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Federal register

Wednesday
June 3, 1992

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Wednesday
June 3, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Chicago, IL, see announcement on the inside cover of this issue.

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Rules and Regulations

Federal Register
Vol. 57, No. 107
Wednesday, June 3, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempted Prescription Products

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the DEA, amending § 1308.32 of title 21 of the Code of Federal Regulations such that those products listed in § 1308.32 containing butalbital shall not be exempted from sections 952–954 of the Controlled Substance Import and Export Act. This action is in response to a decision of the United Nations Commission on Narcotic Drugs taken at the Commission's thirty-fourth session.

EFFECTIVE DATE: July 6, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** on January 14, 1992, proposing that products containing butalbital not be exempt from import/export regulations. Interested persons were given until February 13, 1992, to submit comments or objections regarding the proposal. No comments were received.

The Controlled Substances Act (CSA) as amended in accordance with 21 U.S.C. 811 (g)(3)(A), and the Controlled Substances Import and Export Act as amended in accordance with 21 U.S.C. 956 (b), authorizes the Attorney General to except any compound, mixture, or preparation containing any depressant or stimulant substances listed in paragraph (a) or (b) of Schedule III or in Schedule IV or V from the application of all or any part of this subchapter. This is applicable if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system and (2) such ingredients are included, therein, in such combination, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

The United States is a party to the United Nations Convention on Psychotropic Substances, 1971. Congress intended that the United States fulfill the requirements of this treaty and made provisions under 21 U.S.C. 801(a) of the CSA to incorporate the Convention's provisions into the CSA.

Under the provisions of the 1971 Convention, Article 3 provides that, if certain conditions are met, a Party may exempt preparations containing psychotropic substances from certain measures of control provided for in the Convention, except for specific obligatory requirements. A Party must then notify the Secretary-General of this action. The Secretary-General, in turn, notifies the Commission on Narcotic Drugs (CND). After notification and subsequent review, the CND may decide to terminate the exemption of a preparation.

On May 16, 1989, the United States notified the United Nations of the exemption of 55 products containing butalbital. On April 29, 1991, the 34th Commission on Narcotic Drugs, by decision 4 (XXXIV), decided to terminate the exemption by the Government of the United States of America of the preparations containing butalbital as found in § 1308.32 of title 21 of the Code of Federal Regulations, from certain control measures provided for under the 1971 Convention on Psychotropic Substances, so that the requirements of Article 12, paragraph 2, import/export documentation, of the Convention should apply to these preparations.

To comply with the decision of the Commission, the DEA hereby amends § 1308.32 of the Code of Federal Regulations such that those exempt prescription products listed in § 1308.32 containing butalbital shall be subject to the import/export requirements of sections 952–954 of the CSA.

The Deputy Assistant Administrator of the DEA hereby certifies that this action will have no negative economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

This action has been analyzed in accordance with the priniciples and criteria contained in E.O. 12612 and it has been determined that this matter does not have sufficient Federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB), pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12278 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a "major rule" as that term is used in E.O. 12291 and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, DEA, Drug traffic control, Narcotics, and Prescription drugs.

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811(g)(3)(A)) and delegated to the Administrator of the DEA by regulations of the Department of Justice (28 CFR 0.100), and redelegated to the Deputy Assistant Administrator, Office of Diversion Control of the DEA, pursuant to 47 FR 43370, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends title 21, CFR, part 1308.

Part 1308—Schedule of Controlled Substances

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 801(a), 811, 812, 871(b).

2. Section 1308.32 is amended by revising the introductory text to read as follows:

§ 1308.32 Exempted prescription products.

The following compounds, mixtures,

or preparations which contain a non-narcotic controlled substance listed in § 1308.12(e) or in § 1308.13(b) or (c) or in § 1308.14 or in § 1308.15 listed in the Table of Exempted Prescription Products have been exempted by the Adminsitrator from the application of sections 302 through 305, 307 through 309, 1002 through 1004 of the Act (21 U.S.C. 822–825, 827–829, and 952–954) and §§ 1301.24, 1301.31, 1301.32, and §§ 1301.71 through 1301.76 of this chapter for administrative purposes only. Except that those products containing butalbital shall not be exempt from the requirements of 21 U.S.C. 952–954 concerning importation, exportation, transshipment and in-transit shipment of controlled substances. Any deviation from the quantitative composition of any of the listed drugs shall require a petition of exemption in order for the product to be exempted.

* * * * *

Dated: May 22, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–12828 Filed 6–2–92; 8:45 pm]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 92–16]

Special local regulations: Port Canaveral, Cape Canaveral, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting special local regulations for the Florida Sports Fishing Association Billfish Tournament (FSFA Billfish Tournament). The event will be held annually on the Port Canaveral Barge Canal and the Port Canaveral Inner Reach Channel on the last Saturday of June or the first Saturday of July as published in the Seventh Coast Guard District Local Notice to Mariners. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: July 6, 1992.

FOR FURTHER INFORMATION CONTACT: CDR D. P. Rudolph, (904) 247–7318.

SUPPLEMENTARY INFORMATION: On Tuesday, March 31, 1992, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (57 FR 10849). Interested persons were requested to submit comments, and no comments were received.

Drafting Information

The drafters of these regulations are QM1 Anneta Culver, Marine Event Petty Officer, Coast Guard Group Mayport and LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received. Accordingly, the final rule contains no changes to the notice of proposed rulemaking published in the **Federal Register**.

Economic Evaluation and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. This event is not expected to affect commercial activities on Canaveral Barge Canal or Port Canaveral Inner Reach Channel. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with section 2.B.2.08 of Commandant Instruction M16475.1B and Commandant Instruction 16751.3A, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not threaten protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.716 is added to read as follows:

§ 100.716 Annual Florida Sports Fishing Association Billfish Tournament.

(a) *Regulated area.* A regulated area is established for the waters of Port Canaveral Harbor. The regulated area is bound on the west by the easternmost State Road 401 bascule bridge, position 28–24–33 N, 080–37–55 W, and on the east by the line drawn between Canaveral Harbor Entrance Channel Light #12 (LLNR 8955), position 28–24–38 N, 080–34–59 W, and Canaveral Harbor Entrance Channel Lighted Buoy #13 (LLNR 8960), position 28–24–33 N, 080–34–59 W. The southern boundary will be a line drawn from Canaveral Harbor Entrance Channel Lighted Buoy #13 to the Cape Canaveral southern jetty, position 28–24–29 N; 080–35–18 W, then following the southern shoreline of Cape Canaveral Harbor to the easternmost State Road 401 bascule bridge. The northern boundary will be a line extending from Canaveral Harbor Entrance Channel Light #12, following the northern shoreline of Cape Canaveral Harbor, but excluding all navigable waters north of a line drawn across the mouth of the East Basin, Middle Basin, and West Basin.

(b) *Special local regulations.* A "No Wake Zone" is established in the regulated area.

(c) *Effective dates.* The Commander, Coast Guard Group Mayport will publish the effective times and dates during which the regulations in this section will be effective in the Seventh Coast Guard District Local Notice to Mariners.

Dated: May 14, 1992.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 92–12809 Filed 6–2–92; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05-92-20]

Special Local Regulations for Marine Events; 1.6 Mile Choptank River Swim, Choptank River Bridge, Choptank River, Cambridge, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.512.

SUMMARY: This notice implements 33 CFR 100.512 for the 1.6 Mile Choptank River Swim, to be held on June 7, 1992. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATE: The regulations in 33 CFR 100.512 are effective from 7 a.m. to 11:15 a.m., June 7, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Baltimore (301) 576-2520.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Fletcher Hanks, of Endurance Sports Events, Inc. Swim submitted an application to hold this year's swim on June 7, 1992. The event is the swim portion of the Cambridge Triathlon, and will consist of approximately 500 swimmers racing on a course west of the Choptank River Bridge starting at the Gateway Marina and finishing at Great Marsh Point. Since this is the type of event contemplated by these regulations, and the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.512 are being implemented.

Dated: May 26, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92-12913 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD7 92-49]

Special Local Regulations: Ponce De Leon Inlet, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Daytona Beach Offshore Challenge powerboat race. The event will be held on July 19, 1992 from 12 p.m. EDT to 3 p.m. EDT, one nautical mile offshore of Daytona Beach, Florida. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 12 p.m. EDT to 3 p.m. EDT on July 19, 1992.

FOR FURTHER INFORMATION CONTACT: CDR D.P. Rudolph, (904) 247-7318.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received until April 27, 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are QM1 Anneta Culver, Marine Event Petty Officer, Coast Guard Group Mayport, and LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

There will be thirty-five (35) offshore powerboats ranging in size from 24 to 50 feet. It is anticipated that there will be approximately 500 spectator craft. The race will begin at the Daytona Beach Pier ten miles north of the Ponce de Leon Inlet and proceed north, parallel to the beach and approximately 400 yards offshore, for a distance of 2 miles. At the 2 mile point, the boats will turn towards the ocean and then head back south 4 and ½ miles offshore. They will then turn in towards the shore to a point approximately 400 yards offshore, and then go back to the point of beginning. The entire race consists of seven or ten consecutive laps of the above described course. These regulations are required to provide for the safety of life on the navigable waters during the event.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B and Commandant Instruction 16751.3A, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not threaten protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-T0749 is added to read as follows:

§ 100.35-T0749 Ponce De Leon Inlet, Florida.

(a) *Regulated Area:* A regulated area is established for the waters lying within an area bounded by the following coordinates: position 29-15-40 N, 081-01-07 W at the Northwest corner; position 29-15-43 N, 081-01-00 W at the Northeast corner; position 29-11-46 N, 080-59-00 W at the Southeast corner; and, position 29-11-41 N, 080-59-08 W at the Southwest corner.

(b) *Special Local Regulations:* Entry into the regulated areas is prohibited unless authorized by the Patrol Commander. After termination of the Daytona Beach Offshore Challenge Race, all vessels may resume normal operations.

(c) *Effective Dates:* These regulations become effective from 12 p.m. EDT to 3 p.m. EDT on July 19, 1992.

Dated: May 19, 1992.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 92-12911 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD 09-92-38]

Safety Zone Regulations; Lower Lake Huron, St. Clair River and Black River

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a Safety Zone for portions of Lower Lake Huron, the St. Clair River and Black River during the festivities surrounding the annual Port Huron to Mackinac Island Race. These regulations are needed to provide for the safety of life and property on navigable waters prior to and until approximately eight hours after the start of this event.

EFFECTIVE DATE: These regulations will become effective from 12 p.m. (EDST) on July 17, 1992, until 6 p.m. (EDST), July 18, 1992.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Aids to Navigation and Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable.

Drafting Information

The drafters of these regulations are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Aids to Navigation and Waterways Management Branch, and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The circumstances requiring these regulations result from past experiences prior to and after the start of the annual Port Huron to Mackinac Island Race. This event, based on past records, has drawn in excess of 100,000 people and dramatically increased boating traffic in the general vicinity. These regulations require that all vessels in the designated area from the lower part of the Black River to the International Boundary in the St. Clair River northward to the Lake Huron Cut Buoys, Lake Huron, in United States waters will be operated at a "SLOW/NO-WAKE" speed. There will be no restrictions imposed by the Canadian authorities in their waters. These regulations are necessary to ensure the protection of life and property prior to and until approximately eight hours after the start of the race.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

These regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.TO938 is added to read as follows:

§ 165.TO938 Safety zone: Lower Lake Huron, St. Clair River and Black River.

(a) *Location.* The following area is a safety zone: That portion of the Black River from the 10th Street Bridge (mile 0.7), Port Huron, MI, out to the waters of the St. Clair River, and portions of the St. Clair River and Lake Huron enclosed by a line beginning at the south end of the mouth of the Black River and St. Clair River, eastward to the International Boundary, thence northward along the International Boundary to position 43 degrees 02 minutes 50 seconds North, 082 degrees 23 minutes 50 seconds West, then due west intersecting Lake Huron Cut Buoys 5 (LLN 9465) and 6 (LLN 9470) to shore at position 43 degrees 02 minutes 50 seconds North, 082 degrees 26 minutes 50 seconds West, thence southward along the shore to origin.

(b) *Effective date.* This regulation is effective from 12 p.m. (EDST) on July 17, 1992 until 6 p.m. (EDST) on July 18, 1992, unless otherwise terminated by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Port Huron, MI).

(c) *Regulations.* (1) The above regulated area is designated as a "SLOW/NO-WAKE ZONE". All commercial and recreational vessel traffic transiting the above listed area will be operated at bare steerageway, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Port Huron, MI). The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander".

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may terminate the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 5, 1992.

G.A. Penington,

Rear Admiral, U. S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 92-12810 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-4103-2]

National Emission Standards for Hazardous Air Pollutants; National Emissions Standards for Radon Emissions from Phosphogypsum Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the Administrator's final decision on reconsideration of 40 CFR part 61, subpart R, National Emission Standards for Radon Emissions from Phosphogypsum Stacks. EPA previously announced it would reconsider that portion of subpart R that required that all phosphogypsum be disposed in stacks or mines (55 FR 13480, April 10, 1990). The disposal requirement precluded the distribution and use of phosphogypsum for agriculture, construction, and research and development activities. The form of the final rule adopted by the Agency is a combination of the options proposed for public comment on April 10, 1990 (55 FR 13482) and is based on the various risks presented by the radionuclides contained in the phosphogypsum. First, distribution of phosphogypsum for use in agriculture will be permitted provided that the certified average concentration of radium-226 in the phosphogypsum does not exceed 10 pCi/g. This limit is intended to assure that the risks from indoor radon and direct gamma radiation exposure in residences constructed on land previously treated with phosphogypsum do not exceed an acceptable level. Second, distribution of phosphogypsum for use in research and development (R&D) will be permitted so long as affected facilities do not use more than 700 pounds of phosphogypsum for a particular R&D activity and warning labels are placed on containers used to store phosphogypsum for R&D purposes. Third, other uses of phosphogypsum will be permitted on a case-by-case basis with prior EPA approval. EPA approval will be granted only if EPA finds that the proposed use of the phosphogypsum will be at least as protective of public health, in the short term and the long term, as disposal in a stack or mine.

DATES: June 3, 1992.

Judicial review: Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of decisions under section 112 is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: William C. Conklin, Air Standards and Economics Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20460, (703) 308-8755.

SUPPLEMENTARY INFORMATION:

Motion for Reconsideration

For any party who wishes to present new information to EPA regarding the appropriateness of this revised regulation, a Petition for Reconsideration may be filed under section 307(d)(7)(B) of the Clean Air Act.

Docket

The rulemaking record is contained in Docket No. A-79-11 and contains information considered in determining the health effects associated with uses of phosphogypsum, estimating the impact of the revised standard, and establishing the format of the final rule. It also contains all comments received from the public during the comment period. This docket is available for public inspection and copying between 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for copying.

A single copy of the Background Information Document (BID) has been placed in the docket. Copies of the Background Information Document may be obtained by writing to: Director, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460.

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I. Definitions

A. Terms

Activity—The amount of a radioactive material. It is a measure of the transformation rate of radioactive nuclei at a given time. The customary unit of activity, the curie, is 3.7×10^{10} nuclear transformation per second.

Effective Dose of Equivalent (EDE)—The sum of the risk-weighted organ dose equivalent commitments. The effective dose equivalent has the same risk (for the model used to derive the weighting factors) as a uniform dose equivalent to all organs and tissues. For the purposes of these standards, "effective dose equivalent" means the result of the calculation used to determine the dose equivalent to the whole body, by taking into account the specific organs receiving radiation, the dose each organ receives, and the risk per unit dose to that organ. The system for calculation of the EDE and the weighting factors used for purposes of this rule is described in detail in the International Commission on Radiological Protection's Publication No. 26, Pergamon Press, New York (1982).

Flux standard—A regulatory standard that limits the amount of radon that can emanate per square meter of regulated material per second, averaged over a single source.

Half-Life—The time it takes half the atoms of a particular radioactive material to transform, or decay, to another nuclear form.

Incidence—The predicted number of fatal cancers in a population resulting from exposure to a pollutant. Other health effects (non-fatal cancers, genetic, and developmental) are noted separately.

Maximum Individual Risk—The maximum additional cancer risk imposed on a person due to exposure to a pollutant for a 70-year lifetime.

Pathway—The route through which radionuclides might contaminate the

environment or reach people, e.g. air, water, food.

Radionuclide—A type of atom which spontaneously undergoes radioactive decay.

B. Acronyms

CAA—The Clean Air Act, 42 U.S.C. Sec. 7401 *et seq.*
CAAA—The Clean Air Act Amendments of 1991
CERCLA—The Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*
CFR—Code of Federal Regulations
CMI—Consolidated Minerals, Inc.
BID—The Background Information Document prepared in support of this rulemaking
EPA—United States Environmental Protection Agency
mrem—millirem, 1×10^{-3} rem
MIR—Maximum Individual Risk
NESHAP—National Emission Standard for Hazardous Air Pollutants
NRDC—Natural Resources Defense Council, Inc.
pCi—picocurie, 1×10^{-12} curie
pCi/g—picocurie per gram
pCi/m^2-s—picocurie per square meter per second
RCRA—The Resource Conservation and Recovery Act
TFI—The Fertilizer Institute
TSCA—The Toxic Substances Control Act
USG—United States Gypsum Company

II. Background

A. Standard Setting Under Section 112

On December 15, 1989, EPA promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants (NESHAPs) to control radionuclide emissions to the ambient air from a number of different source categories, 40 CFR part 61. This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). The NESHAPS were promulgated pursuant to a voluntary remand granted by the U.S. Court of Appeals for the DC Circuit. The purpose of the remand was to enable EPA to implement the Court's earlier ruling in *NRDC, Inc. v. EPA*, 824 F.2d 1146 (D.C. Cir. 1987) ("the Vinyl Chloride decision"), which articulated specific legal requirements for promulgation of standards under Section 112.

The Vinyl Chloride decision set forth a decision-making framework for promulgation of NESHAPs in which the Administrator makes a determination under section 112 in two steps: First, determine a "safe" or "acceptable" level of risk considering only health-related factors, and second, set a standard that provides an "ample margin of safety," in which costs, feasibility, and other relevant factors in addition to health may be considered.

After proposing and receiving comments on several options by which to define "safe", the Administrator selected an approach, first announced in the final NESHAPs for certain benzene source categories (54 FR 38044 September 14, 1989). Under this approach, the Administrator established a presumption of acceptability for a risk of approximately one in ten thousand to the maximally exposed individual, and a goal to protect the greatest number of persons possible to a lifetime risk level no higher than approximately one in one million. After evaluating existing emissions against this benchmark, other risk information is then considered and a final decision is made about what risk is acceptable. The Agency then considers other information, including economic costs and technical feasibility, along with all of the health-related factors previously used to determine the "safe" level, to set a standard which protects public health with an ample margin of safety.

B. The NESHAP for Phosphogypsum Stacks

Phosphogypsum stacks are large piles of waste from wet acid phosphorus production. These are approximately 66 stacks of phosphogypsum located in 12 different states. Two-thirds of these stacks are located in Florida, Texas, Illinois, and Louisiana. Because the phosphate ore used to produce the phosphoric acid contains relatively high concentrations of uranium and radium, phosphogypsum stacks also contain high concentrations of these elements. The presence of radium in the stacks causes them to release radon gas into the atmosphere.

During the rulemaking that resulted in promulgation on December 15, 1989, of the final 40 CFR part 61, subpart R, NESHAP for radon emissions for phosphogypsum stacks, EPA performed a pile-by-pile assessment of radon releases from 58 phosphogypsum stacks located at 41 different facilities. Radon emissions were based on radon flux measurements from stacks in Florida and Idaho which, combined with the radium content of the phosphate rock, allowed EPA to estimate emissions from the other stacks. The maximum individual risk estimates were based on the locations of nearby residents obtained from industry or topographical maps. Where information was unavailable, people were assumed to be 800 meters from the site boundary. Population information within 80 km was taken from census tract data.

The estimated maximum individual lifetime risk of fatal cancer from radon emissions from phosphogypsum stacks is 9×10^{-6}. The radon emissions are estimated to cause 0.95 fatal cancers and 0.047 non-fatal cancers per year to the 95 million people within 80 km. Approximately 90% of the risk to the population is borne by people whose risk is less than 1×10^{-5}, and 33% of the risk is borne by people whose risk is less thatn 1×10^{-6}.

As stated earlier, the maximum individual risk to any individual is 9×10^{-5} which is less than the benchmark of approximately 1×10^{-4} and is therefore presumptively acceptable. The incidence of 0.95 results from the low levels of risk to the millions of persons included within the modelling radius, with the bulk of the incidence from people whose individual risk is less thatn 1×10^{-5}. Over 77% of the population is exposed to risks of less than 1×10^{-6}. EPA, therefore, concluded that the risk associated with baseline emissions was acceptable.

In addition to re-examining all of the health-related factors discussed above, EPA also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from phosphogypsum stacks. The results of this examination indicated that the small reductions in incidence and maximum individual risk would be achieved at relatively large costs. Therefore, EPA determined that baseline emissions provided an ample margin of safety and established a NESHAP requiring that all phosphogypsum be disposed of in stacks or mines and that such stacks or mines not emit more than a flux of 20 pCi/m^2-s radon into the ambient air.

EPA settled on this form of a standard pursuant to its authority under CAA section 112(e) to set a work practice standard when it is "not feasible to prescribe or enforce an emission standard" because the hazardous air pollutant cannot be emitted through a conveyance designed or constructed to emit or capture such air pollutant. Given the size of the stacks, use of a conveyance to capture the radon emitted by the stacks is utterly impractical. Without requiring the radium-rich phosphogypsum to be first disposed into large, manageable stacks or mines, which is generally what has been done with the existing phosphogypsum, the phosphogypsum could have been incorporated into other products or otherwise diffused throughout the country, such that the

Agency would be unable to ensure that the phosphogypsum's radon emissions do not present an unacceptable risk to public health. EPA concluded that, once the phosphogypsum is deposited in stacks, an additional requirement limiting radon-222 emissions to 20 pCi/m^2-s would be sufficient to ensure an ample margin of safety.

Because the final phosphogypsum NESHAP was promulgated and became effective on December 15, 1989, it became applicable to existing phosphogypsum sources on March 15, 1990. Clean Air Act section 112(c)(1)(B)(i), 42 U.S.C. 7412(c)(B)(i).

C. Petitions for Reconsideration

EPA received petitions from The Fertilizer Institute ("TFI"), Consolidated Minerals, Inc. ("CMI"), and U.S. Gypsum Co. ("USG") to reconsider the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal into stacks or mines of all phosphogypsum, thereby preventing alternative uses of the material. In pertinent part, TFI contended that this provision (1) was adopted without proper notice and comment, (2) was contrary to the national policy favoring recycling and reuse of secondary materials, (3) effectively prevented any amount, no matter how small, from being used in the research and development of beneficial uses of the material, (4) was unnecessary because certain uses of phosphogypsum such as mixing with soil as a calcium replenisher do not cause significant risks, and (5) would cause irreparable harm to thousands of farmers.

CMI stated that this portion of the phosphogypsum NESHAP was arbitrary and capricious because it prevented the use or sale of any of the phosphogypsum produced by CMI's particular industrial process. CMI contended that the EPA prohibition was unreasonable because the CMI method allegedly reduces the radium concentration in much of the resultant phosphogypsum such that "safe" levels of radon gas emissions to ambient air are ensured.

U.S. Gypsum's petition supported the phosphogypsum NESHAP only insofar as it pertained to untreated phosphogypsum. USG stated that phosphogypsum that is treated so as to achieve "safe" levels of radium (the material that ultimately results in radon gas emissions to ambient air) should be allowed for agricultural use. USG stated that there are safer alternative products available in the agricultural gypsum market that are economically viable, and because the technology to treat phosphogypsum is also available and viable, alternative use of untreated phosphogypsum was properly prohibited by the NESHAP. Therefore, USG requested reconsideration as to the ban on use of treated phosphogypsum and, additionally, to allow research and development of phosphogypsum purification technologies.

In accordance with section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), EPA granted limited reconsideration of the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which required disposal of phosphogypsum in stacks or mines. Although the Agency concluded that several of the issues raised by the petitioners merit reconsideration, EPA did not agree with all of the arguments or assertions raised. For example, EPA believes that its proposal, published at 54 FR 9612, *et seq.* (March 7, 1989), which included explicit regulatory language requiring that phosphogypsum be disposed in stacks or mines (implicitly prohibiting alternative uses), provided adequate public notice for the final rule. Indeed, comments from both industry and environmental groups on this very issue were submitted to EPA in response to that proposal.

EPA granted limited reconsideration in order to receive more information on the following: (1) The specific types of proposed alternative uses of phosphogypsum; (2) the current or anticipated feasibility of those alternative uses; (3) the research and development of processes which remove radium from phosphogypsum; (4) the health risks associated with either research and development or alternative uses, (5) the availability, cost, and effectiveness of substitutes for phosphogypsum, and (6) the proper definition of "phosphogypsum" in terms of its origin and its radium content.

D. Limited Class Waiver from Compliance

Pursuant to the Agency's authority under Clean Air Act section 112(c)(1)(B)(ii), 42 U.S.C. 7412(c)(1)(B)(ii), and 40 CFR parts 61.10–61.11, EPA granted a limited waiver from compliance with the work practice portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, for the 1990 growing season for those owners engaged in the distribution or use of phosphogypsum for agricultural purposes. This limited waiver was based upon the finding of the Administrator that such activity presented no imminent endangerment to public health, that the immediate prohibition of such use would cause great injury to many small farmers who rely upon phosphogypsum, and that it would be burdensome and impracticable to issue limited waivers to each affected farmer. The limited compliance waiver was extended to June 1, 1991, (55 FR 40834 October 5, 1990) and to October 1, 1991 (56 FR 23519 May 22, 1991). EPA permitted the compliance waiver to expire on October 1, 1991, in order to facilitate an orderly transition to the provisions of the revised Subpart R.

E. Proposed Rule

In accordance with the subjects being reconsidered, EPA simultaneously proposed four options to maintain or amend the phosphogypsum NESHAP.

1. Option A

EPA proposed making no change to the phosphogypsum NESHAP, 40 CFR part 61, subpart R, as promulgated on December 15, 1989 at 54 FR 51653 (December 15, 1989).

2. Option B

EPA proposed to amend the definition of "phosphogypsum" to add a requisite threshold concentration level in terms of picocuries of radium per gram of phosphogypsum. EPA considered for this threshold level a range of values up to 10 picocuries of radium per gram. EPA also proposed to amend the present definition of phosphogypsum from the "waste which results from the process of wet acid phosphorus fertilizer production" to "the waste or other form of byproduct which results from the process of wet acid phosphorus production."

3. Option C

EPA proposed allowing the use of phosphogypsum for the limited purpose of researching and developing processes that remove radium-226 from phosphogypsum. Under this option, an owner desiring to make such use must first receive permission from EPA. Permission would be granted only upon a finding by the Administrator that the proposed project is at least as protective of public health, in the short and long term, as would be disposal into a stack or mine, and upon such other factors as the Administrator in his discretion deems appropriate.

4. Option D

EPA proposed allowing any alternative use of phosphogypsum for which the owner has first received permission from EPA. Permission would be granted by the Administrator upon finding that the proposed use is at least as protective of public health, in the short and long term, as would be disposal into a stack or mine, and upon

such other factors as the Administrator in his discretion deems appropriate.

III. Reconsideration of Standard

A. Analytic Methodology

The PATHRAE dose assessment model was utilized to evaluate the incremental increases in the maximum individual lifetime risk (MIR) associated with the uses of phosphogypsum in agriculture, road construction, and research and development activities. (See Reference (1).) The PATHRAE model was initially developed as an analytical tool to assist the EPA in developing standards for low-level radioactive waste and below regulatory concern waste disposal. The PATHRAE model estimates the potential health effects which could occur if radioactive wastes were disposed of in a near surface facility, sanitary landfill, or other geologic setting.

Although PATHRAE models up to ten different off-site and on-site pathways through which persons may come in contact with radioactivity from disposed material, this analysis only utilized eight pathways: Groundwater migration to a river, groundwater migration to a well, erosion and transport to a river, food grown on site, direct gamma radiation, on-site dust inhalation, inhalation of radon in structures, and atmospheric transport of contaminants. Maximum individual lifetime risks from one year of exposure were obtained from the PATHRAE dose assessment results using the risk conversion factors in EPA's Environmental Impact Statement for radionuclide NESHAPS. (See Reference (2).)

Where PATHRAE did not model the exposure scenario (e.g., direct gamma exposure to a person performing experimental analyses on phosphogypsum contained in metal drums), the MICROSHIELD computer code was used to augment the results of the PATHRAE analyses. (See Reference (3).) MICROSHIELD is a microcomputer adaptation of the ISOSHLD mainframe code for analyzing gamma radiation shielding. (See Reference (4).) MICROSHIELD has solution algorithms for 14 different geometries and performs dose rate calculations by one of three geometry-based calculational routines which include analytical expressions, Simpson's rule integration, and point-kernel integration.

Twelve scenarios were developed to evaluate the radiological risks associated with the use of phosphogypsum in agriculture (Scenarios 1–7), road construction (Scenarios 8–11), and research and development activities (Scenario 12). The purpose of these scenarios was to identify the greatest maximum individual lifetime risk of fatal cancer from several exposed groups: members of critical population groups, members of the general public, people living on contaminated land, and workers. Given the uncertainties associated with characterizing a population that might occupy the treated land 100 years in the future, the risk distribution and incidence in a hypothetical population was not estimated. Because these scenarios were designed to be as realistic as possible, the assumptions used relied on survey data and widely accepted scientific information whenever possible. For example, the build-up of radium-226 in the soil takes into consideration removal mechanisms such as radioactive decay, plant uptake, leaching, and wind erosion. In order to minimize the uncertainty of the risk estimates, assumptions with large uncertainties that would not provide any significant clarification of the exposure scenarios, such as the impacts of natural events (e.g. 100 year floods, tornadoes, and hurricanes), were not included in the analyses.

Ra-226 concentrations of 26 pCi/g, 10 pCi/g, 7 pCi/g, 5 pCi/g, and 3 pCi/g in the phosphogypsum were used to determine the significance of varying the level of radioactivity on the risk associated with use. As a result of the number of scenarios, pathways, and Ra-226 concentration levels utilized, over 670 individual risk estimates were generated. The risks provided in Section B are individual lifetime risks based on a 70 year exposure period unless noted otherwise. These risks represent the incremental increase in risk above that presented by exposure to natural background radiation. (Refer to the Background Information Document, Reference (5), for additional details on the exposure scenarios.)

B. Risk Estimate Results

1. Risks from Agricultural Applications

Seven scenarios involving the agricultural application of phosphogypsum were evaluated. Scenarios 1, 3, and 5 assume a clay soil with the exposed individual being 890 meters from the site boundary. Scenarios 2, 4, and 6 assume a sandy soil with the exposed individual being 100 meters from the site boundary. Scenario 7 evaluated the effect of using phosphogypsum containing a range of radium-226 concentrations with different application rates. In each scenario the phosphogypsum was applied biennially over a 100 year period. At the end of the 100 year period the land was coverted to other uses which resulted in increased risks to the users of the treated land. The exposure pathways evaluated in Scenarios 1 through 6 included: Direct gamma exposure and inhalation of contaminated dust by agricultural workers; direct gamma exposure, indoor radon inhalation, and ingestion of contaminated well water by individuals living on the treated land; inhalation of contaminated dust, ingestion of contaminated well water, ingestion of foodstuffs contaminated by well water, and ingestion of foodstuffs grown on treated soil by members of the critical population group; and ingestion of river water contaminated by groundwater or surface water runoff by off-site individuals. Scenario 7 evaluated only the direct gamma exposure and indoor radon pathways for the on-site individual. The risks that occur result from the accumulation of radium-226 activity in the treated soil. For Scenarios 1 and 2, 3 and 4, and 5 and 6, a radium-226 concentration of 26 pCi/g in phosphogypsum is estimated to cause increases in the soil activity of 0.60, 0.88, and 2.70 pCi/g respectively after 100 years of use.

For phosphogypsum with lower radium-226 concentrations, the soil activity can be estimated by ratioing the radium-226 concentration in the phosphogypsum and multiplying by the increased soil activity for the scenario of interest. For example, if the radium-226 concentration in the phosphogypsum is 10 pCi/g, the increased soil activities for the scenarios listed above are estimated to be 0.23, 0.34, and 1.0 pCi/g. Naturally occurring radium-226 soil activities range from 0.5 to 3 pCi/g.

The largest increases in the maximum individual lifetime risks (MIR) for agricultural applications of phosphogypsum, Scenarios 1–6, resulted from the direct gamma radiation and indoor radon inhalation exposure pathways for people living in a house built on phosphogypsum treated land. These incremental risk increases and the sums of these increased risks are presented in Table 1. The sum of the gamma radiation and indoor radon inhalation risks for these six agricultural scenarios ranges from 4.5×10^{-5} to 1.8×10^{-3}. The gamma radiation and radon inhalation risks in Scenarios 1 & 2, 3 & 4, and 5 & 6 are the same because the differences between the scenarios only affected those pathways associated with the migration of radionuclides in water. As Table 1 illustrates, the increased risks appear to be approximately proportional to the concentration of radium-226 in the phosphogypsum.

Scenario 7 was developed to determine how the sum of the gamma radiation and radon inhalation risks could be kept below the presumptively safe level of approximately 1×10^{-4} by varying the phosphogypsum application rate and radium-226 concentration in the phosphogypsum. These results are presented in Table 2. The sum of the maximum lifetime risks to the on-site individual from 70 years of exposure to gamma radiation and indoor radon ranges from 1.5×10^{-5} for 3 pCi/g phosphogypsum applied at a rate of 500 lbs/acre to 1.5×10^{-3} for 15 pCi/g phosphogypsum applied at a rate of 10,000 lbs/acre.

TABLE 1.—GAMMA AND RADON RISKS FOR AGRICULTURAL APPLICATIONS

Scenarios	Pathway	Maximum individual lifetime risk				
		26 pCi/g	10 pCi/g	7 pCi/g	5 pCi/g	3 pCi/g
1 and 2	Direct Gamma	2.1 E-4	8.4 E-5	5.6 E-5	4.0 E-5	2.4 E-5
	Indoor Radon	1.8 E-4	7.0 E-5	4.8 E-5	3.5 E-5	2.1 E-5
	Sum	3.9 E-4	1.5 E-4	1.0 E-4	7.5 E-5	4.5 E-5
3 and 4	Direct Gamma	3.2 E-4	1.3 E-4	9.1 E-5	6.1 E-5	3.6 E-5
	Indoor Radon	4.8 E-4	1.8 E-4	1.3 E-4	9.1 E-5	5.3 E-5
	Sum	8.0 E-4	3.1 E-4	2.2 E-4	1.5 E-4	8.9 E-5
5 and 6	Direct Gamma	9.8 E-4	3.7 E-4	2.7 E-4	1.9 E-4	1.1 E-4
	Indoor Radon	8.4 E-4	3.3 E-4	2.3 E-4	1.7 E-4	9.8 E-5
	Sum	1.8 E-3	7.0 E-4	5.0 E-4	3.6 E-4	2.1 E-4

Note: 1.0 E-4 equals 1×10^{-4}

TABLE 2.—GAMMA AND RADON RISKS FROM AGRICULTURAL APPLICATIONS (SCENARIO 7)

Application rate (lbs/acre)	Ra-226 Concentration in phosphogypsum (pCi/g)						
	3	7	15	20	30	45	60
500	1.5 E-5	3.6 E-5	7.7 E-5	9.8 E-5	1.5 E-4	2.3 E-4	3.1 E-4
1,000	3.1 E-5	7.0 E-5	1.5 E-4	2.0 E-4	3.1 E-4	4.6 E-4	
1,500	4.6 E-5	9.8 E-5	2.3 E-4	3.1 E-4	4.6 E-4		
2,500	7.7 E-5	1.8 E-4	3.8 E-4	5.0 E-4			
5,000	1.5 E-4	3.6 E-4	7.7 E-4				
10,000	3.1 E-4	7.0 E-4	1.5 E-3				

Figure 1 presents the curve that is generated when the combinations of Ra-226 content and application rate that yield an estimated maximum lifetime individual risk of 3×10^{-4} are plotted. If the point representing a given Ra-226 content in phosphogypsum and a given application rate for phosphogypsum is located within or on this curve, the corresponding lifetime individual risk from exposure to gamma radiation and radon inhalation will not exceed the presumptively safe level.

FIGURE 1

APPLICATION RATE OF PHOSPHOGYPSUM AS A FUNCTION OF RA-226 CONCENTRATION FOR A LIFETIME RISK OF 3 X 10^{-4}

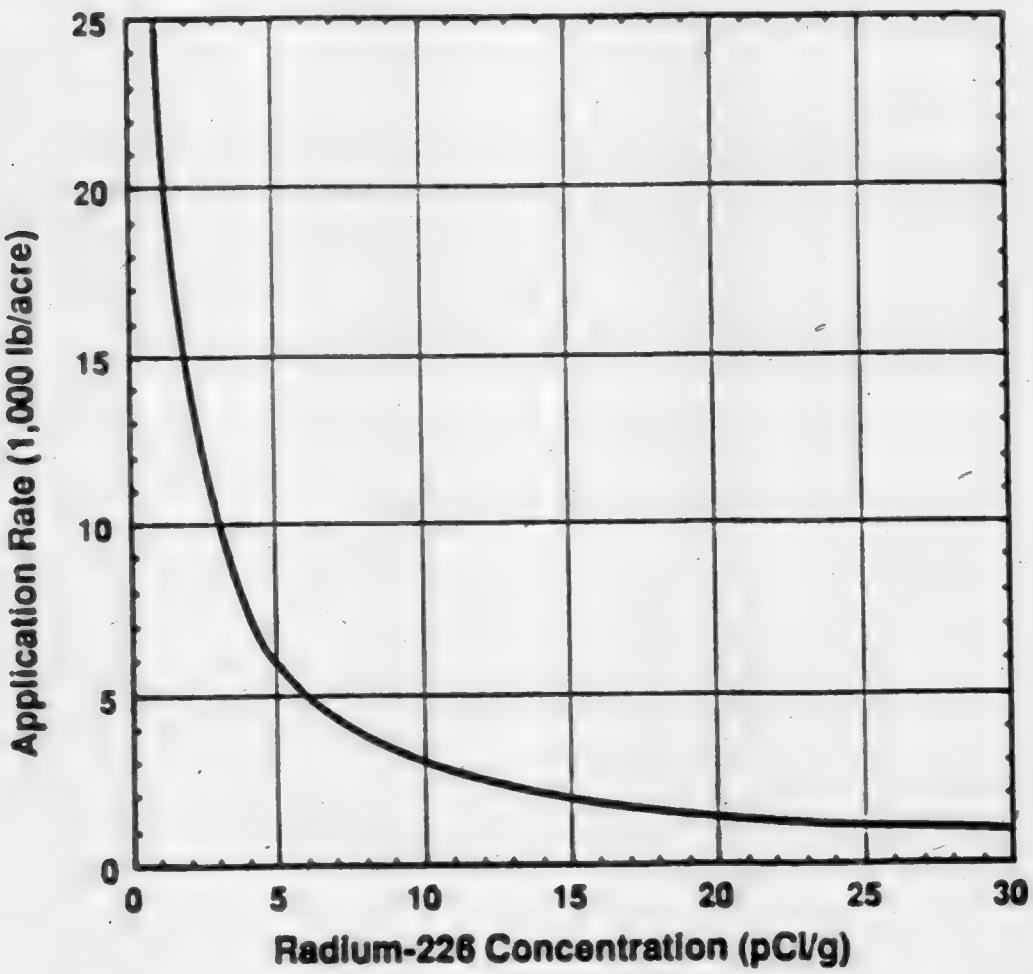

Because PATHRAE does not estimate the radiological risks associated with the direct ingestion of phosphogypsum treated soil by children, separate risk estimates using the International Commission on Radiological Protection methodology were performed. Depending on the radiological content of the phosphogypsum and the number of years that the soil is assumed to be ingested, the risks range from approximately 3.7×10^{-7} to 7.4×10^{-6}. However, the radiological risks associated with exposure scenarios that are more realistic are at the lower end of this range. (Refer to the Background Information Document, Reference 5, for additional details on these risk estimates.)

2. Risks From Road Construction

Scenarios 8, 9, 10, and 11 were used to estimate the radiological hazard associated with using phosphogypsum to construct asphalt and concrete roads. Scenarios 8 and 9 were used for risks from asphalt roads and Scenarios 10 and 11 were used for concrete roads. The primary difference between these two is that phosphogypsum is used in the concrete road surface and in the road base for the concrete roads but only in the road base for asphalt roads. The exposure pathways evaluated for these scenarios include: Direct gamma exposure and dust inhalation by construction workers; direct gamma exposure of persons driving on the road; direct gamma exposure, inhalation of indoor radon, ingestion of contaminated well water, and ingestion of foodstuffs grown on-site by individuals living on the treated land; direct gamma exposure, ingestion of contaminated well water, and ingestion of foodstuffs contaminated by well water by members of the critical population group; and ingestion of river water contaminated by groundwater or surface water runoff by off-site individuals.

The largest increases in the maximum individual lifetime risks are associated with the gamma radiation and indoor radon inhalation exposure pathways for people living in a house constructed on land where roads built using phosphogypsum once existed. These incremental risk increases and the sums of these risk are presented in Table 3. The gamma radiation and radon inhalation risks in Scenarios 8 & 9 and 10 & 11 are the same because the differences between the scenarios only affected those pathways associated with

the migration of radionuclides in water. As illustrated in Table 3, the increases in the maximum individual lifetime risks from gamma radiation and indoor radon exposure are proportional to the concentration of the Ra-226 in the phosphogypsum. The sums of the incremental increases in the maximum individual lifetime risks from the direct gamma and indoor radon exposures ranged from 7.5×10^{-4} to 9.3×10^{-3}.

TABLE 3.—GAMMA AND RADON RISKS FOR ROAD CONSTRUCTION SCENARIOS

Scenarios	Pathway	Maximum individual lifetime risk				
		26 pCi/g	10 pCi/g	7 pCi/g	5 pCi/g	3 pCi/g
8 and 9	Direct gamma	1.8 E-3	7.0 E-4	5.0 E-4	3.7 E-4	2.2 E-4
	Indoor radon	4.3 E-3	1.7 E-3	1.2 E-3	8.4 E-4	5.3 E-4
	Sum	6.1 E-3	2.4 E-3	1.7 E-3	1.2 E-3	7.5 E-4
10 and 11	Direct gamma	3.6 E-3	1.3 E-3	9.8 E-4	7.0 E-4	4.1 E-4
	Indoor radon	5.7 E-3	2.2 E-3	1.5 E-3	1.1 E-3	6.5 E-4
	Sum	9.3 E-3	3.5 E-3	2.5 E-3	1.8 E-3	1.1 E-3

3. Risks from Research and Development Activities

Scenario 12 was developed to estimate the maximum individual lifetime risks associated with conducting research and development activities with phosphogypsum. In this scenario, exposures are estimated for a worker who spends four hours per day, 250 days per year, in a laboratory within one meter of an open 55 gallon drum of phosphogypsum. One 55 gallon drum of phosphogypsum equals approximately 700 pounds of phosphogypsum. The lab undergoes two air exchanges per hour. The worker is exposed via direct gamma radiation, dust inhalation, and radon inhalation pathways. The radon inhalation pathway resulted in the highest maximum individual lifetime risk. Table 4 presents the radon inhalation risks for 5 and 10 year time periods. As Table 4 shows the increase in the maximum individual lifetime risk ranges from 1.2×10^{-5} to 2.2×10^{-4}. Although longer time periods would result in higher risks, the Agency believes that these exposure periods are representative of likely time periods for performing research and development activities.

TABLE 4.—RADON RISKS FOR RESEARCH AND DEVELOPMENT ACTIVITIES

Years of exposure	Maximum individual risk				
	26 pCi/g	10 pCi/g	7 pCi/g	5 pCi/g	3 pCi/g
5	1.1 E-4	4.1 E-5	2.8 E-5	2.0 E-5	1.2 E-5
10	2.2 E-4	8.2 E-5	5.6 E-5	4.0 E-5	2.4 E-5

C. Decision on Acceptable Risk

In the first step of the two-step approach for establishing standards to control risks to public health from hazardous air pollutants, the Agency determines what level of exposure presents an "acceptable risk." The EPA believes that the level of the maximum individual lifetime risk, the distribution of risks in the exposed population, incidence, the science policy assumptions and uncertainties associated with the risk measures, and the weight of evidence that a pollutant is harmful to health are all important factors that may be considered in the acceptability judgment. Under the policy established by the Administrator in the benzene decision and implemented in a number of subsequent standards, there is a presumption of acceptability for a risk of approximately one in ten thousand to the maximally exposed individual.

In each of the scenarios used to estimate the risk from using phosphogypsum, the principal MIRs were derived from exposures to the radon gas resulting from the radioactive decay of radium-226 and the direct gamma radiation resulting from the increase in radon-222 decay products. The sums of the MIRs ranged from 1.5×10^{-5} to 1.5×10^{-3}, 7.5×10^{-4} to 9.3×10^{-3}, and 1.2×10^{-5} to 2.2×10^{-4} for agriculture, road construction and research and development activities, respectively. These results clearly indicate that the risks to public health from the radiological hazards associated with uses of phosphogypsum depend on the amount of phosphogypsum used, the radium-226 concentration in the phosphogypsum, and the exposure pathway. Thus, while the unrestricted use of phosphogypsum in agriculture could result in maximum individual lifetime risks exceeding the presumptively safe level of approximately 1×10^{-4}, limitations on the amount of phosphogypsum applied, the radium-226 concentration in the phosphogypsum, or both of these factors could reduce the risks associated with agricultural use to an acceptable level. In contrast, regardless of the radium-226 concentration in phosphogypsum, the use of phosphogypsum in road construction always resulted in a MIR significantly greater than the presumptively safe level. Because of the uncertainties associated with characterizing a population that might occupy land previously treated with phosphogypsum 100 years in the future, the distribution of risk and incidence of fatal cancer in a hypothetical exposed population was not estimated.

After examining the factors identified above, EPA has determined that the risks represented by uses of phosphogypsum in which the MIR does not exceed the presumptively safe level of approximately 1×10^{-4} are acceptable. In earlier radionuclide NESHAP rulemakings implementing the criteria in the Administrator's benzene decision, EPA determined that in some instances that emissions corresponding to estimated maximum individual lifetime risks as high as 3×10^{-4} were acceptable. In the case of phosphogypsum, considering all of the information available on potential

exposures and the associated risks, as well as the uncertainties inherent in deriving risk estimates, EPA has concluded that certain uses of phosphogypsum may be considered acceptable so long as those uses are restricted to limit the estimated lifetime risk to any individual to no more than 3 in 10 thousand.

In evaluating work practice restrictions for agricultural use which would correspond to an acceptable risk level, EPA estimated the upper 95th percentile of the phosphogypsum application rates. This estimate was based on the application rates reported for various crops in California and for peanut crops in Georgia. The curve in Figure 1 was then used to identify the radium-226 concentration in phosphogypsum that, when applied at the upper 95th percentile application rate, would result in a maximum individual risk from indoor radon inhalation and direct gamma exposure of 3×10^{-4}. Based on information submitted during the public comment period, the Agency estimates that the 95th percentile of the application rates for phosphogypsum in the United States is approximately 2,700 pounds per acre. Applying this value to the curve in Figure 1, the radium-226 concentration that would result in a MIR of 3×10^{-4} is approximately 10 pCi/g. Therefore, EPA has determined that limiting the average radium-226 concentration in phosphogypsum used in agriculture to 10 pCi/g or less would result in a maximum individual lifetime risk that could be deemed acceptable.

An acceptable risk level for agricultural use of phosphogypsum could also be achieved by a limit on the amount of phosphogypsum which could be applied during agricultural use which varies dependent on the radium-226 concentration in the phosphogypsum. While hypothetically acceptable, this approach would involve greater regulatory complexity, increase recordkeeping burdens on agricultural users, and complicate enforcement activities. Accordingly, EPA has concluded that a single limit on the radium-226 concentration in phosphogypsum removed from phosphogypsum stacks and used in agriculture would be a more practicable approach to achieving an acceptable risk level than a variable limit on application rates.

In the risk estimates for the research and development scenario, EPA determined that limiting the amount of phosphogypsum utilized in any research and development activity to 700 pounds (one 55 gallon drum) would correspond to a maximum individual risk to researchers over the time periods evaluated to 2.1×10^{-4}. This is within the range of risks that has been determined to be acceptable for other radionuclide NESHAP categories. Therefore, EPA has concluded that modest work practice requirements, including a limit of 700 pounds on the amount of phosphogypsum which may be utilized in a given research and development activity, will achieve an acceptable level of risk.

For the road construction scenarios analyzed, the use of phosphogypsum always resulted in a MIR greater than the outer bound of the presumptively safe level of approximately 1×10^{-4}. Therefore, EPA has determined that the use of phosphogypsum in road construction presents an unacceptable level of risk to public health.

D. Decision on Ample Margin of Safety

Under the two-step process established by the Vinyl Chloride decision, the second step determines an "ample margin of safety," the level at which the standard is set. The first step determination of acceptability is only a starting point for the analysis, in which a ceiling for the ultimate standard is set. This second step establishes the legally enforceable limit that must be met by a regulated activity.

In the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. In the second step, EPA typically strives to protect the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million. After considering all of these factors, the Agency then establishes the standard at a level that provides an ample margin of safety to protect the public health.

In evaluating the risks to future populations associated with alternative uses of phosphogypsum, EPA concluded it was not feasible to characterize future exposures or a hypothetical exposed population sufficiently to enable estimates of the distribution of risk or total incidence of fatal cancer. Therefore, the cost incurred in reducing the incidence of fatal cancer or maximizing the number of people with an individual lifetime risk level no higher than approximately 1 in 1 million also could not be estimated. However, for agricultural uses, the Agency did attempt to estimate the cost per life saved based on the reduction in the risk and the increase in cost on a per acre basis.

Because the potential benefits of research and development are extremely difficult to quantify, the Agency concluded that it could not perform meaningful cost analyses for this use pattern. Also, because the MIRs for the use of phosphogypsum in road construction always exceed the upper limit of the presumptively safe level of approximately 1×10^{-4}, the Agency concluded it was not necessary to perform any additional analysis for this use pattern.

In the ample margin of safety decision step for agricultural uses of phosphogypsum, EPA has re-examined all the health-related factors considered in the first step, in addition to examining the availability and cost of substitute materials which can be used to reduce the risk associated with agricultural uses of phosphogypsum. The Agency has also attempted to estimate the range of the cost per life saved associated with a decision to prohibit use of phosphogypsum use in agriculture (or to reduce the permissible radium-226 concentration in a manner which results in use of alternate materials.)

EPA has already determined that continued agricultural use of phosphogypsum will only be acceptable if the average radium-226 concentration is no greater than 10 pCi/g. Therefore, EPA attempted as part of establishing an ample margin of safety to estimate the cost per life saved associated with further hypothetical reductions in the risks associated with agricultural use. EPA could not estimate the costs per life saved associated with reductions from 10 pCi/g to specific lower concentrations because present information is insufficient to predict the effect of further reductions in the required concentration on the market price or availability of the material. The available information is sufficient to conclude that a 10 pCi/g limit will substantially reduce the supply of untreated phosphogypsum available for agricultural use, and that further reductions in the permissible limit would entail further reductions in the potential supply of conforming material. EPA realizes that technology is available to treat phosphogypsum to reduce the radium-226 content, but EPA does not believe that it can assess the cost effectiveness of such technology or the likelihood it will be utilized to achieve a particular limit.

EPA did estimate the cost per life saved of a prohibition on agricultural

use, or of a further reduction in the permissible limit for radium-226 sufficient to eliminate phosphogypsum use. This analysis was performed by analyzing the potential reductions in risk and increases in cost on a per acre basis. In the analysis, EPA compared use of phosphogypsum in peanut production to use of natural gypsum. The analysis assumes that the land to be treated with phosphogypsum or natural gypsum will remain in peanut production for 100 years and then be converted to residential use, and that the land is treated biennially over the entire 100 year period. A natural gypsum product was used as the substitute material because: (1) It is the substitute material most likely to be available, (2) it is the substitute material most likely to be cost effective, (3) the range of radium-226 concentrations in natural gypsum and the ratio of the application rates for natural gypsum and phosphogypsum are known. The analysis also assumes that the phosphogypsum contains 10 pCi/g of radium-226 and is applied at a rate of 900 pounds per acre, and that the natural gypsum contains approximately 3 pCi/g of radium-226 and is applied at the rate of 675 pounds/acre. Natural gypsum has more calcium in it than phosphogypsum, therefore, it takes less natural gypsum to achieve the same nutritional result.

Table 5 presents the results of the analysis of the cost per life saved. The undiscounted cost per life saved ranges from a low value of $520,000 for land that is converted to residential use with 3 houses per acre to a high value of $220M for land that has one residence per 138 acres. Each residence is assumed to contain the national average of 2.7 occupants. This extremely wide range is a direct result of the difficulties associated with characterizing the conversion of phosphogypsum treated land into residential developments. Since EPA cannot reliably predict where residential development will occur in the future, EPA cannot make regulatory distinctions on this basis. It is possible that the actual cost to save a particular life could be as small or as great as the extremes of this range. However, the average cost per life saved resulting from a prohibition on agricultural use of phosphogypsum will certainly be substantially greater than $520,000 and substantially less than $220M.

TABLE 5.—COSTS PER LIFE SAVED

	MIR	ΔMIR reduction	Material cost (dollar/acre)	ΔMaterial cost (dollar/acre)	Cost/life saved (dollar/death)	
					1 House per 138 acres	3 Houses per acre
Phosphogypsum	9.0×10^{-6}	7.0×10^{-6}	10.67	5.90	220,000,000	520,000
Natural gypsum	2.0×10^{-6}		16.57			

EPA has also examined the cost of available substitute materials. The first analysis evaluated the relative differences in the total cost per ton, material cost plus transportation cost, between phosphogypsum and eight substitute materials. With the exception of one substitute material, which had a cost index of 1.28, phosphogypsum appeared to enjoy a distinct competitive advantage over the other seven substitute materials which had cost indices ranging from 1.86 to 2.78. However, this analysis did not take into consideration the differences in application rates between the phosphogypsum and the substitutes. Three substitute materials were selected from the eight substitutes evaluated in the first analysis to evaluate the differential in the cost per acre for growing peanuts. These substitutes were selected because of the availability of information on the suggested application rates for peanuts. The increased cost per acre of using the substitutes instead of the phosphogypsum ranged from $6.56 to $17.81 per acre. This increased cost can represent a significant operating cost for many farmers. For this analysis the distance to Tifton was selected because it is located in the middle of the Georgia peanut growing district. Actual distances between farm locations, phosphogypsum suppliers, and suppliers of substitute materials; material application rates; and transportation costs vary to such an extent that other similar analyses will sometimes show that the competing products are less costly than the phosphogypsum. A third analysis was performed to evaluate the cost to increase yield by using three phosphogypsum substitute materials as sources of calcium for growing peanuts. The results of this analysis show that differences in the cost per pound increase in yield between phosphogypsum and the substitutes ranges from 2.5 to 61.6 cents per pound. This represents 7.9% to 195% of the 1990 quota support price of 31.8 cents per pound. These analyses show that, of all the materials evaluated, phosphogypsum is the most cost effective means of increasing peanut yield.

Based on the significant costs associated with prohibiting agricultural use of phosphogypsum or substantially reducing the radium-226 concentration in the phosphogypsum below the acceptable level of 10 pCi/g, the fact that phosphogypsum is the most cost effective material analyzed for increasing peanut yield, and the scientific uncertainties associated with the assumptions used in the Agency's estimates, the Administrator has determined that limiting the average radium-226 concentration in phosphogypsum used in agriculture to 10 pCi/g will protect the public with an ample margin of safety. Therefore, EPA is amending the work practice portion of subpart R to allow phosphogypsum to be removed from phosphogypsum stacks and distributed for use in agriculture if certain procedures and restrictions are followed.

IV. Responses to Public Comments

On April 10, 1990, the EPA proposed in the **Federal Register** four options to maintain or modify 40 CFR part 61, subpart R (55 FR 13482 April 10, 1990). The **Federal Register** notice requested public comments on the proposed options, and (1) the specific types of proposed alternative uses of phosphogypsum; (2) the current or anticipated feasibility of those alternative uses; (3) the research and development of processes which remove radium from phosphogypsum; (4) the health risks associated with either research and development or alternative uses, (5) the availability, cost, and effectiveness of substitutes for phosphogypsum, and (6) the proper definition of "phosphogypsum" in terms of its origin and its radium content. An informal public hearing was held in Atlanta, Georgia to provide interested parties an opportunity to present their views, and written comments were

solicited. Comments were received from over 300 individuals and organizations representing government agencies, industry and other members of the regulated community, environmental and public interest groups, and the general public. This section of the preamble discusses the comments received during the public comment period.

A. Legal and Policy Oriented Comments

There were several significant legal and policy oriented comments that appeared in numerous letters and petitions for reconsideration to the Agency prior to the beginning of this rulemaking effort. The Agency believes that each one of these issues should be addressed as part of this final decision. The following paragraphs contain the Agency's responses to these comments. These comments were raised primarily by industry, academia, and research and development organizations that are opposed to any regulation of the alternative uses of phosphogypsum.

Comment: Several commenters stated that the prohibition on phosphogypsum use and research is impermissible under the Clean Air Act.

Response: EPA disagrees with this comment. The Agency has a Congressionally-mandated responsibility under section 112(a) of the Clean Air Act to control air emissions from a hazardous air pollutant which "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness." In 1979, EPA determined that radionuclide emissions to the air constituted hazardous air pollutants which might be regulated under section 112. Because phosphate ore contains above average concentrations of the radionuclides uranium and radium, phosphogypsum also contains these elements. In 1989, EPA determined that it could best control radon emissions and the associated risks to an acceptable level by requiring the placement of the phosphogypsum in stacks, thereby, preventing alternative uses of the material. This work practice requirement was adopted pursuant to the authority provided by section 112(e).

The Agency has just completed approximately 700 risk estimates on various commercial applications of phosphogypsum. The results of these estimates indicate that some restricted use of phosphogypsum in agriculture and research and development activities may pose levels of risk deemed safe under section 112 of the Clean Air Act, but that other uses pose higher, unacceptable risks. Accordingly, the revisions of the work practice standard for phosphogypsum establish specific conditions under which distribution and use of phosphogypsum will be permitted. These restrictions are necessary to achieve the level of public health protection required by the Clean Air Act and are a lawful extension of the work practice requirements in the original standard.

Comment: One commenter suggested that the prohibition on use and research is not supported by the rulemaking record.

Response: The Agency has agreed to reconsider the risks associated with the alternative uses of phosphogypsum which were prohibited by the final rule as originally promulgated on October 31, 1989. As part of its reconsideration, the Agency has performed estimates of the risks associated with agricultural, road construction, and research and development applications of phosphogypsum. These risk estimates were designed to be best estimates of risks to the maximum exposed individual and incorporate data from industry surveys, scientific studies, previous EPA risk estimates, and nationally recognized radiation protection organizations. In light of the small risks involved in conducting such limited scale research, and in light of EPA's policy of waste minimization and material recycling, EPA has decided to remove its original blanket prohibition on research and development activities.

Comment: The prohibition on phosphogypsum use and research is contrary to other contemporaneous EPA regulatory actions concerning phosphogypsum.

Response: The Agency disagrees with this comment. Specifically, the Office of Solid Waste, in 40 CFR part 261, Special Wastes from Mineral Processing (Mining Waste Exclusion); Final Regulatory Determination and Final Rule, (56 FR 27300 June 13, 1991) stated that current management of phosphogypsum and process wastewater poses potential health and environmental problems. However, due to the enormous cost of regulating these wastes under subtitle C of the Resource Conservation and Recovery Act (RCRA), the Agency will investigate the use of the Toxic Substances Control Act (TSCA) to control the threats to human health and the environment presented by these wastes. This investigation will, at a minimum, address the risk reduction potential and associated costs for such regulatory options as restrictions on manufacturing, processing, or disposal. To conduct this investigation, the Phosphoric Acid Wastes Workgroup has been established and is co-chaired by the Office of Solid Waste and Office of Pesticides and Toxic Substances. Considering these efforts, the Agency believes that its actions are totally consistent with one another.

B. Comments on Rule Options

The comments on the four options proposed by EPA for maintaining or modifying the disposal requirement were generally polarized: Approach A was favored largely by environmental organizations and private citizens; Approach B received very little support; Approach C was criticized by industry, academia, private citizens, and public interest groups; Approach D received some support from industry but was criticized by environmental groups and private citizens. Most industry comments stated that the disposal requirement should be eliminated, but this was not a part of any of the proposed options.

The EPA considered all of these comments in formulating the final rule for subpart R. The EPA response to these comments are presented below.

The following sections are split into discussions of the four alternative options presented in the April 10, 1990, **Federal Register** notice, and ancillary issues that were relevant to formulating the final rule for phosphogypsum. The main position and concerns presented by commenters are followed by an EPA response to the comments in the context of the final rule.

Option A Comments: The commenters who favored this approach fell into two groups: environmental organizations, that felt that any additional exposure of humans to radiation or contamination of land by radioactive material is unacceptable because there is no safe threshold level for radiation exposure; and private citizens, environmentalists and public organizations opposed to Consolidated Minerals proposed Pine Level Project in DeSoto County, Florida. Many commenters from industry and academia opposed Option A because they thought it was contrary to the national policy favoring the recycling and reuse of secondary or byproduct materials.

Response: The D.C. Circuit decision in *Natural Resources Def. Council, Inc.* v. *EPA*, 824 F.2d 1146 (1987) ("*Vinyl Chloride*") recognizes that EPA may deem some level of cancer risk as acceptable, in light of the fact that many carcinogenic substances are assumed not to have a threshold value below which they pose no risk. In the context of the *Vinyl Chloride* decision, the issue is whether "acceptable" risk is equated

with *de minimis* risk, and is thereby defined as "trivial" or "of no value," or whether some higher level of risk is considered acceptable under the court's ruling.

The court explained that the Congressional mandate to provide "an ample margin of safety" to "protect the public health" requires the Administrator to make an initial determination of what is "safe." This determination must be based exclusively upon the Administrator's determination of the risk to health at a particular emission level. The Administrator's decision does not require a finding that "safe" means "risk free." 824 F.2d at 1164.

The court also declined to restrict the Administrator to any particular method of determining what constitutes an acceptable risk but explained simply that "the Administrator must determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live." 824 F.2d at 1166.

While it is true that there is no threshold level below which there is no cancer risk from exposure to radiation, the EPA has concluded that there are levels of radiation exposure that do present acceptable risks. The final rule allows uses of phosphogypsum which pose estimated risks that EPA has found to be acceptable.

With respect to the comment that Option A is contrary to the national policy of recycling, the EPA disagrees. The EPA is a world leader in the effort to establish recycling programs and promote the virtues of recycling. However, the global trend toward recycling waste and byproduct materials does not mean that public health and ecological risks are ignored. Quite the contrary. The recycling of waste and byproduct materials requires us to compare the health and ecological risks associated with past disposal practices to the risks associated with proposed recycling practices, along with any benefits to be gained from the recycling activity. Clearly, the risks associated with recycling activity should not be significantly greater than the risks associated with the disposal practices nor should they outweigh the benefits achieved from recycling.

Option B Comments: The few supporters of Option B suggested that a radium-226 threshold level of 5 pCi/g would adquately protect public health and safety and the environment. Commenters opposed to Option B noted that the intent of the rule was to regulate radon emissions and not radium content and that a threshold level would discriminate against processes that could be employed to reduce radon emissions but not the radium content.

Response: The Agency does not believe that restricting the radium-226 concentration in phosphogypsum in commerce will adequately protect public health and safety and the environment with an ample margin of safety for all possible phosphogypsum applications. The level of risk presented by a particular application depends not only upon the radium-226 concentration in the phosphogypsum but also the nature of the application, the exposure scenario, the exposure pathway, the amount of phosphogypsum used, and other factors too numerous to list. As shown in our risk estimates for road construction applications, even at radium-226 concentrations 3 pCi/g, the risk to the maximum exposed individual is well above the acceptable level. However, the Agency's estimates for agricultural applications of phosphogypsum indicate that a threshold concentration of 10 pCi/g will protect public health with an ample margin of safety.

The Agency agrees that there are several proven mechanisms which can be utilized to reduce the risk associated with radon exposure that do not affect the radium concentration of the material from which the radon emanates. The Agency also believes that these exposure control mechanisms should be instituted, as needed and where possible, to ensure that the risks presented by a particular application are acceptable. For these reasons the Agency has included a mechanism for applicants to obtain EPA approval for uses of phosphogypsum not explicitly addressed in the revised final rule.

Option C Comments: Several commenters were opposed to Option C because they felt that limiting the research and development activities to finding ways to remove the radium from the phosphogypsum was too restrictive. Other commenters were opposed to this option because they felt that adequate Agency oversight and monitoring procedures are not available to ensure that the public health is protected with an ample margin of safety.

Response: The Agency agrees with these comments. In its original rulemaking, the Agency underestimated the extent of research and development activities involving phosphogypsum. Currently there are several hundred million tons of phosphogypsum stored in stacks around the country. Restricting research and development activities to radium removal ignores the potentially large recoverable mineral values, such as sulfur, contained in the phosphogypsum and impedes the use of phosphogypsum in applications which may not present themselves until some time in the future. The final rule explicitly allows research involving a limited quantity of phosphogypsum. The Agency believes that the conditions imposed on this use of phosphogypsum will ensure protection of public health with an ample margin of safety.

Option D Comments: A few industry commenters opposed to any disposal requirement believe that if alternative uses of phosphogypsum must be controlled, then Option D is preferred. Commenters from academia and industry stated that any restrictions imposed on research and development activities as part of this option should be minimized when such activities do not pose significant risks to public health or the environment.

Response: The Agency agrees with many of these comments. Option D not only provides the Agency the flexibility to deal with requests to use phosphogypsum in applications that are in place today but also provides a framework in which to evaluate requests to use phosphogypsum in future applications. The Agency believes that the level of restrictions placed on a particular application should be commensurate with the level of risk associated with the application. Therefore, any request to use phosphogypsum must contain an estimate of the risks that may be associated with the particular use.

V. Final Rule to Amend Subpart R

A. Description of Final Rule

The amended subpart R will remain in the form of a work practice standard that directs that all phosphogypsum be placed initially in stacks or mines. The 20 pCi/m^2−s flux standard, as originally promulgated on December 15, 1989, remains in effect for all inactive phosphogypsum stacks. By requiring that radium-rich phosphogypsum be first disposed into large, manageable stacks or mines, which is generally what has been done with the existing phosphogypsum, the revised subpart R assures that any subsequent distribution or use of phosphogypsum will be controlled to assure radon emissions from the phosphogypsum do not present an unacceptable risk to public health. If an owner or operator removes phosphogypsum from an inactive stack, the stack must be retested for conformity to the 20 pCi/m^2−s flux standard within ninety days, and at least once every calendar year thereafter that additional phosphogypsum is removed.

All phosphogypsum stack owners or operators engaged in the distribution of phosphogypsum will be required to prepare and maintain certification documents containing the name and address of each purchaser or recipient of phosphogypsum, the quantity sold or transferred, the date of sale or transfer, the intended use of the material (e.g. agricultural, research and development), the average Ra-226 concentration at the location in the stack from which phosphogypsum was removed, and the signature of date of the person preparing the records. Distributors, retailers, and resellers who purchase or receive phosphogypsum for subsequent resale or transfer must also prepare and maintain certification documents. Except for agricultural end-users, a copy of the certification documents must be provided to each purchaser or transferee.

The use of phosphogypsum in agriculture will be permitted. However, phosphogypsum intended for agricultural use must have a certified average concentration of radium-226 no greater than 10 pCi/g. There is no limitation on the amount of material that can be applied and farmers do not have to maintain certification or application records.

The use of phosphogypsum in research and development will also be permitted. However, no facility may purchase or possess more than 700 pounds of phosphogypsum (approximately the amount in one 55 gallon drum) for a particular research and development activity. Containers of phosphogypsum utilized in research and development activities must be labeled with a specific warning. Facilities utilizing phosphogypsum in research and development activities will also be required to maintain detailed records.

Other uses of phosphogypsum will be prohibited without prior EPA approval. A request that EPA permit distribution or use for purposes other than agriculture or research and development may be approved only if EPA finds that the proposed distribution and/or use of phosphogypsum is at least as protective of the public health, in both the short term and the long term, as is disposal of phosphogypsum in a stack or a mine. Applications for EPA approval must include, as a minimum, the following information:

(1) The name and address of the person(s) making the request.

(2) A description of the proposed use, including any handling and processing that the phosphogypsum will undergo.

(3) The location of each facility, including suite and/or building number, street, city, county, state, and zip code, where any use, handling, or processing of the phosphogypsum will take place.

(4) The mailing address of each facility where any use, handling, or processing of the phosphogypsum will take place, if different from (3).

(5) The quantity of phosphogypsum to be used by each facility.

(6) The average concentration of radium-226 in the phosphogypsum to be used.

(7) A description of any measures which will be taken to prevent the uncontrolled release of phosphogypsum into the environment.

(8) An estimate of the maximum individual risk, risk distribution, and incidence associated with the proposed use, including the ultimate disposition of the phosphogypsum or any product in which the phosphogypsum is incorporated.

(9) A description of the intended disposition of any unused phosphogypsum.

(10) Each request shall be signed and dated by a corporate officer or public official in charge of the facility.

EPA will develop a guidance document to assist in the implementation of this revised regulation. This guidance document will discuss the process for evaluating requests to distribute or use phosphogypsum for purposes other than agriculture and research and development. The guidance document will also discuss inspections and other compliance monitoring activities.

B. Legal Authority

At the outset, it should be noted that section 112(q)(2) of the 1990 Clean Air Act Amendments provides that section 112, as in effect prior to the 1990 Amendments, continues to govern the promulgation of any NESHAP for phosphogypsum stacks. The procedures to be utilized to modify or revise a NESHAP under the old section 112 are the same as the procedures used to promulgate the NESHAP in the first place.

The existing subpart R was promulgated in the form of a work practice standard under section 112(e) becuase it would be utterly impractical to require that the radon released by phosphogypsum stacks be emitted through a conveyance designed to and constructed to emit or capture such pollutant. The work practice standard required that all phosphogypsum be disposed in stacks or mines and that such stacks or mines be managed to emit no more than 20 pCi/m^2-s. The requirement of disposal in stacks or mines was intended to assure that the emissions from phosphogypsum would not escape regulatory scrutiny.

The revisions to subpart R are a logical extension of the original work practice standard. EPA has determined that other uses of phosphogypsum can provide an ample margin of safety, but only under certain conditions. No owner or operator is required to remove phosphogypsum from a stack, but he must satisfy additional work practice requirements if he does. If phosphogypsum could be removed from a stack or mine and disseminated in commerce without any restrictions, this would frustrate the basic objective of subpart R, to assure that emissions from phosphogypsum do not jeopardize public health.

C. Effective Date

The revisions to the NESHAP for radionuclide emissions from phosphogypsum stacks adopted by this rule are effective immediately upon publication. Under section 112(c)(1)(B)(i) of the Clean Air Act, activities by existing sources which would violate a newly promulgated or revised NESHAP are not prohibited until 90 days after the effective date of the standard. However, in this instance, EPA has decided that it will apply the provisions of the revised NESHAP immediately to all facilities including existing sources.

EPA believes that the evident purpose of the 90 day delay for compliance by existing sources embodied in section 112(c)(1)(B)(i) is to afford such sources time to prepare for the imposition of new requirements. Indeed, section 112 (c)(1)(B)(i) is phrased as an exception to a general prohibition on emissions violative of a NESHAP. Therefore, EPA doubts that it was intended to apply to those revisions of a standard which relax existing requirements rather than creating new requirements. Although the Administrative Procedure Act (APA) does not formally apply in this instance, an analogous provision in the APA provides support for this interpretation. The general requirement that a substantive rule must be published or served 30 days before its effective date, which is also intended to afford affected parties time to prepare for imposition of the rule, does not apply to "a substantive rule which grants or recognizes an exception or relieves a restriction." 5 U.S.C. 553(d)(1).

In this case, any facility which would be in compliance with the original standard for phosphogypsum stacks would also be in compliance with the revised standard. The revisions simply offer facilities additional options for distribution and use of phosphogypsum

which were not available under the original standard. Facilities who elect to remove phosphogypsum from stacks and distribute it in commerce pursuant to the provisions of this rule, or to distribute or use phosphogypsum removed from stacks, must meet certain requirements. However, under the original standard, none of these activities were legally permissible. Moreover, the revised standard does not require any facility to engage in any of these activities.

Since the revisions of subpart R impose no new binding requirements and constitute a substantive relaxation of the original standard, there is no reason to interpret section 112 as requiring a delay in their applicability. Indeed, any delay in implementation of the revised standard could unnecessarily impede agricultural use of phosphogypsum during the 1992 growing season. Therefore, EPA will apply the revisions of subpart R incorporated in this rule immediately to all facilities including existing sources.

VI. Miscellaneous

A. Docket

The docket is an organized and complete file of all information considered by EPA in the development of the standards. The docket allows interested persons to identify and locate documents so they can effectively participate in the rulemaking process. It also serves as the record for judicial review.

Transcripts of the hearings, all written statements, the Agency's response to comments, and other relevant documents have been placed in the docket and are available for inspection and copying during normal working hours.

B. General Provisions

Except where otherwise specifically stated, the general provisions of 40 CFR part 61, subpart A, apply to all sources regulated by this rule.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements were approved by OMB on May 6, 1992. The OMB Control Number is 2060–0191.

D. Executive Order 12291

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Docket A–79–11.

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in (1) a nationwide annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agenices, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a Regulatory Impact Analysis is not being prepared for this action. The distribution of phosphogypsum is currently prohibited by the existing rule. Because this revised rule is a relaxation of the existing requirements, it will upon promulgation permit the distribution of phosphogypsum on a controlled basis.

E. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities. However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed * * * rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Because the use of phosphogypsum is currently prohibited and this revised rule permits restricted phosphogypsum use, EPA believes that the proposed changes ease the regulatory burdens associated with provisions of the existing final rule. Therefore, this rule will have no adverse effect on small businesses. For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

F. References

(1) U.S. Environmental Protection Agency, "PATHRAE-EPA: A Performance Assessment Code for the Land Disposal of Radioactive Wastes, Documentation and User's Manual", EPA 520/1–87–028, Washington, DC, December 1987.

(2) U.S. Environmental Protection Agency, "Risk Assessment Methodology, Environmental Impact Statement for NESHAPS Radionuclides, Volume 1, Background Information Document", EPA 520/1–89–005, Washington, DC, September 1989.

(3) GROVE Engineering, Inc., "MICROSHIELD, User's Manual", Washington Grove, Maryland, 1985.

(4) Engel, R. L., et al., "ISOSHLD, A Computer Code for General Purpose Isotope Shielding Analysis", BNWL–2316, U.S. Department of Energy, Richland, Washington, June 1966.

(5) U.S. Environmental Protection Agency, "Alternative Uses of phosphogypsum and Associated Risks, Background Information Document", EPA 520/1–91–029, Washington, DC, September, 1991.

List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl Chloride, Benzene, Arsenic, and Radionuclides.

Dated: May 20, 1992.

William K. Reilly,

Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as folllows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. Part 61 is amended by revising Subpart R to read as follows:

Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks.

Sec.

61.200 Designation of facilities.
61.201 Definitions.
61.202 Standard.
61.203 Radon Monitoring and Compliance Procedures.
61.204 Distribution and Use of Phosphogypsum for Agricultural Purposes.
61.205 Distribution and Use of Phosphogypsum for Research and Development.
61.206 Distribution and Use of Phosphogypsum for Other Purposes.
61.207 Radium-226 Sampling and Measurement Procedures.
61.208 Certification Requirements.
61.209 Required Records.
61.210 Exemption from the Reporting and Testing Requirements of 40 CFR 61.10.

Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks

§ 61.200 Designation of facilities.

The provisions of this subpart apply to each owner or operator of a phosphogypsum stack, and to each person who owns, sells, distributes, or otherwise uses any quantity of phosphogypsum which is produced as a result of wet acid phosphorus production or is removed from any existing phosphogypsum stack.

§ 61.201 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Inactive stack* means a stack to which no further routine additions of phosphogypsum will be made and which is no longer used for water management associated with the production of phosphogypsum. If a stack has not been used for either purpose for two years, it is presumed to be inactive.

(b) *Phosphogypsum* is the solid waste byproduct which results from the process of wet acid phosphorus production.

(c) *Phosphogypsum stacks* or *stacks* are piles of waste resulting from wet acid phosphorus production, including phosphate mines or other sites that are used for the disposal of phosphogypsum.

§ 61.202 Standard.

Each person who generates phosphogypsum shall place all phosphogypsum in stacks. Phosphogypsum may be removed from a phosphogypsum stack only as expressly provided by this subpart. After a phosphogypsum stack has become an inactive stack, the owner or operator shall assure that the stack does not emit more than 20 pCi/m^2-s of radon-222 into the air.

§ 61.203 Radon monitoring and compliance procedures.

(a) Within sixty days following the date on which a stack becomes an inactive stack, or within ninety days after the date on which this subpart first took effect if a stack was already inactive on that date, each owner or operator of an inactive phosphogypsum stack shall test the stack for radon-222 flux in accordance with the procedures described in 40 CFR part 61, appendix B, Method 115. EPA shall be notified at least 30 days prior to each such emissions test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner or operator shall notify EPA and test as soon as conditions permit.

(b)(1) Within ninety days after the testing is required, the owner or operator shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. Each report shall also include the following information:

(i) The name and location of the facility;

(ii) A list of the stacks at the facility including the size and dimensions of each stack;

(iii) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different);

(iv) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures; and

(v) The results of the testing conducted, including the results of each measurement.

(2) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on may inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If the owner or operator of an inactive stack chooses to conduct measurements over a one year period as permitted by Method 115 in appendix B to part 61, within ninety days after the testing commences the owner or operator shall provide EPA with an initial report, including the results of the first measurement period and a schedule for all subsequent measurements. An additional report containing all the information in § 61.203(b) shall be submitted within ninety days after completion of the final measurements.

(d) If at any point an owner or operator of a stack once again uses an inactive stack for the disposal of phosphogypsum or for water management, the stack ceases to be in inactive status and the owner or operator must notify EPA in writing within 45 days. When the owner or operator ceases to use the stack for disposal of phosphogypsum or water management, the stack will once again become inactive and the owner or operator must satisfy again all testing and reporting requirements for inactive stacks.

(e) If an owner or operator removes phosphogypsum from an inactive stack, the owner shall test the stack in accordance with the procedures described in 40 CFR part 61, appendix B, Method 115. The stack shall be tested within ninety days of the date that the owner or operator first removes phosphogypsum from the stack, and the test shall be repeated at least once during each calendar year that the owner or operator removes additional phosphogypsum from the stack. EPA shall be notified at least 30 days prior to an emissions test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner shall notify EPA and test as soon as conditions permit. Within ninety days after completion of a test, the owner or operator shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. Each such report shall include all of the information specified by §61.203(b).

§ 61.204 Distribution and use of phosphogypsum for agricultural purposes.

Phosphogypsum may be lawfully removed from a stack and distributed in commerce for use in agriculture if each of the following requirements is satisfied:

(a) The owner or operator of the stack from which the phosphogypsum is removed shall determine annually the average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as provided by § 61.207.

(b) The average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as determined pursuant to § 61.207, shall not exceed 10 picocuries per gram (pCi/g).

(c) All phosphogypsum distributed in commerce for use in agriculture by the owner or operator of a phosphogypsum stack shall be accompanied by a certification document which conforms to the requirements of § 61.208(a).

(d) Each distributor, retailer, or reseller who distributes phosphogypsum for use in agriculture shall prepare certification documents which conform to the requirements of § 61.208(b).

§ 61.205 Distribution and use of phosphogypsum for research and development.

(a) Phosphogypsum may be lawfully removed from a stack and distributed in commerce for use in research and development activities if each of the following requirements is satisfied:

(1) The owner or operator of the stack from which the phosphogypsum is removed shall determine annually the average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as provided by § 61.207.

(2) All phosphogypsum distributed in commerce for use in research or development by the owner or operator of a phosphogypsum stack or by a distributor, retailer, or reseller shall be accompanied at all times by certification documents which conform to the requirements of § 61.208.

(b) Phosphogypsum may be purchased and used for research and development purposes if the following requirements are satisfied:

(1) Each quantity of phosphogypsum purchased by a facility for a particular research and development activity shall be accompanied by certification documents which conform to the requirements of § 61.208.

(2) No facility shall purchase or possess more than 700 pounds of phosphogypsum for a particular research and development activity.

(3) Containers of phosphogypsum used in research and development activities shall be labeled with the following warning:

Caution: Phosphogypsum Contains Elevated Levels of Naturally Occuring Radioactivity

(4) For each research and development activity in which phosphogypsum is used, the facility shall maintain records which conform to the requirements of § 61.209(c).

(c) Phosphogypsum not intended for distribution in commerce may be lawfully removed from a stack by an owner or operator to perform laboratory analyses required by this subpart or any other quality control or quality assurance analyses associated with wet acid phosphorus production.

§ 61.206 Distribution and use of phosphogypsum for other purposes.

(a) Phosphogypsum may not be lawfully removed from a stack and distributed or used for any purpose not expressly specified in § 61.204 or § 61.205 without prior EPA approval.

(b) A request that EPA approve distribution and/or use of phosphogypsum for any other purpose must be submitted in writing and must contain the following information:

(1) The name and address of the person(s) making the request.

(2) A description of the proposed use, including any handling and processing that the phosphogypsum will undergo.

(3) The location of each facility, including suite and/or building number, street, city, county, state, and zip code, where any use, handling, or processing of the phosphogypsum will take place.

(4) The mailing address of each facility where any use, handling, or processing of the phosphogypsum will take place, if different from paragraph (b)(3) of this section.

(5) The quantity of phosphogypsum to be used by each facility.

(6) The average concentration of radium-226 in the phosphogypsum to be used.

(7) A description of any measures which will be taken to prevent the uncontrolled release of phosphogypsum into the environment.

(8) An estimate of the maximum individual risk, risk distribution, and incidence associated with the proposed use, including the ultimate disposition of the phosphogypsum or any product in which the phosphogypsum is incorporated.

(9) A description of the intended disposition of any unused phosphogypsum.

(10) Each request shall be signed and dated by a corporate officer or public official in charge of the facility.

(c) The Assistant Administrator for Air and Radiation may decide to grant a request that EPA approve distribution and/or use of phosphogypsum if he determines that the proposed distribution and/or use is at lease as protective of public health, in both the short term and the long term, as disposal of phosphogypsum in a stack or a mine.

(d) If the Assistant Administrator for Air and Radiation decides to grant a request that EPA approve distribution and/or use of phosphogypsum for a specified purpose, each of the following requirements shall be satisfied:

(1) The owner or operator of the stack from which the phosphogypsum is removed shall determine annually the average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as provided by § 61.207.

(2) All phosphogypsum distributed in commerce by the owner or operator of a phosphogypsum stack, or by a distributor, retailer, or reseller, or purchased by the end-user, shall be accompanied at all times by certification documents which conform to the requirements § 61.208.

(3) The end-user of the phosphogypsum shall maintain records which conform to the requirements of § 61.209(c).

(e) If the Assistant Administrator for Air and Radiation decides to grant a request that EPA approve distribution and/or use of phosphogypsum for a specified purpose, the Assistant Administrator may decide to impose additional terms or conditions governing such distribution or use. In appropriate circumstances, the Assistant Administrator may also decide to waive or modify the recordkeeping requirements established by § 61.209(c).

§ 61.207 Radium-226 sampling and measurement procedures.

(a) Before removing phosphogypsum from a stack for distribution to commerce pursuant to § 61.204, § 61.205, or § 61.206, the owner or operator of a phosphogypsum stack shall measure the average radium-226 concentration at the location in the stack from which phosphogypsum will be removed. Measurements shall be performed for each such location prior to the intitial distribution in commerce of phosphogypsum removed from that location and at least once during each calendar year while distribution of phosphogypsum removed from the location continues.

(b) The radium-226 concentration shall be determined in accordance with the analytical procedures described in 40 CFR part 61, appendix B, Method 114.

(c) Phosphogysum samples shall be taken at regularly spaced intervals across the surface of the location in the phosphogypsum stack from which phosphogypsum will be removed.

(d) The minimum number of samples considered necessary to determine a representative average radium-226 concentration for the location on the stack to be analyzed shall be calculated as follows:

(1) Obtain the measured mean and standard deviation of 30 regularly spaced phosphogypsum samples.

(2) Solve the following equation for the number of samples required to achieve a 95% confidence interval:

$$e = \frac{\tau(n)s}{x\sqrt{n}}$$

where:

τ is the students $-\tau$ distribution.
s = measured standard deviation of the radium-226 concentration.
x = measured mean of the radium-226 concentration.

e = allowable error (expressed as a fraction), and
n = number of samples.

See Reference 1 of Method 115 in appendix B to part 61 for a detailed discussion of this statistical technique.

(3) If the number of samples required is greater than 30, then obtain and analyze the necessary number of additional samples and recalculate the average radium-226 concentration using the combination of the results of the original 30 samples and additional samples. The additional samples shall also be regularly spaced across the surface of the location in the phosphogypsum stack from which phosphogypsum will be removed.

§ 61.208 Certification requirements.

(a)(1) The owner or operator of a stack from which phosphogypsum will be removed and distributed in commerce pursuant to § 61.204, § 61.205, or § 61.206 shall prepare a certification document for each quantity of phosphogypsum which is distributed in commerce which includes:

(i) The name and address of the owner or operator;

(ii) The name and address of the purchaser or recipient of the phosphogypsum;

(iii) The quantity (in pounds) of phosphogypsum sold or transferred;

(iv) The date of sale or transfer;

(v) A description of the intended end-use for the phosphogypsum;

(vi) The average radium-226 concentration, in pCi/g, of the phosphogypsum, as determined pursuant to § 61.207; and

(vii) The signature of the person who prepared the certification.

(2) The owner or operator shall retain the certification document for five years from the date of sale or transfer, and shall produce the document for inspection upon request by the Administrator, or his authorized representative. The owner or operator shall also provide a copy of the certification document to the purchaser or recipient.

(b)(1) Each distributor, retailer, or reseller who purchases or receives phosphogypsum for subsequent resale or transfer shall prepare a certification document for each quantity of phosphogypsum which is resold or transferred which includes:

(i) The name and address of the distributor, retailer, or reseller;

(ii) The name and address of the purchaser or recipient of the phosphogypsum;

(iii) The quantity (in pounds) of phosphogypsum resold or transferred;

(iv) The date of resale or transfer;

(v) A description of the intended end-use for the phosphogypsum;

(vi) A copy of each certification document which accompanied the phosphogypsum at the time it was purchased or received by the distributor, retailer, or reseller; and

(vii) The signature of the person who prepared the certification.

(2) The distributor, retailer, or reseller shall retain the certification document for five years from the date of resale or transfer, and shall produce the document for inspection upon request by the Administrator, or his authorized representative. For every resale or transfer of phosphogypsum to a person other than an agricultural end-user, the distributor, retailer, or reseller shall also provide a copy of the certification document to the purchaser or transferee.

§ 61.209 Required records.

(a) Each owner or operator of a phosphogypsum stack must maintain records for each stack documenting the procedure used to verify compliance with the flux standard in § 61.202, including all measurements, calculations, and analytical methods on which input parameters were based. The required documentation shall be sufficient to allow an independent auditor to verify the correctness of the determination made concerning compliance of the stack with flux standard.

(b) Each owner or operator of a phosphogypsum stack must maintain records documenting the procedure used to determine average radium-226 concentration pursuant to § 61.207, including all measurements, calculations, and analytical methods on which input parameters were based. The required documentation shall be sufficient to allow an independent auditor to verify the accuracy of the radium-226 concentration.

(c) Each facility which uses phosphogypsum pursuant to § 61.205 or § 61.206 shall prepare records which include the following information:

(1) The name and address of the person in charge of the activity involving use of phosphogypsum.

(2) A description of each use of phosphogypsum, including the handling and processing that the phosphogypsum underwent.

(3) The location of each site where each use of phosphogypsum occurred, including the suite and/or building number, street, city, county, state, and zip code.

(4) The mailing address of each facility using phosphogypsum, if different from paragraph (c)(3) of this section.

(5) The date of each use of phosphogypsum.

(6) The quantity of phosphogypsum used.

(7) The certified average concentration of radium-226 for the phosphogypsum which was used.

(8) A description of all measures taken to prevent the uncontrolled release of phosphogypsum into the environment.

(9) A description of the disposition of any unused phosphogypsum.

(d) These records shall be retained by the facility for at least five years from the date of use of the phosphogypsum and shall be produced for inspection upon request by the Administrator, or his authorized representative.

§ 61.210 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Appendix B—[Amended]

3. By amending Table 1 in Method 114 in appendix B to part 61 by inserting in alphabetical order the following entry:

Ra-226
A-1, A-2, G-1, G-2

[FR Doc. 92-12640 Filed 6-2-92; 8:45 am]
BILLING CODE 6560-50-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 710 and 752

[AIDAR Notice 92-3]

Metric System

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to implement the Agency's Metric Transition Plan that was issued pursuant to the Metric Conversion Act and Executive Order 12770.

EFFECTIVE DATE: July 6, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen J. O'Hara, FA/PPE, room 1600I, SA-14, Agency for International Development, Washington, DC 20523-1435. Telephone: (703) 875-1534.

SUPPLEMENTARY INFORMATION: A new part 710 is added which sets out the criteria and authority for waiving the requirement to use the metric system of

measurement and establishes a requirement for recording and reporting on waivers. The clause on Language, Weights, and Measures is revised, retitled and relocated to reflect the requirement for use established in part 710.

The changes being made by this Notice are not considered significant rules under FAR section 1.301 and subpart 1.5. This Notice will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. It is not considered a major rule under Executive Order 12291, and has been submitted to OMB for review. This Notice does not establish any information collection as contemplated by the Paperwork Reduction Act. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at any time. Comment or questions may be addressed as specified in the "**FOR FURTHER INFORMATION CONTACT**" section of the preamble.

List of Subjects in 48 CFR Parts 710 and 752

Government procurement.

Accordingly for the reasons set out in the Preamble, 48 CFR chapter 7 is amended as follows:

1. Part 710 is added to read as follows:

PART 710—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

710.011 Solicitation provisions and contract clauses.
710.070 Metric system waivers.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

710.011 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 752.210–70 in all AID-direct solicitations and contracts.

710.070 Metric system waivers.

(a) *Criteria.* The FAR 10.002(c) requirement to use the metric system of measurement for specifications and quantitative data that are incorporated in or required by AID contracts may be waived when AID determines in writing that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets.

(b) *Authorization.* (1) The AID Metric Executive (FA/AS), the contracting officer, and the AID official who approves the procurement requirement (by signing a PIO/T or equivalent document) are authorized to waive the metric requirement for one of the above reasons. The AID Metric Executive is authorized to overrule a decision to grant a waiver, or to nullify a blanket waiver made by another approving official so long as a contractor's rights under an executed contract are not infringed upon.

(2) A blanket waiver for a class of multiple transactions may be issued for a term not to exceed three years.

(3) When a waiver will be based upon the adverse impact on U.S. firms, clearance from the AID Metric Executive (FA/AS) and the Office of Small and Disadvantaged Business Utilization (SDB) will be obtained prior to authorization.

(c) *Records and reporting.* (1) The basis for each waiver and any plans to adapt similar requirements to metric specifications in future procurements should be documented in the contract file.

(2) Each procurement activity will maintain a log of the waivers from the metric requirements which are authorized for its procurements. The logs shall list the commodity/service being procured, total dollar value of the procured item(s), waiver date, authorizing official, basis for waiver, and AID actions that can promote metrication and lessen the need for future waivers.

(3) Within 30 days of the closing of each fiscal year, each AID/W procurement activity and each Mission will submit a copy of the metric waiver log for the year to the AID Metric Executive. (Mission logs are to be consolidated in a Mission report for the procurement activity and for the nonprocurement activities maintaining such logs under the AID Metric Transition Plan.) Repetitive purchases of commercially produced and marketed items and classes of items may be consolidated in reporting procurements that do not exceed $10,000 cumulatively during the reporting period.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

2. The authority citation for part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

3. Section 752.210–70 is added to read as follows:

752.210–70 Lanaguage and measurement.

The following clause shall be used in all AID-direct contracts.

Language and Measurement (June 1992)

(a) The English language shall be used in all written communications between the parties under this contract with respect to services to be rendered and with respect to all documents prepared by the contractor except as otherwise provided in the contract or as authorized by the contracting officer.

(b) Wherever measurements are required or authorized, they shall be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by AID in writing when it has found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.

[End of Clause.]

752.7005 [Removed]

4. Section 752.7005 is removed and reserved.

Dated: May 7, 1992.

John F. Owens,

Procurement Executive.

[FR Doc. 92–12866 Filed 6–2–92; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 911215–2114]

RIN 0648–AD50

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement portions of amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), and amendment 23 to the FMP for Groundfish of the Gulf of Alaska (GOA). These amendments allocate Pacific cod and pollock between inshore and offshore components of the groundfish

fishery in the GOA, and temporarily allocate pollock between inshore and offshore components in the BSAI, as defined in the proposed amendments. Also, these regulations temporarily establish a catcher vessel operational area in the BSAI within which the offshore component is prohibited from conducting fishing operations for pollock during the second seasonal allowance (i.e., the "B" season). In addition, a Western Alaska Community Development Quota (CDQ) program to help develop commercial fisheries in communities on the Bering Sea coast has been approved. Full implementation of this portion of amendment 18, however, will depend on approval of program criteria and specific fishery development plans (FDPs) through a separate rulemaking. These actions are intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMPs that govern these fisheries.

EFFECTIVE DATE: June 1, 1992.

ADDRESSES: Copies of amendments 18 and 23 to the FMPs and the final supplemental environmental impact statement/regulatory impact review/ final regulatory flexibility analysis (FSEIS/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, at 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the GOA and BSAI FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620. The fisheries for walleye pollock (*Theragra chalcogramma*) and Pacific cod (*Gadus macrocephalus*) off Alaska and the affected human environment are described in the FMPs and in the FSEIS/ RIR/FRFA. The Council adopted amendments 18 and 23 to the respective FMPs at its meeting of June 24–29, 1991, for review, approval, and implementation by the Secretary of Commerce (Secretary). At its August and September 1991 meetings, the Council rejected motions to rescind its earlier adoption of the amendments. During the summer of 1991, the Council staff revised the draft SEIS/RIR/IRFA (supplemental environmental impact statement/regulatory impact review/ initial regulatory flexibility analysis), which was completed on September 19, 1991. Notice of the draft SEIS was published in the **Federal Register** on November 22, 1991, which provided for public review and comment until January 6, 1992 (56 FR 58905).

The official receipt date of amendments 18 and 23 from the Council was December 1, 1991. The Secretary immediately made a preliminary evaluation of the amendments to determine whether they were consistent with the national standards of the Magnuson Act and sufficient in scope and substance to warrant review under section 304 of the Magnuson Act. A notice of availability of, and request for public comment on, amendments 18 and 23 was published in the **Federal Register** on December 12, 1991 (56 FR 64738). Public comment on the amendments was invited until February 4, 1992.

A notice of proposed implementing rules was published on December 20, 1991 (56 FR 66009), and invited comments until February 3, 1992. A correction notice was published on January 23, 1992 (57 FR 2814), but did not change the public comment period. All comments received through February 4, 1992, were considered.

Almost 1,100 letters commenting on the amendments and the proposed implementing rules were received. After careful consideration of the public comments, the record developed by the Council, and analyses of the potential effects of the proposed amendments, the Secretary partially disapproved amendment 18 to the BSAI FMP and approved amendment 23 to the GOA FMP. Accordingly, changes are made in the final rule implementing amendment 18, but no substantive changes are made in the final rule implementing amendment 23. Specific changes from the proposed rule in the final rule are described below. Also, a summary of and response to public comments appears later in this rule.

Purpose and Description of Allocations

The primary purpose of amendments 18 and 23 is to protect the inshore component of the fishery from preemption by the offshore fleet. Indication of a preemption problem between these two sectors of the groundfish fishery became apparent early in 1989. Substantial processing of pollock by catcher/processor vessels contributed to an early closure of the pollock fishery in the Shelikof Strait District on March 21, 1989 (54 FR 12204, March 24, 1989), effectively preventing inshore components from realizing their anticipated economic benefit from pollock later in the fishing year. At the April 1989 Council meeting, fishermen and processors from Kodiak Island requested the Council to consider inshore-offshore allocations to prevent future preemption of resources by one industry sector over another.

The problem statement adopted by the Council at its April 1990 meeting stated in part:

> The Council defines the problem as a resource allocation problem where one industry sector faces the risk of preemption by another.

The Council expressed the view that specified allocations of the total allowable catch (TAC) of pollock and Pacific cod for inshore and offshore components at the beginning of a fishing year would resolve the preemption problem and better enable operators within those components to plan harvesting and/or processing activity during the fishing year. A discussion of this conservation and management problem, and an analysis of the effects of various alternative management measures considered by the Council to resolve it, are contained in the FSEIS/ RIR/FRFA, which is available from the Council (see **ADDRESSES**).

Biological, economic and social impacts were evaluated during the decisionmaking process. Biological impacts were fully considered using the SEIS and the biological opinions prepared for amendments 18 and 23. The SEIS and biological opinions determined that implementation of the amendments would not have significant adverse effects on fishery stocks or endangered species, and in particular Steller sea lion populations listed as threatened under the Endangered Species Act. Because the amendments were allocative and did not change the total fishing mortality, the economic and social impacts were deemed by the Secretary to be most important during review of the amendments.

The economic methodology used by the Council for analyzing the economic effects of the proposed amendments was a concern noted in the preamble to the proposed rule for amendments 18 and 23 (56 FR 66009, December 20, 1991). An

input-output analysis was used by the Council to estimate the impacts of the alternatives, including the allocations proposed by amendments 18 and 23. An input-output analysis is designed principally to measure economic activity such as volume of revenue, income and employment. While useful for identifying interindustry transactions and tracing the flow and multiplier effects of revenues and expenditures in an economic system, input-output analysis does not measure economic efficiency or present estimates of net economic gains or losses for society or for private enterprises. FMPs and amendments recommended by a regional fishery management council are to be reviewed by the Secretary for their consistency with the Magnuson Act and other applicable law which require information on costs and benefits to the Nation. Therefore, NMFS undertook a cost-benefit analysis during the public comment period on the proposed rule for amendments 18 and 23. The cost-benefit analysis drew principally from the data used by the Council, existing literature and information provided in public comments on the amendments and by NMFS staff.

Based on the available information supplied by the Council, NMFS and the public, the Secretary determined that full approval of amendments 18 and 23 would result in favorable economic impacts to Alaska coastal communities but would also result in net economic losses to the Nation ranging from $103 to $178 million, depending upon various assumptions. There was almost a zero probability that the action would produce positive net National economic benefits. Based on the record before the Secretary, approval of amendment 23 would be expected to result in an estimated net economic loss to the Nation of $22.7 million if the allocation was in place from the beginning of 1992 to the end of 1995, discounted for net present value. Without discounting for net present value, economic costs of amendment 23 are estimated to be $6.4 million for each full year the allocation is in effect. The net economic costs for approval of only part of the 1992 season (Year 1) for the GOA and the BSAI range from $2 million to $15 million. Full year costs in Year 2 are estimated to range from $32–55 million, not discounted for net present value.

Social impacts were also evaluated by the Secretary in comparison with the economic impacts associated with amendments 18 and 23. The Secretary determined that social benefits associated with approval amendment 23 and the 1992 "B" season allocation of amendment 18 outweighed the economic costs of these allocations. The allocations as approved for Pacific cod in the GOA and pollock in the BSAI closely approximate the status quo in terms of harvesting and processing histories. This, coupled with the need to provide some protection to the inshore sector from the offshore sector, were the basis of the Secretary's approval of these allocations.

The allocation of 100 percent of the GOA pollock TAC to the inshore sector proposed by the Council and approved by the Secretary slightly exceeds the harvest rates of the inshore sector in recent years and results in a redistribution of the pollock resource from the offshore sector to the inshore sector. The Secretary determined that this redistribution was appropriate based on the social and other benefits that would be derived from implementation of the allocation.

The GOA fisheries for pollock and Pacific cod are primarily conducted from Kodiak and Sand Point. Both communities are historically dependent on commercial fisheries for their existence. Fishermen who base their operations in Kodiak and Sand Point operate smaller vessels than those used in the Bering Sea fisheries and land their catches for processing in Alaskan ports. These fishermen pursue an annual round of fisheries in the GOA, shifting among fisheries for Pacific cod and pollock, halibut, and salmon depending on the season. The seasonal round of fisheries provides relatively stable employment for fishermen and processing workers on a year-round basis. While seasonal species composition varies with stock abundance, these fisheries have provided the bulk of the employment in these communities. Information in the record shows that Sand Point depends on fishing and fish processing for 87 percent of paid employment and that fishery employment in Kodiak is approximately 56 percent of local employment. While some transient workers are employed in Sand Point and Kodiak fish processing plants during summer months, the stability and viability of both communities is based on the seasonal round of fisheries. The loss of any one element of the seasonal round of fisheries, such as pollock, that is not replaced would result in significant social costs. Year-round employment would no longer be available in fishing and fish processing with corresponding increases in welfare costs and a decreased local tax base. Loss of part-time fishing activities would further depress employment in service and support industries dependent on seasonal fishing. Also, loss of the ability to fish year-round in seasonal fisheries would increase stress on social institutions such as the family and reduce the quality of life for residents of the communities. The social and economic costs that result from a loss of seasonal fisheries was demonstrated in the GOA in 1989 when the pollock quota was taken by March 10 and the salmon fishery was closed on March 26 as a result of the *Exxon Valdez* oil spill. The Secretary determined that failure to protect GOA costal communities from transfers of effort from the BSAI offshore sector through allocations of pollock and Pacific cod among inshore and offshore interests in the GOA would severely affect the employment and social fabric of the GOA communities.

The portion of amendment 18 that was disapproved by the Secretary would have increased the inshore allocation of the TAC for pollock in the BSAI from 35 percent in 1992, to 40 percent in 1993, and 45 percent in 1994 and 1995. However, an economic review performed by NMFS indicated a large net economic loss to the Nation resulting from this proposed allocation without evidence of sufficient countervailing social or other benefits. The initial 35 percent allocation was approved for the 1992 "B" season because it provides the desired preemption protection and results in a net benefit to the Nation. Under the Magnuson Act, the Council has the option of revising the disapproved portion of amendment 18 and resubmitting it for expedited Secretarial review.

In partially disapproving amendment 18 and fully approving amendment 23, the Secretary recognizes that the potential for preemption of the inshore sector is a genuine conservation and management problem because these two sectors of the industry have greatly differing mobility and harvesting capabilities. This problem is exacerbated by overcapitalization in the industry as a whole. Therefore, parts of amendment 18 and all of amendment 23 are implemented as an interim measure pending development of a solution to the overcapitalization problem. The Council is encouraged to work as expeditiously as possible toward some other method of allocating fish among competing users, ideally one that relies on free market decisions, instead of direct government intervention. The Council is working on a moratorium on the entry of new fishing vessels generally and on a transferable quota program for the fixed gear fisheries for sablefish and Pacific halibut.

A description of approved portions of amendments 18 and 23 and the specific regulations implementing them follows.

1. Inshore and Offshore Definitions

The inshore component is defined by this action at 50 CFR 672.2 and 675.2. Basically, this definition identifies three places where Pacific cod harvested in the GOA or pollock harvested in the GOA or the BSAI area could be processed and considered an "inshore component" for quota monitoring purposes. These include "shoreside" operations, processor vessels at fixed locations in State of Alaska waters, and small processor vessels. The term "processor vessel" includes mothership operations that do not catch fish but receive from catcher vessels and process it, and catcher/processors that are capable of catching and processing fish. Both kinds of processor vessels operating in the groundfish fisheries are required to have Federal groundfish vessel permits unless they are functioning as shoreside operations. Shoreside operations do not have Federal groundfish vessel permits and may include processing plants on shore or on floating platforms, or groundfish buying stations.

Motherships or catcher/processors (i.e., processor vessels) that have Federal groundfish vessel permits but operate under the inshore definition are required to remain in Alaska State waters in the same geographic location during a fishing year when they are processing pollock (hereinafter, unless otherwise specified, includes both BSAI and GOA pollock) and Pacific cod harvested in the GOA that were taken during open directed fisheries for these species. Alaska State waters are those adjacent to the State of Alaska and shoreward of the EEZ. For purposes of this definition, a single geographic location during a fishing year will be determined by the geographic coordinates reported on the most recent check-in notice in effect at the time of the first opening of a directed fishery for Pacific cod in the GOA or for pollock, or, if there is no check-in report at the time of the first directed fishery openings during a fishing year, the first check-in report submitted during a directed fishery for Pacific cod in the GOA or for pollock.

For example, a mothership located in Alaska State waters, that receives pollock or GOA Pacific cod during an open directed fishery for those species for the first time in a fishing year, would have to process subsequent receipts of pollock and Pacific cod during open directed fisheries at the same location for the remainder of the fishing year. The location will be determined by the check-in report required under §§ 672.5 and 675.5. If a check-in report is not received during an open directed fishery for pollock and Pacific cod, then it will be presumed that reported processing of those species is occurring at the location given in the most recent check-in report.

This restriction applies on a fishing-year basis and only to the processing of pollock and GOA Pacific cod during open directed fisheries for those species. A processor vessel could leave the specified "inshore component" location to process other species of groundfish not included under amendments 18 and 23 or non-groundfish species. However, if it processes pollock and GOA Pacific cod again during open directed fisheries for those species later in the same fishing year, the processor vessel must return to the same location reported on the first check-in report of the fishing year at which pollock or GOA Pacific cod were processed during open directed fisheries for those species.

In addition, a processor vessel could process pollock and GOA Pacific cod taken as incidental catch or bycatch, in a location other than where it processes these species during directed fishing for pollock and GOA Pacific cod, when directed fishing for these species is prohibited. Legitimate processing of bycatch amounts of pollock and Pacific cod in different locations will be determined according to the directed fishing standards at §§ 672.20(g) and 675.20(h).

The location restrictions on processor vessels operating in State of Alaska waters under the inshore definition will apply in the 1992 fishing year from the effective date of this rule, and will not be implemented retroactively to the beginning of the fishing year. This means, for example, that processor vessels that have operated at one location during the first quarter pollock fishery in the GOA or the pollock roe season (January 1–April 15) in the BSAI will not be required to process pollock in the same location for subsequent directed fisheries for pollock later in 1992. However, this rule will be in effect for the first GOA pollock and Pacific cod directed fisheries in 1993.

For purposes of the "inshore component" definition, small processor vessels are those that are less than 125 feet (38.1 m) in length overall and process less than 18 metric tons (mt) per day of pollock and GOA Pacific cod. The tonnage standard is based on a daily average during any weekly reporting period. It applies to pollock and Pacific cod in the aggregate and in round weight equivalents calculated using standard product recovery rates.

The offshore component also is defined by this action at 50 CFR 672.2 and 675.2 simply as including all processor vessels in the groundfish fisheries off Alaska that are not included in the inshore definition. Catcher vessels that can only catch and not process fish are not in either the inshore or offshore categories. Their harvests of pollock and GOA Pacific cod will be counted against either the inshore or offshore allocations of pollock and Pacific cod, depending on where the catch is delivered for processing.

Processor vessels are not allowed to catch or process pollock or Pacific cod as an inshore and offshore operation during the same year. For purposes of this measure, the BSAI area and the GOA are viewed as one area. For example, a mothership would not be allowed to process pollock in the GOA under the inshore definition and in the BSAI area under the offshore definition in the same fishing year. It could operate under the inshore definition to process GOA pollock and then move offshore in the BSAI area in the same fishing year to process Pacific cod caught in the BSAI area or flatfish, since these species are not included in the inshore definition for the BSAI area. However, it would have to return to its original location to process pollock caught in either the BSAI area or the GOA, or Pacific cod caught in the GOA in open directed fisheries for those species.

2. Inshore and Offshore Allocations

Under approved amendment 23 for the GOA groundfish fisheries, 90 percent of the Pacific cod TAC and 100 percent of the pollock TAC for each fishing year, as specified in the annual notice of specifications for groundfish, will be allocated to the inshore component of the groundfish fishery. Ten percent of the Pacific cod TAC will be allocated to the offshore component, and an appropriate percentage of the pollock TAC for bycatch purposes will be allowed.

Only the inshore component would be allowed to conduct directed fishing for pollock in the GOA. Nevertheless, under current §§ 672.20 (g) and (h), catcher/processors from the offshore component will be able to retain bycatch amounts of GOA pollock. For a given fishing trip, pollock retention for a vessel in the offshore component must be less than 20 percent by weight (round weight equivalent) of other species retained under current management policies. This provision will allow for the retention

and processing of pollock bycatch by the offshore component, until the pollock TAC is reached, and is intended to alleviate unnecessary discard and waste of the resource. Once the GOA pollock TAC is reached for a given regulatory area and district, pollock must be treated as a prohibited species under current § 672.20(c)(3).

The offshore component will be allocated up to 10 percent of the Pacific cod TAC for each regulatory area in the GOA. The Director, Alaska Region, NMFS (Regional Director), will determine what proportion of this amount will be necessary as bycatch for directed fishing for other species by the offshore component. After this expected bycatch amount is subtracted from the offshore allocation, the remaining amount may be available to the offshore component for directed fishing purposes. For TAC monitoring purposes in the GOA, the retained bycatch of Pacific cod taken by the offshore component will differ from the retained bycatch of pollock. Retained bycatch of pollock taken by the offshore component in the GOA will be counted against the inshore allocation, but retained bycatch of Pacific cod by the offshore component will be credited to its 10 percent allocation. If there happens to be any bycatch of Pacific cod over this 10 percent amount, it will be counted against the inshore allocation.

Under the approved portions of amendment 18 for the BSAI area groundfish fisheries, the inshore component will receive 35 percent of the 1992 non-roe pollock season TAC apportioned to domestic annual processing (DAP), and the offshore component will receive the remaining 65 percent. This allocation applies only to the pollock DAP remaining for the 1992 fishing year on the effective date of this rule. There is no provision for retroactive allocation of pollock amounts already harvested during 1992.

The current specification of DAP for the non-roe ("B" season) pollock season, which begins on June 1, 1992, is 663,000 mt (57 FR 3952, February 3, 1992). The actual tonnage that will be available to both sectors of the BSAI pollock fishery will depend on adjustments made for overages or underages of the roe-season harvest and for pollock bycatch amounts taken between open seasons for pollock. Theoretically, if there were no such adjustments, the inshore component would be allocated 232,050 mt (663,000 × 0.35) and the offshore component would be allocated 430,950 mt (663, 000 × 0.65). This does not include the 195,000 mt of pollock that was initially apportioned to the nonspecific groundfish reserve for the BSAI area. Half of this reserve amount, or 97,500 mt, will be made available for the Western Alaska CDQ program as described below. However, if none of the BSAI pollock TAC is used under the CDQ program by the end of the third quarter, and if the 50 percent portion of reserve set aside for the CDQ program is not used for other purposes, an additional 34,125 mt and 63,375 mt of pollock may be added to the inshore and offshore allocations, respectively, for the 1992 fishing year.

If the Regional Director determines that either of the inshore or offshore components will not be able to process the entire amount of its allocation of pollock or GOA Pacific cod during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock or Pacific cod to the other component.

3. Catcher Vessel Operational Area (CVOA)

An approved portion of amendment 18 provides for a CVOA in the Bering Sea in which access to pollock is limited only to catcher vessels that harvest pollock for delivery to either the offshore component or the inshore component. The CVOA is located south of 56° N. latitude and between 163° and 168° W. longitudes. The offshore component, including all processing vessels, is not allowed to conduct fishing operations for pollock in the CVOA.

4. Western Alaska Community Development Quota (CDQ)

The approved portion of amendment 18 provides for withholding half the amount of BSAI pollock assigned to the nonspecific reserve. The amount withheld will be made available for allocation to qualifying community development projects in western Alaska. As a result, 7.5 percent of the BSAI pollock TAC will be set aside for purposes of this program at the beginning of the fishing year. For the 1992 fishing year, this amount is 97,500 mt. The set aside amount will be reduced as allocations are made to fishery development projects. Following the end of the third quarter, any portion that is unallocated for western Alaska community development projects will be reapportioned to the nonspecific reserve. Any apportionments from the nonspecific reserve to the pollock TAC during 1992 will be allocated to the inshore and offshore components according to the 35/65 proportion described under § 675.20(a)(2)(iii).

To be eligible, a community must meet specified criteria and have an approved FDP. Criteria for community eligibility will be established by the Governor of Alaska, in consultation with the Council, and announced in the **Federal Register** following approval by the Secretary. The program criteria will be required to undergo analysis and evaluation of benefits and costs before being submitted to the Secretary for approval through a notice-and-comment rulemaking procedure. The Secretary will review the criteria for consistency with the objectives of the BSAI groundfish plan, the Magnuson Act, the national standards, and applicable law. Individual FDPs recommended by the Governor of Alaska, after consultation with the Council, will be reviewed by the Secretary for consistency with the criteria.

Actual allocations of pollock to Bering Sea communities under the CDQ program would be announced annually in the **Federal Register** by the Secretary, beginning with the second year of implementing the CDQ program. Unless amended, this program will end on December 31, 1995, along with other provisions of the inshore-offshore allocations.

Specific Changes From the Proposed Rule in the Final Rule

The only substantive difference between the proposed rule (56 FR 66009, December 20, 1991) and this final rule results from the Secretary's partial disapproval of amendment 18 to the FMP for groundfish fisheries in the BSAI area. In effect, this partial disapproval will allocate BSAI pollock between inshore and offshore sectors of the industry only for the 1992 "B" season instead of through 1995 as the Council had proposed. This caused the following changes in the regulatory text for 50 CFR part 675 from that which was proposed.

1. The applicability dates that preceded most of the proposed rule paragraphs were changed from December 31, 1995, to December 31, 1992. This change was made for those paragraphs that are pertinent to the allocation, including the definitions of inshore and offshore. The applicability date of December 31, 1995, for the Western Alaska CDQ program is not changed, indicating the Secretary's full approval, in concept, of this part of amendment 18. This approval of the CDQ program was conditioned on subsequent analysis of the program criteria and FDPs before they are submitted to the Secretary for approval through the rulemaking procedure. Therefore, the regulatory text at

§ 675.20(a)(3) that provides authority for the allocation of pollock for CDQ purposes was expanded to include paragraph (a)(3)(iii) for the program criteria. This paragraph is reserved for later publication of the program criteria after the analysis, public comment, and Secretarial review are complete.

2. The identification of new statistical areas in the Bering Sea that were proposed to be added to the definitions at § 675.2 are not included in the final rule. The primary purpose of these new statistical areas was for monitoring the offshore catch allowance of pollock in the CVOA during the roe-season (January 1 through April 15). As approved, amendment 18 will require only the prohibition of offshore fishing for pollock in the CVOA. Hence, definition of new statistical areas is not needed.

3. The proposed schedule of pollock allocations between inshore and offshore components for the years 1993 through 1995 is not included in the final rule. The Secretary's decision on amendment 18 explicitly rejected the proposed inshore-offshore allocation of pollock in those years. Therefore, the final rule at § 675.20(a)(2)(iii) was changed to provide for a 35/65 percent allocation of pollock in each subarea between inshore and offshore components only for the second seasonal allowance of pollock taken after June 1, for the 1992 fishing year.

4. Proposed rule changes to § 675.20(a)(7) are deleted from the final rule. This proposed change would have incorporated the setting of inshore-offshore allocations into the annual groundfish specification process described at paragraph (a)(7). It is unnecessary to change this regulatory text with only a portion of the 1992 fishing year affected by this final rule.

5. Proposed rule changes to § 675.20(a)(8) also are not needed in the final rule because of the short-term applicability of the BSAI pollock allocations. Instead, authority for the Regional Director to establish directed fishing allowances, and to prohibit directed fishing or retention of a groundfish species by either the inshore or offshore component, is incorporated by reference in paragraph (a)(2)(iii) of § 675.20.

6. The proposed rule definition of the catcher vessel operational area at § 675.22(g) is changed in the final rule. The text that allows limited fishing within the area by the offshore component until or before April 15 is deleted, because that fishing period is now closed for the remainder of 1992.

7. The proposed rule definitions of *Inshore* and *Offshore* at 50 CFR 672.2 and 675.2 are redesignated as *Inshore Component* and *Offshore Component*. The word "component" is used throughout the preamble. Adding it to the definitions will clarify the meaning of these definitions.

Other changes from the proposed rule were made in the final rule text of 50 CFR parts 672 and 675 for purposes of clarity and synthesis with existing regulations. These changes include the following:

1. Definitions of "catcher/processor" and "mothership" were not used in the final rule as proposed because the definition of "processor vessel" incorporates both types of vessels.

2. The definition of "processor vessel" is changed in the final rule to clarify that it is a vessel that can be used for processing groundfish, as already defined, and is a vessel that has a Federal groundfish vessel permit. Incorporating the criterion of having a Federal permit is essential for distinguishing a "processor vessel" from a "shoreside operation."

3. The definition of "shoreside operation" is changed in the final rule to clarify that it does not have a Federal groundfish vessel permit and that it could be any person (including, for example, a corporation or individual) that receives unprocessed groundfish from a catcher vessel. The fact that a shoreside operation may be a building on land or a vessel that is substantially a land structure is of no significance for purposes of monitoring catch quotas of the inshore and offshore components. Changing the name from "shoreside processing facility" in the proposed rule to "shoreside operation" in the final rule clarifies that, for monitoring and recordkeeping purposes, a shoreside operation does not have to be a physical structure or processing plant.

4. Finally, the definition of "inshore component" in the final rule is different from that used in the proposed rule by changing the terms "mothership" and "catcher/processor" to the more comprehensive "processor vessel," and by clarifying the use of check-in reports to determine the geographic location of processor vessels operating in Alaska State waters as "inshore component" processors for purposes of pollock and GOA Pacific cod. A more complete explanation of how this definition will be used is given above in the discussion under the heading "Inshore and Offshore Definitions."

Response to Comments

Amendments 18 and 23 involved the most controversial allocation issue ever received by the Secretary under the Magnuson Act. Nearly 1,100 letters commenting on the amendments and the proposed implementing rules were received during the public comment period. Approximately 300 letters expressed views in favor of approval and 790 expressed opposition to approval of the amendments. Two letters commented on specific details of the proposed rule without expressing an opinion for or against approval. Most letters in favor and opposed were written by processing plant workers and fishermen working in the inshore and offshore sectors, respectively.

Based on the return addresses of comment writers, residents of 34 States ranging from Alaska in the west to Maine in the east and south to Texas commented on amendments 18 and 23. Eighty-three percent of the comments were received from residents of the States of Alaska and Washington. Of the 397 comments from Alaska residents, 289 were in favor of approval while 108 were opposed. Of the 511 comments received from Washington residents, four were in favor of and 507 were opposed to approval. Comments were received from seven members of Congress and eight members of the Washington State Legislature. Two Federal executive branch departments submitted comments, including one late comment. Local government leaders also expressed views when 13 Alaska coastal communities submitted comments. Three Alaska native corporations commented also, and one petition with 1,171 signatures was received from the North Pacific Seafood Coalition. Many of the letters received were similar to one another, allowing for some consolidation of the description of comments in this portion of the rule. Significant issues and concerns raised by these comments are summarized and responded to as follows:

Comment 1: Amendments 18/23 would violate national standard 1 because they would require shifts in fishing patterns that would frustrate rather than facilitate achievement of optimum yield (OY). Harvest of the BSAI area roe season allocation by the offshore sector would be frustrated by the ice edge. The amount of pollock TAC allocated to the offshore sector is not consistently available outside of the CVOA.

Response: National standard 1 requires fishery conservation and management measures to prevent overfishing while achieving, on a continuing basis, the OY from each fishery. Neither amendment 23 nor approved portions of amendment 18 reduce the likelihood of pollock TAC or Pacific cod TAC being reached.

NMFS agrees that fishing patterns would change in response to implementation of the CVOA in the BSAI area. This action establishes the CVOA and specifies inshore-offshore allocations of pollock only for the 1992 "B" season. The pollock roe season fishery for 1992 is finished and the ice edge will have substantially receded by the time that the pollock non-roe fishery opens on June 1, 1992. Historical catch data presented in chapter 2 of the FSEIS indicate that large amounts of pollock are likely to be available north and west of the CVOA during the non-roe season. For the remainder of 1992, the non-roe season pollock catch limit for the Bering Sea (BS) subarea is expected to be about 663,000 mt (depending on adjustments made for overages or underages of the roe season quota and bycatch of pollock between the roe and non-roe seasons), of which 35 percent, or 232,050 mt, will be allocated to the inshore sector and 65 percent, or 430,950 mt, will be allocated to the offshore sector. Weekly production report data for 1991 indicate that the inshore and offshore components have sufficient capacity as well as sufficient opportunity to harvest and process the remainder of the OY in 1992.

Comment 2: Amendments 18/23 are consistent with national standard 1, to prevent overfishing while achieving OY, because they: (1) Do not change the amount or the process for determining the amount of pollock and Pacific cod removed from the fishery; (2) help to prevent localized overfishing by factory trawlers that engage in the practice of pulse fishing; and (3) will help achieve the OY from the pollock and Pacific cod fisheries by increasing the amount of food produced from these fisheries due to the higher product recovery rates experienced by the shoreside plants. Greater food production is an objective recognized in the definition of "optimum yield."

Response: As stated in the response to Comment 1, NMFS agrees that the approved portions of the proposed amendments do not change the amount or the process of determining TAC and believes that the OY from the pollock fisheries will be achieved.

Comment 3: Total revenue and exports would increase as a result of an increase in food production due to the inshore allocation.

Response: An increase in food production does suggest an increase in total revenue and a possible increase in exports. The recovery rate of the inshore sector appears to be somewhat higher than that of the offshore sector. However, the factory fleet has indicated that it is improving its technology and expects to increase recovery rates in the future. While the inshore sector may experience a higher recovery rate in 1992, the offshore sector may show a trend of increasing recovery rates with time, thereby increasing its ability to produce food products.

Comment 4: The economic analysis that the Council conducted is based on the wrong methodology, industry-supplied data for 1990 were ignored, and the Council analysis focused on data only from 1989. Therefore, the cumulative effects of sampling and analytical errors, combined with inappropriate assumptions, render results of the input-output analysis employed by the Council statistically meaningless and violative of national standard 2.

Response: National standard 2 requires that conservation and management measures be based on the best scientific information available including, but not limited to, information of a biological, ecological, economic, or social nature.

The administrative record does not close until the Secretary makes a decision. In recommending the allocation among fishing vessels that deliver to the offshore and inshore sectors, the Council relied upon an input-output analysis. Notwithstanding the Council's view, agency economists concluded that a cost-benefit model is the better scientific method to determine the net national costs and benefits of a proposed allocation. The decision of the Secretary was based on this cost-benefit analysis as well as public comment and the input-output model.

During the public comment period, NOAA used the Council's data to review the Council's findings that the proposed allocations would result in net national benefits. NMFS cost-benefit data, as well as the Council's input-output analysis and information regarding social benefits to coastal communities, were part of the administrative record considered by the Secretary in evaluating the costs and benefits of the amendments. The Council found national benefits would result associated with maintaining a balance in the social and economic opportunities inherent in the fisheries of the GOA and the BSAI. NMFS economic data, when considered along with the information in the record regarding the social benefits accruing to coastal communities from the allocations, confirmed the conclusions of the Council regarding the net national benefits derived from amendment 23 for the GOA and the 1992 "B" season, only, of amendment 18 in the BSAI.

The availability of new information must also be considered. While starting the FMP process over again when new information becomes available is not necessary, new information should be incorporated into a final FMP where practicable; and, where such information indicates that drastic changes have occurred in the fishery, such information might require revision of the management measures. While the Council considered primarily 1989 data, NOAA also took into account the 1990 and 1991 harvesting levels in the GOA and BSAI to address substantial changes in the circumstances and management of the groundfish fisheries over the past several years. NOAA also considered the effects of management measures that have been instituted since 1989, including, but not limited to, quarterly quotas, limits on rollovers between quarters, and the prohibition on roe stripping. These changes were taken into account by the Secretary in making the decision that the GOA and BSAI allocations are consistent with national standard 2.

Comment 5: Approval of amendments 18/23 is arbitrary and capricious because the record does not demonstrate a rational basis for the specific allocations proposed and no basis for allocating away from one sector to provide for the growth of another; the proposed allocations are politically driven and are not based on substantial biological, economic, and social analysis and justification.

Response: The amendments, as approved by the Secretary, do not allocate in order to provide growth for one sector over another. In the GOA, the allocations that were approved by the Secretary closely resemble recent harvest patterns. Public testimony was received indicating that the inshore processing plants are capable of processing the allocation of pollock and Pacific cod without further growth. A reason for their previous failure to process amounts of fish commensurate with the newly allocated levels is that the supply of fish was not available. As discussed for Comment 4, the administrative record upon which the Secretary made the decision contains clear evidence that social and other benefits outweigh the economic costs of the approved allocations.

Concerns with the adequacy of the record were expressed in the preamble to the proposed rule, and the public was asked to comment on the economic analysis included in the draft SEIS/RIR/IRFA and the consistency of the amendments with several of the Magnuson Act national standards.

Based on the record developed by the Council, public comment, and cost-benefit data submitted by NMFS, the Secretary determined that the record contains sufficient information to approve amendment 23 and portions of amendment 18.

Comment 6: Amendments 18/23 are consistent with national standard 2 because the Council did base its decision on a complete record containing the most current and best available information. In addition, 50 CFR 602.12 states that scientific information does not have to be complete for preparation and implementation, it only needs to be based on the best possible information and as new information indicates changes are necessary, the FMP should be amended on a timely basis. There was reliable information before the Council indicating the need to amend the FMP based on changing conditions of the fishery, since the plan was originally adopted when foreign fleets were operating.

Response: The 1989 incident of preemption of the inshore fleet in the GOA clearly indicated a changing fishery and a need to implement new management measures. NOAA agrees that the information available was the best and most current possible for approval of amendment 23 in its entirety and for the 1992 "B" season allocations of amendment 18.

Comment 7: The Magnuson Act and case law require the Secretary to consider public comment, and not rely solely on the record before the Council, when reviewing a plan or plan amendment for consistency with the Magnuson Act and other applicable law. Therefore, information that was not included in the analyses before the Council should be reviewed by the Secretary when making a decision.

Response: Consideration of public comment is an integral part of the Secretarial review process for proposed FMP amendments. The purpose of soliciting public comments is to include them in the decision-making process. The Secretary considered all public comments that were received on amendments 18 and 23.

Comment 8: Amendments 18/23 violate the fairness and equity criterion of national standard 4 because the Council did not take into consideration the financial risk taken by factory trawlers in developing the domestic pollock fishery.

Response: An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as fair and equitable if a restructuring of fishing privileges would maximize overall benefits. To be fair and equitable, an allocation of fishing privileges should be rationally connected to the achievement of OY and to an objective of an approved FMP. The Council is required to make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo.

NOAA recognizes the difficult judgment necessary in making such allocative decisions. By concurring in the Council's conclusions that the GOA allocation and the 1992 "B" season in the BSAI would result in net benefits, NOAA is not making the assumption that the offshore factory trawler fleet has less financial investment and risk than the inshore sector. Public testimony was presented at the Council level and several comments were submitted during public review that described the financial risks associated with both the development of the factory trawler fleet and the shoreside processing industry. Testimony was received regarding the dependence of the factory trawler fleet on the groundfish harvests and the dependence of other businesses on the offshore fleet, including those that sell and repair fishing equipment, fish processing equipment and fishing gear, as well as freight management and warehousing companies. NOAA believes the social and economic impacts of preemption of the inshore sector by the offshore sector, as well as the need to provide some protection to the inshore sector, were clearly demonstrated in the GOA during 1989. The relatively small quota amounts for GOA pollock and Pacific cod, and the Gulf coastal communities that depend on an access to these resources, are clearly vulnerable to massive transfers of effort from the much larger offshore fleet that normally operates in the Bering Sea. Gulf coastal communities are characterized by historic dependence on fishing, and a high proportion of those engaged in this activity are local residents. In NOAA's view, the economic losses as a result of amendment 23 in the GOA are clearly offset by the social benefits accruing to the GOA coastal communities. The resource size in the GOA is a small percentage of that in the BSAI, and the proposed allocation will have a less significant effect on the industry as a whole. The economic effect of the GOA allocation will be much closer to the status quo than the economic effect of the proposed allocation in the Bering Sea. All these factors were evaluated by the Secretary in making the decision. Therefore, the decision is consistent with national standard 4.

Comment 9: Amendments 18/23 violate the fairness and equity criterion of national standard 4 because several objectives of the amendments would not be met.

Response: The objectives of Amendments 18/23 were to address the problems of (1) The future ecological, social, and economic health of the resource and the industry; (2) excessive harvests and processing capabilities; (3) resource allocation; and (4) appropriate management measures to advance the conservation needs of the area. The future ecological, social, and economic health of the resource and the industry is being addressed by the allocations as approved by controlling the percent of the fishery resource that can be taken by the offshore sector. The factory trawler fleet is capable of harvesting a large amount of fish in a short period of time, which can quickly lead to an overharvest. Evidence of the high harvesting capability occurred in 1991 when the third quarter specification for pollock was obtained in a little over one month for both the Central and Western subareas of the GOA and the fishery had to be closed prior to the end of the third quarter, September 29, 1991. The allocations were approved by the Secretary as being a solution for the current situation and will provide the appropriate management measure at present to advance the conservation needs of the area by reducing fishing pressure and ensuring a share of the resource for the coastal communities.

Comment 10: Amendments 18/23 violate the fairness and equity criterion of national standard 4 because the proposed allocations are not related to current and historic proportions of the harvest, or proportional to current processing capacity or harvesting ability.

Response: Public testimony and written comments were received regarding the capacity of inshore plants to process the increased amount of fish under the allocations. Representatives of several inshore plants testified that they had not been operating at full capacity previously because they did not have enough fish to supply the plants. Harvests of pollock by the inshore sector in the GOA in 1989, 1990, and 1991 were 45 percent, 82 percent, and 76 percent, respectively. The 3-year average is 67.7 percent for inshore and 32.3 percent for offshore. Harvests of Pacific cod by the inshore sector the GOA in 1989, 1990, and 1991 were 87

percent, 83 percent, and 78 percent, respectively. The 3-year average for the inshore sector was 82.7 percent and for offshore, 17.3 percent. For BSAI pollock, the inshore sector took 20 percent, 17 percent, and 28 percent for 1989, 1990, and 1991, respectively. The 3-year average in the BSAI for the inshore sector was 21.7 percent and for offshore, it was 78.3 percent.

The economic effect of allocating 100 percent of pollock and 90 percent of Pacific cod in the GOA to the inshore sector, combined with the social benefits derived from the allocations (including stability within the community from year-round employment and the certainty of a steady supply of fish), supports approval. With respect to the BSAI, the economic effects of the 35 percent of pollock allocated inshore during the 1992 "B" season, combined with the information regarding the social benefits to BSAI communities supports the approval.

Comment 11: Amendments 18/23 violate the fairness and equity criterion of national standard 4 because fishermen are discriminated against for the benefit of shoreside processors.

Response: NOAA believes that this action is consistent with the fairness and equity criterion of national standard 4 for the reasons provided in the response to Comment 8. Regulations implementing these amendments do not restrict owners or operators of catcher vessels from delivering to either inshore or offshore processing sectors, or at least during the early part of a fishing season or year. Once a component reaches its TAC, catcher vessels can only deliver to the other component.

Comment 12: Amendments 18/23 violate national standard 4 because they are not consistent with the Council's comprehensive goals.

Response: In 1984, the Council adopted nine Comprehensive Fishery Management Goals for the development of fishery management plans. While each of the nine goals applies, two of these are of particular importance to the amendments. One of the goals is to ensure that the people of the United States benefit from optimum utilization of the Nation's publicly owned fishery resources. The benefits to the Nation will be demonstrated by the social growth of Alaskan communities. Another goal is to promote economic stability, growth, and self-sufficiency in maritime communities. The allocations as approved by the Secretary will clearly benefit the coastal communities of Alaska and aid them in achieving a stable, self-sufficient, and growing economy.

Comment 13: Amendments 18/23 violate national standard 4 because they are not reasonably calculated to promote conservation because (a) no conservation benefits are demonstrated by limiting the offshore fleet; (b) increased effort near shore will lead to localized depletion of pollock stocks and will not reduce the risk of local depletion or extracting large portions of individual schools or subpopulations during the roe season and could negatively affect food supply and spawning behavior; (c) increased fishing effort near sea lion rookeries means critical habitat, nesting, rookery, and haulout sites for marine mammals could be negatively affected; precautionary measures to protect this species, its habitat, and food source should be implemented before the proposed amendments are put into force; (d) the problem of shortened seasons is not solved; (e) increased wastes are not demonstrated to be reversed; the bycatch of prohibited species is greater by the inshore sector and would increase under the amendments; water and air pollution would be increased as a result of increased inshore processing activity; and (f) reduced observer coverage would decrease ability to manage the fishery and increase risk of TAC overages such as the 1991 third quarter overrun in the GOA by the inshore catcher fleet.

Response: (a) A factor to be considered in establishing an allocation scheme is whether it will promote conservation. It may promote conservation by optimizing yield, in terms of size, value, market mix, price, or economic or social benefit of the product. The Secretary has determined that limiting the ability of the offshore fleet to receive more than the percentages of fish harvests allocated under amendment 23 for the GOA FMP and the approved portion of amendment 18 for the BSAI FMP will promote conservation in terms of the social and economic benefits accruing to the inshore sector of the industry.

(b) NOAA recognizes that amendment 18 could have increased fishing effort in near-shore areas. The effect of partial approval of amendment 18, however, is that only 35 percent of the 1992 "B" season pollock TAC (adjusted for "A" season overages and between season bycatch) may be harvested from the BSAI management area for inshore processing. The "B" season fishery will be more dispersed on the Bering Sea shelf than it is during the spawning or "A" season when pollock are more congregated and fishing is focused on the Aleutian Basin stock and between the ice edge and the Aleutian Islands. Potential adverse impacts on near-shore pollock stocks in 1992 are further mitigated by the continued prohibition of directed fishing for pollock in the Bogoslof subarea and within 10 miles of key Steller sea lion rookeries. NMFS scientists have asserted that the potential for localized depletion of the BSAI pollock stock does not pose a threat to the pollock resource.

For amendment 23, the potential problem of localized depletion of pollock stocks was addressed in 1990 and 1991 through inseason action and emergency rules and for subsequent years by amendments 20 and 25. The 1992 Stock Assessment and Fishery Evaluation Report states that BSAI and GOA pollock stocks are at either high or moderate levels of abundance and have experienced only slight decline since 1990. Harvests of pollock by offshore trawl vessels in the GOA have only averaged 32.3 percent of the TAC over the last 3 years (1989, 1990, and 1991). Therefore, the allocation approved for the GOA is not expected to result in a significantly increased fishing effort by inshore operators or to impact pollock stocks negatively in either the GOA or the BSAI management area.

(c) NOAA recognizes that increased fishing effort in the CVOA may diminish the availability of food resources to Steller sea lions dependent upon this geographic region; however, the overall amount of TAC available for harvest in the BSAI and GOA will not be affected by the amendment.

On January 21, 1992, NMFS completed formal section 7 consultations on the 1992 BSAI TACs to evaluate their effects on Steller sea lions, a threatened species, as well as on other listed species under NMFS' jurisdiction. Based upon a review of the available data during the 1992 TAC specifications process, NMFS concluded that concentration of fishing effort on the southeastern BSAI shelf was likely to occur in 1992. Because of this anticipated effort shift, NMFS expanded no-trawl zones around five rookeries during the 1992 first seasonal allowance of pollock, January 1–April 15 (§ 675.20(a)(2)(ii)), to provide better protection to Steller sea lions. These expanded closures, together with the year-round 10 nautical mile closures of all major rookery sites implemented under amendments 20/25 (57 FR 2683, January 23, 1992), are expected to mitigate any potential adverse impacts to Steller sea lions of increased harvests on the southeastern BSAI shelf.

The March 4, 1992, biological opinion for amendment 18 concluded that the implementing regulations for the

Amendment as approved for the "B" season only would actually limit to a greater extent the amount of fishing effort that could be conducted in areas known to be important foraging and breeding grounds for the Steller sea lion. Amendment 18 would proportionately allocate the yearly available harvest of pollock to inshore, offshore, and western Alaska community sectors within the BSAI fishing industry. Therefore, implementation of amendment 18 as approved is not likely to jeopardize the continued existence of endangered or threatened species under NMFS' jurisdiction.

An informal consultation for amendment 23 to the GOA was conducted by NMFS. NOAA reviewed the available data on GOA pollock stocks, fisheries, and Steller sea lions. Based on the analysis, NOAA hypothesized that the temporal and/or spatial compression of the pollock fishery that occurred during the 1980s may have diminished the local availability of food resources important to Steller sea lions. Management measures to disperse fishing effort over space and time and to divert some effort from Steller sea lion foraging areas were implemented.

Since these measures already exist, the proposed allocations are not expected to alter significantly the distribution of fishing effort and amendment 23 will not affect any listed species in a way that was not already considered.

(d) The intent of amendments 18/23 is to protect coastal communities from fisheries preemptions due to groundfish harvests by highly mobile and effective offshore processing operations that can lead to pulse fisheries and early seasonal closures. This issue is being addressed separately by the Council under proposed management measures that include individual transferable quotas (ITQs) and a moratorium on further entry into the groundfish, halibut, and crab fisheries off Alaska.

(e) NMFS is using the best information available to estimate discard amounts in the groundfish fisheries and, at this time, has no reason to believe that discard amounts will increase under amendment 23 and the approved portion of amendment 18, these operations must continue to comply with laws and regulations set forth under the Clean Air Act and the Clean Water Act. The Environmental Protection Agency (EPA) is responsible for issuing permits to these facilities and ensuring that, by issuing such a permit to conduct operations, the facility can operate within the guidelines established by regulation. It is also EPA's responsibility to enforce compliance with those guidelines.

Based on comments received for amendments 18/23, the shoreside plants have the capacity to process the increased amount of fish that will be delivered as a result of the amendments. NMFS will continue to monitor the activities of the shoreside plants for compliance and will refer any violations that come to its attention to the EPA.

(f) The allocations as approved by the Secretary to the inshore sector would mean more fish would be harvested without the benefit of 100 percent observer coverage. However, NMFS is confident that the resultant risk of potential TAC overages is minimal because these allocations do not represent a significant increase over the anticipated inshore proportional harvest. In addition, the observer coverage of the inshore fleet is sufficient for quota monitoring purposes.

Comment 14: Amendments 18/23 violate national standard 4 because they contribute to excessive shares (40 percent) of the BSAI pollock TAC to two Japanese companies.

Response: Pursuant to 50 CFR 602.14, an allocation scheme must be designed to prevent any person or entity from acquiring an excessive share of fishing privileges and to avoid conditions fostering inordinate control by buyers or sellers that would not otherwise exist. Commenters have expressed concern that, because the market for surimi is in Japan, allocation of the pollock resource to shoreside processors, several of which are Japanese-owned, creates inordinate control in the hands of those buying the surimi product. However, there is no indication in the record for amendments 18/23 that the allocations that were approved by the Secretary for the GOA and the BSAI area are inconsistent with the excessive shares prohibition of national standard 4. Amendment 18, as approved, follows closely the current harvest and processing patterns for BSAI pollock in 1992.

The Antitrust Division of the U.S. Department of Justice reviewed amendments 18/23 and the proposed rule and provided no indication that the amendments would vest an excessive share of fishing privileges in an individual, corporation, or other entity. Should it appear that at some point in the future, shoreside processing plants are violating U.S. antitrust law, appropriate action will be taken by the U.S. Department of Justice.

Comment 15: Amendments 18/23 satisfy both tests of the fair and equitable standard of national standard 4 in that they are rationally connected to the furtherance of legitimate FMP objectives and the overall benefits of the allocation outweigh the burdens on the industry. They are fair and equitable in that they preserve a traditional fleet with demonstrated catch histories and promote conservation in the form of improved fleet management and avoidance of waste.

Response: The Secretary has determined that the allocations in the GOA and the 1992 "B" season in the BSAI area are consistent with the fair and equitable criterion of national standard 4. Fleet management is not expected to change with the amendments as approved by the Secretary. Traditional measures of inseason actions and observer coverage will continue to be utilized by NMFS.

Comment 16: Approval of amendments 18/23 avoids excessive amounts of waste and discard because shoreside plants have to pay for their raw material and have to extract more usable product than do factory trawlers. Also, factory trawlers discard large amounts of fish that are determined to be unsuitable for processing.

Response: Shoreside processing plants demonstrate an increase in use of all raw materials. Some factory trawlers may experience a greater loss of potential product due to the conditions under which they must work. Equipment used for preparing fish products must be precisely set and rough conditions experienced at sea on the factory trawlers could prevent maximum efficiency of processing equipment. The inshore processing plants do not have to deal with the movement of equipment and can be more precise in their cuts of fish. Because of this, the inshore processing plants appear to have a somewhat higher product recovery rate.

Comment 17: Amendments 18/23 would resolve NMFS management problems and allow TAC to be fully reached.

Response: One purpose of the allocations is to serve as a preliminary step toward solving the problem of overcapitalization. The allocations as approved by the Secretary will allow for a temporary solution while more permanent management measures can

be evaluated (i.e., limited entry, ITQs). The allocations as approved could increase the amount of time it will take to reach TAC by limiting the competing processor/harvesters to certain areas. This would relieve fishing pressure.

Comment 18: Approval of the Western Alaska CDQ would not promote discrimination because communities would only receive 7.5 percent of the TAC for the area leaving 92.5 percent for the rest of Alaska and other states, and 55 percent of this would go to the factory trawler fleet while 45 percent would go to the inshore processors. The benefits to the western Alaska communities are significant, and yet their allocated 7.5 percent of the TAC would not pose a hardship upon Pacific Northwest residents. Out of 7,000 individuals making up the factory fleet, 6,000 are residents of the Pacific Northwest; and out of 8,000 individuals making up the inshore sector, 6,000 are residents of the Pacific Northwest. Clearly, the allocation does not discriminate between residents of States. In addition, there are no excessive shares and no community will be eligible for more than 4 percent. No State of Alaska statutes or regulations are being used to implement the Western Alaska CDQ program. The Governor only recommends criteria for inclusion and reviews the applications. The Secretary has the ultimate authority to approve or disapprove. Therefore, no discrimination will result based on State statutes or regulations.

Response: The Western Alaska CDQ program has been approved in concept. The State of Alaska, in consultation with the Council, will provide details of the program criteria prior to submission for rulemaking. NOAA has determined that neither amendment 18 as approved nor amendment 23 discriminates against non-Alaskan residents.

Comment 19: Amendments 18/23 discriminate against non-Alaska residents because the Western Alaska CDQ program is not available to communities in other States and the amendments would cause a massive job transfer from other States to Alaska.

Response: The CDQ program does not discriminate between Alaskans and non-Alaskans on the basis of State of residence. The adverse effect of the CDQ program in setting aside pollock reserve for use by western Alaskan communities for FDPs falls equally upon similarly situated Alaskans and non-Alaskans. Regulations that are determined to discriminate against residents from different States would not be approved.

Comment 20: Amendments 18/23 are consistent with national standard 4 because the amendments do not discriminate against non-Alaskan residents by allocating fish to fishermen who may be predominately based in Alaska and who deliver their catch to Alaskan shore-based processors while denying fish to fishermen based primarily outside Alaska. Alaskan and non-Alaskan residents are fully represented and both stand to benefit from approval of the amendments. Shares have not been excessively concentrated in a single entity because the amendments will not result in monopolistic or oligopolistic concentrations.

Response: NOAA agrees the allocations as approved will not discriminate among residents of different states. The allocations remain fair and equitable to both inshore and offshore sectors for amendment 23 and the 1992 "B" season amendment 18.

Comment 21: The economic and social stability of the coastal communities of Alaska could increase with approval of amendments 18/23 because the allocations proposed by the amendments will make resource availability more predictable for individual economic units and could foster a stable, self-sustaining economy. The allocations would further sociological and economic goals in communities in need of development. Therefore, the Western Alaska CDQ program is necessary; without this program, these communities will not be able to enter the fishery. The CDQ program could lead to an increased interrelationship between income earned and success of the subsistence economy and allow the communities to attain their social and economic goals. In addition, the Western Alaska CDQ would promote conservation, in that the community residents would take a greater interest in their overall ecosystem. And since inefficient regulatory techniques are acceptable to attain social or biological objectives if these measures are justified, opportunities for private economic development, such as the CDQ program, should be encouraged or these communities will become abandoned.

Response: The Secretary has conditionally accepted the Western Alaska CDQ program provisions, which will set aside 7.5 percent of the BSAI area pollock reserve for development of remote western Alaskan communities. The State of Alaska has not yet submitted any program criteria or FDPs to the Council. Upon submission, the Council will thoroughly review the criteria to evaluate their costs and benefits before submitting them to the Secretary in the rulemaking process. The Secretary will also review the criteria for consistency with the objectives of the groundfish plan, the national standards and other applicable law as discussed in the preamble to the proposed rule (FR 56 66009, December 20, 1991).

A factor to be considered is whether the allocation will further the goals of the BSAI FMP. The assignment of fishing privileges through the CDQ program will further the goals of the BSAI groundfish FMP by promoting economic stability, growth, and self-sufficiency in the coastal communities and improving their opportunities for enhancing their self-sufficiency.

Comment 22: The amendments propose a specific allocation for shore-based processors that is not provided for under the Magnuson Act definitions of "fishing" and "fishery conservation and management." Specifically, authority does not exist under the Magnuson Act to allocate between inshore and offshore processing industries because the Magnuson Act only provides for allocations among fishermen and not among those to whom fishermen deliver.

Response: The amendments do not make specific allocations among shore-based processors. Amendments 18/23 allocate fish between fishing vessels that deliver to either the "inshore component" or "offshore component." The allocation applies directly to fishing vessels because it limits the amount of fish a vessel can deliver either component. The Secretary is authorized to make such an allocation under the Magnuson Act.

Comment 23: The amendments would be unconstitutional in that they would take away the "right to fish."

Response: The United States Constitution does not include an expressed right to fish.

Comment 24: The Magnuson Act allows allocations to be made that will exclude or severely restrict a user group from a fishery to protect a sector when it can be demonstrated that that social and other benefits to the preempted sector outweigh the costs to the other sector.

Response: Comment noted. The social and economic impacts of the 1989 preemption imposed hardship to the coastal communities of Alaska, which are characterized by historical dependence on fishing. Analysis that led to the approval of amendment 23 showed that the social benefits to these communities would offset economic losses.

Comment 25: Amendments 18/23 would violate national standard 5

because they do not promote efficiency in the use of fishery resources. They would not solve, and could exacerbate, the current overcapitalization of the pollock fishery. The amendments would create an incentive for inefficient shore-based operators to overinvest in fishing and processing equipment resulting in the use of more productive resources than necessary to harvest the available TAC. The amendments also would protect less efficient competitors in the open access management system at the expense of the more efficient operations. Finally, the amendments would violate national standard 5 because they have economic allocation as their sole purpose. Evidence of this objective is that (a) the SEIS presents no biological or ecological rationale or benefit, (b) no legitimate social, community, or cultural benefits from reallocation are realized (most shore plants are staffed by low-paid foreign guest workers who have little interaction with Alaskan communities), and (c) the proposed allocations would result in a windfall profit to inshore processing operations and would further reduce the profit of independent catcher vessel operators.

Response: National standard 5 requires fishery conservation and management measures to promote efficiency in the utilization of fishery resources, except that economic allocation must not be the sole purpose of such measures. In theory, an efficient fishery would harvest all the allowable catch with a minimum use of economic inputs (e.g., labor, capital, fuel, etc.). NOAA is aware that overcapitalization is a problem in the Alaska groundfish fisheries and that amendments 18/23 do little to resolve this problem of excessive economic inputs. However, as approved and implemented by this action, the amendments are not substantially less efficient than the current open access fishery without amendments 18/23. NMFS is implementing only those portions of the proposed amendments that do not appear to exacerbate the overcapitalization problem. In addition, NMFS is strongly urging the Council to work toward a more efficient method of allocating fishing privileges other than direct government intervention. NMFS is aware that the Council currently is working on a moratorium on the entry of new vessels into the fisheries, to be followed by a permanent solution to excess fishing capacity. Any incentive to over-invest in the inshore catching and processing sector will be tempered by the planned expiration of the approved allocations, and the possibility of limited access measures in the near future.

After careful review of the record, NOAA has determined that amendments 18/23 do not have economic allocation as their sole purpose. For the allocation measures that were approved, primarily in the GOA, the interim allocations favoring the inshore component could reduce the bycatch of prohibited species and improve the overall recovery of fish products from the round weight harvested. In addition, the marginal economic loss to the Nation of the GOA allocations is clearly offset by social benefits. Coastal communities in the GOA have a historic dependence on the fishing industry and have a high proportion of their permanent residents involved in fishing and processing businesses. The fact that a non-resident or foreign work force is hired to work in local processing plants during peak fishing seasons when local labor supply is insufficient does not detract from the stabilizing effects of long-term fishing and processing on the local economy. Transient labor contributes to local community economies through its demands for goods and services. Finally, any allocation of fishing privileges will cause some industry participants to be better off and others to be worse off than they would have been without the allocation. This is acceptable under the guidelines of the national standards of 50 CFR 602, providing that such allocations are justified by the achievement of overall biological, economic, and social benefits. The Secretary determined that the GOA and 1992 BSAI "B" season allocations are justified on these criteria. As a result of this partial implementation of Amendments 18/23, the potential for windfall profits is limited.

Comment 26: National standard 5, the "efficiency" goal, is satisfied by the allocation because "efficiency" measures maximization of resource recovery, not maximum harvesting efficiency, which rewards discards and waste. The Secretary measures efficiency in utilization in terms of delivery price to the consumer, quality of product, community economic stability, production efficiency, use of capital and labor, full utilization of harvested fish, and social efficiency without having economics as the sole purpose of the measure. The efficiency of utilization must reflect a sensible balance of economic, social, and biological factors. Technical economic efficiency is only one factor. The allocations of amendments 18/23 promote maximization of resource recovery and do not have an economic allocation as their sole purpose while improving efficiency, because they would permit the efficient investment of capital to prevent the deterioration of present physical capacity by assuring a supply of fish. To disapprove the allocation based on the grounds of "efficiency" would apply a double standard.

Response: Comment noted. The benefits of economic stability and social gains to the Alaskan coastal communities balance potential economic losses to the Nation.

Comment 27: Amendments 18/23 would violate national standard 6 because they make wholesale changes in fishing patterns and practices without assessment of potential impacts on sensitive marine habitats or marine mammals.

Response: National standard 6 requires that conservation and management measures take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. As was explained in Response to Comment 13 (a) and (c), these impacts were analyzed in the draft SEIS and in the biological opinions prepared for amendments 18/23.

Comment 28: Amendments 18/23 would violate national standard 7 because (a) they would impose the most economically restraining and burdensome regulatory regime when a less instrusive and expensive alternative (e.g., exclusive registration areas) would more effectively address the preemption issue, (b) they would impose a large economic cost to produce speculative short-term benefits, and (c) they would force former joint venture processing (JVP) vessels currently delivering to at-sea processors to modify their vessels to transport fish to shore plants.

Response: National standard 7 requires fishery conservation and management measures to minimize costs and avoid unnecessary duplication. The cost-benefit analysis performed by NMFS concluded that the allocations proposed for the GOA would not present an undue economic hardship that was not outweighed by social gains, and the 1992 "B" season in the BSAI also showed that the social benefits to be incurred would offset the economic losses. However, the allocations proposed for the remaining years in the BSAI, 1993 through 1995, do indicate that the cost to the Nation would be more than the social and other benefits could justify. Therefore, because of the lack of a balance between social and economic factors from the years 1993 through 1995, the remainder of amendment 18 is not consistent with national standard 7 and

only the 1992 "B" season could be approved under amendment 18. Other alternatives were considered and rejected by the Council or the Secretary because they were either more restrictive or would not have prevented preemption of the inshore component by the offshore processing vessels.

Comment 29: Amendments 18/23 are consistent with national standard 7 because the Council is free to choose an alternative that, although fair and equitable, may not be the least restrictive.

Response: Amendment 23 and the 1992 "B" season of amendment 18 are consistent with national standard 7 because, although the measures are more restrictive to the offshore component, they provide a significant social benefit to the inshore communities that balances these losses.

Comment 30: A benefit-cost analysis is not necessary under national standard 7 because the recommendation "freezes" the status quo and there is no significant reallocation to the inshore sector and, therefore, no costs to the offshore sector. Because there is no shift in net national benefits, there is no need to elaborate. However, it should be noted that there would be a significant increase in social benefits from a conservation and management point of view (fleet management and waste avoidance).

Response: Approval of amendment 23 and the 1992 "B" season of amendment 18 are in agreement with the comment that there would be a significant social benefit for the inshore sector and that the benefits would offset other economic losses. NOAA disagrees with the statement that the allocations "freeze" the status quo because the current system allows for unregulated take of one, more mobile, sector over another, whereas the allocations will decrease the amount available to the more mobile sector. And, as evidenced by the anticipated increase in social benefits to the inshore sector, there is an apparent shift in economic benefits (i.e., to the inshore). Where there is such a significant allocation as proposed in these amendments, a cost-benefit analysis is a crucial part of the review process.

Comment 31: The allocations as proposed provide only a short-term gain for the inshore sector and will not solve the long-term problem of controlling fishing effort. ITQs are suggested as a long-term solution.

Response: NOAA agrees that the current open access system is a problem and that some form of ITQ could help to mitigate the inshore-offshore issue. While ITQs are under consideration by the Council, the urgent problem of preemption had to be addressed. The allocations as approved by the Secretary, although only temporary, will serve as a preliminary step towards a control on fishing effort and provide immediate relief while the Council works on a more permanent solution.

Comment 32: A conservation and management measure must provide real and substantial benefits and the benefits to society must be assessed. At present, the communities have little direct involvement and may already be effectively barred. Participation depends on an inshore allocation. Individual fishing quotas (IFQs) may not be sufficient to develop an independent fishing industry. The current derby style of the fishery is detrimental to the resource and increases the likelihood that the communities will never be able to enter the fishery. There are few alternatives for these communities.

Response: The amendments as approved demonstrate NOAA's concern that the inshore sector has the opportunity to be included in the fishery and that it is possible to approve an amendement if the social benefits exceed the costs to the Nation. In the case of amendment 23, the social and other benefits exceed the costs to the Nation and, hence, the amendment was approved in its entirety. Amendment 18, on the other hand, demonstrated a benefit outweighing cost only for the "B" season of 1992. The Council has the opportunity to further review the 1993–1995 allocations for possible implementation of an amendment by the end of 1992 if the social and other benefits can be shown to outweigh the cost to the Nation.

Comment 33: It was appropriate not to consider limited entry as an alternative because a moratorium or a limited access system would merely preserve the status quo, which does little to solve the preemption problem faced by the inshore fleet, and disapproval of the inshore allocation should not be based on the desire to implement limited entry as an alternative as limited entry could be in debate for the next 4–6 years. The economic demise of the factory trawler fleet is inevitable if the status quo is allowed to continue, unless they continue to diversify into other fisheries. The issue before the Secretary is whether to permit the factory trawler fleet to economically destroy the inshore fleet while the Council debates over ITQs. It is not clear that amendments 18/23 will cause more economic disruption to the factory trawler fleet than will occur under the status quo. The inshore-offshore allocation is an interim, stabilizing measure that will allow public participation in discussions of limited entry without fear of massive economic disruption in the meantime. Preservation of traditional fleets, improved fleet management, concerns of bycatch and waste, increased food production, and socio-economic stability of coastal communities are enough to support approval of the Amendments.

Response: The Council has been urged to work as expeditiously as possible toward producing a method of allocating fish other than the current open access, olympic system. Limited entry and ITQs are some of the management measures being considered by the Council. The current allocation for the GOA and the 1992 "B" season allocation in the BSAI area will serve as a temporary solution while the other management measures are being reviewed.

Comment 34: There are severe conceptual deficiencies and measurement problems precluding the use of consumer and producer surplus as measures of net national benefits.

Response: Producer and consumer surplus are standard, well established measures of net national benefits in the analysis of public policy and public investment. There may be measurement problems for the analyst to overcome in a given instance, but these would relate to the quality of the data rather than to methodological or conceptual deficiencies in the approach. In the case of the NMFS cost-benefit analysis of amendments 18/23, the measure of benefits was confined to changes in producer surplus. Consumer surplus was not used principally because the dominant product, surimi, is mostly exported and the foreign consumer surplus measure would not apply to this analysis of net national U.S. benefits.

Comment 35: Inshore processing results in lower overall consumer prices, greater volume of finished products, and lower average costs of production. Factory trawlers on the other hand waste the public resource and produce a lower volume on food products at higher prices.

Response: The inshore sector appears to demonstrate a higher recovery rate at present. Inshore processors presently convert a higher percentage of fish from round weight to finished product. This was factored in the supplemental cost-benefit analysis and was taken into account by the Secretary when approving amendment 23 and the 1992 "B" season of amendment 18. However, the factory fleet has indicated that it expects to increase recovery rates while decreasing wastes as more is learned about the improved technology used by the inshore sector. NMFS data do

indicate that the offshore sector obtains a higher price; however, prices are becoming comparable between the inshore and offshore components. The current higher price of the offshore product may be a reflection of the fresher quality.

Comment 36: The proposed allocations do not demonstrate a net benefit to the nation, and possibly reflect a loss.

Response: The Secretary has made a determination that the amendments as approved would result in a net benefit to the Nation. In the GOA, the coastal communities are characterized by historic dependence on fishing and a very high proportion of those engaged in this activity are local residents. In this regard, the social benefits of amendment 23 offset the marginal economic losses. The 35 percent allocation approved for the 1992 "B" season in the BSAI area does not result in a significant net economic loss and the protection to be gained by the inshore sector in this area outweighs those losses. In both areas, the balance between social and other benefits to be gained by the inshore sector and net economic loss is justified.

Comment 37: The allocations to the inshore sector would create increased revenue and employment for the Nation as well as increased food availability and decreased wasted fish.

Response: While approval of amendment 23 and the 1992 "B" season of amendment 18 will result in net national benefits, the remaining years of amendment 18 could not be approved because current information does not indicate such a benefit for these years. Food production and waste were discussed for Comments 3 and 13(e), respectively, as well as for Comment 35.

Comment 38: The economic analysis contained in the RIR/IRFA was adequately responsive to the requirements set forth in the national standards and effectively supported approval of the proposed amendments. Maximizing consumer surplus of foreigners is not a feasible objective of American social, economic or political policy. For the BSAI, an increase of more than $246 million in sales revenue in the years 1992 to 1995 is a meaningful measure of the benefits to be realized by the Nation from implementation of the amendments. Therefore, it is in compliance with Executive Order 12291. And, since the allocation would promote the social economic stability of dependent coastal communities, national standards 1, 4, 5, and 7 are all satisfied.

Response: See responses to comments 10, 13, 28, and 32. As stated in these previous responses, the economic analysis does support approval of amendment 23 and the 1992 "B" season of amendment 18; however, it does not support approval of the allocations proposed for 1993 through 1995 of amendment 18. The current data concerning social and other benefits from implementation of the 1993 through 1995 allocations do not demonstrate that these benefits outweigh the costs to the Nation as a whole and, therefore, for 1993 through 1995 of amendment 18, Executive Order 12291 and the national standards are not satisfied. The Council has the opportunity to reevaluate the remainder of Amendment 18 for possible implementation of a revised plan by the end of 1992.

Comment 39: The analysis is inconsistent with the National Environmental Policy Act (NEPA) because it did not adequately consider all reasonable alternatives.

Response: NEPA requires that an SEIS include an evaluation of the effect of all reasonable alternatives on the human environment. The purpose of NEPA is to provide the public and the decisionmaker with a clear choice among the options. It requires substantial treatment of each alternative. NEPA does not dictate an amount of information that must be provided, but rather prescribes a level of treatment that in turn may require varying amounts of information to enable a reviewer to evaluate and compare alternatives. While the agency recognizes that the reasonable alternatives set forth in the SEIS were analyzed in varying degrees of detail, the SEIS contained sufficient analysis to allow for determinations to be made by the agency of the environmental effects of the proposed amendments.

Comment 40: The analysis is inconsistent with NEPA because the "no action" alternative misrepresents the fishery as it appeared in 1989, and further misrepresents the harvest proportions in the base year of 1989 by including 80 percent of the 1989 JVP catch, which was processed offshore, and freezer-longliner catches as "inshore" harvests.

Response: The Council chose to include the small freezer-longliner fleet (i.e., 125 feet in length overall or less) in the inshore definition because of their limited range. In addition, 80 percent of the former JVP boats apparently had inshore markets in 1990, the year in which the analysis was designed. The SEIS contained sufficient analysis of the reasonable alternatives to enable the agency and the public to evaluate the environmental impacts of those alternatives. While such documents almost always can be improved, in this case NOAA believes the Secretary and the public were provided with sufficient information regarding the effects of amendments 18/23, and that the SEIS satisfies the standards of NEPA.

Comment 41: The analysis is inconsistent with NEPA because the emphasis placed on one alternative in the analysis indicates that the Council had a preconceived solution and was not open to other alternatives.

Response: See response to comment 39.

Comment 42: The analysis is inconsistent with NEPA because there was no opportunity for the public to review and comment on the NMFS economic analysis that was supposed to fix the "fatally flawed" analysis submitted by the Council.

Response: The economic impact analysis prepared by the Council provided estimates of changes in sales, employment, and income that would occur as a result of the proposed allocations. The analysis was based on the use of an input-output (I–O) model that did not, however, address questions of economic efficiency and net national benefits. Because statutory national standards and Executive Order 12291 highlight efficiency as a criterion for utilization of fishery resources and stress the need for regulatory plans to analyze the extent to which net benefits are affected by a proposed action, NMFS conducted an independent economic analysis that examined the allocation issues in light of their effect on economic efficiency and net national benefits. The results of this study were developed within the framework of a cost-benefit anlaysis.

Indeed, the results of the NMFS economic study were not circulated for public comment prior to the decision on amendments 18/23 because the study was not based on any new data that were not previously available to the public. When the Secretary reviewed the findings of the Council, the results of the cost-benefit data were balanced against the quantified social benefits described in the administrative record. The results of the cost-benefit data confirmed the findings of the Council regarding amendment 23 and the 1992 "B" season of amendment 18. The study was based upon data provided by the Council and upon which the Council based its input-output model. The cost-benefit study results are currently available to the public.

Comment 43: The amendments are in compliance with NEPA. The SEIS/RIR/IRFA dated September 19, 1991, provides greater detail on environmental impacts, economic environment, and

associated consequences of the Western Alaska CDQ and concludes there are no critical environmental problems. It is unlikely the communities targeted by this program will be able to capture the benefits of the fishery without preferential allotment.

Response: NOAA agrees that the amendments are in compliance with NEPA and has approved those portions that are consistent with the objectives of the Magnuson Act.

Comment 44: The North Pacific Fishery Management Council has been held to a higher standard than any other Council ever has during the review process for amendments 18/23. All requirements to analyze social and economic benefits to the Nation were satisfied, and the analysis they provided is as good as any other.

Response: The allocations proposed by amendments 18/23 are controversial and many concerns were expressed by both sectors. NOAA must ensure that all concerns are addressed and that the amendments are in compliance with the Magnuson Act, the national standards, NEPA, the Endangered Species Act, and other applicable law. All Councils are held to these same standards and must provide sufficient information to satisfy all concerns. NOAA agrees that, although there is always room for improvement, the record was complete and there was sufficient information to approve amendment 23 and the 1992 "B" season of amendment 18.

Comment 45: The Secretary is not required to conduct a cost-benefit analysis.

Response: The Magnuson Act and Executive Order 12291 require that an analysis of costs and benefits must be prepared to determine if the potential benefits to society outweigh the potential costs. According to 40 CFR 1502.23 of the Council on Environmental Quality, a cost-benefit analysis should be incorporated as an aid in evaluating the environmental consequences when one is prepared. As explained in response to comment 4, an input-output model was prepared by the Council, and the cost-benefit analysis confirmed the conclusions of the input-output model regarding amendment 23 for GOA and the 1992 "B" season, only, of amendment 18 in the BSAI.

Comment 46: Since the benefits of the allocation outweigh the costs, disapproval based on an insufficient record (as a matter of law) would be incorrect. There is sufficient record for making the decision, which is in effect a policy decision at this point.

Response: NOAA agrees that the record was sufficient for making a decision and has approved amendment 23 in its entirety along with the 1992 "B" season of amendment 18. The Western Alaska CDQ program has been approved in concept and the Council will evaluate the program criteria prior to submission for approval through rulemaking.

Comment 47: The current olympic system of fishing increases the cost of operation because of the incentive to produce the product that yields the highest daily revenue, rather than the form most desirable in the U.S. market. This would be changed by the allocations.

Response: The products produced from pollock are dictated by the value of these products on the world market relative to their production cost, regardless of where the processing occurs or whether it is an olympic system of fishing.

Comment 48: Under the open access fishery, there is no "rent." Society should be concerned with the amount of productive resources that are expended to harvest fish, not just the price. In the free market system, the relative price of goods should equal the relative social cost. The prices of the finished product should be set by the market to be socially efficient.

Response: NOAA agrees that under conditions of open access and common property, the market fails and there is a distorted allocation of resources. Because of this concern, NOAA is encouraging the Council to develop a management regime that would induce the fishery to operate in a manner that would be more consistent with a free-market solution.

Comment 49: Shoreside processors have an economic incentive to utilize fish efficiently and, therefore, will produce a greater amount of finished product because of their higher recovery rate.

Response: According to the information before the Secretary at the time of approval, the shoreside processors presently convert a somewhat higher percentage of fish from round weight to finished product. This was factored into the supplemental cost-benefit analysis and taken into consideration by the Secretary.

Comment 50: Shore-based processing plants reduce cost and lower overall prices because of greater recovery rates and better utilization of byproducts, which means a greater volume of finished products, and less expensive building, maintenance, and staffing.

Response: See response to comment 49. In addition, the cost of production for the offshore and the inshore fleet was incorporated into the supplemental economic analysis and was therefore considered by the Secretary.

Comment 51: The inshore component is more efficient because it maximizes resource utilization due to a higher product recovery rate, a lower pollock discard rate, and a lower bycatch rate on halibut, which would allow the TACs of other target groundfish to be reached. Bycatch of PSC would be reduced if amendments 18/23 are approved, because the factory trawler fleet has higher bycatch rates than those vessels delivering to shore-based plants. Lower bycatch means more target species available for harvest.

Response: A reduction in groundfish bycatch would leave more of the target species available for harvest; however, there is no evidence to support the inshore claims that they experience reduced bycatch. The vessels that deliver to the inshore sector employ the same type of equipment used by the factory trawlers. Therefore, they are both subject to the same problems with catch of prohibited species. Bycatch of halibut, crab, and herring are controlled by PSC limits. While bycatch rates may differ among fisheries, total bycatch amounts are expected to continue at levels that approximate the PSC limits.

Comment 52: Bycatch data and the Council's bycatch prediction model were not used.

Response: The Council's bycatch prediction model was designed to assess the effects of PSC limits on species specific fisheries not related to inshore-offshore fishery definitions. Council analysts were hopeful that another model, the Arnarson Model, would be more useful in determining the impacts of bycatch on inshore-offshore allocations. However, the Arnarson Model was not used because of a lack of bycatch rate data.

Comment 53: The shoreside processing plant communities are dependent on the fishery as the only source of employment. Without the protection of the allocation to keep trawlers out of their waters and away from the fish, the inshore sector would experience reduced opportunities for jobs. This reduction in job opportunities would be bad for the economy of the coastal communities, creating local hardships. Incomes would decrease and residents would be unable to pay bills and support their families. Because of this, many would have to file for unemployment or move out of the area as the cost of living in Alaska is very high. Inshore investments would be lost. The allocations would provide needed community stability.

Response: NOAA recognizes the dependency of the coastal Alaska communities on the BSAI fisheries and has approved the 35 percent inshore allocation for the "B" season in 1992. The allocations as approved will prohibit the factory trawlers from fishing in the inshore waters, thereby providing protection to the inshore sector during this first year. For the remaining years of Amendment 18, 1993 through 1995, the Council will have time to examine further whether losses to the Nation will be offset by other benefits and if the allocations set for those years could be approved and implemented by the end of 1992.

Comment 54: Since the inshore sector hires its crew from Alaska, the allocations would, in effect, contribute to the coastal economy. Offshore trawlers, on the other hand, do not contribute to the economy of Alaska and do not provide any tax revenue to Alaska.

Response: According to Executive Order 12291, the economic benefits must be in favor of society as a whole, not a single area. However, if evidence exists indicating that the social or other benefits exceed the costs to the Nation, approval could result. The cost-benefit analysis conducted as a part of the review of the allocations showed that for the 1992 "B" season, a 35 percent allocation to the inshore sector would not result in a significant net economic loss to the Nation.

Comment 55: The inshore processors cannot compete with the trawlers because they are not mobile. The trawlers can go elsewhere to harvest fish.

Response: NOAA recognizes that protection for the inshore processing plants is needed because of the competitive advantage of the mobile offshore component. The approval of the CVOA and the 1992 "B" season will provide the needed protection without resulting in a significant net economic loss to the Nation.

Comment 56: The offshore sector is just looking for short-term profits. Most trawl workers are foreign and ship their products to Japan.

Response: It should be noted that Federal regulations require that no more than 25 percent of the unlicensed seamen on a domestic processor vessel operating in the EEZ may be aliens allowed to work in the United States under the Immigration and Nationality Act (46 U.S.C. 8103).

Comment 57: Factory trawlers are wasteful in that they discard, rather than trim, defective fillets, they produce only high quality surimi at low recovery rates, and only process the predominant fish sizes leading to inefficient use. Many factory trawlers do not utilize entire fish and engage in roe stripping. The factory fleet has a 22 percent discard rate for pollock while the inshore sector is less than 1 percent. This high discard rate results in the inability to maximize the retained harvest and/or production of other flat- and groundfish resources. Also, trawlers have a higher bycatch problem. The factory trawler halibut bycatch is 4.7 percent versus 1.72 percent for inshore (three times as high). Again, this has a negative effect on the ability to fish other groundfish species. The product recovery rate for offshore is 15 percent versus 20 percent for inshore. Therefore, the offshore factory trawlers show a rapid decline in recovery with increase in fish supply. On the other hand, an inshore allocation would (1) maximize pollock harvest through reduction of discards, (2) promote a greater ability to take TACs by reducing halibut bycatch rates, and (3) increase production of pollock primary products due to higher recovery rates.

Response: The allocations as approved will result in a greater amount of fish being available to the inshore sector. It has not been shown that the bycatch rates differ significantly between inshore and offshore catchers as the two utilize the same type of equipment, however, the inshore sector operates under conditions that tend to encourage higher product recovery rates. A standard that effectively prohibits roe stripping was implemented under amendment 14 for the BSAI area and amendment 19 for the GOA.

Comment 58: As the larger vessels force the smaller vessels off the fishing grounds, intense localized fishing could result. Implementation of amendments 18/23 could reduce the risk of localized pulse overfishing because fishing effort would be spread further geographically. In addition, trawlers overharvest and limit the amount of fish available for others. They take more (but use less) of the fish which leads to a depletion of the resource, destruction of stocks, premature closures, and shorter fishing seasons.

Response: See Comment 13(b). The allocations as approved are not expected to result in increased fishing effort or to negatively impact pollock stocks. Effective management of TACs will prevent resource depletion. However, there is no evidence to indicate that increased allocations to the inshore sector, over time, would not increase localized depletions or prevent early closures or shore-based overcapitalization. The potential problems of localized depletion will be addressed through further management actions as done in the past.

Comment 59: Factory trawlers are able to lower their costs by minimizing labor and capital costs and maximizing use of raw pollock, resulting in low product recovery rates. They have the ability to substitute raw fish for other factors of production thereby reducing private cost and wasting pollock in the economic sense because of their lower recovery rates.

Response: The best available information during Secretarial review indicated a higher recovery rate for the inshore sector at present and the amendments as approved reflect the importance of recovery rates. However, as indicated by the offshore sector, surimi technology is relatively new to the factory trawler fleet. The offshore sector indicates that it has overcome the initial inefficiencies and that recovery rates are expected to improve in the future.

Comment 60: NMFS has not been able to manage the large offshore fishery and, in the past, had decided not to open a fishery or to close a fishery early because it would not be able to prevent the factory fleet from exceeding the quota. The inshore fleet is small enough that reliable daily catch capacity can be predicted, and since its harvest is monitored using actual weights, not statistical extrapolations, it is easier to control. Therefore, inshore allocation would allow for the full quota to be reached.

Response: The allocations as approved will not change current measures of management. NMFS will continue to manage the fisheries taking excess harvesting capacity into consideration. It should be noted that the offshore factory trawlers are required to have 100 percent observer coverage that aids in the effective accounting and management of their take, both of groundfish and prohibited species.

Comment 61: The inshore sector states it is very concerned and conscientious about marine mammal protection.

Response: See Comment 13(c). Approval or disapproval of the amendments does not affect the need to protect marine mammals and NMFS will continue to provide additional fishery management as necessary.

Comment 62: With the 100 percent pollock allocation for the GOA, approximately 10 percent of the traditional offshore harvest will be redistributed to the inshore sector. However, management of a fleet as large as the offshore sector is very difficult because of the sea lion

mitigation measures. For example, the maximum a factory trawler could take if there was a 10 percent target fishery allocation in the GOA, would be 1,113 mt of pollock per quarter. The offshore sector can harvest 7,000 mt daily. NMFS would not be able to open and manage a fishery capable of taking 7,000 mt/day with a quota of 1,113 mt.

Response: NOAA agrees with the commenter in that the small amounts of pollock can be difficult to monitor and when such situations occur, directed fishing is closed, allowing only bycatch amounts to be harvested. Currently, fisheries are allocated quarterly and to three subareas in the West and Central GOA and, regardless of the processing sector, will require careful management to avoid exceeding allowances. Nonetheless, the offshore sector has been given an adequate amount of pollock to cover bycatch needs and amendment 23 will allow only inshore processors to receive pollock harvested during directed fishing.

Comment 63: The catch history of the inshore sector serves as an argument for approval of the inshore allocations. The inshore fleet dominated the Pacific cod fishery during the Americanization years (1987–91) and had an 81 percent average catch history during those years. The catch history of Pacific cod by the inshore sector would be greater than or equal to 90 percent if all the small factory longliners, small factory trawlers ("pocket trawlers"), existing mothership operations, and potential mothership operations that elect to cross over to inshore were included. Some of these are presented as being at-sea in the SEIS and should be figured into the inshore statistics. The catch history of pollock in the GOA inshore is 75 percent (if the roe-stripping incident of 1989, when 12 factory trawlers took 50 percent of the pollock TAC, is included). Otherwise, the Secretary is inappropriately rewarding the offshore for roe-stripping by inflating its pollock catch history. There is a 2.5 percent bycatch allowed to offshore and if all those that cross over to inshore are included ("pocket trawlers" and appropriate motherships), the allocation shift from offshore to inshore is about 10 percent. Therefore, based on these arguments, there is really no significant reallocation from offshore to inshore in the GOA.

Response: Fishing effort in the GOA has traditionally been by smaller harvesting vessels delivering catch to inshore processors, hence the approval of amendment 23 in its entirety. The definitions of "inshore" and "offshore" used in the comment are those that were proposed and were not the definitions that NMFS used to categorize catches as inshore or offshore prior to approval of these amendments. Therefore, to include the commenter's definitions as a part of the decision to approve the amendments is not appropriate.

Comment 64: The allocation in the BSAI area actually takes from the traditional users (the inshore) and gives to the new entrants (the factory fleet).

Response: NMFS data indicate that the shoreside processing of pollock harvested in the BSAI area was 28 percent in 1991. Therefore, the 35 percent allocation to the inshore sector in the 1992 "B" season does not differ significantly from the most recent pattern of processing pollock in the BSAI.

Comment 65: Factory trawlers have invested heavily in the development of the offshore fleet that essentially carried out the domestic fishery development mandate of the Magnuson Act. The inshore is trying to take over the fishery that the offshore industry developed; this penalizes offshore trawler owners for accomplishing what the government requested.

Response: With the enactment of the Magnuson Act of 1976, Congress specifically invited the U.S. fishing industry to begin to develop the under-utilized fishery resources off Alaska. Since that time, fishing effort in the GOA has traditionally been by smaller harvesting vessels that deliver catch to the inshore processors. The inshore sector takes an average of 78–89 percent of the pollock in the GOA and 78 percent of the Pacific cod. Therefore, approval of amendment 23, allocating 100 percent of the pollock and 90 percent of the Pacific cod in the GOA, continues this existing practice with little dislocation. In the BSAI area, the inshore sector has taken up to 28 percent of the pollock. Therefore, the 1992 "B" season of amendment 18, allocating 35 percent of the BSAI pollock catch to the inshore and 65 percent to the offshore, also stabilizes the fishery without substantial economic dislocation.

The purpose of the allocations is to protect the smaller, more localized fleets that largely supply to inshore processors from being preempted by the larger, more mobile offshore fleets in the future. Evidence of the vulnerability of coastal communities was demonstrated by the social and economic impacts of preemption due to the transfer of effort from the offshore fleet in 1989 in the GOA.

Comment 66: Amendments 18/23 are unnecessary because there is no evidence of preemption of one industry sector by another. There is no explanation of why the need to resolve inshore-offshore preemption is greater than the need to resolve preemption at other levles (e.g., within the inshore sector, or between individual vessels).

Response: The potential for preemption of the inshore sector by the offshore sector was demonstrated in March of 1989 in the GOA. NOAA recognizes the need for protection from this potential preemption, especially because of the dependence of Alaska coastal communities on groundfish harvests from the GOA. The inshore-offshore preemption issue received priority attention by the Council. NOAA recognizes that other forms of the preemption problem have developed. Therefore, NOAA is strongly urging the Council to devleop management programs that rely on market-driven allocations instead of direct government intervention. If this is done in the near future, the need to resolve preemption problems at other levels could be substantially reduced.

Comment 67: The offshore sector preempts the inshore. The current "olympic" system of fishing discriminates against the inshore sector because (1) the inshore sector would be capable of fishing year-round but is at a disadvantage when fisheries are shut-down while factory trawlers can take advantage of this time for repairs, and (2) they are immobile while factory trawlers can come in and fish and then move elsewhere when the fishery is closed (pulse fish). This leaves the inshore sector with poorer fishing opportunities. In addition, the factory trawlers have a long-run allocative advantage with the current olympic system because they are able to reduce private costs by substitution, are unable to operate year round so they can take advantage of closures, and are able to exploit other groundfish fisheries during closures. Therefore, the current regime allocates to the factory trawlers and away from the shore-based operations. Approval of the allocation is necessary to the inshore fleet because the regulatory environment is so uncertain, there is no way of knowing what will drive the offshore from the BSAI into the GOA. Preemption may be prevented by keeping the factory fleet from shifting to the Gulf during lull periods. When times are bad, factory trawlers tend to enter the traditional inshore areas. Exclusive registration does not resolve preemption as the offshore fleet may still choose the GOA and cause an even greater aggravation of the problem. Only inshore-exclusive registration would

prevent such a preemption. It is acknowledged, however, that intrasector preemption by large inshore boats will need to be addressed by a future plan amendment.

Response: See response to comment 66.

Comment 68: When the fleet became Americanized and the joint ventures were cut off, the traditional fleet began to look for shore-based processing plants in the BSAI area. Shipyard contracts tailored to meet the grandfather clause in the Fishing Vessel Anti-Reflagging Act resulted in factory trawlers being constructed in foreign shipyards. The legality of these transactions is being challenged and some of the vessel owners may lose their licenses. These events are leading to the displacement of the pioneers of the fishery. The 4-year average of the proposed allocations in the BSAI is approximately 40 percent and they should be allowed to retain at least that amount.

Response: See responses to comments 10, 13, 28, 32, and 38.

Comment 69: An additional solution to the problem of overcapitalization would be to keep all re-flagged vessels out of American waters, particularly inshore waters.

Response: Comment noted. Enforcement of the Commercial Fishing Industry Vessel Anti-Reflagging Act is under the jurisdiction of the U.S. Coast Guard, not the Secretary of Commerce.

Comment 70: The United States is the only place that still allows trawlers in its waters.

Response: Trawling is a legal gear in the United States and is used throughout the fisheries on the West, East, and Gulf coasts. Amendments 18/23 do not propose to change the method of catch, but to allocate the resource between inshore and offshore sectors that already use trawls as an effective measure of fishing.

Comment 71: The allocations should be approved since the 1991 Pacific whiting plan was, and the two are nearly identical.

Response: The approval of the Pacific whiting plan in 1991 is not germane to approval/disapproval of amendments 18/23. Each proposal must stand on its own merits. In addition, the magnitude of the allocations for the Pacific whiting issue does not equal the magnitude of the allocations for the GOA and the BSAI. Approval of the GOA and the 1992 "B" season in the BSAI is possible because the allocations will not differ significantly from recent harvest trends, as was the case with the 1991 Pacific whiting plan. However, the allocations proposed for the years 1993 through 1995 would increase the percentage well above the recent harvests for the inshore sector and, in this way, differs from the 1991 Pacific whiting plan.

Comment 72: Under premises of administrative law, amendments 18/23 should be disapproved to be consistent with the disapproval of the Pacific Council's 1992 inshore-offshore proposal for whiting.

Response: The two plans are not interdependent. Each must be evaluated based on the circumstances unique to each fishery and the costs and the benefits of the proposed action. While there are many procedural and substantive differences between the two Council proposals, the disapproved parts of amendment 18 and the whiting proposal were rejected because of insufficient documentation of national benefits to justify a substantial increase in the share assigned to the inshore sector.

Comment 73: Factory trawlers that deliver primary processed product to shore-based processing facilities in Washington State for secondary, value-added processing should be considered part of the inshore component of the industry. Council discussion indicated that this was intended to be included in the definition of "inshore." The proposed rule, however, does not clearly indicate this provision and should be changed to clarify that shoreside processing facilities in Washington, like those in Alaska, would benefit from the proposed amendments.

Response: Although the Council had lengthy discussion of what was meant by "inshore component," the proposed FMP amendment text approved by the Council and submitted to the Secretary does not indicate an intent to allow a factory trawler to deliver processed pollock or Pacific cod to a shore-based processing plant under the inshore definition. However, such a vessel would be considered an "inshore component" vessel for puposes of this action if it was less than 125 feet in length and processed less than 18 mt of groundfish per day, round weight, or if it acted as an inshore mothership by processing pollock and Pacific cod in one location in State of Alaska waters.

Comment 74: It will be important to document which processing vessels are operating in the "inshore" and "offshore" categories during the year by means of a declaration of intent. The proposed regulations, however, do not provide for such a declaration.

Response: Processor vessels will be classified as either "inshore component" or "offshore component" as a function of the check-in report required at §§ 672.5(c)(1) and 675.5(c)(1), and other reporting requirements. All processor vessels are required to report before receiving any groundfish from any reporting area, the reporting area and position in geographic coordinates where the receipt of groundfish is expected to occur. The first check-in report received from a processor vessel in a fishing year will determine the category of that vessel for the remainder of the fishing year. For enforcement purposes, subsequent weekly production reports of processed pollock or Pacific cod harvested from the GOA must be consistent with the first check-in report to avoid violation of §§ 672.7(g) or 675.7(h). Reliance on existing reporting requirements in this way causes less reporting burden than if processor vessel operators were required to submit a new separate declaration form.

Comment 75: Several comments concerned the implementation of the Western Alaska CDQ. It was noted that the western Alaska communities do not have the means or capital necessary for entry into the fisheries. Per capita income in western Alaska is two-thirds of that of Alaska as a whole, yet the cost of living is 50 percent higher than in Anchorage. Currently, these communities do not have self-sustaining cash economies and viable economic opportunities are needed. The BSAI groundfish fishery is the logical, and perhaps the only, place for expansion. The CDQ would allow western Alaskans to leverage their allocation into training, employment, fishing industry infrastructure, and an equity position in the fishery. With limited entry, IFQ, inshore-offshore allocations, vessel moratoria, and the variety of management measures necessary to control a mature fishery, the window of opportunity for the western Alaska communities to enter the fishery is closing. A directed program such as the CDQ is necessary to provide this opportunity. Approximately 60 communities are currently eligible to be a part of the program as defined. The Governor of Alaska will play a major role in the development and implementation of the program.

Response: See responses to comments 18 and 21.

Comment 76: The preamble and regulatory language for the Western Alaska CDQ should be expanded to include: (1) Justification (to provide a fair and reasonable opportunity for participation in the fishery); (2) consistency with the national standards (a lengthy discussion of compliance with numbers 1, 4, 5, and 7); (3) that there is no need to delay allocation until 1993 if the criteria used for development of the

halibut and sablefish community development programs are used; allocations could be available for the third and fourth quarters; and (4) that other provisions should include an allocation of bycatch, exemption from seasonal restrictions, and exemption from vessel moratorium.

Response: The Secretary has determined that the preamble adequately addressed the justification for the Western Alaska CDQ and it has been approved in concept. However, further development is requested of the Governor of Alaska, in consultation with the Council, prior to submission for approval through rulemaking.

Comment 77: The western Alaska communities are also interested in the Pacific cod fisheries, and although Pacific cod was removed from the program, an allocation for this species should be considered at some point.

Response: Comment noted. NMFS encourages the commenter to address this request to the Council.

Comment 78: Comments concerning the factory trawlers' claims that the allocation would be anti-free market and that the pollock resource should be allocated by the market were refuted by the inshore sector, which stated that the current fisheries constitute an open access "olympic" system and do not bear any resemblance to free market. In view of this, the proposal does not violate free market because a fundamental requirement for a free market is private ownership of property rights. In a privately held (free market) fishery, the owner would attempt to maximize profits by monitoring harvests and improving utilization based on the cost of the resource. Tendency toward excess capacity would be reduced and efficiency would be improved. The current system does not promote this tendency. Because the shore-based processors must pay for their fish (factory trawlers do not), they try to achieve the maximum economic return for each pound. Therefore, they utilize the valuable raw material more efficiently.

Response: NOAA agrees that the current style of fishing is an open access system and that the resource is essentially "free" for the taking. Because of this, one sector has been preempted by another and protection is necessary. The amendments as approved by the Secretary will provide a temporary solution for the inshore sector while a more permanent management measure can be examined by the Council that may lead to a free enterprise market.

Comment 79: The quality of pollock products produced by the offshore sector is superior to that produced inshore because the fish are processed sooner after they are caught and not after several days of traveling to the shore plants. This is important to the health of the consumer.

Response: NOAA has no information to suggest that either sector produces an unwholesome product.

Comment 80: The quality produced by both sectors, inshore and offshore, is much the same because, even though fish delivered to the shore-based plants are 24–28 hours old, they are stored in refrigerated seawater during this time. Fish from the factory trawlers, even though they are less than 12 hours old, are stored on deck or in dry, unrefrigerated bins below deck. In addition, ideally, the fish should be allowed to go through rigor mortis slowly and in a cold environment to avoid gaping, toughening, graying, shrinkage, and thaw rigor. This is a problem aboard factory trawlers that freeze fish prerigor. Another aspect of quality is based on the amount of space available to allow the processing of larger-sized fish and better access to fresh water to more effectively wash surimi. Also, the inshore processors have more room to house enough people for an effective quality control program in addition to a laboratory with a complete, separate bacteriology lab. In this way, shore-based processors can achieve a higher quality overall for finished products.

Response: Information indicates that the offshore fresh-frozen products are of a higher quality. This is evidenced by the fact that the offshore products command a higher price in the market.

Comment 81: The shoreside processing plants noted that, due to the scarcity of cold storage on factory trawlers, they have more incentive to produce the product that yields the highest daily revenue, rather than the most desirable product to the market.

Response: NOAA acknowledges that a company will produce the product that yields the greatest profitability. Due to the open access/common property nature of the fishery and resultant market failure, the most desirable product mix may not be produced.

Comment 82: The inshore sector commented that although the quality of surimi depends on the freshness of the fish, the inshore processing plants obtain better recovery rates because the factory trawlers pay nothing for their fish and have no incentive to increase their recovery rates.

Response: See response to comment 59. In addition, as new management measures are developed towards a free-market system, the importance of a higher recovery rate will be realized.

Comment 83: Although factory trawlers produce a more valuable surimi product, the shore-based processors have an advantage in producing fillets and blocks.

Response: Comment noted. NOAA has no information to indicate the value of fillets and blocks produced by the inshore processing plants is higher than those produced offshore.

Comment 84: The BSAI and the GOA should be treated separately based on the different impacts of preemption in these two fishery management areas.

Response: NOAA agrees with the comment.

Comment 85: Council discussion of the inshore-offshore issue generally focused on pollock and the preemption by factory trawlers of the inshore pollock fishery in the GOA. The issue of freezer/longliners never materialized in a substantial way in the analysis or Council discussion until its final meeting. That part of the proposed definition of "inshore" that includes catcher/processors that have less than 18 mt processing capacity and are less than 125 feet in length was not addressed and was not considered to be a major preemption concern. The proposed allocation of Pacific cod in combination with this definition would eliminate 18 freezer-longliners from the GOA while allowing about 93 other freezer-longliners that are under 125 feet to continue to operate in the GOA. The capacity and length restrictions are unnecessary; the capacity restriction alone is sufficient to resolve any potential preemption problem.

Response: The definition of "inshore component" is intended to prevent preemption of small freezer-longliners fishing for Pacific cod in the GOA by large freezer-longliners. After closure of the Pacific cod fishery in the GOA, the larger freezer-longliners could move on to other areas too distant from the home ports of smaller freezer-longliners. The Council recommended, and the Secretary approved, the 125 feet/18 mt criteria to distinguish small from large freezer-longliners for this purpose. Either the length or tonnage definitions alone would not adequately serve this purpose.

Comment 86: The intent of Congress in passing the Processor Preference Amendment to the Magnuson Act was expressly not intended to make the fishing industry subject to terms and conditions that might be established by the processing industry and not to force fishermen and processors into business arrangements they would not enter otherwise. This Congressional intent is likely to be violated because most

catcher vessels are owned by shore-based processors.

Response: NOAA has no verified data on the corporate relations between shore-based processing plants and the catcher vessels that deliver fish to shore plants. If vertical integration of catching and processing businesses leads to a restraint of trade, then it would be investigated for potential violation of anti-trust laws and regulations.

Comment 87: The process by which the allocations were reviewed is poor. It lacked consideration of local needs and inputs. Senators and congressmen have too much influence over the review process.

Response: The Secretary followed the review procedure specified in the Magnuson Act. The Secretary based the decision on the totality of the record, including nearly 1,100 comments, and was not disproportionately influenced by any single comment or set of comments.

Comment 88: Amendments 18/23 would "unAmericanize" the fisheries because they would return control of the fishery to foreign-owned firms.

Response: The Magnuson Act encouraged the "Americanization" of foreign fisheries off Alaska. Between 1977, when the Magnuson Act was first implemented, and 1990, the last year of joint venture fishing off Alaska, U.S. fishing and processing companies developed Alaska groundfish and crab fisheries that now provide billions of dollars worth of seafood for domestic use and export, and provide thousands of jobs. Although the Magnuson Act provided the basic conservation and management framework for this development, the U.S. "fish and chips" policy also played an important role. Under this policy, foreign companies that transferred (pollock) processing technology and invested in U.S. fish processing companies were rewarded preferential allocations of the total allowable level of foreign fishing within the EEZ. Some Japanese companies were especially cooperative under this policy, the result of which is that some shore-based processing firms in Alaska are owned in whole or in part by Japanese fish processing companies.

NOAA recognizes that some of these firms will benefit from implementing the Council's recommended plan for allocating pollock. This will not result in foreign control of the pollock fishery. The inshore pollock allocation in the BSAI area will benefit those foreign-owned processing plants only for the "B" season of 1992 and only marginally relative to their performance in 1991. In 1991, BS subarea pollock delivered to inshore plants accounted for about 28 percent of the total BS pollock harvested that year. This was a significant increase over the 17 percent processed in 1990. Based on this growth rate, these plants were expected to process in excess of 30 percent of the total BS pollock harvest in 1992 even without the specified inshore-offshore allocation. The principal benefit to operators of these plants from this action is that they are assured of no less than their expected performance. Hence, the offshore fleet will continue to have access to most (65 percent) of the available pollock quota in the BS and most (60 percent) of the available pollock off Alaska. Even if all of the shore-based processing plants were entirely owned by foreign companies, which is not the case, it is unlikely that they could collectively control the pollock market with control over, at best, 40 percent of the Alaska pollock harvest. Instead of control, the Secretary anticipates that the cooperative relationship among U.S., Japanese, and other foreign firms that have invested in the Alaska groundfish fisheries (both inshore and offshore) will continue to be beneficial for all parties involved.

Comment 89: The amendments would substantially affect employment. There would be reduced work for factory trawler crews from the Pacific northwest and for workers in supply and shipyard industries elsewhere in the country, which will reduce income in other businesses causing an overall detrimental effect on the national economy. The amendments would simply transfer processing jobs to Alaska. American processing jobs at sea will be lost to non-American jobs at shore plants—offshore processors must employ American citizens in at least 75 percent of the jobs but inshore plants do not have this requirement. Inshore processors hire mostly non-Alaskan and foreign workers who do not contribute to the economy or stability of Alaskan communities. Processing jobs in the offshore sector pay well and provide rewarding opportunities to persons who do not have advanced educations and otherwise would be less well-off or be less able to pay for an advanced education. The allocations would force many of the offshore processing work force out of their jobs and into welfare programs.

Response: NOAA agrees that there could have been a significant negative effect on employment in the offshore processing fleet and related support businesses if amendment 18 were approved in full. The principal reason for disapproving parts of this amendment was that potentially large negative economic losses were not fully considered or rationalized by the Council. The parts of amendments 18/23 that were approved by the Secretary will not significantly alter the relative proportions of pollock and Pacific cod that would have been harvested by the inshore and offshore sectors in the absense of these amendments. Therefore, the amendments as implemented by this action, are not expected to change employment patterns dramatically from the status quo.

Federal regulations require that no more than 25 percent of the unlicensed seamen on a processor vessel may be aliens allowed to work in the United States under the Immigration and Nationality Act (46 U.S.C. 8103). The same requirements would apply to processor vessels that are included by definition in the inshore category, but they do not apply to shore-based processing operations. The number of foreign aliens employed in shore-based plants is unknown. Nevertheless, processing plant workers demand goods and services in whatever community they work, regardless of the nationality of the work force or the location of its permanent residence. This demand will have a positive effect on the economy of a small community.

Comment 90: The amendments do not address the root problem of overcapitalization, which causes an "olympic" race for fish in which some fishermen necessarily will feel preempted, or out-competed for fish. The "olympic system" is inefficient and wasteful. Instead of solving the problem, the allocations would create two new races for fish with opportunity for preemption within each race. Exclusive registration or limited access measures would better deal with the overcapacity problem. The most efficient replacement for the "olympic system" is some type of market-based allocation such as an auction of permits or transferable quotas which would solve the race-for-fish and preemption problems, and produce economic rent for the Nation from the fisheries.

Response: See responses to comments 17 and 25. NOAA agrees that the olympic system is inefficient and wasteful in the sense that it fosters more investment in fishing enterprises than is necessary to catch the amount of fish available for harvest in any fishing year. Frequently, it is also the cause of allocation disputes between different groups of fishermen that could be resolved efficiently through a market-based scheme such as ITQs. However, changing the current olympic system to one in which fishing privileges are

market-driven would not have solved the immediate preemption problem described by the Council. In addition, the Magnuson Act currently prohibits the realization of economic rent from national fishery resources.

Comment 91: The amendments would enhance integration of catching and processing sectors which would force independent catcher vessel operators out of business. Shore-based processors have either acquired former JVP vessels or built new vessels to increase their control of the catcher fleet and depress exvessel market prices. Catcher vessels harvested an average of 65 percent of the total U.S. pollock catch during the period 1986–1990. Between 1988 and 1991, the exvessel price to fishermen for round pollock declined from a range of 10 to 14 percent of surimi prices to 5 percent, as shore-based processors increased their control over the catcher vessel fleet.

Response: Integration of fishing and processing by the inshore sector could happen under explicit inshore-offshore allocations or under the status quo without allocations. NOAA agrees that such vertical integration could result in a depressed exvessel price for pollock. Although this may be unfortunate for independent catcher vessel owners, it is unlikely to lead to market control and serious trade restraint problems. The world market for pollock and substitute products is more likely to affect exvessel values than industry integration. The Council considered two alternative forms of allocation that could have been more favorable to independent catcher vessel owners. One was allocation among vessel size categories (Alternative 4, SEIS section 3.3.4), and the other was allocation to vessels based on their capability to process fish onboard (Alternative 6, SEIS section 3.3.6). The Council rejected both alternatives as being less likely to achieve the principal objective of preventing preemption of the inshore sector than the preferred alternative. In addition, the Council estimated that the potential resource shares under Alternative 6 unduly restrict the offshore sector (SEIS section 3.3.6.1).

Comment 92: At the expense of others, the amendments simply protect the interests of shore-based processors. For BSAI pollock, five of the current seven inshore processors are foreign owned. Amendment 18 would guarantee control of much of the BSAI resource to three Japanese companies and strengthens their grasp and control of the world surimi market.

Response: See response to comment 88.

Comment 93: Investors in inshore processing had the same opportunities to invest in either inshore or offshore processing plants. If the inshore plants now prove to be a poor investment, then protection of those investments by amendments 18/23 would be tantamount to a penalty to the offshore industry to pay for the poor investment decisions of the inshore industry.

Response: The approved portions of the amendments provide an interim protection of a legitimate interest that inshore fishing and processing firms have in the pollock and Pacific cod resources off Alaska from offshore fishing and processing firms. The offshore firms have a clear advantage over the inshore fims because of their inherent mobility. Because of this mobility advantage, the offshore sector could take fish away from the inshore sector that would have otherwise been processed inshore. The approved action is not penalizing or taking fish from the offshore sector; instead it is intended to maintain harvest levels that most closely reflect recent levels.

Comment 94: Offshore processing is more efficient than inshore processing of pollock. Inshore processing produces more waste since many of the fish arrive at plants in a deteriorated condition making them unusable.

Response: Efficiency can be measured in different ways. For example, one fishing and processing operation may be more efficient than another because it extracts more net value from a given amount (tonnage) of fish. Alternatively, an operation that produces the most pounds of marketable product out of a ton of unprocessed fish may be considered the most efficient. In taking this action, NOAA is not expressing any preference for either inshore or offshore processing on the basis of efficiency. Fishing and processing activities have an inherent amount of waste associated with them for a variety of technical reasons. A concern of NOAA in this regard is to provide a regulatory climate in which the discard of unusable fish and fish parts is minimized, and that this discard does not cause pollution detrimental to the marine environment.

Comment 95: Amendments 18/23 would constrain free enterprise and open competition. Economic factors should control the decision of where pollock is delivered for processing and who remains in the fish processing business. The price of fish to consumers will increase because of reduced competition and increased control by the inshore sector.

Response: NOAA agrees that fishery resources should be allocated among fishermen based on economic factors. However, the open access/common property fishery results in a basic market failure that distorts allocation of fishery resources. The approved portions of amendments 18/23 partially mitigate for the market failure.

NOAA is strongly encouraging the Council to consider management programs that allocate fishery resources among competing users based on free market decisions instead of direct government intervention. NOAA notes that such programs do not provide the direct prevention of inter-sectorial preemption that the Council recommended on an interim basis for the pollock and Pacific cod fisheries off Alaska. The specific inshore-offshore allocations implemented by this action are not likely to adversely affect competition among fishermen and processors because the allocations are relatively consistent with the proportions of harvested pollock and Pacific cod between the two sectors in recent years.

Comment 96: The allocations would alter current exports and imports of fish products. Product types will change from fillets to surimi for export to Japan that will make less pollock available to domestic users. Profits received from increased surimi production in shore plants also would be exported to Japan because of Japanese ownership of the larger shore plants.

Response: The larger shore plants that are owned by Japanese companies primarily receive pollock harvested in the Bering Sea. As proposed by the Council, amendment 18 would have shifted a significant proportion of the total BSAI pollock harvest to these and other shore-based plants. If implemented as the Council recommended, a change in the proportions of different pollock products may have occurred, depending on the markets serviced by these plants. Instead, this action implements inshore-offshore allocations of BSAI pollock for only the 1992 "B" season, and establishes an inshore allocation roughly the same as it would have been without amendment 18. Therefore, the purpose of this action is to protect, from offshore preemption, the status quo share of the pollock resource that is delivered to inshore processors instead of increasing that share.

Comment 97: The amendment would alter the development of the Alaska groundfish fishery.

Response: Amendment 23 will protect the interests of established inshore fishing and processing companies operating on pollock and Pacific cod

resources harvested in the GOA. Development of the groundfish fishery in the GOA has followed the development of other fisheries in this area by being primarily shore-based. This is because the facilities used for processing groundfish were built on an existing infrastructure used for salmon, crab, halibut, herring, and other species. The allocations of GOA pollock and Pacific cod are roughly consistent with existing shore-based processing capacity and the proportional harvest of these resources between inshore and offshore sectors in recent years.

The development of the domestic fishery in the BSAI initially followed the model of the early foreign fisheries in this area by processing fish at sea. Shore-based processing of groundfish harvested in the Bering Sea was not based on an existing infrastructure. Hence, most of the domestic harvest of pollock and other groundfish in the BSAI area has been processed offshore. In recent years, new shore-based plants located in the Aleutian Islands have accounted for nearly 30 percent of the total BSAI area pollock harvest. Again, the interim inshore-offshore allocation of pollock is consistent with this demonstrated inshore processing capacity.

To a limited extent, groundfish development in the BSAI area will be affected by the CDQ program.

Comment 98: Inshore allocations proved ineffective in Iceland under a quota system. Product quality of the shore-based plants is uncertain and costs of production are greater than on factory trawlers. We should learn from their mistakes.

Response: This comment is not germane to amendments 18/23. However, for the commenter's information, Iceland went from an olympic system of open access, with a TAC of 290,000 mt of Pacific cod, in 1983 to an individual vessel quota system in 1984. The impetus for the change came from the Union of Boat-Owners who, in the face of declining catches and a TAC of 220,000 mt for 1984, requested a vessel quota system based on catch history. In a national survey conducted by the Fisheries Institute of the University of Iceland in 1990, 85 percent of those interviewed favored the quota system as it has been developed and refined. Neither factory trawlers nor catcher boats were discriminated against in the allocation of quota; the quotas were based on historic catch records of the vessels. There was no allocation to shore-plants per se, and patterns of landings have not changed significantly since the addition of factory trawlers to the Icelandic fleet. The issues raised in the comment appear to be more closely related to the availability of fish at different times of the year than to the management regime.

Comment 99: No consideration was given to the potential economic hardships and losses to the shipyards.

Response: Possible national economic impacts that could occur as a result of implementation of amendments 18/23 were discussed in the FSEIS as well as alternatives available to displaced catching and processing firms. The FSEIS specifically addresses the impacts of failure of individual firms and those who depend on them for business. In addition, whether an inshore-offshore allocation is approved or disapproved does not ensure the continuation of growth opportunities and therefore the need for additional or new vessels because the vessel owner has the option of using the shipyard of its choice.

Comment 100: Amendments 18/23 raise constitutional concerns under the Port Preference Clause of the U.S. Constitution.

Response: The Port Preference Clause is contained in Article 1 section 9 clause 6 of the Constitution. The Port Preference Clause states that "no preference shall be given by a regulation of commerce or revenue to the ports of one state over those of another * * *" and affects two types of government actions: regulation of commerce and regulation of revenue. No action of the Federal government has ever been set aside under this clause, because the clause requires explicit discrimination in favor of a particular state. Measures such as amendments 18/23 that have a legitimate rationale and benefit an industry sector rather than a state would not offend the Port Preference Clause.

Comment 101: Amendments 18/23 should have been considered a "major rule" under section 3(d) of Executive Order 12291.

Response: Documents provided by the Council, namely the SEIS, gave no evidence that the proposed action should be considered a "major rule" under the requirements of Executive Order 12291. The subsequent cost-benefit analysis developed by NMFS staff showed results that could possibly be interpreted as justification for designating the proposed action as "major," however, it was determined that amendments 18/23 as approved are not a "major rule" because they will not result in an annual effect on the economy of $100 million or more, will not result in a major increase in prices for consumers, individual industries, government agencies or regions and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In any event, the analysis prepared for an RIR under NMFS guidelines most likely would already contain all the information and analysis necessary for the regulatory impact analysis that is required if the action is determined to be "major."

Comment 102: The regulatory burden is already too heavy; additional government intervention to achieve some questionable objective is not needed.

Response: See response to comments 6, 9, 12, 17, and 48. NOAA has suggested to the Council that they work towards a management program that will reply less on government intervention.

Comment 103: The amendments were not objectively developed due to conflicts of interest. Some Council members who favored the amendments have financial interests in the inshore sector. The amendments reflect greed and corruption of the Council, and manipulation of data by the Council staff to support preconceived choices.

Response: The Magnuson Act requires that each voting member of a Regional Fishery Management Council and the executive director of each Council must disclose any financial interest in any harvesting, processing, or marketing activity that is being or will be undertaken within any fishery over which the Council concerned has authority. Financial interests that must be disclosed include those held by the individual, their spouse, minor child, or partner; and any organization (other than the Council) in which the individual is serving as an officer, director, trustee, partner or employee. If the individual complies with the requirement to file a financial disclosure statement, he or she is exempt from criminal liability under section 208 of the United States Code.

In developing the Magnuson Act, Congress recognized the need to have members of the fishing community sit on the Council and bring with them to the meetings their fisheries knowledge and experience. It was understood that by requiring nominees with this type of background, some members may be voting on issues that would directly affect their fishing operations, positively or negatively. Regardless of the effect, Council members are not required to recuse themselves from a decision unless the matter is primarily of individual concern. At the time of the decision to adopt amendments 18/23 for

Secretarial review, all voting members of the Council and the Executive Director had properly updated financial disclosure forms on file in the Council office.

Numerous challenges have been raised regarding the sufficiency of the data contained in the documents and analyses prepared by the Council. The Secretary was aware of these challenges and conducted a separate cost-benefit analysis to review the findings of the Council regarding the economic effects of the amendments and net national benefits. Where the data from the cost-benefit analysis confirmed the Council's analysis in that the estimate social and other benefits from implementation of the amendments would outweigh the economic costs, the Secretary approved those measures. Where the cost-benefit data demonstrated that estimated economic losses far exceed those anticipated by the Council, the Secretary disapproved those portions.

Comment 104: The amendments would be inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade (GATT).

Response: The amendments are consistent with the provisions of GATT because their implementing regulations do not restrict where delivery or sale of fish must occur. They restrict the receipt of fish by the offshore and inshore sectors in excess of the specified percentages. All prohibitions apply to the catching of fish by U.S. vessels in the EEZ and not to the location of delivery. For example, GOA Pacific cod could be delivered to shoreside operations in Canada and be considered inshore product. Consequenfly, the amendments do not violate GATT.

Classification

NOAA determined that amendment 23 to the FMP for the groundfish of the GOA, the pollock allocation for the 1992 "B" season, and the Western Alaska CDQ program portions of amendment 18 to the FMP are necessary for the conservation and management of the groundfish fisheries off Alaska. This final rule implementing approved portions of amendments 18 and 23 is published under section 305(a)(1) of the Magnuson Act that requires the Secretary to publish regulations that are necessary to carry out a plan or plan amendment. The Secretary has determined that amendment 23 and those portions of amendment 18 that were approved are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

NOAA has determined that delaying the effectiveness of this final rule for 30 days under the Administrative Procedure Act, 5 U.S.C. 552(d), is impracticable and contrary to the public interest in orderly conduct of the fisheries in the EEZ. Amendment 23 was approved and amendment 18 was partially approved to resolve conflicts between the inshore and offshore components of the fishing industry by allocating amounts of pollock and GOA Pacific cod among them for limited periods of time. The GOA and BSAI pollock fisheries are scheduled to reopen on June 1, 1992. Without implementing regulations in place for the June 1 openings, NOAA has determined that the same fishery conservation and management problems that amendments 18/23 were to resolve would occur. NOAA delayed the scheduled opening of the second quarter GOA pollock fishery from March 30, 1992, to June 1, 1992, for these same reasons (57 FR 11272, April 2, 1992). To reopen the GOA and BSAI pollock fisheries without the allocations in this final rule would prevent implementation of amendments 18/23 as approved. Therefore, NOAA is waiving the 30-day delayed effectiveness period.

NMFS finalized an FSEIS for the FMP amendments; a notice of availability was published on March 20, 1992 (57 FR 9722). A copy of the FSEIS may be obtained from the Council (see ADDRESSES).

NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the FSEIS/RIR/FRFA prepared by the Council and a cost-benefit analysis prepared by NMFS staff. Copies of the FSEIS/RIR/FRFA and cost-benefit analysis can be obtained from the Council (see **ADDRESSES**).

The Council prepared an FRFA that describes the effects amendments 18/23 will have on small entities. NOAA concluded that this rule implementing amendment 23 and portions of amendment 18 will have a significant economic impact on a substantial number of small entities. A summary of this determination is contained in the proposed rule (56 FR 66009, December 20, 1991).

The existing collection-of-information requirement for check-in/check-out notices, has been approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA) (control number 0648–0213). This final rule does not contain a collection-of-information requirement for the purposes of the PRA.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

The final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

A formal section 7 consultation under the Endangered Species Act was initiated for amendment 18. In a biological opinion dated March 4, 1992, the Assistant Administrator for Fisheries, NOAA, determined that amendment 18 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. However, since the southeastern Bering Sea shelf is considered to be an important foraging habitat for Steller sea lions, NMFS will continue to evaluate the suitability of existing management measures for the BSAI fishery to ensure adequate protection of Steller sea lions and their essential habitats. The Regional Director determined that amendment 23 and its implementing regulations will not affect endangered or threatened species.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: May 28, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, new definitions of "catcher vessel," "inshore component," "offshore component," and "shoreside processing operation," are added in alphabetical order, and the existing definition of "processor vessel" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Catcher vessel means any vessel that is used to catch, take, or harvest groundfish that are iced, headed, gutted, bled, or otherwise retained as fresh fish product on board during any fishing year.

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part; and

(3) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall. For purposes of this definition, a single geographic location during a fishing year will be determined by the geographic coordinates reported on the most recent check-in notice in effect at the time of the first opening after May 31, 1992, of a directed fishery for Pacific cod in the Gulf of Alaska or pollock, unless a later check-in report is submitted during a directed fishery for Pacific cod in the Gulf of Alaska or pollock.

* * * * *

Offshore component (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore component."

* * * * *

Processor vessel means, unless otherwise restricted, any vessel that has been issued a Federal groundfish vessel permit and that can be used for processing groundfish.

* * * * *

Shoreside processing operation means any person that has not been issued a Federal groundfish vessel permit for the current fishing year and that receives unprocessed groundfish from a catcher vessel. This definition does not include individuals who receive unprocessed groundfish from a catcher vessel for non-commercial use.

* * * * *

3. In § 672.7, a new paragraph (g) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(g) *Applicable through December 31, 1995.* (1) Process pollock that were harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod that were harvested in the Gulf of Alaska in a directed fishery for Pacific cod, on a processor vessel operating in Alaska State waters under the "inshore component" definition at § 672.2 in a location other than the first location at which these species are processed in any fishing year as reported in a check-in notice and weekly production report required at § 672.5(c).

(2) Operate any processor vessel to process pollock harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the "inshore component" and "offshore component" definitions at § 672.2 and § 675.2 of this chapter during the same fishing year.

4. In § 672.20, existing paragraphs (c)(1)(i) and (c)(1)(ii) are redesignated as paragraphs (c)(1)(i)(A) and (c)(1)(i)(B), respectively; new paragraphs (a)(2)(v), and (c)(1)(i) heading, and (c)(1)(ii) are added; and existing paragraph (c)(2) is revised to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) * * *

(v) *Applicable through December 31, 1995.* (A) The DAP apportionment for pollock in all regulatory areas and for each quarterly reporting period described in paragraph (a)(2)(iv) of this section will be divided into inshore and offshore components. The inshore component will be equal to 100 percent of the pollock DAP in each regulatory area after subtraction of an amount, determined by the Regional Director, projected to be caught by the offshore component incidental to directed fishing for other groundfish species. If the Regional Director determines that the inshore component will not be able to process the entire amount of its allocation of pollock during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock to the offshore component.

(B) The DAP apportionment of Pacific cod in all regulatory areas will be divided into inshore and offshore components. The inshore component will be equal to 90 percent of the Pacific cod DAP in each regulatory area. If the Regional Director determines that the inshore component will not be able to process the entire amount of its allocation of Pacific cod during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of Pacific cod to the offshore component.

(C) All processor vessels that operate in Alaska State waters under the "inshore component" definition in § 672.2 and process pollock that were harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod that were harvested in the Gulf of Alaska in a directed fishery for Pacific cod, must remain at the first geographic location reported in any fishing year in the check-in notice required at § 672.5(c) during the remainder of the fishing year when pollock or Pacific cod harvested during directed fisheries for these species are being processed.

* * * * *

(c) * * *

(1) * * *

(i) *Applicable after December 31, 1995.* (A) * * *

* * * * *

(ii) *Applicable through December 31, 1995.* (A) As soon as practicable after consultation with the Council, NMFS will publish a notice in the **Federal Register** specifying for the succeeding fishing year proposed annual TAC amounts for each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves, halibut prohibited species catch amounts, quarterly allowances of pollock, and allocations of Pacific cod TAC to inshore and offshore components for each regulatory area. This notice will also include the dates that directed fishing may commence for each quarterly allowance for pollock. The preliminary specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur in the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is published in **Federal Register.** One-fourth of the preliminary specifications (not including the reserves and the first quarterly allowance of pollock), one-fourth of the inshore and offshore allocations of Pacific cod in each regulatory area, and one-fourth of the halibut prohibited species catch amounts will be in effect on January 1 on an interim basis and will remain in effect until superseded by a notice of final specifications in the **Federal Register.**

(B) *Notice of final specifications.* NMFS will consider comments received

on the proposed specifications during the comment period and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final halibut prohibited species catch amounts, final quarterly allowances for pollock, and inshore and offshore allocations of Pacific cod.

(2) *Notices prohibiting directed fishing*—(i) *Applicable after December 31, 1995.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is the amount identified in the notice of specifications as provided in § 672.20(c)(1), as these amounts are revised by inseason adjustments, for that species or species group, as identified by regulatory area or district and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, the quarterly allowance of pollock and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or quarterly allowance of pollock that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the quarter, NMFS will prohibit directed fishing for that species or species group in the specified regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

(ii) *Applicable through December 31, 1995.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery, or with respect to pollock, to a quarterly allowance, or with respect to Pacific cod, to an allocation to the inshore or offshore component, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery, or with respect to pollock, a quarterly allowance, or with respect to Pacific cod, to an allocation to the inshore or offshore component, is the amount identified in the notice of specifications as provided in § 672.20(c)(1). These amounts are revised by inseason adjustments, for a given species or species group, as identified by regulatory area or district and as further identified according to any allocation of TALFF, the apportionment of JVP, the apportionment for DAP, the quarterly allowance for pollock, or with respect to Pacific cod, to an allocation to the inshore or offshore component, and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director should consider the amount of that species group, quarterly allowance of pollock, or allocation of Pacific cod to the inshore or offshore component that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the quarter, NMFS will prohibit directed fishing for the species or species group in the specified regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2, new definitions of "catcher vessel," "inshore component," "offshore component," and "shoreside processing operation" are added in alphabetical order; and the existing definition for "processor vessel" is revised to read as follows:

§ 675.2 Definitions.

* * * * *

Catcher vessel means any vessel that is used to catch, take, or harvest groundfish that are iced, headed, gutted, bled, or otherwise retained as fresh fish product on board during any fishing year.

* * * * *

Inshore component (applicable through December 31, 1992) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 675.5(c) of this part; and

(3) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall. For purposes of this definition, a single geographic location during a fishing year will be determined by the geographic coordinates reported on the most recent check-in notice in effect at the time of the first opening after May 31, 1992, of a directed fishery for Pacific cod in the Gulf of Alaska or pollock, unless a later check-in report is submitted during a directed fishery for Pacific cod in the Gulf of Alaska or pollock.

* * * * *

Offshore component (applicable through December 31, 1992) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore component."

* * * * *

Processor vessel means, unless otherwise restricted, any vessel that has been issued a Federal groundfish vessel permit and that can be used for processing groundfish.

* * * * *

Shoreside processing operation means any person that has not been issued a Federal groundfish vessel permit for the current fishing year and that receives unprocessed groundfish from a catcher vessel. This definition does not include individuals who receive unprocessed groundfish from a catcher vessel for noncommercial use.

* * * * *

7. In § 675.7, a new paragraph (h) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(h) *Applicable through December 31, 1992.* (1) Process pollock that were harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod that were harvested in the Gulf of Alaska in a directed fishery for Pacific cod, on a processor vessel operating in Alaska State waters under the "inshore component" definition at § 675.2 in a location other than the first location at which these species are processed in any fishing year as reported in a check-in notice and weekly production report required at § 675.5(c).

(2) Operate any processor vessel to process pollock harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the "inshore component" and "offshore component" definitions at § 672.2 of this chapter and § 675.2 during the same fishing year.

8. In § 675.20, new paragraphs (a)(2)(iii), (a)(3)(i), and (a)(3)(ii) are added and new paragraph (a)(3)(iii) is added and reserved, to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(iii) *Applicable through December 31, 1992.* The 1992 DAP apportionment of pollock in each subarea for the second seasonal allowance defined in paragraph (a)(2)(ii) of this section will be apportioned 35 percent to the inshore component and 65 percent to the offshore component. The fishery for each component is separately subject to the directed fishing allowance and prohibitions authorized under paragraphs (a)(8) and (a)(9) of this section.

(A) If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to harvest and process the entire amount of pollock allocated to it, then the amount that the Regional Director projects will be unused by one component will be reallocated to the other component by notice in the **Federal Register.**

(B) All processor vessels that operate in Alaska State waters under the "inshore component" definition in § 675.2 and process pollock that were harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod that were harvested in the Gulf of Alaska in a directed fishery for Pacific cod, must remain at the first geographic location reported in any fishing year in the check-in notice required at § 675.5(c) during the remainder of the fishing year when pollock or Pacific cod harvested during directed fisheries for these species are being processed.

(3) * * *

(i) *Applicable through December 31, 1995.* One half of the pollock TAC placed in the reserve for each subarea will be assigned to a Western Alaskan Community Development Quota (CDQ) for each subarea. Portions of the CDQ for each area may be allocated for use by specific western Alaska communities in accordance with community fishery development plans developed by the State of Alaska and approved by the Secretary in consultation with the Council. The Secretary may add any amount of a CDQ back to the nonspecific reserve if, after September 30, the Regional Director determines that amount will not be used during the remainder of the fishing year.

(ii) *Applicable through December 31, 1995.* Any amounts of the nonspecific reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned between inshore and offshore components in the same proportion specified in paragraph (a)(2)(iii) of this section.

(iii) *Applicable through December 31, 1995: Criteria for fishery development plans.* [Reserved]

* * * * *

9. In § 675.22, a new paragraph (g) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1992).* The offshore component of the groundfish fishery may not conduct directed fishing for pollock at any time in the Bering Sea subarea south of 56°00′ N. latitude, and between 163° 00′ and 168° 00′ W. longitude.

[FR Doc. 92–12880 Filed 5–28–92; 5:01 pm]
BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for sablefish using hook-and-line gear in the West Yakutat district of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in this district.

DATES: Effective 12 noon, Alaska local time (A.l.t.), May 30, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat district, which is defined at § 672.2, is established by the final notice of specifications (57 FR 2844, January 24, 1992) as 3,553 metric tons.

Under § 672.24(c)(3)(i), the Director of the Alaska Region, NMFS, has determined that the share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat district will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by vessels using hook-and-line gear in the West Yakutat district, effective from 12 noon, A.l.t., May 30, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 28, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–12909 Filed 5–29–92; 11:06 am]
BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the annual secondary bycatch allowance of Pacific halibut for the Pacific cod trawl fishery in the BSAI has been caught.

DATES: Effective 12 noon, Alaska local time (A.l.t.), May 29, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The annual secondary bycatch allowance of Pacific halibut to the Pacific cod trawl fishery, which is defined at § 675.21(g)(4)(v), was established by emergency rule (57 FR 11433, April 3, 1992) as 1,537 metric tons.

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(h)(1)(iv), that U.S. fishing vessels in the BSAI have caught the 1992 secondary bycatch allowance of Pacific halibut for the Pacific cod trawl fishery. Therefore, NMFS is prohibiting directed fishing for Pacific cod by vessels using trawl gear in the BSAI from 12 noon, A.l.t., May 29, 1992, until 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 28, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-12910 Filed 5-29-92; 11:24 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 107
Wednesday, June 3, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 615, and 627

RIN 3052-AA92

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Title V Conservators and Receivers

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes for public comment regulations governing conservatorships and receiverships for which the Farm Credit System Insurance Corporation (Insurance Corporation) is appointed as conservator or receiver. These regulations reflect amendments to the Farm Credit Act of 1971 by the Agricultural Credit Act of 1987 providing that, after January 5, 1993, the Insurance Corporation will be the exclusive entity appointed as conservator or receiver of a Farm Credit System institution (System institution or Farm Credit institution). Also proposed are amendments to existing conservatorship and receivership regulations, which would continue to apply in situations where the Insurance Corporation is not appointed as conservator or receiver.

DATES: Comments must be received by July 6, 1992.

ADDRESSES: Comments should be submitted in writing, in triplicate, to Jean Noonan, General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444,

or

John J. Hays, FCA Examiner, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987 (Pub. L. 100–233) (1987 Act) amended the Farm Credit Act of 1971 (Act) by adding a new title V which provided for the establishment of the Insurance Corporation. New sections 5.51(5) and 5.58(10) of the Act empower the Insurance Corporation to act as conservator or receiver. The 1987 Act also amended section 4.12(b) of the Act to provide that, after January 5, 1993, the Insurance Corporation will be the exclusive entity to be appointed by the FCA as conservator or receiver of a System institution.

In new part 627, the Board proposed to set forth the powers and duties of the Insurance Corporation when it acts as conservator or receiver of a System institution. Other conservators or receivers will continue to be governed by the existing provisions in part 611, subparts K, L, M, and N of the regulations, as amended by these proposals.

The Board's decision to promulgate separate regulations for conservatorships and receiverships for which the Insurance Corporation is the conservator or receiver is based on fundamental differences between the Insurance Corporation and other persons or entities that have previously been appointed to the position. Such other persons have been deemed to be acting as agents of the FCA in the performance of certain duties and responsibilities. Such agency status is unnecessary for the Insurance Corporation, which has the status of a Federal agency in its own right.

In addition, the Board believes that, with a government agency acting as receiver, it is not necessary for the institution to retain a Farm Credit charter. Consequently, the proposed regulations would provide for the Farm Credit charter of an institution to be canceled when the institution is placed in receivership and for the Insurance Corporation to succeed automatically to the rights, titles, and privileges of the institution upon its appointment as receiver. Once the charter is canceled, there would be no further assessments for the FCA's administrative expenses. Existing institutions in receivership for which the Insurance Corporation is not appointed as receiver would continue to retain their charters until the receivership is terminated.

Finally, the proposed regulations would provide the Insurance Corporation with flexibility to perform its receivership functions and would relieve the FCA of most of its supervisory involvement in future receiverships.

The Board notes that conforming amendments would be made to the reporting provisions in the existing regulations in order to maintain consistency of treatment of all receiverships in this important area. However, whereas there would no longer be a mandatory annual examination requirement for receiverships for which the Insurance Corporation acts as receiver, the existing receiverships would continue to be examined. It is the intention of the Board to rescind the existing conservatorship and receivership regulations in part 611 upon the termination of the last receivership or conservatorship for which the Insurance Corporation is not acting as conservator or receiver.

The Board further notes that there is a currently outstanding proposal to amend the definition of insolvency in § 611.1156(b)(1). See 53 FR 43897, October 31, 1988. The Board has decided to take no action with respect to the proposed amendment or the existing regulation at this time other than to transfer the existing grounds for appointing a conservator or receiver to new part 627. A study of the definition of insolvency in the context of section 4.12 of the Act, along with the other grounds for appointment of a conservator or receiver, has been undertaken by the FCA in conjunction with its review of the capital adequacy regulations in part 615. Upon completion of this review, the Board will determine what action to take on the outstanding proposed definition.

The proposed regulations are discussed in more detail below. The most significant differences from existing regulations are described in the first part; the second part contains a section-by-section analysis and

identifies the provisions of existing regulations that served as the basis for provisions in new part 627 pertaining to the Insurance Corporation. The Board notes that many of the powers and procedures set forth in the existing regulations are restated in the proposed regulations for the Insurance Corporation. However, whereas the existing regulations contain separate procedures for banks and associations, these two sets of procedures would be combined into one set of procedures in part 627 that would apply to all types of institutions in conservatorship or receivership. Any distinctions in the provisions to account for the structural differences among institutions, such as the treatment of insured obligations in the case of a bank receivership, as made where appropriate.

I. Significant New Provisions and Revisions to Existing Requirements

A. Cancellation of Charter

The Board believes that it would be appropriate to cancel the charter of a System institution at the time an institution is placed in receivership, rather than at the end of the receivership as is currently done, and to provide that the Insurance Corporation automatically succeeds to all the rights, titles, and privileges of the failed institution. Cancellation of the charter at the outset of a receivership routinely occurs when a commercial bank or savings association is liquidated and a government agency—either the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC)—is appointed as receiver.

B. Auditing and Reporting Requirements

Existing regulations §§ 611.1168 and 611.1174 provide for an annual FCA examination of institutions in receivership and require the filing of call reports on a quarterly and an annual basis. It is the Board's view that, since the Insurance Corporation has its own independent statutory authority to examine institutions in receivership, FCA examinations are no longer necessary. Nonetheless, fairness dictates that the creditor, stockholders, and other interested parties be able to obtain periodic updates on the receivership. Therefore, the Board proposes to eliminate the annual examination requirement and replace it with a requirement that the receivership will be audited annually and that a report of the audit be made available to members of the public upon request.

The Board also proposes to eliminate the requirement for receiverships to file call reports with the FCA on a quarterly basis. Quarterly call reporting to the FCA and to stockholders may be unnecessarily expensive in the context of liquidating a receivership estate. Any significant financial information would be provided in the proposed annual report.

C. Priority of Claims

The priority of claims regulation has been revised to provide several new discretionary priorities for certain categories of claims. These provisions are modeled after the priority of claims regulations, originally adopted by the Federal Home Loan Bank Board and subsequently adopted by the FDIC, for savings association receiverships. Administrative expenses of the receiver would continue to have first priority.

The second, third, and fourth prorities are new. Second in priority would be administrative expenses of the institution incurred within 60 days of the commencement of the receivership, provided that the receiver determines the expenses to be reasonable and in the best interests of the receivership to pay. Such expenses would be limited to reimbursements to employees for business purposes and payments for the services of accountants, attorneys, appraisers, examiners, or management companies.

The third priority would be for claims for previously earned wages and salaries for employees that the receiver engages for a period of time after the commencement of the receivership, in order to help wind up the institution's affairs. The fourth priority would be for claims for wages and salaries of employees not engaged by the receiver to help wind up affairs. Payment of these two employee wage claim priorities would be within the discretion of the receiver, and three would be a limit of three thousand dollars ($3,000), which may be adjusted for inflation, on the amount that can be paid to a terminated employee not hired by the receiver.

The remaining categories of priority are identical to existing regulations.

The FCA Board believes that the new categories of priority payments, particularly the new authority pertaining to claims of the institution's employees, would give the receiver greater flexibility to carry out its receivership responsibilities more efficiently and effectively.

II. Section-by-Section Analysis

A. Part 627

The proposed regulations contain many of the provisons in existing subparts K, L, M, and N of part 611. The proposed regulations are in three subparts. Subpart A outlines general applicability of the new part and grounds for appointment or removal of conservators and receivers. Subpart B contains matters pertaining to receivers and receivershps, and subpart C contains matters pertaining to conservators and conservatorships.

Section 627.2700—General—Applicability

Proposed § 627.2700 would specify that the new part applies only to conservatorships and receiverships for which the Insurance Corporation is appointed as conservator or receiver. Existing conservatorships and receiverships would continue to be governed by applicable regulations in part 611.

Section 627.2705—Definitions

Proposed § 627.2705 contains definitions applicable to the new part. Paragraph (b) defines "Farm Credit institution(s)" or "institution(s)" and includes associations as well as the entities included in the definition of "bank" in existing § 611.1170(h). Paragraph (d) defines "Insurance Corporation" as the Farm Credit System Insurance Corporation. Paragraphs (c) and (e) specify that the references to the conservator in part 627 are references to the Insurance Corporation acting in such capacity.

Section 627.2710 [Reserved]

Proposed § 627.2710 is reserved for existing § 611.1156, which would be transferred to new party 627. Existing § 611.1156 sets forth the grounds for FCA appointment of a conservator or receiver. The existing regulation is being transferred to part 627 in order to preserve the outstanding proposal to amend the definition of insolvency in § 611.1156(b)(1). See 53 FR 43897, October 31, 1988.

Section 627.2715—Action for removal of conservator or receiver

Proposed § 627.2715 is similar to existing § 611.1158 and concerns actions that an institution's board may take to seek an order for the FCA Board to remove such conservator or receiver. If such order is granted, the cancellation of the institution's charter would be rescinded. The proposed regulation clarifies that this provision does not apply to voluntary liquidations.

Subpart B—Receivers and Receiverships

Subpart B includes proposed regulations §§ 627.2720 through 627.2765. These regulations pertain to receivers and receiverships and are a combination of the provisions in subpart L—Liquidations of Associations and subpart M—Liquidations of Banks of part 61.

Section 627.2720—Appointment of receiver

Proposed § 627.2720 combines provisions of existing regulations §§ 611.1160 and 611.1170, which pertain to the appointment of receivers for associations and banks, respectively. Provisions have been omitted pertaining to the role of an institution's board of directors in recommending a receiver for a voluntary liquidation and pertaining to termination of a receivership by the FCA Board. The paragraphs are reordered as appropriate. Paragraph (a) concerns the FCA Board approval over voluntary liquidations. The Board proposes to remove the requirement that the FCA consult with the district bank before placing an association in receivership.

Paragraph (b) combines §§ 611.1160(b) and 611.1170(b) of the existing regulations. Paragraph (c) is proposed to be modified from existing §§ 61.1160(e) and 61.1170(e) by omitting the agent relationship and the reference to the cancellation of the charter, removing the vesting of the receiver's responsibilities, and adding a provision that the Insurance Corporation shall be the sole entity to be appointed as conservator or receiver after January 5, 1993. As discussed in Part I above, the agent relationship between the Farm Credit Administration and the Insurance Corporation is not necessary. The vesting of the receivership responsibilities would be contained in other sections of the regulations, and the Board intends to rescind the charter of an institution in conjunction with appointing a receiver for the institution. Paragraph (d) combines existing §§ 611.1160(c) and 611.1170(d) but omits the provision regarding the receiver's acceptance of the appointment, since the Insurance Corporation will be the only receiver the Farm Credit Administration Board may appoint.

Paragraph (e) is new and directs ■ district bank to take steps to minimize the adverse effect of an association's liquidation on borrowers whose loans are purchased by or transferred to another System institution. This provision is mandated by section 4.12(a) and (c) of the Act.

Paragraph (f) combines existing §§ 611.1160(d) and 611.1170(c), omitting references to the suspension of directors and employees (which are covered elsewhere), and provides for cancellation of the charter upon the appointment of the receiver.

Section 627.2725—Powers and Duties of the Receiver

Proposed § 627.2725 is similar to §§ 611.1157(b), 611.1161, 611.1171 and also contains new provisions regarding and powers and duties of the receiver. Paragraph (a) outlines the general responsibilities of the receiver and incorporates new provisions that the receiver automatically succeeds to all rights, titles, powers and privileges of the institution with respect to the institution and assets; succeeds to the title to the books, records, and assets of any previous conservator or other legal custodian of such institution; and acts as the trustee of the receivership for the benefit of the creditors and stockholders of the institution. Paragraph (b) sets forth the specific powers with few modifications from existing § 611.1161(a)–(s), which is the model for this paragraph.

In addition, paragraph (b)(10) empowers the receiver to hire agents, and paragraph (b)(18) omits a provision authorizing the receiver to take action in the name of the institution in receivership. Since the Insurance Corporation will succeed to the rights, titles, and privileges of the institution, it may take action in its own name on behalf of the receivership.

Section 627.2730—Preservation of Equity

Proposed § 627.2730 combines §§ 611.1162 and 611.1172. Paragraph (d) from § 611.1172, which pertains to the authority of the Farm Credit System Financial Assistance Corporation (FAC) to purchase preferred stock, is omitted because the FAC will not have this authority after 1992.

Section 627.2735—Notice to Holders of Uninsured Accounts and Stockholders

Proposed § 627.2735 combines certain provisions from existing §§ 611.1163, 611.1166, and 611.1173, which require notices to be sent to holders of uninsured accounts and stockholders. Requirements for disclosure of information on borrowers' loans, including transfer and repayment, are omitted. Disclosure of such information could continue to be made by the receiver should the FCA or the receiver deems it to be necessary.

Section 627.2740—Creditors' Claims

Proposed § 627.2740 combines existing §§ 611.1164 and 611.1174 pertaining to creditors' claims. The provisions are similar to the existing regulations except that the receiver is not required to file a list of claims with the FCA. In addition, the provision in existing § 611.1174(b) regarding claims of bondholders and holders of similar obligations has been omitted. In its place is a provision that, if it is deemed necessary or appropriate, such holders would make claims in accordance with procedures formulated by the Insurance Corporation, after consultation with the FCA.

Sections 627.2745, 627.2750, and 627.2752—Priority of Claims

Proposed §§ 627.2745, 627.2750, and 627.2752 set forth the priorities of claims for associations, banks, and other Farm Credit institutions, respectively. The priorities of claims for associations and banks are similar to the existing provisions in §§ 611.1167 and 611.1174, with additional new provisions, explained above in Part I, pertaining to claims for certain business expenses and employee wages and salaries. The provisions in § 627.2752, which are new, provide priorities for System institutions other than banks and associations. The new provisions for other Farm Credit institutions are similar to the provisions for both associations and banks, as applicable.

Section 672.2755—Payment of Claims

Proposed § 627.2755 combines provisions of existing §§ 611.1167 and 611.1174 pertaining to the payment of claims, but omits references to purchase and assumption agreements that may be entered into by the receiver. Such action may be taken by the receiver pursuant to authorities granted in § 627.2725.

Section 627.2760—Inventory, Audit, and Reports

Proposed § 627.2760 combines certain provisions of existing §§ 611.1168 and 611.1175 pertaining to inventory, audit, and reports of receivership activities. As discussed above, the Board has decided to eliminate mandatory annual examinations in situations where the Insurance Corporation is appointed receiver, and also to eliminate most reporting requirements for all receiverships. The Board proposes to require an annual audit of receiverships.

Section 627.2765—Final Discharge and Release of the Receiver

Proposed § 627.2765 provides for the final discharge and release of the receiver. Provisions from existing

§§ 611.1169 and 611.1176 regarding the final report, the cancellation of the charter, examination requirements, storage of records, and approval of the receiver's accounts are omitted.

Subpart C—Conservators and Conservatorships

Subpart C contains proposed §§ 627.2770 through 627.2790 and sets forth regulations for conservators and conservatorships. These provisions are similar to those in subpart N of part 611. Certain conforming revisions are proposed that will be similar to the provisions in the receivership regulations for the Insurance Corporation. Provisions pertaining to the conservator's acceptance of the appointment, the status of the conservator as the FCA's agent, and the replacement of the conservator are omitted. Many of the supervisory provisions in existing subpart N of part 611 would not be retained in part 627.

Section 627.2770—Conservators

Proposed § 627.2770 sets forth general information about conservators and is similar to the relevant provisions of §627.1157(a)

Section 627.2775—Appointment of a Conservator

Proposed § 627.2775 is similar to existing § 611.1180. References to the conservator as agent of the FCA and replacement of the conservator are omitted.

Section 627.2780—Powers and Duties of Conservators

Proposed § 627.2780 is similar to existing § 611.1181 and sets forth the powers and duties of conservators, except that prior FCA approval requirements have been omitted.

Section 627.2785—Inventory, Examination, Audit, and Reports to Stockholders

Proposed § 627.2785 is similar to existing § 611.1182 pertaining to inventory, examination, audit and reports to stockholders, except that the proposed regulation does not specify the format by which the inventory is reported. An audit by a certified public accountant would be mandatory rather than optional, and the FCA prior approval of the accountant is omitted.

Section 627.2790—Final Discharge and Release of the Conservator.

Proposed § 627.2790 is similar to existing § 611.1183(a) pertaining to the final discharge and release of the conservator. The conservator would be required to provide a final report on its activities at the end of the conservatorship. The Board has determined that it is unnecessary to require by regulation an examination or audit to be performed at the end of a conservatorship, since the FCA Board is empowered by section 5.19(a) of the Act to determine when to require an examination of any institution.

B. Part 611

Section 611.1155—General

Section 611.1155 is proposed to be amended to specify that subparts K, L, M, and N will apply only to conservatorships and receiverships for which the Insurance Corporation is not appointed as conservator or receiver.

Section 611.1156—Grounds for Appointment of Conservators and Receivers

Existing § 611.1156, which sets forth the grounds for the appointment of a conservator or receiver of a Farm Credit institution, is proposed to be redesignated as § 627.2710 and amended to eliminate references in paragraph (a) to the Farm Credit System Assistance Board, which ceases existence at the end of 1992. It is anticipated that the final receivership regulations will not be adopted and become effective until 1993, at which time section 4.12(b) of the Farm Credit Act mandates that the Insurance Corporation will be the exclusive entity to be appointed as conservator or receiver of a Farm Credit institution. Since proposed part 627 would contain all provisions applicable to the appointment of the Insurance Corporation, it will be unnecessary to retain this regulation in part 611. Therefore, these regulations are proposed to be transferred to part 627. The currently outstanding proposal to amend § 611.1156(b)(1), as discussed above, would then be considered to be a proposal to amend § 627.2710(b)(1).

Sections 611.1168 and 611.1175—Inventory, Audit, and Reports to Stockholders

The Board proposes to amend these sections to remove existing reporting requirements for banks and associations in receivership, and to require the receiverships to make annual reports that will be available to the stockholders or interested members of the public. As discussed in Part I above, the reporting requirements would be revised to be the same as for receiverships governed by new part 627, but the existing examination requirements would not be revised for receiverships governed by part 611.

C. Part 615

The reference to existing § 611.1156 in § 615.5216 would be revised to reflect the proposed redesignation of that section as § 627.2710.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons set forth in the preamble, parts 627, 611, and 615 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be added and amended, respectively, as follows:

1. A new part 627 is added to read as follows:

PART 627—TITLE V CONSERVATORS AND RECEIVERS

Subpart A—General

Sec.

627.2700 General—applicability.
627.2705 Definitions.
627.2710 [Reserved]
627.2715 Action for removal of conservator or receiver.

Subpart B—Receivers and Receiverships

627.2720 Appointment of receiver.
627.2725 Powers and duties of the receiver.
627.2730 Preservation of equity.
627.2735 Notice to holders of uninsured accounts and stockholders.
627.2740 Creditors' claims.
627.2745 Priority of claims—associations.
627.2750 Priority of claims—banks.
627.2752 Priority of claims—other Farm Credit institutions.
627.2755 Payment of claims.
627.2760 Inventory, audit, and reports.
627.2765 Final discharge and release of the receiver.

Subpart C—Conservators and Conservatorships

627.2770 Conservators.
627.2775 Appointment of a conservator.
627.2780 Powers and duties of conservators.
627.2785 Inventory, examination, audit, and reports to stockholders.
627.2790 Final discharge and release of the conservator.

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act; 12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7.

Subpart A—General

§ 627.2700 General—applicability.

The provisions of this part shall apply to conservatorships and receiverships of Farm Credit institutions for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver.

§ 627.2705 Definitions.

For purposes of this part the following definitions apply:

(a) *Act* means the Farm Credit Act of 1971, as amended.

(b) *Farm Credit institution(s)* or *institution(s)* means all associations, banks, service corporations chartered under title IV of the Act, the Federal Agricultural Mortgage Corporation, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

(c) *Conservator* means the Farm Credit System Insurance Corporation acting in its capacity as conservator.

(d) *Insurance Corporation* means the Farm Credit System Insurance Corporation.

(e) *Receiver* means the Insurance Corporation acting in its capacity as receiver.

§ 627.2710 [Reserved]

§ 627.2715 Action for removal of conservator or receiver.

Upon the appointment of a conservator or receiver for a Farm Credit institution by the Farm Credit Administration Board pursuant to § 627.2710 of this part, the institution may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of the institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove such conservator or receiver and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of subpart B or C of this part, the institution's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may be authorized only by such institution's board of directors.

Subpart B—Receivers and Receiverships

§ 627.2720 Appointment of receiver.

(a) The board of directors of a Farm Credit institution, by the adoption of an appropriate resolution, may vote to liquidate the institution, and upon approval of the resolution by the Farm Credit Administration Board, the Board may, by order, place the Farm Credit institution in receivership.

(b) The Farm Credit Administration Board may, in its discretion, appoint ex parte and without notice a receiver for any Farm Credit institution in accordance with the grounds for appointment set forth in § 627.2710 of this part.

(c) The voluntary or involuntary liquidation of a Farm Credit institution shall be conducted by the receiver. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as receiver.

(d) Upon the appointment of the Insurance Corporation as receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the institution, and its district bank in the case of an association, and shall publish a notice of the appointment in the **Federal Register**.

(e) In the case of the voluntary or involuntary liquidation of an association, the district bank shall institute appropriate measures to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

(f) Upon the issuance of the order placing a Farm Credit institution into liquidation, the Farm Credit Administration Board shall cancel the institution's charter. All rights, privileges, and powers of the board of directors, officers, and employees of the institution shall be vested exclusively in the receiver.

§ 627.2725 Powers and duties of the receiver.

(a) *General.* (1) Upon appointment as receiver, the receiver shall take possession of a Farm Credit institution pursuant to 12 U.S.C. 2183 and § 627.2710 of this part in order to wind up the business operations of such institution, collect the debts owed to the institution, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to stockholders. The receiver shall exercise all powers necessary to the efficient termination of an institution's operation as provided for in this subpart.

(2) Upon its appointment as receiver, the receiver automatically succeeds to—

(i) All rights, titles, powers and privileges of the institution and of any stockholder, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) Title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(3) The receiver of a Farm Credit institution serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the institution under law and the former charter, articles, and bylaws of the institution.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the institution during the process of liquidating its assets and winding up its affairs.

(3) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership.

(4) Borrow such sums as necessary to effectuate the purposes of the receivership.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the institution's assets or property or rehabilitate or improve such property and assets.

(6) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the institution has a lien or in which the institution has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(7) Investigate any matter related to the conduct of the business of the institution, including, but not limited to, any claim of the institution against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(8) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the institution or in which the institution or its creditors or members have any interest, and represent in every way the institution, its members, and creditors.

(9) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(10) Hire any agents or employees necessary for proper administration of the receivership.

(11) Execute, acknowledge, and deliver, in person or through a general or

specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the institution's officers by authority of its board of directors.

(12) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note contract, judgment or decree, stock, or debt owed to the institution, or any property (real or personal, tangible or intangible).

(13) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(14) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(15) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the institution or receiver.

(16) Pay out of the assets of the institution, all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(17) Pay out of the assets of the institution all approved claims of indebtedness in accordance with priorities established in this subpart.

(18) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(19) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes by order or by amendment of any order or by regulation.

(c) The receiver of a bank is also empowered to pay claims of holders of notes, bonds, debentures, or other obligations issued by the bank under 12 U.S.C. 2153 (c) or (d) in accordance with procedure specified by the Insurance Corporation pursuant to § 627.2740(d) of this part.

§ 627.2730 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the institution, no capital stock, participation certificates, equity reserves, or other allocated equities of an institution in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate voluntarily the institution, the capital stock, participation certificates, equity reserves, and allocated equities of the institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities until such time as the stockholders of the institution or the Farm Credit Administration Board disapproves such resolution. In the event the resolution is approved by the stockholders of the institution and the Farm Credit Administration Board, and the institution is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the institution.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2735 Notice to holders of uninsured accounts and stockholders.

(a) Upon placing an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) that the funds ceased earning interest when the receivership was instituted and will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

(b) As soon as practicable after the receiver takes possession of the institution, the receiver shall notify, by first class mail, each holder of stock and participation certificates of the following matters:

(1) The number of shares such holder owns;

(2) That the stock and other equities of the institution may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the owners of such equities; and

(3) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 627.2740 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the institution, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days, respectively, after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the institution's books at the creditor's last address appearing thereon. Claims filed after the specified date shall be disallowed, except as the receiver may approve them for full or partial payment from the institution's assets remaining undistributed at the time of approval.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final, unless, within 30 days after the notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapprove such claim in whole or in part.

(c) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this subpart and in such manner and amounts as the receiver deems appropriate. In the event the institution has a claim against a creditor of the institution, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

(d) The claims of holders of notes, bonds, debentures, or other obligations issued by a bank under 12 U.S.C. 2153 (c) or (d) shall be made, if deemed necessary or appropriate, in accordance with procedures formulated by the Insurance Corporation. In the formulation of such procedures, the Insurance Corporation shall consult with the Farm Credit Administration.

§ 627.2745 Priority of claims—associations.

The following priority of claims shall apply to the distribution of the assets of an association in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the association, provided that such expenses were incurred within 60 days prior to the receiver's taking possession,

and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the association not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors, including the district bank, which are secured by assets or equities of the association in accordance with applicable Federal or State law.

(g) All claims of the district bank other than those provided for in paragraph (f) of this section, based on the financing agreement between the association and the bank, including interest accrued before and after the appointment of the receiver, minus any setoff for stock or other equity of the district bank owned by the association made in accordance with this paragraph or paragraph (f) of this section. Prior to making such setoff, the district bank must obtain the approval of the Farm Credit Administration Board for the retirement of such equities.

(h) All claims of general creditors.

§ 627.2750 Priority of claims—banks.

The following priority of claims shall apply to the distribution of the assets of a bank in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the bank, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the bank.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the bank whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the bank not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the bank, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State Law.

(g) All claims of holders of bonds issued by the bank individually to the extent such are collateralized in accordance with 12 U.S.C. 2154.

(h) All claims of holders of consolidated and Systemwide bonds and claims of the other Farm Credit banks arising from their payments pursuant to 12 U.S.C. 2155.

(i) All claims of general creditors.

§ 627.2752 Priority of claims—other Farm Credit institutions.

The following priority of claims shall apply to the distribution of the assets of an institution, other than a bank or association, in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the institution, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the institution.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the institution whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the institution not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the institution, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of general creditors.

§ 627.2755 Payment of claims.

(a) All claims of each class described in § 627.2745, § 627.2750, or § 627.2752 of this part, respectively, shall be paid in full, or provisions shall be made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay in full any class of claims described in § 627.2745, distribution on such class shall be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the institution to the owners of stock, participation certificates, and other equities in accordance with the priorities for

impairment set forth in the bylaws of the institution.

(c) Notwithstanding this section, elgible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2760 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of an institution, the receiver shall make an inventory of the assets and laibilities as of the date possession was taken.

(b) The institution in receivership shall be audited on an annual basis by a certified public acountant selected by the receiver.

(c) With respect to each receivership, the receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the institution in receivership or any member of the public, with a copy provided to the Farm Credit Administration.

(d) Upon the final liquidation of the institution, the receiver shall send to each stockholder of record a report summarizing the disposition of the assets of the receivership and claims against the receivership.

§ 627.2765 Final discharge and release of the receiver.

After the receiver has made a final distribution of the assets of the receivership, the receivership shall be terminated and the receiver shall be finally discharged and released.

Subpart C—Conservators and Conservatorships

§ 627.2770 Conservators.

(a) The Insurance Corporation shall be appointed as conservator by the Farm Credit Administration Board pursuant to section 4.12 of the Act and § 627.2710 of this part to take possession of an institution in accordance with the terms of the appointment. Upon appointment, the conservator shall direct the institution's further operation until the Farm Credit Administration Board decides whether to place the institution into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment and upon a determination by the Farm Credit Administration Board that the institution can be returned to normal operations, the Farm Credit Administration Board may turn the institution over to such management as the Farm Credit Administration Board may direct.

(b) A conservator shall exercise all powers necessary to continue the ongoing operations of the institution, to conserve and preserve the institution's assets and property, and otherwise protect the interests of the institution, its stockholders, and creditors as provided in this subpart.

§ 627.2775 Appointment of a conservator.

(a) The Farm Credit Administration Board may appoint ex parte and without notice a conservator for any Farm Credit institution provided that one or more of the grounds for appointment as set forth in § 627.2710 exist.

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the institution and, in the case of an association, the district bank, and notice of the appointment shall be published in the **Federal Register**. As soon as practicable after the conservator takes possession of the institution, the conservator shall notify, by first class mail, each holder of stock and participation certificates in the institution of the establishment of the conservatorship and shall describe the effect of the conservatorship on the institution's operations and on the borrower's loan and equity holdings.

(c) Upon the issuance of the order placing a Farm Credit institution in conservatorship, all rights, privileges, and powers of the members, board of director, officers, and employees of the institution are vested exclusively in the conservator.

(d) The conservator is responsible for conserving and preserving the assets of the institution and continuing the ongoing operations of the institution until the conservatorship is terminated by order of the Farm Credit Administration Board.

(e) The Board may, at any time, terminate the conservatorship and direct the conservator to turn over the institution's operations to such management as the Board may designate, in which event the provisions of this subpart shall no longer apply.

§ 627.2780 Powers and duties of conservators.

(a) The conservator of an institution serves as the trustee of the institution and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) The conservator may, with respect to Farm Credit institutions, exercise the powers that a receiver of an institution may exercise under any of the provisions of § 627.2725(b) of this part, except § 627.2725(b)(2) and (b)(17). In interpreting those paragraphs for purposes of this section, the terms "conservator" and "conservatorship" shall be read for "receiver" and "receivership."

(c) The conservator may extend credit to new and existing borrowers as is necessary to the continuing operation of the institution and to effectuate the purposes of the conservatorship.

(d) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the institution.

§ 627.2785 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a Farm Credit institution the conservator shall make an inventory of the assets and liabilities of the institution as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The institution in conservatorship shall be examined by the Farm Credit Administration in accordance with section 5.19 of the Act. The institution shall also be audited by a certified public accountant in accordance with part 621 of this chapter.

(c) Each institution in conservatorship shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of part 621 of this chapter. The conservator of the institution shall provide the certification required in § 621.12 of this chapter.

(d) Each institution in conservatorship shall prepare and issue published financial reports in accordance with provisions of part 620 of this chapter, and the certifications and signatures of the board of directors or management provided for in §§ 620.2(b), 620.2(c), and 620.5m(2) of this chapter shall be provided by the conservator of the institution.

§ 627.2790 Final discharge and release of the conservator.

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

PART 611—ORGANIZATION

2. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638.

Subpart K—Appointment of Conservators and Receivers

§ 611.1155 [Amended]

3. Section 611.1155 is amended by adding two sentences to the end of the existing text to read "Subparts K, L, M, and N of this part shall not apply to conservatorships or receiverships for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver. Such conservatorships and receiverships shall be governed by part 627 of this chapter."

§ 611.1156 [Redesignated]

4. Section 611.1156 is redesignated as § 627.2710, and paragraph (a) of newly designated § 627.2710 is revised to read as follows:

§ 627.2710 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm Credit Administration Board may, in its discretion, appoint a conservator or receiver for such institution. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as conservator or receiver.

* * * * *

§ 611.1157 [Amended]

5. Section 611.1157 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (a) and (b).

Subpart L—Liquidation of Associations

§ 611.1160 [Amended]

6. Section 611.1160 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g).

7. Section 611.1168 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1168 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the association in receivership or any member of the public.

* * * * *

Subpart M—Liquidation of Banks

§ 611.1170 [Amended]

8. Section 611.1170 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g).

9. Section 611.1175 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1175 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the bank in receivership or any member of the public.

* * * * *

Subpart N—Conservators and Conservatorships of Banks and Associations

§ 611.1180 [Amended]

10. Section 611.1180 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (a).

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

11. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

§ 615.5216 [Amended]

12. Section 615.5216 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (b).

Dated: May 27, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–12821 Filed 6–2–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[PS–1–89]

RIN 1545–AM88

Limitation on Passive Activity Losses and Credits; Definition of Activity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of the date, time, and location of public hearing on proposed regulations; extension of time to submit requests to speak and outlines of oral comments.

SUMMARY: This document provides notice of a change of the date, time, and location of the public hearing, and an extension of time to submit requests to speak and outlines of oral comments for the public hearing on proposed regulations relating to the definition of an activity for purposes of applying the limitations on passive credits.

DATES: The public hearing will be held on Thursday, September 3, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, August 13, 1992.

ADDRESSES: The public hearing will be held in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS–1–89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9236 or 202–566–3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the **Federal Register** for Friday, May 15, 1992 (57 FR 20805), announced, among other things, that a public hearing relating to proposed regulations under section 469 of the Internal Revenue Code would be held on Friday, July 24, 1992, beginning at 1:30 p.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC, and that requests to speak and outlines of oral comments should be received by Monday, July 6, 1992. The proposed regulations were published in the **Federal Register** for Friday, May 15, 1992 (57 FR 20802).

There has been a change in the date, time, and location of the public hearing, and an extension of time to submit requests to speak and outlines of oral comments. The hearing will be held on Thursday, September 3, 1992, at 10 a.m., in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washingotn, DC. The requests to speak and outlines of oral comments must be received on Thursday, August 13, 1992.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

In all other respects the details regarding the hearing will remain the same.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-12895 Filed 6-2-92; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[Notice No. 740; Ref: T.D. ATF-299; Notice Nos. 543 and 584]

RIN: 1512-AA89

Materials and Processes Authorized for the Production of Wine and for the Treatment of Juice, Wine and Distilling Material; Also, Revised Alcohol Tolerance on Labels of Wine Under 7 Percent Alcohol by Volume (90F-260T)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice solicits comment from winemakers, consumers and other interested parties as to whether, pursuant to the provisions of section 5382 of the Internal Revenue Code of 1986, the use of certain materials and processes is acceptable in "good commercial practice" in the production, cellar treatment, and finishing of wine. If these new materials and processes are found to be acceptable, then a final rule will be published adding these new materials to the wine treating material regulations.

ATF is also proposing to revise 27 CFR 24.257(a)(4) to change the alcohol tolerance which is allowed on wine labels where the wine contains less than 7 percent alcohol by volume.

DATES: Written comments to this notice must be received by July 6, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (*Attn: Notice No. 740*). Copies of the proposed regulation and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert White or Jim Hunt, Coordinators, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

Since 1981, ATF has been reviewing the wine treating materials and processes which were previously prescribed in title 27, Code of Federal Regulations, part 240, subpart ZZ, and which are currently prescribed in title 27, Code of Federal Regulations, part 24, subpart L. This review was undertaken in an effort to revise the regulations in this subpart to include newly developed materials and processes in use by the wine industry and to delete materials and processes which are considered to be no longer acceptable in "good commercial practice" among wine producers, such as materials and processes no longer in use in the U.S. or elsewhere. Notice No. 543, published in the **Federal Register** of September 24, 1984 (49 FR 37527), proposed the addition or deletion of, and, in some instances, revised usage levels for, materials and processes intended for use in the production and cellar treatment of wine. In the same issue of the **Federal Register** in which Notice No. 543 appeared, ATF published T.D. ATF-182 (49 FR 37510). This Treasury decision promulgated regulations which updated the materials and processes authorized for use in the production and treatment of wine, juice, and distilling material, established a procedure for providing agency sanction of experimentation with newly developed materials and processes, and revised the procedure for adding, altering, or deleting materials and processes employed in the treatment of wine.

Following the issuance of Notice No. 543, ATF published in the **Federal Register** of March 7, 1986 (51 FR 8098), a notice (Notice No. 584) proposing extensive revisions to the regulations in part 240 for the production of wine. The purpose of the proposed revisions was to simplify, to modernize, and, where possible, to liberalize the wine regulations to achieve a reduced regulatory burden and a resource savings for the regulated wine industry and the Federal Government. Notice No. 584 also proposed the recodification of the regulations in part 240 into a new part 24.

On June 19, 1990, ATF published in the **Federal Register** (55 FR 24974) a Treasury decision (T.D. ATF-299) which totally revised the wine regulations and recodified part 240 into a new part 24. As part of this overall recodification, the Treasury decision revised the wine treating material regulations in §§ 240.1051, 240.1051a, and 240.1051b and recodified these sections into 24.246, 24.247, and 24.248. These regulation changes updated the lists of materials and processes authorized for use in the production of wine and in the treatment of wine, juice and distilling material. The preamble of the Treasury decision contained a listing of the commenters to Notice Nos. 543 and 584 and a detailed summary of the comments received with the exception of the comments on sulfites. Further action concerning the maximum permissible level of sulfites in wine was not taken due to the proposal (53 FR 51065) by the Food and Drug Administration (FDA) to lower the maximum level of sulfiting agents in wine from 350 parts per million (ppm) to 275 ppm. ATF is still awaiting final action by FDA before proceeding further in this area.

Since T.D. ATF-299 was published, there have been requests to use several new wine treating materials and processes as well as requests to change the limitations on some currently approved wine treating materials and processes. ATF is also considering delisting several wine treating materials because we do not feel that these materials are currently being used by wine producers.

ATF is issuing this notice of proposed rulemaking in order to obtain public comment on the following specific proposals:

(1) Delisting of ammonium carbonate as a yeast nutrient for the fermentation of wine;

(2) Delisting of the proteolytic enzymes to reduce or to remove heat labile proteins;

(3) Reduction of the pH limitation from 3.0 to 2.5 for ion exchange;

(4) Increasing the residual level of copper which can be contained in finished wine from 0.2 to 0.5 part per million when copper sulfate is added to

wine to remove hydrogen sulfide and/or mercaptans;

(5) Allowing the use of dimethyl dicarbonate (DMDC) in finished wine in the process of being bottled at a level not to exceed 200 parts per million; also allowing the use of DMDC in bulk wine being held for bottling between the time of the final "bottle polish" filtration and the actual filling of the bottles if the total quantity of DMDC in the wine at no time exceeds 200 ppm;

(6) Allowing the use of polyvinylpolypyrrolidone (PVPP) to remove excess color from wine and/or juice at a level not to exceed 60 pounds of PVPP per 1,000 gallons of wine or juice. All PVPP must be filtered out of the treated wine;

(7) Allowing the use of tartaric acid to reduce the pH of juice and/or wine where ameliorating material is used in the production of grape wine;

(8) Delisting of carbohydrase (*alpha*-Amylase), carbohydrase (*beta*-Amylase), and carbohydrase (Glucoamylase, Amyloglucosidase) enzymes to convert starches to fermentable carbohydrates;

(9) Delisting the use of hydrogen peroxide to remove color from the juice of red and black grapes;

(10) Allowing the use of pasteurized milk to clarify white wine;

(11) Allowing the use of low Brix juice produced by thermal gradient processing in the production of wine;

(12) Allowing the additional use of calcium carbonate (with or without calcium salts or tartaric and malic acids) to reduce excess natural acidity in high acid juice prior to or during fermentation;

(13) Allowing the additional use of potassium carbonate and/or potassium bicarbonate to reduce excess natural acidity in high acid juice prior to or during fermentation;

(14) Allowing the unrestricted use of oxygen and compressed air in juice and wine rather than restricting their use to baking or maturing wine and aeration of sherry as currently authorized in § 24.246.

In addition, ATF wants comments concerning its proposal to revise 27 CFR 24.257(a)(4) to change the alcohol tolerance which is allowed on wine labels where the wine contains less than 7 percent alcohol by volume. The new tolerance would be plus or minus .75 percent by volume rather than the currently stated 10 percent of the alcohol content stated on the label. During the comment period, members of the wine industry, consumers and other interested parties have the opportunity to submit comments regarding these specific proposals. In regard to the wine treating material (and processes) proposals, it will be particularly useful to obtain comments on whether these wine treatments are being used in the U.S. or elsewhere and whether such treatments are in accordance with good commercial practice. The review of the comments received in response to this notice will be a factor in ATF's decision whether or not to hold a public hearing.

Ammonium carbonate

Ammonium carbonate is currently listed in 27 CFR § 24.246 as a yeast nutrient to facilitate fermentation of wine. ATF believes that ammonium phosphate is the yeast nutrient most commonly used among winemakers and that ammonium carbonate is no longer being used by wine producers. ATF desires to know whether ammonium carbonate is currently being used in the production of wines in the United States or elsewhere. Accordingly, ATF seeks comment on whether ammonium carbonate is currently in use as a wine treating material.

Proteolytic Enzymes

In 1982, U.S. wine producers were encouraged by research academicians and enologists whose initial studies (e.g., Sears, A.E., "Specific Characteristics of Various Proteases," Proceedings of the 6th Wine Industry Technical Seminar, Santa Rosa, CA, 1980) showed promising results from the use of proteolytic enzymes in the production of wine. Based on this early information, ATF listed the proteolytic enzymes in T.D. ATF–182. Section 24.246 currently authorizes the use of proteolytic enzymes to reduce or to remove heat labile proteins. However, since publication of the Treasury decision in September of 1984, ATF has received information that proteolytic enzymes are no longer in use in the U.S. wine industry. ATF requests comment as to whether the proteolytic enzymes are being used by winemakers in the U.S. or elsewhere for the intended technical effect of reducing or removing heat labile proteins.

Ion Exchange

One commenter to Notice No. 584 suggested that the limitation for reduction of pH by ion exchange be changed from the currently prescribed pH of 3.0 to pH 2.5. The reason given for requesting this change was that "many times it is necessary to go below pH 3 to remove potassium." ATF requests comment as to whether this suggestion should be incorporated into existing regulations for the use of ion exchange in the treatment of wine and juice in the United States. In addition, ATF requests comment on whether this change should be allowed for all wines and juices or whether it should be restricted to other than *Vitis vinifera* wines and juices only.

Copper Sulfate

Regulations in 27 CFR 24.246 prescribe a residual level limitation of 0.2 part per million of copper in wine when copper sulfate is added to wine to remove hydrogen sulfide and/or mercaptans. This limitation does not take into consideration the level of copper present in untreated wine prior to the addition of copper sulfate. Studies of the use of copper sulfate in the treatment of wine (e.g., Thoukis, George, Chemistry of Wine Stabilization: A Review, IN: Chemistry of Winemaking, A.D. Webb, Ed., American Chemical Society, Washington, D.C., 1974) reveal that the treated wine is stable with residual copper levels not exceeding 0.5 part per million. An increase from 0.2 to 0.5 part per million in residual copper, if authorized, would provide winemakers added flexibility in the use of copper sulfate and would eliminate the need to employ additional treatment to reduce the residual copper to 0.2 part per million. ATF requests comment regarding whether an increase in residual copper to 0.5 part per million is acceptable in good commercial practice among winemakers.

Dimethyl Dicarbonate (DMDC)

In June of 1988, ATF received an application from a winery to use dimethyl dicarbonate (DMDC) in all standardized wines. The winery application stated that DMDC has proven useful in wine as a cold beverage sterilant effective against yeast, bacteria and molds. DMDC acts by inactivating enzymes in the micro-organisms present in the wine. At least 96 percent of the remaining DMDC hydrolyzes in the wine, forming principally carbon dioxide and methanol.

The application further stated that compared to other stabilization methods, such as flash pasteurization and chemical methods, DMDC is more effective in controlling problematic micro-organisms and does not lead to the development of resistant strains. Additionally, DMDC has no effect on the taste, color or odor of wine, unlike flash pasteurization or other chemical preservatives. Furthermore, the application stated that the use of DMDC will reduce the amount of sulfites present in wine because of the synergistic action of DMDC and sulfur dioxide.

The winery application was submitted under former 27 CFR 240.1053 (Application for use of new treating material or process). This section of regulations has since been recodified and can now be found in 27 CFR 24.250. All required information was submitted with the application except for documentary evidence of the U.S. Food and Drug Administration's (FDA's) approval of the material for its intended purpose in the amounts proposed for the particular treatment contemplated.

In the October 21, 1988, issued of the **Federal Register**, 53 FR 41325, FDA published a final rule amending the food additive regulations by adding 21 CFR 172.133 to provide for the safe use of DMDC as a yeast inhibitor in wines. The effective date was October 21, 1988.

FDA's final rule states, in part, that DMDC (CAS Reg. No. 4525–33–1) may be safely used in wine in accordance with the following conditions:

(a) The additive meets the following specifications:

(1) The additive has a purity of not less than 99.8 percent as determined by the titration method specified in 21 CFR 172.133(a)(1).

(2) The additive contains not more than 2,000 parts per million (0.2 percent) dimethyl carbonate as determined by a method entitled "Gas Chromatography Method for Dimethyl Carbonate Impruity in Dimethyl Dicarbonate," which is incorporated by reference in accordance with 5 U.S.C. 552(a).

(b) The additive is used or intended for use as an inhibitor of yeast in wine under normal circumstances of bottling where the viable yeast count has been reduced to 500 per milliliter or less by current good manufacturing practices such as flash pasteurization or filtration. The additive may be added to wine in an amount not to exceed 200 parts per million (ppm).

Upon receiving notification of FDA's approval of DMDC for use in wine, ATF approved the winery application to use DMDC in all standardized wines subject to all FDA restrictions on its use. We will consider applications to use DMDC from other wineries on a case by case basis until final action is taken on DMDC after reviewing the comments received regarding this notice. It it is determined, after reviewing the comments, that the use of DMDC in wine under normal circumstances of bottling at a level not to exceed 200 ppm is acceptable in good commercial practice among winemakers, then we will add DMDC to the list of authorized wine treating materials in 27 CFR 24.246.

ATF has received additional inquiries from the wine industry concerning other possible uses of DMDC. These uses include adding DMDC to bulk wine being held for bottling between the time of the final "bottle polish" filtration and the actual filling of the bottles, adding DMDC to fruit juice and/or wine coolers, and adding DMDC to dealcoholized wine (less than ½ percent of alcohol) and/or low alcohol wine (less than 7 percent alcohol).

ATF contacted FDA concerning these requests and received the following reply. FDA has no objection to the use of DMDC to treat wines being held in tanks between the time of the final "bottle polish" filtration and the actual filling of the bottles as long as the requirements in 21 CFR 172.133 are complied with.

Furthermore, as long as the addition of DMDC to wine in a closed storage tank is the last processing step before bottling, FDA has determined that this use of DMDC constitutes "normal circumstances of bottling" as specified in § 172.133. Although the wine to be treated with DMDC in this manner must be finished and must not undergo any additional manufacturing processes, FDA has determined that the finished wine treated with DMDC may be blended with another wine as long as the 200 parts per million (ppm) overall limitation on the addition of DMDC to wine is not exceeded.

In regard to the use of DMDC in wine coolers, dealcoholized wine (below ½ percent alcohol) and low alcohol wine (below 7 percent alcohol), FDA stated that these uses are not permitted at the present time. FDA stated that their approval of DMDC in wine only applied to standard wine with an alcohol content of 7 percent by volume or above. FDA indicated that the reason their approval only applies to this type of wine is because it was the only type of wine for which data was supplied by the petitioners when requesting approval of the use of DMDC in wine. FDA indicated that these other uses of DMDC may very well be approved once the proper food additive petition, with supporting data, is filed with FDA for these other types of wine or wine products.

ATF cannot approve the use of DMDC in wine coolers and low alcohol wine until FDA approves the use of DMDC in these products. Proprietors who wish to experiment with the use of DMDC in these products should file an application with the Regional Director (Compliance) under the provisions of 27 CFR 24.249 setting forth in detail the experimentation to be conducted and the facilities and equipment to be used. In regard to dealcoholized wine and/or fruit juice, only FDA approval is required.

Polyvinylpolypyrrolidone (PVPP)

ATF has received an application from a winery to use polyvinylpolypyrrolidone (PVPP) to remove excess color from "blush" type wines. The application requested that up to 60 pounds of PVPP per 1,000 gallons (7.16 g/L) of wine be authorized for use. The winery submitting the application feels that PVPP has an advantage over some currently approved color removal methods in that it has less effect on the vinous character of the wine than some of the other methods. The winery states that PVPP is a well known material which leaves no treatment residues in the wine, as it is completely insoluble in wine. PVPP simply attracts the undesirable components of the wine to itself. The winery states that all PVPP will be filtered out of the treated wine.

Before and after samples of "blush" wine treated with up to 60 pounds of PVPP per 1,000 gallons of wine were analyzed by the ATF laboratory. The laboratory evaluation data revealed no significant change in the wine other than the visible color change and the reduction of the spectrophotometric measurement resulting from the PVPP treatment. The analysis also indicated that all PVPP has been removed from the treated wine.

After analyzing the application, including the laboratory results of the before and after samples of the treated wine, ATF approved the winery application to use up to 60 pounds of PVPP per 1,000 gallons of wine for the purpose of removing color from red or black wine or red or black juice. Our approval was contingent on the winery following the prescribed conditions listed in Food and Drug Administration (FDA) regulations at 21 CFR 173.50 with the exception that PVPP may be used as a stabilizing agent and to remove color from red or black wine and red or black juice rather than just as a clarifying agent.

We will consider applications from other wineries to use PVPP to remove color from juice/wine on a case by case basis until final action is taken on PVPP after thoroughly reviewing the comments received regarding this notice. If it is determined, after reviewing the comments, that the use of PVPP to remove color from juice/wine is acceptable in good commercial practice among winemakers at a maximum level of 60 pounds per 1,000 gallons of juice/wine, then we will add this additional use of PVPP to the list of authorized wine treating materials in 27 CFR 24.246.

Use of Acid to Correct Natural Deficiencies (Section 24.182)

ATF is proposing to revise § 24.182(a) to allow the use of tartaric acid to reduce the pH of juice or wine where amelioration material is used in the production of grape wine. This would provide wineries with an alternative method to reduce pH if they do not wish to use the ion exchange method. Currently, wineries cannot add tartaric acid to their juice or wine if they are going to ameliorate their wine. This proposal, if adopted as a final rule, would allow wineries who have ameliorated, or who are going to ameliorate, their wine to use tartaric acid to lower their pH. However, if tartaric acid is used to reduce the pH, the fixed acid level of the juice shall be measured prior to the addition of any tartaric acid to determine the maximum quantity of ameliorating material allowed. ATF would like comments on whether the use of tartaric acid to reduce the pH of grape juice/wine where ameliorating material is used is in accordance with good commercial practice. We also request comment on what limit should be placed on the reduction of pH of the juice/wine if this proposal is adopted. We are tentatively proposing that the pH cannot be reduced below 3.0 when adding tartaric acid to ameliorated grape juice or wine (we are proposing a 2.5 limit for ion exchange). We would also like comments on whether a 3.0 limit would be consistent with good commercial practice and whether there should be a different limit for *Vitis vinifera* wine versus wine made from other grapes. ATF is also proposing to revise § 24.182(b) to make this paragraph clearer. Several persons have questioned the meaning of § 24.182(b) in regard to the quantity of acids which can be added either prior to or during fermentation. Some proprietors have interpreted the first sentence of § 24.182(b) to mean that any amount of acids can be added to juice/wine prior to or during fermentation. These proprietors have pointed out that the limitation on the quantity of fixed acid in the finished wine is not stated until the second sentence which prescribed the types of acids which can be added to wine after fermentation is completed. The limitation prescribed is that the fixed acid level of the finished wine (calculated as tartaric acid) may not exceed 9.0 grams per liter. An exception to this limitation for high solids wine is also stated in this paragraph. Prior regulations on this subject may have been clearer because, at that time, a comma was used to divide what is now the first two sentences of § 24.182(b). Since in prior regulations these first two sentences were just one extremely long sentence, it was easier to see that the limitation on the quantity of fixed acid in the finished wine included any acid added to correct natural deficiencies whether the acid was added prior to, during, or after fermentation. Since it appears that § 24.182(b) is ambiguous as currently written, ATF proposes to revise this paragraph to make clear that all acid added to wine to correct natural deficiencies, whether added before, during, or after fermentation, is to be included when determining whether the fixed acid level of the finished wine (calculated as tartaric acid) exceeds the prescribed limitation.

Carbohydrase Enzymes

ATF requests comments on whether the following carbohydrase enzymes should be removed from the wine treating material list in 27 CFR 24.246: *alpha*-Amylase, *beta*-Amylase, Glucoamylase, and Amyloglucosidase. currently, these enzymes are listed both in the wine treating material list and in 27 CFR 24.247 (Materials authorized for the treatment of distilling material). ATF would like to know whether these enzymes are being used by wine producers in the treatment of wine/juice for the stated purpose of converting starches to fermentable carbohydrates or whether these enzymes are only being used in the treatment of distilling material. If it is determined that these carbohydrase enzymes are only being used in the treatment of distilling material, then these enzymes will be removed from 27 CFR 24.246, and only retained in 27 CFR 24.247.

Hydrogen Peroxide

In T.D. ATF–299, ATF stated that hydrogen peroxide was not being removed from the list of authorized wine treating materials at that time because it was still being used by a few wineries to remove color from the juice of red and black grapes. However, we stated that ATF continues to have some reservations about the chemical changes resulting from the use of hydrogen peroxide to decolorize juice. One problem which has been brought up by several industry members is that hydrogen peroxide is a strong oxidizing agency which will add carbonyl groups, convert ketones and aldehydes to acids, break chains, interrupt resonance structures of many phenolic molecules, and give rise to quinoid structures which can quickly polymerize. In addition, the Wine Institute, which represents hundreds of wineries, does not consider the use of hydrogen peroxide to remove color from the juice of red and black grapes to be in accordance with good commercial practice.

Therefore, we are again requesting comments from all interested parties concerning whether the use of hydrogen peroxide to decolorize grape juice is considered to be in accordance with good commercial practice. Updated information will be particularly useful since the last comments we received on the use of hydrogen peroxide to decolorize the juice of red and black grapes were in the spring of 1985.

Pasteurized Milk

ATF has approved several applications from wineries under 27 CFR 24.249 to experiment with the use of pasteurized milk as a fining agent for white wine. We have allowed white wine to be fined with up to 2.0 liters of pasteurized milk per 1,000 liters of wine (0.2 percent V/V). Within this limitation, we have allowed the wineries to sell the treated wine or to use it in any commercial purpose. We have received several favorable responses from the wineries concerning their experimentation with pasteurized milk to fine white wine. We request comments from all interested persons concerning whether the use of pasteurized milk to fine white wine is considered to be in accordance with good commercial practice.

Thermal Gradient Processing Applied to Grape Juice

ATF has approved a winery application to apply thermal gradient technology, currently used for wine, to grape juice. The process involves taking a typical Brix juice and separating it into a low sugar fraction and a high sugar fraction. Both the low Brix and high Brix fractions will be used in wine production. While the high Brix fraction has a Brix level usually associated with concentrate, the winery stated that it is simply high Brix juice. The winery stated the high Brix juice would not be diluted with water for use in wine production.

The ATF Laboratory conducted tests, including organoleptic tests, on the low Brix juice and determined that a significant distinction could be made between low Brix juice produced by thermal gradient technology and low Brix juice produced by adding water to the juice. Consequently, we approved the winery application.

ATF is proposing to expand the use of thermal gradient processing in 27 CFR 24.248 to include the production of low Brix juice for use in wine production. We request comment concerning whether the use of thermal gradient

processing to produce low Brix juice is considered to be in accordance with good commercial practice when the juice is used in the production of wine.

Calcium Carbonate, Potassium Carbonate and/or Potassium Bicarbonate to Reduce Acidity in Juice

Currently, calcium carbonate (with or without calcium salts of tartaric and malic acids) and potassium carbonate and/or potassium bicarbonate are authorized by 27 CFR 24.246 to be used to reduce the excess natural acids in high acid wine. Recently, we received a request to use these wine treating materials earlier in the process by adding them, separately or in combination, to juice for the purpose of reducing the excess natural acidity in high acid juice prior to or during fermentation. Some winemakers state that the earlier in the process you reduce the acid, the better off you are. The current limitation on these wine treating materials states that the natural or fixed acids in the wine shall not be reduced below 5 parts per thousand (5 g/L). If the proposal on calcium carbonate and potassium carbonate and/or potassium bicarbonate is adopted, this limitation will remain the same except that it will apply to juice as well as to wine. We would appreciate receiving comments on this proposal from all interested parties. If it is determined, after reviewing the comments, that the use of these wine treating materials in juice to reduce the acidity level is acceptable in accordance with good commercial practice, then we will add these additional uses of these materials to the wine treating material list in 27 CFR 24.246.

Oxygen and Compressed Air

Currently, the wine treating material regulations at § 24.246 authorize the use of oxygen and compressed air in the baking or maturing of wine and the aeration of sherry. The "Reference or limitation" column of this regulation states that oxygen and compressed air may be used provided it does not cause changes in the wine other than those occurring during the usual storage in wooden cooperage over a period of time. We have recently been asked by a winemaker to allow the use of oxygen and compressed air in juice in order to oxidize the pigments in the juice so the pigments can be more easily removed in order to produce "blush" type wines. This request has led us to reevaluate the purpose for the restrictions on the use of oxygen and compressed air in § 24.246. We request comment from all interested parties concerning whether the current restrictions on oxygen and compressed air should be removed. If, after reviewing the comments, it appears that the restrictions on oxygen and compressed air in § 24.246 currently serve no useful purpose, we will eliminate the restrictions and simply state that oxygen and compressed air can be used in juice and wine.

Revised Alcohol Tolerance on Labels of Wines under 7 Percent Alcohol by Volume

The Federal Alcohol Administration Act (FAA) regulations contain labeling requirements for wines with an alcohol content of 7 percent by volume and above. The requirements for labeling wines under 7 percent alcohol by volume are in the Internal Revenue Code (IRC) wine regulations. During the revision of the IRC wine regulations, ATF determined that there was no specific provision for an alcohol tolerance on labels for wines under 7 percent by volume. The tolerances in alcohol content provided for in former 27 CFR 240.579 were those allowed under 27 CFR part 4, and, therefore, were not applicable to wine having less than 7 percent alcohol by volume. A notice of proposed rulemaking (Notice No. 584) for the revision and recodification of the IRC wine regulations was published in the **Federal Register** on March 7, 1986. In that notice, ATF proposed an alcohol label tolerance for wines under 7 percent alcohol by volume of plus or minus 10 percent of the alcohol content stated on the label. At the time, wines under 7 percent alcohol by volume were wine cooler products with an alcohol content of 5 to 7 percent, which would have allowed for an alcohol tolerance of .5 to .7 percent by volume. One comment was submitted on this proposal stating that it might be preferable to have an alcohol tolerance of 1 percent, but the comment seemed to be more of an opinion rather than an objection to the wine label alcohol tolerance proposed.

On June 19, 1990, ATF published T.D. ATF–299 in the **Federal Register** adopting the proposal in Notice No. 584 to allow a tolerance of plus or minus 10 percent of the alcohol content stated on the label for wines under 7 percent alcohol by volume. Soon after the final rule was published, we were advised that the alcohol tolerance for wines under 7 percent alcohol by volume was too low and it would be very difficult to meet this tolerance for wine cooler products at 5 percent alcohol by volume and nearly impossible for the new light wine cooler products with an alcohol content of 2 to 3 percent by volume. A petition was submitted to allow a label tolerance for alcohol content of 1 percent by volume.

After carefully considering the evidence submitted by the petitioner and other information concerning an alcohol tolerance for wines under 7 percent, we agree that the alcohol tolerance of 27 CFR 24.257(a)(4) allowing a plus or minus 10 percent of the alcohol content stated on the label for wines under 7 percent alcohol by volume should be increased.

However, since wines 7 to 14 percent alcohol by volume in the FAA Act regulations are allowed an alcohol tolerance of 1.5 percent by volume from that stated on the label, we believe an alcohol tolerance of 1 percent for wines under 7 percent alcohol by volume may be considered too high. Therefore, we are proposing and requesting comment on a label alcohol tolerance of .75 percent for wines under 7 percent alcohol by volume.

Public Participation

Comments to this notice may address any one or all of the proposals. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosure.

Written comments will be available for public inspection during normal business hours at the following address: ATF Reading Room, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Ave., NW., Washington, DC.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. A

copy of this proposed regulation has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business pursuant to section 7805(f) of the Internal Revenue Code of 1986.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms. ATF Wine Technical Advisor Richard M. Gahagan and ATF Chemist Randolph H. Dyer have provided significant technical assistance in the evaluation and review of data pertinent to the preparation of this document.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouse, Wine and vinegar.

Authority and Issuance

27 CFR part 24-Wine is amended as follows:

PART 24—WINE

Par. 1. The authority citation for part 24 continues to read as follows:

Authority: 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.182 is amended to revise paragraphs (a) and (b) to read as follows:

§ 24.182 Use of acid to correct natural deficiencies.

(a) *General.* Acids of the kinds occurring in grapes or other fruit (including berries) may be added within the limitations of § 24.246 to juice or wine in order to correct natural deficiencies; however, no acid may be added to juice or wine which is ameliorated to correct natural deficiencies except that in the production of grape wine, tartaric acid my be used to reduce the pH of the juice or wine. If tartaric acid is used to correct the pH of grape juice or wine, the fixed acid level of the juice shall be measured prior to the addition of any tartaric acid to determine the maximum quantity of ameliorating material allowed. In addition, when using tartaric acid to reduce the pH of ameliorated grape juice or wine, the pH cannot be reduced below 3.0.

(b) *Grape wine.* Tartaric acid or malic acid, or a combination of tartaric acid and malic acid, may be added prior to or during fermentation, to grapes or juice from grapes. In addition, after fermentation is completed, citric acid, fumaric acid, malic acid, lactic acid or tartaric acid, or a combination of two or more of these acids, may be added to correct natural deficiencies. However, the use of these acids, either prior to, during or after fermentation, may not increase the fixed acid level of the finished wine (calculated as tartaric acid) above 9.0 grams per liter. In cases where the wine contains 8.0 or more grams of total solids per 100 milliliters of wine, acids may be added to the extent that the finished wine does not contain more than 11.0 grams per liter of fixed acid (calculated as tartaric acid).

* * * * *

Par. 3. Section 24.246 is amended in the table by removing the entry for ammonium carbonate, carbohydrase (*alpha*-Amylase), carbohydrase (*beta*-Amylase), carbohydrase (Glucoamylase, Amyloglucosidase), protease (general), protease (Bromelin), protease (Ficin), protease (Papain), protease (Pepsin), protease (Trypsin) and hydrogen peroxide; by revising the entry for calcium carbonate, copper sulfate, oxygen and compressed air, polyvinylpolypyrrolidone (PVPP), potassium carbonate and/or potassium bicarbonate and tartaric acid; and by adding the entry for dimethyl dicarbonate and milk (pasteurized) to read as follows:

§ 24.246 Materials authorized for treatment of wine and juice.

* * * * *

Materials	Use	Reference or limitation
Calcium carbonate (with or without calcium salts of tartaric and malic acids).	To reduce the excess natural acids in high acid wine, and in juice prior to or during fermentation.	The natural or fixed acids shall not be reduced below 5 g/L. 21 CFR 184.1069 and 184.1099, and 184.1191 (GRAS).
	A fining agent for cold stabilization	The amount used shall not exceed 30 lbs/1000 gals. (3.59 g/L) of wine.
Copper sulfate	To remove hydrogen sulfide and/or mercaptans from wine.	The quantity of copper sulfate added (calculated as copper) shall not exceed 0.5 part copper per million parts of wine (0.5 mg/L) with the residual level of copper not to be in excess of 0.5 part per million (0.5 mg/L). 21 CFR 184.1261 (GRAS).
Dimethyl Dicarbonate	To sterilize and to stabilize standard wine	Must meet the conditions prescribed by FDA in 21 CFR 172.133. DMDC may be added to standard wine containing between not less than 7 percent and not more than 24 percent alcohol in an amount not to exceed 200 parts per million (ppm).

Materials	Use	Reference or limitation
Milk (pasteurized)	Fining agent for white wine	The amount used shall not exceed 2.0 liters of pasteurized milk per 1,000 liters of white wine (0.2 percent V/V).
Oxygen and compressed air	May be used in juice and wine	None.
Polyvinylpolypyrrolidone (PVPP)	To clarify and to stabilize wine	The amount used shall not exceed 6.7 lbs/1,000 gals. (0.8 g/L) of wine and shall be removed during filtration. PVPP may be used in a continuous or batch process. The amount used to clarify and stabilize wine shall be included in the total amount of PVPP used to remove color from red or black wine/juice. 21 CFR 173.50.
	To remove color from red or black wine or juice	The amount used to treat the wine, including the juice from which the wine was produced, shall not exceed 60 lbs/1,000 gals. (7.19 g/L) and shall be removed during filtration. PVPP may be used in a continuous or batch process. The finished wine shall retain vinous character and shall have color of not less than 0.6 Lovibond in a one-half inch cell or not more than 95 percent transmittance per **AOAC Method 11.003–11.004 (14th Ed.). 21 CFR 173.50.
Potassium carbonate and/or potassium bicarbonate.	To reduce excess natural acidity in wine, and in juice prior to or during fermentation.	The natural or fixed acids shall not be reduced below 5 parts per thousand (5 g/L). 21 CFR 184.1619 and 184.1613 (GRAS).
Tartaric acid	To correct natural acid deficiencies in grape juice/wine and to reduce the pH of grape juice/wine where ameliorating material is used in the production of grape wine.	Use as prescribed in 27 CFR 24.182 and 24.192. 21 CFR 184.1099 (GRAS).

Par. 4. Section 24.248 is amended in the table by revising item 6 under the "reference or limitation" heading for ion exchange and by revising the entry for thermal gradient processing to read as follows;

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

* * * * *

Processes	Use	Reference or limitation
Ion exchange	* * *	* * *
		6. Treatment does not reduce the pH of the juice or wine to less than pH 2.5 nor increase the pH to more than pH 4.5.
Thermal gradient processing	To separate wine into low alcohol and high alcohol wine fractions;.	The fractions derived from such processing shall retain vinous character. Such treatment shall not increase the alcohol content of the high alcohol fraction to more than 24 percent by volume. The addition of water other than that originally present in the wine prior to processing will render standard wine "other than standard."
	To separate juice into low Brix and high Brix juice fractions.	The low Brix fraction derived from such processing may be used in wine production. The high Brix fraction derived from such processing shall not be diluted with water for use in wine production.

Par. 5. Section 24.257(a)(4) is revised to read as follows:

§ 24.257 Labeling wine containers.

(a) * * *

(4) The alcohol content as percent by volume or the alcohol content stated in accordance with 27 CFR part 4. For wine with less than 7 percent alcohol by volume stated on the label there is allowed an alcohol content tolerance of plus or minus .75 percent by volume; and

* * * * *

Dated: Jan. 22, 1992.

Daniel R. Black,

Director.

Approved : May 4, 1992.

Peter K. Nunez,

Assistant Secretary, (Enforcement).

[FR Doc. 92–12515 Filed 6–2–92; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–92–15]

Drawbridge Operation Regulations; Bayou Des Allemands, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on LA 631, across Bayou Des Allemands, mile 13.9, at Des Allemands, in St. Charles Parish, Louisiana, by requiring at least four hours advance notice for an opening of the draw. The present regulation requires that the draw shall open on signal; except that from 9 p.m. to 5 a.m. the draw shall open on signal if at least 12 hours notice is given.

This action will provide relief to the bridge owner and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396. The Comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed to navigation position is 5 feet above high tide and 8 feet above low tide. Navigation through the bridge consists of barge tows, commercial fishing boats and recreational craft, primarily fishing vessels. Data submitted by LDOTD show that during the one year period beginning April 1991 and ending March 31, 1992 the monthly average was 13 openings; approximately 1 opening every three days.

Considering the few vessels that pass the bridge, the Coast Guard feels that vessel operators should be able to give the bridge owner four hours notice for a bridge opening with little or no expense or inconvenience to themselves.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the proposed regulation should create very little or no economic hardship or inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and giving the bridge owner advance notice should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to reads as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Part 117 is amended by revising § 117.439 to read as follows:

§ 117.439 Des Allemands Bayou.

The draw of the S631 bridge, mile 13.9 at Des Allemands, shall open on signal if at least four hours notice is given.

Dated: May 14, 1992.

T.D. Fisher,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist. Acting.

[FR Doc. 92–12912 Filed 6–2–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

CGD1–92–037

Safety Zone: Mount Hope Bay, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary safety zones in Mount Hope Bay, in the vicinity of Fall River, MA, for activities associated with Fall River Celebrates America 1992, to take place July 17–19, 1992. Safety zones are proposed for two events during the weekend: For the tall ships parade on Friday, July 17, 1992, and for the fireworks display the evening of July 18, 1992. These safety zones are needed to promote the safe navigation of vessels in Mount Hope Bay in anticipation of an increased volume of vessel traffic due to spectator craft attending the events. The safety zones will serve to limit access to the areas in which each event takes place, in order to protect the event participants, as well as spectator craft and other vessels in the vicinity, from the inherent dangers of these marine events.

DATES: Comments must be received on or before July 1, 1992.

ADDRESSES: Comments should be mailed to the Commanding Officer, Marine Safety Office Providence, John O'Pastore Federal Building, Providence, RI, 02903–1790, or may be delivered to room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (401) 528–5335. The Marine Safety Office maintains a public docket for this rulemaking. Comments will become part of this docket and will

be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Tina Burke at (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (GCD1 92–037) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office Providence at the address under "ADDRESSES." If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LTJG Tina Burke, Project Manager, LCDR J. Astley, Project Counsel, District Legal Office.

Background and Purpose

Fall River Celebrates America is a festival held annually in Fall River, MA, which entails several events, both waterside and landside, throughout an entire weekend. This year's celebration will be held July 17–19, 1992. The celebration is an important event for the town of Fall River, as it draws numerous people to the area for the weekend, increasing tourism and economically benefitting the town.

The Coast Guard received applications for marine events for Fall River Celebrates America 1992 on March 26, 1992. After review of the event applications, the Coast Guard proposes to establish temporary safety zone regulations in Mount Hope Bay for the period July 17–18, 1922. These safety zones are necessary to place a measure of control over vessel movements in the vicinity of the various events in order to ensure the safety of event participants, spectator craft, and other vessels transiting the waterway. They are necessary in light of the limited size of the affected waterway and the expected number of spectator craft (more than 200 for each event), which will greatly increase the congestion in the waterway and create a larger potential for marine accidents. The waterside events include a parade of tall ships through Mount Hope Bay to the Fall River State Pier and a fireworks display in Mount Hope Bay. Marine Safety Office Providence distributed a Marine Safety Information Bulletin to persons likely to be affected by the proposed safety zone regulations on April 6, 1992. The Bulletin explained the celebration, the schedule of events for the weekend, and the Coast Guard's intention to establish safety zones around particular events. The proposed regulations provide specific guidance on safety zones that will be in effect of the period specified.

Chronologically, the events planned for this period are as follows:

(1) Tall ships parade, July 17, 1992. The parade of tall ships provides the kick-off for the Fall River Celebrates America festival. It is significant because it allows the public to view the tall ships under sail before they moor in Fall River for the weekend. The parade will gear up public interest for the upcoming weekend of events. Approximately five tall ships are expected to participate in the parade. These ships will muster just north of the Mount Hope Bridge and will transmit the Mount Hope Bay Channel, from the Mount Hope Bay Junction Lighted Gong Buoy "MH" to the Fall River State Pier. The parade is scheduled to take place between 4:30 p.m. and 6:30 p.m. The Coast Guard plans to establish a moving safety zone, from 200 yards ahead of the lead vessel in the parade, to 100 yards astern of the last vessel in the parade, and 200 yards abeam of each parading vessel. This safety zone will be in effect for the duration of the parade until each vessel is safety moored. This zone is needed to protect the tall ships, recreational boaters, spectators, and other vessel traffic from damage due to collision, or personal injury to persons onboard these vessels, that is likely when tall ships maneuver among other vessels in constricted waters.

Implementation of this zone will close the affected portions of Mount Hope Bay to navigation by deep draft vessels while the zone is in effect. Entry into the moving safety zone is prohibited unless authorized by the Captain of the Port (COTP) Providence.

(2) *Fireworks, July 18, 1992.* On the evening of July 18, 1992, Fall River Celebrates America will be sponsoring a fireworks display that will take place in Mount Hope Bay, in the vicinity of Mount Hope Bay Channel Buoy 17. Two fireworks barges will be anchored in approximate positions (41–42–42N, 71–09–52W) and (41–42–38N, 71–09–55W), from which the fireworks will be initiated. The fireworks are scheduled to take place between 9:30 p.m. and 10:15 p.m. The Coast Guard will establish a safety zone in Mount Hope Bay to encompass the area of water within a three hundred (300) yard radius around each fireworks barge. The safety zone will be in effect between 9:30 p.m. and 10:15 p.m., for the duration of the fireworks display. This safety zone is needed to protect fireworks barges and attending tugs, spectator craft, and other vessels or personnel in the area, from the hazard associated with explosive-laden barges and the display itself. Implementation of this zone will close the affected portion of the Mount Hope Bay Channel to navigation by deep draft vessels while the zone is in effect.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal because these regulations will be in effect only for small segments of a two day period, specifically for two hours on Friday, July 17, 1992, and for one hour on Saturday, July 18, 1992. The fact that the time periods for the safety zones are limited, as well as the advance notice that was given to potentially affected entities concerning the events and proposed safety zones, allow the impacted vessel traffic to schedule transits and operations around the planned activities with minimal hardship. The entities most likely to be affected are large commercial ships and barges in or outbound from Fall River terminals, fishing vessels, and recreational vessels. Only a limited number of large commercial vessels, approximately four or five, transit the impacted waters per week. Because of their limited number and the advance notice given, these vessels will not be heavily impacted. Fishing and recreational vessels have shallow drafts such that they are able to transit the waters around the regulated areas. These vessels have alternate routes available outside the main shipping channel and outside the safety zones in which they may transit or conduct operations. Furthermore, in the case of the tall ships parade safety zone,

vessels will be able to transit the area as soon as the moving zone passes. The impact that this safety zone will have on the waterway will be very short-lived.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the REGULATORY EVALUATION, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is proposed to be amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6, and 160.5.

2. A new § 165.T01–037–1 is added to read as follows.

§ 165.T01–037–1 Safety Zone: Mount Hope Bay, RI.

(A) *Location.* The following area is a safety zone: While transiting Mount Hope Bay, RI: a moving safety zone around the Fall River Celebrates America tall ships parade, extending a distance of two hundred (200) yards ahead of the lead vessel in the parade to one hundred (100) yards astern of the last vessel in the parade, and two hundred (200) yards abeam of each parading vessel. The zone of enforcement will be initiated at Mount Hope Bay Junction Lighted Gong Buoy MH (LL 17330), the start of the parade, and will end at the State Pier, Fall River, MA, after each parading vessel is safely moored.

(b) *Effective date.* This section is effective at 4:30 p.m. on July 17, 1992, and will terminate at 6:30 p.m. on July 17, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

3. A new § 165.T01–037–2 is added to read as follows:

§ 165.T01–037–2 Safety Zone: Mount Hope Bay, RI

(a) *Location.* The following area is a safety zone: The area within a three hundred (300) yard radius around each of two fireworks barges, anchored in approximate positions (41–42–42N, 71–09–52W), and (41–42–38N, 71–09–55W).

(b) *Effective date.* This section is effective while the Fall River Celebrates America fireworks are in progress, between the hours of 9:30 p.m. and 10:15 p.m. on July 18, 1992, unless terminated sooner by the Captain of the Port Providence.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: May 20, 1992.

H. D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92–12811 Filed 6–2–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[PP 0E3902 and FAP 0H5599/P545; FRL–4070–1]

RIN 2070–AC18

Pesticide Tolerances for Lambda-Cyhalothrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide lambda-cyhalothrin in or on the food commodity dried hops, that tolerances be increased for the insecticide lambda-cyhalothrin in or on the raw agricultural commodities fat of cattle, goats, horses, and sheep and milk. The proposed regulations to establish and increase maximum permissible levels for residues of the insecticide were requested pursuant to petitions submitted by ICI Agricultural Products.

DATES: Comments, identified by the document control number [PP 0E3902 and FAP 0H5599/P545], must be received on or before July 2, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 15, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: On August 21, 1990, ICI Agricultural Products, Wilmington, DE 19897, submitted pesticide petition (PP) 0E3902 proposing to increase a tolerance under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)) in or on the raw agricultural commodities fat of cattle, goats, horses, and sheep at 0.02 part per million (ppm) and milk fat at 0.25, and establish a food additive regulation under section 409(b) of the FFDCA (21 U.S.C. 348(b)) for the insecticide lambda-cyhalothrin, [1 α (S*),3 α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethycyclopropanecarboxylate, in or on the food commodity dried hops imported from Germany at 10.0 ppm. The data submitted in the petition and other relevant material have been evaluated.

The toxicology data considered in support of the tolerance include a 12-month oral toxicity study in dogs with a no-observed-effect level (NOEL) of 0.5 mg/kg/day; 24-month rat and mouse chronic feeding/oncogenicity studies with systemic NOEL's of 2.5 mg/kg/day and 15 mg/kg/day with no oncogenic effects observed at dose levels up to and including 12.5 mg/kg/day and 75 mg/kg/day, the highest dose levels tested for rats and mice, respectively. No developmental effects were observed in rats and rabbits at dose levels up to and including 15 mg/kg/day (rats) and 30 mg/kg/day (rabbits) (the highest dose levels tested). The following genotoxicity tests were negative: a gene mutation assay (Ames), a mouse micronucleus assay (other genotoxicity assays), an in vitro cytogenics assay in human lymphocytes, and a gene mutation study in lymphoma cells.

The acceptable Reference Dose (RfD) based on a NOEL of 0.5 mg/kg body weight/day from a three-generation reproduction study and a safety factor of 100 is 0.005 mg/kg body weight/day. The theoretical maximum residue contribution from the proposed tolerances is 0.000129 mg/kg body weight/day; this is equivalent to about 2.60 percent of the RfD. The Dietary Risk Evaluation System (DRES) chronic exposure analysis used tolerance level residues and 100 percent crop treated to estimate the Theoretical Maximum Residue Contribution (TMRC) for the overall U.S. population and 22 population subgroups. The TMRC for the overall U.S. population from published uses only is 0.000240 mg/kg bwt/day, which represents 4.8 percent of the RfD. The proposed use of lambda-cyhalothrin on dried hops (and the resulting secondary residues in meat and milk) would contribute an exposure of 0.000145 mg/kg bwt/day, or 2.9 percent of the RfD; this would raise the TMRC for the overall population to 0.000385 mg/kg bwt/day, or 7.7 percent of the RfD. The TMRC from published uses for the subgroup most highly exposed, nonnursing infants less than 1 year old, is 0.000962 mg/kg bwt/day, or 19 percent of the RfD. The proposed use contributes 0.000344 mg/kg bwt/day (7 percent of the RfD) and raises the TMRC to 0.001306 mg/kg bwt/day, or 26 percent of the RfD. These exposure estimates are likely to be overestimates given the assumptions used in the analysis (tolerance level residues, 100 percent crop treated). Generally speaking, the Agency has no cause for concern if anticipated residue contribution for all published and proposed tolerances is less than the RfD.

The metabolism of the chemical in plants and animals is adequately understood for this use. Any secondary residues occurring in meat and meat byproducts will be covered by existing tolerances. There is no reasonable expectation of finite residues in poultry commodities; therefore, no tolerances are necessary as this time. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. Prior to its publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail: Calvin Furlow, Public Information Branch (H7506C), Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-4432.

Based on the above information, the Agency concludes that the proposed tolerances will protect the public health and use of the pesticide in accordance with the terms of the proposed food additive regulation will be safe. The pesticide is considered capable of achieving the intended physical or technical effect. Therefore, the tolerances and food additive regulation are established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3902 and FAP 0H5599/P545]. All written comments filed in response to this document will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, agricultural commodities, food additives, peticides and pests, recording and recordkeeping requirements.

Dated: May 27, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.438 in the table therein by revising the commodities fat of cattle, goats, horses and sheep and milk to read as follows:

§ 180.438 [1α (S*),3α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cattle, fat	0.02
Goats, fat	0.02
Horses, fat	0.02
Milkfat (reflecting 0.01 ppm in whole milk)	0.25
Sheep, fat	0.02

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.1310 by adding new paragraph (b), to read as follows:

§ 185.1310 [1 α (S*),3α(Z)]-(±)-cyano (3-phenoxyphenyl)methyl 3-(2-chloro-3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate.

* * * * *

(b) A food additive tolerance is established for residues of the insecticide [1 α (S*),3 α(Z)]-(±)-cyano-(3-phenoxylphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate as follows:

Commodity	Parts per million
Hops, dried	10.0

[FR Doc. 92–12928 Filed 6–2–92; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105, 106, and 107

Implementation of the Ethics Reform Act of 1989, Title VII

AGENCY: Committee Management Secretariat (GSA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice requests public participation in the formulation of proposed General Services Administration (GSA) regulations pursuant to implementing the Ethics Reform Act of 1989 (Pub. L. 101–194), Title VII, which provides for an advisory committee known as the Citizens' Commission on Public Service and Compensation.

The Commission is responsible for recommending pay levels for Members of Congress, judges, and senior level Executive Branch officials. In addition, the Commission will review recruitment or retention problems and any public policy issues involved in maintaining appropriate ethical standards relating to any offices or positions within the Federal public service. The President shall consider the report of the Commisison and then transmit his own recommendations to Congress by January 3 of the first calendar year beginning after the date on which the Commission submits its report.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Written comments should be submitted to the Committee Management Secretariat (mailing address: General Services Administration (CAM), 1730 K Street, NW., suite 816, Washington, DC 20006). Comments will be available for examination at the Committee Management Secretariat, at the location specified above.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Neff, Committee Management Secretariat, (202) 632–1135.

SUPPLEMENTARY INFORMATION: Section 701(b) of title VII (2 U.S.C. 352) relating to the composition of the Citizens' Commission on Public Service and Compensation requires, in part, that the Administrator of General Services appoint five members of the Commission. The Act requires the procedures required under this section to be designed in such a way as to provide for maximum geographic diversity, and the selection of members by lot from among names randomly generated from voter registration lists. Other members of the Commission shall be appointed by the President of the United States, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the United States.

GSA will design the regulations in such a manner as to ensure the objectivity and randomness of the selection process. It is anticipated that this process will be complete by October 31, 1992.

Dated: May 18, 1992.

Carlene Bawden,

Associate Administrator for Administration.

[FR Doc. 92–12569 Filed 6–2–92; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL MARITIME COMMISSION

46 CFR PART 580

[Docket No. 92–25]

Regulation of Military Rates Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is considering whether military rates should be exempted from the filing requirements of section 8 of the Shipping Act of 1984 ("1984 Act ") and possibly also section 10 of that Act, or, alternatively, be made fully subject to the requirements of section 8 of the Act. The purpose of this advance notice is to solicit comments and information from the public regarding the treatment of military rates by the Commission.

DATES: Comments are due July 20, 1992.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

ADDRESSES: Comments (original and 15 copies) are to be submitted to Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L St., NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Since the end of World War II, part of the armed forces' need for ocean transportation between the United States and foreign countries has been met by U.S.-flag commercial ocean carriers. Originally, this ocean transportation was procured on behalf of the armed forces by the Army Transportation Corps. Later, this function was taken over by the Military Sea Transportation Service. Today, it is the responsibility of the Military Sealift Command ("MSC").

MSC is responsible for arranging ocean transportation services for all components of the Department of Defense ("DOD"). Although MSC can utilize commercial tariff rates and service contracts for the carriage of DOD cargo, most DOD cargo moves pursuant to rates contained in special contractual arrangements or "tenders" which MSC enters into with carriers.

These tenders are the result of a bid process. MSC is charged with selecting the bid that is "most advantageous to the United States, considering only price * * * and price related factors . . . ." 10 U.S.C. 2305(b)(3). Arrangements for the carriage of military cargo are subject to the provisions of the Cargo Preference

Act of 1904, *id.* 2631, which provides that:

> Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons.

Historically, most cases involving military rates that have come before the Commission have focused on whether the military rates resulting from this bid process were unreasonably low. Section 18(b)(5) of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. 817(b)(5) (1982), authorized the Commission to * * *

> * * * disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

There was no exception in the 1916 Act permitting ocean carriers in the U.S. foreign commerce to provide service to agencies of the government at reduced rates. In order to assure that military rates complied with the provisions of section 18(b)(5), the Commission, in 1972, adopted regulations (General Order 29) requiring military rates to be set at a level that would enable them to recover fully distributed costs. Regulations Governing Level of Military Rates, 13 S.R.R. 411 (1972). A number of proceedings were instituted pursuant to section 18(b)(5) and General Order 29, however none resulted in a final Commission decision.[1] This was largely due to the fact that the military rate tenders under investigation only remained in effect for six months. Thus the cases were rendered moot before a final decision could be issued. In addition to cases brought pursuant to section 18(b)(5) of the 1916 Act, there were other cases involving military rates brought under other sections of the 1916 Act. E.g., Violations of Sections 14 Fourth, 16 First and 17, Shipping Act, 1916, in the Nonassessment of Fuel Surcharges on Military Sealift Command (MSC) Rates Under the MSC Request for Rate Proposals (RFP) Bidding System, 15 F.M.C. 92 (1972).

General Order 29 remained in effect until 1982, when it was temporarily suspended by the Commission after the conditions which had led to its promulgation were found to no longer exist. A year later, General Order 29 was suspended indefinitely. Indefinite Suspension of Regulations Governing Level of Military Rates, 21 S.R.R. 1177 (1982). Section 20 of the Shipping Act of 1984 ("1984 Act") amended the 1916 Act to limit its scope to the domestic offshore trades. Section 18(b)(5), which only applied to the foreign trades, was repealed. No provision similar to section 18(b)(5) was included in the 1984 Act. Accordingly, the Commission rescinded General Order 29 shortly after the 1984 Act became law.[2]

Although there is no longer any statutory authority to regulate the level of military rates in the foreign trades, military rates remain subject to the prohibitions of section 10 of the 1984 Act, 46 U.S.C. app. 1709, including the anti-discrimination and anti-rebate provisions. Since 1984, there have been no proceedings brought under the provisions of section 10. The Commission has exempted military rate tenders from its regulations governing tariff notice form and content. 46 CFR 580.1(d).

The Commission is considering whether changes should be made to the regulatory scheme applicable to military rates. If the FMC's treatment of military rates is seen as making meaningful rate comparisons difficult or as being unfair, disadvantageous or prejudicial to MSC, U.S.-flag carriers or any other party, the Commission could remove format exemptions presently enjoyed by U.S.-flag operators filing military rates and require such rates to be published in exactly the same manner and format as commercial rate, *e.g.*, tariffs and service contracts.

Alternatively, if military rates do not present such difficulties or problems, or, given their nature, do not otherwise raise the sort of issues that the 1984 Act was intended to address, a full or partial exemption from 1984 Act requirements may be warranted. The exemption could be limited to the tariff filing requirements of section 8, 46 U.S.C. app. 1707, or might extend to the provisions of section 10 as well.

The Commission believes that the regulatory treatment of military rates under the 1984 Act can best be explored through the issuance of this Advance Notice of Proposed Rulemaking to solicit the views of governmental bodies, carriers, shippers, and any other interested members of the public. While the Commission requests comments on the specific issues set forth below, it also invites interested persons to submit views and information on any matter that relates to the broader issue of the FMC's treatment of military rates.

Issues Upon Which Specific Comments Are Requested

1. What is the cost of filing military tenders or quotations with the Commission?

2. Do interested parties use tenders or tariffs on file with the Commission as a source of information regarding military rates or is this information obtained directly from MSC?

3. Is the filing of a military tender or tariff with the Commission necessary in order to bring an action involving military rates under the 1984 Act?

4. Given that past proceedings have focused on the level of military rates and that the Commission no longer has any authority to regulate the level of rates in the foreign trades, is there any valid regulatory purpose in subjecting military rates to any or all of the requirements of the 1984 Act?

5. What are the differences between the transportation service provided under military tenders and the service provided to commercial customers by U.S.-flag ocean carriers pursuant to tariffs or service contracts? Is it possible to compare the two?

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[1] Docket No. 71-35, Investigation of Competitive Procurement Practices on Military Cargo; Docket No. 72-10, American Export Isbrandtsen Lines, Inc. v. Military Sealift Command; Docket No. 72-23, American President Lines, Inc., American Mail Line, Inc., Sea-Land Service, Inc., and United States Lines, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916; Docket No. 72-64, American Export Line, Inc., Sea-Land Service, Inc. and United States Lines, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo; Docket No. 72-65, American Mail Line, Inc., American President Lines and Sea-Land Service, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo; Docket No. 73-57, Sea-Land Service, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo; Docket No. 73-58, United States Lines, Inc. Violation of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo—Order to Show Cause; and Docket No. 75-14, Pacific Far East Line, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo.

[2] Section 6 of the Intercoastal Shipping Act, 1933, 46 U.S.C. 846, originally permitted carriers in the domestic offshore trades to provide transportation to the government at free or reduced rates. After repeal of section 6 in 1974, the reasonableness of certain military rates in the domestic offshore trades was challenged under section 18(a) of the 1916 Act, *id.* 817(a), in several Commission proceedings. Department of Defense and Military Sealift Command v. Matson Navigation Company, 19 F.M.C. 503, reconsideration denied, 20 F.M.C. 24 (1977); Puerto Rico Maritime Shipping Authority—Rates on Government Cargo, 21 F.M.C. 188, reconsideration denied, 21 F.M.C. 502 (1978); Sea-Land Service, Inc.—Rates on Government Cargo, 21 F.M.C. 905 (1979), and Seatrain Gitmo, Inc.—Rates on Government Cargo, 21 F.M.C. 894 (1979). Since 1979 there have been no cases brought under section 18(a) of the 1916 Act involving military rates.

6. What, if any, is the legal or economic basis for treating rates offered to MSC different from those offered commercial shippers from a regulatory perspective?

7. What, if any, would be the impediments to the Commission requiring military rate tenders to be filed as service contracts, as provided in section 8(c) of the 1984 Act? Could such arrangements be filed under section 8(a)(E) as loyalty contracts defined in section 3(14) of the Act?

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-12898 Filed 6-2-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR 391

[FHWA Docket No. MC-92-27]

Qualification of Drivers; Waiver Applications; Vision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Receipt of waiver applications; request for comments.

SUMMARY: This notice announces the receipt of applications by drivers for waiver of the FHWA's vision requirements, 49 CFR 391.41(b)(10), pursuant to the notice of intent to accept applications for waivers published in the **Federal Register** (57 FR 10295) on March 25, 1992. The FHWA seeks comments on its intent to waive its vision requirements for drivers that meet certain conditions, some of which have been changed since the March 25 notice. Under the amended conditions listed below, drivers with moving violations in the past three years may be eligible for the proposed waiver program, provided all of the proposed program's other conditions, listed below, are met. To conform with the March 25 notice and to expedite the waiver process, the FHWA will continue to accept applications for waiver of the vision requirements until September 21, 1992. After the comment period has closed and the comments have been analyzed, the FHWA will publish in the **Federal Register** a notice of final disposition on the waiver program.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Submit written, signed comments to FHWA docket No. MC-92-27, room 4232, HCC-10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. If anyone desires notification that the FWHA received their comments, they must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas or Mrs. Eliane Viner, (202) 366-2981, Office of Motor Carrier Standards, or Mr. Eric A. Kuwana or Mr. Raymond W. Cuprill, Office of Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m, e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Waiver Background

On March 25, 1992, the FHWA published a notice in the **Federal Register** (57 FR 10295) to announce its intent to accept applications for a waiver of the vision requirements, as contained in the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR 391.41(b)(10). The notice set forth a program that would waive the vision requirements for drivers who meet certain conditions. Although the March 25 notice outlined the proposed waiver program, this notice and request for comments modifies some of the program's conditions and clarifies its details.

Concurrent Rulemaking

Drivers of commercial motor vehicles have been required to meet Federal vision requirements since 1937. Although the FHWA has conducted many studies on the relationship between vision disorders and driving safety in the past twenty years, the current vision requirements have not been modified since 1971. The proposed waiver program complements a concurrent rulemaking, initiated by an advance notice of proposed rulemaking (ANPRM) on February 28, 1992 (57 FR 6793), to review the FHWA's vision requirements, as contained in the driver qualification requirements of the FMCSRs, 49 CFR part 391. Although the comment period on the ANPRM remained open until April 28, 1992, the FHWA published its intent to accept applications for waivers on March 25 to given early notice to applicants and to expedite the entire process. The proposed waiver program is not a substitute for the substantive rulemaking initiated by the ANPRM of February 28.

As part of the concurrent rulemaking process initiated by the February 28 ANPRM, the FHWA had contracted with Ketron, Inc. to study the relationship between visual disorders and commercial motor vehicle safety. Although copies of the Ketron study are now available for distribution and a copy has been placed in the docket, the FHWA believes that the study, even with public comment to the ANPRM, provides an insufficient foundation to determine the safe levels for the vision requirements for drivers. While it is the FHWA's intent to analyze the comments to the ANPRM of February 28, the Ketron study illuminated a problem—the lack of empirical data on the link between vision disorders and commercial motor vehicle safety. As explained in the notice of March 25, the proposed waiver program will enable the FHWA to conduct a study comparing a group of experienced, visually deficient drivers with a control group of experienced drivers who meet the Federal vision requirements. This study will provide the empirical data that the Ketron study has not.

Statutory Authority

Congress authorized the Secretary of Transportation, after notice and an opportunity for comment, to waive application of any regulation with respect to any person or class of persons if the Secretary determines that such a waiver (1) is not contrary to the public interest and (2) is consistent with the safe operation of commercial motor vehicles. This authority was granted by section 206(f) of the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832, 2835, 49 U.S.C. app. 2505(f)). The FHWA, in proposing the waiver program, does so with the belief that the necessary findings can be made for the waiver program.

Although the March 25 notice of intent to accept applications for waivers barred applications from persons with a conviction for a single moving violation in a commercial motor vehicle within the past four years, the applications and inquiries received have demonsrated a need to relax that prohibition. First, all driving records, and other written documentation, are required to go back for only three years instead of four years. Applicants with no more than two moving violations in a commercial motor vehicle may now be eligibile to apply to the proposed program under the amended conditions. These conditions are only proposed and may undergo

further change before finally approved after the public comment period. The FHWA continues to believe that the stringent conditions, as proposed and listed below, will ensure that only drivers whose visual deficiency is limited to one eye, which meets the present standard in many States, and who have demonstrated their ability to safely operate a commercial motor vehicle for a number of years will be eligible for a waiver.

The applicants are required to have three years of driving experience in a CMV with a record that shows (1) No involvement in a reportable accident in a CMV in which the applicant was cited for a moving traffic violation; (2) no suspensions or revocations of their driver's license for violations in any motor vehicle; (3) no convictions for a disqualifying offense, as described in 49 CFR 383.51, (i.e. (i) driving a commercial motor vehicle while under the influence of alcohol or a controlled substance; (ii) leaving the scene of an accident involving a commercial motor vehicle; and (iii) the commission of a felony involving the use of a commercial motor vehicle.) or more than one serious traffic violation, as that term is defined in 49 CFR 383.5, (i.e. excessive speeding, reckless driving, improper or erratic lane changes, following the vehicle ahead too closely, or a violation arising in connection with a fatality, while driving a commercial motor vehicle); and (4) no more than two convictions for any other moving traffic violations while driving a commercial motor vehicle. These conditions will limit the eligible pool to responsible, low-risk drivers.

The FHWA believes that the waiver program's conditions are cautiously designed and will enable the FHWA to find that such waivers are "consistent with the safe operation of commercial motor vehicles." The FHWA believes, that because it will be consistent with the national policy to facilitate the employment of qualified individuals with disabilities, the waiver program will be in the "public interest."

Applications

Many of the applications received to date are missing information critical to any future decision on whether to grant a waiver for that individual. The FWHA suggests that future applicants use plain paper (there is not application form), include all the supporting documents (such as the DMV record), and use the format set out below.

Vital Statistics

Name of Applicant: (First name, middle initial, last name)
Address: (House number and street name) City, State, and zip code:
Telephone number: (Area code and number)
Sex: (Male or female)
Date of birth: (Month, day, and year)
Age:
Social Security number:
State driver's license number: (Issuing State and license number)
Driver's license classification code:
Driver's license date of issuance: (Month, day, and year)

Experience

Number of years driving straight trucks:
Approximate number of miles driving straight trucks:
Number of years driving tractor-trailer combinations:
Approximate number of miles driving tractor-trailer combinations:
Number of years driving buses:
Approximate number of miles driving buses:

Anticipated Post-Waiver Operations

Employer's name: (If applicable)
Employer's address:
Employer's telephone number:
Type of vehicle to be operated: (Straight truck, tractor-trailer combination, bus)
Commodities to be transported: (e.g., general freight, liquids in-bulk (in cargo tanks), steel, dry-bulk, large heavy machinery, refrigerated products)
States in which you will drive:
Estimated number of miles you will drive per year:
Estimated number of daylight driving hours per week:
Estimated number of nighttime driving hours per week:

Document in Writing

(1) You now possess a valid "intrastate" CDL or possessed a license to operate a CMV (non-CDL) after April 1, 1990 (e.g., a photostatic copy of the driver's license or certification from the State licensing agency);

(2) You operated a CMV for the three year period immediately preceding: (i) the date of this application if you are currently licensed to drive a CMV; or (ii) the date (after April 1, 1990) you last held a valid license to operate a CMV (for example, a signed statement from the applicant's employer or a certified statement from the applicant, in the event the applicant was operating as a motor carrier);

(3) Your driving record for that three year period:

(A) Contains no suspensions or revocations of your driver's license for the operation of any motor vehicle (including your personal vehicle);

(B) Contains no involvement in a reportable accident for which you received a citation for a moving traffic violation;

(C) Contains no convictions for a disqualifying offense or more than one serious traffic violation while driving a commercial motor vehicle, which disqualified, or should have disqualified, the applicant in accordance with the driver disqualification provisions of 49 CFR 383.51.

(D) Contains no more than two convictions for any other moving traffic violations in a commercial motor vehicle.

(4) You have been examined by an ophthalmologist or an optometrist and that person, in writing, has:

(a) Identified and defined the visual deficiency;

(b) Certified that the visual deficiency has not worsened since the last vision examination required by your State's driver licensing agency;

(c) Certified that your visual acuity is at least 20/40 (Snellen), corrected or uncorrected, in the better eye; and

(d) Certified that in his/her opinion, you are able to safely perform the driving tasks required to operate a commercial motor vehicle.

There are a few application details which need to be clarified. If the applicant is currently licensed to drive a CMV (*e.g.*, holds a valid Commercial Driver's License), the four requirements in the "document in writing" section must go back three years from the date of the application for waiver. If the applicant is not currently licensed to drive a CMV, the four requirements in the "document in writing" section must go back three years from the date (after April 1, 1990) when the applicant last possessed a valid license to operate a CMV. The documentation required above must be in writing, and where applicable, be on forms or letterhead of the State licensing agency or the reviewing ophthalmologist or optometrist.

As examples of the applications received to date, the FHWA cites the following information taken from two applications for waiver of the vision requirements. Mr. Jimmy D. Hamilton of Houston, Texas, has driven a CMV for more than twenty years. Because of amblyopia, he has 20/200 (Snellen) vision in his right eye. His vision in the left eye is 20/20 uncorrected, and he has full and unrestricted fields of vision. Ms. Alyce L. Hill of Crump, Tennessee, has driven a CMV over 500,000 miles in seven years of operation. Similar to Mr. Hamilton, she has amblyopia in her left eye resulting in 20/200 (Snellen) vision.

Her vision in the right eye is 20/15 uncorrected, and she has a 180 degree field of vision. According to their applications, neither driver has been at fault for an accident or received a citation for a moving traffic violation during the past three years. These drivers are examples of the safe, experienced drivers who would benefit greatly from the proposed waiver program.

Waivers

The FHWA emphasizes that, under the changed conditions listed above, drivers with moving violations during the past three years may be eligible for the proposed waiver program. The waiver issued to any driver will contain all the pertinent conditions on its face.

Request for Comments

The FHWA requests additional comments from interested parties, medical specialists, motor carriers, associations, and the public on whether the proposed waiver program would be in the public interest and consistent with the safe operation of commercial motor vehicles. Please submit comments to the address listed above. After the comment period to this notice closes, the FHWA will review the dockets from the ANPRM and this notice. The FHWA will then issue a notice of final disposition on the waiver program. (49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48)

Issued on: May 29, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-12978 Filed 6-2-92; 8:45am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC-100 (Sub. 6)]

Single State Insurance Registration; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking; extension of comment due date.

SUMMARY: By notice published at 57 FR 20072 (May 11, 1992) the Commission asked interested persons to submit comments by June 10, 1992, on the formulation of revised regualtions for use in registering interstate operating authority with a single State insurance registration system. By letters filed May 22, 1992, the National Conference of State Transportation Specialists (NCSTS) and the Base State Registration Plan have asked the Commission to extend the comment period by 30 days to July 10, 1992. Petitioners state they soon will be attending the NCSTS annual meeting, which will provide an opportunity for comments to be developed on administering a new single State insurance registration program. The 30-day extension will be granted.

DATES: Comments are due July 10, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. MC-100 (Sub-No. 6) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Kenneth H. Schwartz: (202) 927-5316

or

Richard B. Felder: (202) 927-5610 (TDD for the hearing impaired: (202) 927-5721).

Decided: May 29, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-12961 Filed 6-2-92; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 57, No. 107
Wednesday, June 3, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 91-0 N]

National Advisory Committee on Microbiological Criteria for Foods; Renewal

This notice announces the renewal of the National Advisory Committee on Microbiological Criteria for Foods. The Committee is being renewed in cooperation with the Department of Health and Human Services (HHS), and was recommended by a 1985 report of the National Academy of Sciences (NAS) Committee on Food Protection, Subcommittee on Microbiological Criteria, "An Evaluation of the Role of Microbiological Criteria for Foods."

USDA is charged with the enforcement of the Federal Meat and Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). Under these Acts, USDA is responsible for the wholesomeness and safety of meat, poultry, egg products and products thereof intended for human consumption. Similarly, the Secretary of HHS is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act. Under this Act, HHS is responsible for ensuring the safety of human foods and animal feeds.

In order to continue to meet the responsibilities under the FMIA, PPIA, EPIA, and the FFDCA, the National Committee on Microbiological Criteria for Foods is being renewed. The Committee will be tasked with advising and providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been processed using good manufacturing practice.

Renewal of this Committee is in the public interest because the development of a sound public policy in this area can best be accomplished by a free and open exchange of information and ideas among Federal, State, and local agencies; the industry; the scientific community; and other interested parties.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of HHS. Because of their interest in the microbiological criteria for foods, advice on membership appointments will be requested from the Department of Commerce's National Marine Fisheries Service, and the Department of Defense's Army Surgeon General's Office. Nominations for membership are based primarily on expertise in food science, microbiology, and other relevant disciplines.

For additional information, please contact Ms. Rhonda S. Nally, Director, Executive Secretariat, USDA, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 720-9150.

Comments on this renewal may be sent to the contact person listed above.

Done in Washington, DC, this 21st day of May 1992.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 92-12922 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-37-M

Agricultural Marketing Service

[TB-92-15]

Burley Tobacco Advisory Committee—Notice of Committee Renewal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of committee renewal.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has renewed the Burley Tobacco Advisory Committee for an additional period of 2 years.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, AMS, USDA, 300 12th Street, SW., room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 205-0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Assistant Secretary for Marketing and Inspection Services, recommends opening dates and selling schedules for the burley marketing area which aid the Secretary in making an equitable apportionment and assignment to tobacco inspectors. The Committee consists of 39 members; 21 producers, 10 warehousemen, and 8 buyers, representing all segments of the burley tobacco industry and meets at the call of the Secretary. The Secretary has determined that renewal of this Committee is in the public interest.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. app.).

Done in Washington, DC, this 26th day of May, 1992.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 92-12923 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-02-M

[TB-92-12]

Flue-Cured Tobacco Advisory Committee—Notice of Committee Renewal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of committee renewal.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has renewed the Flue-Cured Tobacco Advisory Committee for an additional period of 2 years.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, AMS, USDA, 300 12th Street, SW., room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 205-0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Assistant Secretary for Marketing and Inspection Services, recommends opening dates and selling schedules for the flue-cured marketing area which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 39 members; 21 producers, 10 warehousemen, and 8 buyers, representing all segments of the flue-cured tobacco industry and meets at the call of the Secretary. The

Secretary has determined that renewal of this Committee is in the public interest.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. app.).

Done in Washington, DC, this 26th day of May, 1992.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 92-12924 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Research Service

Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agriculture Research Service, intends to grant to Crop Genetics International, Hanover, Maryland, an exclusive license to U.S. Patent Application Serial No. 07/633,815, "Benomyl Tolerant Strains of the Fungus *Verticillium lecanii* and Methods of Use for Biocontrol," filed December 26, 1990, and U.S. Patent Application Serial No. 07/645,438, "Method and Composition for Controlling the Soybean Cyst Nematode with a Sex Pheromone and Analogs Thereof," filed January 24, 1991. Notice of Availability for both inventions was given on April 3, 1991, in the *Federal Register*.

DATES: Comments must be received August 3, 1992.

ADDRESSES: Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC-W, Beltsville, Maryland 20705-2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: COMM: 301-504-6786, (FTS) 8-301-504-6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as said company has submitted a complete and sufficient application for a license.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 92-12878 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-03-M

Foreign Agricultural Service

Sharing of United States Agricultural Expertise with Emerging Democracies

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the contact point within the U.S. Department of Agriculture with respect to activities to be pursued in order to share U.S. agricultural expertise with emerging democracies.

DATES: This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Coordinator, Eastern Europe and Soviet Secretariat, Foreign Agricultural Service, U.S. Department of Agriculture, room 6506 South Building, Washington, DC 20250; Tel. (202) 720-0368,Fax (202) 690-4369.

SUPPLEMENTARY INFORMATION: This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The Food, Agriculture, Conservation, and Trade Act of 1990, as amended (1990 Act), provides, in part, for the sharing of United States agricultural expertise with emerging democracies. Subsection (f) of section 1542 of the 1990 act provides that an emerging democracy means any country that the President determines is taking steps toward (1) political pluralism, based on progress toward free and fair elections and a multi-party political system; (2) economic reform, based on progress toward a market-oriented economy; (3) respect for internationally recognized human rights; and (4) a willingness to build a friendly relationship with the United States. Most of the countries are in Eastern Europe and the newly independent States of the former Soviet Union.

Specifically, subsection (d) of section 1542 of the 1990 Act provides that, for each of the ficsal years 1991 through 1995, the Secretary, in order to develop, maintain, or expand markets for United States agricultural products, is directed to make available to at least three emerging democracies in each fiscal year the expertise of the United States to assess, recommend, and identify projects to enhance their food and rural business systems needs. Subsection (d) of section 1542 provides that these assessments, recommendations, and identifications will be made by teams consisting primarily of agricultural consultants and government officials, expert in assessing the food and rural business systems of other countries, who will be chosen by, and receive assistance from, the Secretary. The authority to choose assessment team members has been delegated to the Administrator, Foreign Agricultural Service (FAS).

An assessment team will travel to an emerging democracy to conduct assessments, make recommendations, and identify opportunities and projects which will provide for the development, maintenance, or expansion of markets for United States agricultural exports. Each team will report its findings to the advisory committee (composed of representatives of the various sectors of the food and rural business systems of the United States who will be selected in accordance with the provisions of the Federal Advisory Committee Act) which will advise the Secretary as to which recommendations, opportunities, and projects should receive technical assistance to bring about their implementation. If the Secretary determines that the Department does not possess the expertise to provide such technical assistance, the Department will either contract, enter in a cooperative agreement, or request participation from the public in some other form to provide the technical assistance needed.

Subsection (d) of section 1542 of the 1990 Act also provides that the Secretary shall provide the necessary subsistence expenses in, and the transportation expenses to, the United States of individuals designated by emerging democracies to consult with food and rural business systems experts in the United States to enhance such systems in the emerging democracies. The non-governmental experts with whom the individuals designated by the emerging democracies would be consulting are requested to share in the costs incurred by such individuals. Subsection (d) of section 1542 of the 1990 Act further provides that the Secretary provide for necessary

subsistence expenses in emerging democracies and necessary transportation expenses to emerging democracies of United States agricultural producers and other individuals knowledgeable in agricultural and agribusiness matters to assist in transferring their knowledge and expertise to entities in emerging democracies.

Accordingly, the Administrator, FAS, hereby requests experts in the areas of assessing the food and rural business systems of other countries who are interested in (1) participating in an assessment team, (2) consulting with, and sharing in the costs of, individuals designated by emerging democracies to consult with such experts in the United States about enhancing such systems in emerging democracies, or (3) transferring their agricultural and agribusiness knowledge and expertise to emerging democracies to contact the Eastern Europe and Soviet Secretariat at the address and phone number listed above.

Signed At Washington, DC on May 21, 1992.

Duane Acket,

Administrator, Foreign Agricultural Service.

[FR Doc. 92-12877 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-10-M

Federal Crop Insurance Corporation

[Doc No. 0536s]

Request for Comments on the Insurability of Acreage Which Is Destroyed or put to Another use To Comply With Other U.S. Department of Agriculture (USDA) Programs

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice to extend the time allowed for comments regarding acreage which is destroyed or put to another use to comply with other U.S. Department of Agriculture (USDA) programs. FCIC, in seeking public comment regarding its intent to enforce its policy provisions regarding payment of premium on acreage which is destroyed or put to another use to comply with other USDA programs, is extending the comment period provided by the original public notice published in the **Federal Register** on April 30 1992, at 57 FR 18462.

EXTENDED DATE: Written comments, data, and opinions on this notice must be submitted not later than August 31, 1992, to be sure of consideration.

ADDRESSES: Written comments on this notice should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (703) 235-1168.

SUPPLEMENTARY INFORMATION: The original notice for public comment published at 57 FR 18462, provided that written comments would be accepted until not later than June 1, 1992. Several commenters have requested additional time to further study the issue. FCIC has determined to grant such additional time and publishes this notice for that purpose.

In order to fully inform the reader, FCIC herewith republishes the background information appearing in the original notice, as follows:

FCIC crop insurance policies provide protection for crops from the date they are planted to the time they are damaged, harvested, or the insurance period ends. This insurance protection is provided in exchange for a premium paid by the insured farmer. If the crop is damaged beyond the policy's guarantee threshold, an indemnity is paid to the farmer.

Under the terms and conditions of each crop insurance policy, the premium is earned and payable at the time of planting. As an accommodation to farmer cash flow considerations, FCIC has historically permitted premiums to be paid at the time of harvest.

Crop insurance policies also require an insured farmer to notify the insurer of any intent to abandon, destroy, or convert the crop to another use. This notification enables the insurer to assess the status of the crop, anticipated production, and the level of indemnity if one is required.

FCIC has identified a situation which does not appear to be consistent with intended crop insurance terms and conditions. This situation involves wheat, and other similar crops, which are planted, insured, and then subsequently destroyed to comply with other USDA requirements, or converted to other uses such as grazing when market prices for cattle are attractive.

In this situation, a past practice has developed which permitted farmers to plant wheat, obtain insurance protection as of the planting date, receive insurance coverage for several months, and then decide to destroy the acreage to comply with other USDA programs or graze the wheat. When the acreage was destroyed or grazed, the farmer was permitted to revise the required acreage report after the final reporting date and was not required to pay the premium for the insurance protection received.

This practice violates crop insurance terms and conditions in several ways:

(1) Premiums are earned and payable at the time of planting. It is not appropriate to waive premiums after coverage has been provided. To do so is tantamount to providing insurance policy protection for free.

(2) The final acreage report date establishes the commitment the insurer makes to the farmer and the premium the farmer must pay. The insurer is not able to unilaterally alter the insurance commitment after the final acreage report date, nor should the farmer be able to do so.

(3) The farmers decision to abandon, destroy, or convert acreage to another use requires notice to the insurer to enable the insurer to assess the status of the crop. Farmers need to adhere to this requirement.

(4) This practice is not actuarially sound nor consistent with insurance principles. Adverse selection against the insurer results when indemnities are required for crop failure and no premiums are paid for crop success on acreage converted to another use.

FCIC recognizes that there are practical reasons for farmers to support continuation of this practice. Clearly, the free insurance protection is attractive. The ability to judge the relative merits of crop insurance, other USDA programs, or other uses (grazing) at a time when crop and market conditions are known, is attractive to farmers. However, this practice places insurers in serious financial jeopardy.

As a result, FCIC is providing advance notice of plans to enforce these crop insurance policy terms, beginning with its 1993 crop year. Henceforth, FCIC plans to require premiums to be paid for the acreage insured as of the final acreage reporting date. FCIC plans to assess production to count at the guarantee level for any acreage destroyed, or converted to another use, when proper and timely notice is not given by the insured farmer.

FCIC is mindful that there may be other methods available to address this situation. In order to reach a determination which is equitable for insured farmers, the insurance industry, FCIC and the taxpayer, FCIC is seeking comments from all interested parties. Written comments should be sent to Peter F. Cole, Secretary, Federal Crop

Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

Written comments must be received by FCIC not later than August 31, 1992, to be sure of consideration. All written comment received pursuant to this notice will be available for public inspection and copying in the Office of the Manager at the above address, during regular business hours, Monday through Friday.

Done in Washington, DC, on May 18, 1992.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-12952 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-08-M

Forest Service

Proposed Valbois Resort, Boise National Forest, Cascade Reservoir, Valley County, Idaho

AGENCY: Forest Service (USDA).

ACTION: Notice of intent to prepare a supplement to the final environmental impact statement (EIS) for Valbois, the resort at Cascade Lake, Valley County, Idaho.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Forest Service will serve as the lead agency in the preparation of a supplement to the final EIS for a resort development, Valbois, proposed for development on National Forest System (approximately 2,800 mountainside acres), Bureau of Reclamation (Reclamation) administered (about 75 shoreline acres), and private (580 or more acres) lands located on the west side of Cascade Reservoir in south-central Idaho. The resort, as presented by the proponents for consideration in the final EIS, would be a year-round destination resort including land and water related recreation opportunities, lodging, service and support facilities, and commercial operations.

Reclamation was a cooperating agency in the EIS concerning the proposed resort. Reclamation will also be a cooperating agency in the preparation of the supplement. Because of the significance of issues related to the shoreline development and Cascade Reservoir operation and use, Forest Service and Reclamation will jointly guide the preparation, content, and processing of the supplement to the final EIS. The U.S. Army Corps of Engineers has also requested to be a cooperating agency in the supplement preparation in relation to its Clean Water Act permitting responsibilities. The decisions to be made by the participating agencies will be whether or not to authorize construction and operation of private recreation facilities on the Federal lands referenced above, and if authorized, the extent and location of the facilities.

SUBMIT WRITTEN COMMENTS TO: Mr. Ronn Julian, District Ranger, Cascade Ranger District, Boise National Forest, P.O. Box 696, Cascade, ID 83611

FOR FURTHER INFORMATION CONTACT THE ABOVE, OR: Mr. Douglas James, Regional Environmental Officer Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, ID 83724

SUPPLEMENTARY INFORMATION: The final EIS for the Valbois proposal was filed January 18, 1991. Forest Service issued its Record of Decision (ROD) with the final EIS. Reclamation's ROD was issued September 11, 1991, following completion of the Forest Service appeal process. Neither Forest Service or Reclamation approved an alternative that provides for development. Instead, they decided to allow the Valbois proponents to proceed with further studies and planning to provide further specific information and revised or enhanced development alternatives that could be further evaluated for technical and environmental soundness. No construction activity has been permitted by either agency. Forest Service proposed to use its master planning processes to address site specific development considerations. Reclamation agreed to use the master planning process provided it would produce the complete and detailed information needed to evaluate the proposed resort's impact on the environment and other public uses of Reclamation administered resources in the Cascade area. The RODs also required that further environmental evaluation, review, and National Environmental Policy Act (NEPA) compliance would be accomplished prior to any decision on the appropriateness of proceeding with resort development on the federal lands.

Alternatives: The supplement to the final EIS will consider a wide range of alternatives. The following list is a result of consideration of comments received during and subsequent to the final EIS process. All of these and others that may be suggested will be considered in the public scoping process, joint agency review of the master planning findings, and the development and public review of the supplement to the final EIS. Forest Service and Reclamation have not designated a preferred alternative.

- The Valbois proponents proposed development. It will include modifications to meet environmental and technical concerns presented in the RODs and master planning approval documents; other changes resulting from master planning activities; and commitment to mitigation measures and monitoring requirements.
- No Action. Use of Federal lands for the proposed resort would not be permitted. The Valbois proponents indicate that the four season resort concept will not be implementable without approval from both Forest Service and Reclamation to use Federal lands in the development.
- Alternative resort sites. Consideration will be given to other locations at which resort facilities similar to all or parts of the Valbois proposal could be developed that would serve the same publics.
- Resort at the Valbois site without resort related shoreline facilities. No marina or other lakefront facilities would be constructed by the proponents at the proposed Valbois site. The rest of the Valbois proposal would be developed essentially as presented by Valbois proponents.
- Other alternative resort facility mixes. A resort at the Valbois site with reduced emphasis on waterfront, skiing, residential or other facilities.

Scoping: The range of alternatives proposed for consideration will be subject to review, comment, additions, and revisions by the public and other agencies and organizations during a scoping period that begins with this notice and will continue for several months as the Valbois master planning process is carried out. Public meetings will be scheduled during the scoping period and announced by letter and through news organizations in southwestern Idaho. Written comments concerning the proposed development, alternatives, and related environmental issues are invited at any time. Please provide them to the Cascade District Ranger at the address provided above.

Anyone interested in more information concerning the Valbois proposal, the studies underway, or the environmental issues should contact the Forest Service or Reclamation offices listed above. The agencies encourage comment from individuals, governmental agencies, and organizations that will assist them in the analysis and decision-making processes related to the Valbois proposal.

RESPONSIBLE OFFICIAL: The responsible official for the Forest Service is the Forest Supervisor, Boise National Forest.

A schedule for filing and distribution for public review of the draft supplement to the final EIS is not available. Progress in the Valbois master planning process and the scoping activities will dictate the timing of the document. It is probable that the earliest date for issuing the draft supplement for public review would be in the spring of 1993.

When the supplement to the final EIS is issued, the comment period will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be the the most helpful, comments on the draft supplement to the final EIS should be as specific as possible and may address the adequacy of the supplement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA [40 CFR 1503.3]).

In addition, Federal court decisions have established that a reviewer of draft NEPA compliance documents must structure their participation in the environmental review of a proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yanker, Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after the completion of the final NEPA compliance document. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the agency or agencies at a time when it can meaningfully consider them and respond to them in the final document.

Dated: May 28, 1992.

Stephen P. Mealey,

Forest Supervisor, Boise National Forest.

[FR Doc. 92-12899 Filed 5-29-92; 8:45 am]

BILLING CODE 3410-11-M

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, June 16, 1992, 9 a.m., to 11:30 a.m., and in Alexandria, Virginia, June 17, 1992, 8 a.m., to 5 p.m.; and June 18, 1992, 8 a.m. to 12 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is for the Committee to begin development of the National Urban and Community Forestry Action Plan and develop criteria for the urban and community forestry challenge cost-share program. William Kruidenier of the International Society of Arboriculture will Chair this meeting which is open to the public. However, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring urban and community forestry matters to the attention of the Committee may file written statements with the Committee before or after the meeting.

DATES: The meeting will be held June 16, 1992 through June 18, 1992.

ADDRESSES: The meeting will be held at the USDA Administration Building, Williamsburg Conference Room, 12th and Jefferson Drive SW., Washington, DC, June 16, 1992, and at the Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia, June 17 and 18, 1992.

Send written statements to Brian McGuire, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090-6090, or phone (202) 205-1689.

FOR FURTHER INFORMATION CONTACT: Brian McGuire, Cooperative Forestry Staff (202) 205-1689.

Dated: May 29, 1992.

F.A. Dorrell,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 92-12925 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-508-604]

Industrial Phosphoric Acid From Israel; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial phosphoric acid from Israel. The review covers one manufacturer/exporter of this merchandise to the United States and the period August 1, 1990 through July 31, 1991.

The company under review, Haifa Chemicals (Haifa), did not respond to the Department's questionnaire. Therefore, we are using best information otherwise available for cash deposit and appraisement purposes. As best information for Haifa, we preliminarily determine the dumping margin to be 6.82 percent *ad valorem*, the highest dumping margin for any company under the order.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 41506) of the antidumping duty order on industrial phosphoric acid from Israel (52 FR 31057; August 19, 1987) for the period August 1, 1990 through July 31, 1991. On August 27, 1991, the petitioners, FMC Corporation and Monsanto Company, requested an administrative review of two manufacturers/exporters, Negev Phosphates, Ltd. and Haifa Chemicals Ltd. On August 30, 1991, Negev Phosphates (Negev) also requested a review. We initiated the review of the two manufacturers/exporters on September 24, 1990 (54 FR 39032). Subsequent to the initiation of this administrative review, Negev was revoked from the antidumping duty order in the final results of the previous administrative review (57 FR 10008). As such, the review with respect to Negev is terminated. The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA). This merchandise is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Haifa Chemicals, Ltd., a manufacturer/exporter to the United States of Israeli industrial phosphoric acid, and the period August 1, 1990 through July 31, 1991. Haifa did not respond to the Department's questionnaire. Therefore, we used best information available for assessment of antidumping duties and cash deposit purposes. Best information is the highest margin for a company under the order, 6.82 percent.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the period August 1, 1990 through July 31, 1991:

Manufacturer/exporter	Margin (percent)
Haifa Chemicals	6.82

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act; (1) The cash deposit rate for the reviewed companies which remain subject to the order will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3), if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firms or any previously reviewed firm will be the "All Others" rate established in the final results of the previous administrative review, since we do not use best information available rates in establishing the all other rate. This rate represents the highest rate for any firm (whose shipments to the United States were reviewed) in the most recent administrative review, other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until the publication of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 29, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-12974 Filed 6-2-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-806, A-437-802]

Initiation of Antidumping Duty Investigations; Sulfanilic Acid From India and the Republic of Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Stefanie Amadeo, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1756 or (202) 377-1174, respectively.

INITIATION OF INVESTIGATIONS:

The Petitions

On May 7, 1992, we received petitions filed in proper form by R-M Industries (petitioner). In accordance with 19 CFR 353.12, the petitioner alleges that sulfanilic acid from India and the Republic of Hungary (Hungary) is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petitions because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

The products covered by these investigations are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and refined sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble material present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States (HTSUS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, classifiable under the HTSUS subheading 2921.42.24.20, contains 98

percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials. Refined sodium salt of sulfanilic acid (sodium sulfanilate), classifiable under the HTSUS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

India

Petitioner based its estimates of United States price (USP) on quoted prices for all three grades of sulfanilic acid, c&f U.S. port of entry. According to petitioner, the price quotations are for subject merchandise which was sold in the United States after importation, by or for the account of the exporter; therefore, petitioner calculated exporter's sales price (ESP) based on c&f U.S. port of entry price quotations. Petitioner reduced the quoted USPs for foreign inland freight, foreign handling, ocean freight, and U.S. brokerage and handling charges. Petitioner also reduced the quoted USPs for commissions incurred in the United States. No further adjustments were made to the quoted USPs.

Petitioner's estimate of foreign market value (FMV) is based on f.o.b. observed prices in India for all three grades of sulfanilic acid. No adjustments were made to the observed Indian prices.

The Republic of Hungary

Petitioner based on its estimate of USP on the f.a.s. import values of sulfanilic acid, as reflected in official import statistics. To arrive at the ex-factory USP, petitioner subtracted foreign handling and inland freight charges from the import values. No further adjustments were made to the estimated USP.

Petitioner contends that the FMV of Hungary-produced imports subject to this investigation must be determined in accordance with section 773(c), concerning non-market economy (NME) countries. Pursuant to § 771(18), Hungary is presumed to be a NME and the Department has treated it as such in previous investigations (see, Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Hungarian People's Republic, 52 FR 17428, (May 8, 1987)). Parties will have the opportunity to raise this issue and provide relevant information and argument on it and on whether FMV should be based on prices or costs in the NME in the course of this investigation. The Department further presumes, based on the extent of central control in a NME, that a single antidumping margin, should there be one, is appropriate for all exporters. Only if individual NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific rates. (See, final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588, (May 6, 1991), for a discussion of the information the Department considers appropriate in this regard.)

In accordance with section 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the Hungarian government has selected which factories produce for the United States, for purposes of this investigation we intend to base FMV only on those factories in Hungary which are known to produce sulfanilic acid for export to the United States.

Petitioner calculated FMV on the basis of the valuation of the factors of production. In valuing the factors of production, petitioner used Malaysia as a surrogate country. For purposes of this initiation, we have accepted Malaysia as having a comparable economy and being significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioner used its own factors for raw material inputs, electricity, and fuel oil for constructed value (CV). The raw material and energy factors for technical and sodium salt are based on petitioner's actual experience during 1991. The raw material and energy factors for refined grade sulfanilic acid are the same as petitioner actually experienced from 1986 through 1989 when this product was produced by petitioner. Overhead expenses are expressed as a percentage of labor, raw materials, electricity and fuel oil as experienced by petitioner. The labor factors for all three grades are based on petitioner's experience.

Petitioner based labor and electricity values on wage rates and energy rates in Malaysia. Since fuel oil is a world commodity, petitioner based fuel oil cost on the actual cost incurred by petitioner. Petitioner based the value of raw material costs for caustic soda, sulfuric acid, and aniline on Malaysian values. Petitioner based raw material costs for activated carbon on its own costs for 1991.

Pursuant to section 773(c), petitioner added the statutory minima of ten percent for general expenses and eight percent for profit to CV.

Petitioner alleges dumping margins ranging from 60.6% to 114.8% for sulfanilic acid from India, and 58.6% for Hungary. We recalculated the dumping margin for Hungary in order to correct a mathematical error by petitioner; the recalculated margin is 58.14%.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of the subject merchandise from Hungary.

Initiation of Investigations

We have examined the petitions on sulfanilic acid from India and Hungary, and have found that the petitions meet the requirements of 19 CFR 353.13(a). Therefore, we are initiating antidumping duty investigations to determine whether imports of sulfanilic acid from the above-referenced countries are being, or are likely to be, sold in the United States to less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the International Trade Commission

The ITC will determine by June 22, 1992, whether there is a reasonable indication that imports of sulfanilic acid from India and/or Hungary are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed to conclusion in accordance with the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-12977 Filed 6-2-92; 8:45 am]

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Preliminary Determinations of Sales at Less Than Fair Value: Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium From Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Sullivan or Carole A. Showers, Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202 377-0114 or 377-3217, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). Because respondents failed to provide adequate information in a timely manner, we have based our preliminary LTFV calculations on the best information otherwise available (BIA). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. In addition, we preliminarily determine that uranium from Armenian, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan is not being, nor is it likely to be, sold in the United States at less than fair value, as provided for in section 733 of the Act.

Case History

Since the publication of the notice of initiation in the **Federal Register** (56 FR 63711, December 5, 1991), the following events have occurred.

A. General

On December 10, 1992, the Department received a letter of appearance on behalf of Techsnabexport Ltd. (Tenex), the sole exporter of the subject merchandise during the period of investigation, NUEXCO Trading Corporation (NUEXCO), and Global Nuclear Services and Supply Ltd. (GNSS) (collectively referred to herein as Tenex).

On December 23, 1991, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On December 25, 1991, the Union of Soviet Socialist Republics (USSR) dissolved and the United States subsequently recognized the 12 newly independent states (NIS) which emerged. The Russian Federation was the only NIS which had a diplomatic facility in the United States at that time. In early January 1992, the U.S. State Department informed us that the Russian Embassy was acting as a liaison to the other NIS. On January 16, 1992, the Department presented antidumping duty questionnaires to Tenex and to the Embassy of the Russian Federation for service on the Russian Federation, the Russian Ministry of Atomic Power and Industry, and the other eleven constituent republics of the former USSR (Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan).

We were notified on January 23, 1992, by officials of the Russian Embassy, of their willingness to transmit the questionnaires to all other NIS except Byelarus and Ukraine, which maintained United Nations missions in New York. We served the questionnaire on those missions on January 29, 1992. On January 30, 1992, the Department sent questionnaires to the United States Embassy in Moscow which serviced copies of the questionnaire on the permanent representative to the Russian Federation of each NIS. These questionnaires were served on February 10 and 11, 1992.

B. Requests for Extension

On February 3, 1992, pursuant to a request by Tenex, the Department extended its deadline for Section A of the questionnaire until February 12, 1992. On February 12, pursuant to another request by Tenex, the Department extended the deadline for Section A responses to February 21 (for uranium concentrate and enriched uranium) and February 28 (for uranium hexafluoride). On February 20, 1992, Tenex requested, and the Department granted, an extension until March 13, for the response to Sections C and D of the questionnaire. On March 11, 1992, Tenex requested yet another extension for its response to Sections C and D, which was denied by the Department. We received Section A responses for Tenex on February 21 and 28, 1992. We received a response to Sections C and D on March 13, 1992. We issued a deficiency letter for Section A on March 20, 1992, and received a response to that letter on April 3, 1992. We issued a deficiency letter for Sections C and D on April 13, 1992, which requested Tenex to report U.S. price data as purchase price (PP) sales instead of exporter's sales price (ESP) sales. We also notified Tenex of the severe deficiencies in its foreign market value (FMV) data. We received a response to this letter on April 30, 1992. On May 7, 1992, we received a submission from Tenex arguing that the proper basis for reporting U.S. sales is ESP, not PP as the Department determined.

On February 4, 1992, we received letters from the U.N. missions of Byelarus and Ukraine requesting an extension for their responses to the questionnaire. On February 5, 1992, the Department extended the deadline for Section A responses to February 25 for Ukraine and Byelarus, and, *sua sponte*, to February 12 for Russia and the Ministry of Atomic Energy and February 19 for the other NIS. On February 26, the Department extended the deadline for Ukraine and Byelarus and again, *sua sponte*, extended the deadlines for the other NIS (except Russia) until March 9 for Section A responses and April 1 for responses to Sections C and D. On March 30, 1992, the Department granted a final *sua sponte* extension until April 15, 1992, for the questionnaire responses of all the NIS (except Russia). On May 15, 1992, the Department received a cable from the U.S. Embassy in Dushanbe, Tajikistan, relaying a request from the President of Tajikistan. The President stated that the questionnaire response would have been completed but for the just concluded revolutionary disturbances in his country. The President requested a 30 day extension to complete the questionnaire. Based on these extraordinary circumstances, the Department granted this extension on May 20, 1992. Petitioners objected to any extension in a letter dated May 22, 1992.

C. Critical Circumstances

On January 29, 1992, we received from petitioners an allegation of critical circumstances, which was amended on January 30, 31, and February 7, 1992. On February 26, 1992, we issued a questionnaire regarding critical circumstances to Tenex and all NIS. Tenex' response to this questionnaire was included in its March 13, 1992 response. On May 15, 1992, Tenex attempted to refute petitioners' claims regarding the massiveness of the imports of uranium.

D. Dissolution of the Soviet Union and Postponement of the Preliminary Determination

As stated above, the USSR dissolved and 12 NIS were recognized as successor states. We received submissions from petitioners on January 9, 24, and February 13, and from Tenex, on January 10, February 7, and 14, concerning the issue of whether the Department should continue or terminate this investigation in light of the dissolution of the USSR and the emergence of 12 newly independent successor states. On March 25, 1992, the Department issued a notice postponing the preliminary determination in this investigation 30 days because we found it to be "extraordinarily complicated" as defined under section 733(c)(1)(B) of the Act (57 FR 11064, April 1, 1992). In that notice, the Department also gave notice that it intended to continue this investigation with respect to the NIS of the former USSR. We postponed the preliminary determination an additional ten days because additional time was needed (57 FR 21646, May 21, 1992).

E. Best Information Available

On March 18 and 24, and April 23 and 24, 1992, petitioners requested that the Department use best information available (BIA) in making its preliminary determination because no responses had been received from a producer or country, the home market factors submitted by Tenex were untimely and uncertified, and the U.S. price data submitted by Tenex were materially deficient. Petitioners' provided new data to be used for BIA. Tenex contested petitioners' arguments and offered its own analysis of BIA for FMV in submissions dated April 15, May 7, 8, and 15, 1992. On May 15, 1992, petitioners objected to the BIA submissions of Tenex on the basis that, *inter alia*, Tenex had failed to provide the Department with the data sought in the questionnaire and, therefore, had no right to submit information on BIA. Tenex urged the Department to consider its submission and another made at the Department's request by Maine Yankee Atomic Power Company and Vermont Yankee Nuclear Power Corporation (The Yankee Group), on May 7, 1992, in determining the appropriate basis for BIA. On April 21, 1992, we received a requested submission from a group of electric utilities which includes Consumers Power Company, Energy Operations Inc., Florida Power & Light Company, New Hampshire Yankee Division of Public Service Company of New Hampshire; New York Power Authority, Public Service Electric & Gas Company, Union Electric Company, Virginia Power, and Wisconsin Electric Power Company (the Electric Utilities), suggesting various factors which the Department should take into account when analyzing the FMV data. By letter dated May 22, 1992, petitioners rebutted the Yankee Group's BIA submission.

F. Class or Kind

By submissions dated January 10, March 13, and April 24, 1992, Tenex argued that the subject merchandise constitutes three classes or kinds of merchandise. On April 21, 1992, the Electric Utilities responsed to a request by the Department by submitting information regarding class or kind. Petitioners argued, in submissions dated January 24 and March 27, that the subject merchandise constitutes one class or kind as indicated in the petition. On May 21, 1992, we received a requested submission from the Department of Energy (DOE) supporting a finding of one class or kind of merchandise.

G. Responses From Non-Producing Countries

On March 23, 1992, the Department received a fax from the State Committee for Foreign Economic Relations in Mensk, Byelarus. However, the fax was not easily legible so the Department requested a more legible response. On April 10, 1992, we received a cable from the U.S. Embassy in Mensk which stated that Embassy officials contacted Byelarus officials regarding the Department's questionnaire. The officials stated that Byelarus does not mine, produce or store uranium. The officials also stated that they had previously sent a letter to the Department with the same response.

On April 21, 1992, the Department received a cable from the U.S. Embassy in Yerevan, Armenia, which contained the text of a letter from the Armenian Minister of Energy and Fuel to the Department. The letter stated that Armenia did not produce, export or stockpile uranium during the POI.

On April 28, 1992, we received a cable from the U.S. Embassy in Ashkhabad, Turkmenistan, in which Turkmenistan officials are quoted as stating that Turkmenistan's only uranium producing site was closed in 1957 and that presently Turkmenistan does not produce, process or export uranium. On May 19, 1992, the Department received a letter from the Chief of the Section for Extraordinary Situations of the State Commission of Turkmenistan stating that Turkmenistan does not engage in uranium dvelopment or export.

On May 4, 1992, the Department received a cable from the U.S. Embassy in Baku, Azerbaijan, relaying a message from the Chairman of the State Committee of the Azerbaijani Republic in Geology and Mineral Resources stating that Azerbaijan does not mine uranium. On May 28, 1992, we received a fax from the U.S. Embassy in Moscow which contained a copy of a letter sent to it from the Azerbaijani permanent representative in Moscow. This letter stated that no uranium or uranium-containing materials were exported to the United States from Azerbaijan.

On May 5, 1992, the Department received a cable from the U.S. Embassy in Moscow relaying a communication from the Ministry of Foreign Economic Relations of Moldova which stated that Moldova did not produce, export or store uranium during the POI. This cable aslo relayed a telephone message from the U.S. Embassy in Tblisi, Georgia, where no cable capability exists yet. An Embassy official spoke with the Deputy Minister of Industry who stated that no uranium business exists in Georgia.

We instructed these embassies by cable that department regulations require that the Department receive a response and that the response be certified.

Scope of Investigations

The merchandise covered by these investigations constitutes one class or kind of merchandise (see "Class or Kind" section of this notice). The merchandise covered by these investigations includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U235 and its compounds; alloys, dispersons (including cermets), ceramic products, and mixtures containing uranium enriched in U235 or compounds or uranium eniched in U235. The uranium subject to these investigations is provided for under subheadings 2812.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

On May 21, 1992, the DOE requested that the Department determine whether highly enriched uranium (HEU) is

covered by the scope of these investigations. The petition does not include HEU in its scope and implies that HEU is not covered. Therefore, we preliminarily determine that HEU is not within the scope of this investigation.

Class or Kind

As noted above, Tenex argues that the subject merchandise constitutes three classes or kinds of merchandise, *i.e.*, (1) uranium ore and concentrates, (2) uranium hexafluoride (UF_6), and (3) enriched uranium product (EUP). Petitioners, however, maintain that a finding of one class or kind of merchandise is appropriate. At the Department's request, the DOE and the Electric Utilities submitted arguments regarding class or kind, the former arguing for one class or kind and the latter contending that the subject merchandise constitutes four classes or kinds of merchandise, *i.e.*, the three mentioned above and nuclear fuel assemblies.

Based on an analysis of the comments on class or kind submitted during this proceeding, we have determined that the product under investigation constitutes a single class or kind of merchandise (see Memorandum from Team to Francis J. Sailer, dated May 27, 1992). We based our analysis on the "*Diversified*" criteria (see, *Diversified Products Corp.* v. *United States*, 6 CIT 155 (1983)) and case precedent.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1991.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of BIA Is appropriate in six of these investigations. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent provided the information requested in a timely manner and in the form required.

While Tenex submitted certain information with respect to U.S. price, it completely failed to provide any factors of production information in its questionnaire response, despite extensive efforts by the Department to obtain such information.

While we eventually received a partial response from Tenex with regard to factors of production information, that response was unusable for many reasons. First, on its face the information provided in the response was severly deficient in that it did not provide the data requested by the Department in its questionnaire. Second, Tenex is not a producer of the subject merchandise, merely an exporter, and as such does not have first-hand knowledge of the production enterprises. Verification of second-hand knowledge would be a futile endeavor. Third, the response was not certified by officials at the production enterprises, although the Department did receive an untimely certification two months after the information was filed from an official of only one of several production enterprises in question. The absence of information from the appropriate source necessary to establish FMV rendered the responses provided by Tenex unusable and precipitated the Department's use of BIA. Except for the responses we received from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan, which informed us that these countries were not producers or exporters of uranium, we received no information or questionnaire responses from any other NIS. Therefore, we have used the information submitted in the petition and detailed in our initiation notice as the best information available for the preliminary determinations with respect to Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan. This information was modified, as appropriate, according to submissions of petitioners and two parties from which the Department solicited information (see "United States Price" and "Foreign Market Value" sections, below, and Memorandum from Linda K. Eads and Lawrence P. Sullivan to Marie Parker and Susan H. Kuhback dated May 27, 1992).

Petitioners have argued that the Department should not consider the submission of the Yankee Group, because this submission was not filed by an interested party. In addition, petitioners assert that these are not the type of comments which the Yankee Group is qualified to provide because it is not involved in any manner in the production of enriched uranium. Finally, petitioners question the validity of any information submitted by the Yankee Group in light of the contract that it has with Tenex.

The Department requested the Yankee Group to make its submission in accordance with 19 CFR 353.31(b)(1). While the Yankee Group is not a producer of the subject merchandise, it is a purchaser of uranium concentrate and enriched uranium and has experience with the firms in the industry. Furthermore, as an active participant in the uranium market, it has ready access to publicly available industry information. The Department has critically analyzed all BIA submissions and has accepted the arguments and proposals which we found substantiated and appropriate.

Tenex also submitted a detailed analysis of BIA and an addendum to that analysis. It is the Department's position that a respondent's obligation is to respond adequately to the questionnaire, not to provide information which estimates the information which it should have provided but did not. Therefore, we have not considered the submissions of Tenex regarding BIA.

Tenex has argued that it should not be held responsible for the lack of response from the production enterprises and, therefore, it should not be penalized for the inaction of those entities. However, in an NME case, the Department presumes central control of all production and exporting facilities (see, *e.g.*, Final Determination of Sales at Less Than Fair Value; Tungsten Ore Concentrates from the People's Republic of China, 56 FR 47738 (September 20, 1991)). Therefore, we consider there to be one respondent in each NME country. Thus, the Department holds each country's central government responsible for providing an adequate response to all sections of the Department's questionnaire. With respect to each country under investigation, the Department requires a response which provides complete and accurate data on U.S. sales and factors of production in order to consider any response for a determination. Tenex' response represents only a part of the information required by the Department to perform a less than fair value analysis, and is, therefore, materially deficient.

As noted above in the "Case History" section, we have received responses from certain NIS, either directly or through our embassies in those countries. These responses indicate that these countries do not produce, export or stockpile uranium. Under normal circumstances, we would require all of these responses to be in writing and properly certified. However, as recognized in the notices of postponement of this investigation (57 FR 11064, April 1, 1992, and 57 FR 21646, May 21, 1992), these investigations are "extraordinarily complicated," largely due to the confusion and turmoil surrounding the dissolution of a political entity and its replacement with 12 separate successors. The dissolution of the USSR has made communication between the Department and the NIS extremely difficult, if not at times impossible. The recent establishment of U.S. diplomatic facilities in the NIS has eased these difficulties, albeit limitedly.

In addition, based on information submitted by petitioners and sourced from a Central Intelligence Agency publication (The Soviet Energy Atlas, January 1985), Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan do not mine or produce uranium. Therefore, we have determined that, for purposes of our preliminary determinations, Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan have adquately responded that their respective countries did not produce, export or stockpile uranium during the POI. For purposes of our final determinations, however, we will require a certified response to this effect. In addition, these responses will be subject to verification.

Fair Value Comparisons

After the initiation of this investigation, the country identified in the petition, the USSR, was dissolved and its territory divided between 12 independent states. The United States has officially recognized each of these states as a sovereign nation. Accordingly, the Department is severing the investigation into 12 separate investigations and, to the extent possible, will calculate for each independent state, except the six non-producing NIS, a separate foreign market value and U.S. price.

To determine whether sales of uranium from the former USSR to the United States were made at less than fair value, we compared the United States prices (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. Both USP and FMV are based on BIA, as stated in the section above.

It is the Department's practice to base BIA on an average margin, as opposed to the highest calculated margin, when we determine that respondents have attempted to cooperate with the Department's investigation (see Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Taiwan, 57 FR 17892 (April 28, 1992)). As the Department indicated in its first notice of postponement (57 FR 11064, April 1, 1992), we believe that Tenex has attempted to cooperate in this investigation because they are the sole exporter and attempted to provide the Department with complete USP data. Therefore, we base the preliminary margin on an average of the two calculated margins.

United States Price

Petitioners' estimate of USP is based on an estimated weighted average f.o.b. import price taken from U.S. Bureau of Census statistics on imports of natural and enriched uranium from the former USSR during the period January 1990 through August 1991.

Foreign Market Value

Petitioners allege, and the Department determined, that the former USSR was a nonmarket economy country during the POI within the meaning of section 773(c) of the Act (see Memorandum from David Mueller to Carole Showers dated March 24, 1992). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked. This presumption covers a geographic area, each part of which assumes the previous NME character in the event of dissolution. Therefore, each NIS will continue to be treated as an NME until this presumption is overcome. In these investigations, no information has been presented which would require the Department to revoke the NME status of any of the NIS.

Accordingly, petitioners calculated FMV on the basis of constructed value (CV), using the factors of production methodology specified in section 773(c)(3) of the Act. Petitioners calculated separate CVs for mined and enriched uranium.

We have followed the methodology used in the initiation of this investigation (56 FR 63711, 63712), except in the following instances: (1) For mined uranium, we valued labor in Namibia instead of Portugal because Namibia is the preferred surrogate country and the Namibian labor value is uranium-specific. Additionally, an adjustment to a Canadian factor based upon differential labor rates was accordingly revised, and (2) for enriched uranium, we did not allow a 1991 projected production adjustment to the 1990 values for depreciation, research and development, and selling, general and administrative expenses.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of uranium from the former USSR. Section 733(e)(1) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect the following:

(1) That there is a history of dumping of the same class or kind of merchandise, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair value; and

(2) That there have been massive imports of the subject merchandise over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on official statistics of the Department, as BIA, for equal periods immediately preceding and following the filing of the petition. Because we used BIA with respect to the LTFV analysis, we have no cause to use or verify any of the data submitted by Tenex. Therefore, we did not use Tenex' shipment information in our critical circumstances analysis.

The time period we used for comparison purposes begins in December 1991, the first complete month after the petition was filed (November 8, 1991). We began the comparison period in December 1991 because the subject merchandise is transported by ship from the former Soviet Union to the United States, a journey of 17 days to over one month, according to data submitted by petitioners. Therefore, any subject merchandise shipped on or after the filing date of the petition would almost certainly enter the United States after December 1, 1991. Likewise, any shipments leaving the former USSR before that date would enter the United States before December 1, 1991. Based on available statistics, and in accordance with our regulations (19 CFR 353.16(g)), we determine it appropriate to use for comparison the period December 1991 through March 1992.

We compared the quantity of imports during the comparison period to the imports during the immediately preceding period (the "base period") of comparable duration (*ie.*, August through November 1991).

Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive." Our analysis indicates that shipments from the former USSR have increased by considerably more than 15 percent.

Since this shows evidence of massive imports over a relatively short period of time, we need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. We examined recent antidumping cases and found that there are currently no findings of dumping in the United States or elsewhere on the subject merchandise by former Soviet producers.

We then examined the magnitude of the dumping margins in these investigations. It is our standard

practice to impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act, when the estimated margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, in purchase price sales, we consider estimated margins of 25 percent or greater to be sufficient, and in exporter's sales price sales, margins of 15 percent or greater to be sufficient to impute knowledge of dumping. See, e.g. Final Determination of Sales at Less than Fair Value: High-Tenacity Rayon Filament Yarn from Germany (Yet to be published). Using these criteria, we have found that the preliminary margins in these investigations are sufficient to impute knowledge of dumping. Therefore, we find that the requirements of section 733(e)(1) are met and we preliminarily determine that critical circumstances exist with respect to imports of uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan. For Armenia, Azerhaijan, Byelarus, Georgia, Moldova and Turkmenistan, we have determined that the requirements of section 733(e)(1) are not met. Therefore, critical circumstances do not exist with respect to these countries.

Verification

As provided in section 776(b) of the Act, we will verify all the non-BIA information used in reaching our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of uranium, as defined in the "Scope of Investigations" section of this notice, from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan that are entered, or withdrawn from warehouse, for consumption 90 days prior to or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to 115.82 percent on all entries of uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan. This suspension will remain in effect until further notice. Due to our preliminary negative determinations with respect to Armenia, Azerbaijan, Byelarus, Georgia, Moldova, and Turkmenistan, we are not suspending liquidation of entries of uranium from these countries.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Public Comment

In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations on August 3, 1992, at 2 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone, the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than July 23, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than July 30, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 353.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: May 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-12973 Filed 6-2-92; 8:45 am]

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International Trade Adminstration

[C-533-807]

Initiation of Countervailing Duty Investigation: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3530 or (202) 377-4162, respectively.

Initiation

The Petition

On May 8, 1992, the R-M Industries Corporation filed with the Department of Commerce (the Department) a countervailing duty petition on behalf of the United States industry producing sulfanilic acid. In accordance with 19 CFR 355.12, the petitioner alleges that producers and exporters of sulfanilic acid in India receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Allegation of Subsidies

Petitioner alleges that the following programs provide subsidies to producers of the subject merchandise in India:

1. Preferential Export Financing Through Export Packing Credits
2. Preferential Post-Shipment Financing
3. Income Tax Deduction for Exporters
4. Import Duty Exemptions Available Through Advance Licenses
5. Import Replenishment (REP) Licenses
6. Excess Drawback of Import Duties
7. Market Development Assistance (MDA) Grant
8. Diesel Oil Subsidies
9. Sales of Additional Licenses
10. Grants Under the Central Investment Subsidy Scheme (CISS)
11. Extension of Free Trade Zones

12. Import Duty Exemptions Available to 100 percent Export Oriented Units
13. Preferential Waste Disposal Rates

Because India is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, the U.S. industry.

The petitioner has stated that it has standing to file the petition because it is an interested party as defined in section 771(9)(c) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the products subject to this investigation. If any interested party, as described under paragraphs (C) (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Initiation of Investigation

Under section 702(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on sulfanilic acid from India and have found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of sulfanilic acid receive subsidies. In accordance with section 702(d) of the Act, we are also notifying the ITC of this action.

In this investigation, we are not investigating transportation subsidies alleged to be benefitting producers of the subject merchandise in India. Petitioner's allegation regarding transportation subsidies is based on the allegation made by a petitioner in a previous countervailing duty investigation involving India (see, Petition for the Imposition of Antidumping and Countervailing Duties regarding Ibuprofen from India, Case number C–533–804, filed on July 31, 1991), which maintained that a single company received preferential rates for transportation from a state-owned shipping company. Petitioner, in the instant case, however, failed to provide any information that this program is available to more than the single company alleged to receive the benefit in the ibuprofen investigation. Therefore, absent further information, we have no basis for investigation of this program.

Scope of Investigation

The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and refined sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classified under the subheading 2921.42.24.20 of the *Harmonized Tariff Schedule of the United States* (HTSUS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, classified under the HTSUS subheading 2921.42.24.20, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials. Refined sodium salt of sulfanilic acid (sodium sulfanilate), classified under the HTSUS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

ITC Notification

Section 702(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determination by the ITC

The ITC will determine, by June 22, 1992, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from India of sulfanilic acid. If the ITC determination is negative, this investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: May 27, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–12976 Filed 6–2–92; 8:45 am]

BILLING CODE 3510–DS–M

Foreign-Trade Zones Board

[Order No. 578]

Resolution and Order Approving With Restriction the Application of the Culpeper-County Chamber of Commerce, Inc., for a General-Purpose Foreign-Trade Zone and Special-Purpose Subzones for ITT Corporation, ITT Teves Division Plant (Auto Brake Parts) and for Rochester Corporation Plant (Steel and Fiber Optic Cable); Culpeper County, VA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Culpeper-County Chamber of Commerce, Inc., filed with the Foreign-Trade Zones Board (the Board) on May 25, 1990, and amended on August 2, 1991, requesting a grant of authority to establish a general-purpose foreign-trade zone in Culpeper County, Virginia, adjacent to the Front Royal Customs port of entry, and for subzone status at the ITT Teves plant and the Rochester Corporation plant in Culpeper County, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal as amended, would be in the public interest if approval of the general-purpose zone is limited to the Montanus site and if approval of subzone status for the Rochester plant is given subject to a restriction requiring that privileged

foreign status shall be elected on all foreign merchandise admitted to that subzone site, approves the application, subject to the foregoing limitation and restriction.

Approval is subject to the FTZ Act and FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Zone and Special-Purpose Subzones Culpeper County, VA

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the stablishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when general-purpose zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Culpeper-County Chamber of Commerce, Inc. (the Grantee), a Virginia non-profit corporation, has made application (filed 5–25–90, FTZ Docket 20–90, 55 FR 23119, 6–6–90) to the Board, requesting the establishment of a general-purpose foreign-trade zone in Culpeper, Virginia, adjacent to the Front Royal Customs port of entry, and requesting subzone status at the ITT Corporation, ITT Teves Division plant (auto brake components) and at the Rochester Corporation plant (steel and fiber optic cable), located in Culpeper County;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the limitation and restriction in the resolution accompanying this action;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a general-purpose foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone 185, at the Montanus site described in the application, and special-purpose subzone status at the ITT Teves plant and at the Rochester Corporation plant designated as Subzone Nos. 185A and 185B, respectively, at the locations described in the application, subject to the limitation and restriction described in the resolution accompanying this action, and to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 22 day of May, 1992, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Barbara H. Franklin,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–12975 Filed 6–2–92; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permitting Entry of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

May 28, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain textile products.

EFFECTIVE DATE: May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to permit entry of textile products, produced or manufactured in Taiwan and exported from Taiwan during the period May 1, 1992 through May 31, 1992, which are visaed as 347, 348 or 347/348 and 647, 648 or 647/648. Textile products exported from Taiwan on and after June 1, 1992 must be visaed as Categories 347–K/348–K, 347–W/348–W, 647–K/648–K and 647–W/648–W or the correct part-category corresponding to the actual shipment.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14390, published on April 20, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 28, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, visa requirements for cotton and man-made fiber textile products in Categories 347/348 and 647/648, produced or manufactured in Taiwan and exported on and after May 1, 1992.

Effective on May 1, 1992, you are directed to permit entry of merchandise produced or manufactured in Taiwan which is visaed as Categories 347, 348 or 347/348 and 647, 648 or 647/648 and exported from Taiwan during the period May 1, 1992 through May 31, 1992.

Textile products produced or manufactured in Taiwan and exported from Taiwan on and after June 1, 1992 must be visaed as Categories 347–K/348–K [1], 347–W/348–W [2], 647–K/648–K [3] and 647–W/648–W [4] or the

[1] Category 347–K: all HTS numbers except those in Category 347–W; Category 348–K: all HTS numbers except those in Category 348–W.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[3] Category 647–K: all HTS numbers except those in Category 647–W; Category 648–K: all HTS numbers except those in Category 648–W.

[4] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.2040, 6203.49.2060, 6203.49.3030, 6210.40.1035, 6211.20.1525, 6211.20.3030 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

correct part-category corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-12940 Filed 6-2-92; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Notice of Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on June 15, 1992, in Gaithersburg, Maryland. The purpose of the meeting is to discuss current research to develop a test method to measure cigarette ignition propensity and matters related to implementation of the Fire Safe Cigarette Act.

DATES: The meeting will be from 9:15 a.m. to 4 p.m. on June 15, 1992.

ADDRESS: The meeting will be in room B-119, Building 224, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL: (301) 504-0709.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0470.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101-352, 104 Stat. 405) directs the Commission, with assistance from the National Institute of Standards and Technology (NIST) and the Department of Health and Human Services, to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on June 15, 1992, to discuss current research to develop a test method to measure cigarette ignition propensity; the status of a cigarette fire incident study; plans to evaluate the possible health effect of cigarettes with reduced ignition propensity; and other administrative and operational plans to implement the FSCA.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: May 29, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-12972 Filed 6-2-92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Scientific Advisory Group on Effects (SAGE) Meeting

SUMMARY: The Scientific Advisory Group on Effects announces a closed session meeting.

DATES: The meeting will be held at 0830, Tuesday and Wednesday, 16-17 June 1992.

ADDRESSES: The meeting will be held at DASIAC, 2560 Huntington Avenue, Suite 500, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: LtCol Vayl Oxford, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310, (703) 325-7006.

SUPPLEMENTARY INFORMATION: The mission of the SAGE is to provide the Director, Defense Nuclear Agency, with technical advice on matters related to nuclear weapons effects. The group reviews and evaluates long-range plans for the development and improvement of nuclear weapons effects data and the adequacy of current DNA RDT&E programs.

In accordance with section 10(d) of Public Law 92-463, as amended (5 U.S.C. app. II 10(d) (1988), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988) and that accordingly, this meeting will be closed to the public.

Dated: May 28, 1992.

P. H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-12869 Filed 6-2-92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Department of Defense Standard Tender of Freight Services; MTMC Form MT 364-R; OMB No. 0704-0281.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 45 minutes.

Responses per Respondent: 13.

Number of Respondents: 1,173.

Annual Burden Hours: 11,436.

Annual Responses: 15,249.

Needs and Uses: The information, in uniform format, is used to determine freight transportation charges, accessorial and security service cost, to select carriers for 1.2 million GBL freight shipment annually. Respondents are freight carriers of all modes, except air cargo.

Affected Public: Small businesses or organizations; business or other for profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: May 28, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–12868 Filed 6–2–92; 8:45 am]

BILLING CODE 3810–01–M

Manual for Courts-Martial; Proposed Amendments

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No.12473, as amended by Executive Order Nos. 12484, 1250, 12586, 12708, and 12767. The proposed changes are part of the 1992 annual review required by the Manual for Courts-Martial and DoD directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes reflected in this notice would amend the following rules in Part II (Rules for Courts-Martial): R.C.M. 705, Pretrial agreements (change to discussion and analysis); R.C.M. 912, Challenge of selection of members; examination and challenge of members (change to discussion and analysis); R.C.M. 1001, Presentencing procedure; R.C.M. 1004, Capital cases. The proposed changes would also amend the following rules in Part III (Military Rules of Evidence): M.R.E. 304, Confessions and admissions (change to analysis); M.R.E. 404, Character evidence not admissible to prove conduct, exceptions, other crimes. The proposed changes would also amend the following paragraphs of Part IV (Punitive Articles): Para. 19c—Article 95 (Resistance, breach of arrest, and escape)—clarify flight from apprehension; Para. 44(1)—Article 119 (manslaughter)—Maximum punishment.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon, "May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESSES: Copies of the proposed changes, and the accompanying Discussion and analysis, may be examined at the Air Force Legal Services Agency, Military Justice Division (JAJM), Bldg. 5683, Bolling Air Force Base, Washington, DC 20332–6128. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, ATTN: Major Craig A. Smith.

DATES: Comments on the proposed changes must be received not later than August 17, 1992 for consideration by the Joint Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major Craig A. Smith, (202) 767–1539.

Dated: May 29, 1992.

I.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–12939 Filed 6–2–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Space and C ³ I Panel of 1992 Summer Study on Global Reach/Global Power will meet on 24–25 June 1992 from 8 a.m. to 5 p.m. at HQ TAC Langley AFB, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Space and C ³ I in support of Global Reach/Global Power. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–12865 Filed 6–2–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Draft Supplemental Environmental Impact Statement for Base Realignment at Fort Huachuca, Arizona; Availability

AGENCY: Department of Defense, United States Army.

SUMMARY: The recommendation to retain Headquarters, U.S. Army Information Systems Command (USAISC) and its subordinate supporting elements at Fort Huachuca, Arizona was mandated by Public Law 101–510 (BRAC 91), the Defense Base Closure and Realignment Act of 1990. This action is additional to the consolidation of the U.S. Army Intelligence School, Fort Devens with the U.S. Army Intelligence Center and School at Fort Huachuca, as mandated by Public Law 100–526 (BRAC I). This document focuses on the additional environment and socioeconomic impacts and mitigations associated with retaining the personnel associated with USAISC at Fort Huachuca, Arizona. Additional actions that may be taken unrelated to this realignment may affect the number of positions at Fort Huachuca and the impacts are projected in this document.

No long-term adverse ecological or environmental health effects are expected due to the retention of Headquarters, USAISC and its subordinate supporting elements. The increased population is expected to be a net positive impact on the local economy. Proposed construction projects will not significantly impact environmental resources.

SCOPING: A scoping meeting was held in Sierra Vista on September 25, 1991. Public notices requesting input and comments from the public were issued in the regional area surrounding Fort Huachuca.

A public hearing will be held in Sierra Vista concerning this draft Supplemental Environment Impact Statement (SEIS). The public will receive notice of the meeting details in the near future. The purpose of the hearing is to give individuals or groups the opportunity to comment, either orally or in writing, on the environmental, social and economic impacts of the proposed realignment as presented in the draft SEIS.

The public is encouraged to comment on the Draft Supplemental Environmental Impact Statement. Copies of the Draft Supplemental Environmental Impact Statement can be requested by contacting Mr. Alex Watt, (213) 894–5088 or by writing to: United States Army Corps of Engineers, Los Angeles District, ATTN: CESPL-PD-RN, P.O. Box 2711, Los Angeles, CA 90053–2325. Written public comments and suggestions received within 45 days of

this Notice of Availability will be addressed in the final SEIS.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 92–12905 Filed 6–2–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 6, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: May 29, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Grants Under the Graduate Assistance in Areas of National Need Program.
Frequency: Annually.
Affected Public: : Non-profit Institutions.
Reporting Burden:
Responses: 280.
Burden Hours: 11,200.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by colleges and universitites to apply for funding under the Graduate Assistance in Areas of National Need Program. The Department uses the information to make grant awards.

Office of Policy and Planning

Type of Review: New.
Title: Evaluation of the Student Literacy Corps.
Frequency: One-time.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 713.
Burden Hours: 535.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The data collected by this survey will be used to describe and assess the operations and effects of the Student Literacy Corps Program. In addition, the data will identify innovative and noteworthy practices in the administration and operation of college based literacy programs and assist ED in designing future student service initiatives.

[FR Doc. 92–12950 Filed 6–2–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of the Argentine Republic concerning Civil Uses of Atomic Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the retransfer of 45,960 kilograms of heavy water from Italy to Argentina for use in the Atucha and Embalse power reactors. Retransfer document MB#10 RTD/AR(EU)–3, has been assigned to this retransfer request.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on May 28, 1992.

Salvador N. Ceja,

Acting Director, Office of Nuclear Nonproliferation Policy.

[FR Doc. 92–12970 Filed 6–2–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

State of Wyoming; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

[Docket No. JD92–06705T; Wyoming–28]

May 27, 1992.

Take notice that on May 20, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's

regulations, that the Dakota Formation underlying portions of Sweetwater, Lincoln and Uinta Counties, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers approximately 510,444 acres described on the attached appendix.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Sweetwater, Lincoln and Uinta Counties, Wyoming

Township 23 North, Ranges 111, 112 and 113 West, 6th P.M. All
Township 23 North, Range 110 West, 6th P.M. All of Sections 4–9, 16–21, and 28–33
Township 22 North, Ranges 113 and 112 West, 6th P.M. All
Township 22 North, Range 111 West, 6th P.M. All of Sections 1–24, 26–34 and 36
Township 22 North, Range 110 West, 6th P.M. All of Sections 4–9, 16–21, 28–29, and 31–33
Township 21 North, Range 113 West, 6th P.M. All
Township 21 North, Range 112 West, 6th P.M. All except the N/2 of Section 21
Township 21 North, Range 111 West, 6th P.M. All of Sections 2–36
Township 21 North, Range 110 West, 6th P.M. All of Sections 4–9, 16–21, and 28–33
Township 20 North, Range 114 West, 6th P.M. All of Sections 1–4, 9–16, 21–28, and 33–36
Township 20 North, Range 113 West, 6th P.M. All
Township 20 North, Range 112 West, 6th P.M. All of Sections 1–12, N/2 of 13, 14–16, S/2 of 17, 18–20, S/2 of 21, 22–24, N/2 of 25, 26, S/2 of 27, 28, 30–32, S/2 of 33, and 34–36
Township 20 North, Range 111 West, 6th P.M. All
Township 19 North, Range 114 West, 6th P.M. All of Sections 1–4, 9–16, 21–28, and 33–36
Township 19 North, Range 113 West, 6th P.M. All
Township 19 North, Range 112 West, 6th P.M. All of Sections 1–3, N/2 of 4, 5–9, N/2 of 10, S/2 of 11, 12–14, E/2 of 15, 16–21, E/2, SW/4 and SE/4 of NW/4 of 22, 23–34, S/2 of 35 and S/2 of 36
Township 19 North, Range 111 West, 6th P.M. All except N/2 of Section 31
Township 18 North, Range 114 West, 6th P.M. All of Sections 1–4, 9–16, 21–28, and 33–36
Township 18 North, Range 113 West, 6th P.M. All except N/2 of Section 24 and N/2 of Section 35
Township 18 North, Range 112 West, 6th P.M. All of Sections 1, 2, S/2 of 3, 4–6, N/2 of 7, 8–11, S/2 of 12, 13, 14, S/2 of 15, 16–30, S/2 of 31, 32, S/2 of 33, and 34–36
Township 18 North, Range 111 West, 6th P.M. All
Township 17 North, Range 114 West, 6th P.M. All of Sections 1–4 and 9–16
Township 17 North, Range 113 West, 6th P.M. All of Sections 1–18
Township 17 North, Range 112 West, 6th P.M. All of Sections 1–12 and 18
Township 17 North, Range 111 West, 6th P.M. All of Sections 1–12

[FR Doc. 92–12887 Filed 6–2–92; 8:45am]

BILLING CODE 6717–01–M

[Docket No. RS92–28–000]

Algonquin Gas Transmission Co. Pre-Compliance Filing Conference

May 28, 1992.

Take notice that on June 4, 1992, a Pre-Compliance Filing Conference will be convened in the captioned restructuring docket in accordance with the provisions of Order No. 636. This Pre-Compliance Filing Conference is being held so that Algonquin Gas Transmission Corporation (Algonquin) can present the Commission and the intervenors in this proceeding with a summary of Algonquin's proposals for full compliance with the rule. In a letter to the Secretary of the Commission dated May 8, 1992, Algonquin stated that it expects to file its Order No. 636 compliance filing in time to permit Algonquin to implement Order No. 636 restructuring on its system on November 1, 1992.

The Pre-Compliance Filing Conference is being convened to discuss Algonquin's proposed Order No. 636 compliance filing and rates and to discuss issues raised by Algonquin's summary of compliance, which was circulated to all parties on May 15, 1992. Specifically, topics of discussion will include:

1. The details of Algonquin's new unbundled, open access "no notice" firm transportation service as well as its open access firm transportation services and interruptible transportation services;

2. The intent of customers to retain, reduce, or terminate their rights to firm transportation capacity on Algonquin's system so that Algonquin can then follow the procedures set out in Order No. 636;

3. The allocation of capacity on Algonquin's system;

4. The operating terms and conditions that Algonquin will include in its tariff to enable it to maintain reasonable operational control and system integrity while providing "no notice" transportation as well as other reliable services;

5. The reallocation of capacity released by current capacity holders;

6. The details of assigning firm upstream transportation and storage capacity;

7. The details of nominating, scheduling, resolving imbalances and curtailment;

8. Rates;

9. The allocation of transition costs; and

10. All other issued listed in 18 CFR 284.14 (b)(1), as promulgated in Order No. 636.

The conference will be held at 10 a.m. at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information regarding the conference, interested parties can call Rebecca S. Haney at (617) 560–1376 or David T. Andril at (202) 639–6542.

Lois D. Cashell,

Secretary.

[FR Doc. 92–12888 Filed 6–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–5–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 28, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on May 22, 1992 certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective as indicated on Appendix A.

The purpose of the instant filing is to track rate changes attributable to storage services purchased from Columbia Gas Transmission (Columbia) under its Rate Schedule WS the costs of which are included in the rates and charges payable under ESNG's Rate Schedule CWS—Columbia Winter Service.

The instant filing also revises the billing amounts shown on Fourth Revised Sheet No. 6B to comply with the provisions of ordering Paragraph (B) of

the Commission's August 26, 1988 order in ESNG's Docket No. RP88–226–000. The referenced order requires ESNG to file revised billing amounts to "track" any modifications to Transcontinental Gas Pipe Line Corporation's (Transco) take-or-pay charges ordered by the Commission. Transco filed on May 1, 1992 a recalculation of its LPSP charges for the Annual Recovery Period June 1, 1992 through May 31, 1993.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 and rule 214 of the Commission's Rule of Practice and Procedure (18 C.F.R. § 385.211 and § 385.214). All such motions or protests should be filed on or before June 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–12889 Filed 6–2–92; 8:45 am]

BILING CODE 6717–01–M

[Docket No. TM92–8–37–000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

May 28, 1992.

Take notice that on May 21, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Nineteenth Revised Sheet No. 10
Eighteenth Revised Sheet No. 11
Thirteenth Revised Sheet No. 13

First Revised Volume No. 1–A

Thirteenth Revised Sheet No. 201

Original Volume No. 2

Twenty-Eighth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Surcharge effective July 1, 1992, to reflect (1) interest applicable to April, May and June 1992, and (2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 3.98¢ per MMBtu for the three months commencing July 1, 1992. Northwest states that this instant filing, and the Commodity SSP Surcharge included herein, was prepared in a manner consistent with the provisions of Commission orders, issued in Docket Nos. TM91–8–37 and TM92–2–37, which relate to the level of billing determinants to be used in the calculation of the Commodity SSP Surcharge.

Northwest has challenged the Commission's orders requiring it to calculate its Commodity SSP Surcharge based upon billing determinants other than those approved in the settlement of Phase I of Docket No. RP88–47. Northwest reserves the right and gives notice that it will refile its Commodity SSP Surcharge rates for any affected periods, including the three months beginning July 1, 1992, should Northwest ultimately be successful in its court appeals.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89–137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–12890 Filed 6–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–175–000]

Pan-Alberta Gas (U.S.) Inc., Tariff Changes

May 28, 1992.

Take notice that on May 21, 1992, Pan-Alberta Gas (U.S.) Inc. ("PAG–US") (formerly NATGAS U.S. INC.), 500, 707 Eighth Avenue, SW., Calgary, Alberta, Canada T2P 3V3, tendered for filing in Docket No. RP92–175–000 Fifth Revised Sheet No. 4 Superceding Fourth Revised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 2.

PAG–US states that it is submitting Fifth Revised Sheet No. 4 (1) to reflect a decrease in demand charges during the forthcoming demand charge period (July 1, 1992 through December 31, 1992) for Canadian gas purchased by PAG–US from Northwest Alaskan Pipeline Company ("Northwest Alaskan") and resold to Northern Natural Gas Company ("Northern") under Rate Schedule X–1; and (2) to reflect a downward adjustment in its demand charges to Northern for prior periods.

PAG–US requests that Fifth Revised Sheet No. 4 become effective on July 1, 1992.

In addition, PAG–US has notified the Commission that, unless the Commission directs otherwise, it intends upon acceptance of its filing by the Commission, to make a one-time payment to Northern reflecting Northern's allocated share (plus interest) of the one-time payment received by PAG–US from Northern Border Pipeline Company pursuant to the Commission's order of April 9, 1992 in *Northern Border Pipeline Company*, FERC Docket No. RP92–139–000.

PAG–US states that a copy of this filing has been served on Northern.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice & Procedure. All such petitions or protests should be filed on or before June 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–12891 Filed 6–2–92; 8:45 pm]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–52–NG]

Continental Energy Marketing Ltd.; Application to Export Natural Gas to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 16, 1992, of an application filed by Continental Energy Marketing Ltd. (Continental) requesting blanket authorization to export up to 75 Bcf of natural gas to Canada over a two-year term beginning with the date of first delivery. Continental intends to use existing U.S. pipeline facilities which interconnect with Canadian pipeline facilities at various points on the U.S./Canadian border. Continental states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 6, 1992.

ADDRESSES: Office of Fuels Programs, Fossile Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION:

Continental, a Canadian corporation with its principal place of business in Calgary, Alberta, Canada, intends to purchase natural gas from a range of natural gas producers and marketers, primarily located in the U.S. Gulf Coast and Oklahoma regions. The proposed natural gas exports would be sold to various local distribution companies, pipelines, marketers, and end-users. Continental states that the proposed exports would be made under arrangements negotiated within a bidding process or other competitive framework and that a reliable, competitive, and flexible combination of price, volume, and transportation will be presented to potential buyers.

This export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0102–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may requests that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Continental's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 22, 1992.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–12870 Filed 6–2–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

[Case No. F–046]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver From the Furnace Test Procedure to Amana Refrigeration, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–046)

granting a Waiver to Amana Refrigeration, Inc. (Amana) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Amana its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GUI, GCI, and GSI series of induced draft furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Amana has been granted a Waiver for its GUI, GCI, and GSI series of induced draft furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, May 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In the Matter of: The Amana Refrigeration, Inc. (Case No. F–046).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedures waiver process to allow the Assistant Secretary for Conservation and Renewal Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Intrim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Amana filed a "Petition for Waiver," dated January 9, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on April 13, 1992, Amana's petition and solicited comments, data and information respecting the petition. 57 FR 12810. Amana also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on April 6, 1992. 57 FR 12810, April 13, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with The Federal Trade Commission (FTC) concerning the Amana Petition. The FTC did not have any objections to the issuance of the waiver to Amana.

Assertion and Determinations

Amana's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Amana requests the allowance to test using a 30-second blower time delay when testing its GUI, GCI, and GSI series of induced draft furnaces. Amana states that since the 30-second delay is indicative of how those models actually operate and since such a delay results in an improvement in efficiency of approximately 0.8 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Amana indicates that it is unable to take advantage of any of these exceptions for its GUI, GCI, and GSI series of induced draft furnaces.

Since the blower controls incorporated on the Amana furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Amana GUI, GCI, and GSI series of induced draft furnances. Accordingly, with regard to testing the GUI, GCI, and GSI series of induced draft furnaces, today's Decision and Order exempts Amana from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that: (1) The "Petition for Waiver" filed by Amana Refrigeration, Inc. (Case No. F–046) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Amana Refrigeration, Inc. shall be permitted to test its GUI, GCI, and GSI series of induced draft furnances on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following pargraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are

achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Amana Refrigeration, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3)The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GUI, GCI, and GSI series of induced draft furnaces manufactured by Amana Refrigeration, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective (Insert Date of Issuance), this Waiver supersedes the Interim Waiver granted Amana Refrigeration, Inc. on April 6, 1992. 57 FR 12810, April 13, 1992 (Case No. F-046).

Issued In Washington, DC, May 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-12967 Filed 6-2-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Carrier Corp. (Case No. F-050)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces.

Today's notice also publishes a "Petition for Waiver" from Carrier. Carrier's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Carrier seeks to test using a blower delay time of 45 seconds for its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than July 6, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-050, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 50 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On March 4, 1992, Carrier filed an Application for Interim Waiver

regarding blower time delay. Carrier's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Carrier requests the allowance to test using a 45-second blower time delay when testing its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces. Carrier states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.6 percent. Since current DOE test procedures do not address this variable blower time delay, Carrier asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Condition, 57 FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Carrier an Interim Waiver for its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces. Pursuant to paragraph (e) of section 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to Carrier was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, May 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Edward A. Baily,
Vice-President, Government and Industry Relations, Carrier Corporation, P.O. Box 4808, Syracuse, New York 13221

Dear Mr. Baily: This is in response to your March 4, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the Carrier Corporation (Carrier) 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Carrier Corporation, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 FR 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Condition, Inc., FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991.

Carrier's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Carrier will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Carrier's Application for an Interim Waiver from the DOE test procedure for its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces regarding blower time delay is granted.

Carrier shall be permitted to test its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

March 4, 1992.

The Assistant Secretary for Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Subject: *Petition for Waiver and Application for Interim Waiver*

Gentlemen: This is a Petition for Waiver and Application for Inteim Waiver which are submitted pursuant to Title 10 CFR 430.27 as amended November 14, 1986. Waiver is requested from Test Procedures for Measuring the Energy Consumption of

Furnaces found in Appendix N to Subpart B of Part 430.

Under the existing Test Procedure, a 1.5 minute time delay between burner and blower startup is required. Carrier requests a waiver from the specified 1.5 minute delay. In its place, we request the use of a 45-second delay on Carrier's line of 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A and GB3A induced draft furnaces.

The time delay in all lines of equipment is fixed within the furnace control, and cannot be adjusted by the installer or servicer.

The current test procedures do not credit Carrier for the energy savings associated with the shorter blower time delays. Test data on our mid-efficiency furnaces show a 7.9% decrease in the heat-up cycle energy loss when using the 45-second delay, resulting in an increase in AFUE of approximately 0.6 AFUE points. Confidential supporting test data is available upon request.

Carrier is confident that a waiver will be granted for public policy reasons in the light of previous rulings in which DOE granted waivers of this type to Lennox Industries, Inter-City Products, Amana, Rheem Manufacturing, and the Trane Company. In addition, an interim waiver of this type was recently granted to Goodman and Snyder-General. Lastly, the proposed ASHRAE 103-88 allows the use of non-adjustable blower-on-delays in place of the specified 90 seconds. Both DOE and NIST were instrumental in the development of Standard 103-88, and suggested it be included so as to address furnaces with fixed blower-on-delays.

Respectfully,

Edward A. Baily,

Vice President, Government & Industry Relations.

[FR Doc. 92-12969 Filed 6-2-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Furnace Test Procedures From Clare Brothers (Case No. F-047)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Clare Brothers (Clare) from the existing Department of Energy (DOE) test procedure for furnaces regarding blower time delay for the company's MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Clare. Clare's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Clare seeks to test using a blower delay time of 60 seconds for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than July 6, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-047, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3206, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On January 30, 1992, Clare filed an Application for Interim Waiver regarding blower time delay. Clare's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Clare requests the allowance to test using a 60-second blower time delay when testing its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces. Clare states that the 60-second delay is indicative of how these furnaces actually operate. Since current DOE test procedures do not address this variable blower time delay, Clare asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO

Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 FR 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992; Thermo Proucts, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991. Thus, it appears likely that the Petititon for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Clare an Interim Waiver for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Clare was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, May 20, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Kenneth R. MacIntyre,

Director of Engineering, Clare Brothers, 223 King Street East, Cambridge, Ontario, Canada N3H4T5

Dear Mr. MacIntyre: This is in response to your January 30, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure for furnaces regarding blower time delay for Clare Brothers (Clare) MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991.

Clare's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Clare will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Clare's Application for an Interim Waiver from the DOE test procedure for its MEMC, HEDF, HEHF, HEG, and HEMB lines for gas furnaces regarding blower time delay is granted.

Clare shall be permitted to test its MEMC, HEDF, HEHF, HEG, and HEMB line of gas furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t—), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furance is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t—), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

30 January 1992

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, U.S.A.

Gentlemen: This is a petition for waiver and petition for interim waiver submitted pursuant to Title 10 CFR Part 430.27. Waiver is requested from the furnace test procedure found at Appendix N to Subpart B of Part 430. The test procedure requires a 1.5 minute delay between burner "ON" and blower "ON". Clare is requesting authorization to use a 60 second delay instead of 1.5 minutes. Clare will be manufacturing series of furnace models with an electronic blower control that controls blower operation on a timing sequence as opposed to temperature. The Clare models which will incorporate these controls are noncondensing MEMC series upflow, and condensing furnace series HEDF downflow, HEHF horizontal, HEG lowboy and HEMB upflow. Improved energy efficiency on these models is achieved by the fixed timing controls installed in these models that activate the circulating air blower 60 seconds after the burner is "ON". Under the Appendix N procedures, the stack temperature is allowed to climb at a faster rate than it would with a 60 second blower "ON" time, allowing energy to be lost to the vent system. This waste of energy would not occur in normal operation. If this petition is granted the true blower "ON" time delay would be used in the measurement of AFUE. Proposed ANSI/ASHRAE 103–1988, paragraph 9.6.1 specifically addresses the use of timed blower operation.

Current prescribed test procedures prohibit Clare from taking credit for the saved energy, thus providing inaccurate comparative data.

Several other furnace manufactureres have been granted a waiver to permit calculations based on timed blower operation.

Confidential comparative test data is available to you on request, confirming that there are energy savings.

Manufacturers that market simular products are being sent a copy of this petition for waiver and interim waiver.

Yours sincerely,
Kenneth R. Macintyre,
Director of Engineering.
[FR Doc. 92-12968 Filed 6-2-92; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of May 4 Through May 8, 1992

Office of Hearings and Appeals

During the week of May 4 through May 8, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Barton Kaplan, 5/6/92, LFA-0206

On April 16, 1992, Barton Kaplan filed an Appeal from a determination issued to him on March 13, 1992, by the Acting Chief of Freedom of Information and Privacy Acts (Acting Chief) of the Office of Administrative Services of the Department of Energy (DOE). In that determination, the Acting Chief denied Mr. Kaplan's request for information pursuant to the Freedom of Information Act (FOIA), stating that the DOE had no documents which were responsive to the request. In considering the Appeal, the DOE confirmed that the Acting Chief followed procedures which were reasonably calculated to uncover all material within the scope of Mr. Kaplan's February 4, 1992 request and that no responsive documents were in the possession of the DOE. Accordingly, the DOE denied Mr. Kaplan's Appeal.

James L. Schwab, 5/7/92, LFA-0207

James L. Schwab filed an Appeal from a determination issued by the Department of Energy's (DOE) Albuquerque Field Office (Albuquerque). In his Appeal, Schwab contended that Albuquerque had released a different document to him instead of the document he requested. The DOE's Office of Hearings and Appeals found that Schwab's contentions were meritless and denied his Appeal.

K.D. Moseley, 5/5/92, LFA-0203

K.D. Moseley filed an Appeal from a determination issued by the Inspector General's Office (IG) of the Department of Energy (DOE). Although Moseley filed his FOIA request with the U.S. Postal Service, two responsive documents which were created by the DOE-IG were referred back to the IG for review. The DOE determined that the IG properly withheld the inspectors' names, phone numbers, and names of witnesses under Exemption 7(C). However, the DOE remanded the matter to the IG for a determination as to whether pronouns, dates, places, and other miscellaneous information which were withheld could be released.

Southwest contract Compliance Foundation, 5/7/92, LFA-0202

The Southwest Contract Compliance Foundation (SCCF) filed an Appeal from three determinations issued by the Western Area Power Administration (WAPA) of the Department of Energy (DOE). The determinations denied, in part, three Requests for Information seeking the release of two WAPA contractors' certified payroll records, which SCCF submitted under the Freedom of Information Act. WAPA released a redacted copy of the certified payroll records for one of the contractors from which the employee names, addresses and social security numbers were deleted, but could find no payroll records for the other. WAPA determined, pursuant to Exemption 6 of the FOIA, that disclosure of redacted information would violate the privacy interest of the employees and would not be in the public interest. In considering the Appeal, the DOE found that the public interest was outweighed by the privacy interests of employees in preventing the disclosure of their names, addresses and social security numbers. The DOE also found that WAPA had made an adequate search. Accordingly, SCCF's appeal was denied.

Request for Exception

J.M. Davis Industries, Inc., 5/6/92, LEE-0034

J.M. Davis Industries, Inc. filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that J.M. Davis did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

Motion for Reconsideration

Consolidated Edison Co. of New York, et al., 5/7/92, LER-0008

The DOE issued a Decision and Order denying a Motion for Reconsideration and Modification filed on behalf of Consolidated Edison Co. of New York, *et al.* The Motion requested the reconsideration of a Decision and Order implementing procedures for the disbursement of $9,000,000, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with the Anchor Gasoline Corporation (Anchor) on September 22, 1988. Specifically, the Motion requested that the filing deadline for crude oil claims, which was extended in the Anchor Decision from June 30, 1992 to June 30, 1994, not be adjusted. The DOE found the Motion to be without merit, and retained the June 30, 1991 deadline.

Refund Applications

GAF Corporation 5/4/92, RF272-48671; RD272-48671

The DOE issued a Decision and Order granting an Application for Refund filed by GAF Corporation, a producer of building materials, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States asserted that GAF's sales and profits rose during the refund period, and that the price of roofing products generally rose concurrent with increases in petroleum product prices. In addition, the States submitted an affidavit of an economist stating that, because of the relative elasticities of supply and demand, nearly every industry passes through a portion of its cost increases. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $1,411,568.

Howell Asphalt Company, 5/7/92, RF272-24799; RD272-24799

The DOE issued a Decision and Order granting an Application for Refund filed by Howell Asphalt Company, a highway construction company, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In supoort of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to

rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $24,591.

Tri County Asphalt Corp., 5/4/92, RA272-00047

The DOE issued a Supplemental Order concerning a Decision and Order dated January 16, 1991, granting a refund to Tri County Asphalt Corp. (Tri County), Case No. RF272-10915. In that Decision, the DOE granted Tri County a crude oil refund totalling $3,942. Subsequently, on February 21, 1991, the DOE issued a Supplemental Order, Case No. RC272-114, correcting a mathematical error in the earlier Decision, and reducing the refund granted to Tri County to $3,492. The DOE determined that Tri County was eligible to receive a refund for: (1) 2,909,626 gallons of gasoline, middle distillates and propane mistakenly deducted by the DOE from the firm's original claim; (2) 31,726,432 gallons of liquid asphalt claimed by Tri County but never considered by the DOE; and (3) 13,500,000 gallons of various petroleum products purchased by Tri County between August 1973 and December 1975 which was not claimed in the firm's original application. The DOE granted Tri County an additional refund of $38,509 based on these purchases.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Abitibi-Price Corp.	RF272-1697	05/06/92
Abitibi-Price Corp.	RF272-1697	
Aminoil U.S.A., Inc./ Jim Thomas Enterprises, Inc	RR139-11	05/04/92
Atlantic Richfield Co./Hoggarth ARCO *et al*	RF304-3715	05/04/92
Atlantic Richfield Co./Ken's Service Center *et al*	RF304-12770	05/04/92
Atlantic Richfield Co./North City ARCO	RF304-13011	05/07/92
Pointville ARCO	RF304-13012	
Willits Motor Co.	RF304-13013	
Atlantic Richfield Co./Street's ARCO *et al*	RF304-12084	05/06/92
Empire Gas Corp./John Rostine	RF335-24	05/04/92
Delores H. Hamilton	RF335-54	
Exxon Corp./Ramsey Exxon *et al*	RF307-10195	05/05/92
Massachusetts Turnpike Authority *et al*	RF272-77488	05/05/92
Orangeville C U School Dist 20 *et al*	RF272-78844	05/05/92
Reinauer Petroleum Co./Beisler-Weidmann Co.	RF341-18	05/06/92
Denis Jerram	RF341-19	
Shell Oil Co./Daniel Baker Oil Co., Inc	RF315-9585	05/04/92
Texaco Inc./Frank's Texaco *et al*	RF321-14574	05/05/92
Texaco Inc./Frank's Service Station *et al*	RF321-3105	05/05/92
Texaco Inc./Walt's Texaco Station *et al*	RF321-1473	05/04/92
West Virginia Department of Highways	RF272-69948	05/06/92

Dismissals

The following submissions were dismissed:

Name and Case No.

Andy's Texaco; RF321-4796
Arrow Automotive Co.; RF321-10653
Art's Texaco; RF321-4804
Barrie Texaco Service Station; RF321-10875
Battlefield Service Center; RF321-10684
Beauvais Texaco; RF321-9191
Bill Dennis Texaco; RF321-10662
Bloomingdale Texaco; RF321-2178
Blount County Commission; RF272-89950
Burnett's Texaco; RF321-9190
Canoga Park Car Wash; RF321-10897
Carolina Texaco Service; RF321-10629
Cavalier's Texaco; RF321-11658
Centerville City, SD; RF272-89473
Charles Walker Texaco; RF321-10850
City of Pryor, OK; RF272-88142
City of Woodland; RF321-18449
Clay's Texaco; RF321-10865
Cline's Texaco; RF321-10626
Clyd's Texaco Service Station; RF321-10687
Cochran's Texaco; RF321-10630
Coffman's Texaco; RF321-10633
Conway Dyno Alignment Service; RF321-10642
Cortigeano's Texaco; RF321-10645
Dale City Arco, Inc.; RF304-88
Darrell's Texaco Service; RF321-10635
David Webster's Texaco; RF321-10863
David Williams Texaco; RF321-10870
Davlyn Industries, Inc.; RF272-85788
Dees' Midwest Truck Stop; RF321-10658
Dillow Bros. Texaco; RF321-10677
Doan's Texaco; RF321-10678
Dodge Lakeshore Texaco; RF321-10680
Dodge's Texaco; RF321-10681
Douglas Davidson Texaco; RF321-10655
Dunaway's Texaco; RF321-10688
Ed Steingraber's Texaco; RF321-10884
Ed's Texaco; RF321-7719
Ed's Texaco #1; RF321-10839
Ed's Texaco #2; RF321-10840
Four Points Texaco, Inc.; RF321-10873
Frisinger's North End Texaco; RF321-10637
Gates Texaco; RF321-9189
H.B. Powell Texaco Service; RF321-10609
H.J. Saoliner Oil Co.; RF321-10603
Haak's Texaco; RF321-10604
Harold West Texaco; RF321-10866
Harry Cole Texaco; RF321-10634
Heidle's Texaco Service Station; RF321-10869
Henry Toup's Texaco Service; RF321-10838
Hutterian Brethren in N.Y., Inc.; RF272-90120
Jack W. Trout; RF340-40
Jim's Texaco; RF321-7716
Joe Crain's Texaco; RF321-10648
John's Texaco; RF321-5028
John's Texaco Service; RF321-10833
Len's Southside Texaco; RF321-10657
Leslie's Texaco; RF321-10639

McNeill's Gulf Grocery and Service Station; RF300–15419
Mid-City Texaco; RF321–10851
Midland Texaco; RF321–11891
Montaup Electric Company; RF336–42
Mt. View Texaco; RF321–18471
Nixon Texaco; RF321–8932
O.B.'s Texaco; RF321–10889
Preston A. Dassell; RF321–11862
Princetion University; RF272–88262
Reid Bros. Oil, Inc.; RF321–10812
Reynolds Texaco & Used Cars; RF321–7715
Rivers Texaco; RF321–10882
Ron Crumley Texaco; RF321–10851
Roy Guerin's Texaco; RF321–7720
Roy's Texaco Service; RF321–10889
Russ's Texaco Service Center; RF321–10898
Sam Denaro's Texaco; RF321–10861
Shenco, Inc.; RF300–14514
Simpson Construction Co.; RF272–86104
Spruill's Texaco Service Station; RF321–2057
Tabor Texaco; RF321–10890
Tenney's Texaco Station; RF321–10829
Teter's Texaco; RF321–10831
Therien's Texaco; RF321–1911
Van Kleeck's Service Station ; RF321–10843
Vicksburg Oil & Gas; RF321–10858
Vowell Texaco; RF321–10848
Walter's Texaco Service; RF321–10854
Wathke's Interstate Texaco; RF321–10860
Way's Texaco; RF321–10862
Welch's Texaco Service Station; RF321–10864
West End Texaco; RF321–10868
West Side Texaco; RF321–18152
Westwood Texaco Service; RF321–10883
Xiggores East Side Texaco; RF321–10881

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management*: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 27, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–12971 Filed 6–2–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 92–35–LNG]

Yukon Pacific Corp.; Application To Transfer Long-Term Export Authorization to Yukon Pacific Co., L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Yukon Pacific Corporation (Yukon Pacific) on March 10, 1992, requesting authorization to transfer to Yukon Pacific Company, L.P. (YPLP), the export authorization granted Yukon Pacific in DOE/FE Opinion and Order No. 350 as modified in Order 350–A (collectively referred to as Order 350). See 1 FE ¶ 70,259 (November 16, 1989) and ¶ 70,303 (March 8, 1990). Under the terms of these orders, Yukon Pacific is authorized to export from the United States 350 million metric tons of liquified natural gas (LNG) over a twenty-five year term to the Pacific Rim countries of Japan, South Korea, and the Republic of China (Taiwan).

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 6, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Yukon Pacific is an Alaska corporation headquartered in Anchorage, Alaska. The corporation was formed in 1984 to construct, own, and operate the Trans-Alaska Gas System (TAGS). CSX Corporation of Richmond, Virginia currently holds a controlling interest in Yukon Pacific. Yukon Pacific and CSX recently concluded that a limited partnership would serve as the best vehicle for meeting the future management and financing needs of the TAGS project. Accordingly, on October 31, 1991, YPLP, a Delaware limited partnership, was formed. Yukon Pacific will serve as the sole managing partner of YPLP and as such will be responsible for the daily operation of the TAGS project. All of the limited partnership interests of YPLP are held by Starr of Alaska, Inc., a wholly owned subsidiary of CSX and YPLP's sole limited partner.

In the current application, Yukon Pacific states that since it will be responsible for maintaining bonds and insurance for the project and will continue to serve as the managing partner of YPLP, transfering the export authorization will not affect the basis upon which the authorization was granted, nor will it negate any of the benefits, identified by FE in Order 350, that are expected to flow from the TAGS export project. Moreover, since Starr of Alaska is under the control of CSX as a wholly owned subsidiary, Yukon Pacific asserts that control of the TAGS project will continue to reside with CSX, just as it did at the time DOE issued Order 350.

The application to transfer export authority will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In Order 350, DOE found the Yukon Pacific export arrangement to not be inconsistent with the public interest. Inasmuch as the proposed transfer does not change the export arrangement, intervenors should limit their comments to the effect the transfer might have on that arrangement.

NEPA Compliance.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Yukon Pacific's application is available for A copy of Yukon Pacific's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 22, 1992.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Fossil Energy.

[FR Doc. 92–12632 Filed 6–2–92; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Salt Lake City Area Integrated Projects (SLCA/IP) Electric Power Marketing Environmental Impact Statement (EIS)

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of availability of Purpose and Need Statement and description of alternatives, and announcement of public information meetings.

SUMMARY: The Department of Energy, Western Area Power Administration (Western), announced its intent to prepare a SLCA/IP Electric Power Marketing EIS in the **Federal Register** April 4, 1990 (55 FR 12550). In subsequent **Federal Register** notices published September 20, 1990 (55 FR 38747) and again on November 9, 1990 (55 FR 47125), Western announced and then extended its scoping period and public meetings. Western held three public meetings announced in the **Federal Register** on May 1, 1991 (56 FR 19998) to outline the scope for the EIS.

Western now announces the availability of the EIS Purpose and Need Statement and description of alternatives which will be mailed to all interested parties. Western will hold five public meetings to describe the Purpose and Need Statement and alternatives, and to allow the public to ask questions and provide comments. The comment period will last until July 10, 1992. Western has provided all interested parties on its EIS Mailing list with information on the availability of the Purpose and Need Statement, the alternatives, and the dates for the public meetings and comment period. Copies of the Purpose and Need Statement and description of alternatives may be obtained from David Sabo at the address given below.

DATES: Public information meetings will be held as follows. All meetings begin at 7 p.m.

- June 2: Red Lion Inn Hotel, 255 South West Temple, Salt Lake City, Utah.
- June 3: YWCA of the USA, 9440 North 25th Ave., Phoenix, Arizona.
- June 4: Flagstaff High School, 400 West Elm, Flagstaff, Arizona.
- June 9: Albuquerque Convention Center, 401 2nd Street NW., Albuquerque, New Mexico.
- June 10: Denver West Marriott, 1717 Denver West Marriott Boulevard, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. David Sabo, Manager, Environmental and Public Affairs, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493.

Issued at Golden, Colorado, May 20, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92–12984 Filed 6–2–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66161; FRL 4055–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 1, 1992, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 210, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 40 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000270-00223	Whitmire's No Chew	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate Essential oils Thymol
000352-00490	Atrazine 4L Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000352-00494	Atrazine 90DF Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000400-00415	Olin Terraclor Soil Fungicide 30% Granular	Pentachloronitrobenzene
000464 FL-77-0021	Dow Formula 40	Alkanol* amine 2,4-dichlorophenoxyacetate *(salts of the ethanol and
000464 FL-77-0025	Lorsban 4E	Aromatic petroleum derivative solvent *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000464 FL-81-0037	DMA 4 Herbicide	Dimethylamine 2,4-dichlorophenoxyacetate
000746-00124	Rat and Mouse Killer	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
001022-00008	Permatox 10-S	Borax Pentachlorophenol, sodium salt
001022-00465	Permatox 101	Pentachlorophenol, sodium salt Phenylmercuric acetate
001022-00481	Permatox 101	Pentachlorophenol, sodium salt
001022-00527	Mitrol G-ST	Pentachlorophenol, sodium salt
001471 FL-84-0008	Treflan E.C.	Trifluralin (α,α,α,-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) Trifluralin (α,α,α,-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine)
002781-00043	Carpet Flea Powder	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
004758-00089	Holiday True Fog	Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Sesame oil
006653-00001	Sylvan Dell Brand Flavorized Rat Kakes	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
006720 FL-79-0027	SMCP Standard 2,4-D Amine	Dimethylamine 2,4-dichlorophenoxyacetate
007173 NJ-85-0001	Rozol Paraffinized Pellets	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
007173 NJ-85-0002	Rozol Rodenticide Ground Spray Concentrate	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
009319-00011	AT-90	3-Amino-*s*-triazole
010182 AZ-85-0005	Cymbush 3E Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
011556-00069	Sendran Liquid Tick and Flea Dip for Dogs and Cats	o-Isopropoxyphenyl methylcarbamate
033816-00001	Douse	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
049585-00007	Chacon Fruit & Vegetable Dust	1-Napthyl-*N*-methylcarbamate *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Sulfur
049585-00008	Chacon Rose & Flower Dust Multipur. Insect. Fungicide	1-Napthyl-*N*-methylcarbamate *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Sulfur
055947-00124	Houseplant Insect Mist	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate Isopropyl (2E,4E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate
055947-00125	Zoecon Insect and Mite Houseplant Mist Concentrate	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate Isopropyl (2E,4E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate
055947-00126	Zoecon Insect and Mite Houseplant Mist	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate Isopropyl (2E,4E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate
063935 FL-89-0042	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations.

Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this ninety-day period.

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85067.
000352	E.I. Du Pont Denemours & Co., Inc., Agricultural Products Department, Box 80038, Wilmington, DE 19880.
000400	Uniroyal Chemical Co. Inc., 74 Amity Rd., Bethany, CT 06524.
000464	The Dow Chemical Co., Reg. Compliance / Health & Environmental, 1803 Building, Midland, MI 48674.
000746	Imperial Inc., Agent For: MFA Oil Co., Box 98, Shenandoah, IA 51601.
001022	Chapman Chemical Co., Box 9158, Memphis, TN 38109.
001471	Elanco Products Co., Box 708, Greenfield, IN 46140.
002781	Happy Jack Inc., Box 475, Snow Hill, NC 28580.
004758	Pet Chemicals, Box 18993, Memphis,, TN 38181.
006653	Goulds Dell Prod, 1318 Commerce Park Dr., Williamsport, PA 17701.
006720	Southern Mill Creek Products, 5414 North 56th Street, Tampa, FL 33610.
007173	Liphatech, Inc., 3600 W. Elm St., Milwaukee, WI 53209.
009319	Custom Chemicides, Box 11216, Fresno, CA 93772.
010182	ICI Americas Inc., Agricultural Products, New Murphy Rd. & Concord Pike, Wilmington, DE 19897.
011556	Miles Inc., Agriculture Division, Animal Health Products, Box 390, Shawnee Mission, KS 66201.
033816	T.F.G. Associates, 7518 North 13th Ave., Suite 21, Phoenix, AZ 85021.
049585	Allpack & Co., 377 Amelia, Plymouth, MI 48170.
055947	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
063935	Third Party Registrations, Inc., Box 140097, Orlando, FL 32814.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before September 1, 1992. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s).

Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: May 26, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–12929 Filed 6–2–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP-00319; FRL-4066-4]

Notice of Availability of the Pesticide Handlers Exposure Data Base through Versar, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: A Task Force comprised of EPA, Health and Welfare Canada (HWC), and National Agricultural Chemicals Association (NACA) has developed a generic data base that estimates exposures to mixers, loaders, and applicators of pesticides. This notice announces the availability of the Pesticide Handlers Exposure Data Base (PHED). PHED provides registrants, regulatory agencies, and the public with a substantial body of data on which to base evaluations of the potential exposures for a variety of application methods, crop types and formulations.

ADDRESSES: Copies of the PHED can be ordered from Tim Leighton, Versar Inc., 6850 Versar Center, Springfield, VA 22151, (1–800–283–7727).

FOR FURTHER INFORMATION CONTACT: John T. Tice, Health Effects Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 807, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703–305–7975).

SUPPLEMENTARY INFORMATION: This generic pesticide field worker exposure data base was conceived by a Task Force when it was determined that exposure to pesticide users is primarily a function of the physical parameters of handling and application (e.g., formulation type and mixing/loading/application procedures), rather than of the chemical properties of the active ingredient. The Task Force felt there were many uses and benefits to a generic data base. The most significant benefit is that it allowed exposure and risk assessments to be conducted with a greater degree of certainty, since exposure estimates were based on a larger number of observations than were available from a single exposure study. Secondly, the data base will be a useful research tool for determining and comparing the influences of different parameters on pesticide exposures. Thirdly, pesticide registrants will be able to use the data base and make risk management decisions at the product design stage, prior to the registration stage. Lastly, the cost of pesticide exposure evaluations will be reduced as data are produced for exposure scenarios.

The current version of PHED is being released to the public with the full knowledge and understanding of the Task Force that there are a number of limitations to the data base that will not be solved in this iteration. Enhancements of PHED including improvements in processing time and an increase in the number of data records in the data base, are expected to occur over the next two to three years. Furthermore, the Task Force does not expect the data base to solve all exposure estimation problems for pesticide use. More studies will need to be conducted. Also, improved methodology is critical, particularly in the area of dermal exposure monitoring. However, the availability of pesticide exposure data, organized and compiled in an accessible form in PHED, will allow decisions to be made with greater confidence and will direct future research and monitoring efforts in the most productive directions.

PHED contains over 800 data records for workers engaged in pesticide mixing/loading and application procedures. It also contains procedures for selecting and subsetting data for specific purposes or for entering and using data from other field exposure studies. The PHED program contains the statistical capability to perform univariate (e.g., to obtain means, percentiles, confidence intervals), correlation, or regression statistics. Pesticide exposures (e.g., milligrams per day per pound of active ingredient handled) can be estimated for any given combination of factors that define an exposure scenario such as: application method, mixing/loading method, level of protective clothing, formulation type, and cab type.

Currently, PHED will run only in Revelation G or a run-time version Revelation (G2B) which must be purchased separately through a local software dealer. Revelation is a product of ELF Software, 1419 Commerce Avenue, Longview WA 98632, 1–800–422–2511. NOTE: PHED will not operate with Advanced Revelation.

Dated: May 21, 1992.

Richard D. Schmitt,

Acting Director, Health Effects Division, Office of Pesticide Programs.

[FR 92–12826 6–2–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140181; FRL–4059–8]

Access to Confidential Business Information to Certain Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: EPA intends to transfer confidential business information (CBI) collected from the pulp, paper, and paperboard manufacturing industry to two contractors. Transfer of the information will allow the contractors to assist EPA in developing regulations for the land application of sludge from pulp and paper mills using chlorine and chlorine-derivative bleaching processes under the Toxic Substances Control Act (TSCA), section 6. The information being transferred was collected under the authority of section 308 of the Clean Water Act (CWA), section 114 of the Clean Air Act (CAA), and section 3007 of the Resource Conservation and Recovery Act (RCRA). Interested persons may submit comments on this intended transfer of information to the addresses noted below.

DATES: Comments on the transfer of data are due June 15, 1992.

ADDRESSES: Comments on transfer of data collected under section 308 of CWA, section 114 of CAA, and section section 3007 of RCRA may be sent to Lynne Blake-Hedges, Regulatory Impacts Branch, Economics and Technology Division (TS–779), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lynne Blake-Hedges at (202) 260–7241 for general information and Scott Sherlock at (202) 260–1536 for information regarding uses of CBI under TSCA authority.

SUPPLEMENTARY INFORMATION: EPA intends to transfer information, including CBI, to two contractors: Eastern Research Group, Inc. (ERG), 6 Whittmore St., Arlington, MA 02174 and ABT Associates (ABT), 4800 Montgomery Lane, Suite 500, Bethesda, MD 20814.

More specifically, the information being transferred to the contractors includes the following information collected under the authority of section 114 of CAA, section 308 of CWA, and section 3007 of RCRA: Information collected through questionnaires and surveys of the industry; all joint EPA-industry studies; site visit reports; monitoring and test data; test reports and sampling episodes reports; and analytical summaries of this information and data.

EPA also intends to transfer to ABT and ERG all information listed above (including CBI) that may be collected or developed in the future under the authorities listed above. This information is necessary to enable ABT and ERG to carry out the work required by their contracts to support EPA's development of regulations for the pulp, paper, and paperboard industry. The contractors, contract numbers, and type of support to be provided to EPA are listed in the following table:

EPA Office Receiving Support	Contractor	Contract No.	Type of Support
OPPTS/OPPT/ETD	ERG, Arlington, MA	68–D9–0169	Economic
OPPTS/OPPT/ETD	ERG, Arlington, MA	68–D0–0020	Economic
OPPTS/OPPT/ETD	ABT, Bethesda, MD	68–D9–0169	Economic
OPPTS/OPPT/ETD	ABT, Bethesda, MD	68–D0–0020	Economic

EPA Office Receiving Support	Contractor	Contract No.	Type of Support
OPPTS/OPPT	ABT, Bethesda, MD	68-C0-0093	Technical
OSWER/OSW	ABT, Bethesda, MD	68-C0-0093	Technical

In the case of information claimed to be proprietary and, therefore, confidential, all regulations and confidentiality agreements apply. This transfer would not affect the status of this information as information claimed to be proprietary. The relevant contracts contain all confidentiality provisions required by EPA's confidentiality regulations. Need for access to the information shall continue until September 30, 1993.

In accordance with those regulations, companies who have submitted information claimed to be confidential have until June 15, 1992 to comment on EPA's proposed transfer of this information to ERG and ABT for the proposed outlined above.

Dated: May 27, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc 92-12930 Filed 6-2-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59307B; FRL-4068-1]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME 92-9. The test marketing conditions are described below.

EFFECTIVE DATE: May 28, 1992.

FOR FURTHER INFORMATION CONTACT: Vicki Anderson, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 260-4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-92-9. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-92-9. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-92-9

Date of Receipt: April 15, 1992.

Notice of Receipt: April 28, 1992 (57 FR 17908).

Applicant: Confidential.

Chemical: (G) Alkylamine.

Use: (G) Flotation Agent.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: 6 months, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 28, 1992.

Linda Vlier Moos,

Acting Director, Chemical Control Division, Office of Toxic Substances

[FR Doc. 92-12931 Filed 6-2-92; 8:45 am]

BILLING CODE 6560-50-F

ENDANGERED SPECIES COMMITTEE

Decision

AGENCY: Endangered Species Committee.

ACTION: Notice of decision.

SUMMARY: The Endangered Species Committee held a public meeting on Thursday, May 14, 1992 in Washington, DC, to consider and determine the application of the Bureau of Land Management (BLM) for exemption from the provisions of the Endangered Species Act for 44 timber sales from its FY 1991 timber sales program. By a vote of five to two, the Committee decided on the record to exempt 13 of the 44 timber sales, subject to mitigation and enhancement measures to be undertaken by the BLM. The decision of the Committee is set forth below.

SUPPLEMENTARY INFORMATION: A notice in the September 25, 1991 **Federal Register**, 56 FR 48546, advised that the Bureau of Land Management filed an application with the Secretary of the Interior seeking exemption under section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in its 1991 timber sales program in Oregon.

A notice in the October 22, 1991 **Federal Register**, 56 FR 55462, advised that on October 1, 1991, the

Secretary of the Interior, who is also the Chairman of the Endangered Species Committee, determined that the threshold requirements concerning the application have been met and that a hearing would be conducted.

The Secretary of the Interior designated Harvey C. Sweitzer, an Administrative Law Judge, to conduct the evidentiary hearing. The Administrative Law Judge was assisted by the staff of the Endangered Species Committee, which includes the Division of General Law, Office of the Solicitor, Department of the Interior, and the Office of Program Analysis, Department of the Interior. The evidentiary hearing began on January 8, 1992 and concluded on January 30, 1992, in Portland, Oregon. See 56 FR 57633, November 13, 1991, the **Federal Register** notice that appointed the Administrative Law Judge and established the date of the hearing. An additional public hearing was conducted on February 12–13, 1992, in Portland. See 57 FR 4010, February 3, 1992, the **Federal Register** notice that established the date and location of the public hearing.

The Endangered Species Act requires the Chairman to submit a report to the Committee summarizing the hearing record and addressing specific criteria. The Secretary submitted the report to the Committee on April 29, 1992.

The viewing rooms in Portland and Washington, DC, in which the record was available for public inspection, have been closed.

FOR FURTHER INFORMATION CONTACT: Jon H. Goldstein, (202) 208–4077.

John E. Schrote,

Assistant Secretary—Policy, Management and Budget, and Staff to the Chairman, Endangered Species Committee.

Application for Exemption by the Bureau of Land Management To Conduct 44 Timber Sales in Western Oregon

Decision

Deny 31 and allow 13 of 44 timber sales for which exemption in sought. Specific sales that meet the criteria as discussed below will be allowed.

Proceedings of the Committee

Pursuant to the Endangered Species Act (ESA), 16 U.S.C. 1530 et seq., and its implementing regulations, 50 CFR subchapter C, the Secretary of the Interior convened the Endangered Species Committee (Committee) after making certain threshold determinations on October 1, 1991. An evidentiary hearing was held January 8–30, 1992 in Portland, Oregon. The Secretary presented his report summarizing the record on April 29, 1992. On May 14, 1992, the Committee decided to grant the exemption in part.

Proposed Agency Action

In this case, the Bureau of Land Management (BLM) is both the applicant and the action agency. BLM seeks exemption for 44 proposed timber sales from its FY 1991 timber sales program. As a result of its consultations under section 7 of the Endangered Species Act, the Fish and Wildlife Service (FWS) found that these 44 sales were likely to jeopardize the continued existence of the northern spotted oil.

As the BLM's application shows, 44 individual sales were submitted to FWS for consultations under section 7. FWS issued a single document containing separate biological opinions that addressed the sales. The record does not contain any unity of approach among the parties on this matter, although most analysis and data appeared to analyze some aggregate number of sales. Based on the complex nature of the timber sales program and the consultations under the ESA, as well as on the structure and complexion of the evidence received by the Committee, the Committee determined that the application seeks one exemption with 44 subparts. The Committee has analyzed the record sale by sale and in the aggregate in light of the exemption criteria.

Basis for Decision

Reflecting the provisions of section 7(h) that all criteria must be met to exempt an agency action, the Committee applied the exemption criteria one by one in such a manner that failure to meet any one criterion eliminated the sale from further consideration for exemption. However, the Committee noted each criterion under which a sale would be eliminated.

The Committee's decision to grant a partial exemption allowing 13 sales is based on its determinations that:

(i) For a limited number of the 44 sales, a reasonable and prudent alternative exists, because of the proximity and comparability of some sales from the FY 1992 timber sales program that received "no jeopardy" opinions from the FWS after consultations under section 7 of the ESA. For the rest of the FY 1991 sales, there are no reasonable and prudent alternatives.

(ii) The benefits of the 13 specific timber sales clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and the sales are in the public interest.

(iii) The sales are of regional significance in that their economic effects have, at a minimum, county-wide impact in the two counties in which they are located.

(iv) The Committee finds no evidence in the record demonstrating that the BLM has made any irreversible or irretrievable commitment of resources.

These determinations were made on the record and are summarized below.

Criterion 1: Reasonable and Prudent Alternatives to the Agency Action

The record contains significant evidence that FY 1992 timber sales that received "no jeopardy" opinions from the FWS after consultation under the ESA could constitute reasonable and prudent alternatives. Of these 82 sales, 32 are located in the BLM resource areas that include the 44 FY 1991 sales for which exemption is sought. The Committee finds that proximity to and relative comparability with the exemption sales are important factors in determining which FY 1992 sales are reasonable and prudent. Of these 32, however, three are in critical habitat units and are now the subject of consultation regarding possible adverse modification of critical habitat. Further, 13 of the remaining 32 FY 1992 sales are in informal conferencing with FWS for the marbled murrelet, leaving 16 for consideration as reasonable and prudent alternatives.

The Committee compared these FY 1992 sales against the FY 1991 sales for which BLM seeks exemption that are in the same resource areas due to proximity, comparability and impact on jobs. Comparability of sales is based on board footage, as summarized in Chapter 1, Table 1.2, in the Secretary's report. The distribution of these 16 sales among the resource areas is such that only 12 can serve as reasonable and prudent alternatives.

Ten of the 16 FY 1992 sales serve as reasonable and prudent alternatives for 10 FY 1991 sales located in various resource areas. The other six FY 1992 sales are located in the South Umpqua Resource Area. Two of these six sales serve as reasonable and prudent alternative to the single FY 1991 sale in that resource area. These are no other FY 1991 sales in that resource area for which any of the other four FY 1992 sales can serve as reasonable and prudent alternatives.

Accordingly, the Committee denies exemption for those 11 FY 1991 sales for which reasonable and prudent alternatives exist in the FY 1992 sales. The following 11 FY 1991 sales are denied exemption, based on the

existence of reasonable and prudent alternatives:

Yamhill Resource Area: Back in the Saddle, Kitchen Door, Tigger Too, and Rootballs.
Drain Resource Area: Barneys Peak.
Tioga Resource Area: Green Cedar.
Dillard Resource Area: Pea Gravel Clay and Salty Dog.
South Valley Resource Area: Fox Hollow and and Stennets Fawn Farm.
South Umpqua Resource Area: Horse Heaven.

The Committee recognizes that the FY 1992 sales currently are enjoined pending the outcome of continuing litigation in the Court of Appeals for the Ninth Circuit.

Criterion 2: The Benefits of the Remaining FY 1991 Sales Clearly Outweigh the Benefits of Alternative Courses of Action Consistent With Conserving the Species or its Critical Habitat, and the Sales Are in the Public Interest

Alternative courses of action would include the reasonable and prudent alternatives, as well as those discussed in chapter 3 of the Secretary's Report. Tables 2.1, 2.2, 3.1 of the Secretary's report provide the model for comparing these benefits. After analyzing the quantitative and qualitative data for the sales in the aggregate, the Committee finds that the benefits of the sales "clearly ouweigh" the benefits of alternative courses of action consistent with conserving the species or its habitat. In particular, the stumpage benefits of conducting the sales are significantly greater than the stumpage benefits of not conducting the sales. In addition, the total benefits of the sales are much greater than total benefits of not holding the sales.

The location of a sale in designated critical habitat or a designated conservation area (DCA) in the Recovery Plan for the Northern Spotted Owl (draft) was used as the determinant or "public interest." Accordingly, the Committee finds that the following 12 sales falling within the boundaries of designated critical habitat or a DCA are not in the public interest, and thus are denied exemption:

Northside, Renhaven, Elk 24, Brownson Headwater, Young Leo, Alma Ranch, Table Creek, Eddy Whittaker, Clabber Creek, Amberson Creek, Herb Cluster, 33 and 1.

The Committee finds that the following sale, which was denied under criterion 1, also would be denied exemption as not in the public interest because it falls within the species' critical habitat:

Horse Heaven.

The Committee finds that the sales that were not eliminated under criteria 2 and 3 are in the public interest, because they will provide important benefits in terms of county revenues and continued employment for the affected region, which clearly outweigh those of alternative courses of action.

Criterion 3: The Sales Are of Regional or National Significance

The economic impact information in the record measured the impacts of the sales in terms of the county in which the sales are located. On a sale-by-sale basis, the effects can be county-wide, or may extend beyond the boundaries of any single county, depending on the location of and amount of timber in a given sale. The Committee finds that county-wide impact constitutes regional significance.

The Committee examined a number of factors to determine those sales that would be regionally significant. The Committee reviewed the proposed sales in the context of those counties in which the direct timber jobs associated with the sales are high in comparison to non-timber employment, as set out in Tables 4.8, 4.9 and 4.10 in the Secretary's Report; against county-wide unemployment figures, as set out in Table 4.2; against the relative reliance of counties budgets upon timber sale revenues, as demonstrated in Tables 4.3, 4.4 and 4.6 of the Secretary's Report; and in light of other pertinent information related to the counties involved in the sales.

There were two separate "screens" used for this analysis. First, the remaining sales (those that were not eliminated under either criteria 1 and 2) were evaluated against criteria that constituted a measure of relative size and importance economically and a measure of relative impact on the owl and its habitat. Under this test, sales were deemed to be not of regional significance if they resulted in low county revenue sharing, low timber volume, or high impact on the owl or its habitat (take of owls and/or significant modification of dispersal habitat).

Accordingly, the Committee denies the following six sales under this analysis:

Cross Out, Callahan 20 Cleanup, Last Yankee, Lake Creek, Independence, Luts Breakout.

The following sales, which were denied under criteria 1 and 2, also would be denied under this analysis:

Green Cedar, Salty Dog, Fox Hollow, Back in the Saddle, Clabber Creek, Alma Ranch, Table Creek, Eddy Whittaker.

Second, the Committee evaluated several economic characteristics of six counties involved in the 44 sales to determine if certain counties would be more greatly affected by loss of some or all of the sales. Coos County and Douglas County were highest of all six counties in terms of unemployment, timber employment relative to total employment, percentage of county budgets from O&C revenues, percent of county budgets represented by the remaining sales (not eliminated in criteria 1 and 2), and timber jobs derived from the sales relative to total timber employment.

Using "county" as a region, the Committee determines that the remaining sales falling in Lane, Lincoln, Yamhill and Polk Counties are not of regional significance. Accordingly, the Committee denies exemption to two sales:

Chopped Hamm, Weiss Road.

Under this analysis, additional sales already denied under criteria 1, 2, or the first screen in criterion 3 also would have been denied exemption:

Fox Hollow, Alma Ranch, Lake Creek, Young Leo, Table Creek, Stennets Fawn Farm, Eddy Whittaker, Back in the Saddle, Kitchen Door, Tigger Too, Rootballs, 33 and 1.

After examining and applying these several factors, the Committee determines that the resulting exempted sales are regionally significant. The resulting exempted sales are located in Douglas and Coos Counties, which are more timber-dependent than the other counties and will experience the largest relative economic effects, both in terms of employment and county share of O & C timber receipts. (While Lincoln County's timber employment dependence generally is comparable to that of Douglas and Coos Counties, the sole FY 1991 timber sale in Lincoln County was denied exemption due to the existence of a comparable and proximate FY 1992 sale that may be substituted as a reasonable and prudent alternative under the first criterion.)

Criterion 4: There Has Been No Irreversible or Irretrievable Commitment of Resources

The Committee found no evidence in the record demonstrating that the BLM has made any irreversible or irretrievable commitment of resources.

Sales To Be Exempted

As a result of applying the exemption criteria, the Committee finds for 13 sales that there are no reasonable and prudent alternatives, that the benefits

clearly outweigh the benefits of alternative courses of actions, that they are of regional significance, and that the Bureau of Land Management has not made any irreversible or irretrievable commitment of resources. Accordingly, the Committee grants exemptions for the following 13 sales:

Prego, Moore Coon, Pita Ridge, King Smith, Fall Apart, Chicken Deluxe, Halfway Oxbow, Devore Mountain, Windy, Bateman & Robin, North Sand Creek, Four Gates, Camas Valley West.

Mitigation Measures

The Committee adopts all of BLM's suggestions for mitigation measures to be performed by BLM as integral parts of the exempted sales, modified to maximize the use of land exchange first, rather than acquisition. Additionally, the Committee adopts the mitigation measures set forth on the attachment to this Decision.

Section 7(k) of the ESA

The Committee adopts the recommendations of Counsel to the Committee in his memorandum of April 29, 1992. The Committee therefore declines to issue a finding as to the legal adequacy of BLM's environmental documentation under the National Environmental Policy Act. The Committee is satisfied that an environmental impact statement (EIS) has been previously prepared and that environmental assessments addressing each sale have been tiered to that EIS. The Committee also has reviewed additional evidence in the record regarding the quality and content of the environmental documentation. The Committee believes that the record is complete regarding the environmental issues and accepts the Chairman's conclusion that the requirements of section 7(k) are met.

Order

On the basis of the findings stated above, the Committee grants exemptions for 13 of the 44 FY 1991 timber sales, provided that the mitigation and enhancement measures recommended by BLM, as well as those set forth on the attached addendum, are funded concurrently with the execution of the sales.

Signed on behalf of the Endangered Species Committee:

Date: May 15, 1992.

Manuel Lujan, Jr.

Chairman.

Attachment.

Endangered Species Committee Amendment

As a measure of mitigation for the granting of these 13 exemptions, the Endangered Species Committee (ESC) directs BLM to implement the final recovery plan for the Northern Spotted Owl as expeditiously as possible.

The ESC further directs BLM to use the recovery plan for the Northern Spotted Owl as the basis for its decadal plan. This plan should adequately address concerns about the recovery of the Northern Spotted Owl and shall be consistent with the best available scientific and commercial data, which includes the scientific evidence and information collected by the Inter-Agency Scientific Committee, during the critical habitat rule and draft recovery plan, and as it develops. No single timber sale shall be offered until the decadal plan has gone through a 60-day comment period and has been approved by the DOI. If approval of the decadal plan is delayed beyond the initial comment period and if that delay is beyond the control of the DOI, then sales that are not inconsistent with the Recovery Plan may continue.

The BLM must submit its 1993 annual and decadal plans for consultation as a whole. If BLM, in consultation with FWS, is unable to identify appropriate time [sic] management and owl conservation strategies that will not jeopardized the continued existence of the Northern Spotted Owl, it is the ESC's desire that the FWS issue and opinion on the plan as a whole and not on individual sales. If FWS concurrence is not forthcoming, the BLM could once again apply to the ESC for an exemption from the requirements of section 7 of the ESA.

[FR Doc. 92-12960 Filed 6-2-92; 8:45 am]
BILLING CODE 4310-10-M

FEDERAL RESERVE SYSTEM

Jones Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 26, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Jones Bancorp, Inc., Marcellus, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of G.W. Exchange Bank, Marcellus, Michigan.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Bigfork Bancshares, Inc., Bigfork, Minnesota; to become a bank holding company by acquiring 99.2 percent of the voting shares of First State Bank of Bigfork, Bigfork, Minnesota, and thereby indirectly acquire First State Bank of Bigfork, Bigfork, Minnesota.

2. Bowbells Holding Company, Bowbells, North Dakota; to acquire 100 percent of the voting shares of First National Bank, Minot, North Dakota, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Broadmoor Capital Corporation, Colorado Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank at Broadmoor, Colorado Springs, Colorado.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. West One Bancorp, Boise, Idaho, and West One Bancorp, Washington, Bellevue, Washington; to acquire 100 percent of the voting shares of Yakima Valley Bank, Yakima, Washington.

Board of Governors of the Federal Reserve System, May 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-12906 Filed 6-2-92; 8:45 am]

BILLING CODE 6210-01-F

Professional Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Professional Bancorp, Inc., Santa Monica, California; to acquire BBH Qualified Plans, Inc., Pasadena, California, and thereby engage in data processing, pursuant to § 225.25(b)(7) of the Board's Regulation Y, and trust company functions, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-12901 Filed 6-2-92; 8:45 am]

BILLING CODE 6210-01-F

Earlene Whitaker, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Earlene Whitaker to acquire 32.2 percent, Earlene Whitaker Trust to acquire 19.4 percent, and O.R. Whitaker Trust to acquire 28.8 percent, with Loretta Winkler and J.H. Hay as co-trustees, all located in Liberal, Kansas, of the voting shares of Citizens Financial Corporation, Inc., Liberal, Kansas, parent of Citizens State Bank, Liberal, Kansas.

2. Basil G. Taylor and/or Danna L. Taylor, Watonga, Oklahoma, to acquire an additional 1.27 percent, for a total of 25 percent, and Cecil J. Benway and/or Margaret Benway, Watonga, Oklahoma, to acquire an additional 1.27 percent, for a total of 25 percent, of the voting shares of First State Bancorporation of Watonga, Watonga, Oklahoma, and thereby indirectly acquire First State Bank, Watonga, Oklahoma.

Board of Governors of the Federal Reserve System, May 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-12902 Filed 6-2-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scot-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051192 AND 052292

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
HSBC Holdings plc, Midland Bank plc, Midland Bank plc	92-0864	05/11/92
United Trust, Inc., John K. Cantrell and Mildred G. Cantrell, Commonwealth Industries Corporation	92-0866	5/11/92
Kubota Corp., Silicon Graphics, Inc., Silicon Graphics, Inc	92-0908	05/11/92
The Reynolds and Reynolds Company, Nonck Investment Company A Limited Partnership, Norick Brothers, Inc	92-0875	05/12/92
Medco Containment Services, Inc., COMNET Corporation, COMNET Corporation	92-0911	05/12/92
Fidelity National Financial, Inc., Meridian Bancorp, Inc., Meridian Title Insurance Company	92-0858	05/13/92

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051192 AND 052292—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Saint Luke's Hospital of Kansas City, Spelman Health Services, Inc., Spelman Health Services, Inc	92-0909	05/13/92
Dresser Industries, Inc., Gonzalo Vazquez, AVA International Corp	92-0877	05/14/92
Tyco Toys, Inc., Martin Scheman, Ilico Toy Co. U.S.A. Inc., Ilico International	92-0933	05/14/92
Ben Hill Griffin, Jr. Revocable Intervivos Trust #1, Stonerdge Resources, Inc., Orange-co, Inc	92-0857	05/15/92
American Cable TV Investors 5, Ltd., Steven J. Simmons, Simmons Communications Company, L.P	92-0881	05/15/92
Don G. Angell, The Hilthaven Corporation, First Healthcare Corporation	92-0916	05/15/92
Rite Aid Corporation, Hannaford Bros. Co. Wellby Super Drug Stores, Inc	92-0934	05/15/92
Household International, Inc., Craig-Hallum Corporation, Craig-Hallum Corporation	92-0935	05/15/92
Newell Co., Stuart Hall Company, Inc., Stuart Hall Company, Inc	92-0938	05/15/92
Welsh, Carson, Anderson & Stowe V, L.P., Joint Venture Corporation, Joint Venture Corporation	92-0946	05/15/92
Welsh, Carson, Anderson & Stowe V, L.P., Citicorp, Citicorp Establishment Services	92-0947	05/15/92
BancPLUS Acquisition Corporation, Sam M. Stewart, CFC, Inc	92-0950	05/15/92
The 1818 Fund, L.P., Dorr-Oliver Incorporated, Dorr-Oliver Incorporated	92-0952	05/15/92
Tribune Company, Taft Broadcasting Partners Limited Partnerships, WPHL-TV, Inc	92-0961	05/15/92
Sears, Roebuck and Co., Melvin Simon, Natick Mall Associates	92-0976	05/15/92
Kobe Steel, Ltd., Halstead Industries, Inc., Halstead Industries, Inc	92-0854	05/18/92
Deere & Company, Re Capital Corporation, Re Capital Corporation	92-0891	05/18/92
Ethyl Corporation, Amoco Corporation, Amoco Petroleum Additives Company	92-0927	05/18/92
Merrill Lynch Capital Appreciation Company Limited II, Wherehouse Partners, WEI Holdings, Inc	92-0959	05/18/92
Merrill Lynch Capital Appreciation Company Limited II, Grammy Corporation, Grammy Corporation	92-0967	05/18/92
Code, Hennessy & Simmons Limited Partnership, DWG Corporation, National Frame and Picture Co	92-0928	05/20/92
Alco Standard Corporation, Sterling Capital Ltd., Sterling Capital Ltd	92-0960	05/20/92
First Brands Corporation, Dennis Markel, A&M Pet Products, Inc	92-0965	05/20/92
First Brands Corporation, Anan A. Anabtawi, A&M Pet Products, Inc. and Eurofin Inc	92-0966	05/20/92
Allied-Lyons PLC, William Hill Wine Company, William Hill Wine Company	92-0970	05/20/92
The Liberty Corporation, Mr. Joe Lewis Allbritton, Pierce National Life Insurance Company	92-0977	05/20/92
Genuine Parts Company, I. Gary Davis, Davis & Wilmar, Inc	92-0889	05/22/92
Mr. Ferrucio Fabri, Mr. Chak Fu Chan, Parc 51 Associates	92-0968	05/22/92
The ARA Group, Inc., William J. Steinberg, M.D., Coordinated Health Services, Inc	92-0974	05/22/92
Wings Holdings, Inc., HAL, Inc., Hawaiian Airlines, Inc	92-0975	05/22/92
General Electric Company, Chrysler Corporation, Chrysler Capital Corporation	92-0978	05/22/92
Bacardi International Limited, Bacardi Imports, Inc., Bacardi Imports, Inc	92-0981	05/22/92
Bacardi International Limited, Bacardi Corporation, Bacardi Corporation	92-0982	05/22/92
Craig O. McCaw, Richard E. O'Krepki, General Communications Systems, Inc	92-0983	05/22/92
Sterling Chemicals, Inc., Tenneco Inc., Tenneco Canada Inc. and voting stock of 982174 Ontario	92-0984	05/22/92
Liz Claiborne, Inc., Russ Togs, Inc., Debtor, Russ Togs, Inc	92-0985	05/22/92
AXA, The Equitable Companies Incorporated, The Equitable Companies Incorporated	92-0986	05/22/92
Chris-Craft Industries, Inc., Pinelands, Inc., Pinelands, Inc	92-0992	05/22/92
Mr. Omar Z. Al Askari, Crystal Brands, Inc., Crystal Brands, Inc	92-1000	05/22/92
AMR Corporation, Carl C. Icahn, Trans World Airlines, Inc	92-1001	05/22/92
AMR Corporation, UAL Corporation, Air Wisconsin, Inc	92-1006	05/22/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-12921 Filed 6-2-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 921 0015]

The Vons Companies, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a California-based national grocery chain to sell its Madonna Road supermarket in San Luis Obispo to an FTC-approved purchaser who will operate the store as a supermarket. The respondent would also be required, for a period of 10 years, to obtain FTC approval before making similar acquisitions.

DATES: Comments must be received on or before August 3, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S-2308, Washington, DC 20580, (202) 326-2815; or Paul Roark, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13209, Los Angeles, Ca. 90024, (310) 575-7890.

SUPPLEMENTARY INFORMATION: Pursuant to seciton 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § .2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Divest and To Cease and Desist

In the matter of The Vons Companies, Inc., a corporation. The Federal Trade Commission having initiated an investigation of the acquisition by The Vons Companies, Inc., of eighteen retail grocery stores from Williams Bros. Markets, Inc., and it now appearing that The Vons Companies, Inc., hereinafter sometimes referred to as "proposed respondent" or "Vons," is willing to enter into an agreement containing an

order to divest certain assets and to cease and desist from certain acts,

It is hereby agreed by and between proposed respondent, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Vons is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its executive offices and principal place of business located at 618 South Michillinda Avenue, Arcadia, California, 91007.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement pruposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

As used in this order, the following definitions shall apply:

A. *Acquisition* means the acquisition by Vons of eighteen supermarkets from Williams Bros. Markets, Inc., in San Luis Obispo and Santa Barbara Counties in California.

B. *Property to be divested* means the supermarket at 1314 Madonna Road, San Luis Obispo, California, and shall include the supermarket business and all assets, title, leases, properties, interests, business, goodwill, rights and privileges, of whatever nature, tangible and intangible, except for the name "William Bros." and any other registered or unregistered trademarks and tradenames, and, at the option of the purchaser, all fixtures, equipment and inventory (except private label inventory) generally located at and utilized in any way in conjunction with the retail sale of food and groceries at such supermarket.

C. *Respondent* or *Vons* means The Vons Companies, Inc., subsidiaries, divisions and groups, and their respectiver directors, officers, employees, agents, partners, and representatives, and any successors or assigns of any of the foregoing.

D. *Supermarket* means a retail grocery store of 10,000 or more square feet that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple food stuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items, which may include soaps, detergents, paper goods, and other household products, and health and beauty aids.

E. *Eligible Person* means Albertson's, Inc., Certified Grocers of California Ltd., Food 4 Less Supermarkets, Inc., Scolari of California, Inc, and Joie Scolari, and their respective successors, assigns, subsidiaries, divisions and groups.

II

It is ordered that,

A. Within twelve (12) months of the date this order becomes final, respondent shall divest, absolutely and in good faith, the Property to be Divested.

B. The divestiture shall be made only to (1) an eligible person or to (2) an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the Property to be Divested as an ongoing viable enterprise, engaged in the supermarket business, and to remedy the lessening of competition alleged in the Commission's complaint.

III

It is further ordered that respondent shall take such action as is necessary to maintain the viability and marketability of the Property to be Divested and shall not cause or permit the destruction, removal, wasting, deterioration or impairment of the Property to be Divested except in the ordinary course of business and except for ordinary wear and tear.

IV

It is further ordered that:

A. If respondent has not divested absolutely and in good faith and with the Commission's prior approval, the Property to be Divested as required by Paragraph II of this order within twelve (12) months of the date this order becomes final, respondent shall consent to the appointment of a trustee by the

Commission to divest the Property to be Divested. In the event the Commission or the Attorney General brings an action pursuant to 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. 45(*1*), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Paragrtaph 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Vons to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Property to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen/month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the Property to be Divested, or any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II.B of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Property to be Divested. The divestiture shall be made in the manner set out in Paragraph II; provided, however, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the Property to be Divested.

7. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Property to be Divested.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V

It is further ordered that, within ninety (90) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with Paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with the order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning divestiture.

VI

It is further ordered that, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission:

A. Any supermarket or leasehold interest in any supermarket in San Luis Obispo County, California, or any facility that has operated as a supermarket in San Luis Obispo County within six (6) months of the date of the accepted offer of purchase, or any equity or other interest in or the stock or share capital of any entity that owns any interest in or operates any supermarket in San Luis Obispo County, or any equity or other interest in or the stock and share capital of any entity that owned any interest in or operated any supermarket in San Luis Obispo County within six (6) months of the date of the accepted offer of purchase;

B. Any supermarket or leasehold interest in any supermarket anywhere in the United States that has operated as a supermarket within six (6) months of the

date of the accepted offer of purchase if Vons, directly or indirectly, has within nine (9) months of the date of the accepted offer closed or sold all of its supermarkets (which must be at least one) within seven miles of the supermarket to be acquired, to a purchaser other than an ongoing viable enterprise engaged in the supermarket business in a manner consistent with such purchaser continuing to operate such supermarket as an ongoing, viable supermarket; and

C. Provided, however, that Paragraphs VI.A and B shall not be deemed to require prior approval by the Commission of the construction of new facilities by Vons. Provided further that acquisitions resulting in an interest of not more than 1% of the outstanding voting securities of publicly traded companies, solely for the purpose of investment, or an interest of not more than 5% of the outstanding voting securities of Certified Grocers of California, Ltd. solely for the purpose of investment are not subject to Paragraphs VI.A and B of this order; acquisitions of voting securities of a publicly traded company shall not be subject to Paragraphs VI.A and B of this order solely by reason of the ownership, directly or indirectly, by such publicly traded company of less than 5% of the outstanding voting securities of a company that owns an interest in or operates a supermarket; and

Beginning on August 29, 1992, and annually thereafter for ten (10) years, the respondent shall file with the Commission a verified written report of respondent's compliance with sections A and B of this Paragraph.

VII

It is further ordered that, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to interview officers or employees of respondent, who may have counsel present, regarding such matters.

VIII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change, that may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Vons Companies, Inc. ("Vons").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint in this matter alleges that Vons owns and operates retail supermarkets throughout the country. On or about September 3, 1991, Vons and Williams Bros. Markets, Inc., entered into a letter of understanding for the acquisition by Vons of the Williams Bros. supermarkets in the central coast area of California, including the city of San Luis Obispo. On or about December 31, 1991, Vons and Williams Bros., entered into a formal agreement transferring the assets and operations of the supermarkets to Vons. On or about January 28, 1992, the acquisition was consummated.

The proposed complaint further alleges that on or about September 6, 1991, after Vons had entered into a letter of intent to purchase the Williams Bros. stores, Vons agreed to sell its store in San Luis Obispo to a drugstore operator. On or about September 12, 1991, it entered into a formal agreement with the drugstore operator. On or about September 30, 1991, escrow closed on the transaction.

The proposed complaint alleges that the two transactions described above were inextricably intertwined: the second would not have been made but for the first. Vons sacrificed short run profits to secure market power in the relevant market by agreeing to sell its store in the city of San Luis Obispo to a person that did not intend to operate it as a supermarket for a lower price than it was offered by a person who did intend to operate it as a supermarket.

The proposed complaint further alleges that acquisition of Williams Bros. by Vons substantially increased concentration in the already highly concentrated San Luis Obispo supermarket relevant market. Vons has approximately 50% of the market. Moreover, entry into the relevant market is difficult. Prior to the transactions described above, Vons and Williams Bros. were actual competitors in the relevant market.

The effects of the acquisition may be substantially to lessen competition in the relevant market in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by eliminating direct competition between Vons and Williams Bros.; by eliminating Williams Bros. as a substantial independent competitive force; by facilitating the reduction of capacity in the relevant markets through Vons' sale of its store in San Luis Obispo to a buyer not intending to operate it as a supermarket; and by significantly enhancing the likelihood of collusion, or interdependent coordination among retail supermarkets.

The proposed order requires, among other things, that the proposed respondent shall:

A. Within twelve (12) months of the date this Order becomes final, divest the supermarket at 1314 Madonna Road, San Luis Obispo, CA.

B. Divest the property only to an acquirer that receives the prior approval of the Commission or to an eligible purchaser listed in the order.

C. Take such action as is necessary to maintain the viability and marketability of the property to be divested.

D. Consent to the appointment of a trustee by the Commission to divest the property, in the event that respondent fails to divest in accordance with the Order within twelve (12) months.

E. For a period of ten (10) years after the date the order becomes final, cease and desist from acquiring any supermarket within San Luis Obispo County, CA without the prior approval of the Commission.

F. For a period of ten (10) years after the date the Order becomes final, cease and desist from acquiring any supermarket, anywhere in the country without prior approval from the Commission, if Von's, within nine (9) months of the date of the acquisition, has closed or sold to a non-supermarket purchaser all of the stores it operated within seven (7) miles of the acquired store.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Azcuenaga in re the Vons Companies, Inc. (File No. 921–0015)

I concur in the Complaint and Order insofar as they are based on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, but do not reach the question whether the Williams Bros. acquisition also violated section 7 of the Clayton Act, 15 U.S.C. 18.

[FR DOC. 92–12942 Filed 6–2–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92E–0169]

Determination of Regulatory Review Period for Purposes of Patent Extension; Omniflox®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Omniflox® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joel P. Sparks, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Omniflox®. Omniflox® (temafloxin hydrochloride) is indicated for the treatment of adults with mild to moderate infections caused by susceptible strains of designated microorganisms in lower respiratory tract infections, skin and skin structure infections, prostatitis, and urinary tract infections. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Omniflox® (U.S. Patent No. 4,730,000) from Abbott Laboratories, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 29, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Omniflox® represented the first commercial marketing of the product under section 505 of the Federal Food, Drug, and Cosmetic Act. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Omniflox® is 1,449 days. Of this time, 658 days occurred during the testing phase of the regulatory review period, while 791 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: February 11, 1988. The applicant claims February 10, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was February 11, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: November 30, 1989. The applicant claims November 29, 1989, as the date the new drug application (NDA) for Omniflox® (NDA 20–043) was filed. However, FDA records indicate that NDA 20–043 was submitted on November 30, 1989.

3. *The date the application was approved*: January 30, 1992. FDA has verified the applicant's claim that NDA 20–043 was approved on January 30, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 328 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 3, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 30, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 21, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92–12941 Filed 6–2–92; 8:45 a.m.]

BILLING CODE 4160–01–F

Centers for Disease Control

[Program Announcement Number 238]

Grant for Injury Control Training and Demonstration Center; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control, the Nation's prevention agency, announces the availability of grant funds in Fiscal Year 1992 for the establishment of a new injury control training and demonstration center. The center will address the special needs of trauma victims in rural communities where economic conditions are depressed and where common occupations, including underground mining and family farming, are associated with an increased risk for severe injuries. This center will develop a training, research and services program for injury control, encompassing prevention, acute medical care and rehabilitation services, with an overall mission to reduce morbidity, mortality, disability and health care costs associated with traumatic injury.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. The announcement is related to the priority area of unintentional injuries. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under sections 301 and 391 of the Public Health Service Act [42 U.S.C. 241 and 280b], as amended. Program regulations are set forth in title 42 of the Code of Federal Regulations, part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, state and local health departments and small, minority businesses are eligible for this grant.

Availability of Funds

Approximately $890,000 is available in Fiscal Year 1992 to fund one new injury control training and demonstration center. It is expected that the award will begin on or about September 30, 1992, and will be made for a 12-month budget period, with a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation of funding for future years will be made on the basis of satisfactory progress, including the achievement of milestones towards development of the training, research and services components of the center, and the availability of federal funds.

Purpose

The purpose of this grant program is to establish a new injury control training and demonstration center to serve a rural community where economic conditions are depressed. An increased risk of severe injury exists in these communities where a relatively large proportion of the work force are underground miners, family farmers and other rural workers.

Program Requirements

The following are essential requirements for establishing the new injury control training and demonstration center:

1. Ability to establish a center that is principally based at a Level I trauma center that has established linkages with isolated, rural hospitals that provide medical care services in communities where economic conditions are depressed and where many residents work in occupations, including underground mining and family farming, that have an increased risk for severe injuries.

2. A full-time director/coordinator at the Level I trauma center with authority and responsibility to carry out the requirements of the program.

3. Ability to provide qualified staff, other resources, and knowledge to implement the components of the program.

4. Availability of state-of-the-art telecommunications on a 24-hour basis that facilitates (a) consultations with medical specialists, (b) linkages to major medical and injury control research centers, and (c) transmission of diagnostic information.

5. A plan to develop an applied research program in rural trauma care and EMS systems to enhance and extend prevention, acute care and rehabilitation services. Possible research applications include more effective public education in injury prevention, quicker public access to emergency services, demonstrable enhancements of telecommunications capacity for prehospital emergency care providers, equipment and methods for expeditious transport of injured persons from the scene of injury to the most appropriate receiving hospital, more timely and effective use of resuscitative interventions by prehospital and hospital personnel who treat traumatically injured persons, closer integration of acute care and rehabilitation services, and improvements in trauma care and EMS surveillance systems to facilitate evaluation of clinical performance.

6. Demonstrated capacity to establish and maintain training and continuing education programs for emergency physicians, surgeons, trauma nurses, physician assistants, emergency medical technicians, and first responders so that providers at all phases and levels of service are capable of rendering trauma care that meets recognized national standards. Training programs for emergency medical technicians and first responders should reflect current standard curricula for prehospital care. Teaching programs for physicians and trauma nurses should include instruction in advanced methods for resuscitation and stabilization of critically injured patients. Training in medical control and EMS operations should be a priority for these physicians who provide medical direction to prehospital personnel.

7. Ability to develop and maintain a population-based trauma registry with uniform case criteria and data elements, to be used for trauma care assessment and injury surveillance. This trauma care data system should include process and outcome measures for prehospital, hospital and rehabilitation services as well as data describing the cause of injury and contributing factors. It should also provide appropriate data collection, analysis, and reporting mechanisms for ongoing trauma care system monitoring and evaluation, including assessment of long-term sequelae of injury and the effectiveness of acute care and rehabilitation services.

8. Effective, well-defined working relationships with regional and state health agencies that have responsibility for EMS and trauma care services.

9. A plan to ensure continuation of the injury control training and demonstration center beyond expiration of grant support.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The applicant's understanding of the problem of addressing rural trauma care issues (5%).

2. Technical merit and comprehensiveness of proposed approach to establishing the new injury control training and demonstration center as outlined in this announcement, including summary descriptions (i.e., goals and objectives, rationale, methods

and potential outcomes) of all projects proposed for applied research, training and continuing education, trauma registry, and injury prevention/intervention activities (30%).

3. Relevance of the proposal to the scope and activities described in this announcement (25%).

4. Training and experience of the proposed program director(s) and staff. The program director(s) must have an appropriate medical training in the field of rural trauma care and technical expertise in medical supervision and trauma patient management. The program director(s) must also provide assurances of major time commitment to the program (15%).

5. Appropriateness of facilities, telecommunication systems, and linkages with isolated rural community hospitals as described in this announcement (15%).

6. Proposed implementation plan with milestones and schedule for initiating and accomplishing the major activities of the grant (10%).

Executive Order 12372 Review

Applications are not subject to review by Executive order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Application Submission and Deadline

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before July 31, 1992.

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group.

Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service.

Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, business management technical assistance, and an application package may be obtained from Adrienne McCloud, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6634.

Scientific or technical assistance may be obtained from Daniel A. Pollock, M.D., Biometrics Branch, Division of Injury Control, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road NE., Mailstop F–36, Atlanta, Georgia 30333, (404) 488–4656.

Programmatic technical assistance may be obtained from Paul Burlack, Division of Injury Control, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–36, Atlanta, Georgia 30333, (404) 488–4662.

Please refer to Announcement Number 238 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: May 22, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–12897 Filed 6–2–92; 8:45 am]

BILLING CODE 4160–18–M

[Announcement Number 235]

Injury Community Demonstration Projects for the Evaluation of Youth Violence Prevention Programs; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control, the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for cooperative agreements for the prevention of deaths and injuries associated with youth violence in high-risk communities. These projects will develop, implement, and evaluate multi-faceted, community-based prevention programs to reduce the incidence of interpersonal violent behavior and associated injuries and deaths among adolescents and young adults in high-risk communities.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Violent and Abusive Behavior. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program announcement is authorized under section 391 (42 U.S.C. 380b) of the Public Health Service Act, as amended.

Eligibility

Eligible applicants are state and local health departments, national organizations working at the community level, community-based organizations, research institutions, universities, colleges, and other nonprofit entities with a demonstrated capacity for working with youth in high-risk communities. Regardless of the type of organization from which the application originates, applicants must be able to demonstrate that they have established a working partnership involving, at a minimum, a community-based organization, a university or other academic institution, and a state or local health department.

Availability of Funds

Approximately $750,000 is available in Fiscal Year 1992 to fund up to two projects to evaluate multi-faceted community-based youth violence prevention programs. Awards are expected to range from $325,000 to $425,000 with an average award of $375,000 for each 12-month budget period. Funds are expected to be awarded on or about September 30, 1992, for up to a 5-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Purpose

The purpose of this project is to design, implement, and determine the effectiveness of multifaceted,

community-based youth violence prevention programs in reducing the incidence of interpersonal violent behavior and associated injuries and deaths among adolescents and young adults in high-risk communities.

Youth violence prevention programs will involve collaboration among several different sectors of the community, including (at a minimum) a community-based organization, state and/or local health department, and an academic institution. The population in which these violence prevention programs should attempt to reduce violence is adolescents and young adults. The recipient will define the specific age span that will constitute "adolescents and young adults" for the purposes of this prevention program. The target population for the interventions which comprise the violence prevention program, however, may differ from the population in which the program is attempting to reduce violence. For example, interventions could be targeted towards parents of youth (to enlist their aid in preventing youth violence) or towards young children (with the aim of reducing their violent behavior during adolescence and young adulthood).

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Year 1.

a. Convene local planning groups (LPGs) that will advise and consult on the scientific and practical aspects for the proposed intervention and evaluation activities. This group will collaborate with the applicant in all phases of the project. The LPG must include, at a minimum, a behavioral scientist with experience in intervention evaluation, an experienced epidemiologist, and representatives from the participating state or local health department, community-based organization(s), academic institution(s), and other community agencies concerned with youth violence.

b. Develop procedures for collecting and compiling information relevant to the proposed project. This information should include, but not be limited to a description of the target population; identification of barriers to youth violence prevention; identification of facilitators of violent behavior, and/or facilitators of injury *given* violent behavior; descriptions of new and existing candidate interventions for the proposed youth violence prevention program (including a description of the mechanism by which each intervention would contribute to the prevention of injuries from violence, and evidence—whether empirical, theoretical, or anecdotal—that the intervention may be effective).

c. At the end of the first year provide, in collaboration with participating institutions, a summary of the following information:

i. In light of the above findings, identify a final target population and a diverse but complementary set of promising, culturally sensitive preventive interventions for inclusion in the youth violence prevention program beginning in year 2.

ii. Modify the analysis plan submitted with the application to reflect the above findings and decisions and input from the collaborating partners. Develop a final written scientific protocol for evaluating the planned youth violence prevention program. This protocol will contain the following elements:

1. Statement of the questions to be answered (hypotheses to be tested);

2. Description of any individual intervention, or set of interventions, to be evaluated;

3. Specific process and outcome data that will be collected and analyzed, including data collected for purposes of program monitoring and management;

4. Description of methods (both scientific and operational) for collecting process and outcome data;

5. Description of how data will be maintained (i.e., in what databases); and

6. Description of statistical techniques that will be used to analyze the data.

d. Develop and pilot test instruments for data collection for program monitoring and effectiveness evaluation.

e. Establish baseline rates of violent behavior and associate injuries and deaths, as well as any other key study indicators, within the chosen target population.

f. Establish, in collaboration with CDC, goals and realistic, measurable, time-oriented objectives for all remaining phases of the project.

2. Years 2 and Beyond

a. Develop and implement the selected interventions as part of a coordinated, community-based youth violence prevention program.

b. Collect and compile program monitoring and prevention effectiveness data in an ongoing fashion. Compile "lessons learned" from project demonstration.

c. Collaborate with CDC in the conduct of the final scientific evaluation of the effect of the program on rates of youth violence and associated injuries and deaths.

B. CDC Activities:

1. Provide consultation and technical assistance in problem assessment and defining the target population; the evaluation of coverage, cost, and impact of current and potential interventions; and design of scientific protocols.

2. Collaborate in the design of all phases of the demonstrations. Provide consultation on data collection instruments and procedures, and provide coordination of research, evaluation, and intervention activities between and among the sites.

3. Collaborate in the data collection and analysis of information collected from these studies and other related activities.

4. Monitor data collection and analysis of information collected from evaluation, and provide technical assistance in establishing standardized data collection and reporting systems to monitor program activities and costs of interventions.

5. Provide up-to-date scientific information about youth violence prevention and coordinate with related activities in CDC's national youth violence prevention program.

6. Assist in the transfer of information and methods developed in these projects to other prevention programs through CDC's national youth violence prevention program.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (Maximum 100 total points):

1. The extent to which the community and target population has a high incidence of interpersonal violent behavior among youth and has been affected by deaths and injuries associated with youth violence. (35 points)

2. The extent to which the applicant has demonstrated that a full working partnership for the design, implementation, and evaluation of the project has been established between—at a minimum—a community-based organization, a university or other academic institution, and a state or local health department; and the extent to which the applicant or full working partner provides evidence of other, beneficial collaborative relationships between service providers and researchers and between government, health, and community-based organizations who are or will be

involved in the design, implementation, and evaluation of the project. (10 points)

3. The quality of the applicant's proposed analysis plan, i.e., the plan to design and evaluate a program of interventions that will prevent deaths and injuries associated with youth violence; and the degree to which the proposed interventions are realistic and meet the intended purposes of the funding. (15 points)

4. The extent to which the applicant demonstrates the interest, ability, and willingness to collaborate with CDC and other funded projects in the design and evaluation of the prevention program that may require incorporating, changing, or eliminating certain activities proposed by the applicant. (10 points)

5. The extent to which the applicant or full working partner demonstrates knowledge of evaluation research methods, applied epidemiologic and behavioral research in the area of youth violence, ability to collect data on the target population, and ability to analyze both quantitative and qualitative data; and the extent to which the applicant or full working partner demonstrates the capacity to initiate and complete effective epidemiologic, behavioral, and evaluation research in the area of youth violence prevention. (10 points)

6. The extent to which the applicant or full working partner demonstrates that they have access to the target population for the proposed prevention program, an understanding of the community and the target population, and has experience in management and delivery of high-quality interventions at the community level to the target population. (10 points)

7. The extent to which the applicant's proposed staff and facilities meet project requirements, the extent to which the applicant can demonstrate that institutional barriers will not impede the initiation, implementation, and completion of the project (through letters of support from the head administrative office of the organization where the project will be carried out outlining specifically how the project will be supported institutionally, including endorsement of the timeline, project staff requirements, collaborative and contractual relationships, and other requirements of the project included in the proposal), and the extent to which the applicant proposes to involve appropriate researchers and other personnel who reflect the racial/ethnic makeup of the target population. (10 points)

8. Consideration will also be given to the extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, consistent with the intended use of the cooperative agreement funds, the extent to which the applicant is contributing its own resources to youth violence prevention activities, and the extent to which the applicant is working to establish a self sufficient prevention program within the community. (Not Scored)

Other Requirements

A. Paperwork Reduction Act

Projects funded through this cooperative agreement mechanism that involve collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects and Confidentiality

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institution review committee(s). The applicant will be responsible for providing assurance with the appropriate guidelines and form provided in the application kit.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number (CFDA) for this project is 93.262.

Application Submission and Deadline

The originial and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before July 31, 1992.

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review committee. For proof of timely mailing, applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Late Applications

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, business management technical assistance, and an application package may be obtained from Adrienne McCloud, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6634.

Programmatic assistance may be obtained from Timothy N. Thornton, Division of Injury Control, National Center for Environmental Health and Injury Control, Mailstop F–36, Centers for Disease Control, Atlanta, Georgia 30333, (404) 488–4662.

Scientific assistance may be obtained from Patrick W. O'Carroll, M.D., M.P.H., Division of Injury Control, National Center for Environmental Health and Injury Control, Mailstop F–36, Centers

for Disease Control, Atlanta, Georgia 30333, (404) 488–4646.

Please refer to Announcement Number 235 when requesting information and submitting any application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: May 28, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–12896 Filed 6–2–92; 8:45 pm]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 92F–0218]

BP Chemicals, Ltd.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BP Chemicals, Ltd., has filed a petition proposing that the regulations for use of food additives in animal feed and drinking water be amended to provide for use of formic acid in feed ingredients and in complete poultry feed as an antimicrobial agent when in an amount not to exceed 1.5 percent of the finished feed.

DATES: Written comments by August 3, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration,7500 Standish Pl., Rockville, MD 20855, 301–295–8731.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2226) has been filed by BP Chemicals, Ltd., Research & Development Dept., Hull Laboratory, Salt End, Hull HU 12–8 DS United Kingdom. The petition proposes that § 573.480 *Formic acid* (21 CFR 573.480) be amended to provide for use of formic acid in feed ingredients and in complete poultry feed as an antimicrobial agent for reducing *Salmonella* in an amount not to exceed 1.5 percent of the finished feed.

The potential environmental impact of this action is being reviewed. The environmental assessment prepared by the petitioner may be seen at the Dockets Management Branch (address above). Comments from the public are invited. Comments received by August 3, 1992 will be considered. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 27, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92–12946 Filed 6–2–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92N–0234]

Royce Laboratories, Inc.; Withdrawal of Approval of Six Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of six abbreviated new drug applications (ANDA's) held by Royce Laboratories, Inc. (Royce), 16600 Northwest 54th Ave., Miami, FL 33014. Royce has agreed in writing to permit FDA to withdraw approval of the applications, and has waived its opportunity for a hearing. This action stems from the discovery of discrepancies concerning the data submitted to obtain approval of the applications.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Diane M. Sullivan, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies concerning the data used to support approval of the following ANDA's held by Royce:

ANDA 71–722: Haloperidol Tablets, .05 milligram (mg);

ANDA 71–723: Haloperidol Tablets, 1 mg;

ANDA 71–724: Haloperidol Tablets, 2 mg;

ANDA 71–725: Haloperidol Tablets, 5 mg;

ANDA 72–121: Haloperidol Tablets, 10 mg; and

ANDA 72–122: Haloperidol Tablets, 20 mg.

Royce has conducted an internal audit confirming data discrepancies discovered by the agency. Subsequently, in a letter dated May 1, 1992, Royce requested withdrawal of the ANDA's.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn, effective June 3, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: May 26, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92–12947 Filed 6–2–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 88D–0026]

Tamper-Resistant Packaging Requirements for Certain Over-the-Counter Human Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7132a.17 entitled "Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products." The CPG provides updated guidance to FDA district offices on the requirements for tamper-resistant packaging for OTC drug products for human use.

ADDRESSES: A copy of revised CPG 7132a.17 entitled "Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products" may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 92–174002 and include payment of $12.50 for each copy of the document. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or billing arrangements made with NTIS. Charge card orders

must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. CPG 7132a.17 is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lana J. Ragazinsky, Center for Drug Evaluation and Research (HFD–336), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8107.

SUPPLEMENTARY INFORMATION: FDA has revised CPG 7132a.17 to update internal guidance to FDA district offices on the requirements for tamper-resistant packaging for OTC drug products for human use. The CPG reviews packaging systems, capsule sealing technologies, and location of the tamper-resistant packaging labeling statement(s).

The statements made in the CPG are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

This notice is issued under 21 CFR 10.85.

Dated: May 21, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92–12944 Filed 6–2–92; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called "Medicare Supplier Identification File," HHS/HCFA/BPO No. 09–70–0529. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on May 28, 1992. Pursuant to paragraph 4(b)(4) of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 24, 1985 (50 FR 52730), we are requesting a waiver from OMB of the 60-day advance notice requirement because of the legislative requirement for implementing the change. The effective date of the legislation requiring the disclosure of ownership was January 1, 1992 for all new suppliers. HCFA, however, was unable to develop and obtain approval of the standard form necessary to capture the data required for disclosure of ownership and satisfy the requests of the Office of Inspector General in time to meet the due date. Therefore, in the absence of a denial of the waiver by OMB, the new system of records including routine uses will become effective July 27, 1992, unless comments received should lead HCFA to decide otherwise.

ADDRESSES: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, 2–H–4 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Jane Herlocker, Project Officer, Bureau of Program Operations, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207. Her telephone number is 410–966–7412.

SUPPLEMENTARY INFORMATION: To be eligible for payment for supplies and services furnished to Medicare beneficiaries, a supplier must obtain a billing number by completing the application form ("Medicare Supplier Number Application"—HCFA–192) from the Medicare carrier. As part of the process to obtain a billing number, HCFA requires information about persons having ownership or control interest in a supplier to comply with section 1124A of the Social Security Act, 42 USC section 1320a–3a as added by section 4164 of the Omnibus Reconciliation Budget Act (OBRA) of 1990, Public Law No. 101–508, which requires suppliers to disclose information about owners and managing employees.

In this system of records, HCFA is limiting its collection of information to suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS.) A "supplier" of DMEPOS is an entity or individual, including a physician or part A provider, which sells or rents Part B covered items to Medicare beneficiaries and which meet the standards which Medicare established and are found on the application form ("Medicare Supplier Number Application", HCFA–192). Other suppliers and providers of services are required by this legislation to disclose ownership information of their entities; other privacy systems of records may be established as appropriate.

Section 1124A(a)(3) of the Social Security Act (the Act) defines ownership or control interest as "a person who (A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership of 5 per centum or more in the entity; or (ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or in part interest is equal to or exceeds 5 per centum of the total property and asset of the entity; or (B) is an officer or director of the entity, if the entity is organized as a corporation; or (C) is a partner in the entity, if the entity is organized as a partnership." "Control interest" also includes any person meeting the above definitions for an entity which is involved in a joint venture which is seeking to qualify as a supplier and receive a billing number.

Section 1124A of the Act defines managing employee to mean "an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the entity or who directly or indirectly conducts the day-to-day operations of the entity."

Suppliers also are required to disclose ownership of a subcontractor. A subcontractor is defined in 42 CFR 420.201 as "(1) an individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities of providing medical care to its patients."

The legislation defines in section 1124A of the Act a disclosing Part B provider to mean an entity receiving payment on an assignment-related basis for furnishing items or services for which payment may be made under Part B of Title XVIII. The HCFA Notice of Proposed Rule Making (NPRM) titled "Medicare Program: Carrier Jurisdiction for Claims for Durable Medical

Equipment, Prosthetics, Orthotics, and Other Issues Involving Suppliers" (56 FR 56612) changes the definition to include all suppliers, not just those receiving payment on assignment-related basis. Also included in the NPRM are standards for a supplier to receive a billing number. HCFA is using these standards in lieu of a definition for a supplier of DMEPOS.

Prior to the OBRA legislation, Medicare lacked such a requirement to collect ownership information and received criticism from the Office of Inspector General (OIG) for this deficiency. Without the requirement to collect ownership information, Medicare carriers were unable to cross-check owner and managing employee names against the sanctions listing from the OIG. Thus, individuals who had owned suppliers which were sanctioned or identified as having questionable business practices were able to reenter the Medicare program by changing the name of the business and reincorporating.

To achieve consistency in data requirements, HCFA developed a standard form, "Medicare Supplier Number Application"—(HCFA–192 which OMB approved on December 24, 1991, with the OMB No. 0938–0594), specifically to meet the disclosure requirements of section 1124A of the Act. The form HCFA–192 is designed to capture business and ownership information from suppliers. The information on this application is the source for the "Medicare Supplier Identification File." The application and the subsequent file provide an ongoing collection of data necessary to identify suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) who are eligible to submit claims for items provided to Medicare beneficiaries. In conjunction with the HCFA plan to regionalize the processing of DMEPOS claims, the new DMEPOS regional carriers will collect the ownership information for those suppliers.

The local carriers will continue to collect business and ownership information for three other types of suppliers—ambulance companies, imaging technology companies, and independent physiological laboratories. To comply with the requirement for disclosure of ownership and managing employees for those three types of suppliers, HCFA will instruct the carriers to use local forms to collect the ownership and managing employee information.

The Medicare Supplier Identification File will contain all the business and ownership data from the HCFA–192 and provide each carrier the ability to issue billing numbers only to suppliers eligible to receive Medicare payments. It will also allow the Medicare carrier to check the name of the supplier and the names of the owners and the managing employees against the sanctions listings from the OIG to ascertain that the business and the owners and managing employees do not appear on the OIG listings which contain both supplier business names and individuals' names.

This system of records will not have an unfavorable effect on the privacy or personal rights of individuals. The proposed routine uses in this new system of records meet the compatibility criteria of the Privacy Act.

Dated: May 19, 1992.

William Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

09–07–0523

SYSTEM NAME:

Medicare Supplier Identification File, HHS, HCFA, BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Casrriers under contract to the HCFA will maintain the records. Contact System Manager for location of system of records. In addition, records for suppliers of DMEPOS will be collected and retained at a national level at a contractor to be selected later. The HCFA Data Center may also retain an electronic file of this system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on owners, managing employees, and subcontractors of suppliers of DMEPOS, ambulance companies, imaging technology companies, and independent physiological laboratories which provide services or supplies to Medicare beneficiaries will be collected.

CATEGORIES OF RECORDS IN THE SYSTEM:

This collection of data will identify individuals who are owners, managing employees, or subcontractors in companies which supply DMEPOS, ambulance companies, imaging technology companies, and independent physiological laboratories. This collection will maintain information on the owners, managing employees, and subcontractors; i.e., names of the individuals, business location, unique physician identification number (UPIN) or social security number, specialty code, employer identification number, and type of billing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1124, 1124A, 1126, and 1833(e) the Act.

PURPOSE(S):

The system will identify supplier businesses which are eligible to receive Medicare payments for items and services furnished to Medicare beneficiaries as well as owners, managing employees, and subcontractors in those suppliers. The system will facilitate the identification of business owners who have been sanctioned by the OIG and/or have questionable business practices within the Medicare program. The system will also identify those owners and managing employees whose businesses carriers' audits and reviews cite as employing billing practices which could breach Medicare standards. The carriers will be able to review questionable claims before payment; this process has been found to be more efficient than postpayment reviews.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH RECORDS:

Disclosure may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. To a Medicaid State agency or its fiscal agent to assist in enforcing Medicare and Medicaid sanctions;

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) (HHS), or any component thereof; or

(b) Any HHS employee in his or her individual official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or,

(d) The United States or agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is party to litigation or has an interest in such litigation, and HHS has determined that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation to the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To a contractor for the purposes of collating, analyzing, aggregating or otherwise refining or processing records in this system of for developing, modifying and/or manipulating automated data processing (ADP) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media, e.g., tape, electronic imaging, disk, microfilm, and hard copy paper.

RETRIEVABILITY:

The records are retrievable by business name, owner's name, owner's social security number of UPIN, managing employee's name, employer identification number or other tax reporting number, business address, and carrier assigned billing numbers.

SAFEGUARDS:

Access is limited to authorized personnel and HCFA contractor employees in the performance of their duties. HHS contractors are required to comply with the provisions of the Privacy Act, and are required to sign Assurance of Confidentiality Forms (or Data Security Statements) that are kept on file by the contractor.

The carriers will maintain all records in secure areas accessible only to authorized employees and will notify all employees having access to records of the criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, the carriers will initiate ADP system security procedures required by the HHS *Information Resources Manual,* Circular #10, Automated Information Systems Security Programs, (e.g., use of passwords) and the National Institute of Standards and Technology Federal Information Processing Standards. Similar standards will be provided if any records are transferred to HCFA central office.

RETENTION AND DISPOSAL:

Suppliers complete the form to apply for a billing number in the Medicare program, to update information on the initial request, and to reenroll as Medicare requires every 3 years. The paper copies and/or microfilm or electronically imaged copies are kept indefinitely. The magnetic media file which is used in the day-to-day operations is updated as required for updates, deactivation, or reenrollment. Although records may be deactivated when the supplier ceases to bill Medicare, the carriers will keep all records indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for records information for suppliers of DMEPOS should be directed to the carrier which will maintain the national file (This carrier will be named no earlier than October 1992) or, for other types of suppliers, to the carrier servicing the supplier's geographic area. If an individual wishes to determine if he or she is included in a record in the system, that person must provide the business name of the supplier, employer identification number, and the business address. Information on individuals within the system will be released only to authorized individuals.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the record contents being sought. (These access procedures are in accordance with Department regulation (45 CFR 5.b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the Systems Manager at the address specified above and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the contest; and give any supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES;

Information contained in these records is received from the application which the suppliers complete to obtain Medicare billing numbers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92–12900 Filed 6–2–92; 8:45 am]
BILLING CODE 4120–03–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Methyl Bromide

The HHS' National Toxicology Program (NTP) announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of methyl bromide, widely used as an insecticidal fumigant in food supplies, warehouses, barges, building, furniture, and in quarantine situations. Methyl bromide is also used in fire extinguishers and refrigerant systems and in the chemical industry as a methylating agent and an extraction solvent.

Toxicology and carcinogenesis studies are conducted by exposing groups of 70 B6C3F1 mice of each sex to methyl bromide by inhalating at 0, 10, 33, or 100 ppm for 6 hours per day, 5 days per week up to 103 weeks.

Under conditions of these 2 year inhalation studies, methyl bromide caused degenerative changes in the cerebellum and cerebrum, myocardial degeneration and cardiomyopathy, and olfactory epithelial necrosis and metaplasia. Toxic effects persisted although exposure to methyl bromide in the 100 ppm group terminated was after 20 weeks. There was no evidence of carcinogenic activity [1] of methyl bromide in male or female B6C3F1 mice exposed to 10, 33, or 100 ppm.

The Study Scientist for this bioassay is Dr. Scot L. Eustis. Questions or comments about the contents of this Technical Report should be directed to Dr. Eustis at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3231.

Copies of Toxicology and Carcinogenesis Studies of Methyl Bromide (CAS No. 74–83–9) in B6C3F1 Mice (Inhalation Studies) (TR 385) are available from NTP Central Data Management, NIEHS, P.O. Box 12233, MD A0–01, Research Triangle Park, NC 27709; telephone (919) 541–1371 or (919) 541–3419.

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the evidence observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: May 26, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92-12871 Filed 6-2-92; 8:45 am]

BILLING CODE 4140-01-M

Office of the Assistant Secretary for Health

Secretary's Council on Health Promotion and Disease Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Friday, June 26, 1992.

Name: Secretary's Council on Health Promotion and Disease Prevention

Date and Time: June 26, 1992, 9 a.m. to 5 p.m., Stonehenge, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Open, except for working lunch.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion and to provide a link to the private sector regarding health promotion activities.

Agenda: This will be the tenth meeting of the Secretary's Council. The focus of this meeting is Access to Clinical Preventive Services.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Linda M. Harris, Ph.D., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 472-5370.

Agenda items are subject to change as priorities dictate.

Dated: May 27, 1992.

J. Michael McGinnis,

Deputy Assistant Secretary for Health, Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 92-12934 Filed 6-2-92; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-090-02-5310-10; GP2-258]

Emergency Closure of Public Lands; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access road in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access road in Lane County, Oregon are closed indefinitely to shooting, which includes the discharge of firearms within or across the lands and roadway described below. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as the Mohawk Research Natural Area and Area of Critical Environmental Concern, the McGowan Creek Environmental Education Area, and the McGowan Creek Community Pit and adjoining lands and are located as follows:

Willamette Meridian, Oregon

T. 16 S., R. 2 W.
Sec. 19: S½N½ of Lot 2, S½ of Lot 2, Lots 3 and 4, W½E½W½NE¼, W½W½NE¼, E½E½SW¼NE¼ and SE¼NE¼ lying north of McGowan Creek Access Road, E½NE¼NW¼, E½N½N½SE¼NW¼, S½N½SE¼NW¼, S½SE¼NW¼, E½SW¼, W½E½W½SE¼, W½W½SE¼

T. 16 S., R. 3 W.
Sec. 13: W½NE¼, NW¼
Containing approximately 657 acres.

The road closed as specified above is the McGowan Creek Access Road (BLM Roads Nos. 16-2-27 and 16-3-13.1) from its beginning in Section 27, T. 16 S., R. 2 W., W.M. to the north line of Section 13, T. 16 S., R. 3 W., W.M. The closure applies to all lands within 50 feet on either side of the centerline of the road. The road is located partially on public land and partially on exclusive easements across private land.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: State, local and federal law enforcement personnel.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0-7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands and road closed to shooting under this order will be posted with signs at points of public access.

The purpose of this emergency closure is to protect persons from potential harm from shooting. Uncontrolled shooting on the subject lands and road has reached a level that poses a serious threat to public safety.

DATES: This closure is effective beginning June 7, 1992 and will continue in effect indefinitely.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and road are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Lee Lauritzen, McKenzie Area Manager, Eugene District Office, at (503) 683-6988.

Dated: May 21, 1992.

Lee Lauritzen,

Area Manager.

[FR Doc. 92-12867 Filed 6-2-92; 8:45 am]

BILLING CODE 4310-33-M

[AK-980-02-5101-09-XLKE; AA-58353]

Environmental Statements; Availability, etc.: Alaska-Juneau Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Alaska-Juneau Project Final Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the proposed Alaska-Juneau Project Final Environmental Impact Statement. The EIS analyzed the impacts resulting from reopening and upgrading the Alaska-Juneau mine which involves the extraction of low-grade gold from an old lode mine by underground milling and surface flotation and cyanide vat leaching process, the construction and operation of a hydroelectric dam across Sheep Creek and disposal of tailings in a dam impoundment.

The proposed A-J mine project is located in southeast Alaska on the east side of the Gastineau Channel about four miles south of downtown Juneau, adjacent to the mouth of Sheep Creek at Thane.

DATES: Comments on the A-J Mine Project FEIS must be postmarked by July 6, 1992.

ADDRESSES: Comments on the A-J Mine Project should be sent to State Director (AK-983), BLM Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, Anchorage, Alaska 99513-7599

FOR FURTHER INFORMATION CONTACT: David Dorris (AK 983), BLM Alaska State Office, 222 W. 7th Avenue, #30, Anchorage, AK 99513-7599, (907) 272-2636.

SUPPLEMENTARY INFORMATION: Echo Bay-Alaska (EBA) filed application with BLM and other federal, state and local agencies to reopen the A-J mine in Juneau, Alaska in March 1989. EBA has

requested to withdraw their application for a right-of-way from BLM for a road, dam and tailings pond on about 700 acres of public land managed by the BLM. The land in question is in the process of being conveyed to the State of Alaska.

Comments from the public, review by BLM staff and new information developed since the distribution of the draft have resulted in changes but the preferred alternative is substantially the same. Copies of the A–J Mine Project FEIS are available from David Dorris at the above address.

Ed Spang,

Alaska State Director.

[FR Doc. 92–12907 Filed 6–2–92; 8:45 am]

BILLING CODE 4310–JA–M

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Small Whorled Pogonia for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Revised Recovery Plan for the Small Whorled Pogonia. This orchid species occurs in 15 States in the eastern United States and in one Canadian Province. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft Recovery Plan must be received on or before August 3, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge Street, Ralph Pill Marketplace, Fourth Floor, Concord, New Hampshire 03301–4901, (603) 225–1411. The Plan will also be available for public inspection, by appointment, during normal business hours at the above address.

Comments on the Plan should be addressed to Susanna von Oettingen (see Addresses).

FOR FURTHER INFORMATION CONTACT: Susanna von Oettingen (see Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act) as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during the Recovery Plan development. The Service will consider all information present during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Small Whorled Pogonia (*Isotria medeoloides*) Revised Recovery Plan. The small whorled pogonia, a member of the orchid family, is a rare but widespread species. It is currently known from 87 sites in 15 states in the eastern United States and in one Canadian Province. Despite the discovery of many populations since the species' listing as an endangered species in 1982, over 50 sites are documented as extirpated, and it is likely that the overall number of populations is still declining. The species, found on upland sites in mixed deciduous and mixed deciduous/coniferous forests that are in second or third sucessional states, continues to be threatened by habitat loss due to development and other human activities, as well as by succession of its forest habitat.

The Revised Recovery Plan updates the recovery objectives and activities outlined in the 1985 plan. The primary objective of this draft Plan is to protect an adequate number of sites to ensure long-term viability of the species in the wild. Conditions that must be met to reclassify the small whorled pogonia from endangered to threatened status include protection of a minimum of 25% of known viable sites, to be distributed proportionately throughout the species' range. Delisting will be considered when 75% of known viable sites, distributed proportionately throughout the species' range, are permanently protected, and when long-term management programs are established for those populations requiring some intervention.

Site protection will be accomplished through negotiating cooperative agreements and conservation easements with land owners and managers, acquiring lands from willing sellers, and using existing legislation to protect small whorled pogonia populations and their habitat. Other recovery activities will include searching for additional populations, monitoring population levels and habitat conditions, managing habitat as needed, conducting necessary studies, and conducting a general information program for the public.

This Revised Recovery Plan is being submitted for agency review. After consideration for comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 21, 1992.

Nancy M. Kaufman,

Acting Regional Director.

[FR Doc. 92–12882 Filed 6–2–92; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Comprehensive Management and Use Plan; Juan Bautista de Anza National Historic Trail; Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a Comprehensive Management Plan/Environmental Impact Statement (CMP/EIS) for Juan Bautista de Anza National Historic Trail in Arizona and California, and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–150.

BACKGROUND: The Anza Trail is based on Juan Bautista de Anza's 1775–76 expedition from what is now Sonora, Mexico, to San Francisco, resulting in the founding of a military fort and mission at San Francisco. A feasibility study of the Anza Trail route was completed in 1985 in response to authorizing legislation. The Trail route was legislatively designated as an

historic trail component of the National Trails System in August, 1990. The comprehensive plan is intended to provide long-term guidance for trail implementation and to allow management and initial implementation activity to commence.

Issues to be addressed in the CMP/EIS include, but are not limited to: specific objectives and practices to be observed in managing the trail; identification of significant natural, historic, and cultural resources that are to be preserved; a protection plan for any high potential historic sites or route segments; details of anticipated cooperative agreements with federal, state, and local organizations and private interests; procedures for marking the trail with signs, and proposals to foster public knowledge of the trail and help visitors understand the importance of sites along the trail; identification of sites that will provide public information about the trail; provisions for appropriate public use, including opportunities to retrace the trail route; impacts of adjacent land use; and visitor use managment. A proposal and alternatives to address these issues, including a no-action alternative, will be developed in cooperation with the public. Additionally, the EIS Process will provide for a comprehensive analysis of impacts, especially taking into account cumulative effects.

Public involvement to formulate the CMP/EIS issues and alternatives is expected to commence in Arizona in mid-June, 1992 and to be completed in that state by late July. Meetings will be held in Santa Cruz, Pinal, Pima, Maricopa, and Yuma counties in Arizona. In California, public involvement is expected to begin in late July, 1992 and to be completed by early September, 1992. Meetings will be held in Imperial, San Diego, Riverside, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Monterey, San Benito, Santa Clara, San Mateo, San Francisco, Alameda, and Contra Costa Counties in California. This public involvement will consist of a series of meetings for which advance notice will be provided. For request to participate in, or for any questions on the public involvement phase, please contact the National Park Service, Western Regional Office, Division of Planning, Grants, and Environmental Quality, 600 Harrison Street, Suite 600, San Francisco, California 94107-1372, Attention: Meredith Kaplan, Team Coordinator, telephone number (415) 744–3968.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft CMP and environmental statement are expected to be available for public review in mid-1993, and the final plan, environmental statement and Record of Decision completed approximately one year later.

Dated: May 19, 1992.

W.H. Patton,

Acting Regional Director, Western Region.

[FR Doc. 92–12979 Filed 6–2–92; 8:45 am]

BILLING CODE 4310-70-M

Gettysburg National Military Park Advisory Commission

AGENCY: Historical Committee, Advisory Commission, Gettysburg National Military Park.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of a meeting of the Historical Committee of the Gettysburg National Military Park Advisory Commission.

DATES: Thursday, June 25, 1992.

TIME: 7 p.m–9 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Cyclorama Center, Auditorium, Gettysburg, Pennsylvania 17325.

FOR FURTHER INFORMATION CONTACT: Gerald R. Bennett, Chairman, Historical Committee, Gettysburg National Military Park Advisory Commission, P. O. Box 1080, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. This notice sets forth the date of a meeting of the Historical Committee of the Gettysbury National Military Park Advisory Commission. The Historical Committee will seek public input to their task of assessing the impact to the Gettysburg National Military Park of non-tranditional uses, such as walk-a-thons, bike-a-thons, marathons, and other special uses. The public's comments will be used in developing a recommendation to the Advisory Commission for their consideration and subsequent discussion with Park staff. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Historical Committee, Advisory Commission, Gettysburg National Military Park, P. O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: May 21, 1992.

Frank J. Deckert,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–12980 Filed 6–2–92; 8:45 am]

BILLING CODE 4310-70-M

Draft Policy and Guidelines for Recreational Technical Assistance in Hydropower Licensing

ACTION: Publication of draft policy and guidelines for public comment.

SUMMARY: The National Park Service is publishing for public review and comment draft policy and guidelines for its hydropower licensing program aimed at providing technical assistance in recreational planning. The development of these guidelines will assist the public in determining the approach the National Park Service uses in its hydropower recreational planning, thereby providing the public an understanding of the program and how they may utilize it.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Comments may be mailed to Tracy Miller, National Park Service, Recreation Resources Assistance Division, P.O. Box 37127, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Tracy Miller, (202) 343–3663.

SUPPLEMENTARY INFORMATION: These guidelines are the result of a public meeting held in Washington, DC, on January 22 of this year for the express purpose of developing guidelines. This policy and guidelines affect only the technical assistance conducted by the National Park Service prior to license filing; they are not part of, and do not affect, formal National Park Service environmental review procedures. Further information is included in the preface to the draft guidelines, printed below.

Policy and Guidelines

Preface

Under the National Park Service Organic Act (39 Stat. 535), the Outdoor Recreation Act (Pub. Law 88–29), the Wild and Scenic Rivers Act (Pub. Law 90–542), Council on Environmental Quality Memorandum (45 FR 59190–59191), and Federal Energy Regulatory Commission (FERC) guidelines, the National Park Service is authorized to provide technical assistance for recreational planning in the licensing of hydropower facilities. This is but one element of the National Park Service's

overall technical assistance role in the licensing process, and planning assistance is just one aspect of the National Park Service environmental review of FERC applications.

The following policy and guidelines provide a direction for recreational technical assistance activities concerning hydropower licensing. They are flexible enough to allow for creativity in meeting the individual recreation, conservation and hydropower objectives of each individual project. They are also designed so as not to conflict with other National Park Service mandates.

The recreational community is considered to be any and all possible users of hydropower-impacted resources and includes people interested in such activities as birdwatching, whitewater rafting, canoeing, hiking and fishing. The National Park Service does not recognize one form of recreation over another, but instead weighs the merits of all activities in providing assistance. It is the responsibility of the National Park Service to represent the national interest regarding hydropower-related recreation and to assure an appropriate recognition of recreation interests.

Policy

It is the policy of the National Park Service to recognize the full potential that hydroelectric projects subject to licensing under the Federal Power Act may offer for: (1) Meeting present and future public outdoor recreation demands, and (2) the maintenance and enhancement of the quality of the environmental setting of these projects.

This policy is to be implemented by providing appropriate recreation planning assistance to applicants and licensees; the concerned agencies of Federal, State and local governments; and the private sector. The objectives stated in clauses 1 and 2 are also to be accomplished by providing to the Secretary of the Interior factual information, analyses and findings relating to recreation for incorporation in the Department's comments and recommendations to the Federal Energy Regulatory Commission.

Guidelines

I. **Program Scope**

Extent: Consider the full range of land and water recreational opportunities and factors associated with hydropower projects. These opportunities and factors may include, but are not limited to, land use, access, shorelands conservation, flow, facilities, aesthetics, reservoir levels and safety.

Environmental Quality: Ensure that recreation programs are consistent with the preservation of environmental integrity.

Long-term Benefit: Assist in planning for recreational needs that will arise throughout the term of the license.

Comprehensive Perspective: Evaluate recreational needs and opportunities from a basin-wide or regionwide perspective as appropriate to the resources considered.

Coordination of Planning: Encourage joint comprehensive planning with other public and private river conservation, recreation and energy interests. Avoid duplication of the efforts of other planning agencies.

Communication: Provide a channel for recreational and conservation interests to participate in the licensing process with the applicants. Provide a channel for the applicants to identify and involve those interests.

Conflict Resolution: Provide a facilitation and conflict resolution role among the involved parties and provide a forum to actively seek input from and facilitate dialog between all interested parties.

Balance: Ensure that the importance and significance of the resources and opportunities will be fully considered in balancing competing recreational needs, power production, and economic factors.

Timeliness: Become involved as early as possible in the licensing process to promote advanced planning in an equitable manner.

II. **Project Selection**

Resource Significance: Give priority to those projects located in areas with high natural, cultural and/or recreational resource values.

Potential for Positive Impact: Give priority to projects where there is a high potential for National Park Service participation to result in significant improvement/mitigation for recreational opportunities.

Variety of Recreational Opportunities: Provide assistance on a diverse mix of recreational experiences, settings and geographical locations in the program portfolio.

Concentration of Projects: provide special consideration to rivers, or river basins, with multiple projects, especially where a holistic approach will serve to advance public recreation opportunities more than a site-by-site approach.

Assistance Requests: Respond and provide technical assistance as resources allow to requests from public and private energy, conservation and recreation interests, with priority given to those interests that have little or no access to professional sources of planning assistance and analysis.

III. **Information**

Equitable Information: Use and request the generation of information appropriate to the size of the project, the project impacts, and its relationship to other projects.

Relevant Information: Encourage and participate in the generation of objective data necessary to evaluate recreational needs and opportunities, such as flow studies, recreational needs assessments, and carrying capacity studies.

Scope of Information: Where possible, the information used and generated should consider cumulative and basin-wide impacts and should follow with the intention of broad-scale planning.

Information Dissemination: Maintain a source of case studies and similar data generated by the technical assistance program and make this information widely available to appropriate public and private entities.

IV. **Results**

Mitigation: Seek opportunities to increase the cumulative benefit to recreation and conservation through alternative ideas such as clustering of mitigation from several projects in one area, coordination of recreational releases along a river or throughout a region, providing access and portage from a river-wide perspective, or encouraging cooperative efforts by multiple applicants with projects on the same river.

Cooperative Comprehensive Planning: Encourage an applicant with several projects to develop a comprehensive recreation plan for all projects or for multiple applicants in the same basin to prepare a joint comprehensive plan.

Dated: March 12, 1992.

James Ridenour,

Director, National Park Service.

[FR Doc. 92-12982 Filed 6-2-92; 8:45 am]

BILLING CODE 4310-70-M

Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Cape Krusenstern National Monument and Kobuk Valley National Park and the Chairpersons of the Subsistence Resource Commissions for Cape Krusenstern National Monument and Kobuk Valley National Park announce a

forthcoming joint meeting of the Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions.

The following agenda items will be discussed:

(1) Introduction of commission members and guests.
(2) Superintendent's welcome:
a. Review of SRC function and purpose.
b. Federal Advisory Committee Act Guidelines.
(3) Old business:
a. Review and approve minutes from last meeting.
b. Election of chairpersons.
c. Review past commissions' activities.
(4) New business:
a. Superintendent's Report.
—Subsistence management and directions for SRC program.
b. Federal Subsistence Management Program.
—EIS Record of Decision Summary.
—Federal Regional Council System.
c. 1992–93 federal and state regulations review for taking brown bear, sheep and other species within GMU 23.
d. Harvest reporting system for 1992–93 season.
(5) Public and other agency comments.
(6) Hunting Plan work session:
a. Prepare and approve recommendations for submission to Secretary and Governor.

DATES: The meeting will begin at 9 a.m. on Thursday, June 11, 1992, and conclude around 5 p.m.

LOCATION: The meeting will be held at the National Guard Armory, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Ralph Tingey, Superintendent, P.O. Box 1029, Kotzebue, Alaska 99752. Phone (907) 442–3890.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

John M. Morehead,

Regional Director.

[FR Doc. 92–12981 Filed 6–2–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

PURPOSE OF INFORMATION COLLECTION: The proposed information collection is for use by the Commission in connection with investigation No. 332–315, Uranium and Uranium Enrichment Services: The Impact on the Domestic Industry of Imports into the United States from Nonmarket Economy Countries, instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) at the request of the Senate Committee on Finance.

SUMMARY OF PROPOSAL: (1) *Number of forms submitted:* Two.

(2) *Title of form:* Natural Uranium, Uranium Enrichment Services, and Enriched Uranium Product from Nonmarket Economy Countries—Questionnaires for U.S. (1) Purchasers and (2) Public Utility Commissions or Rate Regulatory Agencies.

(3) *Type of request:* New.

(4) *Frequency of use:* Nonrecurring.

(5) *Description of respondents:* Firms which purchase natural or enriched uranium or uranium enrichment services, and public utility commissions or rate regulatory agencies.

(6) *Estimated number of respondents:* Purchasers: 45, based on an estimated response rate of 75 percent. Public Utility Commissions or Rate Regulatory Agencies: 26, based on an estimated response rate of 80 percent.

(7) *Estimated total number of hours to complete the forms:* The Commission estimates a response time of 30 hours per questionnaire for purchasers and 5 hours per questionnaire for public utility commissions or rate regulatory agencies.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a respondent.

ADDITIONAL INFORMATION OR COMMENT: Copies of the proposed form and supporting documents may be obtained from James A. Emanuel, telephone (202) 205–3367. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Ms. Lin Liu, Desk Officer for the U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire is objectionable, describing the problem in detail, and including specific suggested revisions or language changes. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly, you should advise OMB of your intent within 2 weeks of the date this notice appears in the **Federal Register**. Copies of any comments should be provided to the Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: May 29, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–12955 Filed 6–2–92; 8:45 pm]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–516 (Final)]

Fresh Kiwifruit From New Zealand; Imports

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 26, 1992, following a preliminary determination by the Department of Commerce that imports of fresh kiwifruit from New Zealand were being sold at LTFC within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 27, 1991 (56 FR 67098). The hearing was held in Washington, DC, on

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Watson not participating.

April 14, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 26, 1992. The views of the Commission are contained in USITC Publication 2510 (May, 1992), entitled "Fresh Kiwifruit from New Zealand: Determination of the Commission in Investigation No. 731–TA–516 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: May 27, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–12956 Filed 6–2–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–314 through 317 (Preliminary), and Investigations Nos. 731–TA–552 through 555 (Preliminary)]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, Germany, and the United Kingdom; Imports

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, France, Germany, and the United Kindgom of certain hot-rolled lead and bismuth carbon steel product,[2] provided for in subheadings 7213.20.00 and 7214.30.00 [3] of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of these countries.

The Commission also unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, France, Germany, and the United Kindgom of certain hot-rolled lead and bismuth carbon steel products, provided for in subheadings 7213.20.00 and 7214.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.

Background

On April 13, 1992, a petition was filed with the Commission and the Department of Commerce by Inland Steel Industries, Inc., including Inland Steel Bar Co. (Chicago, IL), and the Bar, Rod and Wire Division, Bethlehem Steel Corp. (Johnstown, PA), alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of certain hot-rolled lead and bismuth carbon steel products from Brazil, France, Germany, and the United Kingdom. Accordingly, effective April 13, 1992, the Commission instituted preliminary countervailing duty investigations Nos. 701–TA–314 through 317, and preliminary antidumping investigations Nos. 731–TA–552 through 555. Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 20, 1992 (57 FR 14431). The conference was held in Washington, DC, on May 4, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 28, 1992. The views of the Commission are contained in USITC Publication 2512 (June 1992), entitled "Certain Hot-rolled Lead and Bismuth Carbon Steel Products from Brazil, France, Germany, and the United Kingdom: Determinations of the Commission in Investigations Nos. 701–TA–314 thru 317 (Preliminary) and Investigations Nos. 731–TA–552 thru 555 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: May 29, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–12957 Filed 6–2–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation Nos. 731–TA–546 and 547 (Preliminary)]

Steel Wire Rope From the Republic of Korea and Mexico; Imports

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unamaniously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Republic of Korea and Mexico of steel wire rope,[2] Provided for in subheading 7312.10.90 of the Harmonized Tariff Schedule of the United States, that is alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 9, 1992, a petition was filed with the Commission and the Department of Commerce by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of steel wire rope from the Republic of Korea and Mexico. Accordingly, effective April 9, 1992, the Commission instituted antidumping investigations Nos. 731–TA–546 and 547 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 16, 1992 (57 FR 13379). The Conference was held in Washington, DC, on April 30, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of these investigations, the subject hot-rolled lead and bismuth carbon steel products are hot-rolled products of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of these investigations are other alloy steels, except steels classified as such by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, selenium, or tellurium. Also excluded are semifinished steels and flat-rolled carbon steel products.

[3] Small quantities of the subject products may also enter under the following HTS subheadings: 7213.31.30, 7213.31.60, 7213.39.00, 7214.40.00, 7214.50.00, 7214.60.00, and 7228.30.80.

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported steel wire rope covered by these investigations consists of ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of stainless steel or brass plated wire.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 26, 1992. The views of the Commission are contained in USITC Publication 2513 (May 1992), entitled "Steel Wire Rope from the Republic of Korea and Mexico: Determinations of the Commission in Investigations Nos. 731–TA–546 and 547 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: May 29, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–12958 Filed 6–2–92; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: Notice of Application for Recognition as a Nationally Recognized Testing Laboratory, and Preliminary Finding

SUMMARY: This notice announces the application of the Canadian Standards Association for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is August 3, 1992.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

Notice of Application

SUPPLEMENTARY INFORMATION:

Notice is hereby given that the Canadian Standards Association (CSA) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: Canadian Standards Association, Toronto Facility, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario M9W1R3, Canada.

By letter dated December 20, 1991 (Ex. 2.M.), CSA amended its application for recognition as follows:

1. The initial phase of the recognition is to be limited to the Toronto facility, and

2. The scope of the application relating to certification services is to be limited to in-house testing only.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

The applicant states that for each item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards.

CSA's application contains sections dealing with background and history; the Certification and Testing (C&T) Division structure; affiliation including a statement of independence; personnel, including experience and expertise, training, and list of key personnel, position descriptions and résumés; the certification process, including testing and evaluation, certification, reports and records and the service agreement; the field services program, including follow-up inspections, re-examination testing and field monitoring; certification services, including prototype (model) certification; testing experience, including recognition by other bodies; control programs, including the quality assurance program, control of technical and quality records, handling and storage/packaging and shipping, and test procedures; laboratory test equipment and calibration of this equipment; facilities; and, finally, CSA's appeal process, the comprehensive system for handling complaints and utilmately providing an unbiased review of any controversial matter.

The Rexdale (Toronto) facility includes the corporate headquarters, a standards division, finance and administration division, and certification and testing division. The laboratory is owned by CSA and consists of a two story building covering 250,000 square feet, situated on ten acres. Approximately 100,000 square feet of floor space are allocated to product testing. The laboratory, established in 1919, has been at this location since 1954.

Natural gas, electric, oil, and water utilities are available in the laboratory for product testing. Environmental conditions in the laboratory are controlled. The temperature and humidity variations throughout the laboratory are recorded as required by specific test requirements. There are rooms and chambers used to control and monitor environmental conditions for specific product testing. The calibration room also has relative humidity control.

The laboratory has a shipping and receiving department for receipt retention, and disposal of samples for testing. Incoming samples are identified with numbered tags and then delivered to the testing areas with a duplicate numbered tag attached. A secondary numbered tag is prepared in triplicate for sample disposition purposes after testing is complete. A copy of each tag is retained by the shipping and receiving department. One copy of the secondary tag is routed to the customs department and a second copy is sent to the jobholder. The jobholder completes this copy when all product evaluation is finished and returns it to the shipping and receiving department for sample disposition. The sample information is maintained on a computer data base. All storage locations are secure and pose no adverse environmental conditions on the samples.

Visitors must enter the front lobby area and are issued name tag labels by a receptionist. All visitors are escorted. A card access system is utilized for staff to enter/leave the facility. Separate test and conference areas are available for clients requiring confidentiality. There are 24 hour, 7 day per week security guards. Staff entering the facility outside normal working hours are required to sign an in/out log book. Indoor and outdoor monitoring cameras are provided. Staff must wear name/photo identification badges.

The applicant states that CSA is an independent, not-for-profit membership association, without share capital, incorporated under the laws of Canada in 1919, engaged in developing national standards and providing a certification service for manufacturers wishing to have their products certified as complying with national standards or standards of foreign countries. The applicant states further that the

organization has no affiliation with manufacturers or suppliers of the products submitted for testing and certification. Several documents are submitted as a part of the CSA application to address the issue of independence.

The Canadian Standards Association claims that it maintains effective procedures for producing creditable findings or reports that are objective and without bias. The C&T Division maintains a quality assurance (QA) system for CSA's world-wide network. The QA Program of the Testing Laboratory is registered by Quality Management Institute (QMI) to ISO 9003 and Z299.3. The Corporate Engineering and Quality Assurance (EQA) Group has the responsibility and authority for overseeing all activities related to the Quality Program. The object of the QA system is to ensure technical excellence, consistency of interpretation and application of standards, consistency of implementation of certificaton programs and procedures, the integrity of the CSA Mark, and continuous improvement. In addition, the QA System is designed to meet National and International Accreditation Criteria. The QA System is documented as follows:

—"Quality Assurance Policy Manual" (QAPM). It contains the quality policies for the Certification and Testing Division and establishes the responsibilities for implementation of these policies.
—"Quality Assurance Manual" (QAM). These manuals describe in detail the system and procedures outlined in the QAPM. They are issued by each Operation Unit after approval by EQA.
—"Divisional Quality Documents" (DQDs). They are issued and controlled by Engineering and Quality Assurance (EQA) and consist of additional operating procedures and guidelines to be used by operations staff.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for contolling all technical and quality records is described in the Quality Assurance Manuals for each CSA Office.

CSA claims that it has a comprehensive system for handling complaints and ultimately providing an unbiased review of any controversial matter. All complaints asnd disputes shall be resolved, whenever possible, by those directly involved with the work contested and/or at the level of authority appropriate for the nature of the complaint/dispute. If the issue cannot be resolved, there are specific steps, including appeals, which may be followed.

The applicant states that it provides for the implementation of control procedures for identifying the listed and labeled equipment or materials, inspection of the production run of such items at factories for product evaluation purposes to assure conformance with applicable test standards, and the conducting of field inspections to monitor and to assure the proper use of its identifying mark or labels on products. A submitter must enter into a written legal contract (service agreement) with CSA to permit the use of the CSA Mark on the product. This agreement clearly specifies the submitter's responsibilities and the terms and conditions for maintaining certification, such as the right of access by CSA inspection staff to listed factories, or notifying CSA when changes are made to certified products. These terms and conditions are designed to protect the integrity of the CSA Marks. CSA establishes a comprehensive field services program to ensure that manufactured products bearing any of the CSA Marks continue to meet the applicable requirements. The program consists of three elements:

Follow-up Inspection;
Re-examination Testing; and
Field Monitoring.

Follow-up inspections are conducted at the point of manufacturing and labeling to ensure, among other things, that:

—The CSA Mark is applied only to certified products;
—That the terms of the Agreement are met when the CSA Mark is used;
—Defects noted during previous inspections have been corrected;
—The manufacturer is aware of any new services, requirements, and effective dates;

The inspections are unannounced and are based on performing a minimum of four inspections per factory per year. The frequency varies with production volumes, the types of products and the manufacturer's track record.

When products fail to meet the requirements, Field Service Representatives take action to have the manufacturer correct the defect immediately, quarantine the stock until the product can be reworked or re-evaluated by certification staff, and remove the CSA Mark from the product.

In cases where it is difficult to determine if a product or component complies with the requirements strictly by visual examination, such products are reexaminaed and tested on a yearly basis.

CSA has an independent, special investigation unit, the Audits and Investigations Group, to monitor products in the field, investigate field complaints, and provide feedback to the standards writing and certification process.

Background

According to the applicant, the Canadian Standards Association is an independent, not-for profit organization governed by a Board of Directors selected by the membership, providing integrated services in the fields of standards development and conformity assessment. The Standards Division of CSA is responsible for the administration of the development of voluntary consensus standards. The Certification and Testing Division provides conformity assessment programs including laboratory testing, certification, inspection and quality management services. The organization started out in 1919 as the Canadian Engineering Standards Association (CESA), which was changed in 1944 to the present name.

The applicant states that during the last 70 years, CSA has developed more that 1400 standards and codes which cover industrial and consumer products and services in a wide range of product areas. In 1940, CSA began to test and certify products and today is an international organization with more than 9000 volunteer members from 20 countries representing consumers, regulators, manufacturers and retailers. They are supported by a staff of approximately 1000 employees, with management staff located in the Far East and Europe.

Again according to the applicant, over 14,000 manufacturers worldwide use CSA's testing and certification services, and the CSA Certification Mark appears on over one billion products a year. CSA processes some 36,000 engineering projects, and the inspection staff makes follow-up visits to some 19,000 factories in almost 60 different countries, each year.

The applicant states that the Certification and Testing (C&T) Division, Toronto facility, of the Canadian Standards Association employs approximately 370 staff as follows:

12—Management
84—Professional Engineers
139—Technologists (Testing & Certification)
24—Technologists (Inspection)
71—Support Staff

40—Other Support Staff (Corporate C&T)

Of this staff, some 45 are considered to be key personnel, as follows by position:

4—General Managers/Directors
5—Managers
13—Senior Engineers
14—Team Coordinators
6—Engineering & Quality Assurance

The applicant desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI Z21.1—Household Cooking Gas Appliances
ANSI Z21.5—Gas Clothes Dryers
ANSI Z21.10—Gas Water Heaters
ANSI Z21.11—Gas-Fired Room Heaters
ANSI Z21.12—Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.47—Gas-Fired Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.64—Direct Vent Central Furnaces
ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.10—Separated Combustion System Central Furnaces (?????)
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment-Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 20—General-Use Snap Switches
ANSI/UL—Electric Amusement Machines
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Electric Cabinets and Boxes
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Applicances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Applicances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices
ANSI/UL 114—Electric Office Applicances and Business Equipment
ANSI/UL 122—Electric Photographic Equipment
ANSI/UL 130—Electric Heating Pads
ANSI/UL 133—Wires and Cables With Varnished Cloth Insulation
UL 141—Garment Finishing Appliances
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 198M—Mine-Duty Fuses
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellur Metal Floor Electrical Raceways and Fittings
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 231—Electrical Power Outlets
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
ANSI/UL—Solid-Fuel and Combination-Fuel Control and Supplementary Furances
ANSI/UL 399—Drinking-Water Coolers
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electric Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electric Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 478—Information-Processing and Business Equipment
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Cooper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Cooper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP-Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Applicances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape

ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 746A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
UL 763—Alarm Accessories for Automatic Water-Supply Control Valves for Fire-Protection Service
ANSI/UL 773—Plug-In Locking-Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Groups C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
ANSI/UL 863—Electric Time-Indicating and Recording Appliances
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 891—Dead-Front Electrical Switchboards
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
UL 896—Oil-Burning Stoves
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical Fiber-Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Flourescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 987—Stationary and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
UL 1059—Terminal Blocks
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators

ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
UL 1092—Process Control Equipment
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignitition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes/Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio System, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
UL 1323—Scaffold Hoists
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circut Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heater
UL 1459—Telephone Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes Drying-Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI/UL 1559—Insesct-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator Systems Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmentallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1666—Standard Test for flame Progagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1676—Discharge Path Resistors
UL 1681—Wiring Device Configurations
ANSI/UL 1727—Commercial Electric Personal-Grooming Appliances
ANSI/UL 1773—Termination Boxes
UL 1778—Uniterruptible Power Supply Equipment
ANSI/UL 1786—Nighlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

Preliminary Finding

The Canadian Standards Association addressed all of the criteria which had to be met for recongition as a NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Quality Assurance Manual including a description of its documentation, calibration system, appeals procedure, recordkeeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory survey: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; qualtiy assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey team in the on-site evaluation [Ex. 3.A.(a)] were adequately responded to by the applicant prior to the preparation of the survey report and are included as a integral part of the report.

With the preparstion of the final survey report of the Canadian Standards Association, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.).

Following a review of the application file and the on-site survey report of the CSA Toronto facility, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary

that the application be preliminary approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Canadian Standards Association (Toronto) can meet the requirements for recognition as required by 29 CFR 1910.7

All interested members of the public are invited to apply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for a Nationally Recognized Testing Laboratory, as well as appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than August 3, 1992, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210. Copies of the CSA application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–92), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final dicision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with appendix A of § 1910.7.

Signed at Washington, DC, this 29th day of May 1992.

Dorothy L. Strunk,

Acting Assistant Secretary.

[FR Doc. 92–12983 Filed 6–2–92; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

National Commission on Acquired Immune Deficiency Syndrome; Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

Date and Time: Monday, June 15, 1992,—10 a.m.–5:30 p.m.; Tuesday, June 16, 1992,—10 a.m.–1 p.m.

Place: Monday, June 15, 1992—Room 214, H. Roe Bartle Hall, Convention Center, 13th & Central Streets, Kansas City, Missouri. Tuesday, June 16, 1992—Battenfeld Auditorium, Student Center, University of Kansas Medical Center, 3901 Rainbow Boulevard (at Olatho Boulevard), Kansas City, Kansas.

Type of Meeting: Open.

For Further Information Contact: Roy Widdus, Ph.D., Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

Agenda: The Commission will examine what influences shape public perceptions on the HIV epidemic, and the role of communication in primary prevention and care.

Dated: May 28, 1992.

Roy Widdus,

Executive Director.

[FR Doc. 92–12959 Filed 6–2–92; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Artists' Projects Regional Initiative Section) to the National Council on the Arts will be held on June 19, 1992 from 9 a.m.–6 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:30 p.m.–6 p.m. The topics will be policy discussion and guidelines review.

The remaining portion of this meeting from 9 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: May 28, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–12879 Filed 6–2–92; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Special Projects Section) to the National Council on the Arts will be held on June 24, 1992 from 9 a.m.–6:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:30 p.m.–6:30 p.m. The topics will be policy discussion and guidelines review.

The remaining portion of this meeting from 9 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels

which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: May 28, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–12881 Filed 6–2–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–47]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of Facility and Disposition of Component Parts, U.S. Army Materials Technology Laboratory

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order authorizing the U.S. Army Materials Technology Laboratory (AMTL) to dismantle their U.S. Army Materials Technology Laboratory Research Reactor (AMTLRR) located at the Army Materials Technology Laboratory in Watertown, Massachusetts, and to dispose of the components in accordance with the application dated October 8, 1991, as supplemented on March 16, 1992, and March 31, 1992.

Environmental Assessment

Identification of Proposed Action

By application dated October 8, 1991, as supplemented, AMTL requested authorization to decontaminate and dismantle the AMTLRR, to dispose of its component parts in accordance with the proposed Decommissioning Plan, and to terminate Amended Facility License No. R–65. The AMTLRR was shut down in March 1970, and has not operated since then. Following the reactor shutdown, the fuel was removed from the core and transferred offsite to the U.S. Atomic Energy Commission (now the Department of Energy).

Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on February 24, 1992 (57 FR 6339). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Need for Proposed Action

In order to terminate the facility license and transfer the area to the AMTL for unrestricted use, the dismantling and decontamination activities proposed by the AMTL must be accomplished.

Environmental Impact of the Proposed Action

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The AMTL staff has calculated that the collective dose equivalent to the AMTL staff, AMTL contractors and public for the project will be less than 10 person-rem.

The above conclusions were based on all proposed operations being carefully planned and controlled, all contaminated components being removed, packaged, and shipped offsite, and that radiological control procedures will be in place that help to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the AMTL Research Reactor, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area.

Alternative Use of Resources

The only alternative to the proposed dismantling and decontamination activities is to maintain possession of the reactor. This approach would include monitoring and reporting for the duration of the safe storage period. However, the AMTL intends to use the area for other purposes.

Agencies and Persons Consulted

The NRC staff consulted no other agencies or persons in reviewing the licensee's request.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated October 8, 1991, as supplemented, and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 28th day of May, 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–12953 Filed 6–2–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on June 18, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, June 18, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the Final Safety Evaluation Report (FSER) of the Electric Power Research Institute's (EPRI's) Requirements Document for evolutionary plant designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the

meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold disucssions with representatives of EPRI, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat E1-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 27, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-12918 Filed 6-2-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on June 17, 1992, in room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, June 17, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will review chapter 1 of the Electric Power Research Institute's (EPRI's) Requirements Document (Vol. II and III) for evolutionary and passive plant designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of EPRI, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 27, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-12919 Filed 6-2-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2, GPU Nuclear Corporation

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI-2) will be meeting on June 9, 1992, from 7 p.m. to 10 p.m. at the Harrisburg Hotel, Center City, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public. The date and location for this meeting were announced to the public at the last meeting of the Panel on April 14, 1992. This notice has been delayed in order to allow time to finalize the agenda.

At this meeting, the Panel will receive a presentation from GPU Nuclear Corporation on their plan for funding the remaining cleanup activities and funding the decommissioning of TMI-2. The NRC staff will explain the regulations applicable to decommissioning funding plans. The Advisory Panel will also discuss future activities.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-1191.

Dated: May 28, 1992.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 92-12920 Filed 6-2-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-4492]

American Nuclear Corp.; Gas Hills Mill; Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend source material license SUA-667 for the Gas Hills Mill to incorporate reclamation schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-667, American Nuclear Corporation's Gas Hills Mill, to incorporate a revised reclamation schedule and to add a new license condition.

DATES: The comment period expires July 20, 1992.

ADDRESSES: Copies of the response from American Nuclear Corporation and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, Colorado, and the NRC Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 80225.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box

25325, Denver, CO 80225. Telephone: 303–231–5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also specified dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that the licensee submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a response on November 15, 1991.

The NRC staff review of the proposed schedule indicates that it calls for placement of the final cover for Tailings Pond No. 1 by June 30, 1996. The final radon cover for Tailings Pond No. 2 will be by December 31, 1994. The date for Tailings Pond No. 1 is six months later than the date specified in the MOU. This occurred because at the time of the writing of the MOU the licensee had not determined the projected final radon cover date. The date supplied for the MOU was the best estimate at the time. A review of this date finds it to be acceptable. In addition, the reclamation milestone schedule appears to be reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA–667 to incorporate the schedules proposed by the licensee by adding License Condition No. 31 to read as follows:

31. The licensee shall complete site reclamation in accordance with the approved reclamation plan and ground-water corrective action plan, as authorized by License Condition Nos. 14 and 29, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile:

For Tailings Pond No. 1—June 30, 1995
For Tailings Pond No. 2—Complete.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion:

For Tailings Pond No. 1—Complete
For Tailings Pond No. 2—Complete.

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 $pCi/m^2/s$ above background:

For Tailings Pond No. 1—June 30, 1996
For Tailings Pond No. 2—December 31, 1994.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with criterion 6 of appendix A of 10 CFR part 40:

For Tailings Pond No. 1—December 31, 1996
For Tailings Pond No. 2—December 31, 1994.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 1994.

C. Any license amendment request to revise the completion dates specified in Section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in section B above, must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 22nd day of May, 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92–12954 Filed 6–2–92; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1992, shall be at the rate of 31 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1992, 31.7 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.3 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 27, 1992.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92–12904 Filed 6–2–92; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Inc.

May 28, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

DVI Health Services Corp.
Common Stock, $.005 Par Value (File No. 7–8525)
Dyersburg Corp.
Common Stock, $.01 Par Value (File No. 7–8526)
ECC Group, PLC

American Depository Shares (Rep. 3 ord. shares, 25p) (File No. 7–8527)
Florida Power & Light Co.
$2.00 No Par Value, Pfd. Stock, Series A (File No. 7–8528)
H&Q Life Sciences Investors
Shares of Beneficial Interest, $.01 Par Value (File No. 7–8529)
International Family Entertainment, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–8530)
Mediplex Group, Inc.
Common Stock, $.10 Par Value (File No. 7–8531)
Quanex Corp.
Dep. Conv. Exch. Pfd. Shares (Rep. 1/10 Sh. of 6.88% Cum. Conv. Exch. Pfd Stk.) (File No. 7–8532)
Van Kampen Merritt for Investment Grade Florida Municipals
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–8533))
Van Kampen Merritt for Investment Grade New Jersey Municipals
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–8534)
Van Kampen Merritt for Investment Grade New York Municipals
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–8535)
Van Kampen Merritt for Investment Grade Pennsylvania Municipals
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–8536)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submmit on or before June 18, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–12876 Filed 6–2–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 28, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Arcadian Partners, L.P.
Common Units (Representing Limited Partnership Interests) (File No. 7–8498)
Boston Scientific Corporation
Common Stock, $.01 Par Value (File No. 7–8499)
Kohl's Corporation
Common Stock, $.01 Par Value (File No. 7–8500)
MuniYield New Jersey Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–8501)
Quanex Corporation
Depositary Convertible Exchangeable Preferred Shares (each representing 1/10 share Cumulative Convertible Exchangable Preferred Stock, Liquidity Preference $250 per share) (File No. 7–8502)
Danielson Holding Corporation
Common Stock, $.10 Par Value (File No. 7–8503)
Alcatel Alsthom Compagnie Generale d'Electricite
American Depositary Shares (each representing 1/5 of a share) (File No. 7–8504)
John Nuveen Co.
Common Stock, $.01 Par Value (File No. 7–8505)
Sulcus Computer Corporation
Common Stock, No Par Value (File No. 7–8506)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 18, 1992, a written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 205249. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–12873 Filed 6–2–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

May 28, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Alcatel Alsthom Compagnie Generale d'Electricite
American Depository Receipts (File No. 7–8517)
Boston Scientific Corporation
Common Stock, $0.01 Par Value (File No. 7–8518)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 18, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securites and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonothan G. Katz,

Secretary.

[FR Doc. 92–12875 Filed 6–2–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 28, 1992

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities.

Voyageur Minnesota Municipal Income Fund
Common Stock, $.01 Par Value (File No. 7–8507)
Wells-Gardner Electronics Corporation
Common Stock, $1.00 Par Value (File No. 7–8508)
MuniYield New Jersey Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–8509)
Boston Scientific Corporation
Common Stock, $0.01 Par Value (File No. 7–8510)
Kohls Corporation
Common Stock, $.01 Par Value (File No. 7–8511)
Davstar Industries Ltd.
Common Stock, No Par Value (File No. 7–8512)
Davstar Industries Ltd.
Warrants, No Par Value (File No. 7–8513)
Sulcus Computer Corporation
Common Stock, No Par Value (File No. 7–8514)
Alcatel Alstorm Compagnie Generaled d'Electricite
American Depositary Shares (File No. 7–8515)
John Nuveen Company
Class A Common Stock, $.01 Par Value (File No. 7–8516)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 18, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–12874 Filed 6–2–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

May 28, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Airgas, Inc.
Common Stock, $.01 Par Value (File No. 7–8519)
Boston Scientific Corp.
Common Stock, $.01 Par Value (File No. 7–8520)
Maxum Health Corp.
Common Stock, $.01 Par Value (File No. 7–8521)
Plains Resources, Inc.
Common Stock, $.02 Par Value (File No. 7–8522)
Reliance Electric Co.
Class A Common Stock, $.01 Par Value (File No. 7–8523)
WestAir Holdings, Inc.
Common Stock, No Par Value (File No. 7–8524)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 18, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–12872 Filed 6–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18734; 812–7915]

The Alliance Fund, Inc., et al.; Application

May 27, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Alliance Fund, Inc., Alliance Balanced Shares, Inc., Alliance Bond Fund, Inc., Alliance Global Small Cap Fund, Inc., Alliance Growth and Income Fund, Inc., Alliance International Fund, Alliance Mortgage Securities Income Fund, Inc., Alliance Muti-Market Strategy Trust, Inc., Alliance New Europe Fund, Inc., Alliance North American Government Income Trust, Inc., Alliance Quasar Fund, Inc., Alliance Short-Term Multi-Market Trust, Inc., and each future series of such funds, or any other registered open-end investment companies that are part of the same group of investments companies and (i) whose investment adviser is the Advisor (as defined below) or an investment adviser that is under common control with the Adviser, (ii) whose principal underwriter is the Distributor (as defined below) or a principal underwriter that is under common control with the Distributor, (iii) which hold themselves out to investors as being related for purposes of investment and investor services, and (iv) whose shares are divided into two classes of securities whose sales load, contingent deferred sales charge ("CDSC"), rate of distribution fees, conversion feature and difference in voting rights are identical to those applicable to the Funds' Class A and Class B shares as described in the application (the "Funds"); Alliance Capital Management L.P. (the "Adviser"); and Alliance Fund Distributors, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) of the Act to amend a previous order which granted applicants exemptive relief from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 6(c) to amend a prior order (the "Prior Order") by (i) modifying certain requirements regarding shareholder approval of dual distribution systems, (ii) deleting the requiremernt that the Directors/Trustees of a Fund divide their purchases of shares evenly between the two classes of shares offered by a Fund, and (iii) permitting waiver of the CDSC on redemptions of Class B shares of a Fund that had been purchased by, or for the benefit of, present or former Directors/Trustees of the Fund or relatives of present or former Directors/Trustees of the Fund.

FILING DATE: The application was filed on May 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm., on June 22, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing, to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each existing Fund is an open-end management investment company registered under the Act. The Adviser serves as each Fund's investment adviser and manager, and will serve as any future Fund's investment adviser and manager, and the Distributor acts as principal underwriter of each Fund's shares, and will act as principal underwriter for any future Fund.

2. In the application for the Prior Order (the "Prior Application"), applicants requested exemptions from sections 18(f), 18(g), and 18(i) to permit the Funds to implement a dual distribution system (the "Dual Distribution System") that would enable the Funds to offer investors the option of purchasing either "Class A" shares subject to a conventional front-end sales load and a rule 12b–1 fee, or "Class B" shares subject to a CDSC and a higher rule 12b–1 fee. Applicants also requested exemptions from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder, to permit the Funds to assess a CDSC on certain redemptions of their shares and to waive the CDSC with respect to certain of such redemptions. A notice of the filing of the Prior Application was issued on January 8, 1990 (Investment Company Act Release No. 17295), and the Prior Order was issued on February 2, 1990 (Investment Company Act Release No. 17330).

3. Applicants propose to amend the Prior Order (i) to modify the shareholder approval requirements contained in condition 2 of the Prior Application, (ii) to delete condition 11 of the Prior Application which requires Directors/Trustees of a Fund to divide their purchases of shares evenly between the two classes of shares offered by a Fund, and (iii) to permit the waiver of the CDSC on redemptions of Class B shares of a Fund that had been purchased by, or for the benefit of, present or former Directors/Trustees of the Fund or relatives (as defined below) of present of former Directors/Trustees of the Fund.

4. Applications propose to modify condition 2 to eliminate the requirement that at least a majority of the existing shareholders of a Fund approve the implementation of the Dual Distribution System by an affirmative vote prior to the implementation of the Dual Distribution System by a Fund. As so modified, condition 2 would read as follows: "The Directors/Trustees of each of the Funds, including a majority of the independent Directors/Trustees, shall have approved the modified Dual Distribution System prior to the implementation of the modified Dual Distribution System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the modified Dual Distribution System will reflect in detail the reasons for determining that the proposed modified Dual Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff."

5. Applicants believe that the approval of shareholders of the Dual Distribution System is not necessary because condition 2 also requires the approval of a majority of the Directors/Trustees of a Fund including a majority of its independent Directors/Trustees, prior to the implementation of the Dual Distribution System. The shareholder approval requirement causes the Funds to seek shareholder approval in instances when such approval is not required by applicable state law or the Act. Consequently, the effect of the requirements that the Funds obtain such approvals before they may implement the Dual Distribution System is that the Funds are required to hold meetings of shareholders, incurring the costs of preparing proxy materials and soliciting proxies, when they would not otherwise do so. Any benefit derived from the required shareholder approvals does not justify the added costs to the Funds brought about as a result of compliance with the requirements. Applicants submit that the proposed modifications to the requirements regarding shareholder approval are consistent with the requirements regarding shareholder approval contained in applications of other investment companies pursuant to which orders were granted by the Commission in closely analogous situations subsequent to the Prior Order. Although such a shareholder approval condition was routinely required in dual class applications at the time of the Prior Order, more recent dual class applicants are not subject to the same shareholder approval requirements.

6. Condition 11 reads as follows: "All purchases of shares of the Fund by the directors made after the issuance of a second class of shares has been authorized will be equally divided between the two classes. Over time and prior to conversion, the actual holdings of the two classes of these newly purchased shares will differ to a minor degree if a director elects to have dividends reinvested. Pursuant to the conversion feature of the Class B shares, Class B shares purchased by the directors of a Fund will eventually convert to Class A shares."

7. Applicants believe that it is no longer necessary for the Directors/Trustees of the Funds to divide their purchases between the two classes. Applicants believe that other conditions of the Prior Order provide adequate safeguards against Directors/Trustees conflicts of interest. Condition 3 requires

that the Directors/Trustees monitor the Funds for any conflicts between the two classes, and that the Adviser and Distributor must report any conflicts to the Directors/Trustees. Condition 7 requires that an expert monitor the manner in which net asset value and dividends and distributions of the two classes and the allocation of expenses between the two classes is made, and that the expert render reports at least annually to the Funds that the calculations and allocations are being made properly. Applicants submit that the proposed elimination of the condition regarding equal share purchases by the Directors/Trustees is appropriate because it is consistent with orders issued by the SEC to other investment companies in closely analogous situations subsequent to the issuance of the Prior Order. Although this type of condition was routinely required at the time of the Prior Order, new dual class applicants are not subject to the same equal share purchase requirement.

8. Pursuant to the Prior Order, applicants waive the CDSC with respect to certain types of redemptions. Applicants request an amendment to the Prior Order to also allow the Funds to waive the CDSC on redemptions of Class B shares of a Fund that had been purchased by, or for the benefit of, present or former Directors/Trustees of the Fund or relatives (as defined below) of present or former Directors/Trustees of the Fund.

9. The proposed additional CDSC waiver category would apply on redemptions of Class B shares of the Fund that had been purchased by present or former Directors/Trustees of the Fund; by the spouse, sibling, direct ancestor or direct descendent (collectively "relatives") of any such person; by any trust, individual retirement account or retirement plan account for the benefit of any such person or relative; or by the estate of any such person or relative, if the shares had been purchased for investment purposes. Shares to which this waiver would apply may not be resold except to the Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-12951 Filed 6-2-92; 8:45 pm]

BILLING CODE 8010-01-M

[Rel. No. IC-18730; No. 811-5334]

Separate Account LL of Lamar Life Insurance Co.

May 26, 1992.

AGENCY: Securities and Exchange Commission (the "Commission") or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Separate Account LL of Lamar Life Insurance Company.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on April 21, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on June 22, 1992, and should be accompanied by proof of service on Applicant in the form of an affivadit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 317 East Capitol Street; Jackson, MS 39201-3404.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Attorney (202) 272-3045, or Wendell M. Faria, Deputy Chief (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On September 18, 1987, Applicant filed a notification of registration as an investment company on Form N-8A, a registration statement as a unit investment trust under the 1940 Act on Form N-8B-2, and a registration statement under the Securities Act of 1933 on Form S-6 that became effective on January 12, 1988. The registration statements pertain to units of interest in certain flexible premium variable life insurance contracts (the "Policies") offered by Lamar Life Insurance Company ("Lamar Life").

2. Applicant is a separate account of Lamar Life established under the provisions of Mississippi insurance law to fund the Policies. Applicant has four classes of units, each of which corresponds to one of Applicant's investment divisions: the Common Stock Division, the Money Market Division the Balanced Division, and the Aggressive Stock Division.

3. Prior to March 31, 1992, each division invested in a corresponding portfolio of the Hudson River Trust, a management investment company registered under the 1940 Act.

4. As of March 31, 1992, Applicant had assets of $219,232, invested in shares of The Hudson River Trust ("HRT"). Applicant retains these assets for purposes of funding outstanding Policies.

5. As of March 31, 1992, Applicant was contractually liable for the unit value of its outstanding Policies in the amount of $198,579 and for amounts owed to Lamar Life of $20,653.

6. As of March 31, 1991, Applicant had 62 security holders.

7. Applicant is not a party to any litigation or adminsitrative proceeding.

8. Applicant ceased to sell new Policies in April 1991 and ceased accepting premimum payments under the Policies on March 31, 1992. All premimum payments made after March 31, 1992 under the Policies have been depositied in Lamar Life's general account.

Applicant's Legal Analysis and Conditions

1. Section 3(c)(1) of the 1940 Act excludes from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and that is not making and does not presently propose to make a public offering of its securities. Applicant meets the conditions of section 3(c)(1) because the Policies are owned by less than 100 persons and because Applicant is not making and does not propose to make a public offering of its securities.

2. Lamar Life sent a letter on February 24, 1992, in the form attached to the Application as Exhibit C, to all of Applicant's contract holders informing them of its intent to file this application.

3. If this application is granted, Applicant will transfer all assets

invested in Applicant to Lamar Life' general account.

4. Each Policy owner's account value under the Policy immediately after the transfer will be the same as immediately before the transfer.

5. No purchase price and no brokerage commissions will be paid in connection with the transfer. All expenses incurred in connection with the liquidation and deregistration of Applicant have been or will be paid by Lamar Life.

6. Lamar Life will fulfill all continuing obligations under the Policies in accordance with the terms of such contracts.

Conclusion

Applicant is not an investment company within the meaning of section 3(c)(1) of the 1940 Act and therefore has ceased to be an investment company within the meaning of section 8(f) of the 1940 Act.

For the Commission, by the Division of Investment Managment, uncer delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-12926 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading; Treats International, Enterprises, Inc.

May 29, 1992.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Treats International Enterprises, Inc. concerning, among other things, (1) questions regarding the identity of persons having undisclosed control of the company, and (2) questions concerning the identities of persons having beneficial ownership of the company's securities, and the resulting impact on the market for Treats International Enterprises, Inc.'s securities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above listed company is suspended for the period from 9:30 a.m. e.d.t., May 29, 1992 through 11:59 p.m. e.d.t., on June 11, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-12943 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18728; 812-7858]

Xerox Financial Services Life Insurance Company, et al.

May 26, 1992

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Xerox Financial Services Life Insurance Company ("Company"), Xerox Variable Annuity Account Four (the "Separate Account"), and Xerox Life Sales Company.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain individual deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on January 28, 1992 and amended on March 27, 1992, April 24, 1992 and May 18, 1992. An amendment will be filed during the notice period to add certain representations the substance of which has been included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be resceived by the Commission by 5:30 p.m. on June 22, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Dean H. Goossen, Esq., Xerox Financial Services Life Insurance Company, One Parkview Plaza, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company which was originally incorporated in 1981 as Assurance Life Company, a Missouri corporation. Currently, North River Insurance Company, an indrect subsidiary of Xerox Corporation, owns 64.80% of the Company's stock and Van Kampen Merritt, Inc. holds the remaining 35.20%.

2. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Account currently is divided into sub-accounts which will invest in shares of the portfolios of Van Kampen Merritt Series Trust or Neuberger & Berman Advisers Management Trust.

3. The Contracts will be distributed through Xerox Life Sales Company, an affiliate of the Company.

4. The Contracts are individual flexible purchase payment deferred variable annuity contracts which are available in connection with fringe benefit plans ("Plan" or "Plans") which may or may not qualify for Federal tax advantages. The minimum size for a Plan is $50,000 of aggregate purchase payments anticipated over the first five contract years. If a Plan participant chooses to make purchase payments through payroll deduction, payments must be at least $1,200 per year. Additional purchase payments must be at least $2,000.

5. Contract owners may transfer all or part of their interest in a sub-account to another sub-account of the Separate Account. The Company will deduct a transfer fee from the amount which is transferred which will be equal to the lesser of $25 or 2% of the amount transferred if there have been more than 12 transfers in the contract year. After annuity payments begin, the Contract owner may make one transfer per contract year.

6. The Company will deduct, at a maximum, an annual contract maintenance charge of $30 from the contract value on each contract anniversary, at the time a Contract is surrendered and, after the annuity date, on a monthly basis. The amount of this

charge will be reduced if projected Contract payments over the first five contract years exceed certain dollar limits.[1] Applicants represent that the charge has not been set at a level greater than its cost and contains no element of profit.

7. In addition, the Company deducts on each valuation date an administrative expense charge which will vary depending upon the total projected purchase payments to be made over the first five years of Plan participation in the Contracts. The amount of the charge is determined at the time the employer establishes the program making the Contracts available to its employees in connection with the Plan. The charge is equal, on an annual basis, to .15% of the daily net asset value of the Separate Account where purchase payments are projected to be from $50,000 to $2,499,999, .10% where projected payments are $2,500,000 to $4,999,999 and .05% for projected payments of $5,000,000 and over. The amount of the charge may be established at a rate below .05% in certain circumstances where total purchase payments above $5,000,000 are projected. This charge is designed to cover the shortfall in revenues from the contract maintenance charge. The Company does not intend to profit from this administrative expense charge. Applicants are relying upon Rule 26a–1 with respect to the deduction of this charge.

8. The Contracts do not provide for a front-end sales charge. Instead, a withdrawal charge (sales load) is imposed on withdrawals of contract values attributable to purchase payments that have not been held for longer than five contract years. The withdrawal charge is equal to 5% of the purchase payment withdrawn. Subject to certain conditions noted in the application, up to 10% of purchase payments may be withdrawn free of the withdrawal charge on a noncumulative basis once each contract year.

9. The Company assumes mortality and expense risks under the Contracts. The mortality risks arise from the contractual obligation to make annuity payments after the annuity date for the life of the annuitant and to waive the withdrawal charge in the event of the death of the annuitant or contract owner (as applicable). The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including contract maintenance costs, administrative fees, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount recovered from the contract maintenance charge and the administrative expense charge. To compensate it for assuming these risks, the Company deducts on each valuation date a mortality and expense risk charge, the amount of which, on an annual basis, will vary as set forth below depending upon the total projected purchase payments to be made over the first five years of Plan participation in the Contracts. The amount of the charge is determined at the time the employer establishes the program making the Contracts available to its employees in connection with the Plan.

Purchase payment	Mortality component (percent)	Expense component (percent)	Total charge (percent)
$50,000–$999,999	0.80	0.45	1.25
1,000,000–2,499,999	0.75	0.30	1.05
2,500,000–4,499,999	0.70	0.25	.95
5,000,000–and over	0.65	0.15	.80

The amount of the mortality and expense risk charge may be established at a rate below .80% in certain circumstances where total purchase payments above $5,000,000 are projected.

The mortality and expense risk charge will remain at the same level at which it was initially established and will not be increased if actual purchase payments do not meet the projected amount. When projected amounts are from $50,000–$999,999, the mortality and expense risk charge may be reduced under certain circumstances where purchase payments exceed or are projected to exceed $1,000,000.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Separate Account of the mortality and expense risk charge under the contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants represent that they have considered the fact that the mortality and expense risk charge will vary in amount depending upon the size of the Plan involved and have concluded that the charge is reasonable at all levels. Also, Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that all levels of the mortality and expense risk charge are within the range of industry practice for comparable variable annuity contracts. Applicants state that these representations are based upon an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, the expense risks taking into account the existence of charges against Separate Account assets for other than mortality and expense risks, the estimated costs, now and in the future, for certain product features, and industry practice with respect to comparable variable annuity contracts. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of this analysis.

3. Applicants state that if the mortality and expense risk charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The mortality and expense risk charge is guaranteed by the Company and cannot be increased.

4. Applicants acknowledge that the withdrawal charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that

[1] See File No. 33–45223, Form N–4 registration statement for the Separate Account, which Applicants have incorporated herein by reference.

the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission.

5. Applicants represent that the Separate Account will invest only in underlying mutual funds that undertake, in the event they should adopt any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors or a board of trustees, a majority of the members of which are not "interested persons" of such funds within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–12927 Filed 6–2–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1634]

Advisory Committee on International Investment; Cancellation of Closed Meeting

The Department of State announces that the closed meeting of the Advisory Committee on International Investment scheduled for Thursday, June 4, from 9 a.m. to 12:30 p.m. in room 1107, Department of State, 2201 C Street, NW., Washington, DC has been cancelled. Public notice of this planned closed meeting of the Advisory Committee on International Investment was published in the **Federal Register** on May 14, 1992 (volume 57, number 94, at page 20728).

Planned speakers for the meeting became unavailable at a late date, necessitating this meeting cancellation.

Dated: May 29, 1992.

Daniel T. Fantozzi,

Executive Secretary, Advisory Committee on International Investment.

[FR Doc. 92–12996 Filed 6–2–92; 8:45 am]

BILLING CODE 4710–07–M

Bureau of Intelligence and Research

[Public Notice 1632]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1993 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the nations of the Commonwealth of Independent States, Eastern Europe, the Baltics, and Georgia under the Soviet-Eastern European Research and Training Act. The grants will be based on an open, national competition among applying organizations.

Authority for this program, called the Russian, Eurasian and East European Research and Training Program, is contained in the Soviet-Eastern European Research and Training Act of 1983. The program was formerly called the Soviet-Eastern European Research and Training Program.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1993 under a program administered by the Department of State.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by September 25, 1992.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Russian, Eurasian and East European Studies Advisory Committee, suite 404, 1250 23rd Street, NW, Washington, D.C. 20037–1164.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to Kenneth E. Roberts, Executive Director, Russian, Eurasian and East European Studies Advisory Committee, suite 404, 1250 23rd Street, NW., Washington, DC.

The Russian, Eurasian and East European Studies Advisory Committee will accept hand-delivered applications between 9 a.m. and 4 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowlege about the countries of that area is " of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced

research, training and other related functions.

The full purpose of the Act and the eligibility requirements are set forth in Public Law 96–164, title VIII, 97 Stat. 1047–50. The countries include Russia, Byelarus, Ukraine, Estonia, Latvia, Lithuania, Moldova, Georgia, Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, Turkmenistan, Albania, Bulgaria, Czechoslovakia, the former German Democratic Republic, Hungry, Poland, Romania, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the fields of Russian, Eurasian and East European and related studies. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of thse funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral levels, and must have demonstrated a likely career commitment to the Russian, Eurasian and East European fields.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the nations of the Commonwealth of Independent States, Eastern Europe, the Baltics, and Georgia by proposing:

(1) National programs which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) National programs which offer graduate, post-doctoral and teaching fellowships for advanced training in Russian, Eurasian and East European and related studies, including training in the languages of the region, with such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) National programs which provide fellowships and other support for American specialists enabling them to conduct advanced research in the field of Russian, Eurasian and East European and related studies; and those which facilitate research collaboration between Government and private specialists in these fields;

(4) National programs which provide advanced training and research on a reciprocal basis in the nations of the Commonwealth of Independent States, Eastern Europe, the Baltics, and Georgia by facilitating access for American specialists to research facilities and resources in those countries;

(5) National programs which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the nations of the Commonwealth of Independent States, Eastern Europe, the Baltcs, and Georgia in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above.

Support for specific activities will be guided by the following policies:

— *Publications.* Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competititve programs.

— *Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving Title VIII funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

— *Library Activities.* Title VIII funds may be used for certain library activites which clearly strengthen research and training in Russian, Eurasian and East European studies and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Title VIII funds may not be used for activites such as modernization or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered for funding.

— *Language Support.* The Advisory Committee encourages attention to the non-Russian languages of the Soviet successor states and the less commonly taught languages of the East European countries. Support provided for Russian language instruction normally will be only at an advanced level.

— *German Democratic Republic.* Funding for research on the former German Democratic Republic is limited to projects selected by national organizations through a competitive process, which address either exclusively the communist experience of the GDR or which extend into the period of reunification, as long as the research relates to the transition experiences of other countries in the region covered by the Russian, Eurasian and East European Research and Training Program.

— *Former Soviet Republics.* The Advisory Committee encourages applications for national programs which advance knowledge and understanding of all the former Soviet republics, as well as those which focus on the broader aspects of Russian, Eurasian and East European research and training.

— *Support for Non-Americans.* The purpose of the Russian, Eurasian and East European Research and Training Program is to build and sustain U.S. expertise on the region. Therefore, highest priority for support should always go to American specialists (i.e., U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, i.e., nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must be prepared to justify the expenditure.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Russian, Eurasian and East European studies. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area. Title VIII legislation requires that in certain cases

grantee organizations include shared-cost provisions in their arrangements with end-users, cost-sharing is encouraged whenever feasible in all programs.

Part III

Available Funds

The President has requested for Fiscal Year 1993 $4.784 million for the Title VIII program. However, the amount available for awards (if any) will not be known until legislative action is complete on the Department of State Appropriations Bill. In Fiscal Year 1992, the Congress increased funding for the Title VIII program from the requested level, $4.784 million, to $10.184 million.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made up to three years from the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, although bulky submissions are discouraged.

All applicants should provide detailed information about their plans for peer evaluation and review procedures and estimates of the types and amounts of anticipated awards.

Applicants who have received a title VIII grant in the previous competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant also received title VIII support prior to last year, a summary of those awards would be helpful.

Descriptions of all competitive award programs should specify both past and anticipated applicant-to-award ratios.

Procedures for elvaluating and selecting applicants to receive awards should be described in detail. For proposals including language instruction programs, criteria for evaluation should address levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices should be included in the application.

Applicants should include certifications of compliance with the provisions of: 1) the Drug-Free Workplace Act (Pub. L. 100–690), in accordance with Appendix C of 22 CFR 137, Subpart F; and 2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Applicants should familiarize themselves with OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education. . . Uniform Administrative Requirements," and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A budget request containing total amount, a detailed program budget indicating direct expenses by program element, and indirect costs. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants who are requesting Title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested title VIII grant funds. Other funding sources and amounts, when known, should be identified;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

All payments will be made to grant recipients through the Department of State by wire transfers.

Technical Review

The Russian, Eurasian and East European Studies Advisory Commttee will evaluate applications on the basis of the following criteria:

(1) responsiveness to the substantive provisions set forth above in Part II, Program Information (40 points);

(2) the professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes in the Russian, Eurasian and East European fields (30 points); and

(3) budget presentation and cost effectiveness (30 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Russian, Eurasian and East European Studies Advisory Committee, suite 404, Box 19, 1250 23rd Street, NW., Washington, DC 20037–1164. Telephone: (202) 736–9060 or 736–9059.

Dated: May 20, 1992.

Kenneth E. Roberts,

Executive Director, Russian, Eurasian and East European Studies Advisory Committee.

[FR Doc. 92–12908 Filed 6–2–92; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the exemptions granted in January thru March 1992. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

MODIFICATION AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-P	DOT-E 2582	Gas Tech, Inc., Hillside, IL	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582 (modes 1, 2, 3, 4, 5).
3004-P	DOT-E 3004	Gas Tech, Inc., Hillside, IL	49 CFR 173.302, 175.3	To become a party to exemption 3004 (modes 1, 2, 4, 5).
3095-P	DOT-E 3095	Good Chemical & Testing Co., Inc., Hennessey, OK.	49 CFR 173.119(a), (b), 173.245(a), 173.249(a), 173.263(a), 173.264, 173.283, 173.289, 178.342-5, 178.343-5.	To become a party to exemption 3095 (modes 1, 3).
4575-P	DOT-E 4575	Gas Tech, Inc., Hillside, IL	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575 (modes 1, 2, 3).
4884-P	DOT-E 4884	Gas Tech, Inc., Hillside, IL	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (modes 1, 2, 3, 4).
5923-P	DOT-E 5923	Akron Welding and Spring Co., d.b.a. Parry Corp., North Royalton, OH.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923 (modes 1, 2, 3).
5923-P	DOT-E 5923	Gas Tech, Inc., Hillside, IL	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923 (modes 1, 2, 3).
6309-P	DOT-E 6309	BASF Corporation, Parsippany, NJ	49 CFR 173.315(a)(1), 174.63(b)	To become a party to exemption 6309 (modes 1, 2).
6530-P	DOT-E 6530	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.302(c)	To become a party to exemption 6530 (modes 1, 2).
6530-P	DOT-E 6530	Gas Tech, Inc., Hillside, IL	49 CFR 173.302(c)	To become a party to exemption 6530 (modes 1, 2).
6543-P	DOT-E 6543	Gas Tech, Inc., Hillside, IL	49 CFR 173.119, 173.185(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To become a party to exemption 6543 (modes 1, 2, 3, 4).
6614-P	DOT-E 6614	Auto-Chlor System, Memphis, TN	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to exemption 6614 (mode 1).
6614-P	DOT-E 6614	Hasa of Arizona, Inc., Eloy, AZ	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to exemption 6614 (mode 1).
6614-P	DOT-E 6614	Cinderella, Inc., Saginaw, MI	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to exemption 6614 (mode 1).
6626-P	DOT-E 6626	Midwest Airgas, Inc., Fairfield, IA	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), 175.3.	To become a party to exemption 6626 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	McGinnis Welding Supply, Wichita Falls, TX.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Capital Welding Supply Company, Little Rock, AR.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	General Welding Products, Inc., Louisville, KY.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Gas Tech, Inc., Hillside, IL	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Arkansas Specialty Company, Inc., El Dorado, AR.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Wakeman Industries, Inc., Claremont, NH.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Industrial Gas Products, Inc., Shreveport, LA.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6762-P	DOT-E 6762	Aqua Laboratories, Inc., Amesbury, MA	49 CFR 173.286(b)(2), 175.3	To become a party to exemption 6762 (modes 1, 2, 3, 4).
6805-X	DOT-E 6805	Liquid Air Corporation, Walnut Creek, CA	49 CFR 173.301(d), 173.302(a)(3)	To authorize ethane, classed as a flammable gas and an additional commodity for shipment in DOT Specification 3AAX steel cylinders. (mode 1).
6805-X	DOT-E 6805	Liquid Air Corporation, Walnut Creek, CA	49 CFR 173.301(d), 173.302(a)(3)	To add 0-2% propane as party of the gas mixtures consisting of nitrogen, hydrogen, carbon monoxide, carbon dioxide or methan and an increase in the percentage of carbon monoxide presently authorized. (mode 1).
6805-P	DOT-E 6805	Gas Tech, Inc., Hillside, IL	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805 (mode 1).
7052-P	DOT-E 7052	Catalyst Research, Owings Mills, MD	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (modes 1, 2, 3, 4).
7052-P	DOT-E 7052	Graseby Dynamics Ltd., Watford, Herts, England.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (modes 1, 2, 3, 4).
7076-P	DOT-E 7076	Aqua Laboratories, Inc., Amesbury, MA	49 CFR 173.286(b)	To become a party to exemption 7076 (modes 1, 2, 3).
7268-P	DOT-E 7268	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.304(a)(1)	To become a party to exemption 7268 (modes 1, 2, 3, 4, 5).
7268-P	DOT-E 7268	Gas Tech, Inc., Hillside, IL	49 CFR 173.304(a)(1)	To become a party to exemption 7268 (modes 1, 2, 3, 4, 5).
7274-P	DOT-E 7274	Gas Tech, Inc., Hillside, IL	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274 (mode 3).
7451-P	DOT-E 7451	Gas Tech, Inc., Hillside, IL	49 CFR 173.304, 173.315	To become a party to exemption 7451 (modes 1, 3).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7835-P	DOT-E 7835	The Jimmie Jones Company, Tulsa, OK	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835 (mode 1).
7835-P	DOT-E 7835	Gas Tech, Inc., Hillside, IL	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835 (mode 1).
7835-P	DOT-E 7835	Oxygen Service Co., Inc., Orange, CA	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835 (mode 1).
7835-P	DOT-E 7835	Post Welding Supply Company, Birmingham, AL.	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835 (mode 1).
7846-P	DOT-E 7846	Gas Tech, Inc., Hillside, IL	49 CFR 173.314(c)	To become a party to exemption 7846 (modes 1, 3).
7929-P	DOT-E 7929	ECONEX, Inc., Pittsfield, IL	49 CFR 173.65	To become a party to exemption 7929 (modes 1, 2).
7943-P	DOT-E 7943	Patterson Laboratories, Inc. (Patterson West), Phoenix, AZ.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To become a party to exemption 7943 (mode 1).
7969-P	DOT-E 7969	Burlington Environmental, Portland, OR	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 7969 (mode 1).
8009-P	DOT-E 8009	Southern California Gas Company, Los Angeles, CA.	49 CFR 173.301(d)(2), 173.302(a)(3)	To become a party to exemption 8009 (mode 1).
8013-P	DOT-E 8013	Gas Tech, Inc., Hillside, IL	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013 (modes 1, 4, 5).
8074-P	DOT-E 8074	Gas Tech, Inc., Hillside, IL	49 CFR 173.34(d), 175.3	To become a party to exemption 8074 (modes 1, 2, 3, 4, 5).
8125-X	DOT-E 8125	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.123, 173.315	To renew and modify the exemption by replacing the external excess flow valve with an internal valve on non-DOT specification IMO Type 5 portable tanks. (modes 1, 2, 3).
8125-P	DOT-E 8125	Ermetainer S.A., Geneva, France	49 CFR 173.123, 173.315	To become a party to exemption 8125 (modes 1, 2, 3).
8156-P	DOT-E 8156	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156 (modes 1, 2).
8156-P	DOT-E 8156	Gas Tech, Inc., Hillside, IL	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156 (modes 1, 2).
8228-X	DOT-E 8228	Department of the Treasury (BATF), Washington, DC.	49 CFR 173.100(bb), 173.113(a)(1), 173.86.	To modify the exemption to include cargo aircraft and rail freight as an additional mode of transportation. (modes 1, 2, 4).
8236-P	DOT-E 8236	TAC Manufacturing, Inc., Jackson, MI	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8236 (modes 1, 2, 3, 4).
8426-P	DOT-E 8426	Burlington Environmental, Portland, OR	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426 (mode 1).
8445-P	DOT-E 8445	K & B Trucking, Inc., Hatfield, PA	49 CFR Part 173, Subparts D, E, F, H	To become a party to exemption 8445 (mode 1).
8445-P	DOT-E 8445	DowElanco, Indianapolis, IN	49 CFR Part 173, Subparts D, E, F, H	To become a party to exemption 8445 (mode 1).
8451-P	DOT-E 8451	Econex, Inc., Pittsfield, IL	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451 (modes 1, 2, 4).
8451-P	DOT-E 8451	Tracor Aerospace, Inc., East Camden, AR.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451 (modes 1, 2, 4).
8526-P	DOT-E 8526	Certified Distribution Services, Inc., Cleveland, OH.	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526 (mode 1).
8526-P	DOT-E 8526	Transport Corporation of America, Inc., Minneapolis, MN.	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526 (mode 1).
8526-P	DOT-E 8526	Contract Transportation Systems Company, Cleveland, OH.	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526 (mode 1).
8554-P	DOT-E 8554	Jack B. Kelley, Inc., Woods Cross, UT	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (modes 1, 3).
8554-P	DOT-E 8554	Explosives Supply Incorporated, Ringwood, NJ.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (modes 1, 3).
8554-P	DOT-E 8554	John Joseph, Inc., Ringwood, NJ	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (modes 1, 3).
8556-P	DOT-E 8556	Teisan Kabushiki Kaisha, Tokyo, Japan	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (modes 1, 3).
8627-P	DOT-E 8627	Good Chemical & Testing Co., Inc., Hennessey, OK.	49 CFR 173.119, 173.245, 178.253	To become a party to exemption 8627 (mode 1).
8723-P	DOT-E 8723	Buckley Powder Company, East Englewood, CO.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 3).
8723-P	DOT-E 8723	Ireco of Florida, Inc., Miramar, FL	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 3).
8723-P	DOT-E 8723	OEI, Inc., Whitesburg, GA	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 3).
8723-P	DOT-E 8723	Sandex, Inc., Las Vegas, NV	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 3).
8862-P	DOT-E 8862	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.119, 173.124(a)(4), 173.305	To become a party to exemption 8862 (mode 1).
8862-P	DOT-E 8862	Gas Tech, Inc., Hillside, IL	49 CFR 173.119, 173.124(a)(4), 173.305	To become a party to exemption 8862 (mode 1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8877-P	DOT-E 8877	Union Carbide Chemicals and Plastics Co., Inc., Charleston, WV.	49 CFR 173.119, 173.245	To become a party to exemption 8877 (modes 1, 2, 3).
8915-P	DOT-E 8915	Gas Tech, Inc., Hillside, IL	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915 (modes 1, 3).
8944-P	DOT-E 8944	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To become a party to exemption 8944 (modes 1, 3).
8966-P	DOT-E 8966	Hasa of Arizona, Inc., Eloy, AZ	49 CFR 173.263(a)(15), 173.277(a)(1), 178.205.	To become a party to exemption 8966 (mode 1).
8988-P	DOT-E 8988	Davis Great Guns Logging, Inc., Wichita, KS.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988 (modes 1, 3, 4).
8988-P	DOT-E 8988	Brown & Root Industrial Services, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988 (modes 1, 3, 4).
8995-P	DOT-E 8995	BASF Corporation, Parsippany, NJ	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To become a party to exemption 8995 (modes 1, 2, 3).
9034-P	DOT-E 9034	Gas Tech, Inc., Hillside, IL	49 CFR 173.302, 173.304, 173.328, 173.334, 175.3.	To become a party to exemption 9034 (modes 1, 2, 3, 4, 5).
9047-P	DOT-E 9047	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047 (modes 1, 2, 3, 4).
9047-P	DOT-E 9047	Gas Tech, Inc., Hillside, IL	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047 (modes 1, 2, 3, 4).
9184-P	DOT-E 9184	The Carbon/Graphite Group, Inc., Pittsburgh, PA.	49 CFR 173.178	To become a party to exemption 9184 (modes 1, 2).
9222-P	DOT-E 9222	Laidlaw Environmental Services, Inc., Columbia, SC.	49 CFR 173.154	To become a party to exemption 9222 (mode 1).
9414-P	DOT-E 9414	Gas Tech, Inc., Hillside, IL	49 CFR 173.302(a)(5)	To become a party to exemption 9414 (modes 1, 3).
9418-X	DOT-E 9418	Weat Texas Fabrication, Odessa, TX	49 CFR 173.119, 173.245, 178.253	To deleting statement "the use of a steel braided neoprene hose as a filling overflow line or manifold is prohibited" on compartmented portable tanks containing flammable or corrosive liquids. (mode 1).
9507-P	DOT-E 9507	Gas Tech, Inc., Milwaukee, WI	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507 (mode 1).
9525-P	DOT-E 9525	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 178.42, Part 173, Subparts D, E, H.	To become a party to exemption 9525 (modes 1, 3, 4).
9571-P	DOT-E 9571	Teledyne McCormick Selph, Hollister, CA	49 CFR Parts 100-177	To become a party to exemption 9571 (modes 1, 2, 3, 4, 5).
9607-P	DOT-E 9607	International Lubrication Laboratories, Inc., Wichita, KS.	49 CFR Parts 100-199	To become a party to exemption 9607 (modes 1, 4, 5).
9610-P	DOT-E 9610	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 172.203(a),(e), 172.204, 173.29(a), (d), Parts 107, Appendix B(2), (3), Parts 171-189.	To become a party to exemption 9610 (modes 1, 2).
9610-P	DOT-E 9610	GenCorp—Aerojet Ordnance, Chino Hills, CA.	49 CFR 172.203(a), (e), 172.204, 173.29(a), (d), Parts 107, Appendix B(2), (3), Parts 171-189.	To become a party to exemption 9610 (modes 1, 2).
9648-X	DOT-E 9648	Thiokol Corporation, Elkton, MD	49 CFR 173.92	To reinstate exemption to authorize shipment of rocket motor, class B explosive, with igniter installed in a specially designed packaging configuration. (modes 1, 3, 4).
9723-P	DOT-E 9723	Waste Conversion Inc., Hatfield, PA	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723-P	DOT-E 9723	Enviro-Chem Environmental Services, Inc., Apex, NC.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9751-P	DOT-E 9751	Implo Technologies Inc., Unionville, Ontario, CN.	49 CFR 173.81(c), 175.3	To become a party to exemption 9751 (modes 1, 2, 3, 4, 5).
9761-P	DOT-E 9761	Systron Donner Corporation, Concord, CA.	49 CFR 173.304(a)(1), 175.3, 178.47	To authorize cargo aircraft as an additional mode of transportation for shipment of certain compressed gases, n.o.s. in non-DOT specification cylinders. (modes 1, 4).
9781-P	DOT-E 9781	DPC Industries, Inc., Houston, TX	49 CFR 173.304(a)(2), 173.34(d), (e)	To become a party to exemption 9781 (mode 1).
9781-P	DOT-E 9781	DXI Industries, Inc., Houston, TX	49 CFR 173.304(a)(2), 173.34(d), (e)	To become a party to exemption 9781 (mode 1).
9781-P	DOT-E 9781	DX Systems Company, Houston, TX	49 CFR 173.304(a)(2), 173.34(d), (e)	To become a party to exemption 9781 (mode 1).
9819-P	DOT-E 9819	Brown & Root Industrial Services, Houston, TX.	49 CFR 173.119, 178.253, Part 173, Subpart F.	To become a party to exemption 9819 (mode 1).
9847-P	DOT-E 9847	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.302(c), (2), (3), (4), 173.34(e), Part 107, Appendix B.	To become a party to exemption 9847 (modes 1, 3).
9851-P	DOT-E 9851	Trans State Airlines d/b/a Trans World Express, St. Louis, MO.	49 CFR Parts 100-199	To become a party to exemption 9851 (mode 5).
9946-P	DOT-E 9946	Gas Tech, Inc., Hillside, IL	49 CFR 173.327(a)	To become a party to exemption 9946 (modes 1, 2, 3).
9953-P	DOT-E 9953	Burlington Motor Carriers Inc., Daleville, IN.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953 (mode 1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9953–P	DOT–E 9953	Westinghouse Electric Corporation, Pittsburgh, PA.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953 (mode 1).
9990–P	DOT–E 9990	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.113	To become a party to exemption 9990 (mode 1).
9997–P	DOT–E 9997	Hornady Manufacturing Company, Grand Island, NE.	49 CFR 173.107, 173.87	To become a party to exemption 9997 (modes 1, 3).
10001–P	DOT–E 10001	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.316, 173.320	To become a party to exemption 10001 (mode 1).
10001–P	DOT–E 10001	Gas Tech, Inc., Hillside, IL	49 CFR 173.316, 173.320	To become a party to exemption 10001 (mode 1).
10022–P	DOT–E 10022	Gas Tech, Inc., Milwaukee, WI	49 CFR 173.119, 173.245, 173.246, 173.247, 173.251, 173.264, 173.273, 173.3(c), 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 10022 (mode 1).
10101–P	DOT–E 10101	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.301(c), 173.34(e)(15)	To become a party to exemption 10101 (mode 1).
10184–P	DOT–E 10184	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.34(e)(10), 173.34(e)(9)	To become a party to exemption 10184 (modes 1, 2, 3).
10184–P	DOT–E 10184	Gas Tech, Inc., Hillside, IL	49 CFR 173.34(e)(10), 173.34(e)(9)	To become a party to exemption 10184 (modes 1, 2, 3).
10298–P	DOT–E 10298	Heli-Lift, Inc., Dallas, TX	49 CFR 172.101, column (6)(b), 173.119, 175.320.	To become a party to exemption 10298 (mode 4).
10318–X	DOT–E 10318	Sonoco Fibre Drum, Inc., Lombard, IL	49 CFR 173.119, 173.125, 173.266, 173.276, 173.346, Part 173, Subpart F.	To modify the exemption to provide for additional commodities classed as Class B poison and corrosive material with secondary hazards. (modes 1, 2, 3).
10318–X	DOT–E 10318	Sonoco Fibre Drum, Inc., Lombard, IL	49 CFR 173.119, 173.125, 173.266, 173.276, 173.346, Part 173, Subpart F.	To modify the exemption to include cargo vessel as an additional mode of transportation. (modes 1, 2, 3).
10325–P	DOT–E 10325	Compagnie Des Containers Reservoirs, 92080 Paris, France.	49 CFR 173.315, 178.245–(1)(b)	To become a party to exemption 10325 (modes 1, 2, 3).
10429–P	DOT–E 10429	Baker Performance Chemicals, Inc., Houston, TX.	49 CFR 177.834(h), Part 107 appendix B(1), Part 173 Subpart D and F.	To become a party to exemption 10429 (mode 1).
10457–P	DOT–E 10457	PPG Industries, Inc., New Martinsville, WV.	49 CFR 173.315(i)(13), 173.33(f)(9), 173.33(h)(4)(ii), 173.33(h)(5)(i).	To become a party to exemption 10457 (mode 1).
10460–X	DOT–E 10460	W. H. Stewart Company, Oklahoma City, OK.	49 CFR 173.420(a)(2)(i)	To authorize those UF–6 cylinders which satisfy the prescribed inspection and test requirements to be stamped and recertified for filling and transport without an exemption. (mode 1).
10504–X	DOT–E 10504	Solkatronic Chemicals, Inc., Fairfield, NJ	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To modify the exemption to include cargo vessel and rail freight as additional modes of transportation. (mode 1).
10504–P	DOT–E 10504	Silicon Systems, Inc., Santa Cruz, CA	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 10504 (mode 1).
10706–X	DOT–E 10706	Energy & Environmental Technology Company, Southfield, MI.	49 CFR 173.119	To reissue exemption originally issued on an emergency basis to authorize shipment of a flammable liquid contained in aluminum canisters overpacked in steel cylindrical packaging (missile containers). (mode 1).
10709–X	DOT–E 10709	Exxon Chemical Company, Houston, TX	49 CFR 173.119(m)	To reissue exemption originally issued on basis to authorize shipment of certain mixtures of flammable and corrosive liquids in stainless steel DOT Specification 57 portable tanks (modes 1, 3).

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10340–N	DOT–E 10340	Schutz Werk, Selters, West Germany	49 CFR 173.118a, 173.119, 173.125, 173.245, 176.340, Part 173, Subpart F.	To authorize the manufacture, marking and sale of nonreusable, non-DOT specification polyethylene portable tank enclosed in a steel jacket, for the shipment of corrosive liquids, combustible liquids, flammable liquids, or poison B liquids. (modes 1, 2, 3).
10407–N	DOT–E 10407	TN Technologies, Inc., Round Rock, TX	49 CFR 173.302, 175.3	To authorize the use of non-DOT specification, stainless steel, radiation detection devices, filled with a nonflammable, nontoxic gas. (modes 1, 2, 3, 4, 5).

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10432–N	DOT–E 10432	Florida Drum Company, Inc., Pine Bluff, AR.	49 CFR Part 173, Subparts D, E, F and H; 178.116–7(a).	To authorize manufacture, marking and sale of non-DOT specification steel drums, for shipment of various hazardous materials. (modes 1, 2).
10567–N	DOT–E 10567	BSL Transport, 59920 Quievrechain, France.	49 CFR 173.274 and 178.245	To authorize the manufacture, marking and sale of non-DOT specification ASME Code "U" stamped portable tank or transportation of certain corrosive liquids. (modes 1, 2, 3).
10570–N	DOT–E 10570	Custom Packaging Systems, Inc., Manistee, MI.	49 CFR 173.245(b)	To authorize the manufacture, marking and sale or large nonreusable, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of not over 2205 pounds each, and top and bottom outlets, for shipment of poison B soliids, corrosive solids, flammable solids, oxidizers solids. (modes 1, 2, 3).
10587–N	DOT–E 10587	Gardner Technology Corporation, Alburtis, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To authorize the manufacture, marking and sell of non-DOT specification, insulated portable tanks for shipment of liquefield helium. (modes 1, 2, 3).
10590–N	DOT–E 10590	Sexton Can Company, Inc., Cambridge, MA.	49 CFR 173.304(d)(3)(ii) 178.33	To authorize shipment of certain flammable gases in a nonrefillable non-DOT specification, inside container similar to the DOT specification 2P with the exception of diameter and capacity. (modes 1, 2, 3).
10598–N	DOT–E 10598	Bulk Lift International, Inc., Carpentersville, IL.	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.224a, 173.234, 173.245(b), 173.366, 173.367.	To authorize the manufacture, mark and sale of large, collapsible, nonreusable polyethylene-lined, woven polypropylene bulk bags having a capacity of approximately 2,200 pounds each, and top and bottom outlets, for the shipment of flammable, oxidizing, Poison B, blasting agent and corrosive solids. (modes 1, 2, 3).
10633–N	DOT–E 10633	Poly Processing Company, Monroe, LA	49 CFR 178.19, 178.253, Part 173, Subparts D and F.	To authorize the manufacture, mark and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks enclosed within a protective steel frame for the shipment of certain flammable liquid or corrosive liquids. (mode 1).
10637–N	DOT–E 10637	Norris Cylinder Company, Longview, TX	49 CFR 173.302(a), 175.3	To authorize the manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain flammable and nonflammable gases. (modes 1, 2, 3, 4).
10645–N	DOT–E 10645	Essex Cryogenics of Missouri, Inc., St. Louis, MO.	49 CFR 173.316; 178.57–8(c)	To authorize the manufacture, marking and sale of one-liter non-DOT specification cylinders for shipments of liquid oxygen. (mode 1).
10652–N	DOT–E 10652	Flura Corporation, Newport, TN	49 CFR 173.328	To authorize a one-time shipment of perfluoroisobutylene classes, as a Poison A in a DOT Specification 4B240 cylinder overpacked in a sealed, capped, schedule 40 pipe which is further overpacked in a DO1–17H drum. (mode 1).
10658–N	DOT–E 10658	Air Care, Inc., South St. Paul, MN	49 CFR 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), 49 CFR 172.101, 49 CFR part 107, appendix B.	To authorize the carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (mode 4).
10667–N	DOT–E 10667	Justrite Manufacturing Company, Mattoon, IL.	49 CFR 173.119, 178.89	To authorize the manufacture, marking and sale of non-DOT specification metal drums of five-gallon capacity and comparable to DOT Specification 5L, for shipment of certain flammable liquids. (mode 1).
10669–N	DOT–E 10669	Transmark Sales, Riverside, CA	49 CFR 173.421 and 173.421–1(a)	To authorize the transportation of galvanized steel bars and rods in various lengths contaminated with low concentrations of radioactive material. (modes 1, 2).

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10669–N	DOT–E 10669	Promet, Inc., Houston, TX	49 CFR 173.421 and 173.421–1(a)	To authorize the transportation of galvanized steel bars and rods in various lengths contaminated with low concentrations of radioactive material. (modes 1, 2).
10672–N	DOT–E 10672	Burlington Packaging, Inc., Brooklyn, NY	49 CFR 173.3a, 175.3, 177.848(b), 174.25(a), 175.3, Part 172, Subpart E and F, Part 173, Subpart D, E, F, and H.	To authorize the manufacture, mark and sale of specially-designed composite type packaging for shipment of poison B, flammable liquid, flammable solid or corrosive material. (modes 1, 2, 4).
10678–N	DOT–E 10678	National Aeronautics & Space Administration, (NASA) Washington, DC.	49 CFR 173.304(a)(1), 173.304(a)(d)	To authorize the use of two non-DOT specification composite cylinder with an aluminum liner (SAMPEX TANK) for one shipment of 100% isobutane liquid (flammable gas) to NASA Goddard Space Flight Center, Greenbelt, Maryland. (mode 1).
10687–N	DOT–E 10687	Duro-Flex Products, Inc., Foristell, MO	49 CFR 173.245b, 173.365	To authorize the manufacture, marking and sell of non-reusable, fiberboard bulk boxes made of triple-wall corrugated fiberboard having an inside lining of 0.0065-inch minimum thickness polyethylene film, for shipment of corrosive solids and poison B solids. (mode 1).
10698–N	DOT–E 10698	Chilton Metal Products Div. of Western Ind., Inc., Chilton, WI.	49 CFR 173.304(a)(2), 178.50	To authorize the manufacture, marking and sale of non-DOT specification cylinders which complies in part with DOT Specification 4B for the shipment of dichlorodifluoromethane. (modes 1, 2).
10717–N	DOT–E 10717	Union Tank Car Company, East Chicago, IN.	49 CFR 173.31	To authorize a modified periodic test schedule for certain DOT specification tank cars. (mode 2).

EMERGENCY EXEMPTIONS

Application Number	Exemption Number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4453–X	DOT–E 4453	Gibson Explosives Products, Inc., Duffield, VA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	Authorizes the use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s. or ammonium nitrate-fuel oil mixtures. (modes 1, 3).
EE 4844–X	DOT–E 4844	Walter Kidde Company, Limited, Berkshire, United Kingdom.	49 CFR 173.301(i), 173.302	Authorizes use of non-DOT specification foreign made steel cylinders, for shipment of certain nonflammable gases (mode 1).
EE 5704–P	DOT–E 5704	TOPTH, Inc., Long Beach, CA	49 CFR 173.62, 173.93(e)	To become a party to exemption 5704 (modes 1, 2, 3).
EE 6614–X	DOT–E 6614	Mid-State Chemical & Supply Corp., Indianapolis, IN.	49 CFR 173.263(a)(28), 173.277(a)(6)	Authorizes the use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (mode 1).
EE 6614–X	DOT–E 6614	Chem-Bright Industries, Brighton, MI	49 CFR 173.263(a)(28), 173.277(a)(6)	Authorizes the use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (mode 1).
EE 7948–X	DOT–E 7948	Union Pacific Resources Company, Wilmington, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	Authorizes the manufacture, marking and sale of non-DOT specification cargo tanks for shipment of flammable and corrosive waste materials. (mode 1).
EE 8214–P	DOT–E 8214	Mazda (North America), Inc., Irvine, CA	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214 (modes 1, 2, 3, 4).
EE 8554–X	DOT–E 8554	Geenen Explosives, Inc., Kaukauna, WI	49 CFR 173.144a, 173.154, 173.93	Authorizes the transport of propellant explosives and blasting agents, in DOT Specification MC–306, MC–307, and MC–312 cargo tanks. (modes 1, 3),
EE 8554–X	DOT–E 8554	Pepin-Ireco, Inc., Ishpeming, MI	49 CFR 173.114a, 173.154, 173.93	Authorizes the transport of propellant explosives and blasting agents in DOT Specification MC–306, MC–307, and MC–312 cargo tanks. (modes 1, 3).

EMERGENCY EXEMPTIONS—Continued

Application Number	Exemption Number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9052-X	DOT-E 9052	Chemical Handling Equipment Company, Inc., Toledo, OH.	49 CFR 173.118a, 173.119, 173.125, 176.340, 178.19, 178.253, Part 173, Subpart F.	Authorizes the manufacture, marking, and sale of non-DOT specification 225 gallons rotationally molded polyethylene portable tanks for shipment of those corrosive liquids and hydrogen peroxide presently authorized in DOT Specification 34 and certain flammable liquids. (modes 1, 2, 3).
EE 9332-X	DOT-E 9332	Johnson Matthey Company, West Chester, PA.	49 CFR 172.101, 173.150, 175.3	Authorizes the transport of a solid explosive dissolved in an ammonia solution as a flammable solid in DOT Specification 34 polyethylene containers or DOT Specification 3E polyethylene bottles, packed in DOT Specification 15A wooden boxes. (modes 1, 2, 4).
EE 9381-X	DOT-E 9381	Western Zinc Corporation, Rancho Dominguez, CA.	49 CFR 173.154	Authorizes the transportation of a water reactive solid, which evolves hydrogen slowly when wet, in open packaging such as drums, hopper trucks and gondola cars. (modes 1, 2).
EE 10239-X	DOT-E 10239	Vista Chemical Company, Baltimore, MD	49 CFR 173.263; 179.200-18(b)(1)	Authorizes the transportation of hydrochloric acid in DOT 111A100W5 tank car tanks equipped with a surge baffle in the safety vent assembly. (mode 2).
EE 10723-N	DOT-E 10723	TRW Electronic Systems Group, Redondo Beach, CA.	49 CFR 173.416(c), Part 107, Appendix B to Subpart B, Paragraph (1).	To authorize a one-time domestic transportation of two packages of radioactive material which are certified for import and export only. (mode 1).
EE 10728-N	DOT-E 10728	The Department of Defense, Washington, DC.	49 CFR 173.328(a), 172.502(a) (1) and (2), Part 107, Appendix B.	To authorize a one-time shipment of an empty MC-338 cargo tank which is placarded and marked as containing nitrogen tetroxide for the purpose of filming an emergency response training exercise. (mode 1).
EE 10729-N	DOT-E 10729	Korean Air Lines Company, Ltd., Los Angeles, CA.	49 CFR 172.101(6)(b); 175.30	To authorize the shipment of explosives which are forbidden for transportation by cargo-aircraft only. (mode 4).
EE 10730-N	DOT-E 10730	Burlington Nodhern Railroad, Forth Worth, TX.	49 CFR 173.31(a)(31), 174.8(b), 179.14, 179-100-14.	To authorize the transportation of a DOT Specification 105A500W tank car tank which is not equipped with a coupler vertical restraint system on the "A" end. (mode 2).
EE 10734-N	DOT-E 10734	Hoechst Celanese Corporation, Charlotte, NC.	49 CFR 1732.212(c), 178.603, 178.606 per HM-181.	To authorize approximately 4,450 open head steel drums, marked UN1A2, with defective bottom chimes containing sodium hydrosulfite to be shipped. (mode 1).
EE 10742-N	DOT-E 10742	Aeropres Corporation, Sibley, LA	49 CFR 179.100-16 and 173.31(a)(7)	To authorize the transportation of certain DOT Class 112J340W and 112T340W tank cars, containing a residue of a flammable gas, equipped with air brake equipment support attachments welded directly to the tank shell. (mode 2).
EE 10743-N	DOT-E 10743	Occidental Chemical Corporation, Pasadena, TX.	49 CFR 173.29(c)(2)	To authorize the transportation of a DOT Specification 105A500W tank car, containing chlorine residue, with a defective safety relief valve, equipped with a safety "C" kit. (mode 2).
EE 10744-N	DOT-E 10744	Alaska Eskimo Whaling Commission, Barrow, AK.	49 CFR 172.101, 6(b), 175.30	To authorize the shipment of approximately 150 pounds of black powder by cargo aircraft. (mode 4).
EE 10746-N	DOT-E 10746	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 173.29(c)(1) and 174.67(i)	To authorize the transportation of a DOT Specification 111A100W1 tank car with defective interior heating coils. (mode 2).
EE 10748-N	DOT-E 10748	McGil Specialized Carriers, Inc., Marietta, GA.	49 CFR 177.825(b) and Part 107, Appendix B(1).	To authorize the transport of radioactive material; using an alternative route which is not a state designed route, or an interstate. (mode 1).
EE 10749-N	DOT-E 10749	Allied Signal Incorporated, Morristown, NJ.	49 CFR 173.29(c)(2)	To authorize the transportation of hydrogen fluoride in a DOT Specification 112S340W tank car with a defective safety relief valve equipped with a safety "C" kit. (mode 2)

EMERGENCY EXEMPTIONS—Continued

Application Number	Exemption Number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 10750–N	DOT–E 10750	Rhone-Poulenc Basic Chemicals Company, Shelton, CT.	49 CFR 173.29(c)(2) 173.29(c)(2)	To authorize the transportation of sulfur dioxide in a DOT Specification 105A500W tank car with a defective liquid angle valve but equipped with a safety "C" kit. (mode 2).
EE 10759–N	DOT–E 10759	Haviland Products Company, Grand Rapids, MI.	49 CFR 173.29(c)(2)	To authorize the transportation of a damaged tank car containing a residue of hydrochloric (mode 2).

WITHDRAWAL EXEMPTIONS

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
6691–P	CS Gases Inc., Buffalo, NY	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6971–X	Ultra Scientific, Inc., North Kingstown, RI	49 CFR Parts 100–199	Authorizes the transport of small quantities of reagent chemicals in inside glass bottles packed in metal boxes, overpacked in a strong wooden or fiberboard box. (modes 1, 2, 3, 4).
8059–X	EFI Corporation, San Jose, CA	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of certain flammable and nonflammable compressed gases. (modes 1, 2, 3, 4, 5).
8554–X	Explo-Tech Inc., Blue Bell, PA	49 CFR 173.114a, 173.154, 173.93	Authorizes the transport of propellant explosives and blasting agents in DOT Specification MC–306, MC–307, and MC–312 cargo tanks. (modes 1, 3).
8956–X	Clif Mock Company, Conroe, TX	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	Authorizes the manufacture, marking and sale of non-DOT specification stainless stell cylinders for transportation of nonflammable gases, flammable gases or flammable liquids. (modes 1, 3, 4).
9326–X	Carbonaire, Inc., Palmerton, PA	49 CFR 173.315	To authorize transport of carbon dioxide refrigerated liquid, in non-DOT specification cargo tank that has been retested in accordance with MC–331 cargo tank retest requirements. (mode 1).
9617–X	Explo-Tech Inc., Blue Bell, PA	49 CFR 176.83(a), 177.835(g), 177.848(f), Part 107, Appendix B(1).	Authorizes the transport of a specially defined detonating cord on the same motor vehicle with Class A and Class C detonators. (modes 1, 3).
9727–X	Sherex Chemical Company, Inc., Dublin, OH	49 CFR 173.249	Authorizes shipment of of an alkaline corrosive liquid, n.o.s. in new or reconditioned DOT Specification 17H steel drums. (modes 1, 2, 3).
10106–X	Dynamit Nobel Special Chemistry, Troisforf, West Germany.	49 CFR 171.12, 172.101, 172.102, 175.3	To authorize transport of tetrazole-1-acetic acid in fiber drums. (modes 1, 4).
10284–N	Hoyer GiMBH Internationale, Fachspedition West Germany.	49 CFR 173.318	To authorize shipment of argon, nitrogen, and oxygen (cryogenic liquids), classed as nonflammable gas in IMO Type 7 tank Container. (modes 1, 2, 3).
10288–X	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.31(c), 179.101–1(a)	To authorize the transport of a DOT Specification 105A300W or 112A340W tank car tank with a safety relief device start-to-discharge pressure at 82.5 percent of the tank test pressure. (mode 2).
10323–P	Union Carbide Industrial Gases Inc., Danbury, CT.	49 CFR 173.119, 173.245, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 10323 (mode 1).
10354–P	Vulcan Chemicals, Birmingham, AL	49 CFR 179.200–18(b)	To become a party to exemption 10354 (mode 2).
10385–N	OEA, Inc., Denver, CO	49 CFR Parts 100–177	To authorize shipment of lead azide-based air bag module classed as an explosive power device Class C, packaged in a foam molded polyethylene bag overpacked in a fiberboard box with styrofoam insert and taped closed. (modes 1, 2, 3).
10506–N	Jet Propulsion Laboratory, Pasadena, CA	49 CFR 173.145, 173.276	To authorize the transportation of flammable liquids in 3AAX stainless steel cylinders (not to exceed 20 pounds per shipment) overpacked in non-DOT specification wooden boxes transported in private-owned vehicles. (mode 1).

WITHDRAWAL EXEMPTIONS—Continued

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
10676-N	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315	To authorize the transportation of compressed gas, n.o.s. in 250 psig design MC330/331 cargo tank. (mode 1).

DENIALS

7277-X	Request by Structural Composites Industries, Inc. Pomona, CA to authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) cylinders, for transportation of certain flammable and nonflammable compressed gas denied March 19, 1992.
10411-N	Request by Janair, Inc. Dallas, TX to authorize the transportation of Class A, B and C explosives by cargo-only aircraft not to exceed 2,000 pounds total net weight per aircraft denied March 3, 1992.
10634-N	Request by Marathon Pipe Line Co. Martinsville, IL to authorize the transportation of a trailer mounted mechanical displacement meter prover for transportation of petroleum crude oil denied March 19, 1992.

Issued in Washington, DC, on May 21, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-12755 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 19-92]

Treasury Notes, Series M-1997

Washington, May 22, 1992.

The Secretary announced on May 21, 1992, that the interest rate on the notes designated Series M-1997, described in Department Circular—Public Debt Series—No. 19-92 dated May 13, 1992, will be 6¾ percent. Interest on the notes will be payable at the rate of 6¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-12863 Filed 6-2-92; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 18-92]

Treasury Notes, Series Z-1994

Washington, May 21, 1992.

The Secretary announced on May 20, 1992, that the interest rate on the notes designated Series Z-1994, described in Department Circular—Public Debt Series—No. 18-92 dated May 13, 1992, will be 5⅛ percent. Interest on the notes will be payable at the rate of 5⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-12864 Filed 6-2-92; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 92-51]

Country of Origin Marking for the Former Yugoslav Republics

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of acceptable names of the independent states formerly parts of Yugoslavia for purposes of country of origin marking under 19 U.S.C. 1304.

SUMMARY: On April 7, 1992, the United States recognized Bosnia-Hercegovina, Croatia, and Slovenia as sovereign and independent states, announcing that consultations towards establishing full diplomatic relations would begin immediately. This notice advises the public of the names and English spellings for the new states and specifies the geographic areas which shall continue to be considered to comprise Yugoslavia for purposes of country of origin marking. The notice also establishes a transition period during which Customs will permit the importation of merchandise from the newly-independent states with the marking, "Yugoslavia".

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Edward M. Leigh, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Pursuant to section 304 Customs may determine the character of the words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin, and may require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of an article.

In view of the political independence of Bosnia-Hercegovina, Croatia, and Slovenia, and recognition of their independent status by the U.S. as of April 7, 1992, merchandise originating in those countries and imported into the U.S. has become subject to marking with the English names of those countries pursuant to 19 U.S.C. 1304. Customs has been advised by the Department of State that the short form English names of the three newly independent countries are as indicated above: "Bosnia-Hercegovina", "Croatia", and "Slovenia". At this time the Department of State has not identified any approved long form names in English for the three countries. It is acceptable to Customs for merchandise to be marked using long form names such as "Republic of _____", provided that the short form name is part of the phrase. With respect to abbreviations, Customs is aware of only one which would satisfy the marking requirements. It would be acceptable to shorten the name "Bosnia-

Hercegovina" to "Bosnia" for these purposes.

Recognizing that manufacturers and importers may need time to adjust to these changes, and that an abrupt change could cause undue hardship, Customs will permit goods from Bosnia-Hercegovina, Croatia, and Slovenia to be marked "Yugoslavia" until April 7, 1993. After that date all merchandise originating in Bosnia-Hercegovina, Croatia, and Slovenia will be required to be marked with the new names as set forth above.

There is no change in the names to be used for marking goods from the non-independent parts of Yugoslavia. However, in accordance with the foregoing, after April 7, 1993, only merchandise produced in the remaining regions of Yugoslavia, *i.e.*, Macedonia, Montenegro, and Serbia, will be permitted to be marked as originating in Yugoslavia for purposes of 19 U.S.C. 1304. It is noted that the U.S. has announced its intention, subject to further negotiations, to recognize the independence of Macedonia. In that event, Customs will adopt corresponding country of origin marking requirements for products of Macedonia.

Dated: May 28, 1992.

Samuel H. Banks,

Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 92-12915 Filed 6-2-92; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 27, 1992.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0720.

Form Number: IRS Forms 8038, 8038-G, 8038-GC and 8038-T.

Type of Review: Resubmission.

Title: Information Return for Small Tax-Exempt Governmental Bond Issues, Leases and Installment Sales (8038-GC).

Description: Forms 8038, 8038-GC collect the information that IRS is required to collect by Code Section 149(e). IRS uses the information to complete the required study of tax-exempt bonds (requested by Congress). IRS also uses the information to assure that tax-exempt bonds are issued consistent with the rules of IRC sections 141-149. Form 8038-T is used to implement the arbitrage rebate requirement.

Respondents: State or local government, Businesses or other for-profit, Non-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 77,000.

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping.—3 hours, 50 minutes
Learning about the law or the form.—1 hour, 51 minutes
Preparing the form.—2 hours, 56 minutes
Copying, assembling, and sending the form to the IRS.—16 minutes

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,454,925.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-12914 Filed 6-2-92; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

Electronic Filing: Electronic Filing of Employee Pension Plan Returns (Form 5500)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice that IRS will be accepting Employee Pension Plan Returns (Form 5500) filed electronically.

SUMMARY: The Electronic Filing Systems Office of the Internal Revenue Service (IRS) announced that in July of 1993, IRS will begin accepting Employee Pension Plan Returns (Form 5500) filed on electronic or magnetic media. The Form 5500 is filed by Plans with 100 or more participants and is the most complicated of the Employee Pension Plan Returns. The IRS currently accepts the Form 5500-C/R Return (filed by Plans with less than 100 participants) in electronic or magnetic media format. The Form 5500EZ (for single participant plans) will be accepted in electronic or magnetic media format beginning in July 1992.

The Form 5500 system for July 1993 will be a pilot system and will have certain restrictions on the types of data that will be accepted.

FOR FURTHER INFORMATION CONTACT: Anyone interested in more information about this program may contact Susan W. Carroll, Chief, Electronic Filing Branch, (901) 365-5590, Memphis Service Center, P.O. Box 30309, A.M.F. Stop 37, Memphis, TN 38130.

Carolyn Davis,

Chief, Business/Employee Plans Master File Section.

[FR Doc. 92-12894 Filed 6-2-92; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Al-Andalus: The Art of Islamic Spain" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about July 1, to on or about September 27, 1992 is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Alberto J. Mora,

General Counsel.

[FR Doc. 92-12962 Filed 6-2-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Luisa Alvarez of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 107
Wednesday, June 3, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 8, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of furniture and furnishings within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 1, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13058 Filed 6–1–92; 11:02 am]

BILLING CODE 6210–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–92–13]

TIME AND DATE: June 10, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Petitions and complaints
5. Inv. 731–TA–557–559 (Preliminary) (New steel rails from Japan, Luxembourg, and United Kingdom)—briefing and vote
6. Inv. 731–TA–530 (Final) (High tenacity rayon filament yarn from Germany)—briefing and vote
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205–2000.

Dated: May 29, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–13017 Filed 6–1–92; 9:42 am]

BILLING CODE 7020–02–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, June 17, 1992, at 10:00 a.m.

ADDRESS: The meeting will be held at Pennsylvania Avenue Development Corporation, Suite 1220 N, 1331 Pennsylvania Ave., NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: May 27, 1992.

M.J. Brodie,

Executive Director.

[FR Doc. 92–13100 Filed 6–1–92; 2:12 pm]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 22863, May 29, 1992].

STATUS: Open meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 27, 1992.

CHANGE IN THE MEETINGS: Rescheduling.

An open meeting scheduled for Thursday, May 28, 1992, at 11 a.m. has been rescheduled for Friday, May 29, 1992, at 11:30 a.m.

Commissioner Schapiro, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272–2000.

Dated: May 29, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13149 Filed 6–1–92; 3:32 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 107
Wednesday, June 3, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 910647-2043]

Endangered and Threatened Species; Threatened Status for Snake River Spring/Summer Chinook Salmon, Threatened Status for Snake River Fall Chinook Salmon

Correction

In rule document 92-8370 beginning on page 14653 in the issue of Wednesday, April 22, 1992, make the following correction:

On page 14661, in the first and second columns, the paragraphs under **Determination** should read as follows:

Determination

Based on its assessment of available scientific and commercial information, NMFS is issuing final determinations that Snake River spring/summer chinook salmon and Snake River fall chinook salmon are ESUs or "species" under the ESA and should be listed as threatened. The ESU for Snake River spring/summer chinook salmon is defined as all natural population(s) of spring/summer chinook salmon in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, amd Salmon River. The ESU for Snake River fall chinook salmon is defined as all natural population(s) of fall chinook salmon in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River. The natural population consists of all fish that are the progeny of naturally spawning fish. The offspring of all fish taken from the natural population after the date of listing (for example, for research or enhancement purposes) are also part of the ESU (natural population).

NMFS is now listing only the natural populations; however, it is also important to address whether any existing hatchery population is similar enough to the natural population that it can be considered part of the ESU and, therefore, potentially used in recovery efforts. In general, hatchery populations that have been substantially changed as a result of artificial propagation should not be considered part of the ESU. To address this and related issues, NMFS is developing a policy on the role of artificial propagation under the ESA for Pacific salmon, and will publish its proposed policy in the **Federal Register** for public comment. After issuing a final policy, NMFS will propose any revisions to the listed ESUs to include various existing hatchery populations, if appropriate. Pending completion of this process, NMFS is excluding from the Snake River spring/summer and fall chinook ESUs all fish in or originating from a hatchery at the time of listing.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110, and 165

[CGD 1 91-165]

Temporary Regulations, Boston Harbor, July 2-17, 1992

Correction

In proposed rule document 92-8031 beginning on page 12286 in the issue of Thursday, April 9, 1992, make the following corrections:

1. On page 12272, in the second column of the table, in the fifth line, "Part" should read "Park".

2. On the same page, in the third column of the table, in the sixth line, "800," should read "0800," and in the fourth line from the bottom, "2800," should read "1800,".

3. On page 12275, in the third column, in the first full paragraph, insert "a" after "starts".

BILLING CODE 1505-01-D

federal register

Wednesday
June 3, 1992

Part II

Department of Transportation

Federal Highway Administration
Federal Transit Administration

23 CFR Ch. I
49 CFR Ch. VI
Management Systems; Proposed rule

DEPARTMENT OF TRANSPORTATION

23 CFR Chapter I

[FHWA Docket No. 92-14]

Federal Highway Administration

Federal Transit Administration

49 CFR Chapter VI

[FTA Docket No. 92-B]

RIN 2125-AC97

Management Systems

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA and the FTA are requesting comments from interested parties concerning the issuance of regulations to implement the provisions of section 1034 of Public Law 102-240, 105 Stat. 1914, the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 1034 of the ISTEA amended Title 23, United States Code, Highways (23 U.S.C.) by adding new section 303 (23 U.S.C. 303) Management Systems, which requires the Secretary of Transportation (the Secretary) to issue regulations, within one year after the date of enactment (by December 18, 1992), for State development, establishment, and implementation of systems for managing: (1) Highway pavement of Federal-aid highways; (2) bridges on and off Federal-aid highways; (3) highway safety; (4) traffic congestion; (5) public transportation facilities and equipment; and (6) intermodal transportation facilities and systems. In addition, not later than one year after the date of enactment, the Secretary must issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment. The purpose of this ANPRM is to solicit early input for development of these regulations.

DATES: Comments must be received on or before August 3, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 92-14, Federal Highway Administration, HCC-10, room 4232, 400 Seventh Street, SW., Washington, DC 20590, or to FTA Docket No. 92-B, Federal Transit Administration, TCC-10, Room 9328, 400 Seventh Street, SW., Washington, DC 20590. All comments will be available for examination at the above addresses between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbert Baccus, FHWA Office of the Chief Counsel, (202) 366-0780, or Mr. Daniel Duff, FTA Office of the Chief Counsel, (202) 366-4063. For information on a specific system: Highway Pavement—Mr. Frank Botelho, (202) 366-1336; Bridges—Mr. Dan O'Connor, (202) 366-1567; Highway Safety—Mr. Fred Small, (202) 366-2171; Traffic Congestion—Mr. Tony Solury, (202) 366-5003; Public transportation facilities and equipment—Mr. Ron Jensen-Fisher, (202) 366-0257; Intermodal transportation facilities and systems—Mr. Dane Ismart, (202), 366-4071; Traffic Monitoring—Mr. Ed Kashuba, (202) 366-0175. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 303 of title 23, U.S.C., requires the Secretary of Transportation to issue regulations, within one year after the date of enactment of the ISTEA of 1991 (December 18, 1991), for State development, establishment, and implementation of a system for managing each of the following:

(1) Highway pavement of Federal-aid highways.

(2) Bridges on and off Federal-aid highways.

(3) Highway safety.

(4) Traffic congestion.

(5) Public transportation facilities and equipment.

(6) Intermodal transportation facilities and systems.

In metropolitan areas, the systems must be developed and implemented in cooperation with metropolitan planning organizations (MPO's). In accordance with the legislation, the regulations may include a compliance schedule and minimum standards for each such system.

States must be implementing each management system beginning in Federal fiscal year 1995, and must annually certify, before January 1 of each fiscal year (the first certification is due by January 1, 1995), that the systems are being implemented, or the Secretary may withhold up to 10% of funds apportioned under Title 23, U.S.C., or under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, amended) for any fiscal year beginning after September 30, 1995. In addition to the six management systems, no later than one year after the date of enactment the Secretary must issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment.

National Highway System (NHS), Surface Transportation Program (STP), FHWA State Planning and Research, Federal Transit Act section 9 (Capital, Planning, and Operating), Federal Transit Act section 8 (Transit Planning), Federal Transit Act section 26(a)(2) (State Planning and Research), and Federal Transit Act section 26(b)(1) (National Planning and Research) funds may be used for development, establishment, and implementation of all of the management and monitoring systems. Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds may be used for certain management system purposes, if such use will likely contribute to the attainment of a national ambient air quality standard (a copy of guidance issued on February 20, 1992, by the FHWA to its field offices on the CMAQ Improvement Program has been placed in the FHWA docket). Apportioned bridge funds also may be used for development and establishment of the bridge management system.

Both the metropolitan (23 U.S.C. 134) and statewide (23 U.S.C. 135) planning processes required under the legislation must include consideration of the needs identified under all of the management systems. Beginning January 1, 1993, the Secretary must submit annual reports to Congress on the progress being made by both the Secretary and the States in carrying out the provisions of 23 U.S.C. 303.

The primary purpose of these management systems is to improve the efficiency of, and protect the investment in, the Nation's existing and future transportation infrastructure. The management systems, or their elements, are not the end products; they will provide additional information needed to make informed decisions for optimum utilization of limited resources. Each State will need to tailor the systems to meet its particular goals, policies, and resources.

Since all of the systems may have common elements and data needs, the Department of Transportation (DOT) decided to issue this unified ANPRM. However, since some of the systems have reached a more advanced stage of development than others, the level of input being sought at this time for each system varies. Background information on each system and specific issues and questions for comment are discussed below. Because of the short timeframe available for issuance of the regulations, the agencies will work on development of notices of proposed rulemaking

during the comment period of this ANPRM, but will not issue notices until all comments received in response to this ANPRM have been considered. Any suggestions on how the requirements for these systems can be met with a minimum paperwork burden would be appreciated. While the comment period for this ANPRM is 60 days, submission of comments as early as possible also would be appreciated.

Status, Issues, and Questions

General

Comments are requested on several issues common to all of the management systems.

As noted above, the legislation requires State development, establishment, and implementation of each management system and that in metropolitan areas (urbanized areas of 50,000 or more population) the systems must be developed and implemented in cooperation with MPO's. States also must cooperate with affected agencies receiving assistance under the Federal Transit Act. These requirements lead to such questions as what should be the nature of this cooperation for development, establishment, and implementation, and should a minimum level of cooperation be specified in the regulations, or should complete flexibility be allowed?

Title 23, U.S.C. 134(f) and section 8 of the Federal Transit Act specify that MPO's, in developing plans and programs, must consider the transportation needs identified through use of the management systems, and the Statewide planning process required under 23 U.S.C. 135(c) also must consider these needs. In addition, the results of the management systems must be considered in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act. What should be the nature of this cooperation and consideration of the results of the management systems in making project selection decisions? Should it be specified in the regulations? What criteria should be used to ensure that the needs identified through the management systems have been appropriately considered?

Each of the management systems will require data to define and monitor the magnitude of the problems, identify needs, analyze alternative solutions, and measure the effectiveness of the implemented actions. Some data needs, such as traffic volumes or travel demand, may be common to all systems while other data will be unique to the particular system, e.g., specific structural data for bridges, and vehicle or person hours of delay for congestion. It is anticipated that the traffic monitoring system required by the legislation, the FHWA's Highway Performance Monitoring System (HPMS), and the Federal Transit Administration's section 15 data, will provide some data to meet National needs and (to some extent) State and metropolitan area needs. The management systems are envisioned as part of an integrated transportation information system that would: Facilitate coordination of the management systems with related programs (e.g., HPMS, speed monitoring, air quality, etc.), facilitate the sharing of resources and data, improve communications among data users, and facilitate the coordination of the metropolitan and statewide plans and programs. What other sources of data are available, or need to be established? What enhancements in the current HPMS, FTA section 15 data, and the traffic monitoring program will be needed for these data bases to be more useful for management systems? How can management system data needs be coordinated with existing information system and be integrated into an overall transportation information system?

Before January 1, 1995, and annually thereafter, States must certify that they are implementing the six management systems. Although a certification is not required until 1995, the systems should be phased in as portions are developed. This will also facilitate certification by that date. The legislation allows the regulations to include a compliance schedule for development, establishment, and implementation of each such system. As part of the rulemaking, a compliance schedule may be proposed for implementation of specific aspects of the systems. At what stage of implementation should each system be in by January 1, 1995, to satisfy this requirement, and what other compliance dates, if any, would be appropriate for specific aspects of each system? What type of supporting documentation, if any, should be submitted with the certifications? What approach should the agencies use to review and assure the adequacy of the systems and the certifications? Should one certification cover all six management systems? At what level of State government (e.g., Governor, State secretary of transportation, etc.) should the certification be made?

The legislation does not specify the extent of coverage of the systems except for highway pavement and bridges. The highway pavement management system is to cover "Federal-aid highways" (those highways eligible for assistance under title 23, U.S.C., except those functionally classified as local or rural minor collectors). The bridge management system is to cover bridges on and off "Federal-aid highways." What should be the extent of coverage of the other systems? Should any of the other systems be limited to the National Highway System (NHS), which, as defined in 23 U.S.C. 102(b)(2), includes the Interstate system and certain other urban and rural principal arterial highways, to Federal-aid highways, or to all public roads?

Of the systems required, the traffic congestion, intermodal, and public transportation management systems may be more closely interrelated than the others. In nonattainment areas for carbon monoxide and ozone, these three systems will also need to be closely coordinated with the process for development of transportation control measures of the State implementation plan (SIP) required by the Clean Air Act (42 U.S.C. 7401 et seq.). How can these systems be interrelated and how should they be coordinated with the SIP development process? Can, or should there be a common extent of coverage and/or data base for these three systems? What institutional structure should be established at the State or MPO level to implement these three systems? Is the highway safety management system sufficiently related to these three systems to be included in a common institutional structure? Should, or could all six of the systems be included?

The legislation specifies that the regulations include minimum standards for each management system. Some of the systems may have similar/common elements and features. What critical elements, features, and processes should be included in each system? In addition to data bases, what other elements should be common to all systems? What degree of detail and guidance are necessary in the regulations for the States to develop, establish, and implement each of the systems?

In lieu of development of a new congestion management system in States where one already exists, the legislation specifies that State laws, rules or regulations pertaining to congestion management systems or programs may constitute the congestion management system required under the ISTEA if the Secretary finds that the State laws, rules or regulations are consistent with, and fulfill the intent of 23 U.S.C. 135, 23 U.S.C. 134, or section 8 of the Federal Transit Act, as appropriate. The legislation does not address acceptance of existing State

laws or procedures for the other systems. Should existing State laws or procedures be accepted for all of the systems? What criteria and review procedures should be used to determine if State laws, rules, or regulations are consistent with and fulfill the intent of the legislation?

Highway Pavement of Federal-Aid Highways

Background

The current FHWA pavement management system (PMS) policy (23 CFR part 626) requires each State highway agency (SHA) to have a PMS that is acceptable to the FHWA and is based on concepts described in American Association of State Highway and Transportation Officials (AASHTO) publications (23 CFR 626.5(a)). The FHWA policy requires that the PMS's cover all Rural Arterials (Interstate, Other Principal Arterials, and Minor Arterials) and Urban Principal Arterials (Interstate, Other Freeways and Expressways, and Other Principal Arterials) under State jurisdiction (approximately 313,000 center-line miles nationwide). The policy also states that the expansion of a SHA's PMS to include all rural and urban arterials, regardless of jurisdiction, and the development of a local PMS for pavements under local jurisdiction are desirable. The completion date to implement this policy is January 13, 1993. Most States have progressed well in developing and implementing their PMS's in accordance with the current regulations. Since the results and progress to date indicate that it is beneficial to do so, the FHWA intends to keep the current PMS policy in effect for the systems specified in 23 CFR 626.5(a).

The extent of network coverage for the pavement management systems has been expanded by the ISTEA to include "Federal-aid highways" which, as defined in 23 U.S.C. 101(a), are highways eligible for assistance under chapter 1 of title 23 U.S.C., other than highways classified as local roads or rural minor collectors. Nationwide this totals over 922,000 center-line miles of which approximately 372,000 are not under State jurisdiction. (The mileage data presented in this ANPRM are 1990 data. These data change over time because States revise and update functional classifications on a continuing basis. In addition, the legislation requires a complete functional reclassification by September 30, 1993.) Although some local highway agencies have begun to recognize and use PMS's and several States have coordinated PMS programs with their local constituents, significantly more effort will be needed because of the expanded network coverage.

It is envisioned that the implementation of the expanded coverage will be accomplished in stages, allowing components of the systems to be put into operation as each is developed. In addition, some items such as actual pavement performance information require several years of data collection before a historical performance data base can be established.

Issues

The design of the total State and local pavement management program is expected to be subdivided into multiple network levels which would typically include the NHS and the various strata for the remainder of Federal-aid highways since the difference in classifications and usage will dictate the design of the PMS to fit the various network levels. For example, a PMS that is designed for a local highway agency typically is less complex and smaller in scope than a PMS for the NHS. Local PMS's which generally cover lower volume highways, should use less inventory data, a limited condition survey, a lower frequency of data collection, and only a basic analysis with a limited number of maintenance and rehabilitation techniques. Is this network subdivision a logical approach? Are there only factors that should be addressed relative to the expanded network coverage for pavement management?

Bridges On and Off Federal-Aid Highways

Background

Tn response to provisions of section 162 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100–17, 101 Stat. 132), the FHWA conducted a special study in 1988 on the progress of State highway agencies in developing comprehensive bridge management systems (BMS's). Based on the results of the study, it was concluded that BMS development was in an early stage in most States, and that significant progress was being made. For example, it was found that more than half the States had appointed a task force or committee to be responsible for developing or overseeing a BMS. One-third had produced a document that broadly described the existing or proposed BMS; three-fourths had some aspect of BMS development either completed, underway or planned; several had made organizational changes which incorporated BMS responsibilities; and a few had made significant progress in developing formal BMS methods and tools. In addition, the AASHTO completed a National Cooperative Highway Research Program (NCHRP) study that resulted in the conceptual development of the modular elements necessary for a model BMS (Transportation Research Board, NCHRP Report No. 300, "Bridge Management Systems").

Since completion of the STURAA study, the AASHTO, the NCHRP, the FHWA, and a few States have proceeded with BMS developments. The AASHTO, through the NCHRP, has produced a guideline on BMS's which is now in final draft, and has continued work on a BMS software development project that is targeted to transportation agencies with small to medium total bridge populations. Under FHWA Demonstration Project 71, the FHWA, six States and the NCHRP have cooperated in the development of a state-of-the-art BMS named Pontis, which is designed to handle inventories of any size and be transportable from one agency to another.

The collective BMS products of the AASHTO, the NCHRP, the FHWA, the individual States, and others constitute a substantial body of information and assortment of tools that should enable all States to implement a comprehensive BMS.

Issues

(1) In most States, bridges that are off Federal-aid highways are owned primarily by cities and counties. Also, in most States, the maintenance of these bridges is the responsibility of the owner rather than the State. In view of varying ownership and maintenance responsibilities, what should be the roles of State and local bridge owners in the operation of a BMS? For example, is it necessary for local bridge owners to operate management systems that are separate from the State's management system? Alternatively, is it sufficient for local bridge owners to simply collect the required data and for the State to analyze the data for purposes of establishing needs estimates and funding allocations under the bridge program?

(2) A network level BMS requires a high degree of standardization in data collection in order to allow flexibility for grouping bridges in various ways for analysis (e.g., needs estimates, funding distributions, deterioration rate predictions, etc.). To what extent should

the data collection requirements within a State be standardized?

(3) Several States that are implementing a BMS have raised a concern regarding possible conflicts between the current system of reporting bridge conditions under the National Bridge Inventory (NBI), and the more detailed descriptions of bridge condition that are used in a BMS. NBI data include overall condition ratings for the deck, superstructure and substructure, while BMS data would generally include a more detailed breakdown of bridge elements (e.g., beams, joints, bearings, etc.) as well as an indication of the extent of deterioration. The concerns raised by the States are twofold: bridge inspectors should not be required to report bridge conditions in more than one format, and while a computer conversion of more detailed BMS condition information to NBI codes is possible, the results may not be consistent with past reporting practices and could adversely impact a State's apportionment of Federal-aid bridge funds. Should the FHWA provide standard procedures or guidelines for converting BMS element level condition data to NBI data?

Highway Safety

Background

Each year over 40,000 people are killed and more than 3.5 million are injured as a result of crashes on the Nation's highways. These facts, combined with the dynamic change that has occurred in the types of highway system users and the overwhelming demand for the system's limited resources, have created a need for better total system management.

The 1966 Highway Safety Act (Pub. L. 89–564, 80 Stat. 731) provided the basic foundation for establishing active highway safety programs in the States. Legislation in subsequent highway and surface transportation bills strengthened and broadened the requirements and scope of the States' involvement in enhancing highway safety. Specific safety program requirements are directed through 23 CFR part 924.

The Transportation Research Board (TRB) conducted a conference in 1981 on the subject of "Enhancing Highway Safety in an Age of Limited Resources." Utilizing many of the recommendations from this conference, the AASHTO's Standing Committee on Highway Traffic Safety developed a document in 1983 titled "A Guide For Enhancement Of Highway Safety Directed To Agencies, Programs and Standards" (AASHTO Safety Guide). Each of these activities were directed toward the effective management of highway activities to ensure timely and appropriate consideration of safety in the ongoing programs and operations of State transportation agencies. In 1988, the FHWA, utilizing the results of the work by the TRB and the AASHTO, initiated a review in several States of practices and programs that provide effective means of enhancing highway safety. The findings of the review were compiled by a task force of FHWA safety professionals into the document titled "Management Approach to Highway Safety — A Compilation of Good Practices." The practices presented in the document were pilot-tested by nine States with a follow-up workshop conducted in September 1991 with representatives from the nine pilot and twelve non-pilot States, the AASHTO and its Standing Committee on Highway Traffic Safety, the TRB, the National Association of Governors' Highway Safety Representatives, the National Highway Traffic Safety Administration, and the FHWA. The purpose of the workshop was to determine the practicality and usefulness of the document to States in developing and implementing a highway safety management system (SMS). State representatives in attendance supported the need for the document to serve as a foundation from which they could develop their systems. The "Management Approach to Highway Safety," the workshop proceedings, and the AASHTO Safety Guide have been placed in the FHWA docket and are available for review. Copies of the"Management Approach to Highway Safety" and the workshop proceedings also are available from the contact shown above for the highway safety management system. Comments in response to this ANPRM, results from the pilot project, and the Safety Management System Workshop will be considered in development of the regulations for the SMS.

Issues

Highway safety involves many disciplines and factors that cross State and local jurisdictional and political boundaries. Engineering, enforcement, education, emergency medical, vehicle design, operators, commercial motor vehicles, and many other inter-related components play a critical role in motor vehicle crashes and survivability. Recognizing these factors, the FHWA's efforts to date have been concentrated on guidance for States to develop SMS's directed toward the roadway. This roadway approach focuses on the basic component affecting the users of the highway transportation system. In order to assess the impacts of the issues identified below, related information from the States, professional and private organizations, industry or the general public is requested. Detailed information and supporting data concerning the issues, and especially information that provides a rationale for a particular position and data that estimate the costs and benefits of the action under consideration, are requested.

(1) Should the highway SMS include all safety elements—driver, vehicle, and roadway—or should it be limited to the roadway only?

(2) Will there be institutional, coordination, or integration impacts if the system covers more than the NHS or includes the driver and vehicle as well as the roadway?

(3) Would State legislation be required to implement a SMS that includes all safety elements or covers more than the NHS?

(4) What are the fiscal, personnel or other resource advantages or constraints associated with developing and implementing a SMS under each of the concepts presented in issues (1) and (2) above?

(5) Section 1016, Program efficiencies, of the ISTEA states that safety considerations for projects subject to subsection (b) of 23 U.S.C. 106 (projects to resurface, restore, and rehabilitate highways on the NHS, non-NHS projects, and low cost NHS projects) may be met by phase construction consistent with an operative safety management system established in accordance with section 303 of Title 23, U.S.C. How should safety considerations be met using phase construction?

Traffic Congestion

Background

In addition to the requirement for a traffic congestion management system in section 1034, the ISTEA places emphasis on congestion management in several other sections. The sixth paragraph of section 2, "Declaration of policy: Intermodal Surface Transportation Efficiency Act," states:

> The National Intermodal Transportation System shall give special emphasis to the contributions of the transportation sectors to increased productivity growth. Social benefits must be considered with particular emphasis to the external benefits of reduced air pollution, reduced traffic congestion and other aspects of the quality of life in the United States.

Title 23, U.S.C., section 134 and section 8 of the Federal Transit Act require that long range plans in

metropolitan areas, among other items, assess capital investment and other measures necessary to "make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods."

In addition to the general requirements that all systems be developed by the States in cooperation with metropolitan area MPO's, the legislation requires that in Transportation Management Areas (TMA's) (i.e., all urbanized areas over 200,000 population and other areas designated by the Secretary at the request of the Governor and MPO) the transportation planning process required under 23 U.S.C. 134 and section 8 of the Federal Transit Act "include a congestion management system that provides for effective management of new and existing transportation facilities eligible for funding under this title and the Federal Transit Act through the use of travel demand reduction and operational management strategies," and it specifies that "the Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section." Further, in TMA's classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), "Federal funds may not be programmed in such area for any highway project that will result in a significant increase in carrying capacity for single occupant vehicles unless the project is part of an approved congestion management system."

Similarly, 23 U.S.C. 135, Statewide planning, requires that the State transportation planning process include "Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel."

Having long recognized the need for congestion management systems, the FHWA sponsored a workshop on such systems in August 1991 in Arlington, VA. A report of the proceedings of the workshop, including a resource paper prepared by the FHWA for the workshop, has been placed in both the FHWA and FTA dockets, and copies are available from the contact shown above for the traffic congestion management system.

The workshop was attended by invited representatives of MPO's, State departments of transportation, transit agencies, universities, professional organizations, the FTA, and the FHWA. A primary objective of the workshop was to obtain early input into the formative phases of definitions and requirements for such systems. The comments and questions that follow are based upon discussions at the workshop, the resource paper, and current thoughts of the FHWA and the FTA staff.

As a starting point an attempt has been made to define a congestion management system (CMS). One possible definition is "a system to monitor and analyze the magnitude of congestion on the multimodal transportation system and to plan and implement actions, appropriate to the scope of the problem, that reduce congestion and enhance the performance of the transportation system to the level desired."

Regardless of the definition of a CMS, preliminary thinking is that the development of regulations should be guided by appropriate principles, that certain elements need to be present in a successful system, and that the system must lead to implementation of specific actions to manage congestion and improve mobility of people and goods. Suggested principles for, and elements of, a CMS are identified below.

CMS Principles

Planning Process Context—Particularly in urbanized areas, the transportation planning process is the mechanism for making decisions about how transportation needs will be met. It, therefore, is the logical place for consideration, debate, and decisions about how congestion will be dealt with on a metropolitan basis.

Value Added—Developed as part of a transportation planning process, the CMS should not require "reinvention" of the planning process, but should build upon and increase the "value" of such process.

Flexibility—Maximum flexibility should be given to State and local officials to develop and implement a CMS and to establish levels of system performance tailored to an area's problems.

Multimodal—Any system developed should consider all appropriate modes and modal interconnectivity. The movement of people and goods, not just vehicles, needs to be addressed.

Areawide—A CMS needs to cover a geographic area and not just isolated facilities. Congestion on a facility may be caused by problems on other facilities in a corridor or subarea, or development decisions. Land use controls, parking management policies, telecommuting, etc. may be the solutions to a congestion problem rather than facility specific actions.

Recurring and Nonrecurring—Typically the planning process has dealt mainly with recurring congestion. However, an effective congestion management system will need to address both congestion that occurs regularly at the same locations and congestion due to isolated incidents.

Implementation Emphasis—While the CMS may be an element of the planning process, the bottom line is the implementation of appropriate congestion management and mobility enhancement strategies, both short term and long term, traditional (traffic operations improvements, transit operational changes, transportation demand management, new capacity) and nontraditional (congestion pricing, land use controls), facility or site oriented (incident management, HOV lane, parking management) and areawide (regional ridesharing programs, growth management). Planners and implementers will need to work together to ensure successful implementation and to improve the effectiveness of a CMS.

Feedback Loop—Implemented strategies need to be monitored and evaluated to determine if they are accomplishing their intended objectives.

CMS Elements

System/Area Designation—While a CMS should be designed to address congestion on a metropolitan area or statewide basis, the nature of the problem may dictate that resources be focused on managing congestion in a subarea, a corridor, or on a specific transportation network (such as the National Highway System).

Performance Measures—At the national level, performance measures or indicators are needed to show how system performance is changing as a result of the strategies that have been implemented. Therefore, for national purposes, a system that reports on how congestion is changing over time may be adequate. However, at the State and local level, there may be a need to know how well the transportation system, or a particular measure, is working at a specific point in time. This may require a different performance measure; one established by State/local officials for their own purposes. The possibility of establishing an acceptable level of performance for the National Highway System has been raised.

Data Collection—Two types of data would probably be neeed: (1) Data necessary to identify and track the location, duration, and severity of congestion on the transportation system, and (2) data needed to evaluate the

effectiveness of the implemented strategies to provide feedback for future decisions.

Strategy Identification/Evaluation—A CMS must identify and evaluate the potential effectiveness of congestion management and mobility enhancement strategies. A better analytical basis is needed for determining the potential effectiveness/impacts of all strategies—both traditional and nontraditional.

Implementation—The ultimate result of a CMS must be implementation. Thus, a key element would be a plan for implementation of appropriate congestion management and mobility enhancement strategies. Such a plan for implementation should include, proposed actions, identification of implementation responsibilities, timeframe for implementation, and probable funding sources.

Issues

Comments on the above-mentioned principles and elements and the following specific issues are invited. Copies of documentation on existing metropolitan and statewide congestion management systems would especially be appreciated.

(1) Should national standards for an "acceptable" level of congestion to be attained be established for all areas, for the NHS, or should each State or metropolitan area be allowed to establish its own standards?

(2) What data should be reported and how? Should new reporting mechanisms be established or can existing mechanisms, for instance the HPMS and FTA section 15 data, be refined to meet national needs?

(3) How can implementing agencies be successfully integrated into a CMS process developed through the planning process? What should be the roles of State and local highway agencies, traffic engineers, transit operators, local government land use decision makers in development, establishment, and implementation of the CMS?

(4) Can existing transportation planning models/procedures: be successfully used to identify congestion problems at the micro level, identify appropriate corrective strategies, measure performance of implemented strategies and the overall transportation system? What new tools will be needed?

(5) What measures currently exist to measure changes in congestion and mobility on a multimodal basis until CMS's can be fully implemented, and what measures might be suitable in a fully implemented system?

(6) How long will it take for development and implementation of a statewide or metropolitan CMS for States and metropolitan areas of different sizes?

Public Transportation Facilities and Equipment

Background

The purpose of the public transportation facilities and equipment management system (PTMS) is to provide a basis for identification of actions to maintain existing transit assets in a good state of repair and to identify strategies necessary to improve transit performance. Management of a public transit system involves examination of the efficiency of the system (vehicle hours or miles per employee, roadcalls per vehicle mile, maintenance cost per vehicle mile, etc.) as well as the performance of the system as it relates to its users (passengers per vehicle mile or hour, transit travel time as a percentage of auto time, on-time performance, crowding levels during peak periods, etc.).

PTMS Elements

Identification of Public Transportation Systems—Urban and rural area public transportation systems operated by the State, local jurisdictions, public transportation agencies and authorities, and private transit operators receiving public funds for capital and/or operating assistance would be identified in terms of location, extent, etc.

Identification of Performance Measures—Performance measures and standards that allow for the evaluation of the transit system would be developed. The measures and standards would reflect State and local goals and objectives. These measures would address, at a minimum, the condition of transit facilites and equipment, the efficiency of the system as defined by cost or labor used per unit of service, and the effectiveness of the system as defined by the passengers carried per unit or cost of service.

Data Collection and System Monitoring—The data collection effort would focus on the physical, operational and passenger utlitization information which is needed to support the performance measures. It would draw upon FTA section 15 data to the extent possible, recognizing the deficiencies of that data to satisfy all needs which could be identified in a system performance evaluation. Data would be collected annually in conjunction with transit operators.

Strategy and Action Identification and Evaluation—Based on the results of the monitoring effort and projected performance, strategies and projects would be identified and alternatives evaluated, where appropriate, to address current and future deficiencies. The costs of these actions, along with priorities and potential funding sources, would be identified. Strategies and projects would be considered for incorporation into State and local plans and programs.

Issues

(1) What should be the specific goals and objectives of a PTMS?

(2) What are the appropriate roles for the States, MPO's, public transit operators, and private transit operators in the development, establishment, and implementation of a PTMS?

(3) Should the DOT receive the information produced from this management system and report national summaries thereof, or is the information only for the benefit of the States, local governments, and transit operators?

(4) Should a PTMS be required only for urbanized areas, or should rural areas be included?

(5) Should a PTMS be required for transit systems receiving little Federal funding?

(6) What other elements, if any, should be included in a PTMS and to what extent should the elements of a PTMS be standardized?

(7) Should the emphasis of a PTMS be on condition of facilities and equipment, on system performance or both?

(8) How should this management system be coordinated with other management systems and the State and urbanized area transportation planning processes?

Intermodal Transportation Facilities and Systems

Background

Intermodalism is a major theme of the ISTEA. In addition to the requirement for an intermodal management system, the 2nd paragraph of Section 2, "Declaration of Policy: Intermodal Surface Transportation Efficiency Act," states:

> The National Intermodal Transportation System shall consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the Nation's preeminent position in international commerce.

Further, paragraph 5 of section 2 states:

> The National Intermodal Transportation System shall provide improved access to ports and airports, the Nation's link to world commerce.

Amended 23 U.S.C. 134 and section 8 of the Federal Transit Act and 23 U.S.C. 135 require that transportation plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation.

Many of the major programs of the ISTEA include the flexibility to fund intermodal transportation projects. For example, the National Highway System must include urban and rural principal arterials that provide access to major ports, airports, public transportation facilities, and other intermodal transportation facilities. Under the Surface Transportation Program (STP), funds may be used for the construction or reconstruction of highways and bridges necessary to accommodate other transportation modes. Also, STP funds may be used for the historic preservation, rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals).

Further, the Statement of National Transportation Policy issued by President Bush on February 26, 1990, recognized the need for "a greater intermodal or multimodal perspective on the part of both transportation companies and government agencies." The Policy also acknowledged the need for "transportation providers and government agencies to provide better connections among different forms of transportation."

With this as a background, the purpose of an intermodal management system (IMS) is to provide a basis for better integration of all transportation facilities and systems. A management approach to intermodal transportation would improve the coordination in the planning and implementation among air, water, and the various land-based transportation systems at both the metropolitan and statewide levels.

In the context of an IMS, an intermodal facility is a transportation hub that interconnects different modes of transportation. An intermodal system provides a means for moving people and goods using various combinations of transportation modes.

An IMS should: Reflect the movement of both goods and people; be designed to provide timely and appropriate information for intermodal transportation decisions; not only look at ground access to intermodal facilities, but at the overall systems necessary to achieve the most efficient movement of goods and people; and be incorporated into the metropolitan and statewide planning processes.

Several critical elements of an IMS that should be incorporated in the statewide and metropolitan planning processes are discussed below. Each of these elements is necessary for an IMS to successfully improve the efficiency of the transportation system. State and metropolitan planning process that incorporates these elements will satisfy the requirements for an IMS.

IMS Elements

Identification of Intermodal Facilities—Intermodal facilities that need to be identified include, but are not limited to, coastal, inland and Great Lakes ports, airports, rail terminals, truck terminals, intercity bus terminals. The intermodal transportation facilities that are identified should serve intrastate, interstate, and international movement of goods and passengers.

Identification of Efficiency Measures and Performance Standards—In order to evaluate the efficiency of intermodal facilities and systems, parameters must be identified that will allow measurement and evaluation of the movement of people and goods from origin to destination. Parameters could include the total travel time and cost for moving passengers and the average time to transfer people or freight from one mode to another. Since the expectations of the quality of service in transportation vary between communities and industries, performance standards or goals should be established at the State or local level with private sector coordination.

Data Collection and System Monitoring—A base year inventory consisting of physical condition and operational characteristics of intermodal facilities and systems is essential. Operational characteristics may include time, cost, capacity, and usage information for the intermodal facilities and systems. Data collection would be coordinated with the traffic congestion and public transportation facilities and equipment management systems. This information should be obtained, to the extent possible, from the ongoing metropolitan and statewide planning processes.

System and Facility Performance Evaluation—The data collection and system monitoring program will be used by the States and local agencies to evaluate the performance of intermodal facilities and systems. The major purpose of the performance evaluation program would be to determine the specific cause(s) for the efficient, or inefficient, movement of goods and people as part of an intermodal transportation system.

Strategy and Action Identification and Evaluation—Strategies and actions would be developed and evaluated for improving intermodal efficiency. Statewide as well as local strategies and actions would be identified for the movement of people and goods. Methods for increasing productivity, increasing the use of advanced technologies, and the use of innovative marketing techniques would be evaluated, including high speed rail, maglev, and just-in-time delivery. The evaluation program would determine what project or combination of projects and actions would most effectively increase intermodal productivity.

Implementation—An IMS would produce strategies to improve the intermodal productivity of transportation systems for both the short and long range. As part of the requirements for Statewide and metropolitan planning, an implementation plan would be developed. The implementation plan would identify the proposed methods and obstacles (institutional, financial, or legal) to implement the strategies and actions. The plan would be developed by the State and, for metropolitan areas, in cooperation with the MPO's responsible for the joint 23 U.S.C. 134 and Federal Transit Act section 8 planning process.

Products—A fully implemented IMS would result in: (1) An inventory of intermodal facilities and systems, (2) incorporation of IMS strategies and actions into State and metropolitan area transportation plans and TIP's, and (3) an implementation plan as part of the statewide and metropolitan area transportation plans.

Issues

(1) What parameters should be used to measure the efficiency of intermodal transportation facilities and systems?

(2) What mechanism or institutional arrangements should be established to address intercity, interstate, and international IMS issues?

(3) How should an IMS be coordinated with the statewide and metropolitan area transportation planning processes?

(4) How should IMS requirements vary based on the complexity of the transportation issues of individual States and urbanized areas?

(5) How should the private sector be involved in the IMS?

(6) Should the IMS be applied in a narrow context (connections and

transfers at terminals) or in a broader context (system-wide, multi-modal)?

(7) Are there existing data sources that could be used to provide information on intermodal facilities and systems?

(8) Should the IMS requirement for an implementation plan include a financial analysis?

Traffic Monitoring System

Background

Within one year of enactment, the FHWA, in cooperation with the FTA, will issue requirements and guidelines for traffic monitoring systems for arterial and collector highways and public transportation facilities and equipment. This will include the monitoring of traffic volumes, vehicle classification, and vehicle weights. Development of the guidelines and requirements is expected to reflect: (1) The content of section 303(b) of title 23, U.S.C., (2) the traffic data needs of the management systems called for in section 303(a) of title 23, U.S.C., (3) redesign of the HPMS, (4) EPA guidance relative to the Clean Air Act Amendments of 1990 (Pub. L. 101–549, 104 Stat. 2399), (5) potential AASHTO adoption of "AASHTO Guidelines for Traffic Data Programs" (not yet adopted by the AASHTO), (6) recently issued ASTM Standard E1442–91 "Standard Practice for Highway-Traffic Monitoring," and (7) procedures and techniques documented in the FHWA's "Traffic Monitoring Guide" (report No. HPM–30/R7–90(100)QE, June 1985). Copies of the publications cited in (6) and (7) have been placed in the FHWA docket and are available for review.

Issues

(1) Efforts have been made to identify relevant activities by national organizations in the development of traffic data guidance. Are there national initiatives, in addition to those identified in the background, relevant to the collection of highway traffic data that could be reflected in national guidelines or requirements?

(2) Systems and programs that are likely to require traffic data are identified in the background. Are there topics addressed in the items under points (1) through (7) of the background that should be more thoroughly addressed in national guidelines or requirements?

(3) The intensity of the traffic monitoring effort will be directly related to the uses of the data. What is the needed precision of traffic volume, vehicle classification, and/or vehicle weight data to support pavement and bridge management, safety and geometric analysis, air quality activities, and policy and plan development?

(4) The intensity of the traffic monitoring effort may also be related to whether the information is being applied to large or small scale questions. How does the needed precision of traffic data, as identified in issue (3), vary for system versus site or project specific issues?

(5) Should the traffic monitoring system include only vehicle data or should it also include transit and automobile passenger trips?

(6) Should transit passenger data be included as part of the traffic monitoring system or as part of the public transportation facilities and equipment monitoring system?

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The actions being considered in this document are required by statute. The FHWA and the FTA have not yet determined if this action would constitute a major rule under Executive Order 12291. However, the FHWA and the FTA consider this to be a significant regulation under the regulatory policies and procedures of the DOT because of the public interest in infrastructure management.

The potential economic impact of this rulemaking is not known at this stage. Therefore, a full regulatory evaluation has not been prepared yet. However, comments should be provided on any cost/benefit data believed to be relevant.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agencies will evalute the effects of this proposal on small entities. Following this evaluation, the agencies will certify whether the proposed action will have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action will be analyzed in accordance with the principles and criteria contained in Executive Order 12612 to determine whether it has sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction, and 20.505 FTA Technical Studies Grants and 20.507, Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Subsequent rules may require collection of information not currently approved for collection.

National Environmental Policy Act

The agencies will analyze regulatory proposals developed as a result of this action under the National Environmental Policy Act of 1969 to determine whether such proposals will have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Chapter I and 49 CFR Chapter VI

Bridges, Grant Programs—transportation, Highway safety, Highways and roads, Traffic regulations, Mass transportation,

Authority: 23 U.S.C. 303 and 315; 49 CFR 1.48 and 1.51; 49 U.S.C app. 1607.

Issued on: May 28, 1992.

T.D. Larson,

Administrator.

Brian W. Clymer,

Administrator.

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Part III

Department of Transportation

Maritime Administration

46 CFR Part 221

Regulated Transactions Involving Documented Vessels and Other Maritime Interests; Final rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. R-125]

RIN 2133-AA79

Regulated Transactions Involving Documented Vessels and Other Maritime Interests

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule to amend and further clarify its regulations implementing statutory changes that became effective on January 1, 1989. Those changes imposed new requirements or standards, and clarified existing ones, for the approval of vessel transfers to noncitizens and noncitizen financing of U.S.-documented vessels. To provide preliminary guidance to the public, MARAD published on February 2, 1989, effective on that date, an interim final rule amending part 221 and soliciting comment from interested persons. A significant number of submissions were received and considered and, to the extent warranted, were reflected in a notice of proposed rulemaking (NPRM) published on April 13, 1990. Once again, substantial comment was received. As a combined result of review of those comments and reconsideration of certain policy objectives, MARAD published a second interim final rule on July 3, 1991, which, in significant respect, further eased the regulatory burden on the affected public. The regulation was published in interim final form in order to permit the public the benefit of those changes and, at the same time, allow for comment on those areas in which the rule substantially differed from the NPRM.

EFFECTIVE DATE: This final rule is effective June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, Washington, DC 20590, tel. (202) 366-5712.

SUPPLEMENTARY INFORMATION:

Background

The amendment and codification of the former Ship Mortgage Act, 1920, at new 46 U.S.C. 313, Subch. II contained in section 102 of Public Law 100-710 (enacted November 23, 1988), introduced significant changes to, and clarification of, prior law. For example, the codification expands the categories of persons that can be approved mortgagees of preferred mortgages on documented vessels, whether or not a "citizen of the United States" as defined in section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802). The codification also allows any noncitizen to hold a preferred mortgage on a documented vessel operated only as a fishing vessel, a fish processing vessel, a fish tender vessel or a vessel operated only for pleasure. The Secretary of Transportation ("the Secretary") is likewise given authority to prescribe criteria for approval of corporate citizen and noncitizen trustees, without regard to citizenship, for a mortgage held by such trustee for the benefit of a noncitizen that cannot qualify as a preferred mortgagee.

Public Law 100-710 also amended section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), to reflect established administrative and judicial interpretation of the prior law that requires, among other things, and with new exceptions, the Secretary's approval of transfers to noncitizens of "control" of citizen-owned documented vessels.

The provisions of Public Law 100-710 that required changes in MARAD's regulations became effective on January 1, 1989. While there was no statutory mandate that implementing regulations be in place when the law became effective, MARAD concluded that it was imperative in the interest of all concerned to publish revised regulations as an interim final rule to facilitate implementation of the new law and to minimize transitional uncertainty. The interim final rule published on February 2, 1989 (54 FR 5382, amended at 54 FR 8195), also allowed fine-tuning of the regulations based on the opportunity for considered evaluation of comments from interested persons before adoption of a final rule.

Apart from the substantive provisions implementing Public Law 100-710, MARAD also made revisions in part 221 in the interest of a more coherent and orderly statement of its regulatory responsibilities with respect to transactions involving citizen-owned documented vessels. These included not only established policy principles but certain tentative new policy guidelines.

In view of the significant changes made by Public Law 100-710 in the statutory provisions to which the regulations in part 221 are addressed, the interim final rule adopted a conservative approach to interpretation and application of the new law, pending the opportunity to obtain comments from all interested parties.

After evaluation of those comments, a number of amendments and clarifications of the interim final rule appeared to be warranted. Mindful of Congress' admonition that MARAD should "temper the consideration of a transfer in interest or control to a (noncitizen) with a concern that the vessel may be needed in time of war or national emergency," and in an attempt to balance this national security role with the desire of many that MARAD completely relinquish its regulatory role in these transactions, MARAD proposed in an April 13, 1990, NPRM (55 FR 14040) a regulation that would significantly relax regulation of the financing and transfer of documented vessels.

MARAD's attempt to codify in these regulations a definition of U.S.-citizen "controlling interest" in vessel-owning business entities was amended to simply restate the section 2 requirements. Given the sweeping general approvals being granted, "controlling interest" for purposes of section 9(c)(1) is of much less importance. However, because of those sweeping approvals MARAD believed it is particularly important that the maritime community be afforded some guidance for those operating in the coastwise trade and others who may be concerned with citizenship status. Substantial discussion was afforded this subject in the preamble to the second interim final rule. (56 FR 30656, July 3, 1991.) That guidance remains current.

The views of interested parties were specifically invited with regard to further liberalization of the section which proposed general approvals. One possibility on which MARAD asked for comment was general approval for transactions involving transfers of an interest in or control of citizen-owned documented vessels to persons who are noncitizens for purposes of section 2, but who, nevertheless, are eligible to document a vessel pursuant to 46 U.S.C. 12102 (documentation citizens). Another possibility was general approval for transactions under section 9(c)(1) so as to place U.S. citizens on an exact par with documentation citizens, which need not apply for such approvals. In all events, MARAD noted, bareboat/demise charters to non-section 2 citizens of vessels operating in coastwise trade would not be included in any such general approvals.

Commenters were generally agreed that MARAD should provide general approval so as to place U.S. citizens on a par with documentation citizens for section 9 transactions in which the vessel remains under U.S. flag.

MARAD determined that such general approval was not inconsistent with the legislative history or with MARAD's

national security responsibilities under section 9. Accordingly, general approval was provided in the second interim final rule for all section 9 transactions other than transfer of registry (except certain transfers to so-called "Bowaters Corporations"), sales for scrapping in a foreign country and bareboat charters of vessels operating in the coastwise trade. It was noted that separate approvals are required by 46 U.S.C. 31322 for preferred mortgagees and that, in addition, approvals may be required by statutes other than section 9 and by contract for certain vessels, such as those constructed with the aid of Title XI financing and/or construction-differential subsidy and those under operating-differential subsidy agreements. Consistent with MARAD's national security role, however, this general section 9 approval would not apply during any period when section 37 of the Shipping Act, 1916, was in effect nor would it apply to transactions proposed to be made with countries with whom trade was prohibited at the time.

Subject to the same national emergency and prohibited country exception, general approval was granted for any federally insured depository institution to be a preferred mortgagee (a number of major banks, because they are foreign-owned, could not heretofore hold a preferred mortgage on a documented vessel).

Another major change was that general approval was granted for time charters to Bowaters Corporations for powered vessels of over 500 gross tons with no special restriction on the sub-time charter of those vessels to other noncitizens. The time charter to Bowaters of barges and smaller powered vessels (the type they are permitted by statute to own) was also given general approval, subject only to the condition that use by the Bowaters Corporations and sub-time charters of those vessels was restricted to the types of use to which they might put owned vessels.

Discussion of Rulemaking Text

The discussion that follows summarizes the comments received on the second interim final rule, notes where changes have been made to the rule, explains the basis for those changes, and, where relevant, why particular recommendations in response to the invitation for comment on that interim final rule have or have not been adopted. A number of commenters commended MARAD for the important step taken in the second interim final rule of significantly easing the regulatory burden on the affected public, without mentioning specific sections. Their comments are acknowledged with appreciation. Reference in this discussion is to the section numbers as published in the second interim final rule, and if a section has been redesignated it is so noted.

Subpart A—Introduction

Subsection 221.1 Purpose

This section is self explanatory. No change.

Section 221.3 Definitions

(a) *"Bowaters Corporation."* A number of comments were received on the subject of Bowaters Corporations. Those comments primarily dealt with the application of section 9 to Bowaters Corporations and will be summarized below in the discussion of § 221.13.

No change.

(b) *"Charter."* No change.

(c) *"Citizen of the United States."* Two commenters directly addressed the § 221.3(c) requirement (based on 46 CFR part 355, MARAD's citizenship regulation) that the "citizenship" test be applied to holders of a controlling interest in a vessel owner at each tier of ownership. One suggested that because the legislative history in this area "is skimpy at best," the requirement may result in certain situations which are "clearly contrary to what must have been Congressional intent." Since the commenter was unaware of substantial support for the requirement, it urged MARAD to remain silent on this question of statutory interpretation. The other suggested that, as applied to coastwise-operated vessels, the requirement "misapplies the governing statute" and that the 75 percent requirement is applicable only to the corporation which owns the vessel.

As noted in the preamble to the second interim final rule, the U.S. Coast Guard addressed and resolved explicitly the issue of application to ownership tiers of the 75 percent requirement for vessels with coastwise endorsements in regulations, 46 CFR part 67—Documentation of Vessels; Controlling Interest (55 FR 51244, December 12, 1990). The Coast Guard determined that the law requires application of the 75 percent requirement at each tier of ownership for entities owning vessels with coastwise endorsements. MARAD agreed with that determination. MARAD's language, while not identical, is entirely consistent with that adopted by the Coast Guard and reflects MARAD's administrative policy in this area. This issue is currently the subject of litigation in which MARAD and the Coast Guard are defendants and plaintiffs are the corporations who submitted the second comment above.

MARAD does not agree that § 221.3(c) of this regulation "misapplies the governing statute." Nowhere does section 2 of the 1916 Act state that a parent of a vessel-owning corporation need only meet the 51 percent requirement for coastwise trading purposes. Section 2(c) states clearly the criteria that each ownership tier must meet when the 75 percent requirement is applied.

> Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States * * * (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or *indirectly*, in behalf of any person who is not a citizen of the United States; or (d) *if by any other means whatsoever control of any interest in the corporation* in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States (emphasis added)

Therefore, if, for example, a parent corporation has greater than 25 percent noncitizen ownership, "more than 25 per centum of the voting power in such (vessel-owning subsidiary) corporation may be exercised * * * indirectly" in behalf of noncitizen owners of the parent corporation.

Subparagraph (d) of section 2(c) is also applicable to the parent/subsidiary relationship. Under (d), if the parent is more than 25 percent owned by noncitizens, then noncitizens "control * * * [an] interest in the [subsidiary] corporation in excess of 25 per centum * * *."

This interpretation of section 2 is consistent with the legislative history. Congress clearly intended to preclude the use of ingenious lawyering to circumvent the 75 percent U.S.-citizen ownership requirement for coastwise vessels. (56 Cong. Rec. 8029 (1918).) Congress has been advised of Coast Guard's and MARAD's interpretation, and has given no indication that the two agencies' interpretation is not in accord with its intent.

No change is made in this final rule to the application of requisite U.S. citizenship to each tier of ownership.

One commenter suggested that, as worded, this paragraph refers principally to corporations, and omits reference to partnerships or associations and to partnership interests or interests in other entities. The commenter is correct, and the paragraph has been amended accordingly.

One commenter stated that the proposed requirement that all officers

authorized to act in the absence or disability of the President or CEO and Chairman also be citizens is without statutory support. This has been a standard MARAD requirement and is consistent with the citizenship regulations at 46 CFR part 355. Clearly, a statutory requirement that certain corporate officers be citizens cannot be considered fulfilled if persons granted equal corporate authority are not. The commenter suggested that if this requirement is to be retained, "Persons," a defined term when capitalized which includes other than individuals, should be lower case. That has been done.

One commenter questioned the proposed citizenship requirements for partnerships, stating that since the definition in this paragraph is based on section 2, which requires only that a controlling interest of the partnership be citizens of the United States for the partnership to be considered a citizen of the United States, the requirement that all general partners of the partnership must be citizens of the United States goes beyond the statutory definition.

MARAD's position remains that section 2 imposes comparable economic and "controlling interest" requirements for citizenship of partnerships (and other business entities) as it does on corporations, with variations due to the nature of the entity. In the case of partnerships MARAD requires that all general partners be section 2 citizens because under most, if not all, State laws a general partner can bind the partnership no matter how small a participation the general partner has. This is confirmed by sections of the Uniform Partnership Act and the Uniform Limited Partnership Act cited by the commenter which state that all general partners have broad authority to bind their partnerships. The citizenship test in this rule for partnerships is also consistent with the statutory requirement for documentation purposes, and with the Coast Guard's implementing regulations at 46 CFR part 67.

A commenter suggested that where a joint venture is not in effect either a partnership or an association, then only a controlling interest by citizens of the United States in the joint venture should be required. MARAD's requirement that all coventurers be citizens of the United States is consistent with the statutory requirement for documentation purposes, and with the Coast Guard's implementing regulations at 46 CFR part 67 and is being retained. The Maritime Administrator will in all instances determine whether a joint venture is in effect an association, a partnership, or otherwise.

One further point may require clarification. This paragraph, as published in the second interim final rule and for this purpose herein unchanged, provided a definition of "Citizen of the United States" which, with respect to a corporation, requires that the "Controlling Interest" be held by U.S. citizens. 56 FR 30665 (amending 46 CFR 221.3(c)) (July 3, 1991) "Controlling Interest" was defined in section 221.3(d) in terms of control by a U.S. citizen majority and is herein unchanged. It further provided:

> But, in the case of a corporation, partnership, association or joint venture owning a vessel which is operated in the coastwise trade, the amount of interest and voting power required to be owned by or vested in citizens of the United States shall be not less than 75 percent as required by 46 App. U.S.C. 802. 56 FR 30666 (amending 46 CFR 221.3(d)(5)) (July 3, 1991).

This was a change from the corresponding provision in the April 1990 NPRM. The NPRM as proposed would have applied the 75 percent requirement to a corporation "owning *or operating* a vessel in the coastwise trade", rather than to a corporation "owning a vessel which is operated in the coastwise trade." (55 FR 14051, proposed new 46 CFR 221.3(d)(5)) (April 13, 1990) (emphasis added). As MARAD stated in the Discussion of Rulemaking Text of the second interim final rule, the change was made because

> exception was taken to the proposed citizenship requirement in paragraph (d)(5) regarding a corporation, partnership, association or joint venture operating a vessel in coastwise trade. Commenters suggested that would be in excess of statutory authority, since 46 App. U.S.C. 883, the relevant authority, speaks only to ownership of vessels used in the coastwise trade. That is correct, and paragraph (d)(5) has been amended to clarify that the citizen requirement applies to the ownership of vessels operated in the coastwise trade, not to the operator of those vessels. 56 FR 30657 (July 3, 1991).

MARAD believed that the language in § 221.(3)(d) "or operating" could be misinterpreted to appear to establish a requirement not supported by statute.

It should be understood that this change in the July 3 interim final rule does not mean that MARAD has somehow waived the requirement of section 9 that persons not qualifying as section 2 citizens require approval before chartering citizen-owned vessels. The statutory requirement imposed by section 9 that citizen owners of documented vessels must get MARAD's approval before chartering them to persons who are not section 2 citizens could not be more clear. The section 2 definition of "Citizen of the United States" is equally clear. As that definition applies to section 9, a person operating a vessel in the coastwise trade is not a citizen unless at least 75 percent of the ownership resides in citizens.

> Section 802(a) (section 2) delineates which business entities are considered United States citizens "within the meaning of this chapter." Among other requirements, a "controlling interest" in the entity must be owned by United States citizens. For those vessels "in the coastwise trade," however, a greater degree of United States ownership is required; the entity which operates them must be 75 percent United States owned in order to "be deemed a citizen of the United States" "within the meaning of this chapter."

Alaska Excursion Cruises, Inc. v. *United States*, 595 F. Supp. 14, 16 (D.D.C. 1984) MARAD cannot by regulation "waive" the statutory requirement imposed by section 9. What MARAD can do, and what was done in the second interim final rule, is give general approval for certain types of transactions. While noncitizens are granted general approval in the rule for many transactions, in § 221.13(a) "bareboat or demise [c]harters of vessels operating in the coastwise trade" is one of the specifically enumerated exceptions to those general approvals. MARAD's intent could not be more evident.

(d) "*Controlling Interest.*" A commenter suggested that the words "or vested in" are superfluous, are not contained in section 2 and should be stricken. In fact, sections 2 (b) and (c) require that the requisite percentage of stock be "vested in such citizens free from any trust or fiduciary obligation * * *." To avoid any uncertainty, this paragraph has been amended to make clear that the stock must be both owned by and vested in citizens.

(e) "*Documented Vessel.*" No change.

(f) "*Federally Insured Depository Institution.*" One commenter stated that section 31322 of title 46, United States Code, has no definition of a federally insured depository institution nor any requirements as to its nature, its assets or other matters and that since the statute is not so limited, the definition should include any institution that has been approved to have its deposits insured under federal law, which, as to banks and savings associations means those under chapter 16 (sec. 1811 *et seq.*) of title 12 U.S.C. (Banks and Banking) and as to credit unions, federal and state, means those under chapter 14 (sec. 1751 *et seq.*) of Title 12 U.S.C. The commenter noted that the second interim final rule includes the

requirement about combined capital and surplus, which is not contained in the statute, and suggested that MARAD is confusing the requirements of 46 U.S.C. 31328, which pertain to persons who may be a trustee of a mortgage securing an instrument or evidence of indebtedness on a documented vessel, with the requirements of 46 U.S.C. 31322(a)(1)(D)(iii) which pertain to the requirements for a mortgagee of a preferred mortgage.

The definitional requirements to be an approved Federally Insured Depository Institution remain fundamentally unchanged from those published in the first interim final rule in 1989. No other commenter has taken significant issue with them. MARAD has not confused these requirements with those of section 31328, but rather, in exercising its discretion under section 31322, has determined that they are reasonable requirements to use in establishing a category of financial institutions to be granted general approval as preferred mortgagees. As provided in section 221.23(d) others, both citizen and noncitizen, may apply for such approval.

No change.

(g) "*Fishing Vessel.*" No change.

(h) "*Fish Processing Vessel.*" No change.

(i) "*Fish Tender Vessel.*" No change.

(j) "*Hearing Officer.*" No change.

(k) "*Mortgagee.*" One commenter suggested that "and" should be substituted for "or" in the phrase "Documented Vessel or other property," stating that a mortgage on a vessel may include other property but it is not relevant if the mortgage covers only other property and not a vessel. "Or" is used in this paragraph to correspond with 46 U.S.C. 31322(c) which provides for the possibility of separate discharge of individual vessels or property which may be the subject of a single preferred mortgage.

(l) "*Noncitizen.*" No change.

(m) "*Operation Under the Authority of a Foreign Country.*" No change.

(n) "*Party.*" No change.

(o) "*Person.*" No change.

(p) "*Pleasure Vessel.*" No change.

(q) "*Settlement.*" No change.

(r) "*State.*" No change.

(s) "*Transfer.*" A commenter suggested that the word "possession" should be stricken so as to read "passing of control of or an interest in a vessel." The commenter suggested that "possession" may be too broad and is not included in the transfers referred to in sec. 9(c)(1) and is not referred to in the remaining portion of paragraph (s) where it speaks only of an involuntary conveyance of any interest in or control of a documented vessel. The commenter also suggested that "vessel" should be "Documented Vessel." MARAD agrees and the changes have been made. Noting that section 9(c) covers two different transfers (section 9(c)(1) covers the transfers referred to in sec. 221.11(a) and sec. 9(c)(2) covers a documented vessel placed under foreign registry or operation under the authority of a foreign country), a commenter suggested that it might be well to separate the two and have each defined. MARAD does not agree.

(t) "*Trust.*" No change.

(u) "*United States.*" No change.

(v) "*United States Government.*" No change.

(w) "*Vessel Transfer Officer.*" No change.

Section 221.5 Citizenship Declarations

This section implements 46 U.S.C. 31306, vice section 40 of the Shipping Act, 1916 (46 App. U.S.C. 838), which was repealed. The filing of Form MA–899, or evidence of MARAD's written approval with the Coast Guard incident to presentation for filing or recording of instruments transferring an interest in a documented vessel is for the purpose of demonstrating that the transaction is not in violation of section 9. This section has been amended to indicate that a filing is not required for transactions involving fishing and pleasure vessels. It has been further amended to waive the filing requirement, as permitted by 46 U.S.C. 31306, for transactions which are given general approval in this part.

Section 221.7 Applications and Fees

This section is self explanatory.

(a) *Applications.* One commenter noted that this rule only requires that the application (form MA–29) shall be filed "with the Vessel Transfer Officer." It does not specify by whom the form must be filed. In the case of a sale, mortgage or charter of a vessel, this would be the owner of that vessel. However, the commenter suggested that if there is to be a transfer of an interest in or control of a vessel where the vessel is owned by a corporation, a partnership or other entity in which the transfer is not of the vessel but of an interest in the corporation, the partnership or other entity owning the vessel, the owner of the vessel may not know of the transfer of such interest or control. The commenter suggested that the regulations should spell out specifically that the obligation to file rests with the person desiring to make such transfer of an interest in or control of a documented vessel and that form MA–29 should be revised to cover such situations. MARAD does not agree. A vessel's owner should be the one to determine whether it wishes to effect (or is willing to permit) a transfer of an interest in or control of the vessel. MARAD will continue to require that the owner sign the MA–29.

(b) *Fees.* At the suggestion of a commenter, paragraph (b)(1)(A)(iv), which pertains to the "Sale or Transfer of stock of a corporation that is a Citizen of the United States and owns, or is the direct or indirect parent of a corporation that owns, any Documented Vessel, if by such sale or Transfer the Controlling Interest in the corporation is vested in, or held for the benefit of any Noncitizen," has been amended to provide also for the sale or transfer of an interest in a partnership or other entity or of a transfer of an interest in a trust that owns a documented vessel.

(c) *Modification of applications or approvals.* No change.

(d) *Reduction or waiver of fees.* No change.

Subpart B—Transfers to Noncitizens or to Registry or Operation Under Authority of a Foreign Country

Section 221.11 Required Approvals

This section recites the statutory list of transactions that require prior approval of the Maritime Administrator. The statutory exclusion for certain fishing vessels, fish processing vessels, fish tender vessels and pleasure vessels is set forth.

(a) A commenter suggested that since the required approvals under section 9(c)(1) apply only to transfers, including mortgages to noncitizens, and since 46 U.S.C. 31322(a)(1)(D), except for subsection (vi), does not apply to mortgagees who are noncitizens, but under subsection (vi) a noncitizen can be a mortgagee if approved by the Secretary, there is no reason to except 46 U.S.C. 31322(a)(1)(D). The commenter further stated that 46 U.S.C. 31328 is completely independent of section 9(c)(1), and suggested that these two exceptions should be deleted from paragraph (a) or placed in separate subparagraphs as the approval required by section 9(c)(2) is in paragraph (b). To avoid any confusion, these exceptions to the section 9(c)(1) approval requirements have been incorporated at the beginning of paragraph (a) as they are in the statute.

(b) Former paragraph (b) has been redesignated as subparagraph (a)(ii) without change.

(c) Two commenters suggested that this section should clearly state that fishing vessels do not lose their statutory exemption from most approval requirements if they also have a registry

endorsement, so long as any trading under that authority has been only incidental to the vessel's principal employment in the fisheries and directly related thereto. That has been done, and this paragraph has been redesignated as paragraph (b).

Section 221.13 General Approval

In this section MARAD grants administrative approval for most § 221.11(a) transfers within U.S.-flag so as to place U.S. citizens on an exact par with documentation citizens, which need not apply for such approvals. General approval is granted for time charters to Bowaters corporations for powered vessels of over 500 gross tons with no special restriction on the sub-time charter of those vessels to other noncitizens. The time charter to Bowaters corporations of barges and smaller powered vessels (the type they are permitted by statute to own) is also given general approval, subject only to the condition that use by the Bowaters corporations and sub-time charter of those vessels is restricted to the types of use to which they may put owned vessels.

(a) *Transactions other than transfer of registry or operation under authority of a foreign country.* One commenter noted that this section excepts, indirectly, preferred Mortgagees under 46 U.S.C. 31322(a)(1)(D), and directly, trustees under 46 U.S.C. 31328. The commenter suggests reference be included in this section to each of the regulations in this part implementing these statutes. MARAD agrees that this change would provide more consistent guidance to the public, and it has been made.

A number of commenters suggested that this paragraph be clarified to indicate that noncitizen transferees, including noncitizen mortgagees, are excluded from the standing approvals granted only at such time as those specific noncitizens are subject, directly or indirectly, to control of a country at any time when such country is the subject of a U.S. Government prohibition on trade. They further suggested that the exclusion for periods of war or national emergency be similarly limited so that it would apply only to noncitizens subject to the control of countries with which the U.S. is at war or during periods of national emergency. That was MARAD's intent and that paragraph has been so modified.

One commenter noted that subparagraph (a)(4) adds to the prohibition against charters for the carriage of cargoes of any kind to or from certain named countries "Charters * * *, or for operation within the waters of, any of these countries." The commenter assumed that this phrase was added to cover charters of mobile offshore drilling units or other vessels used for the exploration and production of mineral resources in waters off the coasts of the USSR, Libya, Iraq, Vietnam or Cuba, which might also be prohibited by other statutes and that it does not include "innocent" passage through such waters when passing between other countries. That is correct, and this paragraph has been amended for clarity.

(b) *Bowaters corporations.* Two commenters objected generally to MARAD's position that Bowaters corporations are not to be treated as U.S. citizens for all purposes of the Jones Act and section 9. They also objected to MARAD's prohibiting (both in the 1975 policy statement and in these regulations) U.S. citizen owners from bareboat or demise chartering vessels which are to be used in the coastwise trade to Bowaters Corporations. Another commenter, pleased that MARAD has "significantly lessened the administrative and regulatory burden on Bowaters Corporations," also urged that Bowaters Corporations be accorded full citizenship status for purposes of section 9 and be permitted to bareboat charter coastwise vessels.

MARAD continues to disagree with the commenters' position. The legislative history of the Bowaters statute clearly shows that it was intended to be only a "minor exception" to the mandate of the Jones Act that only vessels owned by section 2 citizens of the United States are eligible to engage in the coastwise trade. That history indicates that the original version of the legislation as proposed would have authorized a Bowaters Corporation to operate owned or chartered vessels in the coastwise trade. However, as ultimately enacted, the authorization was confined in scope to vessels owned by the corporation, thus evidencing deliberate Congressional consideration and rejection of statutory permission for a Bowaters Corporation to operate chartered vessels in the coastwise trade without section 9 approval. In MARAD's view, the first sentence of the Bowaters statute (46 App. U.S.C. section 883–1) reads as it does because, in order to accomplish that section's purpose, it was necessary to "deem" qualifying corporations to be citizens for purposes of section 883 (the "Jones Act"). Having done that, it was necessary to "deem" such corporations to be citizens for purposes of section 9, (a) to ensure that any transfer of a vessel by such a corporation to "a person not a citizen of the United States" would be subject to approval of the Secretary and (b) to allow such corporations to purchase additional vessels for proprietary use without the redundancy of requiring administrative approval of a use already authorized by statute.

The result has been that time charters and other arrangements for the hire of citizen-owned documented vessels by Bowaters Corporations require (and routinely receive) MARAD approval. Most time charters in to Bowaters Corporations are now given general approval in this rule. Because of MARAD's longstanding policy against approval of bareboat or demise charters to non section 2 citizens of vessels operating in the coastwise trades, Bowaters companies have not received approval for such charters.

Bowaters representatives also argue that use of the word "owned" in section 883–1 should be read literally as regards the statutory restrictions on use and out-charters of vessels by Bowaters operators and that the restrictions should therefore not apply to vessels chartered in by such operators. They argue that the statutory restrictions on "owned" vessels should not, in light of the "deemed a citizen" language, be applied by MARAD's regulations to chartered vessels. It is their view that Bowaters Corporations should be able to charter in, on any basis, vessels of any type and size, particularly larger vessels, and operate those vessels in for-hire trade or charter them out without restriction.

MARAD again disagrees that Bowaters transactions are exempt from section 9. Section 883–1 and its legislative history clearly reflect Congressional intent that it be a minor exception to the Jones Act. To construe it as authorizing unregulated for-hire transportation by Bowaters companies, or unregulated subchartering out on a time-charter basis, would patently contradict that intent.

This issue is included in the current litigation mentioned in the discussion in § 221.3(d), above, in which MARAD and the Coast Guard are defendants and plaintiffs are corporations who submitted a comment on this paragraph. Except as noted below, no change is made in this final rule in the treatment of Bowaters Corporations.

One commenter noted that subparagraph (b)(2) provides that approval is granted for the "time charter or lease" of a documented vessel of any tonnage by a citizen of the United States to a Bowaters Corporation for operation in the coastwise trade. Since the term "lease" is not defined in the regulations, the commenter asks what the difference

is between a lease of a documented vessel and a charter of such a vessel and whether there is a difference between a "lease" and a "demise or bareboat charter." If the word "lease" was merely substituted for the words "demise charter," the commenter asked whether the former would fall within the general approval under paragraph (b)(2). By use of the term "lease," MARAD intended to encompass arrangements other than time charters that parties might enter into, such as contracts of affreightment. It was not intended to encompass bareboat or demise charters. To avoid confusion, the term "lease" has been removed. Regardless of the description given these charters or other agreements, MARAD will in all cases be guided by their content.

Section 221.15 Approval for Transfer of Registry or Operation Under Authority of a Foreign Country or for Scrapping in a Foreign Country

This section carries forward the present statement of procedures and conditions for approval of transfers of documented vessels to foreign ownership or registry, which will also be applicable to operation of documented vessels under the authority of a foreign country as mandated by Public Law 100–710.

(a) *Vessels of under 1,000 gross tons.* This paragraph has been amended to require, as is done by Transfer Order for vessels of 1,000 gross tons or more, that at the time of transfer there be no liens or encumbrances recorded against the vessel in the U.S. Coast Guard Documentation Office at its last U.S. port of record. It has also been amended to include the exclusion found in other general approval sections for periods of war or national emergency so that it would not apply to noncitizen purchasers subject to the control of countries with which the U.S. is at war or during periods of national emergency.

(b) *Vessels of 1,000 gross tons or more.* This paragraph has been amended, without substantive change, to conform with paragraph (a), clarifying those transfers that are contemplated by its terms.

(c) *Foreign transfer other than for scrapping.* This paragraph has been amended to provide that for a transfer to the government of an acceptable foreign country and in unusual circumstances as determined by the Maritime Administrator (for example a transfer to an entity controlled by the government of an acceptable foreign country), some or all of the conditions in subparagraphs (c)(1)–(4) may be waived.

Subparagraph (c)(1)(ii) has been amended to make clear that it is only a transfer of ownership as a result of death that requires notice to the Vessel Transfer Officer.

Subparagraph (c)(3) has been amended, as was 221.13(a)(4), to clarify what is intended by reference to commercial operation in the waters of certain named countries.

(d) *Foreign transfer for scrapping.* One commenter noted that there could be a sale to a noncitizen of a documented vessel under the general approvals provided in § 221.13, which vessel could be scrapped foreign by such noncitizen without transfer of registry (but after deleting its U.S. documentation) to a foreign country or without operation under authority of a foreign country. The commenter suggested this paragraph be amended so that it is clear that whether or not there is a transfer of registry the conditions required by this paragraph will apply. It has been so amended.

(e) *Resident agent for service.* No change.

(f) *Administrative provisions.* No change.

Section 221.17 Sale of a Documented Vessel by Order of a District Court

This section implements 46 U.S.C. 31329(a), which permits foreclosure sale of a documented vessel by order of a district court to a person eligible to own a documented vessel or to a mortgagee of the vessel.

No change.

Section 221.19 Possession or Sale of Vessels by Mortgagees or Trustees Other Than Pursuant to Court Order

This section permits a mortgagee that is not eligible to own a documented vessel or a citizen-trustee of the mortgage to take possession of a documented vessel in the event of default in lieu of a foreclosure proceeding ordered by a U.S. District Court, but prohibits operation of the vessel in commerce. This section reflects the fact that when a noncitizen mortgagee brings a civil action *in rem* to enforce a preferred mortgage lien on the vessel pursuant to 46 U.S.C. 31325(b)(1), the mortgagee may also petition the court pursuant to 46 U.S.C. 31325(e)(1) for appointment of a receiver and the court may authorize the receiver to operate the vessel on such terms and conditions as the court deems appropriate.

One commenter questioned why MARAD requires in this section that the receiver appointed by the court in an *in rem* proceeding must be a section 2 citizen in order to operate the vessel, suggesting this be broadened to include any person eligible to own a documented vessel. MARAD agrees and this section has been so amended. If the receiver is not a section 2 citizen, the vessel may not be operated in coastwise trade without written approval of the Maritime Administrator.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

Section 221.21 Purpose

This section is self explanatory.

No change.

Section 221.23 Notice/Approval of Noncitizen Mortgagees

This section reflects exercise by the Maritime Administrator of the discretion contained in 46 U.S.C. 31322(a)(1)(D)(vi) to approve persons other than those specifically identified in the statute to be mortgagees of preferred mortgages on documented vessels. Blanket approval is granted to certain federally insured depository institutions to hold preferred mortgages on documented vessels, pursuant to authority of 46 U.S.C. 31322(a)(1)(D)(iii), notwithstanding that they may not be citizens of the United States. The statute authorizes such institutions to be mortgagees, unless disapproved. This section provides notice that, pursuant to statute, noncitizens may be mortgagees of vessels that are exempt from foreign transfer restrictions under these regulations.

(a) As with § 221.11(c), commenters suggested that this paragraph should clearly state that fishing vessels do not lose their statutory exemption from mortgagee approval requirements if they also have a registry endorsement, so long as any trading under that authority has been only incidental to the vessel's principal employment in the fisheries and directly related thereto. That has been done.

(b) No change.

(c) As with § 221.13(a)(2), a number of commenters suggested that this paragraph be clarified to indicate that noncitizen mortgagees are excluded from the standing approvals granted only at such time as those specific noncitizens are subject, directly or indirectly, to control of a country at any time when such country is the subject of a U.S. Government prohibition on trade and that the exclusion for periods of war or national emergency be similarly limited so that it would apply only to mortgagees subject to the control of countries with which the U.S. is at war or during periods of national emergency. This has been done.

(d) One commenter suggested that if the policy for the administration of section 9(c)(1) is to threat transfers to noncitizens of documented vessels owned by citizens of the United States the same as such transfers of such vessels owned by noncitizens, then mortgages should be included and, since noncitizens may be mortgagees of preferred mortgages of documented vessels if approved by the Secretary (under section 31328(a)(1)(D)(vi)), all noncitizens should be granted approval to be mortgagees. If blanket approval is granted to sell a documented vessel owned by a citizen of the United States to a noncitizen, and if such a vessel owned by a noncitizen can be both sold and mortgaged to a noncitizen, the commenter stated, then there is no reason such a vessel should not be mortgaged to a noncitizen and the latter be approved as a mortgagee of a preferred mortgage. The commenter requested that, if this suggestion is not adopted, blanket approval be given to any person eligible to own a documented vessel to be a mortgagee of a preferred mortgage of a documented vessel.

No other comment to this effect has been received. MARAD has had little experience with noncitizens acting as mortgagees for preferred mortgages. More experience is needed with the transactional approvals newly provided for before MARAD can responsibly extend broad general approvals to such mortgagees.

No change was made to this paragraph.

Section 221.25 Application for Approval as Mortgagee

This section is self-explanatory.

(a) (New; former paragraph (a) is redesignated as paragraph (b).) This new paragraph was added at the suggestion of a commenter to make clear that noncitizen mortgagees qualifying under § 221.23 (a), (b) or (c) need not file an application.

(b) This is former paragraph (a) redesignated without substantive change.

(c) This is former paragraph (b) redesignated without change.

(d) This is former paragraph (c) redesignated without change.

Section 221.27 Permitted Mortgage Trusts

This section provides that where the United States Government or a State is the mortgagee of a documented vessel or trustee for the benefit of a person not qualifying as a citizen of the United States, issuance of the note or other evidence of indebtedness secured by the mortgage does not require MARAD approval. It makes clear that, unless a person is a mortgagee or trustee approved by MARAD, a note or other evidence of indebtedness secured by a mortgage on a documented vessel may not be issued, assigned, transferred to, or held in trust for the benefit of a noncitizen, by that person to a person who does not qualify as a citizen of the United States under section 2 without the specific approval of MARAD.

One commenter suggested that the role of MARAD in approving mortgage trusts under this section should be expanded to include approval of the trust itself in addition to the trustee. The commenter is concerned about noncitizen beneficiaries of a trust being able to control the administration of the trust and the operation of the vessel subject thereto. Inasmuch as general approval has been given (with only minor exceptions) to all section 9(c)(1) transactions, it would be anomalous for MARAD to review and approve individual mortgage trusts. MARAD will, of course, investigate any alleged violation of laws or regulations it administers, and will hold trustees which it has approved responsible for statutory compliance.

(a) No change.

(b) No change.

(c) One commenter suggested that, in the event a trustee is disapproved, the Maritime Administrator should provide a copy of the disapproval notice and order to the mortgagor in addition to the trustee and the Coast Guard. MARAD may not know the identity of mortgagors for whom a trustee has been acting and therefore cannot undertake to assure individual notice. Public notice will be published in the **Federal Register** of any disapproval.

(d) (New) One commenter stated that since section 9(c)(1) does not apply to fishing vessels, fish processing vessels, fish tender vessels, or vessels operated only for pleasure and since the requirements of section 31322(a)(1), by reason of paragraph (a)(2) of that section, do not apply to a documented vessel that has a fisheries endorsement or a recreational endorsement or both, then there is no necessity to have a trustee act where a note is issued or transferred to a noncitizen and is secured by a mortgage on such a vessel. However, the commenter suggested, if the mortgagee of those types of vessels desires to have a trustee act as mortgagee there should be no citizenship or other requirements for such trustee. MARAD agrees and this new paragraph recognizes the statutory exception for a mortgage trust just as § 221.23 does for mortgagees.

Section 221.29 Approval of Corporate Citizen Trustee

This section reflects the statutory criteria of 46 U.S.C. 31328(b) (1)–(4) for approval of a corporate trustee that is a citizen of the United States.

(a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) No change.

This section was amended to provide that any approvals granted therein shall terminate if the approved entity fails at any time to meet the applicable requirements.

Section 221.31 Approval of Corporate Noncitizen Trustee

This section implements the authority granted the Secretary by 46 U.S.C. 31328(a)(4) and (b)(5) to permit a federally insured depository institution that is not a citizen of the United States to serve as an approved trustee if it otherwise meets the criteria of 46 U.S.C. 31328(b)(1)–(4) and files an application to that effect with MARAD.

One commenter noted that in the second interim final rule, what had been proposed sections dealing with approval of noncorporate citizen trustees and approval of noncitizen trustees were removed. The reason for the removal was stated in the Discussion section of the second interim final rule—that "[w]hile 46 U.S.C. 31328(a)(3) might seem to indicate that any section 2 citizen could be approved as a trustee, 31328(c) limits approval to those satisfying the qualifications of 31328(b), which include being organized as a corporation." To the commenter this appears to be an unduly restrictive interpretation of that section. The commenter believes the history of this section and of the law which it replaced shows that this interpretation placed on the new statute by MARAD is not required.

MARAD cannot agree. The construction of section 31328 is clear and unambiguous. As here relevant, 31328(a) requires that in order to serve as trustee, an entity must meet certain criteria, and that unless the trustee is a State or the United States Government it must have been approved by the Secretary. Section 31328(b) requires the Secretary's approval of trustee if they are corporations meeting certain criteria. Section 31328(c) requires that if at any time the trustee fails to meet the criteria of 31328(b) (unless it is a State or the United States Government) it shall be disapproved. As a matter of construction, (c) clearly requires all

trustees approved under 31328 (other than a State or the United States Government) to meet the criteria of (b). Were it otherwise, (c) would be qualified to indicate that it only applied to trustees other than those approved under (a). MARAD is unable to reach any other conclusion.

(a) No change.

(b) No change.

Section 221.33 Application for Approval as Trustee

This section is self explanatory.

(a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) (New) This new paragraph was added to make clear that once approved, entities may act as trustee without specific transactional approval.

Section 221.35 Renewal of Approval of Trustee

This section is self explanatory. Trustees will be approved for five years rather than the previous one year approval.

(a) No change.

(b) No change.

Section 221.37 Conditions Attaching to Approvals

This section provides that whenever an approval of a mortgagee or trustee is granted by the Maritime Administrator pursuant to 46 U.S.C. 31322(a)(2)(D)(iii) or (iv) or 31328(a)(3) or (4), that approval shall be conditional on prompt response by the mortgagee or trustee to written requests by the Maritime Administrator for information or reports concerning its continuing compliance with the terms or conditions upon which such approval was granted. The terms or conditions may be those imposed generally by provisions in this part, or specifically in the approval itself. Because there is no renewal required of approvals to serve as mortgagees, and renewal of approvals to serve as trustees is only required every five years, it is necessary that the Maritime Administrator be able to verify from time to time that the person is continuing to abide by such terms and conditions. This section imposes an obligation on an approved mortgagee or trustee to notify the Maritime Administrator promptly of the commencement of a foreclosure action in a foreign jurisdiction involving a documented vessel to which section 9 and this part are applicable and to ensure that the court or other tribunal has proper notice of those provisions. This requirement is intended to give the foreign court or other tribunal notice that sale of the vessel to a noncitizen without prior approval of the Maritime Administrator would be void under U.S. law, and also that a noncitizen purchaser of the vessel could not lawfully transfer the vessel to foreign registry without prior approval of the Maritime Administrator. The notice to the Maritime Administrator of commencement of a foreign foreclosure action is intended to permit consideration of whether such approvals should be given and, if not, an opportunity for the Maritime Administration to intervene in the proceeding. This section also prohibits an approved trustee from assuming any fiduciary obligation in favor of noncitizen beneficiaries that would be in conflict with these regulations. Since these regulations have the force and effect of law, trust obligations that violate them would be unenforceable.

(a) No change.

(b) No substantive change.

(c) No change.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency under 46 App. U.S.C. 835 [Reserved]

This subpart reserves for later implementation regulations concerning foreign transfer of interests in or control of vessels or maritime facilities under the captioned circumstances.

No change.

Subpart E—Civil Penalties

Section 221.61 Purpose

Subpart E proposes procedures MARAD would utilize to assess civil penalties for violations of 46 U.S.C. chapter 313 and of section 9 of the Shipping Act, 1916, as amended. The proposed regulations adopt the informal assessment procedure used by many administrative agencies, and, in particular, those used by the Coast Guard, which has shared responsibilities under chapter 313.

One commenter suggested adding a similar note or explanation as to criminal penalties. MARAD does not have criminal penalty authority and this Subpart applies only to civil penalties. A sentence has been added to the note stating that criminal penalties may also be imposed for violation of these statutes.

Section 221.63 Investigation

No change.

Section 221.65 Criteria for Determining Penalty

No change.

Section 221.67 Stipulation Procedure

No change.

Section 221.69 Hearing Officer

No change.

Section 221.71 Hearing Officer Referral

No change.

Section 221.73 Initial Hearing Officer Consideration

No change.

Section 221.75 Response by Party

No change.

Section 221.77 Disclosure of Evidence

No change.

Section 221.79 Request For Confidential Treatment

No change.

Section 221.81 Counsel

No change.

Section 221.83 Witnesses

No change.

Section 221.85 Hearing Procedures

No change.

Section 221.87 Records

No change.

Section 221.89 Hearing Officer's Decision

No change.

Section 221.91 Appeals

One commenter suggested that there should be a requirement that the written decision on the appeal should be sent to the party by certified or registered mail and, if the decision is adverse and is final agency action, the party should be advised of the right of appeal to the courts from that decision, similar to the provisions in paragraph (c) of § 221.89 with regard to appeal from the decision by the Hearing Officer. This section has been so amended.

Section 221.93 Collection of Civil Penalties

No change.

Subpart F—Other Transfers Involving Documented Vessels [Reserved]

Subpart G—Savings Provisions

Section 221.111 Status of Prior Transactions—Controlling Dates

This section was amended to recognize the effective period of the second interim final rule.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While this rulemaking does not involve any change in important Departmental policies, it is considered significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). It implements statutory changes that will substantially effect the regulation of transactions involving U.S.-documented vessels, and has generated significant public interest. However, because the economic impact should be minimal, further regulatory evaluation is not necessary.

Because this final rule recognizes statutory exceptions to the requirements for Maritime Administration approval for certain regulated transactions and significantly relieves restrictions on the affected public in other regards, the Maritime Administration has determined that good cause exists pursuant to 5 U.S.C. 553(d)(1) for it to be effective upon publication.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains information collection requirements that were approved by the Office of Management and Budget (Approval No. 2133–0006). OMB approved the latest changes to the information collection requirements in revised part 221 as contained in the second interim final rule (56 FR 30656), published July 3, 1991, on August 30, 1991. No substantial or material modifications to the information collection requirements contained in the second interim final rule have been made in this final rule. However, the revision of forms contained in this rule will be submitted to OMB for review and approval. Therefore, use of present Maritime Administration forms will be continued, pending review and approval of the proposed revisions.

List of Subjects in 46 CFR Part 221

Maritime carriers, Mortgages, Reporting and recordkeeping requirements, Trusts and trustees.

Accordingly, 46 CFR part 221 is revised to read as follows:

Part 221—Regulated Transactions Involving Documented Vessels and Other Maritime Interests

Subpart A—Introduction

221.1 Purpose.
221.3 Definitions.
221.5 Citizenship declarations.
221.7 Applications and fees.

Subpart B—Transfers to Noncitizens or to Registry or Operation Under Authority of a Foreign Country

221.11 Required approvals.
221.13 General approval.
221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country.
221.17 Sale of a documented vessel by order of a district court.
221.19 Possession or sale of vessels by mortgagees or trustees other than pursuant to court order.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

221.21 Purpose.
221.23 Notice/approval of noncitizen mortgagees.
221.25 Applications for approval as mortgagee.
221.27 Permitted mortgage trusts.
221.29 Approval of corporate citizen trustee.
221.31 Approval of corporate noncitizen trustee.
221.33 Application for approval as trustee.
221.35 Renewal of approval of trustee.
221.37 Conditions attaching to approvals.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency under 46 App. U.S.C. 835 [Reserved]

Subpart E—Civil Penalties

221.61 Purpose.
221.63 Investigation.
221.65 Criteria for determining penalty.
221.67 Stipulation procedure.
221.69 Hearing Officer.
221.71 Hearing Officer referral.
221.73 Initial Hearing Officer consideration.
221.75 Response by party.
221.77 Disclosure of evidence.
221.79 Request for confidential treatment.
221.81 Counsel.
221.83 Witnesses.
221.85 Hearing procedures.
221.87 Records.
221.89 Hearing Officer's decision.
221.91 Appeals.
221.93 Collection of civil penalties.

Subpart F—Other Transfers Involving Documented Vessels [Reserved]

Subpart G—Savings Provisions

221.111 Status of prior transactions—controlling dates.

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

Subpart A—Introduction

§ 221.1 Purpose.

(a) This part implements statutory responsibilities of the Secretary of Transportation (the Secretary) with respect to:

(1) Approval pursuant to 46 U.S.C. ch. 313, subch. II of Mortgagees and trustees of preferred mortgages on vessels documented under the laws of the United States;

(2) The regulation pursuant to 46 App. U.S.C. 808 of transactions involving transfers of:

(i) An interest in or control of Documented Vessels owned by Citizens of the United States (including the Transfer of a Controlling Interest in such owners) to Noncitizens or;

(ii) A Documented Vessel to registry or Operation under Authority of a Foreign Country or for scrapping in a foreign country; and

(3) Transactions involving maritime interests in time of war or national emergency under 46 App. U.S.C. 835.

(b) The responsibilities in paragraph (a) (1) through (3) of this section have been delegated by the Secretary of the Maritime Administrator.

§ 221.3 Definitions.

For the purpose of this part, when used in capitalized form:

(a) *Bowaters Corporation* means a Noncitizen corporation organized under the laws of the United States or of a

State that has satisfied the requirements of 46 App. U.S.C. 883–1(a)–(e) and holds a valid Certificate of Compliance issued by the Coast Guard.

(b) *Charter* means any agreement or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel.

(c) *Citizen of the United States* means a Person (including receivers, trustees and successors or assignees of such Persons as provided in 46 App. U.S.C. 803), including any Person (stockholder, partner or other entity) who has a Controlling Interest in such Person, any Person whose stock or equity is being relied upon to establish the requisite U.S. citizen ownership, and any parent corporation, partnership or other entity of such Person at all tiers of ownership, who, in both form and substance at each tier of ownership, satisfies the following requirements—

(1) An individual who is a Citizen of the United States, by birth, naturalization or as otherwise authorized by law;

(2) A corporation organized under the laws of the United States or of a State, the Controlling Interest of which is owned by and vested in Citizens of the United States and whose president or chief executive officer, chairman of the board of directors and all officers authorized to act in the absence or disability of such persons are Citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are Noncitizens;

(3) A partnership organized under the laws of the United States or of a State, if all general partners are Citizens of the United States and a Controlling Interest in the partnership is owned by Citizens of the United States;

(4) An association organized under the laws of the United States or of a State, whose president or other chief executive officer, chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States, no more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Noncitizens, and a Controlling Interest in which is vested in Citizens of the United States;

(5) A joint venture, if it is not determined by the Maritime Administrator to be in effect an association or a partnership, which is organized under the laws of the United States or of a State, if each coventurer is a Citizen of the United States. If a joint venture is in effect an association, it will be treated as is an association under paragraph(c)(4) of this section, or, if it is in effect a partnership, will be treated as is a partnership under paragraph (c)(3) of this section; or

(6) A Trust described in paragraph (t)(1) of this section.

(d) *Controlling interest* owned by and vested in Citizens of the United States means that—

(1) In the case of a corporation:

(i) Title to a majority of the stock thereof is owned by and vested in Citizens of the United States, free from any trust or fiduciary obligation in favor of any Noncitizen;

(ii) The majority of the voting power in such corporation is vested in Citizens of the United States;

(iii) Through no contract or understanding is it so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any Noncitizen; and

(iv) By no other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any Noncitizen;

(2) In the case of a partnership, all general partners are Citizens of the United States and ownership and control of a majority of the partnership interest, free and clear of any trust or fiduciary obligation in favor of any Noncitizen, is vested in a partner or partners each of whom is a Citizen of the United States;

(3) In the case of an association, a majority of the voting power is vested in Citizens of the United States, free and clear of any trust or fiduciary obligation in favor of any Noncitizen; and

(4) In the case of a joint venture, a majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Noncitizen; but

(5) In the case of a corporation, partnership, association or joint venture owning a vessel which is operated in the coastwise trade, the amount of interest and voting power required to be owned by and vested in Citizens of the United States shall be not less than 75 percent as required by 46 App. U.S.C. 802.

(e) *Documented vessel* means a vessel documented under chapter 121, title 46, United States Code or a vessel for which an application for such documentation is pending.

(f) *Federally insured depository institution* means a corporation or association organized and doing business under the laws of the United States or of a State, authorized by such laws to accept deposits from the public, which has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000, and whose deposit accounts are insured by any of the following agencies—

(1) Federal Deposit Insurance Corporation (FDIC);

(2) Savings Association Insurance Fund (SAIF); or

(3) National Credit Union Administration (NCUA).

(g) *Fishing vessel* means a vessel that commercially engages in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation or an activity that can reasonably be expected to result in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation.

(h) *Fish processing vessel* means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(i) *Fish tender vessel* means a vessel that commercially supplies, stores, refrigerates, or transports (except in foreign commerce) fish, fish products, or materials directly related to fishing or the preparation of fish to or from a Fishing Vessel, Fish Processing Vessel, or another Fish Tender Vessel or a fish processing facility.

(j) *Hearing Officer* means an individual designated by the Maritime Administrator to conduct hearings under Subpart E of this part and assess civil penalties.

(k) *Mortgagee* means—

(1) A Person to whom a Documented Vessel or other property is mortgaged; or

(2) When a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement, unless the context indicates otherwise.

(l) *Noncitizen* means a Person who is not a Citizen of the United States.

(m) *Operation under the authority of a foreign country* means any agreement, undertaking or device by which a Documented Vessel is voluntarily subjected to any restriction or requirement, actual or contingent, under the laws or regulations of a foreign country or instrumentality thereof concerning use or operation of the vessel that is or may be in derogation of the rights and obligations of the owner, operator or master of the vessel under the laws of the United States, unless such restriction or requirement is of general applicability and uniformly imposed by such country or instrumentality in exercise of its sovereign prerogatives with respect to

public health, safety or welfare, or in implementation of accepted principles of international law regarding cabotage or safety of navigation.

(n) *Party* means the Person alleged to have violated the statute or regulations for which a civil penalty may be assessed.

(o) *Person* includes individuals and corporations, partnerships, joint ventures, associations and Trusts existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, or any foreign country.

(p) *Pleasure vessel* means a vessel that has been issued a Certificate of Documentation with a recreational endorsement and is operated only for pleasure pursuant to 46 U.S.C. 12109.

(q) *Settlement* means the process whereby a civil penalty or other disposition of the alleged violation is agreed to by the Hearing Officer and the Party in accordance with § 221.73 of this part.

(r) *State* means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(s) *Transfer* means the passing of control of or an interest in a Documented Vessel and includes the involuntary conveyance by a foreign judicial or administrative tribunal of any interest in or control of a Documented Vessel owned by a Citizen of the United States to a Noncitizen that is not eligible to own a Documented Vessel.

(t) *Trust* means:

(1) In the case of ownership of a Documented Vessel, a Trust that is domiciled in and existing under the laws of the United States, or of a State, of which the trustee is a Citizen of the United States and a Controlling Interest in the Trust is held for the benefit of Citizens of the United States; or

(2) In the case of a mortgage trust, a trust that is domiciled in and existing under the laws of the United States, or of a State, for which the trustee is authorized to act on behalf of Noncitizen beneficiaries pursuant to 46 U.S.C. 31328(a) and subpart C of this part.

(u) *United States*, when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(v) *United States Government* means the Federal Government acting by or through any of its departments or agencies.

(w) *Vessel Transfer Officer* means the Maritime Administration's Vessel Transfer and Disposal Officer, whose address is MAR–745.1, Maritime Administration, United States Department of Transportation, Washington, D.C. 20590, or that person's delegate.

§ 221.5 Citizenship declarations.

(a) Pursuant to 46 U.S.C. 31306(a), when an instrument transferring an interest in a Documented Vessel owned by a Citizen of the United States is presented to the United States Government for filing or recording, the Person filing shall submit therewith Maritime Administration Form No. MA–899 so it may be determined if sections 9 or 37 of the Shipping Act of 1916 (46 App. U.S.C. 808 and 837) apply to the transaction. Form No. MA–899 is available from the Coast Guard Documentation Office at the port of record of the vessel or from the Vessel Transfer Officer.

(b) The filing required by paragraph (a) of this section is not required for transactions involving vessel types described in § 221.11(b)(1)(i) through (iv) of this part.

(c) The filing required by paragraph (a) of this section is waived for transactions which are given general approval in this part.

(d) If the transfer of interest is one which requires written approval of the Maritime Administrator, the Person filing shall submit therewith evidence of that approval.

(e) A declaration filed by any Person other than an individual shall be signed by an official authorized by that Person to execute the declaration.

§ 221.7 Applications and fees.

(a) *Applications.* Whenever written approval of the Maritime Administrator is required for transfers to Noncitizens or to foreign registry or Operation Under Authority of a Foreign Country, or pursuant to a Maritime Administration contract or Order, an application on Maritime Administration Form MA–29 or MA–29B giving full particulars of the proposed transaction shall be filed with the Vessel Transfer Officer.

(b) *Fees.* Applications for written approval of any of the following transactions shall be accompanied by the specified fee:

(1) Transactions requiring approval for:

(i) Sale and delivery by a Citizen of the United States to a Noncitizen, or Transfer to foreign registry or Operation Under Authority of a Foreign Country, of a Documented Vessel, per vessel—

(A) Of 1,000 gross tons and over	$325
(B) Of less than 1,000 gross tons	170
(ii) Mortgage of, or Transfer of any interest in, or control of, a Documented Vessel owned by a Citizen of the United States to a Noncitizen, per vessel	250
(iii) Charter of a Documented Vessel owned by a Citizen of the United States to a Noncitizen, per vessel	250
(iv) Sale or Transfer of an interest in or the control of an interest in an entity that is a Citizen of the United States and owns, or is the direct or indirect parent of an entity that owns, any Documented Vessel, if by such sale or Transfer the Controlling Interest in such entity is vested in, or held for the benefit of, any Noncitizen	325
(v) Application for approval to act as Mortgagee or trustee for an indebtedness secured by a preferred mortgage on a Documented Vessel, and all required renewal applications	215
(2) Transactions requiring written approval pursuant to a Maritime Administration contract or Order:	
(i) Transfer of ownership or registry, or, both, of the vessel, per vessel	260
(ii) Sale or Transfer of any interest in the owner of the vessel, if by such sale or Transfer the Controlling Interest in the owner is vested in, or held for the benefit of, a Noncitizen, per vessel	235
(iii) Charter of the vessel to a Noncitizen, per vessel	240
(iv) Transfer of title to a vessel subject to a mortgage in favor of the United States and to have the mortgage assumed by a new mortgagor, per vessel	400

(c) *Modification of applications or approvals.* An application for modification of any pending application or prior approval, or of an outstanding Maritime Administration contract or Order, shall be accompanied by the fee established for the original application.

(d) *Reduction or waiver of fees.* The Maritime Administrator, in appropriate circumstances, and upon a written finding, may reduce any fee imposed by paragraph (b) or (c) of this section, or may waive the fee entirely in extenuating circumstances where the interest of the United States Government would be served.

Subpart B—Transfers to Noncitizens or to Registry or Operation Under Authority of a Foreign Country

§ 221.11 Required approvals.

(a) Except as provided in sections 31322(a)(1)(D) and 31328 of title 46, United States Code, a Person may not, without the approval of the Maritime Administrator:

(1) Sell, mortgage, lease, charter, deliver, or in any manner Transfer to a Noncitizen, or agree (unless such agreement by its terms requires approval of the Maritime Administrator

in order to effect such transfer), to sell, mortgage, lease, charter, deliver, or in any manner Transfer to a Noncitizen, any interest in or control of a Documented Vessel owned by a Citizen of the United States or a vessel the last documentation of which was under the laws of the United States except as provided in this part; or

(2) Place any Documented Vessel, or any vessel the last documentation of which was under the laws of the United States, under foreign registry or operate that vessel under the authority of a foreign country, except as provided in this part.

(b)(1) The approvals required by paragraph (a)(1) of this section are not required for the following Documented Vessel types if the vessel has been operated exclusively and with *bona fides* for one or more of the following uses, under a Certificate of Documentation with an appropriate endorsement and no other, since initial documentation or renewal of its documentation following construction, conversion, or transfer from foreign registry, or, if it has not yet so operated, if the vessel has been designed and built and will be operated for one or more of the following uses:

(i) A Fishing vessel;

(ii) A Fish processing vessel;

(iii) A Fish tender vessel; and

(iv) A Pleasure vessel.

(2) A vessel of a type specified in paragraphs (b)(1)(i) through (iii) of this section will not be ineligible for the approval granted by this paragraph by reason of also holding or having held a Certificate of Documentation with a coastwise or registry endorsement, so long as any trading under that authority has been only incidental to the vessel's principal employment in the fisheries and directly related thereto.

§ 221.13 General approval.

(a) *Transactions other than transfer of registry or operation under authority of a foreign country.* (1) The Maritime Administrator hereby grants the approval required by 46 App. U.S.C. 808(c)(1) for the sale, mortgage, lease, Charter, delivery, or any other manner of Transfer to a Noncitizen of an interest in or control of a Documented Vessel owned by a Citizen of the United States or a vessel the last documentation of which was under the laws of the United States except:

(i) As limited by paragraph (b) of this section for transfers to Bowaters Corporations;

(ii) As limited by § 221.15(d) of this part for sales for scrapping;

(iii) As limited by § § 221.23 and 221.25 of this part for approval of preferred Mortgagees and by § § 221.27, 221.29, 221.31 and 221.33 for permitted mortgage trusts and approval of their trustees; and

(iv) Bareboat or demise Charters of vessels operating in the coastwise trade. A Documented Vessel shall remain documented following any transaction approved by this paragraph (a)(1). Other approvals may be required by statutes other than 46 App. U.S.C. 808(c)(1) and/or by contract for certain vessels.

(2) The approvals granted by paragraph (a)(1) of this section shall not apply to any such Transfer proposed to be made during any period when the United States is at war or during any national emergency, the existence of which has invoked the provisions of section 37 of the Shipping Act, 1916, as amended (46 App. U.S.C. 835), or to any such Transfer proposed to be made to a citizen of any country when such transfer would be contrary to the foreign policy of the United States as declared by an executive department of the United States.

(3) An information copy of any sales agreement, bareboat or demise Charter, or mortgage entered into pursuant to this approval shall be submitted to the Vessel Transfer Officer not later than thirty days following a request by that official.

(4) Except for Charters to Noncitizens of documented bulk cargo vessels engaged in carrying bulk raw and processed agricultural commodities from the United States to ports in the geographic area formerly known as the Union of Soviet Socialist Republics, or to other permissible ports of discharge for transshipment to the geographic area formerly known as the Union of Soviet Socialist Republics, pursuant to an operating- differential subsidy agreement that is consistent with the requirements of 46 CFR parts 252 and 294, this approval excludes and does not apply to Transfers to a Person who is subject, directly or indirectly, to control of an entity within the geographic area formerly known as the Union of Soviet Socialist Republics, Latvia, Lithuania, Estonia, Libya, Iraq, Bulgaria, Albania, North Korea, Laos, Cambodia, Mongolian Peoples Republic, Vietnam, or Cuba, unless such transferee is an individual who has been lawfully admitted into, and resides in, the United States, or to Charters for the carriage of cargoes of any kind to or from, or for commercial operation while within the waters of (as distinct from passage through), any of these countries. This list of countries is subject to change from time to time. Information concerning current restrictions may be obtained from the Vessel Transfer Officer.

(b) *Bowaters corporations.* (1) For documented Vessels other than those operating in the coastwise trade, the approvals granted in paragraph (a) of this section shall apply to Bowaters Corporations.

(2) The Maritime Administrator hereby grants approval for the time charter of a Documented Vessel of any tonnage by a Citizen of the United States to a Bowaters Corporation for operation in the coastwise trade, subject to the following conditions:

(i) If non-self-propelled or, if self-propelled and less than 500 gross tons, no such vessel shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States embraced within the coastwise laws except as a service for a parent or subsidiary corporation; and

(ii) If non-self-propelled or, if self-propelled and less than 500 gross tons, no such vessel may be subchartered or subleased from any such Bowaters Corporation except:

(A) At prevailing rates;

(B) For use otherwise than in the domestic noncontiguous trades;

(C) To a common or contract carrier subject to part 3 of the Interstate Commerce Act, as amended, which otherwise qualifies as a Citizen of the United States and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

§ 221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country.

(a) *Vessels of under 1,000 gross tons.* (1) The Maritime Administrator hereby grants approval for the Transfer to foreign registry and flag or Operation Under the Authority of a Foreign Country or for scrapping in a foreign country of Documented Vessels or vessels the last documentation of which was under the laws of the United States and which are of under 1,000 gross tons if at the time of such Transfer there are no liens or encumbrances recorded against the vessel in the U.S. Coast Guard Documentation Office at its last U.S. port of record.

(2) This approval shall not apply if the vessel is to be placed under the registry, or operated under the authority of, or scrapped in any country listed in § 221.13(a)(4) of this part.

(3) This approval shall not apply to any such Transfer proposed to be made during any period when the United States is at war or during any national emergency, the existence of which has

invoked the provisions of section 37 of the Shipping Act, 1916, as amended (46 App. U.S.C. 835), or to any such Transfer proposed to be made to a citizen of any country when such transfer would be contrary to the foreign policy of the United States as declared by an executive department of the United States.

(b) *Vessels of 1,000 gross tons or more.* (1) Applications for approval of Transfer to foreign registry and flag or Operation Under the Authority of a Foreign Country or for scrapping in a foreign country of Documented Vessels or vessels the last documentation of which was under the laws of the United States and which are of 1,000 gross tons or more will be evaluated in light of—

(i) The type, size speed, general condition, and age of the vessel;

(ii) The acceptability of the owner, proposed transferee and the country of registry or the country under the authority of which the vessel is to be operated; and

(iii) The need to retain the vessel under U.S. documentation, ownership or control for purposes of national defense, maintenance of an adequate merchant marine, foreign policy considerations or the national interest.

(2) If the application is found to be acceptable under the criteria of this paragraph, approval will be granted. For vessels of under 3,000 gross tons, in the absence of unusual circumstances, no conditions will be imposed on the transfer. For vessels of 3,000 gross tons and above, approval will be granted upon acceptance by the owner of the terms and conditions referred to in paragraph (c) or (d) of this section, as applicable. Additional terms deemed appropriate by the Maritime Administrator may be imposed. The terms and conditions shall be contained in an Approval Notice and Agreement ("Contract") executed prior to issuance of the Transfer Order. Unless otherwise specified, the terms and conditions shall remain in effect for the period of the remaining economic life of the vessel or for the duration of a national emergency proclaimed by the President prior or subsequent to such Transfer, whichever period is longer. The economic life of a vessel for purposes of this regulation is deemed to be twenty (20) years for tankers and other liquid bulk carriers and twenty-five (25) years for other vessel types. This period is to be calculated from the date the vessel was originally accepted for delivery from the shipbuilder, but may be extended for such additional period of time as may be determined by the Maritime Administrator if the vessel has been substantially rebuilt or modified in a manner that warrants such extension.

(c) *Foreign transfer other than for scrapping.* If the foreign Transfer of a vessel referred to in paragraph (b) of this section is other than for the purpose of scrapping the vessel and other than a Transfer to the government of an acceptable foreign country, and in the absence of unusual circumstances as determined by the Maritime Administrator (for example a Transfer to an entity controlled by the government of an acceptable foreign country), the following conditions will be imposed on the transferee:

(1) *Ownership.* (i) Without the prior written approval of the Maritime Administrator, there shall be no further Transfer of ownership, change in the registry or Operation of such vessel Under the Authority of a Foreign Country; provided, however, that, if the Transfer of ownership is to a Citizen of the United States or other entity qualified under 46 U.S.C. 12102(a) to document a vessel and the vessel is thereafter documented under U.S. law, no prior written approval shall be required but the transferee shall notify the Vessel Transfer Officer in writing of such change in the ownership and the U.S. documentation within thirty (30) days after such change in ownership and documentation.

(ii) The restrictions contained in paragraph (c)(1)(i) of this section shall not be applicable to a change in ownership resulting from the death of the vessel owner, so long as notification of any such Transfer of ownership occurring by reason of death shall be filed with the Vessel Transfer Officer within 60 days from the date of such Transfer identifying with particularity the name, legal capacity, citizenship, current domicile or address of, or other method of direct communication with, the transferee(s).

(2) *Requisition.* The vessel shall, if requested by the United States, be sold or Chartered to the United States on the same terms and conditions upon which a vessel owned by a Citizen of the United States or documented under U.S. law could be requisitioned for purchase or Charter pursuant to section 902 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242). If the vessel is under the flag of a country that is a member of the North Atlantic Treaty Organization (NATO), the Maritime Administrator will consider this condition satisfied if the owner furnishes satisfactory evidence that the vessel is already in noncommercial service under the direction of the government of a NATO country.

(3) *Trade.* Without the prior written approval of the Maritime Administrator, the vessel shall not carry cargoes of any kind to or from, or be operated commercially while within the waters of (as distinct from passage through), a country referred to in § 221.13(a)(4) of this part, nor shall there be any Charter or other Transfer of an interest in the vessel, other than to a Citizen of the United States, for carriage of cargoes of any kind to or from, or for commercial operation while within the waters of (as distinct from passage through), any such country.

(4) *Default.* In the event of default under any or all of the conditions set forth in paragraphs (c) (1), (2) or (3) of this section, the owner shall pay to the Maritime Administration, without prejudice to any other rights that the United States may have, as liquidated damages and not as a penalty, the sum of not less than $25,000 or more than $1,000,000, as specified in the contract, and the vessel shall be subject to the penalties imposed by 46 App. U.S.C. 808 and 839. Pursuant to 46 App. U.S.C. 836, the Maritime Administrator may remit forfeiture of the vessel upon such conditions as may be required under the circumstances of the particular case, including the payment of a sum in lieu of forfeiture, and execution of a new agreement containing substantially the same conditions set forth above and such others as the Maritime Administrator may deem appropriate and which will be applicable to the vessel for the remaining period of the original agreement. In order to secure the payment of any such sums of money as may be required as a result of default, the transferee shall contractually agree, in form and substance approved by the Chief Counsel of the Maritime Administration, to comply with the above conditions and to provide a United States commercial surety bond or other surety acceptable to the Maritime Administrator for an amount not less than $25,000 and not more than $1,000,000, depending upon the type, size and condition of the vessel. "Other surety" may be any one of the following:

(i) An irrevocable letter of credit, which is acceptable to the Maritime Administrator, issued or guaranteed by a Citizen of the United States or by a Federally Insured Depository Institution;

(ii) A pledge of United States Government securities;

(iii) The written guarantee of a friendly government of which the transferee is a national;

(iv) A written guarantee or bond by a United States corporation found by the Maritime Administrator to be financially

qualified to service the undertaking to pay the stipulated amount;

(v) If the transferee is controlled in any manner by one or more Citizens of the United States, a contractual agreement in form and substance acceptable to the Chief Counsel of the Maritime Administration by the transferee and the Citizens of the United States with authority to exercise such control, if found by the Maritime Administrator to be financially qualified, jointly and severally to pay the stipulated amount, such agreement to be secured by the written guarantee of the transferee and each of the Citizens of the United States or other form of guarantee as may be required by the Maritime Administrator; or

(vi) Any other surety acceptable to the Maritime Administrator and approved as to form and substance by the Chief Counsel of the Maritime Administration.

(d) *Foreign transfer for scrapping.* If the transfer of control, whether or not there is a transfer of registry, of a vessel referred to in paragraph (b) of this section is for the purpose of scrapping the vessel abroad, the following conditions will be imposed on the transferee:

(1) The vessel or any interest therein shall not be subsequently sold to any Person without the prior written approval of the Maritime Administrator, nor shall it be used for the carriage of cargo or passengers of any kind whatsoever.

(2) Within a period of 18 months from the date of approval of the sale, the hull of the vessel shall be completely scrapped, dismantled, dismembered, or destroyed in such manner and to such extent as to prevent the further use thereof, or any part thereof, as a ship, barge, or any other means of transportation.

(3) The scrap resulting from the demolition of the hull of the vessel, the engines, machinery, and major items of equipment shall not be sold to, or utilized by, any citizen or instrumentality of a country referred to in § 221.13(a)(4) of the part, nor may such scrap be exported to these countries. The engines, machinery and major items of equipment shall not be exported to destinations within the United States.

(4) In the event of default under any or all of the conditions set forth in paragraphs (d) (1), (2) or (3) of this section, the transferee shall pay to the Maritime Administration, without prejudice to any other rights that the United States may have, as liquidated damages and not as a penalty, the sum of not less than $25,000 or more than $1,000,000, as specified in the contract, depending upon the size, type and condition of the vessel. This payment shall be secured by a surety company bond or other surety satisfactory to the Maritime Administrator. "Other surety" may be one of those set out in paragraph (c)(4) (i) through (vi) of this section.

(5) There shall be filed with the Vessel Transfer Officer a certificate or other evidence satisfactory to the Chief Counsel of the Maritime Administration, duly attested and authenticated by a United States Consul, that the scrapping of the vessel (hull only) and disposal or utilization of the resultant scrap and the engines, machinery and major items of equipment have been accomplished in accord with paragraphs (d) (2) and (3) of this section.

(e) *Resident agent for service.* (1) Any proposed foreign transferee shall, prior to the issuance and delivery of the Transfer Order covering the vessel or vessels to be transferred, designate and appoint a resident agent in the United States to receive and accept service of process or other notice in any action or proceeding instituted by the United States relating to any claim arising out of the approved transaction.

(2) The resident agent designated and appointed by the foreign transferee shall be subject to approval by the Maritime Administrator. To be acceptable, the resident agent must maintain a permanent place of business in the United States and shall be a banking or lending institution, a ship-owner or ship-operating corporation or other business entity that is satisfactory to the Maritime Administrator.

(3) Appointment and designation of the resident agent shall not be terminated, revoked, amended or altered without the prior written approval of the Maritime Administrator.

(4) The foreign transferee shall file with the Vessel Transfer Officer a written copy of the appointment of the resident agent, which copy shall be fully endorsed by the resident agent stating that it accepts the appointment, that it will act thereunder and that it will notify the Vessel Transfer Officer in writing in the event it becomes disqualified from so acting by reason of any legal restrictions. Service of process or notice upon any officer, agent or employee of the resident agent at its permanent place of business shall constitute effective service on, or notice to, the foreign transferee.

(f) *Administrative provisions.* (1) The subsequent Transfer of ownership or registry of vessels that have been Transferred to foreign ownership or registry or both, or to Operation Under the Authority of a Foreign Country, that remain subject to Maritime Administration contractual control as set forth above, will be subject to substantially the same Maritime Administration policy considerations that governed the original Transfer, including such changes or modifications that have subsequently been made and continued in effect. Approval of these subsequent Transfers will be subject to the same terms and conditions governing the foreign Transfer at the time of the previous Transfer, as modified (if applicable).

(2) The authorization for all approved transactions, either by virtue of 46 App. U.S.C. 808, 835 and 839 or the Maritime Administration's Contract with the vessel owner, will be by notification in the form of a Transfer Order upon receipt of the executed Contract, the required bond or other surety, and other supporting documentation required by the Contract.

(3) In order that the Maritime Administration's records may be maintained on a current basis, the transferor and transferee of the vessel are required to notify the Vessel Transfer Officer of the date and place where the approved transaction was completed, and the name of the vessel, if changed. This information relating to the completion of the transaction and any change in name shall be furnished as soon as possible, but not later than 10 days after the same has occurred.

§ 221.17 Sale of a documented vessel by order of a district court.

(a) A Documented Vessel may be sold by order of a district court only to a Person eligible to own a Documented Vessel or to a Mortgagee of the vessel. Unless waived by the Maritime Administrator, a Person purchasing the vessel pursuant to court order or from a Mortgagee not eligible to document a vessel who purchased the vessel pursuant to a court order must document the vessel under chapter 121 of title 46, United States Code.

(b) A Person purchasing the vessel, pursuant to court order or from a Mortgagee not eligible to document a vessel who purchased the vessel pursuant to a court order, and wishing to obtain waiver of the documentation requirement must submit a request including the reason therefor to the Vessel Transfer Officer.

(c)(1) A Mortgagee not eligible to own a Documented Vessel shall not operate, or cause operation of, the vessel in commerce. Except as provided in paragraph (c)(2) of this section, the vessel may not be operated for any purpose without the prior written approval of the Maritime Administrator.

(2) The Maritime Administrator hereby grants approval for a Mortgagee not eligible to own a Documented Vessel to operate the vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States.

§ 221.19 Possession or sale of vessels by mortgagees or trustees other than pursuant to court order.

(a) A Mortgagee or a trustee of a preferred mortgage on a Documented Vessel that is not eligible to own a Documented Vessel does not require the express approval of the Maritime Administrator to take possession of the vessel in the event of default by the mortgagor other than by foreclosure pursuant to 46 U.S.C. 31329, if provided for in the mortgage or a related financing document, but in such event the vessel may not be operated, or caused to be operated, in commerce. The vessel may not, except as provided in paragraph (b) of this section, be operated for any other purpose unless approved in writing by the Maritime Administrator, nor may the vessel be sold to a Noncitizen without the approval of the Maritime Administrator.

(b) The Maritime Administrator hereby grants approval for such Mortgagee or trustee to operate the vessel to the extent necessary for the immediate safety of the vessel, for its direct return to the United States or for its movement within the United States, or for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States.

(c) A Noncitizen Mortgagee that has brought a civil action *in rem* for enforcement of a preferred mortgage lien on a citizen-owned Documented Vessel pursuant to 46 U.S.C. 31325(b)(1) may petition the court pursuant to 46 U.S.C. 31325(e)(1) for appointment of a receiver and, if the receiver is Person eligible to own a Documented Vessel, to authorize the receiver to operate the mortgaged vessel on such terms and conditions as the court deems appropriate. If the receiver is not a Citizen of the United States, the vessel may not be operated in coastwise trade without prior written approval of the Maritime Administrator.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

§ 221.21 Purpose.

The purpose of this subpart is to implement responsibilities of the Maritime Administrator with respect to approving Mortgagees and trustees of preferred mortgages on Documented Vessels pursuant to 46 U.S.C. 31322(a)(1)(D) (iii) and (vi) and 31328(a) (3) and (4).

§ 221.23 Notice/approval of noncitizen mortgagees.

(a)(1) Notice is hereby given that pursuant to statute any Noncitizen may be a preferred Mortgagee of the following Documented Vessel types if the vessel has been operated exclusively and with *bona fides* for one or more of the following uses, under a Certificate of Documentation with an appropriate endorsement and no other, since initial documentation or renewal of its documentation following construction, conversion, or transfer from foreign registry, or, if it has not yet so operated, if the vessel has been designed and built and will be operated for one or more of the following uses:

(i) A Fishing vessel;
(ii) A Fish processing vessel;
(iii) A Fish tender vessel; and
(iv) A Pleasure vessel.

(2) A vessel of a type specified in paragraphs (a)(1) (i) through (iii) of this section will not be ineligible for the approval granted by this paragraph by reason of also holding or having held a Certificate of Documentation with a registry or coastwise endorsement, so long as any trading under that authority has been only incidental to the vessel's principal employment in the fisheries and directly related thereto.

(b) The Maritime Administrator hereby grants approval for any Noncitizen to be a preferred Mortgagee of the following Documented Vessel types, provided that Noncitizen is not subject, directly or indirectly, to control of any country identified in § 221.13(a)(4) of this part:

(1) A vessel under 1,000 gross tons;
(2) An oil spill response vessel documented pursuant to 46 U.S.C. 12106; and
(3) A vessel operating on inland lakes or waters from which there is no navigable exit to an ocean for that vessel.

(c) The Maritime Administrator hereby grants approval to the granting or transfer of a preferred mortgage of a Documented Vessel to a Federally Insured Depository Institution, so long as it shall continue to remain a Federally Insured Depository Institution. This approval shall not apply to any such preferred mortgage proposed to be made or transferred during any period when the United States is at war or during any national emergency, the existence of which has invoked the provisions of section 37 of the Shipping Act, 1916, as amended (46 App. U.S.C. 835), or to a preferred mortgage proposed to be made or transferred to a citizen of any country when such transfer would be contrary to the foreign policy of the United States as declared by an executive department of the United States, nor shall it apply if that Federally Insured Depository Institution is subject, directly or indirectly, to control of any country identified in § 221.13(a)(4) of this part.

(d) Other Noncitizens may be granted approval by the Maritime Administrator as preferred Mortgagees, on a case-by-case basis, subject to such conditions as the Administrator may prescribe. No such Noncitizen may serve as a preferred Mortgagee of Documented Vessels, however, unless it shall first have filed with the Vessel Transfer Officer an application pursuant to § 221.25(a) of this part and received approval therefor pursuant to § 221.25(b).

§ 221.25 Application for approval as mortgagee.

(a) Noncitizen mortgagees qualifying under § 221.23 (a), (b) or (c) need not file an application.

(b) Each applicant for approval as a Mortgagee of a preferred mortgage pursuant to § 221.23(d) shall submit a completed Maritime Administration Form MA–29 to the Vessel Transfer Officer.

(c) Each approval of an application to be an approved Mortgagee shall be in writing and an original of such approval shall be provided by the Maritime Administrator to the approved Mortgagee.

(d) A list of Mortgagees who have received transactional approval will be published from time to time in the **Federal Register**, but current information as to the status of a particular Person may be obtained from the Vessel Transfer Officer.

§ 221.27 Permitted mortgage trusts.

(a) An instrument or evidence of indebtedness secured by a preferred mortgage on a Documented Vessel to a trustee may be issued, assigned, transferred to or held in trust for the benefit of, a Noncitizen if the trustee is a State or the United States Government. No application to, approval by or notice to the Maritime Administrator is required on the part of the United States Government or such State, or on the part of the mortgagor.

(b) As to all other Persons, an instrument or evidence of indebtedness secured by a mortgage on a Documented Vessel to a trustee may be issued, assigned, transferred to or held in trust

by a trustee for the benefit of a Noncitizen only if the trustee has been approved by the Maritime Administrator under this subpart, in which event no further application to, approval by or notice to the Maritime Administrator is required.

(c) If an approved trustee at any time shall no longer qualify to serve in such capacity under this subpart:

(1) The trustee shall notify the Vessel Transfer Officer of such failure to qualify not later than twenty (20) days after the event causing such failure;

(2) The Maritime Administrator shall publish a disapproval notice and order and provide the trustee and the Coast Guard with a copy thereof; and

(3) Within thirty (30) days of the date of notification provided for in paragraph (c)(1) of this section, the trustee shall have transferred its fiduciary responsibilities to a successor trustee that has been approved by the Maritime Administrator pursuant to this subpart.

(d) Any Noncitizen may be a trustee of a preferred mortgage of the Documented Vessel types specified in § 221.23(a) of this part, subject to the same conditions specified therein.

§ 221.29 Approval of corporate citizen trustee.

No corporation shall serve as a trustee pursuant to this part unless it shall first have filed with the Vessel Transfer Officer an application for approval pursuant to § 221.33(a) of this part and received approval therefor pursuant to § 221.33(b). Any approval granted pursuant to this section shall terminate if the approved institution shall fail at any time to meet the requirements of paragraphs (a) through (e) of this section. A corporate trustee will be approved under 46 U.S.C. 31328(a)(3) and (b) if it—

(a) Is a Citizen of the United States (the Maritime Administrator reserves the right to require proof of citizenship);

(b) Is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise corporate trust powers;

(d) Is subject to supervision or examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000.

§ 221.31 Approval of corporate noncitizen trustee.

(a) No corporate Noncitizen may serve as a trustee unless it shall first have filed with the Vessel Transfer Officer an application pursuant to § 221.33(a) of this part and received approval therefor pursuant to section 221.33(b). A corporate noncitizen trustee will be approved under 46 U.S.C. 31328(a)(4) and (b) if it—

(1) Is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is subject to supervision or examination by an official of the United States Government or of a State;

(4) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(5) Is not a Person who is subject, directly or indirectly, to control of any country identified in § 221.13(a)(4) of this part.

(b) Any approval granted pursuant to paragraph (a) of this section shall terminate if the approved institution shall fail at any time to meet the requirements of that paragraph.

§ 221.33 Application for approval as trustee.

(a) Each applicant for approval as a trustee shall submit a completed Maritime Administration Form MA–579 to the Vessel Transfer Officer.

(b) Each approval of an application to be an approved trustee shall be in writing and an original of such approval shall be provided by the Maritime Administrator to the approved trustee.

(c) Each approval of a trustee shall be effective for a period of five (5) years from the date of issuance, subject to renewal for additional five (5) year periods upon satisfaction of the provisions of § 221.35.

(d) A list of approved trustees will be published from time to time in the Federal Register, but current information as to the status of a particular Person may be obtained from the Vessel Transfer Officer.

(e) Entities approved as trustees under the provisions of §§ 221.29 and 221.31 of this part may act as a trustee without specific transactional approval of the Maritime Administrator.

§ 221.35 Renewal of approval of trustee.

(a) Upon the filing of an acceptable Maritime Administration Form MA–580, approval of a trustee continuing to meet the requirements of this subpart will be extended for an additional period of five (5) years.

(b) The form shall be submitted to the Vessel Transfer Officer not later than the last business day of, and not earlier than the thirtieth (30th) calendar day before expiration of, the five (5) year period then in effect.

§ 221.37 Conditions attaching to approvals.

Every approval granted by the Maritime Administrator pursuant to 46 U.S.C. 31322(a)(1)(D) (iii) or (vi) or 31328(a) (3) or (4) and this part shall be subject to the following conditions whether or not incorporated into a document evidencing such approval:

(a) An approved Mortgagee or trustee shall promptly respond to such written requests as the Maritime Administrator may make from time to time for information or reports concerning its continuing compliance with the terms or conditions upon which such approval was granted;

(b) An approved Mortgagee or trustee shall promptly notify the Maritime Administrator after a responsible official of such Mortgagee or trustee obtains knowledge of a foreclosure proceeding in a foreign jurisdiction involving a Documented Vessel on which such approved Mortgagee or trustee holds a mortgage under or pursuant to its approval under sections 221.23, 221.25, 221.29, or 221.31 of this part and to which 46 App. U.S.C. 808(c) and section 221.11 of this part are applicable. Such Mortgagee or trustee shall ensure that the court or other tribunal has proper notice of those provisions, including the requirement that the vessel remain documented under the laws of the United States following any such sale; and

(c) An approved trustee shall not assume any fiduciary obligation in favor of Noncitizen beneficiaries that is in conflict with any of the restrictions or requirements of this part 221.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Civil Penalties

§ 221.61 Purpose.

This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309 and 31330, and section 9(d) of the Shipping Act, 1916, as amended (46 App. U.S.C. 808(d)), pursuant to 49 U.S.C. 336.

Note: Pursuant to 46 U.S.C. 31309, a civil penalty of not more than $10,000 may be assessed for each violation of Chapter 313 of 46 U.S.C. Subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a person violating 46 U.S.C. 31328 or 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than $25,000 for each violation. A person that charters, sells, transfers or

mortgages a vessel, or an interest therein, in violation of 46 App. U.S.C. 808 is liable for a civil penalty of not more than $10,000 for each violation. Criminal penalties may also apply to violations of these statutes.

§ 221.63 Investigation

(a) When the Vessel Transfer Office obtains information that a Person may have violated a statute or regulation for which a civil penalty may be assessed under this subpart, that Officer may investigate the matter and decide whether there is sufficient evidence to establish a *prima facie* case that a violation occurred.

(b) If that Officer decides there is a *prima facie* case, then that Officer may enter into a stipulation with the Party in accordance with § 221.67 of this subpart, or may refer the matter directly to a Hearing Officer for procedures in accordance with § 221.73 to 221.89 of this subpart.

§ 221.65 Criteria for determining penalty.

In determining any penalties assessed, the Vessel Transfer Officer under § 221.67 and the Hearing Officer under §§ 221.73 to 221.89 of this part shall take into account the nature, circumstances, extent and gravity of the violation committed and, with respect to the Party, the degree of culpability, any history of prior offenses, ability to pay and other matters that justice requires.

§ 221.57 Stipulation procedure.

(a) When the Vessel Transfer Office decides to proceed under this section, that Office shall notify the Party in writing by registered or certified mail—

(1) Of the alleged violation and the applicable statute and regulations;

(2) Of the maximum penalty that may be assessed for each violation;

(3) Of a summary of the evidence supporting the violation;

(4) Of the penalty that the Vessel Transfer Officer will accept in settlement of the violation;

(5) Of the right to examine all the material in the case file and have a copy of all written documents provided upon request;

(6) That by accepting the penalty, the Party waives the right to have the matter considered by a Hearing Officer in accordance with §§ 221.73 to 221.89 of this subpart, and that if the Party elects to have the matter considered by a Hearing Officer, the Hearing Officer may assess a penalty less than, equal to, or greater than that stipulated in settlement if the Hearing Officer finds that a violation occurred; and

(7) That a violation will be kept on record and may be used by the Maritime Administration in aggravation of an assessment of a penalty for a subsequent violation by that Party.

(b) Upon receipt of the notification specified in paragraph (a) of this section, a Party may within 30 days—

(1) Agree to the stipulated penalty in the manner specified in the notification; or

(2) Notify in writing the Vessel Transfer Officer that the Party elects to have the matter considered by a Hearing Officer in accordance with the procedure specified in §§ 221.73 through 221.89 of this subpart.

(c) If, within 30 days of receipt of the notification specified in paragraph (a) of this section, the Party neither agrees to the penalty nor elects the informal hearing procedure, the Party will be deemed to have waived its right to the informal hearing procedure and the penalty will be considered accepted. If a monetary penalty is assessed, it is due and payable to the United States, and the Maritime Administration may initiate appropriate action to collect the penalty.

§ 221.69 Hearing Officer.

(a) The Hearing Officer shall have no responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties.

(b) The Hearing Officer shall decide each case on the basis of the evidence before him or her, and must have no prior connection with the case. The Hearing Officer is solely responsible for the decision in each case referred to him or her.

(c) The Hearing Officer is authorized to administer oaths and issue subpoenas necessary to the conduct of a hearing, to the extent provided by law.

§ 221.71 Hearing Officer referral.

If, pursuant to § 221.67(b)(2) of this subpart, a Party elects to have the matter referred to a Hearing Officer, the Vessel Transfer Officer may—

(a) Decide not to proceed with penalty action, close the case, and notify the Party in writing that the case has been closed; or

(b) Refer the matter to a Hearing Officer with the case file and a record of any prior violations by the Party.

§ 221.73 Initial Hearing Officer consideration.

(a) When a case is received for action, the Hearing Officer shall examine the material submitted. If the Hearing Officer determines that there is insufficient evidence to proceed, or that there is any other reason which would make penalty action inappropriate, the Hearing Officer shall return the case to the Vessel Transfer Officer with a written statement of the reason. The Vessel Transfer Officer may close the case or investigate the matter further. If additional evidence supporting a violation is discovered, the Vessel Transfer Officer may resubmit the matter to the Hearing Officer.

(b) if the Hearing Officer determines that there is reason to believe that a violation has been committed, the Hearing Officer notifies the Party in writing by registered or certified mail of—

(1) The alleged violation and the applicable statute and regulations;

(2) The maximum penalty that may be assessed for each violation;

(3) The general nature of the procedure for assessing and collecting the penalty;

(4) The amount of the penalty that appears to be appropriate, based on the material then available to the Hearing Officer;

(5) The right to examine all the material in the case file and have a copy of all written documents provided upon requests; and

(6) The right to request a hearing.

(c) If at any time it appears that the addition of another Party to the proceedings is necessary or desirable, the Hearing Officer will provide the additional Party and the Party alleged to be in violation with notice as described above.

(d) At any time during a proceeding, before the Hearing Officer issues a decision under § 221.89, the Hearing Officer and the Party may agree to a Settlement of the case.

§ 221.75 Response by party.

(a) Within 30 days after receipt of notice from the Hearing Officer, the Party, or counsel for the Party, may—

(1) Pay the amount specified in the notice as being appropriate;

(2) In writing request a hearing, specifying the issues in dispute; or

(3) Submit written evidence or arguments in lieu of a hearing.

(b) The right to a hearing is waived if the Party does not submit a request to the Hearing Officer within 30 days after receipt of notice from the Hearing Officer, unless additional time has been granted by the Hearing Officer.

(c) The Hearing Officer has discretion as to the venue and scheduling of a hearing. The hearing will normally be held at the office of the Hearing Officer. A request for a change of location of a hearing or transfer to another Hearing Officer must be in writing and state the reasons why the requested action is necessary or desirable. Action on the

request is at the discretion of the Hearing Officer.

(d) A Party who has requested a hearing may amend the specification of the issues in dispute at any time up to 10 days before the scheduled date of the hearing. Issues raised later than 10 days before the schedule hearing may be presented only at the discretion of the Hearing Officer.

§ 221.77 Disclosure of evidence.

The Party shall, upon request, be provided a free copy of all the evidence in the case file, except material that would disclose or lead to the disclosure of the identity of a confidential informant and any other information properly exempt from disclosure.

§ 221.79 Request for confidential treatment.

(a) In addition to information treated as confidential under § 221.77 of this subpart, a request for confidential treatment of a document or portion thereof may be made by the Person supplying the information on the basis that the information is—

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The Person desiring confidential treatment must submit the request to the Hearing Officer in writing and the reasons justifying nondisclosure. The Hearing Officer shall forward any request for confidential treatment to the appropriate official of the Maritime Administration for a determination hereon. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

(c) Confidential material shall not be considered by the Hearing Officer in reaching a decision unless—

(1) It has been furnished by a Party; or

(2) It has been furnished pursuant to a subpoena.

§ 221.81 Counsel.

A Party has the right to be represented at all stages of the proceeding by counsel. After receiving notification that a Party is represented by counsel, the Hearing Officer will direct all further communications to that counsel.

§ 221.83 Witnesses.

A Party may present the testimony of any witness either through a personal appearance or through a written statement. The Party may request the assistance of the Hearing Officer in obtaining the personal appearance of a witness. The request must be in writing and state the reasons why a written statement would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Hearing Officer determines that the personal appearance of the witness may materially aid in the decision on the case, the Hearing Officer will seek to obtain the witness' appearance. The Hearing Officer may move the hearing to the witness' location, accept a written statement, or accept a stipulation in lieu of testimony.

§ 221.85 Hearing procedures.

(a) The Hearing Officer shall conduct a fair and impartial proceeding in which the Party is given a full opportunity to be heard. At the opening of a hearing, the Hearing Officer shall advise the Party of the nature of the proceedings and of the alleged violation.

(b) The material in the case file pertinent to the issues to be determined by the Hearing Officer shall first be presented. The Party may examine, respond to and rebut this material. The Party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other exculpatory items that bear on the issues, or which may be relevant to the size of an appropriate penalty. The Hearing Officer may require the authentication of any written exhibit or statement.

(c) At the close of the Party's presentation of evidence, the Hearing Officer may allow the introduction of rebuttal evidence. The Hearing Officer may allow the Party to respond to rebuttal evidence submitted.

(d) In receiving evidence, the Hearing Officer shall not be bound by the strict rules of evidence. In evaluating the evidence presented, the Hearing Officer shall give due consideration to the reliability and relevance of each item of evidence.

(e) After the evidence in the case has been presented, the Party may present argument on the issues in the case. The party may also request an opportunity to submit a written statement for consideration by the Hearing Officer. The Hearing Officer shall allow a reasonable time for submission of the statement and shall specify the date by which it must be received. If the statement is not received within the specified time, the Hearing Officer may render a decision in the case without consideration of the statement.

§ 221.87 Records.

(a) A verbatim transcript of a hearing will not normally be prepared. The Hearing Officer will prepare notes on material and points raised by the Party in sufficient detail to permit a full and fair review of the case.

(b) A Party may, at its own expense, cause a verbatim transcript to be made, in which event the Party shall submit, without charge, two copies to the Hearing Officer within 30 days of the close of the hearing.

§ 221.89 Hearing Officer's decision.

(a) The Hearing Officer shall issue a written decision. Any decision to assess a penalty shall be based on substantial evidence in the record, and shall state the basis for the decision.

(b) If the Hearing Officer finds that there is not substantial evidence in the record establishing the alleged violation, the Hearing Officer shall dismiss the case. A dismissal is without prejudice to the Vessel Transfer Officer's right to refile the case if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(c) The Hearing Officer shall notify the Party in writing, by certified or registered mail, of the decision and, if adverse, shall advise the Party of the right to an administrative appeal to the Maritime Administrator or an individual designated by the Administrator from that decision.

(d) If an appeal is not filed within the prescribed time, the decision of the Hearing Officer constitutes final agency action in the case.

§ 221.91 Appeals.

(a) Any appeal from the decision of the Hearing Officer must be submitted in writing by the Party to the Hearing Officer within 30 days from the date of receipt of the Hearing Officer's decision.

(b) The only issues that will be considered on appeal are those issues specified in the appeal which were raised before the Hearing Officer and jurisdictional questions.

(c) There is no right to oral argument on an appeal.

(d) The Maritime Administrator or an individual designated by the Administrator will issue a written decision on the appeal, and may affirm, reverse, or modify the decision, or remand the case for new or additional proceedings. In the absence of a remand, the decision on appeal is final agency action.

(e) The Maritime Administrator or an individual designated by the Administrator shall notify the Party in writing, by certified or registered mail,

of the decision on appeal and, if adverse, shall advise the Party of the right of appeal to the courts.

§ 221.93 Collection of civil penalties.

Within 30 days after receipt of the Hearing Officer's decision, or a decision on appeal, the Party must submit payment of any assessed penalty in the manner specified in the decision letter. Failure to make timely payment will result in the institution of appropriate action to collect the penalty.

Subpart F—Other Transfers Involving Documented Vessels [Reserved]

Subpart G—Savings Provisions

§ 221.111 Status of prior transactions—controlling dates.

(a) The Maritime Administrator hereby grants approval for any transaction occurring on or after January 1, 1989 and prior to July 3, 1991 that was lawful under 46 CFR part 221, revised as of October 1, 1989.

(b) The Maritime Administrator hereby grants approval for any transaction occurring on or after July 3, 1991 and prior to June 3, 1992 that was lawful under 46 CFR part 221, revised as of October 1, 1991.

(c) Any transaction approved by the Maritime Administrator prior to January 1, 1989, or any transaction that did not require such approval prior to that date, shall continue to be lawful.

Dated: May 27, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 92-12774 Filed 6-2-92; 8:45 am]

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federal register

Wednesday
June 3, 1992

Part IV

Farm Credit System Assistance Board

Administrative Dispute Resolution Policy and Program; Notice

FARM CREDIT SYSTEM ASSISTANCE BOARD

Administrative Dispute Resolution Policy and Program

AGENCY: Farm Credit System Assistance Board.

ACTION: Notice of policy statement.

SUMMARY: The Farm Credit System Assistance Board (Assistance Board) has adopted an Administrative Dispute Resolution Policy and Program (ADR Policy and Program) that encourages and supports the use of administrative dispute resolution procedures to resolve disputes, as authorized under the Administrative Dispute Resolution Act.

DATES: Adopted April 21, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Mullarkey (General Counsel) or Isabella Sammons (Senior Attorney) at (202) 737–9255.

SUPPLEMENTARY INFORMATION: As required by the Administrative Dispute Resolution Act, Public Law 101–552, the Assistance Board adopted on April 21, 1992, the ADR Policy and Program that encourages and supports use of administrative dispute resolution (ADR) procedures to resolve disputes in which the Assistance Board is a party. The ADR Policy and Program: (1) Encourages the use of ADR proceedings when appropriate; (2) names the General Counsel as the Dispute Resolution Specialist (DRS); (3) provides that the DRS review disputes and provides guidelines for the DRS to follow in making recommendations to the President and Chief Executive Officer of the Assistance Board whether to use ADR proceedings to resolve the disputes; and (4) permits consultation with, and the use of services of Federal agencies and private entities with ADR expertise.

Pursuant to 12 U.S.C. 2278a–10, the Assistance Board is not required to follow the requirements of the Administrative Procedure Act (APA) with respect to notice and comment on rulemaking. However, the Assistance Board is publishing the ADR Policy and Program in the interest of informing the public of such policy and program. The Assistance Board's determination in this instance is not and should not be construed as a determination that it is subject to the notice and comment requirements of the APA.

Farm Credit System Assistance Board Policy and Program

I. Policy and Purpose.

It is the policy of the Farm Credit System Assistance Board (Assistance Board) to encourage the use of administrative dispute resolution (ADR) proceedings to resolve disputes, whenever appropriate, in place of in-court litigation or formal agency action. To further this policy, an ADR Program is hereby established.

II. Designation of Dispute Resolution Specialist (DRS)

The General Counsel of the Assistance Board is the DRS and is responsible for the direction and administration of the ADR Program.

III. Training

The DRS and, as appropriate, other Assistance Board employees will attend a sufficient number of ADR seminars or conferences sponsored by organizations such as the Administrative Conference of the United States, the Federal Mediation and Conciliation Service, and appropriate private entities to enable them to carry out their responsibilities. The DRS also may provide in-house training to Assistance Board employees as necessary.

IV. Review of Existing Documents

The DRS will conduct an initial review of existing Assistance Board contracts, agreements, Administrative Memoranda, and other documents to assess whether ARD proceedings should be used to resolve potential disputes. The DRS will submit to the President and Chief Executive Officer of the Assistance Board (President) for his or her written approval any recommendations to add provisions for ADR proceedings to the documents.

V. Prior Review of New and Renewed Documents

The DRS will review Assistance Board contracts, agreements, Administrative Memoranda, and other documents before they are made final or renewed to assess whether ADR provisions should be included in the document. The DRS will submit to the President for his or her written approval any recommendations to include ADR provisions in the documents.

VI. Review of Actual Disputes

A. Before the Assistance Board proceeds with, or responds to a lawsuit, the DRS will review the dispute and submit a written recommendation to the President on whether the Assistance Board should consider using an ADR proceeding and what process to use to resolve the dispute. The DRS will continue to monitor any ongoing litigation to which the Assistance Board is a party for opportunities to use an ADR proceeding. If such opportunities occur, the DRS will recommend in writing to the President whether an ADR proceeding should be considered.

B. The DRS will take the following guidelines into consideration when making his or her recommendations:

1. The decision to use an ADR process. ADR consists of various processes, usually involving a third-party neutral, that can assist parties in resolving disputes by means other than litigation and administrative hearings. The decision to use an ADR process may occur either before or after a dispute arises. Voluntary or mandatory dispute resolution provisions may be included in a contract or agreement negotiated by the parties before the dispute arises.

2. An ADR proceeding may be an appropriate means of resolving disputes when:

a. Creative solutions may provide the most satisfactory outcome;

b. Variation in outcome among different disputes is not a major concern;

c. Maintaining confidentiality is either not a concern or would be advantageous;

d. The resolution of the dispute does not require the setting of precedent;

e. The parties are likely to agree to use an ADR proceeding;

f. Litigation would be either lengthy or expensive; or

g. Negotiations are at an impasse or the potential for impasse is high, because of poor communication, conflicts within parties, or technical complexity or uncertainty.

3. An ADR proceeding may not be the appropriate process for resolving a dispute when:

a. There is a serious power or economic imbalance between the parties;

b. The Assistance Board requires an authoritative or precedential resolution of the matter, and an ADR proceeding is not likely to be accepted as an authoritative precedent;

c. Persons or organizations who would not be parties to the ADR proceeding are significantly affected by the dispute;

d. A full public record of the proceeding is important, and an ADR proceeding cannot provide such a record;

e. The matter involves significant questions of Government policy, and an ADR proceeding would not likely serve to develop a recommended policy for the Assistance Board;

f. Consistent results among individual decisions are of special importance, and ADR proceedings would not likely reach such consistent results; or

g. The Assistance Board must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in light of any changed circumstances, and an ADR proceeding would interfere with the Assistance Board fulfilling that requirement.

C. Appropriateness of binding or nonbinding ADR processes.

1. Nonbinding ADR processes.

Nonbinding ADR processes include, but are not limited to, facilitation, conciliation, mediation, minitrial, and nonbinding arbitration. In nonbinding processes, a third-party neutral assists the parties in reaching a resolution. A nonbinding process is likely to be appropriate in breaking an impasse where:

a. Personality conflicts among negotiators exist;

b. Communication and coordination between parties are poor;

c. Procedural difficulties due to multiple plaintiffs or difficulties due to multiple plaintiffs or defendants with conflicting agendas are present;

d. Changing the terms and conditions under which parties are negotiating would be beneficial; or

e. Obtaining the assistance of a neutral to help the parties find an acceptable settlement would be useful.

2. Binding ADR processes.

A binding ADR process is one in which the parties submit a dispute to an impartial person for a final and binding decision. Section 4(b) of the ADRA, 5 U.S.C. 585–591, sets forth the statutory requirements regarding agency use of arbitration and agency review of the arbitrator's decision. The primary binding ADR process is binding arbitration under the ADRA. A binding ADR process may be appropriate where:

a. Parties or issues have a history of intransigence;

b. Courts are unable or unwilling to rule on matters which would advance the case toward resolution;

c. There is need for a private decision-making process; or

d. there is a need for a decision-maker with expertise in the subject matter of the dispute.

VII. Support Services

To carry out his or her responsibilities, and with the written approval of the President, the DRS may consult with and use the services of government or private organizations which specialize in dispute resolution. In implementing the decision to use an ADR proceeding, the Assistance Board may also consult with and use the services of such government agencies or private organizations.

Kenneth L. Peoples,

President and Chief Executive Officer.

[FR Doc. 92–12883 Filed 6–2–92; 8:45 am]

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federal register

Wednesday
June 3, 1992

Part V

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for March 1992

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-53153; FRL 4070-7]

Premanufacture Notices; Monthly Status Report for MARCH 1992

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for March 1992.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPPTS-53153)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during March; (b) PMNs received previously and still under review at the end of March; (c) PMNs for which the notice review period has ended during March; (d) chemical substances for which EPA has received a notice of commencement to manufacture during March; and (e) PMNs for which the review period has been suspended. Therefore, the March 1992 PMN Status Report is being published.

Dated: May 28, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for MARCH 1992.

I. 126 Premanufacture notices and exemption requests received during the month:

PMN No.

P 92-0603 P 92-0607 P 92-0608 P 92-0609
P 92-0610 P 92-0611 P 92-0612 P 92-0613
P 92-0614 P 92-0615 P 92-0616 P 92-0617
P 92-0618 P 92-0619 P 92-0620 P 92-0621
P 92-0622 P 92-0623 P 92-0624 P 92-0625
P 92-0626 P 92-0627 P 92-0628 P 92-0629
P 92-0630 P 92-0631 P 92-0632 P 92-0633
P 92-0634 P 92-0635 P 92-0636 P 92-0637
P 92-0638 P 92-0639 P 92-0640 P 92-0641
P 92-0642 P 92-0643 P 92-0644 P 92-0645
P 92-0646 P 92-0648 P 92-0649 P 92-0650
P 92-0651 P 92-0652 P 92-0653 P 92-0654
P 92-0655 P 92-0656 P 92-0657 P 92-0658
P 92-0659 P 92-0660 P 92-0661 P 92-0662
P 92-0663 P 92-0664 P 92-0665 P 92-0666
P 92-0667 P 92-0668 P 92-0669 P 92-0670
P 92-0671 P 92-0672 P 92-0673 P 92-0674
P 92-0675 P 92-0676 P 92-0677 P 92-0678
P 92-0679 P 92-0680 P 92-0681 P 92-0682
P 92-0683 P 92-0684 P 92-0685 P 92-0686
P 92-0687 P 92-0688 P 92-0689 P 92-0690
P 92-0691 P 92-0692 P 92-0693 P 92-0694
P 92-0695 P 92-0696 P 92-0697 P 92-0698
P 92-0699 P 92-0700 P 92-0701 P 92-0702
P 92-0703 P 92-0704 P 92-0705 P 92-0706
P 92-0707 P 92-0708 P 92-0709 P 92-0710
P 92-0711 P 92-0712 Y 92-0104 Y 92-0105
Y 92-0106 Y 92-0107 Y 92-0108 Y 92-0109
Y 92-0110 Y 92-0111 Y 92-0112 Y 92-0113
Y 92-0114 Y 92-0115 Y 92-0116 Y 92-0117
Y 92-0118 Y 92-0119 Y 92-0120 Y 92-0121
Y 92-0122 Y 92-0123

II. 282 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 83-0237 P 84-0660 P 84-0704 P 85-0433
P 85-0612 P 85-0619 P 85-1184 P 86-0066
P 86-0334 P 86-0335 P 86-1315 P 86-1489
P 86-1607 P 87-0323 P 87-1872 P 88-0998
P 88-1271 P 88-1272 P 88-1273 P 88-1274
P 88-1460 P 88-1682 P 88-1753 P 88-1937
P 88-1938 P 88-1980 P 88-1982 P 88-1984
P 88-1985 P 88-1999 P 88-2000 P 88-2001
P 88-2100 P 88-2169 P 88-2212 P 88-2213
P 88-2228 P 88-2229 P 88-2230 P 88-2236
P 88-2484 P 88-2518 P 88-2529 P 89-0254
P 89-0321 P 89-0396 P 89-0538 P 89-0632
P 89-0676 P 89-0721 P 89-0769 P 89-0770
P 89-0775 P 89-0836 P 89-0837 P 89-0867
P 89-0957 P 89-0958 P 89-0959 P 89-0963
P 89-1038 P 89-1058 P 89-1062 P 90-0002
P 90-0009 P 90-0158 P 90-0159 P 90-0211
P 90-0237 P 90-0248 P 90-0249 P 90-0260
P 90-0261 P 90-0262 P 90-0263 P 90-0372
P 90-0441 P 90-0550 P 90-0558 P 90-0564
P 90-0581 P 90-0608 P 90-1280 P 90-1318
P 90-1319 P 90-1320 P 90-1321 P 90-1322
P 90-1358 P 90-1422 P 90-1527 P 90-1528
P 90-1529 P 90-1530 P 90-1531 P 90-1564
P 90-1592 P 90-1635 P 90-1687 P 90-1745
P 90-1840 P 90-1893 P 90-1937 P 90-1984
P 90-1985 P 91-0004 P 91-0043 P 91-0051
P 91-0101 P 91-0102 P 91-0107 P 91-0108
P 91-0109 P 91-0110 P 91-0111 P 91-0112
P 91-0113 P 91-0118 P 91-0228 P 91-0242
P 91-0243 P 91-0244 P 91-0245 P 91-0246
P 91-0247 P 91-0248 P 91-0288 P 91-0328
P 91-0358 P 91-0442 P 91-0464 P 91-0465
P 91-0466 P 91-0467 P 91-0468 P 91-0469
P 91-0470 P 91-0471 P 91-0472 P 91-0487
P 91-0490 P 91-0501 P 91-0503 P 91-0514
P 91-0521 P 91-0532 P 91-0548 P 91-0572
P 91-0584 P 91-0619 P 91-0659 P 91-0665
P 91-0666 P 91-0688 P 91-0689 P 91-0701
P 91-0732 P 91-0818 P 91-0826 P 91-0853
P 91-0914 P 91-0915 P 91-0934 P 91-0939
P 91-0940 P 91-0941 P 91-0968 P 91-1000
P 91-1009 P 91-1010 P 91-1011 P 91-1012
P 91-1013 P 91-1014 P 91-1015 P 91-1077
P 91-1116 P 91-1117 P 91-1118 P 91-1131
P 91-1163 P 91-1190 P 91-1191 P 91-1206
P 91-1210 P 91-1243 P 91-1279 P 91-1280
P 91-1281 P 91-1282 P 91-1283 P 91-1289
P 91-1297 P 91-1298 P 91-1299 P 91-1321
P 91-1322 P 91-1323 P 91-1324 P 91-1328
P 91-1346 P 91-1367 P 91-1368 P 91-1369
P 91-1371 P 91-1372 P 91-1379 P 91-1384
P 91-1386 P 91-1394 P 91-1409 P 91-1456
P 91-1464 P 92-0002 P 92-0003 P 92-0031
P 92-0032 P 92-0033 P 92-0034 P 92-0035
P 92-0036 P 92-0044 P 92-0048 P 92-0066
P 92-0067 P 92-0068 P 92-0129 P 92-0156
P 92-0157 P 92-0159 P 92-0168 P 92-0177
P 92-0217 P 92-0244 P 92-0245 P 92-0246
P 92-0247 P 92-0248 P 92-0249 P 92-0250
P 92-0251 P 92-0266 P 92-0283 P 92-0294
P 92-0298 P 92-0314 P 92-0315 P 92-0329
P 92-0341 P 92-0343 P 92-0344 P 92-0396
P 92-0412 P 92-0445 P 92-0446 P 92-0471
P 92-0474 P 92-0475 P 92-0476 P 92-0477
P 92-0478 P 92-0492 P 92-0496 P 92-0505
P 92-0509 P 92-0531 P 92-0532 P 92-0533
P 92-0545 P 92-0546 P 92-0547 P 92-0548
P 92-0549 P 92-0550 P 92-0551 P 92-0552
P 92-0554 P 92-0562 P 92-0564 P 92-0595
P 92-0599 P 92-0606

III. 113 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 87-0105 P 88-1807 P 88-1809 P 88-1811
P 90-1311 P 90-1464 P 91-0222 P 91-0391
P 91-0665 P 91-0666 P 91-0827 P 91-0831
P 91-0902 P 91-0905 P 91-0912 P 91-1162
P 91-1392 P 91-1418 P 92-0063 P 92-0210
P 92-0233 P 92-0277 P 92-0278 P 92-0279
P 92-0280 P 92-0281 P 92-0282 P 92-0283
P 92-0284 P 92-0285 P 92-0286 P 92-0287
P 92-0288 P 92-0289 P 92-0290 P 92-0291
P 92-0293 P 92-0294 P 92-0295 P 92-0296
P 92-0297 P 92-0298 P 92-0299 P 92-0300
P 92-0301 P 92-0302 P 92-0303 P 92-0304
P 92-0305 P 92-0306 P 92-0307 P 92-0308
P 92-0309 P 92-0310 P 92-0311 P 92-0312
P 92-0313 P 92-0314 P 92-0316 P 92-0317
P 92-0318 P 92-0319 P 92-0320 P 92-0321
P 92-0322 P 92-0323 P 92-0324 P 92-0325
P 92-0326 P 92-0327 P 92-0328 P 92-0330
P 92-0331 P 92-0332 P 92-0333 P 92-0334
P 92-0335 P 92-0336 P 92-0337 P 92-0338

P 92-0339 P 92-0340 P 92-0342 P 92-0345 | P 92-0354 P 92-0355 P 92-0356 P 92-0357 | P 92-0366 P 92-0367 P 92-0368 P 92-0369
P 92-0346 P 92-0347 P 92-0348 P 92-0349 | P 92-0358 P 92-0359 P 92-0360 P 92-0361 | P 92-0370 P 92-0371 Y 92-0102 Y 92-0103
P 92-0350 P 92-0351 P 92-0352 P 92-0353 | P 92-0362 P 92-0363 P 92-0364 P 92-0365 | Y 92-0104

IV. 92 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 87-0502	G Dialkenylamide	January 26, 1988.
P 88-0337	G Disubstituted cyclclopentanone	July 19, 1988.
P 88-1460	G 2,5-Dimercapto-1,3,4-thiadiazole reaction product	January 4, 1990.
P 88-2031	G Substituted-substituted-substituted-benzene polymer, reacted with a substituted amine, partially quarternized, partial chloride salt..	February 14, 1992.
P 89-1093	G Halogenated alkane	November 20, 1990.
P 90-0113	G Toluene sulfonamide *A* epoxy adduct	June 19, 1990.
P 90-0162	G Hydridopolysilazane	February 10, 1992.
P 90-0365	G Aromatic diarboxylic acid triaromatic polyester	January 11, 1992.
P 90-0486	G Polyester resin solution	February 14, 1992.
P 90-1016	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts threreof	October 15, 1990.
P 90-1046	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts threreof	October 11, 1990.
P 90-1409	G Silicone acrylate	June 20, 1991.
P 90-1696	G Substituted azo naphthalene sulfonic acid	February 5, 1992.
P 90-1822	Acetic acid, hydroxyphosphono-, disodium salt	January 15, 1992.
P 91-0032	G A polymer of acrylic acid esters, methacrylic acidesters, acrylic acid and another vinyl monomer, sodium salt	January 13, 1992.
P 91-0084	G Dimer modified polyester resin with aliphathic polyol and dicarboxylic acids	January 30, 1992.
P 91-0337	G Substituted disazo naphthalene sulfonic acid	January 24, 1992.
P 91-0547	1,1'-Oxybisbenzene, reaction product with 2,4,-trimethylpentene	February 17, 1992.
P 91-0561	G Polyacrylate	February 14, 1992.
P 91-0585	G Rubber modified epoxy resin	January 29, 1992.
P 91-0596	G Substituted azo naphthalenesulfonamide	February 3, 1992.
P 91-0633	G PPDI polyester prepolymer	February 13, 1992.
P 91-0809	G Recovered metal hydride	February 18, 1992.
P 91-0838	G Salt of cyclodiamine and mineral acid	February 12, 1992.
P 91-0852	G Polymer of methyl methacrylate with mixed alkyl methacrylates	January 21, 1992.
P 91-0868	G Polyurethane copolymer polyol	January 29, 1992.
P 91-0927	G Substituted polyoxyalkyl aromatic amine tint	January 23, 1992.
P 91-0932	G Styrenated acrylate methacrylate polymer	February 20, 1992.
P 91-0935	G Glycol borate	January 29, 1992.
P 91-0997	G Polyurethane resin	February 10, 1992.
P 91-0998	G Polyurethane resin	January 20, 1992.
P 91-0999	G Polyurethane resin	February 3, 1992.
P 91-1078	G Aqueous aliphatic polyurethane resin dispersion	November 20, 1999.
P 91-1086	G Polymer of disodium maleate, alkyl ether. and ethylene oxide	February 20, 1992.
P 91-1108	Oligomeric thiodiethylen-bis-(5-dimethoxyl-1,4-dihydroyndien-3-carboxyllate), including oligomers containing some pyridine moieties from the partial oxidation of dihydropyridine moieties..	February 4, 1992.
P 91-1142	G Polyester urethane amine salt	January 31, 1992.
P 91-1170	G Siloxanes and silicones, di me aryl stopped	January 31, 1992.
P 91-1197	G Epoxidized polyaromatic resin	January 29, 1992.
P 91-1219	G Modified maleated rosin	February 8, 1992.
P 91-1223	G Modifide maleated rosin, calcium magnesium and zinc salts	February 9, 1992.
P 91-1250	G Polyol ester	January 27, 1992.
P 91-1290	G Methyl methacrylate butadiene styrene (MBS) copolymer	January 8, 1992.
P 91-1316	G Substituted isothiazole	February 1, 1992.
P 91-1317	G Substituted azothiopene	February 1, 1992.
P 91-1331	G Phosphosate-alkanolamine ester polymer	November 18, 1991.
P 91-1393	G Silicones-imid block copolymer	January 30, 1992.
P 91-1419	G Fluorochemical polyurethane	February 7, 1992.
P 91-1437	G Aliphatic-aromatic carboxylate complex	January 29, 1992.
P 91-1440	G Substituted polyoxalkylene aniline	January 29, 1992.
P 91-1441	G Mixture of aromatic urethane with methacrylate endgroups and hydroxy terminated polyisocyanate	February 20, 1992.
P 91-1443	G Benzoxazole-carbocyanine dye	December 26, 1991.
P 91-1459	G Hydrogenerated acrylonitrile-butadiene polymer	February 7, 1992.
P 91-1463	G Styrene-maleic anhydride copolymer, amine salt	February 6, 1992.
P 92-0059	G Modified polyurethane powder	January 21, 1992.
P 92-0069	G Gum and tall oil rosin, fumeric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer..	January 29, 1992.
P 92-0072	G Gum and tall rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, ammonuim salt..	January 29, 1992.
P 92-0073	G Gum and tall oil rosin. fumaric acid , modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, monoethanolamine salt..	January 29, 1992.
P 92-0074	G Gum and tall oil rosin, fumanc acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, diethanolamine salt..	January 29, 1992.
P 92-0075	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, tnethanolamine salt..	January 29, 1992.
P 92-0076	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, morpholine salt..	January 29, 1992.
P 92-0077	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, dimethylaminoethanol salt..	January 29, 1992.

IV. 92 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 92-0078	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, ester of glycerine and sorbitol polymer, 2-amino-2-methyl- propanol salt..	January 29, 1992.
P 92-0079	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols formaldhyde, esters of glycewrine and sorbitol polymer, 2-methylamino-2-methyl-propanol salt..	January 29, 1992.
P 92-0080	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, dimethylamino-2-propanol salt..	January 29, 1992.
P 92-0083	G Gum tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, triethylamine salt..	January 29, 1992.
P 92-0084	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, *N*-propylamine salt..	January 29, 1992.
P 92-0085	G Gum tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, di-isopropanolamine salt..	January 29, 1992.
P 92-0086	G Gum tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, tri-isopropanolamine salt..	January 29, 1992.
P 92-0087	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, trimethylamine salt..	January 29, 1992.
P 92-0088	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, ethylene diamine salt..	January 29, 1992.
P 92-0089	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, sodium salt..	January 29, 1992.
P 92-0090	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, potassium salt..	January 29, 1992.
P 92-0145	G Styrenated acrylic copolymer	February 3, 1992.
P 92-0149	G Organopolysiloxane metal salt	February 10, 1992.
P 92-0205	G Substituted phosphoric acid	February 11, 1992.
P 92-0236	Dicyclopentadiene, cyclic codimer, aromatic naphtha, soya oil, fatty acid reaction product	February 25, 1992.
P 92-0240	G Aluminum(ethyl 3-oxobutanoato-O1,O3)bis(2-propanola)-,(*T*-4)-reaction products with alcohols, C_{11-C14}-rich, and phenolic resin.	February 27, 1992.
Y 87-0146	G Polyester of carbomonocyclic diacid and alkylene glycols	June 5, 1989.
Y 89-0024	G Aromatic polyester based thermoplastic polyurethane polymer	January 28, 1992.
Y 91-0144	G High solids long oil alkyd resin	January 17, 1992.
Y 91-0153	Polymer of: phathalic acid, fatty acid, polystyrene alkyl alcohol	January 24, 1992.
Y 91-0169	G Aqueous acrylic polymer	January 23, 1992.
Y 91-0236	G Polyester polymer	February 10, 1992.
Y 92-0031	G Dibasic acid glycol polyester	January 10, 1992.
Y 92-0032	G Modified polyalkylene terephathalate	December 2, 1991.
Y 92-0039	G Saturated polyester, modified with glycidyl compound	January 25, 1992.
Y 92-0045	G Saturated polyester	January 25, 1992.
Y 92-0054	G Aqueous acrylic polymer	February 3, 1992.
Y 92-0058	G Aqueous acrylic polymer	February 10, 1992.
Y 92-0070	G Polyester urethane	January 30, 1992.
Y 92-0071	G Polyester urethane	February 7, 1992.
Y 92-0074	Polymer of di-ethylene glycol, trimethylol propane, trimethylol ethane, pentaerythritol, neopentyl glycol, polyethylene terephthlate, phthalic anhydride, and tofa..	February 7, 1992.

V. 8 Premanufacture notices for which the period has been suspended.

PMN No.

P 91-0503 P 92-0003 P 92-0278 P 92-0315
P 92-0329 P 92-0341 P 92-0343 P 92-0344

[FR Doc. 92-12932 Filed 6-2-92; 8:45 am]
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federal register

Wednesday
June 3, 1992

Part VI

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for April 1992

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-53154; FRL 4070-8]

Premanufacture Notices; Monthly Status Report for APRIL 1992

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for April 1992.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPPTS-53154)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during April; (b) PMNs received previously and still under review at the end of April; (c) PMNs for which the notice review period has ended during April; (d) chemical substances for which EPA has received a notice of commencement to manufacture during April; and (e) PMNs for which the review period has been suspended. Therefore, the April 1992 PMN Status Report is being published.

Dated: May 28, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for APRIL 1992.

I. 121 Premanufacture notices and exemption requests received during the month:

PMN No.

P 92-0713	P 92-0714	P 92-0715	P 92-0716
P 92-0717	P 92-0719	P 92-0720	P 92-0721
P 92-0722	P 92-0723	P 92-0724	P 92-0725
P 92-0726	P 92-0727	P 92-0728	P 92-0729
P 92-0730	P 92-0731	P 92-0732	P 92-0733
P 92-0734	P 92-0735	P 92-0736	P 92-0737
P 92-0738	P 92-0739	P 92-0740	P 92-0741
P 92-0742	P 92-0743	P 92-0744	P 92-0745
P 92-0746	P 92-0747	P 92-0748	P 92-0749
P 92-0750	P 92-0751	P 92-0752	P 92-0753
P 92-0754	P 92-0755	P 92-0756	P 92-0757
P 92-0758	P 92-0759	P 92-0760	P 92-0761
P 92-0762	P 92-0763	P 92-0764	P 92-0765
P 92-0766	P 92-0767	P 92-0769	P 92-0770
P 92-0771	P 92-0772	P 92-0773	P 92-0774
P 92-0775	P 92-0776	P 92-0777	P 92-0778
P 92-0779	P 92-0780	P 92-0781	P 92-0782
P 92-0783	P 92-0784	P 92-0785	P 92-0786
P 92-0787	P 92-0788	P 92-0789	P 92-0790
P 92-0791	P 92-0792	P 92-0793	P 92-0794
P 92-0795	P 92-0796	P 92-0797	P 92-0798
P 92-0799	P 92-0800	P 92-0801	P 92-0802
P 92-0803	P 92-0804	P 92-0805	P 92-0806
P 92-0807	P 92-0808	P 92-0809	P 92-0811
P 92-0812	P 92-0813	P 92-0814	P 92-0815
P 92-0816	P 92-0817	P 92-0818	P 92-0819
P 92-0820	P 92-0821	P 92-0830	P 92-0831
P 92-0842	Y 92-0124	Y 92-0125	Y 92-0126
Y 92-0127	Y 92-0128	Y 92-0129	Y 92-0130
Y 92-0131	Y 92-0132	Y 92-0133	Y 92-0134
Y 92-0135			

II. 309 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 83-0237	P 84-0660	P 84-0704	P 85-0433
P 85-0612	P 85-0619	P 85-1184	P 86-0066
P 86-0334	P 86-0335	P 86-1315	P 86-1489
P 86-1607	P 87-0323	P 87-1872	P 88-0998
P 88-1271	P 88-1272	P 88-1273	P 88-1274
P 88-1460	P 88-1682	P 88-1753	P 88-1937
P 88-1938	P 88-1980	P 88-1982	P 88-1984
P 88-1985	P 88-1999	P 88-2000	P 88-2001
P 88-2100	P 88-2169	P 88-2212	P 88-2213
P 88-2228	P 88-2229	P 88-2230	P 88-2236
P 88-2484	P 88-2518	P 88-2529	P 89-0254
P 89-0321	P 89-0396	P 89-0538	P 89-0632
P 89-0676	P 89-0721	P 89-0769	P 89-0770
P 89-0775	P 89-0836	P 89-0837	P 89-0867
P 89-0957	P 89-0958	P 89-0959	P 89-0963
P 89-1038	P 89-1058	P 89-1062	P 90-0002
P 90-0009	P 90-0158	P 90-0159	P 90-0211
P 90-0237	P 90-0248	P 90-0249	P 90-0260
P 90-0261	P 90-0262	P 90-0263	P 90-0372
P 90-0441	P 90-0550	P 90-0558	P 90-0564
P 90-0581	P 90-0608	P 90-1280	P 90-1318
P 90-1319	P 90-1320	P 90-1321	P 90-1322
P 90-1358	P 90-1422	P 90-1527	P 90-1528
P 90-1529	P 90-1530	P 90-1531	P 90-1564
P 90-1592	P 90-1635	P 90-1687	P 90-1745
P 90-1840	P 90-1893	P 90-1937	P 90-1984
P 90-1985	P 91-0004	P 91-0043	P 91-0051
P 91-0101	P 91-0102	P 91-0107	P 91-0108
P 91-0109	P 91-0110	P 91-0111	P 91-0112
P 91-0113	P 91-0118	P 91-0228	P 91-0242
P 91-0243	P 91-0244	P 91-0245	P 91-0246
P 91-0247	P 91-0248	P 91-0288	P 91-0328
P 91-0358	P 91-0442	P 91-0464	P 91-0465
P 91-0466	P 91-0467	P 91-0468	P 91-0469
P 91-0470	P 91-0471	P 91-0472	P 91-0487
P 91-0490	P 91-0501	P 91-0503	P 91-0514
P 91-0521	P 91-0532	P 91-0548	P 91-0572
P 91-0584	P 91-0619	P 91-0659	P 91-0665
P 91-0666	P 91-0688	P 91-0689	P 91-0701
P 91-0732	P 91-0818	P 91-0826	P 91-0853
P 91-0914	P 91-0915	P 91-0934	P 91-0939
P 91-0940	P 91-0941	P 91-0968	P 91-1000
P 91-1009	P 91-1010	P 91-1011	P 91-1012
P 91-1013	P 91-1014	P 91-1015	P 91-1077
P 91-1116	P 91-1117	P 91-1118	P 91-1131
P 91-1163	P 91-1190	P 91-1191	P 91-1206
P 91-1210	P 91-1243	P 91-1279	P 91-1280
P 91-1281	P 91-1282	P 91-1283	P 91-1289
P 91-1297	P 91-1298	P 91-1299	P 91-1321
P 91-1322	P 91-1323	P 91-1324	P 91-1328
P 91-1346	P 91-1367	P 91-1368	P 91-1369
P 91-1371	P 91-1372	P 91-1379	P 91-1384
P 91-1386	P 91-1394	P 91-1409	P 91-1456
P 91-1464	P 92-0002	P 92-0003	P 92-0031
P 92-0032	P 92-0033	P 92-0034	P 92-0035
P 92-0036	P 92-0044	P 92-0048	P 92-0066
P 92-0067	P 92-0068	P 92-0129	P 92-0156
P 92-0157	P 92-0159	P 92-0168	P 92-0177
P 92-0217	P 92-0244	P 92-0245	P 92-0246
P 92-0247	P 92-0248	P 92-0249	P 92-0250
P 92-0251	P 92-0266	P 92-0283	P 92-0294
P 92-0298	P 92-0314	P 92-0315	P 92-0329
P 92-0341	P 92-0343	P 92-0344	P 92-0396
P 92-0412	P 92-0445	P 92-0446	P 92-0471
P 92-0474	P 92-0475	P 92-0476	P 92-0477
P 92-0478	P 92-0492	P 92-0496	P 92-0505
P 92-0509	P 92-0531	P 92-0532	P 92-0533
P 92-0545	P 92-0546	P 92-0547	P 92-0548
P 92-0549	P 92-0550	P 92-0551	P 92-0552
P 92-0554	P 92-0562	P 92-0564	P 92-0595
P 92-0599	P 92-0606	P 92-0624	P 92-0625
P 92-0628	P 92-0635	P 92-0648	P 92-0649
P 92-0652	P 92-0655	P 92-0656	P 92-0657
P 92-0658	P 92-0659	P 92-0660	P 92-0667
P 92-0681	P 92-0683	P 92-0686	P 92-0688
P 92-0690	P 92-0691	P 92-0692	P 92-0696
P 92-0697	P 92-0698	P 92-0699	P 92-0710
P 92-0711			

III. 125 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the inventory).

PMN No.

P 90-0603	P 91-0358	P 91-0763	P 91-0903
P 91-1361	P 91-1364	P 92-0169	P 92-0372
P 92-0373	P 92-0374	P 92-0375	P 92-0376
P 92-0377	P 92-0378	P 92-0379	P 92-0380
P 92-0381	P 92-0382	P 92-0383	P 92-0384
P 92-0385	P 92-0386	P 92-0387	P 92-0388
P 92-0389	P 92-0390	P 92-0391	P 92-0392
P 92-0393	P 92-0394	P 92-0395	P 92-0397
P 92-0398	P 92-0399	P 92-0400	P 92-0401
P 92-0402	P 92-0403	P 92-0404	P 92-0405
P 92-0406	P 92-0407	P 92-0408	P 92-0409
P 92-0410	P 92-0411	P 92-0413	P 92-0414
P 92-0415	P 92-0416	P 92-0417	P 92-0418
P 92-0419	P 92-0420	P 92-0421	P 92-0422

P 92-0423	P 92-0424	P 92-0425	P 92-0426	P 92-0447	P 92-0448	P 92-0449	P 92-0450	Y 92-0105	Y 92-0106	Y 92-0107	Y 92-0108
P 92-0427	P 92-0428	P 92-0429	P 92-0430	P 92-0451	P 92-0452	P 92-0453	P 92-0454	Y 92-0109	Y 92-0110	Y 92-0111	Y 92-0112
P 92-0431	P 92-0432	P 92-0433	P 92-0434	P 92-0455	P 92-0456	P 92-0457	P 92-0458	Y 92-0113	Y 92-0114	Y 92-0115	Y 92-0116
P 92-0435	P 92-0436	P 92-0437	P 92-0438	P 92-0459	P 92-0460	P 92-0461	P 92-0462	Y 92-0117	Y 92-0118	Y 92-0119	Y 92-0120
P 92-0439	P 92-0440	P 92-0441	P 92-0442	P 92-0463	P 92-0464	P 92-0465	P 92-0466	Y 92-0121	Y 92-0122	Y 92-0123	Y 92-0124
P 92-0443	P 92-0444	P 92-0445	P 92-0446	P 92-0467	P 92-0468	P 92-0469	P 92-0470	Y 92-0125			

IV. 98 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 84-0653	G Perfluoroalkyl phosphate ammonium salt	October 2, 1985.
P 84-0655	G Cerium salt of fatty acid	March 24, 1985.
P 86-0334	G Aromatic amino compound	May 4, 1987.
P 86-0468	G Microgel nonaqueous dispersion	January 23, 1992.
P 86-0601	G Dialkyl ether	June 21, 1986.
P 86-1315	G Alkyloamide	February 26, 1992.
P 86-1762	G Polyvinyl acetate copolymer	March 12, 1992.
P 87-0728	G Polyamide	February 26, 1992.
P 88-0045	G Substituted imidazole	March 6, 1992.
P 88-0716	Isononanol; phosphoric acid	March 17, 1992.
P 88-0998	G Fluorene-containing diaromatic amine	March 3, 1992.
P 88-1616	G Carboxylated novolak acrylate	January 5, 1989.
P 88-1778	G Polysilazane	February 18, 1992.
P 88-1831	*D*-aminebis(cyanato-*N*)zinc	February 21, 1992.
P 88-2030	G Substituted-substituted-substituted-benzene polymer, reacted with a substituted amine, quaternized chloride salt	February 19, 1995.
P 88-2056	G Vinyl acrylic copolymer	March 17, 1992.
P 89-0457	G Unsaturated polyester resin	July 14, 1989.
P 89-0663	G Polyurethane resin	March 6, 1992.
P 89-0769	G Resorcinol-formaldehyde resin	June 26, 1990.
P 89-0942	G Substituted triazinylaminophenyl azo substituted heterocycle, salt	February 26, 1992.
P 89-1071	Bacillus licheniformis	January 24, 1991.
P 89-1118	G Modified hydroxy functional acrylic resin	February 28, 1992.
P 89-1137	Hexanedioic acid, trimethyl-, decyl octylester	March 16, 1991.
P 90-1290	G Calcium or strontium salt of the azo dye	February 28, 1992.
P 90-1455	G Cyclic amide	March 4, 1992.
P 90-1636	G Hexanedioic acid, polymer with 1,2-ethanediol reaction products with 1,6-diisocyanato- 2,2,4(or 2,2,4(or 2,4,4)-trimethylhexane and 2-hydroxyethyl acrylate.	March 9, 1992.
P 90-1818	G polyether polyol(aliphatic polyhydric alchol and alkylene oxide) with methyl end cap	March 6, 1992.
P 91-0138	G Isocyanate prepolymer solution	March 19, 1992.
P 91-0190	G Substituted propionic acid	February 20, 1992.
P 91-0227	G Polyamide alloy	March 12, 1992.
P 91-0513	G Aliphatic bis-alkylamide resin	February 17, 1992.
P 91-0524	G Polyester resin	March 10, 1992.
P 91-0552	G Polyepichlorohydrin	March 13, 1992.
P 91-0554	G Azo substituted naphthalene disulfonic acid	March 19, 1992.
P 91-0555	G Azo substituted disulfonic acid	March 19, 1992.
P 91-0564	Pentaerythritol tetraisostearate	July 11, 1991.
P 91-0601	G Methylstyrene oligmers	February 27, 1992.
P 91-0602	G Acrylic/polyester grafted polymer	March 2, 1992.
P 91-0612	G Polydimethylsilane	February 19, 1992.
P 91-0613	G Polydimethylsiloxane	February 17, 1992.
P 91-0687	G Sulfonic acid, alkylaryl, calcium salts, overbased	February 26, 1992.
P 91-0789	G Silane silicate resin	April 2, 1992.
P 91-0802	G High solids modified alkyd	February 10, 1992.
P 91-1016	G Mixed tall oil fatty acids/ polyamine condensate	November 14, 1991.
P 91-1046	G Mixed tall oil fatty acids/polyamine condensate, acetate salt	November 18, 1991.
P 91-1080	G Isophorone diisocyanate type polyurethane	January 27, 1992.
P 91-1103	Ethanamine, 2-((2-chlorothyl)sulfonyl)ethoxy)-,hydrochloride	February 28, 1992.
P 91-1113	G Alkenoic	February 22, 1992.
P 91-1119	G Acrylic resin solution	February 24, 1992.
P 91-1144	G Phenolic resin	March 11, 1992.
P 91-1149	G Cresol novolak resin	March 9, 1992.
P 91-1153	G Organopolysiloxane	February 21, 1992.
P 91-1171	G Polysiloxane bisphenol-*A*-copolycarbonate	March 10, 1992.
P 91-1275	G Polyamide	March 18, 1992.
P 91-1301	G Benzoic acid, 2-substituted-3-methyl-, methyl ester	February 18, 1992.
P 91-1302	G Benzoic acid, 2-substituted-3-methyl-, methyl ester	February 15, 1992.
P 91-1355	G Polyurethane	February 10, 1992.
P 91-1382	Poly(oxy(methyl-1,2-ethanediyl))alpha-phenyl,omega-hydroxy	March 7, 1992.
P 91-1401	G Substituted alpha-aminoanthraquinone	February 26, 1992.
P 91-1402	G Halogenated anthrapyridoner	March 3, 1992.
P 91-1427	G 2-Propenoic acid 2-hydroxyethyl ester, polymer with fluoroalkyl ester and other monomers	March 6, 1992.
P 91-1428	G Ethane, 1,1-dicloro-,polymer with 2-propenoic acidfluoroalkyl ester and other monomers	March 6, 1992.
P 91-1465	Ehanamine, 2,2'-(1,2-ethanediylbis(oxy)bis(*N,N*,-dimethyl-	March 19, 1992.
P 92-0043	G Amino resin	February 20, 1992.
P 92-0081	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, urea salt..	January 29, 1992.
P 92-0082	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, diethylamine salt..	January 29, 1992.

IV. 98 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 92-0136	G Ethylene -manuf-product unsaturated C_6 fraction polymer with substituted toluene	February 27, 1992.
P 92-0137	G Fluorinated substituted urethane	February 25, 1992.
P 92-0139	G Saturated polyester polyol	March 5, 1992.
P 92-0140	G 2-Propenoic acid, 2-methyl-, octadecyl ester, polymer with 2-propenoic acid, fluoroalkyl ester	March 6, 1992.
P 92-0143	G Blocked diisocyanate	March 12, 1992.
P 92-0146	G Fatty amine salt of a sulfonated aromatic compounds	March 3, 1992.
P 92-0147	G Fatty amine salt of a C_{18} fatty ester of amineral acid	March 3, 1992.
P 92-0148	G Fatty amine salt of a C_{12-C18} fatty ester of a mineral acid	March 3, 1992.
P 92-0175	G Rosin modified phenolic resin	April 28, 1992.
P 92-0223	G Modified polyamine terepetalate	April 6, 1992.
P 92-0226	G Condensation polymer of an aromatic sulfonic acid, urea, aliphatic aldehyde and a cyclic acid, amide salt	February 25, 1992.
P 92-0227	G Trialkoxy substituted alkane	February 20, 1992.
P 92-0258	G Polyoxyalkaline acetate ester	February 29, 1992.
P 92-0263	G Phenol, 1-phenylethyl; phenol, bis(1-phenylethyl)-; phenol,2,4,6-tris(1-phenylethyl)-,; oxirane	March 12, 1992.
P 92-0264	G Adipic acid polymer	March 12, 1992.
P 92-0289	G Alkoxysilyl group-terminated polydialkylsiloxane	March 6, 1992.
P 92-0292	G Polyester Polyurethane Acrylic Graft Copolymer	February 21, 1992.
P 92-0297	G Hydrolystic enzyme produced in a recombinant strain of bacillus	March 12, 1992.
P 92-0309	G Alkyldiene alcohol	March 25, 1992.
Y 89-0009	G Polyester resin carboxylated	February 24, 1992.
Y 89-0010	G Polyester resin carboxylated	February 24, 1992.
Y 89-0102	G Aliphatic polyester urethane	April 28, 1992.
Y 90-0082	G Aqueous acrylic copolymer and salts thereof	October 10, 1990.
Y 90-0166	2-Propenoic acid, 2-methyl-, potassium salt; 2-propenioc acid, 2-methyl-	February 14, 1992.
Y 90-0168	2-Propenoic acid, 2-methyl-, potassium salt; 2-propenoic acid, 2-methyl- 2-propenoic acid, 2-methyl-, 2-sulfoethyl ester, sodium salt.	January 29, 1992.
Y 91-0165	G Adipic acid, polyethylene glycol, terephthalic acid copolymer	March 6, 1992.
Y 92-0073	G Polyester resin.	February 24, 1992.
Y 92-0080	G Long oil alkyd	February 19, 1992.
Y 92-0082	G Modified polyethylene glycol	February 19, 1992.
Y 92-0087	G Vinyl acrylic emulsion	February 13, 1992.
Y 92-0096	4,4'-Sulfonyldiphenol; resorcinol diglycidyl ether; resorcinol	February 21, 1992.
Y 92-0099	Azelaic acid, adipic acid, and phthalic anhydride, polymer with propylene glycol-hydrogenated coco fatty acid ester	April 2, 1992.

V. 34 Premanufacture notices for which the period has been suspended.

PMN No.

P 92-0156 P 92-0157 P 92-0159 P 92-0244
P 92-0245 P 92-0246 P 92-0247 P 92-0248
P 92-0249 P 92-0250 P 92-0251 P 92-0396
P 92-0390 P 92-0400 P 92-0401 P 92-0402
P 92-0403 P 92-0412 P 92-0471 P 92-0474
P 92-0475 P 92-0476 P 92-0531 P 92-0532
P 92-0533 P 92-0545 P 92-0546 P 92-0547
P 92-0548 P 92-0549 P 92-0550 P 92-0551
P 92-0552 Y 92-0108

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federal register

Wednesday
June 3, 1992

Part VII

Department of Education

Business and Education Standards Program; Inviting Applications for New Awards for Fiscal Year 1992; Notices

DEPARTMENT OF EDUCATION

Business and Education Standards Program; Final Selection Criteria for Awards To Be Made in Fiscal Year 1992

AGENCY: Department of Education.

ACTION: Notice of final selection criteria for awards to be made in fiscal year 1992.

SUMMARY: The Secretary establishes selection criteria for awards to be made in fiscal year (FY) 1992 using funds appropriated in FY 1991 under the Business and Education Standards Program, which is authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, as amended (the Act). This program implements a key component of AMERICA 2000, the President's education strategy on which the Departments of Education and Labor are jointly working to assist business and labor to adopt voluntary industry-based skill standards. The Secretary takes this action to establish selection criteria for FY 1992 grant awards under this new program with the understanding that the Departments of Education and Labor will meet regularly to discuss the issues surrounding voluntary industry-based standards and the development and promulgation of program regulations.

EFFECTIVE DATE: These selection criteria take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Debra J. Nolan, U.S. Department of Education, 400 Maryland Avenue SW., room 4518, MES, Washington, DC 20202–7327. Telephone: (202) 732–2417. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Business and Education Standards Program provides financial assistance for organizing and operating business-labor-education technical committees that will propose national standards for competencies in industries and trades. This program is authorized under section 416 of the Act, 20 U.S.C. 2416, as amended by Public Law 101–392, 104 Stat. 753 (1990).

The following entities are eligible for an award under this program:

- Industrial trade associations.
- Labor organizations.
- National joint apprenticeship committees.
- Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

Under this program, standards are to be developed through a collaborative voluntary effort by business, labor, and education. Thus, the Secretary expects that entities seeking awards under this program will provide evidence that they represent the entire industry, in some way; that a substantial segment of the industry representatives—employers, labor organizations, associations, vocational and other educators, or experts familiar with the industry that is to use the standards—are in agreement; and that they will participate together in the development of the standards.

The Business and Education Standards Program is an important part of AMERICA 2000, the President's education strategy to help the Nation move itself toward achieving the National Education Goals. Specifically, the program addresses Tract III of the AMERICA 2000 strategy—transforming America into "A Nation of Student"—by establishing standards for job skills and knowledge through a cooperative effort by business, labor, and education groups, so that workers can see what skills are needed to perform a job and can evaluate their grasp of those skills. The Business and Education Standards program also supports National Education Goal 5 of ensuring that every adult American possesses the knowledge and skills necessary to compete in a global economy and to exercise the rights and responsibilities of citizenship.

The Department of Education has consulted with the Department of Labor concerning the establishment of the Business and Education Standards Program. Both Departments will be involved in reviewing applications and will continue meeting throughout the operation of the program.

As part of the Administration's effort to encourage the development of skill standards, the Departments of Labor and Education, in conjunction with the National Advisory Commission on Work-based Learning, held a series of public hearings on "voluntary, industry-based skill standards and certification" during March and April 1992. Public comment on the issues of developing national skill standards was presented by representatives of organized labor and other workers, vocational education and training, apprenticeship programs, and both individual employers and associations of business and industry. These comments will be summarized by the Departments and will become available to the public after they are presented to the National Advisory Commission on Work-based Learning on July 23, 1992.

On January 30, 1992, the Secretary published a notice of proposed criteria for this program in the **Federal Register** (57 FR 3619).

Note: This notice of final criteria does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed criteria, 10 parties submitted on the proposed notice. All of the commenters expressed general support for the proposed selection criteria for the Business and Education Standards Program. An analysis of the comments and the Secretary's responses to them follows.

Comments: Two commenters stated that, because the Business and Education Standards Program is authorized by the Perkins Act, it should reflect and further the goals and explicit requirements of the Act. One commenter stated that the goal of programs under the Act is to provide students with the occupational and academic skills they need for a lifetime of work. The commenter recommended changing the selection criteria to clarify that the standards produced encompass context-based general occupational skills and competencies in all aspects of the industry studied and in the full range of academic subjects. This commenter also expressed concern that Federal funds might be spent to develop standards that federally-assisted vocational education programs could not use because they would be too narrow to be consistent with the planning and accountability measures of the Act. Another commenter recommended that standards be "benchmarked to world class standards" of performance.

Discussion: The Secretary agrees that the standards to be developed should provide students with the broad range of transferable skills needed to succeed in employment and be benchmarked to "world class standards." The Secretary notes that section 416(b)(2)(A) of the Act requires that, at a minimum, standards must relate to major divisions or specialties within the occupations the applicant proposes to study. Each applicant must decide how to identify

the skills from all aspects of the industry that are necessary for specific divisions or specialties within the occupation. Similarly, while the Secretary concurs that education programs should provide a broad range of transferable skills and the standards should be "world class," each applicant must decide how to define these concepts and to meet these goals while identifying the specific skill standards needed for specific divisions or specialties within occupations. In order to allow maximum flexibility in addressing these issues, the Secretary chooses not to regulate on these points. Furthermore, the Secretary expects that any standards generated by these grants will be useful to vocational education programs.

Changes: None.

Comments: Five commenters requested that the selection criteria be changed to ensure that the technical committee established by a grantee is representative of the industry and the educational programs affected by the standards. One commenter suggested that criterion (c)(3) be amended to encourage representation of students, parents, and community representatives, and that the business-labor-education committees have appropriate representation from each of the three sectors of business, labor, and education. Another commenter was concerned with geographic representation of the committee members. Two commenters wanted inclusion of employees involved in high-productivity work environments. Another commenter wanted academic educators to be included to ensure that the standards are not too narrowly defined. One commenter felt that the criteria were biased towards unions. In contrast, another commenter wanted the criteria changed to include more union representation.

Discussion: The Secretary agrees that there must be representation on each project's technical committee of business, labor, and education. To respond to the criteria in paragraph (c), an applicant should describe how the procedures for selecting the project's technical committee will ensure representation of business, labor, and education and membership by persons who are knowledgeable about the occupations to be addressed. These procedures should ensure that there is no bias toward one sector or another. The specific membership provisions suggested by the commenters are not required by the Act. The Secretary does not believe that establishing specific membership requirements is appropriate because each industry will have a different constellation of representations, but the Secretary encourages applicants to involve community representatives where appropriate.

Changes: None.

Comment: One commenter wanted professional societies to be included as eligible recipients and included on the technical committee because they are a form of an industry association and represent their affected members.

Discussion: Section 416(b)(1) of the Act authorizes the Secretary to make grants to national organizations that are comparable to industry trade associations. To the extent that "professional societies" meet the requirements of the Act, they are eligible recipients. Representatives of professional societies may serve as members of a project's technical committee if they are otherwise qualified.

Changes: None.

Comments: Four commenters requested that the method to be used by a grantee to validate its proposed standards should be considered in the selection criteria. One commenter suggested that the standards developed must be "measurable" and "teachable" and include both content components (i.e., what is the skill to be demonstrated) and performance components (i.e., how well must the skill be performed). Two commenters proposed that criteria related to "validity" be added to criterion (a). One commenter stated that the type of evidence needed to show validity depends upon how the standards are going to be disseminated and used and that they must be valid for their particular use. Therefore, the commenter recommended that criteria should either clarify the expected use for the standards or require applicants to state their planned use. Another commenter also wanted the criteria (c), (d), and (g) changed to include "validity" in relation to the populations to which they will apply. Another commenter wanted the criteria to reflect a process for public disclosure and comments on standards being recommended.

Discussion: The Secretary agrees that the standards should be valid for their intended use but does not believe that a change in the selection criteria is needed. Criterion (d) addresses the need for a formative evaluation to help assess and improve the accuracy of standards for competencies and a summative evaluation conducted by an independent evaluator. For example, a formative evaluation might include ongoing communication with employers, assessing how well an employee who met the standards being developed would perform. In contrast, a summative evaluation might include, for example, a survey of employers' acceptance of and intention to adopt the skill standards developed. Also, under criterion (a), the application is assessed for the quality and effectiveness of an applicant's approach to developing national standards for competencies in industries and trades. Although not required by the Act, the Secretary encourages applicants to involve the public in this process to the extent appropriate.

Changes: None.

Comments: Four commenters suggested that the selection criteria be revised to provide a priority for those programs developing competencies in demand and priority occupations. One commenter suggested that the maximum number of points for criterion (b) should be increased to 20 points or more so that more emphasis would be placed on the need for the project to benefit business, labor, and education and provide more flexibility for innovative programs. Another commenter suggested that criterion (b) reflect how the standards to be developed will increase the potential for career growth and upgrading opportunities through expanded career ladders and lattices for both entry-level and experienced workers.

Discussion: The Secretary believes that criterion (b) adequately addresses the commenters' concerns regarding the needs and benefits to business, labor, and education. Under this criterion, the Secretary will assess the extent to which a proposed project would meet specific needs. The extent to which an applicant addresses these needs will be reflected in its score under this criterion. The Secretary notes that an application that demonstrates a strong need for competencies in demand occupations and proposes a project to meet that need would receive a high score under criterion (b). However, the Secretary believes it is not necessary at this time to revise the proposed criteria to give preference to developing competencies for particular occupations. Moreover, under 34 CFR 75.217(d)(3), the Secretary will consider, in determining the extent of the need under criterion (b), whether the applicant or another representative of the applicant's industry has received Department of Labor resources for similar purposes. These grants will not duplicate similar efforts underway with existing resources.

Changes: None.

Comments: One commenter wanted the selection criteria to establish a

timeframe for completing the development of standards.

Discussion: The Secretary agrees that the applicants should discuss expected outcomes and timelines for all tasks and believes this factor has been adequately addressed in criterion (c).

Changes: None.

Comments: Three commenters suggested the selection criteria require that an applicant demonstrate how the project will keep the standards it developed current after Federal assistance ends.

Discussion: The Secretary agrees with the commenters that applicants should develop a methodology for maintaining the currency of the standards. The Secretary believes criterion (a)(1)(i) adequately addresses this concern. An applicant's score under criterion (a) will reflect the extent to which the applicant proposes to develop standards for the increased competency requirements created by the changing workplace.

Changes: None.

Comments: One commenter asked if the 50 percent match may be satisfied by cash, in-kind contributions, or both.

Discussion: The 50 percent match may be satisfied by allowable costs incurred by a grantee, third-party in-kind contributions, or both in accordance with the regulations at 34 CFR 74.52(a) and 80.24(a).

Changes: None.

Comments: One commenter asked whether the reference in criterion (c)(5) to "project participants" is to members of the committee.

Discussion: The project participants referenced in criterion (c)(5) are the technical committee members.

Changes: None.

Comments: Four commenters suggested eliminating the "time" factor in criterion (a)(1)(iii) to encourage a competency-based outcomes approach.

Discussion: The Secretary agrees that the standards should be focused on identifying the competencies required in the division or specialty area studied—not on time spent in training. However, section 416(b)(2)(B) of the Act requires that "minimum hours of study to be competent" in the divisions or specialty areas identified within occupations studied be included in the standards to be developed. The Secretary believes this requires a focus on competency standards; that is, mastery of a task or proficiency in the task, not minimum time in class.

Changes: None.

Comments: Two commenters questioned the "industry-based" aspects of the standards as referenced in the summary paragraph and wanted clarification on how occupational standards that cross industry boundaries will be addressed.

Discussion: The Secretary will award grants to projects that develop standards in either industries or trades, or both. The Secretary agrees with the commenters that some occupational areas that cross industry boundaries are key to developing a world class workforce. In this regard, criterion (a)(i)(ii) reflects the requirement of section 416(b)(2)(A) of the Act that the standards to be developed be for "major divisions or specialty areas identified within occupations studied."

Changes: None.

Comments: One commenter suggested that it would be useful for the Department to use one common set of core proficiencies, such as those outlined in the U.S. Secretary of Labor's Commission on Achieving Necessary Skills (SCANs) report, to serve as a common framework among the various standards-setting projects.

Discussion: The Department of Education and the Department of Labor, in concert with the President's AMERICA 2000 and Job Training 2000 strategies, are working with industry to determine the extent to which the SCANS findings can be incorporated into the development of skill standards for particular industries. An applicant under this program may propose, if it wishes, a framework for expressing skill standards that builds upon the SCANS findings.

Changes: None.

Matching Requirement

Each grant recipient shall provide 50 percent of the cost of the business-labor-education technical committee established under the grant.

Selection Criteria

For the FY 1992 grant competition under the Business and Education Standards Program only, the Secretary uses the following criteria to evaluate an application:

(a) *Program factors* (20 points). The Secretary reviews each application to assess the quality and effectiveness of the applicant's approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace, which can be used to establish job-related and industry-specific skill standards, built around core proficiencies;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in these divisions or specialty areas;

(iv) Minimum tools and equipment required in these divisions or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in these divisions or specialty areas;

(vi) Minimum qualifications for instructional staff in these divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) of this selection criterion as part of the project.

(b) *Extent of need for the project* (15 points). The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national job-related and industry-specific skill standards, built around core proficiencies, for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation* (20 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and termination dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for selecting the committee will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate a business-labor-education technical committee effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or

specialty areas within occupations will be coordinated with businesses, industrial trade associations, labor organizations, vocational and other educators or experts familiar with that industry; and

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan* (15 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel* (10 points).

(1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel an applicant plans to use, including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2)(i) and (ii) will commit to the project; and

(iv) Experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan* (10 points). The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available; and

(3) Provisions for publicizing the proposed national standards for competencies in industries and trades.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 2416.

(Catalog of Federal Domestic Assistance Number 84.244, Business and Education Standards)

Dated: May 29, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-13010 Filed 6-2-92; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No. 84.244-A]

Business and Education Standards Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national skill standards for competencies in industries and trades. This program is authorized under section 416 of the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. 2416, as amended by Public Law 101-392, 104 Stat. 753 (1990).

The Secretary wishes to highlight for potential applicants, that the Business and Education Standards Program is an element of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. The Business and Education Standards Program also supports National Education Goal 5 of ensuring that every adult American possesses the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. Specifically, the program addresses Track III of the AMERICA 2000 strategy—transforming America into "A Nation of Students"—by establishing standards for job skills and knowledge through a cooperative effort by business, labor, and education groups, so that workers can see what skills are needed to perform a job and can evaluate their own grasp of those skills.

Eligible Applicants: The following entities are eligible for an award under this program:

- Industrial trade associations.
- Labor organizations.
- National joint apprenticeship committees.
- Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

Deadline for Transmittal of Applications: July 6, 1992.

Deadline for Intergovernmental Review: September 4, 1992.

Available Funds: $3,500,000 for the first 18 months (funding for the second 18 months is subject to the availability of funds).

Estimated Range of Awards: $450,000 to $550,000 (funding for the first 18 months).

Estimated Average Size of Awards: $500,000 (funding for the first 18 months).

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months (two 18-month grant cycles).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(a) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(b) 34 CFR part 75 (Direct Grant Programs).

(c) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(d) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(e) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(f) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(g) 34 CFR part 82 (New Restrictions on Lobbying).

(h) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(i) 34 CFR part 86 (Drug-Free Schools and Campuses).

Invitational Priority: Under 34 CFR 75.105(c)(1) and 20 U.S.C. 2416, the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not received competitive or absolute preference over other applications. Under the Business and Education Standards Program, the Secretary invites applications for projects that—

(1) Develop a coalition of employers, labor organizations, associations, and vocational and other educators—representing a majority within business and industry—who will participate in the development of the skill standards and a certification process;

(2) Develop standards that include job-specific, academic and reasoning skills, along with a certification process that will be maintained and updated after termination of the project;

(3) Develop methods for using skill standards as the basis for the development of vocational-technical education curriculum and certification;

(4) Propose procedures for testing the validity of the skill standards to insure non-discrimination of the basis of race, color, national origin, gender, age or disability;

(5) Develop a method for determining whether certified personnel are better performers than noncertified personnel; and

(6) Propose procedures for identifying and accommodating probable future skill standards at the national and world class levels for an occupation or industry in the next five to ten years.

With respect to this invitational priority, the Secretary encourages applicants to replicate standards or adapt methods used in this country and abroad. In the United States (for example), the automotive industry is notable in the development of skill standards and the certification process for both individuals and vocational-technical education programs. The work of the Vocational-Technical Education Consortium of States (V–TECS) is notable as the largest system in the United States for converting job analysis information into curriculum objectives and methods for assessing student achievement. Also, other organizations that have attempted to define and measure employability and workplace competencies, include the National Occupational Competency Testing Institute (NOCTI), the Educational Testing Service (ETS), the American College Testing service (ACT), the American Society for Training and Development (ASTD), the Secretary of Labor's Commission on Achieving Necessary Skills (SCANS), and the National Occupational Information Coordinating Committee (NOICC).

Other countries such as Canada, The Netherlands, and Scotland, have done considerable work in developing national industry-based skill standards. These countries have been successful in establishing industry-occupational platform committees with strong representation from management, labor, education, and government.

The Netherlands, in addition, has developed a computerized interactive curriculum information system for entering job analysis data and using artificial intelligence methods to convert those data into skill standards and vocational curricular objectives. The Netherlands has invited the United States to make use of this system, and the Secretary encourages applicants that are interested to do this. Applicants may obtain an abstract that describes this system from the National Occupational Information Coordinating Committee (NOICC) in Washington, DC (Telephone: 202–653–5665).

Selection Criteria: For the FY 1992 grant competition under the Business and Education Standards Program, the Secretary uses the selection criteria in the notice of final selection criteria for this competition published elsewhere in this issue of the **Federal Register**.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 2, 1992, (57 FR 11354).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.244, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address. Instructions for transmittal of applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: CFDA #84.244–A), Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.244–A), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202–4725.

(b) An Applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: To apply for an award under this program competition, your application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications.

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as appendix A of this notice. Questions and answers pertaining to this program are included, as appendix B, to assist potential applicants.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original.

No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Debra J. Nolan, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4518—MES), Washington, DC 20202–7242. Telephone: (202) 732–2350. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2416.

Dated: May 28, 1992.

Betsy Brand,

Assistant Secretary, Vocational and Adult Education.

Appendix A

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and ZIP code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (Specify):

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education/OVAE

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 4 4A

TITLE: Business and Education Standards Program.

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributer. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

Budget Periods

Second	Third	Fourth	Fifth

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST not of Federal funds.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate. This SECTION does not apply to projects that are full-funded.

NOTE: Grant recipients under the Business and Education Standards Program (CFDA 84.244) are required to provide not less than 50 percent of the total cost of the demonstration project conducted under this program. In other words, the amount shown on Line 3, Section B, must be at least 50 percent of the TOTAL PROJECT COST.

BILLING CODE 4000-01-C

Instructions for Part III—Budget Narrative

The Budget Narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this Notice; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Program Narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

Applicants may include as an appendix to the Program Narrative supporting documentation, also on 8½"×11" paper, (e.g., letters of support, footnotes, resumes, etc.) or any other pertinent information that might assist the Secretary in reviewing the application.

Applicants are advised that—

(1) Under 34 CFR 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates applications solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials: Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project OMB 1830–0517, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0517. Expiration date: 7/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of the application is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in a "Program Narrative" of no more than thirty pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualification. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project.

(3) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. How should my application be organized?

A. The Application Narrative should be organized to follow the exact sequence of the components in the selection criteria pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project generally enhance the review of the application.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e., travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual staff development meeting, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If any application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392, 104 Stat. 753 (1990)).

(2) The Education Department General Administrative Regulations (EDGAR).

For a free copy (EDGAR) contact the U.S. Department of Education, Grants and Contracts Services, 400 Maryland Avenue SW. (room 3653—ROB–3), Washington, DC 20202–4835. Telephone: (202) 708–5580.

[FR Doc. 92–13009 Filed 6–2–92; 8:45 am]

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Federal Register

Vol. 57, No. 107

Wednesday, June 3, 1992

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federal register

Thursday
June 4, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Chicago, IL, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 16; 9:00 a.m.
WHERE: Room 328
Ralph H. Metcalfe Federal Building
77 W. Jackson
Chicago, IL
RESERVATIONS: Call the Federal Information Center,
1–800–366–2998

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Rules and Regulations

Federal Register
Vol. 57, No. 108
Thursday, June 4, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Part 595

Existing Regulations and Programs; Regulatory Review

AGENCY: Office of Fossil Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy Office of Fossil Energy is eliminating the regulations codified at 10 CFR part 595, entitled "Certification of Use of Natural Gas to Displace Fuel Oil."

EFFECTIVE DATE: June 4, 1992.

FOR FURTHER INFORMATION CONTACT: Keith N. Frye, U.S. Department of Energy (FE–13), Washington, DC 20585, (301) 903–2644.

SUPPLEMENTARY INFORMATION:

The regulations codified at 10 CFR part 595, entitled "Certification of Use of Natural Gas to Displace Fuel Oil," are being eliminated because the regulations which required the use of the part 595 procedures were themselves eliminated in 1983.

The Federal Energy Regulatory Commission's Order No. 30 Program at 10 CFR part 284, subpart F, authorized the transportation of natural gas directly by end-users to displace fuel oil, but only after the Economic Regulatory Administration of the Department of Energy ("DOE") had issued a certificate of eligible use pursuant to the procedures in 10 CFR part 595.

The Order 30 Program terminated on November 4, 1983, along with DOE's eligible-use certification procedures in 10 CFR part 595 (48 FR 38207, August 23, 1983). The part 595 regulations, however, inadvertently were not removed from the Code of Federal Regulations at that time.[1]

List of Subjects in 10 CFR Part 595

Fossil Energy.

Issued in Washington, DC on May 28, 1992.

James G. Randolph,

Assistant Secretary for Fossil Energy.

For the reasons set forth in the preamble, part 595 of title 10, chapter II, of the Code of Federal Regulations is amended as set forth below:

PART 595—CERTIFICATION OF USE OF NATURAL GAS TO DISPLACE FUEL OIL [REMOVED]

1. Part 595 is removed.

[FR Doc. 92–13109 Filed 6–3–92; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 92–ASW–1; Special Condition 29–ASW–6]

Special Conditions: Bell Helicopter Textron Model 212 and Model 412 Helicopters, Electronic Flight Instrument System

AGENCY: Federal Aviation Administraton, DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for certain Bell Helicopter Textron Models 212 and 412 helicopters modified by Premier Aviation, Inc. These helicopters will have a novel or unusual design feature associated with the Electronic Flight Instrument System (EFIS). The applicable airworthiness regulations do not contain appropriate safety standards for the requirements to protect systems that perform critical functions from the effects of external radio frequency energy sources. This special condition contains additional safety standards that the Administrator considers necessary to ensure that critical functions of systems would be maintained when exposed to high intensity radiated fields (HIRF).

DATES: Effective June 4, 1992.

Comments for inclusion in the Rules Docket must be received by September 2, 1992.

ADDRESSES: Submit comments in duplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–1, Fort Worth, Texas 76193–0007, or deliver in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Fort Worth, Texas.

All comments must be marked Docket No. 92–ASW–1. Comments may be inspected in the Office of the Assistant Chief Counsel, at the address specified above, between 8 a.m. and 4 p.m., weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193–0111; telephone (817) 624–5120.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final special condition and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this special condition may be amended in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this special condition will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this special condition must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–ASW–1." The postcard will be date/time stamped and returned to the commenter.

[1] The part 595 regulations were properly removed from the Federal Energy Guidelines. See 2 FEG 25001–25302 (1990).

Background

On April 26, 1991, Premier Aviation, Inc., 2617 Aviation Parkway, Grand Prairie, Texas, applied for a supplemental type certificate (STC) to install a Bendix/King EFIS/50 Electronic Flight Instrument System in the Bell Helicopter Textron Models 212 and 412 helicopters. The Bell Helicopter Textron Models 212 and 412 are currently approved under Type Certificate No. H4SW. The Model 212 is a 14-passenger, two-engine, 11,200-pound transport category helicopter; and Model 412 is a 14-passenger, two-engine, 11,900-pound transport category helicopter.

Type Certification Basis

The certification basis established for the Model 212 includes: FAR part 29 dated February 1, 1965, Amendments 29–1 and 29–2, and FAR 29.473, 29.501, 29.771, 29.903(c), 29.1323, and 29.1505(b) of Amendment 29.3; Special Conditions 29–12–SW–1; and Ditching in accordance with FAR 25.801 including 29.1411 and 29.1415.

The certification basis established for the Model 412 includes: FAR part 29 dated February 1, 1965, Amendments 29–1 and 29–2, and portions of Amendment 29–3, specifically, 29.473, 29.501, 29.633, 29.771, 29.903(c), 29.1323, and 29.1505(b); Special Conditions 29–12–SW–1, Amendment 1; Exemption No. 3100 against FAR 29.1323(c); Category A engine isolation requirements; and Ditching in accordance with FAR 25.801 including FAR 29.1411 and 29.1415. Bell Helicopter Textron has elected to comply with portions of Amendments 29–4 through 29–30, specifically 29.151, 29.161, 29.610, 29.672, 29.1301, 29.1303, 29.1309, 29.1321, 29.1329, 29.1331, 29.1333, 29.1335, 29.1351, 29.1353, 29.1431, and Appendix B.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 and will become a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

The Bell Helicopter Textron Models 212 and 412 helicopters, at the time of application, were identified as incorporating one and possibly more electrical/electronic systems that will be performing functions critical to the continued safe flight and landing of the helicopter. The Electronic Flight Instrument System performs the attitude display function. The display of attitude, altitude, and airspeed to the pilot is critical to the continued safe flight and landing of the helicopter for instrument flight rules (IFR) operations in instrument meteorological conditions. When the design is finalized, Premier Aviation, Inc., will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by electrical/electronic systems.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. These advanced systems are responsive to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the system's functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of the § 29.1309(a) requirement. Higher energy levels radiate from operational transmitters that are currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) the adverse service experience of military aircraft using these technologies; and (4) the increase in the number and power of radio frequency emitters and the expected increase in the number of these emitters in the future.

The FAA has recognized the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to: (1) Determine and define the electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards. The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have established a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting special conditions for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels in which civilian helicopter system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. This special condition requires that the helicopter's electrical/electronic systems and associated wiring harnesses be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The defined HIRF environment specified in this special condition is based on many critical assumptions; among these is that, with the exception of takeoff and landing at an airport, the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the given environment by twice or more.

This special condition would require qualification of electrical/electronic systems that perform critical functions, as installed in aircraft, to either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and the operational capability of the installed electrical/

electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment. The FAA has determined that the environment defined in Table I is acceptable for critical functions in helicopters operating not less than 500 feet AGL. For critical functions in helicopters operating at altitudes less than 500 feet AGL, additional considerations must be given.

The applicant may demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions withstand a peak electromagnetic field strength in a frequency range of 10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the HIRF requirements, no credit would be given for signal attenuation due to installation. A level of 100 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are appropriate at this time for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF are more appropriate for critical functions during VFR operations.

For helicopters, the primary electronic flight displays are critical for IFR operations and a full authority digital engine control (FADEC) is an example of a critical functioning system for all operations (both IFR and VFR).

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis that perform critical functions are the ones that are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements would only apply to the critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be concurrently exposed to the fields.

The modulation should be selected for the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z and 1 KH_z square wave with greater than 90 percent depth of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical aspects of the system under consideration continue to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable but need to be independently assessed by the FAA for each application.

TABLE 1. FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–500 KH_z	60	60
500–2000	80	80
2–30 MH_z	200	200
30–100	33	33
100–200	150	33
200–400	56	33
400–1000	4020	935
1–2 GH_z	7850	1750
2–4	6000	1150
4–6	6800	310
6–8	3600	666
8–12	5100	1270
12–18	3500	551
18–40	2400	750

Conclusion

This action will affect only certain unusual or novel design features on one series of helicopters. It is not a rule of general applicability and will affect only the manufacturer who applied to the FAA for approval of these features on the affected helicopters.

The substance of this special condition has been subjected to the notice and comment procedure in several prior special conditions. This special condition has been derived without substantive change from those previously issued. Therefore, it is unlikely that prior public comment would have resulted in a significant change in the substance of this special condition. For this reason, and because a delay would significantly adversely affect the certification of these helicopters, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting this special condition immediately. Therefore, this special condition is being made effective upon issuance. However, the FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the similar special conditions previously issued.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

The Final Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the supplemental type certification bases for the Bell Helicopter Textron Model 212 and Model 412 helicopters.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on May 19, 1992.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92–13089 Filed 6–3–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90-ANE-26; Amendment 39-8240, AD 92-10-06]

Airworthiness Directives; Air Cruisers Co., TSO-C69, Evacuation Slides System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Air Cruisers Co., TSO-C69, Evacuation Slides System, Part Numbers (P/N) D31021-101 and -103. This action requires modification and inspection of slides identified by certain serial numbers. This amendment is prompted by two reports of slides deploying improperly. This condition, if not corrected, could result in improper inflation of the slides, which could hamper the emergency evacuation of an aircraft.

DATES: Effective July 6, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Air Cruisers Co., P.O. Box 180, Belmar, NJ 07719-0180. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Aerospace Engineer, New York Aircraft Certification Office, Systems and Equipment Branch, ANE-173, Engine & Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581-1145; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD), that is applicable to Air Cruisers Evacuation Slides, Part Numbers (P/N) D31021-101 and -103, was published in the **Federal Register** on January 28, 1991 (56 FR 3051). That action proposed to require modifications and inspections of slides identified by certain serial numbers in accordance with Air Cruisers Co., Service Bulletin No. 001-25-8, Revision 4, dated May 24, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received.

One commenter recommends that the slides be modified at the earliest opportunity to ensure that a high level of reliability exists in these systems. The AD as proposed requires compliance within nine months after the effective date of the AD. No alternative compliance period was proposed, and the FAA finds that the proposed compliance time provides an acceptable level of safety. Therefore, the proposed compliance time has not been altered.

The other commenter expressed no objection to adoption of the proposed rule.

Paragraph (a) of the AD has been reworded for clarity by including the affected part numbers and serial numbers.

The economic analysis has been revised to increase the specified hourly labor rate from $40 per manhour, as was discussed in the NPRM, to $55 per manhour.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes described.

There are approximately 222 emergency evacuation slides of the affected design in the worldwide fleet. It is estimated that 120 slides on aircraft of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per slide to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of required parts is estimated to be $680 per slide. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $135,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92-10-06 Air Cruisers Company: Amendment No. 39-8240 Docket No. 90-ANE-26

Applicability: Air Cruisers Co. TSO-C69 Emergency Evacuation Slide System, Part Numbers (P/N) D31021-101 and -103, Serial Numbers 1 through 222, installed on but not limited to Airbus Industries Models A300 B2-1C, A300 B4-2C, A300 BA-200 and A300 B4-600 series aircraft.

Compliance: Required within 9 months after the effective date of this AD, unless previously accomplished.

To prevent improper inflation of the slides, which could hamper the emergency evacuation of an aircraft, accomplish the following:

(a) Modify and reidentify Air Cruisers Co. Evacuation Slide System, P/N D31021-101 and -103, serial numbers 1 through 222, in accordance with Air Cruisers Co. Service Bulletin (SB) 001-25-8, Revision 4, dated May 24, 1990, Paragraph 2, Accomplishment instructions.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety, may be used if approved by the Manager, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, Valley Stream, New York 11581-1145. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(d) The modifications and inspections required by this AD shall be accomplished in accordance with the following Air Cruisers Co. Service Bulletin:

Document No.	Page	Issue/ Revision	Date
S.B.001-25-8.	1, 3, 4, 5, 8, 9, 11, 14, 16, 21, and 22.	Rev. No. 4...	May 24, 1990.
	2, 6, 7, 10, 12, 13, 15, 17, 18, 19, 20, 23, 24, 25, and 26.	Rev. No. 3...	April 30, 1990.

Total Pages: 26.

The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Cruisers Co., P.O. Box 180 Belmar, NJ 07719-0180. Copies may be reviewed at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(e) This amendment becomes effective July 6, 1992.

Issued in Burlington, Massachusetts, on April 17, 1992.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-13041 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ASW-33; Amendment 39-8232; AD 92-09-07]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 206A and 206B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Model 206A and 206B helicopters. This action requires an inspection for cracks and modification of the vertical fin supports. In addition, an inspection for gaps between the vertical fin supports and fin mounted inserts is required. This amendment is prompted by a manufacturer's report that installation of an external doubler on the vertical fin may require spacers between the fin and the tailboom to preclude unacceptable loads on certain fin supports. The actions specified in this AD are intended to prevent fatigue failure of the vertical fin supports that could result in loss of the vertical fin and loss of control of the helicopter.

DATES: Effective June 29, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 1992.

Comments for inclusion in the Rules Docket must be received by July 20, 1992.

ADDRESSES: The applicable Alert Service Bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Rules Docket, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ASW-33, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, FAA, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5277.

SUPPLEMENTARY INFORMATION: Bell Helicopter Service Letter No. 206-203, dated December 18, 1972, modified Bell Model 206A and 206B helicopters by adding a doubler, part number (P/N) 206-020-113-109, to the vertical fin, P/N 206-020-113-5, -7, -9, and 107. This doubler provided additional strength to the inboard side of the vertical fin and provided an acceptable repair for cracked fins. Bell Helicopter Alert Service Bulletin No. 206-01-73-5, dated June 27, 1973, provided for the inspection and replacement of cracked vertical fin supports, P/N 206-031-417-003, -007, 206-031-418-001, and -005. Airworthiness Directives No. 73-12-01 and 73-21-03 mandated compliance with these two service letters or bulletins.

Recently the FAA received a report of cracked vertical fin supports on a Bell 206B helicopter. Further engineering analysis and investigation has determined that if a gap exists between the fin mounted inserts and the vertical fin supports, unacceptable loads could occur on the supports. This condition, if not corrected, could result in fatigue failure of the vertical fin supports, loss of the vertical fin, and subsequent loss of control of the helicopter.

Since this condition described is likely to exist or develop on other helicopters of the same type design, this AD is being issued to prevent fatigue failure of the vertical fin supports. This AD requires an inspection for cracks in the vertical fin supports and a modification to affected fin assemblies to reduce the fatigue exposure of the vertical fin supports.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be changed in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ASW-33." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92-09-07 Bell Helicopter Textron, Inc. (BHTI): Amendment 39-8232 Docket No. 91-ASW-33.

Applicability: All Bell Helicopter Textron, Inc., Model 206A and 206B helicopters, serial numbers (S/N) 4 through 1163, certificated in any category, equipped with a vertical fin assembly that has an external doubler, part number (P/N) 206-020-113-109, installed on the lefthand side adjacent to the supports.

Compliance: Required within 30 days or 100 hours' time in service, whichever comes first, after the effective date of this AD, unless previously accomplished.

To prevent failure of the vertical fin supports, which could result in loss of the vertical fin and loss of control of the helicopter, accomplish the following:

(a) Inspect for cracks and modify the vertical fin supports in accordance with part I of Bell Helicopter Alert Service Bulletin No. 206-91-60, dated June 28, 1991.

(b) Prior to reinstalling the fin assembly, inspect for any gaps between the tailboom and the fin mounted inserts. If any gaps are found, comply with part II of Bell Helicopter Alert Service Bulletin No. 206-91-60, dated June 28, 1991. If gaps are not found reassemble the aircraft in accordance with the manufacturer's maintenance manual.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, 4400 Blue Mound Road, Fort Worth, Texas, 76193-0170. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections and modifications to the vertical fin assembly and supports, and the inspection for gaps shall be done in accordance with Bell Helicopter Alert Service Bulletin No. 206-91-60, parts I and II, dated June 28, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(f) This amendment becomes effective June 29, 1992.

Issued in Fort Worth, Texas, on April 6, 1992.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92-13040 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-06-AD; Amendment 39-8256; AD 92-11-06]

Airworthiness Directives; British Aerospace Model BAe 146-100A, 200A, and 300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe 146-100A, 200A, and 300A series airplanes, that requires installation of shorter hoses at certain locations in the pitot-static system on affected airplanes. This amendment is prompted by recent reports of low spots in pitot-static system hoses that could result in water being trapped and causing the pitot-static system to malfunction. The actions specified by this AD are intended to eliminate the low spots and prevent the generation of incorrect air speed and altitude information.

DATES: Effective July 9, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 9, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to British Aerospace Model BAe 146-100A, 200A, and 300A series airplanes was published in the **Federal Register** on February 12, 1992 (57 FR 5085). That action proposed to require installation of shorter hoses at certain locations in the pitot-static system on affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to a single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $494 per airplane. Based on these figures, the total cost impact of the AD

on U.S. operators is estimated to be $17,802.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-11-06. British Aerospace: Amendment 39-8256. Docket 92-NM-06-AD.

Applicability: British Aerospace Model BAe 146-100A, 200A, and 300A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the generation of incorrect air speed and altitude information, accomplish the following:

(a) For British Aerospace Model BAe 146-200A series airplanes with Serial Numbers E2164 and subsequent; and Model BAe 146-300A series airplanes with Serial Numbers E3118, E3163, and subsequent: Within 30 days after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with instructions in British Aerospace Service Bulletin SB.34-128-00950J, dated March 22, 1991:

(1) Replace existing pitot-static system hoses at specified location with shorter hoses.

(2) Check the clamp block bolts installation. If any discrepancy is detected, correct it prior to further flight.

(3) Conduct a leak test of the pitot-static system. If any discrepancy is detected, correct it prior to further flight.

(b) For British Aerospace Model BAe 146-100A, 200A, and 300A series airplanes equipped with a True Airspeed Computer No. 1 in accordance with modification HCM40159B or HCM40297G, along with a Mode "S" Transponder in accordance with modification HCM30118B or HCM40277A: Within 90 days after the effective date of this AD, accomplish the actions specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with instructions in British Aerospace Service Bulletin SB.34-131-46041A, dated June 24, 1991:

(1) Replace existing pitot-static system hoses at specified locations with shorter hoses.

(2) Conduct and leak test of the pitot-static system. If any discrepancy is detected, correct it prior to further flight.

(c) For British Aerospace Model BAe 146-100A, 200A, and 300A series airplanes equipped with a True Airspeed Computer No. 2 in accordance with modification HCM40160C or HCM40298G, along with a Mode "S" Transponder in accordance with modification HCM30118B or HCM40277A: Within 90 days after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1) and (c)(2) of this AD, in accordance with instructions in British Aerospace Service Bulletin SB.34-132-46042A, dated June 24, 1991:

(1) Replace existing pitot-static system hoses at specified locations with shorter hoses.

(2) Conduct a leak test of the pitot-static system. If any discrepancy is detected, correct it prior to further flight.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and modifications shall be done in accordance with British Aerospace Service Bulletin SB.34-128-00950J, dated March 22, 1991; British Aerospace Service Bulletin SB.34-131-46041A, dated June 24, 1991; or British Aerospace Service Bulletin SB.34-132-46042A, dated June 24, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC. Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on July 9, 1992.

Issued in Renton, Washington, on April 29, 1992.

N. B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13043 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-280-AD; Amendment 39-8253; AD 92-11-03]

Airworthiness Directives; British Aerospace Model DH/BH/HS 125 Series Airplanes, Excluding Model 125-600A, -700A, -800A, and -1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model DH/BH/HS 125 series airplanes, that requires eddy current inspections and, if necessary, dye penetrant inspections of certain areas of the wing upper skins to detect cracks in the vicinity of countersunk bolt holes and in internal stringers; and repair, if necessary. This amendment is prompted by recent reports of cracks in countersunk bolt holes in left and right wing upper skins and internal stringers attached to the underside of the wing upper skins. The actions specified by this AD are intended to prevent reduced structural integrity of the wings.

DATES: Effective July 9, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 9, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC. Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules

Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to British Aerospace Model DH/BH/HS 125 series airplanes was published in the **Federal Register** on January 12, 1992 (57 FR 5082). That action proposed to require eddy current inspections and, if necessary, dye penetrant inspections of certain areas of the wing upper skins to detect cracks in the vicinity of countersunk bolt holes and in internal stringers; and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Certain references to British Aerospace Service Bulletin S.B. 57-75 that appeared in paragraphs (a), (b), and (c) of the proposal have been corrected in the final rule to specify "July 30, 1991" as the date of issuance (rather than July 31, 1991).

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the corrections previously described. The FAA has determined that these corrections will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 133 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $87,780.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-11-03. British Aerospace: Amendment 39-8253. Docket 91-NM-280-AD.

Applicability: British Aerospace Model DH/BH/HS 125 series airplanes, excluding Models 125-600A, -700A, -800A, and -1000A series airplanes; as listed in British Aerospace Service Bulletin S.B. 57-75, dated July 30, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Within 3 months after the effective date of this AD, and thereafter at intervals not to exceed 4 years or 2,200 flights, whichever occurs first, perform an eddy current inspection on specified areas of the left and right wing upper skins to detect cracks in countersunk bolt holes in the wing skins and in the internal stringers, in accordance with British Aerospace Service Bulletin S.B. 57-75, dated July 30, 1991.

(b) If cracks are discovered as a result of the eddy current inspection required by paragraph (a) of this AD, prior to further flight, perform a dye penetrant inspection, in accordance with British Aerospace Service Bulletin S.B. 57-75, dated July 30, 1991.

(c) If cracks are discovered as a result of either the eddy current inspections required by paragraph (a) of this AD, or the dye penetrant inspection required by paragraph (b) of this AD, prior to further flight, repair the crack(s) as follows:

(1) Cracks that do not exceed the limits specified in British Aerospace Service Bulletin S.B. 57-75, dated July 30, 1991, must be repaired in accordance with the procedures in the Service Bulletin.

(2) Cracks that exceed the limits specified in British Aerospace Service Bulletin S.B. 57-75, dated July 30, 1991, must be repaired in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repairs shall be done in accordance with British Aerospace Service Bulletin S.B. 57-75, dated July 30, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on July 9, 1992.

Issued in Renton, Washington, on April 28, 1992.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13042 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-281-AD; Amendment 39-8255; AD 92-11-05]

Airworthiness Directives; British Aerospace Viscount Model 744, 745D and 810 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace

Viscount Model 744, 745D and 810 series airplanes, that requires visual inspection of the upper boom of a wing rib for proper fastener edge distance, and, repair or replacement of the rib boom with a new part, if necessary. This amendment is prompted by reports of undersized end rib booms. The actions specified by this AD are intended to prevent reduced structural integrity of the engine mount attachment to the wing and wing structure.

DATES: July 9, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 9, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to British Aerospace Viscount Model 744, 745D and 810 series airplanes was published in the **Federal Register** on February 12, 1992 (57 FR 5083). That action proposed to require visual inspection of the upper boom of a wing rib for proper fastener edge distance, and, repair or replacement of the rib boom with a new part, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and public interest require the adoption of the rule as proposed.

The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $47,850.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-11-05. British Aerospace: Amendment 39-8255. Docket 91-NM-281-AD.

Applicability: Viscount Model 744 and 745D series airplanes, post-mod D3070 and D3292; and Viscount Model 810 series airplanes, post-mod FG1925 and FG2172, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced structural integrity of the engine mount attachment to the wing and wing structure, accomplish the following:

(a) Within 100 landings or within 4 months after the effective date of this AD, whichever occurs earlier, visually inspect the upper boom of the wing rib at wing station 257, left and right, for proper fastener edge distance, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 192 or PTL 323, both dated January 31, 1990, as applicable.

(b) If any discrepancies are detected in the fastener edge distance, prior to further flight, replace the rib boom with a new part, or repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with British Aerospace Viscount Alert PTL 192, Issue 1, dated January 31, 1990; or British Aerospace Viscount Alert PTL 323, Issue 1, dated January 31, 1990; as applicable.

(**Note:** The issue date of PTL 192 and PTL 323 is indicated only on "page 3 of 5" of each document; no other page of these documents is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(f) This amendment becomes effective on July 9, 1992.

Issued in Renton, Washington, on April 29, 1992.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13045 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Freedom of Information Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its regulations to provide procedures for requesting a waiver or reduction of fees for records

requested through the Freedom of Information Act.

EFFECTIVE DATE: June 4, 1992.

FOR FURTHER INFORMATION CONTACT: Linda E. Blevins, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, TN 37402-2801, telephone number: (615) 751-2524.

SUPPLEMENTARY INFORMATION:

On February 24, 1992 (57 FR 6300-6301), TVA gave notice of its intention to amend its regulations to provide procedures for requesting a waiver or reduction of fees for records requested through the Freedom of Information Act. No comments were received in response to this notice. There are no substantive changes between the text of the proposed rule and the text of the final rule.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of information, Privacy act, Sunshine act.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, subpart A, continues to read as follows:

Authority: 16 U.S.C. 831-831dd, 5 U.S.C. 552.

2. Section 1301.3 is added to read as follows:

§ 1301.3 Waiver or reduction of fees.

(a) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under § 1301.2 where TVA determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to TVA, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees, which shall be made at the same time as the requests for records, shall be considered on a case-by-case basis.

(b) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—TVA shall consider the following four factors in sequence:

(1) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(2) The informational value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(3) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualification—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in paragraph 1301.2(b)(7)) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. TVA shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(c) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—TVA shall consider the following two factors in sequence:

(1) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. TVA shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph 1301.2(b)(4)), or any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(2) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (b) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. TVA shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be

presumed to primarily serve the "public interest."

(d) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (b) and (c) of this section, as they apply to each record request.

(f) A denial of a request for reduced fees or of a request for waiver of fees, in whole or in part, will be made in writing, will state the reasons for the denial, and will notify the requester of the right to appeal the denial. The appeal process for denial of a fee waiver or reduction of fees shall be identical to the appeal process for denial of a requested record and shall be subject to the procedures detailed in § 1301.1(c)(2).

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 92-13111 Filed 6-3-92; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-92-18]

Special Local Regulations for Marine Events; Norfolk Harborfest 1992; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of special local regulations.

SUMMARY: This notice implements special local regulations for Norfolk Harborfest 1992, an annual event to be held in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia. These special local regulations are needed to control vessel traffic within the immediate vicinity of Waterside due to the confined nature of the waterway and the expected vessel congestion during the Norfolk Harborfest 1992 activities. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective for the following periods:

10 a.m. to 9 p.m., June 5, 1992.
8 a.m. to 11 p.m., June 6, 1992.
8:30 a.m. to 6:30 p.m., June 7, 1992.

If inclement weather causes the postponement of the fireworks display on June 6, 1992, the regulations will be in effect until 11 p.m., June 7, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398-6204, or Commander, Coast Guard Group Hampton Roads (804) 483-8559.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Harborfest, Inc. has submitted an application to hold Norfolk Harborfest 1992 on June 5, 6, and 7, 1992, in the Waterside area of the Elizabeth River. This area is covered by 33 CFR 100.501 and generally includes the waters of the Elizabeth River between Town Point Park, Norfolk, Virginia, the mouth of the Eastern Branch of the Elizabeth River, and Hospital Point, Portsmouth, Virginia. Since this event is of the type contemplated by this regulation and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Elizabeth River, 33 CFR 100.501 will be in effect during Norfolk Harborfest 1992. Norfolk Harborfest 1992 will consist of aerobatic demonstrations, and air/sea rescue demonstration, fireworks, and numerous other water events, to include a parade of sailboats and several boat and raft races. Because commercial vessels will be permitted to transit the regulated area between events, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa.

Dated: May 21, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 92-12937 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 92-013]

Ray Catena Mercedes-Benz Offshore Grand Prix, Manasquan, NJ

AGENCY: Coast Guard, DOT.

ACTION: Implementation rule.

SUMMARY: This document puts into effect the permanent regulations for the Ray Catena Mercedes-Benz Offshore Grand Prix. The regulations are necessary in order to control vessel traffic within the immediate vicinity of the event due to the hazards associated with powerboat racing and the anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: The regulations are effective at 11:00 am on Saturday, July 25, 1992 and terminate at 3:00 pm on Saturday, July 25, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223-8310.

SUPPLEMENTARY INFORMATION: This notice provides the effective time period for the regulation governing the 1992 running of the Ray Catena Mercedes-Benz Offshore Grand Prix. The regulations, 33 CFR 100.109, will be in effect from 11:00 am on July 25, 1992 through 3:00 pm on July 25, 1992. The Ray Catena Mercedes-Benz Offshore Grand Prix is a high speed power boat race around a rectangular course. The race course is situated on the coastal waters of the Atlantic Ocean extending from Manasquan, NJ to Seaside Heights, NJ. Sponsor provided patrol craft will mark the spectator area which will be established from Manasquan Inlet northward for one half (½) mile. Vessels exiting Manasquan Inlet and wishing to transit the area will be directed to proceed north along the shore until clear of (north of) the regulated area. No vessels will be allowed to exit Manasquan Inlet in a southerly direction during the effective period of regulation. The regulated area will be patrolled by the U.S. Coast Guard, the Coast Guard Auxiliary, state and local law enforcement agencies and the sponsor. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners.

Drafting Information

The principal persons involved in drafting this document are LTJG E.G. Westerberg, Project Manager, First Coast Guard District Boating Safety Division, and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Office.

Dated: May 15, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 92-13105 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD-09-92-05]

Special Local Regulations: Sodus Bay 4th of July Fireworks, Lake Ontario, Sodus Bay, Sodus Point, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special Local Regulations, which will restrict general vessel traffic, are being imposed in Sodus Bay for fireworks on the 3rd of July 1992. Because of the unusually large number of spectator craft in the area and falling ash and debris, which could pose hazards to navigation in the area, Special Local Regulations are necessary to ensure the safety of life and property during the fireworks display.

EFFECTIVE DATE: These regulations become effective from 9 p.m. until 11:30 p.m. (EDST) on July 3, 1992.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Aids to Navigation & Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060 (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 20 April 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Aids to Navigation & Waterways Management Branch and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Sodus Bay 4th of July Fireworks will be conducted on Sodus Bay, Lake Ontario on the 3rd of July 1992. Fireworks will be launched from an anchored barge in Sodus Bay. This event will have falling ash and debris, and an unusually large number of spectator craft in the area, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Sodus Point, NY.).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034); February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Temporary § 100.35–T0905 is added to read as follows:

§ 100.35 T0905 Sodus Bay 4th of July Fireworks, Lake Ontario, Sodus Bay, Sodus Point, NY.

(a) *Regulated Area.* A 500 foot radius around a barge anchored in position 43 degrees 15.73 minutes North, 076 degrees 58.23 minutes West, in Sodus Bay, Lake Ontario.

(b) *Special Local Regulations.* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9 p.m. (EDST) until 11:30 p.m. (EDST) on 3 July 1992.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 5, 1992.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 92-13104 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Jacksonville, FL Regulation 92-48]

Safety Zone Regulations; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the St. Johns River in Jacksonville, FL for all waters 500 feet on either side of the Old Acosta Bridge from 13 May 1992 until 21 August 1992. The zone will be activated and deactivated, in whole or in part, as needed to protect the public from possible harm resulting from demolition operations to remove the Old Acosta Bridge. Entry into the specified zone, when activated, is prohibited. All other time periods, mariners should exercise caution while transiting throughout the area.

EFFECTIVE DATES: This regulation is effective from May 13, 1992 to August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mike Maes, Tel: (904) 791-2648.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to the public and provide a clear work area for demolition contractors.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Theodore J. Ferring, project officer for the Captain of the Port, and Lieutenant Jacqueline M. Lasago, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is the demolition of the Old Acosta Bridge. The zone is needed to protect the public from possible harm resulting from the use of high explosives used in demolishing large concrete structures, and to provide demolition contractors with a clear area to complete the task safely. During this period it is estimated that the zone, in whole or in part, will be activated approximately 18 times, but only for a short duration of not more than two hours. Entry into the specified zone, when activated, is prohibited. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T0800 is added to read as follows:

§ 165.T0800 Safety Zone: St. Johns River, Jacksonville, Florida.

(a) *Location.* The following area is a safety zone: As directed by the Captain of the Port Jacksonville, all waters, or any portion specified therein, of the St. Johns River within an overall area ranging bank to bank and 500 feet in both directions of the Old Acosta Bridge in downtown Jacksonville, FL.

(b) *Effective date.* This regulation is effective from May 13, 1992 to August 21, 1992. The zone, in whole or in part, will be activated as directed by the Captain of the Port Jacksonville via broadcast notice to mariners with a minimum two hour notification.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) This section does not apply to authorized law enforcement agencies and demolition contractors operating within the Safety Zone.

Dated: May 12, 1992.

J. P. Wysocki,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 92-12938 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 91-53 Notice 2]

RIN 2127-AE23

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires certain passenger motor vehicle insurers to file reports with NHTSA, unless the agency exempts the insurer from filing such reports. The law stipulates that NHTSA can only exempt those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State, or for which NHTSA determines that: (1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and (2) the insurer's report will not significantly contribute to carrying out the purposes of title VI.

To carry out these statutory provisions, the agency has exempted those companies that are lawfully eligible to be exempted and is hereby publishing an updated listing of those companies subject to the reporting requirements. Using a new procedure, this notice updates the list of companies subject to the reporting requirements, to reflect changing market conditions. The final rule was preceded by a notice of proposed rulemaking published on October 16, 1991 (56 FR 51871) that requested public comment on the proposal.

EFFECTIVE DATE: The final rule on this subject is effective July 6, 1992. Companies listed on the appendices are required to submit reports beginning with the one due October 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION:

Background

Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act) (15 U.S.C. 2032) requires certain passenger motor vehicle insurers to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The reports include

information about thefts and recoveries of motor vehicles, the rating rules used by the insurers to establish premiums for comprehensive coverage, the actions taken by insurers to reduce such premiums, and the actions taken by insurers to reduce or deter theft. Under the Act, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for one percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; (3) rental or leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. As discussed in the following sections, the agency may, by regulation, exempt certain insurers from the reporting requirements.

A. Insurers of Passenger Motor Vehicles

Although issuers of motor vehicle insurance policies are subject to reporting requirements, section 612(a)(5) provides that the agency shall exempt small insurers from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 612(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such an insurer must report the required information about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), appendix A lists companies which must report based on the fact that each insurer had at least one percent of the national market for motor vehicle insurance premiums, and appendix B lists those insurers that are required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 2, 1987 notice, the agency stated that these appendices will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available to the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition to companies that issue insurance policies, the term "insurers" is defined in section 612 of the Act to include certain self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. (Section 612(a)(3)). Section 612(a)(4) of the Act authorizes the agency to exempt an insurer from submitting the reports, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title IV.

In a final rule dated June 22, 1990 (55 FR 25606), the agency in effect granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles. The agency issued this exemption because it believed that reports from the largest rental and leasing companies would provide the agency with a representative sampling of the theft experience of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out title VI, and that exempting such companies will relieve an unnecessary burden on the vast majority of the companies presently subject to the reporting requirements. As a result of the June 1990 final rule, a new appendix C, which consists of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in part 544, was added. It has been NHTSA's practice to update appendix C based primarily on information contained in the publications *Automative Fleet Magazine* and *Travel Business Travel News.*

October 1991 Notice of Proposed Rulemaking

On October 16, 1991, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers required to file reports, based on the most recent information. (See 56 FR 51871.) In that notice, the agency also proposed a new procedure that the agency believed would let insurers know well in advance of the annual October 25 filing date whether they need to file a report for the previous calendar year.

In the past, it was the agency's practice to attempt to update Appendices A, B and C each year prior to the October 25 filing date, using A.M. Best and other data obtained in the spring of that same calendar year. However, the agency was generally unable to complete the updating before the October 25 filing date, resulting in confusion concerning which companies needed to file reports.

In the October 1991 NPRM, NHTSA stated that it believed that this problem would be resolved by increasing the interval between the receipt of data and the reporting data. Under the new approach, the updating of the appendices would focus on the report due the year after receipt of the A.M. Best and other data, both for companies which are added to the lists and companies which are removed from the lists. The agency stated that, under this approach, all companies added to the lists as of the last update (March 1991 final rule) should file the required report by October 25, 1991, and all companies added to the lists by the final rule based on the October 1991 NPRM would be provided ample notice concerning whether they need to file a report by October 25, 1992.

The agency further noted that part 544 would not need to be changed to implement this approach. Part 544 generally does not limit its requirements to particular years. Under that part, any company not listed has an indefinite exemption from the reporting requirements, and as long as any company is listed, it must file reports each October 25. Thus, any company listed in the appendices as of the date of the notice of proposed rulemaking (October 16, 1991) must file a report on October 25, 1991, and each succeeding October 25, absent a further amendment.

NHTSA requested comments on this approach, and in particular, on whether there are any other ways to eliminate the problem discussed above.

NHTSA also proposed that, based on 1989 calendar year A.M. Best data, two companies, CIGNA Group and Crum and Forster Companies, included in Appendix A, be removed, and one company, Prudential of America Group, be added. Also based on the 1989 Best data, the agency proposed that one

company, Island Insurance Group (reporting on its activities in Hawaii) be removed from appendix B and that one company, Tennessee Farmers (reporting on its activities in Tennessee) be added. The agency further proposed that Southern Farm Bureau Casualty Group, already included in appendix B and required to report on its activities in Mississippi, also be required to report on its activities in Arkansas.

Based on information in Automotive Fleet Magazine and Travel Trade Business Travel News for 1989, NHTSA proposed that the following six rental and leasing companies be removed from appendix C: Automotive Rentals, Inc. (subsidiary of ARI, Inc.), Enterprise Rent-A-Car, GE Capital Auto Lease, Inc., Lend Lease Cars, Security Pacific Auto Finance, and United States Fleet Leasing, Inc. Based on additional information provided by each respective company that it self-insures fewer than 50,000 vehicles per year, the agency proposed to remove from appendix C two additional companies, Automotive Rentals, Inc. and United States Fleet Leasing, Inc. The agency also proposed that one company, Associates Leasing, Inc. be added to appendix C.

Public Comment and Final Determination

In response to the NPRM, the agency received one public comment, from Lease Plan U.S.A., Inc. Lease Plan stated that it should be removed from appendix C because it has on lease in the United States 12,000 vehicles and does not self-insure any of the vehicles. Because Lease Plan U.S.A. has fewer than 50,000 vehicles in its fleet and does not self-insure any of its vehicles, it does not meet the criteria the agency uses to determine that an insurer is included in appendix C. Therefore, the agency agrees that Lease Plan U.S.A. should be removed from appendix C.

Since the agency received no comment on the proposed change in the procedure updating appendices A, B and C, the agency adopts as final the procedure proposed in the NPRM. Henceforth, any company listed in the appendices must file a report in the forthcoming October 25 and each suceeding October 25, absent a further amendment. Therefore, each company listed in appendix A, B, or C of this notice must file a report no later than October 25, 1992, and, on each succeeding October 25, absent a further amendment.

This final rule does not have any retroactive effect, and it does not preempt any State law. Section 610 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2030, provides that judicial review of this rule may be obtained pursuant to Section 504 of the Cost Savings Act, 15 U.S.C. 2004. The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Regulatory Impacts

1. *Costs and Other Impacts.* NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption are expressly required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for 49 CFR part 544. Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the final regulatory evaluation for part 544, the agency estimates that it will cost any company that is added to appendix A about $50,000, any company added to appendix B about $20,000, and any company added to appendix C about $5,770. In this final rule, for appendix A, the agency removes one company and adds one company, for appendix B, the agency removes one company, adds one company, and requires reporting for an additional state for another company already reporting on its activities in one state, and for appendix C, the agency removes seven companies and adds one. The agency therefore estimates that the net effect of this proposal will be a cost savings to insurers, as a group, of approximately $64,620.

As noted above, a full regulatory evaluation was prepared for the final rule establishing 49 CFR part 544. Interested persons may wish to examine that evaluation in connection with this rule. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling at (202) 366-4949.

2. Paperwork Reduction Act. The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) This collection of information has been assigned OMB Control Number 2127-0547 ("Insurer Reporting Requirements") and has been approved for use through October 31, 1993.

3. *Regulatory Flexibility Act.* The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I certify that the final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies on appendices A, B, or C would be construed to be a small entity within the definition of the RFA. Section 612(a)(5)(C) of the Theft Act defines "small insurer" in part as any insurer whose premiums for motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. In addition, the agency has exempted, by rule, all "self insured rental and leasing companies" that have fleets in excess of 50,000 vehicles.

4. Federalism. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts. In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies
Farmers Insurance Group
Geico Corporation Group
Hanover Insurance Companies
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
State Farm Group
Travelers Insurance Group
United States F & G Group
USAA Group

3. Appendix B to part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Amica Mutual Insurance Company (Rhode Island)
Auto Club of Michigan Group (Michigan)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Group (Pennsylvania)
Indiana Farm Bureau Group (Indiana)
Kentucky Farm Bureau Group (Kentucky)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers (Tennessee)

4. Appendix C to part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent-A-Car Corp./ ANSA
Associates Leasing, Inc.
Avis, Inc.
Budet Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
McCullagh Leasing, Inc.
National Car Rental System, Inc.
Penske Truck Leasing Company
PHH Fleet America
Rental Concepts, Inc.
Ryder Truck Rental (both rental and leasing operations)
U-Haul International, Inc. (subsidiary of AMERCO)
Wheels, Inc.

Issued on: May 29, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-13011 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1332

[Ex Parte No. MC-205]

Earlier Disposal of Postal Contracts Filed With the Commission by the U.S. Postal Service

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies its regulations to eliminate the requirement that the United States Postal Service (Postal Service) file with the Commission copies of contracts between the Postal Service and common carriers providing transportation of mail. In lieu of the filing requirement, the Commission will require the Postal Service to supply copies of such contracts to the Commission, upon request, by FAX, messenger service or overnight mail. The Postal Service maintains contracts for public inspection and retains them until cancellation. The public rarely, if ever, asks to review such contracts at the Commission. The modified regulations will eliminate the Postal Service's costs for filing several thousand contracts a year with the Commission, as well as the Commission's costs for processing and storing those contracts, while continuing to fulfill the statutory requirement that postal contracts be available for inspection at the Commission.

EFFECTIVE DATE: This rule is effective July 6, 1992.

FOR FURTHER INFORMATION CONTACT:
James W. Greene (202) 927-5597
or
Charles E. Langyher, III (202) 927-5160
[TDD for hearing impaired: (202) 927-5721]

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking (NPR) served February 13, 1992 (57 FR 5413, February 14, 1992), the Commission proposed to discontinue its practice of retaining postal contracts past their effective date. Additionally, the Commission requested comments on whether it may and should amend 49 CFR 1332.3(b) to eliminate the requirement that the Postal Service file copies of the contracts.

The Association of American Railroads (AAR), The National Industrial Transportation League (NITL) and the National Star Route Mail Contractors' Association (NSRMCA) filed comments in response to the NPR. All three parties supported the proposal to dispose of the contracts after their effective dates. NSRMCA did not respond to the request for comments on the feasibility of eliminating the filing requirement; AAR indicated that the statute appears to preclude total elimination of the requirement, but permits us to require the filing of only one copy (the regulations currently require two copies); and NITL stated that in its view we can eliminate the filing requirement.

In its comments, NITL points out that the Postal Reorganization Act, Public Law 91-375, does not require that postal contracts be "filed" with the Commission; rather, it merely requires that they be "available for inspection" at the Commission at least fifteen days prior to their effective dates. NITL contends that, in this day and age, the "availability" of contracts for inspection at the ICC can be accomplished without the actual physical filing and retention of all such documents at the Commission. For example, NITL states that the Commission and the Postal Service could enter into an understanding that, in the rare event there is a request for review of a contract at the Commission, the Postal Service would either FAX the contract to the Commission or send a copy by messenger.

The Commission believes that procedures along the lines suggested by NITL will produce cost savings for both the Postal Service and the Commission, while continuing to fulfill the statutory requirement that proposed postal contracts be available for inspection at the Commission at least 15 days prior to their effective dates. Postal Service personnel have informally indicated that the Postal Service will send us copies of the relevant contracts, upon request. The Commission therefore finds that 49 CFR Part 1332 should be amended by eliminating the existing filing requirement and substituting therefor a requirement that the Postal Service provide the Commission with copies of proposed contracts, upon request.

Energy and Environmental Considerations

This action will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

This action will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1332

Government contracts, Motor carriers, Postal Service, Railroads.

Decided: May 27, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips and Emmett. Commissioner Simmons concurred in the result with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, the Commission amends title 49, chapter X, part 1332 as follows:

PART 1332—FILING CONTRACTS FOR SURFACE MAIL TRANSPORTATION

1. The authority citation for part 1332 continues to read as follows:

Authority: Sec. 5005(b)(3), 84 Stat. 767, 39 U.S.C. 5005.

2. A new § 1332.2 is added to read as follows:

§ 1332.2 Availability of contracts.

Upon request from any member of the public to inspect a contract(s) or agreement(s) described in § 1332.1, at any time between the effective date of such contract(s) or agreement(s) and 15 days prior thereto, the Commission will obtain the requested contract(s) or agreement(s) from the U.S. Postal Service and make it (them) available for inspection.

3. Section 1332.3 is revised to read as follows:

§ 1332.3 Manner of submitting contracts.

The U.S. Postal Service will submit to the Commission, upon request, a copy of the requested contract(s) or agreement(s). Such contract(s) or agreement(s) will be submitted by facsimile transmission or messenger service where feasible, and, where such services are not feasible, by the fastest available mail service.

[FR Doc. 92-13089 Filed 6-3-92; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 57, No. 108
Thursday, June 4, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 160, 161, and 162

[Docket No. 91-027]

Accreditation of Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations by which we accredit veterinarians and authorize them to perform, on behalf of the Animal and Plant Health Inspection Service, certain animal health activities specified in 9 CFR chapter I. These changes would establish accreditation on a national rather than a State basis, and would also remove a test currently required for accreditied veterinarians, require an orientation program for each newly accredited veterinarian, and specify standards for performance of certain services by accredited veterinarians. We also propose to revise procedures for suspending and revoking accredited veterinarian status, and to add language describing how civil and criminal penalties may be imposed on accredited veterinarians who violate regulatory requirements. These proposed changes are intended to ensure that an adequate number of qualified accredited veterinarians are available in the United States to perform necessary animal health activities. These changes would affect currently accredited veterinarians and future applicants for accredited veterinarian status.

DATES: Consideration will be given only to comments received on or before July 6, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-027. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. J. A. Heamon, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 9 CFR parts 160, 161, and 162 (referred to below as the regulations), some veterinarians are accredited by the Federal government to cooperate with the Animal and Plant Health Inspection Service (APHIS) in controlling and preventing the spread of animal diseases throughout the country and internationally. Accredited veterinarians use their professional training in veterinary medicine to perform certain regulatory tasks. The proposed regulations would change the requirements for becoming accredited, the standards for performance of duties by accredited veterinarians, the rules of practice governing revocation and suspension of accredited veterinarians, and some definitions.

APHIS is responsible for defining the scope of the accredited veterinarian program, providing information and education regarding the program to veterinary practitioners participating as accredited veterinarians, and providing information to cooperating State governments, international partners, and the public. In addition, APHIS is responsible for enforcement of the veterinary accreditation standards contained in the regulations.

Accredited veterinarians are involved in a cooperative relationship with APHIS for disease control and prevention. Licensed veterinarians are presumed to be medically competent; accreditation in addition to licensing indicates that the accredited veterinarian is able and authorized to perform various procedures of regulatory animal health.

State governments have a role in the accredited veterinarian program through licensing and disseminating information on the accredited veterinarian program to veterinary practitioners. States also have an advisory and consultative role in the adjudication process for accredited veterinarians who violate the standards of the regulations. However, the ultimate determination of the adjudicatory sanctions in such cases rests with the Federal Government.

According to current § 161.2, veterinarians must become accredited in each State where they intend to do accredited work. We propose to change this to a national accreditation; once veterinarians are accredited, they could perform accredited work in any State in which they were licensed to practice veterinary medicine.[1] This new national accreditation would increase the efficiency of the accreditation process by decreasing the amount of record keeping, since veterinarians would only need to be accredited once instead of State-by-State. This would decrease the burden on veterinarians who relocate to another State, who work near borders between States, or work in several States on a consultant basis. As a national service, APHIS would be able to keep a single national record of accredited veterinarians rather than utilizing the variety of State records.

Section 161.2 of the current regulations requires veterinarians desiring accreditation to take a written test as a part of the accreditation application procedure. APHIS is proposing to remove that test because it is not an accurate indication of qualification for accreditation.

Basic professional skills necessary for accreditation are learned in veterinary school, and the curricula of many veterinary schools include components designed to provide the basic animal science and regulatory procedural skills needed to successfully perform accredited veterinarian duties. APHIS works with schools of veterinary medicine to make this training available and to ensure that it is complete, current, and accurate.

However, some veterinary schools do not provide such training, and some graduates of veterinary schools may not

[1] We also propose that if an accredited veterinarian wishes to perform accredited duties in a State other than the one in which he or she was first accredited, the Veterinarian-in-Charge of the new State will have the accredited veterinarian complete an orientation in procedures used in the new State before the accredited veterinarian may perform accredited duties in that State.

have completed it. To address this situation, we propose to revise the procedure by which veterinarians apply for accreditaiton by adding a requirement to § 161.2 that APHIS confirm that the applicant's veterinary school coursework prepared the applicant to perform the tasks required of an accredited veterinarian. Under the proposed application procedure, when an applicant completes VS Form 1–36A, "Application for Veterinary Accreditation," the applicant would also certify that he or she is able to perform the following tasks listed in proposed § 161.2(d). After each task, we explain why the accredited veterinarian needs to be able to perform it.

1. Perform physical examination of individual animals, herds, or flocks to determine whether they are free from communicable diseases. One of the most frequent tasks of accredited veterinarians is to examine animals singly or in groups in order to sign certificates or other documents accurately describing their apparent state of health.

2. Recognize the common breeds of livestock so as to be able to record breed information on official documents. Needed to accurately record breed information on official documents, for identification and because some animal diseases afflict certain breeds more than other breeds.

3. Recognize brucellosis tattoos and calfhood vaccination tags, and determine the state of origin or eartags, to properly identify animals in interstate commerce. One of the primary means of enforcing the brucellosis program and other animal disease programs rests with accredited veterinarians checking these forms of official animal identification during examinations of animals in commerce.

4. Estimate the age of livestock using dental formula. Several APHIS programs restrict the movement of animals, particularly horses and cattle, if they are over or under a specified age and regulatory conditions have not been met. Accredited veterinarians may need to estimate the age of animals in situations where documentation of age is not available or may not be trustworthy.

5. Apply an eartag, tattoo, backtag, and legband. These identifications are used in many APHIS programs to show that animals have met specific requirements or are in a particular regulatory category. Accredited veterinarians are often responsible for applying these identifications.

6. Certify the diesease status of a poultry flock with regard to disease caused by Salmonella enteritidis, psittacosis or ornithosis, and velogenic viscerotropic Newcastle disease. Under some circumstances, poultry flocks may only ship birds after an accredited veterinarian has certified the flock is free from certain communicable avian diseases.

7. Properly complete certificates for domestic and international movement of animals. These documents are issued by accredited veterinarians and are used to enforce APHIS regulatory programs, and their accuracy is essential to the success of those programs.

8. Apply and remove official seals. These seals are used on means of conveyance or facilities to reveal whether articles prohibited movement due to a risk of animal disease are in fact moved.

9. Perform a necropsy on livestock. Necropsy is sometimes necessary to obtain, for official documents, information about an animal's disease status.

10. Recognize signs and lesions of exotic animal diseases. Preventing introduction of foreign animal diseases is a primary goal of APHIS programs. Since accredited veterinarians are likely to be the first to see evidence of introduced foreign diseases, it is important that they are able to recognize them.

11. *Plan a disease control strategy for a livestock unit.* Accredited veterinarians must be able to work with animal owners to develop plans to control communicable animal diseases that are discovered in the course of official business.

12. *Vaccinate for brucellosis and fill out the vaccination certificate.* Vaccinating animals and documenting the vaccination are critical parts of the APHIS brucellosis program, and these duties are often performed by accredited veterinarians.

13. *Draw and ship blood for testing.* The accredited veterinarian must perform this duty in connection with several APHIS programs, such as export certification of animals.

14. *Perform a caudal fold test for tuberculosis.* This test is a key part of the APHIS tuberculosis program, and is often performed by accredited veterinarians.

15. *Develop appropriate cleaning and disinfection plans to control communicable livestock disease spread.* To control disease spread, cleaning and disinfection of premises where certain communicable animal diseases are found should be done as soon as possible after that discovery. Because an accredited veterinarian is often the first person in authority to identify a disease, he or she should be able to plan the cleaning and disinfection required by the circumstances.

16. *Explain basic principles for control of diseases for which APHIS programs exist, such as brucellosis, pseudorabies, and tuberculosis.* Accredited veterinarians should be able to explain the methods they use and the requirements they enforce to control these diseases. This should prevent misunderstanding of APHIS programs and explain to persons whose actions are restricted by the regulations why the restrictions are necessary.

Proposed § 161.2(a) would require each applicant for accreditation to:

(1) Graduate with a Doctorate of Veterinary Medicine or equivalent degree (any degree that qualifies the holder to be licensed by a State to practice veterinary medicine) from a college of veterinary medicine, and

(2) Attend an orientation program approved by the Veterinarian-in-Charge for the State in which the veterinarian wishes to perform accredited duties.

Attendance at an orientation program would be required as part of the accreditation procedure to ensure sufficient and current knowledge of Federal animal health rules, objectives, and programs by the applicant. The orientation program would include the following topics, listed in proposed § 161.2(a)(4):

1. Federal animal health laws, regulations, and rules;
2. Interstate movement requirements for animals;
3. Import and export requirements for animals;
4. USDA animal disease eradication and control programs;
5. Loboratory support in confirming disease diagnoses;
6. Ethical/Professional responsibilities of an accredited veterinarian; and,
7. Animal health procedures, issues, and information resources relevant to the State in which the veterinarian wishes to perform accredited duties.

By requiring an applicant to certify that he or she can perform the specified tasks, and to complete an orientation in the above topics, APHIS could ensure that applicants for accreditation have been thoroughly instructed in these tasks and topics. We believe that this system is more reliable than a written test, which for practical reasons may assess only limited areas of the necessary skills, for the purpose of ensuring technical competence in accredited veterinarians.

We also propose to revise § 161.2(b), which deals with reaccreditation of veterinarians whose accreditation have been revoked. Formerly, one condition for reaccreditation was that the

applicant must furnish "adequate assurance that he or she will faithfully fulfill the duties of an accredited veterinarian in the future." Because experience has shown that it is difficult to determine what constitutes such "adequate assurance," we propose to revise this provision by dropping the term "adequate assurance" and by adding a new § 161.2(b)(4) requiring that in reaccreditation cases, the Administrator must determine that:

> The professional integrity and reputation of the applicant support a conclusion that the applicant will faithfully fulfill the duties of an accredited veterinarian in the future. In making this conclusion, the Administrator may consider:
>
> (i) Criminal conviction records adversely reflecting on the honesty or integrity of the applicant with regard to the performance or nonperformance of veterinary medical duties;
>
> (ii) Official records of the applicant's actions participating in Federal, State, or local veterinary programs;
>
> (iii) Judicial determinations in civil litigation adversely reflecting on the integrity of the applicant; and
>
> (iv) Any other evidence reflecting on the professional integrity and reputation of the applicant.

Veterinarians whose accreditation has been revoked and who are later reaccredited would also have to complete a reaccreditation orientation, covering topics deemed necessary by the Veterinarian-in-Charge based on the reasons the veterinarian lost accreditation and any changes to procedures for accredited work which have occurred since the veterinarian's accreditation status was revoked. The State Animal Health Official would be given an opportunity to review the content of reaccreditation orientation programs, because we believe these officials may have valuable suggestions on what topics relevant to their State should be included.

In the application processes for both accreditation and reaccreditation, we propose that the Veterinarian-in-Charge who receives tha application should give the State Animal Health Official for the State involved the opportunity to review the application and either endorse it or return it with an explanation of why it was not endorsed. One purpose of this endorsement is to have the State Animal Health Official indicate that the applicant is licensed to practice veterinary medicine in the involved State. This endorsement practice would also give State Animal Health Officials the opportunity to present any objections they may have to the accreditation or reaccreditation of applicants. However, the ultimate desision on accreditation or reaccreditation rests with the Administrator. To keep the process timely, a State Animal Health Official would have only 14 days to endorse an application or present objections to it; after that time, the Veterinarian-in-Charge would proceed with review of the application.

Moving from application procedures into the area of how accredited veterinarians perform their duties, we propose to permit an "authorized assistant" to control certain papers and materials that previously only the accredited veterinarian was able to control. An authorized assistant would be defined as "An individual who is an employee, agent, or business partner of an accredited veterinarian, who is authorized by the accredited veterinarian to perform specified duties or have access to specified materials associated with the performance of the accredited veterinarian's work, and who is named in a written delegation of authority signed by the accredited veterinarian and on file with the Veterinarian-in-Charge of each State in which the assistant is authorized to perform such duties."

In addition to adding this definition of "authorized assistant," we propose to add language to § 161.3 allowing delegations of authority to authorize such assistants to sign documents for the accredited veterinarian, using the format "signed for (name of accredited veterinarian) by (name of authorized assistant)." The delegation of authority would also specify duties the authorized assistant is authorized to perform and materials associated with the performance of the accredited veterinarian's work to which the authorized assistant is allowed access.

The authorized assistant would be authorized to sign for the accredited veterinarian in order to decrease the veterinarian's paperwork burden. The accredited veterinarian would be responsible for the accuracy and completeness of all tests or activities performed including the information on any certificate of form signed by the authorized assistant.

As discussed below under "Miscellaneous changes," we propose to add or modify several definitions in § 160.1. Definitions of two important terms, "inspect" and "examine," would be added. These definitions would read as follows.

> *Inspect, inspection.* Visual study of the physical appearance, physical condition, and behavior of animals (singly or in groups) that enables an accredited veterinarian to determine whether any abnormality in physical condition or bodily function is evident.

When animals are inspected, they are subjected to a lesser degree of scrutiny than during an examination, defined below. Inspection involves visual study to detect abnormalities that should be apparent to an accredited veterinarian. It is important to define this term because inspecting animals is a common duty of accredited veterinarians, and is mentioned throughout § 161.3, "Standards for accredited veterinarian duties." In addition, if an accredited veterinarian performs an inspection improperly, or issues a false or incorrect inspection certificate, he or she would be subject to suspension or revocation of accredited status, or civil and criminal prnalties, in accordance with proposed § 161.4.

> *Examine, examination.* Physical study of an animal that enables an accredited veterinarian to determine if any abnormality in physical condition or bodily function is the result of a communicable disease.

Examination is the study of an animal that exceeds the visual study performed during an inspection. Inspection should detect physical abnormalities; examination should determine whether the abnormalities are the result of a communicable disease. Applicants for accredited veterinarian status must certify their ability to perform examinations, in accordance with § 161.2(d). Examining animals is also a common duty of accredited veterinarians, required in § 161.3, and accredited veterinarians who perform examinations improperly would be subject to the penalties discussed above.

We propose several other changes to the standards for accredited veterinarian duties in § 161.3. We propose to delete all references to duties under 9 CFR subchapter A, which concerns the Animal Welfare Act (Pub. L. 89–544, as amended) and the Horse Protection Act (Pub. L. 91–540, as amended), APHIS is no longer employing accredited veterinarians to perform those duties.

We propose to revised § 161.3(a) to require that when issuing a certificate, form, record, or report regarding an animal, the accredited veterinarian must have personally observed the animal within 24 hours of the signing. The current language does not include the 24 hour limit, which we think is necessary to ensure that official documents reflect the current status of animals.

Current § 161.3(c) concerns situations where an accredited veterinarian signs documents reflecting the results of an inspection, test vaccination, or treatment performed by another accredited veterinarian. We propose to

add a requirement that when signing a document for another accredited veterinarian, the signing accredited veterinarian must exercise "reasonable care, that is, a standard of care that a reasonably prudent person would use under the circumstances in the course of performing professional duties, to determine that the certificate, form, or report is accurate."

We propose to change § 161.3(e), which concerns identification of reactor animals by accredited veterinarians, to drop the language that requires the accredited veterinarian to follow identification instructions issued by a State Animal Health Official. We believe that such instructions should be issued by the Veterinarian-in-Charge. We also propose to change this paragraph to allow the accredited veterinarian to either perform the identification of reactor animals or to supervise the identification, since either approach would ensure proper identification or reactor animals.

Current § 161.3(1) (proposed § 161.3(k)) deals with certificates issued by accredited veterinarians for export of animals. Normally such certificates include the results of any laboratory tests required to export the animal. Upon occasion, waiting for pending test results would delay the export schedule for the animal. To avoid this, the regulations allow the accredited veterinarian to issue the certificate without including the test results if a Veterinary Services veterinarian agrees to add the test results to the certificate at a later time. We propose that when such an arrangement is made, the accredited veterinarian must record on the certificate the name of the Veterinary Services veterinarian responsible for adding the test results to the certificate.

A new paragraph 161.4(d) is proposed to identify violations of the regulations that could cause a veterinarian to be subject to civil or criminal penalties, in addition to suspension or revocation of accreditation for violations of the standards for accredited veterinarians. These violations include knowingly issuing a false, incorrect, or mislabeled animal health or inspection certificate, blood sample, official brucellosis vaccination certificate, or official tuberculin or brucellosis test certificate. Pointing out the possibility of penalties should help deter veterinarians from committing these violations, which can damage the American livestock industry and endanger public health.

We also propose to revise Part 162—Rules of Practice Governing Revocation or Suspension of Veterinarians' Accreditation, to clarify the outcomes that could result from this process. The possible outcomes are:

(1) A letter to the accredited veterinarian dismissing the case after investigation shows that the accredited veterinarian did not violate the standards.

(2) A letter to the accredited veterinarian dismissing the case, but identifying actions of the accredited veterinarian that violate the standards, instructing the accredited veterinarian in proper procedures, and admonishing the accredited veterinarian to use greater care. We believe that such a letter could serve as a useful and appropriate warning for situations where an accredited veterinarian does not repeatedly violate the standards, but repeated administrative errors require more than warning letters. Therefore, we also propose to add language to § 161.12(d) stating that issuance of three or more letters of dismissal citing incidents of administrative errors by an accredited veterinarian may be cause for more severe action, i.e. suspension or revocation of accredited veterinarian status, or civil or criminal penalties where appropriate.

(3) A letter of warning identifying a significant breach of the standards that does not warrant suspension or revocation of accreditation.

(4) Suspension of accreditation; and

(5) Revocation of accreditation.

The Rules of Practice in part 162 allow alleged violations to be dealt with first on the level of an informal conference and then, if the outcome of this stage justifies it, a formal written complaint. The first two outcomes identified above—letters of dismissal—could be generated during or before the informal conference stage. The third possible outcome—a letter of warning—is generally issued at either the informal conference stage or the formal complaint process. The final two coutcomes—suspension or revocation—could occur only after a formal complaint is processed, unless the accredited veterinarian consents in writing to such an outcome.

With two exceptions, an informal conference is always held for accredited veterinarians who have been notified in accordance with § 162.11 that here is reason to believe that he or she has not complied with the standards for accredited veterinarians in § 161.3. The two exceptions occur if: The case is dismissed by the Veterinarian-in-Charge before the stage when an informal conference would be held; or, civil or criminal charges are pending against the accredited veterinarian for the same actions or inactions believed to be in violation of the standards for accredited veterinarians in § 161.3. In this latter instance, an informal conference would be redundant and inappropriate because proceedings would be in progress in accordance with the applicable rules of civil or criminal law. Holding an informal conference at the same time could interfere with the civil or criminal proceedings; therefore, no informal conference would be held until after the civil or criminal charges have been resolved.

We propose that an informal conference shall include the Veterinarian-in-Charge or his or her representative, the accredited veterinarian, and any other persons the Veterinarian-in-Charge requests to attend due to their involvement in or knowledge of the possible violation. The State Animal Health Official would be invited to attend each informal conference held regarding activities in his or her State. At the discretion of the Veterinarian-in-Charge, informal conferences may be held by telephone. We believe these standards for informal conferences would allow alleged violations that do not justify more formal proceeding to be settled efficiently and fairly.

We are proposing these changes to the Rules of Practice in part 162 because the current regulations do not provide for notification to the accredited veterinarian if the case is dismissed, and because the current regulations are unclear regarding the use of informal conferences and letters of warning.

Miscellaneous Charges

We also propose to add or modify definitions of "Accredited veterinarian," "Administrator," "Animal," "Animal and Plant Health Inspection Service," "Examine," "Inspect," "Official certificate, form, record, report, tag, band or other identification," "State animal health official," and "Veterinarian-in-Charge" to make the definitions consistent with their use in the regulations and to aid understanding of the regulations. We also propose to delete references throughout the regulations to duties no longer required of accredited veterinarians concerning the Animal Welfare Act and Horse Protection Act (9 CFR subchapter A), and to make other minor editorial changes to the chapter 9 CFR Subchapter A), and to make other minor editorial changes in the resegulations consistent with the changes described above.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order

12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed amendment, if adopted, would establish accreditation on a national rather than a State basis, and would also remove a test currently required for accredited veterinarians, require an orientation program for each accredited veterinarian, and specify standards for performance of certain services by accredited veterinarians.

There are currently approximately 45,000 accredited veterinarians practicing in the United States. Approximately 2,000 new accredited veterinarians, mostly recent graduates, are added to the system each year. The degree to which their income depends on performing accredited work varies greatly within this population, and we have little reliable information in this area. It appears that accredited veterinarians may be divided into three groups in terms of the income they derive from performing accredited work. A small minority of accredited veterinarians derive most of their income from accredited work. A large minority of accredited veterinarians derive only a small portion of their income from accredited work. The largest group in the accredited veterinarian population derives a significant but not major portion of their income from accredited work. (Another minor group, irrelevant to economic considerations under the proposed rule, is accredited but receives no income from performing accredited work.)

The proposed changes should not significantly affect the number of accredited veterinarians, the expenses they accrue to become accredited, or the income they derive from performing accredited work. The changes essentially affect application procedures without imposing any significant new application costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings are required before the suspension or revocation of a veterinarian's accreditation can be challenged in court.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, part 3015, subpart V).

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Parts 160, 161, and 162

Administrative practice and procedures, Veterinarians.

Accordingly, we propose to revise subchapter I of 9 CFR chapter 1 to read as follows:

SUBCHAPTER I—ACCREDITATION OF VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

Parts

160 Definition of terms
161 Requirements and standards for accredited veterinarians and suspension or revocation of such accreditation
162 Rules of practice governing revocation or suspension of veterinarians' accreditation

SUBCHAPTER I—ACCREDITATION OF VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

PART 160—DEFINITION OF TERMS

§ 160.1 Definitions.

For the purposes of this subchapter the following words, phrases, names and terms shall be construed, respectively, to mean:

Accredited Veterinarian.[1] A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this subchapter to perform functions specified in subchapters B,C, and D of this chapter.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Adminsitrator.

Animal, animals. All animals except human, including but not limited to cattle, sheep, goats, other ruminants, swine, horses, asses, mules, zebras, dogs, birds, and poultry.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

APHIS. The animal and Plant Health Inspection Service.

Authorized assistant. An individual who is an employee, agent, or business partner of an accredited veterinarian, who is authorized by the accredited veterinarian to perform specified duties or have access to specified materials assocated with the performance of the accredited veterinarian's work, and who is named in a written delegation of authority signed by the accredited veterinarian and on file with the Veterinarian-in-Charge of each State in which the assistant is authorized to perform such duties.

Examine, examination. Physical study of an animal that enable an accredited veterinarian to determine if any abnormality in physical condition or bodily function is the result of a communicable disease.

Inspect, inspection. Visual study of the physical appearance, physical condition, and behavior of animals (singly or in groups) that enables an accredited veterinarian to determine whether any abnormality in physical condition or bodily function is evident.

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[1] The provisions of subchapters B, C, and D of this chapter authorize Federal and State veterinarians and accredited veterinarians to perform specified functions. Full-time Federal (including military) and State employed veterinarians are authorized to perform such functions, pursuant to delegation of authority by the Administrator or cooperative agreements without specific accreditation under the provisions of this subchapter.

Official certificate, form, record, report, tag, band, or other identification. Means any certificate, form, record, report, tag, band, or other identification, prescribed by statute or by regulations issued by the Administrator, for use by an accredited veterinarian performing official functions under this subchapter.

State. Any State, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands of the United States, and any other territory or possession of the United States.

State Animal Health Official. The State animal health official who is responsible for the livestock and poultry disease control and eradication programs of a State.

Veterinarian-in-Charge. The verterinary official of APHIS who is assigned by the Administrator to supervise and perform the official work of APHIS is a State or group of States.

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCCREDITATION

Sec.

161.1 Statement of purpose; performance of accredited duties in different States.
161.2 Requirements and application procedures for accreditation.
161.3 Standards for acccredited veterinarian duties.
161.4 Suspension or revocation of veterinary accreditation; criminal and civil penalties.

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

§ 161.1 Statement of purpose; performance of accredited duties in different States.

(a) This subchapter concerns a program administered by APHIS to accredit veterinarians and thereby authorize them to perform, on behalf of APHIS, certain activities specified in this chapter. This program is intended to ensure that an adequate number of qualified veterinarians are available in the United States to perform such activities.

(b) If an accredited veterinarian wishes to perform accredited duties in a State other than the State for which the verterinarian has competed an orientation in accordance with § 161.2(a)(4), the accredited veterianarian shall so inform the Veterinarian-in-Charge of the new State. The Veterinarian-in-Charge of the new State may require the accredited veterinarian to complete, prior to performing any accredited duties in the new State, an orientation in animal health procedures and issues relevant to the new State. The Veterianarian-in-Charge shall review the content of each such orientation and shall approve its use after determining that it includes adequate information about animal health agencies, regulatory requirements, administrative procedures, and animal disease problems in the new State, to prepare an accredited veterinarian from another State to perform accredited duties in the new State. The Veterinarian-in-Charge shall also give the State Animal Health Official of the new State an opportunity to review the contents of the orientation.

§ 161.2 Requirements and application procedures for accreditating

(a) *Initial Accreditation.* A veterinarian may apply for accreditation by completing an application for accreditation on Form 1–36A, "Application for Veterinary Accreditation," including certification that the applicant is able to perform the tasks listed in paragraph (d) of this section, and submitting it to a Veterinarian-in-Charge.

(1) Completed Forms 1–36A received by a Veterianarin-in-Charge shall be reviewed by the State Animal Health Official [1] for the State in which the veterinarian wishes to perform accredited duties. Wihin 14 days after receiving an application, a State Animal Health Official shall either endorse the application or send a written statement to the Adminisrator explaining why it was not endorsed; but if the State Animal Health Official fails to take one of these actions within 14 days, the Veterinarian-in-Charge shall proceed to review the application. The Administrator will review the application and the written statement, if any, and determine whether the applicant meets the requirements for accreditation contained in this part.

(2) The Administrator is hereby authorized to accredit a veterinarian when he or she determines that:

(i) The veterinarian is a graduate with a Doctorate of Veterinary Medicine or an equivalent degree (any degree that qualifies the holder to be licensed by a State to practice veterinary medicine) from a college of veterinary medicine;

(ii) The veterinarian is licensed to practice veterinary medicine in the State in which the veterinarian wishes to perform accredited duties; and,

(iii) The veterinarian has completed an orientation program approved by the Veterinarian-in-Charge [2] for the State in which the veterinarian wishes to practice, and upon completion of the orientation, has signed a written statement listing the data and place or orientation, the subjects covered in the orientation, and any written materials provided to the veterinarian at the orientation. The orientation program shall include the following topics.

(A) Federal animal health laws, regulations, and rules;

(B) Interstate movement requirements for animals;

(C) Import and export requirements for animals.

(D) USDA animal disease eradication and control programs;

(E) Laboratory support in conforming disease diagnoses;

(F) Ethical/Professional responsibilities of an accredited veterinarian; and,

(G) Animal health procedures, issues, and information resources relevant to the State in which the veterinarian wishes to perform accredited duties.

(b) *Reaccreditation.* A veterinarian whose accreditation has been revoked may apply for reaccreditation when the revocation has been in effect for not less than two years by completing an application for reaccreditation on Form 1–36A, "Application for Veterinary Accreditation", and submitting it to the Veterinarian-in-Charge of the State or area where he or she wishes to perform accredited work.

(1) Completed Forms 1–36A received by a Veterinarian-in-Charge shall be reviewed by the State Animal Health Official [3] for the State in which the veterinarian wishes to perform accredited duties. Within 14 days after receiving an application, a State Animal Health Official shall either endorse the application or send a written statement to the Administrator explaining why it was not endorsed; but if the State Animal Health Official fails to take one of these actions within 14 days, the Veterinarian-in-Charge shall proceed to review the application. The Administrator will review the

[1] Endorsement by the State Animal Health Official shall also indicate that the applicant is licensed to practice veterinary medicine in the State for which the State Animal Health Official is responsible.

[2] The State Animal Health Official shall be given an opportunity to review the content of orientation programs.

[3] Endorsement by the State Animal Health Official shall also indicate that the applicant is licensed to practice veterinary medicine in the State for which the State Animal Health Official is responsible.

application and the written statement, if any, and determine whether the applicant meets the requirements for reaccreditation contained in this part.

(2) The Administrator is hereby authorized to reaccredit a veterinarian when he or she determines that:

(i) The veterinarian is licensed to practice veterinary medicine in the State in which the veterinarian wishes to perform accredited duties;

(ii) The veterinarian has completed a reaccreditation orientation program approved by the Veterinarian-in-Charge for the State in which the veterinarian wishes to practice, and upon completion of the orientation, has signed a written statement listing the date and place of orientation, the subjects covered in the orientation, and any written materials provided to the veterinarian at the orientation. The orientation program shall include topics addressing the subject areas which led to loss of accreditation for the applicant, and subject areas which have changed since the applicant lost accreditation; [4] and,

(iii) The professional integrity and reputation of the applicant support a conclusion that the applicant will faithfully fulfill the duties of an accredited veterinarian in the future. In making this conclusion, the Administrator shall consider:

(A) Criminal conviction records adversely reflecting on the honesty or integrity of the applicant with regard to the performance or nonperformance of veterinary medical duties;

(B) Official records of the applicant's actions participating in Federal, State, or local veterinary programs;

(C) Judicial determinations in civil litigation adversely reflecting on the integrity of the applicant; and

(D) Any other evidence reflecting on the professional integrity and reputation of the applicant.

(c) *Reinstatement after suspension.* A veterinarian whose accreditation has been suspended (other than a summary suspension that is changed to a revocation as the result of an adjudicatory proceeding) will be automatically reinstated as an accredited veterinarian upon completion of the suspension.

(d) *Tasks which applicants for accredited status must be able to perform.* Applicants for accredited status must be able to:

(1) Perform physical examinations of individual animals, herds, or flocks to determine whether they are free from communicable diseases;

(2) Recognize the common breeds of livestock so as to be able to record breed information on official documents;

(3) Recognize brucellosis tattoos and calfhood vaccination tags, and determine the State of origin of eartags, to properly identify animals in interstate commerce;

(4) Estimate the age of livestock using dental formula;

(5) Apply an eartag, tattoo, backtag, and legband;

(6) Certify the disease status of a poultry flock with regard to disease caused by Salmonella enteritidis, psittacosis, and velogenic viscerotropic Newcastle disease;

(7) Properly complete certificates for domestic and international movement of animals;

(8) Apply and remove official seals;

(9) Perform a necropsy on livestock;

(10) Recognize signs and lesions of exotic animal diseases;

(11) Plan a disease control strategy for a livestock unit;

(12) Vaccinate for brucellosis and fill out the vaccination certificate;

(13) Draw and ship blood for testing;

(14) Perform a caudal fold test for tuberculosis;

(15) Develop appropriate cleaning and disinfection plans to control communicable livestock disease spread; and

(16) Explain basic principles for control of diseases for which APHIS programs exist, such as brucellosis, pseudorabies, and tuberculosis.

(Approved by the Office of Management and Budget under control number 0579–0032)

§ 161.3 Standards for accredited veterinarian duties.

An accredited veterinarian shall perform the functions of accredited veterinarian only in a State in which the accredited veterinarian is licensed. An authorized assistant may be authorized to perform specified duties or have access to specified materials associated with the performance of an accredited veterinarian's work, if the authorized assistant is named in a written delegation of authority signed by the accredited veterinarian and on file with the Veterinarian-in-Charge. The delegation of authority shall also specify duties the authorized assistant is authorized to perform and materials associated with the performance of the accredited veterinarian's work to which the authorized assistant is allowed access. The delegation of authority may also authorize an authorized assistant to sign documents for the accredited veterinarian, using the format "signed for (name of accredited veterinarian) by (name of authorized assistant)." The accredited veterinarian will be responsible for the accuracy and completeness of all tests of activities performed by their authorized assistant, including the accuracy and completeness of the information on any official certificate, form, record or report signed by the authorized assistant. An accredited veterinarian shall perform the functions of an accredited veterinarian and carry out all responsiblities under the applicable Federal programs and cooperative programs subject to direction provided by the Veterinarian-in-Charge and in accordance with any regulations and instructions issued to the accredited veterinarian by the Veterinarian-in-Charge, and shall observe the following specific standards:

(a) An accredited veterinarian shall not issue or sign a certificate, form, record or report which reflects the result of any inspection, test, vaccination or treatment performed by him or her, with respect to any animal, unless he or she, within 24 hours prior to such signing, has personally observed each animal in a location that allows the accredited veterinarian sufficient space to observe the animal in such a manner as to detect abnormalities related to areas such as, but not limited to, locomotion, body excretion, respiration, and skin conditions. An accredited veterinarian shall examine each animal showing abnormalities, in order to determine whether or not there is visible evidence of the presence or absence of a communicable disease.

(b) An accredited veterinarian shall not issue or sign any certificate, form, record or report to be used until, and unless, it has been accurately and fully completed, clearly identifying the animals to which it applies, and showing the dates and results of any inspection, test, or vaccination the accredited veterinarian has conducted, except as provided in paragraph (c) of this section. The accredited veterinarian shall distribute copies of certificates, forms, records and reports, according to instructions issued to instruction issued to him or her by the Veterinarian-in-Charge.

(c) An accredited veterinarian shall not issue or sign any certificate, form, record or report which reflects the results of any inspection, test, vaccination, or treatment, performed by another accredited veterinarian, unless:

(1) The signing accredited veterinarian has exercised reasonable care, that is, a standard of care that a reasonable prudent person would use under the

[4] The State Animal Health Official shall be given an opportunity to review the content of reaccreditation orientation programs.

circumstances in the course of performing professional duties, to determine that the certificate, form, or report is accurate;

(2) The certificate, form or report indicates that the inspection, test, vaccination, or treatment was performed by the other accredited veterinarian; identifies the other veterinarian by name; and includes the date and the place where such inspection, test, or vaccination was performed; and,

(3) For a certificate, form, or report indicating results of a laboratory test, the signing accredited veterinarian shall keep a copy of the certificate, form, or report and shall attached to it either a copy of the test results issued by the laboratory, or a written record (including date and participant's names) of a conversation between the signing accredited veterinarian and the laboratory confirming the test results.

(d) An accredited veterinarian shall perform official tests, inspections, treatments, and vaccinations and shall submit specimens to designated laboratories in accordance with Federal and State regulations and instructions issued to the accredited veterinarian by the Veterinarian-in-Charge.

(e) An accredited veterinarian shall identify or supervise the identification of reactor animals by tagging or such other method as may be prescribed in instructions issued to him or her by the Veterinarian-in-Charge.

(f) An accredited veterinarian shall immediately report to the Veterinarian-in-Charge all diagnosed or suspected cases of a communicable animal disease for which APHIS has a control or eradication program in 9 CFR chapter I, and all diagnosed or suspected cases of any animal disease not known to exist in the United States as provided by § 71.3(b) of this chapter.

(g) While performing accredited work, an accredited veterinarian shall take such measures of sanitation as are necessary to prevent the spread of communicable diseases of animals by the accredited veterinarian.

(h) An accredited veterinarian shall keep himself or herself currently informed on Federal and State regulations that are provided to him or her by the Veterinarian-in-Charge, or by the State official through the Veterinarian-in-Charge, governing the movement of animals, and on procedures applicable to disease control and eradication programs, including emergency programs.

(i) An accredited veterinarian shall not use or dispense in any manner, any pharmaceutical, chemical, vaccine or serum, or other biological product authorized for use under any Federal regulation or cooperative disease eradication program, in contravention of any Federal and State statute or regulation, or instruction issued to the accredited veterinarian by the Veterinarian-in-Charge.

(j) An accredited veterinarian shall be responsible for the security and proper use of all official certificates, forms, records, reports, tags, bands, or other identification devices used in his or her work as an accredited veterinarian and shall take reasonable care to prevent misuse thereof. An accredited veterinarian shall immediately report to the Veterinarian-in-Charge, the loss, theft, or deliberate an accidental misuse of any such certificate, form, record, report, tag, band, or other identification devices.

(k) An accredited veterinarian may issue or sign an original health certificate for export use pursuant to part 91 of this Chapter without including tests results from a laboratory, if a Veterinary Services veterinarian has determined that action is necessary to save time in order to meet an exportation schedule and agrees to add the tests to the certificate at a later time. In such cases, the accredited veterinarian shall state on the certificate that such test results are to be added by the Veterinary Services veterinarian and shall state on the certificate the name of the Veterinary Services veterinarian.

§ 161.4 Suspension or revocation of veterinary accreditation; criminal and civil penalties.

(a) The Administrator is authorized to suspend for a given period of time, or to revoke, the accreditation of a veterinarian when he or she determines that the accredited veterinarian has not complied with the "Standards for Accredited Veterinarians" as set forth in § 161.3, or, in lieu thereof, to issue a written notice of warning to the accredited veterinarian when the Administrator determines a notice of warning will be adequate to attain compliance with the Standards.

(b) Accreditation shall be automatically terminated when an accredited veterinarian is not licensed to practice veterinary medicine in at least one State.

(c) Accreditation shall be automatically revoked when an accredited veterinarian is convicted for a crime in either State or Federal court, if such conviction is based on the performance or nonperformance of any act required of him or her in his capacity as an accredited veterinarian.

(d) Any accredited veterinarian who knowingly issues or signs a false, incorrect, or mislabeled animal health or inspection certificate, blood sample, official brucellosis vaccination certificate, or official tuberculin test certificate in accordance with this chapter, shall be subject to such civil penalties and such criminal liabilities as are provided by 18 U.S.C.1001, 21 U.S.C 117, 122, 127, and 134e, or other applicable Federal statutes. Such action may be in addition to, or in lieu of, suspension or revocation of accredited veterinarian status in accordance with § 161.4 of this chapter.

PART 162—RULES OF PRACTICE GOVERNING REVOCATION OR SUSPENSION OF VETERINARIANS' ACCREDITATION

Subpart A—General

Sec.

162.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

162.10 Summary suspension of accreditation of veterinarian.
162.11 Notification.
162.12 Informal conference.
162.13 Formal complaint.

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—General

§ 162.1 Scope and applicability of rules of practice.

The Uniform Rules of Practice for the Department of Agriculture promulgated in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicatory, administrative proceedings for the revocation or suspension of accreditation of veterinarians (9 CFR parts 160 and 161). In addition, the Supplemental Rules of Practice set forth in Subpart B of this part shall be applicable to such proceedings.

Subpart B—Supplemental Rules of Practice

§ 162.10 Summary suspension of accreditation of veterinarians.

In any situation where the Administrator has reason to believe that any veterinarian accredited under the provisions of 9 CFR parts 160 and 161 has not complied with the "Standards for Accredited Veterinarians" set forth in § 161.3 of this chapter, and deems such action necessary in order to prevent the introduction into the United States or the spread from one State to another of a contagious, infectious, or communicable disease of animals, or to

insure that animals intended or offered for export to foreign countries are free from disease, the Administrator may suspend the accreditation of such veterinarian pending final determination in the proceeding, effective upon oral or written notification, whichever is earlier. In the event of oral notification, a written confirmation thereof shall be given to such veterinarian pursuant to § 1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(b)) as promptly as circumstances permit. Such suspension shall have no relevance with respect to the final determination in the proceeding.

§ 162.11 Notification.

The Veterinarian-in-Charge shall notify an accredited veterinarian when there is reason to believe that the accredited veterinarian has not complied with the "Standards for Accredited Veterinarians" as contained in § 161.3 of this chapter. The notification shall be in writing, with a copy to the State Animal Health Official, and shall include a statement of the basis for the belief that the accredited veterinarian has failed to comply with the standards and shall notify the accredited veterinarian if the Veterinarian-in-Charge has arranged to hold an informal conference to discuss the matter.

§ 162.12 Informal conference.

(a) The Veterinarian-in-Charge, in consultation with the State Animal Health Official and the accredited veterinarian, shall designate the time and place for the holding of an informal conference to review the matter, unless the Veterinarian-in-Charge determines that an informal conference is not appropriate. An informal conference is not appropriate only in the Veterinarian-in-Charge decides to dismiss the case based on available facts, or if civil or criminal charges based on the actions or inactions believed to be in violation of the "Standards for Accredited Veterinarians" contained in § 161.3 of this chapter are pending against the accredited veterinarian. An informal conference shall include the Veterinarian-in-Charge or his or her representative, the accredited veterinarian, and any other persons the Veterinarian-in-Charge requests to attend due to their involvement in or knowledge of the possible violation. The State Animal Health Official will be invited to attend each informal conference held regarding activities in his or her State. At the discretion of the Veterinarian-in-Charge, informal conferences may be held by telephone.

(b) Prior to, during, or at the conclusion of the informal conference, the Veterinarian-in-Charge may issue a written warning to the accredited veterinarian without further procedure after determining that a warning with appropriate instructions will be adequate to attain compliance with the standards.

(c) If prior to, during, or at the conclusion of, the informal conference, the accredited veterinarian consents, in writing, to the issuance of an order revoking or suspending his or her accreditation for a specified period of time, in lieu of further procedure, the Veterinarian-in-Charge may issue such a consent order without further procedure.

(d) If prior to, during, or after the informal conference, but prior to the issuance of a formal compliant, the accredited veterinarian is found not to have violated the regulations, the Veterinarian-in-Charge will issue a letter dismissing the case, and provide a copy of the letter to the accredited veterinarian and to the State Animal Health Official. Prior to, during, or after the informal conference, the Veterinarian-in-Charge may issue a letter identifying actions of the accredited veterinarian that were minor violations of the standards, instructing the accredited veterinarian in proper procedures, and admonishing the accredited veterinarian to use greater care in performing these procedures in the future. Issuance of three or more letters of dismissal citing incidents of minor violations by an accredited veterinarian may be cause for more severe action under this section and § 161.4.

§ 162.13 Formal complaint.

If a consent order has not been issued, or if, after an informal conference, the Veterinarian-in-Charge has not issued a letter of dismissal or letter of warning to the accredited veterinarian, a formal complaint may be issued by the Administrator in accordance with § 1.135 of the Uniform Rules of Practice (7 CFR 1.135).

Done in Washington, DC, this 1st day of June, 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–13068 Filed 6–3–92; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 100

Revision of Appendix A

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff will meet with the staff of the Nuclear Management and Resources Council (NUMARC) and other industry representatives to discuss the revision of Appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," to 10 CFR part 100.

DATES: June 17, 1992, 1 p.m.

ADDRESSES: 11555 Rockville Pike, Room: 1F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Chief, Structural and Seismic Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3860.

SUPPLEMENTARY INFORMATION: Appendix A to 10 CFR part 100 describes the seismic and geologic siting and earthquake engineering criteria for nuclear power plants. Because of the advances in the state-of-the-art since the publication of the regulation (effective December 13, 1973), a need for the revision has been established. Staff progress in the revision of appendix A to 10 CFR part 100 has been discussed in public meetings with NUMARC and other industry representatives on February 4, 1992 and April 23, 1992, the Advisory Committee on Reactor Safeguards, Subcommittee on Extreme External Phenomena on February 5, 1992 and the Advisory Committee on Reactor Safeguards, Full Committee on February 7, 1992.

The purpose of this meeting is to meet with NUMARC and other industry representatives to discuss industry recommended alternatives to the draft proposed revision of appendix A to 10 CFR part 100 that was placed in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC (Memorandum from Lawrence C. Shao to Raymond F. Fraley, dated January 21, 1992, Subject: Revision of appendix A to 10 CFR part 100—Geological and Seismological Siting Criteria for Nuclear Power Plants). No specific agenda is being proposed.

Dated at Rockville, Maryland, this 28 day of May, 1992, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92-13062 Filed 6-3-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-85-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires visual inspections of the internal and external splines of the trailing edge flap drive torque tube coupling assembly for excessive wear, and replacement of the coupling, if necessary. That action was prompted by reports of excessive wear on the aft end of the trailing edge flap drive torque tube coupling. This action would add an optional modification that, if installed, would constitute terminating action for the existing inspection requirements. The actions specified by the proposed AD are intended to prevent damage caused by skewed flaps resulting from excessive wear of the splines of the trailing edge flap drive torque tube coupling.

DATES: Comments must be received by July 13, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-85-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Sumner, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2778; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-85-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-85-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On April 4, 1990, the FAA issued AD 90-08-16, Amendment 39-6574 (55 FR 13755, April 12, 1990), to require visual inspections of the internal and external splines of the trailing edge flap drive torque tube coupling assembly for excessive wear, and replacement of the coupling, if necessary. That action was prompted by reports of excessive wear on the aft end of the trailing edge flap drive torque tube coupling. The requirements of that AD are intended to prevent damage caused by skewed flaps resulting from excessive wear of the splines of the trailing edge flap drive torque tube coupling.

Since the issuance of that AD, the manufacturer has developed a modification that, once installed, would eliminate the need for the inspection requirements of the existing rule.

The FAA has reviewed and approved Boeing Service Bulletin 757-27-0099, dated March 12, 1992, that describes procedures for removing two of the currently installed torque tube assemblies for the trailing edge flaps and replacing them with improved torque tube assemblies part number 251N4281-20 (one on each wing). The service bulletin also describes procedures for installing a sealant plug in the shafts of the four gear boxes. Installation of the improved torque tube assembly and sealant plug eliminates the need for repetitive inspections of the assemblies. The effectivity listing of the service bulletin is limited to certain airplanes having specific line numbers; airplanes not included in this listing were modified in production to include the improved torque tube assemblies and sealant plugs.

The FAA has also reviewed and approved Boeing Service Letter 757-SL-27-52-B, dated April 30, 1990, which describes procedures for visual inspection of the trailing edge flap drive torque tube coupling for excessive wear, and replacement of the coupling, if necessary. This revision contains essentially the identical information as contained in Revision A of this service letter (cited incorrectly as Revision 1 in the superseded rule), but includes new information about AD 90-08-16.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90-08-16 to continue the requirement for inspections of the torque tube coupling assembly, but would add an optional modification (consisting of the installation of improved torque tube assemblies and sealant plugs) that, if installed, would constitute terminating action for the inspections. The optional terminating action would be required to be accomplished in accordance with the Boeing service bulletin described previously.

The applicability of the proposed rule has been revised to exclude those airplanes on which the terminating modification was previously installed during production.

The new revision of the Boeing service letter, described above, is cited in paragraph (a) of this proposal as an

additional source of appropriate service information.

There are approximately 431 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 279 airplanes of U.S. registry would be affected by this proposed AD. The (currently required) inspections necessitate 1.5 work hours to accomplish, at an average labor rate is $55 per work hour. Based on these figures the total cost impact of the currently required inspections on U.S. operators is $23,018.

Should an operator elect to install the optional terminating modification, it would take approximately 9 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Modification parts would cost approximately $1,486 per airplane. Based on these figures, the total cost associated with installation of the proposed optional terminating modification is estimated to be $1,981 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6574 (55 FR 13755, April 12, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92–NM–85–AD. Supersedes AD 90–08–16, Amendment 39–6574.

Applicability: Model 757 series airplanes; line numbers 1 through 411, inclusive, and 413 through 432, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage caused by skewed flaps resulting from excessive wear of the splines of the trailing edge flap drive torque tube coupling, accomplish the following:

(a) Prior to the accumulation of 2,000 flight cycles, or within the next 200 flight cycles after April 30, 1990, (the effective date of AD 90–08–16), whichever occurs later, and thereafter at intervals not to exceed 2,000 flight cycles, perform an inspection of the torque tube coupling splines, in accordance with Boeing Service Letter 757–SL–27–52, dated January 31, 1990; or Boeing Service Letter 757–SL–27–52–A (Revision 1), dated March 21, 1990; or Boeing Service Letter 757–SL–27–52–B, dated April 30, 1990.

(1) If the measurement over the pin, as detailed in the service letter, is less than 1.8605 inches but equal to or greater than 1.8533 inches, repeat the inspection prior to the accumulation of 1,000 additional flight cycles.

(2) If the measurement over the pin, as detailed in the service letter, is less than 1.8533 inches, replace the coupling prior to further flight, in accordance with the service letters.

(b) Replacement of the torque tube assemblies edge flaps with improved torque tube assemblies, part number 251N4281–20 (one on each wing), and installation of a sealant plug in the shafts of the four gearboxes, in accordance with Boeing Service Bulletin 757–27–0099, dated March 12, 1992, constitutes terminating action for the inspections required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 12, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13046 Filed 6–3–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–64–AD]

Airworthiness Directives; British Aerospace Model BAe 125–600A, –700A, and –800A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 125–600A, –700A, and –800A series airplanes. This proposal would require modification of the cabin and toilet fluorescent lighting systems. This proposal is prompted by a report that faults in certain cabin and toilet fluorescent lighting systems could cause overheating of components and wiring. The actions specified by the proposed AD are intended to prevent electrical arcing, which can result in a fire.

DATES: Comments must be received by June 29, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–64–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton,

Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–64–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–64–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion: The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 125–600A, –700A, and –800A series airplanes. The CAA advises that there has been a report that faults in certain cabin and toilet fluorescent lighting systems could cause overheating of components and wiring. This condition, if not corrected, could result in electrical arcing, which can result in a fire.

British Aerospace has issued Service Bulletin 33–45–25AO27A&B, dated December 23, 1991, which describes procedures for modification of the cabin and toilet fluorescent lighting systems. This modification consists of replacing the original power units with power units having integral fault monitoring circuits. Installation of this modification will provide protection against faults that could cause overheating of components and wiring. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the cabin and toilet fluorescent lighting systems. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $3,600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $47,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–64–AD.

Applicability: Model 125–600A, –700A, and –800A series airplanes; as listed in British Aerospace Service Bulletin 33–45–25A027A&B, dated December 23, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing and a resultant fire, accomplish the following:

(a) Within 180 days after the effective date of this AD, modify the cabin and toilet fluorescent lighting systems, in accordance with British Aerospace Service Bulletin 33–45–25A027A&B, dated December 23, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 28, 1992.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13048 Filed 6–3–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92-NM-71-AD]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F-28 Mark 0100 series airplanes. This proposal would require reinforcing the lower right-hand wing skin at the fueling adapter. This proposal is prompted by results of recent tests, which revealed that fatigue cracks can develop in the lower right-hand wing skin at the attachment bolt holes of the fueling adapter. The actions specified by the proposed AD are intended to prevent reduced structural capability of the wing and fuel leakage.

DATES: Comments must be received by July 7, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-11-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-71-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-71-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F-28 Mark 0100 series airplanes. The RLD advises that results of recent tests conducted by the airplane manufacturer have revealed that fatigue cracks can develop in the lower right-hand wing skin at the attachment bolt holes of the fueling adapter. Fatigue cracks in this area, if not detected and corrected, could lead to reduced structural capability of the wing and fuel leakage.

Fokker has issued Service Bulletin SBF100-57-008, dated November 1, 1991, which describes procedures for reinforcing the lower right-hand wing skin at the fueling adapter by installing a new stringer and new internal and external doubler plates. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 91-131 in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require reinforcing the lower right-hand wing skin at the fueling adapter. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $880 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $39,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 92–NM–71–AD.

Applicability: Model F–28 Mark 0100 series airplanes; serial numbers 11244 through 11287 inclusive, 11289, 11291, 11292, 11293, 11295, 11299, 11300, 11303, 11306, 11308, and 11310; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the wing and fuel leakage, accomplish the following:

(a) Prior to the accumulation of 12,000 landings, or within 60 days after the effective date of this AD, whichever occurs later, reinforce the lower right-hand wing skin at the fueling adapter by installing a new stringer and new internal and external doubler plates, in accordance with Fokker Service Bulletin SBF100–57–008, dated November 1, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13047 Filed 6–3–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–222–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 and KC–10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10 and KC–10A (military) series airplanes, that would have reduced the repetitive inspection intervals for repaired spar caps and upper rear skin panels, and would have expanded the inspection area. That proposal was prompted by service experience and additional data presented by the manufacturer that indicated that such actions are necessary to ensure the continued airworthiness of these airplanes. This action revises the proposed rule by reducing the compliance time for the initial inspection of the expanded area, and by providing an alternative method of inspection. The actions specified by this proposed AD are intended to prevent loss of the fail-safe capability of the horizontal stabilizer.

DATES: Comments must be received by July 6, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–222–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–121L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–222–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–222–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10 and KC–10A (Military) series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 8, 1992 (57 FR 656). That NPRM would have superseded AD 87–06–53 R2, Amendment 39–6149 (54 FR 8527, March 1, 1989), to reduce the repetitive inspection interval for cracked spar caps from 2,000 landings to 500 landings, and would have required an 80-flight hour inspection interval for stop-drilled cracks in the skin panels. That NPRM was prompted by reports indicating that fatigue cracks that were previously blended out in the barrel nut holes of the spar cap have cracked beyond the established limits. The cracking occurred prior to the 2,000-landing inspection interval required by the existing AD. The manufacturer has furnished data to substantiate that the stop-drilling of cracks that are within specified limits on the skin panels is an acceptable procedure for addressing this cracking problem, provided that the area

is repetitively inspected at reduced inspection intervals.

The proposed rule also would have required an initial inspection of the inboard-most end of the horizontal stabilizer rear upper spar cap vertical tang, in accordance with the "bolt hole" method, stress coining of the vertical tang attachment holes, and repetitive inspections of the vertical tang in accordance with the "surface probe" method at intervals not to exceed 3,500 landings. That action was prompted by reports of four instances of fatigue cracking found in the inboard-most end of the horizontal stabilizer rear spar upper cap vertical tang. Such cracking, if not corrected, could result in the loss of the fail-safe capability of the horizontal stabilizer.

Since the issuance of that NPRM, the FAA has determined (based on comments received from operators and additional technical discussions with the manufacturer) that the option to use the "surface probe" method for the initial eddy current inspection of the vertical tang, as an alternative to the "bolt hole" inspection method, provides an acceptable level of safety. Conducting the eddy current inspection of the vertical tang using the "bolt hole" inspection method takes significantly more work hours than the "surface probe" inspection method. This is due to the complexity of gaining access to the interior of the horizontal stabilizer that is required in order to conduct the inspection using the "bolt hole" inspection method. Both the "surface probe" and the "bolt hole" inspection methods are described in McDonnell Douglas Service Bulletin A55-18, Revision 4, dated September 10, 1991. The proposal has been revised to provide an option to use the "surface probe" inspection method for the initial inspection of the vertical tang.

The FAA has also determined that in order to ensure the structural integrity of the horizontal stabilizer rear upper spar cap, the initial eddy current inspection of the vertical tang must be expedited. A 90-day compliance time for the initial eddy current inspection has been established and paragraph (e) of the proposal has been changed accordingly. This proposed compliance time was established in order to determine the status of the vertical tang on all affected airplanes within the same set time frame. Since the option to use the "surface probe" method for the initial inspection has been added, the 90-day compliance time should provide enough time for operators to schedule the required inspections and modifications, while providing an acceptable level of safety.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 423 Model DC-10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 153 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 25 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $210,375 or $1,375 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 91-NM-222-AD.

Applicability: Model DC-10 and KC-10A (military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the horizontal stabilizer rear upper spar cap and/or upper rear skin panel due to fatigue cracking, accomplish the following:

(a) Prior to the accumulation of 30,000 flight hours or 7,500 landings, whichever occurs earlier, or within 15 days after August 14, 1987 (the effective date of AD 87-06-53 R1, Amendment 39-5894), whichever occurs later, unless already accomplished within the last 120 days since August 14, 1987, conduct a dye penetrant or eddy current inspection of the horizontal stabilizer upper outer section rear spar cap and a visual inspection of the horizontal stabilizer upper outer rear skin panel, in accordance with the "Accomplishment Instructions" of McDonnell Douglas Alert Service Bulletin A55-18, dated March 23, 1987; or Revision 1, dated May 21, 1987; or Revision 2, dated February 8, 1988; or Revision 3, dated August 17, 1990; or Revision 4, dated September 10, 1991.

(b) Prior to the accumulation of 2,000 landings after accomplishing the inspections required by paragraph (a) of this AD, or within 100 landings after March 27, 1989 (the effective date of AD 87-06-53 R2, Amendment 39-6149), whichever occurs later, and thereafter at intervals not to exceed 2,000 landings, except as provided below, repeat the dye penetrant or eddy current inspection required by paragraph (a) of this AD.

(c) If the spar cap has been repaired by removing/blending out a crack in accordance with the method described in McDonnell Douglas Service Bulletin A55-18, Revision 4, dated September 10, 1991 (hereafter, referred to as the "Service Bulletin"), repeat the dye penetrant or eddy current inspection of the spar required by paragraph (a) of this AD prior to the accumulation of 500 landings after the effective date of this amendment, or within 2,000 landings after the last inspection, whichever occurs first. Thereafter, repeat the dye penetrant or eddy current inspection at intervals not to exceed 500 landings.

(d) If the skin panel has been repaired by stop drilling a crack in accordance with the method described in the Service Bulletin, repeat the visual inspection of the skin panel required by paragraph (a) of this AD prior to the accumulation of 80 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 80 flight hours.

(e) Within 90 days after the effective date of this AD, conduct an eddy current inspection of the inboard-most end of the horizontal stabilizer rear spar cap upper vertical tang at station XRS-63.810, in accordance with either the "bolt hole" or

"surface probe" method as described in the Service Bulletin.

(1) If the "surface probe" method is used, and no cracks are found, prior to the accumulation of 2,000 landings after the inspection, inspect the vertical tang in accordance with the "bolt hole" method described in the Service Bulletin. If no cracks are found as a result of the "bolt hole" method, prior to further flight, stress coin the attachment holes and install oversize attachments. Thereafter, at intervals not to exceed 3,500 landings, conduct an eddy current inspection utilizing the "surface probe" method, in accordance with the Service Bulletin.

(2) If the "bolt hole" method is used, and no cracks are found, prior to further flight, stress coin the attachment holes and install oversize attachments. Thereafter, at intervals not to exceed 3,500 landings, conduct an eddy current inspection utilizing the "surface probe" method, in accordance with the Service Bulletin.

(f) If any crack is found as a result of the inspections required by this AD, that is within the limits specified in the Service Bulletin, accomplish the procedures specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD, as applicable:

(1) For cracks in the spar cap that are within the limits specified in Table I of the Service Bulletin: Repair prior to further flight, in accordance with paragraph 4.(b) of the Service Bulletin.

(2) For cracks in the skin panel that are within the limits specified in Table II of the Service Bulletin: Repair prior to further flight, in accordance with paragraph 4.(c) of the Service Bulletin.

(3) For cracks in the vertical tang that are within the limits specified in paragraphs 4.3(a)(1), 4.3(a)(2) and 4.3(b) of the Service Bulletin: Repair prior to further flight, in accordance with 4.3(b) of the Service Bulletin.

(g) If any crack is found as a result of the inspections required by this AD that exceed the limits specified in the Service Bulletin, prior to further flight, repair in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 4, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13051 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 382

Workshop on Lift Boarding Devices for Small Aircraft

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Schedule of workshop meeting.

SUMMARY: The Department of Transportation gives notice, as required by the Federal Advisory Committee Act (Pub. L. 92-463), of the time and location of meeting of a workshop on Lift Boarding Devices for Small (Commuter) Aircraft.

DATES: Meeting of the workshop is scheduled for Wednesday, June 24, and Thursday, June 25, 1992.

ADDRESSES: The workshop meeting will be held in Conference Rooms 8334 and 6244, respectively, of the Department of Transportation (Nassif Building) 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Donald R. Trilling, Director, Office of Transportation Regulatory Affairs, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366-4220.

or

Ira Laster Jr., Senior Program Coordinator, Department of Transportation, Office of Tranportation Regulatory Affairs, 400 7th Street, SW, Washington, DC 20590, Telephone (202) 366-4859.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to provide information to the Department on the present status of the technology, safety, costs, and availability of lifts for small aircraft. Such lifts would facilitate the boarding of disabled passengers. We also will explore a number of issues concerning the need for standards, who should pay for lifts and alternative funding sources. With the information received, we hope to determine whether and when to mandate lift use through amendment of DOT's Air Carrier Access Act (ACAA) rule.

Background

Concurrent with the March 1990 publication of DOT's ACAA rule, the Department issued an Advanced Notice of Proposed Rulemaking seeking information on whether a suitable lift passenger boarding device exists to serve relevant small (less than 30 seats) aircraft in a safe, efficient manner at reasonable costs. We received some comments, but not enough definitive data on the workability, safety, costs and availability of lifts to undertake a formal rulemaking.

In the ensuing two years, DOT headquarters and Federal Aviation Administration (FAA) staff have participated with staff of the Paralyzed Veterans of America, Regional Airline Association (RAA), individual airlines and lift manufacturers in discussions and demonstrations to become acquainted with various types of lifts and their suitability for use on different models of small aircraft. At the same time, a number of small carriers and lift manufacturers have been engaged in ongoing testing of lift prototypes at various airports.

To date, however, it appears only a few investigating carriers or airports find the lifts capable of meeting all their requirements, with respect to flexibility, maintainability, and accommodation of the tight physical requirements of small aircraft. We understand, however, that all parties have been working together to resolve many of these problems and that at least one carrier, American Eagle, has been especially active in this regard.

The Department is conducting this workshop to exchange information on these issues, to put all parties on common ground as to today's state of the art in lift development, and to provide a factual basis for follow-on rulemaking to the Air Carrier Access Act rules.

Persons who might wish to participate should be aware that the conference facilities are small and have limited seating capacity.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-13006 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 146

[Docket No. 91P-0195]

Orange Juice Products; Proposed Amendment of the Standards of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standards of identity for orange juice products in 21 CFR Part 146 to allow the inclusion of juice from the hybrid species 1/2 *Citrus sinensis (C. sinensis)* × 3/8 *Citrus reticulata (C.*

reticulata) × 1/8 *(Citrus paradisi (C. paradisi)* (commonly referred to by the varietal name of "Ambersweet") into all orange juice products in the same manner as is juice from oranges of the species *C. sinensis.* The proposal is based on a joint petition by industry and State government agencies. This action will permit greater flexibility in the manufacturing of orange juice products and will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments by August 3, 1992. The agency proposes that any final rule that may be issued based upon this proposal shall become effective 60 days after date of publication of the final rule in the **Federal Register.**

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–485–0122.

SUPPLEMENTARY INFORMATION: The Florida Department of Citrus, Florida Department of Agriculture and Consumer Services, Florida Citrus Mutual, Florida Citrus Processors Association, Florida Citrus Packers, Indian River Citrus League, Gulf Citrus Growers Association, Inc., Citrus Grower Associates, Inc., National Juice Products Association, and Florida Farm Bureau have filed jointly a food standards petition dated May 13, 1991. The petitioners requested that FDA amend the U.S. standards of identity for orange juice (21 CFR 146.135), pasteurized orange juice (21 CFR 146.140), canned orange juice (21 CFR 146.141), frozen concentrated orange juice (21 CFR 146.146), and orange juice for manufacturing (21 CFR 146.151), to allow the inclusion of juice from the Ambersweet orange hybrid into all orange juice products in the same manner as is juice from oranges of the species *C. sinensis.* The standards of identity for frozen orange juice (21 CFR 146.137), orange juice from concentrate (21 CFR 146.145), reduced acid frozen concentrated orange juice (21 CFR 146.148), canned concentrated orange juice (21 CFR 146.150), orange juice with preservative (21 CFR 146.152), concentrated orange juice for manufacturing (21 CFR 146.153), and concentrated orange juice with preservative (21 CFR 146.154) cross-reference 21 CFR 146.135, 146.146, and 146.151. To the extent that these standards are modified by amendments to the standards that they cross-reference, the petitioners requested that these standards also be modified.

I. Statement of Grounds

The "Ambersweet" orange is an early maturing, cold-resistant hybrid developed and recently released by the United States Department of Agriculture (USDA). Ambersweet fruits are 7.62 to 10.16 centimeters (3 to 4 inches) in diameter, round in shape, and occasionally have a small navel. They resemble navel oranges more than other orange varieties. This particular hybrid is composed of 1/2 *C. sinensis* × 3/8 *C. reticulata* × 1/8 *C. paradisi.* It is widely regarded as the most outstanding variety of orange to result from a 25-year USDA breeding program aimed at developing cold-resistant trees with deeper colored fruit and juice with consistent high-quality taste (ref. 1).

The petitioners contended that authorization for the use of Ambersweet orange juice products would have the advantage of providing consumers with high quality, good tasting orange juice at a lower price. The petitioners asserted that inclusion of this early maturing domestic orange in orange juice products in the same manner as oranges of the species *C. sinensis* (the only species permitted by the U.S. standard of identity for orange juice (§ 146.135) and the primary species authorized for all other standardized orange juice products) would: (1) Lower the cost of blending orange varieties by adding an early maturing domestic orange instead of continuing industry reliance on more expensive off-season imported oranges obtained from the species *C. sinensis;* (2) reduce grower vulnerability to damaging freezes; (3) reduce interseason storage requirements, and (4) make it commercially feasible to propagate the Ambersweet variety in the U.S. The petitioners stated that these cost-saving measures would provide economic benefits for both citrus producers and processors, as well as for consumers of processed citrus products.

II. The Proposal

The U.S. standard of identity for orange juice (21 CFR 146.135) defines orange juice as "the unfermented juice obtained from mature oranges of the species *C. sinensis.*" The addition of juice of other species of oranges and their hybrids is not permitted, nor is such addition permitted by the U.S. standard of identity for frozen orange juice (§ 146.137), which cross-references § 146.135.

The juice of two other species of oranges are permitted, with certain specified limitations, for other orange juice products for which FDA has established standards of identity. Up to 10 percent of the juice from mature oranges of the species *C. reticulata* and their hybrids may be added to pasteurized orange juice (§ 146.140), canned orange juice (§ 146.141), orange juice for manufacturing (§ 146.151), and, by cross-reference, orange juice with preservative (§ 146.152).

Up to 10 percent of the juice from oranges of the species *C. reticulata* and their hybrids and up to 5 percent of the juice from oranges of the species *Citrus aurantium* may be added to frozen concentrated orange juice (§ 146.146) and, by cross-reference, orange juice from concentrate (§ 146.145), reduced acid frozen concentrated orange juice (§ 146.148), canned concentrated orange juice (§ 146.150), concentrated orange juice for manufacturing (§ 146.153), and concentrated orange juice with preservative (§146.154).

The petitioners have requested that FDA amend all of the orange juice standards of identity in 21 CFR part 146 to allow for the inclusion of juice from the species 1/2 *C. sinensis* × 3/8 *C. reticulata* × 1/8 *C. paradisi* (commonly referred to by the varietal name "Ambersweet") in all orange juice products in the same manner as juice from oranges of the species *C. sinensis.* Specifically, the petitioners have requested that FDA amend the standard of identity for orange juice (§ 146.135) by adding the phrase "and of the hybrid species described as 1/2 *C. sinensis* × 3/8 *C. reticulata* × 1/8 *C. paradisi*" to the end of the first sentence of paragraph (a) (§ 146.135(a)).

To make this proposed amendment applicable to pasteurized orange juice (§ 146.140), canned orange juice (§ 146.141), and orange juice for manufacturing (§ 146.151), the petitioners requested that the standards of identity for these products be amended by adding the phrase "(except that this limitation shall not apply to the hybrid species described in § 146.135)" to the end of the first sentence of paragraph (a) in §§ 146.140 and 146.141 (§§ 146.140(a) and 146.141(a)) and to the end of the second sentence of paragraph (a) in § 146.151 (§ 146.151(a)). The petitioners also requested that FDA amend the standard of identity for frozen concentrated orange juice (§ 146.146) by inserting the phrase "(except for the hybrid species described in § 146.135)" in the second sentence of paragraph (a) as follows: "However, in the concentrated blend the volume of juice from *C. reticulata* (except for the hybrid species described in § 146.135) shall not * * *" (§ 146.146(a)).

The petitioners noted that the U.S. standards of identity for frozen orange juice (§ 146.137), orange juice from concentrate (§ 146.145), reduced acid frozen concentrated orange juice (§ 146.148), canned concentrated orange juice (§ 146.150), orange juice with preservative (§ 146.152), concentrated orange juice for manufacturing (§ 146.153), and concentrated orange juice with preservative (§ 146.154) cross-reference §§ 146.135, 146.146, and 146.151 and would be amended by the changes to those sections. FDA concurs that the standards would be amended similarly by the cross-reference.

In support of their petition, the petitioners submitted several references, including information on a number of taste-test studies. One such study was a double blind, side-by-side USDA comparison study in which juice samples containing no Ambersweet juice, 50 percent Ambersweet juice, and 100 percent Ambersweet juice were graded by experienced USDA inspectors. All samples were scored as having "very good" flavor, surpassing the minimum USDA Grade A flavor requirements for orange juice (ref. 2).

The flavor chemistry profiles of juice products obtained from Ambersweet were analyzed and compared to the profiles of similar juice products from tangerine (*C. reticulata*), grapefruit (*C. paradisi*), and other orange (*C. sinensis*) varieties. The results showed that the flavor composition and profiles of juice from Ambersweet oranges are very similar to those of orange juice from *C. sinensis* but are different from those of juice from *C. reticulata*, other *C. reticulata* hybrids, and *C. paradisi* (ref. 3).

The petitioners also noted that additional studies on yield, Brix-acid ratio, color, flavor, and concentration characteristics of Ambersweet juice demonstrated that Ambersweet oranges produce good tasting orange juice with good color early in the season (ref. 4). Based on several years of studies on the characteristics of Ambersweet fruit and its processed juice, the Florida Department of Citrus adopted a regulation, effective August 1990, naming the Ambersweet orange and classifying Ambersweet as an orange for purposes of determining maturity under state maturity laws (Florida Administration Code (1990) § 20–13.011).

FDA believes that the petitioners have provided sufficient grounds to warrant issuance of a proposal to amend the orange juice product standards in 21 CFR part 146 to provide for an additional orange hybrid, "Ambersweet," that is to be used in unlimited amounts in these juice products. The agency requests comments from processors and consumers who have had experience with this new hybrid. In particular, the agency requests comments from the public on its acceptance as an orange juice beverage product.

In the interest of increased flexibility in the orange juice standards, FDA requests comments on these amendments as well as on other changes that would provide processors with lower cost alternatives but that would be in the interest of consumers. FDA questions whether at this time there are other orange hybrids that would be suitable for use without limitations in orange juice products as the petitioners claim for the Ambersweet hybrid. FDA points out that any suggested modifications for increased flexibility in the standards should not result in products that could be misleading, deceptive, or not otherwise in the interest of consumers. FDA believes that consumers purchasing orange juice labeled in accordance with the orange juice standards of identity expect, and should receive, certain typical organoleptic characteristics in these foods. Thus, careful consideration should be given to the use of new ingredients or juice from sources that could change the properties of the food. Suggestions for increased flexibility in the standards should be supported, where possible, with data on the need for the changes and on the anticipated effects on the food and on consumer acceptance of the products so modified.

Based on the information presented by the petitioners, FDA tentatively concludes that amending the standards of identity for orange juice products as set forth below to provide for the use of juice from the hybrid species ½ *C. sinensis* X ⅜ *C. reticulata* X ⅛ *C. paradisi* on the same basis as that of oranges of the species *C. sinensis* will provide consumers with orange juice products at lower cost, with no denigration of orange juice flavor, and that these amendments will promote honesty and fair dealing in the interest of consumers.

Therefore, the agency is proposing to amend the U.S. standards of identity for orange juice (21 CFR 146.135), pasteurized orange juice (21 CFR 146.140), canned orange juice (21 CFR 146.141), frozen concentrated orange juice (21 CFR 146.146), and orange juice for manufacturing (21 CFR 146.151) and, by cross reference, the standards of identity for frozen orange juice (21 CFR 146.137), orange juice from concentrate (21 CFR 146.145), reduced acid frozen concentrated orange juice (21 CFR 146.148), canned concentrated orange juice (21 CFR 146.150), orange juice with preservative (21 CFR 146.152), concentrated orange juice for manufacturing (21 CFR 146.153), and concentrated orange juice with preservative (21 CFR 146.154), to include juice from the hybrid species described as ½ *C. sinensis* × ⅜ *C. reticulata* × ⅛ *C. paradisi* in the same manner as the juice from oranges of the species *C. sinensis*, i.e., without limits on the amount of juice from the hybrid which may be used in the final product.

Minor editorial changes in reference to *C. reticulata* hybrids have been made for clarity in the revised standards set out below.

III. Economic Impact

FDA has examined the economic implications of the proposed rule to amend certain standards of identity for orange juice products in 21 CFR part 146 as required by Executive Orders 12291 and 12612, and by the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12291 compels Federal agencies to use cost-benefit analysis as a component of decisionmaking, and Executive Order 12612 requires that Federal agencies ensure that Federal solutions, rather than State or local solutions, are necessary. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act, FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses. Finally, because this regulation applies to food for interstate trade, and individual state regulations could hinder interstate trade, FDA finds that there is no substantial Federalism issue that would require an analysis under Executive Order 12612.

Options associated with the petition include: (1) Not amending the standards to provide for the Ambersweet hybrid, (2) amending the standards to include only the requested change, or (3) amending the standards to provide for any orange hybrid that falls within specified guidelines.

The cost of failing to amend these standards, option (1), is reduced variety in orange juice products that would be available to consumers.

The benefit of amending these standards, option (2), will be to allow for increased variety in orange juice products for consumers. The marginal costs of amending the standards for only the requested change is the opportunity

cost of not allowing them to be more flexible for future technological changes.

The benefits of option (3) would be to allow firms to market such products without amending the food standards through informal rulemaking. This could ultimately promote innovation in the quality of products and lower production costs. On the other hand, the agency is also concerned about increased transactions costs (costs of using the market) if products marketed under the term "orange juice" are made with other juices. To the extent hybirds and other juices become far removed from "traditional" orange juice, the term "orange juice" will convey less information as an aid to selection of a juice product.

Additionally, FDA believes that the term "orange juice" conveys an extremely homogeneous meaning to consumers as to the contents of these products. Finally, before taking any action like option (3), FDA would have to ensure that such action would promote honesty and fair dealing in the interests of consumers.

Although FDA would like to provide for future technological change in the manufacture of orange juice (without technical amendments to the standard), FDA is not aware of any new hybrids under development that could be used without limitations. Even if such developments were underway, FDA does not have sufficient information to provide boundaries for use of the term "orange juice" that would encompass all future technological development. Finally, it should be noted that manufacturers are currently able to sell any blend of citrus juice products, provided they are appropriately labeled. Thus, FDA has not chosen option (3), providing for any orange hybird without limitations. However, FDA specifically requests comments on these options.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Request for Comments

Interested persons may, on or before August 3, 1992 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

1. Hearn, C.J., "Yield and Fruit Quality of Ambersweet Orange Hybrid on Different Rootstocks," proceedings of the Florida State Horticultural Society, 102:75–78, 1989.

2. Carter, R.D., "USDA Ambersweet Flavor Comparison Tests," unpublished report, Florida Department of Citrus, Lake Alfred, FL, 1991.

3. Moshonas, M.G., P.E. Shaw, and R.D. Carter, "The Ambersweet Orange Hybrid: Compositional Evidence for Variety Classification," Journal of Agricultural and Food Chemistry, 39:1416–1421, 1991.

4. Barros, S.M., R.D. Carter, and C.J. Hearn, "Ambersweet Orange—Processed Juice Quality Characteristics," proceedings of the Florida State Horticultural Society, 103:269–272, 1990.

5. Barrett, H.C. and A.M. Rhodes, "A Numerical Taxonomic Study of Affinity Relationships in Cultivated Citrus and Its Close Relatives," Systematic Botany, 1:105–136, 1976.

6. Telephone conversation between Kristen Chadwell, Department of Citrus, Florida and Richard A. Williams, Jr., Center for Food Safety and Applied Nutrition, FDA, February 13, 1992.

List of Subjects in 21 CFR Part 146

Food grades and standards, Fruit juices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR Part 146 be amended as follows:

PART 146—CANNED FRUIT JUICES

1. The authority citation for 21 CFR Part 146 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 146.135 is amended by revising paragraph (a) to read as follows:

§ 146.135 Orange juice.

(a) Orange juice is the unfermented juice obtained from mature oranges of the species *Citrus sinensis* and of the hybrid species described as ½ *Citrus sinensis* X ⅜ *Citrus reticulata* X ⅛ *Citrus paradisi*. Seeds (except embryonic seeds and small fragments of seeds that cannot be separated by current good manufacturing practice) and excess pulp are removed. The juice may be chilled, but is is not frozen.

* * * * *

3. Section 146.140 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 146.140 Pasteurized orange juice.

(a) Pasteurized orange juice is the food prepared from unfermented juice obtained from mature oranges as specified in § 146.135, to which may be added not more than 10 percent by volume of the unfermented juice obtained from mature oranges of the species *Citrus reticulata* or *Citrus reticulata* hybrids (except that this limitation shall not apply to the hybrid species described in § 146.135). * * *

* * * * *

4. Section 146.141 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 146.141 Canned orange juice.

(a) Canned orange juice is the food prepared from orange juice as specified in § 146.135 or frozen orange juice as specified in § 146.137, or a combination of both, to which may be added not more than 10 percent by volume of the unfermented juice obtained from mature oranges of the species *Citrus reticulata* or *Citrus reticulata* hybrids (except that this limitation shall not apply to the hybrid species described in § 146.135). * * *

* * * * *

5. Section 146.146 is amended by revising the first two sentences in paragraph (a) to read as follows:

§ 146.146 Frozen concentrated orange juice.

(a) Frozen concentrated orange juice is the food prepared by removing water from the juice of mature oranges as provided in § 146.135, to which may be added unfermented juice obtained from mature oranges of the species *Citrus reticulata*, other *Citrus reticulata* hybrids, or of *Citrus aurantium*, or both. However in the unconcentrated blend, the volume of juice from *Citrus reticulata* or *Citrus reticulata* hybrids shall not exceed 10 percent (except that this limitation shall not apply to the hybrid species described in § 146.135 and from *Citrus aurantium* shall not exceed 5 percent. * * *

* * * * *

6. Section 146.151 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 146.151 Orange juice for manufacturing.

(a) * * * It is prepared from unfermented juice obtained from oranges as provided in § 146.135, except that the oranges may deviate from the standards for maturity in that they are below the minimum for Brix and Brix-acid ratio for such oranges, and to which juice may be added not more than 10 percent by volume of the unfermented juice obtained from oranges of the species *Citrus reticulata* or *Citrus reticulata* hybrids (except that this limitation shall not apply to the hybrid species described in § 146.135). * * *

* * * * *

Dated: May 1, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-13033 Filed 6-3-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 741]

RIN 1512-AA07

Spring Mountain Viticultural Area (91F-067P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Napa County, California, to be known as "Spring Mountain." This proposal is the result of a petition filed on behalf of Marston Vineyards and York Creek Vineyards.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

DATES: Written comments must be received by August 3, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, *Attn: Notice No. 741.*

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23 and November 22, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Marston Vineyards and York Creek Vineyards proposing to establish a viticultural area in Napa County, California, to be known as "Spring Mountain." The proposed viticultural area is located within Napa Valley just west of St. Helena, on the eastern slope of the Mayacamus Mountains that separate Napa Valley from Sonoma Valley and the Santa Rosa Plain.

The region is approximately 25 miles north of San Pablo Bay and 30 miles east of the Pacific Ocean. It contains approximately 8,600 acres, of which approximately 800 acres are planted to vineyards. The terrain in the proposed viticultural area consists primarily of east-facing slopes of varying steepness, ranging in elevation from 400 to 2,600 feet. Thirteen wineries are currently active within the proposed viticultural area.

Evidence of Name

Evidence that the name of the proposed area is locally and/or nationally known as referring to the area specified in the petition includes:

(a) Articles in the local newspaper, the St. Helena Star, as far back as December 1877, frequently made references to "Spring Mountain" and mentioned viticultural activities in the area.

(b) In the Annual Report of State Viticultural Commissioners for 1887, on the page that listed varieties of grapes planted in Napa County, "Spring Mountain" was 1 of only 12 locations mentioned.

(c) In California Place Names by Erwin G. Gudde, 3rd Ed. (University of California Press, 1969), Spring Mountain is described as a region filled with reservoirs which supplied water to the town of St. Helena from 1878 to the 1920's. Further, "Spring Mountain" was the name of the school that educated children in the area from the 1870's to the 1930's, and is the name of the principal road that runs through the proposed viticultural area.

(d) In Massee's Guide to Wines of America (1974) "Spring Mountain" is described as being "well on its way to becoming a separate district in its own right, much like Carneros, * * *"

(e) Copies of wine labels (1980 Ritchie Creek Vineyard Cabernet Sauvignon, 1978 and 1981 Ridge Cabernet Sauvignon, 1978 and 1986 Ridge Petite Sirah), each of which indicates that most of the grapes used to make the wine came form Spring Mountain.

(f) As stated in the January-February 1977 issue of Connoisseur's Guide to California Wines, "Spring Mountain * * * has supported vineyards for over 100 years and is probably more responsible than any other Napa hillside for creating the mystique of 'mountain grapes.' "

(g) An excerpt from an article appearing in the magazine Friends of Wine (April-May 1984) makes a reference to "Spring Mountain" as beign a "well-known" appellation.

Evidence of Boundaries

Evidence that the boundaries of the proposed area are as specified in the petition includes the following:

(a) In the Annual Report of the Board of State Viticultural Commissioners for 1887, Spring Mountain is listed as one of the locations in Napa County where varieties of grapes were planted.

(b) In The Connoisseurs' Handbook of California Wines (1984) the section on "Wine Geography" describes Spring Mountain as "[a] distinctly identifiable watershed area * * * west of St. Helena in the Napa Valley and forms part of the Mayacamus Mountain Range * * * Chateau Chevalier and Spring Mountain Vineyard occupy two of the loveliest refurbished properties * * * York Creek Vineyard is near the top of Spring Mountain. Other wineries here include Yverdon, Keenan, and Smith-Madrone."

(c) In the book The Winewrights Register (1988) Spring Mountain is described as being "directly west of the town of St. Helena."

(d) In the New Signet Book of Wine (1985) Alexis Bespaloff states that a "number of wineries are situated on the slopes of Spring Mountain, the best known of which is Spring Mountain Vineyards." Other vineyards and wineries mentioned as "situated on the slopes of Spring Mountain" include Newton Vineyard, Chateau Chevalier, Cain Cellars, Robert Keenan Winery, Yverdon Vineyards, Ritchie Creek Vineyard, and Smith-Madrone Vineyards.

(e) In Leon D. Adams' The Wines of America (1978) Chateau Chevalier winery is described as being "built in 1891 on Spring Mountain * * *"

(f) In The 1982 Napa Valley Wine Auction catalog Keenan Winery is described as "located * * * on the eastern slope of Spring Mountain," and Chateau Chevalier, and Smith-Madrone Vineyards are described as being "high atop Spring Mountain."

(g) Labels for 1978 and 1981 Ridge brand Cabernet Sauvignon indicate that part of the wine came from grapes grown at York Creek Vineyards "on Spring Mountain."

(h) In California's Great Cabernets (1989) Spring Mountain is described as including the vineyards of York Creek, Smith-Madrone, Philip Togni, and Newton.

(i) In Massee's Guide to Wines of America (1974) Lyncrest Vineyard, currently Marston Vineyards, is also mentioned in the paragraph on Spring Mountain.

(j) In Bob Thompson's Pocket Guide to California Wines (1990) Streblow Vineyards is described as "[a] 12-acre vineyard and 1,200 case winery on the lower slopes of Spring Mountain * * *" and Spring Mountain is said to be the "sole source of all the wines" for Stony Hill Vineyards.

Collectively taken, the locations of the vineyards and wineries mentioned above closely approximate the parameters of the proposed Spring Mountain viticultural area.

Geographical Features

Approximately 8,600 acres in size, the proposed viticultural area is roughly rectangular in shape, extending south from the northern boundary along Ritchie Creek approximately 5 miles to slightly beyond Sulphur Creek, and east from the Napa-Sonoma county line along the summit of the Mayacamus mountain range to the 400 foot elevation near the Napa Valley floor. The 400 foot contour line generally marks the boundary between valley floor and hillside vineyards in the Napa Valley. The petitioners provided the following evidence relating to features which they contend distinguish the proposed viticultural area from the surrounding areas:

Soil

(a) The predominant soils in the proposed Spring Mountain viticultural area consist of moderately deep and deep residual upland soils that are an equal mix derived from volcanic and sedimentary parent material.

(b) North of the proposed viticultural area the segment of the Mayacamus Mountains from Diamond Mountain northward is comprised almost entirely of residual upland soils of volcanic origins.

(c) To the east of the proposed viticultural area, on the Napa Valley floor, alluvial soils predominate. These soils are developed on fill materials outwashed from the upland soils and rocks surrounding the valley. The Soil Conservation Service has identified 10 alluvial soils in the valley, none of which are found in the proposed viticultural area.

(d) Of the six residual upland soils from volcanic rocks that are present in the proposed viticultural area (Aiken, Boomer, Felta, Forward, Hambright, and Kidd), only one (Forward) appears in any significant acreage to the south of the proposed Spring Mountain. Both areas contain residual soils from sedimentary rocks, but the acreage and percentage of these sedimentary residual rocks is much greater in the southern segment of the Mayacamus Mountains, south of the proposed Spring Mountain.

(e) West of the proposed viticultural area the warmer slopes of the Mayacamus Mountains in Sonoma County have greater evapotranspiration loss of soil moisture, which is reflected in shallower soils. Also, the residual upland soils from volcano rock found in the proposed viticultural area (Aiken, Boomer, Forward, Felta, and Kidd) are not present in the Sonoma County slopes of the Mayacamus Mountains.

Climate

(a) Spring Mountain's primarily eastern exposure contributes to the region's distinctive climate. It is characterized by cool, wet winters and warm dry summers, moderated by periodic ocean breezes and fog. Average annual rainfall is 37 inches.

(b) In readings taken between April 1 and October 31, generally considered the growing season for wine grapes, daily maximum temperatures were from 2 to 11 degrees lower within the proposed viticultural area than in St. Helena, less than 4 miles away to the east. Conversely, daily minimum temperatures at Spring Mountain were generally higher than those recorded in St. Helena, often by more than 10 degrees.

(c) Comparisons of maximum and minimum temperatures within the proposed viticultural area with those of Calistoga, less than 8 miles away to the north, produce the same results, with even greater temperature differentials between the two locations.

(d) The proposed viticultural area regularly enjoys cooling breezes and occasional fog from the west when the rest of Napa Valley, including hillside locations both north and south remains hot.

(e) Spring Mountain experiences greater annual rainfall than the floor of Napa Valley. In addition, the annual average rainfall in Spring Mountain is approximately 37 inches, more than the seasonal normal of 33.11 inches in St. Helena.

(f) According to meteorologist Steven Newman of Earth Environment Service, a review of daily thermograph readings taken during the summer and early autumn shows that the temperature on Spring Mountain rises relatively rapidly until reaching a maximum high at approximately 3 p.m., then declines with similar speed during the late afternoon. The daily maximum temperature is reached approximately 1 hour earlier than in St. Helena, and the temperature peak is very brief when compared to locations on the Napa Valley floor.

Proposed Boundary

The boundary of the proposed Spring Mountain viticultural area may be found on four United States Geological Survey (U.S.G.S.) maps with a scale of 1:24000. The boundary is described in § 9.145.

Executive Order 12291

It has been determined that this proposed regulation is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assure of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9.143 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.143 Spring Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Spring Mountain."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Spring Mountain viticultural area are four U.S.G.S. 7.5 minute series topographical maps of the 1:24000 scale. They are titled:

(1) "Kenwood, Calif.," 1954 (photorevised 1980);

(2) "Rutherford, Calif.," 1951 (photorevised 1968);

(3) "St. Helena, Calif.," 1960 (photorevised 1980);

(4) "Calistoga, Calif.," 1958 (photorevised 1980).

(c) *Boundary.* The Spring Mountain viticultural area is located in Napa County, California, within the Napa Valley Viticultural area. The boundary is as follows:

(1) Beginning on the Calistoga quadrangle map at the Napa-Sonoma county line at the boundary line between sections 18 and 19 in T8N/R6W;

(2) Then east along the boundary line between sections 18 and 19 for approximately ¾ of a mile to its intersection with Ritchie Creek at the boundary line between sections 17 and 20;

(3) Then northeast along Ritchie Creek approximately 2 miles, to the 400 foot contour line in the northeast corner in section 16 of T8N/R6W;

(4) Then along the 400 foot contour line in a northeast then generally southeast direction, through the St. Helena and Rutherford quadrangle maps, approximately 9 miles, past the town of St. Helena to the point where it intersects Sulphur Creek in Sulphur Canyon, in the northwest corner of section 2 in T7N/R6W;

(5) Then west along Sulfur Creek (onto the Kenwood quadrangle map) and south to the point where it first divides into two intermittent streams in section 3 in T7N/R6W;

(6) Then south along the intermittent stream approximately 1.5 miles to the point where it intersects the 2,360 foot contour line in section 10 in T7N/R6W;

(7) Then southwest in a straight line, approxiamtely .10 mile, to the unnamed peak (elevation 2600 feet) at the boundary line between Napa and Sonoma Counties;

(8) Then in a generally northwest direction along the Napa-Sonoma county line, through sections 10, 9, 4, 5, 32, 33, 32, 29, 20, and 19, to the beginning point on the Calistoga quadrangle map at the boundary between sections 18 and 19 in T8N/R6W.

Approved: May 21, 1992

Stephen Higgins,

Director.

[FR Doc. 92–12916 Filed 6–3–92; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 92–004]

Safety Zone: Rhode Island Sound, Narragansett Bay, Providence River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulation concerning the safety zone required around LPG vessels moored at the LPG facility in the Port of Providence. The amendment would reduce the distance a vessel must moor from an LPG vessel at the LPG facility in the Port of Providence from 400 feet to 200 feet. This action is necessary to eliminate unnecessary economic hardship on the commercial shipping

industry. Reduction of the required empty pier space from 400 feet to 200 feet fore and aft of LPG vessels will continue to provide the necessary level of safety and will also provide the space necessary to respond effectively to an LPG emergency.

DATES: Comments must be received on or before July 20, 1992.

ADDRESSES: Comments should be mailed to the Commanding Officer, Marine Safety Office, John O'Pastore Federal Building, Providence, Rhode Island 02903–1790, or may be delivered to room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (401) 528–5335. The Marine Safety Office maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Tina Burke at (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 92–004) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **"ADDRESSES."** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LTJG Tina Burke, Project Officer, Marine Safety Office Providence, and LCDR J. Astley, Project Counsel, First Coast Guard District Legal Office.

Background and Purpose

The regulations contained in 33 CFR 165.121 outline safety zones required for LPG vessel visiting the Port of Providence under a variety of conditions. The regulations establish safety zones around LPG vessels at anchor, transiting Narragansett Bay, while moored at the LPG facility, Port of Providence, and around the shoreside manifold during LPG transfer operations. The proposed amendment only concerns the safety zone required around LPG vessels moored at the LPG facility, Port of Providence.

33 CFR 165.121(a)(3) establishes a 50 foot safety zone around a moored LPG vessel and also requires that no vessel may moor within 400 feet of an LPG vessel moored at the facility. Industry personnel have continually expressed dissatisfaction with the 400 foot requirement, contending that it places an unnecessary economic burden on the industry involved in and affected by LPG evolutions.

Research into the issue has shown that prohibiting vessels from mooring within 400 feet from LPG vessels moored at the LPG facility, Port of Providence, is excessive and unnecessary. The purpose of requiring that other vessels moor a certain distance from LPG vessels is to eliminate risk of ignition sources as well as to ensure the availability of space around the vessel to respond to any type of emergency. The safety zone established around a vessel when moored at the facility is 50 feet. Thus the vessel is considered safe from ignition sources at a minimum of 50 feet. A 50 foot zone is not sufficient, however, in the event that a vessel needs to be moved in response to an emergency. Therefore, reduction of the requirement from 400 feet to 200 feet would continue to provide ignition source protection and would also provide the space necessary for shoreside or waterside firefighting or for tug assistance during emergency break-away from the pier.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the impact of this proposal to be minimal on all entities because the result of the amendment will be one of deregulation, making the present regulations less restrictive. If the amendment has any effect, it will be a positive effect on impacted entities. Reduction of the safety zone around moored LPG vessels from 400 feet to 200 feet will benefit the LPG facility economically in that the total pierspace for which they must pay to meet the regulations is reduced from a total of 800 feet to 400 feet. This will also benefit the port of Providence economically in that more pierspace will be available for other ships to moor while an LPG vessel is in port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects that this proposal will not have a significant economic impact on any entity. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **"ADDRESSES"**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collect of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **"ADDRESSES."**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of Title 33, Code of Federal Regulations, is proposed to be amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.121 is amended by revising paragraph (a)(3) to read as follows:

§ 165.121 Safety Zone: Rhode Island Sound, Narragansett Bay, Providence River.

(a) * * *

(3) For Liquefied Petroleum Gas (LPG) vessels while moored at the LPG facility, Port of Providence; a Safety Zone within 50 feet around the vessel. No vessel shall moor within 200 feet from the LPG vessel. All vessels transiting the area are to proceed with caution to minimize the effects of wake around the LPG vessel.

* * * * *

Dated: May 18, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92–12938 Filed 6–3–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 510, 580 and 582

[Docket No. 92–27]

Filing Requirements for Anti-Rebate Certifications

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposed to amend its regulations which govern certification of freight forwarder and carrier policies and efforts to combat rebating in the foreign commerce of the United States. The proposed amendments will reduce the annual certification filing requirement to every two years. The intent of this proposal is, without loss of regulatory effectiveness, to reduce the cost imposed on regulated companies by these regulations and to reduce the cost incurred by the Commission in administering them.

DATES: Comments due July 6, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Seymour Glanzer, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5783 (Phone), (202) 523–5785 (FAX).

SUPPLEMENTARY INFORMATION:

Background

Section 15 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1714, mandates that the Federal Maritime Commission ("Commission") require the Chief Executive Officer ("CEO") of each common carrier to file with the Commission a written anti-rebating certification ("ARC") under oath. Section 15 also authorizes the Commission to require the CEO of ocean freight forwarder to file ARCs under oath.

Part 582 of the Commission's rules, 46 CFR part 582, implements section 15 of the 1984 Act by establishing the content of ARCs and procedures governing their filing. Under part 582, the CEO of a common carrier in the foreign commerce of the United States must file an ARC with the Commission on or before December 31 of each year. Part 580, 46 CFR at 580.5(c)(2)(ii), governs tariff requirements regarding ocean carriers' ARCs.

Similarly, part 510 of the Commission's rules, at 46 CFR 510.25, requires licensed ocean freight forwarders to file ARCs on or before December 31 of each year. The content of freight forwarders' ARCs and the procedures for filing them is governed by part 582, *supra*.

Section 15 of the 1984 Act also provides that whoever fails to file an ARC required by the Commission is liable to the United States for a civil penalty of not more than $5,000 for each day the violation continues.

The Commission proposes to amend parts 510, 580 and 582 of its rules to require ARCs be filed every two years rather than annually. If this proposal becomes final, appropriate changes also will be made to the final rule promulgated at 46 CFR 514, implementing the Commission's automated tariff filing and information system. *See e.g.* § 514.1(c)(1)(iii) of the September 9, 1991, Proposed Rule in FMC Docket No. 90–23 Tariffs and Service Contracts (56 FR 46055). This should reduce the administrative and cost burdens on the regulated industry, as well as on the Commission, without causing any appreciable loss of regulatory effectiveness.

For administrative consistency, the proposed rule requires that ARCs be filed by December 31 of each even-numbered year. (The proposed rule also makes technical changes to reflect the redesignation of the Commission's Bureau of Domestic Regulation as the Bureau of Tariffs, Certification and Licensing.)

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of that Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) Annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

This proposed rule does not contain any collection of information requirements that require submission to the Office of Management and Budget ("OMB"). Therefore, OMB review is not required.

List of Subjects

46 CFR Part 510

Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 580

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 582

Maritime carriers, Penalties, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and section 15 and 19 of the Shipping Act of 1984, 46 U.S.C. app. 1714 and 1718, parts 510, 580 and 582 of title 46, Code of Federal Regulations, are proposed to be amended as follows:

PART 510—[AMENDED]

1. The authority citation for Part 510 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716 and 1718; 21 U.S.C. 853a.

2. Section 510.25 is revised to read as follows:

§ 510.25 Anti-rebate certifications.

(a) Every licensed ocean freight forwarder shall file an anti-rebating certificate on or before December 31, 1992 and, thereafter, on or before December 31 of each succeeding even-numbered calendar year.

(b) Every applicant for an ocean freight forwarder license shall file an anti-rebating certificate with its license application. Any application for an ocean freight forwarder license that does not include an anti-rebate certification in acccordance with § 510.12 and part 582 of this chapter shall be rejected. Certificates filed with license applications shall be valid from the granting of an ocean freight forwarder license through the first succeeding December 31 of an even-numbered calendar year.

(c) The anti-rebating certificate shall comply with the requirements of part 582 of this chapter.

PART 580—[AMENDED]

3. The authority citation for part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1722.

4. Section 580.5(c)(2)(ii)(B) is revised to read as follows:

§ 580.5 Tariff contents.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) In addition to the anti-rebate tariff provision, an anti-rebating certificate shall be filed by every common carrier with its initial tariff, and thereafter, on each succeeding December 31 of an even-numbered calendar year. The anti-rebating certificate shall comply with the requirements of part 582 of this chapter. Failure of a common carrier to file an anti-rebate certification with intiital tariffs and publish notice of that certification in its tariff as required by this part and part 582 of this chapter shall result in rejection of that carrier's tariff. Any common carrier who fails to file an anti-rebate certification as required by part 582 of this chapter will be notified by **Federal Register** publication and by certified mail that if within forty-five (45) days from the date the certified notice is mailed the common carrier does not either establish that the required anti-rebate certification was filed in accordance with this part and part 582 of this chapter or file the required anti-rebate certification, its tariff will be canceled, and in the event its rates are published in one or more conference tariffs, its name will be stricken from the list of carriers participating in those conference tariffs. The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in part 582 of this chapter. After the forty-five (45) days, any common carrier that does not have an anti-rebate certification on file with the Commmission will be notified by **Federal Register** publication and certified mail, return receipt requested, that its tariff(s) have been canceled or its name has been stricken from conference tariff(s).

* * * * *

PART 582—[AMENDED]

5. The authority citation for part 582 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701, 1702, 1707, 1709, 1712 and 1714–1716.

6. Section 582.3 is revised to read as follows:

§ 582.3 Reporting requirements.

(a) Every common carrier required by this part to file a written certification in the form prescribed by § 582.2, shall file such certification with its initial tariff and, thereafter, on or before December 31 of each succeeding even-numbered calendar year.

(b) Every licensed ocean freight forwarder, required by § 510.25 of this chapter to file a written certification in the form prescribed by § 582.2, shall file such ceritifcation on or before December 31, 1992 and, thereafter, on or before December 31 of each succeeding even-numbered calendar year. Every applicant for an ocean freight forwarder license initially shall file such certification with its license application.

(c) The certification required by this section shall be valid from the initial filing of a tariff or granting of an ocean freight forwarder license through the first succeeding December 31 of an even-numbered calendar year.

(d) Every person other than a common carrier or ocean freight forwarder which is ordered by the Commission pursuant to § 582.2 to file a written certification shall file such certification in the manner prescribed by the Commission.

(e) In those instances in which a single firm operates in more than one capacity, such as both a non-vessel-operating common carrier and an ocean frieght forwarder, a single certificate may be submitted to satisfy the reporting requirements of this section.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13035 Filed 6–3–92; 8:45 am]

BILLING CODE 6730–01–M

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46 CFR Parts 520, 550 and 580

[Docket No. 92–26]

Filing of Tariffs by Terminal Barge Operators in Pacific Slope States—Notice of Proposed Rulemaking

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to remove 46 CFR part 520—Filing of Tariffs by Terminal Barge Operators in Pacific Slope States and to amend 46 CFR parts 550 and 580 to exempt certain marine terminal barge operators from the tariff filing requirements of the Shipping Act, 1916, and the Shipping Act of 1984. This action is being proposed because there no longer appears to be a regulatory need for part 520.

DATES: Comments on or before July 6, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding..

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission ("Commission") administers, *inter alia*, section 3 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 804

("Section 3"). Section 3 requires the filing of tariffs by terminal barge operators who meet several very specific criteria.[1] Section 3 was added to the 1916 Act to clarify the jurisdictional roles of the Commission and the Interstate Commerce Commission concerning barge movements on one particular inland waterway.

The Commission's regulations implementing section 3 are at 46 CFR part 520. In general terms, section 3 and these regulations require tariffs to be filed by terminal barge operators in Pacific Slope States moving containers or containerized cargo by barge between points in the United States, on the one hand, and points in foreign countries or non-contiguous political jurisdictions of the United States, on the other.[2]

The Commission now proposes to remove 46 CFR part 520 and to amend 46 CFR parts 550 and 580 to exempt terminal barge operators in Pacific Slope States from filing tariffs for the services provided under the conditions set forth in Section 3.[3]

Title 46 CFR part 520 has been in effect since 1975. There is, however, no record of any recent filing of tariffs pursuant to these regulations. The Commission believes, therefore, that it would be appropriate to remove part 520 and to provide an exemption under parts 550 and 580 with regard to the requirement to file tariffs with the Commission.

Section 35 of the 1916 Act, 46 U.S.C. app. 833a, and section 16 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1715, provide that the Commission may by order or rule exempt for the future any specified activity of persons subject to the 1916 Act or the 1984 Act from any requirement of the 1916 Act, the 1984 Act, or Intercoastal Shipping Act, 1933, where the Commission finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition (1984 Act only) or be detrimental to commerce. It appears that the proposed exemptions would meet these criteria.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Proposed Rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations.

This proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 520

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 550

Maritime carriers; Reporting and recordkeeping requirements.

46 CFR Part 580

Cargo, Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers, Rates; Reporting and recordkeeping requirements; Surety bonds; Water carriers; Water transportation.

Therefore, pursuant to 5 U.S.C. 553; sections 3, 18(a) and 43 of the Shipping Act, 1916, 46 U.S.C. app. 804, 817(a) and 841a; section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844; and sections 8, 10, 11, 12, 13, 17 and 23 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1709, 1710, 1711, 1712, 1716 and 1722; parts 520, 550 and 580 of title 46 of the Code of Federal Regulations are proposed to be amended as follows:

PART 520—[REMOVED]

Part 520 is removed.

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 854a, 845b, and 847.

2. Section 550.1(a)(10) is added to read as follows:

§ 550.1 Exemptions.

(a) * * *

(10) Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transporation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

* * * * *

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1722.

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[1] Section 3 provides, in pertinent part:

Notwithstanding part III of the Interstate Commerce Act, as amended (49 U.S.C. 901 *et. seq.*), or any other provision of law, rates and charges for the barging and affreighting of containers and containerized cargo by barge between points in the United States, shall be filed solely with the Federal Maritime Commission in accordance with rules and regulations promulgated by the Commission where (a) the cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States, (b) the transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading, (c) such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of the date of enactment hereof, and (d) such terminal operator is in compliance with the rules and regulations of the Federal Maritime Commission for the operation of such barge service. The terminal operator providing such services shall be subject to the provisions of the Shipping Act, 1916.

[2] The Commission's regulations for the filing of tariffs in the domestic offshore commerce of the United States are at 46 CFR part 550, while the regulations for tariffs in the foreign commerce are at 46 CFR part 580.

[3] Should this proposed exemption become a Final Rule, it will be incorporated into new part 514, which, when finalized, will provide for the Automated Tariff Filing and Information system. See §§ 514.1(c)(3)(ii) and 514.3(a)(7) of the Proposed Rule of September 9, 1991, 56 FR 46055 and 46061.

2. Section 580.1(c)(9) is added to read as follows:

§ 580.1 Exemptions and exclusions.

* * * * *

(c) * * *

(9) Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-13034 Filed 6-3-92; 8:45 am]

BILLING CODE 6730-01-M

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46 CFR Parts 550 and 580

[Docket No. 92-28]

Elimination of Certain Regulatory Provisions

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the publishing, filing and posting of carrier tariffs to eliminate certain outdated or unnecessary regulatory provisions.

DATES: Comments due July 6, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Comments are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW. Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: Rules and regulations governing the publication and filing of tariffs for the waterborne transportation of property and passengers performed by common carriers in the domestic offshore trades, as required by the Shipping Act, 1916, 46 U.S.C. app. 801 *et seq.*, and the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 *et seq.*, are set forth in 46 CFR part 550. Similarly, rules and regulations governing the publication and filing of tariffs for the transportation of property performed by common carriers in the U.S./foreign trades, as required by the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, are set forth in 46 CFR part 580.

A review of parts 550 and 580 disclosed certain provisions which no longer serve any regulatory purpose or whose purpose has expired.

Section 550.1(a)(9), 46 CFR 550.1(a)(9), provides for the exemption from the tariff filing requirements applicable to the domestic offshore trades for transportation by Puget Sound Tug & Barge Company of general cargo in non-self-propelled barges from Seattle, Washington to the vicinity of Kivalina, Alaska, during calendar years 1988 and 1989. This exemption has expired. Similarly, § 580.12(c), 46 CFR 580.12(c), which provides for the continuation of certain time/volume rate contracts entered into prior to June 18, 1984, until July 17, 1985, or the term specified in the contract, whichever occurs first, has expired.

The Federal Maritime Commission ("Commission") also proposes to amend § 550.5(b)(8)(xiv), 46 CFR 550.5(b)(8)(xiv), and delete § 550.8, 46 CFRT 550.8.

Section 550.5(b)(8)(xiv) refers to the Automobile Maufacturers' Measurements guide, the publication of which was indefinitely suspended by the Commission on July 15, 1987 (52 FR 26479). Since the Commission suspended its publication, the Commission has not received any complaints or requests to reinstitute publication of the guide. Consequently, the reference to this publication is deleted.

Section 550.8 governs the filing of tariffs applicable to through intermodal transportation in the United States domestic offshore trades. It has been determined that joint rail/water and motor/water rates are subject to the jurisdiction of the Interstate Commerce Commission. See *Puerto Rico Maritime Shipping Authority* v. *ICC*, 645 F.2d 1102 (D.C. Cir. 1981); *Trailer Marine Transportation Co.* v. *FMC*, 602 F.2d 329 (D.C. Cir. 1979).

In view of the above, the Commission proposes the amendment of 46 CFR 550.5(b)(8)(xiv) and the removal of 46 CFR 550.8. If these proposals are adopted, the Commission will ensure that new Part 514, the Automated Tariff Filing and Information system rules, is appropriately conformed.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the proposed rule in terms of that Order and determined that the proposed rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more:

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Federal Maritime Commission certifies that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

This proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 580

Freight, Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a; section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844; and sections 8, 10, 11, 12, 13, 17 and 23 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1709, 1710, 1711, 1712, 1716 and 1722; Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

§ 550. [Amended]

2. Section 550.1(a)(9) is removed.

3. Section 550.5(b)(8)(xiv)(A) introductory text is revised to read as follows:

§ 550.5 Contents of tariffs.

* * * * *

(b) * * *

(8) * * *

(xiv) * * *

(A) Automobiles shall be rated by measure. The cubic measurements for the five most recent model years will be that prescribed by the manufacturer of the particular make and model as shown on pages _____ to _____ herein.

* * * * *

4. Section 550.8 is removed and reserved.

PART 580—[AMENDED]

1. The authority citation for Part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1722.

§ 580.12 [Removed]

2. Section 580.12(c) is removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13036 Filed 6–3–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–259, Rms–7309, 7942, 7943, 7944, 7948]

Radio Broadcasting Services; Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, Santa Isabel and Vieques, Puerto Rico, and Christiansted and Fredericksted, Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; further notice.

SUMMARY: The Commission requests comments on a counterproposal and interrelated proposals filed in response to the Notice of Proposed Rule Making in this proceeding. See 56 FR 46763, September 16, 1991. Amor Family Broadcasting Group seeks the allotment of Channel 251A to Santa Isabel, Puerto Rico, as its first local aural transmission service. V.I. Stereo Communications Corp. requests the reallotment of Channel 291B from Christiansted, Virgin Islands, to Vieques, Puerto Rico, the modification of Station WVIS' license accordingly, and the substitution of Channel 254A for unoccupied but applied for Channel 293A at Culebra, Puerto Rico. Luis Hernandez requests the allotment of Channel 253A to Fredericksted, Virgin Islands, as its first local aural transmission service. Carlos J. Colon-Ventura counterproposes the substitution of Channel 252A for Channel 255B at Vieques, the reallotment of Channel to Las Piedras, Puerto Rico, instead of Canovanas, Puerto Rico, and the modification of Station WSAN's license accordingly. These channel allotments require the same channel changes at San Juan, Mayaguez and Quebradillas as set forth in the Notice of Proposed Rule Making, *supra*. See Supplementary Information, *infra*.

DATES: Comments must be filed on or before July 20, 1992, and reply comments on or before August 4, 1992.

ADDRESSES: Federal Communications Commission, Washington DC 20554. In addition to filing comment with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Oyster, Esq., Route 1, Box 203A, Castleton, Virginia 22716 (Counsel to Arzuaga); Frank R. Jazzo, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington DC 20036–2679 (Counsel to Colon-Ventura); Jose Manuel Rodriquez, President, Amor Family Broadcasting Group, P.O. Box 1295, Santa Isabel, Puerto Rico 00757 (Petitioner for Santa Isabel); Luis Hernandez, P.O. Box 980, Quebradillas, Puerto Rico 00678 (Petitioner for Fredericksted); John B. Kenkel, Esq., Kenkel & Associates, 1220—19th Street, NW., suite 202, Washington, DC 20036 (Counsel to WKJB); and John P. Bankston, Seq., Hopkins & Sutter, 888—16th Street, NW., Washington, DC 2006 (Counsel to Arso).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 91–259, adopted May 15, 1992, and released May 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714,21st Street, NW., Washington, DC 20036.

Channel 251A can be allotted to Santa Isabel in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.3 miles) east to avoid a short-spacing to proposed Channel 254B at Mayaguez, at coordinates North Latitude 17–58–12 and West Longitude 66–22–09. Channel 291B can be allotted to Vieques without the imposition of a site restriction, at coordinates 18–19–39; 65–18–05. Channel 254A can be allotted to Culebra without the imposition of a site restriction, at coordinates 18–18–18; 65–18–06. Channel 253A can be allotted to Fredericksted, without the imposition of a site restriction, at coordinates 17–42–48; 64–53–00. Channel 252A can be allotted to Las Piedras with a site restriction of 14.6 kilometers (19.1 miles) northeast to avoid short-spacings to Stations WBRQ, Channel 249A, Cidra, Puerto Rico, and to proposed Channel 251A at Santa Isabel, at coordinates 18–16–14; 65–45–33.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael, C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–13056 Filed 6–3–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1321

[Ex Parte No. MC-208]

Nonoperating Motor Carriers—Collection of Undercharges

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing rules, that would apply to certain types of undercharge claims asserted by motor carriers that cease operating (because of bankruptcy, voluntary liquidation or otherwise) and/or their representatives. The proposal is prompted by recent attempts by defunct motor carriers to expand their collection efforts so as to unilaterally and retroactively substitute a higher tariff rate for the tariff rate originally billed for a past shipment, or disavow the contract rates where the shipment had moved as contract carriage, on grounds that the tariff or contract rate originally billed was either inapplicable, invalid, or unlawful. The rules would impose procedures to provide for an initial review by the Commission of the claims of these carriers, prior to rebilling and any attempts to collect amounts in addition to those originally billed, to screen out claims that lack any legitimate basis.

DATES: Comments are due July 6, 1992. Replies are not permitted.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. MC–208 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas Dahl (202) 927–5289 or Richard Felder (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The Commission is instituting a rulemaking proceeding on its own motion to consider whether to adopt regulations to address the problem of undercharge collections by moter carriers that have ceased operating or by their trustees, agents, or assigns. The Commission's general authority to supervise motor carrier rates and tariff publication vest it with primary jurisdiction to determine in the first instance (subject to appropriate court review) whether a particular rate is unreasonable, unlawful, and/or inapplicable. In addition, the Commission has primary jurisdiction to determine whether a transportation service constitutes contract or common carriage, and whether credit and collection practices are unreasonable and unlawful.

In the past the Commission has not always insisted upon exercising its oversight authority to the fullest extent by directly supervising every single undercharge claim that a carrier may bring. However, based on recent experience, the Commission preliminarily concludes that it needs to exercise its oversight authority to the fullest extent over the claims of carriers that are no longer operating, since that is where the potential for abuse is the greatest. Therefore, the Commission now proposes procedures to provide for an initial review by the Commission of certain types of claims by these carriers and/or their representatives, prior to rebilling. The full text of the proposed regulations is set forth below.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental and Energy Considerations

The Commission preliminarily concludes that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

The Commission also preliminarily concludes that the proposed regulations would not have a significant economic impact on a substantial number of small entitites.

List of Subjects in 49 CFR part 1321.

Motor carriers, Undercharges.

Decided: May 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the Preamble, the Commission proposes to amend title 49, chapter X, of the Code of Federal Regulations, by adding a new part 1321 as follows:

PART 1321—NONOPERATING MOTOR CARRIERS—COLLECTION OF UNDERCHARGES

Sec.

1321.1 Nonoperating motor carriers—undercharge collection.
1321.2 Disavowal of triff rates.
1321.3 Disavowal of contract carrier charges.
1321.4 Notice to shipper.
1321.5 Scope of rules.

Authority: 49 U.S.C. 10101, 10102, 10321, 10521, 10701, 10702, 10704, 10741, 10743, 10761, 10762, 10764, 10921, 10923, 11144, 11901, 11903, 11904, 11906; 5 U.S.C. 553.

§ 1321.1 Nonoperating motor carriers—undercharge collection.

Motor carriers that have ceased operation (because of bankruptcy, voluntary liquidation or otherwise), as well as their representatives, estates, assigns, or others who may assert undercharge claims purportedly founded on the regulatory requirements of the Interstate Commerce Act or Commission regulations, are subject to the rules in this part at all stages of the collection process, including the initial phase of rebilling. These regulations extend to pending claims (including claims already pending in court), as well as future claims.

§ 1321.2 Disavowal of tariff rates.

A person subject to this Part seeking to rebill for a past shipment based on the substitution of a different (higher) tariff rate for the tariff rate billed at the time of shipment, whether on lawfulness, reasonableness, or applicability grounds, must obtain prior Commission review and approval for the substitution of the different tariff rates.

§ 1321.3 Disavowal of contract carrier charges.

A person subject to this Part seeking to rebill for a past shipment based on the substitution of a common carrier tariff rate for contract carriage charges originally billed, must obtain prior Commission review and approval for the substitution of a (higher) tariff rate.

§ 1321.4 Notice of shipper.

A person subject to this Part seeking undercharges that are covered by these rules must notify the shipper in writing, simultaneously with its filing with the Commission (or following the effective date of these regulations, for pending claims), to advise that:

(a) The Commission has/or will give a preliminary review to the undercharge claims under § 1321.2 or 1321.3 (as appropriate);

(b) In doing so the Commission will consider any affirmative defenses that the shipper may raise based on the Interstate Commerce Act or Commission regulations; and

(c) The shipper may contact the Commission's Office of Public Assistance or the Bureau of Traffic's

Section of Rates and Informal Cases for further information and assistance.

§ 1321.5 Scope of rules.

The provisions of this Part do not apply to rebillings that:

(a) Seek to collect the (lowest available) tariff rate where the rate originally billed was not contained in a tariff on file with the Commission; or

(b) Seek to collect the unpaid portion of the originally billed tariff rate or contract charges, together with any interest or late payment charges that are permitted by Commission regulations.

[FR Doc. 92-13093 Filed 6-3-92; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 57, No. 108
Thursday, June 4, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 29, 1992.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number (s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Reinstatement

• Farmers Home Administration. 7 CFR 1955–B, Management of Property. On occasion. Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; Federal agencies or employes; 2,810 responses; 960 hours. Jack Holston (202) 720–9736.

Extension

• Farmers Home Administration. 7 CFR 1980–G, Nonprofit National Corporation Loan and Grant Program. FmHA 1980–60, 61, and 63. On occasion; Quarterly; Recordkeeping. State or local governments; Businesses or other for-profit; Non-profit institutions; 354 responses; 487 hours. Jack Holston (202 720–9736.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 92–13066 Filed 6–2–92; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Exemption From Appeal, Far East Salvage and Recovery Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.
ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest, insect baiting and trapping, and reforestation activities to rehabilitate and recover natural resources from recent insect epidemics on the Far East project area of the Lowman Ranger District on the Boise National Forest are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: The appeal exemption is effective on publication of this notice in the **Federal Register**. The Far East final environmental impact statement is effective 30 days after publication of the Notice of Availability in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Sigrist, Timber Management Assistant, Lowman Ranger District, Boise National Forest, HC 77 Box 3020, Lowman, ID 83637, Telephone: 208–259–3361.

SUPPLEMENTARY INFORMATION: Several years of drought in southewest Idaho have reduced soil moisture and weakened conifer trees. Consequently, douglas-fir bark bettle, mountain pine bettle, and tussock moth insect populations have dramatically increased and reached epidemic levels on the Bosie National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest since 1986 as a result of insect damage.

As part of the effort to rehabilitate and recover natural resources damaged by the insect epidemic, the Lowman Ranger District has developed a proposal to harvest dead and dying timber, bait and trap insects, and reforest damaged acres. The Lowman District has analyzed the Far East area and has identified issues, developed alternatives, and analyzed the effects of implementing timber salvage and other recovery activities, and documented the results of the analysis in an environmental impact statement.

The analysis area for Far East is located ten miles east of Lowman, Idaho. The area consists of 13,000 acres with insect damage and mortality scattered throughout. The Forest will harvest approximately 15 million board feet of dead and dying trees using helicopter logging systems. Cutting areas would average less than five acres in size and would not exceed 25 acres. Cutover areas greater than 20 acres would be replanted, and smaller areas may be replanted depending on accessibility. Natural regeneration would be used to reforest smaller areas. The Forest also proposes to bait and trap insects within the project area to help break up breeding cycles and reduce future insect populations. There is no new road construction proposed for the salvage operations.

Management direction for the Far East area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project areas. In addition, the Forest Plan describes standards which must be met when harvesting timber to protect soil, water, wildlife, visual, and other on-site resources. The proposed action for the Far East project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Far East contains a 2260 acre portion of the Ten Mile/Black Warrior Inventoried Roadless Area. The portion of this roadless area that is within the proposed salvage area has been allocated to commercial timber production by the Forest Plan. Approximately 12 million board feet would be harvested from the roadless area using helicopters. Landings would

be constructed adjacent to existing roads outside the roadless area.

Forest Pest Mangement specialists and District foresters have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting, bating/trapping, and reforestation will not control the epidemic, these activities will: (1) Help to break up insect breeding cycles, (2) recover valuable timber that would otherwise deteriorate, and (3) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the salvage timber sale, breeding insects can be trapped and removed and Knutson-Vandenburg (K-V) funds can be generated for use to restore forest resources that have been damged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is sufficient justification to expedite this project. The decision will be implemented after publication of this notice in the **Federal Register**, and the final environmental impact statement will be implemented after 30 days from the publication of a Notice of Availability in the **Federal Register**.

If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $1,000,000. Of this, approximately $250,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to half of this value and potentially make the salvage sale unattractive to timber purchasers, which would jeopardize the objectives of the rehabilitation and recovery project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Far East Salvage and Recovery Project, Idaho City Ranger District, Boise National Forest, from appeal. The final environmental impact statement discloses the effects of the proposed action on the environment and addresses issues resulting from the proposal.

Dated: May 29, 1992.

Clair C. Beasley,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 92-13016 Filed 6-3-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption From Appeal, Featherville Salvage Sale, Boise National Forest, ID.

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Featherville project area, Mountain Home Ranger District, Boise National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: June 4, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Williams, Timber Management Assistant, Mountain Home Ranger District, Boise National Forest, 2180 American Legion Boulevard, Mountain Home, ID 83647, Telephone: 208-587-7961.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir tussock moth, and bark beetle populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Mountain Home Ranger District personnel have developed a proposal to harvest dead and dying timber, and reforest damage acres. The Forest Service has analyzed the Featherville Salvage Area and has identified issues, developed alternatives, and analyzed the effects of implementing timber salvage and other recovery activities.

The analysis area for the Featherville Environmental Assessment (EA) is located 60 miles northeast of Mountain Home, Idaho. The area includes about 40,000 acres with insect mortality scattered throughout. The Forest will harvest approximately 10 million board feet of dead and dying trees using helicopter logging system. Cutting areas would average less than five acres in size and would not exceed 20 acres. Cutover areas greater than 10 acres would be replanted, and smaller areas may be replanted depending on accessibility. Natural regeneration would be used to reforest smaller areas.

There is no road construction or reconstruction proposed for the salvage operations. Helicopter landings would be constructed or reconstructed along existing roads.

Management direction for the Featherville area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project area. The Forest Plan also describes standards to protect soil, water, wildlife, visual, and other resources, when harvesting timber. The proposed action for the Featherville project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

The Featherville Salvage Area includes a portion of the Rainbow (15,400 acres), and all of the Whiskey Jack (7,700 acres) Inventoried Roadless Areas. Both Roadless Areas within the Featherville Management Area have been allocated to commercial timber production as well as other multiple uses by the Forest Plan. Approximately eight million board feet would be harvested from the Roadless Areas using helicopters. Landings would be constructed adjacent to existing roads outside the roadless areas.

Forest Pest Management Specialists and District Foresters have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting and reforestation will not control the epidemic, these activities will: (1) Recover value timber that would otherwise deteriorate, and (2) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the salvage timber sale, breeding insects can be removed in the logs (bark beetles) and Knutson-Vandenburg (K-V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is sufficient justification to expedite this project. The decision will be implemented after publication of this notice in the **Federal Register**.

If the project is delayed because of an appeal (delays of up to 150 days are

possible), it is likely that the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $750,000. Of this, approximately $187,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to half of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Featherville Salvage and Recovery Project, Mountain Home Ranger District, Boise National Forest, from appeal. The environmental assessment discloses the effects of the proposed actions on the environment and will address issues resulting from the proposal.

Dated: May 29, 1992.

Clair C. Beasley,

Deputy Regional Forester, Intermountain Reegion, USDA Forest Service.

[FR Doc. 92-13015 Filed 6-3-92; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Upper North Bosque River Watershed Erath and Hamilton Counties, TX; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper North Bosque River Watershed, Erath and Hamilton Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501-7682, telephone (817) 774-1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservatonist, has determiend that the preparation and review of an environmental impact statement are not needed for this project.

The project will improve surface water and ground water quality in and below the watershed by assisting in a program to reduce the pollutant load from dairies by 70 percent. The plan will provide financial and technical assistance to install animal waste management systems and associated land treatment practices on 31 dairy farms. Implementation of the plan will be accomplished through the local soil and water conservation districts. This project will be supplemented by the Agricultural Conservation Program and Great Plains Conservation Program in the watershed. The plan will be applied during a ten-year period.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Enviromental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: May 20, 1992.

Harry W. Oneth,

State Conservationist.

[FR Doc. 92-13120 Filed 6-3-92; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

University of Nebraska-Lincoln, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92-030. *Applicant:* University of Nebraska-Lincoln, Lincoln, NE 68588-0340. *Instrument:* Electromagnetic Geophysical Survey Instrument, Model EM16/EM16R. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* See notice at 57 FR 11936, April 8, 1992. *Reasons:* The foreign instrument provides measurements of the quadphase as well as the inphase secondary field and measures the secondary field as a ratio of the primary field for independent measurements of absolute field strength. *Advice Received From:* The U.S. Geological Survey, May 8, 1992.

Docket Number: 92-026. *Applicant:* Virginia Polytechnic Institute and State University, Blacksburg, VA 24061-0211. *Instrument:* Distillation Unit, Model CH81. *Manufacturer:* Normag, Germany. *Intended Use:* See notice at 57 FR 11936, April 8, 1992. *Reasons:* The foreign instrument provides: (1) Flexibility for a wide range of distillation/separation applications, (2) a 20-plate column and, (3) five different feed points available by a simple turning of valves. *Advice Received From:* The National Institute of Petroleum and Energy Research, May 19, 1992.

Docket Number: 92-027. *Applicant:* U.S. Geological Survey, Sioux Falls, SD 57198. *Instrument:* Color Digital Image Recorder, Model Color Fire 240. *Manufacturer:* Cymbolic Sciences International, Canada. *Intended Use:* See notice at 57 FR 11936, April 8, 1992. *Reasons:* The foreign instrument provides capability for using roll film rawstock of Aerocolor 2445 type file. *Advice Received From:* The National Oceanic and Atmospheric Administration, May 8, 1992.

Docket Number: 92-037. *Applicant:* University of Hawaii, Honolulu, HI 96822. *Instrument:* Electron Microprobe, Model CAMEBAX SX 50. *Manufacturer:* Cameca Instruments Inc., France. *Intended Use:* See notice at 57 FR 14388, April 20, 1992. *Reasons:* The foreign instrument provides an intense electron beam to excite characteristic x-rays of a sample phase down to 1.0μm area. *Advice Received From:* The National Institute of Standards and Technology, October 23, 1991 (comparable case).

The U.S. Geological Survey, National Institute of Petroleum and Energy Research, National Oceanic and Atmospheric Administration, and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended

purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-13132 Filed 6-3-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications For Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651); 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-188R. *Applicant:* Washington State University, Division of Purchasing, French Administration Building, room 220, Pullman, WA 99164-1020. *Instrument:* Rheometer. *Manufacturer:* Physica Messtechnik GmbH U Co., KG, Germany. Original notice of this resubmitted application was published in the **Federal Register** of January 15, 1992.

Docket Number: 92-064. *Applicant:* Northwest Missouri State University, West 7th Street, Maryville, MO 64468. *Instrument:* Stopped-flow Spectrometer, Model SF-1B. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for teaching research techniques to undergraduate students in chemistry that they may become familiar with stopped-flow techniques and chemical kinetics. *Application Received by Commissioner of Customs:* May 6, 1992.

Docket Number: 92-066. Applicant: University of Miami, Rosenstiel School of Maine and Atmospheric Science, Division of Marine Biology, 4600 Rickenbacker Causeway, Miami, FL 33149-1098. *Instrument:* (2) Electronic Fish Measuring Boards, Model FMB IV. *Manufacturer:* Limnoterra Atlantic Inc., Canada. *Intended Use:* The instrument will be used to make measurements of length, weight and estimation of age in order to determine distributional characteristics of the spanish mackerel stock, *Scombermorus maculatus.* *Application Received by Commissioner of Customs:* May 6, 1992.

Docket Number: 92-067. Applicant: University of Vermont, Department of Pharmacology, UVM Medical Research Center, 55A South Park Drive, Colchester, VT 05446-2500. *Instrument:* 3-D Micromanipulator. *Manufacturer:* Narishige, Japan. *Intended Use:* The instrument will be used for studies of single ion channels from cellular membranes using the patch clamp technique. This allows the measurement of ionic flow through single ion channels from which the functional and kinetic properties of the ion channel can be determined. The main objective of these studies is to characterize different types of ion channels. *Application Received by Commissioner of Customs:* May 11, 1992.

Docket Number: 92-068. Applicant: Northwestern University Medical School, 303 East Chicago Avenue, Chicago, IL 60611. *Instrument:* Multi electrode Neuronal Recording System. *Manufacturer:* UWE Thomas Recording, Germany. *Intended Use:* The instrument will be used to study the interactions between neurons in the motor cortex and cerebellum, two structures which are critically involved in the control of limb movement in both monkeys and humans. The studies involve training monkeys to perform a particular sequence of limb movements, while recording the activity of the relevant neurons. *Application Received by Commissioner of Customs:* May 13, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-13131 Filed 6-3-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the 77th Annual Meeting of the National Conference on Weights and Measures will be held July 19 through 23, 1992, at the Stouffer Nashville Hotel, Nashville, Tennessee. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, held in January 1992, as well as the annual meeting, bring together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATE: The meeting will be held July 19-23, 1992.

LOCATION OF MEETING: Stouffer Nashville Hotel, Nashville, Tennessee.

FOR FURTHER INFORMATION CONTACT: Carroll S. Brickenkamp, Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone (301) 975-4005.

Dated: May 28, 1992.

John W. Lyons,

Director.

[FR Doc. 92-12984 Filed 6-3-92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) and its following Committees will hold meetings at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA, telephone: (215) 521-5900. The meeting will be held on June 23, 24, and 25, 1992.

The committee meetings to be held on June 23 are: **Bluefish Monitoring Committee**—10 a.m. until 12 p.m. **Coastal Migratory Species Committee**—1:30 p.m. until 2:30 p.m. **Habitat Committee**—1:30 p.m. until 4 p.m. **Large**

Pelagic Committee—2:30 p.m. until 4 p.m.

There will also be a scoping meeting on scup & black sea bass beginning at 7:00 p.m.

The Council will begin its regular meeting on June 24 at 8:00 a.m. and adjourn on June 25 at approximately 1 p.m. There will also be a hearing on the revision to the Summer Flounder Fishery Management Plan Amendment #2 on June 24 at 7:00 p.m.

In addition to hearing committee reports, the Council will be making its recommendations to the Regional Director for bluefish management in 1993; is scheduled to adopt the resubmsision of Amendment #2; will hold discussion on artificial reefs and other fishery management matters as deemed necessary. The Council also may go into closed session (not open to the public) to discuss personnel and/or national security matters.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: June 1, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–13128 Filed 6–3–92; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Advisory Subpanel and Plan Development Team will hold a public meeting on June 30, 1992, beginning at 11 a.m. The meeting will be held at the National Marine Fisheries Service, Southwest Regional office, 501 West Ocean Boulevard, suite 4200, Long Beach, CA.

The purpose of this meeting is to discuss the preliminary anchovy biomass estimate and status of the fishery. There will *not* be discussions on the draft fishery management plan being developed to manage anchovy, Pacific mackerel, sardines, and jack mackerel.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117. For those individuals planning on attending this meeting, there is no public parking in the building, however, public parking is available immediately behind the building on Magnolia Street at a cost of $3.00 per day.

Dated: June 1, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–13127 Filed 6–3–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment and Correction of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 1, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting and correcting a limit.

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 641 is being increased for carryforward. The adjusted limit includes a correction to a previous directive.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 26392, published on June 7, 1991; and 57 FR 20250, published on May 12, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 1, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 4, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1991 and extends through June 30, 1992.

Effective on June 8, 1992, you are directed to increase the current limit for Category 641 to 1,772,310 dozen [1], as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Indonesia.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–13130 Filed 6–3–92; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a copy of the latest Regulatory Guidance Letter (RFL) to all known interested parties. RGL's are used by the Corps of Engineers as a means to transmit guidance on the permit program (33 CFR 320–330) to its division and district engineers.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1782.

SUPPLEMENTARY INFORMATION: In accordance with a notice published by the Corps of Engineers on January 22,

[1] The limit has not been adjusted to account for any imports exported after June 30, 1991.

1991, (56 FR 2408), we will publish all RGL's upon issuance. Accordingly, RGL No. 92–1, subject: Federal Agencies Roles and Responsibilities, is hereby published.

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter, RGL 92–1

Date: 13 May 1992. Expires: 31 December 1997.

Subject: Federal Agencies Roles and Responsibilities.

1. Purpose

The purpose of this guidance is to clarify the Army Corps of Engineers leadership and decision-making role as "project manager" for the evaluation of permit applications pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. This guidance is also intended to encourage effective and efficient coordination among prospective permittees, the Corps, and the Federal resource agencies (i.e., Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS)). Implementation of this guidance will help to streamline the permit process by minimizing delays and ensuring more timely decisions, while providing a meaningful opportunity for substantive input from all Federal agencies.

2. Background

(a) The Department of the Army Regulatory Program must operate in an efficient manner in order to protect the aquatic environment and provide fair, equitable, and timely decisions to the regulated public. Clear leadership and a predictable decision-making framework will enhance the public acceptable of the program and allow the program to meet the important objective of effectively protecting the Nation's valuable aquatic resources.

(b) On August 9, 1991, the President announced a comprehensive plan for improving the protection of the Nation's wetlands. The plan seeks to balance two important objectives—the protection, restoration, and creation of wetlands and the need for sustained economic growth and development. The plan, which is designed to slow and eventually stop the net loss of wetlands, includes measures that will improve and streamline the current wetlands regulatory system. This Regulatory Guidance Letter is issued in accordance with the President's plan for protecting wetlands.

(c) The intent of this guidance is to express clearly that the Corps is the decision-maker and project manager for the Department of Army's Regulatory Program. The Corps will consider, to the maximum extent possible, all timely, project-related comments from other Federal agencies when making regulatory decisions. Furthermore, the Corps and relevant Federal agencies will maintain and improve as necessary their working relationships.

(d) The Federal resource agencies have reviewed and concurred with this guidance and have agreed to act in accordance with these provisions. While this guidance does not restrict or impair the exercise of legal authorities vested in the Federal resources agencies or states under the CWA or other statutes and regulations (e.g., EPA's authority under section 404(c), section 404(f), and CWA geographic jurisdiction and FWS/NMFS authorities under the Fish and Wildlife Coordination Act and the Endangered Species Act (ESA)), agency comments on Department of the Army permit applications must be consistent with the provisions contained in this regulatory guidance letter.

3. The Corps Project Management/Decision Making Role

(a) The Corps is solely responsible for making final permit decisions pursuant to section 10 and section 404(a), including final determinations of compliance with the Corps permit regulations, the section 404(b)(1) Guidelines, and Section 7(a)(2) of the ESA. As such, the Corps will act as the project manager for the evaluation of all permit applications. The Corps will advise potential applicants of its role as the project manager and decision-maker. This guidance does not restrict EPA's authority to make determinations of compliance with the Guidelines in carrying out its responsibilities under Sections 309 and 404(c) of the Clean Water Act.

(b) As the project manager, the Corps is responsible for requesting and evaluating information concerning all permit applications. The Corps will obtain and utilize this information in a manner that moves, as rapidly as practical, the regulatory process towards a final permit decision. The Corps will not evaluate applications as a project opponent or advocate—but instead will maintain an objective evaluation, fully considering all relevant factors.

(c) The Corps will fully consider other Federal agencies' project-related comments when determining compliance with the National Environmental Policy Act (NEPA), the Section 404(b)(1) Guidelines, the ESA, the National Historic Preservation Act, and other relevant statutes, regulations, and policies. The Corps will also fully consider the agencies' views when determining whether to issue the permit, to issue the permit with conditions and/or mitigation, or to deny the permit.

4. The Federal Resources Agencies' Role

(a) It is recognized that the Federal resource agencies have an important role in the Department of the Army Regulatory Program under the CWA, NEPA, ESA, Magnuson Fisheries Conservation and Management Act, and other relevant statutes.

(b) When providing comments, Federal resource agencies will submit to the Corps only substantive, project-related information on the impacts of activities being evaluated by the Corps and appropriate and practicable measures to mitigate adverse impacts. The comments will be submitted within the time frames established in interagency agreements and regulations. Federal resource agencies will limit their comments to their respective areas of expertise and authority to avoid duplication with the Corps and other agencies and to provide the Corps with a sound basis for making permit decisions. The Federal resource agencies should not submit comments that attempt to interpret the Corps regulations or for the purposes of section 404(a) make determinations concerning compliance with the Section 404(b)(1) Guidelines. Pursuant to its authority under Section 404(b)(1) of the CWA, the EPA may provide comments to the Corps identifying its views regarding compliance with the Guidelines. While the Corps will fully consider and utilize agency comments, the final decision regarding the permit application, including a determination of compliance with the Guidelines, rests solely with the Corps.

5. Pre-Application Consultation

(a) To provide potential applicants with the maximum degree of relevant information at an early phase of project planning, the Corps will increase its efforts to encourage pre-application consultations in accordance with regulations at 33 CFR 325.1(b). Furthermore, while encouraging pre-application consultation, the Corps will emphasize the need for early consultation concerning mitigation requirements, if impacts to aquatic resources may occur. The Corps is responsible for initiating, coordinating, and conducting pre-application consultations and other discussions and

meetings with applicants regarding Department of the Army permits. This may not apply in instances where the consultation is associated with the review of a separate permit or license required from another Federal agency (e.g., the Federal Energy Regulatory Commission or the Nuclear Regulatory Commission) or in situations where resource agencies perform work for others outside the context of a specific Department of the Army permit application (e.g., the Conservation Reserve Program and technical assistance to applicants of Federal grants).

(b) For those pre-application consultations involving activities that may result in impacts to aquatic resources, the Corps will provide EPA, FWS, NMFS (as appropriate), and other appropriate Federal and State agencies, a reasonable opportunity to participate in the pre-application process. The invited agencies will participate to the maximum extent possible in the pre-application consultation, since this is generally the best time to consider alternatives for avoiding or reducing adverse impacts. To the extent practical, the Corps and the Federal resource agencies will develop local procedures (e.g., teleconferencing) to promote reasonable and effective pre-application consultations within the logistical constraints of all affected parties.

6. Applications for Individual Permits

(a) The Corps is responsible for determining the need for, and the coordination of, interagency meetings, requests for information, and other interactions between permit applicants and the Federal Government. In this regard, Federal resource agencies will contact the Corps to discuss and coordinate any additional need for information from the applicant. The Corps will cooperate with the Federal resource agencies to ensure, to the extent practical, that information necessary for the agencies to carry out their responsibilities is obtained. If it is determined by the Corps that an applicant meeting is necessary for the exchange of information with a Federal resource agency and the Corps chooses not to participate in such a meeting, the Federal resource agency will apprise the Corps, generally in writing, of that agency's discussions with the applicant. Notwithstanding such meetings, the Corps is solely responsible for permit requirements, including mitigation and other conditions—the Federal resource agencies must not represent their views as regulatory requirements. In circumstances where the Corps meets with the applicant and develop information that will affect the permit decision, the Corps will apprise the Federal resource agencies of such information.

(b) Consistent with 33 CFR 325, the Corps will ensure that public notices contain sufficient information to facilitate the timely submittal of project-specific comments from the Federal resource agencies. The resource agencies comments will provide specific information and/or data related to the proposed project site. The Corps will fully consider comments regarding the site from a watershed or landscape scale, including an evaluation of potential cumulative and secondary impacts.

(c) The Corps must consider cumulative impacts in reaching permit decisions. In addition to the Corps own expertise and experience, the Corps will fully consider comments from the Federal resource agencies, which can provide valuable information on cumulative impacts. Interested Federal agencies are encouraged to provide periodically to the Corps generic comments and assessments of impacts (outside the context of a specific permit application) on issues within the agencies' area of expertise.

7. General Permits

(a) The Corps is responsible for proposing potential general permits, assessing impacts of and comments on proposed general permits, and deciding whether to issue general permits. The Corps will consider proposals for general permits from other sources, including the Federal resource agencies, although the final decision regarding the need to propose a general permit rests with the Corps. Other interested Federal agencies should provide comments to the Corps on proposed general permits. These Federal agency comments will be submitted consistent with established agreements and regulations and will focus on the Federal agencies' area(s) of expertise. The Corps will fully consider such agencies' comments in deciding whether to issue general permits, including programmatic general permits.

(b) The Corps is responsible for initiating and conducting meetingss that may be necessary in developing and evaluating potential general permits. Any discussions with a State or local Government regarding proposed programmatic general permits will be coordinated through and conducted by the Corps. Prior to issuing a programmatic general permit, the Corps will ensure that the State or local program, by itself or with appropriate conditions, will protect the aquatic environment, including wetlands, to the level required by the section 404 program.

8. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Commander:

Arthur E. Williams,

Major General, USA, Director of Civil Works.

[FR Doc. 92-13118 Filed 6-3-92; 8:45 am]

BILLING CODE 3710-08-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 92-2]

DOE's Facility Representative Program at Defense Nuclear Facilities

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning DOE's facility representative program at defense nuclear facilities. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before July 6, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208-6400.

Dated: May 29, 1992.

John T. Conway,

Chairman.

DOE's Facility Representative Program at Defense Nuclear Facilities

Dated: May 28, 1992.

Department of Energy (DOE) Order 5000.3A, *Occurrence Reporting and Processing of Information*, establishes a policy "to assure that both DOE and DOE contractor line management, including the Office of the Secretary, [be] kept fully and currently informed of all events which could affect the health and safety of the public." As a central feature of the measures used to implement this policy, the order defines the position "DOE Facility Representative" as follows:

" *DOE Facility Representative.* For each major facility or group of lesser facilities, an

individual * * * assigned responsibility by the Head of the Field Organization for monitoring the performance of the facility and its operations. This individual shall be the *primary point of contact* with the contractor and will be responsible to the appropriate Program Secretarial Officer (PSO) and Head of Field Organization * * *." [emphasis added]

In addition, DOE Order 5480.19, *Conduct of Operations Requirements for DOE Facilities*, directs that "operations at DOE facilities be * * * conducted in a manner to assure an acceptable level of safety," and specifies that DOE Facility Representatives be "assigned responsibility [to] oversee the day-to-day conduct of operations * * * in accordance with * * * direction received from the Program Manager." Secretary of Energy Notice SEN–6E–92, Departmental Organization and Management Arrangements, extends this chain of responsibility, holding Program Managers accountable to Program Secretarial Officers (PSOs), who in turn are "accountable to [the Secretary] for their respective programs, including safety of the workers and the public * * *."

Recognizing the importance of these positions with regard to assuring adequate protection of the public health and safety at DOE defense nuclear facilities, the Board reviewed existing department-wide guidance on the selection, training and responsibilities of DOE Facility Representatives. DOE Order 5000.3A and DOE Order 5480.19 (both cited above), provide only limited details concerning DOE Facilities Representative duties and responsibilities; moreover, there are no orders that prescribe any guidance for selection and training of DOE Facility Representatives, nor any effective guidance for establishing the duties and responsibilities associated with these positions. (See Appendix A)

Having made numerous reviews throughout the DOE defense nuclear facilities complex, the Board notes that the DOE managers for several facilities in the defense nuclear complex have begun to establish formal Facility Representative programs. However, these programs are operating without centralized direction. Generally, this is resulting in widely differing qualifications, duties, and responsibilities for DOE Facility Representatives from facility to facility, even at the same site. For example, DOE Facility Representatives encountered by the Board have ranged from personnel holding doctoral degrees to summer interns (college students).

This situation could result in failure by DOE to achieve the level of technical vigilance necessary to assure the safe operation of the department's defense nuclear facilities. The Board believes that the performance of the interrelated safety, technical, and management functions by DOE Facility Representatives would be enhanced if a formal qualification program for these positions, commensurate with their importance, was promulgated at the department level and implemented throughout the defense nuclear facilities complex.

Therefore, the Board recommends that for defense nuclear facilities:

1. The Secretary of the Department of Energy expeditiously carry out a comprehensive analysis of the existing DOE Facility Representative programs.

a. The analysis should be conducted under the direction of a senior individual who has demonstrated high technical and managerial ability and has demonstrated an understanding of the use of facility representatives.

b. The analysis should emphasize the identification of those aspects of the existing programs that either support or impede the achievement of DOE objectives for assuring the protection of public health and safety. Consideration should be given to evaluating:

(1) Qualification requirements and recruitment practices employed in selecting prospective DOE Facility Representatives;

(2) General and facility-specific training and examination requirements and practices necessary to prepare prospective DOE Facility Representatives for field assignments, and to maintain their proficiency;

(3) DOE Facility Representative duties and responsibilities;

(4) Existing supervision and management of the Facility Representative position, now provided by several individuals in some facilities, especially inquiring whether there are clear lines of responsibilities with both the contractor and DOE line management;

(5) Criteria and practices for assigning DOE Facility Representatives to each defense nuclear facility; and

(6) DOE personnel practices and procedures that provide incentives and impediments to making the position of DOE Facility Representative attractive and career-enhancing. At a minimum, restraints imposed by the practice of measuring responsibility predominantly in terms of numbers of individuals supervised should be addressed.

c. The analysis should identify practices employed in successful Facility Representative programs outside of the defense nuclear facilities complex that are appropriate for the DOE Facility Representative Program.

d. At the conclusion of the analysis, an estimate should be prepared of the personnel and management resources that would be required to establish and maintain an effective DOE Facility Representative Program, and which reflects the results of the analysis.

2. Utilizing the results of the comprehensive analysis, the Secretary of the Department of Energy establish a formal program to select, train, and assign DOE Facility Representatives for the defense nuclear facilities.

a. In establishing this program, DOE should be prepared to modify personnel practices and programs as necessary to establish a beneficial and effective DOE Facility Representative Program.

b. This program should give consideration to:

(1) Delineating DOE Facility Representative selection requirements, including specified standards of educational achievement, professional experience, technical aptitude, and forcefulness;

(2) Establishing DOE Facility Representative training requirements, including a formal centralized core training program, a formal site- and facility(s)-specific training program, and a continuing education and improvement program, each including periodic objective examinations;

(3) Defining DOE Facility Representatives duties and responsibilities, both generically and with regard to each facility in every mode of operation including transition states such as between PSO's; and

(4) Establishing formal requirements to specify those activities or facilities requiring the assignment of DOE Facility Representatives.

John T. Conway.
Chairman.

Appendix A—Review of DOE Facility/Site Representative Position Descriptions

The DNFSB staff has reviewed several current or proposed position descriptions, defining the duties and responsibilities of DOE Facility/Site Representatives at Savannah River, Richland, Idaho National Engineering Laboratory (INEL), Rocky Flats, and the Waste Isolation Pilot Plant (WIPP). Based on these position descriptions, there appears to be a wide disparity in the duties and qualifications for DOE Facility/Site Representatives from facility to facility. The lack of any effective guidance in establishing the duties and responsibilities associated with these positions is supported by the following observations.

The position description for the Facility Representative, WIPP Project Office, (General Engineer GM–801–13) most closely tracks the definition of a "DOE Facility Representative" as defined in DOE Order 5000.3A. The position description properly summarizes the major duties of the facility representative as follows:

"Conducts daily on-site evaluation of contractor operations with emphasis on personnel health and safety, nuclear safety, environmental protection, facility modifications and maintenance, and formality of operations. Assures safe operations at the facility at all times. This is accomplished by frequent walk-through inspections of all facility spaces, observation of facility activities, and continuous interface with contractor personnel at all levels. Deficiencies or concerns are resolved directly with the contractor Facility Manager (with timely appropriate notification to DOE management of the actions taken) or, as necessary, are elevated through DOE line management up to the Operations Office Manager and the Headquarters Program Manager.

"Serves as the primary conduit of information concerning facility operations for DOE management. Maintains awareness of all activities, ongoing and planned, at the facility through discussions with personnel at all levels, through participations in meetings on daily operations and problem resolution, as well as short and long range planning, and through problem identification and resolution resulting from interfacing with personnel at all levels on walk-through inspections and observation of operations. Is responsible for assuring that inspections, observations, and discussions are sufficiently frequent and timely to ensure current knowledge of operations at all times.

"Is normally the first point of contact for DOE in all event notifications and is available to respond to the facility around-the-clock. Serves as the primary DOE expert regarding operational activities and problem identification and resolution."

In contrast, the position description for the Site Representative, Chemical Processing Plant Branch, INEL, includes the following definition of duties:

"Performs surveillance of the facilities to assure that work is being done in accordance with applicable safety standards and specifications, and approved operating and work control procedures. Facility shutdown authority rests with the Assistant Manager for Nuclear Programs. The Site Representative may exercise this authority, after contacting the AM/NP, when in his opinion, operations may result in undue risk to health, safety, or the environment. If time permits, such action will be coordinated with the MPD Director, AM/ES&H, and ID manager. In cases other than imminent danger, the Site Representative will first bring the matter to the attention of facility management. If resolution is not reached, the Site Representative will go through normal DOE–ID line management for directing any change in operations."

The level of knowledge required of individuals assigned to these positions varies widely among the position descriptions reviewed. All of the position descriptions suffer from a lack of specificity as to how an applicant or an incumbent in these positions will be required to demonstrate his or her proficiency in meeting any of the "Knowledge Requirements" stated in the position description. In fact, no level of educational achievement is cited in any of the position descriptions. The Facility Representative position description for the WIPP Project Office does cite a Professional Engineer license as being highly desirable, but not required. This position description also establishes several performance criteria, including:

"The ability to complete training on safety and environmental regulatory issues, and to apply general and site-specific training toward the demonstration of detailed knowledge of safety-related systems design basis, functions, and operational characteristics."

The position descriptions reviewed are not consistent in the assignment of responsibilities and compensation incentives. It is not readily discernable as to how certain DOE Facility/Site Representatives are given General Schedule classifications (e.g. GS–13) whereas selected DOE Facility/Site Representatives are included in the DOE Performance Management Recognition System. This latter system, based on the concept of pay for performance, is used for individuals assigned to supervisory or policy influencing positions. A convincing argument can be made that a DOE Facility/Site Representative influences the operational policies and procedures for assigned facilites and, therefore, should be assigned to this pay for performance incentive system.

Appendix B—Transmittal Letter to the Secretary of Energy

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004, (202) 208–6400 Δ FTS 268–6400

John T. Conway, Chairman, A.J. Eggenberger, Vice Chairman, John W. Crawford, Jr., Herbert John Cecil Kouts

May 28, 1992.

The Honorable James D. Watkins,
Secretary of Energy,
Washington, DC 20585

Dear Mr. Secretary: On May 28, 1992, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 92–2 which is enclosed for your consideration. Recommendation 92–2 deals with DOE's facility representative program at defense nuclear facilities.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John R. Conway,
Chairman.

Enclosure

[FR Doc. 92–12998 Filed 6–3–92; 8:45 am]
BILLING CODE 6820–KD–M

[Recommendation 92–3]

Operational Readiness Reviews for the HB-Line at the Savannah River Site, Aiken, SC

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning operational readiness reviews for the HB-Line at the Savannah River Site, Aiken, South Carolina. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before July 6, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated June 1, 1992.

John T. Conway,
Chairman.

[Recommendation 92–3]

Operational Readiness Reviews for the HB-Line at the Savannah River Site, Aiken, South Carolina

Dated: May 29, 1992.

As indicated in our recent Recommendation 92–1, the Board is continuing its oversight and investigation of health and safety issues related to the proposed resumption of plutonium processing in the HB-Line at the Savannah River Site, South Carolina. Our review of Department of Energy (DOE) and contractor documents, as well as other information obtained during the investigation to date, leads the Board to conclude that the Operational Readiness Review (ORR) of the HB-Line conducted by Westinghouse Savannah River Company (WSRC)

during the summer of 1991, and DOE's subsequent review called an "ORE", were premature, limited in scope, and inadequate. Moreover, some of the conclusions reached seem suspect. The Board was particularly concerned that some safety issues requiring resolution prior to resumption of operations (Category 1) were reclassified as post-resumption issues (Category 2), without the concurrence of certain DOE team members, raising a question regarding the supportability of the findings. The ORRs did not ensure adequate resolution and closure of safety and health issues associated with the HB-Line, which had not been operated since 1987. When attempts were made to resume operations in the HB-Line during the summer of 1991, following the ORRs, a series of radiological exposures to workers and other safety incidents occurred, causing operations to be suspended. In October of 1991, the HB-Line resumed operations until March of 1992, when operations were again suspended due to an unreviewed safety question. The Office of Nuclear Safety's review, as well as other assessments of HB-Line, identified safety issues which still have not been resolved.

The Department has placed a priority upon safety resuming HB-Line operations to meet commitments made to NASA. While recognizing that the HB-Line may not pose an undue risk to the off-site public, the Board remains concerned with protection of on-site personnel, since an adequate assessment of operational readiness has not been conducted, nor has an adequate assessment of an accidental ground level release been performed.

The Board has determined that the conduct of adequate and thorough ORRS by WSRC and DOE are essential for identifying and resolving remaining health and safety issues affecting workers, and at the same time promptly achieving readiness for restart.

Therefore, the Board recommends that, prior to resuming operations in the HB-Line:

1. DOE direct WSRC to reopen its ORR, and that WSRC and DOE conduct adequate ORRs in accordance with previous Board recommendations and DOE implementation plans for ORRs at other facilities.

2. Comprehensive criteria documents be established for judging and measuring readiness to restart. The criteria documents should include the bases for judging which safety issues must be resolved prior to resumption, and which issues may be deferred for resolution subsequent to restart.

3. WSRC issue a Readiness to Proceed Memorandum requesting DOE approval for resumption of operations after WSRC has completed its ORR and has determined that safety issues appropriate for closure prior to resumption have been adequately resolved.

4. DOE provide whatever assistance it deems appropriate to WSRC during the contractor's conduct of its ORR, recognizing that such assistance is separate and distinct from DOE's subsequent and independent execution of its own ORR.

5. A DOE ORR team, including a Senior Advisory Group, conduct an independent and comprehensive ORR for HB-Line after (a) WSRC has conducted an adequate ORR and issued a Readiness to Proceed Memorandum requesting DOE approval for resumption of approval of resumption of operations, and (b) DOE has sufficient reason to believe that significant deficiencies affecting the resumption and safe operation of HB-Line have been corrected by the contractor.

6. The DOE ORR team consist of experienced individuals whose backgrounds collectively include all important facets of the operations involved; that the majority of the team members be independent of HB-Line direct line management responsibilities to ensure an independent and unbiased assessment.

7. In preparing for the Operational Readiness Review for the HB-Line, DOE and WSRC should reexamine the HB-Line Safety Analysis Report (SAR) to ensure that: (a) The accident analyses adequately consider all credible scenarios; (b) all appropriate engineered safety systems which are necessary to prevent accidents or mitigate the on-site and off-site consequences of those accidents are identified; and (c) the information obtained from the updated Fire Hazards Analysis is consistent with the accident analyses.

8. WSRC and DOE should complete their assessment of compliance with DOE safety orders at HB-Line, and finish their review, approval, and implementation of any compensatory measures that are necessary and appropriate to achieve the objectives of order compliance and safe resumption of operations at HB-Line.

John T. Conway,
Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004, (202) 208-6400
• *FTS 268-6400*

John T. Conway, Chairman, A.J. Eggenberger, Vice Chairman, John W. Crawford, Jr., Herbert John Cecil Kouts

May 29, 1992

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585

Dear Mr. Secretary: In accordance with 42 U.S.C. 2286a(2) the Board has conducted an investigation of DOE and contractor activities at the HB-Line at the Savannah River Site. Pursuant to that investigation which is drawing to a close, the Board sent to you Recommendation 92-1 by letter dated May 21, 1992.

In furtherance of that recommendation, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 92-3 which is enclosed for your consideration. Recommendation 92-3 deals with operational readiness reviews for the HB-Line at the Savannah river Site, Aiken, South Carolina.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161-68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

Enclosure

[FR Doc. 92-13061 Filed 6-3-92; 8:45 am]
BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2179-010 California]

Merced Irrigation District; Availability of Environmental Assessment

May 29, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the

Office of Hydropower Licensing (OHL) has reviewed the application for addition of a water delivery system pursuant to article 45 of the license for the New Exchequer Hydroelectric Project. The project is located on the Merced River in Mariposa and Merced Counties, California.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of a water delivery system would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13004 Filed 6-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-7-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 29, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on May 26, 1992, filed the following tariff sheets for inclusion in its FERC Gas Tariff, First Revised Volume No. 1:

Sixth Revised Sheet No. 45
Seventh Revised Sheet No. 45
Fourth Revised Sheet No. 50

CNG states that the purpose of this filing is to recover: revised PSP charges allocated to it by Transcontinental Gas Pipe Line Corporation ("Transco") in Docket No. TM92-10-29-000; Year 2 LPSP charges allocated to CNG by Transco in Docket No. TM92-12-29-000; and take-or-pay costs allocated to CNG by Texas Gas Transmission Corporation in Docket Nos. RP91-61-000, *et al.*

CNG requests effective dates for these proposed tariff sheets of May 27, 1992; June 26, 1992; and August 1, 1991; respectively.

CNG states that copies of this filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before June 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13003 Filed 6-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 29, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on May 27, 1992 certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective June 1, 1992.

ESNG states that the sales rates set forth in the above referenced tariff sheets reflect an increase of $0.3012 per dt in the commodity rates and an increase of $0.3772 in the demand rate. The increased gas cost in the instant filing results from:

(1) Adjusting ESNG's rates to reflect the impact of higher prices being paid to producers/suppliers under ESNG's market responsive gas supply contracts; and

(2) Updating ESNG's pipeline supplier demand rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13002 Filed 6-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-133-000 (Phase I)]

Gas Research Institute; Second Amendment to the Modified Funding Mechanism

May 28, 1992.

Take notice that on May 26, 1992, the Gas Research Institute (GRI) proposed to amend, for a second time, the modified funding mechanism it had proposed on March 20, 1992 in this proceeding. GRI proposes the following mechanism to fund its research and development program for the remainder of 1992 and for 1993:

1. Collection of the GRI funding unit of 1.47 cents per Dth (*i.e.*, 1.51 cents per Mcf) in conjunction with all nondiscounted commodity charges and one-part rates for transportation services, including those associated with bundled sales transactions, would continue to be accomplished as it is under the existing mechanism, *i.e.*, by applying a volumetric surcharge to the member interstate pipeline transportation services, including those associated with bundled sales. As always, the surcharge will be collected only once on each unit of gas.

2. Funding necessary to make up the GRI estimated revenue shortfall of approximately $43 million resulting from exempting discounted transactions from GRI funding, would be collected through a uniform demand or reservation surcharge of 8 cents per Dth per month. GRI intends that this surcharge would remain in effect, without change, for the remainder of 1992 and for 1993.

3. An interstate pipeline member's total annual GRI funding responsibility based on transactions involving discounted demand or reservation charges would be limited to 10 percent of its total 1991 GRI contributions.

Comments on the amended funding mechanism and motions to intervene should be filed by June 5, 1992 with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All comments will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the persons commenting parties to this

proceeding. Accordingly, any person not already a party who wishes to become a party must also file a motion to intervene in accordance with the Commission's rules and regulations. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13000 Filed 6-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 29, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on May 27, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-sixth Revised Sheet No. 10
Fifth-sixth Revised Sheet No. 10A
Thirty-seventh Revised Sheet No. 11
Twenty-seventh Revised Sheet No. 11A
Twenty-seventh Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective June 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.1199 per MMBtu in purchased gas costs from those reflected in the rates set forth in the Out-of-Cycle PGA filed April 29, 1992 (Docket No. TQ92-4-18). No changes are proposed for the demand or SGN Standby rates.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before June 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13001 Filed 6-3-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-29-NG]

Williams Gas Marketing Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Williams Gas Marketing Company blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after May 31, 1992, the day WGM's existing blanket import authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 29, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-13122 Filed 6-3-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of April 17 Through April 24, 1992

During the Week of April 17 through April 24, 1992, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 1, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 17 through April 24, 1992]

Date	Name and location of applicant	Case No.	Type of submission
March 22, 1992	Gulf/Dick's Self Service, Milwaukee, WI	RR300-139	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The March 8, 1991 Decision and Order (Case No. RF300-8983) issued to Dick's Self Service regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.
April 17, 1992	Crescent Refining & Oil Co. and Petroleum Fuel Company, Washington, DC.	LEF-0044	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the September 18, 1991 Consent Judgement entered into with Crescent Refining & Oil Company and Petroleum Fuel Company.
Do.	Goodyear Tire & Rubber Company, Washington, DC.	RR272-92	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: The October 7, 1991 Decision and Order (Case No. RF272-20175) issued to Goodyear Tire & Rubber Company regarding the firm's Application for Refund submitted in the crude oil refund proceeding would be modified.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 17 through April 24, 1992]

Date	Name and location of applicant	Case No.	Type of submission
April 20, 1992	Enron/Texaco Refining and Marketing, Inc., St. Louis, MO.	RR340-1	Request for Modification/Rescission in the Enron Refund Proceeding. If Granted: The December 6, 1991 Decision and Order (Case No. RF340-25) issued to Texaco Refining and Marketing, Inc., regarding the firm's Application for Refund submitted in the Enron refund proceeding would be modified.
April 24, 1992	Gulf/Carolina Fuel Raleigh, NC	RR300-140	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The March 27, 1992 Decision and Order (Case No. RF300-59) issued to Carolina Fuel regarding a correction to the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
April 17, 1992	Vickers/Nebraska	RQ1-578
Do	Nat'l Helium/Nebraska	RQ3-579
Do	Coline/Nebraska	RQ2-580
Do	Standard Oil Ind (Amoco)/Nebraska	RQ251-581
April 17, 1992 thru April 24, 1992	Gulf Oil Refund Applications Received	RF300-19927 thru RF300-19960
Do	Atlantic Richfield Applications Received	RF304-12977 thru RF304-13002
Do	Texaco Refund Applications Received	RF321-18571 thru RF321-18589
April 20, 1992	Blandin Paper Company	RF340-114
Do	Growmark, Inc	RF340-115
April 21, 1992	Martin Oil Company	RF333-30
April 22, 1992	Liquegas	RF340-116
Do	Bonesteel Oil Company	RF340-117
April 23, 1992	Sooner Petroleum Company	RF340-118
Do	Three Allen Center	RF340-119
April 24, 1992	Energy Refunds, Inc	RF340-120
Do	Frankston Reliance Gas Company	RF340-121

[FR Doc. 92-13107 Filed 6-3-92; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of April 24 Through May 1, 1992

During the Week of April 24 through May 1, 1992, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 28, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 24 through May 2, 1992]

Date	Name and location of applicant	Case No.	Type of submission
April 23, 1992	Tesoro/Defense Fuel Supply Center, Alexandria, VA.	RR326-1	Request for Modification/Rescission in the Tesoro Refund Proceeding. If Granted: The December 30, 1991 Decision and Order (Case No. RF326-310) issued to Defense Fuel Supply Center regarding the firm's Application for Refund submitted in the Tesoro refund proceeding would be modified.
April 24, 1992	Gulf/Gulfmain Service Center, Rye Brook, NY	RR300-142	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The March 30, 1992 Dismissal Letter (Case No. RF300-13532) issued to Gulfmain Service Center regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.
April 27, 1992	C. Parker Oil Company, Inc., Asheville, NC	LEE-0042	Except to the Reporting Requirements. If Granted: C. Parker Oil Company, Inc., would not be required to file Form EIA-672B, "Reseller/Retailer's Monthly Petroleum Product Sales Report."

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of April 24 through May 2, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Do.	Consolidated Edison Co. of New York, *et al*, Gladwyne, PA.	LER–0008	Request for Modification/Rescission. If Granted: The April 2, 1992 Decision and Order (Case No. KEF–0120) issued to the Consolidated Edison Co. of New York, *et al.*, concerning a determination to extend the deadline for the submission of crude oil refund claims to June 30, 1994, would be rescinded.
Do.	Gulf/Liverman's Gulf, Woodbridge, VA	RR300–141	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The April 6, 1992 Dismissal Letter issued to Liverman's Gulf regarding the firm's Application for Refund submitted the Gulf refund proceeding would be modified.
April 29, '992	ARCO/Alger Oil Company, Rising Sun, MD	RR304–38	Request for Modification/Rescission in the ARCO Refund Proceeding. If Granted: The April 6, 1992 Decision and Order (Case No. RR304–35) issued to Alger Oil Company in the Atlantic Richfield Company Subpart V special refund proceeding would be modified.
Do.	Texaco/Stewart's Texaco, Shamrock, TX	RR321–112	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The April 1, 1992 Decision and Order (Case No. RF321–18499) issued to Stewart's Texaco regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.
April 30, 1992	Gulf/Hill's Gulf, Woodbridge, VA	RR300–144	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The April 6, 1992 dismissal of an Application for Refund filed by Hill's Gulf (Case No. RF300–13056) in the Gulf Oil Company special refund proceeding would be reviewed.
Do.	Gulf/Kelly's Gulf, Woodbridge, VA	RR300–145	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The April 6, 1992 dismissal of an Application for Refund filed by Kelly's Gulf (Case No. RF300–13182) in the Gulf Oil special refund proceeding would be reviewed.
Do.	Gulf/S&S Service Station, Deposit, NY	RR300–143	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The March 30, 1992 dismissal of an Application for Refund filed by the S&S Service Station (Case No. RF300–11720) in the Gulf Oil special refund proceeding would be modified.
May 1, 1992	James L. Schwab, Spokane, WA	LFA–0208	Appeal of an Information Request Denial. If Granted: James L. Schwab would receive a waiver of all fees incurred in the processing of his Freedom of Information Request for a videotape mailed to him on February 6, 1992.
Do.	Consolidated Edison Company of New York, *et al.*, New York, NY.	LER–0009	Request for Modification/Rescission. If Granted: The April 2, 1992 Decision and Order (Case No. LFX–0006) issued in the 341 Tract Unit of the Citronelle Field proceeding to entertain claims for refunds from Farmer Cooperatives and Airlines who executed waivers and releases in *The Department of Energy Stripper Well Exemptions Litigation* would be modified.
Do.	341 Tract Unit of the Citronelle Field, Washington, DC.	LER–0010	Request for Modification/Rescission. If Granted: The December 24, 1991 Decision and Order (Cases Nos. HER–0050, HER–0106 and KEZ–0096) issued to the 341 Tract Unit of the Citronelle Field regarding the termination of previously granted exception relief would be modified.

Refund Applications Received

Date received	Name of refund proceeding/name of refund applicant	Case No.
April 24, 1992 thru May 1, 1992	Crude Oil, Applications Received	RF272–92217 thru RF272–92250
Do.	Atlantic Richfield, Applications Received	RF304–13003 thru RF304–13021
Do.	Enron Oil, Applications Received	RF304–122 thru RF340–161
April 27, 1992	Reagan Auto Service	RF343–8
Do.	Jack's Service	RF342–201
Do.	ACF Industries, Inc	RF300–19961
Do.	City of Benbrook	RF300–19962
Do.	Broadway-Yellow Cab Co., Inc	RF300–19963
Do.	City of Central Falls	RF300–19964
Do.	Cherokee County	RF300–19965
Do.	Stewart & Stevenson Services	RF300–19966
Do.	Bubb's Gulf	RF300–19967
Do.	Westbank Texaco	RF321–18587
Do.	Carriage Trade Car Wash	RF321–18590
Do.	Chama Texaco	RF321–18591
Do.	Gene's Texaco Service	RF321–18592
Do.	Palagyi's Texaco	RF321–18593
Do.	Melim's Texaco	RF321–18594

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund applicant	Case No.
April 28, 1992	City of New York	RA272-50
Do.	Albert J. Szoke	RF342-202
Do.	D & J Car Wash	RF300-19968
April 29, 1992	Drakes Texaco	RF321-18595
Do.	Rasmussen Fuel Company, Inc	RF342-203
Do.	The Circle K Corporation	RF300-19969
April 30, 1992	Dave Walters Texaco	RF321-18596

[FR Doc. 92-13123 Filed 6-3-92; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of April 20 Through April 24, 1992

During the week of April 20 through April 24, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

David Dekok, 4/21/92, LFA-0199

On March 23, 1992, David DeKok filed an Appeal from a February 26, 1992, determination issued by the San Francisco Field Office (SFO) of the Department of Energy (DOE) in response to a request for documents that Dekok had made under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that SFO had met the requirements of the FOIA by making the responsive documents available for the requestor's review at the Lawrence Livermore National Laboratories and that it had made an adequate search for responsive documents. However, SFO was directed to issue a new determination concerning whether a certain document that it had discovered pursuant to the Appeal was responsive to the Appellant's request.

James L. Schwab, 4/23/92, LFA-0200

James L. Schwab (Schwab) filed an Appeal from a determination issued to him by the Department of Energy Field Office, Albuquerque (DOE/AL) in response to a request for information made by Mr. Schwab under the Freedom of Information Act (FOIA). Mr. Schwab, a former employee of a DOE contractor, had requested all documents regarding the DOE's investigations into allegations made by Schwab concerning: (1) Illegal telephone use by contractor employees at the Tonapah Test Range (TTR); (2) the use of material which originated in South Africa at TTR; and (3) the possible sighting of endangered species at TTR. In its March 16, 1992, determination, DOE/AL provided Schwab with copies of three documents regarding illegal telephone use, and two other documents regarding the possible sighting of endangered species. Schwab appealed the adequacy of DOE/AL's search and determination. In considering the Appeal, the DOE found that DOE/AL's case file indicated that Sandia National Laboratories had been contacted to provide documents responsive to Schwab's request. However, because of personnel changes at DOE/AL, it could not be determined whether other offices or individuals were contacted. Based on the information provided by DOE/AL, the DOE was unable to determine whether the search conducted was adequate or reasonably calculated to uncover the material sought by the Appellant. Consequently, the DOE remanded the matter to DOE/AL to conduct a new search for all documents responsive to Schwab's request.

Seattle Post-Intelligencer, 4/24/92, LFA-0205

On April 16, 1992, the Seattle Post-Intelligencer (SPI) filed an Appeal from a determination issued by the Bonneville Power Administration (BPA) in response to a request for documents made by SPI under the Freedom of Information Act (FOIA). In that determination, BPA denied a request for a copy of a settlement agreement between the Washington Public Power Supply System and the General Electric Company on the basis that the document was the subject of a confidentiality order issued by the United States District Court for the Eastern District of Washington. The order specifically directed BPA not to release the settlement agreement. The DOE found clear Supreme Court authority stating that the FOIA does not require an agency to commit contempt of court in order to release documents in order to comply with the provisions of the FOIA. Accordingly, the Appeal was denied.

Thomas Williams, 4/24/92, LFA-0204

Thomas Williams filed an Appeal from a denial by the Department of Energy Office of Inspector General of a request for information submitted by Mr. Williams under the Freedom of Information Act (FOIA). Because some of the documents responsive to Williams' request related to matters under investigation by the IG, certain materials were withheld pursuant to FOIA Exemption 7(A), which shields from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings * * *" 5 U.S.C. 552(b)(7)(A). However, subsequent to the IG's determination, the investigation was completed. The matter was therefore remanded to the IG for a determination on whether the requested documents should be released or are exempt from mandatory disclosure pursuant to another FOIA exemption.

Refund Applications

Texaco, Inc./Westgate Texaco, 4/22/92, RR321-75

James R. Allen, the owner of Westgate Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications that had been filed on his behalf by a private firm, Federal Refunds, Inc. (FRI). In the Motion, Mr. Allen stated that he had signed the second application, and certified in it that no other application had been filed, because he had been informed by FRI that the first application had been lost and had not been filed. In considering the Motion, the DOE found that the erroneous filing of the duplicate applications was solely caused by FRI. The DOE also found that Mr. Allen had reasonable grounds for believing that the second application, which he signed, would be the only application filed by FRI. Accordingly, the Motion for Reconsideration was approved and Mr. Allen was granted a refund of $5,084.

Texas Industries, Inc., 4/23/92, *RF272–26852, RD272–26852*

The DOE issued a Decision and Order granting an Application for Refund filed by Texas Industries, Inc., a manufacturer of construction materials, in the Subpart V crude oil special refund proceeding. A group of states and territories (States) objected to the Application on the grounds that the Applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the cement industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the Applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the Applicant's presumption of injury. The refund granted to the Applicant in this Decision was $32,668.

Vickers Energy Corp./Kansas, 4/23/92, *RQ1–575, RQ1–576, RQ1–577*

The DOE issued a Decision and Order approving, in part, the second-stage applications filed by the State of Kansas in the Vickers Energy Corporation special refund proceeding. Kansas requested permission to use $390,000 to purchase and install new laundry equipment at the Topeka State Hospital, $69,704 to install a telecommunications link between Parsons State Hospital and the University of Kansas, $303,476 to replace eleven vans for the transportation of the State's elderly, $149,473 to purchase new kitchen equipment for State institutions for the elderly and $20,801 to purchase new vans for the Beloit youth center. The DOE found that, when considered as part of Kansas' overall oil overcharge restitution program, its plans to install a telecommunication link, to purchase new vans for the elderly and to purchase new vans for the Beloit youth warrant approval. The DOE denied Kansas' request to use Vickers' monies to fund the purchasing of new laundry equipment and kitchen equipment. Second-stage refunds monies should be used to supplement but not supplant State, local, or any other funds available for the designated programs. On the basis of the information available, DOE determined that the old laundry and kitchen equipment could be replaced pursuant to an existing, regularly budgeted program.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

American Samoa Power Authority	RF272–66564	04/22/92
Atlantic Richfield Company/Bogata Gas Co. et al	RF304–9293	04/20/92
Atlantic Richfield Company/Winsome Arco	RF304–149	04/22/92
Silver Arco	RF304–12840	
Acme Arco	RF304–12841	
Serramonte Arco	RF304–12842	
Fort Howard Cup Corporation	RF272–69564	04/22/92
Fort Howard Cup Corporation	RD272–69564	
Gulf Oil Corporation/Dinkins Service, Inc. et al	RR330–121	04/22/92
Occidental Chemical Corp	RF272–44117	04/20/92
Occidental Chemical Corp	RD272–44117	
Occidental Chemical Corp	RF272–63961	
Quantum Chemical Corporation/Lascelles Oil Co. et al	RF330–54	04/24/92
Texaco Inc./Felicia Oil Co., Inc. et al	RF321–7068	04/20/92
Texaco Inc./Russell Moody's Texaco et al	RF321–462	04/22/92
Texaco Inc./Williams' Texaco	RF321–1979	04/20/92
Girton's Texaco Service	RF321–11848	
Texaco, Inc./Benoit's Texaco et al	RF321–812	04/23/92
Texaco, Inc./Charlie Fambro Service Center et al	RF321–10273	04/23/92
Texaco, Inc./James Maier Texaco et al	RF321–3203	04/24/92
United Refining Company/Martin Oil Co	RF333–30	04/21/92

Dismissals

The following submissions were dismissed:

Name	Case No.
A.J. Miller Trucking Co	RF300–13897
Al's Texaco	RF321–09280
Alps Texaco	RF321–09388
B & H Distributors	RF321–9954
Bob Kern's Texaco	RF321–07289
Boulevard Texaco	RF321–12426
Brighton Texaco	RF321–16360
Chadwick South Texaco	RF321–07188
Charlie's Texaco	RF321–07306
Chevron U. S. A., Inc	RF324–4
Clint's Gulf	RF300–13611
Community Texaco	RF321–09285
Community Texaco	RF321–02211
Crow Foot Gulf	RF300–13942
Dave's Texaco	RF321–02223
Del's Gulf	RF300–13955
Donati's Texaco	RF321–07194
E & J Tacoma St. Service	RF321–07168
Elrod Gulf Service Station	RF300–13636
Exton Arco	RF304–12786
Five Point Texaco	RF321–09279
Fork's Texaco	RF321–07172
Fran Miller's Texaco	RF321–07181
Frank Newcomb Texaco	RF321–07165
Fraser Texaco	RF321–07305
Gene's Texaco	RF321–5213
Harry Berkovich Texaco	RF321–347
Haynes Texaco	RF321–355
Hibdon's Texaco	RF321–371
Hilltop Texaco	RF321–9923
Ingram Texaco	RF321–9927
Intercounty Construction	RF300–12933
J.C. O'Dillon Texaco	RF321–09387
Jack's Service Station	RF321–07298
Jerry Lowman Texaco	RF321–17411
Jim's Gulf in Amity	RF300–13886
Johnny's Texaco	RF321–07290
Kelley's Texaco	RF321–5897
Kiln Supermarket, Inc	RF300–13609
Kingman Truck Terminal	RF315–9988
LA Gloria Oil & Gas Co	RF340–45
Lacey Springs Gulf	RF300–13929
Lewis Big Gulf	RF300–13619
Lewis Dukes Gulf	RF300–106
Lilburn Texaco	RF321–09202
Lord's Texaco	RF321–09203
Lucas Funeral Home	RF300–13922
Lyons Construction Company	RF300–13923
McLain's Texaco #1 and #2	RF321–689
McLain's Texaco #1 and #2	RF321–688
Mondello's Brothers Service	RF321–07301
Moore's Texaco #1 and #2	RF321–379
Moore's Texaco #1 and #2	RF321–380
Morales Brothers Texaco	RF321–5335
Morgan Texaco	RF321–07304
Mosso's Texaco Service	RF321–390
Nelson's Texaco Station	RF321–12404

Name	Case No.
Petlak & Sons Texaco	RF321-07173
R & W Texaco	RF321-07174
Roland's Texaco	RF321-07302
Royal Gulf	RF300-13613
Russ' Gulf	RF300-13691
Russell's Texaco #1 and #2	RF321-464
Russell's Texaco #1 and #2	RF321-463
Samih Khatib Service Station	RF300-13997
Schatz Texaco	RF321-07180
Sheridan Fruitwood Texaco	RF321-09286
Shively's Texaco Service	RF321-07292
Smith Texaco of Niagara Falls	RF321-511
Smith Texaco Self Service	RF321-510
Soo Oil Company	RF300-13604
South Brothers Gulf Station	RF300-13635
South Main Texaco	RF321-516
Southeastern Transfer and Storage.	RF300-13687
Southland Gulf Super Service	RF300-11616
Speight's Texaco	RF321-532
Tex-Amart #2	RF321-07169
Texaco Copia & Gateway West	RF321-9952
Turnpike Texaco	RF321-07297
Vic's Texaco	RF321-07300
Walt's Texaco	RF321-07189
Westhill Gulf	RF300-13887
White's Texaco	RF321-09386
Zerbey's Texaco	RF321-09281

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 28, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-13124 Filed 6-3-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4139-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 6, 1992.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Baseline Request on the Production, Transformation, Import and Export of Methyl Bromide. (EPA ICR #1432.10; OMB #2060-0170). This ICR is an amendment to an existing clearance.

Abstract: The EPA is currently developing regulations proposing to add methyl bromide to the list of class I ozone-depleting substances under section 602 of the Clean Air Act Amendments of 1990. The Agency is requesting clearance to collect baseline information on methyl bromide for 1991 from producers, transformers, importers and exporters of the substance. The information requested is identical to the Agency's November 26, 1990 request for baseline data for certain ozone-depleting substances (55 FR 49116). The Agency will use the information to establish baselines for methyl bromide producers, transformers, importers and exporters and to allot production, consumption and transformation allowances for methyl bromide.

Burden Statement: The public reporting burden for this one-time collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Methyl bromide producers, transformers, importers and exporters

Estimated Number of Respondents: 12

Estimated Total Annual Burden on Respondents: 96 hours

Frequency of Collection: One-time

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503

Dated: May 28, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-13098 Filed 6-3-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4139-4]

Science Advisory Board, Environmental Engineering Committee, Indoor Air Engineering Research Subcommittee, Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Indoor Air Engineering Research Subcommittee (IAERS) of the Environmental Engineering Committee (EEC), will meet on Monday, July 20, and Tuesday, July 21, 1992. The meeting will be at the U.S. Environmental Protection Agency (EPA) Air and Energy Engineering Research Laboratory (AEERL) at Research Triangle Park, North Carolina 27711. The meeting will begin at 9 am on Monday, July 20th and 8:30 am on Tuesday, July 21st and will adjourn no later than 4 pm on July 21st.

At this meeting, the IAERS will receive briefings from Agency staff, and comment on the draft report on the Agency's Indoor Air Engineering Research Program which was prepared by the Agency's Office of Research and Development (ORD) staff. Copies of this draft report on the Agency's Indoor Air Engineering Research Program may be obtained by contacting Ms. Carolyn Fowler, Secretary to the Pollution Control Division, ORD at the U.S. EPA's AEERL, Research Triangle Park, North Carolina 27711 at (919) 541-2915.

The proposed charge to the SAB's IAERS from the Agency's ORD is to address the overall indoor air engineering research program, to evaluate research-in-progress, as well as strategic planning and strategic directions issues. The following questions are being asked of the SAB/IAERS: (1) Is the EPA/ORD approach to source characterization, with its focus on developing methods for characterizing emissions, sink effects, and exposures, a rational and scientifically sound approach? (2) Is the EPA/ORD approach to indoor air quality (IAQ) modeling and evaluation of IAQ control techniques sufficiently rigorous and appropriately practical? (3) Are the EPA/ORD projects and plans for developing guidance on microbial contaminant control reasonable and scientifically sound? (4) Is bioresponse-based testing of emissions from sources a reasonable extension of chemically-based testing? Is it likely to provide a better measure of the potential of indoor sources to cause health and comfort problems in buildings? and (5) Is there any aspect of the strategic direction of

the indoor air engineering research program that should be reevaluated?

The meeting is open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/260-6552. Written comments received by July 6, 1992 will be mailed to the SAB/IAERS; comments received after that date will be provided to the IAERS at the meeting. Written comments of any length (at least 35 copies) may be provided to the Subcommittee up until the meeting.

Members of the public who wish to make a brief oral presentation should contact Dr. K. Jack Kooyoomjian no later than July 2, 1992. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: May 21, 1992.

Donald G. Barnes,

Staff Director, Science Advisory Board (A101F).

[FR Doc. 92-13097 Filed 6-3-92; 8:45 am]

BILLING CODE 6560-50-M

Superfund Remedial Branch, Proposed Administrative Settlement; Baxter/Union Pacific Tie Treating Site, Laramie, WY

[FRL 4139-5]

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed administrative settlement.

SUMMARY: In accordance with the requirements of section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative settlement under section 122(h) concerning the Baxter/Union Pacific Tie Treating Site in Laramie, Wyoming (Site). The proposed administrative settlement requires one potentially responsible party (PRP) to pay $237,996.12 in order to resolve the United States' cost recovery claim related to response activities taken by EPA in connection with the Site.

DATES: Comments must be submitted by July 6, 1992.

ADDRESSES: Comments should be addressed to Geniene R. Hillier (8HWM-SR), Enforcement Specialist, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, and should refer to: In the matter of Baxter/Union Pacific Tie Treating Site, Laramie, Wyoming.

FOR FURTHER INFORMATION CONTACT: Eduardo Quintana, Assistant Regional Counsel, Office of Regional Counsel, at (303) 293-1458.

SUPPLEMENTARY INFORMATION: Notice of section 122(h) Cost Recovery Settlement:

In accordance with section 122(i) of CERCLA, notice is hereby given that the terms of an Administrative Settlement Agreement (CERCLA-VIII-92-14) have been agreed to by the Union Pacific Railroad Company. In accordance with section 122(h)(1) of CERCLA, EPA has obtained the prior written approval from the Department of Justice to settle the United States claim under section 107(a) of CERCLA for past response costs incurred from September 30, 1986 to November 30, 1991. By the terms of the administrative settlement, this PRP will pay $237,996.12 to EPA if the United States will provide Union Pacific with a limited covenant not to sue for reimbursement of response and oversight costs incurred by the United States after September 30, 1986 and prior to November 30, 1991 in connection with Site. The $237,996.12 figure represents 100% of the total costs expended by EPA from September 30, 1986, to November 30, 1991, in connection with response activities undertaken to implement a 1986 Record of Decision and investigations addressing further remediation of the Site.

EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed administrative settlement.

A copy of the proposed Administrative Settlement Agreement may be obtained in person or by mail from Eduardo Quintana (8RC), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405. Additional background information relating to the administrative settlement is available for review at that address.

Dated: May 26, 1992.

Robert L. Duprey,

Director, Hazardous Waste Management Division.

[FR Doc. 92-13096 Filed 6-3-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 92-637]

Reporting Requirements for International Traffic Data

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: FCC is making available for comments a Manual for filing § 43.61 Data. The Commission recently revised and simplified its requirements for reporting international traffic data. The revisions will reduce the burden on carriers and improve the quality of data received by the Commission.

DATES: Comments must be filed on or before June 19, 1992 and reply comments must be filed on or before July 6, 1992.

ADDRESSES: To file formally in this proceeding, participants must file an original and four copies of all comments and reply comments with the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Linda Blake or Jim Lande, Common Carrier Bureau, Industry Analysis Division, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

Release Date: May 22, 1992.

Comment Dates Established Reporting Requirements for International Traffic Data

Comment Date: June 19, 1992
Reply Date: July 6, 1992.

The Commission has revised and simplified its requirements for reporting international traffic data. Report and Order, CC Docket No. 91-22, Released February 12, 1992. A Manual for Filing § 43.61 Data, dated May 1992, is being made available for notice and comment.

The manual implements the Commission's decision to eliminate obsolete reporting requirements. Other changes include the incorporation of data for Canada, and Saint Pierre and Miquelon, and Mexico; streamlined requirements for pure resellers; a revised definition of minutes to be filed; the addition of two categories of private line service; and, the reporting of new service revenues. The manual also provides a new data format to speed processing. These revisions will reduce the burden on carriers and improve the quality of data received by the Commission.

An original and four copies of comments and reply comments on the Manual for Filing § 43.61 Data should be filed with the Office of the Secretary,

1919 M St. NW., Washington, DC, 20554, room 222. Comments must be filed by June 19, 1992. Reply comments must be filed by July 6, 1992.

All carriers that provided international service in 1991, including pure resale carriers, must file 1991 international traffic data in compliance with the current § 43.61 of the Rules. Carriers may use the new reporting procedures on an interim basis for reporting 1991 data.

The manual is available for reference in the Industry Alalysis Division Reference Room, Common Carrier Bureau, 1250 23rd Street, NW., Plaza Level. Copies may be purchased by calling Downtown Copy Center (DCC) at (202) 452–1422. For more information contact Linda Blake or Jim Lande of the Industry Analysis Division at 202–632–0745.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–12935 Filed 6–3–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–942–DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: May 2, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–942–DR), dated May 2, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 2, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in the City of Los Angeles and Los Angeles County (State of California), resulting from fires during a period of civil unrest beginning on April 29, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the City of Los Angeles and the County of Los Angeles, in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William M. Medigovich of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

Los angeles County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director.

[FR Doc. 92–12991 Filed 6–3–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

United States/Middle East and Indian Subcontinent Interconference; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 206–011377.

Title: United States/Middle East and Indian Subcontinent Interconference Agreement.

Parties:

The "8900" Lines,
The West Coast/Middle East Rate Agreement,
A.P. Moller-Maersk Line,
American President Lines, Ltd.,
National Shipping Company of Saudi Arabia,
Sea-Land Service, Inc.,
United Arab Shipping Company (S.A.G.),
Waterman Steamship Corporation.

Synopsis: The proposed Agreement will authorize the parties to discuss and agree upon rates, charges, rules, and terms and conditions of service, and to exchange information in the trade from United States ports and points (excluding ports in Alaska and Hawaii) to ports and points in the Red Sea, Arabian Gulf and the Indian Subcontinent.

By order of the Federal Maritime Commission.

Dated: May 29, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–12999 Filed 6–3–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

John Horace Day; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 24, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. John Horace Day, Orlando, Florida; to retain 9.02 percent and to acquire an additional 6.90 percent, for a total of 29.99 percent, of the voting shares of Orange Banking Corporation, Orlando, Florida, and thereby indirectly acquire Orange Bank, Orlando, Florida.

Board of Governors of the Federal Reserve System, May 29, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-13055 Filed 6-3-92; 8:45 am]

BILLING CODE 6210-01-F

Story County Bancorporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Story County Bancorporation, Jewell, Iowa; to acquire a 99 percent limited partnership interest in Viking Village Company, L.P., Jewell, Iowa, and thereby engage *de novo* in the provision of housing for low- and moderate-income families, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. The Avoca Company, Avoca, Nebraska; to engage *de novo* in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 29, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-13052 Filed 6-3-92; 8:45 am]

BILLING CODE 6210-01-F

Tomoka Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 29, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Tomoka Bancorp, Inc., Ormond Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Tomoka State Bank, Ormond Beach, Florida.

Board of Governors of the Federal Reserve System, May 29, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-13053 Filed 6-3-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, June 18, 1992 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G Street NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the May 28-29 meeting, a discussion on Uses and Objectives of Federal Accounting, and a discussion on Liabilities and Other Commitments. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F Street NW., room 302, Washington, DC 20001, or call (202) 504-3336.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: May 29, 1992.

Ronald S. Young,

Staff Director.

[FR Doc. 92-13057 Filed 6-3-92; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Specifications for Electronic Price Sale Catalog

AGENCY: Federal Supply Service (GSA).

ACTION: Notice.

SUMMARY: The Federal Supply Service (FSS) of the General Services Administration has developed a set of specifications, consistent with the American National Standards Institute (ANSI) X12 Standards for Electronic Data Interchange (EDI), to be used as a minimum guideline for the development of Price Sales Catalogs (transaction set 832) by Federal Supply Schedule contractors for submission of such catalogs to FSS for use in the Multi-Use File For Interagency News (MUFFIN) Gateway ordering program.

MUFFIN Gateway is an interactive, electronic bulletin board that will allow Federal agencies to review these electronic catalogs and create simplified purchase orders using model, part and descriptive information from the catalog. FSS will process these requisitions through the existing automated supply system to generate EDI purchase orders to Schedule contractors who will be able to submit EDI invoices to FSS and receive Electronic Funds Transfer (EFT) payments through the Department of Treasury's Vendor Express program.

The MUFFIN Gateway program is an addition to the on-going FSS EDI program which consists of the transmission of purchase orders (850), purchase order changes (860) and the receipt of invoices (810) and payment by EFT.

DATES: Comments concerning the GSA/FSS 832 specifications should be submitted no later than 60 days from the date of this notice.

ADDRESSES: Submit comments to the Systems, Inventory & Operations Management Center (FCS), Federal Supply Service, General Services Administration, Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Stuart Goulden, Program Analyst, Systems, Inventory & Operations Management Center, (703) 305–7741.

SUPPLEMENTARY INFORMATION: The logical minimum segments, as defined by X12 and the Federal Supply Service's needs for a multiple award Federal Supply Schedule data, are:

ST Transaction Set Header
BCT Beginning Segment for the Price/Sales Catalog
REF Reference Numbers
PER Administrative Communications Contact
DTM Date/Time Reference
FOB F.O.B. Related Instructions
N1 Name
N2 Additional Name Information
N3 Address Information
N4 Geographic Location
PER Administrative Communications Contact
LIN
Item Detail
PID Product/Item Description
MEA Measurements
PKG Marking, Packaging, Loading
PO4 Item Physical Details
TD4 Carrier Details
LDT Lead Time
FOB F.O.B. Related Instructions
CTP Pricing Information
CTT Transaction Totals
SE Transaction Set Trailer

The fundamental concept of the mapping is that there will be one contract per 832. If a firm has multiple contracts against a single schedule, then multiple 832's will need to be submitted.

Dated: May 20, 1992.

John R. Roehmer,

Director, Systems, Inventory & Operations Management Center.

[FR Doc. 92–13117 Filed 6–3–92; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families Office of Financial Management.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for continued use of a previously approved information collection for the Office of Financial Management (OFM) of the Administration for Children and Families.

ADDRESSES: Copies of the Information Collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Low-Income Home Energy Assistance Program (LIHEAP) Quarterly Estimates—ACF 535

OMB No.: 0970–0037

Description: Title XXVI, section 2610(a) of the Low-Income Home Energy Assistance Act of 1981 authorizes the Secretary to provide for the collection of specific data and any other information needed to carry out the provisions of this Act and, requires the Secretary to submit an annual summary of the data collection to the Congress.

Data reported on the form is used by ACF to adjust the estimated amounts obligated and to develop apportionment requests. It is also used to develop grant awards to State grantees and three Indian tribes based on an analysis of each grantee's needs. The grant awards will be used by grantees that receive over $1 million annually for the Low-Income Energy Assistance Program. ACF will use the information as a general accounting of LIHEAP funds and to assess the utilization patterns of fuel consumption.

Annual Number of Respondents: 55
Annual Frequency: 1
Average Burden Hours Per Response: 15 min.
Total Burden Hours: 14.

Dated: May 22, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92–13007 Filed 6–3–92; 8:45 am]

BILLING CODE 4130–01–M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Familes, Family and Youth Services Bureau (ACYF).

NOTICE: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an existing information collection entitled "State Grants for Dependent Care Planning and Development Program".

This request for OMB clearance is made by the Family and Youth Services Bureau of the Administration for Children, Youth and Families (ACYF) within the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: State Grants for Dependent Care Planning and Development Program

OMB No.: 0980–0178

Description: Subsection D of Public Law 98–558 requires States to submit an application to the Department of Health and Human Services in order to receive an allotment for dependent care planning and development activities and to submit an annual report on its activities under this program. In addition, the Law requires that both the application and the annual report include information on its intended use of these funds as well as information about prior uses of funds received under the program.

The states are required to report information on the number of children who participated in before and after school child care programs assisted under the Act; the characteristics of the children served including age levels, disabling conditions, and the income levels of families in such programs; the salary level and benefits paid to employees in such child care programs; and the number of clients served by the resource and referral systems assisted under the Act.

Annual Number of Respondents: 57

Annual Frequency: 1

Average Burden Hours Per Response: 20

Total Burden Hours: 1,140.

Dated: May 25, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92–13008 Filed 6–3–92; 8:45 am]

BILLING CODE 4130–01–M

Agency for Toxic Substances and Disease Registry

Workshop to Assist in Developing a Standardized Test Battery for Immune Function Disorders for Use in Environmental Health Field Studies; Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR), in association with the University of Medicine and Dentistry of New Jersey—Robert Wood Johnson Medical School (a member of the Association of Occupational and Environmental Clinics), announces the following meeting.

Name: Workshop to Assist in Developing a Standardized Test Battery for Immune Function Disorders for Use in Environmental Health Field Studies.

Times and Dates: 8 a.m.–5 p.m., June 22, 1992, 8:30 a.m.–5:45 p.m., June 23, 1992.

Place: Days Hotel at Lenox, 3377 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The purpose of this workshop is to assist ATSDR in the selection of standardized testing and evaluation methods for investigating the association between immune function disorders in humans and exposure to hazardous substances in the environment.

Matters To Be Considered: Participants will be divided into the following three workgroups:

Workgroup 1: Hypersensitivity.
Workgroup 2: Immune Deficiency.
Workgroup 3: Autoimmunity.

Each workgroup will discuss three major topics:

(1) Development of testing and evaluation methods for immediate use in environmental health studies of adults.

(2) Development of testing and evaluation methods for immediate use in environmental health studies of children.

(3) Identification of significant information needs in the implementation of these evaluation methods and criteria for the continuous modification and updating of the standard methods.

Contact Person for More Information: Joyce Smith, Division of Health Studies, ATSDR (MS E31), 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone (404) 639–6200.

Dated: May 28, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 92–13020 Filed 6–3–92; 8:45 am]

BILLING CODE 4160–70–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Chlorinated Water and Chloraminated Water

The HHS' National Toxicology Program (NTP) announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of chlorinated water and chloraminated water. Chlorine and chloramine are used as disinfectants in water supplies to prevent the spread of waterborne diseases.

Toxicology and carcinogenesis studies of chlorinated water were conducted by providing water containing 0, 70, 140, or 275 ppm chlorine to groups of 70 F344/N rates or B6C3F1 mice of each sex for up to 2 years.

Under the conditions of these 2-year drinking water studies, there was no evidence of carcinogenic activity [1] of chlorinated water in male F344/N rats receiving 70, 140, or 275 ppm. There was equivocal evidence of carcinogenic activity of chlorinated water in female F344/N rats based on an increase in the incidence of mononuclear cell leukemia. There was no evidence of carcinogenic activity of chlorinated water in male or female B6C3F1 mice receiving 70, 140, or 275 ppm.

Toxicology and carcinogenesis studies of chloraminated water were conducted by providing water containing 50, 100, or 200 ppm chloramine to groups of 70 F344/N rats or B6C3F1 mice of each sex for up to 2 years.

Under the conditions of these 2-year drinking water studies, there was no evidence of carcinogenic activity of chloraminated water in male F344/N rats receiving 50, 100, or 200 ppm. There was equivocal evidence of carcinogenic activity of chloraminated water in female F344/N rats based on an increase in the incidence of mononuclear cell leukemia. There was no evidence of carcinogenic activity of chloraminated water in male or female B6C3F1 mice receiving 50, 100, or 200 ppm.

The Study Scientist for this bioassay is Dr. June Dunnick. Questions or comments about the contents of this Technical Report should be directed to

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–4811.

Copies of Toxicology and Carcinogenesis Studies of Chlorinated Water (CAS Nos. 7782–50–5 and 7681–52–9) and Chloraminated Water (CAS No. 10599–90–3) (Deionized and Charcoal-Filtered) in F344/N Rats and B6C3F1 Mice (Drinking Water Studies) (TR 392) are available from NTP Central Data Management, NIEHS, P.O. Box 12233, MD A0–01, Research Triangle Park, NC 27709; telephone (919) 541–1371.

Dated: May 29, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92–13012 Filed 6–3–92; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Ethylene Thiourea

The HHS' National Toxicology Program (NTP) announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of Ethylene thiourea (ETU), used extensively in the rubber industry as an accelerator in the vulcanization of elastomers. It is also a trace contaminant and metabolic degradation product of a widely used class of ethylene bisdithiocarbamate fungicides.

Toxicology and carcinogenicity studies were conducted administering dietary concentrations of 0, 25, 83, and 250 ppm ethylene thiourea to groups of 60 F344/N rats of each sex. Dietary concentrations of 0, 100, 330, and 1,000 ppm ethylene thiourea were administered to groups of 60 B6C3F1 mice of each sex during these 2-year studies.

Under the conditions of these 2-year adult-only dietary exposures, there was clear evidence of carcinogenic activity [1] of ethylene thiourea in male and female F344/N rats, as shown by increased incidences of thyroid follicular cell neoplasms. There was clear evidence of carcinogenic activity of ethylene thiourea in male and female B6C3F1 mice as shown by increased incidences of thyroid follicular cell neoplasms, hepatocellular neoplasms, and adenomas of the pars distalis of the pituitary gland.

Perinatal exposure alone to ethylene thiourea had no effect on the incidences of neoplasms in rats or mice after two years. Combined perinatal and 2-year adult exposures produced marginal increases in the incidences of thyroid neoplasms, Zymbal's gland neoplasms, or mononuclear cell leukemia in some dose groups.

Nonneoplastic lesions associated with the administration of ethylene thiourea included follicular cell hyperplasia in rats and mice and follicular cell cytoplasmic vacuolation, centrilobular hepatocellular cytomegaly, and focal hyperplasia of the pars distalis of the pituitary gland in mice. Other effects associated with the administration of ethylene thiourea included decreased serum levels of T4 and/or T3 in rats and increased serum levels of TSH in rats and mice.

The Study Scientist for this bioassay is Dr. Rajendra S. Chhabra. Questions or comments about the contents of this Technical Report should be directed to Dr. Chhabra at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3386.

Copies of Toxicology and Carcinogenesis Studies of Ethylene Thiourea (CAS No. 96–45–7) in F344/N Rats and B6C3F1 Mice (Feed Studies) (TR 388) are available from NTP Central Data Management, NIEHS, P.O. Box 12233, MD A0–01, Research Triangle Park, NC 27709; telephone (919) 541–1371 or (919) 541–5419.

Dated: May 29, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92–13013 Filed 6–3–92; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3446]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 26, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Proposal: Request for termination of multifamily mortgage insurance.

Office: Housing.

Description of the Need for the Information and its Proposed Use: HUD–9807 will be used to inform HUD that a mortgage has been paid in full

or that a mortgagor and mortgagee mutually agree to terminate the contract of mortgage insurance with HUD.

Form Number: HUD–9807.
Respondents: Businesses or other for-profit.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–9807	480		1		.125		60

Total Estimated Burden Hours: 60.
Status: Revision.
Contact: Victor L. Vancanti, (202) 708–2022, Jennifer Main, OMB, (202) 395–6880.

Dated: May 26, 1992.

Proposal: Evaluation of the Emergency Shelter Grants Program.

Office: Policy Development and Research.
Description of the Need for the Information and its Proposed Use: This information collection will evaluate the Emergency Shelter Grants Programs (ESGP). It will address program description, implementation, and impact status. HUD will use the results to improve ESGP administration.
Form Number: None.
Respondents: State or local governments and non-profit Institutions.
Frequency of Submission: One-Time.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information collection	1398		1		.692		968

Total Estimated Burden Hours: 968.
Status: New.
Contact: John Carson, HUD, (202) 708–3700, Jennifer Main, OMB, (202) 395–6880.

Dated: May 27, 1992.

[FR Doc. 92–13037 Filed 6–3–92; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D–92–994; FR–3276–D–01]

Redelegation of Authority for the Home Investment Partnerships (HOME) Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development is redelegating all power and authority with respect to the Home Investment Partnerships (HOME) Program to the Deputy Assistant Secretary for Grant Programs, subject to certain specified exceptions.

EFFECTIVE DATE: May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Office of Affordable Housing Programs, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Secretary delegated all power and authority with respect to the HOME Program to the Assistant Secretary for Community Planning and Development, subject to certain exceptions, on November 4, 1991, at 56 FR 56416. This delegation of authority, however, did not include the power and authority to administer the HOME Program with respect to Indian Tribes, which was delegated to the Assistant Secretary for Public and Indian Housing in a delegation of authority published on the same day at 56 FR 56417. In this redelegation, the Assistant Secretary for Community Planning and Development is redelegating to the Deputy Assistant Secretary for Grant Programs delegated authority with respect to the HOME Program, subject to additional exceptions. In another redelegation of authority published elsewhere in today's **Federal Register**, each Regional Administrator, Office Manager, and Director of an Office or Division of Community Planning and Development, and the Deputy of each such official, is also authorized by the Assistant Secretary for Community Planning and Development to exercise the power and authority of the Assistant Secretary with respect to the HOME Program, subject to additional exceptions.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

Section A. Authority Redelegated

The Deputy Assistant Secretary for Grant Programs is authorized by the Assistant Secretary for Community Planning and Development to exercise the power and authority of the Assistant Secretary with respect to the HOME Program authorized by the HOME Investment Partnerships Act (42 U.S.C. 12721–17839), except the power and authority specified in section B of this notice.

Section B. Authority Excepted

There is excepted from the authority delegated under section A, the power and authority to issue or waive regulations.

Section C. No Further Redelegation

The Deputy Assistant Secretary for Grant Programs may not further redelegate the power and authority redelegated herein under section A.

Authority: HOME Investment Partnerships Act (42 U.S.C. 12721–12839); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 15, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92–13038 Filed 6–3–92; 8:45 am]
BILLING CODE 4210–29–M

[Docket No. D-92-995; FR-3277-D-01]

Redelegation of Authority for the Home Investment Partnerships (HOME) Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development is redelegating power and authority with respect to the Home Investment Partnerships (HOME) Program to Regional Administrators, Field Office Managers, and Field Directors of Community Planning and Development Division, subject to certain specified exceptions.

EFFECTIVE DATE: May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Office of Affordable Housing Programs, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Secretary delegated all power and authority with respect to the HOME Program to the Assistant Secretary for Community Planning and Development, subject to certain exceptions, on November 4, 1991, at 56 FR 56416. This delegation of authority, however, did not include the power and authority to administer the HOME Program with respect to Indian Tribes, which was delegated to the Assistant Secretary for Public and Indian Housing in a delegation of authority published on the same day at 56 FR 56417. In this redelegation, the Assistant Secretary for Community Planning and Development is redelegating to specified officials of HUD Regional and Field Offices delegated authority with respect to the HOME Program, subject to additional exceptions. In another redelegation of authority published elsewhere in today's **Federal Register** the Deputy Assistant Secretary for Grant Programs is also authorized by the Assistant Secretary for Community Planning and Development to exercise the power and authority of the Assistant Secretary with respect to the HOME Program, subject to additional exceptions.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

Section A. Authority Redelegated

Each Regional Administrator, Office Manager, and Director of an Office or Division of Community Planning and Development, and the Deputy of each such official, is authorized by the Assistant Secretary for Community Planning and Development to exercise the power and authority of the Assistant Secretary with respect to the HOME Program authorized by the HOME Investment Partnerships Act (42 U.S.C. 12721-17839), except the powers and authorities specified in Section B of this Notice.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A, the powers and authorities to: (1) Determine formula allocation and reallocation amounts pursuant to section 217 (42 U.S.C. 12747); (2) establish criteria to measure the authority and administrative capacity of local governments to form consortia pursuant to section 216 (42 U.S.C. 12746); (3) revoke a jurisdiction's designation as a participating jurisdiction, pursuant to section 216 (42 U.S.C. 12746); (4) effect remedies for noncompliance pursuant to section 223 (42 U.S.C. 12753); and (5) issue or waive regulations.

Section C. No Further Redelegation

Regional Administrators, Office Managers, and Directors of an Office or Division of Community Planning and Development, and the Deputies of each such official may not redelegate the power and authority redelegated herein under section A.

Authority: HOME Investment Partnerships Act (42 U.S.C. 12721-12839); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 15, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92-13039 Filed 6-3-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ORO60-01-6310-12 (G-2-247)]

Salem District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Salem District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780 that a meeting of the Salem District Advisory Council will be held on Thursday, June 25, 1992, beginning at 1 p.m. The meeting will be held in the Salem District Office, 1717 Fabry Rd. SE, Salem, OR.

AGENDA: The agenda for the meeting will include:

(1) Introduction of the new members.
(2) Appointment of a new chairperson.
(3) Discussion of the BLM Salem District Land Use Plan and Preferred Alternative.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306 by June 19, 1992. Written comments will also be received for the council's considerations. Summary minutes will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Van W. Manning,

Salem District Manager.

[FR Doc. 92-13119 Filed 6-3-92; 8:45 am]

BILLING CODE 4310-33-M

[UT-942-2112-15; UTU 69597]

Reconveyance of Certain Lands in Garfield County, Utah and Order Providing for Opening of Public Lands in Garfield County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On April 19, 1989, certain public lands were conveyed to the State of Utah under IL 330, to indemnify the State for lands which could not be granted at statehood. Through an out-of-court settlement some of the lands granted under IL 330 were quit claimed back to the United States. This order will open the reconveyed lands to the operation of the public land laws and the mining laws.

EFFECTIVE DATE: July 6, 1992.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, (801) 539-4119.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the following lands were reconveyed to the United States by quit claim deed from the State of Utah. These lands were conveyed to the State in IL 330, dated April 19, 1989. Through an out of court settlement, it was agreed that the State of Utah would deed certain lands back to the United States. The following lands were quite claimed to the United States on February 27, 1992:

Salt Lake Meridian

T. 36 S., R. 5 E.,

Sec. 34, S½SE¼
Sec. 35, S½N½SW¼, S½SW¼, SE¼
T. 37 S., R. 5 E.,
Sec. 1, lots 1–4, S½N½, S½;
Sec. 3, lots 1–4, S½N½, S½
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all.
Sec. 13, NE¼, N½NW¼, SW¼NW¼, S½.
Sec. 14, all;
Sec. 15, all.

The areas described aggregate approximately 6,074.56 acres in Garfield County.

At 9 a.m. on July 6, 1992, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights and requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 6, 1992, shall be considered in the order of filing.

At 9 a.m. on July 6, 1992, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights and requirements of applicable law. Appropriation of any of the lands described in this notice under the general mining laws prior to the date and time of opening is authorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local court.

Ted D. Stephenson,

Deputy State Director, Operations.

[FR Doc. 92-13018 Filed 6-3-92; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-010-4212-13, CACA 30078]

Realty Action; Exchange of Public Land in Yuba and Nevada Counties, CA

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: The following described public land (surface and mineral estate) is being considered for exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land

Yuba County

T.17N., R.7E., M.D.M.
Sec. 2: Lot 2, SW¼NE¼, NW¼SE¼
T.18N., R.7E., M.D.M.
Sec. 28: Lots 1 and 2

Nevada County

T.16N., R.9E., M.D.M.
Sec. 8: Lot 2
T.17N., R.10E., M.D.M.
Sec. 20: SE¼SE¼
Sec. 28: Lots 5, 6 and 7

Aggregating 364.87-Acres, more or less

The selected public land described above is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the **Federal Register**.

The above land is being considered for possible, transfer to a nonprofit conservation organization. In exchange, the public would receive private land located on either the North Fork or South Fork of the American River or the Merced River, or marshlands and waterfowl habitat located in the California Central Valley. This proposal is considered to be in the public interest and is consistent with current land use plans.

SUPPLEMENTARY INFORMATION: The above described Federal land would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945); also right-of-way of record would be identified as prior existing rights.

All necessary clearances including clearances for archaeology, rare plants and animals would be completed prior to any conveyance of title by the U.S.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley, (916) 985–4474 or at the address listed below.

ADDRESS: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: May 27, 1992.

D.K. Swickard,

Area Manager.

[FR Doc. 92-13116 Filed 6-3-92; 8:45 am]

BILLING CODE 4310-40-M

[UT-942-02-5700-11; UTU-67372]

Realty Action, Noncompetitive Lease of Public Land in Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, UTU-67372, noncompetitive lease of public land in Grand County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local land-use planning decisions, based upon public input, resource considerations, regulations, and Bureau policies, the parcel has been found suitable for lease pursuant to section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2762; 43 U.S.C. 1732) using noncompetitive (direct) lease procedures (43 CFR 2920.5–4(b)).

Salt Lake Meridian, Utah

T. 24 S., R. 23 E., SLM
Section 27, S½SE¼NE¼SW¼NE¼, SW¼SW¼NW¼SE¼NE¼, NE¼SE¼SW¼NE¼, W½NW¼SW¼SE¼NE¼, N½SE¼SE¼SW¼NE¼, NW¼SW¼SW¼SE¼NE¼, N½SW¼SE¼SE¼SW¼NE¼, N½SW¼SW¼SW¼SE¼NE¼.

The described parcel aggregates approximately 8.4 acres.

The lands are presently used by Canyonlands Field Institute (CFI), a non-profit educational organization, for an educational field camp under a special recreation permit. Students camp in a remote location and are provided with meals, classroom and bathroom facilities. The BLM proposes to issue a 5-year renewable lease to CFI to convert to a more appropriate authorization for the existing facility. The proposed lease would not authorize the construction of any permanent structures. The camp would essentially be removable with the help of a backhoe and would be reclaimed at the termination of the authorization.

The parcel is being offered as a noncompetitive (direct) lease to CFI in accordance with 43 CFR 2920.5–4(b) at no less than fair market rental. The proposal is a change of authorization to an organization that has shown good stewardship of the land. The lease would be subject to all valid existing rights.

COMMENTS: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may

sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

SUPPLEMENTARY INFORMATION: For further information, contact Mary von Koch, Realty Specialist, Grand Resource Area Office, 885 So. Sand Flats Road, Moab, Utah 84532, (801) 259–8193, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

Dated: May 28, 1992.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 92–13049 Filed 6–3–92; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–060–02–4212–14; UTU–57115 through UTU–57119]

Realty Action, Competitive and Noncompetitive Sale of Public Land in Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, UTU–57115 through UTU–57119, Competitive and Noncompetitive Sale of Public Land in Grand County, Utah.

SUMMARY: Notice is given that the following described parcels of public land have been examined, and through the development of local land-use planning decisions, based upon public input, resource considerations, regulations, and Bureau policies, the parcels have been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using competitive and noncompetitive sale procedures (43 CFR 2711.3–1 and 43 CFR 2711.3–3).

The parcels are difficult and uneconomic to manage as public lands, are not needed for any resource programs, and are not suitable for management by the Bureau of any other Federal department or agency.

Parcels to Be Offered for Competitive Sale

Serial Number, legal description, acreage, and appraised fair market value

UTU–57115 T. 21 S., R. 20 E., SLM, Utah. Section 20, SW¼SW¼ (40 acres) $6,000.00

UTU–57116 T. 21 S., R. 20 E., SLM, Utah. Section 29, Lots 3,4,5 (80.34 acres) $15,300.00

UTU–57117 T. 21 S., R. 20 E., SLM, Utah. Section 29, Lots 1, 2 (29.95 acres) $24,000.00

Parcels UTU–57115–117 are public lands isolated by private land and Interstate Highway 70. They have public access from Grand County roads.

Parcels to Be Offered for Noncompetitive Direct Sale

The following two parcels will be offered for sale to Lester Rogers, the adjacent landowner. The lands are isolated by Mr. Rogers' private lands and Interstate 70. The only physical access to the lands is from the private lands. Legal access is available through public lands east of the parcels. The fair market value for these parcels will be based on sales data collected from the competitive sale of parcels UTU–57115, UTU–57116, and UTU–57117.

UTU–57118 T. 21 S., R. 20 E., SLM, Utah. Section 28, Lot 2 (19.32 acres)

UTU–57119 T. 21 S., R. 20 E., SLM, Utah. Section 28, Lot 1 (41.21 acres)

The parcels will not be offered for sale until at least sixty (60) days after publication of this notice in the **Federal Register**. The sale will be at no less than the appraised fair market value.

Publication of this notice will serve as the 2-year notification to the grazing permittees of a reduction of grazing privilege in grazing authorization numbers 6318 (Crescent Junction Allotment) and 6342 (Crescent Canyon Allotment).

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of publication, whichever occurs first.

The terms and conditions applicable to the sale are

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the parcels will be subject to all valid existing rights, reservations, and privileges of record including, but not limited to the following:

Parcel UTU–57115

a. A right-of-way (RCW) for Grand County Road #175 acquired through relinquishment by the Federal Highway Administration (FHWA).

b. Right-of-way UTUO–146642 for a 3" buried culinary water pipeline within the road ROW authorized under the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959).

Parcel UTU–57116

a. A 100'-wide right-of-way for County Road #144 acquired through relinquishment by the FHWA.

b. Right-of-way UTU–39051 for a buried powerline within the road ROW authorized under Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

c. Right-of-way UTSLO–42141 for a 10'-wide ROW for an aerial telephone line authorized under Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Parcel UTU–57117

a. A 100'-wide right-of-way for County Road #144 acquired through relinquishment by the FHWA.

b. Right-of-way UTU–39051 for a buried powerline within the road ROW authorized under Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

c. Right-of-way UTSLO–42141 for a 10'-wide ROW for an aerial telephone line authorized under Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Parcel UTU–57119

a. Right-of-way UTSLO–42141 for a 10'-wide ROW for an aerial telephone line authorized under Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Competitive Sale Procedures

Sealed bids would be accepted at the Grand Resource Area Office, 885 S. Sandflats Road, Moab, Utah 84532 from 7:45 a.m., MDT, on August 3, 1992 until 3 p.m., MDT, on August 14, 1992. Bid envelopes must be marked on the right front corner with "Bid for Public Sale, Parcel # UTU _____, and sale date (August 14, 1992)". Bids must be at no less than the appraised fair market value specified in this notice. Each bid must be in a sealed envelope accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior, BLM, for no less than twenty (20) percent of the amount bid. A statement as to the amount of the full bid shall be enclosed. The sealed bids will be opened publicly after 3 p.m. on August 14, 1992 at the Grand Resource Area Office. The highest qualifying sealed bid for each parcel will be declared by the authorized officer. Oral bids, in $100 increments, will be invited to determine the apparent high bidder. The person declared to have entered the

highest qualifying bid shall submit payment by cash, personal check, bank draft, money order, or any combination for not less than one-fifth of the amount of the bid immediately following the close of the sale. The successful bidder shall submit the remainder of the full bid price prior to the expiration of 180 days from the date of the sale. If a parcel is not sold on the sale date, it will remain for sale over the counter until sold or withdrawn from the market.

Noncompetitive Sale Procedures

Following the competitive sale, the fair market value of parcels UTU–57118 and UTU–57119 will be determined. The parcels would be offered for direct sale to Lester Rogers at no less than the appraised fair market value on September 14, 1992. In the event that the direct sale does not go through, the unsold parcel(s) would be available for sale over-the-counter starting at 7:45 a.m. on October 5, 1992 and would remain for sale until sold or withdrawn from the market. If both parcels are not sold by direct sale, either both parcels must be sold together or the western parcel must be sold first to prevent the isolation of parcel UTU–57118.

Bidder Qualifications

Bidders must be U.S. citizens, 18 years of age or over; a State or State instrumentality authorized to hold property; a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards

The BLM reserves the right to accept or reject any and all offers or withdraw the land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

COMMENTS: By July 20, 1992, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information, including a brochure describing the parcels, may be obtained from Mary von Koch, Area Realty Specialist, Grand Resource Area, 885 So. Sanflats Road, Moab, Utah 84532, (801) 259–8193, or from Brad Croesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970 Moab, Utah 84532, (801) 259–6111.

Dated: May 27, 1992.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 92–13050 Filed 6–3–92; 8:45 am]

BILLING CODE 4310–DQ–M

[NM–030–02–4351–08]

Intent To Prepare Resource Management Plan Amendment; Caballo Resource Area, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and invitation to participate in an amendment to the White Sands Resource Management Plan.

SUMMARY: The Bureau of Land Management (BLM), Las Cruces District, New Mexico, is initiating the preparation of a Resource Management Plan (RMP) Amendment to consider the reintroduction and management of desert bighorn sheep in the Caballo Mountains in Sierra County, near Truth or Consequences, New Mexico. The RMP Amendment will include an Environmental Assessment (EA).

The public is invited to participate in the planning process. Two public scoping meetings will be held to obtain public input on concerns with the RMP Amendment for bighorn sheep reintroduction. The meetings will be held at the following times and locations:

Date/Time and Location

June 23, 1992, 7 p.m.—Civic Center, 400 West 4th St., Truth or Consequences, New Mexico.

June 25, 1992, 7 p.m.—BLM District Office, 1800 Marquess St., Las Cruces, New Mexico.

DATES: Comments relating to the amendment will be accepted until July 6, 1992.

ADDRESSES: Comments should be sent to: Tim Murphy, Area Manager, BLM, 1800 Marquess St., Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Tim Sanders, Supervisory Natural Resource Specialist of Mike Howard, Wildlife Biologist, BLM, Las Cruces District, Caballo Resource Area, 505–525–8228.

SUPPLEMENTARY INFORMATION: The BLM Las Cruces District, in cooperation with the New Mexico Department of Game and Fish, proposes to reintroduce desert bighorn sheep to approximately 30,000 acres of historic range in the Caballo Mountains of south-central New Mexico. Because desert bighorn sheep are listed as endangered by the State of New Mexico, there is an urgent need to provide for the perpetuation of this subspecies. The White Sands Resource Management Plan (WSRMP), which guides management of the Caballo Mountains, prescribes management for desert mule deer. Reintroduction of bighorn sheep is not addressed in the WSRMP. To consider this new management direction, an RMP Amendment/EA will be completed.

The RMP Amendment will address the proposed action as well as alternatives to that proposal. Specifics of the proposed action are as follows:

1. Provide for the immediate (October 1992) reintroduction of approximately 35 desert bighorn sheep, and subsequent management of a viable population (100 animals) as a primary use of the Caballo Mountains.

2. Develop a Habitat Management Plan following the reintroduction to address management of bighorn sheep and other wildlife species and habitats (including endangered or sensitive plants and animals).

3. Close the Caballo Mountains to off-road vehicles (43 CFR 8341.1(c)) to minimize human disturbance (presence) in the area.

a. The closure would require mining claimants to submit a mining plan of operations for any action, except casual use, within the closed area. Vehicular access for casual use would require authorization. BLM would work with miners, through the plan of operations, to mitigate impacts to bighorn sheep and other sensitive resources in the area (43 CFR 3809.1–4(5)).

b. Provision for specific access needs, such as grazing, mining, and other uses could be authorized by BLM (43 CFR 8340.0–5(h)).

c. The road to the Caballo Mountain Communication Site would remain open to the public.

4. Limit the class of livestock authorized to graze on BLM administered public land to cattle and horses east of the Rio Grande to the White Sands Missile Range boundary, 9 miles west of the Caballo Mountains, and elsewhere within 9 miles of any occupied or likely to be occupied bighorn sheep range in Sierra County. Domestic sheep and goats would not be permitted to graze on public land in these areas. This would be to prevent transmission of disease to bighorn sheep in the Caballo Mountains, the San Andres Mountains, and other areas.

5. The proposed action does not call for the designation of Areas of Critical

Environmental Concern (ACEC), withdrawal of lands from minerals or other public land laws, or Federal acquisition of private or State trust lands, or limitation of existing livestock operations other than as described in item 4. The RMP amendment/EA will be prepared by the wildlife habitat management staff and minerals, lands, recreation, and grazing specialists. Additional support will be provided by other specialists as needed. The RMP Amendment/EA will be developed in coordination with the New Mexico Department of Game and Fish. Public participation activities during the planning process will include consultation with affected users, meetings with interested groups and individuals, mail outs, media notices, **Federal Register** notices, public meetings, and distribution of the RMP Amendment/EA for comments. Complete records of the planning process will be available for public review at the BLM District Office.

Dated: May 29, 1992.

Larry L. Woodard,

State Director.

[FR Doc. 92-13019 Filed 6-3-92; 8:45 am]

BILLING CODE 4310-FB-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0080), Washington, DC 20503, telephone 202-395-7340.

Title: 30 CFR part 882—Reclamation on Private Lands.

OMB Number: 1029-0057.

Abstract: Section 408 of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, provides that under certain circumstances liens may be levied on private property that has been reclaimed. Part 882 establishes procedures for recovery of the cost of reclamation activities conducted on privately owned lands and is intended to ensure that land owners who acquired the land after a specified date or who benefitted from the mining operation will not realize the windfall from the reclamation.

Bureau Form Number: Not applicable.

Frequency: As required.

Descriptions of Respondents: States and Indian tribes.

Estimated Completion Time: One hour.

Annual Responses: One.

Annual Reporting Burden: One.

Bureau Clearance Officer: Andrew DeVito 202-343-5150.

Dated: April 24, 1992.

John Mosesso,

Chief, Division of Technical Services.

[FR Doc. 92-13115 Filed 6-3-92; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343-11344. The applications are governed by 49 CFR part 1182, as revised in Pur., Merger & Cont.-Motor Passenger & Water Carriers, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

Sidney L. Strickland, Jr.,

Secretary.

MC-F-20086, filed May 27, 1992. VanCom, Inc., John G. Van Der Aa, and Terry L. Van Der Aa—Continuance in control—American Transit Corp., d/b/a Huskie Line; American Transit Corp., d/b/a/ Valley Coach; VanCom-Illinois, Inc.; Royal American Charter Lines, Inc.; and VanCom-Connecticut, Inc. Applicant's representatives: Arnold L. Burke, 180 N. LaSalle Street, Suite 2025, Chicago, IL 60601. VanCom, Inc. (VanCom) (MC-163845), a passenger carrier controlled by John G. and Terry L. Van Der Aa, non-carrier individuals, seek approval of VanCom's continuance in control of American Transit Corp., d/b/a Huskie Line, (Huskie) (MC-168387); American Transit Corp., d/b/a/ Valley Coach (Valley) (MC-205760); VanCom-Illinois, Inc., (VanCom-Ill.) (MC-167816); Royal American Charter Lines, Inc., (Royal) (MC-165919); all common carriers of passengers, and VanCom-Connecticut, Inc., (VanCom-Conn.) (MC-219430), a new carrier seeking its initial common carrier authority to transport passengers, in charter and special operations, between points in the United States (except AK and HI). VanCom also controls Indian Bus Service, Inc., (Indiana) (MC-141600), and Van Der Aa Bus Lines, Inc., (Van) (MC-190458). The control by VanCom of Indiana and Van was previously approved in MC-F-14359. A request to merger the authority held by VanCom-Ill. into that of Van will be filed in a separate application. VanCom will control seven carriers upon the issuance of authority to Royal.

[FR Doc. 92-13092 Filed 6-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32073]

The Alabama Great Southern Railroad Co.—Trackage Rights Exemption—Burlington Northern Railroad Co.

Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to The Alabama Great Southern Railroad Company (AGS) over approximately 2 miles of its line, at York, AL, between the junction of the BN line with AGS's line at milepost 731.47 and milepost 729.2 at a lumber facility operated by ATN Lumber, for the purpose of allowing AGS to provide direct service to and from the lumber facility. The trackage rights will become effective on or after June 15, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: James L. Howe III, Northern Southern Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), and as clarified in Wilmington Term. RR, Inc.—Pur & Leases—CSX Transp., Inc., 6 I.C.C.2d 799 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

Dated: May 29, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-13091 Filed 6-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32069]

McCloud Railway Co.—Acquisition and Operation Exemption—McCloud River Railroad Co.

McCloud Railway Company (MRC), a wholly owned subsidiary of 4 Rails, Inc. (4 Rails),[1] both non-carriers, filed a notice of exemption to: (1) Acquire and operate the railroad assets of McCloud River Railroad Company (McCloud River); [2] and (2) to operate over 34.1 miles of Burlington Northern Railroad Company (BN) track between milepost BH-0 at Lookout and milepost BH-34.1 at Hambone in Siskiyou and Modoc Counties, CA (Lookout Branch). McCloud River owns and operates 96.8 miles of track in Siskiyou and Shasta Counties, CA, between: (1) Milepost 0 at McCloud and milepost M-15.8 at Mt. Shasta (Mt. Shasta Line); (2) milepost 0 at McCloud and milepost 31 at Hambone (Hambone Line); (3) milepost 18 near Bartle and milepost B-61 at Burney (Burney Line); and (4) milepost B-58 near Burney and milepost S-7 also near Burney (Sierra Branch). The proposed transaction was to have been consummated on or about May 18, 1992.

Any comments must be filed with the Commission and served on: Jeff E. Forbis, 511 Freeman Lane, Mt. Shasta, CA 96067.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 29, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-13090 Filed 6-3-92; 8:45 am]

BILLING CODE 7035-01-M

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[1] 4 Rails is wholly owned by Jeff E. Forbis and W. Verline Forbis, husband and wife.

[2] McCloud River is a class III wholly owned railroad subsidiary of Itel Rail Corporation, which is a wholly owned subsidiary of Itel Corporation.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Chevron U.S.A., Inc.*, CV 88-7836 RSWL, was lodged with the United States District Court for the Central District of California on May 18, 1992. This action was brought by the United States pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319.

Under the proposed Consent Decree, Chevron U.S.A., Inc., agrees to pay $1,500,000 to the United States to resolve the civil claims of the United States against Chevron for repeated violations of Chevron's National Pollutant Discharge Elimination System permit issued for its oil platform known as Platform Grace located in the Santa Barbara Channel. The proposed Decreee permanently enjoins Chevron from further violations of its permit or the Clean Water Act.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave., Washington, DC 20530. All comments should refere to *United States* v. *Chevron U.S.A., Inc.*, D.J. Ref. 90-5-1-1-3178.

The proposed Consent Decree may be examined at the office of the United States Attorney, 312 North Spring Street, Los Angeles, California 90012. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $2.50 for copying costs ($0.25 per page) payable to "Consent Decree Library".

Barry M. Hartman,

Acting Assistant Attorney General Environment and Natural Resources Division.

[FR Doc. 92-12989 Filed 6-3-92; 8:45 am]

BILLING CODE 4410-01-M

Lodgng of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *City of Jamestown, et. al.* (D.N.D.), (Civil Action number A-3-92-76) was lodged on May 13, 1992 with the United States District Court for the District of North Dakota. The decree requires defendant City of Jamestown, if it conducts demolition or renovation activities in a facility where asbestos containing material ("ACM") is present, to hire an asbestos consultant to determine whether such activities will: (a) Fracture, break up, dislodge or disturb the ACM, (b) prevent access to the ACM for later removal, or (c) expose any worker to airborne ACM fibers. If the answer to any of the above questions is affirmative, the City is required to remove the ACM in accordance with the National Emission Standard for Hazardous Air Pollutants (NESHAP") promulgated for asbestos pursuant to sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414, and to employ an asbestos consultant to review and approve the asbestos abatement plans, and monitor all asbestos abatement measures during removal and disposal of ACM. The decree also requires future compliance with the asbestos NESHAP regulations and provides for stipulated penalties for future violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Jamestown*, DOJ reference #90-5-2-1-1427.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of North Dakota, 219 Federal Building, 655 First Avenue North, Fargo, North Dakota, 58102, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents

per page reproduction costs), payable to "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-12988 Filed 6-3-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; United States v. Union Pacific Railroad Company

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a Consent Decree in *United States* v. *Union Pacific Railroad Company*, Civil Action No. 92 0210 E-EJL was lodged with the United States District Court for the District of Idaho on May 22, 1992. This action was brought under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Consent Decree provides the defendant Union Pacific Railroad Company will clean up the Union Pacific Railroad Sludge Pit Superfund Site as required by the Record of Decision issued by the U.S. Environmental Protection Agency on September 10, 1991, pay $167,333.07, the past response costs incurred by the federal government, and pay all future response and oversight costs incurred by the federal government.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Union Pacific Railroad Company*, D.O.J. Ref. No. 90-11-2-751.

The Consent Decree may be examined at the Offices of the United States Attorney, District of Idaho, room 327, Federal Building, 550 West Fort Street, Boise, Idaho 83724 and at the Region X Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 99101.

A copy of the Consent Decree also may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. Telephone number (202) 347-2072. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. The proposed Consent Decree package consists of a 77 page Consent Decree and 194 pages of appendices. You may request a copy of the Consent Decree with or without the appendices. Please specify in the request whether or not the appendices are requested. A request for a copy of the proposed Consent Decree with appendices should be accompanied by a check for in the amount of $87.75 (25 cents per page reproduction charge) made payable to "Consent Decree Library." A request for a copy of the proposed Consent Decree without appendices should be accompanied by a check in the amount of $19.25.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-12987 Filed 6-3-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum, formerly known as OSI/Network Management Forum, ("the Forum") on April 27, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notification was filed for the purpose of extending the protections of Section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615). On December 23, 1988, March 23, 1989, July 3, 1989, September 28, 1989, November 22, 1989, January 29, 1990, March 20, 1990, May 7, 1990, July 20, 1990, February 27, 1991, April 17, 1991, and June 28, 1991, the Forum filed additional written notifications pursuant to section 6(a) of the Act. The Department published notices in the Federal Register pursuant to section 6(b) on January 26, 1989 (54 FR 3870), April 25, 1989 (54 FR 17834), August 4, 1989 (54 FR 32141), October 26, 1989 (54 FR 43631), January 10, 1990 (55 FR 926), February 28, 1990 (55 FR 7046), April 23, 1990 (55 FR 15295), May 24, 1990 (55 FR 21449), August 20, 1990 (55 FR 33967), April 3, 1991 (56 FR 13655), May 23, 1991 (56 FR 23723), and August 1, 1991 (56 FR 36847), respectively.

The identities of the additional parties to the venture are given below:

Affiliate Member: JP Morgan Co., New York, NY

Corporate Member: Mitsubishi Electric Corp., Kamakura, Japan

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-13114 Filed 6-3-92; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Corrections Advisory Board Meeting

Time and Date: 8.m., Tuesday, June 30, 1992.

Place: Raintree Plaza Hotel and Conference Center, 1900 Diagonal Highway, Longmont, Colorado.

Status: Open.

Matters to be Considered: An update of the Corrections Annual Report, the Corrections Options Incentive Act, the Corrections Telecommunications System, the Foreign Technical Assistance, and the meeting on the Homeless Mentally Ill Inmates.

Contact Person for more Information: Larry Solomon, Deputy Director, (202) 307-3106.

M. Wayne Huggins,

Director.

[FR Doc. 92-13113 Filed 6-3-92; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee; Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. I) and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656(b)), will convene on July 7, 1992, at 8:30 a.m., at the Boston Marriott Long Wharf, 296 State Street, Boston, Massachusetts, 02109. The meeting will adjourn on July 8, 1992, at approximately 4 p.m. The public is encouraged to attend.

The agenda is as follows:

I. Call to Order.
II. Review the transcripts of April 1–2, 1992 meeting.
III. Discussion of the following standards:
(a) 29 CFR part 1915, Subpart F, General Working Conditions.
(b) Ad-hoc Committee Report on 29 CFR part 1915, Subpart G, Materials Handling and Storage (Hammerhead tower cranes).
(c) Ad-hoc Committee Report on 29 CFR part 1915, Subpart Q, Hazardous Materials (Process Safety Management).
(d) 29 CFR part 1915, Subpart L, Electrical 1915
(1). Temporary Services (Power/wiring)
(2). Scope and application (General)
(e) 29 CFR part 1915, Subpart U, Surface Preparation and preservation.
(f) Ad-hoc committee report on 29 CFR part 1915, Subpart Z, Lead.
IV. New Business. Discussion of the following standards, as time permits.
(a) 29 CFR part 1915, subpart J. Ship's Machinery and Piping Systems.

Public Participation: Time permitting, the Committee will consider oral presentations relating to agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, June 26, 1992. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed. Disabled individuals wishing to attend should contact Mr. Thomas Hall to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 5 copies to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8617.

Signed at Washington, DC, this 1st day of June, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–13121 Filed 6–3–92; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the Naitonal Archives of the United States. Schedules also authorize agenices after a specified period to dispose or records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C 3303a(a).

DATE: Request for copies must be received in writing on or before July 20, 1992. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requester must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–92–23). Records of Special Honors, Trophies and Awards sponsored by Air Force and private organizations.

2. Department of Commerce, National Institute of Standards and Technology, (N1–167–92–2). Records of Malcolm Baldridge National Quality Award program.

3. Department of the Navy, U.S. Marine Corps, (N1–NU–92–3). Supporting documentation for personnel retention studies.

4. Department of the Navy, U.S. Marine Corps, (N1–NU–92–4). Facilitative records relating to rations.

5. Department of the Navy, U.S. Marine Corps, (N1–NU–92–5). Unit copy of Marine Corps diaries.

6. Department of the Navy, U.S. Marine Corps, (N1–NU–92–6). Material shortages case files.

7. Department of the Navy, U.S. Marine Corps, (N1–NU–92–7). Facilitative records relating to value engineering programs.

8. Department of the Navy, U.S. Marine Corps, (N1–NU—92–8). Facilitative records relating to medical and dental supplies.

9. Department of the Navy, U.S. Marine Corps, (N1–NU–92–9). Screening interviews of candidates for training schools.

10. Department of the Navy, U.S. Marine Corps, (N1–NU–92–10). Facilitative records relating to the Hometown Area Recruiting Program.

11. Department of Veterans Affairs, Veterans Health Administration (N1–15–92–3). Credentialing and privileging files for medical service individuals.

12. Central Intelligence Agency (N1–263–90–04). This CIA schedule is classified in the interests of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403 (d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

13. Commission on the Bicentennial of the United States Constitution (N1–220–92–1). Routine and facilitative correspondence and other documentation, and educational grant programs.

14. Defense Civil Preparedness Agency (N1–397–91–2). Duplicative, unidentified and fragmentary maps depicting projected climatological fallout patterns, 1956–61.

15. Farm Credit Administration (N1–103–92–3). Examination reference files.

16. National Archives and Records Administration (N1–64–92–3). Records documenting service to National Archives by volunteers.

17. National Security Training Commission (NI–220–92–6). Routine and facilitative records relating to planning physical plant, and personnel matters.

18. Office of Civil and Defense Mobilization (N1–304–92–1). General administrative and mundane records of the Office of Civil and Defense Mobilization, Office of Defense Mobilization, Federal Civil Defense Administration and Defense Production Administration 1915–63.

Dated: May 27, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92–12985 Filed 6–3–92; 8:45 am]

BILLING CODE 7515–01–M

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential materials. Notice is hereby give that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and section 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventioried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

DATES: The National Archives intends to make the integral file segments described in this notice available to the public beginning July 24, 1992. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before July 15, 1992.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 845 South Picket Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, 703–756–6498.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 47.1 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the eighth of a series of openings of Central Files: the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; August 22, 1991; and February 19, 1992.

Some of the materials designated for opening on July 24, 1992, are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below are the integral file segments from the White House Central Files, Subject Files that will be made available to the public on July 24, 1992.

Subject category	Volume (cubic feet)
Federal Government (FG):	
FG 231 United States Tariff Commission	.6
FG 249 Commission on All-Volunteer Armed Force	.6
FG 333 President's Committee on Health Education	.3

Six integral file segments from the Staff Member and Office Files will also be made available to the public. These consist of materials that were transferred to Central Files but were not incorporated into the Subject Files. Listed below are the Staff Member and Office Files that will be made available to the public on July 24, 1992.

File group	Volume (cubic feet)
Anne L. Armstrong	31.2
Michael P. Balzano	3.2
Howard C. Cohen	3.6
Lewis Engman	2.0
Darrell Trent	3.3
White House Conference on Aging	2.0

A number of documents which were previously withheld from public access have been reviewed and declassified under the Mandatory Review provisions of Executive Order 12356 and will be made available to the public on July 24, 1992.

	Volume (cubic feet)
Previously restricted materials	Less than .3.

Public access to some of the items in the file segments will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: May 26, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92–12986 Filed 6–3–92; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE

Meetings

AGENCY: National Advisory Council on the Public Service.

ACTION: Notice of meeting.

DATE AND TIME: June 24, 1992, 8:45 a.m. to 4:30 p.m.

PLACE: National Press Building, 529 14th Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Swearing-in of Council Members. Chairman Raymond Shafer's welcome and status of Council report.
Executive Director Curtis' report.
Overview of Public Law 101–363.
Status of the recommendations of the National Commission on the Public Service.
National Advisory Council on the Public Service (NACPS) agenda development.
NACPS public education plan.
FY 1993 programs and meetings schedule.
Council members' recommendations.
Public Comment.

FOR FURTHER INFORMATION CONTACT: Jane Riddleberger, NACPS, suite 420, National Press Building, 529 14th Street, NW., Washington, DC 20045 (202) 724–0796.

SUPPLEMENTARY INFORMATION: The National Advisory Council on the Public Service was established by Congress in

1990 by Public Law 101–363 [H.R. 4872]. The Council will regularly assess the state of the Federal workforce, seek to attract individuals of the highest caliber to national public service and promote a better understanding of the role of Federal employees in implementing government programs and policies. The Council will also seek to improve public perception of Federal employees, will encourage efforts to build student interest in public service and develops methods for improving motivation and encouraging excellence within the Federal workforce.

The Council shall transmit to the President and each House of the Congress reports with preliminary findings within year one and year two after the Council's first meeting. Within three years a final report containing a detailed statement of findings, conclusions and recommendations for legislative or administrative actions shall be transmitted.

Dated: June 1, 1992.

Jean M. Curtis,

Executive Director.

[FR Doc. 92–13102 Filed 6–3–92; 8:45 am]

BILLING CODE 7525–01–M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting

ACTION: Notice of meeting.

SUMMARY: The National Commission on Migrant Education will hold its eighteenth meeting on Monday, June 22, 1992. The Commission was established by Public Law 100–297, April 28, 1988.

DATE, TIME, AND PLACE: Monday, June 22, 1992, 8:30 a.m. to 5:30 p.m., at the Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.

STATUS: Open to the public.

AGENDA: Consultant's briefing on the chapter 2 (Demographics) draft of the Commission's final report. Remainder of time will be devoted to discussion of draft findings and recommendations for the Commission's final report.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Skiles (301) 492–5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

Chairman.

[FR Doc. 92–13060 Filed 6–3–92; 8:45 am]

BILLING CODE 6820–DE–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research and Infrastructure.

Date and Time: June 24–25, 1992; 6:30 a.m. to 5 p.m.

Place: Room 500–B, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. George Strawn, NSFNET Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for the Network Information Services Manager(s) for NSFNET and the NREN Project Solicitation.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 29, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–12995 Filed 6–3–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Record Keeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of Submission, New, Revision, or Extension:* Extension.

2. *The Title of the Information Collection:* Request for Records.

3. *The Form Number if Applicable:* NRC Form 57.

4. *How often the Collection is Required:* On occasion.

5. *Who Will be Required or Asked to Report:* individuals requesting Public Document Room (PDR) documents.

6. *An Estimate of the Number of Responses:* 45,000 per year.

7. *An Estimate of the Total Number of Hours to Complete the Requirement or Request:* 750 hours annually (45,000 forms X .01666 hr/form) or about 1 minute per individual.

8. *An Indication of Whether Section 3504(h), Public Law 96–511 Applies:* Not applicable.

9. *Abstract:* This form is utilized by the public in the Public Document Room (PDR) in requesting documents for their use at the PDR; this form then serves as a suspense slip on the shelf when the document is charged out to a member of the public.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, Lower Level, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information & Regulatory Affairs (3150–0083), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 22 day of May, 1992.

For the Nuclear Regulatory Commission.

George H. Messenger,

Acting Designated, Senior Official for Information Resources Management.

[FR Doc. 92–13083 Filed 6–3–92; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal

for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of Submission—New, Revision, or Extension:* Revision.

2. *The Title of the Information Collection:* 10 CFR parts 2, 40, 70 and 74 Material Control and Accounting for Uranium Enrichment Facilities Authorized to Produce Special Nuclear Material of Low Strategic Significance.

3. *The For Number if Applicable:* Not applicable.

4. *How Often is the Collection Required:* Information on missing uranium or unauthorized production of enriched uranium is estimated to be collected at a frequency of once per 5 years.

5. *Who Will be Required or Asked to Report:* Applicants for license or licensees authorized to possess equipment capable of enriching uranium or to operate an enrichment facility and produce, possess, or use more than one effective kilogram of special nuclear material of low strategic significance.

6. *An Estimate of the Number of Responses:* 0.2.

7. *An Estimate of the Number of Hours Annually Needed to Complete the Requirement or Request:* 16 hours (80 hours per response).

8. *An Indication of Whether Section 3504(h), Public Law 96–511 Applies:* Applicable.

9. *Abstract:* The final rule has added new requirements which would require an applicant for license or a licensee authorized to possess equipment capable of enriching uranium, or operate an enrichment facility, and produce, possess, or use more than one effective kilogram of special nuclear material of low strategic significance, to provide information to aid in the investigation of missing uranium, or unauthorized production of enriched uranium.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0123), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 22nd day of May, 1992.

For the Nuclear Regulatory Commission.

George H. Messenger,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 92–13064 Filed 6–3–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Amended notice of meeting.

SUMMARY: The President's Council of Advisors on Science and Technology will meet on June 4–5, 1992, in the Conference Room, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC., as announced in 57 FR 21141 (May 18, 1992). All information in this previous **Federal Register** Notice will remain the same with the exception of one agenda item listed in the next section.

AGENDA: Mr. Edwin Mansfield was previously scheduled to make a presentation on the Return on R&D Investment during the Thursday morning session. Mr. Mansfield will not be available to make this presentation. Therefore, during the Thursday morning session, Dr. Walter Dowdle will make a presentation on the current status of AIDS Vaccine Research. In addition, Dr. Roy Schwitters will make a presentation on the current status of the Superconducting Super Collider.

All other agenda items, including topics, time, place and status of the meetings will remain the same. Parties requiring further information should contact Ms. Ann Barnett, (202) 395–4692.

Dated: May 29, 1992.

Vickie V. Sutton,

Assistant Director, Office of Science and Technology Policy.

[FR Doc. 92–13022 Filed 6–3–92; 8:45 am]

BILLING CODE 3170–01–M

The President's Council of Advisors on Science and Technology

ACTION: Notice of public meetings.

SUMMARY: The President's Council of Advisors on Science and Technology (PCAST), will hold a series of public meetings around the country over the next few months to gather information for its study of research intensive universities and their relationships with the Federal government. These meetings will be sponsored by PCAST and a host institution, such as, various colleges and universities nationwide and the National Academy of Sciences.

The purpose of the PCAST public meetings is primarily educational. The goal is to utilize the information gathered from the public meetings and incorporated relevant information into a report on research intensive universities and their relationships with the Federal government. Discussion topics are expected to include the following:

(1) Capacity of research-intensive universities to fulfill their missions in research, education and public service; principal concerns, suggested remedies.

(2) Nature of the current relationship between research-intensive universities and the Federal government; changes occurring or in view; principal problems or areas of difficulty; suggestions for improvement.

(3) Key elements or principles that should characterize the relationship between research-intensive universities and the Federal and/or State governments in the coming years.

(4) The most pressing challenges confronting research-intensive universities over the next decade; role, if any, for the Federal government.

(5) Concerns regarding physical facilities for research: realistic needs, barriers (e.g., limits to campus expansion), role of institutions, States, Federal government in financing.

(6) Balancing merit-based peer review with other criteria for supporting research.

(7) General commitment expected of the Federal government to the university-base pool of highly trained scientists and engineers.

(8) The Federal government's role in expanding the number of university-based women and minorities in science and engineering.

The PCAST seeks diverse perspectives from a broad range of individuals including students and representatives from academia, industry, state government, associations and other interested parties. PCAST also welcomes comments on topics other than those listed above. However, the main purpose of these public meetings is to examine research in colleges and universities, and comments should be directed toward this goal.

DATES AND LOCATIONS: The following is a list of dates and locations of the public meetings:

Date	Place	Host institution
6/24/92	Cambridge, MA	Massachusetts Institute of Technology.
7/15/92	Berkeley, CA	University of California.
7/17/92	Austin, TX	University of Texas.

Date	Place	Host institution
7/21/92	Durham, NC	Duke University.
7/24/92	Washington, DC (higher education associations).	National Academy of Sciences.
9/24/92	Chicago, IL	Northwestern University.

The June 24, 1992, meeting at the Massachusetts Institute of Technology in Cambridge, MA will be held in building E51, room 329, 70 Memorial Drive. The building is on the corner of Wadsworth and Amherst Streets and attendees should use the entrance on Amherst Street. The meeting will begin at 9 a.m., and is expected to last until 4 p.m. Registration will be from 8:30 a.m. to 9 a.m., as outlined in the following Agenda Section.

Specific locations for the remainder of the PCAST meetings will be published in the **Federal Register** once they have been determined. In addition, should it become necessary to change a specific date or location listed above, that information will also be published in the **Federal Register**.

Agenda: Each meeting will be structured based on the following agenda schedule:

8:30 a.m.—Arrival are Welcome
9 a.m.—Host institution welcome
PCAST representative presents brief overview
9:15 a.m.—Presentation: College/university administration
10:15 a.m.—Presentation: College/university faculty
11:30 a.m.—Presentation: College/university students (graduate/undergraduate)
12:30 p.m.—Lunch
1:30 p.m.—Presentation: Industry/state government
2:30 p.m.—Presentation: Public input
3:30 p.m.—Wrap-up/Closing remarks

The PCAST members will attempt to adhere to this schedule at each public meeting site. However, presentation times may be shortened or lengthened depending on interest expressed by each group at each public meeting site.

How to Register: To register to attend any of the meetings, contact Ms. Alicia Tenuta, Office of Science and Technology Policy, 744 Jackson Place, NW., Washington, DC 20506 at (202) 395–4692, fax number (202) 395–5076. Advance registration is desirable for those who wish to make oral presentations. On-site registration will also be held on the days of the meeting from 8:30 a.m. to 9 a.m. There is no registration fee.

Oral Presentations: Individuals or representatives of organizations are encouraged to make oral presentations and/or to submit written statements to the PCAST for its study.

An individual or representative of an organization wishing to make an oral presentation (limited to 5 minutes) should submit his or her name, position, affiliation, phone and fax numbers, address, and the general topic area of the comments to Alicia Tenuta at the above address or fax no later than 10 days prior to each meeting date.

Written Comments: Written comments are also encouraged, especially for those who are not able to attend a public meeting. Written comments should be no more than 10 pages in length, typed and double spaced. It would be most helpful if comments are received as soon as possible, but PCAST will accept input until August 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Tenuta at the above address and phone number.

Dated: May 29, 1992

Vickie V. Sutton,

Assistant Director, Office of Science and Technology Policy.

[FR Doc. 92–13021 Filed 6–3–92; 8:45 am]

BILLING CODE 3170–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–89]

Initiation of Section 302 Investigation and Request for Public Comment: Intellectual Property Acts, Policies, and Practices on Taiwan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation pursuant to section 302(b)(2)(A) of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation pursuant to section 302(b)(2)(A) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the authorities on Taiwan that deny adequate and effective protection of intellectual property rights. USTR invites written comments from the public concerning the matters being investigated.

DATES: This investigation was initiated on May 29, 1992. Written comments from the public are due on or before 12:00 noon, Monday, July 6, 1992.

FOR FURTHER INFORMATION CONTACT: Laura Kneale Anderson, Director for Taiwan, (202) 395–6813; Emery Simon, Deputy Assistant USTR for Intellectual Property (202) 395–6864; or Catherine Field, Associate General Counsel, (202) 395–3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Section 182(a) of the Trade Act (19 U.S.C. 2242) requires the USTR to identify trading partners that deny adequate and effective protection or enforcement of intellectual property rights or that deny fair and equitable market access to U.S. persons that rely on intellectual property protection. Accordingly, on April 29, 1992, the USTR identified Taiwan as a "priority foreign country" under that provision. In identifying Taiwan as a "priority foreign country," the USTR noted deficiencies in that trading partner's intellectual property acts, policies, and practices with respect to: (1) Effective enforcement of intellectual property rights, in particular, the grant of effective remedies against infringement of copyright and trademarks; (2) the high level of exports worldwide of goods from Taiwan that infringe intellectual property rights; and (3) the level of protection provided under laws and agreements for owners of U.S. patents, copyrights, trade secrets, layout designs of integrated circuits, and industrial designs.

Investigation and Consultations

Section 302(b)(2)(A) of the Trade Act requires the USTR to initiate an investigation of any act, policy, or practice that was the basis of the identification of a country as a priority foreign country under the provisions of section 182(a)(2) of the Trade Act to determine whether such act, policy, or practice is actionable under section 301 of the Trade Act.

Pursuant to section 303(a) of the Trade Act, the USTR has requested consultations with representatives of the authorities on Taiwan concerning the issues under investigation. USTR will seek information and advice from the appropriate committees provided for under section 135 of the Trade Act in preparing presentations for such consultations.

Within six months after the date on which this investigation was initiated (*i.e.*, on or before November 29, 1992), pursuant to section 304 of the Trade Act, the USTR must determine, on the basis of the investigation and the consultations, whether any act, policy, or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, determine what action, if any, to take under section 301 of the Trade Act. The deadline for making these

determinations may, however, be extended to nine months after the date of initiation of this investigation if the USTR determines that complex or complicated issues are involved in the investigation that require additional time, that the authorities on Taiwan are making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or that the authorities on Taiwan are undertaking enforcement measures to provide adequate and effective protection of intellectual property rights.

Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of the authorities on Taiwan that are the subject of this investigation; the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices; and the determinations required under section 304 of the Trade Act.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than 12 noon, Monday, July 6, 1992. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–89) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the docket which is open to public inspection.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92–13125 Filed 6–3–92; 8:45 am]

BILLING CODE 3190–01–M

THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Meeting

Summary: This 15 member Commission will hear 2 days of testimony from military services and civilians on policies pertaining to the Assignment of Women in the Military. Additionally, time will be available at hearings for the Commission's four Fact Finding Panels who will meet to discuss:

1. Foreign Military and Domestic Law Enforcement Agency Experience;
2. Equipment Facilities, Accommodations;
3. The Conscription Environment, and the Effects of Changes in Combat Exclusion Restrictions on Career Opportunities, Recruitment, Retention.

Dates: Monday, June 8th and Tuesday, June 9th, 8 a.m. to 6 p.m.

Address: Embassy Suites Hotel, 1250 22ND Street, NW., Rooms: Diplomat/Consulate, Washington, DC 20037, (202)857–3388.

Status: Open.

Contact: Magee Whelan or Kevin K. Kirk (202) 376–6905.

W. S. Orr,

Staff Director.

[FR Doc. 92–12997 Filed 6–3–92; 8:45 am]

BILLING CODE 6820–CD–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meeting of the Prospective Payment Assessment Commission on Tuesday, June 16, 1992, at the Madison Hotel, 15th & M streets, Northwest, Washington, DC.

The full commission will convene at 9 a.m. in executive chambers 1, 2 and 3. All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 92–13074 Filed 6–3–92; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18735; 811–5504]

Mills Value Fund, Inc.; Notice of Application for Deregistration

May 28, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Mills Value Fund, Inc. (the "Fund").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 25, 1992 and amended on May 22, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 22, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1108 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The fund is an open-end diversified management company incorporated under Virginia law. Anderson & Strudwick is the Fund's principal underwriter and sponsor (the "Sponsor"). On March 18, 1988, the Fund registered under the Act by filing a Notification of Registration pursuant to section 8(a). On this same date, the Fund filed a registration statement on Form N–1A. pursuant to section 8(b) of the Act, and registered an indefinite number of shares under the Securities Act of 1933. The registration statement was declared effective on July 29, 1988, and the Fund's initial public offering commenced on August 19, 1988.

2. On October 22, 1991, the Board of Directors of the Fund recommended that a plan of dissolution and liquidation (the "Plan") be submitted to the shareholders of the Fund. On December 2, 1991, proxy materials relating to the Plan were filed with the SEC. At a special meeting held on December 27, 1991, 73% of the shares outstanding voted in favor of the Plan.

3. On December 27, 1991, the Fund made liquidating distributions to its

shareholders. Each shareholder, other than the Sponsor, received a distribution in an amount equal to such shareholder's *pro rata* portion of the net assets of the Fund. The Fund's shareholders, other than the Sponsor, received $11.26 per share.

4. The Fund's organizational expenses were being deferred and amortized on a straight line basis over 60 months. At the time of liquidation, the Fund had remaining unamortized organizational expenses of $31,686.86. Because the Sponsor bore the Fund's unamortized organizational expenses, it received a liquidating distribution of $3.53 per share.

5. Expenses in the amount of $18,440.68 were incurred in connection with the liquidation and dissolution of the Fund. The Fund's investment adviser, Mill Value Advisers, Inc., bore these expenses.

6. At the time of filing of the application, the Fund had no shareholders, assets, or liabilities. The Fund is not a party to any litigation or administrative proceedings. The Fund is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13005 Filed 6-3-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2561]

Virginia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 19, 1992, I find that the Counties of Albermarle, Amherst, Augusta, Bedford, Botetourt, Carroll, Craig, Floyd, Franklin, Greene, Montgomery, Nelson, Page, Patrick, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, and Warren, and the Cities of Buena Vista, Roanoke, and Salem in the State of Virginia constitute a disaster area as a result of damages caused by severe storms and flooding on April 21-22, 1992. Applications for loans for physical damage may be filed until the close of business on July 17, 1992, and for loans for economic injury until the close of business on February 19, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Allegheny, Appomattox, Bath, Bland, Buckingham, Campbell, Clarke, Culpeper, Fauquier, Fluvanna, Frederick, Giles, Grayson, Henry, Highland, Louisa, Madison, Orange, Pittsylvania, Shenandoah, and Wythe, and the Cities of Bedford, Charlottesville, Galax, Harrisonburg, Lexington, Lynchburg, Radford, Staunton, and Waynesboro in the State of Virginia; Hardy, Monroe, and Pendleton Counties in the State of West Virginia; and Rockingham, Stokes, and Surry Counties in the State of North Carolina may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.500
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 256106 and for economic injury the numbers are 762800 for Virginia; 763000 for West Virginia; and 763100 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 26, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-13088 Filed 6-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5467]

Yusa Capital Corp.; Surrender of License

Notice is hereby given that, pursuant to Section 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1992)), Yusa Capital Corporation, 622 Broadway, New York, NY 10012, incorporated under the laws of the State of New York has surrendered its license, No. 02/02-5467 issued by the SBA on July 31, 1984.

Yusa Capital Corporation has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Yusa Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 2, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-13087 Filed 6-3-91; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, July 13, 1992 at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Carol A. White, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240-4670.

Dated: May 28, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-13084 Filed 6-3-92; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-A (Revision 5; Amdt. 1)]

Delegation of Authority; Redelegation of Financial Assistance

Delegation of Authority No. 12-A (Revision 5) (56 FR 55147 October 24, 1991) is hereby amended by Delegation of Authority No. 12-A (Revision 5; Amendment 1). This amendment delegates authority from the Administrator to certain SBA personnel to conduct a Microloan Demonstration Program as added to the Small Business Act by Public Law 102-140, the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1991. Specifically, Public Law 102-140 added a new

subsection (m) to section 7 of the Small Business Act, 15 U.S.C. 636(m), which established a program by which SBA would make direct loans to intermediaries who will use the proceeds to make microloans to startup, newly established, or growing small business concerns. Delegation of Authority No. 12–A (Revision 5; Amendment 1) reads as follows:

1. Regarding the authority delegated to the Assistant Administrator for Financial Assistance: on page 55148, in the third column, paragraphs I.A.6. and 7. are redesignated as paragraphs I.A.7. and 8., and a new paragraph I.A.6. is added to read as follows:

I. Pursuant to the action of the Administrator, Small Business Administrator, dated February 12, 1990, the following authority is hereby delegated to the specific positions designated herein as follows:

A. To the Assistant Administrator for Financial Assistance as follows:

* * * * *

6. Microloan Demonstration Program

a. To take any and all actions involved in approval or decline of applications of entities seeking to be intermediaries in the Microloan Demonstration Program pursuant to section 7(m) of the Small Business Act, 15 U.S.C. 636(m).

b. To take any and all actions involved in the approval or decline of applications for a direct loan by intermediaries approved to participate in the Microloan Demonstration Program, the proceeds of which are to be used to make microloans to qualified small business concerns, including reconsideration thereof; and to execute authorizations and modifications pertaining to such direct loans.

c. To take any other actions necessary to implement the Microloan Demonstration Program as set forth in section 7(m) of the Small Business Act, 15 U.S.C. 636(m) and the regulations promulgated thereunder, See 13 CFR 121.61.

* * * * *

2. Regarding the authority delegated to the Director, Office of Financing: on page 55149, in the first column, paragraph I.B.4. is redesignated as paragraph I.B.5., and a new paragraph I.B.4. is added to read as follows:

I. Pursuant to the action of the Administrator, Small Business Administrator, dated February 12, 1990, the following authority is hereby delegated to the specific positions designated herein as follows:

* * * * *

B. To the Director, Office of Financing as follows:

* * * * *

4. Microloan Demonstration Program

a. To take any and all actions involved in approval or decline of applications of entities seeking to be intermediaries in the Microloan Demonstration Program pursuant to section 7(m) of the Small Business Act, 15 U.S.C. 636(m).

b. To take any and all actions involved in the approval or decline of applications for a direct loan by intermediaries approved to participate in the Microloan Demonstration Program, the proceeds of which are to be used to make microloans to qualified small business concerns, including reconsideration thereof; and to execute authorizations and modifications pertaining to such direct loans.

c. To take any other actions necessary to implement the Microloan Demonstration Program as set forth in section 7(m) of the Small Business Act, 15 U.S.C. 636(m) and the regulations promulgated thereunder, See 13 CFR 121.61.

* * * * *

Dated: May 18, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–13085 Filed 6–3–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5286]

EQUICO Capital Corp.; Transfer of Ownership and Control of a Small Business Investment Company License

On April 16, 1992, a notice was published in the **Federal Register** (57 FR 92–8812) stating that an application has been filed by EQUICO Capital Corporation, 135 West 50th Street, suite 1170, New York, New York 10020, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (23 CFR 107.102 (1992)) for a Transfer of Ownership and Control of the Small Business Investment Company License.

Interested parties were given until close of business May 1, 1992 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA approved the Transfer of Ownership and Control of EQUICO Capital Corporation, on May 14, 1992. Upon the change of Ownership and Control, EQUICO Capital Corporation will change its name to TSG Ventures, Inc.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 21, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–13086 Filed 6–3–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 633]

Certain Foreign Passports Validity

Under the provisions of 212(a)(7)(B), formerly 212(a)(26), of the Immigration and Nationality Act, a nonimmigrant alien who makes application for a visa or for admission into the United States is required to possess a passport which is: (1) Valid for a minimum period of six months from the date of expiration of the initial period of the alien's admission into the United States or his or her contemplated initial period of stay and (2) authorizes the alien to return to the country from which he or she came or to proceed to and enter some other country during such period. Because of the foregoing requirement, certain foreign governments have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of six months beyond the expiration date specified in the passport. These arrangements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport.

This Public Notice advises the public that Suriname is now among those countries which have concluded such agreements.

The following governments have concluded agreements with the Government of the United States:

Algeria
Antigua and Barbuda
Australia
Austria (Reisepass only)
Bahamas, The
Bangladesh (travel permits and passports)
Beligum
Bolivia
Brazil
Canada
Chile

Colombia
Cost Rica
Cote d'Ivoire
Cuba
Cyprus
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Ehtiopia
Finland
France
Germany
Greece
Grenada
Guatemala
Guinea
Guyana
Honduras
Hong Kong (Certificates of Identity and passports)
Iceland
India
Iran
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Korea
Kuwait
Laos
Lebanon
Libya
Liechtenstein
Luxembourg
Madagascar
Malaysia
Malta
Mauritius
Mexico
Monaco
Morocco
Netherlands
New Zealand
Nicaragua (diplomatic and official passports only)
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
St. Kitts and Nevis
St. Lucia
St. Vincent and the Grenadines
Senegal
Singapore
Soviet Union (USSR) (Seamen only)
Spain
Sri Lanka
Sudan
Suriname
Sweden
Switzerland
Syria
Thailand
Trinidad and Tobago
Tunisia
Turkey
United Arab Emirates
United Kingdom
Uruguay
Venezuela
Yugoslavia

In addition, travel documents issued by the Government of the Trust Territory of the Pacific Islands are considered to be valid for the return of the bearer to the Trust Territory for a period of six months beyond the expiration date specified therein.

Public Notice 954 of February 26, 1986 issued at 51 FR 6853 is hereby superseded.

Dated: May 22, 1992.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

[FR Doc. 92-13112 Filed 6-3-92; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airway Science Grant Proposals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Extension of closing date for notice of solicitation for airway science grant proposals.

SUMMARY: The solicitation published in the **Federal Register** (57 FR 9586, March 19, 1992) represents a continuation of the Federal Aviation Administration's AWS Grant Program. The Federal Aviation Administration (FAA) is authorized by Public Laws 101-516 and 102-143 to solicit competitive proposals for Airway Science (AWS) grants from accredited 4-year public or nonprofit private colleges and universities with recognized FAA AWS Curriculum programs. The FAA expects to award most, if not all, of an available $5,036,384 in the form of grants, to a select number of these recognized institutions. A portion of the available funds will be awarded to eligible minority institutions with recognized AWS curricula. Awards typically will range from $100,000 to a maximum of $300,000. In no event shall the total Federal share of any AWS project exceed 50% of the cost of the project.

The grant funds may be used for the purchase, lease with intent to purchase, or construction of academic buildings and associated facilities to be used in support of an FAA recognized AWS curriculum. In addition, grant funds may be used for nonexpendable instructional materials or instructional equipment to be used in the actual teaching of the AWS curriculum. No federal grant funds shall be used for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies or other expendable items, automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, general purpose parking lots, land, commercial airport facilities, taxiways, runways, or any project in support of a commercial activity.

FOR FURTHER INFORMATION CONTACT: Virginia Hancock Krohn, Manager, Airway Science Grant Program, Federal Aviation Administration, Office of Training and Higher Education, AHT-30, room PL-100, 400 7th Street SW., Washington, DC 20590, Telephone: (202) 366-7003.

Closing Date

The closing date is extended to July 31, 1992.

Issued in Washington, DC., May 26, 1992.

Belinda R. Zamer,

Deputy Director, Office of Training and Higher Education.

[FR Doc. 92-13070 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC); Allentown-Bethlehem-Easton International Airport, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Allentown-Bethlehem-Easton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Raymond D. Anderson, A.A.E., Director of Finance of the Lehigh-Northampton Airport Authority at the following address: 3311 Airport Road, Allentown, PA 18103.

Air carriers and foreign air carriers may submit copies of written comment

previously provided to the Lehigh-Northampton Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Manager Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011. 717-782-4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Allentown-Bethlehem-Easton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 19, 1992, the FAA determined that the application to impose a PFC submitted by Lehigh-Northampton Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 28, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: March 31, 1995.

Total estimated PFC revenue: $3,778,111.

Brief description of proposed project(s):

—Preliminary Design of Passenger Terminal Building.
—Design of Passenger Terminal Building.
—Expand Passenger Terminal Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air-Taxi/Commercial operators filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lehigh-Northampton Airport Authority.

Issued in Jamaica, NY on May 26, 1992.

Peter A. Nelson,

Assistant Manager, Airports Division Eastern Region.

[FR Doc. 92-13071 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC); University Park Airport, State College, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at University Park Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to William R. Stacey, Management Specialist of the Pennsylvania State University at the following address: room 304 Old Main, University Park, PA 16802.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Pennsylvania State University under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Manager Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011. 717-782-4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at University Park Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 15, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Pennsylvania State University was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 28, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1992.

Proposed charge expiration date: April 30, 2004.

Total estimated PFC revenue: $5,058,723.

Brief description of proposed project(s):

—Terminal Apron expansion.
—Terminal expansion-phase I.
—Terminal expansion-phase II.
—Land acquisition.
—Upgrade & Renovate Taxiway B.
—Storm Water Management.
—Runway extension.
—Signage update.
—Emergency Generator.
—Obstruction removal.
—GA ramp rehabilitation.
—Runway Friction Tester.
—Runway Condition Sensors.
—Maintenance Building & Grit storage.
—Snow Removal equipment.
—ARFF Vehicle.
—Expand Taxiway B.
—Recondition existing Broom.
—Master Plan Update.
—Security & Access Control improvement.
—AWOS IV.
—Land Acquisition.
—Snow Removal Equipment—blower.
—Renovate Runway Lighting.
—Terminal Building Expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air-Taxi operators and Charter Carriers.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pennsylvania State University.

Issued in Jamaica, NY on May 26, 1992.

Peter A. Nelson,

Assistant Manager, Airports Division Eastern Region.

[FR Doc. 92-13073 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC); Morgantown Municipal Airport, Morgantown, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Morgantown Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Beckley Airports Field Office, 469 Airport Circle, room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert L. Bryant, Airport Manager of the City of Morgantown, West Virginia at the following address: 389 Spruce Street, Morgantown, West Virginia, 26505.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Morgantown under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Scheff, Manager Beckley Airports Field Office, 469 Airport Circle, room 101 Beaver, West Virginia 25813, (304) 252-6216. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Morgantown Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 8, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Morgantown was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: October 1, 1992.
Proposed charge expiration date: October 31, 1994.
Total estimated PFC revenue: $100,000.

Brief description of proposed project(s):

—Airfield Lighting and Guidance signs.
—Overlay T/W C, G.A. Apron and Air Carrier Apron.
—Construction and Lighting of T/W parallel to R/W 5-23.
—Construction of ARFF/Snow Removal Building.
—Purchase ARFF Equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PCFs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Fitzgerald Federal Building—AEA-600, JFK International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Morgantown, West Virginia.

Issued in Jamaica, New York on May 28, 1992.

Peter A. Nelson,

Assistant Manager, Airports Division Eastern Region.

[FR Doc. 92-13072 Filed 6-3-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

[Number: 150-19]

Delegation—Issuance of Immunity Orders

Date: May 28, 1992.

1. By virtue of the authority vested in the Secretary of the Treasury by sections 7802 and 7803 of the Internal Revenue Code of 1986, and by 31 U.S.C. 321(b), there is hereby delegated to the Commissioner of Internal Revenue, the function under Title II of the Organized Crime Control Act of 1970 (18 U.S.C. 6001, *et seq.*; 84 Stat. 926), with the approval of the Attorney General, to make determinations and to issue the orders to compel the testimony under a grant of immunity of any individual who has been or may be called to testify or provide information at any proceeding before the Internal Revenue Service which such individual refuses to give or provide on the basis of the individual's privilege against self-incrimination.

2. The authority herein delegated to the Commissioner of Internal Revenue may be redelegated to the Deputy Commissioner, the Assistant Commissioner (Criminal Investigation) and the Chief Inspector.

3. This Order supersedes Treasury Order 150-19, "Delegation—Issuance of Immunity Orders," dated November 29, 1977.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 92-13059 Filed 6-3-92; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 6, 1992.

DATED: May 27, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information, Resources Policies and Oversight.

Extension

1. Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

2. The information is used by VA regional office in Manila to determine whether eligibility for VA benefits can be established based on service in the Commonwealth Army of the Philippines or recognized guerrilla organization.

3. Individuals or households.

4. 1,000 hours.

5. 1 hour.

6. On occasion.

7. 1,000 respondents.

[FR Doc. 92–13025 Filed 6–3–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NY 20420, (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (203) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the following collection should be direct to the OMB Desk Officer on or before July 6, 1992.

Dated: May 27, 1992.

By direction of the Secretary:

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Certificate of Balance on Deposit, VA Form 27–4718(a).

2. This form is completed by VA fiduciaries, as required by State courts and/or Federal status, to lessen the volunerability of Federal funds to fraud, waste, and abuse.

3. Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions.

4. 1,500 hours.

5. 3 minutes.

6. On occasion; Annually; Biennially; Triennially.

7. 30,000 respondents.

[FR Doc. 92–13026 Filed 6–3–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 6, 1992.

Dated: May 27, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Other On-The-Job Training and Apprenticeship Training Agreement and Standards, VA Form 22–8864, and Employer's Application to Provide Job Training, VA Form 22–8865.

2. The information is collected from trainees and employers to ensure that apprenticeship and on-the-job-training programs and agreements meet the statutory requirement for approval.

3. State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

4. 3,750 hours.

5. 50 minutes.

6. On occasion.

7. 4,500 respondents.

[FR Doc. 92–13027 Filed 6–3–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC

20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 6, 1992.

Dated: May 26, 1992.

By directions of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information, Resources Policies and Oversight.

New Collection

1. Customer Based Measures Telephone Survey.

2. VA seeks to improve the quality, timeliness, and effectiveness of services to veterans and their beneficiaries. The information will be used to incorporate the veterans'/beneficiaries' perspective into plans for service delivery improvements, provide a basis on which to establish customer defined indicators, and provide blueprint for planning and resource allocation.

3. Individuals or households.

4. 806 hours.

5. 14 minutes.

6. Annually.

7. 3,456 respondents.

[FR Doc. 92–13031 Filed 6–3–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Oficer on or before July 6, 1992.

Dated: May 27, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Mortgage Loan Information, VA Form 26–8982.

2. This information card will be used to collect social security numbers as part of the accounting information required by credit reporting agencies on delinquent borrowers.

3. Individuals or households.

4. 829 hours.

5. 5 minutes.

6. On occasion.

7. 9,950 respondents.

[FR Doc. 92–13030 Filed 6–3–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 6, 1992.

Dated: May 27, 1992.

By direction of the Secreatary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Application for Service-Disabled Insurance, VA Form 29–4364 and VA Form 29–4364–1.

2. The forms are used by veterans to apply for Service-Disabled Veterans Insurance, to designate a beneficiary and to select an optional settlement.

3. Individuals or households.

4. 2,833 hours.

5. 40 minutes.

6. On occasion.

7. 4,250 respondents.

[FR Doc. 92–13029 Filed 6–3–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to

VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 6, 1992.

Dated: May 27, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Offer to Purchase and Contract of Sale, VA Form 26–6705, and Credit Statement of Prospective Purchaser, VA Form 26–6705b.

2. VA Form 26–6705 serves as an offer to purchase and contract of sale for submitted purchase offers to VA on properties acquired through operation of the guaranteed and direct loan programs. VA Form 26–6705b is used to collect credit and income information necessary to determine whether an applicant qualifies to purchase a VA-owned property.

3. Individuals or households.

4. 38,547 hours.

5. 14 minutes.

6. On occasion.

7. 165,200 respondents.

FR Doc. 92–13028 Filed 6–3–92; 8:45 am]

BILLING CODE 8320–01–M

The Child Care Development of the VAMC Washington, DC; Designation

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Washington, DC VA Medical Center as a site that will be subject to child care development under the terms of an enhanced-use lease. The Department intends to enter into a long-term lease of real property and facilities with the developer who provides the Department with the best quality care at the greatest economic advantage.

FOR FURTHER INFORMATION CONTACT: Julia Reyes, Office of the Assistant Secretary for Acquisition and Facilities (005), 810 Vermont Ave., NW., Washington, DC 20420, 202–535–8555.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 et seq. specifically provides that the Secretary may enter into an enhanced-use lease with a private developer. This developer will provide services, revenue, or both, to the Department. The child care center will be economically self-sustaining and be compatible with the existing residential neighborhood.

Approved: May 26, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92–13023 Filed 6–3–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 108
Thursday, June 4, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 5, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–13254 Filed 6–2–92; 2:44 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, June 9, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application for the Chicago Mercantile Exchange for contract designation in Goldman Sachs Commodity Index futures and options.

CONTACT PERSON FOR MORE INFORMATION: Jean W. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–13255 Filed 6–2–92; 2:44 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 12, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–13256 Filed 6–2–92; 2:44 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, June 19, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–13257 Filed 6–2–92; 2:44 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 26, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–13258 Filed 6–2–92; 2:44 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, June 30, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–13259 Filed 6–2–92; 2:44 pm]
BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92–12668.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 4, 1992, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA:

Advisory Opinion 1992–13: Mr. James M. Blackburn

DATE AND TIME: Tuesday, June 9, 1992, 10:00 A.M.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, June 11, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Final Repayment Determination—Kemp for President
Final Repayment Determination—Bush-Quayle '88
Status of Regulations Projects (continued from meeting of May 14, 1992)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores R. Harris,

Administrative Assistant.

[FR Doc. 92–13191 Filed 6–2–92; 10:52 am]

BILLING CODE 6715–01–M

POSTAL RATE COMMISSION

Amended Notice of Meeting

[BAC 7710–FW]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 57, p. 21700, May 21, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., June 8, 1992.

CHANGES IN THE MEETING: 10:00 a.m., June 15, 1992.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 92–13221 Filed 6–2–92; 8:45 am]

BILLING CODE 7715–01–M

federal register

Thursday
June 4, 1992

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 412 and 413

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-756-P]

RIN 0938-AF79

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. In addition, in the addendum to this proposed rule, we are describing changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 1992. We are also setting forth proposed rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems.

Finally, we are proposing changes and clarifications to the criteria and procedures concerning the reclassification of hospitals by the Medicare Geographic Classification Review Board. These changes result from public comment and our analysis of hospital reclassifications for Federal fiscal year (FY) 1992. The changes would be effective for applications submitted by September 30, 1992 for geographic reclassifications to be implemented on October 1, 1993 (FY 1994).

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 3, 1992.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-756-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C. 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments.

If comments concern information collection recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt.

In commenting, please refer to file code BPD-756-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

To obtain data used in deriving the standardized amounts and DRG relative weights, see section IX.B of the preamble, Public Requests for Data.

Copies: To order copies of the **Federal Register** containing this document, send your request to: Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250-7954.

Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-2465 or by faxing your request to (202) 512-2250. The cost for each copy (in paper or microfiche form) is $1.50. In addition, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. Ask the order desk operator for the location of the U.S. Government Depository Library nearest to you.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 966-4529.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for the operating costs of acute hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for hospital inpatient operating costs is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412. On August 30, 1991, we published a final rule (56 FR 43196) to implement changes to the prospective payment system for hospital operating costs for Federal fiscal year (FY) 1992.

For cost reporting periods beginning before October 1, 1991, hospital inpatient operating costs were the only costs covered under the prospective payment system. Payment for capital-related costs had been made on a reasonable cost basis because, under sections 1886(a)(4) and (d)(1)(A) of the Act, those costs had been specifically excluded from the definition of inpatient operating costs. However, section 4006(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) revised section 1886(g)(1) of the Act to require that, for hospitals paid under the prospective payment system for operating costs, capital-related costs would also be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991.

Therefore, on August 30, 1991, we published an additional final rule (56 FR 43358) in which we revised the Medicare payment methodology for inpatient capital-related costs for hospitals paid under the prospective payment system for operating costs. As required by section 1886(g) of the Act, we replaced the reasonable cost-based payment methodology with a prospective payment methodology for hospital inpatient capital-related costs. Under the new methodology, effective for cost reporting periods beginning on or after October 1, 1991, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs.

We established the standard Federal rate for FY 1992 using the FY 1989 Medicare inpatient capital cost per discharge updated to FY 1992 by the estimated increase in Medicare capital costs per discharge. In addition, we established a 10-year transition period for hospitals to be paid for their capital-related costs under one of two different payment methods. Generally, hospitals with a hospital-specific rate below the Federal rate are paid based on a fully prospective payment methodology. Hospitals with a hospital-specific rate at or above the Federal rate are paid based on a hold-harmless method or 100 percent of the Federal rate, whichever

results in a higher payment. Beginning with hospital cost reporting periods beginning on or after October 1, 2001, all hospitals are paid the Federal rate except for certain new hospitals that have not completed their transition period. (See the August 30, 1991 final rule (56 FR 43358) for a complete discussion of the prospective payment system for hospital inpatient capital-related costs.)

Hospitals and hospital distinct-part units that are excluded from the prospective payment system under the regulations at part 412, subpart B continue to be paid for capital-related costs on a reasonable cost basis under the provisions of part 413, subpart G. Also, rural primary care hospitals are not currently subject to prospective payment rules as provided under section 1814(l) of the Act and the last sentence of section 1861(e) of the Act.

B. Major Contents of this Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs. This proposed rule would be effective for discharges occurring on or after October 1, 1992. Following is a summary of the major changes that we are proposing to make:

1. Changes to the DRG Classification and Weighting Factors

As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighting factors at least annually. Our proposed changes for FY 1993 are set forth in section II of this preamble.

2. Changes to the Hospital Wage Index

In section III of this preamble, we discuss revisions to the wage index and, in particular, the revisions necessary because of hospital geographic reclassifications.

3. Changes Concerning Reclassifications by the Medicare Geographic Classification Review Board

In section IV of this preamble, we discuss the criteria and procedures for hospital reclassifications by the Medicare Geographic Classification Review Board and set forth proposed changes concerning the following:

- General guidelines—reclassifications for individual hospitals
—Reclassification to a single geographic area.
—Individual urban hospital reclassification to a rural area.
—Special access rule for rural referral center and sole community hospitals seeking reclassification.
—Guidelines for a hospital requesting reclassification for wage index purposes.
—Application of numeric standards.
- Implementation of FY 1994 hospital reclassifications.
—Appropriate wage data.
—Revised labor market areas.
- Administrative and procedural guidelines.
—Withdrawing an application.
—Reopenings.

4. Other Changes to the Prospective Payment System for Inpatient Operating Costs

In section V of this preamble, we discuss several provisions of the regulations in 42 CFR parts 412 and 413 and set forth certain proposed changes concerning the following:

- Outlier payments.
- Rural referral center criteria.
- Direct graduate medical education payments.

5. Changes to Capital Prospective Payment System Rules

In section VI of this preamble, we discuss several provisions of the regulations at 42 CFR part 412, subpart M, and set forth certain proposed changes concerning the following:

- Payments to new hospitals.
- Portion of hospital assets put in patient care service after December 31, 1990.
- Treatment of old capital costs when hospitals are leased after December 31, 1990.
- Obligated capital costs.
- Adjusting the hospital-specific rate—transfer-adjusted discharge and case-mix index for subsequent base periods.
- Redetermination of the hospital-specific rate.
- Effect of hospital mergers, consolidations or dissolution on the hospital-specific rate.
- Extraordinary circumstances exceptions payments.
- Minor technical corrections.

6. Changes for Hospitals Excluded from the Prospective Payment System

In section VII of this preamble, we discuss changes to the regulations at 42 CFR parts 412 and 413 for hospitals and units excluded under the prospective payment system. The proposed changes concern the following:

- Provisionally excluded hospitals and units.
- Definition of discharge for purposes of applying the rate-of-increase limits applicable to excluded hospitals and distinct part units.
- New hospital exemption applicable to excluded hospitals.
- Adjustments under the rate-of-increase ceiling.

7. Determining Prospective Payment Rates and Rate-of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1993 prospective payment rates for operating costs and capital-related costs. We are also proposing new target rate percentages for determining the rate-of-increase limits for cost reporting periods beginning in FY 1993 for hospitals and hospital units excluded from the prospective payment system.

8. Impact Analysis

In appendix A, we set forth an analysis of the impact that the proposed changes described in this rule would have on affected entities.

9. Capital Acquisition Model

Appendix B contains the technical appendix on the proposed FY 1993 capital acquisition model and budget neutrality adjustment.

10. Report to Congress on the Update Factor

Section 1886 (e)(3)(B) of the Act requires that the Secretary report to Congress no later than March 1, 1992 on our initial estimate of an update factor for FY 1993 for both prospective payment hospitals and hospitals excluded from the prospective payment system. This report is included as appendix C to this proposed rule.

11. Proposed Recommendation of Update Factor

As required by sections 1886(e)(4) and (e)(5) of the Act, appendix D provides our recommendation of the appropriate percentage change for FY 1993 for the following:

- Large urban, other urban, and rural average standardized amounts (and hospital-specific rates applicable to sole community hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

12. Discussion of Prospective Payment Assessment Commission Recommendations

The Prospective Payment Assessment Commission (ProPAC) is directed by the

provisions of sections 1886(e)(2) (A) of the Act to make recommendations on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with FY 1986 and thereafter. In addition, section 1886(e)(2)(B) of the Act, as added by section 4002(g) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), directs ProPAC to make recommendations regarding changes in each of the Medicare payment policies under which payments to an institution are prospectively determined. In particular, the recommendations relating to the hospital inpatient prospective payment systems are to include recommendations concerning the number of DRGs used to classify patients, adjustments to the DRGs to reflect severity of illness, and changes in the methods under which hospitals are paid for capital-related costs. As set forth in section 1886(e)(3)(A) of the Act, the recommendations required of ProPAC under sections 1886(e)(2)(A) and (B) of the Act are to be reported to Congress not later than March 1 of each year.

We are printing ProPAC's March 1, 1992 report, which includes its recommendations, as appendix E of this document. The recommendations, and the actions we are proposing to take with regard to them (when an action is recommended), are discussed in detail in the appropriate sections of this preamble, the addendum, or the appendixes of this proposed rule. Those recommendations that are not specifically relevant to matters presented below are discussed in section VIII of this preamble. For a brief summary of the ProPAC recommendations, we refer the reader to pages 5 through 12 of the ProPAC report as set forth in appendix E of this proposed rule. ProPAC also produced technical appendixes in its March 1, 1992 report that provide background material and detailed analyses used in preparation of the ProPAC recommendations. For further information relating specifically to the ProPAC report or to obtain a copy of the technical appendixes, contact ProPAC at (202) 401–8986.

II. Proposed Changes to DRG Classifications and Weighting Factors

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in other DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1992 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient.[1] The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment.

Currently, cases are assigned to one of 489 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, principal diagnosis determines MDC assignment. However, there are four DRGs to which cases are assigned on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. These are the DRGs for liver and bone marrow transplant (DRGs 480 and 481, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

The changes we are proposing to make to the DRG classification system for FY 1993 are set forth below.

2. Reassignment of Certain Endoscopic Procedures (DRGs 76 and 77)

Currently, the only endoscopic procedure performed on the respiratory system that is considered an OR procedure is procedure code 33.27 (Closed endoscopic biopsy of lung). This procedure code is assigned to DRG 76 or 77 (Other Respiratory System OR Procedures) [2] if the patient's principal

[1] Effective with discharges occurring on or after October 1, 1991, we allowed an expansion of the number of reported diagnosis and procedure codes from 5 to 9 and from 3 to 6, respectively. Hospitals are required to code at the new level effective with discharges occurring on or after April 1, 1992.

[2] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second is for cases without CC. If a third number is included, it represents cases of patients who are age 0–17. Occasionally, a pair of DRGs are split on age > 17 and age 0–17.

diagnosis is classified in MDC 4 (Diseases and Disorders of the Respiratory System). If procedure code 33.27 is performed in connection with a principal diagnosis assigned to another MDC, and no other procedure related to that diagnosis is performed, the case is assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis).

Based on inquiries from the industry as well as our own concerns, we have reviewed the appropriate assignment of two other respiratory system endoscopic procedures: Endoscopic excision or destruction of lesion or tissue of lung (procedure code 32.28) and Closed [endoscopic] biopsy of bronchus (procedure code 33.24). Currently, performance of these non-OR procedures affects DRG assignment only in MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms). For principal diagnoses that are assigned to that MDC, the performance of procedure codes 32.28 or 33.24 results in assignment to medical DRG 412 (History of Malignancy with Endoscopy). The preliminary information we received was that procedure codes 32.28 and 33.24 should be considered OR procedures and be assigned to MDC 4 because they are similar to procedure code 33.27 in terms of resource use and complexity.

Our analysis of the FY 1993 Medicare provider analysis and review file (MEDPAR) data demonstrated that, in the medical DRGs in MDC 4, the cases in which either procedure code 32.28 or 33.24 was performed had, on average, higher charges and lengths of stay than did the other cases assigned to these DRGs. This was particularly true for cases that included a CC. A comparison of the average charge and length of stay of medical cases with codes 32.28 and 33.24 with the average charge and length of stay of cases in DRGs 76 and 77 with procedure code 33.27 demonstrates that these cases are very similar in terms of resource use.

Based on these findings, we are proposing that endoscopic procedure codes 32.28 and 33.24 be designated as OR procedures and assigned to DRGs 76 and 77 in MDC 4. Because of this new designation, these procedures would be removed from medical DRG 412 in MDC 17. If procedure code 32.28 or 33.24 appears on a claim with a principal diagnosis in MDC 17, it would be assigned to surgical DRG 408 (Myeloproliferative Disorders or Poorly Differentiated Neoplasms with Other O.R. Procedure) as is procedure code 33.27.

In addition, based on our analysis of average charges, we are proposing that procedure codes 32.28 and 33.24 be assigned to DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) when they are unrelated to the principal diagnosis and no OR procedure related to the principal diagnosis is performed. We note that procedure code 33.27 is assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis).

3. Automatic Implantable Cardioverter Defibrillator (AICD) Procedures (DRG 120)

For several years, we have received a great deal of correspondence concerning the appropriate DRG assignment of certain procedures involving automatic implantable cardioverter defibrillators (AICDs). Currently, when a patient whose principal diagnosis is classified to MDC 5 (Diseases and Disorders of the Circulatory System) receives a total AICD system implant or replacement (procedure code 37.94), the case is assigned to DRG 104 or 105 (Cardiac Valve Procedures with or without Cardiac Catheterization).

However, if a procedure is performed that involves the implantation or replacement of only part of the AICD system (that is, replacement or implant of either the leads or pulse generator only), the case is assigned to DRG 120 (Other Circulatory System OR Procedures). The related procedure codes are the following: 37.95 (Implantation of automatic cardioverter/defibrillator lead(s) only), 37.96 (Implantation of automatic cardioverter/defibillator pulse generator only), 37.97 (Replacement of cardioverter/defibrillator lead(s) only), and 37.98 (Replacement of automatic cardioverter/defibrillator pulse generator only). We note that if a case is coded with a pair of codes that indicates total implant (37.95 and 37.96) or total replacement (37.97 and 37.98), it groups to DRG 104 or 105.

The correspondence we have received has generally recommended that cases in which only part of an AICD system is implanted or replaced be reassigned from DRG 120 to a DRG that more accurately reflects the resources incurred in performing the procedure, preferably a DRG with a higher weight than that of DRG 120. This recommendation has been based on various studies commissioned by the manufacturer of the AICD device. These studies have concluded that the average standardized charges for implant or replacement of AICD leads or pulse generator only have been consistently understated in the MEDPAR file. For a detailed discussion of the previous years' comments and our responses on this subject, see the final rules dated September 1, 1989 (54 FR 36465), September 4, 1990 (55 FR 36023), and August 30, 1991 (56 FR 43216).

In the August 30, 1991 final rule, we described the various measures we had taken in an attempt to improve the MEDPAR charge and coding data on AICD devices. We furnished information given to us by commenters about potential improper coding and billing to the Peer Review Organizations (PROs) for their review. In addition, we sent an instruction to our fiscal intermediaries (Transmittal No. 1525, May 1991) to return to the hospital for review any inpatient claim with procedure code 37.94, 37.95, 37.96, 37.97, or 37.98 for which total charges are less than $17,000. (The manufacturer claimed that the device alone costs $13,500 and the additional $3,500 represents the average cost of a 4-day length of stay.) We also instructed the carriers to deny charges under Medicare Part B for any defibrillator implant furnished in support of surgery during an inpatient hospital stay (Transmittal No. 1393, May 1991). These charges are to be included on the inpatient bill and not billed separately. In the August 30, 1991 final rule, we stated that these changes should improve the AICD data in the FY 1991 MEDPAR file, and we would review those cases as a part of our FY 1993 DRG analysis (56 FR 43217).

Our analysis of the AICD cases in the FY 1991 MEDPAR data was based on 958 cases assigned to DRG 120 and 273 cases that were assigned to DRG 112 (Percutaneous Cardiovascular Procedures). (Cases that involve the implant or replacement of AICD lead or generator only group to DRG 112 when electrophysiologic (EP) studies (procedure code 37.26) are also performed.) Based on these cases, we found that the cases with AICD procedures that were classified in DRG 120 in FY 1991 had an average standardized charge of $19,380. The cases that grouped to DRG 112 had an average standardized charge of $32,626. Thus, the overall average standardized charge for these cases was $22,317.

Since the average standardized charge for all cases in DRGs 112 and 120 in FY 1991 was only approximately $14,000, we believe it is appropriate to propose a change in the classification of the AICD cases effective for FY 1993. Because it is generally not our policy to create single procedure DRGs, we are proposing to reassign AICD cases to an existing DRG. However, the current clinical composition and weights of the surgical DRGs in MDC 5 do not offer a perfect match for reclassification of the AICD

cases. After reviewing the current DRGs in terms of clinical coherence and similar resource use, we are proposing to reassign procedure codes 37.95, 37.96, 37.97, and 37.98, when they do not occur as pairs, to DRG 116 (Permanent Cardiac Implant without AMI, Heart Failure, or Shock). The average standardized charge of $17,214 for DRG 116 is higher than that of both DRGs 112 and 120 and, from a clinical perspective, we believe that the surgical implant of an AICD device is similar to a pacemaker implant. We considered assigning these cases to both DRGs 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure or Shock) and 116, so that AICD implants would be assigned in the same way permanent cardiac pacemakers are (that is, depending on principal diagnosis). However, our review of cases in which an AICD device is replaced or implanted showed no cases in which AMI, heart failure, or shock is a principal diagnosis. Therefore, in any case, all the AICD cases would group to DRG 116.

We believe that the reassignment to DRG 116 would help improve the payment for the AICD cases and would not disrupt the current MDC 5 surgical classification. Since DRG 116 is higher in the surgical hierarchy than DRG 112, the AICD cases that currently group to DRG 112 would also be reassigned to DRG 116. The new title of DRG 116 would be "Other Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure."

4. Major Joint and Limb Reattachment Procedures of Lower Extremity (DRG 209)

As a part of the DRG changes set forth in the August 30, 1991 final rule, we revised the classification of cases assigned to DRG 209. Before October 1, 1991, DRG 209 was titled: "Major Joint and Limb Reattachment Procedures", and procedures of both the upper and lower extremity were assigned that DRG. Effective with discharges occurring on or after October 1, 1991, former DRG 209 was split into two DRGs: DRG 209 (Major Joint and Limb Reattachment Procedures of Lower Extremity) and DRG 491 (Major Joint and Limb Reattachment Procedures of Upper Extremity). (See 56 FR 43205.)

In the August 30, 1991 final rule, in response to a comment we received on the DRG 209 change, we stated that we would analyze the appropriate assignment of major limb reattachment procedures as part of our analysis of potential FY 1993 changes. The commenter suggested that major limb reattachment procedures be separated and assigned to a new DRG. The commenter believes that these procedures are clinically different from and incur higher costs than major joint replacement procedures. The commenter also stated that limb reattachments are comparatively rare and are usually performed as emergency procedures rather than on an elective basis, as are major joint replacements.

We analyzed the FY 1991 MEDPAR data for limb reattachment cases and found that there were no major limb reattachment cases in the 10 percent sample of all Medicare cases that we use for analyzing possible classification changes. That is, in the 10 percent sample, there were no cases of limb reattachments (of either upper or lower extremities) found in any DRG, including DRG 209 and DRG 485 (Limb Reattachment, Hip and Femur Procedures for Multiple Significant Trauma). While these limb reattachment cases may be different clinically and in terms of resource consumption from the major joint replacement cases in DRG 209 and from the other cases in DRG 485, these cases appear to be especially rare in the Medicare population. Based on the lack of supporting data and the fact that few reattachment procedures are performed, we are not proposing any changes to the DRG assignment of major limb reattachment cases.

5. Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders (MDC 20)

In response to concerns that the alcohol/drug DRGs needed further refinement, alcohol/drug treatment hospitals and distinct part hospital units were excluded from the prospective payment system soon after its implementation. This exclusion was temporary until an adjustment to the DRG classification system would permit prospective payment to be made appropriately for alcohol and drug treatment services.

In 1986, in order to address previous data deficiencies and to ensure the most accurate analysis possible, a representative sampling of FY 1984 MDC 20 cases was analyzed using data abstracted from medical records. This study indicated that the use of CCs explained significant differences in resource use and improved overall homogeneity in the alcohol and drug DRG classification, particularly in DRGs 434 and 435. In addition, the effects of CCs explained more of the variation in resource utilization than did other variables studied, including the presence or absence of surgery. Therefore, the DRGs were restructured as follows:

DRG 433	Alcohol/drug abuse or dependence, left against medical advice.
DRG 434	Alcohol/drug abuse or dependence, detoxification or other symptomatic treatment, with CC.
DRG 435	Alcohol/drug abuse or dependence, detoxification or other symptomatic treatment, without CC.
DRG 436	Alcohol/drug dependence with rehabilitation therapy.
DRG 437	Alcohol/drug dependence, combined rehabilitation and detoxification therapy.

Based on this study, the exclusion of alcohol/drug treatment hospital and units from the prospective payment system was eliminated, and these hospitals and units were brought under the prospective payment system effective October 1, 1987 (FY 1988). (For a detailed discussion of this change, see the June 10, 1987 proposed rule (52 FR 22081), the September 1, 1987 final rule (52 FR 33036), and the September 1, 1987 final notice on DRG classification changes (52 FR 33143).)

Since that time, we have received inquires about the absence of any surgical partitioning in MDC 20. In particular, comments we received in response to the June 3, 1991 proposed rule were concerned that the performance of a surgical procedure on patients admitted for treatment for alcohol/drug related conditions that classify to MDC 20 had no influence on the DRG assignment. In the August 30, 1991 final rule, in response to these comments, we stated our intention to examine this issue as a part of our analysis of potential FY 1993 DRG classification changes (56 FR 43203.).

Our analysis of the FY 1991 MEDPAR data has revealed that the procedures reported for MDC 20 discharges were almost entirely therapeutic or diagnostic in nature. Only 1.5 percent of all procedures reported were operating room (OR) procedures. Since more than one OR procedure was often performed for a particular hospital stay, the total number of cases in MDC 20 that would result in a surgical DRG assignment is under 1 percent. We do not believe that this is a sufficient number of cases to create a surgical DRG in MDC 20. In addition, none of these OR procedures could be said to be related to the principal diagnosis that classified the case to MDC 20.

However, a review of the average charges for the surgical cases shows that these cases tend to be much more expensive than the medical cases that

group to that MDC. In fact, the average charge for a case with an OR procedure more closely resembles the average charge of those cases classified to DRGs 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis), depending on the assignment procedure. Therefore, to ensure equitable payment and to accommodate surgeries performed during alcohol/drug admissions, we are proposing that all cases classified in MDC 20 for which an OR procedure is performed would be assigned to DRG 468, 476, or 477 as appropriate, effective with discharges on or after October 1, 1992. DRGs 433 through 437 will otherwise remain as currently structured.

6. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of a one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103) and the class "coronary bypass" consists of two DRGs (DRGs 106 and 107). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class, therefore, involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5, and that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, which may sometimes occur in cases involving multiple procedures, this result is unavoidable.

We would like to point out, notwithstanding the foregoing discussion, that there are a few instances where a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs regardless of the fact that the weighting factor for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the weighting factors are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of the proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised GROUPER software at the time this proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes in the DPG relative weights in the final rule. Further, as discussed below in section II.C of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we would revise the surgical hierarchy for MDCs 3, 5, 8, and 12 and the pre-MDC DRGs.

- In the pre-MDC DRGs, we propose to reorder Tracheostomy Except for Mouth, Larynx, or Pharynx Disorder (DRG 483) above Bone Marrow Transplant (DRG 481).
- In MDC 3, we propose to reorder Myringotomy with Tube Insertion (DRGs 61 and 62) above Cleft Lip and Palate Repair (DRG 52) and reorder Sinus and Mastoid Procedures (DRGs 53 and 54) above Sialoadenectomy (DRG 50).
- In MDC 5, we propose to reorder Amputation for Circulatory System Disorders Except Upper Limb and Toe (DRG 113) above Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure (DRGs 115 and 116) and to reorder Upper Limb and Toe Amputation for Circulatory System Disorders (DRG 114) above Cardiac Pacemaker (DRGs 117 and 118).
- In MDC 8, we propose to reorder Foot Procedures (DRG 225) above Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures with CC (DRG 223).
- In MDC 12, we propose to reorder Testes Procedures (DRGs 338, 339, and 340) above Transurethral Prostatectomy (DRGs 336 and 337).

7. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered complications or comorbidities (CCs). This list was developed by physician panels to include those diagnoses that, when present as a secondary condition, would

be considered a substantial complication or comorbidity. In preparing the original CC list, a substantial CC was defined as a condition that, because of its presence with a specific principal diagnosis, would increase the length of stay by at least one day for at least 75 percent of the patients.

In previous years, we have made changes to the standard list of CCs, either the addition of new CCs or the deletion of CCs already on the list. For FY 1993, we are not proposing to make any changes to the current CC list.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude coding of closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC, stated above, as appropriate. (See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485), the September 1, 1989 final rule for the revision made for discharges occurring in FY 1990 (54 FR 36552), the September 4, 1990 final rule for the revision made for discharges occurring in FY 1991 (55 FR 36126), and the August 30, 1991 final rule for the revision made for discharges occurring in FY 1992 (56 FR 43209).)

We are proposing a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 1992. (See section II.B.9, below, for a discussion of these changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6g and 6h in section IV of the addendum to this proposed rule contain the proposed revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 1992. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6g—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1992, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6h—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1992, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $73.00 and on microfiche for $19.00, plus $3.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, ((PB) 88–133970), should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, and 1992) and those in Tables 6g and 6h of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1992.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Eighth Revision, is available for $195.00, which includes $15.00 for shipping and handling. The Ninth Revision of this manual, which will include the changes proposed in this document as finalized in response to public comment, will be available in September 1992 for $195.00. These manuals may be obtained by writing 3M/HIS at: 100 Barnes Road, Wallingford, Connecticut 06492 or by calling (203) 949–0303.

Please specify the revisions requested.

8. Review of Procedure Codes in DRGs 468 and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether, in conjunction with certain principal diagnoses, there were certain procedures performed that are not currently included in the surgical hierarchy for the MDC in which the diagnosis falls. In FY 1989, this review resulted in the addition of DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis) and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis). For a detailed discussion of these changes, see the September 30, 1988 final rule (53 FR 38487).

Since DRG 468 is reserved for those cases in which none of the OR procedures is related to the principal diagnosis, it is intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRGs 476 and 477 are assigned to specific subsets of these cases. DRG 476 is currently assigned to those discharges in which a prostatic

procedure is performed that is unrelated to the principal diagnosis.

DRG 477 is assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis was published in Table 6c in section IV of the addendum to the September 30, 1988 final rule (53 FR 38591). As a part of the September 4, 1990 final rule, we moved a large number of procedures from DRG 468 to 477. We listed the procedure codes in Table 6g in section IV of the addendum to that final rule (55 FR 36135).

We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. This year's review did not identify any changes that are necessary; therefore, we are not proposing to move any procedures from DRGs 468 or 477 to one of the surgical DRGs.

We also reviewed the list of OR procedures that produce DRG 468 assignments to ascertain if any of those procedures should be moved to the list of nonextensive procedures that produce DRG 477 assignments. We analyzed the charge and length of stay data for cases assigned to DRG 468 to identify those procedures that are associated with discharges that are more similar to the discharges that currently group to DRG 477 than to the discharges that group to DRG 468. Generally, we consider moving only those procedures for which we have an adequate number of discharges to analyze the data.

Based on our analysis, we are proposing to add the following four procedures to the list of nonextensive procedures that group to DRG 477:

04.41	Decompression of trigeminal nerve root.
04.42	Other cranial nerve decompression.
04.44	Release of tarsal tunnel.
04.49	Other peripheral nerve or ganglion decompression or lysis of adhesions.

These cases would group to DRG 477 instead of DRG 468 beginning with discharges on or after October 1, 1992.

9. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD–9–CM is a coding system which is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. This includes approving coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in Volume 1—Diseases: Tabular List and Volume 2—Diseases: Alphabetic Index, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the above process by major health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding fields, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on May 2, August 1 and 2, and December 5 and 6, 1991 and finalized the coding changes after consideration of comments received at the meetings and in writing in the 30 days following the December 1991 meeting. The initial meeting for consideration of coding issues for resolution in FY 1993 will be held on May 7, 1992. Copies of the minutes of these meetings may be obtained by writing to the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Sue Meads, R.R.A, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, NCHS, rm. 9–58, 6525 Belcrest Road, Hyattsville, Maryland 20782.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, HCFA, Office of Coverage and Eligibility Policy, rm. 401 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

The ICD–9–CM code changes that have been approved will become effective October 1, 1992. The new ICD–9–CM codes are listed, along with their proposed DRG classifications, in Tables 6a and 6b (New Diagnosis Codes and New Procedure Codes, respectively) in section IV of the addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments only on the proposed DRG classification.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes or have been deleted are in Table 6c (Invalid Diagnosis Codes). Procedure codes that have been replaced by expanded codes or have been deleted are in Table 6d (Invalid Procedure Codes). These diagnosis and procedure codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1992. The corresponding new expanded codes are included in Tables 6a and 6b. Revisions to diagnosis and procedure code titles are in Tables 6e (Revised Diagnosis Code Titles) and 6f (Revised Procedure Code Titles), which also include the proposed DRG assignments for these revised codes.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 1993 recalibration as we did for FY 1992. (See the August 30, 1991 final rule (56 FR

43218).) That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we would use the most current charge information available, the FY 1991 MEDPAR file, rather than the FY 1990 MEDPAR file. The MEDPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights are constructed from FY 1991 MEDPAR data, received by HCFA through December 1991, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1991 MEDPAR file includes data for approximately 10.2 million Medicare discharges.

The methodology used to calculate the proposed DRG relative weights from the FY 1991 MEDPAR file is as follows:

- All the claims were regrouped using the proposed DRG classification revisions discussed above in section II.B of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated.
- The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average standardized charge per case to determine the weighting factor.
- We established the weighting factor for heart transplants (DRG 103) in a manner consistent with the methodology for all other DRGs except that the heart transplant cases that were used to establish the weight were limited to those Medicare-approved heart transplant centers that have cases in the FY 1991 MEDPAR file. Similarly, we limited the liver transplant cases that were used to establish the weight for DRG 480 (Liver Transplant) to those hospitals that are Medicare-approved liver transplant centers.
- Acquisition costs for kidney, heart, and liver transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); and DRG 480 (Liver Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges prior to computing the average charge for the DRG and prior to eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. In the FY 1990 MEDPAR data used to establish the FY 1992 weights, there were 37 DRGs that contained fewer than 10 cases. We propose to use that same case threshold in recalibrating the DRG weights for FY 1993. Using the FY 1991 MEDPAR data set, there are 38 DRGs that contain fewer than 10 cases. We computed the weight for the 38 low-volume DRGs by adjusting the original weights of these DRGs by the percent change in the average weight of the cases in the remaining DRGs.

The weights developed according to the methodology described above, using the proposed DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that reclassification and recalibration changes beginning with FY 1991 be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. We interpret section 1886(d)(4)(C)(iii) of the Act to require that we ensure the FY 1993 reclassification and recalibration changes do not affect aggregate payments. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals. Therefore, as discussed in section II.A.4.b of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to assure the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

D. FY 1991 DRG Classification Changes and Their Effect on DRG Relative Weights and Payments

As described above in sections II.B and C of this preamble, each year we make changes to the DRG classifications in addition to recalibrating the relative weights based on the most recent charge data available. In the September 4, 1990 final rule, we made several major modifications to the DRGs effective with discharges occurring on or after October 1, 1990 (FY 1991). These changes included creating two new DRGs for liver and bone marrow transplants, which had recently been approved for coverage under the Medicare program. In addition, we added two DRGs for cases in which a tracheostomy is performed: one for patients with a disorder of the mouth, larynx, or pharynx and one for all other patients. Cases are assigned to these four DRGs prior to assignment to one of the MDCs.

We also added two new MDCs, one for multiple significant trauma (MDC 24) and one for human immunodeficiency virus (HIV) infections (MDC 25), and we placed these two MDCs ahead of the other MDCs in the GROUPER. Thus, cases are assessed for assignment to these DRGs before the other 23 MDCs. MDC 24 consists of four DRGs (three surgical and one medical) and MDC 25 is made up of three DRGs (one surgical and two medical).

The FY 1991 changes were designed to improve payment equity by increasing the amount of variation in resource costs explained by the DRGs. For the most part, these new DRGs have extremely high weights, and the cases that are now classified to them receive much higher payments than they would have absent the changes.

When changes in DRG classifications are made, we account for the effect the changes will have on future program payments through the recalibration and normalization of the DRG weights. In the year in which the changes are effective, they are intended to be budget neutral; that is, the payments in that year should be no more or no less than the payments would have been without the changes. As discussed in more detail above, in section II.C of this preamble, recalibration is accomplished by processing the most recent, complete MEDPAR data through a revised GROUPER that encompasses the DRG classification changes and reweighting the DRGs based on the charges

submitted by the hospitals. After recalibration is complete, the new weights are normalized by an adjustment factor. The normalization process compares the average case weight before recalibration to the average case weight after reclassification and recalibration using the same set of MEDPAR data, and an adjustment is made to the new weights so that these two average case weights are the same.

When we conducted the normalization of the FY 1991 DRG weights, we used the FY 1989 MEDPAR data. The FY 1989 claims were first mapped into their FY 1990 equivalents and processed through the FY 1990 GROUPER to determine the average case weight for that year. Those same data were then remapped into their FY 1991 equivalents and processed through the FY 1991 GROUPER to estimate what would be the average case weight during that year. The new DRG weights were then adjusted so that the two average case weights (FYs 1990 and 1993) are equal. (In addition to this process, we also made a budget neutrality adjustment to ensure that aggregate payments made in FY 1991 would be no more than and no less than they would have been absent the DRG and wage index changes.)

Now that the MEDPAR file for FY 1991 is available, we can evaluate the effect of the new DRGs on the actual distribution of cases under the revised DRGs. We find that many more cases than we had originally estimated were classified into the new DRGs. In addition, there are many DRGs that experienced at least a 20 percent increase or decrease in percentage of cases assigned between FY 1989 and FY 1991 when both sets of cases are grouped using the FY 1991 GROUPER. These include several of the new DRGs, other DRGs that were revised effective with FY 1991, and some DRGs for which there was no major change.

The effect of these unanticipated changes in the distribution of cases and the resulting increase in average DRG weight resulted in a 1 percent increase in Medicare inpatient hospital program payments compared to the payments that would have resulted if we had not made DRG reclassification and recalibration changes in FY 1991. If we had been in possession of the actual FY 1991 cases when we established the weights for FY 1991, the overall average case-mix index would have been 0.99 percent lower than the actual FY 1991 case-mix index. The total case-mix change between FY 1990 and FY 1991 was 2.5 percent.

Although there can be many reasons for increases in the relative number of cases assigned to a particular DRG, including an increase in the frequency with which procedures are performed or an increase in inpatient treatment of certain diagnoses, we believe that the 1 percent increase attributable to the DRG classification and recalibration changes was, for the most part, caused by coding improvements made in response to the FY 1991 DRG changes. The increase in cases assigned to higher-weighted DRGs is most dramatic in the new tracheostomy DRG 483 and the three new HIV-related DRGs (488 through 490). When the FY 1989 and 1991 cases are separately classified using the FY 1991 GROUPER, the number of cases assigned to DRG 483 increases 30 percent between the 2 years and the number of cases assigned to DRGs 488 through 490 increases by 123 per cent. The following table illustrates the changes:

DRG	Number of cases in DRG		DRG cases as percent of total cases		
	Estimate	Actual	Estimate	Actual	Percent increase
483	25,191	32,751	0.25	0.32	30
488	261	473	0.003	0.005	81
489	1,801	4,187	0.02	0.04	133
490	780	1,679	0.01	0.02	115
Total MDC 24	2,842	6,334	0.03	0.06	123
Total cases	28,013	39,085	0.28	0.38	40

As noted above, we believe that the increases in the tracheostomy and HIV DRGs are due to the fact that hospitals changed their coding practices between FYs 1989 and 1991 in response to the FY 1991 DRG changes. Before implementation of the FY 1991 changes, there was no incentive to code a tracheostomy outside of MDC 4 nor was there any incentive to code secondary diagnoses of HIV. However, once these codes became significant for correct DRG classification, they were included on claims where they might previously have been left off.

Based on our analysis of the FY 1989 MEDPAR, we estimated that 55 percent of the cases reassigned to DRG 483 would have been classified to DRG 474 (Respiratory System Diagnoses with Ventilator Support) in MDC 4 before the FY 1991 changes. However, the actual number of cases reassigned from DRG 474 was lower while the number of cases reassigned from all other DRGs increased dramatically. The following table demonstrates these changes:

BREAKDOWN OF CASES ASSIGNED TO DRG 483 IN FY 1991

FY 1989 DRG	Estimate		Actual	
	Number of cases	Percent of DRG 483 cases	Number of cases	Percent of DRG 483 cases
DRG 474	13,929	55	11,851	36
All other DRGs	11,262	45	20,900	64
Total	25,191	100	32,751	100

This indicates that a significant number of cases assigned to other DRGs in the FY 1989 MEDPAR did not include a code for a tracheostomy procedure that was performed during the stay. Because DRG 483 had such a high relative weight in FY 1991 (14.0597) compared to the DRGs from which these cases were reclassified, the inability to predict correctly the actual case distribution resulted in a substantial unanticipated increase in program payments.

The new DRGs created for HIV cases experienced a similar influx of cases. In this case, the actual FY 1991 cases came from the DRGs we had predicted they would; however, they came in much larger numbers than we had estimated. For example, based on our analysis of the FY 1989 MEDPAR, we predicted that 21 percent of the cases reassigned to DRG 489 (HIV with Major Related Condition) would have been assigned to DRG 79 (Respiratory Infections and Inflammations with CC) absent the reclassification. The actual percentage of FY 1991 cases assigned to DRG 489 that would have been assigned to DRG 79 remained virtually constant at 22 percent. However, the estimated number of cases was 385 and the actual number was 922. Therefore, even though we correctly predicted the percent of cases in DRG 489 that would move from DRG 79, the number of cases more than doubled. While we recognize the incidence of HIV may have increased between FY 1989 and 1991, we believe a 123 percent increase must also be attributable to improved coding for HIV infection.

On a smaller scale, this type of change in coding happens every year in response to DRG changes. One example of such a change is the deletion of diagnoses from the list of CCs. When CCs are present in a case, hospitals will make sure to code at least one CC in order to classify a case in the higher-weighted "with CC" DRG. However, if that CC is deleted from the list of recognized CCs for the DRG and we predict that the case would now be classified in the non-CC DRG, it is possible that hospitals will simply code another CC present in the medical record in order to achieve the "with CC" classification. Therefore, cases that we had predicted would be classified to the "without CC" DRG actually remain as CC cases because of a change in coding.

Based on the FY 1989 MEDPAR, we had estimated that CC revisions effective for FY 1991 would change the distribution of cases in DRGs 320 and 321 (Kidney and Urinary Tract Infections Age > 17) by decreasing the number of cases assigned to DRG 320 (with CC). (The number of cases assigned to DRG 321 were estimated to remain about the same.) However, the actual number of cases assigned to DRG 320 in the FY 1991 MEDPAR file increased and the number of cases assigned to DRG 321 decreased. The number of cases assigned to DRGs 320 and 321 and their percent of total MEDPAR cases are shown below:

	Relative weight	Estimate DRG cases		Actual DRG cases	
		Number of cases	As percent of total cases	Number of cases	As percent of total cases
DRG 320	1.0055	145,039	1.47	162,874	1.60
DRG 321	.6507	34,523	0.38	28,718	0.28

Thus, the number of cases assigned to the higher-weighted DRG increased from the number we had estimated, and the number of cases assigned to the lower-weighted DRG decreased. As with DRG 483, the coding practice changes made in response to our reclassification of CCs resulted in additional program payments beyond those we had estimated.

This can also happen in response to surgical hierarchy changes or to changes in the procedures that effect classification. This can be seen in the movement of cases in MDC 5 between FYs 1989 and 1991. We completely reconstructed the majority of the surgical DRGs in MDC 5 effective for FY 1991 and there were significant deviations from the estimated frequency for each DRG. For example, the changes made in MDC 5 for FY 1991 resulted in a tremendous increase of cases coded with percutaneous cardiovascular procedures. We assigned these cases to DRG 112 effective with FY 1991 and, based on the FY 1989 MEDPAR, we estimated that 83,614 cases would group to this DRG. The FY 1991 MEDPAR shows that 128,778 cases were assigned to this DRG, an increase of 54 percent. Although this is the DRG that changed the most in terms of number of cases, virtually all of the revised MDC 5 DRGs experienced some change in the number of cases assigned in FY 1991 as opposed to our estimates.

Although we have experienced this type of case-mix increase before (see the September 1, 1989 final rule for a discussion of the inflationary effect of the FY 1987 DRG changes (54 FR 36469)), we are particularly concerned about this problem in light of the fact that we are seriously considering major changes to the DRG system to better explain the effects of severity of illness. Besides the mandate of section 1886(d)(4)(C)(iii) of the Act, which provides that aggregate payments may not be affected by DRG reclassification and recalibration changes, we do not believe it is prudent policy to make changes for which we cannot predict the effect on the case-mix index and, thus, payments.

Although we can predict that changes in certain hospital coding practices may result from DRG changes we make, it is not possible to predict which claims will be affected by these changes. Thus, in the reclassification and recalibration process, we can rely only on the code information included on actual cases. We are hoping that the expansion of the hospital bill to include nine diagnosis and six procedure codes will help to alleviate our problem to some extent. However, this change went into effect on April 1, 1992 and, thus, will not be reflected in a full year of MEDPAR data until FY 1993, which means it will not be available to us for purposes of weight construction until FY 1995.

We are strongly committed to making changes in the DRG system to improve payment equity; however, our current inability to predict the changes in coding behavior that may result from our revisions limits the extent to which we are willing to revise the system. Until such time as we are able either to improve our ability to predict coding changes by validating in advance the impact that potential DRG classification changes may have on coding behavior

or to make methodological changes to prevent building the inflationary effects of the coding changes into future program payments, we intend to make only relatively insignificant changes in the DRG classification system. As a general policy, we will consider the changes to be insignificant if, in the aggregate, we estimate that program payments would increase by less than 0.1 percent or $60 million if we have underestimated by 10 percent the number of cases that would receive more favorable payment under the DRG classification changes that provide incentives for coding improvement.

In this proposed rule, we believe that the proposed changes to MDC 4 and 17 involving certain endoscopic procedures and to MDC 20 involving recognition of OR procedures provide incentives for coding improvement since they involve recognition of procedures that do not currently affect DRG assignment. If we have made a 10 percent underestimation in the number of cases that are directly affected by these classification changes, we estimate that program payments would increase by .0204 percent, or $12 million. The potential for increased program payments is mostly related to our proposal to recognize certain endoscopic procedures as OR procedures.

Based on current coding practices, we estimate approximately 32,000 cases in MDCs 4 and 17 that are currently assigned to medical DRGs with an average case weight of 1.36508 would be assigned to surgical DRGs with an average case weight of 2.27465. If we have underestimated by 10 percent the number of cases that would be paid as surgical DRGs, program payments would increase by .02 percent. If we have underestimated by 10 percent the number of cases that would be affected by the DRG 20 change, we estimate program payments would increase by .0004 percent. Although we are proposing all changes that we believe are appropriate this year, this general policy will preclude our making significant refinements to the DRG system until we are able to protect program payments against the inflationary impact of those changes.

One approach to this problem that we have considered is maintaining the average case weight at 1.0 after recalibration, thereby eliminating the process of normalization. In other words, after recalibration, we would not scale the new weights upward to carry forward the cumulative effects of past case-mix increases. We would, instead, make an adjustment or include in the annual update factor a specific allowance for any real case-mix change that occurred during the previous year. This is a relatively simple and straightforward system for preventing the effects of year-to-year increase in case-mix index from accumulating in the DRG weights.

This methodology would have several advantages. First, it would be an easy and effective means of removing from the payment base inappropriate year-to-year case-mix increase (that is, case-mix increases mainly due to changes in coding practices). It would also streamline the current process of adjustments, where recalibration of the weights is followed by normalization, and the recommended update factor includes a negative adjustment to offset all case-mix increase estimated for the previous year followed by a positive increase to add back the real case-mix increase (that is, a genuine increase in the resources required to treat patients). Finally, the change would restore the meaning of the relative weights by bringing the average weight back to 1.0 each year. Thus, 1.0 would reflect the average resources used to treat the average Medicare inpatient hospital case, while a weight of 2.0 would reflect a case that requires twice the average resources to treat and a weight of 0.5 would reflect a case that requires one-half the average resources. Since the estimated average FY 1991 DRG relative weight is 1.367, this type of comparison is not readily accomplished using normalized DRG relative weights.

We are soliciting public comment on this and other possible approaches that could be implemented in the future by legislation or administratively to account for coding changes that result from revisions in the DRGs. Your comments should take our statutory mandates for prospectivity and budget neutrality into account.

III. Proposed Changes to the Hospital Wage Index

A. Background

Sections 1886(d)(2)(H) and 1886(d)(3)(E) of the Act require that the standardized urban and rural amounts be adjusted for area variations in hospital wage levels as part of the methodology for determining prospective payments to hospitals. To fulfill this requirement, we construct an index that reflects average hospital wages in each urban and rural area as a percentage of the national average hospital wage.

For determining prospective payments to hospitals in FY 1992, the wage index is based on a HCFA survey of hospital wage and salary data for all hospitals subject to the prospective payment system with cost reporting periods ending in calendar year 1988. Home office costs and fringe benefits associated with hospital and home office salaries were included in the updated wage index. Nonhospital costs were excluded from the wage index. The FY 1992 wage index reflected all corrections that had been made in the wage survey data through August 15, 1991.

Section 1886(d)(3)(E) of the Act requires that the hospital wage index be updated annually beginning October 1, 1993.

B. Updating the Wage Index Data

For discharges occurring on or after October 1, 1992, the proposed wage index would continue to be based solely on 1988 wage data. In addition, in determining the proposed wage index, we incorporated all corrections of errors that have been identified in the survey wage data since the construction of the wage index implemented for FY 1992 in the August 30, 1991 final rule.

The wage indexes are shown in Tables 4a through 4c in the addendum to this proposed rule.

C. Revisions to the Wage Index Based on Hospital Reclassifications

Under section 1886(d)(8)(B) of the Act, for discharges occurring on or after October 1, 1988, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) are considered to be located in one of the adjacent MSAs if certain standards are met.

Under section 1886(d)(10) of the Act the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. The first hospital reclassifications based on the decisions of the MGCRB took effect on October 1, 1991.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the MSA to which they have been redesignated. Therefore, the wage index values were

determined by considering the following:

• If including the wage data for the redesignated hospitals reduces the MSA wage index value by 1 percentage point or less, the MSA wage index value applies to the redesignated hospitals deemed to be a part of that MSA. The MSA wage index value is determined exclusive of the wage data for the redesignated hospitals.

• If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to the wage index value of the area that results from including the wage data of the redesignated hospitals. However, the resulting wage index value for the redesignated hospitals cannot be less than the wage index value for the rural areas of the State in which the hospitals are located.

• Rural areas whose wage index values would be reduced by excluding the data for hospitals that have been redesignated to another area continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index values increased as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage index calculated exclusive of the redesignated hospitals.

• The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, the wage index for an urban area may not be reduced, as a result of geographic reclassification, below the Statewide rural average.

We note that, except for those rural areas where redesignations would reduce the rural wage index value, the wage index value for each area is computed exclusive of the data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, there are a few MSAs listed in Table 4a that have no hospitals remaining in the MSA. This is because the hospitals in the original MSA have been reclassified to another area by the MGCRB and our records indicate that there are no other hospitals currently classified in those areas. For those areas, we have listed the Statewide rural wage index value.

The proposed revised wage index values effective for discharges occurring on or after October 1, 1992 are shown in Tables 4a, 4b, and 4c of the addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4c. It should be noted that for some areas, more than one wage index value will be shown in Table 4c. This occurs when hospitals from more than one State are included in the group of redesignated hospitals, and one State has a higher Statewide rural wage index value than the wage index value otherwise applicable to the redesignated hospitals.

Revised Table Names

Table 4a—Wage Index for Urban Areas

Table 4b—Wage Index for Rural Areas

Table 4c—Wage Index for Redesignated Hospitals

The proposed FY 1993 wage index values incorporate all reclassification decisions made by the MGCRB as of March 30, 1992. As of that date, there were 1,150 hospitals reclassified for purposes of the wage index (including hospitals reclassified under both sections 1886(d)(8)(B) and 1886(d)(10) of the Act). This number does not include MGCRB decisions that are still under review by the Administrator. At the time this proposed wage index was constructed, the MGCRB had completed its review. Any changes that result from appeals and the Administrator's review process will be incorporated into the wage index values to be published in the final rule. The changes may affect not only the wage index value for specific geographic areas, but also whether redesignated hospitals receive the wage index of the area to which they are redesignated or a combined wage index that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index for the area from which the hospitals are redesignated may be affected.

We note that hospitals that have been reclassified by the "MGCRB are permitted to withdraw their applications within 45 days of the publication of this **Federal Register** document. The request for withdrawal of an application for reclassification that would be effective in FY 1993 must be received by the MGCRB by July 20, 1992.

We caution that the proposed wage index value will change in the final rule to take into account the impact of revisions in reclassification decisions resulting from the appeals and review process, any withdrawal requests, and any wage index corrections that are made before publication of the final rule. A hospital that requests to withdraw its application may not request that the MGCRB decision be reinstated after publication of the final notice of prospective payment rates.

D. Midyear Corrections to the Wage Index Values

It has been our policy under § 412.63(p)(2) to make midyear corrections to the hospital wage data and adjust the wage index for the affected areas on a prospective basis. However, implementation of mid-year corrections has resulted in several problems concerning the reclassification of hospitals by the MGCRB.

In the June 4, 1991 final rule with comment period affecting the MGCRB (56 FR 25477), we indicated that the MGCRB would use the latest updated survey data, including midyear corrections, to assess reclassification requests. We adopted this policy in order to ensure that hospitals whose applications were submitted based on corrected wage data would be treated fairly. However, because wage data corrections are processed on an ongoing basis throughout the year, the outcome of a hospital's reclassification request may in some cases depend entirely on whether the intermediary's audit and our subsequent processing of its wage correction are completed before the MGCRB issues its decision on the hospital's application. That is, since the MGCRB makes its determination based on the data available at the time a hospital's case is being considered, whether a hospital meets the criteria for reclassification for purposes of the wage index may depend on the timing of the implementation of a wage correction.

Also, under section 1886(d)(8)(C) of the Act, the wage index applicable to reclassified hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the MSA to which they have been redesignated. As explained above, if the impact is a reduction of 1 percentage point or less, the reclassified hospitals receive the MSA wage index value. If the impact is a reduction of greater than 1 percentage point, the reclassified hospitals receive the wage index value that results from combining their wage data with the MSA data. This combined value is normally lower than the MSA value. Under our current policy, we have had instances in which a correction to the wage data for a hospital in an MSA has increased the impact of reclassifications on the MSA wage index value to greater than 1 percentage point. In these situations, reclassified hospitals that had been receiving the MSA wage index value became subject to the lower combined wage index value. Thus, solely as a result of another hospital's wage corrections, payments to these

reclassified hospitals were reduced midway through the fiscal year. These hospitals are confronted with an unanticipated reduction in revenues when their Medicare payments are abruptly reduced because of mid-year wage data corrections.

The current wage index based on 1988 calendar year data has been in effect since FY 1991. Thus, we believe that hospitals have had sufficient time to review their wage data and submit corrections where appropriate. Therefore, in order to resolve the problems described above, we are proposing to eliminate mid-year wage data corrections effective with requests for correction received on or after October 1, 1992.

Under this proposal, only those requests for wage data corrections that are submitted with supporting documentation and received by the fiscal intermediary no later than September 30, 1992 would be implemented as a mid-year wage index change. Changes based on those corrections would be made on a prospective basis in FY 1993 in accordance with our current policy. The specific requirements would be as follows:

- A hospital that wishes to make a correction to its reported wage data must submit to its fiscal intermediary a revised wage survey form (HCFA 2561) along with supporting documentation by no later than September 30, 1992.
- Within 30 days, the fiscal intermediary will review the data and adjust it as appropriate. Upon completion of its review, the fiscal intermediary will forward the hospital's request to the HCFA's Division of Hospital Payment Policy, along with a letter that summarizes the hospital's request and makes a recommendation concerning the appropriateness of the requested wage correction.
- HCFA will review the request and, if HCFA determines that a wage correction is warranted, the wage index value for the area in which the hospital is located will be revised on a prospective basis.
- In cases where the hospital submitted supporting documentation but additional information is required by the fiscal intermediary or HCFA, the hospital must submit the required information within 30 days of receiving the request.

As required by section 1886(d)(3)(E) of the Act, we will update the wage index data on an annual basis beginning October 1, 1993. We are currently collecting wage data on an ongoing basis as part of the Medicare cost report. Fiscal intermediaries are transmitting these wage data through the Hospital Cost Report Information System (HCRIS). We expect to use the latest data available through HCRIS to update the wage index on an annual basis. A hospital that wishes to make corrections to the wage data reported on its Medicare cost report will do so through its fiscal intermediary in accordance with the normal cost report revision or reopening procedures. Fiscal intermediaries will forward any corrections to HCFA through HCRIS, and we will incorporate those corrections into the wage index on an annual basis, at the same time we update the wage index for payment purposes.

E. Revised Metropolitan Statistical Area (MSA) Definitions Based on 1990 Census Data

In the August 30, 1991 final rule (56 FR 43202), we indicated that the Office of Management and Budget (OMB) expected to issue revised MSA definitions based on 1990 census data in June 1992. We had anticipated implementing the new MSA definitions in the FY 1993 final rule in accordance with our policy of adopting MSA changes at the beginning of the Federal fiscal year following OMB's announcement (see § 412.63(b)(4)). However, we pointed out potential problems associated with implementing major MSA changes (such as reconfiguring the wage index and standardized amounts and determining appropriate geographic reclassifications) in a final rule without prior notification in the proposed rule. We also solicited public comments on possible approaches to implementing the revised MSA definitions.

However, because of significant delays in obtaining the necessary data from the Bureau of Census, OMB does not expect to publish the revised MSA definitions by June 30, 1992, as originally planned. As of April 1, 1992, the census data were still not available and the Federal Executive Committee on Metropolitan Areas, which makes recommendations to OMB concerning the MSA definitions, had not yet initiated its review.

The delay in publication of the new MSA definitions will not allow us sufficient time to implement the revised MSAs in the FY 1993 final rule, which must be published by September 1, 1992. Therefore, we now plan to implement the revised MSA definitions based on 1990 census data in FY 1994. Since OMB's originally expected publication date was actually 1 year ahead of normal schedule (the MSAs based on 1980 census data were announced in 1983 and implemented in FY 1984), implementation of the revised MSAs in FY 1994 is within the 10-year census period. Therefore, we will announce the revised MSAs and describe their effect on the wage index and geographic reclassifications in the FY 1994 proposed rule.

IV. Proposed Changes Concerning Reclassifications by the Medicare Geographic Classification Review Board

A. Background

Section 6003(h)(1) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted on December 19, 1989, added section 1886(d)(10) to the Act to provide for creation of the Medicare Geographic Classification Review Board (MGCRB). On September 6, 1990, we published an interim final rule with comment period (55 FR 36754) that provided for the establishment of the MGCRB and set forth the criteria for the MGCRB to use in considering applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. The interim final rule also set forth requirements regarding the MGCRB's composition and operational procedures. On June 4, 1991, we published a final rule with comment period (56 FR 25458) that responded to comments on the September 6, 1990 interim final rule and implemented provisions of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, enacted on November 5, 1990) concerning the MGCRB.

Guidelines concerning the criteria and conditions for hospital reclassification are located at 42 CFR part 412 subpart L, §§ 412.230 through 412.236. (Regulations concerning MGCRB composition and procedures are located at §§ 412.246 through 412.280.) The purpose of the criteria is to provide direction, to both the MGCRB and those hospitals seeking geographic reclassification, with respect to the situations that merit an exception to the rules governing the geographic classification of hospitals for purposes of payment under the Medicare prospective payment system. Hospitals may be reclassified individually or as a group for purposes of their wage index or standardized amount or both.

A request for reclassification must be filed by October 1 of the Federal fiscal year preceding the Federal fiscal year for which the reclassification decision would be effective. For example, a request for reclassification effective for FY 1994 must be filed by October 1, 1992. The MGCRB is required to issue its decision within 180 days of October 1, or

by March 30. A reclassification decision by the MGCRB is generally effective for 1-year. However, depending on its assessment of the facts supporting an individual hospital's or group of hospitals' request for reclassification, the MGCRB may provide for an automatic 1-year renewal of its decision.

Section 1886(d)(8)(D) of the Act requires that the effect of decisions of the MGCRB be budget neutral. Under this section, the Secretary is to adjust the standardized amounts for urban hospitals to ensure that total aggregate payments under the prospective payment system after implementation of the geographic reclassification provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. Also, the standardized amounts for rural hospitals are to be adjusted to ensure that aggregate payments to rural hospitals not affected by these provisions neither increase nor decrease as a result of implementation of these provisions.

The first reclassification decisions issued by the MGCRB became effective on October 1, 1991 for discharges occurring in FY 1992. On June 3, 1991, we published a proposed rule setting forth the proposed FY 1992 payment rates under the prospective payment system (56 FR 25178). The proposed FY 1992 standardized amounts and wage index values incorporated the reclassification decisions that had been made by the MGCRB as of March 30, 1991. The impact analysis in the proposed rule indicated that the reclassification decisions would have a significant impact on the distribution of program payments.

On August 30, 1991, we published a final rule (56 FR 43196) setting forth the FY 1992 prospective payment system rates. In the final rule, we responded to comments concerning the June 3, 1991 proposed rule and discussed the impact of the FY 1992 MGCRB reclassifications. In addition, we responded to comments concerning the June 4, 1991 final rule with comment period on the MGCRB procedures and reclassification guidelines.

The August 30, 1991 final rule reflected 930 hospital reclassifications approved by the MGCRB and the HCFA Administrator as of August 5, 1991 and effective for FY 1992. Over 75 percent of all reclassified hospitals are located in rural areas. As the following chart indicates, 75 percent of the reclassified rural hospitals were reclassified for their wage index, 11 percent were reclassified for their standardized amount, and 14 percent were reclassified for both.

Twenty-five percent of the hospitals reclassified for FY 1992 are located in urban areas. Of the reclassified hospitals located in other urban areas, 45 percent were reclassified for their wage index, 45 percent were reclassified for their standardized amount, and 10 percent were reclassified for both.

DISTRIBUTION OF HOSPITALS RECLASSIFIED FOR FY 1992

Geographic location	Percent reclassified for both wage index value and standardized amount	Percent reclassified for standardized amount	Percent reclassified for wage index value
Large urban	1.9	0.0	98.1
Other urban	45.3	10.1	44.6
Rural	13.6	11.0	75.5

The effects of the MGCRB reclassification decisions on FY 1992 payments were significant. To meet the statutory budget neutrality requirements, each of the urban standardized amounts (large and other) was reduced 1.1 percent. Among all hospitals not reclassified, the overall impact of hospital reclassifications was an average decrease in payment per case of about 1 percent.

The overall impact on reclassified hospitals in FY 1992 was to increase their payment per case by an average 5.9 percent. Hospitals located in rural areas that were reclassified for purposes of both their wage index value and their standardized amount received an average increase of nearly 16 percent. Urban hospitals that were reclassified only for purposes of their standardized amounts received an average decrease in payments per case of 0.2 percent. This was because the average decrease in the wage index values for the urban areas from which other hospitals were reclassified for purposes of their wage index was greater than the average increase in urban standardized amounts after reclassification to a large urban area. The decrease also reflected the budget neutrality adjustment for urban hospitals.

EFFECTS OF FY 1992 GEOGRAPHIC RECLASSIFICATIONS ON PAYMENTS PER CASE

	Percentage change in hospital payments per case from geographic reclassification
All reclassified hospitals	5.9
Standardized amount only	2.7
Wage index only	5.2
Both	8.8
All reclassified urban hospitals	3.7
Standardized amount only	−0.2
Wage index only	2.9
Both	15.9
All reclassified rural hospitals	8.0
Standardized amount only	5.7
Wage index only	6.8
Both	15.8
All nonreclassified hospitals	−1.0
Urban nonreclassified hospitals	−1.0
Rural nonreclassified hospitals	−0.1

(The above analysis pertains to the impact of the FY 1992 geographic reclassifications. Comparable data for FY 1993 reclassifications may be found in Appendix A of this proposed rule. We note that the number of hospital reclassifications has increased from 930 in FY 1992 to 1249 in FY 1993.)

In the August 30, 1991 final rule (56 FR 43198), we discussed comments concerning geographic reclassification issues raised in the June 3, 1991 and June 4, 1991 **Federal Register** documents. Many commenters addressed the impact of geographic reclassification on payments to hospitals.

Several commenters stated that we should suspend implementation of the June 4, 1991 final rule and extend the application deadline for FY 1993 reclassifications in order to allow time to reevaluate the appropriateness of the guidelines. A number of commenters pointed out potential problems with the application process in future years. In response to the comments, we stated that we intended to evaluate the FY 1992 reclassifications made under the current guidelines and to propose such revisions as may be appropriate for future application cycles. We solicited comments concerning possible acceptable approaches on potential changes to the reclassification

guidelines. We indicated that we would consider all comments received by October 29, 1991 in developing any proposed rulemaking document that we would issue concerning the reclassification guidelines. We noted that this process would not be completed in time to revise the guidelines for the application period for the FY 1993 reclassifications and that any revisions in the guidelines would be effective no earlier than FY 1994 reclassifications (for which the application period ends October 1, 1992).

We also indicated that any revisions to the guidelines would need to be considered in conjunction with potential changes to labor market definitions. HCFA as well as ProPAC is evaluating alternative methods for defining labor market areas, and refinements could be implemented as early as FY 1994. Thus, it is possible that MGCRB reclassification decisions based on revised guidelines could be implemented at the same time refined labor market areas are established.

B. Discussion of Comments

In response to our request in the August 30, 1991 final rule, for comments concerning the MGCRB guidelines, we received 134 letters by the October 29, 1991 deadline. Few of the comments dealt with the specifics of the guidelines; instead, most offered general comments on the merits of geographic reclassifications. For example, we received 106 similar letters from reclassified rural hospitals in support of the reclassification guidelines. The commenters stated that the guidelines were fair and equitable; that HCFA should refrain from making any changes until the impact of the prospective payment system for capital-related costs could be evaluated; that Congress created the MGCRB to remedy significant payment inequality in the prospective payment system; and that it was appropriate for urban hospitals to be affected adversely by the reclassifications since they had received relatively higher payments in the past.

In contrast, we received 28 letters from urban hospitals and associations stating the guidelines were too liberal and urging that they be tightened considerably. These commenters suggested eliminating the budget neutrality provision, removing the hold harmless provision that protects rural hospitals from receiving lower payments as a result of geographic reclassifications, and phasing in the reclassifications by paying 50 percent of the increased amount in FY 1992 and the entire amount in FY 1993. Since these proposals would require legislative changes, we are not addressing them in this document.

One commenter suggested using more recent wage survey data from the cost report instead of the HCFA wage survey. However, as we have previously indicated in response to comments recommending that more current wage data be used (see June 4, 1991 final rule (56 FR 25471)), it is essential to use standard data for the same time period so that the wage comparisons can appropriately reflect labor costs for the same point in time. Hospital payroll data for other than the cost reporting period ending in 1988 would not be audited or otherwise verified and, therefore, cannot be used. However, we note that, beginning in FY 1994, we will be updating the wage index annually based on a revised cost reporting form.

Two commenters suggested that the adjacency requirements should be removed in order to expand the number of hospitals eligible for reclassification and to allow hospitals to be reclassified into the MSA most relevant to the applicant's labor market. However, as we indicated in the June 4, 1991 final rule, in response to comments concerning the adjacency requirement (56 FR 25472), there is ample precedent for requiring that hospitals seeking reclassification to a different geographic area be located in a county that is adjacent (that is, contiguous) to that area. The adjacency requirement is consistent with the way OMB defines urban areas and is also consistent with the provision in section 1886(d)(8)(B) of the Act that allows hospitals in certain rural counties that are adjacent to more than one MSA to be deemed urban for prospective payment purposes. Accordingly, we are proposing no changes to the adjacency requirement.

Also, two commenters asked that we preserve the special access rule for sole community hospitals and rural referral centers. Our proposed changes affecting sole community hospitals and rural referral centers are discussed below, along with other proposed changes, in section IV. C. of this preamble.

C. Proposed Changes to the Regulations

The proposed changes in the reclassification guidelines as based on public comment and our analysis of the FY 1992 reclassifications. Since the effects of reclassifications must be budget neutral, increased payments to one group of hospitals are offset by reduced payments to other groups. Therefore, we must assure both that those hospitals meriting reclassification are afforded proper consideration and that other hospitals are protected from the effects of inappropriate reclassifications. In addition, a number of issues concerning the reclassification guidelines have arisen that warrant clarification in the regulations.

Accordingly, we are proposing the following changes to the guidelines, which we believe will result in more appropriate reclassifications. The changes would be effective for applications submitted by October 1, 1992 for geographic classifications to be implemented on October 1, 1993 (FY 1994). The proposed changes would not affect reclassifications that would be effective for discharges occurring in FY 1993. Given the 1-year time lag between the effective date of any proposed changes to the MGCRB regulations and the effect of these changes on hospital reclassifications, we believe it is essential that the following proposed changes be implemented in time to affect applications that will be processed by the MGCRB during FY 1993.

1. General Guidelines—Reclassifications for Individual Hospitals

a. *Reclassification to a Single Geographic Area (§ 412.230(a)(1)).* Section 412.230(a)(1) provides that an individual hospital may seek reclassification to "an adjacent urban or rural area" for purposes of using the other area's standardized amount, wage index, or both. As evidenced by the use of the singular in describing the area to which a hospital could be reclassified (i.e., an adjacent rural or urban area), the intent of this provision is that a hospital may seek reclassification to only one area. There is no provision for a hospital to seek reclassification to more than one area. Nevertheless, because the regulations do not specifically prohibit reclassifications to more than one area, several hospitals have been granted reclassification to two separate areas—one for the wage index and one for the standardized amount.

We do not believe it is appropriate for a hospital to be reclassified to more than one area. The purpose of the MGCRB process is to permit hospitals that are disadvantaged by their geographic classification to obtain a more appropriate classification to the area with which they have the most economic interaction. Accordingly, although hospitals may be reclassified either for purpose of the wage index, standardized amount, or both, we did not intend to allow hospitals to qualify for reclassification to one area for its wage index and another area for its standardized amount in those situtions where they cannot qualify for

reclassification to one area for both the standardized amount and wage index purposes. Therefore, we are proposing to revise § 412.230(a)(1) to specify that a hospital may seek reclassification to only one area. In situations where a hospital can qualify for the wage index of one area and the standardized amount of another area, the hospital must decide which area it wishes to be reclassified to and must indicate its decision in its application.

b. *Individual Urban Hospital Reclassification to a Rural Area (§ 412.230(a)).* Section 412.230 sets forth the guidelines "for an individual hospital seeking redesignation to a different rural or urban area." However, there is no provision under the regulations for a hospital to seek reclassification from an urban area to a rural area for purposes of the wage index. In the preamble to the June 4, 1991 final rule (56 FR 25468), under the General Principles section, we specifically listed the various types of permissible reclassifications (that is, rural to urban, urban to urban, and rural to rural). We believe that our intent was clear that a hospital must already be located in a rural area if it is seeking reclassification to "another rural" area or "a different rural" area. However, the MGCRB has approved several requests from urban hospitals for reclassification to rural areas for purposes of the wage index.

The regulations do not provide for such reclassifications, nor do we believe whose reclassifications are appropriate. Although an urban hospital may be located near the border of a rural area, generally that hospital's competitive marketplace is more closely tied to the urban hospitals in its MSA than to the rural hospitals that are dispersed throughout the rural counties in the State. On the other hand, since rural areas are made up of all rural counties in an entire State, for a rural hospital to meet the proximity criteria for reclassification to another rural area, it would have to be located within 35 miles of the State border and, therefore, could be more like rural hospitals in the next State than the rural hospitals in its own State. Accordingly, while we allow a rural hospital to be reclassified to another rural area, we do not believe it is appropriate to allow an urban hospital to be reclassified to a rural area. Therefore, we are revising § 412.230(a)(1) to clarify that the only types of reclassifications that are permissible are rural to urban, urban to urban, and rural to rural reclassifications.

c. *Special Access Rule for Rural Referral Centers and Sole Community Hospitals Seeking Reclassification § 412.230(a)(4).* Section 1886(d)(10)(D)(i)(III) of the Act requires that the MGCRB guidelines include criteria for considering information provided by a hospital with respect to the effects of the hospital's geographic classification on access to inpatient hospital services for Medicare beneficiaries. Generally, access to care is not an issue except for those areas serviced by rural referral centers and sole community hospitals. Under the special access guidelines at § 412.230(a)(4), we exempt rural referral centers and sole community hospitals from the adjacency and proximity requirements in §§ 412.230(a)(2) and (a)(3). If a rural referral center or sole community hospital can qualify for reclassification on the basis of its wages or costs and is unable to meet the proximity requirements in § 412.230(a)(3), it can apply for reclassification based on the need to provide access to care for Medicare beneficiaries. If the MGCRB finds that the hospital qualifies for reclassification under § 412.230(a)(4), it must be reclassified to the MSA closest to the hospital. Alternatively, a sole community hospital or rural referral center may apply for reclassification under the general proximity criteria in § 412.230(a)(3), in which case the hospital would not be limited to reclassification to the closest urban area.

Consistent with the change we are proposing to § 412.230(a)(1), we are proposing that a sole community hospital or rural referral center may not apply under both the special access rule and the general proximity criteria in order to reclassify to different areas for wage index and standardized amount purposes. In the past, some hospitals have qualified under § 412.230(a)(2) and § 412.230(a)(3) for either the wage index or standardized amount reclassification, and used the special access guidelines at § 412.230(a)(4) to waive the adjacency and proximity requirements and qualify for reclassification to the closest urban area for the other reclassification. Again, the intent of the guidelines is to allow a hospital to seek reclassification to the one area with which it has the most economic interaction, either under the special access rule, if applicable, or under the proximity guidelines.

d. *Guidelines for a Hospital Requesting Reclassification for Wage Index Purposes.* Currently, under § 412.230(e), a hospital meeting the proximity requirement may be reclassified for purposes of the wage index if it can demonstrate that its wages are at least 85 percent of the average hourly wage for the area to which it requests reclassification. A hospital that cannot meet the 85 percent standard may nevertheless qualify for reclassification if it can demonstrate that its average hourly wage, when adjusted for occupational mix, is at least 90 percent of the average hourly wage for the area to which it requests reclassification. There are no requirements regarding the relationship between the average hourly wage of the hospital and the average hourly wage of the hospitals in its original labor market area. Using these criteria, the MGCRB reclassified more than 843 hospitals for purposes of their FY 1992 wage index.

In the August 30, 1991 final rule, we stated that we would reexamine the guidelines and propose revisions for future application cycles, if appropriate (56 FR 43202). To assess whether the wage index reclassifications were appropriate, we examined the average hourly wages of the reclassified hospitals and compared them to the average hourly wages for the hospitals in their original labor market area and in the area to which they were reclassified.

In addition, we determined the amount of variation in the average hourly wages among hospitals in the same labor market area. We divided the wages for each hospital in the prospective payment system by the average hourly wage for each hospital's original labor market area. We found that, on average, hospitals have an average hourly wage that is 96 percent of the average hourly wage for their labor market. The average hospital hourly wage is less than the average hourly wage for the area because the latter is hour-weighted and larger hospitals tend to have higher wages. We determined that the national standard deviation was 12 percent. Assuming a normal distribution, 68 percent of hospitals nationwide have an average hourly wage that is at least 84 percent and less than 108 percent of the average hourly wage of the area in which they are located.

The relationship between the average hourly wage of reclassified hospitals and the average hourly wage in their original labor market area is demonstrated by the table below. We found that 36 percent of the reclassified hospitals had wages that were less than 100 percent of wages in the area from which they were reclassified. An additional 35 percent had wages that were less than 108 percent of, or one national standard deviation above, their

old area. An additional 17 percent had wages that were less than 115 percent of their original labor market area.

1992 WAGE INDEX RECLASSIFICATIONS

	Percent of wage index reclassifications	Number of hospitals
Hospitals with wages less than 100% of old wage area	36	
Wage only		242
Wage and rate		51
Hospitals with wages greater than 100% and less than 108% of old wage area	35	
Wage only		216
Wage and rate		70
Hospitals with wages greater than 108% and less than 115% of old wage area	17	
Wage only		120
Wage and rate		22
Hospitals with wages greater than 115% of old wage area	12	
Wage only		76
Wage and rate		18
Total wage reclassifications		815

Note.—Table includes only hospitals for which cost reporting data for FY 1989 are available.

We believe the reclassification process was established to provide a mechanism that would allow hospitals to effect a change in their geographic location only in those situations where hospitals had been clearly disadvantaged by their current classification. As the above analysis demonstrates, however, hospitals may be reclassified under the current wage guidelines even though, as evidenced by the relationship between their average hourly wages and their old wage area, they may not be disadvantaged by remaining in their original labor market area. Based on this analysis of the FY 1992 reclassifications, we are proposing to revise the guidelines to ensure that hospitals are appropriately reclassified.

We believe that a hospital should not be reclassified unless its average hourly wage is significantly out-of-line with the average hourly wages of the area in which it is located and is in line with the average hourly wages of the area to which it requests reclassification. The changes we are proposing reflect this belief that the purpose of the MGCRB is to address only those situations in which a hospital is clearly disadvantaged by its wage index value under the existing labor market area definitions. In our view, the reclassification of hospitals whose wages are comparable to those of other hospitals in their labor market area results in a fundamental restructuring of labor market areas that is more appropriately handled systematically through refinement in the labor market area definitions than on an individual hospital basis through the MGCRB process. (As noted above in section IV.A. of this preamble, we are evaluating alternative methods for defining labor market areas, and refinements could be implemented as early as FY 1994.)

Specifically, our proposal would add the requirement that a hospital cannot be reclassified unless its average hourly wage is at least 108 percent of the average hourly wage of the area in which it is located. The 108 percent threshold is based on the average hospital wage as a percentage of its area wage (96 percent) plus one standard deviation (12 percent). Currently, the 85 percent standard for the relationship between the hospital's wages and the average hourly wage of the area to which it requests reclassification (found in § 412.230(a)) approximates the average hospital wage as a percentage of its area wage less one standard deviation. (To be consistent, this proposal would also replace the 85 percent standard with an 84 percent standard (96 percent minus one standard deviation)). Thus, to qualify for a wage index reclassification, a hospital would be required to have an average hourly wage that is more than one national standard deviation above its original labor market area and not less than one national standard deviation below its new labor market area. We estimate that 71 percent of the hospitals that were reclassified in FY 1992 would not have qualified for wage index reclassifications if this guideline had been in effect. This includes 89 percent of the urban hospitals and 66 percent of the rural hospitals that qualified for wage index reclassifications in FY 1992.

We are proposing to adopt this change as an additional standard for wage index reclassifications. We believe it is reasonable and appropriate to require that a hospital's wages be out-of-line with its own area and not merely that its wages be in line with the area to which it seeks to be reclassified. We believe that the 108 percent standard, which takes into account the average variation in average hourly wages within a labor market area, is appropriate.

As noted above, we believe the reclassification process was established to provide a mechanism that would allow hospitals to effect a change in their geographic classification only in those situations where hospitals had been clearly disadvantaged by their current classification. Since a hospital's wage index value is limited by the average of all the salaries and hours in its labor market area, it could be disadvantaged if it is near the border of that area and incurs labor costs that are significantly above the average for the area, and at the same time must compete with hospitals in another area that has higher wage costs.

Therefore, we believe it is appropriate to require a hospital to demonstrate that it is at least one national standard deviation above the average hourly wage for its labor market area. We believe that this is an accepted statistical measure of variation from a norm. In addition, with respect to the existing requirement that a hospital's wages be at least 85 percent of the average hourly wage for the area to which it requests reclassification, we are proposing to reduce the threshold to 84 percent to provide a consistent normative standard for both required components of the reclassification process. The 84 percent standard is one standard deviation (12 percent) below the average hospital wage as a percentage of its area wage (96 percent).

In proposing this revision to the wage guidelines, we also considered three other options. One alternative guideline we considered was to require that a hospital could not be reclassified unless its average hourly wage was at least as great as the average hourly wage of the area in which it was located. Since the wage index is based on the average hourly wage of the area, a hospital whose average hourly wage is less than the average hourly wage of the area in which it is located is not disadvantaged by its original wage index. To the contrary, the hospital is already receiving a wage index adjustment that more than compensates for its wage levels. Therefore, we believe reclassification for purposes of receiving an even higher adjustment would not be appropriate. Moreover, since the salaries and hours of all hospitals in a given labor market area make up the average hourly wage, it is fully expected that some hospitals will have an average hourly wage that is above the average for that area and some will have an average hourly wage that is below it. For these reasons, we believe it is more appropriate to adopt a guideline that would require a hospital to have an average hourly wage that is out of line with its own labor market area.

A second alternative guideline we considered was to require that a hospital can not be reclassified unless its average hourly wage is at least 115 percent of the average hourly wage of

the area in which it is located. To qualify for a wage reclassification under this option, a hospital would be required to have an average hourly wage that is at least 15 percent above the average hourly wage of the area in which it is located and no more than 15 percent below the average hourly wage of the area to which it requests reclassification. Thus, this option would retain the current 85 percent standard for the relationship between the hospital's wages and the average hourly wage of the area to which it requests reclassification. This option provides a consistent 15 percent "out-of-line" test for both the comparison with a hospital's own labor market area and the area to which it seeks reclassification. While we believe it is reasonable to require a hospital to have an average hourly wage that is out-of-line with other hospitals in its area before it is eligible for reclassification, we believe that the 115 percent requirement may be too stringent and that a more reasonable test would be to require that the hospital's average hourly wage be at least one national standard deviation above the average for its own labor market area.

Finally, we considered proposing no change in the guidelines in FY 1994. While we recognize the adverse impact that the revised guideline would have on hospitals that would no longer qualify for wage index reclassifications, there are other considerations that lead us to reject this option and propose a revised guideline. First, given the budget neutrality provision, we believe we have a responsibility to all hospitals to ensure that only appropriate reclassifications occur. Second, the results of our analysis clearly indicate that a significant number of hospitals are being reclassified that are not disadvantaged by their current wage index. In addition, the FY 1994 wage index will reflect more recent wage data and revised labor market areas. An improved wage index and redefined labor market areas may help mitigate the impact of no longer qualifying for reclassification. In this regard, we anticipate that some rural hospitals will be located in urban areas after the MSAs are revised to reflect the 1990 census.

Accordingly, we are proposing to review the wage index guidelines at § 412.230(e) to specify that a hospital can be reclassified only if its average hourly wage is least 108 percent of the average hourly wage of hospitals in its original labor market area and at least 84 percent of the average hourly wage of the hospitals in the area to which it is seeking reclassification or 90 percent of the average hourly wage after adjustment for occupational mix. (The 90 percent standard based on occupational mix would remain unchanged.) Although we are proposing to make these changes, we specifically invite comment on the alternative options we considered as well as on our proposal.

We note that the hospital-specific wage data currently supplied to hospitals by HCFA during the application process already reflect the average hourly wage for the hospitals's own labor market area. Therefore, the proposed additional wage criterion would not significantly increase the documentation a hospital must submit to support its application. For purposes of determining whether a hospital meets the 108 percent criterion, the hospital's average hourly wage is included in the average for its labor market area.

While the proposed changes would have a significant effect on the number of hospitals that qualify for wage index reclassifications, we note that these changes would not affect hospital reclassifications until FY 1994, and thus would coincide with the next update to the HCFA wage index and the revised labor market definitions. We believe the use of more recent data in computing the area wage index values, coupled with improved labor market areas, should help to mitigate the impact the proposed changes might have on payments to hospitals, since the wage index will better reflect hospital wage levels within each labor market area.

In addition, our analysis indicates that if the proposed guidelines had been in effect in FY 1992, the urban budget neutrality adjustment would have been 51.6 percent lower. In other words, the urban standardized amount would have been reduced by 0.57 percent instead of 1.1 percent.

e. *Guidelines for a Hospital Seeking Reclassification for Purposes of its Standardized Amount.* A hospital qualifies for reclassification for purposes of its standardized amount if it can demonstrate that its costs per case are more comparable to the amount the hospital would be paid if it were reclassified than to the amount it is paid under its current classification. Accordingly, in order for a hospital to qualify for reclassification for purposes of its standardized payment amount, § 412.230(d)(2) requires that a hospital demonstrate that its case-mix adjusted cost per discharge is at least equal to its current rate plus 75 percent the difference between that rate and what it would receive if it were reclassified.

We are not proposing a change in the guideline for individual hospital reclassifications for purposes of the standardized amount. As a general principle, we believe that inefficient hospitals should not be rewarded by geographic reclassification. Accordingly, in reviewing the guidelines, we wanted to determine whether the criteria for reclassification for purposes of the standardized amount result in the reclassification of hospitals that have high costs because they are operating inefficiently rather than because they are comparable to the hospitals in the area to which they are seeking reclassification. However, our examination of the characteristics of the hospitals that were reclassified for their standardized amount does not indicate there is a significant incidence of inappropriate reclassifications. Although rural hospitals that were reclassified for only the standardized amount have an average occupancy rate that is nearly 4 percentge points below the mean for rural hospitals (41 percent), rural hospitals that were reclassified for both the standardized amount and the wage index as well as other urban hospitals that were reclassified to large urban areas have average occupancy rates that are comparable to the average urban hospital occupancy rate.

Further, any revision in the guideline for standardized amount reclassifications would have limited impact. Any revised guideline would not take effect before FY 1994, and in FY 1995, under section 1886(b)(3)(B)(i)(x) of the Act, the other urban and rural rates will be merged into a single rate. The large urban rate will be only 1.6 percent larger. These changes will reduce the significance of the standardized amount reclassifications.

Moreover, there is no commonly accepted measure of hospital efficiency that could be used to establish an objective standard for reclassification. As with the other guidelines for reclassification, we believe that an objective standard for efficiency would be necessary to ensure that all hospitals are treated fairly and consistently, to facilitate the application process, and to expedite the determination process for geographic reclassifications. Therefore, we are not proposing a change in the guideline for individual hospital reclassifications for purposes of the standardized amount.

f. *Application of Numeric Standards.* The regulations at § 412.120(b)(1) specify that in order to qualify for reclassification, an urban hospital must be located "no more than 15 miles" and a rural hospital "no more than 35 miles"

from the adjacent area to which it seeks redesignation. In addition, § 412.230(e) specifies that the average hourly wage of a hospital seeking reclassification must be equal to "at least 85 percent" or, if adjusted for occupational mix, "at least 90 percent" of the average hourly wage of hospitals in the labor market area to which it seeks reclassification. Section 412.232(c) sets forth the same criteria for group reclassifications. We believe the words "no more than" and "at least" clearly describe our intent that these numeric standards represent the maximum and minimum acceptable standards. In other words, we intended that any figure greater than 35 miles (such as 35.4) or any figure less than 90 percent (such as 89.9 percent) would not meet these standards.

In a number of its decisions, the MGCRB has interpreted the regulations at §§ 412.120(b)(1) and 412.230(e) to require the use of standard rounding rules to evaluate the data contained in reclassification applications against the numeric standards contained therein. However, as explained above, we believe that the plain meaning of the current regulations clearly indicates that we did not intend these standards to be subject to the rules of rounding. Moreover, the application of rounding rules is inconsistent with HCFA's past practices and policies governing the application of numeric standards. For example, the Medicare statute establishes a number of numeric standards such as those related to the qualifying criteria for disproportionate share hospital adjustments and special status as Medicare-dependent small rural hospitals. These standards are set forth in the statute as minimum criteria described in terms of whole numbers. In applying these standards, HCFA has consistently precluded rounding in determining whether a hospital qualifies for a special payment status, and Congress has not indicated any contrary intent that would override that interpretation. Accordingly, the Administrator has reversed MGCRB decisions where a hospital's reclassification request had been approved on the basis of rounding to meet the prescribed standards. In order to ensure that this policy is applied consistently throughout the adjudicative process, we are modifying the MGCRB regulations in each section where a numeric standard is set forth to specify that rounding is not permitted.

2. Implementation of FY 1994 Hospital Reclassifications

a. *Appropriate Wage Data.* As noted above, requests for geographic reclassification by the MGCRB must be filed by October 1 of the Federal fiscal year preceding the Federal fiscal year for which the reclassification decision would be effective. Thus, a request for reclassification for FY 1994 must be filed by October 1, 1992. The MGCRB will consider the request and makes its determination during FY 1993 and the reclassification becomes effective for FY 1994.

Current regulations at §§ 412.230(e)(2) and 412.232(d)(2) specify that the wage data that hospitals submit in support of their applications for geographic reclassification should be taken from the most recent HCFA hospital wage survey. For applications for reclassification effective either for FY 1992 or 1993, the most recent wage data has been from the HCFA survey covering hospitals with cost reporting periods ending in calendar year 1988. However, section 1886(d)(3)(E) of the Act requires that the hospital wage index be updated annually beginning October 1, 1993. This means that in FY 1994, the wage index will be based on the HCFA wage data covering hospitals with cost reporting periods beginning in FY 1990. However, this data will not be available on October 1, 1992, when the MGCRB begins to consider applications for FY 1994 geographic reclassifications (although it may become available later in FY 1993). To ensure that all hospitals are treated equitably, we believe that the MGCRB should base its determinations on the wage data that are in effect for prospective payment purposes during the fiscal year in which the MGCRB makes its decision, even if more recent wage survey data becomes available during that time period. This policy is necessary because the wage data will be submitted throughout the year as part of the HCRIS system and are subject to change as additional cost reports are submitted and the status of the cost reports change from "as submitted" to "settled." The comparison of a hospital's average hourly wage to that of other hospitals is subject to change until the final wage index is issued around each September 1 for the coming fiscal year. We note that while some hospitals would benefit from the updated data, other hospitals would benefit from a delay in using the updated data.

Therefore, we are proposing to revise §§ 412.230(e)(2) and 412.232(d)(2) to clarify that the appropriate wage data are the data used to construct the wage index in effect for prospective payment purposes during the year in which the MGCRB considers the applications. Because the wage data will be updated annually beginning in FY 1994, there will always be a 1-year lag between the wage data used by the MGCRB to make its determinations and the data used to develop the wage index in effect during the year reclassification is effective.

b. *Revised Labor Market Areas.* As noted in section III.E. of this preamble, in FY 1994 we expect to implement revised MSA definitions based on the 1990 census data. The revised labor market areas that will be effective for FY 1994 will be based on the new MSA definitions that will be announced by OMB later this year, as well as any refinements in the labor market area definitions that our analysis indicates would be appropriate. As in the past, we anticipate significant changes to the MSA definitions, including the creation, elimination, or merging of MSAs, as well as the movement of counties from one MSA to another.

OMB is not expected to publish revised MSA definitions until later this year, by which time most or all hospitals may have already submitted their applications for FY 1994 reclassification. Even if the revised MSA definitions were to be published in time for some hospitals to submit new or revised requests for reclassification, it would not be equitable or administratively feasible for the MGCRB to use two different sets of MSA definitions in making its determinations on reclassification requests. For example, if an MSA is revised to comprise different counties, the average hourly wage for that area would also change. This could affect a hospital's eligibility for reclassification. It will not be administratively feasible for us to develop a new wage index based on the reconfigured MSAs in time for the MGCRB to take the revised labor market areas into account in considering applications during FY 1993. In addition, a hospital's ability to meet the proximity guidelines may be affected by the new MSAs. To be consistent and equitable to all hospitals, hospitals that are applying for geographic reclassification effective in FY 1994 will need to base their requests on the current MSA definitions, and the MGCRB will make its determinations during FY 1993 based on the MSA definitions used for prospective payment purposes in FY 1993.

In constructing the FY 1994 wage index, it will be necessary for us to group hospitals into their appropriate labor market areas based on the reconfigured MSAs and any other refinements in the labor market area definitions, and to determine where reclassified hospitals should be located and if a reclassification is appropriate.

For example, the revised labor market area definitions could place a rural hospital into a different urban area than the labor market area to which it has been reclassified by the MGCRB. In such a case, it may no longer be to the hospital's advantage to be reclassified into the area to which it requested reclassification. In order to address situations such as these, the proposed rule on the prospective payment system for FY 1994 will provide a detailed discussion of our proposed policies concerning the effects of the new labor market area definitions on the geographic reclassification of hospitals. We note that, as provided in § 412.273(a)(2), a hospital will have 45 days from publication of the FY 1994 proposed rule to withdraw its application for reclassification if it determines that such reclassification would not be advantageous in view of the revised wage data or new labor market areas that will be implemented in FY 1994. The revised MSA definitions will be used by the MGCRB in making determinations for FY 1995 reclassification requests, which must be submitted to the MGCRB by October 1, 1993.

3. Administrative and Procedural Guidelines

a. *Withdrawing an Application § 412.273.* The June 4, 1991 final rule with comment period (56 FR 25458) added § 412.273 to the regulations to provide that a hospital may withdraw an application for reclassification at any time before the MGCRB issues a decision. The regulation further provides that a hospital may withdraw its application following an MGCRB decision provided the request for withdrawal is received within 45 days of HCFA's annual publication of proposed changes to the prospective payment system. However, § 412.273 does not specify to whom a hospital should submit its request for withdrawal. Moreover, although § 412.256(d) sets forth the appeal rights of a hospital that disagrees with a decision of the MGCRB dismissing the hospital's application for reclassification, the regulations do not provide similar appeal rights for a hospital whose request for withdrawal has been denied.

We propose to revise § 412.273 to specify that a hospital's request for withdrawal of an application must be submitted to the MGCRB. Additionally, we propose to add a new paragraph (c) to § 412.273 to provide appeal rights for a hospital whose request for withdrawal has been denied by the MGCRB. We propose that a hospital may request that the Administrator review the MGCRB's denial within 15 days of the date of the notice of denial. Within 20 days of receipt of the hospital's appeal request, the Administrator will either affirm or reverse the denial.

b. *Reopening.* Section 1886(d)(10)(C)(iii) of the Act establishes time limits for MGCRB and Administrator decisions to ensure that the effects of reclassification are reflected in the new standardized amounts and wage index values that take effect on October 1 of each year for hospitals under the prospective payment system. Therefore, prompt adjudication by either the MGCRB or the Administrator is essential to ensure that the budget neutrality requirement in section 1886(d)(8)(D) of the Act is met when the annual prospective payment system rates are established.

We have received several requests for reopening of MGCRB decisions after the 15-day appeals period set forth in § 412.276(a), as well as requests for reopening of decisions issued by the Administrator. Section 412.276(a) of the regulations provides that a decision by the MGCRB is final and binding unless the decision is reviewed and changed by the Administrator. Neither the statute nor the regulations gives the MGCRB the authority to reopen its decision. We have considered possible revisions to the MGCRB regulations to provide for reopening. However, due to the statutory deadlines provided in section 1886(d)(10)(C) of the Act, we do not believe that a decision by the MGCRB or the Administrator should be subject to subsequent reopening either on motion of the hospital or the applicable reviewing authority. As noted above, administrative finality is essential under this particular review scheme to achieve budget neutrality. Accordingly, we do not believe it would be appropriate to provide for reopening of decisions, in the same way as provided under § 405.750 or § 405.1885, for decisions by the MGCRB or the Administrator concerning applications for geographic reclassification filed under section 1886(d)(10) of the Act.

We further believe procedures for reopening MGCRB decisions are unnecessary because existing regulations provide ample opportunity for final resolution of issues that may arise in the adjudication of applications for reclassification. For example, hospitals that are dissatisfied with MGCRB decisions concerning their requests for reclassification may appeal those decisions to the Administrator within the time period in § 412.276(a). (As noted above, hospitals would also have the right to appeal both MGCRB decisions concerning requests to withdraw an application and MGCRB dismissals.) In addition, the Administrator may review a MGCRB decision at his or her discretion within the time period prescribed in § 412.278(c).

We believe that this review process provides sufficient protection for hospitals and HCFA in those instances where a provider or the Administrator believes that a case has been decided incorrectly by the MGCRB. Accordingly, no additional mechanism to revise MGCRB decisions is necessary or appropriate.

However, under § 412.278(f)(4), a decision of the Administrator is not subject to further review. Thus, there are currently no further appeals or reopening rights available to a hospital following a decision by the Administrator. Since the Administrator's review process provides sufficient opportunity to resolve the substantive issues raised by a reclassification application, we do not believe any further review of those issues is warranted. However, given the multiple computations required in adjudicating reclassification applications, we believe that we should provide a brief time period in which the Administrator would have the limited authority to correct inadvertent mathematical or computational errors that would otherwise result in incorrect reclassification. The Administrator would also have the authority to correct a reclassification decision if the evidence that was considered in making the decision clearly shows on its face that an error was made ("facial error").

Examples of mathematical or computational errors include but are not limited to: The erroneous entry of data for the respective cost or wage comparison calculation (for example, transposing figures from the applicable lines of the cost report) or errors due to incorrect mathematical computations. An example of a facial error would be a decision that includes incorrect identifying information for the affected hospital(s), for example, Smith Hospital instead of Smythe Hospital or Waco, Oklahoma instead of Waco, Texas. However, as explained above, substantive issues such as the Administrator's determination to use only wage survey data that has been properly approved and issued for official use by HCFA, or a challenge to the methodology used in determining the respective cost or wage comparison calculation, may not be reviewed during this limited amendment period.

The time period for amending Administrator decisions must be very short to ensure that all reclassification decisions are made in time to be incorporated into the wage index adjustments required by the budget neutrality provisions described above. Accordingly, we are proposing to add a new paragraph (g) to § 412.278 to provide that, within 10 days following a decision issued by the Administrator, a hospital may request that the Administrator amend the decision only to correct mathematical or computational errors, or facial errors. The Administrator would promptly review the hospital's request and amend the decision, if necessary, within 5 days following receipt of the hospital's request for amendment. The Administrator, at his or her discretion, may also amend the decision to correct mathematical, computational, or facial errors within 15 days following the issuance of his or her initial decision. The Administrator's amended decision would be final and would not be subject to judicial review. In accordance with these proposed changes, we also would revise § 412.278(f)(3) to state that the Administrator's decision issued under §§ 412.278 (a) or (c) is final unless it is amended under § 412.278(g).

c. *Technical Changes to § 412.278(f)(1).* In title 42 of the Code of Federal Regulations, parts 400 to 429, revised as of October 1, 1991, on page 331, the text of § 412.278(f)(1) was printed incorrectly. The correct text, which describes what evidence the Administrator may consider in reviewing an MGCRB decision on a hospital's reclassification request, was originally published as § 412.278(c) in our September 6, 1990 interim final rule (55 FR 36770) and was redesignated as § 412.278(f)(1) in our June 4, 1991 final rule with comment period (56 FR 25489). In addition, technical changes to paragraph (f)(1) are needed to clarify that the Administrator may review comments submitted by HCFA or a hospital during the appeals and discretionary review process. These changes should have been included in our June 4, 1991 final rule but were inadvertently omitted.

Accordingly, we are proposing to republish § 412.278(f)(1), with the above-mentioned technical changes, to ensure that this section of the Code of Federal Regulations is correct and to incorporate the necessary references to comments submitted during the appeals and discretionary review process.

V. Other Proposed Changes to the Prospective Payment System for Inpatient Operating Costs

A. Outlier Payments (§ 412.82)

1. Background

Section 1886(d)(5)(A) of the Act requires the Secretary to pay an additional amount beyond the basic prospective payment amount for a hospital inpatient case that involves an extremely long length of stay or extraordinarily high costs to treat when compared to other discharges classified in the same DRG. We refer to these atypical cases as "day outliers" and "cost outliers," respectively. Section 1886(d)(5)(A)(iii) of the Act specifies that outlier payments approximate the marginal cost of care beyond the outlier threshold. The purpose of the outlier payment is to protect the hospital from significant financial loss in individual cases.

In the two final rules published on August 30, 1991 that implemented changes to the inpatient operating prospective payment system and a new prospective payment system for capital-related costs for FY 1992 (56 FR 43196 and 43358, respectively), we established a unified outlier payment methodology for capital and operating outlier cases. Under § 412.82, for day outliers, an additional per diem payment is made for each covered day of care beyond the length of stay threshold. The per diem payment is equal to 60 percent of the average per diem payment (operating and capital) for the DRG, which is calculated by dividing the standard payment for that DRG by the geometric mean length of stay for the DRG. The capital portion of the day outlier payment is multiplied by the applicable Federal transition percentage during the transition to a prospective payment system for capital-related costs.

For cost outliers, we pay 75 percent of charges, adjusted to equal capital and operating costs, beyond the cost outlier threshold. Charges are adjusted to cost using hospital-specific cost-to-charge ratios and standardized to eliminate the effects of the indirect costs of medical education and the costs of treating a disproportionate share of low income patients, for both operating costs and capital-related costs. As with day outliers, the capital portion of the cost outlier payments is then multiplied by the applicable Federal blend percentage. Cases that qualify as both day and cost outliers are paid under the methodology that yields the highest combined capital and operating payment.

The current outlier payment methodology reflects refinements that we have made since the inception of the prospective payment system to improve the financial protection for high cost cases. In the September 30, 1988 final rule, we refined the payment methodology for day outlier cases that also could qualify as cost outlier cases (53 FR 38502). Previously, our policy was to pay all outlier cases that met the day outlier criteria as day outliers. Our revised policy, as set forth in the September 30, 1988 final rule, is to pay the greater of the day outlier payment amount or the cost outlier payment amount for these cases. This change rectified an inequity in the payment system that resulted in underpaying extremely costly day outlier cases that we would have paid as cost outlier cases except for the fact that they also qualified as day outliers.

In the September 30, 1988 final rule, we also raised the marginal cost factor for cost outliers from 60 to 75 percent in order to target outlier payments to the most costly cases. (As explained below, the marginal cost factor for the burn DRGS is 90 percent.)

We also provided that in determining the cost outlier payment for a case, the hospital's costs would be determined based on hospital-specific cost-to-charge ratios, rather than the national average cost-to-charge ratio used in the original outlier payment policy. The use of hospital specific cost-to-charge ratios enhances the accuracy with which exceptionally costly cases are identified and outlier payments computed, given the wide variation in cost-to-charge ratios across hospitals. This increased accuracy was particularly important given that the types of hospitals that had higher cost-to-charge ratios than the national average (and therefore received lower cost outlier payments using the national ratio rather than the hospital-specific ratio) were the hospitals that performed least well in the early years of the prospective payment system.

In the same final rule, we also implemented changes for the payment of burn outlier cases to reflect section 4008(d)(1)(A) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). Section 4008(d)(1)(A) required the Secretary to pay both day and high cost burn outlier cases using a 90 percent marginal cost factor. This provision was effective for discharges occurring on or after April 1, 1988 and before October 1, 1989. We implemented this change in the September 30, 1988 final rule (53 FR 38505). In the September 1, 1989 final rule (54 FR 36479), we explained that we would continue to compute cost outlier burn cases that were discharged on or after October 1, 1989 using the 90

percent marginal cost factor to determine payment, but beginning with discharges occurring on or after October 1, 1989, we would compute payments for day outlier burn cases using the same maraginal cost factor of 60 percent used to compute payment for all other types of day outlier cases.

2. Proposed Changes to the Payment Methodology for Day Outliers

In the August 30, 1991 final rule implementing the prospective payment system for hospital inpatient capital-related costs, we stated that, as part of our ongoing study of possible refinements to outlier payment policy, we would examine whether changes in the marginal cost factors used to determine outlier payments would be appropriate in light of the inclusion of capital in the outlier payment (56 FR 43383). The 60 percent figure that was originally used for both day and cost outliers, and is still used for day outliers, was derived from a variety of studies for operating cost payments.[3] We believe that the marginal cost factor should be set at a level that is appropriate for Medicare cases, and that is based on more recent data for operating and capital costs.

The RAND Corporation's most recent research for HCFA (under cooperative agreement 99-C—98489/9-08) used FY 1990 MEDPAR data and hospital-specific data from cost reporting periods beginning in FY 1989 (or FY 1988 if the later year was not available) to estimate a Medicare marginal cost factor specifically for day outlier cases.[4] RAND found that the current methodology of establishing a per diem payment based on 60 percent of the DRG payment divided by the geometric mean length of stay for the DRG exceeds the additional costs of an outlier day by approximately 25 percent. In addition, the data suggest that 38.2 percent of day outlier payments go to cases that are profitable once the outlier payments are included. The incremental cost study that RAND completed for ProPAC [5] indicated that the later days of a stay have considerably lower costs than the earlier days, for both medical and surgical DRGs. In addition, the average cost per day in the DRGs studied tended to be constant by the 10th day in almost all cases.

RAND's most recent work for HCFA also examined the relation between costs and length of stay. A regression was developed for each DRG with at least 50 day outlier cases in which the cost per case, standardized for the payment adjustments, and including capital costs, was related to the outlier portion of the stay as follows:

standardized cost = a + b × (LOS—threshold)

This form of the regression implies that total costs for the pre-threshold portion of the stay are constant by DRG, and that the incremental cost of outlier days is also a constant. The results indicate a linear relation between total costs and length of stay (LOS). In addition, the incremental costs of an outlier day vary linearly with the ratio of the DRG weight divided by the mean length of stay (either geometric or arithmetic, although the arithmetic mean performs somewhat better). This indicates that the basic form of the per diem payment is appropriate. That is, DRGs with a low ratio of DRG weight to mean length of stay have a lower per diem payment, so the correlation of the low ratio with low incremental costs means that the payment varies appropriately with costs. The geometric mean and the arithmetic mean are very highly correlated ($R^2 = .94$).

RAND then conducted a study of day outlier cases in all DRGs to determine the coefficients in the following equation:

standardized cost per case = a + b × ((LOS—threshold) × DRG per diem)

where DRG per diem = DRG weight × standardized amount ÷ mean LOS

In this case, the estimate of b provides the percent of the DRG per diem payment represented by the incremental cost of an outlier day. RAND found that incremental costs would equal the DRG per diem payment at a factor of approximately 0.54 using the arithmetic mean and 0.39 using the geometric mean. Further, sensitivity analysis indicated that these results are relatively insensitive to modest changes in the cost outlier threshold.

RAND then simulated various day outlier payment policies. All simulations continued to use the geometric mean length of stay for the DRG to determine the day outlier threshold, but tested different ways of calculating the per diem payment. (The geometric mean is the appropriate mean to use in calculating the day thresholds, because it adjusts for the low tail of the length of stay distribution being truncated at 0, since there are no negative lengths of stay.) The geometric mean is calculated as the antilog of the mean of the log length of stay. Because the logs of two different numbers are closer together than the numbers themselves, the geometric mean compresses the distribution. As a result, day outlier cases have a smaller effect on the geometric mean than they do on the simple average (the arithmetic mean). The arithmetic mean length of stay is therefore larger than the geometric mean length of stay.

In particular, RAND compared current policy to a policy model that used the arithmetic mean length of stay in the computation of the per diem payment, with a marginal cost factor of 0.55.[6] Under the current policy simulation, 38.2 percent of day outlier payments go to cases that are profitable after the outlier payments are made, while 26.3 percent of total outlier payments go to these cases. Under the simulation using the arithmetic mean and a 0.55 marginal cost factor, only 15.2 percent of outlier payments go to profitable cases.

Using the results of the RAND study, we simulated outlier thresholds and payments using the FY 1991 MEDPAR data to determine the impact of changing the per diem payment calculation across types of outlier cases. We used identical day outlier thresholds, in order to isolate the effects of the change in outlier payment policy, rather than any possible effect of changing the thresholds.[7]

There are four types of outlier cases: cases that qualify only as day outliers, cases that qualify only as cost outliers, cases that qualify under both methodologies ("dual outliers") and are paid as day outliers, and dual outliers that are paid as cost outliers. An optimal outlier policy, in terms of protecting hospitals against financial risk, would

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[3] Summarized in J. Lipscomb, I. Raskin, and J. Eichenholz, "The Use of Marginal Cost Estimates in Hospital Cost-Containment Policy," Hospital Cost Containment: Selected Notes for Future Policy, ed. M. Zubkoff, I. Raskin, and R. Hanft (New York: Prodist, 1978), pp. 527–532.

[4] A technical paper, Carter, G.M. and Rumpel, J.D., "Payment Rates for Unusual Medicare Hospital Cases," serves as the basis of the following discussion and explains this research in more detail. The paper is available upon request from HCFA.

[5] Carter, G.M. and Melnick, G.A., "How Services and Costs Vary by Day of Stay for Medicare Hospital Stays," March 1990.

[6] While the simulation using the arithmetic mean length of stay and a 0.55 marginal cost factor also used a slightly different cost outlier methodology, the impact of the change in cost outlier methodology is negligible on the distribution of outlier payments to profitable cases.

[7] The thresholds for the current policy simulation were the geometric mean length of stay plus the lesser of 28 days or 3 standard deviations for day outliers for both simulations. For cost outlier payments the thresholds were the greater of 2.0 times the DRG rate or $34,250 for current law and $29,750 for the alternative policy simulation. The simulations were done using FY 1991 MEDPAR cases, and FY 1992 payment rates and payment adjustments.

provide equal protection (in terms of the ratio of payments for the case to the costs of the case) across all types of outlier cases. Thus, under an optimal policy, there would be no additional risk for a hospital that admits one type of outlier case relative to another.

The results of our simulation are presented in the table below. Under current policy, the payment to cost ratios for outlier cases vary from 0.6549 for dual outliers paid as day outliers to 0.4773 for cost only outliers. The modified day outlier policy yields payment to cost ratios varying from 0.5667 to 0.4891 for the same types of cases:

PAYMENT TO COST RATIOS FOR DIFFERENT TYPES OF OUTLIER CASES

Type of payment	Current day outlier policy		Revised outlier policy	
Outlier case	Ratio	Cases	Ratio	Cases
Day only	0.5970	81,517	0.5350	70,242
Dual, paid day	0.6549	23,617	0.5667	20,580
Dual, paid cost	0.5469	32,117	0.5521	46,429
Cost only	0.4773	76,924	0.4891	107,913
All outliers	0.5426	214,175	[1] 0.5215	245,164

[1] Under the alternative policy, we are able to lower the threshold for cost outliers and, as a result, more cases qualify for cost outlier payments than under the current policy (as illustrated by the higher number of outlier cases). Since the additional outlier cases qualify for smaller payments than cases that qualify under the current policy, the ratio of payments to costs is smaller than under the current policy. Yet, total payment for the additional outlier cases would increase under the alternative policy.

In view of the significant potential for improvements in payment equity across types of outlier cases, we are proposing to revise the day outlier payment policy effective for discharges occurring on or after October 1, 1992. Specifically, we are proposing to revise §412.82(c) to reflect that the per diem payment would be calculated using the arithmetic mean and a 0.55 marginal cost factor. That is, the per diem day outlier payment under the prospective payment system for operating costs would be determined by dividing the standard DRG payment by the arithmetic mean length of stay for that DRG, and multiplying the result by 0.55. During the transition to a prospective payment system for capital, the capital portion of the day outlier payment would also be multiplied by the Federal payment blend percentage. (For cost reporting periods beginning in FY 1993, the blend percentage would be 20 percent for fully prospective hospitals, a hospital-specific percentage that reflects the ratio of Medicare inpatient new capital costs to Medicare inpatient total capital for hospitals receiving hold harmless payments, and 100 percent for hospitals receiving 100 percent of the Federal rate.)

The RAND study suggested that the optimal day outlier policy would be to pay only the marginal cost (rather than the full incremental cost) of the additional days of care beyond the threshold. For cost outlier cases, we pay 75 percent of the costs beyond the cost outlier threshold. If we were to adopt this same policy for day outlier cases, the marginal cost factor would be set at .40 (.55 x .75) for day outlier cases. We considered adopting a 2-year phase-in of this policy by proposing a .50 marginal cost factor for day outliers in FY 1993 and moving to a .40 marginal cost factor in FY 1994. However, because of the significant impact this change would have on those hospitals with longer lengths of stay that have more day outlier cases than average, we believe it would be more appropriate to adopt an incremental change to a .55 marginal cost factor in FY 1993 and evaluate its effects before considering additional revisions to the day outlier payment policy. However, we invite public comments on adopting this optimal policy.

The proposed change in the payment policy for day outliers would provide better protection against costly cases for hospitals, while maintaining a more appropriate level of payments for cases with extraordinarily long lengths of stay that are not also extraordinarily costly. In particular, we believe that this change would ensure that we pay hospitals for day outlier cases no more than the cost of care during the outlier portion of the stay, thus reducing the number of outlier cases that are profitable. While we expect that many outlier cases will move from the day outlier payment methodology to the cost outlier payment methodology based on this proposed change, our analysis indicates that many day-only outlier cases will remain profitable.

We note that the arithmetic mean for the proposed FY 1993 DRGs is set forth in Table 7b.

3. Analysis of the Factors that Affected FY 1991 Outlier Payments

Section 1886(d)(5)(A)(iv) of the Act requires that the total amount of additional payments made for outliers for discharges in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates for discharges in that year. In establishing the FY 1991 prospective payment system payment rates and outlier thresholds, we used FY 1989 billing data. We estimated that outlier payments would equal 5.1 percent of DRG payments and set the outlier thresholds at the geometric mean length of stay for the DRG plus the lesser of 29 days or three standard deviations of the length of stay for day outliers, and the greater of 2.0 times the DRG rate or $35,000 for cost outliers. To estimate the outlier payments, we used the FY 1991 final standardized amounts and wage index values as established in the September 4, 1990 final rule (55 FR 35990), and hospital-specific data from 1989 and 1990 (the most recent we had available). ProPAC, in its June 1991 report to Congress, estimated that FY 1991 outlier payments would equal 5.6 percent of total payments (p. 45).

Preliminary analysis of the FY 1991 billing data indicates that actual outlier payments were 4.0 percent of total DRG payments. We estimate that outlier payments will increase between 0.1 and 0.2 percentage points as later billing data become available. The 4.0 percent is based on the ratio of outlier payments to the sum of the standardized amount and outlier payments, exclusive of additional payments for indirect teaching costs and for serving a disproportionate share of low income patients. If the indirect teaching and disproportionate share payments are included in the calculation, the outlier payment percentage is 4.1 percent. The following table compares the outlier cases and payments we estimated in developing the FY 1991 outlier payment policies compared to the actual FY 1991 outlier experience.

Type of outlier case	Outlier payment as percent of standard payment		Outlier cases as percent of total cases	
	Estimated	Actual	Estimated	Actual
Day outliers only	1.4	1.2	1.2	0.9
Dual outliers paid as day outliers	1.1	0.8	0.8	0.2
Dual outliers paid as cost outliers	1.7	1.2	1.2	0.2
Cost outliers only	0.9	0.9	0.9	0.4
Total	5.1	4.0	4.0	1.7

The difference between estimated and actual FY 1991 outlier payments did not affect the percentage of outlier cases paid as day outlier cases (63 percent in the estimated and 62 percent in the actual) or the amount of outlier payments made under the day outlier formula (48 percent of payments were made under the day outlier formula, while we estimated that figure at 49 percent). The following table summarizes the effect of the difference between estimated and actual FY 1991 outlier payments on payments and number of cases by type of outlier case:

COMPARISON OF FY 1991 PREDICTED AND ACTUAL OUTLIER CASES AND PAYMENTS

Type of outlier	Percentage of outlier cases		Percentage of outlier payments	
	Estimate	Actual	Estimate	Actual
Meets day threshold only	52	52	27	20
Meets day and cost thresholds, paid using day methodology	11	10	22	19
Meet day and cost thresholds, paid using cost methodology	14	12	34	30
Subtotal—all cases meeting day threshold	77	74	83	78
Meets cost threshold only	23	26	17	22
Total	100	100	100	100

In order to understand why the estimate of FY 1991 outlier payments did not match more closely actual FY 1991 outlier payments, we examined several factors which could have caused the difference between the predicted outlier payments and the actual payments. We conducted this analysis to ensure that our methodology for estimating outlier payments continues to be appropriate, and that the difference in predicted and actual FY 1991 outlier payments was primarily a function of data changes that we could not predict. The possible sources for the difference could be unanticipated changes in covered inpatient hospital charges, the hospital-specific cost-to-charge ratio, and the payment adjustments used to standardize hospital charges, all of which affect cost outlier payments, or changes in the mix of inpatient cases between the FY 1989 MEDPAR data used to estimate FY 1991 outlier cases and the actual FY 1991 cases. Accordingly, we have analyzed these potential sources for the difference.

a. *Inflation in Covered Charges.* To determine cost outlier payments, we inflate covered hospital inpatient charges. The inflation factor is based on the historical annual rate of increase in covered charges per case after removing the affects of case mix changes.

If the charge inflation factor was too large, we would have overestimated the costs of cost outlier cases, and would therefore have set the outlier thresholds at a higher level than if we had known the actual lower rate of inflation in covered charges. In estimating FY 1991 covered charges, we used an 11.4 percent annual inflation factor and multiplied the FY 1989 covered charges by 1.241 (1.114 × 1.114). This was the best estimate of annual charge inflation available at the time we estimated the FY 1991 outlier payments. The 11.4 percent amount had been used previously to estimate outlier payments. Until this year, we have not been able to re-estimate the inflation factor because of the impact of the Catastrophic Coverage Act of 1988 (Pub. L. 100–360) on FY 1989 and FY 1990 claims data. Section 101 of Public Law 100–360 caused covered charges to increase during FY 1989 and FY 1990 in part because of the increased number of covered days of care resulting from the elimination of the limitation on hospital inpatient benefit days under catastrophic coverage. Using those years' data to re-estimate the charge inflation factor would have resulted in an incorrect charge inflation factor. The distortions in covered hospital inpatient charges resulting from the enactment of Public Law 100–360 also prevent us from directly determining the increase in covered charges between FY 1989 and FY 1991. Therefore, we determined the compounded annual rate of increase between FY 1988 and FY 1991 after removing the affects of case mix changes. To do this, we calculated the average covered charge per discharge for both FY 1988 and FY 1991, and divided by the national average case mix index for each year. We determined that the total increase in charges per case, net of case mix change, was 33.85 percent, or 10.2 percent compounded annually. Based on this analysis, we estimate that charges increased 21.4 percent between FY 1989 and FY 1991, or 10.2 percent annually compared to the 11.4 percent annual inflation factor used to estimate FY 1991 outlier payments. We note that the new charge inflation figure may increase once additional FY 1991 cases are included in the MEDPAR data, since the cases that appear in later updates of the data tend to have higher charges.

b. *Cost-to-Charge Ratios.* To determine cost outlier payments, we multiply covered charges by a hospital's cost-to-charge ratio. We used the latest cost-to-charge ratios (from 1989 and 1990 hospital specific data) available at the time we estimated FY 1991 outlier payments. It is possible that the cost-to-charge ratios used to estimate the FY 1991 outlier payments were higher than those used to make actual FY 1991 outlier payments. If the cost-to-charge

ratios used to determine estimated FY 1991 outlier payments were higher than the actual FY 1991 cost-to-charge ratios, then the adjusted costs we used to determine cost outlier payments would have been higher than those used to calculate actual outlier payments. Thus, we would have estimated higher outlier payments than if we had used the actual cost-to-charge ratios. The average cost-to-charge ratio we used to estimate FY 1991 outlier payments was 0.6741, while the average cost-to-charge ratio used to compute actual FY 1991 payments was 0.6606. The difference between the two cost-to-charge ratios indicates hospital's charges have been increasing more rapidly than their costs. On average, using the 0.6741 percent cost-to-charge ratio overstated estimated costs by 2.0 percent compared to what costs would have been using the actual cost-to-charge ratios used to make outlier payments in FY 1991.

c. *Payment Adjustments.* To determine cost outlier payments, we standardize a hospital's charges for indirect teaching and disproportionate share adjustments (IME and DSH). Ordinarily, we use the hospital-specific data from the previous year (1989 and 1990 data in this case) to estimate both adjustments. However, because of changes in the disproportionate share formula, we had to compute some disproportionate share adjustment factors using available 1988 hospital cost report data in estimating FY 1991 payments.

If the DSH and IME payment adjustment factors we used to set the FY 1991 thresholds were lower than those used to make FY 1991 payments, we would again overestimate the costs used to determine cost outlier payments, since we divide the charges by a figure of one plus the IME and DSH adjustment factors. Thus, we would have estimated higher outlier payments than if we had used the actual IME and DSH adjustment factors that were used to determine payments. The average DSH adjustment factor we used to estimate FY 1991 outlier payments was 0.0336, while the factor used to determine actual outlier payments averaged 0.0265 for the first quarter of FY 1991 (before the payment formula for large hospitals in urban areas was changed) and 0.0290 for the rest of FY 1991. Since the actual DSH adjustment factors were lower than those we used to estimate FY 1991 outlier payments, our estimate would have understated the FY 1991 costs of hospitals receiving a disproportionate share adjustment.

The IME factor used to estimate FY 1991 outlier payments was 0.0226, while the average IME adjustment factor used to determine actual payments was 0.0218. Thus, our estimate would have understated the costs of hospitals receiving an indirect teaching adjustment.

We note that while the DSH and IME adjustment factors that are used to determine the additional payments for DSH and IME are subject to retroactive adjustment during the cost report settlement process, there is no retroactive adjustment in the cost outlier payment determination. That is, even if the DSH and IME factors change during the cost report settlement process, there is no retroactive change in the cost outlier determination to take into account the effect the revised DSH and IME factors would have had on the adjusted charges used to determine the cost outlier payment.

d. *Effect of Revised Adjustment Factors.* To test the effects of the charge inflation factor, the cost-to-charge ratios, and the payment adjustment factors, we used the FY 1989 MEDPAR data, a revised charge inflation factor of 10.2 percent, and the cost-to-charge ratio, IME and DSH adjustment factors used to determine actual outlier payments in FY 1991 to determine what thresholds we would have set to yield 5.1 percent outlier payments if this more recent data had been available. To approximate the cost-to-charge ratios and the IME and DSH factors that were used to determine cost outlier payments, we used the factors on the September 30, 1990 provider-specific file to determine outlier payments for discharges occurring on or after October 1, 1990 and before January 1, 1991 and the factors on the March 31, 1991 provider-specific file to determine payments for discharges occurring on or after January 1, 1991. We used these two files because, as stated above, the DSH payment formula changed effective for discharges occurring on or after January 1, 1991. In addition, we used the three sets of standardized amounts and two wage indexes in effect during FY 1991 rather than the standardized amounts and wage index established in the September 4, 1990 final rule. The thresholds we would have established if these data had been available at that time would have been the geometric mean length of stay for the DRG plus the lesser of 28 days or three standard deviations for day outliers, and the greater of 2.0 times the DRG rate or $32,500 for cost outliers. (The actual FY 1991 thresholds were the geometric mean length of stay for the DRG plus the lesser of 29 days or three standard deviations for day outliers, and the greater of 2.0 times the DRG rate or $35,000 for cost outliers.) We then ran the FY 1991 cases through these outlier thresholds, and we determined that the actual FY 1991 outlier payments would have been 4.3 percent of DRG payments. Since all of the payment adjustments were the same in the two runs, the difference between this percent and the 5.1 percent of DRG payments that we estimated must be related to the differences in the cases in the FY 1989 MEDPAR compared to the FY 1991 MEDPAR.

e. *DRG Classification Changes.* In FY 1991, we made significant changes to the DRG classification system that included the establishment of several higher weighted DRGs. By improving the amount of variation in resource costs explained by the DRGs, in setting the FY 1991 outlier payment policy, we were able to lower the outlier thresholds compared to the thresholds that would have been required if we had not made the DRG classification changes.

The DRG classification changes and their effect on FY 1991 aggregate program payments are discussed in Section II.B, above. Our analysis indicates that aggregate payments were one percent higher than they would have been if we had not made the DRG classification changes. The increase is largely attributable to changes in hospital coding practices in response to the DRG changes. The coding improvements also had an effect on actual FY 1991 outlier payments. The following example illustrates how the DRG reclassification changes affected outlier payments.

When comparing the assignment of FY 1991 cases using the FY 1990 and FY 1991 GROUPERs, almost 1,000 cases that would have been in DRG 14 (Specific Cerebrovascular Disorders Except TIA) using the FY 1990 GROUPER moved to DRG 483 (Tracheostomy Except for Mouth, Larynx, or Pharynx Disorder). The average length of stay for these cases was 51 days, and the average standardized charges were $88,401. Total payments for these cases can be calculated with the following data:

DRG	DRG weight	Geometric mean length of stay	Day outlier threshold
14	1.2212	7.3	36
483	14.0597	40.0	68

The payments calculated below assume a cost-to-charge ratio of 0.6606 (the average FY 1991 cost-to-charge ratio), and that the hospital is located in

a large urban area. Using the standardized amounts for a large urban area effective for January 1, 1991 and a wage index value of 1.0 (to which the average charges have been standardized), the payments are calculated as follows:

PAYMENT IN DRG 14 COMPARED TO PAYMENT IN DRG 483

	DRG payment	Outlier payment	Total payment	Outlier percentage
DRG 14	$4,277	$17,548	$21,825	80.4
DRG 483	49,245	—	49,245	0

In estimating the FY 1991 outlier payments, we assigned all the cases in the FY 1989 MEDPAR data to the DRG to which the case would be assigned in FY 1991 based on the diagnoses and procedures indicated on the bill. In the above example, the case in DRG 14 would have been reassigned to DRG 483 if the tracheostomy procedure code had been included on the bill. If the case were assigned to DRG 483, the outlier payment simulation to establish the outlier thresholds would have properly included no outlier payment for the case. On the other hand, if the tracheostomy procedure code had not been included on the bill, the case would have continued to be assigned to DRG 14. If the case were assigned to DRG 14, the outlier simulation would have included an outlier payment and a lower standard payment than would actually occur in FY 1991. The simulation would overstate the outlier payment percentage and the outlier thresholds would be set higher than they would be if the case were fully coded. If the case had been an actual FY 1991 case, it would have been fully coded with the tracheostomy procedure code since the presence of the code would affect payment (whereas it did not in FY 1989). As this example illustrates, coding improvements made in response to the DRG classification changes lowers the outlier payments as a percentage of DRG payments in two ways: It lowers outlier payments, and thus lowers the numerator, and increases DRG payments, and thus increases the denominator.

While we believe that the coding improvements had a significant impact on the outlier payment percentage, we are unable to isolate the effects of these changes from other changes in the distribution of cases or from the effects of the elimination of catastrophic coverage. However, we note that as a result of the DRG classification changes, total program payments are .99 percent higher than they would have been if the reclassification changes had not been made. Thus, while the DRG reclassification changes had the effect of decreasing outlier payments, they also had the effect of increasing total program payments and there was no reduction in aggregate payments in FY 1991.

f. *Repeal of Public Law 100–360 and Changes in Length of Stay.* The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) repealed Public Law 100–360, effective January 1, 1990. Thus, the FY 1989 MEDPAR data included claims that were still covered under the provisions of Public Law 100–360. In estimating the FY 1991 outlier payments, we estimated the effect of catastrophic coverage by comparing the outlier percentage modeled on covered days and charges and on total days and charges using pre-catastrophic billing data and catastrophic billing data. We estimated that outlier payments would be 93 percent of the amounts based on FY 1989 covered days and charges. Therefore, we set the thresholds based on a 5.5 percent outlier percentage (5.1 divided by .93) but reduced the standardized amount by only 5.1 percent. It is possible that we underestimated the effect of catastrophic coverage by using the FY 1989 claims rather than the FY 1991 claims.

Because of catastrophic coverage, we cannot make a direct comparison between the average covered length of stay in FY 1989 and FY 1991 to determine if a change might have affected the number of cases qualifying for day outlier payments. However, we do know that the total average length of stay decreased from 8.548 in FY 1989 to 8.372 in FY 1991. Assuming that in the absence of catastrophic coverage the ratio of covered days to total days would remain constant, the reduction in the total average length of stay implies that there was a reduction in the average length of stay independent of the repeal of catastrophic coverage. This could have reduced the number of cases qualifying for outlier payments.

We note that in making the adjustment for catastrophic coverage in the FY 1991 final rule, we adjusted only our estimate of outlier payments. We did not adjust the estimated number of day outlier cases directly. Therefore, we would expect a reduction in the comparison between estimated day outlier cases and actual day outlier cases. Day outlier cases as a percentage of total cases declined from 1.5 percent to 1.3 percent. We are unable to isolate the reduction attributable to the elimination of catastrophic coverage from other changes in the average length of stay and the DRG classification changes.

g. *Conclusion.* All of the differences between the data we used to estimate the FY 1991 outlier thresholds and the actual data used for determining FY outlier payments could not have been predicted at the time of estimation. We note that in past years we have paid out both less and more than the estimated percent of DRG payments, as the following table illustrates:

Fiscal year	Estimated outlier payment	Actual outlier payment
1984	1.4	1.1
1985	2.5	1.7
1986	3.75	[1] 2.5
1987	5.0	4.0
1988	5.0	6.7
1989	5.1	[2] 6.0
1990	5.1	5.2
1991	5.1	(est.) 4.0

[1] Shortfall due to statutory delay (until May 1, 1986) in the implementation of updated thresholds reflecting decreases in Medicare length of stay.
[2] Includes additional outlier payments attributable to the Medicare Catastrophic Coverage Act of 1989.
NOTE.—For the first three years of the prospective payment system, estimated payments were expressed as a percentage of total payments, even though outlier payments were made only on the Federal portion of the prospective payment system payments. For FY 1984, the thresholds were set to provide outlier payments equal to 5.7 percent of Federal payments; for FY 1985 and FY 1986, the target was 5.0 percent of Federal payments. Actual figures for FY 1985–1987 are estimates based on cost report data. In addition, the estimated payment for FY 1988 increased to 5.1 percent as the result of changes to payments effective April 1, 1988.

In all cases, we set the outlier thresholds based on the most current data we had available. Accordingly, we do not believe that it is appropriate to make an adjustment in prospective payment system payments to account for the difference between the estimated and actual FY 1991 outlier payments, just as we have not made adjustments in earlier years (see 51 FR 31525; 52 FR 33048; 53 FR 38508; 54 FR 36500; 55 FR 36077; and 56 FR 43227).

Although outlier payments were 4.0 percent of total standard DRG payments (exclusive of DSH and IME) instead of 5.1 percent, there was no reduction in total standard DRG payments between the payment per case estimated in the FY 1991 final rule and the actual FY 1991 total standard payment per case. As the following table illustrates, the lower outlier payments were more than offset by the increase in standardized amount payments.

	FY 1991 payment per case	
	Estimated	Actual
Average standardized amount payment	$4414.13	$4533.33
Average Outlier Payment	237.36	188.81
Total standard DRG payment per case	4651.49	4722.14

The average total payment per case increased 1.5 percent over the amount estimated in the FY 1991 final rule. We would expect an increase in the average payment for increases in the case mix index (CMI). The observed CMI increase was 2.5 percent. After removing the increase attributable to the FY 1991 DRG reclassification changes, the net CMI increase is 1.5 percent. Thus, the payment increases attributable to the DRG classification changes offset the payment reductions attributable to lower outlier payments. Moreover, the average payment per case increase of 1.5 percent exceeds our estimate that real case mix change was between 1.0 and 1.25 percent.

Finally, we note that we set the estimated outlier payment percentage at 5.1 percent each year. Thus, the 1.1 percent reduction in outlier payments is not permanent. In contrast, except to the extent the difference between observed and real case mix increase is taken into account in the update factor, the observed CMI increase is built permanently into the payment amounts.

4. FY 1992 Outlier Payments

We anticipate that FY 1992 outlier payments will be less than the 5.1 percent that we estimated when we set the outlier thresholds. The FY 1992 thresholds were set using FY 1990 cases that did not reflect the coding effects of the FY 1991 DRG classification changes. In addition, the first quarter of the FY 1990 data included the effects of catastrophic coverage, for which an adjustment was made in estimating FY 1992 outlier payments. Thus, the considerations involved in estimating the FY 1992 outlier payments and comparing them to a current estimate based on FY 1991 cases and more recent data are similar to those applicable to comparing the estimated FY 1991 outlier payments to the actual outlier payments in that year.

Using the FY 1991 cases and the FY 1992 payment data, we currently estimate that FY 1992 operating outlier payments will be approximately 3.6 percent of FY 1992 total. DRG payments, and that FY 1992 capital outlier payments will also be approximately 3.6 percent of capital DRG payments. (If indirect teaching and disproportionate share payments are included in the calculation, the estimated outlier percentage is 3.7 percent.) The 3.6 percent estimate for FY 1992 is lower than the 4.0 actual outlier percentage for FY 1991 largely because of changes in the payment adjustment factors. The estimate is based on the December 31, 1991 update to the provider-specific file. These data indicate that the payment adjustment factors for DSH and IME have increased relative to the factors used to pay outlier cases in FY 1991 (which were also used to set the FY 1992 thresholds). The increases would have the effect of reducing the hospital's costs in determining cost outlier payments. In addition, the average cost-to-charge ratio has decreased. This would also have the effect of decreasing the hospital's costs. The comparative payment adjustment factors are as follows:

	FY 1992 final rule estimated (3/31/91 update)	FY 1992 current estimate (12/31/91 update)
DSH factor	.0349	.0399
IME factor	.0492	.0512
Cost-to-charge ratio	.6138	.5992

While we estimate that outlier payments for FY 1992 will be lower than expected, we also anticipate that total DRG payments will be higher than expected based on the newer cases that reflect the FY 1991 DRG changes discussed above. Even though our latest estimates of FY 1992 outlier payments indicate that payments will likely fall short of the 5.1 percent outlier pool, for a number of reasons we do not plan to revise the outlier pool or thresholds midway through the current fiscal year to reflect the estimated outlier shortfall.

In accordance with sections 1886(d)(6) and 1886(e)(5)(B) of the Act, we must publish the annual rates for the prospective payment system by September 1 before each fiscal year. The intent of this requirement is to provide hospitals with advanced notice of the prospective payment rates that will be in effect for the upcoming fiscal year. In order to comply with this requirement, all aspects of the rate setting computations must necessarily be made using the latest data available at the time of publication. This is true not only in establishing the outlier pool, but also in forecasting the increase in the hospital market basket, recalibrating the DRG relative weights, and computing the various required budget neutrality adjustments. We do not believe Congress contemplated that we would revise any one of these estimates based on later data that becomes available midway through the fiscal year, nor do we believe it is appropriate to do so. Although in this instance our outlier estimates were understated, there are also instances where our estimates have been overstated, not just for outlier payments, but for other elements of the prospective payment system as well. For example, our market basket rate of increase forecasts used to establish the standardized amounts have been overstated for the past two years; however, we have not revised those forecasts as later data became available during the year. Moreover, with respect to estimating the outlier payment pool, we believe we have complied with the intent of section 1886(d)(5)(A)(iv) of the Act that we establish the pool based on "projected or estimated" total payments for the fiscal year. Accordingly, we are not revising the current outlier thresholds based on this latest estimate of outlier payments for FY 1992.

We are using the payment adjustment data on the December 31, 1991 provider-specific file and a 10.2 percent charge inflation factor to establish the proposed FY 1993 outlier thresholds. The proposed thresholds, set forth below, are lower than the FY 1992 thresholds in order to restore the outlier payment percentage to 5.1 percent based on the most current available data.

5. FY 1993 Proposed Outlier Thresholds

For FY 1993, we propose to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 23 days or 3 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $34,500. The thresholds we would propose if we were not implementing the change in day outlier payment methodology discussed above would be: for day outliers, the geometric mean length of stay for each DRG plus the lesser of 26 days or 3 standard deviations, and for cost outliers, the greater of 2.0 times the prospective payment rate for the DRG or $38,500.

The proposed thresholds would slightly increase the proportion of outliers paid as cost outliers relative to those paid as day outliers. We estimate 44.7 percent of cases would be paid using the cost outlier methodology and 55.3 percent would be paid using the day outlier methodology, compared to 41.3 percent of cases being paid using the cost outlier methodology without the proposed day outlier payment change. Cases that meet the day outlier

threshold but that would be paid using the cost outlier methodology, because it yields the higher payment, would increase from 14.0 percent to 17.9 percent of all outlier cases under the proposed policy.

Our simulation of FY 1993 outlier payments based on FY 1991 MEDPAR data indicates that the percentage of outlier cases that would qualify as day outliers is about 73.2 percent under the proposed policy. The cases qualifying as day outliers would receive 75.8 percent of operating outlier payments in FY 1993. An estimated 26.8 percent of outlier cases would be cost only outlier cases, which would receive about 24.2 percent of operating outlier payments under the proposed policy. The following table illustrates this finding in greater detail:

Type of outlier	Percentage of outlier cases		Percentage of Operating outlier payments		Percentage of capital outlier payments		Percentage of total outlier payments	
	Current policy	New policy	Current policy	New policy	Current policy	New policy	Current policy	New policy
Meets day threshold only	47.5	46.2	25.1	18.5	24.7	18.2	25.0	18.4
Meets day and cost thresholds, paid using day methodology	11.2	9.2	20.7	13.7	20.4	13.5	20.6	13.7
Meets day and cost thresholds, paid using cost methodology	14.0	17.9	32.2	43.7	30.9	41.8	32.1	43.5
Meets cost threshold only	27.3	26.8	22.1	24.2	24.0	26.5	22.3	24.4
Subtotal—all cases meeting day threshold	72.7	73.2	77.9	75.8	76.0	73.5	77.7	75.6
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds would result in the same percentage of outlier payments for capital-related costs as for operating costs. We estimate the proposed thresholds would result in outlier payments equal to 5.1 percent of operating DRG payments and 5.1 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors that would be applied to the standardized amounts and the capital Federal rate for FY 1993 are as follows:

Standardized amount		Capital Federal rate
Urban	Rural	
0.944828	0.978085	0.9490

6. Other Changes Concerning Outliers

We propose to remove certain provisions of § 412.82 that are now obsolete. One provision in § 412.82(c) sets forth the factors to be used to compute day outlier payments during the transition period to the prospective payment system for inpatient hospital operating costs. It applied to cost reporting periods beginning before October 1, 1987 and is no longer applicable. We also propose to remove paragraph § 412.82(d). This provision was implemented to conform our regulations to section 4008(d)(1)(A) of Pub. L. 100–203 which directed the Secretary to compute day and high cost outlier payments for burn cases using a marginal cost factor of 90 percent in place of the 60 percent and 75 percent factor we used to calculate day and high cost outlier payments for other types cases. As explained in section C.1., the statute was effective only for discharges occurring on or after April 1, 1988 and before October 1, 1989. Unlike payments for high cost, burn outliers, we did not continue to use a 90 percent marginal cost factor to compute payments for day outlier burn cases following expiration of the statutory provision. Therefore we are proposing to delete § 412.82(d) since it is no longer applicable in determining day outlier payments.

Table 8a in section IV of the addendum to this proposed rule contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. Effective October 1, 1992, these Statewide average ratios replace the ratios published in the August 30, 1991 final rule (56 FR 43196). Table 8b contains comparable Statewide average capital cost-to-charge ratios. We propose that these average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.316374 or greater than 1.27564 and capital cost-to-charge ratios lower than 0.014496 or greater than 0.248882. This range represents 3 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. The cost-to-charge ratios in Tables 8a and 8b would be applied to all hospital-specific cost-to-charge ratios based on cost report settlements occurring during FY 1992.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center (that is, payment is based on the other urban payment rate rather than the rural payment rate). One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital is classified as a rural referral center if its—

- Case-mix index is equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (We note that the number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of

determining rural referral center status. In determining the proposed national and regional case-mix index values, we would follow the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value includes all urban hospitals nationwide and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

These values are based on discharges occurring during FY 1991 (October 1, 1990 through September 30, 1991) and include bills posted to HCFA's records through December 1991. Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1992, a hospital's case-mix index value for FY 1991 would have to be at least—

- 1.2791; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located.

The median case-mix values by region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.1789
2. Middle Atlantic (PA, NJ, NY)	1.1865
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.2779
4. East North Central (IL, IN, MI, OH, WI)	1.2099
5. East South Central (AL, KY, MS, TN)	1.2247
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	1.1978
7. West South Central (AR, LA, OK, TX)	1.2766
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3073
9. Pacific (AK, CA, HI, OR, WA)	1.2761

The above numbers will be revised in the final rule to the extent required if additional bills are received for discharges through September 30, 1991.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1991 case-mix index values in Table 3c in section IV of the addendum to this proposed rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii)(II) of the Act, the national standard is set at 5,000 discharges. However, we are proposing to update the regional standards. The proposed regional standards are based on discharges for urban hospitals' cost reporting periods that began during FY 1990 (that is, October 1, 1989 through September 30, 1990). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1992, the number of discharges a hospital must have for its cost reporting period that began during FY 1991 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the table below:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	7,236
2. Middle Atlantic (PA, NJ, NY)	8,353
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7,029
4. East North Central (IL, IN, MI, OH, WI)	8,096
5. East South Central (AL, KY, MS, TN)	5,576
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	5,957
7. West South Central (AR, LA, OK, TX)	5,251
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7,511
9. Pacific (AK, CA, HI, OR, WA)	5,393

We note that all the regional standard now exceed the national of 5,000. Therefore, 5,000 discharges is now the standard all hospitals will have to meet. We reiterate that to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1992, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1991 would have to be at least 3,000.

3. Retention of Referral Center Status

In the August 31, 1984 final rule, we announced that we were instituting a periodic review of the status of hospitals that qualified for a payment adjustment as a referral center (49 FR 34746). That final rule stated that this review would allow us to determine if these hospitals continued to meet the criteria for referral center status. The final rule stated that we would grant referral center status to a hospital for a 3-year period. At the end of the 3 years, we would evaluate a hospital's performance in meeting the criteria for qualifying as a referral center. A hospital would have been required to meet the criteria for at least 2 of those 3 years. If it did, the hospital would retain its referral center status for another 3-year period. If the hospital did not meet the criteria for at least 2 of the 3 years, the hospital's status as a referral center would end with the last day of the third cost reporting period for which it received the referral center payment adjustment.

Before we were able to implement this review, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) was enacted on October 21, 1986. Section 9302(d)(2) of Public Law 99-509 stated that any hospital that was classified as a rural referral center on the date of the enactment of that law would continue to be classified as a referral center for cost reporting periods beginning on or after October 1, 1986 and before October 1, 1989. Thus, any hospital that was classified as a referral center as of October 21, 1986 (the date of enactment of Public Law 99-509) was guaranteed this status through its cost reporting period beginning before October 1, 1989.

We again attempted to implement the referral center triennial reviews in 1989. In the May 8, 1989 proposed rule (54 FR 19653) and in the September 1, 1989 final rule (54 FR 36486), we reiterated the review criteria and the methodology that we would follow in performing the reviews. However, since some referral centers had been so classified for more than 3 years, the triennial review would be limited to the hospital's compliance during the last 3 years.

Shortly after implementation of the triennial review procedures on October 1, 1989, Congress enacted the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) on December 18, 1989. Section 6003(d) of that Act stated that any hospital that was classified as a referral center as of September 30, 1989, including those so classified as a result of section 9302(d)(2) of Public Law 99-509, would continue to be classified

as a referral center for cost reporting periods beginning on or after October 1, 1989 and before October 1, 1992. In the September 4, 1990 final rule (55 FR 36070), the regulations at § 412.96(g)(2) were revised to reflect this provision. These regulations state that referral center status for those hospitals that do not meet the retention criteria will terminate with the first cost reporting period beginning on or after October 1, 1992.

We believe it is important that the rural referral center benefit be available only to those hospitals that continue to be in compliance with the statutory criteria for designation. Therefore, with the expiration of the requirement of section 6003(d) of Public Law 101–239 on October 1, 1992, we are implementing the retention criteria and methodology specified in § 412.96(f) that we had developed previously. These criteria and methodology were discussed in the June 10, 1985 proposed rule (50 FR 24380), in the September 3, 1985 final rule (50 FR 35676) and in the September 1, 1989 final rule (54 FR 36486).

Basically, to retain status as a referral center, a hospital will have to meet the criteria for classification as a referral center specified in § 412.96 (b)(1) or (b)(2) or (c) for 2 of the last 3 years or it must qualify on the basis of the requirements for the current year. A hospital may meet any one of three sets of the specific criteria for individual years during the 3-year period or the current year. For example, a hospital may meet the two mandatory requirements in § 412.96 (c)(1) (case-mix index) and (c)(2) (number of discharges) and the optional criterion in paragraph (c)(3) (medical staff) during the first year. During the second or third year, the hospital may meet the criteria under § 412.96(b)(1) (rural location and appropriate bed size).

A hospital will have to meet all of the criteria within any applicable section of the regulations in order to meet the retention criteria for a given year. That is, it will have to meet all of the criteria of § 412.96(b)(1) or § 412.96(b)(2) or § 412.96(c). For example, if a hospital meets the case-mix index standards in § 412.96(b)(2) in years 1 and 3 and the number of discharge standards in § 412.96(c)(2) in years 2 and 3, it will not meet the retention criteria. All of the standards would have to be met in the same year.

In accordance with § 412.96(f)(2), the review process will be limited to the hospital's compliance during the last 3 years. Thus, if a hospital meets the criteria for at least 2 of the last 3 years or for the current year the criteria for FY 1993 outlined above in section V.C.1 and 2 of this preamble, it will retain its status for another 3 years. No hospital will be subject to a review until the end of its third full cost reporting period as a referral center. We have constructed the following chart and example to aid hospitals and qualify as referral centers under the criteria in § 412.96(c) in projecting whether they will retain their status as a referral center.

Under § 412.96(f), to qualify for a 3-year extension effective with cost reporting periods beginning in FY 1993, a hospital must meet the mandatory criteria in § 412.96(c) for FY 1993 or it must meet the criteria for 2 of the last 3 years as follows.

For the cost reporting period beginning during FY	Use hospital's case-mix index for FY	Use the discharges for the hospital's cost reporting period beginning during FY	Use numerical standards as published in the **Federal Register** on
1992	1990	1990	August 30, 1991.
1991	1989	1989	September 4, 1990.
1990	1988	1988	September 1, 1989.

Example: A hospital with a cost reporting period beginning July 1 qualified as a referral center effective July 1, 1988. The hospital has fewer than 275 beds. Its status as a referral center is protected through June 30, 1993 (the end of its cost reporting period beginning July 1, 1992). To determine if the hospital should retain its status as a referral center for an additional 3-year period, we will review its compliance with the applicable criteria for its cost reporting periods beginning July 1, 1990, July 1, 1991, and July 1, 1992. The hospital must meet the criteria either for its cost reporting period beginning July 1, 1993 or for two out of the three past periods. For example, to be found to have met the criteria, at § 412.96(c)(2) for its cost reporting period beginning July 1, 1991, the hospital's case-mix index value during FY 1989 must have equaled or exceeded the lower of the national or the appropriate regional standard as published in the September 4, 1990 final rule. The hospital's total number of discharges during its cost reporting year beginning July 1, 1989 must have equaled or exceeded 5,000 or the regional standard as published in the September 4, 1990 final rule.

For those hospitals that seek to retain referral center status by meeting the criteria of § 412.96 (b)(i) and (b)(1)(ii) (that is, rural location and appropriate bed size (500 or more beds for discharges occurring before April 1, 1988 and 275 or more beds thereafter)), we will look at the number of beds shown for indirect medical education purposes (as defined at § 412.105(b)) on the hospital's cost report for the appropriate year. We will consider only full cost reporting periods when determining a hospital's status under § 412.96(b)(1)(ii). This definition varies from the bed size criterion used to determine a hospital's initial status as a referral center because we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds throughout its entire cost reporting period, not just for a particular portion of the year.

C. Direct Graduate Medical Education Payment (§ 413.86)

Section 1886(h) of the Act sets forth the provisions governing direct payments for graduate medical education. As implemented by regulations at § 413.86, HCFA pays a hospital a fixed amount per full time equivalent (FTE) resident employed by the hospital. Under § 413.86(f), HCFA determines the number of hospital resident FTEs by applying a weighting factor to each resident.

In order to be given an FTE weight of greater than zero, under § 413.86(h), a foreign medical graduate must pass the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS), or before July 1, 1986, have received certification from, or passed an examination of the Educational Committee for Foreign Medical Graduates. On or after September 1, 1989, the National Board of Medical Examiners Examination (NBMEE), parts I and II, may be substituted for the FMGEMS. Failure to meet the qualifying requirements on the part of a foreign medical graduate results in an FTE weight of zero being assigned to that resident. The hospital, as a result, would not receive any direct graduate medical education payments for that resident.

Both the FMGEMS and the NBMEE are about to be replaced by the United States Medical Licensing Examination (USMLE). Beginning June 1, 1992, foreign medical graduates will have the option of taking the USMLE or the FMGEMS. Effective in July 1, 1993, only the USMLE will be administered, and foreign medical graduates must pass steps I and II in order to receive certification. Therefore, we are proposing to revise § 413.86(h) to reflect this change in the examination requirements.

We note that section 1886(h) of the Act references only the FMGEMS. Therefore, we intend to seek a technical amendment so that the statute will

provide explicitly for recognition of successor tests. We expect the Congress to act on the technical amendment within one year.

VI. Proposed Changes to Capital Prospective Payment System Rules

A. Payments to New Hospitals (§§ 412.300, 412.302, 412.324, and 412.328)

The August 30, 1991 final rule implementing the capital prospective payment system established special payment provisions for new hospitals (56 FR 43418). Under § 412.324(b), a new hospital is paid 85 percent of its allowable Medicare capital-related costs through its cost reporting period ending at least 2 years after the hospital accepts its first patient. Beginning with the third year, the hospital is paid under the fully prospective or hold-harmless payment methodology, as appropriate. If the hospital is paid under the hold-harmless payment methodology, the hospital's hold-harmless payments for its old capital costs continue for up to 8 years.

As defined under § 412.300(b), a new hospital is one that has operated (under previous or present ownership) for less than 2 years and does not have a 12-month cost reporting period that ends on or before December 31, 1990. As a result of situations brought to our attention since the publication of the August 30, 1991 final rule, we are proposing to refine the definition of a new hospital and clarify how we would treat facilities that have operated for more than 2 years but do not have a 12-month cost reporting period ending on or before December 31, 1990. These changes are necessary to ensure that hospitals that actually had an existing asset base on or before December 31, 1990 are not inadvertently provided with an extended transition period and potentially higher payments than other hospitals.

We believe that it is essential to maintain the integrity of the capital prospective payment system by allowing only truly new providers of hospital care to qualify for the new hospital exemption. The exemption is intended to protect hospitals that come under the capital prospective payment system without a historic asset base and need special consideration for their original plant and equipment costs during their initial years of operation. Therefore, we are proposing to clarify that the new hospital exemption under the capital prospective payment system would not apply to a facility that opens as an acute care hospital if that hospital operated in the past under current or previous ownership and has a historic asset base.

Examples of hospitals with an existing asset base that open as acute care hospitals include a hospital that closes and subsequently reopens (under either its original or different ownership), and a facility that changes its certification from a specialty hospital that is excluded from the capital prospective payment system to an acute care hospital. Although a facility may be treated as a new hospital for certification or other payment purposes when it has previously operated as a hospital, it would not qualify for a new hospital exemption under the capital prospective payment system. As is the case with other acute care hospitals, Medicare program payment has been made to the facility in the past under reasonable cost reimbursement rules, either for the same physical assets or for assets that have been replaced, and the hospital had old capital costs as of December 31, 1990. If the facility were permitted to qualify for the new hospital exemption, we would be extending its cut-off date for old capital beyond the date allowed other hospitals with an existing asset base. We believe it is inappropriate to provide the hospital with a special payment protection that is not afforded other hospitals that were in operation before the effective date of the capital prospective payment system. The reasonable cost payment protection under the new hospital exemption should only be available to those hospitals that have not received reasonable cost payments in the past and need special protection during their initial period of operation.

Also, we propose to clarify that a hospital that replaces its entire facility (with or without a change of ownership) does not qualify for a new hospital exemption. Although the hospital may experience a significant change in its asset base, we believe it would be inappropriate to provide the hospital with special payment protection. If we were to allow new facilities built by existing hospitals to qualify for the new hospital exemption, we would provide an inappropriate incentive for hospitals to replace their existing plant instead of renovating or expanding their current facility. If the capital prospective payment system is to be effective in encouraging prudent capital spending, payment must be neutral with respect to decisions concerning whether to renovate or replace existing assets.

Therefore, we are proposing to amend the definition of a new hospital at § 412.300(b) to clarify that the exemption applies only to hospitals that have been in operation for less than 2 years and does not apply to the following situations:

- A hospital that changes status from an excluded hospital paid under section 1886(b) of the Act to an acute care hospital subject to the provisions of section 1886(d) of the Act.
- A hospital that has been in operation for more than 2 years but has been participating in the Medicare program for less than 2 years.
- A hospital that closes and then reopens under either the same or different ownership.
- A hospital that builds a new or replacement facility at the same or a new location, even if a change in ownership or new leasing arrangements are involved.

Consistent with these changes, we are proposing to revise § 412.328 to clarify that if a hospital (other than a new hospital) does not have a 12-month cost reporting period ending on or before December 31, 1990 as an acute care hospital, the hospital's hospital-specific rate would be based on the hospital's old capital costs per discharge in its first 12-month cost reporting period (or combination of cost reporting periods covering at least 12-months) ending after December 31, 1990. All other transition payment rules apply to the hospital effective with the first cost reporting period that it is subject to the capital prospective payment system.

We are also proposing to clarify the old capital definition applicable to hospitals that qualify for a new hospital exemption. Under § 412.328(a)(2), a new hospital's base period is its 12-month cost reporting period (or combination of cost reporting periods covering at least 12 months) that begins at least 1 year after the hospital accepts its first patient. Although the preamble of the August 30, 1991 final rule (56 FR 43418) stated our intent to treat the hospital's base year costs as old capital costs, the regulations do not explicitly contain this provision. We are proposing to revise § 412.302 to define a new hospital's old capital costs as its allowable capital-related costs for land and depreciable assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of its base period cost reporting period. The limitations in § 412.302(b) that apply to old capital costs would also apply to a new hospital except that the limitations would be based on the hospital's old capital costs for assets that were put in use as of the later of December 31, 1990 or the last day of its base period cost reporting period. We are not proposing any change in the obligated capital provisions with respect to new

hospitals; that is, new hospitals are subject to the same rules on obligated capital as other hospitals (see § 412.302(c)).

B. Portion of Hospital Assets Put in Patient Care Service After December 31, 1990 (§ 412.302)

In the preamble to the August 30, 1991 final rule, we addressed a comment concerning how a situation involving a portion of a hospital that was leased to another party as of December 31, 1990 should be treated if the hospital subsequently takes possession of the space and uses it for patient care (56 FR 43396). We responded to the comment by indicating that the space, which would be a nonreimbursable-cost center in the hospital's base year, would be recognized as old capital when it is subsequently used by the hospital for patient care. Although we addressed this specific situation in our response to comments in the final rule, we did not establish a general principle to follow in situations where nonreimbursable cost centers in the base year subsequently become allowable cost centers. We believe that such situations regularly occur in hospital operations and must be specifically addressed in our rules defining old and new capital.

We propose to revise § 412.302(b) to address situations in which a hospital may have a nonreimbursable cost center or otherwise incur unallowable hospital costs for a depreciable asset as of December 31, 1990. Examples of these unallowable costs include costs attributable to space or equipment that is leased to another party or used to provide non-hospital services in part of a building or department that is also used to provide acute care inpatient hospital services. To the extent the costs of such space or equipment become allowable inpatient hospital capital-related costs after December 31, 1990, those costs would be recognized as old capital costs as long as a portion of the asset was in use for hospital inpatient care as of December 31, 1990. The allowable costs that could be recognized as old capital costs would be subject to the current provisions at § 412.302(b). If no portion of an asset was used to provide hospital inpatient care as of December 31, 1990, any allowable hospital inpatient capital-related costs of the asset would be recognized as new capital costs when the asset was returned to hospital inpatient care service.

We considered proposing that any portion of an asset that was not used for patient care as of December 31, 1990, and was subsequently put in use for patient care, would be classified as new capital. This approach would be consistent with our definition of old capital costs since the nonreimbursable portion of the asset's costs was not an allowable cost as of December 31, 1990 because the asset was not in use for patient care. However, this approach would require that we classify the same asset as old capital with respect to the portion that was in use for patient care as of December 31, 1990, and as new capital with respect to the portion that was in use for nonhospital care as of December 31, 1990. We believe that for purposes of cost finding and the determination of allowable inpatient hospital costs, an individual asset should be considered as either old or new capital, but not both. Therefore, we are proposing that if a portion of an asset was in use for hospital patient care as of December 31, 1990, subject to the limitations in § 412.302(b) on old capital costs, we would recognize as old capital costs any costs for other portions of the asset that subsequently become allowable. If no portion of an asset was in use for hospital patient care as of December 31, 1990, the asset would be classified as new capital if it is subsequently put in use for hospital patient care. We have chosen December 31, 1990 as the cut-off date because the old capital definition implicitly assumes that an asset was put in use on or before December 31, 1990 and continues in use as of December 31, 1990. We do not believe that an asset that was put in use for hospital patient care before December 31, 1990 but was taken out of hospital patient care service by December 31, 1990 should be classified as old capital and receive the same protection under the hold-harmless provision as an asset that was actually in use for hospital patient care as of December 31, 1990.

The proposed policy provides protection for space or equipment costs that are an integral part of assets that otherwise qualify as old capital, while preventing an inappropriate extension of the hold-harmless protections to buildings and equipment that were not used for hospital patient care as of December 31, 1990. We wish to avoid incentives for hospitals to circumvent the capital prospective payment system by converting existing assets that are used to provide nonhospital patient care into hospital assets that would be protected under the hold-harmless methodology while receiving payment under Medicare program benefits for the replacements for the non-hospital assets on a reasonable costs basis. This could occur, for example, if beds in a building used to provide skilled nursing facility services in a multiple-facility complex were converted to acute care beds and new SNF beds were put in service.

C. Treatment of Old Capital Costs When Hospitals Are Leased After December 31, 1990 (§ 412.302(b))

The August 30, 1991 final rule addressed how various situations involving changes of ownership and sale-and-leaseback transactions are treated under the capital prospective payment system (56 FR 43395 and 43405). Since publication of the final rule, an additional situation has been brought to our attention that merits clarification. When an entire hospital operation is leased without transfer of the asset costs of the previous operator, those asset costs on which the old capital determination was based are no longer the allowable capital-related costs of the hospital. At that time, the new owner's lease costs become the allowable capital-related costs of the hospital. Under § 412.302(b)(3), which limits old capital lease costs to the lease amount obligated as of December 31, 1990, the hospital's lease costs would be new capital. However, in other change of ownership situations occurring after the December 31, 1990 cut-off date for old capital, we allow the old capital determinations applicable to the old owner to continue to apply to the new owner (see 56 FR 43395 and 43405). We believe that it is appropriate to deal with the leasing of the entire facility in a similar manner.

We propose to revise § 412.302(b) to allow continued recognition of the base period old capital cost determinations in situations where a hospital is leased without assumption of the hospital's asset costs. However, we would limit the amount of allowable capital-related costs that could be recognized as old capital to the amount that could be recognized for the same assets in the last cost reporting period before the current operating lease became effective. Any cost above that limitation would be paid for as new capital cost. This policy would affect only those hospitals eligible for capital prospective payments on the basis of the hold-harmless methodology. In those cases, a hospital would not be held harmless for any increased costs resulting from the lease arrangement entered into after December 31, 1990. This approach would be consistent with the general policy of extending the hold-harmless protection only to capital commitments entered into by the December 31, 1990 cut-off date. It would also be consistent with the limitation on the valuation of a new owner's basis in an asset that undergoes

change of ownership, set forth in section 1861(v)(1)(O) of the Act.

For purposes of determining old capital costs, treatment of lease costs that involve leasing of portions of a hospital's operation or assets would continue to be subject to the provisions of § 412.302 (b)(3) and (c)(1)(vi).

D. Obligated Capital Costs (§ 412.302(c))

1. Deadline for Putting Assets in Use

Capital-related costs attributable to assets that are put in use after December 31, 1990 but for which the hospital was obligated as of December 31, 1990 may be recognized as old capital costs under certain conditions. Under the general rule related to contractual obligations (§ 412.302(c)(1)) and the special rule relating to construction-in-progress (§ 412.302(c)(3)), one condition is that the asset be put in use for patient care before October 1, 1994. Under the rule relating to hospitals affected by a lengthy certificate-of-need (CON) process (§ 412.302(c)(2)), the asset must be put in use before the earlier of October 1, 1996 or 4 years from the date the certificate-of-need was approved. Under § 412.302(c)(1)(iv), if a hospital experiences delays due to extraordinary circumstances beyond its control, HCFA may extend the deadline for putting an asset in use to no later than September 30, 1996. Extraordinary circumstances include, but are not limited to, a construction strike or atypically severe weather that significantly delayed completion of a construction project. Normal construction delays do not constitute extraordinary circumstances.

The current regulations do not establish a process for granting an extension in the deadline. We are proposing to require that a hospital requesting an extension of the deadline must notify its intermediary of the extraordinary circumstances that delayed, or will delay, completion of the project beyond the original deadline. The request for an extension must be in writing and filed with the intermediary by the later of January 1, 1993 or within 180 days of the event leading to the delay. The request must describe the circumstances contributing to the delay and explain why they are extraordinary and beyond the hospital's control. The request must also explain why the delay cannot be overcome and must provide a new estimated completion date established by the contractor, supplier, or other servicing party. The intermediary would review and verify the documentation submitted by the hospital. The intermediary would forward the request and the results of its review to HCFA within 60 days. Unless additional information is required, HCFA would notify the intermediary of its decision on the request within 90 days of receiving the request from the intermediary.

2. Deadline for Notifying Intermediary of Obligated Capital

Section 412.302(c)(1)(v) provides that a hospital must notify its intermediary that it has obligated capital within 90 days of the date the hospital first becomes subject to the capital prospective payment system. The hospital's notification must include documentation establishing that the capital project meets the criteria for recognition as obligated capital and a description of the project and its estimated costs as of December 31, 1990. The intermediary determines whether the applicable criteria are met and notifies the hospital of its decision before the close of the hospital's first cost reporting period under the capital prospective payment system. The intermediary's determination is contingent on the asset being put in use for patient care by the applicable date.

We established the notification and review process for obligated capital for three basic reasons that we still believe are appropriate. First, the old capital cost determination for obligated capital relates to the status of the project and its estimated costs as of December 31, 1990. We believe a prompt submission contemporaneous with when the project was obligated and when the intermediary would be performing base year audits would facilitate both the submission of proper supporting documentation and the determination process. In addition, we want to fix as soon as feasible the amount of obligated capital that will be recognized as the assets are put in use in order to refine the capital acquisition model used for budget neutrality calculations. Finally, we believe that it is appropriate for hospitals to know in advance whether a project will be recognized as old capital and the amount of the limitation on the project costs that will be recognized as old capital costs.

Since the publication of the final capital prospective payment rule, intermediaries and hospital representatives have indicated that although the notification requirement was clearly set forth in the August 30, 1991 final rule (56 FR 43450) and in the interim hospital-specific rate notification letters sent to hospitals at least 30 days prior to their first cost reporting period under the capital prospective payment system, some hospitals did not notify their intermediary of obligated capital within the required 90 days after the beginning of their first cost reporting period under the capital prospective payment system. Also, since the notification deadline occurs before the end of the third month after a hospital becomes subject to capital prospective payments, some hospitals missed the deadline due to confusion over the distinction between 90 calendar days and a 3-month period.

In view of the shorter timeframe for some hospitals between the publication of the August 30, 1991 final rule and the start of their first cost reporting period under the capital prospective payment system, and to avoid disadvantaging some hospitals that might not have understood the importance of making a timely submission to the intermediary, we have decided to revise § 412.302(c)(1)(v) to extend the deadline for submission of obligated capital cost documentation. We propose to require that a hospital must notify its intermediary of any obligated capital by the later of October 1, 1992 or 90 calendar days after the hospital becomes subject to the capital prospective payment system.

We believe the extension would provide adequate time for all hospitals to familiarize themselves with the requirements for submitting the obligated capital documentation to the intermediary. Also, this action provides a renewed opportunity to submit documentation for hospitals that previously did not submit a notification of obligated capital because of concern about meeting one or more of the qualifying criteria. However, hospitals should be aware that even if they may later meet criteria which they initially anticipated could not be met, there would be no further relief from the notification deadline for submission of obligated capital cost documentation.

Consistent with the extension of the notification deadline for the hospital, we would also extend the deadline for the intermediary's notification to the hospital of its obligated capital determination. We would provide that the intermediary would have 1 year from the date the hospital submits its complete documentation to advise the hospital of its decision.

3. Certificate-of-Need Approvals

Under § 412.302(c)(2), a capital project that is affected by a lengthy certificate-of-need (CON) approval process may qualify as old capital if certain conditions are met. One of the conditions is that the hospital filed the initial CON application on or before December 31, 1989 and had not received

approval as of September 30, 1990. If the hospital received approval no later than September 30, 1990, we believe it is reasonable for the hospital to have entered into a contractual obligation for the project on or before December 31, 1990, in which case the project would qualify under the general rule for obligated capital.

Since the publication of the August 30, 1991 final rule, we have identified situations where the State granted an approval that is conditional upon the hospital fulfilling certain requirements. Since the August 30, 1991 final rule did not describe what would constitute a CON approval, we are proposing to clarify how conditional approvals will be treated under the obligated capital rule.

The conditions in the CON approval may or may not prevent the hospital from proceeding with project activities without delay. For example, a requirement that the hospital obtain adequate financing would not prevent the hospital from entering into a contractual obligation to initiate the project by December 31, 1990. Similarly, conditions related to making minor design modifications would not impede the hospital's ability to proceed with the project. On the other hand, if the hospital received an approval as of September 30, 1990 that was contingent upon a major change in the scope of the project, it would be unreasonable to expect the hospital to enter into a contract for or otherwise proceed with the project by December 31, 1990, since additional planning and design activities may be required.

We propose to amend § 412.302(c)(2)(i)(B) to provide that if a hospital received conditional CON approval for a project, the intermediary would assess the nature of the conditions and determine whether the hospital received sufficient approval for the scope of the project to proceed with the project without undue delay. We believe that the intermediary could best ascertain whether such conditions were sufficient in themselves, given the specific circumstances, to prevent a hospital from proceeding with the project without delay. As is the case with other obligated capital determinations, there would be an internal review process for the intermediary to obtain guidance on questionable cases.

E. Adjusting the Hospital-Specific Rate—Transfer-Adjusted Discharge and Case-Mix Index for Subsequent Base Periods (§§ 412.328 (b)(3) and (c)(1))

Section 412.328(b)(3) provides for the determination of a transfer adjustment factor for each hospital. The transfer adjustment factor is used to adjust the discharge count and the case-mix index used to calculate each hospital's hospital-specific rate. Payment for transfer cases is made on a per diem rate basis, not to exceed the full DRG rate. There is no distortion in the hospital-specific rate if the transfer is paid at the full DRG rate. However, to the extent that a transfer is paid on the per diem rate, the hospital-specific rate would either be understated by counting the transfer as a full discharge, or overstated by excluding the transfer entirely from the discharge count. In developing the August 30, 1991 final rule, we determined that it was not administratively feasible to remove the costs associated with such transfer cases from the allowable capital-related costs in the base period. Instead, we adopted an adjustment to the discharge count to assure that transfers are counted in determining the hospital-specific rate only to the extent that a hospital received a proportionate payment for them. To determine the transfer adjustment factor, we first construct a beneficiary file for a particular cost reporting period from MEDPAR (for the initial base year determinations, the MEDPAR data received as of June 30, 1991). We then count each case as the lower of 1.0 or the result obtained by dividing the length of stay (LOS) for a case by the geometric mean LOS for the case DRG. Thus, a weighted average of the cases represents a proportion of a discharge in each transfer case, not to exceed 1.0. To determine the transfer adjustment factor for each hospital, we then add together the adjusted discharges and divide by total discharges, including transfers.

We also provided in § 412.328(c) for a similar adjustment to the case-mix index for each hospital by multiplying the DRG weight for a transfer case by the ratio of the actual LOS for the case to the geometric mean LOS for the DRG. Using the transfer-adjusted discharge count and case-mix index, we ensured that a hospital's hospital-specific rate would match its costs per discharge.

We provided only for the transfer adjustment factors for the initial base year period in the August 30, 1991 final rule. Therefore, we are proposing to amend §§ 412.328(b)(3) and 412.328(c) to apply appropriately updated transfer adjustment factors for later cost reporting periods that may be used as base periods in the case of a new hospital or a hospital-specific rate redetermination. For later base periods beginning before October 1, 1991, HCFA would determine the discharge transfer adjustment factor for a hospital using the applicable base period MEDPAR data on file as of the December 31 or June 30 update occurring at least 6 months after the close of the base period involved. Thus, for cost reporting periods ending on or before June 30, 1991 the transfer-adjusted case mix index and discharge transfer adjustment factor in Table 9 would be considered final values. Values for cost reporting periods ending after June 30, 1991 through December 31, 1991 would be published in the final rule. For subsequent periods beginning on or after October 1, 1991, the intermediary for the hospital would determine the discharge transfer adjustment factor for a base period using the most recent billing data available from the Provider Statistical and Reimbursement System as of the date of the final determination of the hospital-specific rate. The transfer-adjusted case-mix index would be determined by using the same data that is used to determine the discharge transfer adjustment factor.

F. Redetermination of the Hospital-Specific Rate (§ 412.328(f))

Section 412.328(f) provides that upon request by a hospital paid under the fully prospective payment methodology, the intermediary redetermines the hospital-specific rate to reflect changes in old capital costs as determined in a cost reporting period beginning subsequent to the base period but no later than the hospital's cost reporting period beginning in FY 1994 (or the cost reporting period beginning after obligated capital that is recognized as old capital is put in use, if later). New capital costs are excluded for the calculation of the revised hospital-specific rate. The revised hospital-specific rate is effective with the beginning of the new base period and continues through the remainder of the transition unless the hosptial requests another redetermination. If the revised hospital-specific rate is higher than the Federal rate (after taking into account the estimated effect of outliers and the payment adjustments), the hospital is paid under the hold-harmless methodology effective with the beginning of the new base period.

Section 412.328(f) (as amended by the January 27, 1992 correction notice (57 FR 3016) to the August 30, 1991 final rule) requires that hospital request for a redetermination of the hospital-specific rate must be made not later than 90 days after the close of the hospial's first cost reporting period beginning on or after October 1, 1991, or the cost reporting period that will serve as the new base year, whichever is later.

Since publication of the August 30, 1991 final rule, we have received a number of questions regarding the basic criteria for a hospital-specific rate determination and the process for requesting a redetermination. These questons indicate confusion over when a request for redetermination is appropriate, what responsibilities the hospital has in requesting a redetermination, and whether a hospital is bound by the outcome of the intermediary determinaton of the revised hospital-specific rate. To help to resolve these issues, we are proposing the following clarifications to the regulations.

We would amend § 412.328(f)(1)(i) to clarify that a redetermination is permitted only when there is an increase in the hospital's old capital costs. We would state explicitly that no redetermination would be made to recognize other conditions that could affect the hospital-specific rate, such as a decline in utilization that produced an increase in the hospital's old capital cost per discharge. As discussed in the preamble to the August 30, 1991 final rule (56 FR 43389), we provided for hospital-specific rate redeterminations as a way of addressing certain situations in which a hospital's base year costs may be sufficiently distorted that they should not be used to determine the hospital's payments throughout the transition period. We selected the redetermination approach over other alternatives since we felt it was most consistent with our decision to provide for limited recognition of obligated capital costs. We believe that a redetermination of the hospital-specific rate based on the hospital's capital cost in the subsequent cost reporting period is a reasonable and appropriate way to take these increases in old capital costs into account for hospitals paid under the fully prospective methodology.

However, we do not believe a redetermination is appropriate when the hospital-specific rate is affected by factors other than an increase in old capital costs. This would include an increase in a hospital's old capital cost per discharge that is solely related to a decline in utilization. We noted in the preamble to the August 30, 1991 final rule that one purpose of moving to a per discharge payment was to enable the Medicare program to provide incentives for efficiency by ending subsidies for underutilized capacity (56 FR 43363). We indicated that building an occupancy adjustment into the hospital-specific rate would undermine the incentives of the prospective payment system. Further, we noted that we did not believe a redetermination of the hospital-specific rate to reflect fluctuations in occupancy rates was appropriate (56 FR 43412). With regard to special payment protection policies, we noted that although the minimum payment level provides protection against large utilization declines, we explicitly provided that payments would not be made under the extraordinary circumstances exceptions policy for financial losses attributable to declines in patient volume (56 FR 43411). Similarly, it was not our intent to protect hospitals from financial losses attributable to declines in patient volume through the hospital-specific rate redetermination process.

Current regulations provide that a request for redetermination must be made within 90 days of the close of the affected cost reporting period, when the cost report is ordinarily due. We propose to amend § 412.328(f)(1)(iii) to extend the deadline to coincide with the cost report due date and any extension in the cost report filing date granted by the intermediary. We believe revising the regulations to conform with existing administrative practice on the cost report filing deadline is appropriate since the cost report contains essential documentation for redetermining the hospital-specific rate. We note that if the hospital does not file the cost report timely in accordance with the filing date established by the intermediary, the redetermination request must nevertheless be filed timely to receive intermediary consideration.

We believe that hospitals must recognize the significance of requesting a redetermination for increased old capital costs for themselves and for the intermediary who must process the request and make the final hospital-specific rate determination. We wish to avoid unnecessary requests, that is, situations where the redetermined hospital-specific rate would be lower than the hospital's current rate. As a result, we propose to revise § 412.328(f)(1)(iii) so that a hospital requesting a redetermination must submit, along with the cost report for the period it is requesting as its new base year, an estimate indicating that its new hospital-specific rate would be higher than its current rate. In our view, the hospital is an active participant in the redetermination process and thus should not initiate a request unless it has a reasonable expectation of a positive outcome. However, since at the time a redetermination is requested the hospital's current old capital costs have not been audited and the Medicare statistical data is subject to change, we also propose to amend § 412.328(f)(3) to provide that if the intermediary determines after audit that the new hospital-specific rate is lower, the hospital would be allowed to withdraw its request within 60 days of the intermediary's notification to the hospital of the redetermined rate. This change would protect a hospital that acted responsibly in requesting a redetermination.

G. Effect of Hospital Mergers, Consolidations or Dissolution on the Hospital-Specific Rate (§ 412.331)

In the preamble to the August 30, 1991 final rule, we discussed the appropriate method to determine capital prospective payments when multiple hospitals merge or consolidate during the transition period (56 FR 43405). However, the guidelines set forth in that discussion were not incorporated into the regulations. Also, we did not address situations where a hospital would separate into two or more hospitals after the base period.

Situations involving these types of changes in hospital structure are increasingly being brought to our attention, and we believe that the policies should be incorporated in the regulations. Therefore, we propose to add § 412.331 to incorporate the guidelines provided in the preamble to the final rule of August 30, 1991 for mergers and to establish rules for dealing with situations where a hospital separates into two or more hospitals.

In addition to incorporating the guidelines contained in the August 30, 1991 final rule for consolidation and merger cases, we would clarify that the recalculation of the hospital-specific rate would be applicable only to those cases that meet the previously existing reasonable cost reimbursement rules regarding the criteria for recognizing a merger or consolidation for Medicare program purposes under § 413.134(k). In cases in which the merger or consolidation rules are not met, the transaction involved would simply be treated as a normal asset acquisition for Medicare program purposes. As a result, in situations in which a hospital acquires the assets of another hospital after December 31, 1990, those asset costs would be treated under the rules for determining old capital and new capital costs at § 412.302. Thus, if the transaction occurs after December 31, 1990, the acquired assets and their related capital costs would be considered new capital unless the conditions for recognizing obligated capital assets as old capital under

§ 412.302(c) were met or the provisions for merger and consolidation under our proposed § 412.331 were applicable.

As discussed in the preamble to the August 30, 1991 final rule (56 FR 43405), we would provide that if hospitals merge or consolidate into one hospital after the base year but during the transition period, the hospitals' latest 12-month or longer cost reporting periods ending on or before December 31, 1990 would be combined to determine a discharge-weighted average hospital-specific rate. In addition, we would provide that if, after the base year, a multi-campus hospital splits into two or more separate hospitals that are subject to the capital prospective payment system, the intermediary would determine if the base year capital-related costs and other statistical data for each of the resulting hospitals can be reconstructed from the original hospital's financial and other records. If that data can be determined, the hospital-specific rate for each of the resulting hospitals would be recomputed for the original base year under the current rules. If reconstruction of the necessary data is not feasible, each hospital's hospital-specific rate would be recalculated by establishing the respective hospital's base year as its first 12-month or longer cost reporting period (or combination of cost reporting periods covering at least 12 months) subsequent to the dissolution.

In determining each hospital's old capital costs, the amount that would be recognized as old capital would be limited to the capital-related costs attributable to assets that were in patient care use as of December 31, 1990, and the hospitals would be subject to all other transition period rules. The interim payments for such hospitals would be determined by the intermediary on the basis of the best data available prior to receipt of the new base period cost reports. The final hospital-specific rates would be applied retroactively to the later of the hospitals' first cost reporting period under the capital prospective payment system or the effective date of the dissolution in accordance with § 412.336(c)(2).

H. Extraordinary Circumstances Exceptions Payments (§ 412.348(e))

Section 412.348(e) provides that a hospital may request an additional payment if the hospital incurs an unanticipated capital expenditure in excess of $5 million (net of insurance proceeds) due to extraordinary circumstances beyond the hospital's control. Extraordinary circumstances include, but are not limited to, a flood, fire, or earthquake. A hospital must apply to the HCFA Regional Office within 180 days of the extraordinary circumstance causing the unexpected expenditures in order to qualify for exceptions payments. We propose to amend the requirement in § 412.348(e)(2) to acknowledge the possibility that eligible events could occur prior to, or early in, the hospital's first cost reporting period under the capital prospective payment system. Consistent with our proposal to extend the deadline for obligated capital notifications discussed above, we propose to change the deadline for extraordinary circumstances applications to the later of October 1, 1992 or within 180 days of the occurrence of the extraordinary circumstances.

I. Special Payment Protections

1. Hospitals with High Medicare Usage

In response to the February 28, 1991 proposed rule concerning the capital prospective payment system, we received comments urging special payment protection for hospitals with a high Medicare utilization. We responded in the August 30, 1991 final rule (56 FR 43410) that we recognize that hospitals with a high Medicare utilization rate are potentially more at risk financially than hospitals with low Medicare utilization under the capital prospective payment system, since Medicare is their predominant revenue source. At the same time, however, we observed that under the previous capital payment methodology, these hospitals had less incentive than other hospitals to make efficient capital decisions because a higher proportion of their costs were paid by Medicare based on reasonable costs. As a result, we indicated that we would analyze why these hospitals tend to have higher capital costs and examine whether special treatment for high Medicare hospitals might be appropriate under the capital prospective payment system.

In performing the analysis for this proposed rule, we defined high Medicare hospitals as those with a Medicare utilization (Medicare inpatient days divided by total inpatient days) of at least 65.0 percent in both FY 1988 and 1989, as determined using Medicare cost report data. We examined only those hospitals that qualified in both years because Medicare utilization is somewhat volatile, and we wanted to ensure that our analysis concentrated on those hospitals that consistently have a high Medicare utilization.

Although it is clear that hospitals with high Medicare utilization are dependent on Medicare revenues, it is also important to know whether Medicare beneficiaries are dependent on these hospitals for access to care. To examine this question, we studied the market shares of high Medicare utilization hospitals compared to other hospitals. Market areas are defined as all of those ZIP codes which, when rank-ordered in numerical importance, contribute 75 percent of a hospital's Medicare discharges. The market share of a hospital was then defined as the percentage of Medicare discharges in the hospital's market area that are treated by that hospital. We examined the hospital's market share for all Medicare discharges and for Medicare medical (nonsurgical) discharges. We examined the medical discharges separately to determine if certain groups of Medicare patients were more likely to use high Medicare hospitals. We used discharges from the FY 1988 MEDPAR data.

We compared the market shares of those high Medicare utilization hospitals that were not already subject to special exceptions protection (through their status as sole community hospitals (SCHs) or urban hospitals with at least 100 beds and a DSH patient percentage of at least 20.2 (high DSH) to those hospitals that did not have high Medicare utilization but were afforded the special exceptions protection. In this way, we could determine whether the high Medicare hospitals are more similar to the hospitals afforded special payment protection or to the hospitals in the general exceptions pool. The following table summarizes our market share data (urban or rural location was determined without regard to reclassification by the Medicare Geographic Classification Review Board):

HOSPITAL MEDICARE MARKET SHARES (AS A PERCENT OF MARKET AREA MEDICARE DISCHARGES)

Hospital type	Total discharges	Medical discharges
SCH or high utilization DSH, nonhigh Medicare utilization:		
All	.3325	.4108
Urban	.2074	.2228
Rural	.4989	.6603
High Medicare utilization, non-SCH, and low utilization DSH:		
All	.3611	.4863
Urban	.2859	.3573
Rural	.3965	.5470
Non-high utilization Medicare, non-SCH, and low utilization DSH:		
All	.3308	.4074
Urban	.2649	.3002

HOSPITAL MEDICARE MARKET SHARES (AS A PERCENT OF MARKET AREA MEDICARE DISCHARGES)—Continued

Hospital type	Total discharges	Medical discharges
Rural	.4091	.5348

The analysis indicates that, while the high Medicare hospitals are dependent on Medicare patients, Medicare patients are not dependent on these hospitals since only 36 percent of Medicare patients residing in their service areas use these hospitals.

The only group of high Medicare utilization, non-SCH, and low utilization DSH hospitals whose market share is significantly higher (in a statistical sense) than the nonhigh Medicare utilization group is urban hospitals with regard only to medical discharges. In addition, the high Medicare utilization, urban hospitals are the only ones that have higher market shares (both total discharges and medical discharges) than SCH and high DSH hospitals. (High Medicare utilization, rural hospitals do have a slightly higher market share for medical discharges.) However, we determined that the high Medicare utilization, urban hospitals treat, on average, 36 percent of the medical discharges and 29 percent of all discharges in their service area. Thus, it appears that there are alternative sources of care available to Medicare beneficiaries that are admitted to high Medicare utilization, urban hospitals.

To determine the effect of high Medicare utilization on capital cost per case, we used the data based on cost reporting periods beginning in FY 1988 and 1989 to run regressions similar to those used in developing the final rule to implement the capital prospective payment system. That is, we used as dependent variables the natural log of Medicare inpatient costs per case, standardized to remove the effects of case-mix index differences. We ran regressions using both total cost per case and capital cost per case. In addition, in the capital regressions, we included age and financing variables in order to eliminate the effects of different age and financing levels on the estimate of the impact of high Medicare utilization on Medicare capital cost per case. The independent variables were:

- The natural log of the hospital wage index based on 1988 wage data.
- The disproportionate share patient percentage for urban hospitals with at least 100 beds.
- Dummy variables for large urban (urban areas with more than 1,000,000 population) and other urban location.
- The ratio of interns and residents to average daily census for teaching hospitals.
- A dummy variable for data used from data from cost reporting periods beginning in FY 1989.
- The natural log of the hospital's occupancy rate.
- Various dummy variables relating to high Medicare utilization status, and large urban, other urban, and rural location of those high Medicare hospitals. These variables do not show the effects of location independent of Medicare utilization, since location is controlled for elsewhere in the equations.
- The capital age and financing variables. These variables include:

—The natural log of the average age of total assets [•]
—The natural log of the average remaining usable life of total assets [•]
—The natural log of the ratio of total liabilities to total assets, and
—The natural log of the ratio of total fixed assets to total assets.

First, we ran a regression using capital cost per case, but without the age and financing variables. In this regression, high Medicare utilization, large urban hospitals have higher capital costs per case, everything else being equal, but the coefficient is not statistically significant.

High Medicare utilization hospitals located both in other urban and rural areas have lower capital costs per case, everything else being equal, but only the rural coefficient is statistically significant. The results are summarized below:

CAPITAL COST PER CASE REGRESSION WITHOUT CAPITAL AGE AND FINANCIAL VARIABLES

Type of high Medicare hospital	Coefficient	t-Statistics
Large urban	.069	1.505
Other urban	−.062	−1.10
Rural	−.090	−3.83

[•] (defined as the ratio of accumulated depreciation to current depreciation)

[•] (defined as the ratio of remaining depreciation to current depreciation)

Including the age and financing variables in the capital cost regression results in different coefficients and t-statistics, but again, none is statistically significant:

CAPITAL COST PER CASE REGRESSION INCLUDING CAPITAL AGE AND FINANCING VARIABLES

Type of high Medicare hospital	Coefficient	t-Statistic
Large urban	.0379	.805
Other urban	−.0419	−.771
Rural	.0351	1.665

We have found that there is no evidence, once we control for payment adjustments, occupancy, and the capital age and financing variables, that high Medicare utilization hospitals have higher capital costs per case than hospitals with average or low Medicare utilization.

Since the payment adjustments for the prospective payment system for capital-related costs are based on the total cost regressions, we also examined the effects on total cost per case (adjusted for case-mix index) of high Medicare utilization. Again, we controlled for the payment adjustments and for occupancy, to ensure that the only effects that we found in the utilization variables were those of high Medicare utilization. In the equation of total cost per case, the regression coefficients were as follows:

TOTAL COST PER CASE REGRESSION

Type of high Medicare hospital	Coefficient	t-Statistic
Large urban	.0294	1.445
Other urban	−.0214	−.858
Rural	.0170	1.632

Again, none of the coefficients is statistically significant.

The capital cost per case regression results are consistent with the preliminary data on actual payments under the capital prospective payment system. The most recent provider-specific file contains capital data for 44.1 percent of prospective payment hospitals, and 43.3 percent of high Medicare hospitals. The payment methodologies of those hospitals for which we have data are as follows:

PAYMENT METHODOLOGY BY HOSPITAL TYPE

Type of hospital	Number hospe	Fully prospec-tive	Hold harmless	100% Federal rate
All	2477	69.5%	17.2%	13.3%
High Medicare	197	76.7	15.7	4.6
Urban	41	48.8	31.7	19.5
Rural	156	84.0	11.5	4.5
Others	2280	68.9	17.4	13.8
Urban	1109	59.9	21.6	18.6
Rural	971	80.6	11.7	7.7

High Medicare utilization, urban hospitals are more likely to receive hold harmless payments than nonhigh Medicare utilization, urban hospitals, but the group of high Medicare utilization, rural hospitals have essentially the same proportion of hold harmless hospitals as other rural hospitals. These data confirm that the group of high Medicare utilization hospitals is not homogeneous, and that the rural hospitals in particular are quite similar to other rural hospitals. We will continue to monitor the payment status of high Medicare utilization hospitals as we receive updated data from the fiscal intermediaries.

Finally, we examined the effect on resource use of having an older Medicare patient population than other hospitals. Data provided by the Association of High Medicare Hospitals indicate that high Medicare utilization hospitals have a higher proportion of older Medicare patients than do other hospitals. Although older patients tend to have longer lengths of stay, analysis performed at HCFA's request by 3M/Health Information Systems indicates that, on average, older patients require relatively fewer resources than other patients assigned to the same DRG. Since this finding indicates the DRG relative weight tends to overcompensate hospitals that have a higher proportion of older Medicare patients, it does not support a payment adjustment for high Medicare utilization hospitals.

The DRG relative weights are based on the average charge for cases assigned to the DRG that have been standardized for the hospital wage index and for the payment adjustments for indirect teaching and serving a disproportionate share of low income patients. In its analysis, 3M/Health Information Systems determined for each DRG the average standardized charge by age group and computed the ratio of the age group average standardized charge to the average standardized charge for the DRG. The ratios were separately determined for all patients, and for patients who were discharged alive or who died in the hospital. A discharge-weighted average ratio for each age group across all DRGs was then determined. The results were as follows:

RATIO OF AVERAGE STANDARDIZED CHARGES IN AGE GROUP TO AVERAGE STANDARDIZED CHARGE IN CATEGORY

Age group	Percent of Medicare patients	All dis-charges	Live dis-charges	Deaths
<65	9.7	1.12357	1.12751	1.31438
65–74	41.0	0.98710	0.98377	1.11434
75–84	34.7	0.99134	0.98914	0.98374
>84	14.6	0.97461	0.98358	0.81954
All patients	100.0	1.000	1.000	1.000

Based on our analyses, we do not find any reason to propose a payment adjustment or any special exceptions provisions for high Medicare utilization hospitals at this time. Their Medicare market shares are not appreciably different from those of nonhigh Medicare utilization hospitals. Their capital costs per case, and their total costs per case, are not higher than other hospitals, once the payment adjustments, occupancy and, for capital costs, the age and financing variables are controlled for. Finally, there is no evidence that the older patients that high utilization Medicare hospitals treat require more intensive resource use that would warrant a payment adjustment. We will, however, continue to monitor the characteristics of high Medicare hospitals, particularly once the data on their capital payment status is completely available.

2. Financially Distressed Hospitals That Serve Low Income Patients

Since the publication of the August 30, 1991 final rule, several organizations representing financially distressed hospitals that serve a large volume of low-income patients have expressed concern that their payments under the capital prospective payment system may be insufficient for the hospitals to obtain the necessary financing to undertake needed capital projects in the future. The organizations note that these hospitals do not have internal reserves that can be used to finance their capital projects and rely heavily on the Medicare and Medicaid programs for their revenues. If the funding from these sources is not adequate to cover the financing costs, the hospitals will not be able to complete the renovation and construction projects that are needed to preserve access to care for low-income populations. They recommend several changes in the capital prospective payment system policies to address the needs of those hospitals whose projects do not qualify under the obligated capital rules. These include: extending the deadline for putting obligated capital in use in order to be recognized as old capital; paying 85 percent of obligated capital costs for 10 years from the date the asset is put in use instead of ending the hold-harmless payments at the end of the transition; raising the minimum payment floor for hospitals with a high

percentage of low income patients from the 80 percent floor under the current rule to 90 percent and making it, and the extraordinary circumstances exception, permanent; and revising the extraordinary circumstances exception to include major capital projects undertaken by financially distressed hospitals that are needed to preserve access to care by low income populations.

The changes recommended by the organizations representing financially distressed hospitals are similar to suggestions made in the public comments that we considered in developing the August 30, 1991 final rule. We believe it would be premature to modify the policies in that rule until we have had an opportunity to assess their impact. We are sensitive to the needs of these hospitals, and we intend to monitor closely their situation as well as that of other hospitals under the prospective payment system. As we gain additional experience under the capital prospective payment system for capital-related costs, we will be in a better position to evaluate what changes, if any, would be appropriate in our special protection payment policies.

J. Minor Technical Corrections

We propose making the following technical changes to the regulations:

- Section 412.113(a)(2)(E) would be corrected to note that sole community hospitals, as defined in § 412.92, are excluded from the capital payment reduction for periods prior to a hospital's cost reporting period beginning on or after October 1, 1991.
- Section 413.134(f)(2)(iii)(D) would be corrected to change the last reference for capital prospective payment system purposes to § 412.344(a)(2).
- Section 412.302(c)(1)(ii) would be revised to clarify that the qualifying criterion for obligation of moveable equipment is that it was executed on or before December 31, 1990 and obligates the hospital on or before December 31, 1990.

In addition, we are making a series of minor conforming changes throughout 42 CFR parts 412 and 413. These conforming changes are needed to ensure that our regulations specify which provisions apply to the prospective payment system for operating costs, which provisions apply to the prospective payment system for capital-related costs, and which provisions apply to both systems.

VII. Proposed Changes for Hospitals Excluded From the Prospective Payment System

A. Provisionally Excluded Hospitals and Units (§§ 412.22, 412.23, 412.25, 412.30, and 412.32)

1. Changes in the Status of Excluded Hospitals and Psychiatric and Rehabilitation Distinct-Part Hospital Units (§§ 5412.22 and 412.25)

Since the inception of the prospective payment system for operating costs of hospital inpatient services on October 1, 1983, certain types of specialty-care hospitals and hospital units have been excluded from that system under section 1886(d)(1)(B) of the Act. These currently include psychiatric and rehabilitation hospitals and distinct part units, children's hospitals, and long-term care hospitals. Section 6004(a)(1) of Public Law 101–239 amended section 1886(d)(1)(B) of the Act to provide that certain cancer hospitals are also excluded. The preamble to the January 3, 1984 final rule implementing the prospective payment system for operating costs (49 FR 235) stated that a hospital's or unit's status (that is, whether it is subject to, or excluded from, the prospective payment system) would be determined at the beginning of each cost reporting period. It also provided that changes in a hospital's or unit's status that result from meeting or failing to meet the criteria for exclusion would be implemented prospectively only at the start of a cost reporting period, that is, starting with the beginning date of the next cost reporting period (49 FR 243). However, this policy is not set forth in the regulations.

Current regulations at § 412.25(b) specify that changes in the bed size or square footage of an excluded unit may be made only at the start of the cost reporting period. However, that regulation does not deal specifically with the case in which an existing hospital changes the function of the unit, adds an entire new unit, or converts an existing excluded unit to an acute care unit paid under the prospective payment system. As a result, questions have arisen as to whether such changes could be allowed at times other than the start of a cost reporting period.

We believe that such changes should not be allowed. Serious cost reporting problems could arise if hospitals were allowed to add new excluded units or to vary the size of existing units, after the start of a cost reporting period. Under Medicare cost-finding principles, certain types of indirect costs of patient care such as capital costs, maintenance of the hospital's physical plant, and housekeeping expenses, are allocated to a unit solely on the basis of the square footage that unit occupies at the end of the cost reporting period. If, during a cost reporting period, an excluded unit acquires more square footage or a new unit opens, a full year's worth of the indirect costs identified above will be allocated to the unit, even though the unit (or the added space) may have functioned for only a part of the year. If the square footage of a unit decreases during a cost reporting period, some indirect costs associated with the space lost from the unit will not be allocated to the unit, causing unit costs to be understated. In either case, a change during the cost period will cause a misallocation of cost and lead to either excessive or inadequate payments.

To avoid this result, and to clarify our policy in this area, we propose to revise §§ 412.22 and 412.25 to specify that changes in the status of each hospital or hospital unit would be recognized only at the start of a cost reporting period. Except in the case of retroactive payment adjustments for excluded rehabilitation units described in § 412.30(c), any change in a hospital's or unit's compliance with the exclusion criteria that occurs after the start of a cost reporting period would not be taken into account until the start of the following period. This policy would also apply to any unit which is added to a hospital during the hospital's cost reporting period.

For example, if, at some point in a cost reporting period, a currently participating hospital stopped admitting adult patients and began admitting only patients under the age of 18, it could not be excluded from the prospective payment system as a children's hospital before the start of the next cost reporting period. If a currently participating hospital opened a psychiatric unit after a cost reporting period has begun and the unit met the applicable exclusion criteria, services furnished in that unit would be paid for under the prospective payment system for the rest of that period, and the unit would not be excluded from the prospective payment system until the start of the next cost reporting period. If a currently participating hospital had an existing excluded unit and wished to convert the space to acute care use, the change would be recognized only at the start of the next cost reporting period.

In applying this principle to a newly opened unit that is seeking to be excluded from the prospective payment system, we encountered difficulties because existing regulations do not specify when a new unit is considered to

be opened. Questions have arisen as to whether a unit that has no patients at the start of a cost reporting period could be said to open at that time. In order to remove any confusion as to when we consider a unit open, we propose to revise § 412.25(a) to specify that as a requirement for exclusion, a hospital unit must be fully equipped and staffed, and be capable of providing inpatient psychiatric or rehabilitation care, as of the first day of the first cost reporting period for which all other exclusion requirements are met. A unit that meets this requirement would be considered open regardless of whether there are any inpatients in the unit.

2. Exclusion of New Rehabilitation Hospitals and Distinct-Part Rehabilitation Units With Initial Cost Reporting Periods of Less Than 12 Months (§§ 412.23 and 412.30)

Under § 412.23(b)(8), a new rehabilitation hospital may be provisionally excluded from the prospective payment system for its first full 12-month cost reporting period of Medicare participation based on a written certification that the patients it intends to serve meet the criteria for patients needing rehabilitation services set forth in 412.23(b)(2). The regulations, however, do not address the case of a new hospital that begins operating at a time other than at the start of its regular 12-month cost reporting period. Similarly, our regulations at § 412.30 do not specify how a new rehabilitation unit that is a distinct part of a new hospital is to be treated when the hospital begins operations at a time other than at the start of its regular cost reporting period. New hospitals often begin operating at times other than the start of their regular cost reporting periods because of construction delays or other difficulties in starting a new facility. The cost reporting instructions in section 2414.1 of the Medicare Provider Reimbursement Manual allow a new hospital to select an initial cost period of not less than 1 month and not more than 13 months to cover the period between the actual startup date and the beginning of the hospital's preferred 12-month cost reporting cycle.

To avoid requiring a new rehabilitation hospital to operate under the prospective payment system from the date it opens until the beginning of its first full 12-month cost reporting period, we propose to revise § 412.23(b)(8) to permit provisional exclusion of the hospital for both the initial period it may elect under section 2414.1 of the Provider Reimbursement Manual and for the next full 12-month period. The provisional exclusion would be effective for no more than two consecutive cost reporting periods with a combined total provisional exclusion period not to exceed 25 months.

Under the proposed policy, a separate retroactive adjustment would be made for each cost reporting period during which the hospital is provisionally excluded from the prospective payment system but does not meet the condition that at least 75 percent of the hospital's patients require intensive rehabilitative services (known as the 75-percent rule) set forth in § 412.23(b)(2). During the second cost reporting period of provisional exclusion, the hospital's compliance with the 75-percent rule would be assessed, and the status of the hospital for its third cost reporting period would depend on whether the hospital met the 75-percent requirement for its second cost reporting period.

We propose to revise § 412.30(a) in order to provide similar treatment for rehabilitation units in hospitals that are newly participating in the Medicare program. Under the proposed revision, when a hospital begins participating in the Medicare program and concurrently opens a rehabilitation unit that meets the applicable exclusion criteria, the unit would be provisionally excluded from the prospective payment system from the first day of the hospital's participation through the end of the second cost reporting period. Again, we would specify that the combined total Provisional exclusion period not exceed 25 months. We also propose to revise the regulations to make it clear that a hospital that has undergone a change of ownership or leasing as defined in § 489.18 would be treated as a newly participating hospital for purposes of qualifying for the prospective payment system exclusion, even though the hospital itself is not newly participating because it has previously participated under the old ownership.

3. Removal of Provisions for Excluded Alcohol/Drug Hospitals and Units (§§ 412.23 and 412.32)

Existing regulations at §§ 412.23(c) and 412.32 apply to the exclusion of alcohol/drug hospitals and units. However, as reflected in § 412.32, the exclusion for alcohol/drug hospitals and units ended with cost reporting periods beginning on or after October 1, 1987. Because this exclusion is no longer in effect, we are proposing to delete §§ 412.23(c) and 412.32.

B. Definition of Discharge for Purposes of Applying the Rate-of-Increase Limit Applicable to Excluded Hospitals and Hospital Distinct Part Units (§ 413.40(c))

We are proposing to revise the regulations to include a definition of "discharge" for purposes of applying the rate-of-increase limit applicable to hospitals and hospital distinct part units excluded from the prospective payment system. Section 412.4(a) defines a discharge for purposes of the prospective payment system as any of the following occurrences: the patient is formally released from the hospital, the patient dies in the hospital, or the patient is transferred to a hospital or unit that is excluded from the prospective payment system. There is no definition of discharge specific to the rate-of-increase provision in § 413.40. However, our policy has been that the definition of § 412.4(a) should be followed in applying the rate-of-increase limit.

We are proposing to change that policy to conform to current practice. There are situations in which a Medicare beneficiary has exhausted Medicare benefits during his or her stay and the actual discharge of the patient does not occur until a subsequent cost reporting period. Hospitals excluded from the prospective payment system bill Medicare on an interim basis until the time benefits are exhausted. As a result, the payments and costs of the services are reflected in one cost reporting period but, using the discharge definition in § 412.4(a), the discharge would not be counted until the subsequent cost reporting period. In many cases, since the final discharge bill does not include services covered by the Medicare program beyond those already paid on an interim basis, hospitals do not submit a final bill to Medicare upon the patient's release from the hospital.

To account for benefits-exhausted cases in excluded hospitals and units, the Provider Statistical and Reimbursement System (PS&R), which is designed to capture all statistical and payment data through the claims processing system, has an interface program that counts a discharge when an interim bill is submitted for a beneficiary that has exhausted Medicare benefits, instead of counting a discharge on a no-payment bill that is submitted at discharge. This helps to ensure consistency in the collection of discharge data because hospitals always bill when a patient has exhausted Medicare benefits, but may or may not bill when there are no

Medicare covered services in the final discharge bill. In most cases, the PS&R data are used as cost report settlement statistics, with the result that a discharge is counted for purposes of the rate-of-increase limit when an interim bill is submitted showing benefits are exhausted. This practice provides for agreement between the cost reporting period in which costs are incurred and the application of the rate-of-increase limit. Because the practice of counting a discharge when benefits are exhausted results in a more appropriate discharge count for purposes of the rate-of-increase limit, we are proposing to conform our policy to the current practice. We would revise § 413.40(c)(2) to indicate that a discharge would be defined as set forth in § 412.4(a), except when the beneficiary exhausts Medicare inpatient hospital benefits (including the election to use lifetime reserve days) during the inpatient stay. In that case, the patient would be considered discharged on the date that Medicare benefits are exhausted.

C. New Hospital Exemption Applicable to Excluded Hospitals (§ 413.40 (b), (e), and (f))

Excluded hospitals and units receive payment for the inpatient hospital services they furnish on the basis of reasonable cost, subject to rate-of-increase limits. Under the rate-of-increase limits, an annual target amount (stated as the inpatient operating cost per discharge) is set for each hospital based on the hospital's own cost experience in its base year. This target amount, updated for inflation, is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

Under § 413.40 (e) and (f), a new hospital may be exempted from the rate-of-increase limit on its inpatient operating costs if the hospital files a request with its fiscal intermediary within 180 days of receiving the notice of program reimbursement for the hospital's second cost reporting period. (This would be the first cost reporting period for which a hospital is subject to the rate-of-increase limit on its inpatient operating costs.) As specified under § 413.40(f)(1)(i), a new hospital is a provider of hospital inpatient services that has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership, or both, for less than three full years. The new hospital exemption expires at the end of the first cost reporting period beginning at least two years after the date the hospital admits its first patient. The last cost reporting period for which the exemption is in effect is the base period for determining the target amount applicable to subsequent cost reporting periods.

We are proposing to make three changes to the provisions of § 413.40(f)(1)(i) concerning new hospital exemptions from the rate-of-increase limit. The first proposed change would make the new hospital exemption automatic rather than at the hospital's discretion. The underlying premise of the rate-of-increase limit is that a hospital's costs are comparable between the base year and the cost reporting periods subject to the limit. The reason for allowing an exemption to the rate-of-increase limit during the early years of a hospital's operations is to recognize that certain cost distortions may be present when a hospital is beginning its operations. Typically, the first year of a hospital's operation is not representative of its future operations for two reasons. First, the patient load tends to be lower than the load the hospital maintains once it is fully established. Second, the hospital may not immediately offer its full range of services. Since the first year of operation is commonly atypical, we do not believe it would be appropriate to base the target amount on the hospital's inpatient operating costs per discharge for its first year of operation.

Under current regulations, which allow a hospital the option of whether or not to request a new hospital exemption, we in effect allow the hospital to select either its first or third cost reporting period as the base year for its rate-of-increase limit. Since the hospital does not have to file the request for a new hospital exemption until well into its third cost reporting period, the hospital can easily determine which base year would afford it the greater financial advantage. Thus, by having the choice of requesting or foregoing an exemption, a new hospital could obtain a competitive advantage over other hospitals simply because it is a new hospital.

To remedy this situation, we propose to revise § 413.40(f)(1)(i) to apply the exemption automatically to all new hospitals rather than making the exemption contingent on a request from the hospital.

Under current policy, a hospital may be in operation for 3 or more years before it is subject to the rate-of-increase limit. (Cost reporting periods of less than 12 months, which may occur when the hospital begins operation or there is a change of ownership, extend the exemption period beyond 3 years.) We believe that a hospital's second year of operation should be sufficiently representative to be used to establish the target amount. Therefore, we propose to reduce the new provider exemption to 2 years. A new hospital would be exempt from the rate-of-increase limit through its cost reporting period ending at least 2 years after the hospital accepts its first patient. The base period would be the first 12-month cost reporting period that begins at least 1 year after the hospital accepts its first patient.

Our third proposed change in the new hospital exemption concerns the issue of whether a participating facility that reorganizes and/or changes the basis of its participation in the Medicare program is a new hospital, even though it continues to provide the same services as it did before the reorganization. For example, we are aware of cases in which an acute care hospital had a distinct-part unit (for example, a rehabilitation unit) that eventually split off from the main hospital and became a separate hospital. Under our current regulations, the rehabilitation hospital would meet the criteria for a new hospital and, thus, could qualify for a new hospital exemption.

Another example involved a rehabilitation hospital that added an acute care distinct-part unit. Eventually, the acute-care portion of the facility expanded to a point where the facility sought to participate in the Medicare program as an acute-care hospital with a distinct-part rehabilitation unit. Again, under the current regulations, the distinct-part unit would qualify for an exemption because the hospital technically meets the criteria for a new hospital.

In both examples, the former distinct-part units qualified for a new hospital exemption because they were in existence for less than 3 years as the type of hospital for which they were approved to participate in the Medicare program. However, in a broader sense, these hospitals were not new. As hospitals, they still served the same markets and employed the same staffs as when they operated as distinct-part units. The hospitals in these examples did not have to experience many of the difficulties (such as penetrating new markets or hiring personnel) that are characteristic of a hospital that is beginning its initial operations. Thus, for purposes of establishing rate-of-increase limits on these hospitals' costs, there were no significant cost distortions associated with being a new hospital. Rather, any cost distortions that would affect the comparability of cost reporting periods stemmed from a

change in the organization of the facility's operation rather than in the type of services it provided to patients in the excluded portion of the facility. Therefore, to preclude hospitals from qualifying for a new hospital exemption based solely on such operational reorganizations, we are proposing to revise § 413.40(f) to specify that a hospital will qualify as a new hospital only if it has not previously provided the type of hospital inpatient services for which HCFA granted it approval to participate in the Medicare program.

However, we also recognize that it would not be appropriate to subject these types of hospitals or distinct-part units to the ceiling that applied before the hospital's reorganization. Therefore, when the operational structure of hospital or distinct unit changes (that is, a freestanding rehabilitation hospital becomes a distinct part unit or vice versa), we are proposing to revise § 413.40(b)(1) to clarify that the base period would be the first full 12-month cost reporting period effective with the revised Medicare certification.

We note that the proposed change would mean that the new hospital exemption would not apply to hospitals that change the basis of their certification but do not experience a significant change in organizational structure or in the type of services provided. An example might be a hospital that commenced operations as an acute care hospital subject to the prospective payment system with the intention of qualifying as an excluded long-term care hospital only after its experience demonstrates that the hospital has an average length of stay greater than 25 days. Under current policy, the exemption as a new hospital would begin with the first date of the cost reporting period for which the hospital is certified as a long-term care hospital. Under the revised policy, the exemption would begin with the first day of the cost reporting period in which the hospital began to serve a patient population with an average length of stay greater than 25 days, whether or not the certification is effective for that period. Thus, if the hospital served the requisite population from the outset, the new hospital exemption would be effective as of the date on which the hospital admitted its first patient.

Similarly, a rehabilitation or psychiatric hospital with an average length of stay greater than 25 days may be certified as either a specialty hospital or a long-term care hospital. A hospital that changes its basis of certification while continuing to furnish the same type of specialty services would not qualify as a new hospital. For example, if a hospital furnishing rehabilitation services to patients with an average length of stay greater than 25 days changed its certification from a rehabilitation hospital to a long-term care hospital, the hospital would not qualify for a new hospital exemption and the original target amount would continue to apply. The proposed policy would be effective for Medicare certifications occurring on or after October 1, 1992.

D. Adjustments Under the Rate-of-Increase Ceiling (§ 413.40(g))

Section 413.40(g)(3) provides that HCFA may make an adjustment to take into account factors that would result in a significant distortion in the operating costs of hospital inpatient services between its base year and the cost reporting period subject to the rate-of-increase ceiling. Section 413.40(g)(3)(ii) was added in the August 30, 1991 final rule to clarify those circumstances under which HCFA may adjust the amount of operating costs in establishing the ceiling without a formal request from a hospital (56 FR 43232). Although this clarification was not intended to limit HCFA's authority to adjust base year costs to only those factors specifically stated in § 413.40(g)(3)(iii), we believe the current regulations could be interpreted to preclude HCFA from making adjustments except under the specified circumstances. However, there may be other cases in which the base period is not a representative base for adjusting future costs. This would include cases in which the hospital had extremely low Medicare utilization during the base period, or cases in which there was a significant change in Medicare coverage during the base year (for example, as a result of the Medicare Catastrophic Coverage Act of 1988). In such cases, the base periods would not be appropriate for establishing a target amount for limiting cost increases in future periods. Therefore, we are proposing to revise § 413.40(g)(3)(iii) to specify the circumstances when HCFA may adjust the amount of operating costs. These circumstances would include, but would not be limited to, adjustments to take into account the factors set forth under § 413.40(g)(3)(ii) (A), (B), (C), (E), and (F).

VIII. ProPAC Recommendations

We have reviewed the March 1, 1992 report submitted by ProPAC to Congress and have given its recommendations careful consideration in conjunction with the proposals set forth in this document. Recommendations 1, 2, and 11 concerning the update factors for inpatient operating costs are discussed in Appendix D of this proposed rule. The remaining recommendations are discussed below.

A. Updating Capital Payment Rates (Recommendation 3)

Recommendation: ProPAC recommends that a single update factor be developed for adjusting operating and capital prospective payment rates. The update framework should be consistent with that currently used by ProPAC to develop the prospective payment operating rate update recommendation and should be put into use for FY 1994.

Response: In the August 30, 1991 final rule (56 FR 43414), we established the capital update methodology to be used through FY 1995. Under that methodology, we will update the capital Federal rate and the hospital-specific rates for hospitals paid under the fully prospective payment methodology using a lagged 2-year moving average of actual increases in Medicare inpatient capital costs per discharge, adjusted for case mix index change. The capital update proposed in the Addendum to this Federal Register document is based on the average increase in Medicare inpatient capital costs between 1988 and 1990. The capital update established in FY 1995, the last year in which we will use the current methodology, will be based on the average increase in Medicare inpatient capital costs between 1990 and 1992. We established this methodology in response to hospital industry concerns regarding the uncertainty of the capital update over the first few years of the prospective payment system for capital-related costs. We believe that it would be inappropriate to change the method of updating capital payments before FY 1996, because of this desire of the industry for more certainty regarding capital updates.

We believe that it is appropriate to establish a capital-specific update framework until the prospective payment systems for capital-related and operating costs are unified in a single payment system. The development of an update framework for capital payment is conceptually and empirically more difficult than the development of a framework for updating operating payments. For this reason, and in order to solicit comments and to refine our framework, we included a preliminary discussion of an update framework for the capital prospective payment system in the August 30, 1991 final rule implementing the prospective payment system for capital-related costs (56 FR

43522). In the FY 1993 final rule, we will publish a more detailed discussion of the proposed framework, including an empirical illustration of the proposed update framework. This illustration will show the consistency and relationships of the framework with historical trends in operating and capital-related costs through 1990 and with the proposed FY 1993 update. Comments will be solicited on this framework, and we will provide successively improved frameworks in the final rules for FY 1994 and FY 1995. We will continue to solicit comments on these refined frameworks in order to improve the framework that will be adopted for FY 1996. Until this framework is appropriately refined, we believe that using the lagged increase in actual capital costs, adjusted for case-mix index change, is the most reasonable approach to take regarding capital updates.

B. Level of Indirect Medical Education and Disproportionate Share Adjustments to the Prospective Payment System for Operating Payments (Recommendation 4)

Recommendation: ProPAC recommends that the indirect medical education adjustment to the prospective payment system for operating payments be reduced from its current level of 7.7 percent to 7.0 percent for FY 1993. This reduction should be implemented in a budget neutral fashion, with the anticipated decrease in indirect medical education payments returned to teaching hospitals that are designated as disproportionate share providers through a corresponding increase in their disproportionate share adjustment percentages.

Response: ProPAC's recommended reduction of 0.7 percentage points in the operating adjustment for indirect medical education (IME) represents approximately one-third of the difference between the current level of 7.7 percent (set forth at section 1886(d)(5)(B)(ii) of the Act) and 5.7 percent, which is ProPAC's most recent estimate of the effect of teaching activity on inpatient operating costs. That is, ProPAC estimates that for every 10 percent change in the resident-to-bed ratio, there is, on average, a 5.7 percent increase in Medicare inpatient operating costs per case.

ProPAC uses a statistical model to generate its estimate of the effect of teaching on Medicare inpatient operating costs that does not control for the hospital's costs of treating a disproportionate share of low income patients. Controlling for these costs would result in a substantially lower estimate of IME costs because of the overlap in hospitals receiving IME and disproportionate share (DSH) payments. We believe that it is appropriate to control for the effects of DSH status when estimating the effects of teaching. Not controlling for the effects of all of the payment variables would distort the results of the regressions by attributing some of the effects of the missing variables to the variables present in the regression. We strongly believe that payment for the indirect costs associated with graduate medical education should be based on the best estimate of the added costs incurred in treating Medicare patients and that payments in excess of this amount are an inappropriate use of Medicare trust funds. We further believe, as stated below in our response to ProPAC's Recommendation 5 with respect to the IME adjustment for capital-related costs, that the appropriate level of the IME adjustment is that currently paid in the prospective payment system for capital-related costs. This adjustment is based on regressions on total cost per case, controlling for all of the prospective payment system payment adjustments, including DSH.

ProPAC further recommends that the reduction in IME payments for the prospective payment system for operating costs be returned to teaching hospitals that also receive DSH payments through a modification in the DSH adjustment for operating costs. We do not agree that the reduction in IME payments should be returned to teaching hospitals that also receive DSH payments. These hospitals currently have payment-to-cost ratios that are significantly higher than other hospitals. While we believe that it is possible to improve payment equity across all classes of hospitals by returning at least a portion of the IME payments to all hospitals, any such increase in payments to hospitals must be examined in the larger context of health care reform.

We strongly disagree that the low total operating margins (which are based on the facility's overall operations, not just Medicare patients) of DSH hospitals that also receive IME payments should be relevant to the distribution of Medicare payments. These lower total margins are associated with the fact that DSH hospitals that also receive IME payments tend to be faced with a broad array of social issues not directly related to Medicare patients, stemming largely from their location in urban areas and their role in providing services to low-income individuals. We continue to believe that social problems that are not directly related to Medicare beneficiaries should be addressed through more targeted policies rather than through indirect subsidies in the form of higher payments to a class of hospitals that are not underpaid relative to the costs of treating Medicare beneficiaries.

C. Consistency of Indirect Medical Education and Disproportionate Share Adjustments to Prospective Payment System Capital and Operating Payments (Recommendation 5)

Recommendation: ProPAC recommends that the same level of IME and DSH payment adjustments be applied to both operating payments and the prospective component of capital payments, beginning in FY 1994. Further, ProPAC believes that the methods of determining these adjustments in the prospective payments for operating costs should also be applied to the prospective payments for capital-related costs as follows:

- The measure of teaching intensity used for the IME adjustments should be defined in terms of the ratio of residents per bed.
- The criteria for designation as a DSH should be based on urban or rural location and number of beds.

These changes would better reflect the policy objectives of the Congress in defining and setting the levels of the payment adjustments. They would also be consistent with the principle of incorporating capital into the prospective payment rate.

Response: We agree with ProPAC that an appropriate policy would be to apply the same DSH and IME adjustments to the prospective payments for operating costs and for capital-related costs. However, we continue to believe that the appropriate level of the adjustments is that justified by the total cost regressions, as developed in the August 30, 1991 final rule implementing the prospective payment system for capital-related costs (56 FR 43378). That is, the adjustments for both operating and capital payments should reflect the effect on total costs per case of IME and DSH status. We implemented these IME and DSH adjustments under the capital prospective payment system. We cannot implant them under the prospective payment system for operating costs since the IME and DSH operating adjustments are set by statute. Until we have statutory authority to change the IME and DSH adjustments to operating payments, we are faced with choosing between using different adjustments for capital and operating payments or making the IME and DSH adjustments to

capital payments at the same levels used for operating payments. Since our regression analysis indicates the adjustments to operating payments are not reflective of the effect that IME and DSH status have on Medicare costs per discharge, we believe it would be inappropriate to use these adjustments for capital payments. Thus, we have decided to use different adjustments and base the adjustments to capital payments on the results of the total cost regressions.

With regard to the ProPAC recommendation that the criteria for designation as a disproportionate share hospital should be based on urban or rural location and number of beds, we believe that the only hospital groups that should receive the DSH adjustment are those with significantly higher costs due to their disproportionate share of low income patients. As explained in further detail in the August 30, 1991 final rule implementing the prospective payment system for capital-related costs (56 FR 43378), we found no evidence in the total cost regressions that costs for any rural hospital grouping were significantly correlated with the DSH patient percentage. We also found no evidence that there is a correlation between the total costs per case of urban hospitals with fewer than 100 beds and their DSH patient percentage. For urban hospitals with at least 100 beds, we did not find a threshold disproportionate share patient percentage above which a higher adjustment formula was appropriate, nor did we find a threshold patient percentage below which no correlation between costs and patient percentage exists. For these reasons, we continue to believe that the DSH adjustment to capital payments, which provides an adjustment to only urban hospitals with more than 100 beds and does not require a threshold patient percentage, is correctly formulated and should apply to payments for operating costs as well.

We also disagree with the recommendation that the ratio of interns and residents to beds be used as the measure of teaching intensity for the IME adjustment to capital payments. As discussed in the August 30, 1991 final rule (56 FR 43380), we believe that the ratio of residents to average daily census is a more appropriate measure of teaching intensity. Residency programs are intended to provide participants the opportunity to treat patients in a supervised setting. We believe that the indirect costs of a teaching program are more highly correlated with the ratio of residents to the average number of patients than with the ratio of residents to available beds, both occupied and unoccupied. This expectation is borne out by our regression results, which show both a smaller standard error and a slightly larger t-statistic when the resident-to-day ratio is used than when the resident-to-bed ratio is used in the cost regression.

In the August 30, 1991 final rule, we also stated our concern regarding the potential for manipulation of the bed count in order to increase teaching payments. In this regard, we note that the General Accounting Office, in its report on the IME adjustment for operating costs, refers to average daily census as a more "verifiable" statistic than beds. (A copy of this report, "Flawed Data Add Millions to Teaching Hospital Payments" GAO/IMTEC-91-31, June 1991, can be obtained by contacting the U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20877, or by calling (202) 275-6421.)

D. Improvements in Labor Market Definitions (Recommendation 6)

Recommendation: ProPAC believes that the current prospective payment system labor market definitions need to be improved or replaced as soon as possible. Suitable alternative definitions, however, are not immediately available. In cooperation with the American Hospital Association (AHA) and HCFA, ProPAC is developing alternative labor market definitions that may alleviate many of the current problems. On the basis of this effort, ProPAC hopes to be able to recommend substantially revised labor market definitions for FY 1994.

Response: We agree with the Commission that the current labor market areas could be improved, and look forward to working with ProPAC and the AHA in examining potential improvements in the labor market definitions and the hospital wage index. At a minimum, we anticipate that the hospital wage index will be improved in FY 1994, due to the changes in the MSAs resulting from the 1990 census and the use of more recent wage data.

E. Medicare Transfer Payment Policy (Recommendation 7)

Recommendation: Cases transferred out of a hospital should be paid based on a graduated per diem up to the full DRG payment to recognize the higher daily costs associated with the first few days in a patient stay. In addition, outlier payment policy should be reexamined, particularly with respect to transfer cases received by a hospital. ProPAC believes that hospitals are penalized by the current payment for transfers and that further examination of whether hospitals have the appropriate incentive to transfer patients, particularly with respect to recuperative care, is warranted.

Response: Since a Medicare discharge is the basis of payment under the prospective payment system, it is necessary to distinguish between discharges in which a patient has received complete treatment and discharges in which the patient is transferred to another acute-care hospital for related care. If a full DRG payment were made to each hospital involved in a transfer situation irrespective of the length of time the patient spent in the sending hospital prior to transfer, this would create a strong incentive to increase transfers, thereby unnecessarily endangering patients' health and increasing program outlays. Therefore, in a transfer situation, the regulations at § 412.4(d) provide that full payment is made to the final discharging hospital, and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred. The per diem rate is determined by dividing the full DRG payment that would have been paid in a nontransfer situation by the average length of stay for the DRG into which the case falls. Transferring hospitals are also eligible for outlier payments for cases that meet the cost outlier criteria, but are not eligible for day outlier payments. Two exceptions to the transfer payment policy are transfer cases classified into DRG 385 (Neonates, Died or Transferred to Another Acute Care Facility) or DRG 456 (Burns, Transferred to Another Acute Care Facility), which are not paid on a per diem basis but receive the full DRG payment instead.

In the past, we have reviewed the transfer payment policy for potential improvements. The September 3, 1986 final rule (51 FR 31489) pointed out that, based on our analysis of the possible effects of making a single payment for all the hospitals involved in a transfer case, it was not possible to develop such a policy that would be equitable or administratively feasible. That is, we determined that a single payment based only on the DRG classification of one hospital would probably not be sufficient to be split equitably among the two or more hospitals based on the actual resources that each expended in the episode of care.

We issued a report to Congress in 1988 on the impact of outlier and transfer payment policies upon rural hospitals (Review of the Impact of

Outlier and Transfer Payment Policy upon Rural Hospitals, DHHS, 1988). We examined the ratio of payments under the prospective payment system to total charges in the transferring hospital by length-of-stay and found that the ratios were actually highest for the shortest lengths-of-stay and declined as length-of-stay increased. Furthermore, the ratios for cases with lengths-of-stay of up to 3 days exceeded those for all inpatient stays paid under the prospective payment system. Although the focus of that report was primarily on the impacts of outlier and transfer policy on rural hospitals, it concluded that the current policy was more practical than another potential alternative, establishing separate DRG categories for transfer cases.

ProPAC's report indicates that payment-to-cost ratios for transfer cases in the transferring hospitals were substantially below average for cases with short lengths-of-stay, but that the ratios were closer to average for cases with lengths-of-stay approximating the average. Since ProPAC's findings differ from those in our 1988 report to Congress, we intend to review ProPAC's results to determine whether refinements in the transfer payment policy are now warranted. (A ProPAC technical report containing the results of their analysis is scheduled for publication in April 1992.)

Any change in the transfer payment methodology needs to be evaluated in terms of its potential for creating incentives that may adversely affect the quality of care received by Medicare beneficiaries. For example, the declining per diem rate in a graduated per diem methodology would create an incentive for initiating transfers earlier in the course of treatment, potentially endangering patients' health. The magnitude of this incentive would depend on the gradation of the rate.

We share ProPAC's concern that the transfer payment policy not create substantial disincentives to the transfer of patients for recuperative care at a local hospital after completion of any specialty treatment provided in the tertiary hospital. However, we believe that, in light of the alternatives we have reviewed, our policy adequately maintains the efficiency incentives of the prospective payment system while establishing relatively neutral financial incentives to transfer or accept transfer patients. A decision to transfer a patient should be based upon the medical facts of a patient's case and not the financial effects upon the hospital.

F. Payment for Hemophilia Blood Clotting Factor (Recommendation 8)

Recommendation: ProPAC believes that current prospective payment system policies are adequate to prevent significant payment inequities for hospitals that treat Medicare beneficiaries with hemophilia. Therefore, ProPAC does not recommend reinstatement of an add-on payment for the costs of blood clotting factor provided to hemophilia patients. However, should the current situation change, ProPAC may reevaluate this issue.

Response: In 1989, ProPAC recommended implementation of a temporary, add-on payment for the costs of providing blood clotting factor to patients with hemophilia. ProPAC believed the add-on payment was necessary because of the rapidly increasing costs for clotting factor due in large part to manufacturing processes designed to reduce the risk of transmitting the human immunodeficiency virus. In response to ProPAC's recommendation, Congress enacted section 6011 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), which amended section 1886(a)(4) of the Act to provide that hospitals paid under the prospective payment system receive an additional payment for the costs of administering blood clotting factor to hemophiliacs who are hospital inpatients. This add-on payment was effective for blood clotting factor furnished on or after June 19, 1990 and before December 19, 1991. A detailed discussion of this provision and its implementation can be found in the April 20, 1990 final rule with comment period (55 FR 15157) and the September 4, 1990 final rule (55 FR 36000).

ProPAC states that its analysis indicated that, in FY 1990, there were fewer than 3,000 Medicare discharges with hemophilia. Not all of them required blood clotting factor, and the vast majority of hospitals (94 percent) treated five or fewer cases. Therefore, ProPAC concluded that even though hemophiliacs are more costly to treat than the average case within a given DRG, there are insufficient data to indicate that these differences are due to the administration of clotting factor.

HCFA data analysis resulted in similar findings. Evaluation of hospital admissions in which blood clotting factor was administered (from June 19, 1990, when the add-on was implemented, to October 1, 1991) identified only 97 hemophilia inpatients. We found, as did ProPAC, that not only was there a low volume of patients, but also, there were very few hospitals with a significant number of cases. Only eight hospitals administered clotting factor to four or more hemophilia patients. The impact of the increased cost of the clotting factor was distributed across 35 hospitals submitting claims for administering clotting factors to inpatients with hemophilia during the time period under analysis, with the majority of hospitals incurring only one admission.

As ProPAC states, the costs for the clotting factor are included in the hospital charges and are, therefore, reflected in the DRG weights. Under the prospective payment system, we do not pay for the costs of individual cases; rather, payment is based on an averaging process, as the cases in each DRG vary in resource requirements and length of stay. Given a normal distribution, most cases will require resources close to the average, with some cases costing more and some costing less. With the low volume of hemophilia inpatients requiring clotting factor, the higher costs for these cases are offset by the lower costs for other cases in the same DRG. In addition, the system does make provision for exceptionally high cost cases through outlier payments. Approximately 9 percent of the cases we analyzed received outlier payments.

We agree with ProPAC that, given the low volume of cases and the fact that these cases are not concentrated in a few hospitals, there is not sufficient justification to reinstate the add-on payment. Therefore, we support ProPAC's recommendation concerning the add-on payment for blood clotting factor provided to hemophilia patients.

G. Payment for Epilepsy Cases (Recommendation 9)

Recommendation: The current DRG assignment should be revised to account for the resource requirements of patients with epilepsy receiving intensive neurodiagnostic monitoring. ProPAC analyzed Medicare data from FY 1990 to identify patients with epilepsy in DRGs 24, 25, and 26 (Seizure and Headache) and found that payment-to-cost ratios were lower for patients with epilepsy compared to other patients in the same DRGs. These payment differences were greater for patients with intractable epilepsy and for those receiving neurodiagnostic monitoring. The Commission also found that the majority of patients with epilepsy were not concentrated in any hospital type but that hospitals providing specialized epilepsy services had a higher percentage of patients with epilepsy who receive monitoring. Therefore,

ProPAC believes that the Secretary should evaluate the current DRG assignment for patients with intractable epilepsy, particularly those receiving intensive neurodiagnostic monitoring.

Response: HCFA analyzed FY 1991 MEDPAR data and identified 22,223 discharges with a principal diagnosis of epilepsy in DRGs 24, 25, and 26. Although epilepsy represents 29 percent of all patients classified to these DRGs, intractable epilepsy accounts for only 3.7 percent (2,780 cases). Our findings parallel those of ProPAC, with epilepsy cases diagnosed as intractable having higher average charges ($7310) than the nonintractable cases ($6274). These charges compare to $6393 for all cases classified to DRG 24, 25, and 26. The following table summarizes the comparison of average charges between epilepsy and other cases assigned to the same DRGs. For each entry, the number of cases is included in the parentheses.

DRG	Intractable epilepsy	Nonintractable epilepsy	All epilepsy	All cases
24	$8867	$7260	$7440	$7400
	(1,606)	(13,727)	(15,333)	(53,661)
25	$5027	$3901	$4093	$3977
	(1,173)	(5,700)	(6,873)	(22,386)
26	$4070	$5959	$5848	$7174
	(1)	(16)	(17)	(54)
All cases	$7310	$6274	$6403	$6393
	(2,780)	(19,443)	(22,223)	(76,101)

If video and radio-telemetered electroencephalographic monitoring (procedure code 89.19) is performed, the result is higher charges, with both intractable and nonintractable patients receiving this service averaging a charge of $7215, while those without the service had an average charge of $6471. The differential in charges for intractable epilepsy cases with and without telemonitoring service, however, was less than 3 percent. With only 2 percent of the cases reporting codes for video-telemonitoring, and only two cases reporting psychological services, it is impossible to reach a definitive conclusion concerning the use and cost of neurodiagnostic services.

Evaluation of ancillary charges resulted in similar findings. That is, average ancillary charges were slightly above average for intractable patients and slightly below for nonintractable patients. Since 90 percent of the epilepsy admissions are for nonintractable cases and only 10 percent are for intractable, these slightly higher treatment costs for intractable cases are distributed across DRGs 24, 25, and 26, with some charges occurring above the average and some below. Given this distribution of cases, the average ancillary charge for all epilepsy patients ($3,431) was actually lower than the average charge for all patients in these DRGs ($3,541).

To measure the impact on hospitals of providing services to patients with intractable epilepsy, we evaluated utilization by these patients at the hospital level, identifying high-volume hospitals (defined as hospitals treating 10 or more intractable epilepsy cases). We found that for intractable epilepsy patients, there were 1,042 hospitals providing service to 2,780 patients, with fewer than 4 percent of these hospitals having 10 or more cases (40 hospitals). Only 22 percent of the claims submitted by the high-volume hospitals for intractable epilepsy patients had charges that were higher than the average charge for the DRG for all patients. In addition, for approximately one-half of the claims submitted by these hospitals for all epilepsy patients in DRGs 24, 25, and 26, the average charge for treating intractable cases was less than the average charge for treating nonintractable cases.

Our evaluation of the relationship between Medicare costs and Medicare payments, for the first 7 years of prospective payment, identified only three high-volume hospitals with a negative average Medicare operating margin. (A negative operating margin means that a hospital incurred costs in excess of payment for its Medicare patients.) Without a high concentration of cases in a few hospitals, the impact of treating intractable epilepsy is distributed across many hospitals treating a low volume of these patients, with no significant impact on profit margins. This is consistent with the overall design of the prospective payment system. Under that system, payment is based on an averaging process, with some cases incurring costs in excess of payment while for others payment exceeds costs. The incentive is for hospitals to treat a mix of patients and, thus, achieve a balance between costs and payments.

As part of our analysis, we also examined the charge data from those 25 hospitals that were identified by the National Association of Epilepsy Centers as hospitals that specialize in the treatment of epilepsy. Based on our data, these epilepsy specialty centers did not necessarily treat a high volume of Medicare intractable epilepsy patients. The volume of these cases ranged from 0 to 34. In addition, there was no consistent pattern concerning charges for either intractable or nonintractable epilepsy. The 10 specialty hospitals that were also high-volume hospitals (that is, treated 10 or more epilepsy cases) had average charges lower than the national average for these cases. We evaluated Medicare operating margins for the specialty centers, again reviewing the relationship between cost and payment for treating Medicare patients. As with the high-volume hospitals, the overall average operating margin for the first 7 years under prospective payment was positive. Only two centers (one of which was also a high-volume hospital) experienced an overall negative operating margin.

As ProPAC suggested, HCFA has evaluated the current DRG assignment for patients with intractable epilepsy, particularly those receiving intensive neurodiagnostic monitoring. While the results of our analysis confirm that intractable epilepsy patients incur higher charges on average than do patients with nonintractable epilepsy, particularly those receiving neurodiagnostic monitoring, these differences are not significant enough to warrant any DRG classification change.

We note that the data for both intractable and nonintractable cases were inconsistent across DRGs as well as among hospitals. Without accurate coding for the intensive services required for these patients, we cannot document consistent and reliable differences between patients receiving neurodiagnostic services and those not using these services. With minimal differences in average charges between intractable epilepsy cases and those of the DRG overall, given the distribution of cases across a large number of

hospitals and the inconsistencies between both the high-volume hospitals and the epilepsy treatment centers, we find there is insufficient evidence to justify a DRG modification at this time. Therefore, we are not proposing any revision to the current DRG assignment for epilepsy patients.

H. Essential Access Community Hospital Program (Recommendation 10)

Recommendation: ProPAC recommends that the Secretary waive, on an individual case basis, some of the requirements for participation in the Essential Access Community Hospital Program. This would encourage increased hospital participation and allow the Secretary to gain additional experience with alternative policies. Over time, policies should be expanded to target the larger group of hospitals that should continue to operate but offer limited, less specialized inpatient services. By refocusing these hospitals' operations, ProPAC believes that overall system efficiency may be improved without sacrificing access to care.

Response: On October 25, 1991, we published a proposed rule in the **Federal Register** to implement the Essential Access Community Hospital (EACH) program, including criteria that facilities would have to meet to qualify to be designated as EACHs or rural primary care hospitals (RPCHs) (56 FR 55382). These criteria were based on the provisions of section 1820 of the Act (the statutory section that establishes the EACH program). That section of the Act does not include any mechanism for waiving the statutory requirements for designation as an EACH or RPCH.

In response to our proposed rule, we received a number of comments recommending greater flexibility in the application of the statutory provisions cited by ProPAC, including the criteria for designation as an RPCH. The provisions for which commenters recommended waiver included those provisions relating to the certification of the need for temporary inpatient care, the bed-size and length-of-stay limitations for RPCHs, and the criteria related to the bed size or location of EACHs and their responsibilities with respect to RPCHs. Some commenters expressed the opinion that HCFA should waive some or all of these provisions; other commenters recommended that we publish final regulations to permit the designation of "intermediate EACHs" that would appear to be similar in concept to the larger facilities that ProPAC believes should be encouraged to become more efficient through appropriate restructuring of their services.

We are considering these comments and will respond to them in the preamble to the final rule implementing the EACH program. We do not believe it would be appropriate to adopt any of the ProPAC recommendations outside of the rulemaking process.

I. PRO Review and Quality of Care (Unnumbered Recommendation)

Recommendation: ProPAC believes the Peer Review Organization (PRO) program should continue to monitor, at the case and facility levels, the care furnished to Medicare beneficiaries. Although the Commission commends the planned expansion of epidemiologic patterns of care studies using the Uniform Clinical Data Set, these more general analyses should not replace all case-level and facility-level quality review. Further, funding should be sufficient to allow PROs to perform case-level and facility-level review, as well as more general analyses of broad patterns of care.

Response: We intend to continue to monitor the care furnished to Medicare beneficiaries at the case and facility levels, as ProPAC recommends. HCFA has developed a new strategy for the PRO program, consistent with the recommendations in the 1990 Institute of Medicine Report, "Medicare: A New Strategy for Quality Assurance," to continuously improve quality of care, and to strengthen the ability of health care organizations and practitioners to assess and improve their own performance. This strategy is called the Health Care Quality Improvement Initiative (HCQII). Central to the HCQII is a fundamental change in the PRO program from its emphasis on individual (and often isolated) clinical errors to an increased emphasis on general improvements in medical care. Under the HCQII, PROs will use statistical quality control to examine variations in both the processes and the outcomes of care. PROs will then share these data with hospitals and physicians and work with them to interpret and apply the findings.

The HCQII is a program designed to shift the emphasis of Medicare quality assurance activity from review of individual cases to the review of patterns of care and patterns of outcomes. The Initiative is intended to move mainstream medical care toward best available practices, in contrast with a previous emphasis that focused on correcting unusually bad care.

The Initiative grows out of program experience, health services research, and modern quality management theory. Health services research indicates that there is wide variation in both practices and outcomes for most conditions and procedures. Modern quality management shows that the emphasis on quality improvement should be on improving the usual processes of care rather than identifying an isolated problem with an individual case. The Initiative depends on collection of data through the Uniform Clinical Data Set, which will provide detailed clinical information.

PROs will continue to review individual cases under HCQII. About one-half of PRO resources will be expended on review of individual cases over the next 4 years. This review will continue to be carried out by local physicians working for the local PRO. Reviewing individual cases is an important complement to reviewing patterns of care and outcomes of care. Although there will be increased emphasis on pattern analysis and education, HCFA will continue to identify and act on individual quality problems. Hospitals that do not improve will be subject to increasingly severe actions, including sanctions. However, HCFA believes that education in concert with analysis of current patterns will produce greater improvements in care practices than do sanctions.

The Cooperative Cardiovascular Project is the first major clinical project of the HCQII. The Project will coordinate activities of PROs and the health care and research communities to improve care for patients with myocardial infarction, coronary artery bypass grafting, and percutaneous transluminal coronary angioplasty. The Project is being planned cooperatively by a group of interested organizations representing hospitals, consumers, researchers, and regulators. The Project will examine processes of care and outcomes of care for patients with these three conditions, identify areas in which practices can be improved, develop programs for improvement, and track the success of hospitals and medical staffs in achieving this improvement.

J. Update Factor for Payments to Dialysis Facilities (Recommendation 12)

Recommendation: ProPAC is not recommending an increase in payments for dialysis services at this time. Currently, data are inadequate to assess the relationship between the payments and the costs of furnishing various types of dialysis services in different settings. ProPAC recommends that HCFA expedite work necessary to complete its data base of unaudited dialysis facility cost reports. In addition, HCFA should annually audit the cost reports of a representative sample of dialysis

facilities and maintain a data base with this information.

Response: Section 4201(b) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) directed ProPAC to conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end-stage renal disease (ESRD) patients under the Medicare program. Based on this information, ProPAC was directed to make recommendations to Congress regarding the method or methods of payment and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under Medicare should be established for dialysis services furnished during FY 1993 and the methodology to be used to update these payments for subsequent fiscal years. These recommendations were to be submitted as a report to Congress by March 1, before the beginning of each fiscal year, beginning with March 1, 1992 for FY 1993. The study was to examine the following factors: hemodialysis and other treatment modalities, adjustment factors for facility's characteristics, adjustments for labor and nonlabor costs, profit margin, and adjustments for patient complexity and costs associated with positive outcomes.

ProPAC believes that existing evidence, based on 1988 audit data, does not justify a rate increase at this time. The 1988 audit sample was designed to estimate the median costs of a dialysis service in an efficiently operated renal facility, that is, to set a rate for payment, and not to determine the costs of dialysis services that were affected by other factors (such as volume, type of ownership, and location of facility) as referenced by the statute. ProPAC concluded that the 1988 audit data were not representative of the proportion of patients treated at home, the types of dialysis provided, and the characteristics of all dialysis facilities. Thus, the Commission determined that this sample was not adequate to address the issues raised by Congress in Public Law 101–508 and that more extensive cost data was needed.

We agree with ProPAC's assessment that the 1988 audit data were not sufficient to address the issues raised by Congress, as the audits were not designed to provide data on the issues raised in the Congressional mandate. We have been developing data and have recently completed a data base of unaudited renal cost data. We are maintaining computer files of cost report data for renal facilities with fiscal years ending in 1988, 1989, 1990 and 1991, and have initiated an analysis of these data. ProPAC is aware that we now have data in the format required and has requested access to these data.

ProPAC is also recommending that we annually audit a representative sample of cost reports to use in evaluating payments and costs by type of treatment and setting. This is an appropriate recommendation for rate-setting purposes, but we do not believe it would be cost effective to conduct annual audits under the prospective payment system, since there is no recovery of Medicare funds to offset the costs of these audits, nor does the Secretary have the authority under Public Law 101–508 to set rates. Moreover, we believe that a representative set of audits could be useful to the Secretary to set annual payment rates, if the Secretary had the authority to set rates. We believe that to conduct audits without the authority to use these results to set rates would result in inefficient use of government expenditures.

Presented below are tables that provide data from 1990 ESRD facility surveys, including both hospital-based and independent facilities, and a table that shows the percentage of patients by treatment modalities. Tables 1, 2 and 3 provide information concerning the universe of renal facilities. Over the past 10 years, the number of independent facilities has increased significantly. These facilities account for the majority of dialysis treatments. The 1990 data show that independent facilities account for 66 percent of all renal facilities and furnish dialysis service to 66 percent of all dialysis patients.

Table 3 shows that for 1990, 39 percent of renal facilities furnish 68 percent of outpatient maintenance dialysis treatments. This is in contrast to the situation in 1983, when the original base rates were established. At that time, the rates were weighted using the costs experiences of small renal units, especially hospitals, which then dominated the dialysis industry. This resulted in overpaying the more efficient larger facilities. We believe that ProPAC should consider a payment method that establishes different rates for the larger, more efficient renal facilities that benefit from economies of scale. For facilities that meet certain limited criteria, we are considering a different payment structure based on the characteristics of these facilities. For example, pediatric hospitals and small rural facilities, with less than a defined number of treatments, might qualify for an adjusted rate that reflects the relative inefficiencies associated with low volume. For hospitals, a case-mix adjustment would be appropriate to eliminate the administrative burden and costs borne by hospitals filing for an exception to their payment rates.

Table 4 documents that in 1990 the treatment modalities for 97 percent of renal patients were outpatient hemodialysis, CAPD (continuous ambulatory peritoneal dialysis) or CCPD (continuous cycling peritoneal dialysis). This percentage continues to grow and the rate structure should reflect this shift in treatment modalities. The numbers of intermittent peritoneal dialysis (IPD) and home hemodialysis patients are insignificant and diminishing, and no special payment structure should be established for these treatment modalities. Patients on IPD should be reflected in any case-mix adjustment proposed by ProPAC. Since 1982, the percentage of patients on home hemodialysis has decreased from 6.7 percent to 1.9 percent. Of these home patients, 2 percent of renal facilities account for 43 percent of all patients. In total, 21 percent of renal facilities account for 78 percent of all home dialysis patients. If ProPAC recommends setting a separate home dialysis rate, we would suggest that only those facilities that have a significant home patient population be used to establish the payment rate in order to reflect the economic efficiencies and training expertise of such programs.

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TABLE 1: HOSPITAL DATA FROM 1990 ESRD FACILITY SURVEY

RANGE OF HOSPITAL FACILITIES' TREATMENTS

RANGE	UNITS	HEMO RXS	HEMO PATs	TOTAL PATs	AVG RXs
NO TREATMENTS	18	0	0	38	0
1 – 2,499	168	210548	1830	2643	1253
2,500 – 4,999	157	579238	4222	5795	3689
5,000 – 7,499	114	711744	5057	6958	6243
7,500 – 9,999	96	837722	6035	7922	8726
10,000 – 14,999	77	934659	6884	9004	12138
15,000 – 19,999	39	671950	4721	6214	17229
20,000 OVER	20	541086	3807	5000	27054
TOTAL	689	4486947	32556	43574	6512

RANGE OF RURAL HOSPITAL FACILITIES TREATMENTS

RANGE	UNITS	HEMO RXS	HEMO PATs	TOTAL PATs	AVG RXs
NO TREATMENTS	1	0	0	0	0
1 – 2,499	55	80717	628	657	1468
2,500 – 4,999	67	236009	1708	2134	3523
5,000 – 7,499	20	121127	874	1032	6056
7,500 – 9,999	6	49533	369	409	8256
10,000 – 14,999	2	21475	162	215	10738
15,000 – 19,999	0	0	0	0	0
20,000 OVER	0	0	0	0	0
TOTAL	151	508861	3741	4447	3370

RANGE OF URBAN HOSPITAL FACILITIES' TREATMENTS

RANGE	UNITS	HEMO RXS	HEMO PATs	TOTAL PATs	AVG RXs
NO TREATMENTS	17	0	0	38	0
1 – 2,499	113	129831	1202	1986	1149
2,500 – 4,999	90	343229	2514	3661	3814
5,000 – 7,499	94	590617	4183	5926	6283
7,500 – 9,999	90	788189	5666	7513	8758
10,000 – 14,999	75	913184	6722	8789	12176
15,000 – 19,999	39	671950	4721	6214	17229
20,000 OVER	20	541086	3807	5000	27054
TOTAL	538	3978086	28815	39127	7394

TABLE 2: INDEPENDENT DATA FROM 1990 ESRD FACILITY SURVEY

RANGE OF INDEPENDENT FACILITIES' TREATMENTS

RANGE	UNITS	HEMO RXS	HEMO PATs	TOTAL PATs	AVG RXs
NO TREATMENTS	18	0	0	509	0
1 – 2,499	229	287459	4541	4950	1255
2,500 – 4,999	271	1014465	7990	8885	3743
5,000 – 7,499	242	1480978	10828	12563	6120
7,500 – 9,999	189	1636675	11935	13691	8660
10,000 – 14,999	223	2723589	19342	22803	12213
15,000 – 19,999	80	1372358	9670	11024	17154
20,000 OVER	55	1502806	9844	11801	27324
TOTAL	1307	10018330	74150	86226	7665

RANGE OF RURAL INDEPENDENT FACILITIES' TREATMENTS

RANGE	UNITS	HEMO RXS	HEMO PATs	TOTAL PATs	AVG RXs
NO TREATMENTS	2	0	0	90	0
1 – 2,499	96	127496	1438	1515	1328
2,500 – 4,999	101	371603	2730	3061	3679
5,000 – 7,499	64	382890	2755	2927	5983
7,500 – 9,999	30	258095	1790	1950	8603
10,000 – 14,999	14	165124	1139	1247	11795
15,000 – 19,999	2	33119	216	287	16560
20,000 OVER	1	20388	151	217	20388
TOTAL	310	1358715	10219	11294	4383

RANGE OF URBAN INDEPENDENT FACILITIES' TREATMENTS

RANGE	UNITS	HEMO RXS	HEMO PATs	TOTAL PATs	AVG RXs
NO TREATMENTS	16	0	0	419	0
1 – 2,499	133	159963	3103	3435	1203
2,500 – 4,999	170	642862	5260	5824	3782
5,000 – 7,499	178	1098088	8073	9636	6169
7,500 – 9,999	159	1378580	10145	11741	8670
10,000 – 14,999	209	2558465	18203	21556	12241
15,000 – 19,999	78	1339239	9454	10737	17170
20,000 OVER	54	1482418	9693	11584	27452
TOTAL	997	8659615	63931	74932	8686

TABLE 3: INDEPENDENT & HOSPITAL DATA FROM 1990 ESRD FACILITY SURVEY

RANGE OF HOSPITAL & INDEPENDENT FACILITIES' TREATMENTS

RANGE	UNITS	HEMO RXS	HEMO PATs	TOTAL PATs	AVG RXs	% OF UNITS	CUMUL %	% OF RXS	CUMUL %
NO TREATMENTS	36	0	0	547	0	1.8%	1.8%	0.0%	0.0%
1 – 2,499	397	498007	6371	7593	1254	19.9%	21.7%	6.0%	6.0%
2,500 – 4,999	428	1593703	12212	14680	3724	21.4%	43.1%	11.4%	17.4%
5,000 – 7,499	356	2192722	15885	19521	6159	17.8%	61.0%	14.9%	32.3%
7,500 – 9,999	285	2474397	17970	21613	8682	14.3%	75.3%	16.8%	49.1%
10,000 – 14,999	300	3658248	26226	31807	12194	15.0%	90.3%	24.6%	73.7%
15,000 – 19,999	119	2044308	14391	17238	17179	6.0%	96.2%	13.5%	87.2%
20,000 OVER	75	2043892	13651	16801	27252	3.8%	100.0%	12.8%	100.0%
TOTAL	1996	14505277	106706	129800	7267	100%		100%	

RANGE OF RURAL HOSPITAL & INDEPENDENT FACILITIES' TREATMENTS

RANGE	UNITS	HEMO RXS	HEMO PATs	TOTAL PATs	AVG RXs	% OF UNITS	CUMUL %	% OF RXS	CUMUL %
NO TREATMENTS	3	0	0	90	0	0.7%	0.7%	0.0%	0.0%
1 – 2,499	151	208213	2066	2172	1379	32.8%	33.4%	14.8%	14.8%
2,500 – 4,999	168	607612	4438	5195	3617	36.4%	69.8%	31.8%	46.6%
5,000 – 7,499	84	504017	3629	3959	6000	18.2%	88.1%	26.0%	72.6%
7,500 – 9,999	36	307628	2159	2359	8545	7.8%	95.9%	15.5%	88.1%
10,000 – 14,999	16	186599	1301	1462	11662	3.5%	99.3%	9.3%	97.4%
15,000 – 19,999	2	33119	216	287	16560	0.4%	99.8%	1.5%	98.9%
20,000 OVER	1	20388	151	217	20388	0.2%	100.0%	1.1%	100.0%
TOTAL	461	1867576	13960	15741	4051	100%		100%	

RANGE OF URBAN HOSPITAL & INDEPENDENT FACILITIES' TREATMENTS

RANGE	UNITS	HEMO RXS	HEMO PATs	TOTAL PATs	AVG RXs	% OF UNITS	CUMUL %	% OF RXS	CUMUL %
NO TREATMENTS	33	0	0	457	0	2.1%	2.1%	0.0%	0.0%
1 – 2,499	246	289794	4305	5421	1178	16.0%	18.2%	4.6%	4.6%
2,500 – 4,999	260	986091	7774	9485	3793	16.9%	35.1%	8.4%	13.0%
5,000 – 7,499	272	1688705	12256	15562	6208	17.7%	52.8%	13.2%	26.2%
7,500 – 9,999	249	2166769	15811	19254	8702	16.2%	69.1%	17.0%	43.3%
10,000 – 14,999	284	3471649	24925	30345	12224	18.5%	87.6%	26.9%	70.2%
15,000 – 19,999	117	2011189	14175	16951	17190	7.6%	95.2%	15.3%	85.4%
20,000 OVER	74	2023504	13500	16584	27345	4.8%	100.0%	14.6%	100.0%
TOTAL	1535	12637701	92746	114059	8233	100%		100%	

TABLE 4: PERCENTAGE OF PATIENTS BY TREATMENT MODALITIES

YEAR	HEMO OUTPAT	IPD OUTPAT	ALL TRAIN MODES	HEMO HOME	IPD HOME	CAPD HOME	CCPD HOME	TOTAL
1982	79.92%	1.35%	0.89%	6.68%	1.24%	9.92%	0.00%	100.0%
1983	79.22%	1.03%	0.79%	6.01%	1.10%	11.85%	0.00%	100.0%
1984	79.22%	0.75%	0.61%	5.26%	0.33%	12.74%	1.09%	100.0%
1985	79.30%	0.69%	0.67%	4.70%	0.27%	13.25%	1.12%	100.0%
1986	80.05%	0.56%	0.59%	4.04%	0.21%	13.11%	1.44%	100.0%
1987	80.62%	0.45%	0.36%	3.64%	0.17%	13.03%	1.74%	100.0%
1988	81.40%	0.34%	0.55%	3.02%	0.31%	12.57%	1.81%	100.0%
1989	81.96%	0.27%	0.36%	2.51%	0.14%	12.77%	1.99%	100.0%
1990	81.99%	0.22%	0.35%	1.91%	0.15%	13.07%	2.31%	100.0%
TOTAL	80.62%	0.56%	0.54%	3.88%	0.37%	12.60%	1.43%	100.0%

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K. Outpatient Payment Reform (Recommendation 13)

Recommendation: ProPAC believes that a prospective payment system for outpatient services should be implemented. Outpatient facility payment reform should ultimately include all providers of outpatient services, such as hospitals, physicians' offices, and free-standing ambulatory surgical centers. The same payment method should apply to the facility or technical component of all services. The payment rate, however, should be adjusted to reflect justifiable cost differences such as wages and case mix. Further, cost differences that have some societal benefit, such as standby capacity and emergency capabilities, should also be reflected in the payment rate. Where feasible, the unit of payment should be based on bundled related services.

Response: This recommendation raises a number of important issues. We are committed to the development of a prospective payment system for hospital outpatient departments. We believe the system we design should result in certain benefits, such as increasing payment equity among providers, constraining Medicare expenditures, and protecting beneficiaries' access to services, while promoting predictability and administrative simplicity. In addition, we agree with ProPAC that ideally the same prospective payment system should eventually be extended to the other outpatient settings.

In its discussion of this recommendation, ProPAC raises the concern that our current research focuses only on hospital-provided outpatient services, and they encourage the expansion of research to other outpatient facilities as well. For example, ProPAC notes that the Ambulatory Patient Groups (APGs) classification system was developed for use in the hospital outpatient setting, and questions whether APGs can be appropriately applied in the nonhospital setting.

It is true that we have initially focused on the development of the Congressionally mandated prospective payment system for hospital outpatient services. However, we see this as a first and necessary step to a comprehensive system that could be applied to nonhospital settings as well. In addition, we do not believe that there is any feature inherent in a clinically-based case-mix classification system such as APGs that would preclude it from being used as the payment method for other outpatient settings.

L. Medicare Volume Performance Standard (Recommendation 14)

Recommendation: Services provided in the hospital outpatient setting should be included in the Medicare Volume Performance Standard (MVPS) to the extent that these services are included when provided in other settings. Certain services, such as laboratory tests and therapy, currently are included in the MVPS when they are furnished in free-standing settings. ProPAC believes that hospital-provided outpatient services should also be incorporated in the VPS. Their inclusion will make incentives to control volume consistent across sites of care.

Response: In theory, we agree that services provided in the outpatient department of hospitals should be included in the MVPS because physicians should be held accountable for the services they order as well as provide. However, until a process is established for obtaining more timely data from the intermediaries than currently exists through the cost report process, only clinical diagnostic laboratory tests provided in the outpatient department can feasibly be brought into the MVPS.

With respect to other hospital outpatient department services, the data needed to include these services in the MVPS are not available on a timely basis as long as payment continues on a reasonable cost basis. While charge data from the hospital outpatient department can be obtained in a timely manner, we would not be able to obtain accurate expenditure information for the purpose of measuring performance under the MVPS for the year ending September 30 because of varying fiscal year ending dates for cost reports and delays in settlement of the cost report. Thus, we do not think it is feasible to include in the MVPS any hospital outpatient services that are paid for on a reasonable cost basis.

M. Cost Data Collection for Outpatient Providers (Recommendation 15)

Recommendation: A mechanism should be implemented for periodic collection of procedure-specific cost data in free-standing settings, including physicians' offices and ambulatory surgical centers.

Response: We have specifically chosen not to require Medicare-participating ambulatory surgical centers (ASCs) to submit annual cost reports, primarily to avoid imposing on ASCs the burden and expense that these reports engender. Some ASCs, especially the smaller facilities, would have difficulty absorbing the added expense of maintaining billing and recordkeeping systems necessary to satisfy an annual Medicare cost report requirement. Additional facility costs would, in turn, be reported to Medicare, inflating Medicare ASC payment rates and beneficiary co-payments (see Recommendation 16 below) as well as Medicare administrative costs. Therefore, we do not concur with the ProPac recommendation that an annual cost report would be an appropriate mechanism for the systematic and comprehensive collection of data for free-standing settings.

We surveyed Medicare-participating ASCs in 1986 to collect procedure-specific cost data for use in setting ASC payment rates. Also, an ASC survey will be conducted during 1992. These surveys collect information regarding charges, costs, and volume on a procedure-specific basis. One portion of the 1992 survey will ask ASCs to identify component services of selected high-volume procedures and to report their actual costs in furnishing those services. The data reported for this "procedure costing" portion of the 1992 survey as well as the more general charge, cost, and utilization data collected from all ASCs are validated by random on-site audits of a representative sample of facilities. We have found this method of data collection to be cost effective at both the national and provider level and minimally disruptive to the industry. The increase in the number of Medicare-certified ASCs from slightly fewer than 500 in 1986 to more than 1400 in 1992 suggests that our current data collection procedures are not a significant impediment to Medicare participation by ASCs.

HCFA is currently sponsoring research to obtain facility cost data (that is, excluding physician professional service costs) on a sample of about 400 frequently found procedures in hospital outpatient departments, ambulatory surgical centers, and physicians' offices. The research, due to HCFA in 1993, will demonstrate a methodology for collecting and anylyzing these data and enable us to explore the reasons for differences in costs between types of outpatient sites. After the report is delivered, HCFA will be able to determine whether or not the data collection should be performed periodically.

N. Beneficiary Liability (Recommendation 16)

Recommendation: Beneficiary Part B coinsurance for hospital outpatient services that are paid for prospectively

should be limited to 20 percent of the payment amount allowed by Medicare.

Response: We recognize ProPAC's concern. We have been reviewing this issue in the context of our development of a comprehensive prospective payment system for all hospital outpatient services. We are working to develop an approach that will be fair to beneficiaries, while minimizing the negative financial impact on the Medicare program.

O. Quality of Care in Outpatient Settings (Recommendation 17)

Recommendation: ProPAC is concerned about the lack of Federal quality oversight in many ambulatory care settings. As more services are furnished in outpatient settings, ProPAC believes the Secretary should enhance existing methods and develop new ones to assess and monitor the quality of care provided to beneficiaries in these settings.

Response: We agree with ProPAC's recommendation regarding the need for better assessment and monitoring of the quality of care provided to beneficiaries in ambulatory care settings. We have two projects underway that we expect will give us the necessary information to review patient care provided in physician offices and other ambulatory settings. In both cases, PROs have joined with academic medical experts to develop this information, and in both cases the approach is educational rather than regulatory.

In response to a Request for Proposal issued in 1989, the Wisconsin Peer Review Organization was awarded a contract to review care in physician offices. Data are being abstracted for records from 10 medical conditions commonly found in the Medicare population. Evaluation of risk-adjusted outcomes for these conditions will provide clues as to which patterns of interventions are likely to affect patient outcomes significantly.

The second project was awarded in 1990 to the Delmarva Foundation for Medical Care (the PRO for Maryland). Under this 3-year project, primary care physicians will be compared to their peers on the adequacy of record documentation and the performance of routine clinical functions such as testing, prescribing and monitoring drugs, procedures and diagnoses.

Both of these projects will emphasize providing physicians with data regarding their performance. We believe that the results obtained from these two projects will help us to implement an effective system of ambulatory care review.

In addition, section 4205(c) of Pub. L. 101–508 sets forth a number of requirements to enhance PRO/carrier coordination. In February 1991, all PROs were directed to exchange with carriers all medical policies and review guidelines, including screens and criteria, for new technologies and invasive procedures. In August 1991, five PROs and carriers (Connecticut, Maryland, North Carolina, Texas, and Wisconsin) began a pilot project for further exchange of information, including lists of physicians, to examine any commonality in their medical review activities. This pilot project should also prove beneficial in examining physicians who treat patients primarily on an outpatient basis.

Furthermore, HCFA has created a Fourth Scope of Work Workgroup to examine and develop a revised scope of work for the PROs as we begin implementing the HCQII to focus on evaluating quality of care in terms of the outcomes of care. (See the detailed discussion of HCQII above, in section VIII.I of this preamble.) We will continue to pursue pilot projects among the PROs to field test methods of performing review in ambulatory care settings. The results of these field tests will be used to design and implement a national program of review of ambulatory care.

P. Payment for Hospital-Provided Outpatient ASC–Approved Surgery (Recommendation 18)

Recommendation: ProPAC believes that payments for ambulatory surgery performed in the hospital outpatient setting should be fully prospective based on national rates adjusted for area wage differences. The payment rates should be established using average hospital costs and freestanding ASC payments. These rates should be computed in a budget neutral fashion, that is, aggregate spending should neither increase or decrease. National rates should be based on the classification system used to determine payments to free-standing ASCs. However, ProPAC believes this classification system should be revised, as noted in Recommendation 19. The rates should be updated annually using an appropriate update factor.

Response: We agree with ProPAC that payment for ambulatory surgery performed in the hospital outpatient setting should be fully prospective. As noted in Recommendation 13 above, we are in the process of developing a comprehensive prospective payment system for all hospital outpatient services. However, additional research and evaluation are needed before such a comprehensive prospective payment system can be implemented. Therefore, we anticipate that we will first propose a limited transitional prospective payment system for hospital outpatient services. We are currently evaluating a number of approaches for implementing this transitional system, among them proposals that, as ProPAC recommends, would use ASC data to help establish payment rates for hospital outpatient surgical services.

Q. Revision of the Classification System Used to Group Ambulatory Surgery Cases (Recommendation 19)

Recommendation: The Secretary should revise the classification system used to group ambulatory surgery cases for payment. Cases treated in both hospitals and freestanding ambulatory surgical centers (ASCs) should be used to establish the payment groups.

Response: In compliance with section 1833(i)(2)(A) of the Act, the current ASC payment classification system groups Medicare covered Physicians' Current Procedural Terminology (CPT) codes so as to assure that the standard overhead payment amount established for the procedures in each group takes into account the costs incurred by ASCs generally in providing services furnished in connection with the performance of those procedures.

Absent a complete revision of those sections of the Act that provide for the ASC benefit under Medicare, Part B, combining hospital data with free-standing ASC data to establish a classification system for payments to ASCs would not be in compliance with the law.

R. Payment for Hospital-Provided Outpatient Radiology Services (Recommendation 20)

Recommendation: ProPAC believes that payments for radiology services provided in the hospital outpatient setting should be fully prospective based on national rates adjusted for area wage differences. The payment rates should be established using average hospital costs and the technical component of the Medicare fee schedule for physicians. These rates should be computed in a budget neutral fashion; that is, aggregate spending should neither increase nor decrease. The national rates should be updated annually using an appropriate update factor.

Response: We agree with ProPAC that payment for radiology services performed in the hospital outpatient setting should be fully prospective. Again, we are in the process of developing a comprehensive prospective

payment system for all hospital outpatient services. As noted above, we anticipate that we will first propose a transitional system and we are in the process of evaluating a number of approaches for implementing such a system. For radiology services, we will evaluate, among other approaches, using the blend recommended by ProPAC.

S. Payment Adjustments for Hospital-Provided, ASC-Approved Surgery and Radiology Services (Recommendation 21)

Recommendation: ProPAC believes that national prospective payment rates for ASC-approved ambulatory surgery and radiology services should be adjusted to reflect differences in labor costs. This adjustment should take into account the appropriate labor share and occupational mix of ASC-approved surgery and radiology services in the hospital outpatient setting. The Secretary should conduct additional research to determine whether other adjustments are warranted.

Response: We currently do not have access to the necessary data to implement this recommendation. For example, hospitals would have to maintain records that would provide a breakdown of salaries and personnel hours attributable to inpatient and outpatient services. We are concerned that any future requirement for collecting the necessary data might place an undue administrative burden on hospitals. However, we encourage comments from hospitals with respect to how burdensome it would be to maintain such detail.

We would welcome comments from hospitals on this recommendation, particularly with regard to the scope and effects of the additional collection that would be required to carry out this recommendation.

T. Nursing Facility Wage Index (Recommendation 22)

Recommendation: The Secretary should collect data on employee compensation and paid hours of employment for nursing facilities that care for Medicare SNF patients. Once these data become available, the Secretary should develop a nursing facility wage index and use it to adjust Medicare SNF payments.

Response: ProPAC simulated a nursing facility wage index with limited data and found significant differences from the hospital wage index. However, ProPAC indicates that these differences could be due to differences in State regulations that affect nursing homes. The differences in State regulations should be minimized drastically with the implementation of the nursing home reform provisions of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), effective October 1, 1990, which made the certification requirements for SNFs virtually identical for both Medicare and Medicaid.

ProPAC states that another potential reason for the failure of the hospital wage index to reflect adequately the variation in SNF wages is the skill-mix differences between hospital and nursing facility personnel. We agree that there may be a skill-mix difference between hospitals and skilled nursing facilities. We do not know whether the differences in the skill mix would result in a different wage index.

ProPAC also notes that the current system contributes to inequitable Medicare SNF payments across regions. For example, almost half of the facilities in New England and almost a third of those in the Mid-Atlantic region receive less than 85 percent of their costs. This compares with an average of only 15 percent of the facilities in other regions. We believe, however, that factors other than the current wage index are responsible for the higher than average costs being reported for the facilities in New England and the Mid-Atlantic States. Among these factors are the nursing shortage and the fact that some of those States pay for SNF services under Medicaid using a prospective case-mix system, which encourages facilities to admit higher cost, resource-intensive patients.

Furthermore, based on our experience with similar attempts to mandate the establishment of a home health agency (HHA) based wage index for determining HHA cost limits, we believe it advisable to continue using the hospital wage index for SNFs until the SNF payment system is totally revised through legislation.

U. Nursing Facility Case-Mix Adjustment (Recommendation 23)

Recommendation: ProPAC believes that the payment system should recognize differences in the costs of care for different types of patients. Therefore, it supports the Secretary's efforts to develop and implement a case-mix adjustment to Medicare SNF payments under the Multistate Nursing Home Case Mix and Quality Demonstration. If the case-mix adjustment developed under the demonstration proves to be appropriate, it should be implemented.

Response: As ProPAC indicates, the Secretary will conduct a demonstration to implement a case-mix adjustment to Medicare SNF payments. The demonstration is scheduled to begin in July 1993, and we will consider its findings.

IX. Other Required Information

A. Paperwork Reduction Act

Sections 412.230 and 412.273 contain information collection requirements that are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act. Section 412.230 has been approved by OMB through October 1993 under OMB control number 0938–0573. Section 412.273 contains a new requirement whereby a hospital may request the Administrator to review a denial. Burden associated with this collection of information is estimated to be 1 hour per respondent. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments regarding the burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, may submit them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

B. Requests for Data from the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format; however, some files are available on diskette. Data sets are listed below with the cost of each. Anyone wishing to purchase data tapes should submit a written request along with a certified check or money order (payable to HCFA) to cover the cost of the tapes or diskettes to the following address: HCFA Office of Statistics and Data Management, Bureau of Data Management and Strategy, Room 3–A–12 Security Office Park Building, 6325 Security Boulevard, Baltimore, MD 21207.

1. Expanded Modified MEDPAR File

The file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services. The file is stripped of most data elements that would identify beneficiaries. The hospitals are identified. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Use for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), which was amended by the July

2, 1985 Notice of Proposed New Routine Use for an Existing System of Records (50 FR 27361). Under the requirements of these notices, a data release agreement must be signed by the purchaser before release of these data.

Expanded Modified MEDPAR—Hospital Inpatient Periods Available: FY 1988 through FY 1991

Price: $3,150.00 per fiscal year

2. HCFA Hospital Wage Index Survey

This tape contains three files. Included are the hospital hours and salaries for 1988 used to create the wage indexes used in the Medicare Hospital Prospective Payment System (PPS) as well as all wage indexes used since October 1, 1983. It also contains a list of State and county codes used by SSA and FIPS (Federal Information Processing Standards), county name, and Metropolitan Statistical Area (MSA), since October 1, 1983.

Periods Available: FY 1993 PPS Update File Cost: $460.00

3. H180 Extract, Cost Reporting Periods Ending January 1, 1982 through September 29, 1983

The H180 Extract contains cost, statistical, financial, and other information from the Medicare Hospital Cost Report (HCFA Form 2552–81). The data set includes as submitted, final settled and reopened cost reports as they were received from the Medicare Fiscal Intermediary. There is a single record for each Medicare Cost Report submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary. This file is no longer updated.

Price: $660.00

4. TEFRA Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1982 and Before October 1, 1983

The TEFRA Minimum Data Set contains cost, statistical, financial, and other information from the Medicare Hospital Cost Report (HCFA Form 2552–83) for the Hospital Fiscal Periods beginning on or after October 1, 1982 and before October 1, 1983. This dataset includes capital-related cost (fixed/moveable) information used in the early analyses of prospective capital payment. The majority of these cost reports have been settled by the Medicare Fiscal Intermediary. This file is no longer updated.

Price: $660.00

5. PPS–I Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1983 and Before October 1, 1984

The PPS–I Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552–84). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. The majority of these cost reports have been settled by the Medicare Fiscal Intermediary. This file is no longer updated.

Price: $660.00

6. PPS–II Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1984 and before October 1, 1985

The PPS–II Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552–85). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. This dataset is updated by the end of each calendar quarter and is available on the last day of the following month.

Price: $660.00

7. PPS–III Minimum Data Set, Cost Reporting Periods beginning on or after October 1, 1985 and before October 1, 1986

The PPS–III Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552–85). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. This dataset is updated by the end of each calendar quarter and is available on the last day of the following month.

Price: $660.00

8. PPS–IV Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1986 and Before October 1, 1987

The PPS–IV Minimum Data Set, contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552–85). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Fiscal Intermediary to HCFA. This dataset is updated by the end of each calendar quarter and is available on the last day of the following month.

Price: $660.00

9. PPS–V Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1987 and Before October 1, 1988

The PPS–V Minimum Data Set, contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552–85). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Fiscal Intermediary to HCFA. This dataset is updated by the end of each calendar quarter and is available on the last day of the following month.

Price: $660.00

10. PPS–VI Minimum Data Set

The PPS–VI Minimum Data Set contains cost, statistical, financial, and other information from the Medicare Hospital Cost Report (Form HCFA 2552–85) for the Hospital Fiscal Periods beginning on or after October 1, 1988 and before January 1, 1989 and (Form HCFA 2552–89) for the Hospital Fiscal Periods beginning on or after January 1, 1989 and before October 1, 1989. The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. This dataset is updated by the end of each calendar quarter and is available on the last day of the following month.

Price: $660.00

11. PPS–VII Minimum Data Set

The PPS–VII Minimum Data Set contains cost, statistical, financial and other information from the Medicare Hospital Cost Report (Form HCFA 2552–85) for the Hospital Fiscal Periods beginning on or after October 1, 1989 and before January 1, 1990) and (Form HCFA 2552–89) for the Hospital Fiscal Periods beginning on or after January 1, 1990 and before October 1, 1990. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. This data set is updated by the end of each calendar quarter and is available on the last day of the following month.

Price: $660.00

12. PPS–VI Capital Data Set

The PPS–VI Capital Data Set contains selected data for capital-related costs, interest expense and related information

and complete balance sheet data from the Medicare Hospital Cost Report (Form 2552–85) for the Hospital Fiscal Periods beginning on or after October 1, 1988 and before January 1, 1989 and (Form 2552–88) for the Hospital Fiscal Periods beginning on or after January 1, 1989 and before October 1, 1989. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. This data set is updated at the close of each calendar quarter and is available on the last day of the following month.

Price: $660.00

13. PPS–VII Capital Data Set

The PPS–VII Capital Data Set contains selected data for capital related costs, interest expense and related information and complete balance sheet data from the Medicare Hospital Cost Report (Form 2552–85) for the Hospital Fiscal Periods beginning on or after October 1, 1989 and before October 1, 1990. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. This data set is updated at the close of each calendar quarter and is available on the last day of the following month.

Price: $660.00

14. Provider-Specific File

This file is a component of the PRICER program used in an intermediary's system to compute individual DRG payments. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration process and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements. Beginning with December 1991, the individual records were enlarged to include elements related to the capital prospective payment system.

Periods Available: December 1987, 1988, 1989, 1990, and 1991 updates

Price: $460.00

15. HCFA Medicare Case-Mix Index File (3½" Diskette)

This file contains the hospital provider number and the Medicare case-mix index as published in each year's update of the Medicare Hospital Prospective Payment System. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases.

Periods Available: FY 1985 through FY 1991

Price: $130.00

16. Table 5 DRG (3½" Diskette)

This file contains a listing of DRGs, DRG narrative description, relative weight, geometric mean, length of stay, and day outlier trim points as published in the **Federal Register**.

Periods Available: FY 1993 PPS Update

Price: $130.00

17. AOR/BOR File (3½" Diskette)

This diskette contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (This refers to statistical outliers, not payment outliers.)

Periods Available: FY 1993 PPS Update

Price: $130.00

For further information concerning these data tapes, contact Mary R. White at (410) 597–3671.

In addition, certain other data, such as area wage data and data used to construct the Puerto Rico standardized amounts, are available in hard copy format. Commenters interested in examining hard copy data should contact Lana Price at (410) 966–4535.

We realize that commenters may be interested in obtaining data other than those we have discussed above. These commenters should direct their requests to Lana Price at the number provided above.

Finally, in lieu of obtaining data through the mail, certain data may also be available for inspection at the central office of the Health Care Financing Administration in Baltimore, Maryland. Commenters interested in obtaining more information about this alternative for reviewing data should also contact Lana Price.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the "Dates" section of this preamble and respond to those comments in the preamble to that rule. We emphasize that, given the statutory requirement under section 1886(e)(5) of the Act that our final rule for FY 1993 be published by September 1, 1992, we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—MEDICARE PROGRAMS

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

I. Part 412 is amended as follows:

A. The authority citation for part 412 continues to read as follows:

Authority: Sections 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

Subpart A—General Provisions

B. Subpart A is amended as follows:

1. Section 412.1 is revised to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* This part implements sections 1886(d) and (g) of the Act by establishing a prospective payment system for the operating costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983 and a prospective payment system for the capital-related costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1991. Under these prospective payment systems, payment for the operating and capital-related costs of inpatient hospital services furnished by hospitals subject to the systems (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services, organ acquisition costs incurred by hospitals

with approved organ transplantation centers, and direct costs of medical education) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, indirect medical education costs, and for serving a disproportionate share of low-income patients. Under either prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating or capital-related costs incurred in furnishing inpatient services, and the hospital is at risk for inpatient operating or inpatient capital-related costs that exceed its payment rate.

(b) *Summary of content.* This subpart describes the basis of payment for inpatient hospital services under the prospective payment systems, and sets forth the general basis of these systems. Subpart B of this part sets forth the classifications of hospitals that are included in and excluded from the prospective payment systems, and sets forth requirements governing the inclusion or exclusion of hospitals in the systems as a result of changes in their classification. Subpart C of this part sets forth certain conditions that must be met for a hospital to receive payment under the prospective payment systems. Subpart D of this part sets forth the basic methodology by which prospective payment rates for inpatient operating costs are determined. Subpart E of this part describes the transition rate-setting methods that are used to determine transition payment rates for inpatient operating costs during the first four years of the prospective payment system. Subpart F of this part sets forth the methodology for determining additional payments for outlier cases. Subpart G of this part sets forth rules for special treatment of certain facilities under the prospective payment system for inpatient operating costs. Subpart H of this part describes the types, amounts, and methods of payment to hospitals under the prospective payment system for inpatient operating costs. Subpart K of this part describes how the prospective payment system for inpatient operating costs is implemented for hospitals located in Puerto Rico. Subpart L of this part sets forth the procedures and criteria concerning application from hospitals to the Medicare Geographic Classification Review Board for geographic redesignation. Subpart M of this part describes how the prospective payment system for inpatient capital-related costs is implemented effective with cost reporting periods beginning on or after October 1, 1991.

2. Section 412.2 is amended as follows:

a. Paragraphs (a), (b)(1), and the introductory text of paragraph (b)(2) are revised;

b. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and a new paragraph (d) is added;

c. The introductory text of newly redesignated paragraph (e) and newly redesignated paragraphs (e)(1) and (e)(2) are revised;

d. The introductory text of newly redesignated paragraph (f) and newly redesignated paragraphs (f)(2), (f)(3), and (f)(6) are revised;

e. Newly redesignated paragraph (f)(7) is redesignated as paragraph (f)(8), and a new paragraph (f)(7) is added.

§ 412.2 Basis of payment.

(a) *Payment on a per discharge basis.* Under both the inpatient operating and inpatient capital-related prospective payment systems, hospitals are paid a predetermined amount per discharge for inpatient hospital services furnished to Medicare beneficiaries. The prospective payment rate for each discharge (as defined in § 412.4) is determined according to the methodology described in subpart D, E, or G of this part, as appropriate, for operating costs, and according to the methodology described in subpart M of this part for capital-related costs. An additional payment is made for both inpatient operating and inpatient capital-related costs, in accordance with subpart F of this part, for cases that have an atypically long length of stay or are extraordinarily costly to treat.

(b) *Payment in full.* (1) The prospective payment amount paid for inpatient hospital services is the total Medicare payment for the inpatient operating costs (as described in paragraph (c) of this section) and the inpatient capital-related costs (as described in paragraph (d) of this section) incurred in furnishing services covered by the Medicare program.

(2) The full prospective payment amount, as determined under subpart D, E, or G and under subpart M of this part, is made for each stay during which there is at least one Medicare payable day of care. Payable days of care, for purposes of this paragraph (b)(2) of this section include the following:

* * * * *

(d) *Inpatient capital-related costs.* For cost reporting periods beginning on or after October 1, 1991, the capital prospective payment system provides a payment amount for inpatient hospital capital-related costs as described in part 413, subpart G of this chapter.

(e) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and are paid on a reasonable cost basis:

(1) Capital-related costs for cost reporting periods beginning before October 1, 1991, and an allowance for return on equity, as described in §§ 413.130 and 413.157, respectively, of this chapter.

(2) Direct medical education costs for approved nursing and allied health education programs as described in § 413.85 of this chapter.

* * * * *

(f) *Additional payments to hospitals.* In addition to payments based on the prospective payment rates for inpatient operating costs and inpatient capital-related costs, hospitals receive payments for the following:

* * * * *

(2) The indirect costs of graduate medical education, as specified in subparts F and G of this part and in § 412.105 for inpatient operating costs and in § 412.322 for inpatient capital-related costs.

(3) Costs excluded from the prospective payment rates under paragraph (e) of this section, as provided in § 412.115.

* * * * *

(6) Serving a disproportionate share of low-income patients, as provided in § 412.106 for inpatient operating costs and § 412.320 for inpatient capital-related costs.

(7) The direct graduate medical education costs for approved residency programs in medicine, osteopathy, dentistry, and podiatry as described in § 413.86 of this chapter.

* * * * *

§ 412.4 [Amended]

3. In § 412.4, the term "prospective payment system" is revised to read "prospective payment systems" wherever it appears; and in paragraph (d)(1), the term "prospective payment rate" is changed to read "prospective payment rates", and the phrase "subparts D and E" is revised to read "subparts D, E, and M" wherever it appears.

4. Section 412.6 is revised to read as follows:

§ 412.6 Cost reporting periods subject to the prospective payment systems.

(a) *Initial cost reporting period for each prospective payment system.* (1) Each subject hospital is paid under the prospective payment system for operating costs for inpatient hospital services effective with the hospital's first cost reporting period beginning on or after October 1, 1983 and for inpatient

capital-related costs effective with the hospital's first cost reporting period beginning on or after October 1, 1991.

(2) The hospital is paid the applicable prospective payment rate for inpatient operating costs and capital-related costs for each discharge occurring on or after the first day of its first cost reporting period subject to the applicable prospective payment system.

(3) If a discharged beneficiary was admitted to the hospital before the first day of the hospital's first cost reporting period subject to the prospective payment system for inpatient operating costs, the reasonable costs of services furnished before that day are paid under the cost reimbursement provisions of part 413 of this chapter. For such discharges, the amount otherwise payable under the applicable prospective payment rate is reduced by the amount paid on a reasonable cost basis for inpatient hospital services furnished to that beneficiary during the hospital stay. If the amount paid under reasonable cost exceeds the inpatient operating prospective payment amount, the reduction is limited to the inpatient operating prospective payment amount.

(b) *Changes in cost reporting periods.* HCFA recognizes a change in a hospital's cost reporting period made after November 30, 1982 only if the change has been requested in writing by the hospital and approved by the intermediary in accordance with § 413.24(f)(3) of this chapter.

5. Section 412.8 is revised to read as follows:

§ 412.8 Publication of schedules for determining prospective payment rates.

(a) *Initial prospective payment rates*—(1) *For inpatient operating costs.* Initial prospective payment rates for inpatient operating costs (for the period October 1, 1983 through September 30, 1984) were determined in accordance with documents published in the **Federal Register** on September 1, 1983 (48 FR 39838), and January 3, 1984 (49 FR 324).

(2) *For inpatient capital-related costs.* Initial prospective payment rates for inpatient capital-related costs (for the period October 1, 1991 through September 30, 1992) were determined in accordance with the final rule published in the **Federal Register** on August 30, 1991 (56 FR 43196).

(b) *Annual publication of schedule for determining prospective payment rates.* (1) for cost reporting periods beginning after September 30, 1984, HCFA publishes an annual document setting forth the methodology and data used, including the percentage increase factor, to determine prospective payment rates for inpatient operating costs and (for cost reporting periods beginning after September 30, 1991) for inpatient capital-related costs applicable to discharges occurring during the Federal fiscal year beginning on or after October 1 of that year.

(2) HCFA proposes changes in the methods, amounts, and factors used to determine inpatient prospective payment rates in a **Federal Register** document published for public comment not later than the May 1 before the beginning of the Federal fiscal year in which the proposed changes would apply.

(3) HCFA publishes a **Federal Register** document setting forth final methods, amounts, and factors for determining inpatient prospective payment rates not later than the September 1 before the Federal fiscal year in which the rates would apply.

§ 412.10 [Amended]

6. In § 412.10(a), the phrase "DRG changes will be effective" is revised to read "DRG changes are effective".

C. Subpart B is amended as follows:

1. The heading of subpart B is revised to read as follows:

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

§ 412.20 [Amended]

2. In § 412.20, including the heading, the term "prospective payment system" is revised to read "prospective payment systems" wherever it appears. In § 412.20(b)(1), remove the phrase ", and § 412.32" and add the word "and" before "§ 412.29.".

3. In § 412.22, in paragraph (a), the phrase "A hospital will be excluded from the prospective payment system" is revised to read "A hospital is excluded from the prospective payment systems"; in paragraph (b), the phrase "will be subject to the ceiling" is revised to read "are subject to the ceiling" and the phrase "and § 412.32" is removed; and a new paragraph (d) is added to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(d) *Changes in hospitals' status.* For purposes of exclusion from the prospective payment systems under this subpart, the status of each currently participating hospital (excluded or not excluded) is determined at the beginning of each cost reporting period and is effective for the entire costs reporting period. Any changes in the status of the hospital are made only at the start of a cost reporting period.

4. In § 412.23, the term "prospective payment system" is revised to read "prospective payment systems" wherever it appears; paragraph (b)(8) is revised; and paragraph (c) is removed and reserved to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(b) * * *

(8) A hospital that seeks exclusion as a rehabilitation hospital for the first full 12-month cost reporting period that occurs after it becomes a Medicare participating hospital may provide a written certification that the inpatient population it intends to serve meets the requirements of paragraph (b)(2) of this section, instead of showing that it has treated such a population during its most recent 12-month cost reporting period. The written certification is also effective for any cost reporting period of not less than one month and not more than 13 months occurring between the date the hospital began participating in Medicare and the start of the hospital's regular 12-month cost reporting period.

* * * * *

5. In § 412.25, the term "prospective payment system" is revised to read "prospective payment systems" wherever it appears; the introductory text of paragraph (a) is revised; a new paragraph (a)(13) is added; in paragraph (b), the phrase "will remain the same" is revised to read "remains the same"; and a new paragraph (c) is added to read as follows:

§ 412.25 Excluded distinct part hospital units: Common requirements.

(a) Basis for exclusion. In order to be excluded from the prospective payment systems, a distinct part psychiatric or rehabilitation unit must meet the following requirements:

* * * * *

(13) As of the first day of the first cost reporting period for which all other exclusion requirements are met, the unit is fully equipped and staffed and is capable of providing hospital inpatient psychiatric or rehabilitation care regardless of whether there are any inpatients in the unit on that date.

* * * * *

(c) *Changes in the status of hospital units.* For purposes of exclusion from the prospective payment systems under this section, the status of each hospital unit (excluded or not excluded) is determined at the beginning of each cost reporting period and is effective for the entire cost reporting period. Any

changes in the status of a unit are made only at the start of a cost reporting period. If a unit is added to a hospital after the start of a cost reporting period, it cannot be excluded from the prospective payment systems before the start of the hospital's next cost reporting period.

§ 412.27 [Amended]

6. In the introductory text of § 412.27, the term "prospective payment system" is revised to read "prospective payment systems".

§ 412.29 [Amended]

7. In the introductory text of § 412.29, the term "prospective payment system" is revised to read "prospective payment systems".

8. In § 412.30, paragraph (a) is revised and, in paragraph (c), the term "prospective payment system" is revised to read "prospective payment systems" to read as follows:

§ 412.30 Exclusion of new distinct part rehabilitation units and expansion of units already excluded.

(a) *New units.* (1) A hospital that seeks exclusion of a new rehabilitation unit may provide a written certification that the inpatient population the hospital intends the unit to serve meets the requirements of § 412.23(b)(2) instead of showing that the unit has treated such a population during the hospital's most recent 12-month cost reporting period.

(2) If a hospital that is currently participating in Medicare has not previously sought exclusion for any rehabilitation unit and has obtained approval for added bed capacity under State licensure and under its Medicare certification, it may identify the new beds as a new rehabilitation unit for the first full 12-month cost reporting period during which the beds are used to furnish inpatient care. A unit of a currently participating hospital that includes some beds that were previously licensed and certified and some new beds is recognized as a new rehabilitation unit only if more than one-half of the beds are new.

(3) If a hospital that has not previously participated in the Medicare program seeks exclusion of a rehabilitation unit, it may designate certain beds as a new rehabilitation unit for the first full 12-month cost reporting period that occurs after it becomes a Medicare participating hospital. The written certification described in paragraph (a)(1) of this section also is effective for any cost reporting period of not less than 1 month and not more than 13 months occurring between the date the hospital began participating in Medicare and the start of the hospital's regular 12-month cost reporting period.

(4) For purposes of paragraph (a) of this section, a hospital that has undergone a change of ownership or leasing as defined in § 489.18 of this chapter is not considered to have participated previously in the Medicare program.

* * * * *

§ 412.32 [Removed]

9. Section 412.32 is removed.

D. Subpart C is amended as follows:

1. The heading for subpart C is revised to read as follows:

Subpart C—Conditions for Payment Under the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

§ 412.40 [Amended]

2. In § 412.40(a), the term "prospective payment system" is revised to read "prospective payment systems".

§ 412.42 [Amended]

3. In § 412.42, the term "prospective payment system" is revised to read "prospective payment systems" in paragraph (a) and in the introductory text of paragraph (b).

§ 412.46 [Amended]

4. In § 412.46, in paragraph (d)(1), the phrase "The PRO will review" is revised to read "The PRO reviews"; in paragraph (e)(1), the phrase "the Medicare claim will be appropriately changed" is revised to read "the Medicare claim is appropriately changed"; and in paragraph (e)(2), the phrase "the PRO will change the coding and assign the appropriate DRG" is revised to read "the PRO changes the coding and assigns the appropriate DRG".

§ 412.48 [Amended]

5. In § 412.48(c), the term "prospective payment system" is revised to read "prospective payment systems".

§ 412.50 [Amended]

6. In § 412.50(a), the phrase "The applicable payments made under the prospective payment system, as described in subpart H" is revised to read "The applicable payments made under the prospective payment systems, as described in subparts H and M".

§ 412.52 [Amended]

7. In § 412.52, the term "prospective payment system" is revised to read "prospective payment systems".

E. Subpart D is amended as follows:

1. The heading for subpart D is revised to read as follows:

Subpart D—Basic Methodology for Determining Prospective Payment Federal Rates for Inpatient Operating Costs

§ 412.60 [Amended]

2. In § 412.60, in paragraphs (a) and (c) introductory text, the phrase "HCFA will establish" is revised to read "HCFA establishes"; in paragraph (b), the phrase "HCFA will assign" is revised to read "HCFA assigns"; in paragraph (c)(1), the phrase "The classification of a particular discharge, will, as appropriate, be based," is revised to read "The classification of a particular discharge is based, as appropriate,"; in paragraphs (c)(2) and (c)(3), the phrase "will be" is revised to read "is"; and in paragraph (c)(3), the phrase "will provide" is revised to read "provides".

3. In § 412.62, the section heading is revised; paragraph (a) is revised; in paragraph (b), the heading is revised, and the phrase "HCFA will determine" is revised to read "HCFA determines"; in paragraph (c) introductory text, the phrase "HCFA will update" is revised to read "HCFA updates"; in paragraph (d) introductory text, the phrase "HCFA will standardize" is revised to read "HCFA standardizes"; in paragraph (e) introductory text, the phrase "HCFA will compute" is revised to read "HCFA computes"; and the heading and the introductory text of paragraph (j) are revised to read as follows:

§ 412.62 Federal rates for inpatient operating costs for fiscal year 1984.

(a) *General rule.* HCFA determines national adjusted DRG prospective payment rates for operating costs, for each inpatient hospital discharge in fiscal year 1984 involving inpatient hospital services of a hospital in the United States subject to the prospective payment system under Subpart B of this part, and determines regional adjusted DRG prospective payment rates for inpatient operating costs for such discharges in each region, for which payment may be made under Medicare Part A. Such rates are determined for hospitals located in urban or rural areas within the United States and within each such region, respectively, as described in paragraphs (b) through (k) of this section.

(b) *Determining allowable individual hospital inpatient operating costs.*

* * * * *

(j) *Computing Federal rates for inpatient operating costs for urban and rural hospitals in the United States and*

in each region. For each discharge classified within a DRG, HCFA establishes a national prospective payment rate for inpatient operating costs and a regional prospective payment rate for inpatient operating costs for each region, as follows:

* * * * *

4. Section 412.63 is amended by revising the section heading, paragraph (a)(1), the introductory text of paragraph (o) and paragraph (p)(1); by revising in paragraph (a)(2) the phrase "Each such rate will be" to read "Each such rate is"; by revising in paragraph (b)(2)(ii) the phrase "will receive the lower" to read "receives the lower"; and by revising in paragraph (n)(1) the phrase "HCFA will adjust" to read "HCFA adjusts" to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.

(a) *General rule.* (1) HCFA determines a national adjusted prospective payment rate for inpatient operating costs for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 involving inpatient hospital services of a hospital in the United States subject to the prospective payment system, and determines a regional adjusted prospective payment rate for operating costs for such discharges in each region, for which payment may be made under Medicare Part A.

* * * * *

(o) Computing Federal rates for inpatient operating costs for large urban, other urban, and rural hospitals. For each discharge classified within a DRG, HCFA establishes for the fiscal year a national prospective payment rate and a regional prospective payment rate for inpatient operating costs, for each region, as follows:

* * * * *

(p) *Adjusting for different area wage levels.* (1) HCFA adjusts the proportion (as estimated by HCFA from time to time) of Federal rates for inpatient operating costs computed under paragraph (j) of this section that are attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by HCFA based on survey data) reflecting the relative level of hospital wages and wage-related costs in the geographic area (that is, urban or rural area as determined under the provisions of paragraph (b) of this section) of the hospital compared to the national average level of hospital wages and wage-related costs.

* * * * *

F. Subpart E is amended as follows:

1. The heading for subpart E is revised to read as follows:

Subpart E—Determination of Transition Period Payment Rates for the Prospective Payment System for Inpatient Operating Costs

2. Section 412.70 is revised to read as follows:

§ 412.70 General description.

For discharges occurring on or after April 1, 1988 and before October 1, 1993, payments to a hospital are based on the greater of the national average standardized amount or the sum of 85 percent of the national average standardized amount and 15 percent of the average standardized amount for the region in which the hospital is located.

3. Section 412.71 is amended by revising the section heading; by revising paragraph (c)(1) introductory text; by revising the phrase "will decide" to read "decides" in paragraph (c)(2); and by revising the phrase "will use" to read "uses" in paragraph (d) to read as follows:

§ 412.71 Determination of base-year inpatient operating costs.

* * * * *

(c) *Hospital's request for adjustment of base-year inpatient operating costs.* (1) Before the date it becomes subject to the prospective payment system for inpatient operating costs, a hospital may request the intermediary to further adjust its estimated base-period costs to take into account the following:

* * * * *

§ 412.73 [Amended]

4. In § 412.73, paragraph (d)(1) is amended by revising the phrase "HCFA will adjust" to read "HCFA adjusts" and by revising the phrase "will be based on a factor" to read "is based on a factor "; in paragraph (d)(2), by revising the phrase "HCFA will adjust" to read "HCFA adjusts" and in paragraph (e) by revising the phrase "cost per discharge will be multiplied" to read "cost per discharge is multiplied".

§ 412.74 [Removed]

5. Section 412.74 is removed.

6. Section 412.75 is amended by revising the section heading; in paragraph (b), by revising the phrase "consdered to be a discharge" to read "considered to be a discharge" and by combining the concluding paragraph with paragraph (b); and in paragraph (e), by revising the phrase "cost per discharge will be multiplied" to read "cost per discharge is multiplied" to read as follows:

§ 412.75 Determination of the hospital-specific rate for inpatient operating costs based on a Federal fiscal year 1987 base period.

* * * * *

§ 412.76 [Amended]

6. Section 412.76 is amended by revising the phrase "costs will be adjusted" to read "costs are adjusted" and by revising the phrase "HCFA will recover" to read "HCFA recovers".

G. Subpart F is amended as follows:

1. In § 412.80, the introductory text of paragraph (a)(1)(ii) is republished; paragraphs (a)(1)(ii) (A) and (c) are revised; and in paragraph (a)(2), the phrase "HCFA will provide cost outlier payments" is revised to read "HCFA provides cost outlier payments" to read as follows:

§ 412.80 General provisions.

(a) *Basic rule.* (1) * * *

(ii) The beneficiary's length of stay does not exceed criteria established under paragraph (a)(1)(i) of this section, but the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a cost-to-charge ratio as described in § 412.84(h), exceed the greater of the following:

(A) A fixed dollar amount (adjusted for geographic variation in costs) as specified by HCFA.

* * * * *

(c) *Relation to hospitals that incur indirect costs for graduate medical education programs and that serve a disproportionate share of low-income patients.* The outlier payment amounts are included in total DRG revenue for purposes of determining payments for hospitals that incur indirect costs for graduate medical education programs under § 412.105 and to hospitals that serve a disproportionate share of low-income patients under §412.106.

2. In § 412.82, paragraph (c) is revised; paragraph (d) is removed; and paragraph (e) is redesignated as paragraph (d) to read as follows:

§ 412.82 Payment for extended length-of-stay cases (day outliers).

* * * * *

(c) Except as provided in § 412.86, the per diem payment made under paragraph (a) of this section is derived by taking 55 percent of the average per diem payment for the applicable DRG, as calculated by dividing the Federal prospective payment rate for inpatient operating costs and inpatient capital-related costs determined under Subpart D of this part by the arithmetic mean length-to-stay for that DRG.

* * * * *

§ 412.84 [Amended]

3. In § 412.84(d), the phrase "through this review will be denied" is revised to read "through this review are denied" and the phrase "these services will be recovered" is revised to read "these services are recovered".

H. Subpart G is amended as follows:

1. The heading of subpart G is revised to read as follows:

Subpart G—Special Treatment of Certain Facilities under the Prospective Payment System for Inpatient Operating Costs

2. Section 412.90 is revised to read as follows:

§ 412.90 General rules.

(a) *Sole community hospitals.* HCFA may adjust the prospective payment rates for inpatient operating costs determined under subpart D or E of this part if a hospital, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals, is the sole source of inpatient hospital services reasonably available in a geographic area to Medicare beneficiaries. If a hospital meets the criteria for such an exception under § 412.92(a), its prospective payment rates for inpatient operating costs are determined under § 412.92(d).

(b) *Referral center.* HCFA may make an adjustment to the prospective payment rates for inpatient operating costs determined under subpart D or E of this part if a hospital acts as a referral center for patients transferred from other hospitals. Criteria for identifying such referral centers are set forth in § 412.96.

(c) *Christian Science Sanatoria.* HCFA adjusts the prospective payment rates for inpatient operating costs determined under subpart D or E of this part if a hospital is a Christian Science sanatorium. Such a santorium's prospective payment rates are determined in accordance with § 412.98.

(d) *Kidney acquisition costs incurred by hospitals approved as renal transplantation centers.* HCFA pays for kidney acquisition costs incurred by renal transplantation centers on a reasonable cost basis. The criteria for this special payment provision are set forth in § 412.100.

(e) *Hospitals that are located in urban areas and that are reclassified as rural.* HCFA adjusts the rural Federal payment amounts for inpatient operating costs for hospitals reclassified as rural, as defined in § 412.62(f). The criteria for this adjustment are set forth in § 412.102.

(f) *Hospitals that have a high percentage of ESRD beneficiary discharges.* HCFA makes an additional payment to a hospital if ten percent or more of its total Medicare discharges in a cost reporting period beginning on or after October 1, 1984 are ESRD beneficiary discharges. In determining ESRD discharges, discharges in DRG Nos. 302, 316, and 317 are excluded. The criteria for this additional payment are set forth in § 412.104.

(g) *Hospitals that incur indirect costs for graduate medical education programs.* HCFA makes an additional payment for inpatient operating costs to a hospital for indirect medical education costs attributable to an approved graduate medical education program. The criteria for this additional payment are set forth in § 412.105.

(h) *Hospitals that serve a disproportionate share of low-income patients.* For discharges occurring on or after May 1, 1986, HCFA makes an additional payment for inpatient operating costs to hospitals that serve a disproportionate share of low-income patients. The criteria for this additional payment are set forth in § 412.106.

(i) *Medicare-dependent, small rural hospitals.* For cost reporting periods beginning on or after April 1, 1990 and ending before April 1, 1993, HCFA adjusts the prospective payment rates for inpatient operating costs determined under subparts D and E of this part if a hospital is classified as a Medicare-dependent, small rural hospital. Criteria for identifying these hospitals are set forth in § 412.108.

3. In § 412.92, in paragraphs (b)(1)(iv) and (b)(1)(v), the phrase "will review" is revised to read "reviews"; in paragraph (b)(3), the phrase "will remain" is revised to read "remains"; in paragraph (b)(5), the phrase "will be" is revised to read "is"; and the heading of paragraph (d), and paragraphs (e)(3) introductory text and (e)(3)(i)(B) are revised to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(d) *Determining prospective payment rates for inpatient operating costs for sole community hospitals.*

* * * * *

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease.*

* * * * *

(3) The intermediary determines a lump sum adjustment amount not to exceed the difference between the hospital's Medicare inpatient operating costs and the hospital's total DRG revenue for inpatient operating costs based on DRG-adjusted propsective payment rates for inpatient operating costs (including outlier payments for inpatient operating costs determined under Subpart F of this part and additional payments made for inpatient operating costs for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.105).

(i) * * *

(B) The hospital's fixed (and semi-fixed) costs, other than those costs paid on a reasonable cost basis under part 413 of this chapter; and

* * * * *

4. In § 412.96, the reference "§ 412.118(b)" in paragraph (b)(1) introductory text is revised to read "§ 412.105(b)"; the reference "§ 412.118" in paragraph (c)(1)(ii) is revised to read "§ 412.105"; and paragraph (d) is revised to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(d) *Payment to rural referral centers.* Effective for discharges occurring on or after April 1, 1988, a hospital that is located in a rural area and meets the criteria of paragraphs (b)(1), (b)(2) or (c) of this section is paid prospective payments for inpatient operating costs per discharge based on the applicable other urban payment rates as determined in accordance with § 412.63, as adjusted by the hospital's area wage index.

* * * * *

5. In § 412.98, paragraphs (a) and (b) are revised to read as follows:

§ 412.98 Special treatment: Christian Science Sanatoria

(a) *General rule.* If a Christian Science Sanatorium is not excluded from the prospective payment systems under subpart B of this part, HCFA pays, for inpatient hospital services furnished to be beneficiary by that sanatorium, a predetermined fixed amount per discharge based on the sanatorium's historical inpatient operating costs per discharge.

(b) *Prospective payment rates.* For cost reporting periods beginning on or after October 1, 1983, the sanatorium's prospective payment rate for inpatient operating costs equals the amount that would constitute the sanatorium's target amount under § 413.40(c)(4) of this chapter if the institution were subject to the rate of increase ceiling specified in § 413.40 of this chapter instead of the propsective payment systems. This amount is not adjusted for the DRG weighting factor.

* * * * *

6. In § 412.100, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 412.100 Special treatment: Renal transplantation centers.

(a) *Adjustments for renal transplantation centers.*

(1) HCFA adjusts the prospective payment rates for inpatient operating costs determined under subparts D and E of this part for hospitals approved as renal transplantation centers (described at §§ 405.2170 and 405.2171 of this chapter) to remove the estimated net expenses associated with kidney acquisition.

(2) Kidney acquisition costs are treated apart from the prospective payment rate for inpatient operating costs, and payment to the hospital is adjusted in each reporting period to reflect an amount necessary to compensate the hospital for reasonable expenses of kidney acquisition.

* * * * *

§ 412.102 [Amended]

7. In the introductory text of § 412.102, the phrase "rural Federal payment amount" is revised to "rural Federal payment amount for operating costs".

§ 412.104 [Amended]

8. In § 412.104, in paragraph (a), the phrase "will provide" is revised to read "provides"; in the introductory text of paragraph (b) and in paragraph (b)(4) the phrase "will be" is revised to read "is"; and in paragraph (b)(5), the phrase "will be equal to" is revised to read "equals".

9. In § 412.105, the section heading and the introductory text to the section are revised; the introductory text of paragraph (a) is reprinted; and paragraphs (a)(2) and (e) are revised to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

HCFA makes an additional payment to hospitals for indirect medical education costs using the following procedures:

(a) *Basic data.* HCFA determines the following for each hospital:

* * * * *

(2) The hospital's total DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs including outlier payments for inpatient operating costs determined under subpart F of this part, but excluding additional payments made under the provisions of this subpart.

* * * * *

(e) *Determination of payment amount.* Each hospital's indirect medical education payment under the prospective payment system for inpatient operating costs is determined by multiplying the total DRG revenue for inpatient operating costs, as determined under paragraph (a)(2) of this section, by the applicable education adjustment factor derived in paragraph (d) of this section.

* * * * *

10. In § 412.106, the reference "§ 412.118(b)" in paragraph (a)(1)(i) is revised to read "§ 412.105(b)"; the reference "§ 412.118" in paragraph (a)(2)(ii) is revised to read "412.105"; in paragraphs (d)(2)(i)(B)(*1*) and (*2*) the date "January 1, 1993" is revised to read "October 1, 1993"; and paragraphs (a)(2) and (d)(1) are revised to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

(a) *General considerations.*

* * * * *

(2) The payment adjustment is applied to the hospital's total DRG revenues for inpatient operating costs.

(i) A hospital's total DRG revenues for inpatient operating costs are determined on the basis of DRG-adjusted prospective payment rates for inpatient operating costs or, for transition period payments under subpart B of this part, on the basis of the Federal portion of the hospital's payment rates.

(ii) For purposes of this section, total DRG revenues for inpatient operating costs include outlier payments for inpatient operating costs under subpart F of this part, but exclude additional payments made under this subpart.

* * * * *

(d) *Payment adjustment*—(1) *Method of adjustment.* If a hospital serves a disproportionate number of low-income patients, its total DRG revenues for inpatient operating costs are increased by an adjustment factor as specified in paragraph (d)(2) of this section.

* * * * *

10. In § 412.108, paragraph (a)(1)(i) the reference "§ 412.118(b)" is revised to read "§ 412.105(b)"; in paragraph (d)(3)(i)(B) the term "reimbursed" is revised to read "paid"; and paragraphs (c) and (d)(3) introductory text are revised to read as follows:

§ 412.108 Special treatment: Medicare-dependent, small rural hospitals.

* * * * *

(c) *Payment methodology.* A hospital that meets the criteria in paragraph (a) of this section is paid for its inpatient operating costs based on whichever of the following amounts yields the greatest aggregate payment for the cost reporting period:

* * * * *

(d) *Additional payments to hospitals experiencing a significant volume decrease.*

* * * * *

(3) The intermediary determines a lump sum adjustment amount not to exceed the difference between the hospital's Medicare inpatient operating costs and the hospital's total DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs (including outlier payments for inpatient operating costs determined under Subpart F of this part and additional payments made for inpatient operating costs hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indierect medical education costs as determined under § 412.105).

* * * * *

I. Subpart H is amended as follows:

1. The heading of subpart H is revised to read as follows:

Subpart H—Payments to Hospitals under the Prospective Payment Systems

§ 412.110 [Amended]

2. In § 412.110, the phrase "prospective payment system" is revised to read "prospective payment systems".

3. In § 412.112, the introductory text of the section and paragraph (a) are revised to read as follows:

§ 412.112 Payments determined on a per case basis.

A hospital is paid the following amounts on a per case basis:

(a) The appropriate prospective payment rate for inpatient operating costs for each discharge as determined in accordance with subparts D, E, and G of this part.

* * * * *

4. In § 412.113, paragraph (a)(2)(i) introductory text is republished and paragraph (a)(2)(i)(E) is revised to read as follows:

§ 412.113 Other payments.

(a) *Capital-related costs.* * * *

(2) *Reduction to capital-related payments.* (i) Except for sole community hospitals as defined in § 412.92, the amount of capital-related payments for cost reporting periods beginning before October 1, 1991 (including a return on equity capital as provided under

§ 413.157 of this chapter) is reduced by—

* * * * *

(E) Ten percent for payments attributable to portions of cost-reporting periods occurring on or after October 1, 1991 and before the beginning of the hospital's first cost-reporting period beginning on or after October 1, 1991.

* * * * *

§ 412.115 [Amended]

5. In § 412.115, in paragraph (a), the phrase "An additional payment will be made" is revised to read "An additional payment is made".

§ 412.120 [Amended]

6. In § 412.120 in paragrpah (a), the phrase "payments otherwise payable to a hospital will be reduced" is revised to read "payments otherwise payable to a hospital are reduced"; and in the introductory text of paragraph (b) the phrase "the Medicare payment will be determined" is revised to read "the Medicare payment is determined".

§ 412.130 [Amended]

7. In § 412.130, in paragraphs (b)(1) and (b)(2), the phrase "prospective payment system" is revised to read "prospective payment systems".

J. Subpart K is amended as follows:

1. The heading of supart K is revised to read as follows:

Subpart K—Prospective Payment System for Inpatient Operating Costs for Hospitals Located in Puerto Rico

2. Section 412.200 is revised to read as follows:

§ 412.200 General provisions.

Beginning with discharges occurring on or after October 1, 1987, hospitals located in Puerto Rico are subject to the rules governing the prospective payment system for inpatient operating costs. Except as provided in this subpart, the provisions of subparts A, B, C, F, G, and H of this part apply to hospitals located in Puerto Rico. Except for § 412.60, which deals with DRG classification and weighting factors, the provisions of subparts D and E of this part, which describe the methodology used to determine prospective payment rates for inpatient operating costs for hospitals, do not apply to hospitals located in Puerto Rico. Instead, the methodology for determining prospective payment rates for inpatient operating costs for these hospitals is set forth in § 412.204 through 412.212.

3. Section 412.204 is revised to read as follows:

§ 412.204 Payments to hospitals located in Puerto Rico.

Payments for inpatient operating costs to hospitals located in Puerto Rico that are paid under the prospective payment system are equal to the sum of—

(a) 75 percent of the Puerto Rico prospective payment rate for inpatient operating costs, as determined under § 412.208 or § 412.210; and

(b) 25 percent of a national prospective payment rate for inpatient operating costs, as determined under § 412.212.

4. In § 412.208, paragraphs (a) and (b), and the heading of paragraph (h) are revised to read as follows:

§ 412.208 Puerto Rico rates for Federal fiscal year 1988.

(a) *General rule.* HCFA determines the Puerto Rico adjusted DRG prospective payment for inpatient operating costs for each inpatient hospital discharge occurring in Federal fiscal year 1988 for a prospective payment hospital. These rates are determined as described in paragraphs (b) through (i) of this section.

(b) *Determining target amounts.* For each hospital subject to the prospective payment system for inpatient operating costs, HCFA determines the Medicare target amount, as described in § 413.40(c) of this chapter, for the hospital's cost reporting period beginning in fiscal year 1987. Revisions in the target amounts made subsequent to establishment of the standardized amounts under paragraph (d) of this section do not affect the standardized amounts.

* * * * *

(h) *Computing Puerto Rico rates established under the prospective payment system for inpatient operating costs for urban and rural hospitals.*

* * * * *

§ 412.210 [Amended]

5. In § 412.210, in paragraphs (a)(1), (b)(3) and the introductory text of paragraph (d), the phrase "for inpatient operating costs" is inserted after the phrase "prospective payment rate".

§ 412.212 [Amended]

6. In § 412.212, paragraph (a), the phrase "national prospective payment rate" is revised to read "national prospective payment rate for inpatient operating costs".

§ 412.220 [Amended]

7. In § 412.220, introductory text for the section, the phrase "prospective payment system," is revised to read "prospective payment system for inpatient operating costs."

Subpart L—The Medicare Geographic Classification Review Board

L. Subpart L is amended as follows:

1. Section 412.230 is amended as follows:

a. The heading is revised;

b. Paragraphs (a)(1) and (a)(3) are revised;

c. New paragraphs (a)(4)(v) and (a)(5) are added;

d. In the heading of paragraph (d) and in paragraphs (d)(1) and (d)(3) introductory text, the phrase "standardized amount" is revised to read "standardized amount for inpatient operating costs";

e. In paragraph (d)(3)(ii), the phrase "prospective payment sytem rates for inpatient hospital services" is revised to read "prospective payment rates for inpatient operating costs";

f. Paragraph (e)(1) is revised;

g. Paragraph (e)(2) introductory text is republished and paragraph (e)(2)(i) is revised;

h. Paragraph (e)(2)(ii) introductory text is republished and paragraph (e)(2)(ii)(A) is revised.

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

(a) *General*—(1) *Purpose.* An individual hospital may seek redesignation from a rural area to an urban area, from a rural area to another rural area, or from an urban area to another urban area for the purposes of using the other area's standardized amount for inpatient operating costs, wage index value, or both. An individual hospital may not be redesignated to more than one area.

* * * * *

(3) *Proximity.* Except as provided in paragraph (a)(4) of this section, to be redesignated to another rural area or an urban area, a hospital must demonstrate a close proximity to the adjacent area to which it seeks redesignation by meeting the criteria in paragraph (b) of this section, and submitting data requested under paragraph (c) of this section.

(4) *Special rules for sole community hospitals and rural referral centers.*

* * * * *

(v) A hospital that applies for redesignation under this section may not also apply for redesignation in the same fiscal year under paragraph (a)(2) or (a)(3) of this section.

(5) *Application of criteria.* In applying the numeric criteria contained in §§ 412.230(b)(1) and (2), (d)(2), (e)(1)(iii), and (e)(1)(iv)(A) and (B), rounding of numbers to meet the mileage or

qualifying percentage standard is not permitted.

* * * * *

(e) *Use of urban or other rural area's wage index.*—

(1) *Criteria for use of adjacent area's wage index.* To use an adjacent area's wage index, a hospital must demonstrate the following:

(i) The hospital's incurred wage costs are comparable to hospital wage costs in an adjacent urban or other rural area;

(ii) The hospital has the necessary geographic relationship as specified in paragraphs (a) and (b) of this section;

(iii) The hospital's average hourly wage is at least 108 percent of the average hourly wage of hospitals in the area in which the hospital is located; and

(iv) One of the following conditions apply:

(A) The hospital's average hourly wage is equal to at least 84 percent of the average hourly wage of hospitals in the adjacent area to which it seeks redesignation; or

(B) The hospital's average hourly wage weighted for occupational categories is at least 90 percent of the average hourly wage of hospitals in the adjacent area to which it seeks redesignation.

(2) *Appropriate wage data.* For a wage index change, the hospital must submit appropriate data as follows:

(i) For hospital-specific data, the hospital must provide data from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospital requests reclassification.

(ii) For data of other hospitals, the hospital must provide data concerning both of the following:

(A) The average hourly wage in the adjacent area, which is taken from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospital requests reclassification and;

* * * * *

4. § 421.232, paragraph (c) is revised; paragraphs (d)(2) introductory text and (d)(2)(ii) are republished; and paragraphs (d)(2)(i) introductory text and (d)(2)(ii)(A) are revised to read as follows:

§ 412.232 Criteria for all hospitals in a rural county seeking urban redesignation.

* * * * *

(c) *Wage criteria.* In applying the following numeric criteria, rounding of numbers to meet the qualifying percentages is not permitted.

* * * * *

(d) * * *

(2) *Appropriate wage data.* The hospitals must submit appropriate data as follows:

(i) For hospital-specific data, the hospitals must provide data from the HCFA wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospitals request reclassification.

(ii) For data for other hospitals, the hospitals must provide the following:

(A) The average hourly wage in the adjacent area, which is taken from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospitals request reclassification.

* * * * *

5. In § 412.234, paragraph (b) is revised, and in the heading of paragraph (c) the phrase "inpatient operating costs" is inserted after the phrase "standardized amount" to read as follows:

§ 412.234 Criteria for all hospitals in an urban county seeking redesignation to another urban area.

* * * * *

(b) *Wage criteria.* In applying the following numeric criteria, rounding of numbers to meet the qualifying percentages is not permitted.

* * * * *

6. In § 412.273, the introductory text of paragraph (a), paragraph (a)(1) and paragraph (b) are revised; and paragraph (c) is added to read as follows:

§ 412.273 Withdrawing an application.

(a) *Timing of a withdrawal.* The MGCRB allows a hospital, or group of hospitals, to withdraw its application if the request for withdrawal is submittd to the MGCRB during the following time periods:

(1) At any time before the MGCRB issues a decision on the application; or

* * * * *

(b) *Written request only.* A request to withdraw an application must be made in writing to the MGCRB by all hospitals that are party to the application.

(c) *Appeal of the MGCRB's denial of a hospital's request for withdrawal.* (1) A hospital may appeal the MGCRB's denial of its request for withdrawal of an application to the Administrator within 15 days of the date of the notice of the denial.

(2) Within 20 days of receipt of the hospital's request for appeal, the Administrator affirms or reverses the denial.

3. In § 412.278, paragraphs (f)(1) and (f)(3) are revised; a new heading for paragraph (f) and a new paragraph (g) are added to read as follows:

§ 412.278 Administrator's review.

* * * * *

(f) *Administrator's decision.* (1) The Administrator may not receive or consider any new evidence and must issue a decision based only upon the record as it appeared before the MGCRB and comments submitted under paragraphs (b)(2), (b)(3), (b)(4), (c)(2), and (c)(3) of this section.

* * * * *

(3) The Administrator's decision issued under §§ 412.278(a) or (c) is the final Departmental decision, unless it is amended under § 412.278 (g). The final Departmental decision is not subject to judicial review.

(g) *Amendment of Administrator decision.* (1) Hospital's request for amendment. The hospital may request the Administrator to amend the decision for the limited purpose of correcting mathematical or computational errors, or to correct the decision if the evidence that was considered in making the decision clearly shows on its face that an error was made. The following procedure is followed:

(i) The hospital's request for amendment must be received by the Administrator within 10 days after the date the Administrator issues a decision. The request for amendment must be in writing, with a copy to HCFA.

(ii) The Administrator promptly reviews the hospital's request and amends the decision, if necessary, within 5 days following receipt of the hospital's request for amendment.

(2) *Discretionary review by the Administrator.* Within 15 days following the issuance of the Administrator's decision, the Administrator, at his or her discretion, may amend the decision to correct mathematical or computational errors, or to correct the decision if the evidence that was considered in making the decision clearly shows on its face that an error was made. The Administrator's amended decision is final and is not subject to judicial review.

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

M. Subpart M is amended as follows:

1. In §412.300, paragraph (b) is revised to read as follows:

§ 412.300 Scope of subpart and definition.

* * * * * * *

(b) *Definition.* For purposes of this subpart, a new hospital means a hospital that has operated (under previous or present ownership) for less than 2 years.

The following hospitals are not new hospitals:

(1) A hospital that builds new or replacement facilities at the same or another location even if coincidental with a change of ownership, a change in management, or a lease arrangement.

(2) A hospital that closes and subsequently reopens.

(3) A hospital that has been in operation for more than 2 years but has participated in the Medicare program for less than 2 years.

(4) A hospital that changes its status from a hospital that is excluded from the prospective payment systems to a hospital that is subject to the capital prospective payment system.

2. In § 412.302, the introductory text of paragraph (b) is revised; paragraphs (b)(3)(iii) and (b)(7) are added; paragraphs (c)(1)(ii), (c)(1)(iv), (c)(1)(v), (c)(1)(vii)(B) are revised; the introductory text of paragraph (c)(2)(i) is republished; and paragraph (c)(2)(i)(B) is revised to read as follows:

§ 412.302 Introduction to capital costs.

* * * * *

(b) *Old capital costs.* Except as provided in paragraph (c) of this section with respect to capital obligations that qualify for recognition as old capital, old capital costs are allowable capital-related costs for land and depreciable assets that were put in use for patient care on or before December 31, 1990. However, for a new hospital as defined in § 412.300(b), old capital costs are defined as those allowable capital-related costs for land and depreciable assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period under § 412.328(a)(2). Old capital costs include the following:

* * * * *

(3) * * *

(iii) If an entire hospital is leased without assumption of the hospital's asset costs after December 31, 1990, the amount of allowable capital-related costs recognized as old capital costs is limited to the amount allowed for old capital costs in the base year or the last cost reporting period these costs were recognized under this subpart, whichever is later.

* * * * *

(7) If a hospital had nonreimbursable costs applicable to an old capital asset as of December 31, 1990 that subsequently become allowable inpatient capital-related costs, the allowable costs for such an asset that are attributable to inpatient hospital services are recognized as old capital costs if a portion of the asset was in use for inpatient hospital care on December 31, 1990.

* * * * *

(c) *Obligated capital costs.* (1) * * *

(ii) *Moveable equipment.* Moveable equipment is recognized as old capital only if all of the conditions specified in paragraph (c)(1)(i)(B) through (D) of this section are met and one of the following conditions is met:

(A) There was a binding contractual agreement that was executed on or before December 31, 1990 and obligates the hospital on or before December 31, 1990 for the lease or purchase of the item of equipment on or before December 31, 1990.

(B) There was a binding contractual agreement that was executed on or before December 31, 1990 and obligates the hospital on or before December 31, 1990 for financing the acquisition of the equipment, on or before December 31, 1990; or before December 31, 1990; the item of equipment costs at least $100,000; and the item was specifically listed in an equipment purchase plan approved by the Board of Directors on or before December 31, 1990.

* * * * *

(iv) *Extension of deadline.* HCFA may extend the deadline in paragraph (c)(1)(i)(B) of this section, under which an asset must be put in use for patient care before October 1, 1994, to no later than September 30, 1996 for extraordinary circumstances beyond the hospital's control. Extraordinary circumstances include, but are not limited to, a construction strike or atypically severe weather that significantly delayed completion of a construction project. Normal construction delays do not constitute extraordinary circumstances.

(A) The hospital must submit its request for an extended deadline with documentation of the extraordinary circumstances by the later of January 1, 1993 or within 180 days of the extraordinary circumstance.

(B) The intermediary reviews the request and verifies the hospital's documentation, and forwards the request to HCFA within 60 days. Within 90 days, HCFA notifies the intermediary of its decision and, if an extension is granted, of the revised deadline for putting the asset in use for patient care service.

(v) *Notification to intermediary.* The hospital must submit to its intermediary the binding agreement and supporting documents that relate to the obligated capital expenditure by the later of October 1, 1992 or within 90 days after the start of the hospital's first cost reporting period beginning on or after October 1, 1991.

* * * * *

(vii) *Determining old capital costs.*

* * * * *

(B) The intermediary advises the hospital of its determination within 12 months of the receipt of the hospital's notification under paragraph (c)(1)(v) of this section.

* * * * *

(2) *Lengthy certificate-of-need process.* (i) If a hospital does not meet the criteria under paragraph (c)(1)(i) or paragraph (c)(1)(ii) of this section, but meets all of the following criteria, the estimated cost for the project as of December 31, 1990 may be recognized as old capital costs:

* * * * *

(B) The hospital filed an initial application for a certificate of need on or before December 31, 1989 that includes a detailed description of the project and its estimated cost and had not received approval or disapproval on or before September 30, 1990. If the hospital received conditional approval on or before September 30, 1990, the hospital's intermediary assesses the nature of the conditions. The hospital will be considered to have received approval for the project as of September 30, 1990 if the intermediary determines that the hospital received sufficient approval for the project to proceed without significant delay.

* * * * *

In § 412.328, paragraph (a)(3) is added; paragraphs (b)(2), (b)(3), (c)(1), (f)(1)(i), and (f)(1)(iii) are revised; the introductory text of paragraph (f)(3) is republished; a new paragraph (f)(3)(iv) is added; paragraph (f)(4) is redesignated as paragraph (f)(5); and a new paragraph (f)(4) is added to read as follows:

§ 412.328 Determining and updating the hospital-specific rate.

(a) *Base-year cost reporting period.*

* * * * *

(3) *Other hospitals.* For other than a new hospital as defined in § 412.300(b), if a hospital does not have a 12-month cost reporting period ending on or

before December 31, 1990, the hospital-specific rate is based on the hospital's old capital costs (per discharge) in its first 12-month cost reporting period (or combination of cost reporting periods covering at least 12 months) ending after December 31, 1990.

(b) *Base-year costs per discharge.*

* * * * *

(2) *Discharges.* For the purpose of determining a hospital's base period capital costs per discharge a discharge, includes discharges as defined in § 412.4(a) and transfers as defined in § 412.4(b)(2), adjusted by the transfer adjustment factor that is determined under paragraph (b)(3) of this section.

(3) *Transfer adjustment factor.* (i) For base year cost reporting periods ending on or before December 31, 1990, HCFA uses the base year MEDPAR data received as of June 30, 1991 to develop an adjustment to discharges to account for transfers. HCFA divides the length of stay for each transfer case by the geometric mean length of stay for the DRG (but in no case using a number greater than 1.0) and assigns each nontransfer case a value of 1.0. To determine the transfer adjustment factor, HCFA adds together the adjusted discharges and divides the result by total discharges including transfers.

(ii) For base year cost reporting periods ending after December 31, 1990 but beginning before October 1, 1991, HCFA determines a transfer adjustment factor as described in paragraph (b)(3)(i) of this section for a hospital using the applicable base year MEDPAR data on file as of the December 31 or June 30 occurring at least 6 months after the close of the approved base year.

(iii) For base year cost reporting periods beginning on or after October 1, 1991, the intermediary determines the transfer adjustment factor in place of HCFA as described in paragraph (b)(3)(i) of this section based on the most recent billing data available as of the date of the final determination of the hospital specific rate.

(c) *Case-mix adjustment*—(1) *Determining transfer-adjusted case mix value. Step 1:* For base year cost reporting periods ending on or before December 31, 1990, HCFA uses the base year MEDPAR data received as on June 30, 1991 to determine the hospital's transfer-adjusted case-mix value. For base year cost reporting periods ending after December 31, 1990 and beginning before October 1, 1991, HCFA determines a transfer-adjusted case-mix value for a hospital using the applicable base year MEDPAR data on file as of the December 31 or June 30 occurring at least 6 months after the close of the base year. For base year cost reporting periods beginning on or after October 1, 1991, the intermediary determines the transfer-adjusted case-mix value based on the most recent billing data available as of the date of the final determination of the hospital-specific rate. HCFA or the intermediary, as appropriate, multiplies the DRG weight for each case by one of the following factors:

* * * * *

(f) *Redetermination of hospital-specific rate*—

(1) *General.* (i) Upon request by a hospital, the intermediary redetermines the hospital-specific rate to reflect an increase in old capital costs as determined in a cost reporting period subsequent to the base year. An increase in Medicare old capital cost per discharge that is related solely to a decline in utilization is not recognized as an increase in old capital costs for purposes of this section. New capital costs are excluded from the redetermination of the hospital-specific rate.

* * * * *

(iii) The hospital must request a redetermination in writing no later than the date the cost report must be filed with the hospital's intermediary for the first cost reporting period beginning on or after October 1, 1991 or the cost reporting period that will serve as the new base period whichever is later. The hospital's redetermination request must include the cost report for the new base period and an estimate of the revised hospital-specific rate indicating that the new rate exceeds the hospital's current hospital-specific rate.

* * * * *

(3) *Redetermined hospital-specific rate.* The intermediary redetermines the hospital-specific rate based on the old capital costs that are determined under paragraph (f)(2) of this section for the new base period. The intermediary—

* * * * *

(iv) If the intermediary determines, after audit, that the requested redetermination will result in a lower hospital-specific rate, it advises the hospital of its determination and provides the hospital the opportunity to withdraw its request within 60 days of the intermediary notice.

(4) *Withdrawing a request.* If the intermediary determines, after audit, that the revised hospital-specific rate is lower than the current hospital-specific rate, it advises the hospital of its determination and promptly notifies the hospital that it may withdraw its request within 60 days of the intermediary notice.

* * * * *

4. A new § 412.331 is added to read as follows:

§ 412.331 Determining hospital-specific rates in cases of hospital merger, consolidation, or dissolution.

(a) *Hospital merger or consolidation.* If, after the base year, two or more hospitals merge or consolidate into one hospital as provided for under § 413.134(k) of this chapter, the intermediary determines a revised hospital-specific rate applicable to the combined facility under § 412.328, which is effective beginning with the date of merger or consolidation. The following rules apply to the revised hospital-specific rate and payment determination:

(1) *Revised hospital-specific rate.* Using each hospital's base period data, the intermediary determines a combined average discharge weighted hospital-specific rate.

(2) *Payment determination.* The discharge-weighted hospital-specific rate determined by the intermediary is compared to the Federal rate to establish the appropriate payment methodology under § 412.336 and for payment purposes under §§ 412.340 or 412.344. The revised payment methodology is effective as of the date of merger or consolidation.

(3) *Old capital cost determination.* The capital-related costs related to the assets of each merged or consolidated hospital as of December 31, 1990 are recognized as old capital costs during the transition period. If the hospital is paid under the hold-harmless methodology after merger or consolidation, only that original base year old capital is eligible for hold-harmless payments.

(b) *Hospital dissolution.* If a hospital separates into two or more hospitals that are subject to capital payments under this subpart after the base year, the intermediary determines new hospital-specific rates for each separate hospital under the provisions of § 412.328 effective as of the date of the dissolution. The new hospital-specific rates are determined as follows:

(1) *Hospital-specific rate*—(i) *Adequate base year data.* The intermediary determines whether the base year capital-related cost data and necessary statistical records are adequate to reconstruct the cost and other data required under § 412.328 from the former hospital's financial records to determine the hospital-specific rates for each facility. If the data are adequate, the intermediary uses the former hospital's base period to determine the

hospital-specific rate for each separate hospital.

(ii) *Inadequate original base year data.* If the intermediary determines that the base period data for the former hospital is inadequate to establish separate hospital-specific rates, the intermediary establishes a new base period for each hospital. The new base period is each hospital's first 12-month or longer cost reporting periods covering at least 12 months) immediately following separation of the hospitals. The intermediary determines the hospital-specific rate for each hospital using the new base period under § 412.328.

(2) *Payment determinations.* The intermediary applies the payment methodology provisions of § 412.336. The revised payment determination is effective as of the date of the hospital's dissolution.

(3) *Old capital cost determination.* In determining the old capital costs for each hospital, the amount recognized as old capital is limited to the allowable capital-related costs attributable to assets that were in use for patient care as of December 31, 1990, and the hospitals are subject to all other transition period rules of this subpart.

5. Section 412.348(e)(2) is revised to read as follows:

§ 412.348 Exception payments during transition period.

* * * * *

(e) * * *

(2) A hospital must apply to its HCFA Regional Office by the later of October 1, 1992 or within 180 days of the extrordinary circumstance causing the unanticipated expenditures for a determination by the HCFA Administrator of whether the hospital is eligible for an additional payment based on the nature of the circumstances and the amount of financial loss documented by the hospital.

* * * * *

II. Part 413 is amended as follows:

A. The authority citation for part 413 continues to read as follows:

Authority: Sections 1102, 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 13951(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100–360 as amended by sec. 608(d)(3) of Pub. L. 100–485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 101–234 (42 U.S.C. 1395ww (note))

Subpart A—Introduction and General Rules

B. Subpart A is amended as follows:

1. In § 413.1, paragraph (d)(2) introductory text and paragraph (d)(2)(i) are revised to read as follows:

§ 413.1 Introduction.

* * * * *

(d) *Payment for inpatient hospital services.*

* * * * *

(2) Payment to short-term general hospitals located in the 50 States and the District of Columbia for the operating costs of hospital inpatient services for cost reporting periods beginning on or after October 1, 1983, and for inpatient services for capital-related costs for cost reporting periods beginning on or after October 1, 1991 are determined prospectively on a per discharge basis under part 412 of this chapter except as follows:

(i) Payment for capital-related costs for cost reporting periods beginning before October 1, 1991, medical education, and kidney acquisition costs, and the costs of certain anesthesia services, is described in § 412.113 of this chapter.

* * * * *

2. In § 413.5, the introductory text of paragraph (c) is revised to read as follows:

§ 413.5 Cost reimbursement: General.

* * * * *

(c) As formulated herein, the principles give recognition to such factors as depreciation, interest, bad debts, educational costs, compensation of owners, and an allowance for a reasonable return on equity capital (in the case of certain proprietary providers). With respect to allowable costs some items of inclusion and exclusion are:

* * * * *

Subpart B—Accounting Records and Reports

C. Subpart B is amended as follows:

§ 413.24 [Amended]

In § 413.24(f)(3)(iii), the term "prospective payment system" is revised to read "prospective payment systems".

Subpart C—Limits on Cost Reimbursement

D. Subpart C is amended as follows:

In § 413.40, paragraph (a)(2)(i) introductory text is republished; paragraphs (a)(2)(i)(B), (c)(2), (f)(1)(i), and (g)(3)(iii) are revised; and a sentence is added at the end of paragraph (b)(1) to read as follows:

§ 413.40 Ceiling on rate of hospital cost increases.

(a) * * *

(2) *Applicability.* (i) This section is not applicable to—

* * * * *

(B) Hospitals that are paid under the prospective payment systems for inpatient hospital services in accordance with section 1886(d) and (g) of the Act and part 412 of this chapter.

* * * * *

(b) *Cost reporting periods subject to the rate of increase ceiling.* (1) * * * When the operational structure of a hospital or distinct unit changes (that is, a freestanding rehabilitation hospital becomes a distinct-part unit or vice versa) the base period would be the first full 12-month cost reporting period effective with the revised Medicare certification classification.

(c) * * *

(2) *Cost determined on a per case basis.* Costs subject to the ceiling as described in paragraph (c)(1) of this section are determined on a per discharge basis. For purposes of this subpart, a patient is considered discharged on the earliest of the following dates:

(i) The date the patient has exhausted Medicare Part A inpatient hospital benefits (including the election to use lifetime reserve days) during his or her spell of illness.

(ii) The date the patient is formally released as specified in § 412.4(a)(1) of this chapter;

(iii) The date the patient is transferred to another facility.

(iv) The date the patient dies.

* * * * *

(f) *Exemptions—(1)* * * *

(i) *New hospitals.* A new hospital is exempt from the rate-of-increase ceiling imposed under this section. The exemption begins when the hospital accepts its first patient and ends at the end of the first cost reporting period ending at least two years after the hospital accepts its first patient. The first 12-month cost reporting period beginning at least one year after the hospital accepts its first patient is the base year in accordance with paragraph (b) of this section. For purposes of this section, a new hospital is a provider of hospital inpatient services that—

(A) Has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership (or both), for less than two full years; and

(B) Has not previously provided the type of hospital inpatient services for

which HCFA granted it approval to participate in the Medicare program.

* * * * *

(g) *Adjustments*—

* * * * *

(3) * * *

(iii) *Adjusting operating costs.* Without a formal request from a hospital, HCFA may adjust the amount of operating costs determined under paragraph (c)(1) of this section to take into account certain adjustments. These adjustments include, but are not limited to, adjustments under paragraphs (g)(3)(ii) (A), (B), (C), (E), and (F) of this section.

* * * * *

Subpart E—Payments to Providers

E. Subpart E is amended as follows:

§ 413.64 [Amended]

In § 413.64, in paragraphs (h)(1)(i) and (h)(1)(ii), the term "prospective payment system" is revised to read "prospective payment systems".

Subpart F—Specific Categories of Costs

F. Subpart F is amended as follows:

Section 413.86 is amended by adding paragraph (h)(6) to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(h) * * *

(6) On or after June 1, 1992, the United States Medical Licensing Examination may be substituted for the FMGEMS for purposes of the determination made under paragraphs (h)(1) and (h)(4) of this section. On or after July 1, 1993 only the results of steps I and II of the United States Medical Licensing Examination shall be accepted for purposes of making this determination.

* * * * *

Subpart G—Capital Related Costs

G. Subpart G is amended as follows:

§ 413.134 [Amended]

1. In § 413.134, in paragraph (f)(2)(iii)(D), the reference "§ 412.340(a)(2)" is revised to read "§ 412.344(a)(2)".

§ 413.157 [Amended]

2. In § 413.157, paragraph (c)(5) is removed.

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance; No. 93.744, Medicare—Supplementary Medicare Insurance)

Dated: April 30, 1992.

William Toby,

Acting Administrator, Health Care Financing Administration.

Approved: May 22, 1992.

Louis W. Sullivan,

Secretary.

[**Editorial Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective with Discharges On or After October 1, 1992 and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1992

I. Summary and Background

In this addendum, we are making changes in the amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1992, except for sole community hospitals, Medicare-dependent small rural hospitals, hospitals located in Puerto Rico, and hospitals subject to the regional floor, each hospital's payment per discharge under the prospective payment system will be comprised of 100 percent of the Federal national rate.

For cost reporting periods beginning on or after April 1, 1990, sole community hospitals and, for cost reporting periods ending on or before March 31, 1993, Medicare-dependent small rural hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: The Federal national rate (subject to the regional floor), the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Hospitals in Puerto Rico are paid on the basis of a rate per discharge composed of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act). Hospitals affected by the regional floor are paid on the basis of 85 percent of the Federal national rate and 15 percent of the Federal regional rate (section 1886(d)(1)(A)(iii) of the Act).

As discussed below in section II, we are making changes in the determination of the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, will affect the calculation of the Federal rates. In section III we discuss changes we are making in the determination of the prospective payment rates for Medicare inpatient capital-related costs. Section IV sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the proposed rule are presented at the end of this addendum in section V.

II. Proposed Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 1993

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the manner in which we are changing some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, will be effective with discharges occurring on or after October 1, 1992. As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighting factors for discharges in FY 1993.

In summary, the proposed standardized amounts set forth in Tables 1a, 1b, and 1c of section V of this addendum were—

- Updated by 2.75 percent for urban hospitals (that is, the market basket percentage increase of 4.3 percent minus 1.55 percent); and 3.75 percent for rural hospitals (that is, the market basket percentage increase of 4.3 percent minus 0.55 percent);
- Adjusted by removing the FY 1992 outlier offsets and applying the revised urban and rural outlier offsets;
- Adjusted to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1992 budget neutrality factor and applying a revised factor; and
- Adjusted to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by removing the FY 1992 budget neutrality adjustment factors and applying revised budget neutrality adjustment factors to the urban and rural standardized amounts.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interm final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886 (d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove the cost data the affects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since the standardized amounts have already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, no additional adjustments for these factors for FY 1993 were made. That is, the standardization adjustments reflected in the FY 1993 standardized amounts are the same as those reflected in the FY 1992 standardized amounts.

Sections 1886 (d)(2)(H) and (d)(3)(E) of the Act require that, in making payments under the prospective payment system, the Secretary adjust the proportion of payments that are wage-related (as estimated by the Secretary from time to time). Beginning with October 1, 1990, when the market basket was rebased, we have considered 71.40 percent of costs to be labor-related for purposes of the prospective payment system.

2. Computing Urban and Rural Averages Within Geographic Areas

Section 1886(d)(3) of the Act requires the Secretary to compute three average standardized amounts for discharges occurring in a fiscal year: One for hospitals located in rural areas; one for hospitals located in large urban areas; and one for hospitals located in other urban areas. In addition, under section 1886(d)(9)(B)(iii) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and rural areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines a "large urban area" as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Under that section, urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas."

Based on 1990 population estimates published by the Bureau of the Census, the current 49 large urban areas continue to meet the criteria to be defined as large urban areas for FY 1993. These areas are identified by an asterisk in Tables 4a and 4c. No additional areas have been identified. Therefore, we are making no change in these areas for purposes of this proposed rule. If new population estimates are published by the Bureau of Census by June 30, 1992, we will include any resulting changes in the list of large urban areas in the final rule.

Table 1a contains the three national standardized amounts that would continue to be applicable to most hospitals. Table 1b sets forth the 27 regional standardized amounts that would continue to be applicable for hospitals located in census areas subject to the regional floor. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national rural standardized amount, the national large urban standardized amount, and the national other urban standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. This table also includes the three standardized amounts that would be applicable to most hospitals in Puerto Rico.

The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the large urban, other urban, and rural average standardized amounts using the applicable percentage increases specified in section 1886(b)(3)(B)(i). Section 1886(b)(3)(B)(i)(VIII) of the Act (as added by sections 4002 (a) and (c) of Public Law 101–508) specifies the following update factors for the standardized amounts for FY 1993:

- The market basket percentage increase minus 1.55 percentage points (that is, 2.75 percent) for hospitals located in urban areas.
- The market basket percentage increase minus 0.55 percentage points (that is, 3.75 percent) for hospitals located in rural areas.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecasted hospital market basket increase for FY 1993 is 4.3 percent.

Although the update factor for FY 1993 is set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress no later than March 1, 1992 on our initial recommendation of update factors for FY 1993 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix C to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act), as well as our responses to ProPAC's recommendation concerning the update factor, is set forth as Appendix D to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. *Reclassified Hospitals—Budget Neutrality Adjustment.* Section 1886(d)(8)(B) of the Act provides that

certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals beginning in FY 1992 based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both. (See section I.A.1 of the preamble for a further explanation.)

Section 1886(d)(8)(D) of the Act specifies two budget neutrality objectives that must be met. First, the FY 1993 urban standardized amounts are to be adjusted so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8) (B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. Second, the rural standardized amounts are to be adjusted to ensure that aggregate payments to rural hospitals not affected by these provisions neither increase nor decrease as a result of implementation of these provisions. We note that some rural referral centers have been reclassified for purposes of the standardized amount. The budget neutrality adjustment for geographic reclassifications does not include the cost of paying the rural referral centers the other urban standardized amount since they are already paid on this basis. Rather, the budget neutrality adjustment includes only the difference between the payments to these hospitals after reclassification and payments as a rural referral center before reclassification (for example, higher disproportionate share payments or the difference between large urban and other urban rates, as applicable). Once the rural referral center triennial reviews are implemented beginning October 1, 1992 (see section V.B., above), it is likely that several of these hospitals will no longer be eligible for rural referral center status. At that point, it would be appropriate to include the cost of paying the hospitals the other urban standardized amount in the budget neutrality adjustment factor. Therefore, in calculating the final FY 1993 budget neutrality adjustment factor, we would identify those hospitals that are likely to lose their rural referral center status and determine the cost of paying them the urban standardized amount for the portion of FY 1993 that we estimate they would no longer qualify as a rural referral center. We would include this cost in the budget neutrality adjustment factor. The following adjustment factors, necessary to achieve the requisite budget neutrality constraints, were applied to the proposed standardized amounts:

Urban	Rural
.987245	.999457

The adjustment factors are applied to the standardized amounts after removing the effects of the FY 1992 budget neutrality adjustment factors. We note that the proposed FY 1993 adjustments reflect wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of March 30, 1992. The effects of any additional reclassification changes resulting from appeals and review of the MGCRB's decisions for FY 1993 or from a hospital's request for the withdrawal of a reclassification request will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act.

b. *Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.* Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassifications and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II.C of the preamble, we normalized the recalibrated DRG weights by an adjustment factor so that the average case weight after recalibration is equal to the average case weight prior to recalibration. While this adjustment is intended to ensure that recalibration does not affect total payments to hospitals, our analysis indicates that the normalization adjustment does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated based on new survey data no later than October 1, 1990 and on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that the DRG reclassification changes and recalibration of the relative weights be budget neutral and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be implemented in a budget neutral manner, we compared aggregate payments using the FY 1992 relative weights and the wage index effective October 1, 1991 to aggregate payments using the proposed FY 1993 relative weights and wage index. The same methodology was used for the FY 1992 budget neutrality adjustment. (See the discussion in the August 30, 1991 final rule (56 FR 43246).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 1.000007. We applied this budget neutrality adjustment factor to the standardized amounts after removing the effects of the FY 1992 budget neutrality adjustment.

In addition, we are proposing to continue to apply the same FY 1993 adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1992, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

c. *Retroactive Budget Neutrality Adjustment to Reflect FY 1992 Midyear Wage Index Corrections.* In the September 4, 1990 final rule (55 FR 36042), we set forth under § 412.63(l) (redesignated at § 412.63(p)) our policy for making mid-year corrections in the wage index and applying those corrections on a prospective basis effective with discharges occurring after the date the corrections are made. As described in that rule, when mid-year corrections are made under the provisions of § 412.63(l), the correction in the wage index value for the affected area is effective prospectively from the date the revision is made; however, both the corresponding prospective adjustment to the wage index values for all other wage areas (to reflect the effect of the corrected data on the national average hourly wage), and the budget neutrality adjustment to the standardized amounts required by section 1886(d)(3)(E) of the Act (to account for the effect on payments of the mid-year corrections), are not made until the beginning of the next fiscal year.

To account for the effect that mid-year corrections in the wage index for FY 1992 had on program payments for that year, we have computed a retroactive budget neutrality adjustment factor of .999586. This adjustment was computed by comparing FY 1992 aggregate

payments before the wage data corrections were made with aggregate payments after the revised wage index values were implemented. This adjustment has been applied to the FY 1993 standardized amounts after removing the effects of the FY 1992 budget neutrality adjustment for mid-year wage corrections.

d. *Outliers.* Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act requires that the urban and rural standardized amounts be separately reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments for hospitals located in urban areas and those located in rural areas. Section 1886(d)(9)(B)(iv) of the Act requires that the urban and rural standardized amounts be reduced by the proportion of estimated total payments made to hospitals in Puerto Rico attributable to estimated outlier payments.

Consequently, instead of a uniform reduction factor applying equally to all the standardized amounts, there are two separate reduction factors, one applicable to the urban national and regional standardized amounts and the other applicable to the rural national and regional standardized amounts. Furthermore, sections 1886(d)(5)(A)(iv) and 1886(d)(9)(D)(i) of the Act direct that outlier payments in any year may not be less than 5 percent nor more than 6 percent of total payments projected to be made based on the prospective payment rates.

In the August 30, 1991 final rule, we set the outlier thresholds so as to result in estimated operating outlier payments equal to 5.1 percent of total operating prospective payments. We also set the same outlier thresholds and offsets for the Puerto Rico prospective payment standardized amounts as we had for hospitals located outside Puerto Rico. For FY 1992, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 32 days or 3.0 standard deviations. The cost outlier threshold is the greater of 2.0 times the prospective payment rate for the DRG or $44,000 ($40,100 for hospitals that have not yet entered the prospective payment system for inpatient capital-related costs). The outlier adjustments for FY 1992 that were effective for discharges on or after October 1, 1991 were .944047 for the urban rates, .979202 for the rural rates, and .949722 for the capital Federal rate.

As discussed in section V.A of the preamble, we are proposing to establish outlier thresholds that would be applicable to both inpatient operating costs and inpatient capital-related costs. The proposed outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1993 are as follows:

Urban standardized amount	Rural standardized amount	Capital federal rate
.944828	.978085	.9490

We would apply the proposed outlier adjustment factors after removing the effects of the FY 1992 outlier adjustment factors on the standardized amounts and the capital Federal rate.

We are proposing to continue to set the outlier thresholds so as to result in estimated outlier payments equal to 5.1 percent of total prospective payments. The model that we use to determine the outlier thresholds necessary to target our desired outlier payment percentage for FY 1993 uses the FY 1991 MEDPAR file and the most recent available information on hospital-specific payment parameters (such as the cost-to-charge ratios). This information is based on the December 31, 1991 update of the provider-specific file used in the PRICER program.

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that would be made by the intermediaries in determining the prospectus payment rates as described in section II.D of this addendum. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Tables 1a, 1b, and 1c, as set forth in this addendum, contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospectus payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico.

1. Adjustment for Area Wage Levels

Sections 1886(d)(2)(H) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a through 4c of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages above. For FY 1993, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii would be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

Table of cost-of-living adjustment factors, Alaska and Hawaii Hospitals

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Weighting Factors

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed weighting factors for each DRG that are intended to reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs.

Table 5 of section V of this addendum contains the weighting factors that we propose to use for discharges occurring in FY 1993. These factors have been recalibrated as explained in section II.C of the preamble.

D. Calculation of Prospective Payment Rates for FY 1993

General Formula for Calculation of Prospective Payment Rates for FY 1993

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals and, for cost reporting periods ending on or before March 31, 1993, Medicare-dependent, small rural hospitals = Federal rate.

Prospective payment rate for sole community hospitals and, for cost reporting periods ending on or before March 31, 1993, Medicare-dependent,

small rural hospitals = Whichever of the rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the FY 1982 hospital-specific rate, or 100 percent of the FY 1987 hospital-specific rate.

Prospective payment rate for Puerto Rico = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the large urban, other urban, and rural national rates.

1. Federal Rate

For discharges occurring on or after October 1, 1992 and before October 1, 1993, except for sole community hospitals, Medicare-dependent, small rural hospitals (for cost reporting periods ending on or before March 31, 1993), hospitals located in Puerto Rico, and hospitals subject to the regional floor, the hospital's rate is comprised exclusively of the Federal national rate. Section 1886(d)(1)(A)(iii) of the Act provides that the Federal rate is comprised of 100 percent of the Federal national rate except for those hospitals located in census regions that have a regional rate that is higher than the national rate. The Federal rate for hospitals located in census regions that have a regional rate that is higher than the national rate equals 85 percent of the Federal national rate plus 15 percent of the Federal regional rate. For discharges occurring on or after October 1, 1992, rural hospitals in regions I, II, III, and IV and urban and large urban hospitals in regions I, IV, and VI are affected by the regional floor.

The Federal rates are determined as follows:

Step 1—Select the appropriate regional or national adjusted standardized amount considering the type of hospital and designation of the hospital as large urban, other urban, or rural (see Tables 1a and 1b, section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section V of this addendum).

Step 3—For examples in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the weighting factor corresponding to the appropriate DRG (see Table 5, section V of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals)

Section 1886(d)(5)(D)(i) of the Act provides that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate (subject to the regional floor), the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Under section 1886(d)(5)(G) of the Act, Medicare-dependent small rural hospitals are eligible for special payment under the prospective payment system for cost reporting periods beginning or after April 1, 1990 and ending on or before March 31, 1993 using the same formula applicable to sole community hospitals.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. *Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1993 Cost Reporting Periods.* For cost reporting periods beginning on or after October 1, 1992, we are proposing to increase the hospital-specific rates by 4.3 percent (the hospital market basket percentage increase) for sole community hospitals located in all areas. The update, which is effective for cost reporting periods beginning in FY 1993, is not applicable to Medicare-dependent small rural hospitals since the provision ends with cost reporting periods ending after March 31, 1993.) Section 1886(b)(3)(C)(ii) of the Act (as amended by section 4002(c)(2)(A)(ii) of Pub. L. 101–508) provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(ii) of the Act, which, for cost reporting periods beginning in FY 1993, is the market basket rate of increase.

b. *Calculation of Hospital-Specific Rate.* For sole community hospital cost reporting periods beginning on or after October 1, 1992 and before October 1, 1993, the applicable hospital-specific rate would be calculated by multiplying a hospital's hospital-specific rate for the preceding cost reporting period by the applicable update factor (that is, 4.3 percent). In addition, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, 1.000007) as discussed in section II.A.4.b of this addendum. This resulting rate would be used in determining under which rate a sole community hospital is paid for its cost reporting period beginning on or after October 1, 1992, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1992 and before October 1, 1993

a. *Puerto Rico Rate.* The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban, other urban, or rural designation of the hospital (see Table 1c, section V of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section V of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 75 percent.

Step 5—Multiply the amount from Step 3 by the weighing factor corresponding to the appropriate DRG weight (see Table 5, section V to the addendum).

b. *National Rate.* The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section V of the addendum) by the appropriate wage index.

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 25 percent.

Step 4—Multiply the amount from Step 3 by the weighing factor corresponding to the appropriate DRG weight (see Table 5, section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1993

The prospective payment system for hospital inpatient capital-related costs was implemental for cost reporting periods beginning on or after October 1,

1991. Effective with that cost reporting period, hospital inpatient capital related costs are paid during a 10-year transition period extending through FY 2001 on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of the historical costs for capital as described below.

The basic methodology for determining Federal capital prospective rates is set forth at § § 412.308–412.352 of the regulations. Below we discuss the manner in which we propose to change the factors used for determining the Federal rate and the hospital-specific rate. The rate changes would be effective for discharges occurring on or after October 1, 1992.

The FY 1992 standard Federal payment rate for capital-related costs under the prospective payment system was computed by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per discharge. The standard Federal rate is updated each year for increases in capital-related costs as provided in § 412.308(c)(1). Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of total capital payments under the Federal rate. For FY 1992 through FY 2001, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated additional payments made for exceptions under § 412.348. Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that estimated aggregate payments after any changes resulting from the annual DRG reclassification and the recalibration of DRG weights and in the geographic adjustment factor are budget neutral. For FY 1992 through FY 1995, § 412.352 requires that the Federal rate is also adjusted by a budget neutrality factor, so that estimated aggregate payments for inpatient hospital capital costs will equal 90 percent of the estimated payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year.

The hospital-specific rate for each hospital was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment reduction factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. The hospital-specific rate is updated each year for inflation and for changes in the exceptions payment adjustment factor and the budget neutrality adjustment factor.

To determine the appropriate budget neutrality adjustment factors and the exceptions reduction factor, we developed a dynamic model of Medicare inpatient capital- related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. The model and its application are more fully described in Appendix B.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid under a special payment formula. These hospitals are paid a blended rate that takes into account their geographical designation and is comprised of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals in the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national rate for capital-related costs. Hospitals in Puerto Rico are paid based on 75 percent of the Puerto Rico rate and 25 percent of the Federal rate.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

1. Standard Federal Rate Update

Section 412.308(c)(1)(i) provides that for FY 1993 through FY 1995, the standard Federal rate is updated on the basis of a lagged two-year moving average of actual increases in Medicare inpatient capital-related costs per discharge. The two-year moving average is based on the actual increase, adjusted for case-mix index change, in Medicare inpatient capital-related costs per case for the fiscal years three and four years before the fiscal year in question. For FY 1993, the increase is based on the increase in Medicare inpatient capital-related costs per case between FY 1988 and FY 1990. These are the most recent fiscal years for which cost report data are available. To determine the amount of the increase, we apportioned a hospital's costs and discharges to each fiscal year based on the number of months in the hospital's cost reporting period that occurred during the applicable fiscal year. Thus, an individual hospital may have more than one cost report included in the calculation.

We are proposing that the FY 1993 update for the Federal rate will be 3.76%. The following chart shows how this figure was computed:

CAPITAL PER CASE INCREASE FROM COST REPORT DATA

FY	Number of cost reports	Average capital cost per case	Percent increase	Observed case mix increase (percent)	Adjustment to case mix increase (percent)
1988	6356	$485.75			
1989	6282	518.90	6.83	2.52	
1990	5155	547.23	5.46	0.85	1.22

FY	Adjusted case mix (percent)	Case mix adjusted increase	Average two year increase (percent)
1989	2.52	4.20	
1990	2.08	3.31	3.76

This computation was based on incomplete cost report data from FY 1990. As the above chart suggests, some hospital cost reports are not yet included in the Hospital Cost Report Information System (HCRIS). We expect

data from those cost reports to become available on HCRIS before we publish the final rule. We will therefore recalculate the FY 1993 update factor on the basis of complete FY 1990 cost report data for the final rule. We note that the proposed FY 1993 update factor is 2.21 percentage points lower than the update factor of 5.97 percent which we projected from the capital acquisitions model for FY 1993.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 20 percent for cost reporting periods beginning in FY 1993 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that 5.1 percent of estimated inpatient operating payments are paid as outlier payments. The inpatient capital-related outlier reduction factor is then set according to the estimated inpatient capital-related outlier payments that would be made if hospitals were all paid according to 100 percent of the Federal rate. It is appropriate, for purposes of calculating the outlier thresholds and the outlier reduction factor, to model all hospitals as if paid 100 percent of the Federal rate. This is because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

For FY 1992, we estimated that outlier payments would equal 5.03 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of .9497 to the Federal rate. Based on the proposed thresholds as set forth in section VI of the preamble, we estimate that outlier payments will equal 5.10 percent of inpatient capital-related payments based on the Federal rate in FY 1993. We are therefore proposing an outlier adjustment factor of 0.9490 to the Federal rate. The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore the net change in the outlier adjustment to the Federal rate for FY 1993 is 0.9490/.9497 or 0.9993. Thus, the higher outlier payment percentage will reduce the FY 1993 Federal rate by .07 percent (1—0.9993) compared with the FY 1992 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Weight and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that estimated aggregate payments for the fiscal year based on any changes resulting from the annual reclassification and recalibration of the DRG weights and in the geographic adjustment factor equal estimated aggregate payments that would have been made on the basis of the Federal rate without such changes. We used the actuarial model described in Appendix B to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the geographic adjustment factor. We also used the model to estimate aggregate payments that would have been made on the basis of the Federal rate as a result of those changes. We used these figures to compute the adjustment in DRG weights and in the geographic adjustment factor. For FY 1993, we are estimating that a budget neutrality factor of 0.9906 is necessary for this purpose. We note that this factor accounts only for changes due to DRG classification changes and recalibration and in the geographic adjustment factor. It does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors. It incorporates the effects on the geographic adjustment factor of FY 1993 geographic reclassification decisions made by the MGCRB compared to FY 1992 decisions.

4. Budget Neutrality Factor to Assure Aggregate Payments Equal 90 Percent of Reasonable Cost Payments

As amended by section 4001(b) of Public Law 101–508, section 1886(g)(1)(A) of the Act requires that aggregate payments made each year in FY 1992 through FY 1995 for hospital inpatient services be reduced in a manner that results in savings equivalent to 10 percent of what HCFA estimates would have been payable on a reasonable cost basis for inpatient capital-related costs in that year. The Conference Committee report accompanying Public Law 101–508 indicated that, prior to the fiscal year, the Secretary may estimate the budget neutrality adjustment based on the best available information (H.R. Conf. Rep. No. 964, 101st Cong., 2nd Sess. 691 (1990)). In keeping with the legislation, no retroactive increase or decrease is made if aggregate payments are greater than or less than 90 percent of actual Medicare inpatient capital-related costs for that year.

Section 412.352 of the regulations provides that HCFA determines an adjustment to the hospital-specific rate and the Federal rate proportionately, so that the estimated payments for capital in each year from FY 1992 through FY 1995 will equal 90 percent of what would have been payable that year on a reasonable cost basis. The effect of this provision is that the savings required under section 1886(g)(1)(A) of the Act are realized entirely through a reduction in payment for capital costs in FY 1992 through FY 1995.

For FY 1992, we determined that a budget neutrality factor of 0.9602 was required, so that aggregate payments for inpatient capital-related costs would equal 90 percent of what would have been payable on a reasonable cost basis in that year. As we explain in Appendix B, there was practically no capital data available for use in setting the capital budget neutrality factor for FY 1992. We now have available some data that can be used directly in the determination of the budget neutrality factor. For FY 1993, we are using an actuarial model that integrates the available data with results from the FY 1992 capital acquisition model for items for which data are still missing. On the basis of the integrated model, we now estimate that capital-PPS payments for FY 1992 will equal approximately 92.09 percent of what we estimate would have been payable on a reasonable cost basis for inpatient capital-related costs in FY 1992. In other words, we now estimate that capital-PPS payments for FY 1992 will exceed the 90 percent budget neutrality target by approximately 2.09 percentage points.

We believe that there are at least two reasons for the difference between our estimate in the final rule for FY 1992 and the estimate based on the most recent data. One reason is that more hospitals appear to be qualifying as high cost hospitals receiving payment under the hold-harmless methodology than we originally estimated. In the preamble to the final rule, we estimated that 29 percent of hospitals subject to the capital-PPS system would qualify for hold-harmless payments. On the basis of the data now available, our actuarial

model estimates that about 36 percent of hospitals are qualifying for hold-harmless payments in FY 1992. Another reason is that exceptions payments appear to be higher than we previously estimated. On the basis of the data now available, the actuarial model estimates that more hospitals will receive exceptions payments, and that they will receive higher payments, than we anticipated on the basis of our original model simulations for FY 1992. Since the budget neutrality and exceptions reduction factors interact, the revised estimate of exceptions payments for FY 1992 has an effect on the determination of the budget neutrality factor.

While we do not retroactively adjust budget neutrality factors for previous years to account for revisions in our estimates, we do employ the information obtained through our monitoring efforts to refine the budget neutrality adjustment for subsequent years. Thus, we have used the most recently available data to establish the proposed budget neutrality adjustment for FY 1993. For FY 1993, we are proposing a budget neutrality factor of 0.9564 to realize the required expenditure level. The budget neutrality factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. The net adjustment to the FY 1993 Federal rate would therefore be .9564/.9602 or .9960. We will continue to integrate newly available data with the results from the model used in FY 1992, and we will recalculate the budget neutrality factor on the basis of all the data available at the time we publish the final rule.

5. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments for exceptions under § 412.348 determined as a proportion of total payments under the hospital-specific rate and Federal rate. The model developed for determining the budget neutrality adjustment factor is also used to estimate payments under the exceptions payment process and to determine the exceptions payment adjustment factor.

For FY 1992, we estimated that exceptions payments would equal 1.87 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of .9813 (1–0.0187) in determining the Federal rate. For FY 1993, we estimate that exceptions payments will equal 3.9 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we propose to apply an exceptions reduction factor of 0.9610 to determine the FY 1993 Federal rate. The exceptions reductions factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. The net adjustment to the FY 1993 Federal rate is therefore .9610/.9813, or .9793.

6. Standard Federal Rate for FY 1993

For FY 1992, the Federal rate was $415.59. With the changes we are proposing to the factors used to establish the Federal rate, we are proposing that the FY 1993 Federal rate will be $416.36. The changes are calculated as follows:

- The FY 1993 update factor would be 1.0376.
- The FY 1993 outlier adjustment factor would be 0.9490.
- The FY 1993 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the geographic adjustment factor would be 0.9906.
- The FY 1993 budget neutrality adjustment factor that is applied to the standard Federal payment rate and the hospital-specific rate to assure that aggregate payments equal 90 percent of payments that would have been made on a reasonable cost basis would be 0.9564.
- The FY 1993 exceptions payments adjustment factor would be 0.9610.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we propose to make no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factors for changes in the DRG relative weights and the geographic adjustment factor.

We are providing below a comparison of the proposed rate calculation that accounts for changes in the Federal rate from FY 1992. At each step, dollar amounts are shown to illustrate the cumulative effect on the Federal rate of each adjustment factor, and the difference in the effect of each adjustment factor between the final FY 1992 rate and the proposed rate for FY 1993. The cumulative percent change column shows the difference, to that point in the table, between the rate in FY 1992 and the proposed rate for FY 1993.

The 1993 update increases the Federal rate 3.76 percent compared to the rate in FY 1992 while the geographic and DRG budget neutrality factor decrease the Federal rate by 0.94 percent. The exceptions reduction factor decreases the proposed Federal rate by 2.07 percent compared to the exceptions reduction for FY 1992. The budget neutrality adjustment factor reduces the proposed FY 1993 rate by 0.40 percent compared to the budget neutrality reduction in FY 1992. The combined effect of all the proposed changes is to increase the proposed Federal rate by 0.19 percent compared to the Federal rate for FY 1992.

COMPARISON OF FEDERAL RATE CALCULATION FROM FY 92 FINAL RULE TO FY 93 PROPOSED RULE

	Cost per discharge	Percent change from FY 1992 rate	Cumulative percent change from FY 1992 rate
FY 89 cost per discharge	$527.22		
FY 89 cost per discharge updated to 92, adjusted for transfers and payment parameters	464.42		
93 update factor:			
FY 92	464.42		
FY 93: 1.0376	481.88	+3.76	+3.76
GAF/DRG budget neutrality factor:			
FY 92: 1.0000	464.42		
FY 93: 0.9906	477.35	−0.94	+2.78
Outlier reduction factor:			
FY 92: 0.9497	441.06		
FY 93: 0.9490	453.01	−0.07	+2.71

COMPARISON OF FEDERAL RATE CALCULATION FROM FY 92 FINAL RULE TO FY 93 PROPOSED RULE—Continued

	Cost per discharge	Percent change from FY 1992 rate	Cumulative percent change from FY 1992 rate
Exceptions reduction factor:			
FY 92: 0.9813	432.81		
FY 93: 0.9610	435.34	−2.07	+0.58
Budget neutrality reduction factor:			
FY 92: 0.9602	415.59		
FY 93: 0.9564	416.36	−0.40	+0.19
Net change:			
FY 92 rate	415.59		
FY 93 rate	416.36	+0.19	

We have refined our proposed budget neutrality and exceptions reduction factors for FY 1993 on the basis of the most recent data at our disposal. We have not retroactively adjusted the Federal rate for FY 1992 in determining the proposed rate for FY 1993. We are providing a chart that demonstrates how our proposed FY 1993 Federal rate differs from the projection we made when we published the final rule for the capital prospective payment system on August 30, 1991. At that time, we projected that the Federal rate for FY 1993 would be $430.17. This projection was based on an anticipated update factor of 1.0579, and expected exceptions reduction and budget neutrality factors of 0.9605 and 0.9582, respectively. Our proposed FY 1993 Federal rate of $416.36 is 3.21 percent lower than our August 1991 projection. As the chart shows, there are two major reasons for the difference between the projection and our current proposal. First, our projection did not include the budget neutrality factor for changes in DRG weights and in the geographic adjustment factor. Application of this factor in determining the proposed rate for FY 1993 accounts for a 0.94 percent reduction. The other reason is that the update factor used to compute the proposed rate is 2.21 percentage points lower than the update factor we used in our projection. This accounts for a 2.09 percent reduction in the proposed rate for FY 1993 compared with the projected rate. As we discuss in section III.A.1 of this Addendum, the update factor for FY 1993 is the average of the actual increases in Medicare inpatient capital-related costs per case between FY 1988 and FY 1990. The average capital cost per case for FY 1990 is lower than we originally anticipated. However, the FY 1990 average we have employed in developing the proposed FY 1993 Federal rate is based upon as yet incomplete cost report data for FY 1990. We expect to have complete FY 1990 cost report data available before we publish the final rule. We will therefore recalculate the FY 1993 update factor on the basis of complete FY 1990 data for the final rule. Also, we note that although the proposed Federal rate is only .19 percent higher than the FY 1992 rate, total payments per case under the capital prospective payment system are projected to increase 7.57 percent.

COMPARISON OF FEDERAL RATE CALCULATION AUGUST 1991 PROJECTION AND FY 1993 RATE

	Cost per discharge	Percent change from projected rate	Cumulative percent change from projected rate
FY 89 cost per discharge	$527.22		
FY 89 cost per discharge updated to FY 92, adjusted for transfers and payment parameters	464.42		
Update factor:			
Projection: 1.0597	492.15		
Proposed FY 1993: 1.0376	481.88	−2.09	−2.09
GAF/DRG budget neutrality adjustment factor:			
Projection: -----	492.15		
Proposed FY 1993: 0.9906	477.35	−0.94	−3.01
Outlier adjustment factor:			
Projection: 0.9497	467.39		
Proposed FY 1993: 0.9490	453.01	−0.07	−3.08
Exceptions reduction factor:			
Projection: 0.9605	448.93		
Proposed FY 1993: 0.9610	435.34	+0.05	−3.03
Budget neutrality factor:			
Projection: 0.9582	430.17		
Proposed FY 1993: 0.9564	416.36	−0.19	−3.21
Net change:			
Projected Federal Rate:	430.17		
FY 1993 Proposed Federal Rate:	416.36	−3.21	

7. Special Rate for Puerto Rico Hospitals

For FY 1992, the special rate for Puerto Rico hospitals was $319.68. With the changes we are proposing to the factors used to determine the rate, we are proposing that the FY 1993 special rate for Puerto Rico will be $320.27.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate each year be determined by adjusting

the FY 1992 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1993, we are proposing that the hospital-specific rate be updated by a factor of 1.0376.

2. Exceptions Payment Adjustment Factor

For FY 1992 through FY 2001, the updated hospital-specific rate is reduced by an adjustment factor equal to the estimated additional payments for capital-related costs for exceptions under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1993, we estimate that exceptions payments will be 3.9 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We therefore propose that the updated hospital-specific rate be reduced by a factor of 0.9610. The exceptions reductions factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. The net adjustment to the FY 1993 hospital-specific rate is therefore .9610/.9813 or .9793.

3. Budget Neutrality Adjustment Factor

For FY 1992 through FY 1995, the updated hospital specific rate is adjusted by a budget neutrality adjustment factor determined under § 412.352 of the regulations so that estimated aggregate payments under the capital prospective payment system will equal 90 percent of what would have been payable on a reasonable cost basis. (The budget neutrality adjustment for changes in the DRG relative weights and in the geographic adjustment factor is not applied to the hospital-specific rate.) For FY 1993, we are proposing a budget neutrality factor of 0.9564. The budget neutrality factor is not built permanently into the rates; that is, the factor is not applied cumulatively in determining the hospital-specific rate. The net adjustment to the FY 1993 hospital-specific rate is therefore .9564/.9602 or .9960.

4. Net change to Hospital-Specific Rate

We are providing a chart below to show the proposed net change to the hospital-specific rate. The chart shows the factors for FY 1992 and FY 1993 and the net adjustment for each factor. It also shows that the proposed cumulative net adjustment from FY 1992 to FY 1993 is 1.0121, which represents an increase of 1.21 percent to the hospital-specific rate. The proposed FY 1993 hospital-specific rate for each hospital can be determined by multiplying the FY 1992 hospital-specific rate by the cumulative net adjustment of 1.0121.

PROPOSED FY 1993 UPDATE AND ADJUSTMENTS TO HOSPITAL—SPECIFIC RATES

		Net adjustment	Percent change
Update factor:			
FY 92			
FY 93	1.0376	1.0376	+3.76
Exceptions payment adjustment factor:			
FY 92	0.9813		
FY 93	0.9610	0.9793	−2.07
Budget neutrality factor:			
FY 92	0.9602		
FY 93	0.9564	0.9960	−0.40
Cumulative adjustments:			
FY 92	0.9422		
FY 93	0.9537	1.0121	+1.21

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1993

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two alternative payment methodologies: The fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate is determined by adjusting:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's geographic adjustment factor, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, where appropriate). If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor) × (Large Urban Add-on, if applicable) × (for hospitals located in Alaska and Hawaii, COLA adjustment) × (1 + Disproportionate Share Adjustment Factor + Indirect Medical Education Adjustment Factor, if applicable).

The result is termed the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total

Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost-reporting period beginning on or after October 1, 1993 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis throughout the transition period.

Payment for each discharge under the fully prospective methodology is the sum of:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 1993 are 20 percent of the adjusted Federal rate and 80 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that will be 20 percent of the Federal rate for discharges occurring in cost reporting periods beginning during FY 1993. Thus, a fully prospective hospital will receive 20 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1993. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The proposed rules to establish outlier thresholds for FY 1993 are published in section V.A of the preamble to this proposed rule. For FY 1993, we are proposing that a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the larger of 2.0 times the prospective payment rate for the case or $34,500. We are also proposing that a case qualifies as a day outlier for FY 1993 if the length of stay is greater than the geometric mean length of stay for the DRG plus the lesser of three standard deviations of the length of stay or 23 days.

During the capital prospective payment system transition period, any hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The minimum payment levels for portions of cost reporting periods occurring in FY 1993 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first two years of operation and are paid 85 percent of their reasonable costs during that period. As discussed in section VI.A. of the preamble, we are proposing to clarify that a new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even though the hold-harmless payments may extend beyond the normal transition period.

IV. Proposed Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience, trended forward by the applicable update factors. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

Effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has inpatient operating costs per discharge in excess of its target amount will be paid its target amount plus 50 percent of its costs in excess of the target amount. Total payments may not exceed 110 percent of the target amount. However, a hospital that has inpatient operating costs less than its target amount will be paid its costs plus the lower of—

- Fifty percent of the difference between the inpatient operating cost per discharge and the target amount; or
- Five percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage. For cost reporting periods beginning on or after October 1, 1992 and before October 1, 1993, section 1886(b)(3)(B)(ii) of the Act provides that the applicable percentage increase is the market basket percentage increase. In order to determine a hospital's target amount for its cost reporting period beginning in FY 1993, the hospital's target amount for its reporting period that began in FY 1992 is increased by the market basket percentage increase for FY 1993. The most recent forecasted market basket increase for FY 1993 for hospitals and units excluded from the prospective payment system is 4.5 percent. Therefore, the applicable percentage increase is also 4.5 percent.

V. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1a, 1b, 1c, 3c, 4a, 4b, and 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, 1c, 1d, 3C, 4a, 4b, 4c, 5, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 7A, 7B, 8a, 8b, and 9 are presented below. The tables presented below are as follows:

Table 1a—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1b—Regional Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1d—Capital Standard Federal Payment Rate
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1990
Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4c—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Length of Stay Outlier Cutoff Points Used in the Prospective Payment System
Table 6a—New Diagnosis Codes
Table 6b—New Procedure Codes
Table 6c—Invalid Diagnosis Codes
Table 6d—Invalid Procedure Codes
Table 6e—Revised Diagnosis Code Titles
Table 6f—Revised Procedure Code Titles
Table 6g—Additions to the CC Exclusions List
Table 6h—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 91 MEDPAR Update 12/91 GROUPER V9.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 91 MEDPAR Update 12/91 GROUPER V10.0
Table 8a—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted)
Table 8b—Statewide Average Capital Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted)
Table 9—1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban		Other urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2594.12	1068.75	2553.05	1051.84	2626.19	846.11

TABLE 1B.—REGIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2724.24	1116.00	2681.11	1098.33	2911.62	1004.15
2. Middle Atlantic (PA, NJ, NY)	2447.49	1057.28	2408.74	1040.54	2788.46	949.28
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2612.60	975.75	2571.24	960.30	2665.64	823.15
4. East North Central (IL, IN, MI, OH, WI)	2755.66	1154.48	2712.04	1136.20	2699.32	914.86
5. East South Central (AL, KY, MS, TN)	2507.38	883.52	2467.68	869.54	2641.93	767.60
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	2613.35	1051.92	2571.98	1035.27	2567.76	820.06
7. West South Central (AR, LA, OK, TX)	2598.31	969.14	257.17	953.80	2462.59	754.17
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2506.45	1038.08	2466.77	1021.65	2490.33	867.40
9. Pacific (AK, CA, HI, OR, WA)	2438.08	1,185.79	2399.49	1167.02	2422.06	977.17

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO LABOR NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2333.14	485.24	2296.20	477.56	1790.07	385.90
National	2587.30	1006.27				

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	416.36
Puerto Rico	320.27

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 1 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
010001	01.2775	010065	01.2083	010130	01.1185	030012	01.2290	030086	01.1894
010004	00.9132	010066	00.9436	010131	01.2511	030013	01.2429	030087	01.6015
010005	01.1192	010068	01.2064	010134	00.8435	030014	01.4006	030088	01.2872
010006	01.3435	010069	01.1523	010136	00.9504	030016	01.2747	030089	01.2291
010007	01.1001	010072	01.1109	010137	01.2242	030017	01.3580	030091	00.8278
010008	01.0040	010073	00.8996	010138	00.9187	030018	01.5921	030092	01.4527
010009	01.0231	010078	01.1838	010139	01.5177	030019	01.2839	030093	01.2457
010010	01.1173	010079	01.1452	010143	01.1228	030022	01.3881	030094	01.2766
010011	01.3551	010080	00.9592	010144	01.3789	030023	01.2050	030898	00.5181
010012	01.1931	010081	01.8040	010145	01.2057	030024	01.6287	030899	00.5200
010015	01.0675	010083	01.0991	010146	01.0427	030025	01.0787	040001	01.0683
010016	01.0742	010084	01.2935	010148	00.9513	030027	01.0654	040002	01.1373
010018	00.9098	010085	01.2727	010149	01.3690	030030	01.6618	040003	01.0324
010019	01.1735	010086	00.9632	010150	01.0031	030033	01.3712	040004	01.2185
010020	01.0072	010087	01.5119	010152	01.2610	030034	01.0249	040005	01.0502
010021	01.2132	010089	01.0956	010153	00.9070	030035	01.2448	040007	01.5284
010022	00.9360	010090	01.4736	010155	01.1117	030036	01.2282	040008	01.0195
010023	01.2700	010091	01.0218	010898	00.5196	030037	01.8874	040010	01.1381
010024	01.2319	010092	01.3462	010899	00.5200	030038	01.4584	040011	00.9208
010025	01.2143	010094	01.1822	020001	01.4754	030040	00.9766	040013	00.9658
010027	00.8636	010095	01.0234	020002	01.1956	030041	00.9497	040014	01.1038
010029	01.4907	010096	00.9042	020004	01.0918	030043	01.1944	040015	01.0686
010031	01.2842	010097	01.0094	020005	00.9051	030044	01.1142	040016	01.4734
010032	00.8913	010098	01.0222	020006	01.0468	030046	00.9643	040017	01.2387
010033	01.9377	010099	01.0824	020007	00.8787	030047	00.9250	040018	01.2086
010034	01.0469	010100	01.1729	020008	01.0333	030049	00.9363	040019	01.1872
010035	01.1685	010101	01.0592	020009	00.8031	030051	01.0265	040020	01.4510
010036	01.1452	010102	00.9106	020010	00.9000	030054	00.9012	040021	01.2032
010038	01.2322	010103	01.5427	020011	00.9370	030055	01.1982	040022	01.6969
010039	01.5834	010104	01.5701	020012	01.1503	030059	01.3750	040024	01.0838
010040	01.2840	010108	01.1551	020013	00.8702	030060	01.1305	040025	00.9924
010043	00.9584	010109	01.0717	020014	00.9537	030061	01.4277	040026	01.4369
010044	00.9788	010110	00.9124	020017	01.3518	030062	01.2495	040027	01.2740
010045	01.0010	010112	01.1436	020018	00.8783	030064	01.5417	040028	00.9902
010046	01.3147	010113	01.5935	020019	00.9422	030065	01.4484	040029	01.0888
010047	00.9028	010114	01.1846	020021	00.9005	030067	01.0552	040030	00.9164
010048	01.0790	010115	00.8953	020024	01.0287	030068	01.0087	040031	00.9815
010050	00.9491	010117	01.1050	020025	01.0213	030069	01.2789	040032	00.9272
010051	00.8287	010118	01.1373	020026	01.2160	030071	00.9640	040035	00.9102
010052	00.9874	010119	01.1974	020027	00.8182	030072	00.8799	040036	01.2323
010053	01.0179	010120	00.9855	030001	01.3617	030073	01.0323	040037	01.1350
010054	01.1925	010121	01.1050	030002	01.7349	030074	01.0497	040039	01.0816
010055	01.3289	010122	00.9577	030003	01.3318	030075	00.9453	040040	00.9931
010056	01.2851	010123	01.2930	030004	00.9855	030076	01.0423	040041	01.1299
010057	01.0122	010124	01.2847	030006	01.5760	030078	01.0864	040042	01.3037
010058	00.9253	010125	01.0912	030007	01.2757	030079	00.7815	040044	00.9218
010059	00.9964	010126	01.0751	030008	01.8925	030080	01.5166	040045	00.9477
010061	00.9627	010127	01.5091	030009	01.2164	030083	01.3440	040047	01.0546
010062	00.9473	010128	00.8857	030010	01.4319	030084	01.1458	040048	01.2052
010064	01.6492	010129	01.0542	030011	01.3722	030085	01.3881	040050	01.1061

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 2 OF 3

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
040051	01.0291	050009	01.6032	050075	01.2735	050137	01.2678	050212	01.1063
040053	01.0340	050013	02.1233	050076	01.4847	050138	01.7065	050213	01.3822
040054	00.9467	050014	01.0837	050077	01.6442	050139	01.2130	050214	01.5456
040055	01.3270	050015	01.4664	050078	01.3218	050140	01.2963	050215	01.4141
040058	00.9101	050016	01.1859	050079	01.5001	050143	01.4018	050217	01.2034
040060	00.9745	050017	02.0086	050080	01.2194	050144	01.4952	050219	01.3608
040062	01.3459	050018	01.2656	050081	01.6186	050145	01.2839	050220	01.2477
040063	01.4385	050019	00.8019	050082	01.4811	050146	01.3042	050222	01.5161
040064	00.9033	050021	01.2692	050084	01.4887	050147	00.7626	050224	01.6179
040066	01.0287	050022	01.5469	050087	01.7340	050148	01.1279	050225	01.3268
040067	01.0078	050024	01.3713	050088	01.1475	050149	01.3523	050226	01.4244
040069	01.0531	050025	01.6700	050089	01.3437	050150	01.2418	050228	01.2684
040070	00.9627	050026	01.4750	050090	01.2347	050152	01.3937	050230	01.3319
040071	01.4115	050028	01.2694	050091	01.2234	050153	01.6399	050231	01.4916
040072	01.0749	050029	01.3282	050092	00.9544	050154	01.2079	050232	01.8523
040074	01.1782	050030	01.2953	050093	01.5279	050155	01.0988	050233	01.2233
040075	01.1030	050032	01.2800	050095	01.8435	050158	01.6873	050234	01.2788
040076	01.0457	050033	01.3889	050096	01.0950	050159	01.3846	050235	01.4955
040077	00.9271	050034	01.3112	050097	01.4334	050161	01.5247	050236	01.3804
040078	01.2381	050036	01.7073	050099	01.6580	050166	01.0544	050238	01.5048
040080	01.0666	050038	01.4042	050100	01.8096	050167	01.3769	050239	01.4072
040081	00.8585	050039	01.6455	050101	01.3540	050168	01.6897	050240	01.4357
040082	01.2073	050040	01.1085	050102	01.2835	050169	01.4897	050241	01.2873
040084	01.1230	050041	01.2975	050103	01.4970	050170	01.3975	050242	01.3914
040085	01.1277	050042	01.2151	050104	01.3516	050172	01.3293	050243	01.4666
040088	01.2199	050043	01.5835	050107	01.3445	050173	01.2464	050245	01.4073
040090	00.9564	050045	01.2640	050108	01.4279	050174	01.5976	050248	01.1128
040091	01.1591	050046	01.1789	050109	02.0895	050175	01.4123	050251	01.1829
040093	01.0163	050047	01.6959	050110	01.1486	050177	01.2383	050254	01.1301
040095	00.8770	050049	01.5293	050111	01.2768	050179	01.2320	050256	01.6689
040100	01.1257	050051	01.1437	050112	01.4440	050180	01.4036	050257	01.1402
040105	01.0186	050053	01.2884	050113	01.1630	050181	01.2676	050258	01.2463
040106	01.1743	050054	01.2674	050114	01.4689	050183	01.1229	050260	00.9182
040107	01.0535	050055	01.2658	050115	01.4645	050186	01.3243	050261	01.1815
040109	01.1405	050056	01.3653	050116	01.4446	050188	01.3669	050262	01.7402
040114	01.7018	050057	01.4435	050117	01.3078	050189	00.9111	050263	01.2485
040115	01.0638	050058	01.4070	050118	01.1611	050191	01.3797	050264	01.4181
040116	01.3735	050060	01.4525	050121	01.2749	050192	01.1773	050267	01.5090
040118	01.1913	050061	01.2547	050122	01.4136	050193	01.3451	050269	01.0991
040119	01.1378	050063	01.3386	050124	01.2015	050194	01.3375	050270	01.3084
040122	01.0989	050065	01.5143	050125	01.2916	050195	01.5291	050272	01.3138
040124	01.0802	050066	01.2789	050126	01.3895	050196	01.2749	050274	00.9718
040126	00.9696	050067	01.2796	050127	01.2513	050197	01.9148	050276	01.1388
040132	01.4616	050068	01.1265	050128	01.4923	050199	01.2346	050277	01.4033
040898	00.5196	050069	01.5878	050129	01.5417	050201	00.9045	050278	01.4025
040899	00.5200	050070	01.1970	050131	01.2596	050204	01.4017	050279	01.2145
050002	01.2967	050071	01.3146	050132	01.3999	050205	01.2219	050280	01.4567
050006	01.2959	050072	01.2163	050133	01.1862	050207	01.2349	050281	01.2718
050007	01.4748	050073	01.2151	050135	01.3006	050208	01.1981	050282	01.2748
050008	01.3865	050074	01.0344	050136	01.2961	050211	01.3124	050283	01.4291

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 3 OF 23

PROVIDER	CASE MIX
050286	01.0244
050289	01.6764
050290	01.4731
050291	01.1747
050292	01.1348
050293	01.3058
050295	01.3292
050296	01.1106
050298	01.2188
050299	01.2423
050300	01.2945
050301	01.1870
050302	01.2706
050305	01.4602
050307	01.4068
050308	01.5480
050309	01.2966
050310	01.2352
050312	01.7651
050313	01.1686
050315	01.2833
050317	01.2069
050320	01.3202
050324	01.8365
050325	01.2841
050327	01.6173
050328	01.2477
050329	01.2414
050331	01.2894
050333	01.0028
050334	01.4687
050335	01.2418
050336	01.2370
050337	01.2174
050342	01.3071
050343	01.0348
050345	01.3605
050348	01.7029
050349	01.0077
050350	01.4095
050351	01.4804
050352	01.2587
050353	01.6574
050355	00.9837
050357	01.8126
050359	01.1197
050360	01.4326
050363	01.3267
050366	01.2918
050367	01.2376
050369	01.2706
050373	01.3800
050376	01.3023
050377	00.9904
050378	01.1644
050379	01.1388
050380	01.6015
050382	01.4337
050385	01.3214
050387	00.9417
050388	00.9504
050390	01.2280
050391	01.4178
050392	00.9559
050393	01.5017
050394	01.4718
050396	01.5810
050397	00.8738
050401	01.1898
050404	01.0481
050406	01.0903
050407	01.0341
050410	00.8314
050411	01.3054
050414	01.2608
050417	01.1647
050418	01.3164
050419	01.2788
050420	01.3644
050421	01.3308
050423	01.0499
050424	01.6884
050425	01.3100
050426	01.3732
050427	00.9738
050430	00.9661
050431	01.0448
050432	01.6131
050433	01.1511
050434	01.1019
050435	01.2896
050436	01.0104
050438	01.4773
050440	01.2045
050441	01.7390
050442	00.8510
050443	00.9028
050444	01.2352
050446	00.8811
050447	01.0390
050448	01.0819
050449	01.2931
050450	00.8056
050451	00.9848
050454	01.6526
050455	01.8496
050456	01.3863
050457	01.8000
050458	00.9333
050459	01.2557
050464	01.7938
050467	01.2370
050468	01.6302
050469	01.0978
050470	01.1291
050471	01.7540
050476	01.2644
050477	01.3904
050478	01.0005
050481	01.4764
050482	01.0299
050483	01.2493
050485	01.7390
050486	01.4141
050488	01.1990
050489	01.0803
050491	01.4395
050492	01.2545
050494	01.0906
050496	01.7941
050497	00.7612
050498	01.1462
050502	01.6770
050503	01.2981
050506	01.4730
050510	01.2897
050512	01.2454
050515	01.3183
050516	01.3388
050517	01.3989
050522	01.3364
050523	01.2422
050526	01.3684
050527	01.2051
050528	01.2075
050530	00.9026
050531	01.2815
050534	01.4063
050535	01.3038
050537	01.2255
050539	01.1954
050541	01.4811
050542	01.1247
050543	01.3982
050545	00.9304
050546	01.1350
050547	00.9116
050549	01.7832
050550	01.1040
050551	01.2649
050552	01.0653
050557	01.5074
050559	01.2590
050560	01.2621
050561	01.1587
050564	01.3160
050565	01.1196
050566	01.0216
050567	01.8121
050568	01.3153
050569	01.2062
050570	01.6957
050571	01.4054
050573	01.8318
050575	01.2308
050577	01.3060
050578	01.4097
050579	01.4477
050580	01.2579
050581	01.3583
050583	01.7159
050584	01.2778
050585	01.3653
050586	01.3371
050587	01.2359
050588	01.2718
050589	01.3564
050590	01.3075
050591	01.1236
050592	01.2864
050593	01.2619
050594	01.9607
050597	01.3571
050598	01.3543
050599	01.6492
050601	01.3017
050603	01.4267
050604	01.4106
050607	01.2278
050608	01.1783
050609	01.2933
050613	01.0819
050615	01.3968
050616	01.3301
050618	01.1719
050619	01.3693
050622	01.0777
050623	01.1558
050624	01.2654
050625	01.4642
050630	01.2453
050633	01.2234
050635	01.2962
050636	01.2819
050637	01.1827
050638	01.0131
050641	01.1309
050643	00.8934
050644	01.0971
050649	01.1482
050651	01.2751
050655	00.7803
050660	01.1220
050661	00.8980
050662	00.9940
050663	01.1048
050666	00.9618
050667	01.0151
050668	01.1684
050669	00.7493
050670	01.2287
050671	01.1525
050672	00.6859
050674	01.1831
050675	01.5231
050676	00.9970
050677	01.2951
050678	01.1900
050680	01.1784
050682	00.9421
050684	01.2152
050685	01.1468
050686	01.2813
050688	01.1468
050689	01.3497
050690	01.1960
050691	00.9533
050693	01.2499
050694	01.1491
050695	01.2229

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 4 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050696	01.7667	060062	00.9905	070028	01.4866	100021	01.3539	100079	01.1933
050898	00.5184	060063	01.1643	070029	01.2278	100022	01.6030	100080	01.5876
050899	00.5200	060064	01.3938	070030	01.2712	100023	01.3257	100081	01.0850
060001	01.4473	060065	01.3389	070031	01.3064	100024	01.2561	100082	01.3652
060003	01.2174	060066	00.9210	070033	01.3594	100025	01.5092	100083	01.3256
060004	01.0625	060068	01.1589	070034	01.2937	100026	01.4216	100084	01.3015
060005	01.7634	060070	01.1378	070035	01.3635	100027	00.8915	100085	01.3420
060006	01.1687	060071	01.0907	070036	01.3354	100028	01.2884	100086	01.2972
060007	01.1705	060072	00.9116	070038	00.6890	100029	01.3160	100087	01.7275
060008	01.0566	060073	01.0022	070898	00.5192	100030	01.2433	100088	01.5126
060009	01.3422	060074	00.8741	070899	00.5200	100032	01.7739	100089	01.2578
060010	01.5323	060075	01.2877	080001	01.5986	100034	01.6068	100090	01.3009
060011	01.2398	060076	01.3972	080002	01.1482	100035	01.4708	100092	01.3309
060012	01.4429	060085	00.8856	080003	01.2470	100038	01.6027	100093	01.5400
060013	01.1587	060087	01.4029	080004	01.2425	100039	01.6078	100098	01.0255
060014	01.6576	060088	01.1095	080005	01.1641	100040	01.6453	100099	01.2760
060015	01.4507	060090	00.9544	080006	01.1587	100042	01.2676	100100	01.2561
060016	01.1624	060096	01.0348	080007	01.2412	100043	01.3730	100102	01.2052
060018	01.1716	060100	01.3752	080898	00.5196	100044	01.4116	100103	01.0123
060020	01.4510	060101	01.3241	080899	00.5200	100045	01.3840	100105	01.3779
060022	01.5650	060102	04.0098	090001	01.4324	100046	01.3314	100106	01.1455
060023	01.4318	060103	01.3942	090002	01.1968	100047	01.5519	100107	01.2547
060024	01.5904	060104	01.2421	090003	01.4211	100048	00.9518	100108	01.1039
060026	01.3897	070001	01.7935	090004	01.5339	100049	01.3471	100109	01.2356
060027	01.4832	070002	01.7754	090005	01.2647	100050	01.2169	100110	01.3936
060028	01.3114	070003	01.1715	090006	01.3010	100051	01.2891	100112	00.9398
060029	01.0063	070004	01.1316	090007	01.2671	100052	01.3159	100113	01.9434
060030	01.3033	070005	01.2877	090008	01.3742	100053	01.2670	100114	01.4608
060031	01.4095	070006	01.2630	090009	01.2280	100054	01.3836	100117	01.2908
060032	01.3503	070007	01.3738	090010	00.9452	100055	01.3523	100118	01.1757
060033	01.1385	070008	01.2364	090011	01.8691	100056	01.5729	100121	01.1084
060034	01.3380	070009	01.2975	090898	00.5247	100057	01.3440	100122	01.3107
060036	01.1230	070010	01.4696	090899	00.5200	100059	01.5216	100124	01.3007
060037	01.0147	070011	01.1991	100001	01.3999	100060	01.7630	100125	01.1734
060038	01.1302	070012	01.2447	100002	01.4195	100061	01.4898	100126	01.4681
060041	01.0393	070013	01.3400	100004	01.0160	100062	01.6713	100127	01.5839
060042	00.9514	070014	01.2508	100005	00.9181	100063	01.3037	100128	02.2774
060043	00.9036	070015	01.2474	100006	01.6073	100065	01.2895	100129	01.3777
060044	01.2120	070016	01.2964	100007	01.8771	100067	01.3848	100130	01.1884
060046	01.1247	070017	01.2853	100008	01.7168	100068	01.4241	100131	01.2148
060047	01.1706	070018	01.3011	100009	01.4227	100069	01.3902	100132	01.2970
060049	01.0782	070019	01.1736	100010	01.3955	100070	01.3118	100134	00.9987
060050	01.2190	070020	01.3966	100012	01.5492	100071	01.3919	100135	01.5116
060052	01.0024	070021	01.2052	100014	01.3253	100072	01.1614	100137	01.1324
060053	01.0392	070022	01.6674	100015	01.4018	100073	01.8211	100138	00.8728
060054	01.3065	070023	01.2590	100016	01.0734	100074	01.2326	100139	01.0604
060056	00.9142	070024	01.1946	100017	01.6853	100075	01.7370	100140	01.1142
060057	01.0967	070025	01.6569	100018	01.3501	100076	01.2951	100142	01.1543
060058	00.8810	070026	01.2481	100019	01.4850	100077	01.3021	100143	01.2479
060060	01.0164	070027	01.2134	100020	01.3049	100078	01.1487	100144	01.2115

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 5 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
100145	01.3978	100218	00.8935	100277	01.0002	110051	01.0654	110115	01.5804
100146	01.0737	100219	01.3945	100278	00.6969	110052	00.9595	110117	01.0814
100147	01.0807	100220	01.6886	100279	01.2692	110054	01.2231	110118	01.0345
100150	01.4351	100221	01.5400	100898	00.5185	110055	00.8784	110120	01.0454
100151	01.7286	100222	01.2188	100899	00.5200	110056	00.9984	110121	01.1181
100152	01.2548	100223	01.4274	110001	01.1514	110059	01.3499	110122	01.3054
100154	01.5992	100224	01.3180	110002	01.2126	110061	00.9985	110123	00.8407
100156	01.0467	100225	01.3578	110003	01.2787	110062	00.9273	110124	01.0725
100157	01.4911	100226	01.3231	110004	01.2388	110063	01.0321	110125	01.1430
100159	01.0496	100227	00.9950	110005	01.4177	110064	01.2389	110127	00.9568
100160	01.1839	100228	01.2705	110006	01.2823	110065	01.0074	110128	01.1580
100161	01.5007	100229	01.4521	110007	01.3635	110066	01.2479	110129	01.5818
100162	01.3001	100230	01.2808	110008	01.1223	110069	01.1940	110130	00.9843
100164	00.9880	100231	01.7172	110009	01.0997	110070	00.9516	110132	01.1278
100165	01.1703	100232	01.3095	110010	01.9836	110071	01.0340	110133	00.8938
100166	01.4899	100234	01.3452	110011	01.1478	110072	01.0001	110134	00.8857
100167	01.3349	100235	01.3245	110013	00.9991	110073	01.2378	110135	01.1668
100168	01.2989	100236	01.3256	110014	01.0282	110074	01.2521	110136	01.0652
100169	01.7901	100237	02.0925	110015	01.0553	110075	01.2141	110140	00.8749
100170	01.4164	100238	01.4005	110016	01.2323	110076	01.3575	110141	00.8966
100172	01.3735	100239	01.4278	110017	00.9219	110078	01.5955	110142	01.1064
100173	01.5659	100240	00.8747	110018	01.1568	110079	01.2925	110143	01.2768
100174	01.3582	100241	00.9983	110020	01.1523	110080	01.0696	110144	01.2225
100175	01.0843	100242	01.3139	110023	01.1944	110082	02.0548	110146	00.9286
100176	01.9514	100243	01.3886	110024	01.3733	110083	01.4758	110149	01.0948
100177	01.3284	100244	01.3431	110025	01.2896	110085	01.1683	110150	01.2360
100179	01.7186	100246	01.3684	110026	01.0925	110086	01.0764	110151	00.9851
100180	01.4036	100248	01.6913	110027	01.0390	110087	01.2570	110152	01.0209
100181	01.3168	100249	01.2949	110028	01.5457	110088	00.9019	110153	01.0076
100183	01.3387	100252	01.3774	110029	01.2975	110089	01.1032	110154	00.9383
100185	01.2200	100253	01.3636	110030	01.1894	110091	01.2712	110155	01.0529
100186	01.3615	100254	01.6109	110031	01.3160	110092	01.0849	110156	00.9185
100187	01.3159	100255	01.3767	110032	01.1149	110093	00.9367	110157	01.0762
100189	01.3813	100256	01.7268	110033	01.3365	110094	01.0202	110161	01.2659
100191	01.3664	100258	01.6919	110034	01.3828	110095	01.3300	110162	00.8024
100194	01.2544	100259	01.4074	110035	01.3233	110096	01.1470	110163	01.3459
100196	01.2477	100260	01.4020	110036	01.6187	110097	01.1070	110164	01.3095
100199	01.1715	100262	01.3357	110037	01.0781	110098	01.0151	110165	01.1870
100200	01.3521	100263	01.4525	110038	01.3267	110100	01.0974	110166	01.3463
100203	01.0816	100264	01.3878	110039	01.3182	110101	01.0193	110168	01.6421
100204	01.5665	100265	01.2780	110040	00.9111	110103	00.9414	110169	00.7656
100206	01.3603	100266	01.3124	110041	01.0631	110104	01.1317	110171	01.3361
100207	01.3851	100267	01.2256	110042	01.0593	110105	01.1648	110172	01.1566
100208	01.5129	100268	01.2607	110043	01.5546	110107	01.6075	110174	00.8708
100209	01.5320	100269	01.4203	110044	01.1330	110108	00.9009	110176	01.1209
100210	01.6637	100270	00.9083	110045	01.0170	110109	01.1164	110177	01.3922
100211	01.2674	100271	01.5639	110046	01.1779	110111	01.1600	110178	01.1896
100212	01.6383	100273	01.1320	110048	01.1276	110112	00.9343	110179	01.1987
100213	01.6177	100275	01.2894	110049	01.0904	110113	00.9223	110181	00.9519
100217	01.1787	100276	01.3800	110050	01.0831	110114	01.1558	110183	01.3344

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 6 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
110184	01.2003	130005	01.3730	140013	01.3847	140077	01.2273	140138	01.0748
110185	00.9921	130006	01.6776	140014	01.0454	140079	01.2482	140139	01.0728
110186	01.2747	130007	01.4902	140015	01.2315	140080	01.8216	140140	01.0426
110187	01.1391	130008	00.8848	140016	00.9992	140081	01.1374	140141	00.9898
110188	01.3436	130009	00.9932	140018	01.3817	140082	01.2590	140143	01.0528
110189	01.1006	130010	00.9362	140019	00.9139	140083	01.2850	140144	00.9833
110190	01.1052	130011	01.3106	140024	00.9709	140084	01.1859	140145	01.0480
110191	01.1501	130012	01.0191	140025	01.1061	140086	01.0968	140146	00.9265
110192	01.3316	130013	01.2650	140026	01.1448	140087	01.3291	140147	01.1786
110193	01.2024	130014	01.2539	140027	01.0764	140088	01.4716	140148	01.5280
110194	00.9175	130015	01.0129	140029	01.3221	140089	01.2468	140150	01.3500
110195	01.1101	130016	00.8789	140030	01.5148	140090	01.3547	140151	01.0620
110198	01.3031	130017	00.9921	140031	01.0301	140091	01.6510	140152	01.0214
110200	01.7448	130018	01.5557	140032	01.2728	140093	01.2369	140154	01.2605
110201	01.2760	130019	01.1236	140033	01.1999	140094	01.2425	140155	01.2017
110202	00.9783	130021	00.8857	140034	01.1019	140095	01.2257	140158	01.4258
110203	01.0440	130022	01.1573	140035	01.0121	140097	00.9048	140159	01.1728
110204	00.9001	130024	01.1213	140036	01.1263	140098	01.3902	140160	01.1383
110205	00.9699	130025	01.0614	140037	00.9639	140100	01.2560	140161	01.1267
110206	02.5579	130026	01.1397	140038	01.0459	140101	01.0441	140162	01.4821
110207	00.9171	130027	00.8704	140039	00.9937	140102	00.9953	140164	01.2575
110208	00.9302	130028	01.2769	140040	01.2346	140103	01.3222	140165	01.0683
110898	00.5196	130029	00.9896	140041	01.0551	140105	01.2932	140166	01.2815
110899	00.5200	130030	00.9719	140042	01.0330	140107	00.8112	140167	01.0718
120001	01.6744	130031	00.9746	140043	01.1795	140108	01.1909	140168	01.1887
120002	01.1395	130034	00.9033	140045	00.9506	140109	01.1301	140170	00.9658
120003	01.0859	130035	00.9414	140046	01.1915	140110	01.2297	140171	00.8721
120004	01.2360	130036	01.1817	140047	01.0355	140112	01.0422	140172	01.5130
120005	01.2139	130037	01.3858	140048	01.2248	140113	01.3763	140173	01.0039
120006	01.2061	130039	01.1447	140049	01.3639	140114	01.2527	140174	01.3784
120007	01.5725	130040	01.0515	140051	01.2854	140115	01.1906	140176	01.2093
120008	00.8843	130043	00.9901	140052	01.2107	140116	01.2328	140177	01.2487
120010	01.5601	130044	00.9167	140053	01.7314	140117	01.2833	140179	01.2840
120011	01.2146	130045	00.9461	140054	01.3480	140118	01.4737	140180	01.4660
120012	00.9295	130048	01.0410	140055	00.9674	140119	01.6353	140181	01.3033
120014	01.1543	130049	01.1747	140058	01.0839	140120	01.1694	140182	01.3101
120015	00.9384	130051	00.9799	140059	01.0949	140121	00.9718	140184	01.1422
120016	00.9362	130054	00.9280	140061	01.0748	140122	01.3824	140185	01.4099
120018	01.0064	130056	01.0417	140062	01.2415	140123	01.1906	140186	01.2111
120019	01.1890	130058	00.9293	140063	01.3225	140124	01.1130	140187	01.4419
120021	00.9305	140001	01.2689	140064	01.1511	140125	01.2390	140188	00.9827
120022	01.4982	140002	01.2618	140065	01.3256	140126	01.6426	140189	01.1626
120025	00.9026	140003	00.9576	140066	01.2128	140127	01.2685	140190	01.1883
120026	01.2761	140004	00.9865	140067	01.6926	140128	01.1235	140191	01.4355
120027	01.3498	140005	00.9421	140068	01.2049	140129	01.0379	140192	01.1390
120898	00.5183	140007	01.2627	140069	01.0681	140130	01.1289	140193	00.9868
120899	00.5200	140008	01.3957	140070	01.2140	140132	01.5673	140197	01.2873
130001	01.1231	140010	01.3454	140072	01.1220	140133	01.3392	140199	01.0066
130002	01.3127	140011	01.0797	140074	01.1306	140135	01.1999	140200	01.4280
130003	01.2337	140012	01.2217	140075	01.3858	140137	00.9743	140202	01.2196

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 7 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
140203	01.1337	140898	00.5181	150053	01.0470	150112	01.1982	160040	01.3666
140205	00.9551	140899	00.5200	150054	01.0497	150113	01.2270	160041	01.1382
140206	01.1013	150001	01.0866	150056	01.6901	150114	01.0611	160043	00.9578
140207	01.2690	150002	01.3312	150057	02.2253	150115	01.2867	160044	01.2367
140208	01.4229	150003	01.6251	150058	01.5508	150122	01.0794	160045	01.6074
140209	01.5752	150004	01.3044	150059	01.2186	150123	00.9503	160046	01.0336
140210	01.0445	150005	01.2138	150060	01.1671	150124	01.1739	160047	01.4127
140211	01.1326	150006	01.2403	150061	01.1838	150125	01.3873	160048	01.0440
140212	01.2870	150007	01.1829	150062	01.0910	150126	01.5358	160049	00.8982
140213	01.1873	150008	01.3416	150063	01.1227	150127	01.1294	160050	01.0342
140215	01.0482	150009	01.2908	150064	01.0567	150128	01.1622	160051	01.2973
140217	01.2319	150010	01.1783	150065	01.1089	150129	01.2726	160052	00.9844
140218	00.9885	150011	01.2436	150066	01.1213	150130	01.1040	160054	01.0653
140220	01.1372	150012	01.5638	150067	01.0741	150132	01.3831	160055	01.0042
140223	01.5118	150013	01.2096	150069	01.2334	150133	01.2568	160056	01.0445
140224	01.3121	150014	01.3494	150070	01.0998	150134	01.1592	160057	01.3591
140226	00.9456	150015	01.2179	150071	01.1540	150135	00.8683	160058	01.6085
140228	01.5306	150017	01.6638	150072	01.2506	150136	01.0943	160059	01.2371
140229	00.9738	150018	01.2399	150073	01.0332	150898	00.5281	160060	01.0625
140230	00.9463	150019	01.1710	150074	01.4884	150899	00.5200	160061	00.9922
140231	01.5672	150020	01.1315	150075	01.2291	160001	01.1459	160062	00.9161
140233	01.6464	150021	01.6037	150076	01.0504	160002	01.2211	160063	01.1777
140234	01.1276	150022	01.1080	150077	01.1840	160003	01.0661	160064	01.5250
140236	00.9992	150023	01.3798	150078	01.0674	160005	01.0823	160065	01.1123
140239	01.5783	150024	01.1862	150079	01.1606	160007	00.9661	160066	01.0640
140240	01.2534	150025	01.5246	150082	01.3845	160008	01.0831	160067	01.2509
140242	01.4056	150026	01.1850	150084	01.6722	160009	01.1237	160068	01.0595
140245	01.0278	150027	00.9988	150085	00.9949	160012	01.1698	160069	01.3451
140246	01.0286	150029	01.2366	150086	01.2449	160013	01.2526	160070	01.1470
140250	01.2315	150030	01.1538	150088	01.1321	160014	00.9603	160071	01.1085
140251	01.2873	150031	01.0737	150089	01.2705	160016	01.2805	160072	01.0487
140252	01.2874	150032	01.6708	150090	01.2714	160018	00.9803	160073	00.9101
140253	01.2978	150033	01.5674	150091	01.2142	160020	01.0945	160074	01.0358
140258	01.3986	150034	01.2955	150092	01.1656	160021	01.1472	160075	01.0646
140271	01.0257	150035	01.4004	150094	01.0387	160023	01.0519	160076	00.9608
140275	01.1750	150036	00.9985	150095	01.1019	160024	01.4478	160077	01.1110
140276	02.0314	150037	01.2045	150096	00.9955	160025	01.8087	160079	01.2838
140280	01.1492	150038	01.2351	150097	01.0369	160026	01.0294	160080	01.1229
140281	01.5020	150039	00.9896	150098	01.0412	160027	01.1317	160081	01.0832
140285	01.2689	150042	01.1886	150099	01.2931	160028	01.2531	160082	01.6677
140286	01.1101	150043	01.0538	150100	01.5883	160029	01.4546	160083	01.5479
140288	01.5924	150044	01.2313	150101	01.0645	160030	01.3108	160085	01.1158
140289	01.2836	150045	01.1570	150102	01.1126	160031	01.0375	160086	01.0256
140290	01.3853	150046	01.4045	150103	01.1413	160032	01.0543	160088	01.0229
140291	01.2536	150047	01.6539	150104	01.1703	160033	01.3345	160089	01.2044
140292	01.1840	150048	01.1880	150105	01.1906	160034	01.0049	160090	01.0593
140294	01.0794	150049	01.0822	150106	01.0667	160035	00.9184	160091	01.1440
140295	03.2098	150050	01.1867	150109	01.2663	160036	01.0409	160092	00.9561
140297	01.4023	150051	01.2354	150110	00.8906	160037	01.0126	160093	01.1058
140299	00.8975	150052	01.0362	150111	01.0951	160039	01.0469	160094	01.1664

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 8 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
160095	01.0190	170007	01.1100	170064	01.1682	170123	01.6819	180018	01.1547
160097	01.1524	170008	01.0001	170066	00.9297	170124	00.9698	180019	01.1754
160098	00.9580	170009	01.1568	170067	01.0338	170125	00.9370	180020	01.0113
160099	01.0951	170010	01.1290	170068	01.2348	170126	00.9533	180021	00.8982
160101	01.1564	170011	01.3507	170069	00.8681	170128	00.9943	180023	00.8405
160102	01.4309	170012	01.4250	170070	01.0500	170131	01.1240	180024	01.1988
160103	00.9021	170013	01.1995	170072	00.9415	170133	01.1704	180025	01.1341
160104	01.1303	170014	01.0589	170073	01.1247	170134	00.9724	180026	01.1069
160106	01.0243	170015	01.0878	170074	01.1620	170137	01.1588	180027	01.1579
160107	01.1143	170016	01.5492	170075	00.8509	170139	00.9596	180028	00.9895
160108	01.1360	170017	01.1852	170076	01.1281	170140	01.0344	180029	01.2787
160109	00.9435	170018	01.1002	170077	00.9625	170142	01.2568	180030	01.1421
160110	01.5132	170019	01.1755	170079	00.9817	170143	01.0926	180031	01.0028
160111	01.1020	170020	01.2224	170080	00.9468	170144	01.4924	180032	00.9845
160112	01.3806	170021	00.8705	170081	01.1629	170145	01.1424	180033	01.0804
160113	01.0430	170022	01.1900	170082	00.9076	170146	01.3142	180034	01.0138
160114	00.9986	170023	01.3026	170084	00.9100	170147	01.2109	180035	01.4403
160115	01.0069	170024	01.1041	170085	00.9514	170148	01.3324	180036	01.1042
160116	01.1581	170025	01.4256	170086	01.6350	170150	01.1269	180037	01.2745
160117	01.3205	170026	00.9911	170087	01.3417	170151	01.0010	180038	01.3231
160118	00.9801	170027	01.1585	170088	00.9295	170152	00.9193	180040	01.9484
160119	00.8658	170030	00.9718	170089	01.0006	170159	00.9105	180041	01.0778
160120	01.0034	170031	00.8776	170090	00.9957	170160	00.9690	180042	01.0364
160122	01.2228	170032	01.0526	170092	00.8563	170164	01.0938	180043	01.0120
160123	01.0963	170033	01.2046	170093	01.0164	170166	01.0144	180044	01.0752
160124	01.1753	170034	00.9560	170094	01.0047	170168	00.8770	180045	01.1536
160126	01.1345	170035	00.8789	170095	01.1818	170170	00.8537	180046	01.0595
160129	01.1714	170036	00.9473	170097	00.9439	170171	01.1421	180047	01.0280
160130	01.2586	170037	01.1591	170098	01.0287	170172	01.0228	180048	01.2029
160131	01.1591	170038	00.9980	170099	01.3981	170173	00.8276	180049	01.3388
160133	01.1978	170039	01.1149	170100	00.8458	170174	00.9455	180050	01.3006
160134	00.8912	170040	01.4044	170101	00.9893	170175	01.2206	180051	01.1949
160135	01.0161	170041	01.0247	170102	00.9798	170176	01.4126	180053	01.1655
160138	01.1636	170043	01.0621	170103	01.2120	170898	00.5196	180054	01.0952
160140	01.0666	170044	01.2601	170104	01.4366	170899	00.5200	180055	01.0618
160141	00.9225	170045	01.0048	170105	00.9795	180001	01.1551	180056	01.0465
160142	01.1504	170049	01.3084	170106	00.8874	180002	01.1152	180058	00.9059
160143	01.1120	170050	00.9449	170108	00.9018	180004	01.1859	180059	00.9006
160145	00.9883	170051	00.9698	170109	01.0129	180005	01.0705	180060	00.9007
160146	01.3139	170052	01.0973	170110	00.9777	180006	00.9389	180062	00.8038
160147	01.2251	170053	00.8526	170112	00.9233	180007	01.4148	180063	01.0271
160151	01.1450	170054	01.0861	170113	01.0559	180009	01.1758	180064	01.0549
160152	01.0275	170055	01.0842	170114	01.0692	180010	01.7058	180065	00.9945
160153	01.5606	170056	00.9901	170115	01.0858	180011	01.0951	180066	01.1690
160898	00.5196	170057	01.0282	170116	01.1130	180012	01.2606	180067	01.8854
160899	00.5200	170058	01.0342	170117	00.9549	180013	01.3258	180069	01.0757
170001	01.1790	170060	01.0250	170119	00.9609	180014	01.5681	180070	01.0676
170003	01.1970	170061	00.9598	170120	01.2157	180015	01.1107	180072	01.0910
170004	01.0552	170062	00.8460	170121	00.7845	180016	01.2027	180075	00.9465
170006	01.2423	170063	00.9227	170122	01.8009	180017	01.2178	180078	01.0110

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 9 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
180079	01.0158	190009	01.0869	190098	01.3473	190175	01.8435	200026	00.9964
180080	01.1259	190010	00.9124	190099	01.1842	190176	01.4020	200027	01.0818
180081	01.3845	190011	01.0651	190102	01.4314	190177	01.4911	200028	01.0334
180085	01.3268	190013	01.2197	190103	00.9018	190178	00.9785	200031	01.2848
180087	00.9848	190014	00.9872	190106	01.1609	190182	01.0160	200032	01.2705
180088	01.6284	190015	01.1929	190109	01.0862	190183	01.0784	200033	01.6831
180092	01.1040	190017	01.2233	190110	00.9627	190184	00.9008	200034	01.1733
180093	01.3912	190018	01.1515	190111	01.5638	190185	01.2377	200037	01.1608
180094	00.9914	190019	01.4994	190112	01.2865	190186	00.9504	200038	00.9959
180095	00.9731	190020	01.1497	190113	01.2819	190187	00.6374	200039	01.3038
180099	00.9626	190023	00.6808	190114	00.9300	190189	01.0927	200040	01.0448
180101	01.2639	190025	01.2591	190115	01.2984	190190	00.9928	200041	01.1624
180102	01.3959	190026	01.3084	190116	01.2175	190191	01.2145	200043	00.6671
180103	01.7911	190027	01.3961	190118	00.9955	190193	01.1726	200044	01.1561
180104	01.3908	190029	01.2525	190120	00.8999	190194	01.1263	200050	01.1164
180105	00.9756	190033	00.9577	190122	01.1389	190196	00.8327	200051	00.9915
180106	00.9030	190034	01.2263	190124	01.4427	190197	01.1954	200052	01.0318
180108	00.9008	190035	01.3867	190125	01.3857	190198	01.1925	200055	01.0359
180115	00.9735	190036	01.6053	190127	01.4642	190199	01.2482	200062	00.9688
180116	01.2722	190037	00.9829	190128	00.8335	190200	01.5711	200063	01.2191
180117	01.2493	190039	01.4224	190130	00.9213	190201	01.2052	200066	01.1363
180118	01.0100	190040	01.3537	190131	01.2685	190202	01.4030	200898	00.5196
180120	00.9155	190041	01.5700	190132	01.0487	190203	01.6192	200899	00.5200
180121	01.0528	190043	01.0344	190133	01.0881	190204	01.4483	210001	01.3113
180122	00.9433	190044	01.0859	190134	00.9965	190205	01.3582	210002	01.8102
180123	01.4493	190045	01.2702	190135	01.3406	190206	01.4580	210003	01.3679
180124	01.3235	190046	01.4276	190136	01.0275	190207	01.1789	210004	01.2692
180125	01.0289	190047	01.1513	190138	00.7591	190208	00.8650	210005	01.2031
180126	01.0195	190048	00.9815	190140	00.9931	190211	00.9095	210006	01.0709
180127	01.1529	190049	00.9832	190142	00.9274	190212	00.8972	210007	01.4240
180128	01.1070	190050	01.0377	190144	01.1443	190213	00.7898	210008	01.2671
180129	01.0511	190053	01.0173	190145	00.9276	200001	01.3061	210009	01.6115
180130	01.3826	190054	01.3866	190146	01.4486	200002	01.0690	210010	01.1401
180132	01.3115	190059	00.9473	190147	00.9627	200003	01.0446	210011	01.2918
180133	01.2250	190060	01.2367	190148	00.9486	200006	01.0578	210012	01.4686
180134	01.0809	190064	01.4478	190149	00.9899	200007	01.0300	210013	01.2990
180136	01.2741	190065	01.4534	190151	01.0827	200008	01.2206	210015	01.2112
180137	01.7549	190071	00.8912	190152	01.4163	200009	01.6701	210016	01.7479
180138	01.2003	190075	01.4406	190155	00.9153	200012	01.1630	210017	01.1426
180139	01.0273	190077	00.8830	190156	00.8454	200013	01.1053	210018	01.2121
180898	00.5196	190078	01.1669	190158	01.2932	200015	01.2727	210019	01.3329
180899	00.5200	190079	01.2161	190160	01.1167	200016	01.0312	210021	01.2554
190001	00.8958	190081	00.8791	190161	00.8674	200017	01.3041	210022	01.3115
190002	01.5643	190083	00.8729	190162	01.2630	200018	01.1012	210023	01.2724
190003	01.3795	190086	01.2142	190164	01.0565	200019	01.2165	210024	01.2451
190004	01.1471	190088	01.3358	190165	01.0670	200020	01.0701	210025	01.2536
190005	01.3164	190089	01.0645	190166	01.0047	200021	01.1376	210026	01.3391
190006	01.0955	190090	01.1977	190167	01.2954	200023	00.7971	210027	01.1947
190007	01.0465	190092	01.1615	190170	01.0008	200024	01.1752	210028	01.0626
190008	01.4282	190095	01.0355	190173	01.4337	200025	01.1447	210029	01.3446

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 10 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
210030	01.0595	220036	01.4834	220105	01.1695	230032	01.6964	230104	01.5790
210031	01.4051	220038	01.2598	220106	01.1035	230034	01.1744	230105	01.4711
210032	01.1903	220041	01.1661	220107	01.1500	230035	01.1663	230106	01.1158
210033	01.1204	220042	01.1514	220108	01.1383	230036	01.2841	230107	01.0171
210034	01.1897	220045	01.1892	220110	01.9168	230037	01.2656	230108	01.1981
210035	01.1484	220046	01.3591	220111	01.1722	230038	01.5726	230110	01.2223
210036	01.2133	220048	01.1725	220114	01.0710	230039	01.2712	230111	01.0475
210037	01.1863	220049	01.1742	220115	01.2616	230040	01.3120	230113	01.0260
210038	01.3598	220050	00.9942	220116	01.7618	230041	01.1222	230114	00.7155
210039	01.2021	220051	01.2208	220118	01.9112	230042	01.0850	230115	01.0244
210040	01.3506	220052	01.2323	220119	01.3504	230046	01.7675	230116	00.9016
210043	01.1926	220053	01.2760	220120	00.9899	230047	01.2111	230117	01.7995
210044	01.1942	220055	01.1789	220123	00.9522	230053	01.4494	230118	01.2659
210045	00.9678	220057	01.1936	220126	01.2209	230054	01.6021	230119	01.1895
210046	01.1195	220058	01.0118	220128	01.1053	230055	01.1461	230120	01.0485
210048	01.1631	220060	01.1394	220131	01.1600	230056	00.9740	230121	01.1978
210049	01.1574	220062	00.6459	220133	00.8163	230058	01.1574	230122	01.3594
210051	01.2987	220063	01.1314	220135	01.1216	230059	01.4275	230124	01.1282
210054	01.2530	220064	01.1833	220153	01.0615	230060	01.1550	230125	01.3778
210055	01.1864	220065	01.1802	220154	00.9829	230062	01.1155	230128	01.3803
210056	01.3710	220066	01.2842	220156	01.2133	230063	01.2606	230129	01.8959
210057	01.2377	220067	01.2460	220162	01.4154	230065	01.4452	230130	01.5703
210058	01.7027	220068	00.6142	220163	01.9473	230066	01.3047	230132	01.3326
210059	01.3246	220070	01.1430	220171	01.6249	230068	01.3382	230133	01.1317
210060	01.0387	220071	01.8364	220173	00.4926	230069	01.0842	230134	01.3096
220001	01.1455	220073	01.2169	220175	01.0281	230070	01.3124	230135	01.2971
220002	01.3339	220074	01.1303	220897	05.1063	230071	00.6451	230137	01.0688
220003	01.1052	220075	00.7598	220898	00.5184	230072	01.1754	230138	00.8920
220004	01.3526	220076	01.1903	220899	00.5200	230075	01.3006	230140	01.5311
220006	01.2667	220077	01.5935	230001	01.1380	230076	01.2008	230141	01.5159
220008	01.1517	220079	01.1113	230002	01.2264	230077	02.1412	230142	01.2211
220010	01.1987	220080	01.1914	230003	01.1340	230078	01.3494	230143	01.2287
220011	01.1745	220081	00.9630	230004	01.6977	230080	01.2467	230144	01.2039
220012	01.1783	220082	01.2163	230005	01.2082	230081	01.1805	230145	01.1011
220015	01.1955	220083	01.1173	230006	00.9902	230082	01.1693	230146	01.2209
220016	01.1822	220084	01.1402	230007	01.0874	230085	01.1510	230147	01.5170
220017	01.2453	220086	01.5508	230012	00.7936	230086	00.9502	230149	01.0323
220019	01.0963	220088	01.4854	230013	01.2781	230087	01.1035	230150	01.5858
220020	01.1486	220089	01.2671	230014	00.9354	230089	01.3413	230151	01.3966
220021	01.2272	220090	01.1744	230015	01.3998	230090	01.1216	230153	01.0639
220023	01.2625	220092	01.1877	230017	01.5254	230092	01.2605	230154	01.1036
220024	01.1928	220094	01.2019	230019	01.5578	230093	01.1906	230155	01.0427
220025	01.0177	220095	01.1789	230020	01.5718	230095	01.1450	230156	01.6121
220026	01.2698	220097	01.0091	230021	01.5158	230096	01.0844	230157	01.3851
220028	01.3958	220098	01.2938	230022	01.2618	230097	01.5015	230159	01.3519
220029	01.1196	220099	01.1297	230024	01.4667	230098	00.7519	230162	00.9358
220030	01.0752	220100	01.2618	230027	01.0804	230099	01.2163	230165	01.7048
220031	01.7694	220101	01.3758	230029	01.4894	230100	01.1905	230167	01.1934
220033	01.2295	220102	00.7887	230030	01.1748	230101	01.0476	230169	01.3184
220035	01.1757	220104	01.2410	230031	01.3672	230103	01.0029	230171	01.1818

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 11 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
230172	01.1439	230270	01.2648	240056	01.3087	240116	00.9400	240180	00.9663
230173	01.4271	230273	01.4985	240057	01.7572	240117	01.1206	240183	01.1108
230174	01.2172	230275	00.7450	240058	00.9789	240119	00.8942	240184	01.0688
230175	01.0197	230276	01.0169	240059	01.1062	240121	00.9326	240187	01.2038
230176	01.1364	230277	01.1445	240061	01.4214	240122	01.0927	240192	00.9223
230178	01.1632	230278	01.3676	240063	01.5106	240123	01.1280	240193	01.0907
230179	00.8224	230898	00.5183	240064	01.2170	240124	01.0059	240196	01.3415
230180	01.1261	230899	00.5200	240065	00.9885	240125	00.9411	240200	00.8882
230184	01.1551	240001	01.5525	240068	01.3442	240127	01.0744	240201	01.0099
230186	01.0102	240002	01.6772	240069	01.1868	240128	01.1689	240205	00.8630
230188	01.1156	240003	01.2518	240071	01.1145	240129	00.9582	240206	00.8691
230189	00.9079	240004	01.4701	240072	00.9980	240130	01.0139	240207	01.1578
230190	00.9770	240005	00.9336	240073	01.0056	240132	01.2876	240210	01.2426
230191	00.9704	240006	01.1714	240075	01.2335	240133	01.1273	240211	01.3121
230193	01.2994	240007	01.1038	240076	01.1225	240134	01.0280	240898	00.5196
230194	01.2165	240008	01.0298	240077	01.0165	240135	00.8382	240899	00.5200
230195	01.3589	240009	01.0648	240078	01.3835	240138	00.8750	250001	01.5232
230197	01.2297	240010	01.8442	240079	01.0763	240137	01.1870	250002	00.8101
230199	01.1807	240011	01.0432	240080	01.3625	240138	00.8505	250003	00.9867
230201	00.9735	240013	01.2242	240082	01.2115	240139	00.9802	250004	01.4368
230204	01.2494	240014	01.1907	240083	01.2348	240140	00.8291	250005	00.9593
230205	01.1088	240016	01.3556	240084	01.2279	240141	01.0038	250006	00.9742
230207	01.2858	240017	01.1897	240085	00.8600	240142	01.0587	250007	01.1598
230208	01.0809	240018	01.2133	240086	01.0710	240143	00.9457	250008	00.8814
230211	00.9529	240019	01.3203	240087	01.0587	240144	00.9873	250009	01.0987
230212	01.0931	240020	01.2205	240088	01.4423	240145	00.9044	250010	01.0838
230213	01.0755	240021	01.0521	240089	01.0096	240146	00.9948	250012	00.9682
230216	01.3168	240022	01.0970	240090	01.0258	240148	00.9883	250015	00.9488
230217	01.0783	240023	01.0387	240091	00.9892	240150	00.9497	250016	00.8825
230219	01.0066	240025	01.1940	240093	01.2884	240152	00.9568	250017	00.9838
230221	01.2415	240027	01.0591	240094	00.9901	240153	00.9823	250018	01.0221
230222	01.3525	240028	01.1189	240096	01.0569	240154	00.9760	250019	01.2674
230223	01.2882	240029	01.1722	240097	01.0456	240155	00.9647	250020	01.0198
230227	01.3220	240030	01.3210	240098	00.9286	240156	01.0383	250021	00.8865
230228	01.1907	240031	00.9693	240099	00.9673	240157	01.0822	250023	00.8288
230230	01.3387	240036	01.4856	240100	01.3045	240158	00.9253	250024	00.9312
230232	01.0412	240037	01.0452	240101	01.2128	240160	00.9687	250025	01.0173
230235	00.9852	240038	01.4651	240102	01.0642	240161	00.9851	250027	00.9818
230236	01.3334	240040	01.2753	240103	01.1615	240162	01.0598	250029	00.9028
230237	01.0843	240041	01.2215	240104	01.2225	240163	00.9641	250030	00.8954
230239	01.1589	240043	01.1198	240105	00.8976	240166	01.1833	250031	01.2566
230241	01.2039	240044	01.1645	240106	01.3231	240167	00.8225	250032	01.2148
230244	01.3639	240045	01.1042	240107	00.9717	240169	00.9676	250033	01.0404
230253	01.1020	240047	01.3852	240108	00.9372	240170	01.0514	250034	01.4456
230254	01.2612	240048	01.2586	240109	00.9743	240171	01.0979	250035	00.8393
230257	00.9134	240049	01.6408	240110	01.0183	240172	01.0974	250036	00.9640
230259	01.0826	240050	01.1178	240111	01.0075	240173	00.9721	250037	00.8906
230264	01.3921	240051	00.8773	240112	01.0110	240175	00.8058	250038	00.9200
230266	01.2378	240052	01.2165	240114	01.0988	240176	00.8777	250039	01.0136
230269	01.2346	240053	01.4558	240115	01.5158	240179	00.9654	250040	01.2040

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 12 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
250042	01.1247	250107	00.9221	260025	01.3034	260094	01.0703	260180	01.5535
250043	00.8894	250109	00.9893	260026	00.9651	260095	01.3633	260182	01.0287
250044	01.0552	250112	00.9511	260027	01.5425	260096	01.4339	260183	01.4370
250045	01.1668	250113	00.9415	260029	01.1546	260097	01.2057	260186	01.1359
250046	01.0486	250117	01.0837	260030	01.1216	260100	01.1322	260188	01.1762
250047	00.9340	250119	00.9708	260031	01.4522	260102	00.9714	260189	00.9424
250048	01.3314	250120	01.0690	260032	01.6089	260103	01.3151	260190	01.1465
250049	00.9234	250122	01.2673	260033	01.2708	260104	01.5977	260191	01.2650
250050	01.1677	250123	01.1464	260034	01.0357	260105	01.9034	260193	01.1966
250051	00.8826	250124	00.8807	260035	01.0585	260107	01.3031	260195	01.1117
250057	01.0908	250125	01.2574	260036	01.0804	260108	01.6492	260197	01.2138
250058	01.1705	250126	00.9941	260037	01.2423	260109	00.9966	260198	01.2956
250059	01.0072	250127	00.8579	260039	01.2908	260110	01.6325	260200	01.1599
250060	00.7996	250128	00.9747	260040	01.4929	260111	00.9736	260202	01.3720
250061	00.9222	250129	01.1868	260042	01.1057	260112	01.4293	260898	00.5196
250062	00.9936	250131	00.9698	260044	01.0713	260113	01.1681	260899	00.5200
250063	00.8533	250134	00.9456	260047	01.3360	260115	01.0318	270002	01.2270
250065	00.9489	250136	00.7368	260048	01.3619	260116	01.2017	270003	01.2098
250066	00.9400	250137	00.9566	260049	00.9763	260119	01.1452	270004	01.6612
250067	01.0130	250138	01.3143	260050	01.0855	260120	01.1723	270006	00.8631
250068	00.8491	250139	00.9025	260051	01.2067	260122	01.2244	270007	00.9652
250069	01.2286	250140	00.8086	260052	01.1861	260123	00.9744	270009	01.0743
250071	01.0417	250141	01.1842	260053	01.0727	260127	01.1439	270011	01.1330
250072	01.2247	250142	00.7975	260054	01.3405	260128	01.0267	270012	01.3864
250073	00.9908	250143	00.9179	260055	01.1987	260129	01.0761	270013	01.2741
250076	00.9144	250898	00.5196	260057	01.1632	260131	01.3532	270014	01.6195
250077	00.9350	250899	00.5200	260059	01.0663	260134	01.2830	270016	00.8960
250078	01.3812	260001	01.5577	260061	01.1121	260137	01.2215	270017	01.1889
250079	00.8564	260002	01.3321	260062	01.1662	260138	01.7838	270019	00.9810
250081	01.2362	260003	00.9550	260063	01.1717	260141	02.0284	270021	01.0869
250082	01.2527	260004	01.0372	260064	01.3788	260142	01.2001	270023	01.3086
250083	00.8969	260005	01.3762	260065	01.6091	260143	01.1463	270024	01.0474
250084	01.1893	260006	01.3910	260066	01.0367	260146	01.3530	270026	00.9351
250085	01.0011	260007	01.2516	260067	00.9155	260147	01.0368	270027	01.0342
250086	00.9265	260008	01.1950	260068	01.7711	260148	01.0130	270028	01.0321
250088	01.0125	260009	01.2595	260070	01.0646	260158	01.1349	270029	01.0902
250089	00.9991	260011	01.5395	260073	00.9690	260159	01.1081	270030	00.9306
250091	01.0209	260012	01.0014	260074	01.1946	260160	01.1247	270031	00.8980
250093	01.1545	260013	01.1559	260077	01.3789	260162	00.9993	270032	01.1308
250094	01.2687	260014	01.6183	260078	01.1076	260163	01.2092	270033	00.8281
250095	01.0474	260015	01.1773	260079	01.0051	260164	01.0634	270035	01.0465
250096	01.2004	260016	01.2397	260080	01.1189	260165	00.9847	270036	00.9939
250097	01.1793	260017	01.2127	260081	01.4034	260166	01.2306	270039	00.9223
250098	00.8454	260018	00.9508	260082	01.1552	260172	01.0171	270040	01.0091
250099	01.2073	260019	01.0171	260085	01.4329	260173	01.0752	270041	00.9219
250100	01.1534	260020	01.6072	260086	01.0521	260175	01.1399	270044	01.1112
250101	00.8876	260021	01.2811	260089	01.0811	260176	01.4735	270046	00.9506
250102	01.4386	260022	01.3859	260090	01.4633	260177	01.3011	270047	00.9894
250104	01.3161	260023	01.2742	260091	01.5472	260178	01.4137	270048	01.1184
250105	00.9118	260024	01.0645	260092	01.1313	260179	01.5396	270049	01.5723

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 13 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
270050	01.0273	280035	00.9089	280101	01.1410	300012	01.2570	310038	01.6843
270051	01.1926	280037	00.9509	280102	00.8717	300013	01.1550	310039	01.2894
270052	01.0362	280038	01.0367	280104	00.9342	300014	01.3527	310040	01.2168
270053	00.9047	280039	01.0744	280105	01.2156	300015	01.0438	310041	01.2510
270055	00.6659	280040	01.5595	280106	01.0083	300016	01.2320	310042	01.1616
270057	01.1058	280041	00.9190	280107	01.0819	300017	01.2088	310043	01.2161
270058	00.9452	280042	00.9747	280108	01.0518	300018	01.2214	310044	01.2521
270059	00.8462	280043	01.1654	280109	00.8804	300019	01.2676	310045	01.2755
270060	00.9531	280045	01.1419	280110	01.0000	300020	01.1544	310047	01.2516
270063	00.8769	280046	01.0118	280111	01.2032	300021	01.1592	310048	01.2203
270067	00.9483	280047	01.1742	280114	00.9031	300022	01.1210	310049	01.2629
270068	00.8818	280048	01.0600	280115	00.9720	300023	01.2302	310050	01.1893
270072	00.8396	280049	01.0295	280117	01.0834	300024	01.2501	310051	01.2856
270073	01.2127	280050	00.9943	280118	01.0149	300028	01.1837	310052	01.1775
270074	00.8435	280051	00.9726	280119	00.9112	300029	01.2917	310054	01.2728
270075	00.9801	280052	01.0246	280123	00.9142	300033	01.0722	310056	01.1821
270076	00.8445	280054	01.1529	280898	00.5196	300034	01.7367	310057	01.2180
270079	00.9275	280055	00.9712	280899	00.5200	300898	00.5184	310058	01.1870
270080	01.1140	280056	00.9864	290001	01.5986	300899	00.5200	310060	01.1997
270081	00.9450	280057	01.0220	290002	00.9212	310001	01.6470	310061	01.1438
270082	00.9089	280058	01.2269	290003	01.8323	310002	01.8101	310062	01.1324
270083	00.9860	280060	01.4556	290005	01.1866	310003	01.2132	310063	01.3011
270084	00.9454	280061	01.2919	290006	01.0913	310005	01.2349	310064	01.2180
270898	00.5196	280062	01.1201	290007	01.6965	310006	01.1505	310067	01.2214
270899	00.5200	280064	01.0728	290008	01.2587	310008	01.3104	310069	01.1427
280001	01.1190	280065	01.1489	290009	01.5486	310009	01.1767	310070	01.2537
280003	01.8229	280066	01.1383	290010	01.0460	310010	01.2271	310071	00.7389
280005	01.4465	280068	00.9241	290011	01.0057	310011	01.2111	310072	01.2944
280009	01.4844	280070	00.9732	290012	01.3113	310012	01.5171	310073	01.4065
280011	00.9785	280073	00.9619	290013	01.0262	310013	01.2808	310074	01.3116
280012	01.1932	280074	01.1614	290014	00.9873	310014	01.5553	310075	01.2311
280013	01.8684	280075	01.2969	290015	01.0883	310015	01.5652	310076	01.3200
280014	00.9879	280076	00.9738	290016	01.1385	310016	01.2372	310077	01.5553
280015	01.0124	280077	01.2694	290018	01.0100	310017	01.3242	310078	01.2838
280017	01.1579	280078	00.9470	290019	01.2020	310018	01.2066	310081	01.1943
280018	00.9331	280079	00.9695	290020	01.0154	310019	01.6371	310083	01.2864
280020	01.4313	280080	01.0701	290021	01.5421	310020	01.1915	310084	01.2258
280021	01.1310	280081	01.4459	290022	01.6838	310021	01.2565	310085	01.2158
280022	01.0302	280082	01.5157	290027	00.9537	310022	01.2040	310086	01.4730
280023	01.3601	280083	00.9744	290029	00.8077	310024	01.2143	310087	01.1772
280024	00.8327	280084	00.9565	290032	01.4516	310025	01.1681	310088	01.2537
280025	00.9912	280085	00.9390	300001	01.2916	310026	01.2210	310090	01.2506
280026	01.0498	280088	01.6279	300003	01.8715	310027	01.2737	310091	01.2295
280028	00.8837	280089	01.0383	300005	01.3500	310028	01.1943	310092	01.3354
280029	00.9921	280090	00.9305	300006	01.1124	310029	01.8039	310093	01.0835
280030	01.7687	280091	01.0150	300007	01.0971	310031	02.7260	310096	01.7146
280031	01.1181	280092	01.0050	300008	01.2337	310032	01.2523	310105	01.0982
280032	01.1713	280094	01.1244	300009	01.2216	310034	01.1488	310108	01.3596
280033	00.9317	280097	00.8690	300010	01.2422	310036	01.1980	310110	01.2075
280034	01.2760	280098	01.0111	300011	01.2197	310037	01.2095	310111	01.2381

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 14 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
310112	01.2250	320072	00.9134	330058	01.3208	330135	01.1965	330204	01.2380
310113	01.2184	320074	01.0652	330059	01.4801	330136	01.2484	330205	01.1031
310115	01.1824	320076	01.1177	330061	01.3001	330140	01.6347	330208	01.1778
310116	01.2468	320079	01.0741	330062	01.0854	330141	01.2493	330209	01.2043
310118	01.2034	320898	00.5182	330064	01.2793	330142	01.3154	330211	01.2315
310119	01.5134	320899	00.5200	330065	01.2031	330144	01.0114	330212	01.2419
310120	01.0530	330001	01.1573	330068	01.2180	330148	01.0180	330213	01.1492
310121	01.0509	330002	01.4178	330067	01.3155	330151	01.1101	330214	01.7238
310898	00.5196	330003	01.3324	330072	01.3231	330152	01.3930	330215	01.1806
310899	00.5200	330004	01.3470	330073	01.1239	330153	01.3069	330218	01.2610
320001	01.4284	330005	01.6610	330074	01.2555	330154	01.4019	330219	01.5511
320002	01.2439	330006	01.3761	330075	01.0668	330155	01.1711	330221	01.2897
320003	01.1377	330007	01.3450	330078	01.3561	330157	01.3175	330222	01.2118
320004	01.1801	330008	01.2121	330079	01.1011	330158	01.3176	330223	01.1131
320005	01.2406	330009	01.3057	330080	01.2468	330159	01.3015	330224	01.2673
320006	01.1917	330010	01.1917	330082	01.2226	330160	01.4422	330225	01.1777
320009	01.3541	330011	01.1983	330084	00.9693	330161	01.0632	330226	01.2963
320011	00.9576	330012	01.5868	330085	01.3317	330162	01.2347	330229	01.1835
320012	00.9723	330013	02.0354	330086	01.2771	330163	01.1747	330230	01.4634
320013	01.0995	330014	01.3753	330088	01.0898	330164	01.3840	330231	01.2070
320014	00.9425	330015	01.0378	330090	01.7305	330166	00.9395	330232	01.2588
320016	01.2059	330016	00.9929	330091	01.3645	330167	01.5236	330233	01.5082
320017	01.2024	330019	01.3490	330092	00.9851	330168	00.9973	330234	01.8912
320018	01.2379	330020	00.9973	330094	01.3163	330169	01.3720	330235	01.2159
320019	01.3548	330022	01.0130	330095	01.2609	330171	01.3071	330236	01.3588
320021	01.6425	330023	01.2037	330096	01.1434	330174	00.7840	330238	01.1054
320022	01.2381	330024	01.6899	330097	01.1778	330175	01.0509	330239	01.1781
320023	01.1024	330025	01.1024	330100	00.6818	330176	00.8822	330240	01.3464
320030	01.0346	330027	01.4414	330101	01.6693	330177	01.0661	330241	01.7347
320031	00.9630	330028	01.3333	330102	01.2881	330179	00.9373	330242	01.2878
320032	00.9273	330029	01.1491	330103	01.1723	330180	01.2218	330244	01.0712
320033	01.0914	330030	01.1599	330104	01.3349	330181	01.2606	330245	01.3033
320035	01.0746	330033	01.1312	330106	01.5402	330182	02.2759	330246	01.1755
320037	01.2472	330034	01.0865	330107	01.2411	330183	01.4307	330247	00.6007
320038	01.2286	330036	01.1991	330108	01.2375	330184	01.2489	330249	01.2008
320046	01.0954	330037	01.0772	330110	01.1247	330185	01.1842	330250	01.2449
320048	01.2192	330038	01.1795	330111	01.1248	330186	01.0038	330252	00.9331
320056	00.9297	330039	00.9000	330114	00.9981	330188	01.2024	330254	00.9861
320057	01.0692	330041	01.3702	330115	01.2552	330189	00.8786	330258	01.3215
320058	00.8835	330043	01.2826	330116	01.0029	330191	01.2538	330259	01.3093
320059	01.0758	330044	01.2064	330118	01.5864	330193	01.3665	330261	01.2056
320060	00.9179	330045	01.3000	330119	01.5770	330194	01.7174	330263	01.0711
320061	01.2195	330046	01.5833	330121	01.0150	330195	01.6558	330264	01.2189
320062	00.8963	330047	01.2797	330122	01.2778	330196	01.3766	330265	01.2850
320063	01.2780	330048	01.2461	330125	01.7622	330197	01.0220	330267	01.2425
320065	01.1644	330049	01.3134	330126	01.2213	330198	01.3368	330268	01.1279
320067	00.8660	330053	01.0524	330127	01.2255	330199	01.2794	330270	01.8929
320068	00.8698	330055	01.3943	330128	01.3995	330201	01.5020	330273	01.1870
320069	01.0449	330056	01.4090	330132	01.1159	330202	01.2672	330275	01.2072
320070	00.8930	330057	01.5815	330133	01.2817	330203	01.4149	330276	01.1970

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 15 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
330277	01.1660	330397	01.4297	340052	00.9654	340124	01.0989	350015	01.5081
330279	01.2538	330398	01.3045	340053	01.5704	340125	01.4481	350016	00.9585
330281	00.5865	330399	01.3740	340054	00.9833	340126	01.2820	350017	01.2579
330285	01.7031	330898	00.5184	340055	01.1548	340127	01.2081	350018	01.0418
330286	01.3267	330899	00.5200	340060	01.1856	340129	01.1142	350019	01.5266
330288	01.0133	340001	01.2404	340061	01.8078	340130	01.3899	350020	01.3499
330290	01.6685	340002	01.7820	340063	01.0115	340131	01.3413	350021	01.0395
330293	01.1313	340003	01.1435	340064	01.1032	340132	01.3657	350023	00.9263
330304	01.1989	340004	01.3954	340065	01.2402	340133	01.2113	350024	01.0001
330306	01.3801	340005	01.2248	340067	01.1056	340135	01.0416	350025	00.9635
330307	01.1486	340006	01.1648	340068	01.2634	340136	00.9614	350027	00.9697
330308	01.2473	340007	01.1116	340069	01.7376	340137	01.2062	350029	00.9776
330309	01.2865	340008	01.2217	340070	01.2945	340138	01.1089	350030	01.0582
330314	01.2773	340009	01.2648	340071	01.0871	340141	01.5315	350031	00.9810
330315	01.1910	340010	01.3128	340072	01.0478	340142	01.1637	350032	01.3053
330316	01.2799	340011	01.0781	340073	01.3482	340143	01.3686	350033	00.9688
330327	00.9488	340012	01.0743	340075	01.1893	340144	01.2602	350034	00.9727
330331	01.2008	340013	01.1872	340076	01.0244	340145	01.1963	350035	00.8449
330332	01.2653	340014	01.6284	340080	01.1014	340146	01.0203	350036	00.9076
330333	01.3160	340015	01.2257	340084	01.0221	340147	01.2785	350038	00.9526
330336	01.2640	340016	01.2028	340085	01.2491	340148	01.3089	350039	00.8935
330338	01.1680	340017	01.2031	340087	01.0862	340151	01.1634	350041	00.9930
330339	00.8648	340018	01.2122	340088	01.0764	340153	01.9198	350042	00.9265
330340	01.1330	340019	01.0682	340089	01.0124	340154	00.9284	350043	01.5744
330350	01.9215	340020	01.2519	340090	01.1315	340155	01.4968	350044	00.8569
330351	01.0933	340021	01.2154	340091	01.6586	340156	00.8534	350047	01.1519
330353	01.2130	340022	01.1558	340093	01.0479	340158	01.0492	350049	01.0615
330354	01.1772	340023	01.2726	340094	01.3398	340159	01.2119	350050	01.0010
330357	01.3776	340024	01.2260	340096	01.2097	340160	01.0407	350051	00.9505
330359	00.9417	340025	01.0940	340097	01.0062	340162	01.2649	350053	00.8922
330362	00.6534	340027	01.1217	340098	01.6183	340164	01.3377	350055	00.9727
330363	00.6845	340028	01.3877	340099	01.1457	340166	01.3225	350056	00.8603
330366	00.7261	340030	01.7523	340100	01.0956	340167	00.5762	350058	00.9942
330367	00.5681	340031	01.0758	340101	01.0643	340168	00.5300	350060	00.9168
330368	00.6233	340032	01.2943	340104	01.0020	340898	00.5196	350061	01.0142
330369	00.6711	340034	01.2779	340105	01.3302	340899	00.5200	350063	00.7953
330371	00.6549	340035	01.0914	340106	01.1084	350001	01.1026	350064	00.8823
330372	01.2421	340036	01.0860	340107	01.2896	350002	01.6352	350065	00.9920
330373	00.6816	340037	01.2507	340109	01.2934	350003	01.1400	350066	00.9984
330381	01.3074	340038	01.2043	340111	01.1799	350004	01.8644	350067	01.0656
330383	01.3691	340039	01.2345	340112	00.9991	350005	01.1970	350898	00.5196
330385	01.1783	340040	01.7078	340113	01.9433	350006	01.3887	350899	00.5200
330386	01.2131	340041	01.2337	340114	01.3841	350007	01.0270	360001	01.2226
330387	00.8627	340042	01.1508	340115	01.4469	350008	01.0426	360002	01.1431
330389	01.8356	340044	01.0107	340116	01.7276	350009	01.1689	360003	01.5858
330390	01.2295	340045	00.9733	340119	01.2190	350010	01.0820	360006	01.7152
330393	01.6495	340047	01.7790	340120	01.0632	350011	01.7312	360007	01.1430
330394	01.3833	340049	00.5900	340121	00.9440	350012	00.9732	360008	01.1918
330395	01.3378	340050	01.2034	340122	01.0351	350013	01.0990	360009	01.3037
330396	01.2310	340051	01.2232	340123	01.1902	350014	01.0581	360010	01.1857

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 16 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
360011	01.2688	360067	01.1867	360123	01.1541	360185	01.1675	370023	01.3168
360012	01.2752	360068	01.4362	360124	01.2262	360186	01.1421	370025	01.3078
360013	01.0955	360069	01.0220	360125	01.0834	360187	01.3223	370026	01.3150
360014	01.1706	360070	01.3931	360126	01.2638	360188	00.9713	370028	01.6151
360015	01.4453	360071	01.2778	360127	01.0096	360189	01.0678	370029	01.2316
360016	01.4757	360072	01.1552	360128	01.0577	360192	01.2764	370030	01.2154
360017	01.7331	360074	01.3209	360129	01.0458	360193	01.2620	370032	01.3419
360018	01.3610	360075	01.4143	360130	01.0978	360194	01.0610	370033	01.2163
360019	01.1733	360076	01.2496	360131	01.2720	360195	01.1878	370034	01.1203
360020	01.2371	360077	01.4009	360132	01.1771	360197	01.1574	370035	01.5034
360021	01.2068	360078	01.2628	360133	01.3116	360200	01.2136	370036	01.1071
360024	01.2680	360079	01.6158	360134	01.5310	360203	01.1235	370037	01.5263
360025	01.2149	360080	01.2318	360135	01.1111	360204	01.1589	370038	01.0486
360026	01.1206	360081	01.3380	360136	01.0682	360210	01.1832	370039	01.2295
360027	01.4854	360082	01.3197	360137	01.5089	360211	01.1732	370040	01.0366
360028	01.3210	360083	01.2142	360139	01.1094	360212	01.4171	370041	01.0290
360029	01.1008	360084	01.4097	360140	01.0636	360213	01.0868	370042	00.8924
360030	01.1580	360085	01.6471	360141	01.4140	360218	01.3151	370043	00.9567
360031	01.2664	360086	01.3438	360142	00.9764	360230	01.2837	370045	01.0610
360032	01.1208	360087	01.3144	360143	01.2275	360231	01.1283	370046	01.0292
360034	01.0871	360088	01.1562	360144	01.2815	360232	01.1302	370047	01.2496
360035	01.4566	360089	01.1092	360145	01.4933	360234	01.2226	370048	01.2086
360036	01.1737	360090	01.1715	360147	01.2190	360236	01.2094	370049	01.2973
360037	01.8243	360091	01.3100	360148	01.1922	360238	00.8448	370050	00.8128
360038	01.4361	360092	01.1705	360149	01.0874	360239	01.2025	370051	00.9928
360039	01.2386	360093	01.1582	360150	01.2049	360240	00.5398	370054	01.2477
360040	01.2696	360094	01.2112	360151	01.2795	360241	00.6501	370056	01.4626
360041	01.2336	360095	01.2971	360152	01.4982	360242	01.5486	370057	01.0892
360042	01.0928	360096	01.1068	360153	01.1558	360243	00.8675	370059	01.2355
360044	01.0952	360098	01.3126	360154	01.0467	360898	00.5184	370060	01.0403
360045	01.5106	360099	01.0472	360155	01.2083	360899	00.5200	370063	01.1848
360046	01.1347	360100	01.2812	360156	01.1294	370001	01.6642	370064	00.9081
360047	01.1163	360101	01.6002	360159	01.1421	370002	01.1794	370065	01.1247
360048	01.7040	360102	01.2254	360161	01.2217	370004	01.2024	370069	01.0062
360049	01.2535	360103	01.3331	360162	01.2163	370005	00.9222	370071	01.0033
360050	01.2657	360104	00.8994	360163	01.6517	370006	01.2095	370072	00.9691
360051	01.4826	360106	01.1571	360164	00.9676	370007	01.1043	370076	01.1094
360052	01.5898	360107	01.2097	360165	01.0692	370008	01.2174	370077	01.2691
360054	01.2958	360108	01.0245	360166	01.0386	370011	00.9363	370078	01.5444
360055	01.1928	360109	01.0346	360169	01.0041	370012	00.9154	370079	00.9236
360056	01.2931	360112	01.5994	360170	01.1506	370013	01.4040	370080	00.9516
360057	00.9648	360113	01.2367	360172	01.3331	370014	01.1488	370082	00.9993
360058	01.0989	360114	01.0518	360174	01.1534	370015	01.1305	370083	00.9966
360059	01.4730	360115	01.2371	360175	01.1481	370016	01.2488	370084	00.8518
360061	01.0460	360116	01.0292	360176	01.1409	370017	00.9915	370085	00.8918
360062	01.6356	360118	01.2455	360177	01.2651	370018	01.1807	370086	01.0963
360063	01.0518	360119	01.2274	360178	01.2657	370019	01.1326	370089	01.2445
360064	01.4481	360120	00.7106	360179	01.2516	370020	01.2644	370091	01.5312
360065	01.1965	360121	01.1784	360180	02.1048	370021	00.9578	370092	01.0342
360066	01.2309	360122	01.2276	360184	00.7063	370022	01.3427	370093	01.6203

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CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 17 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
370094	01.2715	370185	00.6561	380061	01.6147	390026	01.2350	390081	01.2352
370095	00.9090	370186	00.9633	380062	00.9570	390027	01.7235	390083	01.1265
370097	01.2381	370189	00.9887	380063	01.2825	390028	01.6767	390084	01.1541
370099	01.1431	370190	01.1516	380064	01.3335	390029	01.6407	390086	01.0814
370100	01.0537	370898	00.5196	380065	01.0718	390030	01.1468	390088	01.3309
370103	00.8131	370899	00.5200	380066	01.0928	390031	01.1583	390090	01.7817
370105	01.9054	380001	01.3151	380068	01.0711	390032	01.2088	390091	01.1120
370106	01.3381	380002	01.2177	380069	01.1473	390035	01.2520	390092	01.2343
370108	01.0380	380003	01.1390	380070	01.0594	390036	01.2100	390093	01.2071
370110	00.9936	380004	01.8286	380071	01.2608	390037	01.2077	390095	01.2471
370112	00.9185	380005	01.2014	380072	00.9347	390039	01.0619	390096	01.2292
370113	01.1029	380006	01.1538	380075	01.3688	390040	00.9668	390097	01.3045
370114	01.5388	380007	01.7708	380078	01.1849	390041	01.2209	390098	01.5899
370117	01.2894	380008	01.0588	380081	01.0504	390042	01.2514	390100	01.7315
370121	01.1787	380009	01.6300	380082	01.2725	390043	01.0833	390101	01.2256
370122	00.9285	380010	01.1575	380083	01.1657	390044	01.5320	390102	01.2754
370123	01.1545	380011	01.1304	380084	01.2489	390045	01.2951	390103	01.0748
370125	00.9826	380013	01.2429	380087	00.9822	390046	01.4190	390104	01.0672
370128	01.0998	380014	01.3118	380088	00.9352	390047	01.4521	390106	01.0622
370131	00.9898	380017	01.7205	380089	01.2930	390048	01.1036	390107	01.1651
370133	01.1934	380018	01.8699	380090	01.3293	390049	01.5208	390108	01.3281
370138	01.1798	380019	01.2763	380091	01.1712	390050	01.8703	390109	01.2110
370139	01.0055	380020	01.3418	380094	01.1817	390051	02.0862	390110	01.3263
370140	01.0515	380021	01.2306	380096	01.1107	390052	01.1418	390111	01.7098
370141	01.4378	380022	01.2313	380898	00.5196	390054	01.1087	390112	01.1746
370146	01.0256	380023	01.2936	380899	00.5200	390055	01.6827	390113	01.2433
370148	01.2664	380024	01.2845	390001	01.2147	390056	01.0945	390114	01.0307
370149	01.2092	380025	01.2444	390002	01.1796	390057	01.2598	390115	01.2881
370153	01.1017	380026	01.4077	390003	01.1478	390058	01.3234	390116	01.1831
370154	01.0267	380027	01.2087	390004	01.2445	390059	01.3136	390117	01.1725
370156	01.0215	380029	01.1339	390005	01.0950	390060	01.1532	390118	01.1642
370157	00.9246	380030	00.8953	390006	01.6596	390061	01.2365	390119	01.3159
370158	01.0516	380031	01.0127	390007	01.1734	390062	01.1893	390121	01.1893
370159	01.1527	380033	01.8735	390008	01.1211	390063	01.6161	390122	01.0338
370161	01.1942	380035	01.1923	390009	01.4950	390064	01.4105	390123	01.2058
370163	00.8659	380036	01.0970	390010	01.1663	390065	01.2463	390125	01.2138
370165	01.1719	380037	01.2178	390011	01.1975	390066	01.2665	390126	01.2151
370166	01.1703	380038	01.2342	390012	01.1928	390067	01.5075	390127	01.1053
370169	00.9926	380039	01.3115	390013	01.1584	390068	01.2521	390128	01.1815
370170	00.8072	380040	01.3432	390014	00.8148	390069	01.2566	390130	01.0879
370171	00.9418	380042	01.1141	390015	01.1150	390070	01.1840	390131	01.2017
370172	00.9121	380047	01.5505	390016	01.1720	390071	01.1242	390132	01.1387
370173	01.0665	380048	01.0019	390017	01.1587	390072	00.9962	390133	01.4034
370174	01.0009	380050	01.3308	390018	01.2169	390073	01.4684	390135	01.2273
370176	01.2772	380051	01.4272	390019	01.1097	390074	01.2196	390136	01.1659
370177	00.9315	380052	01.1700	390021	01.0653	390075	01.2995	390137	01.1604
370178	01.0072	380055	01.1809	390022	01.2727	390076	01.2453	390138	01.2456
370179	01.0859	380056	01.0445	390023	01.2386	390078	01.0561	390139	01.4407
370180	01.0029	380059	00.9126	390024	00.7858	390079	01.6580	390142	01.7079
370183	01.0819	380060	01.3229	390025	00.8127	390080	01.1670	390143	03.1916

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 18 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
390145	01.2077	390200	01.0849	390899	00.5200	400114	01.0792	420039	01.1107
390146	01.1874	390201	01.3200	400001	01.1881	400115	01.0219	420040	01.3040
390147	01.1797	390203	01.2850	400002	01.2619	400117	01.1646	420042	01.0843
390148	01.1450	390204	01.2733	400003	01.1298	400118	01.1589	420043	01.1479
390149	01.2549	390205	01.2314	400004	01.1206	400120	01.3046	420044	01.1473
390150	01.2004	390206	01.2467	400005	01.1140	400121	01.0225	420048	01.1359
390151	01.2469	390209	00.9586	400006	01.1571	400898	00.5196	420049	01.0901
390152	01.0106	390211	01.1450	400007	01.0914	400899	00.5200	420051	01.5358
390153	01.2124	390213	01.0178	400008	01.1094	410001	01.2630	420053	01.1017
390154	01.1162	390215	01.1778	400009	00.9779	410002	01.2355	420054	01.1395
390155	01.2803	390217	01.1410	400010	00.9458	410004	01.4273	420055	01.0400
390156	01.3738	390219	01.1903	400011	01.1151	410005	01.2999	420056	01.0084
390157	01.1784	390220	01.1172	400012	01.0291	410006	01.1826	420057	01.0795
390158	01.2512	390222	01.1946	400013	01.0254	410007	01.5217	420059	01.0485
390159	01.3086	390223	01.5740	400014	01.3307	410008	01.2004	420061	01.2556
390160	01.1731	390224	00.9522	400015	01.0703	410009	01.3363	420062	01.2827
390161	01.0764	390225	01.2679	400016	01.2595	410010	01.0407	420064	01.0795
390162	01.2337	390226	01.6080	400017	01.1041	410011	01.1912	420065	01.3002
390163	01.1978	390228	01.1861	400018	01.2617	410012	01.5811	420066	01.0041
390164	01.8624	390229	01.4254	400019	01.3508	410013	01.1469	420067	01.1186
390165	01.0746	390231	01.3033	400021	01.2994	410898	00.5196	420068	01.1797
390166	01.1072	390232	01.0853	400022	01.2823	410899	00.5200	420069	01.0023
390167	01.2338	390233	01.2849	400024	01.0325	420002	01.3240	420070	01.2608
390168	01.1900	390235	01.8288	400026	00.9313	420004	01.9427	420071	01.3698
390169	01.2273	390236	01.1930	400027	01.0911	420005	01.1073	420072	00.9958
390170	01.6154	390237	01.4891	400028	01.0395	420006	01.5351	420073	01.2805
390171	01.0817	390238	01.0094	400029	01.0170	420007	01.4119	420074	00.9684
390172	01.1806	390242	01.2194	400031	01.0524	420009	01.2345	420075	01.0698
390173	01.1219	390244	00.8730	400032	01.1264	420010	01.0809	420076	01.2665
390174	01.5807	390245	01.3427	400037	00.5692	420011	01.0845	420078	01.5720
390176	01.2013	390246	01.2164	400038	00.9750	420014	01.1106	420079	01.5496
390178	01.3262	390247	01.1041	400044	01.2408	420015	01.2475	420080	01.1498
390179	01.2269	390249	00.9808	400048	01.1459	420016	01.2167	420081	00.7876
390180	01.3859	390252	00.9369	400061	01.7371	420018	01.6236	420082	01.3718
390181	01.0733	390256	01.6516	400079	01.1457	420019	01.1733	420083	01.1968
390183	01.1363	390258	01.2932	400087	01.2501	420020	01.1773	420084	00.8455
390184	01.1014	390260	01.2395	400088	00.7437	420022	00.9983	420085	01.2552
390185	01.1590	390261	01.8236	400089	01.0861	420023	01.2449	420086	01.3713
390186	01.1075	390262	01.6794	400094	00.9166	420026	01.8136	420087	01.5173
390187	01.1026	390263	01.4378	400098	01.2250	420027	01.3422	420088	01.1821
390189	01.1099	390265	01.2528	400102	01.0973	420028	01.0602	420089	01.2615
390191	01.0642	390266	01.1168	400103	01.4186	420029	01.8435	420898	00.5313
390192	01.0709	390267	01.2177	400104	01.2728	420030	01.1602	420899	00.5200
390193	01.1893	390268	01.2218	400105	01.2768	420031	00.9776	430004	01.0589
390194	01.0999	390270	01.2963	400106	01.1445	420032	00.8787	430005	01.3206
390195	01.5444	390272	00.6242	400109	01.4987	420033	01.1668	430007	01.1418
390196	01.2926	390275	00.5310	400110	01.1753	420035	00.8405	430008	01.2122
390197	01.2815	390277	01.6310	400111	01.2148	420036	01.2587	430009	01.0996
390198	01.2482	390278	00.8910	400112	01.2234	420037	01.2765	430010	01.0968
390199	01.2215	390898	00.5192	400113	01.1732	420038	01.2094	430011	01.3505

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 19 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
430012	01.3084	430087	01.0579	440083	01.4083	440149	01.1662	450016	01.6544
430013	01.2454	430088	00.9421	440084	01.0954	440150	01.2932	450018	01.6503
430014	01.1890	440001	00.9710	440085	01.1440	440151	01.1714	450019	02.8940
430015	01.0293	440002	01.5655	440087	01.1697	440152	01.5894	450020	01.0557
430016	01.6953	440003	01.1090	440088	01.1821	440153	00.9805	450021	01.7829
430017	01.0846	440006	01.3970	440089	01.0935	440154	00.7147	450023	01.4166
430018	00.9456	440007	01.0231	440070	00.9308	440156	01.4041	450024	01.2536
430022	00.9458	440008	00.9625	440071	01.3170	440157	01.0081	450025	01.4466
430023	00.9379	440009	01.0308	440072	01.3583	440159	01.2140	450027	01.1954
430024	01.0137	440010	00.9318	440073	01.2856	440160	01.0405	450028	01.4483
430025	01.0095	440011	01.2254	440074	00.8608	440161	01.5762	450029	01.3719
430026	00.8653	440012	01.3384	440078	01.0116	440162	01.0043	450031	01.1900
430027	01.6561	440014	00.8858	440079	00.8498	440166	01.2763	450032	01.2098
430028	01.1055	440015	01.4816	440081	01.1415	440168	01.0281	450033	01.6006
430029	00.9983	440016	00.9602	440082	01.8158	440170	01.3334	450034	01.4963
430031	00.9975	440017	01.4782	440083	01.2483	440173	01.4729	450035	01.4695
430033	00.9929	440018	01.2990	440084	01.0829	440174	00.9087	450037	01.4597
430034	01.0588	440019	01.4703	440087	01.0207	440175	01.1648	450039	01.1511
430036	01.0453	440020	01.2235	440090	01.0396	440176	01.2756	450040	01.6108
430037	00.9834	440022	01.0825	440091	01.3860	440177	00.9367	450041	00.9472
430038	01.0461	440023	00.9773	440095	01.0953	440178	01.1921	450042	01.6229
430039	01.0090	440024	01.1487	440100	01.0899	440180	01.0819	450043	01.4104
430040	00.9203	440025	01.1475	440102	01.0619	440181	00.9828	450044	01.4927
430041	00.9454	440026	01.2751	440103	01.2865	440182	00.9364	450046	01.3798
430042	00.9998	440029	01.2259	440104	01.4334	440183	01.4240	450047	00.9998
430043	01.1914	440030	01.0524	440105	01.3087	440184	01.2448	450050	01.2859
430044	00.9388	440031	01.0529	440109	01.0568	440185	01.0517	450051	01.6291
430047	01.0810	440032	00.9562	440110	01.0901	440186	01.1522	450052	01.0289
430048	01.1315	440033	01.0851	440111	01.2744	440187	01.0781	450053	01.1015
430049	00.9209	440034	01.3879	440114	01.0018	440189	01.4806	450054	01.6246
430051	00.9773	440035	01.1765	440115	01.1553	440192	00.9532	450055	01.0724
430054	00.9451	440038	00.9218	440120	01.4583	440193	01.0727	450056	01.6171
430056	00.8748	440039	01.5765	440121	01.0677	440194	01.2600	450057	01.1806
430057	00.9685	440040	00.9040	440125	01.4404	440196	00.9873	450058	01.5082
430060	00.9537	440041	00.8864	440128	00.9216	440197	01.3314	450059	01.2849
430062	00.8516	440046	01.0325	440130	01.1082	440200	01.0815	450060	01.3500
430064	01.0446	440047	00.9206	440131	01.1177	440203	00.9772	450063	00.9432
430065	00.9423	440048	01.5953	440132	01.0485	440205	00.9808	450064	01.4578
430066	01.0643	440049	01.8157	440133	01.4522	440898	00.5197	450065	01.1445
430073	01.1110	440050	01.1505	440135	01.3829	440899	00.5200	450068	01.6470
430076	01.0211	440051	00.9205	440136	01.2673	450002	01.3864	450070	01.1262
430077	01.4148	440052	01.1596	440137	01.0606	450004	01.0625	450072	01.1843
430079	01.0445	440053	01.1735	440141	00.9095	450005	01.0307	450073	01.1778
430080	00.8204	440054	00.9849	440142	01.0573	450007	01.3619	450074	01.1898
430081	01.0074	440056	00.9662	440143	01.0382	450008	01.2429	450076	01.2325
430082	00.8879	440057	00.9621	440144	01.1350	450010	01.2689	450077	00.9726
430083	00.8287	440058	01.1529	440145	00.9853	450011	01.5573	450078	00.9892
430084	01.0482	440059	01.1398	440146	01.3775	450012	01.2168	450079	01.4361
430085	00.9199	440060	01.2190	440147	00.7335	450014	01.1108	450080	01.1779
430086	00.8609	440061	01.1074	440148	01.1368	450015	01.5125	450081	01.1803

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 20 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450082	00.9878	450155	01.0332	450237	01.5126	450355	01.0741	450489	01.0442
450083	01.5443	450157	01.0099	450239	01.1959	450358	01.9532	450497	01.1356
450085	00.9962	450160	01.0575	450241	00.9517	450362	00.9684	450498	01.0658
450087	01.3390	450162	01.3390	450243	00.9273	450365	00.9715	450508	01.4049
450090	01.1553	450163	01.1193	450246	00.9979	450366	01.6461	450514	01.1396
450092	01.2944	450164	00.9439	450249	00.9346	450369	01.1674	450517	00.9377
450094	01.3856	450165	00.9336	450253	01.0849	450370	01.1883	450518	01.3356
450096	01.4924	450166	00.8618	450258	01.1207	450371	01.1062	450523	01.4825
450097	01.4141	450169	00.8653	450259	01.2308	450372	01.3072	450530	01.3099
450098	01.1252	450170	01.0904	450264	00.8503	450373	01.1546	450534	00.9543
450099	01.2202	450175	01.1666	450268	01.2098	450374	00.8612	450535	01.2194
450101	01.3902	450176	01.2832	450269	00.9470	450376	01.4562	450537	01.3913
450102	01.6896	450177	01.0842	450270	01.1608	450378	01.2775	450538	01.2977
450104	01.2474	450178	01.0815	450271	01.1922	450379	01.5759	450539	01.2685
450107	01.4183	450179	01.0164	450272	01.3403	450381	00.8646	450544	01.2497
450108	00.9694	450181	00.9942	450276	00.9661	450388	01.6205	450545	01.1671
450109	00.9858	450183	00.9973	450278	00.9057	450389	01.2353	450546	01.3580
450110	01.2155	450184	01.4658	450280	01.3054	450393	01.2800	450547	00.9746
450111	01.1778	450185	01.0386	450283	01.1518	450395	01.0896	450550	01.0319
450112	01.2127	450187	01.1771	450286	01.0898	450399	01.0396	450551	01.0391
450113	01.2878	450188	00.9746	450288	01.1503	450400	01.0660	450557	01.0538
450115	01.0680	450190	01.2664	450289	01.3791	450403	01.2092	450558	01.7882
450118	01.4149	450191	01.1072	450292	01.2671	450410	01.0659	450559	00.8825
450119	01.2371	450192	01.0919	450293	00.9699	450411	01.0800	450561	01.5047
450121	01.3651	450193	02.1479	450296	01.2220	450417	01.0292	450563	01.2059
450123	01.0641	450194	01.1301	450297	01.0674	450418	01.3690	450565	01.2924
450124	01.4506	450195	01.4354	450299	01.3529	450419	01.2510	450570	01.0008
450126	01.3166	450196	01.2475	450303	00.9489	450422	00.7494	450571	01.4405
450127	01.0078	450197	01.2008	450306	01.0477	450423	01.3512	450573	01.0383
450128	01.1509	450200	01.2921	450307	00.9572	450424	01.2682	450574	01.0282
450130	01.4644	450201	00.9786	450309	01.0480	450429	00.9324	450575	00.9983
450131	01.2453	450203	01.1729	450315	01.2300	450431	01.4965	450578	00.9630
450132	01.4508	450207	01.0764	450320	01.2982	450438	01.0520	450580	01.1800
450133	01.4421	450209	01.3398	450321	00.8811	450446	00.8813	450583	01.0112
450135	01.5677	450210	01.2090	450322	00.9604	450447	01.2796	450584	01.1850
450137	01.3428	450211	01.2599	450324	01.5257	450450	01.0934	450586	01.1113
450140	00.9070	450213	01.4222	450325	01.1884	450451	01.0167	450587	01.2652
450142	01.2794	450214	01.3077	450327	00.9930	450457	01.6592	450591	01.2213
450143	01.0147	450217	00.8757	450330	01.0889	450460	00.9727	450596	01.2305
450144	01.1266	450218	00.9962	450334	01.0795	450462	01.5850	450597	01.0431
450145	00.9544	450219	01.1150	450337	01.1764	450464	00.9097	450603	00.9690
450146	01.0182	450221	00.9934	450340	01.3527	450465	01.1069	450604	01.2344
450147	01.3537	450222	01.6862	450341	00.9360	450467	01.0530	450605	01.2340
450148	01.3152	450224	01.1254	450346	01.3103	450469	01.2746	450607	00.8981
450149	01.4288	450229	01.3541	450347	01.2278	450473	01.0949	450609	00.8539
450150	01.0242	450231	01.5950	450348	00.9811	450475	01.1409	450610	01.3881
450151	01.0793	450233	01.0909	450349	01.1467	450476	01.0202	450614	01.0286
450152	01.4122	450234	00.9314	450351	01.2655	450484	01.5207	450615	00.9538
450153	01.5918	450235	01.0319	450352	01.2257	450486	00.9499	450617	01.3736
450154	01.1277	450236	01.1188	450353	01.1381	450488	01.2127	450620	01.0614

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 21 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450623	01.1476	450697	01.4699	450770	00.9889	470005	01.1979	490046	01.3389
450626	00.9651	450698	00.9552	450771	01.4111	470006	01.2789	490047	01.1653
450628	00.9503	450700	00.9175	450773	01.1124	470008	01.2208	490048	01.3225
450630	01.6511	450702	01.2760	450775	01.1776	470010	01.0254	490050	01.3135
450631	01.6362	450703	01.2785	450898	00.5185	470011	01.1556	490052	01.4038
450632	00.9847	450704	01.2962	450899	00.5200	470012	01.2596	490053	01.2112
450633	01.5711	450705	00.8149	460001	01.5910	470013	01.1287	490054	01.0658
450634	01.3409	450706	01.2481	460003	01.4113	470015	01.2089	490057	01.3419
450637	01.3098	450709	01.1947	460004	01.7084	470018	01.1878	490059	01.4007
450638	01.4733	450711	01.6225	460005	01.2454	470020	01.0006	490060	01.0770
450639	01.5158	450712	00.7194	460006	01.3458	470023	01.2311	490063	01.5852
450641	00.8841	450713	01.2517	460007	01.3778	470024	01.1076	490066	01.1116
450643	01.1766	450715	01.3764	460008	01.3143	490001	01.1323	490067	01.2715
450644	01.6030	450716	01.2263	460009	01.7463	490002	01.0317	490069	01.3486
450646	01.4840	450717	01.2375	460010	01.9660	490003	00.6395	490071	01.2856
450647	01.9627	450718	01.1224	460011	01.3179	490004	01.2101	490073	01.2198
450648	01.1252	450723	01.2326	460013	01.4278	490005	01.4001	490074	01.2449
450649	01.0717	450724	01.1880	460014	01.0821	490006	01.1376	490075	01.2375
450651	01.8199	450725	00.9321	460015	01.2529	490007	01.9148	490077	01.1729
450652	00.9619	450726	00.8599	460016	00.9745	490008	01.1116	490079	01.2313
450653	01.2314	450727	00.9886	460017	01.2250	490009	01.6351	490083	00.7805
450654	00.9789	450728	00.9472	460018	00.9533	490010	01.1770	490084	01.1388
450656	01.2684	450729	00.9489	460019	01.0058	490011	01.2872	490085	01.2258
450658	00.9588	450730	01.4029	460020	00.8427	490012	01.0014	490088	01.1191
450659	01.4433	450732	01.1808	460021	01.2977	490013	01.1187	490089	01.0411
450660	01.6517	450733	01.3195	460022	00.9521	490014	01.5709	490090	01.1363
450661	01.2154	450734	01.2375	460023	01.1429	490015	01.4681	490091	01.1587
450662	01.4387	450735	00.8265	460024	01.0117	490017	01.2780	490092	01.1211
450665	00.9758	450737	00.8791	460025	00.8553	490018	01.0967	490093	01.2491
450666	01.2175	450742	01.3395	460026	00.9581	490019	01.1428	490094	01.0887
450668	01.5190	450743	01.4476	460027	00.9403	490020	01.0785	490095	01.2782
450669	01.3242	450745	00.8077	460029	00.9543	490021	01.3897	490097	01.1425
450670	01.2277	450746	00.9051	460030	01.0972	490022	01.2225	490098	01.2686
450672	01.5931	450747	01.3162	460032	00.9703	490023	01.1895	490099	00.9336
450673	01.0162	450749	01.0372	460033	00.9958	490024	01.6477	490100	01.2993
450674	00.8387	450750	00.9804	460035	00.9104	490027	01.0316	490101	01.1101
450675	01.3391	450751	01.3373	460036	00.9599	490028	01.2898	490104	00.8736
450677	01.3384	450753	00.9048	460037	00.9599	490030	01.3082	490105	00.7261
450678	01.4938	450754	00.8722	460039	00.9527	490031	01.0667	490106	00.7954
450681	01.5216	450755	01.0120	460041	01.2414	490032	01.6436	490107	01.2615
450682	01.2870	450757	00.9510	460042	01.3789	490033	01.2261	490108	00.8624
450683	01.3102	450758	01.4096	460043	01.2982	490035	01.2400	490109	00.8145
450684	01.3007	450759	01.1331	460044	01.1330	490037	01.1340	490110	01.2088
450685	01.2243	450760	01.3684	460046	00.9837	490038	01.2384	490111	01.1740
450686	01.3796	450761	00.9382	460047	01.8109	490040	01.3770	490112	01.5107
450688	01.3271	450763	01.0496	460898	00.5198	490041	01.1789	490113	01.2435
450690	01.3170	450765	01.0945	460899	00.5200	490042	01.2832	490114	01.0200
450691	01.1673	450766	01.6135	470001	01.1564	490043	01.1755	490115	01.1474
450694	01.2216	450768	01.0823	470003	01.9130	490044	01.2678	490116	01.1893
450696	01.0664	450769	00.9555	470004	01.1646	490045	01.1589	490117	01.0684

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991

PROVIDER	CASE MIX
490118	01.7073
490119	01.3397
490120	01.3092
490122	01.2075
490123	01.1363
490124	01.2094
490126	01.1955
490127	01.0650
490129	01.1401
490130	01.2281
490131	00.9497
490898	00.5185
490899	00.5200
500001	01.3037
500002	01.4095
500003	01.2881
500005	01.7196
500007	01.3095
500008	01.8947
500009	01.3186
500011	01.2218
500012	01.4964
500014	01.6630
500015	01.2843
500016	01.3652
500019	01.2405
500021	01.3708
500023	01.1643
500024	01.3348
500025	01.9312
500026	01.2537
500027	01.5794
500028	00.9881
500029	00.8975
500030	01.3448
500031	01.2319
500033	01.1501
500034	00.9200
500035	01.3931
500036	01.2762
500037	01.1511
500039	01.2991
500041	01.2065
500042	01.3023
500043	01.1726
500044	01.9039
500045	01.1537
500048	00.9342
500049	01.2301
500050	01.2771
500051	01.6277
500052	01.2199
500053	01.2526
500054	01.8276
500055	00.9829
500057	01.2672
500058	01.3159
500059	01.1346
500060	01.1839
500061	01.1698
500062	00.9586
500064	01.5577
500065	01.2726
500068	01.1644
500069	01.0012
500071	01.4032
500072	01.1949
500073	00.9418
500074	01.1165
500075	01.1767
500076	01.3138
500077	01.2247
500078	01.2940
500079	01.2506
500080	00.9168
500084	01.0035
500085	01.0518
500086	01.3255
500088	01.3065
500089	01.0180
500090	00.9145
500092	01.0780
500093	01.1705
500094	00.9211
500096	01.0582
500097	01.1723
500098	00.8613
500101	00.8910
500102	00.9656
500104	01.2425
500106	00.9918
500107	01.0965
500108	01.8490
500110	01.2181
500118	01.1796
500119	01.2504
500122	01.2079
500123	01.0362
500124	01.3282
500125	00.9528
500127	01.0519
500129	01.6858
500132	00.8248
500134	00.7403
500135	01.1288
500137	00.8291
500138	07.0911
500139	01.3462
500140	01.0335
500141	01.2348
500143	00.6451
500898	00.5185
500899	00.5200
510001	01.6416
510002	01.2824
510004	00.9408
510005	00.9523
510006	01.2044
510007	01.3741
510008	01.1728
510009	01.0303
510012	01.0428
510013	01.1459
510015	00.9063
510016	01.0076
510018	01.1304
510020	01.0968
510022	01.6247
510023	01.0375
510024	01.3137
510025	00.9025
510026	00.9758
510027	01.0050
510028	01.0652
510029	01.2433
510030	01.1212
510031	01.2711
510033	01.2111
510035	01.0599
510036	01.1241
510038	01.0047
510039	01.2755
510040	00.9642
510043	00.9995
510046	01.2532
510047	01.1249
510048	01.1308
510050	01.2260
510053	01.0018
510055	01.1619
510058	01.2105
510059	01.4222
510060	01.1601
510061	01.0490
510062	01.1464
510063	01.0619
510065	00.9937
510066	01.1450
510067	01.2778
510068	01.1025
510070	01.1906
510071	01.2567
510072	01.0244
510076	00.9725
510077	01.1417
510080	00.9917
510081	01.0073
510082	01.0169
510084	00.9481
510085	01.2048
510086	01.0422
510087	00.7675
520002	01.2749
520003	01.1504
520004	01.2442
520006	01.0229
520007	01.0810
520008	01.2004
520009	01.4767
520010	01.0967
520011	01.0892
520012	00.9264
520013	01.2887
520014	01.1740
520015	01.1844
520016	00.9844
520017	01.1666
520018	00.9703
520019	01.2357
520021	01.1840
520024	00.9820
520025	01.1231
520026	01.0953
520027	01.1398
520028	01.3878
520029	00.9306
520030	01.5238
520031	01.1648
520032	01.1415
520033	01.2564
520034	01.1832
520035	01.2521
520037	01.5980
520038	01.2987
520039	01.0154
520040	01.4174
520041	01.1147
520042	01.0127
520044	01.3333
520045	01.6380
520047	00.9704
520048	01.3229
520049	01.8077
520051	02.0414
520053	01.0585
520054	01.1941
520056	01.2993
520057	01.1415
520058	01.1071
520059	01.2841
520060	01.2323
520062	01.1789
520063	01.1924
520064	01.5197
520066	01.2357
520068	01.0682
520069	01.1981
520070	01.3171
520071	01.1762
520074	01.1135
520075	01.3924
520076	01.1606
520077	01.0289
520078	01.3122
520081	01.2238
520082	01.2813
520083	01.4987
520084	01.0795
520087	01.4852
520088	01.2179
520089	01.4068
520090	01.1483
520091	01.2251
520092	01.1655
520094	01.1828
520095	01.3054
520096	01.4423
520097	01.2966
520098	01.8714
520100	01.2286

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 23 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
520101	01.1872	520177	01.5263						
520102	01.1975	520178	01.1647						
520103	01.3449	520180	00.6038						
520104	00.9950	520898	00.5196						
520107	01.2338	520899	00.5200						
520109	01.0785	530001	01.2428						
520110	00.9839	530002	01.1366						
520111	01.0898	530003	00.9530						
520112	01.1200	530004	00.9961						
520113	01.2130	530005	01.0865						
520114	01.0570	530006	01.0919						
520115	01.2976	530007	01.0376						
520116	01.1964	530008	01.1465						
520117	01.0751	530009	00.9901						
520118	00.9407	530010	01.2515						
520120	01.0842	530011	01.1284						
520121	00.9647	530012	01.6027						
520122	01.0401	530014	01.1252						
520123	01.0392	530015	01.1345						
520124	01.1529	530016	01.1563						
520130	01.0705	530017	00.9896						
520131	01.0713	530018	01.0646						
520132	01.1558	530019	00.9882						
520134	01.1471	530022	01.1225						
520135	01.0616	530023	00.9090						
520136	01.4677	530024	00.9669						
520138	01.8363	530025	01.2490						
520139	01.1935	530026	01.0612						
520140	01.4028	530027	00.8697						
520141	01.0957	530029	00.9020						
520142	00.9897	530031	00.9951						
520144	01.0093	530032	01.2519						
520145	01.0206	530898	00.5183						
520146	01.1614								
520148	01.1000								
520149	01.0489								
520151	01.0610								
520152	01.1404								
520153	01.0141								
520154	01.1121								
520156	01.0848								
520157	01.0066								
520159	00.9077								
520160	01.7466								
520161	01.0675								
520170	01.3002								
520171	00.9938								
520173	01.0598								
520174	01.4641								
520176	00.8365								

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1991

BILLING CODE 4120-01-C

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOP (GAF) FOR URBAN AREAS

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Abilene, TX	0.9429	0.9605
Taylor, TX		
Aguadilla, PR	0.4568	0.5848
Aquada, PR		
Aguadilla, PR		
Isabella, PR		
Moca, PR		
Akron, OH	0.8921	0.9248
Portage, OH		
Summit, OH		
Albany, GA	0.8050	0.8620
Dougherty, GA		
Lee, GA		
Albany-Schenectady-Troy, NY	0.8956	0.9273
Albany, NY		
Greene, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Albuquerque, NM	1.0123	1.0084
Bernalillo, NM		
Alexandria, LA	0.8275	0.8784
Rapides, LA		
Allentown-Bethlehem-Easton, PA-NJ	0.8797	0.9160
Warren, NJ		
Carbon, PA		
Lehigh, PA		
Northampton, PA		
Altoona, PA	0.9238	0.9472
Blair, PA		
Amarillo, TX	0.8739	0.9118
Potter, TX		
Randall, TX		
*Anaheim-Santa Ana, CA	1.1756	1.1172
Orange, CA		
Anchorage, AK	1.4176	1.2699
Anchorage, AK		
Anderson, IN	0.9583	0.9713
Madison, IN		
Anderson, SC	0.7258	0.8029
Anderson, SC		
Ann Arbor, MI	1.1384	1.0928
Washtenaw, MI		
Anniston, AL	0.7931	0.8532
Calhoun, AL		
Appleton-Oshkosh-Neenah, WI	0.9223	0.9461
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
Arecibo, PR	0.3953	0.5296
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
Quebradillas, PR		
Asheville, NC	0.8739	0.9118
Buncombe, NC		
Athens, GA	0.7773	0.8415
Clarke, GA		
Jackson, GA		
Madison, GA		
Oconee, GA		
*Atlanta, GA	0.9596	0.9722

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Barrow, GA		
Butts, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
De Kalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
Atlantic City, NJ	1.0609	1.0413
Atlantic City, NJ		
Cape May, NJ		
Augusta, GA–SC	0.9401	0.9586
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Aurora-Elgin, IL	0.9463	0.9629
Kane, IL		
Kendall, IL		
Austin, TX	0.9599	0.9724
Hays, TX		
Travis, TX		
Williamson, TX		
Bakersfield, CA	1.0868	1.0587
Kern, CA		
*Baltimore, MD	1.0156	1.0107
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Annes, MD		
Bangor, ME	0.9064	0.9349
Penobscot, ME		
Baton Rouge, LA	0.9089	0.9367
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
Battle Creek, MI	0.9099	0.9374
Calhoun, MI		
Beaumont-Port Arthur, TX	0.9604	0.9727
Hardin, TX		
Jefferson, TX		
Orange, TX		
Beaver County, PA	1.0165	1.0113
Beaver, PA		
Bellingham, WA	1.0497	1.0338
Whatcom, WA		
Benton Harbor, MI	0.8091	0.8650
Berrien, MI		
*Bergen-Passaic, NJ	0.8585	0.8994
Bergen, NJ		
Passaic, NJ		
Billings, MT	0.9325	0.9533
Yellowstone, MT		
Biloxi-Gulfport, MS	0.8062	0.8628
Hancock, MS		
Harrison, MS		
Binghamton, NY	0.9260	0.9487

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Broome, NY		
Tioga, NY		
Birmingham, AL	0.8769	0.9140
Blount, AL		
Jefferson, AL		
Saint Clair, AL		
Shelby, AL		
Walker, AL		
Bismarck, ND	0.8881	0.9219
Burleigh, ND		
Morton, ND		
Bloomington, IN	0.7757	0.8404
Monroe, IN		
Bloomington-Normal, IL	0.8658	0.9060
McLean, IL		
Boise City, ID	0.9757	0.9833
Ada, ID		
*Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1809	1.1206
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Boulder-Longmont, CO	0.9689	0.9786
Boulder, CO		
Bradenton, FL	0.8730	0.9112
Manatee, FL		
Brazoria, TX	0.8947	0.9266
Brazoria, TX		
Bremerton, WA	1.0365	1.0249
Kitsap, WA		
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1905	1.1268
Fairfield, CT		
Brownsville-Harlingen, TX	0.8601	0.9019
Cameron, TX		
Bryan-College Station, TX	0.9489	0.9647
Brazos, TX		
Buffalo, NY	0.8908	0.9239
Erie, NY		
Burlington, NC	0.7936	0.8536
Alamance, NC		
Burlington, VT	0.9358	0.9556
Chittenden, VT		
Grand Isle, VT		
Caguas, PR	0.4588	0.5865
Caguas, PR		
Gurabo, PR		
San Lorenz, PR		
Aguas Buenas, PR		
Cayey, PR		
Cidra, PR		
Canton, OH	0.8453	0.8913
Carroll, OH		
Stark, OH		
Casper, WY	0.8891	0.9227
Natrona, WY		
Cedar Rapids, IA	0.7532	0.8236
Linn, IA		
Champaign-Urbana-Rantoul, IL	0.8745	0.9123
Champaign, IL		
Charleston, SC	0.8331	0.8825
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
Charleston, WV	0.9692	0.9788
Kanawha, WV		
Putnam, WV		
*Charlotte-Gastonia-Rock Hill, NC-SC	0.9486	0.9645

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Astensk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
Charlottesville, VA	0.9615	0.9735
Albermarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
Chattanooga, TN-GA	0.9198	0.9444
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
Sequatchie, TN		
Cheyenne, WY	0.7777	0.8418
Laramie, WY		
*Chicago, IL	1.0518	1.0352
Cook, IL		
Du Page, IL		
McHenry, IL		
Chico, CA	1.0981	1.0662
Butte, CA		
*Cincinnati, OH-KY-IN	0.0921	0.9877
Dearborn, IN		
Boone, KY		
Campbell, KY		
Kenton, KY		
Clermont, OH		
Hamilton, OH		
Warren, OH		
Clarksville-Hopkinsville, TN-KY	0.7319	0.8076
Christian, KY		
Montgomery, TN		
*Cleveland, OH	1.0739	1.0500
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Medina, OH		
Colorado Springs, CO	0.9816	0.9874
El Paso, CO		
Columbia, MO	0.9506	0.9659
Boone, MO		
Columbia, SC	0.8940	0.9261
Lexington, SC		
Richland, SC		
Columbus, GA-AL	0.7371	0.8115
Russell, AL		
Chattanoochee, GA		
Muscogee, GA		
*Columbus, OH	0.9673	0.9775
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
Union, OH		
Corpus Christi, TX	0.8594	0.9014
Neuces, TX		
San Patricio, TX		
Cumberland, MD-WV	0.8188	0.8721
Allegeny, MD		
Mineral, WV		
*Dallas, TX	0.9638	0.9751
Collins, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Kaufman, TX		
Rockwall, TX		
Danville, VA	0.7826	0.8455
Danville City, VA		
Pittsylvania, VA		
Davenport-Rock Island-Moline, IA-IL	0.8471	0.8926
Scott, IA		
Henry, IL		
Rock Island, IL		
Dayton-Springfield, OH	0.9646	0.9756
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
Daytona Beach, FL	0.8906	0.9237
Volusia, FL		
Decatur, AL	0.7487	0.8202
Lawrence, AL		
Morgen, AL		
Decatur, IL	0.8286	0.8792
Macon, IL		
*Denver, CO	1.0762	1.0516
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
Des Moines, IA	0.9171	0.9425
Dallas, IA		
Polk, IA		
Warren, IA		
*Detroit, MI	1.0827	1.0559
Lapeer, MI		
Livingston, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
Saint Clair, MI		
Wayne, MI		
Dothan, AL	0.7569	0.8264
Dale, AL		
Houston, AL		
Dubuque, IA	0.8374	0.8856
Dubuque, IA		
Duluth, MN-WI	0.9517	0.9667
St. Louis, MN		
Douglas, WI		
Eau Claire, WI	0.8481	0.8933
Chippewa, WI		
Eau Claire, WI		
El Paso, TX	0.8714	0.9100
El Paso, TX		
Elkhart-Goshen, IN	0.8872	0.9213
Elkhart, IN		
Elmira, NY	0.8852	0.9199
Chemung, NY		
Enid, OK	0.8912	0.9242
Garfield, OK		
Erie, PA	0.9155	0.9413
Erie, PA		
Eugene-Springfield, OR	1.0164	1.0112
Lane, OR		
Evansville, IN-KY	0.9276	0.9498
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
Fargo-Moorhead, ND-MN	0.9707	0.9796
Clay, MN		
Cass, ND		
Fayetteville, NC	0.8296	0.8799
Cumberland, NC		
Fayetteville-Springdale, AR	0.7990	0.8576
Washington, AR		
Flint, MI	1.1544	1.1033
Genesee, MI		
Florence, AL	0.7717	0.8374
Colbert, AL		
Lauderdale, AL		
Florence, SC	0.8429	0.8696
Florence, SC		
Fort Collins-Loveland, CO	1.0238	1.0162
Larimor, CO		
*Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0356	1.0242
Lee, FL		
Fort Myers-Cape Coral, FL	0.9799	0.9862
Martin, FL		
Fort Pierce, FL	1.1041	1.0702
Martin, FL		
St. Lucie, FL		
Fort Smith, AR-OK	0.7931	0.8532
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
Fort Walton Beach, FL	0.8941	0.9262
Okaloosa, FL		
Fort Wayne, IN	0.8901	0.934
Allen, IN		
De Kalb, IN		
Whitley, IN		
*Fort Worth-Arlington, TX	0.9747	0.9826
Johnson, TX		
Parker, TX		
Tarrant, TX		
Fresno, CA	1.0737	1.0499
Fresno, CA		
Gadsden, AL	0.8199	0.8729
Etowah, AL		
Gainesville, FL	0.8798	0.9160
Alachua, FL		
Bradford, FL		
Galveston-Texas City, TX	0.9428	0.9605
Galveston, TX		
Gary-Hammond, IN	0.9596	0.9722
Lake, IN		
Porter, IN		
Glens Falls, NY	0.9231	0.9467
Warren, NY		
Washington, NY		
Grand Forks, ND	0.9577	0.9708
Grand Forks, ND		
Grand Rapids, MI	0.9883	0.9920
Kent, MI		
Ottawa, MI		
Great Falls, MT	0.9992	0.9995
Cascade, MT		
Greeley, CO	0.9358	0.9556
Weld, CO		
Green Bay, WI	0.9585	0.9714
Brown, WI		
Greensboro-Winston-Salem-High Point, NC	0.9165	0.9120
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
Greenville-Spartanburg, SC	0.8923	0.9249

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Greensville, SC		
Pickens, SC		
Spartanburg, SC		
Hagerstown, MD	0.9157	0.9415
Washington, MD		
Hamilton-Middletown, OH	0.9153	0.9412
Butler, OH		
Harrisburg-Lebanon-Carlisle, PA	0.9919	0.9944
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
*Hartford-Middletown-New Britain-Bristol, CT	1.1910	1.1272
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
Hickory, NC	0.8666	0.9066
Alexander, NC		
Burke, NC		
Catawba, NC		
Honolulu, HI	1.1580	1.1057
Honolulu, HI		
Houma-Thibodaux, LA	0.7344	0.8095
Lafourche, LA		
Terrebonne, LA		
*Houston, TX	0.9935	0.9955
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
Huntington-Ashland, WV-KY-OH	0.9438	0.9612
Boyd, KY		
Carter, KY		
Greenup, KY		
Lasrence, OH		
Cabell, WV		
Wayne, WV		
Huntsville, AL	0.8835	0.9187
Madison, AL		
*Indianapolis, IN	0.9663	0.9768
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
Iowa City, IA	0.9528	0.9674
Johnson, IA		
Jackson, MI	0.8826	0.9180
Jackson, MI		
Jackson, MS	0.7733	0.8386
Hinds, MS		
Madison, MS		
Rankin, MS		
Jackson, TN	0.8329	0.8823
Madison, TN		
Jacksonville, FL	0.9051	0.9340
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
Jacksonville, NC	0.7936	0.8536
Onslow, NC		
Jamestown-Dunkirk, NY	0.6634	0.7550
Chatauqua, NY		
Janesville-Beloit, WI	0.8447	0.8909

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Rock, WI		
Jersey City, NJ	1.1276	1.0857
Hudson, NJ		
Johnson City-Kingsport-Bristol, TN-VA	0.8668	0.9067
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
Johnstown, PA	0.8613	0.9028
Cambria, PA		
Somerset, PA		
Joliet, IL	1.0509	1.0346
Grundy, IL		
Will, IL		
Joplin, MO	0.7957	0.8551
Jasper, MO		
Newton, MO		
Kalamazoo, MI	1.1709	1.1141
Kalamazoo, MI		
Kankakee, IL	0.8489	0.8939
Kankakee, IL		
*Kansas City, KS-MO	0.9588	0.9716
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
Kenosha, WI	0.8855	0.9201
Kenosha, WI		
Killeen-Temple, TX	1.1295	1.0870
Bell, TX		
Coryell, TX		
Knoxville, TN	0.8693	0.9085
Anderson, TN		
Blount, TN		
Grainger, TN		
Jefferson, TN		
Knox, TN		
Sevier, TN		
Union, TN		
Kokomo, IN	0.9603	0.9726
Howard, IN		
Tipton, IN		
LaCrosse, WI	0.8956	0.9273
LaCrosse, WI		
Lafayette, LA	0.8227	0.8749
Lafayette, LA		
St. Martin, LA		
Lafayette, IN	0.8432	0.8898
Tippecanoe, IN		
Lake Charles, LA	0.8374	0.8856
Calcasieu, LA		
Lake County, IL	0.9408	0.9591
Lake, IL		
Lakeland-Winter Haven, FL	0.7659	0.8331
Polk, FL		
Lancaster, PA	0.9278	0.9500
Lancaster, PA		
Lansing-East Lansing, MI	1.0222	1.0151
Clinton, MI		
Eaton, MI		
Ingham, MI		
Laredo, TX	0.7278	0.8045

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Webb, TX		
Las Cruces, NM	0.7909	0.8516
Dona Ana, NM		
Las Vegas, NV	1.0631	1.0428
Clark, NV		
Lawrence, KS	0.7504	0.8215
Douglas, KS		
Lawton, OK	0.8388	0.8866
Comanche, OK		
Lewiston-Auburn, ME	0.8457	0.8916
Androscoggin, ME		
Lexington-Fayette, KY	0.8446	0.8908
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Scott, KY		
Woodford, KY		
Lima, OH	0.8453	0.8913
Allen, OH		
Auglaize, OH		
Lincoln, NE	0.8956	0.9273
Lancaster, NE		
Little Rock-North Little Rock, AR	0.8420	0.8889
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
Longview-Marshall, TX	0.8691	0.9084
Gregg, TX		
Harrison, TX		
Lorain-Elyria, OH	0.8896	0.9230
Lorain, OH		
*Los Angeles-Long Beach, CA	1.2359	1.1561
Los Angeles, CA		
Louisville, KY-IN	0.9092	0.9369
Clark, IN		
Floyd, IN		
Harrison, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
Shelby, KY		
Lubbock, TX	0.8790	0.9155
Lubbock, TX		
Lynchburg, VA	0.8544	0.8978
Amherst, VA		
Campbell, VA		
Lynchburg City, VA		
Macon-Warner Robins, GA	0.8804	0.9165
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Madison, WI	1.0311	1.0212
Dane, WI		
Manchester-Nashua, NH	1.0130	1.0089
Hillsborough, NH		
Merrimack, NH		
Mansfield, OH	0.8392	0.8869
Richland, OH		
Mayaguez, PR	0.4771	0.6024
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
San German, PR		
McAllen-Edinburg-Mission, TX	0.7715	0.8372
Hidalgo, TX		
Medford, OR	1.0045	1.0031
Jackson, OR		
Melbourne-Titusville, FL	0.8730	0.9112

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Astersk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Brevard, FL		
Memphis, TN-AR-MS	0.9060	0.9346
Crittenden, AR		
De Soto, MS		
Shelby, TN		
Tipton, TN		
Merced, CA	1.0315	1.0215
Merced, CA		
*Miami-Hialeah, FL	0.9955	0.9969
Dade, FL		
*Middlesex-Somerset-Hunterdon, NJ	1.0409	1.0278
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
Midland, TX	1.0377	1.0257
Midland, TX		
*Milwaukee, WI	0.9719	0.9807
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
*Minneapolis-St. Paul, MN-WI	1.0818	1.0553
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Washington, MN		
Wright, MN		
St. Croix, WI		
Mobile, AL	0.8244	0.8761
Baldwin, AL		
Mobile, AL		
Modesto, CA	1.1388	1.0931
Stanislaus, CA		
Monmouth-Ocean, NJ	0.9912	0.9940
Monmouth, NJ		
Ocean, NJ		
Monroe, LA	0.7864	0.8483
Ouachita, LA		
Montgomery, AL	0.7738	0.8389
Autauga, AL		
Elmore, AL		
Montgomery, AL		
Muncie, IN	0.8068	0.8633
Delaware, IN		
Muskegon, MI	0.9853	0.9899
Muskegon, MI		
Naples, FL	1.0324	1.0221
Collier, FL		
Nashville, TN	0.9397	0.9583
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford, TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
*Nassau-Suffolk, NY	1.2154	1.1429
Nassau, NY		
Suffolk, NY		
New Bedford-Fall River-Attleboro, MA	1.1713	1.1144
Bristol, MA		
New Haven-Waterbury-Meriden, CT	1.2095	1.1391
New Haven, CT		
New London-Norwich, CT	1.1571	1.1051
New London, CT		
*New Orleans, LA	0.8908	0.9239
Jefferson, LA		
Orleans, LA		
St. Bernard, LA		
St. Charles, LA		
St. John The Baptist, LA		
St. Tammany, LA		
*New York, NY	1.3460	1.2257
Bronx, NY		
Kings, NY		
New York City, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
*Newark, NJ	1.0906	1.0612
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Niagara Falls, NY	0.7560	0.8257
Niagara, NY		
*Norfolk-Virginia Beach-Newport News, VA	0.8515	0.8958
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
James City Co., VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City, VA		
Williamsburg City, VA		
York, VA		
*Oakland, CA	1.4529	1.2915
Alameda, CA		
Contra Costa, CA		
Ocala, FL	0.8614	0.9029
Marion, FL		
Odessa, TX	1.0839	1.0567
Ector, TX		
Oklahoma City, OK	0.9145	0.9406
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
Olympia, WA	1.1002	1.0676
Thurston, WA		
Omaha, NE-IA	0.8989	0.9296
Pottawattamie, IA		
Douglas, NE		
Sarpy, NE		
Washington, NE		
Orange County, NY	1.0121	1.0083
Orange, NY		
*Orlando, FL	0.9621	0.9739
Orange, FL		
Osceola, FL		
Seminole, FL		
Owensboro, KY	0.8151	0.8694
Daviess, KY		
Oxnard-Ventura, CA	1.1792	1.1195
Ventura, CA		
Panama City, FL	0.8632	0.9042
Bay, FL		
Parkersburg-Marietta, WV-OH	0.8540	0.8976
Washington, OH		
Wood, WV		
Pascagoula, MS	0.8771	0.9141
Jackson, MS		
Pensacola, FL	0.8623	0.9035
Escambia, FL		
Santa Rosa, FL		
Peoria, IL	0.8710	0.9098
Peoria, IL		
Tazewell, IL		
Woodford, IL		
*Philadelphia, PA-NJ	1.0952	1.0643
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
*Phoenix, AZ	1.0429	1.0292
Maricopa, AZ		
Pine Bluff, AR	0.6979	0.7817
Jefferson, AR		
*Pittsburgh, PA	1.0127	1.0087
Allegheny, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
Pittsfield, MA	1.0782	1.0529
Berkshire, MA		
Ponce, PR	0.4601	0.5877
Juana Diaz, PR		
Ponce, PR		
*Portland, ME	0.9257	0.9485
Cumberland, ME		
Sagadahoc, ME		
York, ME		
*Portland, OR	1.1576	1.1054
Clackamas, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Portsmouth-Dover-Rochester, NH	1.0027	1.0018
Rockingham, NH		
Strafford, NH		
Poughkeepsie, NY	0.9369	0.9563
Dutchess, NY		
*Providence-Pawtucket-Woonsocket, RI	1.0380	1.0259
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
Provo-Orem, UT	1.0230	1.0157
Utah, UT		
Pueblo, CO	0.8722	0.9106
Pueblo, CO		
Racine, WI	0.8488	0.8938
Racine, WI		
Raleigh-Durham, NC	0.9465	0.9630
Durham, NC		
Franklin, NC		
Orange, NC		
Wake, NC		
Rapid City, SD	0.8400	0.8875
Pennington, SD		
Reading, PA	1.0271	1.0185
Berks, PA		
Redding, CA	1.0549	1.0373

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Shasta, CA		
Reno, NV	1.1618	1.1082
Washoe, NV		
Richland-Kennewick, WA	0.9402	0.9587
Benton, WA		
Franklin, WA		
Richmond-Petersburg, VA	0.9417	0.9597
Charles City Co., VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
*Riverside-San Bernardino, CA	1.1107	1.0745
Riverside, CA		
San Bernardino, CA		
Roanoke, VA	0.8284	0.8790
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
Rochester, MN	1.1030	1.0694
Olmsted, MN		
*Rochester, NY	0.9710	0.9800
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
Rockford, IL	0.9283	0.9503
Boone, IL		
Winnebago, IL		
*Sacramento, CA	1.2253	1.1493
Eldorado, CA		
Placer, CA		
Sacramento, CA		
Yolo, CA		
Saginaw-Bay City-Midland, MI	1.0484	1.0329
Bay, MI		
Midland, MI		
Saginaw, MI		
St. Cloud, MN	0.8919	0.9246
Benton, MN		
Sherburne, MN		
Stearns, MN		
St. Joseph, MO	0.9414	0.9595
Buchanan, MO		
*St. Louis, MO-IL	0.9388	0.9577
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Salem, OR	0.9637	0.9888
Marion, OR		
Polk, OR		
Salinas-Seaside-Monterey, CA	1.3041	1.1994
Monterey, CA		
*Salt Lake City-Ogden, UT	0.9932	0.9953
Davis, UT		
Salt Lake, UT		
Weber, UT		
San Angelo, TX	0.8139	0.8685
Tom Green, TX		
*San Antonio, TX	0.8452	0.8912
Bexar, TX		
Comal, TX		
Guadalupe, TX		
*San Diego, CA	1.1934	1.1287
San Diego, CA		
*San Francisco, CA	1.4447	1.2865
Marin, CA		
San Francisco, CA		
San Mateo, CA		
*San Jose, CA	1.4900	1.3140
Santa Clara, CA		
*San Juan, PR	0.4987	0.6210
Barceloa, PR		
Bayoman, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trojillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Santa Barbara-Santa Maria-Lompoc, CA	1.1805	1.1203
Santa Barbara, CA		
Santa Cruz, CA	1.1818	1.1212
Santa Cruz, CA		
Santa Fe, NM	0.9162	0.9418
Los Alamos, NM		
Santa Fe, NM		
Santa Rosa-Petaluma, CA	1.2957	1.1941
Sonoma, CA		
Sarasota, FL	0.9781	0.9850
Sarasota, FL		
Savannah, GA	0.8327	0.8822
Chatham, GA		
Effingham, GA		
Scranton-Wilkes Barre, PA	0.8959	0.9275
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Monroe, PA		
Wyoming, PA		
*Seattle, WA	1.0871	1.0589
King, WA		
Snohomish, WA		
Sharon, PA	0.8914	0.9243
Mercer, PA		
Sheboygan, WI	0.8872	0.9213
Sheboygan, WI		
Sherman-Denison, TX	0.9089	0.9367
Grayson, TX		
Shreveport, LA	0.9299	0.9514
Bossier, LA		
Caddo, LA		
Sioux City, IA-NE	0.8504	0.8950
Woodbury, IA		
Dakota, NE		
Sioux Falls, SD	0.8833	0.9185
Minnehaha, SD		
South Bend-Mishawaka, IN	1.0067	1.0046
St. Joseph, IN		
Spokane, WA	1.0691	1.0468
Spokane, WA		
Springfield, IL	0.9295	0.9512
Menard, IL		
Sangamon, IL		
Springfield, MO	0.8082	0.8643
Christian, MO		
Greene, MO		
Springfield, MA	0.9589	0.9717
Hampden, MA		
Hampshire, MA		
State College, PA	0.9901	0.9932
Centre, PA		
Steubenville-Weirton, OH-WV	0.8712	0.9099
Jefferson, OH		
Brooke, WV		
Hancock, WV		
Stockton, CA	1.1789	1.1193
San Joaquin, CA		
Syracuse, NY	0.9917	0.9943
Madison, NY		
Onondaga, NY		
Oswego, NY		
Tacoma, WA	0.9868	0.9909
Pierce, WA		
Tallahassee, FL	0.9220	0.9459
Gadsden, FL		
Leon, FL		
*Tampa-St. Petersburg-Clearwater, FL	0.9188	0.9437
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
Terre Haute, IN	0.8758	0.9132
Clay, IN		
Vigo, IN		
Texarkana-TX-Texarkana, AR	0.7906	0.8514
Miller, AR		
Bowie, TX		
Toledo, OH	0.8714	0.9100
Fulton, OH		
Lucas, OH		
Wood, OH		
Topeka, KS	0.9302	0.9517
Shawnee, KS		
Trenton, NJ	1.0038	1.0026
Mercer, NJ		
Tuscon, AZ	0.9620	0.9738
Pima, AZ		
Tulsa, OK	0.8532	0.8970
Creeks, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
Tuscaloosa, AL	0.8521	0.8962
Tuscaloosa, AL		
Tyler, TX	0.9838	0.9889
Smith, TX		
Utica-Rome, NY	0.8402	0.8876
Herkimer, NY		
Oneida, NY		
Vallejo-Fairfield-Napa, CA	1.2917	1.1916

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Napa, CA		
Salano, CA		
Vancouver, WA	1.0712	1.0482
Clark, WA		
Victoria, TX	0.8994	0.9300
Victoria, TX		
Vineland-Millville-Bridgeton, NJ	0.9649	0.9758
Cumberland, NJ		
Visalia-Tulare-Porterville, CA	1.0392	1.0267
Tulare, CA		
Waco, TX	0.7814	0.8446
McLennan, TX		
*Washington, DC-MD-VA	1.0941	1.0635
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Loudoun, VA		
Manassas City, VA		
Manassis Park City, VA		
Prince William, VA		
Stafford, VA		
Waterloo-Cedar Falls, IA	0.8642	0.9049
Black Hawk, IA		
Bremer, IA		
Wausau, WI	0.9748	0.9827
Marathon, WI		
West Palm Beach-Boca Raton-Delray Beach, FL	1.0291	1.0198
Palm Beach, FL		
Wheeling, WV-OH	0.6926	0.7776
Belmont, OH		
Marshall, WV		
Ohio, WV		
Wichita, KS	0.9809	0.9869
Butler, KS		
Harvey, KS		
Sedgwick, KS		
Wichita Falls, TX	0.8172	0.8709
Wichita, TX		
Williamsport, PA	0.8864	0.9207
Lycoming, PA		
Wilmington, DE-NJ-MD	1.0884	1.0597
New Castle, DE		
Cecil, MD		
Salem, NJ		
Wilmington, NC	0.8712	0.9099
New Hanover, NC		
Worcester-Fitchburg-Leominster, MA	0.9694	0.9789
Worcester, MA		
Yakima, WA	1.0111	1.0076
Yakima, WA		
York, PA	0.8613	0.9028
Adams, PA		
York, PA		
Youngstown-Warren, OH	0.9886	0.9908
Mahoning, OH		
Trumbull, OH		
Yuba City, CA	1.0142	1.0097
Sutter, CA		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Yuba, Ca		
Yuma, AZ	0.8747	0.9124
Yuma, AZ		

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7121	0.7925
Alaska	1.3498	1.2280
Arizona	0.8747	0.9124
Arkansas	0.6966	0.7807
California	1.0142	1.0097
Colorado	0.8415	0.8885
Connecticut	1.1905	1.1268
Delaware	0.8572	0.8999
Florida	0.8730	0.9112
Georgia	0.7773	0.8415
Hawaii	0.9618	0.9737
Idaho	0.9105	0.9378
Illinois	0.7700	0.8361
Indiana	0.7806	0.8440
Iowa	0.7532	0.8236
Kansas	0.7446	0.8171
Kentucky	0.7793	0.8430
Louisiana	0.7384	0.8125
Maine	0.8328	0.8822
Maryland	0.8061	0.8628
Massachusetts	1.1713	1.1144
Michigan	0.8826	0.9180
Minnesota	0.8309	0.8809
Mississippi	0.6957	0.7800
Missouri	0.7249	0.8023
Montana	0.8255	0.8769
Nebraska	0.6995	0.7829
Nevada	0.9702	0.9795
New Hampshire	0.9547	0.9688
New Jersey [1]		
New Mexico	0.8318	0.8815
New York	0.8402	0.8876
North Carolina	0.7936	0.8536
North Dakota	0.7719	0.8375
Ohio	0.8453	0.8913
Oklahoma	0.7400	0.8137
Oregon	0.9607	0.9729
Pennsylvania	0.8613	0.9028
Puerto Rico	0.4333	0.5640
Rhode Island [1]		
South Carolina	0.7650	0.8324
South Dakota	0.7168	0.7961
Tennessee	0.7340	0.8091
Texas	0.7591	0.8280
Utah	0.9044	0.9335
Vermont	0.9706	0.9798
Virginia	0.7826	0.8455
Washington	0.9635	0.9749
West Virginia	0.8488	0.8938
Wisconsin	0.8447	0.8908
Wyoming	0.8457	0.8916

[1] All counties within the State are classified urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area reclassified to—	Wage index	GAF
Abilene, TX	0.9429	0.9605
Aguadilla, PR	0.4568	0.5848
Akron, OH	0.8921	0.9248
Albany, GA	0.7897	0.8507
Albany-Schenectady-Troy, NY	0.8956	0.9273
Albany-Schenectady-Troy, NY (Rural Vermont Hospitals)	0.9706	0.9798
Albuquerque, NM	0.9942	0.9960
Alexandria, LA	0.8050	0.8620
Allentown-Bethlehem-Easton, PA-NJ	0.8797	0.9160
Altoona, PA	0.9238	0.9472
Amarillo, TX	0.8739	0.9118
Anaheim-Santa Ana, CA	1.1545	1.1034
Anchorage, AK	1.4000	1.2591
Ann Arbor, MI	1.1063	1.0716
Appleton-Oshkosh-Neenah, WI	0.8698	0.9089
Asheville, NC	0.8472	0.8927
Athens, GA	0.7773	0.8415
Atlanta, GA	0.9461	0.9628
Augusta, GA-SC	0.9401	0.9586
Aurora-Elgin, IL	0.8874	0.9215
Baltimore, MD	1.0156	1.0107
Bangor, ME	0.8801	0.9163
Baton Rouge, LA	0.9089	0.9367
Battle Creek, MI	0.9099	0.9374
Beaver County, PA	0.9451	0.9621
Benton Harbor, MI	0.8826	0.9180
Billings, MT	0.9049	0.9339
Biloxi-Gulfport, MS	0.7804	0.8438
Binghamton, NY	0.8868	0.9210
Birmingham, AL	0.8769	0.9140
Bismarck, ND	0.8881	0.9219
Bloomington, IN	0.7806	0.8440
Boise City, ID	0.9558	0.9695
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1574	1.1053
Boston-Lawrence-Salem-Lowell-Brockton, MA (Rural Massachusetts Hospitals)	1.1713	1.1144
Brazoria, TX	0.8792	0.9156
Bremerton, WA	1.0365	1.0249
Buffalo, NY	0.8789	0.9154
Burlington, VT	0.9018	0.9317
Burlington, VT (Rural Vermont Hospitals)	0.9706	0.9798
Caguas, PR	0.4588	0.5865
Canton, OH	0.8453	0.8913
Casper, WY	0.8773	0.9143
Champaign-Urbana-Rantoul, IL	0.8745	0.9123
Charleston, SC	0.8171	0.8708
Charleston, WV	0.9692	0.9788
Charlotte-Gastonia-Rock Hill, NC-SC	0.9300	0.9515
Charlottesville, VA	0.9374	0.9567
Chattanooga, TN-GA	0.8878	0.9217
Cheyenne, WY	0.7499	0.8211
Chicago, IL	1.0518	1.0352
Chico, CA	1.0826	1.0559
Cincinnati, OH-KY-IN	0.9821	0.9877
Cleveland, OH	1.0475	1.0323
Columbia, MO	0.9269	0.9493
Columbia, SC	0.8748	0.9125
Columbus, GA-AL	0.7371	0.8115
Columbus, OH	0.9518	0.9667
Corpus Christi, TX	0.9638	0.9751
Dallas, TX	0.9638	0.9751
Davenport-Rock Island-Moline, IA-IL	0.8346	0.8835
Dayton-Springfield, OH	0.9646	0.9756
Daytona Beach, FL	0.8906	0.9237
Decatur, AL	0.7331	0.8085
Denver, CO	1.0762	1.0516
Des Moines, IA	0.9032	0.9327

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to—	Wage index	GAF
Detroit, MI	1.0708	1.0480
Dothan, AL	0.7589	0.8264
Dubuque, IA	0.8121	0.8672
Dubuque, IA (Rural Wisconsin Hospitals)	0.8447	0.8909
Duluth, MN-WI	0.9394	0.9581
Eau Claire, WI	0.8481	0.8933
El Paso, TX	0.8714	0.9100
Elkhart-Goshen, IN	0.8872	0.9213
Elmira, NY	0.8659	0.9061
Erie, PA	0.9155	0.9413
Eugene-Springfield, OR	1.0164	1.0112
Evansville, IN-KY	0.8959	0.9275
Fargo-Moorhead, ND-MN	0.9316	0.9526
Fayetteville, NC	0.7936	0.8536
Fayetteville-Springdale, AR	0.7990	0.8576
Flint, MI	1.1206	1.0812
Florence, AL	0.7717	0.8374
Florence, SC	0.8429	0.8896
Fort Collins-Loveland, CO	1.0031	1.0021
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0228	1.0156
Fort Myers-Cape Coral, FL	0.9799	0.9662
Fort Pierce, FL	1.0260	1.0177
Fort Smith, AR	0.7931	0.8532
Fort Walton Beach, FL	0.8941	0.9262
Fort Wayne, IN	0.8658	0.9060
Fort Worth-Arlington, TX	0.9747	0.9826
Fresno, CA	1.0624	1.0423
Galveston-Texas City, TX	0.9428	0.9605
Gary-Hammond, IN	0.9022	0.9319
Glens Falls, NY	0.8989	0.9296
Grand Forks, ND	0.9209	0.9451
Grand Rapids, MI	0.9883	0.9920
Great Falls, MT	0.9262	0.9469
Greeley, CO	0.8956	0.9273
Green Bay, WI	0.9278	0.9500
Greensboro-Winston-Salem-High Point, NC	0.8959	0.9275
Greenville-Spartanburg, SC	0.8768	0.9139
Hagerstown, MD	0.8756	0.9132
Hamilton-Middletown, OH	0.8435	0.8900
Harrisburg-Lebanon-Carlisle, PA	0.9390	0.9578
Hartford-Middletown-New Britain-Bristol, CT	1.1808	1.1205
Hickory, NC	0.8424	0.8892
Honolulu, HI	1.1580	1.1057
Houston, TX	0.9935	0.9955
Huntington-Ashland, WV-KY-OH	0.9255	0.9484
Huntsville, AL	0.8480	0.8932
Indianapolis, IN	0.9551	0.9690
Iowa City, IA	0.9327	0.9534
Jackson, MI	0.8826	0.9180
Jackson, MS	0.7593	0.8281
Jackson, TN	0.8073	0.8636
Jacksonville, FL	0.9051	0.9340
Johnson City-Kingsport-Bristol, TN-VA	0.8668	0.9067
Johnstown, PA	0.8613	0.9028
Joliet, IL	1.0211	1.0144
Joplin, MO	0.7838	0.8464
Kalamazoo, MI	1.1194	1.0803
Kansas City, KS-MO	0.9588	0.9716
Knoxville, TN	0.8693	0.9085
Kokomo, IN	0.9002	0.9305
LaCrosse, WI	0.8749	0.9125
Lafayette, LA	0.8227	0.8749
Lafayette, IN	0.8432	0.8898
Lake Charles, LA	0.8374	0.8856
Lancaster, PA	0.9096	0.9372
Lansing-East Lansing, MI	1.0046	1.0031
Las Vegas, NV	1.0489	1.0332
Lawrence, KS	0.7504	0.8215
Lawton, OK	0.8277	0.8785
Lewiston-Auburn, ME	0.8457	0.8916
Lexington-Fayette, KY	0.8323	0.8819
Lincoln, NE	0.8462	0.8919
Little Rock-North Little Rock, AR	0.8208	0.8735
Longview-Marshall, TX	0.8520	0.8961
Lorain-Elyria, OH	0.8896	0.9230
Los Angeles-Long Beach, CA	1.2359	1.1561
Louisville, KY-IN	0.8969	0.9282
Lubbock, TX	0.8790	0.9155
Lynchburg, VA	0.8389	0.8867
Macon-Warner Robins, GA	0.8622	0.9035
Madison, WI	0.9791	0.9856
Manchester-Nashua, NH	1.0130	1.0069
Mansfield, OH	0.8453	0.8913
Medford, OR	0.9884	0.9920
Memphis, TN-AR-MS	0.8772	0.9142
Merced, CA	1.0315	1.0215
Miami-Hialeah, FL	0.9955	0.9968
Middlesex-Somerset-Hunterdon, NJ	0.9928	0.9951
Midland, TX	1.0377	1.0257
Milwaukee, WI	0.9603	0.9726
Minneapolis-St. Paul, MN-WI	1.0818	1.0559
Mobile, AL	0.8244	0.8781
Modesto, CA	1.1388	1.0931
Monroe, LA	0.7864	0.8483
Montgomery, AL	0.7738	0.8386
Muncie, IN	0.7955	0.8550
Nashville, TN	0.9397	0.9583
New London-Norwich, CT	1.1095	1.0738
New Orleans, LA	0.8908	0.9239
New York, NY	1.3460	1.2257
Newark, NJ	1.0699	1.0474
Norfolk-Virginia Beach-Newport News, VA	0.8515	0.8958
Oakland, CA	1.4529	1.2915
Odessa, TX	1.0839	1.0567
Oklahoma City, OK	0.9145	0.9406
Olympia, WA	1.0390	1.0265
Omaha, NE-IA	0.8989	0.9296
Orange County, NY	1.0121	1.0063
Orlando, FL	0.9446	0.9617
Owensboro, KY	0.8151	0.8694
Oxnard-Ventura, CA	1.1792	1.1195
Panama City, FL	0.8632	0.9042
Parkersburg-Marietta, WV-OH	0.8540	0.8976
Pascagoula, MS	0.8771	0.9141
Peoria, IL	0.8710	0.9098
Philadelphia, PA-NJ	1.0801	1.0542
Phoenix, AZ	1.0429	1.0292
Pine Bluff, AR	0.6979	0.7817
Pittsburgh, PA	0.9960	0.9973
Pittsfield, MA	1.0119	1.0081
Portland, ME	0.9095	0.9371
Portland, OR	1.1421	1.0953
Portsmouth-Dover-Rochester, NH	1.0027	1.0018
Poughkeepsie, NY	0.9369	0.9563
Providence-Pawtucket-Woonsocket, RI	1.0063	1.0043
Provo-Orem, UT	1.0001	1.0001
Pueblo, CO	0.8519	0.8960
Raleigh-Durham, NC	0.9197	0.9443
Rapid City, SD	0.8284	0.8790
Redding, CA	1.0406	1.0276
Reno, NV	1.1438	1.0964
Roanoke, VA	0.8284	0.8790
Rochester, NY	0.9564	0.9698
Rockford, IL	0.9095	0.9371
Sacramento, CA	1.2253	1.1493
Saginaw-Bay City-Midland, MI	1.0211	1.0144
St. Cloud, MN	0.8919	0.9246
St. Louis, MO-IL	0.9248	0.9479
Salem, OR	0.9837	0.9888
Salinas-Seaside-Monterey, CA	1.2899	1.1984
Salt Lake City-Ogden, UT	0.9932	0.9953
San Angelo, TX	0.8139	0.8685
San Antonio, TX	0.8452	0.8912
San Diego, CA	1.1934	1.1287
San Francisco, CA	1.4447	1.2865
San Jose, CA	1.4721	1.3032
San Juan, PR	0.4987	0.6210
Santa Barbara-Santa Maria-Lompoc, CA	1.1636	1.1093
Santa Fe, NM	0.8856	0.9202
Santa Rosa-Petaluma, CA	1.2957	1.1941
Sarasota, FL	0.9448	0.9617
Scranton-Wilkes Barre, PA	0.8856	0.9202
Seattle, WA	1.0719	1.0467
Sharon, PA	0.8914	0.9243
Sheboygan, WI	0.8723	0.9107
Sherman-Denison, TX	0.8934	0.9257
Shreveport, LA	0.9299	0.9514
Sioux City, IA-NE	0.8323	0.8919
Sioux Falls, SD	0.8833	0.9185
South Bend-Mishawaka, IN	0.9686	0.9784
Spokane, WA	1.0691	1.0488
Springfield, IL	0.9193	0.9440
Springfield, MO	0.7915	0.8520
State College, PA	0.9328	0.9535
Steubenville-Weirton, OH-WV	0.8340	0.8831
Stockton, CA	1.1789	1.1193
Syracuse, NY	0.9514	0.9665
Tacoma, WA	0.9868	0.9909
Tallahassee, FL	0.8853	0.9200
Tampa-St. Petersburg-Clearwater, FL	0.9188	0.9437
Terre Haute, IN	0.8651	0.9055
Texarkana, TX-Texarkana, AR	0.7906	0.8514
Toledo, OH	0.8714	0.9100
Toledo, OH (Rural Michigan Hospitals)	0.8826	0.9180
Topeka, KS	0.9302	0.9517
Tucson, AZ	0.9620	0.9738
Tulsa, OK	0.8398	0.8873
Tyler, TX	0.9330	0.9536
Vallejo-Fairfield-Napa, CA	1.2722	1.1792
Vancouver, WA	1.0124	1.0085
Victoria, TX	0.8839	0.9190
Waco, TX	0.7814	0.8446
Washington, DC-MD-VA	1.0941	1.0635
Waterloo-Cedar Falls, IA	0.8642	0.9049
Wausau, WI	0.9069	0.9353
West Palm Beach-Boca Raton-Delray Beach, FL	1.0291	1.0198
Wichita, KS	0.9563	0.9699
Wichita Falls, TX	0.8172	0.8709
Williamsport, PA	0.8707	0.9095
Wilmington, NC	0.8299	0.8801
Worcester-Fitchburg-Leominster, MA	0.9894	0.9789
Yakima, WA	0.9886	0.9930
Youngstown-Warren, OH	0.9507	0.9680
Rural California	0.9983	0.9986
Rural Connecticut	1.1581	1.1057
Rural Georgia	0.7773	0.8415
Rural Illinois	0.7700	0.8361
Rural Indiana	0.7806	0.8449
Rural Iowa	0.7532	0.8236
Rural Kansas	0.7446	0.8171
Rural Kentucky	0.7793	0.8430
Rural Louisiana	0.7364	0.8125
Rural Massachusetts	1.1509	1.1010
Rural Michigan	0.8826	0.9180
Rural Minnesota	0.8809	0.8809
Rural Missouri	0.7249	0.8023
Rural New Hampshire	0.9706	0.9798
Rural North Carolina	0.7936	0.8536

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to—	Wage index	GAF
Rural Ohio	0.8453	0.8913
Rural Oklahoma	0.7400	0.8137
Rural Pennsylvania	0.8613	0.9026
Rural South Dakota	0.7168	0.7961
Rural Texas	0.7591	0.8280
Rural Utah	0.9044	0.9335

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to—	Wage index	GAF
Rural Virginia	0.7826	0.8455
Rural Washington	0.9429	0.9605
Rural Washington (Rural Oregon Hospitals)	0.9607	0.9729
Rural West Virginia	0.8488	0.8938
Rural Wisconsin	0.8447	0.8909

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to—	Wage index	GAF
Rural Wyoming	0.8289	0.8794

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	01	SURG		CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.2349	11.3	34
2	01	SURG		CRANIOTOMY FOR TRAUMA AGE >17	3.1227	10.7	34
3	01	SURG	*	CRANIOTOMY AGE 0-17	2.9677	12.7	36
4	01	SURG		SPINAL PROCEDURES	2.3569	8.8	32
5	01	SURG		EXTRACRANIAL VASCULAR PROCEDURES	1.5593	5.2	28
6	01	SURG		CARPAL TUNNEL RELEASE	.5510	2.0	22
7	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC WITH CC	2.5891	11.0	34
8	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	.8055	3.0	26
9	01	MED		SPINAL DISORDERS & INJURIES	1.2840	6.5	30
10	01	MED		NERVOUS SYSTEM NEOPLASMS WITH CC	1.2879	7.4	30
11	01	MED		NERVOUS SYSTEM NEOPLASMS W/O CC	.7738	4.3	27
12	01	MED		DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9516	6.9	30
13	01	MED		MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.8409	6.6	30
14	01	MED		SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2178	7.0	30
15	01	MED		TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.6704	4.1	27
16	01	MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.1154	6.6	30
17	01	MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6477	4.4	27
18	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS WITH CC	.9166	5.8	28
19	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6016	4.0	27
20	01	MED		NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.9823	8.6	32
21	01	MED		VIRAL MENINGITIS	1.4613	7.2	30
22	01	MED		HYPERTENSIVE ENCEPHALOPATHY	.7290	4.2	27
23	01	MED		NONTRAUMATIC STUPOR & COMA	.8233	4.2	27
24	01	MED		SEIZURE & HEADACHE AGE >17 WITH CC	.9715	5.2	28
25	01	MED		SEIZURE & HEADACHE AGE >17 W/O CC	.5330	3.4	26
26	01	MED		SEIZURE & HEADACHE AGE 0-17	1.0701	3.9	27
27	01	MED		TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3670	4.3	27
28	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 WITH CC	1.2128	5.9	29
29	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.5965	3.3	26
30	01	MED	*	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3599	2.0	17
31	01	MED		CONCUSSION AGE >17 WITH CC	.7696	4.4	27
32	01	MED		CONCUSSION AGE >17 W/O CC	.4474	2.7	25
33	01	MED	*	CONCUSSION AGE 0-17	.2498	1.6	9
34	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM WITH CC	1.1432	5.9	29
35	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5662	3.6	27

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	02	SURG		RETINAL PROCEDURES	.6268	1.9	11
37	02	SURG		ORBITAL PROCEDURES	.7899	2.8	26
38	02	SURG		PRIMARY IRIS PROCEDURES	.3607	2.1	16
39	02	SURG		LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.4866	1.5	8
40	02	SURG		EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.5181	2.0	25
41	02	SURG	*	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3719	1.6	7
42	02	SURG		INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.5891	1.9	14
43	02	MED		HYPHEMA	.4101	3.7	27
44	02	MED		ACUTE MAJOR EYE INFECTIONS	.5793	5.2	28
45	02	MED		NEUROLOGICAL EYE DISORDERS	.6015	3.5	26
46	02	MED		OTHER DISORDERS OF THE EYE AGE >17 W CC	.7207	4.3	27
47	02	MED		OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4203	2.9	26
48	02	MED	*	OTHER DISORDERS OF THE EYE AGE 0-17	.4086	2.9	26
49	03	SURG		MAJOR HEAD & NECK PROCEDURES	1.6364	5.0	28
50	03	SURG		SIALOADENECTOMY	.6883	2.0	13
51	03	SURG		SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.6320	2.1	19
52	03	SURG		CLEFT LIP & PALATE REPAIR	.7808	2.2	18
53	03	SURG		SINUS & MASTOID PROCEDURES AGE >17	.7264	2.0	24
54	03	SURG	*	SINUS & MASTOID PROCEDURES AGE 0-17	.7006	3.2	22
55	03	SURG		MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.5480	1.7	15
56	03	SURG		RHINOPLASTY	.6144	1.9	17
57	03	SURG		T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.8995	3.3	26
58	03	SURG	*	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3150	1.5	4
59	03	SURG		TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.4367	1.5	10
60	03	SURG	*	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2660	1.5	4
61	03	SURG		MYRINGOTOMY W TUBE INSERTION AGE >17	.6791	2.6	26
62	03	SURG	*	MYRINGOTOMY W TUBE INSERTION AGE 0-17	.3142	1.3	5
63	03	SURG		OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.0570	3.7	27
64	03	MED		EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.0975	5.1	28
65	03	MED		DYSEQUILIBRIUM	.4944	3.3	23
66	03	MED		EPISTAXIS	.4898	3.3	25
67	03	MED		EPIGLOTTITIS	.8271	4.1	27
68	03	MED		OTITIS MEDIA & URI AGE >17 WITH CC	.7223	4.7	28
69	03	MED		OTITIS MEDIA & URI AGE >17 W/O CC	.5038	3.6	22
70	03	MED		OTITIS MEDIA & URI AGE 0-17	.6458	3.3	26

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	03	MED		LARYNGOTRACHEITIS	.7794	4.1	27
72	03	MED		NASAL TRAUMA & DEFORMITY	.5800	3.2	26
73	03	MED		OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7480	4.1	27
74	03	MED	*	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3485	2.1	20
75	04	SURG		MAJOR CHEST PROCEDURES	3.0434	11.1	34
76	04	SURG		OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3930	10.6	34
77	04	SURG		OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.1306	5.2	28
78	04	MED		PULMONARY EMBOLISM	1.4381	8.4	31
79	04	MED		RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 WITH CC	1.7150	8.8	32
80	04	MED		RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	.9485	6.3	29
81	04	MED	*	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.1219	6.1	29
82	04	MED		RESPIRATORY NEOPLASMS	1.1901	6.3	29
83	04	MED		MAJOR CHEST TRAUMA WITH CC	.9477	6.0	29
84	04	MED		MAJOR CHEST TRAUMA W/O CC	.4799	3.4	26
85	04	MED		PLEURAL EFFUSION WITH CC	1.1723	6.7	30
86	04	MED		PLEURAL EFFUSION W/O CC	.6630	4.0	27
87	04	MED		PULMONARY EDEMA & RESPIRATORY FAILURE	1.3585	5.8	29
88	04	MED		CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9950	5.8	29
89	04	MED		SIMPLE PNEUMONIA & PLEURISY AGE >17 WITH CC	1.1478	6.9	30
90	04	MED		SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.7080	5.2	28
91	04	MED		SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.9381	4.8	28
92	04	MED		INTERSTITIAL LUNG DISEASE WITH CC	1.1660	6.6	30
93	04	MED		INTERSTITIAL LUNG DISEASE W/O CC	.7374	4.7	28
94	04	MED		PNEUMOTHORAX WITH CC	1.2701	7.0	30
95	04	MED		PNEUMOTHORAX W/O CC	.5978	4.3	27
96	04	MED		BRONCHITIS & ASTHMA AGE >17 WITH CC	.9355	5.8	29
97	04	MED		BRONCHITIS & ASTHMA AGE >17 W/O CC	.6222	4.3	24
98	04	MED		BRONCHITIS & ASTHMA AGE 0-17	.9254	4.6	28
99	04	MED		RESPIRATORY SIGNS & SYMPTOMS WITH CC	.7598	3.8	27
100	04	MED		RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5083	2.5	17
101	04	MED		OTHER RESPIRATORY SYSTEM DIAGNOSES WITH CC	.8956	4.9	28
102	04	MED		OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5385	3.3	26
103	05	SURG		HEART TRANSPLANT	12.0076	23.5	46
104	05	SURG		CARDIAC VALVE PROCEDURES W CARDIAC CATH	7.7901	17.1	40
105	05	SURG		CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.8509	11.9	35

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.6949	13.3	36
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.2763	10.2	33
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9112	12.3	35
109			NO LONGER VALID	.0000	.0	0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES WITH CC	4.0937	9.9	33
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.3178	7.3	30
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.0008	4.5	28
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.7699	13.9	37
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6038	8.9	32
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.6230	11.2	34
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GEN PROC C	2.4759	5.3	28
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2405	3.7	27
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.6001	2.5	26
119	05	SURG	VEIN LIGATION & STRIPPING	.9692	3.5	26
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9968	7.2	30
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.6191	7.8	31
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.1639	5.7	29
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4089	2.9	26
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.2107	4.2	27
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.7652	2.2	22
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.8816	15.5	39
127	05	MED	HEART FAILURE & SHOCK	1.0159	5.9	29
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7910	7.2	30
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.2912	2.4	25
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.9149	6.1	29
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5909	4.7	28
132	05	MED	ATHEROSCLEROSIS WITH CC	.7832	4.0	27
133	05	MED	ATHEROSCLEROSIS W/O CC	.5347	2.9	24
134	05	MED	HYPERTENSION	.5686	3.8	27
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC	.8718	4.7	28
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	.5352	3.1	25
137	05	MED	* CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6422	3.3	26
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC	.8142	4.3	27
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5067	2.9	21
140	05	MED	ANGINA PECTORIS	.6266	3.6	24

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.7030	4.2	27
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5087	3.1	22
143	05	MED	CHEST PAIN	.5202	2.7	18
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0691	5.0	28
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.8304	3.1	26
146	06	SURG	RECTAL RESECTION WITH CC	2.5585	11.9	35
147	06	SURG	RECTAL RESECTION W/O CC	1.5518	8.3	31
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.1528	13.0	38
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5106	8.3	28
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.5871	11.3	34
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2025	6.3	29
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.7859	8.8	32
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0483	6.5	25
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC	4.0735	14.0	37
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	1.4849	7.2	30
156	06	SURG *	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8524	8.0	29
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	.9639	4.5	27
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.5020	2.4	17
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC	1.0840	4.7	28
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.6228	2.7	19
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC	.7862	3.2	26
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.4684	1.8	11
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.4848	2.1	10
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC	2.1773	9.5	32
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2206	6.4	25
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC	1.3383	5.9	29
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.7550	3.6	15
168	03	SURG	MOUTH PROCEDURES WITH CC	1.0037	3.5	26
169	03	SURG	MOUTH PROCEDURES W/O CC	.5928	2.1	19
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.7235	10.6	34
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1181	5.0	28
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.2967	7.0	30
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6455	3.5	27
174	06	MED	G.I. HEMORRHAGE WITH CC	.9841	5.3	28
175	06	MED	G.I. HEMORRHAGE W/O CC	.5587	3.6	22

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108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9112	12.3	35
109			NO LONGER VALID	.0000	.0	0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES WITH CC	4.0937	9.9	33
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.3178	7.3	30
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.0008	4.5	28
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.7699	13.9	37
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6038	8.9	32
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.6230	11.2	34
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GEN PROC C	2.4759	5.3	28
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2405	3.7	27
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.8001	2.5	26
119	05	SURG	VEIN LIGATION & STRIPPING	.9692	3.5	26
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9968	7.2	30
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.8191	7.8	31
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.1639	5.7	29
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4089	2.9	26
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.2107	4.2	27
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.7652	2.2	22
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.8616	15.5	39
127	05	MED	HEART FAILURE & SHOCK	1.0159	5.9	29
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7910	7.2	30
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.2912	2.4	25
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.9149	6.1	29
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5909	4.7	28
132	05	MED	ATHEROSCLEROSIS WITH CC	.7632	4.0	27
133	05	MED	ATHEROSCLEROSIS W/O CC	.5347	2.9	24
134	05	MED	HYPERTENSION	.5686	3.8	27
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC	.8716	4.7	28
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	.5352	3.1	25
137	05	MED	* CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6422	3.3	26
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC	.8142	4.3	27
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5087	2.9	21
140	05	MED	ANGINA PECTORIS	.6266	3.6	24

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.7030	4.2	27
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5087	3.1	22
143	05	MED	CHEST PAIN	.5202	2.7	18
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0691	5.0	28
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6304	3.1	26
146	06	SURG	RECTAL RESECTION WITH CC	2.5585	11.9	35
147	06	SURG	RECTAL RESECTION W/O CC	1.5519	8.3	31
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.1528	13.0	36
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5106	8.3	28
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.5671	11.3	34
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2025	6.3	29
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.7859	8.8	32
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0483	6.5	25
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC	4.0735	14.0	37
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	1.4849	7.2	30
156	06	SURG *	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8524	6.0	29
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	.9639	4.5	27
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.5020	2.4	17
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC	1.0840	4.7	28
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.6228	2.7	19
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC	.7862	3.2	26
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.4584	1.8	11
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.4846	2.1	10
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC	2.1773	9.5	32
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2206	6.4	25
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC	1.3383	5.9	29
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.7550	3.6	15
168	03	SURG	MOUTH PROCEDURES WITH CC	1.0037	3.5	26
169	03	SURG	MOUTH PROCEDURES W/O CC	.5928	2.1	18
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.7235	10.8	34
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1181	5.0	28
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.2967	7.0	30
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6455	3.5	27
174	06	MED	G.I. HEMORRHAGE WITH CC	.9841	5.3	28
175	06	MED	G.I. HEMORRHAGE W/O CC	.5567	3.6	22

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	06	MED	COMPLICATED PEPTIC ULCER	1.0421	5.8	29
177	06	MED	UNCOMPLICATED PEPTIC ULCER WITH CC	.7987	5.0	28
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5766	3.7	22
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.1102	7.0	30
180	06	MED	G.I. OBSTRUCTION WITH CC	.9312	5.7	29
181	06	MED	G.I. OBSTRUCTION W/O CC	.5059	3.8	25
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 WITH CC	.7744	4.8	28
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	.5350	3.4	24
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.4682	2.8	17
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	.7998	4.5	27
186	03	MED	* DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	.4181	2.9	23
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.5799	2.6	26
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 WITH CC	.9995	5.2	28
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.4833	2.8	26
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.6676	4.2	27
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES WITH CC.	4.4563	15.1	38
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7402	7.7	31
193	07	SURG	BILIARY TRACT PROC W CC EXCEPT ONLY CHOLECYST W OR W/O CDE .D.E	3.0458	13.6	37
194	07	SURG	BILIARY TRACT PROC W/O CC EXCEPT ONLY CHOLECYST W OR W/O C.D.E	1.6456	7.9	31
195	07	SURG	CHOLECYSTECTOMY W C.D.E. WITH CC	2.2861	10.4	33
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.4276	7.3	30
197	07	SURG	CHOLECYSTECTOMY W/O C.D.E. WITH CC	1.7014	6.2	29
198	07	SURG	CHOLECYSTECTOMY W/O C.D.E. W/O CC	.8839	2.7	26
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3390	10.8	34
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.6811	8.9	32
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.5417	10.0	33
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3029	6.9	30
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.2203	6.8	30
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1201	6.0	29
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA WITH CC	1.2281	6.5	30
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6172	3.6	27
207	07	MED	DISORDERS OF THE BILIARY TRACT WITH CC	.9866	5.3	28
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5603	3.1	26
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES - LOWER EXTREMITY	2.3848	9.4	32
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC	1.9186	10.7	34

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.3438	8.3	31
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.0490	4.2	27
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.7656	9.2	32
214	08	SURG	BACK & NECK PROCEDURES WITH CC	1.8748	8.1	31
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.0972	5.1	28
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	2.0448	10.0	33
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	3.0412	13.5	37
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 WITH CC	1.4242	6.8	30
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	.9017	4.2	26
220	08	SURG *	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	.9398	5.3	28
221	08	SURG	KNEE PROCEDURES WITH CC	1.7993	7.3	30
222	08	SURG	KNEE PROCEDURES W/O CC	.9709	3.7	27
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	.8124	3.0	22
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.6573	2.4	14
225	08	SURG	FOOT PROCEDURES	.8255	3.3	26
226	08	SURG	SOFT TISSUE PROCEDURES WITH CC	1.3386	5.8	29
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.6847	2.8	24
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	.8083	2.5	25
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.5567	1.9	14
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	.9269	3.9	27
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	1.1114	3.9	27
232	08	SURG	ARTHROSCOPY	1.1827	3.6	27
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC WITH CC	1.8439	8.2	31
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	.9044	3.9	27
235	08	MED	FRACTURES OF FEMUR	1.0150	6.8	30
236	08	MED	FRACTURES OF HIP & PELVIS	.8161	6.2	29
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5525	4.2	27
238	08	MED	OSTEOMYELITIS	1.5507	10.2	33
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.0448	7.4	30
240	08	MED	CONNECTIVE TISSUE DISORDERS WITH CC	1.1342	6.8	30
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.5842	4.3	27
242	08	MED	SEPTIC ARTHRITIS	1.1927	7.8	31
243	08	MED	MEDICAL BACK PROBLEMS	.6867	5.0	28
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES WITH CC	.7422	5.2	28
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.5120	3.8	27

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					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	08	MED		NON-SPECIFIC ARTHROPATHIES	.5713	4.2	27
247	08	MED		SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5676	3.6	27
248	08	MED		TENDONITIS, MYOSITIS & BURSITIS	.6765	4.5	27
249	08	MED		AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.7006	4.1	27
250	08	MED		FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 WITH CC	.7053	4.5	28
251	08	MED		FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	.4428	2.6	25
252	08	MED	*	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.3555	1.8	15
253	08	MED		FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 WITH CC	.7788	5.5	29
254	08	MED		FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	.4249	3.4	26
255	08	MED	*	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4717	2.9	26
256	08	MED		OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	.6544	3.7	27
257	09	SURG		TOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9025	4.2	23
258	09	SURG		TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7070	3.2	14
259	09	SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.8855	3.6	27
260	09	SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.5736	2.2	12
261	09	SURG		BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	.7220	2.2	14
262	09	SURG		BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.5432	2.1	23
263	09	SURG		SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS WITH CC	2.5340	14.2	37
264	09	SURG		SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.2745	8.2	31
265	09	SURG		SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.3952	5.9	29
266	09	SURG		SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	.7069	3.0	26
267	09	SURG		PERIANAL & PILONIDAL PROCEDURES	.6361	2.8	26
268	09	SURG		SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.7640	2.6	26
269	09	SURG		OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE WITH CC	1.7053	8.0	31
270	09	SURG		OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE W/O CC	.8458	2.8	26
271	09	MED		SKIN ULCERS	1.2022	8.4	31
272	09	MED		MAJOR SKIN DISORDERS WITH CC	1.0535	7.1	30
273	09	MED		MAJOR SKIN DISORDERS W/O CC	.8648	5.2	28
274	09	MED		MALIGNANT BREAST DISORDERS WITH CC	1.1607	6.7	30
275	09	MED		MALIGNANT BREAST DISORDERS W/O CC	.8015	3.1	26
276	09	MED		NON-MALIGANT BREAST DISORDERS	.6157	4.0	27
277	09	MED		CELLULITIS AGE >17 WITH CC	.9103	6.8	30
278	09	MED		CELLULITIS AGE >17 W/O CC	.8015	5.1	28
279	09	MED	*	CELLULITIS AGE 0-17	.7492	4.2	24
280	09	MED		TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 WITH CC	.8833	4.6	28

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	09	MED		TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4271	3.1	28
282	09	MED	*	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.3482	2.2	19
283	09	MED		MINOR SKIN DISORDERS WITH CC	.7606	5.2	28
284	09	MED		MINOR SKIN DISORDERS W/O CC	.4514	3.4	28
285	10	SURG		AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.7319	14.5	38
286	10	SURG		ADRENAL & PITUITARY PROCEDURES	2.4111	9.0	32
287	10	SURG		SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.1723	12.5	35
288	10	SURG		O.R. PROCEDURES FOR OBESITY	2.0959	7.0	30
289	10	SURG		PARATHYROID PROCEDURES	1.0320	3.7	27
290	10	SURG		THYROID PROCEDURES	.7500	2.6	18
291	10	SURG		THYROGLOSSAL PROCEDURES	.4939	1.7	9
292	10	SURG		OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC WITH CC	2.8505	11.9	35
293	10	SURG		OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1593	5.2	28
294	10	MED		DIABETES AGE >35	.7508	5.6	28
295	10	MED		DIABETES AGE 0-35	.7769	4.3	27
296	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 WITH CC	.9433	5.9	28
297	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5319	3.9	27
298	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.5779	2.8	26
299	10	MED		INBORN ERRORS OF METABOLISM	.8209	4.5	27
300	10	MED		ENDOCRINE DISORDERS WITH CC	1.1212	6.8	30
301	10	MED		ENDOCRINE DISORDERS W/O CC	.5818	3.9	27
302	11	SURG		KIDNEY TRANSPLANT	3.9177	13.5	37
303	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.6685	10.9	34
304	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL WITH CC	2.3986	9.8	33
305	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.1708	5.0	28
306	11	SURG		PROSTATECTOMY WITH CC	1.2840	6.5	30
307	11	SURG		PROSTATECTOMY W/O CC	.6947	3.7	20
308	11	SURG		MINOR BLADDER PROCEDURES WITH CC	1.4432	6.0	29
309	11	SURG		MINOR BLADDER PROCEDURES W/O CC	.7402	2.9	26
310	11	SURG		TRANSURETHRAL PROCEDURES WITH CC	.8938	3.8	27
311	11	SURG		TRANSURETHRAL PROCEDURES W/O CC	.5215	2.1	14
312	11	SURG		URETHRAL PROCEDURES, AGE >17 WITH CC	.8169	3.7	27
313	11	SURG		URETHRAL PROCEDURES, AGE >17 W/O CC	.4667	2.1	17
314	11	SURG	*	URETHRAL PROCEDURES, AGE 0-17	.4398	2.3	25
315	11	SURG		OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0508	6.6	30

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					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED		RENAL FAILURE	1.2942	6.2	29
317	11	MED		ADMIT FOR RENAL DIALYSIS	.5108	2.8	26
318	11	MED		KIDNEY & URINARY TRACT NEOPLASMS WITH CC	1.1258	5.9	29
319	11	MED		KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5104	2.5	25
320	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE >17 WITH CC	.9857	6.5	29
321	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.6299	4.8	27
322	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.6850	4.9	28
323	11	MED		URINARY STONES WITH CC, &/OR ESW LITHOTRIPSY	.7416	3.1	26
324	11	MED		URINARY STONES W/O CC	.3903	2.1	13
325	11	MED		KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 WITH CC	.6579	4.2	27
326	11	MED		KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4182	2.8	22
327	11	MED	*	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.5604	3.1	26
328	11	MED		URETHRAL STRICTURE AGE >17 WITH CC	.8434	3.6	27
329	11	MED		URETHRAL STRICTURE AGE >17 W/O CC	.4147	2.1	18
330	11	MED	*	URETHRAL STRICTURE AGE 0-17	.2835	1.6	9
331	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 WITH CC	.9797	5.3	28
332	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5378	3.0	26
333	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.9588	5.2	28
334	12	SURG		MAJOR MALE PELVIC PROCEDURES W CC	1.7878	8.2	27
335	12	SURG		MAJOR MALE PELVIC PROCEDURES W/O CC	1.3798	6.9	19
336	12	SURG		TRANSURETHRAL PROSTATECTOMY WITH CC	.8905	4.7	25
337	12	SURG		TRANSURETHRAL PROSTATECTOMY W/O CC	.6141	3.5	12
338	12	SURG		TESTES PROCEDURES, FOR MALIGNANCY	.7881	2.8	26
339	12	SURG		TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.7077	2.7	26
340	12	SURG	*	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.4409	2.4	13
341	12	SURG		PENIS PROCEDURES	.9716	3.3	25
342	12	SURG		CIRCUMCISION AGE >17	.5888	2.5	25
343	12	SURG	*	CIRCUMCISION AGE 0-17	.3852	1.7	6
344	12	SURG		OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0639	3.9	27
345	12	SURG		OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	.7572	3.2	28
346	12	MED		MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WITH CC	.9977	5.7	29
347	12	MED		MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5218	2.9	26
348	12	MED		BENIGN PROSTATIC HYPERTROPHY WITH CC	.6888	4.0	27
349	12	MED		BENIGN PROSTATIC HYPERTROPHY W/O CC	.4034	2.3	20
350	12	MED		INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6739	4.8	28

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					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	*	STERILIZATION, MALE	.3390	1.3	5
352	12	MED		OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5853	3.2	26
353	13	SURG		PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.9325	9.3	32
354	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG WITH CC	1.3856	6.8	30
355	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	.8607	4.7	12
356	13	SURG		FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.7087	3.8	15
357	13	SURG		UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIG	2.3204	10.0	33
358	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY WITH CC	1.1154	5.6	22
359	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.7796	4.2	11
360	13	SURG		VAGINA, CERVIX & VULVA PROCEDURES	.8119	4.0	27
361	13	SURG		LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.9995	3.6	27
362	13	SURG	*	ENDOSCOPIC TUBAL INTERRUPTION	.5066	1.4	5
363	13	SURG		D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6328	3.0	25
364	13	SURG		D&C, CONIZATION EXCEPT FOR MALIGNANCY	.5703	2.6	26
365	13	SURG		OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.7333	7.1	30
366	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM WITH CC	1.2102	6.4	29
367	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.4966	2.7	26
368	13	MED		INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.8830	5.8	29
369	13	MED		MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5461	3.2	28
370	14	SURG		CESAREAN SECTION W CC	.8892	5.2	24
371	14	SURG		CESAREAN SECTION W/O CC	.6447	4.0	11
372	14	MED		VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.4879	2.9	19
373	14	MED		VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3189	2.1	8
374	14	SURG		VAGINAL DELIVERY W STERILIZATION &/OR D&C	.6246	2.8	23
375	14	SURG	*	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6933	4.4	27
376	14	MED		POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	.3194	2.2	15
377	14	SURG		POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	.8445	3.8	27
378	14	MED		ECTOPIC PREGNANCY	.7802	3.3	14
379	14	MED		THREATENED ABORTION	.2845	2.0	20
380	14	MED		ABORTION W/O D&C	.3497	1.9	20
381	14	SURG		ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.4250	1.7	13
382	14	MED		FALSE LABOR	.1520	1.3	5
383	14	MED		OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.3924	3.2	26
384	14	MED		OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.2893	2.0	19
385	15	MED	*	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.2439	1.8	25

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15	MED	*	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.7098	17.9	41
387	15	MED	*	PREMATURITY W MAJOR PROBLEMS	1.8578	13.3	38
388	15	MED	*	PREMATURITY W/O MAJOR PROBLEMS	1.1767	8.6	32
389	15	MED	*	FULL TERM NEONATE W MAJOR PROBLEMS	1.4253	4.7	28
390	15	MED		NEONATE W OTHER SIGNIFICANT PROBLEMS	1.3104	4.2	27
391	15	MED	*	NORMAL NEWBORN	.2255	3.1	11
392	16	SURG		SPLENECTOMY AGE >17	3.1580	11.1	34
393	16	SURG	*	SPLENECTOMY AGE 0-17	1.5463	9.1	32
394	16	SURG		OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.5947	5.6	29
395	16	MED		RED BLOOD CELL DISORDERS AGE >17	.7907	4.6	28
396	16	MED		RED BLOOD CELL DISORDERS AGE 0-17	.6899	2.0	24
397	16	MED		COAGULATION DISORDERS	1.1954	5.3	28
398	16	MED		RETICULOENDOTHELIAL & IMMUNITY DISORDERS WITH CC	1.2163	6.4	28
399	16	MED		RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6832	4.0	27
400	17	SURG		LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.5529	8.9	32
401	17	SURG		LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.4112	10.4	33
402	17	SURG		LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	.8693	3.5	27
403	17	MED		LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6775	8.1	31
404	17	MED		LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.7522	4.0	27
405	17	MED	*	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.0583	4.9	28
406	17	SURG		MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.7902	10.9	34
407	17	SURG		MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.2024	5.0	28
408	17	SURG		MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.3730	5.0	28
409	17	MED		RADIOTHERAPY	.9920	6.1	28
410	17	MED		CHEMOTHERAPY WITHOUT ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	.6140	2.8	20
411	17	MED		HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4698	2.5	25
412	17	MED		HISTORY OF MALIGNANCY W ENDOSCOPY	.4072	1.9	17
413	17	MED		OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG WITH CC	1.3256	7.3	30
414	17	MED		OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.6849	4.0	27
415	18	SURG		O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.4971	14.5	37
416	18	MED		SEPTECEMIA AGE >17	1.5203	7.4	30
417	18	MED		SEPTECEMIA AGE 0-17	.8950	4.5	27
418	18	MED		POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9709	6.4	28
419	18	MED		FEVER OF UNKNOWN ORIGIN AGE >17 WITH CC	.9519	5.7	28
420	18	MED		FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6570	4.4	27

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NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.6849	4.3	27
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.7356	4.8	28
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.5481	7.7	31
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3554	13.5	36
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.7086	4.5	27
426	19	MED	DEPRESSIVE NEUROSES	.6031	5.1	28
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.6348	5.1	28
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7701	6.5	29
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9448	7.6	31
430	19	MED	PSYCHOSES	.9030	8.5	32
431	19	MED	CHILDHOOD MENTAL DISORDERS	.6180	5.1	28
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7081	4.5	27
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3596	2.9	26
434	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT WITH CC	.7590	5.4	28
435	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT W/O CC	.4876	4.4	27
436	20	MED	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.0080	15.0	38
437	20	MED	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.1011	14.2	37
438			NO LONGER VALID	.0000	.0	0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.2262	5.5	29
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.8295	8.1	31
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7437	2.4	25
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES WITH CC	1.9129	5.9	29
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.7604	2.6	26
444	21	MED	TRAUMATIC INJURY AGE > 17 W CC	.7648	5.2	28
445	21	MED	TRAUMATIC INJURY AGE > 17 W/O CC	.4885	3.4	26
446	21	MED	* TRAUMATIC INJURY AGE 0-17	.4877	2.4	22
447	21	MED	ALLERGIC REACTIONS AGE >17	.4905	2.5	24
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.3529	2.9	17
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 WITH CC	.7899	4.0	27
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4374	2.3	22
451	21	MED	* POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.5277	2.1	17
452	21	MED	COMPLICATIONS OF TREATMENT WITH CC	.8540	4.2	27
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4220	2.7	23
454	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG WITH CC	.8888	4.3	27
455	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG W/O CC	.4160	2.4	21

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TABLE 5

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22	MED	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.7210	4.4	27
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	2.0868	3.8	27
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.8990	16.0	39
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.9178	10.1	33
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.0043	6.2	28
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	.9111	2.7	28
462	23	MED	REHABILITATION	1.7740	13.7	37
463	23	MED	SIGNS & SYMPTOMS W CC	.7333	4.8	28
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4618	3.1	28
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.3474	1.8	17
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5332	2.4	25
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4384	2.7	28
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.2644	12.5	36
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	0
470		**	UNGROUPABLE	.0000	.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.9172	11.9	35
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	11.8267	16.0	39
473	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.4700	9.7	33
474	04		NO LONGER VALID	.0000	.0	0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.5025	9.4	32
476			PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.1952	13.5	36
477			NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.4306	5.9	29
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.1789	6.8	30
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.2851	4.1	27
480		SURG	LIVER TRANSPLANT	21.8488	28.1	51
481		SURG	BONE MARROW TRANSPLANT	15.5389	41.0	84
482		SURG	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	3.4816	13.6	37
483		SURG	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	16.2645	42.5	88
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	6.6212	14.9	38
485	24	SURG	LIMB REATTACH., HIP AND FEMUR PROCS FOR MULTI SIGN TRAUMA	3.1328	12.9	36
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.7689	10.6	34
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.8656	7.5	31
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	3.5333	14.9	38
489	25	MED	HIV W MAJOR RELATED CONDITION	1.8532	9.0	32
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.1221	5.4	28

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TABLE 5

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES - UPPER EXTREMITY	1.5760	5.3	28
492	17	MED	CHEMOTHERAPY WITH ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	2.9124	8.6	32

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TABLE 6a.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
008.00	Intestinal infection due to unspecified E. coli	N	06	182, 183, 184
008.01	Intestinal infection due to enteropathogenic E. coli	N	06	182, 183, 184
008.02	Intestinal infection due to enterotoxigenic E. coli	N	06	182, 183, 184
008.03	Intestinal infection due to enteroinvasive E. coli	N	06	182, 183, 184
008.04	Intestinal infection due to enterohemorrhagic E. coli	N	06	182, 183, 184
008.09	Intestinal infection due to other intestinal E. coli infections	N	06	182, 183, 184
008.43	Intestinal infection due to Campylobacter	N	06	182, 183, 184
008.44	Intestinal infection due to Yersinia enterocolitica	N	06	182, 183, 184
008.45	Intestinal infection due to Clostridium difficile	N	06	182, 183, 184
008.46	Intestinal infection due to other anaerobes	N	06	182, 183, 184
008.47	Intestinal infection due to other gram-negative bacteria	N	06	182, 183, 184
008.61	Enteritis due to Rotavirus	N	06	182, 183, 184
008.62	Enteritis due to Adenovirus	N	06	182, 183, 184
008.63	Enteritis due to Norwalk virus	N	06	182, 183, 184
008.64	Enteritis due to other small round viruses [SRV's]	N	06	182, 183, 184
008.65	Enteritis due to Calcivirus	N	06	182, 183, 184
008.66	Enteritis due to Astrovirus	N	06	182, 183, 184
008.67	Enteritis due to Enterovirus not elsewhere classified	N	06	182, 183, 184
008.69	Enteritis due to other viruses	N	06	182, 183, 184
041.00	Bacterial infection due to unspecified Streptococcus	N	18	423
041.01	Bacterial infection due to Streptococcus, Group A	N	18	423
041.02	Bacterial infection due to Streptococcus, Group B	N	18	423
041.03	Bacterial infection due to Streptococcus, Group C	N	18	423
041.04	Bacterial infection due to Streptococcus, Group D	N	18	423
041.05	Bacterial infection due to Streptococcus, Group G	N	18	423
041.09	Bacterial infection due to other Streptococcus	N	18	423
041.10	Bacterial infection due to unspecified Staphylococcus	N	18	423
041.11	Bacterial infection due to Staphylococcus aureus	N	18	423
041.19	Bacterial infection due to other Staphylococcus	N	18	423
041.81	Bacterial infection due to Mycoplasma	N	18	423
041.82	Bacterial infection due to Bacillus fragilis	N	18	423
041.83	Bacterial infection due to Clostridium perfringens	N	18	423
041.84	Bacterial infection due to other anaerobes	N	18	423
041.85	Bacterial infection due to other gram-negative organisms	N	18	423
041.89	Bacterial infection due to other specified bacteria	N	18	423
099.40	Unspecified nongonococcal urethritis [NGU]	N	12	423
			13	358, 359, 368
099.41	Venereal urethritis due to Chlamydia trachomatis	N	12	350
			13	358, 359, 368
099.49	Venereal urethritis due to other specified organism	N	12	350
			13	358, 359, 368
099.50	Chlamydia trachomatis infection of unspecified site	N	12	350
		13	358, 359, 368	
099.51	Chlamydia trachomatis infection of pharynx	N	03	68, 69, 70
099.52	Chlamydia trachomatis infection of anus and rectum	N	06	188, 189, 190
099.53	Chlamydia trachomatis infection of lower genitourinary sites	N	12	350
			13	358, 359, 368
099.54	Chlamydia trachomatis infection of other genitourinary sites	N	11	320, 321, 322
099.55	Chlamydia trachomatis infection of unspecified genitourinary site	N	12	350
			13	358, 359, 368
099.56	Chlamydia trachomatis infection of peritoneum	N	06	188, 189, 190
099.59	Chlamydia trachomatis infection of other specified site	N	12	350
			13	358, 359, 368
112.84	Candidiasis of the esophagus	Y	06	182, 183, 184
			15	387, 389
			25	489
112.85	Candidiasis of the intestine	Y	06	182, 183, 184
			15	387, 389
			25	489
320.81	Meningitis due to anaerobic bacteria	Y	01	20
			15	387, 389
320.82	Meningitis due to gram-negative bacteria, not elsewhere classified	Y	01	20
			15	387, 389
320.89	Meningitis due to other specified bacteria	Y	01	20
			15	387, 389
346.00	Classical migraine without mention of intractable migraine	N	01	24, 25, 26
346.01	Classical migraine with intractable migraine, so stated	N	01	24, 25, 26
346.10	Common migraine without mention of intractable migraine	N	01	24, 25, 26
346.11	Common migraine with intractable migraine, so stated	N	01	24, 25, 26
346.20	Variants of migraine without mention of intractable migraine	N	01	24, 25, 26
346.21	Variants of migraine with intractable migraine, so stated	N	01	24, 25, 26
346.80	Other forms of migraine without mention of intractable migraine	N	01	24, 25, 26
346.81	Other forms of migraine with intractable migraine, so stated	N	01	24, 25, 26
346.90	Migraine, unspecified, without mention of intractable migraine	N	01	24, 25, 26
346.91	Migraine, unspecified, with intractable migraine, so stated	N	01	24, 25, 26
371.82	Corneal disorder due to contact lens	N	02	46, 47, 48
437.7	Transient global amnesia	N	01	16, 17

TABLE 6a.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
440.20	Atherosclerosis of arteries of the extremities, unspecified	N	05	130, 131
440.21	Atherosclerosis of arteries of the extremities with intermittent claudication	N	05	130, 131
440.22	Atherosclerosis of arteries of the extremities with rest pain	N	05	130, 131
482.30	Pneumonia due to unspecified Streptococcus	Y	04	89, 90, 91
			15	[1] 387, 389
			25	489
482.31	Pneumonia due to Streptococcus, Group A	Y	04	89, 90, 91
			15	[1] 387, 389
	D	25	489	
482.32	Pneumonia due to Streptococcus, Group B	Y	04	89, 90, 91
			15	[1] 387, 389
			25	489
482.32	Pneumonia due to Streptococcus, Group B	Y	04	89, 90, 91
			15	[1] 387, 389
			25	489
482.39	Pneumonia due to other Streptococcus	Y	04	89, 90, 91
			15	[1] 387, 389
			25	489
482.81	Pneumonia due to anaerobes	Y	04	79, 80, 81
			15	[1] 387, 389
			25	489
482.82	Pneumonia due to Escherichia coli [E. coli]	Y	04	79, 80, 81
			15	[1] 387, 389
			25	489
482.83	Pneumonia due to other gram-negative bacteria	Y	04	79, 80, 81
			15	[1] 387, 389
			25	489
482.89	Pneumonia due to other specified bacteria	Y	04	79, 80, 81
			15	[1] 387, 389
			25	489
483.0	Pneumonia due to Mycoplasma pneumoniae	Y	04	89, 90, 91
			15	[1] 387, 389
483.8	Pneumonia due to other specified organism	Y	04	89, 90, 91
			15	[1] 387, 389
524.00	Unspecified anomaly of jaw size	N	03	185, 186, 187
			—	482
524.01	Maxillary hyperplasia	N	03	185, 186, 187
			—	482
524.02	Mandibular hyperplasia	N	03	185, 186, 187
			—	482
524.03	Maxillary hypoplasia	N	03	185, 186, 187
			—	482
524.04	Mandibular hypoplasia	N	03	185, 186, 187
			—	482
524.05	Macrogenia	N	03	185, 186, 187
			—	482
524.06	Microgenia	N	03	185, 186, 187
			—	482
524.09	Other specified anomaly of jaw size	N	03	185, 186, 187
			—	482
524.10	Unspecified anomaly of relationship of jaw to cranial base	N	03	185, 186, 187
			—	482
524.11	Maxillary asymmetry	N	03	185, 186, 197
			—	482
524.12	Other jaw asymmetry	N	03	185, 186, 187
			—	482
524.19	Other specified anomaly of relationship of jaw to cranial base	N	03	185, 186, 187
			—	482
524.70	Unspecified alveolar anomaly	N	03	185, 186, 187
			—	482
524.71	Alveolar maxillary hyperplasia	N	03	185, 186, 187
			—	482
524.72	Alveolar mandibular hyperplasia	N	03	185, 186, 187
			—	482
524.73	Alveolar maxillary hypoplasia	N	03	185, 186, 187
			—	482
524.74	Alveolar mandibular hypoplasia	N	03	185, 186, 187
			—	482
524.79	Other specified alveolar anomaly	N	03	185, 186, 187
			—	482
596.51	Hypertonicity of bladder	N	11	331, 332, 333
596.52	Low bladder compliance	N	11	331, 332, 333
596.53	Paralysis of bladder	N	11	331, 332, 333
596.54	Neurogenic bladder, not otherwise specified	N	11	331, 332, 333
596.55	Detrusor sphincter dyssynergia	N	11	331, 332, 333
596.59	Other functional disorder of bladder	N	11	331, 332, 333
599.81	Urethral hypermobility	N	11	331, 332, 333
599.82	Intrinsic (urethral) sphincter deficiency [ISD]	N	11	331, 332, 333
599.83	Urethral instability	N	11	331, 332, 333

TABLE 6a.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
599.84	Other specified disorders of urethra	N	11	331, 332, 333
599.89	Other specified disorders of urinary tract	N	11	331, 332, 333
659.60	Other advanced maternal age, unspecified as to episode of care or not applicable	N	14	370, 371, 372, 373, 374, 375
659.61	Other advanced maternal age, delivered, with or without mention of antepartum condition	N	14	370, 371, 372, 373, 374, 375
659.63	Other advanced maternal age, antepartum condition or complication	N	14	383, 384
692.72	Acute dermatitis due to solar radiation	N	09	283, 284
692.73	Actinic reticuloid and actinic granuloma	N	09	283, 284
692.74	Other chronic dermatitis due to solar radiation	N	09	283, 284
692.82	Dermatitis due to other radiation	N	09	283, 284
692.83	Dermatitis due to metals	N	09	283, 284
710.5	Eosinophilia myalgia syndrome	Y	09	240, 241
738.10	Unspecified acquired deformity of head	N	08	256
738.11	Zygomatic hyperplasia	N	08	256
738.12	Zygomatic hypoplasia	N	08	256
738.19	Other specified acquired deformity of head	N	08	256
780.01	Coma	Y	01	23
			15	[1] 387, 389
780.02	Transient alteration of awareness	N	01	23
780.09	Other alteration of consciousness	N	01	23
780.57	Other and unspecified sleep apnea	N	01	34,35
788.30	Unspecified urinary incontinence	N	11	325, 326, 327
788.31	Urge incontinence	N	11	325, 326, 327
788.32	Stress incontinence, male	N	11	325, 326, 327
788.33	Mixed incontinence, urge and stress	N	11	325, 326, 327
788.34	Incontinence without sensory awareness	N	11	325, 326, 327
788.35	Post-void dribbling	N	11	325, 326, 327
788.36	Nocturnal enuresis	N	11	325, 326, 327
788.37	Continuous leakage	N	11	325, 326, 327
788.39	Other urinary incontinence	N	11	325, 326, 327
864.05	Injury to liver without mention of open wound into cavity, unspecified laceration	Y	07	205, 206
			24	[2] 487
864.15	Injury to liver with open wound into cavity, unspecified laceration	Y	07	205, 206
			24	[2] 487
V07.4	[Need for] prophylactic postmenopausal hormone replacement therapy	N	23	467
V25.43	[Encounter for] surveillance of implantable subdermal contraceptive	N	23	467
V25.5	[Encounter for] insertion of implantable subdermal contraceptive	N	23	467
V29.0	Observation and evaluation of newborns and infants for suspected infectious condition not found.	N	15	[3] 391
			23	467
V29.1	Observation and evaluation of newborns and infants for suspected neurological condition not found.	N	15	[3] 391
			23	467
V29.8	Observation and evaluation of newborns and infants for other specified suspected condition not found.	N	15	[3] 391
			23	467
V29.9	Observation and evaluation of newborns and infants for unspecified suspected condition not found.	N	15	[3] 391
			23	467

[1] Diagnosis code is classified as a "major problem" in these DRGs.
[2] Diagnosis code is assigned to the "Significant Abdominal Trauma" body site category.
[3] Diagnosis code is considered in this classification only if it is a secondary diagnosis.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
02.96	Insertion of sphenoidal electrodes	N		
66.01	Salpingotomy	Y	13	354, 355, 357, 358, and 359.
66.02	Salpingostomy	Y	13	354, 355, 357, 358, and 359.
68.9	Other and unspecified hysterectomy	Y	13	354, 355, 357, 358, and 359.
			14	375
81.97	Revision of joint replacement of upper extremity	Y	08, 21, and 24.	233, 234, 442, 443, and 486.

TABLE 6C.—INVALID DIAGNOSIS CODES [1]

Diagnosis code	Description	CC	MDC	DRG.
008.0	Intestinal infection due to Escherichia coli [E. coli]	N	06	182, 183, and 184.
008.6	Enteritis due to specified virus	N	06	182, 183, and 184.
041.0	Bacterial infection due to Streptococcus	N	18	423.
041.1	Bacterial infection due to Staphylococcus	N	18	423.
041.8	Other specified bacterial infections	N	18	423.

TABLE 6C.—INVALID DIAGNOSIS CODES [1]—Continued

Diagnosis code	Description	CC	MDC	DRG
099.4	Other nongonococcal urethritis	N	12	350.
		13	358, 359, and 368..	
320.8	Meningitis due to other specified bacteria	Y	01 and 15	20, 387, and 389.[2]
346.0	Classical migraine	N	01	24, 25, and 26.
346.1	Common migraine	N	01	24, 25, and 26.
346.2	Variants of migraine	N	01	24, 25, and 26.
346.8	Other forms of migraine	N	01	24, 25, and 26.
346.9	Migraine, unspecified	N	01	24, 25, and 26.
440.2	Atherosclerosis of arteries of the extremities	N	05	130, 131.
482.3	Pneumonia due to Streptococcus	Y	04	89, 90, and 91.
482.8	Pneumonia due to other specified bacteria	Y	04	79, 80, and 81.
483	Pneumonia due to other specified organism	Y	04	89, 90, and 91.
524.0	Major anomalies of jaw size	N	03	185, 186, and 187.
524.1	Anomalies of relationship of jaw to cranial base	N	03	185, 186, and 187.
596.5	Other functional disorders of bladder	N	11	331, 332, and 333.
599.8	Other specified disorders of urethra and urinary tract	N	11	331, 332, and 333.
738.1	Other acquired deformity of head	N	08	256.
780.0	Coma and stupor	Y	01	23.
788.3	Incontinence of urine	N	11	325, 326, and 327.

[1] See Table 6a for new diagnosis codes (4- or 5-digits) that will be considered valid by the FY 1993 GROUPER.
[2] Diagnosis code is classified as a "major problem" in these DRGs.

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
46.12	Permanent magnetic colostomy	Y	06, 17, 21, and 24.	148, 149, 400, 406, 407, 442, 443, and 486.
69.11	Removal of intraligamentous ectopic pregnancy	Y	13 and 14	354, 355, 357, 358, 359, and 375.
89.49	Artificial pacemaker slew rate check	N		

Table 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
079.8	Other specified viral and Chlamydial infections	N	18	421, 422.
079.9	Unspecified viral and Chlamydial infection	N	18	421, 422.
200.00	Reticulosarcoma, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, and 404.
200.10	Lymphosarcoma, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
200.20	Burkitt's tumor or lymphoma, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
200.80	Other named variants, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
201.00	Hodgkin's paragranuloma, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
201.10	Hodgkin's granuloma, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
201.20	Hodgkins sarcoma, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404
201.40	Lymphocytic-histiocytic predominance, unspecified site, extranodal and solid organ sites.		17	400, 401, 402, 403, and 404.
201.50	Nodular sclerosis, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
201.60	Mixed cellularity, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
201.70	Lymphocytic depletion, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
201.90	Hodgkin's disease, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
202.00	Nodular lymphoma, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
202.10	Mycosis fungoides, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
202.20	Sezary's disease, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
202.30	Malignant histiocytosis, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
202.40	Leukemic reticuloendotheliosis, unspecified site, extranodal and solid organ sites.		17	400, 401, 402, 403, and 404.
202.50	Letterer-Siwe disease, unspecified site, extranodal and solid organ sites		17	406, 407, 408, 413, and 414.
202.60	Malignant mast cell tumors, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
202.80	Other lymphomas, unspecified site, extranodal and solid organ sites		17	400, 401, 402, 403, and 404.
202.90	Other and unspecified malignant neoplasms of lymphoid and histocytic tissue, unspecified site, extranodal and solid organ sites.		17	400, 401, 402, 403, and 404.
481	Pneumococcal pneumonia [Streptococcus pneumoniae pneumonia]		04	89, 89, 91.
654.20	Previous cesarean delivery, unspecified as to episode of care or not applicable	N	14	469.
654.21	Previous cesarean delivery, delivered, with or without mention of antepartum condition.	N	14	370, 371, 372, 373, 374, and 375
654.23	Previous cesarean delivery, antepartum condition or complication	N	14	383, 384.
665.10	Rupture of uterus during labor, unspecified as to episode of care or not applicable.		14	370, 371, 372, 373, 374, and 375.
665.11	Rupture of uterus during labor, delivered, with or without mention of antepartum condition.		14	370, 371, 372, 373, 374, and 375.
665.12	Rupture of uterus during labor, delivered, with mention of postpartum complication.		14	370, 371, 372, 373, 374, and 375.

Table 6E.—Revised Diagnosis Code Titles—Continued

Diagnosis code	Description	CC	MDC	DRG
665.14	Rupture of uterus during labor, postpartum condition or complication		14	376, 377.
692.79	Other dermatitis due to solar radiation	N	09	283, 284.
768.4	Fetal distress, unspecified as to time of onset, in liveborn infant	N	15	390.
785.2	Undiagnosed cardiac murmurs	N	05	135, 136, 137.
V30.00	Single liveborn, born in hospital, delivered without mention of cesarean delivery	N	15	391.
V30.01	Single liveborn, born in hospital, delivered by cesarean delivery	N	15	391.
V31.00	Twin, mate liveborn, born in hospital, delivered without mention of cesarean delivery.	N	15	391.
V31.01	Twin, mate liveborn, born in hospital, delivered by cesarean delivery	N	15	391.
V32.00	Twin, mate stillborn, born in hospital, delivered without mention of cesarean delivery.	N	15	391.
V32.01	Twin, mate stillborn, born in hospital, delivered by cesarean delivery	N	15	391.
V33.00	Twin, unspecified, born in hospital, delivered without mention of cesarean delivery.	N	15	391.
V33.01	Twin, unspecified, born in hospital, delivered by cesarean delivery	N	15	391.
V34.00	Other multiple, mates all liveborn, born in hospital, delivered without mention of cesarean.	N	15	391.
V34.01	Other multiple, mates all liveborn, born in hospital, delivered by cesarean delivery.	N	15	391.
V35.00	Other multiple, mates all stillborn, born in hospital, delivered without mention of cesarian delivery.	N	15	391.
V35.01	Other multiple, mates all stillborn, born in hospital, delivered by cesarean delivery.	N	15	391.
V36.00	Other multiple, mates live- and stillborn, born in hospital, delivered without mention of cesarean delivery.	N	15	391.
V36.01	Other multiple, mates live- and stillborn, born in hospital, delivered by cesarean delivery.	N	15	391.
V37.00	Other multiple, unspecified, born in hospital, delivered without mention of cesarean delivery.	N	15	391.
V37.01	Other multiple, unspecified, born in hospital, delivered by cesarean delivery	N	15	391.
V39.00	Liveborn infant, type of birth unspecified, born in hospital, delivered without mention of cesarean delivery.	N	15	391.
V39.01	Liveborn infant, type of birth unspecified, born in hospital, delivered by cesarean delivery.	N	15	391.
V73.8	Other specific viral and Chlamydial diseases	N	23	467.

Table 6F.—Revised Procedure Code Titles

Procedure code	Description	OR	MDC	DRG
04.01	Excision of acoustic neuroma	Y	01	1, 2, 3.
			03	63.
46.13	Permanent colostomy	Y	06	148, 149.
			17	400, 406, 407.
			21	442, 443.
			24	486.
54.91	Percutaneous abdominal drainage	N		
74.3	Removal of extratubal ectopic pregnancy	Y	14	375.
81.59	Revision of joint replacement of lower extremity, not elsewhere classified	Y	08	233, 234.
			21	21
			24	442, 443.
				486.

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Table 6g - Additions to the CC Exclusions List

CCs that are added to the list are in Table 6g-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*00321	48289	4830	4838	*01126	48230	48231	48232
32081	4830	4838	*01121	48230	48231	48232	48239
32082	4838	*01113	48230	48231	48232	48239	48281
32089	*01105	48230	48231	48232	48239	48281	48282
*01100	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01151
48281	48282	48283	48289	4830	4838	*01143	48230
48282	48283	48289	4830	4838	*01135	48230	48231
48283	48289	4830	4838	*01130	48230	48231	48232
48289	4830	4838	*01122	48230	48231	48232	48239
4830	4838	*01114	48230	48231	48232	48239	48281
4838	*01106	48230	48231	48232	48239	48281	48282
*01101	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01152
48281	48282	48283	48289	4830	4838	*01144	48230
48282	48283	48289	4830	4838	*01136	48230	48231
48283	48289	4830	4838	*01131	48230	48231	48232
48289	4830	4838	*01123	48230	48231	48232	48239
4830	4838	*01115	48230	48231	48232	48239	48281
4838	*01110	48230	48231	48232	48239	48281	48282
*01102	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01153
48281	48282	48283	48289	4830	4838	*01145	48230
48282	48283	48289	4830	4838	*01140	48230	48231
48283	48289	4830	4838	*01132	48230	48231	48232
48289	4830	4838	*01124	48230	48231	48232	48239
4830	4838	*01116	48230	48231	48232	48239	48281
4838	*01111	48230	48231	48232	48239	48281	48282
*01103	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01154
48281	48282	48283	48289	4830	4838	*01146	48230
48282	48283	48289	4830	4838	*01141	48230	48231
48283	48289	4830	4838	*01133	48230	48231	48232
48289	4830	4838	*01125	48230	48231	48232	48239
4830	4838	*01120	48230	48231	48232	48239	48281
4838	*01112	48230	48231	48232	48239	48281	48282
*01104	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01155
48281	48282	48283	48289	4830	4838	*01150	48230
48282	48283	48289	4830	4838	*01142	48230	48231
48283	48289	4830	4838	*01134	48230	48231	48232

48239	48281	48282	48283	48289	4830	4838	*01206
48281	48282	48283	48289	4830	4838	*01201	48230
48282	48283	48289	4830	4838	*01193	48230	48231
48283	48289	4830	4838	*01185	48230	48231	48232
48289	4830	4838	*01180	48230	48231	48232	48239
4830	4838	*01172	48230	48231	48232	48239	48281
4838	*01164	48230	48231	48232	48239	48281	48282
*01156	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01210
48281	48282	48283	48289	4830	4838	*01202	48230
48282	48283	48289	4830	4838	*01194	48230	48231
48283	48289	4830	4838	*01186	48230	48231	48232
48289	4830	4838	*01181	48230	48231	48232	48239
4830	4838	*01173	48230	48231	48232	48239	48281
4838	*01165	48230	48231	48232	48239	48281	48282
*01160	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01211
48281	48282	48283	48289	4830	4838	*01203	48230
48282	48283	48289	4830	4838	*01195	48230	48231
48283	48289	4830	4838	*01190	48230	48231	48232
48289	4830	4838	*01182	48230	48231	48232	48239
4830	4838	*01174	48230	48231	48232	48239	48281
4838	*01166	48230	48231	48232	48239	48281	48282
*01161	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01212
48281	48282	48283	48289	4830	4838	*01204	48230
48282	48283	48289	4830	4838	*01196	48230	48231
48283	48289	4830	4838	*01191	48230	48231	48232
48289	4830	4838	*01183	48230	48231	48232	48239
4830	4838	*01175	48230	48231	48232	48239	48281
4838	*01170	48230	48231	48232	48239	48281	48282
*01162	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01213
48281	48282	48283	48289	4830	4838	*01205	48230
48282	48283	48289	4830	4838	*01200	48230	48231
48283	48289	4830	4838	*01192	48230	48231	48232
48289	4830	4838	*01184	48230	48231	48232	48239
4830	4838	*01176	48230	48231	48232	48239	48281
4838	*01171	48230	48231	48232	48239	48281	48282
*01163	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01214

48230 48231 32089 48232 48239 0380 6822 6804
48231 48232 *01301 48239 48281 0381 6823 6805
48232 48239 32081 48281 48282 0382 6825 6806
48239 48281 32082 48282 48283 0383 6826 6807
48281 48282 32089 48283 48289 03840 6827 6808
48282 48283 *01302 48289 4830 03841 6828 6809
48283 48289 32081 4830 4838 03842 6829 6820
48289 4830 32082 4838 *01796 03843 *04102 6821
4830 4838 32089 *01791 48230 03844 0380 6822
4838 *01283 *01303 48230 48231 03849 0381 6823
*01215 48230 32081 48231 48232 0388 0382 6825
48230 48231 32082 48232 48239 0389 0383 6826
48231 48232 32089 48239 48281 6800 03840 6827
48232 48239 *01304 48281 48282 6801 03841 6828
48239 48281 32081 48282 48283 6802 03842 6829
48281 48282 32082 48283 48289 6803 03843 *04104
48282 48283 32089 48289 4830 6804 03844 0380
48283 48289 *01305 4830 4838 6805 03849 0381
48289 4830 32081 4838 *0212 6806 0388 0382
4830 4838 32082 *01792 48230 6807 0389 0383
4838 *01284 32089 48230 48231 6808 6800 03840
*01216 48230 *01306 48231 48232 6809 6801 03841
48230 48231 32081 48232 48239 6820 6802 03842
48231 48232 32082 48239 48281 6821 6803 03843
48232 48239 32089 48281 48282 6822 6804 03844
48239 48281 *01310 48282 48283 6823 6805 03849
48281 48282 32081 48283 48289 6825 6806 0388
48282 48283 32082 48289 4830 6826 6807 0389
48283 48289 32089 4830 4838 6827 6808 6800
48289 4830 *01311 4838 *0310 6828 6809 6801
4830 4838 32081 *01793 48230 6829 6820 6802
4838 *01285 32082 48230 48231 *04101 6821 6803
*01280 48230 32089 48231 48232 0380 6822 6804
48230 48231 *01312 48232 48239 0381 6823 6805
48231 48232 32081 48239 48281 0382 6825 6806
48232 48239 32082 48281 48282 0383 6826 6807
48239 48281 32089 48282 48283 03840 6827 6808
48281 48282 *01313 48283 48289 03841 6828 6809
48282 48283 32081 48289 4830 03842 6829 6820
48283 48289 32082 4830 4838 03843 *04103 6821
48289 4830 32089 4838 *0360 03844 0380 6822
4830 4838 *01314 *01794 32081 03849 0381 6823
4838 *01286 32081 48230 32082 0388 0382 6825
*01281 48230 32082 48231 32089 0389 0383 6826
48230 48231 32089 48232 *0391 6800 03840 6827
48231 48232 *01315 48239 48230 6801 03841 6828
48232 48239 32081 48281 48231 6802 03842 6829
48239 48281 32082 48282 48232 6803 03843 *04105
48281 48282 32089 48283 48239 6804 03844 0380
48282 48283 *01316 48289 48281 6805 03849 0381
48283 48289 32081 4830 48282 6806 0388 0382
48289 4830 32082 4838 48283 6807 0389 0383
4830 4838 32089 *01795 48289 6808 6800 03840
4838 *01300 *01790 48230 4830 6809 6801 03841
*01282 32081 48230 48231 4838 6820 6802 03842
48230 32082 48231 48232 *04100 6821 6803 03843

03844	0380	6822	01122	01203	01363	01634	01744
03849	0381	6823	01123	01204	01364	01635	01745
0388	0382	6825	01124	01205	01365	01636	01746
0389	0383	6826	01125	01206	01366	01640	01750
6800	03840	6827	01126	01210	01380	01641	01751
6801	03841	6828	01130	01211	01381	01642	01752
6802	03842	6829	01131	01212	01382	01643	01753
6803	03843	*04119	01132	01213	01383	01644	01754
6804	03844	0380	01133	01214	01384	01645	01755
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01166	4838	48282	48283	48289	4830	4838	*5060
01170	4841	48283	48289	4830	4838	*501	48230
01171	4843	48289	4830	4838	*4957	48230	48231
01172	4845	4830	4838	*4952	48230	48231	48232

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5902	430	*80025	*80061	*80095	*80131	*80165	*80301
5903	431	78001	78001	78001	78001	78001	78001
59080	4320	*80026	*80062	*80096	*80132	*80166	*80302
59081	4321	78001	78001	78001	78001	78001	78001
5909	436	*80029	*80063	*80099	*80133	*80169	*80303
591	78001	78001	78001	78001	78001	78001	78001
5921	*7802	*80030	*80064	*80100	*80134	*80170	*80304
5935	78001	78001	78001	78001	78001	78001	78001
5950	*7804	*80031	*80065	*80101	*80135	*80171	*80305
5951	78001	78001	78001	78001	78001	78001	78001
5952	*7809	*80032	*80066	*80102	*80136	*80172	*80306
5954	78001	78001	78001	78001	78001	78001	78001
59581	*7998	*80033	*80069	*80103	*80139	*80173	*80309
59582	78001	78001	78001	78001	78001	78001	78001
59589	*80000	*80034	*80070	*80104	*80140	*80174	*80310
5959	78001	78001	78001	78001	78001	78001	78001
5961	*80001	*80035	*80071	*80105	*80141	*80175	*80311
5962	78001	78001	78001	78001	78001	78001	78001
5964	*80002	*80036	*80072	*80106	*80142	*80176	*80312
5966	78001	78001	78001	78001	78001	78001	78001
5967	*80003	*80039	*80073	*80109	*80143	*80179	*80313
5970	78001	78001	78001	78001	78001	78001	78001
5981	*80004	*80040	*80074	*80110	*80144	*80180	*80314
5982	78001	78001	78001	78001	78001	78001	78001
5990	*80005	*80041	*80075	*80111	*80145	*80181	*80315
5994	78001	78001	78001	78001	78001	78001	78001
5996	*80006	*80042	*80076	*80112	*80146	*80182	*80316
5997	78001	78001	78001	78001	78001	78001	78001
*7105	*80009	*80043	*80079	*80113	*80149	*80183	*80319
7105	78001	78001	78001	78001	78001	78001	78001
*74861	*80010	*80044	*80080	*80114	*80150	*80184	*80320
48230	78001	78001	78001	78001	78001	78001	78001
48231	*80011	*80045	*80081	*80115	*80151	*80185	*80321
48232	78001	78001	78001	78001	78001	78001	78001
48239	*80012	*80046	*80082	*80116	*80152	*80186	*80322
48281	78001	78001	78001	78001	78001	78001	78001
48282	*80013	*80049	*80083	*80119	*80153	*80189	*80323
48283	78001	78001	78001	78001	78001	78001	78001
48289	*80014	*80050	*80084	*80120	*80154	*80190	*80324
4830	78001	78001	78001	78001	78001	78001	78001
4838	*80015	*80051	*80085	*80121	*80155	*80191	*80325
*78001	78001	78001	78001	78001	78001	78001	78001
430	*80016	*80052	*80086	*80122	*80156	*80192	*80326
431	78001	78001	78001	78001	78001	78001	78001
4320	*80019	*80053	*80089	*80123	*80159	*80193	*80329
4321	78001	78001	78001	78001	78001	78001	78001
436	*80020	*80054	*80090	*80124	*80160	*80194	*80330
78001	78001	78001	78001	78001	78001	78001	78001
*78002	*80021	*80055	*80091	*80125	*80161	*80195	*80331
430	78001	78001	78001	78001	78001	78001	78001
431	*80022	*80056	*80092	*80126	*80162	*80196	*80332
4320	78001	78001	78001	78001	78001	78001	78001
4321	*80023	*80059	*80093	*80129	*80163	*80199	*80333
436	78001	78001	78001	78001	78001	78001	78001
78001	*80024	*80060	*80094	*80130	*80164	*80300	*80334
*78009	78001	78001	78001	78001	78001	78001	78001

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*80344 78001	*80380 78001	*80414 78001	*80450 78001	*80484 78001	*85112 78001	*85146 78001	*85182 78001
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*80350 78001	*80384 78001	*80420 78001	*80454 78001	*80490 78001	*85116 78001	*85152 78001	*85186 78001
*80351 78001	*80385 78001	*80421 78001	*80455 78001	*80491 78001	*85119 78001	*85153 78001	*85189 78001
*80352 78001	*80386 78001	*80422 78001	*80456 78001	*80492 78001	*85120 78001	*85154 78001	*85190 78001
*80353 78001	*80389 78001	*80423 78001	*80459 78001	*80493 78001	*85121 78001	*85155 78001	*85191 78001
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*80356 78001	*80392 78001	*80426 78001	*80462 78001	*80496 78001	*85124 78001	*85160 78001	*85194 78001
*80359 78001	*80393 78001	*80429 78001	*80463 78001	*8500 78001	*85125 78001	*85161 78001	*85195 78001
*80360 78001	*80394 78001	*80430 78001	*80464 78001	*8501 78001	*85126 78001	*85162 78001	*85196 78001
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*80362 78001	*80396 78001	*80432 78001	*80466 78001	*8503 78001	*85130 78001	*85164 78001	*85200 78001
*80363 78001	*80399 78001	*80433 78001	*80469 78001	*8504 78001	*85131 78001	*85165 78001	*85201 78001
*80364 78001	*80400 78001	*80434 78001	*80470 78001	*8505 78001	*85132 78001	*85166 78001	*85202 78001
*80365 78001	*80401 78001	*80435 78001	*80471 78001	*8509 78001	*85133 78001	*85169 78001	*85203 78001
*80366 78001	*80402 78001	*80436 78001	*80472 78001	*85100 78001	*85134 78001	*85170 78001	*85204 78001
*80369 78001	*80403 78001	*80439 78001	*80473 78001	*85101 78001	*85135 78001	*85171 78001	*85205 78001
*80370 78001	*80404 78001	*80440 78001	*80474 78001	*85102 78001	*85136 78001	*85172 78001	*85206 78001

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Table 6h - Deletions to the CC Exclusions List

CCs that are deleted from the list are in Table 6h-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*00321	4828	4828	4828	4828	4828	4828	*01316
3208	483	483	483	483	483	483	3208
*01100	*01120	*01140	*01160	*01180	*01200	*01280	*01790
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01101	*01121	*01141	*01161	*01181	*01201	*01281	*01791
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01102	*01122	*01142	*01162	*01182	*01202	*01282	*01792
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01103	*01123	*01143	*01163	*01183	*01203	*01283	*01793
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01104	*01124	*01144	*01164	*01184	*01204	*01284	*01794
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01105	*01125	*01145	*01165	*01185	*01205	*01285	*01795
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01106	*01126	*01146	*01166	*01186	*01206	*01286	*01796
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01110	*01130	*01150	*01170	*01190	*01210	*01300	*0212
4823	4823	4823	4823	4823	4823	3208	4823
4828	4828	4828	4828	4828	4828	*01301	4828
483	483	483	483	483	483	3208	483
*01111	*01131	*01151	*01171	*01191	*01211	*01302	*0310
4823	4823	4823	4823	4823	4823	3208	4823
4828	4828	4828	4828	4828	4828	*01303	4828
483	483	483	483	483	483	3208	483
*01112	*01132	*01152	*01172	*01192	*01212	*01304	*0360
4823	4823	4823	4823	4823	4823	3208	3208
4828	4828	4828	4828	4828	4828	*01305	*0391
483	483	483	483	483	483	3208	4823
*01113	*01133	*01153	*01173	*01193	*01213	*01306	4828
4823	4823	4823	4823	4823	4823	3208	483
4828	4828	4828	4828	4828	4828	*01310	*0410
483	483	483	483	483	483	3208	0380
*01114	*01134	*01154	*01174	*01194	*01214	*01311	0381
4823	4823	4823	4823	4823	4823	3208	0382
4828	4828	4828	4828	4828	4828	*01312	0383
483	483	483	483	483	483	3208	03840
*01115	*01135	*01155	*01175	*01195	*01215	*01313	03841
4823	4823	4823	4823	4823	4823	3208	03842
4828	4828	4828	4828	4828	4828	*01314	03843
483	483	483	483	483	483	3208	03844
*01116	*01136	*01156	*01176	*01196	*01216	*01315	03849
4823	4823	4823	4823	4823	4823	3208	0388

0389	01103	01184	01344	01615	01725	01805	6825
6800	01104	01185	01345	01616	01726	01806	6826
6801	01105	01186	01346	01620	01730	01880	6827
6802	01106	01190	01350	01621	01731	01881	6828
6803	01110	01191	01351	01622	01732	01882	6829
6804	01111	01192	01352	01623	01733	01883	*0470
6805	01112	01193	01353	01624	01734	01884	3208
6806	01113	01194	01354	01625	01735	01885	*0471
6807	01114	01195	01355	01626	01736	01886	3208
6808	01115	01196	01356	01630	01740	01890	*0478
6809	01116	01200	01360	01631	01741	01891	3208
6820	01120	01201	01361	01632	01742	01892	*0479
6821	01121	01202	01362	01633	01743	01893	3208
6822	01122	01203	01363	01634	01744	01894	*0490
6823	01123	01204	01364	01635	01745	01895	3208
6825	01124	01205	01365	01636	01746	01896	*0491
6826	01125	01206	01366	01640	01750	0310	3208
6827	01126	01210	01380	01641	01751	0360	*0530
6828	01130	01211	01381	01642	01752	0361	3208
6829	01131	01212	01382	01643	01753	0362	*05472
*0411	01132	01213	01383	01644	01754	0363	3208
0380	01133	01214	01384	01645	01755	03640	*0700
0381	01134	01215	01385	01646	01756	03641	7800
0382	01135	01216	01386	01650	01760	03642	*0701
0383	01136	01300	01390	01651	01761	03643	7800
03840	01140	01301	01391	01652	01762	03681	*07020
03841	01141	01302	01392	01653	01763	03682	7800
03842	01142	01303	01393	01654	01764	03689	*07021
03843	01143	01304	01394	01655	01765	0369	7800
03844	01144	01305	01395	01656	01766	0380	*07030
03849	01145	01306	01396	01660	01770	0381	7800
0388	01146	01310	01400	01661	01771	0382	*07031
0389	01150	01311	01401	01662	01772	0383	7800
6800	01151	01312	01402	01663	01773	03840	*07041
6801	01152	01313	01403	01664	01774	03841	7800
6802	01153	01314	01404	01665	01775	03842	*07042
6803	01154	01315	01405	01666	01776	03843	7800
6804	01155	01316	01406	01670	01780	03844	*07043
6805	01156	01320	01480	01671	01781	03849	7800
6806	01160	01321	01482	01672	01782	0388	*07049
6807	01161	01322	01483	01673	01783	0389	7800
6808	01162	01323	01484	01674	01784	3570	*07051
6809	01163	01324	01485	01675	01785	6800	7800
6820	01164	01325	01486	01676	01786	6801	*07052
6821	01165	01326	01600	01690	01790	6802	7800
6822	01170	01330	01601	01691	01791	6803	*07053
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6825	01172	01332	01603	01693	01793	6805	*07059
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6829	01176	01336	01610	01720	01800	6809	*0709
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01102	01183	01343	01614	01724	01804	6823	*09042

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*0942	4828	*25080	3200	*4320	01116	01196	*4824
3208	483	3208	3201	7800	01120	01200	4823
*09889	*11591	7800	3202	*4321	01121	01201	4828
3208	3208	*25081	3203	7800	01122	01202	483
*0994	*11595	3208	3207	*4329	01123	01203	*4828
09040	4823	7800	3208	7800	01124	01204	01100
09041	4828	*25090	3209	*4800	01125	01205	01101
09042	483	3208	3210	4823	01126	01206	01102
09049	*1221	7800	3211	4828	01130	01210	01103
0930	4823	*25091	3212	483	01131	01211	01104
0931	4828	3208	3213	*4801	01132	01212	01105
09320	483	7800	3214	4823	01133	01213	01106
09321	*1300	*2510	3218	4828	01134	01214	01110
09322	3208	7800	3220	483	01135	01215	01111
09323	*1304	*2511	3221	*4802	01136	01216	01112
09324	4823	7800	3222	4823	01140	0310	01113
09381	4828	*2512	3229	4828	01141	11505	01114
09382	483	7800	3570	483	01142	11515	01115
09389	*1363	*2513	*3209	*4808	01143	1304	01116
0939	4823	7800	3208	4823	01144	1363	01120
0940	4828	*3200	*3210	4828	01145	481	01121
0941	483	3208	3208	483	01146	4820	01122
0942	*25000	*3201	*3211	*4809	01150	4821	01123
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09815	*25030	01303	*3221	*4821	01165	4848	01141
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09817	*25031	01305	*3222	4828	01170	486	01143
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5990	7800	01311	3208	4823	01173	4951	01146
*10081	*25041	01312	*3488	4828	01174	4952	01150
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*11283	*25050	01314	*3489	*4823	01176	4954	01152
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4828	3208	0942	*3570	01110	01190	5070	01163
483	7800	11283	3208	01111	01191	5071	01164
*11511	*25070	1142	*430	01112	01192	5078	01165

01166	485	01142	11515	4823	4823	4823	7800
01170	486	01143	1304	4828	4828	4828	*5965
01171	4870	01144	1363	483	483	483	5960
01172	4950	01145	481	*4848	*4958	*5069	5964
01173	4951	01146	4820	4823	4823	4823	5996
01174	4952	01150	4821	4828	4828	4828	7882
01175	4953	01151	4822	483	483	483	*5998
01176	4954	01152	4823	*485	*4959	*5070	5800
01180	4955	01153	4824	4823	4823	4823	5804
01181	4956	01154	4828	4828	4828	4828	58081
01182	4957	01155	4829	483	483	483	58089
01183	4958	01156	483	*486	*496	*5071	5809
01184	4959	01160	4841	4823	4823	4823	5810
01185	5060	01161	4843	4828	4828	4828	5811
01186	5061	01162	4845	483	483	483	5812
01190	5070	01163	4846	*4870	*500	*5078	5813
01191	5071	01164	4847	4823	4823	4823	58181
01192	5078	01165	4848	4828	4828	4828	58189
01193	5080	01166	485	483	483	483	5819
01194	5081	01170	486	*4871	*501	*5080	5834
01195	5171	01171	4870	4823	4823	4823	5845
01196	*4829	01172	4950	4828	4828	4828	5846
01200	4823	01173	4951	483	483	483	5847
01201	4828	01174	4952	*494	*502	*5081	5848
01202	483	01175	4953	4823	4823	4823	5849
01203	*483	01176	4954	4828	4828	4828	585
01204	01100	01180	4955	483	483	483	59010
01205	01101	01181	4956	*4950	*503	*5088	59011
01206	01102	01182	4957	4823	4823	4823	5902
01210	01103	01183	4958	4828	4828	4828	5903
01211	01104	01184	4959	483	483	483	59080
01212	01105	01185	5060	*4951	*504	*5089	59081
01213	01106	01186	5061	4823	4823	4823	5909
01214	01110	01190	5070	4828	4828	4828	591
01215	01111	01191	5071	483	483	483	5921
01216	01112	01192	5078	*4952	*505	*5171	5935
0310	01113	01193	5080	4823	4823	4823	5950
11505	01114	01194	5081	4828	4828	4828	5951
11515	01115	01195	5171	483	483	483	5952
1304	01116	01196	*4841	*4953	*5060	*5178	5954
1363	01120	01200	4823	4823	4823	4823	59581
481	01121	01201	4828	4828	4828	4828	59582
4820	01122	01202	483	483	483	483	59589
4821	01123	01203	*4843	*4954	*5061	*51889	5959
4822	01124	01204	4823	4823	4823	4823	5961
4823	01125	01205	4828	4828	4828	4828	5962
4824	01126	01206	483	483	483	483	5964
4828	01130	01210	*4845	*4955	*5062	*5198	5966
4829	01131	01211	4823	4823	4823	4823	5967
483	01132	01212	4828	4828	4828	4828	5970
4841	01133	01213	483	483	483	483	5981
4843	01134	01214	*4846	*4956	*5063	*5199	5982
4845	01135	01215	4823	4823	4823	4823	5990
4846	01136	01216	4828	4828	4828	4828	5994
4847	01140	0310	483	483	483	483	5996
4848	01141	11505	*4847	*4957	*5064	*5722	5997

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4828	7800	7800	7800	7800	7800	7800	7800
483	*80024	*80060	*80094	*80130	*80164	*80300	*80334
*7800	7800	7800	7800	7800	7800	7800	7800
430	*80025	*80061	*80095	*80131	*80165	*80301	*80335
431	7800	7800	7800	7800	7800	7800	7800
4320	*80026	*80062	*80096	*80132	*80166	*80302	*80336
4321	7800	7800	7800	7800	7800	7800	7800
436	*80029	*80063	*80099	*80133	*80169	*80303	*80339
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*7809	*80032	*80066	*80102	*80136	*80172	*80306	*80342
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*7998	*80033	*80069	*80103	*80139	*80173	*80309	*80343
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*80001	*80035	*80071	*80105	*80141	*80175	*80311	*80345
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*80002	*80036	*80072	*80106	*80142	*80176	*80312	*80346
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*80003	*80039	*80073	*80109	*80143	*80179	*80313	*80349
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*80004	*80040	*80074	*80110	*80144	*80180	*80314	*80350
7800	7800	7800	7800	7800	7800	7800	7800
*80005	*80041	*80075	*80111	*80145	*80181	*80315	*80351
7800	7800	7800	7800	7800	7800	7800	7800
*80006	*80042	*80076	*80112	*80146	*80182	*80316	*80352
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7800	7800	7800	7800	7800	7800	7800	7800
*80014	*80050	*80084	*80120	*80154	*80190	*80324	*80360
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*80021	*80055	*80091	*80125	*80161	*80195	*80331	*80365
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7800	7800	7800	7800	7800	7800	7800	7800
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7800	7800	7800	7800	7800	7800	7800	7800
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7800	7800	7800	7800	7800	7800	7800	7800
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7800	7800	7800	7800	7800	7800	7800	7800
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7800	7800	7800	7800	7800	7800	7800	7800
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*80396	*80432	*80466	*8503	*85130	*85164	*85200	*85235
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7800	7800	7800	7800	7800	7800	7800	7800
*80400	*80434	*80470	*8505	*85132	*85166	*85202	*85239
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*80401	*80435	*80471	*8509	*85133	*85169	*85203	*85240
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TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	28268	15.7441	4	7	11	19	31
002	5718	14.9003	4	7	11	19	30
003	3	2.0000	1	1	1	4	4
004	5127	13.0521	3	5	9	16	27
005	52807	6.7496	2	3	5	8	13
006	854	3.3162	1	1	2	3	7
007	5742	21.2179	2	6	11	22	45
008	2699	4.5954	1	1	3	6	10
009	1678	10.5864	2	4	7	12	21
010	19835	10.8720	2	4	7	14	22
011	3528	6.4212	1	2	4	8	13
012	21359	10.4106	2	4	7	12	19
013	5571	8.5144	3	4	7	10	15
014	337593	9.9669	3	4	7	12	19
015	133891	5.4328	2	3	4	6	10
016	11011	9.3524	3	4	7	11	18
017	2962	5.7667	2	3	5	7	10
018	13605	7.9338	2	4	6	9	15
019	6848	5.4936	1	2	4	7	11
020	7404	12.4114	2	5	9	16	25
021	1006	9.6928	3	4	7	12	19
022	9691	5.5158	2	3	4	7	10
023	3067	6.2097	1	2	4	7	12
024	53265	7.3423	2	3	5	9	14
025	22480	4.4321	1	2	3	5	8
026	55	5.6727	1	2	3	5	14
027	2678	7.9623	1	2	4	10	18
028	7878	9.4439	2	3	6	11	19
029	3540	4.8621	1	2	3	6	10
030	2	1.0000	1	1	1	1	1
031	3572	6.6249	2	2	4	7	13
032	2583	3.6806	1	2	3	4	7
034	13481	8.8028	2	3	6	10	17
035	3768	5.2606	1	2	4	6	10
036	20229	2.3422	1	1	2	3	4
037	2665	4.4649	1	1	3	5	10
038	770	2.8208	1	1	2	3	5
039	9581	1.9363	1	1	1	2	3
040	3321	3.4192	1	1	2	4	7
042	20297	2.5528	1	1	2	3	5
043	201	5.6866	1	2	4	6	11
044	1962	6.2819	2	4	5	7	11
045	2588	4.4532	1	2	4	6	8
046	2878	6.2827	1	2	5	8	12
047	1859	4.4330	1	2	3	5	8
048	2	7.0000	5	5	9	9	9
049	2967	7.6923	2	3	5	9	16
050	4902	2.8391	1	1	2	3	4
051	524	2.8645	1	1	2	3	6
052	171	3.1462	1	1	2	3	6
053	6387	3.4481	1	1	2	3	8

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
055	3589	2.7317	1	1	1	2	6
056	1090	2.7009	1	1	2	3	6
057	898	5.3750	1	2	3	6	11
058	1	1.0000	1	1	1	1	1
059	183	2.1858	1	1	1	2	4
061	381	5.0919	1	1	2	6	12
063	4780	5.7492	1	2	4	7	12
064	4332	8.7652	1	2	5	11	20
065	32014	4.1498	1	2	3	5	8
066	7733	4.3419	1	2	3	5	8
067	425	5.1671	2	3	4	6	9
068	11536	5.9536	2	3	5	7	11
069	3729	4.3124	2	2	4	5	8
070	17	4.5294	1	2	3	5	9
071	132	5.0682	2	3	4	6	10
072	873	5.7281	1	2	3	5	9
073	6546	6.0053	1	2	4	7	12
074	2	11.0000	9	9	13	13	13
075	31763	13.7042	6	8	10	16	25
076	75079	14.3224	4	7	11	18	27
077	6545	7.5325	1	3	6	10	15
078	28477	10.0135	4	7	9	12	18
079	132677	11.6036	4	6	9	14	21
080	8940	7.7613	3	4	6	9	14
081	1	7.0000	7	7	7	7	7
082	58814	9.0936	2	4	7	12	19
083	7021	8.1493	2	4	6	10	15
084	1783	4.4577	1	2	3	6	8
085	16869	8.8759	2	4	7	11	17
086	1697	5.2787	1	2	4	7	10
087	61021	8.0394	2	4	6	10	15
088	161966	7.3437	3	4	6	9	13
089	388544	6.6408	3	5	7	10	15
090	45578	6.1821	3	4	5	7	10
091	44	6.1136	2	3	5	7	11
092	8321	8.5321	3	4	7	10	16
093	1327	5.8425	2	3	5	7	10
094	9350	9.3702	3	4	7	11	18
095	1287	5.3963	2	3	4	7	10
096	176236	7.0607	3	4	6	8	12
097	32075	5.1441	2	3	4	6	9
098	17	6.2941	2	3	5	6	10
099	30114	5.1423	1	2	4	6	10
100	11199	3.1203	1	2	2	4	6
101	18008	6.6578	2	3	5	8	13
102	3535	4.2795	1	2	3	5	8
103	238	32.1723	10	14	23	38	62
104	17372	20.2585	9	12	17	25	35
105	15979	14.4294	7	9	11	16	25
106	74580	15.2254	8	10	13	17	24
107	52388	11.7806	7	8	10	13	18

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
108	8815	15.1239	7	9	12	18	27
110	50710	13.4182	3	8	11	16	25
111	6320	8.4106	3	6	8	10	13
112	128899	6.0896	2	3	5	8	12
113	36405	18.7793	6	8	14	22	37
114	8076	12.4459	3	5	9	15	24
115	8203	13.8516	5	8	11	17	24
116	63412	7.2544	2	3	6	9	14
117	3265	5.5103	1	2	3	7	12
118	8177	3.9209	1	1	2	4	9
119	3204	6.2644	1	2	3	7	15
120	34531	12.1610	2	3	8	15	27
121	143327	9.6028	4	6	8	11	16
122	99268	6.8777	2	4	7	9	11
123	55036	5.2981	1	1	3	7	13
124	123827	5.7604	1	2	5	7	11
125	88564	3.1515	1	1	2	4	7
126	4203	20.4149	5	10	16	29	41
127	602239	7.7143	2	4	6	9	14
128	23149	8.4066	4	5	7	10	13
129	6227	4.7466	1	1	1	6	12
130	70683	8.0792	2	4	7	10	14
131	26293	5.9626	1	3	6	8	10
132	12891	5.5565	1	2	4	7	11
133	4152	3.9188	1	2	3	5	7
134	29006	4.9912	2	2	4	6	9
135	6404	6.6284	2	3	5	8	13
136	1428	4.3690	1	2	3	5	7
138	185487	5.8414	2	3	4	7	11
139	71704	3.6838	1	2	3	5	7
140	341502	4.4690	2	2	4	5	8
141	76370	5.6764	2	3	4	7	10
142	36764	3.9269	1	2	3	5	7
143	115719	3.3746	1	2	3	4	6
144	55652	7.0829	2	3	5	9	14
145	8435	4.1801	1	2	3	5	8
146	7585	13.7870	7	9	11	15	22
147	1620	8.9846	5	7	9	11	13
148	141393	15.8461	7	9	12	18	28
149	18120	9.0679	6	7	8	10	13
150	21587	13.8921	5	8	11	17	24
151	4781	7.7833	3	4	7	10	13
152	4551	10.6339	5	7	9	12	18
153	2048	7.0459	4	5	7	8	10
154	37035	17.9293	7	9	14	22	34
155	4178	8.6084	4	5	7	10	14
157	13128	6.5957	2	3	5	8	13
158	9959	3.0688	1	1	2	4	6
159	16227	6.3665	2	3	5	8	12
160	12821	3.3392	1	2	3	4	6
161	23791	4.6269	1	2	3	6	10

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
162	21101	2.2025	1	1	2	3	4
163	10	2.4000	1	2	2	3	4
164	4579	11.3872	5	7	9	13	19
165	1794	7.0284	4	5	7	9	11
166	2932	7.1538	3	4	6	9	13
167	2170	4.1253	2	3	4	5	7
168	1799	5.7943	1	2	3	7	12
169	1366	2.9129	1	1	2	3	6
170	12713	15.6310	3	7	11	19	31
171	1463	6.9412	1	3	6	9	13
172	31140	10.3381	2	4	7	13	21
173	3337	5.2517	1	2	4	7	11
174	165016	6.9276	2	4	5	8	13
175	22542	4.3682	2	3	4	5	7
176	12892	7.7026	2	4	6	9	14
177	14855	6.2788	2	3	5	8	11
178	8418	4.4483	2	3	4	5	8
179	8630	9.5102	3	4	7	11	18
180	69302	7.6203	2	4	6	9	14
181	22049	4.5862	2	3	4	6	8
182	256259	6.2255	2	3	5	7	11
183	78176	4.5400	1	2	4	5	8
184	50	3.6000	1	2	3	4	6
185	3831	6.3156	1	3	5	8	13
186	1	4.0000	4	4	4	4	4
187	997	3.9529	1	1	2	5	8
188	49808	7.3748	2	3	5	9	14
189	9043	3.8545	1	1	3	5	8
190	94	5.2447	2	3	4	7	10
191	10080	19.7738	6	10	15	24	38
192	985	9.6020	3	6	8	12	18
193	12295	16.5567	7	9	14	20	29
194	1416	9.7041	3	6	8	12	17
195	17110	12.2889	6	7	10	14	20
196	1856	8.2193	4	5	7	10	13
197	76376	8.4937	2	4	7	11	16
198	48853	3.8350	1	1	3	5	7
199	2829	14.2618	4	7	11	18	27
200	1923	13.5190	2	5	10	17	28
201	2997	14.3784	3	6	10	18	30
202	17745	9.6320	2	4	7	12	19
203	29497	9.7206	2	4	7	12	20
204	39199	8.0600	3	4	5	9	15
205	20814	9.1418	2	4	7	11	18
206	2413	5.0220	1	2	4	7	10
207	37528	7.0338	2	3	5	8	13
208	14008	4.0415	1	2	3	5	7
209	287627	10.5536	6	7	9	12	18
210	116591	12.9940	6	8	10	14	21
211	28911	9.4425	5	6	8	11	14
212	18	6.1111	2	2	3	7	9

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
213	5738	12.8313	3	6	9	16	25
214	41313	10.2321	4	5	8	12	19
215	37881	6.0864	3	4	5	7	10
216	7018	14.4741	3	6	11	18	28
217	19628	21.0197	4	7	14	27	45
218	18336	9.0048	3	4	7	11	17
219	17781	5.1588	2	3	4	6	9
220	4	2.2500	1	1	2	3	3
221	4856	10.7091	2	4	8	13	21
222	5229	5.2878	1	2	4	7	10
223	15713	4.0320	1	2	3	4	7
224	8728	2.8997	1	2	2	3	5
225	9983	5.2825	1	2	3	6	12
226	5452	8.9762	2	3	6	11	20
227	8485	3.8863	1	2	3	4	7
228	4327	3.7123	1	1	2	4	8
229	2505	2.8591	1	1	2	3	6
230	3230	6.4412	1	2	4	7	13
231	10173	6.5634	1	2	4	7	15
232	793	6.5523	1	2	3	7	17
233	5186	11.6795	3	5	8	15	23
234	3023	5.4016	1	2	4	7	11
235	6239	11.1886	2	4	7	12	23
236	38320	6.9097	2	4	7	10	17
237	1881	5.8257	2	3	4	7	10
238	6361	13.9027	4	8	10	17	28
239	58319	10.0120	3	5	7	12	19
240	10920	9.3950	3	5	7	11	18
241	3950	5.6483	2	3	4	7	11
242	2498	10.5086	3	5	8	13	22
243	103841	6.8288	2	3	5	8	14
244	11061	7.2525	2	3	5	8	14
245	5681	5.3374	1	2	4	6	10
246	1728	5.4177	2	3	4	7	10
247	9849	5.0789	1	2	4	6	10
248	8248	5.1908	2	3	4	7	10
249	8359	5.3973	1	2	4	6	10
250	3393	5.7781	2	3	4	6	10
251	3237	3.6256	1	1	2	4	7
253	16958	5.1943	2	3	4	6	9
254	12121	4.7225	1	2	3	4	7
255	2	2.5000	1	1	2	3	4
256	9233	5.4512	1	2	4	6	11
257	28219	5.1278	2	3	4	6	9
258	26390	3.6482	2	2	3	4	6
259	4004	5.8288	1	2	3	5	9
260	4979	2.5700	1	1	2	3	4
261	2941	2.8259	1	1	2	3	5
262	1302	3.5861	1	1	2	3	7
263	28743	20.2119	5	8	14	24	39
264	4186	11.3512	3	5	8	14	23

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
265	4915	9.6867	2	3	6	11	21
266	4167	4.3252	1	2	3	5	9
267	368	4.9837	1	1	3	5	11
268	1410	5.1723	1	1	2	5	9
269	10906	12.2327	2	4	8	15	25
270	5130	4.0310	1	2	3	5	9
271	19866	11.4729	3	5	8	13	21
272	6799	9.3836	3	5	7	11	18
273	2194	6.8090	2	3	5	8	14
274	3139	10.9341	2	4	7	12	21
275	401	5.7232	1	2	3	6	9
276	867	5.7151	1	2	4	7	11
277	70657	8.4681	3	5	7	10	15
278	25890	6.1614	3	4	5	7	11
279	6	7.0000	2	3	4	11	11
280	12914	6.7166	2	3	5	8	13
281	7188	4.1994	1	2	3	5	8
282	1	2.0000	2	2	2	2	2
283	5814	7.3003	2	3	5	8	14
284	2389	5.0682	1	2	4	6	9
285	4549	20.6736	5	9	15	25	40
286	1721	11.2702	5	6	8	13	22
287	6493	18.7138	4	7	12	21	38
288	507	10.4694	3	4	7	10	21
289	3955	5.6718	2	2	3	5	12
290	9577	3.4522	1	2	2	4	8
291	143	2.1049	1	1	2	2	4
292	5044	17.6921	4	7	13	21	35
293	505	7.4950	1	3	6	10	15
294	89720	7.2549	3	4	6	8	13
295	3262	5.8483	2	3	4	7	11
296	210976	8.3160	2	4	6	10	16
297	44441	5.1711	2	3	4	6	9
298	65	4.6308	1	2	2	5	8
299	877	6.5530	1	2	5	8	13
300	11785	9.3115	3	4	7	11	18
301	2074	5.2160	1	2	4	7	10
302	6613	15.9483	7	9	13	19	28
303	17481	13.2953	6	8	10	15	23
304	13878	13.3942	4	6	10	16	26
305	3517	6.4578	2	3	6	8	12
306	12341	8.8255	3	4	6	11	17
307	4325	4.5686	2	3	4	5	8
308	10288	9.0454	2	3	6	11	19
309	4383	3.9877	1	2	3	5	8
310	35212	5.8127	1	2	4	7	11
311	19528	2.6869	1	1	2	3	5
312	3102	5.5239	1	2	4	7	11
313	1818	2.7629	1	1	2	3	5
314	1	8.0000	8	8	8	8	8
315	28943	12.2125	1	3	7	15	27

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
316	49066	9.1396	2	4	7	12	18
317	707	4.1782	1	2	3	4	8
318	8661	8.9922	2	3	6	11	19
319	884	3.7986	1	1	2	4	8
320	162684	8.3590	3	4	6	10	15
321	29134	5.8757	2	3	5	7	10
322	50	5.8400	2	3	5	7	10
323	20541	4.2749	1	2	3	5	8
324	13478	2.5819	1	1	2	3	5
325	9618	5.7660	2	3	4	7	11
326	3608	3.5658	1	2	3	4	7
327	8	7.0000	1	2	5	8	10
328	1257	4.9578	1	2	4	6	9
329	341	2.9003	1	1	2	4	5
331	29323	7.4644	2	3	6	9	15
332	5847	4.4404	1	2	3	5	9
333	311	7.5949	2	3	5	10	16
334	22368	9.1218	5	6	8	10	14
335	10820	7.2799	5	6	7	8	10
336	105208	5.7983	3	3	4	7	10
337	88453	3.8239	2	3	3	4	6
338	7449	5.2254	1	1	2	6	13
339	3230	4.6889	1	1	2	5	11
340	2	5.0000	3	3	7	7	7
341	12839	4.3806	1	2	3	5	8
342	410	3.8510	1	1	2	4	9
343	2	2.0000	1	1	3	3	3
344	4825	5.3988	1	2	4	6	10
345	2512	4.8949	1	2	3	5	10
346	7797	8.5775	2	3	6	10	17
347	963	4.3894	1	1	3	5	9
348	4269	5.7126	1	2	4	7	11
349	1634	3.1157	1	1	2	4	6
350	7998	5.8718	2	3	5	7	10
351	1	6.0000	6	6	6	6	6
352	770	4.8065	1	2	3	6	10
353	2321	11.4942	5	6	9	14	21
354	9487	8.2451	4	5	6	9	14
355	6005	4.9975	3	4	5	6	7
356	31595	4.3123	2	3	4	5	7
357	6815	12.4031	5	7	10	15	23
358	23005	6.5669	3	4	5	7	11
359	26844	4.4906	3	4	4	5	8
360	9626	5.2339	2	3	4	6	8
361	440	5.7500	1	2	4	6	14
363	5695	4.3392	1	2	3	4	8
364	2842	4.1862	1	1	2	5	8
365	3169	10.7349	3	4	7	13	23
366	5027	10.0072	2	3	7	13	21
367	873	3.9210	1	1	3	4	8
368	1482	7.3657	2	4	6	9	14

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
369	2518	4.594	1	2	3	6	9
370	612	6.363	3	4	5	7	10
371	885	4.419	3	3	4	5	6
372	409	3.807	1	2	3	4	6
373	2513	2.522	1	2	2	3	5
374	67	4.000	2	2	2	3	5
375	7	14.714	1	2	2	7	14
376	146	2.740	1	1	2	3	5
377	27	5.074	1	2	4	7	10
378	138	3.652	2	3	3	4	6
379	310	2.971	1	1	2	3	6
380	66	2.818	1	1	2	3	5
381	222	2.432	1	1	1	3	4
382	58	1.448	1	1	1	2	2
383	842	4.426	1	2	3	5	9
384	98	2.724	1	1	2	3	6
385	5	5.600	1	1	3	6	15
386	1	149.000	149	149	149	149	149
387	1	6.000	6	6	6	6	6
389	9	8.556	1	5	9	9	11
390	28	6.536	1	2	4	11	14
391	1	2.000	2	2	2	2	2
392	2443	14.079	5	7	10	18	27
394	1980	10.330	1	2	6	12	22
395	70959	6.446	2	3	5	8	13
396	13	3.154	1	1	2	2	5
397	12488	7.452	2	3	5	9	15
398	14832	8.302	3	4	6	10	15
399	1681	5.258	1	2	4	7	10
400	8031	13.330	3	5	9	17	28
401	6988	15.257	3	6	11	19	32
402	2355	5.211	1	2	3	7	11
403	27920	11.893	2	5	8	15	25
404	5327	5.685	1	2	4	7	12
405	5	3.000	1	1	3	3	6
406	3783	15.319	4	7	11	19	31
407	977	6.492	2	3	5	8	11
408	5198	8.535	1	2	5	10	20
409	7548	9.030	2	4	5	11	20
410	125087	3.621	1	2	3	5	8
411	165	3.655	1	1	2	5	7
412	142	2.775	1	1	2	3	6
413	9559	10.688	2	4	8	13	22
414	1738	6.013	1	2	4	8	13
415	29908	20.274	5	9	15	25	40
416	135915	10.339	2	5	8	13	19
417	42	5.500	2	3	4	7	8
418	14224	8.258	3	4	7	10	15
419	16976	7.428	2	4	6	9	14
420	3737	5.434	2	3	4	7	10
421	12184	5.583	2	3	4	7	10

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
422	103	6.078	2	3	5	7	11
423	7136	10.898	3	5	8	13	22
424	2826	22.561	3	8	15	27	45
425	17758	6.483	2	3	4	8	13
426	5935	7.293	2	3	5	9	15
427	1979	7.866	1	3	5	9	16
428	1111	10.632	2	3	6	13	25
429	30483	12.055	3	4	7	13	23
430	55787	12.278	3	5	9	16	25
431	243	11.337	1	3	6	9	15
432	534	7.140	1	2	4	8	15
433	5788	4.538	1	1	3	5	11
434	18195	7.815	2	3	5	9	15
435	12116	6.330	2	3	5	7	13
436	2439	17.928	5	10	19	28	28
437	10653	16.676	6	10	15	23	28
439	944	9.394	1	3	6	12	22
440	4601	12.955	2	4	8	16	28
441	845	3.741	1	1	2	4	8
442	11317	9.876	1	3	6	12	21
443	5848	3.719	1	1	2	5	8
444	3891	7.287	2	3	5	8	13
445	2178	4.368	1	2	3	5	8
447	3122	3.495	1	1	2	4	7
448	1	1.000	1	1	1	1	1
449	29032	5.941	1	2	4	7	12
450	7484	3.318	1	1	2	4	7
451	7	147.571	1	3	5	10	11
452	17447	6.230	1	2	4	7	13
453	5851	3.570	1	2	3	4	7
454	4045	6.901	1	2	4	8	14
455	1100	3.295	1	1	2	4	6
456	173	9.035	1	2	4	10	21
457	122	9.115	1	1	4	11	20
458	1606	22.719	5	10	17	29	45
459	563	14.909	3	6	10	18	31
460	2377	9.176	2	4	7	12	19
461	5830	5.401	1	1	2	5	13
462	6530	17.789	5	8	15	23	33
463	9344	6.782	2	3	5	8	13
464	2953	4.149	1	2	3	5	8
465	533	3.079	1	1	1	3	6
466	3591	4.686	1	1	2	4	8
467	3376	6.102	1	1	2	5	10
468	72859	18.112	4	8	14	22	35
471	7574	14.050	7	9	11	16	23
472	178	29.315	1	9	23	42	62
473	8355	17.029	2	4	10	26	41
475	73010	13.666	2	6	11	18	27
476	10661	16.928	6	10	14	20	29
477	36151	10.349	1	3	7	13	21

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
478	102880	10.2410	2	4	7	13	21
479	17854	5.4843	1	2	5	7	10
480	75	40.4933	11	16	28	45	66
481	67	44.9552	23	31	39	50	72
482	6838	18.0759	6	9	13	21	34
483	32814	54.0528	17	27	43	67	99
484	289	22.9516	2	9	18	33	49
485	2511	18.4552	6	9	12	19	30
486	1730	18.9983	1	7	13	22	35
487	2848	11.1774	2	4	8	14	22
488	844	20.3140	5	9	15	25	39
489	4279	13.8995	3	5	9	16	25
490	1702	6.6710	1	3	5	10	19
491	6713	6.3799	3	4	5	8	11
492	1048	14.4637	3	4	6	24	34
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	10203666						

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	28268	15.7441	4	7	11	19	31
002	5718	14.9003	4	7	11	19	30
003	3	2.0000	1	1	1	4	4
004	5127	13.0521	3	5	9	16	27
005	52807	6.7496	2	3	5	8	13
006	854	3.3182	1	1	2	3	7
007	5742	21.2179	2	6	11	22	45
008	2699	4.5954	1	1	3	6	10
009	1678	10.5864	2	4	7	12	21
010	19835	10.8720	2	4	7	14	22
011	3528	6.4212	1	2	4	8	13
012	21359	10.4106	2	4	7	12	19
013	5571	8.5144	3	4	7	10	15
014	337593	9.9669	3	4	7	12	19
015	133891	5.4328	2	3	4	6	10
016	11011	9.3524	3	4	7	11	18
017	2962	5.7667	2	3	5	7	10
018	13805	7.9338	2	4	6	9	15
019	6848	5.4936	1	2	4	7	11
020	7404	12.4114	2	5	9	16	25
021	1006	9.6928	3	4	7	12	19
022	9691	5.5158	2	3	4	7	10
023	3067	6.2097	1	2	4	7	12
024	53265	7.3423	2	3	5	9	14
025	22480	4.4321	1	2	3	5	8
026	55	5.6727	1	2	3	7	14
027	2678	7.9623	1	2	4	10	18
028	7878	9.4439	2	3	6	11	19
029	3540	4.8621	1	2	3	6	10
030	2	1.0000	1	1	1	1	1
031	3572	6.6249	2	2	4	7	13
032	2583	3.6806	1	2	3	4	7
034	13451	8.8028	2	3	6	10	17
035	3768	5.2606	1	2	4	6	10
036	20228	2.3422	1	1	2	3	4
037	2665	4.4649	1	1	3	5	10
038	770	2.8208	1	1	2	3	5
039	9581	1.9363	1	1	1	2	3
040	3321	3.4192	1	1	2	4	7
042	20297	2.5528	1	1	2	3	5
043	201	5.6866	1	2	4	6	11
044	1962	6.2819	2	4	5	7	11
045	2588	4.4532	1	2	4	6	8
046	2876	6.2827	1	2	5	8	12
047	1859	4.4330	1	2	3	5	8
048	2	7.0000	5	5	9	9	9
049	2967	7.6923	2	3	5	9	16
050	4902	2.6391	1	1	2	3	4
051	524	2.8645	1	1	2	3	6
052	171	3.1462	1	1	2	3	6
053	6387	3.4481	1	1	2	3	6

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
055	3589	2.7317	1	1	1	2	6
056	1090	2.7009	1	1	2	3	6
057	696	5.3750	1	2	3	6	11
058	1	1.0000	1	1	1	1	1
059	183	2.1858	1	1	1	2	4
061	381	5.0919	1	1	2	6	12
063	4780	5.7492	1	2	4	7	12
064	4332	8.7652	1	2	5	11	20
065	32014	4.1498	1	2	3	5	8
066	7733	4.3418	1	2	3	5	8
067	425	5.1671	2	3	4	6	9
068	11538	5.9538	2	3	5	7	11
069	3729	4.3124	2	2	4	5	8
070	17	4.5294	1	2	3	5	8
071	132	5.0682	2	3	4	6	10
072	673	5.7281	1	2	3	5	9
073	6548	6.0053	1	2	4	7	12
074	2	11.0000	9	9	13	13	13
075	31763	13.7042	6	8	10	15	25
076	75079	14.3224	4	7	11	18	27
077	6545	7.5325	1	3	6	10	15
078	26477	10.0135	4	7	9	12	16
079	132677	11.6036	4	6	9	14	21
080	8940	7.7613	3	4	6	9	14
081	1	7.0000	7	7	7	7	7
082	58814	9.0935	2	4	7	12	19
083	7021	8.1493	2	4	6	10	15
084	1783	4.4577	1	2	3	6	9
085	16869	8.8759	2	4	7	11	17
086	1697	5.2787	1	2	4	7	10
087	61021	8.0394	2	4	6	10	15
088	161966	7.3437	3	4	6	9	13
089	388544	8.6408	3	5	7	10	15
090	45578	6.1821	3	4	5	7	10
091	44	6.1136	2	3	5	7	11
092	8321	8.5321	3	4	7	10	16
093	1327	5.8425	2	3	5	7	10
094	9350	9.3702	3	4	7	11	18
095	1287	5.3963	2	3	4	7	10
096	178236	7.0607	3	4	6	8	12
097	32075	5.1441	2	3	4	6	9
098	17	6.2941	2	3	5	6	10
099	30114	5.1423	1	2	4	6	10
100	11199	3.1203	1	2	2	4	6
101	18008	6.6578	2	3	5	8	13
102	3535	4.2785	1	2	3	5	8
103	238	32.1723	10	14	23	38	62
104	17372	20.2585	9	12	17	25	35
105	15979	14.4294	7	9	11	16	25
106	74580	15.2254	8	10	13	17	24
107	52388	11.7606	7	8	10	13	18

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
106	8815	15.1239	7	9	12	18	27
110	50710	13.4182	3	8	11	16	25
111	6320	8.4106	3	6	8	10	13
112	128626	6.0864	2	3	5	8	12
113	38406	18.7793	6	8	14	22	37
114	8076	12.4459	3	5	9	15	24
115	8203	13.8516	5	8	11	17	24
116	64867	7.2072	2	3	5	9	14
117	3247	5.5079	1	2	3	7	12
118	8174	3.9172	1	1	2	4	9
119	3204	6.2644	1	2	3	7	15
120	33573	12.3955	2	3	6	16	27
121	143327	9.6028	4	6	8	11	18
122	89268	6.8777	2	4	7	9	11
123	55036	5.2981	1	1	3	7	13
124	123827	5.7604	1	2	5	7	11
125	88584	3.1515	1	1	2	4	7
126	4203	20.4149	5	10	16	29	41
127	602239	7.7143	2	4	6	9	14
128	23149	8.4068	4	5	7	10	13
129	6227	4.7486	1	1	1	6	12
130	70683	8.0792	2	4	7	10	14
131	28293	5.9826	1	3	6	8	10
132	12691	5.5565	1	2	4	7	11
133	4152	3.9188	1	2	3	5	7
134	29006	4.9912	2	2	3	6	9
135	8404	6.6284	2	3	5	8	13
136	1428	4.3890	1	2	3	5	7
138	185487	5.8414	2	3	5	7	11
139	71704	3.6838	1	2	3	5	7
140	341502	4.4690	2	2	4	6	8
141	76370	5.6784	2	3	4	7	10
142	36764	3.9269	1	2	3	5	7
143	115719	3.3746	1	2	3	4	6
144	55652	7.0829	2	3	5	8	14
145	8435	4.1801	1	2	3	5	8
146	7565	13.7870	7	8	11	15	22
147	1620	8.9846	5	7	9	11	13
148	141393	15.8461	7	9	12	18	28
149	18120	8.0879	5	6	8	10	13
150	21587	13.8921	8	8	11	17	24
151	4781	7.7833	5	6	7	10	13
152	4551	10.6339	5	7	9	12	18
153	2048	7.0459	4	5	7	9	13
154	37035	17.9293	7	9	14	22	34
155	4178	8.6084	4	5	7	10	14
157	13128	6.5957	2	3	5	8	12
158	9959	3.0688	1	1	2	4	6
159	16227	6.3665	2	3	5	8	12
160	12821	3.3392	1	2	3	4	6
161	23781	4.6269	1	2	3	5	10

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
162	21101	2.2025	1	1	2	3	4
163	10	2.4000	1	2	2	3	4
164	4579	11.3872	5	7	9	13	19
165	1794	7.0284	4	5	7	9	11
166	2932	7.1538	3	4	6	9	13
167	2170	4.1253	2	3	4	5	7
168	1799	5.7843	1	2	3	7	12
169	1366	2.9129	1	1	2	3	6
170	12713	15.6310	3	7	11	19	31
171	1463	6.9412	1	3	6	9	13
172	31140	10.3381	2	4	7	13	21
173	3337	5.2517	1	2	4	7	11
174	185016	6.9276	2	4	5	8	13
175	22542	4.3682	2	3	4	5	7
176	12892	7.7026	2	4	6	9	14
177	14855	6.2788	2	3	5	8	11
178	6418	4.4483	2	3	4	5	8
179	8630	9.5102	3	4	7	11	18
180	69302	7.6203	2	4	6	9	14
181	22049	4.5862	2	3	4	6	8
182	256259	6.2255	2	3	5	7	11
183	78178	4.5400	1	2	4	5	8
184	50	3.6000	1	2	3	4	6
185	3831	6.3156	1	3	5	8	13
186	1	4.0000	4	4	4	4	4
187	997	3.9529	1	1	2	5	8
188	49808	7.3748	2	3	5	9	14
189	9043	3.8545	1	1	3	5	8
190	94	5.2447	2	3	4	7	10
191	10080	19.7739	6	10	15	24	38
192	985	9.6020	3	6	8	12	18
193	12295	16.5587	7	9	14	20	29
194	1416	9.7041	3	6	9	12	17
195	17110	12.2889	6	7	10	14	20
196	1856	8.2193	4	5	7	10	13
197	76376	8.4937	2	4	7	11	16
198	48653	3.6350	1	1	3	5	7
199	2829	14.2816	4	7	11	18	27
200	1923	13.5190	2	5	10	17	28
201	2997	14.3784	3	8	10	18	30
202	17745	9.6320	2	4	7	12	19
203	29497	8.7206	2	4	7	12	20
204	39199	8.0600	3	4	6	9	15
205	20814	9.1418	2	4	7	11	18
206	2413	5.0220	1	2	4	7	10
207	37528	7.0338	2	3	5	9	13
208	14008	4.0415	1	2	3	5	7
209	267627	10.5536	6	7	9	12	16
210	116591	12.9940	6	8	10	14	21
211	28911	9.4425	5	6	8	11	14
212	18	6.1111	2	2	3	7	9

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
213	5738	12.8313	3	6	9	16	25
214	41313	10.2321	4	5	8	12	19
215	37991	6.0864	3	4	5	7	10
216	7018	14.4741	3	6	11	18	29
217	16628	21.0197	4	7	14	27	45
218	18336	9.0046	3	4	7	11	17
219	17781	5.1599	2	3	4	6	9
220	4	2.2500	1	1	2	3	3
221	4858	10.7091	2	4	8	13	21
222	5229	5.2878	1	2	4	7	10
223	15713	4.0320	1	2	3	4	7
224	8728	2.8997	1	2	2	3	5
225	9993	5.2825	1	2	3	6	12
226	5452	8.9762	2	3	6	11	20
227	6465	3.8863	1	2	3	4	7
228	4327	3.7123	1	1	2	4	8
229	2505	2.6591	1	1	2	3	5
230	3230	6.4412	1	2	4	7	13
231	10173	6.5634	1	2	4	7	15
232	793	6.5523	1	2	3	7	17
233	5188	11.6795	3	5	8	15	23
234	3023	5.4016	1	2	4	7	11
235	6239	11.1856	2	4	7	12	23
236	38320	8.9097	2	4	7	10	17
237	1681	5.8257	2	3	4	7	10
238	6361	13.9027	4	6	10	17	28
239	59319	10.0120	3	5	7	12	19
240	10920	9.3950	3	4	7	11	18
241	3950	5.6463	2	3	4	7	11
242	2498	10.5096	3	5	8	13	22
243	103841	6.8288	2	3	5	9	13
244	11051	7.2525	2	3	5	9	14
245	5661	5.3374	1	2	4	6	10
246	1726	5.4177	2	3	4	7	10
247	9689	5.0799	1	2	4	6	10
248	6248	6.1908	2	3	5	7	12
249	8359	6.3973	1	2	4	8	13
250	3393	6.7781	2	3	5	8	12
251	3237	3.6258	1	1	2	4	7
253	16958	8.1943	2	3	6	9	16
254	12121	4.7225	1	2	3	6	9
255	2	2.5000	1	1	4	4	4
256	9233	5.4512	1	2	4	6	11
257	28218	5.1278	2	3	4	6	9
258	26390	3.6482	2	2	3	4	6
259	4004	5.9298	1	2	3	6	13
260	4979	2.5700	1	1	2	3	4
261	2941	2.8259	1	1	2	3	5
262	1302	3.5661	1	1	2	3	7
263	28743	20.2119	5	8	14	24	40
264	4186	11.3512	3	5	8	14	23

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
265	4915	9.6867	2	3	6	11	21
266	4167	4.3252	1	2	3	5	9
267	368	4.9837	1	1	3	5	11
268	1410	5.1723	1	1	2	5	9
269	10906	12.2327	2	4	9	15	25
270	5130	4.0310	1	2	3	5	9
271	19866	11.4729	3	5	8	13	21
272	6799	9.3836	3	5	7	11	18
273	2194	6.8090	2	3	5	8	14
274	3139	10.9341	2	4	7	12	21
275	401	5.7232	1	2	3	6	9
276	867	5.7151	1	2	4	7	11
277	70657	8.4681	3	5	7	10	15
278	25890	6.1614	3	4	5	7	11
279	6	7.0000	2	3	4	11	11
280	12914	6.7166	2	3	5	8	13
281	7188	4.1994	1	2	3	5	8
282	1	2.0000	2	2	2	2	2
283	5814	7.3003	2	3	5	8	14
284	2389	5.0682	1	2	4	6	9
285	4549	20.6736	5	9	15	25	40
286	1721	11.2702	5	6	8	13	22
287	6493	18.7138	4	7	12	21	38
288	507	10.4694	3	4	7	10	21
289	3955	5.6718	2	2	3	5	12
290	9577	3.4522	1	2	2	4	6
291	143	2.1049	1	1	2	2	4
292	5044	17.6921	4	7	13	21	35
293	505	7.4950	1	3	6	10	15
294	89720	7.2549	3	4	6	8	13
295	3262	5.8483	2	3	4	7	11
296	210976	8.3160	2	4	6	10	18
297	44441	5.1711	2	3	4	6	9
298	65	4.6308	1	2	2	5	8
299	877	6.5530	1	2	5	8	13
300	11785	9.3115	3	4	7	11	18
301	2074	5.2160	1	2	4	7	10
302	6813	15.9483	7	9	13	19	28
303	17481	13.2953	6	8	10	15	23
304	13876	13.3942	4	6	10	16	26
305	3517	6.4578	2	3	6	8	12
306	12341	8.8255	3	4	6	11	17
307	4325	4.5686	2	3	4	5	8
308	10288	9.0454	2	3	6	11	19
309	4383	3.9877	1	2	3	5	8
310	35212	5.8127	1	2	4	7	11
311	19528	2.6869	1	1	2	3	5
312	3102	5.5239	1	2	4	7	11
313	1818	2.7629	1	1	2	3	5
314	1	8.0000	8	8	8	8	8
315	26943	12.2125	1	3	7	15	27

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
316	49068	9.1398	2	4	7	12	18
317	707	4.1782	1	2	3	4	8
318	6661	8.9922	2	3	6	11	19
319	884	3.7986	1	1	2	4	8
320	162684	8.3690	3	4	6	10	15
321	29134	5.8757	2	3	5	7	10
322	50	5.8400	2	3	5	7	10
323	20541	4.2749	1	2	3	5	9
324	13479	2.5819	1	1	2	3	5
325	9618	5.7680	2	3	4	7	11
326	3609	3.5658	1	2	3	4	7
327	9	7.0000	1	2	3	8	10
328	1257	4.9578	1	2	4	6	9
329	341	2.9003	1	1	2	4	5
331	29323	7.4844	2	3	6	9	15
332	5847	4.4404	1	2	3	5	9
333	311	7.5949	2	3	5	10	16
334	22366	9.1218	5	6	8	10	14
335	10820	7.2799	5	6	7	8	10
336	105208	5.7983	3	3	4	7	10
337	88453	3.8239	2	3	3	4	6
338	7449	5.2254	1	1	2	6	13
339	3230	4.6889	1	1	2	5	11
340	2	5.0000	3	3	7	7	7
341	12839	4.3806	1	2	3	5	8
342	410	3.8610	1	1	2	4	8
343	2	2.0000	1	1	2	3	3
344	4825	5.3988	1	2	4	6	10
345	2512	4.8949	1	2	3	5	10
346	7797	8.5775	2	3	6	10	17
347	963	4.3894	1	1	3	5	9
348	4269	5.7126	1	2	4	7	11
349	1634	3.1157	1	1	2	4	6
350	7998	5.8718	2	3	5	7	10
351	1	6.0000	6	6	6	6	6
352	770	4.8065	1	2	3	6	10
353	2321	11.4942	5	6	9	14	21
354	9487	8.2451	4	5	6	9	14
355	8005	4.9975	3	4	5	6	7
356	31595	4.3123	2	3	4	5	7
357	6815	12.4031	5	7	10	15	23
358	23005	6.5669	3	4	5	7	11
359	26844	4.4908	3	4	4	5	8
360	9626	5.2339	2	3	4	6	9
361	440	5.7500	1	2	4	6	14
363	5695	4.3392	1	2	3	4	8
364	2642	4.1862	1	1	2	5	8
365	3169	10.7349	3	4	7	13	23
366	5027	10.0072	2	3	7	13	21
367	873	3.9210	1	1	3	4	8
368	1482	7.3657	2	4	6	8	14

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
369	2518	4.594	1	2	3	6	9
370	612	6.363	3	4	5	7	10
371	685	4.419	3	3	4	5	6
372	409	3.807	1	2	3	4	6
373	2513	2.522	1	2	2	3	5
374	67	4.000	2	2	2	3	5
375	7	14.714	1	2	2	7	14
376	148	2.740	1	1	2	3	5
377	27	5.074	1	2	4	7	10
378	138	3.652	2	3	3	4	6
379	310	2.871	1	1	2	3	5
380	66	2.818	1	1	2	3	5
381	222	2.432	1	1	1	2	4
382	58	1.448	1	1	1	2	2
383	842	4.428	1	2	3	5	8
384	85	2.724	1	1	2	3	6
385	5	5.800	1	1	3	6	18
386	1	149.000	149	149	149	149	149
387	1	6.000	6	6	6	6	6
389	9	8.556	1	5	9	9	11
390	28	6.536	1	2	4	11	14
391	1	2.000	2	2	2	2	2
392	2443	14.078	5	7	10	18	27
394	1980	10.330	1	2	6	12	22
395	70959	6.446	2	3	5	8	13
396	13	3.154	1	1	2	2	5
397	12488	7.452	2	3	5	8	15
398	14632	8.302	3	4	6	10	15
399	1661	5.258	1	2	4	7	10
400	8031	13.330	3	5	9	17	28
401	6986	15.257	3	6	11	19	32
402	2355	5.211	1	2	3	7	11
403	27920	11.893	2	5	8	15	25
404	8327	5.685	1	2	4	7	12
405	5	3.000	1	1	3	3	6
406	3783	15.319	4	7	11	19	31
407	977	6.492	2	3	5	8	11
408	5196	8.535	1	2	5	10	20
409	7548	9.030	2	4	5	11	20
410	125087	3.621	1	2	3	5	8
411	185	3.855	1	1	2	5	7
412	142	2.775	1	1	2	3	6
413	9559	10.688	2	4	6	13	22
414	1738	6.013	1	2	4	8	13
415	29908	20.274	5	9	15	25	40
416	135815	10.338	2	5	8	13	19
417	42	5.500	2	3	4	7	15
418	14224	8.258	3	4	7	10	14
419	18976	7.428	2	4	6	9	14
420	3737	5.434	2	3	4	7	10
421	12184	5.583	2	3	4	7	10

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
422	103	6.078	2	3	5	7	11
423	7136	10.896	3	5	8	13	22
424	2826	22.561	3	8	15	27	45
425	17758	6.483	2	3	4	8	13
426	5935	7.293	2	3	5	9	15
427	1979	7.868	1	3	5	9	16
428	1111	10.632	2	3	6	13	25
429	30483	12.055	3	4	7	13	23
430	55787	12.278	3	5	9	16	25
431	243	11.337	1	3	6	9	15
432	534	7.140	1	2	4	8	15
433	5779	4.511	1	1	3	5	11
434	17984	7.667	2	3	5	9	15
435	12086	6.317	2	3	5	7	13
436	2428	17.904	5	10	19	26	28
437	10592	16.628	6	10	15	23	28
439	944	9.394	1	3	6	12	22
440	4601	12.955	2	4	8	16	28
441	845	3.741	1	1	2	4	8
442	11317	9.876	1	3	6	12	21
443	5848	3.719	1	1	2	5	8
444	3891	7.287	2	3	5	8	13
445	2178	4.368	1	2	3	5	8
447	3122	3.495	1	1	2	4	7
448	1	1.000	1	1	1	1	1
449	29032	5.941	1	2	4	7	12
450	7484	3.318	1	1	2	4	7
451	7	147.571	1	3	5	10	11
452	17447	6.230	1	2	4	7	13
453	5851	3.570	1	2	3	4	7
454	4045	6.901	1	2	4	8	14
455	1100	3.295	1	1	2	4	6
456	173	9.035	1	2	4	10	21
457	122	9.115	1	1	4	11	20
458	1606	22.719	5	10	17	29	45
459	583	14.909	3	6	10	18	31
460	2377	9.176	2	4	7	12	19
461	5830	5.401	1	1	2	5	13
462	6530	17.789	5	8	15	23	33
463	9344	6.762	2	3	5	8	13
464	2953	4.149	1	2	3	5	8
465	533	3.079	1	1	1	3	6
466	3591	4.686	1	1	2	4	9
467	3378	6.102	1	1	2	5	10
468	73065	18.124	4	8	14	22	35
471	7574	14.050	7	9	11	18	23
472	178	29.315	1	9	23	42	62
473	8355	17.029	2	4	10	26	41
475	73010	13.686	2	6	11	18	27
476	10713	16.946	6	10	14	20	29
477	36245	10.355	1	3	7	13	21

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 12/91 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
478	102877	10.2409	2	4	7	13	21
479	17854	5.4843	1	2	5	7	10
480	75	40.4833	11	18	28	45	66
481	67	44.8552	23	31	39	50	72
482	6838	18.0759	6	9	13	21	34
483	32814	54.0628	17	27	43	67	99
484	289	22.9516	2	9	16	33	49
485	2511	16.4552	6	9	12	19	30
486	1730	18.9983	1	7	13	22	35
487	2848	11.1774	2	4	8	14	22
488	844	20.3140	5	9	15	25	39
489	4279	13.8985	3	5	9	16	28
490	1702	8.6710	1	3	5	10	18
491	6713	6.3799	3	4	5	8	11
492	1048	14.4637	3	4	6	24	34
	10203666						

BILLING CODE 4120-01-C

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) APRIL 1992

State	Urban	Rural
Alabama	0.503647	0.530099
Alaska	0.769646	0.882596
Arizona	0.579847	0.620998
Arkansas	0.583693	0.570674
California	0.511337	0.565421
Colorado	0.586320	0.624826
Connecticut	0.646590	0.666155
Delaware	0.616202	0.640679
District of Columbia	0.572248	
Florida	0.497297	0.505095
Georgia	0.592786	0.578752
Hawaii	0.629273	0.753597
Idaho	0.667878	0.671385
Illinois	0.567290	0.614793
Indiana	0.668611	0.679592
Iowa	0.680816	0.741266
Kansas	0.634933	0.709132
Kentucky	0.586710	0.583233
Louisiana	0.558362	0.598960
Maine	0.670862	0.626500
Maryland	0.768898	0.806322
Massachusetts	0.711945	0.858405
Michigan	0.580700	0.659005
Minnesota	0.662974	0.722065
Mississippi	0.596325	0.583217
Missouri	0.541151	0.585243
Montana	0.675568	0.700140
Nebraska	0.654524	0.722772
Nevada	0.509109	0.677714
New Hampshire	0.679143	0.686632
New Jersey	0.796232	
New Mexico	0.547462	0.582679
New York	0.672745	0.738413
North Carolina	0.627158	0.581949
North Dakota	0.684004	0.712080
Ohio	0.634724	0.662139
Oklahoma	0.574143	0.606318
Oregon	0.634317	0.681224
Pennsylvania	0.531257	0.601704

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) APRIL 1992—Continued

State	Urban	Rural
Puerto Rico	0.532837	0.633205
Rhode Island	0.765000	
South Carolina	0.562383	0.544672
South Dakota	0.664001	0.686325
Tennessee	0.575922	0.579831
Texas	0.574424	0.660252
Utah	0.625666	0.648080
Vermont	0.668931	0.668817
Virginia	0.585301	0.598326
Washington	0.710180	0.739728
West Virginia	0.580977	0.567044
Wisconsin	0.724494	0.736675
Wyoming	0.746141	0.774423

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) APRIL 1992

State	Ratio
Alabama	0.062910
Alaska	0.105552
Arizona	0.078547
Arkansas	0.067796
California	0.051154
Colorado	0.056766
Connecticut	0.040184
Delaware	0.064672
District of Columbia	0.045503
Florida	0.068092
Georgia	0.060021
Hawaii	0.060616
Idaho	0.068879
Illinois	0.052549
Indiana	0.067411
Iowa	0.063290

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) APRIL 1992—Continued

State	Ratio
Kansas	0.062413
Kentucky	0.066616
Louisiana	0.061314
Maine	0.049786
Maryland	0.057705
Massachusetts	0.056731
Michigan	0.058711
Minnesota	0.060940
Mississippi	0.060694
Missouri	0.060135
Montana	0.071758
Nebraska	0.061103
Nevada	0.055191
New Hampshire	0.063597
New Jersey	0.079026
New Mexico	0.060087
New York	0.066052
North Carolina	0.055494
North Dakota	0.073101
Ohio	0.064051
Oklahoma	0.066489
Oregon	0.052530
Pennsylvania	0.053267
Puerto Rico	0.062126
Rhode Island	0.042000
South Carolina	0.067906
South Dakota	0.071916
Tennessee	0.068952
Texas	0.070990
Utah	0.064945
Vermont	0.060000
Virginia	0.069063
Washington	0.063107
West Virginia	0.064799
Wisconsin	0.072273
Wyoming	0.082848

BILLING CODE 4120-01-M

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
010006	07/01/90	-	06/30/91	1.3318	0.9949
010011	07/01/90	-	06/30/91	1.3454	0.9988
010012	07/01/90	-	06/30/91	1.2362	0.9661
010015	04/01/90	-	03/31/91	1.0662	0.9175
010018	07/01/90	-	06/30/91	0.8805	0.9916
010020	07/01/90	-	06/30/91	1.0207	0.9759
010022	07/01/90	-	06/30/91	0.9361	0.9705
010023	07/01/90	-	06/30/91	1.2745	0.9881
010024	07/01/90	-	06/30/91	1.2319	0.9898
010025	07/01/90	-	06/30/91	1.2077	0.9725
010031	07/01/90	-	06/30/91	1.3116	0.9928
010034	07/01/90	-	06/30/91	1.0534	0.9659
010036	04/01/90	-	03/31/91	1.1152	0.9710
010038	07/01/90	-	06/30/91	1.1979	0.9851
010039	07/01/90	-	06/30/91	1.5773	0.9972
010050	07/01/90	-	06/30/91	0.9590	0.9530
010053	07/01/90	-	06/30/91	1.0024	0.9443
010054	07/01/90	-	06/30/91	1.1958	0.9795
010055	07/01/90	-	06/30/91	1.3327	0.9984
010056	07/01/90	-	06/30/91	1.2769	0.9925
010058	07/01/90	-	06/30/91	0.9387	0.9500
010064	07/01/90	-	06/30/91	1.6140	0.9983
010066	07/01/90	-	06/30/91	0.9333	0.9334
010068	07/01/90	-	06/30/91	1.2011	0.9868
010072	07/01/90	-	06/30/91	1.1296	0.9560
010078	07/01/90	-	06/30/91	1.1567	0.9896
010080	04/01/90	-	03/31/91	0.9553	0.9704
010085	07/01/90	-	06/30/91	1.2940	0.9755
010086	07/01/90	-	06/30/91	0.9715	0.9642
010089	07/01/90	-	06/30/91	1.0720	0.9890
010090	07/01/90	-	06/30/91	1.4694	0.9985
010091	07/01/90	-	06/30/91	1.0299	0.9703
010098	07/01/90	-	06/30/91	1.0314	0.9743
010101	07/01/90	-	06/30/91	1.0561	0.9752
010103	07/01/90	-	06/30/91	1.5225	0.9988
010104	07/01/90	-	06/30/91	1.5706	0.9978
010113	04/01/90	-	03/31/91	1.5668	0.9988
010114	07/01/90	-	06/30/91	1.1897	0.9854
010118	07/01/90	-	06/30/91	1.1508	0.9820
010121	07/01/90	-	06/30/91	1.0974	0.9834
010128	07/01/90	-	06/30/91	0.8733	0.9528
010131	07/01/90	-	06/30/91	1.2598	0.9885
010134	04/01/90	-	03/31/91	0.8210	0.9296
010136	05/01/90	-	04/30/91	0.9766	0.9505
010138	07/01/90	-	06/30/91	0.9094	0.9103
010145	02/01/90	-	01/31/91	1.2126	0.9963
010148	07/01/90	-	06/30/91	0.9575	0.9381
010150	04/01/90	-	03/31/91	1.0014	0.9969
020002	07/01/90	-	06/30/91	1.1907	0.9743
020004	07/01/90	-	06/30/91	1.1270	0.9683
020007	07/01/90	-	06/30/91	1.1966	0.9370
020008	07/01/90	-	06/30/91	0.9888	0.9822
020009	07/01/90	-	06/30/91	0.8102	1.0000
020010	07/01/90	-	06/30/91	0.9867	0.9817
020011	07/01/90	-	06/30/91	0.8982	0.9725
020014	07/01/90	-	06/30/91	0.9086	1.0000
020024	07/01/90	-	06/30/91	1.0355	0.9484
030003	07/01/90	-	06/30/91	1.3396	0.9908
030006	07/01/90	-	06/30/91	1.5371	0.9983
030007	07/01/90	-	06/30/91	1.2967	0.9736
030009	07/01/90	-	06/30/91	1.2077	0.9881
030010	07/01/90	-	06/30/91	1.4283	0.9981
030011	07/01/90	-	06/30/91	1.3591	0.9948
030016	07/01/90	-	06/30/91	1.2920	0.9829
030017	07/01/90	-	06/30/91	1.3601	0.9968
030019	07/01/90	-	06/30/91	1.2897	0.9928
030022	07/01/90	-	06/30/91	1.3555	0.9927
030024	07/01/90	-	06/30/91	1.6087	0.9985
030027	07/01/90	-	06/30/91	1.0636	0.9941
030033	07/01/90	-	06/30/91	1.3781	0.9736
030034	04/01/90	-	03/31/91	1.0818	0.9743
030037	07/01/90	-	06/30/91	1.8599	0.9982
030040	07/01/90	-	06/30/91	0.9830	0.9474
030043	07/01/90	-	06/30/91	1.1538	0.9556
030049	07/01/90	-	06/30/91	0.9213	0.9499
030051	07/01/90	-	06/30/91	1.0406	0.9833
030054	07/01/90	-	06/30/91	0.8915	0.9644
030055	07/01/90	-	06/30/91	1.2142	0.9754
030059	07/01/90	-	06/30/91	1.3584	0.9819
030064	07/01/90	-	06/30/91	1.5351	0.9934
030080	04/01/90	-	03/31/91	1.4964	0.9984
030091	07/01/90	-	06/30/91	0.7698	0.9730
040001	04/01/90	-	03/31/91	1.0270	0.9645
040002	07/01/90	-	06/30/91	1.1748	0.9751
040003	07/01/90	-	06/30/91	1.0253	0.9708
040008	07/01/90	-	06/30/91	1.0125	0.9738
040011	07/01/90	-	06/30/91	0.9218	0.9666
040015	07/01/90	-	06/30/91	1.0427	0.9094
040016	07/01/90	-	06/30/91	1.4587	0.9968
040017	04/01/90	-	03/31/91	1.2153	0.9777
040019	07/01/90	-	06/30/91	1.1983	0.9460
040022	07/01/90	-	06/30/91	1.6607	0.9974
040025	07/01/90	-	06/30/91	1.0037	0.9661
040026	07/01/90	-	06/30/91	1.4063	0.9961
040030	07/01/90	-	06/30/91	0.9387	0.9412
040032	07/01/90	-	06/30/91	0.9155	0.9781
040035	07/01/90	-	06/30/91	0.9287	0.9822
040039	07/01/90	-	06/30/91	1.0442	0.9772
040040	07/01/90	-	06/30/91	0.9753	0.9722
040048	07/01/90	-	06/30/91	1.2030	0.9822
040051	04/01/90	-	03/31/91	0.9766	0.9387
040053	07/01/90	-	06/30/91	1.0508	0.9096
040054	07/01/90	-	06/30/91	0.9589	0.9775
040055	07/01/90	-	06/30/91	1.3329	0.9984
040058	06/05/90	-	06/30/91	0.8994	0.9783
040060	02/01/90	-	01/31/91	0.9361	0.9297

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING BEGIN	-	PERIOD END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
040062	07/01/90	-	06/30/91	1.3005	0.9944
040063	07/01/90	-	06/30/91	1.4273	0.9972
040064	07/01/90	-	06/30/91	0.9041	0.9210
040071	07/01/90	-	06/30/91	1.3970	0.9963
040074	07/01/90	-	06/30/91	1.1602	0.9876
040076	07/01/90	-	06/30/91	0.9848	0.9598
040077	07/01/90	-	06/30/91	0.9402	0.9586
040080	07/01/90	-	06/30/91	1.0560	0.9402
040082	07/01/90	-	06/30/91	1.2148	0.9701
040084	07/01/90	-	06/30/91	1.1084	0.9771
040088	07/01/90	-	06/30/91	1.1955	0.9869
040090	07/01/90	-	06/30/91	0.9599	0.9130
040091	07/01/90	-	06/30/91	1.1241	0.9675
040093	07/01/90	-	06/30/91	0.9799	0.9613
040095	07/01/90	-	06/30/91	0.8631	0.9079
040109	07/01/90	-	06/30/91	1.1434	0.9832
040116	03/01/90	-	02/28/91	1.2866	0.9990
040124	07/01/90	-	06/30/91	1.1476	0.9645
040126	07/01/90	-	06/30/91	0.9731	0.9588
050006	07/01/90	-	06/30/91	1.3166	0.9912
050009	07/01/90	-	06/30/91	1.6158	0.9944
050014	07/01/90	-	06/30/91	1.0829	0.9668
050015	07/01/90	-	06/30/91	1.4391	0.9748
050016	01/01/90	-	01/23/91	1.1070	0.9845
050017	04/01/90	-	03/31/91	1.9631	0.9978
050019	07/01/90	-	06/30/91	0.8275	0.9656
050025	07/01/90	-	06/30/91	1.6859	0.9938
050026	07/01/90	-	06/30/91	1.4891	0.9936
050028	07/01/90	-	06/30/91	1.2805	0.9877
050029	07/01/90	-	06/30/91	1.3317	0.9852
050033	07/01/90	-	06/30/91	1.3733	0.9974
050034	06/01/90	-	05/31/91	1.2763	0.9883
050036	07/01/90	-	06/30/91	1.6831	0.9986
050038	07/01/90	-	06/30/91	1.3836	0.9917
050039	07/01/90	-	06/30/91	1.6237	0.9968
050040	07/01/90	-	06/30/91	1.0743	0.9700
050041	06/01/90	-	05/31/91	1.2943	0.9812
050042	07/01/90	-	06/30/91	1.2173	0.9718
050045	07/01/90	-	06/30/91	1.2646	0.9780
050046	06/01/90	-	05/31/91	1.1725	0.9727
050047	06/17/90	-	06/16/91	1.6773	0.9982
050051	07/01/90	-	06/30/91	1.1504	0.9759
050054	07/01/90	-	06/30/91	1.2745	0.9970
050055	07/01/90	-	06/30/91	1.2814	0.9935
050056	07/01/90	-	06/30/91	1.3467	0.9954
050057	07/01/90	-	06/30/91	1.4468	0.9928
050063	07/01/90	-	06/30/91	1.3235	0.9936
050065	04/01/90	-	03/31/91	1.5002	0.9957
050066	04/01/90	-	03/31/91	1.2849	0.9942
050067	07/01/90	-	06/30/91	1.2757	0.9800
050068	07/01/90	-	06/30/91	1.1063	0.9913
050069	07/01/90	-	06/30/91	1.5585	0.9930
050077	07/01/90	-	06/30/91	1.6363	0.9990
050079	07/01/90	-	06/30/91	1.4862	0.9984
050082	07/01/90	-	06/30/91	1.4779	0.9969
050088	07/01/90	-	06/30/91	1.1429	0.9920
050089	07/01/90	-	06/30/91	1.3373	0.9859
050090	07/01/90	-	06/30/91	1.2284	0.9873
050092	07/01/90	-	06/30/91	0.9762	0.9720
050093	06/01/90	-	05/31/91	1.5178	0.9989
050095	07/01/90	-	06/30/91	1.8435	0.8663
050104	07/01/90	-	06/30/91	1.3575	0.9968
050110	07/01/90	-	06/30/91	1.1105	0.9714
050113	07/01/90	-	06/30/91	1.2424	0.9848
050114	05/01/90	-	04/30/91	1.5048	0.9818
050115	07/01/90	-	06/30/91	1.4688	0.9950
050116	07/01/90	-	06/30/91	1.4136	0.9964
050118	06/01/90	-	05/31/91	1.1620	0.9835
050124	07/01/90	-	06/30/91	1.2072	0.9888
050128	07/01/90	-	06/30/91	1.4877	0.9980
050129	07/01/90	-	06/30/91	1.5105	0.9956
050133	07/01/90	-	06/30/91	1.1788	0.9732
050136	07/01/90	-	06/30/91	1.3058	0.9803
050143	04/01/90	-	03/31/91	1.4183	0.9963
050147	06/01/90	-	05/31/91	0.7395	0.9830
050148	07/01/90	-	06/30/91	1.1109	0.9612
050152	07/01/90	-	06/30/91	1.4031	0.9938
050153	07/01/90	-	06/30/91	1.6231	0.9978
050158	04/01/90	-	03/31/91	1.6706	0.9962
050159	07/01/90	-	06/30/91	1.3933	0.9913
050161	05/01/90	-	04/30/91	1.6192	0.9912
050166	07/01/90	-	06/30/91	1.0269	0.9715
050167	07/01/90	-	06/30/91	1.3824	0.9940
050168	07/01/90	-	06/30/91	1.6796	0.9982
050170	07/01/90	-	06/30/91	1.4186	0.9912
050172	07/01/90	-	06/30/91	1.3424	0.9916
050174	07/01/90	-	06/30/91	1.6054	0.9982
050175	07/01/90	-	06/30/91	1.3782	0.9908
050177	04/01/90	-	03/31/91	1.2361	0.9949
050179	02/01/90	-	01/31/91	1.2439	0.9875
050181	07/01/90	-	06/30/91	1.3230	0.9923
050183	07/01/90	-	06/30/91	1.1358	0.9837
050188	06/01/90	-	05/31/91	1.3770	0.9897
050191	07/01/90	-	06/30/91	1.3900	0.9925
050192	07/01/90	-	06/30/91	1.1528	0.9812
050193	07/01/90	-	06/30/91	1.3447	0.9893
050194	07/01/90	-	06/30/91	1.3465	0.9917
050195	07/01/90	-	06/30/91	1.4964	0.9964
050197	07/01/90	-	06/30/91	1.8953	0.9979
050199	07/01/90	-	06/30/91	1.3072	0.9870
050207	07/01/90	-	06/30/91	1.2034	0.9920
050213	07/01/90	-	06/30/91	1.3656	0.9908
050215	07/01/90	-	06/30/91	1.6195	0.9980
050219	05/01/90	-	04/30/91	1.3491	0.9873
050220	04/01/90	-	03/31/91	1.2865	0.9918
050228	07/01/90	-	06/30/91	1.2481	0.9730

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
050230	03/01/90	-	02/28/91	1.3559	0.9864
050232	07/01/90	-	06/30/91	1.8510	0.9972
050240	07/01/90	-	06/30/91	1.4347	0.9967
050242	07/01/90	-	06/30/91	1.3816	0.9981
050243	07/01/90	-	06/30/91	1.4278	0.9964
050245	07/01/90	-	06/30/91	1.4570	0.9934
050248	07/01/90	-	06/30/91	1.1256	0.9816
050258	03/01/90	-	02/28/91	1.2539	0.9960
050260	07/01/90	-	06/30/91	0.9582	0.9162
050261	07/01/90	-	06/30/91	1.1889	0.9876
050262	07/01/90	-	06/30/91	1.6956	0.9943
050263	05/01/90	-	04/30/91	1.2801	0.9883
050267	07/01/90	-	06/30/91	1.4913	0.9978
050274	07/01/90	-	06/30/91	0.9849	0.9969
050276	07/01/90	-	06/30/91	1.1466	0.9899
050277	07/01/90	-	06/30/91	1.3527	0.9958
050278	06/01/90	-	05/31/91	1.3892	0.9881
050279	07/01/90	-	06/30/91	1.2355	0.9898
050280	07/01/90	-	06/30/91	1.4806	0.9884
050283	07/01/90	-	06/30/91	1.3910	0.9892
050289	07/01/90	-	06/30/91	1.6600	0.9966
050290	06/01/90	-	05/31/91	1.4497	0.9981
050291	07/01/90	-	06/30/91	1.1755	0.9933
050292	07/01/90	-	06/30/91	1.1551	0.9882
050293	07/01/90	-	06/30/91	1.2646	1.0000
050295	07/01/90	-	06/30/91	1.3291	0.9928
050296	07/01/90	-	06/30/91	1.1227	0.9790
050299	04/01/90	-	03/31/91	1.2349	0.9909
050307	06/01/90	-	05/31/91	1.3821	0.9934
050308	07/01/90	-	06/30/91	1.5545	0.9978
050312	06/01/90	-	05/31/91	1.7470	0.9960
050315	07/01/90	-	06/30/91	1.2767	0.9900
050320	07/01/90	-	06/30/91	1.2591	0.9828
050325	07/01/90	-	06/30/91	1.2670	0.9892
050331	03/01/90	-	02/28/91	1.2859	0.9832
050333	07/01/90	-	06/30/91	1.0043	0.9200
050334	07/01/90	-	06/30/91	1.4558	0.9975
050337	06/01/90	-	05/31/91	1.2079	0.9712
050342	07/01/90	-	06/30/91	1.3145	0.9904
050343	07/01/90	-	06/30/91	1.0605	0.9944
050348	07/01/90	-	06/30/91	1.6552	0.9896
050349	07/01/90	-	06/30/91	1.0430	0.9760
050350	07/01/90	-	06/30/91	1.3930	0.9959
050353	07/01/90	-	06/30/91	1.6318	0.9943
050355	07/01/90	-	06/30/91	0.9531	0.9757
050359	07/01/90	-	06/30/91	1.1069	0.9965
050360	07/01/90	-	06/30/91	1.4111	0.9874
050373	07/01/90	-	06/30/91	1.3496	0.9718
050376	07/01/90	-	06/30/91	1.2950	0.9952
050377	07/01/90	-	06/30/91	0.9950	0.9658
050378	06/01/90	-	05/31/91	1.1799	0.9881
050379	07/01/90	-	06/30/91	1.1738	0.9821
050380	07/01/90	-	06/30/91	1.5920	0.9986
050382	07/01/90	-	06/30/91	1.3964	0.9998
050387	07/01/90	-	06/30/91	0.9757	0.9887
050388	07/01/90	-	06/30/91	0.9395	0.9345
050390	07/01/90	-	06/30/91	1.2347	0.9944
050392	07/01/90	-	06/30/91	0.9208	0.9739
050393	07/01/90	-	06/30/91	1.4767	0.9976
050397	07/01/90	-	06/30/91	0.8635	0.9607
050401	05/01/90	-	04/30/91	1.1843	0.9947
050406	07/01/90	-	06/30/91	1.1036	0.9694
050410	07/01/90	-	06/30/91	0.8326	1.0000
050414	04/01/90	-	03/31/91	1.2749	0.9771
050418	06/01/90	-	05/31/91	1.2857	0.9822
050419	07/01/90	-	06/30/91	1.2536	0.9653
050423	04/01/90	-	03/31/91	1.0784	0.9466
050430	07/01/90	-	06/30/91	0.9386	0.9386
050432	06/01/90	-	05/31/91	1.5961	0.9949
050433	07/01/90	-	06/30/91	1.1255	0.9861
050434	04/01/90	-	03/31/91	1.0708	0.9635
050435	07/01/90	-	06/30/91	1.2687	0.9813
050436	07/01/90	-	06/30/91	1.0005	0.9786
050442	06/02/90	-	06/01/91	1.0000	1.0000
050443	07/01/90	-	06/30/91	0.9192	0.9673
050444	07/01/90	-	06/30/91	1.2239	0.9929
050446	07/01/90	-	06/30/91	0.8703	0.9264
050448	02/01/90	-	01/31/91	1.0455	0.9838
050449	07/01/90	-	06/30/91	1.2840	0.9910
050450	07/01/90	-	06/30/91	0.7792	1.0000
050451	07/01/90	-	06/30/91	0.9672	0.9656
050454	07/01/90	-	06/30/91	1.6326	0.9954
050456	07/01/90	-	06/30/91	1.3553	0.9900
050457	07/01/90	-	06/30/91	1.7728	0.9970
050459	07/01/90	-	06/30/91	1.2936	0.9781
050464	06/01/90	-	05/31/91	1.7723	0.9980
050470	07/01/90	-	06/30/91	1.1205	0.9687
050476	07/01/90	-	06/30/91	1.2633	0.9965
050477	07/01/90	-	06/30/91	1.4046	0.9856
050482	07/01/90	-	06/30/91	0.9911	0.9813
050485	07/01/90	-	06/30/91	1.6939	0.9964
050488	07/01/90	-	06/30/91	1.1848	0.9874
050491	07/01/90	-	06/30/91	1.4548	0.9943
050494	07/01/90	-	06/30/91	1.0993	0.9687
050496	07/01/90	-	06/30/91	1.7649	0.9954
050497	07/01/90	-	06/30/91	0.6934	1.0000
050502	07/01/90	-	06/30/91	1.6736	0.9998
050516	04/01/90	-	03/31/91	1.3195	0.9853
050522	06/01/90	-	05/31/91	1.3278	0.9905
050527	07/01/90	-	06/30/91	1.3130	0.9938
050528	07/01/90	-	06/30/91	1.2087	0.9864
050534	06/01/90	-	05/31/91	1.3954	0.9829
050539	07/01/90	-	06/30/91	1.2107	0.9738
050542	07/01/90	-	06/30/91	1.1138	0.9352
050545	07/01/90	-	06/30/91	0.8839	1.0000
050546	07/01/90	-	06/30/91	1.0031	1.0000

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
050547	07/01/90	-	06/30/91	0.9880	1.0000
050551	06/01/90	-	05/31/91	1.2910	0.9855
050559	07/01/90	-	06/30/91	1.2847	0.9730
050564	06/01/90	-	05/31/91	1.3180	0.9817
050565	07/01/90	-	06/30/91	1.1075	0.9827
050566	07/01/90	-	06/30/91	1.0079	0.9481
050568	07/01/90	-	06/30/91	1.3406	0.9907
050569	07/01/90	-	06/30/91	1.1516	0.9809
050573	07/01/90	-	06/30/91	1.6228	0.9985
050577	07/01/90	-	06/30/91	1.3112	0.9908
050578	07/01/90	-	06/30/91	1.4584	0.9608
050579	06/01/90	-	05/31/91	1.4135	0.9912
050581	06/01/90	-	05/31/91	1.3394	0.9886
050583	06/01/90	-	05/31/91	1.6787	0.9974
050584	06/01/90	-	05/31/91	1.3001	0.9785
050589	06/01/90	-	05/31/91	1.3231	0.9858
050594	07/01/90	-	06/30/91	1.9550	0.9930
050599	07/01/90	-	06/30/91	1.6169	0.9960
050601	04/01/90	-	03/31/91	1.2700	0.9819
050603	07/01/90	-	06/30/91	1.4390	0.9971
050608	02/01/90	-	01/31/91	1.1688	0.9916
050613	07/01/90	-	06/30/91	1.1084	0.9983
050615	05/01/90	-	04/30/91	1.4687	0.9968
050616	07/01/90	-	06/30/91	1.3375	0.9894
050618	07/01/90	-	06/30/91	1.1252	0.9634
050623	07/01/90	-	06/30/91	1.0854	1.0000
050625	04/01/90	-	03/31/91	1.4670	0.9984
050633	06/01/90	-	05/31/91	1.2098	0.9790
050636	07/01/90	-	06/30/91	1.2840	0.9754
050637	05/01/90	-	04/30/91	1.1806	0.9982
050638	07/01/90	-	06/30/91	0.9760	0.9592
050641	07/01/90	-	06/30/91	1.1261	0.9963
050651	02/01/90	-	01/31/91	1.2891	0.9897
050660	07/01/90	-	06/30/91	1.0823	0.9985
050661	02/01/90	-	01/31/91	0.8959	0.9909
050666	07/01/90	-	06/30/91	0.9562	1.0000
050667	07/01/90	-	06/30/91	1.0577	0.9532
050668	07/01/90	-	06/30/91	1.1585	0.9556
050671	07/01/90	-	06/30/91	1.1314	0.9635
050672	07/01/90	-	06/30/91	0.7000	0.9986
050675	02/01/90	-	01/31/91	1.5255	0.9945
050676	07/01/90	-	06/30/91	0.9866	0.8925
050678	07/01/90	-	06/30/91	1.1846	0.9977
050684	07/01/90	-	06/30/91	1.2156	0.9820
050685	07/01/90	-	06/30/91	1.1570	0.9822
050688	07/01/90	-	06/30/91	1.1460	0.9749
050689	06/01/90	-	05/31/91	1.3953	0.9714
060008	07/01/90	-	06/30/91	1.0467	0.9808
060012	07/01/90	-	06/30/91	1.4161	0.9988
060013	07/01/90	-	06/30/91	1.1979	0.9858
060015	07/01/90	-	06/30/91	1.4123	0.9788
060016	07/01/90	-	06/30/91	1.1173	0.9730
060020	07/01/90	-	06/30/91	1.4487	0.9919
060023	06/01/90	-	05/31/91	1.4293	0.9975
060024	07/01/90	-	06/30/91	1.5697	0.9928
060026	07/01/90	-	06/30/91	1.3890	0.9948
060028	06/01/90	-	05/31/91	1.3139	0.9986
060031	07/01/90	-	06/30/91	1.3764	0.9923
060032	07/01/90	-	06/30/91	1.3823	0.9998
060036	04/01/90	-	03/31/91	1.1774	0.9832
060054	05/01/90	-	04/30/91	1.2768	0.9949
080001	07/01/90	-	06/30/91	1.5816	0.9992
080002	07/01/90	-	06/30/91	1.1584	0.9880
080003	07/01/90	-	06/30/91	1.2413	0.9977
080004	06/25/90	-	06/24/91	1.2508	0.9965
080006	07/01/90	-	06/30/91	1.1346	0.9960
080007	07/01/90	-	06/30/91	1.2098	0.9840
090001	07/01/90	-	06/30/91	1.4317	0.9981
090003	07/01/90	-	06/30/91	1.4300	0.9997
090004	07/01/90	-	06/30/91	1.5547	0.9999
090009	07/01/90	-	06/30/91	1.2250	0.9994
090010	07/01/90	-	06/30/91	0.9677	0.9898
090011	07/01/90	-	06/30/91	1.8233	0.9998
100010	07/01/90	-	06/30/91	1.3816	0.9951
100027	06/01/90	-	05/31/91	0.9253	0.9782
100032	07/01/90	-	06/30/91	1.7467	0.9981
100038	05/01/90	-	04/30/91	1.5856	0.9968
100039	07/01/90	-	06/30/91	1.5889	0.9941
100059	07/01/90	-	06/30/91	1.4927	0.9971
100067	07/01/90	-	06/30/91	1.4006	0.9949
100068	04/01/90	-	03/31/91	1.4001	0.9999
100070	07/01/90	-	06/30/91	1.3171	0.9849
100073	07/01/90	-	06/30/91	1.8170	0.9984
100075	07/01/90	-	06/30/91	1.7290	0.9991
100076	04/01/90	-	03/31/91	1.3035	0.9968
100079	06/01/90	-	05/31/91	1.1629	0.9795
100084	07/01/90	-	06/30/91	1.3182	0.9730
100086	07/01/90	-	06/30/91	1.3079	0.9930
100113	07/01/90	-	06/30/91	1.8598	0.9993
100114	04/01/90	-	03/31/91	1.4365	0.9944
100122	07/01/90	-	06/30/91	1.3201	0.9836
100126	06/01/90	-	05/31/91	1.4682	0.9926
100145	07/01/90	-	06/30/91	1.3802	0.9928
100160	07/01/90	-	06/30/91	1.1880	0.9546
100161	06/01/90	-	05/31/91	1.5387	0.9849
100168	07/01/90	-	06/30/91	1.2893	0.9895
100172	06/01/90	-	05/31/91	1.3761	0.9990
100179	05/01/90	-	04/30/91	1.6946	0.9978
100191	07/01/90	-	06/30/91	1.3657	0.9876
100200	07/01/90	-	06/30/91	1.3440	0.9939
100204	03/01/90	-	02/28/91	1.5362	0.9984
100207	04/01/90	-	03/31/91	1.3789	0.9900
100213	05/01/90	-	04/30/91	1.6078	0.9973
100218	07/01/90	-	06/30/91	0.8880	0.9946
100225	06/01/90	-	05/31/91	1.3749	0.9952
100231	06/01/90	-	05/31/91	1.6939	0.9984

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
100239	06/01/90	-	05/31/91	1.4130	0.9960
100240	06/01/90	-	05/31/91	0.8715	0.9990
100242	02/01/90	-	01/31/91	1.2996	0.9939
100244	07/01/90	-	06/30/91	1.3472	0.9856
100249	06/01/90	-	05/31/91	1.3032	0.9772
100252	02/01/90	-	01/31/91	1.3099	0.9842
100254	05/01/90	-	04/30/91	1.5618	1.0000
100256	03/01/90	-	02/28/91	1.6566	0.9943
100258	06/01/90	-	05/31/91	1.7111	0.9877
100264	03/01/90	-	02/28/91	1.3496	0.9781
100268	06/01/90	-	05/31/91	1.2892	0.9765
100270	06/01/90	-	05/31/91	0.8943	0.9538
100271	07/01/90	-	06/30/91	1.5335	1.0000
100276	07/01/90	-	06/30/91	1.3433	0.9851
100277	07/01/90	-	06/30/91	1.0014	0.9996
110003	03/01/90	-	02/28/91	1.2541	0.9837
110008	04/01/90	-	03/31/91	1.1292	0.9844
110011	07/01/90	-	06/30/91	1.1499	0.9916
110015	07/01/90	-	06/30/91	1.0642	0.9449
110017	07/01/90	-	06/30/91	0.9171	0.9807
110026	07/01/90	-	06/30/91	1.1143	0.9732
110027	07/01/90	-	06/30/91	1.0537	0.9797
110031	04/01/90	-	03/31/91	1.2851	0.9877
110034	07/01/90	-	06/30/91	1.3837	0.9960
110035	07/01/90	-	06/30/91	1.3294	0.9864
110039	07/01/90	-	06/30/91	1.3043	0.9918
110040	07/01/90	-	06/30/91	0.9304	0.9816
110041	07/01/90	-	06/30/91	1.0706	0.9638
110042	07/01/90	-	06/30/91	1.0522	0.9785
110043	07/01/90	-	06/30/91	1.5517	0.9979
110051	05/01/90	-	04/30/91	1.0464	0.9756
110052	07/01/90	-	06/30/91	0.9413	0.9786
110054	07/01/90	-	06/30/91	1.2266	0.9943
110055	03/01/90	-	02/28/91	0.8844	0.9617
110056	07/01/90	-	06/30/91	1.0169	0.9630
110062	04/01/90	-	03/31/91	0.9073	0.9828
110064	07/01/90	-	06/30/91	1.2220	0.9943
110066	07/01/90	-	06/30/91	1.2402	0.9909
110069	03/01/90	-	02/28/91	1.1888	0.9902
110071	07/01/90	-	06/30/91	1.0509	0.9702
110093	07/01/90	-	06/30/91	0.9273	0.9546
110094	07/01/90	-	06/30/91	1.0365	0.9734
110101	07/01/90	-	06/30/91	1.0162	0.9784
110103	07/01/90	-	06/30/91	0.9375	0.9982
110104	07/01/90	-	06/30/91	1.1572	0.9808
110108	07/01/90	-	06/30/91	0.8679	0.9398
110109	07/01/90	-	06/30/91	1.0859	0.9791
110113	06/01/90	-	05/31/91	0.9838	0.9618
110118	05/01/90	-	04/30/91	1.0455	0.9934
110124	07/01/90	-	06/30/91	1.0531	0.9860
110125	05/01/90	-	04/30/91	1.1444	0.9833
110127	07/01/90	-	06/30/91	0.9496	0.9580
110128	07/01/90	-	06/30/91	1.1458	0.9913
110132	04/01/90	-	03/31/91	1.1336	0.9770
110133	07/01/90	-	06/30/91	0.8958	0.9424
110134	07/01/90	-	06/30/91	0.8687	0.9716
110135	05/01/90	-	04/30/91	1.1775	0.9845
110136	07/01/90	-	06/30/91	1.0711	0.9872
110141	07/01/90	-	06/30/91	0.8943	0.9502
110143	06/01/90	-	05/31/91	1.2569	0.9915
110149	07/01/90	-	06/30/91	1.0577	0.9818
110152	07/01/90	-	06/30/91	1.0316	0.9631
110153	03/01/90	-	02/28/91	1.0129	0.9875
110154	07/01/90	-	06/30/91	0.9935	0.9692
110155	04/01/90	-	03/31/91	1.1040	0.9848
110156	07/01/90	-	06/30/91	0.9377	0.9434
110157	04/01/90	-	03/31/91	1.1274	0.9893
110163	05/01/90	-	04/30/91	1.3225	0.9959
110164	04/01/90	-	03/31/91	1.3061	0.9925
110168	07/01/90	-	06/30/91	1.6267	0.9996
110169	07/01/90	-	06/30/91	0.7899	1.0000
110174	07/01/90	-	06/30/91	0.8584	0.9685
110176	07/01/90	-	06/30/91	1.1772	0.9971
110178	07/01/90	-	06/30/91	1.2734	1.0000
110181	04/01/90	-	03/31/91	0.8988	0.9672
110183	02/01/90	-	01/31/91	1.2711	0.9848
110184	04/01/90	-	03/31/91	1.2015	0.9862
110185	07/01/90	-	06/30/91	0.9922	0.9606
110186	05/01/90	-	04/30/91	1.3079	0.9960
110188	04/01/90	-	03/31/91	1.3662	0.9916
110191	07/01/90	-	06/30/91	1.1392	0.9911
110194	07/01/90	-	06/30/91	0.9021	0.9232
110202	04/01/90	-	03/31/91	1.0218	0.9843
110204	07/01/90	-	06/30/91	0.8977	1.0000
120001	07/01/90	-	06/29/91	1.6161	0.9973
120002	07/01/90	-	06/30/91	1.1676	0.9833
120003	07/01/90	-	06/30/91	1.0629	0.9815
120004	07/01/90	-	06/30/91	1.2318	0.9881
120005	07/01/90	-	06/30/91	1.1798	0.9934
120007	07/01/90	-	06/30/91	1.5746	0.9986
120009	07/01/90	-	06/29/91	0.8718	0.9413
120010	07/01/90	-	06/30/91	1.5315	0.9996
120012	07/01/90	-	06/30/91	0.9189	0.9686
120014	07/01/90	-	06/30/91	1.1690	0.9811
120015	07/01/90	-	06/30/91	0.9507	0.9653
120016	07/01/90	-	06/30/91	0.9569	0.9334
120018	07/01/90	-	06/30/91	1.0198	0.8846
120019	07/01/90	-	06/30/91	1.2130	0.9771
120021	07/01/90	-	06/30/91	0.9481	0.9307
120025	07/01/90	-	06/30/91	0.9026	1.0000
120026	07/01/90	-	06/30/91	1.2954	0.9964
120027	07/01/90	-	06/30/91	1.2766	0.9981
130003	07/01/90	-	06/30/91	1.2441	0.9801
130007	06/01/90	-	05/31/91	1.4950	0.9878
130008	07/01/90	-	06/30/91	0.8650	0.9787
130013	07/01/90	-	06/30/91	1.2388	0.9840

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
130017	07/01/90	-	06/30/91	0.9497	0.9682
130022	07/01/90	-	06/30/91	1.1469	0.9718
130029	07/01/90	-	06/30/91	0.9822	0.9523
130035	07/01/90	-	06/30/91	0.9812	0.9513
130048	07/01/90	-	06/30/91	0.9891	0.9794
140001	07/01/90	-	06/30/91	1.2625	0.9790
140003	03/01/90	-	02/28/91	0.9531	0.9565
140005	04/01/90	-	03/31/91	0.9086	0.9634
140011	04/01/90	-	03/31/91	1.1000	0.9872
140014	07/01/90	-	06/30/91	1.0680	0.9615
140016	03/01/90	-	02/28/91	1.0015	0.9464
140018	07/01/90	-	06/30/91	1.3825	0.9971
140024	07/01/90	-	06/30/91	0.9846	0.9739
140025	04/01/90	-	03/31/91	1.0949	0.9655
140026	07/01/90	-	06/30/91	1.1280	0.9924
140027	05/01/90	-	04/30/91	1.0857	0.9857
140030	05/01/90	-	04/30/91	1.4864	0.9968
140032	07/01/90	-	06/30/91	1.2879	0.9810
140035	07/01/90	-	06/30/91	1.0059	0.9809
140037	07/01/90	-	06/30/91	0.9764	0.9588
140038	05/01/90	-	04/30/91	0.9986	0.9782
140040	05/01/90	-	04/30/91	1.2435	0.9887
140041	06/01/90	-	05/31/91	1.0349	0.9816
140042	04/01/90	-	03/31/91	1.0403	0.9761
140043	05/01/90	-	04/30/91	1.1614	0.9885
140045	07/01/90	-	06/30/91	0.9380	0.9574
140047	05/01/90	-	04/30/91	1.0454	0.9764
140053	07/01/90	-	06/30/91	1.7141	0.9981
140055	05/01/90	-	04/30/91	0.9679	0.9522
140059	07/01/90	-	06/30/91	1.0708	0.9751
140061	07/01/90	-	06/30/91	1.0903	0.9629
140063	07/01/90	-	06/30/91	1.2859	0.9934
140068	04/01/90	-	03/31/91	1.2469	0.9910
140069	05/01/90	-	04/30/91	1.0658	0.9660
140070	05/01/90	-	04/30/91	1.2542	0.9821
140072	07/01/90	-	06/30/91	1.1325	0.9930
140075	07/01/90	-	06/30/91	1.3837	0.9972
140077	05/01/90	-	04/30/91	1.1258	0.9982
140081	07/01/90	-	06/30/91	1.1398	0.9726
140082	06/25/90	-	06/30/91	1.2353	0.9952
140083	07/01/90	-	06/30/91	1.2504	0.9949
140086	07/01/90	-	06/30/91	1.1064	0.9733
140088	07/01/90	-	06/30/91	1.4748	0.9967
140089	07/01/90	-	06/30/91	1.2439	0.9805
140091	07/01/90	-	06/30/91	1.6428	0.9980
140100	07/01/90	-	06/30/91	1.2348	0.9829
140102	07/01/90	-	06/30/91	0.9977	0.9579
140109	07/01/90	-	06/30/91	1.1105	0.9630
140110	05/01/90	-	04/30/91	1.1867	0.9766
140114	02/01/90	-	01/31/91	1.2307	0.9900
140115	07/01/90	-	06/30/91	1.2003	0.9979
140116	07/01/90	-	06/30/91	1.2356	0.9863
140117	07/01/90	-	06/30/91	1.2706	0.9892
140119	07/01/90	-	06/30/91	1.6225	0.9935
140120	05/01/90	-	04/30/91	1.1540	0.9801
140121	07/01/90	-	06/30/91	0.9590	0.9890
140127	07/01/90	-	06/30/91	1.2620	0.9853
140133	07/01/90	-	06/30/91	1.3341	0.9888
140138	07/01/90	-	06/30/91	1.1226	0.9597
140140	07/01/90	-	06/30/91	1.0470	0.9745
140144	04/01/90	-	03/31/91	0.9880	0.9784
140145	07/01/90	-	06/30/91	1.0405	0.9739
140146	05/01/90	-	04/30/91	0.9139	0.9579
140150	07/01/90	-	06/30/91	1.3414	0.9727
140151	07/01/90	-	06/30/91	1.0772	1.0000
140158	07/01/90	-	06/30/91	1.4364	0.9984
140159	07/01/90	-	06/30/91	1.1803	0.9932
140166	04/01/90	-	03/31/91	1.2499	0.9866
140165	04/01/90	-	03/31/91	1.0697	0.9573
140166	07/01/90	-	06/30/91	1.2561	0.9858
140168	07/01/90	-	06/30/91	1.1759	0.9733
140170	07/01/90	-	06/30/91	0.9486	0.9660
140171	07/01/90	-	06/30/91	0.8433	0.9826
140172	07/01/90	-	06/30/91	1.4939	0.9876
140173	07/01/90	-	06/30/91	0.9694	0.9641
140174	07/01/90	-	06/30/91	1.3286	0.9936
140177	04/01/90	-	03/31/91	1.2660	0.9842
140179	07/01/90	-	06/30/91	1.2512	0.9927
140184	05/01/90	-	04/30/91	1.1516	0.9750
140187	07/01/90	-	06/30/91	1.4172	0.9915
140189	07/01/90	-	06/30/91	1.1711	0.9827
140190	05/01/90	-	04/30/91	1.1778	0.9627
140193	07/01/90	-	06/30/91	0.9716	0.9600
140199	07/01/90	-	06/30/91	1.0005	0.9643
140200	07/01/90	-	06/30/91	1.4470	0.9967
140205	06/01/90	-	05/31/91	0.9464	0.9728
140210	05/01/90	-	04/30/91	1.0545	0.9744
140213	04/01/90	-	03/31/91	1.2028	0.9907
140215	07/01/90	-	06/30/91	1.0217	0.9811
140218	07/01/90	-	06/30/91	0.9701	0.9695
140223	07/01/90	-	06/30/91	1.4899	0.9970
140224	07/01/90	-	06/30/91	1.3180	0.9987
140228	06/01/90	-	05/31/91	1.5122	0.9986
140229	05/01/90	-	04/30/91	0.9841	0.9671
140230	07/01/90	-	06/30/91	0.9419	0.9618
140231	07/01/90	-	06/30/91	1.4738	0.9871
140234	07/01/90	-	06/30/91	1.1549	0.9865
140239	03/01/90	-	02/28/91	1.5307	0.9954
140242	07/01/90	-	06/30/91	1.3990	0.9963
140245	07/01/90	-	06/30/91	1.0259	0.9721
140246	07/01/90	-	06/30/91	1.0184	0.9750
140250	05/01/90	-	04/30/91	1.2229	0.9853
140251	07/01/90	-	06/30/91	1.2785	0.9916
140275	04/01/90	-	03/31/91	1.1947	0.9947
140276	07/01/90	-	06/30/91	2.0017	0.9982
140280	06/01/90	-	05/31/91	1.1627	0.9847

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
140286	05/01/90	-	04/30/91	1.0958	0.9836
140297	06/01/90	-	05/31/91	1.4644	0.9922
140299	07/01/90	-	06/30/91	0.9061	0.9600
150011	07/01/90	-	06/30/91	1.2094	0.9904
150012	06/01/90	-	05/31/91	1.5356	0.9972
150016	07/01/90	-	06/30/91	1.3162	0.9906
150019	07/01/90	-	06/30/91	1.1806	0.9942
150025	07/01/90	-	06/30/91	1.5000	0.9959
150032	07/01/90	-	06/30/91	1.6723	0.9923
150043	07/01/90	-	06/30/91	1.0463	0.9689
150046	05/01/90	-	04/30/91	1.4368	0.9974
150056	03/01/90	-	02/28/91	1.6483	0.9986
150076	06/01/90	-	05/31/91	1.0106	0.9825
150077	07/01/90	-	06/30/91	1.1483	0.9884
150082	05/01/90	-	04/30/91	1.3756	0.9992
150084	07/01/90	-	06/30/91	1.6502	0.9998
150085	06/01/90	-	05/31/91	0.9815	0.9600
150088	06/01/90	-	05/31/91	1.1415	0.9869
150089	07/01/90	-	06/30/91	1.2727	0.9997
150090	07/01/90	-	06/30/91	1.2749	0.9851
150099	07/01/90	-	06/30/91	1.3224	0.9979
150100	07/01/90	-	06/30/91	1.5650	0.9934
150103	07/01/90	-	06/30/91	1.1350	0.9478
150110	05/01/90	-	04/30/91	0.8663	0.9869
150115	07/01/90	-	06/30/91	1.2561	0.9801
150125	07/01/90	-	06/30/91	1.4009	0.9982
150126	07/01/90	-	06/30/91	1.5552	0.9942
150130	07/01/90	-	06/30/91	1.0930	0.9845
150135	07/01/90	-	06/30/91	0.8726	0.7790
160005	07/01/90	-	06/30/91	1.1284	0.9771
160007	07/01/90	-	06/30/91	0.9942	0.9252
160009	07/01/90	-	06/30/91	1.1264	0.9397
160012	07/01/90	-	06/30/91	1.2010	0.9729
160013	07/01/90	-	06/30/91	1.2253	0.9875
160014	07/01/90	-	06/30/91	0.9644	0.9450
160016	07/01/90	-	06/30/91	1.2801	0.9727
160018	07/01/90	-	06/30/91	0.9963	0.9455
160020	07/01/90	-	06/30/91	1.0889	0.9799
160021	07/01/90	-	06/30/91	1.1383	0.9704
160023	07/01/90	-	06/30/91	1.0926	0.9576
160025	07/01/90	-	06/30/91	1.7993	0.9964
160026	07/01/90	-	06/30/91	1.0176	0.9654
160027	07/01/90	-	06/30/91	1.1020	0.9658
160028	07/01/90	-	06/30/91	1.2532	0.9929
160029	07/01/90	-	06/30/91	1.4286	0.9984
160030	07/01/90	-	06/30/91	1.3156	0.9862
160031	07/01/90	-	06/30/91	1.0430	0.9428
160032	07/01/90	-	06/30/91	1.0381	0.9719
160033	07/01/90	-	06/30/91	1.3362	0.9914
160034	07/01/90	-	06/30/91	1.0004	0.9513
160035	07/01/90	-	06/30/91	0.9167	0.8895
160036	07/01/90	-	06/30/91	1.0264	0.9643
160037	07/01/90	-	06/30/91	1.0090	0.9454
160039	07/01/90	-	06/30/91	1.0594	0.9639
160040	07/01/90	-	06/30/91	1.3683	0.9906
160041	07/01/90	-	06/30/91	1.1307	0.9552
160043	07/01/90	-	06/30/91	0.9522	0.9537
160044	07/01/90	-	06/30/91	1.0361	0.9844
160048	07/01/90	-	06/30/91	1.0502	0.9558
160049	07/01/90	-	06/30/91	0.8964	0.9403
160050	07/01/90	-	06/30/91	1.0265	0.9548
160052	07/01/90	-	06/30/91	1.0132	0.9368
160054	07/01/90	-	06/30/91	1.0667	0.9753
160055	07/01/90	-	06/30/91	1.0381	0.9671
160056	07/01/90	-	06/30/91	1.0472	0.9611
160057	07/01/90	-	06/30/91	1.3684	0.9768
160058	07/01/90	-	06/30/91	1.5856	0.9989
160059	07/01/90	-	06/30/91	1.2447	0.9822
160060	07/01/90	-	06/30/91	1.0670	0.9642
160061	07/01/90	-	06/30/91	0.9750	0.9713
160062	07/01/90	-	06/30/91	0.9540	0.9668
160063	07/01/90	-	06/30/91	1.0822	0.9682
160064	07/01/90	-	06/30/91	1.5155	0.9922
160065	06/01/90	-	05/31/91	1.1304	0.9587
160066	07/01/90	-	06/30/91	1.0695	0.9644
160067	07/01/90	-	06/30/91	1.2389	0.9870
160068	07/01/90	-	06/30/91	1.0828	0.9609
160069	07/01/90	-	06/30/91	1.3270	0.9964
160070	07/01/90	-	06/30/91	1.0843	0.9933
160073	07/01/90	-	06/30/91	0.9085	0.9799
160074	07/01/90	-	06/30/91	1.0137	0.9658
160075	07/01/90	-	06/30/91	1.0738	0.9621
160076	07/01/90	-	06/30/91	0.9634	0.9658
160077	07/01/90	-	06/30/91	1.0967	0.9658
160079	07/01/90	-	06/30/91	1.2936	0.9944
160080	07/01/90	-	06/30/91	1.1280	0.9771
160081	07/01/90	-	06/30/91	1.0805	0.9557
160083	07/01/90	-	06/30/91	1.5365	0.9984
160085	07/01/90	-	06/30/91	1.1202	0.9507
160086	07/01/90	-	06/30/91	1.0076	0.9599
160088	07/01/90	-	06/30/91	0.9972	0.9558
160089	04/01/90	-	03/31/91	1.1967	0.9868
160090	07/01/90	-	06/30/91	1.0765	0.9782
160091	07/01/90	-	06/30/91	1.1241	0.9684
160093	07/01/90	-	06/30/91	1.0461	0.9509
160094	07/01/90	-	06/30/91	1.1848	0.9807
160095	07/01/90	-	06/30/91	1.0452	0.9522
160097	07/01/90	-	06/30/91	1.1179	0.9726
160098	07/01/90	-	06/30/91	0.9759	0.9707
160101	07/01/90	-	06/30/91	1.2025	0.9656
160102	07/01/90	-	06/30/91	1.4498	0.9972
160103	07/01/90	-	06/30/91	0.8779	0.9531
160106	07/01/90	-	06/30/91	1.0484	0.9539
160107	07/01/90	-	06/30/91	1.1084	0.9397
160108	07/01/90	-	06/30/91	1.1588	0.9690
160109	07/01/90	-	06/30/91	0.9842	0.9575

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
160112	07/01/90	-	06/30/91	1.3473	0.9729
160113	07/01/90	-	06/30/91	1.0284	0.9757
160114	07/01/90	-	06/30/91	1.0111	0.9677
160115	07/01/90	-	06/30/91	1.0240	0.9746
160116	07/01/90	-	06/30/91	1.1182	0.9779
160117	07/01/90	-	06/30/91	1.3380	0.9970
160118	07/01/90	-	06/30/91	0.9921	0.9804
160119	07/01/90	-	06/30/91	0.8416	0.9528
160120	07/01/90	-	06/30/91	1.0122	0.9074
160123	07/01/90	-	06/30/91	1.1013	0.9676
160124	07/01/90	-	06/30/91	1.1725	0.9555
160126	03/01/90	-	02/28/91	1.0646	0.9726
160134	07/01/90	-	06/30/91	0.8913	0.9033
160135	07/01/90	-	06/30/91	0.9984	0.9685
160140	07/01/90	-	06/30/91	1.0695	0.9707
160141	07/01/90	-	06/30/91	0.9299	0.9637
160142	07/01/90	-	06/30/91	1.1277	0.9349
160143	07/01/90	-	06/30/91	1.0959	0.9400
160145	07/01/90	-	06/30/91	1.0324	0.9917
160146	07/01/90	-	06/30/91	1.3035	0.9932
160151	07/01/90	-	06/30/91	1.1043	0.9837
160152	07/01/90	-	06/30/91	1.0531	0.9558
160153	07/01/90	-	06/30/91	1.5418	0.9979
170003	07/01/90	-	06/30/91	1.2184	0.9869
170007	07/01/90	-	06/30/91	1.1130	0.9945
170009	06/01/90	-	05/31/91	1.1753	0.9952
170010	07/01/90	-	06/30/91	1.1517	0.9711
170011	07/01/90	-	06/30/91	1.3391	0.9891
170013	07/01/90	-	06/30/91	1.2178	0.9937
170015	04/01/90	-	03/31/91	1.0691	0.9763
170016	06/01/90	-	05/31/91	1.5642	0.9981
170020	07/01/90	-	06/30/91	1.2261	0.9805
170025	07/01/90	-	06/30/91	1.3852	0.9868
170037	07/01/90	-	06/30/91	1.1576	0.9800
170040	07/01/90	-	06/30/91	1.3762	0.9942
170044	07/01/90	-	06/30/91	1.2031	0.9832
170045	07/01/90	-	06/30/91	1.0186	0.9745
170051	05/01/90	-	04/30/91	0.9891	0.9608
170052	05/01/90	-	04/30/91	1.1198	0.9714
170053	04/01/90	-	03/31/91	0.8675	0.9755
170056	04/01/90	-	03/31/91	0.9714	0.9742
170057	07/01/90	-	06/30/91	1.0163	0.9996
170058	07/01/90	-	06/30/91	1.0155	0.9840
170060	07/01/90	-	06/30/91	1.0476	0.9737
170061	04/01/90	-	03/31/91	1.0099	0.9570
170067	07/01/90	-	06/30/91	1.0297	0.9478
170069	07/01/90	-	06/30/91	0.8604	0.9586
170072	04/01/90	-	03/31/91	0.9652	0.9660
170074	05/01/90	-	04/30/91	1.1516	0.9919
170084	07/01/90	-	06/30/91	0.9469	0.9366
170085	07/01/90	-	06/30/91	0.9418	0.9079
170089	07/01/90	-	06/30/91	0.9941	0.9319
170093	04/01/90	-	03/31/91	1.0160	0.9449
170095	07/01/90	-	06/30/91	1.1595	0.9755
170100	05/01/90	-	04/30/91	0.8024	0.9685
170103	07/01/90	-	06/30/91	1.1985	0.9741
170105	07/01/90	-	06/30/91	0.9727	0.9646
170115	07/01/90	-	06/30/91	1.0944	0.9777
170133	07/01/90	-	06/30/91	1.1972	0.9787
170140	07/01/90	-	06/30/91	1.0051	0.9631
170142	07/01/90	-	06/30/91	1.2524	0.9808
170159	07/01/90	-	06/30/91	0.9249	0.9530
170171	06/01/90	-	05/31/91	1.1739	0.9905
180002	07/01/90	-	06/30/91	1.1371	0.9787
180005	07/01/90	-	06/30/91	1.0570	0.9808
180006	05/01/90	-	04/30/91	0.9283	0.9958
180007	07/01/90	-	06/30/91	1.3870	0.9957
180012	07/01/90	-	06/30/91	1.2625	0.9912
180013	04/01/90	-	03/31/91	1.3472	0.9962
180018	07/01/90	-	06/30/91	1.1808	0.9760
180020	07/01/90	-	06/30/91	1.0054	0.9710
180021	07/01/90	-	06/30/91	0.9139	0.9757
180024	07/01/90	-	06/30/91	1.1659	0.9688
180027	04/01/90	-	03/31/91	1.1265	0.9784
180028	07/01/90	-	06/30/91	0.9975	0.9634
180029	07/01/90	-	06/30/91	1.2749	0.9842
180032	07/01/90	-	06/30/91	0.9409	0.9710
180033	05/01/90	-	04/30/91	1.0612	0.9390
180034	07/01/90	-	06/30/91	1.0579	0.9643
180038	06/01/90	-	05/31/91	1.3029	0.9934
180042	07/01/90	-	06/30/91	1.0424	0.9517
180046	07/01/90	-	06/30/91	1.0433	0.9629
180047	07/01/90	-	06/30/91	1.0074	0.9273
180049	07/01/90	-	06/30/91	1.3477	0.9735
180050	07/01/90	-	06/30/91	1.2956	0.9617
180053	07/01/90	-	06/30/91	1.1763	0.9753
180054	07/01/90	-	06/30/91	1.0916	0.9622
180055	07/01/90	-	06/30/91	1.0289	0.9766
180056	07/01/90	-	06/30/91	1.0490	0.9817
180062	07/01/90	-	06/30/91	0.8157	0.9627
180065	07/01/90	-	06/30/91	0.9780	0.9831
180067	07/01/90	-	06/30/91	1.8398	0.9970
180069	07/01/90	-	06/30/91	1.0985	0.9838
180070	07/01/90	-	06/30/91	1.0591	0.9746
180075	05/01/90	-	04/30/91	0.9552	0.9793
180087	07/01/90	-	06/30/91	0.9767	0.9838
180092	07/01/90	-	06/30/91	1.1226	0.9802
180101	03/01/90	-	02/28/91	1.2362	0.9848
180105	03/01/90	-	02/28/91	0.9490	0.9665
180108	07/01/90	-	06/30/91	0.9097	0.9624
180117	06/01/90	-	05/31/91	1.2658	0.9623
180118	07/01/90	-	06/30/91	0.9816	0.9618
180122	07/01/90	-	06/30/91	0.9400	0.9328
180125	07/01/90	-	06/30/91	0.9963	0.9721
180129	05/01/90	-	04/30/91	1.1048	0.9717
180134	07/01/90	-	04/30/91	1.1039	0.9564

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
180139	07/01/90	-	06/30/91	1.0016	0.9699
190001	07/01/90	-	06/30/91	0.8920	0.9937
190005	07/01/90	-	06/30/91	1.2688	0.9972
190006	07/01/90	-	06/30/91	1.0634	0.9967
190007	07/01/90	-	06/30/91	1.0531	0.9663
190008	04/01/90	-	03/31/91	1.4522	0.9997
190009	07/01/90	-	06/30/91	1.1074	0.9976
190010	07/01/90	-	06/30/91	0.9037	0.9825
190011	07/01/90	-	06/30/91	1.0769	0.9972
190015	07/01/90	-	06/30/91	1.1941	0.9907
190017	07/01/90	-	06/30/91	1.1949	0.9873
190019	07/01/90	-	06/30/91	1.4884	0.9980
190020	07/01/90	-	06/30/91	1.1401	0.9805
190023	07/01/90	-	06/30/91	0.8858	0.9699
190027	07/01/90	-	06/30/91	1.4165	0.9970
190029	07/01/90	-	06/30/91	1.2454	0.9527
190033	06/01/90	-	05/31/91	0.9779	0.9904
190035	07/01/90	-	06/30/91	1.4151	1.0000
190036	05/01/90	-	04/30/91	1.6235	0.9996
190037	07/01/90	-	06/30/91	0.9822	0.9600
190041	07/01/90	-	06/30/91	1.5565	0.9979
190045	07/01/90	-	06/30/91	1.2905	0.9884
190047	07/01/90	-	06/30/91	1.1614	0.9775
190048	07/01/90	-	06/30/91	0.9738	0.9779
190054	07/01/90	-	06/30/91	1.4017	0.9824
190071	07/01/90	-	06/30/91	0.9224	0.9754
190075	07/01/90	-	06/30/91	1.4096	0.9970
190081	07/01/90	-	06/30/91	0.8500	0.9468
190086	05/01/90	-	04/30/91	1.2121	0.9885
190098	07/01/90	-	06/30/91	1.3357	1.0000
190103	05/01/90	-	04/30/91	0.9457	0.9828
190112	06/01/90	-	05/31/91	1.2993	0.9930
190114	07/01/90	-	06/30/91	0.9262	0.9908
190122	07/01/90	-	06/30/91	1.1690	0.9943
190124	07/01/90	-	06/30/91	1.4200	1.0000
190131	07/01/90	-	06/30/91	1.2679	0.9836
190132	07/01/90	-	06/30/91	1.0926	0.9656
190133	06/01/90	-	05/31/91	1.0310	0.9721
190138	05/01/90	-	04/30/91	0.7693	0.9971
190140	05/01/90	-	04/30/91	0.9928	0.9748
190148	06/01/90	-	05/31/91	0.9603	0.9739
190152	06/01/90	-	05/31/91	1.4353	0.9909
190155	07/01/90	-	06/30/91	0.9519	0.9823
190156	07/01/90	-	06/30/91	0.8431	0.9688
190158	06/01/90	-	05/31/91	1.3173	0.9986
190161	07/01/90	-	06/30/91	0.8502	1.0000
190165	05/01/90	-	04/30/91	1.0267	0.9499
190166	07/01/90	-	06/30/91	0.9889	0.9868
190170	04/01/90	-	03/31/91	1.0066	0.9692
190173	06/01/90	-	05/31/91	1.4328	0.9957
190176	07/01/90	-	06/30/91	1.3967	0.9984
190182	03/01/90	-	02/28/91	1.0245	0.9959
190183	07/01/90	-	06/30/91	1.0589	0.9984
190187	05/01/90	-	04/30/91	0.6506	0.9217
190190	04/01/90	-	03/31/91	1.0107	0.9722
190196	05/01/90	-	04/30/91	0.8320	1.0000
190199	07/01/90	-	06/30/91	1.2505	0.9787
190204	06/01/90	-	05/31/91	1.4451	0.9964
200002	05/01/90	-	04/30/91	1.0542	0.9698
200003	07/01/90	-	06/30/91	1.0322	0.9767
200008	07/01/90	-	06/30/91	1.1920	0.9959
200012	07/01/90	-	06/30/91	1.1141	0.9802
200013	07/01/90	-	06/30/91	1.1370	0.9857
200015	07/01/90	-	06/30/91	1.2617	0.9899
200016	07/01/90	-	06/30/91	1.0241	0.9669
200019	05/01/90	-	04/30/91	1.2045	0.9919
200020	07/01/90	-	06/30/91	1.0464	0.9903
200023	04/01/90	-	03/31/91	0.8545	0.9776
200024	07/01/90	-	06/30/91	1.1784	0.9890
200037	07/01/90	-	06/30/91	1.1593	0.9735
200038	05/01/90	-	04/30/91	1.0173	0.9803
200039	04/01/90	-	03/31/91	1.2975	0.9941
200040	06/01/90	-	05/31/91	1.0690	0.9706
200050	07/01/90	-	06/30/91	1.1297	0.9837
200051	07/01/90	-	06/30/91	0.9872	0.9559
200063	04/01/90	-	03/31/91	1.2307	0.9854
210001	07/01/90	-	06/30/91	1.3065	0.9998
210002	07/01/90	-	06/30/91	1.7811	0.9998
210003	07/01/90	-	06/30/91	1.3074	0.9941
210004	07/01/90	-	06/30/91	1.2490	0.9915
210005	07/01/90	-	06/30/91	1.2099	0.9914
210007	07/01/90	-	06/30/91	1.4036	0.9993
210008	07/01/90	-	06/30/91	1.2721	0.9983
210009	07/01/90	-	06/30/91	1.5349	0.9996
210010	07/01/90	-	06/30/91	1.1546	0.9749
210012	07/01/90	-	06/30/91	1.4363	0.9958
210013	07/01/90	-	06/30/91	1.2859	0.9966
210015	07/01/90	-	06/30/91	1.2214	0.9943
210016	07/01/90	-	06/30/91	1.7256	0.9981
210017	07/01/90	-	06/30/91	1.1532	0.9803
210018	07/01/90	-	06/30/91	1.2356	0.9918
210019	07/01/90	-	06/30/91	1.3193	0.9995
210021	07/01/90	-	06/30/91	1.2474	0.9949
210022	07/01/90	-	06730/91	1.2865	0.9893
210023	07/01/90	-	06/30/91	1.2659	0.9894
210024	07/01/90	-	06/30/91	1.2563	0.9983
210025	07/01/90	-	06/30/91	1.2417	0.9942
210026	07/01/90	-	06/30/91	1.3293	0.9954
210027	07/01/90	-	06/30/91	1.2174	0.9924
210028	07/01/90	-	06/30/91	1.0342	0.9766
210029	07/01/90	-	06/30/91	1.3281	0.9823
210030	07/01/90	-	06/30/91	1.0597	0.9859
210031	07/01/90	-	06/30/91	1.4101	1.0000
210032	07/01/90	-	06/30/91	1.1851	0.9960
210033	07/01/90	-	06/30/91	1.1332	0.9957
210034	07/01/90	-	06/30/91	1.1874	0.9961

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
210035	07/01/90	-	06/30/91	1.1340	0.9942
210036	07/01/90	-	06/30/91	1.1601	0.9897
210037	07/01/90	-	06/30/91	1.1898	0.9928
210038	07/01/90	-	06/30/91	1.3667	0.9956
210039	07/01/90	-	06/30/91	1.1915	0.9893
210040	07/01/90	-	06/30/91	1.3274	0.9897
210043	07/01/90	-	06/30/91	1.1730	1.0000
210044	07/01/90	-	06/30/91	1.1968	0.9966
210045	07/01/90	-	06/30/91	0.9828	0.9707
210046	07/01/90	-	06/30/91	1.1161	0.9929
210048	07/01/90	-	06/30/91	1.1597	0.9915
210051	07/01/90	-	06/30/91	1.2746	0.9963
210054	07/01/90	-	06/30/91	1.2398	0.9927
210055	07/01/90	-	06/30/91	1.1891	0.9949
210056	07/01/90	-	06/30/91	1.3635	0.9927
210057	07/01/90	-	06/30/91	1.2376	0.9921
210058	07/01/90	-	06/30/91	1.7267	0.9749
210059	07/01/90	-	06/30/91	1.3274	0.9943
220011	07/01/90	-	06/30/91	1.1694	0.9946
220041	07/01/90	-	06/30/91	1.1662	0.9897
220083	07/01/90	-	06/30/91	1.1349	0.9951
220114	07/01/90	-	06/30/91	1.0456	0.9962
220115	07/01/90	-	06/30/91	1.3012	0.9942
220131	07/01/90	-	06/30/91	1.1599	0.9804
220133	07/01/90	-	06/30/91	0.7435	0.9596
220153	07/01/90	-	06/30/91	1.0720	0.9518
220154	07/01/90	-	06/30/91	0.9595	0.9472
220163	07/01/90	-	06/30/91	1.9736	0.9976
230001	07/01/90	-	06/30/91	1.1589	0.9747
230002	07/01/90	-	06/30/91	1.2389	0.9909
230004	07/01/90	-	06/30/91	1.6683	0.9975
230005	07/01/90	-	06/30/91	1.1937	0.9881
230006	04/01/90	-	03/31/91	0.9901	0.9782
230014	04/01/90	-	03/31/91	0.9487	0.9851
230019	07/01/90	-	06/30/91	1.5564	0.9990
230024	07/01/90	-	06/30/91	1.4711	0.9989
230027	07/01/90	-	06/30/91	1.0871	0.9780
230029	07/01/90	-	06/30/91	1.4890	0.9988
230030	07/01/90	-	06/30/91	1.1671	0.9860
230031	07/01/90	-	06/30/91	1.3636	0.9927
230032	07/01/90	-	06/30/91	1.6846	0.9995
230034	04/01/90	-	03/31/91	1.1818	0.9803
230035	07/01/90	-	06/30/91	1.1486	0.9708
230036	07/01/90	-	06/30/91	1.2662	0.9775
230037	07/01/90	-	06/30/91	1.2883	0.9780
230038	07/01/90	-	06/30/91	1.5364	0.9998
230039	07/01/90	-	06/30/91	1.2783	0.9994
230041	07/01/90	-	06/30/91	1.1225	0.9953
230046	07/01/90	-	06/30/91	1.6964	0.9996
230047	07/01/90	-	06/30/91	1.2270	0.9886
230054	07/01/90	-	06/30/91	1.5833	0.9980
230058	07/01/90	-	06/30/91	1.1375	0.9646
230059	07/01/90	-	06/30/91	1.4107	0.9972
230060	07/01/90	-	06/30/91	1.1735	0.9882
230062	07/01/90	-	06/30/91	1.0550	0.9605
230066	04/01/90	-	03/31/91	1.3065	0.9931
230068	07/01/90	-	06/30/91	1.2994	0.9986
230069	07/01/90	-	06/30/91	1.1071	0.9820
230070	07/01/90	-	06/30/91	1.2974	0.9904
230072	04/01/90	-	03/31/91	1.1920	0.9998
230075	07/01/90	-	06/30/91	1.3133	0.9895
230077	07/01/90	-	06/30/91	2.1198	0.9982
230081	07/01/90	-	06/30/91	1.1623	0.9890
230082	07/01/90	-	06/30/91	1.1530	0.9759
230085	07/01/90	-	06/30/91	1.1395	0.9726
230086	07/01/90	-	06/30/91	0.9444	0.9582
230092	07/01/90	-	06/30/91	1.2447	0.9860
230093	07/01/90	-	06/30/91	1.1758	0.9815
230095	04/01/90	-	03/31/91	1.0916	0.9743
230097	07/01/90	-	06/30/91	1.4659	0.9982
230099	07/01/90	-	06/30/91	1.2030	0.9921
230100	07/01/90	-	06/30/91	1.1529	0.9754
230106	07/01/90	-	06/30/91	1.0858	0.9780
230108	07/01/90	-	06/30/91	1.1589	0.9826
230111	07/01/90	-	06/30/91	0.9995	0.9753
230113	07/01/90	-	06/30/91	1.0017	0.9772
230116	04/01/90	-	03/31/91	0.9398	0.9727
230117	07/01/90	-	06/30/91	1.7870	0.9989
230120	07/01/90	-	06/30/91	1.0076	0.9954
230124	04/01/90	-	03/31/91	1.1021	0.9810
230132	07/01/90	-	06/30/91	1.3156	0.9954
230133	07/01/90	-	06/30/91	1.0997	0.9839
230140	07/01/90	-	06/30/91	1.2608	0.9982
230144	07/01/90	-	06/30/91	1.1596	0.9949
230147	07/01/90	-	06/30/91	1.4790	0.9988
230153	07/01/90	-	06/30/91	1.0730	0.9761
230154	07/01/90	-	06/30/91	1.0836	0.9954
230156	07/01/90	-	06/30/91	1.6313	0.9993
230157	07/01/90	-	06/30/91	1.4088	0.9892
230159	04/01/90	-	03/31/91	1.3886	0.9928
230162	04/01/90	-	03/31/91	0.9233	0.9588
230165	06/24/90	-	06/23/91	1.6842	0.9993
230172	04/01/90	-	03/31/91	1.1553	0.9761
230173	07/01/90	-	06/30/91	1.4160	0.9900
230174	07/01/90	-	06/30/91	1.2352	1.0000
230178	04/01/90	-	03/31/91	1.1268	0.9806
230180	07/01/90	-	06/30/91	1.1255	0.9992
230188	04/01/90	-	03/31/91	1.1440	0.9912
230189	07/01/90	-	06/30/91	0.9047	0.9741
230199	07/01/90	-	06/30/91	1.1575	0.9874
230201	07/01/90	-	06/30/91	0.9530	0.9576
230207	07/01/90	-	06/30/91	1.2793	0.9989
230219	04/01/90	-	03/31/91	0.9288	0.9426
230221	04/01/90	-	03/31/91	1.2339	0.9964
230222	07/01/90	-	06/30/91	1.3200	0.9922
230232	07/01/90	-	06/30/91	1.0267	0.9643

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
230241	04/01/90	-	03/31/91	1.1339	0.9860
230264	07/01/90	-	06/30/91	1.3831	0.9895
240002	07/01/90	-	06/30/91	1.6660	0.9943
240005	07/01/90	-	06/30/91	0.9399	0.9040
240009	07/01/90	-	06/30/91	1.0401	0.9659
240017	05/01/90	-	04/30/91	1.2162	0.9733
240036	07/01/90	-	06/30/91	1.4798	0.9974
240037	07/01/90	-	06/30/91	1.0509	0.9973
240040	07/01/90	-	06/30/91	1.2473	0.9582
240044	05/01/90	-	04/30/91	1.1733	0.9730
240049	07/01/90	-	06/30/91	1.6220	0.9971
240075	07/01/90	-	06/30/91	1.2347	0.9826
240077	07/01/90	-	06/30/91	0.9707	0.9583
240089	04/01/90	-	03/31/91	1.0613	0.9887
240890	05/01/90	-	04/30/91	1.0214	0.9738
240099	06/01/90	-	05/31/91	0.9927	0.9873
240101	07/01/90	-	06/30/91	1.1759	0.9692
240104	07/01/90	-	06/30/91	1.2391	0.9819
240110	07/01/90	-	06/30/91	1.0044	0.9621
240125	06/01/90	-	05/31/91	0.9366	0.9807
240129	06/01/90	-	05/31/91	0.9738	0.9657
240137	04/01/90	-	03/31/91	1.2096	0.9726
240145	03/01/90	-	02/28/91	0.9405	0.9625
240158	05/01/90	-	04/30/91	0.9840	0.9255
240160	07/01/90	-	06/30/91	0.9661	0.9779
240167	01/01/90	-	01/12/91	0.8628	0.9311
240171	05/01/90	-	04/30/91	1.1386	0.9557
240175	06/01/90	-	05/31/91	0.8325	1.0000
240176	07/01/90	-	06/30/91	0.9167	0.9851
250001	07/01/90	-	06/30/91	1.4630	0.9956
250006	07/01/90	-	06/30/91	0.9807	0.9855
250016	05/01/90	-	04/30/91	0.8531	0.9958
250017	04/01/90	-	03/31/91	0.9886	0.9700
250031	05/01/90	-	04/30/91	1.2181	0.9909
250032	07/01/90	-	06/30/91	1.1559	0.9908
250033	04/01/90	-	03/31/91	1.0643	0.9546
250034	07/01/90	-	06/30/91	1.4511	0.9938
250044	07/01/90	-	06/30/91	1.0662	0.9809
250046	04/01/90	-	03/31/91	1.0081	0.9614
250094	04/01/90	-	03/31/91	1.2087	0.9968
250102	07/01/90	-	06/30/91	1.3986	0.9990
250123	03/01/90	-	02/28/91	1.1269	0.9902
250126	04/01/90	-	03/31/91	0.9989	0.9572
250128	05/01/90	-	04/30/91	0.9753	0.9570
250134	07/01/90	-	06/30/91	0.9549	1.0000
250138	05/01/90	-	04/30/91	1.2602	0.9912
250141	07/01/90	-	06/30/91	1.1664	0.9854
250143	12/16/89	-	01/02/91	0.9096	0.9822
260001	07/01/90	-	06/30/91	1.5647	0.9991
260002	06/01/90	-	05/31/91	1.3093	0.9876
260006	07/01/90	-	06/30/91	1.3137	0.9910
260007	04/01/90	-	03/31/91	1.1853	0.9941
260008	07/01/90	-	06/30/91	1.2363	0.9933
260009	06/01/90	-	05/31/91	1.2422	0.9836
260013	05/01/90	-	04/30/91	1.1233	0.9994
260016	07/01/90	-	06/30/91	1.2100	0.9934
260020	07/01/90	-	06/30/91	1.5593	0.9981
260022	06/01/90	-	05/31/91	1.3887	0.9875
260033	05/01/90	-	04/30/91	1.2920	0.9919
260037	02/01/90	-	01/31/91	1.2101	0.9881
260042	07/01/90	-	06/30/91	1.0944	0.9860
260047	07/01/90	-	06/30/91	1.3049	0.9894
260048	05/01/90	-	04/30/91	1.3596	0.9983
260049	07/01/90	-	06/30/91	0.8563	0.9559
260051	06/01/90	-	05/31/91	1.2717	0.9978
260052	07/01/90	-	06/30/91	1.1541	0.9886
260055	07/01/90	-	06/30/91	1.1939	0.9694
260059	07/01/90	-	06/30/91	1.0585	0.9570
260061	07/01/90	-	06/30/91	1.1293	0.9793
260065	07/01/90	-	06/30/91	1.5749	0.9987
260066	07/01/90	-	06/30/91	1.0481	0.9664
260067	07/01/90	-	06/30/91	0.9562	0.9523
260077	07/01/90	-	06/30/91	1.3796	0.9940
260079	07/01/90	-	06/30/91	1.0012	0.9700
260081	07/01/90	-	06/30/91	1.3967	0.9978
260082	04/01/90	-	03/31/91	1.1584	0.9873
260085	07/01/90	-	06/30/91	1.4306	0.9979
260086	04/01/90	-	03/31/91	0.9677	0.9819
260089	05/01/90	-	04/30/91	1.0935	0.9914
260090	07/01/90	-	06/30/91	1.4546	0.9924
260094	05/01/90	-	04/30/91	1.0405	0.9968
260095	07/01/90	-	06/30/91	1.3605	0.9972
260096	07/01/90	-	06/30/91	1.4352	0.9985
260104	07/01/90	-	06/30/91	1.5896	0.9973
260105	07/01/90	-	06/30/91	1.8521	0.9966
260108	07/01/90	-	06/30/91	1.6264	0.9988
260109	04/01/90	-	03/31/91	1.0410	0.9553
260112	05/01/90	-	04/30/91	1.3629	0.9989
260115	07/01/90	-	06/30/91	1.0573	0.9394
260127	07/01/90	-	06/30/91	1.0865	0.9734
260128	07/01/90	-	06/30/91	1.0149	0.9583
260129	06/01/90	-	05/31/91	1.0830	0.9910
260131	04/01/90	-	03/31/91	1.3070	0.9575
260137	06/01/90	-	05/31/91	1.2395	1.0000
260141	07/01/90	-	06/30/91	1.9490	0.9899
260142	05/01/90	-	04/30/91	1.2315	0.9738
260143	07/01/90	-	06/30/91	1.1842	0.9692
260146	07/01/90	-	06/30/91	1.2012	0.9903
260147	07/01/90	-	06/30/91	1.0283	0.9722
260148	07/01/90	-	06/30/91	1.0108	0.9556
260163	04/01/90	-	03/31/91	1.1921	0.9570
260164	05/01/90	-	04/30/91	1.0989	0.9696
260172	07/01/90	-	06/30/91	1.0282	0.9793
260173	07/01/90	-	06/30/91	1.1111	0.8950
260175	04/01/90	-	03/31/91	1.1710	0.9822
260176	05/01/90	-	04/30/91	1.3154	0.9912

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
260177	07/01/90	-	06/30/91	1.3056	0.9909
260182	07/01/90	-	06/30/91	1.0392	0.9655
260183	07/01/90	-	06/30/91	1.4172	0.9932
260186	05/01/90	-	04/30/91	1.1376	0.9571
260189	07/01/90	-	06/30/91	0.9479	0.9752
260197	02/01/90	-	01/31/91	1.2524	0.9949
260198	07/01/90	-	06/30/91	1.2822	0.9868
270003	06/01/90	-	05/31/91	1.1879	0.9887
270004	07/01/90	-	06/30/91	1.6946	0.9984
270009	06/01/90	-	05/31/91	1.0669	0.9770
270011	07/01/90	-	06/30/91	1.1355	0.9720
270012	07/01/90	-	06/30/91	1.3808	0.9974
270016	07/01/90	-	06/30/91	0.9477	0.9175
270017	06/01/90	-	05/31/91	1.2210	0.9802
270023	07/01/90	-	06/30/91	1.2716	0.9913
270024	07/01/90	-	06/30/91	1.0515	0.9849
270026	07/01/90	-	06/30/91	0.9600	0.9560
270027	07/01/90	-	06/30/91	1.0052	0.9865
270028	07/01/90	-	06/30/91	1.0193	0.9737
270029	07/01/90	-	06/30/91	1.0603	0.9841
270031	06/01/90	-	06/30/91	0.8856	0.9640
270032	07/01/90	-	06/30/91	1.1106	0.9663
270036	07/01/90	-	06/30/91	0.9661	0.9928
270040	07/01/90	-	06/30/91	1.0172	0.9558
270044	07/01/90	-	06/30/91	1.1592	0.9672
270046	05/01/90	-	04/30/91	0.9527	0.9657
270047	07/01/90	-	06/30/91	0.9262	0.9248
270049	06/01/90	-	05/31/91	1.5876	0.9972
270050	07/01/90	-	06/30/91	1.0346	0.9576
270051	04/01/90	-	03/31/91	1.2089	0.9924
270052	07/01/90	-	06/30/91	1.0396	0.9558
270053	07/01/90	-	06/30/91	0.8383	0.8336
270055	07/01/90	-	06/30/91	0.6368	0.9758
270058	07/01/90	-	06/30/91	0.9847	0.9795
270060	07/01/90	-	06/30/91	0.9500	0.9091
270067	05/01/90	-	04/30/91	0.9493	0.9951
270068	07/01/90	-	06/30/91	0.8888	0.8945
270072	07/01/90	-	06/30/91	0.8672	0.9038
270073	07/01/90	-	06/30/91	1.1772	0.9532
270079	07/01/90	-	06/30/91	0.9509	0.9460
270080	07/01/90	-	06/30/91	1.0930	0.9736
270081	07/01/90	-	06/30/91	0.9303	0.9642
270082	07/01/90	-	06/30/91	0.8880	0.9723
280003	06/01/90	-	05/31/91	1.8344	0.9977
280009	07/01/90	-	06/30/91	1.4787	0.9883
280011	07/01/90	-	06/30/91	1.0097	0.9688
280013	07/01/90	-	06/30/91	1.8270	0.9960
280014	07/01/90	-	06/30/91	0.9956	0.9687
280018	07/01/90	-	06/30/91	0.9430	0.9635
280020	07/01/90	-	06/30/91	1.4431	0.9925
280021	07/01/90	-	06/30/91	1.1404	0.9680
280022	07/01/90	-	06/30/91	1.0412	0.9839
280023	07/01/90	-	06/30/91	1.3730	0.9845
280024	07/01/90	-	06/30/91	0.8356	0.9608
280026	07/01/90	-	06/30/91	1.0319	0.9812
280028	05/01/90	-	04/30/91	0.8778	0.9576
280029	07/01/90	-	06/30/91	0.9899	0.9620
280033	07/01/90	-	06/30/91	0.9512	0.9930
280035	07/01/90	-	06/30/91	0.9111	0.9373
280037	07/01/90	-	06/30/91	0.9412	0.9475
280042	05/01/90	-	04/30/91	1.0014	0.9778
280043	07/01/90	-	06/30/91	1.1113	0.9684
280045	07/01/90	-	06/30/91	1.1097	0.9958
280049	05/01/90	-	04/30/91	1.0162	0.9837
280050	07/01/90	-	06/30/91	0.9829	0.9640
280051	07/01/90	-	06/30/91	1.0257	0.9984
280052	07/01/90	-	06/30/91	1.0660	0.9757
280055	07/01/90	-	06/30/91	0.9920	0.9408
280056	07/01/90	-	06/30/91	1.0023	0.9789
280060	07/01/90	-	06/30/91	1.4360	0.9988
280062	07/01/90	-	06/30/91	1.1430	0.9664
280064	05/01/90	-	04/30/91	1.0898	0.9708
280066	07/01/90	-	06/30/91	1.1385	0.9911
280068	04/01/90	-	03/31/91	0.8758	0.9128
280070	05/01/90	-	04/30/91	0.9996	0.9276
280073	07/01/90	-	06/30/91	1.0010	0.9461
280075	07/01/90	-	06/30/91	1.3199	0.9813
280077	07/01/90	-	06/30/91	1.2948	0.9820
280078	05/01/90	-	04/30/91	0.9194	0.8852
280080	07/01/90	-	06/30/91	1.0813	0.9689
280082	03/01/90	-	02/28/91	1.2983	0.9888
280084	07/01/90	-	06/30/91	0.9546	0.9518
280090	07/01/90	-	06/30/91	0.9664	0.9719
280091	07/01/90	-	06/30/91	1.0221	0.9801
280092	07/01/90	-	06/30/91	0.9631	0.8984
280094	04/01/90	-	03/31/91	1.0863	0.9748
280097	07/01/90	-	06/30/91	0.9064	0.9276
280098	07/01/90	-	06/30/91	0.9917	0.9911
280104	07/01/90	-	06/30/91	0.9589	0.8916
280105	07/01/90	-	06/30/91	1.2099	0.9909
280110	07/01/90	-	06/30/91	1.0343	0.9660
280111	05/01/90	-	04/30/91	1.2069	0.9830
280117	07/01/90	-	06/30/91	1.0399	0.9702
280118	07/01/90	-	06/30/91	0.9524	0.9702
280123	07/01/90	-	06/30/91	0.9442	0.9000
290001	07/01/90	-	06/30/91	1.5795	0.9999
290002	04/01/90	-	03/31/91	0.9768	0.9271
290007	07/01/90	-	06/30/91	1.6757	0.9972
290008	07/01/90	-	06/30/91	1.2653	0.9688
290011	07/01/90	-	06/30/91	1.0149	0.9647
290012	07/01/90	-	06/30/91	1.3171	0.9843
290013	07/01/90	-	06/30/91	1.0380	0.9808
290014	07/01/90	-	06/30/91	0.9425	0.9344
290015	07/01/90	-	06/30/91	0.9952	0.9179
290016	07/01/90	-	06/30/91	1.0926	0.9511
290019	07/01/90	-	06/30/91	1.1997	0.9825

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
290020	07/01/90	-	06/30/91	0.8756	0.9549
290027	07/01/90	-	06/30/91	0.9515	0.9970
300003	07/01/90	-	06/30/91	1.8397	0.9956
300010	07/01/90	-	06/30/91	1.2596	0.9733
300015	07/01/90	-	06/30/91	1.0261	0.9383
300019	07/01/90	-	06/30/91	1.2401	0.9886
300029	03/01/90	-	02/28/91	1.2481	0.9898
300034	07/01/90	-	06/30/91	1.7137	0.9967
310119	07/01/90	-	06/30/91	1.5159	0.9969
320001	07/01/90	-	06/30/91	1.4283	0.9880
320002	07/01/90	-	06/30/91	1.2533	0.9912
320003	07/01/90	-	06/30/91	1.1558	0.9829
320004	07/01/90	-	06/30/91	1.1740	0.9929
320005	07/01/90	-	06/30/91	1.2622	0.9885
320006	07/01/90	-	06/30/91	1.1903	0.9857
320009	07/01/90	-	06/30/91	1.3160	0.9946
320011	04/01/90	-	03/31/91	0.9783	0.9750
320012	04/01/90	-	03/31/91	0.9280	0.9343
320013	06/01/90	-	05/31/91	1.0896	0.9778
320014	07/01/90	-	06/30/91	0.9685	0.9476
320016	07/01/90	-	06/30/91	1.2000	0.9785
320017	07/01/90	-	06/30/91	1.1867	0.9979
320018	07/01/90	-	06/30/91	1.2056	0.9949
320021	04/01/90	-	03/31/91	1.6351	0.9964
320022	04/01/90	-	03/31/91	1.2168	0.9824
320023	06/01/90	-	05/31/91	1.1190	0.9771
320030	07/01/90	-	06/30/91	1.0400	0.9650
320031	07/01/90	-	06/30/91	0.9575	0.9809
320032	04/01/90	-	03/31/91	0.9144	0.9481
320033	07/01/90	-	06/30/91	1.0408	0.9956
320037	07/01/90	-	06/30/91	1.2383	0.9184
320046	04/01/90	-	03/31/91	1.0655	0.9492
320048	07/01/90	-	06/30/91	1.3045	0.9916
320065	04/01/90	-	03/31/91	1.1809	0.9623
320068	07/01/90	-	06/30/91	0.8598	0.9619
320069	07/01/90	-	06/30/91	1.0743	0.9582
320074	07/01/90	-	06/30/91	1.0522	0.9861
320076	04/01/90	-	03/31791	1.1648	0.9832
320079	04/01/90	-	03/31/91	1.0681	0.9879
330080	07/01/90	-	06/30/91	1.2402	0.9940
330127	07/01/90	-	06/30/91	1.2268	0.9616
330128	07/01/90	-	06/30/91	1.3881	0.9946
330196	07/01/90	-	06/30/91	1.3913	0.9991
330199	07/01/90	-	06/30/91	1.2429	0.9962
330202	07/01/90	-	06/30/91	1.2290	0.9839
330204	07/01/90	-	06/30/91	1.2010	0.9970
330231	07/01/90	-	06/30/91	1.1931	0.9939
330240	07/01/90	-	06/30/91	1.3066	0.9874
330354	04/01/90	-	03/31/91	1.1394	1.0000
330385	07/01/90	-	06/30/91	1.1988	0.9835
340014	07/01/90	-	06/30/91	1.6111	0.9993
340019	07/01/90	-	06/30/91	1.0695	0.9907
340020	06/01/90	-	05/31/91	1.2379	0.9709
340030	07/01/90	-	06/30/91	1.7215	0.9974
340032	07/01/90	-	06/30/91	1.2876	0.9882
340047	07/01/90	-	06/30/91	1.7385	0.9983
340061	07/01/90	-	06/30/91	1.5983	0.9987
340073	07/01/90	-	06/30/91	1.3335	0.9946
340076	07/01/90	-	06/30/91	1.0047	0.9731
340116	05/01/90	-	04/30/91	1.6776	0.9940
340135	07/01/90	-	06/30/91	1.1003	0.8391
340136	07/01/90	-	06/30/91	0.9989	1.0000
340137	07/01/90	-	06/30/91	1.3079	1.0000
340138	07/01/90	-	06/30/91	1.0945	0.9856
340143	07/01/90	-	06/30/91	1.3605	0.9882
340144	03/01/90	-	02/28/91	1.2847	0.9961
340148	07/01/90	-	06/30/91	1.3048	0.9947
340153	03/01/90	-	02/28/91	1.9009	0.9993
340154	07/01/90	-	06/30/91	0.9967	1.0000
340155	07/01/90	-	06/30/91	1.5121	0.9972
340158	07/01/90	-	06/30/91	1.0621	0.9917
340160	07/01/90	-	06/30/91	1.0394	0.9591
340164	06/01/90	-	05/31/91	1.3063	0.9922
350001	07/01/90	-	06/30/91	1.1017	0.9931
350002	07/01/90	-	06/30/91	1.6667	0.9985
350003	07/01/90	-	06/30/91	1.1090	0.9772
350005	07/01/90	-	06/30/91	1.1289	0.9522
350006	07/01/90	-	06/30/91	1.3771	0.9932
350008	07/01/90	-	06/30/91	1.0511	0.9663
350009	07/01/90	-	06/30/91	1.1467	0.9794
350010	04/01/90	-	03/31/91	1.0950	0.9885
350011	07/01/90	-	06/30/91	1.7378	1.0000
350012	07/01/90	-	06/30/91	1.0006	0.9902
350013	07/01/90	-	06/30/91	1.0679	0.9722
350014	07/01/90	-	06/30/91	1.0694	0.9852
350016	07/01/90	-	06/30/91	0.9791	0.9712
350017	07/01/90	-	06/30/91	1.2278	0.9898
350021	07/01/90	-	06/30/91	1.0964	0.9752
350025	07/01/90	-	06/30/91	0.9736	0.9659
350029	07/01/90	-	06/30/91	0.9546	0.9402
350030	07/01/90	-	06/30/91	1.0611	0.9853
350031	07/01/90	-	06/30/91	0.9771	0.9703
350032	07/01/90	-	06/30/91	1.1451	1.0000
350034	07/01/90	-	06/30/91	0.9603	0.9841
350035	07/01/90	-	06/30/91	0.8435	0.9283
350036	07/01/90	-	06/30/91	0.8991	0.8986
350038	07/01/90	-	06/30/91	0.9377	0.9762
350039	07/01/90	-	06/30/91	0.8850	0.9466
350043	07/01/90	-	06/30/91	1.4861	0.9964
350044	07/01/90	-	06/30/91	0.8672	0.9920
350047	07/01/90	-	06/30/91	1.1156	0.9397
350049	07/01/90	-	06/30/91	1.0699	0.9722
350053	07/01/90	-	06/30/91	0.8745	0.9809
350056	07/01/90	-	06/30/91	0.8789	0.9802
350058	04/01/90	-	03/31/91	1.0174	0.9705
350060	07/01/90	-	06/30/91	0.9915	1.0000

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
350061	04/01/90	-	03/31/91	1.0214	0.9897
350065	03/01/90	-	02/28/91	0.9734	0.9403
350067	07/01/90	-	06/30/91	0.9935	0.9174
360003	07/01/90	-	06/30/91	1.5017	0.9953
360006	07/01/90	-	06/30/91	1.6791	0.9984
360008	07/01/90	-	06/30/91	1.1948	0.9776
360011	07/01/90	-	06/30/91	1.2533	0.9931
360014	07/01/90	-	06/30/91	1.1771	0.9728
360017	07/01/90	-	06/30/91	1.7318	0.9966
360028	07/01/90	-	06/30/91	1.3095	0.9890
360029	07/01/90	-	06/30/91	1.1000	0.9868
360035	06/01/90	-	05/31/91	1.4449	0.9978
360040	07/01/90	-	06/30/91	1.2708	0.9656
360048	07/01/90	-	06/30/91	1.6749	0.9963
360052	07/01/90	-	06/30/91	1.5723	0.9990
360054	07/01/90	-	06/30/91	1.3044	0.9831
360058	04/01/90	-	03/31/91	1.0752	0.9752
360085	07/01/90	-	06/30/91	1.6396	0.9901
360090	07/01/90	-	06/30/91	1.1621	0.9946
360134	07/01/90	-	06/30/91	1.5056	0.9994
360161	07/01/90	-	06/30/91	1.2345	0.9842
360178	07/01/90	-	06/30/91	1.1999	0.9882
360185	07/01/90	-	06/30/91	1.1791	0.9884
360187	07/01/90	-	06/30/91	1.3453	0.9876
360238	07/01/90	-	06/30/91	0.8813	0.9824
370004	07/01/90	-	06/30/91	1.1375	0.9758
370005	07/01/90	-	06/30/91	0.9539	0.9649
370008	07/01/90	-	06/30/91	1.1991	0.9933
370011	07/01/90	-	06/30/91	0.9422	0.9775
370012	07/01/90	-	06/30/91	0.8948	0.9441
370013	07/01/90	-	06/30/91	1.3686	0.9990
370015	07/01/90	-	06/30/91	1.1192	0.9757
370016	07/01/90	-	06/30/91	1.2813	0.9964
370019	07/01/90	-	06/30/91	1.1148	0.9691
370022	07/01/90	-	06/30/91	1.3322	0.9800
370023	07/01/90	-	06/30/91	1.2936	0.9829
370026	07/01/90	-	06/30/91	1.3037	0.9965
370028	07/01/90	-	06/30/91	1.5874	0.9989
370029	07/01/90	-	06/30/91	1.2024	0.9429
370030	07/01/90	-	06/30/91	1.2150	0.9719
370034	07/01/90	-	06/30/91	1.1186	0.9837
370035	07/01/90	-	06/30/91	1.4775	0.9949
370036	07/01/90	-	06/30/91	1.0831	0.9331
370038	07/01/90	-	06/30/91	1.0349	0.9484
370041	07/01/90	-	06/30/91	1.0025	0.9646
370042	07/01/90	-	06/30/91	0.8910	0.9737
370043	07/01/90	-	06/30/91	0.9592	0.9718
370045	07/01/90	-	06/30/91	1.0777	0.9627
370046	07/01/90	-	06/30/91	1.0141	0.9481
370047	07/01/90	-	06/30/91	1.2306	0.9918
370048	07/01/90	-	06/30/91	1.2252	0.9470
370050	07/01/90	-	06/30/91	0.8390	0.9106
370056	07/01/90	-	06/30/91	1.4442	0.9954
370059	07/01/90	-	06/30/91	1.2710	0.9852
370060	06/01/90	-	05/31/91	0.9757	0.9510
370063	07/01/90	-	06/30/91	1.1823	0.9717
370064	05/01/90	-	04/30/91	0.9092	0.9389
370065	07/01/90	-	06/30/91	1.1184	0.9501
370069	07/01/90	-	06/30/91	1.0008	0.9670
370071	07/01/90	-	06/30/91	0.9890	0.9582
370072	07/01/90	-	06/30/91	0.9622	0.9644
370076	07/01/90	-	06/30/91	1.0812	0.9903
370079	07/01/90	-	06/30/91	0.9241	0.9668
370080	07/01/90	-	06/30/91	0.9558	0.9580
370082	07/01/90	-	06/30/91	1.0274	0.9390
370083	04/01/90	-	03/31/91	1.0243	0.9776
370084	07/01/90	-	06/30/91	0.8456	0.9411
370085	04/01/90	-	03/31/91	0.8678	0.9601
370086	07/01/90	-	06/30/91	1.0629	0.9793
370089	07/01/90	-	06/30/91	1.2536	0.9793
370091	07/01/90	-	06/30/91	1.5052	0.9991
370097	04/01/90	-	03/31/91	1.2682	0.9979
370099	07/01/90	-	06/30/91	1.1150	0.9727
370100	07/01/90	-	06/30/91	1.0240	0.9635
370103	07/01/90	-	06/30/91	0.9162	0.9425
370110	07/01/90	-	06/30/91	0.9846	0.9616
370112	04/01/90	-	03/31/91	0.9393	0.9443
370113	07/01/90	-	06/30/91	1.0989	0.9845
370122	04/01/90	-	03/31/91	0.8986	0.9506
370123	07/01/90	-	06/30/91	1.1332	0.9947
370125	07/01/90	-	06/30/91	0.9880	0.9794
370126	07/01/90	-	06/30/91	1.1067	0.9697
370131	05/01/90	-	04/30/91	1.0051	0.9419
370133	07/01/90	-	06/30/91	1.1834	0.9189
370138	07/01/90	-	06/30/91	1.1626	0.9662
370139	07/01/90	-	06/30/91	0.9940	0.9724
370140	07/01/90	-	06/30/91	1.0402	0.9728
370153	07/01/90	-	06/30/91	1.0965	0.9805
370154	07/01/90	-	06/30/91	1.0265	0.9540
370156	07/01/90	-	06/30/91	0.9972	0.9416
370158	07/01/90	-	06/30/91	1.0318	0.9546
370159	07/01/90	-	06/30/91	1.1554	0.9812
370163	07/01/90	-	06/30/91	0.8709	0.9661
370166	02/01/90	-	01/31/91	1.1121	0.9667
370178	07/01/90	-	06/30/91	0.9784	0.9761
370183	07/01/90	-	06/30/91	1.1021	0.9506
370186	07/01/90	-	06/30/91	0.9547	0.9510
380001	07/01/90	-	06/30/91	1.3388	0.9877
380002	07/01/90	-	06/30/91	1.1999	0.9774
380003	07/01/90	-	06/30/91	1.1124	0.9869
380005	07/01/90	-	06/30/91	1.2009	0.9831
380007	04/01/90	-	03/31/91	1.7272	0.9942
380008	04/01/90	-	03/31/91	1.0688	0.9759
380009	07/01/90	-	06/30/91	1.6095	0.9968
380011	07/01/90	-	06/30/91	1.1564	0.9776
380013	07/01/90	-	06/30/91	1.2606	0.9547

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
380017	04/01/90	-	03/31/91	1.7207	0.9975
380023	07/01/90	-	06/30/91	1.3293	0.9613
380024	04/01/90	-	03/31/91	1.2888	0.9895
380025	04/01/90	-	03/31/91	1.2479	0.9803
380027	07/01/90	-	06/30/91	1.2178	0.9871
380031	07/01/90	-	06/30/91	1.0158	0.9858
380033	07/01/90	-	06/30/91	1.6581	0.9984
380035	05/01/90	-	04/30/91	1.2283	0.9764
380037	07/01/90	-	06/30/91	1.2306	0.9592
380040	07/01/90	-	06/30/91	1.3621	0.9767
380048	07/01/90	-	06/30/91	1.0095	0.9459
380059	07/01/90	-	06/30/91	0.9255	0.9835
380062	07/01/90	-	06/30/91	0.9483	0.9722
380063	07/01/90	-	06/30/91	1.2571	0.9888
380065	07/01/90	-	06/30/91	1.0684	0.9663
380066	07/01/90	-	06/30/91	1.0904	0.9717
380069	07/01/90	-	06/30/91	1.1161	0.9897
380071	05/01/90	-	04/30/91	1.2359	0.9755
380072	07/01/90	-	06/30/91	0.9356	0.9270
380078	07/01/90	-	06/30/91	1.1513	0.9661
380081	07/01/90	-	06/30/91	1.0650	0.9604
380083	07/01/90	-	06/30/91	1.1666	0.9679
380084	05/01/90	-	04/30/91	1.2897	0.9792
380087	07/01/90	-	06/30/91	0.9536	0.9547
380088	07/01/90	-	06/30/91	0.9528	0.9860
380089	04/01/90	-	03/31/91	1.3093	0.9788
380090	07/01/90	-	06/30/91	1.3438	0.9832
380094	07/01/90	-	06/30/91	1.1364	0.9947
390001	07/01/90	-	06/30/91	1.2097	0.9933
390002	07/01/90	-	06/30/91	1.1911	0.9965
390003	07/01/90	-	06/30/91	1.1548	0.9924
390004	07/01/90	-	06/30/91	1.2504	0.9990
390005	07/01/90	-	06/30/91	1.0984	0.9909
390006	07/01/90	-	06/30/91	1.6355	0.9990
390007	07/01/90	-	06/30/91	1.1969	0.9904
390008	07/01/90	-	06/30/91	1.1199	0.9697
390009	07/01/90	-	06/30/91	1.4935	0.9991
390010	07/01/90	-	06/30/91	1.1311	0.9868
390011	07/01/90	-	06/30/91	1.1900	0.9926
390012	07/01/90	-	06/30/91	1.2037	0.9876
390013	07/01/90	-	06/30/91	1.1676	0.9888
390014	07/01/90	-	06/30/91	0.7687	1.0000
390015	07/01/90	-	06/30/91	1.1115	0.9722
390016	07/01/90	-	06/30/91	1.1653	0.9885
390017	07/01/90	-	06/30/91	1.1621	0.9893
390018	07/01/90	-	06/30/91	1.2418	0.9931
390019	07/01/90	-	06/30/91	1.1172	0.9747
390021	07/01/90	-	06/30/91	1.0388	0.9848
390022	07/01/90	-	06/30/91	1.2521	0.9903
390023	07/01/90	-	06/30/91	1.2248	0.9980
390024	07/01/90	-	06/30/91	0.7829	0.9971
390025	07/01/90	-	06/30/91	0.7981	0.9953
390026	07/01/90	-	06/30/91	1.2649	0.9883
390027	07/01/90	-	06/30/91	1.6723	0.9966
390028	07/01/90	-	06/30/91	1.6719	0.9986
390029	07/01/90	-	06/30/91	1.6217	0.9980
390030	07/01/90	-	06/30/91	1.1465	0.9946
390031	07/01/90	-	06/30/91	1.1501	0.9865
390032	07/01/90	-	06/30/91	1.1989	0.9923
390035	07/01/90	-	06/30/91	1.2909	0.9913
390036	07/01/90	-	06/30/91	1.2175	0.9935
390037	07/01/90	-	06/30/91	1.2158	0.9877
390039	07/01/90	-	06/30/91	1.0524	0.9835
390040	07/01/90	-	06/30/91	0.9540	0.9901
390041	07/01/90	-	06/30/91	1.2272	0.9825
390042	07/01/90	-	06/30/91	1.2386	0.9899
390043	07/01/90	-	06/30/91	1.0626	0.9860
390044	07/01/90	-	06/30/91	1.5211	0.9983
390045	07/01/90	-	06/30/91	1.2884	0.9911
390046	07/01/90	-	06/30/91	1.4060	0.9984
390047	07/01/90	-	06/30/91	1.4703	0.9955
390048	07/01/90	-	06/30/91	1.1171	0.9863
390049	07/01/90	-	06/30/91	1.5110	0.9978
390050	07/01/90	-	06/30/91	1.8470	0.9983
390051	07/01/90	-	06/30/91	2.0545	0.9978
390052	07/01/90	-	06/30/91	1.1390	0.9769
390055	07/01/90	-	06/30/91	1.6520	0.9989
390056	07/01/90	-	06/30/91	1.1049	0.9877
390057	07/01/90	-	06/30/91	1.2691	0.9956
390058	07/01/90	-	06/30/91	1.3167	0.9858
390059	07/01/90	-	06/30/91	1.3048	0.9952
390061	07/01/90	-	06/30/91	1.2385	0.9888
390062	07/01/90	-	06/30/91	1.1852	0.9851
390063	07/01/90	-	06/30/91	1.5982	0.9989
390064	07/01/90	-	06/30/91	1.3726	0.9982
390065	07/01/90	-	06/30/91	1.2253	0.9833
390066	07/01/90	-	06/30/91	1.2884	0.9859
390067	07/01/90	-	06/30/91	1.4798	0.9985
390068	07/01/90	-	06/30/91	1.2652	0.9898
390069	07/01/90	-	06/30/91	1.2673	0.9904
390070	07/01/90	-	06/30/91	1.1561	0.9898
390071	07/01/90	-	06/30/91	1.1042	0.9911
390072	07/01/90	-	06/30/91	0.9840	0.9862
390073	07/01/90	-	06/30/91	1.4683	0.9984
390074	07/01/90	-	06/30/91	1.2184	0.9896
390075	07/01/90	-	06/30/91	1.2866	0.9925
390076	07/01/90	-	06/30/91	1.2191	0.9870
390078	07/01/90	-	06/30/91	1.0701	0.9824
390079	07/01/90	-	06/30/91	1.6409	0.9986
390080	07/01/90	-	06/30/91	1.1679	0.9941
390081	07/01/90	-	06/30/91	1.2333	0.9934
390083	07/01/90	-	06/30/91	1.1362	0.9932
390084	07/01/90	-	06/30/91	1.1530	0.9954
390086	07/01/90	-	06/30/91	1.0781	0.9722
390088	07/01/90	-	06/30/91	1.3481	0.9927
390090	07/01/90	-	06/30/91	1.7695	0.9979

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
390091	07/01/90	-	06/30/91	1.1114	0.9935
390092	07/01/90	-	06/30/91	1.1872	0.9891
390093	07/01/90	-	06/30/91	1.1890	0.9916
390095	07/01/90	-	06/30/91	1.2294	0.9896
390096	07/01/90	-	06/30/91	1.2246	0.9924
390097	07/01/90	-	06/30/91	1.3262	0.9842
390098	07/01/90	-	06/30/91	1.5682	0.9979
390100	07/01/90	-	06/30/91	1.7179	0.9983
390101	07/01/90	-	06/30/91	1.2134	0.9939
390102	07/01/90	-	06/30/91	1.2887	0.9967
390103	07/01/90	-	06/30/91	1.0808	0.9906
390104	07/01/90	-	06/30/91	1.0627	0.9685
390106	07/01/90	-	06/30/91	1.0623	0.9785
390107	07/01/90	-	06/30/91	1.1711	0.9952
390108	07/01/90	-	06/30/91	1.3343	0.9910
390109	07/01/90	-	06/30/91	1.1987	0.9886
390110	07/01/90	-	06/30/91	1.2844	0.9923
390111	07/01/90	-	06/30/91	1.7078	0.9966
390112	07/01/90	-	06/30/91	1.1809	0.9778
390113	07/01/90	-	06/30/91	1.2335	0.9905
390114	07/01/90	-	06/30/91	1.0237	0.9979
390115	07/01/90	-	06/30/91	1.2915	0.9874
390116	07/01/90	-	06/30/91	1.1828	0.9856
390117	07/01/90	-	06/30/91	1.1615	0.9783
390118	07/01/90	-	06/30/91	1.1204	0.9865
390119	07/01/90	-	06/30/91	1.3285	0.9970
390121	07/01/90	-	06/30/91	1.2100	0.9956
390122	07/01/90	-	06/30/91	1.0753	0.9825
390123	07/01/90	-	06/30/91	1.2029	0.9882
390125	07/01/90	-	06/30/91	1.2071	0.9947
390126	07/01/90	-	06/30/91	1.2074	0.9897
390127	07/01/90	-	06/30/91	1.0962	0.9885
390128	07/01/90	-	06/30/91	1.1927	0.9897
390130	07/01/90	-	06/30/91	1.0649	0.9547
390131	07/01/90	-	06/30/91	1.2088	0.9958
390132	07/01/90	-	06/30/91	1.1752	0.9911
390133	07/01/90	-	06/30/91	1.3936	0.9944
390135	07/01/90	-	06/30/91	1.2328	0.9943
390136	07/01/90	-	06/30/91	1.1903	0.9968
390137	07/01/90	-	06/30/91	1.1600	0.9970
390138	07/01/90	-	06/30/91	1.2514	0.9824
390139	07/01/90	-	06/30/91	1.4305	0.9987
390142	07/01/90	-	06/30/91	1.6931	0.9997
390143	07/01/90	-	06/30/91	0.9115	0.9997
390145	07/01/90	-	06/30/91	1.2080	0.9860
390146	07/01/90	-	06/30/91	1.1824	0.9828
390147	07/01/90	-	06/30/91	1.1805	0.9934
390148	07/01/90	-	06/30/91	1.1517	0.9996
390149	07/01/90	-	06/30/91	1.2262	0.9889
390150	07/01/90	-	06/30/91	1.2042	0.9814
390151	07/01/90	-	06/30/91	1.2526	0.9941
390152	07/01/90	-	06/30/91	0.9936	0.9897
390153	07/01/90	-	06/30/91	1.1944	0.9898
390154	07/01/90	-	06/30/91	1.1099	0.9731
390155	07/01/90	-	06/30/91	1.2475	0.9924
390156	07/01/90	-	06/30/91	1.3673	0.9964
390157	07/01/90	-	06/30/91	1.1958	0.9934
390158	07/01/90	-	06/30/91	1.2307	0.9894
390159	07/01/90	-	06/30/91	1.2797	0.9907
390160	07/01/90	-	06/30/91	1.1852	0.9929
390161	07/01/90	-	06/30/91	1.0620	0.9802
390162	07/01/90	-	06/30/91	1.2345	0.9969
390163	07/01/90	-	06/30/91	1.1909	0.9923
390164	07/01/90	-	06/30/91	1.7807	0.9980
390165	07/01/90	-	06/30/91	1.0931	0.9884
390166	07/01/90	-	06/30/91	1.1164	0.9744
390167	07/01/90	-	06/30/91	1.2352	0.9939
390168	07/01/90	-	06/30/91	1.1815	0.9892
390170	07/01/90	-	06/30/91	1.5875	0.9986
390171	07/01/90	-	06/30/91	1.0941	0.9870
390172	07/01/90	-	06/30/91	1.1852	0.9946
390173	07/01/90	-	06/30/91	1.1193	0.9763
390174	07/01/90	-	06/30/91	1.5378	0.9986
390176	07/01/90	-	06/30/91	1.2185	0.9908
390178	07/01/90	-	06/30/91	1.3225	0.9916
390179	07/01/90	-	06/30/91	1.2383	0.9932
390180	07/01/90	-	06/30/91	1.3587	0.9928
390181	07/01/90	-	06/30/91	1.0826	0.9869
390183	07/01/90	-	06/30/91	1.1504	0.9784
390184	07/01/90	-	06/30/91	1.1175	0.9853
390185	07/01/90	-	06/30/91	1.1687	0.9796
390186	07/01/90	-	06/30/91	1.0656	0.9770
390187	07/01/90	-	06/30/91	1.1208	0.9800
390189	07/01/90	-	06/30/91	1.1301	0.9800
390191	07/01/90	-	06/30/91	1.0850	0.9768
390192	07/01/90	-	06/30/91	1.0757	0.9837
390193	07/01/90	-	06/30/91	1.1960	0.9937
390194	07/01/90	-	06/30/91	1.0956	0.9825
390195	07/01/90	-	06/30/91	1.5382	0.9991
390196	07/01/90	-	06/30/91	1.2796	0.9992
390197	07/01/90	-	06/30/91	1.2889	0.9963
390198	07/01/90	-	06/30/91	1.2604	0.9940
390199	07/01/90	-	06/30/91	1.2407	0.9683
390200	07/01/90	-	06/30/91	1.0501	0.9673
390201	07/01/90	-	06/30/91	1.2932	0.9876
390203	07/01/90	-	06/30/91	1.2768	0.9901
390204	07/01/90	-	06/30/91	1.2898	0.9939
390205	07/01/90	-	06/30/91	1.2393	0.9904
390206	07/01/90	-	06/30/91	1.2576	0.9970
390209	07/01/90	-	06/30/91	0.9776	0.9677
390211	07/01/90	-	06/30/91	1.1444	0.9872
390213	07/01/90	-	06/30/91	0.9783	0.9978
390215	07/01/90	-	06/30/91	1.1795	0.9878
390217	07/01/90	-	06/30/91	1.1297	0.9890
390219	07/01/90	-	06/30/91	1.1992	0.9745
390220	07/01/90	-	06/30/91	1.1300	0.9874

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
390222	07/01/90	-	06/30/91	1.2141	0.9921
390223	07/01/90	-	06/30/91	1.5440	0.9963
390225	07/01/90	-	06/30/91	1.2638	0.9813
390226	07/01/90	-	06/30/91	1.5905	0.9988
390228	07/01/90	-	06/30/91	1.1899	0.9946
390229	07/01/90	-	06/30/91	1.4208	0.9966
390231	07/01/90	-	06/30/91	1.3050	0.9949
390232	07/01/90	-	06/30/91	1.0673	0.9762
390233	07/01/90	-	06/30/91	1.2736	0.9946
390235	07/01/90	-	06/30/91	1.7961	0.9966
390236	07/01/90	-	06/30/91	1.2007	0.9908
390238	07/01/90	-	06/30/91	0.9871	0.9912
390242	07/01/90	-	06/30/91	1.2275	0.9925
390244	07/01/90	-	06/30/91	0.8597	0.9516
390245	07/01/90	-	06/30/91	1.3470	0.9912
390246	07/01/90	-	06/30/91	1.2248	0.9843
390247	07/01/90	-	06/30/91	1.0993	1.0000
390249	04/01/90	-	03/31/91	0.9896	0.9791
390252	07/01/90	-	06/30/91	0.6968	0.9911
390256	07/01/90	-	06/30/91	1.5971	1.0000
390258	07/01/90	-	06/30/91	1.2989	0.9895
390260	07/01/90	-	06/30/91	1.2344	0.9884
390261	07/01/90	-	06/30/91	1.7899	0.9967
390262	07/01/90	-	06/30/91	1.6652	0.9951
390263	07/01/90	-	06/30/91	1.4484	0.9897
390265	07/01/90	-	06/30/91	1.2533	0.9937
390266	07/01/90	-	06/30/91	1.1276	0.9816
390267	07/01/90	-	06/30/91	1.2248	0.9921
390268	07/01/90	-	06/30/91	1.2240	0.9910
390270	07/01/90	-	06/30/91	1.2906	0.9898
390275	07/01/90	-	06/30/91	0.5649	1.0000
390277	07/01/90	-	06/30/91	1.7555	0.9714
390278	07/01/90	-	06/30/91	0.9309	0.9552
400001	07/01/90	-	06/30/91	1.1779	1.0000
400003	07/01/90	-	06/30/91	1.1181	0.9978
400004	07/01/90	-	06/30/91	1.1114	0.9997
400006	07/01/90	-	06/30/91	1.1534	1.0000
400009	07/01/90	-	06/30/91	0.9782	0.9995
400012	07/01/90	-	06/30/91	1.0365	1.0000
400013	04/01/90	-	03/31/91	0.9533	0.9868
400015	07/01/90	-	06/30/91	1.0859	0.9984
400018	04/01/90	-	03/31/91	1.2573	0.9963
400021	06/01/90	-	05/31/91	1.2920	0.9995
400026	07/01/90	-	06/30/91	0.9438	0.9843
400028	07/01/90	-	06/30/91	1.0016	1.0000
400029	07/01/90	-	06/30/91	1.0192	0.9974
400037	07/01/90	-	06/30/91	0.7007	1.0000
400038	07/01/90	-	06/30/91	0.8530	0.8693
400044	07/01/90	-	06/30/91	1.2211	0.9945
400048	07/01/90	-	06/30/91	1.1380	0.9933
400061	07/01/90	-	06/30/91	1.7356	0.9981
400079	07/01/90	-	06/30/91	1.1456	0.9906
400087	03/01/90	-	02/28/91	1.2197	0.9958
400088	05/01/90	-	04/30/91	0.7940	0.9937
400102	07/01/90	-	06/30/91	1.0980	0.9987
400103	07/01/90	-	06/30/91	1.4353	0.9968
400104	07/01/90	-	06/30/91	1.2608	0.9976
400105	07/01/90	-	06/30/91	1.2810	0.9977
400110	07/01/90	-	06/30/91	1.1678	0.9889
400114	07/01/90	-	06/30/91	1.0679	0.9983
420002	05/01/90	-	04/30/91	1.2944	0.9897
420004	07/01/90	-	06/30/91	1.9072	0.9978
420006	07/01/90	-	06/30/91	1.4690	0.9754
420035	07/01/90	-	06/30/91	0.8228	0.9734
420053	07/01/90	-	06/30/91	1.0876	0.9708
420062	03/01/90	-	02/28/91	1.1626	0.9478
420079	04/01/90	-	03/31/91	1.5274	0.9994
420080	07/01/90	-	06/30/91	1.1316	0.9833
420082	03/01/90	-	02/28/91	1.3316	0.9932
420083	07/01/90	-	06/30/91	1.1658	0.9893
420084	07/01/90	-	06/30/91	0.7915	0.9858
420085	05/01/90	-	04/30/91	1.2280	0.9690
430004	03/01/90	-	02/28/91	1.1402	0.9662
430005	06/01/90	-	05/31/91	1.3185	0.9783
430007	07/01/90	-	06/30/91	1.1639	0.9496
430010	07/01/90	-	06/30/91	1.0791	0.9669
430011	07/01/90	-	06/30/91	1.3043	0.9736
430012	07/01/90	-	06/30/91	1.3139	0.9819
430018	07/01/90	-	06/30/91	0.9506	0.9477
430022	03/01/90	-	02/28/91	0.9585	0.9653
430025	03/01/90	-	02/28/91	0.9697	0.9850
430027	05/01/90	-	04/30/91	1.6450	0.9983
430033	07/01/90	-	06/30/91	1.0076	0.9804
430037	07/01/90	-	06/30/91	0.9559	0.9623
430039	06/01/90	-	05/31/91	1.0101	0.9579
430042	02/01/90	-	01/31/91	0.9559	0.9856
430054	07/01/90	-	06/30/91	0.9351	0.9704
430062	06/01/90	-	05/31/91	0.8614	0.9715
430066	07/01/90	-	06/30/91	1.0587	0.9828
430077	07/01/90	-	06/30/91	1.4025	0.9982
440001	07/01/90	-	06/30/91	0.9762	0.9743
440002	07/01/90	-	06/30/91	1.5374	0.9983
440003	06/01/90	-	05/31/91	1.1209	0.9798
440006	07/01/90	-	06/30/91	1.3686	0.9984
440007	07/01/90	-	06/30/91	1.0311	0.9814
440009	07/01/90	-	06/30/91	1.0392	0.9769
440010	07/01/90	-	06/30/91	0.9363	0.9594
440011	07/01/90	-	06/30/91	1.2235	0.9867
440012	07/01/90	-	06/30/91	1.3204	0.9977
440014	07/01/90	-	06/30/91	0.8939	0.9949
440015	07/01/90	-	06/30/91	1.4676	0.9986
440016	07/01/90	-	06/30/91	0.9608	0.9830
440017	07/01/90	-	06/30/91	1.4413	0.9978
440019	07/01/90	-	06/30/91	1.4770	0.9987
440022	07/01/90	-	06/30/91	1.0793	0.9710
440023	07/01/90	-	06/30/91	0.9704	0.9772

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING BEGIN	-	PERIOD END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
440024	07/01/90	-	06/30/91	1.1161	0.9874
440025	07/01/90	-	06/30/91	1.1126	0.9969
440029	07/01/90	-	06/30/91	1.2159	0.9900
440030	07/01/90	-	06/30/91	1.0423	0.9686
440031	07/01/90	-	06/30/91	1.0571	0.9691
440032	07/01/90	-	06/30/91	0.9441	0.9775
440033	07/01/90	-	06/30/91	1.0930	0.9630
440035	07/01/90	-	06/30/91	1.1827	0.9803
440038	07/01/90	-	06/30/91	0.9278	0.9810
440039	07/01/90	-	06/30/91	1.5872	0.9957
440040	07/01/90	-	06/30/91	0.8914	0.9545
440051	07/01/90	-	06/30/91	0.9225	0.9816
440052	07/01/90	-	06/30/91	1.1395	0.9635
440053	07/01/90	-	06/30/91	1.1711	0.9860
440054	07/01/90	-	06/30/91	0.9843	0.9787
440056	07/01/90	-	06/30/91	0.9636	0.9752
440057	07/01/90	-	06/30/91	0.9707	0.9735
440059	07/01/90	-	06/30/91	1.1127	0.9758
440060	07/01/90	-	06/30/91	1.1625	0.9757
440063	07/01/90	-	06/30/91	1.4019	0.9985
440065	07/01/90	-	06/30/91	1.0822	0.9700
440069	07/01/90	-	06/30/91	1.1234	0.9916
440070	07/01/90	-	06/30/91	0.9231	0.9444
440073	07/01/90	-	06/30/91	1.2915	0.9853
440074	07/01/90	-	06/30/91	0.8812	0.9676
440082	07/01/90	-	06/30/91	1.8119	0.9986
440084	07/01/90	-	06/30/91	1.0679	0.9765
440090	07/01/90	-	06/30/91	1.0384	0.9652
440102	07/01/90	-	06/30/91	1.0594	0.9790
440103	07/01/90	-	06/30/91	1.2879	0.9967
440104	07/01/90	-	06/30/91	1.4274	0.9976
440109	07/01/90	-	06/30/91	1.0368	0.9507
440111	07/01/90	-	06/30/91	1.2812	0.9864
440114	07/01/90	-	06/30/91	1.0346	0.9600
440115	07/01/90	-	06/30/91	1.1729	0.9781
440121	07/01/90	-	06/30/91	1.1372	0.9866
440128	07/01/90	-	06/30/91	0.9548	0.8204
440130	07/01/90	-	06/30/91	1.1113	0.9826
440131	07/01/90	-	06/30/91	1.1357	0.9678
440132	07/01/90	-	06/30/91	1.0409	0.9631
440133	07/01/90	-	06/30/91	1.4563	0.9988
440135	07/01/90	-	06/30/91	1.3395	0.9934
440137	07/01/90	-	06/30/91	1.0512	0.9722
440141	07/01/90	-	06/30/91	0.8984	0.9648
440142	07/01/90	-	06/30/91	0.9993	0.9857
440143	06/01/90	-	05/31/91	1.0145	0.9492
440144	06/01/90	-	05/31/91	1.1389	0.9783
440147	07/01/90	-	06/30/91	0.7857	0.9968
440151	05/01/90	-	04/30/91	1.1401	0.9568
440152	07/01/90	-	06/30/91	1.5662	0.9896
440153	07/01/90	-	06/30/91	0.9495	0.9660
440156	04/01/90	-	03/31/91	1.3462	0.9992
440159	07/01/90	-	06/30/91	1.1830	0.9904
440160	07/01/90	-	06/30/91	1.0415	0.9941
440162	02/01/90	-	01/31/91	1.0256	0.9825
440166	07/01/90	-	06/30/91	1.2564	0.9914
440170	06/01/90	-	05/31/91	1.3581	0.9850
440175	03/01/90	-	02/28/91	1.1497	0.9588
440176	03/01/90	-	02/28/91	1.2108	0.9966
440180	07/01/90	-	06/30/91	1.0816	0.9572
440183	03/01/90	-	02/28/91	1.4033	0.9981
440187	06/01/90	-	05/31/91	1.0669	0.9765
440192	05/01/90	-	04/30/91	0.9524	0.9520
440193	06/01/90	-	05/31/91	1.1061	0.9838
440197	06/01/90	-	05/31/91	1.2922	0.9883
450004	07/01/90	-	06/30/91	1.0749	0.9797
450007	07/01/90	-	06/30/91	1.3505	0.9810
450008	04/01/90	-	03/31/91	1.2671	0.9928
450021	07/01/90	-	06/30/91	1.7150	0.9986
450023	07/01/90	-	06/30/91	1.4203	0.9977
450027	05/01/90	-	04/30/91	1.1610	0.9978
450029	07/01/90	-	06/30/91	1.3613	0.9949
450031	04/01/90	-	03/31/91	1.1709	0.9843
450034	07/01/90	-	06/30/91	1.4837	0.9969
450035	07/01/90	-	06/30/91	1.4810	0.9983
450040	07/01/90	-	06/30/91	1.6102	0.9995
450042	07/01/90	-	06/30/91	1.6372	0.9980
450044	07/01/90	-	06/30/91	1.4597	0.9991
450051	07/01/90	-	06/30/91	1.6535	0.9986
450052	07/01/90	-	06/30/91	1.0361	0.9876
450056	07/01/90	-	06/30/91	1.5902	0.9994
450060	07/01/90	-	06/30/91	1.2988	0.9880
450064	06/01/90	-	05/31/91	1.4387	0.9988
450070	07/01/90	-	06/30/91	1.1118	0.9870
450074	06/01/90	-	05/31/91	1.1344	0.9920
450078	04/01/90	-	03/31/91	0.9854	0.9775
450079	07/01/90	-	06/30/91	1.4451	0.9950
450090	07/01/90	-	06/30/91	1.2122	0.9670
450092	07/01/90	-	06/30/91	1.2667	0.9670
450096	07/01/90	-	06/30/91	1.4947	0.9970
450099	05/01/90	-	04/30/91	1.1759	0.9886
450102	07/01/90	-	06/30/91	1.6731	0.9968
450109	07/01/90	-	06/30/91	1.0051	0.9812
450113	06/01/90	-	05/31/91	1.2182	0.9890
450115	04/01/90	-	03/31/91	1.0947	0.9772
450123	05/01/90	-	04/30/91	1.0807	0.9846
450126	03/01/90	-	02/28/91	1.2054	0.9910
450128	07/01/90	-	06/30/91	1.1681	0.9820
450143	07/01/90	-	06/30/91	1.0052	0.9300
450147	07/01/90	-	06/30/91	1.3377	0.9973
450157	03/03/90	-	02/28/91	1.0072	0.9834
450170	07/01/90	-	06/30/91	1.1541	0.9685
450177	07/01/90	-	06/30/91	1.0633	0.9769
450179	07/01/90	-	06/30/91	1.0180	0.9849
450184	07/01/90	-	06/30/91	1.4702	0.9969
450188	04/01/90	-	03/31/91	0.9583	0.9503

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN		END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
450190	07/01/90	-	06/30/91	1.2678	0.9900
450217	07/01/90	-	06/30/91	0.8591	0.9888
450219	06/01/90	-	05/31/91	1.1609	0.9453
450221	07/01/90	-	06/30/91	0.9886	0.9830
450222	04/01/90	-	03/31/91	1.6353	0.9921
450233	07/01/90	-	06/30/91	1.0790	0.9797
450235	07/01/90	-	06/30/91	1.0403	0.9836
450241	05/27/90	-	05/31/91	0.9351	0.9653
450249	07/01/90	-	06/30/91	0.9319	0.9568
450258	06/01/90	-	05/31/91	1.1145	0.9364
450269	05/01/90	-	04/30/91	0.9298	0.9673
450270	04/01/90	-	03/31/91	1.1443	0.9786
450278	07/01/90	-	06/30/91	0.9402	0.9309
450288	04/01/90	-	03/31/91	1.1713	0.9856
450289	04/01/90	-	03/31/91	1.2962	0.9976
450307	05/01/90	-	04/30/91	0.8981	0.9677
450309	06/01/90	-	05/31/91	1.0388	0.9531
450320	04/01/90	-	03/31/91	1.2557	0.9908
450324	07/01/90	-	06/30/91	1.5592	0.9962
450325	07/01/90	-	06/30/91	1.2079	0.9849
450341	04/01/90	-	03/31/91	0.9449	0.9994
450349	07/01/90	-	06/30/91	1.1624	0.9699
450351	06/01/90	-	05/31/91	1.2986	0.9871
450362	07/01/90	-	06/30/91	0.9569	0.9591
450366	04/01/90	-	03/31/91	1.6917	0.9957
450370	05/01/90	-	04/30/91	1.2243	0.9776
450372	07/01/90	-	06/30/91	1.3288	0.9776
450379	06/01/90	-	05/31/91	1.6042	0.9966
450381	04/01/90	-	03/31/91	0.8942	0.9622
450393	03/01/90	-	02/28/91	1.2716	0.9931
450395	07/01/90	-	06/30/91	1.0685	0.9692
450400	07/01/90	-	06/30/91	1.0819	0.9441
450411	07/01/90	-	06/30/91	1.0580	0.9620
450417	01/17/90	-	01/16/91	1.0451	0.9661
450418	04/01/90	-	03/31/91	1.3273	0.9835
450447	05/01/90	-	04/30/91	1.3195	0.9896
450451	07/01/90	-	06/30/91	1.0247	0.9566
450457	06/01/90	-	05/31/91	1.5769	0.9998
450460	07/01/90	-	06/30/91	0.9740	0.9791
450467	07/01/90	-	06/30/91	1.0455	0.9670
450469	07/01/90	-	06/30/91	1.2631	0.9938
450473	06/01/90	-	05/31/91	1.0915	0.9826
450476	07/01/90	-	06/30/91	0.9312	0.9234
450486	07/01/90	-	06/30/91	0.9580	0.9418
450489	04/01/90	-	03/31/91	1.0207	0.9457
450497	07/01/90	-	06/30/91	1.1645	0.9709
450498	07/01/90	-	06/30/91	1.0732	0.9735
450508	07/01/90	-	06/30/91	1.3958	0.9951
450517	07/01/90	-	06/30/91	0.9424	0.9739
450537	06/01/90	-	05/31/91	1.3468	0.9916
450545	07/01/90	-	06/30/91	1.2543	0.9986
450546	06/01/90	-	05/31/91	1.3419	0.9859
450551	04/01/90	-	03/31/91	1.0685	0.9622
450563	07/01/90	-	06/30/91	1.2228	0.9858
450570	04/01/90	-	03/31/91	0.9889	0.9774
450573	07/01/90	-	06/30/91	1.0415	0.9580
450586	07/01/90	-	06/30/91	1.1139	0.9835
450603	04/01/90	-	03/31/91	0.9061	0.9474
450610	04/01/90	-	03/31/91	1.3818	0.9947
450620	07/01/90	-	06/30/91	1.0911	0.9374
450630	05/01/90	-	04/30/91	1.5898	0.9970
450638	06/01/90	-	05/31/91	1.4657	0.9970
450641	07/01/90	-	06/30/91	0.8780	0.9898
450643	07/01/90	-	06/30/91	1.1757	0.9914
450649	07/01/90	-	06/30/91	1.0414	0.9347
450651	04/01/90	-	03/31/91	1.7284	0.9985
450658	07/01/90	-	06/30/91	0.9943	0.9484
450660	03/01/90	-	02/28/91	1.6355	0.9975
450665	07/01/90	-	06/30/91	0.9835	0.9652
450668	06/01/90	-	05/31/91	1.4893	0.9969
450670	07/01/90	-	06/30/91	1.2219	0.9928
450675	04/01/90	-	03/31/91	1.3255	0.9909
450678	06/01/90	-	05/31/91	1.4577	0.9946
450681	07/01/90	-	06/30/91	1.5172	0.9998
450682	07/01/90	-	06/30/91	1.2568	0.9930
450684	07/01/90	-	06/30/91	1.3312	0.9887
450685	07/01/90	-	06/30/91	1.2529	0.9926
450688	06/01/90	-	05/31/91	1.2984	0.9855
450691	07/01/90	-	06/30/91	1.2668	0.9826
450694	07/01/90	-	06/30/91	1.1783	0.9775
450704	07/01/90	-	06/30/91	1.2890	0.9824
450709	07/01/90	-	06/30/91	1.2506	0.9990
450723	07/01/90	-	06/30/91	1.2264	0.9920
450730	06/01/90	-	05/31/91	1.3905	0.9815
450743	07/01/90	-	06/30/91	1.4399	0.9919
450749	07/01/90	-	06/30/91	1.0371	0.9832
450750	07/01/90	-	06/30/91	0.9907	0.9883
450755	06/01/90	-	05/31/91	0.9754	0.9754
450758	06/01/90	-	05/31/91	1.7706	0.9930
450768	01/18/90	-	01/31/91	1.1565	0.9608
460003	06/01/90	-	05/31/91	1.3985	0.9978
460005	06/01/90	-	05/31/91	1.2538	0.9880
460008	03/01/90	-	02/28/91	1.2910	0.9807
460009	07/01/90	-	06/30/91	1.7523	0.9998
460030	02/01/90	-	01/31/91	1.0594	0.9797
460032	07/01/90	-	06/30/91	0.9438	1.0000
460035	07/01/90	-	06/30/91	0.8822	0.9507
460037	07/01/90	-	06/30/91	0.9613	0.9642
490007	05/01/90	-	04/30/91	1.8798	0.9974
490009	07/01/90	-	06/30/91	1.6345	0.9961
490010	07/01/90	-	06/30/91	1.1715	0.9744
490022	07/01/90	-	06/30/91	1.2138	0.9851
490028	04/01/90	-	03/31/91	1.2815	0.9933
490032	07/01/90	-	06/30/91	1.6112	0.9973
490035	07/01/90	-	06/30/91	1.1647	0.9788
490043	07/01/90	-	06/30/91	1.1543	0.9879

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
490046	05/01/90	-	04/30/91	1.3366	0.9887
490053	07/01/90	-	06/30/91	1.2123	0.9756
490090	07/01/90	-	06/30/91	1.1490	0.9772
490093	05/01/90	-	04/30/91	1.2694	0.9971
490094	05/01/90	-	04/30/91	1.0960	0.9941
490098	07/01/90	-	06/30/91	1.2722	0.9903
490104	07/01/90	-	06/30/91	0.9212	0.9792
490105	07/01/90	-	06/30/91	0.6928	0.9789
490106	07/01/90	-	06/30/91	0.7939	0.9913
490108	07/01/90	-	06/30/91	0.8653	0.9756
490109	07/01/90	-	06/30/91	0.7984	0.9873
490111	07/01/90	-	06/30/91	1.1696	0.9756
490114	07/01/90	-	06/30/91	1.0166	0.9871
490118	04/01/90	-	03/31/91	1.6558	0.9986
490120	07/01/90	-	06/30/91	1.3022	0.9901
490123	04/01/90	-	03/31/91	1.0860	0.9726
490124	07/01/90	-	06/30/91	1.2596	0.9950
490127	07/01/90	-	06/30/91	1.0633	0.9824
490131	07/01/90	-	06/30/91	0.9289	0.9745
500008	07/01/90	-	06/30/91	1.9072	0.9979
500021	07/01/90	-	06/30/91	1.3337	0.9792
500023	07/01/90	-	06/30/91	1.1630	0.9741
500030	07/01/90	-	06/30/91	1.3389	0.9928
500039	05/01/90	-	04/30/91	1.2937	0.9937
500041	07/01/90	-	06/30/91	1.1912	0.9815
500064	07/01/90	-	06/30/91	1.5890	0.9886
500076	04/01/90	-	03/31/91	1.3026	0.9915
500086	07/01/90	-	06/30/91	1.3282	0.9768
500104	04/01/90	-	03/31/91	1.2826	0.9610
500108	07/01/90	-	06/30/91	1.6463	0.9984
500127	07/01/90	-	06/30/91	1.0645	0.9883
500135	07/01/90	-	06/30/91	1.0307	0.9830
500137	06/01/90	-	05/31/91	0.9085	1.0000
500138	07/01/90	-	06/30/91	4.8258	1.0000
500139	02/01/90	-	01/31/91	1.3184	0.9936
500141	07/01/90	-	06/30/91	1.2357	0.9769
510015	07/01/90	-	06/30/91	0.9353	0.9597
510020	07/01/90	-	06/30/91	1.1141	0.9791
510023	07/01/90	-	06/30/91	1.0212	0.9881
510024	07/01/90	-	06/30/91	1.3061	0.9995
510025	07/01/90	-	06/30/91	0.9291	0.9608
510026	07/01/90	-	06/30/91	0.9857	0.9729
510027	07/01/90	-	06/30/91	1.0185	0.9217
510035	07/01/90	-	06/30/91	1.0466	0.9639
510036	07/01/90	-	06/30/91	1.1452	0.9758
510043	07/01/90	-	06/30/91	0.9712	0.9573
510046	07/01/90	-	06/30/91	1.2645	0.9929
510058	07/01/90	-	06/30/91	1.1910	0.9949
510061	07/01/90	-	06/30/91	1.0755	0.9693
510062	07/01/90	-	06/30/91	1.1662	0.9935
510070	06/01/90	-	05/31/91	1.1767	0.9916
510071	07/01/90	-	06/30/91	1.2691	0.9881
510072	07/01/90	-	06/30/91	1.0167	0.9763
510080	07/01/90	-	06/30/91	0.9859	0.9584
510086	07/01/90	-	06/30/91	1.1067	0.9862
520004	07/01/90	-	06/30/91	1.2340	0.9936
520006	03/01/90	-	02/28/91	1.0387	0.9591
520007	07/01/90	-	06/30/91	1.0545	0.9723
520009	07/01/90	-	06/30/91	1.4490	0.9933
520011	04/01/90	-	03/31/91	1.0968	0.9818
520013	07/01/90	-	06/30/91	1.2851	0.9941
520015	07/01/90	-	06/30/91	1.1553	0.9600
520016	07/01/90	-	06/30/91	0.9986	0.9658
520017	07/01/90	-	06/30/91	1.1666	0.9832
520025	07/01/90	-	06/30/91	1.1097	0.9735
520027	07/01/90	-	06/30/91	1.1476	0.9804
520028	07/01/90	-	06/30/91	1.3402	0.9918
520030	07/01/90	-	06/30/91	1.5138	0.9962
520040	07/01/90	-	06/30/91	1.4296	0.9912
520041	07/01/90	-	06/30/91	1.1147	0.9678
520044	07/01/90	-	06/30/91	1.3316	0.9918
520047	04/01/90	-	03/31/91	0.9706	0.9512
520051	07/01/90	-	06/30/91	2.0142	0.9993
520063	07/01/90	-	06/30/91	1.1860	0.9785
520066	07/01/90	-	06/30/91	1.2377	0.9903
520068	07/01/90	-	06/30/91	1.0729	0.9730
520074	07/01/90	-	06/30/91	1.1601	0.9753
520075	07/01/90	-	06/30/91	1.3792	0.9962
520076	07/01/90	-	06/30/91	1.1635	0.9850
520087	04/16/90	-	04/14/91	1.5118	0.9983
520088	07/01/90	-	06/30/91	1.2200	0.9807
520091	04/01/90	-	03/31/91	1.2625	0.9846
520092	05/01/90	-	04/30/91	1.1784	0.9606
520096	07/01/90	-	06/30/91	1.4205	0.9969
520097	07/01/90	-	06/30/91	1.2820	0.9913
520098	07/01/90	-	06/30/91	1.6765	0.9951
520104	06/01/90	-	05/31/91	0.9966	0.9400
520111	07/01/90	-	06/30/91	1.1364	0.9737
520112	07/01/90	-	06/30/91	1.1154	0.9735
520114	07/01/90	-	06/30/91	1.0966	0.9791
520120	07/01/90	-	06/30/91	1.0999	0.9781
520121	07/01/90	-	06/30/91	0.9666	0.9653
520122	07/01/90	-	06/30/91	1.0134	0.9647
520124	04/01/90	-	03/31/91	1.1020	0.9744
520132	05/01/90	-	04/30/91	1.2279	0.9747
520134	07/01/90	-	06/30/91	1.1202	0.9821
520136	07/01/90	-	06/30/91	1.4663	0.9975
520141	07/01/90	-	06/30/91	1.1416	0.9549
520142	07/01/90	-	06/30/91	0.9788	0.9618
520151	03/01/90	-	02/28/91	1.0810	0.9600
520159	04/01/90	-	03/31/91	0.9121	0.9564
520161	04/01/90	-	03/31/91	1.1091	0.9579
520170	07/01/90	-	06/30/91	1.2614	0.9877
520176	07/01/90	-	06/30/91	0.8486	1.0000
520178	07/01/90	-	06/30/91	1.1520	0.9558
520180	07/01/90	-	06/30/91	0.7340	0.9907

Table 9 -- 1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

PROVIDER NUMBER	COST REPORTING PERIOD BEGIN	-	END	TRANSFER ADJUSTED CASE MIX INDEX	TRANSFER ADJUSTMENT TO DISCHARGES
530001	06/01/90	-	05/31/91	1.2612	0.9975
530002	07/01/90	-	06/30/91	1.1473	0.9727
530003	07/01/90	-	06/30/91	0.9898	0.9248
530004	07/01/90	-	06/30/91	0.9709	0.9593
530005	07/01/90	-	06/30/91	1.0754	1.0000
530006	07/01/90	-	06/30/91	1.1214	0.9885
530007	07/01/90	-	06/30/91	1.0385	0.9438
530009	07/01/90	-	06/30/91	0.9655	0.9781
530011	07/01/90	-	06/30/91	1.1226	0.9782
530012	07/01/90	-	06/30/91	1.6146	0.9954
530014	07/01/90	-	06/30/91	1.1026	0.9953
530015	07/01/90	-	06/30/91	1.1318	0.9785
530016	07/01/90	-	06/30/91	1.1586	0.9954
530017	07/01/90	-	06/30/91	0.9973	0.9781
530018	07/01/90	-	06/30/91	1.0510	0.9667
530019	07/01/90	-	06/30/91	0.9685	0.9951
530022	07/01/90	-	06/30/91	1.1265	0.9460
530025	07/01/90	-	06/30/91	1.2447	0.9780
530026	07/01/90	-	06/30/91	1.0658	0.9790
530027	07/01/90	-	06/30/91	0.8558	0.9615
530029	07/01/90	-	06/30/91	0.9180	0.9431
530031	07/01/90	-	06/30/91	1.0417	0.9186

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APPENDIX A—REGULATORY IMPACT ANALYSIS

I. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule;" that is, a rule that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds and that is located outside of a Metropolitan Statistical Area or New England County Metropolitan Area.

Section 601(g) of th Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent New England Metropolitan County. Thus, for purposes of the prospective payment system, we classified these hospitals as urban hospitals.

It is clear that the changes being implemented in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with E.O. 12291 and the RFA.

II. Objectives

The prospective payment rates for both capital and operating costs create incentives similar to the incentives a hospital faces in pricing and marketing its services in a price competitive market. Under the prospective payment systems, similar hospitals are paid the same rate for similar services, and hospitals know in advance the amount they will be paid per discharge. Because hospitals receive this payment regardless of their specific cost experience, there are strong incentives to operate more efficiently and to minimize unnecessary costs. Our specific objectives include the following:

- Restructuring hospitals' economic incentives.
- Basing payment on a system that more accurately identifies the product being purchased than cost reimbursement.
- Reinforcing the role of the Federal government as a prudent buyer of services.
- Restraining the rate of hospital cost increases, thus moderating the outflow of expenditures from the Medicare trust fund while maintaining high quality care.

In addition, we share national goals of deficit reduction and restraints on government spending in general. We believe the proposed changes would further all of the above goals while maintaining the financial viability of the hospital industry and ensuring access to high quality care for beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are, in general, reasonable and equitable while avoiding or minimizing unintended adverse consequences. Thus, our overall intent is to refine further the prospective payment system without undercutting our objectives.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis is limited to presenting the projected effects of the proposed policy and rate changes on current and projected payment rates. In the analysis that follows, we examine the effects on hospital payments of changes required by statute and changes HCFA is proposing. We accomplish this by projecting estimated payments under each set of proposed policy changes onto current estimated payments and determining the difference between the two sets of payment amounts. That is, we project the effects of each policy change on payments while holding all other payment variables constant. Thus, we are not attempting to predict behavioral responses to our policy changes, and we are not generally accounting for changes in such exogenous variables as admissions, lengths of stay, or case mix. We believe that this approach to the specific impact discussions below is the most reasonable one given the difficulty we have in quantifying impacts and attributing causality. Wherever possible, we have included quantitative representations of the impact of changes being proposed in this document.

As we have done in previous impact analyses, we are soliciting comments and information about the anticipated effects of these changes on the prospective payment system.

IV. Hospitals Included in and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. Only 59 short-term, acute care hospitals remain excluded from the prospective payment systems under section 1814(b)(3) of the Act (in Maryland) or a demonstration project (in the Finger Lakes region of New York State). Thus, as of April 9, 1992, about 5,390 hospitals were receiving prospectively based payments for performing inpatient services. This represents about 83 percent of all Medicare-participating hospitals.

Among the 5,390 prospective payment hospitals, there are over 860 hospitals that are paid on special bases under the prospective payment system for operating costs, as required by statute, as sole community hospitals or rural referral centers. In addition, there are approximately 1,602 hospitals that are receiving additional payments on the basis of being classified as disproportionate share hospitals. About 30 of these hospitals also receive special payments as rural referral centers and 95 as sole community hospitals. About 1,207 hospitals are receiving additional payments for the indirect cost of medical education. There are about 605 hospitals that qualify for additional payments under both the indirect medical education and disproportionate share payment provisions under the prospective payment system for operating costs.

Section 1886(d)(5)(G)(i) of the Act directs the Secretary to pay Medicare-dependent, small rural hospitals on the

basis of the greater of a hospital-specific rate based on their FY 1982 or FY 1987 operating costs per discharge, whichever is higher, or the applicable standardized payment amount. This provision was effective with cost reporting periods beginning after April 1, 1990 and expires with cost reporting periods ending on or before March 31, 1993. Thus, with cost reporting periods beginning after April 1, 1992, over 500 hospitals that meet the criteria for being Medicare-dependent, small rural hospitals will begin receiving only the standardized amount payments.

Under the capital prospective payment system, there are special payment protections for sole community hospitals and for urban hospitals with more than 100 beds and a disproportionate share patient percentage of 20.2 percent or more or which derive at least 30 percent of their total inpatient revenues from State or local government sources for the care of indigent patients. Approximately 532 sole community hospitals and 761 urban hospitals qualify for this protection. An additional 1,486 urban hospitals with more than 100 beds receive additional payments for serving low income patients. (An additional payment is made to all urban hospitals with more than 100 beds that serve low income patients.) Additional payments are also made to 1,207 hospitals with graduate medical education teaching programs.

As of April 9, 1992, about 1,050 Medicare hospitals are excluded by statute from the prospective payment system and continue to be paid on the basis of their reasonable costs, subject to limits on the rate of increase in their costs. These hospitals include psychiatric, rehabilitation, long-term care, and children's hospitals. Another 1,893 psychiatric and rehabilitation units in hospitals subject to the prospective payment system are excluded from the prospective payment system as of the same date. These units, too, are paid on the basis of reasonable cost subject to limits on the rate of increase in their costs. In addition, there are nine hospitals extensively involved either in the treatment of cancer or cancer research that are excluded from the prospective payment system.

V. Impact on Excluded Hospitals and Units

As noted in the previous section of this impact analysis, approximately 1,050 excluded Medicare hospitals and 1,893 units in hospitals included in the prospective payments systems are paid on a reasonable cost basis subject to the rate-of-increase ceiling requirement of § 413.40. For hospital cost reporting periods beginning on or after October 1, 1992, excluded hospitals and units would be paid the full increase in their reasonable costs up to the percentage increase in the hospital market basket. We are projecting an increase in the excluded hospital market basket of 4.5 percent.

The impact on excluded hospitals and units of the proposed update in the rate-of-increase limit depends on the rate of cost increases experienced by each hospital and excluded unit since its base period. For excluded hospitals and units with per-case increases in inpatient operating costs below the cumulative update in their rate-of-increase limit, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limit, the major effect will be the amount of excess costs that the hospitals would have to absorb.

In this context, we note that for cost reporting periods beginning in FY 1992, § 413.40(d)(3)(iii) allows an excluded hospital or unit whose cost exceed the rate-of-increase limit to receive the lower of its target amount plus 50 percent of reasonable costs in excess of the target amount or 110 percent of the target amount. In addition, under the various provisions set forth in § 413.40, excluded hospitals and units can obtain substantial relief from the rate-of-increase limit for significant, yet justifiable, increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases to the growth rate in the hospital market basket, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Proposed Policy Changes Under Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating costs and for capital-related costs. We have prepared separate analyses of the proposed changes to each system.

The data used in developing the quantitative analyses of changes in operating payments that are presented below are taken from FY 1991 billing data and the most current hospital-specific data. For purposes of determining which method of payment to apply for sole community hospitals (the Federal payment rate or the applicable hospital-specific payment rate as prescribed by section 1886(d)(5)(D)(i) of the Act), we assume that all sole community hospitals have a cost reporting period that coincides with the Federal fiscal year.

Our analysis has several limitations. First, it does not take into account behavioral changes that hospitals may adopt in response to the policy changes being implemented in this proposed rule. Second, as a result of gaps in our data, we are unable to quantify some of the effects of the changes contained in this rule. Third, we could not categorize all the hospitals in our data base because in some cases the hospital-specific data necessary for constructing our impact model were missing. For some hospitals, data on hospital bed size and type of ownership were missing. The missing data, however, did not prevent us from using the discharges from these facilities to estimate the actual payments for FY 1992 and the projected FY 1993 payments under the policies proposed that serve as the bases of our simulation.

To illustrate the effects of hospital geographic reclassifications for FY 1993, we are dividing the analysis presented in Table I into two parts. The first part shows changes in payments to hospitals based on their actual geographic location. The second part of the analysis shows changes in payments based on a hospital's FY 1993 geographic classification for purposes of the standardized amount under the prospective payment system after any reclassifications under sections 1886(d)(8) or (10) of the Act, rather than its actual geographic location. For example, our analysis in Table I of hospital operating payments based on actual geographic location shows that the number of hospitals in large urban, other urban, and rural areas is 1,467, 1,411, and 2,516, respectively. The analysis of hospitals that incorporates reclassifications shows the number of large urban, other urban, and rural hospitals to be 1,619, 1,480, and 2,295, respectively. The effects of geographic reclassification are evident from a comparison of the two analyses within Table I.

To simulate the impact of the expiration of section 1886(d)(5)(G) of the Act on payments to Medicare-dependent, small rural hospitals (MDHs), we computed hospital-specific payments from October 1, 1992 through the end of each hospital's cost reporting period that ends on or before March 31, 1993. That is, we simulated payments for this period based on the higher of the hospital-specific payment or the

proposed FY 1993 standardized amount payments for operating costs. We then computed payments for the remainder of the Federal fiscal year based on the proposed FY 1993 standardized amount payments for operating costs. For example, if the hospital's cost reporting period ends December 31 and the hospital-specific payments are higher than the proposed standardized amount payments, we computed hospital-specific payments for 3 months and prospective payments for 9 months. In the simulation, hospitals with cost reporting periods ending before September 30, were paid on the basis of the Federal payment rates for the entire period. Since some of those hospitals lose this special protection during FY 1992, a similar simulation was performed to reduce FY 1992 payments for comparison purposes. Below we present the annual effect of the expiration of the special provision on payments to Medicare-dependent, small rural hospitals. We simulated a full 12 months of payments under the special payment provision compared with 12 months of payment without benefit of the provision.

Average FY 1993 payment/case 12 months payment as an MDH	Average payment/case 12 months payment without the MDH payment protection	Percent change
$3,502	$3,138	−10.4

The analysis in Table I examines the following major changes set forth in this proposed rule—

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the DRG weights required by section 1886(d)(4)(C) of the Act (column 1).
- The effects of hospital reclassifications by the MGCRB (column 2).
- The effect of the proposed outlier payment changes (using a marginal cost factor of .55 and the arithmetic mean to calculate day outlier payments) and increase in outlier payment levels (column 3).
- The combined effect of all changes being presented in this proposed rule (column 4).

In order to present the effects of the separate policy proposals displayed in columns 1, 2, and 3 of table I, we added incrementally the payment variables associated with the provision under examination, so that the percentages in the columns represent the difference in payments relative to the previous column. For example, column 2 (Geographic Reclassification) examines the impact of the standardized amount and wage index changes resulting from geographic reclassifications given the DRG reclassifications and recalibration results displayed in column 1 of Table I. The last column in Table I displays the combined effects of the previous columns as well as, corrections to the wage index values, the phase-out of the MDH Provision, and the update and budget neutrality factors. Thus, the last column is the only one that reflects the effects of all the quantifiable proposed policy changes on simulated FY 1992 payments.

TABLE I.—IMPACT ANALYSIS OF PROPOSED OPERATING COST PROSPECTIVE PAYMENT SYSTEM CHANGES FOR FY 1993

	Number of hospitals [1]	DRG reclassification and recalibration (1) [2]	Geographic reclassification (2) [3]	Outlier payment changes			All changes (4) [6]
				Payment level adjustment (3A) [4]	Proposed Policy (3B) [5]	Sum of (A) and (B) (3C)	
By Geographic Location							
All hospitals	5,394	0.0	0.0	1.6	0.0	1.6	4.3
Large urban areas (populations over 1 million)	1,467	.0	−.1	1.9	+.2	1.7	4.5
Other urban areas (populations of 1 million or fewer)	1,411	.0	.0	1.7	.1	1.8	4.6
Rural Areas	2,516	−.1	.1	.7	.0	.7	3.3
Urban Hospitals	2,878	.0	.0	1.8	.1	1.7	4.5
0–99 beds	670	−.1	−.1	1.1	.2	1.3	4.0
100–199 beds	859	.1	.0	1.4	.2	1.6	4.4
200–299 beds	614	.1	.0	1.7	.1	1.8	4.6
300–499 beds	536	.0	.2	1.9	.1	1.8	4.5
500 or more beds	199	.0	.0	2.2	.4	1.8	4.6
Rural Hospitals	2,516	.1	.1	.7	.0	.7	3.3
0–49 beds	1,239	.2	.3	.2	.0	.2	2.0
50–99 beds	767	.1	.3	.4	.0	.4	2.8
100–149 beds	264	.0	.1	.7	.1	.8	3.5
150–199 beds	128	.0	.2	.8	.0	.8	4.2
200 or more beds	116	.0	.4	1.2	.0	1.2	3.8
Urban by Region:							
New England	172	.2	.2	1.8	−.3	1.5	4.3
Middle Atlantic	460	.3	−.1	2.6	−1.3	1.3	4.2
South Atlantic	418	−.1	.0	1.9	.3	2.2	4.9
East North Central	475	.0	−.2	1.4	.3	1.7	4.3
East South Central	168	.1	−.1	1.8	.4	2.2	5.0
West North Central	183	.0	−.3	1.4	.4	1.8	4.3
West South Central	352	.1	.4	1.7	.6	2.3	5.6
Mountain	110	−.1	−.3	1.6	.6	2.2	4.6
Pacific	492	−.2	.0	1.4	.4	1.8	4.4
Puerto Rico	48	.2	−.2	.9	.1	1.0	3.7
Rural by region:							
New England	57	−.1	−.1	.9	.0	.9	4.3
Middle Atlantic	93	.0	−.4	1.3	−.7	.6	2.0
South Atlantic	343	.0	−.7	1.1	−.1	1.0	3.4
East North Central	346	.0	.6	.4	.1	.5	3.2
East South Central	298	.0	.0	.6	.1	.7	3.6
West North Central	564	−.1	.5	.3	.1	.4	2.5
West South Central	401	−.1	.7	.5	.2	.7	3.5
Mountain	241	−.1	.2	.3	.1	.4	4.1

TABLE I.—IMPACT ANALYSIS OF PROPOSED OPERATING COST PROSPECTIVE PAYMENT SYSTEM CHANGES FOR FY 1993—Continued

	Number of hospitals [1]	DRG reclassification and recalibration (1) [2]	Geographic reclassification (2) [3]	Outlier payment changes			All changes (4) [6]
				Payment level adjustment (3A) [4]	Proposed Policy (3B) [5]	Sum of (A) and (B) (3C)	
Pacific	166	.0	.5	.5	.2	.7	4.2
Puerto Rico	7	.0	−.4	.3	.0	.3	3.7
By Payment Classification							
All hospitals	5,394	.0	.0	1.6	0.0	1.6	4.3
Large Urban areas (populations over 1 million)	1,619	.0	.0	1.9	−0.1	1.8	4.5
Other urban areas (populations of 1 million or fewer)	1,480	.0	.0	1.6	.1	1.7	4.5
Rural areas	2,295	−.1	−.1	.6	.0	.6	3.1
Teaching status:							
Non-teaching	4,186	.0	.0	1.3	.2	1.5	4.2
Resident/bed ratio less than 0.25	968	.0	−.1	1.7	−.1	1.6	4.4
Resident/bed ratio 0.25 or greater	239	.0	.0	2.3	−.6	1.7	4.5
Disproportionate share hospitals (DSH):							
Non-DSH	3,792	.0	.0	1.5	.1	1.6	4.3
Urban DSH:							
100 Beds or more	1,133	.1	.0	1.9	−.3	1.6	4.5
Fewer than 100 beds	95	−.1	.1	.8	.3	1.1	3.9
Rural DSH:							
Sole Community (SCH)	95	−.1	−.4	0.2	.0	.2	3.4
Referral centers (RRC)	44	.0	.0	1.1	−.2	.9	3.7
Other rural DSH hospitals:							
100 beds or more	62	.0	−2.8	1.0	−.2	.8	1.6
Fewer than 100 beds	173	.2	.0	.3	.0	.3	3.0
Urban teaching and DSH							
Both teaching and DSH	605	.1	.0	2.1	−.4	1.7	4.5
Teaching and no DSH	516	−.1	−.1	1.8	.1	1.9	4.5
No Teaching and DSH	623	.1	.1	1.5	.1	1.6	4.5
No Teaching and no DSH	1,355	.0	.0	1.6	.3	1.9	4.7
Rural hospital types:							
Non special status hospitals	1,010	−.1	−.8	.6	.0	.6	3.5
RRC	179	.0	.4	1.0	.1	1.1	4.3
SCH	532	−.1	.0	.1	.0	.1	4.1
Medicare-Dependent hospitals (MDH)	515	−.2	.3	.2	.0	.2	−4.3
SCH and RRC	45	.1	.3	.6	−.2	.4	4.3
SCH and MDH	1,092	−.1	.2	.3	−.1	.2	1.6
Hospitals Reclassified by the Medicare Geographic Classification Review Board							
Reclassification status during FY 92 and FY 93:							
Reclassified during both FY 92 and FY 93	847	.0	−.7	1.2	.0	1.2	3.4
Reclassified during FY 93 only	349	.1	4.1	1.7	−.3	1.4	8.3
Reclassified during FY 92 only	82	.0	−3.6	1.1	.1	1.2	0.5
FY 93 reclassifications:							
All reclassified hospitals	1,196	.0	.9	1.3	−.1	1.2	5.0
All nonreclassified	4,148	.0	−.3	1.7	.0	1.7	4.2
All urban reclassified hospitals	376	.1	1.2	1.7	−.2	1.5	5.7
Urban nonreclassified hospitals	2,502	.0	−.3	1.8	.0	1.8	4.3
All reclassified rural hospitals	820	.0	.4	.8	.0	.8	4.0
Rural nonreclassified hospitals	1,646	−.1	−.3	.4	.0	.4	2.2
Other reclassified hospitals (section 1886(D)(8)(B))	50	.0	.1	1.1	.1	1.2	4.1
Type of ownership:							
Voluntary	3,188	.0	−.1	1.7	−.1	1.6	4.3
Proprietary	749	.0	.0	1.7	.4	2.1	4.9
Government	1,457	.0	.2	1.3	.0	1.3	4.1
Medicare utilization as a percent of inpatient days:							
0–25	277	.1	.2	1.6	−.1	1.5	4.6
25–50	1,934	.0	.0	1.7	.0	1.7	4.5
50–65	2,213	.0	.0	1.5	.0	1.5	4.3
Over 65	727	.0	−.2	1.2	.0	1.2	2.9

[1] Because data necessary to classify some hospitals by category were missing, these hospitals were omitted from the analysis. Therefore, the total number of hospitals in each category may not equal the national total. Hospital-specific data and discharges data are from FY 1991, and hospital cost report data are from reporting periods beginning in FY 1990.

[2] Recalibration of the DRG weights and classification changes are based on FY 1991 MEDPAR data and are performed annually in accordance with section 1886(d)(4)(C) of the Act.

[3] Under section 1886(d)(10) of the Act, a hospital may apply to the Medicare Geographic Classification Review Board for the purpose of obtaining a higher wage index, standardized payment amount, or both. Under section 1886(d)(8)(D) of the Act, changes in the geographic designation of hospitals must be budget neutral and payments to rural hospitals after reclassification cannot be lower than they would be absent reclassification. This column reflects the impact of changes in reclassifications between FY 1992 and FY 1993.

[4] This column displays the effects of increasing outlier payments between FY 1992 and FY 1993. The thresholds implemented for FY 1992 were intended to result in 5.1 percent of payments for outlier cases. FY 1992 outlier payments now are estimated to equal 3.6 percent of total prospective payments. FY 1993 outlier payments are estimated at 5.1 percent.

[5] This column displays the impact of the proposed change for computing day outlier cases: using the arithmetic mean length of stay in place of the geometric mean length of stay for computing the per diem payment amount, and using a marginal cost factor of .55 instead of .60.

[6] This column shows the combined effects of all the previous columns as well as the effects of updating the FY 1992 standardized payment amounts by the rates of increase as mandated by section 1886(b)(3)(B)(i)(VII) of the Act. It also reflects the phase-out of the Medicare dependent, small rural hospital provision. In addition, this column captures interactive effects that we are not able to quantify.

B. The Impact of the Proposed Changes to the DRG Weights (Column 1)

In column 1 of Table I, we present the combined effects of the revised DRG classificaton system, and the subsequent recalibration of the DRG weights incorporating these redefined DRGs. Section 1886(d)(4)(C)(i) of the Act requires us each year to make appropriate classification changes and recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The impact of reclassification and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral.

The redistributional impact of the proposed classification and recalibration changes across hospital groupings is small. At most, the impact is either a reduction or an increase of 0.3 percent for a few hospital groupings while most hospitals appear to experience no effect. The reductions are concentrated among small urban and rural hospitals. Rural hospitals with fewer than 50 beds are projected to lose an average of 0.2 percent in payments per case, and rural hospitals with between 50 and 99 beds are projected to lose 0.1 percent of their payments. Also, urban hospitals with fewer than 100 beds can expect an average 0.1 percent reduction in payments per case. However, urban hospitals with between 100 and 299 beds can expect an average increase in payments of 0.1 percent.

C. The Impact of MGCRB Reclassification on Hospitals (Column 2)

1. Impact of Current Policies

Section 1886(d)(10) of the Act provides for the establishment of the Medicare Geographic Classficiation Review Board (MGCRB). The MGCRB considers applications by hospitals for geographic reclassification for purposes of receiving a different wage index value, standardized amount, or both under the prospective payment system. By March 30 of each year, the MGCRB makes reclassificaton determinations that will be efffective for the next fiscal year beginning on October 1. The first hospital reclassifications based on decisions of the MGCRB for FY 1992 were effective October 1, 1991. The MGCRB may reclassify a hospital to an adjacent urban area or to another rural area with which it has a close proximity for the purposes of using the other area's standardized amount, wage index value, or both. (A rural referral center or a sole community hospital may be redesignated to an area that is not an adjacent county.)

The proposed FY 1993 standardized payment amounts and wage index values incorporate all the MGCRB's reclassification decisions that will be effective for FY 1993. The MGCRB approved 1,249 hospital reclassifications for FY 1993. This number includes 50 hospitals that have also been reclassified under provisions of section 1886(d)(8)(B) of the Act that deems certain rural counties adjacent to one or more urban areas as belonging to the urban area.

The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions as of March 30, 1991. Additional changes that result from the Administrator's review of MGCRB decisions will be incorporated into the wage index values and standardized payment amounts to be published in the final rule implementing changes to the prospective payment system for FY 1993.

The later Administrator decisions may affect the wage index value for specific geographic areas. These decisions may also determine whether a redesignated hospital receives the wage index of the area to which it is redesignated or a combined wage index that includes the data for both the hospitals already in the area and the redesignated hospitals.

Over 68 percent of all hospitals reclassified for FY 1993 are located in rural areas (820 hospitals). This represents almost 33 percent of all rural hospitals in our data base. Of the total number of rural hospitals that were reclassified, 79 percent (647 hospitals) were reclassified for purposes of their wage index. Ten percent of rural reclassified hospitals were reclassified for purposes of their standardized amounts and about 11 percent were granted reclassification for purposes of both their wage index and their standardized payment amount.

Among the 245 hospitals located in other urban areas that were reclassified for FY 1993, almost 57 percent (140 hospitals) were reclassified for purposes of increasing their wage index value. Another 36 percent (89 hospitals) were reclassified for purposes of both their wage index value and standardized amount. The following table shows the number (and percentage) of reclassified hospitals by their actual geographic location.

DISTRIBUTION OF RECLASSIFIED HOSPITALS

Georgraphic location	Total No. of hospitals reclassified	Reclassified for both wage index vale and standardized amount		Reclassified for standardized amount		Reclassified for wage index	
		Number	Percent	Number	Percent	Number	Percent
Large Urban	131	6	5	0	0	125	95
Other Urban	245	89	36	16	7	140	56
Rural	820	93	11	80	10	647	79
Total	1196	188	16	96	8	912	76

Overall, 76 percent of the reclassified hospitals (912 hospitals) were reclassified for purposes of their wage index value, 8 percent (96 hospitals) were reclassified for purposes of their standardized amounts, and 16 percent (188 hospitals) were reclassified for purposes of both their wage index value and standardized payment amount.

We conducted an analysis that shows the effects of reclassification on payments to reclassified and non-reclassified hospitals in FY 1993. This analysis is presented in Table II, below. This anlysis compares reclassified hospital payments for FY 1993 with payment levels that assume reclassified hospitals are paid on the basis of their geographic location rather than reclassified location. In this respect, the analysis in Table II is comparable to the analysis we presented in the August 30, 1991 final rule (56 FR 43350).

Table II shows the changes in payments per case for all FY 1993 reclassified and nonreclassified hospitals in urban and rural locations

for each of the three reclassification categories.

As evidenced by the increase in payment for reclassified hospitals and the decrease in payments for non-reclassified hospitals, the effects of the MGCRB reclassification decisions are significant. The overall impact on reclassfied hospitals would be to increase their payments per case by an average of 4.4 percent for FY 1993. Hospitals located in rural areas that were reclassified for purposes of both their wage index value and their standardized amount would receive the largest percentage increase in payments per case. They could expect an average increase of nearly 15.1 percent above what they would receive without reclassification. The 16 hospitals located in urban areas that were reclassified for purposes of their standardized amounts would receive an average decrease in payments per case of 0.5 percent compared to what they would receive if there were no reclassifications. This outcome reflects the effects of the budget neutrality adjustment for urban hospitals and the reclassification of other hospitals from their labor market area. Thus, for the hospitals remaining in the labor market area after the wage index reclassifications, on average the decrease in the wage index value for the area would be greater than the increase in their standardized amount after reclassification to a large urban area.

The reclassification of hospitals primarily affects payment to nonreclassifed hospitals through changes in the wage index and through the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that were not reclassifed, the overall impact of hospital reclassifications would be an average decrease in payments per case of about 1.2 percent. Non-reclassified urban hospitals (comprising about 61 percent of non-reclassified hospitals) would experience a 1.3 percent decrease in payments per case compared to what they would receive if there were no reclassifications. The 0.2 percent increase for nonreclassified rural hospitals is largely atttributable to a redistribution of outlier payments between nonreclassified rural hospitals and hospitals that are reclassified for wage index purposes only. In the aggregate, payments to hospitals that are receiving the rural standardized payment amounts are budget neutral (except with respect to wage index only reclassifications, which are accounted for in the budget neutrality adjustment to the urban standardized amount).

TABLE II.—Effects on Payments Per Case of Geographic Reclassification of Hospitals Under Current Reclassification Policies

	Number of hospitals	(a) Payment per case without reclassification [1]	(b) Payment per case after reclassification	(c) Percent change in payment per case due to reclassification only [2]
FY 93 reclassifications:				
All reclassified hospitals	1,196	5,009	5,231	4.4
Standardized amount only	96	4,879	5,003	2.6
Wage index only	912	5,017	5,219	4.0
Both	188	5,009	5,323	6.3
All urban reclassified hospitals	376	5,981	6,128	2.5
Standardized amount only	16	6,826	6,791	−0.5
Wage index only	265	6,163	6,297	2.2
Both	95	5,427	5,628	3.7
All reclassified rural hospitals	820	4,004	4,302	7.4
Standardized amount only	80	3,683	3,906	6.1
Wage index only	647	4,031	4,293	6.5
Both	93	3,959	4,555	15.1
All nonreclassified hospitals	4,148	6,003	5,932	−1.2
Urban non-reclassified hospitals	2,502	6,361	6,279	−1.3
Rural non-reclassified hospitals	1,646	3,544	3,549	0.2

[1] This column shows payments without regard to any previous MGCRB reclassification decision. This column reflects the fact that reclassifications are in effect for only 1 fiscal year.

[2] This column only shows the percentage change in payments resulting from decisions of the MGCRB for FY 1993. It does not reflect other changes such as outliers, DRG recalibration & reclassification or the update.

Table I shows the impact of changes in reclassification status between FY 1992 and FY 1993. The percentage change shown in Column 2 compares current payments (that include payments to currently reclassified hospitals) with payments based on the FY 1993 MGCRB decisions. For example, for hospitals that were reclassified in FY 1992, only the difference between their FY 1992 and FY 1993 payments that is attributable to FY 1993 MGCRB decisions is shown. For hospitals that were reclassified in both FY 1992 and FY 1993, the effect of the increased number of MGCRB reclassifications would be to reduce their payments by 0.7 percent. Hospitals that were reclassified in FY 1993 only would experience a 4.1 percent increase in payments, while those hospitals that were reclassified in FY 1992 but not in FY 1993 would experience a 3.6 percent reduction in payment as a result of no longer being reclassified. Overall payments to rural hospitals are expected to increase by an average of 0.1 percent. However, payments to rural hospitals with fewer than 100 beds are projected to increase by 0.3 percent, while payments to rural hospitals with 200 or more beds are expected to decrease by 0.4 percent. Among urban hospitals, we expect hospitals with between 300 and 499 beds to receive an average decrease of 0.2 percent in payments compared with FY 1992 payments.

Among the hospitals receiving special payments, rural referral centers are expected to benefit the most, receiving an average increase of 0.4 percent in their payments. However, rural disproportionate share hospitals with 100 or more beds may expect an average decrease in payments of 2.8 percent compared with current levels. This reduction is attributable primarily to a few hospitals in this category that were reclassified to an urban area in FY 1992 and received disproportionate share payments at the urban rate. Since these hospitals were not reclassified to urban areas for FY 1993, their payments fall dramatically.

The geographic analysis by census division shows that generally hospitals in urban areas are more likely than rural hospitals to receive a decrease in payments and hospitals located in rural areas are, on average, expected to receive an increase. However, there are notable exceptions in both groups. While urban hospitals in the West North Central and Mountain census divisions are projected to receive decreased payments of 0.3 percent, hospitals in the West South Central census division are expected to receive an average increase of 0.4 percent. Also, rural hospitals in the West South Central census division can expect an increase of 0.7 percent, which is the largest increase for the census divisions. However, our analysis shows that rural hospitals in the South Atlantic census division can expect average payment reductions of 0.7 percent, the largest decrease of any census division.

The foregoing analysis was based on MGCRB and HCFA Administrator decisions made by March 30 of this year. As previously noted, there will be changes to some MGCRB decisions through the appeals and review process. The outcome of these cases may affect the final results of our analysis, which we will present in the final rule.

2. Impact of Proposed Guideline Changes

Section 412.230(e) specifies the criteria a hospital must meet in order to be reclassified from one labor market to an adjacent one for purposes of the wage index. These criteria are based on average hourly wage differences between the two areas. As discussed in section IV of the preamble to this proposed rule, we are proposing an additional criterion that would require a hospital to demonstrate that its average hourly wage was at least 108 percent of the average hourly wage for hospitals in its current labor market area. The proposed guideline would be effective for applications filed by October 1, 1992 that are reviewed by the MGCRB in FY 1993. They would not affect payment until FY 1994.

Based on the FY 1993 reclassifications, we estimate that under the proposed change in the wage guideline, 75 percent of the hospitals that qualified for reclassification based on their wage index values would no longer qualify. This includes 79 percent of the urban hospitals and 62 percent of the rural hospitals that qualified in FY 1993. The following table shows the effect of the proposed change on the number of hospitals that would qualify for reclassification under the three reclassification categories and by urban and rural geographic location.

DISTRIBUTION OF HOSPITALS BY RECLASSIFICATION STATUS

Reclassification status	Actual FY 1993 reclassification	Proposed change
All Hospitals	5394	5394
All Reclassified Hospitals	1196	526
Standardized Amount Only	96	247
Wage Index Only	912	242
Both	188	37
All Nonreclassified Hospitals	4148	4818
Hospitals Affected by Revised Guideline		759
Changed from Wage Index Only to No Reclassification		608
Changed from Both to Standardized Amount Only		151
All Reclassified Urban Hospitals	376	143
Standardized Amount Only	16	105
Wage Index Only	265	32
Both	95	6
All Nonreclassified Urban Hospitals	2502	2735
Urban Hospitals Affected by Revised Guideline		322
Changed from Wage Index Only to No Reclassification		233
Changed from Both to Standardized Amount Only		89
All Reclassified Rural Hospitals	820	383
Standardized Amount Only	80	142
Wage Index Only	647	210
Both	93	31
All Nonreclassified Rural Hospitals	1646	2083
Rural Hospitals Affected by Revised Guideline		437
Changed from Wage Index Only to No Reclassification		375
Changed from Both to Standardized Amount Only		62

For several reasons, it is difficult to estimate the impact the proposed changes would have on FY 1994 reclassifications (the year in which reclassifications based on the revised guidelines would take effect). Our estimates are based on the best data available. However, there are several policy changes that we anticipate will occur that will affect our estimates, but whose outcome cannot be predicted at this point. The following is a partial list of expected changes:

- The revised MSA definitions based on the 1990 Census that are expected to be effective for FY 1994 are likely to have a significant impact on hospital classifications. Until the new MSA definitions are released and hospitals are regrouped based on these definitions, the impact on hospital reclassifications cannot be determined.
- As indicated in section IV.C of the preamble to this proposed rule, we are in the process of evaluating alternative methods for defining labor market areas and refinements could be implemented as early as FY 1994, the year in which reclassifications based on the revised guidelines would take effect. Any refinements to the labor market area definitions could significantly affect the impact of geographic reclassifications.
- Beginning in FY 1994, the wage data used to develop the wage index will be updated annually. This change, together with revised labor market areas, will affect the impact of FY 1994 wage index reclassifications and the number of hospitals that will qualify for reclassification beginning in FY 1995.
- Wage index reclassifications granted by the MGCRB also affect the geographic adjustment factor (GAF) applied to the capital prospective payment system rates. In addition, the level of the capital prospective payment rate is adjusted to account for any additional payments resulting from geographic reclassification. Therefore, a reduction in the number of reclassifications granted by the MGCRB as a result of changes in the guidelines would result in a corresponding increase in the capital prospective payment rate.
- Finally, beginning in FY 1995, the rural standardized payment amount will be eliminated. As a result, payments to rural hospitals will also be affected by the geographic reclassifications through the budget neutrality adjustment. That is, the standardized payment amount applicable to both urban and rural hospitals will be adjusted in order to finance the additional payments to hospitals that are reclassified by the MGCRB.

D. Effect of Changes in Outlier Payments (Columns 3A, B, and C)

1. Proposed Outlier Policy Changes

For computational reasons, we present in Table I, column 3A, the impact of increased FY 1993 outlier payments compared with estimated FY 1992 outlier payments before the impact of the proposed outlier policy changes, which are shown in column 3B. However, because of its significance, we discuss first the impact of the proposed outlier policy changes and then the impact of revisions to the outlier payment level.

Under current regulations at § 412.82(c), we compute the per diem DRG payment amount for day outlier

cases by dividing the adjusted DRG payment amount by the geometric mean length of stay for the DRG. We then multiply the per diem amount by a marginal cost factor of 60 percent times the number of days beyond the outlier threshold the patient remains in the hospital. As explained in section V.A.1. of the preamble to this proposed rule, the analysis conducted by the RAND Corporation shows that using the arithmetic mean length of stay in place of the geometric mean length of stay and a marginal cost factor of 55 percent instead of 60 percent results in more appropriate payments for day outlier cases and produces both a more equitable distribution of payments across outlier cases and payments that better protect hospitals from losses resulting from those cases.

Since we have made the aggregate effect of the change in outlier policy budget neutral, there is no overall effect on payments under the prospective payment system. Similarly, because there are separate outlier offsets to the urban and rural standardized amounts, there is no payment redistribution between urban and rural hospitals. Our analysis indicates that large hospitals (over 500 beds) located in urban areas would lose about 0.4 percent in payments per case. Also, hospitals located in large urban areas would be expected to receive a decrease in payments of 0.2 percent. On the other hand, urban hospitals with fewer than 100 beds would gain about 0.2 percent.

Among hospitals receiving special payments, hospitals with large teaching programs show a loss of 0.6 percent in payments per case. Also, hospitals that qualify as both sole community and rural referral centers are projected to lose about 0.2 percent in their payments per case. Payments to disproportionate share hospitals would be reduced by 0.3 percent.

When examined by census division, the effects are quite pronounced. Except for hospitals in the New England and Middle Atlantic divisions, we project increases in payments to urban hospitals of between 0.3 and 0.6 percent. Urban hospitals in the Middle Atlantic and New England census divisions would experience decreases in their payments of 1.3 and 0.3 percent, respectively. For rural hospitals, we find a similar though less dramatic pattern of redistributive effects. With the exception of the Middle Atlantic and South Atlantic divisions, the analysis shows increased payments ranging from 0 percent to 0.2 percent. The Middle Atlantic and South Atlantic census divisions are projected to receive decreases in payments amounting to 0.7 and 0.1 percent, respectively.

In conclusion, the principal impact of the proposed changes in computing day outlier payments appears to be one of redistributing payments from hospitals in two of the census divisions to hospitals in the other census divisions, especially among hospitals located in urban areas.

2. FY 1992 Outlier Payments

Section 1886(d)(5)(A)(iv) of the Act requires that the total amount of additional payments made for outlier cases in a fiscal year may not be less than 5 percent nor more than 6 percent of the total prospective payments estimated to be made for discharges in that fiscal year. As described in the August 30, 1991 final rule (56 FR 43246), we established the thresholds for day and high cost outliers based on an estimate that outlier payments would equal 5.1 percent of total prospective payments. In addition, we reduced the standardized amounts by 5.1 percent for the estimated outliers payments. As the analysis in section V.A.4 of the preamble to this proposed rule describes, we now estimate that FY 1992 outlier payments will equal 3.6 percent of total DRG payments (exclusive of indirect teaching and disproportionate share payments) and 3.7 percent of total payments under the prospective payment system for operating costs. The average FY 1992 payment that we use in analyzing the impact of the proposed FY 1993 changes reflects the 3.6 percent outlier payment level. The outlier payment percentage in FY 1993 is estimated to be 5.1 percent. Ordinarily, we account for the difference between the estimated outlier payment percentage in the current year and the outlier payment percentage for the subsequent year in the All Changes column of Table I and indicate that we have done so in a footnote and a brief discussion in the text. However, given the magnitude of the difference between the estimated FY 1992 outlier payments and the 5.1 percent estimated for FY 1993, we are explicitly displaying the increase that will occur in total outlier payments in column 3A. This column reflects the additional outlier payments that we estimate will be made under current outlier policy compared to our estimate of FY 1992 outlier payments.

The effect of the difference between FY 1992 and FY 1993 estimated outlier payments would be to increase average payments per case, overall, by 1.6 percent. Among the hospital groupings, the effect is the greatest for those hospitals that receive a relatively high percentage of outlier payments. In terms of geographic location, the effect would be larger for hospitals located in large urban areas—raising payments an average of 1.9 percent. The effect is smallest for rural hospitals—raising their payments by 0.7 percent. Among hospitals that receive additional payments or are grouped according to certain characteristics, hospitals with large teaching programs would receive the largest payment increases. The increase averages about 2.3 percent.

The analysis by census division shows urban hospitals in the Middle Atlantic census division receiving the greatest increase in payments. Urban hospitals would receive an average increase of 2.6 percent and rural hospitals would receive an average increase of 1.3 percent. Thus, in column 3C, we see that the net effect of the difference between FY 1992 and FY 1993 estimated payments and the proposed outlier policy changes is an increase in payments to hospitals in the Middle Atlantic census division of 1.3 percent for urban hospitals and 0.6 percent for rural hospitals, compared to FY 1992 payments.

E. Combined Effects of All Changes (Column 4)

In column 4 of Table I, we present the expected effects of all proposed changes for FY 1993 compared to expected payments under policies in effect for FY 1992. In addition to the changes being proposed for DRG weights (presented in column 1), the effects of FY 1993 geographic reclassification decisions (presented in column 2), and the changes to outlier payments (presented in columns 3A, B, and C), we incorporate the update factors being proposed for hospitals located in urban and rural areas (2.75 percent for urban hospitals and 3.75 percent for rural hospitals), the phase-out of the Medicare-dependent, small rural hospital provision, and revisions to the wage index and cost of living adjustments. Although we have not explicitly analyzed these changes in this impact analysis, they are discussed in the addendum to the proposed rule and in the preamble. As explained in our introductory remarks to the quantitative analysis section, some changes cannot be captured because we lack either current or complete data. There may also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 4 may not equal the sum of the previous columns plus the other variables we are able to identify.

At the national level, our simulation of the proposed FY 1993 prospective

payment rates shows that the average payment to hospitals would increase 4.3 percent. Urban hospitals can expect an increase of 4.5 percent, with hospitals in the large urban areas receiving an increase of 4.5 percent and hospitals in the other urban areas receiving an increase of 4.6 percent. Hospitals in rural areas can expect an average increase in payments of 3.3 percent. The lower increase in rural hospital payments is attributable to the phase-out of the Medicare-dependent, small rural hospital provision and a smaller adjustment for FY 1992 outlier payment levels.

The analysis by census division shows that among urban hospitals, those in the West South Central census division are projected to receive an increase in payments per case of 5.6 percent, the largest increase of any census division. With the exceptions of hospitals in Puerto Rico, other projected increases range from 4.2 percent for hospitals in the Middle Atlantic division to 5.0 for the East South Central census division. Hospitals in Puerto Rico are projected to receive average increases of 3.7 percent.

Among the rural areas, the New England census division would receive the largest increase in payments per case of 4.3 percent. The smallest increase is projected for the Middle Atlantic census division. Rural hospitals in that census division are projected to increase 2.0 percent.

Consistent with our expectations, reclassified hospitals would gain the most under the policies being proposed in this document. Hospitals that are being reclassified for the first time in FY 1993 would receive the largest payment gains of 8.3 percent, largely as a result of an increase of 4.1 percent directly attributable to their reclassification. In contrast, hospitals that were reclassified in FY 1992 and will be reclassified again in FY 1993 are projected to receive average payment increases of 3.4 percent, which is below the national average increase. Hospitals that were reclassified in FY 1992 but will not be reclassified in FY 1993 can expect average increases amounting to only 0.5 percent. Again, the small increase is due largely to the drop in payments of 3.6 percent as a result of these hospitals not being reclassified in FY 1993. Nonreclassified hospitals may expect increased payments amounting to about 4.2 percent.

Rural hospitals with fewer than 50 beds are projected to receive a payment increase of averaging 2.0 percent, and hospitals with from 50 to 99 beds are projected to receive average increases of 2.8 percent. Both of these hospital groups are impacted adversely by the phase-out of the Medicare-dependent, small rural hospital provision. Overall, these two groups are estimated to experience payment reductions of 4.3 percent.

Rural, disproportionate share hospitals with 100 or more beds would receive an average increase of only 1.6 percent. As a group, proprietary hospitals are expected to receive a 4.9 percent increase. This represents the largest gain of any other group.

Table III presents the projected average payments per case under the changes proposed for FY 1993 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments with the average estimated per case payments that were effective October 1, 1991. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. That is, the percentage changes shown in the last column of Table I equal the percentage change in average payments from October 1, 1991 to October 1, 1992.

TABLE III—COMPARISON OF OPERATING PROSPECTIVE PAYMENTS PER CASE (FY 1992 PAYMENTS COMPARED TO PROPOSED FY 1993 PAYMENTS)

	Number of hospitals	Average FY 1992 payments/ case	Average FY 1993 payments/ case	All changes[1]
By Geographic Location				
All Hospitals	5,394	5,525	5,765	4.3
Large Urban Areas (populations over 1 million)	1,467	6,496	6,787	4.5
Other Urban Areas (populations of 1 million or fewer)	1,411	5,436	5,688	4.6
Rural Areas	2,516	3,839	3,965	3.3
Urban Hospitals	2,878	5,986	6,257	4.5
0–99 beds	670	4,245	4,415	4.0
100–199 beds	859	5,104	5,331	4.4
200–299 beds	614	5,544	5,801	4.6
300–499 beds	536	6,222	6,501	4.5
500 or more beds	199	7,692	8,049	4.6
Rural Hospitals	2,516	3,839	3,965	3.3
0–49 beds	1,239	3,197	3,262	2.0
50–99 beds	767	3,530	3,629	2.8
100–149 beds	264	3,970	4,110	3.5
150–199 beds	128	4,038	4,209	4.2
200 or more beds	116	4,633	4,811	3.8
Urban by Region				
New England	172	6,327	6,596	4.3
Middle Atlantic	460	6,557	6,833	4.2
South Atlantic	418	5,687	5,964	4.9
East North Central	475	5,840	6,089	4.3
East South Central	168	5,187	5,444	5.0
West North Central	183	5,825	6,073	4.3
West South Central	352	5,433	5,738	5.6
Mountain	110	5,892	6,165	4.6
Pacific	492	6,781	7,076	4.4
Puerto Rico	48	2,286	2,371	3.7
Rural by Region				
New England	57	4,550	4,745	4.3
Middle Atlantic	93	4,224	4,368	2.0
South Atlantic	343	4,026	4,161	3.4
East North Central	346	3,859	3,981	3.2

TABLE III—COMPARISON OF OPERATING PROSPECTIVE PAYMENTS PER CASE (FY 1992 PAYMENTS COMPARED TO PROPOSED FY 1993 PAYMENTS)—Continued

	Number of hospitals	Average FY 1992 payments/ case	Average FY 1993 payments/ case	All changes[1]
East South Central	298	3,443	3,566	3.6
West North Central	564	3,557	3,647	2.5
West South Central	401	3,496	3,610	3.5
Mountain	241	4,093	4,259	4.1
Pacific	166	4,608	4,799	4.2
Puerto Rico	7	1,559	1,615	3.7
All Hospital	5,394	5,525	5,765	4.3
Large Urban Areas (populations over 1 million)	1,619	6,362	6,672	4.5
Other Urban Areas (populations of 1 million or lower)	1,480	5,374	5,617	4.6
Rural Areas	2,295	3,793	3,909	3.1
Teaching Status				
Non-teaching	4,186	4,589	4,794	4.2
Resident/bed ratio				
Less than 0.25	968	5,949	6,212	4.4
Resident/bed ratio 0.25 or greater	239	9,297	9,717	4.5
Disproportionate Share Hospitals (DSH)				
Non-DSH	3,792	5,006	5,222	4.3
Urban DSH				
100 beds or more	1,133	6,650	6,947	4.5
Fewer than 100 beds	95	4,073	4,230	3.9
Rural DSH				
Sole community (SCH)	95	3,688	3,814	3.4
Referral centers (RRC)	44	4,489	4,657	3.7
Other rural DSH hospitals				
100 Beds or More	62	3,505	3,562	1.6
Fewer Than 100 beds	173	3,020	3,112	3.0
Urban Teaching and DSH				
Both Teaching and DSH	805	7,427	7,758	4.5
Teaching and No DSH	516	6,049	6,320	4.5
No Teaching and DSH	623	5,263	5,501	4.5
No Teaching and No DSH	1,355	4,879	5,110	4.7
Rural hospital Types				
Non Special Status Hospitals	1,010	3,366	3,482	3.5
RRC	179	4,401	4,591	4.3
SCH	532	3,849	4,006	4.1
Medicare-Dependent Hospitals (MDH)	515	3,323	3,182	−4.3
SCH and RRC	45	4,674	4,874	4.3
SCH or MDH	1,092	3,819	3,880	1.6
Hospitals Reclassified by the Medicare Geographic Classification Review Board				
Reclassification Status During FY 92 and FY 93				
Reclassified during both FY 92 and FY 93	847	4,868	5,032	3.4
Reclassified during FY 93 only	349	5,236	5,673	8.3
Reclassified during FY 92 only	82	4,502	4,526	0.5
FY 93 Reclassifications				
All Reclassified Hospitals	1,196	4,982	5,231	5.0
All Nonreclassified Hospitals	4,148	5,694	5,932	4.2
All Urban Reclassified Hospitals	376	5,800	6,128	5.7
Urban Nonreclassified Hospitals	2,502	6,018	6,279	4.3
All Reclassified Rural Hospitals	820	4,136	4,302	4.0
Rural Nonreclassified Hospitals	1,646	3,472	3,549	2.2
Other Reclassified Hospitals (Section 1886(D)(8)(B))	50	4,288	4,463	4.1
Type of Ownership				
Voluntary	3,188	5,670	5,915	4.3
Proprietary	749	5,134	5,384	4.9
Government	1,457	5,093	5,300	4.1
Medicare utilization as a percent of inpatient days				
0–25	277	7,141	7,471	4.6
25–50	1,934	6,098	6,375	4.6
50–65	2,213	4,986	5,201	4.3
Over 65	727	4,554	4,686	2.9

[1] Percentage changes shown in the column are taken from Table I, column 4. Because the dollar amounts shown in this table are rounded to the nearest whole dollar, percentage changes computed on the basis of these amounts will differ slightly from those presented in the last column of Table I.

VII. Impact of Changes in the Capital Prospective Payment System

A. General Considerations

Any impact analysis of payment changes for capital-related costs is limited by our ability to develop meaningful projections of new capital investment. Our principal constraint is the lack of hospital-specific data on future hospital capital investments. The lack of hospital-specific data limits our impact analysis in the following ways:

• Major investment in hospital capital assets (for example in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not

have the necessary hospital-specific budget data to project the individual hospital capital growth rates. Since our projection of capital-related costs could be very inaccurate for individual hospitals, a cross-sectional impact analysis using the usual prospective payment system hospital groupings (for example, urban or rural, teaching or nonteaching, etc.) that rely on individual hospital projections from prior cost reports may not be representative of the impact of the FY 1993 proposed changes in the capital prospective payment system.

• Moreover, our policy of recognizing certain obligated capital as old capital complicates the problem of projecting future capital-related costs for individual hospitals. With the proposed changes we are making to § 412.302(c), a hospital will have until the later of October 1, 1992 or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system to notify its intermediary that it has obligated capital. The intermediary will have one year from the notification date to make its determination as to whether the obligated capital will qualify as old capital. Therefore, we will not know actual obligated capital commitments in time to be used in the FY 1993 capital cost projections. Without knowing what proportion of an individual hospital's future capital spending will qualify as old capital, we cannot accurately project how the hospital will be affected by the transition payment policies.

• A meaningful cross-sectional analysis of the capital prospective payment system would have to control for the two transitional payment methods implemented in the final rule (the hold-harmless method and the fully prospective payment methods) and accurately forecast FY 1993 asset acquisitions and disposals.

Because we will not have complete data reports from our payment systems and cannot accurately predict an individual hospital's FY 1993 capital-related costs, we cannot determine with any certainty the proportion of hospitals within a hospital grouping that will qualify for payment under the hold-harmless payment method or under the fully prospective payment method. A cross-sectional analysis that includes all hospitals without distinguishing between the payment methodologies and asset changes will not fully or accurately present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals. To present these effects, we use the results of our proposed FY 1993 actuarial model that distinguishes between high capital cost and low capital cost hospitals only. The cross-sectional analysis described later in this impact analysis is intended to provide only a sense of the distribution of the transition payment methodologies across hospital groupings from the provider-specific file used to make interim capital payments. We also present the effect of changes on the adjusted Federal rate across hospital groupings assuming payments were based on 100 percent of the Federal rate.

B. Projected Impact Based on the Proposed FY 1993 Actuarial Model

1. Assumptions

Based on the above considerations, our approach to the impact analysis in this proposed rule is similar to the approach we took in August 30, 1991 final rule (56 FR 43425). In the final rule, we used an actuarial model to project individual hospital capital growth rates for budget neutrality purposes and to estimate the impact of implementing the capital prospective payment methodology. In this impact analysis, we continue to model dynamically the impact of the capital prospective payment system from FY 1992 through FY 1993 using an actuarial model. The proposed FY 1993 actuarial model, described in Appendix B of this **Federal Register** document, integrates actual data from individual hospitals with randomly generated amounts developed from the results of the capital acquisition model used in the August 30, 1992 final rule. We have available more recent capital cost data from cost reports beginning in FY 1989 and FY 1990 through the Hospital Cost Reporting Information System (HCRIS), interim payment data for hospitals already receiving capital prospective payments through PRICER, and limited capital audit data from intermediary reports. However, we do not have individual hospital data on old capital changes, new capital formation, and obligated capital. Because we can combine actual data for individual hospitals with the results from the capital acquisition model, we need to generate only the old and new capital changes and obligated capital randomly. All Federal rate payment parameters, which were randomly assigned by the capital acquisition model in the FY 1992 final rule, are assigned in the FY 1993 model to the applicable hospital.

For purposes of this impact analysis, the FY 1993 actuarial model includes the following assumptions:

• Medicare inpatient capital costs per discharge will increase at the following rates during these periods:

Fiscal year	Average percentage increase in capital costs per discharge
1992	9.10
1993	10.07

• The Medicare case mix index will increase by 2 percent annually.

• The Federal capital rate as well as the hospital-specific rate will be updated by the two year moving average increase in Medicare capital costs per case, net of case mix change increase, between FY 1988 and FY 1990. The FY 1993 update is 3.76 percent (see Addendum, Part III).

• Consistent with the budget neutrality constraints provided in section 4001(b) of Public Law 101–508, aggregate Medicare payments for capital costs in FY 1993 will equal 90 percent of total Medicare inpatient capital costs. The budget neutrality adjustment factor will be applied to the Federal and hospital-specific rates only and not to the hold-harmless payment for old capital.

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1992 to FY 1993. To show the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals, we are presenting in Table IV the results of our simulation separately for low capital cost and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high cost hospital is a hospital that, based on its initial hospital-specific rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Type of hospital	Percent of hospitals	FY 1993 percent of discharges	FY 1993 percent of capital costs	FY 1993 percent of capital payments
Low cost hospital	64	58	40	45
High cost hospital	36	42	60	55

A low cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use. If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital would become a hold-harmless payment hospital as a result of a redetermination in FY 1992 or FY 1993, we have continued to show these hospitals as low cost hospitals in Table IV. The following table shows our estimate of the percentage of low capital cost hospitals that would be paid under the hold-harmless payment methodology through a hospital-specific rate redetermination and the basis of their payment under hold-harmless payment methodology:

Fiscal year	Percent of low cost fully prospective hospitals that qualify as hold-harmless	Of these, percent that are paid:	
		100% federal rate	Hold-harmless
1992	0.7	19	81
1993	0.7	5	95

Assuming no behavioral changes in capital expenditures, Table IV displays the percentage in payments from FY 1992 to FY 1993 using the above described actuarial model.

TABLE IV.—NPRM CAPITAL BUDGET NEUTRALITY FOR FY 1993–1995

[Impact of Proposed Changes for FY 1993 on Capital Payments per Discharge]

	No. of hospitals	Discharges	Adjusted Federal payment	Average Federal percent	Hosiptal specific payment	Hold-harmless payment	Excep-tions payment	Total payment	Percent change
FY 1992 Payments Per Discharge									
Low Cost Hospitals	3,229	5,532,338	$63.68	10.08	$405.26	$1.61	$2.22	$472.77	
Fully Prospective	2,975	5,253,721	63.60	10.00	410.11		1.99	475.71	
Rebase—Fully Prospective	233	257,167	55.36	10.00	340.08		6.20	401.64	
Rebase—100% Federal Rate	4	6,086	463.21	100.00				463.21	
Rebase—Hold Harmless	17	15,364	69.82	14.79		578.93	13.50	662.25	
High Cost Hospitals	1,828	3,997,419	326.13	50.15		464.79	19.59	810.50	
100% Federal Rate	659	1,618,627	671.59	100.00			37.79	709.38	
Hold Harmless	1,169	2,378,792	91.07	14.32		781.05	7.20	879.31	
Total Hospitals	5,057	9,529,757	173.77	27.18	235.27	195.90	9.50	614.44	
FY 1993 Payments Per Discharge									
Low Cost Hospitals	3,229	5,532,338	131.88	20.04	371.83	1.99	6.68	512.39	8.38
Fully Prospective	2,975	5,253,721	132.55	20.00	376.28		5.36	514.19	8.09
Rebase—Fully Prospective	233	257,167	115.32	20.00	311.92		33.43	460.67	14.70
Rebase—100% Federal Rate	1	820	391.02	100.00				391.02	−15.59
Rebase—Hold Harmless	20	20,630	156.83	30.65		534.81	10.65	702.30	6.05
High Cost Hospitals	1,828	3,997,419	396.64	57.63		434.80	35.12	866.57	6.92
100% Federal Rate	703	1,713,592	700.60	100.00			54.25	754.85	6.41
Hold Harmless	1,125	2,283,827	168.58	24.83		761.04	20.77	950.39	8.08
Total Hospitals	5,057	9,529,757	242.94	36.22	215.86	183.54	18.61	660.95	7.57

Under section 1886(g)(1) of the Act, aggregate payments under the capital prospective payment system for FY 1992 through 1995 are to equal 90 percent of what would have been payable on a reasonable cost basis in each year, respectively. (See Addendum, Part III for a full discussion of the budget neutrality provision.) We project that in FY 1992 aggregate payments under the capital prospective payment system are 2.1 percent higher than 90 percent of reasonable costs. To achieve budget neutrality in FY 1993, we estimate there would be an aggregate 7.6 percent increase in Medicare capital payments over the FY 1992 payments.

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average case-weighted

increase in payments of 8.4 percent, and high capital cost hospitals will experience an average increase of 6.9 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 10 percent to 20 percent and the hospital-specific rate payment percentage will decrease from 90 to 80 percent in FY 1993.

The Federal rate payment percentage for a hospital paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for those hospitals receiving a hold-harmless payment for old capital will increase from 14.3 percent to 24.8 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 36 to 38 percent.

We are proposing no changes in our exceptions policies in FY 1993. As a result, the minimum payment levels would be:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or beds and a disproportionate share patient percentage of 20.2 percent or more; or,
- 70 percent for all other hospitals.

We estimate that there will be a 96 percent increase in exceptions payments in FY 1993. The projected distribution of the payments is shown in the table below:

ESTIMATED FY 1993 EXCEPTIONS PAYMENTS

Type of hospital	No. of hospitals	Percent of exceptions payments
Low Capital Cost	204	20.8
High Capital Cost	316	79.2
Total	520	100.0

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

1. Introduction

Table V presents a cross-sectional summary of hospital by capital prospective payment methodology. This distribution is not generated by our actuarial model. Rather, it is based on the December 31, 1991 update of the Provider-Specific File used by intermediaries to make interim capital payments using the PRICER program. The payment methodology distribution is based on 2,477 hospitals for which capital data are available on file. It is important to note in reviewing the data presented in Table V that we have interim capital payment data from our Hospital Specific File for only 44 percent of the hospitals. The data are not fully representative of the payment methodologies that will be applicable to the full set of hospitals. For example, the reporting cycle for the higher capital intensity teaching hospital group is generally later in the Federal fiscal year and would be expected to alter the proportions of hospitals in the categories shown. These hospital groups should be more adequately represented in the impact analysis presented in the final rule.

TABLE V.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of hospitals	(2) No. of hospitals reporting	(3) Hold-harmless		(4) Percentage paid fully prospective rate
			Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location					
All hospitals	5,394	2,477	17.2	13.3	69.5
Large urban areas (populations over 1 million)	1,467	677	23.5	17.4	59.1
Other urban areas (populations of 1 million or fewer)	1,411	589	20.9	19.9	59.3
Rural areas	2,516	1,211	12.0	7.8	80.3
Urban hospitals	2,878	1,266	22.3	18.6	59.2
0–99 beds	670	286	17.8	18.2	64.0
100–199 beds	859	391	26.9	20.5	52.7
200–299 beds	614	291	23.0	18.2	58.8
300–499 beds	536	218	20.6	17.0	62.4
500 or more beds	199	80	17.5	16.3	66.3
Rural hospitals	2,516	1,211	12.0	7.8	80.3
0–49 beds	1,239	594	7.4	4.4	88.2
50–99 beds	767	364	14.6	9.6	75.8
100–149 beds	264	132	20.5	12.1	67.4
150–199 beds	126	62	16.1	11.3	72.6
200 or more beds	116	58	19.0	17.2	63.8
By Region					
Urban By Region:					
New England	172	138	10.9	13.8	75.4
Middle Atlantic	460	95	21.1	17.9	61.1
South Atlantic	418	137	29.2	18.2	52.6
East North Central	475	266	11.2	25.2	63.6
East South Central	168	39	43.6	10.3	46.2
West North Central	183	121	18.2	14.9	66.9
West South Central	352	133	49.6	24.8	25.6
Mountain	110	60	26.7	15.0	58.3
Pacific	492	233	20.2	16.3	63.5
Puerto Rico	48	24	29.2	0.0	70.8
Rural By Region:					
New England	57	33	6.1	12.1	81.8

TABLE V.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of hospitals	(2) No. of hospitals reporting	(3) Hold-harmless		(4) Percentage paid fully prospective rate
			Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
Middle Atlantic	93	1	0.0	0.0	100.0
South Atlantic	343	182	18.7	9.3	72.0
East North Central	346	182	7.7	12.1	80.2
East South Central	298	134	14.9	9.0	76.1
West North Central	564	273	5.1	2.6	92.3
West South Central	401	159	21.4	13.2	65.4
Mountain	241	178	12.9	3.9	83.1
Pacific	166	68	5.9	5.9	88.2
Puerto Rico	7	1	0.0	0.0	100.0
By Payment Classification					
All Hospitals	5,394	2,477	17.2	13.3	69.5
Large urban areas (populations over 1 million)	1,619	775	22.7	18.5	58.8
Other urban areas (populations of 1 million or fewer)	1,480	609	21.0	17.7	61.2
Rural areas	2,295	1,093	11.3	7.1	81.6
Teaching status:					
Non-teaching	4,186	1,968	18.1	12.5	69.4
Resident/bed ratio less than 0.25	968	427	14.8	15.5	69.8
Resident/bed ratio 0.25 or greater	239	81	9.9	21.0	69.1
Disproportionate share hospitals (DSH)	2,295	1,093	11.3	7.1	81.6
Non-DSH rural	852	376	18.6	17.3	64.1
Non-DSH urban	2,247	1,008	23.2	18.5	58.3
Urban DSH, 100 beds or more	1,010	468	9.6	8.8	81.6
Rural Hospital Types:					
Non special status hospitals	179	88	20.5	17.0	62.5
RRC	532	282	13.5	4.3	82.3
SCH	515	226	6.6	3.1	90.3
Medicare-dependent hospitals (MDH)	45	22	22.7	9.1	68.2
SCH and RRC	1,092	530	10.9	4.0	85.1
SCH or MDH	3,188	1,528	16.2	15.2	68.6
Type of Ownership					
Voluntary	749	251	42.6	18.3	39.0
Proprietary	1,457	698	10.3	7.3	82.4
Government	277	119	20.2	14.3	65.5
Medicare Utilization as a Percent of Inpatient Days:					
0–25	1,934	951	18.2	15.6	66.2
25–50	2,213	1,030	16.9	11.6	71.6
50–65	727	295	13.2	8.5	78.3
Over 65					

In Table V, we are presenting the distribution of the capital payment methodologies for teaching hospitals in terms of the resident-to-bed ratio specifically so that readers may compare these analyses with those for the prospective payment system for operating costs. Also, we have not yet developed a break point for distinguishing heavy teaching involvement from light teaching involvement using the resident-to-average-daily-census ratio that is comparable to the break point developed for the resident-to-bed ratio (resident-to-bed ratios less than .25 or ratios equal to or greater than .25). Although we are classifying teaching hospitals according to their resident-to-bed ratio for display purposes, for our Federal rate payment simulations, we have computed the indirect medical education adjustment factor using the ratio of resident-to-average-daily-census.

2. Distribution of Hospitals by Payment Methodology

The cross-sectional distribution of hospital by payment methodology is provided by: (1) Geographic location, (2) region, and (3) payment classification. This provides an indication of what percentage of hospitals within a particular hospital groupings will be paid under the fully prospective payment methodology and under the hold-harmless methodology. The information is based on the 2,477 hospitals with interim capital payment data on the December 31, 1991 Provider Specific File. Since the data are based on 44 percent of hospitals, the distribution does not match the projections in our actuarial model. We expect that as additional hospitals become subject to the capital prospective payment system later in FY 1992, the percentage of hospitals paid under the hold-harmless methodology will increase from 30 to 36 percent.

The distribution of hospitals by capital payment methodology is generally consistent with the distribution of low and high capital cost hospitals in the August 30, 1992 final rule. As expected, a relatively higher percentage of rural and governmental hospitals are being paid on the fully prospective payment methodology. This is a reflection of their lower than average capital costs per case. More than 80 percent of these hospitals would be paid under the fully prospective payment methodology compared to an average of 60 percent of hospitals with reported data. In contrast, only 39 percent of the proprietary hospitals with reported data are being paid under the fully prospective payment methodology. This is the only group of hospitals that is expected to have a majority of hospitals paid under the hold harmless methodology. As we noted in the August

30, 1991 final regulations (56 FR 43430), we found that about 62.7 percent of proprietary hospitals have a capital cost per case above the national average cost per case.

3. Federal Rate Payment Simulations.

To estimate the potential impact of our proposed changes for FY 1993 on payments based solely on the Federal rate, we simulated payments under the FY 1992 Federal rate and our proposed FY 1993 Federal rate using a universe of 5,394 hospitals. The individual hospital payment parameters are taken from the best available data, including: FY 1991 MEDPAR bills, the December 31, 1991 update to the Provider-Specific File, and cost report data for cost reporting periods beginning in FY 1990. Table VI presents a comparison of payments per case for FY 1992 and FY 1993 based on 100 percent of the Federal rate. The comparisons are provided by: (1) Geographic location, (2) payment classification, and (3) payment region.

The simulation results show that, on average, Federal rate payments per case, exclusive of any change in the Federal rate payment percentage, can be expected to increase by 2.0 percent. This increase results from the combined effects of: (1) The proposed 3.76 percent annual update, (2) a 1.7 percent increase due to the change in the outlier offset and the increase in outlier payments, (3) a 1.0 percent decrease due to the budget neutrality reduction for changes in the wage index and DRG weights, (4) a 2.07 percent decrease for exceptions, and (5) a 0.4 percent increase in the budget neutrality reduction.

The distributional effects of the changes in Federal rate payments primarily result from DRG recalibration, changes in the geographic adjustment factor (including both wage index corrections and geographic reclassifications), and changes in the outlier payment policy. The increase in payments per case will be larger for urban hospitals (2.1 percent) than for rural hospitals (1.4 percent). We believe that this difference is due to the fact that the increase in outlier payments relative to FY 1992 outlier payments and the DRG classification changes have a predominantly urban effect.

Sole community hospitals realize a smaller increase (0.5 percent) than any other payment classification. This is probably due to the fact that they will realize a smaller gain from the increase in the outlier payments compared to FY 1992 levels because they tend to have fewer outlier cases.

Section 1886(d)(10) of the Act established the Medicare Geographic Classification Review board (MGCRB). Fiscal year 1992 is the first year that hospitals were reclassified as a result of decisions by the MGCRB. Hospitals may apply for reclassification for the purpose of obtaining a higher wage index value, standardized payment amount or both a higher standardized payment amount and wage index value. Although there is no difference with respect to the Federal capital rate, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as result of the large urban adjustment factor. Reclassification for wage index purposes affects the geographic adjustment factor since it is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 1993 compared to FY 1992, we show the average Federal Rate payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 1993 reclassifications, we are indicating those hospitals reclassified for standardized amount purposes only, for wage index purposes only and for both factors. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified by the Medicare Geographic Classification Board during FY 1993 only can be expected to realize a much larger increase (5.5 percent) than other hospitals. Similarly, hospitals reclassified during FY 1992 only do much worse in FY 1993 (a 0.9 percent decrease) than other hospitals as they lose the higher payments from their geographic reclassification during FY 1992.

By region, the significantly greater gain of urban hospitals in the West South Central region (3.5 percent increase) is probably due to geographic reclassifications.

TABLE VI–COMPARISON OF FEDERAL RATE PAYMENTS PER CASE

[FY 1992 Payments Compared to Proposed FY 1993 Payments Based on 100% Federal Rate]

	Number of hospitals	Average FY 1992 payments/ case	Average FY 1993 payments/ case	All changes
By Geographic Location:				
All Hospitals	5,394	631	644	2.0
Large Urban Areas (populations over 1 million)	1,467	735	750	2.0
Other Urban Areas (populations of 1 million or fewer)	1,411	625	638	2.2
Rural Areas	2,516	447	454	1.4
Urban Hospitals	2,878	682	696	2.1
0–99 Beds	670	503	512	1.8
100–199 Beds	859	596	609	2.2
200–299 Beds	614	644	658	2.2
300–499 Beds	536	708	722	1.9
500 or more Beds	199	838	856	2.1
Unknown	0	0	0	0.0
Rural Hospitals	2,516	447	454	1.4
0–49 Beds	1,239	375	377	0.6
50–99 Beds	767	416	420	1.1
100–149 Beds	264	465	472	1.5
150–199 Beds	128	472	480	1.7
200 or more Beds	116	528	539	2.0
Unknown	2	564	574	1.7
Urban by Region				
New England	172	711	721	1.4
Middle Atlantic	460	731	734	1.7
South Atlantic	416	656	673	2.7
East North Central	475	665	676	1.7
East South Central	168	593	609	2.7

TABLE VI–COMPARISON OF FEDERAL RATE PAYMENTS PER CASE—Continued

[FY 1992 Payments Compared tO Proposed FY 1993 Payments Based on 100% Federal Rate]

	Number of hospitals	Average FY 1992 payments/ case	Average FY 1993 payments/ case	All changes
West North Central	183	675	687	1.7
West South Central	352	628	650	3.6
Mountain	110	688	704	2.3
Pacific	492	772	786	1.7
Puerto Rico	48	275	280	1.5
Rural by Region	57	519	523	0.8
New England	93	492	496	0.8
Middle Atlantic	343	469	478	1.8
South Atlantic	346	451	457	1.3
East North Central	296	404	409	1.1
East South Central	564	416	422	1.3
West North Central	401	412	419	1.7
West South Central	241	465	470	1.0
Mountain	166	536	544	1.5
Pacific	7	220	221	0.5
Puerto Rico				
By Payment classification:				
All Hospitals	5,394	631	644	2.0
Large Urban Areas (populations over 1 million)	1,619	724	739	2.0
Other Urban Areas (populations of 1 million or fewer)	1,480	617	630	2.1
Rural Areas	2,295	441	447	1.3
Teaching Status:				
Non-Teaching	4,186	543	554	2.0
Resident/Bed Ratio less than 0.25	968	681	693	1.9
Resident/Bed Ratio 0.25 or greater	239	962	982	2.1
Disproportionate share hospitals (DSH):				
Non-DSH Rural	2,295	441	447	1.3
Non-DSH Urban	852	496	504	1.7
Urban DSH 100 Beds or more	2,247	689	704	2.1
Rural Hospital Types:				
Non Special Status Hospitals	1,010	412	417	1.2
RRC	179	508	518	1.8
SCH	532	422	426	0.8
Medical-Department Hospitals (MDH)	515	376	379	0.9
SCH and RRC	45	514	522	1.5
SCH or MDH	1,092	423	427	1.0
Hospitals reclassified by the Medicare Geographic Classification Review Board:				
Reclassification Status During FY92 and FY93:				
Reclassification during both FY92 and FY93	847	565	571	1.0
Reclassification during FY93 only	349	605	639	5.6
Reclassification during FY92 only	82	514	509	−0.9
FY93 Reclassifications:				
All reclassified Hospitals	1,196	578	592	2.5
All nonreclassified hospitals	4,148	648	660	1.8
All Urban reclassified Hospitals	376	668	688	3.0
Urban nonreclassified Hospitals	2,502	684	697	1.9
All reclassified Rural Hospitals	820	484	493	1.8
Rural nonreclassified Hospitals	1,646	401	404	0.7
Other reclassified Hospitals (section 1886(D)(8)(B))	50	512	521	1.7
Type of ownership:				
Voluntary	3,188	649	661	1.9
Proprietary	749	603	620	2.9
Government	1,457	565	575	1.8
Medicare utilization as a percent of inpatient Days:				
0–25	277	747	760	1.8
25–50	1,934	687	701	2.1
50–65	2,213	583	594	1.9
Over 65	727	539	548	1.7

Appendix B: Description of the Capital Acquisition Model and Budget Neutrality Adjustment

Section 1886(g)(1) of the Act (as amended by section 4001 of Pub. L. 101–508) requires that for FY 1992 through FY 1995 aggregate prospective payments for operating costs under section 1886(d) and prospective payments for capital costs under section 1886(g)(1) of the Act be reduced each year in a manner that results in savings equal to 10 percent of the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. Under § 412.352, the 10 percent savings is generated entirely from the capital prospective payments. A budget neutrality adjustment factor is applied to the Federal rate and hospital-specific rate so that total capital payments for FY 1992 through FY 1995 approximately equal 90 percent of Medicare inpatient capital costs in each year.

To calculate budget neutrality, the hold-harmless provision of the payment methodology requires that we identify old and new capital; that is, we must be able to project the rate at which old capital will be depreciated and written off and at which new capital will be acquired and depreciated. (Old capital costs are depreciation, lease, interest

expenses, and other capital-related costs defined in § 412.302 that are in use or obligated on or before December 31, 1990.)

In developing the FY 1992 prospective payment rates, there was limited capital data available that could be used to project payments under the capital prospective payment system and develop the budget neutrality adjustment factor. Consequently, we developed a capital acquisition model that relied on Monte Carlo random simulation techniques to project capital costs for 6000 hypothetical hospitals. This model is described in detail in the August 30, 1991 final rule (56 FR 43517–43522). The model will be referred to as the capital acquisition model in the following discussion.

Since publication of the August 31, 1991 final rule, capital data have become available that can be incorporated directly into the determination of budget neutrality. The available data include: the December 31, 1991 update of the Hospital-Specific File that provides the data items needed by the PRICER program used by the intermediaries to determine interim payments to hospitals; cost reports for cost reporting periods beginning in FY 1989 (PPS–6) that overlap the base year for determining the hospital-specific rate; and, data reported by the intermediaries that includes the hospital-specific rate determinations that have been made through February 1992. The December 31, 1991 update to the Provider-Specific File contains data on interim payments under the capital prospective payment system for approximately 44 percent of all hospitals. Generally, the data are for hospitals that became subject to the capital prospective payment system effective with their cost reporting period beginning on or before January 1, 1992.

The available data sources directly supply, or can be used to calculate, the hospital-specific rate. For those hospitals with capital data on the Provider-Specific File, the payment methodology as well as the estimated FY 1992 hold-harmless amount and new capital ratio for hospitals paid under the hold-harmless payment methodology is also available.

The available data still lack certain items which are required for the determination of budget neutrality. These items are the hospital's new capital costs for each year, its old capital costs for each year, and the obligated capital amounts for assets that will be put in use for patient care services and recognized as old capital each year.

For FY 1993, we are proposing to use an integrated model that starts with the available data for existing hospitals and back-fills the missing items with results from the capital acquisition model that was used to develop the FY 1992 payment rates. Since hospitals under alternative payment system waivers are currently excluded from the capital prospective payment system, we excluded these hospitals (hospitals in Maryland and hospitals in the Finger Lakes Area Hospital Corporation in New York) from our proposed model.

We have not modified the parameters of the FY 1992 capital acquisition model; however, we analyzed several capital growth patterns generated by that model to backfill the elements for which actual data are not available. These patterns include the distribution of growth rates in old capital (exclusive of obligated capital), the new capital ratio (which includes obligated capital), and the ratio of obligated capital costs for assets being put in use for patient care to total capital costs. In all cases, the distributions from the model were fitted to the beta distribution. The beta distribution is a two parameter distribution with the range restricted from zero to one. The growth rate for old capital (which is exclusive of obligated capital) must be between zero and one since depreciation and interest on old capital cannot increase. The ratio of new capital to total capital and the ratio of obligated capital to total capital are necessarily between zero and one. Hence, the beta distribution is ideal for this purpose, especially since the two parameters provide a range of shapes.

With regard to the new capital ratio for years after FY 1992, the model fits the change in the ratio from one year to the next to the beta distribution. This is to prevent large swings in the new capital ratio over time. It is possible to have a decrease in the new capital ratio since some new capital may have a short useful life compared to old capital. Therefore, we rescaled the range of the changes in the ratios since the beta distribution must have numbers between zero and one.

The proposed model first develops the hospital-specific rate. Where available, this rate is taken from the December 1991 update of the Provider-Specific File. This file contains the actual amounts used by the intermediaries with the PRICER program to compute interim capital prospective payments. If the hospital-specific rate is not available from the Provider-Specific File, the second source is the audit information reported by the intermediaries. If this is not available, the model computes the hospital-specific rate from the hospital's cost reporting period beginning in FY 1990 as reported on the HCRIS as of December 1991 update.

The proposed model also develops the old capital amount for each hospital. If available, the model uses the hold-harmless payment per discharge from the Provider-Specific File. If the actual hold-harmless amount is not available, the model develops an estimate from the hospital's hospital-specific rate. It computes an FY 1990 capital cost per discharge by dividing the 1992 hospital-specific rate by factors used to inflate base year capital cost per discharge to FY 1992 as set forth in the August 30, 1991 final rule (56 FR 43390). The model updates the base year capital per discharge to FY 1992 using a two-year rate of increase (FY 1990 to FY 1992) in old capital that is randomly generated from the beta distribution described above. This old capital amount for FY 1992 excludes any obligated capital that has been put in use since the base year. Excluding obligated capital from the old capital growth factors produces a more stable growth sequence with lower variance. The development of the hospital's obligated capital costs is described below. Before we update the hospital's old capital costs in a given year, the model adds the obligated capital that is first depreciated in the current year to the old capital cost for that year. As a result, any obligated capital depreciation and interest expense projected by the model is incorporated into the hospital's old capital costs in subsequent years.

The proposed model also develops the new capital ratio for each hospital. If available, the model uses the hospital's new capital ratio from the Provider-Specific File. If the actual new capital ratio is not available, the model generates the ratio from a beta distribution as described above. For purposes of fitting the new capital ratio to the beta distribution, the model treats obligated capital as new capital. The model restricts the new capital ratio to 90 percent in all cases. After fitting the FY 1992 new capital ratio, the year-to-year change in the new capital ratio is fit to the beta distribution. The new capital ratio combined with the old capital amount generates the total capital costs.

Finally, the model develops the obligated capital ratio for obligations first being depreciated in the year under analysis. It generates an obligated capital ratio using a beta distribution fitted to the results of the capital acquisition model (and obligation capital assumptions) as described above. This ratio is an offset to the new capital ratio. Consequently, the

obligated capital ratio is restricted to the magnitude of the new capital ratio. The new capital ratio is reduced by the obligated capital ratio.

If a hospital has a hold-harmless payment amount available on the Hospital-Specific File, this amount includes the effect of obligated capital on its FY 1992 old capital costs per discharge. Therefore, the model does not generate any additional FY 1992 obligated capital for these hospitals. We necessarily generated obligated capital amounts for all hospitals for FY 1993 and later.

The model does not recompute the hospital's total capital costs for obligated capital. Instead, obligated capital costs are the product of the obligated capital ratio rate and total capital costs. The hospital's costs for new capital are the product of the revised new capital ratio times the hospital's total capital costs.

We computed the average total capitals cost per discharge from the capital costs that were generated by the model and compared the results to total capital costs per discharge that we had projected independently of the proposed model. The capital amount in any year is composed of capital previously acquired (old capital) and capital acquired in the current year (new capital and new obligated capital). We cannot adjust the old capital component since it is a function of acquisitions in earlier years. Consequently we can only adjust new and obligated capital amounts. We proportionately adjusted the new and obligated capital amounts so that the total capital costs per discharge generated by the model match the independently projected capital costs per discharge.

To summarize, the proposed model integrates actual data with randomly generated amounts developed from the results of the capital acquisition model. We generated at most three numbers for each hospital each year. Only the old capital increase, new capital ratio, and obligated capital ratio are randomly generated.

Once each hospital's capital-related costs are generated, the model projects capital payments. In FY 1992, we randomly generated all payment parameters (for example, the case-mix index and the geographic adjustment factor). In the proposed model, we use the actual payment parameters that are applicable to the specific hospital.

To project capital payments, the proposed model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital. If available, the model uses the payment methodology method indicated in the Provider-Specific File. Otherwise, the model determines the methodology by comparing the hospital's hospital-specific rate to the adjusted Federal rate applicable to the hospital. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the 1991 MEDPAR file using the proposed FY 1993 DRGs and relative weights. The case-mix index is increased 2 percent per year after FY 1991 consistent with the continuing trend (which we expect to continue) in case-mix increase.

Changes in geographic reclassification and corrections in the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor, and changes in the DRG classification system and the relative weights affect the case mix index. Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year based on the Federal rate after any changes resulting from changes in the DRG classification system and relative weights and in the geographic adjustment factor equal the estimated aggregate payments, payments based on the Federal rate that would have been made without such changes. To determine the budget neutrality adjustment factor needed to make the effect of the DRG and geographic adjustment changes budget neutral on estimated Federal rate payments, we first determined the portion of the Federal rate that would be paid for each hospital in FY 1993 based on its applicable payment methodology. We then compared what aggregate Federal rate payments would be based on the FY 1992 DRG relative weights and geographic adjustment factor to aggregate Federal rate payments based on the FY 1993 relative weights and geographic adjustment factor. In making the comparison, we held the FY 1993 Federal rate portion constant and set the other budget neutrality adjustment factor and exceptions reduction factor to 1.00. We determined that to achieve budget neutrality for the changes in the geographic adjustment factor and the DRG weights, a budget neutrality adjustment factor of 0.9906 should be applied to the FY 1993 Federal rate.

The methodology used to determine the geographic and recalibration budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG weights. Under the capital prospective payment system, there is a single budget neutrality adjustment factor for changes in the geographic adjustment factor (including geographic reclassification change since FY 1992) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients or the large urban add-on.

In addition to computing the geographic and recalibration budget neutrality adjustment factor, we used the proposed model to project total aggregate payments under the prospective payment system and to compute the budget neutrality adjustment factor that would result in estimated payments under the capital prospective payment system equal 90 percent of what would have been payable on a reasonable cost basis. This budget neutrality factor is applied to the Federal and hospital-specific rates, but not to the hold-harmless payments.

Additional payments under the exceptions process are financed through a reduction in the Federal and hospital-specific rates. Therefore, we used the proposed model to calculate estimated exceptions payments and the exceptions reduction factor. This exceptions reduction factor ensures that estimated aggregate payments under the capital prospective payment system, including exceptions payments, equal what aggregate payments would be under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the budget neutrality and exceptions adjustments factors must be determined through iteration. Further, these two factors interact with each other so that they must be determined simultaneously. We successfully determined values for these factors so that the exceptions adjustment factor is correct and estimated payments under the capital prospective payment system equal 90 percent of estimate Medicare inpatient capital costs.

In the August 30, 1991 final rule, we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next five years. The table below provides the actual FY 1992 factors, the proposed FY 1993 factors, and the estimated factors that would be

applicable through FY 1997. We caution that, except with respect to FY 1992 and FY 1993, these are estimates only and are subject to revisions resulting from continued methodological refinements, more recent data, and any payment policy changes that may occur. The projections are as follows:

Fiscal year	Increase in cost per discharge	Update factor	Exceptions reduction factor	Budget neutrality factor	Federal rate (after outlier reduction)
1992	[1] 6.96	N/A	.9813	.9802	415.59
1993	7.91	3.76	.9610	.9564	416.36
1994	8.31	6.19	.8240	.9786	435.40
1995	8.77	5.99	.9000	.9983	458.56
1996	8.73	7.44	.9000	N/A	493.02
1997	8.71	8.41	.9000	N/A	534.48

[1] Note: Adjusted for estimated 2.0 percent increase in case-mix index.

Appendix C—Letters to Congress

March 30, 1992.

The Honorable Dan Quayle,
President of the Senate, Washington, D.C. 20510

Dear Mr. President: Section 1886(e)(3)(B) of the Social Security Act requires that the Secretary of Health and Human Services, not later than March 1, 1992, report to the Congress his initial estimate of the applicable percentage increase in payments for inpatient operating costs for FY 1993 that he will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for excluded hospitals and units. This submission constitutes the required report.

President Bush's budget incorporates updates consistent with those mandated by current law. The budget recommends an update for hospitals subject to the PPS equal to the rate of increase in the hospital market basket minus 1.55 percentage points for urban hospitals and the rate of increase in the hospital market basket minus 0.55 percentage points for rural hospitals. For hospitals excluded from the PPS, the budget includes an average increase in the Tax Equity and Fiscal Responsibility Act limit equal to the rate of increase in the hospital market basket. In addition, the budget contains a legislative proposal to move the annual update for hospitals from October 1 to January 1 to conform with the update cycle generally used in Medicare. We believe that this move will reduce the hospital industry's frustration with the many payment changes caused by Congressional delays and budget negotiations.

We have not had the opportunity to evaluate fully the recommendations of the Prospective Payment Assessment Commission (ProPAC). Our recommendation for the updates is contingent on the current situation and projections of relevant data. In addition, we note that the President's proposal to move the hospital update will, if enacted, change the market basket and, therefore, the updates for the hospitals. The President's budget assumed the market basket would increase by 4.5 percent for hospitals subject to the prospective payment system and by 4.6 percent for excluded hospitals. These estimates are consistent with our most current projections. A final recommendation on the appropriate percentage increases for FY 1993 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projections available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including ProPAC's recommendations.

Section 1886(d)(4)(C)(iv) of the Social Security Act, as enacted by section 6003(b)(2) of the Omnibus Budget Reconciliation Act of 1989, requires that the Secretary include in his report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time, we do not anticipate recommending any adjustment to the DRG weighting factors for FY 1993.

My staff and I look forward to discussing this recommendation with you.

Sincerely,

Louis W. Sullivan, M.D.

March 30, 1992.

The Honorable Thomas S. Foley,
Speaker of the House of Representatives, Washington, D.C. 20515.

Dear Mr. Speaker: Section 1886(e)(3)(B) of the Social Security Act requires that the Secretary of Health and Human Services, not later than March 1, 1992, report to the Congress his initial estimate of the applicable percentage increase in payments for inpatient operating costs for FY 1993 that he will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for excluded hospitals and units. This submission constitutes the required report.

President Bush's budget incorporates updates consistent with those mandated by current law. The budget recommends an update for hospitals subject to the PPS equal to the rate of increase in the hospital market basket minus 1.55 percentage points for urban hospitals and the rate of increase in the hospital market basket minus 0.55 percentage points for rural hospitals. For hospitals excluded from the PPS, the budget includes an average increase in the Tax Equity and Fiscal Responsibility Act limit equal to the rate of increase in the hospital market basket. In addition, the budget contains a legislative proposal to move the annual update for hospitals from October 1 to January 1 to conform with the update cycle generally used in Medicare. We believe that this move will reduce the hospital industry's frustration with the many payment changes caused by Congressional delays and budget negotiations.

We have not had the opportunity to evaluate fully the recommendations of the Prospective Payment Assessment Commission (ProPAC). Our recommendation for the updates is contingent on the current situation and projections of relevant data. In addition, we note that the President's proposal to move the hospital update will, if enacted, change the market basket and, therefore, the updates for the hospitals. The President's budget assumed the market basket would increase by 4.5 percent for hospitals subject to the prospective payment system and by 4.6 percent for excluded hospitals. These estimates are consistent with our most current projections. A final recommendation on the appropriate percentage increases for FY 1993 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projections available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including ProPAC's recommendations.

Section 1886(d)(4)(C)(iv) of the Social Security Act, as enacted by section 6003(b)(2) of the Omnibus Budget Reconciliation Act of 1989, requires that the Secretary include in his report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time, we do not anticipate recommending any adjustment to the DRG weighting factors for FY 1993.

My staff and I look forward to discussing this recommendation with you.

Sincerely,

Louis W. Sullivan, M.D.

Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Social Security Act (the Act) apply to setting update factors for services furnished in FY 1993 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i) of the Act sets the FY 1993 applicable percentage increases in the operating cost standardized amounts for prospective payment hospitals equal to the hospital market basket percentage increase minus 1.55 percentage points for hospitals located in urban areas and

the market basket percentage increase minus 0.55 percentage points for hospitals located in rural areas. Section 1886(b)(3)(B)(ii) of the Act governs the target rate-of-increase limits for hospitals excluded from the prospective payment system and the hospital-specific rate applicable to sole community hospitals. In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the average standardized amounts, the hospital-specific rates and the target rate-of-increase limits for hospitals excluded from the prospective payment system as provided for in section 1886(b)(3)(B) of the Act, as set forth above. Based on the currently forecasted market basket increase of 4.3 percent for hospitals subject to the prospective payment system, the proposed updates in the standardized amounts are 2.75 percent for hospitals in urban areas and 3.75 percent for hospitals in rural areas. The proposed update in the hospital-specific rate applicable to sole community hospitals is 4.3 percent. The proposed update for hospitals excluded from the prospective payment system is based on the percentage increase in the market basket for these hospitals and equals 5.4 percent.

Sections 1886(e)(2)(A) and (3)(A) of the Act require that the Prospective Payment Assessment Commission (ProPAC) recommend to the Congress by March 1, 1992 an update factor that takes into account changes in the market basket index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

In its March 1, 1992 report, ProPAC recommended update factors to the standardized amounts equal to the percentage increases in HCFA's market basket minus 1.45 percentage points for urban hospitals and the market basket rate of increase minus 0.45 percentage points for hospitals located in rural areas. Further, ProPAC recommended an update to the standardized amounts equal to 3.05 percent for hospitals located in urban areas and 4.05 percent for hospitals located in rural areas (based on a market basket estimate of 4.5 percent). The components of ProPAC's update factor recommendations are described in detail in the ProPAC report, which is published in appendix E to this document. ProPAC recommended the update for the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals be equal to the rural hospital update; that is, the percentage increases in HCFA's market basket minus 0.45 percentage points, or 4.05 percent based on a market basket estimate of 4.5 percent. We discuss ProPAC's recommendations concerning the update factors and our responses to those recommendations below.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for FY 1993 that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the recommended FY 1993 update factors that are provided for under section 1886(e)(4) of the Act. Accordingly, this appendix provided our recommendations of appropriate update factors, our analysis of the derivation of the amount of the update factors, and our responses to the ProPAC recommendations concerning the update factors.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that the standardized amounts be increased by an amount equal to the market basket percentage increase minus 1.55 percentage points for hospitals located in urban areas and the market basket percentage increase minus 0.55 percentage points for hospitals in rural areas. We are recommending an increase of the market basket rate of increase minus 1.55 percentage points for the hospital-specific rate for sole community hospitals. With the exception of the higher update for the rural standardized amount, we believe that the hospital-specific rate should be updated by the same percentage increases as the standardized amounts. Our recommendation for a higher update to the rural standardized amount is intended to reduce the differential between the standardized amounts for other urban and rural hospitals, which is not an applicable consideration for hospital-specific rates.

We recommend that hospitals excluded from the prospective payment system receive, on average, an update equal to the percentage increase in the market basket that measures input price increases for services furnished by excluded hospitals. That market basket is currently forecast at 4.5 percent. However, we are also recommending that the amount of the update vary according to the base year used to establish the excluded hospital or unit's rate of increase. Those hospitals and units whose base year for purposes of the rate of increase limit began during the period FY 1983 through FY 1987 would receive a higher update than hospitals whose base year was established in FY 1982 or after 1987. The amount of the recommended HCFA update is dependent on the actual base year, as follows:

Base year began in FY	FY 1993 general update	FY 1993 additional update	Recommended FY 1993 update
1982	2.9		2.9
1983	2.9	1.8	4.7
1984	2.9	3.8	6.7
1985	2.9	6.0	8.9
1986	2.9	3.9	6.8
1987	29	1.8	4.7
1988 and later	2.9		2.9

In recommending these increases, we have followed section 1886(e)(4) of the Act which indicates we should take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC. Our responses to the ProPAC recommendations concerning the update factor are discussed below.

III. ProPAC Recommendation for Updating the Prospective Payment System Standardized Amounts

For FY 1993, ProPAC recommends that the standardized amount be updated by the following factors:

- The projected increase in the hospital market basket (which was estimated to be 4.5 percent in ProPAC's March 1, 1992 report) plus 0.2 percentage points to account for the different wage and salary price proxies used for the ProPAC market basket.
- A correction of −0.8 percent to reflect the forecast error in the FY 1991 market basket rate of increase.
- A discretionary adjustment factor of 0.0 percent composed of an allowance of 1.0 percent for scientific and technological advancement and an allowance of −1.0 percent for productivity improvement.
- An adjustment for case-mix change of −0.7 percent.
- A differential update of 0.85 percent for hospitals located in rural areas and −0.15 percent for hospitals located in urban areas, to reflect the phasing out of the differential in the standardized amounts between rural and other urban hospitals.

Overall, the net increase employing the above factors is the percentage increase in the hospital market basket minus 1.45 percentage points for urban hospitals and the market basket minus 0.45 percentage points for rural hospitals. Based on the market basket estimate of 4.5 percent used in its March 1, 1992 report, ProPAC recommends a differential update for urban and rural hospitals, with urban hospitals receiving a 3.05 percent update, and rural hospitals receiving a 4.05 percent update.

Reponse: We are recommending an update that is consistent with the Administration's budget proposal that all hospitals receive an update in their payments for FY 1993 based on the current market basket forecast with the adjustments set forth in section 1886(b)(3)(B)(i)(VIII), as added by section 4002(a)(1)(C) of Public Law 101-508. The latest forecast shows that the FY 1993 market basket has decreased from 4.5 percent, the figure used by ProPAC in determining its update recommendations, to 4.3 percent between the fourth quarter of 1991 and the first quarter of 1992.

Our recommendation is supported by the following analyses which measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix:

- *Productivity:* At the beginning of the prospective payment system update process, HCFA established a conservative normative standard for hospital productivity increases of 1.0 percent per year, based on a review of the literature on historical and potential hospital productivity and average long-run productivity growth in the U.S. economy. In the short run, any increases in productivity in excess of 1.0 percent would be kept by hospitals as increases in operating margins. Productivity increases of more than 1.0 percent would be encouraged by this standard. We believe that substantial gains can be made in hospital productivity, and that we should continue to provide an incentive to increase productivity.

ProPAC also believes hospitals should be given an incentive for additional productivity improvement. ProPAC measures productivity as the ratio of hospital admissions (adjusted for case mix and outpatient services) per FTE employee (adjusted for changes in skill mix). ProPAC includes in its productivity measurement the effect of changes in practice patterns. We have traditionally treated historic practice pattern changes as a separate factor because they represent changes that have occurred in the nature of the hospital product. This year, ProPAC assumes a productivity gain of at least 2.0 percent and recommends a −1.0 percentage point adjustment on the basis that any productivity gains should be shared equally by Medicare and hospitals.

- *Quality Enhancing New Science and Technology:* The new science and technology factor is intended to recognize technological changes that increase costs but also enhance health status. We have no empirical evidence that accurately sets the level for this factor. Typically, a specific new technology increases costs in some uses and decreases costs in other uses. Concurrently, in some situations, health status is improved while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost-increasing effects for individual technologies and new technologies. In the early years of the prospective payment system, ProPAC conducted several studies of new technology costs and concluded that they were fairly low. Those studies focused primarily on the acquisition costs of the new technologies but also looked at diffusion of use and operating costs. Project Hope, under contract with ProPAC, annually estimates the incremental operating costs of specific cost-increasing technologies. However, we know of no definitive studies that establish an appropriate level or range for this factor. ProPAC's adjustment is for the cost-increasing effect of new technologies only, and this year assumes the estimated costs for these technologies at +1.0 percent.

We believe that the ProPAC estimate may be overstated for several reasons. First, the estimate does not account for offsetting changes in revenue due to changes in DRG assignment. Second, it is not clear that all of the new technologies listed in ProPAC's study significantly enhance health status. To the extent the new technologies are not quality enhancing, an adjustment is inappropriate. Finally, some of the technologies have considerable potential for cost savings relative to the technologies they are replacing.

Until a usable measure for the incremental operating costs associated with the implementation of these new sciences and technologies is developed, we believe that this adjustment should be set at a conservative, stable level. We recommend an adjustment of +0.3 to +0.5 percent.

- *Improvements in Practice Pattern:* We measure practice pattern changes based on changes in average length of stay since the beginning of the prospective payment system. Although we have no complete measure of changes in practice patterns, we believe this factor can be modeled appropriately based on this measure. The practice pattern adjustment is based on the belief that the costs on which the initial payment rates were based included a component of unnecessarily high costs reflecting ineffective practice patterns and that it is reasonable for HCFA to share in the savings in the long run.

Average length of stay declined dramatically during the first years of the prospective payment system and gradually increased in subsequent years. However, our latest data indicate that average length of stay declined again and has remained stable over the last few years. Based on updated data on changes in average length of stay and the cumulative practice pattern adjustment implicit in prior update recommendations, we estimate that a residual adjustment of up to −1.8 percent could be supported.

- *Impact of OSHA Rule:* In the December 6, 1991 Federal Register (56 FR 64004), the Occupational Safety and Health Administration (OSHA) published a final rule implementing regulations (29 CFR 1910.1030) requiring organizations to use a variety of means to reduce the risk of employees contracting blood-borne pathogens, including hepatitis B virus and human immunodeficiency virus. In that rule, OSHA estimates the impact on hospitals at 0.14 percent of revenues. We are therefore recommending an adjustment of +0.14 percent to account for these additional costs. ProPAC did not recommend any explicit adjustment for the effects of these regulations.

Overall, the combined adjustment for productivity, technology, practice pattern changes, and the new OSHA requirements could range from −2.36 to −0.36 percentage points.

- *Change in Case Mix:* Our analysis takes into account changes in case mix adjusted for changes attributable to improved coding practices and DRG reclassification and recalibration. We found that the observed increase in case mix was 2.5 percent during FY 1991. We estimate real case mix increased 1.0 to 1.25 percent. We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect greater resource requirements. This estimate is supported by past studies of case-mix change by RAND Corporation. In addition, we

estimate that DRG reclassification and recalibration in FY 1992 resulted in a 1.0 percent increase in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER. The resulting adjustment to account for changes in case mix during FY 1991, the most recent year for which data are available, is −2.5 to −2.25 percent (the sum of −2.5 percent, +1.0 to 1.25 percent, and −1.0 percent). The −2.5 and +1.8 percent figures used in the ProPAC framework represent, respectively, ProPAC's projection for observed case-mix change, and its projection for real case-mix change, including within-DRG case complexity change, during FY 1992. ProPAC's observed case-mix change is estimated, whereas our observed case-mix change is based on FY 1991 bills received through February 29, 1992. ProPAC does not make an adjustment for DRG reclassification and recalibration in its update recommendation (we note that Congress asks the Secretary for an estimate of these effects in our update recommendation).

• *Correction for Market Basket Forecast Error:* The FY 1991 estimated market basket percentage increase used to update the payment rates was 5.2 percent. Our most recent data indicate the actual FY 1991 increase was 4.4 percent, reflecting that the increase in wages was lower than projected. The resulting forecast error in the projected FY 1991 market basket rate of increase forecast was −0.8 percentage points. Our policy has been to make a forecast error correction if our estimate is off by 0.25 percent points or more. Therefore, we are recommending an adjustment of −0.8 percentage points to reflect this overestimation of the FY 1991 market basket. This matches ProPAC's recommended forecast error adjustment.

The following is a summary of the update ranges supported by our analyses compared to ProPAC's framework.

TABLE 1.—COMPARISON OF FY 1993 UPDATE RECOMMENDATION FRAMEWORKS

	HHS	ProPAC
Market Basket (MB)	MB	MB
Difference Between HCFA & ProPAC MB Forecasts [1]		+0.2
Subtotal	MB	MB +0.2

TABLE 1.—COMPARISON OF FY 1993 UPDATE RECOMMENDATION FRAMEWORKS—Continued

	HHS	ProPAC
Policy adjustment factors		
productivity	−1.0	−1.0
Science and technology	+0.3 to +0.5	+1.0
Practice patterns	−1.8 to 0	
OSHA requirements	+0.14	
Subtotal	−2.36 to −0.36	+0.0
Case mix adjustment factors:		
Observed case mix change	−2.5	−2.5
Real across DRG change	+1.0 to 1.25	+1.5
Real within DRG change effect of 1990:		
Reclassification and recalibration	+0.3 −1.0	
Subtotal	−2.5 to −2.5	−0.7
Forecast error correction:	−0.8	−0.8
Total recommended update	MB −5.66 to MB −3.41	MB −1.3

[1] The difference between the HHS and ProPAC market baskets is due to a different treatment of the wage and employee benefit proxies used by ProPAC in its market basket.

While the above analysis would support a recommendation that there be no update in the standardized amounts applicable to urban hospitals and the hospital-specific rates applicable to sole community hospitals in FY 1993, we believe that it would be inappropriate, in view of commitments made as part of the 1990 budget agreement, to recommend an update other than market basket minus 1.55 percentage points for urban hospitals and the hospital-specific rates applicable to sole community hospitals.

In addition, we believe a differential update for the standardized amount applicable to rural hospitals is appropriate in order to phase out the differential between the rural and other urban standardized amounts, as required by Pub. L. 101–508. Therefore, we are recommending that the rural standardized amount be updated by an additional 1.0 percentage point, for a total update of 3.75 percent (that is, market basket minus 0.55 percentage points). We note that we disagree with ProPAC's recommendation that the hospital-specific rates applicable to sole community hospitals be increased by the update factor applicable to the rural standardized amounts. We believe that the considerations used to develop the update recommendations for the urban standardized amounts are also applicable to the hospital-specific rates, and that the differential update applied to the rural standardized amounts to eliminate the difference between the rural and other urban standardized amounts is not a relevant consideration for the hospital-specific rates.

IV. ProPAC Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals

ProPAC recommends an average update factor equal to the market basket rate of increase minus 0.4 percentage points for excluded hospitals and units. The 0.4 percentage point reduction represents a reduction of 0.7 percentage points to account for the forecast error in the FY 1991 market basket rate of increase for excluded units, a 0.2 percentage point increase to reflect the different compensation price proxies used by ProPAC, and an allowance for new technology of 0.1 percent. Further, ProPAC recommends an additional allowance based on the year the hospital or unit was excluded from the prospective payment system. Before FY 1989, excluded hospitals and units received the prospective payment system update, which was reduced to account for rapid growth in payments due to case mix increases. Since excluded facilities do not benefit from the payment-increasing effect of case-mix index change, ProPAC believes that these hospitals should have received the applicable full market basket increase for years prior to FY 1989. ProPAC recommends that the additional allowance to these hospitals be funded through the savings achieved from the 0.4 percentage reduction included in its average update recommendation for excluded hospitals.

Response: We recommend an average update for excluded hospitals that

would result in total payments comparable to those that would result from an update equal to the market basket rate of increase. The market basket for excluded hospitals is currently estimated at 4.5 percent. However, we recommend that excluded hospitals and units whose base year began during the period FY 1983 through FY 1987 receive a higher update than hospitals whose base year began in FY 1982 or after FY 1987.

We recommend that excluded hospitals and units with an FY 1982 base year or a base year that began after FY 1987 receive an update equal to the market basket percentage increase minus 1.6 percent. The 1.6 percentage point adjustment is to account for the forecast error in the FY 1991 market basket rate of increase of 0.7 percentage points plus the forecast error in the FY 1990 market basket rate of increase of 0.9 percentage points. Generally, we believe that increased costs for quality-enhancing new technologies should be offset by productivity gains and that explicit adjustments in the rate-of-increase limit for productivity and new technology are inappropriate.

In addition, we agree with ProPAC that a higher update for hospitals and units that were excluded in the early years of the prospective payment system is appropriate. This is because the updates applied to excluded hospitals in FYs 1986, 1987, and 1988 were considerably less than the market basket rate of increase and were based on some considerations appropriate only to hospitals subject to the prospective payment system. We agree with ProPAC as to the basis for the cumulative positive allowance adjustment, which is consistent with our calculation of the compounded difference between the updates received and the market basket rate of increase, as described in the June 3, 1991 proposed rule (56 FR 25322).

Base year began in fiscal year	FYs subject to ceiling	Compounded adjustment
1982	1983–1988	−0.5
1983	1984–1988	2.1
1984	1985–1988	4.2
1985	1986–1988	6.9
1986	1987–1988	4.4
1987	1988	2.1

We also agree with ProPAC's recommendation that any additional update allowance be made in a budget neutral fashion. It is not clear that an additional expenditure is warranted, or that any increase in payments is more appropriately distributed to excluded hospitals through a differential update factor rather than through a more targeted approach. While some hospitals have been adversely affected by the rate-of-increase limits, others have managed to receive substantial incentive payments. Further analysis is needed to understand why some hospitals have fared well and others have not, before we can determine whether an across-the-board increase is more appropriate than one targeted toward groups of hospitals whose costs are systematically above the rate-of-increase limit. Additionally, the lower updates are only part of the explanation for why hospitals with early base years are more financially vulnerable than hospitals that more recently became subject to the rate-of-increase limits. Another consideration is that these hospitals have been subject to the limits for a longer period of time and, in the case of those hospitals with an FY 1982 or FY 1983 base year, have a target amount that was established before the prospective payment system was implemented. For these reasons, we are recommending a 2.9 percent update for hospitals with an FY 1982 base year, even though a lower update would appear warranted based on the cumulative difference between the market basket increase and the update factors.

We believe any increase in aggregate payments to excluded hospitals and units, plus an additional update for hospitals and units is premature until these issues are more fully evaluated. In this regard, we note that the Secretary is required by section 4005(b) of Public Law 101–508 to report to Congress on recommendations for potential modifications to the rate-of-increase limits sytem as well as the possible replacement of that system with a prospective payment system. At the same time, we believe the analysis of the cumulative difference between the market basket rate-of-increases and the update factors supports a recommendation for differential updates. We have used the results of the analysis to determine differential update factors that will result in program outlays that approximate the outlays that would result from a 4.5 percent update. Our recommended update factor is 2.9 percent for all excluded hospitals and units, plus an additional update for hospitals and units that became subject to the ceiling during the period FY 1984 through FY 1988. The recommended updates are as follows:

Base year began in fiscal year	General update	HCFA recommended additional adjustment	HCFA recommended fiscal year 1992 update
1982	2.9		2.9
1983	2.9	1.8	4.7
1984	2.9	3.8	6.7
1985	2.9	6.0	8.9
1986	2.9	3.9	6.8
1987	2.9	1.8	4.7
1988 and later	2.9		2.9

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PROSPECTIVE PAYMENT
ASSESSMENT COMMISSION

REPORT AND RECOMMENDATIONS TO THE CONGRESS

MARCH 1, 1992

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

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March 1, 1992

The Honorable Dan Quayle
President of the Senate
United States Senate
Washington, DC 20510

Dear Mr. President:

I am hereby transmitting to the Congress the annual report of the Prospective Payment Assessment Commission as required by Section 1886(e)(3) of the Social Security Act as amended by Public Law 101-508. This report provides an overview of trends in Medicare spending and sites of care from 1980 to 1990. The report also contains 23 recommendations and addresses several additional concerns that reflect the Commission's collective judgment about issues of substantial importance to beneficiaries, hospitals, other providers, and the Medicare program.

Sincerely,

Stuart H. Altman, Ph.D.
Chairman

Enclosure

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March 1, 1992

The Honorable Thomas Foley
Speaker
United States House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I am hereby transmitting to the Congress the annual report of the Prospective Payment Assessment Commission as required by Section 1886(e)(3) of the Social Security Act as amended by Public Law 101-508. This report provides an overview of trends in Medicare spending and sites of care from 1980 to 1990. The report also contains 23 recommendations and addresses several additional concerns that reflect the Commission's collective judgment about issues of substantial importance to beneficiaries, hospitals, other providers, and the Medicare program.

Sincerely,

Stuart H. Altman, Ph.D.
Chairman

Enclosure

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Executive Summary

Executive Summary

In this report for fiscal year 1993, the Prospective Payment Assessment Commission (ProPAC) discusses trends in Medicare spending for facility services and their implications. The Commission also presents 23 recommendations and addresses several additional concerns regarding Medicare facility payment methods. This report reflects ProPAC's analysis and the collective judgment of its Commissioners about issues of substantial importance to enrollees, hospitals, other providers, and the Medicare program. The report is made directly to Congress, although the Secretary of Health and Human Services (HHS) is required to respond to the Commission's recommendations.

ProPAC's original mandate was to advise the Congress and the Secretary on the Medicare prospective payment system (PPS) for hospitals. The Commission continues to devote substantial effort to updating and improving policies for paying hospitals under PPS as well as those that are excluded. However, ProPAC's responsibilities have expanded over time to include analyzing and developing prospective payment policies for all facility services furnished to Medicare beneficiaries. The Congress also has asked ProPAC to examine and report on broader issues regarding the effectiveness and quality of health care delivery in the United States. The expansion of ProPAC's responsibilities provides an opportunity for the Commission to examine the interrelationships among alternative facility payment policies and to improve policies so that an appropriate continuum of care at a reasonable level of spending is encouraged.

MEDICARE SPENDING AND SITES OF SERVICE

When Medicare began, most covered services were provided in acute care hospitals and physicians' offices. But as the Medicare program added new benefits, and as medical practice patterns changed and new technological capabilities were developed, the number and types of services provided in outpatient and other settings have increased. Inpatient hospital services continue to account for the largest share of health care spending, although that share is diminishing. An increase in the delivery of services in other sites has been encouraged by Medicare policies and payment incentives. As a result, new providers, facilities, and sites of care have grown rapidly, as has Medicare spending for services furnished outside the hospital.

Medicare payment policies are specific to the type of facility in which a service is provided. As sites of care have emerged, Medicare has developed payment policies for some new categories of providers. The Commission is responsible for analyzing current and proposed prospective payment policies for inpatient hospitals paid under PPS, PPS-excluded hospitals and distinct-part units, hospital outpatient services, skilled nursing facilities (SNFs), home health agencies, and renal dialysis facilities.

Among the other sites of care that Medicare does not specifically recognize for facility payment are ambulatory care centers, diagnostic imaging centers, lithotripsy centers, and outpatient psychiatric clinics. For payment purposes, these sites are often treated as physicians' offices or as physician-directed clinics. Thus, the covered services provided in these facilities are paid for according to Part B rules for physician and other ambulatory services.

Many services can be furnished in alternative settings, so payment policy for one type of facility may affect utilization and spending in others. A comparison of the rate of increase in spending across facility types suggests that the current fragmentation and inconsistency of Medicare payment policies across facilities and settings may be contributing to accelerating program expenditures. Between 1980 and 1990, spending per enrollee for hospital services rose 28 percentage points more than general inflation. Real spending per enrollee at other facilities recognized by Medicare increased 170 percent. Real Medicare expenditures per enrollee for physician services climbed 84 percent. This includes payments for many services provided in facilities not paid separately by

Medicare. A 20 percent growth in Medicare enrollees during the 1980s contributed to an 89 percent real increase in total program expenditures.

Medicare spending for inpatient hospital services is still the program's largest single expenditure category, totaling almost $59 billion in 1990. Because the growth in spending for inpatient hospital services was slower than that for other types of facility and physician services, the proportion of Medicare spending on inpatient services fell from 67 percent in 1980 to 54 percent in 1990. At the same time, the share of Medicare spending on other recognized facilities increased from 10 percent to 19 percent.

The relatively slow increase in Medicare inpatient spending was due in part to the implementation of PPS. Before PPS, hospitals were reimbursed for the costs they incurred. Since the third year of PPS, payments per discharge have increased substantially less than operating costs per discharge.

Utilization changes have a major influence on Medicare spending patterns. The proportion of Medicare enrollees receiving services increased from 63 percent to 78 percent between 1980 and 1989. The proportion of Medicare enrollees using inpatient hospital services fell from 23.7 percent to 19.2 percent in the same period. The fall-off in admissions occurred in PPS hospitals; admissions to PPS-excluded hospitals and distinct-part units rose rapidly. Utilization of post-acute services in SNFs, rehabilitation hospitals, and home health care agencies also increased. Thus, the relatively slow growth in Medicare spending for inpatient acute care services and the large increases in spending for outpatient and other facility services resulted in part from a shift in the site of care. Increases in the number of services provided per beneficiary also contributed to higher expenditures.

Changes in the use of health care services, including the shift to outpatient settings, contributed to a nearly 20 percent increase in the average complexity of Medicare cases treated in PPS hospitals. These changes also led to a substantial increase in hospital outpatient utilization, with 46 percent of Medicare enrollees receiving these services in 1989, compared with 28 percent in 1980. Utilization of SNF services grew as well, peaking during 1988 and 1989 due to clarification of coverage rules and improved benefits under the Medicare Catastrophic Coverage Act of 1988 (MCCA). SNF utilization declined following the repeal of the Act in 1990, although it remained above pre-MCCA levels. The use of home health care agency services rose sharply during the early 1980s, but leveled off in the mid-1980s. Home health visits have been climbing since coverage criteria were clarified in 1989. The number of beneficiaries receiving dialysis for end-stage renal disease (ESRD) doubled during the 1980s, and annual admissions to hospices rose steadily after the introduction of the hospice benefit in 1984, reaching 100,000 in 1990.

Changes in facility capacity mirrored those in utilization patterns. The number of PPS-eligible hospitals and beds both declined every year from the introduction of PPS in 1983 to 1990. Because total inpatient days fell even more rapidly, however, excess inpatient capacity increased. By contrast, the number of PPS-excluded hospitals rose, with psychiatric and rehabilitation hospitals and distinct-part units showing the largest growth. The number of outpatient facilities participating in Medicare also jumped dramatically after PPS was introduced. Ambulatory surgical centers (ASCs) rose 670 percent, while the number of home health agencies grew by 22 percent.

Payment methods and payment rates can vary when the same service is provided at different sites, thus influencing utilization. Hospitals paid under PPS receive a prospectively determined payment, based on patient diagnosis. Payment to PPS-excluded hospitals, on the other hand, is based on the hospital's own historical costs, trended forward. Skilled nursing facilities and home health care agencies are paid reasonable costs, subject to certain limits. Ambulatory services generally are covered under Part B of Medicare. For services provided in Medicare-recognized facilities, payments are made separately to the facility and to physicians. Ambulatory surgical centers and dialysis facilities are paid a prospective rate. Independent clinical laboratories are paid according to a fee schedule. Payment to most other Medicare-recognized outpatient facilities is based on either reasonable costs or reasonable charges.

The variation in payment methods and rates for the same service at different sites may introduce

inappropriate financial considerations into the clinical decisionmaking process. It may also contribute to the growth in service capacity and encourage inappropriate use of services. The Commission believes that Medicare payment policies should be designed to provide consistent financial incentives and appropriate payment amounts across the different types of providers and practitioners. Related to this, ProPAC believes that the payment systems should promote quality of care throughout an episode of illness. Thus, incentives created by Medicare payment policies should be consistent with the goals of ensuring both access to appropriate high-quality care throughout an episode of illness and cost-efficiency of the care delivered.

The interaction of payment policies for inpatient and outpatient services directly affects both where those services are provided and their quality. Because of this, incremental policy changes cannot be evaluated in isolation. Rather, efforts to alter and improve PPS need to be considered in the broad context of the entire system. The recommendations in this report are consistent with these beliefs.

SUMMARY OF THE RECOMMENDATIONS

In Chapter 2, ProPAC presents 23 recommendations for updating and improving Medicare payment policies. The Commission also comments on other issues of importance to the Medicare program that may require action in the near future. ProPAC believes these proposed changes are necessary for maintaining access to high-quality health care, encouraging hospital productivity and cost-effectiveness, and permitting the adoption of innovative and appropriate technological advances. The Commission developed its recommendations by setting priorities, analyzing information, and deliberating on the implications of alternative policies. ProPAC also pays close attention to the concerns of the Congress, the Administration, health care providers, third-party payers, enrollees, and the public. The recommendations are offered to comply with the Commission's statutory mandate and to contribute to an informed, open debate about hospital payment policy and the Medicare program. For fiscal year 1993, ProPAC focused on six broad areas:

- Updating PPS payments,
- Adjusting the payment system,
- Updating and adjusting payments to PPS-excluded hospitals and distinct-part units,
- Updating payments to dialysis facilities,
- Improving hospital outpatient payment policy, and
- Improving skilled nursing facility payment policy.

Updating PPS Payments–The Commission recommends fiscal year 1993 updates equal to the increase in the Health Care Financing Administration's (HCFA) PPS market basket minus 1.45 percentage points for hospitals in urban areas and market basket minus 0.45 percentage points for hospitals in rural areas. Based on current HCFA projections, these updates are 3.05 percent and 4.05 percent, respectively. The average update is market basket minus 1.3 percentage points, or 3.2 percent.

The update recommendation combines five components. First, the fiscal year 1993 HCFA market basket is forecasted to increase 4.5 percentage points. Second, 0.2 percentage points are added to better reflect the increases in hospital labor costs that are not adequately measured in HCFA's market basket. Third, an adjustment of –0.8 percentage points for errors in the fiscal year 1991 market basket forecast is made. Fourth, a net discretionary adjustment factor (DAF) of zero reflects the Commission's judgment that scientific and technological advancement should be funded out of productivity gains. Fifth, a –0.7 percentage point adjustment for case-mix change offsets the estimated extra revenues hospitals received in fiscal year 1992 from case-mix index (CMI) increases that were not due to treating sicker patients.

The Commission supports the phased elimination of the differential between the standardized amounts paid to hospitals in rural areas and to those in urban areas with fewer than one million people. Therefore, an additional 0.85 percentage points should be added to the update for rural hospitals, and 0.15 percentage points should be subtracted from the update for urban hospitals.

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For hospitals paid on the basis of a hospital-specific rate, the Commission recommends an update equal to the rural update of 4.05 percent.

The update is only one source of the increase in total PPS payments to hospitals. Change in the case-mix index, which is estimated to rise 2.3 percent during fiscal year 1993, will also drive up payments. As a result, the average increase in per case payments, including CMI change and all of ProPAC's recommendations, is expected to be 5.6 percent in fiscal year 1993.

ProPAC believes there should ultimately be one payment for hospital inpatient operating and capital expenses. It therefore recommends the development of a single update factor for adjusting PPS operating and capital payments, consistent with the existing PPS operating update framework. This single update factor should be implemented for fiscal year 1994.

Adjusting the Payment System–The current indirect medical education (IME) adjustment more than adequately compensates hospitals for the increased costs associated with teaching activity. However, the financial performance of major teaching hospitals, especially those that serve a large share of low-income patients, is worse than that of other hospital groups. The Commission is concerned that the continued operation of these hospitals and the fulfillment of their unique role in the provision of health care might be impaired by a substantial immediate reduction of Federal support. The Commission therefore believes that gradual reduction of the IME adjustment to the appropriate level would be a prudent course of action. Thus, for fiscal year 1993, ProPAC recommends reducing the level of the IME adjustment from 7.7 percent to 7.0 percent for every 10 percent increase in teaching intensity, with the savings from this reduction returned to disproportionate share (DSH) teaching hospitals through an increase in the DSH adjustment for these hospitals.

Development of a single payment for operating and capital expenses would require a unified set of payment adjustments. ProPAC therefore recommends that, effective in fiscal year 1994, the indirect medical education and disproportionate share adjustments for capital payments should be made consistent with the IME and DSH adjustments for PPS operating payments. A single IME adjustment factor should be based on an evaluation of the relationship between teaching intensity and combined Medicare operating and capital costs per case. To develop a consistent IME adjustment, the measure of teaching intensity used for operating payments—the ratio of residents per bed—should also be used for capital payments. In addition, to develop a consistent DSH adjustment, the criteria used to designate disproportionate share providers for the DSH operating adjustment should be applied to capital.

ProPAC has long believed that the current definition of labor market areas used to make wage index adjustments to PPS payment does not accurately reflect actual labor market conditions. The need to improve these definitions, which are used to construct the area wage index under PPS, was underscored by the recent geographic reclassification of more than 800 hospitals into different labor market areas. The Commission is working with HCFA and the American Hospital Association to develop by fiscal year 1994 an alternative approach to alleviate many of the problems inherent in the current definitions. ProPAC recommends that Congress await the outcome of this effort before taking further action on labor market definitions.

The Commission has been evaluating the impact of two alternative proposals for a major refinement of the diagnosis-related groups (DRG) patient classification system. Both proposals appear to permit more accurate classification of patients under PPS. Thus, payments to hospitals could more accurately reflect cost differences due to variations in severity of illness and other factors. However, further study would be needed to reach a final judgment regarding whether any of the proposed modifications is desirable. The Commission welcomes the views of hospitals and other entities as it continues to evaluate these proposals.

Medicare cases transferred out of one hospital and into another are paid a uniform per diem based on a DRG, up to the full DRG amount. In the Commission's view, these cases should be paid on a graduated per diem, up to the full DRG payment, in recognition of the higher costs associated with stabilization, evaluation, and surgery that generally take place early in a patient's hospital stay. ProPAC also recommends further examination of whether

hospitals have the appropriate incentives to receive and transfer patients, particularly with respect to outlier payments and for recuperative care.

The Commission has determined that current PPS payment policies provide adequate compensation to hospitals that treat Medicare beneficiaries with hemophilia. Therefore, it does not recommend reinstatement of an add-on payment for the costs of blood clotting factor provided to hemophilia patients.

ProPAC recommends that the Secretary evaluate and refine the current DRG assignment for patients with intractable epilepsy, particularly those receiving neurodiagnostic monitoring.

Medicare's Essential Access Community Hospital (EACH) Program is intended to encourage the development of rural regionalization plans with two levels of care. Rural primary care hospitals (RPCHs) will provide emergency and temporary inpatient care. Essential access community hospitals will act as full-service referral hospitals to the RPCHs. The program offers an option to hospitals that have recently closed or are considering discontinuing routine inpatient care. The Commission supports this attempt to increase overall system efficiency without sacrificing access to care, but believes that the current program's focus is too narrow. Therefore, ProPAC urges the Secretary to waive some of the program requirements on an individual case basis to increase hospital participation and to gain additional experience with alternative policies.

The Peer Review Organization (PRO) program should continue to track, at the case and facility levels, the care furnished Medicare beneficiaries, while developing the ability to monitor care at the regional and national levels. ProPAC therefore supports the development of the nationally representative Uniform Clinical Data Set (UCDS). However, it is concerned that monitoring quality of care at the case and facility levels will be deemphasized. The PROs should be funded at an appropriate level to allow them to perform all of these functions.

Updating and Adjusting Payments to PPS-Excluded Hospitals and Distinct-Part Units–The Commission recommends fiscal year 1993 updates of market basket minus 0.4 percentage points for PPS-excluded hospitals and distinct-part units. In addition, hospitals excluded from PPS before 1989 should receive a positive allowance. Based on HCFA's current projections, the update should be 4.2 percent before adding the positive allowance.

The update factor recommendation combines five components. First, the fiscal year 1993 HCFA PPS-excluded market basket is forecasted to increase 4.6 percentage points. Second, 0.2 percentage points are added to better reflect the increases in hospital labor costs that are not adequately measured in HCFA's market basket. Third, an adjustment of –0.7 percentage points for errors in the fiscal year 1991 market basket forecast is made. Fourth, a 0.1 percentage point allowance is recommended for scientific and technological advancement. Fifth, a positive allowance ranging from 2.1 to 6.9 percentage points should be given to hospitals excluded from PPS before 1989. This allowance reflects the difference between the market basket and the actual updates given in earlier years.

Updating Payments to Dialysis Facilities–The Commission does not now have adequate data on which to base a recommendation concerning an appropriate update for ESRD composite rate payments. It therefore urges the Secretary to expedite the development of the data necessary to evaluate the cost of providing dialysis services.

Improving Hospital Outpatient Payment Policy–ProPAC believes that a prospective payment system for outpatient services should be implemented. This system should ultimately include all providers of outpatient services. Reform of outpatient payment policies should take into account the relationship between costs and services across inpatient and outpatient settings. This would imply that the eventual unit of payment should be for a bundle of related services. At this time, however, the unit of payment should be based on individual services.

The outpatient payment system should avoid introducing inappropriate financial considerations into the clinical decisionmaking process. However, it should reward providers for delivering cost-effective quality care in the appropriate setting. ProPAC thus offers the following outpatient payment policy principles. First, the payment method for the technical or facility component should be consistent across sites, but the payment rate should be adjusted to reflect cost differences that have societal benefit, such as standby capacity or emergency capabilities

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Second, if services are included in the Medicare Volume Performance Standard (VPS) when delivered in free-standing settings, they also should be included in the VPS when provided in hospital outpatient departments. Finally, Part B coinsurance for prospectively paid outpatient services should be 20 percent of the payment amount Medicare allows, regardless of delivery site.

To support development of prospective payment for outpatient services, a mechanism for periodic collection of procedure-specific cost data in free-standing settings should be implemented. The Commission supports the research being conducted by the Physician Payment Review Commission (PPRC), and intends to work with both the Secretary and PPRC in assessing available data sources.

ProPAC is concerned about lack of quality oversight in the ambulatory care setting. The Secretary should enhance and further develop methods to assess the quality of care provided to Medicare beneficiaries in all outpatient settings.

In light of the principles outlined above, ProPAC examined current payment policies for outpatient ambulatory surgery and radiology services. It recommends that payment for ambulatory surgeries performed in the hospital outpatient setting should be fully prospective and based on national rates. The national rates, in turn, should be based on a revised classification system that applies to both free-standing and hospital-based ambulatory surgery facilities. The level of the national rates should be computed in a budget neutral fashion, using both average hospital costs and payments to free-standing ambulatory surgery facilities. The national rates should be updated annually, using an appropriate update factor.

The Commission also recommends that payment for outpatient radiology services performed in the hospital outpatient setting should be fully prospective and based on national rates. The payment rates should be computed in a budget neutral fashion, using both average hospital costs and the technical component of the Medicare Fee Schedule for physicians. The rates should be adjusted to reflect differences in labor costs and updated annually.

Improving Skilled Nursing Facility Payment Policy–ProPAC believes it is inappropriate to use the current hospital wage index in calculating SNF cost limits. It recommends that the Secretary collect data on employee compensation and paid hours of employment for workers in nursing homes that receive Medicare patients. Using these data, the Secretary should develop a nursing home wage index to create cost limits for SNF payment.

The current SNF payment methodology does not recognize differences in the costs of care provided to different types of patients. Medicare's per diem payment for patients who require intensive nursing and rehabilitative care is the same as that for patients who require fewer resources. Since Medicare beneficiaries often need more intensive nursing care than other patients, the payment system creates financial disincentives for SNFs to treat Medicare beneficiaries. The Commission therefore supports the Secretary's efforts to develop and implement a case-mix adjustment to Medicare SNF payments under the Multistate Nursing Home Case Mix and Quality Demonstration.

RECOMMENDATIONS FOR FISCAL YEAR 1993

Updating PPS Payments

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1993, the PPS standardized payment amounts should be updated to account for the following factors:

- The projected increase in the Health Care Financing Administration (HCFA) PPS market basket index, currently estimated at 4.5 percent;
- An upward adjustment of 0.2 percentage points, to reflect the difference between the ProPAC and HCFA market baskets;
- A correction for substantial error in the fiscal year 1991 market basket forecast of –0.8 percentage points;
- A net discretionary adjustment factor of zero; and
- A net adjustment of –0.7 percentage points for case-mix change.

In addition, a positive adjustment of 0.85 percentage points for hospitals in rural areas and a negative adjustment of 0.15 percentage points for hospitals in large urban and other urban areas should be made to reflect a continuation of the phase out of the differential in the standardized amounts between rural and other urban hospitals.

Recommendation 2: Amount of the Update Factor for Hospitals Paid on the Basis of Hospital-Specific Rates

The Commission believes that payments based on hospital-specific base-year costs for sole community hospitals and for small rural Medicare-dependent hospitals should be updated by the same factor that applies to the PPS rate for rural hospitals.

Recommendation 3: Updating Capital Payment Rates

The Commission recommends that a single update factor be developed for adjusting PPS operating and capital payment rates. The update framework should be consistent with that currently used by ProPAC to develop the PPS operating rate update recommendation, and should be put into use for fiscal year 1994.

Adjusting the Payment System

Recommendation 4: Level of Indirect Medical Education and Disproportionate Share Adjustments to PPS Operating Payments

The Commission recommends that the indirect medical education adjustment to PPS operating payments be reduced from its current level of 7.7 percent to 7.0 percent for fiscal year 1993. This reduction should be implemented in a budget neutral fashion, with the anticipated decrease in indirect medical education payments returned to teaching hospitals that are designated as disproportionate share providers through a corresponding increase in their disproportionate share adjustment percentages.

Recommendation 5: Consistency of Indirect Medical Education and Disproportionate Share Adjustments to PPS Capital and Operating Payments

The Commission recommends that the same level of indirect medical education and disproportionate share payment adjustments be applied to both operating payments and the prospective component of capital payments, beginning in fiscal year 1994. Further, ProPAC believes that the methods of determining these adjustments to PPS operating payments should also be applied to capital payments. Therefore:

- The measure of teaching intensity used for the indirect medical education adjustments should be defined in terms of the ratio of residents per bed, and
- The criteria for designation as a disproportionate share provider should be based on urban or rural location and number of beds.

These changes would better reflect the policy objectives of the Congress in defining and setting the levels of the payment adjustments. They would also be consistent with the principle of incorporating capital into the PPS rate.

Recommendation 6: Improvements in Labor Market Definitions

The Commission believes that the current PPS labor market definitions need to be improved or replaced as soon as possible. Suitable alternative definitions, however, are not immediately available. In cooperation with the American Hospital Association and the Health Care Financing Administration, ProPAC is developing alternative labor market definitions that may alleviate many of the current problems. On the basis of this effort, the Commission hopes to be able to recommend substantially revised labor market definitions for fiscal year 1994.

Potential Major Refinements to the DRGs

The Commission has recently completed a partial evaluation of the impact of alternative proposals for major refinement of the DRGs. The results indicate that these refinements would allow more accurate classification and payment for Medicare cases. Further study would be needed, however, to reach a final judgment regarding the desirability of any of the proposed modifications. Therefore, ProPAC is not recommending adoption of major changes at this time. The Commission is interested in the views of hospitals and other entities as it continues to assess the desirability and impact of these refinements.

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Recommendation 7: Medicare Transfer Payment Policy

Cases transferred out of a hospital should be paid based on a graduated per diem up to the full DRG payment to recognize the higher daily costs associated with the first few days in a patient stay. In addition, outlier payment policy should be reexamined, particularly with respect to transfer cases received by a hospital. The Commission believes that hospitals are penalized by the current payment for transfers and that further examination of whether hospitals have the appropriate incentive to transfer patients, particularly with respect to recuperative care, is warranted.

Recommendation 8: Payment for Hemophilia Blood Clotting Factor

The Commission believes that current PPS payment policies are adequate to prevent significant payment inequities for hospitals that treat Medicare beneficiaries with hemophilia. Therefore, ProPAC does not recommend reinstatement of an add-on payment for the costs of blood clotting factor provided to hemophilia patients. However, should the current situation change, the Commission may reevaluate this issue.

Recommendation 9: Payment for Epilepsy Cases

The current DRG assignment should be revised to account for the resource requirements of patients with epilepsy receiving intensive neurodiagnostic monitoring.

Recommendation 10: Essential Access Community Hospital Program

The Commission recommends that the Secretary waive, on an individual case basis, some of the requirements for participation in the Essential Access Community Hospital Program. This would encourage increased hospital participation and allow the Secretary to gain additional experience with alternative policies. Over time, policies should be expanded to target the larger group of hospitals that should continue to operate but offer limited, less specialized inpatient services. By refocusing these hospitals' operations, the Commission believes that overall system efficiency may be improved without sacrificing access to care.

PRO Review and Quality of Care

The Commission believes the Peer Review Organization program should continue to monitor, at the case and facility levels, the care furnished to Medicare beneficiaries. Although the Commission commends the planned expansion of epidemiologic patterns of care studies using the Uniform Clinical Data Set, these more general analyses should not replace all case-level and facility-level quality review. Further, funding should be sufficient to allow PROs to perform case-level and facility-level review, as well as more general analyses of broad patterns of care.

Updating and Adjusting Payments to PPS-Excluded Hospitals and Distinct-Part Units

Recommendation 11: Fiscal Year 1993 Update Factor for PPS-Excluded Hospitals and Distinct-Part Units

For fiscal year 1993, the target rate of increase for PPS-excluded hospitals and distinct-part units should be updated to account for the following factors:

- The projected increase in the HCFA PPS-excluded hospital market basket, currently estimated at 4.6 percentage points;
- An upward adjustment of 0.2 percentage points, to reflect the difference between HCFA's market basket and that recommended by ProPAC;
- A correction for fiscal year 1991 market basket forecast error of –0.7 percentage points; and
- An allowance for scientific and technological advancement of 0.1 percentage points.

In addition, a positive allowance should be given to TEFRA providers that entered the program before fiscal year 1989, depending on the year on which their target rates were based. This allowance should reflect the difference between the actual updates given to their target rates in earlier years and the market basket for those years. It should result in aggregate payments that are budget neutral with respect to the legislated update.

Updating Payments to Dialysis Facilities

Recommendation 12: Update Factor for Payments to Dialysis Facilities

The Commission is not recommending an increase in payments for dialysis services at this time. Currently, data are inadequate to assess the relationship between the payments and the costs of furnishing various types of dialysis services in different settings. The Commission recommends that HCFA expedite work necessary to complete its database of unaudited dialysis facility cost reports. In addition, HCFA should annually audit the cost reports of a representative sample of dialysis facilities and maintain a database with this information.

Improving Hospital Outpatient Payment Policy

Recommendation 13: Outpatient Payment Reform

The Commission believes that a prospective payment system for outpatient services should be implemented. Outpatient facility payment reform should ultimately include all providers of outpatient services, such as hospitals, physicians' offices, and free-standing ambulatory surgical centers.

The same payment method should apply to tne facility or technical component of all services. The payment rate, however, should be adjusted to reflect justifiable cost differences such as wages and case mix. Further, cost differences that have some societal benefit like, for example, standby capacity and emergency capabilities, should also be reflected in the payment rate. Where feasible, the unit of payment should be based on bundled related services.

Recommendation 14: Medicare Volume Performance Standard

Services provided in the hospital outpatient setting should be included in the Medicare Volume Performance Standard (VPS) to the extent that these services are included when provided in other settings. Certain services, such as laboratory tests and therapy, currently are included in the VPS when they are furnished in free-standing settings. The Commission believes that hospital-provided services should also be incorporated in the VPS. Their inclusion will make incentives to control volume consistent across sites of care.

Recommendation 15: Cost Data Collection for Outpatient Providers

A mechanism for periodic collection of procedure-specific cost data in free-standing settings, including physicians' offices and ambulatory surgical centers, should be implemented.

Recommendation 16: Beneficiary Liability

Beneficiary Part B coinsurance for hospital outpatient services that are paid for prospectively should be limited to 20 percent of the payment amount allowed by Medicare.

Recommendation 17: Quality of Care in Outpatient Settings

The Commission is concerned about the lack of Federal quality oversight in many ambulatory care settings. As more services are furnished in outpatient settings, ProPAC believes the Secretary should enhance existing methods and develop new ones to assess and monitor the quality of care provided to beneficiaries in these settings.

Recommendation 18: Payment for Hospital-Provided Outpatient ASC-Approved Surgery

The Commission believes that payments for ambulatory surgery performed in the hospital outpatient setting should be fully prospective based on national rates adjusted for area wage differences. The payment rates should be established using average hospital costs and free-standing ASC payments. These rates should be computed in a budget neutral fashion; that is, aggregate spending should neither increase nor decrease. National rates should be based on the classification system used to determine payments to free-standing ASCs. However, the Commission believes this classification system should be revised. The rates should be updated annually using an appropriate update factor.

Chapter 1

Medicare Spending and Sites of Service

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Recommendation 19: Revision of the Classification System Used to Group Ambulatory Surgery Cases

The Secretary should revise the classification system used to group ambulatory surgery cases for payment. Cases treated in both hospitals and free-standing ambulatory surgical centers should be used to establish the payment groups.

Recommendation 20: Payment for Hospital-Provided Outpatient Radiology Services

The Commission believes that payments for radiology services provided in the hospital outpatient setting should be fully prospective based on national rates adjusted for area wage differences. The payment rates should be established using average hospital costs and the technical component of the Medicare Fee Schedule for physicians. These rates should be computed in a budget neutral fashion; that is, aggregate spending should neither increase nor decrease. The national rates should be updated annually using an appropriate update factor.

Recommendation 21: Payment Adjustments for Hospital-Provided, ASC-Approved Surgery and Radiology Services

The Commission believes that national prospective payment rates for ASC-approved ambulatory surgery and radiology services should be adjusted to reflect differences in labor costs. This adjustment should take into account the appropriate labor share and occupational mix of ASC-approved surgery and radiology services in the hospital outpatient setting. The Secretary should conduct additional research to determine whether other adjustments are warranted.

Improving Skilled Nursing Facility Payment Policy

Recommendation 22: Nursing Facility Wage Index

The Secretary should collect data on employee compensation and paid hours of employment for nursing facilities that care for Medicare SNF patients. Once these data become available, the Secretary should develop a nursing facility wage index and use it to adjust Medicare SNF payments.

Recommendation 23: Nursing Facility Case-Mix Adjustment

The Commission believes that the payment system should recognize differences in the costs of care for different types of patients. Therefore, it supports the Secretary's efforts to develop and implement a case-mix adjustment to Medicare SNF payments under the Multistate Nursing Home Case Mix and Quality Demonstration. If the case-mix adjustment developed under the demonstration proves to be appropriate, it should be implemented.

Chapter 1

Medicare Spending and Sites of Service

The Medicare program today covers acute and post-acute care services provided in many different settings. When Medicare was enacted in 1965, the primary settings were acute care hospitals and physicians' offices. This has been changing, however, as the Medicare program has expanded and added benefits such as home health, hospice, and dialysis services. Changes in practice patterns and the development of new technological capabilities have also fostered the treatment of patients outside the hospital. All these factors have led to significant changes in how and where Medicare beneficiaries are treated.

New providers, facilities, and sites of care have grown rapidly; in many instances, the same service can be provided in a variety of settings. Home health agencies, skilled nursing facilities (SNFs), and rehabilitation facilities often provide similar post-acute care services. In many cases, these services can be used to shorten and reduce the cost of a beneficiary's inpatient hospital stay.

Spending for services delivered outside the hospital has increased markedly. Medicare payment is specific to the type of facility in which the service is offered. The payment method for a cataract extraction, for example, differs depending on whether the procedure is performed in an inpatient or outpatient hospital setting, a free-standing ambulatory surgical center (ASC), or a physician's office.

The current Medicare benefit and payment system, therefore, is made up of fragmented and sometimes inconsistent payment policies across the various facilities and settings. These policies may not encourage the most efficient use of resources or the most appropriate care. The coverage of and payment for services furnished by many new providers and facilities may make services for Medicare beneficiaries more accessible. On the other hand, the proliferation of facilities also contributes to the rapid growth in Medicare spending and may make it more difficult for beneficiaries to receive quality care at a reasonable price.

The Prospective Payment Assessment Commission's (ProPAC) original mandate was to advise the Congress and the Secretary of Health and Human Services (HHS) on the Medicare prospective payment system (PPS) for hospitals. This role has since expanded to include payment for hospital outpatient services, excluded hospitals and units, skilled nursing facilities, dialysis treatments for end-stage renal disease (ESRD) patients, and home health services. The broadening of ProPAC's responsibilities gives the Commission an opportunity to examine the interrelationship among alternative facility payment policies and to devise policies that encourage an appropriate continuum of care at a reasonable level of spending. Only through a careful analysis of the complex array of providers, benefits, and payment methods can such policies be developed.

This chapter gives an overview of the facilities that provide services to Medicare beneficiaries. It focuses on Medicare expenditures across the various facilities and explains the reasons for their growth. The first section reviews the types of facilities participating in the Medicare program, Medicare spending, utilization, and capacity. This discussion provides background on how the program has evolved over the past decade. The chapter then examines the reasons for Medicare spending growth by facility type, focusing on payment policy and utilization effects. This is followed by a description of the relationship between utilization and spending trends by taking a broader look at how those forces interact and affect total Medicare

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Table 1-1. Provider and Facility-Specific Payment Policies

Provider/Facility	Method of Payment
Medicare-recognized Part A providers[a]	
Hospitals (inpatient)	PPS and costs subject to TEFRA limits
Skilled nursing facilities	Costs subject to limits
Home health agencies	Costs subject to limits
Hospice programs	Cost-related prospective payment
Medicare-recognized Part B providers[b]	
Hospitals (outpatient)	Varies by service
Comprehensive outpatient rehabilitation facilities	Reasonable costs
Rehabilitation agencies and clinics	Reasonable costs
Other Part B facilities recognized by Medicare	
Ambulatory surgical centers	Prospective rate
Dialysis facilities	Prospective rate
Cardiac rehabilitation facilities	Reasonable charge
Independent clinical laboratories	Fee schedule
Physical and occupational therapy practices	Reasonable charges subject to salary equivalency guidelines
Rural health clinics	Reasonable costs

[a] For beneficiaries with Part B but no Part A coverage, some of the services furnished by these providers are covered as a Part B benefit.

[b] Includes ambulance and portable X-ray suppliers.

SOURCE: Information compiled by ProPAC.

expenditures and patterns of care. The chapter ends by highlighting Commission activities related to developing and refining prospective payment for these various facility-based providers.

FACILITIES INVOLVED IN MEDICARE

Medicare beneficiaries receive services in a variety of facilities (see Table 1-1). This section focuses on the major types of facilities included in the Commission's mandate: inpatient hospitals paid under PPS, hospitals and units excluded from PPS, outpatient hospital care, skilled nursing facilities, home health agencies, and renal dialysis facilities. In addition, the section examines changes in spending for independent laboratory, hospice, and physician services. Although Medicare recognizes a number of other facilities and providers for payment, they are not discussed here since they account for relatively low expenditures, and data on them are limited.

There are many additional sites of care that Medicare does not recognize for facility payment, but where specific services furnished are covered under Part B rules (see Table 1-2). In these cases, the facility does not have to meet conditions of program participation. Many of these sites of care are treated as physicians' offices or physician-directed clinics.

Medicare Spending

Medicare spending continues to rise at near double-digit rates, despite a decade of intensified attempts at cost control. Medicare Part B expenditures for physician and other ambulatory services have grown much faster than spending under Part A, which covers hospitals and some other facility services. Between 1980 and 1990, Part B spending increased by more than 280 percent, while spending under Part A rose by about 160 percent. By contrast, general inflation in the U.S. economy during that period was 57 percent.

Between 1980 and 1990, total Medicare spending per enrollee increased by 147 percent. The 28 percent growth in spending per enrollee, adjusted for inflation, was much less in inpatient hospitals than in other settings (see Figure 1-1). Real growth in spending per enrollee increased fastest in other facilities recognized by Medicare (SNF, home health agencies, hospices, outpatient facilities, and clinical laboratories), a cumulative 170 percent between 1980 and 1990. The real growth in physician spending per enrollee was about 84 percent.

Table 1-2. Sites of Care Without Specific Medicare Policies

Type of Provider	Major Services Offered
Ambulatory care centers	Primary urgent care, occupational medicine, diagnostic imaging, rehabilitation/sports medicine, psychiatric treatment, substance abuse treatment
Diagnostic imaging centers	X-ray, mammography, ultrasound, magnetic resonance imaging, computerized axial tomography scans
Cancer centers: comprehensive radiation oncology	Radiation therapy, chemotherapy, cancer screening and prevention, patient education, rehabilitation
Women's centers	Mammography, breast services, premenstrual syndrome care, diabetes care/education, pap smear
Lithotripsy centers	Extracorporeal shock wave lithotripsy for kidney stone removal
Outpatient psychiatric clinics	Psychiatric treatment, medication monitoring, substance abuse treatment, suicide counseling
Pain clinics	X-ray, psychological testing, laboratory tests, physical examinations, drug therapy, physical therapy

SOURCE: Project HOPE under contract to ProPAC.

The change in the growth of Medicare spending has shifted the proportion of expenditures accounted for by hospitals and other services. In 1980, about 67 percent of Medicare spending was for inpatient hospital services, 23 percent was for physician services, and 10 percent was for other program benefits (see Figure 1-2). By 1990, only 54 percent of Medicare spending was for inpatient hospital services, and 27 percent was for physician services. Other services accounted for 19 percent of total Medicare spending.

Spending for inpatient hospital services is still by far the largest single expenditure category in Medicare, totaling almost $59 billion in 1990 (see Table 1-3). The growth in spending for inpatient

Figure 1-1. Cumulative Growth in Real Medicare Spending Per Enrollee, 1980–1990 (In Percent)

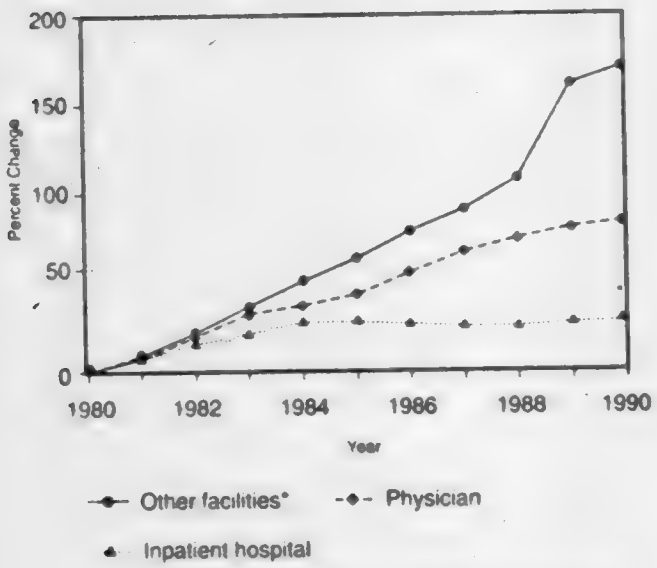

*Other facilities include outpatient hospitals and other included providers, skilled nursing facilities, home health agencies, hospices, and independent laboratories.

SOURCE: Health Care Financing Administration, Office of the Actuary.

Figure 1-2. Total Medicare Spending, by Type of Facility or Service, 1980 and 1990 (In Percent)

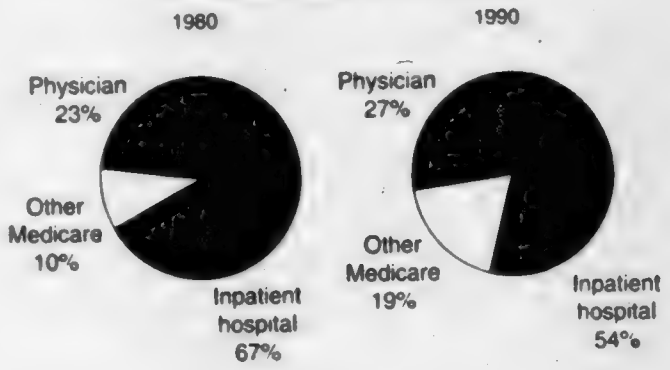

SOURCE: Health Care Financing Administration, Office of the Actuary.

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Table 1-3. Estimated Medicare Benefit Payments, by Type of Service, 1980-1990

	Part A								Part B			
	Total Medicare		Inpatient		Skilled Nursing		Home Health Agency*		Physician		Outpatient	
Year	Payments (In Billions)	Percent Change	Payments (In Billions)	Percent Change	Payments (In Billions)	Percent Change	Payments (In Billions)	Percent Change	Payments (In Billions)	Percent Change	Payments (In Billions)	Percent Change
1980	$ 36.5	--	$24.4	--	$0.4	--	$0.8	--	$ 8.5	--	$2.0	--
1981	43.7	19.8%	29.2	19.7%	0.5	9.5%	1.1	29.1%	10.1	19.5%	2.4	19.2%
1982	51.2	17.3	33.8	15.7	0.5	9.3	1.4	30.9	12.2	20.2	2.8	19.1
1983	58.1	13.5	37.6	11.2	0.5	6.7	1.8	28.3	14.3	17.2	3.3	16.4
1984	64.8	11.5	41.9	11.4	0.6	6.9	2.1	19.0	15.6	9.7	3.8	14.2
1985	69.9	7.9	44.3	5.7	0.6	2.9	2.2	5.3	17.2	9.8	4.4	16.8
1986	75.4	7.8	45.8	3.5	0.6	0.2	2.2	1.0	19.6	14.0	5.3	20.1
1987	81.7	8.4	48.0	4.7	0.6	9.0	2.2	-0.5	22.2	13.3	6.2	17.7
1988	88.9	8.8	50.8	5.9	1.0	51.7	2.4	8.5	24.5	10.5	7.0	13.1
1989	100.0	12.5	55.0	8.3	3.4	258.1	3.0	24.2	27.1	10.5	7.6	8.3
1990	108.4	8.4	58.9	7.1	2.4	-29.3	4.4	46.8	29.4	8.5	8.5	11.3

Note: Payments reported here are incurred expenditures rather than outlays.

* Includes Part B home health agency expenditures.

SOURCE: Health Care Financing Administration, Office of the Actuary

hospital services, however, has been much slower than that for other facilities. Although data on spending by type of inpatient facility (PPS short stay or excluded provider) are limited, growth in spending was probably faster in excluded hospitals because the number of Medicare discharges from these providers increased substantially between 1985 and 1988, while discharges declined for short stay facilities. Excluded hospitals accounted for about 8 percent of Medicare inpatient spending in 1990.[1]

Spending for outpatient hospital care and other facilities rose by more than 325 percent between 1980 and 1990, from $2.0 billion to $8.5 billion. Much of this increase was due to a shift in site of service delivery. Cataract surgery, which in the early 1980s was performed almost exclusively in the inpatient setting, is illustrative. By 1990, cataract surgery was performed almost exclusively in outpatient settings.

Spending for SNF care climbed from $0.4 billion in 1980 to $2.4 billion in 1990, a 500 percent increase. The rise was most pronounced in 1988 and 1989. Home health agency spending also rose markedly between 1980 and 1990. In 1980, it totaled about $0.8 billion, but by 1990 had increased by almost 450 percent, to $4.4 billion. Home health agency spending was the fastest growing part of the Medicare program in 1990.

Spending for hospice services was just over $350 million in 1990—a marked increase since the benefit was first introduced in 1984. The magnitude of this spending is quite small, however, compared with expenditures in other parts of Medicare.

In 1989, spending for dialysis services totaled $1.2 billion, with increases averaging 8.7 percent annually between 1984 and 1989.[2] The yearly increase in spending for dialysis treatment has been much more constant than that for other facilities due largely to greater numbers of patients served.

Specific data on spending in other Medicare-approved facilities are available only for independent laboratories. Expenditures for these laboratories rose dramatically between 1980 and 1990, spiraling more than 1,000 percent from $139 million to $1.5 billion.

Medicare spending for physician services totaled almost $30 billion in 1990, an increase from $8.5 billion in 1980. Although the growth in this spending category slowed in the latter part of the decade, it was still substantially faster than that for inpatient hospital services and more than twice the increase in general inflation. Real spending per enrollee rose by 84 percent during the 1980s. Spending controls placed on physicians, such as physician fee freezes, may have had some effect on the slower growth seen by the end of the decade.

Table 1-4. Trends in Medicare Enrollment,1980-1991 (In Millions)

Year[a]	Number of People		
	Total	Aged	Disabled
1980	28.5	25.5	3.0
1981	29.0	26.0	3.0
1982	29.5	26.5	3.0
1983	30.0	27.1	2.9
1984	30.5	27.6	2.9
1985	31.1	28.2	2.9
1986	31.7	28.8	3.0
1987	32.4	29.4	3.0
1988	33.0	29.9	3.1
1989	33.6	30.4	3.2
1990	34.2	30.9	3.3
1991[b]	35.0	31.6	3.4

[a] As of July of the specified year.

[b] Estimated.

SOURCE: Health Care Financing Administration, Bureau of Data Management and Strategy, and the Office of the Actuary.

Medicare Facility Utilization

Utilization trends for Medicare services in the different sites are related to two basic factors: changes in the number of Medicare enrollees, and changes in treatment patterns due to new technologies and physician practice styles. The interaction of these two factors helps explain a major portion of spending growth.

Between 1980 and 1990, Medicare enrollment increased by about 20 percent to 34.2 million (see Table 1-4). The rise in the number of enrollees, however, generally affects spending growth in all parts of the program equally, contributing about 2 percent annually.

Changes in the proportion of beneficiaries using services are more important in explaining some of the variations in spending trends. Changing utilization is due to several factors. Among these are population aging, a greater supply of services and technological capabilities, and practice pattern changes. The percentage of enrollees receiving services under Medicare each year grew from 63 percent to 78 percent between 1980 and 1989 (see Table 1-5).

Spending growth for inpatient hospital services probably would have been much larger were it not for a decline in inpatient admissions and length of stay. The fall in inpatient use, however, was associated with a substantial increase in outpatient utilization. The decrease in length of stay coincided with greater utilization of SNFs, rehabilitation hospitals and units, and home health care agencies for post-acute care services.

Hospital admissions for those 65 and over decreased during the first three years of PPS. Since 1987, admissions have increased, but not as fast as the number of Medicare enrollees. The proportion of Medicare enrollees using hospital services fell from 23.7 percent in 1980 to 19.2 percent in 1989, an average annual decline of 2.3 percent. Overall, Medicare inpatient hospital utilization per enrollee has continued to drop, but much more slowly than between 1984 and 1986. Admissions to excluded hospitals and units, by contrast, increased substantially in the 1980s, rising by 43 percent between 1985 and 1988.

Medicare utilization of hospital outpatient services has increased notably. In 1980, 27.5 percent of Medicare enrollees used hospital outpatient facilities, compared with 45.8 percent in 1989. Higher outpatient utilization was due to the development of new technologies and changes in practice patterns, as has been noted. These caused a shift in services

Table 1-5. Aged and Disabled Persons Served by Medicare, 1980-1989 (Per 1,000 Enrollees)

Type of Coverage/Provider	Persons Served						Average Annual Percent Change
	1980	1982	1984	1986	1988	1989	1980-1989
Total	633.2	638.2	681.3	726.9	761.7	778.9	2.3%
Hospital Insurance (Part A)	240.6	251.4	239.9	211.0	207.6	206.2	-1.7
Inpatient hospital	237.1	243.5	229.0	203.2	197.5	192.3	-2.3
Skilled nursing facility	9.2	8.7	10.0	9.7	11.9	19.3	8.6
Home health agency	25.9	39.7	49.9	50.3	48.8	51.0	7.8
Supplementary Medical Insurance (Part B)	650.5	653.5	697.5	748.9	789.6	810.3	2.5
Physician	629.9	696.1	674.8	725.9	768.7	792.6	2.6
Hospital-provided outpatient services	275.1	297.3	332.2	399.6	447.6	458.1	5.8

Note: Rates based on enrollment in Part A, Part B or both, as appropriate.

SOURCE: Health Care Financing Administration, Bureau of Data Management and Strategy.

from inpatient to outpatient settings, as well as an absolute growth in the number of services provided. The movement from inpatient to outpatient settings was further encouraged by Medicare policies and payment incentives.

Utilization also increased substantially for SNFs and home health agencies. In 1989, 1.9 percent of Medicare enrollees used skilled nursing facilities, compared with 0.9 percent in 1980. The number of covered days for SNF care increased markedly in 1988 and 1989, due largely to the clarification of coverage guidelines by the Health Care Financing Administration (HCFA) and to the Medicare Catastrophic Coverage Act of 1988 (MCCA). Utilization in 1990 declined from 1989 levels owing to repeal of the Act, but remained much higher than before the legislation was passed. The number of beneficiaries receiving SNF care continued to expand, however.

Use of home health agency services increased from 2.6 percent of enrollees in 1980 to 5.1 percent in 1989. There was a decided rise in home health visits through the early 1980s, although visits decreased in the 1985 through 1987 period. The early growth was due to the Omnibus Budget Reconciliation Act (OBRA) of 1980, which allowed more home health agencies to participate in the program. Recent growth in utilization is due partly to changes in coverage that expanded the number of beneficiaries covered and broadened the scope of home health agency care.

Medicare admissions to hospice programs have continued to increase since the hospice benefit was created in 1984. In fiscal year 1990, slightly more than 100,000 beneficiaries were admitted to these programs. The number of Medicare beneficiaries undergoing dialysis treatment doubled between 1980 and 1990 due to expanded medical indications.

The proportion of beneficiaries using physician services grew at a slower rate than for other facility services, 2.6 percent annually. However, almost 80 percent of enrollees used physician services in 1989, making this the most widespread benefit.

Facility Capacity

Increased total spending for certain types of facilities is partly explained by the greater number providing Medicare-covered services (see Table 1-6). This has a major effect on enrollees' access to and utilization of these services.

The number of short stay hospitals and beds has fallen every year since 1983. In 1990, there were 921,400 hospital beds, compared with slightly more than a million in 1983, a decline of 8.2 percent. Hospital admissions, however, decreased more rapidly; thus, excess capacity was substantially greater in 1990 than in 1983. While the number of short stay PPS-eligible hospitals has declined, the number of excluded hospitals has increased substantially. In 1990, there were 57 percent more excluded psychiatric hospitals and 173 percent more excluded rehabilitation hospitals than in 1984.

Table 1-6. Medicare Participating Facilities and Suppliers, 1980-1990

Facility/Supplier	1980	1982	1984	1986	1988	1990	Average Annual Percent Change
Hospitals	6,777	6,742	6,675	6,720	6,715	6,520	-0.4%
Short stay	6,104	6,070	6,038	5,994	5,856	5,549	-0.9
Long stay	673	672	637	726	859	971	3.7
Skilled nursing facilities	5,052	5,408	5,952	6,897	7,379	8,937	5.9
Home health agencies	2,924	3,415	4,684	5,978	5,769	5,730	7.0
Independent laboratories	3,447	3,581	3,801	4,138	4,487	4,879	3.5
Outpatient physical therapy providers	419	603	791	907	1,030	1,195	11.0
Portable X-ray suppliers	216	251	269	347	395	443	7.4
Rural health clinics	391	419	420	432	459	551	3.5
Comprehensive outpatient rehabilitation facilities	--	--	48	96	141	186	25.3
Ambulatory surgical centers	--	--	155	574	852	1,197	40.6
Hospices	--	--	108	268	449	825	40.3
Facilities providing services to ESRD beneficiaries	999	1,197	1,335	1,463	1,701	1,992	7.1

SOURCE: Health Care Financing Administration, Bureau of Data Management and Strategy.

The supply of ambulatory services is growing rapidly. Although the specific number of facilities furnishing outpatient services is not readily available, data on increases in physicians and other information illustrate this trend. One important type of free-standing ambulatory provider for Medicare is the ambulatory surgical center. In 1990, there were 1,197 Medicare-participating ASCs—more than two and one-half times the number in 1985. Further, procedures performed at these centers rose almost 200 percent during this period, from fewer than 800,000 to more than 2.3 million.[3]

There have also been increases in nearly all types of other Medicare-eligible facility providers. The number of skilled nursing facilities furnishing services to Medicare beneficiaries climbed from 5,052 in 1980 to 8,937 in 1990, or 77 percent. The number of home health agencies grew by 96 percent during this period; by 1990, 5,730 home health agencies were participating in Medicare. The number of hospices also rose substantially between 1984 and 1990, largely because the benefit became a covered service in 1984.

The number of facilities providing renal dialysis expanded by about 100 percent between 1980 and 1990. The largest increase was among non-hospital renal dialysis facilities.

As noted earlier, numerous new ambulatory sites of care have emerged recently, among them ambulatory care centers, cancer centers, women's health clinics, and outpatient psychiatry clinics. Physicians, hospitals, for-profit entrepreneurs, and other entities have entered this market. The numbers of these other providers are unknown, however.

The supply of physicians also grew markedly over the decade. In 1980, there were about 468,000 physicians, compared with more than 600,000 in 1989, an increase of 28 percent. In contrast, the U.S. population grew by a little more than 9 percent.

REASONS FOR THE GROWTH IN MEDICARE FACILITY AND NONFACILITY SPENDING

Growth in Medicare spending across facilities has been influenced by a combination of factors: an increase in the beneficiary population, changes in utilization and in sites of care, and inflation. Changing practice patterns and treatment protocols also have had an effect. The largest component of Medicare spending, inpatient hospital services, has seen the smallest growth, while spending in other types of facilities has accelerated more rapidly. Lower rates of growth for inpatient services and higher growth rates in other settings are also partially the result of different Medicare policies to control expenditures. This section describes spending trends observed in each of the major types of Medicare facilities.

Inpatient Hospital

Since fiscal year 1984, payments to short stay hospitals have been based on patient diagnosis. There are about 490 diagnosis-related groups (DRGs) for payment purposes. Payment rates are increased annually based on an update factor set by the Congress. The updates have been less than the per unit increase in costs for inpatient hospital services, which has helped constrain the growth rate in Medicare inpatient hospital spending. Under PPS, a hospital generally knows in advance what it will receive in payment for the services it provides, unless the case is exceptionally costly or the stay is much longer than normal. Before the advent of PPS, hospitals were paid on the basis of costs, subject to certain limits. This payment method provided minimal incentives for efficiency.

Prospective payment coincided with significant changes in how hospitals provide care. A number of trends, such as reductions in length of stay and admission declines, were occurring even before PPS was implemented. In addition to the evolution of practice patterns, the growing use of post-acute services such as SNFs, home health care, and rehabilitation hospitals may have occurred even without implementation of PPS.

Payment constraints have had a substantial influence on spending growth for inpatient hospital services. However, payments per discharge increased dramatically during the first year of PPS because of the way that initial PPS rates were set and increases in the case-mix index (CMI), which is used to measure the severity or amount of service provided to patients (see Table 1-7). Growth in spending has been much lower since then, due to payment rate

updates that were below the rise in costs. The extent to which these payment constraints have significantly affected increases in the total cost of providing services is unclear, however. In fact, hospital cost increases to furnish care have continued to outpace both general inflation and the hospital market basket, which measures the higher costs hospitals face to provide services.

Changes in the hospital CMI directly affected spending growth. Between fiscal years 1984 and 1990, the Medicare case-mix index rose by 19.2 percent due to the increasing complexity of patients or their treatments and coding practice changes. Greater patient or treatment complexity leads to higher resource costs. On the other hand, coding practice changes do not reflect higher costs, but do cause higher Medicare spending.

Falling inpatient hospital utilization and changing patterns of care—particularly the greater use of outpatient and post-acute care services—also have significantly affected Medicare spending. Lower utilization reduced aggregate spending increases for inpatient hospital services, but contributed to the notable increase in expenditures for other facilities. Changing the inpatient payment to a per case system provided incentives to increase utilization outside the hospital and decrease inpatient utilization. In turn, inpatient capacity, as measured by the number of hospitals and beds, fell after 1983. However, excess capacity, as measured by empty beds, remains at historically high levels.

Total Medicare inpatient hospital payments rose by 40 percent between 1984 and 1990. Payment rate changes and case-mix increases contributed most to this growth. Utilization changes initially were responsible for decreasing spending growth and, later, for holding it close to the payment rate change. Admissions growth rates have been below historical levels since the implementation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and PPS. This trend indicates a continuing shift to treating patients in other settings.

PPS-Excluded Providers

When PPS was implemented, certain facilities were excluded: rehabilitation and psychiatric hospitals and distinct-part units, as well as children's, long-term, and cancer hospitals.[4] PPS-excluded providers are paid on the basis of each facility's historical costs trended forward, with a limit placed on the rate of increase in per case reimbursable costs. These target rate-of-increase limits, established by TEFRA, are updated annually. The target rate per discharge is derived from hospital-specific Medicare costs in a base year, which varies depending on when the facility was constructed or converted to a PPS-excluded category. The

Table 1-7. Medicare Inpatient Hospital Utilization and Spending, 1980-1990

Year	Inpatient Admissions (In Thousands)	Spending Per Admission	Real Spending Per Admission*	Total Inpatient Spending (In Millions)
1980	10,628	$2,281	$2,281	$24,242
1981	11,118	2,610	2,388	29,022
1982	11,309	2,969	2,558	33,580
1983	11,595	3,222	2,665	37,361
1984	11,358	3,666	2,914	41,638
1985	10,681	4,118	3,168	43,988
1986	10,232	4,442	3,330	45,452
1987	10,180	4,669	3,381	47,528
1988	10,229	4,919	3,418	50,316
1989	10,167	5,352	3,558	54,410
1990	10,282	5,669	3,608	58,288
Average annual percent change:				
1980-1985	0.1%	12.5%	6.8%	12.7%
1985-1990	-0.8	6.6	2.6	5.8

Note: Data excludes ESRD enrollees.

* 1980 dollars.

SOURCE: Health Care Financing Administration, Office of the Actuary.

payment mechanism provides hospitals with an incentive to keep cost increases close to the target increase level. There are no incentives to keep increases below the target rate or to control volume.[5]

PPS-excluded facilities have proliferated since 1984, but growth has not been uniform across all types of these providers (see Table 1-8). Those classified for payment as rehabilitation facilities grew most rapidly between 1984 and 1990. During this period, rehabilitation hospitals increased 173 percent, while rehabilitation distinct-part units rose 120 percent. Psychiatric facilities, which represent most PPS-excluded facilities, also have undergone rapid growth. Some existing psychiatric and rehabilitation hospitals were not recognized initially as excluded facilities and later applied for excluded status, which helps explain this trend.

Medicare discharges from most PPS-excluded facilities grew steadily from 1984 to 1988 (see Table 1-9). Most Medicare discharges from PPS-excluded facilities in 1988 were from psychiatric providers (63 percent of total PPS-excluded discharges). Rehabilitation providers treated about 33 percent of discharges from excluded facilities. The rest were treated at children's, long-term, and cancer hospitals. Distinct-part units, especially rehabilitation units, experienced the fastest growth in number of discharges during this period. The majority of beneficiaries receiving services in PPS-excluded facilities are treated in distinct-part units. By 1988, for example, nearly 70 percent of Medicare discharges from rehabilitation providers were from distinct-part units; about 66 percent of Medicare discharges from psychiatric providers were from such units.

A portion of the growth in utilization and expenditures of excluded facilities can undoubtedly be attributed to PPS. Part of the decline in inpatient care in short stay general acute care hospitals, for instance, may be due to increases in the number of patients admitted to specialty facilities. Further, hospitals created distinct-part units to absorb overhead, excess capacity, and other resources, allowing them to lower inpatient costs. They could also reduce costs by discharging patients to the excluded unit to reduce length of stay. Additional providers saw opportunities for growth as PPS and other forces reduced inpatient stays. It is impossible to attribute how much of the expenditure growth in excluded facilities is due to PPS and how much to changing practice patterns or growing need. This is an example, however, of how cost control attempts in one sector of the health care system increased spending in another.

Outpatient Facilities

Ambulatory services generally are covered under Part B of Medicare. These services include medical visits, diagnostic laboratory tests, X-rays, and durable medical equipment. The services may be provided by hospitals, physicians, non-physician practitioners, and suppliers. Various methods are used by Medicare to pay for beneficiary care in outpatient settings; among them, reasonable costs or charges, prospective

Table 1-8. PPS-Excluded Hospitals and Distinct-Part Units, 1984-1990

Type of Facility	Year*							Percent Increase 1984-1990
	1984	1985	1986	1987	1988	1989	1990	
Hospitals								
Psychiatric	439	481	515	578	608	650	691	57%
Rehabilitation	49	68	79	84	100	120	134	173
Long-term	84	86	92	87	87	88	90	7
Children's	47	53	55	60	58	59	65	38
Cancer	--	--	--	8	8	8	8	--
Total	619	688	741	817	861	925	988	60
Distinct-part units								
Psychiatric	722	762	906	950	1,051	1,104	1,129	56
Rehabilitation	308	386	473	535	565	628	678	120
Total	1,030	1,148	1,379	1,485	1,616	1,732	1,807	75

* Numbers were determined as of September of each year except 1990, which was as of December 17, 1990.

SOURCE: Health Care Financing Administration, Health Standards and Quality Bureau.

rates, and blended rates. The payment method differs depending on the site and type of service.[6]

Medicare spending for outpatient services has grown substantially, climbing by 325 percent between 1980 and 1990. Spending growth in the outpatient setting has been much faster than that for either physicians or hospitals. From 1989 to 1990, for instance, hospital outpatient expenditures increased 11.3 percent. This compares with an increase of 8.5 percent for physician services and 7.1 percent for hospital inpatient services.

Due to technological advances and practice pattern changes, hospitals can offer more types of ambulatory services to their patients. For example, 81 percent of hospitals reported having an organized outpatient department in 1989, compared with 32 percent in 1979. About two-thirds of this growth occurred after the introduction of PPS. By 1989, nearly 95 percent of hospitals had ambulatory surgery services.[7] Other outpatient services provided by hospitals include substance abuse treatment, psychiatric care, and rehabilitation.

One example of the changing medical services provided in hospital outpatient departments is surgery. The total volume of surgery in hospitals increased 16.8 percent from 1979 to 1989. Inpatient surgery actually declined 30 percent, while outpatient hospital surgery increased 304 percent. In 1979, outpatient surgical procedures accounted for only 14 percent of total surgeries. By 1989, they accounted for almost 49 percent.[8]

Medicare data on hospital outpatient utilization and spending per visit are rather limited. Information on total hospital outpatient spending, however, may help explain the causes of growth in outpatient expenditures (see Figure 1-3). In the 1980 to 1985 period, real spending growth in hospital outpatient services was due almost exclusively to increased spending per visit or to intensity. The causes for this trend cannot be broken down in detail, but probably include increasing complexity of cases, changing service mix, and higher charges. Some of the growth may also be explained by changes in the way visits are reported through unbundling. (Unbundling is the separate billing of services that were previously included in the same bill.) In the 1985 to 1990 period, the growth in visits due to technological advances and practice pattern changes was responsible for an increasing proportion of the total real growth in outpatient spending.

Some of the growth in Medicare outpatient spending can be attributed to PPS and the incentives to unbundle services by providing preadmission testing in hospital outpatient departments. Peer Review Organization precertification requirements for services like cataract surgery further contributed to the shift from inpatient to outpatient settings. Recent regulations expanding the preadmission time period from one to three days may reduce the number of outpatient visits that are separately reimbursable. Thus, while Medicare payment policy constrained per unit growth in outpatient spending by controlling payment rate increases, it provided

Table 1-9. Medicare Discharges from PPS-Excluded Hospitals and Distinct-Part Units, 1985-1988

Type of Facility	1985	1986	1987	1988	Percent Change 1985-1988
Psychiatric					
Hospitals	71,456	75,059	69,837	76,612	7.2%
Units	93,120	120,739	131,217	148,501	59.5
Total	164,576	195,798	201,054	225,113	36.8
Rehabilitation					
Hospitals	25,429	27,401	31,413	35,567	39.9
Units	45,650	57,566	68,813	82,723	81.2
Total	71,079	84,967	100,226	118,290	66.4
Long-term	14,477	14,666	13,712	14,304	-1.2
Children's	1,690	2,141	2,298	2,281	35.0

Note: These figures understate the actual number of Medicare discharges due to incomplete cost reports.

SOURCE: ProPAC analysis of Medicare Cost Report data from the Health Care Financing Administration.

Figure 1-3. Factors Accounting for Real Growth in Hospital Outpatient Expenditures, 1980-1990 (In Percent)

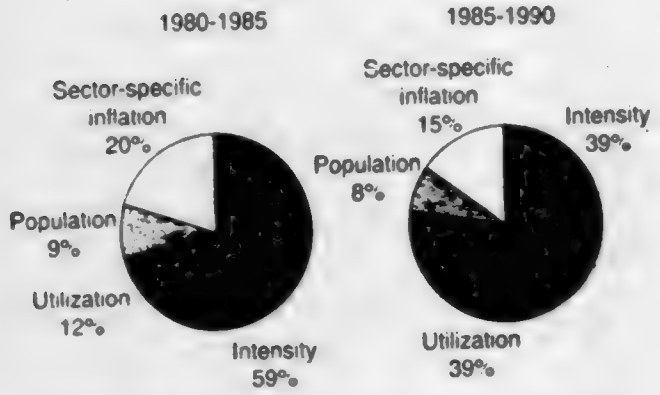

SOURCE: Health Care Financing Administration, Office of the Actuary, Office of National Health Statistics.

no incentive to control volume or intensity—the primary contributors to higher spending.

Skilled Nursing Facilities

Medicare's skilled nursing facility benefit is limited to payment for extended care services furnished in SNFs. The Medicare SNF benefit covers skilled nursing services; physical, speech, and occupational therapy; medical social services; drugs and biologicals; whole blood and packed red blood cells; supplies, appliances, and equipment; and other diagnostic and therapeutic items or services provided by the SNF or a hospital with which the SNF has a transfer agreement.[9]

To be eligible for the SNF benefit under Part A, beneficiaries must need skilled nursing or other skilled rehabilitation services on a daily basis. In addition, they must have completed a minimum three-day hospital stay and must have been transferred to a SNF within 30 days after discharge from the hospital. The need for SNF care must have been caused by the medical condition that led to the hospital stay or by one that arose during the hospitalization. The benefit is limited to no more than 100 days of post-hospital care per spell of illness. A daily coinsurance payment, equal to $81.50 in 1992, is required after the twentieth day of service.[10]

In general, Medicare reimburses SNFs under Part A on the basis of reasonable costs subject to certain limits. The limits apply nationwide but are set separately for urban and rural facilities, and hospital-based and free-standing providers. The Medicare SNF payment method creates an incentive for providers to increase costs up to the limit. Because Medicare accounts for a relatively small share of SNF care, however, cost growth is influenced more by the payment policies of the Medicaid program, which is the dominant payer.

Between 1980 and 1990, expenditures for the Medicare SNF benefit climbed sixfold, from $0.4 billion to $2.4 billion (see Table 1-10). Most of this increase occurred after 1988. Between 1988 and 1989, expenditures for this benefit jumped an unprecedented 258 percent. This was caused by two major changes to the SNF program in 1988 and 1989 that dramatically affected utilization, namely clarification of coverage guidelines in 1988 and the Medicare Catastrophic Coverage Act.[11] Both of these increased the number of enrollees using the benefit. In 1990, SNF expenditures decreased 29 percent after the Act was repealed.

Between 1980 and 1990, Medicare SNF payments per covered day of service increased 96 percent, from an average of $47.54 to $93.12. This growth was 39 percentage points more than general inflation over the period.

Medicare SNF payments per person served remained fairly constant between 1980 and 1985, rising roughly 3 percent annually. However, in 1987 they began to accelerate, increasing by 13 percent and, in 1988, by 16 percent.

Between 1988 and 1989, however, enrollees using the benefit increased 66 percent, and covered days escalated almost 175 percent because of the clarification of coverage guidelines and the MCCA cited earlier. In 1990, SNF expenditures fell almost 30 percent due to a decline in covered days per patient. The number of patients served, however, continued to grow. The clarification of coverage guidelines in 1988 kept both utilization and expenditures higher than pre-MCCA levels. Clearly, the dramatic increase in total program expenditures is due primarily to increased utilization rather than to price increases.

Utilization was substantially affected by changes that allowed more enrollees to use the SNF benefit. Higher SNF costs per day accounted for less than

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Table 1-10. Medicare Skilled Nursing Facility Utilization and Spending, 1980-1990

Year	Covered Days (In Thousands)	Patients Served* (In Thousands)	Days Per Patient Served	Cost Per Skilled Nursing Facility Day	Total Spending (In Millions)
1980	8,645	257	33.6	$ 47.54	$ 411
1981	8,518	251	33.9	52.83	450
1982	8,814	252	35.0	55.82	492
1983	9,314	265	35.1	56.37	525
1984	9,640	299	32.2	58.20	561
1985	8,927	314	28.4	64.64	577
1986	8,160	304	26.8	70.83	578
1987	7,451	293	25.4	84.55	630
1988	11,033	384	28.7	86.65	956
1989	30,046	636	47.2	113.93	3,423
1990	26,000	815	31.9	93.12	2,421
Average annual percent change:					
1980-1985	0.6%	4.1%	-3.3%	6.3%	7.0%
1985-1990	23.8	21.0	2.3	7.6	33.2

* These numbers are for fee-for-service only and may not include health maintenance organization enrollees.

SOURCE: Health Care Financing Administration, Office of the Actuary.

one-third of the growth. A small part of the increased utilization may also have been brought on by PPS, which provided hospitals with an incentive to reduce the length of inpatient stays by transferring patients to SNFs for post-acute care services. In 1984, for example, the number of Medicare patients receiving SNF care rose 12.8 percent over 1983.

Hospital Swing Beds

The Medicare swing-bed program was designed to address the shortage of nursing home beds in rural areas and low occupancy rates in rural hospitals. A swing-bed hospital is a small hospital that can use its beds interchangeably to furnish either acute care services or SNF-type services to Medicare beneficiaries. Swing-bed hospitals are generally allowed to use any number of their acute care beds for SNF-level care.

Hospitals began participating in the swing-bed program in 1982; only hospitals with fewer than 50 beds could qualify. In 1987, the program was extended to rural hospitals with fewer than 100 staffed beds, although additional requirements were placed on these hospitals. The number of hospitals participating in the program has increased every year since its implementation. In 1989, approximately 844 of 1,255 eligible hospitals participated in the program.

The Medicare swing-bed per diem rate, calculated for each state, is based on the state's average Medicaid SNF rate in the previous calendar year. Medicaid SNF payment levels and methods vary from one state to another.

The number of Medicare admissions to swing beds has increased. The average number of covered days for beneficiaries staying in swing beds has consistently been less than 20—substantially lower than that for beneficiaries in skilled nursing facilities.

Swing-bed days account for only a small proportion (about 5 percent) of total SNF care days provided to Medicare beneficiaries. However, the creation of swing beds may have increased access to post-acute care for beneficiaries living in rural areas who may not have such care available close to home. In 1988, there were fewer SNF beds per 1,000 population in areas where swing beds were located compared to those without swing beds.[12]

Home Health Care

Medicare beneficiaries can qualify for home health care benefits if they are confined to their homes and need occasional skilled nursing care for an acute or post-acute condition. Covered home health care services include part-time or intermittent nursing care; physical, occupational, or speech therapy; medical social services; part-time or inter-

mittent services of a home health aide; medical supplies; and durable medical equipment. There is no time limit or prior hospitalization requirement. Program guidelines generally limit part-time or intermittent nursing care to 35 hours per week for up to three weeks. There is no deductible or coinsurance charge for this care. Services must be provided by a Medicare-certified home health agency.

Payment to home health agencies is based on reasonable cost reimbursement subject to certain limits. The limits are set at 112 percent of the mean labor-related and non-labor related per unit costs for each type of service provided by free-standing home health agencies. The limits are applied on an aggregate basis to all visits made by the agency. The payment mechanism for home health care services provides an incentive to control costs for agencies that are above or near the payment cap. Agencies with costs below the cap, however, do not have as much incentive to keep costs down.

Spending for home health care climbed by 440 percent between 1980 and 1990. The largest increase occurred from 1989 to 1990, when spending jumped 47 percent to $4.4 billion (see Table 1-11). About 1.7 million beneficiaries received home health care services in 1990, an increase of 129 percent over 1980. Intensity of care, as measured by the number of visits per patient served, has fluctuated throughout the decade. It increased substantially, however, after 1988.

Between 1981 and 1984, beneficiaries served rose at double-digit rates because of a provision in OBRA 1980 that allowed for-profit home health agencies to participate in Medicare in states that do not require their licensing. This change significantly boosted the number of home health agencies participating in the program. There were 5,730 Medicare participating home health agencies in 1990, an increase of 96 percent over 1980.

The latest increase in utilization occurred because of a court case that required HCFA to revise the eligibility and coverage manual, and clarify the rules for part-time or intermittent care criteria. These changes, which became effective in July 1989, reduced provider concerns about retroactive coverage denials of intermittent or part-time care and included a provision for case management services.

The average charge per visit rose 76 percent from 1980 to 1990, only 19 percent more than general inflation. The increase between 1985 and 1990 was actually less than general inflation. Higher spending therefore is due to greater numbers of beneficiaries served and more visits per patient. The average charge per visit accounted for only a small part of the growth in home health expenditures.

Table 1-11. Medicare Home Health Care Utilization and Spending, 1980-1990

Year	Visits (In Thousands)	Patients Served[a] (In Thousands)	Visits Per Patient Served	Spending Per Visit	Spending Per Patient Served	Total Spending (In Millions)[b]
1980	16,322	726	22.5	$37.19	$ 836	$ 817
1981	22,688	948	23.9	41.34	989	1,054
1982	30,628	1,154	26.5	11.50	1,181	1,380
1983	36,898	1,318	28.0	47.35	1,325	1,770
1984	40,422	1,498	27.0	51.46	1,389	2,107
1985	39,449	1,549	25.5	55.49	1,413	2,220
1986	38,000	1,571	24.2	58.21	1,408	2,242
1987	35,588	1,544	23.0	61.71	1,422	2,232
1988	37,100	1,582	23.5	64.10	1,503	2,422
1989	46,173	1,685	27.4	63.78	1,748	3,008
1990	65,985	1,665	39.6	65.62	2,601	4,415
Average annual percent change:						
1980-1985	19.3%	16.4%	2.5%	8.3%	11.1%	22.1%
1985-1990	10.8	1.5	9.2	3.4	13.0	14.7

[a] These numbers are for fee-for-service only and may not include enrollees in health maintenance organizations.

[b] Includes Part B expenditures.

SOURCE Health Care Financing Administration, Office of the Actuary

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Changes in coverage and eligibility requirements fueled the growth in home health visits. Greater utilization can also be attributed to expansion in the number of agencies eligible to participate in the program. It is difficult, however, to differentiate the effect of PPS on home health care expenditures due to other changes taking place in the 1980s that may also have influenced spending and use.

Hospice Care

The Medicare hospice benefit was introduced in 1984. Terminally ill Medicare beneficiaries whose life expectancy is six months or less are eligible to receive these services. Hospice care provided to dying persons and their families is supportive rather than cure-oriented. Once a beneficiary chooses to receive the hospice benefit, he or she must waive the right to all other Medicare benefits. Coverage is limited to 210 days, but beneficiaries can receive an additional 90-day period of coverage if they are recertified as terminally ill. Hospice benefits include nursing care, various therapies, medical social services, homemaker-home health services, physicians' services, short-term inpatient care, and patient counseling.

Hospices are paid prospectively for the care they deliver, and the rates vary according to level of care furnished to the beneficiary. They are paid one of four predetermined rates for each day of care they provide: routine home care, continuous home care, inpatient respite care, and general inpatient care.

The number of Medicare-certified hospice providers increased from 108 in 1984 to 825 in 1990. Both spending for hospice care and the number of beneficiaries receiving it have grown markedly (see Table 1-12). Total spending for hospice care was about $320 million in fiscal year 1990, and there were slightly more than 100,000 hospice admissions. Spending for the benefit is expected to increase dramatically, to more than $1 billion, by 1995. The hospice benefit, however, substitutes for spending in other parts of Medicare that might occur if the benefit were not available.

The rise in hospice spending is due to higher hospice admission rates and more days of care per admission. The admissions increase reflects the fact that the benefit is new and that more providers are furnishing this care. The number of days per admission climbed from 29 in fiscal year 1984 to 51 in fiscal year 1990, or 76 percent. The cost per patient day rose by only 37 percent over this period, a relatively small amount after accounting for inflation.

Dialysis Facilities

People with ESRD are eligible for all Medicare benefits if they are fully or currently insured under Social Security, entitled to monthly Social Security benefits, or the spouse or dependent child of someone insured under Social Security. About two-thirds of enrollees are under 65. Entitlement to Medicare benefits generally begins in the third month after the month in which renal dialysis is initiated and ends 12 months after dialysis stops. Patients accepting home dialysis training can become entitled to Medicare benefits earlier.[13]

Table 1-12. Estimates of Hospice Program Data, Fiscal Years 1984-1995

Fiscal Year	Hospice Admissions	Days Per Admission	Cost Per Hospice Day	Cost Per Admission	Total Cost (In Millions)
1984	2,200	29	$62	$1,800	$2
1985	11,000	33	66	2,200	15
1986	28,012	37	66	2,442	35
1987	68,721	41	74	3,034	63
1988	84,770	44	74	3,256	90
1989	89,008	48	74	3,470	211
1990	102,359	51	85	4,245	320
1991	112,595	53	93	4,828	465
1992	120,477	55	98	5,270	605
1993	126,501	57	103	5,749	760
1994	132,826	59	108	6,258	920
1995	139,467	61	114	6,811	1,100

SOURCE: Congressional Budget Office estimates, 1984-1989, and baseline projections for 1990-1995.

Program expenditures for ESRD beneficiaries almost doubled over the 1984 to 1989 period, to $4.4 billion. The program spent an average of $26,600 per beneficiary in 1989, this includes all Medicare-covered services. About one-fifth of program expenditures are for outpatient dialysis treatment.

Medicare spending for dialysis treatment totaled $1.2 billion in 1989, a 50 percent increase over 1984. Similarly, the number of enrollees receiving dialysis grew by 49 percent between 1984 and 1989. A total of 129,800 beneficiaries received dialysis treatment in 1990. Facilities that provide dialysis receive a prospectively set rate per treatment. The payment rate per treatment has essentially been unchanged since 1983, so that price changes have not been responsible for increases in Medicare expenditures. The average number of treatments per patient year has also not changed appreciably. The growth in Medicare spending for dialysis, therefore, was due to greater numbers of beneficiaries receiving this treatment.

Other Facilities, Providers, and Suppliers

Medicare recognizes for payment purposes a host of other facilities, providers, and suppliers (see Tables 1-1 and 1-6). Available information shows their proliferation between 1980 and 1990, which may have enhanced beneficiaries' access to care. Data on expenditures, on the other hand, are quite limited except for independent laboratories.

Spending for independent laboratories rose more than 1,000 percent, from $139 million to $1.5 billion, between 1980 and 1990. Most of this growth occurred after 1984. Despite higher expenditures, the number of facilities increased by only 42 percent between 1980 and 1990. Since 1984, clinical laboratory services have been paid according to a fee schedule that limits increases in per unit costs for a given procedure. However, it does not control growth related to heavier utilization and greater sophistication of services. These latter two factors, along with increased utilization of independent laboratories rather than hospital outpatient and physicians' offices laboratories, contributed significantly to the dramatic rise in spending.

Nonfacility Providers

Medicare payment for physician services has recently undergone a major change, moving to a fee schedule using relative value scales. Throughout most of the 1980s, however, physician services were paid using a fee-for-service system based on reasonable charges, with each service billed separately. Since the mid-1980s, Congress has increasingly put restrictions on increases in physician payment. Targeted particularly at doctors who did not accept Medicare payment as payment in full, these strategies were designed to encourage physician participation in the Medicare program. They were also aimed at restraining spending growth and limiting beneficiary liability.

Between 1980 and 1990, real spending for physician services rose by 121 percent due to increased utilization and intensity, and higher charges. Between 1980 and 1989, the percentage of beneficiaries receiving physician services paid for by Medicare grew 26 percent. Some of this increase may be explained by the fact that the Part B deductible changed very little over this period.[14]

Growth in the number and intensity of services substantially contributed to the higher physician spending over the decade. Between 1980 and 1984, increased volume and intensity contributed about 7 percent annually to this trend. These factors contributed about 6 percent annually to physician expenditures between 1984 and 1988.[15]

By contrast, higher physician prices contributed about 9 percent annually to the growth in spending between 1980 and 1984, compared with only about 3 percent between 1984 and 1988.[16] The slower growth in physician payment rates was due to controls placed on physician fee increases and lower inflation in the latter part of the decade.

RELATIONSHIP OF UTILIZATION AND SPENDING TRENDS TO PATTERNS OF CARE

Medicare spending continues to spiral at twice the rate of general inflation, despite attempts to constrain it through changes in Medicare payment and coverage policies. There are many complex and

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interacting forces that affect total spending, including the price, overall utilization, and intensity of services; an increase in the number of Medicare beneficiaries; inflation; technological advances; and practice pattern changes. Modifications to Medicare payment and coverage policies also influence spending in ways that were not necessarily intended. The importance of these factors differs substantially among the types of facilities and the services beneficiaries receive.

Expenditures for inpatient acute care hospital services continue to be the largest component of spending, but the rate of growth has slowed partly because of declining admissions. Controls on payment rate increases have also played a substantial role in reducing spending growth. Under PPS, hospitals have an opportunity for financial benefit if they control the services provided throughout the hospital stay, including those furnished within three days of admission. Nevertheless, incentives remain to maximize payment by unbundling services that would have been provided during the inpatient stay. Reduced length of stay and increased utilization of post-acute care service are evidence of this phenomenon.

PPS and other factors that constrained inpatient hospital utilization at the same time helped drive up Medicare spending for other services. For example, the rapid expansion of rehabilitation services is likely related to PPS incentives to shorten inpatient length of stay. The growth in SNF and home health agency use may also partially be attributed to these incentives, although changes in coverage rules probably had a more significant impact.

In other cases, higher spending reflects the interaction of new technological capabilities and changes in policy. Ambulatory surgery is illustrative. In the early 1980s, Medicare began to cover and pay for surgery performed in free-standing units. Technological advances allowed procedures that previously had been performed primarily in inpatient settings, such as cataract surgery and arthroscopy, to be performed on an outpatient basis. This change in setting was encouraged by the Medicare program because it substantially lowered the cost of providing individual services. The result, however, was that more beneficiaries received services, thus boosting spending in outpatient settings.

Post-acute care increasingly can be delivered not only in skilled nursing facilities, but also in rehabilitation hospitals and units and through home health care providers. Similarly, certain surgical procedures can be provided in inpatient and outpatient hospital units, in free-standing ambulatory surgical centers, and in physicians' offices. The availability of multiple facilities and sites of service creates opportunities to meet the needs of a diverse population of enrollees in an appropriate fashion. However, multiple settings contribute to the inability to contain total health care spending and to ensure appropriate patterns of care across an entire episode of illness.

Changes in coverage and benefits also exert an influence on the growth in Medicare spending. This is particularly evident in the case of SNF and home health agency services. Recent changes clarifying coverage requirements for these services are major contributors to higher utilization and spending.

Other considerations in the context of cost control are the various payment methods employed across facilities and sites, even for essentially similar services. Because of this, cost control efforts are fragmented and generally are directed only at constraining the unit price of a service rather than at checking overall utilization and total expenditures. The Medicare program implemented PPS to control the costs of services provided during an inpatient hospital stay, but has not developed similar controls for other sites of care. This may help explain the faster growth in spending observed in other parts of the program. Multiple payment methods also contribute to the inability to ensure the most appropriate pattern of care across settings.

Many of the payment strategies for controlling expenditures in other settings have focused on spending per unit of service. But these approaches do not constrain growth in intensity or volume of services provided. Although Medicare SNF payment methods can be used to control the price per SNF day, for instance, they do not control the number of beneficiaries receiving care or the number of days provided. The Medicaid program and state efforts to control the number of facilities, as well as the limited nature of the Medicare SNF benefit, probably have much more of an impact on overall Medicare spending for these services. Other ser-

vices, such as home health and clinical laboratories, are less subject to constraints on volume.

While maintaining or even improving the package of services furnished during an episode of care, Medicare's efforts to control growth in spending thus affect and are affected by the diversity of practitioners and suppliers. Further, patterns of care are shaped not only by clinical decisions and technological capabilities, but also by payment methods and service availability. The Commission's goals in modifying payment methods consider how all these factors affect the broader health care delivery system.

Goals of Medicare Payment Methods

ProPAC believes that Medicare's payment methods should result in consistent financial incentives across all treatment settings. These methods should reward productivity improvements and discourage unnecessary intensity. To achieve this, system modifications should account for the different types of providers and facilities that may be involved in the services delivered during an episode of care.

In addition, the payment systems should promote appropriate quality of care throughout an episode of illness, from ensuring access to necessary services to coordinating the array of services provided. Clearly, factors other than Medicare's payment methods have a major impact on quality and access. These include licensure and certification requirements, health care personnel training, and policies of other payers, to name a few. To the extent that Medicare payment policies encourage coordination of services over an episode, they should promote these policy goals.

Further, the Commission believes that individual providers should be adequately compensated for the services they furnish. Inadequate payment could have serious implications for access to and quality of care. ProPAC is mindful, however, of the current fiscal environment and the Federal budget deficit: Rising health care costs are a grave concern, and payment policy changes need to address this issue. Achieving the balance between appropriate payment levels and cost containment presents a significant challenge in efforts to reform Medicare's payment methods.

Commission Payment Reform Activities

Since its inception, the Commission has been involved in payment reform for inpatient hospitals and excluded facilities. This mandate was recently expanded to include hospital outpatient facilities, skilled nursing facilities, home health agencies, and dialysis facilities. ProPAC will incorporate the goals discussed above into its analyses and recommendations on payment reform for this diverse group.

In its forthcoming March report on hospital outpatient payment policies, ProPAC offers recommendations on an incremental approach to fully prospective payment methods for outpatient services. The Commission believes that for all outpatient facilities and providers, prospective payment is an appropriate means to achieve consistent financial incentives for productivity and the right level of intensity and cost containment. Along with policy changes, adequate quality assurance mechanisms also need to be developed. In March, ProPAC will also issue a preliminary report on SNF payment. Although this report will not recommend a specific payment method, it will provide information and a framework for achieving the same goals with SNF payment reform. The Commission's activities on the other facilities under its expanded mandate will be directed toward these ends.

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Notes to Chapter 1

1. Health Care Financing Administration estimate.

2. Health Care Financing Administration, Office of Research, unpublished data from a forthcoming report, September 25, 1991.

3. SMG Marketing Group, *Freestanding Outpatient Surgery Center Directory and Report* (Chicago, IL: SMG Marketing Group, 1991).

4. Cancer hospitals have been excluded from PPS only since 1989.

5. For more information, see the Commission's forthcoming June 1992 report to Congress on excluded providers.

6. For more information, see the Commission's March 1992 report to Congress on hospital outpatient payment.

7. American Hospital Association, *Hospital Statistics*, 1990-1991 edition (Chicago, IL: AHA).

8. Ibid.

9. For more information, see the Commission's March 1992 report to Congress on skilled nursing facility payment.

10. During 1989, when the Medicare Catastrophic Coverage Act was in effect, SNF services were covered for 150 days per calendar year and did not require a prior hospitalization. In addition, coinsurance of $25.50 was required only for the first eight days of coverage

11. In April 1988, HCFA clarified the SNF coverage guidelines. This resulted in an expansion of Medicare SNF utilization; previously, many beneficiaries did not apply or were not encouraged to apply for Medicare coverage because of the possibility of retroactive denial of coverage. The MCCA eliminated the three-day prior hospitalization rule, expanded the allowable days of coverage, and modified the coinsurance policy, resulting in increased utilization of the Medicare SNF benefit.

12. Unpublished ProPAC analysis.

13. For more information, see the Commission's forthcoming June 1992 report to Congress on dialysis facility payment.

14. Beneficiaries do not start receiving Medicare Part B benefits until they have reached the Part B deductible amount, which was $75 from 1983 to 1989 and increased to $100 in 1990. Only enrollees who exceed the Part B deductible are counted as using physician services.

15. Physician Payment Review Commission, *Fee Update and Medicare Volume Performance Standards for 1992*, Report No. 91-3, May 15, 1991.

16. Ibid.

Chapter 2

Recommendations

Chapter 2

Recommendations

The Prospective Payment Assessment Commission (ProPAC) was created by Congress in 1983. Its primary responsibility then was to analyze issues and make recommendations for updating and improving the Medicare prospective payment system (PPS). Over time, Congress has expanded ProPAC's responsibilities to include analyzing current payment policies for all facility services furnished to Medicare beneficiaries and developing policies for the future.

These expanded responsibilities include payment for hospital outpatient services, services furnished by skilled nursing facilities (SNFs) and home health agencies, and dialysis services for end-stage renal disease (ESRD) patients. The Congress has also requested that ProPAC examine and report on broader issues regarding the effectiveness and quality of health care delivery in the United States. The Commission, however, continues to devote a substantial amount of effort to updating and improving payment for PPS hospitals and excluded hospitals and distinct-part units.

From 1985 through 1990, ProPAC's recommendations were delivered to the Secretary of Health and Human Services (HHS). Following the enactment of the Omnibus Budget Reconciliation Act (OBRA) of 1990, the Commission's report and recommendations are now made directly to Congress. The Secretary, however, is still required to consider ProPAC's recommendations and respond to them in the annual notice of PPS rulemaking published in the *Federal Register*.

ProPAC's analyses and decisionmaking are guided by a set of principles that were initially based on the goals of PPS, but which also are applicable to other facility services. These principles provide the foundation for the Commission's recommendations. They are:

- Ensuring beneficiary access to high-quality health care;
- Encouraging productivity and long-term cost-effectiveness;
- Facilitating innovation and appropriate technological change;
- Promoting equity in the distribution of payments;
- Maintaining stability for providers, consumers, and third-party payers; and
- Making decisions based on reliable, timely data and information.

Along with these principles, the Commission is mindful of the current fiscal environment. Rising health care costs and their effect on the Medicare trust funds and the Federal budget are concerns the Commission takes into account with each recommendation. Moreover, budgetary pressures intensify the need to address distributional and technical payment issues that may affect access and quality of care furnished to Medicare beneficiaries.

ProPAC's recommendations reflect the collective judgment of the 17 Commissioners. Some of the subjects of these recommendations are repeated every year, such as the annual update. Others are either modifications of previous recommendations or cover new issues. All incorporate recent research findings. This year, in addition to its specific recommendations, the Commission has highlighted several areas of concern. Work on these and other issues continues.

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RECOMMENDATIONS FOR FISCAL YEAR 1993

The Commission's recommendations and concerns fall into six areas:

- Updating PPS payments,
- Adjusting the payment system,
- Updating and adjusting payments to PPS-excluded hospitals and distinct-part units,
- Updating payments to dialysis facilities,
- Improving hospital outpatient payment policy, and
- Improving skilled nursing facility payment policy.

Updating PPS Payments

The Commission is mandated by law to recommend to the Congress each year the appropriate update to the inpatient hospital payment rates under PPS. As required, ProPAC considers several factors in developing its annual update recommendation: the hospital market basket index (which reflects the prices of resources used by hospitals in providing inpatient care), scientific and technological advances, hospital productivity, the quality of health care, and long-term cost-effectiveness. The Secretary of Health and Human Services is required to take the Commission's recommendation into consideration in developing his update recommendation. The actual update is determined by Congress.

In OBRA 1990, the PPS update was established for each fiscal year through 1995. For fiscal year 1993, the update is set equal to the change in the hospital market basket index minus 1.55 percentage points for urban hospitals, and the change in the index minus 0.55 percentage points for rural hospitals. Even though the fiscal year 1993 update has been set by law, ProPAC has continued to follow its approach of examining the individual factors that together determine the appropriate update to the PPS payment rates. The Commission believes that this approach will result in an update that is sufficient to maintain Medicare beneficiaries' access to high-quality care while encouraging hospital efficiency in providing such care.

In addition to the update to the PPS payment rates, the Commission in this report recommends an update for rates derived from hospital base-year costs. These rates may be used in place of the PPS rates for sole community hospitals and small rural Medicare-dependent hospitals. ProPAC also considers the update for the Federal payment rate under the prospective payment system for capital, which became effective in fiscal year 1992. The update for facilities currently excluded from PPS is addressed in a later section of this chapter.

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1993, the PPS standardized payment amounts should be updated to account for the following factors:

- **The projected increase in the Health Care Financing Administration (HCFA) PPS market basket index, currently estimated at 4.5 percent;**
- **An upward adjustment of 0.2 percentage points, to reflect the difference between the ProPAC and HCFA market baskets;**
- **A correction for substantial error in the fiscal year 1991 market basket forecast of –0.8 percentage points;**
- **A net discretionary adjustment factor of zero; and**
- **A net adjustment of –0.7 percentage points for case-mix change.**

In addition, a positive adjustment of 0.85 percentage points for hospitals in rural areas and a negative adjustment of 0.15 percentage points for hospitals in large urban and other urban areas should be made to reflect a continuation of the phase out of the differential in the standardized amounts between rural and other urban hospitals.

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ProPAC's recommendation would result in an estimated average update factor of 3.2 percent for fiscal year 1993, with an increase of 3.05 percent for urban hospitals and 4.05 percent for rural hospitals. This recommendation reflects the Commission's judgment about the appropriate increase in the level of PPS payment rates. Since it is based on current projections of the fiscal year 1993 increase in the market basket index, the effective value of ProPAC's update factor recommendation may be modified as more current forecasts become available. The components of ProPAC's update factor recommendation are summarized in Table 2-1, and a discussion of each of those components follows.

It should be noted that the increase in average per case payments to hospitals in each year is greater than the PPS update. This is because increases in the Medicare case-mix index (CMI) result in proportional increases in hospital payments. Future changes in case mix are difficult to project; however, on the basis of currently available data, ProPAC estimates that the CMI will increase by 2.3 percent in fiscal year 1993. Based on the Commission's recommendation of a 3.2 percent average update, the average increase in per case payments would be about 5.6 percent.

PPS Market Basket Increase Forecast and Forecast Error Correction–The forecasted increase in the market basket index is the expected change in the prices paid by hospitals for the resources used during a typical hospital stay. This forecast is the reference point used in updating the PPS payment rates. The current forecast is for a 4.5 percent increase in HCFA's PPS market basket index during fiscal year 1993.

In its March 1990 *Report and Recommendations to the Secretary, U.S. Department of Health and Human Services*, ProPAC proposed modifications to the market basket used by HCFA. Although

Table 2-1. Recommended PPS Update Factor for Fiscal Year 1993

Components of the Update		
Components applied to all hospitals:		
Fiscal year 1993 HCFA PPS market basket forecast*		4.5%
Adjustment for difference between HCFA and ProPAC market baskets*		0.2
Correction for fiscal year 1991 forecast error		- 0.8
Components of discretionary adjustment factor		
Scientific and technological advancement allowance	1.0	
Productivity adjustment	-1.0	
Net discretionary adjustment factor		0.0
Adjustments for case-mix change (fiscal year 1992)		
Total DRG case-mix index change	- 2.5	
Real across-DRG case-mix change	1.5	
Within-DRG case-complexity change	0.3	
Net adjustment for case-mix change		-0.7
Additional adjustments to the standardized amounts:		
Adjustment for large urban areas	-0.15	
Adjustment for other urban areas	-0.15	
Adjustment for rural areas	0.85	
Total Update Factor		
Overall average		3.2
Large urban	3.05	
Other urban	3.05	
Rural	4.05	

* Market basket forecast provided by the Health Care Financing Administration, Office of the Actuary, December 1991. The market basket forecast is subject to change as more current forecasts become available.

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HCFA adopted most of these modifications, it did not incorporate the key provision that increased the weight of internal hospital wages in the computation of the market basket index. The Commission believes that the market basket as currently constructed does not adequately recognize the unique characteristics of the hospital labor market.

Since the PPS update for fiscal year 1993 is legislated relative to a market basket that HCFA would implement, HCFA's market basket is used as the basis for the update. ProPAC's update recommendation takes this into account by making an adjustment of 0.2 percentage points to account for the estimated effect of the modifications it believes are justified.

A forecasted market basket increase of 5.2 percent was used to set payments in fiscal year 1991. The actual market basket increase, however, was 4.4 percent. The update for fiscal year 1991 was thus set 0.8 percentage points higher than if the actual market basket increase had been known at the time.

The Commission believes that a correction for substantial error in market basket forecasts is an important part of its update framework. This correction protects both hospitals and the Federal government by adjusting the base payment rates so that the effects of past forecast errors (both positive and negative) are removed. Therefore, ProPAC's update recommendation also includes a –0.8 percentage point adjustment for fiscal year 1991 market basket forecast error.

Discretionary Adjustment Factor–The discretionary adjustment factor (DAF) incorporates considerations related to scientific and technological advancement and hospital productivity improvement, as provided in the statute establishing PPS. While the market basket index measures the cost of the resources used during a typical hospital stay, the components of the DAF reflect changes in the mix of those resources over time. In general, scientific and technological advancement accounts for the use of new resources that may increase costs; productivity accounts for changes in resource use that may decrease costs.

The scientific and technological advancement allowance is a future-oriented policy target. It provides additional funds for hospitals to adopt quality-enhancing health care advances, even when they increase costs. To develop an informed judgment as to the appropriate level of this allowance, ProPAC each year sponsors a study that examines a set of the most important new cost-increasing technologies and scientific developments. For fiscal year 1993, these technologies are expected to increase Medicare operating costs by 0.9 percent. However, the cost-increasing effects of "small-ticket" technologies and changes in practice patterns are not included in this estimate. Given these considerations, the Commission believes that 1.0 percent is an appropriate level for the scientific and technological advancement allowance.

The productivity adjustment is also a future-oriented target. The Commission believes it is reasonable to expect hospitals to achieve productivity improvements during fiscal year 1993 comparable to those achieved in other sectors of the economy. The recommended adjustment of –1.0 percent is based on ProPAC's determination that hospital productivity should increase by 2.0 percent, and that the savings from such improvement should be shared equally by hospitals and the Medicare program.

The Commission therefore concludes that the positive scientific and technological advancement allowance and the negative productivity improvement adjustment should offset each other. ProPAC believes that it is appropriate for the costs of scientific and technological advancement to be financed by expected productivity gains, to provide an incentive for hospitals to strive for productivity improvement as they adopt new technologies. (See Appendix A for more information on the DAF.)

Adjustments for Case-Mix Change–For fiscal year 1993, the PPS update should be reduced by 0.7 percentage points to account for the net effect of case-mix change during fiscal year 1992. This adjustment reflects:

- A 2.5 percentage point reduction for the estimated change in the CMI;
- A positive allowance of 1.5 percentage points for real case-mix change across diagnosis-related groups (DRGs); and
- A positive allowance of 0.3 percentage points for within-DRG case-complexity change.

Adjusting for these factors allows payments to increase due to real changes in the resources required to treat an average Medicare patient. At the same time, it removes the effect of changes in medical record documentation and coding practices that are unrelated to patient resource requirements (also referred to as upcoding).

The annual rate of increase in the CMI has generally declined over time. This pattern reflects a dramatic change in the distribution of patients across DRGs (due both to treatment patterns and to upcoding) when PPS was implemented, followed by a gradual settling toward a new equilibrium. This trend, however, has been interrupted when revisions to the payment system created new opportunities for upcoding—particularly in fiscal year 1988, when the criteria for assigning patients to DRGs were changed.

Each year, ProPAC estimates the increase in the CMI for the previous year, based on available data on the trend in prior years and expectations about the effects of any DRG changes that may have been implemented. ProPAC's estimate for fiscal year 1991 indicates that changes in the DRG assignment rules led to another acceleration in the CMI. ProPAC's estimate of the increase in the CMI for fiscal year 1991 is 2.7 percent. In fiscal year 1992, DRG changes and increases in the numbers of fields for entering diagnosis and procedure codes on the Medicare bill may provide additional opportunities for upcoding. Nonetheless, the Commission expects that the increase in the CMI will be 2.5 percent in fiscal year 1992, lower than in the previous year.

Real CMI change is that portion related to actual increases in patient resource requirements across DRGs. ProPAC's estimate of real CMI change takes into account previous studies that apportioned increases in the CMI into real and upcoding components. These studies indicate that real CMI change in past years has been in the range of 1.5 percent to 1.6 percent. In the Commission's judgment, 1.5 percentage points of the 2.5 percent increase in the CMI for fiscal year 1992 will be related to real changes in patient resource requirements.

ProPAC's estimate of within-DRG case-complexity change takes into account information from a series of studies, in which a more detailed patient grouping mechanism is applied to Medicare data for discharges within each DRG. As with the CMI, the rate of increase in case complexity tends to decline over time. The most recent estimates are that case complexity rose by 0.6 percent in fiscal year 1989 and by 0.5 percent in fiscal year 1990. On the basis of this trend, ProPAC estimates that case-complexity change in fiscal year 1992 will be 0.3 percent.

During the first eight years of PPS, CMI change generated payment increases that were almost equal to those resulting from the annual updates and all other payment policies combined. Given the magnitude of this factor and its failure to diminish as much as expected, it remains an important topic on the Commission's analytic agenda.

Differential Adjustments to the Standardized Amounts–ProPAC supports the provisions in OBRA 1990 that eliminate the difference between the standardized payment amounts for hospitals in rural areas and for those in other urban areas (metropolitan areas with fewer than one million people). This is to be accomplished by fiscal year 1995 by providing higher updates to rural hospitals. Consistent with current law, the Commission is recommending that the PPS update for rural hospitals be 1 percentage point higher than that for urban hospitals. The overall average update of 3.2 percent based on ProPAC's PPS update framework would be maintained by increasing the rural update by 0.85 percentage points, and decreasing the large urban and other urban hospital updates by 0.15 percentage points.

Since the beginning of PPS, Medicare payments have been higher relative to costs for urban hospitals than for rural hospitals. This is primarily the result of two factors. Urban hospitals have benefited more from the PPS payment adjustments—particularly the effects of CMI change and the indirect medical education (IME) and disproportionate share (DSH) adjustments. In addition, rural hospitals have had large declines in inpatient volume, raising fixed costs per case.

However, as indicated in ProPAC's October 1991 report to Congress, *Rural Hospitals Under Medicare's Prospective Payment System*, several recent policy changes have improved the relative

performance of rural hospitals under PPS. This trend promises to continue. The Commission will monitor and analyze the further effects of these policies as additional data become available.

Recommendation 2: Amount of the Update Factor for Hospitals Paid on the Basis of Hospital-Specific Rates

The Commission believes that payments based on hospital-specific base-year costs for sole community hospitals and for small rural Medicare-dependent hospitals should be updated by the same factor that applies to the PPS rate for rural hospitals.

This recommendation would result in an update to the hospital-specific rates of 4.05 percent for fiscal year 1993, consistent with the Commission's recommendation on the PPS update. Since the update is based on current projections of the fiscal year 1993 increase in the market basket index, its effective value may be modified as more current forecasts become available.

OBRA 1989 provides that certain hospitals be paid on the basis of the PPS rate, their own 1982 base-year costs updated to the current year, or their updated 1987 base-year costs, whichever would yield the largest payment. Two groups of hospitals qualify for this special treatment: sole community hospitals, which meet certain criteria based on distance from other hospitals or market share; and small rural Medicare-dependent hospitals, which are rural hospitals with fewer than 50 beds and at least a 60 percent Medicare share of total discharges or inpatient days. The provision for small rural Medicare-dependent hospitals applies only to cost reporting periods ending on or before March 31, 1993.

Current law requires that the hospital-specific rates for these hospitals be updated at a rate equal to the increase in the PPS hospital market basket index. PPS rates, however, are to be updated by less than this amount in fiscal year 1993. This discrepancy means that hospitals with relatively high base-year costs (above the PPS rate) would receive a larger update than those with relatively low base-year costs. High-cost hospitals would therefore be twice advantaged. They would receive both their higher base-year cost rate and a higher update to those rates compared with lower-cost hospitals.

The update applied to the hospital-specific rates for sole community hospitals and small rural Medicare-dependent hospitals should be equal to that applied to the PPS rates under which the same hospitals would be paid. This option provides relief for hospitals with high base-year costs due to their special circumstances by raising their payment base. However, once the payment base is raised, it subjects them to the same payment constraints deemed appropriate for all other comparable PPS hospitals.

Recommendation 3: Updating Capital Payment Rates

The Commission recommends that a single update factor be developed for adjusting PPS operating and capital payment rates. The update framework should be consistent with that currently used by ProPAC to develop the PPS operating rate update recommendation, and should be put into use for fiscal year 1994.

Medicare's capital payment method was changed from a cost basis to a prospective per case payment beginning in fiscal year 1992. The new capital payment method will be phased in over a 10-year transition period. During the transition, an increasing portion of capital payments will be based on the national average payment rate.

The Secretary plans to update the base capital payment rate for fiscal year 1993 using the average per case increase in Medicare inpatient hospital capital costs in fiscal years 1989 and 1990, adjusted for case-mix change. The fiscal year 1994 and 1995 capital updates are to be based on a similar methodology. Starting in fiscal year 1996, the Secretary will determine the capital update factor using a framework similar to that used for updating PPS operating payment rates. Because the statute requires that Medicare capital payments be budget neutral with respect to 90 percent of costs through fiscal year 1995, the proposed updates will affect the base payment rate, but not total capital payments. Beginning in fiscal year 1996, however, the resulting base payment rate will determine the capital payments each hospital receives.

The Commission believes that ultimately there should be one payment for hospital inpatient operating and capital expenses. ProPAC understands that it is not possible to combine operating and capital payments until the transition to fully prospective capital payment is complete. Despite the separate payment rates, hospitals do not distinguish between their operating and capital payments. Operating payments may be used to defray capital shortfalls and vice versa. Thus, hospitals should face the same financial incentives for operating and capital decisions. Therefore, the Secretary should move to a single update approach for inpatient operating and capital payment rates as soon as possible.

The Commission believes that a formula-based update, consistent with that applied to the PPS update, should be used before fiscal year 1996. In ProPAC's view, the use of past cost increases to set future payment rates is inappropriate. This would incorporate past cost increases that may reflect inefficient capital spending behavior into the fiscal year 1996 base. Capital payments should be set at a level that reflects efficient capital spending per case. This would be accomplished by incorporating the update for capital payment rates into the current PPS update framework.

ProPAC therefore recommends the development and use of an update framework that combines capital and operating payments for fiscal year 1994. Like the operating update currently used by ProPAC, the new combined update framework should incorporate a market basket to measure changes in prices, as well as adjustments for scientific and technological advances, productivity, and case-mix change. This would ensure that updates to both operating and capital base payment rates reflect increases in the cost of the goods and services that hospitals require to produce inpatient hospital care efficiently.

Adjusting the Payment System

The PPS payment system adjusts hospital payments in several ways to account for factors such as the level of teaching activity, wage rates, and case complexity, which may legitimately affect hospital costs. These adjustments are important for providing a fair level of payment to hospitals depending on the circumstances they face.

As part of its mandate, the Commission examines the distribution of PPS payments across hospitals and makes recommendations concerning the various adjustments to the payment system. ProPAC considers adjustments that are made both at a hospital level and at a case level. In this year's report, the Commission makes recommendations concerning the indirect medical education and disproportionate share adjustments, improvements in the definition of labor markets, transfer payment policy, hemophilia clotting factor, epilepsy centers, and the program establishing essential access community hospitals (EACHs) and rural primary care hospitals (RPCHs). In addition, the Commission makes statements concerning DRG refinement, and Peer Review Organizations (PROs) and the quality of care.

Recommendation 4: Level of Indirect Medical Education and Disproportionate Share Adjustments to PPS Operating Payments

The Commission recommends that the indirect medical education adjustment to PPS operating payments be reduced from its current level of 7.7 percent to 7.0 percent for fiscal year 1993. This reduction should be implemented in a budget neutral fashion, with the anticipated decrease in indirect medical education payments returned to teaching hospitals that are designated as disproportionate share providers through a corresponding increase in their disproportionate share adjustment percentages.

The IME adjustment is intended to recognize the higher costs teaching hospitals incur in treating Medicare patients. These costs have been attributed to caring for patients with more severe or complex illnesses, providing a broader scope of more intense services, and using a costlier mix of staff.

ProPAC annually estimates the relationship between teaching intensity and adjusted Medicare operating costs per discharge. The adjustments control for differences in costs that are accounted for by other PPS payment factors, such as geographic differences in the PPS base payment amounts, the local area wage index, the hospital's Medicare case-mix index, and outlier payments for extremely long or costly cases. The most recent analysis was based on cost data from the sixth year of PPS and pay-

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ment rules for fiscal year 1992. The results indicate that, on average, a 10 percent difference in teaching intensity is associated with a 5.7 percent difference in Medicare operating costs per discharge.

The Commission recognizes that, since PPS began, the Medicare program has more than adequately compensated teaching hospitals for the costs of treating Medicare patients. The current 7.7 percent IME operating payment adjustment is substantially higher than the empirical estimate of 5.7 percent indicated by the most recent analysis. Moreover, PPS operating margins consistently have been higher for teaching hospitals than for nonteaching hospitals. PPS margins have been especially high for major teaching hospitals (that is, those with the highest levels of teaching intensity).

However, the overall financial performance of major teaching hospitals has been poor relative to other hospitals. Major teaching hospitals have had lower total margins than other hospital groups. The Commission is concerned that the continued operation of these hospitals and the fulfillment of their unique role in the provision of health care might be impaired by a substantial immediate reduction of Federal support.

ProPAC believes that the Medicare program's responsibility to its enrollees is broader than merely paying for Medicare operating costs. This responsibility includes the maintenance of access to high-quality health care, which might be affected adversely if the poor financial condition of major teaching hospitals were to worsen. A sharp reduction of the IME adjustment might have that undesirable effect.

Given these considerations, the Commission believes that a gradual reduction of the IME adjustment is a prudent course of action. ProPAC would reduce the adjustment by approximately one-third of the difference between the current level and the Commission's estimate of 5.7 percent each year for three years. Based on the current estimate of the relationship between teaching intensity and Medicare operating costs, the IME adjustment would be reduced to 6.3 percent in fiscal year 1994 and to 5.7 percent in fiscal year 1995. This approach recognizes as an ultimate objective the use of the IME adjustment to compensate appropriately for differences in Medicare costs that are attributable to differences in teaching intensity. ProPAC will continue to examine the financial status of teaching hospitals to avoid any deleterious effects on access to high-quality care for Medicare enrollees.

The DSH adjustment is designed to ensure that Medicare beneficiaries have access to high-quality health care at hospitals that treat a large share of low-income patients. Both access to care and the quality of the care provided by these hospitals might be affected adversely if their generally poor financial condition were to worsen. The Commission believes that the Federal government and the Medicare program have a broad responsibility to avoid that situation.

In recent analyses, ProPAC has compared several methods of measuring the burden of uncompensated care and distributing disproportionate share payments. These analyses indicate that, except for hospitals with the highest uncompensated care loads, the current DSH adjustment mechanism distributes payments reasonably proportional to the amount of uncompensated care provided. However, the hospitals that provide the largest share of uncompensated care receive a low share of DSH payments relative to that burden.

ProPAC's analyses indicate that DSH hospitals with teaching programs tend to have much lower total margins than other hospital groups (see Table 2-2). The Commission is concerned that the unique role of these hospitals in the provision of high-quality health care to low-income patients, including low-income Medicare patients, might be adversely affected if their financial condition were to worsen.

ProPAC analyzed the effects of several alternatives for distributing the savings that would result from a reduction of the IME adjustment. Redistributing these savings through an increase in the DSH adjustment for hospitals with teaching programs would greatly reduce the disparity in total margins across hospital groups. The Commission therefore recommends that the IME adjustment be exactly offset by corresponding increases in DSH payments for teaching hospitals designated as disproportionate share providers.

As noted earlier, changes in the IME and DSH adjustments should be considered in the context of their interactions with other components of the

Table 2-2. Simulated Aggregate Total Margins, in the Sixth Year of PPS, Using Fiscal Year 1992 Payment Rules with Alternative Adjustments (In Percent)

Adjustment Alternative	Payment Adjustment Category			
	IME Only	DSH Only	IME and DSH	Neither
Fiscal year 1992 payment rules, including a 7.7 percent indirect medical education adjustment	4.2%	4.0%	2.8%	4.5%
Fiscal year 1992 payment rules, with a 5.7 percent indirect medical education adjustment and savings redistributed to:				
Disproportionate share teaching hospitals	3.7	4.0	3.2	4.5
All disproportionate share hospitals	3.7	4.7	2.9	4.5
All hospitals	4.0	4.3	2.5	4.7
Fiscal year 1992 payment rules, with 5.7 percent indirect medical education adjustment and no redistribution of savings	3.7	4.0	2.2	4.5

SOURCE: ProPAC analysis of Medicare Cost Reports and MedPAR file data from the Health Care Financing Administration.

payment system and their effects on PPS payments, as well as hospitals' overall financial status. The impact on the quality of care and access to that care should also be considered. In general, any change in Medicare payment policy must be evaluated in terms of its effect on the health care system as a whole.

In the coming year, ProPAC will continue to examine the level and structure of the IME and DSH adjustments, as well as other factors that affect hospitals' payments, costs, and financial condition. The distribution of PPS and total margins and the other effects of potential changes in the IME and DSH adjustments will also be studied. ProPAC's most recent analysis is described in a technical report, *Indirect Medical Education and Disproportionate Share Hospital Payment Adjustments* (March 1992).

Recommendation 5: Consistency of Indirect Medical Education and Disproportionate Share Adjustments to PPS Capital and Operating Payments

The Commission recommends that the same level of indirect medical education and disproportionate share payment adjustments be applied to both operating payments and the prospective component of capital payments, beginning in fiscal year 1994. Further, ProPAC believes that the methods of determining these adjustments to PPS operating payments should also be applied to capital payments. Therefore:

- **The measure of teaching intensity used for the indirect medical education adjustments should be defined in terms of the ratio of residents per bed, and**
- **The criteria for designation as a disproportionate share provider should be based on urban or rural location and number of beds.**

These changes would better reflect the policy objectives of the Congress in defining and setting the levels of the payment adjustments. They would also be consistent with the principle of incorporating capital into the PPS rate.

Through fiscal year 1991, PPS operating payments were determined prospectively, while capital costs were paid on a pass-through basis. Therefore, the IME and DSH adjustments were applied only to PPS operating payments. In fiscal year 1992, capital payments began a 10-year transition to a fully prospective payment system. The prospective component of PPS capital payments also includes adjustments for teaching and disproportionate share

hospitals. However, both the definitions and the levels of these adjustments differ from the IME and DSH adjustments to operating payments.

A single IME adjustment applied to both operating and capital payments requires a consistent definition of teaching intensity. The measure of teaching intensity used for the IME adjustment for operating payments is based on the number of residents per available bed. By contrast, the number of residents per patient is used to define teaching intensity for capital payments.

The two measures of teaching intensity are similar for hospitals with high occupancy rates, but the per patient measure is much higher for hospitals with low occupancy rates. Therefore, basing the IME adjustment on the per patient measure would tend to reward low occupancy teaching hospitals at the expense of high occupancy teaching hospitals. The Commission believes this result is inconsistent with the PPS objective of encouraging the efficient provision of health care services.

Furthermore, ProPAC's analyses indicate that use of the per patient measure would substantially reduce payments to high occupancy major teaching hospitals in urban areas, which have a large share of low-income patients and low total margins. By contrast, the per patient measure would substantially increase payments to low occupancy (often suburban) hospitals, with smaller teaching programs, a smaller share of low-income patients, and higher total margins. Because the per patient measure would both produce inappropriate incentives and reduce IME payments to the teaching hospitals with the greatest need for Federal support, the Commission believes that the measure of teaching intensity for IME adjustments to both operating and capital payments should be based on the ratio of residents to available beds.

The IME adjustment applied to operating payments is based on an analysis of the relationship between teaching intensity and operating costs per Medicare case. The IME adjustment applied to capital payments is based on the relationship between teaching intensity and combined operating and capital costs per Medicare case. In the longer term, the Commission believes that a single IME adjustment applied to both operating and capital payments should be based on the combined measure. As with the current operating adjustment, the level should be set to reflect not only the empirical relationship, but also the broader policy objectives that have been incorporated by the Congress.

The eligibility criteria for the DSH adjustments to operating and capital payments also differ. The operating adjustment is based on urban or rural location and the number of beds, as well as the hospital's low-income share. However, only urban hospitals with at least 100 beds are eligible for the DSH capital payment adjustment. Thus, many hospitals that receive the DSH operating payment adjustment are not eligible for the capital payment adjustment.

In addition, the two DSH adjustments use different distribution formulas: The DSH operating payment adjustment is graduated, and directs more payments to hospitals with the highest shares of low-income patients than the DSH capital payment adjustment. ProPAC compared several alternative methods for distributing DSH payments and found that, of the alternatives considered, the graduated DSH operating payment formula distributes payments that most closely correspond to the broader objectives of the policy.

The Commission therefore recommends that the eligibility criteria and adjustment formulas developed for DSH operating payment adjustments be applied to capital payments. In anticipation of a fully prospective system for both operating and capital payments, ProPAC has recommended that consistent update factors be implemented in fiscal year 1994. The Commission also recommends that the IME and DSH adjustments applied to the prospective component of capital payments should be the same as the adjustments applied to operating payments, effective in fiscal year 1994.

Recommendation 6: Improvements in Labor Market Definitions

The Commission believes that the current PPS labor market definitions need to be improved or replaced as soon as possible. Suitable alternative definitions, however, are not immediately available. In cooperation with the American Hospital Association and the Health Care Financing

Administration, ProPAC is developing alternative labor market definitions that may alleviate many of the current problems. On the basis of this effort, the Commission hopes to be able to recommend substantially revised labor market definitions for fiscal year 1994.

Under PPS, an area wage index is used to adjust hospitals' DRG payment rates per discharge to reflect variations in the wage rates hospitals must pay for labor in different geographic areas. The index measures the level of average hourly compensation for hospital workers in each labor market area relative to the national average. Under current law, changes in the wage index are required to be budget neutral. Therefore, changes in the wage index do not affect aggregate payments to hospitals under PPS. However, the index is a key determinant of the distribution of payments among hospitals because of its impact on each hospital's base payment rate. A 10 percent difference in the wage index for a hospital's labor market area will lead to about a 7 percent difference in its total PPS payments.

Since the inception of PPS, the wage index has been constructed using labor market areas based on county boundaries. Urban labor market areas have been defined by metropolitan statistical areas (MSAs). Each MSA includes a set of contiguous, economically integrated counties, generally incorporating a central city and its surrounding suburbs. A single statewide rural labor market area has been defined for each state, including all counties in the state that are not in an MSA.

The use of labor market areas based on county boundaries has created two important problems. First, large differences in wage index values often exist between nearby hospitals located on either side of such boundaries. In fiscal year 1991, for example, the wage index for hospitals located in the Joliet, Illinois, MSA was 33 percent higher than that for nearby hospitals located in adjacent rural counties. Differences of somewhat lesser magnitude often exist among adjacent MSAs and among adjacent rural labor market areas in neighboring states.

In addition, many of these labor markets cover extensive geographic areas that include a large and diverse population of hospitals. This occurs because of the vast size of many counties, especially in the West. Hourly compensation for hospital workers often varies markedly among the hospitals within such areas. Consequently, many hospitals are paid according to an index that does not accurately reflect their actual labor market conditions.

These problems have led to numerous complaints about inequities in PPS payments. Hospitals in many rural areas have argued that they are treated unfairly because they compete for labor with hospitals in nearby MSAs. Similarly, hospitals in the highly urbanized central counties of MSAs have argued that their payments are too low because they are grouped with suburban hospitals.

In OBRA 1989, Congress established the Medicare Geographic Classification Review Board to consider hospital applications for geographic reclassification. Under this legislation, hospitals are permitted to apply for reclassification for the purpose of the wage index, the standardized amount, or both. Generally, hospitals may apply for reclassification to an adjacent MSA, or to an adjacent statewide rural area.

In its first year of operation, more than 1,100 hospitals applied to the board for reclassification effective in fiscal year 1992, mostly for the purpose of the wage index. About 90 percent of all applications were approved by the board. As a result, more than one-quarter of all rural hospitals and about 6 percent of urban hospitals have been reclassified from the PPS labor market areas in which they are actually located to nearby (generally urban) labor market areas.

These reclassifications have led to substantial increases in payments for many hospitals. HCFA estimated that payments to hospitals reclassified for the wage index would increase in fiscal year 1992 by 5.2 percent, due to reclassification alone. The estimated increase averaged 6.8 percent for reclassified rural hospitals and 2.9 percent for reclassified urban hospitals.

Statutory provisions governing the calculation of the wage index after reclassification protect most hospitals from declines in their wage index values. Therefore, the increase in aggregate payments due to reclassification was substantially larger than it otherwise would have been. However, the statute

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also requires the Secretary to adjust the standardized payment amounts for urban hospitals so that aggregate PPS payments do not change as a result of reclassification. Consequently, payments to urban hospitals were reduced by 1.0 percent (about $450 million) in fiscal year 1992. Thus, payments are expected to increase about 2.9 percent for urban hospitals that were reclassified for the wage index. Payments are expected to decline by 1.0 percent for most of the remaining urban hospitals.

ProPAC analysis of the recent reclassification decisions suggests that this policy has failed to resolve many of the problems it was intended to address. Although reclassification has clearly increased payments for many of the affected hospitals, large differences in wage index values still exist across the boundaries of adjacent labor market areas. The current labor market areas also continue to include diverse sets of hospitals with widely varying hourly compensation rates. Further, the reclassification process has created a sizable ongoing administrative burden and considerable uncertainty for hospitals.

Some of the failure of reclassification may be due to problems with the qualifying criteria. Improvements in the criteria for approving reclassification requests could reduce the number of inappropriate reclassifications. However, this would not solve the fundamental problems associated with the current labor market definitions because reclassification modifies only the edges of each labor market area.

Congress has continued to receive numerous complaints about the fairness of the wage index. Consequently, both the Senate Finance Committee and the House Ways and Means Committee have asked ProPAC to develop a new approach to labor market definitions. The American Hospital Association and HCFA have also expressed strong interest in this effort.

The most serious limitations of the current labor market definitions are related to the large size and fixed boundaries of MSAs and statewide rural areas. It is assumed, implicitly, that hospitals located within each area compete for labor, while those located on opposite sides of area boundaries do not. This produces large differences in wage index values for adjacent labor market areas. At the same time, substantial variations in hourly compensation rates within each area are unrecognized.

To define alternative labor market areas that recognize the local nature of labor competition, the Commission plans to develop hospital-specific labor markets based on the set of hospitals located nearest to each hospital, measured by road miles. These labor market areas will not have fixed geographic boundaries like county borders. Instead, for each hospital, the areas will merely identify other nearby hospitals as the most probable competitors for labor. The implicit assumption is that a hospital's nearest neighbors will provide the best measure of the labor market conditions it faces. Because this approach will produce overlapping labor market areas for nearby hospitals, it is likely to reduce substantially the strong boundary effects among labor market areas in the current wage index.

A number of difficult issues need to be resolved to determine whether this approach would result in appropriate labor market areas. Moreover, the distance data needed for this project are not likely to be available before mid-1992 at the earliest. In addition, the analysis will take several months. Thus, even if the project is highly successful, it is improbable that the resulting wage index could be implemented for fiscal year 1993. The Commission believes, however, that other currently available policy options are not likely to produce significant overall benefits. Therefore, ProPAC recommends that Congress await the outcome of this effort before taking further action.

Potential Major Refinements to the DRGs

The Commission has recently completed a partial evaluation of the impact of alternative proposals for major refinement of the DRGs. The results indicate that these refinements would allow more accurate classification and payment for Medicare cases. Further study would be needed, however, to reach a final judgment regarding the desirability of any of the proposed modifications. Therefore, ProPAC is not recommending adoption of major changes at this time. The Commission is interested in the views of hospitals and other entities as it continues to assess the desirability and impact of these refinements.

The Commission recently conducted a partial evaluation of the impact of alternative proposals for major refinement of the DRG patient classification system. These proposals were developed by the Health Systems Management Group at Yale University and by 3M Health Information Systems for New York State.

The results of ProPAC's analysis indicate that both proposals would permit more accurate classification of Medicare patients under PPS. Consequently, payments to hospitals would more accurately reflect cost differences due to variations in severity of illness and other factors.

Adoption of either proposal also would substantially affect the distribution of PPS payments among hospitals. Under current law, the Secretary is required to adjust payments to hospitals so that any change in the DRGs or the DRG weights would be budget neutral. (That is, the standardized payment amounts would be adjusted so that estimated aggregate payments after the change are equal to those that would have been made without it.) This means that changes in the DRGs leading to higher payments for some hospitals must result in offsetting reductions in payments to other hospitals.

On average, either set of DRG refinements would lead to an increase of about 1 percent in payments per discharge for major teaching hospitals and for disproportionate share hospitals located in large urban areas. Conversely, average payments per discharge would decrease by about 1 percent for small rural hospitals and for sole community hospitals. This would occur because the refined DRGs would better reflect differences in the average severity of illness of the patients treated by various types of hospitals.

However, the distribution of PPS payments would change even more within any hospital category. The percentage change in payments per discharge for individual major teaching hospitals would range from –1.8 percent to 2.6 percent using the Yale DRG refinement. Similarly, the percentage change in payments per discharge for individual rural hospitals would range from –3.0 percent to 3.8 percent. The pattern of change would be quite similar under the New York refinement, although the size of the change would be somewhat smaller in every hospital group.

In addition, uncertainty remains regarding other potential effects of adopting either of these refinements. First, it is not clear how much other payment adjustments, such as the indirect medical education or disproportionate share adjustments, would need to be modified to accommodate changes in patient classification. It is also unclear to what extent large differences in payment rates between patients with different classes of comorbidities and complications would encourage undesirable changes in coding behavior. Moreover, the administrative burden hospitals and intermediaries would face in converting to either system is uncertain.

Resolving these issues will require further evaluation. In addition, the Commission believes that it may be more desirable to consider adopting these refinements as part of a broader package of payment reforms. Other reforms might include major changes in the construction of the PPS wage index, changes in the methods and data used to calculate DRG weights, and changes in the definition and financing of payments for outlier cases. (See Recommendation 6 for a discussion of the wage index.) Consequently, ProPAC is not at this time recommending adoption of either of the proposed DRG refinements. The Commission is interested in the views of hospitals and other entities as it continues to assess the desirability and impact of these proposals.

Recommendation 7: Medicare Transfer Payment Policy

> **Cases transferred out of a hospital should be paid based on a graduated per diem up to the full DRG payment to recognize the higher daily costs associated with the first few days in a patient stay. In addition, outlier payment policy should be reexamined, particularly with respect to transfer cases received by a hospital. The Commission believes that hospitals are penalized by the current payment for transfers and that further examination of whether hospitals have the appropriate incentive to transfer patients, particularly with respect to recuperative care, is warranted.**

Medicare cases transferred out of one hospital and into another are paid a uniform per diem based on the DRG, up to the full DRG amount. The final

hospital in a transfer sequence receives the full DRG payment, although the patient involved may be assigned to a different DRG for each hospitalization.

Over the past few years, ProPAC has conducted an extensive analysis of transfer payment policy. The analysis found that the uniform per diem payment provided to the transferring hospital undercompensated the hospital for the care provided. Payment to cost ratios were substantially below average for cases with short lengths of stay, but were closer to average for cases with typical stays. This is because a uniform per diem payment does not recognize the frequently higher costs associated with stabilization, evaluation, and surgery that generally take place early in a patient's hospital stay.

The analysis found that the receiving hospital was also undercompensated for transfer cases due to a higher incidence of outliers among these patients. A ProPAC technical report outlining the findings from the analysis will be published in April 1992.

The Commission believes that the payment system should not influence the decision to transfer a patient. Rather, the decision should be based solely on appropriate patient care. ProPAC is concerned that the current payment method may inappropriately penalize hospitals that transfer patients to another institution for more complex care or for recuperative care.

A graduated per diem payment could more accurately reflect the higher daily costs associated with the first few days of care by more closely tracking these costs. A graduated per diem payment, to vary by day of stay, would be highest for the first day of care and lowest for the last day. The cumulative per diem payments would not exceed the full DRG payment. The methodology for developing a graduated per diem payment could follow a study conducted by RAND for ProPAC *(How Services and Costs Vary by Day of Stay for Medicare Hospital Stays)*. This study examined how cost varied for each day of a patient stay for a number of DRGs. The Commission would be happy to work with the Secretary in developing a graduated per diem payment for transfer cases.

The current payment method also discourages the transfer of cases from one hospital to another for recuperative care, as noted above. A graduated per diem for all but the final admission in a transfer sequence could reduce the penalty faced by these hospitals. However, the full DRG payment amount for cases requiring recuperative care may be too high. Further, it is uncertain whether a graduated per diem payment would affect hospital behavior in these situations. Nor is it known if behavioral change would be desirable. ProPAC therefore encourages the Secretary to explore the benefits of encouraging these kinds of transfers, as well as what payment policy would be appropriate. Finally, the Commission believes PROs should continue to review transfer cases in order to monitor changes in frequency that are related to any new financial incentives.

The Commission is also concerned that Medicare's outlier payment policy penalizes hospitals that receive numerous transfer cases. ProPAC analysis has shown that a larger than average proportion of transfer cases become outliers and that the losses on these cases are substantially greater than those for the average outlier case. ProPAC strongly urges the Secretary to reexamine outlier payment policy, giving particular attention to transfer cases. The Commission also plans to reexamine outlier payment policy in the near future and is willing to work with the Secretary on the issue.

Recommendation 8: Payment for Hemophilia Blood Clotting Factor

The Commission believes that current PPS payment policies are adequate to prevent significant payment inequities for hospitals that treat Medicare beneficiaries with hemophilia. Therefore, ProPAC does not recommend reinstatement of an add-on payment for the costs of blood clotting factor provided to hemophilia patients. However, should the current situation change, the Commission may reevaluate this issue.

In 1989, the Commission recommended implementation of an add-on payment, for a two-year period, for the costs of providing blood clotting factor to Medicare patients with hemophilia. This payment was needed because the prices of clotting factors had risen dramatically in 1987 and 1988. These increases were due mostly to new manufacturing processes designed to reduce the risk of transmitting the human immunodeficiency

virus (HIV). Congress enacted ProPAC's recommendation in OBRA 1989. The add-on payment was effective for discharges occurring after June 18, 1990, and before December 19, 1991. Congress has asked ProPAC to reevaluate this issue.

Reinstatement of the add-on payment for clotting factor could be justified if there were many beneficiaries who required it, if the costs to administer it were substantial, and if these cases were concentrated in a few hospitals. But in fiscal year 1990, there were fewer than 3,000 discharges of Medicare beneficiaries with hemophilia. Not all required blood clotting factor. These cases were treated in more than 1,300 hospitals. Of the hospitals providing this care, 94 percent treated five or fewer Medicare beneficiaries with hemophilia. So there are relatively few of these cases, and they are widely scattered among many hospitals. Further, even though hemophiliacs are, on average, more costly to treat than other cases within a given DRG, there are insufficient data to indicate that these differences are due to the administration of clotting factor.

Current PPS payment policies adequately compensate hospitals that treat Medicare beneficiaries with hemophilia. Hospitals' billed charges, which are used to recalibrate the DRG weights, include the costs of clotting factors. Therefore, these costs are reflected in higher weights for the DRGs that include these patients. In addition, while payment to cost ratios are lower than average for hemophilia discharges compared with all Medicare discharges, the process of averaging offsets the losses from these cases against the profits from cases with lower average costs. Finally, outlier payment policy is designed to provide additional compensation to hospitals for exceptionally costly cases.

If the current situation changes, and future evidence indicates that the costs of administering clotting factors to patients with hemophilia become significantly burdensome for some hospitals, the Commission will reevaluate this issue.

Recommendation 9: Payment for Epilepsy Cases

The current DRG assignment should be revised to account for the resource requirements of patients with epilepsy receiving intensive neurodiagnostic monitoring.

Epilepsy is a chronic disorder of the brain, characterized by the tendency to have recurrent seizures. Approximately 10 percent of epilepsy patients do not attain an adequate level of seizure control: Their seizure disorders are characterized as intractable. In 1987, concerns over the adequacy of PPS payment for the treatment of intractable epilepsy patients receiving intensive neurodiagnostic monitoring were brought to the Commission's attention.

ProPAC reported preliminary findings on this issue in its March 1988 report to the Secretary. At that time, only three centers were identified as providing specialized care for the treatment of intractable epilepsy. Within the two DRGs to which the majority of these cases were assigned (DRG 24 and DRG 25), payment shortfalls were larger for patients with epilepsy than for other patients. However, the Commission deferred making a recommendation at that time because there were no specific codes to identify patients with intractable epilepsy. Since then, the number of hospitals providing these specialized services has increased to more than 40, and codes that distinguish patients with intractable epilepsy have been implemented.

Commission analyses of data from fiscal year 1990 found that the majority of patients with epilepsy are not concentrated in any hospital type. However, hospitals providing specialized services had a higher percentage of patients with epilepsy who receive monitoring. Further, nearly 64 percent of the patients in these hospitals who were assigned to DRGs 24 and 25 had intractable epilepsy, compared with about 31 percent in other PPS hospitals.

Payment to cost ratios were lower for patients with epilepsy compared with other patients in the same DRG. For example, ratios were about 10 percent lower for epilepsy patients compared with other patients in DRG 25. These differences were larger for patients with intractable epilepsy and for those receiving monitoring. In DRG 25, the payment to cost ratios were 18 percent lower for patients with intractable epilepsy. Those receiving monitoring had ratios nearly 22 percent lower than other patients in the same DRG. The same pattern was seen in DRG 24 as well.

Therefore, the Commission believes that the Secretary should evaluate the current DRG

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assignment for patients with intractable epilepsy, particularly those receiving intensive neurodiagnostic monitoring. The payment system should not discourage hospitals from treating these patients. The Commission realizes, however, that more accurate codes may need to be implemented to ensure that the appropriate type of monitoring is reflected in the patient records.

Recommendation 10: Essential Access Community Hospital Program

> **The Commission recommends that the Secretary waive, on an individual case basis, some of the requirements for participation in the Essential Access Community Hospital Program. This would encourage increased hospital participation and allow the Secretary to gain additional experience with alternative policies. Over time, policies should be expanded to target the larger group of hospitals that should continue to operate but offer limited, less specialized inpatient services. By refocusing these hospitals' operations, the Commission believes that overall system efficiency may be improved without sacrificing access to care.**

OBRA 1989 required the Secretary of Health and Human Services to establish an Essential Access Community Hospital Program in up to seven states. By restructuring the delivery of services in rural areas, the program seeks to ensure access to care through the provision of emergency services and an entry point for inpatient care. Restructuring is also designed to reduce the cost of providing appropriate care, primarily through downsizing inpatient capacity.

The program requires every participating state to develop a rural regionalization plan with two levels of care. Rural primary care hospitals are to provide emergency and temporary inpatient care for cases needing stabilization prior to discharge or transfer. Essential access community hospitals are to act as full-service referral hospitals for the RPCHs.

Participating RPCHs must transform from providing routine inpatient care to offering more limited emergency inpatient and outpatient services. Specifically, all hospitalizations in RPCHs must be certified as emergencies by a physician, and patients must be discharged or transferred within three days. In addition, a RPCH is limited to six inpatient beds, unless the hospital has swing beds. In that case, the RPCH may have up to 12 total beds, with no more than 10 beds concurrently used for skilled nursing level services. Further, formal agreements with at least one other hospital must be established for the referral and admission of cases that cannot be treated at the RPCHs. By limiting the services offered at these hospitals, the extra costs of maintaining inpatient capacity while serving a small number of patients may be avoided. Instead, local residents requiring non-emergency inpatient care are to be treated in a hospital offering an appropriate array of services.

The Commission agrees with the intent of this program. Nevertheless, it has concerns regarding several specific RPCH provisions, as outlined in its report to Congress, *Rural Hospitals Under Medicare's Prospective Payment System*. ProPAC questioned the following: (1) the condition of payment requiring certification that the admissions were required on a temporary, inpatient basis; (2) the six-bed limitation; and (3) the maximum three-day length of stay.

The program also contains several provisions for EACHs. These facilities must be located 35 miles from another EACH or rural referral center and have at least 75 beds. The hospitals must agree to provide emergency and medical backup services to RPCHs, offer admitting privileges to RPCH physicians, and accept RPCH patients as transfers. The Commission is troubled by the 75-bed requirement, which may encourage unnecessary bed capacity or disallow participation of small, full-service hospitals.

In the Commission's judgment, the EACH program provisions are so restrictive that many otherwise eligible hospitals may choose not to participate. Without sufficient participation, the program is unlikely to meet its goals. Therefore, ProPAC encourages the Secretary to waive certain provisions on an individual case basis. This flexibility may result in higher hospital participation while experience is gained regarding alternative policies.

The EACH program is not designed to solve the problems facing those rural hospitals that wish to remain open but are not financially viable in their current configuration. Because this program is limited to hospitals that will discontinue their routine inpatient care, it is unlikely to have a large impact on the organization and delivery of rural hospital care. Thus, the Commission recommends that policies eventually should be expanded to target larger hospitals that will remain open as inpatient facilities. These hospitals should be made more efficient through appropriate restructuring of their services. The Rural Transition Grant Program, administered by HCFA, is one effort aimed at helping hospitals adapt to their changing circumstances. Begun in 1987, this program provides funds to help small rural not-for-profit hospitals and their communities adapt to changing demand for services, excess acute care capacity, and the inability to provide appropriate staffing. It is designed to ensure access to emergency and inpatient care in areas where services are eliminated.

Alternatively, the EACH program could be expanded to permit the participation of hospitals offering routine inpatient services for treatment of appropriate cases. This could enable other hospitals that wish to remain open to use EACH funds to downsize and develop linkages with full-service hospitals. The Commission would gladly collaborate with Congress and other interested parties to develop a workable strategy to achieve a more efficient hospital system.

PRO Review and Quality of Care

The Commission believes the Peer Review Organization program should continue to monitor, at the case and facility levels, the care furnished to Medicare beneficiaries. Although the Commission commends the planned expansion of epidemiologic patterns of care studies using the Uniform Clinical Data Set, these more general analyses should not replace all case-level and facility-level quality review. Further, funding should be sufficient to allow PROs to perform case-level and facility-level review, as well as more general analyses of broad patterns of care.

Peer Review Organizations, which are private organizations under contract to HCFA, generally operate at the state level. These organizations review hospital medical records in a given state to determine whether payment should be made for services provided under Medicare. HCFA specifies the major responsibilities of the PROs in their contracts, which are awarded for three years. One-third of these contracts come up for renewal each year.

Historically, the mandate of the PROs has included quality of care and utilization review at the hospital level. Past ProPAC recommendations have addressed the need to improve quality of care review by, for instance, implementing better quality screens (the specific criteria against which care is evaluated). The Commission has also called for more sophisticated methods of quality review that emphasize outcomes measures.

The fourth PRO contracting cycle began in the fall of 1991. The contracts issued during the latest cycle reflect the Secretary's overall strategy of shifting the PRO program's focus from an emphasis on individual record review to a more systematic analysis of patterns of use and patterns of outcome. This strategy is consistent with recommendations made in the recent Institute of Medicine (IOM) report, *Medicare: A Strategy for Quality Assurance*. The IOM's recommendations reflect its belief that hospitals, together with their medical staffs, will continue to improve the quality of care furnished to all patients.

In conjunction with this changed focus, the Uniform Clinical Data Set (UCDS) is being implemented. An automated record review system, the UCDS is designed to standardize the review process and produce a detailed, patient-level database. This database will be important in conducting epidemiologic studies of patterns of health care delivery. The Commission strongly supports this type of activity.

However, with increased emphasis on a more nationally representative database, the hospital-level review of the care furnished to Medicare beneficiaries has been deemphasized. No other external entity will perform this function. The Commission is concerned that this shift in PRO orientation is at the expense of quality monitoring at the individual and facility level. All levels of quality should be examined, from individual cases and facilities to local, regional, and national patterns of

care. Therefore, although the UCDS is a useful and important tool, it does not substitute for facility and case-level review of the quality of care provided to Medicare beneficiaries.

PRO funding should be sufficient to provide for adequate review at the case and facility level. Funding should also permit analyses of broad patterns of care. ProPAC is concerned that budget cuts will have an unfavorable impact on both of these important types of activities.

Updating and Adjusting Payments to PPS-Excluded Hospitals and Distinct-Part Units

Since the implementation of Medicare's prospective payment system in 1983, certain hospitals (psychiatric, rehabilitation, long-term, and children's) and distinct-part units (psychiatric and rehabilitation) have been exempt. Further, cancer hospitals were exempted from PPS as a result of OBRA 1989. The primary reason for their exemption was that DRGs failed to predict accurately the resource costs for patients treated by these providers.

PPS-excluded hospitals and distinct-part units are subject to the payment limitations and incentives established in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). They are paid on the basis of each facility's historical costs trended forward, with a limit placed on the rate of increase in per case reimbursable costs. These TEFRA target rate-of-increase limits are updated annually. The target rate per discharge is based on hospital-specific Medicare costs in a base year, which varies depending on when the facility was constructed or converted to a PPS-excluded category.

Facilities with costs less than the target rate per discharge receive their costs plus an additional payment that is the lesser of 50 percent of the difference between their costs and the TEFRA target rate, or 5 percent of this target rate. Beginning in fiscal year 1992, providers with costs exceeding their target rates will receive 50 percent of these costs subject to a total payment ceiling of 110 percent of the target amount. Further, the Secretary is required to provide for an adjustment to the amount of payment for a hospital when events beyond the hospital's control distort the increase in costs for a cost reporting period.

The TEFRA target rate-of-increase limits are updated annually. PPS-excluded hospitals and distinct-part units received the same update provided to PPS hospitals until fiscal year 1989. Congress then set the TEFRA target rate update equal to the projected increase in the market basket. Beginning in fiscal year 1991, the Secretary has implemented a separate market basket for PPS-excluded providers. Although the update has been legislated, Congress requires the Commission and the Secretary of HHS to recommend an annual update factor to the TEFRA target rates.

OBRA 1990 requires the Secretary to develop a proposal to modify the current payment system for PPS-excluded providers (including operating and capital-related costs) or to replace it with a prospective payment system. The Secretary is required to submit this report by April 1, 1992. ProPAC is to analyze and comment on the Secretary's proposals by June 1, 1992.

Recommendation 11: Fiscal Year 1993 Update Factor for PPS-Excluded Hospitals and Distinct-Part Units

For fiscal year 1993, the target rate of increase for PPS-excluded hospitals and distinct-part units should be updated to account for the following factors:

- **The projected increase in the HCFA PPS-excluded hospital market basket, currently estimated at 4.6 percentage points;**
- **An upward adjustment of 0.2 percentage points, to reflect the difference between HCFA's market basket and that recommended by ProPAC;**
- **A correction for fiscal year 1991 market basket forecast error of –0.7 percentage points; and**
- **An allowance for scientific and technological advancement of 0.1 percentage points.**

In addition, a positive allowance should be given to TEFRA providers that entered the program before fiscal year 1989, depending on the year on which their target rates were

based. This allowance should reflect the difference between the actual updates given to their target rates in earlier years and the market basket for those years. It should result in aggregate payments that are budget neutral with respect to the legislated update.

The legislated update to the TEFRA target rate equals the projected increase in the market basket. The Commission's recommendation results in an average update to the target rate equal to the market basket minus 0.4 percentage points (see Table 2-3). The savings achieved from this reduction should be used to fund the allowance for the pre-1989 TEFRA providers.

Market Basket–The update recommendation is determined primarily by the projected increase in the PPS-excluded market basket index. The current HCFA market basket forecast for fiscal year 1993 is 4.6 percent. The Commission, however, believes that the market basket as currently constructed does not adequately recognize the unique characteristics of the hospital labor market. The major reason is that the proportion of internal hospital wages used in the wage component of the HCFA market basket is understated. (See the discussion of the market basket index in Appendix A.) Therefore, the Commission recommends an additional 0.2 percentage point adjustment.

Forecast Error Correction–ProPAC continues to believe that the update should be corrected for past market basket forecast errors. This requires comparing the actual market basket increase in a given year with the forecast used to update payments in that year. A two-year lag exists between when the forecast is used and when the actual market basket increase is known. In the Commission's judgment, corrections should be made only for errors that equal or exceed 0.25 percentage points. Taking this approach, the Commission compared the actual fiscal year 1991 market basket increase with the forecast used to update the TEFRA target limits in that year. The fiscal year 1991 market basket forecast was 5.3 percent, and the actual market basket increase was 4.6 percent. The forecast error correction for fiscal year 1991 is thus –0.7 percentage points.

Scientific and Technological Advancement–ProPAC has also developed an allowance for scientific and technological advancement for PPS-excluded facilities. This allowance reflects the Commission's judgment about hospitals' financial requirements for the adoption of quality-enhancing but cost-increasing technologies. To arrive at an informed judgment on the allowance, each year ProPAC examines a set of the most important new technologies and scientific advances used in PPS-excluded facilities. Based

Table 2-3. Recommended PPS-Excluded Update Factor for Fiscal Year 1993

Components of the Update	
Components applied to all hospitals and distinct-part units:	
Fiscal year 1993 HCFA PPS-excluded market basket forecast[a]	4.6%
Adjustment for difference between HCFA and ProPAC market baskets[a]	0.2
Correction for fiscal year 1991 forecast error	-0.7
Allowance for scientific and technological advancement	0.1
Average update before positive allowance adjustment	4.2
Basis for cumulative positive allowance adjustment[b]	
1984-1988	2.1
1985-1988	4.2
1986-1988	6.9
1987-1988	4.4
1988	2.1

[a] Market basket forecast provided by the Health Care Financing Administration, Office of the Actuary, December 1991. The market basket forecast is subject to change as more current forecasts become available.

[b] *Federal Register* 56(106), June 3, 1991, 251778-25323.

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on this examination, an increase of 0.1 percentage points to the target rate is needed to offset the cost of new technologies.

Unlike the update for PPS hospitals, the update for excluded facilities should not include a productivity adjustment. The productivity adjustment to the PPS update is based on the principle that Medicare should share in the savings generated by productivity improvements. However, Medicare automatically shares in the savings under TEFRA. Facilities with costs less than the target amount receive their costs plus the lesser of 5 percent of the target amount, or 50 percent of the difference between their target amount and costs. Therefore, part of any productivity increase is factored into reduced Medicare payments. ProPAC believes that further reductions in payments for productivity improvement are not appropriate for PPS-excluded providers.

Positive Allowance–Based on the Commission's initial analysis of PPS-excluded facilities, it appears that the earlier a provider was excluded from PPS, the more financially vulnerable it has become. This is partly because hospitals and distinct-part units excluded before fiscal year 1989 received the same update as PPS hospitals. The PPS update was reduced to account for growth in payments resulting from CMI increases. PPS-excluded providers, however, did not benefit from increased payments due to CMI changes.

ProPAC believes that these providers should have received the full increase in the market basket during this period. To ensure budget neutrality, the savings achieved from the Commission's average update recommendation should be distributed to these providers based on the difference between the market basket increase and the actual update received. Further, the Secretary is required to provide for adjustment of a hospital's payments when events beyond its control affect the increase in costs during a reporting period. In general, the provider must request an adjustment each year in which costs exceed payments. In these cases, the Secretary is permitted to use the most appropriate method for adjustment, including the assignment of a new base year.

ProPAC believes that giving a positive allowance to providers excluded in the early years will reduce the amount of the adjustments that will be requested and granted in the future. The savings based on the difference between the market basket increase and the actual update should be considered in determining the positive allowance. Again, providers that had new target rates computed to reflect more recent cost data should not receive the positive allowance.

The Commission will continue to evaluate the appropriateness of the TEFRA system for PPS-excluded providers. As required by Congress, ProPAC will prepare a report by June 1, 1992, analyzing and commenting on proposals developed by the Secretary. If the Secretary's report is delayed, the Commission will submit a preliminary report in June 1992 evaluating TEFRA payment policy. Several factors will be examined, including (1) cost and payment increases in PPS-excluded facilities, (2) payment variation and potential reasons for it, and (3) beneficiaries' access to services at these facilities. Further, the report will review the general criteria for reform and present various payment policy options. The Commission will submit a subsequent report reviewing the Secretary's recommendations, as appropriate.

Finally, ProPAC believes that the Secretary should systematically collect data on successful adjustment applications. Medicare Cost Report data are a valuable source of information used to assess the financial effects of TEFRA. However, cost reports are not amended to reflect these adjustments. Therefore, these data may not accurately reflect the overall impact of TEFRA payments on providers.

Updating Payments to Dialysis Facilities

The Omnibus Budget Reconciliation Act of 1990 directs the Commission to recommend "an appropriate change factor which should be used for updating payments" for the facility component of dialysis services. This recommendation is due by March 1 of each year, starting in March 1992 for services provided in fiscal year 1993.

The legislation also instructs the Commission to submit a report in June 1992 that includes recommendations regarding payment methods and levels for the facility component of dialysis services. In making these recommendations, ProPAC is to study the costs, services, and profits associated with the various types of dialysis.

Since 1983, dialysis facilities have been paid a prospectively set amount per dialysis treatment; hospital-based facilities and independent facilities receive slightly different base rates. The rate was set using a sample of Medicare Cost Reports from 1977 through 1979. This prospectively set rate is referred to as the composite rate, because it was based on a formula that factored in the lower costs of providing dialysis at home and the proportion of patients receiving dialysis in this setting. While this payment rate was meant to encourage the use of home dialysis, the proportion of patients receiving such treatment has increased only minimally. This increase is due to growth in the number of patients receiving peritoneal dialysis at home. The number of home dialysis patients receiving hemodialysis has decreased since 1983.

Although there have been some minor changes to base payment rates, they are essentially the same as the rates set in 1983. There has been no annual process for updating payment to dialysis facilities like the one used in PPS.

Recommendation 12: Update Factor for Payments to Dialysis Facilities

The Commission is not recommending an increase in payments for dialysis services at this time. Currently, data are inadequate to assess the relationship between the payments and the costs of furnishing various types of dialysis services in different settings. The Commission recommends that HCFA expedite work necessary to complete its database of unaudited dialysis facility cost reports. In addition, HCFA should annually audit the cost reports of a representative sample of dialysis facilities and maintain a database with this information.

The Commission believes that developing an appropriate update factor for dialysis services requires information on payments and costs for the different types of dialysis furnished in the alternative settings. Existing data are inadequate to evaluate payments and costs by type of treatment and by setting.

The latest available data are from a sample of 1988 audited cost reports, which was to be the basis for proposing new payment rates. The sampling strategy was intended to produce cost estimates that reflected efficiently produced services. To do this, larger facilities with lower production costs were overrepresented. This sampling strategy was appropriate for its originally intended purpose. But because it was not representative of all dialysis facilities, the sample did not allow the comprehensive evaluation of costs and payments that the Commission believes is necessary.

Patients may receive hemodialysis or peritoneal dialysis. These services may be provided by hospital-based or independent facilities in the facility or in the home. The 1988 audited cost report sample was not representative of either the proportion of patients treated at home or the types of dialysis provided. Nor did it represent other facility characteristics that should be analyzed, such as location, size, chain affiliation, ownership, and whether the facilities were hospital-based or independent. To correct these data deficiencies, the Commission recommends that HCFA expedite the collection of unaudited cost report data from later years and complete the work necessary to make this database operational. In addition, HCFA annually should audit a representative sample of cost reports to use in evaluating payments and costs by type of treatment and setting.

The sampling issues inherent in the available cost report data create problems for many analyses. These data, however, represent the best systematically collected information available on costs per treatment in hospital-based and independent facilities, and therefore on the industry's financial status. In 1988, the costs of hospital-based facilities were, on average, higher than Medicare payments, whereas costs in independent facilities, the largest group, were lower. The majority of facilities were profitable in 1988. Other organizations that did similar analyses using data from 1988 or before reached comparable conclusions.

Additional analyses, notably one conducted by the Institute of Medicine (IOM) entitled *Kidney Failure and the Federal Government*, indicate that facilities have apparently been able to adapt to unchanged payment rates by introducing productivity improvements. These improvements are based at least partly on scientific and technological advances that have reduced the time needed to

dialyze patients and, hence, the labor and other costs associated with each dialysis session. Another productivity improvement occurring during the 1980s was the increased reuse of dialyzers, a key component in the dialysis process. The IOM report states that "the introduction of the composite rate in 1983 had several general effects on providers and, derivatively, on innovation. It increased the severity of the economic discipline on all providers, further encouraging the search for efficiency."

Evidence concerning quality of care is inconclusive. Further, even though payments have not changed since 1983, the number of dialysis facilities continued to grow steadily through 1989, suggesting that access to care has not been reduced.

On the basis of this information, the Commission believes it is appropriate to wait until data are available to evaluate the dialysis industry thoroughly before recommending an update factor. In its June report on dialysis payment rate, ProPAC will describe its approach to a comprehensive analysis of the dialysis facilities and the issues related to developing an update to payment rates.

Improving Hospital Outpatient Payment Policy

During the 1980s, there was unprecedented growth in the delivery of care in the outpatient setting. Medicare payments for outpatient hospital services increased more than three times faster than those for inpatient services between 1984 and 1990. Outpatient revenues are a particularly large proportion of total revenues for small hospitals and for those located in rural areas.

OBRA 1990 requires the Commission to issue a report by March 1, 1992, analyzing and commenting on the Secretary's proposal for developing a hospital outpatient payment based on prospectively determined rates. Although the Secretary has not yet issued a report, ProPAC will present its recommendations to Congress by the mandated date. The Commission will comment on the Secretary's proposal after it is released.

The following nine recommendations are excerpted from ProPAC's report. They provide principles for improving the outpatient payment system, and apply these principles to specific recommendations on ambulatory surgery and outpatient radiology services.

Recommendation 13: Outpatient Payment Reform

The Commission believes that a prospective payment system for outpatient services should be implemented. Outpatient facility payment reform should ultimately include all providers of outpatient services, such as hospitals, physicians' offices, and free-standing ambulatory surgical centers.

The same payment method should apply to the facility or technical component of all services. The payment rate, however, should be adjusted to reflect justifiable cost differences such as wages and case mix. Further, cost differences that have some societal benefit like, for example, standby capacity and emergency capabilities, should also be reflected in the payment rate. Where feasible, the unit of payment should be based on bundled related services.

The Commission believes that one major goal of outpatient payment reform is to provide incentives for controlling total expenditures in an appropriate manner. Reform should reward providers for delivering cost-effective quality care in the appropriate setting. A prospective payment method promotes incentives to deliver cost-effective care by allowing an opportunity for a profit as well as the risk of financial loss. However, ProPAC realizes that various payment methods may be used during the transition to a fully prospective system.

In attempting to control total costs, the Commission recommends that outpatient reform should eventually include all providers of ambulatory care, including physicians' offices and independent laboratories. This broad scope is necessary because most ambulatory care is furnished outside of the hospital setting.

Physicians and beneficiaries should not have financial incentives to favor one site of care over another, but should choose the most medically appropriate site. Applying the same prospective payment method to all outpatient services, regardless of whether care is provided in hospitals, free-standing ambulatory care settings, or physicians' offices, will help achieve this goal. Using the same method of payment, although not necessarily the same level of payments, will help ensure that payment incentives across providers are consistent.

Although the reforms should be applied to all providers of outpatient services, the payment rate may vary for different providers. There are many reasons why costs may differ among similar providers (such as teaching and non-teaching hospitals) and across treatment sites (such as hospitals and physicians' offices). These factors include differences in patient severity, the intensity of teaching activities, and geographic location. The Commission believes it is desirable to adjust for some of these factors in the payment system, particularly those that represent a benefit to society and are beyond the control of the provider. (See Recommendation 21.) However, the lack of cost data for free-standing settings may complicate the determination of appropriate differences in payment rates. (See Recommendation 15.)

ProPAC recommends that outpatient facility payment reform should contain incentives consistent with those of physician payment reform. Beginning in 1992, physicians will be paid using a resource-based Medicare Fee Schedule. The fee schedule is designed to increase payment equity among physicians, constrain Medicare expenditures, protect beneficiaries' access to services, and promote predictability and administrative simplicity. The Commission believes that these features should also characterize the reform of outpatient payment methods, as it noted in its March 1991 *Report and Recommendations to the Congress.*

While a prospective payment method controls the price of the individual unit of service, it has limited impact on the volume of services provided. (See Recommendation 14.) ProPAC believes that over time, payment should move from the current fee for an individual service to a larger payment unit containing more services (known as bundling). A bundling approach is necessary to control the volume and intensity of services provided. These packages, or bundles, could be based on services furnished during a single visit or over multiple visits, such as a week or an entire episode of care. Eventually, payments could be set to cover the costs of bundles of services deemed to be appropriate or necessary for high-quality, cost-effective care.

Initially, there may be less comprehensive approaches to bundling. Analysis of the 1987 hospital outpatient file by the Urban Institute, for example, indicates that bills for certain outpatient services had a significant number of related ancillary charges (such as radiology and laboratory). Nearly 58 percent of surgical claims had ancillary charges. This suggests that limited bundling for selected services in the hospital outpatient setting may be appropriate.

To define the unit of payment, the Commission supports the research funded by the Secretary to develop a classification system for ambulatory services. However, ProPAC is concerned that this research currently focuses only on hospital-provided outpatient services. For example, the Ambulatory Patient Groups (APGs) outpatient case-mix classification system was developed for use in the hospital outpatient setting. While additional research is under way, it is unclear whether APGs can be appropriately applied in the non-hospital setting.

To the extent that free-standing facilities are providing the same package of services, ProPAC believes any classification system should be applicable to these settings as well. The Commission encourages the expansion of the Secretary's research in this direction.

Recommendation 14: Medicare Volume Performance Standard

Services provided in the hospital outpatient setting should be included in the Medicare Volume Performance Standard (VPS) to the extent that these services are included when provided in other settings. Certain services, such as laboratory tests and therapy, currently are included in the VPS when they

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are furnished in free-standing settings. The Commission believes that hospital-provided services should also be incorporated in the VPS. Their inclusion will make incentives to control volume consistent across sites of care.

Several of Medicare's current outpatient payment methods (such as blended rates and fee schedules) control the price of individual services. However, these payment methods fail to control the volume of services provided. The Commission believes that a policy to control inappropriate volume is warranted.

The Volume Performance Standard, enacted in OBRA 1989, offers an approach for controlling some Medicare Part B expenditures. The primary purpose of the VPS is to provide a collective incentive for physicians to control the rate of increase in the volume and intensity of services furnished to beneficiaries. The VPS is designed to give physicians incentives to order fewer tests and other procedures of limited value to patients. The Commission realizes that reductions in volume and intensity growth will be achieved gradually.

Services commonly furnished by physicians or in physicians' offices and billed through Part B carriers are included in the VPS. Services provided in the hospital outpatient setting and billed through Part A fiscal intermediaries are excluded because the intermediaries do not collect service-specific data. To the extent that these services are included in the VPS when provided in free-standing settings, they should also be included when supplied by hospitals. This change would prevent physicians from attempting to circumvent the objectives of the current VPS. Since hospital-provided outpatient laboratory services are not included in the VPS, for example, physicians have incentives to shift these services to the hospital setting. If these services were included in the VPS, physicians would have the same incentive to control their use as they would to control the use of laboratory tests performed in their offices or independent laboratories.

In his response to the Commission's previous recommendation, the Secretary has stated that outpatient hospital services may be included in the VPS as data systems evolve over time. ProPAC believes that the Secretary should advance the development of these systems so that outpatient services provided in the hospital setting can be included in the VPS as soon as possible.

Recommendation 15: Cost Data Collection for Outpatient Providers

A mechanism for periodic collection of procedure-specific cost data in free-standing settings, including physicians' offices and ambulatory surgical centers, should be implemented.

To implement and maintain a prospective payment system across outpatient providers, comparable patient and financial data are needed. Under a prospective payment rate, comparisons must be made between hospitals and other providers of ambulatory care—such as physicians' offices and free-standing ambulatory surgical centers (ASCs)—to determine the appropriate level of payment.

Cost data for free-standing settings therefore are necessary to ensure comparable financial incentives across different types of providers. However, data are not now available to compare the costs of ambulatory care across providers. Because most outpatient services are available in a variety of settings, the Commission believes that collection of non-hospital cost data is necessary to develop appropriate outpatient payment policy.

ProPAC believes that systematic and comprehensive methods of collecting data on services provided in non-hospital settings need to be developed. For ambulatory surgical centers and some other types of providers, an annual cost report would be the appropriate data collection mechanism. The Secretary's survey of ASCs could serve as a model for collecting service-specific cost data from other ambulatory care providers. The Commission supports the research being conducted by the Physician Payment Review Commission (PPRC) on the direct practice costs for certain services provided in physicians' offices. This research will provide guidance on how service-specific cost data can be collected in these settings.

In the short term, alternative methods for using readily available data should be considered. Data used to construct the practice expense component

of the fee schedule, for instance, may be useful in establishing a fair price for services across settings. The Secretary has indicated that alternative methods for data collection will be explored. The Commission intends to work with both the Secretary and PPRC in assessing available data sources.

Recommendation 16: Beneficiary Liability

Beneficiary Part B coinsurance for hospital outpatient services that are paid for prospectively should be limited to 20 percent of the payment amount allowed by Medicare.

Under current law, beneficiary liability for outpatient services differs depending on the site of care. In the hospital outpatient setting, for example, coinsurance equals 20 percent of submitted charges. In free-standing ambulatory surgical centers, however, coinsurance equals 20 percent of the ASC payment rate. The ASC payment rate is likely to be lower than charges submitted by hospitals.

Historically, hospital outpatient services were reimbursed on the basis of reasonable costs. These costs could not be determined until after the services were performed. Consequently, it was administratively infeasible to base beneficiary coinsurance on actual Medicare payments or costs. As a result, beneficiary coinsurance was based on submitted charges, which were known when the services were performed. Some hospital services are still reimbursed on the basis of reasonable costs. However, when services are paid prospectively, as recommended in this report, Medicare reimbursement will be known at the time services are furnished. Therefore, it will be feasible to follow Medicare's general policy—that beneficiary coinsurance equal 20 percent of the payment amount and Medicare payment, 80 percent.

Analysis conducted by the Commission indicates that beneficiary coinsurance tends to be higher in hospital settings than in free-standing settings. For example, for hospital-provided ASC-approved surgery and radiology services, patients may pay as much as 35 percent and 46 percent, respectively, of the amount Medicare ultimately allows.

In the Commission's view, this policy unfairly penalizes beneficiaries who receive care in the hospital outpatient setting. ProPAC believes legislation should be adopted to eliminate this discriminatory policy and reduce the burden on beneficiaries who use hospital outpatient services.

The Commission realizes that this policy will increase Medicare expenditures. However, the Medicare program should assume responsibility for 80 percent of the payment amount. If such an increase in expenditures is unacceptable, less discriminatory ways of sharing the financial burden should be explored.

Recommendation 17: Quality of Care in Outpatient Settings

The Commission is concerned about the lack of Federal quality oversight in many ambulatory care settings. As more services are furnished in outpatient settings, ProPAC believes the Secretary should enhance existing methods and develop new ones to assess and monitor the quality of care provided to beneficiaries in these settings.

The quality of care provided in hospital outpatient departments and free-standing ambulatory surgical centers is subject to some Federal review, primarily through Medicare conditions of participation and PRO activities. Many other ambulatory care settings, however, are not subject to any Federal quality assurance mechanisms. Medicare conditions of participation require a setting to be inspected by the Medicare program, or some agent of the program, to ensure that it meets specific quality standards. Peer Review Organizations have medical practitioners review cases of beneficiaries seen in specific settings to make certain these standards have been met.

By contrast, many ambulatory care settings, including ambulatory care centers, diagnostic imaging centers, cancer centers, and lithotripsy centers, do not have to meet any Medicare conditions of participation, nor are they subject to PRO review. Some of these facilities are voluntarily accredited by private organizations, although many do not even undergo voluntary accreditation. In addition, many surgical procedures previously performed in hospitals now can be performed in

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physicians' offices, for which there is no Federal oversight of quality assurance mechanisms.

PROs review a sample of cases treated in hospital outpatient departments and in ASCs. However, the sample of ambulatory surgery cases reviewed in these facilities has recently been reduced from 5 percent to 3 percent. Cases treated in hospital outpatient departments are reviewed only if the outpatient services were received between hospitalizations that occurred within 31 days of each other. Because these "intervening care" cases are part of a random 10 percent sample of beneficiaries who were discharged from a hospital, the number of a hospital's outpatient cases the PRO reviews can be quite small.

As more care is delivered in ambulatory settings, the Commission is concerned about the limited role of the PROs and the lack of any Federal quality oversight for much of this care. In addition, many of the voluntary accreditation processes do not focus on outcomes of care, but rather on the physical aspects of the settings and the procedures used to provide care. The Commission believes that more emphasis should be placed on ensuring the quality of ambulatory care and, more specifically, evaluating quality in terms of the outcomes.

Recommendation 18: Payment for Hospital-Provided Outpatient ASC-Approved Surgery

The Commission believes that payments for ambulatory surgery performed in the hospital outpatient setting should be fully prospective based on national rates adjusted for area wage differences. The payment rates should be established using average hospital costs and free-standing ASC payments. These rates should be computed in a budget neutral fashion; that is, aggregate spending should neither increase nor decrease. National rates should be based on the classification system used to determine payments to free-standing ASCs. However, the Commission believes this classification system should be revised. The rates should be updated annually using an appropriate update factor.

The Commission supports congressional intent to establish prospective payment methods for outpatient services. These methods will create incentives for controlling total expenditures by encouraging hospitals to deliver cost-effective care. Thus, providers will have the opportunity for a profit as well as the risk of financial loss. In addition, prospective payments are more predictable.

The current payment method for ambulatory surgery fails to achieve this goal. Hospitals are paid the lesser of costs (or charges, for those hospitals with charges below costs) or a blended amount, which is equal to 42 percent of hospital-specific costs and 58 percent of the ASC payment rate. This method provides no incentive for hospitals to lower their costs. If a hospital reduces its costs, the payments it receives correspondingly decline, thus eliminating some of the incentive to deliver care more efficiently. By contrast, ASCs are reimbursed on the basis of a prospective fee schedule for the same service, thereby providing more incentive to control costs.

The Commission believes that payment rates should recognize justifiable differences in the costs of furnishing services. Costs may differ between hospitals and free-standing providers for several reasons, including patient severity, stand-by capacity, and the presence of an emergency room. While there are no data to measure the costs in free-standing settings, payment rates between these settings and hospitals vary. Lacking complete information on the reasons for these payment differences, ProPAC believes that hospitals' rates should incorporate a portion of the difference between hospital costs and the ASC payment rates.

The Commission realizes that if national rates were established in this manner, without modification, Medicare expenditures would increase. For example, preliminary analysis indicates that about 26 percent of hospitals currently receive payments for all ambulatory surgery based on costs or charges. This indicates that the costs or charges of these hospitals are below the comparable ASC payments. Paying these hospitals the current blended rate will increase Medicare expenditures. Therefore, the Secretary should adjust the national rates to maintain budget neutrality. ProPAC's preliminary estimates indicate that the national rate will reflect a 28:72 blend of average hospital costs and the free-standing ASC rate. These rates should be

updated annually to reflect increases in the market basket and other appropriate cost increases.

ProPAC believes that better cost data are necessary to understand the implications of using current ASC payment rates. (See Recommendation 15.) Such data will help to determine the reasons for and the magnitude of cost differences between settings. Future payment rates could be adjusted to reflect better cost data. In addition, these national rates should be adjusted to reflect differences in wages. (See Recommendation 21.) Finally, the classification system used to group cases for payment should include both ASC and hospital cases. (See Recommendation 19.)

Recommendation 19: Revision of the Classification System Used to Group Ambulatory Surgery Cases

> **The Secretary should revise the classification system used to group ambulatory surgery cases for payment. Cases treated in both hospitals and free-standing ambulatory surgical centers should be used to establish the payment groups.**

The current classification system used to group cases for ambulatory surgery payment was developed using cases treated in free-standing ASCs. Audited charge data for 90 ASCs were standardized for area wage differences, converted to costs using an average cost to charge ratio, and arrayed in descending order. The procedures were then classified into the payment groups using $75 intervals. Over time, as the number of approved ASC procedures has increased, the number of surgery groups has increased from four to nine.

The Commission is concerned that the current ASC classification system may not accurately reflect the costs or mix of cases treated in hospitals. It is likely that the mix and costs of hospital cases would result in different groupings. Thus, while the number of groups may remain the same, the classification of certain procedures may vary from the current classification system. Therefore, the Commission recommends that hospital data be combined with free-standing ASC data in establishing the classification system used for payments.

Recommendation 20: Payment for Hospital-Provided Outpatient Radiology Services

> **The Commission believes that payments for radiology services provided in the hospital outpatient setting should be fully prospective based on national rates adjusted for area wage differences. The payment rates should be established using average hospital costs and the technical component of the Medicare Fee Schedule for physicians. These rates should be computed in a budget neutral fashion;that is, aggregate spending should neither increase nor decrease. The national rates should be updated annually using an appropriate update factor.**

The Commission supports congressional intent to establish prospective payment methods for outpatient services. These methods will create incentives for controlling total expenditures by presenting the opportunity for a profit as well as the risk of financial loss. Thus hospitals will be encouraged to deliver cost-effective care. In addition, prospective payments are more predictable.

The current payment method for radiology services fails to achieve this goal. Hospitals are paid, by law, the lesser of costs (or charges, for those hospitals with charges below costs) or a blended amount, which equals 42 percent of hospital-specific costs and 58 percent of 62 percent of the global fee schedule amount. This method provides no incentive for hospitals to lower their costs because it simply reduces payments rather than establishing a reward system for hospitals that deliver care more efficiently. By contrast, physicians are reimbursed on the basis of a prospective fee schedule for the same service, thereby encouraging them to control costs.

Physician-provided radiology services have been paid on the basis of a fee schedule for several years. The original fee schedule was based on a professional services component and a technical component. The professional component measured the physician's time, skill, and intensity of service. The technical component measured the physician's practice costs—rent, employee salary, and equipment costs, and so forth. When constructed, it was assumed that 62 percent of the physician's charge

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for radiology services represented the technical component. Therefore, payment for hospital-provided radiology services was based on the same percentage.

Beginning January 1, 1992, payments to all physicians are based on the Medicare Fee Schedule. Radiology services are incorporated into this fee schedule. It also includes professional and technical components. However, the technical component has been refined to measure practice costs for individual radiological procedures more accurately. ProPAC believes, therefore, that the technical component of the new physician fee schedule should be used to calculate payments for individual hospital outpatient radiology services.

In ProPAC's view, payment rates should recognize justifiable differences in the costs of furnishing services. Costs may differ between hospitals and free-standing providers for several reasons, including patient severity, standby capacity, and the presence of an emergency room. While data are not available to measure radiology service costs in free-standing settings, payment rates vary between these settings and hospitals. Despite the lack of information explaining these differences, the Commission believes that the hospital payment rate should incorporate a portion of the payment difference. ProPAC acknowledges that radiology services provided in physicians' offices are comparable to those provided in the hospital outpatient setting, to some degree. Therefore, the national payment rate should also reflect physician payments.

The national payment rate for radiology services furnished in the hospital setting should be computed using average hospital costs and the technical component of the Medicare Fee Schedule for physicians. Preliminary analysis indicates that about 10 percent of hospitals currently receive payments based solely on costs. This indicates that these hospitals' costs are lower than the comparable physician payments. Eliminating the "lesser of" provision in current law and reimbursing these hospitals using rates calculated with the current blended rate would increase Medicare expenditures. Therefore, the Secretary should adjust the national rates to maintain budget neutrality. ProPAC's preliminary estimates indicate that the national rate will reflect a 36:64 blend of average hospital costs and the technical component of the Medicare Fee Schedule for physicians. These rates should be updated annually to reflect changes in the market basket and other appropriate cost increases.

Better cost data are necessary to determine the reasons for and the magnitude of cost differences between settings to understand the implication of using the technical component of the current physician fee schedule. (See Recommendation 15.) Future payment rates could be adjusted to reflect better cost data. Finally, the Commission believes that these national rates should be adjusted to reflect differences in wages. (See Recommendation 21.)

Recommendation 21: Payment Adjustments for Hospital-Provided, ASC-Approved Surgery and Radiology Services

> **The Commission believes that national prospective payment rates for ASC-approved ambulatory surgery and radiology services should be adjusted to reflect differences in labor costs. This adjustment should take into account the appropriate labor share and occupational mix of ASC-approved surgery and radiology services in the hospital outpatient setting. The Secretary should conduct additional research to determine whether other adjustments are warranted.**

The Commission supported the concept that the payment system should be neutral with respect to certain providers, settings, and area characteristics. The payment system should not inappropriately influence the site where services are furnished.

ProPAC's recommendation for payment of ASC-approved surgical procedures and radiology services furnished in hospitals incorporates hospital costs to reflect differences between hospitals and other ambulatory care providers. These rates should also be adjusted to reflect differences among geographic areas. Payments to free-standing providers and physicians are now adjusted for differences in area wages. To ensure equity among providers located in various areas of the country, as well as maintain consistency with other payment methods, payments for hospital outpatient services should also account for variations in area wage levels.

The proportion of costs attributed to labor and the mix of occupations employed differs between the outpatient and inpatient settings. Under PPS, for example, 71 percent of the standardized amount is adjusted for the cost of labor. Conversely, in free-standing ASCs, about 35 percent of the rate is labor adjusted. Therefore, the labor share and the wage index used for inpatient services may not be appropriate for outpatient services.

If the labor share were less for outpatient services than for inpatient services, reimbursing outpatient services based on the inpatient labor share would tend to overpay hospitals in higher wage areas (urban); it would underpay those in lower wage areas (rural). In addition, the over-adjustment would tend to obscure other differences in outpatient costs that are associated with an urban location, such as teaching or disproportionate share status.

Further, if the mix of occupations employed in the outpatient setting differed from the overall facility mix, using the hospital wage index for an outpatient payment system would lead to inaccurate payments for outpatient services. The complexity of services and the resulting differences in the occupational mix in inpatient and outpatient settings may vary considerably. The Secretary should undertake research to determine and adjust for the appropriate labor share for outpatient services, as well as the mix of occupations employed in outpatient settings.

Besides variations in costs due to geographic location, costs may differ among hospital groups. Under PPS, payment adjustments account for these differences. The need for additional payment adjustments for hospital groups, such as those to teaching, disproportionate share, and sole community hospitals, should be evaluated. Preliminary analyses indicate that average hospital costs for radiology and ASC-approved surgery did not vary substantially for hospitals with teaching or disproportionate share status. These costs did, however, appear to vary by hospital size and geographic location. Rural hospitals had lower costs than hospitals in urban areas, and larger hospitals had lower costs than smaller ones. While size appears to influence costs, multivariate analysis should be conducted to consider, simultaneously, teaching, location, disproportionate share status, and size. Once these analyses are complete, the need for and the amount of adjustments can be determined.

Improving Skilled Nursing Facility Payment Policy

OBRA 1990 requires the Secretary and ProPAC to report on a prospective payment system for extended care services provided in skilled nursing facilities. The Secretary was charged with developing a proposal to modify the current system or, alternatively, to develop a proposal to pay for skilled nursing care on the basis of prospectively determined rates. The Secretary was to have issued the report by September 1, 1991, but has not yet done so.

ProPAC was to have commented on the Secretary's report by March 1, 1992. Instead, the Commission is issuing a background report on skilled nursing facility payment by the March deadline, and will review the Secretary's SNF payment proposal after it has been released. The following recommendation and discussion are excerpted from ProPAC's forthcoming report.

Recommendation 22: Nursing Facility Wage Index

The Secretary should collect data on employee compensation and paid hours of employment for nursing facilities that care for Medicare SNF patients. Once these data become available, the Secretary should develop a nursing facility wage index and use it to adjust Medicare SNF payments.

The current Medicare SNF payment system uses the hospital wage index to adjust payments. However, there is evidence to suggest that geographic differences in the unit prices of labor for hospital employees are not similar to those for employees of nursing facilities. ProPAC simulated a nursing facility wage index with limited data and found significant differences from the hospital wage index. For example, the HCFA hospital wage index is much lower than the estimated nursing home wage index in urban areas of the New England and Mid-Atlantic states and higher in the West South Central region.

These indexes may differ due to wide variations in state regulations affecting nursing homes. Through their certification and oversight roles, states have a

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major impact on the costs and staffing of nursing facilities. It is appropriate for Medicare to recognize these differences in labor costs imposed by the states. Increased Federal involvement through OBRA 1987 may reduce variations in state regulations that affect nursing homes. This legislation provides for far greater Federal oversight of nursing homes. OBRA 1987 also mandates new standards for quality of care in these facilities, requirements related to overall staffing, and minimum training for nurse aides.

Another potential reason for the failure of the hospital wage index to reflect adequately the variation in skilled nursing facility wages is the skill mix differences between hospitals and nursing facilities. Nursing facilities employ proportionately more aides than hospitals. In addition, the relative level of aides' salaries compared with nurses' salaries may not be the same across geographic areas. The hospital wage index does not capture these differences in the mix of employees and in relative wages.

The use of the hospital wage index under the current system contributes to inequitable Medicare SNF payments across regions. The relationship of payments to costs varies significantly by geographic area. For example, almost half of the facilities in New England and almost a third of those in the Mid-Atlantic region receive less than 85 percent of their costs. This compares with an average of only 15 percent of the facilities in other regions. In addition, only 17 percent of the facilities in New England and 30 percent in the Mid-Atlantic region receive 100 percent of their costs, compared with 66 percent of the facilities in the West South Central region and 50 percent in the Pacific region.

Regardless of the payment method for nursing facilities under Medicare, an accurate wage index is necessary to account for geographic differences in wages. As with the hospital wage index, the method used to collect wage and hour data for nursing facilities should be prospective and incorporated with the current Medicare Cost Report to maximize the consistency of the data and minimize the reporting burden. Further, the Commission suggests that the Secretary phase in the use of the nursing facility wage index to allow time for facilities to adjust.

The Commission also recognizes that collecting nursing facility wage data and developing an index may take several years to complete. As an interim measure, separate cost limits could be developed for each geographic region. This would partially address the problems associated with the use of the hospital wage index.

Recommendation 23: Nursing Facility Case-Mix Adjustment

> **The Commission believes that the payment system should recognize differences in the costs of care for different types of patients. Therefore, it supports the Secretary's efforts to develop and implement a case-mix adjustment to Medicare SNF payments under the Multistate Nursing Home Case Mix and Quality Demonstration. If the case-mix adjustment developed under the demonstration proves to be appropriate, it should be implemented.**

Under the current Medicare SNF payment method, skilled nursing facilities face a financial disincentive to admit Medicare patients, especially those who require the most care. Medicare beneficiaries are often sicker and require more nursing and rehabilitative care than other SNF patients. The current Medicare method of cost finding, however, attributes routine costs (including nursing care costs) to Medicare on the basis of the program's share of patient days. That is, Medicare patients and other nursing facility patients are treated as if they all incurred the same average per diem cost for routine care services. As a result, Medicare's share of allowable costs tends to understate the true costs of caring for Medicare patients. Further, this discrepancy, and the related financial disincentive, may be especially large for Medicare beneficiaries who require more than average care. A payment adjustment that explicitly recognized differences in cost for different types of patients would mitigate the disincentive to admit patients who require more extensive care.

A case-mix index is being developed under the Multistate Nursing Home Case Mix and Quality Demonstration. This demonstration, which is being conducted in six states, will use the index for Medicare and Medicaid payment and evaluate its performance. If the case-mix adjustment developed under the demonstration proves to be appropriate, it should be implemented.

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Part III

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 703
Wetlands Reserve Program; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 703

Wetlands Reserve Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: Title XIV of the Food, Agricultural, Conservation, and Trade Act of 1990 (the 1990 Act), enacted on November 28, 1990, amended the Food Security Act of 1985 (the 1985 Act) to provide for the establishment of the Wetlands Reserve Program (WRP). The 1990 Act amendments authorized the Secretary of Agriculture to purchase easements from owners of eligible land who voluntarily agree to restore and protect farmed wetlands or converted wetlands and eligible adjacent acres. For fiscal year 1992 only, the WRP shall be available to producers in only the following states: California, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New York, North Carolina, and Wisconsin. This final rule adopts, with changes, the proposed rule published in the **Federal Register** (57 FR 4378) on February 5, 1992, which set forth the proposed regulations which are necessary for the implementation of the program.

EFFECTIVE DATE: June 1, 1992.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013; phone (202) 720–6221.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "major." It has been determined that these provisions may result in an annual effect on the national economy of $100 million or more. However, (1) no major increases in costs or prices for consumers, individual industries, State or local agencies, or geographic regions, or (2) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets will result upon implementation of these provisions. However, a regulatory impact analysis has been prepared and is available upon request.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since Agricultural Stabilization and Conservation Services (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will not have any significant adverse impact on the quality of the human environment. Therefore, an environmental impact statement is not needed. Copies of a final environmental assessment are available upon request.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance to which this rule applies are: Wetlands Reserve program 10.072.

The information collection requirements of the final rule at 7 CFR part 703 have been submitted to OMB for approval under provisions of 44 U.S.C. chapter 33. Further, the OMB number 0560–0139 has been assigned.

The public reporting burden for the information collections that would be required for compliance with these regulations is estimated to average 31 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule: are not retroactive; and preempt State and local laws to the extent such laws are inconsistent with the provisions of this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded program participants at 7 CFR part 780 must be exhausted.

Discussion of Program

The WRP is authorized by title XII of the 1985 Act. Under the WRP, the Agricultural Stabilization and Conservation Service (ASCS) will purchase easements from persons voluntarily agreeing to restore farmed and converted wetlands. The 1990 Act creates an umbrella program called the Agricultural Resource Conservation Program (ARCP) which includes the Environmental Conservation Acreage Reserve Program (ECARP). ECARP includes the Conservation Reserve Program (CRP) and the WRP. On April 19, 1991, the Commodity Credit Corporation published a rule in the **Federal Register** (56 FR 15980) containing final regulations which would add to the Code of Federal Regulations a new part (7 CFR part 1410) for the CRP program. General provisions for the ARCP were included as subpart A of pqrt 1410 and specific regulations for the CRP were set out as subpart B. This rule establishes a new part (7 CFR part 703) for WRP.

Maximum Acreage Enrollment, Land Eligibility, and Easement Priorities

Section 1237 of the 1985 Act sets a 1991–95 enrollment goal of a maximum 1 million acres for the WRP, but provides further that enrollment through 1991 may not exceed 200,000 acres, enrollment through 1992 may not exceed 400,000 acres, enrollment through 1993 may not exceed 600,000 acres, enrollment through 1994 may not exceed 800,000 acres, and enrollment through 1995 may not exceed 1,000,000 acres.

Section 1237 specifies that eligible land will include farmed or converted wetlands, but not wetlands converted after December 23, 1985, together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the wetland values merit inclusion in the program taking into account the cost of restoring the wetlands. ASCS is also permitted to include in the program: (1) Farmed wetlands and adjoining lands that are enrolled in the CRP with the highest wetland functions and values and that are likely to return to production at the end of the CRP contract; (2) other wetlands that would not otherwise be eligible if it is determined that inclusion in the program would add to the value of the easement; and (3) riparian areas that link wetlands that are protected by easements or by some other device or circumstance that achieves the same purpose as an easement. In addition, prior converted wetlands enrolled in the CRP may be eligible to be included in the WRP if there is a high probability the wetlands can be restored.

Nationwide, eight pools will be established that correspond with the country boundaries of Soil Conservation Service's (SCS) Major Land Resource Regions (MLRR's). Bids accepted, generally, will be based on a ratio of acres of hydric cropland soils in a particular pool area compared to the acres of hydric cropland soils in the nation. If bids are not accepted which equal the total allocated acreage within

a pool area, ASCS may, at ASCS's discretion, redistribute any remaining acreage in such pool to other pools. Section 1237 prohibits acquiring WRP easements for land that contains timber stands established under the CRP.

With respect to owner eligibility, section 1237E of the 1985 Act provides that no WRP easement shall be created on land that has changed ownership in the preceding 12 months unless: (1) The new ownership was acquired by will or succession as a result of the death of the previous owner; or, (2) the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purpose of placing it in the WRP.

Section 1237A provides that the easements purchased under the WRP shall be in a recordable form and shall be for 30 years, permanent, or the maximum duration allowed under applicable State laws. Section 1237C(c) provides that in determining the acceptability of offers, consideration may be given to the extent to which the purposes of the program can be accomplished on the land, the productivity of the land and the on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities. In addition, section 1237C(d) provides that to the extent practicable, taking into consideration costs and future agricultural and food needs, the Secretary shall give priority to obtaining permanent easements before shorter term easements and, in consultation with the Secretary of the Interior, shall place priority on acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife. In order to accomplish this goal, § 703.12 provides that permanent easements will be preferred whenever possible. The final rule at § 703.10 provides that the duration of the easement is one of the factors which will be evaluated in rating bids to be accepted into the program. ASCS's intention is that a bid which offers less than a permanent easement shall be substantially lower in priority than a bid offering a permanent easement. For fiscal year 1992 and subsequent enrollment periods, requirements regarding the duration of WRP easements shall be as announced by ASCS.

A formula will be used to determine a ranking for bid acceptance when an excess of eligible bids are received during any given signup period. ASCS's intention in ranking the bids is to enroll the wetlands that provide the greatest environmental benefits for the government money expended on restoration and easement purchase. Initially, the prioritization formula will emphasize factors that ensure the effectiveness of the restored wetland when compared to a site's particular wetland functions and values. The weight of particular factors may change if credible new information is developed that characterizes the environmental benefits of wetlands by their specific functions and values.

Further, if it is determined that special circumstances exist which increase the value of the area to be accepted and the wetland to be restored, the SCS State Conservationist, upon the recommendations of the Fish and Wildlife Service (FWS) and the local SCS office, may request acceptance of no more than five percent of the total acreage enrolled in the State during each signup period irrespective of the ranking. Each request for such acceptance will be considered on a case-by-case basis taking into consideration the information submitted by SCS for each such request.

Successful permanent easement bidders have an option of either receiving lump-sum payments or equal annual payments over 10 years. For bid evaluation purposes, the net present value of a lump-sum bid will be calculated to equitably compare the two options to ensure that the maximum environmental benefit per taxpayer dollars expended is obtained.

The final regulations implement the owner and land eligibility provisions in §§ 703.6–703.9. In order to assure maximum benefits from the expenditure of WRP funds, the regulations set out crop-history requirements and other provisions which include limiting the eligibility of "adjacent lands" to buffer areas that in each case may neither, for the particular easement, average more than 100 feet wide nor be more than twice the area of the restored wetland. Landowners will be allowed to transfer eligible land from the CRP to WRP during the first 2 WRP sign-up periods established in their county without having to refund CRP payments or having to accept a reduction of their WRP payment. Transferring eligible land from CRP to WRP after the first 2 WRP signup periods will result in a reduction in any WRP amount due equal to any CRP payments received after the second available WRP signup period.

Specifications are also set out in the final regulation for the wetland functional values which may be considered relevant by ASCS in determining whether particular parcels should be accepted for enrollment in the program. Sections 703.10–703.11, provide for a bid system to be used to determine enrollment and those sections provide for the use of priorities in assessing bids, as is provided in the statute. Section 703.12 provides specifically that, to the extent practicable, all easements shall be permanent easements unless it is determined by ASCS upon evaluation of offers that accepting an offer for a shorter period, which still meets the minimum length requirements of the 1985 Act, is necessary for accomplishment of the national program goals in individual cases.

With respect to fiscal year 1992 only, WRP shall be available to producers only in the following states: California, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New York, North Carolina, and Wisconsin. These states have been determined to be those which will provide the eligible acres necessary to enroll approximately 50,000 acres and allow an evaluation of WRP implementation procedures.

Producer Requirements

Section 1237A of the 1985 Act provides that an owner of land placed in the program must: (1) Grant an easement on the land; (2) implement a Wetlands Reserve Plan of Operation (WRPO); (3) provide for the creation and recordation of a deed restriction covering the easement area; and (4) ensure consent to the easement from persons holding a security interest in the property.

The 1985 Act requires, in addition, that the easement permit: (1) Repairs, improvements, and inspection on such lands that are necessary to maintain existing public drainage systems and; (2) landowners to control public access on the easement area while identifying access routes to be used for wetland restoration activities, management and monitoring. Section 1237A requires that the easement: (1) Prohibit the alteration of wildlife habitat and other natural features of the land unless specifically permitted by the WRPO; (2) prohibit spraying with chemicals or mowing of the land except as permitted by the WRPO to comply with Federal or State noxious weed laws or Federal or State emergency pest treatment programs. The 1985 Act provides further that the Secretary may impose other conditions as needed and authorizes the Secretary to permit compatible uses of the property which are deemed consistent with the primary purposes of the easement. Section 1237B requires, generally, that participants must comply with all program requirements and specifies that as a condition for

participation, the participant must agree to the permanent retirement of any existing cropland base and allotment history for such land under production adjustment programs administered by the Secretary.

Section 1237A provides that in the case of any violation of the terms and conditions of the easement or related agreement, the easement shall remain in force and the owner may be required to refund all or part of any payment made for such easement, together with interest. With respect to WRPO's, section 1237A provides that such WRPO's will be developed and agreed to at the local level by representatives of the SCS and the FWS, United States Department of Interior, in conjunction with the landowner. However, if agreement between SCS and FWS cannot be reached at the local level, the WRPO shall be developed by the State Conservationist in consultation with FWS.

Sections 703.12 and 703.15 set out the obligations of WRP participants. These provisions require participants to control noxious weeds or pests to the extent specified in the WRPO taking into consideration the needs of wildlife and water quality. Each participant will be required, prior to submitting a bid for participation in the program, to have an approved WRPO which would set out the manner in which the land would be restored to a wetland status and other measures which would be required for the property including adjacent areas.

Under § 703.12 participants are required to be responsible for the long-term management of the easement in accordance with the terms of the easement and related agreements including the WRPO. However, participants will continue to have the option, at their sole discretion, to enter into an agreement with a Federal, State, or private conservation entity to secure management assistance or other commitment of action from such entities that the landowner determines to be in their interest. Arranging for a conservation entity to become the owner of record of the land, including the management responsibilities associated with the easement area, is one potential option available to the present owner as a means of transferring long-term management responsibility.

Section 703.15 sets out provisions which authorize ASCS to permit certain uses to be considered compatible uses of the property in appropriate cases. Those uses can include fee hunting and fishing, and, in addition, timber production under an approved management and harvesting plan. Compatible uses may also include haying or grazing if allowed by the WRPO in a manner consistent with the easement. Provisions for remedies for ASCS in the event of a program or easement violation are set out in § 703.19 of the final regulations.

Payments

WRP payments are subject to advance appropriations. ASCS may make easement payments, cost-share payments and reimbursement for fair and reasonable legal costs associated in acquiring an easement. With respect to easement payments, section 1237A of the 1985 Act provides that the easement payment may not exceed the amount which is equal to the difference between the fair market value of the land less the fair market value of the land encumbered by the easement. Easements will be accepted based on the market value of the agricultural land. A formula to determine the value of the land will be used based on the average market value of agricultural land in a county adjusted for: (1) Soil productivity, (2) landowner cost of wetland restoration; (3) long term easement area operation; maintenance, and replacement costs; (4) long term costs of providing for an easement access route; and (5) any other factors authorized by ASCS. This section provides further that the payments may be made on an annual basis, in equal or unequal amounts, for a period which may not be less than 5 years or more than 20 years. This section also provides: (1) In the case of permanent easements, a lump-sum payment may be made; and (2) that the total amount of easement payments made to a person for any year under the WRP may not exceed $50,000, except that such limitation will not apply with respect to payments for permanent easements. With respect to cost-share payments, section 1237C of the 1985 Act provides that, for non-permanent easements, the Secretary shall authorize cost-shares equal to not less than 50 percent nor more than 75 percent of the cost of carrying out the establishment of restoration measures and practices and the protection of the wetland functions and values, as set forth in the WRPO, to the extent that the Secretary determines that cost-sharing is appropriate and in the public interest. At § 703.13 the final rule provides that cost sharing for easements which are less than permanent may receive cost shares at a rate as low as 50 percent while easements which are permanent may receive cost shares at a rate which is no less than 75 percent of eligible costs. It is ASCS's intention to use a 50 percent cost share rate on less than permanent easements and a 75 percent rate on permanent easements.

Unlike CRP participants, WRP participants are not subject to the wetland conservation and highly erodible conservation provisions of Title XII of the 1985 Act under which participants may lose eligibility for certain USDA benefits as the result of prohibited activities related to wetlands and highly erodible lands. Section 1237D of the 1985 Act provides that WRP payments are not subject to a budget sequester order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

Provisions for payments are made in § 703.13. Those provisions specifically authorize withholding a portion of the easement payments otherwise due pending installation of the practices agreed to in the WRPO. In addition, the final rule provides that cost-share payments may be made under the WRP for the establishment or installation of the eligible restoration practices or reestablishment or reinstallation if failure is due to an unforeseen natural disaster or similar act. With respect to the limitation on payments for non-permanent easements, § 703.14 provides that payment limitation determinations will be made in accordance with 7 CFR part 1497 (including § 1497.109(a)) which provides that payments will be attributed to each member of an entity.

Miscellaneous Provisions

The final regulation contains other miscellaneous provisions to implement the program provided for in the 1985 Act. These provisions cover, among other matters, assignments of payments, the transfer of the enrolled property, and the enrollment limitations of 25 percent of the county cropland. In the case of a land transfer, the easement will "run with the land;" therefore, all parties having or acquiring an interest of any kind in the property are subject to the easement. Section 703.4 of the final rule provides for the acceptance of long term easement offers in counties where cropland enrollment into ECARP already exceeds 25 percent of the county's cropland.

Discussion of Comments

ASCS received sixty-nine letters containing 274 comments concerning the proposed rule published February 5, 1992. Entities responding included individuals, State governments, local governments, State wildlife and conservation organizations, national wildlife and conservation organizations, national farm and commodity

organizations, and Members of Congress. Comments came from twenty-eight states and that District of Columbia.

Changes in this final rule from the proposed rule of February 5, 1992, are based upon public comments to the proposed rule. A few minor editorial and other changes have also been made in the text for clarity and to facilitate the application of the regulations. The discussion of comments that follows is organized by section in the same sequence as the final rule.

Section 703.1 Applicability

Twenty-eight comments were received regarding the proposal to limit the implementation of WRP in the fiscal year 1992 to 8 states. The respondents indicated that other States and types of restored wetlands are desirable to be included as pilot States. Although an argument can reasonably be made for the inclusion of any specific State based on local conditions, only one State, Wisconsin, was added. Implementation of the CRP in Wisconsin provides a unique opportunity to study the effects that an existing State restoration program, that in over 20 years has established over 1,500 wetlands in the State, may have on participation in the new WRP. Wisconsin also ranks high in potential hydric soils suitable for restoration to better ensure sufficient bids are submitted in order to reach the 50,000 acre goal during the pilot program.

Section 703.2 Administration

Nineteen comments suggested changes in the proposed administration of the WRP. These comments addressed the issues of the roles and responsibilities of environmental and conservation groups in implementing the WRP. Several minor editorial and other changes have been adopted. Accordingly, the provisions of § 703.2(f)2 have been expanded to include consultation with State and non-governmental organizations at the State and local level; the provisions of § 703.12(a)15 have been clarified to include private organizations; and § 703.15(d) to include conservation districts as approving officials on the WRPO. Designating a different lead agency or requiring the local drainage district as an approving official are not viable alternatives and were not adopted. Although ASCS is the administering agency, the success of this program lies with the technical agencies, namely SCS and FWS, that will make the technical decisions regarding land eligibility and development of the WRPO with the landowner, and FS where tree planting for timber production is approved.

Section 703.3 Definitions

One comment suggested that the term "non-permanent easements" include 10-year agreements. The 1985 Act provisions specifically state the types of easements which may be accepted and the length of the easements. There is no statutory basis to adopt this suggestion.

One comment recommended expanding program provisions to specify the role and function of environmental and conservation organizations at the local level. These organizations are important and expected to play a major role in the effective implementation of the WRP. Section 703.3 has been amended to specify that ASCS will consult with non-governmental agencies regarding issues when necessary and appropriate.

Another comment requested that trees and vine crops be included in the definition of an agricultural commodity. Generally, for the purposes of this program, an "agricultural commodity" is defined to be an annually tilled crop or sugarcane. Adding trees or vine crops would go beyond that criteria and would not generally produce the same public benefit as the enrollment of other lands into the program. Accordingly, no change has been made by the final rule.

One comment offered another definition for "riparian areas." In response to this comment an addition to the proposed definition has been included in § 703.3 to expand the definition of a "riparian area" to provide that areas along "channels" shall also be included.

Finally, one comment pointed out the proposed definition of an "easement area" included only the land being restored and not necessarily the adjacent lands. The definition of "easement area" has not been revised, since the term is used to delineate that portion of the farm on which the restored wetland is located, or which is described on the easement document as being the location of the required practices necessary to restore the hydrology and protection to the restored area. However, the easement document will specify that no action may be undertaken anywhere on the easement farm which affects the restored wetland or other area designated as the easement area.

Section 703.4 Maximum County Acreage

Three comments were received favoring a waiver of the 25 percent maximum cropland permitted to enter into the Environmental Conservation Acreage Reserve Program (ECARP) and one comment was received opposing any waivers. Since long-term easements are preferred over shorter-term easements and CRP contracts will begin expiring in 1996, it has been determined ASCS may accept and approve offers in counties in excess of the 25 percent cropland rule when such acceptance is deemed not to have an adverse effect on the local economy. The final rule has been modified to reflect that ASCS will accept WRP intentions and a waiver be granted in order to accept acreage into the WRP in an amount which is in excess of 25 percent of the county's cropland.

Section 703.6 Eligible Person

Six comments recommended waiving or eliminating any ownership requirement. One comment opposed allowing a person to purchase farmland solely for the intent of enrolling such land into the WRP. The proposed rule has been adopted without change since experience with the CRP has shown that program abuse is likely to occur if there is no prior ownership requirement.

Section 703.7 Eligible Land

Twenty-eight comments were submitted for review and consideration. Four of these were from California, recommending the cropping history requirement be modified or eliminated so as to permit the eligibility of pasture land for inclusion into the WRP. Since only slight to moderate enhancement of wetland functions and values would be achieved, this provision was not amended regarding cropping history.

Other comments recommended expanding the "adjacent area" which may be included in an easement from the average of 100 feet set forth in the proposed rule to 300 feet or to cover an entire watershed. Based on the advice provided by representatives of the technical agencies, the proposed 100 feet provision provides the nesting habitat and the restored area will be adequately protected from siltation or other water quality contaminants without defeating the intent of the program which is to restore wetland hydrology. ASCS does not believe that the additional acreage is necessary to achieve WRP goals. Therefore, no change was made in this regard.

Three comments suggested placing a higher priority for acceptance on eligible riparian areas. Five comments were supportive of the riparian area criteria, buffer area inclusion, or supported the eligibility criteria "as is." Other comments suggested including as eligible areas, areas with: trees;

bottomland hardwoods; or habitats for threatened or endangered species. These comments generally went beyond the scope of the WRP by including sizable increases in non-hydric cropland areas. Therefore, except as noted in the discussion on changes to § 703.8, none of these suggested changes were adopted.

Section 703.8 Additional Land Eligibility Provisions

One comment recommended inserting for inclusion "land including pasture lands or adjacent lands that have been identified as being habitat of an endangered or threatened species." The suggestion was not adopted; however, § 703.10(d) is being modified to allow for additional consideration under easement priority for wetlands which may aid in the protection of threatened or endangered species.

Section 703.9 Transfer of Lands From the CRP to the WRP

Thirteen comments were received with respect to the issue of allowing current CRP contract holders to enroll eligible land in the WRP prior to the maturity of the CRP contract. Generally, these comments opposed the proposal requiring CRP participants to bid in the first available WRP signup period; those CRP participants who did not bid at that time would have to wait until their CRP contract terminated before a WRP bid could be submitted. These comments also opposed the manner in which ASCS proposed to take into account previously paid CRP payments when making the WPP payments with respect to land subject to both contracts. In response to these comments, ASCS will allow CRP participants the opportunity to submit a WRP bid during all WRP signups; however, any CRP payment which is made after the second WRP signup period available to the CRP participant will be deducted from the WRP payment made to such person. This will allow for greater WRP participation without defeating the purposes of either program while ensuring that limited funding is used to the maximum possible extent.

Section 703.10 Easement Priority

Seventeen comments were received. Three comments support the use of a formula for selection purposes. One comment stated the formula was too complex. One comment recommended deleting the formula. Two other comments recommended either including the formula in the rule or providing copies of the formula to eligible landowners. One comment felt it was unfair to stress permanent easements. Two comments recommended that ASCS provide appraisals for review while one commenter was concerned how land values will be established. Another comment suggested expanding criteria to include North American Waterfowl Management Plans. One comment believed the prioritization should be the function of the technical agencies and not ASCS. In order to ensure that proper weight is given to all bids and to ensure that all factors involving the offered area are given sufficient consideration, a formula or other internal guidance is needed for use by ASCS personnel. Experience with prior ASCS administered programs has shown that disclosure of all criteria used in the bid evaluation process is not feasible and also defeats the whole concept of a bid program. Accordingly, these suggestions were not adopted except that the factor for "wetlands location significance" was clarified to include the contribution that restoration of the wetland may make toward the recovery of threatened or endangered species.

Section 703.11 Statement of Intention; Submission of Bids

Seven comments were received with six expressing concern over the most beneficial use of technical agency time in working with potential WRP participants. Each of the six comments recommended using "draft" Wetland Reserve Plans of Operation (WRPO) or not requiring any actual planning until after a producer had enrolled into the WRP. SCS has agreed to furnish a comprehensive plan to the landowner for assistance in formulating a competitive bid based on out-of-pocket costs to be incurred and any rights afforded under the easement such as haying, grazing, fee hunting, or planned timber harvest. The WRPO is a tool to bid competitively for acceptance into the program. However, detail design plans may not be completed by the technical agency until the bid is accepted. ASCS and SCS believe anything less than full disclosure as to requirements, costs, and rights retained would be unfair to a landowner and could cause increased program costs if any uncertainty existed. In addition, in order to properly prepare the easement document, the producer and ASCS must have a firm agreement as to the action to be undertaken or prohibited on the easement area and easement farm. For these reasons, this suggestion has not been adopted.

The seventh comment recommended providing copies of easement forms and other relevant forms to producers at the time of submission of an intention to participate. Any person may request and receive a copy of the WRP forms at any time. Each landowner signing an intention to participate will be given a packet of information including a basic easement document at that time to ensure a thorough understanding of the WRP and to assist in the formulation of a bid after the WRPO is completed.

Section 703.12 Obligations of the Landowner

Fifty-three comments were submitted for review and consideration on this section. Fourteen of these were regarding the length of easement. Most were strongly supportive toward permanent easements and did not support the use of short-term easements. Due to the limited funding available and due to the highest returns to be gained from these funds, it has been determined that ASCS will only accept permanent easements unless otherwise announced by the Deputy Administrator, State and County Operations, ASCS.

Eleven comments recommended changes for clarity with respect to permissive and restrictive uses in the adjacent areas of a participant's farm not included in the easement area. This suggestion is adopted in the final rule; § 703.12 is revised to provide that the WRPO will specify the prohibition of any activity that will cause excessive sedimentation or contaminants to enter the easement area or that may alter the flow of surface or subsurface water.

Five comments recommended deleting the requirement to control pests and weeds on the easement area. Two comments were concerned on the use of pesticides in weed or insect control. One comment suggested that the WRP regulations should take into account that the creation of wetlands through restoration may create nuisance problems in some instances. ASCS deemed no change is needed since State and local laws are applicable to the easement area.

Section 703.13 Payments to Landowners by ASCS

Thirteen comments were received. Three comments recommended clarifying the provisions of the regulations concerning easement cost and filing cost responsibilities. The final rule has been clarified to specify that ASCS will reimburse participants for fair and reasonable costs concerning title search and filing costs.

Five comments recommended higher cost-share rates. One comment suggested including as an eligible cost any water requirements in arid areas. One comment recommended lump-sum payments be offered to owners offering

less than permanent easements. Another comment disagreed with the proposal to refrain from making total payment until completion of practices necessary for restoration. These comments were not adopted since the 1985 Act specifically limits lump-sum payments to only those landowners granting a permanent easement and extending the benefits beyond that proposed would not be maximizing the possible program extents.

Finally, one comment recommended that the regulations clearly provide that landowner's be made aware that the WRP was funded by advance appropriations for the total value of the easement prior to ASCS accepting any offers. This suggestion was not adopted since it was determined that the issue is not one properly addressed in a regulation; however, participants may be fully apprised of their rights with respect to receiving payments by contacting their county ASCS office.

Section 703.15 Wetland Plan of Operations

Thirty-two comments were offered for consideration regarding the WRPO. Many of the comments recommended that the regulations be expanded to clarify those actions which are covered by the WRPO. Other comments related to the proposed provisions regarding weed control. With some comments recommending stricter provisions concerning the landowner's responsibilities, other comments recommended deleting the requirement of weed control entirely.

Many of the comments addressed the appropriateness of including grazing, haying, and mowing. Several comments recommended that the WRPO also be signed by State agencies and local drainage districts. There was also concern that the WRPO submitted with the bid not be so detailed that it burdens the landowner or the agencies preparing the WRPO.

The regulations have been expanded to address or clarify some of the above concerns. Specifically, the landowner will be assisted by the SCS, FWS, and other appropriate agencies in the preparation of the WRPO, therefore, the development of the WRPO will not demand a great deal of the landowner's resources. Although the WRPO is a comprehensive document, details regarding restoration designs and subsequent operation and maintenance will be developed following bid acceptance. In addition, the WRPO development allows for State agencies and drainage districts to be consulted by SCS while developing the WRPO.

The WRP allows for haying, grazing, timber harvesting, and hunting and fishing, if determined by SCS and FWS that such use is compatible with the goals and objectives of the program. Specific guidelines concerning compatible uses will be site specific and agreed to by the landowner, SCS, FWS, and ASCS before bid acceptance.

Section 703.16 Easement Modifications

Four comments were received. Two comments recommended prohibiting any blanket waivers for haying or grazing of the easement area during an emergency. Because the WRP easements may be perpetual in nature and due to the fact that it is not possible to foresee the possible feed needs of landowners in an emergency situation, the regulations do not prohibit such action. However, any such approval would be made only in those instances in which ASCS has determined that adverse affects to the easement area would not occur. One comment recommended concurrence by FWS and SCS and plan modifications. SCS and FWS will concur on plan modifications because it has been determined that all modifications will be approved in the same manner as initial plan development. The fourth comment believes that ASCS has the authority to arbitrarily lessen or weaken program participation. The final rule has been clarified to eliminate this concern.

Section 703.17 Transfer of Land

Four comments were submitted recommending several changes for clarity. This section has been reorganized to clarify the manner in which the owner submitting a WRP contract will receive payment and how a new owner establishes eligibility for cost-share payments if the required practices were not completed by the previous owner.

Section 703.18 Monitoring and Enforcement of Easement Terms and Conditions

Eight comments were received. Three comments recommend that non-government organizations be delegated this responsibility. One comment volunteered their services in this endeavor. One comment was in opposition to any delegation of the monitoring or enforcement to other Federal or State agencies. Another comment believed ASCS should obtain written permission from the landowner in order to inspect the easement area. One comment recommends that management agreements may be entered into by the landowner and a third party at any time. Several comments indicated it is unreasonable to expect a landowner to foresee all future management capabilities and needs at the time the easement is finalized. Allowing third party agreements at any time will increase the effectiveness of WRP by combining the efforts of Federal, state or private organizations having expertise for management and monitoring. Two comments stated that local groups may provide the most cost effective management and monitoring for this program. In many cases the partnership may be essential to enable landowner participation. The final rule has been amended to allow participants to enter into third party agreements for maintenance with private conservation organizations to ensure continued management of the easement area without the need for additional public funding.

Section 703.19 Violations

Six comments were received with a broad range of positions. One comment supported the position in the proposed rule. One comment recommended that graduated penalties be applied for program violations. One comment stated that the court system is too slow to enforce WRP easements. The fourth comment claimed it is not due process to require a refund from someone not receiving payment. Another comment stated that ASCS should not reimburse legal expenses. Finally, the sixth comment stated that the proposed provision was arbitrary and punitive. Based upon these comments, the provisions of this section have been amended to provide that any refund of WRP payments shall be made only by the person who received payment from ASCS. Since this program is designed to provide easements for the benefits of the United States, ASCS will avail itself of any and all remedies which it has, including the right to seek damages or equitable relief from Federal courts. Accordingly, no change in the provisions relating to use of the court system is made. There is no statutory basis to establish graduated penalties. Accordingly this suggestion has not been adopted.

Other Comments

Several comments suggested that landowners enrolling into the WRP should be exempt from property or real estate taxes after enrollment. Since ASCS is purchasing only a property right and is not obtaining ownership of the property, State tax liabilities remain with the landowner. Since this is a State law issue, ASCS does not have the authority to choose the manner in which

taxes are assessed on the WRP easement area. Accordingly, these suggested changes are not adopted.

Several comments also stated that ASCS should furnish the water necessary to ensure continuance of the restored wetland areas where water is currently being purchased or there is the potential for a lack of water to ensure continuance of the restored wetland area. This suggestion goes beyond the scope of the authorizing legislation. Accordingly, no change has been made in the regulation based on these comments.

Two comments encouraged the inclusion of a provision to allow subsequent cost-share assistance in the event of a natural disaster or similar event over which the producer had no control. The final rule at § 703.13(b) has been amended to authorize ASCS to provide cost-share assistance, at the discretion of ASCS, for the replacement or restoration of practices destroyed or lost due to reasons beyond the owner's control.

List of Subjects in 7 CFR Part 703

Administrative practices and procedures, Compliance procedures, Easements, Natural resources, Technical assistance and Wetlands Reserve Plan of Operations (WRPO).

Final Rule

Accordingly, title 7 of the Code of Federal Regulations, chapter VII is amended by adding a new part 703 to subchapter A to read as follows:

PART 703—WETLANDS RESERVE PROGRAM

Sec.

703.1 Applicability.
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703.7 Eligible land.
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703.11 Statement of intention to participate; submission of bids.
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703.13 Payments to landowners by ASCS.
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703.15 Wetlands Reserve Plan of Operations.
703.16 Easement modifications.
703.17 Transfer of land.
703.18 Monitoring and enforcement of easement terms and conditions.
703.19 Violations.
703.20 Performance based upon advice or action of the Department.
703.21 Access to land under agreement.
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703.23 Payments not subject to claims.
703.24 Assignments.
703.25 Appeals.
703.26 Scheme and device.
703.27 Filing of false claims.
703.28 Miscellaneous.

Authority: 16 U.S.C. 3801 *et seq.*

§ 703.1 Applicability.

(a) The regulations in this part govern the Wetlands Reserve Program (WRP). With respect to fiscal year 1992 only, WRP shall be available to producers only in the following States: California, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New York, North Carolina, and Wisconsin. These states have been determined to have the highest incidence of:

(1) Significant acreage of hydric cropland;

(2) Potential capacity of restoration;

(3) Diversity in kinds of wetlands; or

(4) Substantial benefits for migratory birds.

(b) Under the Wetlands Reserve Program, ASCS will accept voluntary offers for the purchase of easements from eligible persons who have eligible land with respect to which they agree to restore and protect farmed wetlands or converted wetlands and eligible adjacent lands. Such voluntary easements will be for the purpose of restoring the hydrology and vegetation, and protecting the functions and values of wetlands for wildlife habitat, water quality improvement, flood water retention, ground water recharge, open space, aesthetic values, environmental education, and other values determined appropriate by ASCS.

§ 703.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees ("State committees" and "county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such county committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Administrator of ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

(f)(1) The eligibility of the land for inclusion in the WRP will be based on the likelihood of successful wetland restoration and the merit of including the land in the program, taking into account the cost of the restoration.

(2) The development of the WRPO to achieve the desired objectives shall be made by the Soil Conservation Service (SCS) in agreement with the Fish and Wildlife Service (FWS), except that no determination by the SCS and the FWS shall compel ASCS to execute a contract or an easement which ASCS determines will serve the purposes of the program established by this part.

(3) The detailed designs to implement the practices and management measures in the WRPO shall be completed by the SCS, except that the Forest Service or State agency will assist with tree planting plans.

(4) ASCS shall consult with the SCS and FWS for such other technical assistance in the implementation of the WRP and may consult with State agencies and other groups and organizations for technical assistance in developing and implementing the WRPO.

(g) ASCS shall consult with the Forest Service (FS) or the State Forestry Agency for such assistance as is determined by SCS to be necessary for implementing WRPO's which include tree planting practices.

(h) ASCS may consult with the Extension Service (ES) to coordinate the related information and education program as deemed appropriate to implement the WRP.

§ 703.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters or sugarcane planted or produced in a State or alfalfa and other multiyear grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by ASCS, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Annual payment means, unless the context indicates otherwise, the payment specified in the WRP agreement which is made annually to a participant to compensate such participant for placing eligible land in the WRP.

Applicant means a person who submits to ASCS an intention to participate in a WRP easement.

ASCS means the Agricultural Stabilization and Conservation Service.

Bid means, unless the context indicates otherwise, the total payment requested by the owner for granting an easement.

Conservation District (CD) means a subdivision of a State organized pursuant to an applicable State Conservation District Law or in instances where a conservation district does not exist, the State Conservationist of the Soil Conservation Service.

Contract means the document specifying the contracted obligations and rights of any person who is participating in the program.

Cost-share payment means the payment made by ASCS to assist program participants in establishing the practices required in a WRPO.

CRP means the Conservation Reserve Program provided for in 7 CFR parts 704 and 1410.

Deputy Administrator means the ASCS Deputy Administrator for State and County Operations (DASCO).

Easement means the real property interest acquired by ASCS under this part, and which is filed with the appropriate local or State government official.

Easement area means the land on which the approved restoration practices are required.

Easement farm means the area of land, including the easement area which has been conveyed by the most current deed recorded in the land records of the county where the easement area is located.

FWS means the Fish and Wildlife Service of the United States Department of the Interior.

Local ASCS office means the county office of the Agricultural Stabilization and Conservation Service serving the county or combination of counties in the area in which the landowner's farm or ranch is administratively located.

Non-permanent easement means an easement for the maximum duration permitted by State law or for 30 years.

Participant means a landowner who has an approved easement contract.

Permanent easement means an easement in perpetuity.

Practice means the wetland and easement area development restoration measures agreed to in the WRPO to accomplish the desired program objectives.

Riparian areas mean areas of land, which are directly influenced by free water in the soil, that occur along streams, channels, rivers, and other water bodies. They are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics. They may be identified by distinctive vegetative communities which are reflective of soil conditions normally wetter than adjacent soils.

SCS means the Soil Conservation Service of the United States Department of Agriculture.

Technical assistance means the assistance provided under the WRP to owners by a representative of the Department of Agriculture or the FWS in determining cropland eligibility, suitability for restoration, developing WRPO's, and implementing and certifying practices. State agencies, non-governmental organizations, and individuals, with the concurrence of the landowner, may provide technical assistance in the development of the WRPO.

WRP means the Wetlands Reserve Program provided for in this part.

WRPO means the Wetlands Reserve Plan of Operations provided for in this part.

§ 703.4 Maximum county acreage.

(a) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, the maximum acreage which may be placed in the ECARP may not exceed 25 percent of the total cropland in the county of which no more than 10 percent of the total cropland in the county may be subject to an easement.

(b) When statements of intention to participate in the WRP are received in counties that have exceeded the 25 percent limit, the county committee may request a waiver for the purpose of enrolling such lands in the WRP. The limitation in paragraph (a) of this section shall not apply if ASCS determines that such action will not adversely affect the local economy of the county.

§ 703.5 Maximum acreage limitation.

ASCS will attempt to enroll no more than 1,000,000 acres in the WRP during the 1991–1995 calendar years and the cumulative total acreage enrolled will not exceed:

(a) 200,000 acres through 1991;
(b) 400,000 acres through 1992;
(c) 600,000 acres through 1993;
(d) 800,000 acres through 1994; and
(e) 1,000,000 acres through 1995.

§ 703.6 Eligible person.

To be eligible to offer land for the WRP a person must be the owner of the eligible property for which enrollment is sought and must have been the owner of such land for at least the preceding 12 months prior to the end of the period in which the intent to participate is declared, as provided in this part, unless:

(a) It is determined by ASCS that the land was acquired by will or succession as a result of the death of the previous owner; or

(b) It is determined by ASCS that adequate assurances have been presented that the new owner of such land did not acquire such land for the purpose of placing it in the WRP.

§ 703.7 Eligible land.

(a)(1) Except as otherwise provided in this section, land may only be considered eligible for enrollment in the WRP if it is determined by SCS that the land:

(i) Is wetland farmed under natural conditions, a farmed wetland, or prior converted cropland which is cropland except that converted wetlands shall not be eligible for enrollment if the conversion was not commenced prior to December 23, 1985; and

(ii) Merits inclusion in the program based on the likelihood of successful restoration of the enrolled land and the resultant wetland values when considering restoration cost.

(2) Except in the case of land which qualifies as non-croplands under paragraph (b) of this section, land enrolled in the WRP must also:

(i) Have been annually planted or considered planted to an agricultural commodity in at least 1 of the 5 crop years 1986 through 1990;

(ii) Be suitable for planting to an agricultural commodity at the time of enrollment unless the land is wetlands

that have been restored on the land under a CRP contract, or under a Federal or State wetland restoration program without an easement of at least 30 years in which case the land need only to have been planted to an agricultural commodity 2 of the 5 crop years, 1981 through 1985; and

(iii) Not be a wetland mitigated under part 12 of this title.

(b) Non-cropland may qualify as eligible adjacent land if ASCS determines that including such land in the program would contribute significantly to the restoration of adjacent wetlands under paragraph (a) of this section;

(c) Determinations under this section will be made in accordance with the provisions of part 12 of this title, in such manner as may be prescribed by the Deputy Administrator.

(d) Eligible land also includes land which SCS determines to be:

(1) A riparian area along a stream or other waterway that links or after restoring the riparian area will link wetlands which are protected by an easement or other agreement that achieves the same objective as an easement;

(2) Land adjacent to the restored wetland, which would contribute significantly to the restoration of adjacent wetlands, but not more than an average of 100 feet wide, and not more than twice the area of the restored wetland as needed to protect the functions and values of wetlands restored under this part unless DASCO determines a larger area is necessary to meet the objectives of the WRP;

(3) Lands that otherwise meet the requirements of paragraph (a) of this section subject to an existing CRP contract, with the highest wetland functions and values, that are likely to return to production after the expiration of the CRP contract and adjacent lands that otherwise meet the requirements of paragraph (b) of this section; or

(4) Other wetlands of an owner that would not otherwise be eligible if the inclusion of such wetlands in the WRP easement would significantly add to the functions and values of the wetlands to be restored under this part.

(e) Notwithstanding any other provision of this section, land which meets the requirements of paragraphs (a) through (d) of this section, shall not be considered eligible land unless it is determined by the SCS in consultation with the FWS that:

(1) The wetland hydrology and vegetation can be restored to a condition approximating conditions which existed before conversion.

(2) Significant restoration and protection is probable, taking into consideration the cost of the restoration, for wetland functions and values of such land. Wetland functions and values shall include but are not limited to:

(i) The improvement of habitat for migratory birds and other wildlife;

(ii) The protection and improvement of water quality;

(iii) The attenuation of water flows due to flood;

(iv) The recharge of ground water;

(v) The protection and enhancement of open space and aesthetic quality; or

(vi) The educational and scientific values of the area.

(f) Eligible land must be configured in a manner which allows the owner to meet the objectives of the WRP.

§ 703.8 Additional land eligibility provisions.

Notwithstanding other provisions of this part, land that is eligible for enrollment in the WRP must not be:

(a) Converted wetlands if the conversion was commenced after December 23, 1985;

(b) Land that contains timber stands or trees established in connection with a CRP contract;

(c) Lands owned or acquired by an agency of the Federal Government; or

(d) Land subject to a deed restriction prohibiting the production of agricultural commodities or the alteration of existing wetland hydrology.

§ 703.9 Transfer of lands from the CRP to the WRP.

Land subject to an existing CRP contract may be offered for acceptance and transfer into the WRP only if:

(a) The land is eligible land for purposes of the WRP as provided in §§ 703.7 and 703.8 and

(b) The application for such transfer into the WRP is agreed to by ASCS. If such transfer is requested by the owner and agreed to by ASCS, the CRP contract for the property shall be terminated or otherwise modified subject to such terms and conditions as are mutually agreed. Transfers from CRP to WRP after the second available WRP signup period will only be permitted if the owner agrees to refund all payments received under the CRP since the close of the second available WRP signup period.

§ 703.10 Easement priority.

(a) In implementing the WRP, ASCS shall, to the extent practicable, in determining which WRP bids to accept, take into account the costs of obtaining an easement, future agricultural and food needs, and the benefits for protecting and enhancing habitat for migratory birds and other wildlife that would be acquired through purchase of the easement.

(b) A formula will be used to ensure that offers will not be accepted in excess of the value of agricultural land, adjusted for: Soil productivity; nonland assets idled; landowner cost of wetland restoration; long term easement area operation and maintenance; long term costs for providing easement access route; and any other factors as may be allowed.

(c) In evaluating easement offers, different priorities for selection may be established by ASCS from time to time as determined by ASCS in order to accomplish the goals of the WRP.

(d) ASCS will rank the bids based on the environmental benefits per dollar of government expenditures on restoration and easement purchase. The factors for determining the priority for selection may include the following:

(1) Wetland hydrology restoration potential;

(2) Wetlands location significance including the contribution the restoration may make to the recovery of threatened and endangered species;

(3) Wetlands functions and values;

(4) Management risks;

(5) Duration of easements;

(6) Cost of restoration and easement purchase; and

(7) Any other factors as determined appropriate by ASCS.

§ 703.11 Statement of intention to participate; submission of bids.

(a) A person seeking to enroll land in the WRP must apply for enrollment by stating on an approved ASCS form their intention to participate in the WRP. The statement of intention must be filed with the local county ASC committee during an announced period for such submissions. Such periods may be announced periodically by ASCS.

(b) Following the statement of intention, the application will be considered complete only if such applicant:

(1) Obtains an approved WRPO; and

(2) Submits to ASCS a WRP bid setting out the total amount of easement payments that the person is willing to accept in return for participation in the program and for agreeing to other conditions for participation that may be required by ASCS, including the creation of an easement on the property. Such bids may be made no later than 90 days after the close of the period announced by ASCS for submitting a statement of intention to participate, unless a later date is agreed to by ASCS.

No bid may be accepted unless submitted on the approved ASCS form and unless it is determined that the land is eligible and that the submitter of the bid is an eligible person. The determination of which bids to accept shall be at the exclusive discretion of ASCS.

(c) A person submitting a statement of intention to participate shall not be obligated to submit a bid.

(d) A bid may be submitted only if signed by all owners of the property or their duly authorized representative.

§ 703.12 Obligations of the landowner.

(a) All owners of land for which a WRP bid is accepted by ASCS shall:

(1) Grant to ASCS an approved easement for the land which shall run with the land and shall be in favor of ASCS and its assigns or delegates which provides that the property shall be maintained in the manner specified by ASCS to ensure that the land is maintained in accordance with the goals and purposes of this part, including the maintenance of the restored wetland and eligible lands as specified in the WRPO for the full life of the easement. Such easement shall:

(i) Be a reserve interest easement that the Deputy Administrator determines is for a sufficient term of time necessary to achieve the purposes of the program. Permanent easements will be accepted and preferred whenever possible. However, the term of the easement shall be at least 30 years or the maximum extent allowed under State law;

(ii) Require that the maintenance of the land in accordance with the easement and with the terms of the WRPO shall be the responsibility of the owners of the property and their successors of any kind, including, but not limited to, the owner's heirs and assigns;

(iii) Grant to ASCS a right of access in favor of ASCS and its delegates, assigns and successors of any kind, to the portion of the property which is subject to the provisions of the WRPO. Maintenance of such access shall be the responsibility of the owner and their successors of any kind;

(iv) Reserve to ASCS the right to permit such compatible uses of the easement area as may be identified in the WRPO; and

(v) Reserve to the landowner those compatible uses identified in the WRPO that are permitted to be pursued by the landowner.

(2) Comply with all terms and conditions of the WRPO;

(3) Provide for creating and recording an appropriate deed restriction, as determined by ASCS, for such land as necessary to meet the requirements of this subpart;

(4) Provide that the easement granted to ASCS is superior to the rights of all others, except as authorized by ASCS. Such action shall include, but not be limited to, providing a written statement of consent to such easement and disclaimer by those holding a security interest or any other encumbrance with respect to such and;

(5) Agree to the permanent retirement of the aggregate a total of crop acreage bases, and allotment and mandatory quota history on the farm or ranch to the extent that such crop acreage bases are not supported by the cropping pattern on the farm not including cropland enrolled in WRP;

(6) Not allow the grazing of the land or any other commercial use on the land, except as provided for in the WRPO, or harvesting of any agricultural commodity produced on the land subject to the WRP easement;

(7) Comply with Federal or State noxious weed laws in the manner specified in the WRPO;

(8) Control other identified weed and pest species, in the manner specified in the WRPO;

(9) Establish, maintain, and replace, as specified in the easement contract, the practices required in the WRPO as needed to meet the requirements of the WRPO, the easement contract, and the terms of the easement;

(10) Be responsible for repairs, improvements, and inspections of the WRPO practices as necessary to maintain existing public drainage systems when the land is restored to the condition required by the terms of the WRPO, the easement contract and the easement;

(11) Be permitted to control public access, in accordance with the WRPO, on the land enrolled in the program;

(12) Implement any additional provisions that are required by ASCS in consultation with SCS and FWS in the easement contract, WRPO, or easement, in order to, as determined by ASCS, facilitate the administration of the WRP;

(13) Not plant for harvest an agricultural commodity on the enrolled land for crop years subsequent to the acceptance of a WRP bid by ASCS;

(14) Not alter the vegetation, except to harvest already planted crops or forage, or hydrology on such offered acres subsequent to acceptance of a bid by ASCS except as provided for in the easement or WRPO;

(15) Be responsible for the long-term management of the easement in accordance with the terms of the easement and related agreements including the WRPO provided that owners will have the option to enter into an agreement with governmental or private organizations to assist in the management of the easement area. No ASCS funds will be provided to the designated agencies or organizations for management expenses and the responsibility to ASCS for the management of the easement shall in all cases remain with the owner and the owner's successors of any kind regardless of whether such arrangements for third-party management are made with governmental or private organizations, including federal agencies;

(16) Agree that each person on the easement contract with ASCS, or who is subject to the easement, shall be jointly and severally responsible for compliance with the WRPO, the easement contract and the provisions of this subpart and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the WRPO, the easement contract, or provisions of this subpart;

(17) Refrain from taking any action on the easement area unless specifically authorized in the reserve interest easement or the WRPO; and

(18) Secure any necessary local, State and Federal permits prior to commencing restoration of the designated area.

(b) In addition, program participants and their successors of any kind may:

(1) Not alter wildlife habitat and other natural land features of the enrolled land unless authorized by the WRPO;

(2) Apply pesticides or fertilizers on the enrolled land or mow such land, only as provided for in the WRPO; or

(3) Not engage in activities on other land on the person's farm area that will:

(i) Cause excessive sediment or other pollutants to enter the easement area;

(ii) Alter the flow of surface or subsurface water into or out of the easement area except as specified in the WRPO; or

(iii) Otherwise be inconsistent with the terms of the easement.

(c) The activities of any person on the property shall be considered for purposes of this section to be the actions of the program participant, except to the extent that ASCS determines that the activities of such other person were beyond the control of the owner, in which case ASCS may adjust the remedies that are otherwise provided for in this part to the extent determined consistent with program goals. Obligations created by the easement shall run with the land and shall bind all persons having an interest in the property at any time whether such

interest is created by death of the owner, sale, assignment, or otherwise.

§ 703.13 Payments to landowners by ASCS.

(a) ASCS will share the cost with landowners of rehabilitating the enrolled land in the WRP as provided in the WRPO, or the easement contract. The amount of the cost-share assistance shall be specified in the easement contract. Eligible costs for such cost-share assistance by ASCS shall only include those costs which ASCS determines are appropriate, and shall be subject to the following restrictions:

(1) ASCS shall pay:

(i) As determined by ASCS, not less than 75 percent of: the actual cost of establishing or installing the practices specified in the WRPO; or the average cost of establishing the practices specified in the WRPO for a permanent easement; and

(ii) Not less than 50 percent nor more than 75 percent, as determined by ASCS, of: the actual cost of establishing or installing the practices required by the WRPO; or the average cost of establishing the practices specified in the WRPO for other than a permanent easement.

(2) For purposes of determining average establishment or installation costs ASCS may take into account recommendations of the State and County Conservation Review Groups provided for in § 701.2(a) of this chapter and the determination of average costs shall be the average for the part of the county in which the land is located, except that if such an estimate is not possible, then an estimate for the whole county may be used, or if an estimate for part of the county or the whole county is not readily determinable, an estimate may be used for the State or part of the State in which the land is located;

(3) Cost-share payments may be made only upon a determination by ASCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications;

(4) Cost-share payments may be made only for the establishment or installation of an eligible practice and not for the maintenance of the practice except as specifically permitted in writing by the Deputy Administrator; and

(5) Cost-share payment determinations shall be made by the county committee but no easement contract may be approved which would allow for total WRP cost-shares in excess of 50 percent of the pre-easement fair market value of the property subject to the WRPO without written approval by the State committee or for more than 100 percent of such fair market value without the written approval of the Deputy Administrator.

(b) Notwithstanding paragraph (a)(4) of this section, cost share payments may be authorized for the replacement or restoration of practices for which cost share assistance has been previously allowed under the WRP, but only if:

(1) Replacement or restoration of the practice is needed to meet the objectives for which the easement was established; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(c)(1) ASCS shall pay, at the times determined by ASCS, the agreed upon amount for the easement as determined through the acceptance of bids for eligible land through annual payments made in equal or unequal amount over a period not less than 5 years nor more than 20 years; except that in the case of permanent easements the easement payment may be made in a lump-sum amount.

(2) ASCS payments shall be made in cash;

(3) In the case of any non-permanent easement, the amount of payments that may be received per person, as determined under part 1497 (specifically § 1497.109(a)) of this title, shall be limited as provided for in this part;

(4) For all easements, ASCS shall withhold a portion of the payments that might otherwise be made pending completion of the restoration plan for the property and ASCS may condition any payment on satisfactory progress toward completion of the plan. At a minimum, ASCS shall pay no more than 10 percent per year of the total purchase price for the easement pending completion of the restoration of the wetlands;

(5) No payment may be made which would exceed the total amount bid and accepted for the property and payments may only be made if the person on whose account the payment is to be made:

(i) Has agreed to all terms and conditions of the program set out in this part;

(ii) Submitted an accepted bid on the standard ASCS-approved form for the WRP; and;

(iii) Is in full compliance with the terms and conditions of the WRP easement except to the extent that relief is authorized by this part and is approved under guidelines issued by the Deputy Administrator.

(d) ASCS will reimburse landowners offering an acceptable easement for fair and reasonable expense incurred for title searches, filing expenses, and related costs, as determined by ASCS.

§ 703.14 Payment limitation.

With respect to non-permanent easements, the annual amount of payments paid to a person, as determined under part 1497 (specifically § 1497.109(a)) of this title, shall not exceed $50,000.

§ 703.15 Wetlands reserve plan of operations.

(a) At the time of submitting a bid to enroll land in the WRP, the landowner must have obtained a WRPO for the land which has been approved by ASCS.

(b) The WRPO shall:

(1) Include an aerial photo displaying the land offered for enrollment;

(2) Specify the manner in which the farmed or converted wetlands included in the enrolled land shall be restored, operated, and maintained to accomplish the goal of the program together with other practices which may be necessary or appropriate to accomplish the goals of the program, including, where appropriate:

(i) Measures necessary to control noxious weeds and insect pests in order to comply with applicable Federal, or State noxious weed and pest control laws; and

(ii) Measures to the extent determined necessary in the WRPO to control other specified species of weeds, insects or pests.

(3) Specify compatible land uses for personal enjoyment or for which compensation may be received, if any, reserved to the landowner in the easement and the manner in which these uses are to be carried out, such uses may include among others:

(i) Recreational use, hunting and fishing;

(ii) Managed timber production including harvesting; and

(iii) Periodic haying or grazing consistent with the goals of the program.

(4) Set out cost estimates of the practices required by the WRPO;

(5) Identify access routes to be maintained for wetland restoration activities and future management and easement monitoring in connection with the land to be enrolled;

(6) Make provisions deemed necessary for maintaining public drainage system if present on lands subject to the WRPO;

(7) Contain scheduled implementation dates for restoration practices;

(8) In areas where natural runoff is no longer sufficient to support natural wetland vegetation, include appropriate

provisions, to ensure adequate hydrology; and

(9) Contain other provisions or limitations as ASCS, in consultation with the SCS and FWS, determines to be necessary.

(c) SCS and FWS will cooperate and may consult with any other agency or person as deemed necessary on the development of the WRPO with the landowner.

(d) The WRPO must be signed by SCS, FWS, CD, and the landowner before submission of a bid by an applicant. However, if agreement between SCS and FWS at the local level is not reached within 20 calendar days, the WRPO shall be developed by the State Conservationist of SCS in consultation with FWS.

(e) The WRPO may require that a temporary vegetative or water cover be established on the property if immediate establishment of a permanent cover is not practicable or otherwise desirable.

(f) The terms of an ASCS-approved WRPO shall not relieve the program participant of any obligation or term imposed or provided for in the easement contract, the easement, or this part.

(g) The WRPO, where appropriate, will provide for the development of a tree planting plan with the assistance of the Forest Service or State forestry agency.

(h) The WRPO, where appropriate will provide for the development by SCS of detailed plans for weed control, structural measures and their operation, vegetation establishment and management, and other measures as needed.

(i) Revisions of the WRPO to enhance or protect the value for which the easement was established may be made at any time at the request of and with the concurrence of the owner, SCS, FWS, and ASCS.

§ 703.16 Easement modifications.

After the easement has been recorded, no change will be made in the easement without a written request by the landowner and the written agreement of the Deputy Administrator, or a designee, who may grant such approval only where such approval is determined necessary or appropriate by the Deputy Administrator, or a designee, to achieve the goals of WRP or facilitate the practical administration and management of the easement area or the program, and will not adversely affect the functions and values for which the easement was established.

§ 703.17 Transfer of land.

(a) If a new owner purchases or obtains the right and interest in, or right to occupancy of, the land subject to a WRP easement, such new owner shall be subject to the terms and conditions of the easement. The seller who is the signatory to the contract shall be entitled to receive all remaining WRP easement payments, if any. Eligible cost-share assistance shall be paid to the seller with respect to costs incurred by such seller.

(b) Upon the transfer of the property, any remaining cost-share payments shall be withheld and shall be paid only if the new owner or purchaser becomes a party to the easement contract within 60 days of the recordation of the deed transferring title to the new owner. Such payments shall be paid in the manner agreed to by the seller and the buyer. The new owner or purchaser shall be held responsible for assuring completion of all measures and practices required by the contract and the WRPO.

(c) Any transfer of the property prior to the filing of the easement shall void any intention to participate, bid, or WRP easement contract unless the new owner agrees to be a party to the intention to participate, bid, or contract within 60 days of the recordation of the deed transferring the land to the new owner.

§ 703.18 Monitoring and enforcement of easement terms and conditions.

(a) ASCS or its representative shall be permitted to inspect each easement area at any and all times determined necessary or appropriate by ASCS to ensure that:

(1) Structural and vegetative restoration work are properly maintained;

(2) The wetlands and adjacent upland habitat of the easement area is being managed as required in the WRPO, and the terms of the easement; and

(3) Uses of the area are consistent with the terms and conditions of the easement contract, the WRPO and any related agreement.

(b) If an owner or other interested party is unwilling to voluntarily correct, in a timely manner, deficiencies in compliance with the terms of the WRPO, the WRP easement, or any related agreements, ASCS may at the expense of any person who is subject to the WRP easement correct such deficiency. Such ASCS action shall be in addition to other remedies available to ASCS.

(c) Management, monitoring and enforcement responsibilities may be delegated by ASCS at any time to other Federal or State agencies or, for management responsibilities only, private conservation organizations that have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities, as determined by ASCS.

§ 703.19 Violations.

(a) If a violation of the terms and conditions of the easement contract, the WRPO or the recorded WRP easement occurs, the easement shall remain in force and ASCS may, in addition to taking action as provided in § 703.26:

(1) Require the owner to fully restore the easement area, to fulfill the terms and conditions of the easement and WRPO; and

(2) Require the owner, who received payments from ASCS to refund all or part of such payments received together with interest as determined appropriate by ASCS.

(b) If an owner fails to carry out the terms and conditions of an easement, appropriate legal action may be initiated under civil law, or such other authority available to the entity assigned management responsibilities to compel such compliance may be used. The owner of the property shall reimburse ASCS for all costs incurred including but not limited to legal fees.

§ 703.20 Performance based upon advice or action of the Department.

The provisions of part 790 of this chapter relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 703.21 Access to land under agreement.

In order to determine eligibility and compliance with respect to this part, representatives of the Department, or designee thereof, shall have the right of access to:

(a) Land which is the subject of an application made in accordance with this part,

(b) Land which is subject to an easement made in accordance with this part, and

(c) Records of the producer which release such land.

§ 703.22 Program payments and provisions relating to tenants and sharecroppers.

(a) Payments received under this part shall be divided in the manner specified in the applicable easement contract.

(b) ASCS shall ensure that producers who would have shared in the risk of producing crops on land subject to such easement receive treatment deemed to be equitable in accordance with § 1413.150 of this title.

§ 703.23 Payments not subject to claims.

Subject to parts 3 and 1403 of this title, any cost-share or easement

payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

§ 703.24 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this title.

§ 703.25 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant in the WRP may obtain a review of any administrative determination rendered under the program in accordance with the administrative appeal regulations provided in part 780 of this chapter.

(b) Determinations concerning land eligibility, development of WRPO's or determining the potential for restoration of an offered area may be reviewed in accordance with procedures established under part 614 of this title or as otherwise established by SCS.

§ 703.26 Scheme and device.

(a) If it is determined by ASCS that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by ASCS, and the contract with the landowner may be terminated. In such a case, ASCS may also continue to hold the easement interest acquired under this part.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or land payments for easements, and obtaining a payment that otherwise would not be payable.

(c) An owner of land subject to this part who succeeds to the responsibilities under this part shall report in writing to ASCS any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

§ 703.27 Filing of false claims.

If it is determined by ASCS that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable WRPO. Any amounts paid under these circumstances shall be refunded, together with interest as determined by ASCS, and any amounts otherwise due such participant shall be withheld.

§ 703.28 Miscellaneous.

(a) Except as otherwise provided in this part in the case of death, incompetency, or disappearance of any landowner, any payment due under this part shall be paid to the landowner's successor in accordance with the provisions of part 707 of this chapter.

(b) The provisions of 7 CFR part 791 are applicable to this part.

(c) Any remedies permitted ASCS under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of ASCS as may be permitted by law.

Signed this May 21, 1992 in Washington, DC.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 92-13044 Filed 6-1-92; 1:29 pm]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.
Special Federal Aviation Regulation No. 38; Certification and Operating Requirements; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510; SFAR No. 38–8]

Special Federal Aviation Regulation No. 38; Certification and Operating Requirements

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38–2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38–2 that it was necessary to establish a new termination date for SFAR 38–2 to allow time for the FAA to complete the rulemaking process that will consolidate the rules regarding certification and operating requirements and incorporate SFAR 38–2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38–2 is June 1, 1992. Because the FAA has not completed that rulemaking process, a 1-year extension of the termination date is necessary. SFAR 38–2 is extended to ensure that the FAA has adequate time to complete the consolidation of the rules regarding certification and operating requirements. However, if a final rule, which consolidates those rules, is issued before the new termination date, the FAA intends to publish a notice rescinding SFAR 38–2 concurrently with the publication of the final rule in the Federal Register.

DATES: Effective date June 1, 1992. Comments must be received on or before August 3, 1992.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Donell Pollard, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267–3750.

SUPPLEMENTAL INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 (43 FR 58366; December 14, 1978) as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95–504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 (43 FR 58366; December 14, 1978) set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, or part 91 training and other special purpose operations.)

On December 27, 1984, the FAA issued SFAR 38–1 (50 FR 450; January 4, 1985), which merely extended the termination date of SFAR 38 and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38–2 (50 FR 23941; June 7, 1985), which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38–3 (51 FR 17274; May 9, 1986), which extended the termination date of SFAR 38–2 to allow the FAA time to incorporate its contents into Notice No. 88–16 (53 FR 39852; October 12, 1988). That notice proposes to consolidate the certification and operating requirements rules in parts 121 and 135, and to incorporate various provisions of SFAR 38–2 into new part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38–4 (52 FR 28938; August 4, 1987), which reinstated SFAR 38–2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38–2 into Notice No. 88–16.

On May 26, 1989, the FAA issued SFAR 38–5 (54 FR 23884; June 2, 1989), which extended the expiration date of SFAR 38–2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88–16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38–2, part 121, and part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88–16 (55 FR 14404; April 17, 1990) for comments on the definition of "scheduled operation" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38–2 until June 1, 1991 (55 FR 23046; June 5, 1990). Because of the complexity of the comments, the expiration date for SFAR 38–2 again was extended until June 1, 1992 (56 FR 25450; June 4, 1991).

Based on comments received, the FAA has determined that a different definition of "scheduled operation" should be proposed for public comment. Therefore, in order to allow time to issue the supplemental notice of proposed rulemaking, consider comments, and issue a final rule, it is necessary to extend the expiration date for SFAR 38–2 until June 1, 1993.

Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38–2 of June 1, 1993. If the FAA publishes a final rule incorporating SFAR 38–2 into the FAR before the termination date, a notice rescinding SFAR 38–2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38–2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 121

Air carrier, Aircraft, Airmen, Air transportation, Aviation safety.

14 CFR Part 125

Aircraft, Airmen, Airports, Airspace, Air traffic control, Air transportation, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Infants, Smoking.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness.

14 CFR Part 129

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing SFAR 38–2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended as follows:

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

3. The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g).

4. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. app. 1346, 1354(a), 1356, 1357, 1421, 1502, 1511; 49 U.S.C. 106(g); Sec. 101 et seq., Pub. L. 101–604, 104 Stat. 3066.

5. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

Special Federal Aviation Regulation No. 38–2 is amended by removing the words "June 1, 1992" in the last paragraph, and by adding in their place the words "June 1, 1993."

Issued in Washington, DC, on June 1, 1992.

Barry Lambert Harris,

Acting Administrator.

[FR Doc. 92–13054 Filed 6–1–92; 3:47 pm]

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Thursday, June 4, 1992

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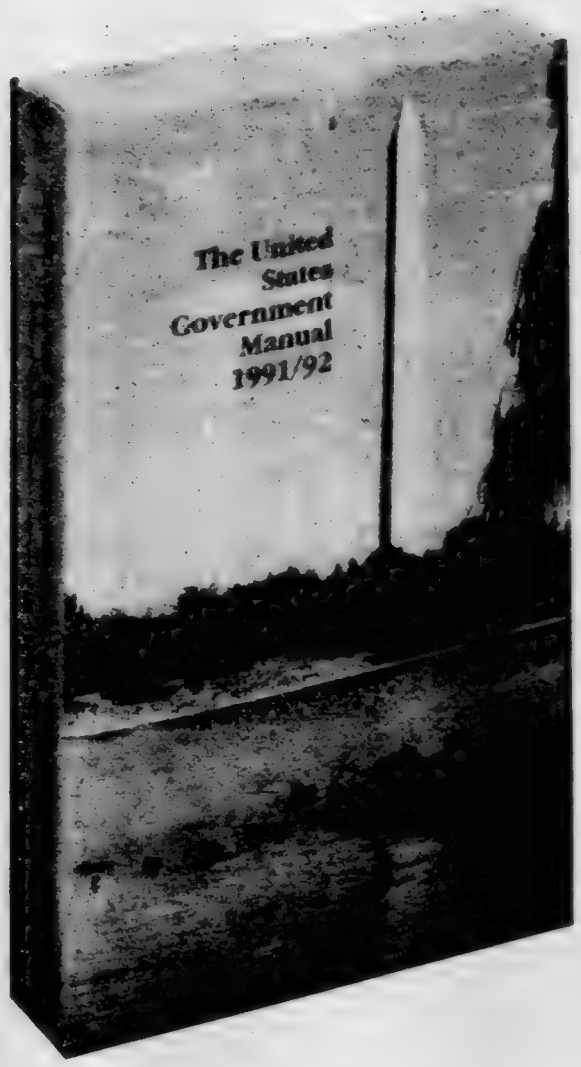

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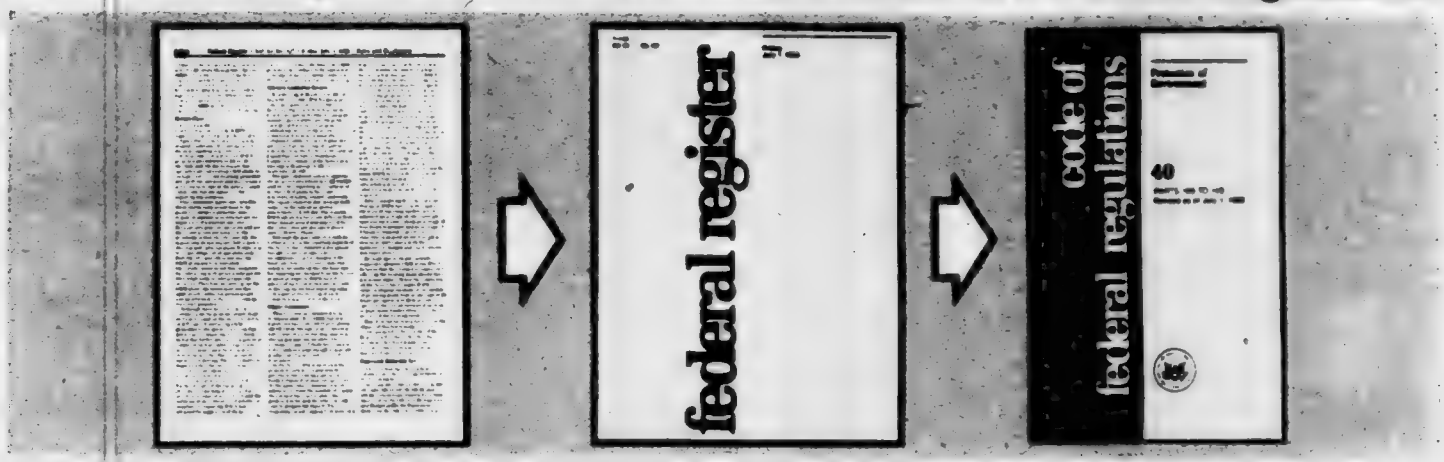

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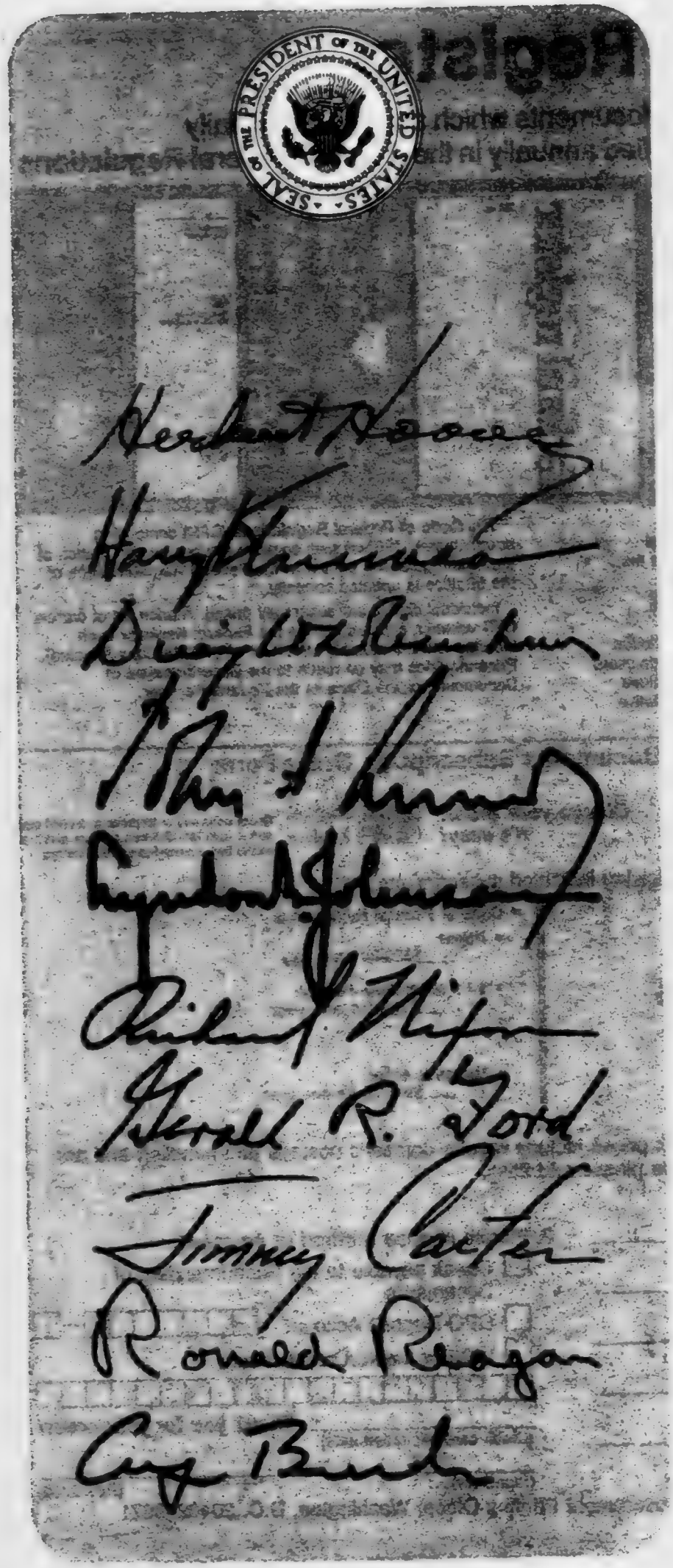

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Federal Register
Vol. 57, No. 109
Friday, June 5, 1992

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Title 3—

The President

Executive Order 12809 of June 3, 1992

Waiver Under the Trade Act of 1974 With Respect to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan pursuant to section 402(d) of the Act, and having made the report to the Congress required by section 402(c)(2) of the Act, I hereby waive the application of sections 402(a) and 402(b) of the Act with respect to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan.

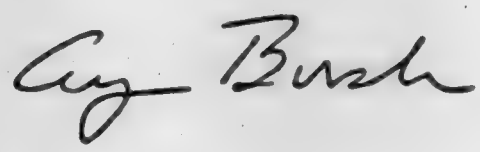

THE WHITE HOUSE,
June 3, 1992.

[FR Doc. 92-13452
Filed 6-4-92; 10:59 am]
Billing code 3195-01-M

Editorial note: For the President's message to Congress and memorandum to the Secretary of State on trade with these states of the former Soviet Union, see issue 23 of the *Weekly Compilation of Presidential Documents*.

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Rules and Regulations

Federal Register
Vol. 57, No. 109
Friday, June 5, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 91-045-2]

Movement and Handling of Pork and Pork Products from Sonora, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Final rule.

SUMMARY: We are allowing additional pork and pork products from Sonora, Mexico, including fresh, chilled, or frozen pork and pork products, to transit the United States for immediate export to other countries. Additionally, we are relieving certain restrictions on the in-transit movement of pork and pork products from Sonora, Mexico, that are currently eligible to transit the United States. We are taking this action based on investigations indicating that pork and pork products from Sonora present a relatively low risk of transmitting hog cholera, which exists in Mexico. This action will allow additional movements of pork and pork products from Sonora, Mexico, through the United States without presenting a significant risk of introducing hog cholera into the United States.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Blackwell, Senior Staff Microbiologist, Import-Export Products Staff, USDA, APHIS, VS, room 756-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations), among other things, govern the importation into the United States of pork and pork products in order to prevent the introduction into the United States of hog cholera. The regulations also stipulate the conditions under which animal products and materials may transit the United States for immediate export. Prior to the effective date of this final rule, § 94.15 of the regulations provided, among other things, that only animal products and materials eligible for entry into the United States could transit the United States. Section 94.9 of the regulations sets forth conditions for the entry of pork and pork products from countries where hog cholera exists. Among other things, § 94.9 requires that the pork and pork products:

(1) Have been treated in accordance with one of the approved procedures of this section:

(2) were prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and

(3) shall be accompanied by a certificate issued by an official of the national government of the country of origin.

On January 31, 1992, we published in the **Federal Register** (57 FR 3729-3732, Docket No. 91-045) a proposal to amend § 94.15 to allow pork and pork products from Sonora, Mexico, that do not meet the requirements of § 94.9 for entry into the United States to transit the United States for immediate export to other countries if specific conditions were met. Those conditions were:

(1) Any person desiring to transport pork and pork products from Sonora, Mexico, across the United States for immediate export would have to first obtain a permit from the Animal and Plant Health Inspection Service (APHIS) Import-Export Products Staff in Hyattsville, Maryland:

(2) The pork and pork products would have to be sealed in Sonora, Mexico, in a leakproof container with serially-numbered seals approved by APHIS;

(3) The person moving the pork or pork products through the United States would be required to notify the pork inspector, in writing, of certain facts concerning the pork or pork products prior to their arrival in the United States;

(4) The pork or pork products would be required to transit the United States under Customs bond; and

(5) The pork or pork products would be required to be exported from the United States within the time period specified on the permit.

Our proposal invited the submission of written comments, which were required to be received on or before March 2, 1992. We received four comments. These were from two foreign-based airlines, a domestic pork industry group, and a veterinary medical association. One commenter supported the proposed rule based on the information provided in the proposal, two commenters expressed interest in moving pork and pork products through the United States under the conditions set forth in the proposed rule, and one commenter opposed the proposed rule. The commenter who opposed the proposal was concerned that, despite the proposed safeguards, it would be possible for pork products from other Mexican States to be transhipped through Sonora, and that these pork products could be diverted once they were within United States borders, thereby putting the health and prosperity of the U.S. pork industry at risk. In the proposed rule at 57 FR 3729-3732, we cited many factors that would reduce the risk of the above scenario actually occurring, including:

(1) Active support by the private sector represented by the Sonoran Pork Producers Council;

(2) control of movement of animals along Highway 15 and Highway 40 by Ministry of Agriculture and Water Resources (SARH) of Mexico inspectors; and

(3) enforcement of the Sonoran prohibition against swine and pork products from entering Sonora from other Mexican States. Additionally, as explaned in the proposal, this rule requires that the person moving the pork or pork products through the United States adhere to strict requirements, including obtaining a permit from APHIS, transiting the United States within a time limit specified on the permit, and transporting the pork or pork products in a leakproof container with serially-numbered seals approved by APHIS. These actions will enable APHIS to track and monitor the movement of the pork or pork products to determine whether the movement complies with the regulations. For these and other reasons explained in the proposed rule, we have determined that

this final rule provides sufficient safeguards to prevent the introduction of hog cholera into the United States. Therefore, no changes are made based on this comment.

However, we are correcting an error in the proposed rule of January 31, 1992 at 57 FR 3729–3732. Proposed § 94.15(b)(2) provides that "[t]he pork and pork products are sealed in Sonora, Mexico, in a leakproof container, and the container remains sealed during the entire time that it is in transit across the United States, from the point of arrival to its exportation." However, as explained in the "Supplementary Information" section of the proposed rule, we further stipulate that "the pork and pork products be sealed in Sonora, Mexico, in a leakproof container *with serially-numbered seals approved by APHIS.*" Therefore, this document also corrects proposed § 94.15(b)(2) so that it is consistent with the "Supplementary Information" section of the proposed rule.

Effective Date

This is a substantive rule that relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This change to 9 CFR part 94 allows additional pork and pork products from Sonora, Mexico, including fresh, chilled, or frozen pork and pork products, to transit the United States for immediate export to other countries. Additionally, it relieves certain restrictions on the in-transit movement of pork and pork products from Sonora, Mexico, that are currently eligible to transit the United States. Based on current Mexican exports of pork and pork products, the Department does not anticipate a large volume of shipments transiting the United States. Mexico exported 900 metric tons of pork and pork products worldwide to countries other than the United States in 1989. This represented only about 0.03 percent of total world exports of pork and pork products. Assuming that Mexico would want to transit all of its pork and pork products destined for other countries through the United States, there would be approximately 50 truckloads transiting the United States annually (calculated using the 900 metric tons exported in 1989 as a parameter and assuming that each truck load is about 40,000 pounds). Using the average quoted frieght rates of $1.97 per mile and a distance of 513 miles between Nogales (Arizona) and San Diego (California),[1] the change will yield a total revenue of about $51,000 to businesses in the United States. Because the current Interstate Commerce Commission regulations forbid Mexican carriers from hauling the product beyond the border zone, small, specialized U.S. transport companies and brokerage houses will benefit.

At present, Mexico is the third largest trade partner of the United States. The United States exported $25 billion worth of goods and services to Mexico in 1989 and imported $28 billion worth of goods and services from Mexico. Seventy-five percent of the total trade was carried overland by trucks. Mexican pork and pork products transiting the United States would represent a small fraction of the total carried overland by trucks. However, facilitating export opportunities for the Mexican port industry may provide incentives for continued efforts to eradicate hog cholera from infected Mexican States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws, regulations, and policies that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products.

Accordingly, the regulations in 9 CFR part 94 are amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 94.15 is amended by redesignating the introductory paragraph and paragraphs (a) and (b) as the introductory text of paragraph (a) and paragraphs (a)(1) and (a)(2), respectively, and by adding a new paragraph (b) to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(b) Pork and pork products from Sonora, Mexico, that are not eligible for entry into the United States in accordance with the regulations in this part may transit the United States for immediate export if the following conditions are met:

(1) The person desiring to move the pork and pork products through the United States obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6). (An application for the permit

[1] This example represents the most likely route for transit of pork and pork products to other countries such as Japan, which imports such products from Mexico.

may be obtained from the Import-Export Products Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.)

(2) The pork and pork products are sealed in Sonora, Mexico, in a leakproof container with serially-numbered seals approved by APHIS, and the container remains sealed during the entire time that it is in transit across the United States, from the point of arrival to its exportation.

(3) The person moving the pork and pork products through the United States notifies, in writing, the Plant Protection and Quarantine Officer at the United States port of arrival prior to such transiting. The notification must include the following information regarding the pork and pork products:

(i) Permit number;

(ii) Times and dates of arrival in the United States;

(iii) Time schedule and route to be followed through the United States; and

(iv) Serial numbers of the seals on the containers.

(4) The pork and pork products transit the United States under Customs bond and are exported from the United States within the time limit specified on the permit. Any pork or pork products that have not been exported within the time limit specified on the permit or that have not been transited in accordance with the permit or applicable requirements of this part will be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

Done in Washington, DC, this 1st day of June 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-13067 Filed 6-4-92; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19 and 20

RIN 3150-AA38

Standards for Protection Against Radiation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; confirmation of effective date for information collection requirements.

SUMMARY: In a final rule published in the Federal Register on May 21, 1991 (56 FR 23360), the Nuclear Regulatory Commission amended 10 CFR parts 2, 19, 20, 30, 31, 32, 34, 35, 39, 40, 50, 61, and 70 to incorporate updated scientific information and to reflect changes in the basic philosophy of radiation protection. The Office of Management and Budget (OMB) approved the information collection requirements contined in part 19, "Notices, Instructions, and Reports to Workers; Inspections," on January 13, 1992, and approved the information collection requirements contained in part 20, "Standards for Protection Against Radiation," on January 24, 1992. OMB approval has not been obtained for NRC Form 4, Lifetime Occupational Exposure History, and NRC Form 5, Occupational Exposure Record for a Monitoring Period.

EFFECTIVE DATES: The information collection requirements contained in §§ 19.13 (b), (c), and (e) are effective on January 13, 1992. The information collection requirements contained in §§ 20.1101, 20.1202, 20.1204, 20.1206(b), 20.1206(f), 20.1206(g), 20.1301(c), 20.1302(c), 20.1501, 20.1601(c), 20.1603(a) (7) and (11), 20.1603(a)(9), 20.1603(b), 20.1703(a)(2), 20.1703(a)(3)(iv), 20.1703(a)(4), 20.1703(b)(2), 20.1703(d), 20.1901, 20.1902, 20.1904, 20.1905(e), 20.1906(d), 20.1906(e), 20.2002, 20.2006(a), 20.2102(a), 20.2103(a), 20.2105, 20.2107(a), 20.2108 (a) and (b), 20.2109 (a) and (b), 20.2110, 20.2201(a), 20.2201(b), 20.2201(d), 20.2202(a), 20.2202(b), 20.2203(a), 20.2203(b), 20.2204, and appendix F to 10 CFR part 20 §§ 20.1001 through 20.2401 are effective on January 24, 1992.

FOR FURTHER INFORMATION CONTACT: Charleen T. Raddatz, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3745 or Brenda Jo Shelton, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-8132.

SUPPLEMENTARY INFORMATION: The effective date for 10 CFR 19.13, Notifications and Reports to Individuals, and 10 CFR part 20 et al., Standard for Protection Against Radiation; Final Rule, was May 21, 1991, except for the additional information collection requirements contained in §§ 19.13 (b), (c), and (e) and §§ 20.1101, 20.1202, 20.1204, 20.1206(b), 20.1206(f), 20.1206(g), 20.1301(c), 20.1302(c), 20.1501, 20.1601(c), 20.1603(a) (7) and (11), 20.1603(a)(9), 20.1603(b), 20.1703(a)(2), 20.1703(a)(3)(iv), 20.1703(a)(4), 20.1703(b)(2), 20.1703(d), 20.1901, 20.1902, 20.1904, 20.1905(e), 20.1906(d), 20.1906(e), 20.2002, 20.2006(a), 20.2102(a),20.2103(a), 20.2105, 20.2107(a), 20.2108, (a) and (b), 20.2109 (a) and (b), 20.2110, 20.2201(a), 20.2201(b), 20.2201(d), 20.2202(a), 20.2202(b), 20.2203(a), 20.2203(b), 20.2204, and appendix F to 10 CFR part 20 §§ 20.1001 through 20.2401 which, as an additional information collection burden, were subject to approval by the Office of Management and Budget. The information collection requirements contained in these paragraphs were approved and became effective on January 13, 1992, under OMB clearance number 3150-0044 for part 19, and on January 14, 1992, under OMB clearance number 3150-0014 for part 20. Information collection requirements contained in §§ 20.2104, 20.2106, 20.2206 (b) and (c) are covered under separate OMB clearance packages and have not yet been approved.

Dated at Rockville, Maryland, this 28th day of May, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-13065 Filed 6-4-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 205 and 1001

Existing Regulations and Programs; Regulatory Review

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administation ("ERA") of the Department of Energy ("DOE") is revoking five regulations identified in implementing the President's January 28, 1992, Memorandum for Certain Department and Agency Heads on the subject of "Reducing the Burden of Government Regulation" ("President's Memorandum"). These five regulations were made unnecessary by Executive Order 12287 (January 28, 1981) and the final rule published by ERA on April 3, 1981 (46 FR 20508) which rescinded the DOE petroleum price and allocation regulations. Four of the five regulations revoked by this notice are also no longer applicable under the Petroleum Overcharge Distribution and Restitution Act of 1986 ("PODRA").

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, 820 First Street, NE.,

suite 810, Washington, DC 20002, (202) 523–3034.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 1992, the President issued the President's Memorandum which, among other things, required a review of existing regulations and programs with the objectives of reducing the burden of regulation and promoting economic growth to the extent that the law allows. The regulations were to be reviewed, with opportunity for public input, using the following standards:

(a) The expected benefits to society of any regulation should clearly outweigh the expected costs it imposes on society.

(b) Regulations should be fashioned to maximize net benefits to society.

(c) To the maximum extent possible, regulatory agencies should set performance standards instead of prescriptive command-and-control requirements, thereby allowing the regulated community to achieve regulatory goals at the lowest possible costs.

(d) Regulations should incorporate market mechanisms to the maximum extent possible.

(e) Regulations should provide clarity and certainty to the regulated community and should be designed to avoid needless litigation.

The President's Memorandum further directs that, to the maximum extent permitted by law, and as soon as possible, an agency propose repeal or modifications in existing regulations to bring them into conformity with the foregoing standards.

Pursuant to the President's Memorandum, ERA conducted a review of existing regulations over which ERA has primary responsibility for administering. ERA has identified five (5) regulations made unnecessary by the January 28, 1981 Executive Order and the April 1981 revocation notice in conformance therewith, which decontrolled crude oil price and allocation regulations contained in the Emergency Petroleum Allocation Act ("EPAA"), the Economic Stabilization Act ("ESA") and the Department of Energy Organization Act ("DOEOA"). Four of the five regulations revoked by this notice are additionally no longer applicable under PODRA, which limits the time periods for the commencement of civil enforcement actions by the ERA.

On March 2, 1992, the DOE published a Notice of Inquiry and Public Hearing (57 FR 7327) which elicited public comments on, *inter alia*, these specific regulations. Although a number of comments were received from the public, no comments were received relating to the regulations identified by the ERA.

II. Provisions Revoked

10 CFR 205.191, a provision setting forth the procedures to be used for a Notice of Probable Violation ("NOPV"), is being revoked because issuance of an NOPV to commence an enforcement action was entirely discretionary. See also 10 CFR 205.192(b). In fact, the ERA has not issued any NOPV for ten year or more. More importantly, however, PODRA, enacted in 1986, defines the term "commencement of civil enforcement action" as (1) the signing and issuance of a proposal remedial order against any person for filing with the Office of Hearings and Appeals of the Department of Energy; or (2) the filing of a complaint with the appropriate district court of the United States. Therefore, under the terms of PODRA, the NOPV is no longer an option for formally commencing an enforcement proceeding and 10 CFR 205.191 is therefore unnecessary.

10 CFR 205.199D, sets forth the procedures to be used for the issuance of an Interim Remedial Order for Immediate Compliance ("IROIC"). This procedure was also discretionary and is being revoked because it provides a mechanism for dealing with continuing or future violations. The President's January 28, 1981 executive order and subsequent final agency rule revoking all the price and allocation regulations make such preventive actions obsolete. Further, the PODRA precludes use of an IROIC to commence a civil enforcement action.

10 CFR 205.199E, a provision setting forth the procedures to be used for a Notice of Proposed Disallowance, Proposed Order of Disallowance and Order of Disallowance, is being revoked because authority for the ERA to issue such notices no longer exists under the provisions of PODRA. In addition, such proposed orders related to transfer pricing issues arising from refiner pricing audits, and the last such case was completed and resolved more than six years ago. This regulation is, therefore, unnecessary.

10 CFR, part 205, subpart G, 205.90 *et seq.*, covers, *inter alia*, applications by motor gasoline retail sales outlets relating to the firm's supply obligation and the use of multiple allocation fractions by suppliers of allocated products. Because the underlying allocation regulations to which an application would be addressed were rescinded by the President's Executive Order of January 28, 1981, these regulations are unnecessary and hereby rescinded.

10 CFR part 1001 contains § 1001.1 and Delegation No. 0204–4 as an appendix thereto. Section 1001.1 specifies the separation of regulation preparation functions and enforcement functions within the Economic Regulatory Administration. Inasmuch as the authority of the ERA to promulgate petroleum allocation and pricing regulations no longer exists and the separation of the functions required under the DOEOA was effected through Delegation No. 0204–4, this part is unnecesssary. Furthermore, since responsibility for preparing and administering natural gas regulations which remain in force was transferred in January 1989 from the ERA to the Fossil Energy division of DOE (Delegation No. 0204–127; 54 FR 11437, March 20, 1989), there is no reason to maintain this part.

List of Subjects

10 CFR Part 205

Administrative practice and procedure, Petroleum allocation, Petroleum price regulations.

10 CFR Part 1001

Organization and functions (Government agencies).

Issued in Washington, DC, on May 21, 1992.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

For the reasons set forth in the preamble and under authority of 5 U.S.C 301, 42 U.S.C. 7191, 7254, title 10, chapter II, of the Code of Federal Regulations is amended as set forth below:

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. The authority citation for part 205 continues to read as follows:

Authority: Emergency Petroleum Allocation Act of 1973, Public Law 93–159, Federal Energy Administration Act of 1974, Public Law 93–275; E. O. 11790, 39 FR 23185.

Subpart G—[Amended]

2. Subpart G (sections 205.90–205.98) is removed.

Subpart O—[Amended]

3. In subpart O, §§ 205.191, 205.199D and 205.199E are removed.

PART 1001—SEPARATION OF REGULATORY AND ENFORCEMENT FUNCTIONS WITHIN THE ECONOMIC REGULATORY ADMINISTRATION

4. Part 1001 is removed.

[FR Doc. 92–13110 Filed 6–4–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

10 CFR Parts 417, 445, 456, and 490

Existing Regulations and Programs; Regulatory Review

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy Office of Conservation and Renewable Energy is eliminating the regulations codified at 10 CFR part 417, entitled "Wind Energy Technology Application Program"; 10 CFR part 445, entitled "Industrial Energy Conservation Program"; 10 CFR part 456, entitled "Energy Conservation Service Program"; and 10 CFR part 490, entitled "Emergency Building Temperature Restrictions." The statutory bases for these regulations no longer exist.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Simon Sidamon-Eristoff, U.S. Department of Energy, room 6C-016, 1000 Independence Avenue SW., Washington, DC 20007, (202) 586-0087.

SUPPLEMENTARY INFORMATION: The regulations codified at 10 CFR part 417, entitled "Wind Energy Technology Application Program," are being eliminated because the statutory authority for these regulations has lapsed pursuant to 42 U.S.C. 9205(i).

The regulations codified at 10 CFR part 445, entitled "Industrial Energy Conservation Program," are being eliminated because the statutory authority for these regulations, 42 U.S.C. 6341–6346, was repealed by section 3101(b) of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509 (October 21, 1986), 100 Stat. 1874, 1888.

The regulations codified at 10 CFR part 456, entitled "Energy Conservation Service Program," are being eliminated because the statutory authority for these regulations has lapsed pursuant to 42 U.S.C. 8229 and section 201(c) of the Conservation Service Reform Act of 1986, Public Law 99–412 (August 28, 1986), 100 Stat. 932, 943.

The regulations codified at 10 CFR part 490, entitled "Emergency Building Temperature Restrictions," are being eliminated because the statutory authority for these regulations has lapsed pursuant to section 104(b) of the Energy Policy and Conservation Amendments Act of 1985, Public Law 99–58 (July 2, 1985), 99 Stat. 102, 104. The regulations at 10 CFR part 490 may also be eliminated because Presidential Proclamation No. 4667, 44 FR 40629 (July 10, 1979), directing the issuance, implementation, and effectiveness of these regulations, which Presidential Proclamation was extended by Presidential Proclamation No. 4750, 45 FR 26019 (April 15, 1980) and further extended by Presidential Proclamation No. 4813, 46 FR 3489 (January 13, 1981), was rescinded [1] by Presidential Proclamation No. 4820, 46 FR 12941 (February 17, 1981).

List of Subjects in 10 CFR Parts 417, 445, 456, and 490

Energy conservation.

Issued in Washington, DC on May 29, 1992.

B. Reid Detchon,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

For the reasons set forth in the preamble and under authority of 5 U.S.C. 301, 42 U.S.C. 7191, 7254, title 10, chapter II, of the Code of Federal Regulations is amended as set forth below:

PART 417—WIND ENERGY TECHNOLOGY APPLICATION PROGRAM

1. Part 417 is removed.

PART 445—INDUSTRIAL ENERGY CONSERVATION PROGRAM

2. Part 445 is removed.

PART 456—ENERGY CONSERVATION SERVICE PROGRAM

3. Part 456 is removed.

PART 490—EMERGENCY BUILDING TEMPERATURE RESTRICTIONS

4. Part 490 is removed.

[FR Doc. 92-13108 Filed 6-4-92; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 304

RIN 3064-AA61

Forms, Instructions and Reports

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has revised its regulations which identify and describe two "report of condition" forms which must be used by insured banks to report information to the FDIC. The two forms are the Consolidated Reports of Condition and Income and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. The revision has been made to bring these regulations into conformity with section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) and to replace outdated information in the former section with current information. The list of forms has also been revised accordingly.

Section 122 of the FDICIA requires the federal banking agencies to adopt regulations requiring the annual reporting of information on loans to small businesses and small farms by insured depository institutions in their reports of condition. The Federal Financial Institutions Examination Council (FFIEC) has separately published for comment a proposal identifying the small business and small farm loan information that insured depository institutions would be required to report annually.

DATES: Effective July 6, 1992.

However, the actual collection of small business and small farm lending information in the reports of condition filed by insured depository institutions will not begin until the FFIEC adopts final reporting requirements for such information.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898-8906, or J. William Via, Jr., Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Section 122 of the FDICIA requires the FDIC and the other federal banking agencies to "prescribe regulations requiring insured depository institutions to annually submit information on small businesses and small farm lending in their reports of condition." As defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), "[t]he term 'insured depository institution' means any bank or savings association the deposits of which are insured by the FDIC", and also includes an insured U.S. branch of a foreign bank. Thus, the reports of condition to which section 122 applies are the Consolidated Reports of Condition and Income filed by insured commerical banks and FDIC-supervised savings banks, the Thrift Financial Report filed by savings associations, and the Report of Assets and Liabilities of U.S. Branches and Agencies of

[1] 10 CFR 490.2 provided that the regulations at 10 CFR part 490 "may be terminated or suspended by the President at any time."

Foreign Banks filed by insured U.S. branches of foreign banks. (The Thrift Financial Report is not filed by any institution for which the FDIC is the primary federal regulator.) Section 122 further provides that the agencies' regulations "shall require insured depository institutions to submit such information as the agency may need to assess the availability of credit to small businesses and small farms."

Section 1006(c) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305(c)) directs the FFIEC to "develop uniform reporting systems for federally supervised financial institutions." Thus, under the auspices of the FFIEC, the FDIC and the other federal banking agencies have developed proposed changes to the reports of condition filed by insured depository institutions in order to carry out the statutory mandate of section 122. The FFIEC has published these proposed changes to solicit public comment on the information that such institutions would be required to submit annually to the agencies on small business and small farm lending. (See 57 FR 21409, May 20, 1992.) Nevertheless, to comply with section 122, the FDIC must also make conforming amendments to its regulations on reports of condition.

Part 304 of the FDIC's regulations (12 CFR part 304) was issued pursuant to section 552 of title 5 of the United States Code (5 U.S.C. 552), which requires each agency to make available to the public information pertaining to the description of forms available or the places at which forms may be obtained, and instructions as to the scope and content of reports and other submittals. In particular, §§ 304.4 and 304.5(d) (12 CFR 304.4 and 304.5(d)) address the Consolidated Reports of Condition and Income and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, respectively. The FDIC is therefore revising these two sections of its regulations to bring them into conformity with section 122 of FDICIA.

In addition, a review of § 304.4 revealed that it contained outdated information about the Consolidated Reports of Condition and Income. This section of the regulation (and the related portion of appendix A to part 304—List of Forms) contained information on report forms for savings banks and other references that were obsolete. Section 304.4 and appendix A were therefore revised to remove the outdated information and replace it with current information.

Regulatory Factors

After considering the public comments that will be received in response to the May 20, 1992, publication of a notice of its proposal, the FFIEC will be adopting final reporting requirements for small business and small farm lending information in the reports of condition filed by insured depository institutions pursuant to section 122 of FDICIA. As a consequence, the revised rule contained herein does not in and of itself require any action by FDIC-supervised insured depository institutions beyond what the FFIEC will be requiring them to perform. This regulatory revision by the FDIC serves only to bring §§ 304.4 and 304.5(d) of the FDIC's regulations into conformity with the statutory requirement of section 122 of FDICIA and to update and correct section 304.4. Therefore, in accordance with the Administrative Procedure Act (5 U.S.C. 553), the Board of Directors may waive notice of proposed rulemaking and public comment.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board of Directors hereby certifies that the revised rule will not have a significant economic impact on a substantial number of small entities because the rule does not impose any actions or requirements on FDIC-supervised insured depository institutions other than what will be imposed on such institutions upon the FFIEC's adoption of final reporting requirements for small business and small farm lending pursuant to section 122.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the current Consolidated Reports of Condition and Income required of FDIC-insured state nonmember commercial and savings banks and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks required of FDIC-supervised insured U.S. branches of foreign banks have been submitted to, and approved by, the Office of Management and Budget ("OMB"). (OMB Control Numbers 3064–0052 and 7100–0032, respectively.) Upon the adoption by the FFIEC of final reporting requirements for small business and small farm lending, the FDIC will submit the reporting changes to the Consolidated Reports of Condition and Income to OMB for its review. Similarly, the Federal Reserve Board, which collects and processes the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks on behalf of FDIC-supervised insured branches, will submit the reporting changes to this report to OMB for its review.

List of Subjects in 12 CFR Part 304

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Foreign banking, Freedom of information, Reporting and recordkeeping requirements.

Accordingly, the FDIC hereby amends 12 CFR part 304 as follows:

PART 304—FORMS, INSTRUCTIONS AND REPORTS

1. The authority citation for part 304 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1817, 1818, 1819, 1820; Public Law 102–242, 105 Stat. 2251 (12 U.S.C. 1817 note).

2. Section 304.4 is revised to read as follows:

§ 304.4 Reports of condition and income.

Forms FFIEC 031, 032, 033, and 034: Consolidated Reports of Condition and Income. Forms FFIEC 031, 032, 033, and 034 are quarterly reports, for insured state nonmember banks (except District banks) of different asset sizes or with foreign offices, as appropriate, in the form of an income statement, a reconciliation of changes in total equity capital accounts, and a balance sheet of the reporting bank. Supporting schedules request additional detail with respect to charge-offs and recoveries, income from international operations, specific asset and liability accounts, off-balance sheet items, past due and nonaccrual assets, information for assessment purposes, and risk-based capital. Reporting banks must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. In addition, insured state nonmember savings banks must file quarterly a supplemental schedule which primarily contains interest rate sensitivity data. Consolidated Reports of Condition and Income must be prepared in accordance with the appropriate instructions contained in the Federal Financial Institutions Examination Council booklet entitled "Instructions—Consolidated Reports of Condition and Income." All insured state nonmember banks (except District banks) shall file their completed reports either electronically, on diskette, or in hard copy (paper) form with the appropriate collection agent for the FDIC as designated in the materials accompanying the report forms each quarter. The report forms, the instructions for completing the reports, and the accompanying materials will be furnished to all insured state

nonmember banks (except District banks) by, or may be obtained upon request from, the Call Reports Analysis Unit, Division of Supervision, FDIC, Washington, DC 20429.

3. In § 304.5(d), a new sentence is added between the first and second sentences to read as follows:

§ 304.5 Other forms.

* * * * *

(d) * * * Insured branches must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. * * *

* * * * * *

4. In appendix A to part 304—List of Forms, the entry for "Form 6040/25: Consolidated Reports of Income and Condition for Savings Bank" is removed, and, in the entries for forms "FFIEC 031, FFIEC 032, FFIEC 033, and FFIEC 034: Consolidated Reports of Condition and Income", the reference "304.4(a)" in the third column is revised to read "304.4".

By order of the Board of Directors.

Dated at Washington, DC, this 28th day of May, 1992.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-13103 Filed 6-4-92; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 337

RIN 3064-AA80

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This final rule implements section 301 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 301 amends section 29 of the Federal Deposit Insurance Act (FDI Act) and adds a new section 29A. As amended, section 29 prohibits undercapitalized institutions from accepting funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts. Adequately capitalized institutions may accept such funds only if they first obtain a waiver from the FDIC. Well capitalized institutions may accept such funds without restriction. Section 29, as amended, also limits the rates of interest that may be offered by insured depository institutions that are undercapitalized or adequately capitalized. Section 29A requires a deposit broker to notify the FDIC of its status as a deposit broker before soliciting or placing deposits with an insured depository institution. The FDIC may require deposit brokers to maintain records relating to the deposits placed for each insured depository institution and to periodically submit those reports to the FDIC. FDICIA requires the FDIC to adopt final regulations to carry out the amendments made under section 301. Such regulations are required to become effective not later than 180 days after the date of enactment of FDICIA, that is, not later than June 16, 1992.

This final rule defines and clarifies key terms used in the statute. It describes the application process whereby adequately capitalized insured depository institutions may obtain a waiver from the FDIC authorizing the acceptance of funds obtained by or through a deposit broker. This final rule also prescribes the form and content of the notice which deposit brokers must file with the FDIC and imposes related recordkeeping requirements on deposit brokers.

The FDIC invites any interested party to inform the FDIC of difficulties uncountered as a result of the final rule. Suggestions for ways to improve implementation so as to lessen any unnecessary adverse impact are welcome.

EFFECTIVE DATE: This final rule becomes effective on June 16, 1992.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Supervision, (202) 898-6892 or Valerie Jean Best, Counsel, Legal Division, (202) 898-3812, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The order of discussion in this section is as follows. First, the statutory provisions governing brokered deposits are described. Second, the FDIC's March 24, 1992 proposal for implementing those statutory provisions is discussed. Third, the comment letters received in response to the proposal are summarized. Fourth, a summary of the final rule is provided.

I. Statutory Provisions

Statutory Provisions Limiting the Acceptance of Brokered Deposits and the Payment of Significantly Higher Interest Rates

Prior to the enactment of FDICIA, section 29 of the FDI Act prohibited "troubled" institutions from accepting funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts. (For ease of reference, such funds are referred to an "brokered deposits" in this discussion and in the final rule). A "troubled" institution was defined by statute to mean any insured depository institution that did not meet the minimum capital requirements applicable with respect to such institution (*i.e.*, an "undercapitalized" institution). Renewals and rollovers of any amount on deposit in any such accounts were treated as an "acceptance" of funds under the statute.

The term "deposit broker" was broadly defined to mean (1) "any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties" and, (2) "an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan." Several exceptions to this definition were set out in the statute. Most of the exceptions concerned depositors acting in certain, specifically described, fiduciary relationships (*e.g.*, the trust department of an insured depository institution, the trustee of a pension plan or other employee benefit plan, the trustee of a testamentary account, the trustee of an irrevocable trust, etc.).

The FDIC was authorized to waive the prohibition on the acceptance of brokered deposits on a case-by-case basis upon a finding that the acceptance of such deposits did not constitute an unsafe or unsound practice with respect to the institution applying for a waiver. The FDIC was also authorized to exempt certain insured depository institutions for which the FDIC had been appointed as conservator.

Prior to the enactment of FDICIA, section 29 regulated the interest rates that troubled institutions could offer. The restrictions on interest rates were achieved through the definitions employed in the statute. More specifically, the term "deposit broker" was defined to include "any insured depository institution, and any employee of any insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market

area." The phrase "normal market area" was not defined by the statute, but generally it was construed by the FDIC to mean the area in which an institution was advertising a particular type of deposit.

As a result of this definitional provision, an insured depository institution and its employee(s), were deemed to be deposit brokers if they solicited deposits by offering interest rates that were significantly higher than the prevailing rates offered in the institution's normal market area. Since troubled institutions were not permitted to accept deposits obtained through any deposit broker absent a waiver from the FDIC, troubled institutions could not solicit deposits by offering rates that were significantly higher than the prevailing rates unless they first obtained a waiver. This provision was intended to prohibit "the solicitation of deposits by in-house salaried employees through so-called money-desk operations." H.R. Conf. Rep. No. 101–222, 101st Cong., 1st Sess. 402 (1989). It addressed a concern that emerged during various hearings—namely, that brokered deposit restrictions could be easily circumvented by in-house solicitation or general newspaper advertising of high rates. See "Problems of the Federal Savings and Loan Insurance Corporation: Hearings Before the Committee on Banking, Housing, and Urban Affairs of the United States Senate," (part II) 101st Cong., 1st Sess. 230–231 (1989) (statement of Mr. Seidman); "Insured Brokered Deposits and Federal Depository Institutions: Hearing Before the Subcommittee on General Oversight and Investigations of the Committee on Banking, Finance, and Urban Affairs of the House of Representatives," 101st Cong., 1st Sess. 17 (1989) (statement of Mr. Murkowski), *id.* at 60–61 (statement of Mr. Fleischer).

Section 301 of FDICIA, entitled "Limitations on Brokered Deposits and Deposit Solicitations," significantly expands the current limitations on brokered deposits. Under the statutory scheme created by FDICIA, "well capitalized" insured depository institutions may accept, renew, or roll over brokered deposits without first obtaining a waiver from the FDIC. However, "adequately capitalized" insured depository institutions are prohibited by FDICIA from accepting, renewing, or rolling over brokered deposits unless they first obtain a waiver from the FDIC. "Undercapitalized" insured depository institutions are prohibited from accepting, renewing, or rolling over brokered deposits. Upon the effective date of this final rule, the FDIC will no longer have the authority to grant undercapitalized institutions a waiver authorizing the acceptance of brokered deposits. (There is, however, a limited exception for insured depository institutions for which the FDIC has been appointed conservator.) Undercapitalized institutions that are currently accepting brokered deposits pursuant to a waiver issued by the FDIC, will be prohibited from accepting further deposits upon the effective date of this final rule.

FDICIA expands the interest rate restrictions set out in section 29 of the FDI Act. FDICIA increases the number of institutions that are subject to the interest rate restrictions due to the fact that the prohibitions contained in section 29, as amended, now apply to adequately capitalized institutions as well as undercapitalized institutions. In addition, FDICIA eliminates the FDIC's authority to exempt an institution (whether adequately capitalized or undercapitalized) from the interest rate restrictions through a waiver.

Undercapitalized institutions are prohibited under FDICIA from soliciting deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits (1) in such institution's normal market areas; or (2) in the market area in which such deposits would otherwise be accepted. Adequately capitalized institutions that accept brokered deposits pursuant to a waiver from the FDIC are prohibited from paying a rate of interest on such funds which, at the time that such funds are accepted, renewed, or rolled over, significantly exceeds (1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or (2) the "national rate" paid on deposits of comparable maturity for deposits accepted outside the institution's normal market area. The "national rate" is to be established by the FDIC. FDICIA does not impose interest rate restrictions on well capitalized institutions.

FDICIA retains unchanged the definition of "deposit broker" currently set out in section 29 of the FDI Act. Consequently, the term "deposit broker" continues to include any insured depository institution, and any employee of any insured depository institution, which, directly or indirectly, solicits deposits by offering rates of interest which are significantly higher than the prevailing rates of interest offered by other insured depository institutions having the same type of charter in the offering depository institution's normal market area. The apparent effect of this provision is to limit the rate of interest an adequately capitalized institution may offer on this type of deposit, as well as those obtained through a third-party intermediary.

The FDIC recognizes the circularity of the law that says solicitation of deposits by offering significantly above market rates of interest makes those deposits brokered funds, and an adequately capitalized institution, even with a FDIC waiver, cannot pay a rate of interest on brokered funds that significantly exceeds market rates. This, however, seems to be the clear result of the statutory language and the consequence is that a merely adequately capitalized institution can never solicit deposits by offering rates of interest which are significantly more than the relevant local or national rate.

Statutory Restrictions Applicable to Deposit Brokers

FDICIA provides that deposit brokers are prohibited from soliciting or placing any deposit with an insured depository institution unless the broker has provided the FDIC with written notice that it is a deposit broker. The form and content of the written notice may be prescribed by the FDIC. The FDIC is authorized to require, by regulation, each deposit broker to maintain separate records relating to the total amounts and maturities of the deposits placed by such broker for each insured depository institution. The FDIC may also require each deposit broker to file separate quarterly reports with the FDIC relating to the total amounts and maturities of the deposits placed by the broker for each depository institution during the applicable quarter.

The FDIC is authorized to impose by regulation or order, such additional restrictions on the acceptance of brokered deposits by any institution as the FDIC may determine to be appropriate.

II. Description of Proposed Rule

On March 24, 1992, the FDIC adopted a proposed rule designed to implement the new statutory scheme for regulating brokered deposits as prescribed in amended section 29 and new section 29A of the FDI Act. (57 FR 11442, April 3, 1992.) For the most part, the proposed rule tracked the language of the statute. The proposed rule did, however, offer definitions for the terms "well capitalized," "adequately capitalized," and "undercapitalized." In order to fully effectuate the interest rate restrictions

imposed by FDICIA, the proposed rule outlined a method of calculating the "national rate" created by FDICIA. In addition, the proposed rule clarified the meaning of "significantly higher" as it relates to the interest rate restrictions. The proposed rule described a waiver application process. Finally, the proposed rule outlined registration and recordkeeping provisions applicable to deposit brokers. The specific provisions of the proposed rule are described in more detail below.

Capital Level Definitions

The new statutory scheme for brokered deposits tracks the language of other provisions of FDICIA calling for progressively more stringent restrictions and supervision as capital levels decline. Thus, well capitalized institutions may accept brokered deposits without restriction. Adequately capitalized institutions may accept brokered deposits if they first obtain a waiver from the FDIC. Undercapitalized institutions may not accept brokered deposits. The term "well capitalized" and "adequately capitalized" are not defined in section 29, as amended. However, those terms are the same as found in section 38 of the FDI Act dealing with prompt corrective action. Further, section 29, as amended, indicates that the terms "undercapitalized" is to have the same meaning provided in section 38 of the FDI Act.

The precise regulatory definitions of the different capital levels identified in section 38 are currently being developed in consultation with the other Federal banking agencies. They will not be available until some time beyond the date when final regulations implementing the new brokered deposit restrictions must be in place. For consistency and in keeping with the evident intent of Congress, the FDIC intends to adopt the section 38 definitions of capital levels when they become effective.

In the interim, the proposed regulation defined "well capitalized" to mean an institution whose leverage and risk-weighted capital ratios are at least one to two percentage points higher than otherwise currently required by applicable regulations. The FDIC stated in the proposed rule that it intended to adopt a precise percentage point and possibly other elements, but desired to receive the comments of interested persons before selecting the appropriate measure. In addition, the proposed rule provided that a "well capitalized" institution must be CAMEL- or MACRO-rated 1 or 2 and may not be under any outstanding order or written direction to achieve a specific higher level of capital. An "adequately capitalized" institution was defined as one that fails to meet the standard for "well capitalized" but is not "undercapitalized." An "undercapitalized" institution was defined as one that fails to meet any regulatory minimums after giving effect to any chargeoffs or other capital reductions directed by a federal or state regulator, and would have included any institution which had been directed to achieve a specific higher level of capital and had not yet met that higher capital level. An exception was created for any institution that met the minimum regulatory capital requirements but had been directed or advised to achieve a specific higher level of capital. Such an institution would have been considered adequately capitalized if (1) it had committed to and was in compliance with a plan designed to achieve the specific higher level of capital directed or otherwise required, and (2) the plan had been accepted in writing by the regulator requiring the specific higher level of capital.

The definition of "well capitalized" has been changed in the final rule so as to exclude any institution that is in a "troubled condition". For purposes of this final rule, the term "troubled condition" is defined by reference to regulations issued pursuant to section 32 of the FDI Act. The definition of "undercapitalized" has also been changed in the final rule; "undercapitalized" is determined solely by failing to meet the regulatory minimums. An adequately capitalized institution is in between and if in a "troubled condition," the FDIC will consider its performance and commitment to a corrective program in deciding whether to grant a brokered deposit waiver. The criteria as originally proposed and summarized in the preceding paragraph are likely to be part of any waiver conditions (*i.e.*, compliance with a capital restoration plan accepted in writing by the applicable regulator).

The Board intends to lower or eliminate the leverage capital component from the definitions of "well capitalized," "adequately capitalized," and "undercapitalized," after the risk based capital standards have been revised by each Federal banking agency to take into account interest rate risk as required by section 305 of FDICIA, and after experience has been gained with such standards. We acknowledge the requirements of section 38(c) of the FDI Act and would comply with those requirements, to the extent they apply, before taking any such action.[1]

Interest Rate Limitations

Although an adequately capitalized institution may accept brokered deposits with a waiver from the FDIC, it may not pay a rate of interest on such deposits which, at the time that such deposits are accepted, significantly exceeds (1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in its normal market area, or (2) the "national rate" paid on deposits of comparable maturity for deposits accepted outside the institution's normal market area.

The FDIC examined several alternatives for purposes of establishing the "national rate." First, the FDIC considered periodically surveying markets throughout the country and compiling and publishing rates for deposits of various maturities. The second alternative examined was reference to publications that currently publish deposit rates. A third possible approach was to tie the national rate to comparable Treasury securities with some additional margin.

The alternative selected for inclusion in the proposed rule was based on Treasury securities. The proposed rule provided that the national rate would be determined by reference to the current yield of similar maturity U.S. Treasury obligations published daily plus 100 basis points, or 150 basis points in the case of any deposit at least half of which is uninsured (wholesale deposits).

The final rule continues to provide that the national rate will be computed by reference to comparable Treasury securities. However, the method of calculating the national rate has been simplified. Ordinarily, the national rate will be 120 percent of the current yield on similar maturity Treasury securities; in the case of institutional (wholesale) deposits, the national rate will be 130 percent of the current yield on similar maturity Treasury securities. The FDIC requests comment from any party that is unreasonably constrained by these limits and will consider whether any

[1] Section 38(c) of the FDI Act requires that the capital standards prescribed under that section by each appropriate Federal banking agency shall include a leverage limit and a risk-based capital requirement, as well as any other additional relevant capital measures needed to carry out the purpose of section 38 and implemented by regulation. However, an appropriate Federal banking agency may, by regulation, rescind any relevant capital measure required by section 38, upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of section 38.

future amendment to the regulations is appropriate.

As outlined above, section 29, as amended, prohibits undercapitalized and adequately capitalized institutions from soliciting funds by offering interest rates that "significantly exceed" the prevailing rate or that are "significantly higher" than the prevailing rate. Based upon its reading of the statute and a review of the legislative history, it is the FDIC's view that Congress did not intend to suggest that the phrases "significantly higher" and "significantly exceed" are to have different meanings. Consequently, the FDIC construes the two phrases as having the same meaning. For purposes of implementing the interest rate limitations imposed by FDICIA, the proposed rule defined the phrases "significantly exceeds" or "significantly higher" to mean 50 basis points. In other words, an interest rate would be "significantly" excessive or "significantly" higher than a prevailing market rate if it exceeds that rate by more than 50 basis points. In response to the comment letters received, this number has been changed in the final rule from 50 basis points to 75 basis points.

The proposed rule offered a new definition for the phrase "market area." Previously, FDIC regulations described an institution's "normal market area" as the area in which an institution is advertising and soliciting a particular type of deposit. The normal market area could vary from office to office or for different types of deposits. The media used to advertise and solicit a particular type of deposit and the normal coverage of those media were important considerations in defining the market for that deposit. The earlier FDIC regulation stated that "[i]n each case, the rates offered for the particular deposit must be compared with the rates offered by the other institutions with the same type of charter, without regard to size, in the particular geographic market in which that deposit is being solicited, whether the market is national, regional or local in character." 12 CFR 337.6(a)(1)(ii) footnote.

Under the proposed rule, the term "market area" was more broadly defined to mean "any readily defined geographical area in which rates offered by any one insured depository institution operating in the area may affect the rates offered by other institutions operating in that same area." This definition has been adopted in the final rule. It is designed to facilitate a case-by-case determination of market area based on the economic impact of a particular institution's efforts to solicit deposits in an area.

The proposed rule noted that when comparing rates offered or paid with market rates, there has been some confusion in the past as to what was intended since both the statute and current regulation simply referred to "rates" without elaboration. The FDIC attempted to clarify this requirement by explicitly referring to "nominal" rates of interest in the proposed rule. Staff was of the view that results ordinarily would not change significantly whether nominal rates were compared to nominal rates or yields to yields. Consequently, nominal rates were proposed in the proposed rule for simplicity of administration and enforcement.

Application for a Waiver

The proposed rule provided that adequately capitalized institutions wishing to obtain a waiver must file an application in letter form with the appropriate FDIC regional director. The proposed rule outlined the information required to be submitted in the waiver. It was also provided that any application filed by an institution that is CAMEL- or MACRO-rated 1 or 2 by its primary federal regulator would be deemed approved for the period requested (not to exceed two years) 30 days after the application had been filed with the FDIC unless the institution is notified in writing during the 30 day period that the FDIC requires additional time to review the application. These proposals have been adopted in the final rule, largely without change, except that the 30-day waiting period has been reduced to 21 days.

Deposit Brokers

The proposed rule required the registration of deposit brokers because the statute requires registration in order to permit deposit brokers to continue to operate. Only minimal registration information was required under the proposed rule.

Recordkeeping requirements were also imposed requiring any deposit broker to report, upon request, the volume, rates and maturities of deposits placed with any named institution over a specified time period and the deposits outstanding at a given institution on a stated date. The FDIC believed that these records are already being maintained by brokers in the ordinary course of business. FDICIA authorizes the FDIC to require deposit brokers to submit quarterly reports to the FDIC showing the total amount and maturities of the deposits placed by such broker for each depository institution. The proposed rule did not impose a blanket requirement that such reports be submitted to the FDIC on an ongoing basis. Instead, the proposed rule stated that a deposit broker must submit the above-referenced quarterly reports to the FDIC upon request. The FDIC believed that call report data on brokered deposits received from insured institutions is sufficient for supervisory and regulatory purposes for the time being, but will require deposit brokers to submit reports whenever appropriate. The provisions outlined in the proposed rule have been adopted in the final rule without change.

III. Comment Summary

The proposed rule provided for a 30-day comment period. Comments were required to be received by the FDIC by May 4, 1992.

The FDIC received 90 comment letters addressing various aspects of the proposed rule. Three-quarters of these letters were received after the expiration of the 30-day comment period. The FDIC recognizes that this final rule will have a broad impact, however. Consequently, even though the FDIC is faced with a restricted amount of time within which it must implement this final rule, the FDIC has reviewed and considered all letters received, including those that were received after the deadline. Letters were received from approximately 46 banks or bank holding companies; nine savings associations or savings association holding companies; 10 brokers; and 14 trade associations. As to the trade associations, seven represented banking interests; two represented savings associations; two represented brokers; one represented a credit union; and two represented the interests of both banks and savings associations. The remaining letters were received from a variety of sources, including a financial services firm, individuals, law firms writing on behalf of both banks and savings associations, a rate-listing service, and state banking departments.

Many comment letters received from community banks urged that brokered deposits be prohibited altogether. One complained, for example, that brokered deposits "take [funds] out of communities that in many cases needed the funds." A major trade association representing community bankers wrote to express general support for restrictions on brokered deposits commenting that: "Troubled institutions should not be allowed to pay excessive rates, unfairly competing for deposits, in an attempt to grow out of their problems. Undercapitalized institutions

need stable, 'core' deposits—not short-term brokered deposits attracted by high rates." Another trade group referred to the "savings and loan debacle" and wrote: "[W]e commend the [FDIC's] proposed rule * * *. A prudent measure such as that which is proposed, should aid in curtailing a similar situation from occurring in the future." A state banking department wrote that "much of the S&L crisis can be traced to brokered deposits." In contrast, comment letters received from securities firms and from some large banks argued that brokered deposits should not be further restricted. One argued that: "Brokered deposits are inherently no different than deposits obtained directly by a bank or savings association. Recent studies concluded that brokered deposits have not played a major role in the failure of banks and savings associations and that there is no evidence of abuse of brokered deposits since the adoption of FIRREA [the Financial Institutions Reform, Recovery, and Enforcement Act of 1989]." Another contended that brokered deposits can be "a source of funds that are frequently less expensive and have longer maturities than funds from alternative sources, which permits greater flexibility in liquidity and asset/liability management."

Apart from this larger debate over the merits of brokered deposits, most of the comment letters recognized that the restrictions set out in the proposed rule were required by statute. The comment letters are discussed in more detail below.

Capital Level Definitions

The FDIC received more comment letters on the definition of "well capitalized" than on any other issue. Many comment letters urged that an institution should be considered "well capitalized" if it maintains a capital level that is 100 basis points above the current regulatory minimums. (As opposed to the alternate suggestion of 200 basis points above minimum.) Generally, these comment letters did not provide extensive arguments or data to support their views but simply urged that institutions should not be unnecessarily excluded from the brokered deposit market. Their views were generally premised on the belief that brokered deposits could be beneficial. For example, one comment letter noted: "[B]y precluding those institutions whose capital levels do not exceed required minimum[s] by two percentage points, the Proposed Regulations act to foreclose this otherwise economical and efficient funding source for a number of healthy institutions." Other comment letters argued that the capital levels should be kept low so as not to burden either the institution, which would have to file a waiver application, or the FDIC, which would have to review the application. For example, one comment letter stated:

> Setting extremely high capital requirements for institutions that may accept brokered deposits without a waiver increases the burden on both the depository institutions that could benefit from them and the FDIC which will have to administer the waiver process. Therefore, the definition of 'well capitalized' should be inclusive rather than exclusive.

The concern was also expressed that the definition of "well capitalized" may have implications beyond those currently contemplated in the law. The following comment is typical of these concerns: "Setting the threshold levels has implications for more than just restricting brokered deposits. It * * * may also ultimately affect the ability of banks to offer diversified financial services."

The FDIC does not believe that the capital levels should be set artificially low in order to enable more institutions to escape the restrictions imposed by section 29, as amended. It should be remembered that section 29, as amended, permits adequately capitalized institutions to accept brokered deposits pursuant to a waiver from the FDIC. Section 29, as amended, is not so much a bar on the acceptance for third-party deposits as it is a mechanism that requires an adequately capitalized institution to explain to the FDIC (through the waiver application process) why the institution's use of brokered deposits does not pose an undue risk. If the acceptance of such funds does not constitute an unsafe or unsound practice with respect to the applying institution, then the institution will generally be granted a waiver by the FDIC.

The FDIC also is not persuaded that capital levels should be set low in order to relieve institutions of the burden of filing waiver applications. It is expected that institutions would engage in the type of analysis required by the waiver application whenever they consider the acceptance of brokered deposits. Finally, it would be futile to speculate as to whether or not laws affecting the activities of depository institutions will be enacted in the near future. No one can predict with any certainty the content of such laws, if enacted. It would be inappropriate to allow such speculation to shape the implementation of a statute that already is in effect.

The FDIC believes the different capital levels for purposes of this regulation should be defined based on market perceptions of capital strength and other indicators of soundness. Where institutions fall is essentially a function of their own capital strength and soundness and the statutory scheme crafted for brokered deposits under FDICIA.

Several comment letters opposed using CAMEL or MACRO ratings for purposes of determining whether or not an institution is "well capitalized." They argued that the CAMEL/MACRO ratings should not be incorporated into the definition of "well capitalized" for the following reasons: (1) The CAMEL/MACRO ratings should be kept confidential; (2) the CAMEL/MACRO ratings are subjective; (3) it makes the determination of capital more complicated; and (4) Congress considered, and rejected, proposals to use CAMEL/MACRO ratings in FDICIA because Congress was concerned that the ratings should be kept confidential. In contrast, some institutions wrote to support the use of CAMEL/MACRO ratings for purposes of defining "well capitalized." A major trade association wrote: "The CAMEL sytsem has the advantage of blending the ratings of key aspects of banking, weighted equally. For purposes of this rule, basing a bank's qualifications to accept brokered deposits on a CAMEL system where capital is emphasized seems reasonable."

Other comment letters suggested that the proposed rule could be simplified by eliminating certain references to subsets of capital and by eliminating the reference to capital requirements imposed by state regulators.

In light of the comments received, the FDIC has revised the capital provisions set out in the proposed rule as follows. The definition of "well capitalized insured depository institution" in the final regulation has been changed to stated percentages of leverage and risk-based capital. A "well capitalized institutions" is one that: (1) Has a ratio of Tier 1 capital to total book assets of not less that 5.0 percent; (2) has a ratio of total capital to risk-weighted assets of not less than 10.0 percent; (3) has a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent; and (4) is not in a "troubled condition" as that term is used in section 32 of the FDI Act. With regard to the requirement that the ratio of Tier 1 capital to risk-weighted assets be not less than 6.0 percent, we do *not* intend to suggest that, as an institution's total risk-based capital ratio increases, its Tier 1 capital must always increase proportionately so that 60 percent of an institution's total risk-based capital is always Tier 1 capital.

For example, an institution with 11 percent total risk-based capital would not be required to have a 6.6 percent Tier 1 risk-based capital ratio; rather, the minimum ratio of Tier 1 capital to risk-weighted assets would still be 6.0 percent.

These percentages are at the lower end of the range of institutions that might be considered "well capitalized" and yet are consistent with the intent of Congress in establishing capital as a principal protection for taxpayer funds under the regulatory scheme established under FDICIA. The definition of well capitalized has also been simplified by eliminating references to subsets of capital and by eliminating references to state standards. In addition, the reference to CAMEL/MACRO ratings has been deleted from the definition of a "well capitalized" institution. The FDIC has substituted in its place the above-referenced requirement that, in order to be considered well capitalized, institutions may not be in a "troubled condition" as that term is used in section 32 of the FDI Act. This substitution should reduce concerns as to the subjectivity and confidentiality of CAMEL/MACRO ratings.

The comment letters did not challenge the definition of "adequately capitalized" used in the proposed rule. Consequently, that definition set forth in the proposed rule is adopted in the final rule without change. The definition of undercapitalized has been greatly simplified. It now refers to institutions that fail to meet the minimum capital requirements prescribed by their primary Federal regulator, exclusive of any corrective orders. It is believed that these interim definitions are fairly simple, reasonable under the circumstances and should suffice until definitions of capital levels for purpose of section 38 are adopted. These interim definitions of capital levels should not be construed as anticipatory or necessarily indicative of how the different capital levels may eventually be defined for purposes of prompt corrective action under section 38 of the FDI Act.

Interest Rate Restrictions

Determination of the "National Rate"

A majority of the comment letters that addressed the issue agreed that the "national rate" should be determined by reference to the yields on comparable Treasury securities with some additional margin. A small number of comment letters questioned whether such an index would be sufficiently flexible. These comment letters argued that the spread between Treasury securities and bank deposits is not constant and that the funding operations of a bank may be constrained as economic conditions change. They also argued that Treasury securities may not have the necessary range of maturities and denominations to permit adequate differentiation in pricing different products. Most of these comment letters recommended that the FDIC rely on a private publication. Comment letters that opposed reliance on a private publication or on a FDIC-generated survey were concerned that the institutions surveyed may not be sufficiently representative of all institutions.

Those who endorsed implementation of a Treasury securities index to calculate the national rate did so on the grounds that such an approach is "more objective and simpler to administer" than the other methods outlined in the proposed rule. One comment letter noted:

> The Treasury markets are well recognized and otherwise meet the criteria established. We believe that it would be a relatively simple matter to ensure that obligations are within 100 basis points of U.S. Treasury obligations with similar maturities and 150 basis points if at least half the deposit is uninsured. * * * [A]s a functional index, it appears to be the one most susceptible of broad use.

Another comment letter argued that a U.S. Treasury index is a logical choice for a national brokered deposit rate as it also is the generally accepted benchmark for pricing fixed rate or, at times, floating rate financings. In response to arguments that Treasury securities may not have the necessary range of maturities and denominations, comment letters supportive of the Treasury securities index contended that "it is both common and effective practice to interpolate rates on deposits where there are no corresponding maturities."

However, even those who endorsed the Treasury securities index cautioned that apread between Treasury securities and depository institution deposits can fluctuate substantially over time. One comment letter stated: "Traditionally, deposit spreads to U.S. Treasuries have widened whenever there is a flight to quality and investors move to U.S. Treasury securities. It is important that this index have the ability to be moved so as to adjust for changes in market spreads." These comment letters urged that the spread should be wide enough to handle such fluctuations. Generally, they found the spread contained in the proposed rule (*i.e.*, 100 basis points, or 150 basis points in the case of any deposit at least half of which is uninsured) to be adequate, but others urged that the FDIC adopt a greater spread. Several comment letters urged the FDIC to adopt an index that the securities industry is developing for various retail brokered deposits. However, the FDIC understands that the index is not in place at this time.

A substantial number of comment letters expressed concern about institutional or wholesale deposits. The institutional market is described as being comprised of institutional investors purchasing substantially uninsured, large-denomination, negotiable certificates of deposit from banks and savings associations with ratings from the credit rating agencies. In contrast, the retail market is described as being comprised primarily of individual depositors and savers purchasing fully insured certificates of deposit in relatively smaller amounts. Many of these comment letters argued that the institutional market should be exempted from the brokered deposit restrictions contained in the statute and in the regulation. Most comment letters, however, seemed to recognize that the FDIC does not have the authority to exempt the institutional market from the statutory prohibitions governing brokered deposits. Instead, they supported the two-tier approach taken in the proposed rule, that is, a spread that is greater for deposits over half of which are uninsured.

Based upon the comments received, the final rule adopts the Treasury index outlined in the proposed rule, with one change. Although not ideal, this approach has been adopted since it is better than any other and has a number of advantages. First, it is objective and simple to administer. Maximum allowable rates can be computed by anyone who has the benchmark rates and the formula for deriving the maximum. Moreover, since the benchmark rates are updated regularly and the formula remains constant, there is no maintenance requirement. The final rule has been changed, however, to allow for greater flexibility should the spread to Treasury securities widen in a rising interest rate environment. Recognizing that today's relatively low rates are not necessarily indicative of future rates, the final rule provides that the national rate will be calculated by reference to a percentage, rather than a fixed number of basis points, as had been provided in the proposed rule. More specifically, the national rate shall be 120 percent of the current yield on similar maturity U.S. Treasury obligations, or, in the case of any wholesale deposit, 130 percent of such

applicable yield. A wholesale deposit is a deposit at least half of which is uninsured. In the case of non-term deposits or other unusual situations, the FDIC will provide interpretative advice regarding the appropriate benchmark reference rates as necessary.

The FDIC has rejected the alternative that would have required it to survey markets throughout the country and compile and publish rates for deposits of various maturities. The FDIC believes this approach would not be timely because data on market rates must be available on a substantially current basis to achieve the intended purpose of this provision and permit institutions to avoid violations. At this time, the FDIC has determined not to tie the national rate to a private publication. The FDIC has not been able to establish that such published rates sufficiently cover the markets for deposits of different sizes and maturities.

Definition of Significantly Higher

Several comment letters suggested that the definition of "significantly higher" be revised. These comment letters suggested anywhere from 75 to 200 basis points as the appropriate test. Some comment letters asserted that adequately capitalized institutions, as opposed to undercapitalized institutions, should be given greater flexibility in terms of the interest rates they may offer. In particular, concern was expressed that adequately capitalized institutions cannot pay significantly higher than market rates on deposits they solicit directly, even with a waiver from FDIC. In light of these concerns, the meaning of "significantly exceeds" and "significantly higher" has been revised in the final rule. An interest rate is deemed to be significantly higher or excessive if it exceeds the applicable benchmark (*i.e.*, the national rate or the local rate) by more than 75 basis points. Based upon the FDIC's experience with the brokered deposit prohibitions to date, it is believed that this number will allow insured depository institutions subject to the interest rate ceilings imposed by FDICIA to compete for funds within markets, and yet constrain their ability to attract funds by paying rates significantly higher than prevailing rates.

Definition of "Normal Market Area"

A small number of letters comment on the definition of the phrase "normal market area" and "market area." Some comment letters found the definition of "market area" offered in the proposed rule to be acceptable. A few comment letters asked that the phrase be more precisely defined, while other comment letters urged that the term be defined broadly. One comment letter stated:

> We recognize that it is probably impossible to come up with a precise definition of normal market area that will be appropriate for all institutions. Thus, we suggest that the final regulation allow each institution to establish its own market area (or several market areas, if appropriate), but that it provide additional guidance to aid banks in making such determination.

Among the factors suggested in this comment letter were advertising, the percentage of deposits that come from the community, and the bank's market share in the community.

In light of these concerns, the final rule incorporates the generalized test of economic impact outlined in the proposed rule for purposes of defining "market area." Under the final rule, the market area will be determined pragmatically, on a case-by-case basis, based on the evident or likely impact of a depository institution's solicitation of deposits in a particular area, taking into account the means and media used and volume and sources of deposits resulting from such solicitation.

Definition of "Prevailing Rate"

Very few letters commented on the definition of "prevailing rate." Some of these letters offered alternative definitions while others asked for clarification. Based upon its analysis of the comment letters, and its experience with the brokered deposit regulations to date, the FDIC has determined not to define more specifically the term "prevailing rate" through the regulation at this time. Rather, a case-by-case analysis is believed to be more appropriate. The FDIC has, however, clarified matters by defining "prevailing rate" as the average yields paid on comparable deposits in the relevant market at the time. Some comment letters objected to the use of "nominal rates," arguing that nominal rates are easy to distort through compounding differences and discounts of premiums on an instrument. As a result of these comments, the final rule explicitly refers to effective yields. The FDIC believes that effective yields are the more accurate and meaningful measure since yield will account for differences in compounding and permit more ready comparison with U.S. Treasury securities, including instruments sold at a discount.

Waiver Applications

A number of comment letters asked that the information required for the waiver application be simplified. It was argued that not all of the information outlined in the proposed rule was relevant. The Board did not find these arguments to be persuasive. A waiver application may be granted only if the FDIC finds that acceptance of brokered deposits is not an "unsound or unsafe practice." Given the broad nature of this test, the FDIC must consider a range of information before it may conclude that the test has been satisfied. The FDIC remains convinced that the information outlined in the proposed rule is necessary in order to enable the FDIC to make a full analysis of the waiver application.

Any waiver granted will be for a fixed period, generally no longer than two years. The FDIC anticipates that a full, two-year term waiver will be used sparingly. More frequent reevaluations are usually called for. The final rule allows for a short transitional period after the effective date of the final rule. An adequately capitalized institution that files an application with the FDIC within 30 days of the effective date of the final rule may accept, renew or rollover brokered deposits for a period of 60 days following the effective date of the final rule. The institution must cease such activity if it is so notified by the FDIC. Short term, temporary orders may also be issued by the FDIC, based upon a preliminary review of a waiver application and pending further, in-depth analysis and consideration.

Registration of Brokers

The comment letters were generally supportive of the broker notification and recordkeeping requirements outlined in the proposed rule. Consequently, this final rule implements the requirements outlined in the proposed rule without change. It is the FDIC's view that a company may file a single notice on behalf of all of its employees and/or agents, although the FDIC reserves the right to require individual information at any time.

Conservatorships

Section 29 of the FDI Act grants insured depository institutions for which the FDIC has been appointed as conservator a limited exception from the brokered deposit prohibitions set forth in the statute. The final rule reflects this exception. The final rule provides that institutions for which the FDIC has been appointed conservator shall not be subject to the brokered deposit prohibitions for 90 days after the date on which the institution was placed in conservatorship. In large part, this provision continues the exception contained in current FDIC regulations. It will require the Board to make certain findings as it did in the past. It is

believed this standby authority could provide some useful funding flexibility whenever the FDIC is appointed conservator of an institution. In any event, and consistent with section 29 of the FDI Act, this additional funding flexibility could be used only for the first 90 days of a conservatorship after which the institution can no longer accept, renew or rollover brokered deposits. In addition, such institutions are subject to the interest rate restrictions imposed by FDICIA. Section 29 of the FDI Act does not set forth a similar specific exemption from the brokered deposit prohibition for RTC conservatorships. The FDIC did not receive any specific comments on this provision.

Other Issues

Government Programs Designed to Assist Minority and Women-Owned Depository Institutions

Some comment letters raised concerns about certain government programs. These government programs, which were created to assist minority and women-owned depository institutions ("MWODIs"), benefit from the services of insured institutions which facilitate the deposit of government-owned or government-controlled funds in MWODIs and carry out other administrative duties necessary to the operation of the programs. Minority and women-owned financial institution assistance programs provide stable, long-term deposits for which the insured MWODIs generally pay market or less than market rates. The purposes for which the funds are to be used are monitored by the sponsoring departments or agencies. Such deposits clearly do not have the negative attributes of the brokered deposits which were of concern to Congress in adopting the FDICIA, and the FDIC believes that the amendments made by section 301 of that Act were not intended to apply to deposits placed by insured depository institutions assisting government departments and agencies in the administration of minority and women-owned depository institution deposit programs. The final rule excludes from the definition of the term "deposit broker" insured depository institutions acting as intermediaries or agents for government departments or agencies to facilitate the deposit of funds in MWODIs under minority or women-owned depository institution deposit programs.

Insured Branches of Foreign Banks Operating in the U.S.

As stated in the proposed rule, insured branches of foreign banks operating in the United States are subject to the prohibitions contained in section 29 of the FDI Act, as amended. (57 FR 11442, 11444, April 3, 1992.) It is not clear from the statute, however, what criteria should be used for purposes of distinguishing among a "well capitalized" branch, an "adequately capitalized" branch, or an "undercapitalized" branch. Reference could be made to the capital position of the entire foreign bank, not just the insured branch operating in the U.S., but such a reference would be cumbersome and make implementation of the brokered deposit prohibitions diffficult. Consequently, the proposed rule offered a definition of "undercapitalized" based on the pledge of assets required by 12 CFR 346.19 and on the eligible assets required by 12 CFR 346.20. More specifically, the proposed rule provided that, for purposes of the brokered deposit prohibitions only, an insured branch of a foreign bank operating in the United States would be considered "undercapitalized" if it failed to maintain either: (1) The pledge of assets required under 12 CFR 346.19; or (2) the required volume of eligible assets prescribed by 12 CFR 346.20. The proposed rule did not specify when an insured branch of a foreign bank would be considered "well capitalized." One comment letter noted that, in the absence of such a definition, all insured branches of foreign banks that are not "undercapitalized" would be required to apply for a waiver, an obviously undesirable result. Consequently, the final rule sets out a definition of "well capitalized" applicable to insured branches of foreign banks. The final rule provides that an insured branch of a foreign bank is well capitalized, for purposes of the brokered deposit prohibitions, if it (1) maintains the pledge of assets required under 12 CFR 346.19; (2) maintains the eligible assets prescribed by 12 CFR 346.20(a) at 108 percent of the preceding quarter's average book value of the insured branch's third-party liabilities; and (3) has not been notified by the appropriate Federal banking agency that it is in a "troubled condition." The reference to "troubled condition" parallels the criteria used in the definition of "well capitalized" applicable to all other insured depository institutions. The final rule provides that an "adequately capitalized" institution is one that is neither a well capitalized institution nor an undercapitalized institution. The FDIC believes that this general definition is sufficient to encompass insured branches of foreign banks.

Miscellaneous Issues

Some of the comment letters asked for clarifications and interpretations of the statute which did not require amendment of the regulation. The FDIC intends to issue additional guidance to address these questions as necessary. The FDIC also will consider whether additional rulemaking is required to address any of these issues.

IV. Summary of Key Provisions of Final Rule

Key Definitions

A well capitalized institution is one that: (1) Has a ratio of total capital to risk-weighted assets of not less than 10.0 percent; (2) has a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent; (3) has a ratio of Tier 1 capital to total book assets of not less than 5.0 percent; and (4) has not been notified by its appropriate Federal banking agency that it is in a "troubled condition." An undercapitalized institution is one that fails to meet the minimum regulatory capital requirements prescribed by its appropriate Federal banking agency. An adequately capitalized institution is one that is neither a well capitalized institution nor an undercapitalized institution.

General Prohibitions

The statute regulates the acceptance by insured depository institutions of funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts (*i.e.*, "brokered deposits"). Well capitalized insured depository institutions may accept brokered deposits without restriction. Adequately capitalized insured depository institutions are prohibited from accepting brokered deposits unless they first obtain a waiver from the FDIC. Undercapitalized institutions are prohibited from accepting brokered deposits.

Adequately capitalized institutions desiring to obtain a waiver from the FDIC must file an application in letter form with the appropriate FDIC regional director. The final rule provides for a 60-day transitional period. An adequately capitalized institution that files an application with the FDIC within 30 days of the effective date of the final rule may accept, renew or rollover brokered deposits for a period of 60 days following the effective date of the final rule, unless otherwise notified by the FDIC.

Interest Rate Restrictions

Undercapitalized institutions may not solicit deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits (1) in such institution's normal market areas; or (2) in the market area in which such deposits would otherwise be accepted.

Adequately capitalized institutions that accept brokered deposits pursuant to a waiver from the FDIC are prohibited from paying a rate of interest on such funds which, at the time that such funds are accepted, significantly exceeds (1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or (2) the "national rate" paid on deposits of comparable maturity for deposits accepted outside the institution's normal market area. The "national rate" is (1) 120 percent of the current yield on similar maturity U.S. Treasury obligations, or (2) in the case of any deposit at least half of which is uninsured (institutional or wholesale deposits), 130 percent of such applicable yield.

A rate is deemed to be "significantly" higher or excessive if it exceeds by more than 75 basis points the applicable benchmark (*i.e.*, the local rate or national rate).

Under the statute, the term "deposit broker" includes any insured depository institution, and any employee of any insured depository institution, which solicits deposits by offering rates of interest which are significantly higher than the prevailing rates of interest offered by other insured depository institutions having the same type of charter in the offering depository institution's normal market area. The apparent effect of this provision is to limit the rate of interest an adequately capitalized institution may offer on this type of deposit, as well as those obtained through a third-party intermediary. A merely adequately capitalized institution cannot solicit deposits by offering rates of interest which are significantly more than the relevant local or national rate.

Deposit Brokers—Recordkeeping Requirements

A deposit broker must register with the FDIC before it may solicit or place deposits with an insured depository institution. A deposit broker must maintain records showing the volume of brokered deposits placed with any insured depository institution over the preceding 12 months. Such records must also show the maturities, rates, and costs associated with such deposits. Upon request from the FDIC, a deposit broker must file quarterly written reports showing the volume, maturities, rates, and costs of brokered deposits placed with each depository institution during the applicable quarter.

V. Reason for Adoption Without 30-Day Delayed Effective Date

Section 301(d) of FDICIA provides that final regulations to carry out the amendments made under section 301 shall become effective not later than 180 days after the date of enactment of FDICIA. In order to comply with the requirements of section 301(d) of FDICIA, this final rule must become effective not later than June 16, 1992. Due to the statutory time constraints, the FDIC finds that good cause exists for waiving the 30-day delayed effective date required by the Administrative Procedure Act (5 U.S.C. 553(d)).

VI. Paperwork Reduction Act

The collection of information contained in § 337.6 as revised by this final rule will be reviewed by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064–0099. The information will be collected from adequately capitalized insured depository institutions applying for a waiver from the prohibition on the acceptance or renewal of brokered deposits contained in section 29 of the Federal Deposit Insurance Act as amended (12 U.S.C. 1831f). Information will also be collected from deposit brokers registering with the FDIC in order to continue to operate as a deposit broker.

The estimated annual reporting burden for the collection of information from insured depository institutions and deposit brokers in this final rule is summarized as follows:

Number of Respondents:	
Depository Institutions	400
Deposit Brokers	50
Total	450
Number of Responses per Respondent	1
Total Annual Responses	450
Hours Per Response:	
Depository Institutions	6
Deposit Brokers	1
Total Annual Burden Hours	2,450

No burden is estimated for the recordkeeping requirements for deposit brokers since no new or additional records are being mandated beyond those believed maintained in the regular course of business at the present time. Although periodic reporting is authorized by statute, none is being required under the final rule.

Comments concerning the accurancy of this burden estimate and suggestions on reducing this burden shall be directed to Assistant Executive Secretary (Administration), room F–453, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064–0099), Washington, DC 20503.

VII. Regulatory Flexibility Act

The FDIC's Board of Directors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities because it largely tracks and clarifies strictures established by statute and affords a means by which adequately capitalized insured depository institutions may avoid the application of those strictures by applying to the FDIC for a waiver. Moreover, it is anticipated that the institutions most affected by the regulation will be relatively large insured depository institutions and large brokerage firms acting as deposit brokers. Consequently, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

List of Subjects in 12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set forth in the preamble, the FDIC hereby amends part 337 of title 12 of the Code of Federal Regulations as set forth below.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818(a), 1818(b), 1819, 1828(f), 1831f, 1831f–1.

2. Section 337.6 is revised to read as follows:

§ 337.6 Brokered deposits.

(a) *Definitions.* For the purposes of this § 337.6, the following definitions apply:

(1) *Adequately capitalized insured depository institution* means an insured depository institution that is neither a well capitalized insured depository institution nor an undercapitalized insured depository institution.

(2) *Appropriate Federal banking agency* has the same meaning as

provided under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(3) *Brokered deposit* means any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.

(4) *Deposit* has the same meaning as provided under section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(1)).

(5) *Deposit broker.* (i) The term *deposit broker* means:

(A) Any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions, or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

(B) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(ii) The term *deposit broker* does not include:

(A) An insured depository institution, with respect to funds placed with that depository institution;

(B) An employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) A trust department of an insured depository institution, if the trust or other fiduciary relationship in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) The trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) A person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that person is performing managerial functions with respect to the plan;

(F) The trustee of a testamentary account;

(G) The trustee of an irrevocable trust (other than one described in paragraph (a)(5)(i)(B) of this section), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) A trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d) or 403(a));

(I) An agent or nominee whose primary purpose is not the placement of funds with depository institutions; or

(J) An insured depository institution acting as an intermediary or agent of a U.S. government department or agency for a government sponsored minority or women-owned depository institution deposit program.

(iii) Notwithstanding paragraph (a)(5)(ii) of this section, the term *deposit broker* includes any insured depository institution, and any employee of any insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market area.

(6) *Employee* means any employee: (i) Who is employed exclusively by the insured depository institution;

(ii) Whose compensation is primarily in the form of a salary;

(iii) Who does not share such employee's compensation with a deposit broker; and

(iv) Whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(7) *FDIC* means the Federal Deposit Insurance Corporation.

(8) *Insured depository institution* means any bank, savings association, or branch of a foreign bank insured under the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 et. seq.).

(9) *Undercapitalized insured depository institution* means:

(i) Any insured depository institution that fails to meet the minimum regulatory capital requirements prescribed by its appropriate Federal banking agency; [1] and

(ii) Any insured branch of a foreign bank that fails to maintain either:

(A) The pledge of assets required under 12 CFR 346.19; or

(B) The required volume of eligible assets prescribed by 12 CFR 346.20.

(10) *Well capitalized insured depository institution.* (i) The term *well capitalized insured depository institution* means an insured depository institution that:

(A) Has a ratio of total capital to risk-weighted assets of not less than 10.0 percent;

(B) Has a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent;

(C) Has a ratio of Tier 1 capital to total book assets of not less than 5.0 percent; and

(D) Has not been notified by its appropriate Federal banking agency that it is in a "troubled condition" as that term is defined by the appropriate Federal banking agency in its regulations implementing section 32 of the Federal Deposit Insurance Act.

(ii) The terms *Tier 1 capital, risk-weighted assets, total capital,* and *total book assets* have the respective meanings prescribed in regulations issued by the appropriate Federal banking agency.

(iii) As to insured nonmember banks, the term *troubled condition* is defined in 12 CFR 303.14(a)(4) to mean an institution that:

(A) Has been assigned a composite CAMEL rating by the FDIC of 4 or 5 under the Uniform Financial Institutions Rating System, or, in the case of an insured state-licensed branch of a foreign bank ("state branch"), an equivalent rating;

(B) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(C) Is subject to a written agreement which requires action to improve or maintain the safety and soundness of the institution and which is issued by either the FDIC or by the appropriate state banking authority, a cease and desist order or proceeding initiated by either the FDIC or the appropriate state banking authority, or a capital directive issued by either the FDIC or the appropriate state banking authority; or

(D) Is informed in writing by the regional director (Division of Supervision) of the region in which the institution is located ("appropriate regional director") or his or her designee, based on a visitation, examination, or report of condition, that it has been designated a "troubled institution" for the purposes of 12 CFR 303.14.

(iv) For purposes of this § 337.6, an insured branch of a foreign bank is *well capitalized* if it:

(A) Maintains the pledge of assets required under 12 CFR 346.19;

(B) Maintains the eligible assets prescribed by 12 CFR 346.20(a) at 108 percent of the preceding quarter's average book value of the insured branch's liabilities, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries; and

[1] An institution that meets the minimum capital standards prescribed in regulations issued by its appropriate Federal banking agency but that is required to achieve a higher level of capital (*e.g.*, to margin additional risk inherent in its activities or assets, etc.), is not considered to be "undercapitalized" for the purposes of this section.

(C) Has not been notified by its appropriate Federal banking agency that it is in a *troubled condition* as that term is defined by the appropriate Federal banking agency in its regulations implementing section 32 of the Federal Deposit Insurance Act.

(b) *Solicitation and acceptance of brokered deposits by insured depository institutions.* (1) A well capitalized insured depository institution may solicit and accept, renew or roll over any brokered deposit without restriction by this section.

(2)(i) An adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposit unless it has applied for and been granted a waiver of this prohibition by the FDIC in accordance with the provisions of this section.

(ii) Any adequately capitalized insured depository institution that has been granted a waiver to accept, renew or roll over a brokered deposit may not pay an effective yield on any such deposit which, at the time that such deposit is accepted, renewed or rolled over, exceeds by more than 75 basis points:

(A) The effective yield paid on deposits of comparable size and maturity in such institution's normal market area for deposits accepted from within its normal market area; or

(B) The national rate paid on deposits of comparable size and maturity for deposits accepted outside the institution's normal market area. For purposes of this paragraph (b)(2)(ii)(B), the national rate shall be:

(1) 120 percent of the current yield on similar maturity U.S. Treasury obligations; or

(2) In the case of any deposit at least half of which is uninsured, 130 percent of such applicable yield.

(3)(i) An undercapitalized insured depository institution may not accept, renew or roll over any brokered deposit.

(ii) An undercapitalized insured depository institution may not solicit deposits by offering an effective yield that exceeds by more than 75 basis points the prevailing effective yields on insured deposits of comparable maturity in such institution's normal market area or in the market area in which such deposits are being solicited.

(4) For purposes of the restriction contained in paragraphs (b)(2)(ii)(A) and (b)(3)(ii) of this section, the effective yields in the relevant markets are the average of effective yields offered by other insured depository institutions in the market area in which deposits are being solicited. An effective yield on a deposit with an odd maturity violates paragraphs (b)(2)(ii)(A) and (b)(3)(ii) of this section if it is more than 75 basis points higher than the yield calculated by interpolating between the yields offered by other insured depository institutions on deposits of the next longer and shorter maturities offered in the market. A market area is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area.

(c) *Waiver.* The FDIC may, on a case-by-case basis and upon application by an adequately capitalized insured depository institution, waive the prohibition on the acceptance, renewal or rollover of brokered deposits upon a finding that such acceptance, renewal or rollover does not constitute an unsafe or unsound practice with respect to such institution. The FDIC may conclude that it is not unsafe or unsound and may grant a waiver when the acceptance, renewal or rollover of brokered deposits is determined to pose no undue risk to the institution. Any waiver granted may be revoked at any time by written notice to the institution.

(d) *Application.* An adequately capitalized insured depository institution wishing to accept, renew or roll over brokered deposits may apply to the appropriate regional director for supervision for the region in which the main office of the institution is located. The application may be in letter form and shall include the following information:

(1) The time period for which a waiver may be needed;

(2) A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;

(3) The volume, rates and maturities associated with the brokered deposits held currently and anticipated during the waiver period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;

(4) A description of how brokered deposits are costed and compared to other funding alternatives and how such deposits are used in the institution's lending and investment activities, including a detailed discussion of any plans for asset growth;

(5) A description of the procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;

(6) A description of the management systems in overseeing the solicitation, acceptance and use of brokered deposits;

(7) A recent consolidated financial statement with balance sheet and income statements; and

(8) Reasons the institution believes its acceptance, renewal or rollover of brokered deposits would pose no undue risk.

(e) *Decision.* (1) The FDIC Executive Director for Supervision and Resolutions, the Director, Division of Supervision, and when confirmed in writing by the Director, an associate director or the appropriate regional director, or deputy regional director, shall each have the authority to approve any waiver application properly filed. An application is properly filed when complete and accurate information addressing each of the informational elements stated in paragraph (d) of this section has been provided to the appropriate regional director. Any properly authorized FDIC official may grant a temporary waiver based upon a preliminary review for a short period in order to facilitate the orderly processing of an application for a waiver. Any waiver granted will be for a fixed period, generally no longer than two years, but may be extended upon reapplication. The FDIC will provide notice to the depository institution's appropriate Federal banking agency and any state regulatory agency, as appropriate, that a request for a waiver has been filed and will consult with such agency or agencies, prior to taking action on the institution's request for a waiver. Notwithstanding the foregoing, prior notice and/or consultation shall not be required in any particular case if the FDIC determines that the circumstances require it to take action without giving such notice and opportunity for consultation.

(2) Any application filed by an institution that is CAMEL- or MACRO-rated 1 or 2 by its appropriate Federal banking agency shall be deemed approved for the period requested (not to exceed 2 years) 21 days after filing unless the institution in the interim has been notified in writing that further review and consideration are required and that it will be specifically notified when its application has been decided.

(f) *60-Day transition period.* An adequately capitalized insured depository institution may accept, renew or roll over any brokered deposit for a period of 60 days following June 16, 1992, provided it has properly filed an application within 30 days after June 16, 1992, and the FDIC has not notified the institution that the application has been denied.

(g) *Exclusion for institutions in FDIC conservatorship.* No insured depository

institution for which the FDIC has been appointed conservator shall be subject to the prohibition on the acceptance, renewal or rollover of brokered deposits contained in this § 337.6 or section 29 of the Federal Deposit Insurance Act for 90 days after the date on which the institution was placed in conservatorship. During this 90-day period, the institution shall, nevertheless, be subject to the restriction on the payment of interest contained in paragraph (b)(2)(ii) of the section. After such 90-day period, the institution may not accept, renew or roll over any brokered deposit.

(h) *Deposit brokers.* (1) A deposit broker shall not solicit or place any deposit with an insured depository institution unless it has provided the FDIC with written notice that it is acting as a deposit broker. The notice may be in letter form and shall describe generally the history, nature and volume of its deposit brokerage operations, including the sources and placement of such funds. The notice should be submitted to the Federal Deposit Insurance Corporation, Office of Compliance and Special Activities, Division of Supervision, Washington, DC 20429. The notice shall be effective upon receipt.

(2) A deposit broker shall maintain sufficient records of the volume of brokered deposits placed with any insured depository institution over the preceding 12 months and the volume outstanding currently, including the maturities, rates and costs associated with such deposits.

(3) The FDIC Executive Director, Supervison and Resolutions, the Director, Division of Supervision, or any of their designees may request, from time to time, quarterly written reports from any deposit broker regarding the volume of brokered deposits placed with a specified insured depository institution and the maturities, rates and costs associated with such deposits.

(4) When a deposit broker ceases to act as such, it shall notify the FDIC in writing at the address indicated in paragraph (h)(1) of this section that it is no longer acting as a deposit broker.

By order of the Board of Directors.

Dated at Washington, DC this 29th day of May, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-13186 Filed 6-4-92; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 92-52]

Clearance Requirements for Certain U.S. Vessels

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document makes a conforming amendment to the Customs Regulations to reflect certain statutory changes that were made relating to the requirements for U.S. vessels seeking clearance for certain voyages.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Burton, Carrier Rulings Branch, 202-566-5706.

SUPPLEMENTARY INFORMATION:

Background

Customs is responsible for the clearance of vessels bound for foreign ports. Before clearing vessels, Customs is charged with ensuring that they meet statutory and Coast Guard requirements regarding the employment and disembarkation of seamen.

Section 4.69, Customs Regulations (19 CFR 4.69), now provides that no vessel of the U.S. bound for a foreign port outside the British North American possessions, the West Indies and Mexico shall be granted final clearance until the shipping articles of the vessel executed before a shipping commissioner on Coast Guard Form 705, 705-A, or 705-B are presented to Customs. Section 4.69 also provides that no vessel bound for a foreign port shall be granted clearance until Customs is satisfied that there has been full compliance with the pertinent requirements of 46 U.S.C. 599 and 672 and the Coast Guard regulations issued thereunder relating to allotments of wages, the language test and the crew.

Section 4.69 no longer accurately reflects the statutory scheme set forth in the shipping laws. The statutory references in the current § 4.69 relating to allotments of wages to the crew and language comprehension and rating of the crew, 46 U.S.C. 599 and 672, respectively, are no longer in effect. Public Law 98-89 (97 Stat. 600-604 and 600-605) repealed both 46 U.S.C. 599 and 672. Provisions concerning the language comprehension and rating of the crew are now found in 46 U.S.C. 8702(b). Under that provision, a vessel described in the statute may depart from a U.S. port only if at least 75 percent of the crew in each department on board is able to understand any order spoken by the officers and, with certain limited exceptions, 65 percent of the deck crew are rated at least as able seamen. Section 8702, unlike its predecessor provision, does not provide for denial of clearance by Customs to a violative vessel; it provides for a monetary penalty for violation of the provision. Provisions relating to advances and allotments of seamen wages are now found in 46 U.S.C. 10314 and 10315 relating to shipping agreements, rather than 46 U.S.C. 599; clearance can still be denied if shipping agreements do not comply with these provisions.

In addition to these changes in the statutory scheme, 46 U.S.C. 10302, which was also enacted by Public Law 98-89, now generally requires, through 46 U.S.C. 10301, that shipping articles agreements are necessary for U.S. vessels that are of at least 75 gross tons on a voyage between a port of the U.S. on the Atlantic Ocean and a port of the U.S. on the Pacific Ocean as well as for U.S. vessels on a voyage between a port in the U.S. and a port in a foreign country other than Canada, Mexico or the West Indies.

Section 4.69, Customs Regulations, as presently worded, also does not accurately reflect the Coast Guard Regulations. The Coast Guard Regulations concerning the shipping articles form (46 CFR 14.05-1) specifically states that any shipping articles form other than Form CG-705A that complies with statutory requirements may be utilized.

In order to conform the Customs Regulations to the current statutory scheme and the Coast Guard Regulations, this document amends § 4.69, Customs Regulations (19 CFR 4.69).

Inapplicability of Public Notice and Delayed Effective Date

Inasmuch as these amendments merely conform the Customs Regulations to existing law and practice, pursuant to 5 U.S.C. 553(a)(2) and (b)(3)(B), notice and public procedure are unnecessary, and pursuant to 5 U.S.C. 553(a)(2) and (d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document relates to agency management, it is not subject to Executive Order 12291.

Regulatory Flexibility Act

Because of notice of proposed rulemaking is required, the provisions of

the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Amendment to the Regulations

Part 4 of the Customs Regulations (19 CFR part 4) is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for part 4 continues to read as follows and the specific authority for § 4.69 is added:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

* * * * *

Section 4.69 also issued under 46 U.S.C. 10301, 10302, 10314, and 10315.

* * * * *

2. Section 4.69 is revised to read as follows:

§ 4.69 Shipping articles.

No vessel of the U.S. on a voyage between a U.S. port and a foreign port (except a port in Canada, Mexico, or the West Indies), or if of at least 75 gross tons, on a voyage between a U.S. port on the Atlantic Ocean and a U.S. port on the Pacific Ocean, shall be granted clearance before presentation, to the appropriate Customs officer, of the shipping articles agreements, including any seaman's allotment agreement, required by 46 U.S.C. chapter 103, in the form provided for in 46 CFR 14.05–1.

Editorial Note: This document was received at the Office of the Federal Register on June 1, 1992.

Carol Hallett,

Commissioner of Customs.

Approved: January 22, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92–13129 Filed 6–4–92; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

RIN 0960–None Assigned

Federal Old-Age, Survivors and Disability Insurance Determining Disability and Blindness; Extension of Expiration Date for Cardiovascular System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which part A of the cardiovascular system listings found in appendix 1 of part 404, subpart P, will no longer be effective from June 6, 1992, to January 5, 1993. We have made no revisions in the medical criteria in the cardiovascular listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering comments we received on a proposed rule to update the medical criteria contained in Part A and Part B of the listings. When we have completed our review, and revised criteria will be published as final regulations.

EFFECTIVE DATE: This final rule will be effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of the 13 major body systems, impairments that are considered severe enough to preclude a person from engaging in any gainful activity (Part A), or in the case of a child under the age of 18, impairments that are severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (Part B). The Listing of Impairments is used for evaluating disability and blindness under the Social Security disability program and the supplemental security income program.

When the revised Listing of Impairments was published in 1985, we indicated that disability evaluation and treatment and program experience would require that the listing be periodically reviewed and updated. Accordingly, expiration dates were established ranging from 4 to 8 years for each of the specific body systems. A date of December 6, 1989, was established for the cardiovascular system listings in Part A to no longer be effective. A date of December 6, 1993, was established for Part B of the listings to no longer be effective.

The potential program impact of the changes to update the listings required careful analysis and consideration within the Agency. As our study and analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for Part A of the cardiovascular listings by December 6, 1989. We published in the **Federal Register** of December 5, 1989 (54 FR 50233), a final regulation extending the current cardiovascular listings for a period of 18 months through June 5, 1991. The cardiovascular listings were again extended an additional 12 months through June 5, 1992, by final regulation published in the **Federal Register** on June 6, 1991 (56 FR 26030).

Proposed revisions to the medical criteria contained in Parts A and B of the cardiovascular system listings were published in the **Federal Register** on July 9, 1991 (56 FR 31266), with provisions for a 60-day comment period. Because the issues raised by the comments have required careful consideration, we find that we will not have sufficient time to publish a final regulation in the **Federal Register** by June 6, 1992. We have, therefore, decided to extend the date on which the current cardiovascular system listings in Part A will no longer be effective for an additional 7 months—from June 6, 1992, to January 5, 1993.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the expiration date of Part A of the cardiovascular

listings and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again.

Because we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of comments submitted with respect to the proposed revisions to the existing criteria, a final regulation will be published.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Act.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: April 14, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: May 21, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b) and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P—[Amended]

2. Appendix 1 to Subpart P is amended by revising the fourth paragraph of the introductory text to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

The cardiovascular system (4.00) will no longer be effective on January 5, 1993.

* * * * *

[FR Doc. 92–13279 Filed 6–4–92; 8:45 am]

BILLING CODE 4190–29–M

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20 CFR Part 404

RIN 0960–None Assigned

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for Musculoskeletal System Listings

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which Part A of the musculoskeletal system listings found in appendix 1 of part 404, subpart P, will no longer be effective from June 6, 1992, to December 6, 1993. We have made no revisions in the medical criteria in the musculoskeletal listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering revisions to update the medical criteria contained in the listings, and any revised criteria will be published as proposed rules when we have completed our review. Under this final rule extending the expiration date of the musculoskeletal system listings, we will continue to use the existing criteria until any revised criteria are published as final rules.

EFFECTIVE DATE: This final rule will be effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of the 13 major body systems, impairments that are considered severe enough to prevent an adult from performing any gainful activity (part A), or in the case of a child under the age of 18, impairments which are severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (part B). The Listing of Impairments is used for evaluating disability and blindness under the Social Security disability program and the supplemental security income program.

When the revised Listing of Impairments was published in 1985, we indicated that disability evaluation and treatment and program experience would require that the listing be periodically reviewed and updated. Accordingly, expiration dates were established ranging from 4 to 8 years for each of the specific body systems. A date of December 6, 1990, was established for the musculoskeletal system listings in part A to no longer be effective. A date of December 6, 1993, was established for part B of the listings to no longer be effective.

The potential program impact of the changes to update the listings required careful analysis and consideration within the Agency. As our study and analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for part A of the musculoskeletal system listings by December 6, 1990. We, therefore, published in the **Federal Register** of December 12, 1990 (55 FR 51100), a final regulation extending the current musculoskeletal system listings for a period of 18 months through June 5, 1992.

Before proposing revisions to the current musculoskeletal listings, we must consider and resolve a variety of medical issues affecting both adults and children. We also want to give special attention to ensuring consistency between the proposed adult and childhood listings, while also recognizing the particular considerations appropriate to children. Because of the complexity of these medical and technical tasks, we find that we will not have sufficient time to publish a notice of proposed rulemaking setting out any proposed revisions to the current listings that may be necessary and then publish a final regulation in the **Federal Register** by June 6, 1992. We have, therefore, decided to extend the date on which the current musculoskeletal system listings in part A will no longer be effective for an additional period of 18 months—from June 6, 1992, to December 6, 1993.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the expiration date of Part A of the musculoskeletal system listings and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of the existing musculoskeletal system listings is completed, any proposed revisions to the existing criteria will be published for public comment.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Act.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: April 14, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: May 21, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404 of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b) and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P—[Amended]

2. Appendix 1 to subpart P is amended by revising the second paragraph of the introductory text to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

The musculoskeletal system (1.00) will no longer be effective on December 6, 1993.

* * * * *

[FR Doc. 92–13281 Filed 6–4–92; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Part 176

[Docket No. 87F–0239]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a polyamide-epichlorohydrin resin prepared by reacting *N*-methyl-bis (3-aminopropyl) amine with oxalic acid and urea to form a basic polyamide and further reacting the polyamide with epichlorohydrin. The polyamide-epichlorohydrin resin will be used to impart wet strength to paper and paperboard in contract with aqueous and fatty foods. This action is in response to a petition filed by Hercules, Inc.

DATES: Effective June 5, 1992; written objections and requests for a hearing by July 6, 1992.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 205–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 17, 1987 (52 FR 30740), FDA announced that a food additive petition (FAP 7B3986) had been filed by Hercules, Inc., Hercules Plaza, Wilmington, DE 19894, proposing that Section 176.170 *Components of Paper and Paperboard in Contact With Aqueous and Fatty Foods* (21 CFR 176.170) be amended to provide for the safe use of polyamide-epichlorohydrin water-soluble thermosetting resins prepared by reacting *N*-methyl-bis (3-aminopropyl) amine with oxalic acid and urea or dimethylglutarate to form a basic polyamide and further reacting the polyamide with epichlorohydrin. The polyamide-epichlorohydrin resins will be used to impart wet strength to paper and paperboard in contact with aqueous and fatty foods.

Since publication of the filing notice, the petitioner has withdrawn a request to list the proposed use of the polyamide-epichlorohydrin resin prepared by reacting *N*-methyl-bis (3-aminopropyl) amine with dimethylglutarate to form a basic polyamide and further reacting the polyamide with epichlorohydrin.

FDA, in the evaluation of the safety of the additive, reviewed the safety of the additive, the starting materials used to manufacture the additive, and manufacturing impurities that may be present in the additive. Although the additive itself has not been found to cause cancer, it has been found to contain minute amounts of epichlorohydrin as an impurity from its production. This chemical has been shown to cause cancer in test animals. Residual amounts of reactants, such as epichlorohydrin, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-

called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 (the amendment) is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the amendment (section 409(c)(3)(A) of the act) (21 U.S.C. 348(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the polyamide-epichlorohydrin resin will result in extremely low levels of exposure to this additive. The agency estimated the probable daily intake of the additive based on considerations such as the migration of the additive under the most severe intended use conditions and the types of food-contact articles that may contain this substance. The agency estimated that the probable daily intake for the additive would not exceed 18 micrograms (μg) per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed other available toxicological data. On the basis of the agency's review of these data and of the low level of migration of the resin, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

As stated above, the additive may contain epichlorohydrin, a substance that has been shown to cause cancer in test animals. This impurity may be present as a residue from manufacturing the additive. However, because the additive itself has not been shown to cause cancer, the Delaney Clause (21 U.S.C. 348(c)(3)(A)) does not apply to it.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemical, epichlorohydrin, that may be present as an impurity in this additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018 and 13019, April 2, 1984). The risk evaluation of the carcinogenic impurity has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Epichlorohydrin

Based on the fraction of the daily diet that may be in contact with surfaces containing the polyamide-epichlorohydrin resin and on the level of epichlorohydrin that may be present in the additive, FDA estimated that the hypothetical worst-case exposure to epichlorohydrin from the use of the additive in paper and paperboard to be 0.15 μg per person per day (Refs. 3 and 4). The agency used data from a Japanese carcinogenesis bioassay (Ref. 5) on epichlorohydrin fed to rats in their drinking water to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of this resin. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic for rats under the conditions of the study. The test material caused significantly increased incidences of stomach papillomas and carcinomas in the rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on epichlorohydrin. The committee further concluded that an estimate of the upper-bound limit of lifetime human risk from potential exposure to epicholorohydrin stemming from the proposed use of the resin could be calculated from the bioassay.

Based on a worst-case exposure of 0.15 μg per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to epichlorohydrin from the use of this polyamide-epichlorohydrin water-soluble thermosetting resin is 7×10^{-9}, or less than 1 in 140 million (Ref. 6). Because of numerous conservatisms in the exposure estimate, actual lifetime-averaged individual exposure to epichlorohydrin is expected to be substantially less than the estimated daily intake, and, therefore, the actual risk would be less than the calculated upper-bound limit. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to epichlorohydrin that might result from the proposed use of the polyamide-epichlorohydrin resin.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of epichlorohydrin in

the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because the trace amounts of epichlorohydrin that might be present in the additive can be expected to be virtually eliminated from the paper during subsequent paper processing operations and by the heat during drying steps, the agency would not expect this impurity to become a component of food at other than extremely small amounts, and (2) the upper-bound limit of lifetime risk from exposure to epichlorohydrin, even under worst-case assumptions, is very low, less than 1 in 140 million.

C. Conclusion on Safety

FDA has evaluated the available toxicity data and the exposure calculation for the resin and has found it to be safe and effective for the intended use based upon the extremely low levels of exposure to the resin and upon evaluation of the data furnished in the petition. Accordingly, FDA concludes that the regulation in § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

III. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogen Testing Programs" in *Food Safety: Where Are We?*, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, pp. 59–67, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," *Chemical Safety Regulation and Compliance*, edited by Homburger, F., and J.K. Marquis, New York, pp. 24–33, 1985.

3. Memorandum from the Food and Color Additives Review Section to the Indirect Additives Branch, "Polyamide-Epichlorohydrin Resin for Use in Paper and Paperboard," dated March 3, 1988.

4. Memorandum from the Food Additives and Animal Drug Chemistry Evaluation Branch to the Petitions Control Branch, "Consumption Estimates for Epichlorohydrin," dated October 15, 1982.

5. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," *Gan No Rinsho (Japanese Journal of Cancer Clinics)*, 71:922–923, 1980.

6. Report of the Quantitative Risk Assessment Committee, "Upper Bound Risk Estimation for the Carcinogenic Impurity, Epichlorohydrin, in FAP 7B3986," dated October 27, 1988.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 6, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry to the table to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * *	* * * *
Polyamide-epichlorohydrin water-soluble thermosetting resin (CAS Reg. No. 96387–48–3) prepared by reacting *N*-methyl-bis(3-aminopropyl) amine with oxalic acid and urea to form a basic polyamide and further reacting the polyamide with epichlorohydrin.	For use only as a wet strength agent and/or retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard and used at a level not to exceed 1.5 percent by weight of dry paper and paperboard fibers.
* * * *	* * * *

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Dated: May 28, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-13133 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 89F-0156]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *N,N*-bis (2-hydroxyethyl) butylamine; bis (hydrogenated tallow alkyl) aminoethanol; isotridecyl alcohol, ethoxylated; bis (hydrogenated tallow alkyl) amine; and diethylene glycol monobutylether as components of lubricants used in the manufacture of metallic articles for food-contact use. This action is in response to a petition filed by Berol (Suisse) S.A. Fribourg (formally Alunique S.A.).

DATES: Effective June 5, 1992; written objections and requests for a hearing by July 6, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 7, 1989 (54 FR 24425), FDA announced that a food additive petition (FAP 9B4145) had been filed by Alunique S.A., 56 Grand Rue, CH 1700 Fribourg, Switzerland, proposing that section 178.3910 *Surface Lubricants Used in the Manufacture of Metallic Articles* (21 CFR 178.3910) be amended to provide for the safe use of the following additives as components of lubricants in the manufacture of metallic articles for food-contact use:

(1) *N,N*-Di (2-hydroxyethyl) butylamine.

(2) Bis (hydrogenated tallow-alkyl) aminoethanol.

(3) Isotridecyl alcohol, ethoxylated.

(4) Bis (hydrogenated tallow-alkyl) amine.

(5) Diethyleneglycol monobutylether.

In the remainder of this preamble and in the rule set forth below, the agency refers respectively to the compounds listed above by their more appropriate chemical names: *N,N*-Bis (2-hydroxyethyl) butylamine; bis (hydrogenated tallow-alkyl) aminoethanol; isotridecyl alcohol, ethoxylated; bis (hydrogenated tallow alkyl) amine; and diethylene glycol monobutylether. The petitioner, Alunique S.A., has been replaced by Berol (Suisse) S.A. Fribourg, c/o Lenz, Schluep, Briner, & de Coulon, Grand Rue 25, 1211 Geneva 11 Switzerland.

FDA, in its evaluation of the safety of these additives, reviewed the safety of both the additives and the starting materials used to manufacture the additives. The additives themselves have not been found to cause cancer. However, all of the additives except bis (hydrogenated tallow alkyl) aminoethanol may contain minute amounts of ethylene oxide and 1,4 dioxane as byproducts of their production; these chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as these chemicals, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance. (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (§ 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A)) of the act provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures have made it possible for FDA to establish the safety of additives that contain carcinogenic impurities but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contained a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for these decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, published in the **Federal Register** of April 2, 1982 (47 FR 14464).

The agency now believes that the Delaney or anticancer clause is applicable only when the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety provision of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Court rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimated that the petitioned use of the five additives will result in extremely low levels of exposure. The agency has calculated estimated daily intakes for these additives based on the potential residue levels of the additives on food contact surfaces under the most severe intended use conditions and the probable concentration of the additives in the daily diet from food-contact articles that may contain them as a consequence of having been manufactured by a process in which the

additives were used as components of lubricants. The maximum concentration of each additive in the daily diet and the estimated daily intake (EDI) for the additives are not expected to exceed the following:

Components	Daily dietary intake	
	Concentration (parts per billion)	EDI (micrograms per day)
N,N-Bis(2-hydroxyethyl) butylamine	4	11
Bis (hydrogenated tallow alkyl) amine	0.03	0.08
Bis(hydrogented tallow alkyl) aminoethanol	0.11	0.32
Diethylene glycol monobutylether	6	18
Isotridecyl alcohol, ethoxylated	0.09	0.3

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and has not required such testing here. Because these additives have not been shown to cause cancer, the anticancer clause does not apply to them. However, the agency has reviewed data from acute oral toxicity studies on these lubricant formulation components and concludes that there is an adequate margin of safety for the proposed use of the additives.

For the four additives that may contain the carcinogenic impurities ethylene oxide and 1,4-dioxane, FDA has evaluated the safety of the additives under the general safety provision, using risk assessment procedures to estimate the upper-bound limit of risk presented by the two carcinogenic chemicals.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (e.g., 49 FR 13018 at 13019, April 2, 1984). This risk evaluation of the carcinogenic impurities ethylene oxide and 1,4-dioxane has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. The Impurity 1,4-Dioxane

Based on the fraction of the daily diet that may contact surfaces containing the four additives, the residue levels on these surfaces, as well as the level of 1,4-dioxane that may be present in the additives (Ref. 3), FDA estimated the hypothetical worst-case exposure to 1,4-dioxane from the use of these additives (in nanograms per person per day (ng/p/day)) to be as follows:

Components	1,4-dioxane (ng/p/day)
N,N-Bis(2-hydroxyethyl)butylamine	1.2
Bis(hydrogenated tallow alkyl)aminoethanol	0.016
Diethylene glycol monobutylether	0.18
Isotridecyl alcohol, ethoxylated	0.0027

The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the additives. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the CAC) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The Quantitative Risk Assessment Committee (the QRAC) concluded that an estimate of the upper-bound level of lifetime human risk from potential exposure to 1,4-dioxane stemming from the proposed use of these additives could be calculated from the bioassay (Ref. 5).

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate to potential human exposure from the doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low exposures and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of these food additives. Based on worst-case exposures mentioned above, FDA estimates the upper-bound limit of individual lifetime risk from potential exposure to 1,4-dioxane (Ref. 5) from the use of these additives to be as follows:

Components	1,4-dioxane upper-bound lifetime risk
N,N-Bis(2-hydroxyethyl) butylamine.	4×10^{-11} (or 4 in 100 billion).
Bis(hydrogenated tallow alkyl)aminoethanol.	6×10^{-13} (or 6 in 10 trillion).
Diethylene glycol monobutylether.	6×10^{-12} (or 6 in 1 trillion).
Isotridecyl alcohol, ethoxylated.	1×10^{-13} (or 1 in 10 trillion).

Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that may result from the proposed use of the above listed additives.

B. The Impurity Ethylene Oxide

Based on the fraction of the daily diet that may contact surfaces containing the four additives, the residue levels on these surfaces, as well as the level of ethylene oxide that may be present in the additives (Ref. 3), FDA also estimated the hypothetical worst-case exposure to ethylene oxide from the use of these additives to be as follows:

Components	Ethylene oxide (ng/p/day)
N,N-Bis(2-hydroxyethyl) butylamine	0.16
Bis(hydrogenated tallow alkyl)aminoethanol	0.016
Diethylene glycol monobutylether	0.090
Isotridecyl alcohol, ethoxylated	0.0054

The agency used data in a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 6), to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of these additives. The results of the bioassay on ethylene oxide demonstrated that this material was carcinogenic for female rats under the conditions of the study. The test material caused a significantly increased incidence of squamous cell carcinoma of the forestomach and carcinoma, in situ, of the glandular stomach.

The CAC reviewed this bioassay and other relevant data available in the literature and concluded that this information on ethylene oxide supported the finding of carcinogenicity. The QRAC further concluded that an estimate of the upper-bound limit of

lifetime human cancer risk from potential exposure to ethylene oxide could be made from the bioassay.

Based on worst-case exposures listed above, FDA estimates, using a linear proportional model, the upper-bound limit of individual lifetime risk from potential exposure to ethylene oxide (Ref. 5) from the use of these additives to be as follows:

Component	Ethylene oxide upper-bound lifetime risk
N,N-Bis(2-hydroxyethyl) butylamine.	3×10^{-10} (or 3 in 10 billion)
Bis(hydrogenated tallow alkyl) aminoethanol.	3×10^{-11} (or 3 in 100 billion)
Diethylene glycol monobutylether.	2×10^{-10} (or 2 in 10 billion)
Isotridecyl alchohol, ethoxylated.	1×10^{-11} (or 1 in 100 billion)

Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that may result from the use of these additives.

III. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of the ethylene oxide and 1,4-dioxane impurities in the food additives. The agency finds that specifications are not necessary for the following reasons: (1) Production specifications will control the levels of residual ethylene oxide and 1,4-dioxane, such that the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limit of lifetime risk from exposure to these impurities, even under a worst-case assumption, is very low.

IV. Conclusion on Safety

FDA has evaluated the available toxicity data and the estimated exposure for the additives and has determined that the additives are safe for their proposed use and that 21 CFR 178.3910(a)(2) be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogen Testing Programs" in "Food Safety: Where Are We?," p. 59, Committee on Agriculture, Nutrition, and Forestry, United States Senate, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," presented at the Second International Conference on Safety Evaluation and Regulation of Chemicals, Cambridge, MA, October 24, 1983.

3. Memorandum dated November 1, 1989, from Food and Color Additives Review Section (HFF–415), to Indirect Additives Branch, FAP 9B4145—Berol Nobel Stenungsund AB (formerly Berol Keni AB) (BNS), "Rolling Fluid Formation/Metal Foil," October 10, 1989.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Report of the Quantitative Risk Assessment Committee, "FAP 9B4145—Estimation of Upper-Bound Risk for Ethylene Oxide and 1,4-Dioxane in Rolling Fluid Formulation/Metal Foil (Berol Nobel Stenungsund AB)," February 4, 1991.

6. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," British Journal of Cancer, 46:924, 1982.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 6, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.3910 is amended in paragraph (a)(2) by alphabetically adding five new entries to the table to read as follows:

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(a) * * *

(2) * * *

List of substances	Limitations
• • • • • • •	
Bis(hydrogenated tallow alkyl)amine (CAS Reg. No. 61789-79-5)	Not to be used in combination with sodium nitrite.
Bis(hydrogenated tallow alkyl)aminoethanol (CAS Reg. No. 116438-56-3)	
N,N-Bis(2-hydroxyethyl)butylamine (CAS Reg. No. 102-79-4)	
• • • • • • •	

List of substances	Limitations
Diethylene glycol monobutylether (CAS Reg. No. 112-34-5)	
• • • • • • •	
Isotridecyl alcohol, ethoxylated (CAS Reg. No. 9043-30-5)	
• • • • • • •	

• • • • •

Dated: May 28, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-13134 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for the use of an additional concentration of monensin Type A medicated article (80 grams of monensin sodium per pound of product) to be used as currently approved to make Type B and Type C medicated cattle and goat feeds.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: William G. Marnane, Center for Veterinary Medicine (HFV-143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8678.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, has filed a supplement to NADA 95-735, providing for the use of an 80-grams-per-pound monensin Type A medicated article in addition to the currently approved 20-, 30-, 45-, and 60-grams-per-pound articles. The Type A medicated article is to be used as currently approved in § 558.355 (f)(3) and (f)(6) (21 CFR 558.355 (f)(3) and (f)(6)) to make Type B and Type C medicated cattle and goat feeds, respectively.

The supplemental NADA is approved as of May 4, 1992, and the regulations are amended in paragraphs (b)(7) and (b)(14) of § 558.355 to reflect the approval.

Under 21 CFR 514.106(b)(2), this is a Category II supplement that did not require reevaluation of the underlying safety and effectiveness data in the parent application because the approved uses of the product have not been changed. Because the sponsor was not required to submit new safety and effectiveness data, a freedom of information summary was not required.

As provided in 21 CFR 558.4(a), monensin is a Category I, Type A medicated ariticle, which as the sole drug ingredient, does not require an approved Form FDA 1900 for making Type B and Type C medicated feeds as permitted under § 558.355 (f)(3) and (f)(6). Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplement does not qualify for marketing exclusivity because neither new clinical or field studies, nor human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant, were required for its approval.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.355 is amended by revising paragraphs (b)(7) and (b)(14) to read as follows:

§ 558.355 Monensin.

• • • • • •

(b) • • •

(7) To 000986: 20, 30, 45, 60, and 80 grams per pound, as monensin sodium, paragraph (f)(3) of this section.

• • • • • •

(14) To 000986: 60 and 80 grams per pound, as monensin sodium, paragraph (f)(6) of this section.

• • • • • •

Dated: June 1, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-13188 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 901

[Docket No. R-91-1520; FR-2897-I-05]

RIN 2577-AA89

Public Housing Management Assessment Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of extension of time for submission of comments.

SUMMARY: On January 17, 1992, HUD published an interim rule implementing the Public Housing Management Assessment Program, and requesting comments by May 18, 1992. The purpose of this Notice is to extend the time for submission of applications until July 20, 1992.

DATES: The comment due date originally announced for May 18, 1992 is extended by this Notice to July 20, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. An original and three copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Casimir R. Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0440. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: A proposed rule for the Public Housing Management Assessment Program (PHMAP) in accordance with section 502 of the National Affordable Housing Act (approved November 28, 1990, Public Law 101-625, hereinafter, NAHA) was published in the **Federal Register** on April 17, 1991 (56 FR 15712), with a 60 day comment period. The Department received 114 comments on the PHMAP proposed rule. On January 17, 1992 (57 FR 2160), HUD published an interim rule implementing PHMAP, requesting comments by May 18, 1992.

The Department has received a number of requests for additional time in which to submit comments on the interim rule. The Department also believes that participation by PHAs in the quarterly cycle of PHMAP review may lead to additional comments, and the Department wishes to solicit as broad a range of comments as possible.

In response to these concerns, the Department is extending, for an additional 60 days, the deadline for submission of comments on the PHMAP interim rule. Comments will now be due on or before Monday, July 20, 1992.

Interested persons are invited to submit an original and three copies of comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable.

Dated: June 2, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-13241 Filed 6-4-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 580

Haitian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Haitian Transactions Regulations, 31 CFR part 580 (the "Regulations"), to prohibit entry into any U.S. port, unless otherwise authorized, of any vessel that has called in Haiti since the later of June 5, 1992 or the vessel's last call in the United States (the "reference date"), unless it has demonstrated to the satisfaction of the Department of the Treasury's Office of Foreign Assets Control ("FAC") that all calls in Haiti since the reference date were for transactions (1) exempted or excepted from the prohibitions of the Regulations if engaged in by a U.S. person; or (2) specifically licensed by FAC, or authorized by a member state of the Organization of American States pursuant to MRE/RES. 3-92; or (3) under a contract of voyage that was fully completed prior to the vessel's currently proposed entry into a U.S. port. This provision implements Resolution MRE/RES. 3-92, adopted with respect to Haiti by the Ad Hoc Meeting of Ministers of Foreign Affairs of the Organization of American States on May 17, 1992, if further implementation of Executive Orders 12775 of October 4, 1991, 56 FR 50641, and 12779 of October 28, 1991, 56 FR 55975. The rule also corrects § 580.405 of the Regulations.

EFFECTIVE DATE: This rule is effective on June 5, 1992.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief of Policy Planning and Program Management (tel.: 202/622-1604), Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On March 31, 1992, the Department of the Treasury promulgated the Haitian Transactions Regulations in consultation with the Department of State to implement the President's Executive Orders of October 4, 1991, declaring a national emergency with respect to Haiti and ordering specified measures against Haiti, and of October 28, 1991, ordering a trade embargo against Haiti. A new § 580.211 is added which further implements the trade restrictions by requiring that any vessel that has called in Haiti within the requisite period is prohibited from entering a U.S. port unless it has demonstrated to the satisfaction of FAC that certain conditions have been met.

Section 580.211 provides that any vessel that has called in Haiti since the later of June 5, 1992 or the date of the vessel's last call in the United States (the "reference date") is prohibited from entering a U.S. port unless it demonstrates to the satisfaction of FAC that all calls in Haiti since the reference date were for transactions (1) exempted or excepted from the prohibitions of this part if engaged in by a U.S. person; or (2) specifically licensed by FAC, or authorized by a member state of the Organization of American States pursuant to MRE/RES. 3-92; or (3) under a contract of voyage that was fully completed prior to the vessel's currently proposed entry into a U.S. port.

Vessels entering U.S. ports with goods destined for Haiti are fully subject to the export prohibitions of § 580.206 of the Regulations. Exportations to Haiti may be licensed by FAC on a case-by-case basis.

Any vessel subject to § 580.211 which enters a U.S. port without having first demonstrated to the satisfaction of FAC that the required conditions have been met may be subject to civil and criminal penalties.

The final rule also corrects § 580.405 to indicate that payments to the *de facto* regime in Haiti from third-country subsidiaries of U.S. persons will be considered an evasion of the Regulations if such payments, prior to October 4, 1991, had been made by U.S. persons, including their foreign branches, or by Haitian entities owned or controlled by U.S. persons.

Because the Regulations involve a foreign affairs function, Executive Orde

12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 580

Administrative practice and procedure, Banking and finance, Blocking of assets, Exports, Haiti, Imports, Penalties, Reporting and recordkeeping requirements, Shipping, Transfer of assets, Vessels.

For the reasons set forth in the preamble, 31 CFR part 580 is amended as follows:

PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 continues to read as follows:

Authority: 50 U.S.C. 1701, *et seq.*; E.O. 12775, 56 FR 50641 (Oct. 7, 1991); E.O. 12779, 56 FR 55975 (Oct. 30, 1991).

Subpart B—Prohibitions

2. Section 580.211 is added to read as follows:

§ 580.211 Entry of vessels engaged in trade with Haiti.

Except as otherwise authorized, any vessel that has called in Haiti since the later of June 5, 1992 or the vessel's last call in the United States (the "reference date") is prohibited from entering a U.S. port unless it has demonstrated to the satisfaction of the Office of Foreign Assets Control that all calls in Haiti since the reference date were for transactions:

(a) Exempted or excepted from the prohibitions of this part if engaged in by a U.S. person; or

(b) Specifically licensed by the Office of Foreign Assets Control, or authorized by a member state of the Organization of American States pursuant to MRE/RES. 3–92; or

(c) Under a contract of voyage that was fully completed prior to the vessel's currently proposed entry into a U.S. port.

3. Section 580.405 is amended by revising the second and third sentences to read as follows:

§ 580.405 Indirect payments to the de facto regime in Haiti; payments by subsidiaries in third countries.

* * * Unlicensed payments or transfers made to the *de facto* regime in Haiti from U.S. subsidiaries in third countries shall be considered an evasion of the prohibitions set forth in § 580.202 where such payments or transfers prior to that date were normally made by U.S. persons, including their foreign branches, or by persons organized under the laws of Haiti and owned or controlled by U.S. persons. Payments or transfers by third-country subsidiaries of U.S. persons which were routinely made by such subsidiaries prior to October 4, 1991, however, are not prohibited.

Dated: May 29, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 29, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–13369 Filed 6–3–92; 2:00 pm]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 92–011]

Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Implementation rule.

SUMMARY: This document puts into effect the permanent regulations for the Empire State Regatta to begin on Friday, June 12, 1992. The regulations in 33 CFR 100.104 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.104 are effective from 12 p.m. on Friday, June 12, 1992 to 7 p.m. on Sunday, June 14, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8310.

Drafting Information

The principal persons involved in drafting this document are LTJG E.G. Westerberg, Project Manager, First Coast Guard District Boating Safety Division, and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Office.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1992 running of the Empire State Regatta in Albany, New York. A portion of the Hudson River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area between the Interstate Route 90 bridge and the Dunn Memorial bridge in Albany, New York. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners. The full text of this regulation is found in 33 CFR 100.104.

Dated: May 26, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 92–13202 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–14–M

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46 CFR Part 401

[CGD 89–104]

RIN 2115–AD47

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the Great Lakes Pilotage regulations by increasing the basic pilotage rates on an interim basis by 14 percent in District 1, 21 percent in District 2, and 10 percent in District 3. These rate adjustments are designed to increase the revenue received by the pilot organizations so as to increase pilot compensation, pending development of a permanent rate methodology.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Poyer, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G–MVP/12), room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–6248.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this rule are: Mr. Scott Poyer, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 6, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Great Lakes

Pilotage Rates in the **Federal Register** (56 FR 63911). The Coast Guard received 15 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The last rate increase for District 2 was in April 1985 (50 FR 7177), and the last rate increase for Districts 1 and 3 was in May 1987 (52 FR 11468). Since the last rate increases a 1988 Department of Transportation (DOT) Pilotage Study and a December 14, 1990 DOT Inspector General's (IG) Audit Report revealed weaknesses in accounting for the expenses incurred by the pilotage associations and the need to formally establish the factors considered in establishing pilotage rates.

On April 25, 1990, the Coast Guard published a final rule (55 FR 17580) establishing improved audit requirements and the guidelines and procedures to be followed in ratemaking. The Coast Guard is developing standardized procedures for evaluating future pilotage rate adjustment requests, and expects that it could take up to a year to revise the pilotage ratemaking methodology.

The Coast Guard has determined that an interim increase in the pilotage rates is necessary because actual pilot compensation is below present target levels.

Title 46 U.S.C. 9305 provides that the Secretary of Transportation, subject to the concurrence of the Secretary of State, "* * * may make agreements with the appropriate agency of Canada to * * * prescribe joint or identical rates and charges * * *." The latest Memorandum of Arrangements between Canada and the United States specifies that "[t]he Secretary [of Transportation] and the Minister [of Transport] will arrange for the establishment of regulations imposing identical rates * * *." Consequently, both U.S. and Canadian pilotage rates were nominally identical until 1986. Uniform rates are required by the agreement with Canada Uniform rates are also important from the standpoint of predictable costs for vessels requiring pilotage. However, there are differences in the cost bases and in the operating organizations of the U.S. and Canadian pilots, particularly with regard to pilot compensation. These differences, as well as the need for U.S. and Canadian uniformity, will be taken into account when revising the pilotage ratemaking methodology.

The intent of this final rule is to assure that this rate adjustment will result in increased compensation for the pilots. Accordingly, the Coast Guard expects the pilot associations to make every effort to ensure that the rate increases will be used to increase pilot compensation. Because the shipping season has already commenced, the Coast Guard finds good cause to make this rule effective upon publication in accordance with 5 U.S.C. 553(d).

Discussion of Comments and Changes

A total of 15 written comments were received. Many of the comments addressed not only the increase in the basic pilotage rates, but also pilotage in general. While information on pilotage in general is appreciated, this section discusses only those comments dealing with the ratemaking and the changes to the NPRM of December 6, 1991.

Three comments addressed the NPRM's calculation of expenses for District 1. Review of these comments revealed that three categories of expenses were inadvertently omitted from the District 1 total expense figure contained in that NPRM. These expenses included Federal Insurance Contribution Act (FICA) taxes, Workmen's Compensation coverage, and some travel expenses. These pilotage expenses for District 1 are incurred by the pilots individually rather than by the pilotage Association in District 1, and are not reflected in the Association's financial records in District 1. Therefore, these expenses were inadvertently omitted from the calculations. A detailed examination of these omitted expenses showed that the total of omitted expenses is $85,097. This total consists of $23,803 for FICA expenses, $12,294 for locally available Workmen's Compensation coverage, and $49,000 for travel expenses that were individually paid. As a result, the total of $85,097 was added to the operating expenses taken from the 1989 United States Coast Guard (USCG) audit of the St. Lawrence Seaway Pilots Association of $504,708, minus the expenses found to be unreasonable/unsupported in the 1989 DOT IG audit of $59,622. This results in total estimated operating expenses of $530,183, rather than the $470,770 contained in the NPRM of December 6, 1991. Making this change results in an increase of 14% in the basic pilotage rates for District 1, instead of 9% as originally put forth in the NPRM of December 6, 1991.

Five comments questioned the calculations of allowable expenses used in the ratemaking. There comments indicated that more expenses should be allowed. Two comments indicated that fewer expenses should be allowed, and the current oversight of expenses should be considerably more strict. This subject will be thoroughly considered during the upcoming review of the ratemaking methodology. Further comments on this subject will be sought at that time. However, for the purposes of this interim rate increase, the Coast Guard considers the allowed expenses to be reasonable.

Six comments questioned the method in which pilot compensation is targeted to equal the average compensation received by masters and chief mates on U.S. Great Lakes vessels. Each comment that offered an alternative offered a different alternative for new targets or redesignation of current targets. This subject has been the topic of numerous studies, most recently the Great Lakes Pilotage Study Final Report of December 7, 1988 by the U.S. Department of Transportation (DOT). This study concluded that the present pilot compensation targets are appropriate.

Two comments questioned the definitions of designated and undesignated waters used in the NPRM of December 6, 1991. These definitions were established by Presidential Proclamation No. 3385, June 10, 1968, 33 FR 8535, and are not subject to Coast Guard interpretation.

Four comments expressed dissatisfaction with the method of the current ratemaking procedure. These comments will be considered in the upcoming review of the ratemaking procedures. However, as written in the NPRM of December 6, 1991, the rate increases contained in this rule are meant as an interim measure until a new ratemaking procedure is developed.

Fifteen comments addressed the amount of the rate increase. Seven comments said the increase was too low. Two comments said the increase was too high. Two comments supported the rate increase. Four comments did not oppose the rate increase. Given this wide disparity of opinion between those who pay pilotage fees and those who receive pilotage fees, the Coast Guard considers the interim rate increase to be fair to all parties involved.

Three comments questioned the methods that are used to calculate the number of pilots that should be employed in each District. One comment was that too many bridge hours are required for River pilots, and two comments indicated that the calculations did not take into account surges in traffic, illness, rest periods, and other factors which would require more pilots. The method used to calculate the number of pilots for ratemaking purposes was considered in detail in the DOT Great Lakes Pilotage Study Final Report, published December 7, 1988. That study concluded that the pilot workload standard of 1000 hours

per pilot per season for designated waters was appropriate, and that the pilot workload standard for undesignated waters be reduced by 200 to 1800 bridge hours per pilot per season. In this rulemaking, the Coast Guard used 1000 hours for designated waters and 1800 hours for undesignated waters.

Four comments addressed the timing of the rate increase and the length of the comment period on the NPRM of December 6, 1991. Two comments requested that the comment period be lengthened or the rate increase be delayed. Two comments requested that this rate increase, and the process for future rate adjustments, be accelerated. In light of the length of time since the previous rate increases, and the steadily decreasing compensation received by most pilots, the Coast Guard believes that further delay in this interim increase would not serve the interests of the maritime community of the Great Lakes.

Two comments suggested that District 1 should be divided into separate Lake and River Districts, rate increases should be separate for each area, or Lake Pilots should be fully registered. These comments will be considered in the upcoming review of the rulemaking process. However, as written in the NPRM of December 6, 1991, the rate increases contained in this rule are meant as an interim measure until a new ratemaking procedure is developed.

Regulatory Evaluation

This final rule is not considered to be major under Executive Order 12291, but is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). Therefore, the Coast Guard has determined that a Regulatory Impact Analysis under Executive Order 12291 is not required. Furthermore, because the Coast Guard expects the regulatory impact of this final rule to be minimal, a separate draft Regulatory Evaluation has not been prepared. The primary impact of this rate adjustment will be in 1992. Since the pilotage fees represent only about 3% of total shipping costs, this would result in an approximate one-half percent increase in total shipping costs, which should not have a significant impact on Great Lakes shipping.

Small Entities

As discussed above, the Coast Guard expects the impact of this rule to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significnt economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule increases the Great Lakes basic pilotage rates on an interim basis pending development of a new ratemaking methodology. The authority to regulate concerning Great Lakes pilotage rates is delegated to the Coast Guard by the Secretary of Transportation, whose authority is committed by statute. Furthermore, since vessel traffic in the Great Lakes tends to move between U.S. ports in the national marketplace, pilotage regulations for the Great Lakes is a matter for which regulations should be of national scope to avoid unreasonably burdensome variances. Therefore, by adopting this final rule, the Coast Guard is preempting State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This action is an administrative action solely involving the fees charged for existing services and clearly has no environmental impact.

List of Subjects in 46 CFR Part 401

Administrative practice and procedures, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

PART 401—[AMENDED]

For the reasons set out in the preamble, the Coast Guard amends part 401 of title 46 of the Code of Federal Regulations as follows.

1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46; section 401.105 also issued under the authority of 44 U.S.C. 3507.

2. Section 401.405 is revised to read as follows:

§ 401.405 Basic rates and charges on designated waters.

Except as provided in § 401.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots in the areas described in § 401.300.

(a) *District 1:*

(1) For passage through the District or any part thereof, $11.76 for each statute mile, plus $157 for each lock transited, but with a minimum basic rate of $343 and a maximum basic rate for a through trip of $1,507.

(2) For a movage in any harbor, $516.

(b) *District 2:*

(1) Southeast Shoal to Toledo or any point on Lake Erie west of Southeast Shoal, $754.

(2) Between points on Lake Erie west of Southeast Shoal, $445.

(3) Southeast Shoal to Port Huron Change Point or any point on the St. Clair River when pilots are not changed to the Detroit Pilot Boat, $1,313.

(4) Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $754.

(5) Southeast Shoal to the Detroit Pilot Boat, $546.

(6) Toledo or any point on Lake Erie west of Southeast Shoal to the Port Huron Change Point, when pilots are not changed at the Detroit Pilot Boat, $1,521.

(7) Toledo or any point on Lake Erie west of Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $979.

(8) Toledo or any point on Lake Erie west of Southeast Shoal to the Detroit Pilot Boat, $754.

(9) Detroit/Windsor to any point on the Detroit River and between points on the Detroit River, $445.

(10) Detroit/Windsor or any point on the Detroit River to the Port Huron Change Point or any point on the St. Clair River, $987.

(11) Detroit Pilot Boat to any point on the St. Clair River, $987.

(12) Detroit Pilot Boat to Port Huron Change Point, $767.

(13) Between points on the St. Clair River, $445.

(14) Port Huron Change Point to any point on the St. Clair River, $546.

(c) *District 3:*

(1) Between the southerly limit of the district and the northerly limit of the district or the Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario, $1,242.

(2) Between the southerly limit of the District and Sault Ste. Marie, Ontario or any point in Sault Ste. Marie, Ontario other than the Algoma Steel Corporation Wharf, $1,042.

(3) Between the northerly limit of the District and Sault Ste. Marie, Ontario, including the Algoma Steel Corporation Wharf, or Sault Ste. Marie, Michigan, $468.

(4) For a movage in any harbor, $468.

3. Section § 401.410 is revised to read as follows:

§ 401.410 Basic rates and charges on undesignated waters.

(a) Except as provided in § 401.420 and subject to paragraph (c) of this section, the basic rates for each 6 hour period or part thereof that a U.S. pilot is on board a ship in the undesignated waters are:

(1) In Lake Ontario, $277.

(2) In Lake Erie, $322.

(3) In Lakes Huron, Michigan, and Superior, $251.

(b) Each time a U.S. pilot performs the docking or undocking of a ship in undesignated waters there is an additional charge of:

(1) In District 1, $264.

(2) In District 2, $248.

(3) In District 3, $239.

(c) For assignments performed by U.S. pilots between Buffalo and any point on the Niagara River below the Black Rock Lock, the basic rate payable is, $633.

4. Section 401.420 is revised to read as follows:

§ 401.420 Cancellation, delay or interruption in rendition of services.

(a) Except as provided in this paragraph, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of $46 for each hour or part of an hour during which each interruption or detention lasts with a maximum basic rate of $727 for each continuous 24 hour period during which the interruption or detention continues. There is no charge for an interruption or detention caused by ice, weather or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge may be made for an interruption or detention if the total interruption or detention ends during the 6 hour period for which a charge has been made under § 401.410.

(b) When the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of $46 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of $727 for each continuous 24 hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of $275;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of $46 for each hour or part of an hour including the first hour, with a maximum basic rate of $727 for each 24 hour period.

5. Section 401.428 is revised to read as follows:

§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point, the ship shall pay at the rate of $281 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for these services. The change points to which this section applies are designated in § 401.450.

Dated: June 2, 1992.

Martin H. Daniell,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 92-13330 Filed 6-3-92; 12:27 pm]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-10; Notice 5]

RIN 2127-AE14

Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In response to petitions for reconsideration of a final rule published in the **Federal Register** (56 FR 15290) on April 16, 1991, this final rule amends Federal Motor Vehicle Safety Standard No. 118, *Power-operated window, partition, and roof panel systems.* The final rule provides additional flexibility to manufacturers, clarifies the requirements, and delays by one year the effective date for the extension of the Standard to cover power-operated roof panels.

DATES: *Effective Date:* The changes made in this rule are effective September 1, 1992. Vehicles manufactured before September 1, 1992 may comply with the changes made in this rule.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than July 6, 1992.

ADDRESSES: Petitions for reconsideration must refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday. It is requested, but not required, that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Boyd, Office of Vehicle Safety Standards, NRM-11, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Boyd's telephone number is (202) 366-6346.

SUPPLEMENTARY INFORMATION:

Background

At present, Standard No. 118 is titled *Power-operated window systems* (49 CFR 571.118). The purpose of the standard is to minimize the risk of personal injury that may result if a person is caught between a closing power-operated window and the window frame. The agency's experience is that children are the group of people most likely at risk from inadvertent or unsupervised operation of power windows.

On April 6, 1990, the agency published in the **Federal Register** (55 FR 12871) a notice of proposed rulemaking (NPRM) to amend Standard No. 118. Among other things, the agency proposed to: extend the standard's coverage to apply to power operated roof panel systems, add force requirements for key-activated systems located on the exterior of the vehicle, and permit non-key locking systems on the vehicle exterior and remote control systems.

On April 16, 1991, the agency published in the **Federal Register** (56 FR 15290) a final rule amending the standard. The standard's requirements were extended to cover power-operated roof panels. It had previously applied only to power windows and power partition systems. A new requirement was established for key-activated power window/partition/roof panel control systems located on the vehicle exterior. Such systems, which previously had been permitted, were now required to either have an operating control that must be continuously activated by the user, or to have an automatic reversal mechanism that reverses window/partition/roof panel direction upon the window/partition/roof panel meeting an obstruction while closing. The final rule also newly permitted non-key locking systems on the exterior of the vehicle, which were required to meet the same requirements as key-activated systems located on the vehicle exterior. Finally, the final rule newly permitted remote control devices for power window/partition operation. Such devices were required to either be incapable of operating from a distance of more than 20 feet from the vehicle, or to have an automatic reversal mechanism. The same requirements were established for remote control devices for power roof panel operation.

In response to the final rule, the agency received three timely petitions for reconsideration, from Prospects Corporation, the Rover Group, Ltd. and the Association of International Automobile Manufacturers (AIAM). NHTSA also received submissions from the International Sunroof Institute (ISI) and General Motors Corporation (GM). The latter two submitters each apparently considered its document to be a petition for reconsideration. However, because the documents were submitted after the filing deadline established in 49 CFR 533.35, the agency is treating them as petitions for rulemaking (See 49 CFR part 552).

In responding to the petitions for reconsideration, the agency has, however, been able to address the issues raised in the petitions for rulemaking, since the late petitions raised issues related to those presented in the petitions for reconsideration. Therefore, this notice responds to both the petitions for reconsideration and the petitions for rulemaking.

The agency now turns to addressing the issues raised by the petitioners.

Automatic Reversal Safety Feature

Standard No. 118, as amended in the April 1991 final rule, permits power window/partition/roof panel systems to be closed only under specified circumstances. As indicated above, one option manufacturers may select for power control systems on the exterior of the vehicle and remote control systems is to provide an automatic reversal mechanism that reverses window/partition/roof panel direction upon the window/partition/roof panel meeting an obstruction while closing. The regulatory text related to this option, as set forth in the April 1991 final rule, reads as follows:

S5.(a) Notwithstanding S4, power window, partition or roof panel systems which, while closing, reverse direction when they meet a resistive force of 22 pounds or more from a solid cylinder of 4 to 200 mm in diameter and open to at least 200 mm, may close:

(1) Upon the one-time activation of a locking system on the exterior of the vehicle,

(2) Upon the one-time activation of any remote actuation device, or-

(3) Upon continuous activation of any remote actuation device capable of closing the power window, partition or roof panel from a distance of more than 20 feet from the vehicle.

(b) The 4 to 200 mm dimension cited in S5(a) is measured from the window or panel's leading edge to the daylight opening.

1. Circumstances For Closing When Reversal Feature is Provided

Petitions submitted by Prospects and GM argue that the permissible circumstances for the closing of a window, partition or roof panel with a reversal feature are overly narrow. Prospects requested that the standard permit the closing of windows equipped with its "intelligent control system." With this system, drivers could leave windows open about an inch when they leave their vehicles. The windows would shut automatically if the system detects rain falling. Prospects stated that section S5(a)(1)'s reference to one-time activation of the vehicle locking system could be interpreted as prohibiting an automatic power window system from continuously responding to signals to close (if rain should fall intermittently), in the event the window or sunroof does not actually close. GM noted that in the April 1991 final rule, S4 pertains to supervised power window closing and S5 pertains to unsupervised power window closing. GM requested that the final rule be amended to remove the specified circumstances when power windows with an automatic reversing safety feature are permitted to close.

Upon reconsideration, the agency has decided not to restrict closing of power-operated window, partition and roof panel systems which include an automatic reverse feature. NHTSA believes that the safety concerns ordinarily associated with unsupervised window closing modes do not exist if an automatic reverse feature is provided. Even if a child places his or her fingers, arms or head in the path of a such a closing window, the automatic reversal feature would prevent serious injuries. The April 1991 final rule permitted certain specified unsupervised window closing modes if an automatic reversal feature was provided. However, as evidence by the petitions for reconsideration, manufacturers would like to provide a number of other unsupervised window closing modes. Upon review, the agency does not see any safety reason why, if an automatic reversal feature is provided, some unsupervised window closing modes should be permitted but not other modes. Accordingly, in response to the petitions for reconsideration, NHTSA is amending S5(a) of Standard No. 118 to remove restrictions on the circumstances under which closing is permitted for systems equipped with an automatic reversal feature.

2. Size of Opening to Which System Must Reverse

In order for manufacturers to take advantage of compliance options provided for systems equipped with a reversal feature, they must ensure their reverse mechanisms meet specified criteria. One criterion of the April 1991 final rule was that, upon reversal, a power window/partition/roof panel must open to "at least 200 mm." Three petitioners, Prospects, Rover and ISI, raised the issue of how that requirement could be met if the maximum size of the opening was less than 200 mm. As an example of a system that may be unable to comply with such a requirement, Rover noted that pop-up sunroofs typically have a maximum opening of 100 mm.

Prospects stated a concern about opening to 200 mm because of security considerations. As previously noted, Prospects' "intelligent control system" permits windows to be open about an inch but automatically shuts the windows if the system detects rain falling. Prospects stated that a design which caused the windows to open to 200 mm upon meeting an obstacle while closing would compromise the vehicle's security, since a 200 mm opening would be large enough to permit a person to gain access to the vehicle interior. It recommended amending the language of S5(a) to require opening "to at least the same original position prior to the automatic closing." The petitioner argued that if a person's fingers, arms or head could be moved into an open window or sunroof area prior to the

automatic closing, they could be moved out of the same area when the window glass or roof panel is reopened to the same position.

The agency agrees with petitioners that the size of the opening upon reversal should be reconsidered. Both issues that were raised, the impossibility of complying with the 200 mm requirement for some power-operated systems, and security considerations, are valid. Therefore, in the final rule, the agency retains the opening to 200 mm criterion as one alternative and adopts language similar to that proposed by Prospects as another alternative. The agency agrees with Prospects' argument that opening to the position prior to initiation of closing would meet the need for safety in this area. However, the agency believes that adopting only the language proposed by Prospects would be too restrictive, since it would require windows and panels that were initially open further than 200 mm to return automatically to that position. Therefore, the amendments make the criteria less restrictive than the language adopted in the April 1991 final rule.

3. Resistive Force Specification

Another criterion specified in the April 1991 final rule for reversal mechanisms is that such systems must reverse direction "when they meet a resistive force of 22 pounds or more from a solid cylinder of 4 to 200 mm in diameter."

Prospects stated that this wording may mean that windows must reverse at the actual moment of contact. Prospects expressed its concern that only systems that use force sensoring to control reversing would be practical for unsupervised or automatic closing. If this were the case, Prospects believes that systems with proximity sensors to detect exposed fingers, which reverse the window before actual contact (avoiding resistive force in the solid cylinder test), would not be permitted.

NHTSA notes that the purpose of the resistive force specification is to ensure that reversal takes place before a level of force occurs that causes injury. Thus, reversal before contact would obviously meet this safety concern. Since the wording of the April 1991 amendment appears to contemplate that reversal takes place after contact, the agency is revising the language to make it clear that reversal may take place before contact occurs.

ISI requested a review of the resistive force specification as applied to power operated sunroof panels. ISI stated that because sunroof panels are equipped with edge frames two or three times the thickness of glass, sunroofs should be allowed a higher resistive based on the lower contact pressure (force per unit area) that occurs with sunroofs as compared to windows.

NHTSA does not agree with ISI's argument that sunroof panels should be permitted a higher force limit simply because they result in lower contact pressure than windows. Standard No. 118's focus on force resulted from the agency's review of an investigation conducted by the University of Heidelberg for the Kraftfahrt-Bundesmat, the German governmental body responsible for type approval of automotive equipment. The university study concluded that 10 kg (22 pounds) is sufficient to strangle an infant whose neck is caught face down between the window edge and the door frame. NHTSA believes that force is a better predictor of the risk of strangulation and bone breakage than pressure. While a pressure specification might be better than force for predicting cutting injuries, window/partition/roof panel edges are sufficiently blunt that cutting injuries are not a significant safety concern.

NHTSA notes that, consistent with its policy of using metric measurements where feasible, the agency is revising the force limit from 22 pounds to 100 newtons (22.48 pounds). The revised force limit is identical to that in the German Road Traffic Act, which was the original source for the limit.

4. Test Procedure

In specifying that reversal systems must reverse direction "when they meet a resistive force of 22 pounds or more from a solid cylinder of 4 to 200 mm in diameter," the April 1991 final rule provided that the 4 to 200 mm dimension "is measured from the window or panel's leading edge to the daylight opening."

ISI stated that a standardized means or method for the measurement of the reversing pressure should be established. That organization argued that varying measurement methods will otherwise give varying and likely non-conforming and non-comparable results.

Some petitioners argued that further clarification is needed for the term "daylight opening." Rover noted that in the April 1991 final rule, NHTSA had adopted GM's recommendation that the window opening zone be measured between the top edge of the glass and the daylight opening. Rover stated its belief that for a window, the measurement would be the top edge, as "this would be the part which is usually substantially horizontal." However, Rover stated that in the case of a pop-up sun roof, "there is no clear 'leading edge.' " In order to clarify this point, Rover provided recommended language to amend S5.(b) so that the force is measured at a point "from the centerline of the maximum width of the panel or window to the daylight opening."

ISI requested a clarification of "daylight opening" with respect to sunroofs. That petitioner noted that the opening for sunroofs is stepped, causing the outer opening to be somewhat larger than the inner opening. It stated that the inner opening should be of primary concern, as that is the point at which body parts of vehicle occupants would first make contact.

NHTSA agrees that clarification is necessary since the language the agency cited as rationale for the wording of the final rule addresses only sliding windows and partitions, not hinged windows, roof panels, or partitions that pop up or pop out. Moreover, there appears to be some ambiguity even in how forces in side windows that slide up and down are to be measured.

The agency believes, however, that the basic requirement is relatively straightforward and that a detailed test procedure is unnecessary. In essence, when a rod from 4 mm to 200 mm in diameter (representing a finger, arm or head) is placed through the opening of a closing power window/partition/roof panel, the window/partition/roof panel must reverse direction without exerting a force on the rod exceeding a specified maximum.

NHTSA believes that the following language will clarify the requirements:

S5(a) Notwithstanding S4, a power operated window, partition or roof panel system may close if it is capable of meeting the following requirements—

(1) while closing, the window, partition or roof panel system reverses direction before contacting, or before exerting a force of 100 newtons or more on, any rigid circular cylindrical rod from 4 mm to 200 mm in diameter (but not exceeding the size of the opening at the test location) that is placed through the window, partition or roof panel system opening at any location in the manner described in S5(b), and

(2) upon such reversal, opens to either a position that permits a rigid circular cylindrical rod that is 200 mm in diameter to be placed through the opening at the same contact point(s) as the rod described in (1), or to a position that is at least as open as the position at the time closing was initiated.

S5(b) The test rod is placed through the window, partition or roof panel opening from the inside of the vehicle such that the cylindrical surface of the rod contacts any part of the structure with which the window, partition or roof panel mates. Typical placements of test rods are illustrated in Figure 1.

While the agency believes that this regulatory text is clear, it is including

Figure 1 in the standard to depict typical placement of test rods for sunroofs and windows.

NHTSA notes that the zone where reversal must take place is determined by the 4 mm to 200 mm test rods, since the cylindrical surface of the test rod contacts the structure with which the window, partition or roof panel mates. A 200 mm test rod similarly determines the amount by which a window/partition/roof panel must open (if it opens to a position less open than when closing was initiated). With this regulatory approach, it is no longer necessary to use or define the term "daylight opening."

In order to meet the requirement, reversal must take place when a window/partition/roof panel is closing and any 4 mm to 200 mm test rod is placed through any part of the aperture. The agency does not accept a suggestion by Rover that force be measured at a single point. Depending on the shape of a window/partition/roof panel and surrounding structure, the force at one point might be less than 22 pounds and the force at another point several times 22 pounds. For a hinged sunroof, for example, the force at points close to the hinges would likely be much higher than the force at points farthest from the hinges. Thus, Rover's suggested amendment would not ensure that windows/partitions/roof panels reverse before imposing forces that could cause serious injury to the fingers of small children.

With respect to ISI's statement that the inner opening of a stepped sunroof should be of primary concern, since it is the point at which body parts of vehicle occupants would first make contact, NHTSA notes that the placement of a test rod through a window/partition/roof panel opening from the inside of a vehicle closely simulates placing a finger or arm through the opening. The forces that are imposed on the test rod are thus the same ones that would be imposed on a finger or arm. Accordingly, the test procedure ensures that reversal occurs before inappropriate force is imposed on fingers or arms, whether at the inner opening of a stepped sunroof or at other vehicle parts.

Since the placement of test rods and measurement of force on a test rod are straightforward, NHTSA does not see any need to define a special test procedure.

Remote Actuation Devices

The April 1991 final rule newly permitted remote actuation devices for power-operated window and partition systems. The requirements that were established in this area were also applied to power roof panel systems. Such devices were required either to be incapable of operating from a distance of more than 20 feet from the vehicle, or to have an automatic reversal mechanism.

AIAM requested a review of the 20 foot limitation. That petitioner argued that "RF"-type remote controls cannot be limited to 20 feet and that there is a question whether an infra-red device can reliably be limited to that distance. AIAM stated that it did not know of any data that would indicate that 20 feet is safe and 30 or 40 not.

NHTSA notes that it initially proposed to permit remote closing systems only if an automatic reversal mechanism was provided. However, the agency was persuaded by commenters that vehicles using a line-of-sight remote control need not be required to have the automatic reversal feature. The agency concluded that a line-of-sight system with a 20 foot range would provide adequate safeguards against injury, because the person operating the remote control would be close enough to the vehicle that he or she would be able to see whether there were any children near a closing window/partition/roof panel. NHTSA stated that it believed that a 20 foot range would provide adequate convenience while still ensuring that the operator of the remote control device remained close to the vehicle. 56 FR 15294. The agency notes that while it contemplated that line-of-sight remote control devices would be used under this option, the regulatory language did not specify that remote control devices be line-of-sight devices.

Upon reconsideration, to permit flexibility, NHTSA has decided that a longer operating distance of 35 feet (11 meters) should be permitted so long as operation of the device is limited to line-to-sight. The agency believes that the operators of remote control devices can see whether children are in the vicinity of the vehicle from 35 feet so long as their vision is unobstructed. The 20 foot limitation will be maintained for non-line-of-sight devices. In keeping with the agency's policy of specifying metric measurements whenever possible, the final rule adopts a limitation of 11 meters. The final rule also amends the 20 foot limitation for non-line-of-sight operation by converting it into a metric measurement of 6 meters.

In its petition for reconsideration, AIAM took issue with NHTSA's position, set forth in the April 1991 final rule, that remote actuation devices for power operated window and partition systems were precluded by Standard No. 118 prior to that final rule. AIAM stated that "such systems are now in use" and are used to remotely operate power windows, sunroofs, doorlocks and antitheft systems. AIAM asked for a one year delay in the effective date, since, according to that organization, several manufacturers cannot provide an automatic reversal mechanism or limit operation to 20 feet by the September 1992 effective date.

The interpretation issue raised by AIAM was specifically addressed by NHTSA in the April 1991 final rule, in response to comments, and AIAM has not provided any new arguments indicating that the agency's position is incorrect. Therefore, NHTSA is not revisiting that issue. To the extent that remote actuation devices for power operated window and partition systems are currently being sold that are inconsistent with the requirements of the April 1991 final rule and today's amendments, NHTSA will address them in the context of enforcement proceedings. As discussed below, however, NHTSA has decided to delay by one year the effective date for the extension of Standard No. 118's requirements to roof panel systems, to ensure that there is adequate leadtime for manufacturers to meet the requirements for those devices.

Closing From Positions Less Than 4 mm Open

As discussed above, power windows/partitions/roof panels are generally permitted to close if they reverse direction within a zone defined by 4 mm to 200 mm test rods placed through the opening such that the longitudinal edge of the test rod contacts the structure with which the window/partition/roof panel mates. Thus, such reversal is not required for the closing of a window that was open less than 4 mm before it started closing.

GM stated that it has been investigating the use of partially lowered windows as a means of facilitating door closing by reducing interior compartment air pressure during door closing. GM's system would cause all of the power windows to lower slightly when the first door was opened, and would cause all power windows to close automatically when the last door was closed. GM stated its belief that this system would be permitted if the windows were lowered less than 4 mm, but requested that Standard No. 118 be amended to specifically permit it.

The April 1991 final rule was concerned about closing of power windows, partitions, and sunroofs within the range of 4 mm to 200 mm from the frame. The agency believed it was within this range that fingers, and other

body parts of children would be at risk of being caught. NHTSA did not apply the reversal requirement to windows opened less than 4 mm prior to closing as it believed such openings are too small to pose a likely danger and because unnecessary automatic reversal could result from a window's misalignment or obstruction by ice. Since GM's system involves openings of a size the agency did not believe posed a safety risk, the agency agrees that the system should be permitted.

Since it is not clear that GM's system is permitted under the April 1991 final rule, the agency is amending the standard to indicate that it permits automatic closing of power windows/partitions/roof panels which are open less than 4 mm (at all locations around their perimeter).

Closing Between Turning Off Ignition Key and Opening Door

One of the specified circumstances for which the April 1991 final rule permits power-operated windows/partitions/roof panels to close, without meeting any other requirements, is during the interval between the time the ignition key is turned off and the time one of the front vehicle doors is opened. ISI stated that some power-operated sunroofs are designed to close automatically when the ignition is turned off. That organization expressed concern that this closing mode may not be permitted under the April 1991 final rule since the sunroof may take longer to close than the time required for the driver to open the door. ISI therefore requested that consideration be given to "a time relief" for sunroof panels, with possibly inclusion of a specific reversing pressure limit.

NHTSA notes that the provision permitting closing during the interval between the time the ignition is turned off and one of the front vehicle doors is opened has long applied to power windows and partitions. However, this provision, like a similar one permitting closing when the ignition key is in the "on," "start," or "accessory" provision did not contemplate "automatic" closing of power windows/partitions. Instead, the provisions were intended to limit the times when typical power window controls were permitted to be operable. While the standard does not prohibit automatic operation during these times, the agency notes that "automatic" closing of power windows/partitions/roof panels (within the range of 4 mm to 200 mm from the frame) raises different safety issues than intentional closing by typical power controls. For example, before and during intentional closing of a window, an adult is likely to check whether a child has his or her arms or fingers in a window opening. If a window closes automatically, however, a supervising adult may be taken by surprise and have difficulty reacting immediately if a child should have his or her fingers in the opening.

As discussed above, automatic closing of sunroofs is permitted, regardless of timing, if a reversal feature is provided. Thus, the closing mode cited by ISI could be provided for a sunroof design if a reversal feature was also included. Moreover, as indicated above, NHTSA has decided to delay by one year the effective date for the extension of Standard No. 118's requirements to roof panel systems, to ensure that there is adequate leadtime for manufacturers to meet the requirements for those devices.

Retitling Standard No. 118

In its petition for reconsideration, AIAM suggested that it would be appropriate to amend the title of the standard to reflect its expanded applicability. The agency concurs with this recommendation. Accordingly, Standard No. 118 is now retitled as "Power-operated window, partition and roof panel systems."

Effective Dates

The changes made in this rule are effective September 1, 1992. Vehicles manufactured before September 1, 1992 may comply with the changes made in this rule. The standard's requirements for power-operated roof panel systems need not be met for vehicles manufactured before September 1, 1993.

Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

1. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has considered the costs and other impacts of this rule and determined that the rule is neither "major " within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory procedures. This rule does not impose new requirements but instead, in response to petitions for reconsideration of a final rule published in April 1991, provides additional flexibility to manufacturers, clarifies the requirements, and delays by one year the effective date for the extension of the Standard to power-operated roof panels. Therefore, neither a regulatory impact analysis nor a full regulatory evaluation is required.

2. Regulatory Flexibility Act

NHTSA has analyzed the effects of this final rule on small entities in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. As indicated above, this rule does not impose new requirements but instead provides additional flexibility to manufacturers, clarifies existing requirements, and delays by one year the effective date for the extension of the Standard to cover power-operated roof panels. Accordingly, no final regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and requirements contained in Executive Order 12612, and the agency has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and has determined that it will not significantly affect the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1391, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.118 [Amended]

Section 571.118 is amended to read as follows:

2. The heading of § 571.118 is revised to read as follows:

§ 571.118 Standard No. 118; Power-operated window, partition, and roof panel systems.

3. S2 is revised to read as follows:

* * * * *

This standard applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 10,000 pounds or less. The standard's requirements for power-operated roof panel systems need not be met for vehicles manufactured before September 1, 1993.

* * * * *

4. S4 is amended by revising paragraph (d) and adding paragraphs (f) and (g) as follows:

* * * * *

(d) Upon continuous activation of a remote actuation device, provided that the remote actuation device shall be incapable of closing the power window, partition or roof panel from a distance of more than 6 meters from the vehicle;

* * * * *

(f) If the window, partition, or roof panel is in a static position before starting to close and in that position creates an opening so small that a rigid circular cylindrical rod that is 4 mm in diameter cannot be placed through the opening at any location around its edge in the manner described in S5(b).

(g) Upon continuous activation of a remote actuation device, provided that the remote actuation device shall be incapable of closing the power window, partition or roof panel if the device and the vehicle are separated by an opaque surface and provided that the remote actuation device shall be incapable of closing the power window, partition or roof panel from a distance of more than 11 meters from the vehicle.

5. S5 is amended by revising paragraphs (a) and (b) as follows:

S5(a) Notwithstanding S4, a power operated window, partition or roof panel system may close if it is capable of meeting the following requirements—

(1) while closing, the window, partition or roof panel system reverses direction before contacting, to before exerting a force of 100 newtons or more on, any rigid circular cylindrical rod from 4 mm to 200 mm in diameter (but not exceeding the size of the opening at the test location) that is placed through the window, partition or roof panel system opening at any location in the manner described in S5(b), and

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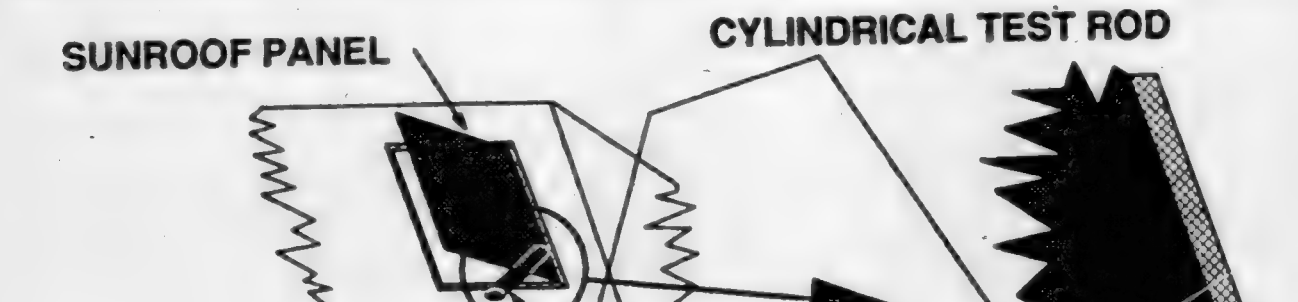

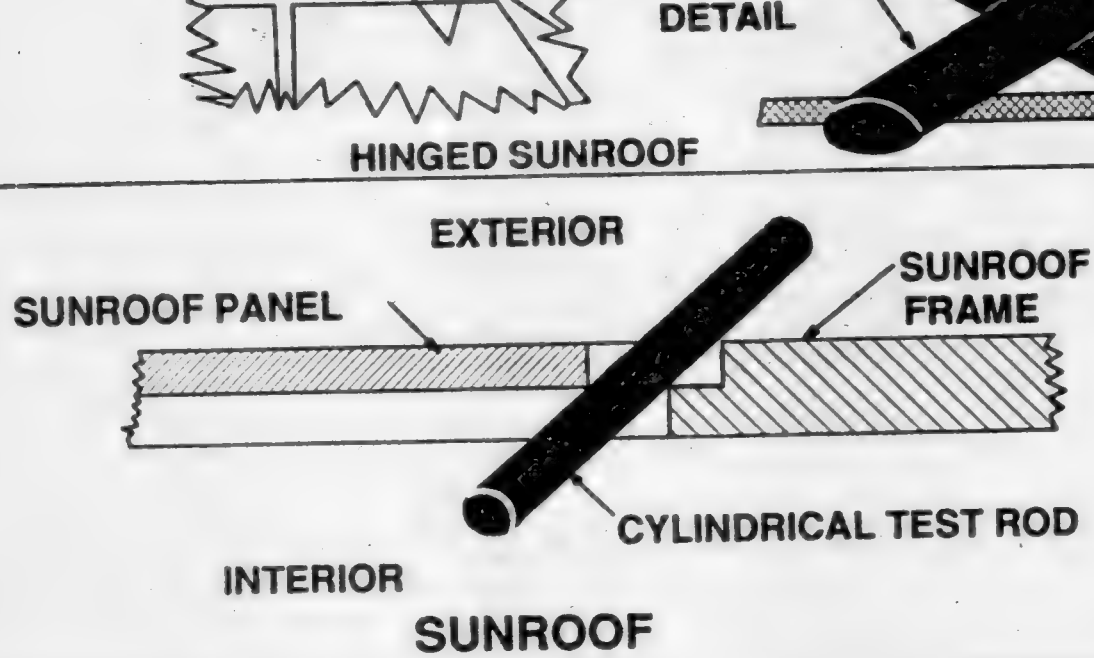

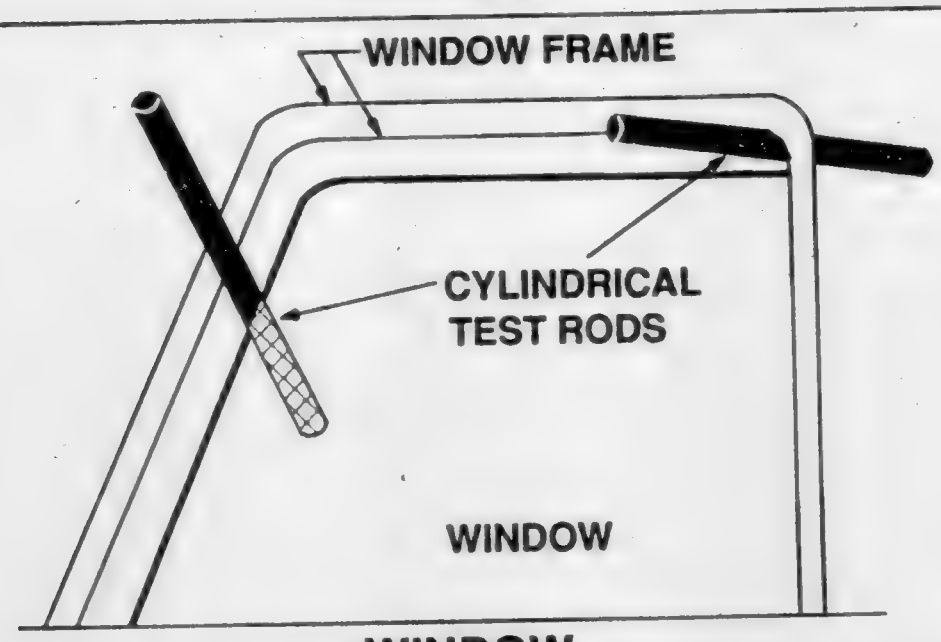

Figure 1 - Typical Cylindrical Test Rods Protruding through Sunroof and Window Daylight Openings

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(2) upon such reversal, opens to either a position that permits a rigid circular cylindrical rod that is 200 mm in diameter to be placed through the opening at the same contact point(s) as the rod described in S5(a)(1), or to a position that is at least as open as the position at the time closing was initiated.

(b) The test rod is placed through the window, partition or roof panel opening from the inside of the vehicle such that the cylindrical surface of the rod contacts any part of the structure with which the window, partition or roof panel mates. Typical placements of test rods are illustrated in Figure 1.

6. Figure 1 is added at the end of Standard No. 118 as follows:

Issued on June 1, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-13160 Filed 6-4-92; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for sablefish using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in this area.

DATES: Effective 12 noon, Alaska local time (A.l.t.), June 3, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to hook-and-line gear in the Central Regulatory Area, which is defined at § 672.2, is established by the final notice of specifications (57 FR 2844, January 24, 1992) as 7,656 metric tons.

Under § 672.24(c)(3)(i), the Director of the Alaska Region, NMFS has determined that the share of the sablefish TAC assigned to hook-and-line gear in the Central Regulatory Area will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by vessels using hook-and-line gear in the Central Regulatory Area, effective from 12 noon, A.l.t., June 3, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 2, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-13200 Filed 6-2-92; 1:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 109
Friday, June 5, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-22-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce engines, that currently requires inspections for cracked midspar fuse pins, and replacement of the pins, if necessary. The applicability of this action includes additional airplanes equipped with bulkhead-type fuse pins that were installed by the manufacturer and are also subject to cracking. This action also provides a terminating action for the inspection requirements. This proposal is prompted by an analysis conducted by the manufacturer which indicates that bulkhead-type fuse pins must be replaced at specified intervals. The actions specified by the proposed AD are intended to prevent the separation of the strut and engine from the wing.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103,Attention: Rules Docket No. 92-NM-22-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2779; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-22-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-22-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On February 22, 1990, the FAA issued AD 90-03-51, Amendment 39-6523 (55 FR 7697, March 5, 1990), to require inspections of certain Boeing Model 757 series airplanes to detect cracked midspar fuse pins, and replacement of the pins, if necessary. That action was prompted by a report of an operator finding two completely fractured midspar fuse pins on the same strut on a Boeing Model 757 series airplane equipped with Rolls Royce engines. The requirements of that AD are intended to prevent the separation of the strut and engine from the wing.

Since the issuance of that AD, the manufacturer has installed bulkhead-type fuse pins on a second group of these airplanes. Results of a recent analysis have revealed that bulkhead-type fuse pins are also subject to cracking and must be replaced every 6,000 flight cycles in order to maintain an acceptable level of safety. Also, a terminating action for the inspections has been developed, which involves an inspection of the bushings of the midspar attachment and verification that the bushings' inside diameters are within specific allowable limits.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, that describes procedures for repetitive inspections of the fuse pins to detect cracks, and replacement of cracked pins. Included in this bulletin are procedures for performing the inspection of the bushings of the midspar attachment which, if accomplished, terminates the need for the repetitive inspections of the fuse pins. This service bulletin also specifies the replacement times for the bulkhead fuse pins. The effectivity of this revised service bulletin includes additional airplanes equipped with bulkhead fuse pins that were installed by the manufacturer and are also subject to cracking.

The FAA has also reviewed and approved Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992. This revision is essentially the same as Revision 2, but includes instructions on how to replace the bushings in the wing side-load fitting and strut duckbill fittings.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90-03-51 to continue to require inspections to detect cracking of

the midspar fuse pins, and replacement of cracked pins; and replacement of bulkhead fuse pins at specific intervals. This AD also contains provisions for terminating the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 223 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 86 airplanes of U.S. registry would be affected by this proposed AD, which includes 38 airplanes that were affected by AD 90-03-51, and 48 additional airplanes affected by this proposal. The manufacturer has installed bulkhead fuse pins on 41 of these airplanes.

The FAA estimates that it would take approximately 8 work hours per airplane to accomplish the actions currently required by AD 90-03-51; 2 additional work hours to accomplish the bushings inspection that would be required by this proposed AD; and 56 additional work hours for the 41 airplanes equipped with bulkhead fuse pins to accomplish the fuse pin replacement that would be required by this proposed AD. The average labor rate would be $55 per work hour. Required parts for the 41 airplanes with bulkhead fuse pins would cost approximately $1,640 per airplane.

Based on these figures, the current cost impact of AD 90-03-51 on U.S. operators is $16,720. This proposed AD would add total costs of $26,400 for 48 additional airplanes to accomplish the requirements of this proposal; and total costs of $4,180 for the original 38 airplanes to accomplish the bushings inspection. It would also add total costs of $193,520 for the 41 airplanes equipped with bulkhead fuse pins to accomplish the actions required by this proposal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $241,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6523 (55 FR 7697, March 5, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92-NM-22-AD. Supersedes AD 90-03-51, Amendment 39-6523.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines; as listed in Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the strut and engine from the wing, accomplish the following:

(a) For airplanes identified as Group 1 in Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992: Prior to the accumulation of 5,000 flight cycles on a new fuse pin or 1,500 flight cycles since the last inspection, or within the next 30 days after March 19, 1990 (the effective date of AD 90-03-51, Amendment 39-6523), whichever occurs later; and thereafter at intervals not to exceed 1,500 flight cycles: Perform an eddy current inspection to detect cracks of the engine strut midspar fuse pins, part number 311N5067-1, in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992.

Note: Inspections accomplished in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 1, dated January 30, 1990, or Revision 2, dated October 31, 1991, prior to the effective date of this amendment, are considered to comply with the requirements of this paragraph.

(b) If a crack is found in any midspar fuse pin as a result of any inspection required by paragraph (a) of this AD, prior to further flight, inspect the 6 bushings per wing in the wing side-load fitting and strut duckbill fittings, in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, or Revision 3, dated March 26, 1992. As a result of the inspections required by this paragraph, accomplish the applicable procedure as specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, in accordance with the service bulletin.

(1) If any of the bushings in the wing side-load fitting or strut duckbill fittings are found to have an inside diameter measurement of greater than or equal to 1.5645 inches: Prior to further flight, install new fuse pins, part number 311N5067-1, and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (b) of this AD.

(2) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have an inside diameter measurement of less than or equal to 1.5644 inches, and one or more of the dimensions is between 1.5633 inches and 1.5645 inches: Prior to further flight, install new fuse pins, part number 311N5067-1, and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (b) of this AD.

(3) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have inside diameter measurements of less than or equal to 1.5633 inches, accomplish the procedures specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this AD:

(i) Prior to further flight, install new fuse pins, part number 311N5067-1, and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD; and

(ii) Within 10 days, submit a report of findings of the bushing inspection (in which all bushings are found to have inside diameter measurements of less than or equal to 1.5633 inches) to the Boeing Commercial Airplane Group. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120-0056.

(c) If no cracks are found in a midspar fuse pin as a result of the inspections required by paragraph (a) of this AD, prior to further flight, inspect the 6 bushings per wing in the wing side-load fitting and strut duckbill fittings in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, or Revision 3, dated March 26, 1992. As a result of the inspections required by this paragraph, accomplish the applicable procedure specified in paragrapn

(c)(1), (c)(2), or (c)(3) of this AD, in accordance with the service bulletin.

(1) If any of the bushings in the wing side-load fitting or strut duckbill fittings are found to have an inside diameter measurement of greater than or equal to 1.5645 inches: Prior to further flight, re-install the removed fuse pins, and repeat the inspections of the fuse pins in accordance with paragraph (a) of this AD. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (c) of this AD.

(2) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have an inside diameter measurement of less than or equal to 1.5644 inches: Prior to further flight, re-install the removed fuse pins and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (c) of this AD.

(3) If all of the bushings in the wing side-load fitting and strut duckbill fitting are found to have inside diameter measurements of less than or equal to 1.5633: Prior to further flight, re-install the removed fuse pins. No more inspections in accordance with this AD are required.

(d) For airplanes identified as Group 2 in Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992: Prior to the accumulation of 6,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, inspect the 6 bushings per wing in the wing side-load fitting and strut duckbill fittings, and replace the engine midspar fuse pins, part number 311N5211-1, with new fuse pins having the same part number, in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, or Revision 3, dated March 26, 1992. As a result of the inspections required by this paragraph, accomplish the applicable procedure specified in either paragraph (d)(1) or (d)(2) of this AD, in accordance with the service bulletin.

(1) If any of the bushings in the wing side-load fitting or strut duckbill fittings are found to have an inside diameter measurement of greater than 1.5633 inches: Within 6,000 additional flight cycles after the inspection of the bushings required by paragraph (d) of this AD, remove all bushings that have an inside diameter measurement of greater than 1.5633 inches, and install new midspar fuse pins, part number 311N5967-1.

(2) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have inside diameter measurements of less than or equal to 1.5633 inches: Within the next 6,000 flight cycles after the inspection of the bushings required by paragraph (d) of this AD, install new fuse pins, part number 311N5067-1.

(e) Accomplishment of the bushing replacement and installation of midspar fuse pins, part number 311N5067-1, in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992, constitutes terminating action for the inspection requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13075 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-45-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes. This proposal would require installation of bonding straps to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers. This proposal is prompted by reports of engine rundown (flame out) due to ice ingestion, resulting from static discharge and airframe and equipment electrical bonding difficulties that caused the engine de-icing timers to malfunction. The actions specified by the proposed AD are intended to prevent engine rundown due to ice ingestion.

DATES: Comments must be received by July 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-45-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-45-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-

NM-45-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP series airplanes. The Civil Aviation Authority advises that reports have been received of engine rundown (flame out) due to ice ingestion. Heavy electrostatic build-up on Module 3 apparently has caused spurious instrument and radio interference, resulting in malfunctioning of the engine intake de-ice timers. Consequently, ice build-up in the engine air intake systems was not signalled on the flight deck. If uncorrected, this condition could cause engine rundown due to ice ingestion.

British Aerospace has issued Service Bulletin ATP-24-45-35229A, dated December 20, 1991, that describes procedures for installation of bonding straps to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers. The Civil Aviation Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of bonding leads to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no charge to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,150.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92-NM-45-AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2045, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine rundown (flame out) due to ice ingestion, accomplish the following:

(a) Within 90 days after the effective date of this AD, install bonding straps, Modification 35229A, at the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers, in accordance with British Aerospace Service Bulletin ATP-24-45-35229A, dated December 20, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 15, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13076 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-49-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes. This proposal would require installation of fixed fittings and electrical power filters into the main and side windscreen heating systems. This proposal is prompted by reports of voltage spikes in the windscreen heater power supply circuits, resulting in simultaneous loss (shut-down) of the pilot's and/or co-pilot's electronic flight instruments system (EFIS). The actions specified by the proposed AD are intended to prevent loss of EFIS displays.

DATES: Comments must be received by July 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-49-AD, 1601 Lind Avenue SW., Renton,

Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–49–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–49–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP series airplanes. The Civil Aviation Authority advises that cases have been reported of voltage spikes (transients) in the windscreen heater power supply circuits, resulting in simultaneous loss (shut-down) of all tubes on either or both sides of the pilot's and/or co-pilot's electronic flight instruments system (EFIS). The voltage spikes are caused by airframe static electrical discharge. If uncorrected, this condition could result in loss of pilot's and/or co-pilot's EFIS displays.

British Aerospace has issued Service Bulletin ATP–30–20–10248A–10248C, Revision 1, dated February 17, 1992, that describes procedures for installation of fixed fittings and electrical power filters into the main and side windscreen electrical power supply circuits. Installation of these items will eliminate interference to EFIS from voltage spikes in the windscreen heater supply circuit. The Civil Aviation Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of fixed fittings and electrical power filters into the main and side windscreen heating systems. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 41 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $9,500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $117,550.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–49–AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2045, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss (shut-down) of electronic flight instruments system (EFIS) displays, accomplish the following:

(a) Within 180 days after the effective date of this AD, install fixed fittings, Modification 10248C, and filter units, Modification 10248A, in the electrical power supplies to the main

and side windscreen heater system at the rear of the EFIS control panel, in accordance with British Aerospace Service Bulletin ATP-30-20-10248A/-10248C, Revision 1, dated February 17, 1992.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 15, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13077 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-56-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. This proposal would require repetitive X-ray inspections to detect cracks in the left and right wing upper skins, joint straps, and stringers, and repair of any cracks found. This proposal is prompted by results of wing fatigue tests, which indicate the possibility of cracking in both the left and right wing upper skin panels beneath the upper center line butt strap. Fatigue cracking in these areas, if not detected and corrected, could result in reduced structural integrity of the wings.

DATES: Comments must be received by July 21, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-56-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-56-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-56-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. The CAA advises that results of wing fatigue tests indicate the possibility of cracking in both the left and right wing upper skin panels beneath the upper center line butt strap. Fatigue cracking in these areas, if not detected and corrected, could result in reduced structural integrity of the wings.

British Aerospace has issued Inspection Service Bulletin 57-41, dated July 26, 1991, which describes procedures for repetitive X-ray inspections to detect cracks in the left and right wing upper skins, joint straps, and stringers at rib "O," and repair, if necessary. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive X-ray inspections to detect cracks in the left and right wing upper skins, joint straps, and stringers at rib "O," and repair of any cracks found. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane (excluding access and reinstallation time) to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,280 for each inspection cycle.

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–56–AD.

Applicability: All Model BAe 146–100A, –200A, and –300A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Prior to the accumulation of 24,000 landings, or within 60 days after the effective date of this AD, whichever occurs later: Perform an X-ray inspection to detect fatigue cracks in the left and right wing upper skins, joint straps, and stringers in the vicinity of rib "O," in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 28, 1991.

(1) If cracks are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 9,000 landings, in accordance with the service bulletin.

(2) If no cracks are found, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 9,000 landings, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 21, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13078 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–97–AD]

Airworthiness Directives; British Aerospace Model BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 125–800A series airplanes. This proposal would require modification of the auxiliary power unit (APU) wiring. This proposal is prompted by a report that in the event of an uncontained engine failure, debris from the engine may damage the power supply wiring between certain electrical panels. The actions specified by the proposed AD are intended to prevent a short circuit, arcing, and an electrical fire.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–97–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–97–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 125–800A series airplanes. The CAA advises that in the event of an uncontained engine failure, debris from the engine may damage the power supply wiring between electrical panel "ZL" and the auxiliary power unit (APU) electrical panel, "ZK–A." This condition, if not corrected, could result in a short circuit, arcing, and an electrical fire.

British Aerospace has issued Service Bulletin 49–37–25A253A&B, dated October 28, 1991, which describes procedures for modification of the APU wiring by relocating certain power supply connections to protect against damage from engine debris. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the APU wiring. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,880. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–97–AD.

Applicability: Model BAe 125–800A series airplanes; post-mod 250404B (Turbomach auxiliary power unit) and post-mod 258706 (Garrett auxiliary power unit); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit, arcing, and an electrical fire, accomplish the following:

(a) Within 120 days after the effective date of this AD, modify the auxiliary power unit wiring, in accordance with British Aerospace Service Bulletin 49–37–25A253A&B, dated October 28, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 18, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13080 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–58–AD]

Airworthiness Directives; British Aerospace Model DH/HS/BH/BAe 125 Series Airplanes, Excluding Model BAe 125–1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to British Aerospace Model BAe 125–600A, –700A, and –800A series airplanes, that currently requires a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary. That action was prompted by an incident in which the tailcone inside area of a Model BAe 125–800A series airplane was soaked with fuel that leaked out of fuel feed pipe joints during a high altitude transatlantic flight. This action would expand the applicability of the existing rule to include additional airplanes. These airplanes have been determined to be subject to the same unsafe condition addressed in the existing rule. The actions specified by the proposed AD are intended to prevent an in-flight fire hazard in the rear equipment bay.

DATES: Comments must be received by July 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–58–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9

a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-58-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-58-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On December 20, 1991, the FAA issued AD 92-01-09, Amendment 39-8133 (57 FR 786, January 9, 1992), applicable to British Aerospace Model BAe 125-600A, -700A, and -800A series airplanes, to require a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary. That action was prompted by an incident in which the tailcone inside area of a Model BAe 125-800A series airplane was soaked with fuel that leaked out of fuel feed pipe joints during a high altitude transatlantic flight. The requirements of that AD are intended to prevent an in-flight fire hazard in the rear equipment bay.

Since issuance of that AD, British Aerospace has issued Service Bulletin SB 28-87, dated December 31, 1991, that describes procedures for a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary. This service bulletin is similar to Service Bulletin SB 28-86, which was referenced in the existing AD, but includes certain earlier models of Model BAe 125 series airplanes in its effectivity listing; these airplanes have been determined to be subject to the same unsafe condition addressed in Service Bulletin SB 28-86. The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92-01-09, to expand the applicability of the existing rule to include certain earlier models of Model BAe 125 series airplanes. The applicability of the proposed rule would include all Model DH/HS/BH/BAe 125 series airplanes, except for the Model BAe 125-1000A. The actions would be required to be accomplished in accordance with the service bulletin described previously. The added airplanes would be provided with a longer compliance time than those affected by the existing AD, since they usually fly at lower altitudes; service experience has shown that an in-flight fire hazard in the rear equipment bay is more prevalent at higher altitudes.

The FAA estimates that 421 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $185,240.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8133 (57 FR 786, January 9, 1992), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace: Docket 92–NM–50–AD. Supersedes AD 92–01–09, Amendment 39–8133.

Applicability: British Aerospace Model DH/HS/BH/BAe 125 series airplanes, excluding Model BAe 125–1000A series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent an in-flight fire hazard in the rear equipment bay, accomplish the following:

(a) For airplanes listed in British Aerospace Service Bulletin SB 28–86, dated June 28, 1991: Within 60 days after January 24, 1992 (the effective date of AD 92–01–09, Amendment 39–8133), accomplish a visual inspection for proper alignment of fuel feed pipes at pipe joint couplings, in accordance with British Aerospace Service Bulletin SB 28–86, dated June 28, 1991. If misalignment is detected outside the specifications cited in the service bulletin, prior to further flight, correct the alignment by installing an "O" ring modification and fuel pipe clamping modification, in accordance with the service bulletin.

(b) For airplanes listed in British Aerospace Service Bulletin SB 28–87, dated December 31, 1991, and not subject to the requirements of paragraph (a) of this amendment: Within 6 months after the effective date of this AD, accomplish a visual inspection for proper alignment of fuel feed pipes at pipe joint couplings, in accordance with British Aerospace Service Bulletin SB 28–87, dated December 31, 1991. If misalignment is detected outside the specifications cited in the service bulletin, prior to further flight, correct the alignment by installing an "O" ring modification and fuel pipe clamping modification, in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 15, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13079 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–79–AD]

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1125 Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model 1125 Astra series airplanes. This proposal would require inspection of all oxygen tubing for security, chafing, and general condition; and protection of the oxygen tubing, if necessary. This proposal is prompted by indications of potentially insufficient clearance around the oxygen lines such that chafing can occur. The actions specified by the proposed AD are intended to prevent chafing and damage to the oxygen tubing, which could lead to increased potential for fire ignited from arcing or heated components.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–79–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Astra Jet Corporation, Technical Publications, 77 McCollough Drive, suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–79–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–79–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Astra Model 1125 series airplanes. The CAAI advises that the manufacturer discovered that there may not be sufficient clearance around the oxygen lines to prevent chafing. Without sufficient clearance, an oxygen line may be chafed by wires, components, or adjacent structure; however, to date, there have been no occurrences of chafing. If the oxygen line is chafed or burned through, there is potential for loss of oxygen reserved for high altitude operation or emergency descent after decompression. Additionally, chafing or damage of the oxygen tubing could result in an increased potential for fire ignited from arcing or heated components. Israel Aircraft Industries, Ltd., has issued Astra Service Bulletin SB 1125–35–071, dated February 12, 1992, which describes procedures for inspecting the oxygen tubing for general condition, security, and chafing; and for protecting the tubing by wrapping it with neoprene rubber. The CAAI

classified this service bulletin as mandatory.

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection of all oxygen tubing for security, chafing, and general condition; and protection of the oxygen tubing, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $20 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $99,900. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries, Ltd.: Docket 92–NM–79–AD.

Applicability: Model 1125 Astra series airplanes, all serial numbers prior to 059; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent chafing and damage to the oxygen tubing, which could lead to increased potential for fire ignited from arcing or heated components, accomplish the following:

(a) Within 200 hours time-in-service or within 6 months after the effective date of this AD, whichever occurs first, inspect all oxygen tubing for security, chafing, and general condition, in accordance with Astra Service Bulletin SB 1125–35–071, dated February 12, 1992.

(b) If any discrepancies are detected as a result of the inspections required by paragraph (a) of this AD, prior to further flight, protect the oxygen tubing, in accordance with Astra Service Bulletin SB 1125–35–071, dated February 12, 1992.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13082 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–84–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require inspections to detect fatigue cracks of the side skin and doubler surrounding the pressure relief door assembly of the tail pylon, and structural modification of the tail pylon pressure relief door opening. This proposal is prompted by a full-scale fatigue test that detected the development of fatigue cracks. The actions specified by the proposed AD are intended to prevent skin and doubler fatigue cracking, which could cause loss of fail safe capability of the tail pylon structure.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–84–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Wahib Mina, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–121L, FAA, Transport Airplane Directorate 3229 East Spring

Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–84–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–84–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

McDonnell Douglas has reported that, during a full-scale fatigue test involving the Model MD–11 tail pylon, cracks developed at the right-hand side center pressure relief cutout corners through the side skin and doubler for the tail pylon. These fatigue cracks were observed at 13,000 simulated flight cycles during the tail pylon fatigue test. This is equivalent to 6,500 airplane landings. The side skin and doubler of the tail pylon were designed to meet their fatigue life of a minimum of 20,000 landings. Fatigue of the tail pylon side skin and doubler is caused by high local stress level. Fatigue cracking of the skin and doubler, if not detected and corrected in a timely manner, could result in the loss of fail safe capability of the tail pylon structure.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, that describes procedures for inspecting for cracks of the tail pylon skin around pressure relief door and installing an interim modification or one of two permanent modifications, as applicable. The interim modification involves installation of interim external doublers. One of the permanent modifications involves the installation of an internal doubler, frame, and stiffener; and the other involves the installation of external doublers, an internal doubler, frame, and stiffener. If the interim modification is installed, one of the two permanent modifications must be installed in the future, as applicable. The purpose of the modification is to increase structural reliability and fatigue life of the tail pylon skin.

Note: This service bulletin refers to Rohr Industries Service Bulletin MD–11 54–160, dated January 31, 1992, that provides additional information about the inspection and modification of the tail pylon pressure relief cutout.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspections to detect fatigue cracks of the side skin and doubler surrounding the pressure relief door assembly of the tail pylon, and structural modification of the tail pylon pressure relief door opening. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 28 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection requirements, and that the average labor rate is $55 per work hour. Based on these figures, the total cost of the inspection requirements of the proposed AD on U.S. operators would be $990.

Installation of the interim modification would take approximately 35 hours to accomplish, and the average labor rate would be $55 per work hour. Parts will be provided at no cost to the operators. Based on these figures, the cost to U.S. operators who install the interim modification would be $1,925 per airplane.

Installation of the permanent modification (without removal of the interim modification) would take approximately 308 work hours to accomplish, and the average labor rate would be $55 per work hour. Parts will be provided at no cost to operators. Based on these figures, the total cost to U.S. operators who install the permanent modification (without removing the interim modification) would be $16,940 per airplane.

Installation of the permanent modification (with removal of the interim modification) would take approximately 316 work hours to accomplish, and the average labor rate would be $55 per work hour. Parts will be provided at no cost to operators. Based on these figures, the total cost to U.S. operators who install the permanent modification (with removing the interim modification) would be $17,380 per airplane.

Based on the figures discussed above, the total cost impact of the proposed AD on U.S. operators would be between $305,910 and $348,480. These total cost figures assume that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 92–NM–84–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent skin and doubler fatigue cracking, which could cause loss of fail safe capability of the tail pylon structure, accomplish the following:

(a) For Group I airplanes, as listed in McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, prior to the accumulation of 2,100 landings or within 60 days after the effective date of this AD, whichever occurs later, visually inspect to detect cracks on the tail pylon skin and interior doubler around the pressure relief door, and install either the interim or permanent modification, as specified in sub-paragraphs (a)(1) and (a)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992.

(1) If no cracks are detected, prior to further flight, install either the interim modification, which consists of interim external doublers; or the permanent modification, which consists of internal doubler, frame, and stiffener. If the interim modification is installed, prior to the accumulation of 6,000 landings or within 60 days after the effective date of this AD, whichever occurs later, install the permanent modification (internal doubler, frame, and stiffener), in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992.

(2) If cracks are detected, prior to further flight, install the permanent modification, which consists of external doublers, internal doubler, frame, and stiffener, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992.

(b) For Group II airplanes, as listed in McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, prior to the accumulation of 6,000 landings or within 60 days after the effective date of this AD, whichever occurs later, conduct a dye penetrant inspection for cracks of the tail pylon skin around the pressure relief door, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992.

(1) If no cracks are found, prior to further flight, install the permanent modification, which consists of an internal doubler, frame, and stiffener, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992.

(2) If cracks are detected, prior to further flight, install the permanent modification which consists of external doublers, internal doubler, frame, and stiffener, in accordance with McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13083 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–CE–27–AD]

Airworthiness Directives; Piper Aircraft Corporation PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–20–04, which currently requires repetitive inspections of the engine baffle seals to ensure that they are all positioned properly on certain Piper Aircraft Corporation (Piper) PA–31 series airplanes, and reinforcement of any baffle seal that is positioned improperly. That AD allows the repetitive inspections to be eliminated if the reinforcement is incorporated. The Federal Aviation Administration (FAA) has received reports of reinforced baffle seals found improperly positioned. The proposed AD would retain the inspection and possible reinforcement requirements of AD 80–20–04, but would not allow the repetitive inspections to be eliminated. The actions specified by the proposed AD are intended to prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures.

DATES: Comments must be received on or before August 14, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–27–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567–4361. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–27–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention:

Rules Docket No. 92–CE–27–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive 80–20–04, Amendment 39–3925 (45 FR 64168, September 29, 1980), currently requires repetitive inspections of the engine baffle seals to ensure that they are all positioned properly on certain Piper PA–31 series airplanes, and reinforcement of any baffle seal that is improperly positioned. The possible reinforcement is accomplished in accordance with Piper Service Bulletin (SB) No. 693, dated July 28, 1980. AD 80–20–04 allows the repetitive inspection to be eliminated if the reinforcement is incorporated.

The FAA has received several reports from Airworthiness Aviation Safety Inspectors indicating that baffle seal problems still exist on certain Piper PA–31 series airplanes that are in compliance with AD 80–20–04. The baffle seals on the airplanes involved in the referenced incidents were reinforced as specified in AD 80–20–04, and, as a result, have eliminated the repetitive inspections in accordance with paragraph (c) of that AD. These reports establish that these reinforced baffle seals have deteriorated and reinforcement patches have lost their effectiveness.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that additional AD action should be taken in order to prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA–31 series airplanes of the same type design, the proposed AD would supersede AD 80–20–04, Amendment 39–3925, with a new AD that would retain the inspection and possible reinforcement requirements of AD 80–20–04, but would not allow the repetitive inspections to be eliminated. The possible reinforcement would be accomplished in accordance with Piper SB No. 693, dated July 28, 1980.

The FAA estimates that 2,448 airplanes in the U.S. registry would be affected by the proposed AD and that it would take approximately 0.5 workhours per airplane to accomplish the proposed inspections. Since an owner/operator who holds a private pilot certificate as authorized by FAR 43.7 is allowed to accomplish the proposed inspections, the only cost impact upon the public would be the time it takes to accomplish these inspections. AD 80–20–04, which would be superseded by the proposed action, currently requires the same actions as is proposed except for not allowing the repetitive inspections to be eliminated. The only difference between the proposed AD and AD 80–20–04 is the time incurred through repetitive interval inspections.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 80–20–04, Amendment 39–3925 (45 FR 64168, September 29, 1980), and by adding the following new airworthiness directive:

Piper Aircraft Corporation: Docket No. 92–CE–27–AD Supersedes AD 80–20–04, Amendment 39–3925.

Applicability: Model PA–31, PA–31–300, and PA–31–325 airplanes (serial numbers 31–2 through 31–8012089), and Model PA–31–350 airplanes (serial numbers 31–5001 through 31–8052199), certificated in any category.

Compliance: Required within the next 50 hours time in-service (TIS) after the effective date of this AD, unless already accomplished (superseded AD 80–20–04, Amendment 39–3925), and thereafter at intervals not to exceed 50 hours TIS.

To prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures, accomplish the following:

(a) Visually inspect the engine baffle seals for proper positioning by using a light and looking in air inlets and access doors to ensure that forward seals and lower aft seals are all facing forward and not blown back.

(b) If baffle seals are improperly positioned (blown back), prior to further flight, reinforce the seals in accordance with the instructions in Piper Service Bulletin No. 693, dated July 28, 1980.

Note 1: The reinforcement of the baffle seals in accordance with paragraph (b) of this AD does not eliminate the repetitive inspection requirement of this AD.

(c) The repetitive inspections required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by FAR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with FAR 43.11.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 80–20–04, Amendment 39–3925.

Issued in Kansas City, Missouri, on May 29, 1992.

Larry D. Malir,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13174 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-18736, File No. S7-12-92]

RIN 3235-AF47

Exclusion From the Definition of Investment Company for Certain Structured Financings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and request for comment.

SUMMARY: The Commission is proposing a new rule under the Investment Company Act of 1940 (the "Act") to exclude certain issuers that pool income-producing assets and issue securities backed by those assets ("structured financings") from the definition of "investment company." The proposal would permit structured financings that meet the conditions of the rule to publicly offer their securities in the United States without registering under the Act and complying with the Act's substantive provisions. The proposed rule is intended to remove an unnecessary and unintended barrier to the use of structured financings in all sectors of the economy, including the small business sector.

DATES: Comments must be received on or before August 4, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7-12-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Rochelle G. Kauffman, Senior Counsel, (202) 272-2038, Elizabeth R. Krentzman, Attorney, (202) 272-5416, or Karen L. Skidmore, Assistant Director, (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 3a-7 under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act"). Proposed rule 3a-7 would effectuate the recommendation made in Chapter 1 of the Division of Investment Management's recently issued report, *Protecting Investors: A Half Century of Investment Company Regulation.*[1] In addition, the Commission is requesting public comment on whether section 3(c)(5) of the Act [15 U.S.C. 80a-3(c)(5)] should be amended, particularly in light of the proposed rule.

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Executive Summary

Proposed rule 3a-7 would exclude from the definition of investment company in section 3(a) of the Act [2] certain issuers that pool income-producing assets and issue primarily debt or debt-like securities backed by those assets for the purpose of providing their sponsors financing and other related benefits. In the last decade, this finance technique, called "structured finance,"[3] has become one of the dominant means of capital formation in the United States; in 1991, structured financings accounted for approximately half of all publicly offered securities in the United States.[4]

Despite the volume of offerings, the Act to some degree has constrained the development of the structured finance market. Structured financings generally fall within the definition of investment company under section 3(a), but are unable to operate under the Act's requirements.[5] Many private sector sponsored financings have avoided regulation under the Act by relying on the exception from the definition of investment company in section 3(c)(5), which originally was intended to exclude issuers engaged in the commercial finance and mortgage banking industries.[6] The Commission has exempted by order certain other structured financings, primarily those involving mortgage-related assets, under section 6(c), the general exemptive provision of the Act.[7] Financings that

[1] SEC Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, *The Treatment of Structured Finance under the Investment Company Act* 1-101 (1992) [hereinafter Structured Finance Chapter]. This report concluded a two-year examination of the regulation of investment companies and certain other pooled investment vehicles. In the course of this examination, the Division of Investment Management (the "Division") met with representatives of entities associated with the structured finance industry to discuss, among other things, how structured financings work, the roles of the various participants, the status of the structured finance market, likely developments, and investor protection concerns. The Structured Finance Chapter discusses the Division's findings. Many of the Division's recommendations were based on suggestions made by commenters responding to a Commission release requesting comment on the regulation of investment companies and related issues, including the treatment of structured financings under the Act. SEC Request for Comment on the Reform of Investment Companies, Investment Company Act Release No. 17534 § III.C. (June 15, 1990), 55 FR 25322 (June 25, 1990) [hereinafter Study Release].

[2] 15 U.S.C. 80a-3(a).

[3] Although structured finance is the term most commonly used to describe this financing technique, other terms, such as "asset-backed arrangements," "asset-backed financings," "asset securitization," and "structured securitized credit," also have been used.

[4] Michael Liebowitz, *Reversing Four-Year Trend and Swooning Economy, Wall Street Explodes in 1991*, Inv. Dealers Dig., Jan. 6, 1992, at 21-23 (statistic excludes offerings of United States Treasury obligations).

[5] For example, the limitations of section 18 on the issuance of senior securities and the prohibitions of section 17 on transactions involving affiliates conflict with the operations of structured financings. 15 U.S.C. 80a-18, -17.

[6] S. Rep. No. 1775, 76th Cong., 3d Sess. 13 (1940); H.R. Rep. No. 2639, 76th Cong., 3d Sess. 12 (1940).

In addition, certain federally sponsored structured financings, such as those sponsored by the Federal National Mortgage Association, are exempted from the Act under section 2(b), which exempts, among other things, activities of United States Government instrumentalities and wholly-owned corporations of such instrumentalities. 15 U.S.C. 80a-2(b).

[7] 15 U.S.C. 80a-6(c). Section 6(c) provides that the Commission may exempt, by rule or order,

any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

Id.

cannot rely on section 3(c)(5) or obtain an exemption must sell their securities in private placements in reliance on section 3(c)(1),[8] the "private" investment company exception, or outside the United States.

In sum, under the present regulatory framework, a structured financing may be entirely exempt from the Act, or it may be subject to the Act and thus sold overseas or in private placements, depending solely on the nature of the assets securitized. Ironically, the result does not depend on the structure and operation of structured financings or the credit quality of the securitized assets. Many investors may be prevented from acquiring sound capital market instruments. In addition, some sponsors are denied the opportunity to obtain the benefits of publicly offered structured financings, even though they hold assets that, as a financial matter, readily could be securitized.

Application of the Act to structured financings has broad economic implications. Excepted or exempt structured financings have increased the availability of certain financial assets, often at lower costs. Structured finance, for example, has been credited with making the home mortgage market generally resistant to funding shortages.[9] Due to the applicability of the Act, however, some sectors of the economy, including small business, generally have been unable to use structured financings as sources of capital.

Proposed rule 3a–7 would remove an unnecessary barrier to the use and development of structured financings by excluding structured financings that meet certain conditions from the definition of investment company under the Act.[10] These conditions are intended to delineate the operational distinctions between registered investment companies and structured financings, permit the continued evolution of the structured finance market, and address any investor protection concerns that could arise. The proposed rule provides an exclusion for structured financings, regardless of the assets securitized.

[8] 15 U.S.C. 80a–3(c)(1).

[9] *See, e.g.*, Brant K. Maller, The Collateralized Mortgage Obligation: The Latest Phase in the Evolution of Mortgage-Backed Securities, *13 Real Estate* L.J. 298, 300–301 (1985).

[10] Of course, structured financings would remain subject to various regulatory requirements under the Securities Act of 1933 [15 U.S.C. 77a–77aa], the Securities Exchange Act of 1934 [15 U.S.C. 78a–78*l*], and the Trust Indenture Act of 1939 [15 U.S.C. 77aaa–77bbbb] as well as other federal and state laws.

The Commission also is requesting comment on whether section 3(c)(5) of the Act should be amended, either to narrow or to expand its scope. Some have suggested that certain types of issuers should not be able to rely on this section, while others have argued that the section is unnecessarily narrow.

I. Background [11]

A. The Structured Finance Market

The modern structured finance market originated in the 1970's with the securitization of residential mortgages. Since then, structured financings have become a major facet of American finance.[12] In 1991, securities of structured financings publicly offered in the United States totalled approximately $292.8 billion, accounting for approximately fifty percent of total public securities issuances (debt and equity) and fifty-seven percent of total debt securities issuances in the United States.[13]

Structured financings backed by residential mortgages dominate the structured finance market; in 1991, publicly offered mortgage-backed securities issuances in the United States totalled approximately $246.21 billion, or eighty-four percent of the structured finance market.[14] The non-mortgage market, which emerged in the mid-1980's, also has grown rapidly. Volume of non-mortgage asset-backed public offerings in 1991 totalled approximately $50.8 billion, up from $10 billion in 1986.[15] Securities backed by automobile loans and credit card account receivables represent approximately eighty percent of the public non-mortgage structured finance market. Other assets presently securitized and offered publicly include home equity loans, boat loans, computer leases, airplane leases, mobile home loans, recreational vehicle loans, and hospital account receivables.

A significant domestic private placement market for structured finance issues also exists. Although some private offerings are similar to those sold publicly, many private placements involve types of structured financings that have never been publicly offered in the United States, in part because of the Act. These financings include those backed by installment loans, future royalties, high yield bonds, and Medicare receivables.

Most public offerings of structured financings are issued under programs sponsored by the federal government or by government sponsored enterprises. Securities issued under programs sponsored by the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC") dominate the mortgage market.[16] In 1991, the Resolution Trust Corporation began issuing securities backed by mortgages, junk bonds, and other assets acquired from failed savings and loan associations.[17]

The private sector also is active in sponsoring structured financings. The most active sponsors in the private sector include commercial banks, savings and loan associations, automobile manufacturers, retailers, finance companies, insurance companies, and investment banks. These sponsors securitize assets for a variety of reasons. Structured financings often enable a sponsor to gain access to an alternative, usually cheaper, funding source. In addition, some sponsors find that securitizing assets allows them to manage their loan portfolios, and in turn, their balance sheets more effectively.[18] Banks and savings and loan associations also securitize assets to facilitate compliance with regulatory capital requirements.

B. The Securitization Process

The basic structures of all structured financings, regardless of the underlying

[11] This section provides a brief overview of the structured finance market, the organization and operation of a structured financing, the application of the Act to structured financings, and the effects of the Act on the structured finance market. A more detailed discussion is included in the Structured Finance Chapter, *supra* note 1, §§ I–IV.

[12] As discussed below, federally sponsored financings have played a major role in this development. Most of these programs rely on the exemption in section 2(b) of the Act.

[13] Liebowitz, *supra* note 4.

[14] *Id.*

[15] Dean Witter Reynolds Inc., Asset-Backed Securities Reference Guide A–10 (Year Ended 1991). *See also* Liebowitz, *supra* note 4, at 22 (reporting $46.6 billion of non-mortgage asset-backed securities issued in the United States).

[16] In 1990, FHLMC, GNMA, and FNMA sponsored programs were responsible for 94.2% of mortgage-backed pass-through securities and 82.2% of multiclass mortgage-backed securities issued that year. *See* Federal Home Loan Mortgage Corp., *Database, in* The Secondary Mortgage Markets, Tables 2, 3 (Winter 1991/1992).

[17] In addition, the Federal Agricultural Mortgage Corporation issues securities backed by agricultural mortgages guaranteed by the Farmers Home Administration. The Small Business Administration securitizes a small portion of the loans it guarantees. Finally, as discussed in Section I.C. below, in the late 1980's, the federal government sold portions of the loan portfolios of certain government agencies, which in turn, were pooled and securitized.

[18] By converting financial assets into cash (which can be used to retire debt or acquire new receivables), structured finance enables sponsors to reduce interest rate risk and to diversify their portfolios.

assets, are remarkably similar.[19] Typically, a sponsor transfers a pool of homogeneous financial assets to the issuer, a special purpose entity,[20] in return for the proceeds from the sale of one or more classes of securities backed by these assets. The securities issued generally are debt securities or equity securities with debt-like characteristics ("fixed-income securities").[21] Payment on the securities depends primarily on the cash flows generated by the pooled assets.[22] Issuers that have more assets or that expect to receive more income than needed to make full payment on the fixed-income securities may sell interests in the residual cash flow. These interests are typically sold to highly sophisticated investors.[23]

[19] While this section discusses the basic components of a structured financing, there are a wide range of permutations. For a discussion of these permutations, see Structured Finance Chapter, *supra note*, 1 § III.A. *See also* Jason H.P. Kravitt, A Brief Summary of Structures Utilized in the Securitization of Financial Assets, in 1 Securitization of Financial Assets § 4 (Jason H.P. Kravitt ed. 1991) [hereinafter Securitization of Financial Assets].

[20] The special purpose entity may be a corporation, a grantor trust, an owner's trust, or a partnership. The form of organization depends generally on tax considerations and the payment structure of the financing and its securities. For a general discussion of payment structures and attendant tax issues, see, *e.g.*, William A. Schmalz *et al.*, *Tax Issues in* 1 Securitization of Financial Assets, *supra* note 19, §§ 9.01 – 9.06; Charles M. Adelman & Roger D. Lorence, *Tax Considerations*, The Asset Securitization Handbook, 48–63 (Phillip Zweig ed., 1989).

[21] These securities typically entitle the holder to a specified principal amount at maturity and bear interest at a fixed rate or at an adjustable rate, which may be determined periodically by reference to an index, through auctions among investors or prospective investors, or through the remarketing of the instrument. Interest payments also may be determined by reference to all or part of the interest received on the underlying assets.

Generally, the type of security issued depends in part on the payment structure. Under a "pass-through" structure, a single class of securities is issued, with each security representing a fractional interest in the underlying pool. A "pay-through" structure permits the issuance of multiple classes of securities, with each class having differing maturities and payment schedules. Both structures permit the issuance of "stripped securities" (such as interest-only and principal-only certificates) and classes of senior and subordinate securities.

[22] Some financings also include credit enhancements, such as irrevocable standby letters of credit ("LOCs"), financial guarantee insurance, or cash collateral accounts, that could be drawn upon if the cash flows from the assets prove insufficient to meet the issuer's obligations.

Not all financings offer securities backed by the cash flow from the underlying assets. As discussed in note 65 *infra*, a few structured financings have employed a "market value" structure, in which payment on the securities is derived from the aggregate market value of the pooled assets, rather than from the cash flow from the underlying assets.

[23] As discussed *infra* note 77, residual interests are highly volatile instruments that bear any losses first resulting from an insufficient cash flow.

The issuer's only business activity is to acquire the sponsor's assets and issue securities. A servicer, which often is the sponsor or an affiliate of the sponsor, is the primary administrator of the financing. Generally, the servicer collects payments on the underlying assets when due and ensures that funds are available so that investors are paid in a timely manner. An independent trustee, usually a large commercial bank, typically holds the issuer's assets, or documentation of interest in the assets, in a segregated account for the benefit of investors. The trustee also monitors the issuer's fulfillment of its obligations.

Initially, most financings were structured so that their pools were fixed at the time of issuance, with "management" of the assets (other than servicing) generally limited to the substitution of new, similar assets for defective assets.[24] As the structured finance market has evolved, structures have been developed that rely to a greater degree on management. Many financings allow the servicer or trustee to reinvest idle cash in short-term debt obligations when there is a timing mismatch between collections and payments to investors. In some financings, the issuer may acquire additional assets if the previously designated assets do not generate sufficient cash flows to pay investors.[25] Finally, recently developed structures permit an issuer to purchase assets and issue securities on an ongoing basis.[26] In each case, guidelines governing both the level and type(s) of permissible management are established prior to the issuance of the financing's securities.

[24] Circumstances under which substitution may occur are described *infra* note 80.

[25] Credit card financings, for example, are backed by current and future receivables generated by specified credit card accounts; the balance of the pooled assets fluctuate as new receivables are generated and existing amounts are paid or charged off as a default. If the accounts do not generate sufficient receivables to support the securities, the sponsor may be required to assign receivables from other accounts to the pool.

[26] These structures include master trust programs, used predominantly in financings backed by credit card receivables, and asset-backed commercial paper programs. In a master trust program, the sponsor initially transfers a large amount of assets and the structured financing issues multiple classes of securities, often with varying terms, over time. Under certain conditions, assets may be added or removed throughout the life of the issuer. Asset-backed commercial paper programs issue commercial paper on an ongoing basis and are backed by a diversified pool of assets, with assets added to the pool throughout the life of the program. Asset-backed commercial paper programs generally contain a variety of relatively short-term assets, such as credit card receivables, automobile lease receivables, trade receivables, and short-term money market instruments.

Publicly offered structured financings typically issue at least one class of securities rated in one of the two highest categories by a nationally recognized statistical rating organization, or "rating agency."[27] As with a traditional corporate bond, a rating of a structured financing assesses credit risk (*i.e.*, the likelihood that the investor will receive full and timely payments).[28]

In rating a structured financing, rating agencies generally apply the same basic approach, regardless of the assets securitized.[29] Rating agencies examine (i) the structure of the financing, including the risk that the insolvency of the financing's sponsor would affect payments to investors;[30] (ii) the credit risk of the financing, including the potential impairment of the cash flows from the pooled assets due to borrower delinquencies or defaults;[31] and (iii) risks related to the actual cash flow funding the securities, including the allocation of cash flow under the financing's payment structure.[32] Based on this examination, rating agencies determine the amount of credit enhancement necessary for the structured financing to obtain the rating desired by the sponsor.

Financings typically are structured and operated in accordance with criteria developed by the rating agencies to minimize various risks. Rating agencies, for example, may require that the transfer of the assets from the sponsor to the issuer be a "true sale" and not a

[27] At least four rating agencies, Standard & Poor's Corporation, Moody's Investors Service, Inc., Fitch Investors Service, Inc., and Duff & Phelps, Inc., currently are active in rating domestic structured financings.

Providers of external credit support, such as the issuers of LOCs or financial guarantee insurers, also may play a role in structuring the financing. As in most securities issuances, underwriters and independent auditors also are participants.

[28] A rating does not address market risks to investors that may result from changes in interest rate levels or from prepayments on the assets in the underlying pool. *See, e.g.*, Standard & Poor's Corporation, S&P's Structured Finance Criteria 101 (1988).

[29] Asset-backed commercial paper programs are subject to somewhat different rating criteria because of the nature of the securities they offer. For a more detailed discussion of the role of the rating agencies, *see, e.g.*, Peter V. Darrow, et al., *Rating Agency Requirements in* 1 Securitization of Financial Assets, *supra* note 19.

[30] Rating agencies also examine whether the issuer itself could become subject to bankruptcy proceedings. This, for example, could occur if an issuer were to engage in other business activities.

[31] Rating agencies also evaluate the quality of the servicer in connection with its responsibilities to manage and maintain the payment stream on the underlying assets. In addition, rating agencies evaluate the capability of the trustee in performing its duties.

[32] The "pass-through" and "pay-through" payment structures are described *supra* note 21.

secured loan,[33] that the pooled assets generally be representative of the sponsor's portfolio, and that the financing's servicer remit the cash flows from the financing's assets to the trustee within forty-eight hours.

Once a financing is rated, rating agencies typically monitor the financing's performance. Downgrades of financings have been infrequent, with most occurring as a result of downgrades in the ratings of providers of credit support. The Commission is not aware of any rated structured financing defaulting on its fixed-income securities.[34]

C. The Application of the Investment Company Act to Structured Financings

Despite the size of the structured finance market, its growth and development has been constrained by the Act. Structured financings meet the definition of investment company under section 3(a) because they issue securities and are primarily engaged in investing in, owning, or holding securities.[35] These financings, however, are unable to operate under the Act's requirements.[36] Accordingly, to be offered in the United States, a structured financing must either be organized to come within one of the exceptions to the definition of investment company under the Act or seek exemptive relief from the Commission.[37]

There are only two exceptions that are particularly relevant to private sector structured financings: sections 3(c)(5) and 3(c)(1).[38] Section 3(c)(5) excepts:

> [a]ny person who is not engaged in the business of issuing redeemable securities * * * and who is primarily engaged in one or more of the following businesses: (A) purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

Section 3(c)(5) was intended to except issuers engaged primarily in the factoring, discounting, or real estate businesses.[39] Many structured financings, however, rely on this exception due to its broad statutory language. A number of no-action letters address whether an issuer is primarily engaged in one of the businesses enumerated in section 3(c)(5).[40]

Under these letters, issuers relying on subparagraphs (A) or (B) of section 3(c)(5) must primarily hold receivables, loans to refinance receivables, or loans to manufacturers made in connection with the purchase of specified merchandise and services.[41] Many non-mortgage financings whose assets meet this criteria, such as those backed by automobile loans, most credit card account receivables, and equipment leases, rely on subparagraphs (A) and (B). No-action assurance has been declined where an issuer's assets are not related to the purchase or sale of specified merchandise, insurance, or services.[42] Financings backed by general purpose commercial loans, consumer loans, or corporate bonds typically are unable to rely on subparagraph (A) or (B).

Many issuers of mortgage-backed securities and similar products rely on subparagraph (C) of section 3(c)(5). Under no-action letters, an issuer relying on this provision must invest at least fifty-five percent of its assets in mortgages and other liens on and interests in real estate ("qualifying interests"). An additional twenty-five percent of the issuer's assets must be in "real estate related assets."[43]

Qualifying interests have been interpreted to include fee interests, leaseholds, interests fully secured by mortgages solely on real estate, and so-called "whole pool certificates" issued by FNMA, GNMA or FHLMC (i.e., certificates that represent the entire ownership interest in a particular pool of mortgages).[44] So-called "partial pool certificates" issued by these agencies (i.e., certificates representing less than the entire ownership interest in a particular pool of mortgages) have not been considered to be qualifying interests, although they may be treated as real estate related assets for purposes of the twenty-five percent test.[45]

Structured financings that cannot rely on section 3(c)(5) may rely on section 3(c)(1), the private investment company exception. This exception, however, is limited to issuers that do not engage in public offerings and whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons.[46]

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[33] Structuring the financing as a "true sale" reduces the risk that the sponsor's insolvency will affect the issuer's payments to investors. Sponsors not subject to the Bankruptcy Code, such as banks and savings and loan associations, may be permitted to pledge assets to the issuer.

[34] Unrated financings, by contrast, have experienced defaults. The largest and most notable occurred in 1985 when Equity Program Investment Corporation and certain of its affiliates defaulted on approximately $1.4 billion in mortgages and privately placed mortgage-backed securities. For a discussion of the facts underlying the EPIC default, see EPIC Mortgage Ins. Litig., 701 F. Supp. 1192 (E.D. Va 1988), *aff'd in part, rev'd in part, sub nom. Foremost Guaranty Corp.* v. *Meritor Sav. Bank*, 910 F.2d 118 (4th Cir. 1990).

[35] Financial instruments generated in commercial transactions generally have been considered to be securities for purposes of the Act. *See, e.g.*, SEC, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 238–39 (1966) (stating that notes representing the sales price of merchandise, loans to manufacturers, wholesalers, retailers and purchasers of merchandise or insurance, and mortgages and other interests in real estate are securities for purposes of the Act).

[36] For example, section 17(a) prohibits certain persons affiliated with a registered investment company from selling securities and other property to the investment company. 15 U.S.C. 80a-17(a). In a structured financing, this section would prohibit a sponsor's sale of assets to the issuer, as well as any substitution of assets by the sponsor.

[37] As discussed *supra* note 6, most financings sponsored by the federal government or by government sponsored enterprises are exempt under section 2(b).

[38] Other exceptions may be available for a limited number of private sector structured financings. *See, e.g.*, Investment Company Act sections 3(c)(3), (4), and (6); 15 U.S.C. 80a-3(c)(3), (4), & (6). *See also infra* note 46.

[39] See authorities cited *supra note* 6. *See also* S. Rep. No. 184, 91st Cong., 1st Sess. 37 (1969); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 17 (1970).

[40] Structured financings meet the first portion of section 3(c)(5) because they do not issue redeemable securities.

[41] *See, e.g.*, Ambassador Capital Corporation (pub. avail. Oct. 6, 1986) (no-action position taken with respect to issuer holding airline credit card account receivables); Days Inn of America, Inc. (pub. avail. Dec. 30, 1988) (no-action position taken with respect to issuer holding franchise fee receivables).

[42] *See, e.g.*, World Evangelical Development Ltd. (pub. avail. Apr. 5, 1979) (no-action position declined where entity would issue general purpose commercial loans); Educational Loan Marketing Associations, Inc. (pub. avail. Feb. 4, 1986) (no-action position declined where entity would issue debt secured by the repayment of student loans financed by proceeds from the debt offering).

[43] This percentage may be reduced to the extent that more than 55% of the issuer's assets are invested in qualifying interests. *See, e.g.*, Greenwich Capital Acceptance, Inc. (pub. avail. Aug. 8, 1991); United Bankers, Inc. (pub. avail. Mar. 23, 1988). Generally, there are no restrictions on the investment of the remaining 20% of the issuer's assets. *See, e.g.*, NAB Asset Corp. (pub. avail. June 20, 1991).

[44] *See, e.g.*, United Bankers, Inc., *supra* note (fee interests); Health Facility Credit Corp. (pub. avail. Feb. 6, 1985) (leaseholds); Medidentic Mortgage Investors (pub. avail. May 23, 1984) (mortgages); American Home Finance Corp. (pub. avail. Apr. 9, 1981) (GNMA whole pool certificates).

[45] *See* Nottingham Realty Securities, Inc. (pub. avail. Apr. 19, 1984). The Division has reasoned that agency whole pool certificates should be considered qualifying interests because holders of these certificates generally have the same economic experience as an investor who purchases the underlying mortgages directly. Conversely, the Division has concluded that an investment in agency partial pool certificates is an investment in the securities of the issuer, rather than an investment in the underlying mortgages, and accordingly, should not be considered a qualifying interest.

[46] Legislation has been introduced in Congress that would, among other things, create a new

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Some structured financings have obtained exemptive orders from the Commission under section 6(c), the Act's general exemptive provision. Most of the orders have concerned structured financings whose assets consisted primarily of partial pool certificates and other mortgage-related assets that are not considered to be qualifying interests under section 3(c)(5)(C).[47] These orders have been based, in part, on the legislative purpose underlying the Secondary Mortgage Market Enhancement Act of 1984 ("SMMEA").[48] In adopting SMMEA, Congress contemplated that the Commission would provide appropriate administrative relief if the Act unnecessarily hindered the development of the secondary mortgage market.[49] The Commission has issued approximately 125 orders concerning mortgage-related financings.[50]

In general, the orders have required, among other things, that (i) fixed-income securities sold to the public be rated in one of the two highest categories by at least one rating agency; (ii) substitution of assets be limited both quantitatively and qualitatively; [51] (iii) the assets be held by an independent trustee qualified under the Trust Indenture Act of 1939 (the "Trust Indenture Act") [52] who has a first priority perfected security interest or lien in the collateral; (iv) the servicer not be affiliated with the trustee; and (v) the issuer be audited annually to determine that the cash flow is sufficient for payment of principal and interest. These conditions generally parallel requirements prescribed by rating agencies.[53]

The Commission also has granted exemptive relief under sections 6(c) and 6(e) [54] for financings related to the federal government loan sales program.[55] Under this program, the federal government sold portions of the loan portfolios of certain government agencies during the late 1980's.[56] While some of these sales were excepted under section 3(c)(5), others could not have been completed without exemptive relief. A total of seven financings either received exemption from most provisions of the Act, including the registration requirements, or registered as closed-end management investment companies and received exemption from much of the Act.[57] The conditions imposed in those orders generally were similar to those required for exempting mortgage-related financings.[58]

D. The Effects of the Regulatory Structure

As a practical matter, the Act treats similar types of structured financings very differently. Some structured financings are subject to the Act's requirements, while others are excepted entirely, depending solely on the assets underlying the financing. Most structured financings backed by consumer receivables, for example, are excepted from the Act under section 3(c)(5). Structured financings backed by general purpose loans, on the other hand, are not excepted and cannot be sold publicly in the United States, even though the financing may be similar to those qualifying for an exception or receiving exemptive relief. This regulatory framework ignores both the structure and operation of structured financings, and the credit quality of securitized assets.[59] It also enforces a distinction that does not reflect the economic reality that any asset with a relatively predictable cash flow is capable of being securitized in a generally uniform manner.

The differing regulatory treatment under the Act has adversely affected the development of the structured market. According to market participants, the most widely accepted types of structured financings are those sold on the domestic public market, while financings whose distribution is limited to private placements or to overseas markets have lagged in development. In addition, United States investors are denied the opportunity to purchase high-quality securities issued by certain types of structured financings. Similarly, sponsors of financings that cannot be offered publicly in the United States are prevented from diversifying and expanding their investor base.

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section exception for issuers whose securities are held exclusively by sophisticated or "qualified" purchasers, as defined by rule. If adopted, structured financings could rely on this exception so long as their security holders consist of "qualified" purchasers. Small Business Incentive Act of 1992, S. 2518, 102d Cong., 2d Sess. (Apr. 2, 1992); H.R. 4938, 102 Cong., 2d Sess. (Apr. 9, 1992). *See Hearings on the Small Business Incentive Act of 1992*, 102d Cong., 2d Sess. (Mar. 26, 1992).

[47] *See, e.g.*, Mortgage Bankers Financial Corp. I, Investment Company Act Release Nos. 16458 (June 28, 1988), 53 FR 25228 (July 5, 1988) (Notice of Application) and 16497 (July 25, 1988), 41 SEC Docket 814 (Aug. 9, 1988) (Order); Shearson Lehman CMO, Inc., Investment Company Act Release Nos. 15796 (June 11, 1987), 52 FR 23246 (June 18, 1987) (Notice of Application) and 15852 (July 2, 1987), 38 SEC Docket 1403 (July 21, 1987) (Order).

[48] Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98-440, 98 Stat. 1689 (1984). Congress enacted SMMEA in an effort to expand the participation of the private sector in the secondary mortgage market in response to concerns that GNMA, FNMA, and FHLMC would not be able to meet future demands for mortgage credit.

[49] *See* S. Rep. No. 293, 98th Cong., 2d Sess. 9 (1983) (while the Senate Committee on Banking, Finance and Urban Affairs considered whether the Act should be amended to except issuers investing in certain mortgage-backed securities from the definition of investment company, the Committee reported legislation without such an exception in light of the Commission's administrative flexibility).

[50] *See supra* note 47.

[51] For example, the orders generally have permitted substitution of pooled assets, provided, among other things, that the new assets be of equal or better credit quality than the replaced assets, and that the new assets have similar payment terms. In addition, some orders have limited substitution to no more than 40% of the aggregate face amount of the assets initially deposited (with no substitution of substituted assets). *See, e.g.*, Mortgage Bankers Financial Corp. I, *supra* note 47 (with respect to the substitution of pooled GNMA, FNMA, and FHLMC certificates).

[52] The Trust Indenture Act sets forth requirements regarding, among other things, the eligibility and qualifications of trustees, the preferential collection of claims against the issuer, and reporting obligations. The Trust Indenture Act also addresses the duties of trustees when an issuer defaults.

[53] The exemptive orders also have imposed conditions limiting the sale of residual interests.

[54] 15 U.S.C. 80a-6(e). Section 6(e) provides that if, in connection with any order under section 6 exempting any investment company from the registration provisions of section 7 [15 U.S.C. § 80a-7], the Commission finds it appropriate that certain provisions of the Act pertaining to registered investment companies be applicable in respect of such company, the specified provisions will apply to that company as though it were a registered investment company. *See, e.g.*, Community Program Loan Trust No. 1987 A, Investment Company Act Release Nos. 15900 (July 29, 1987), 52 FR 28628 (July 31, 1987) (Notice of Application) and 15948 (Aug. 24, 1987), 39 SEC Docket 65 (Sept. 8, 1987) (Order).

[55] See, e.g., Community Program Loan Trust No. 1987 A, *supra* note 54.

[56] *See* Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, 100 Stat. 1874; Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330 (1987).

[57] Some issuers registered as investment companies because of tax advantages. *See, e.g.*, College and University Faculty Loan Trust, Investment Company Act Release Nos. 15903 (July 31, 1987), 52 FR 28890 (Aug. 4, 1987), (Notice of Application) and 15990 (Sept. 18, 1987), 39 SEC Docket 348 (Sept. 29, 1987) (Order).

[58] The only other exemptive order issued with respect to structured financings involved trusts established by the Government of Israel to facilitate the financing of its housing program to Soviet refugees. Each trust issued non-redeemable pass-through certificates backed by a single promissory note, the payment of which was guaranteed by the full faith and credit of the United States. *See* Government of Israel, Investment Company Act Release Nos. 18047 (Mar. 18, 1991), 56 FR 11806 (Mar. 20, 1991) (Notice of Application) and 18069 (Mar. 28, 1991), 48 SEC Docket 943 (Apr. 2, 1991) (Order).

[59] In response to the Study Release, *supra* note 1, one commenter noted that "issuers of asset-backed securities whose underlying assets are credit card receivables have restrictions limiting the percentage of their assets that can be represented by cash advances. In many cases, if the percentage of cash advance receivables becomes too great, the transaction is liquidated and investments are paid earlier than expected * * *. From the point of view of the investor, [however], there is no difference between the two types of credit card receivables." Letter from Cleary, Gottlieb, Steen & Hamilton to Jonathan G. Katz, Secretary, SEC 62-63 (Oct. 12, 1990) at File No. S7-11-90 [hereinafter Cleary, Gottlieb Study Comment].

The regulatory barriers presented by the Act also have broader economic implications. Many sectors of the economy are prevented from fully using structured finance to address capital needs. When the Act does not apply, structured finance has proved effective in increasing the availability of certain financial assets, often at lower costs. For example, structured finance has increased the availability of home mortgage funding by enabling banks and savings and loan associations to package their loans and sell them in the secondary market.

In the long-term, private sector structured finance may prove beneficial as a means of capital formation with respect to small businesses. For example, general purpose loans to small businesses could be securitized in a manner very similar to residential mortgages. Suppliers and distributors also could securitize small business payables. Finally, small businesses themselves could pool and sell their own assets, such as receivables from customers.[60]

II. Discussion

A. Proposed Rule 3a–7

Proposed rule 3a–7 would remove impediments caused by the Act by excluding any structured financing, regardless of the type of assets securitized, from the definition of investment company, provided certain conditions are satisfied. It would obviate the need for sponsors to attempt to fit their financings within the confines of section 3(c)(5)—a section that was not intended to cover these arrangements. The proposal also would eliminate the need to obtain exemptive orders covering specific structured financings.

Proposed rule 3a–7 would have four conditions:

(i) Issuers must primarily issue fixed-income securities, with the holders of all such securities entitled to receive payments based on the cash flow from pooled assets;

(ii) Securities offered to the public must be fixed-income securities (as defined under the rule) that are rated at the time of sale in one of the two highest categories by at least one rating agency;

(iii) The issuer must hold substantially all assets to maturity, except that assets may be substituted or added consistent with the interests of existing investors; and

(iv) Assets, cash flows, and other property of the issuer must be maintained in the custody of an independent trustee, except to the extent necessary to the financing's operations.

These conditions, which are discussed in greater detail below, are intended to recognize the structural and operational distinctions between registered investment companies and structured financings and to address investor protection concerns by codifying requirements currently imposed by the market itself. The conditions also are intended to accommodate future innovations in the structured finance market, consistent with investor protection.

1. Scope of the Rule

Proposed rule 3a-7 would exclude from the definition of investment company any person that is in the business of acquiring and holding eligible assets, and does not issue redeemable securities.[61] The proposed rule is intended to exclude only structured financings from the Act and to preclude excluded issuers from acting in a manner similar to registered investment companies. Only issuers whose sole business is to hold a pool of eligible assets and to issue non-redeemable securities could rely on the exclusion.

Proposed rule 3a-7 would be based on the structure and operation of the financing and not on the type of assets securitized, provided all of the issuer's assets consist of eligible assets. Proposed paragraph (b)(1) defines the term "eligible assets" generally to include obligations that have scheduled cash flows.[62] This requirement is intended to ensure that securitized assets produce cash flows of the type that may be statistically analyzed by rating agencies and investors.

2. Conditions

(i) Securities Based on Underlying Cash Flows

Proposed paragraph (a)(1) would require issuers relying on the rule to issue primarily fixed-income securities, interest-only ("IO") securities, principal-only ("PO") securities, or other securities with similar characteristics, all of which entitle their holders to receive payments that depend on cash flows generated by the underlying pool. The proposed rule is intended to provide issuers with great flexibility in choosing the types of debt or debt-like securities to issue.[63] Structured financings presently issue a variety of securities based on cash flows from the underlying pool, and the proposal is not intended to limit that industry practice.[64]

By requiring payment on the securities to be based on the cash flows from the underlying pool, proposed paragraph (a)(1) is intended to reach the predominate types of structured financings that are currently offered.[65] The provision would permit an excluded financing to use credit enhancements, such as letters of credit or financial guaranty insurance, to pay investors if the cash flow from pooled eligible assets is insufficient to meet the issuer's obligations.

(ii) Securities Offered to the Public Must Be Fixed-Income Securities Rated in the Two Highest Investment Grades

Paragraph (a)(2) of the proposed rule would require that all securities offered to the public be fixed-income securities that are rated, at the time of sale by the issuer or any underwriter acting on the issuer's behalf, in one of the two highest categories by at least one nationally recognized statistical rating organization, or "rating agency."[66]

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[60] *See Hearings on the Small Business Incentive Act of 1992, supra note* 46 (testimony of Myron Glucksman, Vice President, Structured Finance Division, Citicorp Securities Markets, Inc.).

[61] In addition, issuers seeking to rely on the rule may not issue debt securities that entitle holders to receive principal and accrued interest within a short period of time after demand (i.e., within 14 days). Securities with a short-term demand feature appear more like redeemable equity securities, and investors could confuse the securities with those issued by open-end management investment companies.

[62] Under proposed paragraph (b)(1), eligible assets also would include assets that serve solely to support the credit of the securities (e.g., letters of credit). *See supra* note.

[63] *See supra* note 21. As discussed below, however, IO securities, PO securities, and securities with similar characteristics could not be sold to the public.

[64] In defining fixed-income securities, proposed subparagraph (b)(2)(i) seeks to delineate the methods currently used to calculate interest on a structured financing's securities. The Commission specifically requests comment on whether this approach may limit unnecessarily the types of fixed-income securities that may be offered in the future, and whether an alternative approach would be appropriate.

[65] Structured financings using a "market value" structure, where payment on the financing's securities is derived from the aggregate market value of the pooled assets, would not be able to rely on proposed rule 3a-7. Market value transactions present issues that differ from financings utilizing the cash flow structure. For example, because investors are paid based on the aggregate market value of the assets, rather than cash flows generated from the assets, asset valuation concerns differ with respect to the two types of structures. Accordingly, these structures should not be subject to the same regulatory treatment as cash flow transactions. Since the use of the market value structure has diminished in the last few years, this limitation should not significantly affect the structured finance market. Of course, financings using the market value structure may sell their securities in private placements or overseas, or may apply for exemptive relief.

[66] The rating agency could not be an affiliated person of the financing's sponsor, servicer, trustee, or provider of credit support.

Securities that are not rated in the two highest categories, or that are unrated, may be sold only to qualified institutional buyers, as defined in rule 144A under the Securities Act of 1933,[67] or to an affiliated person of the issuer.[68]

This provision recognizes that rating agencies already play an integral role in the structured finance market.[69] Investors generally rely on rating agencies to perform evaluations of credit risk. Of course, the Act generally is not intended to protect investors against credit risk. Nevertheless, due to the nature of structured financings, rating agency evaluations appear to address most of the Act's concerns about abusive practices, such as self-dealing and overreaching by insiders, misvaluation of assets, and inadequate asset coverage. Determining whether a financing is structured appropriately has become increasingly difficult, due to the wide variety and growing complexity of these transactions. Rating agencies have been successful in analyzing various structures, without impeding the development of the structured finance market.[70] Accordingly, a rating requirement has been incorporated in the proposed rule. The Commission, however, requests comment on whether rating agencies should be subject to additional regulatory requirements and whether a rating requirement is necessary in proposed rule 3a-7, and, if not, on what alternative bases the Commission should exclude financings from the Act.

Proposed subparagraph (a)(2) would require that securities offered to the public be rated in one of the two highest categories by at least one rating agency. Since most structured financings publicly offer only securities that are rated in one of these categories, this requirement should not materially affect the structured finance market. Some have argued, however, that a rating within one of the four highest categories (i.e., an investment grade rating) would address investor protection concerns, while providing greater flexibility for structured financings.[71] Accordingly, the Commission specifically requests comment on whether an investment grade rating requirement would be appropriate.

The Commission also requests comment on whether rule 3a-7 should require that excluded financings be rated by more than one rating agency. Although today most financings are rated by two or more rating agencies, the Commission is concerned that requiring two ratings would impose unnecessary costs.

Under proposed paragraph (a)(2), an issuer may sell to the public only fixed-income securities as defined under paragraph (b)(2) of the proposed rule. As proposed, the term "fixed-income securities" generally includes any debt obligation or instrument with debt-like characteristics, other than IO and PO securities or other securities with similar characteristics. Thus, an issuer relying on the proposed rule would be precluded from offering to the public IO and PO securities and any other securities with similar characteristics.

IO and POs securities are highly volatile, with payment subject to extreme prepayment and interest rate risks.[72] These securities may be highly rated, since prepayment and interest rate risks are not addressed in a security's rating.[73] Unsophisticated investors, however, may not appreciate the risks associated with IO and PO securities, and sales of these instruments to such investors may raise suitability concerns. In addition, financings that offer these securities arguably may represent a type of complex capital structure that the Act was intended to address.[74] Accordingly, the Commission proposes that rule 3a-7 not encompass structured financings that sell IO and PO securities to the public.[75] The Commission requests specific comment, however, on whether this restriction is appropriate.[76]

The proposed rule would permit any class of securities, without regard to the nature of the securities or their rating, if any, to be sold to qualified institutional buyers as defined in rule 144A, or to affiliated persons of the issuer. Presently, subordinate classes of structured financings, which typically are not highly rated, if rated at all, and interests in residual cash flows [77] are

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[67] 17 CFR 230.144A. Under rule 144A, a qualified institutional buyer generally includes institutional investors, such as employee benefit plans, insurance companies, banks, and investment companies, that own or invest on a discretionary basis at least $100 million in securities.

[68] Section 2(a)(3) of the Act defines affiliated person of another person as:

(A) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such person is an unincorporated investment company not having a board of directors, the depositor thereof.

15 U.S.C. 80a–2(a)(3).

[69] In adopting SMMEA, Congress expressly recognized the role of rating agencies in the structured finance market, by including in the definition of "mortgage related security" (the type of security that qualifies for the special treatment conferred by SMMEA) a requirement that the security be rated in one of the two highest rating categories by at least one rating agency. *See supra* note 47.

[70] *See supra* note and accompanying text.

[71] In response to the Study Release, *supra* note 1, m most commenters supporting an exemption for structured financings suggested a rating in one of the two highest categories. *See, e.g.*, Letter from Financial Security Assurance Inc. to Jonathan G. Katz, Secretary, SEC 4 (Oct. 9, 1990), File No. S7–11–90; Merrill Lynch Study Comment, *supra* note 75. A few commenters favored an investment grade standard. *See, e.g.*, Letter from the American Bar Association, Section of Business Law, 1940 Act Structured Finance Task Force to Jonathan G. Katz, Secretary, SEC 20–21 (Oct. 16, 1990), File No. S7–11–90.

[72] J.P. Morgan, for example, recently incurred a $50 million loss on its IO securities as a result of a high rate of prepayments on the underlying mortgages. *J.P. Morgan Had $50 Million in Loss in Trading Mortgage-Backed Securities*, Wall St. J., Mar. 10, 1992, at A4. The Federal Financial Institutions Examination Council adopted a supervisory policy statement that includes restrictions governing the acquisition of IO and PO securities by national banks due to the volatility of these instruments. Comptroller of the Currency, Administrator of National Banks, Supervisory Policy Statement on Securities Activities, Banking Circular No. 228 (Rev.) (Jan. 10, 1992).

[73] *See supra* note 28.

[74] The legislative history of the Act describes investment companies that offered multiple classes of debt with different preferences and priorities, making it difficult for the ordinary investor to understand the rights and risks associated with his investment. *See* SEC, **Investment Trusts and Investment Companies**, H.R. Doc. 707, 75th Cong., 3d. Sess. pt. 1 at 28–29 (1939); SEC, **Investment Trusts and Investment Companies**, H.R. Doc. No. 279, 76th Cong., 1st Sess. pt. 3 at ch. V (1939). Section 18 of the Act addresses these concerns by imposing restrictions on the offering of debt securities by registered investment companies. 15 U.S.C. 80a–18.

[75] In response to the Study Release, *Supra* note 1, some commenters indicated that sales of IO securities to the public should be restricted because of their extreme volatility. *See* Cleary, Gottlieb Study Comment, *supra* note 59; Letter from Merrill Lynch & Co., Inc. to Jonathan G. Katz, Secretary, SEC IX–13 (Oct. 18, 1990), File No. S7–11–90 [hereinafter Merrill Lynch Study Comment].

[76] The proposed rule also would prohibit the public sale of any other securities that are highly volatile and pose risks that unsophisticated investors may not appreciate. For example, residual interests structured as debt present similar concerns to IO and PO securities and, therefore, could not be sold to the public. Of course, IOs and POs and securities with similar characteristics could be sold to qualified institutional buyers and affiliated persons of the issuer. The Commission also requests comment on this aspect of the proposed rule.

[77] Residual interests typically are structured as equity and are not rated. These interests are highly volatile instruments, with payment depending in part on the effects of prepayments on the underlying assets and/or changes in the interest rate(s) on the cash flow. Residual interests bear risks that are significantly different from those attending fixed-income securities. In the event of self-dealing or overreaching by insiders, for example, these interests (as equity) would be the first to bear any losses. Residual interests usually are retained by the sponsor or sold to institutional investors who purchase them for hedging purposes.

placed with highly sophisticated investors. These investors conduct their own due diligence reviews prior to investing, and are capable of evaluating on their own behalf whether the financing is structured so that they, as holders of subordinate securities, will receive full and timely payment.

(iii) Limited Management

Proposed subparagraph (a)(3) would require issuers to hold substantially all eligible assets, other than any form of external credit support (e.g., letters of credit), to maturity. With four exceptions, issuers relying on the proposed rule would be required to hold to maturity (i.e., the termination of the asset according to its terms) [78] substantially all assets initially deposited in the pool as well as any assets added later.[79]

Proposed subparagraph (a)(3)(i) is intended to permit asset substitution, provided the new assets are of the same type and at least as high in credit quality as those initially deposited in the pool. This provision is intended to permit the replacement of assets when necessary to the financing's operations,[80] but to prevent any change in the financing's assets to the detriment of investors.

Proposed subparagraph (a)(3)(ii) would allow financings to continue the practice of using a defeasance mechanism to enable issuers to meet their obligations. This mechanism permits the trustee to sell assets and use the proceeds to purchase Government securities,[81] usually Treasury bills, that provide sufficient cash flows to pay holders of the financing's fixed-income securities.

Proposed subparagraph (a)(3)(iii) would permit assets to be added to the financing, provided these assets do not result in a downgrading of the rating of the financing's outstanding fixed-income securities. The new assets would not be required to be of the same type as those already in the pool.[82] This provision would permit financings to add assets to support the issuance of new fixed-income securities or to support obligations already outstanding.[83] The provision also would allow financings to continue the practice of reinvesting idle cash in highly rated short-term securities.[84]

Proposed subparagraph (a)(3)(iv) would permit issuers to dispose of assets that have not reached maturity only in connection with a financing's termination.[85] In all other circumstances, assets may not be removed from the underlying pool unless they meet the requirements of subparagraphs (a)(3)(i) or (ii).

The requirements of paragraph (a)(3) are intended to limit the amount of management permitted in structured financings without unduly restricting their operations. The provision recognizes that most financings require some form of management and that more recent structures contemplate somewhat greater flexibility in the management of pooled assets.[86] At the same time, proposed paragraph (a)(3) seeks to ensure that any changes in a financing's assets would not adversely affect the holders of the financing's outstanding fixed-income securities, and that excluded financings would not be managed to the same extent and in the same manner as management investment companies.

The Commission requests comment on whether paragraph (a)(3) achieves its intended purposes by permitting the proposed types of asset turnover. The Commission also requests comment on whether other restrictions relating to the management of assets should be included, and if so, what these restrictions should be. For example, it may be appropriate to include a general prohibition on the trading of assets for profit.[87]

The Commission also requests comment on alternative approaches to proposed paragraph (a)(3). The Commission, for example, could limit management objectively by requiring that a specified percentage, for example, sixty percent, of the aggregate amount of pooled eligible assets to be held to maturity.[88] A specific percentage limitation, however, could unnecessarily limit flexibility to respond to the specific types of financings through the no-action process.

(iv) The Independent Trustee

Proposed paragraph (a)(4) would require that all eligible assets, cash flow derived from such assets, and any other property of the issuer not needed for the financing's operations, be maintained in a segregated account by a trustee meeting certain requirements.[89] All property of the issuer at the time the financing is established, including pooled eligible assets (or legal documentation of interest in such assets) and any documents relating to credit support arrangements, would be deposited with the trustee. All subsequently acquired property, including all cash flows, would be transferred to the trustee within a reasonable period from the time of receipt.[90] Property necessary to the financing's operations (*e.g.*, for servicing) could be removed from the segregated account, provided that the property is returned promptly to the trustee once it is no longer needed.[91]

Proposed paragraph (a)(4) is intended to ensure the safekeeping of the issuer's assets. The provision generally is intended to codify industry practice, except that it would prohibit any servicer from commingling the financing's cash flows with its own

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[78] Thus, an asset would be considered to have reached maturity when the asset is prepaid in accordance with its terms.

[79] The requirement that substantially all eligible assets be held to maturity is intended to permit a limited amount of additional management flexibility, as determined through the no-action process.

[80] Substitution typically occurs when assets are in default or subject to imminent default, or when they do not conform to the representations and warranties made at the time the financing is established.

[81] Under section 2(a)(16) of the Act, the term "Government security" includes any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the United States Government pursuant to Congressional authority, or any certificate of deposit of the foregoing. 15 U.S.C. 80a-2(a)(16).

[82] For example, in asset-backed commercial paper programs, discussed *supra* note 28, short-term money market instruments may be added to a pool of credit card account receivables.

[83] See *supra* notes 25–26 and accompanying text.

[84] Reinvestment would be limited to eligible assets as defined in proposed paragraph (b)(1). The Commission seeks specific comment on whether this requirement would limit unnecessarily a financing's reinvestment options.

[85] In the course of winding up its operations, an issuer may dispose of a significant portion of its assets prior to maturity. Excluded financings in the process of terminating their operations would continue to be in compliance with proposed subparagraph (a)(3)(ii), provided the financing is concluded within a reasonable period of time in light of the structure of the financing, the assets involved, and prevailing market conditions.

[86] *See supra* notes 24–26 and accompanying text.

[87] *See* Letter of Citicorp to Jonathan G. Katz, Secretary, SEC (Oct. 10, 1990) File No. S7-11-90 (responding to the Study Release, *supra* note).

[88] This approach would be consistent with prior exemptive orders. *See supra* note 51. More restrictive limits (*e.g.*, seventy percent, seventy-five percent, or eighty percent) also may be appropriate.

[89] In light of the diversity of assets used in structured financings, the Commission requests specific comment on whether the physical transfer of eligible assets to the trustee would present any difficulties for particular types of financings, and if so, what alternative approach would be appropriate to accommodate these arrangements.

[90] Whether the property is transferred within a reasonable period of time would depend on a number of factors, including the type of property transferred, the circumstances surrounding the transfer, and industry practice.

[91] For example, it may be necessary to remove documentation for a specific loan to collect delinquent payments; the documentation would be returned to the trustee following collection.

assets.[92] Investor protection concerns outweigh any benefit resulting from the commingling of a servicer's assets with those of the issuer.

Proposed paragraph (a)(4) would require the trustee to be a bank that meets the requirements of section 26(a)(1) of the Act governing trustees of unit investment trusts.[93] The trustee also could not be affiliated with the other participants in the financing.[94] Absent this prohibition, one entity could act in all capacities of the financing, with no independent party safeguarding the financing's assets.[95] Virtually all trustees are unaffiliated with the other parties involved in a structured financing, and this requirement would not depart from industry practice.

Proposed paragraph (a)(4) also would require the trustee to execute an agreement stating that it will not resign until the structured financing has been completely liquidated or until a successor trustee has been designated. The agreement additionally would provide that the sponsor or an agent of the sponsor keep a record of the financing's security holders.[96] These requirements are both consistent with industry practice and are imposed under the Act with respect to registered unit investment trusts.[97]

Proposed paragraph (a)(4) would not specify other duties for the trustee. It would not require the trustee to monitor the issuer's obligations to investors or to represent the interests of investors if the financing defaults. These requirements are imposed under the Trust Indenture Act,[98] which applies to many publicly offered financings. Structured financings not subject to the Trust Indenture Act often are structured to conform to the requirements of that Act. The Commission specifically requests comment on whether proposed rule 3a-7 should specify other duties for trustees, including whether any portion of the Trust Indenture Act's requirements should be made applicable to financings that are not subject to that Act.

B. Amending Section 3(c)(5)

The Commission also is requesting comment on whether section 3(c)(5) should be amended, either to expand or narrow its scope. As noted above, section 3(c)(5) was enacted to except commercial finance and mortgage companies from the Act. The activities of those entities has evolved considerably since 1940, however. In addition, a broad range of other issuers, including structured financings, not anticipated in 1940 (or 1970, when the exception was amended) rely on the exception.[99]

According to one trade group, traditional distinctions between companies engaged in factoring, sales financing, and other types of commercial financing activities no longer exist. Today, a finance company may be engaged in several kinds of financing activities or variations thereof.[100] Moreover, the trade group has suggested that current interpretations of section 3(c)(5) may unduly constrict legitimate financing activities.[101]

Others have suggested that the section should be narrowed, to prevent structured financings and other issuers from relying on it.[102] Of course, even assuming adoption of proposed rule 3a-7, absent an amendment to section 3(c)(5), structured financings will continue to be subject to somewhat disparate treatment. Structured financings that come within the section will be excepted from the Act, while other financings will have to meet the requirements of the proposed rule (although these requirements largely codify present practice).

In addition, upon adoption of proposed rule 3a-7, the no-action position of the Commission's Division of Investment Management with respect to the treatment of whole pool agency certificates will be withdrawn.[103] Both whole pool and partial pool certificates, which are traded in capital markets, are more in the nature of securities than real estate, and should not be deemed to be interests in real estate. Moreover, with the adoption of proposed rule 3a-7, withdrawal of the position should not affect structured financings backed by whole pool agency certificates. The Commission, however, requests comment on the withdrawal of this position.

III. Cost/Benefit of Proposed Action

Proposed rule 3a-7 would remove an unnecessary and unintended barrier to the use of structured financings in all sectors of the economy, including the small business sector. Accordingly, it is intended to allow more sponsors to obtain the benefits of structured financings, including using these arrangements as sources of capital. It also would obviate the need for sponsors to spend unproductive time attempting to fit these arrangements within the confines of section 3(c)(5), or to obtain exemptive orders from the Commission.

The Commission anticipates that for virtually all structured financings and their sponsors, the cost of compliance with proposed rule 3a–7 would be minimal because the proposed rule essentially codifies industry practice. Comments are requested, however, on the above assessment of the costs and benefits associated with the proposed rule. Commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical evidence available.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding

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[92] Rating agencies generally permit a servicer with an equal or higher rating as the financing's fixed-income securities to commingle the financing's cash flows with its own assets.

[93] 15 U.S.C. 80a-26(a)(1). Section 26(a)(1) also is incorporated in section 17(f) of the Act governing the qualifications of banks that serve as custodians for registered investment companies. 15 U.S.C. 80a-17(f).

[94] Rule 405 of the Securities Act of 1933 defines an "affiliate" of, or a person "affiliated" with, a specified person as "a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified." 17 CFR 230.405. Subject to the requirement that the trustee remain unaffiliated with the financing, the trustee would be free to purchase the financing's securities.

The Trust Indenture Act prohibits an obligor and any person with a control relationship to the obligor from serving as the trustee for the obligor's securities. 15 U.S.C. 77jjj(a)(5).

[95] For example, banks may act as sponsors, servicers, and/or providers of credit support to structured financings.

[96] This requirement would not prevent the trustee, as an agent of the sponsor, from maintaining these records.

[97] Sections 26(a)(3) and 26(a)(4)(A) of the Act. 15 U.S.C. 80a-26(a)(3), -26(a)(4)(A).

The Commission considered but rejected proposing that the agreement include provisions in the effect set forth in sections 26(a)(2) and 26(a)(4)(B) of the Act, which also apply to unit investment trusts ("UITs"). 15 U.S.C. 80a-26(a)(2), -26(a)(4)(B). Section 26(a)(2) contains prohibitions on fees that would not be compatible with the fee structure used in structured financings, which generally are based on the cash flow generated by the pool. In addition, proposed rule 3a-7 would permit greater flexibility with respect to asset substitutions than that allowed UITs, causing a notice requirement, such as that in section 26(a)(4)(B), to be unduly burdensome.

[98] *See supra* note 52.

[99] See authorities cited *supra* notes 6 & 39.

[100] Memorandum accompanying Letter from Sidley & Austin, on behalf of the National Commercial Finance Association, to Jonathan G. Katz, Secretary, SEC (Oct. 9, 1990), File No. S7–11–90.

[101] *Id.*

[102] *See, e.g.*, Memorandum from the Investment Company Institute on the Regulation of Asset-Backed Arrangements under the Investment Company Act (undated), File No. S7–11–90.

[103] *See supra* note and accompanying text. The Division of Investment Management does not intend to recommend that the Commission commence enforcement action against structured financings previously established in reliance on this no-action position solely because the position has been withdrawn.

proposed rule 3a-7. The Analysis explains that the proposed rule is intended to remove an unnecessary and unintended barrier to the use of structured financings in all sectors of the economy, including the small business sector. The Analysis describes the present regulatory framework, under which a structured financing may be entirely exempt from the Act or subject to the Act, depending solely upon the assets securitized. A structured financing, however, is not able to operate under the Act's requirements. Thus, failing exclusion or exemption, it must be sold in private placements, or outside the United States. The Analysis explains that this result has impeded the development of the structured finance industry. The Analysis states that the costs of compliance with proposed rule 3a-7 would be minimal because the proposal essentially would codify industry practice. The Analysis also describes certain significant alternatives to the proposed rule considered by the Commission. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Rochelle G. Kauffman, Esq., or Elizabeth R. Krentzman, Esq., both at Mail Stop 10–4, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Statutory Authority

The Commission is proposing rule 3a–7 under the exemptive and rulemaking authority set forth in sections 6(c) and 38(a) [15 U.S.C. 80a–6(c), –37(a)] of the Investment Company Act of 1940. The authority citations for these actions precede the text of the actions.

VI. Text of Proposed Rule

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39 unless otherwise noted:

2. By adding § 270.3a-7 to read as follows:

§ 270.3a-7 Certain issuers of asset-backed securities.

(a) Notwithstanding section 3(a) of the Act, any issuer who is engaged in the business of purchasing, or otherwise acquiring, and holding eligible assets and who does not issue redeemable securities or debt securities with a demand feature providing for payment within fourteen days of demand will not be deemed to be an investment company; *provided that:*

(1) The issuer primarily issues fixed-income securities, interest-only securities, principal-only securities or any other securities with similar characteristics, all of which entitle their holders to receive payments that depend on the cash flow from the eligible assets;

(2) All securities offered or sold to persons other than qualified institutional buyers, as defined in rule 144A under the Securities Act of 1933 [17 CFR 230.144A], or affiliated persons of the issuer are fixed-income securities that are rated, at the time of sale by the issuer or any underwriter thereof, in one of the two highest rating categories assigned debt obligations by at least one nationally recognized statistical rating organization that is not an affiliated person of the issuer or of any person involved in the organization or operation of the issuer;

(3) The issuer holds substantially all pooled eligible assets to maturity, except that it may:

(i) Substitute eligible assets for other eligible assets of the same type and of the same or higher credit quality;

(ii) Pursuant to a defeasance mechanism, substitute Government securities for eligible assets, provided such Government securities produce cash flows similar to those expected from the replaced asset;

(iii) Acquire additional eligible assets that do not result in a downgrading in the rating of the issuer's outstanding fixed-income securities; and

(iv) Dispose of any eligible assets in connection with the issuer's termination; and

(4) Eligible assets, cash flow derived from such assets, and any other property of the issuer, not needed at the time for the operation of the issuer's business, are maintained in a segregated account by a trustee that meets the requirements of section 26(a)(1) of the Act, that is not affiliated, as that term is defined in rule 405 under the Securities Act of 1933 [17 CFR 230.405], with the issuer or with any person involved in the organization or operation of the issuer, and that executes an agreement or instrument concerning the issuer's securities containing provisions to the effect set forth in sections 26(a)(3) and 26(a)(4)(A) of the Act.

(b) For purposes of this section:

(1) *Eligible assets* means obligations that require scheduled cash payments, such as notes, bonds, debentures, evidences of indebtedness, certificates of deposit, leases, installment contracts, interest rate swaps, repurchase agreements, guaranteed investment contracts, accounts receivable, chattel paper, cumulative preferred stock, guarantees, annuities, and participations or beneficial interests in any of the foregoing; and other assets that serve solely to support the credit of the issuer's securities, such as letters of credit, guarantees, and cash collateral accounts.

(2) *Fixed-income securities* means any securities that entitle the holder to receive:

(i) a stated principal amount and either:

(A) interest based on such principal amount calculated by reference to a fixed rate or an adjustable rate determined periodically by reference to an index that is generally recognized in financial markets as a reference rate of interest, through auctions among holders and prospective holders, or through remarketing of the security, or

(B) an amount equal to specified portions of the interest received on the assets held by the issuer;

provided that any interest determined as described in paragraphs (b)(2)(i)(A) and (B) of this section bears a reasonable relationship to a market rate of interest; or

(ii) a stated principal amount at maturity and no interest payments; but do not include interest-only securities or principal-only securities or any other securities with similar characteristics.

By the Commission.

Dated: May 29, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13150 Filed 6–4–92; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 86P–0297]

Cacao Products; Amendment of the Standards of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this tentative final rule to amend the U.S.

standards of identity for certain cacao products. The amendments will: (1) Provide for the use of safe and suitable nutritive carbohydrate sweeteners, neutralizing agents, and emulsifiers in cacao products; (2) revise the current milkfat content requirements for milk chocolate, buttermilk chocolate, skim milk chocolate, and mixed dairy product chocolates; (3) eliminate the current nonfat milk solids-to-milkfat ratios for certain cacao products; (4) revise the standards for coatings; and (5) update the language and format of the standards. This action is being taken principally in response to a citizen petition submitted by the Chocolate Manufacturers Association of the United States of America (CMA) and to comments received in response to a proposed rule that published in the **Federal Register** of January 25, 1989 (54 FR 3615). The amendments will promote honesty and fair dealing in the interest of consumers and, to the extent practicable, will achieve consistency with the Codex Alimentarius Commission (Codex) International Standards for Chocolate and for Cocoa Powders (Cocoas) and Dry Cocoa—Sugar Mixtures.

FDA is also requesting comments on the following issues: (1) Whether to provide for the use of any safe and suitable sweeteners in cacao products rather than limiting the sweeteners to nutritive carbohydrate sweeteners; (2) whether to provide for additional products in the standards for sweet cocoa, sweet chocolate, and milk chocolate coatings made with vegetable fat; (3) whether to revise the standards for breakfast cocoa, cocoa, and lowfat cocoa to achieve consistency with proposed definitions for nutrient content claims; and (4) whether to retain the provisions that prohibit the use of flavors that imitate chocolate, milk, or butter in cacao products. The agency seeks comment on whether these actions are appropriate, and whether they will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments on section II.A. of this tentative final rule by July 6, 1992. The agency is proposing that any final rule that may be issued based upon this tentative final rule become effective on the date of publication of the final rule in the **Federal Register**. Written comments on section II.B. by August 4, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch, (HFA–305), Food and Drug Administration, room 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0106.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 25, 1989 (54 FR 3615), FDA published a proposed rule to amend the standards of identity for cacao products in 21 CFR part 163. The proposal responded to a citizen petition submitted by CMA. CMA requested that FDA amend the standards of identity for cacao nibs (§ 163.110), chocolate liquor (§ 163.111), breakfast cocoa (§ 163.112), sweet chocolate (§ 163.123), milk chocolate (§ 163.130), buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), and mixed dairy product chocolates (§ 163.145) to accomplish four major changes. The changes would: (1) Provide for the use of safe and suitable nutritive carbohydrate sweeteners in sweet chocolate and milk chocolate; (2) permit the use of specified neutralizing agents in the preparation of cacao beans and cacao nibs; (3) reduce the required minimum milkfat content of chocolate products and eliminate the current nonfat milk solids-to-milkfat ratio requirements; and (4) permit the use of safe and suitable emulsifying ingredients in addition to those currently specified.

Responding to the CMA petition to amend the cacao products standards, the agency proposed: (1) To replace the term "optional saccharine ingredients" with the term "safe and suitable nutritive carbohydrate sweeteners," thus permitting other sweeteners in addition to those currently specified, and to remove the quantitative limitations on the sweeteners used; (2) to amend the standards for cacao nibs, chocolate liquor, breakfast cocoa and, by cross-reference, sweet chocolate and milk chocolate to provide for the use of specified neutralizing agents; (3) to lower the milkfat content requirements from 3.66 percent to 3.39 percent and to eliminate the nonfat milk solids-to-milkfat ratio requirement in milk chocolate, buttermilk chocolate, skim milk chocolate, and mixed dairy product chocolates; and (4) to delete specific references to certain emulsifying ingredients because they would be included as safe and suitable emulsifying ingredients and establish a maximum combined use level for emulsifiers of 1.0 percent.

On its own initiative, FDA also proposed to: (1) Establish a new *Section 163.5 Methods of Analysis* to avoid repetitive listing of the methods for determining cacao fat and cacao shell content, to delete the reference citations for the methods in the individual standards, and to cite a newer method for the determination of cacao fat; (2) delete references to certain optional ingredients including ground nut meats, ground coffee, and dried cereal malt extract; (3) delete specific references to certain sweetening ingredients such as honey, molasses, brown sugar, and maple sugar because they would be included as safe and suitable nutritive carbohydrate sweeteners; (4) amend the standard for sweet cocoa and vegetable fat (other than cacao fat) coating to provide for the optional use of chocolate liquor in combination with cocoa; (5) delete the phrase "other than cacao fat" in the product names of coatings covered by the standards of identity in §§ 163.153 and 163.155; and (6) redesignate the standard for sweet cocoa and vegetable fat (other than cacao fat) coating in § 163.150 as "chocolate flavor coating." In addition, FDA proposed to require label declaration of all optional ingredients used in accordance with applicable sections of the labeling regulations in 21 CFR part 101.

The FDA rulemaking, based on the CMA petition, was initiated under authority of section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)) which required formal rulemaking in any action for the issuance, amendment, or repeal of a food standard. However, the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) (the 1990 amendments), enacted November 8, 1990, removed food standards rulemaking (except for actions for the amendment or repeal of food standards of identity for dairy products or maple syrup) from the coverage of 21 U.S.C. 371(e). Therefore, FDA is providing notice that it is proceeding under 21 U.S.C. 371(a) in this rulemaking, which means that it is informal, notice and comment rulemaking under the Administrative Procedure Act.

Under formal rulemaking procedures established in 21 U.S.C. 371(e), there is an opportunity to object to any final rule and to request a public hearing upon such objection. Such an opportunity is not provided as part of informal rulemaking. To reflect this change in statutory authority and to ensure that no one is prejudiced by this change in procedure, the agency is providing an additional opportunity for comment before it decides on a final rule. Consequently, FDA is issuing this

tentative final rule with a 30-day comment period.

In the **Federal Register** of January 25, 1989 (54 FR 3615), FDA offered interested persons the opportunity to comment on the proposed rule to amend the standards of identity for cacao products. The comment period ended March 27, 1989. Responding to requests from the American Dairy Products Institute and CMA, FDA published a notice in the **Federal Register** (54 FR 14663, April 12, 1989) reopening and extending the comment period until June 12, 1989. The comment period was subsequently extended an additional 60 days, to August 11, 1989, at the request of the International Ice Cream Association (54 FR 24908, June 12, 1989).

The agency has fully considered all comments that it received on the proposal in reaching the tentative determinations set forth in section II.A. The agency considers section II.A. to be a tentative final rule. The agency advises that it intends to review any comments that it receives on this tentative final rule and to issue a final rule as expeditiously as possible. The agency also advises that it is not likely to take regulatory action against products that would comply with the standards as revised in accordance with the discussion in section II.A. The agency advises, however, that any company that modifies its product in response to this tentative final rule does so at the risk that it may need to make further changes in its product in response to the final rule or face regulatory action.

During the extended comment period, several issues were raised (e.g., establishing a standard of identity for white chocolate; whether to revise the cacao standards to achieve consistency with proposed definitions for nutrient content claims) that were outside the scope of the original proposal. These issues are discussed in section II.B. of this document. Because these issues have not been fully considered, FDA is not prepared to more on them as quickly as it will move on the issues in section II.A.

FDA is providing a 60-day comment period on the issues discussed in section II.B. The agency seeks comments on whether the actions are appropriate, and whether they will promote honesty and fair dealing in the interest of consumers. Should FDA receive comments supporting the actions discussed in section II.B., it will respond to such comments in a separate document to the one that it intends to issue as a final rule on the issues discussed in section II.A.

II. Comments

Fourteen letters, each containing one or more comments, were received from trade associations, ingredient suppliers, law firms, and an equipment distributor. Discussions of the specific comments and the agency's responses follow.

A. Tentative Final Rule

1. Sweeteners

For comments supported the use of the functional group designation of "nutritive carbohydrate sweeteners" in the standards for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130). One comment stated that the term, although generally understood, was not sufficiently clarified in the preamble of the proposal. The comment stated that FDA should further clarify the term, either in the preamble of the final rule or in the final regulations, to show that it includes sugar alcohols and other carbohydrates such as maltodextrin and certain starches that, like lactose, provide reduced sweeteness. Another comment suggested that the term should include rice syrup solids. Two comments stated that the term should also include sweetners from fruit juice concentrates in combination with maltodextrin or dextrins.

In response to these comments, CMA stated that sugar alcohols and substances such as maltodextrin are not "nutritive carbohydrate sweeteners" or are not "suitable" for use in standarized sweet chocolate and milk chocolate products. CMA also stated that the specific nutritive carbohydrate sweeteners permitted in chocolate should be those specified by the Codex standards for chocolate. CMA maintained that the sweeteners identified in the Codex Standards are safe and technologically suitable for use in chocolate, as shown by their long-standing use in chocolate products worldwide.

FDA notes that the Codex standards for chocolate and cocoa products permit the use of "those sugars for which standards have been elaborated by the Codex Alimentarius Commission." These sugars include: white sugar (sucrose), powdered sugar (icing sugar), soft sugars, dextrose (anhydrous and monohydrate), glucose syrup, dried glucose syrup, lactose, honey, powdered dextrose, and fructose.

FDA proposed to use the functional group designation, "nutritive carbohydrate sweeteners," to provide greater flexibility in the choice of sweeteners that can be used in cacao products and to reduce the need to amend the cacao products standards as other safe and suitable nutritive carbohydrate sweeteners are developed. The agency believes that listing all nutritive carbohydrate sweeteners that FDA is currently aware of, and considers appropriate for use in cacao products, is impractical and would be contrary to the intent of this proposal. To minimize possible confusion, the agency sets forth the following discussion of the characteristics that, when used collectively, describe the class of sweeteners commonly known as "nutritive carbohydrate sweeteners."

Nutritive carbohydrate sweeteners are relatively low molecular weight saccharides. They are polyhydroxy aldehydes and ketones which may be classified as monosaccharides (e.g., glucose or fructose), disaccharides (e.g., sucrose or lactose), or trisaccharides (e.g., raffinose). The agency advises that "safe and suitable nutritive carbohydrate sweeteners" include such substances as the sweeteners listed in part 168 (21 CFR part 168).

The term "nutritive" in the phrase "nutritive carbohydrate sweeteners" implies that a food can be metabolized. Section 170.3(o)(21) (21 CFR 170.3(o)(21)) defines "nutritive sweeteners" as "those substances having greater than 2 percent of the caloric value of sucrose per equivalent unit of sweetening capacity."

The sweetening power of carbohydrates is a function of their chemical structure, the concentration of the constituent saccharides, and the degree to which they are polymerized. Nonsweet, high molecular weight saccharide polymers (e.g., corn starch or rice starch) are not "nutritive carbohydrate sweeteners" unless they have been converted or hydrolyzed to lower molecular weight saccharides or simple sugars such as D-glucose (dextrose). When these starches are completely converted, the end product is 100 percent dextrose. If partially converted, the degree of conversion of the product is expressed in terms of the dextrose equivalent (DE). ("DE" is defined as a measure of the reducing sugar content calculated as a percentage of the total dry substance.)

In response to comments requesting clarification on whether specific ingredients would be considered safe and suitable nutritive carbohydrate sweeteners, the agency notes the following:

Maltodextrin is primarily used as a carrier or bulking agent. It has a DE of less than 20. On the other hand, the standard for glucose sirup (21 CFR 168.120), a nutritive carbohydrate sweetener obtained from edible starch,

specifies a DE of not less than 20. Maltodextrin has been defined in § 184.1444 (21 CFR 184.1444) as a "nonsweet nutritive saccharide polymer." Therefore, it is not a sweetener for the purpose of these standards.

Rice syrup solids, although specifically listed in Part 168, are provided for under the standard of identity for dried glucose syrup in § 168.121. Therefore, they are nutritive carbohydrate sweeteners.

Although lactose has considerably less sweetening power than the sweeteners currently permitted by the cacao products standards, it is listed as a sweetener in § 168.122 and may be suitable in some cacao product formulations.

Sugar alcohols are derivatives of carbohydrates and are commonly referred to as "polyhydric alcohols" or "polyols." FDA notes that sugar alcohols such as sorbitol (§ 184.1835) and xylitol (§ 172.395 (21 CFR 172.395)) are usually used as sweeteners in foods for special dietary use. They also provide other technical functions that may be beneficial in chocolate-containing confections. However, sugar alcohols are not saccharides; thus, these ingredients do not conform to the definition of "nutritive carbohydrate sweeteners" set forth in these standards.

FDA does not believe that the comments have provided sufficient information concerning the nature of the fruit juice concentrate and maltodextrin or dextrim mixtures and their effects on the finished food or consumer acceptability to justify consideration of these combinations of ingredients as nutritive carbohydrate sweeteners that are suitable for use in the manufacture of cacao products. Fruit juice concentrates are themselves foods that may serve as sources of nutritive carbohydrate sweeteners. They may also contain other constituents, such as fruit flavors, acids, and juice solids, that could make them unsuitable for use in cacao products. Therefore, FDA is not providing for their use in the standards set out below.

FDA acknowledges that some manufacturers have developed processes whereby fruit juices may be decharacterized by removing the flavor constituents and color, so that the resulting products are essentially solutions of the sugars from the juice, no longer resembling the fruit juices from which they were made. Those sugars that would be naturally occurring in the juice would be nutritive carbohydrate sweeteners and would have to be declared by their common names (e.g., sucrose or fructose) or by an appropriate term that is not misleading, such as "decolorized, decharacterized grape juice concentrate," and not as fruit juice concentrates.

The agency has tentatively decided to incorporate the functional group designation "safe and suitable nutritive carbohydrate sweeteners" into the standards for sweet chocolate and milk chocolate, as proposed. This approach minimizes the need to revise the standards as other nutritive carbohydrate sweeteners are found to be safe and suitable for use in these foods. Accordingly, FDA is amending the standards of identify for sweet chocolate in § 163.123(a)(1) and (b)(2), milk chocolate in § 163.130(a)(1) and (b)(2), and, by cross-reference, the standards of identify for buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), mixed dairy product chocolates (§ 163.145), sweet cocoa and vegetable fat (other than cacao fat) coating (§ 163.150), sweet chocolate and vegetable fat (other than cacao fat) coating (§ 163.153), and milk chocolate and vegetable fat (other than cacao fat) coating (§ 163.155), to include this functional group designation in lieu of a list of specific permitted sweeteners.

2. Milkfat Content and Nonfat Milk Solids-to-Milkfat Ratio

Six letters commented on the proposed amendment to reduce the minimum milkfat content of milk chocolate in § 163.130(a)(2) from 3.66 to 3.39 percent and to eliminate the nonfat milk solids-to-milkfat ratio. Five letters claimed that the proposed changes were not justified. They argued that the CMA statement that the current requirement of 3.66 percent milkfat in milk chocolate is 7 percent higher than that for standardized milk is in error. The comments presented data from several sources that the average milkfat content for producers' milk, before standardization for beverage purposes, has been 3.67 percent for many years and has not declined.

In response to the comments opposed to the reduction in milkfat content in milk chocolate, CMA stated that the grounds for the objections are unsound and fail to address the entire rationale for the proposed changes. The petitioner explained that the standard of identify for milk is § 131.110 (21 CFR 131.110) requires that milk contain not less than 11.5 percent total milk solids and at least 3.5 percent milkfat. The standard for milk chocolate is § 163.130 requires a minimum level of 12 percent total milk solids. For both products to have the same proportion of total milk solids to milkfat, milk chocolate that contains 12 percent total milk solids must contain 3.39 percent milkfat.

The petitioner stressed that it was proposing that the minimum required milkfat content of milk chocolate be changed to 3.39 percent to be consistent with the proportion of total milk solids to milkfat in standardized milk. CMA stated that it is not proposing to reduce the total milk solids content in milk chocolate from 12 percent to 11.5 percent.

CMA also stated that deleting the current nonfat milk solids-to-milkfat ratio requirement would enable manufacturers to meet the milkfat requirement and still add more milk solids, thereby creating additional product choices.

The agency has evaluated both arguments and tentatively concludes that it is reasonable to lower the minimum milkfat content in milk chocolate, so that the proportional milkfat content in milk chocolate is not less than that of milk under the standard of identify in § 131.110. The agency recognizes that chocolate manufacturers generally do not use milk as standardized for beverage purposes but rather use concentrated milk, dry milk, and fluid milk products tailored to their specific needs. Thus, chocolate manufacturers are not bound by milkfat and total milk solids levels found in producers' milk. However, the agency believes that the request to reduce the minimum required milkfat content in milk chocolate, so that it is consistent with that required in standardized milk, is reasonable. Lowering the required minimum level of milkfat in the cacao products standards will provide flexibility for manufacturers. Manufacturers can continue to produce milk chocolates with higher milkfat levels when desired.

Similarly, FDA has tentatively decided to grant the CMA rquest to delete the requirements for the nonfat milk solids-to-milkfat ratio. Deleting the nonfat milk solids-to-milkfat ratio will permit manufacturers to produce products with a higher nonfat milk solids content and provide consumers with greater product choices. This action is consistent with agency policy and efforts to permit, where appropriate, technological flexibility and the opportunity to market a wider variety of products. These actions will benefit consumers by providing for products with a broader range of physical characteristics while maintaining the essential nutritional characteristics of milk chocolate because the total milk solids content requirement is unchanged.

Therefore, FDA has tentatively decided to reduce the minimum milkfat content from 3.66 percent to 3.39 percent in milk chocolate in § 163.130(a)(2) and to reduce the maximum milkfat content from 3.66 to 3.39 in buttermilk chocolate (§ 163.135) and skim milk chocolate (§ 163.140). FDA has also tentatively decided to reflect this change in the standard for mixed dairy product chocolates (§ 163.145). In addition, FDA has tentatively decided to delete the nonfat milk solids-to-milkfat ratio requirement in the standard of identity for milk chocolate (§ 163.130), as proposed.

3. Percent Fat in Chocolate Liquor

When the cacao product standards were promulgated (9 FR 14329, December 6, 1944), cacao nibs seldom contained less than 50 percent, or more than 58 percent, by weight of cacao fat. Therefore, FDA concluded that these were practicable and reasonable limits for the cacao fat content of chocolate liquor in § 163.111.

In the January 25, 1989, **Federal Register** document, FDA proposed to retain this cacao fat content requirement for chocolate liquor. The agency believed, however, that the method of calculating chocolate liquor content based on the weight of nonfat cacao solids in finished sweet chocolate and milk chocolate (§§ 163.123(a)(2) and 163.130(a)(2)) was superfluous and thus did not include this language in the proposed standards.

In its comments on the proposal, CMA stated that current research in breeding has produced cacao nibs containing up to 60 percent cacao fat. CMA requested that the cacao fat content level in the standard for chocolate liquor (§ 163.111) be changed by raising the upper limit from "not more than 58 percent" to "not more than 60 percent." CMA also stated that an increase in cacao fat in chocolate liquor should not be accompanied by a decrease in nonfat cacao solids in the finished cacao product. To avoid such a result, the comment requested that FDA retain the method of calculating the chocolate liquor content in sweet chocolate and milk chocolate that is in the current standards.

The agency believes that the requested change to reflect the increased level of cacao fat in chocolate liquor as a result of the increased fat content in cacao beans is a logical outgrowth of the proposal and is consistent with the agency's goal of updating the cacao product standards. Accordingly, FDA is proposing to amend § 163.111(a)(1) to increase the maximum cacao fat content of chocolate liquor to 60 percent. In addition, FDA is proposing to retain the method for calculating the chocolate liquor content in the current standards for sweet chocolate (proposed § 163.123(a)(2) and milk chocolate (proposed § 163.130(a)(2)), to ensure that the nonfat cacao solids content is not diminished when chocolate liquor containing higher levels of cacao fat is used.

4. Status of Certain Optional Ingredients

In its comments on the proposal, CMA opposed the proposed deletion of the provisions for the use of ground nut meats, ground coffee, and malt extract in the standards for chocolate liquor (§ 163.111), sweet chocolate (§ 163.123), and milk chocolate (§ 163.130). In the preamble of the proposal, FDA stated that it believed that ground nut meats, ground coffee, and malt extract were seldom used in the preparation of sweet chocolate or milk chocolate and proposed to delete reference to these ingredients. The comment disagreed, stating (and providing supporting evidence) that because these ingredients are frequently used, the provision for their use should be retained. CMA also requested that ground nut meats be specifically identified as ground whole nut meats to ensure that defatted ground nut meat is not used. The comment maintained that occasionally defatted nut meats have been used abroad in chocolate products as fillers or extenders for cocoa. It addeded that the fat content of ground whole nut meats makes the addition of such nut meats self-limiting.

Based on the evidence that CMA submitted that ground whole nut meats, dried malted cereal extract, and ground coffee are still used as ingredients in the preparation of sweet chocolate and milk chocolate, FDA has retained these foods as optional ingredients in § 163.111(b)(4), § 163.123(b)(3), and § 163.130(b)(3).

CMA also stated that the permitted dairy ingredients malted milk and dried milk were omitted in the proposed revision of the standard for sweet chocolate, and that dried milk had been omitted in the proposed revision of the standard for milk chocolate. Because there was no discussion in the preamble, CMA stated that the omissions were apparently inadvertent. CMA contended that there is no reason not to continue to provide for the use of these ingredients in §§ 163.123(b)(4) and 163.130(b)(4).

FDA agrees that the listing of these omitted ingredients should be restored and has added dried milk and malted milk as permitted dairy ingredients in § 163.123(b)(4)(ii) and (b)(4)(v), respectively, and dried milk as a permitted dairy ingredient in § 163.130(b)(4)(ii).

5. Revision of the Name for Sweet Cocoa and Vegetable Fat (Other Than Cacao Fat) Coating

FDA proposed to redesignate the standard for "sweet cocoa and vegetable fat (other than cacao fat) coating" in § 163.150 as "chocolate flavor coating." The agency believed that the term "chocolate flavor coating" was appropriate for a product containing cocoa, alone or in combination with chocolate liquor, as the source of chocolate flavoring.

A comment from a law firm objected to the proposed name change, stating that use of the term "flavor" in the name of a standardized food is inappropriate. The comment contended that the term conflicts with FDA's CPG 7105.15. The firm argued that application of the terminology to a standardized food would place manufacturers of nonstandardized confectionery products at a serious disadvantage.

CMA disagreed with this comment, stating that codifying the name "chocolate flavored" in the standards for compound coatings would be consistent with industry practice and would provide useful information to consumers with regard to the nature or taste of coatings that contain a substantial quantity of cacao solids. CMA further stated that a wide variety of coatings containing vegetable fat and the minimum nonfat cacao solids level in the proposed standards are already known in the trade as "chocolate flavored" or "milk chocolate flavored" coatings. However, the comment admitted that there may be products sold now as chocolate flavored or milk chocolate flavored coatings that do not comply with the standard for "sweet cocoa and vegetable fat (other than cacao fat) coating." To the extent that reformulations will be necessary to comply with the standard, CMA stated that these reformulations will be salutary and will promote honesty and fair dealing in the interest of consumers.

FDA notes that CPG 7105.15 is concerned only with the terms "chocolate" and "chocolate flavored" as applied to nonstandardized foods. The guide states that any nonstandardized food product that contains cocoa as the chocolate flavoring ingredient may bear the term "chocolate" if it can be demonstrated that consumers recognize that the food (e.g., chocolate pudding or hot chocolate) may be made from cocoa and do not expect it to contain some other chocolate ingredient. Foods that contain cocoa as the sole source of

chocolate flavoring must be labeled "chocolate flavored" or "natural chocolate flavored" when consumers could reasonably expect such foods to contain a chocolate ingredient. For example, a chocolate bar is expected to contain chocolate and may not be made from cocoa unless it is labeled as a "chocolate flavored" candy. The purpose of the guide is to prevent the misuse of the word "chocolate" in various food names.

FDA acknowledges that nonstandardized products may exist that are known as "chocolate flavored coating" and do not comply with § 163.159. The agency did not intend to broaden this standard to include nonstandardized, substitute chocolate products. Nor would FDA want to require that manufacturers of nonstandardized confectionery products reformulate or relabel such products without good cause. Furthermore, FDA believes that this terminology should continue to be available for nonstandardized chocolate products.

Therefore, the agency is withdrawing that portion of its 1989 proposal (54 FR 3615 at 3622) that would have redesignated *Section 163.150 Sweet Cocoa and Vegetable Fat (Other Than Cacao Fat) Coating* as *Section 163.50 Chocolate Flavor Coating.* FDA is tentatively redesignating *Section 163.150* as *Sweet Cocoa and Vegetable Fat Coating.* The agency believes that this name adequately reflects the nature of the food. FDA requests comments on this tentative action.

6. Revision of the Names for Other Coatings Made With Vegetable Fat

In its comments on the proposal, CMA suggested that 21 CFR 163.153 *Sweet Chocolate and Vegetable Fat (Other Than Cacao Fat) Coating* be redesignated as *Section 163.153 Sweet Chocolate Flavored Coating.* CMA also suggested that FDA redesignate § 163.155 *Milk Chocolate and Vegetable Fat (Other Than Cacao Fat) Coating* as *Section 163.155 Milk Chocolate Flavored Coating.* CMA contended that the phrase "and vegetable fat" in the name is unnecessary and should be deleted. It pointed out that the vegetable-derived fat ingredients would continue to be listed on the label as ingredients as required by the applicable sections of Part 101.

The agency does not believe that the suggested nomenclature is appropriate for sweet chocolate coatings and milk chocolate coatings that are made with vegetable fat. As stated in the discussion of the previous comment, the agency believes that the "chocolate flavored" terminology should be available for labeling nonstandardized substitutes for standardized chocolate products. Because FDA is not adopting the "chocolate flavored" terminology for these coatings, the phrase "and vegetable fat" remains a necessary part of the names of the coatings. The phrase describes the primary difference between coatings made with vegetable fat and the sweet chocolate and milk chocolate products that they resemble. FDA believes that the phrase is necessary to distinguish the coatings in §§ 163.153 and 163.155 from sweet chocolate (§ 163.123) and milk chocolate (§ 163.130). Therefore, FDA is retaining the designations of *Section 163.153 Sweet Chocolate and Vegetable Fat Coating* and of *Section 163.155 Milk Chocolate and Vegetable Fat Coating,* that it proposed in the January 25, 1989, document.

7. Use of Chocolate Liquor in Sweet Cocoa and Vegetable Fat Coating

FDA proposed to amend the standard for "sweet cocoa and vegetable fat (other than cacao fat) coating" in § 163.150 to provide for the optional use of chocolate liquor. There were no objections to this proposed action. However, CMA suggested that the proposed standard could be incorporated into a new revised standard that would contain the elements of both the standards for "sweet cocoa and vegetable fat (other than cacao fat) coating" and "sweet chocolate and vegetable fat (other than cacao fat) coating," currently in §§ 163.150 and 163.153, respectively. CMA stated that this approach would allow removal of § 163.150.

FDA disagrees with the CMA suggestion to eliminate *Section 163.150 Sweet Cocoa and Vegetable Fat (Other Than Cacao Fat) Coating* by providing for the optional use of cocoa, alone or in combination with chocolate liquor, in *Section 163.153 Sweet Chocolate and Vegetable Fat (Other Than Cacao Fat) Coating.*

The agency notes that the standard for "sweet chocolate and vegetable fat (other than cacao fat) coating" in § 163.153 describes a food that resembles sweet chocolate (§ 163.123) in that it contains not less than 15 percent by weight of chocolate liquor. The standard for "sweet cocoa and vegetable fat (other than cacao fat) coating" in § 163.150 also describes a food that resembles sweet chocolate except that the food is prepared using cocoa rather than chocolate liquor. Section 163.150 requires that the food contain not less than 6.8 percent by weight of the nonfat cacao portion of such cocoa, an amount equivalent to the nonfat cacao solids content of sweet chocolate and sweet chocolate and vegetable fat (other than cacao fat) coating.

Amending the standard for coatings made with sweet cocoa and vegetable fat in § 163.150 to provide for the optional use of chocolate liquor, as proposed by FDA, would provide manufacturers with increased flexibility while maintaining the minimum required nonfat cacao solids content requirement for the food. Consumers could choose from a wider range of products that continued to provide the level of chocolate flavor they expect in a sweet cocoa and vegetable fat coating. However, amending the standard for coatings made with sweet chocolate and vegetable fat, as suggested by CMA, would provide for products that did not contain the minimum level of chocolate liquor required in sweet chocolate (§ 163.123). The agency believes that it would be inappropriate to allow cocoa to replace all, or part, of the chocolate liquor in a food that purports to be "chocolate" with added vegetable fat. The agency believes that the CMA request is not consistent with the intent of the proposal, i.e., to allow the use of chocolate liquor to supplement or replacement part of the cocoa in coatings made with sweet cocoa and vegetable fat. Therefore, FDA must deny the CMA request.

FDA is retaining the provision for the optional use of chocolate liquor in § 163.150 (tentatively designated as *Section 163.150 Sweet Cocoa and Vegetable Fat Coating),* as proposed.

8. Milkfat in Milk Chocolate and Vegetable Fat Coating

FDA proposed to revise the current milkfat content requirements and to eliminate the nonfat milk solids-to-milkfat ratio requirements for certain cacao products. In its comments on the proposal, CMA stated that the proposed minimum requirement of 3.39 percent milkfat in the milk chocolate standard (§ 163.130(a)((2)) should not be applicable to milk chocolate and vegetable fat coating (§ 163.155), and that, as a result, the milk solids requirement in § 163.155 should be reduced from 12 percent to 8.61 percent (i.e., 12 percent total milk solids less the 3.39 percent solids from milkfat). CMA maintained that coatings are frequently made with palm kernel oil, whose presence in the coating will not permit the use of any milkfat. CMA also stated that even when other vegetable fats, such as soy or cottonseed oils, are used in milk chocolate and vegetable fat

coatings, the melting point requirements often place constraints on the levels of milkfat that can be used. CMA contended that the distinctive flavor and appearance of the milk chocolate and vegetable fat coating results primarily from the presence of nonfat milk solids and not from the use of milkfat. The comment also noted that most of the highly desired, nonstandardized, milk chocolate flavored coatings being sold by CMA members contain little or no milkfat. Therefore, CMA requested that § 163.155 be amended to exempt milk chocolate and vegetable fat coating from the minimum milkfat requirement for milk chocolate.

The agency notes that the coatings standards in §§ 163.153 and 163.155 provide for foods that resemble sweet chocolate and milk chocolate, except that vegetable fat is added in lieu of additional cacao fat. As such, consumers could reasonably expect milk chocolate and vegetable fat (other than cacao fat) coatings (§ 163.155) to contain levels of milkfat and milk solids equal to that of milk chocolate. Therefore, the agency believes that it would be inappropriate to eliminate the milkfat content requirement (and, as a consequence, to reduce the minimum milk solids content requirement) of milk chocolate and vegetable fat coating in § 163.55 compared to milk chocolate coating in § 163.130, and FDA is denying the request.

FDA recognizes that some firms might want to manufacture milk chocolate-like coatings with vegetable fats that are not compatible with milkfat. The agency notes that *Section 163.140 Skim milk chocolate* provides for a food that exhibits dairy characteristics similar to milk chocolate in § 163.130 (including a requirement of not less than 12 percent skim milk solids by weight) except that the finished skim milk chocolate contains less than 3.39 percent by weight of milkfat. The agency believes that providing for a food labeled "skim milk chocolate and vegetable fat coating" within the proposed standard for milk chocolate and vegetable fat coating (§ 163.155) would allow manufacturers the increased flexibility that they desire. Consumers would benefit from increased product choices, while the proposed nomenclature would clearly indicate that the food contained less milkfat compared to milk chocolate (§ 163.130) or milk chocolate and vegetable fat coating (§ 163.155). Therefore, the agency is proposing to amend Section *163.155 Milk Chocolate and Vegetable Fat Coating* to provide for products that contain less than 3.39 percent by weight of milkfat and are labeled "skim milk chocolate and vegetable fat coating."

9. Other Ingredients in Chocolate and Vegetable Fat Coatings

FDA proposed to provide for the use of safe and suitable nutritive carbohydrate sweeteners and emulsifiers in certain cacao products. In its comments on the proposal, CMA supported the use of functional group designations within the cacao products standards. CMA suggested further modifications in the coatings standards (§§ 163.150, 163.153, and 163.155) to provide for the use of safe and suitable dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers. In addition, CMA stated that some ingredients, like polydextrose (§ 172.841), are already cleared for food use provided that their use is not precluded by standards of identity. CMA noted that providing for the use of "safe and suitable" ingredients that perform a particular technical effect, as FDA proposed to do with respect to emulsifiers in the sweet chocolate and milk chocolate standards, will ensure consumer protection while providing the industry with the ability to utilize new ingredients as they are developed. CMA also stated that this action would allow industry to take advantage of technological innovation and permit development of products with a wider range of physical properties.

A comment from a food ingredient producer requested that glyceryl tristearate (§ 172.811) be permitted as an optional safe and suitable ingredient in cacao products. It noted that glyceryl tristearate is listed in § 172.811 (c)(1) and (c)(3) for food additive use as a crystallization accelerator in cocoa products, imitation chocolate, and compound coatings and as a formulation aid in confections.

The agency notes that under §172.811 of the food additives regulations, glyceryl tristearate is listed for five specified uses, two of which appear to be applicable to certain of the cacao product standards. These include its use as: (1) A crystallization accelerator in cocoa products, in imitation chocolate, and in compound coatings; and (2) a formulation aid as described in § 170.3(o)(14) (21 CFR 170.3(o)(14)) in confections. Polydextrose (§ 172.841) is listed for use as a bulking agent, formulation aid, humectant, and texturizer in confections.

FDA believes that the use of polydextrose and glycerol tristearate in coatings made with vegetable fat (§§ 163.150, 163.153, and 163.155) is consistent with the food additive regulations in §§ 172.811 and 172.841. The agency also believes that providing for the use of ingredients that perform a specific technical effect is consistent with the history and intent of the standards in §§ 163.150, 163.153, and 163.155, that is, to provide for the use of vegetable fat to achieve desired melting characteristics. Furthermore, providing for the use of additional safe and suitable ingredients by functional group designation would provide manufacturers with increased flexibility and minimize the need to amend the standards as new ingredients are developed. Consumers would benefit from a wider range of product choices, at potentially lower cost.

Therefore, FDA is tentatively expanding the proposed provisions for the use of safe and suitable ingredients in §§ 163.150(b), 163.153(b), and 163.155(b) to include dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers.

With respect to the dairy-derived ingredients, CMA argued that a dairy-derived ingredient, such as whey, should not be used in meeting the minimum nonfat milk solids requirements in milk chocolate and vegetable fat coating. CMA recommended that the calculation of the total milk solids content be based only on those dairy ingredients specified in proposed § 163.123(b)(4) and § 163.130(b)(4).

FDA agrees with the suggestion made by CMA with respect to the milk solids requirements in §§ 163.153 and 163.155. The agency notes that the minimum content requirements for total milk solids in the existing standards for milk chocolate (§ 163.130) and, by cross-reference, milk chocolate and vegetable fat (other than cacao fat) coating (§ 163.155) ensure that these products contain the level of dairy flavor that consumers expect in milk chocolate. Conversely, the maximum total milk solids content requirements in sweet chocolate (§ 163.123) and sweet chocolate and vegetable fat (other than cacao fat) coating (§ 163.153) were established to distinguish these foods from milk chocolate and from coatings made with milk chocolate and vegetable fat. The agency knows of no reason to include, in determining whether a food meets these minimum or maximum requirements, dairy-derived ingredients that do not significantly contribute to the dairy character of the food. Whey, for example, which is primarily lactose, may perform a desired technical effect in the food, but it would not contribute to the flavor, texture, and appearance that consumers expect in a milk chocolate product. The agency believes that limiting the calculation of total milk

solids content requirements in §§ 163.153 and 163.155 to those dairy ingredients that are specified in §§ 163.123(b)(4) and 163.130(b)(4) is therefore appropriate.

Consequently, FDA is tentatively amending paragraph (a) in both proposed *Section 163.153 Sweet Chocolate and Vegetable Fat Coating* and proposed *163.155 Milk Chocolate and Vegetable Fat Coating* to specify that compliance with the total milk solids content requirements in §§ 163.123(a)(2) and 163.130(a)(2) shall be calculated using only those dairy ingredients referred to in §§ 163.123(b)(4) and 163.130(b)(4), respectively.

Accordingly, FDA is tentatively amending proposed §§ 163.150, 163.153, and 163.155 to provide for the use of safe and suitable dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers. The agency is also adding new language to proposed §§ 163.153(a) and 163.155(a) to limit the calculation of the total milk solids content requirement to those dairy ingredients listed in §§ 163.123(b)(4) and 163.130(b)(4).

10. Other Matters

a. In an effort to update the language and the format of the standards, FDA proposed to make editorial changes in the Definitions and Nomenclature sections (§ 163.123 (a) and (c)) of the proposed standard for sweet chocolate. In its comments on the proposal, CMA observed that the current standard for sweet chocolate (§ 163.123(a)) states that bittersweet chocolate is sweet chocolate that contains not less than 35 percent by weight of chocolate liquor. It also observed that § 163.123(g) lists "semisweet chocolate" and "bittersweet chocolate" as alternate names for sweet chocolate that contains not less than the minimum quantity of chocolate liquor prescribed for bittersweet chocolate in § 163.123(a). CMA stated that proposed § 163.123 (a) and (c), as modified, could be interpreted to mean that bittersweet chocolate is an alternative name for sweet chocolate, which is untrue. Therefore, CMA requested that proposed § 163.123(a)(3) be revised to specifically state that "semisweet or bittersweet chocolate is the sweet chocolate that contains not less than 35 percent by weight of chocolate liquor complying with the requirements of § 163.111 and calculated in the same manner as set forth in paragraph (a)(2) of this section."

The agency agrees that § 163.123, as proposed, did not make clear that bittersweet chocolate is the alternative name for only semisweet chocolate, and therefore FDA has made the appropriate editorial changes in the standard for sweet chocolate in § 163.123(a)(3) to clarify this point.

b. The existing standard for milk chocolate in § 163.130(a) states that the food is prepared from chocolate liquor, one or more optional dairy ingredients, and one or more optional saccharine ingredients. The proposed amendment of § 163.130(a) erroneously omitted the specific requirement that makes sweetening ingredients mandatory. Therefore, to correct this inadvertent omission, FDA is republishing § 163.130(a) with nutritive carbohydrate sweeteners listed as a mandatory component of milk chocolate.

c. FDA also notes that the existing standard for chocolate liquor in § 163.111(a)(4) provides for the use of butter and milkfat as seasonings and in § 163.111(b)(4) requires that the use of such seasoning be declared on the label in a statement that must immediately and conspicuously precede or follow the name of the food. The proposal omitted the reference to labeling of butter and milkfat when used as seasonings. To correct this omission, FDA is including a reference to paragraph (b)(5) (butter or milkfat) in § 163.111(c)(3), so that when these ingredients are used as seasonings in chocolate liquor, the label will bear and appropriate statement, e.g., "Seasoned with butter".

11. Alternate Method of Analysis

FDA proposed (54 FR 3615 at 3617) to establish a new *Section 163.5 Methods of Analyses* to avoid repetitive listings of the methods for determining cacao fat and cacao shell content and to update the citation for the determination of cacao fat. In its comment on the proposal, an equipment distributor sought to have a new extraction process (involving a patented procedure and equipment) included along with the cited Soxhlet extraction method of the Association of Official Analytical Chemists (AOAC) for the determination of fat in cacao products (§ 163.5). The comment stated that FDA was being too restrictive by not allowing for new equipment and techniques that are safer, faster, and more economical than the classical Soxhlet apparatus. The comment further stated that a good portion of the cacao products industry had converted to the patented extraction technique, and that it would be short-sighted if the final rule did not take the current state-of-the-art methodology into consideration.

FDA is not being restrictive by not specifically alowing for new and safer equipment and techniques. The method cited in the proposal is not necessarily intended to replace routine methods used in the industry. According to 21 CFR 2.19, it is FDA policy to use official methods of the AOAC where they are available. This regulation also states that other effective methods may be used for quality control, but that the agency expects that the other methods will be calibrated in terms of the official AOAC methods. At the present time, the technique discussed in the comment does not have official AOAC status. The test results submitted in the comment were for studies that used meat and did not include studies on the determination of fat in cacao products.

FDA is therefore not revising the proposed regulations to include the extraction technique cited in the comment. This method, or any other effective method, may be used for quality control and other nonregulatory functions. However, FDA will use the AOAC method for enforcement purposes.

B. Issues for Future Rulemaking

1. Safe and Suitable Sweeteners

FDA recognizes that various forms of new sweetening ingredients have become available since the standards were initially promulgated, and that this trend will continue with further advances in food technology and changes in consumer expectations. FDA invites comments on the desirability of increasing flexibility with respect to permitted sweeteners by broadening this provision to read "safe and suitable sweeteners" rather than "safe and suitable nutritive carbohydrate sweeteners." Comments should provide a substantive basis for such a change and include suggestions for appropriate product names to distinguish such chocolate products from those sweetened with nutritive carbohydrate sweeteners. Comments should also address the need for bulking agents in combination with high intensity sweeteners and the effect of such ingredients on the character and acceptability of cacao products. (Alternatively, persons interested in broadening this provision to permit sweetening ingredients beyond safe and suitable nutritive carbohydrate sweeteners may submit a citizen petition in the form set out in § 10.30 (21 CFR 10.30) to amend the standards.) The agency advises that should it receive substantive comments (or a petition) that support further broadening of the provision for the use of safe and suitable sweeteners in cacao products, this action would be addressed in a separate rulemaking.

The agency recognizes that cacao products have traditionally been sweetened with nutritive carbohydrate sweeteners. The agency also notes that section 402(d)(3) of the act (21 U.S.C. 342(d)(3)) prohibits the use of any nonnutritive substance in a confectionery unless the substance is used for some practical, functional purpose and does not promote deception of the consumer. FDA has held in Compliance Policy Guide 7105.01 (CPG 7105.01), entitled "Confectionery—Use of Nonnutritive Substances as Ingredients," that the use of nonnutritive sweeteners in confectionery for the purpose of caloric reduction is not a practical, functional purpose and is, therefore, prohibited. FDA is in the process of reconsidering this interpretation and will announce any revisions of CPG 7105.01 in the **Federal Register.**

2. Dried Cream Extract

A comment from a food ingredient producer requested a change in the standard of identity for milk chocolate to permit the use of "dried cream extract" which the comment defined as "a natural flavor, derived from enzyme-modified milkfat." The comment noted that the proposed standard in § 163.130(b)(3) does not permit the use of spices, natural and artifical flavoring, and other seasonings that impart a flavor that imitates the flavor of chocolate, milk, or butter. In support of its request, the comment maintained that it was understood that this provision was to ensure that a minimum standard of quality was met. The comment also pointed out that according to the proposed standard, milk chocolate must contain not less than 3.39 percent milkfat. The comment argued that the addition of dried cream extract would not be used in place of the required milkfat but would be used in addition to it. A small amount of the ingredient carries a flavor equating to a much higher level of milk. The comment also claimed that the use of dried cream extract would allow the consumer to have a better tasting product that is healthier because less fat may be used.

The agency advises that the current standard for milk chocolate (§ 163.130) prohibits the use of flavors that singularly, or in combination, imitate the flavor of chocolate, milk, or butter. This prohibition was established to prevent consumer deception, in that the use of such substances makes the finished products appear better or more valuable than they are. The agency recognizes that consumer perceptions and desires, along with ingredient and processing technologies, have changed considerably since these regulations were promulgated. The agency believes that it is appropriate to reevaluate the prohibition on the use of flavors that imitate chocolate, milk, or butter in cacao products. Therefore, FDA invites comment on the need to maintain or revise these prohibitions.

For example, FDA asks if it would be desirable to provide chocolate manufacturers with the option, once they have met the minimum requirements for milkfat content in milk chocolate, to produce a richer tasting chocolate by means of either the addition of more milkfat or by the addition of milk-like flavors. Alternatively, some products (e.g., skim milk chocolate) have a maximum milkfat content that cannot be exceeded. The agency asks if it would be appropriate to allow manufacturers to create richer tasting versions of these products by means of the addition of flavors that resemble milk or cream.

The agency also notes that all cacao product standards that provide for the optional use of natural and artificial flavorings prohibit the use of flavors that imitate chocolate, milk, or butter. Comments should be specific with regard to which prohibitions are (or are not) necessary. For example, would it make a difference if the flavoring resembled milk as opposed to chocolate, or if the flavoring was dairy- or cacao-derived as opposed to a natural or artificial flavoring not derived from dairy or cacao sources? Comments should also address whether the use of such flavorings might be more appropriate in some types of cacao products compared to other products. Comments should provide a substantive basis for any suggested changes.

The agency also invites comment on appropriate labeling to identify cacao products that contain natural or artificial milk, butter, or chocolate flavors. The agency notes that § 101.22 (21 CFR 101.22) provides that nonstandardized foods containing natural or artificial flavors that reinforce the characterizing flavor of the food must be labeled "flavored" or "artificially flavored," as appropriate. Finally, FDA invites comment on whether amending or deleting these prohibitions would promote honesty and fair dealing in the interest of consumers. The agency advised that, should it receive substantive comments that support changing the standards, this action will be addressed in a future rulemaking.

3. Alternative Forms of Coatings

In its comments on the proposal, CMA explained that the term "coatings" refers not only to those compounds that are used to enrobe other articles but also to compounds that are deposited or molded into shapes, such as chips, morsels, drops, and bunnies. The comment suggested that the coatings standards could be further amended to provide that the name of the food is, e.g., "chocolate flavored _____," the blank being filled in with the name of the article produced by the compound, e.g., drop, chip, or morsel.

The agency believes that it would be inappropriate to codify terms such as "chocolate flavored chips" or "chocolate flavored morsels" that could also describe a wide variety of nonstandardized foods. Although the foods described in §§ 163.150, 163.153, and 163.155 may be used in applications other than for enrobing, FDA advises that the current coatings standards only identify foods that are used to coat or enrobe other articles. The standards do not provide for additional applications such as shaping or molding.

The agency invites comment on the desirability of expanding the coverage of the standards in §§ 163.150, 163.153, and 163.155 to apply not only to material used for enrobing but also to the solid or semiplastic food that may be molded or deposited in a specific form (e.g., chips or bunnies). Comments should include suggested nomenclature that accurately describes the standardized food in its various forms.

4. Frozen Dessert Coatings Standard

A trade association representing ice cream manufacturers suggested that the revised cacao products standards include provisions for "frozen dessert coatings." It also suggested that these revised standards permit the use of safe and suitable vegetable-derived oils, fats, and stearins with no specific limitations on use levels, thereby providing for frozen dessert coatings that possess a wide range of desired physical properties acceptable to the consumer.

The agency notes that the proposed standards for sweet cocoa and vegetable fat coating (§ 163.150), sweet chocolate and vegetable fat coating (§ 163.153), and milk chocolate and vegetable fat coating (§ 163.155) provide for the use of safe and suitable vegetable derived oils, fats, and stearins. The melting point restrictions have also been tentatively removed in proposed §§ 163.150, 163.153, and 163.155. Thus, frozen dessert coatings could be produced within the parameters of the standards as proposed. If the trade association believes that there is a need for a separate standard for frozen dessert

coating, FDA suggests that the trade association submit a citizen petition in the form set out in § 10.30, according to the procedure for establishing a food standard stated in § 130.5 (21 CFR 130.5).

5. The Need to Maintain Standards for Coatings Made With Vegetable Fat

FDA notes that the standards in §§ 163.150, 163.153, and 163.155 were promulgated to define products that resemble chocolate in taste and appearance except that vegetable fats are added in lieu of additional cacao fat. Such products were developed to overcome the merchandizing problems associated with the melting of chocolate coatings and to formulate coatings for specific needs. FDA is aware that advances in the technology for food fats have resulted in various fat formulations and processing techniques that will allow the production of coatings with a wide range of physical properties.

In the initial proposal in this rulemaking (54 FR 3615 at 3618), FDA stated that the melting point restrictions in §§ 163.150, 163.153, and 163.155 are outdated and, therefore, proposed to remove them. The agency also proposed (54 FR 3615 at 3617) to provide for the optional use of chocolate liquor in *Section 163.150 Sweet Cocoa and Vegetable Fat (Other Than Cacao Fat) Coating* and to redesignate that standard as *Section 163.150 Chocolate Flavor Coating*.

As discussed above, FDA is proposing in this document to withdraw that portion of its proposal that would have designated *Section 163.150 as Chocolate Flavor Coating* and is tentatively redesignating *Section 163.150 as Sweet Cocoa and Vegetable Fat Coating*.

FDA is also proposing to expand the coverage of § 163.155 (milk chocolate and vegetable fat coating) to include skim milk chocolate coating and to provide for the use of safe and suitable dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers.

The agency notes that the desired range of physical properties in the coatings subject to these standards (and the ability to achieve those properties) is very different now than when the standards were promulgated. This change is reflected by the relatively high proportion of comments that proposed additional amendments to the standards for chocolate coatings made with vegetable fat. Many of these comments requested changes in nomenclature or minimum content requirements that the agency believes are inappropriate, either within the context of a specific standard (e.g., eliminating the milkfat requirement for milk chocolate and vegetable fat coating) or for standardized foods generally. As previously mentioned (section II.A.8.), FDA believes that the standards for sweet chocolate and vegetable fat coating (§ 163.153) and milk chocolate and vegetable fat coating (§ 163.155) must be consistent with the minimum content requirements of the sweet chocolate (§ 163.123) and milk chocolate (§ 163.130) standards on which they are based.

FDA also notes that CMA maintained in its comment that a wide variety of coatings containing vegetable fat and the minimum nonfat cocoa solids content are known in the trade as "chocolate flavored" or "milk chocolate flavored coatings." The agency advises that these terms refer to nonstandardized foods and, as such, their use is not provided for in §§ 163.150(c), 163.153(c), and 163.155(c).

Because of the number of issues raised, and the possibility of future rulemaking with respect to these standards, FDA believes that it is appropriate to invite comment on whether it is necessary to retain standards of identity for "sweet cocoa and vegetable fat coating," "sweet chocolate and vegetable fat coating," and "milk chocolate and vegetable fat coating." Comments should be specific with regard to which standards are (or are not) necessary. Comments should provide a substantive basis for any suggested changes. Comments in favor of retaining or amending the standards for these compound coatings should include suggested nomenclature that accurately describes the nature of the food. Comments should also address how such changes will promote honesty and fair dealing in the interest of consumers. The agency advises that, should it receive comments that support substantive changes in the standards for chocolate coatings made with vegetable fat, these comments will be addressed in a future rulemaking.

6. White Chocolate Standard

A letter from a chocolate manufacturer suggested that a standard of identity be established for "white chocolate," a product that would contain cocoa butter, milk solids, butterfat, and sucrose. In support of the proposed action, the firm stated that the absence of a standard of identity for white chocolate has proven to be a limiting factor in the introduction of new products to meet consumer demand. The firm also noted the likelihood of consumer confusion over the ingredient content of products commonly referred to as "white chocolate" which may or may not contain any cacao derived ingredients. The comment observed that, in the absence of a standard for the product, the term "white chocolate" would be prohibited under the present standards of identity in 21 CFR part 163. This fact, it contended, has proven to be a deterrent to companies developing and marketing the product. When such products have been introduced, the companies have been forced to use fanciful names to avoid the labeling constraints in the standards.

FDA recognizes the dilemma faced by manufacturers of confections made from cacao fat, milk solids, sucrose, and other ingredients, but with no nonfat cacao solids, which may be labeled in other countries as "white chocolate." However, this matter is outside the scope of this tentative final rule and represents a new and separate action. The agency suggests that the manufacturer submit a citizen petition in the form set out in § 10.30 according to the procedure for establishing a food standard in § 130.5. FDA notes that the comment contained language for the proposed standard.

The agency also advises that it has granted a temporary permit (56 FR 46798, September 16, 1991) to allow market testing of two white chocolate confections. These products deviate from standardized chocolate products in that they are prepared without the nonfat components of the ground cacao nibs but contain the fat (cacao butter) expressed from the nibs.

7. Ingredient Labeling

FDA proposed in this rulemaking to require label declaration of all optional ingredients used in cacao products. There were no objections to this proposal. Subsequently, in response to the statutory changes enacted in the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), FDA issued a proposal in the **Federal Register** of June 21, 1991 (56 FR 28592), that would require label declaration of all ingredients used in standardized foods, including cacao products. This proposal supersedes the January 25, 1989, proposal with respect to ingredient labeling of cacao products. Therefore, FDA is not taking any action on ingredient labeling for cacao products in this rulemaking.

The June 21, 1991, proposal was issued, in part, to implement the provisions in section 7 of the 1990 amendments, which pertain to ingredient labeling. Section 7(1) removed the portion of section 403(i) of the act that excluded mandatory ingredients and certain optional ingredients used in standardized foods

from the requirement for label declaration. Thus, FDA proposed to amend part 130 to require label declaration of all ingredients of standardized foods. In addition, FDA proposed to amend each of the applicable cacao product standards by either changing the existing language for label declaration of ingredients, or by adding a new paragraph, to require that each of the ingredients used in the food be declared on the label in accordance with the applicable sections of parts 101 and 130. Any comments concerning label declaration of ingredients in cacao products received in response to the ingredient labeling proposal will be considered within the context of that rulemaking.

The June 21, 1991, ingredient labaeling proposal was based on the existing a cacao products standards. FDA will make any necessary editorial changes (e.g., in response to paragraph redesignations) in the final rule on ingredient labeling. The agency expects that the final rule based on this tentative final rule will be issued before the final rule on the ingredient labeling proposal.

In the **Federal Register** of November 27, 1991 (56 FR 60877), the agency announced changes in the statutory effective date of the mandatory ingredient labeling provisions for standardized foods, including cacao products. A technical amendment to the 1990 amendments was enacted on August 17, 1991, to delay the effective date of the new ingredient labeling requirements. This amendment provides that labels that were printed before July 1, 1991, and attached to food before May 8, 1993, will not be subject to the mandatory ingredient labeling requirements of section 7(1) of the 1990 amendments. In other words, any cacao products bearing labels printed before July 1, 1991 (and attached before May 8, 1993), need only comply with the ingredient labeling requirements in the existing standards of identity. The technical amendment further provides that labels printed after July 1, 1991, and attached to food before May 8, 1993, are in compliance with law if they conform to the requirements of the June 21, 1991, ingredient labeling proposal or with section 7(1) of the 1990 amendments. Labels attached to food after May 8, 1993, will be subject to section 7(1) of the 1990 amendments.

8. Lowfat Cocoa

In response to the 1990 amendment, FDA published a proposed rule (56 FR 60478, November 27, 1991) that would define nutrient content claims for the fat, fatty acid, and cholesterol content of foods. In that document, FDA proposed that the term "lowfat" may be used to describe a food that contains 3 grams (g) or less fat per serving and 3 g or less fat per 100 g food. The standard of identity for lowfat cocoa (§ 163.114) states that the product contains less than 10 percent by weight of cacao fat. Thus, if the November 27, 1991 proposal is finalized as proposed, the standard for lowfat cocoa (§ 163.114) would not be consistent with the nutrient content claims regulations and could contribute to consumer confusion about the meaning of the term "lowfat."

Section 403(r)(5)(C) of the act, which was added by the 1990 amendments, specifies that nutrient content claims required by a standard of identity do not have to be defined by regulation or comply with the definitions that FDA does adopt. However, the agency believes that inconsistent use of the same term (e.g., lowfat) on various product could mislead and confuse consumers. Thus, the agency is compelled to strive for consistency in the use of nutrient content claims and intends to address their use in those standards that are being amended or updated.

FDA believes that it would be inappropriate to amend the standard for lowfat cocoa in § 163.114 before final regulations for nutrient content claims are established. However, if the nutrient content claims proposals are finalized as proposed, FDA may initiate rulemaking to revise either the nomenclature for lowfat cocoa or the cacao fat content for the food so as to conform to the requirements of the nutrient content claims regulations. FDA invites comment on alternative names for lowfat cocoa in § 163.114. The agency also invites comment on the need to retain the existing cacao fat content requirement versus establishing new requirements (e.g., 3 percent cacao fat as the maximum cacao fat content in lowfat cocoa).

The standard of identity for breakfast cocoa (§ 163.112) states that the product contains not less than 22 percent by weight of cacao fat. The standard for cocoa (§ 163.113) states that the product contains less than 22 percent but not less than 10 percent by weight of cacao fat. The standards also provide for the use of "high fat cocoa" and "medium fat cocoa" as alternative names for breakfast cocoa and cocoa, respectively. The agency advises that it proposed (56 FR 60421, November 27, 1991) that the taerm "high" could be used to emphasize the presence of a certain nutrient when a food contains 20 percent or more of the Reference Daily Intake or Daily Reference Value for that nutrient. FDA believes that the use of the term "high" provides an opportunity to call attention to the positive aspects of the nutrient content of a food and to aid consumers in planning more healthful diets. The agency did not consider the need to provide for the use of the term "high" to describe fat content. In addition, FDA has not provided for the use of the term "medium" to describe nutrient content.

FDA believes it would be inappropriate to amend the cocoa standards in §§ 163.112, 163.113, and 163.114 before final regulations for nutrient content claims are established. However, if the nutrient content claims proposals are finalized as proposd, FDA may initiate rulemaking to revise the nomenclature or cacao fat content requirements, or both, for standardized cocoas to conform to the requirements of the new regulations.

FDA invites comment on: (1) The need to retain "high fat cocoa" and "medium fat cocoa" as alternative names for breadfast cocoa and cocoa in §§ 163.112 and 163.113, respectively; (2) the need to maintain three separate standards for cocoa products; (3) the need to retain the existing cacao fat content requirements versus establishing new requirements, such as, 3 percent cacao fat as the maximum cacao fat content requirement in lowfat cocoa.

III. Economic Impact

Because this proceeding no longer involves formal rulemaking, the agency has conducted an economic assessment according to Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601). Executive Order 12291 compels Federal agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Because no marginal costs are expected to be incurred, the agency finds that this tentative final rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), in the proposal, FDA announced its tentative determination that this action will not have a significant adverse impact on a substantial number of small businesses. The agency did not receive any comments on this tentative determination.

The costs arising from this regulation are the economic opportunity costs arising from separate decisions that the agency must make. One option would be no action, which would mean that manufacturers of cacao products would continue to produce products that

conform to the existing standards, regardless of the availability of new ingredients or technologies. The second option would be to eliminate all cacao product standards which is not practicable at this time. The cacao standards have provided a benchmark of quality which has historically served industry and consumers. Additionally, under existing Federal laws (the 1990 amendments), removal of Federal food standards would allow each State to establish their own food standards which could inhibit interstate trade. The third option, amending the cacao products standards as proposed, would increase flexibility and allow for innovation.

The benefits of this regulation are to allow manufacturers to take advantage of new ingredients and technologies and to develop a wider variety of cacao products with a broad range of physical characteristics. Consumers will benefit from increased product choices and, potentially, lower manufacturing costs. Increased flexibility (e.g., providing for functional group designations rather than specifically listing ingredients in the standards) also reduces the costs associated with updating the standards to keep current with technology.

Because firms will not be required to change existing labels, FDA finds that there are no marginal costs of this regulation. This action is also expected to facilitate international trade by providing for products with a wider range of desired characteristics and by making the standards more consistent with the Codex International Standards for Chocolate and for Cocoa Powders (Cocoas) and Dry Cocoa—Sugar Mixtures.

IV. Environmental Impact

As stated in the January 25, 1989, proposal, the agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. FDA has not received any new information or comments that would alter its previous determination.

V. Request for Comments

Interested persons may, on or before July 6, 1992, submit to the Dockets Management Branch (address above) written comments regarding section II.A. of this tentative final rule, and by August 4, 1992, written comments on section II.B. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 163

Cacao products, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 163 be revised to read as follows:

PART 163—CACAO PRODUCTS

Subpart A—General Provisions

Sec.
163.5 Methods of analysis.

Subpart B—Requirements for Specific Standardized Cacao Products

163.110 Cacao nibs.
163.111 Chocolate liquor.
163.112 Breakfast cocoa.
163.113 Cocoa.
163.114 Lowfat cocoa.
163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.
163.123 Sweet chocolate.
163.130 Milk chocolate.
163.135 Buttermilk chocolate.
163.140 Skim milk chocolate.
163.145 Mixed dairy product chocolates.
163.150 Sweet cocoa and vegetable fat coating.
163.153 Sweet chocolate and vegetable fat coating.
163.155 Milk chocolate and vegetable fat coating.

Authority: Secs. 201, 301, 401, 403, 403A, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 341, 343, 348, 371, 376).

Subpart A—General Provisions

§ 163.5 Methods of analysis.

Shell and cacao fat content in cacao products shall be determined by the following methods of analysis, prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists, 2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(a) Shell content—12th ed. (1975), sections 13.010–13.014, under the heading "Shell in Cacao Nibs—Official Final Action," pp. 208–210.

(b) Fat content—15th ed. (1990), methods 963.15, under the heading "Fat in Cacao Products—Soxhlet Extraction Method—Final Action, 1973," pp. 770–771.

Subpart B—Requirements for Specific Standardized Cacao Products

§ 163.110 Cacao nibs.

(a) *Description.* (a) Cacao nibs is the food prepared by removing the shell from cured, cleaned, dried, and cracked cacao beans. The cacao shell content is not more than 1.75 percent by weight, calculated on an alkali-free basis, as determined by the method prescribed in § 163.5(a).

(2) The cacao nibs, or the cacao beans from which they are prepared, may be processed by heating with one or more of the optional alkali ingredients specified in paragraph (b)(1) of this section.

(3) The cacao nibs, or the cacao beans from which they are prepared, as appropriate, may be further processed with one or more of the optional neutralizing agents specified in paragraph (b)(2) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Alkali ingredients. Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, added as such, or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such, or before shelling from the cacao beans, the total quantity of alkali ingredients used is not greater in neutralizing value (calcualted form the respective combined weights of the alkali ingredients used) than the neutralizing value of 3 parts by weight of anhydrous potassium carbonate.

(2) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, added as such, or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such, or before shelling from the cacao benas, the total quantity of phosphoric acid used is not greater than 0.5 parts by weight, expressed as P_2O_5. The total amount, singly or in combination, of citric acid and *L*-tartaric acid is not greater than 1.0 part by weight.

(c) *Nomenclature.* The name of the food is "cacao nibs", "cocoa nibs", or "cracked cocoa".

(1) When the cacao nibs, or the cacao beans from which they are prepared, are processed with alkali ingredients specified in paragraph (b)(1) of this section, the name of the food shall be accompanied by the statement

"Processed with alkali" or "Processed ____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When the cacao nibs, or the cacao beans from which they are parpared, are processed with neutralizing agents specified in paragraph (b)(2) of this section, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ____", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in paragraphs (c)(1) and (c)(2) of this section shall precede or follow the name without intervening printed or graphic matter.

§ 163.111 Chocolate liquor.

(a) *Description.* (1) Chocolate liquor is the solid or semiplastic food prepared by finely grinding cacao nibs. The fat content of the food may be adjusted by adding one or more of the optional ingredients specified in paragraph (b)(1) of this section to the cacao nibs. Chocolate liquor contains not less than 50 percent nor more than 60 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(2) of this section may be used as such in the preparation of chocolate liquor under the conditions and limitations specified in § 163.110(b)(1).

(3) Optional neutralizing agents specified in paragraph (b)(3) of this section may be used as such in the preparation of the chocolate liquor under the conditions and limitations specified in § 163.110(b)(2).

(4) Chocolate liquor may be spiced, flavored, or seasoned with one or more of the ingredients listed in paragraph (b)(4), (b)(5), and (b)(6) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat and cocoas (breakfast cocoa, cocoa, or lowfat cocoa);

(2) Alkali ingredients—Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, added as such, or in aqueous solution;

(3) Neutralizing agents—Phosphoric acid, citric acid, and *L*-tartaric acid, added as such or in aqueous solution;

(4) Spices, natural and artificial flavorings, gound whole nut meats, ground coffee, dried malted cereal extract, and other seasonings that do not either singularly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(5) Butter or milkfat; or

(6) Salt.

(c) *Nomenclature.* The name of the food is "chocolate liquor", "chocolate", "unsweetened chocolate", "bitter chocolate", "baking chocolate", "cooking chocolate", "chocolate coating", or "unsweetened chocolate coating".

(1) When any optional alkali ingredient specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with alkali" or "Processed with ____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(3) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ____", the blank being filled in with the common or usual name of the specific neutralizing ingredient used in the food.

(3) When one or more Spices, flavorings, or seasonings specified in paragraphs (b)(4) and (b)(5) of this section is used in the chocolate liquor, the label shall bear an appropriate statement, e.g., "spice added", "Flavored with ____", "Seasoned with ____", or "With ____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this section, showing optional ingredients used, shall precede or follow the name without intervening printed or graphic matter.

§ 163.112 Breakfast cocoa.

(a) *Description.* (1) Breakfast cocoa is the food prepared by pulverizing the material remaining after part of the cocoa fat has been removed from cocao nibs. Breakfast cocoa contains not less than 22 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(1) of this section may be used as such in the preparation of breakfast cocoa under the conditions and limitations specified in § 163.110(b)(1).

(3) Optional neutralizing agents specified in paragraph (b)(2) of this section may be used as such in the preparation of the breakfast cocoa under the conditions and limitations specified in § 163.110(b)(2).

(4) Braeakfast cocoa may be spiced, flavored, or seasoned with one or more of the ingredients listed in paragraphs (b)(3) and (b)(4) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Alkali ingredients—Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, used as such or in aqueous solution;

(2) Neutralizing agents—Phosphoric acid, citric acid, and *L*-tartaric acid, used as such or in aqueous solution;

(3) Spices, natural and artificial flavorings, and other seasonings that do not either singularly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter; or

(4) Salt.

(c) *Nomenclature.* The name of the food is "breakfast cocoa", or "high fat cocoa".

(1) When any optional alkali ingredient specified in paragraph (b)(1) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompained by the statement "Processed with alkali" or "Processed with ____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompained by the statement "Processed with neutralizing agent" or "Processed with ____", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section is used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with ____", or

"With ____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow the name without intervening printed or graphic matter.

§ 163.113 Cocoa.

(a) *Description.* Cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 22 percent, but not less than 10 percent by weight, as determined by the method prescribed in § 163.5(b).

(b) *Nomenclature.* The name of the food in "cocoa" or "medium fat cocoa".

§ 163.114 Lowfat cocoa.

(a) *Description.* Lowfat cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 10 percent by weight, as determined by the method prescribed in § 163.5(b).

(b) *Nomenclature.* The name of the food is "lowfat cocoa".

§ 163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.

(a) *Description.* Cocoa with dioctyl sodium sulfosuccinate for manufacturing is the food additive complying with the provisions precribed in § 172.520 of this chapter. It conforms to the definition and standard of identity for breadkfast cocoa in § 163.112, or for cocoa in § 163.113, or for lowfat cocoa in § 163.114, except that the food additive contains dioctyl sodium sulfosuccinate (complying with the requirements of § 172.810 of this chapter, including the limit of not more than 0.4 percent by weight of the finished food additive).

(b) *Nomenclature.* The name of the food additive is "cocoa with dioctyl sodium sulfosuccinate for manufacturing" to which is added any modifier of the word "cocoa" required by the definition and standard of identity to which the food additive otherwise conforms. When the food additive is used in a fabricated food, the phrase "for manufacturing" may be omitted from any declaration of ingredients required under § 101.4 of this chapter.

163.123 Sweet chocolate.

(a) *Description.* (1) Sweet chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more optional nutritive carbohydrate sweeteners, and may contain one or more of the other optional ingredients specified in paragraph (b) of this section.

(2) Sweet chocolate contains not less than 15 percent by weight of chocolate liquor complying with the requirements of § 163.111, as calculated by subtracting from the weight of the chocolate liquor used the weight of the cacao fat therein and the weights therein of any alkali, neutralizing, and seasoning ingredients, and multiplying the remainder by 2.2, dividing the result by the weight of the finished sweet chocolate, and multiplying the quotient by 100. The finsished sweet chocolate, contains less than 12 percent by weight of total milk solids.

(3) Semisweet chocolate or bittersweet chocolate is sweet chocolate that contains not less than 35 percent by weight of chocolate liquor complying with the requirements of § 163.111 and calculated in the same manner as set forth in paragraph (a)(2) of this section.

(4) Cacao fat is determined by the method prescribed in § 163.5(b).

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat;

(2) Nutritive carbohydrate sweeteners;

(3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasoning that do not either singularly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(4) Dairy ingredients:

(i) Cream, milkfat, butter;

(ii) Milk, concentrated milk, evaported milk, sweetened condensed milk, dried milk;

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk;

(iv) Concentrated buttermilk, dried buttermilk; and

(v) Malted milk; or

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* The name of the food is "sweet chocolate", "sweet chocolate coating", "semisweet chocolate", "semisweet chocolate coating", "bittersweet chocolate", or "bittersweet chocolate coating", as appropriate.

(1) When optional alkalizing ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate was prepared, the label shall bear the statement "Processed with alkali" or "Processed with _____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents" or "Processed with _____", the blank being filled in with the common or usual name or usual name of the specific neutralizing agency used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section is used in the breadkfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added," "Flavored with _____", or "With _____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

§ 163.130 Milk chocolate.

(a) *Description.* (1) Milk chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more of the optional dairy ingredients and one or more optional nutritive carbohydrate sweeteners, and may contain one or more of the other optional ingredients specified in paragraph (b) of this section.

(2) Milk chocolate contains not less than 10 percent by weight of chocolate liquor complying with the requirements of § 163.111 as calculated by subtracting from the weight of the chocolate liquor

used the weight of cacao fat therein and the weights of alkali, neutralizing and seasoning ingredients, multiplying the remainder by 2.2, dividing the result by the weight of the finished milk chocolate, and multiplying the quotient by 100. The finished milk chocolate contains not less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of total milk solids.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat;

(2) Nutritive carbohydrate sweeteners;

(3) Spices, natural and artifical flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singularly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(4) Dairy ingredients:

(i) Cream, milkfat, butter;

(ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk; and

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk; or

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* The name of the food is "milk chocolate" or "milk chocolate coating".

(1) When optional alkali ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with alkali" or "Processed with ____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents" or "Processed with ____", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section is used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with ____", or "With ____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

§ 163.135 Buttermilk chocolate.

(a) *Description.* Buttermilk chocolate is the food that conforms to the standard of identity, and is subject to the labeling requirements, for milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients are limited to sweet cream buttermilk, concentrated sweet cream buttermilk, dried sweet cream buttermilk, and any combination of these.

(2) The finished buttermilk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of sweet cream buttermilk solids.

(b) *Nomenclature.* The name of the food is "buttermilk chocolate", "buttermilk chocolate coating", "sweet buttermilk chocolate", "sweet buttermilk chocolate coating", "sweet cream buttermilk chocolate", or "sweet cream buttermilk chocolate coating".

§ 163.140 Skim milk chocolate.

(a) *Description.* Skim milk chocolate is the food that conforms to the standard of identity and is subject to the labeling requirements of milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients are limited to skim milk, evaporated skim milk, concentrated skim milk, sweetened condensed skim milk, nonfat dry milk, and any combination of these.

(2) The finished skim milk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of skim milk solids.

(b) *Nomenclature.* The name of the food is "skim milk chocolate", "skim milk chocolate coating", "sweet skim milk chocolate", or "sweet skim milk chocolate coating".

§ 163.145 Mixed dairy product chocolates.

(a) *Description.* Mixed dairy product chocolates are the foods that conform to the standard of identity, and are subject to the labeling requirements, for milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients for each of the foods are mixtures of two or more of the following:

(i) Any dairy ingredients specified in §163.130;

(ii) Any dairy ingredients specified in §163.135;

(iii) Any dairy ingredients specified in §163.140; or

(iv) Malted milk; and

(2) The finished mixed dairy product chocolates shall contain not less than 12 percent by weight of total milk solids derived from those dairy products referred to in paragraph (a) of this section and may contain less than 3.39 percent by weight of milkfat. The quantity of each component used in any such mixture is such that no component contributes less than one-third of the weight of the total milk solids contributed by that component which is used in the largest proportion.

(b) *Nomenclature.* The name of the food is "chocolate" or "chocolate coating", preceded by the designation of the type of milk ingredients used as prescribed in paragraph (a) of this section in the order of predominance by weight, e.g., "milk and skim milk chocolate".

§163.150 Sweet cocoa and vegetable fat coating.

(a) *Description.* Sweet cocoa and vegetable fat coating is the food that conforms to the standard of identity, and is subject to the labeling requirements, for sweet chocolate in §163.123, except that:

(1) In the preparation of the product, cocoa, or a mixture of cocoa and chocolate liquor is used in such quantity that the finished food contains not less than 6.8 percent by weight of nonfat cacao solids, calculated on a moisture-free basis;

(2) One or more optional ingredients specified in paragraph (b) of this section are used: and

(3) The requirement in §163.123(a)(2) limiting the total milk solids content to less than 12 percent by weight does not apply.

(b) *Optional ingredients.* (1) Breakfast cocoa, cocoa, lowfat cocoa;

(2) Chocolate liquor;

(3) Safe and suitable vegetable derived fats, oils, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated;

(4) Safe and suitable dairy-derived ingredients; and

(5) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "sweet cocoa and vegetable fat

coating." Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food e.g., "sweet cocoa and ____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

§ 163.153 Sweet chocolate and vegetable fat coating.

(a) *Description.* Sweet chocolate and vegetable fat coating is the food that conforms to the standard of identity, and is subject to the labeling requirements, for sweet chocolate in § 163.123, except that one or more optional ingredients specified in paragraph (b) of this section are used. Compliance with the requirement in § 163.123(a)(2) limiting the total milk solids content to less than 12 percent by weight shall be calculated by including only those dairy ingredients referred to in § 163.123(b)(4).

(b) *Optional ingredients.* (1) Safe and suitable vegetable derived fats, oils, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated;

(2) Safe and suitable dairy-derived ingredients; and

(3) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "sweet chocolate and vegetable fat coating." Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food e.g., "sweet chocolate and ____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

§ 163.155 Milk chocolate and vegetable fat coating.

(a) *Description.* Milk chocolate and vegetable fat coating is the food that conforms to the standard of identity, and is subject to the labeling requirements, for milk chocolate in § 163.130 or skim milk chocolate in § 163.140, except that one or more optional ingredients specified in paragraph (b) of this section are used. Compliance with the requirement in § 163.130(a)(2) that the product contains not less than 12 percent by weight of nonfat milk solids shall be calculated using only those dairy ingredients referred to in § 163.130(b)(4).

(b) *Optional ingredients.* (1) Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The oils, fats, and stearins may be hydrogenated;

(2) Safe and suitable dairy-derived ingredients; and

(3) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "milk chocolate and vegetable fat coating" or "skim milk chocolate and vegetable fat coating," as appropriate. Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food e.g., "milk chocolate and ____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

Dated: May 8, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-13032 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, and 268

[FRL 4137-4]

Public Meeting on the Hazardous Waste Identification Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: EPA's Office of Solid Waste will conduct a Roundtable Discussion of the issues raised by its recently proposed Hazardous Waste Identification Rule (57 FR 21450, May 20, 1992). The proposed rule contained a number of different options for exempting low-toxicity wastes under Subtitle C of RCRA. The discussion will include: The advantages and disadvantages of the alternative conceptual approaches; EPA's specific information needs; and the utility of additional Roundtable Discussions.

DATES: The meeting will be held on June 15, 1992, and will begin at 8:30 a.m., and end at 5 p.m.

ADDRESSES: The meeting will be held at the Washington Hilton, 1919 Connecticut Avenue, NW., Washington, DC, 20009, (202) 483-3000.

FOR MORE INFORMATION CONTACT: For information on substantive matters, please contact William A. Collins, Jr., of the Waste Identification Branch, at (202) 260-4791. For information on administrative matters, or to advise of your intent to attend, please contact Michael Young or Denise Madigan, EPA's Roundtable Co-Conveners at (212) 725-8160, and (202) 429-8782, respectively.

Dated: May 29, 1992.

Deborah Dalton,

Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 92-13099 Filed 6-4-92; 8:45 am]

BILLING CODE 6560-60-M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[Docket No. 92-30]

Licensing of Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations in part 510 which govern the licensing, duties and responsibilities of ocean freight forwarders. The intent and purpose of the proposed amendments are to reduce financial and regulatory burdens on the ocean freight forwarder industry. The proposed rule would: (1) Remove the requirement that prior Commission approval be obtained for organizational changes involving the acquisition of one or more additional licensees by a licensee; (2) permit payment by personal check for Commission approval of organizational changes; and (3) permit the licensee's name to appear before or after the shipper's name when the licensee's name appears in the shipper identification box on the bill of lading. (The proposed rule also makes technical changes to reflect the redesignation of the Commission's Bureau of Tariffs to the Bureau of Tariffs, Certification and Licensing.)

DATES: Comments due July 6, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT: Seymour Glanzer, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5783.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission's ("Commission") regulations and procedures governing the licensing,

duties and responsibilities of ocean freight forwarders are set forth in 46 CFR part 510. The current regulations in part 510 were issued in 1984 to implement section 19 of the Shipping Act of 1984, 46 U.S.C. app. 1718, the successor provision to former section 44 of the Shipping Act, 1916, 46 U.S.C. 841b. Section 44 was enacted to correct abuses and inefficiencies in the ocean freight forwarder industry by requiring ocean freight forwarders to be licensed and regulated by the Commission. The 1984 regulations altered and streamlined the regulatory environment of the freight forwarding industry.

As a result of further experience with the regulations, the Commission has determined that certain revisions might be made to reduce the financial and regulatory burden on the ocean freight forwarder industry without loss of regulatory effectiveness. Accordingly, the following changes are proposed:

1. Approval for the Acquisition of One or More Additional Licensees by a Licensee

Section 510.19(a)(5) [1] requires prior approval of the Commission for a change, in an existing licensee's organization, involving the acquisition of one or more additional licensees. The Commission proposes to remove this requirement. Although prior approval for the acquisition of additional licensees will no longer be required, the Commission will require that the licensee notify the Commission of any such acquisition. Therefore, a clarifying paragraph to this effect will be added to § 510.19.

Payment of Application Fees for Approvals

Section 510.19(e) requires that the $100 processing fee for approval of organizational changes specified in paragraph (a) of this section be paid by money order, certified check, or cashier's check.[2] It is proposed that the method of payment be expanded to include payment by personal check. This change is intended to provide greater flexibility. However, should the personal check not be honored when presented for payment, processing of the approval of the status change or license transfer would be suspended until the processing fee is paid.

3. Disclosure of Principal

Section 510.23(a) [3] permits the licensee's name to appear in the shipper's identification box on the bill of lading, but suggests that the licensee's name may appear only after the shipper's name. This regulation is intended to ensure that the identity of the actual shipper be disclosed. Therefore, the position of the licensee's name becomes insignificant when the licensee is identified as the shipper's agent. Accordingly, it is proposed that the licensee's name be allowed to appear before or after the shipper's name in the shipper's box, provided the licensee is identified therein as the shipper's agent.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Proposed Rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

This proposed rule does not contain any collection of information requirements that require submission to the Office of Management and Budget ("OMB"). Therefore, OMB review is not required.

List of Subjects in 46 CFR Part 510

Fees and user charges, Licensing, Ocean freight forwarders, Reporting and record keeping requirements, Surety bonds.

Therefore, pursuant to 5 U.S.C. 553 and sections 17 and 19 of the Shipping Act of 1984, 46 U.S.C. app. 1716 and 1718, part 510 of title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 510—[AMENDED]

1. The authority citation for part 510 continues to read:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 853a.

§ 510.19 [Amended]

2. Section 510.19 is amended by deleting paragraph (a)(5) and by redesignating paragraphs (a)(6) and (7) as (a)(5) and (a)(6), respectively.

3. Section 510.19 is also amended by revising paragraph (e) by adding a new paragraph (f) to read as follows:

§ 510.19 Changes in organization

* * * * *

(e) *Application form and fee.* Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, on Form FMC–18, Rev., together with a processing fee of $100, made payable by money order, certified check, cashier's check or personal check to the Federal Maritime Commission. Should a personal check not be honored when presented for payment the processing of the application shall be suspended until the processing fee is paid.

(f) *Acquisition of one or more additional licensees.* In the event a licensee acquires one or more additional licensees, for the purpose of merger, consolidation, or control, the acquiring licensee shall advise the Commission of such change within thirty days after such change occurs by submitting in duplicate, an amended Form FMC–18, Rev. No application fee is required when reporting this change.

5. Section 510.23 is amended by revising paragraph (a) to read as follows:

[1] Section 510.19 Changes in organization:

(a) The following changes in an existing licensee's organization require prior approval of the Commission:

* * * * *

(5) Acquisition of one or more additional licensees, whether for the purposes of merger, consolidation, or control.

[2] Section 510.19(e) Application form and fee:

Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs (now the Bureau of Tariffs, Certification and Licensing), Federal Maritime Commission, on Form FMC–18, Rev., together with a processing fee of $100, made payable by money order, certified check, or cashier's check to the Federal Maritime Commission.

[3] Section 510.23(a) Disclosure of principal:

The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensee's name may appear after the name of the shipper, but the licensee must be identified as the shipper's agent.

§ 510.23. Forwarder and carrier; compensation.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensee's name may appear with the name of the shipper, but the licensee must be identified as the shipper's agent.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-13232 Filed 6-4-92; 8:45 am]

BILLING CODE 6730-01-M

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46 CFR Part 525 and 530

[Docket No. 92-29]

Notice of Inquiry; Free Time and Demurrage Charges on Import Property at the Port of New York; Truck Detention at the Port of New York

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission solicits public comment on whether its current regulations concerning free time and demurrage charges on import property and truck detention at the Port of New York are still necessary.

DATE: Comments due July 6, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: Parts 525 and 530 were promulgated pursuant to section 17 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 816, which authorizes the Federal Maritime Commission ("Commission") to prescribe and order enforced just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property. The Commission continued parts 525 and 530 when Congress amended the 1916 Act by enacting the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* A review of Parts 525 and 530 brings into question whether they remain necessary.

Part 525

Part 525 (formerly part 526) defines "adequate" free time for import property at New York to be five days, and prescribes that free time for such property shall be not less than five days, absent special circumstances. The rule also prescribes the method of assessing demurrage charges.

Part 525 was an outgrowth of certain traffic congestion conditions at the Port of New York ("Port"). It is applicable only to general cargo moving through the Port. It is possible that part 525 may have outlived its usefulness. The Commission last reviewed part 525 in Docket No. 73-55, Uniform Rules and Regulations Governing Free Time on Import Containerized Cargo at the Port of New York, 20 F.M.C. 688, 679 (1978) [1]. With the passage of time, the congestion conditions which led to the original issuance of the rule may have changed. Furthermore, because so much cargo is now containerized and not covered by this regulation, it appears that there may be little justification for retaining the present rules. The industry has not recently reported any problems to the Commission related to congestion at the Port.

Therefore, the Commission invites interested parties to comment on what compelling regulatory need exists for this Commission rule on free time and demurrage charges at the Port.

Part 530

Part 530 (formerly part 551) arose from Docket No. 72-41, Truck Detention at the Port of New York, 19 F.M.C. 25 (1975). In that proceeding, as well as those that preceded it,[2] the Commission determined that there were unreasonable delays in the handling and interchange of freight between ocean and motor carriers at the Port. The Commission, therefore, promulgated the rule in 1975 to establish a uniform and equitable system to ameliorate congestion at the Port, with disputes concerning claims for penalties to be settled by an adjudicator selected by the Commission. The rule sets forth appointment/non-appointment procedures to be followed by motor carriers and terminal operators (and other import/export agents) whose actions or inactions could impede the pickup and delivery of cargo by motor carriers at marine facilities within the Port.

Five years have transpired since the Commission last examined the rule, in Docket No. 86-20, Truck Detention at the Port of New York—Increase in Penalty Charges.[3] Again because transportation circumstances which prompted the rule may have changed, the Commission also seeks comments on the continuing regulatory need for part 530.

Commenting parties are requested to accompany their submissions, where appropriate, with documents, factual examples, or descriptions of experience illustrating their remarks. If, for example, certain benefits for retaining part 525 and/or part 530 are alleged, specific data or factual examples in support of the alleged benefits realized should be provided.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-13233 Filed 6-4-92; 8:45 am]

BILLING CODE 6730-01-M

[1] In that proceeding, the Commission determined that this regulation does not apply to containerized cargo.

[2] Truck and Lighter Loading and Unloading Practices at New York Harbor, 9 F.M.C. 505 (1966) (Affirmed in *American Export Isbrandtsen* v. *F.M.C.*, 389 F. 2d 982 (D.C. Cir. 1968); Truck and Lighter Loading and Unloading Practices at New York Harbor, 12 F.M.C. 166 (1969).

[3] Proposed rule, 51 FR 18822 (May 21, 1986); final rule, 52 FR 2703 (January 26, 1987). The notice of proposed rulemaking in Docket No. 86-20 also requested comment on whether a continuing need existed for the rule. Four of the five commenters in that proceeding supported continuation of the rule.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 21

[PR Docket No. 92-80, FCC 92-173]

Use of the Frequencies in the 2.1 and 2.5 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a notice of proposed rule making soliciting public comment on a range of proposals designed to reduce the delays associated with the processing of applications for stations in the Multichannel Distribution Service and the Multichannel Multipoint Distribution Service (MDS/MMDS). Specifically, under consideration are proposals to: (1) Reorganize various aspects of the MDS processing and regulatory scheme, (2) streamline the rules and technical standards governing MDS operations, and (3) remedy several difficulties that have arisen with respect to MDS/MMDS

processing by modifying existing processing procedures. The purpose of these proposals is to allow entities licensed in the MDS/MMDS, particularly wireless cable operators, to realize their competitive potential.

DATES: Comments must be filed on or before June 29, 1992 and reply comments must be filed on or before July 14, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, (202) 634–2443, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, PR Docket No. 92–80, FCC 92–173, adopted April 9, 1992, and released May 8, 1992. The full text of this notice of proposed rule making is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452–1422.

Summary of Notice of Proposed Rule Making

1. The competitive potential of wireless cable operators licensed in the MDS/MMDS remains largely unrealized to a substantial extent because approximately 20,000 MDS applications, some dating back as far as 1980 and 1983, remain pending before the Commission. This large and aging backlog is the result of the interplay between the Commission's existing MDS/MMDS processing rules and policies, which are extremely complex, the fact that the Commission has been unable to allocate sufficient resources to the processing of MDS/MMDS applications, and a torrent of MDS/MMDS filings, the majority of which are believed to be speculative. The impact of this backlog on the wireless cable industry has been devastating. Wireless cable operators have been unable to gain access to the number of channels necessary for them to meet subscriber demand and match competitors' offerings. Meanwhile, delays in the processing of MDS/MMDS applications have allowed traditional cable systems to further strengthen their position in the multichannel video distribution marketplace, making the task of providing meaningful competition more difficult for rival operators. The Commission has initiated the instant proceeding with the primary objective of facilitating the licensing of MDS/MMDS services, thereby hopefully reversing these trends.

2. First, the Commission is considering various proposals to reorganize the MDS/MMDS processing and regulatory scheme. Specifically, the Commission developed four options to this effect:

(1) To relocate some or all aspects of the processing of MDS/MMDS applications to the Private Radio Bureau's Licensing Division in Gettysburg, Pennsylvania, and to have either the Common Carrier Bureau or the Mass Media Bureau process the remaining aspects and regulate the service,

(2) To relocate both MDS/MMDS processing and regulation to the Private Radio Bureau,

(3) To relocate MDS/MMDS processing and regulation entirely to the Mass Media Bureau, and

(4) To leave both MDS/MMDS processing and regulation in the Common Carrier Bureau.

3. In addition, regardless of which Bureau processes and/or regulates the MDS, the Commission is also considering the adoption of certain new rules and technical standards to be used to govern MDS/MMDS operations. In developing each of the suggested rule changes, the Commission attempted to balance in an equitable manner the interests of existing MDS/MMDS operators as well as those of MDS/MMDS applications. Commenters are explicitly asked to discuss the impact on both of these groups of each rule change under consideration.

4. First, the Commission stated that it is possible that the processing of MDS/MMDS applications could be expedited by modifying the interference protection criteria currently contained in 47 CFR 21.902. As a possible alternative, the Commission suggested the use of simple mileage separation standards. The Commission solicited commenters' views on all aspects of this suggestion. In addition, either in conjunction with the suggested separation standards or as an alternative thereto, the Commission requests commenters to discuss whether the Commission should adopt a table to facilitate short-spacing of MDS/MMDS stations. The Commission devised a proposed short-spacing table, and asked commenters to discuss the permissible separations reflected therein, as well as to suggest alternatives. The Commission also asked commenters to discuss the relative merits of a proposal to retain the existing co- and adjacent channel interference criteria, and to address the impact that the retention of these standards would have on the goal of expediting the processing of both backlogged and new MDS/MMDS applications.

5. The Commission is also considering replacing the requirements currently set forth in 47 CFR 21.15(a) and 21.900, pursuant to which an MDS applicant must demonstrate (1) that the applicant is legally, financially, technically, and otherwise qualified to render the proposed service; (2) that there are frequencies available to enable the applicant to render satisfactory service; and (3) that the applicant has a station site available, with a certification that these things are true. The Commission solicits commenters' views on these suggestions, and requests commenters to address whether some of these requirements should simply be eliminated altogether.

6. In addition, to deter the filing of speculative applications, the Commission is considering disallowing settlement agreements among MDS/MMDS applicants, and prohibiting applicants from holding any type of interest, including serving as an officer, director, shareholder, trustee, beneficiary, owner, general or limited partner, or similar position, in more than one application for the same channel or channels as sites within the same service area.

7. The Commission is also entertaining several interim measures to be used solely for the purpose of processing the backlog of pending MDS/MMDS applications. First, the Commission imposed a short-term, temporary freeze on the filing of all applications for MDS/MMDS channels, effective immediately upon adoption of the notice of proposed rule making. Accordingly, as of April 9, 1992, no initial applications for new stations on these channels will be accepted for filing, at least during the pendency of this rule making.

8. Next, to permit the expeditious processing of the backlog of MDS applications, the Commission is considering certain special procedures to be applied to pending applications, including applications of tentative selectees, that, because they contain settlement agreements or other prelottery requests, would ordinarily require individualized review by Commission staff. Because these new rules and procedures would be prospectively applied to all pending MDS/MMDS applications, applicants would be afforded a limited opportunity, during the fourteen-day period commencing on the effective date of the new rules, to amend their applications to take the new rules into consideration or otherwise put their applications in conformity therewith.

9. Finally, irrespective of where MDS/MMDS processing. Both of these proposals are designed to facilitate the effective processing of both backlogged and future MDS/MMDS applications.

Initial Regulatory Flexibility Analysis

Reason for Action

This rule making proceeding is being initiated to obtain comment regarding proposals to modify the existing rules and policies pertaining to applicants, conditional licensees and licensees in the MDS/MMDS.

Objectives

The purpose of this rule making is two-fold: (1) To expedite the provision of the various services offered on MDS frequencies to the public, and (2) to increase administrative efficiency in the processing of MDS applications.

Legal Basis

The proposed action is authorized under sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 313 and 314.

Reporting, Recordkeeping and Other Compliance Requirements

Generally, the proposed rule changes reduce the reporting and recordkeeping burden on applicants. The amendment of certain applications may, however, be necessitated in order for applicants to bring their applications into compliance with any new rules.

Federal Rules that Overlap, Duplicate or Conflict with these Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

The rule changes proposed in this proceeding could affect certain small entities in the wireless cable industry, or small entities that otherwise use MDS/MMDS spectrum. After evaluating the comments, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

None.

List of Subjects

17 CFR Part 1

Communications common carriers.

17 CFR Part 2

Reporting and recordkeeping requirements.

List of Subjects in 47 CFR Part 21

Multipoint distribution service, Communications Common Carriers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13139 Filed 6-4-92; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92-28; Notice 1]

RIN 2127-AB85

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The purpose of this document is to announce that NHTSA will publish a notice of proposed rulemaking (NPRM) concerning improved head impact protection from interior components of passenger cars, i.e., roof rails, pillars and front headers, by January 31, 1993. This rulemaking action and notice of a publication date for the NPRM are required by the NHTSA Authorization Act of 1991.

FOR FURTHER INFORMATION CONTACT: Mr. William Fan, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4922).

SUPPLEMENTARY INFORMATION: The NHTSA Authorization Act of 1991 requires the agency to address several matters through rulemaking. One of these matters, set forth in section 2503 of the Act, is improved head impact protection from interior components of passenger cars, i.e., roof rails, pillars and front headers.

Section 2502 of the Act generally provides that NHTSA must publish, no later than May 31, 1992, an advance notice of proposed rulemaking (ANPRM) or a notice of proposed rulemaking (NPRM) concerning improved head protection. However, the section also provides that if the agency is unable to meet that deadline, it must publish a notice indicating that it will publish an ANPRM or NPRM by a certain date which is not later than January 31, 1993. The agency is also required to indicate the reasons for the delay. NHTSA is publishing this notice of intent to announce that it is unable to meet the May 31, 1992 deadline but will publish an NPRM by January 31, 1993.

NHTSA has been conducting research concerning improved head impact protection for several years. On August 19, 1988, the agency published in the **Federal Register** (53 FR 31712) an ANPRM which addressed this issue.. NHTSA noted that almost one-half of all fatalities in passenger car side impacts occur as a result of head injuries. The agency indicated that while many head injuries occur as a result of ejection from the vehicle, a high percentage occur due to head/face impacts with vehicle interior components, such as the pillars and other structures supporting the roof.

In the August 1988 ANPRM, NHTSA states that it believed that various techniques, including the use of padding, may be available to reduce the severity of, and in some cases prevent, many head injuries. In particular, the agency discussed the possibility of padding pillars, roof rail components and window frames with hard rubber or high density foam materials. NHTSA indicated that there are a number of possible approaches to expressing performance requirements, including placing limits on head acceleration during specified component tests using a headform impactor.

NHTSA has continued to conduct research since publishing the August 1988 ANPRM and believes that it is appropriate to publish an NPRM on improved head impact protection. As discussed below, however, there are several reasons why the agency cannot publish such a document by May 31, 1992.

First, the agency has not yet completed its analysis and documentation for many of the tests it has already completed. NHTSA has conducted impact tests of upper interior components of production vehicles using a free motion headform (FMH) impactor to assess injury potential. NHTSA has also conducted tests of padded upper interior components to evaluate the effectiveness of padding in reducing head impact severity. Given the large number of tests, NHTSA does not expect to complete its analysis and documentation of the tests until the fall of this year.

NHTSA is also still in the process of conducting certain tests and analyses. The agency is planning to conduct additional FMH-to-component impact tests using different thicknesses of padding, as part of analyzing the practicability of adding padding to existing vehicle interior components.

The agency is also continuing to analyze the possible effect of padding on neck injury risks. Auto manufacturers have expressed safety concerns in this area. NHTSA is also analyzing the issue of alternative headform impactors.

Finally, while NHTSA is well along in its research program, it will take considerable time for the agency to prepare the necessary documents for rulemaking, i.e., the NPRM itself, including specific proposed requirements, and the accompanying preliminary regulatory impact analysis. The additional time between May 31, 1992 and January 31, 1993 will enable the agency to complete the tests and analyses needed to support an NPRM for improved head impact protection, and to prepare the necessary rulemaking documents.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Authority: 15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 1, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13167 Filed 6-2-92; 11:12 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 88-06, Notice 18]

RIN 2127-AE49

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses and Multipurpose Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The purpose of this advance notice is to announce that NHTSA is considering the issuance of a proposal to extend its passenger car dynamic side impact requirements to light trucks, buses and multipurpose passenger vehicles, and to request comments to assist the agency in deciding whether, and if so how, to proceed with developing such a proposal. This rulemaking action is required by the NHTSA Authorization Act of 1991.

DATES: Comments must be received on or before August 4, 1992.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4924).

SUPPLEMENTARY INFORMATION:

Background

The NHTSA Authorization Act of 1991 requires the agency to address several matters through rulemaking. One of these matters, set forth in section 2503 of the Act, is the possible extension of the dynamic side impact protection requirements for passenger cars to multipurpose passenger vehicles (MPV's) and trucks with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These vehicles comprise a large majority of the vehicles referred to as "LTV's," which include trucks, buses and MPV's with a GVWR of 10,000 pounds or less. Under section 2502 of the Act, the rulemaking must be conducted under the general provisions of the National Traffic and Motor Vehicle Safety Act concerning safety standards.

This ANPRM is being published in response to the requirement in section 2502 that the agency must publish no later than May 31, 1992, an ANPRM or an NPRM concerning extending Standard No. 214's passenger car side impact protection requirements to LTV's. Upon publication of justification, this date may be delayed not more than 6 months.

Section 2502 also provides that this rulemaking action must be completed within 26 months of publishing the ANPRM. The rulemaking is considered completed when NHTSA either promulgates a final rule or decides not to promulgate a rule. In either case, the agency must publish its decision in the **Federal Register.**

NHTSA's side impact protection requirements are set forth in Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection.* The standard specifies two sets of requirements for passenger cars, (1) quasi-static side door strength requirements and (2) dynamic requirements.

Standard No. 214's quasi-static side door strength requirements, which have applied to passenger cars since January 1, 1973, seek to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a vehicle is pushed into the passenger compartment during a side impact. The requirements specify that side doors must resist crush forces that are applied against the door's outside surface in a laboratory test. NHTSA extended these requirements to LTV's in a final rule published in the **Federal Register** (56 FR 27427) on June 14, 1991.

NHTSA added Standard No. 214's dynamic requirements for passenger cars in a final rule published in the **Federal Register** (55 FR 45722) on October 30, 1990. Since the quasi-static side door strength requirements had been extended to LTV's well before the NHTSA Authorization Act of 1991 was enacted, it is the dynamic requirements, that the agency must consider extending to LTV's under section 2503.

Under Standard No. 214's dynamic requirements, a passenger car must provide protection to occupants' thoracic and pelvic regions as indicated by instrumented side impact dummies (SID) in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier (MDB) simulating another vehicle. Manufacturers have two compliance options. Under one, the requirements are phased-in by an annually increasing percentage of each manufacturer's production beginning on September 1, 1993, with full implementation effective September 1, 1996. Under the other, no compliance is required during the production year beginning September 1, 1993, but full implementation is required effective September 1, 1994.

The MDB specified in Standard No. 214's test procedure weighs about 3,000 pounds. Under the test procedure, the front and rear wheels of the MBD are "crabbed" at an angle of 27 degrees, and the MDB moves at that angle and at a speed of 33.5 mph into the side of the target car. These aspects of the procedure were selected so that the test simulates the vehicle kinematics and crash forces in the struck car in a real world side crash in which a vehicle traveling at 30 mph perpendicularly strikes the side of a vehicle traveling at 15 mph. The agency determined that the 30 mph/15 mph combination is a representative crash severity for serious chest injury.

Standard No. 214's test procedure includes placing instrumented SID dummies in the outboard front and rear seats of the target car. For the thorax, the performance limit is expressed in terms of an injury criterion known as the Thoracic Trauma Index (dummy) or

TTI(d). This injury criterion represents the average of peak acceleration values measured on the lower spine and the greater of the acceleration values of the upper and lower ribs of the test dummy. For the pelvis, the performance limit is specified in terms of the peak acceleration measured on the pelvis of the test dummy.

While Standard No. 214 specifies the use of SID, NHTSA notes that on December 27, 1991, it published in the **Federal Register** (56 FR 67042) an ANPRM requesting comments on the desirability and need for specifying alternative dummies, including BioSID and EuroSID.

August 1988 ANPRM

On August 19, 1988, NHTSA published in the **Federal Register** (53 FR 31716) an ANPRM concerning possible requirements for LTV's to reduce the risk of fatalities and injuries in side impacts and other crashes where the side protection of the vehicle is a relevant factor. The agency addressed a broad range of subjects in that ANPRM, including thorax and pelvis protection, head injuries, ejection, extension of Standard No. 214's quasi-static side door strength requirements, and side impacts with poles, trees and other similar fixed objects.

In the 1988 ANPRM, NHTSA estimated that there may be 1,350 serious injuries (AIS 3 or greater) annually to LTV occupants resulting from contact between the side interior of the vehicle and the abdomen, chest, pelvis and upper extremities. The agency indicated that approximately 190 of these serious injuries result in fatalities.

NHTSA explained that its research had shown for passenger cars that the use of structural modifications in combination with padding or the use of padding alone can reduce the probability and/or severity of these types of injuries. The agency stated that it believed that the same types of countermeasures may provide benefits for LTV occupants, and that the approach of requiring a vehicle to protect its occupants in a full-scale side impact crash test may be appropriate for LTV's as well as for passenger cars.

The agency also stated that it believed that differences between passenger cars and LTV's and their crash experiences would likely warrant some differences in possible test procedures and/or performance requirements. NHTSA indicated that it appeared to be important for LTV's that the MDB specified in the test be more representative of the striking vehicles that are likely to cause fatalities and injuries in LTV's. The agency noted that crash data indicate that in two-vehicle side impact collisions, more LTV occupants are killed by other LTV's and medium/heavy trucks than by passenger cars, and that a passenger car striking the side structure of a vehicle does not constitute as much of a threat to the occupants of LTV's as it does to occupants of passenger cars.

NHTSA requested information and comments on several issues concerning possible requirements for thorax and pelvis protection, including what relevant data and studies are available, possible countermeasures and their costs and benefits, and what types of performance criteria and test procedures should be considered.

Ford commented that if the agency decides to extend the passenger car dynamic side impact requirements to LTV's, the test procedures (including design and mass of the MDB) should be the same. That company stated that accident data show that light trucks are involved in side impact accidents that are similar to those of passenger cars, and that, therefore, the test and test devices should be the same. Ford also suggested that the agency investigate the field experience resulting from the passenger car requirements.

Chrysler stated that it believes that the structural and padding modifications suggested for thorax and pelvis protection in LTV's would be unlikely to significantly improve motor vehicle safety. That company noted that the agency's analysis indicated that for side impact fatalities in light trucks, the striking vehicle is a passenger car in only 34.6 percent of the cases. Chrysler argued that use of the agency's passenger car test procedure for LTV's would only model about 66 LTV fatal crashes per year, and that the money spent on countermeasures could possibly be spent elsewhere with a higher safety benefit.

Chrysler also stated that it had performed one test on a prototype full-size pickup using the MDB and test dummy for passenger cars. According to that company, the high sill structure absorbed much of the force of the impact, and the truck compiled with the dynamic passenger car requirements. Chrysler stated that this indicates that application of the passenger car test procedure to at least some LTV's is unlikely to prompt substantive countermeasures.

General Motors stated that there is considerable uncertainty regarding the type of MDB that should be used if rulemaking were ultimately to require full-scale testing of LTV's. That company also suggested that the agency consider component testing or composite testing as an alternative for full-scale test requirements.

Range Rover expressed concern about the possibility that the MDB weight for LTV testing might be higher than that used for passenger car testing. That company stated that the barrier weight is the same for passenger cars and LTV's in other safety standards and that it would be unreasonable to specify a weight that far exceeds the actual weight of the majority of the vehicles on the road. Range Rover also stated that using a heavier barrier for LTV's would mean that LTV's would have to meet a more stringent requirement than passenger cars.

Volkswagen suggested that a composite test procedure might be appropriate for LTV's, although it questioned the need for any additional side impact countermeasures for these vehicles. Volkswagen stated that LTV's generally have high sills which offer a substantial degree of occupant protection in side impacts. Toyota commented that it was premature to consider dynamic requirements for LTV's until the agency had completed its rulemaking concerning dynamic side impact requirements for passenger cars.

The National Truck Equipment Association and the Recreation Vehicle Industry Association expressed concern about the impacts of dynamic crash test requirements on final stage manufacturers and alterers of certified motor vehicles.

The Insurance Institute for Highway Safety (IIHS) commentd that the need to apply side impact standards for LTV's is becoming increasingly important and is long overdue. That organization urged the agency to embark on a crash test program to establish whether the passenger car dynamic side impact test represents a severe enough test for light trucks. IIHS stated that because the light truck door sill height matches better with the passenger car bumper, the passenger car test may not be as severe for light trucks as it is for passenger cars. That organization stated that NHTSA may need to increase the weight and adjust the bumper height of the test barrier so that it is more representative of light trucks.

New ANPRM

A great deal of activity has occurred in the area of side impact protection during the almost four years since NHTSA issued its August 1988 ANPRM. As indicated above, in October 1990, the agency issued its final rule establishing the dynamic side impact requirements for passenger cars. While the phase-in

of the new requirements does not begin until next year, manufacturers are already designing many of their passenger cars to meet the requirements. Several manufacturers have advertised that certain models already comply with them. Therefore, manufacturers and others now have considerably more experience with the dynamic test procedure and issues related to it.

Also during the past four years, NHTSA extended Standard No. 214's quasi-static side door strength requirements to LTV's. Finally, the agency and others have continued research in the area of side impact protection. As discussed below, NHTSA has conducted two series of LTV side impact tests similar to Standard No. 214's dynamic side impact test for passenger cars.

Given the events which have occurred since the agency published its August 1988 ANPRM, publication of today's ANPRM is necessary, in addition to meeting a requirement of the NHTSA Authorization Act of 1991, to help ensure that NHTSA has up-to-date information on which to base a decision of whether, and if so how, to proceed with further rulemaking in this area.

As discussed in the Preliminary Regulatory Impact Analysis (PRIA) for this ANPRM, NHTSA estimates that the number of LTV fatalities in side impact crashes will rise by about 11 percent between 1989 and the mid-1990's. It is expected that front seat fatalities will total 1,683 to 1,753, with 58 fatalities in the second seat. Approximately 16 percent of the fatalities are expected to occur in heavy vehicle-LTV side crashes, 39 percent in light vehicle-LTV side crashes, and 45 percent in single vehicle LTV side crashes. In multi-vehicle side impacts, approximately 29 percent of the LTV fatalities are caused by heavy vehicles. A much smaller percentage of passenger car fatalities is caused by heavy vehicles in multi-vehicle side impacts.

The possible extension of Standard No. 214's dynamic requirements to LTV's would primarily address LTV occupant fatalities and serious injuries which result from contacts between the side interior of LTV's and the shoulder, chest, abdomen, back and pelvis. NHTSA estimates that by the mid-1990's, this portion of the side impact problem will account for about 245 LTV occupant fatalities and an additional 825 non-fatal serious injuries (AIS–3 or greater) annually.

NHTSA continues to believe that the same types of countermeasures that reduce the probability of these types of thoracic and pelvic injuries in passenger cars, i.e., the use of structural modifications in combination with padding or the use of padding alone, can provide safety benefits for LTV's. The agency also believes that the approach used in Standard No. 214 for passenger cars of requiring a vehicle to protect its occupants in full-scale side impact crash test, utilizing an MDB and instrumented test dummies, may be appropriate for LTV's.

In considering the possible extension of Standard No. 214's dynamic side impact requirements to LTV's, NHTSA believes that one important issue is whether, given the differences between passenger cars and LTV's and their crash experiences, any changes should be made in the Standard No. 214 test procedure to make it more appropriate for LTV's.

As noted above, NHTSA has conducted two series of LTV side impact tests similar to the Standard No. 214 passenger car test. In the first test series, the agency tested six LTV's using an MDB that was modified to make it more representative of crash conditions causing fatalities and serious injuries in light trucks. The weight of the MDB was increased to 4,000 pounds, and the height of the barrier face was raised about 7.5 inches. In the second test series, NHTSA tested three small LTV's and a fourth vehicle representative of a small LTV, using the test procedure, including the 3,000 pound MDB, specified in Standard No. 214 for passenger cars. (The fourth vehicle was a passenger car version of a vehicle which is marketed in a four-wheel drive version as an LTV. The agency believes that both versions of the vehicle provide similar side impact protection.) The results of the two series of tests are set forth in the PRIA.

The data from the two test series indicate that many current LTV's, especially medium and heavy ones, already meet the injury criteria specified for future passenger cars. For some LTV's, this is true even when the modified, heavier MDB is used. Other LTV's, however, had high TTI(d) and pelvic g levels in the tests, indicating that their occupants would have a higher risk of serious occupant injury in the types of real-world crashes replicated by the tests.

Based on the limited number of LTV side impact crash tests conducted to date, NHTSA believes that, for those LTV's that would not already comply with Standard No. 214's passenger car requirements, the use by manufacturers of countermeasures which employ padding alone would probably be sufficient to ensure compliance. This would also likely be true for possible alternative requirements that might be proposed, such as ones specifying use of a heavier MDB.

In its passenger car rulemaking, NHTSA estimated that the effectiveness of countermeasures which employ padding is about 20 percent. The agency is citing this effectiveness level as an example. Further evaluation would be needed to provide an effectiveness estimate for LTV's. In order to provide estimates of benefits, NHTSA would also need to estimate the percentage of the LTV fleet that currently complies with specific proposed requirements.

NHTSA estimated the costs of padding countermeasures for passenger cars to be $52–63 per vehicle (1989$). These consumer costs included front and rear passenger protection, two- and four-door models, secondary weight and fuel costs.The agency estimated that passenger car countermeasures would add approximately 20 pounds of weight per vehicle, including secondary weight. Accounting for the actual crash test performance of passenger cars in the current fleet, a secondary weight penalty and a fuel penalty, NHTSA estimated a sales weighted consumer cost per vehicle of $51 for the passenger car requirements. The agency is citing these passenger car cost estimates as an example. Further evaluation would be required to make LTV cost estimates.

In analyzing issues related to the possible extension of Standard No. 214's dynamic side impact requirements to LTV's, NHTSA requests information and comments on the following questions:

1. What current crash data and crash analyses are available to indicate injuries to the thorax and pelvis of LTV occupants in vehicle-to-vehicle side crashes?

2. What tests/studies have been performed concerning the lateral stiffness and crash performance of production LTV's in mitigating thorax/pelvis injuries in side impacts?

3. Should the side impact dynamic test requirements for passenger cars be extended to all LTV's with a GVWR of 10,000 pounds or less; to MPV's and trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less (the LTV's cited in the NHTSA Authorization Act of 1991); to some other group of LTV's, such as mini-vans (the LTV's that are most like passenger cars); or not to any LTV's?

4. Should the weight and height of contact surface of the MDB for side impact testing of passenger cars be modified to be more representative of vehicles that cause injuries and fatalities in LTV's? If so, what modifications should be made?

5. Is the MDB impact speed/crab angle combination (33.5 mph/27 degrees, simulating a crash in which a vehicle traveling at 30 mph perpendicularly strikes the side of a vehicle traveling at 15 mph), specified for passenger car testing, appropriate for LTV testing? Is the 30 mph/15 mph combination a representative crash severity for serious chest injury in LTV's (as it is for passenger cars)?

6. Is the MDB impact point specified for passenger cars appropriate for LTV's?

7. Should the 90-degree impact angle be changed to minimize the lateral stiffness effects of the bench seats in LTV tests? If so, by how much and why?

8. Should NHTSA develop a test procedure for LTV's in which MDB height and weight varies depending upon a vehicle's sill/H-point or seating reference point heights and curb weight? If so, what specific procedures should the agency consider?

9. Is the basic approach of NHTSA's side impact dynamic test requirements for passenger cars, i.e., requiring vehicles to meet specified TTI(d) and pelvic g limits in a full-scale crash test, appropriate for LTV's? Are there any alternative approaches that should be considered?

10. Are the available countermeasures for reducing thorax and pelvis injuries in passenger car side impacts, i.e., the use of structural modifications in combination with padding or the use of padding alone, applicable to LTV side impacts? Please provide estimates of costs, benefits and leadtimes associated with adopting these countermeasures for LTV's. To what extend do the available countermeasures, costs, benefits and leadtimes vary for different types of LTV's?

11. Should different performance requirements be established for different types of LTV's, e.g., based on size of LTV, number of doors, etc.? If there are no seats close to the side of an LTV, should that side be excluded from the requirements? Should any particular types of LTV's, such as walk-in vans, tow trucks, and vehicles without permanent side doors, be excluded from the requirements?

12. What impacts would result on final stage manufacturers and alterers from extending the side impact dynamic test requirements for passenger cars to LTV's?

Rulemaking Analyses and Notices

DOT Regulatory Policies and Procedures

NHTSA has considered the potential burdens and benefits associated with extending the side impact dynamic test requirements for passenger cars to LTV's. NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation's regulatory policies and procedures, since it concerns a matter in which there is substantial public interest. The agency has prepared a PRIA which addresses the issues of costs and benefits of the potential countermeasures that the agency is considering in this action. The PRIA is being placed in the docket.

Executive Order 12812 (Federalism)

This action has been analyzed in accordance with the principles and criteria in Executive Order 12812, and it has been determined that it does no have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Comments

NHTSA solicits public comments on the questions presented in this ANPRM and on other relevant issues. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality. Three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the docket as this information becomes available, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Authority: 15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on: June 1, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–13168 Filed 6–2–92; 11:11 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

Mid-Atlantic Fishery Management Council; Public Hearing on Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a public hearing on the resubmitted portion of Amendment 2 to the Summer Flounder Fishery Management Plan (FMP). The purpose of the hearing is to obtain public comments on management provisions that will be resubmitted to NMFS to replace provisions disapproved by the Regional Director.

DATES: Written comments on the proposed revisions must be submitted by noon, June 22, 1992, to John C. Bryson, room 2115 Federal Building, 300 South New Street, Dover, DE 19901–6790, phone (302) 674–2331, fax (302) 674–5399.

A public hearing on the above revisions will be held at 7 p.m., June 24, 1992.

ADDRESSES: The hearing will be held at the Radisson/Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA 19113, phone (215) 521–5900.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790, phone (302) 674–2331, fax (302) 674–5399.

SUPPLEMENTARY INFORMATION: The following portion of 9.1.2.3.1 of Amendment 2 to the FMP was disapproved:

Until the Regional Director determines that a State is in compliance with the FMP, vessels from that State may be prohibited from fishing in the EEZ. The Regional Director shall publish a notice in the **Federal Register** specifying which States are in compliance, which States are not in compliance, and which States are closed. A vessel is deemed to be from the State listed on the permit as the principal landing State as shown on the vessel's permit application. The State from which the vessel is deemed to be from may not be changed except through a notification to the Regional Director of a change to the permit application. Such notification shall include evidence sufficient for the Regional Director to conclude that the legal residence of the owner or operator has been changed. Such evidence may include a copy of a drivers license or a voter registration card.

The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels from a particular State by publishing a notice in the **Federal Register** if he determines that the State's quota has been exceeded and the State has taken no action or inappropriate action to close it fishery.

This portion was judged to violate national standard 4.

Pursuant to section 304(b) of the Magnuson Fishery Conservation and Management Act, the Director, Northeast Regional Office, NMFS, recommended that the issue be resolved by adding a provision that the Federal permits required by the FMP be conditioned with the restriction that the vessel may not land summer flounder in a State whose quota (established under the FMP) has been reached. This condition would apply equally and without prejudice to all permitted vessels, regardless of their home port States, and would not depend on any State action or inaction.

To implement this revision, the second paragraph of section 9.1.2.1.1.3. (Permit application) would be revised by adding a second sentence, so the paragraph would read:

Applicants for a permit under this FMP must agree, as a condition of issuance of the permit, to fish in accordance with Federal rules whether they are fishing in the EEZ or State waters. For vessels with moratorium permits, this includes agreeing not to land summer flounder in any State where the Regional Director has determined that the State's commercial quota has been landed.

Additionally, section 9.1.2.5. (Other measures) would be revised by adding a paragraph to read:

Owners or operators of vessels with moratorium permits may not land summer flounder in a State when the Regional Director has determined that the State's commercial quota has been landed.

To be consistent with these revisions, § 625.4 (Vessel permits) and § 625.8 (Prohibitions) of the implementing regulations in title 50 CFR would be amended later through proposed rulemaking with a public comment period, followed by publication of a final rule. These revisions do not change the environmental, economic, or regulatory impacts of Amendment 2, so the Environmental Impact Statement and Regulatory Impact Review are not being revised.

Dated: June 1, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–13126 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 651

[Docket No. 920495–2095]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes to amend the regulations implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) by modifying the language of 50 CFR 651.20(e)(2), which allows the use of the net strengtheners in the Regulated Mesh Area. This modification is necessary to address the use of net strengtheners as a means of circumventing the intent of the regulations.

DATES: Comments on the proposed rule must be received on or before July 6, 1992.

ADDRESSES: Comments may be mailed to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Groundfish Regulations".

Copies of the Regulatory Impact Review (RIR) and Environmental Impact Statement (EIS) for the FMP may be obtained from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01908.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst, Northeast Region, NMFS), 508–281–9252.

SUPPLEMENTARY INFORMATION: The regulations implementing the FMP specify gear requirements such as a minimum mesh size in an area designated as the Regulated Mesh Area. The regulations at 50 CFR 651.20(e)(2) allow for the use of a strengthener on a net subject to mesh regulations in the Regulated Mesh Area. The net strengthener employed may be attached to the top half of the net by its outer edges, provided that it is of the same material as the regulated portion of the net and at least twice the authorized minimum mesh size. The top half is determined by laying the net flat. The intent of the regulation was to allow the legitimate use of a portion of a net over the regulated net that would provide added strength but not impede escapement of fish through the regulated mesh. Added strength could be necessary if a net is full of fish and under strain.

Several fishermen have interpreted the regulation differently from its intent. They have employed a net strengthener that if laid flat on top of the regulated net would actually have a smaller width than the regulated net. The application of this type of net strengthener constricts the full opening of the net, which results in a smaller effective mesh size despite the use of legal size mesh. Recent reports have indicated that a net equipped in this manner will catch fish below the legal minimum size, with up to 85 percent discards of Atlantic cod occurring. The increased mortality resulting from this practice is not consistent with the original intent of the regulation.

In order to eliminate this practice, the New England Fishery Management Council (Council) requested NMFS to modify the existing regulation by allowing only one splitting strap and one bull rope to be present on the top of the regulated portion of a trawl net. These may be no more than 3 inches in diameter and can not constrict in any manner the top of the regulated portion of the net. No other device or material may be used on the top of the regulated portion of the net.

Such a configuration should not affect the behavior of the net nor should it result in any increase in cost. It would

effectively eliminate the current practice, and make it consistent with the intent of the original requirement.

Comments are requested on this proposed rule and will be accepted until July 6, 1992. Specific comments are requested on the adequacy of the allowance of one bull rope. At a meeting of the Council's Groundfish Industry Advisory Panel it was suggested that one bull rope was not sufficient now that the regulated portion of th net is the entire net. Comments received on this aspect of the proposed rule will be considered and any change will be specified in the final rule for this amendment.

Classification

The Regional Director has initially determined that this proposed rule is necessary for the conservation and management of the Northeast multispecies fishery and is consistent with the Magnuson Act and with other applicable law.

The Regional Director has determined that this rule is consistent with the FMP.

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule, which would revise the language in the regulations implementing the FMP, does not alter the scope or intent of the FMP, the conclusions derived from the regulatory impact review (RIR), EIS, or Regulatory Flexibility Analysis for the FMP, or its implementing regulations. Therefore, this proposed rule is consistent with Executive Order 12291 and the Regulatory Flexibility Act. The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since the proposed rule would only modify the regulations to achieve its original intent, and eliminate interpretations which circumvent the purpose of the regulation.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216-6. The EIS prepared for the FMP assessed the impacts of the regulated mesh requirement. The net strengthener provision in this regulatory amendment further defines how the regulated mesh requirement is implemented. This modification intends to achieve the effects associated with the regulated mesh requirement.

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

The Regional Director has determined that this rule would be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. The basis of this determination is that this proposed rule reflects the intent of the final rule that originally implemented the minimum mesh size requirement for the groundfish fishery. Therefore, it is not necessary to submit this rulemaking for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 1, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 651.20, paragraph (e)(2) is revised to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

(e) * * *

(2) A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of a trawl net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net (that in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this subparagraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

* * * * *

[FR Doc. 92-13201 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

Petition for Rulemaking; Central Bering Sea Fisherman's Association

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Decision on petition for rulemaking; denial.

SUMMARY: NMFS announces its decision not to undertake at this time the rulemaking requested by a petition submitted by the Central Bering Sea Fishermen's Association (CBSFA). On April 3, 1992, NMFS received a request from CBSFA to stay proceedings and decisionmaking on CBSFA's Petition for rulemaking without prejudice to a resumption of such proceedings on further notice by CBSFA. Based on NOAA guidelines and given CBSFA's request, NMFS has decided not to undertake the rulemaking suggested by CBSFA. This decision is based on procedural grounds and does not address the substantive merits of CBSFA's petition.

FOR FURTHER INFORMATION CONTACT: Catherine Belli, Fishery Management Specialist, (301) 713-2341, or Lauren Rogerson, Attorney-Advisor, (301) 713-2231.

SUPPLEMENTARY INFORMATION: CBSFA petitioned NMFS to: (1) Issue a rule to provide a directed allocation of the Bering Sea and Aleutian Islands Total Allowable Catch to the Pribilof communities, (2) issue an interpretative rule indicating NMFS has a fiduciary obligation to assist in the Federal creation of a fishery-based economy on the Pribilof Islands and, (3) issue a finding that the Community Development Quota (CDQ) system will not encourage serious investment in fishery related enterprises on the Pribilof Islands. As stated in its petition, CBSFA represents the vested interest of Aleut Natives of the Prifilof Islands, Alaska, in the creation of a fisheries-based economy on the Pribilof Islands.

The notice of receipt of petition for rulemaking and request for comments was published in the **Federal Register** on January 21, 1992 (57 FR 2247). The public comment period ended March 6, 1992. Twelve comments in support of the petition were received during the comment period.

The CBSFA requested publication of, and action on, its petition concurrent with public notice and review of Amendment 18 to the FMP. Amendment 18 to the FMP was prepared by the North Pacific Fishery Management Council (Council) and was submitted to the Secretary for review under the provisions of the Magnuson Act. As proposed, Amendment 18 contained a provision to establish a Western Alaska Community Development Quota (CDQ) program and set aside 7.5 percent of the Bering Sea and Aleutian Islands pollock quota for western Alaska communities. On March 4, 1992, the Under Secretary for Oceans and Atmosphere approved in concept the CDQ provisions of Amendment 18. Criteria for community eligibility will be established by the Governor of Alaska, in consultation with the Council, and submitted to the Secretary of Commerce for approval through rulemaking.

On April 3, 1992, CBSFA submitted a request for a stay of proceedings to the Assistant Administrator. CBSFA stated that the purpose of the request was to preserve NOAA's freedom to judge the merits and legal sufficiency of certain forthcoming actions of the Council concerning the eligibility criteria for the CDQ program at upcoming Council meetings. In its request, CBSFA stated the belief that the Council may redefine the CDQ and the inshore allocations such that the objectives of its petition can be met through the council process. CBSFA requested a stay of proceeding so that, if its objectives are not realized through the council process, it may resume the petition.

NMFS considered CBSFA's petition and its request for a stay of proceedings and has decided not to initiate the rulemaking suggested by CBSFA for two reasons. First, NOAA guidelines provide for acceptance or rejection of a petition for rulemaking by the 120th day after receipt of its petition for rulemaking. There is no provision for postponing a decision based on a request for a stay by a petitioner. Second, NMFS encourages interested groups to work through the Council process to affect changes in fishery management. CBSFA stated in the request for a stay of proceedings its renewed interest in working with the Council in its review of CDQ criteria. For these reasons, NMFS has determined that there is no benefit to be derived by extending the review period by postponing a decision indefinitely. NMFS' decision not to initiate rulemaking at this time is based on procedural grounds and is not based on the merits of the petition. Because NMFS' decision not to initiate rulemaking is based on procedural grounds, NMFS did not consider comments submitted by the public; therefore, the comments are not discussed in detail in this notice. Copies of the comments are available upon request for public inspection.

Under the Administrative Procedure Act, CBSFA may resubmit the petition. All petitions for rulemaking received by NMFS will be processed in accordance with NOAA guidelines and published in the **Federal Register** for review and public comment.

Dated: June 1, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-13203 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 109
Friday, June 5, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication Notice of Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a series of meetings of the Committee on Adjudication of the Administrative Conference of the United States.

The Committee will discuss a draft report on the federal administrative judiciary, prepared for the Conference by Paul Verkuil, Daniel Gifford, Charles Koch, Richard Pierce, and Jeffrey Lubbers.

Copies of the draft report are available from the Conference.

DATES: Monday, June 29, 1992 at 1:30 p.m., Wednesday, July 15, 1992 at 1:30 p.m., Tuesday, August 4, 1992 at 1:30 p.m., Tuesday, August 18, 1992 at 1:30 p.m.

LOCATION: Library of the Administrative Conference, 2120 L Street NW., suite 500, Washington, DC.

PUBLIC PARTICIPATION: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to each meeting. The committee chairman may permit members of the public to present oral statement at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meetings. Minutes of the meetings will be available on request.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Dated: June 1, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–13248 Filed 6–4–92; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Bedrock Creek Watershed Protection Project; Clearwater and Nez Perce Counties

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho, 83705, telephone (208) 334–1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmentral Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bedrock Creek Watershed Protection Project, Clearwater and Nez Perce Counties, Idaho.

The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Bedrock Creek Watershed Protection Project consists of a system of land treatment measure designed to protect the resource base, reduce off-site sediment, and improve the quality of waters entering the Clearwater River. Planned land treatment practices include pasture and hayland planting, critical area planting, grassed waterways, terraces, and sediment basins.

The notice of a finding of no significant impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10904—Watershed Protection and Flood Prevention Program, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials)

Dated: May 26 1992.

[FR Doc. 92–13179 Filed 6–4–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Retail Trade Survey.

Form Number(s): B–151, B–151A, B–151D, B–152, B–153, B–153D.

Agency Approval Number: 0607–0013.

Type of Request: Extension of a currently approved collection without any change in the substance or in the method of collection.

Burden: 9,415 hours.

Number of Respondents: 22,458.

Avg Hours Per Request: 25 minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Retail Trade Survey to collect annual totals of sales, inventories, inventory valuation methods, purchases, and accounts receivable balances from a sample of retail establishments in the United States. The estimates compiled from this survey are critical to the accurate measurement of total economic activity and are used in computing such indicators of economic well-being as the Gross Domestic Product and the

National Income and Product Account. Survey results also provide valuable information for economic policy decisions and actions by the government and are widely used by private businesses, trade organizations, professional associations, and other for market research and anaylsis.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–13234 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 15–92]

Proposed Foreign-Trade Zone—Rio Rancho, NM; Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Rio Rancho, New Mexico, requesting authority to establish a general-purpose foreign-trade zone in Rio Rancho, New Mexico, adjacent to the Albuquerque Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 22, 1992. The applicant is authorized to make the proposal under section 3–18–29, New Mexico Statutes Annotated 1978 (1985 Repl.).

The proposed zone would be in the second project in the Albuquerque area. The Board authorized the City of Albuquerque, New Mexico, to establish a general-purpose zone and subzone in 1984 (FTZ 110, Board Order 279, 49 FR 44516).

The proposed Rio Rancho foreign-trade zone would be located at the Rio Rancho Industrial Park, which consists of 5 parcels (567 acres). Four of the parcels are located in the City of Rio Rancho (three are on New Mexico State Highway 528 and one on Southern Boulevard). The fifth parcel is located in Sandoval County, immediately adjacent to the City of Rio Rancho, on Highway 528. Amrep Southwest Inc. (Amrep), is the primary developer and owner of the industrial park, although certain parcels have been sold to individual firms which remain subject to the covenants of the park. Amrep has been designated as the proposed zone operator.

The application indicates there is a need for additional zone services in the Albuquerque area to serve the economic development needs of the City of Rio Rancho. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as integrated circuits, die cutting tooling, electronic aviation communication products, optical and medical products, and electronic components and accessories. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the appolication and report to the Board.

Public comment on the application is invited from interested parties. Submissions (orginal and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 4, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 19, 1992).

While no public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following location:

U.S. Department of Commerce District Office, 625 Silver Street, SW., 3d Floor, Albuquerque, NM 87102.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 29, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–13235 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–015]

Television Receivers, Monochrome and Color, From Japan; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On April 13, 1992 (57 FR 12797), the Department of Commerce initiated an administrative review of the antidumping duty finding on television receivers, monochrome and color, from Japan for the period March 1, 1991, through February 29, 1992, for television receivers manufactured by Citizen Watch Co., Ltd. The Department has now decided to terminate this review.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1992, we received a request from Citizen Watch Co., Ltd. (Citizen), a Japanese manufacturer of television receivers, to conduct an administrative review of the antidumping duty finding on telephone receivers, monochrome and color, from Japan for the period March 1, 1991, through February 29, 1992. On April 13, 1992, we published a notice initiating that administrative review (57 FR 12797).

On May 15, 1992, Citizen withdrew its request for review. Therefore, we are terminating the review of the television receivers, monochrome and color, from Japan for the period of March 1, 1991, through February 29, 1992.

This termination of review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1) and 19 CFR 353.22(a)(5).

Dated: May 29, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92–13236 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–DS–M

[C-570-816]

Final Negative Countervailing Duty Determinations: Oscillating and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle or Beth Graham, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3534 or 377-4105, respectively.

FINAL DETERMINATION:

Case History

Since the publication of the notice of preliminary determination in the **Federal Register** (56 FR 10111, March 23, 1992), the following events have occurred.

We conducted verification in the PRC and Hong Kong of certain respondents from April 6 to April 17, 1992.

On April 30, 1992, Lasko Metal Products, Inc. (Lasko), petitioner, alleged that PRC fan producers benefit from upstream subsidies provided to steel-input suppliers. On May 11, 1992, the Government of the People's Republic of China (GPRC), the China Chamber of Commerce for Machinery and Electronic Products (including China Household Electric Appliance Branch), and the China Association of Enterprises with Foreign Investment, disputed petitioner's allegations as untimely under 19 CFR 355.15(d). On May 15, 1992, we dismissed petitioner's upstream allegation on the following bases: (1) Petitioner did not provide evidence to support reversal of the Department's preliminary determination that the "downstream" industries, *i.e.*, producers of oscillating and ceiling fans, are not market-oriented, (2) petitioner provided no information that would cause the Department to reconsider its conclusion in Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks from the People's Republic of China, (57 FR 877, January 9, 1992) that significant state control of the PRC steel sector, the allegedly subsidized input suppliers, rendered "subsidies" to such suppliers incapable of being identified or fairly quantified, and (3) petitioner provided insufficient information identifying a benefit to the input product, the existence of a competitive benefit, and establishing that the subsidies had a significant effect on the cost of producing the subject merchandise.

A hearing was held on May 22, 1992.

Scope of Investigation

Imports covered by these investigations constitute two separate classes or kinds of merchandise: (1) Oscillating fans; and (2) ceiling fans.

The products subject to these investigations are oscillating fans and ceiling fans. Oscillating fans are electric fans that direct a flow of air using a fan blade/motor unit that pivots back and forth on a stationary base ("oscillates"). Oscillating fans incorporate a self contained electric motor of an output not exceeding 125 watts. Ceiling fans are electric fans that direct a downward and/or upward flow of air using a fan blade/motor unit. Ceiling fans incorporate a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans are designed for permanent or semi-permanent installation.

Window fans, industrial oscillating fans, industrial ceiling fans, and commercial ventilator fans are not included within the scope of these investigations. Futhermore, industrial ceiling fans are defined as ceiling fans that meet six or more of the following criteria in any combination: A maximum speed of greater than 280 revolutions per minute (RPMs); a minimum air delivery capacity of 8000 cubic feet per minute (CFM); no reversible motor switch; controlled by wall-moutned electronic switch; no built-in motor controls; no decorative features; not light adaptable; fan blades greater than 52 inches in diameter; metal fan blades; downrod mounting only-no hugger mounting capability; three fan blades; fan blades mounted on top of motor housing; single-speed motor.

The Harmonized Tariff Schedule (HTS) subheading under which oscillating fans are classifiable is 8414.51.0090. The HTS subheading under which ceiling fans are classifiable is 8414.51.0030. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Market Orientation of the PRC Fans Industry

As explained in our preliminary determinations, the countervailing duty (CVD) law may be applied to industries in nonmarket economy (NME) countries if the Department finds that the relevant industry is a market-oriented industry (MOI). To determine whether a sector of an NME is market-oriented, the Department applies the following three-part test:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production or allocation of production of the merchandise, whether for export or domestic consumption in the NME country, would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry, but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.*, labor and overhead), and for an all-but-insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the iniput or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

See Preliminary Negative Countervailing Duty Determination: Oscillating and Ceiling Fans from the People's Republic of China (56 FR 10011, March 23, 1992). If all of these conditions are not met, the producers of the merchandise under investigation will be treated as NME producers and the CVD law will not apply.

Based on our verification of the responses submitted in this proceeding, we determine that the fans industry in the PRC does not meet the third of these criteria. Verification confirmed that most of the companies under investigation source significant inputs in the PRC. We also established that some of the products included within the PRC's mandatory plan are used as inputs for fans and that for certain inputs, in-plan production was a significant proportion of all PRC production of those inputs. Verification also established that certain PRC fan input suppliers have both in-plan and out-of-plan production. Finally, we learned at verification that some of the state- and collectively-owned enterprises producing fans purchase inputs at state-mandated prices. Although the in-plan purchases were for inputs used in the production of

products other than the fans under investigation, the materials were the same as those used for fan production. These companies had no inventory control system which distinguished between materials purchased in-plan and out-of-plan.

Because we have determined that there is extensive government involvement in certain industries supplying significant inputs to the PRC fans producers, there is no need to address the first two parts of the MOI test. However, if the first two parts of the MOI test were to be addressed, the Department has concerns regarding the extent of the influence which GPRC guidance plans issued to collectives and state-owned enterprises have on their production and marketing decisions. For example, local governmentas set certain production targets. These production targets establish either total production quantities or values. Verification established that guidance plans also are used by local authorities as a means to measure company management's performance, again suggesting business enterprises' lack of automony from the government concerning prices and production.

Based on the information above, we conclude that the prices of several significant inputs are not market-determined. Therefore, we have determined that the PRC fans industry is not an MOI. As a result, we determine that the CVD law cannot be applied to the PRC fan industry. Therefore, the Department is issuing final negative determinations in these proceedings.

Interested Party Comments

Comment 1: The respondents and a U.S. importer, Encon, argue that the CVD law cannot be applied to an NME country like China. They claim that the Court of Appeals held in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1309 (Fed. Cir. 1986) (Georgetown Steel) that once a country is determined to be an NME country, application of the CVD law is precluded as a matter of law. Respondents claim that according to the court in Georgetown Steel, the antidumping (AD) law provides the exclusive remedy against unfairly priced imports from NME countries. Therefore, unless the Department revokes the PRC's status as an NME country under the AD law, the Department is required to find that the CVD law does not apply to the PRC and to terminate this investigation.

Respondents further state that Georgetown Steel and the Department's practice of not applying the CVD law to NMEs was affirmed by the Congress' rejection of Section 157 of House Resolution 3 as an amendment to the 1988 Trade Act. These parties state that not only would the amendment have overruled the Georgetown Steel decision but also would have permitted the Department to conduct the "sectoral" analysis involved in this investigation.

Lasko rebuts respondents by arguing that in Georgetown Steel, the Federal Circuit held that 19 U.S.C. 1303 does not apply to countries where the state controls virtually every aspect of the economy. Lasko further asserts that China is no longer the monolithic, state-controlled economy described in Georgetown Steel. To support this claim, petitioner cites the Economic Report of the President (February 1991) which describes extensive economic reform in China and to Department notices which refer to China as an economy "in transition" (Final Determination of Sales at Less than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China (56 FR 46153, 46155, September 10, 1991), remanded on other grounds, Amendment to Final Determination of Sales at Less than Fair VAlue and Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China (57 FR 15052, April 24, 1992) (Lug Nuts Remand). Based on this, petitioner contends that the Georgetown Steel decision does not preclude the Department from applying the CVD law to the PRC. Thus, the PRC's bounties or grants are countervailable under 19 U.S.C. 1303.

DOC Position: In 1984 decisions involving carbon steel wire rod from Czechoslovakia and Poland (49 FR 19370, May 7, 1984) ("*Wire Rod*"),the Department determined that it would not impose the market-based concept of a subsidy on a system where subsidies have no meaning and cannot be fairly identified or quantified. We further concluded that under such circumstances Congress could not have intended to apply the CVD law to NME countries. The Department's determinations were subsequently upheld by the Federal Circuit in Georgetown Steel. Thereafter, Congress rejected legislation which would have overturned Georgetown Steel. See H.R. Rep. No. 576, 100th Cong., 2d Sess. 628 (1988).

However, in 1988, Congress also amended the AD law to include section 773(c)(1)(B) which permits the Department to use its normal market economy methodologies in determining foreign market value (FMV) even though the subject merchandise is from a country which the Department has determined to be an NME. This change was added in recognition of attempts by the traditional NME countries to evolve toward market-oriented economies. Congress clearly contemplated a situation in which a sector of an NME may be sufficiently free of NME distortion so that the actual prices and/or costs incurred in the NME could be used in dumping calculations and render meaningful results. If the prices and costs in a sector of an NME are determined to be sufficiently market-oriented to serve as the bases for FMV, it follows that any subsidies would also have meaning and could be fairly identified and quanitified. Therefore, the CVD law can be applied.

In addition, if the Department were able to identify a sector in an NME that was sufficiently market-oriented to permit use of the NME producers' prices or costs in an AD investigation, United States industries would be left at a disadvantage if they were not able to seek protection from subsidies to that producer. The NME government could use subsidies to minimize AD margins with impunity if the CVD law did not apply. Clearly, Congress could not have intended such a result. On the other hand, if an industry is determined to be nonmarket, so that the Department would have to value the factors of production in a surrogate country, subsidies to the NME producers become irrelevant— any AD margin would not be calculated using NME Prices potentially influenced by subsidies. Therefore, the CVD law may be applied to industries in NME countries if the Department finds that the relevant industry is an MOI.

Comment 2: Polaray and Wing Tat assert that the Department should reclassify the PRC as a market economy. They claim that the information in the verification reports could be used to overturn the Department's designation of the PRC as an NME based on the factors listed in 19 U.S.C. § 1677(18)(B). If the Department chooses not to reclassify the entire country, then they argue that pursuant to this statute, the Department could designate Guangdong province as a market economy, since it is more market-oriented than other areas of China.

DOC Position: We disagree with Polaray's and Wing Tat's request that the Department reclassify the PRC as a market economy country. While Section 771 (18)(C)(ii) does provide that the Department "may make a determination under subparagraph (A) with respect to any foreign country at any time," these respondents have not provided any information or arguments addressing the factors to be considered in making NME determinations which are listed in Section 771 (18)(B). Therefore, no basis

exists for the Department to revoke the PRC's NME status. In addition, the information collected by the Department during the course of the proceedings focuses on the PRC fans sector, not the PRC economy as a whole or a particular geographic area.

Comment 3: Petitioner asserts that the Department's preliminary determinations in these investigations and its use of the "mix and match" approach in the AD proceedings on the same products are fundamentally inconsistent. Lasko states that in the Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China (56 FR 55271, October 25, 1991) (Fans), the Department principally used the actual production costs incurred by the PRC producers for raw material inputs purchased from market economy countries to value the PRC manufacturers' factors of production. In the present investigations, the Department preliminarily determined that the prices for raw material inputs are not market-driven for purposes of the CVD law. Petitioner asserts that these two approaches are fundamentally inconsistent. The Department must eliminate either the "mix and match" approach or the three part MOI test in order to provide U.S. industries a remedy against unfair trade practices by economies in transition.

Respondents disagree with petitioner. In their view, the Department's decision to rely on the actual acquisition prices of imported inputs purchased in market economy countries in the AD investigations is compatible with a conclusion that the CVD law is inapplicable to imports from an NME. They concede that where the Department uses the prices of domestically-sourced inputs in an NME, there is a risk that these values may be distorted by upstream subsidies bestowed upon the input supplier. Moreover, if the Department refused to investigate such subsidies, the petitioner would get neither the protection of the CVD law nor the use of subsidy-free input values from market economies in the calculation of FMV. However, when the prices of imported inputs from market economy countries are used to value the factors of production, there can be no presumption that they are subsidized, and, even if they were, such benefits, bestowed by the government of the country of the input production, would not be countervailable under U.S. law.

Repondents argue further that it would be unfair to PRC producers that use imported inputs for the Department to apply both the CVD law and the surrogate valuation approach in AD investigations. If the Department applied the CVD law to an industry in which the surrogate methodology had been applied, the NME producer would be penalized a second time for the same subsidy.

DOC Position: The Department's determinations in the AD and CVD investigations are consistent with each other.

In the AD investigations, the Department determined that the PRC fans industry did not sufficiently overcome the presumption that the prices for PRC-sourced inputs were not market-based. See Fans. Although several respondents claimed that the prices of various PRC-sourced inputs were market driven because they were purchased in market economy currencies, the normal NME methodology for calculating FMV was used (*i.e.*, surrogate values were used to value the factors of production for PRC-sourced parts). However, materials sourced from market economy countries and paid for in convertible currencies were valued using the actual market prices reported by the respondents. Surrogate values were not used for the imported inputs.

In this notice of final negative countervailing duty determinations, we are determining that the PRC fans industry is not an MOI because of the extent of state involvement in the production of significant inputs purchased locally by PRC fan producers. This is the same conclusion the Department reached in its final determination in the AD investigation; that the prices and costs for particular PRC-sourced inputs are not market-based. The MOI test has no relevance to the Department's determination to use the prices and costs of inputs sourced from market economy countries and paid for in a market economy currency.

Comment 4: Petitioner argues that the Department's MOI test is far more restrictive than the requirements set out in Georgetown Steel. In particular, the third part of the test requires the PRC to become more market-oriented than current market economies before the CVD law will be applied. For example, petitioner asserts that based on this test, the CVD law could not have been applied to industries involved in the following affirmative CVD determinations: Final Affirmative Countervailing Duty Determination: Aluminum Sulfate from Venezuela (54 FR 43440, October 25, 1990); Carbon Black from Mexico (41 FR 30385, August 26, 1986), remanded on other grounds, *Cabot Corporation* v. *United States*, Slip Op. 88-96, 10 ITRD 1736 (1988); Preliminary Affirmative Countervailing Duty Determination: Softwood Lumber Products from Canada (57 FR 8800, March 12, 1992); and Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Brazil (49 FR 5157, February 10, 1984). In each of these cases, petitioner maintains that inputs were supplied to firms by government-owned enterprises at fixed prices.

Lastly, petitioner contends that the Department's MOI test is "tantamount to a restrictive amendment to statutory law without legislative or constitutional authority" and it must be withdrawn. Petitioner asserts that the Department's MOI test constitutes a "rule" within the meaning of 5 U.S.C. 551(4) and is subject to the rule-making requirements of the Administrative Procedure Act ("an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy * * *"). By applying the MOI test to the present investigation and to future NME investigations, petitioner argues that the Department has not adhered to the rule-making requirements prescribed by 5 U.S.C. 553.

DOC Position: The Department rejects petitioner's argument that it is required to conduct a rule-making proceeding pursuant to the Administrative Procedures Act, 5 U.S.C. 553, for its MOI test. As the U.S. Supreme Court has recognized, an agency in the administration of a statute has a choice between proceeding by rule-making or decision-making on a case-by-case basis. *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 202, 203 (1947) (Chenery); see also, *Zenith Electronics Corporation* v. *United States*, 755 F.Supp. 397 (CIT, 1990); *see contra, Ipsco* v. *United States*, 687 F. Supp. 614 (CIT, 1988). This decision lies primarily within the informed discretion of the administering authority. The Supreme Court further recognized that an "agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgement into a hard and fast rule." Chenery, 332 U.S., at 202. Such is the case here.

In 1988, Congress amended the AD statute to include section 773(c)(1)(B), which permits the Department to use its normal market economy methodology for FMV even though the country involved in the administrative proceeding is an NME country. Until recently, the Department has not had to focus on the question of how this

provision of the statute could be met. During the past year, the Department has had several administrative proceedings which have involved claims pursuant to section 773(c)(1)(B). Therefore, the Department has attempted to develop the appropriate standards for the application of this provision. The Department's initial test was developed in Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug-Nuts from the People's Republic of China (56 FR 46153, September 10, 1991) (Lug-Nuts); and Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China (55 FR 55271, October 25, 1991). However, in the Lug-Nuts Remand the Department found that the scope of its test was too narrow. As a result of that remand, the Department issued an amended final determination published on April 24, 1992 modifying its developing NME methodology as currently embodied in the MOI test. As discussed above, we applied the MOI test in this case and found that the fans industry in the PRC was not sufficiently market-oriented to be designated an MOI under the test.

While the Department could have promulgated a regulation in 1988 establishing a test, the failure of the Department to anticipate this problem and promulgate a general rule does not mean that the Department does not have the authority to fulfill its statutory duty in this case. Chenery, 332 U.S. at 201–202. To restrict the administrative process to require the Department to first promulgate regulations before it has experience with particular situations "would stultify the administrative process." *Id.* at 202.

The Department also disagrees with petitioner's assertion that the Department's MOI test is far more restrictive than the requirements set out in Georgetown Steel. The MOI test specifically addresses the court's concerns in Georgetown Steel regarding the distortions caused by extensive government involvement in the economy. We believe that each part of the MOI test attempts to gauge the extent to which NME prices and costs are market-determined and not distorted by central government economic planning.

The MOI test is designed to solicit information which enables the Department to evaluate (i) state involvement in the provision of inputs, and (ii) the ability of companies in an NME to respond to market signals in their pricing/output decisions, or in a more general sense, to act as profit maximizers. For example, the first part of the test addresses the extent of government involvment in the pricing and production decisions of the companies producing the merchandise under investigation. The second part of the test deals with particular types of ownership and the ability of certain types of enterprises to respond to "market" signals with respect to investment or disinvestment. The third part of the test focuses on inputs and the market distortion that may result from the PRC's central planning activities for those inputs. An analysis of each element of the test will result in a thorough evaluation of the extent to which market forces exist within a particular sector in an NME. Conversely, the deletion of any one of these elements from the MOI test would limit the Department's ability to address the specific characteristics and distortions identified by the court in Georgetown Steel.

Some parties have claimed that the inappropriateness of the MOI test is obvious because of the inability of many market economy countries to meet the test's requirements. The MOI test was designed only to apply to NMEs and for a specific purpose: to assess the extent to which distortions caused by extensive government involvement in an NME exist in a particular industry. The Department recognizes that governments intervene and regulate certain markets or sectors in many countries which the Department has treated as market economies. The government's intervention, however, must be viewed against the backdrop of the larger market economy in which a particular sector or market is embedded. There is a reasonable presumption that the market economy influences of a market economy predominate over the influence of any sector or market in which there is government intervention or regulation. Therefore, because of the predominance of the market forces of the larger economy, this presumption cannot be overcome and the MOI test is irrelevant within the context of a market economy country.

In an NME, however, the contrary presumption obtains: Nonmarket forces permeate the economy. However, the Department considers it possible that market forces within a sector or industry, if strong enough, can overcome the NME forces that would normally prevail. Thus, the presumption of nonmarket orientation exists from case to case, regardless of the industry, until overturned. While section 773(c)(1)(B) of the Act clearly allows for the possibility that market forces may predominate in specific sectors or industries, we believe those instances will be rare.

Comment 5: Lasko contests the Department's dismissal of its upstream subsidy allegation regarding the steel inputs used by the Chinese fan producers. According to the petitioner, the Department, in its May 15, 1992 letter, stated that an upstream subsidy cannot be countervailable unless the downstream industry passes the MOI test. Petitioner contends that based on this decision, the Department prejudged the issue since the final determination would not be made until June 1, 1992. In addition, petitioner asserts that the Department would not be able to investigate the upstream subsidies until after this investigation is completed, resulting in a "perversion of the remedial purpose of the statute."

DOC Position: The Department disagrees with petitioner's contention that the Department prejudged this issue in rejecting the upstream subsidy allegation. As stated in the Department's letter of May 15, 1992, in order for an upstream allegation to be viable in an NME case, the Department would first have to determine that the "downstream" industry being investigated is characterized by market activity. The letter also indicated that the petitioner had "provided no evidence demonstrating that [the Department's] preliminary determination should be reversed." Therefore, there was no legal basis on which an upstream subsidy investigation could be sustained. Furthermore, as stated in the "Case History" section of this notice, petitioner's upstream subsidy allegation was also dismissed because of certain other deficiencies. See the "Case History" section of this notice.

Comment 6: Polaray and Wing Tat assert that they meet all three criteria of the Department's MOI test. These companies state that verification established that "there is no government involvement in setting prices of ceiling fans or amounts to be produced" and "that the fans industry is characterized by private or collective ownership of the producers under investigation." With respect to the third part of the MOI test, these companies assert that they import most of their inputs from market economies and pay for these inputs in convertible currencies. Because they claim that an insignificant proportion of the material inputs used in their production processes are sourced in the PRC and are not influenced by the GPRC, Polaray and Wing Tat request that the Department determine that Polaray and Wing Tat are market-

oriented producers and do not benefit from subsidies bestowed by the PRC government.

DOC Position: Regardless of Polaray's and Wing Tat's situations, the CVD law focuses on whether the industry producing the subject merchandise is being subsidized, and the Department's MOI test focuses on the industry's market orientation. Because the Department has determined that the PRC fans industry is not market-oriented, the Department will not make a determination with respect to individual companies within the industry.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: June 1, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-13237 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92-00007." A summary of the application follows.

Summary of the Application

Applicant: EXIM International, The Pennsylvanian, 1100 Liberty Avenue, suite 817, Pittsburgh, Pennsylvania 15222, Contact: Mark A. Goldstein, Esquire, Telephone: (412) 263-2773.

Application No.: 92-00007.

Date Deemed Submitted: May 26, 1992.

Members (in addition to applicant): None.

Export Trade: 1. *Products.* All Products. 2. *Services.* All Services. 3. *Technology Rights* Technology rights, including, but not limited to, patents, trademarks, copyrights, trade secrets, that relate to Products and Services. 4. *Export Trade Facilitation Services (as they relate to the Export of Products).* Export Trade Facilitation Services including professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers associations.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. To engage in Export Trade in the Export Markets, EXIM seeks to:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

i. Enter into contracts for shipping.

2. EXIM and individual Suppliers may regularly exchange information on a one-on-one basis regarding inventories and near-term production schedules in order that the availability of supplies for export can be determined and effectively coordinated by EXIM with its distributors in Export Markets.

Definition

Supplier means a person who produces, provides, or sells Products, Services, or Technology Rights.

Dated: May 29, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-13181 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 90-2A006.

SUMMARY: The Department of Commerce has issued an amendment to

the Export Trade Certificate of Review granted to the Forging Industry Association (FIA) on May 29, 1992. The original Certificate was issued on July 9, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on July 13, 1990 (55 FR 28801).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-fee number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs (OETCA) is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 90–00006, was issued to the Forging Industry Association ("FIA") on July 9, 1990 (55 FR 28801, July 13, 1990), and previously amended on April 30, 1991 (56 FR 21128, May 7, 1991).

FIA's Export Trade Certificate of Review has been amended to:

1. Add the following eight companies as "Members" within the meaning of § 325.2 (1) of the Regulations (15 CFR 325.2(1)): The Drop Dies & Forgings Co., Cleveland, OH; FMC Steel Products Division, Anniston, AL, (controlling entity: FMC Corporation, Chicago, IL); Hussey Marine Alloys LTD., Leetsdale, PA; Earle M. Jorgensen Co., Forge Division, Seattle, WA; (controlling entity: Earle M. Jorgensen Co., Seattle, WA); KomTek, Worcester, MA (controlling entity: Kervick Enterprises Inc., Worcester, MA); Ladish Co., Inc., Cudahy, WI; Union Forging Company, Endicott, NY (controlling entity: UIS, Inc., New York, NY); Western Forge & Flange Co., Santa Clara, CA; and

2. Delete Bethlehem Steel Corporation, BethForge Division, Bethlehem, PA as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2 (1)).

A copy of the amended Certificate will kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 1, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–13180 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–DR–M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first Request for Panel Review of final affirmative injury determination made by the Canadian International Trade Tribunal respecting Machine Tufted Carpeting Originating in or Exported From the United States of America filed by General Felt Industries, Inc. with the Canadian Section of the Binational Secretariat on May 27, 1992.

SUMMARY: On May 27, 1992, General Felt Industries, Inc. filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative injury determination made by the Canadian International Trade Tribunal respecting machine tufted carpeting originating in or exported from the United States of America. The Binational Secretariat has assigned Case Number CDA–92–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binatiónal Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on May 27, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 26, 1992);

(b) A Party, investigating authority or interested person, that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the Deadline for filing a Notice of Appearance is July 13, 1992);

(c) In the case of a final determination made in Canada, any person that would be entitled to appear and be represented in a judicial review of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 13, 1992); and

(d) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and

substantive defenses raised in the panel review.

Dated: June 2, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-13238 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of the final affirmative countervailing duty determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Certain Softwood Lumber Products from Canada, filed by the Government of Canada, the Governments of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan, the Gouvernement du Quebec, the Governments of the Northwest Territories and the Yukon Territory, and the Canadian Forest Industries Council and affiliated companies with the United States Section of the Binational Secretariat on May 28, 1992.

SUMMARY: On May 28, 1992, the Government of Canada, the Governments of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan, the Gouvernement du Quebec, the Governments of the Northwest Territories and the Yukon Territory, and the Canadian Forest Industries Council and affiliated companies filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative countervailing duty determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Certain Softwood Lumber Products from Canada, made by the International Trade Administration, Import Administration, Import Administration File Number C-122-816. The Binational Secretariat has assigned Case Number USA-92-1904-01 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on May 28, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 29, 1992);

(b) A Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 13, 1992); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 2, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-13239 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-GT-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 6, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 10, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (57 FR 12480) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the services at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, U.S. Army Reserve Center for the following locations:
East Windsor, Connecticut
West Hartford, Connecticut
Windsor Locks, Connecticut
Janitorial/Custodial, U.S. Army Reserve Center, 200 Baker Road, Pittsfield, Massachusetts

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–13211 Filed 6–4–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 6, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Necktab, Women's Shirt, 8445–01–317–1620
Nonprofit Agency: Northeastern Association for the Blind at Albany, Albany, New York

Services

Grounds Maintenance: Travis Air Force Base, California
Nonprofit Agency: Phoenix Programs, Inc., Concord, California
Grounds Maintenance for the following locations:
Marine Corps Base, Camp LeJeune, North Carolina
Marine Corps Air Station, New River, Jacksonville, North Carolina
Nonprofit Agency: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina
Laundry Service: Portsmouth Naval Hospital, Portsmouth, Virginia
Nonprofit Agency: Lewis W. Eggleston Center, Norfolk, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–13212 Filed 6–4–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 6, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from a nonprofit agency employing individuals who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the commodity to the Government.

2. The action will result in authorizing a small entity to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification

on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List:

Arming Adapter, Self-Adjusting, 1325-01-159-8083
Nonprofit Agency: New Ventures, Inc., LaGrange, Georgia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-13213 Filed 6-4-92; 8:45 am]

BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 92-1-90CD]

Ascertainment of Whether Controversy Exists Concerning 1990 Distribution of Cable Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Copyright Royalty Tribunal directs all claimants to royalty fees paid by cable operators for secondary transmission during 1990 (Phase I and Phase II) to submit any comments concerning whether a controversy exists with regard to the distribution of the 1990 cable royalty fees. All claimants intending to participate in the 1990 proceeding shall include with their comments a Notice of Intent to Participate. Any particular controversy, Phase I or Phase II, of which the Tribunal does not become advised by the end of the comment period will not be considered at a later date without a showing of good cause. Specifically for Phase II each claimant must state each program category in which he or she has an interest which by the end of the comment period has not yet been satisfied by private agreement.

DATES: Comments are due July 15, 1992.

ADDRESSES: An original and five copies of the comments shall be addressed to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: J.C. Argetsinger, Commissioner, Coyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202) 606-4400.

Dated: June 1, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92-13215 Filed 6-4-92; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Contract Administration Working Group of the DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College, DOD.

ACTION: Request for public comment.

SUMMARY: The Contract Administration Working Group of the DOD Advisory Panel is reviewing the following laws relating to claims and disputes:

5 U.S.C. 581 *et seq.*—Alternative Means of Dispute Resolution in the Administrative Process
a. 5 U.S.C. 581—Definitions
b. 5 U.S.C. 582—General authority
c. 5 U.S.C. 583—Neutrals
d. 5 U.S.C. 584—Confidentiality
e. 5 U.S.C. 585—Authorization of arbitration
f. 5 U.S.C. 586—Enforcement of arbitration agreement
g. 5 U.S.C. 587—Arbitrators
h. 5 U.S.C. 588—Authority of arbitrators
i. 5 U.S.C. 589—Arbitration proceedings
j. 5 U.S.C. 590—Arbitration awards
k. 5 U.S.C. 591—Judicial review
l. 5 U.S.C. 592—Compilation of information
m. 5 U.S.C. 593—Support services
10 U.S.C. 2405—Limitation on adjustment of shipbuilding contracts
10 U.S.C. 2410—Contract claims; certification
10 U.S.C. 7365—Settlement of claims
28 U.S.C. 1346—United States as defendant
28 U.S.C. 1491—Claims against United States generally; actions involving Tennessee Valley Authority
28 U.S.C. 1499—Liquidated damages withheld from contractors under Contract Work Hours and Safety Standards Act
28 U.S.C. 2672—Administrative adjustment of claims
28 U.S.C. 2673—Reports to Congress
28 U.S.C. 2674—Liability of the United States
28 U.S.C. 2675—Disposition by federal agency as prerequisite; evidence
28 U.S.C. 2676—Judgment as bar
28 U.S.C. 2677—Compromise
28 U.S.C. 2678—Attorney fees; penalty
28 U.S.C. 2679—Exclusiveness of remedy
28 U.S.C. 2680—Exceptions
31 U.S.C. 1304—Judgments, awards and compromise settlements
31 U.S.C. 3717—Interest and penalty of claims
31 U.S.C. 3726—Payment for transportation
31 U.S.C. 3807—Right to administrative offset
41 U.S.C. 601—Definitions
41 U.S.C. 602—Applicability of law
41 U.S.C. 603—Maritime contracts
41 U.S.C. 604—Fraudulent claims
41 U.S.C. 605—Decision by contracting officer
41 U.S.C. 606—Contractor's right of appeal to board of contract appeals
41 U.S.C. 608—Small claims
41 U.S.C. 609—Judicial review of board decisions
41 U.S.C. 610—Subpoena, discovery and deposition
41 U.S.C. 611—Interest
41 U.S.C. 612—Payment of claims
41 U.S.C. 613—Separability of provisions
Public Law 99-509, Part B—Program Fraud Civil Remedies Act of 1986

Working Group 3 has also identified an error in the numbering of certain sections in title 5. Ten sections numbers in this title have been used twice for different code sections. Working Group 3 is interested in receiving comments about and will be reviewing 5 U.S.C. 581 *et seq.* regarding Alternative Means of Dispute Resolution in the Administrative Process. The Working Group will not be reviewing the statutes regarding Negotiated Rulemaking Procedure, which are also numbered as 5 U.S.C. 581 through 5 U.S.C. 590.

Working Group 2, Contract Formation, is in the process of reviewing the area of bid protests and has previously solicited comments on that subject. Working Group 3 will not be reviewing this aspect of the claims and dispute area.

Request responses to the following questions on each law:

—Is the law serving its intended purpose?
—Has the law created inefficiencies?
—Has it unduly burdened the buyer/seller relationship?
—Is it required for the continuing financial and ethical integrity of defense procurement programs?
—Is it required to protect the best interests of DOD?
—Is the law still relevant?
—Does it overlap, duplicate, or conflict with other laws?
—Does it contain ambiguous terms or provisions which have led to problems in interpretation?
—Should the law apply to commercial products?
—Should it apply to first tier subcontracts, or all subcontracts?

The panel also solicits suggestions of other laws relating to claims and disputes.

The Contract Administration Working Group will be presenting initial recommendations on the laws relating to claims and disputes to the panel at its July 16, 1992 meeting. Comments must be received by July 2, 1992 in order to be fully considered by the Working Group.

Individuals and organizations wishing to provide information to the Contract Administration Working Group may provide the information to Ms. Diane Sidebottom, Acquisition Law Task Force, at Defense Systems Management College, 8580 Cinderbed Road, suite 800, Newington, VA 22122 (703-355-2665).

Dated: June 1, 1992.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13198 Filed 6–4–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management Symposium, Open Meeting

AGENCY: Military Traffic Management Symposium, DOD.

ACTION: Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of the Committee: Military Traffic Management Symposium, DOD.

Date of the Meeting: 18 June 1992.

Time: 0830–1630 hours.

Place: Best Western Old Colony Inn, Alexandria, VA.

Proposed Agenda:

2. To provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Moving and Storage Program.

3. All interested persons desiring to submit topics for discussion, should contact the Commander, Military Traffic Management Command, Attn: MTPP–M, (703) 756–1600, between 0800 and 1630 hours.

Gregory D. Showalter,

Alternate Army Federal Rgister Liaison Officer.

[FR Doc. 92–13183 Filed 6–4–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Support of High Sulfur Coal Research

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance (Cooperative Agreement) award.

SUMMARY: The Department of Energy (DOE), announces that pursuant to 10 CFR 600.7(b), it is intending to award a cooperative agreement on a noncompetitive basis to the State of Illinois, Department of Energy and Natural Resources (ENR) for the "Support of High Sulfur Coal Research."

SCOPE: The objective of this project is to stimulate the utilization of high-sulfur coal, the predominant generic coal type found in the Illinois Basin as well as in other important bituminous coal producing regions in the United States, while meeting New Source Performance Standards and the National Environmental Policy Act through Producing Liquid, Gaseous and Solid Fuels and Chemicals from Coal, Coal Preparation, Combustion, Coal Characterization, Related Coal Desulfurization Studies, and Flue Gas and Gas Stream Cleanup. The intended research will: (1) Convert coal partially or completely into premium quality liquids and gases, and produce solid fuel forms and/or chemicals that are distinctly different from the original coal; (2) develop precombustion coal cleaning methods for removing noxious elements, especially sulfur, contained in coal; (3) develop advanced combustion technologies that will not only meet stringent emission regulations but also maintain or increase thermal efficiency and combustor performance; (4) transfer the technological information developed to industry through publications and regularly held conferences and workshops. The State of Illinois will make available to this project the personnel, material and other facilities necessary for carrying out a research program dedicated to solving problems inherent in the use of high-sulfur coal.

In accordance with the criteria presented under 10 CFR 600.7(b)(2)(i) criteria (A), (B), and (D), the State of Illinois has been selected as the cooperative agreement recipient. This activity would be solely conducted by the State of Illinois using its own resources; however, DOE support of the activity would enhance the public benefits derived by cosponsoring work in areas for which there is insufficient funding available, and by preventing duplications of effort in parallel DOE/State of Illinois R&D. Additionally, by pursuing its own research and development program since 1982, the State of Illinois has become a unique repository of the extensive data and information relating to the high-sulfur coals endemic to the Illinois Basin.

The project period of the cooperative agreement is for three years with an initial funding period of twelve months. The estimated value for the initial funding period is $2,932,458.00. This funding level will be equally shared between DOE and the State of Illinois.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Robert L. Baker, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Telephone: AC (412) 892–6154.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 92–13228 Filed 6–4–92; 8:45 am]

BILLING CODE 6450–01–M

Savannah River Field Office (SR) Financial Assistance Award Intent to Award a Noncompetitive Grant

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive award of cooperative agreement.

SUMMARY: The DOE announces that it plans to award a renewal agreement to South Carolina Water Resources Commission (SCWRC), Division of Geology/Hydrology, Columbia, South Carolina, for continuation of the project "A Geohydrologic Investigation and Establishment of a Permanent Multi-Observational Well Network in Aiken, Allendale, and Barnwell Counties, South Carolina." The cooperative agreement will be extended for a five-year perid with DOE support of $2,048,000; SCWRC will cost share $820,331 during the period. Pursuant to § 600.7(b)(2)(i)(A) of the DOE Assistance Regulations (10 CFR part 600), DOE has determined that the activity to be funded is necessary for the satisfactory completion of an activity presently being funded by DOE and eligiblity for this award shall be limited to SCWRC.

FURTHER INFORMATION CONTACT: Elizabeth T. Martin, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Field Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2191.

SUPPLEMENTARY INFORMATION:

PROCUREMENT REQUEST NUMBER: 09–92SR15160.001.

PROJECT SCOPE: In 1986, SCWRC began constructing a high quality observational well network at locations in Aiken, Allendale, and Barnwell counties to obtain geohydrologic data to define the stratigraphy and groundwater conditions beneath and around the Savannah River Site (SS). Continuation of this project will allow for completion of the planned well-cluster system (eleven well clusters containing a total of about 82 observational wells) and will provide detailed information concerning the lithology, stratigraphy, and hydrogeology outside SRS and how it relates to similar studies conducted onsite. The project will provide a long-term observation network to: (1)

Continually monitor water levels, head relationships, and flow paths; (2) monitor water quality; and (3) detect changes in these parameters as groundwater pumpage increases or decreases in an around SRS.

SCWRC is the authorized and qualified state agency to perform the functions covered under the agreement. The primary purpose of the award is to ensure the citizens of South Carolina that their health, safety, and environment are being protected through a program of independent monitoring and oversight by the state.

Issued in Aiken, South Carolina on: May 22, 1992.

Robert E. Lynch,

DOE Savannah River Field Office, Head of Contracting Activity Designee.

[FR Doc. 92-13229 Filed 6-4-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Award

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited proposal application of a grant award with Texas A&M Research Foundation.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center (PETC) to the Texas A&M Research Foundation for "Development and Use of an Apparatus to Measure the Dynamic Surface Properties of Coal-Water-Slurry Fuels for Applications to Atomization Characteristics."

SUPPLEMENTAL DATA: *Grant No.:* DE-FG22-92PC92156.

Title: "Development and Use of an Apparatus to Measure the Dynamic Surface Properties of Coal-Water-Slurry Fuels for Applications to Atomization Characteristics".

Awardee: Texas A&M Research Foundation.

Term: 12 months.

Cost: Total estimated cost is $53,741. There will be no cost-sharing involved in this transaction; financial assistance will be provided by the Federal Government to the Texas A&M Research Foundation.

SCOPE: The proposed research presents a unique method for measurement of dynamic surface tension and surface dilatational viscosity properties, and could provide insight into the droplet-forming mechanism of the coal-water-slurry atomization process. The effects of the measured properties will be used to describe the atomization behavior and performance, and further to select the optimum atomizer operating conditions. The dynamic surface tension and surface dilatational viscosity will be measured to investigate a new way of describing the slurry spray characteristics. This will contribute significantly to the knowledge base for the spray correlations for non-Newtonian fuels such as coal-water-slurry. DOE support of this activity will benefit the academic community in developing the theory of slurry atomization as well as slurry nozzle manufacturers and users who will benefit by the improved understanding of spray characteristics.

FOR FURTHER INFORMATION WRITE TO: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Ms. Mary S. Price, Contract Administrator, Acquisition and Assistance Division, P.O. Box 10940, MS 921-118, Pittsburgh, PA 15236.

Dated: May 20, 1992.

Beth H. Peterman,

Chief, Administrative Support Group, Acquisition and Assistance Division.

[FR Doc. 92-13230 Filed 6-4-92; 8:45 am]

BILLING CODE 6450-01-M

Conservation and Renewable Energy Office

Award Based on Acceptance of an Unsolicited Application American Solar Energy Society (ASES)

AGENCY: Conservation and Renewable Energy; Department of Energy (DOE).

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: DOE, Office of Management and Resources, Conservation and Renewable Energy, through the Philadelphia Support Office, announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), DOE intends to award a grant to the ASES. The anticipated overall objective is to provide a vehicle for exchanging information about advances in solar energy technologies, programs and concepts with both public and private sector technical researchers and energy officials.

SUPPLEMENTARY INFORMATION: The grant of $40,000 will partially fund the ASES' Annual National Solar Energy Conference. In this project, entitled "Application for Federal Assistance for Partial Funding of the American Solar Energy Society Solar 92 Conference," ASES will conduct its annual conference which will focus on the impact of solar technologies on the national and global environment.

The term of this grant shall be three (3) months from the effective date of award.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for noncompetitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Christoper G. McGowan, Philadelphia Support Office, U. S. Department of Energy, Tenth Floor, 1421 Cherry Street, Philadelphia, Pennsylvania 19102-1492, (215) 597-3890.

Issued in Chicago, Illinois on May 27, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-13228 Filed 6-4-92; 8:45 am]

BILLING CODE 6450-01-M

[CE-Support Office Boston]

Financial Assistance Award; Intent to Award Grant to Solar Energy Industries Association

AGENCY: Conservation and Renewable Energy, Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Pursuant to 10 CFR 600.7(b)(2), the Department of Energy, Chicago Operations, through the Boston Support Office intends to award a grant to The Solar Energy Industries Association. The grant will provide funding in the amount of $64,610 for a Photovoltaic Commercialization Program. The work proposed will support among other things, the development of market introduction strategies, organization and attendance at meetings, and liaison with joint venture activities being undertaken by DOE and by the International Fund for Renewable Energy and Energy Efficiency.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

The term of this grant shall be twelve (12) months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office; Attn: Mr. Hugh Saussy, Jr.; One Congress Street, Boston, MA 02114-2021.

Issued in Chicago, Illinois on May 27, 1992.
Timothy S. Crawford,
Assistant Manager for Administration.
[FR Doc. 92-13227 Filed 6-4-92; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-346-000, et al.]

Central Hudson Gas & Electric Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Central Hudson Gas & Electric Corporation

[Docket No. ER92-346-000]

May 27, 1992.

Take notice that Central Hudson Gas and Electric Corporation (Central Hudson) on May 7, 1992, tendered for filing an amendment to its development of actual costs for 1990 related to substation service provided to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule FERC No. 43.

Central Hudson indicates that the actual cost for 1990 amounted to $261,196 and will be the basis on which estimated charges for 1991 will be billed.

Central Hudson requests waiver of the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1991 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the Sate of New York Public Service Commission.

Comment date: June 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Oswego Hydro Partners L.P.

[Docket No. QF86-517-001]

May 28, 1992.

On May 22, 1992, Oswego Hydro Partners L.P., c/o American Energy Hydroelectric Corporation, 900 19th Street, NW., suite 600, Washington, DC 20006, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The hydroelectric facility will be located in Oswego and Onondaga Counties, New York on the Oswego River. The Commission previously certified the facility as a qualifying small power production facility. *Long Lake Energy Corporation,* 35 FERC ¶ 62,097 (1986). The instant request for recertification is due to: (1) Change in ownership structure involving an electric utility, (2) decrease in maximum net electric power production capacity from 4.0 MW to 3.4 MW and, 3) inclusion of a 2,150-foot 34.4 kV transmission line that will interconnect the facility to Niagara Mohawk Power Corporation's electric system.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Company

[Docket No. ER91-684-000]

May 29, 1992.

Take notice that on May 20, 1992, Iowa Public Service Company (IPS) tendered for filing a forth amendment to the filing of an executed Transmission Interconnection and Interchange Agreement between IPS and Nebraska Public Power District (NPPD).

IPS indicates that the Interconnection and Interchange Agreement reflects the establishment of a transmission interconnection between the two systems. NPPD will pay IPS a facilities charge based on transmission line investment. This fourth amendment provides Amendment No. 2 to the Agreement (signed by both parties) and a calculation of refund owed to NPPD.

IPS respectfully requests a waiver of the Commission's rules so that the Interconnection and Interchange Agreement may be approved retroactive to December 29, 1986.

IPS states that copies of this filing were served on NPPD and the Iowa Utilities Board.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER92-476-000]

May 29, 1992.

Take notice that on May 27, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to the agreement filed under FERC Docket No. ER92-476-000. This docket, initially filed on April 21, 1992, implements on an interim basis a new practice for flexible scheduling of the power output of Northern California Power Agency's and the City of Santa Clara's Collierville Powerhouse Units 1 and 2 based on an executed letter agreement dated July 31, 1991.

The amendment supplements the original agreement by:

(i) Extending the effective date and

(ii) Revising the data in Attachment 1 and Table 1 to reflect an increase in the Machine Capacity rating of the Collierville Hydroelectric Project.

No rate changes are involved in this filing.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Public Sevice Company

[Docket No. ER92-564-000]

May 29, 1992.

Take notice that on May 20, 1992, Iowa Public Service Company (IPS) tendered for filing a reduction of the Transmission Service Fee. On February 18, 1992 FERC accepted for filing and designated Rate Schedule FERC No. 111 for the Transmission Service Agreement (Agreement) between Iowa Public Service Company (IPS) and Cedar Falls Utilities (CFU). This Agreement provides transmission service to CFU for its share of power and energy from the George Neal Generating Station Unit No. 4 to CFU's system. Section 2 of the Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary.

IPS respectfully requests a waiver of the Commission's rules so that the Transmission Service Fee may be approved retroactive to January 1, 1992.

IPS states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER92-319-000]

May 29, 1992.

Take notice that on May 19, 1992, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its prior submittal of an Agreement to Provide Qualifying Facility Transmission Service between Tampa Electric and Seminole Fertilizer Corporation (Seminole Fertilizer). The amendment concerns support for, and amendment of, a related interconnection agreement between Tampa Electric and Seminole Fertilizer.

Tampa Electric proposes an effective date for the Transmission Service Agreement of the earlier of October 1, 1992, or the in-service date of the power sale contract between Seminole Fertilizer and Florida Power Corporation.

Copies of the filing have been served on Seminole Fertilizer and the Florida Public Service Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Missouri Public Service, a Division of UtiliCorp United Inc.

[Docket No. ER92-562-000]

May 29, 1992.

Take notice that Missouri Public Service, a Division of UtiliCorp United Inc. (MPS) on May 19, 1992, tendered for filing an Amendment dated May 14, 1992 to the Transmission and Interconnection Agreement between MPS and Associated Electric Cooperative, Inc. (AEC) dated August 24, 1988 (the Agreement).

The filing states that the Amendment was entered into in order to add two new delivery points to the Agreement. No change in rates will occur as a result of the Amendment. MPS is requesting waiver of the Commission's notice requirements so that the Amendment can become effective on May 14, 1992, as the parties agreed.

Copies of the filing were served upon AEC and the Missouri Public Service Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Madison Gas and Electric Company

[Docket No. ER92-244-000]

May 29, 1992.

Take notice that Madison Gas and Electric Company (MGE) on May 18, 1992, tendered for filing a revised Service Schedule A to the Interchange Agreement between itself and Wisconsin Electric Power Company (WEPCO). The submittal addresses certain concerns of the Commission's staff regarding compensation for Limited Term Power and Energy.

WEPCO and MGE respectfully requests an effective date of June 1, 1992.

Copies of the filing have been served on WEPCO and the Public Service Commision of Wisconsin.

Comment date: June 12, 1992, in accordance with Standard Paragraph at the end of this notice.

9. Duke Power Company

[Docket No. ER92-567-000]

May 29, 1992.

Take notice that on May 19, 1992, Duke Power Company (Duke) tendered for filing with the Commission a revised Supplement No. 5 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). The revised Supplement No. 5 changes Duke's monthly transmission capacity rate under the Interchange Agreement from $1.1415 per kW per month to $1.1097 per kW per month. Duke has proposed an effective date of July 1, 1992, for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER92-581-000]

May 29, 1992.

Take notice that on May 20, 1992, Consolidated Edison Company of New York, Inc. (Con Edison), in response to a deficiency letter herein, tendered for filing additional information relative to an agreement to provide transmission service to New York State Electric & Gas Corporation (NYSEG).

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER92-573-000]

May 29, 1992.

Take notice that on May 26, 1992, Western Resources, Inc. (Western Resources), 818 Kansas Avenue, Topeka, Kansas, 66601, tendered for filing notice that due to the change of name of The Kansas Power and Light Company (KPL), Western Resources adopts, ratifies, and makes its own, in every respect all applicable rate schedules, and supplements thereto previously filed with the Federal Energy Regulatory Commission and the Federal Power Commission, its predecessor, by The Kansas Power and Light Company.

The notice of name change was filed as a result of the renaming of the Kansas Power and Light Company to Western Resources, Inc., by a vote of its stockholders on May 5, 1992.

Copies of the filing were served upon Western Resources' jurisdictional customers and the Kansas Corporation Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER92-563-000]

May 29, 1992.

Take notice that on May 19, 1992, Commonwealth Edison Company (Edison) tendered for filing Amendment No. 17, dated May 6, 1992, to the Interconnection Agreement, dated March 1, 1964, between Edison and Illinois Power (Illinois Power). Amendment No. 17 changes Edison's rates for coordination transactions between the parties, deletes the service schedule providing for the exchange of Maintenance Energy and adds a service schedule permitting Edison to sell Firm Power to Illinois.

Edison requests expedited consideration of the filing and an effective date for its rate schedule of June 1, 1992. Accordingly, the parties request waiver of the Commission's notice requirements to the extent necessary.

Copies of this filing were served upon the Illinois Commerce Commission and Illinois Power.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER92-533-000]

May 29, 1992.

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated May 26, 1992, tendered for filing an amendment to Rate Schedule T—Firm Transmission Service, originally filed on May 6, 1992.

The filing is being made to amend certain language to give service under Rate Schedule T the same priority as firm sales service to LG&E's Native Load Customers. As originally filed, service under Rate Schedule T was subordinate to firm sales service to LG&E's Native Load Customers.

LG&E has requested that the effective date of July 6, 1992 (per the originaly filing) remain unchanged. A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER92-577-000]

May 29, 1992.

Take notice that on May 27, 1992, Wisconsin Public Service Corporation (WSPC) tendered for filing a new Service Schedule H under its W-3 Tariff for Partial Requirements Load Pattern Service to Interconnection Customers.

The new schedule provides for limited term power and energy. Currently, only one customer (Consolidated Water Power Company) is served under the W–3 Tariff, and that customer has asked to have the new service available as soon as possible.

WPSC states that copies of this filing have been posted and have been served on Consolidated Water Power Company and the Public Service Commission of Wisconsin.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Iowa Public Service Company

[Docket No. ER91–256–000]

May 29, 1992.

Take notice that on May 26, 1992, Iowa Public Service Company (IPS) filed a supplement to its FERC filing of March 26, 1991. On February 8, 1991, IPS filed an executed Contract for Electric Service (Nonfirm Energy Service) and Interconnection Agreement between Iowa Public Service Company and the U.S. Department of Energy, Western Area Power Administration, Pick-Sloan Missouri Basin Program, Eastern Division, and on September 12, 1991, filed an amendment to the original filing. On November 1, 1991, IPS requested FERC to defer taking action pending the development of further cost support. By this supplement, IPS is now requesting FERC to proceed with taking action on Docket No. ER91–256–000.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Texas-New Mexico Power Company

[Docket No. ER92–565–000]

May 29, 1992.

Take notice that on May 19, 1992, Texas-New Mexico Power Company (TNP) tendered for filing a Notice of Cancellation of its Rate Schedule No. 12. TNP proposes an effective date of July 19, 1992.

TNP states that the reason for the cancellation is that the contract for the service provided for therein has expired by its terms and that TNP does not at present provide any service thereunder and does not intend to provide any such service in the future. Accordingly, the rate schedule serves no useful purpose.

Copies of the filing were served on the jurisdictional customer involved and the interested state commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Philadelphia Electric Company

[Docket No. ER92–412–000]

May 29, 1992.

Take notice that on May 20, 1992, Philadelphia Electric Company (PECo) filed on behalf of the parties to the Extra High Voltage Transmission Agreement (EHV Agreement) revised Schedules to the Transmission Enhancement Facilities (TEF) Agreement which is filed as a supplement to the EHV Agreement. The parties to both agreements are: Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Philadelphia Electric Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and UGI Corporation.

The revised Schedules are being substituted for similar Schedules previously tendered for filing in this docket. They contain several changes introduced to satisfy objections raised by the Commission's staff. An effective date of June 1, 1992 has been requested for these revisions concurrent with the in-service date for the new facilities.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13153 Filed 6–4–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–502–000, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP92–502–000]

May 27, 1992.

Take notice that on May 15, 1992, Florida Gas Transmission Company (Florida Gas), 1400 Smith Street, Houston, Texas 77002, filed an application in Docket No. CP92–502–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authority to amend its existing certificate under which it provides service to Peoples Gas System, Inc. (Peoples) under Rate Schedules G and FTS–1 and to abandon service it renders to Palm Beach County Utilities Corporation (Palm Beach) under Rate Schedules G and FTS–1, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Florida Gas seeks to revise the existing firm sales agreement under Rate Schedule G and the existing firm transportation agreement under Rate Schedule FTS–1 it has with Peoples by increasing Peoples' firm sales and firm transportation entitlements by an amount equal to Palm Beach's firm sales and firm transportation entitlements. In addition, Florida Gas is adding a new Palm Beach division that consists of the Palm Beach Gardens delivery point. Further, Florida Gas requests a waiver of its tariff with respect to the first-come, first-served policy so as to permit Peoples to retain its existing priority in Florida Gas/ firm transportation queue.

Comment date: June 17, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources, a division of Arkla, Inc. and Arkla Energy Resources Company

[Docket No. CP92–504–000]

May 27, 1992.

Take notice that on May 20, 1992, Arkla Energy Resources, a division of Arkla, Inc. (Division) and Arkla Energy Resources Company (AERCo), both located at 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71181, jointly referred to as Applicants, filed in Docket No. CP92–504–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order authorizing AERCo (1) to acquire and operate Division's interstate pipeline facilities, and (2) to transport and sell natural gas for resale in interstate commerce, and

authorizing Division to abandon the facilities and services to be acquired and performed, respectively, by AERCo, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that Division is transferring its interstate pipeline facilities and contracts to AERCo. It is indicated that upon such transfers, AERCo, newly-formed company, would become a "natural gas company" under the Natural Gas Act and a successor in interest to Division's interstate pipeline business.

AERCo also seeks authorization to make jurisdictional sales for resale of natural gas Arkansas Louisiana Gas Company (ALG) pursuant to Rate Schedule CD, as modified. It is stated that no changes in the existing certificated services or service levels currently performed by Division for ALG are proposed. It is also indicated that no facility modifications are required. Applicants further state that the proposed corporate realignment would place the pipeline's pipelines operations and regulation on a similar basis to other interstate pipelines, and that it would have no adverse effect on Division's jurisdictional ratepayers.

Comment date: June 17, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Pipeline Company

[Docket No. CP92–514–000]

May 29, 1992.

Take notice that on May 26, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92–514–000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval for the abandonment of a transportation service provided to Natural Gas Pipeline Company of America (Natural) under Rate Schedule X–130 of Original Volume No. 2 of ANR's FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it is authorized to provide a firm transportation of up to 40,000 Mcf of natural gas to Natural under ANR's Rates Schedule X–130. ANR also states that as a result of negotiations between ANR and Natural they have mutually agreed to terminate Rate Schedule X–130 effective October 31, 1992 and request that the order be effective on that date. ANR further states upon grant and acceptance of the abandonment, it will file, pursuant to Section 154 of the Commission's Regulations, to cancel its Rate Schedule X–130 to its FERC Gas Tariff, Original Volume No. 2. ANR also states that no facilities are proposed to be abandoned.

Comment date: June 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP92–513–000]

May 29, 1992.

Take notice that on May 22, 1992, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP92–513–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to continue the operation of the Ripley Storage Field, Jackson County, West Virginia, within its current natural boundaries, originally authorized in Docket No. G–2061 (12 FPC 891), all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to expand the boundaries of the existing Ripley Storage Field to the extent necessary to maintain its integrity as a natural gas storage facility due to the migration of stored gas beyond the original, estimated boundaries of the field. Columbia states that a map showing the reservoir and protective boundaries of the storage field is included in Exhibit H to the application. Columbia further states that the purpose of the application is to assure Columbia's ability to condemn exclusive gas storage easements under section 7(h) of the Natural Gas Act, as amended. Columbia explains that the filing results from a Court's holding in *Columbia Gas Transmission Corporation* v. *An Exclusive Gas Storage Easement, et al.*, 578 F. Supp. 930 (N.D. Ohio 1983), *affirmed*, 776 F.2d 125 (6th Cir. 1985) that Columbia did not have the right of eminent domain for a certain tract of land in one of its storage fields because it was located outside the geographic area designated on the exhibit maps contained in the application in which Columbia obtained certificate authorization for the storage field.

Comment date: June 19, 1992, in accordance with Standard Paragraph F at the end of the notice.

5. Tennessee Gas Pipeline Company

[Docket NO. CP91–1618–002]

May 29, 1992.

Take notice that on May 19, 1992, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77252, filed a petition to vacate that portion of a Commission order issued on December 27, 1991, in Docket No. CP91–1618–000 which granted Tennessee certificate authorization for the replacement of a portion of its Holyoke Delivery Line (Holyoke segment), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Tennessee states that the Commission's order issued on December 27, 1991, in Docket No. CP91–1618–000 authorized Tennessee, among other things, to replace approximately 2.28 miles of 4.5-inch pipeline on its Holyoke Delivery Line in Hampshire and Hampden Counties, Massachusetts with 8-inch pipeline in order to ensure the continued safety and integrity of Tennessee's system. Tennessee has determined that the replacement should be delayed due to the infrequent use of this particular segment of pipeline, it is indicated. Tennessee states that the Holyoke segment has only been utilized as back-up service four times since 1968. Tennessee states that it has filed for permission and approval to abandon, in place, the Holyoke segment pursuant to its blanket certificate. Therefore, Tennessee requests that the portion of the December 27, 1991, order pertaining to the Holyoke segment be vacated.

Comment date: June 19, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Mercado Gas Services, Inc.

[Docket No. CI92–51–000]

May 29, 1992.

Take notice that on May 18, 1992, Mercado Gas Services, Inc. (Mercado) of 400 West 15th Street, Austin, Texas 78701 filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for a unlimited-term blanket certificate with pre-granted abandonment. Mercado requests authority to make sales for resale in interstate commerce, without supply or marketing restrictions, of all natural gas subject to the jurisdiction of the Commission under the NGA. Mercado requests that its blanket certificate be consistent with certificates granted to other marketing affiliates. Mercado's application is on file with the Commission and open for public inspection.

Comment date: June 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

7. Viking Gas Transmission Company

[Docket No. CP92–509–000]

May 29, 1992.

Take notice that on May 21, 1992, Viking Gas Transmission Company (Viking), 1010 Milam Street, Houston, Texas 77002, filed in Docket No. CP92–509–000 a request pursuant to Section 157.205 of the Commission's Regulations to expand an existing delivery point in Wadena, Minnesota (Wadena) to increase capacity for interruptible transportation services that Viking currently provides to Northern Minnesota Utilities, a Division of UtiliCorp United Inc. (NMU) under Viking's blanket certificate issued in Docket No CP88–679–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection .

Viking proposes to expand the meter station at Wadena to increase its capacity to 20,000 Mcf of natural gas per day by replacing the existing measuring equipment with a 6-inch auto-adjust turbine meter in the existing right-of-way. Viking states that the existing facilities would be expanded to accommodate increased natural gas deliveries to NMU under Viking's Rate Schedule IT–2. NMU has requested deliveries of up to 20,000 Mcf of natural gas per day at Wadena and has agreed to reimburse Viking for the cost of the expanded facilities which are estimated to cost $259,000, it is stated. Viking states that the total quantities to be delivered to NMU through the new expanded facilities would not exceed presently authorized quantities and the changes proposed are not prohibited by Viking's tariff. Viking has sufficient capacity in its system to accomplish the increased delivery of natural gas to Wadena without detriment or disadvantage to any of Viking's other customers, it is stated.

Comment date: July 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92–510–000]

May 29, 1992.

Take notice that on May 21, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92–510–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of an electric motor-driven compressor at Transco's Compressor Station No. 100 in Chilton County, Alabama, referred to as a Motor Pipeline Compressor (MOPICO), from TEVCO Compressor Company (TCC), and to operate two of Transco's existing steam-driven compressors, also at Station No. 100, on a standby basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Transco states that Transco Energy Ventures Company (TEVCO) and other companies (TEVCO group) are involved in developing and commercializing a low cost, high efficiency, electric compressor, referred to as the MOPICO. It is stated that Transco agreed to host the first prototype MOPICO at its Compressor Station No. 100 in Chilton County, Alabama, prior to introduction of the MOPICO to market. It is stated that on February 23, 1990, 50 FERC ¶61,220, in Docket No. CP89–1808–000, TEVCO was granted exemption from the certificate requirements of section 7(c) of the Natural Gas Act for the installation and testing of the prototype unit at Station No. 100 as long as the unit was utilized as replacement capacity only and that at no time during the testing of the unit would Station No. 100 exceed the total horsepower capacity for which it was certificated.

It is stated that subsequent to the granting of exemption, Transco and TEVCO entered into an Equipment Lease Agreement wherein Transco leased from TEVCO the prototype unit for installation and operation at Station No. 100. It is maintained that such lease is still in effect and includes an option for Transco to purchase the unit for $4,000,000. It is also stated that subsequent to the execution of the lease, TEVCO, with the consent of Transco, assigned all of its interest in such agreement to TCC, provide that in the event TCC does not perform any of its obligations under the agreement TEVCO would perform them.

Transco states that is has decided to exercise its option to purchase the prototype MOPICO unit, in place, at its Station No. 100. It is stated that Transco, TEVCO and TCC have executed a Lease/Purchase Agreement which provides that Transco will pay TEVCO/TCC $4,000,000 for the unit; that the unit will be disassembled and inspected on-site by TEVCO and TEVCO will, as its own expense, under the existing parts and labor warranty, modify the unit by incorporating improvements dictated by undue operating wear of the unit and inspection of the unit; and that TEVCO will rewheel the centrifugal compressor with high efficiency wheels designed for peak performance at the flow and pressure ratio conditons to be projected in writing by Transco.

Transco requests approval of the herein acquisition by September 1, 1992, because under Transco's currently pending general rate case in Docket No. RP92–137–000, all facilities to be included in rate base must be owned by Transco and in service by September 1, 1992.

It is further stated that upon purchase of the MOPICO unit and inclusion of it as one of Transco's regular units, Transco plans to remove from regular service two steam-driven compressors at Station No. 100 that were authorized in Docket Nos. G–704 and G–1277 and placed into service during June 1951. It is stated that these units were part of the original Transco system and now require extensive renovation. Transco states that it plans to leave the two units in place and operate them solely on a standby basis, only when other compression at Station No. 100 is not capable of being utilized for any reason and when it is necessary to utilize one or both of the steam units to achieve the necessary throughput at Station No. 100. Transco requests that authorization of the operation of the two steam-driven compressors on a standby basis be contingent upon Transco receiving acceptable authority to acquire and operate the MOPICO unit.

In addition, Transco states that at no time will Station No. 100 exceed the total horsepower capacity for which it is certificated.

Comment date: June 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP92–512–000]

May 29, 1992.

Take notice that on May 22, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92–512–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon two compressor units located in Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNC proposes to abandon a 230 horsepower compressor unit at the Hughey compressor station in Gray County, Texas, and a 230 horsepower compressor unit at the White Deer compressor station in Carson County, Texas. It is stated that both units were installed in 1937 and that both are now obsolete and not adaptable to automation or unmanned operation. It is asserted that the compressor units

remaining at both stations will continue to provide the same level of service and that no customers will lose service as a result of the proposed abandonment. The cost of the proposed abandonment is estimated at $15,540, and the salvage value for both units is estimated at $2,700.

Comment date: June 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

10. Michigan Consolidated Gas Company

[Docket No. CP92-406-001]

May 29, 1992.

Take notice that on May 22, 1992, Michigan Consolidated Gas Company (MichCon), 501 Griswald Street, Detroit, Michigan, 48226, pursuant to sections 3 and 7(c) of the Natural Gas Act and Parts 157 and 385 of the Commission's Regulations thereunder, filed herein an amendment (the "Amendment") to its application filed on March 11, 1992, (the "Application"). The Amendment removes a restriction that MichCon proposed in the Application with respect to the transportation of gas through Belle River-Bickford Pipeline (the "Pipeline"), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In the Application, MichCon asked that the Commission remove the existing restriction on Michcon's section 3 authorization with respect to the use of the Pipeline in foreign and interstate commerce.[1] That restriction provides that MichCon may only use the Pipeline for:

> * * * * the transportation of gas in foreign commerce for the purposes of Union's system supply or for the delayed exchange of Union Gas Limited's and MichCon's system supplies.[2]

MichCon states in the Amendment that although it would have preferred the deletion of the entire restriction, in an effort to avoid entanglement with the Commission's ongoing consideration of the proposals of Empire State Pipeline and others to serve the western New York State market,[3] and to expedite action on the Application, MichCon proposed in the Application to retain a limited restriction on the use of the Pipeline in interstate commerce. Specifically, MichCon proposed that it not be authorized to transport any natural gas through the Pipeline into Canada that would, in turn, be imported from Canada into New York State (the "New York State Limitation").

MichCon further states in the Amendment that since the Application was filed, several petitioners have protested the New York State Limitation as inconsistent with the Commission's open access regulations. Accordingly, MichCon is amending the Application to delete all references to the New York State Limitation.

Comment date: June 19, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wising to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211/.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13152 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10876-001-Texas]

Sam Rayburn Municipal Power Agency, Surrender of Preliminary Permit

May 29, 1992.

Take notice that Sam Rayburn Municipal Power Agency, permittee, for the Lake Livingston Project located on the Trinity River in Polk County, Texas, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 16, 1990, and would have expired on April 30, 1993. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on May 4, 1992, and the preliminary permit for Project No. 10876 shall remain in effect through the thirtieth day after issuance of this notice unless that day is

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[1] *Michigan Colsolidated Gas Company*, 48 FERC ¶ 61,300 (1989); *reh'g denied*, 50 FERC, FERC ¶ 61,010 (1990)

[2] 48 FERC ¶ 61,300 at page 61,959 (1989)

[3] *Empire State Pipeline et al.*, Docket Nos. CP90-316-000 et al.

a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13151 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-63-000 and TM92-4-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 1, 1992.

Take notice that on May 27, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Thirty-First Revised Sheet No. 8
Thirty-First Revised Sheet No. 9

Carnegie states that pursuant to Sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect updated projections affecting the average commodity cost of purchased gas to be incurred by Carnegie on and after June 1, 1992. Carnegie states that the primary purpose of its filing is to accurately state the average commodity cost of gas on Carnegie's tariff sheets so that the negotiated sales rates agreed upon between Carnegie and its customers for interruptible sales service on and after June 1, 1992, will be in compliance with the rate conditions imposed by the Commission in issuing the SEGSS certificate and footnote 2 of Revised Tariff Sheet No. 9.

The revised rates are proposed to become effective June 1, 1992, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ92-5-63-000: a $0.2040 per Dth increase in the commodity component of its CDS and LVWS rate schedules an a $.2040 increase in both the maximum and minimum commodity rates under Rate Schedule SEGSS. The revised tariff sheets also reflect an increase in the TCA charge of $0.0184 per dth, from $0.1846 per dth to $0.2030 per dth, as measured against Carnegie's last TCA filed on May 1, 1992, in Docket No. TM92-3-63-000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR sections 385.214 and 385.211. All such pleadings should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13154 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-176-000]

Colorado Interstate Gas Co.; Tariff Filing

June 1, 1992.

Take Notice that on May 28, 1992, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets in its Original Volume No. 3, with a proposed effective date of July 1, 1992.

Second Revised Sheet No. 60
Original Sheet No. 60A
Original Sheet No. 60B

CIG states that the purpose of this filing is to add a new section 9 to its Rate Schedule IS-1 governing the transfer of ownership of storage gas by Shippers. This new section 9 allows the transfer of ownership of gas in place held by interruptible storage shippers on CIG's system.

CIG states that copies of its filing were served on all holders of Volume No. 3 of CIG's FERC Gas Tariff and appropriate state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13158 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-32-000]

Colorado Interstate Gas Co.; Filing

June 1, 1992.

Take notice that on May 28, 1992 Colorado Interstate Gas Company ("CIG") submitted for filing an original and five copies of Fifth Revised Sheet Nos. 7.1 through 8.2. CIG requests that these proposed tariff sheets be made effective on July 1, 1992.

The instant purchased gas adjustment ("PGA") filing is made pursuant to § 154.308 of the Commission's Regulations implementing Order 483, *et seq.* Fifth Revised Sheet Nos. 7.1 through 8.2 reflect a 0.02 cent/Mcf increase in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules. There is no change in the Demand-1 or Demand-2 rates because CIG does not currently incur "as billed" charges from its suppliers.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13155 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-5-004]

Midwestern Gas Transmission Co.; Rate Filing June 1, 1992.

Take notice that on May 28, 1992, Midwestern Gas Transmission Company ("Midwestern"), tendered for filing the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Revised tariff sheet	Effective date
Second substitute sixth revised twenty-seventh revised sheet No. 5.	Jan. 1, 1992.
Second substitute sixth revised twenty-second revised sheet No. 6.	Do.
Third substitute twenty-eight revised sheet No. 5.	Do.
Second substitute twenty-ninth revised sheet No. 5.	Do.
Second substitute thirtieth revised sheet No. 5.	Feb. 1, 1992.
Substitute first revised thirtieth revised sheet No. 5.	Mar. 1, 1992.
Second substitute thirty-first revised sheet No. 5.	Apr. 1, 1992.
Substitute thirty-second revised sheet No. 5.	Do.
Substitute thirty-third revised sheet No. 5.	May 1, 1992.

Midwestern states that the revised sheet tracks Tennessee Gas Pipeline Company's April 14, 1992 compliance filing in Docket No. RP91-203. Midwestern further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13156 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-224-003 and RP92-1-005]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 1, 1992.

Take notice that Northern Natural Gas Company (Northern) on May 21, 1992, tendered for filing to become part of Northern's FERC Gas Tariff Third Revised Volume 1, the following tariff sheets, proposed to be effective October 25, 1991:

Sixth Revised Sheet No. 52C.9a
Sixth Revised Sheet No. 52F.11
Original Sheet No. 52F.11a
Tenth Revised Sheet No. 59
Eighth Revised Sheet No. 59C

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order issued May 6, 1992, in Docket Nos. RP91-224-000 et al. and RP92-1-000 et al. to revise the tariff language surrounding temporary supply interruption and other issues.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13157 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1253-002]

WestGas InterState, Inc.; Compliance Filing

June 1, 1992.

Take notice that on May 22, 1992 WestGas InterState, Inc. (WGI) tendered for filing its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1992.

WGI states that the tariff sheets referenced above are being filed to comply with the Commission's Order Issuing Certificates, dated April 7, 1992. Pursuant to that Order WGI has made certain changes to the Pro Forma tariff sheets filed in its Certificate Application filed with the Commission on February 14, 1991. WGI requested waiver of any and all Commission regulations that would prevent the tariffs from becoming effective on June 1, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washigton, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13159 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4140-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before July 6, 1992.

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) subpart QQ for the Graphic Arts Industry—Publication Rotogravure Printing (ICR No. 0657.04; OMB No. 2060-0105).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7-60.8 and the specific NSPS, for volatile organic compound (VOC)

emissions from the Graphic Arts Industry, at 40 CFR 60.430–60.435. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Owners and operators of affected facilities must provide EPA with: (1) Notification of construction, reconstruction, or modification; (2) anticipated and actual dates of facility startup; (3) initial performance test data and results; and (4) notification of any physical or operational change to an existing facility which could increase the VOC emission rate.

All affected facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) the amount of volatile solvent used, the amount recovered, and the percentage of volatile solvent emitted over each performance period (4 weeks or one month); and (3) the initial performance test results.

Presently there are 165 facilities subject to the regulation with an estimated growth of 15 facilities per year over the next three years. All subject facilities must maintain records related to compliance for two years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 81 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 63 hours annually.

Respondents: Owners or operators of subject rotogravure printing facilities which commenced construction, reconstruction, or modification after October 28, 1980.

Estimated Number of Respondents: 15 reporters, 188 recordkeepers.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,933 hours.

Frequency of Collection: One-time notifications for new facilities; occasional reporting, as appropriate, for existing facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 1, 1992.

Paul Lapsley,

Regulatory Management Division.

[FR Doc. 92–13210 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–M

[AMS–FRL–4139–6]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Notice of application for extension of the Reformulated Gasoline Program to the District of Columbia.

SUMMARY: This notice publishes the application by the Major of the District of Columbia to have the prohibition set forth in section 211(k)(5) of the Clean Air Act, as amended (the Act), applied to the District of Columbia portion of the Washington ozone nonattainment area. Under section 211(k)(6) the Administrator of EPA shall apply the prohibition against the sale of gasoline which has not been reformulated to be less polluting in an ozone nonattainment area upon the application of the governor of the state in which the nonattainment area is located. The District of Columbia would be treated as a "State" for the purposes of section 211(k)(6). See section 302(d) of the Act.

DATES: The effective date of the prohibition described herein is January 1, 1995 (see the Supplementary Information section of today's notice for a discussion of the possible delay of this date.

ADDRESSES: Materials relevant to this Notice are contained in Public Document No. A–91–02. This docket is located in Room M/1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB–12), Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4504.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated ("conventional gasoline") in the nine worst ozone nonattainment areas beginning January 1, 1995. To be certified as reformulated a gasoline must comply with the following formula requirements: Oxygen content of at least 2.0 percent by weight; benzene content of no more than 1.0 percent by volume; and no heavy metals (with a possible waiver for metals other than lead). The gasoline must also achieve toxic and volatile organic compound emissions reductions equal to or exceeding the more stringent of a specified formula fuel or a performance standard.

Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989. Applying those criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York city, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee. Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the reformulated gasoline program.

Any other ozone nonattanment area may be included in the program at the request of the governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a governor, EPA shall apply the prohibition against selling conventional gasoline in any area in the governor's state which has been classified under subpart 2 of part D of title I of the Act as a Marginal, Moderate, Serious or Severe ozone nonattainment area.[1] The Act defines "State" to include the District of Columbia (section 302(d)). While the District does not have a governor, the highest executive branch official in the District of Columbia government is the Mayor. Subparagraph 211(k)(6)(A) further provides that EPA the Administrator is to apply the prohibition as of the date he "deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later." In some cases the effective date may be extended for such an area as provided in section

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[1] EPA recently promulgated such designations pursuant to Section 107(d)(4) of the Act (56 FR 56694; November 6, 1991).

211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" reformulated gasoline. Finally, EPA is to publish a governor's application in the **Federal Register.** EPA has received and published applications from the governors of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Virginia.

EPA has used the regulatory negotiation process in developing the requirements for reformulated gasoline. A notice of proposed rulemaking was published July 9, 1991 (56 FR 31176). Since that time the regulatory negotiation advisory committee reached consensus on an outline for the reformulated gasoline program. A supplemental notice of proposed rulemaking published on April 16, 1992 (57 FR 13416). This supplemental notice describes the certification program for reformulated gasoline, the credits program for exceeding certain requirements and the enforcement program, among other elements.

II. The Mayor's Request

EPA received an application from the Hon. Sharon Pratt Kelly, Mayor of the District of Columbia, for the District of Columbia portion of the Washington ozone nonattainment area to be included in the reformulated gasoline program. Her application is set out in full below.

[District of Columbia letterhead]

February 14, 1992.

The Honorable William Reilly,
Administrator, United States Environmental Protection Agency, West Tower Waterside Mall, 401 M Street SW., Washington, DC 20460

Dear Administrator Reilly: Pursuant to the requirements of Section 211 (k)(6) of the Clean Air Act, I request that, beginning January 1, 1995, the prohibition applying to the sale of conventional gasoline be extended to include the District of Columbia. I consider the sale of reformulated gasoline to be a major step towards the attainment of healthful air quality in the District and the surrounding Maryland and Virginia jurisdictions included in the Washington nonattainment area, an area currently classified as a serious ozone nonattainment area under federal Clean Air Act provisions.

I have appointed Ms. Ferial S. Bishop, of the Department of Consumer and Regulatory Affairs to serve as my contact in this matter. Ms. Bishop can be contacted at the following address: Ferial S. Bishop, Administrator, Environmental Regulation Administration, D.C. Department of Consumer and Regulatory Affairs, 2100 Martin Luther King, Jr., Avenue, SE., Suite 203, Washington, DC 20020–5732, Telephone: 202–404–1136, Fax: 202–404–1141.

We look forward to your expeditious approval of this request.

Sincerely,

s/Sharon Pratt Kelly,

Mayor.

cc: The Honorable Douglas Wilder
The Honorable William Donald Schaefer
Mr. Edwin Erickson—EPA Region III
Mr. Richard Rykowski—EPA Ann Arbor
Mr. Robert Perciasepe, Chairman, Northeast Ozone Transport Commission

III. Action

Pursuant to the mayor's letter and the provisions of section 211(k)(6), the prohibitions of subsection 211(k)(5) will be applied to the entire District of Columbia portion of the Washington ozone nonattainment area beginning January 1, 1995 (unless delayed, as provided above).[2] The application of the prohibitions to this area cannot take effect any earlier than January 1, 1995 under section 211(k)(5) and cannot take effect any later than January 1, 1995, under section 211(k)(6)(A), unless the Administrator extends the effective date by rule under section 211(k)(6)(B).

Dated: May 26, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92–13095 Filed 6–4–92; 8:45am]

BILLING CODE 6560–50–M

[ER–FRL–4139–9]

Environmental Impact Statements Notice of Availability;

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Availability of Environmental Impact Statements Filed May 22, 1992 Through May 29, 1992 Pursuant to 40 CFR 1506.9

EIS No. 920196, Final Supplement, COE, NY, Atlantic Coast of New York City from Rockaway Inlet to Norton Point Beach Erosion and Storm Damage Reduction Plan, Updated Information, Implementation, Brighton Beach and Coney Island, Borough of Brooklyn, Kings County, NY, Due: July 06, 1992, Contact: Peter Weppler (212) 264–4663.

EIS No. 920197, FINAL EIS, BLM, AK, A–J Mine Reopening Project, Construction and Operation, Issuance of Right-of-Way Permit for Permanent Disposal of Tailings on Federal Lands in Sheep Creek Valley, Section 10 and 404 Permits, and NPDES Permit, City and Borough of Juneau, AK, Due: July 06, 1992, Contact: David Dorris (907) 272–2636.

EIS No. 920198, DRAFT EIS, AFS, MT, Stillwater Valley Platinum-Palladium Mining and Milling Project, Amendment to Plan of Operations and Approval of Permit, Stillwater River Valley, Custer National Forest, Stillwater County, MT, Due: July 20, 1992, Contact: Grey Visconty (406) 444–2074.

EIS No. 920199, Draft Supplement, USA, MA, NJ, AZ, Fort Huachuca, Fort Devens and Fort Monmouth Base Realignment, Transfer of Missions and Functions, Updated Information, Cochise County, AZ; Worcester and Middlesex Counties, MA and Monmouth County, NJ, Due: July 20, 1992, Contact: Alex Watt (213) 894–5088.

EIS No. 920200, Draft EIS, AFS, WA, Easton Ridge Timber Sale and Road Construction, Implementation, Wenatchee National Forest, Cle Elum Ranger District, Kittitas County, WA, Due: July 20, 1992, Contact: Tim Foss (509) 674–4411.

EIS No. 920201, Draft EIS, AFS, WA, County Timber Sale and Road Construction, Implementation, South Fork and Middle Fork, Little Naches River, Wenatchee National Forest, Naches Ranger District, Yakima and Kittitas Counties, WA, Due: July 20, 1992, Contact: Don Rotell (509) 653–2205.

EIS No. 920202, Final EIS, DOT, Commercial Reentry Vehicles Launched into and from Space, Licensing, Due: July 06, 1992, Contact: Norman C. Bowles (202) 366–2929.

EIS No. 920203, Draft Supplement, DOE, CA, Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 (Elk Hills) Continued Operation, Updated Information, Kern County, CA Kern County, CA, Due: July 31, 1992, Contact: James C. Killen (805) 763–6038.

Dated: June 2, 1992.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 92–3208 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4140–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 18, 1992 through May 22, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section

[2] The Washington ozone nonattainment area includes the entire District of Columbia. See 56 FR 56738 (November 6, 1991).

102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–AFS–J65190–WY Rating EC1, Union Pass Road Relocation Project, connecting Union Pass Road and Green River Lakes Road, Implementation, Bridger-Teton National Forest, Pinedale Ranger District, Fremont and Sublette Counties, WY.

Summary

EPA expressed environmental concerns regarding potential conflicts between recreation accommodated by the roadway upgrade and other forest activites such as grazing.

ERP No. D–BLM–K67014–AZ Rating EO2, Sanchez Open Pit Heap Leach Copper Mine Project, Construction and Operation, Permits Approval, Gila Mountain, Graham County, AZ.

Summary

EPA expressed environmental objections regarding potential project impacts to air quality, specifically that the project may cause or contribute to violations of the Federal air quality standards for particulates smaller than 10 microns (PM10). EPA requested that the FEIS contain more information on air and water quality and biological resources as well as facility design, monitoring and reclamation efforts.

ERP No. D–FRC–L05201–ID Rating EO2, Shelley Hydroelectric Project (FERC No. 5090) on the Snake River, Construction License, City of Idaho Falls, Bingham County, ID.

Summary

EPA expressed objection to the project based on possible water temperature increases and water quality effects on cold water biota. EPA requested additional information on possible violations of state water quality standards, project monitoring and effectiveness of mitigation measures.

ERP No. D–IBR–K28016–CA Rating EC2, Los Vaqueros Water Quality and Reliability Project, Implementation, Section 10 and 404 Permits and Possible NPDES Permit, Contra Costa Water District, Contra Costa County, CA.

Summary

EPA expressed environmental concerns regarding potential project impacts to fisheries, wetlands and air quality. EPA requested that the final document commit to mitigate for potential adverse impacts and that the project will not conflict with the availability of water to meet existing and reasonably foreseeable future protective water quality standards.

ERP No. D–IBR–K34009–CA Rating EO2, Arvin-Edison/Metropolitan Water Storage and Exchange Program, Central Valley Project, Funding and Implementation, City of Arvin, Kern County, CA.

Summary

EPA expressed objections to the proposed program which is based on water quality standards that are not protective of fish and wildlife. EPA requested that the mitigation analysis be expanded and that final decisions on the program await adoption of protective water quality standards.

ERP No. D–MMS–A02235–00 Rating EO2, 1993 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales No. 142 and No. 143, Lease Offerings, offshore AL, LA, TX and MS.

Summary

EPA objected to proposed unrestricted leasing without inclusion of protective environmental stipulations. EPA also recommended that an interim ozone (03) modeling effort be undertaken in order to gauge impacts of offshore emissions on 03 levels onshore and requested additional information concerning Floating Production Systems before publication of the final environmental impact statement.

Final EISs

ERP No. F–AFS–K65136–CA CASA-Guard Timber Sale, Implementation, Sequoia National Forest, Cannell Meadow Ranger District, Tulare and Kern Counties, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F–AFS–K65138–CA Red Hill Planning Area Timber Sale, Implementation, Sequoia National Forest, Tule River Ranger District, Tulare County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F–COE–K36100–CA American River Watershed Flood Plain Protection Project, Construction, Operation and Maintenance, Implementation, Sacramento, Placer and Sutter Counties, CA.

Summary

EPA expressed environmental concerns about significant issues that remain unresolved which are: (1) Corp's separate evaluations of related flood control actions, (2) the lack of a clear identification of the least damaging practicable alternative as required by Section 404 of the Clean Water Act, (3) significant cumulative environmental impacts, (4) potential impacts on the Central Valley Project/State Water Project, and (5) adequate mitigation.

ERP No. F–USA–K11050–HI Strategic Target System Program, Launching of nonnuclear payloads from the Kauai Test Facility at the Pacific Missile Test Facility, Island of Kauai, HI.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. FS–COE–G39026–AR Lakes Greeson, Ouachita and DeGray Operation and Maintenance, Updated Information, Lake Greeson/Little Missouri River Water Quality Improvement and Fishery Enhancements, Pike County, AR.

Summary

EPA believed that the work to be done would be minor and temporary, with expected benefits to water quality and fisheries exceeding any anticipated impacts.

Dated: June 2, 1992.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 92–13209 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00321; FRL–4070–4]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the peer review classification of Facet® as a Group C carcinogen; Bromoxynil as a Group C carcinogen; Triallate as a Group C carcinogen; Dimethoate as a Group C carcinogen;

and the PD 2/3 for Inorganic Arsenicals. The meeting will be open to the public.

DATES: The meeting will be held on Thursday, June 25, 1992, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at: Holiday Inn Crystal City, 15th St. and Jefferson Davis Highway, Arlington, VA 22202, (703) 920–0772.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 815B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5369/5244.

Copies of documents related to items 1–5 may be obtained by contacting: By mail: Public Response and Program Resources Branch, (H7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5434.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following topics:

1. Review a set of scientific issues in connection with the Agency's classification of Facet® as a Group C, possible human carcinogen, based on the induction of benign pancreatic acinar cell adenomas in male rats.
2. Review a set of scientific issues in connection with the Agency's classification of Bromoxynil as a Group C, possible human carcinogen, based upon a dose–related increase in liver carcinomas and adenomas in male mice. A low dose extrapolation model from the experimental animal tumor data is recommendation for quantitation of human risk ($Q1^*$).
3. Review a set of scientific issues in connection with the Agency's classification of Dimethoate as a Group C, possible human carcinogen, based upon equivocal hemolymphoreticular tumors in male mice, compound related weak effect of combined spleen and lymph tumors in male rats. Positive mutagenic activity was also observed.
4. Review a set of scientific issues in connection with the Agency's classification of Triallate as a Group C, possible human carcinogen, based upon a statistically significant increase of hepatocellular carcinomas in male mice.
5. Evaluate the Special Review PD 2/3 for Inorganic Arsenicals specifically as it regards the use on cotton.

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or the phone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advance notice to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 10 copies of a summary no later than June 25, 1992, in order to ensure appropriate consideration by the Panel.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in rm. 1128 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel.

Copies of the Panel's report of their recommendations will be available 10 to 15 working days after the meeting and may be obtained by contacting the Public Response and Program Resources Branch, at the address or telephone number given above.

Dated: June 1, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–13217 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59940; FRL–4071–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 2 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92–138, May 30, 1992.

Y 92–139, June 1, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92–138

Manufacturer. Henkel Corporation.

Chemical. (G) Polyester.

Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 1,000,000–2,000,000 kg/yr.

Y 92–139

Manufacturer. Confidential.

Chemical. (G) Saturated, oil-free polyester resin.

Use/Production. (S) Polyester resin from painted coatings, inks. Prod. range: Confidential.

Dated: June 1, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–13219 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–F

[OW-FRL-4140-2]

Water Quality Criteria; Availability of Guidance and Request for Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of interim guidance on interpretation and implementation of ambient water quality criteria for protection of aquatic life from the toxic effects of metals.

SUMMARY: Purusant to section 301(a)(1) of the Clean Water Act, EPA has developed interim guidance on interpretation and implementation of metals criteria in State water quality programs for protection of aquatic life. The guidance deals with issues stemming from differences in the biological availability of metals in ambient waters and in laboratory toxicity test waters. It recommends chemical analytical methods for use with metals criteria, and recommends a toxicity testing approach for adjusting criteria for site-specific ambient water characteristics. As interim guidance, it represents EPA's current recommendations on implementation of metals criteria. Many of the methods recommended in the guidance are already in use in some States. EPA will consider all public comments in deciding the content and timing of revisions to the guidance.

DATES: Written comments should be addressed to the person listed directly below by September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Call Ecological Risk Assessment Branch at (202) 260–0658 and request "Interim Metals Guidance", or write Charles Delos, Mail Code WH–586, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

AVAILABILITY OF DOCUMENT: This notice announces the availability of the following document for public review and comment and as interim guidance: "Interim Guidance on Interpretation and Implementation of Aquatic Life Criteria for Metals". Copies of the document may be obtained upon request, as described above. The document is also available for public inspection during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, room 2404 (rear), 401 M Street SW., Washington, DC 20460. Copies of this document are also available for review in the EPA Regional Office libraries.

BACKGROUND INFORMATION: Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

Over the years, EPA has issued a number of ambient water quality criteria for the protection of aquatic organisms and their uses from the toxic effects of metals. With respect to today's notice, the following metals criteria are of particular interest: antimony and silver, published November 28, 1980 (45 FR 79318); arsenic, cadmium, chromium, copper, lead, and mercury, published July 29, 1985 (50 FR 30784); nickel, published December 3, 1986 (51 FR 43665); zinc, published March 2, 1987 (52 FR 6213); selenium, published January 5, 1988 (53 FR 177); aluminum, published August 30, 1988 (53 FR 33177), and antimony and silver, published as draft revisions of the above mentioned 1980 criteria, May 14, 1990 (55 FR 19986).

The guidance announced in today's notice supersedes all statements in the above documents concerning analytical methods for measuring metals concentrations. The guidance does not supplant the numerical criteria set forth in the above documents.

REQUEST FOR COMMENTS: EPA is publishing the document as interim guidance. As such, it represents EPA's current guidance for use in all States. EPA is also soliciting comments on the guidance, and will consider such comments in deciding the content and timing of revisions to the guidance. Due to the complexity of metals specification and its effect on toxicity, the guidance, based on the currently available information, does not solve all problems relating to metals bioavailability. EPA anticipates continuing research on metals toxicity, and thus anticipates revising the guidance from time to time, as necessary.

EPA will consider immediate revision of the guidance if the public comment so warrants. EPA will also consider the public comments in planning future work on metals criteria and in making later revisions to the guidance. Comments are especially solicited regarding specific methods for directly measuring bioavailability of metals, and for predicting the environmental fate of particulate and complexed metals.

With the publication of this interim guidance, EPA is granting a petition by Kilpatrick & Cody and the Santa Ana River Dischargers Association to modify its criteria document recommendations regarding analytical methods for metals.

EPA is currently considering a petition by the City of Colorado Springs et al. to: (1) Develop part 136 analytical methods to test for acid soluble and dissolved metals, and (2) either reinterpret 40 CFR 122.45(c) or modify the rule to allow water quality-based effluent limitations for metals to be expressed in either dissolved or acid soluble form. The interim guidance issued today does not represent a final Agency response to the matters raised in the petition. However, by recommending techniques for accounting for the differing bioavailability of metals in different locations, EPA believes that today's guidance may serve to mitigate the petition's concerns that strict application of total recoverable metals methodology may be unnecessarily overprotective. EPA currently anticipates that it will issue a final response to the petition after receipt and consideration of comments on today's interim guidance.

Dated: May 28, 1992.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 92–13214 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budgetfor Review

May 28, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washigton, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0106.

Title: Section 43.61, Reports of Overseas Telecommunications Traffic.

Report Number: FCC Report 43.61.

Action: Revision of a currently approved collection.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: Annually and Other: Corrections are reported three months after the annual filing.

Estimated Annual Burden: 110 responses; 9 hour average burden per response; 990 hours total annual burden.

Needs and Uses: The collection of § 43.61 overseas telecommunications traffic data is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended, sections 151–609 (1981). The collected data are essential to both the FCC and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payment in international communications services, and market analysis purposes. Subjected carriers are required to submit their reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent (5%) of the reported figure by October 31 pursuant to § 43.61(d). The Commission adopted all the proposals set forth in the NPRM in a report and order, CC Docket No. 91–22, released 2/12/92. The Common Carrier Bureau has issued the attached Public Notice to solicit public comment on the filing manual for the § 43.61 data in compliance with the Commission's directive in the report and order. The data contained in Section 43.61 traffic reports are used by the Commission to determine whether to grant applicants authority under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214 (1980) to acquire and operate facilities for the provisions of telecommunications services between the United States and international points of communication. As part of our evaluation under section 214, we must determine whether competition is feasible in the market(s) sought to be served and whether the competition is in the public interest. We also use the data in our facilities planning processes to estimate traffic and market trends in various regions of the world. We further use the collected data to monitor the development and competitiveness of each international market and to gauge the competitive impact of our decisions on the market. Moreover, the data are used to track the growth in net settlement payments and identify instances of particularly rapid growth.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92–13138 Filed 6–4–92; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1893]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

May 29, 1992.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions must be filed on or before June 22, 1992.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules to provide for filing and processing of applications for unserved areas in cellular service and to modify other cellular rules. (CC Docket No. 90–6). Number of Petitions Filed: 4.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 92–13137 Filed 6–4–92; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Withdrawal of Statement of Policy on Brokered Funds

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of statement of policy.

SUMMARY: The FDIC is withdrawing its policy statement on "Brokered Funds" that was adopted by the Board of Directors on February 13, 1970 (published at 35 FR 5019, March 24, 1970). This statement warned of loans based on brokered deposits that had led to some bank closings about that time and the possibility of violating the interest rate regulations during the course of funding such arrangements.

Section 29 of the Federal Deposit Insurance Act, which was added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, established a comprehensive regulatory scheme for the solicitation and acceptance of brokered deposits by all insured depository institutions. In defining "deposit broker," section 29(g)(1)(B) specifically references the types of transactions the earlier policy statement was designed to address and hence those transactions are now covered by the regulatory scheme established by section 29. The interest rate regulations were rescinded many years ago. Consequently, the policy statement is now obsolete and unnecessary.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Supervision, (202) 898–6892, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

By order of the Board of Directors.

Dated at Washington, DC, this 20th day of May 1992.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 92–13187 Filed 6–4–92; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

San Francisco Port Commission et al., Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004161–008.
Title: San Francisco Port Commission/Marine Terminals Corporation Nonexclusive Management Agreement.

Parties:

San Francisco Port Commission ("Port")

Marine Terminals Corporation ("Management Contractor").

Synopsis: The Agreement provides for: (1) A new schedule for revenue sharing with Management Contractor; (2) an option for Management Contractor to cancel the Agreement if the Port cannot maintain the berthing spaces at the depths set forth in the Agreement; (3) Management Contractor to comply with City requirements; and (4) all other terms and conditions in the Agreement to remain the same.

Agreement No.: 224–200119–002.

Title: Port of Seattle/Trans Pacific Container Service Corporation Leasing Agreement.

Parties:

The Port of Seattle ("Port"),

Trans Pacific Container Service Corporation ("Trans Pacific").

Synopsis: The Agreement provides for the Port to construct approximately 7.26 acres of additional container yard at the south end of the terminal for use by Trans Pacific. It also provides for reimbursement, to Trans Pacific from the Port, for the cost of a constructed storage building and the subsequent amortization of that amount by Trans Pacific.

Dated: June 1, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13142 Filed 6–4–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 221]

1992 Capacity Building for Core Components of Breast and Cervical Cancer Prevention and Control Programs

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year (FY) 1992 funds for new competing cooperative agreements to initiate capacity building for the core components of comprehensive breast and cervical cancer control programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Cancer. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301(a) [42 U.S.C. 241(a)] and 1507 [42 U.S.C. 300n–3] of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments. Excluded are the state health departments of California, Colorado, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, South Carolina, Texas, and West Virginia. They were funded under Program Announcement Numbers 121 and 122, "Early Detection and Control of Breast and Cervical Cancer" in Fiscal Years 1991 and 1992, and are not eligible to compete for funding under this program announcement.

In addition, state health departments or their bona fide agents or instrumentalities which secure funding under this program announcement will be eligible to compete for funding under other CDC announcements for early detection and control or breast and cervical cancer anytime during this project period.

Availability of Funds

Approximately $2,500,000—$5,000,000 is available in Fiscal Year 1992 to fund approximately 20 awards. It is expected that the average award will be $275,000 ranging from $250,000 to $300,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

At the request of the applicant, federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Purpose

The purpose of these cooperative agreements is to support state health departments in their efforts to develop their capacity to carry out a program for early detection and control of breast and cervical cancer. Resources available under this program announced may not be used to support screening and follow up services for breast and cervical cancer.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, the CDC shall be responsible for conducting activities under B., below:

A. *Recipient Activities*

The following six elements are essential and integral components in the development of a state-based comprehensive breast and cervical cancer control program. Planning for conducting the core components must occur during the first and second year, with implementation begun by completion of the project period.

1. Breast and Cervical Cancer Control Plan and Coalition

In developing a comprehensive breast and cervical cancer control program, the applicant should include the following:

a. A state level breast and cervical cancer control coalition including representative from key private, professional, voluntary and public (e.g., American Cancer Society) cancer organizations, legislators, and consumers.

b. A proposed breast and cervical cancer control plan that describes:

(1) Goals and objectives to address breast and cervical cancer control.

(2) Proposed strategies to meet those objectives.

(3) An assessment of existing and needed resources to develop the comprehensive breast and cervical cancer control program.

2. Public Education

A plan for a comprehensive public education program based on an assessment of the target populations educational needs. Successful public education programs are those that influence knowledge, attitudes, and practices related to breast and cervical cancer screening adherence in target populations by utilizing all available resources which may include, but are not limited to, the American Cancer Society, state medical societies, and universities.

3. Professional Education

A plan for conducting an assessment of the health care providers to determine important practice information useful in developing an education program. This could include:

(1) Screening behaviors in their practices;

(2) Knowledge of screening guidelines;

(3) Use of screening reminder systems;

(4) Laboratories used for reading Pap smears; and

(5) Sites of mammography referrals.

After the health care provider assessment has been conducted, states should collaborate with appropriate professional groups and organizations to develop a provider education program. The development of a health provider education program would transmit information on the efficacy and appropriate use of screening procedures and reminder systems for providers.

4. Quality Assurance

In preparation for developing a statewide quality assurance component: (1) Conduct a statewide assessment to determine the current status and identify areas of need in mammography and cervical cytology quality assurance and (2) develop the components of a comprehensive quality assurance program based on guidelines developed by the Public Health Service for mammography and by the Clinical Laboratory Improvement Act 1988 for cervical cytology.

a. *Mammography.* The achievement of mammography's full potential contribution to the process of early breast cancer detection requires that quality assurance procedures be systematically applied in routine practice. Mammography quality assurance encompasses the importance of the design, functioning, and operation of equipment, patient and provider communication, image quality, the interpretation of the mammogram, the communication of the radiologist's interpretation, and record keeping.

The minimal quality level for mammography shall include the following criteria:

(1) Properly trained and experienced personnel.

(2) Proper use of appropriate, well-maintained, dedicated equipment.

(3) Periodic performance evaluation tests of the imagining system following guidelines recommended by the American College of Radiology.

b. *Cervical cytology.* The minimal quality level for cervical cytology shall include the following criteria:

(1) Properly trained, accredited, and certified personnel.

(2) Licensed laboratories that maintain an ongoing quality assurance program, to include provisions for alternative cervical cancer screening techniques if such systems are used by the participating laboratories.

(3) Appropriate reporting and communication of results.

5. Surveillance

States should assess current capabilities and develop a plan to ensure that changes in disease burden and screening behavior can be adequately monitored. To do this, a surveillance system should:

a. Collect population-based information on race, incidence, staging at diagnosis, and mortality from breast and cervical cancers.

b. Identify population segments at higher risk for disease and for failure to be screened.

c. Identify factors that contribute to disease burden and to limited or inequitable access to early detection and treatment services.

d. Monitor the number and characteristics of women screened and outcomes of screening.

e. Monitor screening resources, including the number of mammography facilities, cytology laboratories, and providers of cytology screening.

f. Design and conduct case studies and other epidemiologic investigations to determine factors associated with avoidable morbidity and mortality.

g. Publish a yearly report summarizing the population status with respect to these conditions.

6. Evaluation

Attention should be given to the development, establishment, and design of individual components to ensure that there can be meaningful evaluation. The evaluation plan should assess the performance and effectiveness of intervention components, including:

a. Coalition development.

b. Cancer plan development.

c. Public education.

d. Professional education.

e. Quality assurance.

f. Surveillance.

At a minimum, the evaluation plan should assess the existing state breast and cervical cancer control program and should include the following:

a. A description of the evaluation plan and how evaluation results will be used.

b. A description of methods used to assess the development of program activities in all program components.

B. *CDC Activities*

1. Convene meetings for representatives of states receiving awards for workshops and sharing information.

2. Convene meetings for representatives of states receiving awards for training purposes.

3. Disseminate to state health departments relevant state-of-the-art research findings and public health recommendations that relate to early detection, diagnosis, and treatment for breast and cervical cancer.

4. Collaborate with recipients in planning, operating, and evaluating program activities and coordinating projects' participation in all components of the cancer program.

5. Collaborate with recipients in developing surveillance and data systems and in the states' analysis and evaluation of data.

6. Provide technical assistance in the development of public and professional education components.

7. Collaborate with recipients in disseminating outcome indicators and their integration into program operation.

8. Provide guidance in the development and establishment of specific morbidity reduction objectives.

9. Provide technical information and guidelines in the development of quality assurance procedures for mammography and cervical cytology.

10. Provide technical assistance and direction in the development of evaluation efforts.

Evaluation Criteria

The initial application for the proposal for capacity building of the core components of a comprehensive breast and cervical cancer control program will be reviewed according to the evaluation criteria listed below. The application and the appendices should not exceed 100 pages. In addition, special consideration will be given in the review process to applications from state health departments at an introductory level in the planning of statewide approaches to breast and cervical cancer screening.

1. The capability of the state health department's commitment to carrying out the planning, intervention, and evaluation process and the overall plan to accomplish this process. (10 points)

2. The extent to which the applicant assesses the breast and cervical cancer program needs of the target population and justifies the program's focus on the target population. (10 points)

3. The consistency of the specific and time-related, measurable objectives with the stated purpose of the cooperative agreement and the ability to achieve the objectives, activities, and milestones of the program within the specified period. (15 points)

4. The extent of the applicant's ability to assure community and professional support and involvement, to use available resources, and to ensure that the coalition assumes a major role in the program. (10 points)

5. The ability of the applicant to identify appropriate staff for the program who are available and trained to carry out the required task. (5 points)

6. The extent to which the applicant's plan reflects integration of breast and cervical cancer program elements into the health care delivery system through the formation of program linkages and the development of a cancer program advisory group or task force. (10 points)

7. Evidence of the applicant's commitment to develop and maintain a surveillance system, a breast and cervical cancer registry, and a method to track the knowledge, attitudes, and practices of the targeted population. (10 points)

8. The quality of the public education plan, including the ability to develop, carry out, and evaluate interventions for target populations. (5 points)

9. The quality of professional education plan, including the ability to develop, carry out, and evaluate interventions for target populations. (5 points)

10. The quality of the mammography and cervical cytology quality assurance plan. (10 points)

11. The quality of the applicant's evaluation plan. (10 points)

12. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds. (Not weighted)

Continuation awards within the project period will be made on the basis of the following criteria:

1. Availability of funds.

2. The extent to which the accomplishments of the current budget period show that the applicant is achieving its objectives.

3. The consistency of the specific and time-related measurable objectives for the new budget period with purpose of the cooperative agreement and the extent to which they are realistic, specific, and measurable.

4. The extent to which the methods described will clearly lead to the achievement of these objectives.

5. The quality of the proposed evaluation plan to monitor the efficacy of the proposed methods.

6. The extent to which the budget request is justified, reasonable, and consistent with the intended use of cooperative agreement funds.

7. Evidence of long-term commitment to nonfederal support for which the amount of support increases over time.

Recipient Financial Participation

This program has no statutory formula. No specific matching funds are required; however, the application should include specifics on the applicant's contribution to the overall program cost.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form–5161–1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before July 16, 1992.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Gordon R. Clapp, Grants Mangement Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6508. Programmatic technical assistance may be obtained from George-Ann Stokes, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop K–52, Atlanta, Georgia 30333, (404) 488–5760.

Please refer to Program Announcement Number 221 when requesting information and submitting an application in response to this Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Dated: June 1, 1992.

Robert L. Foster,

Acting Associate Director for Mangement and Operations, Centers for Disease Control.

[FR Doc. 92–13185 Filed 6–4–92; 8:45 am]

BILLING CODE 4160–18–M

[Announcement Number 232]

Cooperative Agreements To Support State Pregnancy Nutrition Surveillance Program Announcement and Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds to implement and conduct the enhanced Pregnancy Nutrition Surveillance System (PNSS). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of nutrition and maternal and infant health. (For ordering a copy of Healthy People 2000, see the Section, Where to Obtain Additional Information.)

Authority

This program is authorized under section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended, and section 317(k)(3) of the Public Health Service Act [42 U.S.C. 247b(k)(3)].

Eligible Applicants

Because the intent of this cooperative agreement is to develop state capacity to continuously conduct program-based pregnancy nutrition surveillance, assistance will be provided only to the official public health departments of states or their bona fide agents or instrumentalities. This includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments. States and territories who received funding in Fiscal Year 1991 are not eligible. No other applications will be accepted.

Availability of Funds

Approximately $500,000 is available in Fiscal Year 1992 to fund approximately 10 awards for PNSS. It is expected that the average award will be $50,000, ranging from $40,000 to $55,000. It is expected that the awards will begin on or about August 15, 1992, and are usually made for a 12-month budget period within a project period of up to 4 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory performance and availability of funds. Priority will be given to states which have areas designated as Healthy Start communities or with high infant mortality rates.

Purpose

The purposes of this Cooperative Agreement are to:

A. Promote the development and use of standardized pregnancy nutrition surveillance methods in support of state programs for Maternal and Child Health (MCH), the Supplemental Food Program for Women, Infants, and Children (WIC), Healthy Start communities, and other relevant programs such as Community and Migrant Health Centers, to reduce pregnancy-related health risks and adverse pregnancy outcomes.

B. Assist states in monitoring trends in the prevalence of prenatal and early infancy nutrition and behavioral risk factors, which are major predictors of low birth weight and infant mortality.

C. Provide information needed by the states to assess coverage, targeting, and effectiveness of prenatal and early infancy programs; to redirect health care services accordingly; and to evaluate the extent to which service redirection results in improved health and nutrition outcomes.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC shall be responsible for conducting activities under B., below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Identify and describe communities within the state which have high infant mortality rates, including Healthy Start Communities.

2. Identify and describe public health programs, such as WIC, that have the capability of providing statewide data on pregnant and postpartum women.

3. Develop and maintain, in collaboration with CDC, a data collection system for PNSS, including the flow, editing, analysis, and application of data and the design and field test of a data collection tool in appropriate programs.

4. In accordance with guidelines to be provided by CDC, collect clinical and program data on risk factors associated with poor pregnancy outcomes among high-risk populations (e.g., those defined by tobacco use, prenatal weight gain, socioeconomic indicators, trimester of first prenatal visit, alcohol use).

5. Plan and implement procedures for ensuring the completeness and quality of the data, including training and data editing.

6. Coordinate the surveillance system with various organizational units in the agency to ensure consistency and comparability in the data that are collected and to ensure a single point for data management.

7. With technical assistance and/or provision of software from CDC, produce a clean, edited tape for analysis that includes the specified material and postpartum data.

8. Develop and implement a plan for the analysis and use of surveillance data in appropriate prevention and intervention programs to reduce the prevalence of risk factors associated with low-birthweight outcomes.

9. Prepare and disseminate surveillance information, in collaboration with CDC, through presentation and publication in appropriate forums.

10. Propose an evaluation strategy and collaborate with CDC to assess the effectiveness and efficiency of the surveillance system to monitor the health risks of the high-risk prenatal population.

11. Describe potential plans, or the feasibility and capability, for linking the prenatal information with birth certificates and other related data systems and the general plan for using such information.

B. CDC Activities

1. Collaborate in the design of standardized data items, definitions, procedures, and methods to collect the desired surveillance information.

2. Provide training in the appropriate skills to develop, manage, and implement the surveillance project.

3. Provide technical support for data processing or assist state participants in developing appropriate data-processing capabilities.

4. Assist states to analyze, interpret, and use the surveillance data to improve the coverage, targeting, and effectiveness of state interventions toward reducing pregnancy-related health risks.

5. Collaborate with the recipient in preparing and presenting program-relevant surveillance findings to appropriate state and national audiences.

6. Collaborate with the recipient in evaluating the effectiveness and

efficiency of the surveillance system to monitor and intervene upon the health risks of high-risk prenatal populations.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Potential for Public Health Impact (10 Points)

1. Evidence that the state has a high rate of nutrition and behavioral health risks associated with low birthweight and infant mortality.

2. Evidence that the state has areas of high infant mortality and low birthweight, especially the existence of Healthy Start communities.

3. Evidence of state health department plans to improve the outcome of pregnancy through intervention programs to reduce risk factors occurring during pregnancy and of the state health department's ability to develop, implement, evaluate, and use surveillance activities to support effective program interventions.

4. The extent and availability of statewide data, such as 100 percent of clinics of the WIC Program and, where feasible, multiple program sources of data (e.g., WIC, Healthy Start communities, prenatal clinics, Medicaid).

B. Capability (30 Points)

1. The extent and appropriateness of previous efforts to monitor health risks of prenatal, pediatric, and other high-risk populations by using similar systems and data collection methods, such as the Pregnancy Nutrition Surveillance System, the Pregnancy Risk Assessment Monitoring System, the Pediatric Nutrition Surveillance System, or other statewide surveillance systems.

2. The ability to incorporate the PNSS data into one or more existing programs.

3. Evidence of strong working relationships with the organizational entities involved with this project.

4. Evidence that key project staff have experience in developing and implementing surveillance systems, analyzing data, and using data in evaluating and planning program activities.

C. Project Design (55 Points Total)

1. The appropriateness of goals, objectives, and activities stated in the overall plan related to: (40 points)

Program Development and Implementation (10 Points)

a. The extent to which the applicant describes characteristics of the target population, participating programs and clinics, and, if relevant, the existing or planned health information data collection system into which PNSS will be incorporated (e.g., WIC certification data system).

b. The adequacy of procedures for selecting the target population, the extent to which information will be collected on the initial prenatal and subsequent postpartum visit, and evidence of the ability to consolidate information collected into a single record for analysis.

c. The adequacy of procedures for designing, implementing, and debugging the surveillance system. This includes the feasibility of the proposed time schedule for designing, pretesting, and evaluating the surveillance system, and the submission of quarterly data tapes to CDC.

Training and Data Quality (10 Points)

The adequacy of proposed data management procedures to assure data quality (e.g., ensuring data completeness, training personnel, and validating the quality of data, data entry, and editing).

Data Analysis and Dissemination (10 Points)

a. The adequacy of the applicant's plans to analyze the data on a timely basis and to share the data with CDC for providing national estimates.

b. The adequacy of the applicant's plans to supply surveillance findings to the planning and evaluation of intervention activities.

c. The adequacy of the applicant's plans in coordinating PNSS data collection, analysis and dissemination efforts with appropriate others such as the State's Primary Care Access Plan as funded by the Federal Bureau of Health Care Delivery and Assistance (BHCDA).

Program Evaluation (10 Points)

How well the applicant understands what surveillance data will be needed and how the data will be used in planning pregnancy risk-reduction activities and evaluating their effectiveness.

2. The specific roles and responsibilities of participating units of the state health department are described in relationship to: Project management; design of instruments; data collection, analysis, interpretation, and dissemination; and enlisting the support of local health departments/agencies, especially Healthy Start communities. (15 points)

D. Commitment (5 Points)

Evidence that the organizational alignment is conducive to accomplishing the stated objectives, including written commitments from the appropriate organizational entities responsible for MCH and WIC activities, state vital records, state data processing, and other organizational units that would be expected to support activities related to the surveillance system.

E. Budget (Not Weighted)

The extent to which the applicant describes the total amount of funds requested in each of the object class categories and clearly links the budget items to objectives and activities proposed for the budget period.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Application Submission and Deadline

A signed original and two copies of the application, PHS Form 5161–1, must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mail Stop: E–14, Atlanta, Georgia 30305, on or before June 12, 1992.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Application:* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Leah Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, (404) 842–6803.

Programmatic technical assistance may be obtained from Colette Zyrkowski, Division of Nutrition, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Mail Stop K–25, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488–5099.

Please refer to announcement Number 232 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone 202–783–3238).

Dated: June 1, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–13177 Filed 6–4–92; 8:45am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92F–0197]

Agway, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Agway, Inc., has filed a petition proposing that the food additive regulations be amended to provide for (1) increasing the maximum absorbed dose of ionizing radiation approved for the safe treatment of the complete diets of certain laboratory animals and (2) the treatment of the complete diets of guinea pigs and rabbits.

DATES: Written comments by August 4, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8731.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2223) has been filed by Agway Inc., P.O. Box 4933, Syracuse, NY 13221–4933. The petition proposes to amend the food additive regulations in § 579.22 *Ionizing radiation for treatment of laboratory animal diets* (21 CFR 579.22) to provide for (1) increasing the maximum absorbed dose of ionizing radiation used for microbial disinfection of the complete diets of certain laboratory animals from the currently approved level of 2.5 megarads to 5.0 megarads and (2) the addition of the complete diets of guinea pigs and rabbits to the list of those currently cleared for treatment.

The potential environmental impact of this action is being reviewed. The environmental assessment prepared by the petitioner may be seen at the Dockets Management Branch (address above). Comments from the public are invited. Those comments received by August 4, 1992 will be considered. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 29, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92–13135 Filed 6–4–92; 8:45 am]

BILLING CODE 4160–01–F

The Prescription Drug Marketing Act of 1987; Notice of Commissioner's Industry Exchange Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding a Commissioner's industry exchange meeting on the Prescription Drug Marketing Act of 1987 (PDMA). This meeting is intended to inform regulated industry, health professionals, and other interested persons of the PDMA's requirements, the agency's enforcement policies relating to the PDMA, and the State wholesale distributor licensing requirements.

DATES: The meeting will be held Wednesday, June 24, 1992, 8:30 a.m. to 4:30 p.m. Registration will be held between 7:30 a.m. and 8:30 a.m.

ADDRESSES: The meeting will be held at the Engineer's College of Puerto Rico, Rm. Salon Salvador V. Caro, Hato Rey, PR.

FOR FURTHER INFORMATION CONTACT: Jeanne White, Office of Small Business, Scientific, and Trade Affairs (HF–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs has previously indicated his intention to hold Commissioner's industry exchange meetings to disseminate information on timely issues and to get industry's views on these issues. This meeting was organized by FDA's Office of Small Business, Scientific, and Trade Affairs, the Center for Drug Evaluation and Research (the Center), and the Office of Regulatory Affairs.

FDA managers and technical officials will be present at the meeting to answer questions and hear your concerns about issues associated with the PDMA, such as interaction with the Center. Recent

policy initiatives also will be discussed. The agency believes that this exchange of information will be helpful to the drug industry regulated by FDA and to the agency in formulating plans for future management of the PDMA.

Dated: May 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-13130 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Availability of Funds for Community and Migrant Health Centers for Reducing Infant Mortality

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $10 million for grants to community health centers and migrant health centers (C/MHCs) in high infant mortality areas to further extend infant mortality reduction activities both within Healthy Start target areas and without. These grants will be awardedunder the provisions of the FY 1992 Appropriations Act of the Department of Health and Human Services, Public Law 102-163.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Community and Migrant Health Centers program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

ADDRESSES: The PHS Regional Grants Management Officers (RGMOs) whose names and addresses are provided in Appendix I to this document are responsible for distributing application kits and guidance (Form PHS 5161-1 with revised Face Sheets DHHS Form 424, as approved by the OMB under control number 0937-0189), and completed applications must be submitted to them. Potential applicants should contact the appropriate RGMO. The RGMO can also provide assistance on business management issues.The application kit was available as of April 1, 1992.

DATES: Applications are due July 6, 1992. Applications shall be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked before the deadline date and received in time for orderly processing. Untimely applications will be returned to the applicant. Applicants should obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Ms. Joan Holloway, Director, Division of Special Populations Program Development, Bureau of Health Care Delivery and Assistance (BHCDA), 5600 Fishers Lane, Room 7A-22, Rockville, Maryland 20857 (301) 443-8143.

SUPPLEMENTARY INFORMATION

Background

This initiative is a collaborative effort between the BHCDA and the Office of Healthy Start in HRSA. As part of the Department's activities to reduce infant mortality, C/MHCs are providing basic perinatal care through C/MHC funds and enhanced perinatal services as part of their Comprehensive Perinatal Care Program (CPCP) activities. In addition, HRSA has a Healthy Start initiative which is a 5 year demonstration program that currently funds 15 communities (See appendix II) that have developed or are developing new and innovative approaches to delivering needed care to pregnant women and infants in areas with excessive numbers of infant deaths. These funds are expected to enhance existing perinatal programs, where appropriate, and to develop new perinatal capacity where needed.

Available Funds

There will be approximately $10 million in discretionary grants to expand current infant mortality reduction activities in federally funded C/MHCs participating in the Healthy Start initiative, and to establish new or to expand already existing perinatal systems in federally funded C/MHCs which are not in Healthy Start targeted areas and which have infant mortality rates of 15.7 or greater.

Number of Awards

Approximately 30 to 50 awards will be made, ranging from approximately $150,000 to $400,000. The project period for all C/MHCs will be four years.

Eligible Applicants

Eligible applicants are C/MHCs funded under sections 329 and 330 of the PHS Act that are participating in a Healthy Start program and serve a significant proportion of the Healthy Start targeted population and C/MHCs not in Healthy Start targeted areas serving an area or population whose infant mortality rates are 15.7 per 1000 live births or greater.

Criteria for Evaluation

Eligible applicants will be evaluated based upon the following:

C/MHCs in Healthy Start Targeted Areas

Need

- The relative need of the populations to be served for the comprehensive package of perinatal services to be provided based upon: (1) The demongraphic and health status characteristics of the population to be served; (2) the need and demand for perinatal services within the community; (3) an overview and analysis of the existing services and delivery systems currently available to serve this population as well as those services and systems which will be supported under the Healthy Start demonstration program; and (4) the identification of gaps within these services.

Proposed Plan to Close Gaps in Services

- The extent to which the proposed activities go beyond those services which are currently provided through basic section 329/330 grant support (including any CPCP funding) or other Federal (including those services proposed by the Healthy Start grant), State, or local funding;
- The adequacy and feasibility of the new or expanded efforts proposed to meet the needs of the population and to improve pregnancy outcomes by assisting the Healthy Start demonstration program in reaching the 50 percent reduction in infant mortality in 4 years.
- The ability of the C/MHC to implement the proposed plan.

Collaboration/Coordination

- The extent to which the application is consistent with the goals and overall comprehensive plan of the Healthy Start

Consortia and/or Healthy Start grantee within the community.

• The degree to which the applicant intends to integrate its services with related services provided by State and local health departments and other health and social service providers (e.g. Medicaid, WIC, or other C/MHCs within the community).

Budget

• The appropriateness of the proposed budget in relation to other resources and the adequacy of the budget justification to support the proposed interventions for this initiative.

Evaluation

• The adequacy of the center's plan to evaluate the impact of these activities.

C/MHCs in NonHealthy Start Areas

Need

• The need as measure by: (1) a five year average of an infant mortality rate of 15.7 per 1000 live births or greater; (2) a low birth weight rate of 6.9 percent of live births or greater; (3) geographic barriers based on average travel time/distance to next nearest source of primary care that is accessible to Medicaid recipients and/or uninsured low income people in need of a sliding fee schedule; (4) a shortage of perinatal providers; and (5) other documented special access or health factors such as disparities in health status, high employment, high percentage of the uninsured amongst the populations served, or prevalence of conditions such as HIV infection, homelessness and/or substance abuse, or teen pregnancy.

Plans to Close Gaps in Services

• The extent to which the proposed package of services is consistent with the needs of the community.

• The extent to which the proposed activities go beyond those services which are currently provided through basic section 329/330 grant support (including any CPCP funding) or other Federal, State, or local funding.

• The adequacy and feasibility of the new or expanded efforts proposed to meet the needs of the population and to improve pregnancy outcomes.

• The ability of the C/MHC to implement the proposed plan.

Collaboration/Coordination

• The degree to which the applicant intends to integrate its services with related services provided by State and local health departments and other health and social service providers (e.g. Medicaid, WIC, or other C/MHCs within the community).

• The extent of community support.

Budget

• The appropriateness of the proposed budget in relation to other resources and the adequacy of the budget justification to support the proposed interventions for this initiative.

Evaluation

• The adequacy of the center's plan to evaluate the results of these activities in terms of improved health status.

In selecting applications for funding preference will be given to approved applications of C/MHCs participating in the Healthy Start initiative and those in rural areas (i.e., approved applications from C/MHCs in Healthy Start target areas and rural areas will be funded ahead of other applications).

Other Award Information

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit will contain a listing of States which have chosen to set up a review system and will identify a State Single Point of Contact (SPOC) in each State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State.

State process recommendations should be submitted to the appropriate Regional Office (see Appendix). The due date for State process recommendations is 60 days after the appropriate application deadline date. The BHCDA does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

In the OMB Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 93.224 and the Migrant Health Center program is listed as Number 93.246.

Dated: April 1, 1992.

Robert G. Harmon,

Administrator.

Appendix I—Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–1482

Region II: Steven Wong, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278, (212) 264–4496

Region III: Martin Bree, Acting Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA 19101, (215) 596–6653

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–2597

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–8700

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–3885

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016, (816) 426–5841

Region VIII: Jerry F. Wheeler, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461

Region IX: Linda Gash, Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553–7997

Appendix II—Healthy Start Communities

Aberdeen—Cynthia Smith, Director, Northern Plains Health Start Project, UND Department of Family Medicine, 501 Columbia Road, Grant Forks, North Dakota 58203, (701) 777–3848

Baltimore—Tom Coyle, Director, Office of Policy and Program Development, Baltimore City Health Department, 303 East Fayette Street, Seventh Floor, Baltimore, Maryland 21202, (410) 396–9994

Birmingham—Ms. Carroll N. Romano, MPA, Director, Medicaid Maternity Waiver Program, Jefferson County Department of Health, P.O. Box 2648, 1400 Sixth Avenue, South, Birmingham, Alabama 35202, (205) 930–1383

Boston—June Cooper, Project Officer, Division of Public Health, Department of Health and Hospitals, 1010 Massachusetts Avenue, 2nd Floor, Boston, Massachusetts 02118, (617) 534–5359

Alonzo Plough, Deputy Commissioner of Department of Public Health, 818 Harrison Avenue, Admin.—500, Boston, Massachusetts 02118, (617) 534–5284

Chicago—Stephen E. Saunders, M.D., M.P.H., Chief, Division of Family Health, Illinois Department of Public Health, 535 West Jefferson Street, Springfield, Illinois 62761

Cleveland—Daisy Alford, Director, Cleveland Department of Public Health, 1925 St. Clair Avenue, Cleveland, Ohio 44144, (216) 664–2324

Detroit—John B. Waller, Jr., Dr. P.H., Chairman, Department of Community

Medicine, Wayne State University, 540 East Canfield, Detroit, Michigan 48201, (313) 557–1033
District of Columbia—Patricia A. Tompkins, Chief, Office of Maternal & Child Health, Commission of Public Health, 1660 L Street, NW, Suite 907, Washington, D.C. 20036, (202) 673–4551
New Orleans—Sheila J. Webb, RN, M.S., Deputy Director, City of New Orleans Department of Health, City Hall, Room 2E10, 1300 Perdido Street, New Orleans, LA 70112, (504) 565–6906
New York—Michelle Drayton, Project Director, 250 Broadway, Room 303, New York, New York 10013, (212) 566–7076
Oakland—Janice Berger, Perinatal Program, Alameda County Health Care Services Agency, 499 Fifth Street, Room 504, Oakland, CA 94607, (510) 208–1018
Philadelphia—Harriet Dichter, Director, Maternal & Infant Health, 500 South Broad Street, Philadelphia, PA 19146, (215) 875–5927
Pittsburgh—Carol Synkewecz, Executive Assistant, Allegheny County Health Department, 3333 Forbes Avenue, Pittsburgh, PA 15213, (412) 578–8003
South Carolina—Roger Poston, Project Director, United Way of South Carolina, 2711 Middleburg Drive, Suite 210, Columbia, South Carolina 29204, (803) 929–1002 (Columbia), (803) 662–1462 (Florence)
Gary—Rebera Elliott Foston, M.D., M.P.H., Health Commissioner, Gary Health Department, 1145 West Fifth Avenue, Gary, IN 46402

[FR Doc. 92–13192 Filed 6–4–92; 8:45 am]
BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday May 29, 1992.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. 1992 Update of National Survey of Prescription Drug Information Provided to Patients—New—To provide information for current Health and Human Services and the Food and Drug Administration policy initiatives, a national survey of adults age 18 and older will assess the nature and extent of prescription drug information received by patients from health professionals and other sources. This is a repeat of a survey conducted in 1982 and 1984. Respondents: Individuals of households.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Screener	12,320	1	.0167
Full Survey	1,000	1	.3167
Estimated Total Annual Burden			513

2. HIV/AIDS Dental Reimbursement Program—0915–0151 Dental Schools will apply for reinstatement of documented uncompensated costs of oral health care for HIV infected persons. The Information will be used to determine eligibility and amount of reimbursement under this program. Respondents: Non-profit institutions; Number of Respondents: 150; Number of Responses per Respondent: 1; Average Burden Per Response: 2.5 hours; Estimated Annual Burden: 375 hours.

4. Collection and Evaluation of human Tissues and cells—0925–0152—Epidemiological data is collected to compare the environmental characteristics of non-cancer control autopsy tissues to those of surgically derived cancer cases when analyzing for binding levels of carcinogens, composition of macromoecules complexed with test chemicals, genetic mutations, and susceptibility of tissues to chemically induced transformation and tumorigenesis. Respondents: Individuals or households; Number of Respondents: 10; Number of Responses per Respondent: 1; Average Burden per Response: 0.33 hours; Estimated Annual Burden: 4 hours.

4. 1993–1994 National Health Interview Survey—0910–0214—the National Health Interview Survey, an ongoing survey of the civilian, non-institutionalized population, monitors the Nation's Health. The 1993–1994 NHIS will include supplements on "Disability", "Family Resources", "Immunization", and "AIDS Knowledge and Attitudes". Respondents: Individuals or households; Number of Respondents: 48,500; Number of Responses per Respondent: 1; Average Burden per Response: 2.06 hours; Estimated Annual Burden: 99,808 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch New Executive Office Building, room 3002 Washington, DC 20503.

Dated: May 29, 1992.

Phyllis M. Zucker,

Acting Director, Office of Health Planning and Evaluation.

[FR Doc. 92–12994 Filed 6–4–92; 8:45 am]
BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on May 1, 1992.

(Call Reports Clearance Officer on (410) 965–4149 for copies of package)

1. Missing and Discrepant Wage Reports Letter and Questionnaires—0960–0432. The information on forms SSA–L93, SSA–95 and SSA–97 is used by the Social Security Administration to properly post employees' earning records. The respondents are employers with missing and discrepant wage reports.

Number of Respondents: 385,000.

Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 192,500 hours.

2. Request for Reconsideration-Disability Cessation—0960—0349. The information on form SSA–789 is used by the Social Security Administration in situations in which a claim for disability benefits has been denied and the claimant wishes to file for a reconsideration of that determination. The respondents are claimants for disability benefits under titles II and XVI of the Social Security Act who file for reconsideration.
Number of Respondents: 11,550.
Frequency of Response: 1.
Average Burden Per Response: 12 minutes.
Estimated Annual Burden: 2,310 hours.

3. Statement regarding Student's School Attendance—0960—0113. Form SSA–2434 is used by the Social Security Administration (SSA) in connection with claims for black lung student benefits. The information obtained via this form helps SSA to determine the status of children of coal miners or their widows or brothers of deceased coal miners.
Number of Respondents: 5,340.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 890 hours.

4. Receipt Demonstration Project—Caller Recontact Survey—0960—NEW. The information on form SSA–4358 will be used by the Social Security Administration (SSA) to determine caller satisfaction and reaction to SSA's service of issuing a receipt following a call to the 800 number. The respondents are selected individuals who contact SSA using the toll-free number.
Number of Respondents: 5,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 1,250 hours.

5. Final Regulation Concerning Payment of Certain Travel Expenses—0960–0434. The information required by this regulation is used by the Social Security Administration to reimburse an individual who has been required to travel over 75 miles to appear at a medical examination or disability hearing.
Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 8,333.
OMB Desk Officer: Laura Oliven.
Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: May 18, 1992.
Charlotte Whitenight,
Acting Reports Clearance Officer, Social Security Administration.
[FR Doc. 92–12749 Filed 6–4–92; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–81]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.
ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address

(including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 693–0674; (This is not a toll-free number).

Dated: May 29, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 06/05/92

Arizona—Williams Air Force Base

Williams Air Force Base is located in Mesa, Arizona, 85240–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 4,072 acres, 179 Government-owned buildings and 700 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210096
Type Facility: Housing—700 units of military family housing; 1-story with 2 to 5 bedrooms.

Property Number: 199210097
Type Facility: Temporary Living Quarters—15 buildings; 1, 2, and 3–story structures including dorms and lodging.

Property Number: 199210098
Type Facility: Support and Service Facilities—5 buildings; one 3-story fire station, one 1-story brick chapel, a gate house, a post office and an education center.

Property Number: 199210099
Type Facility: Miscellaneous Facilities—24 buildings; 1 and 2-story structures including a library, bowling center, gym, child care, youth and recreation centers, theater, commissary and stores.

Property Number: 199210100–199210101
Type Facility: Recreation—20 facilities including golf club bldgs., bathhouses, swimming pools, baseball, softball and soccer fields, tennis courts, track, golf course, driving range and a camp.

Property Number: 199210102
Type Facility: Medical Facilities—6 buildings; 1-story block and concrete structures including a hospital, clinics and pharmacy.

Property Number: 199210103
Type Facility: Laboratories—9 buildings; eight 1-story and one 3-story metal and concrete/block structures.

Property Number: 199210104
Type Facility: Flight Training and Admin. Facilities—36 buildings; 1 to 3-story concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities.

Property Number: 199210105
Type Facility: Warehouse and Storage Facilities—12 buildings; 1-story concrete, wood and steel structures including warehouses and storage bldgs.

Property Number: 199210106
Type Facility: Base Support and Flight Maintenance Facilities—52 buildings; 1-story concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops.

Property Number: 199210107
Type Facility: Hazardous and Explosive Storage—14 buildings; 1-story concrete and concrete/metal structures.

Arkansas—Eaker Air Force Base

Eaker Air Force Base is located in Blytheville, Arkansas 72317–5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,700 acres and contains 928 housing units and 199 government-owned buildings. The properties that HUD has determined suitable and which are available include various types of housing; office and administration buildings; indoor and outdoor recreational facilities; warehouses and multi-use buildings; child care centers; maintenance, storage and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210040–199210042
Type Facility: Housing—818 duplex units with two, three and four bedrooms; wood with brick veneer fronts; 10 single family houses with four and five bedrooms; and 25–4 unit buildings with two story four bedroom units; four playgrounds.

Property Number: 199210045
Type Facility: Office/administration—30 buildings; 188 to 49,000 sq. ft.; one and two story; concrete block, metal, shingle or masonry construction.

Property Numbers: 199210046–199210047
Type Facility: Recreation—20 outdoor areas which includes athletic fields (track, softball, baseball), swimming pools, golf courses, volleyball court, basketball courts, tennis court. Eight indoor facilities which includes gym, theatre, library, bowling, youth and recreation centers, hobby shop; concrete block, masonry or metal/brick construction.

Property Numbers: 199210048–199210055
Type Facility: Temporary living quarters and dorms—8 buildings; 3,414 to 41,000 sq. ft.; one and two story; wood/brick veneer and brick masonry buildings.

Property Numbers: 199210056, 199210072
Type Facility: Warehouses/multi-use buildings—39; metal, concrete block, shingle, wood or plywood frame; one and two story; 64 to 45,960 sq. ft.; includes cold storage facilities, maintenance shops, traffic management facility, storage shed, thrift shops and other specialty type facilities.

Property Numbers: 199210057–199210059
Type Facility: Hospitals—3 buildings; one story concrete block; 1,084 sq. ft. animal clinic; 5,249 sq. ft. dental clinic; and 54,089 sq. ft. composite medical bldg.

Property Numbers: 199210060–199210062
Type Facility: Child care centers—3 buildings; 2,098 to 8,365 sq. ft.; brick, concrete block and hadite block construction.

Property Numbers: 199210063–199210065, 199210073
Type Facility: Stores and services—4 buildings; 4,299 sq. ft. exchange service station; 32,925 sq. ft., one story concrete block exchange sales store; 3,370 sq. ft., one story wood frame packaging store; 38,575 sq. ft., one story concrete block/metal commissary.

Property Number: 199210066
Type Facility: Airfield related buildings—14; 96 to 49,000 sq. ft.; shingle, metal or contrete block structures, e.g. hangars, aircraft general purpose bldgs., jet engine maintenance shops, control centers.

Property Number: 199210068
Type Facility: Vehicle maintenance facilities—3; 2,032 to 29,350 sq. ft.; one story metal frame buildings.

Property Number: 199210069
Type Facility: Fuels/related storage facilities—40 buildings; steel, fiberglass and porcelain type; e.g. service stations, diesel storage, pump stations, jet fuel storage.

Property Number: 199210070
Type Facility: Hazardous storage buildings—6; 96 to 3,000 sq. ft.; one story metal structures.

Property Number: 199210071
Type Facility: Munitions facilities—21 buildings; 412 to 4,864 sq. ft.; concrete block; storage igloos and magazines.

Property Number: 199210074
Type Facility: Fire Station—Building 100; 15,717 sq. ft.; concrete masonry/asbestos cement shingles frame.

Property Number: 199210075
Type Facility: Chapel—Building 525; 17,602 sq. ft.; one story frame with brick veneer.

Property Number: 199210076–199210077
Type Facility: Laboratories—2 buildings; 4,200 sq. ft. precision measurement equipment lab; and 3,775 sq. ft. audio-visual photo lab.

Property Number: 199210078
Type Facility: Bank; 2,367 sq. ft.; one story concrete block; lease restrictions.

Property Number: 199210079

Type Facility: Land; 1,982 acres; restrictive agricultural lease.

Unsuitable Properties

Property Number: 199210067
Type Facility: Detached latrines—3; 264 sq. ft. concrete block structures.

Property Number: 199210043
Type Facility: Housing—23 buildings; cracked foundations, therefore, structural deficiencies.

California—George Air Force Base

George Air Force Base is located in San Bernardino, California 92394–5000. All the properties will be excess to the needs of the Air Force on or about December 31, 1992. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures. The Air Force has determined that all suitable properties are available for use to assist the homeless.

Extensive assistance, including maps, tours, and details on specific properties, is available for interested homeless assistance providers at the Base; interested parties should contact Lt. Col. Zernow at (619) 269–2020.

Suitable/Available Properties

Property Numbers: 199120001–199120420
Type Facility: Housing—420 buildings with a total of 1,636 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos.

Property Numbers: 199120421–199120473
Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos.

Property Numbers: 199120474–199120505
Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos.

Property Numbers: 199120506–199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos.

Property Numbers: 199120548–199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos.

Property Numbers: 199120588–199120608
Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos.

Property Numbers: 199120609–199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos.

Property Numbers: 199120619–199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos.

Property Numbers: 199120631–199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos.

Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos.

Property Numbers: 199120634–199120635
Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos.

Property Numbers: 199120636–199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos.

Property Numbers: 199120639–199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos.

Property Numbers: 199120646–199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care center; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos.

Property Numbers: 199120656–199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos.

Property Numbers: 199120667–199120676
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos.

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms
Reason: Within 2000 ft. of flammable or explosive material.

Property Numbers: 199120680–199120687
Type Facility: Hazardous storage facilities—8 buildings
Reason: Within 2000 ft. of flammable or explosive material.

Property Numbers: 199120688–199120713
Type Facility: Explosives and munitions facilities—26 buildings
Reason: Within 2000 ft. of flammable or explosive material.

Property Numbers: 199120714–199120732
Type Facility: Fuel facilities—19 structures
Reason: Within 2000 ft. of flammable or explosive material.

California—Mather Air Force Base

Mather Air Force Base is located in Sacramento County, California 95655–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 5715 acres, 315 Government-owned buildings and 1271 housing units that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210017–199210020
Type Facility: Housing—207 buildings/414 units Wherry duplexes (two to three bedrooms); 857 family houses (one to four bedrooms); buildings have reinforced concrete block, wood and stucco frame construction; presence of asbestos.

Property Number: 199210021
Type Facility: Temporary Living Quarters—18 buildings; one, two, and three story wood, concrete block and stucco structures; presence of asbestos.

Property Number: 199210022
Type Facility: Office/Administration—60 buildings; one, two and three story structures; presence of asbestos.

Property Number: 199210023
Type Facility: Recreation—32 facilities including theater, gymnasium, library, bowling alley, recreation center, arts and crafts center, youth center, pools, bath houses, museum buildings; presence of asbestos.

Property Number: 199210024
Type Facility: Aircraft and Airport Related Facilities—33 buildings; one to two story structures including hangars, storage facilities and maintenance shops; presence of asbestos.

Property Number: 199210025
Type Facility: Maintenance and Engineering Facilities—36 buildings; one story structures including storage, shop and maintenance buildings; presence of asbestos.

Property Number: 199210026
Type Facility: Training Facilities—15 buildings; one to two story concrete, wood and metal classroom/education buildings; presence of asbestos.

Property Number: 199210027
Type Facility: Stores and Services—7 buildings; one story structures including stores, service station exchange and cold storage building; presence of asbestos.

Property Number: 199210028
Type Facility: Chapels—2 buildings; one story concrete block and masonry concrete structures; presence of asbestos.

Property Number: 199210029
Type Facility: Fire Facilities—2 fire facilities and 2 fire stations; presence of asbestos.

Property Number: 199210030
Type Facility: Audio Visual—3 buildings; one story photo lab and training aid shops; presence of asbestos.

Property Number: 199210031
Type Facility: Miscellaneous—6 buildings; one story child care centers, correction facility, dining and mess halls; presence of asbestos.

Property Number: 199210032
Type Facility: Storage Facilities—61 buildings; one story metal, steel, wood or concrete storage buildings or sheds; presence of asbestos.

Property Number: 199210033
Type Facility: Warehouses—7 buildings; one to two story structures; presence of asbestos.

Property Number: 199210034
Type Facility: Vehicle Shops—6 buildings; one story concrete block, wood, steel frame and metal shops; presence of asbestos.

Property Number: 199210035
Type Facility: Traffic Check House—1 building; two story concrete block structure.

Property Number: 199210036
Type Facility: Fuel Facilities—6 buildings; one story structures.

Property Number: 199210037
Type Facility: Explosives and Munitions Facilities—5 buildings; one story concrete or concrete block storage structures.

Property Number: 199210038
Type Facility: Hazardous Storage Facilities—11 buildings; one story metal storage structures

Property Number: 199210039
Type Facility: Land—Recreation Areas and Airfield Properties including softball/football/soccer fields, running track, riding stables, golf course, taxiway and runways, (approximately 5716 acres).

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Champaign, Illinois, 61868. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base consists of approximately 2,174 acres, 164 Government-owned buildings and 403 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210130
Type Facility: Housing—463 houses with 1 to 6 units, brick and wood structure, possible asbestos.

Property Number: 199210140
Type Facility: Temporary Living Quarters—74 buildings; 1 to 4-story dormitories and temporary living facilities, possible asbestos.

Property Number: 199210141
Type Facility: Medical Facilities—2 buildings; 4-story concrete hospital and a 1-story concrete dental clinic, possible asbestos.

Property Number: 199210142
Type Facility: Storage Warehouses—28 buildings; concrete block, brick, metal and wood structures including supply and training bldgs., need repairs.

Property Number: 199210143
Type Facility: Maintenance Bldgs.—16 buildings; 1-story maintenance facilities and shops, possible asbestos.

Property Number: 199210144
Type Facility: Engine Test Cells/Warehouses—2 buildings; 1-story concrete storage/maintenance facilities, possible asbestos.

Property Number: 199210145
Type Facility: Gas Stations—2 buildings; 1-story gas stations.

Property Number: 199210146
Type Facility: Training Facilities—23 buildings; 1 to 4-story structures including training bldgs., classrooms, and labs, possible asbestos.

Property Number: 199210147
Type Facility: Retail Stores—5 buildings; 1-story brick and wood structures including 4 branch exchanges and 1 commissary, possible asbestos.

Property Number: 199210148
Type Facility: Chapel/Chapel Center—3 buildings; one 2-story brick chapel center and two 1-story wood chapels, possible asbestos.

Property Number: 199210149
Type Facility: Fire Station—1 building; 2-story brick fire station, possible asbestos.

Property Numbers: 199210150–199210151
Type Facility: Recreation—49 facilities; including gym, library, theater, golf bldgs., youth, child, bowling and recreation centers, track, softball fields, tennis courts, golf course and driving range.

Property Number: 199210152
Type Facility: Administration—26 facilities; wood, brick and concrete structures including a band center, an education center, admin. bldgs. and offices, needs rehab, possible asbestos.

Property Number: 199210153
Type Facility: Bldg. 306/Band Bldg.—31603 sq. ft., 2-story concrete block/wood band center, needs rehab.

Louisiana—England Air Force Base

England Air Force Base is located in Alexandria, Louisiana 71311–5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at this time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,282 acres and contains 294 housing units and 193 government-owned buildings. The properties that HUD has determined suitable and which are available include one and two story family housing; office and administration buildings; recreational facilities and areas; educational, business and commercial buildings; maintenance, storage and other specialized structures.

Suitable/Available Properties

Property Numbers: 199210060–199210061
Type Facility: Housing—294 buildings with 588 dwelling units; one and two story; wood or masonry frame; 1,190 to 6,701 sq. ft.

Property Number: 199210062
Type Facility: Office and administration—28 buildings; 228 to 40,006 sq. ft.; one and two story; wood, brick, block or masonry frame, presence of asbestos in several structures.

Property Numbers: 199210063–199210064
Type Facility: Recreation—18 facilities and 10 parcels of land; i.e. swimming pools, gym, threatre, riding stables, bowling, library, golf course, arts and crafts center, baseball, soccer, and softball fields, track and tennis court; presence of asbestos in some structures.

Property Number: 199210065
Type Facility: Dorms and dining areas—14 buildings; 3,902 to 25,715 sq. ft.; brick or masonary frame; one, two, and three story; presence of asbestos in some structures; includes dorms, officers club, NCO club and dining hall.

Property Number: 199210066
Type Facility: Educational/training—14 buildings; 740 to 45,716 sq. ft.; wood or masonry frame; one and two story; presence of asbestos in a few structure; includes classrooms, child care center, school, education office and field training facility.

Property Number: 199210067
Type Facility: Hospitals—3 related buildings—medical storage, hospital and bio environment; metal or masonry frame; presence of asbestos in hospital.

Property Number: 199210068
Type Facility: Business and Commercial—6 buildings; 1,925 to 34,320 sq. ft.; masonry frame and possible asbestos in the commissary; other structures include mini mall, photo lab, post office, service station and base package store.

Property Number: 199210069
Type Facility: Storage/Warehouse—36 buildings including igloos, supply and equipment warehouses, records storage, commissary warehouse, retail exchange warehouse, cold storage and open storage facilities; 225 to 60,960 sq. ft.; one story; wood, block, metal, brick or concrete construction; presence of asbestos in several structures.

Property Number: 199210070

Type Facility: Maintenance shops—20 buildings; 228 to 34,176 sq. ft.; one story; block, metal or steel construction; presence of asbestos in several structures.
Property Number: 199210091
Type Facility: Airfield related faciliites—36 buildings including vehicle fuel station, petroleum operations building, aircraft general purpose, control center, shop avionics, air freight terminal, etc.; 240 to 79,537 sq. ft.; block, metal, wood, concrete or masonry frame; presence of asbestos in some structures.
Property Number: 199210092
Type Facility: Fire facility—Building 500; 13,658 sq. ft.; one story masonry frame; presence of asbestos.
Property Number: 199210093
Type Facility: Chapel—Building 1801; 11,484 sq. ft.; one story masonry frame.
Property Number: 199210094
Type Facility: Land, airfield, runways—25 parcels; 10 to 398,099 square yarads; concrete or asphalt.

Unsuitable Properties

Property Number: 199210095
Type Facility: Fuel storage containers—14 hazardous storage containers.

New Hampshire—Pease Air Force Base

Pease Air Force Base is located in Rockingham County, New Hampshire, 03803. The Base consists of approximately 4,257 acres, numerous Government-owned buildings and residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base. All suitable/available properties listed below are vacant.

Suitable Buildings

Property Numbers: 189040321–189040323
Type Facility: 2 open mess and 1 dining hall.
Property Number: 189040326
Type Facility: 1 bachelor quarters buildings.
Property Number: 189040327
Type Facility: Hospital heat plant.
Property Number: 189040328
Type Facility: Hospital.
Property Number: 189040329
Type Facility: Trailer (hospital office space).
Property Numbers: 189040330–189040322
Type Facility: 3 training facilities.
Property Numbers: 189040333–189040334
Type Facility: 2 child care facilities.
Property Number: 189040335
Type Facility: Fire station.
Property Numbers: 189040059–189040148, 189040304–189040319
Type Facility: 106 4-unit residences.
Property Number: 189040352
Type Facility: 1 chapel.
Property Number: 189040383
Type Facility: Single family residence.
Property Number: 189040384
Type Facility: Rod and gun club.
Property Numbers: 189040387–189040394
Type Facility: 8 dormitories.
Property Numbers: 189040395–189040404
Type Facility: 10 residences with detached garage.
Property Numbers: 189040405–189040467
Type Facility: 63 2-unit residences with detached garage.
Property Numbers: 189040468–189040471
Type Facility: 4 6-unit residences with attached garage.
Property Numbers: 189040472–189040561
Type Facility: 90 detached housing storage sheds.
Property Number: 189040726
Type Facility: 1 communications facility.
Property Numbers: 189040737–189040740, 189040742
Type Facility: 5 recreational facilities.
Property Numbers: 189040743–189040751
Type Facility: 9 small concrete munitions storage buildings.
Property Numbers: 189040763–189040768, 189040770–189040771
Type Facility: 9 administrative facilities.
Property Numbers: 189040774–189040775, 189040777–189040778, 189040787, 189040790, 189040792–189040793, 189040795–189040805
Type Facility: 19 miscellaneous buildings used for office, administrative, educational, laboratory, traffic check, storage, maintenance, and other purposes.
Property Number: 189010535
Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive.

Unsuitable Properties

Property Number: 189040360
Type Facility: Golf course
Reason: Within airport runway clear zone.
Property Number: 189010536
Type Facility: Vehicle fuel station
Reason: Within 2000 ft. of flammable or explosive material.
Property Numbers: 189010537, 189010538
Type Facility: Jet fuel pumphouses
Reason: Within 2000 ft. of flammable or explosive material.
Property Number: 189010539
Type Facility: Weapons storage area
Reason: Within 2000 ft. of flammable or explosive material.
Property Numbers: 189040354–189040359
Type Facility: Bldgs. 399–401, 403, 405, 407
Reason: Within airport runway clear zone.
Property Numbers: 189040361, 189040369, 189040373
Type Facility: Industrial facilities
Reason: Within 2000 ft. of flammable or explosive material.
Property Number: 189040717
Type Facility: Utility plant
Reason: Other.
Property Numbers: 189040772, 189040794
Type Facility: Bus shelters
Reason: Other.
Property Numbers: 189040806, 189040825–189040829
Type Facility: Sewage pump stations
Reason: Other.
Property Numbers: 189040820, 189040822–189040824
Type Facility: Pump stations
Reason: Other.
Property Numbers: 189040830–189040851
Type Facility: Power stations
Reason: Other.

South Carolina—Myrtle Beach Air Force Base

Myrtle Beach Air Force Base is located in Horry County, South Carolina 29579–5000. All the properties will be excess to the needs of the Air Force on or about March 31, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers approximately 3,800 acres, 190 Government-owned buildings and 448 residential buildings with 800 units of housing that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210001
Type Facility: Housing—448 buildings with a total of 800 dwelling units; two, three, and four bedrooms single family dwellings and duplexes with attached carports.
Property Number: 199210002
Type Facility: Dormitories/Quarters—13 buildings; two to three story masonry and block structures.
Property Number: 199210003
Type Facility: Miscellaneous—14 buildings; one to two story structures including a chapel, theater, recreation center, child care centers, retail sales stores and dining hall.
Property Number: 199210004
Type Facility: Hospital—1 three story base hospital and 6 one story medical support buildings.
Property Number: 199210005
Type Facility: Office/Administration—53 buildings; one to two story modular, block, wood and brick structures.
Property Numbers: 199210006–199210008
Type Facility: Recreation—15 buildings and land including bath houses, bowling center, gymansium, golf course buildings, three soccer fields, six tennis courts, three softball fields, four youth ball fields, track, campground, golf course and driving range.
Property Number: 199210009
Type Facility: Utility Type Facilities—45 buildings; one story structures including warehouses, shops and sheds.
Property Number: 199210010
Type Facility: Security—3 police buildings;

one story masonry structures including a jail.

Property Number: 199210011
Type Facility: Storage—15 buildings; one story metal, concrete and masonry ammunition storage structures.

Property Numbers: 199210012–199210013
Type Facility: Airfield and Related Properties—25 support buildings and land including hangars, maintenance shops, fire station, eight-story control tower, runways, taxiways and aprons.

Property Numbers: 199210014–199210015
Type Facility: Land—approximately 17 acres used as a mobile home park and 1678 acres of forest.

Unsuitable Properties

Property Number: 199210016
Type Facility: Small Arms Building
Reason: Extensive Deterioration.

Texas—Carswell Air Force Base

Carswell Air Force Base is located in Tarrant County, Texas, 76127. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,308 acres, 214 Government-owned buildings and 352 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and stroage facilities; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210108–199210122
Type Facility: Housing—352 military family residences; 1- and 2-story wood frame, concrete and brick/wood buildings.

Property Number: 199210123
Type Facility: Dormitories—7 buildings; 3- and 4-story concrete block dorms.

Property Number: 199210124
Type Facility: Temporary Living Quarters—6 buildings; 1- and 2-story brick and frame lodging facilities.

Property Number: 199210125
Type Facility: Administration Facilities—45 buildings; 1- to 4-story concrete block, brick, metal and wood structures including education centers, child care, clinics and admin. bldgs.

Property Number: 199210126
Type Facility: Recreation Facilities—13 buildings; metal, concrete block, brick and wood structures including golf club equip. houses, bathhouse, gym, bowling, youth and recreation centers and NCO clubs.

Property Number: 199210127
Type Facility: Recreation Areas—14 areas; approximately 172 acres including golf course, riding stables, playground and picnic area, camps and tennis courts.

Property Numbers: 199210128–199210130
Type Facility: Miscellaneous Facilities—80 buildings; 1-story metal, concrete, block, wood, and brick structures including maintenance and storage bldgs., shops, warehouses, sheds and a commissary.

Property Number: 199210131
Type Facility: Facility 1506—24,000 sq. ft., 1-story brick dining hall.

Property Number: 199210132
Type Facility: Facility 3000—345,188 sq. ft., 5-story concrete hospital.

Property Number: 199210133
Type Facility: Bank/Credit Union—2 buildings; a 1-story concrete bank and a 2-story brick credit union.

Property Number: 199210134
Type Facility: Facility 1838—8790 sq. ft., 1-story brick chapel.

Property Number: 199210135
Type Facility: Facility 1845—9967 sq. ft., 1-story brick theater.

Property Number: 199210136
Type Facility: Fuel Stations—2 buildings; 1-story metal and brick/metal vehicle fuel and exchange service stations.

Property Number: 199210137
Type Facility: Hazardous Storage and Igloos—40 buildings; 4 metal and concrete block hazardous storage bldgs. and 36 concrete igloo storage bldgs.

Property Number: 199210138
Type Facility: Airport Related Areas—28 areas; approximately 205 acres including runways, aprons, taxiways and pads.

Maine—Loring Air Force Base

Suitable/Available Properties

Buildings

Bldgs. 1–16
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Aroostook, Zip: 04750–
Federal Register Notice Date: 01/31/92
Property Numbers 189010590–189010605
Status: Excess
Comment: 1116 sq. ft. each; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.

Colorado—Lowry Air Force Base

Suitable/Available Properties

Land
NTMU—Partial Area
Lowry Air Force Base
Denver, CO, Denver, Zip: 80230–5000
Federal Register Notice Date: 01/31/92
Property Number: 189010254
Status: Excess
Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary
Comment: Approximately 20 acres; sloping parts in the area.

[FR Doc. 92–12949 Filed 6–4–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-068-02-7122-09-6514]

Intent to Prepare an Environmental Impact Statement (EIS) on a Proposed Gold Mining/Processing Operation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of a proposed gold mining/processing operation, the Oro Cruz Operation of the American Girl Project, on public lands in Imperial County in southern California. Comments are being requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues (including alternatives) that need to be analyzed, and to eliminate from detailed study those issues that are not significant. All comments recommending that the EIS address specific environmental issues should contain supporting documentation.

DATES: For Scoping Meetings and Comments: Public scoping meetings will be held on the following dates: 7 p.m., Tuesday, June 30, 1992, at the El Centro Community Center, 375 South First Street, El Centro, California 92243, (619 337–4555); 7 p.m., Wednesday, July 1, 1992, at the Best Western Yuma Inn Suites, Palm Canyon Room, 1450 Castle Dome Avenue, Yuma 85365, (602) 783–8341. Written comments must be filed no later than Friday, July 17, 1992.

ADDRESSES: Written comments should be addressed to Area Manager, Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243–2298, ATTN: Thomas Zale.

FOR FURTHER INFORMATION CONTACT: Thomas P. Zale (619) 352–5842.

SUPPLEMENTARY INFORMATION: A Plan of Operation (POO) has been submitted to the El Centro Area Office of the BLM describing the proposed Oro Cruz gold mining/processing operation. The POO was submitted in accordance with 43 CFR 3809 by the American Girl Mining Joint Venture (AGMJV), the project proponent. The proposed Oro Cruz operation involves both underground and surface mine development, and is the third component of the overall American Girl Project, which includes

the previously approved American Girl Canyon and Padre Madre operations.

The proposed Oro Cruz operation is located in the Cargo Muchacho Mountains on unpatented lode and placer mining claims, primarily on land administered by BLM in Township 15 South, Range 21 East, San Bernardino Meridian, Imperial County, California. The project is about 15 miles northwest of Yuma, Arizona and about 40 miles east-northeast of El Centro, California.

The American Girl Project currently consists of two components: the Padre Madre operation and the American Girl Canyon operation. The American Girl Canyon operation is currently in the fourth year of a planned eleven year operation. Recent exploration activities have led to the acquisition and exploration of the Oro Cruz property, located approximately 2.5 miles north of the American Girl Canyon facilities. Because of AGMJV's ability to develop the Oro Cruz property in conjunction with the American Girl Canyon operation, the proposed Oro Cruz operation would consist of mining and waste rock disposal facilities, a heap leach facility, and miscellaneous roads and buildings. Ore crushing and milling would be conducted at the existing American Girl Canyon facilities.

The proposed Oro Cruz operation would last for about 4.5 years. Surface mining would occur at the Oro Cruz operation for two years, with 3 million tons of ore and 9 million tons of waste rock being produced. The underground mining would result in 500,000 tons of ore being produced. Higher and lower grade ores would be segregated during the mining and treated separately for processing. Tailings from mill processing would be managed in the same manner as the in the current operation. The lower grade ore would be hauled to one or more of three optional sites for processing by heap leaching.

The proposed Oro Cruz operation would result in 207 acres of surface disturbance. This includes a 50 acre area for a haul road between the American Girl Canyon and Oro Cruz properties. If the Oro Cruz operation were approved as proposed, the cumulative area of direct impact from the three American Girl Project operations would be 825 acres.

A tentative project schedules as follows:

Begin Public Comment/Scoping Period—June 1992
Hold Public Scoping Meetings—June/July 1992
File Drat EIS—December 1992
Hold Public Meetings on Draft EIS—January 1993
File Final EIS—June, 1993
File Record of Decision—July 1993
Complete Licensing and Permitting—September 1993
Begin Project Construction—Fall 1993
Begin Project Operation—Winter 1994

Dated: June 1, 1992.

G. Ben Koski,

Area Manager.

[FR Doc. 92-13175 Filed 6-4-92; 8:45 am]

BILLING CODE 4310-40-M

[UT-040-02-4830-12]

Cedar City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Cedar City District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 of a meeting of the Cedar City District Advisory Council. This meeting will consist of a field trip to western Beaver County to view the West Desert elk and wild horse use area, associated livestock, and other resource management activities. Other agenda discussion items will include the Tenneco Mine expansion plans in western Washington County, plus an update of district land use planning activities.

DATES: July 17, 1992. The field trip will begin at 8:30 a.m. at the Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah.

FOR FURTHER INFORMATION CONTACT: Gordon R. Staker, District Manager, Cedar City District, 176 East D.L. Sargent Drive, Cedar City, Utah 84720. Telephone: 801-586-2401.

SUPPLEMENTARY INFORMATION: Advisory Council Meetings are open to the public. Interested persons may make oral statements or file written statements for the Council's consideration. Anyone wishing to make a statement notify the District Manager or the Public Affairs Officer by Tuesday, July 14, 1992. A time limit may be established by the District Manager. Persons attending the field trip should bring their own transportation and lunch.

Dated: May 28, 1992.

Gordon R. Staker,

District Manager.

[FR Doc. 92-13178 Filed 6-4-92; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-060-7122-10-6516; CA-30093]

Realty Action; Proposed Exchange of Public Lands in Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership and the acquisition of unique natural resource lands. All or part of the following described federal lands are being considered for disposal via exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

San Bernardino Base & Meridian, Imperial County, California

T. 11 S., R. 15 E.:
Sec. 24: All;
T. 11 S., R. 16 E.:
Sec. 30: lots 3-18, E½;
Sec. 32: All
T.12 S., R.16 E.:
Sec. 4: lots, 3,4,5,6,S½N½, N½NE¼SW¼, SE¼NE¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 10: NE¼NE¼, S½NE¼, N½NW¼, NE¼SW¼, NW¼, N½SE¼,NW¼, SE¼SE¼NW¼, NE¼SE¼, N½NW¼SE¼, SE¼NW¼SE¼, NE¼SE¼SE¼;
Sec. 14: NE¼, NE¼SE¼SE¼, NE¼SE¼, N½NW¼SE¼, N½SE¼NW¼, SE¼SE¼NW¼, NE¼NW¼, N½NW¼NW¼, SE¼NW¼NW¼;

Comprising approximately 3,376.28 acres.

Final determination on disposal will await completion of an environmental analysis. The proposed exchange is consistent with the Bureau's land use planning objectives. Lands being proposed for exchange will be conveyed by the United States subject to the following reservations, terms and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for an existing Railroad Grant within Sec. 32, T. 11S., R. 16E. and Sec. 14, T. 12S., R. 16E. (SO 4/14/1953, SO 10/1/1953).

3. All valid existing rights of record.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, except exchange pursuant to section 206 of the Federal Land Policy and Management act of 1976.

The segregation of the above-described land shall terminate upon issuance of a document conveying title

to such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Area Manager, El Centro Resource Area Office, 333 South Waterman Avenue, El Centro, California 92243. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this reality action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 1, 1992.

G. Ben Koski,

Area Manager,

El Centro Resource Area.

[FR Doc. 92-13176 Filed 6-4-92; 8:45 am]

BILLING CODE 4310-40-M

NATIONAL PARK SERVICE

National Register of Historic Places Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 23, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by June 22, 1992.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Arapahoe County

Curtis School, 2349 E. Orchard Rd., Greenwood Village, 92000808

Denver County

Grimm, S.A., Block, 2031-2033 Curtis St., Denver, 92000807

Larimer County

Robertson, T.H., House, 420 W. Mountain Ave., Fort Collins, 92000811

Moffat County

State Armory, 590 Yampa Ave., Craig, 92000810

Otero County

North La Junta School, Jct. of CO 109 and CO 194, La Junta, 92000809

GEORGIA

Jackson County

Shields—Etheridge Farm, Jct. of GA 319 and Co. Rd. 125, approximately 5 mi. SW of Jefferson, Jackson vicinity, 92000814

MASSACHUSETTS

Bristol County

Wesport Point Historic District, Roughly, Main St. from Charles St. to W. Branch, Westport R., including Cape Bial and Valentine Lns., Westport, 92000815

NEBRASKA

Fillmore County

Strang School District No. 36, Main St., Strang, 92000805

NEW JERSEY

Hunterdon County

Potterstown Rural Historic District, Along Potterstown and Hall's Mill Rds. and I-78, Readington and Clinton Townships, Potterstown, 92000806

VERMONT

Windsor County

Morris, Gen. Lewis R., House (Agricultural Resources of Vermont MPS), 456 Old Connecticut River Rd., Springfield, 92000813

WISCONSIN

Barron County

Cumberland Public Library (Public Library Development in Wisconsin MPS), 1305 Second Ave., Cumberland, 92000804

Chippewa County

Z.C.B.J. Hall, WI 27, 7 mi. N of Cadott, Arthur, 92000812

[FR Doc. 92-13014 Filed 6-4-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-571 (Preliminary)]

Professional Electric Cutting and Sanding/Grinding Tools From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commnisison hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-571 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishement of an industry in the United States is materially retarded, by reason of imports from Japan of certain tools of a type suitable for industrial or professional use,[1] that are alledged to be sold in the United States at less than fair value. The Commission must complete a preliminary antidumping investigation in 45 days, or in this case by July 13, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 29, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-205-3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 29, 1992, by the Black & Decker Corp., Towson, MD.

Participation in the Investigation and Public Service List.

Persons (other than petititoners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives,

[1] For purposes of this investigation, such tools include the following types, provided for in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTS): New sawing or cutting-off machines, valued under $3,025 each, of HTS subheading 8461.50.00; woodworking machines (except sawmill machines, radial arm saws, and table saws) valued under $3,025 each, of HTS subheading 8465.91.00; electromechanical saws (except chain saws) for working in the hand with self-contained electric motor, of HTS subheading 8508.20.00; and electromechanical grinders, polishers, sanders, routers, planers, and other electromechanical tools (except screwdrivers, nut-runners, impact wrenches, grass and weed trimmers/edgers, electropneumatic rotary and percussion hammers, and electric sciasors) for working in the hand with self/contained electric motor, of HTS subheading 8508.80.00.

who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 19, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than June 18, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 24, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 2, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–13231 Filed 6–4–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–548, 550, and 551 (Preliminary)]

Sulfur Dyes from China, India, and the United Kingdom

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from China, India, and the United Kingdom of sulfur dyes,[3] provided for subheadings 3204.15.10, 3204.15.20, 3204.15.30, 3204.15.35, 3204.15.40, 3204.15.50, 3204.19.30, 3204.19.40, and 3204.19.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 10, 1992, a petition was filed with the Commission and the Department of Commerce by Sandoz Chemicals Corporation, Charlotte, NC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of sulfur dyes from China, India, and the United Kingdom.[4] Accordingly, effective April 10, 1992, the Commission instituted antidumping investigations Nos. 731–TA–548, 550 and 551 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 17, 1992 (57 FR 13756). The conference was held in Washington, DC, on May 1, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 26, 1992. The views of the Commission are contained in USITC Publication 2514 (May 1992), entitled "Sulfur dyes from China: Determinations of the Commission in Investigations Nos. 731–TA–548, 550, and 551 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Issued: June 1, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–13184 Filed 6–4–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Interstate Transportation for Certain Nonmembers

June 2, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30

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[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Vice Chairman Brunsdale determined that two like products exist and voted in the negative on sulfur dyes in the pre-reduced, liquid "ready-to-dye" form and in the affirmative on all other sulfur dyes.

[3] Sulfur dyes are synthetic organic coloring matter containing sulfur. Sulfur dyes are obtained by high-temperature sulfurization of organic material containing hydroxy, nitro or amino groups, or by reaction of sulfur and/or alkaline sulfide with aromatic hydrocarbons. For the purposes of these investigations, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 46, 47, 49, and 50 and Reduced Vat Blue 42 and 43. Sulfur vat dyes also have the properties described above. All forms of sulfur are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms.

[4] The petition also alleged material injury or threat of material injury with respect to imports of sulfur dyes sold at LTFV from Hong Kong. Commerce, however, did not initiate an antidumping duty investigation concerning imports from Hong Kong, and the Commission accordingly amended its institution notice to discontinue its investigation on sulfur dyes from Hong Kong (inv. No. 731–TA–549).

days of its annual meeting each year. Any subsequent change concerning offices, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC

(1) Flav-O-Rich, Inc.
(2) 10140 Linn Station Road, Louisville, KY 40223
(3) Motor Transportation Records Located:
Atlanta, 2121 Faulkner Rd., Atlanta, GA 30324
Wilkesboro, 103 N. Cherry Street, Wilkesboro, NC 28697
Florida Group, 4711 34th Street, North, St. Petersburg, FL 33733
Monroe, 1801 Louisville Ave., Monroe, LA 71203
Bristol, 2537 Catherine St., Bristol, VA 24201
Florence, 1100 S. Church St., Florence, SC 29504
London, I–75 & KY 80, London, KY 40741
Montgomery, 950 W. South Blvd., Montgomery, AL 36196
Greensboro, 3939 W. Market St., Greensboro, NC 27402
Sylacauga, 423 N. Norton Ave., Sylacauga, AL 35150
(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–13220 Filed 6–4–92; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room of the Office of Director of Practice, suite 600, 801 Pennsylvania Avenue, NW, Washington, DC on Tuesday, June 30, and Wednesday, July 1, 1992, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1992 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. The examination program, including the syllabus topics for the November 1992 pension actuarial examination and the May 1993 basic actuarial examinations will be discussed. In addition, the number of questions on the Joint Board examinations will be addressed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L 92–463) that the portions of the meetings dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1992 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:30 p.m. on June 30 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. This portion of the meeting will be opened to the public as space is available. Time permitting, after discussion of the program, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 15, 1992 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: June 2, 1992.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 92–13197 Filed 6–4–92; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions from the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contained no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency,

whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S.Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida: FL91-15 (Feb. 22, 1991). p.135, p.136.

New Jersey: NJ91-3 (Feb. 22, 1991). p. 721, pp. 726-727.

Volume II

None.

Volume III

Colorado: CO91-5 (Feb. 22, 1991). p.All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about Janaury 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 29th day of May 1992.

Alan L. Moss

Director, Division of Wage Determinations.

[FR Doc. 92-12963 Filed 6-4-92; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The Helen Mining Company

[Docket No. M-92-47-C]

The Helen Mining Company, R.D. #2, Box 2110, Homer City, PA 16748-9558 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Homer City Mine (I.D. No. 36-000926) located in Indiana County, Pennsylvania. Due to an impassable roof fall in the LW9 No. 1 entry of the longwalls main return, the petitioner proposes to conduct an evaluation to insure that an adequate quantity of air is passing over the fall. The petitioner states that the inby and outby ends of the roof fall would be supported in accordance with the approved roof control plan at the mine, and a certified person would travel the return air course to examine the outby end of the fall and the tailgate side of the longwall face to determine the air flow into the return entry, and to test for methane.

2. Mountain Coal Company

[Docket No. M-92-59-C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its West Elk Mine (I.D. No. 05-03672) located in Gunnison County, Colorado. The petitioner proposes to install dry type transformers, rectifiers, or permanent pumps in the belt or intake entry without coursing the equipment ventilation directly into the return. The petitioner states that the equipment would be housed in a monitored fireproof structure and would provide the same measure of protection to miners as the proposed standard.

3. Mystic Energy Corporation

[Docket No. M-92-60-C]

Mustic Energy Corporation, 107 George Street, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Hazy Creek Mine (I.D. No. 46-07802) located in Raleigh County, West Virginia. The Petitioner states that due to unstable conditions inby and outby a roof fall, any clean-up efforts would be both dangerous and impractical. The petitioner proposes to maintain a 36 inch ventilation pipe to surround the fall area for a length of about 350 feet, and maintain a sufficient amount of air in the return and the pipe to ventilate the working sections.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1992. Copies of these petitions are available for inspection at that address.

Dated: May 29, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-13210 Filed 6-4-92; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority, Browns Ferry Nuclear Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-260]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of section III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 to the Tennessee Valley Authority (the licensee) for the Browns Ferry Nuclear Plant, Unit 2. The unit is located at the licensee's site in Limestone County, Alabama. The exemption was requested by the licensee in its letter dated December 20, 1991.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow the licensee deviation from the provisions of sections III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 that require Type B and Type C component leak rate testing during refueling outages on an interval not to exceed two years. In its letter of December 20, 1991, the licensee requested an extension of the allowable test interval for 87 components to permit realignment of the test program with the Brown Ferry Nuclear Plant, Unit 2 refueling outage schedule. The letter stated this outage will begin no later than January 29, 1993. The required extension is no more than 177 days for any single component.

The Need for the Proposed Action

The proposed exemption is required to permit the licensee to avoid an otherwise unnecessary and lengthy plant outage. The required testing is ordinarily performed during refueling outages.

Environmental Impacts of the Proposed Action

The proposed exemption will not increase potential radiological environmental effects due to containment leakage beyond those already permitted by the regulations. Testing of Type B and Type C components under appendix J to 10 CFR part 50 is intended to demonstrate that containment leakage from these components is within defined acceptable limits. These limits provide information used to calculate the maximum radiological consequences of a design-basis accident. Appendix J limits the combined leak rate for all penetrations and valves subject to Type B and C tests to less than 0.6 times the maximum allowable containment leakage rate with the containment pressurized to its design limit (commonly termed "0.6 La"). The licensee states in its December 20, 1991 letter that the most recent testing of the Type B and C components yielded leakage of less than 17% of the Appendix J limit. When the projected component degradation is added, leakage at the end of the proposed extended interval is expected to be well within acceptable limits. Therefore, the Commission concludes there would be no adverse radiological environmental impact as a consequence of the proposed exemption beyond that already permitted by the regulations.

With regard to potential non-radiological environmental impact, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR part 20. The exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed exemption.

Since it does not involve adverse radiological or other environmental impacts, the Commission concludes the proposed exemption does not significantly change the conclusions of the licensee's "Final Environmental Statement, Browns Ferry Nuclear Plant Units 1, 2, and 3", dated September 1, 1992.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to the exemption will have either no significantly different environmental impact, or grater environmental impact.

The principal alternative would be to deny the requested exemption. This denial would require an additional plant outage to perform testing. Such an outage would result in additional occupational radiation dose to plant workers without a compensatory increases in public health and safety. Therefore, this alternative is not desirable.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement, Brown Ferry Nuclear Plant Units, 1, 2, and 3", dated September 1, 1972.

Agencies and Persons Contacted

The NRC staff has reviewed the licensee's request dated December 20, 1991, that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's request for the exemption dated December 20, 1991, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC, and at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland this 28th day of May 1992.

For The Nuclear Regulatory Commission.

Frederick J. Hebden,

Director, Project Directorate II-4 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13222 Filed 6-4-92; 8:45 am]

BILLING CODE 7590-01-M

Workshop on Current Licensing Basis

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is holding a public workshop to discuss the Current Licensing Basis (CLB) and how it is maintained, utilized, and changed over the life of the license.

DATES: The workshop will be held on June 23–24, 1992, from 8 a.m. to 4 p.m.

ADDRESSES: The workshop will be held at the Holiday Inn, Crowne Plaza, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: David Wigginton at 301–504–1301.

SUPPLEMENTARY INFORMATION: The workshop will include presentations on Generic Letter 92–03, the results of the 14 plant audits, and advanced reactor applications and license renewal, and panel discussions on the following: components of the CLB, the significance and use of the CLB, the significance and use of the updated safety analysis report (USAR), the significance and use of the design basis reconstitution efforts, managing changes to the CLB, managing

licensee commitments, and electronic storing and retrieving (compiling) the CLB.

Dated at Rockville, Maryland, this 1st day of June 1992.

John T. Larkins,

Director, Project Directorate IV-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13223 Filed 6-4-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit No. 3); Order Approving Transfer of License

I.

The Public Service Company of New Hampshire (PSNH) is the holder of a 2.8475 percent ownership share of Millstone Nuclear Power Station, Unit No. 3. PSNH's interest in Millstone Unit No. 3 is governed by License No. NPF-49, issued by the U.S. Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR part 50 on January 31, 1986, in Docket No. 50-423. Under this license, only Northeast Nuclear Energy Company (NNECO), acting as agent and representative of 14 utilities listed in the license, has the authority to operate Millstone Unit No. 3. Millstone Unit No. 3 is located in New London County, Connecticut.

II.

NNECO requested an amendment to NPF-49 by letter dated March 21, 1991, as supplemented June 11, 1991, in which NNECO requested that License No. NPF-49 be changed to reflect the transfer of control of PSNH's 2.8475 percent ownership in Millstone Unit No. 3 through the merger of PSNH with a wholly owned subsidiary of Northeast Utilities (NU), with PSNH emerging as the surviving entity from the merger as a wholly owned subisidary of NU. The amendment would be effective on the date that PSNH merges with and into a wholly owned subsidiary of NU. NNECO has advised the NRC staff that the merger is expected to be completed by May 1992.

The transfer of any right under License No. IPF-49 is subject to the NRC's approval pursuant to 10 CFR 50.80(a). Based on NNECO's operation of Millstone Unit No. 3 to date and the small ownership interest affected by the transfer, the staff has determined that the proposed transferee (NNECO) remains qualified to be a holder of License No. NPF-49 and that the license transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

III.

Accordingly, pursuant to sections 161b and 161i of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201, and 10 CFR 50.89, It is Hereby Ordered that transfer of control of PSNH's 2.8475 percent ownership in Millstone Unit No. 3 through the merger of PSNH with a wholly owned subsidiary of NU, with PSHN emerging as the surviving entity from the merger as a wholly owned subsidiary of NU, is approved, subject to the following: (1) The amendment describing PSNH as a wholly owned subsidiary of NU in License No. NPF-49 will become effective as of the date the merger is completed; (2) should the merger not be completed by November 30, 1992, this Order will be null and void; and (3) on application and for good cause shown, this Order may be extended for a short period beyond November 30, 1992.

Dated at Rockville, Maryland, this 29th day of May, 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13224 Filed 6-4-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443 (License No. NPF-86)]

Public Service Co. of New Hampshire; Northeast Utilities; North Atlantic Energy Service Co.; North Atlantic Energy Co.; (Seabrook Station Unit 1); Order Approving Transfers and Notice of Issuance of License Amendments

I.

On March 15, 1990, pursuant to 10 CFR part 50, License No. NPF-86 was issued, under which The Public Service Co. of New Hampshire (PSNH) is authorized to operate and hold a 35.6 percent ownership share in Seabrook Station, Unit 1 (Seabrook), which is located in Rockingham County, New Hampshire.

II.

On January 28, 1988, PSNH filed for bankruptcy protection from its creditors. As incident to that bankruptcy filing, a Third Amended Joint Plan of Reorganization was filed with The United States Bankruptcy Court for the District of New Hampshire on December 28, 1989, under which Northeast Utilities (NU) would acquire PSNH, including PSNH's ownership share in Seabrook, and would assume operation of Seabrook. The acquisition would increase NU's ownership interest in Seabrook to about 39.6 percent. After approval of the plan by PSNH's shareholders, its creditors and the New Hampshire State Legislature, the Bankruptcy Court confirmed the plan and ordered its implementation on April 20, 1990.

III.

To implement the plan of reorganization, NU applied to the U.S. Nuclear Regulatory Commission (NRC) for two license amendments to license NPF-86, by two letters dated November 13, 1990, as supplemented by later filings. Under these requested license amendments the ownership share of PSNH in Seabrook would be transferred to the North Atlantic Energy Co. (NAEC), a wholly owned subsidiary of NU, and control over the operation of Seabrook would be transferred from the New Hampshire Yankee Division of PSNH to the North Atlantic Energy Service Co. (NAESCO), another wholly owned subsidiary of NU. Notice of these applications for transfers and proposed no significant hazards consideration determinations were published in the **Federal Register** on February 28, 1991, and March 6, 1991, respectively. 56 FR 8373; 56 FR 9384.

IV.

The transfer of rights under License No. NPF-86 is subject to the NRC's approval under 10 CFR 50.80. Based on information provided by the licensee and NU, and other information before the Commission, it is determined that the proposed transfer of control of operations of Seabrook from PSNH to NAESCO, and the proposed transfer of ownership share of PSNH to NAEC, subject to the conditions set forth herein, are in the public interest and are consistent with applicable provisions of law, regulations and orders issued by the Commission. These actions were evaluated by the staff as documented in Safety Evaluations, dated May 29, 1992, which contain final no significant hazards consideration determinations. The conditions of the transfers, to which the licensee has not objected, are:

A. For a period of three years from the date of issuance of the NRC license amendment approving the transfer of management authority to NAESCO, the licensee shall inform the Director, NRR, at least 60 days in advance, of any change in the senior site official for the Seabrook facility, or in the principal duties of such official, unless such change is due to unforeseen circumstances. In such circumstances, the licensee shall inform the Director, NRR, of such change as soon as it can reasonably do so.

B. For a period of three years from the date of issuance of the NRC license amendment approving the transfer of management authority to NAESCO, the Joint Owners shall provide to the Director, NRR, promptly any report of the Oversight Committee or any report of the Operator or of any contractor or consultant which has been provided to the Joint Owners relating to: plant design, equipment or personnel performance or plant operations that could have potentially adverse effects on facility safety; any substantive programmatic or procedural changes to the employee concerns program; any allegation of employee harassment, intimidation or discrimination; changes to any compensation incentive program which could have potentially adverse effects on facility safety; and any changes to the annual operations and maintenance and capital expenditure budgets. These reporting requirements are in addition to other requirements of NRC regulations.

C. The oversight reports in 2.C.(4)(b) [B. above] shall be followed promptly by a report to the Director, NRR, by the Operator, reflecting the Operator's assessment of such report and proposed corrective action, if any. Submission of the Operator's assessment and proposed corrective action shall not delay submission of the report called for by license condition 2.C.(4)(b). A review and assessment of the Operator's report by the Joint Owners shall be provided to the Director, NRR, together with any corrective actions and disposition of the Operator's report.

D. For a report of three years from the date of issuance of the NRC license amendment approving the transfer of management authority to NAESCO, the licensee shall inform the Director, NRR, of any changes to certain sections of the Joint Ownership Agreement and the Managing Agent Operating Agreement. These sections are: Sections 3.c, 7.a, 7.e, 8, 10, 11 and 16.b, as described in appendix 1 of the Settlement Agreement dated as of July 19, 1990 between Northeast Utilities Service Company and New England Power Company.

E. NAESCO is prohibited from marketing or brokering power or energy from the plant. In addition, all licensees other than NAESCO are responsible and accountable for the actions of their agent to the extent said agent's actions effect the marketing or brokering of power and energy from Seabrook Station, Unit 1.

V.

Accordingly, pursuant to sections 103, 105, 161b, 161i, 184, and 187 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201 et seq. and 10 CFR part 50, *It is hereby ordered* that the transfers to North Atlantic Energy Co. and North Atlantic Energy Service Co., discussed above, are approved, and notice is given that license amendments providing for the transfer of control of operation of Seabrook to NAESCO, subject to license conditions set out and herein, and the transfer of the ownership share of PSNH in Seabrook to NAEC are issued, and both amendments being subject to the further conditions that should both of these transfers not be completed by November 30, 1992, this order will be null and void, except that for good cause shown, the date upon which the transfers are to be completed may be extended for a short period beyond November 30, 1992.

Dated at Rockville, Maryland this 29th day of May, 1992.

For The Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13225 Filed 6-4-92; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Request for Letters of Intent and Notice for Cooperative Agreements and Grants for Fiscal Year 1992

AGENCY: Physician Payment Commission.

ACTION: Notice.

The Physician Payment Review Commission is soliciting letters of intent to develop proposals for research and analysis that can support its ongoing work to advise Congress on issues specified in its legislative mandate. The Commission is looking to researchers to propose methodologies and databases that can make significant contributions to its deliberations in a number of policy areas. This notice describes the application procedures, general policy considerations, and criteria to be used in reviewing applications for the Commission's cooperative agreements and grants. This will be a two-stage process. First, all interested applicants must submit a letter of intent. Based upon the criteria discussed below, the Commission will select researchers to submit full proposals.

Background on the Commission

The Physician Payment Review Commission was established in 1986 Pub. L. 99-272) to advise the U.S. Congress on physician payment policy under Part B of the Medicare program. The 13-member Commission is comprised of physicians, health economists, health services research experts, and individuals representing the perspectives of Medicare beneficiaries, private payers, nurses, and other expert in the field of health policy. Supporting the Commission is multidisciplinary staff with skills in research, policy analysis, and administration.

In 1990, the Commission's legislative mandate was substantially expanded to include topics beyond Medicare physician payment. Its responsibilities now include consideration of a broader set of interrelated policies affecting the financing, quality, and delivery of health services. These include access to care for residents of underserved areas, medical malpractice reform, development of practice guidelines that improve quality and contain costs, enhancing physician profiling, improving data needed for cost containment and quality assurance, managing care, and training physicians to meet the nation's needs.

The Commission submits an annual report to the Congress on March 31. It also submits a series of reports in May concerning Medicare Volume Performance Standards, monitoring access to care, and the financial liability of Medicare beneficiaries.

Priority Areas for Cooperative Agreements and Grant Funding

The Commission invites proposals on the following topics:

(1) Measurement of access to care for Medicaid beneficiaries. The Commission is interested in development and testing of measures that would be suitable for monitoring access by Medicaid beneficiaries on a routing basis, either through the use of claims data or survey data. Projects proposing to develop measures, as well as projects that go further to test their feasibility, will be considered.

(2) Graduate medical education. The Commission is interested in:

—Studies of the relationship between teaching of residents and the productivity of faculty physicians. It invites proposals for studies of the effect of teaching activity, in both inpatient and outpatient settings, on the time, effort and efficiency of academic physicians when providing identifiable patient care services.

–Studies that would inventory the specific service roles played by residents in teaching settings.

–Gaining a better understanding of decisionmaking within teaching institutions regarding the financing, establishment, and expansion of residency programs.

–Studies of the current roles played by nonphysician practitioners in meeting the service needs of teaching hospitals and their potential as substitutes for residents and fellows.

(3) The relationship between physician supply and rates of use of medical services. The Commission is

interested in studies on both the role of aggregatge supply and the role of speciality mix on the volume, intensity, and appropriateness of medical care.

(4) Impact of Medicare physician payment reform on physician services delivered to privately-insured patients. The Commissioni is interested in changes in both the price and volume of physicians' services provided to privately-insured patients that are attributable to changes in Medicare payments.

(5) Incorporation of severity of illness into Medicare's resource-based fee schedule. The Commission is interested in proposals that would develop and/or test the feasibility of patient-level information that could be used to adjust Medicare payments.

(6) Bundling of physicians' services for payment purposes. Medicare and private insurers have long used a bundled payment for major surgery that includes a defined range of pre- and postoperative evaluation and management serives as well as the operation. The Commission is interested in research on options for additional bundling (for example, combining payment for certain diagnostic tests with payment for procedures or visits). Consideration should be given to the impact of bundling policies on different specialties, assuming that they would be integrated into a payment system with no specialty differentials, and how such policies might be designed to ensure equitable payment.

(7) Measurement of defensive medicine. The Commission is interested in development and application of a methodology to measure the cost or extent of defensive medicine.

(8) Practice guidelines and medical malpractice. The Commission is interested in studies of the roles that practice guidelines have played in decisions in malpractice cases.

(9) The impact of technology diffusion on expenditures for physicians' services. The Commission is interested in several topics related to understanding the process by which medical technologies diffuse, the factors that influence diffusion, and their effects on spending. In particular, the Commission's interests include:

–Studies of the factors affecting the introduction and diffusion of technologies across geographic areas, physician specialties, and methods of treatment.
–Studies on changing uses of diffusing technologies.
–Development of criteria for determining when technologies are no longer diffusing.
–Studies of instances in which new technologies either substitute for, or complement, existing technologies.

Application Process

The Commission encourages applications that seek to make significant contributions to knowledge in any of the areas mentioned above. All interested organizations that wish to be considered for an award must submit a letter of intent.

Criteria for Letter of Intent

Six copies of the letter of intent must be submitted by June 22, 1992. The letter should be double-spaced and contain the following:

1. Proposed area of research.
2. Brief summary of the application's objectives (2–3 paragraphs).
3. Brief summary of the proposed project including issues to be examined, research, design, analysis plan, and data sources as appropriate (not to exceed 3–5 pages).
4. Resources available to conduct project (not to exceed 1 page).
5. Estimated budget and duration of project (not to exceed 1 page).
6. Knowledge and experience of principal investigator (not to exceed 1 page).

Applicants are discuraged from including extensive discussions of the nature of the problem, extensive review of the literature, general statements of capabilities, and summaries of the Commission's statements on the issues to be addressed.

Evaluation of Letters of Intent

Applicant's letters of intent will be reviewed by a technical review panel composed of at least three (3) people. The panel will evaluate all letters and determine which applicants will be requested to submit a complete proposal. The recommendations for review will be based on the following criteria:

1. The relevance of the project to the Commission's work.
2. Description of the project objectives.
3. The adequacy of the study design, including specific hypotheses to be examined and data sources, as appropriate.
4. What the project will accomplish and how it relates to or differs from previous work in the area.
5. Investigators' knowledge and experience in the area.
6. The level of effort needed to conduct the project.

In addition to the recommendation of the review panel, the Commission may consider other factors in selecting which applicants will be asked to submit a formal proposal. These include compatibility of applications with Commission priorities, as judged by senior staff, and the availability of resources.

The Commission will notify those applicants who have been selected to submit full proposals by sending them a formal Request for Proposal. Applicants will be given 30 days to submit their formal proposal.

Formal Proposals

The following provides a basic outline of what selected applicants will be expected to submit in a formal proposal:

1. Project title and objectives.
2. Background and policy relevance of issue to be studied.
3. Study design, including statement of hypotheses, specification of variables, data source, sampling strategy, development of measures and/or survey instruments, and database management, as appropriate.
4. Analysis plan, including how data will be used and anlayzed, analytic methods, potential problems and strategies for resolving problems.
5. Work plan including description of tasks, time schedule, and level of effort for key individuals and the number of days devoted to each task.
6. Qualifications of key project staff.
7. Organizational chart.
8. Detailed budget providing justifications and explanations for amounts requested.

Review of Proposals

Proposals will be reviewed by a panel composed of at least three (3) individuals. Reviewers will score applications, basing their scoring decisions and approval recommendations on the criteria published in the Commission's Request for Proposals, part IV section M, "Technical Evaluation and Criteria for Award."

General Information

Number and Size of Project: The number of agreements depends on the availability of funds. Most awards range from $50,000 to $350,000 per project. It is anticipated that up to six (6) projects will be awarded through this solicitation.

Authority: The Commission's authority for making these awards is based on section 1845(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w-1).

Regulations: General policies and procedures that govern the administration of cooperative agreements and grants are located in

title 45 of the Code of Federal Regulations parts 74 and 92. Applicants are urged to review the requirements contained in those regulations.

Submission Address: Physician Payment Review Commission, 2120 L Street, NW., suite 510, Washington, DC 2037.

Obligation: This solicitation in no way obligates the Commission to fund any applicant.

Contact: Paul B. Ginsburg, Ph.D., Director or Lauren LeRoy, PhD., Deputy Director Physicial Payment Review Commission, 2120 L Street, NW, suite 510, Washington, DC 20037, (202) 653–7220.

Dated: June 2, 1992.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 92–13182 Filed 6–4–92; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30757; File No. SR-Amex–92–08]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc., Relating to the Use of the Auto-Ex System During Periods of Extremely High Order Flow in Select Equities

May 29, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] notice is hereby given that on February 21, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Amex has requested temporary accelerated approval of this proposal.[3] The Commission is granting accelerated approval and is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Amex has requested approval of the proposed rule change for a six-month period. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC, dated March 19, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to allow the automatic execution of orders up to 599 shares entered into the Post Execution Reporting ("PER") system [4] in select Amex equities through the Exchange's Auto-Ex system during periods of extremely high order flow.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduced in 1985, Auto-Ex is the automated execution feature of PER and the Amex Options Switch ("AMOS"), the electronic order routing system for options. Auto-Ex is currently being used to execute customer market and marketable limit orders [5] in options at the best bid or offer being displayed when an order in the option series is entered into the AMOS system. The execution of market and marketable limit orders is immediately reported to the tape and to the firm entering the order. Auto-Ex trades are submitted for comparison processing by the Exchange as locked-in trades.

The Exchange is not proposing to use Auto-Ex to execute automatically orders of up to 599 shares [6] in Amex equities during periods of extremely high order flow. When activated during such periods, Auto-Ex would execute all market and marketable limit orders of up to 599 shares at the Amex's best bid or offer being displayed on the Exchange at the time the order is entered into the PER system. The Exchange believes that the use of Auto-Ex in this manner would assist the specialist in providing a faster execution and turn-around time for such customer orders.

In order for Auto-Ex to be activiated for an equity, two Exchange Floor Governors would determine on a case by case basis that there is extremely high order flow for a particular equity security, given the characteristics of the security and the number and size of orders being sent through the PER system.[7]

Moreover, the Exchange will allow Auto-Ex to be activated and remain in use only when the spread between the displayed bid and offer is no wider than the "minimum fractional change" [8] and there is no potential for price improvement.[9] Because of this limitation, the Amex best bid or offer should be the *de facto* Intermarket Trading System ("ITS") best bid or offer.

The specialist will be the contra-side of all Auto-Ex orders. If the best bid or offer being displayed is represented by an order on the specialist's book when an Auto-Ex order arrives, the specialist will subsequently execute that book order for his or her own account, thus ensuring that limit book orders are protected.[10] To avoid double printing of

[4] PER is the Exchange's electronic order entry and routing system for equities, which directs certain orders directly to the specialist on the Amex floor for manual execution.

[5] A market order is an order to buy or sell a stated amount of a security at the prevailing best bid or offer. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price or a better price, if obtainable, entered at a time when the prevailing best bid or offer is at or better than the specified price.

[6] Presently, PER accepts orders for up to 5,000 shares in Amex equities. See Securities Exchange Act Release No. 28891 (February 15, 1991), 56 FR 7438 (approving File No. SR–Amex–90–37).

[7] In addition to trading characteristics and the circumstances surrounding the increased volume of orders, the Exchange stated that the main considerations for activating Auto-Ex for a particular security would be the length of the order queue in PER and, if there is order flow build-up prior to the opening, the number of orders eligible for execution at the opening price through the Exchange's Opening Automated Reporting Service ("OARS"). Specifically, the Exchange would use the following as guidelines: queues longer than one minute in PER and a backlog of more than 100 orders stored in OARS. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC, dated March 16, 1992.

[8] Amex Rule 127 lists the minimum fractional changes for securities traded on the Exchange.

[9] See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC, dated February 24, 1992, correcting the filing to reflect that there is no potential for price improvement when the spread between the displayed bid and offer is no wider than the minimum fractional change. The Amex stated that Auto-Ex will automatically prevent the automatic execution of orders when the spread in a security becomes wider than the minimum fractional change. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC, dated March 16, 1992.

[10] See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC,

Continued

orders in this situation, the specialist transaction with the order on the book will not be reported to the Market Data System ("MDS"), but the trade occurring though Auto-Ex will be automatically reported to MDS.[11]

The Amex states that Auto-Ex is part of the Exchange's Order Processing System ("System").[12] The Amex represents that implementation of Auto-Ex will not affect adversely Amex's system capacity and operations during trading hours. Similarly, the Amex represents that the Exchange's current system capacity is sufficient to meet expected demand.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

dated March 16, 1992. The Amex noted, however, that during periods of extremely high order flow, orders being represented by floor brokers in the crowd also should increase, resulting in more orders on the specialist's book being executed against orders in the crowd, thus requiring use of this procedure only occasionally.

[11] MDS is the Amex's system for the collection and reporting of market information for processing by the Securities Industry Automation Corporation ("SIAC") and dissemination by securities information vendors. The Amex stated that Exchange systems will capture for surveillance purposes trade data regarding the transaction between the specialist and the limit order book. Conversation between Claire P. McGrath, Senior Counsel, Amex, and Edith Hallahan, Attorney, SEC, on May 29, 1992.

[12] See letter from Edward Bilinski, Vice President, Amex, to Mary Revell, Branch Chief, SEC, dated March 20, 1992.

Persons, making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–08 and should be submitted by June 26, 1992.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Amex's proposal to extend Auto-Ex to the execution of certain equity orders entered through the PER system for a temporary period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, specifically, sections 6 and 11A of the Act.[13]

In particular, the use of Auto-Ex for equities should enhance the efficiency of the execution of PER orders during periods of heavy volume, and thus facilitate transactions on the Amex, consistent with section 6(b)(5) of the Act. In this regard, the Commission believes that the proposed automatic execution of equity orders should speed order execution and reduce the possibility of order handling delays during heavy trading volume periods.

The Commission also believes that limiting the use of Auto-Ex to specific circumstantces described in the Amex's proposal should ensure that the primary market continues to serve its price discovery function. An essential characteristic of a primary auction market for equities such as the Amex is an active trading crowd to which orders can be exposed for possible price improvement. Because the use of an automatic execution feature eliminates order exposure and possible price improvement, the Commission has concerns about the use of such a feature by a primary exchange. The Commission believes, however, that the absence of order exposure under the terms of this proposal is not inconsistent with the Act because the use of Auto-Ex under this proposal would be limited to high volume situations where there is a minimum variation market and no opportunity for price improvement.[14]

In addition, the Commission believes that the proposed extension of Auto-Ex is consistent with section 6(b)(8) of the Act, in that it should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[15] Markets trading the same stocks compete in a number of areas, including execution quality, fees and cutomer services. The ability of a particular market to handle order flow efficiently during heavy volume surges is a service enhancement that may affect order routing decisions in a competitive market environment. The proposed extension of Auto-Ex to equities should help the Exchange's efforts in this area to remain competitive with exchanges which have similar automation systems in place.[16]

The Commission also believes that the proposed rule change is consistent with the requirements of section 11A(a)(1)(C) of the Act.[17] Specifically, the Commission believes that the proposal is designed to contribute to the best execution of investors' orders while assuring the economically efficient execution of transactions, which in turn should protect the public interest and promote fair and orderly markets.[18] In this regard, incoming orders subject to Auto-Ex should receive the best available execution because the Amex best bid or offer includes orders on the specialist's limit order book as well as in the trading crowd. In addition, the Commission believes that public investors should be benefitted as a result of the enhanced competition

[13] 15 U.S.C. 78f and 78k–1 (1988).

[14] Several regional exchanges have automatic execution systems that provide a 15-second order exposure period to provide a possibility of price improvement. Because the Amex's proposal is limited to situations where there is no possibility of price improvement and where the heavy volume warrants the automatic execution feature, an order exposure feature appears to be unnecessary because it would delay order execution without significant benefit.

[15] 15 U.S.C. 78f(b)(8) (1988).

[16] The Boston, Midwest, Pacific and Philadelphia Stock Exchanges have various automatic execution systems in place for trading equity securities.

[17] 15 U.S.C. 78K-1(a)(1)(C) (1988).

[18] 18 The Amex is using its quotes rather than the ITS quotes as the basis for Auto-Ex executions. Because, as noted above, Auto-Ex will be used only in minimum variation markets, the Amex quotes will almost always be the ITS best bid or offer, thus providing best execution of Auto-Ex orders.

among exchange markets which should result from the Exchange's implementation of Auto-Ex.

The Commission believes that it is appropriate to allow the Exchange to implement Auto-Ex for equities for a temporary period because this will afford both the Exchange and the Commission an opportunity to monitor the operation and effectiveness of the proposal. Specifically, the Commission believes that this temporary period is necessary to provide the Exchange with additional time to assemble data regarding the operation of Auto-Ex and to allow the Commission to weigh the benefits of speedy order executions during periods of heavy volume against the absence of full order exposure to the auction market. Thus, in order to facilitate its review of the permanent use of Auto-Ex in equities, the Commission requests that the Amex submit by October 15, 1992 a report detailing each use of Auto-Ex in equities during this period. Specifically, the Commission is interested in the extent to which Amex experiences queues in the Amex's PER and OARS systems due to heavy volume prior to implementation of Auto-Ex, the total volume and number of orders, other characteristics of the stock supporting the use of Auto-Ex, the length of time Auto-Ex was in place, and the number and types of orders executed during its use. The Commission is also interested in the length of time between an Auto-Ex execution and the resulting execution by the specialist of a limit order to protect the book. In addition, the Commission expects that the Exchange will submit a proposed rule change by October 1, 1992 to either request permanent approval or an extension of the temporary use of Auto-Ex for certain equity securities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the use of Auto-Ex for equities should benefit investors and the public interest by affording them a more efficient method of executing small market and marketable limit orders in actively-traded equities during periods of extremely high order flow. In such situations, it is likely that queues will develop in PER and/or OARS. Because it is difficult to predict when such situations will arise, the Exchange requests accelerated approval of this proposal in order to clarify as quickly as possible the Amex's authority to use the Auto-Ex system for equities when necessary to provide more efficient and effective market operations during periods of extremely high order flow. Further, the general substance of the proposal, the use of Auto-Ex for Amex equities, has been noticed previously in the **Federal Register** for the full statutory period without comment.[19]

It is therefore ordered, Pursuant to section 19(b)(2) [20] that the proposed rule change (SR–Amex-92–08) is hereby approved for a period ending December 1, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13143 Filed 6–4–92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–30748; File No. SR–GSCC–92–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Proposed Rule Change Requesting an Extension of Its Authority To Maintain Its Current Clearing Fund Formula

May 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 14, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue to use its current clearing fund formula.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 12, 1990, the Commission approved, on a temporary basis, until April 30, 1992, a proposed rule change (SR–GSCC–89–13) that revised GSCC's clearing fund formula in various respects, including allowing offsets of required margin amounts. By this filing, GSCC requests that such authority be made permanent or, in the alternative, that the Commission further extend, temporarily, GSCC's authority to maintain its current clearing fund formula.

In its April 12, 1990, approval order ("Approval Order"), the Commission noted that, "in light of its significance to GSCC and its membership, the proposed revisions to GSCC's Clearing Fund formula should be carefully monitored before they become a permanent feature" of GSCC's Rules and Procedures.[3] The essence of the Commission's concerns expressed in the Approval Order involved the adequacy of the following: (1) GSCC's analysis of price volatility; (2) GSCC's measures of correlation; and (3) the liquidity the Clearing Fund provides to GSCC during periods of high volatility. Each concern is discussed below.

1. Analysis of Price Volatility

The Commission stated in the Approval Order that GSCC should "continue to consider ways to refine its analysis of price volatility, including procedures to consider the effects of

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[19] See Securities Exchange Act Release No. 27013 (July 10, 1989), 54 FR 30296 (July 19, 1989) File No. SR–Amex-89–11).This filing proposed the use of Auto-Ex for 20 select equities, without limiting its use to situtions of extremely high order flow and a minimum variation market, as proposed in the above-captioned filing. The filing also proposed that in the event a limit order on the book or in the crowd represented the best bid or offer, the Auto-EX order would be routed to the specialists's PER screen for execution against that book or crowd bid or offer. The Amex withdrew the proposal on June 19, 1990.

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] This proposal was initially filed on January 25, 1992 as File No. GSCC–92–3. The Commission approved continued use of the Clearing Fund formula for sixty days to allow the Commission to consider this proposal in the context of related proposals now awaiting Commission approval. Securities Exchange Act Release No. 30881 (April 30, 1992), 57 FR 19854.

[3] Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

dramatic price movements."[4] Since the Commission issued the Approval Order, GSCC has compiled nearly two-years' worth of its own price volatility data. This data base is now sufficient for use in assessing and monitoring the adequacy of its margin factors.

GSCC continues to ensure the sufficiency of its margining process by using conservative margin factor criteria. In this regard, the information currently considered on a quarterly basis by the Membership and Standards Committee in reviewing the sufficiency of GSCC's margin factors includes: (1) Historical daily price volatility data prepared by Carol McEntee & McGinley Inc. which looks at the current leading issue in each category and uses means plus two standard deviations and (2) short-term (currently, the past 90 days) and long-term (currently, the past year) GSCC data covering mean plus two standard deviations and, separately, 99 percent of all price movements. GSCC's internal and third-party price volatility data indicates that its margin factors are prudent and conservative, including on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.

Recently, private sector initiatives in the government securities marketplace have arisen, such as the establishment of GOVPX, Inc., that have made significant steps toward disseminating the type of government securities price information that would benefit GSCC. In view of this development, GSCC continues to evaluate the types of third-party price volatility information that are available and the utility of such information. GSCC continues to believe, however, that its own data base would be the most accurate and meaningful source of price volatility data on government securities if GSCC could receive trade data from its members on a time-stamped basis.

2. Measures of Correlation

GSCC believes its disallowance percentage schedule is a conservative one. Currently, GSCC uses neither internal price data nor third-party data to monitor the accuracy of its disallowance percentage schedule. After evaluating available third-party price volatility information, however, GSCC will be able to determine whether and how to use either its internal price data base or a third-party data source to monitor its disallowance percentage schedule.

[4] *Id.*

3. Ensuring GSCC's Liquidity Needs

In the Approval Order, the Commission indicated the need for GSCC "to ensure that the Clearing Fund has sufficient liquidity, during periods of high volatility, to protect it from contingencies stemming from participants' daily net settlement obligations." [5]

GSCC's margining process helps ensure that GSCC has sufficient liquidity to meet its settlement guarantees, even during periods of high volatility. Perhaps the area of greatest potential concern in this regard is forward trades, which present the largest exposure to GSCC. GSCC believes the margining process for forward net settlement positions, on which Clearing Fund deposits are taken and which are subject to a separate margin pool (the forward mark allocation payment process), is conservative and prudent, particularly in light of GSCC's recent rule filing (SR–GSCC–91–04) that makes various changes to GSCC's margin and funds collection processes.[6]

Considering GSCC's positive experience to date with the revised Clearing Fund formula, the conservative nature of its margining process, the extent to which that process has been strengthened to ensure GSCC's liquidity posture, and its ability now to use internal price volatility data to assess the adequacy of margin factors and correlations, GSCC believes its Clearing Fund formula is appropriate and should receive permanent approval.

GSCC believes the proposed rule change will help further its ability to ensure orderly settlement in the government securities marketplace. Thus, GSCC believes the proposal is consistent with the requirements of the Act and, in particular, section 17A because it will promote prompt clearance and settlement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change have neither been solicited nor received. Members will be notified of the proposed rule change, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the address above. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–92–06 and should be submited by June 26, 1992.

[5] *Id.*

[6] Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942. The proposed rule change would allow GSCC to treat forward net settlement positions for Clearing Fund calculation purposes essentially as it does next-day settling and fail net settlement obligations.

In addition to Clearing Fund deposits of a separate "forward mark allocation" margin amount on forward net settlement positions, the proposed rule change would allow GSCC to raise the cap on this daily margin amount from 75 percent to 100 percent. Under most circumstances, this change would allow GSCC to collect the entire amount of the top five daily member debits in each CUSIP.

For the Commission, by the Division of Market Regulation.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13146 Filed 6-4-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30754; File No. SR-GSCC-92-04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing of a Proposed Rule Change Relating to the Netting of Zero Coupon Government Securities

May 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 14, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue to include in its netting system book-entry zero coupon Government securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On January 31, 1991, the Commission approved on a temporary basis, until April 30, 1992, a proposed rule change (File No. SR-GSCC-90-06) to expand GSCC's netting service to include zero-coupon Government securities ("zeros").[1] On April 30, 1992, the Commission approved the service on a temporary basis through July 31, 1992.[2] By this filing, GSCC requests that such authority be made permanent.

In its approval order of January 31, 1991 ("approval order"), the Commission stated that it was approving the proposed rule change on a temporary basis "[i]n light of the significance of this proposal to GSCC and its clearing members, and in light of the probability that GSCC's methodology for risk analysis will be modified at a future date." The Commission indicated that "[I]t believes that GSCC's method of determining the applicable margin factor [for zeros] is reasonable in light of the lack of historical data on which to base the margin assessment." The Commission noted, however, its concern about "the accuracy with which GSCC's current methodology reflects the historical and implied volatility of zeros."

Since the approval order was issued, GSCC has gained almost one year's experience in the netting of zeros without incurring any problems. GSCC's margining process for zeros remains conservative and prudent, and now has the benefit of the use of GSCC's internal price volatility data base. Moreover, as described below, it has modified and improved its risk assessment systems in various respects. In view of the above, GSCC believes that its method for margining zeros is an appropriate one.

1. Use of GSCC's Internal Price Volatility Data Base to Assess the Adequacy of GSCC's Margin Factors

As GSCC noted in its original rule filing, it is not aware of any satisfactory third party source of historical price volatility data on zeros from which to establish applicable margin factors. GSCC stated in that filing that it intended to develop and maintain its own historical price volatility base for zeros, as it does for all other securities eligible for the net, commencing at the time that it started to net zeros.

GSCC now has over one year's worth of its own price volatility data for zeros; this data base is sufficient for use in assessing and monitoring the adequacy of its margin factors for zeros. GSCC hereby represents that the information contained in this data base will be considered on a periodic basis by the Membership and Standards Committee of GSCC's Board of Directors ("Board") in reviewing the sufficiency of GSCC's margin factors for zeros.

2. Continued Use of a Conservative Margining Process

GSCC, in making zeros eligible for its net, recognized that these securities require different considerations from a margining perspective than do other Treasury securities ("non-zeros") because zeros generally are subject to greater price volatility than are non-zeros with the same maturity. Thus, GSCC will continue to maintain a separate margin factor schedule for zeros, which takes into account, based on data contained in the Treasury Department's liquid capital standards, the greater price volatility presented by zeros in general, and the greater price volatility which arises as the remaining maturity of a zero security increase.

The currently applicable margin percentages for zeros range from being the same as those for non-zeros on the short end of the maturity spectrum to two-and-a-half times that applicable to non-zeros on the longest term end. GSCC's internal price volatility data for zeros indicate that these percentages for zeros are prudent and conservative, particularly on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.

3. Strengthening of GSCC's Margining Process Generally

Since the initial approval order was issued, GSCC has filed a proposed rule change (File No. SR-GSCC-91-04) to implement a number of changes to its margining and funds collection processes that will further strengthen that process. Certain of these changes will particularly complement GSCC's process for mitigating the risk arising from guaranteeing net settlement positions in zeros, and serve to ensure that this risk is minimal.

In sum, in view of GSCC's positive experience in the netting of zero, the conservative nature of its margining process for zeros, its ability now to use internal price volatility data to assess the adequacy of its margin factors for zeros, and the general strengthening of GSCC's margining process, GSCC believes that its method for margining zeros is an appropriate one and that its authority to net zeros should be made permanent.

(b) The proposed rule change will help further GSCC's ability to ensure orderly settlement in the Government securities marketplace, by expanding the scope of Government securities eligible for its netting system. Thus it is consistent with

[7] 17 CFR 200.30-3(a)(12) (1991).

[1] Securities Exchange Act Release No. 28842 (January 31, 1991), 56 FR 5032.

[2] Securities Exchange Act Release No.30661 (April 30, 1992), 57 FR 19854 (approving File Nos. SR-GSCC-92-01, 92-02, and 92-03).

section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the proposed rule change, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriated and publishes its reason for so finding or (ii) as to such period that the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–92–04 and should be submitted by June 26, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13147 Filed 6–4–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30755; File No. SR–GSCC–92–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing Relating to the Netting of Forward-Settling Trades in Government Securities

May 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 14, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue netting forward-settling trades.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 12, 1990, the Commission approved on a temporary basis, until April 30, 1992, a proposed rule change (SR–GSCC–90–01) [1] that expanded GSCC's netting service to include forward-settling trades in Government securities ("forward trades"). More recently, on April 30, 1992, the Commission extended, on a temporary basis until July 31, 1992, GSCC's rules relating to the netting of forward settling trades.[2] By this filing, GSCC requests that such authority be made permanent by the Commission or, in the alternative, that the Commission further extend on a temporary basis GSCC's authority to net forward trades.

In its approval order of April 12, 1990 (the "Approval Order"),[3] the Commission stated that, "in light of its significance to GSCC and its membership, the proposed netting service for forward-settling transactions should be carefully monitored before it becomes a permanent feature of GSCC's netting system." The Approval Order was a lengthy one; however, the essence of the Commission's concerns regarding the proposal may be said to have been the adequacy of each of the following: (1) GSCC's forward mark allocation payment process; (2) the revised Clearing Fund formula; and (3) GSCC's system prices. Each of these concerns is discussed below.

1. The Forward Mark Allocation Calculation

As was stated in the original rule filing (SR–GSCC–90–01), in designing a system for the netting of forward trades, GSCC considered fully applying mark-to-market requirements during the period between trade and settlement, in the same manner as is done for regular-way trading. That is, GSCC considered requiring Netting Members (hereinafter "members") to pay on a daily basis in cash the full amount of mark payments stemming from net settlement positions in forward-settling securities.

In view, however, of the potential for significant amounts of money to have to be passed through GSCC on a daily basis, which might on any particular day drain liquidity from a firm in an unpredictable manner, GSCC chose an alternative approach that realistically reflects, and sufficiently minimizes, the risk of disruption to the settlement process. This method provides for the daily collection of a percentage of any debit mark amount allocable to a forward-settling position (the "forward mark allocation amount") that ensures, on a per-CUSIP basis, that the failure of up to all of the five members with the

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[1] Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15000.

[2] Securities Exchange Act Release No. 30661 (April 30, 1992), 57 FR 19654.

[3] Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15006.

largest debit mark levels on any given day would not disrupt GSCC's ability to successfully settle that day's Government securities trades.

GSCC's experience to date shows that this approach to the margining of forward trades strikes an appropriate balance between the need for a sufficient margin to ensure GSCC's liquidity and to prevent a loss upon liquidation of a member's position, versus the desire to not unduly drain funds from members. (The sufficiency of GSCC's margining process for forward trades also is supported by the preliminary conclusions of a comprehensive risk assessment of GSCC that will be forwarded to the Commission later this year.) Analyses done by GSCC indicate that, in the morning of a typical date for forward trades, when GSCC faces exposure equal to the difference between the amount of forward mark allocation ("FMA") payments collected on the previous business day (which has not yet been returned) and the amount of transaction adjustment paymnents ("TAP") owed to GSCC on such day (and not yet paid), the amount already "pre-collected" in FMA payments is a majority (often a large majority) of that day's TAP amount.

To the extent that GSCC has had concerns with its FMA process, it has been with the increasing activity in non-new-issue securities (in particular, zero coupon securities). Such activity typically is not as evenly spread among members as the activity in normally recurring issues (such as the weekly Bill issues and the monthly two-year and five-year Note issues). Instead, it tends to be more concentrated in a few members. For a particular CUSIP, this often leads to the total debit mark level of the five members with the largest such debit marks constituting a higher percentage of the daily liquidation exposure incurred by GSCC as regards that CUSIP than if the activity were more evenly spread. Currently, only a maximum of 75 percent of a member's debit mark is collected as FMA.

This matter, together with numerous other margining issues, was addressed in a recent filing (SR–GSCC–91–04) [4] by GSCC, wherein GSCC requested authority to raise the cap on a member's daily FMA payment amount from 75 percent of the calculation to 100 percent. This will increase the dollar amount collected by GSCC in the event that certain members create a relatively large exposure for GSCC vis-a-vis other members.

2. GSCC's Clearing Fund Formula

With regard to the sufficiency of FMA payments, GSCC notes that the Commission, in the Approval Order, indicated a concern that the FMA payment process provide "adequate collateral protection for forward-settling transactions independently from other liquidity sources designed to protect against risks stemming from the settling of regular-way trades." Of course, the source of liquidity protection for next-day trades are Clearing Funds deposits. Thus, the Commission has, in effect, indicated that the Clearing Fund formula must factor in exposure arising from next-day and forward trades independently of each other and cumulatively. GSCC's experience to date confirms that the formula does in fact do so, and that the nature of GSCC's margining process for forward trades, wherein such trades are both margined for Clearing Fund purposes and are subject to a separate margin requirement (the FMA payment process), is quite conservative and prudent in nature. This is particularly true in light of GSCC's recent rule filing (SR–GSCC–91–04) noted above.

GSCC's Clearing Fund formula provides for the collection of 125 percent of the member's average daily funds-only settlement amount over the most recent 20 business days and the greater of: (1) the margin amount on the member's net settlement positions taking into account offsetting positions averaged over the most recent 20 business days or (2) 50 percent of the margin amount for that business day on the member's net settlement positions calculated without taking into account offsetting positions. Currently, a member's net securities and funds-only settlement obligations arising from forward trades are factored into the calculation of such member's Clearing Fund requirement during the post-auction forward-settling period, except that such positions are factored into the 20-day averages only for purposes of determining the current day's margin calculation. GSCC's recently proposed rule filing, SR–GSCC–91–04, will change this to provide for GSCC to treat forward settlement positions for Clearing Fund calculation purposes essentially as it does all other net settlement obligations, thus providing for a smoother Clearing Fund collection process and greater amounts of margin received from members.

3. Prices

A significant event that has occurred since the issuance of the Approval Order is that GSCC now has close to two-years' worth of its own price volatility data. This data base now is used in assessing and monitoring the adequacy of its margin factors. GSCC hereby represents that the information contained in this data base is being and will continue to be considered on a periodic basis by GSCC's Membership and Standards Committee in reviewing the sufficiency of GSCC's margin factors.

It is noteworthy that GSCC has ensured, and will continue to ensure, the sufficiency of its margining process through the use of conservative margin factor criteria.

With regard to obtaining additional third party Government securities price volatility data, in the past, there has been no available source of data that was sufficiently comprehensive and accurate to consider as an alternative to GSCC's internal data base. Indeed, GSCC's own data base is likely always to be more precise than any third-party data source for off-the-run issues, because GSCC receives price data across a broad spectrum of issues and products and is not focused on leading issues within a maturity or product range.

Recently, however, private sector initiatives in the Government securities marketplace have arisen, such as the establishment of GOVPX, Inc., which have made significant steps toward disseminating the type of Government securities price information that would be of particular benefit to GSCC. In view of this, GSCC continues to evaluate the types of third-party price volatility information that are available and the usefulness of such information. GSCC notes in this regard that it continues to believe that its own data base would be able to serve as the most accurate and meaningful source of price volatility data on Government securities in existence if it were to receive trade data from its members on a time-stampled basis.

In sum, in view of GSCC's positive experience to date in the neeting of forward trades, the conservative nature of its margining process for forwards and the general strengthening of the process that has taken place, and its ability now to use internal price volatility data to assess the adequacy of its margin factors, GSCC believes that its method for margining forward trades is an appropriate one and that its

[4] Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942.

authority to net forward trades should be made permanent.

(b) The proposed rule change will encompass forward-settling Government securities transactions within the Netting System and, thus, will further promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible. It is therefore consistent with section 17A of the Act, and section 17A(b)(3)(A) of the Act in particular.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received From Members, Participants, or Others

Comments on the proposed rule changes have not yet been solicited or received. Members will be notified of the rule filings, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR-GSCC-92-05 and should be submitted by June 26, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13148 Filed 6-4-92; 8:45 am]

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[Release No. 34-30743; File No. SR-NASD-92-13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Vendor Fee for Distribution of Nasdaq Market Indices

May 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1992, the National Association of Securities Dealers, Inc. ("NASD or Association") filed with the Securities and Exchange Commission ("SEC or Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend part IX, section C of schedule D to the NASD By-Laws to establish a vendor charge for supplying Nasdaq index information to parties not receiving Nasdaq Level 1 and last sale information from the vendor. Below is the text of the proposed rule change. Proposed additions are in italics.

C. Special Options

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7. Nasdaq Market Indices Permits vendor to process Nasdaq Level 1 and Last Sale data feeds solely for the purpose of supplying subscribers with real-time calculations of Nasdaq market indices. $500/month

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the SEC, the Association included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a fee for distribution of a narrow subset of Nasdaq market data, *i.e.*, the Nasdaq indices. The fee would apply to any vendor that wishes to furnish subscribers with Nasdaq market indices without their having to subscribe to the Nasdaq Level I and Last Sale services. Currently, subscription to the Nasdaq Level 1 and Last Sale services is the only means by which a subscriber can obtain the real-time index data from a vendor. This filing was prompted by a request from at least one vendor that desires to supply Nasdaq indices, for analytic purposes, to a subset of its subscriber base. These subscribers apparently have no business need for the more expansive Nasdaq market data normally supplied along with the index information. Therefore, the NASD fashioned this rule proposal to accommodate the interested vendor (and its subscribers) in a cost effective manner that minimizes administrative burdens attendant to the vendor's provision of the service. For example, because the proposed fee will be paid by the vendor, the latter will not have the burden of collecting and verifying payment to the NASD subsidiaries of any terminal-based subscriber charges, in contrast to the established arrangement for vendor distribution of Nasdaq Level 1 and Last Sale services.

The NASD believes that the proposed rule change in consistent with section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the NASD establish reasonable fees for its market data services and that the costs of providing those services be equitably allocated among the end users. In this instance, the NASD's fee tracks other established fees for data streams of Nasdaq market

information being provided for analytic purposes. Further, this proposal offers a less costly alternative to the end users who wish to receive Nasdaq market indices on a real-time basis, but have no business need for Nasdaq last sale or inside quotation information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NSAD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b–4 thereunder. The NASD has designated this proposal as "establishing or changing a due, fee, or other charge" under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of the filing. At any time within 60 days of the filing of such rule change, the Commission's may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communcations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commissions's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 26, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deput Secretary.

[FR Doc. 92–13145 Filed 6–4–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30744; File No. SR–NYSE–92–04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to Rule 407, Transactions—Employees of Exchange, Member Organizations or Certain Non-Member Organizations, and Rescission of Rule 406(2), Accounts of Members and Allied Members

May 27, 1992.

On February 21, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Rule 407, pertaining to transactions by Exchange employees, members and certain non-member organizations, and rescind NYSE Rule 406(2), pertaining to the accounts of members and allied members.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30467 (March 11, 1992), 57 FR 9298 (March 17, 1992). No comments were received on the proposal.

The following is the text of the changes to NYSE Rule 407 (italics denote new language and brackets denote deletions):

Transactions—Employees of [Exchange] *Members*, Member Organizations *and the Exchange* [or Certain Non-Member Organizations]

Rule 407. (a) No member or member organization shall, without the prior written consent of the employer, [make:] *open a securities or commodities account or execute any transaction in which a member, allied member or employee associated with another member or member organization or an employee of the Exchange is directly or indirectly interested.*

In connection with accounts or transactions of members, allied members and employees associated with another member or member organization, duplicate confirmations and account statements shall be sent promptly to the employer.

[(1) A cash or margin transaction or carry a margin account in securities or commodities in which an employee of another member or member organization is directly or indirectly interested. Except in connection with transactions of an employee in Monthly Investment Plan type accounts, duplicate reports and statements shall be sent promptly to the employer.]

[(2) A cash or margin transaction or carry a margin account in securities or commodities in which an employee of the Exchange, or of any corporation of which the Exchange owns the majority of the capital stock, is directly or indirectly interested.]

[(3) A margin transaction or carry a margin account in securities or commodities in which an employee of a bank, trust company, insurance company, or of any other corporation, association, firm or individual engaged in the business of dealing, either as a broker or as principal, in stocks, bonds, or other securities in any form, bills of exchange, acceptances, or other forms of commercial paper, is directly or indirectly interested.]

(b) [(1)] No member, allied member [, registered representative] or *employee associated with* [officer of] a *member or* member organization shall have a securities or commodities account with respect to which *such person* [he] has *a financial interest or* the power, directly or indirectly, to make investment decisions, at another *member or* member organization, or a *domestic or foreign non-member broker-dealer, investment adviser, bank or other financial institution* [non-member organization or a bank] without the prior written consent of another person designated by the member or member organization under Rule 342(b)(1) to sign such consents and review such accounts.

[(2)] Persons having accounts referred to [in (1)] above shall arrange for duplicate *confirmations* [reports] and monthly statements of said accounts to be sent to another person designated by the member or member organization under Rule 342(b)(1) to review such accounts.

[(3) For the purpose of this rule accounts referred to in (1) above shall include, but are not limited to, the following: (A) securities and commodities accounts carried at

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

member of non-member organizations or at banks; (B) limited or general partnership interests in investment partnerships; (C) direct and indirect participations in joint accounts; and (D) legal interests in trust accounts, provided that with respect to trust accounts the member or member organization required to approve the account may waive the requirement to send duplicate reports and monthly statements for such accounts.]

* * * Supplementary Material

.10 Employees of Exchange.—An employee of the Exchange or any of its affiliated companies, *i.e., any corporation of which the Exchange owns the majority of the capital stock,* who wishes to open a securities or commodities account should apply for permission from the Secretary of the Exchange. A form of application can be obtained in the Office of the Secretary.

.11 For the purpose of this rule, accounts referred to in paragraph (b) above shall include, but are not limited to, the following: (A) securities and commodities accounts; (B) limited or general partnership interests in investment partnerships; (C) direct and indirect participations in joint accounts; and (D) legal interests in trust accounts, provided that with respect to trust accounts a member or member organization required to approve the account may waive the requirement to send duplicate reports and monthly statements for such accounts. [3]

.12 The requirement to send duplicate confirmations and statements shall not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, as amended, or to accounts which are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the member or member organization employer requests receipt of duplicate confirmations and statements of such accounts.

[.20 Application of rule 407(3).—rule 407(3) applies to all employees of insurance companies without regard to whether they are compensated on a salary or commission basis. However, it is not considered applicable to independent insurance agents.

For the purpose of rule 407(3), a person who is clearly designated by the Charter or By-Laws of a bank, trust company, insurance company, etc., as an officer of such institution is not considered an "employee".]

NYSE Rule 407 governs the ability of members, member organizations and their employees to establish certain accounts. Specifically, rule 407(a) requires members and member organizations to obtain the prior written consent of employers to open accounts for employees of other members, member organizations, the Exchange and other specified finanical institutions, *e.g.* banks and insurance companies. Rule 407(b) requires certain associated persons to obtain written consent from their employers prior to opening accounts outside that member or member organization. In addition, such persons are required to have duplicate confirmations and monthly statements sent to appropriate supervisory persons at their member organization employer.

The Exchange states that rule 407 is intended to facilitate a member's or member organization's supervision of its employees by providing the employer with information regarding employees' private securities transactions. The Exchange believes that the rule serves to protect against conflicts of interest which might arise from such private securities transactions and assists the member or member organization in monitoring transactions for violations of insider trading rules and use of manipulative or deceptive devices.

NYSE Rule 406 governs the designation of accounts by restricting member organizations carrying certain accounts. Rule 406(2) specifically prohibits member organizations from carrying the account of a member or allied member of another member organization without the prior written consent of that member or certain persons at that member organization, who must also receive duplicate confirmations and monthly account statements. In addition, rule 406(2) requires that clearing organizations report certain transactions.

The Exchange is proposing to amend rule 407 and rescind rule 406(2). Respecting rule 407(a), the amendments will eliminate the requirement in rule 407(a)(3) that a member or member organization receive the employer's prior written consent to carry margin accounts of employees of financial institutions (other than the Exchange or other member organizations). The Exchange believes that limiting this requirement to employees of Exchange members and member organizations and of the Exchange is appropriate because the Exchange's overall supervisory requirements do not extend to employees of other financial institutions.

Amendments to NYSE Rule 407(b) adding the word "employee" and other specific language should clarify that the provisions of the rule apply to all accounts in which members, allied members or employees associated with a member or member organization have a financial interest or the power to make investment decisions, regardless of where they are maintained (*e.g.*, at another member or member organization, or a domestic or foreign non-member broker-dealer, investment adviser, bank or other financial institution). In addition, new Commentary .11 will enumerate to which accounts rule 407 applies. New Commentary .12 to rule 407 will specify that the requirements to provide reports to employers will not be applicable to certain enumerated transactions (*e.g.*, mutal funds), unless specifically requested by the employer.

The Exchange also proposes to rescind rule 406(2), because the basic requirements applicable to members and allied members set forth therein will be incorporated by the amendments in NYSE Rule 407. Specifically, the restrictions on member organizations seeking to open accounts will now be contained in rule 407(a). Accordingly, the entire text of paragraph two of rule 406 will be deleted and paragraph one will comprise the entire text of rule 406.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[5] In particular, the Commission believes the proposal is consistent with the requirements of section 6(b)(5) in that it clarifies the restrictions contained in NYSE Rule 407. The amendments to rule 407(a) streamline the language of the prohibition applicable to member ogranizations opening certain accounts. Specifically, the Commission believes that requiring approval to open a securities or commodities account or execute a transaction for certain persons should reveal existing and potential conflicts of interest as well as alert member organizations that additional surveillance could be appropriate. This disclosure, in turn, should promote just and equitable

[3] Proposed Commentary .11 of Rule 407 will apply to both paragraphs (a) and (b) of Rule 407. See letter from Donald van Weezel, Managing Director, NYSE, to Edith Hallahan, Attorney, SEC, dated May 12, 1992, correcting the text of Commentary .11, which originally applied only to Rule 407(b). The NYSE also made a minor word change to this commentary.

[4] The number "(1)" will be deleted from Rule 406(1) such that this text will simply be referred to as Rule 406.

[5] 15 U.S.C. 78f(b) (1988).

principles of trade, prevent fraudulent and manipulative acts, and, in general, protect investors and the public. These section 6(b)(5) requirements should also be furthered by the conditions in rule 407 (a) and (b) that duplicate confirmations and account statements should be sent to appropriate persons. The Commission also believes that it is appropriate to limit these restrictions by deleting rule 407(a)(3), which extends this rule to employees of finanical institutions over which the Exchange does not retain regulatory jurisdiction.

For the same reasons, the Commission also finds that it is consistent with the Act to extend the prohibition of rule 407(b) to employees of members, allied members and member organizations. This requirement that certain persons obtain the approval of their employer before opening certain accounts should also ensure that disclosure of conflicts of interest or improper trading is made and employers are aware of the transactions of their employees. Moreover, the Commission believes that adding language that extends the application of rule 407(b) to an account to which a member, allied member, or employee associated with a member or member organization has a financial interest should broaden the scope of the rule by extending it beyond individuals with investment-making authority. The Commission finds that this should further the above-stated benefits of rule 407 by capturing those accounts that could pose problems for employers if not carefully monitored.

The Commission also believes that the proposed rule change is consistent with section 6(b)(1), which requires that an exchange have the capacity to enforce compliance by its members and persons associated with its members with the Act, the rules therunder and the rules of the exchange.[6] The proposed rule change should assist members and member organizations in monitoring transactions by their employees that may violate the Act or the rules of the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–92–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13144 Filed 6–4–92; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(1) (1988).

[7] 15 U.S.C. 78s(b)(2)((1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 35–25574]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 3, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 19, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Niagara Mohawk Power Corporation (70–7962)

Niagara Mohawk Power Corporation ("Niagara"), 300 Erie Boulevard West, Syracuse, New York 13202, a New York public-utility holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2, has filed an amendment restating its application filed under sections 9(a)(2) and 10 of the Act.[1] Niagara proposes to acquire all of the issued and outstanding shares of common stock, no par value ("Syracuse Common Stock"), of Syracuse Suburban Gas Company, Inc. ("Syracuse"), a New York public-utility company.

Niagara provides gas service in areas totalling approximately 4,500 square miles in central, northern and eastern New York. In addition, Niagara provides electric service in an area of approximately 24,000 square miles extending from Lake Erie to the borders of New England, Canada and Pennsylvania.

Syracuse provides natural gas services to approximately 4,500 customers in the village of East Syracuse, New York and the immediate vicinity. Syracuse's service territory is completely surrounded by the gas service territory of Niagara and Syracuse takes its gas service exclusively through the pipelines of Niagara. There are currently 42,000 issued and outstanding shares of Syracuse Common Stock, held by 13 shareholders.

Pursuant to an Amended and Restated Merger Agreement ("Merger Agreement"), dated March 13, 1992 between Niagara and Syracuse, Niagara will acquire the Syracuse Common Stock and Syracuse will be merged with and into NMPC ("Newco"), a New York corporation created by Niagara for the sole purpose of effecting the acquisition of Syracuse. Following the merger, Newco will be a wholly owned subsidiary company of Niagara and will change its name to NM Suburban Gas, Inc., ("NM Suburban").[2] In connection with the merger and as part of the consideration for the acquisition, each share of Syracuse Common Stock will be converted into the right to receive, on the closing date, that number of shares of Niagara common stock, par value $1.00 per share ("Niagara Common Stock"), having an aggregate value of approximately $6,120,000, and to receive, periodically after the closing of the merger, a certain number of shares of additional Niagara Common Stock.

For the Commission, by the Division of the Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13355 Filed 6–3–92; 12:45 p.m]

BILLING CODE 8010–01–M

[1] An original notice of the filing of the application was issued by the Commission on May 8, 1992 (HCAR No. 25529).

[2] Pursuant to the Merger Agreement, NM Suburban will have the assets and liabilities and certain authorizations of Syracuse after the merger. The liabilities of Syracuse as of December 31, 1991 were in the amount of approximately $3,533,000.00. In addition, the amendment to the application states that, on April 27, 1992, Syracuse redeemed each outstanding share of its 5% preferred stock, par value $100 per share, and its 5.78% preferred stock, par value $25 per share, at redemption prices of $102 per share and $26.90 per share, respectively.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 92-10; Notice 2]

Determination That Nonconforming 1991 BMW 850i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Administrator of NHTSA that nonconforming 1991 BMW 850i passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1991 BMW 850i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S. certified 1991 BMW 850i), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

> "(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 40 CFR part 591. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer No. R-90-005) petitioned NHTSA to determine whether 1991 BMW 850i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 3, 1992 (57 FR 7613) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #10 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a non-U.S- certified 1991 BMW 850i is substantially similar to a 1991 BMW 850i originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the non-U.S. certified 1991 BMW 850i is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-13162 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-11; Notice 2]

Determination that Nonconforming 1989 BMW 520iA Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Administrator of NHTSA that nonconforming 1989 BMW 520iA passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1989 BMW 520iA passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1989 BMW 525iA), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and After January 31, 1990, unless NHTSA has determined that

> "(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis

of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K, Automotive conversion, Inc. of Anaheim, California (Registered Importer No. R–90–007) petitioned NHTSA to determine whether 1989 BMW 520iA passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 9, 1992 (57 FR 8377) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #9 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 BMW 520iA is substantially similar to a 1989 BMW 525iA originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–13163 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–59–M

Determination that Nonconforming 1988 Mitsubishi Galant VX Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Adminsitrator of NHTSA that nonconforming 1988 Mitsubishi Galant VX passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1988 Mitsubishi Galant VX passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1988 Mitsubishi Sigma), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1988 Mitsubishi Galant VX passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 3, 1992 (57 FR 7614) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #8 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1988 Mitsubishi Galant VX is substantially similar to a 1988 Mitsubishi Sigma originally manufactured for importation into and in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i) (I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement

[FR Doc. 92–13164 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 91–67; Notice 2]

Determination that Nonconforming 1989 Mercedes Benz 300SL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Administrator of NHTSA that nonconforming 1989 Mercedes Benz 300SL passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1989 Mercedes Benz 300SL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and

certified by its manufacturer as complying with the safety standards (the 1989 Mercedes Benz 560SL), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1989 Mercedes Benz 300SL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on February 10, 1992 (57 FR 4907) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #7 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Mercedes Benz 300SL is substantially similar to a 1989 Mercedes Benz 560SL originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–13165 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 92–26; Notice 1]

Notice of Receipt of Petition for Determination That Nonconforming 1989 Bentley Turbo R Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for determination that nonconforming 1989 Bentley Turbo R passenger cars are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1989 Bentley Turbo R that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer No. R–90–004) has petitioned NHTSA to determine whether 1989 Bentley Turbo R passenger cars manufactured by Rolls-Royce Motors are eligible for importation into the United States. The vehicle which Liphard believes is substantially similar is the 1989 Bentley Turbo R that Rolls-Royce Motors offered for sale in the United States and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it has carefully compared the 1989 Bentley Turbo R with its U.S.-certified counterpart, and found that they are substantially similar with respect to most applicable Federal motor vehicle

safety standards. Specifically, the petitioner claims that the 1989 Bentley Turbo R is identical to its U.S.-companion model with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *., 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 111 Rearview Mirrors, 113 Hood Latch Systems, 116 Brake Fluids, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 214 Side Door Strength, 216 Roof Crush Resistence, 219 Windshield Zone Intrusion, 301 Fuel System Integrity, and 302 Flammability of Interior Materials.

The petitioner also contends that the 1989 Bentley Turbo R is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.- model headlamp assemblies which incorporated sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 114 Theft Protection: Installation of a buzzer relay in the steering lock electrical circuit, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power-Operated Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: Installation of an ignition switch-actuated seat belt warning buzzer.

Additionally, the petitioner states that the energy absorbers on the front bumper of the 1989 Bentley Turbo R must be replaced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 6, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-13166 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES TRADE REPRESENTATIVE

Review of Implementation of the U.S.-Japan Semiconductor Arrangement

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for written comments by June 24, 1992 in connection with review of implementation of the U.S.-Japan Semiconductor Arrangement.

SUMMARY: The Trade Policy Staff Committee (TPSC) is seeking the views of interested parties on the implementation of the U.S.-Japan Semiconductor Arrangement (Arrangement). The review will assess all factors relevant to the market access provisions of the Arrangement. TPSC invites written comments which provide views on the implementation of these factors.

FOR FURTHER INFORMATION CONTACT: Wendy Silberman, Office of Industry, USTR, (202) 395-6160 (for technical and policy issues) or Tim Reif, Office of the General Counsel, USTR, (202) 395-6800 (for legal issues).

SUPPLEMENTARY INFORMATION:

I. General

Reflecting concern about the lack of progress in improving access to the Japanese market for foreign semiconductors, Ambassador Hills announced on May 27, 1992 the initiation of an interagency review of the 1991 U.S.-Japan Semiconductor Arrangement. USTR has been monitoring compliance with the Arrangement since it came into effect on August 1, 1991. Based on this monitoring, Ambassador Hills has decided that a full interagency review should be conducted to assess all factors relevant to the market access provisions of the Arrangement. These factors inlcude, among others: Foreign market share; design-ins of foreign semiconductors and long-term relationships between foreign and Japanese firms; efforts by the Government of Japan to promote foreign access to Japan's semiconductor market and the impact of these efforts; and possible additional steps that may be required to achieve the objectives of the Arrangement.

Copies of the Arrangement are available in the USTR Reading Room (room 101).

II. Written Comments

Written comments are invited on the implementation of the U.S.-Japan Semiconductor Arrangement. All comments should be submitted in 20 copies, by noon, Wednesday, June 24, 1992, to Carolyn Frank, Executive Secretary, TPSC, room 414, 600 Seventeenth Street, NW., Washington, DC 20506.

Any submissions which include business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary. Nonconfidential information received will be available for public inspection by appointment in the USTR Reading Room, 600 Seventeenth Street, NW., room 101, Washington, DC, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on (202) 395-6186.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92-13204 Filed 6-4-92; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 109
Friday, June 5, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 10, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1992 Federal Reserve Automation Services (FRAS) budget.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13292 Filed 6-3-92; 8:45 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 10, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed building renovation projects within the Federal Reserve System.
2. Proposals regarding automation consolidation within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13293 Filed 6-3-92; 10:03 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., June 15, 1992.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW, Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 18, 1992, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of Peat Marwick audit report, "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Withdrawal Operations at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: June 2, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92-13274 Filed 6-2-92; 8:45 am]

BILLING CODE 6760-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of June 8, 1992.

A closed meeting will be held on Tuesday, June 9, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 9, 1992, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Institution of injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272-2400.

Dated: June 2, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-13387 Filed 6-3-92; 1:54 pm]

BILLING CODE 8010-01-M

federal register

Friday
June 5, 1992

Part II

Department of Education

34 CFR Parts 425, 426, 431, etc.
Adult Education and Literacy Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 425, 426, 431, 432, 433, 434, 435, 436, 437, 438, 441, 460, 461, 462, 463, 464, 471, 472, 473, 474, 475, 476, 477, 489, 490, and 491

RIN 1830-AA10

Adult Education and Literacy Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends existing regulations that govern various adult education and literacy programs and adds regulations for four new programs: State Literacy Resource Centers, National Workforce Literacy Strategies, Functional Literacy for State and Local Prisoners, and Life Skills for State and Local Prisoners. These amendments are needed to implement the National Literacy Act of 1991 and certain new program authorities enacted in Public Law 102-103. The regulations incorporate statutory changes and provide rules for applying for and expending the Federal funds under these programs.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joan Seamon, U.S. Department of Education, 400 Maryland Avenue, SW., room 4428, Mary E. Switzer Building, Washington, DC 20202-7240. Telephone: (202) 732-2270. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On October 28, 1991, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (56 FR 55542). The public was given 60 days to submit comments.

The NPRM summarized the major statutory provisions enacted in the National Literacy Act and Public Law 102-103 and included a discussion of the major issues in the proposed regulations (56 FR 55542-55546). Significant changes since publication of the NPRM are described in the following analysis of comments and changes.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 99 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Some issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed. The Secretary also received a number of requests for administrative guidance or interpretations of the statute or regulations. Administrative guidance and interpretations will be provided by the Secretary on a case-by-case basis, as necessary.

Direct and Equitable Access to Federal Funds Under the Basic Grant Program (§ 461.12(b))

Comments: The Secretary received numerous comments concerning the statutory requirement, added by the National Literacy Act, that local educational agencies, public or private nonprofit agencies, community-based organizations, correctional education agencies, postsecondary educational institutions, and institutions that serve educationally disadvantaged adults will be provided direct and equitable access to all Federal funds provided under this part. The NPRM proposed to implement this requirement by providing that direct and equitable access must include: (1) The right to submit applications directly to the State educational agency (SEA) for those funds; and (2) use by the SEA of a process for selecting recipients of those funds that gives each agency, institution, and organization a fair chance of receiving an award.

Commenters from several States asked that their States' current systems of fund distribution not be disturbed. The commenters stated that the existing systems are effective and efficient in meeting the adult education and literacy needs of their States. Some of these commenters asked that States be allowed to continue to use sub-State entities to distribute the funds. Others were concerned that the regulations might require set-asides for the various categories of eligible recipients.

Some commenters were concerned that the new Federal requirement would conflict with State law. Some commenters also stated that the new requirement would impose an administrative burden on the SEA.

Other commenters expressed concern that community-based organizations and volunteer groups would be denied an opportunity for funding. The commenters asked for assurances that they would have a fair opportunity to receive funding. Some commenters were also concerned that the new statutory criteria for selecting recipients, including past effectiveness (see § 461.31(d)), could be used by States to deny funding to these applicants. One commenter asked if the regulations would preclude an application by a State correctional agency on behalf of the State correctional system.

Discussion: By adding the requirement for direct and equitable access, Congress clearly intended to allow all eligible entities to apply for the funds and have a fair chance of receiving an award. The Secretary is particularly concerned that the decision-making process in selecting award recipients is such that this congressional intent is carried out. For example, a system under which some applicants for the funds are also making decisions as to whether other competing applicants should receive funding would create a conflict of interest, and would not meet the new requirements of the law. Moreover, from the comments received, it appears that very few existing State systems, and no State laws, will have to be modified to meet the new statutory requirement for distribution of Federal funds.

The Secretary cannot waive the statutory requirement. However, the Secretary is not aware of any State law that precludes a State from distributing the funds in accordance with the statute and regulations. With respect to the issue of administrative burden, the Secretary does not believe that some increase in burden on the SEA can be avoided, given the change in the Act.

The Act and regulations do not require set-asides for the various categories of entities that are eligible for funding. All eligible entities must be given an opportunity to apply to carry out the activities funded by the SEA in accordance with the Act and regulations. The Act and regulations do not preclude voluntary combinations of eligible applicants from applying for funding. For example, a State correctional system, as described by the commenter, could apply.

The regulations are designed to ensure that all eligible entities have a fair opportunity to apply for and receive funds. None of the statutory criteria that the State must consider, including past

effectiveness, should be used in a way that would preclude any category of eligible entity from having that opportunity. However, the Secretary expects States to distribute funds to those entities that can best provide services to the individuals targeted by the Act.

Changes: None.

Eligibility for Funding Under the Basic Grant Program (§ § 461.12(b) and 461.30(a))

In the NPRM, the Secretary noted that the new statutory requirement for direct and equitable access to funds under the basic grant program (proposed § 461.12(b)) applies to a slightly different list of entities than the statutory list of eligible entities reflected in proposed § 461.30(a). Both lists included LEAs, public or private nonprofit agencies, community-based organizations, correctional education agencies, and postsecondary educational institutions. However, the statutory list of eligible parties, repeated in proposed § 461.30(a), also includes other institutions that have the ability to provide literacy services to adults and families. The statutory access requirement in proposed § 461.12(b) did not specifically include these institutions but did include institutions that serve educationally disadvantaged adults. The Secretary invited comments on how best to reconcile these statutory requirements.

Comments: The comments received by the Secretary reflected nearly universal agreement that the two lists should be reconciled, since it would make no sense to have some entities eligible to apply but without direct and equitable access to the funds, or vice-versa. The Secretary also received comments suggesting that various specific types of entities be added to the lists.

Discussion: The Secretary agrees that the lists should be made consistent. However, since the various suggested additions to the lists were of entities already included under broader categories, such as "public or private non-profit agencies," the Secretary has not added any non-statutory categories.

Changes: Sections 461.12(b) and 461.30(a) have been modified to include the same list of entities.

Indicators of Program Quality (§§ 461.3(b)(7), 461.12(a)(3), and 461.14(b))

Comments: Numerous commenters stated that a wide variety of groups, including volunteer organizations and other service providers, should be involved in the development of the States' indicators of program quality. One commenter specifically stated that the indicators should be reviewed by the State Job Training Coordinating Council. Another commenter objected to the requirement in § 461.14(b) that the State plan be amended to include the indicators, stating that the amendment process would be burdensome for the States. The commenter pointed out that the States must amend their plans in 1992 to incorporate provisions relating to the National Literacy Act and that the amendment in 1993 incorporating the indicators would be the second in two years.

Other commenters asked the Secretary to clarify the statement in the preamble to the NPRM that States are encouraged, to the extent appropriate, to develop indicators that are consistent with any similar standards developed under the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act, or the Job Opportunities and Basic Skills Program. These commenters were concerned that the Secretary might be requiring that the indicators be identical to those other standards.

Discussion: The regulations provide adequate protections to ensure that all interested groups are involved in the development of the indicators. As required by the Act, § 461.3(b)(7) provides that the indicators must be developed and implemented in consultation with a widely representative group of appropriate experts, educators, and administrators. Moreover, by requiring that the indicators be included in the State plan through the amendment process, which includes public hearings, the Secretary has ensured that all interested parties can participate. While the amendment requirement imposes some burden on the States, the Secretary believes that public involvement in the development of the indicators is so important that the requirement in § 461.14(b) should be retained. The amendment process also ensures an opportunity for review by the State Job Training Coordinating Council. (See § 461.13(c)(1)(ii).) To minimize burden, States are encouraged to submit the amendment with any other changes to the State plan that are needed in 1993.

The Secretary's statement in the preamble concerning standards under other Federal laws did not constitute a requirement, since none exists in the Act. Moreover, the Secretary did not intend to imply that the indicators under the Adult Education Act should necessarily be identical to standards developed under other laws. However, where common goals exist among Federal programs, the Secretary continues to believe that States should develop indicators and standards, under the various Federal laws, that are consistent to the extent appropriate. It is up to the States to determine the extent to which this can be achieved.

Changes: None.

Gateway Grants (§ 461.30(c))

Section 461.30(c) incorporates a new statutory requirement that States use funds provided under the basic grant program for competitive 2–year grants to public housing authorities for literacy programs and related activities. The Act requires that any public housing authority that receives a grant under this provision consult with local adult education providers in conducting programs and activities with assistance provided under the grant. Any grant provided under this provision is to be referred to as a "Gateway Grant." In the NPRM the Secretary proposed to give States flexibility in determining the amount of funds to be used for this purpose.

Comments: Two commenters objected to the consultation requirement, stating that consultation after a Gateway Grant is made would serve no purpose. Some commenters stated that recipients of Gateway Grants should meet the same cooperation and accountability requirements as community-based organizations and other recipients under the basic grant program.

One commenter asked that the definition of public housing authority include emergency and transitional shelters.

Several commenters asked for clarification concerning the amount of funds to be provided for Gateway Grants. One commenter requested that the regulations include procedures that a State must use in making these grants. Three commenters supported the flexibility provided in the proposed regulations.

Discussion: The Secretary interprets the statutory consultation requirement to apply after the grant is made.

Applicants for and recipients of Gateway Grants are subject to the same statutory and regulatory requirements as other recipients under the basic grant program.

The Secretary has consulted with the Department of Housing and Urban Development about emergency and transitional shelters. These shelters are not normally operated by public housing authorities and therefore are not included in the definition.

States are required to use some funds for Gateway Grants. As noted in the NPRM, the Secretary will give States flexibility in deciding the amount of

funds to be provided for Gateway Grants, since the statute does not specify an amount. Although the Secretary does not see any need for Federal regulations to specify special procedures for awarding these grants, the Secretary will provide technical assistance on program implementation, as needed.

Changes: As proposed in the NPRM, and in the absence of a definition in the National Literacy Act, the Secretary has adopted the definition of "public housing authority" used by the Department of Housing and Urban Development.

Part 460—Adult Education—General Provisions

Section 460.3 What Regulations Apply to the Adult Education Programs?

In the NPRM, the Secretary proposed to exempt the adult education and literacy discretionary grant programs from a provision in the Education Department General Administrative Regulations (EDGAR) that limits financial and performance reports to annual submissions. In some cases, to ensure that grant projects are making adequate progress, the Secretary stated that he might propose to require reports more frequently than annually. Any such reporting requirements would first be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980.

Comments: Several commenters objected to the proposed change, although most of the commenters mistakenly believed that the proposed regulation would apply to the State basic grant program as well as to the discretionary grant programs under the Act. The commenters objected both to the cost and burden of reporting on performance more frequently than annually.

Discussion: The exemption only applies to the discretionary grant programs under the Act, not the State basic grant program. For discretionary grant programs, reporting would not be required more frequently than annually if the information is not necessary to ensure program integrity and accountability or if the information is available from other sources, such as continuation applications or ongoing Federal evaluation activities. Moreover, any such requirement would have to be approved by OMB under the Paperwork Reduction Act, at which time the public would have the opportunity to comment on the requirement, an additional assurance that any burden would be kept to a minimum.

Changes: None.

Section 460.4 What Definitions Apply to the Adult Education Programs?

Comments: Several commenters objected to the proposal to remove a definition of the term "expansion." The commenters stated that removal of the definition might restrict their ability to apply for and receive funding under the State basic grant program.

Most commenters supported the definition of "literacy" that was included in the NPRM. One commenter stated that the regulations should require that all States adopt this definition of literacy, in order to obtain consistency throughout the Nation.

Another commenter suggested that the definition of "literacy" be expanded to be consistent with the basic skills listed in the SCANS report. (The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in February 1990 by the U.S. Secretary of Labor and charged with identifying and defining the skills needed in the American workplace. In May 1991, SCANS produced What Work Requires of Schools, a document defining a set of competencies and foundation skills required for effective job performance. A final report, American Know-How: Producing the Using Skills on the Job, is being issued by SCANS.) A second commenter suggested that the term "problem solving" should be defined to include the abilities listed in proposed § 473.6 and abilities in synthesis.

Discussion: As noted in the preamble to the NPRM, the National Literacy Act allows a variety of entities to have access to funds under the State basic grant program. (See §§ 461.12(b) and 461.30(a).) The definition of "expansion" is no longer needed.

The Secretary has no authority to apply the definition of "literacy" beyond the Federal programs. As noted in the preamble to the NPRM, the National Literacy Act defines "literacy," but only as that term is used in the National Literacy Act. To ensure uniform administration of all of the Department's adult education and literacy programs, the Secretary proposed to make the definition apply to all of the regulations for these programs.

The Secretary cannot change the definition as applied to the National Literacy Act. The Secretary therefore has not made the revision suggested by the commenter concerning the SCANS report, which is not entirely consistent with the statutory definition incorporated in these regulations. The Secretary also has not revised the definition of "literacy" in response to the comment on problem solving, since the Act does not appear to use the term "problem solving" consistently (for example, compare sections 371(a)(3)(E) and 371(c)(2)(B)(v)). However, in response to the commenter's suggestion, the Secretary has made a change in § 473.6. (See the discussion below following the heading for that section.)

Changes: None.

Part 461—Adult Education State-Administered Basic Grant Program

Section 461.46 What Requirements for Program Reviews and Evaluations Must be Met by a State?

Comments: One commenter objected to the requirement in § 461.46 that the State annually make public the results of program evaluations. The commenter mistakenly believed that this would require the identification of specific recipients.

One SEA recommended that the regulations require States to report the level of funding provided to each type of grant recipient in addition to the information already required by § 461.46.

Discussion: States may satisfy the annual publication requirement by releasing aggregate results of program reviews and evaluations. Specific recipients do not have to be identified, although a State may choose to do so.

Under the Act States are required to report the number and percentages of grant recipients by type. Given the amendments to the Act concerning access to funding and eligibility (see §§ 461.12(b) and 461.30(a)), the Secretary agrees that this additional information is needed to ensure program accountability.

Changes: A new paragraph (d)(1)(i)(B) has been added to § 461.46.

Section 461.50 What are a State's Responsibilities Regarding a State Advisory Council on Adult Education and Literacy?

Section 461.51 What are the Membership Requirements of a State Advisory Council?

Comments: Two commenters stated that the regulations should preclude a Governor from unilaterally taking part or all of an SEA's administrative funds for a State advisory council. Two commenters requested that the regulations specify that it is the Governor who decides whether to establish a council and who certifies the establishment and membership of the council.

Discussion: The Governor has clear discretion to use up to five percent of the funds provided under the State

Literacy Resource Centers Program to establish or support a State advisory council. (See § 464.40.) Moreover, the Act now provides that a State advisory council must be appointed by, and be responsible to, the Governor, although the council must advise the SEA and other State agencies as well as the Governor. Under the Act, the basic grant is made to the SEA, and the SEA's administrative funds clearly still can be used to establish or support a council. The Secretary does not believe that Federal regulations are appropriate in this area. The Secretary presumes that Governors and SEAs will work together to resolve any concerns regarding the use of basic grant administrative funds for a State advisory council.

The Secretary has chosen to retain the statutory language that provides for the "State" to establish a council and to certify the establishment and membership of the council. This is properly a matter for each State to determine.

Changes: None.

Part 464—State Literacy Resource Centers Program

Section 464.3 What Kinds of Activities may be Assisted?

Comments: One commenter stated that the regulations should require centers to serve those persons most educationally disadvantaged and in need of assistance.

Discussion: The purposes of the State literacy resource centers are set forth in section 356(a) of the Act (20 U.S.C. 1208aa(a)) and repeated in § 464.1. The centers will assist other agencies and organizations that deliver literacy instruction but will not themselves provide direct instruction to students. (See section 356(h) of the Act and § 464.11.)

Note: Although no formal comments were received, the Secretary has been informed that some States may wish to use funds under this program to provide the services and activities set forth in the Act but without establishing a center to provide this assistance. To clarify this matter, the Act specifically requires that the funds under this program be used for State or regional centers to provide the services and activities set forth in this section of the regulations.

Changes: None.

Section 464.10 How do States Apply?

Comments: One commenter expressed concern that the proposed regulations did not include provisions for evaluating the performance of State literacy resource centers. Another commenter expressed concern that the regulations did not ensure that the centers would have the capacity to serve the entire literacy service community.

Discussion: The Secretary will monitor the performance of the centers, including the collection of appropriate information through annual performance reports authorized by the Education Department General Administrative Regulations (EDGAR) (34 CFR 80.40). Performance reporting under EDGAR will include such matters as a comparison of actual accomplishments to the objectives of the centers as set forth in the approved applications. This should be sufficient to ensure that the centers are effective in carrying out the purposes of the Act, including access to the services and activities of the center by the entire literacy service community.

Changes: None.

Comments: Some commenters expressed concern with proposed § 464.10(e), which provides that a State application remains in effect during the period of the Adult Education State plan. The commenters were concerned that this provision would not allow the States enough flexibility to make necessary changes during the effective period of the State application.

Discussion: The Secretary expects that each year there will be some changes in funding and operating the State literacy resource centers. A State participating in a regional center may decide it is more advantageous to operate its own State center, or a State may wish to join a regional center. It may be necessary for a State or a group of States to change the recipient of a center award. A State that did not participate in the program in the prior year may decide to apply for a grant.

The Secretary, as stated above, intends to give the States as much flexibility as possible in designing and operating these resource centers, and will allow States to make necessary changes on an annual basis. On the other hand, if no change is needed in a State or regional center in a particular year, the Secretary will not require a new application or an amendment. This would be unnecessary paperwork.

Changes: A new paragraph (f) has been added to § 464.10. Through a notice published in the **Federal Register**, the Secretary will give States an annual opportunity to submit new applications or make changes in their existing applications.

Section 464.20 What payment does the Secretary make?

Comments: A commenter stated that the regulations should contain the Department's process for reviewing State applications, including the selection criteria that would be used. Another commenter recommended that the process be simple and streamlined.

Discussion: Since this is a State-administered, formula grant program, the Secretary does not establish or use selection criteria as he would for a competitive grant program. The Secretary approves all State applications that meet the requirements of the Act and the regulations, including the statutory application content requirements repeated in § 464.11.

Note: Other application requirements are contained in 34 CFR part 76, subpart B.

Changes: None.

Section 464.21 May the Secretary Require a State to Participate in a Regional Center?

Comments: A commenter stated that the regulations should contain criteria that the Secretary would use in deciding how a State would be assigned to a regional center. The commenter suggested the use of such factors as geographical boundaries and common statewide literacy needs. A second commenter stated that the regulations should contain criteria that the Secretary would use to allow funding of a State center rather than a regional center. Two commenters asked that the Secretary allow expansion of an existing State literacy resource center, even if total funding for the center were less than the statutory threshold of $100,000.

Discussion: With one exception, the Secretary is given broad discretion to decide whether a State whose allocation is less than $100,000 should be part of a regional center. The exception is stated in § 464.21(b), which provides that the Secretary may not exercise this discretion if the State shows in its application that the total amount of Federal, State, local, and private funds expended to carry out the purposes of this part would equal or exceed $100,000.

The Secretary intends to exercise his discretion in two ways. First, the Secretary will allow a State to use its allocation to expand an existing center, that otherwise meets the purposes of the Act and the requirements of the regulations, even if the total amount devoted to the center is less than $100,000.

Second, if a State is not proposing to expand an existing center, the State may demonstrate in its application either (1) that the State should not be designated to a regional center even though funding for its new State center would be less than $100,000, or (2) that the State should be designated to a particular regional center.

States should be given as much latitude as possible, subject to the requirements of the Act, to design the best possible means of establishing or expanding centers within their jurisdictions. It is unlikely that any Federal criteria would be useful in resolving the many different situations that may arise in establishing and operating the resource centers.

Changes: This section has been amended to provide that States wishing to expand existing centers will not be required by the Secretary to participate in a regional center.

Section 464.30 With whom must a State contract?

In the NPRM, the Secretary noted that the Act specifically provides that a competitive contract must be awarded by a State to establish a State center, but does not reference regional centers as being subject to this requirement. The proposed regulations reiterated the statutory provision. However, the Secretary offered to consider the following options for inclusion in the final regulations, or others suggested in comments received by the public:

(1) Apply the same rules to a regional center that apply to a State center. Require that the group of States that are establishing a regional center designate one State to award a competitive contract for the regional center;

(2) Provide in the regulations that the method for establishing a regional center must be agreed to by the States involved, leaving the method to their discretion; or

(3) Leave the regulations silent on this question.

Comments: Nearly all of the commenters who responded to this issue favored the second option. One commenter stated that the second option would allow States flexibility to build on existing relationships and institutions. The one commenter who opposed giving States full discretion in establishing a regional center stated that the States should be required to use an open and competitive process in selecting a resource center.

In addition to the comments received concerning regional centers, several commenters asked that competition not be required to expand an existing State literacy resource center.

Two commenters asked for "field involvement" in the State's application review process. These commenters also asked that the regulations include a description of the review process. Some commenters also asked that the regulations include the selection criteria to be used by the States.

Discussion: As stated above, the Secretary intends that States have as much flexibility as possible in establishing and operating the centers. The Secretary has therefore adopted the option recommended by all but one of the commenters for establishing a regional center.

The Secretary has also determined from the comments received that a competitive contract would not be an effective means, at least in some States, of expanding an existing State center. As noted above, States should be given as much flexibility as possible in carrying out the purposes of the Act. Moreover, in section 356(h)(1) of the Act, Congress specified that a State's application must describe how it will develop a new literacy resource center or expand an existing center. Because Congress contemplated that a State would make this choice before it received an award of funds, and because it would be impracticable subsequently to conduct a competition that would undermine that choice—for example, by awarding the funds for expansion to an entity other than the entity that continues to operate the existing center—the Secretary interprets the Act as only requiring a competitive contract if a new State center is being established. Under this interpretation, a State would still be permitted to conduct a competition to expand an existing center if this were appropriate in its particular circumstances.

The State Literacy Resource Centers Program is State-administered, pursuant to the provisions of the Act. In a State-administered program, the Secretary gives the States as much flexibility as possible in deciding how to carry out the purposes established by Congress. If a State establishes a State literacy resource center through a competitive contract, the Education Department General Administrative Regulations provide that the State shall follow its own procedures for those contracts. Beyond this provision, it would not be appropriate for the Federal regulations to dictate how the State conducts its review process.

Changes: The Secretary has revised § 464.30 and added a new § 464.32.

Section 464.31 Who may not Review a Proposal for a Contract?

The Act prohibits a party applying for a contract under this program from reviewing its own proposal. To avoid conflicts of interest, the NPRM proposal also to prohibit the party from reviewing the proposals of the parties with whom it is competing for the contract.

Comments: One commenter objected to the proposed prohibition in the NPRM. The commenter stated that State advisory council members could be applying for the State literacy center contract, and that the regulation could eliminate them from reviewing proposals. The commenter stated that a wide range of literary expertise should be encouraged in the review of proposals.

Discussion: The Secretary believes that it is essential, in a competition for funds, to avoid both actual and potential conflicts of interest. Moreover, the Secretary does not believe that any State has such a lack of persons with expertise in the field of literacy that an exception is needed.

Changes: None.

Part 473—National Workforce Literacy Strategies Program

Section 473.2 Who is Eligible for an Award?

Comment: Two commenters stated that partnerships between private sector and educational organizations should not be required, and that unions and employers having the resources should be permitted to establish programs without the participation of an education partner.

Discussion: The National Workforce Literacy Strategies Program is subject to the same statutory provisions that govern partnerships in the National Workplace Literacy Program. The statute requires applications receiving funding to be submitted jointly by organizations of a specific character. Partnerships must include at least one business, industry, labor organization, or private industry council; and at least one State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization). Therefore, a union and an employer cannot receive funding from either program without incorporating an education partner in the proposed project.

Changes: None.

Comment: Some commenters asked the Secretary to ensure full participation of labor organizations. Two commenters asked the Secretary to require partnerships to include in their partnership agreements, or to obtain prior to expending project funds, the written concurrence of the appropriate labor organizations. The commenters stated that where workers are not organized, concurrence of committees elected by secret ballot of workers to be served should be required.

Discussion: Labor organizations are identified in the Act as eligible partners in both the National Workplace Literacy and National Workforce Literacy Strategies Programs. Like other partners, labor organizations wishing to participate in projects are required to sign a partnership agreement. It is unnecessary to require a partnership having no labor organization partners to obtain the written concurrence of labor organizations regarding its proposed activities. For all projects, the extent to which employees are involved in designing and implementing the project and evaluating its outcomes is one criterion used to determine the relative merits of applications to be funded. (See § 473.21(a)(4).)

Changes: None.

Section 473.4 What Priorities Does the Secretary Establish?

Comments: A commenter stated that the use of priorities other than the small business priority unduly targets the program. The commenter believed that the only other considerations should be the quality of design and the degree to which an application demonstrates the importance of the project to workforce literacy.

Another commenter stated that program priorities and selection criteria should target awards to employers committed to high performance work organizations, worker empowerment, and ongoing worker training. The commenter stated that program evaluations should examine whether an employer's participation in this program affects its training practices or workforce organization.

Discussion: The priorities stated in § 473.4(d) further the purposes of the statute by allowing a focus on critical areas that may need additional attention. Quality of design, and the degree to which an application demonstrates the importance of a project to workforce literacy, are contained in the selection criteria used to determine the relative merits of applications. (See § 473.21.)

The priorities as written do not preclude the submission of an application focussing on the areas of interest mentioned by the second commenter. However, the Secretary does not believe that a focus on these areas of interest would be appropriate in all applications.

Changes: None.

Section 473.6 What Definitions Apply?

Comments: Two commenters stated that references to cross-cultural differences in communication patterns and styles should be included in the definitions of interpersonal skill-building and communication skill-building.

As noted above under § 460.4, another commenter recommended that "problem solving" should include abilities in synthesis, as well as mathematics, analysis, sequencing, and decisionmaking.

Discussion: Cross-cultural training, including training in differences in communication patterns and styles that relate to work environments, is an allowable program cost under the definition of "interpersonal skill-building" contained in this section.

The Secretary concurs with the comment that problem solving, within the context of this program, should include abilities in synthesis.

Changes: The Secretary has revised the definition of "problem solving" and made other technical improvements in this section.

Section 473.10 Are Preapplications Required?

Section 473.11 How Does the Secretary Consider a Preapplication?

Comments: A commenter stated that the Secretary should not include a preapplication process in the regulations. The commenter did not believe that such a process is needed and questioned whether the provision was authorized under the Act.

Discussion: The Secretary has determined that it is unnecessary to include a preapplication process, which was intended to be optional in any case.

Changes: Proposed §§ 473.10 and 473.11 have been deleted from the final regulations.

Section 473.21 What Selection Criteria Does the Secretary Use?

Comments: The Secretary received the following comments on this section:

(1) Additional emphasis in the rating process should be placed on the partnerships' ability to continue the program after federal funding has ended.

(2) Specific qualifications for the project administrator and instructor in funded projects should be developed and included in the selection criteria. The selection criteria should include a plan to consult with advisors from existing federally funded workplace literacy projects.

(3) Applicants should be required to obtain a cooperative review document demonstrating that the State educational agency has reviewed and concurs in the application.

Discussion: One of the selection criteria that the Secretary uses to determine which applications are funded already addresses the question of continuing support for the program. (See § 473.21(a)(7).) The Secretary believes that this criterion provides sufficient emphasis.

The criteria contained in § 473.21(f) are sufficiently specific regarding the qualifications sought in key staff of projects funded by the National Workforce Literacy Strategies Program. Any additional specificity would unduly restrict applicants in the information they provide and could result in an unnecessary paperwork burden.

Applicants are free to consult with staff of existing federally funded workplace literacy projects. However, the Secretary does not believe it appropriate to require this. Such a requirement could impose an unanticipated burden on funded projects.

Applicants may consult with and obtain the views of the State educational agency. However, the Act does not require that the State educational agency review an application before it is submitted to the Secretary, and the Secretary does not see the need to require such an approval process in the absence of a statutory requirement to do so.

Changes: None.

Part 489—Functional Literacy for State and Local Prisoners Program

Part 490—Life Skills for State and Local Prisoners Program

Section 489.2 Who is Eligible for a Grant?

Section 490.2 Who is Eligible for a Grant?

Comments: Several commenters asked for clarification of the statutory categories of eligible parties in §§ 489.2 and 490.2. One commenter stated that local educational agencies (LEAs) should be included since in many places LEAs provide adult education services to State and local prisoners. One commenter expressed concern that private, for-profit entities that contract with State and local governments to manage correctional institutions seemed to be excluded. One commenter recommended that the definition of "State correctional education agency" include the State educational agency responsible for administering adult education funds corrections education.

Discussion: The Secretary agrees that clarification of the statutory terms would be useful. Because the statute refers to "State" and "local" agencies, the Secretary believes that Congress intended eligibility to be restricted to governmental agencies, which would include State and local educational

agencies. However, recipients under this program can still contract with other entities to provide goods or services.

Changes: Sections 489.5 and 490.4 have been amended to add definitions of the entities set forth in §§ 489.2 and 490.2.

Section 489.21 What Selection Criteria Does the Secretary Use?

Section 490.21 What Selection Criteria Does the Secretary Use?

Comments: One commenter stated that the selection criteria for the two programs should give significant weight to an applicant's readiness and past record in incorporating the State's indicators of program quality. Two commenters questioned the suggested use of a random assignment evaluation design. One commenter suggested that the procedure would be difficult and expensive. The other commenter stated that corrections agencies are subject to legal requirements of fairness in providing access to programs, and thought that random assignment would therefore present a problem.

Discussion: The States' indicators of program quality have not yet been developed. After the indicators have been developed, the Secretary will determine whether any amendments to the regulations would be appropriate.

Under the Functional Literacy for State and Local Prisoners Program, all prisoners who are not functionally literate (with some exceptions) must participate in a funded project. Therefore, a random assignment design could be used only if two or more educational approaches are being used in the project. The Life Skills for State and Local Prisoners Program does not include a similar requirement, and random assignment therefore may be more feasible.

Use of a random assignment design is not necessarily more costly than establishing matched comparison groups, another alternative. However, it is important that the evaluator be familiar with the approach. In any case, the regulations leave the approach as optional.

Changes: None.

Other Changes

Comments: The Secretary received some useful suggestions for improving the clarity of the proposed regulations. In response to those suggestions, the following changes have been made.

Changes: Section 464.20(a) has been revised to make clear that, in applying the State basic grant program formula under this section, the Secretary considers only the States that have approved applications under the State Literacy Resource Centers Program. This is necessary to ensure that all funds are allocated under this program even if one or more States do not participate in a particular year.

Section 461.33(a) and (b) have been revised to clarify how the 15 percent set-aside for special experimental demonstration projects and teacher training projects is to be allocated among the purposes in this section. The Secretary interprets the Act to require that only 10 percent of a State's basic grant must be used for (1) training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act, and (2) training professional teachers, volunteers, and administrators. The proposed regulations could have been read to require that two-thirds of all expenditures for special experimental demonstration projects and teacher training projects must be spent for these two purposes, even if the State chooses to spend more than the statutory 15 percent minimum for these projects. The Secretary believes that this interpretation is the better reading of the statutory requirement that "⅔ of the 15 percent" reserved for these projects be spent for the two designated purposes. (See section 353(b) of the Act.) This leaves a minimum of five percent of the State's grant that must be spent either for the purposes set forth in § 461.33(a)(1) or for the purposes set forth in § 461.33(a)(2), or both.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 425

Adult education, General provisions, Reporting and recordkeeping requirements.

34 CFR Part 426

Adult education, State-administered grants, Corrections education, Literacy, Reporting and recordkeeping requirements.

34 CFR Part 431

Adult education, Reporting and recordkeeping requirements.

34 CFR Part 432

Adult education, Workplace literacy, Reporting and recordkeeping requirements.

34 CFR Part 433

Adult education, Workplace literacy, Reporting and recordkeeping requirements.

34 CFR Part 434

Adult education, English literacy, Reporting and recordkeeping requirements.

34 CFR Part 435

Adult education, English literacy, Reporting and recordkeeping requirements.

34 CFR Part 436

Adult education, Migrant farmworker, Immigrant education, Reporting and recordkeeping requirements.

34 CFR Part 437

Adult education, Adult literacy, Volunteers, Reporting and recordkeeping requirements.

34 CFR Part 438

Adult education, Policy studies, Reporting and recordkeeping requirements.

34 CFR Part 441

Adult education, Homeless program, Reporting and recordkeeping requirements.

34 CFR Part 460

Adult education, General provisions, Reporting and recordkeeping requirements.

34 CFR Part 461

Adult education, State-administered grants, Corrections education, Literacy, Reporting and recordkeeping requirements.

34 CFR Part 462

Adult education, Workplace literacy, Technology, Reporting and recordkeeping requirements.

34 CFR Part 463

Adult education, English literacy, Reporting and recordkeeping requirements.

34 CFR Part 464

Adult education, Literacy, Resource centers, Reporting and recordkeeping requirements.

34 CFR Part 471

Adult education, Reporting and recordkeeping requirements.

34 CFR Part 472

Adult education, Workplace literacy, Reporting and recordkeeping requirements.

34 CFR Part 473

Adult education, Workplace literacy, Technology, Reporting and recordkeeping requirements.

34 CFR Part 474

Adult education, English literacy, Reporting and recordkeeping requirements.

34 CFR Part 475

Adult education, Migrant farmworker, Immigrant education, Reporting and recordkeeping requirements.

34 CFR Part 476

Adult education, Adult literacy, Volunteers, Reporting and recordkeeping requirements.

34 CFR Part 477

Adult education, Policy studies, Reporting and recordkeeping requirements.

34 CFR Part 489

Adult education, Prisoners, Literacy, Reporting and recordkeeping requirements.

34 CFR Part 490

Adult education, Prisoners, Literacy, Skills, Reporting and recordkeeping requirements.

34 CFR Part 491

Adult education, Homeless program, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.002 Adult Education State-Administered Basic Grant Program; 84.223 State-Administered English Literacy Program; 84.191 National Adult Education Discretionary Program; 84.198 National Workplace Literacy Program; 84.192 Adult Education for the Homeless Program. The following programs have not been assigned CFDA numbers: State-Administered Workplace Literacy Program, State Literacy Resource Centers Program, National Workforce Literacy Strategies Program, Adult Migrant Farmworker and Immigrant Education Program, National Adult Literacy Volunteer Training Program, State Program Analysis Assistance and Policy Studies Program, Functional Literacy for State and Local Prisoners Program, Life Skills for State and Local Prisoners Program.)

Dated: May 26, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends chapter IV of title 34 of the Code of Federal Regulations as follows:

1. Parts 425, 426, 431, 432, 433, 434, 435, 436, 437, 438, and 441 are redesignated in accordance with the following distribution table:

REDESIGNATION

Old part	Title	New part
425	Adult Education—General Provisions.	460
426	Adult Education State-Administered Basic Grant Program.	461
433	State-Administered Workplace Literacy Program.	462
434	State-Administered English Literacy Program.	463
431	National Adult Education Discretionary Program.	471
432	National Workplace Literacy Program.	472
435	National English Literacy Demonstration Program for Individuals of Limited English Proficiency.	474
436	Adult Migrant Farmworker and Immigrant Education Program.	475
437	National Adult Literacy Volunteer Training Program.	476
438	State Program Analysis Assistance and Policy Studies Program.	477
441	Adult Education For The Homeless Program.	491

PART 460—ADULT EDUCATION—GENERAL PROVISIONS

2. The authority citation for part 460 continues to read as follows:

Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

3. Section 460.2 is amended by redesignating paragraph (b) as paragraph (e), paragraphs (c) and (d) as paragraphs (b) and (c), respectively, and paragraphs (e) through (h) as paragraphs (g) through (j), respectively, and by adding new paragraphs (d), (f), (k), and (l), to read as follows:

§ 460.2 What programs are authorized by the Adult Education Act?

* * * * *

(d) State Literacy Resource Centers Program (34 CFR part 464).

* * * * *

(f) National Workforce Literacy Strategies Program (34 CFR part 473).

* * * * *

(k) Functional Literacy for State and Local Prisoners Program (34 CFR part 489).

(l) Life Skills for State and Local Prisoners Program (34 CFR part 490).

* * * * *

4. Section 460.3 is revised to read as follows:

§ 460.3 What regulations apply to the adult education programs?

The following regulations apply to the adult education programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs) applies to parts 472, 473, 474, 475, 476, 477, 489, and 490, except that 34 CFR 75.720(b), regarding the frequency of certain reports, does not apply.

(3) 34 CFR part 76 (State-Administered Programs) applies to parts 461, 462, 463, and 464, except that 34 CFR 76.101 (The general State application) does not apply.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 460.

(c) The regulations in 34 CFR parts 461, 462, 463, 464, 472, 473, 474, 475, 476, 477, 489, and 490.

(Authority: 20 U.S.C. 1201 *et seq.*)

5. Section 460.4 is amended by adding, in alphabetical order in paragraph (a), the term "State", by removing the definitions of "expansion" and "State" in paragraph (c), and by adding, in alphabetical order in paragraph (c), definitions of the terms "Governor" and "literacy", to read as follows:

§ 460.4 What definitions apply to the adult education programs?

* * * * *

(c) * * *

Governor includes the chief executive officer of a State that does not have a Governor.

* * * * *

Literacy means an individual's ability to read, write, and speak in English, compute, and solve problems, at levels of proficiency necessary to function on the job and in society, to achieve one's goals, and to develop one's knowledge and potential.

* * * * *

6. Part 461 is revised to read as follows:

PART 461—ADULT EDUCATION STATE-ADMINISTERED BASIC GRANT PROGRAM

Subpart A—General

Sec.

461.1 What is the Adult Education State-administered Basic Grant Program?
461.2 Who is eligible for an award?
461.3 What are the general responsibilities of the State educational agency?
461.4 What regulations apply?
461.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

461.10 What documents must a State submit to receive a grant?
461.11 How is the State plan developed?
461.12 What must the State plan contain?
461.13 What procedures does a State use to submit its State plan?
461.14 When are amendments to a State plan required?

Subpart C—How Does the Secretary Make a Grant to a State?

461.20 How does the Secretary make allotments?
461.21 How does the Secretary make reallotments?
461.22 What criteria does the Secretary use in approving a State's description of efforts relating to program reviews and evaluations?
461.23 How does the Secretary approve State plans and amendments?

Subpart D—How Does a State Make an Award to an Eligible Recipient?

461.30 Who is eligible for a subgrant or contract?
461.31 How does a State award funds?
461.32 What are programs for corrections education and education for other institutionalized adults?
461.33 What are special experimental demonstration projects and teacher training projects?

Subpart E—What Conditions Must Be Met by a State?

461.40 What are the State and local administrative costs requirements?
461.41 What are the cost-sharing requirements?
461.42 What is the maintenance of effort requirement?
461.43 Under what circumstances may the Secretary waive the maintenance of effort requirement?
461.44 How does a State request a waiver of the maintenance of effort requirement?
461.45 How does the Secretary compute maintenance of effort in the event of a waiver?
461.46 What requirements for program reviews and evaluations must be met by a State?

Subpart F—What Are the Administrative Responsibilities of a State?

461.50 What are a State's responsibilities regarding a State advisory council on adult education and literacy?
461.51 What are the membership requirements of a State advisory council?
461.52 What are the responsibilities of a State advisory council?
461.53 May a State establish an advisory body other than a State advisory council?

Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

Subpart A—General

§ 461.1 What is the Adult Education State-administered Basic Grant Program?

The Adult Education State-administered basic Grant Program (the program) is a cooperative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. Based on need and resources available, States fund local programs of adult basic education, programs of adult secondary education, and programs for adults with limited English proficiency.

(Authority: 20 U.S.C. 1203)

§ 461.2 Who is eligible for an award?

State educational agencies (SEAs) are eligible for awards under this part.

(Authority: 20 U.S.C. 1203)

§ 461.3 What are the general responsibilities of the State educational agency?

(a) A State that desires to participate in the program shall designate the SEA as the sole State agency responsible for the administration and supervision of the program under this part.

(b) The SEA has the following general responsibilities:

(1) Development, submission, and implementation of the State application and plan, and any amendments to these documents.

(2) Evaluation of activities, as described in section 352 of the Act and § 461.46.

(3) Consultation with the State advisory council, if a State advisory council has been established under section 332 of the Act and § 461.50.

(4) Consultation with other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under the Act.

(5)(i) Assignment of personnel as may be necessary for State administration of programs under the Act.

(ii) The SEA must ensure that—(A) These personnel are sufficiently qualified by education and experience; and

(B) There is a sufficient number of these personnel to carry out the responsibilities of the State.

(6) If the State imposes any rule or policy relating to the administration and operation of programs under the Act (including any rule or policy based on State interpretation of any Federal law, regulation, or guidance), the SEA shall identify the rule or policy as a State-imposed requirement.

(7) By July 25, 1993, development and implementation, in consultation with a widely representative group of appropriate experts, educators, and administrators, of indicators of program quality to be used to evaluate programs assisted under this part, as required by section 352 of the Act and § 461.46, to determine whether those programs are effective, including whether those programs are successfully recruiting, retaining, and improving the literacy skills of the individuals served under those programs.

(Authority: 20 U.S.C. 1205 (a) and (b)

§ 461.4 What regulations apply?

The following regulations apply to the program:

(a) The regulations in this part 461

(b) The regulations in 34 CFR part 460.

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 461.5 What definitions apply?

(a) The definitions in 34 CFR 460.4 apply to this part.

(b) For the purposes of this part, "State" includes the Federated States of Micronesia and the Republic of the Marshall Island.

(Authority: 20 U.S.C. 1201 *et seq.*)

Subpart B—How Does a State Apply for a Grant?

§ 461.10 What documents must a State submit to receive a grant?

An SEA shall submit the following to the Secretary as one document:

(a) A State plan, developed once every four years, that meets the requirements of the Act and contains the information required in § 461.12.

(b) A State application consisting of program assurances, signed by an authorized official of the SEA, to provide that—

(1) The SEA will provide such methods of administration as are necessary for the proper and efficient administration of the Act;

(2) Federal funds granted to the State under the Act will be used to supplement, and not supplant, the amount of State and local funds available for uses specified in the Act;

(3) Programs, services, and activities funded in accordance with the uses specified in section 322 of the Act are designed to expand or improve the quality of adult education programs, including programs for educationally disadvantaged adults, to initiate new programs of high quality, or, if necessary, to maintain programs;

(4) The SEA will provide such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the State (including Federal funds paid by the State to eligible recipients under the Act);

(5) The SEA has instituted policies and procedures to ensure that copies of the State plan and all statements of general policy, rules, regulations, and procedures will be made available to the public;

(6) The SEA will comply with the maintenance of effort requirements in section 361(b) of the Act;

Cross-Reference: See § 461.42 What is the maintenance of effort requirement?

(7) Adults enrolled in adult basic education programs, including programs for adults with limited English proficiency, will not be charged tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program;

(8) The SEA may use not more than 20 percent of the funds granted to the State under the Act for programs of equivalency for a certificate of graduation from secondary school;

(9) As may be required by the Secretary, the SEA will report information concerning special experimental demonstration projects and teacher training projects supported under section 353 of the Act; and

(10) The SEA annually will report information abut the State's adult education students, programs, expenditures, and goals, as may be required by the Secretary. (Approved by the Office of Management and Budget under control number 1830–0026.)

(Authority: 20 U.S.C. 1203a(b)(2), 1206(a), 1206b, 1207a, 1208, and 1209(b))

§ 461.11 How is the State plan developed?

In formulating the State plan, the SEA shall—

(a) Meet with and utilize the State advisory council, if a council is established under section 332 of the Act and § 461.50;

(b) After providing appropriate and sufficient notice to the public, conduct at least two public hearings in the State for the purpose of affording all segments of the public, including groups serving educationally disadvantaged adults, and interested organizations and groups, an opportunity to present their views and make recommendations regarding the State plan;

(c) Make a thorough assessment of —

(1) The needs of adults, including educationally disadvantaged adults, eligible to be served as well as adults proposed to be served and those currently served by the program; and

(2) The capability of existing programs and institutions to meet those needs; and

(d) State the changes and improvements required in adult education to fulfill the purposes of the Act and the options for implementing these changes and improvements. (Approved by the Office of Management and Budget under control number 1830–0026.)

(Authority: 20 U.S.C. 1206a(a)(1) and (2), (b))

§ 461.12 What must the State plan contain?

(a) Consistent with the assessment described in § 461.11(c), a State plan must, for the four-year period covered by the plan—

(1) Describe the adult education needs of all segments of the adult population in the State identified in the assessment, including the needs of those adults who are educationally disadvantaged;

(2) Describe and provide for the fulfillment of the literacy needs of individuals in the State;

(3) Set forth measurable goals for improving literacy levels, retention in literacy programs, and long-term learning gains of individuals in the State and describe a comprehensive approach for achieving those goals, including the development of indicators of program quality as required by section 331(a)(2) of the Act and § 461.3(b)(7).

(4) Describe the curriculum, equipment, and instruments that are being used by instructional personnel in programs and indicate how current these elements are;

(5) Describe the means by which the delivery of adult education services will be significantly expanded (including efforts to reach typically underserved groups such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with disabilities) through coordination by agencies, institutions, and organizations including the public school system, businesses, labor unions, libraries, institutions of higher education, public health authorities, employment or training programs, antipoverty programs, organizations providing assistance to the homeless, and community and voluntary organizations;

(6) Describe the means by which representatives of the public and private sectors were involved in the development of the State plan and how they will continue to be involved in the implementation of the plan, especially in the expansion of the delivery of adult education services by cooperation and collaboration with those public and private agencies, institutions, and organizations;

(7) Describe the capability of existing programs and institutions to meet the needs described in paragraph (a)(1) of this section, including the other Federal and non-Federal resources available to meet those needs;

(8) Describe the outreach activities that the State intends to carry out during the period covered by the plan, including specialized efforts—such as flexible course schedules, auxiliary aids and services, convenient locations, adequate transportation, and child care services—to attract and assist meaningful participation in adult education programs;

(9)(i) Describe the manner in which the SEA will provide for the needs of adults of limited English proficiency or no English proficiency by providing

programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(ii) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(iii) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational and Applied Technology Education Act;

(10) Describe how the particular education needs of adult immigrants, the incarcerated, adults with disabilities, the chronically unemployed, homeless adults, the disadvantaged, and minorities in the State will be addressed;

(11)(i) Describe the progress the SEA has made in achieving the goals set forth in each State plan subsequent to the initial State plan filed in 1989; and

(ii) Describe how the assessment of accomplishments and the findings of program reviews and evaluations required by section 352 of the Act and § 461.46 were considered in establishing the State's goals for adult education in the plan being submitted;

(12) Describe the criteria the SEA will use in approving applications by eligible recipients and allocating funds made available under the Act to those recipients;

(13) Describe the methods proposed for joint planning and coordination of programs carried out under the Act with programs conducted under applicable Federal and State programs, including the Carl D. Perkins Vocational and Applied Technology Education Act, the Job Training Partnership Act, the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Immigration Reform and Control Act of 1986, the Higher Education Act of 1965, and the Domestic Volunteer Service Act, to ensure maximum use of funds and to avoid duplication of services;

(14) Describe the steps taken to utilize volunteers, particularly volunteers assigned to the Literacy Corps established under the Domestic Volunteer Service Act and volunteers trained in programs carried out under section 382 of the Act and 34 CFR part 476, but only to the extent that those volunteers supplement and do not supplant salaried employees;

(15) Describe the measures to be taken to ensure that adult education programs, services, and activities under the Act will take into account the findings of program reviews and evaluations required by section 352 of the Act and § 461.46;

Cross-Reference: See § 461.22. What criteria does the Secretary use in approving a State's description of efforts relating to program reviews and evaluation?

(16) Report the amount of administrative funds to be spent on program improvements;

(17) Contain assurances that financial assistance provided under this part is used to assist and expand existing programs and to develop new programs for—

(i) Adults whose lack of basic skills renders them unemployable;

(ii) Adults whose lack of basic skills keeps them, whether employed or unemployed, from functioning independently in society; and

(iii) Adults whose lack of basic skills severely reduces their ability to have a positive effect on the literacy of their children;

(18) Describe the SEA's policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects that meet the requirements of § 461.33;

(19) Describe the SEA's policies, procedures, and activities for carrying out corrections education and education for other institutionalized adults that meet the requirements of § 461.32;

(20) Describe the SEA's planned use of Federal funds for administrative costs under § 461.40(a), including any planned expenditures for a State advisory council under § 461.50.

Note: An additional source of funding exists under section 356(g) of the Act and 34 CFR part 464, but need not be reported under this paragraph.

and

(21) Include a summary of recommendations received and the SEA's responses to the recommendations made through the State plan development process required under § 461.11(b).

(b) Each State plan must provide assurance that public or private nonprofit entities eligible under § 461.30—local educational agencies, public or private nonprofit agencies, community-based organizations, correctional education agencies, postsecondary educational institutions, institutions that serve educationally disadvantaged adults, and any other institution that has the ability to provide literacy services to adults and families—will be provided direct and equitable access to all Federal funds provided under this part, including—

(1) The right to submit applications directly to the SEA for those funds; and

(2) Use by the SEA of a process for selecting recipients of those funds that gives each agency, institution, and organization a fair chance of receiving an award.

(c) To be eligible to participate in the State-administered Workplace Literacy Program under section 371(b) of the Act, an SEA shall comply with the requirements in 34 CFR 462.10.

(d) To be eligible to participate in the State-administered English Literacy Program under section 372(a) of the Act, an SEA shall comply with the requirements in 34 CFR 463.10.

(e) In order for a State, or the local recipients within the State, to be eligible to apply for funds under the Adult Migrant Farmworker and Immigrant Education Program under section 381 of the Act and 34 CFR part 475, an SEA shall describe the types of projects appropriate for meeting the educational needs of adult migrant farm workers and immigrants under section 381 of the Act.

(Approved by the Office of Management and Budget under control number 1830–0026.)

(Authority: 20 U.S.C. 1203a(a)(1); 1204; 1205(c); 1206a(a)(2), (b)(1)(B), (c), (d); 1208; 1211(b)(3)(A); 1211a(a)(2); and 1213(a))

§ 461.13 What procedures does a State use to submit its State plan?

(a) An SEA shall submit its State plan to the Secretary not later than 90 days prior to the first program year for which the plan is in effect.

(b)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the State advisory council, if one is established under section 332 of the Act and § 461.50, an opportunity to review and comment on the plan.

(2) The SEA shall respond to all timely and substantive objections of the State advisory council and include with the State plan a copy of those objections and its response.

(c)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the following entities an opportunity to review and comment on the plan:

(i) The State board or agency for vocational education.

(ii) The State Job Training Coordinating Council under the Job Training Partnership Act.

(iii) The State board or agency for postsecondary education.

(2) Comments (to the extent those comments are received in a timely fashion) of entities listed in paragraph (c)(1) of this section and the SEA's

response must be included with the State plan.

(Approved by the Office of Management and Budget under control number 1830–0028.)

(Authority: 20 U.S.C. 1206(b) and 1206a(a)(3)(A) and (B))

§ 461.14 When are amendments to a State plan required?

(a) *General.* If an amendment to the State plan is necessary, the SEA shall submit the amendment to the Secretary not later than 90 days prior to the program year of operation to which the amendment applies.

(b) *Indicators of program quality.* Each SEA shall amend its plan by July 25, 1993, to include the indicators of program quality required by section 331 of the Act and § 461.3(b)(7). Cross-Reference: See 34 CFR 76.140–76.142 Amendments.

(Approved by the Office of Management and Budget under control number 1830–0028.)

(Authority: 20 U.S.C. 1207(a))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 461.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant according to the formula in section 313(b) of the Act.

(Authority: 20 U.S.C. 1201b(b))

§ 461.21 How does the Secretary make reallotments?

(a) Any amount of any State's allotment under section 313(b) of the Act that the Secretary determines is not required, for the period the allotment is available, for carrying out that State's plan, is reallotted to other States on dates that the Secretary may fix.

(b) The Secretary determines any amounts to be reallotted on the basis of—

(1) Reports, filed by the States, of the amounts required to carry out their State plans; and

(2) Other information available to the Secretary.

(c) Reallotments are made to other States in proportion to those State's original allotments for the fiscal year in which allotments originally were made, unless the Secretary reduces a State's proportionate share by the amount the Secretary estimates will exceed the sum the State needs and will be able to use under its plan.

(d) The total of any reductions made under paragraph (c) of this section is reallotted among those States whose proportionate shares were not reduced.

(e)(1) Any amount reallotted to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(2) A reallotment of funds from one State to another State does not extend the period of time in which the funds must be obligated.

(Authority: 20 U.S.C. 1201b(c))

§ 461.22 What criteria does the Secretary use in approving a State's description of efforts relating to program reviews and evaluations?

The Secretary considers the following criteria in approving a State's description of efforts relating to program reviews and evaluations under section 342(c)(13) of the Act and § 461.12(a)(15):

(a) The extent to which the State will have effective procedures for using the findings of program reviews and evaluations to identify, on a timely basis, those programs, services, and activities under the Act that are not meeting the educational goals set forth in the State plan and approved applications of eligible recipients.

(b) The adequacy of the State's procedures for effecting timely changes that will enable programs, services, and activities identified under paragraph (a) of this section to meet the educational goals in the State plan and approved applications of eligible recipients.

(c) The extent to which the State will continue to review those programs, activities, and services, and affect further changes as necessary to meet those educational goals.

(Approved by the Office of Management and Budget under control number 1830–0501.)

(Authority: 20 U.S.C. 1206a(c)(13) and 1207a)

§ 461.23 How does the Secretary approve State plans and amendments?

(a) The Secretary approves, within 60 days of receipt, a State plan or amendment that the Secretary determines complies with the applicable provisions of the Act and the regulations in this part.

(b) In approving a State plan or amendment, the Secretary considers any information submitted in accordance with § 461.13 (b) and (c).

(c) The Secretary notifies the SEA, in writing, of the granting or withholding of approval.

(d) The Secretary does not finally disapprove a State plan or amendment without first affording the State reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1206(b), 1206a(a)(3), and 1207(b))

Subpart D—How Does a State Make an Award to an Eligible Recipient?

§ 461.30 Who is eligible for a subgrant or contract?

(a) The following public or private nonprofit entities are eligible to apply to the SEA for an award:

(1) A local educational agency (LEA).

(2) A public or private nonprofit agency.

(3) A correctional education agency.

(4) A community-based organization.

(5) A postsecondary educational institution.

(6) An institution that serves educationally disadvantaged adults.

(7) Any other institution that has the ability to provide literacy services to adults and families.

(b) A public or private nonprofit entity listed in paragraph (a) of this section may apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(c)(1) Each State shall also use an amount of funds provided under this part, as determined by the State given the State's needs and resources for adult education, for competitive 2-year grants to public housing authorities for literacy programs and related activities. Any public housing authority that receives a grant under this paragraph shall consult with local adult education providers in conducting programs and activities with assistance provided under the grant. Any grant provided under this paragraph is referred to as a "Gateway Grant."

(2) For the purposes of this part, "public housing authority" means a public housing agency, as defined in 42 U.S.C. 1437a(b)(6), that participates in public housing, as defined in 42 U.S.C. 1437a(b)(1).

(Authority: 20 U.S.C. 1203a(a)(1), (2), (3)(A))

§ 461.31 How does a State award funds?

(a) In selecting local recipients, an SEA shall give preference to those local applicants that have demonstrated or can demonstrate a capability to recruit and serve educationally disadvantaged adults, particularly in areas with a high proportion of adults who do not have a certificate of graduation from a school providing secondary education or its equivalent.

(b) An SEA shall award funds on the basis of applications submitted by eligible recipients.

(c) In reviewing a local application, an SEA shall determine that the application contains the following:

(1) A description of current programs, activities, and services receiving assistance from Federal, State, and local sources that provide adult education in the geographic area proposed to be served by the applicant.

(2) A description of cooperative arrangements (including arrangements with business, industry, and volunteer literacy organizations as appropriate) that have been made to deliver services to adults.

(3) Assurances that the adult educational programs, services, or activities that the applicant proposes to provide are coordinated with and do not duplicate programs, services, or activities made available to adults under other Federal, State, and local programs, including the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act, the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Indian Education Act, the Higher Education Act of 1965, and the Domestic Volunteer Service Act.

(4) The projected goals of the applicant with respect to participant recruitment, retention, and educational achievement and how the applicant will measure and report progress in meeting its goals.

(5) Any other information the SEA considers necessary.

(d) In determining which programs receive assistance, the SEA shall consider—

(1) The past effectiveness of applicants in providing services (especially with respect to recruitment and retention of educationally disadvantaged adults and the learning gains demonstrated by those adults);

(2) The degree to which the applicant will coordinate and utilize other literacy and social services available in the community; and

(3) The commitment of the applicant to serve individuals in the community who are most in need of literacy services.

(e) In reviewing a local application, an SEA may consider the extent to which the application—

(1) Identifies the needs of the population proposed to be served by the applicant;

(2) Proposes activities that are designed to reach educationally disadvantaged adults;

(3) Describes a project that gives special emphasis to adult basic education;

(4) Describes adequate outreach activities, such as—

(i) Flexible schedules to accommodate the greatest number of adults who are educationally disadvantaged;

(ii) Location of facilities offering programs that are convenient to large concentrations of the adult populations identified by the State in its four-year State plan or how the locations of facilities will be convenient to public transportation; and

(iii) The availability of day care and transportation services to participants in the project;

(5) Describes proposed programs, activities, and services that address the identified needs;

(6) Describes the resources available to the applicant—other than Federal and State adult education funds—to meet those needs (for example, funds provided under the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act, the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Indian Education Act, the Higher Education Act of 1965, or the Domestic Volunteer Service Act, and local cash or in-kind contributions); and

(7) Describes project objectives that can be accomplished within the amount of the applicant's budget request.

(f) An SEA may not approve an application for a consortium that includes a for-profit agency, organization or institution unless the State has first determined that—

(1) The for-profit entity can make a significant contribution to attaining the objectives of the Act; and

(2) The public or private nonprofit agency, organization, or institution will enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(g) If an SEA awards funds to a consortium that includes a for-profit agency, organization, or institution, the award must be made directly to the public or private nonprofit agency, organization, or institution that applies on behalf of the consortium.

(Approved by the Office of Management and Budget under control number 1830–0501).

(Authority: 20 U.S.C. 1203a(a) and 1206a(c)(4))

§ 461.32 What are programs for corrections education and education for other institutionalized adults?

(a) An SEA shall use not less than 10 percent of its grant for educational programs for criminal offenders in corrections institutions and for other institutionalized adults. Those programs may include—

(1) Academic programs for—(i) Basic education with special emphasis on reading, writing, vocabulary, and arithmetic;

(ii) Special education, as defined by State law;

(iii) Bilingual education or English-as-a-second-language instruction; and

(iv) Secondary school credit;

(2) Vocational training programs;

(3) Library development and library service programs;

(4) Corrections education programs, including training for teacher personnel specializing in corrections education, such as courses in social education, basis skills instruction, and abnormal psychology;

(5) Guidance and counseling programs;

(6) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after their release; and

(7) Cooperative programs with educational institutions, community-based organizations of demonstrated effectiveness, and the private sector, that are designed to provide education and training.

(b)(1) An SEA shall establish its own statewide criteria and priorities for administering programs for corrections education and education for other institutionalized adults.

(2) The SEA shall determine that an application proposing a project under paragraph (a) of this section contains the information in § 461.31(c) and any other information the SEA considers necessary.

(Authority: 20 U.S.C. 1203a(b)(1) and 1204)

§ 461.33 What are special experimental demonstration projects and teacher training projects?

(a) In accordance with paragraph (b) of this section, an SEA shall use at least 15 percent of its grant for—

(1) Special projects that—(i) Will be carried out in furtherance of the purposes of the Act;

(ii) Will be coordinated with other programs funded under the Act; and

(iii)(A) Involve the use of innovative methods (including methods for educating adults with disabilities, homeless adults, and adults of limited English proficiency), systems, materials, or programs that may have national significance or will be of special value in promoting effective programs under the Act; or

(B) Involve programs of adult education, including education for adults with disabilities, homeless adults, and adults of limited English proficiency, that are part of community school programs, carried out in cooperation with other Federal, State, or local programs that have unusual promise in promoting a comprehensive

or coordinated approach to the problems of adults with educational deficiencies; and

(2)(i) Training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act; and

(ii) Training professional teachers, volunteers, and administrators, with particular emphasis on—

(A) Training— (*1*) Full-time professional adult educators;

(*2*) Minority adult educators; and

(*3*) Educators of adults with limited English proficiency; and

(B) Training teachers to recognize and more effectively serve illiterate individuals with learning disabilities and individuals who have reading ability below the fifth grade level.

(b) An SEA shall use at least—

(1) 10 percent of its grant for the purposes in paragraph (a)(2) of this section; and

(2) Five percent of its grant for the purposes in paragraph (a)(1) or (a)(2) of this section, or both.

(c)(1) An SEA shall establish its own statewide criteria and priorities for providing and administering special experimental demonstration projects and teacher training projects.

(2) The SEA shall determine that an application proposing a project under paragraph (a) of this section contains—

(i) The information in § 461.31(c); and

(ii) Any other information the SEA considers necessary.

(Authority: 20 U.S.C. 1208)

Subpart E—What Conditions Must be Met by a State?

§ 461.40 What are the State and local administrative costs requirements?

(a)(1) Beginning with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation), an SEA may use no more than 5 percent of its grant or $50,000—whichever is greater—for necessary and reasonable State administrative costs.

(2) For grants awarded from funds appropriated for fiscal years prior to fiscal year 1991 (grants awarded before July 1, 1991), an SEA may determine what percent of its grant is necessary and reasonable for State administrative costs.

(b)(1) At least 95 percent of an eligible recipient's award from the SEA must be expended for adult education instructional activities.

(2) The remainder may be used for local administrative costs— noninstructional expenses, including planning, administration, evaluation, personnel development, and coordination—that are necessary and reasonable.

(3) If the administrative cost limits under paragraph (b)(2) of this section are insufficient for adequate planning, administration, evaluation, personnel development, and coordination of programs supported under the Act, the SEA shall negotiate with local grant recipients in order to determine an adequate level of funds to be used for noninstructional purposes.

(Authority: 20 U.S.C. 1203b and 1205(c))

§ 461.41 What are the cost-sharing requirements?

(a) The Federal share of expenditures made under a State plan for any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico may not exceed—

(1) 90 percent of the costs of programs carried out with the fiscal year 1988 grant (a grant that is awarded on or after July 1, 1988 from funds appropriated in the fiscal year 1988 appropriation);

(2) 90 percent of the costs of programs carried out with the fiscal year 1989 (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation);

(3) 85 percent of the costs of programs carried out with the fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation);

(4) 80 percent of the costs of programs carried out with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation); and

(5) 75 percent of the costs of programs carried out with the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) and from each grant thereafter.

(b) The Federal share for American Samoa, Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Virgin Islands is 100 percent.

(c) The Secretary determines the non-Federal share of expenditures under the State plan by considering—

(1) Expenditures from State, local, and other non-Federal sources for programs, services, and activities of adult education, as defined in the Act, made by public or private entities that receive from the State Federal funds made available under the Act or State funds for adult education; and

(2) Expenditures made directly by the State for programs, services, and activities of adult education as defined in the Act.

(Authority: 20 U.S.C. 1209(a); 48 U.S.C. 1681)

§ 461.42 What is the maintenance of effort requirement?

(a) *Basic standard.* (1)(i) Except as provided in § 461.43, a State is eligible for a grant from appropriations for any fiscal year only if the Secretary determines that the State has expended for adult education from non-Federal sources during the second preceding fiscal year (or program year) an amount not less than the amount expended during the third preceding fiscal year (or program year).

(ii) The Secretary determines maintenance of effort on a per student expenditure basis or on a total expenditure basis.

(2) For purposes of determining maintenance of effort, the "second preceding fiscal year (or program year)" is the fiscal year (or program year) two years prior to the year of the grant for which the Secretary is determining the State's eligibility. The "third preceding fiscal year (or program year)" is the fiscal year (or program year) three years prior to the year of the grant for which the Secretary is determining the State's eligibility.

Example

Computation based on fiscal year. If a State chooses to use the fiscal year as the basis for its maintenance of effort computations, the Secretary determines whether a State is eligible for the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) by comparing expenditures from the second preceding fiscal year—fiscal year 1990 (October 1, 1989–September 30, 1990)—with expenditures from the third preceding fiscal year—fiscal year 1989 (October 1, 1988–September 30, 1989). If there has been no decrease in expenditures from fiscal year 1989 to fiscal year 1990, the State has maintained effort and is eligible for its fiscal year 1992 grant.

Computation based on program year. If a State chooses to use a program year running from July 1 to June 30 as the basis for its maintenance of effort computation, the Secretary determines whether a State is eligible for funds for the fiscal year 1992 grant by comparing expenditures from the second preceding program year—program year 1990 (July 1, 1989–June 30, 1990)—with expenditures from the third preceding program year—program year 1989 (July

1, 1988–June 30, 1989). If there has been no decrease in expenditures from program year 1989 to program year 1990, the State has maintained effort and is eligible for its fiscal year 1992 grant.

(b) *Expenditures to be considered.* In determining a State's compliance with the maintenance of effort requirement, the Secretary considers the expenditures described in § 461.41(c).

(Authority: 20 U.S.C. 1209(b))

§ 461.43 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive, for one year only, the maintenance of effort requirement in § 461.42 if the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(b) The Secretary does not consider a tax initiative or referendum to be an exceptional or uncontrollable circumstance.

(Authority: 20 U.S.C. 1209(b)(2))

§ 461.44 How does a State request a waiver of the maintenance of effort requirement?

An SEA seeking a waiver of the maintenance of effort requirement in § 461.42 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—(1) The reason for the request; and

(2) Any additional information the Secretary may require.

(Approved by the Office of Management and Budget under control number 1830–0501.)

(Authority: 20 U.S.C. 1209(b)(2))

§ 461.45 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant from appropriations for a fiscal year, the Secretary determines whether the State has meet that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for adult education from non-Federal sources in the second preceding fiscal year (or program year) with the amount spent in the fourth preceding fiscal year (or program year.)

Example

Because exceptional or uncontrollable circumstances prevented a State from maintaining effort in fiscal year 1990 (October 1, 1989–September 30, 1990) or in program year 1990 (July 1, 1989–June 30, 1990) at the level of fiscal year 1989 (October 1, 1988–September 30, 1989) or program year 1989 (July 1, 1988–June 30, 1989), respectively, the Secretary grants the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation). In order to determine whether a State has met the maintenance of effort requirement and therefore is eligible to receive its fiscal year 1993 grant (the grant to be awarded for the year after the year of the waiver), the Secretary compares the State's expenditures from the second preceding fiscal year (or program year—fiscal year 1991 (October 1, 1990–September 30, 1991) or program year 1991 (July 1, 1990–June 30, 1991)—with expenditures from the fourth preceding fiscal year—fiscal year 1989 (October 1, 1988–September 30, 1989) or program year 1989 (July 1, 1988–June 30, 1989). If the expenditures from fiscal year (or program year) 1991 are not less than the expenditures from fiscal year (or program year) 1989, the State has maintained effort and is eligible for its fiscal year 1993 grant.

(Authority: 20 U.S.C. 1209(b)(2))

§ 461.46 What requirements for program reviews and evaluations must be met by a State?

(a) An SEA shall provide for program reviews and evaluations of all State-administered adult education programs, services, and activities it assists under the Act. The SEA shall use its program reviews and evaluations to assist LEAs and other recipients of funds in planning and operating the best possible programs of adult education and to improve the State's programs of adult education.

(b) In reviewing programs, an SEA shall, during the four-year period of the State plan, gather and analyze data—including standardized test data—on the effectiveness of State-administered adult education programs, services, and activities to determine the extent to which—

(1) The State's adult education programs are achieving the goals in the State plan, including the goal of serving educationally disadvantaged adults; and

(2) Grant recipients have improved their capacity to achieve the purposes of the Act.

(c)(1) An SEA shall, each year during the four-year period of the State plan, evaluate in qualitative and quantitative terms the effectiveness of programs, services, and activities conducted by at least 20 percent of the local recipients of funds so that at the end of that period 80 percent of all local recipients have been evaluated once.

(2) An evaluation must consider the following factors:

(i) Projected goals of the recipient as described in its application pursuant to section 322(a)(4) of the Act and § 461.31(c)(4).

(ii) Planning and content of the programs, services, and activities.

(iii) Curriculum, instructional materials, and equipment.

(iv) Adequacy and qualifications of all personnel.

(v) Achievement of the goals set forth in the State plan.

(vi) Extent to which educationally disadvantaged adults are being served.

(vii) Extent to which local recipients of funds have improved their capacity to achieve the purposes of the Act.

(viii) Success of the recipient in meeting the State's indicators of program quality after those indicators are developed as required by section 331(a)(2) of the Act and § 461.3(b)(7).

(ix) Other factors that affect program operations, as determined by the SEA.

(d)(1) Within 90 days of the close of each program year, the SEA shall submit to the Secretary and make public within the State the following:

(i) With respect to local recipients—

(A) The number and percentage of local educational agencies, community-based organizations, volunteer groups, and other organizations that are grant recipients;

(B) The amount of funds provided to local educational agencies, community-based organizations, volunteer groups, and other organizations that are grant recipients; and

(C) The results of the evaluations carried out as required by paragraph (c)(1) of this section in the year preceding the year for which the data are submitted.

(ii) The information required under § 461.10(b)(10).

(iii) A report on the SEA's activities under paragraph (b) of this section.

(iv) A report on the SEA's activities under paragraph (c) of this section.

(2) The reports described in paragraphs (d)(1)(ii) and (iii) of this section must include—

(i) The results of any program reviews and evaluations performed during the program year, and a description of how the SEA used the program reviews and evaluation process to make necessary changes to improve programs; and

(ii) The comments and recommendations of the State advisory

council, if a council has been established under § 461.50.

(e) If an SEA has established a State advisory council, the SEA shall—

(1) Obtain approval of the plan for program reviews and evaluation from the State advisory council; and

(2) Inform the State advisory council of the results of program reviews and evaluations so that the State advisory council may perform its duties under section 332(f)(7) of the Act.

Note to § 461.40: In addition to the Adult Education State-administered Basic Grant Program in this part 461, State-administered adult education programs include the State-administered Workplace Literacy Program (See 34 CFR part 462) and the State-administered English Literacy Program (See 34 CFR part 463).

(Approved by the Office of Management and Budget under control number 1830-0501.)

(Authority: 20 U.S.C. 1205a(f)(7) and 1207a)

Subpart F—What are the Administrative Responsibilities of a State?

§ 461.50 What are a State's responsibilities regarding a State advisory council on adult education and literacy?

(a) A State that receives funds under section 313 of the Act may—

(1) Establish a State advisory council on adult education and literacy; or

(2) Designate an existing body as the State advisory council.

(b) If a State elects to establish or designate a State advisory council on adult education, the following provisions apply:

(1) The State advisory council must comply with §§ 461.51 and 461.52.

(2) Members to the State advisory council must be appointed by, and be responsible to, the Governor. The Governor shall appoint members in accordance with section 332(e) of the Act.

(3) Costs incurred for a State advisory council that are paid for with funds under this part must be counted as part of the allowable State administrative costs under the Act.

(4) The Governor of the State shall determine the amount of funding available to a State advisory council.

(5) A State advisory council's staffing may include professional, technical, and clerical personnel as may be necessary to enable the council to carry out its functions under the Act.

(6) Members of a State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law and regulations and State practices applicable to persons performing comparable duties and services.

(Authority: 20 U.S.C. 1205a(a)(1), (d)(1), (e))

§ 461.51 What are the membership requirements of a State advisory council?

(a)(1) The membership of a State advisory council must be broadly representative of citizens and groups within the State having an interest in adult education and literacy. The council must consist of—

(i) Representatives of public education;

(ii) Representatives of private and public sector employment;

(iii) Representatives of recognized State labor organizations;

(iv) Representatives of private literacy organizations, voluntary literacy organizations, and community-based literacy organizations;

(v) The Governor of a State, or the designee of the Governor;

(vi) Representatives of—

(A) The SEA;

(B) The State job training agency;

(C) The State human services agency;

(D) The State public assistance agency;

(E) The State library program; and

(F) The State economic development agency;

(vii) Officers of the State government whose agencies provide funding for literacy services or who may be designated by the Governor or the Chairperson of the council to serve whenever matters within the jurisdiction of the agency headed by such an officer are to be considered by the council; and

(viii) Classroom teachers who have demonstrated outstanding results in teaching children or adults to read.

(2) The State shall ensure that there is appropriate representation on the State advisory council of—

(i) Urban and rural areas;

(ii) Women;

(iii) Persons with disabilities; and

(iv) Racial and ethnic minorities.

(b)(1) A State shall certify to the Secretary the establishment of, and membership of, its State advisory council.

(2) The certification must be submitted to the Secretary prior to the beginning of any program year in which the State desires to receive a grant under the Act.

(c) Members must be appointed for fixed and staggered terms and may serve until their successors are appointed. Any vacancy in the membership of the council must be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council.

(Approved by the Office of Management and Budget under control number 1830-0501.)

(Authority: 20 U.S.C. 1205a (a)(1), (b), (c), and (e))

§ 461.52 What are the responsibilities of a State advisory council?

(a) Subject to paragraphs (b) and (c) of this section, the State advisory council shall determine its own procedures, staffing needs (subject to funding levels authorized by the Governor of the State), and the number, time, place, and conduct of meetings.

(b) The State advisory council shall meet at least four times each year. At least one of those meetings must provide an opportunity for the genral public to express views concerning adult education in the State.

(c) One member more than one-half of the members on the council constitute a quorum for the purpose of transmitting recommendations and proposals to the Governor of the State, but a lesser number of members may constitute a quorum for other purposes.

(d) A state advisory council shall—(1) Meet with the State agencies responsible for literacy training during the planning year to advise on the development of a State plan for literacy and for adult education that fulfills the literacy and adult educations needs of the State, especially with respect to the needs of the labor market, economic development goals, and the needs of the individuals in the State;

(2) Advise the Governor, the SEA, and other State agencies concerning—

(i) The development and implementation of measurable State literacy and adult education goals consistent with section 342(c)(2) of the Act, especially with respect to—

(A) Improving levels of literacy in the State by ensuring that all appropriate State agencies have specific objectives and strategies for those goals in a comprehensive approach;

(B) Improving literacy programs in the State; and

(C) Fulfilling the long-term literacy goals of the State;

(ii) The coordination and monitoring of State literacy training programs in order to progress toward the long-term literacy goals of the State;

(iii) The improvement of the quality of literacy programs in the State by supporting the integration of services, staff training, and technology-based learning and the integration of resources of literacy programs conducted by various agencies of State government; and

(iv) Private sector initiatives that would improve adult education

programs and literacy programs, especially through public-private partnerships;

(3) Review and comment on the plan submitted pursuant to section 356(h) of the Act and submit those comments to the Secretary;

(4) Measure progress on meeting the goals and objectives established pursuant to paragraph (d)(2)(i) of this section;

(5) Recommend model systems for implementing and coordinating State literacy programs for replication at the local level;

(6) Develop reporting requirements, standards for outcomes, performance measures, and program effectiveness in State program that are consistent with those proposed by the Federal Interagency Task Force on Literacy; and

(7)(i) Approve the plan for the program reviews and evaluations required in section 352 of the Act and § 461.46 and participate in implementing and disseminating the program reviews and evaluations. In approving the plan for the program reviews and evaluations, the State advisory council shall ensure that persons knowledgeable of the daily operation of adult education programs are involved;

(ii) Advise the Governor, the State legislature, and the general public of the State with respect to the findings of the program reviews and evaluations; and

(iii) Include in any reports of the program reviews and evaluations the council's comments and recommendations.

(Approved by the Office of Management and Budget under control number 1830–0501.)

(Authority: 20 U.S.C. 1205a (d) and (f), 1206a(a)(3)(B))

§ 461.53 May a State establish an advisory body other than a State advisory council?

(a) A State may establish an advisory body that is funded solely from non-Federal sources.

(b) The advisory body described in paragraph (a) of this section is not required to comply with the requirements of section 332 of the Act and this part.

(c) The non-Federal funds used to support the advisory body may not be included in the non-Federal share of expenditures described in § 461.41(c).

(Authority: 20 U.S.C. 1205a and 1209)

PART 462—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM

7. The authority citation for part 462 continues to read as follows:

Authority: 20 U.S.C. 1211a(b), unless otherwise noted.

8. Section 462.50 is amended by revising paragraph (d) to read as follows:

§ 462.50 What other requirements must be met under this program?

* * * * *

(d) An award under this program may be used to pay—

(1) 100 percent of the administrative costs incurred in establishing a project during the start-up period under paragraph (e) of this section by an SEA, LEA, or other entity described in § 462.30(a), that receives a grant or subgrant under this part; and

(2) 70 percent of the costs of a project after the start-up period.

* * * * *

9. A new part 464 is added to read as follows:

PART 464—STATE LITERACY RESOURCE CENTERS PROGRAM

Subpart A—General

Sec.

464.1 What is the State Literacy Resource Centers Program?
464.2 Who is eligible for a grant?
464.3 What kinds of activities may be assisted?
464.4 What regulations apply?
464.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

464.10 How do States apply?
464.11 What must an application contain?
464.12 How may States agree to develop a regional center?

Subpart C—How Does the Secretary Make a Grant to a State?

464.20 What payment does the Secretary make?
464.21 May the Secretary require a State to participate in a regional center?
464.22 May a State participating in a regional center use part of its allotment for a State center?

Subpart D—How Does a State Award Contracts?

464.30 With whom must a State contract to establish a State literacy resource center?
464.31 Who may not review a proposal for a contract?
464.32 How is a regional literacy resource center established and operated?

Subpart E—What Post-Award Conditions Must Be Met by a State?

464.40 May a State use funds to establish a State advisory council?
464.41 What alternative uses may be made of equipment?
464.42 What limit applies to purchasing computer hardware and software?

Authority: 20 U.S.C. 1208aa, unless otherwise noted.

Subpart A—General

§ 464.1 What is the State Literacy Resource Centers Program?

The State Literacy Resource Centers Program assists State and local public and private nonprofit efforts to eliminate illiteracy through a program of State literacy resource center grants to—

(a) Stimulate the coordination of literacy services;

(b) Enhance the capacity of State and local organizations to provide literacy services; and

(c) Serve as a reciprocal link between the National Institute for Literacy and service providers for the purpose of sharing information, data, research, and expertise and literacy resources.

(Authority: 20 U.S.C. 1208aa(a))

§ 464.2 Who is eligible for a grant?

States are eligible to receive grants under this part.

(Authority: 20 U.S.C. 1208aa(c))

§ 464.3 What kinds of activities may be assisted?

(a) The Secretary makes grants under this part for purposes of establishing a network of State or regional adult literacy resource centers.

(b) Each State shall use funds provided under this part to conduct activities to—

(1) Improve and promote the diffusion and adoption of state-of-the-art teaching methods, technologies, and program evaluations;

(2) Develop innovative approaches to the coordination of literacy services within and among States and with the Federal government;

(3) Assist public and private agencies in coordinating the delivery of literacy services;

(4) Encourage government and industry partnerships, including partnerships with small businesses, private nonprofit organizations, and community-based organizations;

(5) Encourage innovation and experimentation in literacy activities that will enhance the delivery of literacy services and address emerging problems;

(6) Provide technical and policy assistance to State and local governments and service providers to improve literacy policy and programs and access to those programs;

(7) Provide training and technical assistance to literacy instructors in reading instruction and in—

(i) Selecting and making the most effective use of state-of-the-art

methodologies, instructional materials, and technologies such as—

(A) Computer-assisted instruction;

(B) Video tapes;

(C) Interactive systems; and

(D) Data link systems; or

(ii) Assessing learning style, screening for learning disabilities, and providing individualized remedial reading instruction; or

(8) Encourage and facilitate the training of full-time professional adult educators.

(Authority: 20 U.S.C. 1208aa(b), (d))

§ 464.4 What regulations apply?

The following regulations apply to the State Literacy Resource Centers Program:

(a) The regulations in this part 464.

(b) The regulations in 34 CFR part 460.

(Authority: 20 U.S.C. 1208aa)

§ 464.5 What definitions apply?

The definitions in 34 CFR part 460 apply to this part.

(Authority: 20 U.S.C. 1208aa)

Subpart B—How Does a State Apply for a Grant?

§ 464.10 How do States apply?

(a) The Governor of a State may submit an application to the Secretary for a grant for a State adult literacy resource center.

(b) The Governors of a group of States may submit an application to the Secretary for a grant for a regional adult literacy resource center.

(c) A State may apply for and receive both a grant for a State adult literacy resource center and, as part of a group of States, a grant for a regional adult literacy resource center.

(d) If appropriate, a State shall obtain the review and comments of the State council on the application.

(e) An approved application remains in effect during the period of the State plan under 34 CFR part 461.

(f) Through a notice published in the Federal Register, the Secretary sets an annual deadline before which a State may submit a new application or an amendment to its existing application.

(Authority: 20 U.S.C. 1208aa(h))

§ 464.11 What must an application contain?

An application must describe how the State or group of States will—

(a) Develop a literacy resource center or expand an existing literacy resource center;

(b) Provide services and activities with the assistance provided under this part;

(c) Ensure access to services of the center for the maximum participation of all public and private programs and organizations providing or seeking to provide basic skills instruction, including local educational agencies, agencies responsible for corrections education, service delivery areas under the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations;

(d) Address the measurable goals for improving literacy levels as set forth in the plan submitted under section 342 of the Act; and

(e) Develop procedures for the coordination of literacy activities for statewide and local literacy efforts conducted by public and private organizations, and for enhancing the systems of service delivery.

(Approved by the Office of Management and Budget under control number 1830–0501)

(Authority: 20 U.S.C. 1208aa(h))

§ 464.12 How may States agree to develop a regional center?

A group of States may enter into an interstate agreement to develop and operate a regional adult literacy resource center for purposes of receiving assistance under this part if the States determine that a regional approach is more appropriate for their situation.

(Authority: 20 U.S.C. 1208aa(j)(1))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 464.20 What payment does the Secretary make?

(a)(1) From sums available for purposes of making grants under this part for any fiscal year, the Secretary allots to each State, that has an application approved under §§ 464.10–464.11, an amount that bears the same ratio to those sums as the amount allotted to the State under section 313(b) of the Act for the purpose of making grants under section 321 of the Act bears to the aggregate amount allotted to all States under that section for that purpose.

(2) In applying the formula in section 313(b) of the Act to calculate grants under this part, the Secretary counts the number of adults only in States that have approved applications under this part.

(b)(1) The Secretary pays to each State the Federal share of the cost of activities described in the application.

(2) For purposes of this section, the Federal share—

(i) For each of the first two fiscal years in which the State receives funds under this part, may not exceed 80 percent;

(ii) For each of the third and fourth fiscal years in which the State receives funds under this part, may not exceed 70 percent; and

(iii) For the fifth and each succeeding year in which the State receives funds under this part, may not exceed 60 percent.

(3) If a State receives funds under this part for participation in a regional center, the State is required to provide only 50 percent of the non-Federal share under paragraph (b)(2) of this section.

(4) The non-Federal share of payments under this section may, in accordance with 34 CFR 80.24, be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(Authority: 20 U.S.C. 1208aa(c)(1), (i), (j)(2))

§ 464.21 May the Secretary require a State to participate in a regional center?

(a) If, in any fiscal year, a State's allotment under this part is less than $100,000, the Secretary may designate that State to receive the funds only as part of a regional center.

(b) Paragraph (a) of this section does not apply to a State—

(1) That demonstrates, in its application to the Secretary, that the total amount of Federal, State, local, and private funds expended to carry out the purposes of this part would equal or exceed $100,000; or

(2) That will use its funds to expand an existing State literacy resource center that meets the purposes of the Act and the requirements in this part.

(Authority: 20 U.S.C. 1208aa(i)(3), (4))

§ 464.22 May a State participating in a regional center use part of its allotment for a State center?

In any fiscal year in which § 464.20(b)(3) applies, the Secretary may allow certain States that receive funds as part of a regional center to reserve a portion of those funds for a State adult literacy resource center under this part.

(Authority: 20 U.S.C. 1208aa(j)(5))

Subpart D—How Does a State Award Contracts?

§ 464.30 With whom must a State contract to establish a State literacy resource center?

(a) To establish a new State literacy resource center, the Governor of each State that receives funds under this part shall contract on a competitive basis with—

(1) The SEA;

(2) One or more local educational agencies;

(3) A State office on literacy;
(4) A volunteer organization;
(5) A community-based organization;
(6) An institution of higher education; or
(7) Another non-profit entity.

(b) Paragraph (a) of this section does not apply to funds under this part that a State uses to expand an existing State literacy resource center.

(Authority: 20 U.S.C. 1208aa(c)(2))

§ 464.31 Who may not review a proposal for a contract?

A party participating in a competition under § 464.30 may not review its own proposal for a contract or any proposal of a competitor for that contract.

(Authority: 20 U.S.C. 1208aa(c)(2))

§ 464.32 How is a regional literacy resource center established and operated?

(a) The States that participate in a regional literacy resource center shall agree on how the center is to be established and operated.

(b) Subject to the requirements of the Act and the regulations in this part, the States have discretion to determine how to establish and operate the regional center.

(Authority: 20 U.S.C. 1208aa (h) and (j))

Subpart E—What Post-Award Conditions Must Be Met by a State?

§ 464.40 May a State use funds to establish a State advisory council?

(a) Each State receiving funds under this part may use up to five percent of those funds—

(1) To establish and support a State advisory council on adult education and literacy under section 332 of the Act and 34 CFR 461.50–461.52; or

(2) To support an established State council to the extent that the State council meets the requirements of section 332 of the Act and 34 CFR 461.50–461.52.

(b) Each State receiving funds under this section to establish or support a State council under section 332 of the Act shall provide matching funds on a dollar-for-dollar basis.

(Authority: 20 U.S.C. 1208aa(g))

§ 464.41 What alternative uses may be made of equipment?

Equipment purchased under this part, when not being used to carry out the provisions of this part, may be used for other instructional purposes if—

(a) The acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under this part;

(b) The equipment is used after regular program hours or on weekends; and

(c) The other use is—

(1) Incidental to the use of the equipment under this part;

(2) Does not interfere with the use of the equipment under this part; and

(3) Does not add to the cost of using the equipment under this part.

(Authority: 20 U.S.C. 1208aa(e))

§ 464.42 What limit applies to purchasing computer hardware and software?

Not more than ten percent of funds received under any grant under this part may be used to purchase computer hardware or software.

(Authority: 20 U.S.C. 1208aa(f))

PART 472—NATIONAL WORKPLACE LITERACY PROGRAM

10. The authority citation for part 472 continues to read as follows:

Authority: 20 U.S.C. 1211(a), unless otherwise noted.

11. Section 472.20 is amended by adding a new paragraph (c), to read as follows:

§ 472.20 What priorities may the Secretary establish?

* * * * *

(c) In making awards under this part, the Secretary gives priority to applications from partnerships that include small businesses.

* * * * *

12. Section 472.30 is amended by removing and reserving paragraph (c) and by revising paragraph (d) to read as follows:

§ 472.30 What other requirements must be met under this program?

* * * * *

(c) [Reserved]

(d) An award under this program may be used to pay—

(1) 100 percent of the administrative costs incurred in establishing a project during the start-up period under paragraph (e) of this section by an SEA, LEA, or other entity described in § 472.2(a), that receives a grant under this part; and

(2) 70 percent of the costs of a project after the start-up period.

* * * * *

13. A new part 473 is added to read as follows:

PART 473—NATIONAL WORKFORCE LITERACY STRATEGIES PROGRAM

Subpart A—General

Sec.
473.1 What is the National Workforce Literacy Strategies Program?
473.2 Who is eligible for an award?
473.3 What activities may the Secretary fund?
473.4 What priorities does the Secretary establish?
473.5 What regulations apply?
473.6 What definitions apply?

Subpart B—How Does a Partnership Apply for an Award?

473.12 How does a partnership apply?

Subpart C—How Does the Secretary Make an Award?

473.20 How does the Secretary evaluate an application?
473.21 What selection criteria does the Secretary use?
473.22 What additional factors does the Secretary consider?
473.23 May the Secretary limit the design phase of a project?
473.24 May the Secretary limit the amount of funds for technology-based learning environments?
473.25 What is the Federal share of projects funded under this part?

Authority: 20 U.S.C. 1211, unless otherwise noted.

Subpart A—General

§ 473.1 What is the National Workforce Literacy Strategies Program?

In any fiscal year in which amounts appropriated pursuant to section 371(e) of the Act equal or exceed $25,000,000, the Secretary establishes a National Workforce Literacy Strategies Program to provide awards to assist unions, unions in collaboration with programs eligible for assistance under the Act and businesses, and small and medium-sized businesses, to facilitate the design and implementation of national strategies to effectively provide literacy and basic skills training to workers.

(Authority: 20 U.S.C. 1211(c)(1))

§ 473.2 Who is eligible for an award?

(a) Awards under this part are provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency (SEA), a local educational agency (LEA), an institution of higher education, or a school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Authority: 20 U.S.C. 1211(a)(1))

§ 473.3 What activities may the Secretary fund?

The Secretary provides awards under this part to establish large-scale national strategies in workforce literacy, which may include the following activities:

(a) Basic skills training that is—

(1) Cost-effective;

(2) Needed by employees; and

(3) Required by employers to establish a trainable workforce that can take advantage of further job-specific training and advance the productivity of the labor force on an individual, industry, or national level.

(b) Specific program offerings, which may include—

(1) English-as-a-second-language instruction;

(2) Communications skill building;

(3) Interpersonal skill building;

(4) Reading and writing skill building; and

(5) Computation and problem solving.

(c) Appropriate assessments of the literacy and basic skills needs of individual workers and the skill levels required by business.

(d) Cooperative arrangements with other organizations involved in providing literacy and basic skills training, including adult education organizations, vocational education organizations, community and junior colleges, community-based organizations, State-level agencies, and private industry councils.

(e) The establishment, as appropriate, of technology-based learning environments, such as computer-based learning centers.

(Authority: 20 U.S.C. 1211(c)(2))

§ 473.4 What priorities does the Secretary establish?

(a) In making awards under this part, the Secretary gives priority to applications from partnerships that include small businesses.

(b) Each year the Secretary may establish as a priority one or more of the types of projects described in paragraph (d) of this section.

(c) The Secretary announces these priorities in a notice published in the **Federal Register**.

(d) The Secretary may give priority to projects modeling a national strategy that—

(1) Is targeted to a business or industry type—

(i) That has been severely and adversely impacted by global competition; and

(ii) For whose workers basic skills training is expected to result in increased global competitiveness and productivity;

(2) Demonstrates new methods of involving workers in all aspects of program development, including project design, job task analysis, curriculum development, governance, and evaluation, that is integrated with team-based management or cross-training approaches to be used in the workplace; or

(3) Includes in project activities the identification, design, and testing of evaluation approaches and indicators that can relate learning gains to workplace outcomes such as increased employee readiness for promotion, and reductions in waste, turnover, and lost management time.

(Authority: 20 U.S.C. 1211(c))

§ 473.5 What regulations apply?

The following regulations apply to the National Workforce Literacy Strategies Program:

(a) The regulations in this part 473.

(b) The regulations in 34 CFR part 460.

(Authority: 20 U.S.C. 1211(c))

§ 473.6 What definitions apply?

(a) The definitions in 34 CFR 460.3 apply to this part.

(b) The definitions in 34 CFR part 472 also apply to this part.

(c) The following definitions also apply to this part:

Communications skills include not only speaking and listening in the context of work, but also communicating and receiving directions, presenting and interpreting work activities to other employees and supervisors, participating in meetings on quality, and giving and receiving information to and from customers.

Interpersonal skills include the ability to work with individuals with different backgrounds and to work as part of a team.

Problem solving includes mathematics and abilities in analysis, synthesis, sequencing, and decision-making.

(Authority: 20 U.S.C. 1211(c))

Subpart B—How Does a Partnership Apply for an Award?

§ 473.12 How does a partnership apply?

(a) Any partnership described in § 473.2 that desires to receive an award under this part shall submit an application to the Secretary.

(b)(1) The application must contain a plan—

(i) Specifying a strategy for designing and implementing workforce literacy and basic skills training for workers; and

(ii) Justifying the national, statewide, or industry-wide importance of this strategy.

(2) The application must include—

(i) A demonstration of need for literacy and basic skills training;

(ii) A description of the business or industry for which the strategy is to be established;

(iii) A statement of specific, measurable goals and participant outcomes;

(iv) A strategy for achieving the goals, including a description of the process to identify literacy and basic skills required by employers and the skills of individual workers, and a description of the specific services to be provided; and

(v) A description of the costs of the activities to be undertaken.

(Approved by the Office of Management and Budget under control number 1830–0512)

(Authority: 20 U.S.C. 1211(c)(3))

Subpart C—How Does the Secretary Make an Award?

§ 473.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 473.21.

(b) The Secretary awards up to 100 points for these criteria, including 10 points that the Secretary assigns in accordance with paragraph (d) of this section.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) For each competition under this part, the Secretary, in a notice published in the **Federal Register**, assigns 10 points among the criteria in § 473.21.

(Authority: 20 U.S.C. 1211(c))

§ 473.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to

determine the extent to which the project—

(1)(i) Will have a significant impact—

(A) On a workforce in a particular type of business or industry, such as textile manufacture or health care;

(B) On businesses and industries of a specific size, such as small businesses and industries; or

(C) On businesses and industries in a specific type of geographic area, such as urban or rural businesses and industries; or

(ii) Has an innovative approach, such as an interactive video curriculum or peer mentoring, that will provide a model that is replicable in other businesses or industries of a similar type, size, or geographic area;

(2) Demonstrates a strong relationship between instruction and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(3) Is targeted to adults with inadequate basic skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(4) Involves workers in designing and implementing the project and in evaluating its outcomes;

(5) Includes support services designed to overcome the barriers experienced by small and medium-sized businesses and their employees in participating in the project. Support services may include educational counseling, transportation, and child care during non-working hours while adult workers are participating in the project;

(6) Demonstrates the active commitment of all partners to accomplishing the goals of the project and the participant outcomes to be achieved; and

(7) Demonstrates the partnership's ability to continue the program when Federal funds are no longer available.

(b) *Extent of need for the project.* (12 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated national needs for workforce literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the national needs to be addressed by the project;

(3) How well those national needs will be met by the project;

(4) The benefits to adult workers and their businesses and industries that will result from meeting those national needs; and

(5) The extent to which the application demonstrates a relationship between the basic skills training to be provided to adult workers and subsequent job-specific training to be provided to those workers.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner that is an SEA, a local educational agency, an institution of higher education, or a school (including an area vocational school, an employment and training agency, or a community-based organization), unless transferring this activity to another partner is necessary and reasonable within the framework of the project.

(d) *Cooperative arrangements.* (5 points) The Secretary considers—

(1) The extent to which the project includes cooperative arrangements with organizations, other than partners, that are involved in providing literacy and basic skills training, including adult education organizations, vocational education organizations, community and junior colleges, community-based organizations, State level agencies, and private industry councils;

(2) The adequacy of the description of the roles of the organizations with whom these cooperative arrangements are made; and

(3) The extent to which the application demonstrates the active commitment of each of those organizations to accomplishing the goals of the project and the participant outcomes to be achieved.

(e) *Plan of operation.* (12 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project goals and participant outcomes—

(i) Will accomplish the purposes of the National Workforce Literacy Strategies program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended goals and participant outcomes;

(3) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;—

(ii) A description of the activities to be carried out by any contractors under the plan; and

(iii) A description of the respective roles, including any cash or in-kind contributions, of any organizations that are not members of the partnership;

(4) The quality of the applicant's plan to use resources and personnel to achieve the objectives, goals, and intended participant outcomes described in the application;

(5) The quality of the applicant's plan to effectively disseminate, on a national, State, or local level, promising practices developed and found successful during the project period; and

(6) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(f) *Applicant's experience and quality of key personnel.* (11 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to adult workers.

(2) The Secretary also reviews each application to determine the quality of key personnel that the applicant plans to use on the project, including—

(i) The qualifications of the project director, in relation to the purposes of the project;

(ii) The qualifications of each of the other key personnel, in relation to the purposes of the project;

(iii) The time that each person referred to in paragraphs (f)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers—

(i) Experience and training in fields related to the objectives, goals, and intended participant outcomes described in the application;

(ii) Experience and training in project management.

(g) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) Will be conducted by an independent evaluator;

(3) Will assess the impact of improving basic skills on workforce or industry productivity variables such as job turnover, attendance, waste or error rates, hourly production, and lost management time;

(4) Include formative evaluation activities to help assess student progress and program management and improve program operations;

(5) Are applied systematically throughout the project period and will determine how successful the project is in meeting its intended objectives, goals, and participant outcomes; and

(6) To the extent possible, are objective and produce data that are quantifiable.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the purposes of the project.

(Approved by the Office of Management and Budget under control number 1830–0512)

(Authority: 20 U.S.C. 1211(c))

§ 473.22 What additional factors does the Secretary consider?

In addition to the criteria in § 473.21, the Secretary may consider geographic factors, such as rural and urban areas and national distribution.

(Authority: 20 U.S.C. 1211(c)(7))

§ 473.23 May the Secretary limit the design phase of a project?

The Secretary may limit the design phase of a project to a reasonable period.

(Authority: 20 U.S.C. 1211(c))

§ 473.24 May the Secretary limit the amount of funds for technology-based learning environments?

The Secretary may limit the amount or percentage of an award, or the amounts or percentages of all awards in a fiscal year, that may be used for technology-based learning environments, including amounts for hardware and software.

(Authority: 20 U.S.C. 1211(c))

§ 473.25 What is the Federal share of projects funded under this part?

An award under this part may not exceed 70 percent of the cost of a project.

(Authority: 20 U.S.C. 1211(c)(2), (5))

14. A new part 489 is added to read as follows:

PART 489—FUNCTIONAL LITERACY FOR STATE AND LOCAL PRISONERS PROGRAM

Subpart A—General

Sec.

489.1 What is the Functional Literacy for State and Local Prisoners Program?
489.2 Who is eligible for a grant?
489.3 What activities may the Secretary fund?
489.4 What regulations apply?
489.5 What definitions apply?

Subpart B—How Does One Apply for a Grant?

489.10 How does an eligible entity apply for a grant?

Subpart C—How Does the Secretary Make an Award?

489.20 How does the Secretary evaluate an application?
489.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must be Met after an Award?

489.30 What annual report is required?

Authority: 20 U.S.C. 1211–2, unless otherwise noted.

Subpart A—General

§ 489.1 What is the Functional Literacy for State and Local Prisoners Program?

(a) The Secretary makes grants to eligible entities that elect to establish a demonstration or system-wide functional literacy program for adult prisoners, as described § 489.3.

(b) Grants under this part may be used for establishing, improving, expanding, or carrying out a program, and for developing the plans and submitting the reports required by this part.

(Authority: 20 U.S.C. 1211–2(a), (d)(1))

§ 489.2 Who is eligible for a grant?

A State correctional agency, a local correctional agency, a State correctional education agency, or a local correctional education agency is eligible for a grant under this part.

(Authority: 20 U.S.C. 1211–2(f)(1))

§ 489.3 What activities may the Secretary fund?

(a) To qualify for funding under § 489.1, a functional literacy program must—.

(1) To the extent possible, make use of advanced technologies, such as interactive video- and computer-based adult literacy learning: and

(2) Include—

(i) A requirement that each person incarcerated in the system, prison, jail, or detention center who is not functionally literate, except a person described in paragraph (b) of this section, shall participate in the program until the person—

(A) Achieves functional literacy, or in the case of an individual with a disability, achieves a level of functional literacy commensurate with his or her ability;

(B) Is granted parole;

(C) Completes his or her sentence; or

(D) Is released pursuant to court order; and

(ii) A prohibition on granting parole to any person described in paragraph (a)(2)(i) of this section who refuses to participate in the program, unless the State parole board determines that the prohibition should be waived in a particular case; and

(iii) Adequate opportunities for appropriate education services and the screening and testing of all inmates for functional literacy and disabilities affecting functional literacy, including learning disabilities, upon arrival in the system or at the prison, jail, or detention center.

(b) The requirement of paragraph (a)(2)(i) does not apply to a person who—

(1) Is serving a life sentence without possibility of parole;

(2) Is terminally ill; or

(3) Is under a sentence of death.

(Authority: 20 U.S.C. 1211–2(b))

§ 489.4 What regulations apply?

The following regulations apply to the Functional Literacy for State and Local Prisoners Program:

(a) The regulations in this part 489.

(b) The regulations in 34 CFR 460.3.

(Authority: 20 U.S.C. 1211–2)

§ 489.5 What definitions apply?

(a) The definitions in 34 CFR 460.4 apply to this part.

(b) As used in this part—

Functional literacy means at least an eighth grade equivalence, or a functional criterion score, on a nationally recognized literacy assessment.

Local correctional agency means any agency of local government that

provides corrections services to incarcerated adults.

Local correctional education agency means any agency of local government, other than a local correctional agency, that provides educational services to incarcerated adults.

State correctional agency means any agency of State government that provides corrections services to incarcerated adults.

State correctional education agency means any agency of State government, other than a State correctional agency, that provides educational services to incarcerated adults.

(Authority: 20 U.S.C. 1211–2(f)(2))

Subpart B—How Does One Apply for a Grant?

§ 489.10 How does an eligible entity apply for a grant?

An eligible entity may receive a grant under this part if the entity submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including, but not limited to, the following:

(a) An assurance that the entity will provide the Secretary such data as the Secretary may request concerning the cost and feasibility of operating the functional literacy programs authorized by § 489.1(a), including the annual reports required by § 489.30.

(b) A detailed plan outlining the methods by which the provisions of §§ 489.1 and 489.3 will be met, including specific goals and timetables. (Approved by the Office of Management and Budget under control number 1830–0512.)

(Authority: 20 U.S.C. 1211–2(d)(2))

Subpart C—How Does the Secretary Make an Award?

§ 489.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 489.21.

(b) The Secretary awards up to 100 points for these criteria, including 15 points that the Secretary assigns in accordance with paragraph (d) of this section.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) For each competition under this part, the Secretary, in a notice published in the **Federal Register**, assigns 15 points among the criteria in § 489.21.

(Authority: 20 U.S.C. 1211–2)

§ 489.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews the application to determine the quality of the proposed project, including the extent to which the application includes—

(1) A clear description of the services to be offered;

(2) A complete description of the methodology to be used, including a thorough assessment of all offenders in the system and assessments necessary to identify offenders with disabilities affecting functional literacy;

(3) Flexibility in the manner that services are offered, including the provision of accessible class schedules;

(4) A strong relationship between skills taught and the literacy and skill requirements of the changing workplace; and

(5) An innovative approach, such as interactive video curriculum or peer tutoring that will provide a model that is replicable in other correctional facilities of a similar type or size; and

(6) Staff in-service education.

(b) *Educational significance.* (15 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of functional literacy;

(2) To use unique and innovative techniques to produce benefits that address functional literacy problems and needs that are of national significance; and

(3) To demonstrate how well those national needs will be met by the project.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including an assessment of the effectiveness of the project in improving functional literacy of prisoners. To the extent feasible, the assessment must include a one-year post-release review, during the grant period, to measure the success of the project with respect to those prisoners who received services and were released. The assessment must involve comparison of the project to other existing education and training programs or no treatment for individuals, as appropriate. The evaluation must be designed to produce findings that, if positive and significant, can be used in submission of an application to the Department's Program Effectiveness Panel. To assess program effectiveness, consideration may be given to implementing a random assignment evaluation design. (Review criteria for the Program Effectiveness Panel are provided in 34 CFR 786.12.);

(3) Provide for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects;

(4) Include formative evaluation activities to help assess program management and improve program operations; and

(5) To the extent possible, are objective and produce data that are quantifiable.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (5 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the objectives and planned outcomes of the project, of the project director;

(ii) The qualifications, in relation to the objectives and planned outcomes of the project, of each of the other key personnel to be used in the project, including any third-party evaluator;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers experience and training in project management and in fields related to the objectives and planned outcomes of the project.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the applicant's commitment to the project, including the extent to which—

(i) Non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) The applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends. (Approved by the Office of Management and Budget under control number 1830–0512)

(Authority: 20 U.S.C. 1211–2)

Subpart D—What Conditions Must be Met after an Award?

§ 489.30 What annual report is required?

(a) Within 90 days after the close of the first calendar year in which a literacy program authorized by § 489.1 is placed in operation, and annually for each of the 4 years thereafter, a grantee shall submit a report to the Secretary with respect to its literacy program.

(b) A report under paragraph (a) of this section must disclose—

(1) The number of persons who were tested for eligibility during the preceding year;

(2) The number of persons who were eligible for the literacy program during the preceding year;

(3) The number of persons who participated in the literacy program during the preceding year;

(4) The name and types of tests that were used to determine functional literacy and the names and types of tests that were used to determine disabilities affecting functional literacy;

(5) The average number of hours of instruction that were provided per week and the average number per student during the preceding year;

(6) Sample data on achievement of participants in the program, including the number of participants who achieved functional literacy;

(7) Data on all direct and indirect costs of the program; and

(8) Information on progress toward meeting the program's goals.

(Approved by the Office of Management and Budget under control number 1830–0512.)

(Authority: 20 U.S.C. 1211–2(c))

15. A new part 490 is added to read as follows:

PART 490—LIFE SKILLS FOR STATE AND LOCAL PRISONERS PROGRAM

Subpart A—General

Sec.

490.1 What is the Life Skills for State and Local Prisoners Program?
490.2 Who is eligible for a grant?
490.3 What regulations apply?
490.4 What definitions apply?

Subpart B—How Does One Apply for a Grant?

490.10 How does an eligible entity apply for a grant?

Subpart C—How Does the Secretary Make an Award?

490.20 How does the Secretary evaluate an application?
490.21 What selection criteria does the Secretary use?
490.22 What additional factor does the Secretary consider?

Authority: 20 U.S.C. 1211–2, unless otherwise noted.

Subpart A—General

§ 490.1 What is the Life Skills for State and Local Prisoners Program?

The Secretary may make grants to eligible entities to assist them in establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

(Authority: 20 U.S.C. 1211–2(e)(1))

§ 490.2 Who is eligible for a grant?

A State correctional agency, a local correctional agency, a State correctional education agency, or a local correctional education agency is eligible for a grant under this part.

(Authority: 20 U.S.C. 1211–2(f)(1))

§ 490.3 What regulations apply?

The following regulations apply to the Life Skills for State and Local Prisoners Program:

(a) The regulations in this part 490.

(b) The regulations in 34 CFR 460.3.

(Authority: 20 U.S.C. 1211–2)

§ 490.4 What definitions apply?

(a) The definitions in 34 CFR 460.4 apply to this part.

(b) As used in this part—

Life skills includes self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, and stress and anger management.

Local correctional agency means any agency of local government that provides corrections services to incarcerated adults.

Local correctional education agency means any agency of local government, other than a local correction agency, that provides educational services to incarcerated adults.

State correctional agency means any agency of State government that provides corrections services to incarcerated adults.

State correctional education agency means any agency of State government, other than a State correctional agency, that provides educational services to incarcerated adults.

(Authority: 20 U.S.C. 1211–2(f)(3))

Subpart B—How Does One Apply for a Grant?

§ 490.10 How does an eligible entity apply for a grant?

To receive a grant under this part, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require, including, but not limited to, an assurance that the entity will report annually to the Secretary on the participation rate, cost, and effectiveness of the program and any other aspect of the program on which the Secretary may request information. (Approved by the Office of Management and Budget under control number 1830–0512.)

(Authority: 20 U.S.C. 1211–2(e)(2))

Subpart C—How Does the Secretary Make an Award?

§ 490.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the criteria in § 490.21.

(b) The Secretary awards up to 100 points for these criteria, including 15 points that the Secretary assigns in accordance with paragraph (d) of this section.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) For each competition under this part, the Secretary, in a notice published in the **Federal Register**, assigns 15 points among the criteria in § 490.21.

(Authority: 20 U.S.C. 1211–2)

§ 490.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews the application to determine the quality of the proposed project, including the extent to which the application includes—

(1) A clear description of the services to be offered; and

(2) Life skills education designed to prepare adult offenders to reintegrate successfully into communities, schools and the workplace.

(b) *Educational significance.* (15 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of life skills;

(2) To use unique and innovative techniques to produce benefits that address life skills problems and needs that are of national significance; and

(3) To demonstrate how well those national needs will be met by the project.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including an assessment of the effectiveness of the project in improving life skills of prisoners. To the extent feasible, the assessment must include a one-year post-release review, during the grant period, to measure the success of the project with respect to those prisoners who received services and were released. The assessment must involve comparison of the project to other existing education and training programs or no treatment for individuals, as appropriate. The evaluation must be designed to produce findings that, if positive and significant, can be used in submission of an application to the Department's Program Effectiveness Panel. To assess program effectiveness, consideration may be given to implementing a random assignment evaluation design. (Review criteria for the Progam Effectiveness Panel are provided in 34 CFR 786.12.);

(3) Provide for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects;

(4) Include formative evaluation activities to help assess program management and improve program operations; and

(5) To the extent possible, are objective and produce data that are quantifiable.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (5 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the objectives and planned outcomes of the project, of the project director;

(ii) The qualifications, in relation to the objectives and planned outcomes of the project, of each of the other key personnel to be used in the project, including any third-party evaluator;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers experience and training in project management and in fields related to the objectives and planned outcomes of the project.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the applicant's commitment to the project, including the extent to which—

(i) Non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) The applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

(Approved by the Office of Management and Budget under control number 1830–0512.)

(Authority: 20 U.S.C. 1211–2)

§ 490.22 What additional factor does the Secretary consider?

In addition to the points awarded under the selection criteria in § 490.21, the Secretary awards up to 5 points to applications for projects that have the greatest potential for innovation, effectiveness, and replication in other systems, jails, and detention centers.

(Authority: 20 U.S.C. 1211–2(e)(3))

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Friday
June 5, 1992

Part III

Department of Education

Functional Literacy for State and Local Prisoners Program; Notice Inviting New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA No.: 84.255-A]

Functional Literacy for State and Local Prisoners Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Functional Literacy for State and Local Prisoners Program provides financial assistance for the development of a demonstration or systemwide functional literacy program for adult prisoners.

This program can help further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Educational Goals. Specifically, the program can contribute to the President's objective—as stated in Track III of the AMERICA 2000 strategy ("Transforming America into 'A Nation of Students' ")—of reviewing current Federal job training efforts and identifying successful ways of motivating and enabling individuals to receive the comprehensive services, education, and skills necessary to achieve economic independence. The Functional Literacy for State and Local Prisoners Program also directly supports National Education Goal 5—ensuring that every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: (1) A State correctional agency; (2) A local correctional agency; (3) A State correctional education agency; (4) A local correctional education agency.

Deadline for Transmittal of Applications: July 21, 1992.

Deadline for Intergovernmental Review: September 19, 1992.

Available Funds: $5,000,000.

Estimated Range of Awards: $300,000–$500,000.

Estimated Average size of Awards: $416,666.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR part 489.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The regulations in 34 CFR 489.20 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the reserved 15 points as follows: 10 additional points to the selection criterion in 34 CFR 489.21(a) (Program factors) for a total of 25 points for this criterion; and 5 additional points to the selection criterion in 34 CFR 489.21(b) (Educational significance) for a total of 20 points for this criterion.

(a) *Program factors.* (25 points) The Secretary reviews the application to determine the quality of the proposed project, including the extent to which the application includes—

(1) A clear description of the services to be offered;

(2) A complete description of the methodology to be used, including a thorough assessment of all offenders in the system and assessments necessary to identify offenders with disabilities affecting functional literacy;

(3) Flexibility in the manner that services are offered, including the provision of accessible class schedules;

(4) A strong relationship between skills taught and the literacy and skill requirements of the changing workplace; and

(5) An innovative approach, such as interactive video curriculum or peer tutoring that will provide a model that is replicable in other correctional facilities of a similar type or size; and

(6) Staff in-service education.

(b) *Educational significance.* (20 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of functional literacy;

(2) To use unique and innovative techniques to produce benefits that address functional literacy problems and needs that are of national significance; and

(3) To demonstrate how well those national needs will be met by the project.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriated to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including an assessment of the effectiveness of the project in improving functional literacy of prisoners. To the extent feasible, the assessment must include a one-year post-release review, during the grant period, to measure the success of the project with respect to those prisoners who received services and were released. The assessment must involve comparison of the project to other existing education and training programs or no treatment for individuals, as appropriate. The evaluation must be designed to produce findings that, if positive and significant, can be used in submission of an application to the Department's Program Effectiveness Panel. To assess program effectiveness, consideration may be given to implementing a random assignment evaluation design. (Review criteria for the Program Effectiveness Panel are provided in 34 CFR 786.12.);

(3) Provide for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects;

(4) Include formative evaluation activities to help assess program management and improve program operations; and

(5) To the extent possible, are objective and produce data that are quantifiable.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (5 points)

(1) The Secretary reviews each application to determine the quality of key pesonnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the objectives and planned outcomes of the project, of the project director;

(ii) The qualifications, in relation to the objectives and planned outcomes of the project, of each of the other key personnel to be used in the project, including any third-party evaluator;

(iii) The time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers experience and training in project management and in fields related to the objectives and planned outcomes of the project.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the applicant's commitment to the project, including the extent to which—

(i) Non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) The applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 2, 1992 (57 FR 11354).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, Executive Order 12372—CFDA No. 84.255–A, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline

date to: U.S. Department of Education Application Control Center, Attention: (CFDA #84.255–A) Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education Application Control Center, Attention: (CFDA #84.255–A), room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The CFDA number—and suffix letter, if any—of the competition under which the application is being submitted, must be indicated on the outside of the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424).

Application Instructions and Forms

To apply for an award under this program competition, your application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department).

d. Disclosure of Lobbying Activities (Standard Form LLL–A) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

All applicants must submit one original signed application, including ink signatures on all forms and assurances and six copies of the application. Please mark each application as original or copy.

No grant may be awarded unless a completed application form has been received. (20 U.S.C. 1241–1391).

For Further Information Contact

Gail M. Schwartz, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4512—MES), Washington, DC 20202–7242. Telephone (202) 732–3892. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2420a

Dated: May 20, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

Appendix A

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): | | | – | | | | | | | |

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 5 5A

TITLE: Functional Literacy for State and Local Prisoners Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

SECTION C - Budget Estimates (Federal Funds Only) For Balance of Project

Budget Periods			
Second	Third	Fourth	Fifth

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate. This SECTION does not apply to projects that are full-funded.

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Instructions for Part III—Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly requests you to limit the program narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider your application if it is longer. Be sure to number consecutively *ALL* pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

You are advised that—

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217).

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0512, Washington, DC 20503. (Information collection approved under OMB control number 1830–0512. Expiration date: 6/30/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the requirements of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors meeting, you may also wish to include a trip or two to Washington, D.C. in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item; or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Functional Literacy for State and Local Prisoners Program (CFDA No.: 84.255–A).

(2) Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86 and 489.

(3) Program regulations for the Functional Literacy for State and Local Prisoners Program, 34 CFR part 489 (note that these regulations are published elsewhere in this issue of the **Federal Register**).

[FR Doc. 92–12885 Filed 6–4–92; 8:45 am]

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federal register

Friday
June 5, 1992

Part IV

Department of Education

National Workplace Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year 1993; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.198]

National Workplace Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

Eligible Applicants

(a) Awards are provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership must include as partners at least one entity from paragraph (a)(1) and at least one entity from paragraph (a)(2), and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application. Applications are governed by the EDGAR provisions in 34 CFR 75.127–75.129 regarding group applications.

Deadline for Transmittal of Applications: July 10, 1992.

Deadline for Intergovernmental Review: September 8, 1992.

Available Funds: $19,251,000.

Estimated Range of Awards: $121,000 to $1,000,000.

Estimated Average Size of Awards: $385,000.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension) (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR parts 460, 461, and 472.

Description of Program: The Secretary provides grants or cooperative agreements to projects designed to improve the productivity of the workforce through improvement of literacy skills in the workplace by—

(a) Providing adult literacy and other basic skills services and activities;

(b) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(c) Meeting the literacy needs of adults with limited English proficiency;

(d) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(e) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(f) Providing educational counseling, transportation, and child care services for adult workers during nonworking hours while the workers participate in the project.

This program supports AMERICA 2000, the President's strategy for moving the Nation towards the National Education Goals. The National Workplace Literacy Program is one means of transforming America into a "Nation of Students" and strengthening the Nation's education effort for yesterday's students who are today's workers. The President believes that learning is a life-long challenge. Approximately 85 percent of America's workers for the year 2000 are already in the workforce. Improving schools for today's and tomorrow's students is not sufficient to ensure a competitive America in the year 2000. The President has called on Americans to move from "A Nation at Risk" to "A Nation of Students" by continuing to enhance the knowledge and skills of all Americans.

Invitational Priorities

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

Projects that propose—

(a) Assessment and evaluation activities including development of qualitative and quantitative tools that measure the attainment or enhancement of job-specific basic skills and other workplace outcomes as increased employee-readiness for promotions, decreased error rates and reductions in waste, turnover, lost management time and downtime. The Department respects the proprietary nature of the kinds of workplace data collected and is seeking data only on participant gains and not access to raw data;

(b) In the case of previously funded grantees, activities that (in addition to "normal" literacy services) develop, validate, refine, reproduce, and disseminate basic skills curricula that—

(1) Are based on an analysis of literacy skills required for job competencies;

(2) Simplify job-based materials to create a systematic curriculum that brings workers to the level of basic

skills competency required for a current or future job; and

(3) May be transferrable to businesses or industries of a similar type or size (such as garment manufacturing or small businesses).

(c) A plan of operation that, consistent with the principles of high productivity work environments, demonstrates new methods of involving workers, whether union or non-union, in all aspects of program development, including project design, job task analysis, curriculum development, governance, recruitment, instruction, peer support, and evaluation that is integrated with team-based management or cross-training approaches used in the workplace.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 105 points, including the 5 points associated with the additional factor of small business involvement. The maximum score for each criterion is indicated in parentheses.

The Secretary assigns the 15 points reserved in 34 CFR 472.21(b) as follows: 5 points to the selection criterion (a)—Program factors—in 34 CFR 472.22(a) for a total of 20 points for that criterion; 5 points to the selection criterion (d)—Plan of operation—in 34 CFR 472.22(d) for a total of 17 points for that criterion; and 5 points to the selection criterion (f)—Evaluation plan—in 34 CFR 472.22(f) for a total of 15 points for that criterion.

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project; and

(4) Demonstrates the active commitment of all partners to accomplishing project goals.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner classified under 34 CFR 472.2(a)(2), unless transferring this activity to the partner classified under 34 CFR 472.2(a)(1) is necessary and reasonable within the framework of the project.

(d) *Plan of operation.* (17 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles, including any cash or in-kind contributions, of helping organizations; and

(iv) A description of the respective roles of any sites;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(e) *Applicant's experience and quality of key personnel.* (10 points).

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) above will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications under paragraphs (e)(2 (i) and (ii) above, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety and attendance), and job retention; and

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement.

(g) *Budget and cost-effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

Additional Factor

The Secretary assigns 5 points to applications that include small businesses. To qualify for the 5 points, an applicant must certify which of the enterprises included in the partnership is a small business under the Small Business Size Standards; Final and Interim Final Rules (13 CFR part 121), published in the **Federal Register** (Vol. 54, No. 249, pages 52648–52658), and make explicit in the certification the four-digit Standard Industrial Classification (SIC) code in the Final and Interim Final Rules within which each such enterprise classifies itself.

(Authority: 20 U.S.C. 1211(a))

In making awards under this program, the Secretary may consider, in addition to the selection criteria, whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C 1211(a))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 2, 1992 (57 FR 11354).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, Executive Order 12372–CFDA #84.198, U.S. Department of Education, room 4181, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note That the Above Address is not the Same Address as the One to Which the Applicant Submits its Completed Application. Do not Send Applications to the Above Address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and SIX copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

To apply for an award under this program competition, your application must be organized in the following order and include the following six parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and Instructions.

Part II: Partners' Agreement Form.

Part III: Budget Information and Instructions.

Part IV: Budget Narrative.

Part V: Program Narrative.

Part VI: Additional Assurances and Certification:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED form 80–0013) and Instructions.

c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and Instructions.

Note: Ed Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as appendix A of this notice. Questions and answers pertaining to this program are included, as appendix B, to assist potential applicants.

An applicant may submit information on a photostatic copy of the forms in appendix A. However, each of the pertinent documents must include an original ink signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original.

No grant may be awarded unless a complete application form has been received.

(20 U.S.C. 1241–1391)

FOR FURTHER INFORMATION CONTACT: Jeanne Williams, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, room 4512–MES, 400 Maryland Avenue SW., Washington, DC 20202–7242. Telephone (202) 732–1838. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1211(a).

Dated: May 28, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

Appendix A—

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 8

TITLE: National Workplace Literacy Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 3-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - PARTNERSHIP AGREEMENT FORM

INSTRUCTIONS: Partners must submit a signed Partners' Agreement form and enclose it with the application. Under 34 CFR 472.2 it is essential that the partners sign and submit this document in order for their application to be considered complete. If the document is not signed by all partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Please note that every partnership must include at least one entity from each of the following two categories and may, but need not, include more than one entity from each category. Category 1 includes a business, industry, or labor organization, or private industry council. Category 2 includes a State educational agency, local educational agency, or school (including an area vocational school, and employment and training agency, or a community-based organization). This means that the Partnership Agreement must be signed by at least one Category 1 partner and at least one Category 2 partner and must also be signed by any other partner(s) included in the partnership. Any questions about forming a valid partnership and properly completing the Partnership Agreement may be referred to one of the program officers listed as an information contact in this application notice.

Partners' Agreement

As authorized representatives of our organizations, we agree on their behalf to the following terms with respect to our application number V198A_____ as a condition of applying for and receiving a grant from the National Workplace Literacy Program. We:

- designate partner _____ as the applicant on behalf of the partnership;
- are willing to be partners in this project;
- will perform the role detailed for each of us in the application;
- will be bound by every statement and assurance made in the application including, but not limited to, the assurance that any funds provided to the partnership under Section 371 of Public Law 100-297 will be used to supplement and not supplant funds otherwise available for the purposes of the National Workplace Literacy Program.

Category One Partner	Category Two Partner
_____	_____
Original Ink Signature	Original Ink Signature
_____	_____
Name (Typed)	Name (Typed)
_____	_____
Title (Typed)	Title (Typed)
_____	_____
Organization (Typed)	Organization (Typed)
_____	_____
Date (Typed)	Date (Typed)
_____	_____

Note: Applicant must add signature spaces including the above information for any additional partner(s).

INSTRUCTIONS FOR PART II--PARTNERS' AGREEMENT FORM

Partners must submit a signed Partners' Agreement Form and enclose it with the application. Under 34 CFR 472.2, it is essential that the partners sign and submit this document in order for their application to be considered complete. Any reference in the application to an organization as a partner in the project is considered to mean a bona fide partner in the partnership. If the document is not signed by all organizations identified as partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216

PART III - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the entire project budget period.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

INSTRUCTIONS FOR PART III - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for two trips for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personnel property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (not allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

BILLING CODE 4000-01-C

Part IV—Instructions for Budget Narrative

Prepare a detailed Budget Narrative that justifies, and/or clarifies the budget figures shown in sections A and B. (Please note that the National Literacy Act of 1991 (Pub. L. 102–73 as amended) amends the Adult Education Act (Pub. L. 100–297) to permit any eligible organization to use 100 percent Federal funds for administrative costs incurred in establishing a project during a start-up period, not to exceed 90 days.) Explain:

1. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs) and any other cost that may appear unusual;
2. How the major cost items relate to the proposed project activities;
3. The costs of the project's evaluation component;
4. What matching occurs in each budget category; and
5. For any organization claiming 100 percent Federal funding for administrative costs incurred in establishing a project during a start-up period, not to exceed 90 days, provide a breakdown of expenditures in the start-up period, and in the subsequent operational period.

Instructions for Part V—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the invitational priority, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with a Abstract; that is, a summary of the proposed project:
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed, 8½" × 11" pages (on one side only), although the Secretary will consider applications of greater length. Be sure that each page of your application is numbered consecutively.

Include as an appendix to the Application Narrative supporting documentation, also on 8½" × 11" paper (e.g., letters of support, footnotes, résumés, etc.) or any other pertinent information that might assist the Secretary in reviewing the application.

Applicants are advised that—

(1) Under 34 CFR 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment of resources and placement of successful completers.

Include any other pertinent information that might assist the Secretary in reviewing the application under the Adult Education Act, as amended by Title II, Part B of Public Law 102–103.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0512, Washington, DC 20503. (Information collection approved under OMB control number 1830–0512. Expiration date 1/31/93.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form – LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

Appendix B—

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. We just missed the deadline for a previous Department of Education competition. May we submit the application we prepared for it under this competition?

A. Yes. However, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. How can I best ensure that my application is received on time and is considered under the correct competition?

A. Applicants should carefully follow the instructions for filing applications that are set forth in this notice. Be sure to clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number 84.198, and the title of the program—National Workplace Literacy Program—representing the competition in which the application should be considered.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priority. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. However, the scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than 25 pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Resumes may be included in the appendices.

(2) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Note that a Budget Narrative describing specific uses of funds requested in the budget form also is required. No applications will be funded without this material. The Budget Narrative is not included in the 25 pages recommended. It may consist of two of three additional pages.

Q. How should my application be organized?

A. The Secretary strongly requests that the applications be assembled with the SF 424 on top, followed by the abstract, Partners' Agreement Form, table of contents, SF 424A budget forms, Application Narrative, assurances and certifications, and appendices. Do not substitute your own cover for the SF 424. Please include one extra, loose copy of the SF 424 for use by the Application Control Center. Please number all pages. The Application Narrative should be organized to follow the exact sequence of the components in the selection criteria in this notice.

Q. Is travel allowable using project funds?

A. Travel associated with carrying out the project is allowed if necessary and reasonable. The Secretary anticipates that the project director and one business or labor representative may be asked to attend two staff developmental meetings. Therefore, you may wish to include the costs of four trips to Washington, DC in the travel budget.

Q. How can I ensure that my application is filed on behalf of a validly formed partnership?

A. The requirements for forming a partnership and filing an application on its behalf are explained in 34 CFR 472.2 of the program regulations. A partnership requires a signed agreement between at least one entity described in 34 CFR 472.2(a)(1) and at least one entity described in 34 CFR 472.2(a)(2). Note that State and local governments—like any other entities—may not qualify as partners unless they fall within these descriptions. For example, under the regulations a State or local educational agency or a municipal employment and training agency is an eligible partner, but a State or city as such is not an eligible partner. No agency of the Federal government is an eligible partner. Federal employees including members of the armed services are not eligible for training. If you are not sure whether a particular entity is an eligible partner, please call one of the program officers listed as an information contact in the application notice.

Q. Can entities that are not eligible partners be involved in a workplace literacy project?

A. Yes. They could potentially be involved as "contractors," "helping organizations," or "sites," as defined in 34 CFR 472.5 of the regulations. Note that entities that are "helpers" or "sites" may not receive funds from the grant.

Q. Must the signed partnership agreement be submitted with the application?

A. Yes. The agreement is required both to establish the partnership's legal eligibility and to ensure each partner's continuing commitment during the workplace literacy project. Prior to submitting an application, partners should ensure that each partner clearly understands its role and responsibilities in the project.

The Department interprets even a single reference in the application to an organization as a partner to mean that it is a bona fide partner in the partnership and, thus, is required to sign the partnership agreement. The applicant should be careful to designate partners, helpers, contractors, etc. in the same way wherever they are mentioned throughout the application. Because partnership requirements are established by law, the Department reviews each agreement form to be certain that it meets the terms of the law requiring all entities named as partners to sign the agreement. The Department wishes to underscore that if any of the entities named as partners in the application have not signed the agreement form, the application will be returned to the applicant without further consideration for funding.

Q. What is meant by a required percent of non-Federal matching funds?

A. In this program, the recipient of Federal funds is required to "match" the Federal grant by paying at least a minimum percentage of total program costs. Total program costs include both the Federal funds received and the non-Federal contribution. For example, a partnership that is required to pay 30 percent of total program costs would have to contribute $30,000 to match a Federal award of $70,000 ($30,000=30 percent of $100,000 ($30,000 plus $70,000)). All partnerships must contribute at least 30 percent of total program costs, except that partnerships may receive full reimbursement for their necessary and reasonable administrative costs incurred in establishing a project during the project start-up period. That period may not exceed 90 days, at which time the project is expected to provide services to adult workers.

Q. What costs may be included in the 30 percent match (cash or in-kind)?

A. Any cost that can be paid with Federal funds from this program is allowable as match (see Education Department General Administrative Regulations, 34 CFR 74.50–74.57 and 34 CFR 80.24).

Q. What costs are not allowed using project funds (Federal or non-Federal match)?

A. The following items are not allowable costs in the National Workplace Literacy Program:

- Life skills such as balancing a checkbook, learning to read to children, writing personal correspondence, etc.
- Personal counseling such as counseling for alcoholism, mental health, health, domestic problems, or housing issues.
- Job skills or vocational training such as direct training in Statistical Process Control rather than literacy skills needed for SPC.
- Computer literacy, defined as any training above the level of computer competence needed to operate a computer-assisted program of instruction used in a WPL project. Nonallowable costs include teaching of word processing, Wordperfect, Lotus, dBase, etc.
- Stipends or tuition payments.
- Training of supervisors, other than those one step up from targeted workers such as maintenance crew supervisors.
- Construction costs.
- Institutional allowance.
- Planning and executing national conferences.
- Any unreasonable or unnecessary cost.

Q. May a project provide vocational or job training activities?

A. No. Projects must provide adult education programs that teach literacy skills needed in the workplace. Workplace literacy activities include only the adult education activities listed in the Description of Program section of the Notice Inviting Applications. This list does not include vocational or job training activities such as auto mechanics, dye casting, tailoring, and statistical process control. Workplace literacy instructions, however, may enable individuals to benefit subsequently or simultaneously from advanced vocational skills training. For example, this program could support classes in math skills necessary for statistical process control but not a program of statistical process control training itself. If you are not sure whether a particular activity is eligible under this program, please call one of the program officers listed as an information contact in the application notice.

Q. May a project provide training in operating a computer?

A. Training to operate a computer that is part of the performance of a job is a form of vocational or job training and is not an eligible activity under this program. However, computers could be used as a means of instruction if this were necessary and reasonable under the circumstances of a particular project. In such a context, it would be permissible to ensure that students possessed those rudimentary skills that are necessary to interact with computer-assisted literacy instruction.

Q. How many copies of the application should I submit and must they be bound?

A. The original application should be bound and clearly marked as the original application bearing the original signatures. In addition six copies should be submitted and marked as copies. Applications should not include foldouts, photographs, audio-visuals, or other materials that are hard to duplicate.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 8 to 9 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Will my application be returned?

A. We do not return original copies of applications. Thus, applicants should retain at least one copy of the application.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The materials referenced in this notice should be referred to as follows:

(1) The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297, Title III, sections 301–385.

(2) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86).

(3) 34 CFR part 472 (National Workplace Literacy Program), as published elsewhere in this issue of the **Federal Register**.

[FR Doc. 92–12886 Filed 6–4–92; 8:45 am]
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federal register

Friday
June 5, 1992

Part V

Environmental Protection Agency

Draft Report: A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of mg/kg$^{3/4}$/Day; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4139-7]

Draft Report: A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of $mg/kg^{3/4}/Day$

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for comments on the draft report: A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of $mg/kg^{3/4}/day$.

SUMMARY: Three Federal regulatory agencies, the Environmental Protection Agency, the Food and Drug Administration, and the Consumer Product Safety Commission, are today asking for public comments on the draft report: A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of $mg/kg^{3/4}/day$.

The report is intended to serve as the basis for a common and unified science policy among these three agencies on a default methodology for determining equivalence of doses—to be used when existing agent-specific data are insufficient for a case-by-case determination—when extrapolating results of rodent carcinogen bioassays to humans.

The public is invited to comment, and public comments will be considered in final revision of the report and in the final adoption of science policies by the participating agencies on cross-species extrapolation of equivalent doses in assessing potential human risks from putative chemical carcinogens.

Commenters are asked to focus on the report's discussion of several issues: (1) The bearing of empirical data on carcinogenic potencies in experimental animals and in humans to the appropriate choice of a dose-scaling methodology; (2) the use of allometric scaling as a means for suggesting appropriate dose scaling methods; (3) the appropriate use of pharmacokinetic and other data in defining a default methodology and particularly in supplanting such default assumptions with case-specific, data-based analysis of dose equivalence; (4) distinguishing the contributions of pharmacokinetic and pharmacodynamic factors to species differences in a carcinogen's potency; and (5) the advisability of adopting the proposed dose-scaling methodology as a common default methodology for the participating agencies.

The complete text of the draft report is published as the last section of this notice.

DATES: The draft document is being made available for public review and comment until August 4, 1992. Comments must be in writing and must be postmarked by August 4, 1992.

INSPECTION AND COPYING: This notice, references, supporting documents, and other relevant materials are available for inspection and copying from the ORD Public Information Shelf at the EPA Headquarters Library, 401 M Street, SW., Washington, DC, Telephone: (202) 260–5926 or FTS: 260–5926. The Library is open daily between the hours of 8 a.m. and 5:30 p.m., except weekends and holidays.

ADDRESSES: Comments may be mailed or delivered to: Project Officer for Cross-Species Scaling Factor Report, c/o Technical Information Staff, Office of Health and Environmental Assessment, U.S. EPA (RD–689), 401 M Street, SW. (room 3703), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Lorenz Rhomberg, Human Health Assessment Group, Office of Health and Environmental Assessment, U.S. EPA (RD–689), Washington, DC 20460, Telephone: (202) 260–5723 or FTS: 260–5723.

SUPPLEMENTARY INFORMATION: This document reports a consensus reached by representatives of the U.S. Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Consumer Product Safety Commission (CPSC) in discussions conducted under the auspices of the Interagency Pharmacokinetics Group, a workgroup of Federal scientists dealing with issues of common interest arising in the application of pharmacokinetics to chemical health risk assessment. The report is a product of the Interagency Pharmacokinetics Group. It comprises an analysis of empirical and theoretical aspects of the cross-species dose-scaling question, together with an argument for adopting the method of scaling daily administered doses by body mass raised to the ¾ power to achieve presumed equivalence in lifetime carcinogenic risk in different mammalian species. These recommendations have been reviewed and endorsed by the EPA, the FDA, and the CPSC.

If such a policy is adopted, it would replace the current practices in carcinogenic risk assessment of scaling daily administered amounts by body mass (as at FDA) or by body surface area (as at EPA and CPSC). The consensus recognizes that there is considerable scientific uncertainty around any scaling method; it does not claim to have overturned these previous methods with one of superior scientific validity or reduced uncertainty. Rather, in view of the benefits of having the major practitioners of carcinogen risk assessment in the Federal government adhere to a single, consistent methodology, the proposal provides a common default procedure to encourage consistent analyses in cases where agent-specific information is insufficient to suggest appropriate dose-equivalencies on a case-by-case basis. Such case-specific information is always to be preferred to the default methodology proposed herein, and its development and appropriate use are encouraged. Since the scaling methodologies in current use by the agencies participating in this proposal are within the span of scientific uncertainty surrounding the cross-species scaling question, it is not proposed to retroactively change or adjust any risk assessments completed under current policies.

This document has undergone a preliminary interagency review under the auspices of the Ad Hoc Working Group on Risk Assessment of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET). This request for public comment and a concurrent external scientific peer review will contribute to the development of a final report on this topic. This final report of the Interagency Pharmacokinetics Group will provide the basis for a recommendation of a uniform, default science policy on interspecies scaling for carcinogen risk assessment, to be endorsed by the FCCSET Working Group and used by a broad segment of Federal agencies.

Dated: May 22, 1992.

F. Henry Habicht II,

Deputy Administrator.

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I. Introduction
II. Approaches to Choosing a Cross-Species Scaling Factor
A. Empirical Approach
B. Allometric Approach
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3. Toxicological Equivalence
4. A Physiological Time Approach to Toxicological Equivalence
III. Discussion
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A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of $mg/kg^{3/4}/Day$

I. Introduction

As a matter of necessity, the potential for a chemical agent to cause toxic reactions in humans is often

investigated by exposing and observing the reactions of experimental animals, usually rats and mice. This practice rests on the high degree of physiological, biochemical, and anatomical similarity among mammalian species; the biological reactions in the experimental animals may be taken as evidence that humans might show similar responses to the same chemical exposures. When the objective is to use the animal data to predict the degree or probability of response in humans—that is, when the aim is quantitative extrapolation—one must define the dose levels for humans and animals that are expected to produce the same degree of effect. For this, it is necessary to take into account the pronounced difference in *scale* between the tested model organisms and humans. That is, even if fundamental similarity is presumed, one must allow for the fact that humans are much larger than experimental rodents and will experience chronic exposure to a toxicant for a longer lifetime.

Defining such "toxicologically equivalent" doses has been problematic. Alternatives that have found use include scaling daily administered amounts by body weight or by body surface area; scaling cumulative lifetime intake by body weight; equating exposures to contaminated air, food, or water according to the concentration of toxic agent; and others. Despite considerable study and debate (Pinkel, 1958; Freireich et al., 1966; Mantel and Schneiderman, 1975; Rall, 1977; Hoel, 1977; Hogan and Hoel, 1982; Calabrese, 1983, 1987; Crump et al., 1985; Davidson et al., 1986; Gillette, 1987; Vocci and Farber, 1988; Hill et al., 1986), no alternative has emerged as clearly preferable, either on empirical or theoretical grounds. The various Federal agencies conducting chemical risk assessments have developed their own preferences and precedents for cross-species scaling methodology. This variation stands among the chief causes of variation among estimates of a chemical's potential human risk, even when assessments are based on the same data.

The variety of cross-species scaling methods in use correctly reflects the uncertainty about the best procedure, but the resulting disagreement in risk estimates results in some awkwardness in the regulatory arena. Increasingly, regulatory procedures are being mandated that establish decision points contingent on whether a certain human risk level is to be expected according to "generally accepted" risk assessment procedures. Variation in methodology frequently leads to ambiguity as to whether regulatory action should take place. It has therefore become important to resolve differences in cross-species scaling assumptions.

A second impetus for reexamining the scaling question comes from the increasing availability of comparative pharmacokinetic information on toxic agents. Pharmacokinetic analysis uses data on absorption of agents into the body, distribution among the tissues, metabolic activation or detoxification, and elimination to develop a picture of the disposition of a dose by the body and consequent exposure of the actual target tissues of toxic action. Pharmacokinetic differences among species clearly contribute to the magnitude of equipotent doses. However, the appropriate use of such information for the dose equivalency question hinges on resolving the role of pharmacokinetics compared to that of species differences in the magnitude of toxic reaction to a given degree of target-tissue exposure (i.e., "pharmacodynamics"). Distinguishing the roles of these two aspects of potency scaling has been hampered by imprecisely articulated rationales for the various methods.

In view of the above considerations, the Federal agencies with primary responsibility for conducting chemical risk assessments have endeavored to define a uniform cross-species scaling methodology and rationale for use when extrapolating results of rodent carcinogen bioassays to humans. Discussions and debate on the issues have been held under the auspices of the Interagency Pharmacokinetics Group (IPG), an ongoing workgroup of Federal scientists that deals with issues of common interest arising in the application of pharmacokinetics to risk assessment. The present report is a product of the Interagency Pharmacokinetics Group, and represents a statement of the consensus recommendation resulting from these discussions.

The consensus is that, in the absence of adequate information on pharmacokinetic and sensitivity differences among species, doses of carcinogens should be expressed in terms of daily amount administered per unit of body mass raised to the ¾ power. Equal doses in these units (i.e., in $mg/kg^{3/4}/day$), when experienced daily for a full lifetime, are presumed to produce equal lifetime cancer risks across mammalian species. This proposed scaling method has the advantage of being intermediate between the two currently used methods (scaling daily amount by body mass or by body surface area). It is not merely a compromise; it is as well supported by the empirical data on carcinogen potencies in animals and humans as the methods it would replace. It also has an explicit rationale (the concept of species-independent "physiological time") that may be derived from principles of interspecific allometric variation in anatomy, physiology, and pharmacokinetics. That is, it can be interpreted as a correction for readily observable scale differences among species as their essentially similar biology varies in a regular quantitative way as a function of size.

The consensus does not pretend to have solved the underlying scientific issues. Former methodologies have not been shown to be in error; the consensus should not be construed as overturning previous assumptions and replacing them with one of superior scientific validity. Rather, the consensus achieves the benefits of having all Federal risk assessments adhere to a single, consistent methodology that is in accord with current scientific knowledge on the scaling question. Moreover, the method corresponds to a fully articulated rationale with explicitly stated assumptions about the roles and interactions of various underlying determinants of carcinogenic potency. This aids in consistent and scientifically appropriate application. Furthermore, as information is gained on how the biology of carcinogenesis varies among species, it will be clearer how the arguments and previous presumptions should be modified to accommodate these new insights.

The balance of this document reviews the evidence and arguments that may be adduced to address the question of cross-species scaling of equally carcinogenic doses, and outlines the support for the recommended position of equipotent doses in terms of $mg/kg^{3/4}/day$.

II. Approaches to Choosing a Cross-Species Scaling Factor

There are two broad and complementary approaches to choosing a cross-species scaling factor. The first is empirical; one may seek cases in which human epidemiologic data allow a direct estimate of an agent's potency, and then investigate the success of various scaling methods in predicting that potency from animal data. The second approach is theoretical, and is grounded in the principles of allometry, which is the study of the regular variation in features of anatomy and physiology as a function of overall body size. The strategy for this second

approach is to develop a scientific rationale for a particular scaling factor by investigating the allometric variation of the biological features and processes that influence and underlie carcinogenic potency.

Clearly, in many cases there will be agent-specific ways in which humans and experimental animals differ in a nonsystematic fashion. These may include metabolic activation or detoxification, interaction with key receptors or target molecules, and others. Such factors create unpredictable deviation from the general pattern of scaling, and must be discovered and accounted for on a case-by-case basis. The factor proposed here is a *default* scaling factor, by which is meant one that is to be applied in the absence of adequate case-specific information. Lacking such information, one provisionally assumes that the agent in question is an example of a "typical" or "average" chemical that follows a general pattern of cross-species potency differences. This presumption may be modified as information becomes available, but the default assumptions still serve as the benchmark against which the new information is evaluated.

A. Empirical Approach

This approach attempts to find a factor value that is empirically successful in producing good estimates of potency in humans from data on potencies in other species. The underlying reason why such a factor works is a secondary consideration. The advantage of an empirical approach is that, by directly examining carcinogenic potencies (rather than influences on potency, such as pharmacokinetics), all relevant factors are included. The disadvantage is that the data are few and of low resolution. One must hope that the agent-specific factors, mentioned above, average out to give a good estimate of the general relationship.

A number of studies have sought general scaling factors empirically. Freireich et al. (1966), testing and extending the suggestion of Pinkel (1958), examined maximum tolerated doses (MTDs) of 18 antineoplastic drugs in mice, rats, hamsters, dogs, monkeys, and humans. LD_{10}s were used for rodents, and were presumed to be an equivalent level of toxicity to an MTD. Doses from experiments of different length were reexpressed in terms of an exposure regimen of 5 consecutive days, on the assumption that cumulative dose is proportional to effect. The authors concluded that, when doses were expressed as mg/m^2 body surface area/day, good predictions of human MTDs were obtained from all animal species, but that body weight scaling of doses overpredicted human MTDs (i.e., underpredicted potency in humans) by a margin that increased as one extrapolates from smaller and smaller species. Since an MTD is intended to be a dose causing no lethality, while an LD_{10} causes 10% lethality, the equivalence of these two end points can be questioned. Antineoplastic drugs typically have very steep dose-response curves, however, and survival near the MTD is maintained by close monitoring and intervention, which the rodent LD_{10} determination lack.

Collins et al. (1986, 1990) have found that the human MTD for 16 antineoplastic drugs is well predicted on average by the mouse LD_{10} when doses are expressed as mg/m^2 of body surface area. (If the MTD is considered to be a less severe end point, in such comparisons potencies in the larger species are overestimated vis-à-vis those in rodents; a bias would then be created that would increase the apparent success of surface area scaling compared to scaling by body weight.) That is, if these endpoints of acute toxicity are taken as equivalent, scaling doses in proportion to surface area tends to equalize toxicity across species. Moreover, Collins et al. (1990) compared the blood levels (in terms of the areas-under-the-curve of concentration in plasma as it declines over time, or "C x T") that correspond to equally toxic administered doses and found that these were an even better predictor, in that they displayed less case-by-case variation. These results illustrate three points that are returned to in Section B, below: (1) Scaling administered doses in this way tends to equalize blood levels across species; (2) areas-under-the-curve of blood concentration can serve as a predictive measure of the toxic response to a dose, even across species; and (3) obtaining pharmacokinetic data on internal dose measures can increase the precision of the cross-species prediction of equivalently toxic doses by accounting for case-by-case variation.

Travis and White (1988) reanalyzed the Freireich et al. (1966) data set and nearly doubled the number of drugs by adding a similar data set of Schein et al. (1979). Instead of simply examining the success of prevously proposed scaling methods, they used regression techniques empirically to determine the optimal power of body weight to achieve the best fitting allometric relationship of MTDs across species. For both data sets individually and for the combined data set, a power of 0.72 to 0.74 led to the best cross-species predictions. In the analysis of the combined data, a power of unity (body weight scaling) was clearly rejected at the 95% level of significance, and a power of 2/3 (surface area scaling) was barely rejected. The authors discuss the history of empirical studies of allometric variation in a number of physiological features, primarily basal metabolism, and arque that their result is part of a general empirical support for scaling by the 3/4 power of body weight.

The difficulty with applying these studies to the present question is that they address acute systemic toxicity of a rather narrowly defined type rather than carcinogenesis. Although dose-scaling for different toxic end points should have some features in common (notably pharmacokinetics), it is not altogether clear how lifelong risks that accumulate over time (such as cancer risk) should relate to short-term toxicity dependent only on immediate insults to target tissues.

Some empirical studies of comparative potencies of carcinogens in different species have been done. Such studies face the difficulty of precisely determining potencies in humans based on epidemiologic data. There is also some ambiguity in defining potencies in animals, owing to the variations in rout of exposure, sex and strain differences, varying experimental designs, and so on. Nonetheless, such studies represent the direct investigation of the question at hand.

The National Academy of Sciences (NAS, 1975) examined the potencies of six carcinogenic agents in bioassays using mice and rats and from human epidemiologic studies. They recommended as a dose measure cumulative lifetime amount of agent administered (in mg) per kg body weight. Such scaling is more "conservative" (i.e., predictive of higher human risk from animal results) than either surface area scaling or body weight scaling (from which it differs by a factor of 35, owing to the lack of adjustment for differences in length of lifetime). The NAS conclusion was not based on formal quantitative comparison with surface area scaling ($mg/kg^{2/3}/day$) or body weight scaling.

The paucity of carcinogen potencies in humans known directly from epidemiologic data limits the precision of such comparisons. Crouch and Wilson (1979) instead investigated dose scaling between rats and mice in about 70 ingestion cancer bioassays from the National Cancer Institute testing program. They measured potency by the parameter of a fitted one-hit dose-response model (in units of risk per mg/

kg/day), focusing on the tumor site/type producing the greatest potency (excluding testicular tumors in Fisher 344 rats, and skipping cases in which potency was less than twice sensitivity in either species). A geometric mean of potencies in each sex (which were highly correlated) was used. Interspecies comparisons were based on the best-fitting line of unit slope on a plot of the logarithm of potency in rats against the logarithm of potency in mice. The intercept of such a line gives the geometric mean of the factor by which the rat potency must be divided to give the mouse potency. Body weight scaling predicts a factor of one (i.e., equal risk per mg/kg/day in both species) while surface area scaling predicts a factor of about 2.1 to 2.3, depending on the exact body weights. (For comparison, the scaling by $mg/kg^{3/4}$/day, as advocated herein, predicts a ratio of about 1.8 or 1.9.) The results depend on the strain of rat used. In the 17 cases of comparison between Osborne-Mendel rats and B6C3F1 mice the mean ratio of potencies was 0.40; these rats were somewhat less sensitive than mice, contrary to the expectations of both scaling methodologies. When Fischer 344 rats were compared to the same mouse strain (18 cases) a mean ratio of 4.5 was obtained, indicating that rats were even more sensitive than surface area scaling would expect. (A geometric mean of these two ratios is 1.3. To attempt definition of a general mammalian cross-species allometric relationship using only two species is fraught with pitfalls, especially when they are as close in size as are rats and mice. Nonetheless, for the purposes of this discussion one may note that, using typical body weights—70 kg for a human, 40 g for a mouse, 467 g for a rat of unspecified strain, 500 g for an Osborne-Mendel rat, and 360 g for a Fischer rat—the ratio of 1.3 implies scaling by body weight to the 0.89 power.)

Crouch and Wilson (1979) also examined ratios of rodent potency to epidemiologically derived human potency, comparing "insofar as possible" studies with the same route of exposure and duration in fraction of a lifetime. Owing to imprecision in the epidemiologically based human estimates, no precise curve fitting was attempted, but the authors state that humans appear to be more sensitive to a mg/kg/day dose by about a factor of 5 compared to either rats or mice. (Using the typical body weights listed previously, a factor of 5 corresponds to scaling doses by a power of body weight of 0.7 and 0.8 based on the rat and mouse results, respectively.)

A similar comparison of rats and mice, based on an expanded base of 187 NCI bioassays, was conducted by Crouch (1983). (Despite the larger original database, there were only a few more chemicals in the final analysis, apparently owing to more stringent requirements for significance of portency estimates.) Again, the rat strain influenced the results: for Osborne-Mendel rats the mean ratio was 0.63 while for Fischer 344 rats it was 2.29. (A geometric mean of these two ratios is 1.20.) Separate analysis of males and females changed these ratios only slightly. An analysis irrespective of rat strain yielded a ratio of 1.62. (Using the typical body weights listed previously, rations of 1.20 and 1.62 imply scaling by body weight to the 0.92 and 0.80 power, respectively.)

Gaylor and Chen (1986) examined data on rats, mice, and hamsters in the extensive database of Gold et al. (1984) on TD_{50}s, the dose (in mg/kg/day) leading to a halving of the actuarially adusted percentage of tumor-free animals at the end of a standard lifespan. The tumor site/type showing highest potency (i.e., lowest TD_{50}) was chosen to represent the species, and only agents with responses in both species were included. For 190 compounds administered in the diet, the geometric mean ratio of TD_{50}s in rats and mice was 0.455=1/2.20. That is, rats were on average about 2.2-fold more sensitive. (Using the typical body weights listed previously, this corresponds to scaling by body weight to the 0.68 power.) Ratios for other routes of exposure varied somewhat, although based on much lower sample sizes than the ingestion results cited above. By gavage, 32 compounds had a mean ratio 1/1.32, in drinking water 10 compounds had a mean ratio of 1.45 (i.e., rats were less sensitive), and by inhalation 7 compounds had a mean ratio of 1/11.2 (i.e., rats were much more sensitive).

Chen and Gaylor (1987) investigated NCI/NTP cancer bioassays of compounds administered orally to rats and mice. They compared "virtually safe doses" (VSDs), defined as doses associated with a lifetime cancer risk of one in a million. These were determined by the method of Gaylor and Kodell (1980), i.e., a linear extrapolation was conducted from an upper bound on a fitted multistage model dose-response curve. Thus, both the rat and mouse VSDs are in some sense "upper bounds." Chemicals were included if judged by the NTP to be positive in at least one species, and when in only one, if there was at least a positive trend in the other species for the same tumor site/type. Unlike the studies mentioned above, Chen and Gaylor (1987) focused on Correspondence of VSDs at the *same* site and sex across species. VSDs were expressed in terms of concentration (parts per million [ppm]); as discussed further in the following section on allometry, since intakes of contaminated media (air, food, water) tend to be proportional to body surface area, the expectation from surface area scaling is that VSDs expressed in ppm would be about equal across species, while body weight scaling would expect a ratio of rat to mouse VSDs to be slightly greater than 2. Again, the results depend on the strain of rat used: For Fischer 344 rats the mean ratio is 1.15, for Osborne-Mendel rats it is 1.68, and for Sprague-Dawley rats it is 1.78. Ignoring rat strain gives a mean ratio of 1.27. These results are intermediate between the expectations of surface area and body weight scaling. For ease of comparison with other studies, one may convert these ratios from a ppm basis to a mg/kg/day basis using empirically based daily food and water consumption patterns in rats and mice (for food, 5% and 13% of body weight for rats and mice, respectively, and for water, 7.8% and 17% [U.S. EPA, 1984]). On a mg/kg/day basis, the rat:mouse VSD ratios are 0.44–0.53 for Fischer rats, 0.647–0.771 for Osborne-Mendel rats, and 0.69–0.82 for Sprague-Dawley rats. (The range reflects using rat:mouse ratios of water and food consumption, respectively, which differ slightly.) Using the typical body weights listed previously, and assuming a weight of 540g for Sprague-Dawley rats, these ratios correspond to scaling doses by body weight to the 0.63–0.71 power (when based on Fischer rats, which constituted most of the cases), 0.83–0.90 power (when based on Osborn-Mendel rats), and 0.86–0.92 (when based on Sprague-Dawley rats).

Metzger et al. (1989) expanded Crouch's (1983) earlier data set by including all 264 cases from the Gold et al. (1984) database in which a significant TD_{50} was obtained in an oral study of rats and mice (of any strain), i.e., including studies that were not in the NCI/NTP database. A best-fitting line of unit slope showed a TD_{50} ratio of 1.46 between mice and rats. This is intermediate between the ratio of 1.0 expected from body weight scaling and 2.5 from suface area scaling (using the authors' assumptions about body weights—this implies a power of body weight of 0.86).

A major study of animal-to-human extrapolation of cancer potencies was carried out by Allen et al. (1987), and reported on by Crump et al. (1987, 1989) and Allen et at. (1988). Twenty-three chemicals were identified that permitted quantitative evaluation of potency in humans and in animals. "Risk-Related Doses" (RRDs) were calculated, defined as the average daily dose per kg of body weight that would be expected to result in an extra cancer risk of 25% over a lifetime. Chemicals were included even if RRD estimates were "infinite" for one species, as happens when no carcinogenic effect is observed. Unlike the studies reviewed above, the Allen et al. (1987) study considered a large number of alternative ways of representing the potency in animals as well as various methods for extrapolating the resulting RRDs to humans. Alternative sets of "risk assessment assumptions" restricted the animal database according to various criteria of experimental design, route of exposure, and tumor type. Different levels of averaging results over experiments, sex, and species were tried. Finally, different methods for combining the multiple animal results on a given chemical into a single measure of its "potency in animals" were examined. This complexity allows an admirably comprehensive look at animal-to-human extrapolation, but it also makes manifest a problem that is latent in the other extrapolation studies: The performance of a scaling factor depends on how the animal potency is characterized. A factor that tends to overpredict human risk can be "rescued" by a method for characterzing animal potency that tends to produce a low estimate, and vice versa.

When the objective is to examine alternative dose-scaling factors, it would seem that the best approach is to examine analyses that aim at broadly based and unbiased estimates of the potency in animals. Risk assessment practices such as using upper bounds on dose-response curves and extrapolating from the most sensitive sex and species of animal are explicitly conservative; they may be appropriate science policies for regulatory purposes, but when the issue is empirically to choose a best-performing scaling factor, they introduce a bias, favoring a less conservative factor to compensate for their conservatism and restore a good prediction of the known human potency.

To compare potencies, Allen et al. (1987) fit a line of unit slope to the data of epidemiologically observed log RRD in humans plotted against the predicted human log RRD based on the animal data and the chosen scaling methodology. The intercept of this line gives an average ratio of the observed to predicted potency, with a ratio of unity indicating unbiased prediction. The analyses discussed prominently in the Allen et al. (1987, 1988) and Crump et al. (1987, 1989) reports show that body weight scaling leads to a ratio of approximately one to somewhat less than one depending on the particular suite of risk assessment assumptions chosen (i.e. slightly underpredicting human risk), while surface area scaling overpredicts human risk several-fold.

These results are sometimes cited as tending to support mg/kg/day scaling, but such a conclusion should be tempered. The particular choice of risk assessment assumptions (among many examined) in the widely cited analysis is the one with results least favorable to surface area scaling; most of the alternatives discussed by Allen et al. (1987) show that body weight scaling underestimates human risks by about the degree to which surface area overestimates it. Moreover, these analyses contain a bias of the sort outlined above—the animal potency for a chemical is characterized by the median of the *lower bounds* on the RRDs for the various animal data sets rather than on best estimates. At present it is unresolved how much the use of central estimates of animal risk to predict central estimates of human risk—a more appropriate analysis for resolving the scaling factor—would shift the results toward favoring surface area scaling.

Two additional studies of comparative cancer potencies should briefly be mentioned, both favoring a somewhat more conservative scaling factor. Raabe et al. (1983) compared bone cancer risks from radium in watch dial painters (who ingested radium by tipping brushes on their tongues) and in beagle dogs exposed to radium by injection. Doses were measured as dose to bone of deposited radium, so this camparison can be seen as lacking the pharmacokinetic component of cross-species differences. Potency was measured by the relative mean degree of life-shortening as a function of does. The authors argued that a cumulative lifetime radiation dose per unit of bone seemed to give good correspondence between human and dog. This result could be related to mg/kg/lifetime scaling for chemical agents.

Kaldor et al. (1988) examined carcinogenic potency of five antineoplastic drugs, using potencies derived from bioassays in rodents and from the secondary tumors the drugs caused in human cancer patients. They argued that potency seemed to be related to total cumulative lifetime exposure per kg of body weight.

The empirical evidence on cross-species scaling of carcinogen potencies can be summed up as follows. The correlation of agents' potencies across species is clearly and strongly demonstrated. This correlation extends to humans, so far as is ascertainable from the limited number of agents for which potencies can be estimated epidemiologically. There is a remarkable agreement among studies that the dose-scaling methods in current use span a range that appears approximately correct. The resolution of the data available at present, however, does not permit a clear choice between surface area and body weight scaling. Empirically chosen scaling factors tend to fall in between these two choices in most cases, but the specific results depend on the laboratory strains used, route of administration, details of the methods for characterizing the carcinogenic potency in animals, and the statistical methods used in curve fitting. The data seem consistent in indicating that body weight scaling somewhat underestimates risks in larger species. The exception is when Osborne-Mendel or Sprague-Dawley rats are compared to B6C3F1 mice, in which comparison the rats are seen to be less affected even by doses scaled to body weight. The preponderance of data are from Fischer 344 rats, however, and this is the strain used in most modern bioassays.

Several points should be borne in mind while interpreting the empirical scaling data. First, although several studies are reviewed, they overlap considerably in their databases; the individual studies are not independent tests. Second, the specific results of a study depend on details of the methodology. The Allen et al. (1987) study showed that whether potencies were averaged over sexes, whether both benign and malignant tumors were counted, whether projections were made for specific tumor sites or for the most potent site, and other such factors could swing the analysis toward favoring one scaling method or another. It is hard confidently to identify and isolate the specific contribution of dose scaling among the many factors that contribute to the final predictions of human risk. Third, the epidemiologically based human potencies that serve as "targets" for the animal-based extrapolations are themselves very uncertain and, as in the animal data, dependent on the specifics of the methodology used in their

estimation. As a result of this and of the previous point, the comparability of animal- and human-based potencies may be problematic. (For example, potencies calculated from human data are usually based on cancers that were the cause of death following partial lifetime exposure, while animal-based estimates usually reflect incidental as well as fatal tumors arising after full lifetime exposure.) A final point to be borne in mind is that the report empirically derived factors represent averages over large numbers of cases. Although the means vary over a narrow range, the individual chemicals show ratios of potencies in different species that span orders of magnitude. Most of the rat-to-mouse comparisons were within an order of magnitude of the average scaling relationship, but several agents showed a 100-fold difference. Variances of rodent-to-human potency ratios were higher, reflecting the uncertain determination in humans and the lack of standardized experimental design. The existence of this scatter of cases around the mean helps to define the limits to the resolution of any scaling method and emphasizes the importance of case-to-case variation. Moreover, it provides some insight into the distribution of uncertainty in the cross-species dose extrapolation step of risk assessment.

Despite these shortcomings, the empirical data support the general practice of scaling rodent potencies to humans, and show that, on average, the current methods perform satisfactorily. Certainly, any method that produces average results an order of magnitude higher or lower than the range represented by body weight and surface area scaling would be in contradiction to the empirical data. The data suggest that a scaling factor in between the surface area and body weight scaling can be considered to have empirical support.

B. Allometric Approach

The complement to the empirical investigation of potency scaling is a more theoretical approach that seeks to identify the biological factors whose variation underlies the variation in a carcinogen's potency across species, and then attempts to adjust for their effect. Clearly, these factors are numerous and, for the most part, poorly understood. Fortunately, there are some rather simple and general quantitative patterns in the variation of many features of anatomy and physiology across differently sized mammalian species, representing broad trends in the way the essentially similar mammalian system operates in large and small editions. Although specific processes acting on specific chemicals can (and do) deviate from these broad trends, it is argued below that the general patterns can provide a benchmark that expresses the expectation about a chemical's carcinogenic potency in small mammals such as experimental rodents and larger ones such as humans. This expectation can be refined (or refuted) by case-specific biological and mechanistic data, when available, showing how the actual processes of metabolism and carcinogenesis differ from the presumptions of the broad trend analysis that serves as the default.

The aim of a dose-scaling methodology is to estimate administered daily doses to experimental rodents and humans that result in equal lifetime cancer risks. That is, the scaled doses are intended to be "toxicologically equivalent." It is useful to recognize two components to this equivalence. The first, which might be termed "pharmacokinetic equivalence," concerns adjustment of the administered dose to a rodent or human so that the corresponding tissues that constitute the targets of the agent's toxicity receive similar exposures to the toxin. The second, or "pharmacodynamic equivalence," relates to the relative tissue doses that, when experienced daily for a lifetime, yield equal lifetime cancer risks. This latter aspect includes, but goes beyond the question of "sensitivity" to address species differences in the operation of the carcinogenic processes as they relate to tissue does. For both the pharmacokinetic and the pharmacodynamic component, scaling questions arise and the problem of defining "equivalence" must be faced.

By way of illustration, consider a hypothetical agent with rather simple pharmacokinetics (first order elimination from a single compartment) given by intravenous injection to a mouse and a human. As shown in Figure 1, such a compound will demonstrate an almost instantaneous peak in its blood concentration, followed by exponential decline. If the administered doses are equal in terms of mg/kg body weight, the peak concentrations are the same in the mouse and the human, but the mouse rids itself of this body burden faster, owing to its more rapid metabolism and elimination compared to the human. As a result, the area under the curve (AUC) of blood concentration as it declines with time is much less in the mouse. If the amount injected is properly adjusted, as illustrated in Figure 2, a concentration profile can be achieved in which the initial peak blood concentration is much less in the human, and yet is balanced by the compound's longer persistence to generate an AUC equal to that of the mouse.

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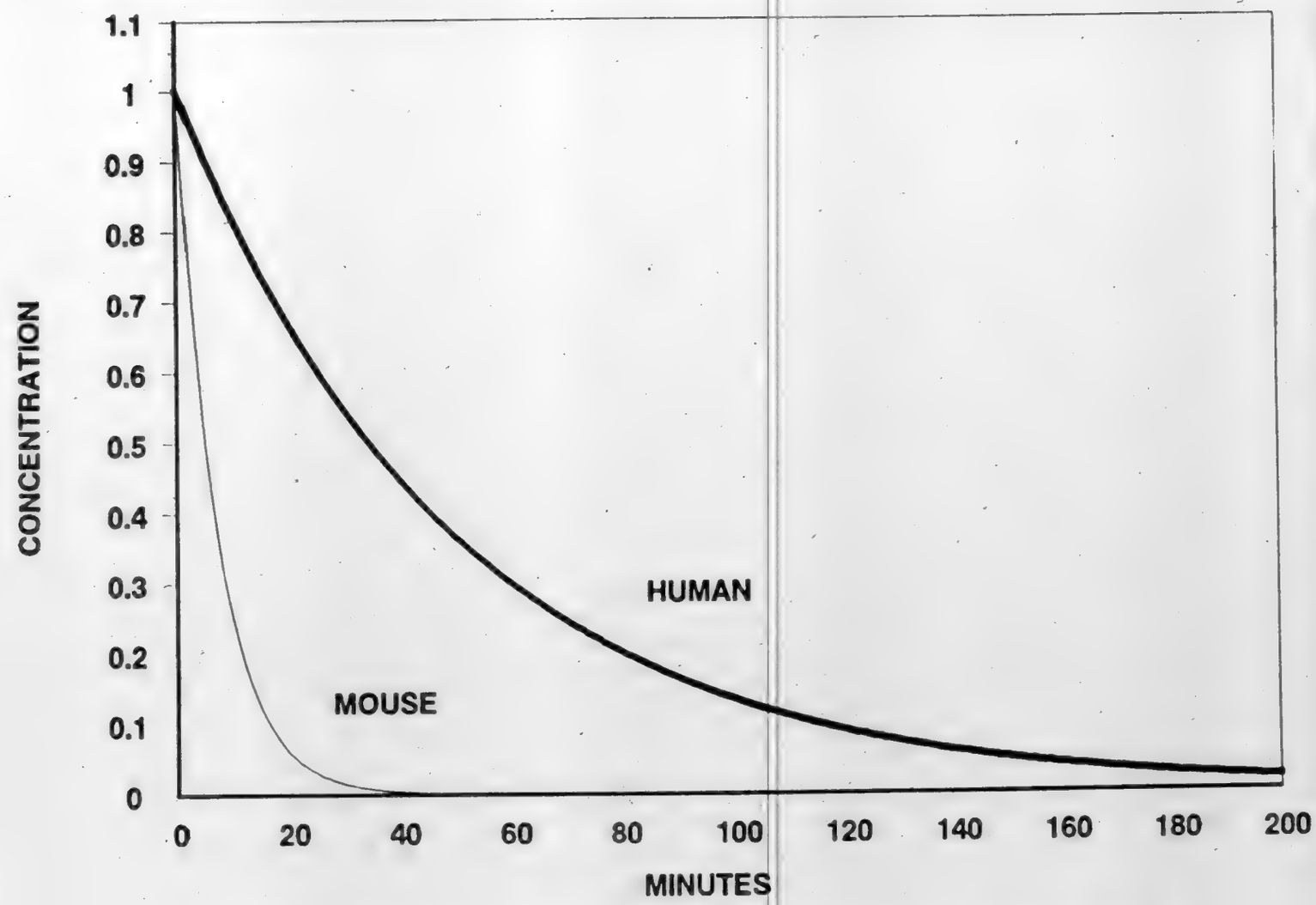

Figure 1. Blood concentration following injection of a dose scaled to body weight in a mouse (light line) and a human (heavy line). The human has an area under the curve that is 7-times greater.

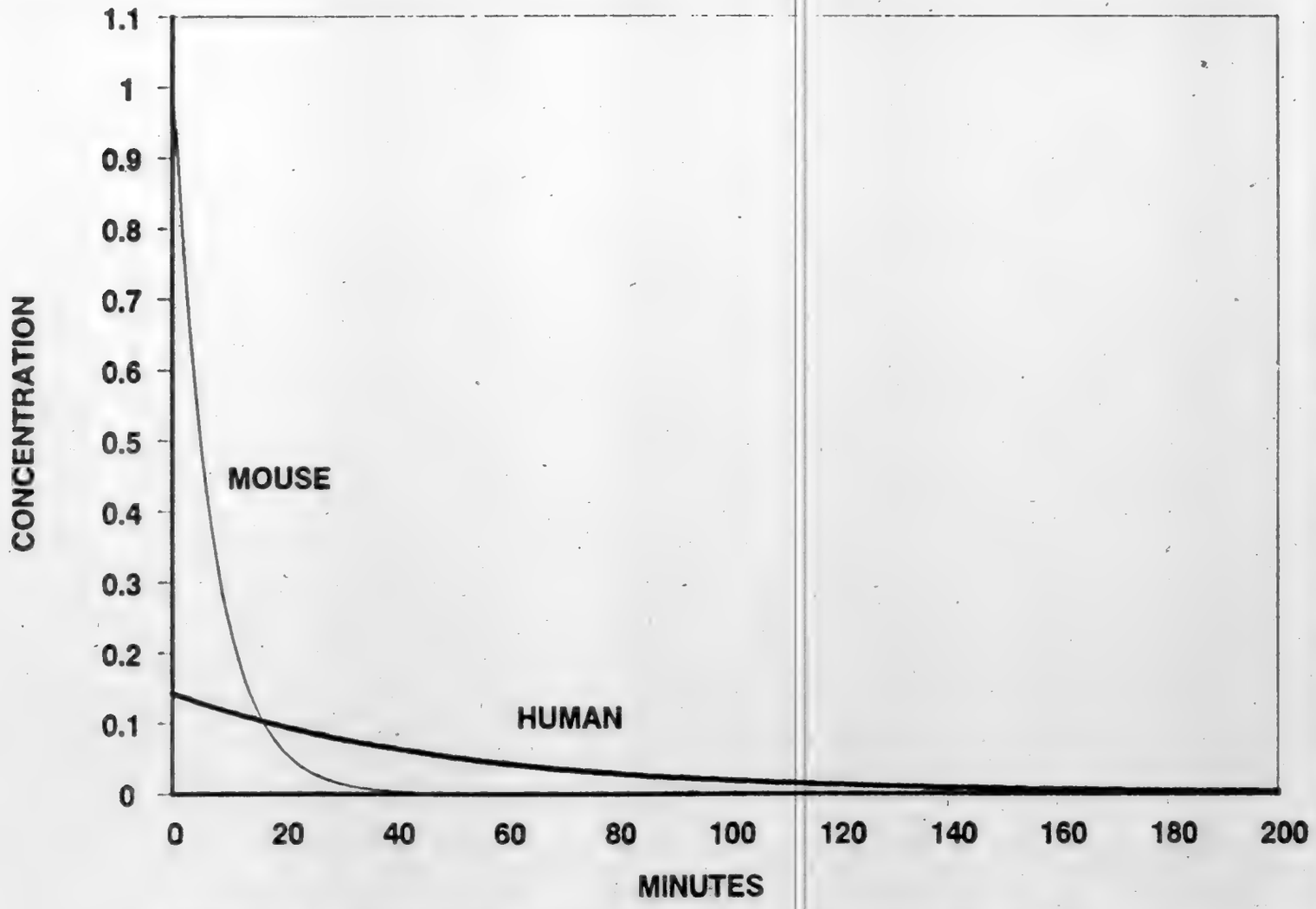

Figure 2. The injection amount scaled in proporation to $W^{3/4}$. The initial concentration in the mouse (light line) is 7-times higher than in the human (heavy line), but the AUCs are equal.

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This example illustrates two points: that knowledge of a compound's pharmacokinetics can suggest scaling of administered doses so as to equalize the exposure of internal targets of toxicity, and that "equal" internal exposure requires further definition. The area under the concentration curve encompasses both the amount of a compound that is present and the duration of its presence, providing a measure of the compound's opportunity to interact with the targets of toxicity. Moreover, since the AUC is the integral of concentration X time—that is, the "sum" of many momentary concentration levels—dividing the AUC by the time interval over which it is measured gives the average concentration during that interval. As such, the AUC is more representative of the target organ's total exposure to the agent than is the peak concentration. The AUC provides a measure of the agent's opportunity to participate in critical reactions at the target site. For example, for DNA-reactive compounds, the AUC is predictive of the rate of generation of DNA adducts (Hattis, 1990), while for moderate levels of receptor mediated carcinogens it tends to be proportional to average receptor occupancy. For such reasons, pharmacokinetic equivalence is usually defined in terms of equality of AUCs.

If this hypothetical chemical is assumed to be a carcinogen, an added difficulty in defining pharmacodynamic equivalence is also readily apparent. It should be remembered that equally carcinogenic doses are defined in terms of exposures repeated *every day* over a full lifetime. An adjusted daily dose that yields pharmacokinetic equivalence for one day's exposure of the target organ (as illustrated in Figure 2) is repeated for 2 years in the lifetime of a mouse, but 70 years in a human's. Furthermore, if the agent's stress on the physiological system at any given moment is not proportional to its concentration, the fact that the pharmacokinetically "equivalent" equal AUCs are achieved from different time-patterns of target organ exposure (as seen in Figure 2) could affect the carcinogenic consequences. These and other issues will be discussed at greater length further on in this document; they are raised here to emphasize that pharmacokinetic equivalence need not lead to carcinogenic equivalence without first employing further scaling considerations.

Clearly, actual pharmacokinetic and pharmacodynamic processes will be more complex than the simple considerations mentioned above would indicate. Nevertheless, there are some well recognized general trends in species differences (e.g., the higher metabolic rate in small mammals, the longer tumor latency in humans via-a-vis experimental rodents) that clearly influence the appropriate scaling of doses of carcinogens, and for which we should attempt to account in our scaling rationale (Boxenbaum, 1982, 1983; Schmidt-Nielsen, 1970, 1975, 1984; Travis et al., 1990; Ings, 1990). An analysis of the effects of major general trends in cross-species physiological differences not only helps guide our choice of appropriate scaling factors, but it provides the benchmark against which increasingly available case-specific data on the complex details of pharmacokinetics and carcinogenesis may be compared. Without such a framework, the impact of data on a single component—metabolic activation of a carcinogen in a target tissue in mice and humans, for example—is difficult to guage (U.S. EPA, 1987a,b). The analysis presented below is not a definitive solution to the cross-species scaling problem. Rather, it is presented as an attempt to accommodate present knowledge about the major quantitative trends in comparative anatomy and physiology into a scaling rationale with explicity stated assumptions.

The scaling of the myriad physiological processes that underlie the processing of carcinogens and their toxic effects can be drawn together into a single scheme by referring to the concept of *physiological time*. This concept proposes that quantitative differences across mammalian species in physiological processes can be seen largely as the consequence of fundamentally similar anatomical and biochemical machinery operating at different *rates* in differently sized species, smaller species having faster physiological "clocks." By correcting for these differences in size and time one can express dose-response problems in terms of a single scale-free mammalian system in which scaled doses should yield equal responses. (It is this very similarity, after all, that leads us to use experimental animals as surrogates for humans in risk assessment.) In the sections that follow, the issues of pharmacokinetic and pharmacodynamic equivalence are considered in turn.

1. Species Differences in Pharmacokinetics

The physiological time concept emerges from the study of the allometry of key physiological and anatomical variables that affect pharmacokinetics. Allometry studies the variation in features (and the consequences of that variation) as a function of body size and some other parameters. Most quantitative features that vary among mammals are well described by the so-called allometric equation,

$$Y = a\,W^{b},$$

where b is the power of body weight (W) to which attribute Y maintains a constant proportionality, a. A review of the large literature on this subject is beyond the scope of the present paper. The reader is referred to a number of excellent reviews (Adolph, 1949; Kleiber, 1932, 1961; Lindstedt and Calder, 1976, 1981; Schmidt-Nielsen, 1970, 1975, 1984).

The key point for the present argument is that there is great regularity in the value of b for certain classes of attributes relevant to pharmacokinetics (Travis et al., 1990). Volumes and capacities (blood volume, volumes of distribution, organ sizes, lung capacity, etc.) tend to remain in approximately constant proportion to body size (i.e., $b \approx 1.0$) in large and small mammals.

Rates, in contrast, tend to maintain proportionality with body weight to the 3/4 power (i.e., $b \approx 0.75$). Such rates include cardiac output, minute volume, basal metabolic rate and oxygen consumption, glomerular filtration rate, and many others. Consumption rates also tend to scale this way, including daily intakes of food, air, and water. A rate that scales in this way becomes smaller per unit weight (or volume) in larger animals. For example, a human has a total cardiac output (mL/min) about 300 times greater than a mouse, but in proportion to the human's 2000-times more massive body, the rate of blood delivery per gram of tissue is approximately seven-fold smaller (in terms of mL/min/g).

Several authors have suggested that this consistent scaling of rates of physiological processes leads to a useful concept of *physiological time* (Dedrick et al., 1970; Dedrick, 1973; Boxenbaum, 1982, 1983, 1984, 1986; Lindstedt and Calder, 1981; Mordenti, 1986; Lindstedt, 1987; Travis et al., 1990). A mouse is carrying out the same set of physiological processes as a human, but each process proceeds at a rate some 7-times faster. The various processes stay in proportion to one another, but all of them are relatively sped up in smaller species. If one scales the units of *time* by dividing them by the fourth root of body mass (i.e., $\text{min} \cdot W^{-1/4}$, correcting the physiological time scale) then the time-course of physiological processes becomes congruent across species. If time were measured according to some internal, physiological standard (such as

heartbeats, breaths, blood circuit times, clearance half-lives, etc.), rather than in minutes, then the rates of pharmacokinetic processes, the time course of disposition of a dose, and even life milestones and lifespan would all be about equal across species. (As discussed more fully below, humans tend to be an outlier in the relationship of lifespan to $W^{1/4}$, living longer than expected. Some authors have addressed this by including brain weight as a second factor in the allometric equation [Boxenbaum, 1986].)

This concept is illustrated by the simple example introduced in the previous section (shown graphically in Figure 1)—a single intravenous dose of a compound to a mouse and a human, and its subsequent blood concentration as it is removed from a single body compartment. (The simplicity is for illustration; the argument can be shown to hold for more complex pharmacokinetic models as well, e.g., Travis et al., 1990.) If doses are scaled to body weight (mg/kg) then initial concentrations are equal, but the blood level takes much longer to decline in the human, owing to slower processing of the compound. The human has a bood volume (which is proportional to body weight) some 2000-fold higher than the mouse, but the compound must be cleared from this volume by processes (metabolism and/or excretion) that operate only 300-fold faster (or seven-fold slower per unit blood volume). As a result, the human has an area under the blood concentration curve (or AUC) that is 7-fold higher. The AUC has units of [conc.]•[time], e.g., (mg/L)•min.

There are two kinds of scaling one could imagine to accommodate the species difference in pharmacokinetic behavior. The first has already been illustrated in Figure 2; one could give a smaller initial dose to the human—one that is seven-fold smaller in terms of mg/kg *but equal in terms of mg/kg*$^{3/4}$. The initial concentration is lower, but this is balanced by the slower removal to give the same AUC as seen in the mouse.

Alternatively, one could give the same initial mg/kg dose, but scale the *time* axis, expressing time in "physiological time units" (i.e., minutes divided by $W^{1/4}$). This is illustrated in Figure 3. Such graphs are sometimes called "Dedrick plots," following the demonstration of Dedrick et al. (1970) that scaling time in this way leads to congruity of methotrexate pharmacokinetics among several species. The mouse and human curves are identical on such a graph, falling to the same concentration after the same amount of *physiological* time has elapsed. (Of course, it still takes 7-times more minutes in a human for a given interval of physiological time to elapse. The AUC in the usual chronological time units is still bigger in the human, but in units of [conc.]•[physiological time] it is equal.)

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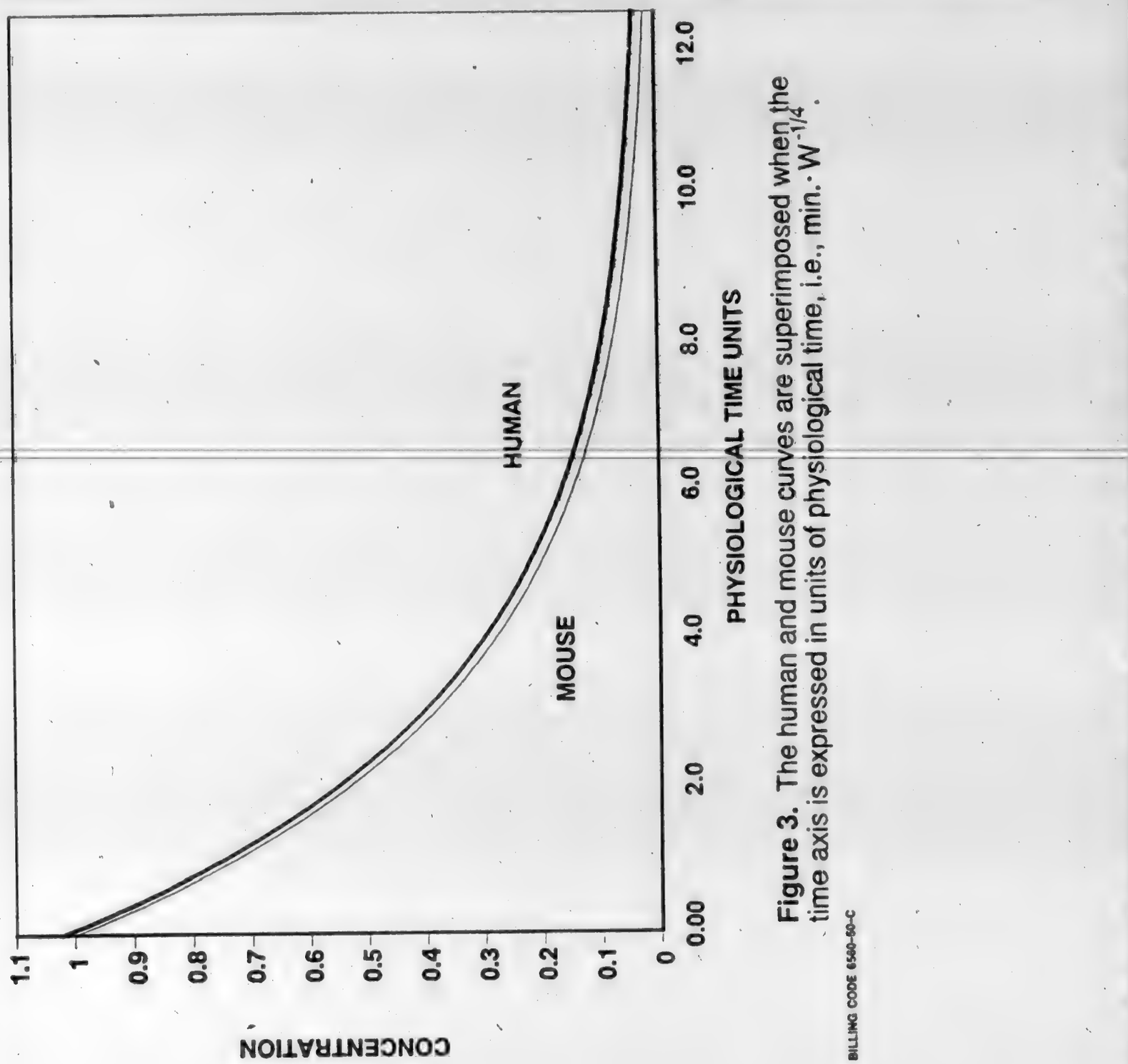

Figure 3. The human and mouse curves are superimposed when the time axis is expressed in units of physiological time, i.e., min. $\cdot W^{-1/4}$.

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It can be shown that these two scaling approaches—shrinking doses or stretching the time scale—give equivalent ways of dealing with scale differences as long as saturable pharmacokinetic processes do not figure prominently (O'Flaherty, 1989). For example, consider the slightly more complex case of repeated dosing. Figures 4 and 5 show blood concentration versus time curves for bolus dosing repeated at regular intervals. If dosing is daily (i.e., inter-dose intervals are equal for animal and human in clock time, as in Fig. 4) then scaling the bolus amount by $W^{3/4}$ achieves an equal area under the curve after a given number of days, as well as an equal average steady-state blood concentration. Alternatively (Fig. 5), one can give equal mg/kg doses spaced according to equal intervals of physiological time (e.g., daily in the mouse and every seven days in the human) to achieve the same end.

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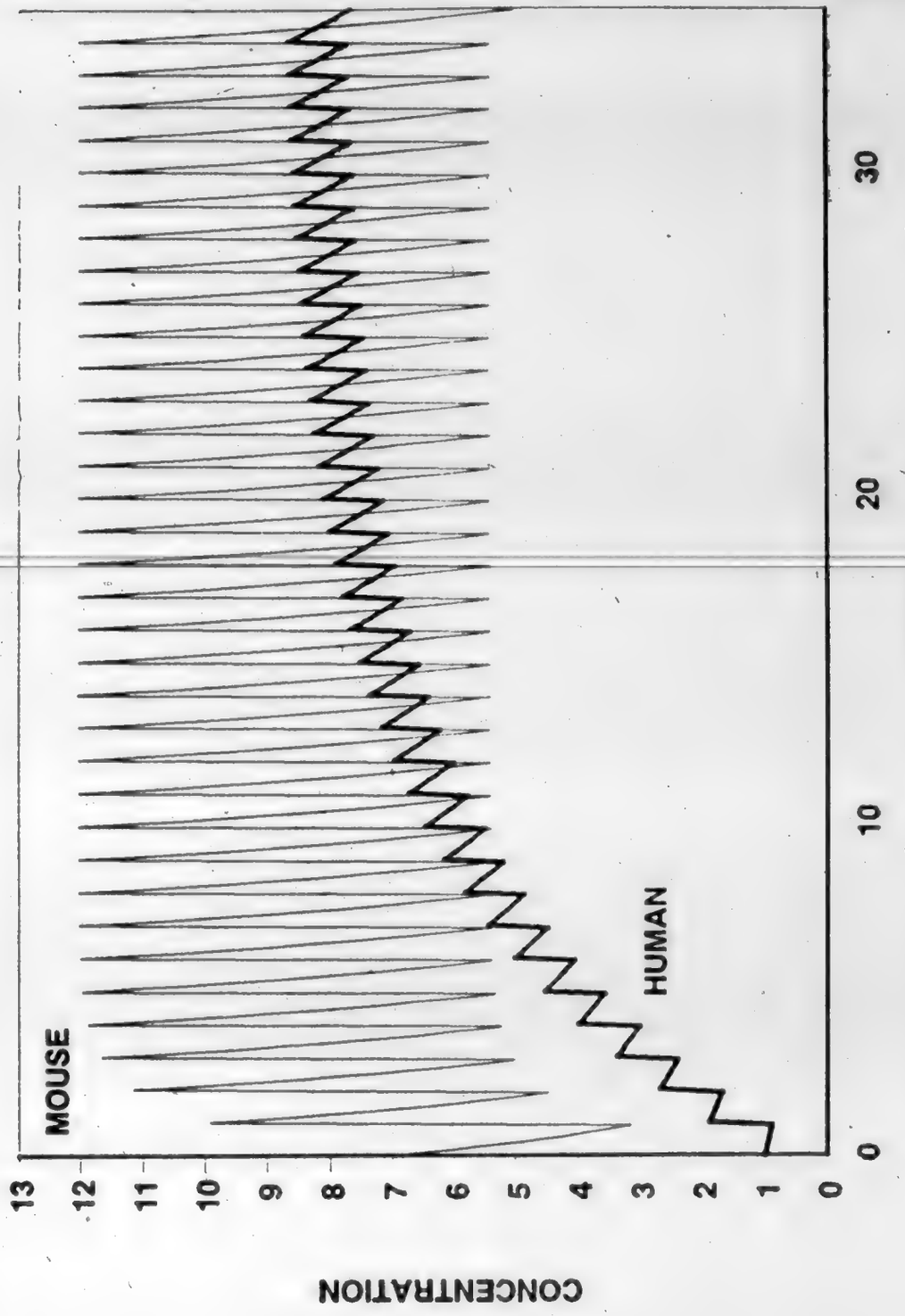

Figure 4. Repeated daily doses scaled to $W^{3/4}$ in the mouse (light line) and the human (heavy line).

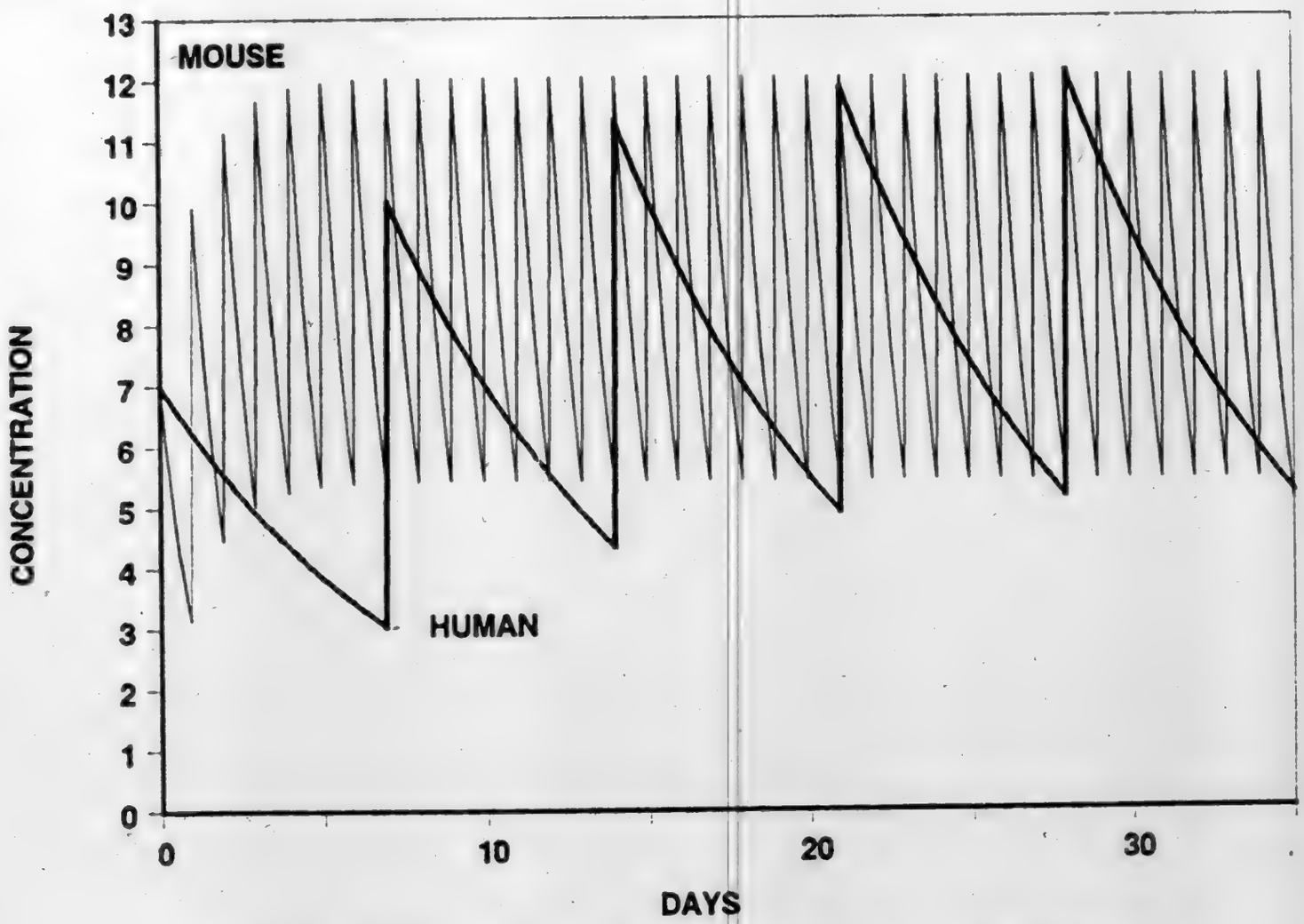

Figure 5. Repeated dosing of amounts scaled to body weight, repeated daily in the mouse (light line) and every 7 days in the human (heavy line).

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The foregoing examples are of course simplified and hypothetical, designed to illustrate the principles of allometric variation in physiological rates and volumes and their impact on the relation of administered dose to the degree of "internal" exposure. The same principles, however, can be shown to apply to much more complex pharmacokinetic systems as well, including multicompartment models, multiple routes of uptake and elimination, and multiple metabolic pathways causing carcinogenic activation and/or detoxification. The arguments have been most extensively developed by Mordenti (1986), O'Flaherty (1989), and Travis et al. (1990). The complete elaboration of the allometry of pharmacokinetics is too complex to detail here, but a few important points should be made.

First, the ability to predict the pharmacokinetic consequences of variation in the dozens of parameters that affect a chemical's uptake, distribution, processing, and elimination rests on the *regularity* in their cross-species variation and the *congruence* of these patterns for certain classes of parameters (rates, volumes, etc.). If physiological features varied haphazardly across species, or if all features had independent allometric patterns unrelated to one another, then no dose scaling method could be defined ($W^{3/4}$ or any other) to approximate pharmacokinetic equivalence without first knowing the compound's pharmacokinetics in detail.

Owing to their importance, it is well briefly to examine the starting assumptions that form the basis of the allometric, "physiological time" concept and its predictions. They are: (a) Volumes and capacities (organ sizes, blood volumes) retain proportionality to W; (b) the absolute rates of physiological processes are proportional to $W^{3/4}$; these rates include cardiac output, minute volume, glomerular filtration, and the rates of specific metabolic steps; (c) physicochemical and thermodynamic properties of compounds (solubilities in various tissues) are equal in all species; and (d) for metabolic pathways with saturable metabolism, the Michaelis constant (the substrate concentration at which half the maximum reaction velocity is achieved) is invariant, while the maximum velocity scales as $W^{3/4}$. A corollary to points (a) and (b) is that when rates are figured relative to body size (or to a volume, or in terms of concentration rather than absolute amount), they scale as $W^{3/4}/W = W^{-1/4}$, as illustrated by the cardiac output example shown earlier.

Most of the above assumptions are well supported by data on comparative anatomy and physiology, as detailed in the allometry references cited previously. Collectively, they embody the concept of a basically similar mammalian physiological and anatomical plan that varies primarily in scale from one species to another. The most problematic issue is the scaling of rates of individual metabolic transformation reactions as $W^{3/4}$. Not only are there few data on such scaling, but some individual metabolic enzyme activities are shown to vary rather haphazardly across species (e.g., Gillette, 1987; Calabrese 1986a,b). Several points should be made, however. First, there are data that support the proposition of $W^{3/4}$ scaling in specific cases (e.g., Reitz et al., 1988). Second, overall metabolic rate (O_2 consumption, resting metabolic rate) clearly scales as $W^{3/4}$; indeed, this is the issue around which physiological allometry was developed. Scaling an individual metabolic step in this way corresponds to keeping it in proportion to general metabolism, which seems the best default. Third, daily intake of natural toxins (the usual targets of carcinogen-metabolizing enzymes) depends on intake of air, water, and food (which all scale as $W^{3/4}$). That is, scaling detoxification processes in proportion to their anticipated load also predicts $W^{3/4}$ scaling.

Consideration of these points leads to the view that $W^{3/4}$ scaling of the rates of individual metabolic transformation reactions can be viewed as a benchmark around which different species (and individuals within a species) vary from instance to instance. Such variation does not invalidate the general scaling argument, nor does it provide evidence for any different scaling factor. Rather, the variation simply illustrates that any single conception of cross-species scaling can accommodate only the general trends, not the diversity of particular instances. Clearly, when data on metabolic conversion are available in a particular case, they should be used in preference to the $W^{3/4}$ default. In fact, instances of chemical-, dose-, and species-specific variation in metabolic transformation of a chemical may constitute the principal reason for deviation from the allotmetric default assumptions herein laid out. Accordingly, empirical determination of such metabolic variation constitutes the most important pharmacokinetic data that can be brought to bear on the estimation of target tissue exposures.

A second major point to bear in mind about the allometric analysis of pharmacokinetics is that the cross-species consequences of variation in the many physiological parameters depend not on the individual parameters, but on their interrelation. It is misleading simply to examine the scaling of one component (say, metabolic activation) in isolation. One must remember that the many quantitative differences across species are having their influences simultaneously; it is their *interactions* and *net results* that determine the consequences for doses to the tissues. For example, metabolic rates alone are a less important determinant of the fraction of a dose that is metabolically activated than is the ratio of metabolic activation rates to rates of other competing processes (such as renal clearance) that remove a compound from the body.

The third major point is that, despite the variety and diversity of underlying pharmacokinetic processes that may obtain from one case to another, the allometric analysis of pharmacokinetics makes rather general and simple predictions about how administered doses should relate to target tissue exposures in experimental rodents and humans. These predictions are:

For a given dosing pattern in which amounts are scaled to body weight, the tissue exposures (as measured by areas under the concentration curve) tend to be bigger in larger species by the ratio of human to animal body weight to the 1/4 power (which amounts to almost seven-fold for mouse-to-human scaling and not quite four-fold for rat-to-human scaling). If the administered amounts are kept in proportion to $W^{3/4}$ (rather than to W) the doses tend to be "pharmacokinetically equivalent" in the sense of yielding similar areas under the curve of concentration over time. Since daily intakes of air, food, and water tend to be in proportion to $W^{3/4}$ across species, calling exposures to environmental media equivalent on a ppm basis (i.e., when they are equally contaminated) produces essentially the same expectation of pharmacokinetic equivalence as scaling by $W^{3/4}$ (Hattis, 1991).

In fact, all variables containing [time] in their units will scale in a way that leads to the human value being bigger by the ratio of body weights to the 1/4 power. If these variables are reexpressed in terms of "physiological time units," i.e., [time] $\cdot W^{-1/4}$, then their values are equal across species.

The above conclusions apply to parent compound and to metabolites, since (in this generalized scheme)

metabolites are also subject to scale-affected clearance processes. In humans a metabolite may be formed more slowly, but the amount that is formed persists longer, resulting in similar AUCs as seen in rodents. The pharmacokinetic equivalence applies not only to an agent's concentration in blood, but also to concentrations in any specified organ or tissue. Thus, the scaling applies to the AUC of the ultimate carcinogenic species (be it parent compound or metabolite) at the particular site in the body that constitutes the target of carcinogenesis (presuming the target site to be the same across species).

The proportion of the administered dose that ends up having any particular ultimate fate (e.g., being excreted unchanged, being metabolized by a particular biochemical pathway at a particular site, being excreted as a conjugate in the urine, etc.) is predicted to be the same independent of species. That is, if a mouse given 10 mg/kg of an agency ends up metabolizing 4 mg/kg into a form that has an AUC in the spleen of 100 (mg/L)•min, then the allometric prediction for a human given 10 mg/kg is that 4 mg/kg will be metabolized, but the AUC in the spleen will be 700 (mg/L)•min, owing to the metabolite's slower clearance.

A difficult situation arises when the active carcinogen is neither the parent compound nor a stable metabolite, but rather a very reactive metabolite, perhaps an intermediate formed ephemerally during the course of metabolic transformation. If this reactive compound is removed by spontaneous reaction (rather than further enzymatic processing) and if such spontaneous reaction is so rapid that the moiety never leaves the tissue in which it is formed, then the removal rate may no longer be species-dependent; instead, it may hinge only on physicochemical properties of the reactant and its milieu. In such a case, without species differences in persistence, the AUC of the reactive moiety in its tissue of formation may be proportional to the amount formed. Such AUCs would tend to be equalized when doses are scaled to body weight, rather than to $W^{3/4}$ (Travis, 1990).

It may be well to reiterate at this point that the reason for constructing these general allometric arguments is to predict the AUC of the proximate carcinogenic agency at its site of action in those cases (which constitute the majority of cases at present) for which no better means exists to determine relative target tissue doses in rodents and humans. Clearly, if better means exist to characterize target tissue exposures, they should take precedence. Pharmacokinetic modeling of a particular compound may demonstrate that the allometric presumptions are in error. Two possible causes of such error are: (a) species differences in metabolic processing that do not adhere to the rule of proportionality to $W^{3/4}$, and (b) saturation of metabolism in one but not the other species as a result of comparing markedly different dose levels or dosing regimens. The importance of the "reactive metabolite" scenario outlined in the previous paragraph is best determined by case-specific characterization of metabolic activation and its effects. Macromolecular adducts may be particularly useful in this regard since, under certain circumstances (including negligible repair), their accumulation in a tissue would be expected to be proportional to the AUC of the adduct-forming moiety in that tissue.

It must be conceded that, in actuality, mice and rats are not simply scale-model humans; certain particular characteristcs (metabolism among them) do not necessarily vary in a simple way with body size. However, the long-standing toxicological practice of using rodent exposures to toxic agents as surrogates for the human experience rests on the belief that, to a first approximation, the similarities that stem from a shared mammalian anatomy and physiology outweigh the differences. The species differences in size, uptake rates, basal metabolism, blood flows, organ sizes, and so on are clearly important to acknowledge in any dosimetric scheme. The allometric arguments adduced here attempt to construct a logical and consistent framework for investigating cross-species dosimetry. This framework provides a basis for articulating the expected consequence of those broad general patterns of cross-species difference in size scale and time scale that we understand, while providing rebuttable default positions for those aspects, such as chemical-specific metabolism, that are less well understood.

2. Species Differences in Pharmacodynamics

The overall aim of dose scaling is to achieve toxicological equivalence across species. The foregoing section discussed pharmacokinetic equivalence. For such results to be useful for carcinogen risk assessment—that is, to complete the equation of exposure and tumorigenic response—it remains to determine what toxicological consequences to expect from given target tissue exposures in humans and animals. As argued earlier, the principles of pharmacodynamic equivalence are far from self-evident.

The issues about pharmacodynamic equivalence fall into three categories. First, the appropriate measures of "delivered dose" would seem to depend on details of the mechanism of toxic action, details that are frequently poorly understood. In the foregoing section, scaling of administered doses was discussed in terms of tendency to equalize the AUC, an integrated measure of target tissue concentration. Although this is a frequent and widely accepted measure of a target organ's exposure to a toxin (Voisin, et al., 1990), its use as a measure of carcinogenic equivalence of doses rests on the presumed proportionality of the rates of toxicological reactions to the AUC. If the underlying reactions that comprise the process of carcinogenicity are markedly nonlinear with target-tissue concentration, if they include capacity-limited steps or magnitudes below which significant stress on the system is absent, then proportionality of toxic response to the AUC (or to any other easily characterized summary measure of target-tissue exposure) becomes problematic. Thus, use of the AUC as an "equivalent" tissue dose should be regarded as a default that corresponds to the presumption that the processes constituting carcinogenicity operate in proportion to the concentration of the carcinogen at the target. In particular applications, this assumption should be critically examined, and relevant data brought to bear, if possible.

The second issue returns to the question of scale. For corresponding organs bathed in an equal concentration of carcinogen, a human will have many more target cells exposed than a rodent, only one of which need be transformed to found a tumorigenic clone. Moreover, during the course of a full lifetime under this dosing regime, a human's cells will be exposed for much longer and undergo many more cell divisions (NAS, 1975; U.S. EPA, 1987a). Although this would seem to suggest a much larger sensitivity to carcinogens in larger species, the empirical evidence shows instead a rough lifetime-to-lifetime equivalence across species of both the magnitude of spontaneous cancer risk and the age pattern of its appearance. When arguments from first principles lead to answers that are clearly off track, it indicates that key factors have not been brought into consideration. In this case, the role of species differences in repair processes may enter. Also, the number of cells (or cell divisions) at risk may be less different among species

than presumed, owing to slower turnover, stem cell populations that are not proportional to tissue volume, or other factors. The point is raised here simply to emphasize that size and timespan differences across species may have key roles in comparative pharmacodynamics just as they do in comparative pharmacokinetics, although the particulars are not clear at present. In the face of this difficulty, it has been the ususal practice to assume lifetime equivalence when projecting carcinogenesis patterns across species, an assumption that has held up well in experience. This point will be returned to below.

The third issue in pharmacodynamic equivalence also parallels one in pharmacokinetics—that of the uniqueness and species-specificity of carcinogenic responses that tends to obscure overall trends and patterns. The pharmacodynamic reasons for differences in sensitivity of potential target organs among species are perhaps more obscure than the pharmacokinetic reasons, but they surely exist. As with the case-by-case particulars of pharmacokinetic processes, the idiosyncratic and species-specific variations in responsiveness to carcinogenic stimuli create an unavoidable envelope of uncertainty around the predictions of a scaling methodology that can only characterize the average behavior of carcinogens overall. When data are available that enable the investigator to incorporate knowledge of species differences in the carcinogenic reactions to a given level of target-tissue dose, they should be considered in the analysis and incorporated when appropriate.

Although certain pieces of the puzzle of cellular and molecular biology that underlie carcinogenesis are known, and despite rapid progress, it not yet possible to undertake a detailed analysis of the magnitudes and causes of species differences in the carcinogenic process. At present, there can be no empirical and allometric characterizations of general cross-species trends, as has been done in this report for the pharmacokinetic part of the equation. One can, however, make use of the observation of general lifetime-equivalence, noted above, to suggest how the insights of cross-species patterns in pharmacokinetics might be applied to the question of toxicological equivalence.

3. Toxicological Equivalence

When experimental animals and humans are exposed to a chemical in such a way that they experience equal areas-under-the-curve of the proximate carcinogenic agent (be it the parent compound, a metabolite, or a reactive intermediate of metabolism) at the target of toxic action, then they will have their susceptible tissues exposed to equal *average* concentrations of the carcinogen over the exposure period. Over the course of a full lifetime of exposure, the lifetime average target-tissue concentrations are equal (although the total accumulated AUC is larger in humans, by virtue of their longer lives). The earlier discussion of pharmacokinetics argued that, if daily administered doses are scaled in proportion to $W^{3/4}$ (or if exposures of equal duration are equated on a ppm basis), such equality of resulting AUCs tends to result across mammalian species.

If the empirical principle of lifetime-to-lifetime equivalence is applied, then a possible presumption is that such pharmacokinetically equivalent lifetime exposures (in terms of equal average concentrations of the carcinogen at its target) should be equivalent in the degree of lifetime cancer risk they engender (although other interpretations of the consequences of pharmacokinetic equivalence are possible). That is, it may be assumed that equal carcinogen concentrations at the target lead to equal degrees of impact at the cellular level which, if continued for a lifetime, yield equal lifetime probabilities that a tumor will be caused in that target organ.

The reasons for approximate lifetime equivalence in the carcinogenic process among species of different body size and lifespan are not clear. One can, however, rationalize this observation by extending the concept of physiological time from pharmacokinetic processes to cover pharmacodynamic processes as well. The following section explores this approach.

4. A Physiological Time Approach to Toxicological Equivalence

It is helpful to begin by considering the case of "zero" dose, i.e., by examining background or spontaneous carcinogenesis. Although the common cancer types differ somewhat, humans and experimental animals have roughly similar lifetime cancer rates. Moreover, the latency periods are greatly different in animals and humans, but in a way that is roughly proportional to lifetime. Age-specific incidences are also roughly parallel when time is measured not in years, but on a lifetime scale (Cutler and Semsei, 1989). If these equivalencies were not so, we would either never see tumors in experimental animals (since they would die of other causes before the 20-to-40 year latency was completed), or we would find humans to be overwhelmed with spontaneously arising tumors during childhood. These results from spontaneous carcinogenesis appear to be paralleled by chemically induced cancers, in that such cancers also arise and progress on a "lifetime" time scale in experimental animals and humans.

The above results suggest that carcinogenesis proceeds more slowly in larger animals, in a way that makes its progress roughly constant per lifetime, rather than per unit of clock time. This is in accord with the current risk assessment practice of equating lifetime cancer incidences in humans and rodents. It would seem that the concept of physiological time—that large animals carry on their life processes at an overall slower pace than smaller ones—proves as useful in examining pharmacodynamics as it does for pharmacokinetics. As argued in the previous section, the rates of the underlying pharmacokinetic processes tend to operate in proportion to a size-dependent physiological time "clock," which allows appropriate scaling to explain and correct for species differences in pharmacokinetic end points." In the case of carcinogenesis, the component physiological features and processes are less easily observed, but the "pharmacodynamic end point" can be seen in the above-mentioned cross-species patterns of spontaneous carcinogenesis. In sum, not only may "pharmacokinetic time" vary among species in a regular way, "pharmacodynamic time" may do so as well. Total lifespans of different species generally scale in rough proportion to $W^{1/4}$ (Sacher, 1959; Lindstedt and Calder, 1976, 1981). (In terms of the physiological time concept, the "processes of living" that proceed at a rate proportional to $W^{3/4}$—or on a per kg basis, to $W^{-1/4}$—go slower in a larger animal, and so take chronological time in proportion to $W^{1/4}$ to go "to completion.") Hence, the two physiological time scales are quite similar. However, humans live longer than their allometric prediction by about a factor of five.

The above discussion of pharmacodynamics suggests that carcinogenesis (in common with other physiological processes) proceeds more slowly in humans than in rodents, in a way that tends to be equivalent on a lifetime basis. Together with the pharmacokinetic results outlined earlier—namely, that scaling daily administered doses in proportion to $W^{3/4}$ tends to result in "pharmacokinetically equivalent"

exposures to corresponding organs and equal steady-state concentrations of agents and their metabolites—this suggests that administered doses of carcinogens be considered equal in lifetime risk when expressed in units of mg/kg $^{3/4}$/day. One possible interpretation of this line of reasoning is that tissues experiencing equal average concentrations of the carcinogenic moiety over a full lifetime should be presumed to have equal lifetime cancer risk. Under the arguments on pharmacokinetic allometry set out earlier, such equality of average concentrations would tend to be produced by daily administered doses scaled in proportion to $W^{3/4}$. However, if the pharmacokinetically equivalent doses can be obtained by experimental means, under this line of reasoning, such results could replace the allometric presumptions, and equal risks would be expected when average daily AUCs are equal (or equivalently, when average concentrations are equal). If the default allometrically based assumptions about pharmacokinetics are adhered to by a particular compound, the introduction of data in place of assumptions will leave the answer unchanged. Other interpretations of the question of the cross-species toxicological equivalence of delivered doses are possible, and the issue remains one on which further insight would be helpful.

If we use a scale of pharmacodynamic time based on the equivalence of lifetimes, then the 35-times larger exposure of human tissues to carcinogens that results from a lifetime of doses scaled by mg/$W^{3/4}$/day results in an equal lifetime cancer risk because the affected physiological processes of carcinogenesis themselves are operating more slowly (by assumption, 35-times more slowly). A given span of clock time that a tissue spends under a given concentration regime yields less risk in a human (since the tissue has spent less "pharmacodynamic time" exposed).

It should be clear that not every empirical measure of "internal dose" is equally informative about species differences. As noted earlier, the amount of a dose metabolically activated, for example, may be equal in a mouse and a human, but the human's AUC of metabolite at the target may be much larger. If an empirical measurement or modeled result is to be used as a surrogate for "internal dose" in a cross-species extrapolation, its value in animals and humans should be compared to the predictions of the default assumptions of allometrically scaled pharmacokinetics (which should be aided by a full analysis of the uncertainties in the available data and of reasonably likely alternative pharmacokinetic modeling approaches). With this kind of analysis, it is possible to judge whether those default assumptions have actually been contradicted by data for the case at hand.

Once again it should be stressed that the arguments set out here are intended as defaults. They attempt to gauge the expected effect of known major cross-species trends in the rates and magnitudes of the underlying physiological processes, both in the internal disposition of a dose and its subsequent carcinogenic effect. Just as the pharmacokinetic presumptions may be able to be replaced with sufficiently validated case-specific modeling, the pharmacodynamic presumptions may be replaced with suitable biologically based dose-response models. The true pharmacodynamic situation is clearly more complex than represented here. In particular, there may be dose-rate effects, in which higher concentrations have more-than-proportionally stronger effect (Hattis, 1990). The effect of one moment's exposure may also depend on age or on the degree of exposure earlier in life. Such effects have no generalizable patterns, however, and cannot serve as a basis for default scaling of effects. Again, we seek a simple default principle to guide our expectations, while allowing for the use of case-specific experimental or epidemiologic insights (when available) to improve the estimate based on the simplifying assumptions.

It should also be pointed out that this scheme, with its explicit treatment of time, pharmacokinetics, and pharmacodynamics, provides a conceptual framework for examining such crucial emerging issues as risks from partial lifetime exposures, potencies in children vis-à-vis adults, and other similar questions. Failing to provide such an explicit argument from stated assumptions dooms a scaling factor to be inapplicable to such questions and provides no means for incorporating biological insights, such as data on pharmacokinetics and mechanism of action, when they are available.

III. Discussion

This proposal aims at arriving at a very broad generalization about carcinogen exposures that can be considered of equal risk in experimental animals and humans—one that can be applied to potentially carcinogenic chemicals lacking adequate information on pharmacokinetics and mechanisms of action. It attempts to provide a rational basis for a *prima facie* characterization of potential risks in humans, consistent with our empirical knowledge of carcinogen potencies in animals and humans and with the known general consequences of species variation in body size and the rates of physiological processes.

To achieve this wide applicability and generality, it is necessary to rely on simplified, broad patterns and trends of biological variation, while bypassing many details and causes of case-by-case variation. This is not to deny the importance of these details, nor to denigrate the value of case-specific data that show species- or dose-related differences in uptake, metabolism, or physiological actions of putative carcinogenic agents. To the contrary, the intention is to provide a framework for the use of such data, allowing (and indeed, encouraging) one to go beyond the *prima facie* case based on overall trends to address the impact of specific knowledge about the chemical and its actions.

The empirical data on carcinogen potencies estimated in various animal species and in humans demonstrate the large variability involved. Although scaling doses by $W^{3/4}$, as proposed herein, characterizes the trend fairly well, individual chemicals may deviate from this overall pattern by two orders of magnitude or more in either direction. In the case of the allometric arguments, there are dozens of points in the chain of inference where one could raise counterexamples to simplifying assumptions, arguing that the generalized $W^{3/4}$ scaling method thereby would over- or underestimate human risks for that case. For example, Gillette (1985) lists a number of physiological factors with high variability that would influence the accuracy of extrapolation of a dose's toxicity to an exposed human, not the least of which is the 20-to-50-fold variation among individual humans in their ability to take up and metabolize an agent and to repair any resulting damage.

The existence of such underlying variation means that the extrapolation of chemically induced risks observed in one circumstance (say, in a mouse lifetime cancer bioassay) to another (say, to people exposed to environmental pollutants) needs to be carefully and properly interpreted. Clearly, the projection of an equivalent dose is not merely a conversion of units, with the resulting human dose achieving an equal factual standing to the original animal observation. The projection is an

hypothesis, formulated in the face of uncertainty. In the most basic case—when there is little additional information that may be brought to bear—this hypothesis is framed in terms of the general features of anatomical and physiological differences among species that should affect all chemicals. It represents a best guess based on general principles and the recognition of overall trends. This best guess is surrounded by an envelope of considerable uncertainty, owing to the dozens of particulars that make each chemical's disposition and toxic effects in various species unique, despite the overall trends. When applicable pharmacokinetic and mechanistic insights into the particular chemical and its actions are available, they can (and should) be used to refine the projections by identifying and accounting for these chemical-specific factors.

Every projection of human equivalent dose, no matter how sophisticated, will have associated with it both uncertainty and variability. The uncertainty concerns whether the scaling method employed has correctly embodied and utilized the information at hand (be it general cross-species trends over all chemicals or case-specific insights from pharmacokinetics and mechanistic studies). The variability arises because even a sophisticated projection, when applied to a population of cases, will at best predict the mean of an array of actual values that reflect the myriad individual factors that no analysis can completely take into account. The "true" dose of equivalent risk will vary among exposed humans according to how each individual deviates from the overall human norm, owing to genetic factors, environmental influences, age, sex, lifestyle, and countless details of personal history.

The goal of a cross-species scaling methodology, then, is not to arrive at "true" values of equivalent does under all circumstances (for this is impossible, even in principle). Rather, it is to embody correctly and without bias the impact of the information at hand, providing rational estimates that take into account what is known, recognizing that true values will vary around this estimate as a result of case-by-case particulars, many of which are either unknown to vary among the individuals for whom the projections are being made.

The proposed scaling of daily administered doses of putative carcinogens by $W^{3/4}$ is intended to be such an unbiased projection; i.e., it is to be thought of as a "best" estimate rather than one with some conservatism built in to assure that any error is on the side of being overly protective. It should not be interpreted as a "safety factor" or other intentional bias designed to "err on the side of safety." Thus, it is to be expected that some individual compounds will have their human potencies overestimated by this procedure, while others will have them underestimated.

This having been said, it must be said, it must be acknowledged that there is considerable uncertainty about the best scaling method to achieve this unbiased projection. In particular, the empirical data on comparative carcinogen potencies are also compatible with both body weight and surface area scaling, the methodologies that we propose to abandon in favor of $W^{3/4}$ scaling. The $W^{3/4}$ scaling is chosen both to achieve unity of default methods and because it can be related to an explicit rationale based on allometric variation of the underlying anatomy and physiology. Former methodologies have not been shown to be false, however, and it is considered that risk assessments conducted under these methodologies are not in need of revision on account of any agreement to utilize a common methodology in the future.

The utility of the "physiological time" concept for understanding the patterns of cross-species differences in a carcinogen's action lies in its simplicity and generality. Because organ volumes tend to share a common pattern of allometric variation, while rates of physiological processes share another, the general predictions of cross-species differences is independent of specific hypotheses about target organs or mechanisms of action. One could, for instance, envisage an alternative allometric formulation that, rather than relying on overall patterns for unspecified organs in all mammals, focuses instead on the details of specific organs (common target organs or sites of metabolic transformation, say) in specific laboratory animal strains and in humans. For example, instead of relying on the approximation that breathing rates vary as $W^{3/4}$, one could make precise measurements of rates in B6C3F1 mice and in the humans whose risks are being evaluated. The utility of such an approach for a *default* scaling factor is doubtful, however, since the generality of the argument is lost, and the analysis becomes contingent on the details of the specific physiological hypothesis being elaborated. If such specificity is possible in an individual instance, it should become part of the case-specific pharmacokinetic and pharmacodynamic analysis that overrides the default methodology.

It is sometimes suggested that there should be more than one "default" scaling methodology, with different generalized procedures to be applied to different classes of chemical carcinogens. At present, it is not clear how such division of cases would be made, however, nor what the consequences on a generalized method should be. For example, tissue area-under-the-curve of the toxic moiety would seem to be the best *prima facie* dosimeter for the effects of both genotoxic and non-genotoxic carcinogens on their target organs. Similarly, the general allometric arguments for how AUCs are expected to vary across species apply both to agents active as the parent compound and to those requiring metabolic activation.

A possible exception to this pattern has been mentioned earlier. The generalized allometric pattern assumes that the rate of clearance of a metabolite from the target site of toxic action, like other rates, scales in proportion to $W^{3/4}$. If a compound acts through a very reactive metabolite that is spontaneously and fully deactivated by purely physical-chemical processes within the target tissue itself, then the rate of detoxification may be species-independent, and the AUC may be more related to the amount metabolized, which by default is expected to retain proportionality to body mass (Travis, 1990). Such a situation is not only plausible, it may be frequent. There is no particular indication from the empirical data, however, that different rules apply to metabolically activated compounds. Moreover, since the reactive intermediate scenario breaks the symmetry of the physiological time argument, it is difficult to know exactly what the carcinogenic consequences should be. This remains an important problematical area that requires future attention. For the present, however, there do not seem to be grounds for specifying when and how one should alter the default proposal.

The analysis presented herein is oriented around scaling doses so as to yield equal areas under the carcinogen's concentration curve at the target site. This definition of equivalence of target "doses" is in line with common practice. The AUC provides a measure of the agent's opportunity to interact with the target. Equal AUCs over a fixed time interval correspond to equal average concentrations of the agent during that interval. It should be borne in mind, however, that other measures of target

tissue dose might be more appropriate for specific mechanisms of carcinogenicity. For example, if a critical concentration must be reached or if there is a nonlinear dependence of toxic stress on concentration of the agent. Such alternative have no generalizable consequences or patterns, however, and there is no evident way to bring them into a default methodology. When case-specific pharmacokinetic analysis is undertaken, careful attention should also be paid to the measure of target tissue dose that is being considered to yield equivalent lifetime carcinogenic effect, and alternatives should be examined.

When AUCs from daily exposures are equal, then average concentrations of the agent at the target sites are equal. And when dosing producing equal daily average concentrations is continued for a lifetime, then average lifetime concentrations are equal. If one presumes that such average lifetime concentrations yield equal cancer risk, then the argument follows common practice and is in accord with the general finding that age-specific tumor incidence patterns tend to be congruent across species when expressed on a lifetime scale. (Other presumptions about the impact of such equal concentrations can be held, however.) The underlying biological basis for lifetime equivalence, and the conditions under which it might be violated, are not clear at present. This is an area in need of further investigation, and increased understanding will be key to determining how to scale the results of cell-kinetically based models of carcinogenesis from animal models to humans.

It should be borne in mind that the arguments for scaling doses by $W^{3/4}$ have been cast in very general terms to reflect constant, low-level, lifetime dosing and consequent lifetime cancer risks. Care should be taken when applying the methodology to specific exposure scenarios that deviate from this pattern. For example, the allometric arguments are adduced for variation among mammals. Other groups of animals have their own characteristic allometric patterns, but they are different than the mammalian ones. To extrapolate across classes of vertebrates with the proposed methodology, for example, would violate the basic presumption of the variation in a basically similar anatomical and physiological plan among differently sized mammals.

The allometric patterns relied on by the present argument represent variation *among species* for adult organisms. Allometric patterns among variously sized *individuals* of the same species can (and generally do) differ from the pattern seen from one species to another. The metabolic and lifespan patterns across species do not really describe variation among differently sized humans, for example. In other words, the scaling arguments presented here do not necessarily apply for the adjustment of doses to larger and smaller humans. In such cases, it is probably preferable to use mg/kg scaling (although the difference between this and $W^{3/4}$ scaling is minor). Similarly, the allometric patterns describing the changes within an individual as he or she grows and matures from child to adult generally differ from both the cross-species pattern and from the variation among differently sized adults. Compared to adults, children do have faster metabolic rates and greater intakes of food, water and air per unit of body weight, but these relations are not well described by proportionality $W^{3/4}$, as they are across species. Moreover, children also have proportionally faster rates of cell division (i.e., both pharmacokinetic and pharmacodynamic time are accelerated compared to adults). This a complex and problematic issue that is beyond the scope of the present document. It is deserving of further study. At present, it seems most reasonable to follow current practice, i.e., to scale doses for adults and children (and for differently sized adults) on a mg/kg basis. For similar reasons, the present scaling arguments provide no special insight into the problem of partial lifetime exposures.

Finally, it should be borne in mind that the scaling arguments are made for similar levels and patterns of exposure in animals and humans. When experimental animals are exposed to much higher levels than humans (as is common in carcinogenicity bioassays) there is the possibility of saturation of metabolism in animals that is not shared with human exposures. Such effects will obscure the usual pattern of equivalence of internal doses projected on the assumption of similar exposure regimes. In other words, dose scaling cannot solve the high-to-low-dose extrapolation problem, which must be addressed by other means. Case-specific pharmacokinetic analysis can, however, provide very valuable insight into differences in target tissue doses between rodents at high bioassay exposures and humans at much lower exposures.

IV. Conclusions

This notice is an announcement of a consensus reached by the Environmental Protection Agency, the Food and Drug Administration, and the Consumer Product Safety Commission to consider that lifetime cancer risks will be presumed to be equal when daily amounts administered are in proportion to body weight raised to the 3/4 power. It should be reiterated that former methodologies have not been shown to be in error, and this agreement should not be construed as overturning those practices with one of superior scientific validity.

The empirical data on comparative carcinogenic potencies in different species support the general practice of scaling rodent potencies to humans, and show that, on average, current methods perform rather well. The data are not of sufficient resolution, however, to distinguish between surface area and body weight dose scaling. The data are fully consistent with the proposal contained herein for scaling by body weight to the 3/4 power.

Theoretical support for scaling carcinogen doses by the 3/4 power of body weight is available from analysis of the allometric variation of key physiological parameters across mammalian species. Such an analysis has the benefit of providing an articulated rationale for the scaling methodology and of setting out the underlying assumptions explicitly.

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Friday
June 5, 1992

Part VI

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for MAY 1992

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-53155; FRL 4071-3]

Premanufacture Notices; Monthly Status Report for MAY 1992

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for May 1992.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPPTS-53155)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. 201ET, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during May; (b) PMNs received previously and still under review at the end of May; (c) PMNs for which the notice review period has ended during May; (d) chemical substances for which EPA has received a notice of commencement to manufacture during May; and (e) PMNs for which the review period has been suspended. Therefore, the May 1992 PMN Status Report is being published.

Dated: June 1, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for MAY 1992.

I. 178 Premanufacture notices and exemption requests received during the month:

PMN No.

P 92-0810	P 92-0822	P 92-0823	P 92-0824
P 92-0825	P 92-0826	P 92-0827	P 92-0828
P 92-0829	P 92-0832	P 92-0833	P 92-0834
P 92-0835	P 92-0836	P 92-0837	P 92-0838
P 92-0839	P 92-0840	P 92-0841	P 92-0843
P 92-0844	P 92-0845	P 92-0846	P 92-0847
P 92-0848	P 92-0849	P 92-0850	P 92-0851
P 92-0852	P 92-0853	P 92-0854	P 92-0855
P 92-0856	P 92-0857	P 92-0858	P 92-0859
P 92-0860	P 92-0861	P 92-0862	P 92-0863
P 92-0864	P 92-0865	P 92-0866	P 92-0867
P 92-0868	P 92-0869	P 92-0870	P 92-0871
P 92-0872	P 92-0873	P 92-0874	P 92-0875
P 92-0876	P 92-0877	P 92-0878	P 92-0879
P 92-0880	P 92-0881	P 92-0882	P 92-0883
P 92-0884	P 92-0885	P 92-0886	P 92-0887
P 92-0888	P 92-0889	P 92-0890	P 92-0891
P 92-0892	P 92-0893	P 92-0894	P 92-0895
P 92-0896	P 92-0897	P 92-0898	P 92-0899
P 92-0900	P 92-0901	P 92-0902	P 92-0903
P 92-0904	P 92-0905	P 92-0906	P 92-0907
P 92-0908	P 92-0909	P 92-0910	P 92-0911
P 92-0912	P 92-0913	P 92-0914	P 92-0915
P 92-0916	P 92-0917	P 92-0918	P 92-0919
P 92-0920	P 92-0921	P 92-0922	P 92-0923
P 92-0924	P 92-0925	P 92-0926	P 92-0927
P 92-0928	P 92-0929	P 92-0930	P 92-0931
P 92-0932	P 92-0933	P 92-0934	P 92-0935
P 92-0936	P 92-0937	P 92-0938	P 92-0939
P 92-0940	P 92-0941	P 92-0942	P 92-0943
P 92-0944	P 92-0945	P 92-0946	P 92-0947
P 92-0948	P 92-0949	P 92-0950	P 92-0951
P 92-0952	P 92-0953	P 92-0954	P 92-0955
P 92-0956	P 92-0957	P 92-0958	P 92-0959
P 92-0960	P 92-0961	P 92-0962	P 92-0963
P 92-0964	P 92-0965	P 92-0966	P 92-0967
P 92-0968	P 92-0969	P 92-0970	P 92-0971
P 92-0972	P 92-0973	P 92-0974	P 92-0975
P 92-0976	P 92-0977	P 92-0978	P 92-0979
P 92-0980	P 92-0981	P 92-0982	P 92-0983
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IV. 46 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 80-0018	1-Nitrobenzolyl-1(4-carboxypyridyl)hydrazide	January 7, 1982.
P 81-0250	G Disubstituted benzenamine	October 25, 1983.
P 84-0660	G Substituted aryl olefin	February 9, 1988.
P 84-0704	G Substituted alkyl arene	January 24, 1988.
P 85-1198	Amine functional acrylic terpolymer	March 12, 1992.
P 87-1707	G Quaternized fatty amidoamine	October 17, 1988.
P 88-1267	G Hydrazine derivative	November 22, 1988.
P 88-1569	Graft copolymer of polyvinyl alcohol with acrylamide, acrylic acid and alky acetoacetate	January 16, 1991
P 88-1570	Copolymer of acrylamide and 2*H*-hydroxypropyl methacrylate	June 11, 1991.
P 89-0236	4-Dibenzylamino-2-methyl benzidehyde-diphenyl hydrazone	August 10, 1991.
P 89-0471	G Substituted hydrazinopyrazole	July 1, 1989.
P 89-0653	G Copolymer	October 31, 1989.
P 90-0594	G Substituted hydrazine	January 23, 1991
P 90-1699	G Metal carbonyl carboxylate	March 18, 1992.
P 91-0052	G Polyolefin amino ester salt	April 13, 1991.
P 91-0076	1,1-Dimethyl-1-(2-hydroxypropyl)amine methacrylimide	April 16, 1991.
P 91-0507	Mixture of pyridinium,3-carboxy-1-(4-((4-chloro-3-sulfophenyl)amino-6-((5-hydroxy-6-((4-methoxy-2-sulfophenyl)azo)-7-sulfo-2-naphthaleny)amino)-1,3,5-triazrin-2yl)-hydroxy, inner salt, potassium sodium salt,2-naphthalenesulfonic acid, 7-((4-chloro-6-((4-chloro-3-sulfophenyl)amino)1,3,5-triazrin-2-yl)amino)-4-hydroxy-3-((4-methoxy-2-sulfophenyl)azo-, potassium sodium salt and 2-naphthalenesulfonic acid, 7-((4-hydroxy-6-((4-chloro-3-sulfophenyl)amino)-4-hydroxy-3-((4-methox-2-sulfophenyl)azo-, potassium sodium salt.	December 5, 1991.
P 91-0616	G Neopentyl glycol diisostearate	April 2, 1992.
P 91-1143	G Acrylic copolymer	March 27, 1992.
P 91-1244	G Acrylic-silicone : graft polymer	March 5, 1992.
P 91-1245	G Diphenol Dicyanate homopolymer	March 29, 1992.
P 91-1268	G Tall oil fatty acids, aliphatic dicarboxylic acid, aliphatic polyol, oxyalkylene alkyd	March 31, 1992.
P 91-1294	G Acrylate/anhydride copolymer	March 8, 1992.
P 91-1347	G Quaternary ammonium perfluoroalkyl carboxylate	March 18, 1992.
P 91-1418	G Modified hydrocarbon resin	April 2, 1992.
P 92-0021	G Sulfonated azo dye with monochlorotriazine groups, copper complex; potassium, sodium salt	April 3, 1992.
P 92-0057	G Silica supported magnesium-titanium catalyst	March 15, 1992.
P 92-0062	G Phenolic res	April 7, 1992.
P 92-0151	G Modified gela	March 23, 1992.
P 92-0231	G Polyurethane	April 9, 1992.
P 92-0237	G Spirocyclic al e ketone	April 20, 1992.
P 92-0260	G Polymeric colorant	April 3, 1992.
P 92-0276	G Amino silicone	March 29, 1992.
P 92-0279	G Styrenated hydroxy functional acrylic	March 25, 1992.
P 92-0306	G Aluminum alkoxide chelate	March 20, 1992.
P 92-0321	G Aliphatic amine, epoxy adduct	March 30, 1992.
P 92-0322	G Acrylic polymer	April 14, 1992.
P 92-0377	G Acetamide derivative	April 6, 1992.
Y 87-0062	G acrylamide acrylate copolymer	March 18, 1992.
Y 90-0104	Rosin; maleic anhyride; pentacrythritol; nonyl phenol; p-tert-butylphenol; paraformaldehyde; bisphenol A	February 21, 1990.
Y 90-0241	G Acrylic polymer	March 18, 1992.
Y 91-0147	G Acrylid modified soya/linseed polymer	March 23, 1992
Y 92-0001	Tall oil fatty acids; sorbitol; glycerine; phthalicanhydne; maleic anhydride	March 25, 1992
Y 92-0097	G Polyester of hexanediol, trimethyl propane and mixed aliphatic acids	March 20, 1992.
Y 92-0103	G Alkyd resin, styrenated	March 14, 1992.
Y 92-0104	Conjugated linoleic acid; styrene; acrylic acid; methyl methacrylate	April 4, 1992.

V. 9 Premanufacture notices for which the period has been suspended.

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[FR Doc. 92-13218 Filed 6-4-92; 8:45 am]
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S. 2569/P.L. 102–297

To provide for the temporary continuation in office of the current Deputy Security Advisor in a flag officer grade in the Navy. (June 2, 1992; 106 Stat. 216; 1 page) Price: $1.00

Last List June 2, 1992

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Monday
June 8, 1992

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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 16; 9:00 a.m.
WHERE: Room 328
Ralph H. Metcalfe Federal Building
77 W. Jackson
Chicago, IL
RESERVATIONS: Call the Federal Information Center.
1–800–366–2998

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Presidential Documents

Title 3—

The President

Proclamation 6443 of June 4, 1992

Week for the National Observance of the 50th Anniversary of World War II, 1992

By the President of the United States of America

A Proclamation

At a time when more and more nations are adopting systems of government based on respect for human rights, it may be difficult for many young Americans to fathom the days when the very existence of freedom stood at the heart of a fierce global battle—one in which the United States and its Allies faced totalitarian regimes intent on achieving regional hegemony and world domination. Yet remember those days we must, because however remote the events of a half-century ago may appear today, World War II offers lessons that are vital to the continued preservation of our freedom and security.

At its most fundamental level, World War II was a struggle to preserve our way of life. As President Franklin Roosevelt said in late 1941:

> What we face is nothing more or less than an attempt to overthrow and to cancel out the great upsurge of human liberty of which the American Bill of Rights is the fundamental document: to force the peoples of the earth . . . to accept again the absolute authority and despotic rule from which the courage and the resolution and the sacrifices of their ancestors liberated them many, many years ago.

During World War II, the United States and its Allies were pitted against tyrannical regimes that would brutally deny the God-given rights and dignity of the individual, that would repress freedom of speech and subordinate the individual and family to the whims of the state, and that would exterminate entire peoples while enslaving others through systematic intimidation, repression, and the use of force.

The people of the United States met this threat with an extraordinary display of unity, courage, and resolve. By January 1, 1942, only a few weeks after the attack on Pearl Harbor, more than 100,000 Americans rushed to enlist in the Armed Forces. Before the war ended, more than 16,000,000 Americans would serve in uniform, and some 400,000 would make the supreme sacrifice in the defense of freedom. In the first year of our Nation's participation in World War II, as U.S. and Allied forces fought in places such as Bataan and Corregidor, the North Atlantic, and the Coral Sea, countless citizens prayed at home, church, and school while millions of others worked virtually around-the-clock to maximize the production of our farms, factories, mines, and shipyards. Tested and proven in historic victories at Midway and Guadalcanal, in General MacArthur's celebrated "leapfrog" up the 1,500-mile coast of New Guinea, and in daring Allied campaigns across North Africa, this united front against tyranny would not falter or fail throughout the remaining years of the war.

We Americans have learned many lessons from our experience in World War II, one of the first being that no aggressor, no matter how ruthless or cunning, can match the loyalty and devotion of a free people to the ideals of liberty and self-government. Americans also learned, as President Roosevelt said, "that we cannot live alone, at peace; that our well-being is dependent on the well-being of other nations far away." The Allied victory in World War II affirmed U.S. leadership in global affairs and underscored the importance of promoting constructive dialogue among nations in an increasingly interdependent world.

Clearly, the lessons of World War II are timeless. When we reflect on the course of events 50 years ago and then consider the recent emergence of democratic nations around the globe, we recognize, as did President Truman, that the spirit of liberty and the inherent dignity and freedom of the individual "are the strongest and toughest and most enduring forces in all the world."

This week, as we celebrate our freedom in our places of worship and in our halls of government, in private thanksgiving and in public ceremony, let us honor our Nation's World War II veterans, especially the infirm and the hospitalized, and let us remember with grateful prayers those heroic individuals who died in battle so that others might live in freedom, peace, and safety. Finally, let us commit to memory the lessons of World War II and strive, through our constant vigilance and labors, to make them the basis of larger freedom and lasting peace among all humankind.

The Congress, by Public Law 102–290, has designated the week beginning May 31, 1992, as a "Week for the National Observance of the 50th Anniversary of World War II."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of May 31 through June 6, 1992, as a Week for the National Observance of the 50th Anniversary of World War II. I call on all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 4 day of June, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 92–13527
Filed 6–4–92; 2:06 pm]
Billing code 3195–01–M

Editorial note: For the President's remarks on signing this proclamation, see issue 23 of the *Weekly Compilation of Presidential Documents*.

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 26880; Amdt. No. 1493]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation

(Air), Standard instrument approaches, Weather.

Issued in Washington, DC on May 22, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective August 20, 1992

Aniak, AK—Aniak, LOC/DME, RWY 10, Amdt. 2
Aniak, AK—Aniak, ILS/DME, RWY 10, Amdt. 6
Barrow, AK—Wiley Post-Will Rogers Mem, NDB RWY 24, Amdt. 6
Phoenix, AZ—Phoenix Sky Harbor Intl, VOR-A, Orig., CANCELLED
Fayetteville, AR—Drake Field, VOR-A, Amdt. 24
Grand Junction, CO—Walker Field, VOR RWY 11, Amdt. 1
Grand Junction, CO—Walker Field, ILS/DME RWY 11, Amdt. 14
Pocatello, ID—Pocatello Regional, VOR/DME or TACAN RWY 21, Amdt. 9
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Tell City, IN—Perry County Muni, VOR RWY 31, Amdt. 4
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Lexington, KY—Blue Grass, VOR-A, Amdt. 7
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McCook, NE—McCook Muni, VOR RWY 21, Amdt. 3
Albany, OR—Albany Muni, VOR/DME-A, Amdt. 2
Dickson, TN—Dickson Muni, NDB RWY 17, Amdt. 1
Bluefield, WV—Mercer County, VOR RWY 23, Amdt. 7
Bluefield, WV—Mercer County, VOR/DME RWY 23, Amdt. 2
Bluefield, WV—Mercer County, ILS RWY 23, Amdt. 12

** * * Effective June 25, 1992*

Louisville, KY—Standiford Field, VOR or TACAN RWY 29, Amdt. 21
Louisville, KY—Standiford Field, NDB RWY 29, Amdt. 18
Louisville, KY—Standiford Field, ILS RWY 1, Amdt. 10
Louisville, KY—Standiford Field, ILS RWY 19, Amdt. 8
Louisville, KY—Standiford Field, ILS RWY 29, Amdt. 21
Frankfort, MI—City-County, VOR-A, Amdt. 2
Cambridge, MN—Cambridge Muni, NDB RWY 34, Amdt. 6
Crookston, MN—Crookston Muni-Kirkwood Fld, VOR RWY 31, Amdt. 4
Crookston, MN—Crookston Muni-Kirkwood Fld, NDB RWY 13, Amdt. 6
Fosston, MN—Fosston Muni, NDB RWY 34, Amdt. 3
Wheaton, MN—Wheaton Municipal, NDB RWY 34, Amdt. 1
Columbus, OH—Bolton Field, NDB RWY 4, Amdt. 6
Dayton, OH—Dayton General Arpt South, LOC RWY 20, Amdt. 3
Wadsworth, OH—Wadsworth Muni, NDB RWY 2, Amdt. 4
Yankton, SD—Chan Gurney Muni, VOR RWY 31, Amdt. 3

** * * Effective May 15, 1992*

Nashville, TN—Nashville Intl, ILS RWY 2R, Amdt. 1

** * * Effective May 13, 1992*

Fort Myers, FL—Southwest Florida Regional, RADAR-1, Amdt. 4

[FR Doc. 92-13306 Filed 6-5-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26881; Amdt. No. 1494]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on May 22, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
05/08/92	AZ	Phoenix	Phoenix Sky Harbor Intl	FDC 2/2669	VOR-A ORIG.
05/08/92	AZ	Show Low	Show Low Muni	FDC 2/2668	NDB-A ORIG.
05/08/92	CA	Santa Barbara	Santa Barbara Muni	FDC 2/2675	VOR RWY 25 AMDT 6.
05/08/92	ID	Caldwell	Caldwell Industrial	FDC 2/2661	NDB RWY 30, AMDT 3.
05/08/92	ID	Lewiston	Lewiston-Nez Perce County	FDC 2/2660	VOR RWY 8 AMDT 5.
05/08/92	ID	Lewiston	Lewiston-Nez Perce County	FDC 2/2663	VOR RWY 26 AMDT 12.
05/08/92	KS	Newton	Newton-City County	FDC 2/2650	NDB RWY 35 AMDT 2.
05/08/92	KS	Newton	Newton-City County	FDC 2/2651	RNAV RWY 35 AMDT ORIG.
05/08/92	KS	Newton	Newton-City County	FDC 2/2652	RNAV RWY 17 ORIG.
05/08/92	KS	Newton	Newton-City County	FDC 2/2654	NDB RWY 17 AMDT 3.
05/08/92	OR	Scappoose	Scappoose Industrial Airpark	FDC 2/2658	VOR/DME-A AMDT 1.
05/08/92	WA	Seattle	Seattle-Tacoma Intl	FDC 2/2662	ILS RWY 34L, AMDT 1.
05/11/92	KS	Newton	Newton-City County	FDC 2/2701	ILS RWY 17 AMDT 2.
05/11/92	MT	Forsyth	Tillitt Field	FDC 2/2706	NDB RWY 26 AMDT 2.
05/13/92	CA	Lompoc	Lompoc	FDC 2/2811	VOR/DME-A AMDT 3.
05/13/92	LA	Hammond	Hammond Muni	FDC 2/2736	VOR RWY 31 AMDT 3.
05/13/92	LA	Hammond	Hammond Muni	FDC 2/2739	VOR RWY 18 AMDT 2.
05/13/92	LA	Hammond	Hammond Muni	FDC 2/2852	ILS RWY 18 AMDT 2.
05/13/92	NY	Hamilton	Elisa Payne	FDC 2/2744	VOR-A AMDT 2.
05/14/92	CO	Colorado Springs	City of Colorado Springs Muni	FDC 2/2780	ILS RWY 17 AMDT 4.
05/14/92	CO	Colorado Springs	City of Colorado Springs Muni	FDC 2/2782	NDB RWY 35 AMDT 25.
05/14/92	CO	Colorado Springs	City of Colorado Springs Muni	FDC 2/2785	ILS RWY 35 AMDT 36.
05/15/92	ST	Christiansted	Alexander Hamilton	FDC 2/2798	CROIX, VI. VOR RWY 27 AMDT 18.
05/20/92	MN	Red Wing	Red Wing Muni	FDC 2/2886	NDB RWY 9 AMDT 2.

NFDC Transmittal Letter Attachment

Show Low

Show Low Muni
Arizona
NDB-A ORIG . . .
Effective: 05/08/92
FDC 2/2668/SOW/ FI/P Show Low Muni, Show Low, AZ. NDB-A ORIG . . . TRML RTE Hozer INT TO SOW NDB DSTC 7.6 VICE 8.1. Delete notes . . . Maintain 8100 or above until established outbound for proc turn. Activate MIRL RWY 6-24 UNICOM. This becomes NDB-A ORIG A.

Phoenix

Phoenix Sky Harbor Intl
Arizona
VOR-A ORIG . . .
Effective: 05/08/92
FDC 2/2669/PHX/ FI/P Phoenix Sky Harbor Intl, Phoenix, AZ. VOR-A ORIG . . . MIN ALT AT Lakey INT 6000 Vice 4200. This becomes VOR-A ORIG A.

Santa Barbara

SANTA BARBARA MUNI
California
VOR RWY 25 AMDT 6 . . .
Effective: 05/08/92
FDC 2/2675/SBA/ FI/P Santa Barbara Muni, Santa Barbara, CA. VOR RWY 25 AMDT 6 . . . Delete Tally INT/GVO 16.7 DME. Delete Tally FIX MINS . . . This Becomes VOR RWY 25 AMDT 6A.

LOMPOC

LOMPOC
California
VOR/DME-A AMDT 3 . . .
Effective: 05/13/92
FDC 2/2811/LPC/ FI/P Lompoc, CA. VOR/DME-A AMDT 3. . . Delete note . . . Use Vandenberg AFB ALSTG; when Vandenberg Approach not in Operation Proc NA. ADD NOTE . . . IF LCL ALSTG not received, use Vandenberg AFB ALSTG; when neither received, proc NA. ADD ALTN MINS . . . CATS A AND B 900-2 (not authorized when LCL ALSTG not available). This becomes VOR/DME-A AMDT 3A.

Colorado Springs

City of Colorado Springs Muni
Colorado
ILS RWY 17 AMDT 4 . . .
Effective: 05/14/92
FDC 2/2780/COS/ FI/P City of Colorado Springs Muni, Colorado Springs, CO. ILS RWY 17 AMDT 4 . . . Change all references to RWY 17-35 to RWY 17R-35L. This becomes ILS RWY 17R AMDT 4A.

Colorado Springs

City of Colorado Springs Muni
Colorado
NDB RWY 35 AMDT 25 . . .
Effective: 05/14/92
FDC 2/2782/COS/ FI/P City of Colorado Springs Muni, Colorado Springs, CO. NDB RWY 35 AMDT 25 . . . Change all references to RWY 17-35 to RWY 17R-35L. This becomes NDB RWY 35L, AMDT 25A.

Colorado Springs

City of Colorado Springs Muni
Colorado
ILS RWY 35 AMDT 36 . . .
Effective: 05/14/92
FDC 2/2785/COS/ FI/P City of Colorado Springs Muni, Colorado Springs, CO. ILS RWY 35 AMDT 36 . . . Change all references to RWY 17-35 TO RWY 17R-35L. This becomes ILS RWY 35L, AMDT 36A.

Lewiston

LEWISTON-NEZ PERCE COUNTY
Idaho
VOR RWY 8 AMDT 5 . . .
Effective: 05/08/92
FDC 2/2660/LWS/ FI/P Lewiston-Nez Perce County, Lewiston, ID. VOR RWY 8 AMDT 5. . . Delete lighting note . . . Activate MALSR RWY 26 119.4. Delete note . . . ALTN MINS NA when CTL TWR not in operation. Revise ALTN MINS to . . . Standard, CAT C 800-2 1/4, CAT D 800-2 1/2 . . . ALTN MINS NA when CTL TWR CLSD except for operators with approved weather reporting services. This becomes VOR RWY 8 AMDT 5A.

Caldwell

Caldwell Industrial
Idaho
NDB RWY 30, AMDT 3 . . .
Effective: 05/08/92
FDC 2/2661/U35/ FI/P Caldwell Industrial, Caldwell, ID. NDB RWY 30, AMDT 3 . . . Delete note . . . Use Boise, ID ALSTG add revised note . . . IF LCL ALSTG not received, use Boise ALSTG. This becomes NDB RWY 30, AMDT 3A.

Lewiston

Lewiston-Nez Perce County
Idaho
VOR RWY 26 AMDT 12 . . .

Effective: 05/08/92

FDC 2/2663/LWS/ FI/P Lewiston-Nez Perce County, Lewiston, ID. VOR RWY 26 AMDT 12 . . . Delete Lighting note . . . Activate MALSR RWY 26 119.4. Revise ALTN MINS TO ADD . . . ALTN MINS NA when CTL TWR closed except for operators with approved weather reporting services. This becomes VOR RWY 26 AMDT 12A.

Newton

Newton-City County
Kansas
NDB RWY 35 AMDT 2 . . .
Effective: 05/08/92

FDC 2/2650/EWK/ FI/P Newton-City County, Newton, KS. NDB RWY 35 AMDT 2 . . . TRML RTE Waive INT to Newton NDB CRS/DTSC . . . 086/ 9.8NM. Delete note . . . MALSR . . . thru . . . CTAF. Change ALT NOTE . . . IF LCL ALSTG not received use Wichita ASLTG and increase all MDAS 100FT. This becomes NDB RWY 35 AMDT 2A.

Newton

Newton-City County
Kansas
RNAV RWY 35 AMDT ORIG . . .
Effective: 05/08/92

FDC 2/2651/EWK/ FI/P Newton-City County, Newton, KS. RNAV RWY 35 AMDT ORIG . . . TRML RTE waive INT to SPINA WP CRS/DTSC . . . 128/ 13.7NM. Delete Note . . . MALSR . . . Thru . . . CTAF. Change ALT note . . . IF LCL ALSTG not received use Wichita ASLTG and increase all MDAS 100FT. This becomes RNAV RWY 35 ORIG–A.

NEWTON

Newton-City-County
Kansas
RNAV RWY 17 ORIG. . .
Effective: 05/08/92

FDC 2/2652/EWK/ FI/P Newton-City County, Newton, KS. RNAV RWY 17 ORIG. . . Delete Note. . . MALSR. . Thru. . CTAF. Change ALT Note. . . If LCL ALSTG not received use Wichita ASLTG and increase all MDAS 100 FT. This Becomes RNAV RWY 17 ORIG-A.

Newton

Newton-City County
Kansas
NDB RWY 17 AMDT 3. . .
Effective: 05/08/92

FDC 2/2654 EWK/FI/P Newton-City County, Newton, KS. NDB RWY 17 Amdt 3. . . TRML RTE Waive INT to HARVS LOM CRS/DTSC. . . 059/ 10.6NM. Delete Note. . . MALSR. . thru. . CTAF. Change ALT NOTE. . . IF LCL ALSTG not received use Wichita ASLTG and Increase All MDAS 100 FT. This Becomes NDB RWY 17 AMDT 3A.

Newton

Newton-City County
Kansas
ILS RWY 17 AMDT 2. . .
Effective: 05/11/92

FDC 2/2701/EWK/ FI/P Newton-City County, Newton, KS. ILS RWY 17 AMDT 2. . . TRML RTE Waive INT to HARVS LOM CRS/DTSC. . . 059/ 10.6NM. Delete Notes. . . MALSR. . thru. . CTAF, and CAT D. . thru. . INOP MM. Change ALT NOTE. . . IF LCL ALSTG not received use Wichita ASLTG and increase all MDAS 100 FT. This Becomes ILS RWY 17 AMDT 2A.

HAMMOND

Hammond Muni
Louisiana
VOR RWY 31 AMDT 3. . .
Effective: 05/13/92

FDC 2/2738/0R9/ FI/P Hammond Muni, Hammond, LA. VOR RWY 31 AMDT 3. . . Non-standard take-off MINS apply, see take-off MINS. This becomes VOR RWY 31 AMDT 3A.

HAMMOND

Hammond Muni
Louisiana
VOR RWY 18 AMDT 2. . .
Effective: 05/13/92

FDC 2/2739/0R9/ FI/P Hammond Muni, Hammond, LA. VOR RWY 18 amdt 2. . .Non-standard take-off MINS apply, see take-off mins. This becomes VOR RWY 18 AMDT 2A.

HAMMOND

Hammond Muni
Louisiana
ILS RWY 18 AMDT 2. . .
Effective: 05/13/92

FDC 2/2852/0R9/ FI/P Hammond Muni, Hammond, LA. ILS RWY 18 AMDT 2. . . non-standard Take-off mins apply, see Take-off MINS. This becomes ILS RWY 18 AMDT 2A.

Red Wing

Red Wing Muni
Minnesota
NDB RWY 9 AMDT 2. . .
Effective: 05/20/92

FDC 2/2886/RGK/ FI/P Red Wing Muni, Red Wing, MN. NDB RWY 9 AMDT 2. . . Delete note . . . Obtain local altimeter. . . thru. . . visibilities ½ mile. Add note. . . If local altimeter setting not RCVD, use Minneapolis-St Paul Intl altimeter setting and increase all MDAS 160 FT. This is NDB RWY 9 AMDT 2A.

Forsyth

Tillitt Field
Montana
NDB RWY 26 AMDT 2. . .
Effective: 05/11/92

FDC 2/2708/1S3/ FI/P Tillitt Field, Forsyth, MT. NDB RWY 26 AMDT 2. . . Delete Notes . . . use Miles City ALSTG and Activate MIRL and VASI RWY 8–26 CTAF. . . add note. . . use Miles City ALSTG, when not AVBL, except for operators with approved weather reporting services, PROC NA. This becomes NDB RWY 26 AMDT 2A.

HAMILTON

Elisa Payne
New York
VOR–A AMDT 2. . .
Effective: 05/13/92

FDC 2/2744/B24/ FI/P Elisa Payne, Hamilton, NY. VOR–A AMDT 2. . . Delete Note . . . PROC NA at night. Change Planview note. . . NO PT for arrivals. . ."248 CW" to read "249 CW" 334. This becomes VOR–A AMDT 2A.

Scappoose

Scappoose Industrial Airpark
Oregon
VOR/DME–A AMDT 1. . .
Effective: 05/08/92

FDC 2/2658/1S4/ FI/P Scappoose Industrial Airpark, Scappoose, OR. VOR/DME–A AMDT 1. . . TRML route from Mules INT (IAP) to BTG VORTAC (NOPT) COURSE/DISTANCE—340/ 17.7. This becomes VOR/DME–A AMDT 1A.

Christiansted

Alexander Hamilton Airpark
ST. .
CROIX, VI. VOR RWY 27 AMDT 18. . .
Effective: 05/15/92

FDC 2/2798/STX/ FI/P Alexander Hamilton, Christiansted, St. Croix, VI. VOR RWY 27 AMDT 18. . . TRML RTE from Gruff Coy 12 DME/RADAR to Coy VOR/DME DIST 12.0 NM. FAF to map 5.0 NM, MAP 5.0 DME. DME MINIMA. . . MDA 640 HAT 600 all CATS, VIS CAT C 1½, CAT D 1¾. Circling MDA 640 HAA 579 all CATS. This becomes VOR RWY 27 AMDT 18A.

Seattle

Seattle-Tacoma INTL
Washington
ILS RWY 34L, AMDT 1. . .
Effective: 05/08/92

FDC 2/2662/SEA/ FI/P Seattle-Tacoma Intl, Seattle, WA. ILS RWY 34L, AMDT 1. . . Delete Chuck INT AS IAF. Facts INT/I–TUC 17.1 DME becomes IAF. MIN ALT facts INT/I–TUC 17.1 DME 5000. MIN ALT MILLT INT/I–TUC 11 DME 3000. This becomes ILS RWY 34L AMDT 1A.

[FR Doc. 92–13307 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960—None Assigned

Federal Old-Age, Survivors and Disability Insurance (1950–) Determining Disability and Blindness; Extension of Expiration Date for Adult Mental Disorders Listings

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which the adult mental disorders listings found in part A of appendix 1 of part 404, subpart P, will no longer be effective from August 28, 1992, to August 28, 1993. We have made no revisions in the medical criteria in these mental disorders listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering comments we received on a proposed rule to update the medical criteria used to evaluate mental disorders in adults contained in part A and to make technical changes to part B of the listings used to evaluate mental disorders in children. When we have completed our review, any revised criteria will be published as final regulations.

EFFECTIVE DATE: This rule is effective June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243.

SUPPLEMENTARY INFORMATION: Final regulations issued on August 28, 1985 (50 FR 35038), containing the adult mental disorders listings, included a provision which provided that the listings would expire on August 27, 1988, unless extended by the Secretary of Health and Human Services (the Secretary) or revised and promulgated again. The reason we gave for establishing this expiration date was as follows: "The dynamic nature of the diagnosis, evaluation and treatment of the mental disease process requires that the rules in this area be periodically revised and updated. We intend to carefully monitor these regulations over a 3-year period to ensure that they fulfill congressional intent by providing for ongoing evaluation of the medical evaluation criteria. Therefore, 3 years after publication of final rules, these regulations will cease to be effective unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period."

On August 9, 1988, the Secretary extended the expiration date of these rules through August 27, 1990 (53 FR 29878). The extension was needed to provide additional time for us to determine what revisions to the listings might be necessary.

On October 13, 1988, we announced (53 FR 40135) a public meeting to obtain comments on whether we should revise the adult mental disorders listings and related regulations and, if so, the specific nature of the revisions. The meeting was held in Baltimore, Maryland on November 9–10, 1988. We considered the testimony provided at the meeting and written comments received in response to the meeting announcement along with information from our evaluation activities to determine the need for and nature of revisions to the adult mental disorders listings and related regulations.

We were unable to complete our evaluation in time to have final regulations published by August 27, 1990, the expiration date then in effect. Therefore, on August 28, 1990, we again extended the expiration date of these rules through August 27, 1991 (55 FR 35286). At that time we believed that the additional 1-year extension would provide us with sufficient time to complete our review and to have a final rule published.

On July 18, 1991 we published, in a Notice of Proposed Rulemaking, proposed revisions to the medical criteria for evaluating mental disorders in adults and several technical changes to the medical criteria for evaluating mental disorders in children (56 FR 33130). However, since the adult listings would have expired on August 27, 1991, it was necessary to again extend the expiration date of the current listing criteria (without any changes) for another year—through August 27, 1992. This was done by a final rule published on August 16, 1991 (56 FR 40780). The public comment period provided by the Notice of Proposed Rulemaking closed September 16, 1991. We received over 100 letters which offered over 550 individual comments. In order to ensure sufficient time for careful consideration of all of those comments we are again extending the expiration date of the current listings. Specifically, we are extending the current adult listings (without any changes) for one year—from August 27, 1992, through August 27, 1993. This additional time will enable us to consider more carefully the views expressed by the public. The mental disorders listings in part B of appendix 1 was revised on December 12, 1990 (55 FR 51208), and will no longer be effective on December 12, 1995, unless it is extended by the Secretary or revised and promulgated again.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on these regulations since opportunity for public comment is unnecessary. Prior notice and comment are unnecessary because these regulations involve only the extension of the expiration date of the adult mental disorders listings, and make no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Since we are not making any revisions to the current listings in this final rule, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of comments submitted with respect to the proposed revisions to the existing criteria, a final regulation will be published.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Act.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security Disability Insurance; 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and disability Insurance, Reporting and recordkeeping requirements.

Dated: April 14, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: May 21, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404 of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)-(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P [Amended]

2. Appendix 1 to subpart P is amended by revising the last sentence of the sixth paragraph of the introductory text to read as follows:

* * * * *

* * * The mental disorders listings in part A (12.00) will no longer be effective on August 28, 1993, unless extended by the Secretary or revised and promulgated again.

3. Listings 12.00 Mental Disorders of appendix 1 to subpart P, part A is amended by revising the first paragraph to read as follows:

* * * * *

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 28, 1993, unless extended by the Secretary or revised and promulgated again.

* * * * *

[FR Doc. 92-13280 Filed 6-5-92; 8:45 am]

BILLING CODE 4190-29-M

Food and Drug Administration

21 CFR Part 573

[Docket No. 84F-0345]

Food Additives Permitted in Feed and Drinking Water of Animals; Poly(2-Vinylpyridine-Co-Styrene); Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a final rule that appeared in the **Federal Register** of March 5, 1992 (57 FR 7875). The document amended the food additive regulations to provide for the safe use of poly(2-vinylpyridine-co-styrene) as a coating agent to provide rumen-stable, abomasum-dispersible nutrients for beef cattle. The document was published with an inadvertent error in the specification contained in the regulation. This document corrects that error.

EFFECTIVE DATE: March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8731.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 5, 1992 (57 FR 7875), FDA published a document that amended the food additive regulations to provide for the safe use of poly(2-vinylpyridine-co-styrene) as a coating agent in the preparation of rumen-stable, abomasum-dispersible nutrients for beef cattle. In 21 CFR 573.870(a) the inherent viscosity was incorrectly provided as a set value rather than a range of acceptable values. Accordingly, this document amends the table in § 573.870(a) to specify the limitations on the inherent viscosity as a range of 1.0 deciliter per gram to 1.6 deciliter per gram. Viscosities outside this range result in an unusable product.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

§ 573.870 [Amended]

2. Section 573.870 *Poly(2-vinylpyridine-co-styrene)* is amended in paragraph (a) in the table under the heading "Limitation" by removing the first entry "1.0 deciliter per gram.[1]" and adding in its place "1.0–1.6 deciliter per gram." [1]

Dated: May 20, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-13244 Filed 6-5-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8405]

RIN 1545-AP18

Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operation Loss Carryforwards; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8405, which was published in the **Federal Register** for Monday, March 30, 1992 (57 FR 10739). The final regulations relate to the use of certain corporate tax attributes under section 382 of the Internal Revenue Code of 1986 that are attributable to the period preceding an ownership change of the corporation. Section 382 was amended by the Tax Reform Act of 1986, the Revenue Act of 1987, and the Technical and Miscellaneous Revenue Reconciliation Act of 1989.

EFFECTIVE DATE: March 30, 1992.

FOR FURTHER INFORMATION CONTACT: Lori J. Brown, (202) 566-3205 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide guidance under section 382 for the aggregation of stock ownership with respect to the definition of an entity.

Need for Correction

As published, T.D. 8405 contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8405), which was the subject of FR Doc. 92-7159, is corrected as follows:

§ 1.382-2 [Corrected]

1. On page 10740, column 2, § 1.382-2(a)(3)(ii), paragraph (i) of *Example 2*, third line from the bottom of that paragraph, the language "of L's stock. On October 1, 1991, 15 of these" is corrected to read "of L's stock. On October 1, 1992, 15 of these".

2. On page 10740, column 2, § 1.382-2(a)(3)(ii), paragraph (iii) of *Example 3*, line 2, the language "same if the only additional fact was that the" is corrected to read "same under paragraph (a)(3)(i) of this section if the only additional fact was that the".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-13260 Filed 6-5-92; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF-323]

Importation of Arms, Ammunition and Implements of War [No. 92-07]

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury Decision).

SUMMARY: On October 29, 1991, the Department of State published a final rule (56 FR 55630 (1991)) formally removing Poland, Hungary, Czechoslovakia, and East Germany from the list of proscribed destinations for exports of defense articles and services in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). This final rule conforms the regulations in 27 CFR part 47 to the revised ITAR. The rule also revises § 47.52(c) to reflect current import policy on South Africa in light of the termination of the major sanctions against South Africa under the Comprehensive Anti-Apartheid Act of 1986, 22 U.S.C. 5052. Additionally, the rule revises § 47.52(a) to reflect the rapidly changing situation in the geographic area formerly known as the Union of Soviet Socialist Republics (U.S.S.R., Soviet Union).

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: A. Virginia Alford or Ernestine O'Neal, Specialists, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202) 927-8320.

SUPPLEMENTARY INFORMATION: The Arms Export Control Act of 1976, 22 U.S.C. 2778, gives the President of the United States the authority to control the import and export of defense articles and defense services.

Executive Order 11958 of January 18, 1977, as amended (42 FR 4311 (1977)), delegated authority to control exports of defense articles and defense services to the Secretary of State.

The Executive Order also delegated to the Secretary of the Treasury the authority to control the import of such articles and services. However, as stated in 27 CFR 47.55, the Bureau of Alcohol, Tobacco and Firearms (ATF) is guided by the views of the Departments of State and Defense on matters affecting world peace and the external security and foreign policy of the United States. After consulting these Departments, ATF is revising the provisions of 27 CFR part 47 to conform to the State Department ITAR and to implement Executive Order 12769 (56 FR 31855) relating to South Africa.

On October 29, 1991, the Department of State published a final rule (56 FR 55630 (1991)) which was effective on that date and which revised the ITAR to delete Poland, Hungary, Czechoslovakia, and the geographical region previously known as the German Democratic Republic (or East Germany) from the list of proscribed countries to which exports of defense articles and services may not lawfully be made.

With respect to imports from South Africa, § 47.52(c) currently provides that pursuant to the United Nations Security Council Resolution 558 of December 13, 1984, and Executive Order 12532 (50 FR 36861) of September 9, 1985, it is the policy of the United States to deny approval to import defense articles and technical data relating to such articles. The regulation also refers to the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5052) as prohibiting the importation of arms, ammunition, and military vehicles produced in South Africa, as well as any manufacturing data for such articles.

On July 10, 1991, the President issued Executive Order 12769 (56 FR 31855) which terminated the sanctions imposed by the Comprehensive Anti-Apartheid Act of 1986 which are referred to in § 47.52(c). Also, Executive Order 12532 was revoked. However, the Department of State has advised that it is still the policy of the United States to adhere to the arms embargo against South Africa imposed by the United Nations Security Council Resolution 558. Therefore, approval to import defense articles and technical data relating to such articles from South Africa will continue to be denied.

Accordingly, this final rule revises § 47.52(a) by removing Poland, Hungary, Czechoslovakia and East Germany from the list of proscribed countries or areas from which defense articles and services may not be approved for importation. In addition, while § 47.52(c) will continue to restrict the importation of defense articles and data relating to such articles from South Africa consistent with the United Nations Security Council Resolution, the final rule deletes references to Executive Order 12532 of September 9, 1985, and the Comprehensive Anti-Apartheid Act of 1986 which are no longer applicable.

Section 47.52(a) is also being revised to reflect the rapidly changing situation in the geographic area formerly known as the Union of Soviet Socialist Republics (U.S.S.R., Soviet Union). This section is being revised to replace the term "Soviet Union" with the names of the states which made up the former Union of Soviet Socialist Republics.

Executive Order 12291

Because the amendments to 27 CFR part 47 involve a foreign affairs function, Executive Order 12291 does not apply.

Administrative Procedure Act

Under 27 CFR 47.54, the amendments made to 27 CFR part 47 are excluded from the rulemaking provisions of 5 U.S.C. 553 because these regulations involve a foreign affairs function of the United States. Accordingly, it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation in 5 U.S.C. 533(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-

511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no reporting or recordkeeping requirements.

Drafting Information

The principal authors of this Treasury decision are A. Virginia Alford and Ernestine O'Neal, Specialists, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegations, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, and Seizures and forfeitures.

Authority and Issuance

PART 47—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR, IS AMENDED AS FOLLOWS:

Paragraphs 1. The authority citation for 27 CFR part 47 continues to read as follows:

Authority: 22 U.S.C. 2778.

Par. 2. Section 47.52 is amended by revising paragraphs (a) and (c) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy also applies to imports from these countries or areas. This policy applies to Albania, Bulgaria, Cuba, Estonia, Kampuchea, Latvia, Lithuania, North Korea, Outer Mongolia, Rumania, Vietnam and the States that comprise the former Soviet Union (Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). This policy applies to countries or areas with respect to which the United States maintains an arms embargo. It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.

* * * * *

(c) In accordance with United Nations Security Council Resolution 558 of December 13, 1984, it is the policy of the United States to deny licenses and other approvals with respect to defense articles, and technical data relating to defense articles, from South Africa.

* * * * *

Signed: February 28, 1992.

Stephen E. Higgins,

Director.

Approved: April 23, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-13193 Filed 6-5-92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1 92-002]

Drawbridge Operation Regulations; Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Bath Iron Works (BIW), the Coast Guard has changed the regulations in section 117.525 paragraph (a)(2), governing the Carlton Bridge over the Kennebec River at mile 14.0 between Bath and Woolwich, Maine, by amending the time periods that the bridge need not open during the morning and evening rush hours. This change was requested because the times that the morning and afternoon production shifts arrive and depart from the Bath Iron Works production plant have changed. This change to the regulations should continue to reduce traffic congestion resulting from the traffic created by the two shift-changes at the BIW plant and should still meet the needs of navigation.

EFFECTIVE DATE: This rule is effective on July 8, 1992.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are John McDonald, project officer, and Lieutenant Commander John Astley, project attorney.

Regulatory History

On March 25, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, Kennebec River, in the **Federal Register** (57 FR 10321). The Coast Guard received no comments on this proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Bath Iron Works requested a change to § 117.525 paragraph (a)(2) of the regulations for the Carlton Bridge, which presently opens on signal except during the morning and evening rush hours from 6:30 a.m. thru 7:30 a.m. and from 3:45 p.m. thru 5:30 p.m., Monday thru Friday, excluding holidays.

The BIW requested that the hours the Carlton Bridge need not open be expanded to cover the morning and evening rush hours from 6 a.m. thru 7:30 a.m. and from 3:15 p.m. thru 5:30 p.m., Monday thru Friday, excluding holidays.

Discussion of Comments and Changes

No comments were received and no changes were made to this previously published Notice of Proposed Rulemaking.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based upon the fact that there have been only limited openings during the requested closed period and the change is only for a 30 minute adjustment to the existing regulations.

Small Entities

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of

Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.525 paragraph (a)(2) is revised to read as follows:

§ 117.525 Kennebec River.

(a)* * *

(2) Except for vessels noted in paragraph (a)(1) of this section, the draw need not open from 6 a.m. to 7:30 a.m. and from 3:15 p.m. to 5:30 p.m. Monday to Friday, excluding holidays.

* * * * *

Dated: May 26, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 92–13346 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD1 92–027]

Drawbridge Operation Regulations; Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the Connecticut Department of Transportation (CONN DOT) and the Town of East Haddam, the Coast Guard is issuing temporary regulations governing the Route 82/East Haddam Bridge over Connecticut River, at mile 16.8, between East Haddam and Haddam, Connecticut. The temporary regulations effective for 155 days from May 29 through October 31, 1992 provide that the bridge need open for recreational vessels only on the hour and half-hour between 9 a.m. and 9 p.m. on Fridays, Saturdays, Sundays, and federal holidays. This temporary regulation was implemented to examine the effect on vehicular and marine traffic during the above period and provides for marine openings in emergency situations. This action should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on May 29, 1992 and terminate on October 31, 1992.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073. Comments may also be hand-delivered to this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. The District Commander maintains the public docket for this rulemaking. Comments and other material referenced in this notice will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are Mr. Waverly W. Gregory, Jr., Project Manager, and Lieutenant Commander John Astley, Project Counsel.

Regulatory History

On May 1, 1992, the Coast Guard published a notice of proposed temporary rulemaking entitled "Drawbridge Operating Regulations-Connecticut River, CT" in the **Federal Register** (57 FR 18852). The Commander, First Coast Guard District, also published the proposal as a Public Notice 1–780 dated May 1, 1992. In each notice interested persons were given until May 15, 1992, to submit comments. The Coast Guard received no comments on the proposal. A public hearing was not requested and one was not held. A shortened comment period has been implemented in order to permit an opportunity to put the proposed temporary regulation in effect on May 29, 1992, for evaluation purposes, and good cause exists from making them effective in less than 30 days after **Federal Register** publication. Delaying its effective date would be contrary to the public interest since implementation of the temporary regulations is necessary to evaluate their effect during the months when boating and vehicular traffic are in greatest conflict.

Background and Purpose

In response to a request from the Town of East Haddam, CONN DOT requested evaluation of a change to the regulations for the Route 82/East Haddam Bridge, which presently opens on signal. The Town of East Haddam and the Chamber of Commerce feel that commerce is suffering due to perceptions that East Haddam is impassable due to frequent bridge openings and the winding and narrow nature of the local roads.

The Coast Guard was asked to determine if regulations should be permanently adopted to provide scheduled openings, and if such regulations would reduce the effects on morning and evening commuter traffic on Route 82 in the area of the bridge and the adverse effect unscheduled openings have on the patrons of the Goodspeed Opera House. The temporary regulations provide openings for commercial vessels at all times and for recreational vessels at all times except on the hour and half hour, from 9 a.m. to 9 p.m., Fridays, Saturdays, Sundays, and federal holidays for the 155 day period from May 29 through October 31, 1992. This temporary regulation permits the Coast Guard to assess the effect on vehicular and marine traffic during the peak recreational and transient boating season from May 29 through October 31.

Discussion of Comments

No comments were received regarding the Notice of Proposed Rulemaking. However, comments will be accepted throughout the period of this rule until October 31, 1992.

Regulatory Evaluation

This action is considered not major under Executive Order 12291 on Federal Regulation and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The economic impact has been found to be so minimal that a Regulatory Evaluation is unnecessary. This opinion is based on the fact that the regulations will not prevent recreational boaters from transiting the bridge but just require adjusting their time of arrival at the bridge to coincide with openings on the hour and half hour to minimize any delays.

Small Entities

Because the impact of these regulations are expected to be minimal and no comments to the contrary were received, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final temporary rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3051 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final temporary rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying at Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.205, paragraph (c) is added for the 155 day period from May 29 through October 31, 1992 to read as follows:

§ 117.205 Connecticut River.

* * * * *

(c) The draw of the Route 82/East Haddam Bridge, mile 16.8, shall operate as follows:

(1) Public vessels of the United States, state or local vessels used for public safety and vessels in distress shall be passed through the draw as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn, or a radio request.

(2) The owner shall provide and keep in good legible condition clearance gauges with figures not less than 12 inches high designed, installed and maintained according to the provisions of paragraph 118.160 of this chapter.

(3) For commercial vessels, the draw shall open on signal at all times.

(4) For recreational vessels, from May 29 through October 31, the draw shall open on signal except that it need only open on the hour and half-hour from 9 a.m to 9 p.m. on Fridays, Saturdays, Sundays, and federal holidays.

Dated: June 1, 1992.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 92–13348 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6929

[CA–940–4214–10; CACA 7850]

Partial Revocation of Secretarial Order Dated December 15, 1906; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 25 acres of National Forest System land withdrawn for use as a ranger station. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through land exchange under the General Exchange Act of 1922. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land is temporarily closed to mining by a Forest Service exchange proposal. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1992.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E–2845, Sacramento, California 95825, 916–978–4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated December 15, 1906, which withdrew National Forest System lands for use as ranger stations, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

Inyo National Forest

June Lake Ranger Station

T. 2 S., R. 26 E.,

Sec. 14, NW¼NE¼SW¼, NW¼SW¼ NE¼SW¼, and that portion of lot 3 described as SE¼NE¼NW¼SW¼ and SE¼NW¼SW¼ .

The area described contains 25 acres in Mono County.

2. At 10 a.m. on July 8, 1992, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: May 27, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92–13284 Filed 6–5–92; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 383

[Docket No. R–136]

RIN 2133–AA87

Determination of Fair and Reasonable Guideline Rates for the Carriage of Less-Than-Shipload Lots of Bulk Preference Cargoes Carried on U.S.-Flag Liner Vessels; Correction

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Correction of final rule.

SUMMARY: The Maritime Administration ("MARAD") is issuing this notice of correction of a final rule which appeared in the **Federal Register** on May 18, 1992 (57 FR 21033) concerning fair and reasonable guideline rates for liner vessels.

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Washington, DC 20590, Telephone (202) 366–2323.

SUPPLEMENTARY INFORMATION: In the May 18, 1992 final rule the Authority paragraph contains an incorrect citation to 46 CFR 1.66, rather than to 49 CFR 1.66.

PART 383—[CORRECTED]

Accordingly, on page 21036 in the **Federal Register** of May 18, 1992, Column 3 46 CFR part 383 is corrected by revising the Authority citation to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1241(b); 49 CFR 1.66.

Dated: June 1, 1992.

James Saari,

Secretary, Maritime Administration.

[FR Doc. 92-13170 Filed 6-5-92; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

Private Land Mobile Radio Services; 220-222 MHz Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment is being made to correct the mobile unit frequency tolerance specified in Footnote 18 to the Frequency Tolerance table in § 90.213(a).

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

List of Subjects in 47 CFR Part 90

Radio.

Amendatory Text

47 CFR part 90 is amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., 1066, 1082; as amended 47 U.S.C. 154, 303 and 332 unless otherwise noted.

2. 47 CFR 90.213 is amended by revising Footnote 18 to the Frequency Tolerance Table in paragraph (a) to read as follows:

§ 90.213 Frequency tolerance.

(a) * * *

Frequency Tolerance

* * * * *

18 In the 220-222 Mhz band, base stations shall maintain the carrier frequency to within ±0.00001 percent, and mobiles shall maintain the carrier frequency to within ±0.00015 percent. Mobile units may utilize synchronizing signals from associated base stations to achieve the specified carrier stability.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13141 Filed 6-5-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Limnanthes floccosa ssp. californica (Butte County Meadowfoam)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for a plant, *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam). The subspecies is threatened principally by urban development in the undeveloped northern and eastern portions of the city of Chico in Butte County, California. In addition, conversion of the plant's habitat, vernal pools and ephermeral drainages, for agricultural purposes threatens the plant. Road widening or realignment, overgrazing by livestock, garbage dumping, off-road vehicle use, competing alien vegetation, and stochastic (random) extinction by virtue of the small isolated nature of the remaining populations threaten the subspecies to some degree. This rule implements the protection and recovery provisions afforded by the Endangered Species Act of 1973, as amended (Act), for this species.

EFFECTIVE DATE: June 8, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E-1803, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Jim Bartel at the above address (916/978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

Limnanthes floccosa ssp. *californica*, a member of the false mermaid family (Limnanthaceae), was first collected in 1917 by Amos Heller 10 miles (16 kilometers (km)) north of Chico in Butte County, California. In a paper revising the taxonomy of *L. floccosa*, a species that ranges from Jackson County in Oregon to Butte County, Mary Kalin de Arroyo (1973) described *L. floccosa* ssp. *californica* from a 1970 collection she made 0.5 miles (0.8 km) south of Shippee Road along State Route 99 in Butte County. The Butte County meadowfoam is a densely pubescent, winter annual herb. Its stems, which range from 1 to 10 inches (3 to 25 centimeters (cm)) in length, generally lie flat on the ground with the tips curved upward. Appearing in late March through April, the flowers of *L. floccosa* ssp. *californica* are white with dark yellow veins at the base of each of the five petals (McNeill and Brown 1979). Though similar in appearance, differences in nutlet (seed) ornamentation, inflorescence, flower shape during full bloom, and sepal fusion and vestiture (i.e., coloring and type of hairiness) separate *L. floccosa* ssp. *californica* from *L. floccosa* ssp. *floccosa* (Jokerst 1989) In addition, electrophoretic (Arroyo 1975) and allozyme (Brown and Jain 1979, McNeill and Jain 1983) studies demonstrated the genetic distinctiveness of *L. floccosa* ssp. *californica*.

Butte County meadowfoam is restricted to a narrow 25-mile (40 km) strip along the eastern flank of the Sacramento Valley from central Butte County to the northern portion of Chico (Jokerst 1989). According to James Jokerst (1989), *Limnanthes floccosa* ssp. *californica* has two centers of distribution; near the type locality in central Butte County, and in and around Chico. Although Arroyo (1973) reported the subspecies from the summit of Table Mountain in Butte County, this locality is based on a 1949 collection by Herbert Mason that is probably mislabeled (James Jokerst, consulting botanist, pers. comm., 1987). Three other *Limnanthes* taxa occasionally are associated with the Butte County meadowfoam; *L. alba* ssp. *alba*, *L. douglasii* var. *rosea*, and *L. floccosa* ssp. *floccosa* which reaches its southern distributional limits in the northern portion of Chico. However, using allozyme and morphometric data, Jefferey Dole and Mei Sun (in press) reported finding no evidence of introgression (i.e., hybridization) at sympatric sites of *L. floccosa* ssp. *californica* and *L. alba* ssp. *alba*. They also found that the Butte County meadowfoam had only an average of 1.2 percent of polymorphic loci, which is an extremely low level of genetic variation compared to other restricted species or *Limnanthes* taxa (Karron 1991). Like other annual flowering plants (Hamrick *et al.* 1991), the proportion of genetic diversity of *L. floccosa* ssp. *californica* existed among rather than within its populations. Consequently, the subspecies' continued existence likely will depend on the long-term conservation of most, if not all, populations (Dole, U.C. Davis researcher, pers. comm., April 30, 1991)

Arroyo (1973) noted that *Limnanthes floccosa* ssp. *californica* grew on the "[e]dges of deep vernal pools in undisturbed areas." Jokerst (1989), however, stated that the subspecies occurs in three types of seasonal wetlands: "ephemeral drainages, vernal pool depressions in ephemeral drainages, occasionally around the edges of isolated vernal pools (i.e., those not connected with other pools by ephemeral drainages)." Vernal pools form in regions with Mediterranean climates where shallow depressions fill with water during fall and winter rains. Downward percolation is prevented by the presence of an impervious subsurface layer, such as a clay bed, hardpan, or volcanic stratum (Holland 1986). Plant species occurring in vernal pools are uniquely adapted to this "amphibious ecosystem," seasonal alteration of very wet and very dry conditions (Zedler 1987, Stone 1990). Upland plants cannot tolerate the temporarily saturated to flooded soils of winter and spring, while the seasonal drying makes the pool basins unsuitable for marsh or aquatic species requiring a permanent source of water.

Limnanthes floccosa ssp. *californica* is primarily threatened by urban development in and around Chico in Butte County, California. In a study funded by the City of Chico, Dole (1988) conducted a field survey of the subspecies' vernal pool and ephemeral drainage habitat to precisely delimit the number and distribution of the Butte County meadowfoam populations in the vicinity of the city. He identified 10 populations in the Chico area, whereas Jokerst (1989) identified an eleventh population ("Diesel") in the northern portion of the city. Construction of an apartment complex, however, destroyed this population. In addition, the California Natural Diversity Data Base (CNDDB) reported that a twelfth site located west of the junction of Paradise Skyway and Bruce Road in Chico was destroyed by the construction of a shopping center in 1985. Recently, Jokerst (pers. comm., May 6, 1991) reported another Chico-area population, which is immediately north of the "Humboldt" population along State Route 32. This "Highway 32" population was severely disturbed 15 years ago when topsoil was removed from the site.

Hundreds of plants now persist in this area, which is grazed by horses (Jokerst, pers. comm., May 6, 1991). Additionally, Jokerst (pers. comm., May 6, 1991) identified a southerly extension of the "Doe Mill" population and three easterly outlying stands east of the "Rancho Arroyo" population. Of the 11 remaining populations in or immediately adjacent to Chico, 8 populations are entirely on private land and zoned for urban development. Two populations and a small portion of another occur on City-owned property surrounding Chico Municipal Airport (Jokerst 1989). The City-owned portions of these three populations, which were reportedly graded or leveled in the past (Patrick Kelley, local botanist, California Native Plant Society (CNPS), pers. comm., March 20, 1990), may be subject to some airport maintenance activities (City of Chico 1989). As a result, the 11 remaining populations in the Chico area are subject to urbanization or airport-related maintenance.

According to the CNDDB, an additional five "occurrences" (i.e., population sites) of *Limnanthes floccosa* ssp. *californica* exist or existed outside of the Chico area. Though Jokerst (1989) noted that only four "non-Chico" populations exist today, Valerie Campbell (pers. comm., May 6, 1991) of the California Department of Transportation (Caltrans) in Marysville reported that her staff located approximately 40 pools and swales harboring *L. floccosa* ssp. *californica* within one section (1 square mile) along State Route 149. These sites can be grouped into three populations; one population between Cottonwood Creek and Gold Run (which was previously reported by the CNDDB and included in the four extant non-Chico populations cited above), and two new populations between Gold Run and Dry Creek. In addition, Mary Meyer (local botanist, CNPS, pers. comm., April 20, 1991) found a new population of *L. floccosa* ssp. *californica* consisting of four plants west of Dry Creek and 1.5 miles (2.4 km) east of State Route 70. This new population is near Pentz approximately 5 miles (8 km) northeast of the populations clustered about the type locality. All seven non-Chico populations are bisected by or immediately adjacent to paved roads, while three of the seven populations exist on parcels smaller than 50 acres in size. Such small parcels of grazing land are often subject to "ranchette" development. The transformation of essentially unaltered lands into cultivated fields ("ag-land conversion") also threatens six of these populations outside of the Chico area. Three of the non-Chico sites were surveyed by Caltrans biologists in anticipation of a possible widening or realigning of State Route 149. In sum, 16 of the 18 remaining populations of *L. floccosa* ssp. *californica* occur entirely or largely on private land and are subject to urban development, ag-land conversion, and highway widening or realignment. Numerous development proposals awaiting approval in the Chico area pose an imminent threat to the plant. The two populations and a small portion of another that occur on City-owned property may be subject to airport maintenance activities. Other potential threats include overgrazing by livestock, garbage dumping, off-road vehicle use, and competing alien vegetation. Moreover, employing Jokerst's (1989) estimated population size data and reports from other commenters, less than 200,000 plants likely existed in the 16 censused sites in 1988. Because 13 of these 16 populations consisted of less than 9,000 plants, stochastic extinction by virtue of the small isolated nature of the remaining populations threatens the subspecies.

Federal government actions on this plant began when the Service published a revised notice of review in the **Federal Register** (45 FR 82480) on December 15, 1980, of native plants considered for listing under the Act. *Limnanthes floccosa* ssp. *californica* was included as a category-1 candidate (species for which the Service has sufficient data in its possession to support a listing proposal). On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 notice of review. Because this supplement did not include *L. floccosa* ssp. *californica*, the subspecies remained a category-1 candidate. *Limnanthes floccosa* ssp. *californica* was included as a category 1 candidate in both the September 27, 1985, (50 FR 39526) and the February 21, 1990, (55 FR 6184) notices of review.

The California Native Plant Society (CNPS) petitioned the Service to emergency list *Limnanthes floccosa* ssp. *californica* as an endangered species on February 22, 1988. The Service issued a 90-day finding that substantial information exists indicating that the requested action may be warranted in the **Federal Register** (53 FR 53030) on December 30, 1988. A conservation plan (Jokerst 1989) detailing additional data on the status of the plant confirmed the need for listing. On February 15, 1991 (56 FR 6345), the Service published a proposal to list *Limnanthes floccosa* ssp. *californica* as an endangered species. Because Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt, publication of the proposed rule constituted the final finding for the petitioned action. The Service now determines the Butte County

meadowfoam to be an endangered species with the publication of this rule.

Summary of Comments and Recommendations

In the February 15, 1991, proposed rule (56 FR 6345) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published inviting general public comment. On March 12, 1991, the Service received a written request for a public hearing from Mr. Tom Guarino of the Greater Chico Chamber of Commerce. Subsequently, the Service received another public hearing request from Mr. Thomas J. Lando of the Community Services Department of the City of Chico on March 21, 1991. As a result, the Service published (56 FR 14055) a notice of a public hearing on April 5, 1991, and extended the deadline for the comment period to May 6, 1991. The Service conducted the hearing on April 25, 1991, at the City of Chico Council Chambers in Chico, California. Testimony was taken from 6 p.m. to 9 p.m. Notice of the proposal and public hearing were published in the *Chico Enterprise-Record* and *Sacramento Bee*.

During the comment period, the Service received 44 comments (e.g., letters and oral testimony) from 31 individuals. The California Department of Fish and Game (Fish and Game) was among 12 commenters expressing support for the listing proposal, while 11 commenters opposed or asked for a delay in the listing action. Eight commenters were neutral and the information they provided was generally non-substantive, although some of these individuals provided locality or miscellaneous data on the subspecies or they inquired as to the possible effects of listing on their activities or interests. Written comments or oral statements obtained during the public hearing and comment period are combined in the following discussion. Opposing comments and other comments questioning the rule can be organized into approximately eight specific issues. These categories of comments and the Service's response to each are listed below:

Comment 1: Many commenters requested the Service delay or not list *Limnanthes floccosa* ssp. *californica* because additional distributional and autecological data are needed to determine the subspecies' true status. In addition, they variously contended that past surveys cited in the proposed rule, Dole (1988) and Jokerst (1989), were inadequate. Though the rationale varied, most of the support for this contention was that areas outside the known range of the plant may harbor additional populations. To support the need for further field work, two commenter cited the discovery by Caltrans biologists of three new populations within the known range of the subspecies. Others, however, asserted that the distribution of the Butte County meadowfoam, which has been the subject of botanical study for nearly 20 years by several researchers and local members of the CNPS, is well known and not in need of further study.

Service response: Only four commenters provided precise data on new populations or extensions of known sites beyond that detailed in the two principal surveys of *Limnanthes floccosa* ssp. *californica* (Dole 1988 and Jokerst 1989), which were the primary basis of the proposed rule. Kelley (pers. comm., March 20, 1990) detailed two *L. floccosa* ssp. *californica* populations: (1) "some scattered plants" immediately north of the "Humboldt" population along State Route 32, and (2) an isolated stand east of the "Rancho Arroyo" population along a tributary of Sycamore Creek. Subsequently, Kelley (pers. comm., April 4, 1991) stated that the latter site was actually *L. floccosa* ssp. *floccosa*. Jokerst (pers. comm., May 6, 1991) reported three new populations or extension: (1) the same Butte County meadowfoam north of the "Humboldt" population described by Kelley, (2) a southerly extension of the "Doe Mill" population, and (3) three easterly outlying stands east of the "Rancho Arroyo" population. These "Rancho Arroyo" stands differed in their precise locality from population of *L. floccosa* ssp. *floccosa* reported by Kelley from the same general area. Mary Meyer (pers. comm., April 20, 1991) found a new population of *L. floccosa* ssp. *californica* consisting of four plants west of Dry Creek and 1.5 miles (2.4 km) east of State Route 70. As discussed earlier, Caltrans staff located approximately 40 pools and swales harboring *L. floccosa* ssp. *californica* within one section (1 square mile) along State Route 149. These sites can be grouped into three populations; one population between Cottonwood Creek and Gold Run (which was previously reported by the CNDDB and included in the proposed rule), and two new populations between Gold Run and Dry Creek. These population data have been incorporated into this rule. Nonetheless, no new significant distributional data affecting the status of the subspecies were reported by any respondent. In addition, despite claims of populations in Tehama and Yuba Counties, no populations are reported from outside the known range of the Butte County meadowfoam and no data were presented to contradict the Service's contention that the subspecies is imminently threatened by rapid urban development and other threats in Butte County (see Factor A in "Summary of Factors Affecting the Species"). Although future surveys likely will reveal additional small and isolated pool sites within less-accessible portions of Butte County, these newly discovered sites likely will be threatened by the same activities affecting the other known populations. The Service maintains that this decision is based on the best and most current information available. In addition, the Service believes that sufficient information is available on *L. floccosa* ssp. *californica* to warrant making a determination on its status.

Comment 2: Congressman Herger asserted that "the Butte County meadowfoam does not appear to be facing an immediate threat to its survival" because of the considerable attention and cooperation the subspecies is receiving in the Chico area from the U.S. Army Corps of Engineers (Corps), Fish and Game, and City of Chico. In this regard, one respondent noted that a large development proposed for northeast Chico would not adversely affect the Butte County meadowfoam and that 62 acres would be designated a "natural open space." Five respondents, including the congressman, suggested or implied that the mitigation program adopted by the City of Chico to conserve *Limnanthes floccosa* ssp. *floccosa* should be given a chance. However, other commenters claimed that the protection afforded the subspecies by the three agencies, especially the City's program, was insufficient. One respondent listed examples of the City of Chico's past failure to live up to environmental protection agreements, while another contended that the City program essentially "calls for further destruction of the remaining Butte County meadowfoam sites within the city."

Service response: Regarding the adequacy of local and State regulation, the mitigation program adopted by the City of Chico generates no acquisition funding and relies on developer dedication, either via fee title or conservation easement, of preserved pool habitat. Perhaps as a result of the

voluntary nature of the mitigation program, only one 14.76-acre parcel within a secondary preserve area ("Doe Mill") has been established to date, though two other landowners reportedly are negotiating with the City of Chico (Thomas J. Lando, City of Chico, pers. comm., May 3, 1991). Moreover, the alternative program does not provide for the preservation of, at least, portions of all populations in the Chico area, including the two largest stands "Bruce-Stilson" and "Cohasset" (Dole, pers. comm., April 30, 1991). Such a strategy is likely essential for the long-term survival of this genetically depauperate subspecies. Thus, the long-term effectiveness of the City of Chico's mitigation program in protecting and managing the vernal pool habitat is questionable and likely insufficient. The County of Butte, which declared bankruptcy in 1990, has undertaken no actions to date to protect *Limnanthes floccosa* ssp. *californica* (Jokerst, pers. comm., May 5, 1991). Reportedly, the County has allowed the conversion of over 1,000 acres of Butte County meadowfoam habitat over the last 5 years (Jokerst, pers. comm., May 5, 1991). Regarding the adequacy of Federal regulation, the Corps' report (Art Champ, Regulatory Section, Sacramento District, pers. comm., April 1, 1991) of numerous ongoing or future permit actions affecting most of the remaining Butte County meadowfoam populations in and around Chico attests to the precarious state of Federal protection now provided to the subspecies. See the discussion under Factor D ("Summary of Factors Affecting the Species") for a complete discussion on the inadequacy of existing regulatory mechanisms for *Limnanthes floccosa* ssp. *californica*.

Comment 3: One respondent stated that seeds of *Limnanthes floccosa* ssp. *californica* collected from destroyed pools within the "Humboldt" population should be sown elsewhere.

Service response: Any effort to sow the Butte County meadowfoam on another site would require, at a minimum, a large source of genetically uncontaminated seed, and appropriate, unoccupied, vernal pool or swale habitat within the known range of the subpsecies. Moreover, such an introduction effort must provide for the long-term protection of the introduction site. Even when such conditions can be found, success cannot be guaranteed. For example, one commenter reported that an introduced population of Macoun's meadowfoam (*Limnanthes macounii*) in apparently suitable habitat declined and slowly disappeared for no obvious reason after 7 years of monitoring (Adolf Ceska, botanist and *Limnanthes* researcher, Royal British Columbia Museum, pers. comm., April 19, 1991). As a result, introduction efforts, like that suggested by the respondent, likely will offer only limited mitigation opportunities in the future.

Comment 4: A few people expressed concerns over the economic impact of listing the plant. For example, one respondent claimed that the listing of *Limnanthes floccosa* ssp. *californica* would be costly for people "struggling to purchase their first home." Another commenter stated that any action resulting in a monetary loss regarding his land would not be acceptable.

Service response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions" H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of species * * * " *Id.* at 20. Because the Service is specifically precluded from considering economic impacts in a final decision on a proposed listing, the Service does not respond to comments concerning possible economic consequences of listing the Butte County meadowfoam.

Comment 5: One commenter was concerned that listing of *Limnanthes floccosa* ssp. *californica* would force local developers to change mitigation agreements made with the City of Chico. Apprehension over potential changes in current agreements likely prompted one respondent to detail the story of 3 years of trying to obtain necessary permits from the Corps to construct church facilities on vernal pool habitat east of Chico. Similarly, two other respondents strongly asserted that the construction of church facilities should be allowed to proceed.

Service response: As discussed under the "Available Conservation Measures" section below, section 7(a) of the Act requires all Federal agencies, like the Corps, to evaluate their actions with respect to *Limnanthes floccosa* ssp. *californica* and to ensure that activities the agency authorizes, funds, or otherwise carries out are not likely to jeopardize the continued existence of a listed species. Though the Corps would become involved with this plant species through its permitting authority under section 404 of the Clean Water Act, the fate of such consultations with the Corps or any consultations with other Federal agencies is not known at this time. As a result, the effect of listing the Butte County meadowfoam on such local projects, including the church, cannot be precisely predicted. Regardless, the listing of the plant may result in a revisiting of past mitigation agreements.

Comment 6: One commenter contested the claim in the proposed rule that all species of *Limnanthes* have the potential to be of high agronomic value because of the oil contained within their seeds (see discussion under Factor D in the "Summary of Factors Affecting the Species"). This commenter stated that *L. floccosa* ssp. *californica* likely has no commercial value because of its narrow habitat requirements and its short stature (usually less than 8 inches (20 cm) tall), which would make cultivation and harvest difficult. However, another respondent noted that Gary Jolliff (crop scientist, Oregon State University) reported during a talk on meadowfoam cultivation at California State University, Chico on April 19, 1991, that meadowfoam is "[i]ncredibly encouraging as a crop potential." This respondent also brought to the public hearing a few meadowfoam-based products (e.g., hand cream, face cream) to demonstrate the potential commercial value of the genus.

Service response: As stated under Factor D in the "Summary of Factors Affecting the Species," crop breeding studies at the University of California Davis suggest that *Limnanthes floccosa* ssp. *californica* has desirable traits for future agricultural use (Jokerst 1989). Regardless as to the eventual commercial value of the Butte County meadowfoam, the Service maintains that the subspecies has not been and likely will not be overutilized in this regard.

Comment 7: One commenter suggested that it would be worthwhile to examine more definitively the taxonomic status of the Butte County meadowfoam in relation to *Limnanthes alba* and other subspecies of *L. floccosa*. Without providing any details or specimens, this commenter also implied that hybrids of *L. floccosa* ssp. *californica* may exist in Yuba County.

Service response: Aside from the electrophoretic (Arroyo 1975) and allozyme (Brown and Jain 1979, McNeill and Jain 1983) studies that demonstrated the gentic distinctiveness of *Limnanthes floccosa* ssp. *californica*, Dole and Sun (in press) reported finding no evidence

of hybridization at sympatric sites of *L. floccosa* ssp. *californica* and *L. alba* ssp. *alba* using allozyme and morphometric data. Using the best and latest systematic and genetic information from a number of reliable sources, the Service maintains that these studies are conclusive and that no additional taxonomic work is necessary.

Comment 8: One respondent stated that the Service should make a "concerted effort" to designate critical habitat for the Butte County meadowfoam as required by section 4 of the Act.

Service response: Under section 4(a)(3)(A) of the Act, the Secretary must designate critical habitat to the maximum extent prudent and determinable at the time a species is determined to be endangered or threatened. In the proposed rule, the Service found that determination of critical habitat was not prudent for these species. As discussed under the "Critical Habitat" section below, the Service continues to find that designation of critical habitat for *Limnanthes floccosa* ssp. *californica* is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Limnanthes floccosa* Howell ssp. *californica* Arroyo are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As discussed in the "Background" section, 9 of the 11 remaining populations occurring either partially or totally on private lands in the Chico area are threatened by urbanization. These sites have been zoned by the City of Chico for various types of urban uses, like residential, neighborhood commercial, or manufacturing-industrial park (Jokerst 1989). Because 3 of the 7 remaining non-Chico area populations may be suited to ranchette development, 12 of the remaining 18 populations of the Butte County meadowfoam are vulnerable to urban development. In addition, the publicly owned populations on lands surrounding Chico Municipal Airport (Jokerst 1989) may be subject to airport maintenance activities (City of Chico 1989).

As discussed in the "Background" section, ag-land conversion also threatens the six of the seven populations outside of the Chico area. For example, 90 percent of the population of *Limnanthes floccosa* ssp. *californica* growing at the type locality was lost as a result of ag-land conversion for rice production in the early 1980's (Jokerst 1989). The other non-Chico population is threatened by the proposed construction of housing funded by U.S. Department of Housing and Urban Development. In addition, highway widening or realignment threatens portions of the three populations recently surveyed by Caltrans. As a result, all known remaining populations of the Butte County meadowfoam are subject to urban development, airport maintenance activities, ag-land conversion, and/or road widening or realignment.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

All species of *Limnanthes* have high potential agronomic value because of the oil contained within their seeds. Because the lubricating qualities of *Limnanthes* oil are retained under high temperature and pressure, the seed oil is similar to that produced by sperm whales (Jain *et al.* 1977). Crop breeding studies at the University of California Davis suggest that *L. floccosa* ssp. *californica* has desirable traits for future agricultural use (Jokerst 1989). Nonetheless, no overutilization has occurred in this regard and none is expected.

C. Disease or Predation

According to Jokerst (1989), intensive long-term grazing by livestock evidently has eliminated the Butte County meadowfoam from apparently suitable pool habitat in the Chico area. Jokerst (1989) reports that the "Cohasset" population abruptly ends at the fenceline of an overgrazed pasture, while the "North Enloe" and "Bruce-Stilson" populations increased in numbers when grazing pressure was reduced. Dole (1988) similarly noted high population numbers in ungrazed pastures. Albert Beck (local consultant, pers. comm., April 25, 1991) noted that grazing by horses damages meadowfoam populations the most, followed by sheep and then cattle. Nevertheless, *Limnanthes floccosa* ssp. *californica* seems to have persisted in areas receiving light to moderate to periodic heavy grazing pressure (Jokerst 1989). Though the overall effect of livestock grazing is not completely understood, overgrazing doubtlessly has adversely affected and likely continues to threaten the plant.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (chapter 1.5 section 1990 *et seq.* of the Fish and Game Code) and California Endangered Species Act (chapter 1.5 section 2050 *et seq.*), the California Fish and Game Commission has listed *Limnanthes floccosa* ssp. *californica* as endangered (14 California Code of Regulations section 670.2). Though both statutes prohibit the "take" of State-listed plants (chapter 1.5 section 1908 and section 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant." (chapter 1.5 section 1913)

Jokerst (1989) drafted a conservation plan for the City of Chico that details various actions designed to conserve *Limnanthes floccosa* ssp. *californica* in the Chico area "while recognizing the need for future urban growth." Though the City of Chico "adopted" the conservation plan on October 17, 1989, an alternative mitigation program or addendum to the plan was approved simultaneously, which actually instituted the City's mitigation procedure for projects affecting the subspecies. The alternative plan calls for the immediate establishment of two "core preserves" and four "secondary preserves" (City of Chico 1989). The plan, which generates no acquisition funding, relies on developer dedication, either via fee title or conservation easement, of preserved pool habitat. Perhaps as a result of the voluntary nature of the mitigation program, only one 14.76-acre parcel within a secondary preserve area ("Doe Mill") has been established to date, though two other landowners reportedly are negotiating with the City of Chico (Thomas J. Lando, City of Chico, pers. comm., May 3, 1991). Reportedly the large development proposed for northeast Chico would not adversely affect the "Rancho Arroyo" population of Butte County meadowfoam because Crocker Development will designate 62 acres as "natural open space" (B. Demar Hooper,

attorney, Hackard, Taylor & Phillips, pers. comm., April 16, 1991). Regardless as to the outcome of this development, the alternative program does not provide for the preservation of, at least, portions of all populations in the Chico area, including the two largest stands "Bruce-Stilson" and "Cohasset" (Dole, pers. comm., April 30, 1991). Such a strategy is likely essential for the long-term survival of this genetically depauperate subspecies. As a result, the long-term effectiveness of the City of Chico's mitigation program in protecting and managing the vernal pool habitat is questionable and likely insufficient.

The County of Butte, which declared bankruptcy in 1990, has undertaken no actions to date to protect *Limnanthes floccosa* spp. *californica* (Jokerst, pers. comm., May 5, 1991). Reportedly, the County has allowed the conversion of over 1,000 acres of Butte County meadowfoam habitat over the last 5 years (Jokerst, pers. comm., May 5, 1991).

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers regulates the discharge of fill into waters and adjacent wetlands of the United States. To be in compliance with the Clean Water Act, potential permit applicants are required to notify the Corps prior to undertaking any activity (e.g., grading, discharge of soil or other fill material) that would result in the fill of wetlands. Nationwide Permit Number 26 (33 CFR 330.5), which was reissued on November 22, 1991, and became effective on January 21, 1992, (56 FR 59110), addresses fills of headwaters and isolated waters. This permit was issued to regulate the fill of wetlands that are relatively small, less than 10 acres. Most proposals involving the fill of wetlands smaller than 1 acre in size would qualify under Nationwide Permit Number 26. Where fill would occur in a wetland 1 to 10 acres in size, the Corps circulates for comment a predischarge notification to the Service and other interested parties prior to determining whether or not the proposed fill activity qualifies under Nationwide Permit Number 26. Because the Corps must respond within 20 days or the proposed activity will be authorized under Nationwide Permit 26, many projects are authorized by default. Individual permits are required for the discharge of fill into wetlands greater than 10 acres in size. The review process for the issuance of individual permits is more rigorous, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the size of the wetland. In practice, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit.

With respect to the vernal pools harboring *Limnanthes floccosa* ssp. *californica*, most individual pools and ephemeral drainages in Butte County encompass less than 10 acres. As a result, even large projects can qualify for Nationwide Permit 26. For example, the Corps confirmed a wetland delineation of 7.8 acres of vernal pools on property owned by Crocker Development within the "Rancho Arroyo" population, although, to reiterate, the proposed development reportedly will not adversely affect the subspecies. Although the Sacramento District of the Corps has not required individual permits for projects that involve the filling of vernal pools or ephemeral drainages, the District did issue a cease and desist order to a landowner that graded 0.4 acres of vernal pool habitat on a 10.83-acre parcel in violation of section 404 of the Clean Water Act. However, the District notified two applicants (i.e., Century Industrial Park, Pleasant Valley Assembly of God) that proposed fills of vernal pool habitat of *L. floccosa* ssp. *californica* qualified for Nationwide Permit 26. In addition, five landowners have submitted or are preparing wetland delineations for their respective properties in the Chico area, each of which likely will involve less than 10 acres of wetlands (Champ, Core of Engineers, Sacramento District, pers. comm., April 1, 1991).

The issuance of Nationwide Permit 26 or disclaimers does not allow for the assessment of cumulative impacts to the vernal pools or the plant species under consideration herein. Thus, *Limnanthes floccosa* ssp. *californica* is not currently afforded protection under section 404 of the Clean Water Act.

The Corps cannot determine that a project qualifies for a nationwide permit if a federally listed endangered or threatened species may be adversely affected by the proposed project until the Corps has complied with section 7 of the Act (see discussion below under "Available Conservation Measures"). In addition, federally listed species are known to be important to the Nation and its people, and the issuance of further disclaimers would be unlikely upon the listing of the plant as endangered.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Alien, annual grasses and forbs invaded the low-elevation, plant communities of California during the days of the Franciscan missionaries. Today, these grasses, which account for 50 to 90 percent of the vegetative cover (Heady 1977) and can stand up to a meter (3.3 feet) in height (Holland 1986), dominate most grasslands in California. By germinating in late fall prior to native forbs, alien grasses have outcompeted these natives (for nutrients and water) and displaced much of the native flora throughout California. Although vernal pools are "relatively immune" to the competition of alien plants (Zedler 1987), Jokerst (1989) reported that soil disturbance or reductions in the frequency and length of time pool soil is saturated facilitate the invasion of the vernal pool habitat by weedy species. The effect of grazing livestock (see Factor C "Summary of Factors Affecting the Species") in concert with the ubiquitous presence of alien plants on *Limnanthes floccosa* ssp. *californica* needs further study.

Natural fluctuations in rainfall patterns resulting in little to no water in the vernal pools may effect localized extinctions (Jokerst 1989). Though climatic-induced extirpations have not been documented for *Limnanthes floccosa* ssp. *californica*, the small isolated nature of the remaining populations make stochastic extinction more likely. A prolonged drought of several years is the most likely stochastic phenomenon that would result in the localized extinction of a vernal pool plant like the Butte County meadowfoam. In addition, because of the proximity of the subspecies to roads and urban development, Jokerst (1989) reports that garbage dumping, and off-road vehicle use may adversely affect some populations of *Limnanthes floccosa* ssp. *californica*. In light of recent Caltrans survey activity along State Route 149, highway widening or realignment may also threaten portions of three populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Limnanthes floccosa* ssp. *californica* in determining to issue this rule. Based on this evaluation, the preferred action is to list *L. floccosa* ssp. *californica* as endangered. At least two populations have been lost due to urbanization in the Chico Area, while 90 percent of a third site has been converted to a rice field. Of the remaining 18 populations of

the Butte County meadowfoam, all are subject to urban development, airport maintenance activities, and/or ag-land conversion. In addition, road widening or realignment, overgrazing by livestock, garbage dumping, off-road vehicle use, competing alien vegetation, and stochastic extinction by virtue of the small isolated nature of the remaining populations threaten the entire range of the subspecies to some degree. Federal listing will provide opportunities for protection of populations from natural and anthropogenic (human-induced) loss and degradation of vernal pools and their associated watersheds.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that determination of critical habitat is not prudent for this species at this time. *Limnanthes floccosa* ssp. *californica* occurs primarily on private land that has been and is subject to urban development and ag-land conversion (see Factor A in "Summary of Factors Affecting the Species"). The vernal pool and ephemeral drainage habitat of the plant is usually small and easily identified. Therefore, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant more vulnerable to incidents of vandalism and could contribute to the decline of the species. A listing of *L. floccosa* ssp. *californica* as endangered also would publicize the rarity of this plant and, thus, could make it attractive to researchers or collectors of rare plants. The proper agencies have been notified of the locations and management needs of this plant. Landowners were notified of this listing action and the importance of protecting habitat of this subspecies. Nonetheless, some landowners reportedly indicated that if the "level of protection gets higher," "they would make attempts to destroy those populations" (Gaylord Enns, pastor, Pleasant Valley Assembly of God, pers. comm., April 25, 1991). Another commenter described one incident where a landowner threatened to disc under any meadowfoam populations on his property (Dole, pers. comm., April 30, 1991). Protection of these species' habitats will be addressed through the recovery process and through the section 7 consultation process. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for this plant is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Army Corps of Engineers will become involved with this subspecies through its permitting authority under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by the proposed project without first completing formal consultation pursuant to section 7 of the Act. The presence of listed species would highlight the national importance of these resources, thus rendering any disclaimers of jurisdiction unlikely. In addition, if the U.S. Department of Housing and Urban Development proposes to insure housing loans in areas that presently support *Limnanthes floccosa* ssp. *californica*, like the recently discovered population near Pentz, the funding of these loans would be subject to review by the Service under section 7 of the Act. Airport development at Chico Municipal Airport, if proposed, likely would be subject to review and/or approval by the Federal Aviation Administration and, thus, subject to section 7 consultation.

Listing of *Limnanthes floccosa* ssp. *californica* provides for the development of a recovery plan and will bring together State and Federal efforts involving the conservation of the plant. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in their conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish recovery. It would also describe site-specific management actions needed to achieve conservation and survival of the subspecies.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to the Butte County meadowfoam, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Though the seeds of *Limnanthes floccosa* ssp. *californica* likely have high agronomic value (see Factor B "Summary of Factors Affecting the Species"), the Service anticipates that few trade permits would be sought or issued for this species. Requests for copies of the regulations on plants and

inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Jim A. Bartel, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules	
*	*	*	*	*	*	*	*
Limnanthaceae—False mermaid family:							
Limnanthes floccosa ssp. *californica*.	Butte County meadowfoam	U.S.A. (CA)	E	471	NA	NA	
*	*	*	*	*	*	*	*

Dated: May 18, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–13253 Filed 6–5–92; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 57, No. 110
Monday, June 8, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-74-AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of the nylon bushings for the C-latches of the forward and rear service/emergency doors. This proposal is prompted by reports that in extremely cold temperatures, the C-latches of the forward and rear service/emergency doors may freeze in their bushings. The actions specified by the proposed AD are intended to prevent the C-latch bushings from being rendered temporarily inoperable, which could prevent an emergency evacuation through the forward and rear service/emergency doors.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-74-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-74-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-74-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that the nylon bushings of the C-latch mechanisms in the forward and rear service/emergency doors can absorb water and swell, causing a reduction in clearance with the C-latch shaft. In extremely cold temperatures, the C-latches could freeze in their bushings. If uncorrected, this condition could render the doors inoperable and prevent an emergency evacuation through the forward and rear service/emergency doors. (No doors have yet been affected during an actual emergency evacuation.)

Fokker has issued Service Bulletin SBF100-52-039, dated September 17, 1991, which describes procedures for replacement of the C-latch nylon bushings on the forward and rear service/emergency doors with bushings that have a lower water absorption level and increased clearance with the C-latch shaft. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 91-116 in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the C-latch bushings on the forward and rear service/emergency doors. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 23 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $7,520 per airplane. Based on these figures, the

total cost impact of the proposed AD on U.S. operators is estimated to be $272,335. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 92–NM–74–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11355, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent the C-latch bushings from being rendered temporarily inoperable, which could prevent the opening of the forward and rear service/emergency doors during an emergency evacuation, accomplish the following:

(a) Within 3 months after the effective date of this AD, remove the existing C-latch mechanisms and bushings of the forward and rear service/emergency doors, and install new C-latch mechanisms and bushings, Modification Kit SBF100–52–039A or SBF100–52–039B, in accordance with Service Bulletin SBF100–52–039, dated September 17, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 92–13081 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–CE–42–AD]

Airworthiness Directives; FL Aerospace (formerly Janitrol) Models B1500, B2030, B3040 and B4050 Combustion Heaters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have superseded Airworthiness Directive (AD) 82–07–03, which requires repetitive inspections for cracks and operational tests of FL Aerospace Models B1500, B2030, B3040 and B4050 combustion heaters, and repair or overhaul of these heaters if necessary. The proposed action would have retained the requirements of AD 82–07–03, but would have required the actions to be accomplished in accordance with updated service information. Since issuance of the NPRM, the manufacturing and ownership rights of the affected heaters have been transferred, and the Federal Aviation Administration (FAA) has become aware of other methods of accomplishing the actions of AD 82–07–03 that need to be further evaluated. The FAA has determined that, while these other methods are being evaluated, accomplishment of the actions required by AD 82–07–03 will continue to prevent the possibility of a fire igniting or carbon monoxide leaking into the cabin because of a cracked or defective heater. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Will Trammell, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would be applicable to certain FL Aerospace Models B1500, B2030, B3040, and B4050 combustion heaters was published in the **Federal Register** on May 24, 1991 (56 FR 23818). The action proposed superseding AD 82–07–03, Amendment 39–4354 (47 FR 13788, April 1, 1982), with a new AD that would: (1) Retain the repetitive inspections of the combustion heaters for cracks and the repair if cracks are found that are required by AD 82–07–03; and (2) would require these actions in accordance with new service information.

Since issuance of this NPRM, the manufacturing and ownership rights of the affected heaters have been transferred from the FL Aerospace Corporation to CD Airmotive Products. In addition, the FAA has become aware of other methods of accomplishing the actions of AD 82–07–03 that need to be further evaluated.

The FAA has determined that, while the evaluation is being conducted, accomplishment of the actions required by AD 82–07–03 will continue to prevent carbon monoxide from leaking into the cabin area because of a cracked heater. Accordingly, the proposed rule is withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 90-CE-42-AD, published in the **Federal Register** on May 24, 1991 (56 FR 23818), is withdrawn.

Issued in Kansas City, Missouri, on May 29, 1992.

Larry D. Malir,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13173 Filed 6-5-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ANE-26]

Proposed Amendment to Transition Area; Rangeley, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise the Rangeley, Maine Transition Area by correcting the longitude and latitude references for the Rangeley Municipal Airport and the Rangeley NDB and by changing statute mile distances to nautical miles. This proposal is prompted by a geographic survey of the Rangeley Transition Area conducted by the National Flight Data Center, and by the conversion of the lateral unit of measurement used to define transition areas from statue miles to nautical miles. This action is necessary to keep the description of the Rangeley Transition Area operationally current.

DATES: Comments must be received on or before July 8, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 92-ANE-26, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299.

The Official Docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299, weekdays, except Federal holidays, between the hours of 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rick Miller, System Management Branch, ANE-530, Federal Aviation Administration, Burlington, MA 01803-5299; Telephone: (617) 273-7146.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANE-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this NPRM by submitting a request to the Office of the Assistant Chief Counsel, ANE-7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to update the description of the Transition Area for Rangeley, Maine. This proposed action is the result of a geographic survey conducted by the National Flight Data Center (NFDC) as applied to the airspace surrounding Rangeley Municipal Airport, Rangeley, ME. Based on that survey the FAA has determined that corrections are necessary to the latitude and longitude references for the Rangeley Municipal Airport and the Rangeley NDB. In addition, the FAA has revised the criteria used to define transition areas as part of an overall review and reclassification of terminal airspace. The revised criteria include converting the lateral unit of measurement for transition areas from statue miles to nautical miles. Based on those new criteria, the FAA proposes to change the description of the Rangeley Transition Area by using nautical miles instead of statue miles. The net effect of this proposal is to increase slightly the radius of the Rangeley Transition Area. This amendment is necessary to keep the description of the Rangeley Transition Area operationally current. The description of the transition area is published in § 71.181 of FAA Order 7400.7, dated November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities under the Criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181, Transition Areas

* * * * *

ANE ME TA Rangeley, ME

That airspace extending upward from 700 feet above the surface within 6.3 nautical miles of the center of the Rangeley Municipal Airport, Rangeley, Maine (lat. 44°59'30", long. 70°39'51" W.), and that airspace within 2.8 nautical miles on each side of the Rangeley NDB 226° bearing from the Rangeley NDB (lat. 44°56'04" N., long. 70°45'06" W.) extending southwest from the 6.3-mile radius area to 6.6 nautical miles southwest of the Rangeley NDB.

* * * * *

Issued in Burlington, Massachusetts, on May 27, 1992.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 92-13301 Filed 6-5-92; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 165

[CGD1 92-052]

Safety Zone: Sippican Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in Sippican Harbor, Marion, MA, during the Marion Fourth of July fireworks display. The safety zone will cover the area of Sippican Harbor along the Silver Shell Beach shoreline out to 400 yards east of the shoreline and is necessary to protect pleasure craft and personnel aboard these vessels from injury due to potential hazards associated with the fireworks.

DATES: Comments must be received on or before June 23, 1992.

ADDRESSES: Comments should be mailed to the Commanding Officer, Marine Safety Office Providence, John O'Pastore Federal Building, Providence, RI, 02903-1790, or may be delivered to room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (401) 528-5335. The Marine Safety Office maintains a public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Tina Burke, Marine Safety Office Providence, (401) 528-5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 92-052) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **"ADDRESSES."** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are LTJG T. Burke, Project Manager, and LCDR J. Astley, Project Counsel, District Legal Office.

Background and Purpose

On July 4, 1992, the town of Marion, Masschusetts, plans to sponsor a Fourth of July Fireworks display between the hours of 8 p.m. and 10 p.m. The fireworks will be launched from a site on Silver Shell Beach and will project onto the waters of Sippican Harbor. The sponsor notified the Coast Guard of this event on April 28, 1992. Approximately 200 spectator vessels are expected to attend the event. The fireworks display is necessary to allow the city of Marion and the public to celebrate Independence Day.

A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area of Sippican Harbor over which the fireworks will be launched, in order to protect these vessels and the persons onboard from sparks and falling debris. The Coast Guard proposes to establish this safety zone from the shoreline of Silver Shell Beach, extending eastward 400 yards into Sippican Harbor, between the hours of 8 p.m. and 10 p.m. on July 4, 1992.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal because these regulations will be in effect for only a short period, specifically for two hours on one day. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water. These vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 400 yards from the shoreline, which will not cause them undue hardship.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certificates under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a commit (see **"ADDRESSES"**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal in accordance with the the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6, and 160.5.

2. A new § 165.T01–052 is added to read as follows:

§ 165.T01–052 Safety Zone: Sippican Harbor, MA.

(a) *Location.* The following area is a safety zone:

From the shoreline of Silver Shell Beach, extending eastward 400 yards into Sippican Harbor.

(b) *Effective Date.* This regulation becomes effective at 8 p.m. on July 4, 1992. It terminates at 10 p.m. on July 4, 1992, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: June 1, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92–13349 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 92–050]

Safety Zone; New Bedford Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in New Bedford Harbor, New Bedford, MA, in the main ship channel, south of the New Bedford-Fairhaven Bridge in the vicinity of New Bedford Channel lighted buoy 16, during the New Bedford Fourth of July fireworks display. This safety zone is necessary to protect vessels in the vicinity of the display and personnel aboard these vessels from injury due to potential hazards associated with the fireworks.

DATES: Comments must be received on or before June 23, 1992.

ADDRESSES: Comments should be mailed to the Commanding Officer, Marine Safety Office Providence, John O'Pastore Federal Building, Providence, RI, 02903–1790, or may be delivered to room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (401) 528–5335. The Marine Safety Office maintains a public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Tina Burke, Marine Safety Office Providence, (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 92–050) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LTJG T. Burke, Project Manager, and LCDR J. Astley, Project Counsel, District Legal Office.

Background and Purpose

On July 4, 1992, the town of New Bedford, Massachusetts, plans to sponsor a Fourth of July fireworks display between the hours of 7 p.m. and 10 p.m. The fireworks will be launched from a barge anchored in the vicinity of New Bedford Channel lighted buoy 16. The sponsor notified the Coast Guard of this event on May 22, 1992. Approximately 200 spectator vessels are expected to attend the event. The fireworks display is necessary to allow the city of New Bedford and the public to celebrate Independence Day.

A safety zone is needed to prohibit vessels from transiting or anchoring in the area of New Bedford Harbor over which the fireworks will be launched, in order to protect them from personal injury, fire, or other damage as a result of stray projectiles or hot/burning falling debris. The Coast Guard proposes to establish this safety zone in the area within a 350 yard radius around the fireworks barge. The zone will be in effect between the hours of 7 p.m. and 10 p.m. on July 4, 1992 and will effectively close New Bedford Channel to all vessel traffic during this period.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal because these regulations will be in effect for only a short period, specifically for three hours on one day. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water as well as fishing vessels wishing to transit the area. Spectator vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 350 yards from the barge, which will not cause them undue hardship. Fishing vessels will be prohibited from transiting through the area while the zone is in effect. This will not have a significant economic impact on them because of the short duration of the zone. In addition, most of the fishermen who work out of New Bedford expect and are aware that the fireworks and accompanying safety zone will be in place the evening of July 4 because the fireworks display is an annual event. This awareness, along with the short

duration of the zone, makes the hardship minimal for these fishing vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a commit (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6, and 160.5.

2. A new § 165.T01–050 is added to read as follows.

§ 165.T01–050 Safety Zone: New Bedford Harbor, MA.

(a) Location: The following area is a safety zone:

A 350 yard radius around the deck barge anchored in New Bedford Channel in the vicinity of New Bedford Channel lighted buoy 16, approximately 300 yards south of the New Bedford-Fairhaven Bridge, New Bedford Harbor, MA.

(b) Effective Date: This regulation becomes effective at 7 p.m. on July 4, 1992. It terminates at 10 p.m. on July 4, 1992, unless terminated sooner by the Captain of the Port.

(c) Regulations: The general regulations governing safety zones contained in § 165.23 apply.

Dated: June 1, 1992.

H. D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92–13350 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92–117; FCC No. 92–215]

Administrative Practice and Procedure-Tariffs

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend the Commission's rules to require that petitions seeking investigation, suspension, or rejection of a tariff filing made on 14 days' notice be filed within six calendar days after the date of the tariff filing; a carrier's reply to such a petition for relief from a tariff filing must be filed within three calendar days after service of the petition. This notice also proposes to count intermediate holidays in calculating both the six-day and three-day filing periods and to require that petitions and replies be personally served on all parties.

DATES: Comments must be filed on or before July 23, 1992 and reply comments on or before August 7, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jodie Donovan, tel: 202–632–6917.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

Reason for action. The Commission is issuing this Notice of Proposed Rulemaking to seek comment regarding adjustment of the pleading cycle for petitions to investigate, suspend, or reject tariffs filed with the Commission on 14 days' notice.

Objectives. The objective of this Notice of Proposed Rulemaking is to provide the Commission additional time to review petitions against tariffs filed on 14 days' notice.

Legal Basis. Sections 1, 4(i), 4(j), 201–205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 303(r).

Description, potential impact, and number of small entities affected. The proposed amendments to § 1.773 of the Commission's Rules, 47 CFR 1.773, mandate that petitions to investigate, suspend, or reject a tariff filing made on 14 days' notice be filed within six calendar days after the date of the tariff filing. The carrier's reply to these petitions must be filed within three calendar days after the petition is served. Intermediate holidays are counted during both filing periods. The amendments also require the petition and reply to be personally served on all parties. Small entities should experience no significant impact from this minor rule adjustment. Reporting, recordkeeping, and other compliance requirements. The proposed rules impose no new reporting requirements and no new recordkeeping requirements.

Federal rules which overlap, duplicate, or conflict with the Commission's proposal. None.

Any significant alternatives minimizing impact on small entities and consistent with stated objectives. None.

Comments are solicited. We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on other issues in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as Responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice to the Chief Counsel for

Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. 601, et seq.

Ex Parte Requirements

This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

Accordingly, *It is ordered* That notice is hereby given of the proposed regulatory changes described above, and that comment is sought on these proposals.

It is further ordered That pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, comments shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554 on or before July 23, 1992. Reply comments shall be filed no later than August 7, 1992. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, room 518, 1919 M Street, NW., Washington, DC. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, Downtown Copy Center, room 246, 1919 N Street NW., Washington, DC.

It is further ordered That the Secretary shall mail a copy of this Notice of Proposed Rulemaking to be the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects for 47 CFR Part 1

Administrative practice and procedure-tariffs.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendments to the Commission's Rules

Part 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.4 is amended by revising paragraph (g) introductory text to read as follows:

§ 1.4 Computation of time.

* * * * *

(g) Unless otherwise provided (e.g. § 1.773 of the rules), if the filing period is less than 7 days, intermediate holidays shall not be counted in determining the filing date.

* * * * *

3. Section 1.773 is amended by revising paragraph (a)(1), the first sentence of paragraph (a)(1)(i) and (a)(2); redesignating paragraphs (a)(2)(i) through (ii) as paragraphs (ii) through (iv) and revising them; then adding new paragraph (a)(2)(i); adding paragraph (a)(4); redesignating paragraphs (b)(1)(i) through (iv) as (ii) through (v) and revising redesignated paragraphs (b)(1)(ii) through (iv) and the last sentence of redesignated paragraph (b)(1)(v); then adding new paragrph (b)(1)(i); and revising paragraph (b)(2) and (c) to read as follows:

§ 1.773 Petitions for suspension or rejection of new tariff fillngs.

(a) *Petition*—(1) *Content.* Petitions seeking investigation, suspension or rejection of a new or revised tariff filing or any provision thereof shall specify its Federal Communications Commission tariff number and carrier transmittal number, the items against which protest is made, and the specific reasons why the protested tariff filing warrants investigation, suspension, or rejection under the Communications Act. No petition shall include a prayer that it also be considered a formal complaint. Any formal complaint shall be filed as a separate pleading as provided in § 1.721.

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision of such a publication, must specify the pertinent Federal Communication Commission tariff number and carrier transmittal number; the matters protested; and the specific reasons why the tariff warrants investigation, suspension, or rejection. * * *

* * * * *

(2) *When filed.* All petitions seeking investigation, suspension, or rejection of a new or revised tariff filing shall meet the filing requirements of this paragraph. * * *

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 6 days after the date of the tariff filing.

(ii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 7 days after the date of the tariff filing.

(iii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 15 days after the date of the tariff filing.

(iv) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 90 or more days notice shall be filed and served within 25 days after the date of the tariff filing.

* * * * *

(4) *Copies, Service.* An original and 4 copies of each petition shall be filed with the Commission and separate copies served simultaneously upon the Chief, Common Carrier Bureau, and the Chief, Tariff Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be personally served on the filing carrier. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice may be served on the filing carrier by mail.

(b)(1) * * *

(i) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 3 days after service of the petition.

(ii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 4 days after service of the petition.

(iii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 5 days after service of the petition.

(iv) Replies to petitions seeking investigation, suspension or rejection of a new or revised tariff filing made on 90 or more days notice shall be filed and served within 8 days after service of the petition.

(v) * * * The time for filing such a consolidated reply will begin to run on the last date for timely filed petitions, as fixed by (a)(2)(i)-(iv) of this section, and the date on which the consolidated reply is due will be governed by (b)(1)(i)-(iv) of this section.

(2) *Computation of time.* Intermediate holidays shall be counted in determining the 3-day filing date for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice. Intermediate holidays shall not be counted in determining filing dates for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice. When a petition is permitted to be served upon the filing carrier by mail, an additional 3 days (counting holidays) may be allowed for filing the reply. If the date for filing the reply falls on a holiday, the reply may be filed on the next succeeding business day.

(c) *Copies Service.* An original and 4 copies of each reply shall be filed with the Commission and separate copies served simultaneously upon the Chief, Common Carrier Bureau, and the Chief, Tariff Division. Replies responding to a new or revised tariff filing made on less than 15 days notice shall be personally served on the petitioner. Replies responding to a new or revised tariff filing made on 15 or more days notice may be served on petitioner by mail.

[FR Doc. 92-13140 Filed 6-5-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92-27; Notice 1]

RIN 2127-AE41

Federal Motor Vehicle Safety Standards; Wheel Nuts, Wheels Discs, and Hub Caps

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Federal Motor Vehicle Safety Standard No. 211, *Wheel Nuts, Wheel Discs, and Hub Caps*, currently prohibits wheel nuts, wheel discs, and hub caps that incorporate "winged projections." The purpose of the prohibition is to protect pedestrians and cyclists. This notice implements the agency's granting of a petition for rulemaking to amend the standard to permit wheel nuts, wheel discs and hub caps with winged projections if, when the wheel nuts, wheel discs or hub caps are installed on a wheel rim, the projections do not extend outward beyond the plane tangent to the outside of the wheel rim.

DATES: Comments must be received on or before August 7, 1992.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, room 5109, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Gill, Office of Vehicle Safety Standards, Office of Rulemaking, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gill's telephone number is (202) 366-6651.

SUPPLEMENTARY INFORMATION:

Background

Standard No. 211, Wheel Nuts, Wheel Discs, and Hub Caps (49 CFR 571.211), was issued in 1967 (32 FR 2408) as one of the initial Federal Motor Vehicle Safety Standards. Except for the addition of a note that clarified the term "wheel nut" in 1969, Standard No. 211 has remained unchanged since its issuance. Since Standard No. 211 applies to motor vehicles and motor vehicle equipment, both vehicle manufacturers and manufacturers of motor vehicle equipment must comply with Standard No. 211. Standard No. 211 currently prohibits wheel nuts, wheel discs, and hub caps (referred to hereafter as "hub caps") that incorporate "winged projections." This prohibition applies to all hub caps with winged projections, regardless of the size of the projections and regardless of how far outward they jut when the hub cap is installed on any wheel on which it is or can be mounted.

Petition for Rulemaking

By petition dated September 3, 1991, Consolidated International Automotive, Inc., Dayton Wheel Products, and Gorilla Automotive Products (petitioners) petitioned the agency to amend Standard No. 211. Petitioners seek amendments to clarify and make more objective the provisions of the standard and to allow the manufacture and installation of some types of hub caps that may be prohibited under the existing language of the standard. Petitioners asserted that the record contains no evidence substantiating any safety related hazards associated with the motor vehicle equipment regulated by Standard No. 211. To bolster this position, the petitioners enclosed the results of a survey of automotive parts wholesale and retail establishments, that showed no reports of injuries resulting from hub caps incorporating winged projections. Petitioners further stated that since the agency provides no guidance as to what constitutes a "winged projection," it is difficult to discern what types of equipment are prohibited by the standard. Petitioners therefore petitioned for the standard to be amended so that it does not prohibit the manufacture and installation of hub caps with "winged projections" that, when installed, "do not extend beyond the outermost plane of the wheel."

Agency Grant of Petition and Notice of Proposed Rulemaking

On December 2, 1991, the agency granted petitioners' petition for rulemaking. This notice implements that grant by proposing to amend Standard No. 211 to permit wheel nuts, wheel discs, and hub caps incorporating "winged projections" that, when installed, "do not extend beyond the outermost plane that is tangent to the outboard edge of the wheel rim."

As previously noted, since the 1967 issuance of Standard No. 211, all hub caps incorporating winged projections, regardless whether they are recessed so that they do not extend beyond the outermost edge of the wheel, have been prohibited by the standard. The ageny has reexamined the safety need to prohibit winged projections that are recessed. In doing so, the agency has examined available information provided by the petitioners and by other sources. As previously noted, in investigating possible injuries connected with winged projections, petitioners surveyed approximately 1,500 major automotive parts wholesale and retail establishments to determine whether there have been any reports of accidents involving hub caps incorporating winged projections. Out of the 194 responses received, none of the respondents reported winged projection-related accidents or injuries. The results of this survey are available for review at the docket number cited at the beginning of this notice.

In addition, the agency has received accident data sources to determine the extent of injuries involving winged projections. Pedestrians, motorcyclists, and bicyclists are potentially at risk from injuries resulting from contact with hub caps incorporating winged projections. The agency's analysis is based on a review of accident data files from the Pedestrian Injury Causation Study (PICS), the National Accident Sampling Systems (NASS), and complaints to NHTSA's Office of Defects Investigation.

1. Pedestrian Injury Causation Study (PICS)

The PICS accident data file was used to determine the number, type, and severity of reported pedestrian injuries caused by contact with vehicle wheels, wheel covers, wheel nuts, wheel discs, and hub caps. PICS accident data contain information gathered through an in-depth review of approximately 2,000 urban pedestrian accidents as they were reported to have occurred in five major United States metropolitan areas. These accidents were reported to have occurred from September 1979 to March 1980. All pedestrian accidents reported in these five areas during the stated time period were reviewed.

Although the PICS data file is not nationally representative, the data suggest that wheel covers were not a serious pedestrian hazard during the time period in which the accident data were collected. The majority of pedestrian accidents involve frontal impacts. Side impacts, which would include any contact with hub caps, account for just over 20 percent of the accidents. Injuries resulting from side pedestrian impacts are far less severe than those resulting from frontal impacts.

The PICS data file indicates that the number of pedestrian injuries resulting from hub caps contacts is low. Out of approximately 2000 cases investigated, no cases of pedestrian injury from contacts with wheels without hub caps or wheels with custom hub caps were reported. Contacts with wheels with standard hub caps accounted for only four pedestrian injuries.

The next phase of the accident data analysis involved determining the number of injuries resulting from contact with vehicle components located close to the wheels, primarily the front and rear fenders. The number of injuries of this type may be significant because it indicates the potential for wheel and hub cap injuries if hub caps are allowed to protrude too far outboard of the wheel. There were 125 PICS cases in which a pedestrian received an injury from front fender contact and 25 cases involving the rear fender. This unweighted data, taking into account only incidents reported in the five areas, indicates that about 10 percent of the reported accident victims in the PICS file (200 fender injury cases out of a total of approximately 2000 reports) were injured by vehicle components located close to the wheels. The weighted data, that take into account possible statistical aberrations that may be caused by reviewing reports from only five areas, produce very similar results: an estimated 9 percent of the most serious pedestrian injuries in the PICS sample area were caused by these contacts. It may be argued that these pedestrians are potential victims of wheel and hub cap injuries, if any of those components protrude out as far as the fender.

2. National Accident Sampling Systems (NASS)

The 1982–1986 NASS average annual estimates indicate that tire and wheel injuries account for an estimated 4.2 percent of NASS pedestrian injuries and 1.1 percent of pedalcyclist injuries during these five years. Using the computerized file, the agency cannot separate the injuries caused by wheels alone from those caused by either the tire or wheel.

Based on a review of individual cases, the agency determined that the "wheel" could be identified as the source of the injury in only a few cases. Moreover, it appears that the investigator was actually referring to the "wheel" in only one or two of these few cases. In the other cases, the investigator appeared to be utilizing the term "wheel" interchangeably with "tire." For those injuries caused by the tire, most occurred when the pedestrian made contact with the side of the vehicle and a foot or leg made contact with the tire.

3. Reports to NHTSA Office of Defects Investigation

The agency reviewed approximately 1,000 consumer complaints, classified as problems potentially related to Standard No. 211, filed with the NHTSA Office of Defects Investigation. The complaints were from the period beginning January 1, 1981 and continuing to the present. An examination of the allegations in these complaints did not disclose that any of the consumers were injured because of "winged projections" extending from hub caps.

The data set forth above do not indicate that since 1979, significant injury has been caused to pedestrians or cyclists as a result of accidental contact with wheels or hub caps. Based on this, the agency tentatively concludes that safety would not be compromised by amending Standard No. 211 so that it permits wheel nuts, wheel discs and hub caps with winged projections if, when the wheel nuts, wheel discs or hub caps are installed on a wheel rim, the projections do not extend outward beyond the plane tangent to the outside of that wheel rim. For greater clarity as to what the agency deems permissible, the agency also proposes to adopt two graphics, one depicting a "winged projection" and another depicting winged projections that do not extend beyond the plane specified above.

Effective Date

Because the proposed changes to Standard No. 211 would relieve restrictions without compromising safety, the agency tentatively has determined that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest. Accordingly, the agency proposes that, if adopted, the effective date for the final rule be 30 days after its publication in the **Federal Register**.

The proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

1. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this proposal and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This proposed rule would impose no additional requirements but would permit manufacturers greater design flexibility by relieving a restriction. Further, any cost impacts would be so slight they cannot be quantified. Since the effects of the proposal, if adopted as a final rule, would be so minimal, a full regulatory evaluation is not required.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that the proposed rule, if made final, would have only a

small beneficial effect on small importers and dealers of motor vehicle equipment by relieving restrictions on the sale of certain wheel nuts, wheel discs, and hub caps incorporating winged projections. Accordingly, an initial regulatory flexibility analysis has not been prepared.

3. Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. National Environmental Policy Act

The agency also has analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment.

Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposals will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the following, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S3 would be revised to read as follows:

§ 571.211 Standard No. 211; wheel nuts, wheel discs, and hub caps.

* * * * *

S3. *Definitions.*

S3.1 *Wheel nut* means an exposed nut that is mounted at the center or hub of a wheel. It does not include any of the ordinary small hexagonal nuts that secure a wheel to an axle, and that are normally covered by a hub cap or wheel disc.

S3.2. *Winged projection* means any exposed cantilevered appendage that projects radially from a wheel nut, wheel disc or hub cap and that typically has front, edge, and/or rear surfaces which are not in contact with the wheel when the wheel nut, wheel cover or hub cap is installed on the axle. Figure 1 shows an example of a "winged projection."

* * * * *

S4 would be added to read as follows:

* * * * * *

S4. *Requirements.* As installed on any physically compatible combination of axle and wheel rim, wheel nuts, wheel discs, and hub caps for use on passenger cars and multipurpose passenger vehicles shall not incorporate winged projections that extend beyond the plane that is tangent to the outboard edge of the wheel rim at all points around its circumference. Figure 2 shows that plane.

* * * * *

4. The paragraph entitled "**NOTE.**" at the end of Standard No. 211 would be removed.

5. Figures 1 and 2 would be added at the end of Standard No. 211.

Issued on: June 1, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13161 Filed 6-5-92; 8:45 am]

BILLING CODE 4910-59-M

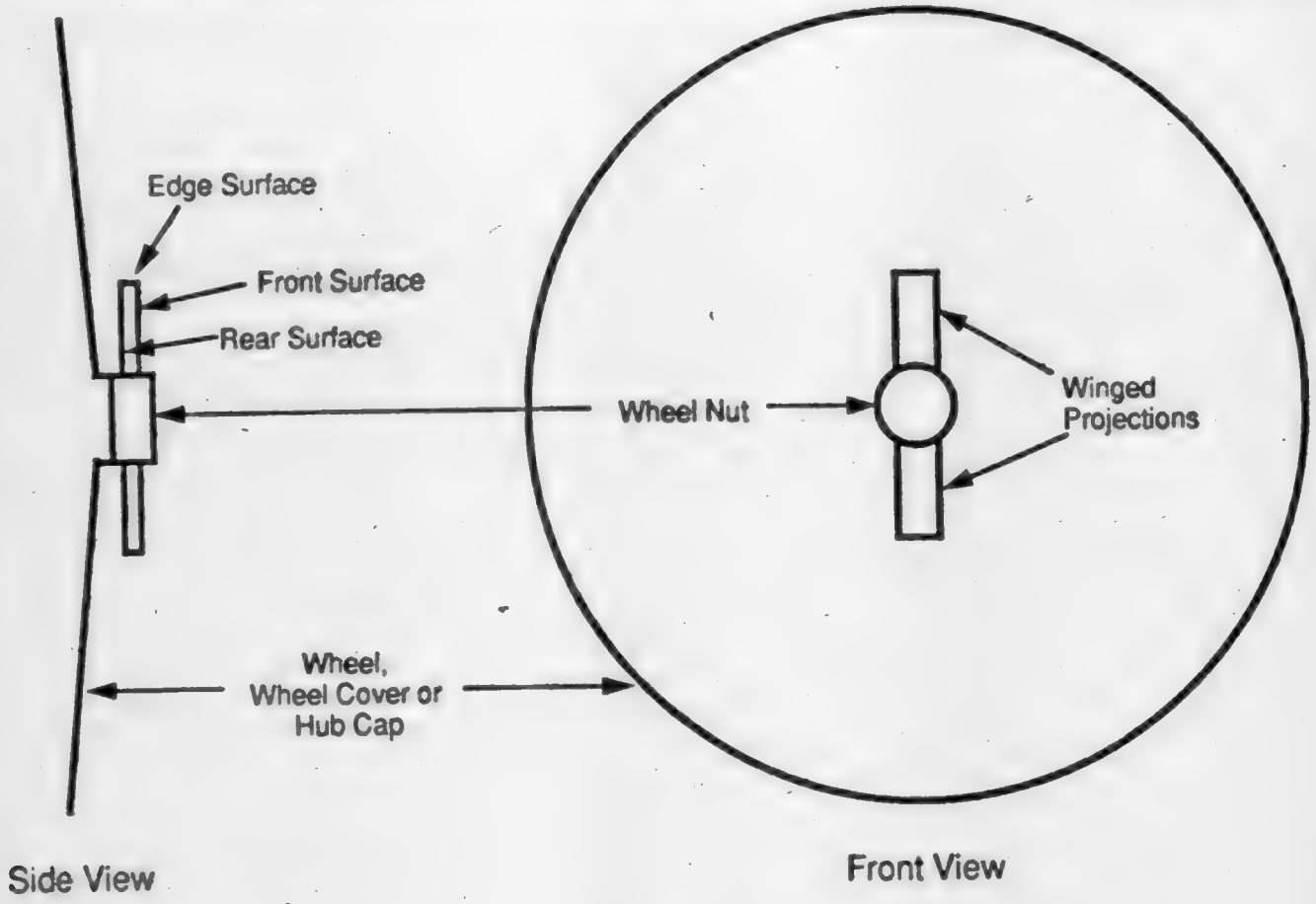

Figure 1 — Depiction of Winged Projection

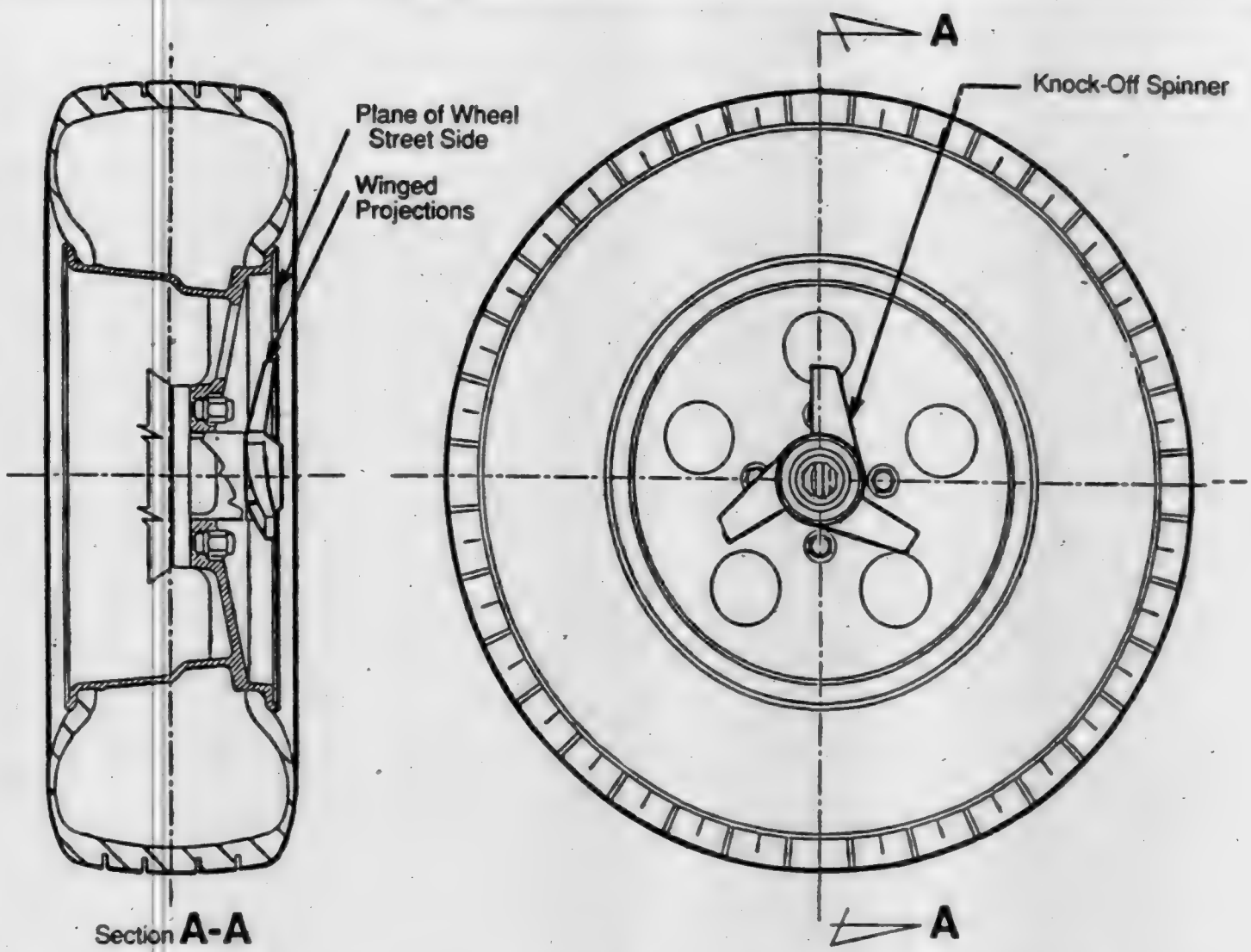

Figure 2 — Winged Projections Shall Never Extend Beyond Plane of Wheel

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49 CFR Part 571

[Docket No. 92-29; Notice 1]

RIN 2127-AA00

Federal Motor Vehicle Safety Standards; Stability and Control Requirements for Medium and Heavy Duty Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice announces that NHTSA is considering measures to improve the stability and control performance characteristics of heavy vehicles during braking. Specifically, the agency is considering the issuance of a proposal to establish additional performance requirements for improving the lateral stability of such vehicles while braking. Currently, antilock braking systems (ABS) are the only reliable technology available that is capable of achieving these performance goals. As a result, the agency notes that some heavy vehicles may have to be equipped with such systems or similarly performing equipment in order to be stably stopped. While the agency was formulating this rulemaking, Congress passed the Motor Carrier Act of 1991 which directs the Secretary of Transportation to initiate rulemaking about; among other things, antilock brake systems on new commercial motor vehicles. The agency seeks comments and information on the extent to which such measures would affect safety by improving heavy vehicle braking performance, as well as information about the costs and any potential negative effects of implementing rules that would have the practical effect, in many cases, of requiring this type of equipment. This notice is one part of a comprehensive effort by the agency to improve the braking performance of heavy vehicles.

DATES: Comments on this notice must be received on or before August 7, 1992.

ADDRESSES: All comments on this notice should refer to the docket and notice number and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-5892.

SUPPLEMENTARY INFORMATION:

Background

Overview of Notice

Federal Motor Vehicle Safety Standards that apply to medium and heavy duty vehicle brake systems are Standard No. 105, Hydraulic Brake Systems and Standard No. 121, Air Brake Systems. As part of the agency's plans to improve the braking performance of medium and heavy duty vehicles (hereinafter referred to as "heavy vehicles"), the agency is considering ways to improve the stability and control characteristics of heavy vehicles while braking, as discussed in this advance notice of proposed rulemaking (ANPRM). This ANPRM is prompted by the problems caused by the tendency for heavy vehicles to lose control when brakes are applied and wheels lock. The agency is also considering rulemaking to reinstate and establish stopping distance requirements for these vehicles.

While the agency was formulating this rulemaking, Congress passed the Motor Carrier Act of 1991 which directs the Secretary of Transportation to

> initiate rulemaking concerning methods for improving braking performance of new commercial motor vehicles (i.e., those vehicles with a gross vehicle weight rating of 26,001 or more pounds), including truck tractors, trailers, and their dollies. Such a rulemaking shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. (section 4012)

The Act requires that the rulemaking be consistent with the Motor Carrier Safety Act of 1984 (49 U.S.C. 2519(b)) and be carried out pursuant to, and in accordance with, the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381).

Among the issues discussed in this advance notice are the occurrence of loss-of-control crashes; the availability and performance of components or systems to improve lateral stability and steering control under all conditions of braking and vehicle load; potential regulatory approaches to improve the lateral stability and steering control of heavy vehicles during braking, including anticipated performance requirements and test procedures; a schedule for implementing requirements to maximize the benefits and minimize the costs of lateral stability and steering control requirements; diagnostic equipment and other methods to ensure in-use functioning of the systems employed to meet any of the standards that might be proposed; and anticipated cost considerations of such requirements.

Brake Designs and Equipment

Designing braking systems for the many heavy vehicle configurations and loading conditions is very complex. Heavy vehicles may be operated as a single unit (i.e., a single unit truck), part of a tractor trailer combination, a longer combination vehicle (e.g., an LCV which may be a double or triple combination with up to nine axles), or in the bobtail configuration (i.e., a tractor operated without a trailer).

Because heavy vehicles operate under greatly varying loading situations, brakes for these vehicles must be designed to handle vehicle loaded weights which range up to three times more than empty weights. Heavy vehicles are typically designed to achieve their best braking performance when operating in the fully loaded condition. Accordingly, a vehicle with a brake system designed to operate ideally in the fully loaded condition has a tendency to lockup one or more of its axles prematurely (i.e., one axle will lockup before other axles achieve maximum braking) when operating in the lightly loaded condition, especially when operating on slippery roads.

Manufacturers have developed several devices related to the braking of heavy vehicles, including automatic from axle limiting valves (ALVs), bobtail proportioning valves (BPVs), load-sensing proportioning valves (LSVs), and antilock braking systems (ABS).

ALVs automatically limit the amount of braking pressure applied at steering axle brakes. They are typically installed to allay the concern of some drivers about loss of steering control during hard braking, which may result from wheel lockup. However, as the test data explained below indicate, these valves can actually compromise stopping performance, especially when lightly loaded or empty vehicles operate on slippery roads because the front axle brakes are not doing their share of the braking. With the ALV installed, lockup of the drive axles occurs at a lower rate of deceleration. Thus drivers must apply the brakes lightly when stopping the vehicle under these conditions, or the drive axle brakes will lock, causing the vehicle to become unstable. As a result of the light brake application, stopping distances increase. Accordingly, the use of ALVs may be contrary to the agency's long-range goal of improving stopping performance.

BPVs automatically reduce brake application pressure to the drive axles of a truck tractor when it is operating bobtail, thereby allowing greater use of the vehicle's, steering-axle braking

power. By automatically apportioning more brake pressure to the steering axle, the likelihood of premature drive-axle wheel lockup and loss-of-control is reduced. As a result, stopping performance is enhanced. The agency's long-range goal is to promulgate performance requirements for shorter stopping distances. Given the potential safety problems resulting from the significantly longer stopping distances for truck tractors in the bobtail configuration, the use of BPVs would be encouraged.

LSVs function by mechanically sensing drive-axle suspension deflection that results from cargo load. When the load is low on the drive-axle (i.e., the vehicle is operating lightly loaded or empty), brake proportioning is changed to apportion more of the braking to the steering axle. Because of problems keeping the device calibrated and maintained properly, most U.S. manufacturers do not equip vehicles with these devices.

ABS automatically controls the amount of braking pressure applied to a wheel so as to prevent wheel lock, thus increasing stability and control in emergency stops by preventing skidding, spinouts, and jackknifes. Vehicles equipped with ABS also usually have shorter stopping distances compared to the same vehicle without ABS, particularly on low mu surfaces.

Devices That Improve Lateral Stability and Steering Control During Braking

All of these devices discussed above can affect the lateral stability and steering control of vehicles during braking. At this time, electronic ABS, as discussed below, appears to be the most reliable method of preventing loss of stability and steering control. LSVs can reduce the likelihood of premature wheel lockup by mechanically sensing drive-axle suspension deflection that results from cargo load and adjusting brake proportion based on different loading conditions, but ultimately they cannot totally prevent lockup if brakes are applied hard enough under some operating conditions. Likewise, BPVs reduce the likelihood of premature drive-axle wheel lock-up by allowing the steer-axle to do more of the braking work when a truck tractor is operating bobtail; nevertheless, they also cannot totally prevent wheel lockup. Finally, loss-of-control crashes also could be reduced by eliminating Automatic Limiting Valves (ALVs). These devices increase the likelihood of drive-axle and trailer lock-up because front axles do not do their share of the braking, and therefore drivers must apply brakes harder to stop the vehicle. In addition, jackknifing of articulated vehicles can be controlled at the articulation point, by physically constraining the two units in the combination from articulating through the use of anti-jackknife devices. However, this approach does not provide the driver steering control of the vehicle, nor does it influence brake system performance. Because this approach only treats the symptoms of poor braking performance, wheel lock-up is still possible. If the vehicle is on a curved road when this occurs, the vehicle will typically leave the roadway. Since these devices do not affect a vehicle's braking performance, they have not been considered as the technology that would likely be used in response to this rulemaking effort.

ABS helps prevent loss of control situations by automatically controlling the amount of braking pressure applied to a wheel. With these systems, the Electronic Control Unit (ECU) monitors wheel-speeds, and changes in wheel-speeds, based on electric signals transmitted from sensors located at the wheels or within the axle housings. If the wheels start to lock, the ECU signals a modulator control valve to actuate, thereby reducing the amount of braking pressure applied to the wheel that is being monitored. As a result, these devices ensure stability and control by preventing wheel lockup and loss of control. When operating at loads significantly below the fully loaded condition or on slippery road conditions, vehicles equipped with ABS usually obtain shorter stops because braking efficiency is enhanced.

There are several types of ABS configuarations which are available for most common heavy vehicles on the road today. In order of decreasing complexity and cost, system for tractors include those with individual wheel control, side-to-side control, axle-by-axle control, and drive-axle-only systems, and tandem control systems. With individual wheel control—the most complicated and costly ABS—each of the brakes on a tractor trailer combination is individually monitored and controlled using wheel-speed sensors and control valves for each wheel. With side-to-side control, each front brake is individually controlled, while each pair of brakes on each side of the tractor drive and trailer tandem-axle sets is controlled by an individual valve. With axle-by-axle control, each axle is controlled by an individual valve. With drive-axle-only and tandem control, all four brakes on the tandem drive-axle set on the tractor are controlled by an individual valve.

History of Antilock Braking Systems

Development work on ABS for heavy vehicles began in the 1950s with commercial products available in the late 1960s. The agency initially adopted a stringent set of heavy vehicle braking requirements in 1971 which were set to take effect in 1973. These requirements specified distances in which vehicles had to stop at specified speeds without wheel lockup. As a result of these requirements, approximately one million air-braked trucks, buses, and trailers were equipped with ABS in the late 1970s. While most of the vehicles equipped with ABS continued to function properly in service, some reliability problems occurred, particularly with trailers and low-volume specialty vehicles.

In response to a challenge that the then-available ABS were not reliable, the Ninth Circuit invalidated the "no wheel lockup" stopping distance requirements in *PACCAR* v. *NHTSA*, 573 F.2d 632 (9th Cir 1978) *cert. denied* 439 U.S. 862 (1978). The court questioned the reliability of the hardware used by manufacturs to comply with the "no lockup" requirement, holding that more probative and convincing data evidencing the reliability and safety of vehicles that are equipped with antilock and in use must be available before the agency can enforce a standard requiring its installation.

After *PACCAR*, U.S. manufacturers chose to halt development and production of ABS on heavy vehicles. Before the 1978 ruling, A–C Sparkplug, the last domestic manufacturer of ABS, produced about 180,000 ABS units per year. By 1984, it produced about 500 units.

Meanwhile European interest in ABS increased. ECE Regulation No. 13 includes technical requirements for antilock systems in Annex 13 of its regulation. Annex 13 defines three categories of antilock systems (Category I, II, and III) and sets performance requirements for each category. A Category I device must meet the most strigent performance requirements, whereas a Category III device must meet less strigent performance requirements. The European Economic Community (EEC, Common Market) directive has identical requirements. After October 1, 1991, all new heavy trucks (with GVWR greater than 16 metric tons), interurban buses (with GVWR greater than 12 metric tons), and trailers manufactured for sale in European countries adopting the standard have to be equipped with ABS.

Loss of Control Crashes

Crashes involving heavy vehicles result in a significant number of fatalities, injuries, and property damage each year. One of the most important vehicle-related contributing factors is brake system performance. This notice focuses on a specific type of crash: Those involving loss-of-control, skidding, or jackknifing as a result of braking. Such incidents typically involve poor lateral stability or loss of steering control due to locked wheels during braking. These crashes often occur when the vehicle is lightly loaded or empty and the road is slippery or wet. According to agency records, 80 percent of all jackknife incidents occur on wet roads; and 60 percent to 80 percent of single unit truck skidding incidents involve wet roads. Air-braked equipped combination units may jackknife when a tractor's drive wheels lock, swing out of the lane when a trailer's wheels lock, or lose steering control when steer-axle wheels lock. Similarly, a single unit truck may spin out of control when a brake application is made. In any case, such crashes disproportionately result in head-on collisions and fatalities. See NHTSA's March 1991 report to Congress, "Improved Brake Systems for Commercial Vehicles" (PB91-182600) which may be examined at the agency's Technical Reference Office, room 5108, at no charge. It is available from the National Technical Information Service (NTIS), Springfield, VA 22161 for a small charge.

Braking induced loss of control crashes most often occur when a truck driver responds "normally" to a crash threat by braking hard. In many hard braking situations, undesirable brake system characteristics (e.g., unbalanced brake torque at different axles) and roadway conditions (e.g., wet roads) combine to produce the rapid-event sequence of wheel lock-up and loss of control.

Based on available statistics about loss-of-control crashes, the estimated national annual crash, injury, and fatality totals are as follows: Crashes—38,400 to 57,600; injuries to truck occupants—16,550 to 24,826; injuries to occupants of other involved vehicles—21,043 to 31,565; truck occupant fatalities—177 to 265; and fatalities to occupants of other involved vehicles—1,521 to 2,281. For a more detailed discussion of the injury statistics, the reader should refer to the Preliminary Regulatory Evaluation (PRE) for this rulemaking and the above-mentioned report to Congress, "Improved Brake Systems for Commercial Vehicles." The agency emphasizes that quantifying the number of loss-of-control crashes is very difficult, given the variation among data sources in reporting these types of crashes, the use of multiple data sources, the possible overlap among crash categories, and the inherent imprecision of identifying braking performance as a contributing factor to truck crashes. Nevertheless, the data, although imperfect, indicate that brake induced instability is a significant contributing factor to truck crashes.

NHTSA Activities Related to Stability and Control During Braking Peformance

In contemplation of again proposing brake stability and control requirements that would likely have the practical effect of requiring ABS or similarly performing equipment, NHTSA is reviewing the performance and use of ABS. These efforts include a study of the in-use experience with ABS in other countries, an extensive domestic fleet test of ABS equipped heavy vehicles, and performance testing of ABS equipped vehicles.

NHTSA has completed a study about the performance, reliability, and maintainability of in-service commercial vehicles equipped with ABS in Europe and Australia ("European/Australian Experience with Antilock Braking Systems in Fleet Service," U.S. Department of Transportation, NHTSA, DOT HS 807 269, March 1988). Among the study's findings were that maintenance was done only when a malfunction warning light activated; failure warning indications did not disrupt operations, allowing vehicles to continue their routes; no special maintenance was performed on the ABS beyond routine periodic inspections; no problems with electronic and radio frequency interference (RFI) were reported; with proper maintenance, ABS life was expected to equal that of the vehicle; and carriers reported that drivers liked driving ABS-equipped vehicles. ABS manufacturers believed that their systems were generally reliable and expected future improvements, although some problems were encountered with wiring and connector failures.

NHTSA conducted a fleet testing program of ABS-equipped truck tractors that was completed in the summer of 1991. That study evaluated the reliability, maintainability, and durability of 200 truck tractors equipped with ABS from Wabco, Bosch, Bendix, Rockwell, and Midland. Vehicles in the test fleet provided information about their in-use experience with ABS. Trailers were added to the program in 1990–1991. A final report on the tractor portion of the study will be published in early 1992. A report on the trailer portion will follow in 1993. The agency plans to use these findings if it decides to formulate future rulemaking about ABS. A discussion of the study's interim results may be obtained in the March 1991 report to Congress, "Improved Brake Systems for Commerical Motor Vehicles."

NHTSA is also in the process of conducting a test track evaluation of trailer ABS. The truck ABS test track evaluation was completed in late 1991. That study evaluates the performance and cost trade-offs of various antilock control strategies, including individual wheel control, axle-by-axle control, tandem axle control, and drive axle control. Test vehicles are being put through a full test matrix varying the maneuvers, speeds, test surfaces, and vehicle loadings. Maneuvers include straight line braking and braking in a 500-foot radius curve. Among the considerations being addressed by the tests are the electrical power requirements for ABS, the adequacy of the stop-lamp circuit to power ABS on multiple unit combinations, the stability and control implications of using wheel-by-wheel versus axle-by-axle ABS configurations, and the need for ABS on converter dollies. The agency is also working to develop ABS test procedures. Initial work has focused on defining test surfaces to ensure that test results can be reproduced at multiple test sites. Upon completion, the findings of both studies will be placed in the docket.

Issues

The agency is undertaking a comprehensive effort to improve the braking performance of heavy vehicles. The agency is considering in other proceedings whether to reinstate the requirements for 60 mph stops on high coefficient of friction surfaces for all heavy vehicles.

This ANPRM discusses the agency's efforts about whether to propose braking performance requirements addressing a vehicle's lateral stability and steering control during braking. To achieve such performance goals, the agency tentatively believes that the best available and most reliable techonology is ABS, and many heavy vehicles would have to be equipped with ABS or other similarly performing systems. The proposals for such an undertaking have not been fully developed because the agency is awaiting the final results of the ABS fleet study and the ABS vehicle testing. Along with comments to this notice, the results of these research studies will provide the basis for the agency's proposals to implement lateral

stability and vehicle control requirements. This notice also makes a number of requests for data and information. Since this is an ANPRM, no rule will be issued on this specific subject without an NPRM and further opportunity to comment.

In commenting on a particular matter or responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to, testing, statistical, and cost data, and the source of such information. The agency is interested in comments about the following general topics:

(a) The anticipated safety benefits from introducing requirements to improve the lateral stability and control performance during braking of heavy vehicles;

(b) Potential regulatory approaches to improve the lateral stability and control of heavy vehicles during braking, including anticipated performance requirements and test procedures;

(c) The type of equipment that would be needed to comply with the new requirements;

(d) A schedule for implementing lateral stability and contorl during braking requirements to maximize the benefits at reasonable costs;

(e) Diagnostic equipment and other methods to enhance the in-use equipment or systems installed to meet these requirements;

(f) The costs of requiring different devices and braking systems to comply with the anticipated requirements.

For ease of reference, the questions are numbered consecutively. The agency requests that commenters give the number of each question they answer.

Safety Need

The threshold issue in deciding whether to introduce a new safety standard or amend an existing safety standard concerns the safety need. The agency's initial review of the safety data includes information from the Fatal Accident Reporting System (FARs), NHTSA's General Estimates System (GES), National Accident Sampling System (NASS), and State accident data files. As explained above, these data indicate that braking induced loss-of-control crashes appear to be a frequent type of heavy vehicle crash that warrants further study. Because details about the circumstances of a crash are often lacking, supplementary information would be useful. Truck drivers, police officers, and fleet operators are uniquely qualified to supply NHTSA with first-hand information about their actual in-field experiences with braking induced loss-of-control crashes. Accordingly, the agency requests comments from these people and others about their experiences in which heavy vehicles lose control.

Each of the many heavy vehicle configurations and loading and operating conditions affect the braking and control of such vehicles. Heavy vehicles may be operated as a single unit (i.e., a straight truck), part of a tractor trailer combination, or in the bobtail configuration (i.e., a truck tractor operated without a trailer). Heavy vehicles may operate under greatly varying situations, from fully loaded to empty and on straight or curved roads that are dry or slippery. As mentioned above, manufacturers have developed several devices related to the braking of heavy vehicles, including automatic front axle limiting valves (ALVs), bobtail proportioning valves (BPVs), load-sensing proportioning valves (LSVs), and ABS that deal, in varying degrees, with improving brake performance under these various conditions. With these considerations in mind, the agency poses the following questions.

1. Based on the available data, what safety benefits would result from requirements to prevent or minimize the effect of braking induced loss-of-control crashes?

2. Should the agency apply requirements to some vehicle types but not others? Alternatively, should the agency initially apply requirements to limited vehicle types and later apply the requirements to all vehicle types? At this stage of the rulemaking, it appears that, based on the crash data, the greatest benefits would be obtained by requirements for braking lateral stability and control of truck tractors. Based on these crash data, it appears that an intermediate level of safety benefits could be obtained from applying these requirements to trailers, and converter dollies. In addition, it appears that smaller benefits would be obtained from applying these requirements to single unit trucks, buses, school buses, and special permit vehicles.

3. What additional injury and non-injury data and other information exist about real-world crashes and near crashes with heavy vehicles jackknifing, skidding, or otherwise losing control?

The next several questions relate to NHTSA's interest in comments from drivers, police officers, and others concerning their experience with actual braked induced crashes.

4. What type of heavy vehicle (e.g., tractor trailers, straight trucks, buses, bobtail tractors) was involved in the crash? To what extent was the vehicle loaded? Many heavy vehicle crashes also involve one or more passenger vehicles. What type of "other involved" vehicle or vehicles were involved in the crash?

5. With what type of braking-related equipment (e.g., ABS, ALV, BPVs, etc.) was the heavy vehicle equipped?

6. At the time of the event, what were the driving conditions and weather environment? At what speed was the heavy vehicle traveling? Was the roadway dry, wet, or icy? To what degree did these adverse driving conditions contribute to the crash and its severity? Did the crash occur on an interstate, secondary highway, or residential road? What, if any, crash avoidance maneuver precipitated the crash?

7. Based on the above information, if the heavy vehicle had been equipped with a different brake system or other device which helps in maintaining a vehicle's stability during stopping, could that hardware have helped in avoiding or reducing the severity of the crash?

Requirements Concerning the Loteral Stability and Control of Heavy Vehicles During Braking

If NHTSA were to amend Standard No. 121 to improve the lateral stability and control of heavy vehicles during braking, the agency would first need to determine that the amendment met the Vehicle Safety Act's criteria that the requirement be practicable and be stated in objective terms. (Section 103(a)). Any rulemaking to improve lateral stability would also be guided by the findings in *PACCAR*, which held that at the time of its implementation, parts of the existing standard were not reasonable nor practicable. The court held that objective test methods and more probative and convincing data evidencing the reliability and safety of vehicles that are equipped with antilock and in use must be available before the agency can enforce a standard requiring its installation.

8. Consistent with the above considerations, the agency is contemplating requiring heavy vehicles to be capable of stopping without loss of stability or directional control, while turning on a slippery surface and with full brake-pedal application. Are these anticipated performance objectives appropriate and feasible? What additional requirements, if any, are necessary to achieve an appropriate level of safety?

9. Based on the preliminary results of the agency's testing of ABS, the agency is contemplating certain test procedures,

including a braking-in-a-curve test in which a heavy vehicle's braking lateral stability and control would be measured at slower speeds on a slippery surface. At this stage in the rulemaking, the agency is inclined to pursue a "braking-in-a-curve test" without specifying minimum stopping distance performance requirements. This type of test would ensure that stability enhancing equipment is installed on vehicles without specifying the effectiveness performance of that equipment. The agency is inclined to specify a stability performance test on a low coefficient of friction surface in which the test vehicle traveling at 30 mph or 75 percent of its maximum drive through speed capability would be required to stay within the 12-foot lane of a 500 foot radius curve during a full treadle brake application. The 500 foot radius curve is representative of a "tight" highway exit ramp. No stopping distance performance requirement would be included for the low coefficient of friction surface. What problems, if any, are associated with this type of test procedure? Is this testing approach a valid indicator of heavy vehicle lateral stability and control performance?

10. If heavy vehicles are equipped with different configurations of ABS (i.e., individual wheel control, axle-by-axle control, side-by-side control, and drive-axle-only) would any modifications to the braking-in-a-curve test procedure be necessary to accommodate any of these different systems? Would such modifications be appropriate? Should the agency include an efficiency requirement to ensure that all systems meet a certain minimum efficiency level?

11. The agency anticipates specifying the surface used in the curve test to have a PFC of not more than 0.5 measured in accordance with the ASTM Method E 1337–90 at a speed of 40 mph, using the Standard ASTM E1136 Reference Test Tire, with water delivery. A surface with a PHC of 0.5 represents a wet secondary road in poor condition. While several materials may be used to obtain a test surface with a PFC of 0.5, the agency typically uses a wetted "jennite" surface. Jennite is the trade name of a sealer for paved surfaces. Is a PFC of 0.5 an appropriate measure of a slippery surface? Does such a surface raise any practicability concerns? Are there other low coefficient of friction test surfaces that offer less fluctuations, thus ensuring greater repeatability of vehicle stability performance?

12. While the agency is not inclined to propose it, another type of test, known as a "split coefficient of friction surface" (or split Mu surface in which Mu is the measure of the coefficient of friction) test, combines two surfaces, one with high friction and the other with low friction. The test lane is split along its length, down the centerline, so that the wheels on one side of the vehicle are on the high friction surface and the wheels on the other side of the vehicle are on the slick surface, What benefits would be obtained from testing on such a split mu surface? What testing problems would result from such a surface? Do commenters agree with the agency's tentative decision not to pursue such a procedure?

13. As part of the agency's testing, the agency has evaluated braking performance which simulates applying the brakes and then changing lanes while braking. Such a land-change maneuver simulates a relatively severe evasive maneuver, similar to what might be required if another vehicle stopped suddenly or "cut in front" of the truck. However, there appear to be several shortcomings with this approach. First, compared to the other maneuvers, the lane-change test includes additional variables which may influence the test results, (e.g., the brake application and initiation of steering influence the vehicle's path.) Second, this test may not provide additional or different insights about ABS performance compared to the information obtained using the curve and straight lane maneuvers. Accordingly, at this stage of the rulemaking, the agency does not anticipate pursuing the lane-change test procedure. Do commenters agree with the agency's tentative decision not to pursue such a procedure? What have been the experiences of commenters with this test?

14. Two different methods of applying brakes are used when testing ABS (and braking systems in general). One method is a "full treadle" rapid, pedal-to-floor application typical of how a driver might react in a crash-threatening situation. This type of brake application can precipitate wheel lock-up and loss-of-control if the vehicle is unloaded or operating on a slippery surface. A second method is a modulated "driver-best-effort" application in which wheels are not locked to enable stops that are as quick and short as possible while still maintaining stability and steering control. At this stage of the rulemaking, the agency anticipates proposing a full treadle application because it is more representative of a typical driver's response to a real world crash-threatening situation. In addition, a driver best-effort stop could be unrealistically moderate in the absence of stopping distance performance requirements on the low Mu braking-in-a-turn test. In specifying the amount of brake application force in this test procedure, the agency anticipates that requiring a treadle value pressure of 100 psi within 0.1 second for air braked vehicles or a pedal force of 200 pounds in 0.1 seconds for hydraulic braked vehicles could adequately represent a full treadle application. The agency requests comments about how to specify the brake application provisions. Sepcifically, are such applications representative of the type of brake applications drivers make when confronted with a potential crash situation?

15. An alternative to the road test of a vehicle would be for the agency to institute an equipment requirement similar to those in S5.1 and S5.2 of Standard No. 121. With this alternative, the agency could mandate the installation of ABS or similar types of equipment on certain types of heavy vehicles. Possible advantages of a mandatory equipment requirement are that it might be easier to develop than one involving vehicle performance testing, and pose fewer concerns about variability. However, NHTSA generally favors performance oriented requirements in brake standards, since they give vehicle manufacturers flexibility in use of equipment to meet the requirements. Also, the agency might have difficulty establishing an appropriate, readily enforceable definition for what constitutes an ABS or other suitable equipment that is both broad enough to cover all effective ABS designs but precise enough to avoid including designs that would not significantly improve safety. If such an equipment requirement approach were taken, the agency also might have to include specific test procedures. The agency requests comments about the possible benefits and shortcomings of an equipment requirement approach. Commenters are also requested to address how best to define ABS or other suitable equipment.

Equipment Needed To Comply With the Potential New Requirements

16. If NHTSA were to amend Standard No. 121 to improve the lateral stability and control of heavy vehicles during braking, certain hardware would need to be added to some vehicles to achieve the new performance requirements. At this stage of the rulemaking, the agency anticipates that the hardware most likely to be added would be ABS to control all axle

positions. Nevertheless, it is possible that other hardware could achieve the same performance goals. Along with ABS, what other equipment could achieve the requirements discussed in the previous section?

17. How many vehicles would need to be equipped with ABS or the other hardware to comply with the anticipated requirements?

18. Testing conducted by the agency indicates that antilock systems that control both the steering and drive axles of a vehicle provide full steering control and stability during braking. However, drive-axle-only systems appeal to some users in the industry because they are relatively simple, and provide some benefits (e.g., prevention of jackknifing) at a lower initial cost. They do not, however, ensure steering control while braking. Under what circumstances, if any, would a drive-axle-only system provide adequate safety benefits, even though the all-axle and all-wheel systems would provide greater safety benefits? Should systems that control all axles on a vehicle be required for all heavy vehicles, or should drive-axle-only systems be permitted on some classes of vehicles?

Implementation

The agency's goal in implementing requirements for lateral stability and steering control during braking is to achieve significant improvements in braking performance at a reasonable cost to manufacturers and consumers. In achieving this goal, several factors may be relevant, including only applying requirements to certain vehicle types, having more stringent requirements for certain vehicle types, and phasing in requirements to apply to certain vehicle types before others.

The agency is aware of several different methods to implement potential requirements. One approach would be first to apply the requirements to vehicles which experience the highest incidence of braking induced loss of control crashes (e.g., standard truck tractors) for which commercially available ABS have already been developed. The requirements could then be expanded to include other heavy vehicles that experience fewer incidences of braking induced loss of control crashes, and which may be more difficult or costly to equip. A second approach would be for the agency to patter its ABS performance standards after Annex 13 of the ECE Regulation No. 13. This provision specifies three categories of ABS, each with a different level of stringency. While all heavy vehicles would have to comply with an ABS requirement, certain vehicles would have to comply with more stringent requirements. A third approach would be based on vehicle weight, type of vehicle (e.g., school buses, tankers), or vehicle characteristics (e.g., short wheelbase, high center of gravity). In addition, an implementation schedule could incorporate portions of each approach.

19. At this stage in the rulemaking, the agency contemplates applying a braking stability and control requirement at different times based on the type of vehicle's annual production volume and on the type of vehicle that could provide the greatest safety benefit. Truck tractors, the type of vehicle with the highest annual production volume and the greatest potential for increased safety benefits when equipped with ABS, would be the first to be subject to any braking stability and control requirements. This would be followed by requirements for trailers, converter dollies, single unit trucks, and buses. Among the advantages of this implementation approach are that (1) ABS installed on truck tractors would provide the greatest safety benefits early in the implementation period because loss of control crashes would be greatly reduced (i.e., crash data reveal that 70 percent of all serious heavy vehicle crashes involve combination unit trucks), (2) ABS manufacturers should be able to reduce their manufacturing costs quickly because of the economies of scale associated with first applying the requirements to high production vehicles, (3) all heavy vehicle ABS manufacturers currently have a tractor system commercially available, and (4) enforcement of this approach would be relatively easy, because it involves readily identifiable and distinct categories of vehicles. The agency welcomes comments about this anticipated implementation procedure. Is this the type of implementation approach that would achieve the maximum safety benefits while minimizing costs? Would any other approach be more reasonable? Which approach would be the most feasible? Which approach would be the easiest to administer?

20. If the agency were to propose this approach, the following implementation schedule is anticipated:

Vehicle type	Effective date
Truck tractors	Two years after final rule.
Trailers, converter dollies	Three years after final rule.
Single unit trucks	Four years after final rule.
Buses	Five years after final rule.

Is this implementation schedule appropriate? Would it be reasonable to delay any portion of it? Accelerate any portion of it?

21. The agency could establish a system like the ECE's in which categories or tiers of increasingly stringent performance requirements would be applied to different types of vehicles, instead of establishing one minimum requirement for all antilock systems. For instance, vehicle types considered to be the most in need of braking stability and control systems, such as tractor trailers might be required to have individual wheel control ABS; whereas, vehicle types considered to be relatively more stable such as lighter single unit trucks might be required to have only axle-by-axle control. What would be the benefits and shortcomings of such an approach? What performance criteria should be included in each category, and what types of vehicles should be equipped with antilock systems of each category?

22. ABS manufacturers have not developed systems for many special-purpose vehicles (e.g., crane carriers, heavy haulers, all-wheel drive vehicles, concrete mixers and refuse trucks), because their low production volumes result in relatively high developmental costs. The agency notes that such special-purpose vehicles presented particular problems with ABS in the late 1970s. As explained above, the agency is inclined to apply the requirements so that manufacturers concentrate on high-volume, high safety benefit vehicle types. Accordingly, at a minimum, the agency anticipates that the requirements would not be applied to the special-purpose vehicles until later in the implementation schedule. An extension of this philosophy would be to exclude certain special-purpose vehicles permanently from the anticipated requirements. What are the advantages and disadvantages of applying lateral stability requirements to special-purpose vehicles? If the agency decides to exclude certain vehicles, which vehicle types should be excluded? Should the applicability section list vehicles to which the standard would not apply? If so, what specialty vehicles should be listed? What other ways could be used to specify the requirement's applicability?

23. As for hydraulic-braked trucks and buses, very few of them are designed to

tow heavy trailers. The agency is not aware of any antilock systems that have been developed for hydraulic-braked heavy vehicles in the U.S. Accordingly, the agency anticipates that ABS-related requirements would be applied to hydraulic-braked vehicles later in the implementation schedule, and only after reliable systems are demonstrated to be available. What safety benefits would result from applying the braking lateral stability and control requirements to hydraulically braked vehicles earlier in the implementation schedule? Are antilock systems available for these vehicles?

24. The agency notes that when the "no lockup" provisions in Standard No. 121 were promulgated in the 1970s, some users, especially of single unit trucks and buses, switched to hydraulic brakes to avoid the additional costs of ABS-related requirements in Standard No. 121. If braking lateral stability and control requirements are extended to air-braked single-unit trucks and buses, the agency anticipates making them applicable to hydraulic-braked heavy vehicles at the same time. Would such an implementation schedule be necessary, and would it provide adequate leadtime to allow manufacturers to develop systems for hydraulic-braked heavy vehicles? What research and development are manufacturers currently doing for ABS on hydraulic braked vehicles? What additional leadtime, if any, would be appropriate for heavy hydraulic vehicles with ABS?

Diagnostic and Other "In-Use" Matters

25. Many early Standard No. 121 ABS systems, particularly for trailers, were not operational much of the time because they shut down due to malfunctions. In many cases, drivers and repair personnel either were not aware that there was a problem because trailers were not required to have antilock failure warning signals, or were unable to determine how to repair it because proper diagnostic equipment was not generally available in the field. To avoid such problems, section S5.1.6 requires heavy vehicles subject to Standard No. 121 to be capable of signalling a warning about a total electrical failure of the antilock system. The agency is considering whether to require a similar warning about malfunctions. The agency notes that any such requirement would be consistent with the agency's rulemaking in response to the WABCO petition. (56 FR 20401, May 3, 1991.) What is the need for such a warning? What would be the best approach to effectuate such a warning? Should there be a warning device about ABS failure on trailers? Should this be a common warning pattern for all ABS-equipped vehicles? Should the trailer warning signals actuate when adequate electrical power is not present to operate the trailer ABS or should the warning signal actuate only if the ABS actually fails for mechanical or electrical reasons?

26. If an ABS malfunctions, it may be necessary to have equipment that could diagnose the malfunction. Diagnostic systems could be either on-board the vehicle (i.e., a "self-contained" system) or outside the vehicle. At this stage of the rulemaking, the agency does not believe it would be reasonable to expect every truck stop in the country to have multiple diagnostic equipment for several types of systems. Rather, the agency believes that it might be worthwhile to require each ABS to have its own self-contained diagnostic system. Ideally, such a system would operate in the same standardized way for all systems. The Society of Automotive Engineers (SAE) is developing a protocol for self-contained diagnostics that may provide the basis for a requirement. How necessary is a system to diagnose ABS malfunctions? Is requiring a "self-contained" diagnostic system the appropriate approach? What requirements would be necessary to provide for a standardized diagnostic system?

27. The agency's experience in the 1970s revealed that an ABS requirement will only be effective if heavy vehicle users are committed to keeping the system in working condition. The agency anticipates working with the Federal Highway Administration's Office of Motor Carrier Standards and the States to ensure the proper in-use performance of these systems. For instance, an inoperative ABS might result in the issuance of a repair ticket or fine. Would this approach ensure that ABS would be maintained in an operable condition? How else could the agency ensure that ABS would continue to be operable?

28. Based on the agency's earlier experiences with ABS, having requirements that result in vehicles being equipped with ABS will be ineffective if people do not know how to diagnose an ABS malfunction or do not know how to fix a malfunctioning system. Accordingly, the agency believes that educational programs would be needed for drivers, fleet operators, and maintenance and enforcement personnel. The agency welcomes suggestions on educational programs to accomplish this end.

Costs Associated With Anticipated Requirements

NHTSA has made an initial estimate of the cost to the vehicle manufacturer of some of the devices and braking systems that would be needed to improve lateral stability consistent with the anticipated requirements. The agency notes that the main components of ABS currently available for most common heavy vehicles are the Electronic Control Unit (ECU), the air pressure modulators, and the wheel speed sensors (WSS). The agency estimates that the cost of these components to be approximately $500 for an ECU, $100 for a modulator, and $50 for a WSS. The initial hardware cost to equip a 6×4 tractor—the most prevalent heavy vehicle configuration—with an ABS depends on the desired ABS performance parameters.

The best performing ABS are those that meet the criteria of ECE Category 1 systems. A complete six-channel system installed on a 6×4 tractor would have 1 ECU, 6 modulators, and 6 WSSs. The agency estimates that a six channel system would cost approximately $1400. Similar ABS performance could be achieved by a four-channel system having 1 ECU, 4 modulators, and 4 WSSs, at an approximate cost of $1100.

Systems that meet the criteria of an ECE Category 2 are Select Low (SL) systems which control each axle with a Modulator while having a WSS at each wheel location. These systems guarantee vehicle and directional stability, and shorter stopping distances on surfaces with uniform friction, but increase stopping distances if surface friction is different left to right, e.g. split Mu surface. The agency estimates that a full SL system installed on a 6×4 tractor consisting of 1 ECU, 3 Modulators, and 6 WSSs would cost approximately $1100.

Systems that meet the criteria of an ECE Category 3 are Drive Axle Only (DAO) truck tractor systems and SL Rear Axle trailer systems. These systems guarantee no lockup of the ABS equipped axle but do not ensure steerability during crash avoidance braking maneuvers. The agency estimates a DAO system installed on a 6×4 tractor consisting of 1 ECU, 1 modulator and 2 WSS would cost approximately $700. NHTSA requests comments about these initial cost estimates for these or similar devices and any additional pertinent cost information.

29. For each of the systems mentioned above, what would be the likely cost to final purchasers resulting from its addition to a heavy vehicle?

30. What is the number and type of heavy vehicles currently equipped with ABS? What is the number and type of heavy vehicles that are expected to be voluntarily equipped with ABS in the near future? What is the current number and type of heavy vehicles that could be equipped with ABS to improve lateral stability.

31. What costs would be associated with the self-contained diagnostic device?

32. NHTSA notes that European insurance companies currently offer discounts for antilock equipped heavy vehicles and American insurance companies offer discounts for antilock equipped passenger cars, light trucks and MPVs. Do insurance companies anticipate offering discounts for antilock equipped heavy vehicles? If so, how large would the discount be?

Other Areas for Improving Braking Performance

The Motor Carrier Act requires the Secretary of Transportation to initiate rulemaking concerning methods for improving braking performance on heavy vehicles. Such rulemaking shall include an examination of antilock systmes, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. The agency is considering the need to reinstate stopping distance performance requirements on heavy vehicles and to propose threshold pressure requirements to improve braking capatibility between truck tractors and trailers. The agency has also recently issued an NPRM on brake timing. (56 FR 66395, issued December 23, 1991).

33. Are there other areas for improving heavy vehicle braking performance that the agency should consider?

Rulemaking Analyses and Notices

DOT Regulatory Policies and Procedures

NHTSA has considered the potential burdens and benefits associated with this advance notice. NHTSA has determined that this advance notice is a significant rulemaking action under the Department of Transportation's Regulatory Policies and Procedures. The advance notice concerns a matter in which there is substantial public interest, and there is a potential for significant safety benefits if effective measures can be developed to address braking stability and control of heavy vehicles. The preliminary regulatory evaluation (PRE) for this advance notice addreses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. Those estimates are summarized below.

The agency based its analysis of the potential safety benefits of this notice on available accident data and the results of a study which analyzed the potential for avoiding, and reducing in severity, crashes involving air brake equipped heavy vehicles if those vehicles had been equipped with Category 1 ABS. It is estimated that the use of Category 1 ABS on all air-braked equipped heavy vehicles would result in between 308 and 498 fewer fatalities, between 8,700 and 19,900 fewer injuries, and between $99 million and $147 million of property damage prevented. About two-thirds of these prevented injuries would involve the occupants of vehicles other than the heavy vehicle involved in the crash.

The potential cost impact of this notice is based on the same assumption as the safety benefit analysis, i.e., the requirement would result in all air brake equipped heavy vehicles being equipped with Category 1 ABS. Using the $1100 per vehicle cost to the vehicle manufacturer for a four channel ABS, the agency estimated that the cost to a purchaser of a truck, bus, or truck tractor would be $1661. Based on this consumer cost estimate and an estimated annual vehicle production of 187,000 vehicles, the annual cost for powered heavy vehicles would be approximately $310 million. For trailers, using the per vehicle cost to the vehicle manufacturer of $900, the agency estimated a cost to the trailer purchaser of $1359. This consumer cost, together with an estimated annual production of 149,000 trailers, yields an estimated annual cost of $202 million. The total annual cost of such a requirement would be $513.1 million.

Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency has determined that this advance notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No State laws would be affected. The agency welcomes comment on this issue.

Comments

NHTSA invites comments from interested persons on the questions presented in this advance notice and on other relevant issues. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

NHTSA will consider all comments received before the close of business on the comment closing date indicated in the "Dates" caption of this advance notice. To the extent possible, the agency will consider comments filed after the closing date. Comments on the advance notice will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the Docket as this information becomes available, and recommends that interested persons continue to examine the Docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 1, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13169 Filed 6-2-92; 11:13 am]

BILLING CODE 4910-59-M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 92-31]

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is considering the publishing of a proposed rule that would permit two or more shippers to enter into a service contract with an ocean common carrier or conference of such carriers regardless of whether the shippers were members of a shippers' association. The purpose of this Advance Notice is to solicit comments and information from the public on the desirability and feasibility of such a proposed rule.

DATES: Comments due July 8, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Comments (original and 15 copies) are to be submitted to:

Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: Section 8(c) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1707(c), permits an ocean common carrier or conference to enter into a service contract with a shipper or shippers' association.[1] The 1984 Act defines a "service contract" as

* * *

* * * a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

Id. app. 1702(21).

[1] A "shippers' association" is defined as * * *

* * * a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload or other volume rates or contracts.

46 U.S.C. app. 1702(24).

The definition of "service contract," contained in the FMC's earliest rules implementing the 1984 Act, was identical to that contained in the Act. See Docket No. 84-21, *Service Contracts*, 22 S.R.R. 1424 (1984). However, when the Commission later revised its service contract rules based on its experience under the 1984 Act, it initially proposed to define "service contract" as "a contract between *one or more* shippers or shippers' associations and *one or more* ocean common carriers or conferences * * *" (emphases supplied). Docket No. 86-6, *Service Contracts*, 24 S.R.R. 277, 282 (1987). Based on comments expressing reservations with this definition, the Commission declined to adopt the proposed definition and retained the definition which is currently set forth at 46 CFR 581.1(n).[2]

The Commission's decision in this regard may have been based on an unnecessarily restrictive interpretation of the 1984 Act's definition of "service contract." Moreover, permitting two or more unaffiliated shippers to join together in a service contract would not appear contrary to the intent and purpose of the 1984 Act. On the contrary, it could lead to an increasing number of small or medium-sized shippers being able to engage in service contracts, one of the Act's goals.

The Commission is accordingly seeking comment on whether it should propose a rulemaking to permit unaffiliated shippers to enter into a joint service contract. This issue can best be addressed initially through the issuance of an Advance Notice of Proposed Rulemaking to solicit the views of all interested persons. Commenters are requested to submit proposed rule language if they believe such a rule is warranted.

Specific comments are sought on the following specific issues, as well as on any other matter deemed to be relevant.

1. Should two or more shippers be permitted to access a service contract originally entered into by only one shipper, or vice versa?

2. If two or more unaffiliated shippers enter into a service contract, should they be jointly and severally liable for all obligations thereunder or could the contract apportion their liabilities in the event of a default? Is this an issue the FMC should be concerned about or is it a matter for the contracting parties to address?

3. If two or more unaffiliated shippers enter into a service contract and one shipper defaults during the course of the contract, should the others be permitted to continue at a reduced cargo commitment? Is this a matter for the FMC or the contracting parties to address? Would this affect the rights of other shippers who were unable to meet the original commitment but might be able to meet the reduced commitment?

4. Should NVOCCs be treated any differently from proprietary shippers, *e.g.* should two or more NVOCCs be permitted to enter into a service contract?

5. Should affiliates of shipper contract parties be allowed to participate in the contract?

6. Are there implications for shippers' associations of permitting two or more unaffiliated shippers to enter into a joint service contract that the Commission should address?

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-13243 Filed 6-5-92; 8:45 am]

BILLING CODE 6730-01-M

[2] In making this determination, the Commission explained:

Under the definition, shippers can continue to affiliate to take advantage of service contracts, if that affiliation meets the definition of a "shippers' association."

Id. There may be good reason, however, why shippers wanting to join together on a service contract may not also want to assume the obligations and responsibilities that a shippers' association relationship my entail.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Scimitar-horned Oryx, Addax, and Dama Gazelle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: Because the Service has learned there might be important additional information available, the Service gives notice that the comment period on the proposed rule to determine endangered status for the scimitar-horned oryx, addax, and dama gazelle is reopened until September 1, 1992.

DATES: All comments and information received through September 1, 1992, will be considered in making a final decision on the proposal and will be included in the administrative record.

ADDRESSES: Please send correspondence regarding this notice to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 5, 1991 (56 FR 56491–56495), the Fish and Wildlife Service (Service) issued a proposed rule to determine endangered status for the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*). A notice of minor correction was published on February 10, 1992 (57 FR 4912). These three antelope species are native to North Africa and have declined in that region because of habitat deterioration and excessive hunting. During the initial comment period on the proposal, which ended on March 4, 1992, the Service received several requests for more time, particular concern being expressed relative to the status of captive and free-roaming populations. There were indications that considerably more data might be made available on such populations, and possibly wild populations as well. The Service also has learned of additional authorities who might be able to provide important new information. It therefore has been decided to reopen the comment period until September 1, 1922.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: May 14, 1992.

Bruce Blanchard,

Acting Director.

[FR Doc. 92–13252 Filed 6–5–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening and Extension of Comment Period on the Proposed Endangered Status for Seven Plants and the Morro Shoulderband from San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: Because the Service would like to receive additional information, the U.S. Fish and Wildlife Service announces the reopening and extension of the comment periods for proposed rules to list seven plants and the Morro shoulderband (*Helminthoglypta walkeriana*), as endangered species pursuant to the Endangered Species Act of 1973, as amended. The seven plants are: Marsh sandwort (*Arenaria paludicola*), Gambell's watercress (*Rorippa gambellii*), Morro manzanita (*Arctostaphylos morroensis*), Chorro Creek bog thistle (*Cirsium fontinale* var. *obispoense*), Pismo clarkia (*Clarkia speciosa* ssp. *immaculata*), Indian Knob mountainbalm (*Eriodictyon altissimum*), and California sea-blite (*Suaeda californica*). The snail is known as the Morro shoulderband (*Helminthoglypta walkeriana*); it has also been referred to as the banded dune snail.

DATES: The commend period on the proposals is reopened and extended until July 8, 1992.

ADDRESSES: Comments and materials should be sent to the Office Supervisor, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, suite 100, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steven M. Chambers, Office Supervisor, at the above address (telephone number 805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

Marsh sandwort (*Arenaria paludicola*) and Gambell's watercress (*Rorippa gambellii*) are restricted to coastal freshwater marshes along the coast of San Luis Obispo County (Oso Flaco and Little Oso Flaco Lakes), California. Both plants are threatened with loss of freshwater marsh habitat from alteration of hydrologic regime associated with urban and agricultural development. Gambel's watercress is also threatened from encroachment of sand from adjacent coastal dune habitat.

The remaining five plants and the snail are found in western San Luis Obispo County and are threatened with alteration or destruction of habitat owing to urbanization, recreational activities, road construction, grazing, water diversion, competition with alien plants, and possibly dredging of Morro Bay. In addition, several of the plants and the Morro shoulderband are threatened with extinction by virtue of stochastic (i.e., random) extinction. A determination that these taxa are endangered would implement the protection provided by the Endangered Species Act.

A complete copy of the proposal to list the two plants (*Arenaria paludicola* and *Rorippa gambellii*) as endangered species was published in the **Federal Register** on September 30, 1991 (56 FR 49446), and the original comment period closed on November 29, 1991. A complete copy of the proposal to list the remaining five plants and the snail as endangered species was published in the **Federal Register** on December 23, 1991 (56 FR 66400), and the original comment period closed on February 21, 1992. The public comment period is being reopened on both of these rules to allow for additional comment. The comment period closes on July 8, 1992. Written comments should be submitted to the Service in the ADDRESSES section.

Author

The primary author of this notice is Constance Rutherford, Botanist, Ventura Office, at the above address.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: May 6, 1992.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92–13247 Filed 6–5–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for the Karner Blue Butterfly (Lycaeides Melissa Samuelis)

AGENCY: Fish and Wildlife Service.

ACTION: Proposed rule: notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973 (Act), gives notice that a public hearing will be held on the proposed endangered status for the Karner blue butterfly *(Lycaeides melissa samuelis)*. The hearing will allow all interested parties to submit oral or written information on factors the Service is required to consider in making its final decision on listing the species. The comment period for the original proposed rule, published in the **Federal Register** of January 21, 1992 (57 FR 2241) closed on March 6, 1992. The comment period is now reopened, effective this date of publication, and will remain open until July 6, 1992.

DATES: The public hearing will be held on June 25, 1992, from 7 to 9 p.m. in Eau Claire, Eau Claire County, Wisconsin. Written comments must be received from all interested parties by July 6, 1992. Comment received after this closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held in the County Board Room of the Eau Claire County Courthouse, Eau Claire, Wisconsin. Written comments should be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, Twin Cities Field Office, 4101 East 80th Street, Bloomington, Minnesota 55425–1665. Information and documents received at the public hearing will be available for inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Lynn L. Lewis, Twin Cities Field Office (see ADDRESSES section), telephone: 612/725–3548.

SUPPLEMENTARY INFORMATION:

Background

Historically, the Karner blue butterfly occurred in a narrow band extending from eastern Minnesota, across portions of Wisconsin, Illinois, Indiana, Michigan, Ohio, Canada (Ontario) of Pennsylvania, New York, Massachusetts, and New Hampshire. It is now extirpated from Illinois, Ohio Ontario, Pennsylvania, and Massachusetts. The Service propsoes to list the Karner blue butterfly as an endangered species because of marked reduction of the species' range and declining size of remaining populations. The primary cause of past and threatened losses is habitat modification and destruction due to development, vegetative succession in the absence of natural disturbances, silviculture, and fragmentation of remaining habitat. This proposal, if made final, would extend the Federal protection and recovery provisions afforded by the Act to *(Lycaeides melissa samuelis)*.

The Karner blue butterfly was proposed for listing as an endangered species, with no critical habitat, in the **Federal Register** of January 21, 1992 (57 FR 2241). Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the publication of a proposed rule. On March 6, 1992, the Service received a written request for a public hearing from Mr. Wilmer Pautz, of Altoona, Wisconsin.

In response to this request, the Service has scheduled a public hearing for June 25, 1992, in the County Board Room of the Eau Claire County Courthouse, Eau Claire, Wisconsin. The Public hearing will provide opportunity for the public to enter formal statements into the record. The Service invites the public to provide information on the following items at the public hearing:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Karner blue butterfly;

(2) The location of any additional populations of the Karner blue butterfly and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the Karner blue butterfly;

(4) Current or planned activities in Karner blue butterfly areas and their possible impacts on the species.

Parties wishing to make statements for the record should bring copies of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period for this proposal closes on July 6, 1992. Written comments not presented to the Service at the public hearing should be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Charles G. Kjos, Twin Cities Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** Section).

Authority

The authority of this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Publ. L. 99–625; 100 Stat. 3500) unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species. Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: June 3, 1992.

John Christian,

Acting Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 92-13443 Filed 6-5-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 678

[Docket No. 920409-2109]

RIN 0648-AD12

Fishery Conservation and Management; Foreign Fishing; Atlantic Sharks

AGENCY: National Marine Fisheries Service (NMFS), NOSS, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement the proposed Fishery Management Plan for Sharks of the Atlantic Ocean (FMP). This rule would (1) divide the 39 shark species managed by the FMP into three distinct groups for management and resource assessment purposes—large coastal, small coastal, and pelagic species; (2) establish annual quotas for commercial landings of the large coastal and pelagic species groups with closures of the commercial fisheries for these species groups when their annual quotas are reached; (3) establish a fishing year of July 1 through June 30; (4) require annual permits for commercial shark fishing vessels fishing in the U.S. exlusive economic zone (EEZ); (5) prohibit "finning," the practice of harvesting sharks for fins alone; (6) limit the sale of sharks harvested from the EEZ to those caught from permitted

vessels; (7) establish a minimum size limit for mako sharks; (8) establish recreational bag limits for sharks; (9) require sharks that are not harvested as part of the commercial quota or under the bag limits to be released in a manner ensuring maximum probability of survival; (10) require data reports from owners/operators of permitted vessels and persons conducting shark fishing tournaments; (11) require permitted vessels to accommodate NMFS-approved observers upon request; and (12) authorize the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), to implement or adjust certain management measures in accorance with a specified regulatory procedure. The intended effects of this rule are to prevent overfishing of sharks and to increase understanding of the condition of shark resources and the operation and effects of the shark fishery.

DATE: Written comments must be received on or before July 20, 1992.

ADDRESSES: *Comments:* Comments on the proposed rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Managment, NMFS, NOAA, 1335 East-West Highway, Silver Spring, MD 20910 (telephone: 301–713–2334); please mark envelope "Shark FMP Comments." Comments on the information collection requirements should be sent to Edward E. Burgess, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: Desk Officer for NOAA). *FMP Copies:* Copies of the FMP and related documents (including the draft Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Draft Environmental Impact Statement (DEIS)) may be obtained from the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, (telephone: 813–893–3161).

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Proposed FMP was prepared by NMFS under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Preparation of the FMP began under section 304(c) of the Magnuson Act which provides for Secretarial preparation under certain circumstances. The Fishery Conservation Amendments of 1990 give the Secretary of Commerce (Secretary) full management responsibility for managing Atlantic highly migratory species, including "oceanic sharks;" accordingly, the FMP and these proposed regulations are being issued under section 304(f)(3) of the Magnuson Act which directs the Secretary to prepare fishery management plans for the specified Atlantic highly migratory species.

The proposed FMP was released on January 8, 1992, to the public for a 60-day review and comment period ending March 9, 1992. A notice of availablility of the FMP was published in the **Federal Register** on January 13, 1992 (57 FR 1250). The proposed FMP has been distributed to the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils (Councils) for their comment. All public, Council, and other comments received will be considered and addressed in conjunction with issuing a final FMP and implementing regulations. This proposed rule would implement the proposed FMP which would establish a management regime for sharks in the EEZ of the Atlantic Ocean (including the Gulf of Mexico and Caribbean Sea) for commercial and recreational shark fishing.

Background

Sharks are a diverse group of about 350 species ranging from whale sharks (approximately 12 meters long) to the tiny pygmy shark (only a few centimeters). Sharks grow very slowly, take many years to mature, have long reproductive cycles, and produce relatively few young. Many, if not most, species are highly migratory; some have ranges covering several oceans. Annual migratory patterns appear closely related to water temperatures and to the sharks' reproductive cycles. Adults usually congregate in specific areas to mate and females move to specific nursery areas, frequently inshore or new shore, to pup. With few exceptions, sharks have acute olfactory and motion-detection senses that allow them to be very effective predators. At the top of the predator-prey food chain, sharks are taken primarily by man; because of their low reproductive rate, they are not equipped to withstand heavy fishing pressure over a period of time.

Historically, there have been few shark fisheries in North America. While small, localized shark fisheries existed along the southeast coast and in the Gulf of Mexico for many years, sharks were underutilized until the late 1930s. Starting in 1938, intensive shark fisheries developed in several states and were initiated by the high demand for shark livers, which are rich in vitamin A. By the early 1950s, these fisheries ceased to operate due to a combination of factors including the synthesis and importation of vitamin A, a low demand for shark products (e.g., hides), and overexploitation.

New east coast and Gulf of Mexico shark fisheries developed in the 1980s associated with a domestic demand for shark meat and a foreign demand for shark fins. The practice known as "finning" emerged in recent years in response to the rising price of shark fins. Finning is the removal of valuable fins from sharks and discarding the remainder of the shark at sea. The dried fins may bring Florida fishermen as much as $22 per kilogram and may account for up to half the value of their catch. Although the extent of finning is unknown, this practice has brought considerable outcry from the public objecting to it as wasteful and cruel.

NOAA regulations at 50 CFR 602.11(c) require that each fishery management plan specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by the plan. The proposed FMP would define overfishing as follows: (1) For a stock at a level sufficient to produce MSY on a contining basis, overfishing is a fishing mortality rate exceeding the fishing mortality rate that would produce MSY on a continuing basis; and (2) for a stock at a level below that necessary to produce MSY on a continuing basis, overfishing is a fishing mortality rate exceeding the rate that is consistent with a stock rebuilding program established under the FMP.

The current NMFS assessment of shark resources in the U.S. Atlantic EEZ estimates that MSY for the large coastal sharks group at 3,400 metric tons (mt) a year. Catch and effort data indicate that this group, normally those targeted by commercial shark longline and gillnet fisheries and by the southern shark tournament fisheries, has been the most significantly affected by fishing pressure. MSY was exceeded in 1987 by 139 mt, in 1988 by 795 mt, in 1989 by 2,438 mt, and in 1990 by 1,635 mt. The evidence clearly shows that the large coastal species group is overfished.

The NMFS stock assessment indicates that the small coastal and pelagic species groups are fully utilized (fishing mortality rates are at or close to the MSYs). The MSYs for the small coastal and pelagic groups are estimated at 3,600 mt and 2,800 mt respectively. Small coastal sharks are typically caught in recreational fisheries (headboats and privately owned boats) and as discarded bycatch in the Gulf of Mexico shrimp trawl fisheries. The largest component of the small coastal species catch is in the shrimp trawl bycatch.

Pelagic sharks are caught commercially primarily as a bycatch of the commercial tuna and swordfish longline fisheries as well as exploited by recreational fisheries in the mid-Atlantic area. Trans-Atlantic migrations of these sharks are common and this species group is exploited by several nations.

The optimum yield (OYs) for the three shark species groups are defined by the FMP as specific annual harvest levels (total of commercial and recreational catches) that will produce MYS for the two species groups not overfished (pelagics and small coastals) or that will allow rebuilding of the overfished species group (large coastals) to a level that will produce MSY. The OYs are 1,900 mt for the large coastals group, 3,600 mt for the small coastals group, and 2,800 mt for the pelagics group.

Proposed Fishery Management Measures

The proposed FMP is intended to conserve shark resources by protecting those fully utilized stocks from overfishing and by rebuilding those stocks already overfished.

The proposed FMP's management unit contains 39 species of sharks found in the western North Atlantic Ocean. These species are frequently caught in commercial or recreational fisheries. The present state of knowledge precludes management on an individual species basis; the 39 species in the management unit are separated into three group for assessment and regulatory purposes: large coastal sharks (22 species), small coastal sharks (7 species), and pelagic sharks (10 species). Thirty-four additional species are included in the proposed FMP for date collection purposes but are not part of the management unit. Most of these 34 species are small, deep-water sharks taken incidentally in other directed fisheries; also included are the spiny and smooth dogfishes that are extremely abundant and currently in low demand.

The proposed FMP addresses or discusses problems in the fishery including: (1) Overfishing; (2) lack of management; (3) "finning" (harvesting sharks for fins alone); (4) bycatch mortality of sharks in other fisheries and mortality of marine mammals and endangered species in shark fisheries; (5) inadequate fishery and resources information; (6) limited public education; and (7) habitat losses and degradation. The FMP's management objectives are to: (1) Prevent overfishing; (2) encourage management of shark resources throughout their range; (3) establish a shark resource data collection, research, and monitoring program; and (4) increase benefits from shark resources to the U.S. while reducing waste, consistent with the other objectives.

The proposed FMP would do the following to address fishery problems and meet stated objectives: (1) Establish an annual commercial quota for large coastal species of 1,450 mt per fishing year, commencing July 1, 1992; (2) establish an annual commercial quota for pelagic species of 1,600 mt per fishing year, commencing July 1, 1992; (3) establish a fishing year for the shark fishery of July 1 though June 30; (4) close the commercial fishery for a species group for the remainder of a fishing year once its commercial quota is reached or is projected to be reached; (5) establish recreational bag limits in the EEZ of two sharks per fishing vessel per trip for large coastal and pelagic species combined, and five per person per day for small coastal species; (6) require annual permits for commercial shark fishing vessels and condition receipt of the permit on the recipient's agreement to abide by the Federal regulations for all shark harvested regardless of where such sharks are harvested (inside or outside the EEZ); (7) limit the sale of sharks harvested in the EEZ to those caught by permitted shark fishermen; (8) establish a minimum size limit for mako sharks of 66 inches (167.64 centimeters) from the tip of the snout to the fork of the tail, or an equivalent length measurement if the head or tail is removed; (9) prohibit "finning" and require fins to be landed in proportion to the carcasses landed; (10) require sharks that are not harvested as part of the commercial quota or under the bag limits to be released in a manner ensuring maximum probability of survival; (11) require written reports from the owners or operators of permitted vessels and persons conducting shark tournaments; (12) require permitted vessels to accommodate observers upon request; (13) authorize the Assistant Administrator to implement or adjust certain management measures in accordance with an established regulatory procedure; and (14) establish a total allowable level of foreign fishing (TALFF) of zero.

When the commercial quota for a species group is reached or is projected to be reached, the appropriate fishery would be closed for the remainder of the fishing year. At least 5 days notice of such closure would be given. Fishery participants would have at least that amount of time to land and sell their on-board catch of the applicable species. Associated fins would have to be removed from the vessel when the carcasses are removed but could be retained (up to 30 days later) for subsequent sale.

Until issuance of an FMP and its implementation through final regulations, management of foreign fishing for sharks in the EEZ of the Atlantic Ocean continues to be regulated under the Preliminary Fishery Management Plan for Atlantic Billfishes and Sharks (PMP) and implementing regulations at 50 CFR 611.60 and 611.61. The proposed FMP summarizes the management measures in the PMP that apply to foreign fishing for sharks in the Atlantic EEZ. The proposed FMP would adopt these measures, by reference to the PMP, with some changes. The PMP management measures that apply to foreign fishing reporting requirements, the presence of U.S. observers on foreign fishing vessels, and the incidental catch of sharks by foreign fishing vessels are adopted by the FMP in their entirety. These measures include the requirement that all foreign vessels carry a U.S. observer, the prohibition on retention of prohibited species (*i.e.*, species that a foreign vessel is not specifically allocated or authorized to retain), and seasonal closures to avoid gear conflicts with domestic fishermen. The PMP established a TALFF for Atlantic sharks; the last notice of foreign fishing specifications under 50 CFR 611.60 indicated a TALFF of 1,150 mt. (52 FR 3248, February 3, 1987). Under the proposed FMP, domestic annual harvest (DAH) would equal the optimum yield (OY) resulting in TALFF of zero. Therefore, the proposed FMP would prohibit directed or incidental foreign fishing for sharks in the Atlantic EEZ. Sharks taken by foreign vessels as bycatch would have to be released in a manner as to insure maximum probability of survival: For hooked sharks, by cutting the line as close to the hook as possible without removing the animal from the water; for net-caught sharks, by releasing the animal as quickly and gently as possible. The FMP measures applying to foreign fishing for sharks in the EEZ of the Atlantic Ocean, as for the PMP measures, would be implemented through regulations at 50 CFR 611.60, 611.61, and other relevant sections of 50 CFR part 611. Specifically proposed regulatory changes in §§ 611.60 and 611.61 also reflect that all management measures pertaining to foreign fishing for Atlantic billfishes (defined under the PMP to mean all species of marlin, spearfish, sailfish, and swordfish) would be incorporated under the approved and implemented Fishery Management Plan for Atlantic Billfishes, implemented October 28, 1988 (53 FR 37765, September 28, 1988), and the

Fishery Management Plan for Atlantic Swordfish, implemented September 18, 1985 (50 FR 33952, August 22, 1985).

Under the terms of the proposed FMP, an applicant for an annual commercial vessel permit must certify and document that he/she derived more than 50 percent of earned income from commercial fishing (*i.e.*, sale of catch, or from charter or headboat operations) during the calendar year preceding the application. The Gulf of Mexico Fishery Management Council has recommended that this requirement be changed to require that the applicant, during one of the 2 calendar years preceding the application, has derived more than 50 percent of earned income from commercial, charter or headboat fishing or that his/her gross sales of fish were more than $20,000. An earned income requirement based solely on the previous year's earned income may unfairly exclude a fishermen who was unable to fish due to illness or temporary loss of his/her vessel. A threshold level of $20,000 in gross sales may be appropriate for determining status as a full time commercial fisherman, without regard to whether that amount constitutes 50 percent of earned income. NMFS is interested in public comment on these alternative income criteria for a commercial permit.

During public review of the FMP/DEIS, NMFS received comments concerning the reliability of the fishery data and the validity of the stock assessment used by NMFS as a basis for establishing the total allowable level of catch designed to rebuild overfished shark resources; many comments on other issues were also received. NMFS will respond to all of these comments, as well as those concerning the proposed rule, in the issuing a final FMP and implementing it through final regulations. A summary of public comments and agency repsonses will be included in the preamble of the final rule.

Anticipated Impacts of the Management Program

General

The proposed FMP would place 39 species of sharks under Federal management within the EEZ. The proposed management measures should rebuild the large coastal species group to a level capable of producing MSY by the year 2000 and should stabilize the small coastal and pelagic species grups at levels at or near those producing MSY. The proposed measures are not expected to have any predictable negative ecological impacts as they are designed to rebuild overfished resources, prevent overfishing, and promote conservation. In addition, the proposed measures should not have any impact on the physical environment or the habitat necessary to maintain the biological integrity of the resource. Short-term economic costs to fishermen and processors are expected as the growth of the commercial fishery is curtailed through the imposition of catch quotas. However, these costs are expected to be outweighed by long-term environmental and economic benefits through rebuilding depleted stocks and preventing overfishing of other stocks. The management measures are designed to improve significantly the available data on the condition of the stocks and the operation of the fishery; this information is necessary for adjusting the management program to optimize the benefits from the resource.

Recreational Fishery Bag Limits

Fishermen in the EEZ subject to the recreational bag limits would be limited to two sharks per fishing vessel per trip for large coastal species and pelagic species combined, and to five small coastal species per person per day. This measure will not affect the authority of the coastal states to establish bag limits in their waters where 64 percent of recreational fishing mortality (by numbers of sharks killed) has occurred during the period 1984–88. However, NMFS encourages the states to adopt bag limits compatible with Federal measures in the EEZ. Compatible state bag limits would greatly enhance the effectiveness and enforceability of the Federal bag limits while still meeting most needs for home meat consumption. Sport fisherman will not be restricted to the number of sharks caught as long as they comply with the bag limit and release those sharks not retained in a manner ensuring maximum probability of survival. The proposed two-fish per boat trip limit should not affect approximately 79 percent of recreational boat trips, but is expected to reduce overall recreational landings by about 43 percent from the 1990 level. In addition, the requirement to release uninjured those sharks not harvested under the bag limits is expected to result in a significant reduction in recreational fishing mortality. Some fishermen may object to the bag limit and the requirement to release uninjured all sharks caught over the limit. However, recreational catch-and-release shark fishing can continue after the bag limit is taken; the bag limit measure should not significantly affect the recreational fishing experience. Recreational fishermen generally release more sharks than they land, which argues that retention of catch contributes a relatively small part of overall satisfaction from a shark fishing trip. To the extent that reduced recreational fishing mortality contributes to the stability of the shark populations and sustains the level of recreational fishing at recent levels, there would be net benefits to the recreational fishery from the bag limit restrictions over the long-run compared to imposing no such measures.

Sale Restrictions

The FMP would prohibit the sale of sharks caught in the EEZ by persons not fishing under a Federal vessel permit. This measure is not expected to have any significant economic impacts. Currently, only about 10 percent of recreationally caught sharks are sold. The care necessary to produce palatable shark meat and the general lack of facilities available to recreational fishermen for such care already limit the marketability of recreationally caught sharks. Some reductions in shark landings and overall fishing mortality are expected in shark fishing tournaments as sponsors of such events move toward catch-and-release tournaments and impose other restrictions and bag limits. Tournament directors are encouraged to establish additional specific fishing restrictions that promote shark conservation and the reduction of waste. Possible measures include minimum size and weight limits based on the biology of individual species caught in the tournaments and even more restrictive bag limits (e.g., one shark per boat per trip).

Mako Minimum Size Limit

Mako sharks are the most valuable of the sharks in the management unit because of the quality and price of their meat and their prized fighting ability to anglers. The minimum size limit for mako sharks should result in more fish reaching sexual maturity. Small mako sharks retrieved dead on the line in the commercial fishery may be retained as a means of reducing waste, but will be counted against the commercial quota.

Fishing Year

The FMP establishes a fishing year beginning July 1 of each year (ending June 30 of the next year). It is expected that the commercial fishing season will be less than 12 months for the large coastal and pelagic sharks since quotas will probably be taken before the end of the year. This expected shortened season will unavoidably increase fishing activity during the early part of the season, raise certain costs, and alter the

traditional supply and price situation. The short-term results may be lower profits for commercial fishermen and lower consumer surplus resulting from less product and less availability for fresh product during the closed fishery periods. The July 1 start of each fishing year should ensure that the commercial fishery is opened when the resource is available coastwide, allowing fishermen off the northern and southern states concurrent access to the fishery. Additionally, the quotas would likely be reached and the commercial fishery closed late April to mid-June when most female sharks are delivering pups.

Commercial Quotas

Fishermen in the commercial shark fishery for large coastal species should initially be adversely affected by the management measures. The restrictive annual quota of 1,450 mt (compare with landings of 5,537 mt in 1989 and some 3,600 mt in 1991) will result in negative economic impacts on the commercial fishery and accompanying losses in consumer surplus in the short run while the resource is rebuilding. The annual quotas for this group are expected to increase under the rebuilding program until the year 2001 when the stock should sustain the MSY of 3,400 mt (2,600 mt allocated as commercial quota and 800 mt allocated to the recreational fishery). The yield from the large coastals fishery is expected to stabilize after 2001; significant positive economic benefits should accrue thereafter. Without management, in a few years the commercial fishery for large coastal species would probably no longer be viable.

Fishermen harvesting pelagic species as bycatch in the swordfish and tuna fisheries are not expected to be as seriously affected by the management measures. The annual commercial quota of 1,600 mt approximates the average landings during the period 1986–1989. More recent landings of pelagic sharks and expected landings in 1992 may be significantly lower than the 1986–89 average. In the possible event that 1992 landings are below the 1,600 mt quota, no adverse economic effects would be expected. It is noted that a scientific stock assessment was not conducted for the pelagic species group because of data limitations; this group's biological status is largely unknown even through current landings indicate significant exploitation. It is possible that a restrictive quota for large coastals would result in fishermen moving to catch more pelagics and that this group's quota could be met.

Approximately 124 commercial vessels participated in 1989 in a directed shark fishery for at least one trip. Although the total number of vessels capable of commercial shark fishing is unknown, those holding Atlantic swordfish permits (about 700) would represent a minimum estimate of this number. Accordingly, between 124 and 700 vessels constitute the population of commercial shark fishing vessels that potentially would be impacted by commercial quotas. The projected landings of large coastal sharks under the proposed rebuilding schedule compared to a no-management alternative would be expected to generate an additional exvessel value of approximately $3.8 million over the period 1992–2006. The proposed quota for pelagic sharks is not expected to change landings since the quota is at the level of recent harvests.

Should future fishery closures for any of the species groups extend for a considerable part of the fishing year, difficulties may occur in reestablishing a shark meat market after the closure, particularly if dealers rely on imports to replace scarce domestic supplies.

Finning Prohibition

The FMP prohibits "finning" and requires landing of fins in proportion to the number of carcasses landed; currently, fishing practices frequently involve landing only the fins from pelagic sharks. Finning is believed to occur primarily in association with pelagic longlining for tuna and swordfish. This measure is intended to minimize a growing wasteful fishery practice. To the extent that it is not economically feasible for some fishermen to land whole sharks, the requirement to land carcasses along with fins may result in the release of both live and dead sharks currently taken for fins alone—some fishermen may elect to save their freezer space for more valuable carcasses such as tuna or swordfish. Some reduction in fishing mortality of pelagic sharks may result as those fishermen who were only interested in the valuable fins might drop out of the fishery. Largely because of the lack of adequate information about the extent of finning, it is currently difficult to quantify the costs and benefits of this measure.

Release Requirements

The FMP's requirement that sharks not harvested as part of the commercial quota or under the bag limits be released alive and in a manner ensuring maximum probability of survival should reduce fishing mortality. It is estimated that this measure, along with the prohibition on finning, could reduce the fishing mortality of sharks caught as bycatch in the longline fishery by as much as 50 percent from the 1979–88 average, assuming full compliance. It is recognized that this measure is difficult, if not impossible, to enforce. Reduction of bycatch mortality based on this measure, including elimination of the purposeful killing of sharks, could provide the basis for subsequent increases in commercial quotas and recreational bag limits.

Vessel Permits and Reporting Requirements

The requirement for an annual vessel permit is not expected to have any direct economic impact on the fishery in terms of quantity and value of landings. The income requirement for commercial permits that at least 50 percent of an applicant's earned income must be derived from commercial, charter, or headboat fishing would limit vessel permit holders to persons with some commercial, charter, or headboat fishing experience (see earlier discussion of alternative income requirements). The permit requirement would increase the cost of doing business by the cost of the permit. Fees for permits are limited by the Magnuson Act to the administrative costs associated with reviewing applications and issuing permits and are periodically calculated in accordance with the NOAA Finance Handbook. Currently, the fee for an application for a shark permit would be $34 and for a replacement permit would be $7.

The application procedures for obtaining a commercial fishing permit would be made effective upon publication of the final implementing regulations. Up to 90 days may be required for NMFS to process applications and issue permits to applicants. Initial permits will have varying expiration dates depending on the applicant's birthdate. Subsequent permits will be issued for annual periods.

The proposed FMP requirement that permitted fishermen submit sales receipts or trip tickets involving any landed sharks should minimize reporting costs (the specific costs are estimated in conjunction with the request to OMB for approval of the new collections of information under the Paperwork Reduction Act). Additional reporting costs will be incurred by those vessels selected by the Science and Research Director to maintain logbooks. The management benefits to the fishery participants, as well as to the shark resources, from obtaining better data are expected to outweigh the permitting and reporting costs.

The proposed requirement that selected tournament operators report catch and effort data would impose minimal costs on fishery participants. Increased recordkeeping costs should be more than offset by improved fishing resulting from management's efforts to ensure healthy stocks. Most tournaments keep careful records on catch to determine winners and probably monitor effort, at least to the extent necessary to eliminate fishing methods not conforming to tournament rules. Therefore, it is likely that little increase in recordkeeping would be required, and the only additional cost would be the minimal cost of providing the data to the management authority.

The requirement that a permitted vessel carry an observer when requested and pay the costs associated with having the observer aboard would reduce profits and, thus, will have some negative economic effects. However, such observer coverage is essential for determining the fishery effects on marine mammals and protected species.

Framework Regulatory Adjustment Procedure

The proposed FMP includes a framework regulatory procedure for periodically changing the principal management measures as necessary and implementing such changes in a timely manner through regulations without requiring a full FMP amendment process. Measures that may be adjusted through this procedure include the MSY estimates, commercial quotas, recreational bag limits, specification of the fishing year, the shark species included in the management unit and the groups to which they are assigned, species' size limits, and permitting and reporting requirements.

The regulatory adjustment procedure would involve annual recommendations for management changes by an Operational Team (OT) comprised of staff representatives of the NMFS regional and Washington offices, the five Councils covering the east coast, Gulf of Mexico, and the Caribbean, as well as scientists from the NMFS Northeast and Southeast Fisheries Centers and from non-governmental institutions as necessary or appropriate. The OT would be appointed by the Assistant Administrator and would be responsible for monitoring the fishery, reviewing the annual NMFS Stock Assessment and Fishery Evaluation (SAFE) Report, and recommending necessary management changes annually.

The proposed framework regulatory adjustment procedure is included as an appendix to this proposed rule and public comment on it is invited. Since the procedure itself does not have specific direct effects on fishermen or processors, it will remain part of the FMP but not be codified in the regulations implementing the FMP. The regulatory adjustment procedure itself should not have direct measurable biological or economic effects. The environmental and socioeconomic costs and benefits associated with specific proposed regulatory adjustments will be evaluated and made available for public review and comment prior to their implementation, as required by the procedure and by Federal law. This measure is expected to provide strong positive benefits because it should, over time, help ensure the optimal utilization of shark resources.

Changes to the Foreign Fishing Regulations at 50 CFR 611.60 and 611.61

The proposed changes in the regulations governing foreign fishing for sharks in the Atlantic EEZ, which previously were based only on the PMP, are intended to reflect primarily the transfer of management measures affecting foreign fishing from the PMP to the fishery management plans not only for Atlantic sharks but to those for Atlantic billfishes and swordfish. These changes should have no biological, economic, or social impacts because no Atlantic sharks have been harvested by foreign vessels in the EEZ since the early 1980s. The change in TALFF from the current 1,150 mt will be accomplished through the next notice of foreign fishing specifications as provided for by 50 CFR 611.20 and 611.60.

Impacts on Endangered and Threatened Species and Marine Mammals

In 1989, NMFS conducted a formal consultation under section 7 of the Endangered Species Act (ESA) on the issuance of commercial fishing exemptions under section 114 of the Marine Mammal Protection Act and on associated commercial fisheries by gear type. The impacts of all U.S. fisheries, including Atlantic shark fisheries, on threatened and endangered species were assessed. The consultation concluded that U.S. fisheries activities would not jeopardize the continued existence of threatened and endangered species, but may adversely affect these species. An Incidental Take Statement was issued under provisions of the ESA for the Marine Mammal Exemption Program (MMEP) for all U.S. fisheries (again including the Atlantic sharks fisheries) that allowed the take of certain numbers of sea turtles and shortnose sturgeon in these fisheries. The reasonable and prudent measures that NMFS believed necessary to minimize the impacts of the shark fisheries on listed species were indicated in the Incidental Take Statement for the MMEP and included: (1) NMFS should implement regional observer programs to document incidental capture, injury, and mortality of listed species (emphasize monitoring of gillnet and longline fisheries taking sharks directly or indirectly); (2) all incidents of take of listed species should be reported to NMFS within 10 days of the take; (3) sea turtle taken incidentally must be handled with care to prevent injury to live animals, observed for activity, and returned to the water; and (4) NMFS should consider regulations to reduce or eliminate mortality of listed species in areas or seasons where take of such species is likely.

Also in 1989, NMFS conducted an informal consultation under section 7 of the ESA regarding the impact of the FMP's management measures and implementing regulations on endangered and threatened species. The consultation concluded that the proposed measures would not adversely affect such species but that the operations of the various shark fisheries under management may adversely affect endangered or threatened species. In April 1991, NMFS initiated a formal section 7 consultation under the ESA on the directed and incidental Atlantic shark fisheries to be managed under the FMP. This formal consultation resulted in a Biological Opinion (Opinion) issued September 23, 1991, that concluded the following: (1) concurrence with the conclusions of the formal section 7 consultation in conjunction with the MMEP (no jeopardy to any listed species); (2) concurrence with the informal section 7 consultation in 1989 regarding the effects of the FMP's proposed management measures; (3) that neither the proposed FMP management action nor shark fishing that would be authorized by the FMP are likely to jeopardize the continued existence of any listed species; and (4) that fisheries taking sharks directly or as bycatch may adversely affect endangered or threatened marine mammals, sea turtles, and fish by injury or mortality. Specifically, NMFS anticipates that the shark fisheries (direct and incidental) may result in the injury or mortality of loggerhead, leatherback, green, Kemps ridley, and hawksbill turtles as well as shortnose sturgeon. Incidental take levels for these listed species were established in the July 5, 1989, section 7 consultation for the MMEP and are considered valid for

the 1991 Opinion. The Opinion indicated that the proposed commercial quotas and reporting and observer requirement may reduce the likelihood of incidental catches of protected species in the shark fisheries, and will improve the data base regarding such takes. Finally, in compliance with ESA requirements for actions that may involve a take of listed species, NMFS issued an Incidental Take Statement (ITS) specifying the impact of the incidental takings and specifying reasonable and prudent measures necessary to minimize impacts (essentially the same measures included in the ITS for the MMEP). The ITS and the reasonable and prudent measures are contained in the Opinion issued September 23, 1991.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that the proposed FMP and the proposed implementing regulations will promote conservation and management of sharks in the Atlantic Ocean and are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. In making a final determination, the Assistant Administrator will take into account the data, views, and comments received during the comment period.

The Assistant Administrator prepared a Draft Environmental Impact Statement (DEIS) that discusses the expected impacts on the human environment as a result of the proposed FMP and this proposed rule. A notice of availability of the DEIS and a request for comments was published on January 17, 1992 (57 FR 2093). A copy of the DEIS may be obtained from NMFS (see **ADDRESSES**). A Final Environmental Impact Statement will be prepared and filed with the Environmental Protection Agency in support of final agency action.

The Assistant Administrator has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted as proposed, is not likely to result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions, or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Assistant Administrator's determination is based on a Regulatory Impact Review (RIR) that concludes this rule will have the following economic effects: (1) Significantly reduced commercial catches, particularly for the large coastal species group, with associated substantial reductions in fishery revenue to commercial fishermen over the near-term (several years); (2) significantly positive net economic benefits from the commercial quotas and recreational bag limits over the long-term (approximately 6 years and beyond) because of the rebuilding of overfished stocks, the prevention of overfishing of presently fully utilized stocks, and the avoidance of a fishery collapse from unchecked increases in commercial and recreational fishing mortality (estimated present value of cumulated net benefits from the large coastals group is about $3.8 million by the year 2006); (3) short-term reductions in consumer surplus resulting from less shark meat and fin products in the marketplace followed by significant economic gains over the long-term; and (4) generally net economic benefits of the other FMP measures (live release conditions, finning prohibition, mako minimum size, regulatory adjustment procedure, and reporting requirements for commercial fishermen and tournament operators) over both the short- and long-term. Some measures, particularly requirements for reporting and vessel observers, will involve measurable costs to fishermen without easy-to-measure benefits, but are considered necessary to implement the FMP effectively and to realize the overall long-term net benefits from the shark resources. A copy of the RIR is available from NMFS (see **ADDRESSES**).

The NMFS prepared an initial regulatory flexibility analysis (IRFA) as part of the regulatory impact review, which concludes that this proposed rule, if adopted as proposed, would have significant effects on small entities as specified under the Regulatory Flexibility Act. Those small entities directly involved in the fishery and potentially affected by this rule include commercial fishing vessels (approximately 800), processors/dealers (unknown number), and charterboats and head boats providing recreational fishing for a fee (several hundred). The rule is likely to result in a reduction in annual gross revenues by about 5 percent for some, but not necessarily all, of these small entities. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

The Assistant Administrator determined that this proposed rule, if adopted as proposed, would be implemented in a manner that is consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs (New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana). This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule contains four new collection-of-information requirements subject to the Paperwork Reduction Act: (1) Applications for annual vessel permits; (2) submission of logbooks and copies of sales receipts/trip tickets by vessels off-loading sharks; (3) tournament operator reports; and (4) advance notification of shark fishing trips. Requests to collect this information have been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burdens for these collections of information are estimated to average 15, 15, 30, and 10 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

This proposed rule involves three existing collection-of-information requirements that have already been approved by OMB: (1) The requirement that foreign vessels submit quarterly reports (OMB Control No. 0648–0075) is restated for clarity; (2) copies of sales receipts/trip tickets by vessels off-loading sharks, if not submitted with the shark logbook forms, are to be submitted with existing vessel logbook forms (OMB Control No. 0648–0016); and (3) the requirement to make sharks available for inspection and to answer questions regarding catch and effort (OMB Control Nos. 0648–0013 and 0648–0229) would make a currently voluntary information program mandatory. The public reporting burdens for these existing collections of information are estimated to average 35, 6, and 10 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including

suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

A federalism assessment was prepared that concludes that implementation of this proposed rule would be consistent with the principles, criteria, and requirements of E.O. 12612.

List of Subjects

50 CFR Part 611

Fisheries, Fishing, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 678

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 2, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 611 is proposed to be amended and a new part 678 is proposed to be added as follows:

PART 611—[AMENDED]

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq., and 16 U.S.C. 1361 et seq.*

2. In § 611.60, in paragraph (d), the phrase "Atlantic Ocean, Gulf of Mexico and Caribbean Sea" is revised to read "Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea"; and paragraph (a) is revised to read as follows:

§ 611.60 General provisions.

(a) *Purpose and scope.*

(1) This subpart regulates:

(i) All foreign longline fishing conducted under a GIFA that involves catching, processing, or receipt of swordfish, billfish, sharks, or other fish in the EEZ in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea; and

(ii) All other foreign fishing conducted under a GIFA within the EEZ south of 35°00'N. latitude in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

(2) Regulations governing fishing by vessels of the United States for swordfish, billfish, or sharks off the Atlantic, Gulf of Mexico, and Caribbean coastal states are published at parts 630, 644, and 678 of this chapter.

(3) The terms *swordfish, billfish,* and *shark,* as used in this subpart, are defined at §§ 630.2, 644.2, and 678.2 of this chapter.

* * * * *

3. In § 611.61, paragraph (d) is removed and reserved; and the section heading, paragraphs (a) and (b)(1), the text of (b)(2) before the table, and paragraphs (c)(3) and (e) are revised to read as follows:

§ 611.61 Atlantic swordfish, billfish, and shark incidental catch fishery.

(a) *Purpose.* This section governs all foreign fishing conducted under a GIFA that involves the catching of swordfish, billfish, or sharks in the EEZ in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

(b) * * *

(1) Except as provided in paragraph (b)(2) of this section, foreign fishing under this section may be conducted throughout the year. Because there are no allocations for swordfish, billfish, or sharks, the closure provisions of § 611.13(a)(1) through (a)(3) do not apply to this section.

(2) From June 1 through November 30, foreign vessels fishing under this section, and longline gear deployed from such vessels, are prohibited in the area defined by the following coordinates in the order listed: * * *

* * * * *

(c) * * *

(3) All swordfish, billfish, and sharks must be released at the surface of the water by cutting the line without removing the fish from the water.

* * * * *

(e) *Statistical reporting.*

(1) A foreign vessel fishing under this section is exempt from the requirements of §§ 611.4(f)(2) and 611.9(d), but must provide the reports required by § 611.4(f)(3) and (f)(4), when applicable. In addition, each vessel must submit the following additional quarterly reports:

(i) Catch and effort data, summarized weekly by one degree squares, containing the following information:

(A) Number of hooks set.

(B) Number of prohibited species (by species code from Appendix D to subpart A) caught and released.

(C) Number of prohibited species (by species code) released alive.

(ii) Summary of vessel activities containing the following information:

(A) Permit number of each vessel fishing.

(B) For each successive day of the reporting period, the vessel's noon-day location (within 0.1 degree of latitude and longitude).

(2) The quarterly reports required by paragraph (e)(1) of this section must be submitted not later than 60 days from the end of the quarter for which the report is being made to: Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–5761.

* * * * *

4. A new part 678 is added to read as follows:

PART 678—ATLANTIC SHARKS

Subpart A—General Provisions

Sec.
678.1 Purpose and scope.
678.2 Definitions.
678.3 Relation to other laws.
678.4 Permits and fees.
678.5 Recordkeeping and reporting.
678.6 Vessel identification.
678.7 Prohibitions.
678.8 Facilitation of enforcement.
678.9 Penalties.
678.10 At-sea observer coverage.

Subpart B—Management Measures

678.20 Fishing year.
678.21 Harvest limitations.
678.22 Bag limits.
678.23 Commercial quotas.
678.24 Closures.
678.25 Restrictions on sale.
678.26 Adjustment of management measures.
678.27 Specifically authorized activities.
Figure 1 to Part 678—Mako Shark Length Measurements

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions.

§ 678.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Sharks of the Atlantic Ocean (FMP) prepared by the Secretary of Commerce.

(b) This part governs conservation and management of sharks in the management unit.

§ 678.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a permit issue under § 678.4 is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat with a permit issued under § 678.4 is considered to be operating as a headboat when it carries

a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Landed or *landing* means to arrive at a dock, berth, beach, seawall, or ramp.

Large coastal species means any of the species, or a part thereof, listed in paragraph (1) of the definition of *management unit.*

Management unit means the following species in the western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea:

(1) Large coastal species:

Basking Sharks—Cetorhinidae

Basking shark, *Cetorhinus maximus*
Hammerhead Sharks—Sphyrnidae
Great hammerhead, *Sphyrna mokarran*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygoena*

Mackerel Sharks—Lamnidae

White shark, *Carcharodon carcharias*

Nurse Sharks—Ginglymostomatidae

Nurse shark, *Ginglymostoma cirratum*

Requiem Sharks—Carcharhinidae

Bignose shark, *Carcharhinus altimus*
Blacktip shark, *Carcharhinus limbatus*
Bull shark, *Carcharhinus leucas*
Caribbean reef shark, *Carcharhinus perezi*
Dusky shark, *Carcharhinus obscurus*
Galapagos shark, *Carcharhinus galapagensis*
Lemon shark, *Negaprion brevirostris*
Narrowtooth shark, *Carcharhinus brachyurus*
Night shark, *Carcharhinus signatus*
Sandbar shark, *Carcharhinus plumbeus*
Silky shark, *Carcharhinus falciformis*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*

San tiger Sharks—Odontaspididae

Bigeye sand tiger, *Odontaspis noronhai*
Sand tiger shark, *Odontaspis taurus*

Whale Sharks—Rhincodontidae

Whale shark, *Rhincodon typus*

(2) Small coastal species:

Angel sharks—Squatinidae

Atlantic angel shark, *Squatina dumerili*

Hammerhead Sharks—Sphyrnidae

Bonnethead, *Sphyrna tiburo*

Requiem Sharks—Carcharhinidae

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Blacknose shark, *Carcharhinus acronotus*
Caribbean sharpnose shark, *Rhizoprionodon porosus*
Finetooth shark, *Carcharhinus isodon*
Smalltail shark, *Carcharhinus porosus*

(3) Pelagic species:

Cow Sharks—Hexanchidae

Bigeye sixgill shark, *Hexanchus vitulus*
Sevengill shark, *Heptranchias perlo*
Sixgill shark, *Hexanchus griseus*

Mackerel Sharks—Lamnidae

Longfin mako, *Isurus paucus*
Porbeagle shark, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*

Requiem Sharks—Carcharhinidae

Blue shark, *Prionace glauca*
Oceanic whitetip shark, *Carcharhinus longimanus*

Thresher Sharks—Alopiidae

Bigeye thresher, *Alopias superciliosus*
Thresher shark, *Alopias vulpinus*

Pelagic species means any of the species, or a part thereof, listed in paragraph (3) of the definition of *management unit.*

Regional Director means the Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, telephone 813–893–3141, or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–5761, or a designee.

Shark means any of those species that comprise the management unit, or a part thereof.

Shark tournament means any fishing competition involving sharks in which participants must register or otherwise enter or in which a prize or award is offered for catching a shark.

Small coastal species means any of the species, or a part thereof, listed in paragraph (2) of the definition of *management unit.*

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

§ 678.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it may be unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in a longline or gillnet shark fishery in the Atlantic Ocean (including the Gulf of Mexico and Caribbean Sea) unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in 50 CFR part 229.

(c) Regulations governing fishing in the EEZ by vessels other than vessels of the United States appear at 50 CFR part 611, subpart A, and §§ 611.60 and 611.61 of subpart D.

§ 678.4 Permits and fees.

(a) *Applicability.*

(1) To sell a shark taken in the EEZ or to be eligible for exemption from the bag limits specified in § 678.22(b) for a shark taken in the EEZ, an owner or operator of a fishing vessel must obtain an annual vessel permit.

(2) A qualifying owner or operator or a charter vessel or headboat may obtain a permit. However, a charter vessel or headboat must adhere to the bag limits when operating as a charter vessel or headboat.

(3) For a vessel owned by a corporation or partnership to be eligible for a vessel permit, the earned income qualification specified in paragraph (b)(2)(9)(vii) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(5) An owner or operator who applies for a permit under paragraph (b) of this section must agree, as a condition of such permit, that the vessel's shark fishing, catch, and gear will be subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, landward of the EEZ, or outside the EEZ and without regard to where such shark or gear are possessed, taken, or landed.

(b) *Application for an annual vessel permit.*

(1) An application for a vessel permit must be submitted and signed by the owner (in the case of a corporation, the qualifying officer or shareholder; in the case of a partnership, the qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate;

(ii) The vessel's name and official number;

(iii) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(iv) If the vessel owner is a corporation or a partnership, the names, addresses, and dates of birth of the two principal shareholders or partners;

(v) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(vi) Social security number and date of birth of the applicant and the owner

(if the owner is a corporation, the employer identification number, if one has been assigned by the Internal Revenue Service);

(vii) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of catch, or from charter or headboat operations, during the calendar year preceding the application;

(viii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section;

(ix) A sworn statement that the applicant agrees to the conditions specified in paragraph (a)(5) of this section;

(x) Any other information requested by the Regional Director concerning vessel, gear, and fisheries the vessel is used for; and

(xi) Any other information that may be necessary for the issuance or administration of the permit.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vii) of this section before a permit is issued. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential, but may be released to and verified by the Internal Revenue Service.

(c) *Change in application information.* The owner of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information required by paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service, and may not exceed such costs. Applicable fees are specified with the application form and must be remitted with each application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(vii) of this section. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable shark catch and effort reports and economic data reports, including those specified at § 678.5(a).

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandonded.

(f) *Duration.* A permit remains valid for the period for which it is issued, and the conditions accepted upon its issuance remain in effect for that period, unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A vessel permit issued under paragraph (b) of this section is not transferable or assignable. A person purchasing a permitted vessel who desires to fish for sharks must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(h) *Display.* A vessel permit issued under paragraph (b) of this section must be carried on board the fishing vessel and such vessel must be identified as provided for in § 678.6. The operator of a fishing vessel must present the permit for inspection upon request for an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

§ 678.5 Recordkeeping and reporting.

(a) *Vessel reports.* (1) *All permitted vessels.* An owner or operator of a vessel for which a permit has been issued under § 678.4 must submit copies of sales receipts (trip tickets) that record the weights of fish sold from any trip from which a shark is off-loaded. Such sales receipts must be submitted as follows:

(i) The owner or operator of a vessel that has been selected by the Science and Research Director to maintain and submit the logbook forms described in paragraph (a)(2) of this section must submit the copies of the sales receipts attached to such logbook forms.

(ii) The owner or operator of a vessel that has not been selected to submit the logbook forms described in paragraph (a)(2) of this section but has been selected to maintain and submit logbook forms to the Science and Research Director in a fishery other than the shark fishery must attach the copies of the sales receipts to the logbook forms for that other fishery and submit them in the time frame required for those logbook forms.

(iii) The owner or operator of a vessel that has not been selected to submit logbook forms to the Science and Research Director in any fishery must submit the copies to the Science and Research Director postmarked not later than the third day after sale of the fish off-loaded from a trip.

(2) *Selected permitted vessels.* An owner or operator of a vessel for which a permit has been issued under § 678.4 and that is selected by the Science and Research Director must maintain and submit logbook forms for each trip on forms provided by the Science and Research Director. The logbook forms will provide a record of fishing locations, time fished, fishing gear used, numbers of each species caught, and numbers of each species discarded. Logbook forms must be maintained and submitted for each trip, whether or not shark are caught on that trip. The logbook forms must be submitted to the Science and Research Director postmarked not later than the third day after sale of the fish off-loaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the forms.

(b) *Tournament operators.* A person conducting a shark tournament who is selected by the Science and Research Director must maintain and submit a record of catch and effort on forms available from the Science and Research Director. Completed forms must be submitted to the Science and Research Director postmarked not later than 7 days after the conclusion of the tournament and must be accompanied by a copy of the tournament rules.

(c) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel and a dealer are required to make sharks available for inspection by the Science and Research Director or an authorized officer and to provide data on catch and effort, as requested.

§ 678.6 Vessel identification.

(a) *Official number.* A vessel for which a permit has been issued under § 678.4 must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numberals in contrasting color to the background;

(3) At least 18 inches (45.72 centimeters) in height for fishing vessels over 65 feet (19.8 meters) in length and at least 10 inches (25.4 centimers) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, its fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.

§ 678.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify information required in § 678.4(b)(2) on an application for a permit.

(b) Fail to display a permit, as specified in § 678.4(h).

(c) Falsify or fail to provide information required to be maintained, submitted, or reported, as specified in § 678.5(a) or (b).

(d) Fail to make a shark available for inspection or provide data on catch and effort, as required by § 678.5(c).

(e) Falsify or fail to display and maintain vessel identification, as required by § 678.6.

(f) Falsify or fail to provide requested information regarding a vessel's trip, as specified in § 678.10(a).

(g) Fail to embark an observer on a trip when selected, as specified in § 678.10(b).

(h) Assault, resist, oppose, impede, harass, intimidate, or interfere with an NMFS-approved observer aboard a vessel.

(i) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his/her duties aboard a vessel.

(j) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 678.10(c).

(k) Remove the fins from a shark and discard the remainder, as specified in § 678.21(a)(1).

(l) Possess shark fins aboard or off-load shark fins from a fishing vessel, except as specified in § 678.21 (a)(2) and (3).

(m) Fail to release a shark in the manner specified in § 678.21(b).

(n) Possess a longfin mako or shortfin mako smaller than the minimum size limit, as specified in § 678.21(c).

(o) Exceed the bag limits, as specified in § 678.22 (a) through (c).

(p) Operate a vessel with a shark aboard in excess of the bag limits, as specified in § 678.22(d).

(q) Transfer a shark at sea, as specified in § 678.22(e).

(r) During a closure for a shark species group, retain a shark of that species group abroad a vessel that has been issued a permit under § 678.4 or sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter a shark of that species group, as specified in § 678.24.

(s) Sell, trade, or barter or attempt to sell, trade, or barter a shark harvested in the EEZ except as an owner or operator of a vessel with a permit, as specified in § 678.25(a).

(t) Purchase, trade, or barter or attempt to purchase, trade, or barter shark meat or fins harvested from the EEZ from an owner or operator of a vessel that does not have a vessel permit, as specified in § 678.25(b).

(u) Sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter shark fins that are disproportionate to the number of carcasses landed, as specified in § 678.25(c).

(v) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(w) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a shark.

§ 678.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 678.9 Penalties.

See § 620.9 of this chapter.

§ 678.10 At-sea observer coverage.

(a) When requested by the Science and Research Director, an owner or operator of a vessel for which a permit has been issued under § 678.4 must advise the Science and Research Director in writing not less than 10 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time); and

(2) Expected landing information (port, dock, and date).

(b) If a vessel's trip is selected by the Science and Research Director for observer coverage, the owner or operator of such vessel must accommodate an NMFS-approved observer.

(c) An owner or operator of a vessel on which an NMFS-approved observer is embarked must—

(1) Provide, at no cost to the observer or the United States government, accomodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to, and use of, the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to, and use of, the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish.

Subpart B—Management Measures

§ 678.20 Fishing year.

The fishing year is July 1 through June 30.

§ 678.21 Harvest limitations.

(a) *Finning.* (1) The practice of "finning," that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited in the EEZ or aboard a vessel that has been issued a permit under § 678.4.

(2) Shark fins that are possessed aboard or off-loaded from a fishing vessel must be in proper proportion to the number of carcasses. That is, the number of fins may not exceed five per carcass.

(3) Shark fins may not be possessed aboard a fishing vessel after the vessel's first point of landing.

(b) *Release.* A shark that is harvested in the EEZ or harvested by a vessel that has been issued a permit under § 678.4 neither as part of the commercial allocation nor under the bag limits—

(1) Must be released in a manner that will ensure maximum probability of survival, and

(2) If caught by hook and line, must be released by cutting the line near the hook without removing the fish from the water.

(c) *Size limit.* (1) The minimum size limit for the possession of a longfin mako or shortfin mako in or from the EEZ or aboard a vessel that has been issued a permit under § 678.4 is—

(i) For a shark that has head and caudal fin intact, a fork length of 66 inches (167.64 centimeters), measured in a straight line from the tip of the snout to the center of the tail (caudal fin) (see Figure 1); or

(ii) For a shark that has head or caudal fin removed, a distance between the first and second dorsal fins of 19 inches (48.26 centimeters), measured from where the rear of the first dorsal fin is attached to the body to where the leading edge of the second dorsal is attached to the body. If the dorsal fins have been removed, the 19-inch measurement must be made between the cuts that removed the dorsal fins. (See Figure 1.)

(2) The provisions of paragraph (c)(1) of this section notwithstanding, an undersized longfin mako or shortfin mako harvested by a vessel that has been issued a permit under § 678.4 that is retrieved dead may be retained.

§ 678.22 Bag limits.

(a) *Applicability.* The bag limits apply to a person who fishes in the EEZ or possesses a shark in or from the EEZ aboard a vessel—

(1) When the vessel does not have on board a permit issued under § 678.4; or

(2) When the vessel is under charter or operating as a headboat.

(b) *Bag limits.* The bag limit for—(1) Large coastal species and pelagic species combined is 2 per fishing vessel per trip; and

(2) Small coastal species is 5 per person per day.

(c) *Combination of bag limits.* A person to whom the bag limits apply may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to state waters.

(d) *Responsibility for the bag limits.* The operator of a vessel for which the bag limits apply is responsible for the bag limit applicable to that vessel.

(e) *Transfer of sharks.* A person to whom the bag limits apply may not transfer at sea a shark—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such shark was taken.

§ 678.23 Commercial quotas.

Persons fishing aboard vessels for which vessel permits have been issued under § 678.4 are subject to the following quotas:

(a) Large coastal species—1,450 metric tons, whole weight, each fishing year.

(b) Pelagic species—1,600 metric tons, whole weight, each fishing year.

§ 678.24 Closures.

(a) When a commercial quota specified in § 678.23 is reached, or is projected to be reached, the Assistant Administrator will publish a notice to that effect in the **Federal Register**. The effective date of such notice will be at least 5 days after the date such notice is filed with the Office of the Federal Register.

(1) On the effective date of such notice, for the remainder of the fishing year,

(i) A person aboard a vessel that has been issued a permit under § 678.4 may not retain shark of the species group for which the commercial quota has been reached, except as provided in paragraph (a)(3) of this section; and

(ii) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of a shark carcass of that species group harvested by a person aboard a vessel that has been issued a permit under § 678.4 is prohibited.

(2) On the date 31 days after the effective date of such notice, for the remainder of the fishing year, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of a shark fin of the species group for which the commercial quota has been reached harvested by a person aboard a vessel that has been issued a permit under § 678.4 is prohibited.

(3) A person aboard a charter vessel or headboat that has been issued a permit under § 678.4 may retain, subject to the bag limits specified in § 678.22(b), shark of the species group for which the commercial quota has been reached, provided the vessel is operating as a charter vessel or headboat. However, the prohibitions of paragraphs (a)(1)(ii) and (a)(2) of this section regarding sale, purchase, barter, or trade or attempted sale, purchase, barter, or trade apply to such shark.

(b) The prohibitions of paragraphs (a)(1)(ii) and (a)(2) of this section regarding sale, purchase, barter, or trade or attempted sale, purchase, barter, or trade by a dealer do not apply to trade in shark carcasses or fins that were harvested, off-loaded, and bartered, traded, or sold, for shark carcasses, prior to the effective date of the notice in the **Federal Register**, or, for shark fins, prior to 31 days after the effective date of such notice, and were held in storage by a dealer or processor.

§ 678.25 Restrictions on sale.

Subject to the restrictions of § 678.24,

(a) Upon landing, meat or fins from a shark harvested in the EEZ may be sold, traded, or bartered or attempted to be sold, traded, or bartered only by an owner or operator of a vessel that has been issued a permit under § 678.4;

(b) Upon landing, meat or fins from a shark harvested in the EEZ may be purchased, traded, or bartered or attempted to be purchased, traded, or bartered only from the owner or operator of a vessel that has been issued a permit under § 678.4; and

(c) Fins from a shark harvested in the EEZ, or by a vessel that has been issued a permit under § 678.4, that are disproportionate to the number of carcasses landed may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

§ 678.26 Adjustment of management measures.

In accordance with the framework regulatory adjustment procedures specified in the Fishery Management Plan for Sharks of the Atlantic Ocean, the Assistant Administrator may establish or modify for a species or a species group in the shark fishery the following: maximum sustainable yield, total allowable catch, quotas, trip limits, bag limits, size limits, the fishing year or fishing season, the species of sharks managed and the specification of species groups to which they belong, and permitting and reporting requirements.

§ 678.27 Specifically authorized activites.

The Assistant Administrator may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

Figure 1 to Part 678 -- Mako Shark Length Measurements

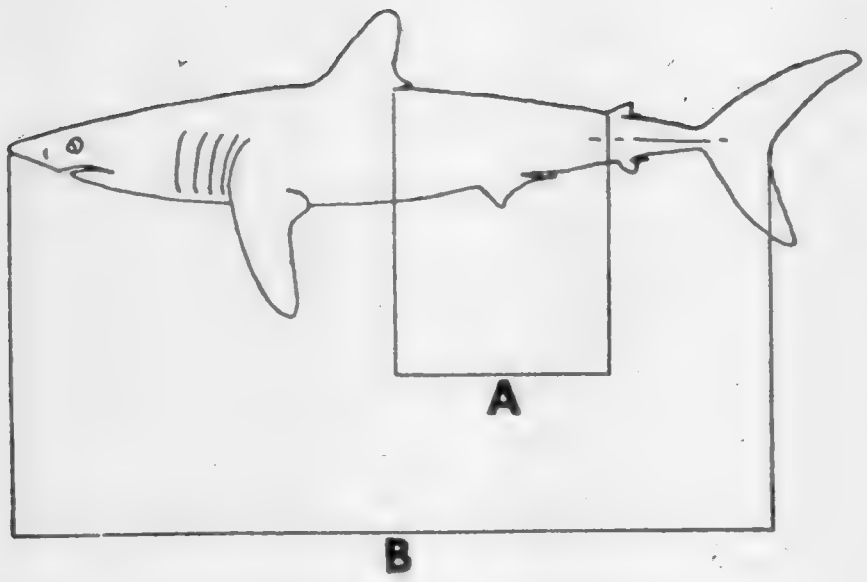

A - Interspace between 1st and 2nd dorsal fins

B - Fork length

Appendix—Framework Procedures for adjusting management measures as specified in the Shark Fishery Management Plan for the Atlantic Ocean

Note: This appendix will not appear in the Code of Federal Regulations.

a. As provided for in 50 CFR 602.12(e), the Assistant Administrator annually will assure that: a stock assessment and fishery evaluation (SAFE) report for sharks is prepared, reviewed, and changed as necessary; current fishing mortality is estimated; other appropriate population parameters are estimated (*e.g.*, revised MSY estimates); catch statistics on the fishery are analyzed; and relevant environmental, social, and economic data are evaluated.

b. The Assistant Administrator will appoint an Operational Team (OT) which includes representatives from the following: NMFS Northeast and Southeast Regional Offices and the Washington Office, the five affected Councils, NMFS Fisheries Research Centers, and others as necessary and appropriate. The OT will receive the SAFE report and other relevant data annually and, based thereon, submit a written report of its findings to the Assistant Administrator. If the OT determines that adjusting the management measures is necessary, it will include in the report specified ranges of acceptable biological catch (ABC) for individual species, species groups, or all sharks. The ABC will be calculated so as to prevent overfishing or to prevent further declines of an overfished species, species groups, or all managed species of sharks. Recommendations in the report may include implementing or changing the following: Maximum sustainable yield; total allowable catch; commercial quotas; commercial trip limits; recreational bag limits; species size limits; the fishing year or fishing season; the species of sharks managed and the species groups to which they belong; and permitting and reporting requirements. The biological, environmental, social, and economic impacts of each recommendation will be included in the report. In formulating its recommendations, the OT will consult with the Assistant Administrator, Regional Directors of the NMFS Northeast and Southeast Regions, and any intercouncil shark committee. The OT May hold public hearings as appropriate.

c. If the Assistant Administrator concurs with the OT's recommendations, he will prepare the regulatory package and file within 30 days a proposed rule and a request for public comment with the Office of the Federal Register. The regulatory package will include a discussion of the need for action; the proposed adjustments to the management measures; analyses as required by applicable law of the social, economic, and biological impacts of the proposed measures; and the proposed rule. From 15 to 30 days will be provided for public comment, consistent with the magnitude of the action.

d. After reviewing public comments and additional information or data that may be available, the Assistant Administrator will, after consultation with the OT, if appropriate, make final determinations regarding consistency of the proposed conservation and management measures with the objectives of the FMP, the national standards, and other applicable law. Within 30 days of the close of the public comment period on the proposed rule, the Assistant Administrator will publish a final rule in the Federal Register.

e. The Assistant Administrator may take action independent of the recommendations of the OT if he finds, based on the best available scientific information on the biological conditions of the shark resources or economic conditions of the fishery, that adjustments in the management measures are required. In this situation, the Assistant Administrator would follow the same procedure that the OT would follow in preparing recommendations for regulatory changes. The Assistant Administrator would consult with the OT, as necessary and appropriate.

f. The Assistant Administrator will consult with and consider the comments and views of the affected Councils in developing proposed and final adjustments in managment measures.

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BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 110
Monday, June 8, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-074-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 19 environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environment assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plants pets (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulate article. The Animial and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit	Permittee	Date issued	Organisms	Field test location
91-352-04	Frito-Lay, Incorporated	04-27-92	Potato plants genetically engineered to express patho-genesis-related proteins for resistance to late blight of potato.	Oneida County, Wisconsin.
92-034-01, renewal of permit 90-332-04, issued on 03-06-91.	DeKalb Plant Genetics	04-27-92	Corn plants genetically engineered to express the *bar* gene for tolerance to the herbicide bialaphos.	DeKalb County, Illinois.
92-042-02, renewal of permit 91-067-01, issued on 03-06-91.	Pioneer Hi-Bred International Incorporated.	04-27-92	Sunflower plants genetically engineered to express a methionine-rich seed storage protein from Brazil nut.	Yolo County, California.
92-002-01	Monsanto Agricultural Company.	04-29-92	Potato plants genetically engineered to express a solids mofification gene, a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt), and coat protein genes from potato virus X (PVX), and potato virus Y (PVY), for resistance to Colorado potato beetle, PVX, and PVY.	Oneida and Waushara Counties, Wisconsin.
92-002-02	Monsanto Agricultural Company.	04-29-92	Potato plants genetically engineered to express a solids modification gene and a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt), for resistance to Colorado potato beetle.	Essex and Suffolk Counties, New York.

Permit	Permittee	Date issued	Organisms	Field test location
92-007-01	Monsanto Agricultural Company.	04-29-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and/or a metabolizing enzyme for tolerance to the herbicide glyphosate.	Jersey County Illinois.
92-014-01	North Carolina State University	04-29-92	Tobacco plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD1.	Johnson County, North Carolina.
92-049-05	Upjohn Company	04-29-92	Corn plants genetically engineered to express a phosphinothricin acetyltransferase (PAT) gene for tolerance to the herbicide glufosinate.	Kalamazoo County, Michigan; Isabela, Puerto Rico.
92-002-04	Pioneer Hi-Bred International Incorporated.	04-30-92	Corn plants genetically engineered to express a coat protein gene from a maize chlorotic mottle virus (MCMV) for reistance to MCMV, and the selectable marker phosphinothricin acetyltransferase from *S. hygro-scopicus* for tolerance to the herbicide glufosinate.	Franklin, Harlan, and York Counties, Nebraska.
92-015-02	Monsanto Agricultural Company.	04-30-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Craighead and Washington Counties, Iowa.
92-037-05	Monsanto Agricultural Company.	05-01-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Elmore County, Alabama; Crittenden and Mississippi Counties, Arkansas; Kent County, Delaware; Baker and Sumpter Counties, Georgia; Champaign, Jersey, Macon, St. Clair, and Warren Counties, Illinois; Marshall, Tippecanoe, and Tipton Countries, Indiana; Carroll, Franklin, Jasper, and Story Countries, Iowa; Caldwell, Fayette, and Hopkins Counties, Kentucky; East Baton Rouge, St. Landry, and Tensas Parishes, Louisiana; Prince Georges and Worcester Counties, Maryland; Ingham County, Michigan; Tunica and Washington Counties, Mississippi; Gentry County, Missouri; Lancaster and Saunders County, Nebraska; Allen Franklin, and Pickaway Counties, Ohio; Florence County, South Carolina; Gibson, Hardeman, and Obion Counties, Tennessee; Brazoria and Chambers Counties, Texas.
92-022-03	Pioneer Hi-Bred International, Incorporated.	05-04-92	Corn plants genetically engineered to express wheat germ agglutinin for resistance to European corn borer.	Polk County Iowa.
92-035-05	DNA Plant Technology Corporation.	05-04-92	Tomato plants genetically engineered to express an anti-sense ACC gene to delay ripening.	Contra Costa County, California.
92-080-01, renewal of permit 90-360-01, issued on 04-24-91.	University of Idaho	05-04-92	Potato plants genetically engineered to express an enzyme for tolerance to the herbicide bromoxynil.	Bingham County, Idaho.
92-080-02, renewal of permit 91-077-01, issued on 06-18-91.	Harris Moran Seed Company	05-04-92	Cantaloupe plants genetically engineered to express the coat protein gene of cucumber mosaic virus (CMV) for resistance to CMV.	Solano County, California.
92-041-01	Monsanto Agricultural Company.	05-05-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Baldwin and Macon Counties, Alabama; Arkansas and Crittenden Counties, Arkansas; Sumpter County, Georgia; Jersey County, Illinois; Warrick County, Indiana; Fremont County, Iowa; Hopkins County Kentucky; East Baton Rouge and Tensas Parishes, Louisiana; Queen Annes and Worcester Counties, Maryland; Tunica and Washington Counties Mississippi; New Madrid County, Missouri; Florence County, South Carolina; Obion County, Tennessee.

Permit	Permittee	Date issued	Organisms	Field test location
91-364-01	Dow Gardens	05-05-92	*Amelanchier laevis* plants (Allegheny Serviceberry) genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects.	Midland County, Michigan.
92-002-05	Pioneer Hi-Bred International Incorporated.	05-05-92	Corn plants genetically engineered to express a coat protein gene from a maize dwarf mosaic virus (MDMV) for resistance to *MDMV*, and the selectable marker phosphinothricin acetyltransferase from *S. hygroscopicus*, for tolerance to the herbicide glufosinate.	Polk County, Iowa.
92-015-05	Monsanto Agricultural Company.	05-05-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Mclean County, Illinois.

The environmental assessments and findings of an significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508, (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979).

Done in Washington, DC, this 3rd day of June 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-13353 Filed 6-5-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-054-1]

Availability of Environmental Assessment and Finding of No Significant Impact Concerning the North Carolina Gypsy Moth Eradication Project

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is making available an environmental assessment and finding of no significant impact for the gypsy moth eradication project in the State of North Carolina. The environmental assessment provides a basis for our conclusion that the methods employed to eradicate the gypsy moth will not have a significant impact on the human environment.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies of the environmental assessment and finding of no significant impact may be obained upon request from:

(1) Thomas Flanigan, Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247;

(2) Lloyd Garcia, North Carolina Department of Agriculture, P.O. Box 27647, Raleigh, NC 27611; or

(3) Mike South, Plant Protection and Quarantine, APHIS, USDA, room 316, Federal Building, P.O. Box 83, Goldsboro, NC 27530.

FOR FURTHER INFORMATION CONTACT: Thomas Flanigan, Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 7 U.S.C. 147a, 148, and 450, the Secretary of Agriculture is authorized to cooperate with the States and certain other organizations and individuals to control and eradicate plant pests.

The gypsy moth, *Lymantria dispar* (Linnaeus), which is present in North Carolina, is a destructive pest of forest trees. The North Carolina Department of Agriculture, in cooperation with the U.S. Department of Agriculture (USDA), has developed a project to eradicate the gypsy moth in North Carolina and has prepared an environmental assessment (EA) to evaluate the effects of this eradication project on the environment. Based on the environmental assessment, the Animal and Plant Health Inspection Service (USDA) has determined that the eradication project in North Carolina will not have a significant impact on the human environment. The EA for this cooperative gypsy moth eradication project is supported by and tiered to the Gypsy Moth Suppression and Eradication Projects, Final Environmental Impact Statement (FEIS) as Supplemented, 1985.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 3rd day of June 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-13352 Filed 6-5-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Rocky Mountain Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal.

Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 shall begin April 5, 1990.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, 11177 W. 8th Ave., Box 25127, Lakewood, Colorado 80225, Area Code 303–236–9430.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Rocky Mountain Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. As provided in 36 CFR 217.5(d), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the Rocky Mountain News, published daily in Denver, Denver County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: Greeley Tribune, published daily in Greeley, Weld County, Colorado.

Boulder District: Boulder Daily Camera, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: Clear Creek Courant, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: Sulphur Sky High News, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel published daily in Grand Junction, Mesa County, Colroado.

District Ranger Decisions

Collbran and Grand Junction Districts: Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: Delta County Independent, published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: Gunnison Country Times, published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: Telluride Times-Journal, published weekly in Telluride, San Miguel County, Colorado.

Ouray District: Montrose Daily Press, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo chieftain, published daily in Pueblo County, Colorado.

District Ranger Decisions:

San Carlos District: Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

Comanche District: Plainsman Herald, published weekly in Springfield, Baca County, Colorado.

Cimarron District: Tri-State News, published weeky in Elkhart, Morton County, Kansas.

South Platte District: Daily News Press, published daily in Castle Rock, Douglas County, Colorado.

Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.

Salida District: The Mountain Mail, published daily in Salida, Chaffee County, Colorado.

South Park District: Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Pikes Peak District: Gazette Telegraph, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decision

Bears Ears District: Northwest Colorado Daily Press, published daily in Craig, Moffat County, Colorado. In addition, notice of decisions by the District Ranger will also be published in the Hayden Valley Press, published weekly in Hayden, Routt County, Colorado, and in the Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Yampa and Hahns Peak Districts: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District: Middle Park Times, published weekly in Kremmling, Grand County, Colorado.

North Park District: Jackson County Star, published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Friday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: Aspen Times, published weekly in Aspen, Pitkin County, Colorado.

Blanco District: Meeker Herald, published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: Summit Sentinel, published twice weekly in Frisco, Summit County, Colorado.

Eagle District: Eagle Valley Enterprise, published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: Vail Trail, published weekly in Minturn, Eagle County, Colorado.

Rifle District: Rifle Telegram, published weekly in Rifle, Garfield County, Colorado.

Sopris District: Valley Journal, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: The North Platte Telegraph, published daily in North Platte, Lincoln County, Nebraska.

Samuel R. McKelvie National Forest: The Valentine Newspaper, published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts: The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Pine Ridge District: The Chadron Record, published weekly in Chadron, Dawes County, Nebraska.

Ft. Pierre National Grassland: The Capitol Journal, published daily in Pierre, Hughes County, South Dakota.

Black Hills National Forest, South Dakota and eastern Wyoming

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: Buffalo Bulletin, published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: Lovell Chronicle, published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: Northern Wyoming Daily News, published daily in Worland, Washakie County, Wyoming.

Paintrock District: Greybull Standard, published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Douglas District: Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden Districts: Rawlins Dailing Times, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decisions

Cody Enterpise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: Powell Tribune, published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Wind River District: The Dubois Frontier, published weekly in Dubois, Teton County, Wyoming.

Lander District: Wyoming State Journal, published twice weekly in Lander, Fremont County, Wyoming.

Dated: May 26, 1992.

Tom L. Thompson,

Acting Regional Forester.

[FR Doc. 92-13288 Filed 6-5-92; 8:45 am]

BILLING CODE 3410-11-M

Southbranch Resource Management Projects, Tahoe National Forest, Placer County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to do resource management projects, including timber harvest, on the Foresthill Ranger District, Tahoe National Forest in an area allocated for timber management.

There are three types of proposals. One proposal is to harvest timber in areas in need of improved growth and/or stocking levels. Another proposal is to open and close roads to meet timber, transportation, and wildlife and watershed protection needs. A third proposal is to establish a local water-storage facility for local wildfire suppression needs.

The Tahoe National Forest Land Resource Management Plan (LMP) was approved on June 14, 1990. This plan identified that the management emphasis in the majority of the analysis area is intensive even-aged timber management; the Plan identified a potential output of up to 14 million board feet of timber during this planning decade.

The public scoping for this proposal was conducted during 1988 and 1989. Public comments are not being solicited at this time. No further public meetings are scheduled. The scoping identified several issues related to watershed, wildlife, timber, recreation, and down-woody material. The issue which has had the most impact on the development of the alternatives is watershed because two of the subwatersheds are currently over the threshold of concern. The previous analysis, therefore, has determined that an EIS should be done.

One alternative to the timber harvest proposal is to treat all the area which is available for harvest even if it requires burning of logging debris to reforest. A second alternative is to preclude harvesting in subwatersheds that currently are at or above the threshold of concern. A third alternative eliminates harvest on steep cable ground and treats logging debris with a minimum amount of burning. The fourth alternative is to not initiate any new management activities at this time.

FOR FURTHER INFORMATION CONTACT: Slim Stout, Interdisciplinary Team Leader, Foresthill Ranger District, Foresthill, CA 95631, telephone (916) 367-2224.

SUPPLEMENTARY INFORMATION: No cooperating agency agreements have been made.

The draft EIS is expected to be available to the Environmental Protection Agency (EPA) in June 1992 for listing in the **Federal Register**. A 45-day

comment period will follow the publication of the notice of availability of the draft EIS in the **Federal Register.** The comments will be analyzed and a final EIS accompanying record of decision (ROD) will be issued.

Comments on the draft EIS should be as specific as possible, and may address the adequacy of the identification of issues, alternatives, or consequences of implementation or the merits of the alternatives as formulated and discussed in the draft. Participants may wish to refer to the Council On Evironmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act (at 40 CFR 1503.3). Participants should be aware of several court rulings related to public participation in the environmental analysis process. First, the court's decision in *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519.533 (1978) established that participants should structure their input to the environmental analysis process so that it is meaningful and so that it alerts the agency to the participant's position and contentions. Second, *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Hertages, Inc.* v. *Harris,* 490 F Supp. 1334, 1338 (E.D. Wis. 1980) establish that objections that could have been raised during the draft stage but are not raised until after completion of the final EIS, may be waived or dismissed by the courts. Because of these court rulings, it is very important that those interested participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

District Ranger Richard A. Johnson will be the responsible official for this environmental impact statement.

Dated: May 28, 1992.

John H. Skinner,

Forest Supervisor, Tahoe National Forest.

[FR Doc. 92–13250 Filed 6–5–92; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Dewitt-Rollover Vegetative Project, LA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dewitt-Rollover Vegetative Project, Vermilion Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Dewitt-Rollover Vegetative Project, Louisiana, Notice of a Finding of No Significant Impact.

The project consists of shoreline erosion protection for an area of beach between Dewitt Canal and Rollover Bayou. The planned works of improvement include the planting of two and one-half acres of marshhay cordgrass and smooth cordgrass along the six mile stretch of beach.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Horace J. Austin.

No administrative section on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

This activity is being conducted under the provisions of Public Law 101–646—Coastal Wetlands Planning, Protection, and Restoration Act.

Dated: May 27, 1992.

Horace J. Austin,

State Conservationist.

[FR Doc. 92–13295 Filed 6–5–92; 8:45 am]

BILLING CODE 3410–16–M

Timbalier Island Vegetative Project, LA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Timbalier Island Vegetative Project, Terrebonne Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Timbalier Island Vegetative Project, Louisiana Notice of a Finding of No Significant Impact.

The project concerns the protection of dunes and other areas of beach shoreline on Timbalier Island. The planned works of improvement include the planting of fifteen acres of marshhay cordgrass, twenty acres of Atlantic coastal panic grass, three acres of black mangrove, five acres of smooth cordgrass, two acres of Roseau cane, and 2 acres of matrimony vine along Timbalier beach and dune area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Horace J. Austin.

No administrative section on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

This activity is being conducted under the provisions of Public Law 101-646—Coastal Wetlands Planning, Protection, and Restoration Act.

Dated: May 27, 1992.

Horace J. Austin,

State Conservationist.

[FR Doc. 92-13296 Filed 6-5-92; 8:45 am]

BILLING CODE 3410-16-M

West Hackberry Vegetative Project, LA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the West Hackberry Vegetative Project, Cameron Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473-7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

West Hackberry Vegetative Project, Louisiana Notice of a Finding of No Significant Impact.

The project concerns the erosion protection of levees in the West Hackberry Oil Field and near Starks Canal. The planned works of improvement include the planting of 13,000 linear feet of levees using approximately 10,000 smooth cordgrass plant. The vegetation will be placed at the intertidal area of the levee and reduce wave induced erosion.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Horace J. Austin.

No administrative section on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

This activity is being conducted under the provisions of Public Law 101-646—Coastal Wetlands Planning, Protection, and Restoration Act.

Dated: May 27, 1992.

Horace J. Austin

State Conservationist.

[FR Doc. 92-13294 Filed 6-5-92; 8:45 am]

BILLING CODE 3410-16-M

ARCTIC RESEARCH COMMISSION

Arctic Research Commission, Meeting

June 3, 1992.

Notice is hereby given that the Arctic Research Commission will hold its 27th Meeting in Anchorage, Alaska, July 6, 1992. On Monday, July 6, a business meeting open to the public will be held starting at 8:30 a.m. in the Chancellor's Conference Room, Administration Building, University of Alaska. Agenda items include:

(1) Chairman's Report,

(2) Comments from agencies and organizations,

(3) Resolution of Appreciation for Mr. Oliver Leavitt,

(4) Commission review and planning discussion of Arctic policy statements, and duties and accomplishments under ARPA,

(5) Unfilled needs and expectations; and

(6) Selection of priorities for ARC activities. The Commission will meet in Executive Session following the conclusion of the public meeting.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission, 202-371-9631 or TDD 202-357-9867.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 92-13251 Filed 6-5-92; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Allocation of Duty-Exemptions for Calendar Year 1992 Among Watch Producers Located in the Virgin Islands and Guam

AGENCY: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates 1992 duty-exemptions for watch producers located in the Virgin Islands and Guam pursuant to Public Law 97-446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 97-446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the U.S. insular possessions and the Northern Mariana Islands. In accordance with § 303.3(a) of the regulations (15 CFR part 303), we have maintained for 1992 and 1991 total quantity of watches and watch movements (6,200,000 units) which may be entered free of duty from the insular possessions and the Northern Mariana Islands. Of this amount, 4,200,000 units may be allocated to Virgin Islands producers, 1,000,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (56 FR 9621).

The criteria for the calculation of the 1992 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations.

The Departments have verified the data submitted on application form ITA-334P by producers in the territories and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1991 the Virgin Islands watch assembly firms shipped 1,847,107 watches and watch movements into the customs territory of the United States under Public Law 97-446. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1991 plus the creditable wages paid by the industry during calendar year 1991 to residents of the territory totalled $4,429,080.

There is only one producer in Guam. Publication of the Guam data, accordingly, would disclose competitively sensitive information.

The calendar year 1992 Virgin Islands and Guam annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands and Guam. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA Form–334P) as a result of the Departments' verification; and reallocation of duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1992 in the Virgin Islands are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc	500,000
Hampden Watch Co., Inc	300,000
Progress Watch Co., Inc	350,000
Unitime Industries, Inc	500,000
Tropex, Inc	400,000
Timex V.I., Inc	780,000

The duty-exemption allocation for Guam is as follows:

Name of firm	Annual allocation
Timewise Ltd	800,000

Alan M. Dunn,

Assistant Secretary for Import Administration.

Stella G. Guerra,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 92–13386 Filed 6–5–92; 8:45 am]

BILLING CODE 3510–DS–M and 4310–93–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privilege; Reza Panjtan Amiri, et al.

In the matter of: Reza Panjtan Amiri, also known as Ray Amiri individually and doing business as Ray Amiri Computer Consultants, 13165 E. Essex Drive, Cerritos, California 90701; and Mohammad Danesh, also known as Don Danesh, 27591 Bocina, Mission Viejo, California 92692. Respondents

Decision and Order on Renewal of Order Temporarily Denying Export Privileges

Procedural Background

On November 12, 1991, I issued an order temporarily denying the export privileges of Reza Panjtan Amiri, also known as Ray Amiri (Amiri), Mohammad Danesh, also known as Don Danesh (Danesh), and Ray Amiri Computer Consultants (RACC) for 180 days.[1] 56 FR 58553 (November 20, 1991). This order was issued pursuant to the provisions of § 788.19 of the Export Administration Regulations (currently codified at 15 CFR parts 768–99 (1991)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–20 (1991)) (Act.).[2]

On April 20, 1992, The Office of Export Enforcement of this Department (the Department), requested that the order be renewed. Counsel for Amiri has filed opposition to the request for renewal. No timely opposition has been received from Danesh.[3] The order is currently set to expire on May 29, 1992, if not renewed.[4]

Factual Background

1. Original Order

In its original request, the Department stated that, as a result of its ongoing investigation, the Department had reason to believe that, during the period betwen on or about April 1989 and on or about October 31, 1990, Amiri and Danesh, acting through RACC, a company located in Newport Beach, California, exported U.S.-origin electronic test and measurement equipment and oscilloscopes, controlled for reasons of foreign policy, to Iran without the validated export licenses required by the Regulations for such exports.

The Department believed that Amiri and Danesh, acting through RACC, would obtain orders from customers in Iran for U.S.-origin commodities. The commodities would be ordered from U.S. suppliers by RACC on the representation that the goods were intended for use in the United States. Once the good were delivered to RACC. Amiri and Danesh would export the goods to Iran. In certain instances, they would submit license applications to the Department seeking authorization to export the goods from the United States to Iran. Amiri and Danesh would export the goods to Iran without waiting to determine whether the Department would issue a validated export license. On some occasions, no application was filed at all. In order to conceal the fact that no validated license existed that would authorize the exports, Amiri and Danesh would submit Shipper's Export Declarations to the U.S. government stating that the exports were authorized under general licenses G–DEST or GLV. In instances in which they claimed that the export was being made under general license GLV, they would also misdescribe the commodity classification and the true value of the commodity being exported.

The Department stated that its investigation revealed that, on at least eight separate occasions between August 3, 1989 and October 13, 1990, Amiri, Danesh and RACC exported U.S.-origin equipment from the United States to Iran without the required validated export license in the manner described above.

The Department also stated that the investigation gave it reason to believe that Amiri, Danesh and RACC continued to seek to obtain U.S.-origin commodities that they intended to export from the United States.

2. Renewal

The Department continues to believe that the risks posed when the original order was issued remain. Additionally, the Department states that two significant actions have occurred since the original order which further demonstrate the need for the continuation of the order. First, both Amiri and Danesh entered guilty pleas to criminal charges relating to some of the conduct mentioned in the original order.[5] Second, the Department believes

[1] Since the issuance of the original order, the Department has learned that RACC is a sole proprietorship of Ray Amiri, not a separate legal entity. In addition, the Department has learned that Don Danesh is no longr employed by RACC. The caption of this matter has been amended to reflect these changes.

[2] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–06 (1991)).

[3] On May 26, 1992, I received a handwritten opposition from Danesh in which he claims that he was a mere employee of RACC, that all of his actions were directed by Amiri, that he had no involvement with Amiri's clients, and that he has ceased all connection with RACC and Amiri. While I cannot consider Danesh's claims at this point, I direct that the Office of Export Enforcement review his pleading, conduct whatever inquiry it deems necessary, and submit to me that office's assessment of the pleading and Danesh's continued risk of committing a violation through counsel by July 1, 1992. A copy should be served on Danesh.

[4] On May 8, 1992, I issued a short extension of the order based upon the agreement of the parties. 57 FR 21057 (May 18, 1992).

[5] On March 30, 1992, each entered pleas of guilty to selected counts of an indictment returned in the U.S. District Court for the Central District of California. Amiri pled guilty to five counts each alleging a violation of 18 U.S.C. 1001, false statements to U.S. government agencies. Danesh pled guilty to a total of four counts. Two counts alleged violations of 50 U.S.C. app., 2410(b), one a conspiracy to violate the EAA and the other was a substantive count of illegal exportation to Iran

Continued

that Amiri has violated the temporary denial order by continuing to engage in export related activities.

In opposing the renewal of the temporary denial order, Amiri argues that he has reorganized his business activities to prevent future violations and that the Department is drawing incorrect conclusions about the meaning of his plea of guilty and his role in the crimes. Further, Amiri denies that he has violated the order and argues that any export business he has entered was authorized by the Department.[6]

Discussion

The Department continues to make a sufficient showing that Amiri, Danesh, and RACC are likely to commit imminent violations of the Regulations and that the temporary denial order is necessary. The guilty please add significant weight to the Department's showing.

Respondent Amiri's opposition papers (hereinafter "respondent's papers") argue that the Department has mischaracterized his March 30, 1992 plea. According to the Department's petition:

> [t]he investigation and subsequent pleas entered in the criminal case establish that Amiri, Danesh and RACC deliberately sought to circumvent U.S. foreign policy controls in regard to these exports. Amiri, Danesh and RACC knew that the exports they made were subject to the Act and Regulations * * *

Department's Request for Renewal at 4. Respondent Amiri (hereinafter "respondent") argues that the above statements are wholly inaccurate characterizations of his plea. Respondent states that "Respondent did not admit to directly or personally participating in any of the violations charged in the indictments." Respondent's papers at 7. Instead, according to Respondent:

> The conduct to which Respondent pleaded guilty essentially consisted of: (1) Awareness in general of U.S. export license requirements pertaining to commodities such as those in question; (2) awareness of the "high probability" that certain of the items required individual validated export licenses; (3) knowledge that Danesh would sign the relevant export declarations stating that the items were authorized for export; and (4) the deliberate failure to ascertain whether in fact such a license was required for any of the items in question.

In sum, Respondent appears to be suggesting that his guilty plea does not reflect upon his trustworthiness as an exporter because his plea did not admit to an overt act of violating the regulations, but instead the knowledge that the regulations would be violated on his behalf and the deliberate failure to take steps to prevent this violation.

In terms of this request for renewal of the temporary denial order, I find that this is a distinction without a difference. In fact, the Respondent's effort to draw this distinction appears to evidence a misunderstanding of the basis for this denial order. Section 778.19(b)(1) provides that such an order may be renewed upon a showing that it is necessary to prevent an imminent violation of the Act or Regulations. Respondent's paper appears to suggest that the only way an imminent violation can occur is when the particular Respondent takes an overt act to violate the regulations. Under this logic, the Respondent's ignorance of the regulations or, as in this case, an affirmative decision by the Respondent to allow his agents to ignore those regulations, could not pose the risk of an imminent violation. Clearly, such a result would undermine the purpose and intent of § 778.19(b) and the TDOs issued thereunder. As such, even if I accepted in toto the Respondent's characterization of his guilty plea, I conclude that his actions to date suggest that allowing him to export unfettered by the proposed order would pose the risk of an imminent violation of the regulations.

In addition to arguing semantics, the Respondent's opposition papers contend that his appointment of Ulysses International (UI) to manage business operations has resulted in "as ironclad a compliance program in place as possible." Respondent's papers at 8. However, it is important to note that Respondent also alleges that his prior difficulties arose not from any personal act but rather from his reliance upon Danesh to address export licensing matters, Now, the Respondent is again relying on others to meet his legal responsibilities. While Respondent's reliance on UI may prove justified, respondent's past record raises doubts as to this "ironclad" compliance program.[7]

Finally, both the Department and Respondent have addressed the issue of whether or not the respondent has violated the terms of the original order. I find that the resolution of this issue is not necessary for purposes of this request to renew the TDO. For purposes of this decision, I will assume that the Respondent has not violated the terms of the original order.[8]

In closing, I would note that my decision to renew this order does not reflect any decision on my part that the Respondent should be permanently barred from reclaiming his export privileges. Rather, it is based on my determination that, at this time, evidence exists to suggest the likelihood of an imminent violation of the Act or the Regulations by the respondent. Any further request for a renewal of the order called for in the Department's papers will require a fresh review of the impact the Respondent's guilty plea will have on his ability to meet the requirements of the law at that time.

Findings

Based on the files of this matter, I find that an order temporarily denying the export privileges of Reza Panjtan Amiri, also known as Ray Amiri, individually and doing business as Ray Amiri Computer Consultants; and Mohammad Danesh, also known as Don Danesh; is necessary to be continued in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with Amiri, Danesh and RACC in goods and technical data subject to the Act and the Regulations, in order to reduce the substantial likelihood that Amiri, Danesh and RACC will continue to engage in activities that are in violation of the Act and the Regulations.

Order

It is hereby Ordered:

I. All outstanding individual validated licenses in which Amiri, Danesh and RACC appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for

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without the required export authorization. The other two counts were a violation of 50 U.S.C. 1701, illegal exportation to Iran in violation of the International Emergency Economic Powers Act (the penalty provisions is in § 1705), and a violatin of 18 U.S.C. 1001, a false statement to U.S. government agencies.

[6] On December 10, 1991, the Director, Office of Export Licensing, authorized Ulysses, International, a California corporation, to export commodities qualifying for general licenses G-DEST or GTDA "on behalf of Amiri" subject to certain conditions.

[7] Respondent's paper argues that, while his guilty plea evidences an acceptance of full responsibility for his past conduct, it does not show a predisposition to violate the Act or Regulations in the future. Respondent's papers at 5, ftn. 11. Such a finding of predisposition is not required for an extension of this order. Rather, respondent's admission that he deliberately failed to prevent violations done on his behalf appears to reflect a predisposition to allow such violations in the future.

[8] Amiri has not exception to the order which would permit him to engage in export transactions. The Department's allegations here are insufficient to establish that Amiri has violated the denial order. The Department should determine where the truth lies. If Amiri has violated the order, appropriate action should be taken. If he has not, the Department should review the exception granted to Ulysses International

cancellation. Further, all of Amiri's, Danesh's and RACC's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of 180 days from May 30, 1992, Reza Panjtan Amiri, also known as Ray Amiri, individually and doing business as Ray Amiri Computer Consultants, 13165, E. Essex Drive, Cerritos, California 90701, and Mohammad Danesh, also known as Don Danesh, 27591 Bocina, Mission Viejo, California 92692, and all their successors, assignees, officers, partners, representatives, agents, and employees, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 788.3(c), any person, firm, corporation, or business organization related to Amiri, Danesh and/or RACC by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations; if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. In accordance with the provisions of § 788.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge, U.S. Department of Commerce, room H-6716, 14th Street and Constitution Avenue NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective on May 30, 1992, and shall remain in effect for 180 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew of this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Dated: May 29, 1992.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 92-13297 Filed 6-5-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("The Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than June 30, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

Antidumping duty proceedings	Period
BELGIUM: Sugar (A-423-077)	06/01/91 to 05/31/92
CANADA: Oil Country Tubular Goods (A-122-506)	06/01/91 to 05/31/92
CANADA: Red Raspberries (A-122-401)	06/01/91 to 05/31/92
FRANCE: Large Power Transformers (A-427-030)	06/01/91 to 05/31/92
FRANCE: Sugar (A-427-078)	06/01/91 to 05/31/92
ITALY: Large Power Transformers (A-475-031)	06/01/91 to 05/31/92
ITALY: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-475-802)	06/01/91 to 05/31/92
JAPAN: Nitrile Rubber (A-588-706)	06/01/91 to 05/31/92
JAPAN: Fishnetting of Man-Made Fibers (A-588-029)	06/01/91 to 05/31/92
JAPAN: Forklift Trucks (A-588-703)	06/01/91 to 05/31/92
JAPAN: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-588-807)	06/01/91 to 05/31/92
JAPAN: Large Power Transformers (A-588-032)	06/01/91 to 05/31/92

Antidumping duty proceedings	Period
JAPAN: 64K DRAMS (A-588-503)	06/01/91 to 05/31/92
JAPAN: Pet Film (A-588-814)	11/30/90 to 05/31/92
ROMANIA: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished (A-485-602)	06/01/91 to 05/31/92
SINGAPORE: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-559-802)	06/01/91 to 05/31/92
SWEDEN: Stainless Steel Plate (A-401-040)	06/01/91 to 05/31/92
TAIWAN: Carbon Steel Plate (A-583-080)	06/01/91 to 05/31/92
TAIWAN: Fireplace Mesh Panels (A-583-003)	06/01/91 to 05/31/92
TAIWAN: Oil Country Tubular Goods (A-583-505)	06/01/91 to 05/31/92
THE HUNGARIAN PEOPLE'S REPUBLIC: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-437-601)	06/01/91 to 05/31/92
THE FEDERAL REPUBLIC OF GERMANY: Barium Carbonate (A-428-061)	06/01/91 to 05/31/92
THE FEDERAL REPUBLIC OF GERMANY: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-428-802)	06/01/91 to 05/31/92
THE FEDERAL REPUBLIC OF GERMANY: Sugar (A-428-082)	06/01/91 to 05/31/92
THE PEOPLE'S REPUBLIC OF CHINA: Sparklers (A-570-804)	12/17/90 to 05/31/92
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished (A-570-601)	06/01/91 to 05/31/92
THE PEOPLE'S REPUBLIC OF CHINA: Silicon Metal (A-570-806)	02/05/91 to 05/31/92
THE REPUBLIC OF KOREA: Pet Film (A-580-807)	11/30/90 to 05/31/92

In accordance with § 353.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with §§ 353.31 or 355.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by June 30, 1992.

If the Department does not receive, by June 30, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 1, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-13388 Filed 6-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-502]

Certain Iron Construction Castings From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 27, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain iron construction castings from the People's Republic of China (PRC). This review covers all PRC manufacturers/exporters for the period May 1, 1990 through April 30, 1991. The review indicates the existence of dumping margins during the period.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, we have changed the final results from those in the preliminary results of review.

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Philip Marchal or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 6709) the preliminary results of its administrative review of the antidumping order on certain iron construction castings from the People's Republic of China (PRC) (51 FR 17222, May 9, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 353.22 (1991).

Scope of the Review

Imports covered by this review are shipments of certain iron construction castings, limited to: manhole covers, rings and frames; catch basin grates and frames; cleanout covers and frames used for drainage or access purposes for public utility, water, and sanitary systems; and valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. Certain iron construction castings are currently classifiable under numbers 7352.10.00.00 and 7325.10.00.50 of the Harmonized Tariff Schedule (HS). Although the HS numbers are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

The review covers all PRC manufacturers and exporters of the subject merchandise and the period May 1, 1990 through April 30, 1991.

Use of Best Information Available

Questionnaires were forwarded to nine PRC manufacturers/exporters of the subject merchandise. Two companies reported that they had no shipments during the period. Seven companies, including the Guangdong Branch of China National Metals and Minerals Import and Export Corporation (Minmetals Guangdong), failed to respond to our questionnaire. The Department has therefore decided to use

the best information available (BIA) in determining the rate for all companies.

When a company fails to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department considers the company uncooperative and generally assigns to that company the higher of: (a) The highest rate assigned to any company in a previous review or the investigation or (b) the highest rate for a responding company with shipments during the review period. See 19 CFR 353.37(b) and Final Results of Antidumping Duty Administrative Reviews: Portable Electric Typewriters From Japan (November 4, 1991, 56 FR 56393).

For BIA, we have used the rate of 92.74 percent, the rate calculated for Minmetals Guangdong in the final results of the 1989–90 administrative review. See Final Results of Antidumping Duty Administrative Review: Certain Iron Construction Castings From the People's Republic of China (57 FR 10644, March 27, 1992) (1989–90 Castings Final).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.22(c) of the Commerce regulations. We received comments from one importer of the subject merchandise, Overseas Trade Corporation (Overseas Trade), and from the petitioners, the Municipal Castings Fair Trade Council and its individually-named members—Alhambra Foundry, Inc. Allegheny Foundry Co., Bingham and Taylor Division, Virginia Industries, Inc., Campbell Foundry Co., Charlotte Pipe and Foundry Co., Deeter Foundry Co., East Jordan Iron Works, Inc., LeBaron Foundry Inc., Municipal Castings, Inc., Neenah Foundry Co., Opelika Foundry Co., Pinkerton Foundry, Inc., Tyler Pipe Industries Inc., U.S. Foundry and Manufacturing Co., and Vulcan Foundry, Inc. Although comments were also submitted by two other importers, because they were untimely we did not consider them, and we returned them in accordance with 19 CFR 353.38(a)

Comment 1: Petitioners state that the Department correctly determined in its preliminary results that, because the PRC is a state-controlled economy and because there has been no evidence presented to the contrary regarding the legal, financial, or economic independence of the respondents during the period of review, a single country-wide rate is appropriate for this review. Petitioners assert that the Department should not change this determination for the final results of this review.

Department's Position: We disagree. In our preliminary results we stated that we were following the final results of review for the most recent period in determining that a single country-wide rate was appropriate. At the time of our preliminary results, the most recent period for which final results had been published was the 1988–89 period. On March 27, 1992, the final results of review of a more recent period, the 1989–90 period, were published. In those final results we determined that Minmetals Guangdong was entitled to a separate rate because Minmetals Guangdong had met the criteria set out in Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991). See 1989–90 Castings Final. We have determined that once a Chinese company has demonstrated that it is entitled to a separate rate, unless there is an indication that its status may have changed, it is not necessary for that company to resubmit data supporting a separate rate during subsequent reviews. No information has been submitted on the record for this review indicating any change in Minmetals Guangdong's status. Therefore, we determine that Minmetals Guangdong is entitled to a separate rate for these final results.

Comment 2: Petitioners state that, because seven of the nine firms that received the Department's questionnaire did not respond, the Department should use BIA for the final results, as it did in the preliminary results. Petitioners assert that, in conformity with Department practice, the Department should apply a BIA rate that is least favorable to respondents because of the deliberate failure of these firms to respond. In support of their claim for a BIA least favorable to respondents, petitioners cite *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990). Petitioners specifically propose applying a BIA rate of 92.74 percent, the rate from the 1989–90 review period. See 1989–90 Castings Final.

Department's Position: We agree that, for these final results, the appropriate BIA is 92.74 percent, the rate calculated for Minmetals Guangdong in the 1989–90 administrative review. See 1989–90 Castings Final. The fact that two respondents replied that they had no shipments during the period of review is irrelevant for these final results because neither of these companies has demonstrated an absence of government control; therefore, they are not entitled to separate rates.

Comment 3: Overseas Trade claims that, because it purchased the subject merchandise from the Liaoning Branch of China National Machinery Import and Export Corporation (Liaoning Machimpex), an allegedly independent company for which they claim no review was requested or is being in accordance with 19 CFR 353.22(e) at the deposit rate of 11.66 percent. Overseas Trade states that, while the Department may apply a country-wide rate for the companies reviewed, there is no basis in the law or the Department's regulations to apply such a rate to non-reviewed companies.

Petitioners claim that their May 31, 1991 request for review specifically asked that the Department include China National Machinery Import and Export Corporation (Machimpex) within the review. Petitioners claim that they did not limit their request to certain branches of this corporation. Petitioners cite as evidence supporting their claim the fact that the Department sent a questionnaire to Machimpex, and that counsel for Liaoning Machimpex advised the Department that Liaoning Machimpex would not be able to respond to the Department's questionnaire issued in this review.

Petitioners also state that, in its preliminary results, the Department noted its determination that a single country-wide rate is appropriate for this review because the PRC is a state-controlled economy and that there has been no evidence presented to the contrary regarding legal, financial, or economic independence during the review. Petitioners further assert that because Liaoning Machimpex has submitted no information demonstrating its independence from the central government, it is assumed to be controlled by the central government, and therefore should be assessed the same dumping margins as all other government-controlled entities. Accordingly, petitioners argue that the Department correctly determined to apply the all-other rate to entries from Liaoning Machimpex during the review period.

Department's Position: We agree with petitioners that the BIA rate for this review period is applicable to Liaoning Machimpex. Machimpex, and all its branches, are included in this review. In publishing initiations of administrative review, the Department does no list every branch company. Neither the statute nor the Department's regulations require it to include the name of every company subject to review in its initiation notices. See 19 CFR 353.22(c). Such a policy could prove overly burdensome to administer, especially with respect to Chinese companies, which have in the past been subject to unpredictable changes in structure,

organization, and location. During past reviews in this case, in fact, the Department has been unable consistently to determine the names of all the companies exporting castings to the United States. See, e.g., Iron Construction Castings From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, (55 FR 22939, June 5, 1990). In any event, because this is a non-market economy case, all companies are covered by the review unless specifically excluded (see discussion of "separate rates" above).

While we attempt to include the names of headquarters companies, our failure to list Machimpex in the June 18, 1991 initiation notice (56 FR 27943) was an oversight. This omission constituted harmless error, however, See 1989–90 Castings Final, Department's Position in response to Comment 5. The company had notice that its exports were subject to review under the antidumping duty order. Petitioners specifically requested that Machimpex be included within this review. Therefore, Overseas Trade is incorrect in claiming that any portion of Machimpex's exports should be liquidated at the deposit rate. See 19 CFR 353.22(e).

Furthermore, we sent Machimpex a questionnaire without designating a particular branch. On October 16, 1991, we received a letter of appearance for this review from the counsel to Liaoning Machimpex, and on October 25, 1991, Liaoning Machimpex notified the Department's questionnarie issued in this administrative review.

We also agree with petitioners that Liaoning Machimpex has not presented any evidence, during this review or any previous review, of legal, financial, or economic independence from the state-controlled economy of the PRC. The BIA rate of 92.74 percent, therefore, applies to all exports of the subject merchandise by Liaoning Machimpex during the period of review.

Final Results of the Review

As a result of comments received, we have revised our preliminary results, and we determine the margins to be:

Manufacturer/exporter	Period	Margin (percent)
Guangdong Minmetals	5/1/90 to 4/30/91	92.74
All Others	5/1/90 to 4/30/91	92.74

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain iron construction castings from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies and any other company without a company-specific rate will be as listed above; (2) For previously reviewed or investigated companies with company-specific rates not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established or the most recent period for the manufacturer of the merchandise; (4) The cash deposit rate for all other manufacturers or exporters will be 92.74 percent. This rate represents the highest rate for any firm with shipments in this administrative review.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the nest administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occured and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1991).

Dated: June 2, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–13389 Filed 6–5–92; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On February 19, 1992, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico (57 FR 5997). We have now completed that review and determine the total bounty or grant to be zero or *de minimis* for fifty-seven companies and 1.74 percent *ad valorem* for all other companies for the period January 1, 1990 through December 31, 1990.

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 5997) the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20012; May 10, 1982). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Mexico ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000 and 6908.90.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period from January 1, 1990 through December 31, 1990, fifty-eight companies, and the following programs: (1) FOMEX; (2) BANCOMEXT Financing for Exporters:

(3) FOGAIN; (4) PITEX; (5) other BANCOMEXT preferential financing; (6) CEPROFI; (7) import duty reductions and exemptions; (8) state tax incentives; (9) NAFINSA FONEI-type financing; and (10) NAFINSA Fogain-type financing.

Calculation Methodology for Assessment and Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52306, 52325–52326; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits received by the fifty-eight companies subject to review to determine the overall subsidy from all countervailable programs benefitting exports of subject merchandise to the United States. Because the country-wide rate was above *de minimis*, as defined by 19 CFR 355.7, we proceeded to the next step in our analysis and examined the *ad valorem* rate we had calculated for each company for all countervailable programs, to determine whether individual company rates differed significantly from the weighted-average country-wide rate. Fifty-seven companies received aggregate benefits which were zero or *de minimis* (significantly different within the meaning of 19 CFR 355.22(d) (3) (ii)). Therefore, these companies must be treated separately for assessment and cash deposit purposes.

Ceramica Regiomontana's (Ceramica) rate was not significantly different from the weighted-average country-wide rate. Since ceramica was the only company receiving greater than *de minimis* benefits, the all-other rate is based on the unweighted aggregate benefits that Ceramica received from all countervailable programs.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from one respondent, Ceramica.

Comment 1: Ceramica contends that the Department does not have the legal authority to impose countervailing duties on ceramic tile from Mexico and must revoke the countervailing duty order. Effective April 23, 1985, the date of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the Understanding), Mexico became a "country under the Agreement". Therefore, Ceramica argues that 19 U.S.C. 1671 requires an affirmative injury determination as a prerequisite to the imposition of countervailing duties on any Mexican merchandise imported on or after April 23, 1985, regardless of whether the countervailing duty order was published before or after that date.

Ceramica further contends that the Department's failure to revoke this order is inconsistent with past practice. In two previous countervailing duty administrative reviews, Certain Fasteners From India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and Carbon Steel Wire Rod From Trinidad and Tobago; Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order (50 FR 19561; May 9, 1985), where an outstanding countervailing duty order was issued pursuant to 19 U.S.C. 1303(a) without benefit of an ITC injury determination, the Department determined that it did not have the authority to impose countervailing duties when events subsequent to the issuance of the order required an affirmative ITC injury determination prior to imposition of countervailing duties. Since the ITC has indicated that it does not have the legal authority to conduct an injury investigation concerning merchandise already subject to a countervailing duty order, the Department has in the past concluded that it could not impose countervailing duties and revoked, or preliminary determined to revoke, the order effective the date the affirmative injury determination became a requirement. Therefore, the Department should revoke the countervailing duty order on ceramic tile and refund all deposits of estimated countervailing duties by Ceramica during the 1990 review period.

Department's Position: We fully addressed this issue in a previous administrative review of this countervailing duty order. See Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review (55 FR 50744; December 10, 1990). Ceramica has provided neither new evidence nor new arguments that convince us to reconsider our position on this issue.

Comment 2: Ceramica contests the Department's determination that the BANCOMEXT and FOMEX loans taken out by the company were countervailable. The respondent contends that the use of a commercial rate as a benchmark in the Department's calculation is inconsistent with Item (k) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (GATT). Item (k) of the Illustrative List defines an export subsidy as the granting of export credits by governments at interest rates below the cost of funds to the government. BANCOMEXT and FOMEX financing meets the cost to the government standard and therefore does not provide countervailable subsidies.

Department's Position: We disagree. The cost to government standard which defines an export subsidy in Item (k) of the Illustrative List does not limit the United States in applying its own national countervailing duty law to determine the countervailability of benefits bestowed on merchandise exported from Mexico. Certain Textile Mill Products From Mexico; Final Results of Countervailability Duty Order Administrative Review (54 FR 36841, 36843–36844; September 5, 1989) and Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 12175, 12177; March 22, 1991). Because BANCOMEXT and FOMEX loans are limited to exporters, we determine this program is countervailable. Cermica Tile From Mexico; Preliminary Results of Countervailing Duty Review (57 FR 5997; February 19, 1992). When we compared our benchmark with the interest rates reported under the BANCOMEXT and FOMEX financing, we found countervailable benefits.

Comment 3: Ceramica argues that the Department incorrectly treated the benefit from the PITEX program as a grant and thus overstated the company's net benefits. Ceramica claims that after five years the company will have to pay the import duties on all equipment and consumables imported under the PITEX bond. Therefore, the benefit is the deferred payment of import duties and should be treated as an interest-free loan instead of an outright grant.

Department's Position: We disagree. We believe it is more appropriate to treat the Mexican Government's forgiveness of import duties under PITEX as grants, rather than as interest-free loans. PITEX provides qualified exporters with import duty exemptions at the time the machinery is imported for the production of merchandise destined for export, rather than as a deferral contingent on certain export requirements. Under PITEX, the exporters anticipate re-export of the merchandise. As long as the machinery is reexported after five years, PITEX does not require the exporter to reimburse the Mexican Government for any import duties exempted at the time of import. See Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative

Review (56 FR 50858, 50859; October 9, 1991).

If the exporter chooses to keep the machinery as a permanent import, it appears that any reimbursement made to the Mexican Government of import duties previously exempted would not be significant because: (1) Duties are calculated based on the depreciated value of the machinery at the time of conversion; (2) exporters can renew the five-year temporary period and retain the machinery up to ten years prior to converting it to permanent import; and, (3) duties are calculated at the duty rate in effect at the time of conversion, not at the time of import. We note that duty rates in Mexico have been decreasing steadily over the last six years, further reducing any duty liabilities under PITEX. Under these circumstances, there is a strong likelihood that the duties due at the time of conversion would be zero. *Id.* For these reasons, duty exemptions under PITEX are properly treated as grants and we expensed them in full at the time of importation, when the exporters otherwise would have paid duties on the imported machinery. *Id.*; Final Negative Countervailing Duty Determination; Silicon Metal From Brazil (56 FR 26988; June 12, 1991). See also Notice of Proposed Rulemaking and Request for Public Comments § 355.48(b)(6) (54 FR 23366, 23384; May 31, 1989).

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be zero or *de minimis* for fifty-seven companies and 1.74 percent *ad valorem* for all other companies for the period January 1, 1990 through December 31, 1990.

The following 57 companies received zero or *de minimis* benefits during the period of review:

(1) Agustin Cedillo Ruiz
(2) Alejandro Estrada
(3) Antonio Avila
(4) Apolonio Arias
(5) Aurelio Cedillo Ruiz
(6) Azulejos Orion
(7) Barros Tlaquepaque
(8) Casimiro Chavez
(9) Eduardo Garcia de la Pena
(10) Emilio Pacheco
(11) Faustino Nuncio
(12) Fernando Espinoza Sanchez
(13) Francisco Gomez
(14) Francisco Rincon
(15) Gergorio Bustos
(16) Guadalupe Avila
(17) Industrias Intercontinental
(18) Inocencio Leija
(19) J. Garza Arocha
(20) Jesus Flores
(21) Jesus Gallegos Olivares
(22) Jesus Hernandez Tovar
(23) Jesus Jimenez
(24) Jose Antonio Mata
(25) Jose Arellano Valdez
(26) Jose Dolores Hernandez
(27) Jose Refugio Silva
(28) Jose Silva Romero
(29) Juan Cortez Coronel
(30) Juan Rodriguez Rocha
(31) Julio Coronado
(32) Julio Jimenez
(33) Julio Ulloa Rodriguez
(34) Ladrillera La Luz
(35) Ladrillera Monterrey
(36) Leoncio Sanchez
(37) Leopoldo Montiel Rincon
(38) Materiales Rodriguez
(39) Matias Barajas
(40) Matias Reyes
(41) Norberto Cuellar
(42) Pedro Aguilar
(43) Pedro Hernandez
(44) Pedro Lopez Alonso
(45) Pisos Coloniales de Mexico
(46) Ramon Medina
(47) Ramon Torres Avila
(48) Raul Leija
(49) Reynol Martinez Chapa
(50) Ricardo Padilla
(51) Roberto Elizondo
(52) Ruben Cuellar
(53) Sotero Jalomo Reyna
(54) Teofilo Covarrubias
(55) Tranquilino Flores
(56) Vicente Jalomo Reyna
(57) Zenon Cortez Coronel

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 57 companies listed above and to assess countervailing duties of 1.74 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies exported on or after January 1, 1990 and on or before December 31, 1990.

The Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Act, on shipments of this merchandise from the 57 companies listed above and to collect a cash deposit of estimated countervailing duties of 1.61 percent of the f.o.b. invoice price on shipments from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. The decrease in the cash deposit rate for all other companies is due to the termination of the FOMEX program. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 2, 1992

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-13390 Filed 6-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-421-601]

Standard Chrysanthemums From the Netherlands; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review of the countervailing duty order on standard chrysanthemums from the Netherlands for the period January 1, 1990 through December 31, 1990 (57 FR 9539). We have now completed that review and determine the net subsidy to be 0.37 percent *ad valorem*.

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 9539) the preliminary results of its administrative review of the countervailing duty order on standard chrysanthemums from the Netherlands (52 FR 7646; March 12, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Dutch standard chrysanthemums. During the review period, such merchandise was classifiable under item number 0603.10.7020 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990, and nine programs.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from the respondents.

Comment: Vereniging Van Bloemenveilingen in Nederland and the Bedrijfschap voor de Groothandel in Bloemkwekeriproduckten, state that the Department incorrectly calculated the benefit from the Glasshouse Enterprise Program. They allege that the Department included in its calculations both the gross disbursed grant amounts and the net grant amounts after adjustment for partial returns of grants previously disbursed. They also contend that the Department should only use the net grant amounts to calculate the benefit from this program.

Department's Position: We reviewed our calculations and confirmed that we had used both the gross disbursed grant amounts and the net grant amounts to calculate the benefit from the Glasshouse Enterprise Program. In the preliminary results, we calculated the net grants amounts based on data in a prior review period. After re-examination of our calculation, we determined that it is appropriate to use the gross disbursed grant amounts as submitted in the questionnaire response since we were not provided in this period of review with the information necessary to derive the net grant amounts, such as partial returns of grants previously disbursed. Therefore, we have adjusted our calculations accordingly. On this basis, we determine the benefit from this program to be 0.32 percent *ad valorem*.

Final Results of Review

As a result of our review, we determine the total net subsidy to be 0.37 percent *ad valorem* for all exports of the subject merchandise during the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the Netherlands exported on or after January 1, 1990 and on or before December 31, 1990. The Department will also instruct the Customs Service to waive the collection of cash deposits of estimated countervailing duties on all shipments of the subject merchandise from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 29, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-13391 Filed 6-5-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, DOC.

ACTION: Issuance of emergency permit; Fish Passage Center, (P500).

On May 12, 1992, notice was published in the **Federal Register** (57 FR 20246) that an application had been filed by the Fish Passage Center, 2501 SW. First Ave., suite 230, Portland, OR 97201-4752, to take Snake River Sockeye salmon (*Oncorhynchus nerka*) and Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) for the purposes of scientific research and enhancement.

Notice is hereby given that on May 29, 1992, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued an emergency Permit for the above taking subject to certain conditions set forth therein.

Issuance of this emergency Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This emergency Permit was also issued in accordance with and is subject to parts 220-222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits. This emergency Permit will be valid only until July 31, 1992, or until supeseded by a decision on the application, whichever comes first.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713-2289);

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE. BIN C15700—Building 1, Seattle, WA 98115-0070 (206/526-6150); and

Environmental and Technical Services Division, National Marine Fisheries Service 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: May 29, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-13263 Filed 6-5-92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, DOC.

ACTION: Issuance of emergency permit; U.S. Army Corps of Engineers (Corps), (P504).

On May 12, 1992, notice was published in the **Federal Register** (57 FR 20247) that an application had been filed by the U.S. Army Corps of Engineers (Corps), Walla Walla District, Walla Walla, WA 99362-9265, to take Snake River Sockeye salmon (*Oncorhynchus nerka*) and Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) for the purposes of scientific research and enhancement.

Notice is hereby given that on May 29, 1992, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued an emergency Permit for the above taking subject to certain conditions set forth therein.

Issuance of this emergency Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This emergency Permit was also issued in accordance with and is subject to parts 220-222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits. This emergency Permit will be valid only until July 31, 1992, or until superseded by a decision on the application, whichever comes first.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries

Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289);

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE. BIN C15700—Building 1, Seattle, WA 98115–0070 (206/526–6150); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: May 29, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–13264 Filed 6–5–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of public display permit no. 784.

SUMMARY: On Friday, March 27, 1992, notice was published in the **Federal Register** (57 FR 10650) that an application (P508) had been filed by Zoo Parquesam, Parques de Fuengirola, Camino Jose Cela, Malaga, Spain 29640. A public display permit was requested to obtain the care and custody of two (2) male California sea lions (*Zalophus californianus*) from captive stock, currently in the custody of the Marine Mammal Center, Sausalito, CA.

Notice is hereby given that on May 29, 1992, as authorized by the provisions of the Marine Mammal Protection Act, the National Marine Fisheries Service issued a permit for the above activities subject to the special conditions set forth therein.

The permit is available for review by appointment by interested persons in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7330, SSMC1, Silver Spring, MD 20910, (301) 713–2289; and

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802, (310) 980–4001.

Dated: May 29, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources.

[FR Doc. 92–13265 Filed 6–5–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

June 2, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 347/348 is being increased for special shift and swing, reducing the limits for Categories 314 and 647/648 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1905, published on January 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 2, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 13, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on June 9, 1992, you are directed to amend the directive dated January 13, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
314	4,894,447 square meters.
347/348	448,586 dozen.
647/648	536,231 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–13316 Filed 6–5–92; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Rule Amendment Relating to Records for Orders and Personal Transactions During Regular Trading Hours

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule amendment.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a proposed rule amendment to the Commodity Futures Trading Commission for review. The purpose of the rule amendment is to exempt certain institutional users of the market from the requirement that all customer orders include the customer's account designation at the time of execution

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of the proposed rule amendment is in the public interested and will assist the

Commission in considering the views of interested persons Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule amendment for public comment.

DATES: Comments must be received on or before July 8, 1992.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: By letters dated February 24, 1992 and May 7, 1992, the CME submitted a proposed amendment to Exchange Rule 536 under section 5a(12) of the Commodity Exchange Act ("Act") [1] Currently under exchange rule 536, every order received from a customer must be in writing at the time of execution and must include the customer's account designation. The Exchange has represented that orders entered on behalf of highly capitalized and sophisticated entities may be adversely affected by the rule. Specifically, the Exchange states that account managers that manage more than one account and use futures as part of an overall strategy to hedge securities portfolios have expressed concern that the rule is inconsistent with the manner in which futures are used to hedge securities portfolios, the goal of treating all accounts fairly, and the requirements in the securities markets which permit an account advisor to transmit orders throughout the day and communicate the account designation at the end of the day. The CME represents that the proposed rule amendment is intended to address these issues.

The proposed CME rule amendment exempts certain orders from the customer account designation requirement at the time of execution, provided specified conditions are met. Eligible orders would include orders entered by Investment Advisors registered with the Securities and Exchange Commission pursuant to the Investment Advisors Act of 1940, banks, insurance companies, trust companies and savings and loan associations subject to federal or state regulation. Additionally, such orders that did not include the account designation prior to execution could only be allocated to certain specified sophisticated institutional accounts.

Acting pursuant to the authority delegated pursuant to Commission Regulation 140.96, the Director of the Division of Trading and Markets, with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of the proposed rule amendment is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule amendment for public comment. The Commission requests comments on any aspects of the proposed rule amendment that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the CME submissions are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies may also be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested is submitting written data, views, or comments on the proposed rule amendment should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on June 1, 1992.

Alan L Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 92–13310 Filed 6–5–92; 8:45 am]

BILLING CODE 6351–01–M

[1] The CME also submitted, by letter dated February 24, 192, a petition for rulemaking pursuant to Commission Regulation 13.2 to amend Commission Regulation 1.35(a–1).

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DFARS 252.228–7006, Subcontractor Requests for Payment Bonds.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 30 minutes.

Responses Per Respondent: 10.

Number of Respondents: 5,000.

Annual Burden Hours: 25,000.

Annual Responses: 50,000.

Needs and Uses: This requirement provides for the collection of information from contractors who are awarded DoD construction contracts which are subject to the Miller Act (40 U.S.C. 270a–270d). The information collection requires these contractors to provide a copy of their payment bond when requested to so so by current or prospective subcontractors/suppliers.

Affected Public: Businesses or other for-profit organizations; small businesses or organizations.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written request for copies of the information collection proposals should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia, 22202–4302.

Dated: June 3, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 92–13320 Filed 6–5–92; 8:45 am]

BILLING CODE 3810–01–M

The Joint Staff; National Defense University Board of Visitors

AGENCY: National Defense University, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors.

DATES: The meeting will be held between 0800–1200 and 1330–1530 on 19 June 1992.

ADDRESS: The meeting will be held in the Command Conference Room, Marshall Hall, Building 62, Fort Lesley J. McNair.

FOR FURTHER INFORMATION CONTACT: The Director, University Plans and Programs, National Defense University, Fort Lesley J. McNair, Washington, DC 20319–6000. To reserve space, interested person should phone (202) 287–9418/16.

SUPPLEMENTARY INFORMATION: The agenda will focus on updates of major University elements, progress on accreditation and degree granting, and a

general review of the University during Admiral Baldwin's tenure.

Dated: June 3, 1992

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 92-13318 Filed 6-5-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Renewal of the Department of Defense Information School Board of Visitors

ACTION: Notice.

SUMMARY: The Department of Defense Information School (DINFOS) Board of Visitors was renewed for a two-year period, effective May 27, 1992, in consonance with the public interest, in accordance with the provisions of Public Law 92-463, the "Federal Advisory Committee Act."

The DINFOS Board of Visitors provides timely and expert advice to the Secretary of Defense and the Assistant Secretary of Defense for Public Affairs regarding promoting excellence in public affairs training. The Board is an external source of journalistic and communications media expertise which acts as an important bridge between the DINFOS and the media professional communities, and ensures continued reflection on the objectives, operations, and policies of the School.

Continued efforts are made to ensure that the Board has a well-balanced membership comprised of individuals from the journalistic and communications media fields, and from diverse sectors such as, academic institutions, public media research firms, network news companies, and national newspapers/publications.

For further information on the DINFOS Board of Visitors, contact: Mr. Tom Green, Armed Forces Information Service, (703) 274-4897.

Dated: June 3, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-13319 Filed 6-5-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of membership of the DIA Performance Review Committee (PRC).

SUMMARY: This notice announces the appointment of the PRC of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service (DISES). Publication of the PRC membership is required by 10 U.S.C. 1601 (a)(4).

The PRC provides fair and impartial review of Defense Intelligence Senior Executive Service (DISES) performance appraisals and makes recommendations regarding performance, performance awards, and as applicable, recertification to the Director, Defense Intelligence Agency.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Human Resources Manager, Policy and Program Division, Directorate for Human Resources, Defense Intelligence Agency (RHR-5), 3100 Clarendon Boulevard, Arlington, VA 22201-5322, (703) 284-1341.

PRIMARY MEMBERS: Mr. Dennis M. Nagy, Deputy Director (Chairman); Mr. A. Denis Clift, Chief of Staff; Mr. Michael F. Munson, Director, Intelligence Program Support Group; Mr. Joseph J. Romano, Deputy Director for Foreign Intelligence; Mr. Steven T. Schanzer, Director for Information Systems.

ALTERNATE MEMBERS: Mr. Geoffrey H. Langsam, Director for Collection and Imagery Activities; Mr. John J. Sloan, Director, Policy Issues Staff; Mr. Robert E. Martin, Director, Office for Systems Operations.

Dated: June 3, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-13317 Filed 6-5-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology to Support Force Projection: Global Reach—Global Power will meet on 13-24 July 1992, at the Naval Command, Control and Ocean Surveillance Center, Research, Development Test and Evaluation Division (NRAD), from 8 a.m. to 5 p.m..

The purpose of this meeting is to gather information for Summer Study Final Report.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-13392 Filed 6-5-92; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995-2020 (Architecture Committee) will meet on 23 June 1992, at ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA, 8 a.m. to 5 p.m.

The purpose of this meeting is to discuss status of Summer Study Reports and future activities.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-13393 Filed 6-5-92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

May 28, 1992

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

Notice of Application Tendered for Filing with the Commission.

a. *Type of Application:* Minor License.

b. *Project No.:* 10881-001.

c. *Date filed:* April 24, 1992.

d. *Applicant:* Daniel Nelson Evans, Jr.

e. *Name of Project:* Whitney Mills.

f. *Location:* On the Lawson's Fork Creek, Spartanburg County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Daniel Nelson Evans, Jr., 212 Range Road, Kings Mountain, NC 28086, (704) 739-9710.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219-2811.

j. *Comment Date:* Within 60 days of the date filed shown in paragraph (c).

k. *Description of Project:* The existing inoperative project would consist of: (1) A 296–foot-long, 25-foot-high masonry and stone dam; (2) a 4-acre reservoir; (3) two buried 60-foot-long penstocks; (4) a powerhouse with an installed capacity of 225-kW; and (5) appurtenant facilities. Applicant proposes to rehabilitate the existing facilities and would reinstall a short transmission line.

l. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days after the application is filed and serve a copy of the request on the applicant.

Lois D. Cashell,
Secretary.

[FR Doc. 92–13268 Filed 6–5–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TQ92–3–1–000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 2, 1992.

Take notice that on May 29, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet.

Thirtieth Revised Sheet No. 4

The tariff sheet is proposed to become effective July 1, 1992. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers and to reflect certain transportation costs as purchased gas costs as permitted under the Commission's order issued on February 7, 1992 in Docket No. RP92–87–000 (58 FERC 61,130). Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commission.

Any person desiring to be hear or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 or rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Louis D. Cashell,
Secretary.

[FR Doc. 92–13344 Filed 6–5–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. G–9885–001, et al.]

Chevron U.S.A. Inc. et al.; Applications for Termination or Amendment of Certificates [1]

June 2, 1992.

Take notice that each of the Applicants listed here filed an application under section 7 of the Natural Gas Act for authorization to terminate or amend certificates or to abandon service as described herein, all as more fully describe in the respective applications which are on file with the Commission and open for public inspection.

To be heard or to protest these applications a person must file a petition to intervene or a protest on or before June 16, 1992. A person filing a petition to intervene or a protest must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All petitions to intervene or protests must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make protestants parties to a proceeding. A person wanting to be a party to a proceeding or to particiapte as a party in a hearing must file a petition to intervene.

Under the procedure provided for here, unless otherwise advised, the Applicant will not have to appear or be represented at any hearing.

Lois D. Cashell,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G–9885–001 D March 30, 1992.	Chevron U.S.A. Inc., 1301 McKinney, Houston, TX 77010.	Texas Eastern Transmission Corporation, Southwest Helen Gohlke Field, Victoria County, Texas.	Assigned August 20, 1991 to Valence Operating Company.
CI61–1461–001 D March 11, 1992.	Meridian Oil Production Inc, 2919 Allen Parkway, Suite 900, Houston, TX 77019.	Colorado Interstate Gas Company, Monell, Arch and Higgins Units, Sweetwater County, Wyoming.	Assigned November 25, 1991 to Union Pacific Resources Company.
CI92–29–000 (CI73–232) D March 9, 1992.	BHP Petroleum (Americas) Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Transcontinental Gas Pipeline Corporation, Cook Ranch Field, LaSalle County, Texas.	Assigned April 1, 1991 to Floyd Oil Company and Cheyenne Partners IV, Ltd.
CI92–31–000 (CI73–235) D March 9, 1992.	BHP Petroleum (Americas) Inc.....	Transcontinental Gas Pipeline Corporation, Stuart City Field, LaSalle County, Texas.	Assigned April 1, 1991 to Floyd Oil Company and Cheyenne Partners IV, Ltd.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 92–13329 Filed 6–5–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM92-3-2-000]

East Tennessee Natural Gas Co.; Rate Filing

June 2, 1992.

Take notice that on May 29, 1992, East Tennessee Natural Gas Company ("East Tennessee"), tendered for filing revisions to the Fifth Revised Sheet No. 6 of First Revised Volume No. 1 of its FERC Tariff, to be effective on July 1, 1992.

East Tennessee Natural Gas Company states that on May 29, 1992, East Tennessee Natural Gas Company's (East Tennessee) upstream supplier, Tennessee Gas Pipeline Company (Tennessee), filed certain revised tariff sheets in Docket No. RP92-182, to adjust recovery of transition costs pursuant to Commission Order Nos. 528 and 528-A and the terms and conditions of its FERC Gas Tariff. The purpose of the instant filing is to revise East Tennessee's tariff in order to track Tennessee's May 29, 1992, filing. East Tennessee states that the instant tariff sheets reflect (i) the allocation of additional fixed take-or-pay charges billed to East Tennessee by Tennessee in the amount of $44,658, (ii) customers payments through June 30, 1992, and (iii) the reduction in carrying charges utilized to compute the future amortization due to a decrease in interest rates, for an overall decrease in the monthly Demand Rate Surcharge.

East Tennessee requests the Commission to waive § 28.2(a)(2) of its FERC Gas Tariff in order to allow the amortization of the new transition costs over the remaining amortization period which began on May 1, 1991. East Tennessee states that an extension of the amortization period is not necessary since the filing results in an overall decrease in monthly Demand Rate Surcharges as well as the fact that the instant filing will have a *de minimis* impact on the monthly surcharge level.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13336 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-2-000]

East Tennessee Natural Gas Co.; Rate Filing

June 2, 1992.

Take notice that on May 29, 1992, East Tennessee Natural Gas Company ("East Tennessee"), submitted for filing ten copies each of Twenty Second Revised Nos. 4 and 5 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1992.

East Tennessee states that the purpose of the filing is to implement a Quarterly Gas Rate Adjustment to be effective for the period July 1 through September 30, 1992, pursuant to § 21.1(b) of the General Terms and Conditions of East Tennessee's FERC Gas Tariff.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13345 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-178-000]

Florida Gas Transmission Company; Petition of Florida Gas Transmission Company for Limited Waiver of Tariff Provisions

June 2, 1992.

Take notice that on May 29, 1992, Florida Gas Transmission Company ("FGT"), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. RP92-178-000 a petition requesting authorization for waivers of Federal Energy Regulatory Commission's ("F.E.R.C." or "Commission") policy, Commission regulations, and FGT's F.E.R.C. Gas Tariff to the extent necessary to allow FGT to add a new delivery point to the existing Service Agreement for firm transportation service between FGT and West Florida Natural Gas Co. ("West Florida"), while permitting West Florida to maintain its exising priority in FGT's first-come, first-served queue.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same end-user, (ii) the new delivery point will be located in the same geographic location as an existing delivery point at which FGT presently serves West Florida, and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 9, 1992 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or protest in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR and 385.211 and 385.214). Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13332 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 2, 1992.

Take notice that on May 29, 1992 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective June 1, 1992:

Twenty-Seventh Revised Sheet No. 8

FGT states that the above-referenced tariff sheet is being filed to reflect an increase in FGT's cost of gas purchased from that level reflected in its last Quarterly PGA filing effective May 1, 1992 in Docket No. TQ92-3-34-000.

On April 30, 1992, FGT made a compliance filing in its Quarterly PGA in Docket Nos. TA92-1-34-000, TA92-1-34-001 and TQ92-3-34-000 containing a projected cost of purchased gas for the period May 1, 1992 through July 31, 1992 of $1.9230/MMBtu saturated. Subsequent to the Quarterly filing, FGT has experienced an increase in its cost of purchased gas to a level that now exceeds the level of purchased gas cost established in FGT's last Quarterly PGA. However, FGT is precluded from adjusting its rates under § 15.10 (Interim Adjustment Filings) of its FERC Gas Tariff to reflect a level of gas cost that exceeds the level established in its last Quarterly PGA filing. Therefore, FGT is making the instant Out-of-Cycle PGA filing in order to reflect the increases in its cost of purchased gas to a level of $2.0374/MMBtu saturated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13340 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-000]

Great Lakes Gas Transmission Limited Partnership; Rescheduling of Informal Settlement Conference

June 2, 1992.

Take notice that at the request of Great Lakes Gas Transmission Limited Partnership (Great Lakes), the informal settlement conference previously scheduled for June 3d and 4th, 1992, has been rescheduled for June 16th and 17th, 1992, at 10 a.m., to permit a greater number of parties to attend. Great Lakes will notify the active parties timely by telephone of this change.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13331 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-5-000]

Midwestern Gas Transmission Co.; Rate Filing

June 2, 1992.

Take notice that on May 29, 1992, Midwestern Gas Transmission Company ("Midwestern"), tendered for filing the Thirty-Fifth Revised Sheet No. 5 to be effective on July 1, 1992.

Midwestern states that the purpose of this filing is to reflect a quarterly PGA rate adjustment to its sales rates for the period July 1, 1992 through September 30, 1992. The current Purchased Gas Cost Adjustments reflected in the enclosed tariff sheet consist of a $.1609 per dekatherm adjustment applicable to the gas component of Midwestern sales' rates, and a $.02 per dekatherm adjustment to the demand component. Midwestern further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13343 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-11-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

June 2, 1992.

Take notice that on May 29, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Seventy-Seventh Revised Sheet No. 4, and Thirty-Sixth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective June 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Seventy-Seventh Revised Sheet No. 4 and Thirty-Sixth Revised Sheet No. 4.1 reflect an increase of 48.57 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective June 1, 1992, in Docket No. TA92-1-25-000. MRT also states that since the April 1, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be head or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13342 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-177-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 2, 1992.

Take notice that Northern Border Pipeline Company (Northern Border), on May 29, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. Northern Border projects that the proposed changes will increase jurisdictional revenues by $13.0 million during the first year that such changes are in effect.

As a result of the Commission's Order dated July 30, 1990 in Northern Border's previous rate case at Docket No. RP89-33-000, Northern Border was authorized to earn an Operation Phase Rate (OPR) which averaged a return on equity of 12.8 percent over the three (3) year time period ended May 31, 1992. By this filing, Northern Border is proposing to return to an OPR of 14.5% which was the authorized OPR for the first ten months of the rate period in Docket No. RP89-33. For the twelve months ending June 30, 1993, this requested OPR equates to a pre-tax return of 13.31 percent. Northern Border is also proposing to increase the provision in 426.1, Donations, not to exceed $50,000 a year plus the Company's matching of contributions made by the Operator's employees and, to allocate interest expense, used in the calculation of income taxes, on a ratio of debt to total capitalization. Finally, Northern Border requests approval to recover increased expenses resulting from the implementation of FASB 106, "Employers Accounting for Postretirement Benefits Other Than Pension" by the Operator's parent company effective January 1, 1993.

Northern Border proposes an effective date for this filing of July 1, 1992. Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13335 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-9-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 2, 1992.

Take notice that Northern Natural Gas Company, (Northern), on May 29, 1992, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $2.2059 per MMBtu to be effective July 1, 1992, through September 30, 1992.

Also the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. Such required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new Demand rate component of $7.910 per MMBtu. This rate will be effective July 1, 1992 through September 30, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13339 filed 6-5-92;8:45]

BILLING CODE 6717-01-M

[Docket No. TQ92-8-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff June 2, 1992.

Take notice that Northern Natural Gas Company (Northern), on May 29, 1992 tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing Requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $1.9559 per MMBtu to be effective June 1 through June 30, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13341 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-7-000]

Southern Natural Gas Company; Proposed Changes to FERC Gas Tariff

June 2, 1992.

Take notice that on May 29, 1992, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

One Hundred Eighteenth Revised Sheet No. 4A
Thirty-First Revised Sheet No. 4B
Thirty-Seventh Revised Sheet No. 4J

The proposed tariff sheets and supporting information are being filed with a proposed effective date of July 1, 1992 and reflect approximately the same

commodity cost of purchased gas as contained in Southern's last scheduled PGA filing in Docket No. TA91-1-7-000, and changes in Southern's demand rates for Zones 1, 2, and 3 of ($.069), $.035, and ($.018) per Mcf, respectively, resulting from utilization of the most recent 3-day peak.

Southern states that copies of the filing were served upon Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13338 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-181-000]

Tennessee Gas Pipeline Company; Tariff Filing of Changes in Rates

June 2, 1992.

Take notice that on May 29, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing changes in its FERC Gas Tariff to rates for service under Rate Schedule NET-Northeast to be effective July 1, 1992, consisting of the following revised tariff sheet:

Third Revised Volume No. 1
Fourth Revised Fifth Revised Sheet No. 30

Tennessee states that the rate change for Rate Schedule NET-Northeast is necessary to reflect an updated analysis of the costs that will be incurred to render the new service, relying largely on actual experience, rather than the outdated estimated costs on which the rates presently in effect are based. Tennessee states that it also seeks to conform the design of the Rate Schedule NET-Northeast rates to current Commission policy.

Tennessee requests in the alternative, and to the extent appropriate, that the Commission, pursuant to section 7 of the Natural Gas Act, amend the initial rates established by the Commission in its orders certificating the Rate Schedule NET-Northeast facilities and services prior to the date that the associated facilities are placed into service.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13333 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-182-000]

Tennessee Gas Pipeline Co.; Rate Change Pursuant to Tariff Adjustment Provisions

June 2, 1992.

Take notice that on May 29, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets to adjust its recovery of transition costs pursuant to Article XXX of the General Terms and Conditions of Volume No. One of its FERC Gas Tariff effective June 1, 1992 and July 1, 1992 respectively:

Third Revised Volume No. 1

Effective June 1, 1992

Eighth Revised Sheet No. 20
Second Revised Sheet No. 20A
Eighth Revised Sheet No. 21
Second Revised Sheet No. 21A
Fourth Revised Sheet No. 24
First Revised Sheet No. 24A
Fifth Revised Sheet No. 25
First Revised Sheet No. 25A
Fifth Revised Sheet No. 26
First Revised Sheet No. 26A
Second Revised Fifth Revised Sheet No. 30

Effective July 1, 1992

Ninth Revised Sheet No. 20
Third Revised Sheet No. 20A
Ninth Revised Sheet No. 21
Third Revised Sheet No. 21A
Fifth Revised Sheet No. 24
Second Revised Sheet No. 24A
Sixth Revised Sheet No. 25
Second Revised Sheet No. 25A
Sixth Revised Sheet No. 26
Second Revised Sheet No. 26A
Third Revised Fifth Revised Sheet No. 30
Fifth Revised Sheet No. 38
Fifth Revised Sheet No. 39
Fifth Revised Sheet No. 40
Fifth Revised Sheet No. 41
Fifth Revised Sheet No. 42

Tennessee states that the purpose of this filing is to adjust Tennessee's transition cost demand and commodity surcharges effective July 1, 1992 to reflect the recovery of an additional $2.2 million of new transition costs, which have been allocated under an equitable sharing formula of 25% absorption-25% demand-50% volumetric resulting in revised demand and volumetric surcharges under Article XXX of its tariff, and to terminate its existing transition cost Volumetric Surcharge effective June 1, 1992 in accord with section 4.7 of Article XXX.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 9, 1992, file with the Federal Energy Regulatory Commission, 825 Capitol Street, NE., Washington, DC 20426, a motion to intervene a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214 of the Regulations under the Natural Gas Act 18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13334 Filed 6-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-5-49-000]

Williston Basin Interstate Pipeline Company; Annual Take-or-Pay Reconciliation Filing

June 2, 1992.

Take notice that on May 29, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, tendered for filing its Annual Take-or-Pay Reconciliation Filing pursuant to Sections 32 and 33 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. More specifically, Williston Basin filed the following Primary tariff sheets:

First Revised Volume No. 1

1st Rev 43rd Revised Sheet No. 10
Fourth Revised Sheet No. 122
Second Revised Sheet No. 123i

Original Volume No. 1–A

1st Rev 36th Revised Sheet No. 11
1st Rev 41st Revised Sheet No. 12

Original Volume No. 1–A

1st Rev 31st Revised Sheet No. 10
1st Rev 31st Revised Sheet No. 11

Original Volume No. 2

1st Rev 43rd Revised Sheet No. 10
1st Rev 37th Revised Sheet No. 11B

Williston Basin has requested that the Commission accept this filing to become effective July 1, 1992.

Williston Basin states that the revised Primary tariff sheets are being filed to reflect recalculated fixed monthly surcharges and a revised throughput surcharge to be effective during the period July 1, 1992 through June 30, 1993 pursuant to the procedures contained in sections 32 and 33 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, First Revised Volume No. 1 and Commission Orders dated March 12, 1992 and April 21, 1992 in Docket Nos. RP90–137–001 and 003 and RP91–56–000. This filing reflects a revised total througput surcharge of 12.181 cents per dkt applicable to all sales and transportation volumes.

The instant filing also contains Alternate tariff sheets to be effective only if the Commission makes the Company's alternate rates filed in Docket No. RP92–163–000 effective prior to July 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13337 Filed 6–5–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–53–NG]

Panda Resources, Inc.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on April 16, 1992 by Panda Resources, Inc. (Panda), requesting blanket authorization to import up to 100 Bcf of natural gas from Canada over a two-year period beginning with the date of first delivery. Panda intends to use existing facilities, and will submit quarterly reports of its transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 8, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

C. Frank Duchaine, Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Panda, a Kansas corporation with its principal place of business in Tulsa, Oklahoma, is an independent marketer of natural gas. Panda proposes to import gas, acting either on its own behalf or as an agent for others, for sale to a variety of purchasers in U.S. markets, including commercial and industrial end-users, utility customers, pipelines and distribution companies. The terms of the supply contracts will be negotiated in response to market conditions.

The decision on the request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties should comment on the issue of competitiveness as set forth in the policy guidelines. Panda asserts its proposed import transactions will be competitive. Parties opposing Panda's request for import authorization bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file

additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Panda's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 2, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–13375 Filed 6–5–92; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. FE C&E 92–08; Certification Notice—101]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Saranac Energy Company, Inc.,* Houston, Texas	05-18-92	Topping Cycle	240	Plattsburgh, NY.

* This certification supersedes Saranac's 1990 filing for an 80 MW facility for the same site which appeared in the FEDERAL REGISTER on April 23, 1990 (55 FR 15285)

Amendments to the FUA on May 21, 1987 (Public Law 100–42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

This self-certification may be reviewed in the Office of Fuels Program, Fossil Energy, room 3–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, or for further information call Myra Couch at (202) 586–6769.

Issued in Washington, DC on June 2, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–13376 Filed 6–5–92; 8:45 am]

BILLING CODE 6450–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Tuesday, June 23, 1992, from 9:30 a.m. to 12 noon. The meeting will be held at Eximbank in room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Advisory Committee Comment on Competitiveness Report; Subcommittee Reports: Small Business, Credit Reform, Latin America, EE/CIS, FCIA; and next steps/other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Chere Sublett, room 1238, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8345, not later than June 22, 1992. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 17, 1992, Chere Sublett, room 1238, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566–8345 or TDD: (202) 535–3913.

FURTHER INFORMATION: For further information, contact Chere Sublett, room 1238, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8345.

Chere Sublett,

Special Assistant to the Vice Chairman.

[FR Doc. 92–13479 Filed 6–5–92; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Port of Oakland/Trans Pacific Container Service Corp.; et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1110 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200563–001.

Title: Port of Oakland/Trans Pacific Container Service Corporation Nonexclusive Preferential Agreement.

Parties: The Port of Oakland, Trans Pacific Container Service Corporation.

Synopsis: The Agreement provides for: (1) The deletion of a 253 square foot area from the Assigned Premises as provided for under the basic Agreement; (2) procedures relating to the possible future adjustment of the boundary of the Assigned Premises to allow for an extension of the east end of the wharf on adjacent leased terminal premises; and (3) a technical correction to the definition of "Costs of the Project".

Agreement No.: 224–200669.

Title: Maryland Port Administration and Ceres Marine Terminal, Inc., Lease Agreement.

Parties: The Maryland Port Administration ("MPA"), Ceres Marine Terminal, Inc. ("CERES").

Synopsis: The Agreement provides for MPA to lease to Ceres an 88.61 acre tract of land and Shed 8 at Dundalk Marine Terminal for five years.

Agreement No.: 232–011283–002.

Title: Nippon Yusen Kaisha and Hyundai Merchant Marine Co., Ltd. Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades.

Parties: Nippon Yusen Kaisha, Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment extends the expiration of the Agreement from July 16, 1992 to December 31, 1992, and permits either party to terminate the Agreement prior to the expiration date upon 60 days' prior written notice to the other party.

By order of the Federal Maritime Commission.

Dated: June 2, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13271 Filed 6–5–92; 8:45 am]

BILLING CODE 6730–01–M

Pacific Coast/American Samoa Rate Agreement; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 5 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may respect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.6 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 002–010893–005.

Title: Pacific Coast/American Samoa Rate Agreement.

Parties: South Seas Steamship Company, Blue Star Pace Ltd., Polynesia Line Ltd.

Filing Party: R. Federic Fisher, Esq., Lillick & Charles, Two Embarcadero Center, San Francisco, California 94111–3996.

Synopsis: The proposed amendment expands the scope of the Agreement to include Tahiti. It also modifies the authority of the Agreement to permit the parties to only discuss and reach an agreement on matters concerning the trade from the U.S. West Coast to Tahiti. Adherence to any such agreement reached would be voluntary.

By order of the Federal Maritime Commission.

Dated: June 2, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13275 Filed 6–5–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Old Kent Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to engage *de novo* in offering full-service brokerage services, through Old Kent Brokerage Services, Inc. The Board recently has added this activity to Regulation Y as an activity permissible for bank holding companies.

Board of Governors of the Federal Reserve System, June 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13312 Filed 6-5-92; 8:45 am]

BILLING CODE 6210-01-F

Dale Earney Pahlke, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dale Earney Pahlke to acquire 36.38 percent, Raymond Edward Reich to acquire 24.88 percent, and Stanley Harold Sayer to acquire 17.15 percent, all located in Hebron, North Dakota, of the voting shares of Hebron Bancshares, Inc., and thereby indirectly acquire Security Bank of Hebron, both located in Hebron, North Dakota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Jose Maria Ramirez, Jr., San Ygnacio, Texas; to acquire an additional 10.38 percent, for a total of 21.20 percent, of the voting shares of Zapata Bancshares, Inc., Mercedes, Texas, and thereby indirectly acquire Mercedes National Bank, Mercedes, Texas, and Zapata National Bank, Zapata, Texas.

Board of Governors of the Federal Reserve System, June 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13311 Filed 6-5-92; 8:45 am]

BILLING CODE 6210-01-F

United Community Banks, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 2, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. United Community Banks, Inc., Blairsville, Georgia; to acquire 100 percent of the voting shares of Mountain Bank of Georgia, Hiawassee, Georgia.

Board of Governors of the Federal Reserve System, June 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13313 Filed 6-5-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to reflect changes in chapter HN (National Institutes of Health) and chapter HA (Office of the Assistant Secretary for Health). These changes will restructure and strengthen the PHS research integrity program.

Specifically, the statement for the National Institutes of Health (NIH) (40 FR 22859, May 27, 1975, as amended most recently at 56 FR 61259, December 2, 1991) is amended to abolish the Office of Scientific Integrity (HNAC) in the Office of the Director, NIH, and transfer its functions to the Office of the Assistant Secretary for Health.

The statement for the Office of the Assistant Secretary for Health (OASH) (42 FR 61318, December 2, 1977 as amended most recently at 57 FR 15326-7, April 27, 1992) is amended to (1) establish an Office of Research Integrity (HAG) with two components, the Division of Policy (HAG2) and the Division of Research Integrity Assurance (HAG3), and (2) abolish the Office of Scientific Integrity Review (HA4)/OASH.

The Food and Drug Administration, because of its special responsibilities as a regulatory agency and its extensive investigative capacity, will continue to conduct its own investigations of alleged misconduct in FDA regulatory research under its bio-research monitoring program.

Office of the Assistant Secretary for Health

Under section HAS-10, Organization, delete 13. Office of Scientific Integrity Review (HA4), add new item 4. Office of Research Integrity (HAG) and renumber items 4-19 as items 5-20.

Under section HA-20, Functions, delete the title and statement for the Office of Scientific Integrity Review (HA4), and after the statement for the President's Council on Physical Fitness and Sports (HAC), add the following:

Office of Research Integrity (HAG)

The Director reports to the Assistant Secretary for Health and will: (1) Oversee and direct PHS research integrity activities on behalf of the Assistant Secretary for Health (ASH), with the exception of the regulatory research integrity activities of the Food and Drug Administration; (2) evaluate and monitor research integrity operations activities, including case investigations and evaluations; institutional assurance programs; and prevention and education activities; (3) coordinate the development of research integrity policies designed to ensure that subjects of investigations are treated fairly, including clear specification of what constitutes misconduct, a fair hearing process, appropriate time limits on pursuing allegations, and guidelines to discourage malicious allegations of misconduct; and (4) manage the financial resources and provide overall

administrative guidance in carrying out the activities.

Division of Policy (HAG2).

The Director and staff: (1) Develop policies, procedures, and regulations for presentation to the Advisory Committee on Scientific Integrity for their review and recommendation to ASH and the Secretary; (2) provide administrative and program support to the Advisory Committee on Scientific Integrity; (3) coordinate the dissemination or research integrity policies, procedures, and regulations; (4) conduct policy analyses and studies to improve PHS research integrity policies and procedures, including studies requested by the Advisory Committee; and (5) coordinate FOI and Privacy Act responsibilities pertaining to research misconduct issues.

Division of Research Integrity Assurance (HAG2)

The Director and staff: (1) Review and monitor investigations conducted by applicant and awardee institutions; (2) conduct inquiries and investigations involving extramural and intramural research programs when necessary; (3) develop proposed findings of misconduct and proposed sanctions; (4) evaluate investigations and investigatory findings and makes recommendations on whether or not to propose findings of misconduct and on appropriate sanctions; (5) assist the OGC in preparing and presenting cases for hearings before the Research Integrity Adjudications Panel of the DHHS Departmental Appeals Board; (6) provide information on PHS policies and procedures, as requested, to researchers who have made an allegation or have been accused of research misconduct; (7) assure that PHS policies and procedures are properly implemented in intramural and extramural misconduct cases; (8) administer, review, and approve institutional assurances; (9) administer the PHS ALERT system which provides pertinent information on investigations and sanctions to PHS awarding officials; and (10) develop and implement research misconduct prevention and education activities in PHS extramural and intramural programs.

National Institutes of Health

Section HN–B, Organization and Functions, is amended as follows:

After the statement for the Office of Research Services (HNAA), delete in its entirety the title and statement of the Office of Scientific Integrity (HNAC).

Section HA–30, Delegations of Authority. All delegations and redelegations of authority to officials of the Office of Scientific Integrity and the Office of Scientific Integrity Review that were in effect prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, ending further redelegations.

Dated: May 29, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–13328 Filed 6–5–92; 8:45 am]

BILLING CODE 4160–17–M

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for July 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacs whose names, room numbers, and telephone numbers are listed below.

Committee Name: Behavioral Subcommittee, Mental Health Special Projects Review Committee.

Meeting Date: July 21–22, 1992.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: July 21, 9–10 a.m.

Closed: Otherwise.

Contact: Phyllis D. Artis, room 9C–15, Parklawn Building, Telephone (301) 443–6470.

Dated: June 2, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–13246 Filed 6–5–92; 8:45 am]

BILLING CODE 4160–20–M

National Institute of Mental Health; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of an advisory committee of the National Institute of Mental Health for July 1992.

The initial review group will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The summary of the meeting and roster of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (telephone: 301–443–4333).

Substantive program information may be obtained from the contact whose name, room number, and telephone number are listed below.

Committee Name: Biobehavioral/Clinical Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 14–15, 1992.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 14, 9 a.m. to 9:30 a.m.

Closed: Otherwise.

Contact: Iris W. O'Brien, room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Sociobehavioral Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 21–23, 1992.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 21, 9 a.m. to 9:30 a.m.

Closed: Otherwise.

Contact: H. Noble Jones, room 10–22, Parklawn Building, Telephone (301) 443–9042.

Dated: June 2, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–13245 Filed 6–5–92; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

[Program Announcement Number 247]

Demonstration/Epidemiology Projects for the Prevention of Secondary Disabilities

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for competitive grant applications for Demonstration/ Epidemiology Projects. Applications are being accepted for financial assistance to support projects to build a prevention information base and support programs to prevent secondary disabilities/ conditions. Secondary disabilities/ conditions (hereafter called secondary conditions) are discussed and defined by the Institute of Medicine in its report, Disability in America. "People with disabling conditions are often at risk for developing secondary conditions that can result in further deterioration in health status, functional capacity, and quality of life. Secondary conditions by definition are causally related to a primary disabling condition and can be either a pathology, an impairment, a functional limitation, or an additional disability."

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the areas of Health Promotion, Health Protection, Preventive Services, and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized by section 301(a) (42 U.S.C. 241(a)) and section 317 (42 U.S.C. 247(b)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, disability service groups such as advocacy and voluntary organizations and independent living centers, and federally recognized Indian Tribal Governments are eligible for these grants

Availability of Funds

It is anticipated that approximately $400,000 will be available to support two demonstration/epidemiology projects with an average award of $200,000 each. Grant awards are expected to be made on or about September 30, 1992 for a twelve month budget period within a project period of two or three years, depending upon the scope of the approved project. Funding beyond Fiscal Year 1992 will be dependent upon satisfactory progress and the availability of funds.

Use of Funds

Grant funds may be used to support personnel services, supplies, equipment, travel, subcontracts, and other services directly related to project activities consistent with the approved scope of work. Project funds may not be used to supplant other applicant or collaborating agency funds available, or for construction, or to lease or purchase facilities or space, or for patient care. Project funds may not be used for individualized preventive measures (direct patient support) such as for wheelchairs or medical appliances unless specifically approved by the funding agency.

Purpose

The purpose of these awards is to develop public health approaches and/ or conduct epidemiological studies that will lead to better understanding of the disabling process and the resultant secondary conditions that occur in targeted groups of persons with disabilities. These studies can: (1) Determine the prevalence of specified secondary conditions; (2) define the range of the disabling process, including health status and functional abilities; (3) determine risk factors associated with specified secondary conditions and obstacles that limit function or quality of life; or (4) evaluate the effectiveness of public health interventions aimed at reduction of specified secondary conditions. Grantees are expected to document the results of their study in a manner that states, institutions, and other organizations concerned with public health, disabilities prevention and/or rehabilitation can benefit.

Project activities in two targeted groups will be supported under this announcement:

1. Secondary conditions associated with developmental disabilities:

Applicants may address those conditions associated with one or more of the following: cerebral palsy, spina bifida, fetal alcohol syndrome, and mental retardation.

2. Secondary conditions in persons with disabilities as a result of spinal cord and/or head injuries:

Such secondary conditions may include cardiovascular-cardiopulmonary; genitourinary, bowel, and reproductive; neuro/ musculoskeletal; skin-related; and psychosocial conditions.

In order to have representation in all areas, at least one award will be made in each of the two targeted groups.

Project activities must offer full access to persons with disabilities and provide evidence that all project-programs will involve and be accessible to persons with disabilities. Projects should present their capacity to share costs for portions of the project by staff support or other contributions by the applicant or collaborating organizations.

Program Requirements

Applicants must develop an intervention demonstration and evaluation program or conduct an epidemiological study that will contribute to a national information base for the prevention of secondary conditions. A demonstration project or epidemiological study focused on a targeted group should be designed to address one or more of the following:

1. Determine the prevalence of specified secondary conditions.

2. Define the disabling process and status of persons with a specific disability, including their health and functional status, in order to better determine the nature of preventable secondary conditions.

3. Determine risk factors associated with specified secondary conditions and obstacles that limit function or quality of life.

4. Develop model education and behavior-directed programs for persons with disabilities that will focus on susceptible populations and risk factors for secondary conditions.

5. Develop and evaluate a model intervention program with the objective of prevention of secondary conditions.

6. Evaluate the effectiveness of existing prevention programs that are directed toward the prevention of secondary conditions and assess their potential for replication.

Evaluation Criteria

Applications for Demonstration/ Epidemiology Projects will be reviewed and evaluated for technical merit based on the following factors: (Total 100 Points)

Evidence of Need and Understanding of the Problem: (10 Points)

This criteria includes the quality and consistency of the applicant's proposal with respect to the national disabilities problem, and the purpose of this grant. This section should present the applicant's recognition of the public health significance of the problem and the need for such knowledge directed toward reducing the incidence, prevalence, severity, and economic burden of secondary conditions.

2. Capacity to Conduct the Project: (20 Points)

This criteria relates to the special capability of the applicant to conduct a project of this nature, taking into account its reputation in the field, including that of its key staff and science leadership; its ability to access all necessary data and client information; and its ability to demonstrate a pre-eminent position among its colleagues as an appropriate agency to carry out the project.

3. Applicant Experience: (15 Points)

This criteria covers the applicant's experience and performance in conducting and evaluating similar demonstration or epidemiology projects, including the strength and value to the proposed project of the selected collaborating organizations.

4. Organization and Management Plan: (20 Points)

This criteria includes the level of control and management oversight capability within the applicant organization to conduct the proposed project. It includes the adequacy of the methods to be developed, the competence to be created through appropriate collaborations, the specificity of measureable project tasks, the feasibility of tasks being accomplished in the time-frames proposed, and the explicitness and quality of the management staffing plan. Attention will be given to the quality of the overall evaluation approaches to be used to monitor, assess, and modify (as necessary) project activities.

5. Epidemiologic and Technical Approach: (35 Points)

This criteria includes the extent to which the proposed methods and sources of data to be used that will produce the information necessary to quantify incidence, prevalence, and economic impact of preventable secondary conditions, and/or document evidence of intervention effectiveness and costs. It covers the strength of the study and/or follow-up design, the scope of confidentiality protection, and the quality of the analytic and dissemination plans.

6. Project Budget: (Not Scored)

This criteria includes the adequacy of the project application budget in relation to program operations, collaborations, and services; the extent of cost sharing; and the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Other Requirements

A. Paperwork Reduction Act

Projects funded through this grant that involve the collection of information from ten or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects and Confidentiality

This program involves research on human subjects. Therefore, applicants must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Executive Order 12372

Applications are not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Catalog of Federal Domestic Assistance (CFDA)

The Catalog of Federal Domestic Assistance number is 93.184.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Mr. Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305 on or before July 30, 1992.

1. Deadlines

Applications will be considered to have met the deadline if they are either:

a. Received on or before the dealine date; or

b. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Late Applications

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management techncial assistance may be obtained from Adrienne McCloud, Grants Management Specialist, Grants Mangement Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Altanta, Georgia 30305, (404) 842–6634.

Programmatic Technical Assistance may be obtained from Joseph B. Smith, Disabilities Prevention Program, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–41, Atlanta, Georgia 30333, (404) 488–4905.

Please refer to Announcement No. 247 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone (202) 783–3238).

Dated: June 1, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–13283 Filed 6–5–92; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Demonstration Grants to States for Community Scholarship Programs

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $500,000 is available in fiscal year (FY) 1992 for demonstration grants to States for Community Scholarship Programs (CSP), as authorized under section 338L of the Public Health Service Act (PHS).

Grants will be awarded to States for the purpose of increasing the availability of primary health care in urban and rural health professional shortage areas (HPSA) by assisting community organizations to provide scholarships for the education of individuals to serve as health professionals in these communities.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity. This grant program is related to the objectives of improving access to and availability of primary health care services for all Americans especially the underserved populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone number 202–783–3238).

ADDRESSES: An application kit (Form PHS 5161–1 as approved by the Office of Management and Budget (OMB) under control number 0937–0189) may be requested by calling (301) 443–5887 or writing, to: Mrs. Harriet Green, Grants Management Branch (GMB), Bureau of Health Care Delivery and Assistance (BHCDA), 12100 Parklawn Drive, Rockville, Maryland 20857. Completed applications must be mailed to the same address. The GMB can also provide assistance on business management issues.

DUE DATES: To receive consideration, grant applications must be received by the Grants Management Office July 8, 1992. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service or a legibly dated U.S. Postal Service postmark will be accepted as proof of timely mailing. Applications received after the announced closing date will not be considered for funding and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For further program information and technical assistance please contact Ms. Cheryl A. LaPointe, M.P.H., National Health Service Corps (NHSC), Bureau of Health Care Delivery and Assistance, HRSA, 5600 Fishers Lane, room 7A–29, Rockville, Maryland 29857, (301) 443–1470.

SUPPLEMENTARY INFORMATION: Under this program, States enter into agreements with public or private nonprofit community organizations located in HPSAs. These organizations will recruit qualified residents of their communities and provide scholarships to them to become physicians, certified nurse practitioners, certified nurse midwives, or physician assistants based on the needs of the communities.

This demonstration grant program is intended to be consistent with the efforts of the NHSC Scholarship and Loan Repayment Programs to meet the needs of underserved populations within HPSAs through the placement of primary care practitioners.

There will be approximately 12 grants ranging from $5,000 to $50,000. The number of grants will depend on the number of scholarships and types of practitioner training requested by the States. Only one grant will be made to each State annually. All awards will be made for one year budget periods with project periods of up to three years.

In an effort to assist the States and their communities in recruiting primary care practitioners (for purposes of this program, the term "primary health care" means health services provided by physicians' practicing family medicine, internal medicine, pediatrics, or obstetrics and gynecology, certified nurse practitioners, certified nurse midwives, or physician assistants), the Federal portion of the grant will provide for 40 percent of the costs of each scholarship. The States and local communities will be responsible for the remainder of the costs of the CSP. The Secretary is required by statutue (Section 338L(1)(3) of the PHS Act) to ensure that, to the extent practicable, not less than 50 percent of the amount appropriated will be in the aggregate expended by the States for making grants to community organizations that are located in rural HPSAs.

In order for a State to receive a grant under this program, the State must:

1. Receive funding for at least one grant, cooperative agreement, or contract under any provision of the PHS Act other than section 338L, for the fiscal year for which the State is applying;

2. Agree that the grant program carried out by the State under section 338L will be administered directly by a single State agency;

3. Agree to make grants to community organizations located in HPSAs in order to assist those community organizations in providing scholarships to individuals enrolled or accepted for enrollment as full-time students in health professions schools (see definition of "primary health care" below);

4. Agree that forty percent of the total costs of the scholarships will be paid from the Federal grant made to the State;

5. Agree that sixty percent of the total costs of the scholarships will be paid from non-Federal contributions made in cash by both the State and the community organization through which the scholarship is provided.

a. The State must make available through these case contributions not less than 15 percent nor more than 25 percent of the scholarship costs.

b. The community organization must make available through these cash contributions not less than 35 percent nor more than 45 percent of the scholarship costs.

Non-Federal contributions provided in cash by the State and community organization (as described in a and b above) may not include any amounts provided by the Federal Government to the State, or community organization involved, or to any other entity. Non-Federal contributions required may be provided directly by the state and community organization involved, and may be provided through donations from public and private entities.

States should be aware, however, that donations from providers may be subject to provisions of Public Law 102–234, the Medicaid Voluntary Contribution and Provider—Specific Tax Amendments of 1991.

Scholarship Contracts

To receive a grant, the State must agree that it will award a grant to a community organization for scholarships only if:

1. The individual who is to receive the scholarship under a contract is a resident of the HPSA in which the community organization is located;

2. The individual is enrolled or accepted for enrollment as a full-time student in a health professions school that is accredited by a body or bodies recognized for accreditation purposes by the Secretary of Education;

3. The individual agrees to maintain a level of academic standing at the school at which a full-time student retains

eligibility to continue attendance under the school's standards and practices;

4. The individual and the community organization agree that the scholarship:

a. Will be expended only for tuition expenses, other reasonable educational expenses, reasonable living expenses incurred while in attendance at the school, and or payment to the individual of a monthly stipend of not more than the amount authorized for NHSC scholarship recipients under section 338A(g)(1)(B) of the PHS Act; and

b. Will not, for any year of such attendance for which the scholarship is provided, be in an amount exceeding the total amount required for the year for the purposes indicated in paragraph (a) above;

5. The individual agrees to meet the educational, certification, and licensure requirements necessary to become a primary care physician, nurse practitioner, midwife, or physician assistant in the State in which the individual is to practice under the contract; and

6. The individual agrees to provide primary health care in a HPSA in which a community organization is located for:

a. A number of years equal to the number of years for which the scholarship is provided, or for a period of 2 years, whichever period is greater; or

b. Such greater period of time as the individual and the community organization may agree; and

7. The individual agrees that, in providing primary health care pursuant to the scholarship, the individual (a) will not, in the case of an individual seeking care, discriminate on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the programs established in titles XVIII (Medicare) or XIX (Medicaid) of the Social Security Act, and (b) will accept assignment under section 1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be made under part B of title XVIII, and will enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under title XIX to provide service to individuals entitled to medical assistance under the plan.

Evaluation Criteria

Applications for grants will be reviewed and evaluated according to the following criteria:

1. The extent to which the application describes a mechanism to determine the appropriateness of a community organization's participation in the CSP;

2. The extent to which the application justifies and documents the number and type of primary care providers the State proposes to support through this program relative to the needs of the community;

3. The appropriateness and adequacy of a State's plan for administration of a CSP, to include the administrative and managerial capability of the employees involved, and their relevant program experience;

4. The adequacy of a State's proposed method of monitoring and evaluating a CSP scholar's fulfillment of their CSP contracts, including a breach of contract, and provisions for waivers and suspensions;

5. The extent to which the applicant's and community's recruitment plans are consistent with long-term plans for meeting the needs of the community's primary care system;

6. The level of community commitment and involvement with the program including coordination with other Federal, State and community programs for meeting health professional needs;

7. The extent to which the application provides estimates of the amounts of the grant funds that will be expended on primary care for rural HPSAs and similar estimate for urban HPSAs; and

8. The reasonableness of the administrative costs.

Other Grant Information

The CSP demonstration grant program is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package for this program will include a list of States with review systems and the single point of contact (SPOC) in each State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necesary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline. The BHCDA does not guarantee that it will accommodate or explain its response to State process recommendations received after that date.

Grants will be administered in accordance with HHS regulations in 45 CFR part 92.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.930.

Dated: April 15, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-13314 Filed 6-5-92; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-92-3451; FR-3295-N-01]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1824. The Telecommunications Device for the Deaf (TDD) number is (202) 708-4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989)) requires that HUD "publish in the **Federal Register** a description of and the cause for administrative action against a HUD-approved motgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from January 1, 1992 through April 30, 1992.

1. PFG Mortgage, Inc., Mission Viejo, California

Action: Withdrawal of HUD mortgagee approval.

Cause: Criminal conviction of the company's president, who is also the owner, for offenses which reflect upon the responsibility, integrity, and ability

of the company to participate in HUD-FHA programs as an approved mortgagee.

2. Waterfield Financial Corporation, Fort Wayne, Indiana

Action: Settlement Agreement that provides for indemnification to HUD in the amount of $371,591 for claim losses and agreement by the company not to submit any further claims on 103 improperly originated HUD-FHA insured mortgages.

Cause: A HUD Office of Inspector General audit of the company's Phoenix, Arizona branch office which cited violations of HUD–FHA single family program loan origination requirements. The violations included: Failure to conduct face-to-face interviews with mortgagors; failure to assure that mortgagors made the minimum required investment in the property; permitting an interested third party to perform loan origination functions resulting in the submission of false or accurate informtion to HUD–FHA; and permitting improper sales inducements in connection with a builder's "trade-in" programs resulting in the circumvention of HUD–FHA minimum investment requirements by mortgagors.

3. SCM Mortgage Company, Inc., Mesquite, Texas

Action: Withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing violations of HUD–FHA single family program loan origination requirements, and, noncompliance with a previous Mortgagee Review Board probation action.

4. Phoenix Mortgage Marketing, Inc., Miami, Florida

Action: Suspension.

Cause: A HUD monitoring review citing violations of HUD–FHA single family program requirements that included: Submission of false mortgagors' verifications of employment; and failure to assure that a mortgagor made the minimum required investment in the property.

5. Prime Mortgage Investors, Inc., Coral Gables, Florida

Action: Proposed withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing violations of HUD–FHA requirements that included: Failure to implement and maintain a Quality Control Plan for the Originaiton of HUD–FHA insured mortgages; failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); submitting false information to HUD–FHA; failure to properly verify the income of self-employed mortgagors; processing, approving and closing loans prior to the borrower completing the HUD 92900 application; failure to perform face-to-face interviews with mortgagors; and permitting a loan officer to act as a realtor on the same transaction.

6. First Home Mortgage, Inc., Jonesboro, Arkansas

Action: Withdrawal of HUD mortgagee approval unless the principals of the company dispose of their ownership interest, the company indemnifies HUD for claim losses in connection with certain improperly originated loans, and the company implements a Quality Control Plan for loan origination.

Cause: A HUD monitoring review citing violations of HUD–FHA program requirements that included: Failure to develop and implement a Quality Control Plan in accordance with HUD–FHA requirements; failure to disclose to mortgagors an identity of interest between FHM and a settlement agent; failure to separate loan development, processing, and underwriting functions; failure to disclose and improperly processed sweat equity arrangements; failure to ensure that borrowed funds were not used for closing; failure to reduce the acquisition cost of properties by the amount of sellers' concessions; failure to report liabilities of mortgagors; failure to adequately verify the income of self-employed mortgagors; failure to verify that the income of mortgagors would continue for five (5) years; and failure to verify sources of funds.

7. Harber-Stephenson, Inc., Benbrook, Texas

Action: Withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing violations of HUD–FHA requirements that include: Failure to implement a Quality Control Plan in accordance with HUD–FHA requirements; omitting mortgagor liabilities; withholding information on mortgagors which demonstrates an inability to manage their financial affairs; withholding information on mortgagors' housing expenses; submitting inaccurate or incomplete information concerning mortgagors' employment; failure to comply with HUD–FHA source of funds requirements; failure to timely remit to HUD–FHA One-Time Mortgage Insurance Premiums (OTMIPs); failure to maintain an escrow account for the segregation of mortgagor escrow funds; and failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

8. Renet Financial Corporation, Anaheim, California

Action: Probation.

Cause: A HUD monitoring review citing violations of HUD–FHA single family program loan origination requirements that included: Use of loan agents to assist in processing HUD–FHA insured mortgages; misleading the Department with respect to Renet's HUD–FHA insured mortgage operations; failure to perform face-to-face interviews with mortgagors; and payment of referral fees in connection with HUD–FHA insured mortgages.

9. Goldpost Mortgage Corporation, Rochester, New York

Action: Proposed Settlement Agreement.

Cause: A HUD monitoring review citing a violation of HUD–FHA single family program loan origination requirements. The company improperly calculated closing costs which resulted in mortgagors not making the minimum required downpayment, and HUD–FHA overinsurance of the mortgages.

10. Century Bank, Denver, Colorado

Action: Proposed settlement.

Cause: A HUD monitoring review citing a violation of HUD–FHA single family program requirements. The Bank increased the appraised value of certain properties without proper justification.

11. Clarence A. Marshall Mortgage & Investment Company, Inc. Kansas City, Missouri

Action: Proposed withdrawal of HUD mortgagee approval.

Cause: A HUD Office of Inspector General Audit Report which cited violations of HUD–FHA single family program loan origination requirements that included: Omitting mortgagor liabilities; permitting a mortgagor to use unsecured borrowed funds to meet the minimum required investment in the property; failure to determine the value of chattel in connection with a collateral loan for funds to close; and failure to separate the company's mortgage lending and real estate operations.

12. Richards Woodbury Mortgage Corporation, Salt Lake City, Utah

Action: Probation.

Cause: Use of misleading advertising in connection with HUD–FHA single family mortgage insurance programs.

13. California Loan Funding, Inc., Huntington Beach, California

Action: Probation.

Cause: Use of misleading advertising in connection with the HUD–FHA Title I property improvement program.

14. Bowest Corporation, La Jolla, California

Action: Proposed Settlement Agreement.

Cause: A HUD monitoring review citing violations of HUD-FHA insured mortgage servicing requirements that include: Failure to take prompt collection action to minimize the number of delinquent loans; failure to initiate foreclosure in a timely manner; and failure to comply with the requirements of the assignment program.

15. Rapid Mortgage Corporation, Los Angeles, California

Action: Withdrawal of HUD mortgagee approval.

Cause: Failure to remit to HUD-FHA One-Time Mortgage Insurance Premiums (OTMIPs) collected from mortgagors in HUD-FHA mortgage transactions.

16. Kirkland Mortgage Corporation, Atlanta, Georgia

Action: Withdrawal of HUD Mortgagee approval.

Cause: A HUD Office of Inspector General investigation, and HUD monitoring review citing violations of HUD-FHA program requirements that include: Submitting an application for FHA insurance which contained a fraudulent gift letter; failure to maintain the required warehouse line of credit; failure to comply with the HUD-FHA reporting requirements for approved lenders pursuant to the Home Mortgage Disclosure Act (HMDA); and failure to remit appraisal fees in a timely manner to HUD-FHA approved fee appraisers.

17. Mark I Mortgage Corporation, Cerritos, California

Action: Withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing violations of HUD-FHA requirements that included: Failure to maintain a warehouse line of credit; failure to maintain the requisite staff, including underwriters, necessary to meet the requirements of a nonsupervised Direct Endorsement lender; failure to maintain and implement a Quality Control Plan; failure to meet the principal activity requirement of a nonsupervised mortgagee; misleading the Department concerning its approval status; and ordering appraisals on FHA cases from staff appraisers of another Direct Endorsement lender.

18. Mid Valley Mortgage Corporation, Denver, Colorado

Action: Withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing violations of HUD-FHA requirements, and, failure to comply with HUD-FHA financial reporting requirements. The violations disclosed by the monitoring review included: Failure to remit borrowers mortgage payments to servicing mortgagees; failure to conduct its business in accordance with the plan indicated by its application for HUD-FHA mortgagee approval; failure to implement and maintain a Quality Control Plan; failure to timely remit to HUD-FHA mortgage insurance premiums collected from mortgagors; failure to submit cases to HUD-FHA for mortgage insurance endorsement in a timely manner; failure to establish and maintain an escrow account to segregate mortgagor escrow funds; and failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

19. Old Homestead Mortgage Company, Moses Lake, Washington

Action: Letter of Reprimand.

Cause: Failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

20. American States Mortgage Corporation, Homewood, Illinois

Action: Letter of Reprimand.

Cause: Failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

Dated: May 26, 1992.

Arthur J. Hill,

Assistant Secretary for Housing - Federal Housing Commissioner.

[FR Doc. 92–13286 Filed 6–5–92; 8:45 am]

BILLING CODE 4210–27–M

Office of Administration

[Docket No. N–92–3450]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 28, 1992.

Kay Weaver,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Hearing—Contracting with Resident-Owned Businesses, FR–2850.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The information is necessary so that the applicants (resident-owned businesses) seeking to qualify for non-competitive contracting with the Public Housing Agency (PHA) will be eligible to be solicited by the PHA as a contractor for a proposed contract.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, Non-Profit Institutions and Small Businesses or Organizations.

Frequency of Submission: One-time and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	500		1		16		8,000
Recordkeeping	500		2		2		2,000

Total Estimated Burden Hours: 10,000.

Status: New.

Contact: Paul Fletcher, HUD, (202) 708–4214; Landry Williams, Jr., HUD, (202) 708–4214; Jennifer Main, OMB, (202) 395–6880.

Dated: May 28, 1992.

[FR Doc. 92–13242 Filed 6–5–92; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(NM–940–02–4730–12)

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on July 7, 1992.

New Mexico Principal Meridian, New Mexico.

T. 7 S., R. 15 W., Accepted May 13, 1992, for Group 863 NM
T. 17 N., R. 12 W., Accepted May 13, 1992, for Group 872 NM
T. 7 S., R. 14 W., Accepted May 14, 1992, for Group 893 NM
T. 20 N., R. 14 K., Accepted April 17, 1992, for Group 843 NM
T. 19 N., R. 14 W., Accepted March 27, 1992, for Group 843 NM
T. 18 N., R. 14 W., Accepted March 27, 1992, for Group 843 NM
T. 17 N., R. 14 W., Accepted March 27, 1992, for Group 843 NM
T. 12 N., R. 4E., Accepted May 13, 1992, Supplemental Plat
T. 26 N., R. 7 W., Accepted April 17, 1992, Supplemental Plat
T. 8 N., R. 5 E., Accepted April 16, 1992, Supplemental Plat

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–7115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: May 28, 1992.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 92–13249 Filed 6–5–92; 8:45 am]

BILLING CODE 4310–FB–M

[ID–030–00–4320–12]

Idaho Falls District Advisory Council; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls District Advisory Council.

SUMMARY: The Idaho Falls District Advisory Council will meet Tuesday, July 14, 1992. Notice of this meeting is in accordance with Public Law 92–463. The meeting will begin at 9 a.m. at the Idaho Falls District Office located at 940 Lincoln Rd., Idaho Falls, Idaho 83401.

The agenda for this meeting includes an update on new recreational developments including two interpretive trails on Hell's Half Acre Lava Flow, and an interagency Visitor Information Center. Council members will hear an update on implementation of the Snake River Activity/Operations Plan and take a tour of the Egin Lakes area.

The meeting is open to the public, however interested persons must provide their own transportation for the field tour. Anyone wishing to bring an item to the attention of the Council should mail written material to be received at the address shown above prior to 4:30 p.m., July 13, 1992. A public comment period will be held from 9 a.m. to 9:30 a.m.

Detailed minutes of the meeting will be maintained in the Idaho Falls District Office, 940 Lincoln Rd., Idaho Falls, Idaho 83401 and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday) within 30 days following the meeting.

Dated: May 27, 1992.

Gary L. Bliss,

Acting District Manager.

[FR Doc. 92–13285 Filed 6–5–92; 8:45 am]

BILLING CODE 4310–GG–M

[CO–050–4212–11; COC–51078]

Realty Action; Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COC–51078 Amendment; Direct Sale of Public Land or Recreation and Public Purposes Act Lease/Sale; Chaffee County, Colorado.

SUMMARY: On March 22, 1990 the following lands were proposed for direct sale to Chaffee County under the Federal Land Policy and Management Act of 1976 (55 FR 10697):

New Mexico P.M.

T.51N., R.8E.,
Section 21, NE¼.

That notice is hereby amended to include classification of those lands for lease or sale under the Recreation and Public Purposes Act of 1926 (43 U.S.C. 869) and the regulations thereunder (43 CFR 2740.2912). These lands are hereby segregated from all other public land laws, including the mining laws, for a

period of eighteen months, or until patent is issued.

DATES: Comments may be submitted on this action until July 13, 1992.

ADDRESSES: Bureau of Land Management, Canon City District, PO Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: David Hallock, (719) 275–0631.

Dated: May 27, 1992.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 92–13287 Filed 6–5–92; 8:45 am]

BILLING CODE 4310–JB–M

[OR–110–4212–13;G–2–267]

Realty Actions, Sales, Leases, etc.; Oregon

ACTION: Notice of Realty Action—Exchange of public lands in Jackson County and notice of intent to amend the Jackson/Klamath Management Framework Plan (MFP) (Serial No. OR–48393).

SUMMARY: In accordance with 43 CFR 1610.3–1(d) and 43 CFR 2201.1, notice is given that the Bureau of Land Management (BLM) in the State of Oregon, Medford District, intends to amend the Jackson/Klamath Management Framework Plan (MFP). The purpose of the plan amendment is to make available for exchange certain lands in Jackson County. The MFP amendment will specifically facilitate the Cascade Ranch exchange proposal. The on-going Medford disrict-wide Resource Management Plan (RMP) will address broad land tenure adjustment opportunities and will provide overall direction and decisions sometime in 1993. The lands identified for this exchange were not addressed in the MFP and the opportunity to acquire certain lands by exchange may not be available in 1993.

SUPPLEMENTARY INFORMATION: The Jackson/Klamath MPF proposed plan amendment and exchange proposal includes public lands described as follows:

Willamette Meridian, Jackson County, OR

T. 37 S., R. 2 E.,
Sec. 5;
Sec. 7, Lots 3 & 4, NE¼NE¼, S½NE¼, SE¼NW½, E½SE¼, SE¼;
Sec. 17;
Sec. 18, Lot 1, NE¼NW¼, NE¼NE¼;
Sec. 19, Lot 4, E½, E½W½,
Sec. 20, N½NE¼, SE¼NE¼.

Aggregating approximately 2,560 acres.

The publication of this notice in the **Federal Register** will segregate the above land to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for exchange. As provided by 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the **Federal Register** of a termination of the segregation, or two years from date of this publication, whichever occurs first.

Non-federal lands to be acquired by exchange will be selected from several parcels which are identified as high priority sites for acquisition if the proponent is successful in securing an option to purchase. These parcels are considered to contain high public values including riparian areas, wildlife, fisheries, special status plants, and recreation potential.

A subsequent notice of realty action and more specific information concerning the proposed plan amendment will be published at a later date. This notice will describe more specifically the lands which will be acquired by exchange, the terms and conditions of the exchange, and will include information on the availability of the environmental assessment with the public comment period announced.

Major issues involved in the plan amendment include the specific tracts to be exchanged. Parcels will be screened by an interdisciplinary team through the environmental assessment process. disciplines to be represented on the interdisciplinary team preparing the plan amendment and environmental assessment (EA) are: Wildlife, recreation, watershed, botany, soils, lands and realty, cultural forestry, recreation and land use planning. Preliminary planning criteria and alternatives are now being prepared and will be made available for review at the Medford District Office.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the proposed exchange and plan amendment, including the environmental analysis will be available at a later date at the Medford District Office, 3040 Biddle Road, Medford, Oregon 97504. For more information contact Mary Johnson at (503) 770–2310.

DATES: At this time a 45-day comment period is provided to meet the requirements of the Notice of Intent to prepare a plan amendment. This 45-day period will begin with publication of the Notice in the **Federal Register**. At this time BLM is inviting comments to be considered in the preparation of the EA. When the EA is completed, a public comment period will be provided and announced in a subsequent **Federal Register** notice.

Maurice Ziegler,

Acting District Manager.

[FR Doc. 92–13286 Filed 6–5–92; 8:45 am]

BILLING CODE 4310–33–M

[OR–110–6310–11–257A: G2–268]

Medford District Office, Grants Pass Resource Area

AGENCY: Bureau of Land Management.

ACTION: Final ruling.

SUMMARY: This notice announces the final ruling on prohibited acts in Rogue National Wild and Scenic Area.

FOR FURTHER INFORMATION CONTACT: Harold J. Belisle, Grants Pass Area Manager, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504; Telephone 503–770–2200.

SUPPLEMENTARY INFORMATION:

Prohibited Acts in Rogue National Wild and Scenic River Area

Pursuant to 43 CFR 8351.2–1, the following is prohibited on the lands and water surface within the Rogue River component of the National Wild and Scenic Rivers System administered by the Bureau of Land Management (BLM) which are described in Exhibit A of this Order. The Order shall remain in effect until further notice.

1. Boating

Going onto or being upon the Rogue River between Grave Creek and the Siskiyou National Forest boundary at Marial using any type of floatable craft or object without: (1) A Rogue Wild and Scenic River management group permit (of which BLM is a signatory), or (2) a joint BLM/US Forest Service (USFS) permit, or (3) an individual BLM permit for such use. The provisions of this paragraph shall not be applicable to persons engaged in non-commercial boating trips on the river from September 16 to May 31.

2. Boat Launching

Using any of the lands described in Exhibit A located between Grave Creek and the Siskiyou National Forest boundary at Marial for the purpose of entering or going upon the Rogue River with any type of floatable craft or object without: (1) A Rogue Wild and Scenic River management group permit (of which BLM is signatory), or (2) a joint BLM/Forest Service permit or (3) an

individual BLM permit for such use. The provisions of this paragraph shall not be applicable to persons engaged in non-commercial boating trips on the river from September 16 to May 31.

3. Operation of Motorized Boats

Operation of any motorized boat on the Rogue River between Grave Creek and the Siskiyou National Forest boundary at Marial between May 15 and November 15. The provisions of this paragraph shall not be applicable to persons having a valid BLM permit for such use.

4. Camping

a. Camping for a period longer than 14 consecutive days (7 days in the Wild Section of the river), or as posted.

b. Camping in any area posted as closed to that use.

c. Occupying any portion of a developed or undeveloped recreation site for other than recreation purposes.

d. Occupying between 10 p.m. and 6 a.m. a place designated for day use only.

5. Building, Maintaining, Attending or Using a Fire

a. Carelessly ora negligently throwing or placing any burning substance, or any other substance or thing which may cause a fire, or firework or explosive into any place where it might start a fire; causing timber, slash, brush, or grass to burn except as authorized by BLM permit; leaving a fire without completely extinguishing it; allowing a fire to escape from control; or building, attending, maintaining or using a campfire without adequately removing all flammable material from around the campfire, which could allow its escape.

b. Failing to observe State fire closure regulations or notices issued by the Oregon State Department of Forestry.

c. Building, maintaining, attending, or using an open fire in any configuration within 400 feet of the river's edge, except when the fire is in a firepan or similar device that will contain the fire and its residue.

6. Improper Disposal of Trash or Human Waste

a. Placing in or near a river, stream, or other water any substance which does or may contribute to polluting such river, stream, or other water.

b. Failing to dispose of all trash or human waste either by removing it from the area or by depositing it into receptacles or at places provided for such purposes. Human waste may also be buried six to eight inches deep in the soil, away from campsites or water.

c. Leaving in a trash container or dump, any trash brought as such from private property.

7. Disorderly Conduct

a. Engaging in fighting, or in threatening, abusive, indecent or offensive behavior.

b. Making unreasonable noise.

c. Being nude where a person may be observed by the general public. No person under the age of 10 years shall be considered nude under this paragraph.

8. Other Acts

a. Violation of the terms of any written permission or permit issued by the BLM which authorizes an act or omission otherwise prohibited by the order.

b. Operating motorized vehicles off roads within BLM Wild and Recreational Sections of the Rogue National Wild and Scenic River corridor, except for the following five areas which are open today use vehicle parking on the gravel bar. These five limited access points are the gravel bar fishing areas at Rand Recreation site, Rocky Riffle Recreation site, Griffin Park Group Recreation site, Argo Recreation site and White Horse Recreation site.

c. Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property (1) from June 1 to September 15 from the land or waters between Grave Creek and the Siskiyou National Forest boundary a Martial, or (2) at any time within 150 yards of a residence, building developed or undeveloped recreations site, or occupied area, or (3) at any time across or on any public road, or across or on any trail or body of water whereby any person or property is exposed to injury or damages as a result of such discharge.

d. Constructing, placing, or maintaining any kind of road, trail, fence enclosure, communication equipment building or other structure of improvement without a BLM authorization.

e. Damaging, disturbing or removing any timber or other vegetation or forest product, except as authorized by a BLM permit or timer sale contract. The provisions of this paragraph shall not be applicable to the use by campers of reasonable amounts of dead and down timber for campfire.

f. Defacing, disturbing or removing any national feature or any property of the United States.

g. Entering any structure owned or controlled by the United States when such structure is not designated open to the public.

h. Digging in, disturbing, or removing any archaeological, paleontological or historical site or removing, disturbing, injuring or destroying any archaeological, paleontological or historical object, without a BLM permit.

i. Digging, scraping, disturbing, or removing natural land features for the purpose of mineral prospecting or mining. The provisions of this paragraph shall not be applicable to: (1) Valid existing mining rights, (2) recreational gold panning that does not require digging, dredging, or sluicing, or (3) the use in accordance with State law and regulations of up to a four inch diameter motorized suction dredge in the river channel between the mouth of the Applegate River and the mouth of Grave Greek. Suction dredges are restricted to operations below water level and within existing banks.

j. Using or possessing a bicycle, motorized vehicle, saddle, pack or draft animal on the Rogue River Trail from the trailhead at Grave Creek to the Siskiyou National Forest boundary at Marial, or the Rainie Falls Trail from the trail head at Grave Creek to Rainie Falls.

k. Operation or use of any aircraft within 1,000 feet of the water surface from June 1 to September 15 between Grave Creek and the Siskiyou National Forest boundary at Marial. The provisions of this paragraph shall not be applicable to the operation and use of aircraft by persons forced to land due to circumstances beyond their control and by persons with a BLM permit for such use.

l. Failing to exhibit required permits and identification when requested by a BLM Authorized Officer or representative. Failure to properly display boat tag.

m. Conducting any kind of business enterprise without a BLM permit.

n. Threatening, resisting, intimidating or interfering with any BLM official or employee engaged in or on account of the performance of his or has official duties in the administration of the National Wild and Scenic Rogue River.

o. Jumping, falling, rappelling, dangling, throwing or causing or assisting any object, person or animal to jump, fall, rappel, dangle or be thrown from Grave Creek Bridge or Hellgate Bridge. Occupancy of any portion of the above bridges, other than the roadway or pedestrian footpaths located on these bridges.

The provisions of paragraphs 1, 2, 3, 4, and 8, b, c, j, k and o shall not be applicable to any federal, state or local officer or member of any organized rescues of fire fighting force in the performance of an official duty.

Violation of these prohibitions is punishable by a fine of not more than $500 or imprisonment for not more than 6 months, or both. Title 16 U.S.C. 3. 43 CFR 8351.2–1.

Exhibit A

The land and water surface administered by the Bureau of Land Management to which this order applies are as follows:

1. Lands administered by the Bureau of Land Management between the mouth of the Applegate River and Grave Creek (Recreational Section of the Rogue National Wild and Scenic River):

Willamette Meridian

T. 34 S., R. 7 W.
- Sec. 6 lots 4, 5, 6, and 7;
- Sec. 18, lot 4, SW¼SE¼SW¼;
- Sec. 19, lots 2 and 4, W½E½NW¼, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 314 page 978 and Vol. 312 page 1122;
- Sec. 30, lot 1 including a portion of M.S. No. 734, Robert Dean Placer Mining Claim;
- Sec. 31, lot 4 SE¼SW¼, W½SW¼SE¼.

T. 34 S., R. 8 W.
- Sec. 1, lots 8, 9, 10, 11, 12 and 13, SE¼SE¼SW¼, SE¼NW¼SE¼;
- Sec. 11, SE¼SE¼SE¼,
- Sec. 12, lots 1, 2, 3, 4, 5, 6, 7, and 8, NW¼NE¼NE¼, SE¼SW¼NW¼ E½NW¼SE¼, NW¼NW¼SE¼;
- Sec. 13, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, NE¼NW¼SW¼, M.S. No. 796 Grubstake;
- Sec. 14, E¼NE¼NE¼;
- Sec. 24, lots 1, 3, 4, 5, and 8, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 321 page 1348, Vol. 321 page 1346, Vol. 320 page 1669, and Vol. 321 page 2000;
- Sec. 25, lots 1, 2, 3, 6, 8, and 9, SE¼NE¼NW¼, SE¼SW¼, portion of M.S. No. 734 Robert Dean Placer claim;
- Sec. 36, lots 2 and 12, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 317 page 968, Vol. 322 page 19, and Vol. 330 page 1098.

T. 35 S., R. 7 W.
- Sec. 3, S½SW¼SW¼;
- Sec. 4, lots 5, 6, 7, 8 and 9, S½NW¼SE¼, plus that property described in that deed recorded in the Josephine County Deed Records in Vol. 316 page 382;
- Sec. 5, lots 5, 6, 7, 8, 9, 10, 11, and 12, SW¼NW¼, NE¼SW¼;
- Sec. 6, lots 1, 2, 3, 4, 6, and 12, SE¼NW¼, plus that property described in that deed recorded in the Josephine County Deed Records in Vol. 317 page 1465;
- Sec. 9, lots 1 and 2, N½NW¼NE¼;
- Sec. 10, lots 1, 4, 5, 6, 7, and 8, all those portions of land in lots 2 and 3, and the SE¼NE¼ lying south and west of the Merlin-Galice Road. N½SW¼NW¼, SE¼SW¼NW¼, NE¼NE¼SW¼, E½NW¼NE¼SW¼, NE¼SW¼SE¼, N½SE¼SE¼, SE¼SE¼SE¼;
- Sec. 11, that property described in those deeds recorded in the Josephine County Deed Records in Vol. 308 page 725, Vol. 309 page 865, Vol. 308 page 1274, Vol. 308 page 1270, Vol. 308 page 1274, and a portion of that property described in Vol. 323 page 975;
- Sec. 14, that property described in those deeds recorded in the Josephine County Deed Records in Vol. 323 page 427, Vol. 321 page 1300, Vol. 324 page 1464, Vol. 307 page 1100, and a portion of that property described in Vol. 323 page 973;
- Sec. 15, NE¼NE¼NE¼;
- Sec. 23, lots 3 and 7, E½NE¼NW¼, E½W½NE¼NW¼, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 329 page 1313, Vol. 330 page 181, Vol. 329 page 1836, Vol. 340 page 2020, Vol. 332 page 192, Vol. 335 page 726, Vol. 331 page 1066, Vol. 321 page 1298, and a portion of those properties described in Vol. 319, page 48 and Vol. 287 page 726;
- Sec. 24, lots 1 and 2, NE¼SW¼, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 336 page 1578, Vol. 336 page 2007, and a portion of that property described in Vol. 319 page 48 and Vol. 287 page 728;
- Sec. 25, lots 1, 3, and 4, N½NE¼NW¼, SW¼NE¼NW¼, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 307 page 1103, Vol. 333 page 1391, Vol. 313 page 370, and a portion of those properties described in Vol. 336 page 196, Vol. 333 page 2047, Vol. 330 page 192, Vol. 326 page 1963 (correction deed in Vol. 330 page 514), and Vol. 330 page 194;
- Sec. 26, lot 3, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 314 page 1567, Vol. 318 page 1874, Vol. 320 page 781, Vol. 330 page 190, and a portion of those properties described in Vol. 336 page 196, Vol. 333 page 2047, Vol. 330 page 194, Vol. 326 page 1963 (correction deed in Vol. 330 page 514), Vol. 330 page 192, and Vol. 298 page 85;
- Sec. 35, lot 1, an island lying in portions of the S½NE¼ and the N½SE¼, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 313 page 1220, Vol. 327 page 1356, Vol. 319 page 1478, Vol. 285 page 557, and a portion of that property described in Vol. 278 page 734;
- Sec. 36, lots 1 and 2, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 326 page 1711, Vol. 283 page 449, Vol. 326 page 1200, and a portion of those properties described in Vol. 326 page 1963 (correction deed in Vol. 330 page 514), and Vol. 289 page 973.

T. 35 S., R. 8 W.
- Sec. 1, lots 1, 2, 3, 4, excluding M.S. No. 865 Genevieve Placer, 5, and 8, E½NW¼SW¼, N½NW¼SE¼, SW¼NW¼SE¼, plus an island lying on the S½SW¼.

T. 36 S., R. 6 W.
- Sec. 18, a portion of the property described in that deed recorded in the Josephine County Deed Records in Vol. 324 page 1458;
- Sec. 19, a portion of that property described in that deed recorded in the Josephine County Deed Records in Vol. 324 page 1458.

T. 36 S., R. 7 W.
- Sec. 1, that property described in those deeds recorded in the Josephine County Deed Records in Vol. 326 page 1707 and Vol. 323 page 438;
- Sec. 2, lots 8, 9, and 10, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 283 page 607, Vol. 319 page 1487, Vol. 314 page 352, Vol. 281 page 147, Vol. 322 page 1584, Vol. 305 page 388, and Vol. 326 page 1201;
- Sec. 11, lots 5, 6, 7, and 8, plus that property described in those deeds recorded in the Josephine County Deed Records in Vol. 316 page 1291, Vol. 333 page 152, Vol. 316 page 287, and a portion of that property described in Vol. 312 page 1124;
- Sec. 12, lots 1 and 2, W½SW¼;
- Sec. 13, a portion of that property described in that deed recorded in the Josephine County Deed Records in Vol. 324 page 1458;
- Sec. 14, that property described in those deeds recorded in the Josephine County Deed Records in Vol. 316 page 1967, Vol. 308 page 610, Vol. 313 page 372, Vol. 327 page 1358, Vol. 306 page 643, and a portion of that property described in Vol. 312 page 1124.

2. Lands administered by the Bureau of Land Management between Grave Creek and the Siskiyou National Forest boundary at Marial (Wild Section of the Rogue National Wild and Scenic River).

Willamette Meridian

T. 33 S., R. 7 W.
- Sec. 31 lot 4..

T. 33 S., R. 8 W.
- Sec. 31, SE¼SE¼SE¼;
- Sec. 32, lots 1, 2, 3, 4, 5, 6, and 7, S½SE¼NE¼, E½NW¼SW¼;
- Sec. 33, lots 1, 2, 3, 4, 5, 6, 7, and 8, S½SW¼NW¼, NE¼SE¼SW¼, W½SE¼SW¼, N½S½SE¼;
- Sec. 34, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, W½SE¼NW¼, SE¼SE¼NW¼, N½SW¼SW¼, SE¼SW¼, M.S. No. 553 Gold Ring;
- Sec. 35, lots 9 and 10, M.S. No. 553 Gold Ring SE¼SW¼;
- Sec. 36, lot 5 and SW¼SE¼.

T. 33 S., R. 9 W.
- Sec. 8, S½SE¼SW¼, S½SW¼SE¼, SW¼SE¼SE¼;

Sec. 15, S½SW¼SW¼;
- Sec. 16, lots 1, 2, 3, 4, and 5, W½NW¼NW¼, SE¼NW¼NW¼, W½SE¼NW¼, E½SW¼SW¼, NW¼SW¼SW¼, W½NW¼SE¼, SE¼NW¼SE¼, S½SE¼SE¼;
- Sec. 17, lots 1, 2, 3 4, 5, 6, 7, and 8, N½SW¼NE¼, N½NW¼SW¼, NE¼NE¼SE¼;
- Sec. 18, lots 1, 2, 3 excluding Winkle Bar and Winkle Bar Extension M.S. No. 844, 4

excluding Winkle Bar and Winkle Bar Extension M.S. No. 844. 5 excluding Winkle Bar and Winkle Bar Extension M.S. No. 844. 6, 7, 8, 9, 11, 12, 13. SE¼NE¼NE¼, SW¼NE¼NW¼;
Sec. 21, lots 1, 2, and 3, N½SW¼NE¼, SE¼SW¼NE¼, N½NE¼NW¼, SE¼NE¼NW¼, NE¼NE¼SE¼;
Sec. 22, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, S½SE¼NE¼, NW¼NW¼, N½NW¼SW¼, N½SW¼SE¼;
Sec. 23, lots 1, 2, and 3, SW¼NE¼SW¼, W½SW¼SE¼;
Sec. 26, lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, W½NW¼NE¼, SW¼NW¼SE¼, W½SW¼SE¼,;
Sec. 27, E½NE¼NE¼;
Sec. 35, lots 1, 2, 3 excluding St. Charles Placer M.S. No. 862, 4, 5, 6, excluding Boston Placer and St. Charles Placer M.S. No. 862, 7 excluding Boston Placer M.S. No. 862, 8, 9, and 10, W½NW¼NE¼, W½SW¼NE¼, SE¼SW¼NE¼, E½NW¼SW¼, S½NE¼SE¼,
Sec. 36, 1, 2, and 3, SW¼NE¼SW¼, S½NW¼SW¼,
T. 33 S., R. 10 W.,
Sec. 9, lots 1, 2, 3, and 4, S½SW¼NE¼, SE¼NE¼, E½NE¼SW¼, SW¼NE¼SW¼, N½SE¼SE¼;
Sec. 10, lots 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, and 13, S½NE¼NE¼, SE¼NW¼NE¼, NW¼SW¼SW¼, N½NE¼SE¼, except for that property described in Vol. 40 page 642 of the Curry County Deed Records;
Sec. 11, lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, SW¼NW¼NW¼, W½SE¼NW¼, SE¼SE¼NW¼, NE¼SW¼SW¼, W½NW¼SE¼, SE¼NW¼SE¼, SE¼SW¼SE¼;
Sec. 12, lots 1 and 2, W½SW¼SE¼, SE¼SW¼SE¼;
Sec. 13, lots 1, 2, 3, 4, 5, 6, 7, and 8, NE¼SE¼NW¼, NE¼NE¼SE¼;
Sec. 14, lots 1, 2, and 3, NE¼NE¼NW¼.
T. 34 S., R. 8 W.
Sec. 1, lots 1, 2, 3, 4, 5, 6, and 7, NW¼SW¼NE¼, NW¼NW¼SW¼, an island in the SW¼NW¼(lots 5 and 6);
Sec. 2, lots 1, 2, 3, 4, 5, 6, 7, and 8, NE¼SW¼NW¼, N½SE¼NW¼, N½NE¼SE¼, an island in the SE¼NE¼(lot 7 and 8);
Sec. 3, lot 1;
Sec. 5, lots 3, 4, and 5, NW¼SW¼NW¼;
Sec. 6, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, N½NE¼SW¼, NW¼NE¼SE¼, N½NW¼SE¼.
T. 34 S., R. 9 W.,
Sec. 1, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, N½N½SE¼;
Sec. 2, lots 1, 2, and 3.

3. The Rogue River from the mouth of the Applegate River downstream to the Siskiyou National Forest Boundary at Marial.

Maurice Ziegler,

Acting District Manager.

[FR Doc. 92-13291 Filed 6-5-92; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 120)]

Chesapeake Western Railway Co.—Abandonment—Rockingham and Augusta Counties, VA; Findings

The Commission has found that the public convenience and necessity permit the Chesapeake Western Railway Company to abandon 20.2 miles of railroad between milepost HS-5.00 at Pleasant Valley and milepost HS-25.20 at Staunton in Rockingham and Augusta Counties, VA. The proposal also includes abandonment of 2.65 miles of other tracks.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: June 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-13321 Filed 6-5-92; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMISSION ON AMERICA's URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92-463, that the National Commission on America's Urban Families will hold a meeting with invited public officials and others at the Center for Community Cooperation, 2900 Live Oak Street, Dallas, Texas at 12:45-3 p.m. on Tuesday, June 16, 1992.

The purpose of the meeting is to enable invited participants to express their views on the condition of America's urban families and present suggestions on programs that work to strengthen families.

Because of the need to commence the activities of the Commission as soon as possible and because of the early deadlines for the report required of the Commission, this notice is being provided at the earliest possible time.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue SW., room 305-F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92-13326 Filed 6-5-92; 8:45 am]

BILLING CODE A150-04-M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and report to the nation on the progress toward the goals.

TENTATIVE AGENDA ITEMS: The agenda for the meeting includes a discussion and review of indicators for the 1992 Goals Report; a review on the status of updating data reported last year; and a progress report on an Early Childhood Assessment System that the Panel endorsed at the previous meeting.

DATE: The thirteenth meeting is scheduled for Monday, June 15, 1992.

ADDRESS: The Holiday Inn Capitol Hotel, 550 C Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The National Education Goals Panel office at (202) 632-0952. Please give your name to indicate attendance.

Dated: June 1, 1992.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 92-13315 Filed 6-5-92; 8:45 am]

BILLING CODE 3127-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts, Declined General Applications for Federal Assistance; Reconsideration

ACTION: Notice of proposed procedures.

AGENCY: National Endowment for the Arts, NFAH.

SUMMARY: Process for reconsideration of declined general applications for Federal assistance.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel ((202) 682–5418 (voice) or (202) 682–5496 (TDD)), National Endowment for the Arts, 1100 Pennsylvania Avenue NW., room 522, Washington, DC 20506.

DATES: To be assured of consideration, comments must be in writing and must be received on or before August 7, 1992.

ADDRESSES: Comments should be sent to: Office of the General Council, 1100 Pennsylvania Avenue NW., room 522, Washington, DC 20506. Comments received will be available for public inspection at: 1100 Pennsylvania Avenue NW., Washington, DC 20506, room 522, from 9 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Audio versions of this proposed procedure can be made available on request.

1. Purpose

The National Endowment for the Arts relies on peer panel review of grant applications as the first step in assuring informed funding. Panel recommendations are subsequently reviewed by the National Council on the Arts, which provides advice to the Chairperson. The Chairperson then decides whether to fund the applications recommended by the Council.

This Circular establishes a procedure for reconsideration of applications for financial and technical assistance, which have been declined by the National Endowment for the Arts based on negative recommendations of the peer review panel. The Endowment will not reconsider the amount of any grant awarded. This Process does not apply to applications recommended by the peer review panel but rejected by the Council or Chairperson. Reconsideration of such applications is had at the discretion of the Chairperson only. Appeals of Council or Chairperson rejections should be directed to the Chairperson. The provisions of this Circular, which updates and amends the earlier (1983) Circular on this subject, do not apply to procurement governed by the Federal Acquisition Regulations.

2. Policy

(a) Statement

Award of financial and technical assistance is discretionary. Panel determinations are made using criteria described in the program guidelines; several criteria involve subjective, qualitative judgments which are not subject to reconsideration. Notwithstanding this fact, a Project Director, Authorizing Official, or individual whose application has been declined may obtain an explanation of the declination from the appropriate Program Director. Following receipt of the explanation, if the Project Director, Authorizing Official, or individual applicant (hereafter referred to as "applicant") believes that the declination was based on one or more of the following Grounds for Reconsideration, reconsideration may be obtained under the procedure outlined in section 3, below.

(b) Ground(s) for Reconsideration

Reconsideration of grant declinations is available solely for one of the following three reasons relating to procedural impropriety or error:

(i) Application declined based on criteria other than those appearing in the relevant guidelines;

(ii) Application declined based on influence of individual(s) with conflict of interest on peer review panel;

(iii) Application declined based on information provided by staff, panelists, or others, but not including the applicant, that was materially inaccurate or incomplete at the time of review despite the fact that the applicant has provided the Endowment staff with accurate and complete information as part of the regular application process.

3. Procedures To Be Followed for Reconsideration

(a) Explanation by Program Director

Within 30 days following written notification from the Endowment of its decision on any application, the applicant may request an explanation for a declined application from the appropriate Program Director. This initial request may be by telephone, in person, or in writing. The Program Director will explain within 30 days the basis for declination. Upon request from the applicant, the Program Director shall provide the substance of the peer review panel comments, the names of all panel and staff members, and the name of the appropriate Deputy Chairperson (hereafter "Deputy") who will review the applicant's Request for Reconsideration.

(b) Request for Reconsideration

If the Program Director's explanation, or other reliable information, appears to the applicant to indicate the presence of one or more of the "Grounds for Reconsideration" listed in paragraph 2(b) above, the applicant may submit to the Deputy a written Request for Reconsideration. This written request must reference a particular ground(s) for reconsideration and specify the facts supporting his or her claim, with enough particularity to enable the Deputy to determine whether the claim is meritorious. A request of this nature will be considered only if (a) the Request for Reconsideration is based on one or more of the grounds listed in paragraph 2(b); (b) the applicant has obtained an explanation from the appropriate Program Director; (c) the applicant has specified with sufficient particularity the facts supporting his or her claim; (d) the Request for Reconsideration is received by the Deputy within 45 days after the applicant received the Program Director's explanation.

(c) Action by the Appropriate Deputy

(i) The appropriate Deputy will review the applicant's Request for Reconsideration, records of the panel discussions, the applicant's application file, and any other relevant materials to determine if the panel's recommendation was influenced by one or more of the grounds listed in paragraph 2(b). In conducting this review, the Deputy may request additional information from the applicant and may obtain advice from a new peer review panel. In addition, the Deputy may request an audit, financial survey, or site visit of the applicant, but no revisions or additions to the grant application materials will be accepted in connection with the Request for Reconsideration, except to the extent that additional materials are necessary to substantiate the applicant's claim that one of the grounds listed in paragraph 2(b) exists.

(ii) The Deputy may conduct the reconsideration personally or may designate another Endowment official who had no part in the initial evaluation to do so. The term "Deputy," as used here, applies to such designees.

(iii) The Deputy will provide written notification of the results of the reconsideration within 45 days. If the Deputy cannot provide such notice within 45 days, the applicant will receive a written explanation of the

need for more time and an estimate of when the results can be expected.

(d) Resolution of Requests for Reconsideration

(i) If the Deputy determines that none of the grounds listed in paragraph 2(b) existed, the declination will be affirmed.

(ii) If the Deputy determines that one or more of the grounds listed in paragraph 2(b) existed, but the recommendation of the peer review panel was not affected, the declination will be affirmed.

(iii) If the Deputy determines that one or more of the grounds listed in paragraph 2(b) existed, and he or she can determine, based on the materials reviewed, that but for the infirmity in the peer review process, the application would have been recommended, the application will be considered by the National Council on the Arts at its next regularly scheduled meeting.

(iv) If the Deputy determines that one or more of the grounds listed in paragraph 2(b) occurred, but he or she cannot determine whether but for the infirmity, the peer review panel would have recommended the application, the application will be reviewed by a new panel. If the new panel recommends the application, the National Council on the Arts will review it at the next regularly scheduled meeting.

(v) The Deputy's determinations shall be final.

4. Reporting Requirements

Each appropriate Deputy will maintain a record of Requests for Reconsideration. The record will include the date of receipt, the name of the applicant, including name of organization or institution where applicable, the application number, and once the Deputy's review is complete, the date on which each applicant was notified of the results of the reconsideration, and what those results were.

Dated: May 28, 1992.

Amy Sabrin,

General Counsel, National Endowment for the Arts.

[FR Doc. 92–13267 Filed 6–5–92; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the International Advisory Panel (Federal Advisory Committee on International Exhibitions Section) to the National Council on the Arts will be held on June 23, 1992 from 9 a.m.–5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:30 p.m.–5:30 p.m. The topics will be general review and budget discussion.

The remaining portion of this meeting from 9 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 2, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Edowment for the Arts.

[FR Doc. 92–13276 Filed 6–5–92; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Dance on Tour: State Component Section) to the National Council on the Arts will be held on June 23, 1992 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portion of this meeting from 9 a.m.–3 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 2, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–13277 Filed 6–5–92; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Dance on Tour: Regional Component Section) to the National Council on the Arts will be held on June 24, 1992 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3 p.m.–5 p.m. The

topics will be policy discussion and guidelines review.

The remaining portion of this meeting from 9 a.m.–3 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 2, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–13278 Filed 6–5–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE).

Dates and Times: June 24, 1992; 1 to 5 p.m. (Open); June 25, 1992; 8:30 a.m. to 4 p.m. (Open), 4 p.m. to 5 p.m. (Closed); June 26, 1992; 9 a.m. to 12 p.m. (Open), 12 p.m. to 3 p.m. (Closed).

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: Part-open.

Contact Person: Mary M. Kohlerman, Executive Secretary, CEOSE, National Science Foundation, 1800 G Street, N.W., rm. 1225, Washington, DC 20550. Telephone: (202) 357–7461.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To review outcomes of effective intervention programs to attract women, minorities, and persons with disabilities to participate in science and engineering, and to prepare the Report to Congress.

Agenda:

Open Sessions

June 24: 1 p.m. to 5 p.m.—Presentations/ Discussions—Report on top 20 institutions and discussion on response to report on Persons with Disabilities.

June 25: 8:30 a.m. to 4 p.m.—Panel on programs to attract women, minorities, and persons with disabilities to science and engineering, and analyses of outcomes.

June 26: 9 a.m. to 12 p.m.—Plans for future programs, and planning of Report to Congress.

Closed Sessions

June 25: 4 p.m. to 5 p.m. and Juen 26, 12 p.m. to 3 p.m.—Working sessions to review program performance and draft Report to Congress.

Reason for Closing: The subcommittees will be discussing individual performances of NSF employees in the context of the report; therefore, these portions are closed to the public. These matters are exempt under 5 U.S.C. 552 b(c)(6) of the Government in the Sunshine Act.

Dated: June 3, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–13368 Filed 6–5–92; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Review of RI 38–107 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of an information collection. RI 38–107—Verification of Who is Getting Payments, is used to verify that the person entitled to receive payments is receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

The number of respondents for RI 38–107 is 3000; we estimate that it takes 10 minutes to fill out the form. The annual burden is 500 hours.

For copies of this proposal, call C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before July 8, 1992.

ADDRESS: Send or deliver comments to—

Ms. Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92–13269 Filed 6–5–92; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30768; File No. SR–Amex–92–06]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to Proposed Rule Change Relating to Trading Index Warrants and Non-Option Derivative Products on the Floor by Registered Traders

June 2, 1992.

On February 3, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to apply most of the provisions of Amex Rule 958 to trading in index warrants and non-option derivative products. Accordingly, Amex market makers trading these instruments would be

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

governed by Amex Rule 958 in lieu of Amex Rules 111 and 114. On March 11, 1992, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On March 13, 1992, the Amex submitted Amendment No. 2 to the proposal.[4] The proposed rule change as well as Amendments 1 and 2 thereto were published for comment in Securities Exchange Act Release No. 30493 (March 18, 1992), 57 FR 10394 (March 25, 1992). No comments were received on the proposal. On April 24, 1992, the Amex submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on Amendment No. 3 to the proposed rule change from interested persons. In addition, this order approves the proposed rule change, as amended.

As stated above, the proposal would apply most of the provisions of Amex Rule 958 to trading in index warrants and non-option derivative products.[6] Currently, index warrants, like other securities traded under the Amex's equity trading rules, are traded on the Exchange floor by specialists and Registered Equity Market Makers ("REMMs") pursuant to the provisions of Amex Rule 114, which include applicable provisions of Amex Rule 111.[7] Under the proposed rule change, a regular member who seeks to engage in supplemental market making activity in index warrants would be required to register as a Registered Trader under Amex Rule 958, and could trade for his or her own account in such issues pursuant to the provisions of this rule.[8] In contrast to REMMs trading pursuant to Amex Rules 111 and 114, competing market makers governed by Rule 958 [*e.g.*, Registered Options Traders ("ROTs")] have continuous affirmative market making obligations.[9] In recognition of this, such market makers therefore are designated as specialists on the Exchange for all purposes under the Act,[10] and are entitled to "good faith" market maker margin with respect to transactions on the floor in their assigned securities.[11] In lieu of the margin that would otherwise be required,[12] good faith margin treatment permits a trader to finance up to 100% of his or her securities positions' market value. The Amex anticipates that application of the requirements of Rule 958 to supplemental Exchange market makers will encourage additional competing market maker activity in index warrants and enhance index warrant liquidity, while ensuring the continuous market-making obligations of such members.

The Exchange's proposal also would affect the trading of non-option derivative products on the Amex. Article IV, section 1(b)(4) of the Exchange Constitution was recently amended [13] to provide that "derivative products" under that section include, in addition to standardized options, securities "which are issued by * * * [a] limited purpose entity or trust and which are based on the performance of an index or portfolio of other publicly traded securities."[14] This amendment was adopted specifically so that such securities may be traded by Amex options principal members ("OPMs") and limited trading permit ("LTP") holders [15] as a means of increasing depth and market liquidity for such products.[16] The Amex believes that subjecting the trading of such market basket-type securities to Rule 958 will further enhance market making competition and provide additional depth and liquidity.

The Exchange also is proposing to add several commentaries to its floor trading rules. The new commentaries would provide that proprietary transactions on the floor in both index warrants and non-option derivative products, which were previously traded pursuant to Exchange's equity trading rules, will be governed by and effected in accordance with Amex Rule 958. The following is the text of the proposed rule change:

Rule 111 Restrictions on Registered Traders

* * * Commentary .12

Transactions on the Floor in (i) index warrants and (ii) derivative products [as defined in Article IV, section 1(b)(4) of the Exchange Constitution] which are otherwise traded under the Exchange's equity trading rules, by a member for an account in which he has an interest shall be governed by the provisions of Rule 958. (See Commentary .10 of Rule 958.)

Rule 114 Registered Equity Market Makers

* * * Commentary .14

Transactions on the Floor in (i) index warrants and (ii) derivative products [as defined in Article IV, section 1(b)(4) of the Exchange Constitution] which are otherwise traded under the Exchange's equity trading rules, by a member for an account in which he has an interest shall be governed by the

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[3] Specifically, under the original proposal, Rule 958, Commentary .10 would have excluded Rule 958(c)(ii) and (f), and Rule 958, Commentary .02, .03, .07 and .08 from application to trading by Registered Traders in index warrants and non-option derivative products. Amendment No. 1 would apply Rule 958(c)(ii) and Commentary .02 and .07 to such trading. See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Branch Chief, SEC, dated March 10, 1992.

[4] *See* letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Branch Chief, SEC, dated March 13, 1992, which proposes to apply Rule 958 in its entirety to transactions by Registered Traders in index warrants and non-option derivative products. As a result, Amendment No. 2 would apply Rule 958(f) and Commentary .03 and .08 to such trading.

[5] Originally, the Amex proposed, in Commentary .10 to Rule 958, that Rule 111, Commentary .02 would not be applicable to ROTs trading index warrants and non-option derivative products. Amendment No. 3 deletes this reference to Rule 111, Commentary .02, which defines "on the floor," as unnecessary, because Rule 958, Commentary .01 defines the term for purposes of Rule 958. In addition, the Amex amended the numbering of the commentaries such that Rule 111, Commentary .11 would now be Commentary .12, and Rule 114, Commentary .13 would not be Commentary .14. *See* letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Branch Chief, SEC, dated April 23, 1992.

[6] Rule 958 is entitled Options Transactions of Registered Traders.

[7] Rule 111 is entitled Restrictions on Registered Traders; Rule 114 is entitled REMMs.

[8] REMMs as well as any other Registered Traders under Rule 111 currently trading index warrants or non-option derivative products will be required to register under Rule 958 and will thus become subject to the provisions of this rule in lieu of Rule 114 governing REMMs or Rule 111. Conversation between Michael Cavalier, Assistant General Counsel, Amex, and Edith Hallahan, Attorney, Commission, on March 11, 1992.

[9] See Amex Rule 958(c).

[10] See Amex Rule 958, Commentary .01.

[11] Good faith margin treatment is defined in Regulation T, issued by the Board of Governors of the Federal Reserve System, as the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions. *See* 12 CFR 220.2(k), 220.12(b)(3), 221.2(f), and 221.5(c)(10) (1991).

[12] 12 CFR 220.18. Generally, the required initial margin for each equity security held in a margin account is 50% of the current market value of the Security. Amex Rule 462 provides that the margin which must be maintained in margin accounts of customers is 25% of the market value of the security.

[13] *See* Securities Exchange Act Release No. 28612 (November 14, 1990), 55 FR 48308 (approving File No. SR-Amex-90-17).

[14] The Amex notes that Article IV, Section 1(b)(4) specifies that for purposes thereof the term "derivative products" does not include warrants of any type or closed-end mutual funds.

[15] Previously, Article IV, Section 1(b)(4) of the Amex Constitution limited OPMs to trading standardized options and section 1(j)(3) authorized LTP holders to trade only standardized index options, specifically excluding both from trading warrants and other securities.

[16] An example of such a non-option derivative product is the SuperUnits of certain SuperTrusts sponsored by SuperShare Services Corporation ("SSC"). The Commission has approved a proposed rule change relating to the listing and trading of unit investment trust securities such as SuperTrust securities. See Securities Exchange Act Release No. 30394 (February 21, 1992), 57 FR 7409 (approving File No. SR-Amex-90-06).

provisions of Rule 958. (See Commentary .10 of Rule 958.)

Rule 958 Option Transactions of Registered Traders

* * * Commentary .10

Transactions on the Floor in index warrants by Registered Traders who are regular members, and transactions by Registered Traders on the Floor in derivative products [as defined in Article IV, section 1(b)(4) of the Exchange Constitution] which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this Rule. In addition, Rule 111, Commentary .01 shall not apply to such transactions (See Rule 111, Commentary .12, and Rule 114, Commentary 114.)

Proposed Commentary .10 to Rule 958 would exclude the application of Rule 111, Commentary .01 [17] to transactions in index warrants and non-option derivative products. Registered Traders under Rule 958 are specifically exempt from Rule 111, Commentary .01 by Rules 958, Commentary .06, which refers to Rule 950(c) [18] Because of the nature of the affirmative obligations imposed by Rule 958, the Amex believes that a limitation on the number of Registered Traders in an index warrant or non-option derivative product trading crowd would be inappropriate.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-06 and should be submitted by June 29, 1992.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) and 11(b) and Rule 11b-1 thereunder.[19] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that the proposal should encourage market making competition, and enhance depth and liquidity, in index warrants and non-option derivative products, while ensuring the continuous market making obligations of these Exchange members. Because the proposed rule change would treat ROTs trading index warrants and non-option derivative products as specialists, subjecting them to continuous affirmative market making obligations, the Commission also believes that the proposal is consistent with section 11(b) and rule 11b-1, which provide that the rules of a national securities exchange may permit members to be registered as specialists, subject to the requirement of maintaining fair and orderly market in their specialty securities.

Because ROTs trading index warrants and non-option derivative products on the Amex under Rule 958 will assume continuous affirmative market making obligations, they will be treated as specialists for margin purposes As a result, these traders will be entitled to good faith margin treatment, which may attract more market makers. Increased market making activity due to the good faith margin incentive should, in turn, provide increased depth and liquidity to the markets for index warrants and non-option derivative products, which should improve the quality of markets. The Commission believes that market depth and liquidity should prevent fraudulent and manipulative practices as well as promote just and equitable principles of trade. The Commission also believes that more liquid markets generally protect investors and the public, because manipulation should be less likely and best execution of orders should be furthered. In addition, the Commission finds that it is consistent with the Act to exclude the application of Commentary .01 to Rule 111 to ROTs trading index warrants and non-option derivative products. The Exchange stated that the purpose of the proposed rule change is to enhance supplemental market making activity. Accordingly, the Commission believes that it is appropriate not to limit the number of traders in a trading crowd seeking to establish or increase a position.

Moreover, the Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The proposed rule change, which was published in the **Federal Register** for the full statutory period, provided that index warrants and non-option derivative products would be traded by ROTs under Amex Rule 958.[20] Proposed Amendment No. 3 is simply a clarification of the definition of the term "on the floor' and a renumbering of certain supplementary material.

Accordingly, the Commission believes that approval on an accelerated basis is appropriate.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-06 and should be submitted by June 29, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR-Amex-92-06) is approved.

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[17] This provision limits to three the number of Registered Traders in a trading crowd permitted to establish or increase a position for accounts in which they have an interest, absent written Floor Official approval.

[18] Specifically, Commentary .02 to Rule 950(c) provides that the number of ROTs in a trading crowd establishing or increasing a position for accounts in which they have an interest may be limited if it is determined by two Floor Officials that this is in the interest of fair and orderly markets.

[19] 15 U.S.C. 78f(b) and 78k(b) (1988); 17 CFR 240.11b-1 (1991).

[20] See Securities Exchange Act Release No. 30493 (March 18, 1992), 57 FR 10394 (March 25, 1992).

[21] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13360 Filed 6-5-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30762; File No. SR-DGOC-92-01]

Self-Regulatory Organization; Delta Government Options Corp.; Order Approving on an Accelerated Basis a Proposed Rule Change Relating to Credit Enhancement Facility and Margin and Trading Limits

June 1, 1992.

On April 14, 1992, the Delta Government Options Corp. ("DGOC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (SR-DGOC-92-01) pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposed rule change is to amend DGOC's credit enhancement facility ("CEF") and margin and trading limits. Notice of the proposed rule change appeared in the **Federal Register** on May 26, 1992, to solicit comments from interested persons.[2] This order approves the proposed rule change on an accelerated basis.

I. Description of the Proposed Rule Change

The proposed rule change amends the amount of CEF DGOC will maintain and the procedures in which DGOC will call for additional margin or will set trading limits for participants. Under the proposal, DGOC will retain a maximum CEF of $150,000,000 with a per participant sublimit of $30,000,000. The new CEF will be comprised of an in place $100,000,000 surety bond and a standby $50,000,000 committed surety bond.[3] Both surety bonds will be provided by Capital Market Assurance Corp. ("CapMAC"). Currently, DGOC carries a CEF in the aggregate amount of $200,000,000 which consists of a $100,000,000 letter of credit provided by Security Pacific National Bank ("Security Pacific") and a $100,000,000 surety bond with a per participant limit of $20,000,000 provided by CapMAC.

DGOC's procedures requires DGOC to maintain at all times CEF in an amount equal to three times the Maximum Potential System Exposure ("MPSE").[4] In order to remain in continuous compliance with this requirement while at the same time maintaining a lower CEF, DGOC will make calls for additional margin from individual participants more frequently. DGOC will monitor each participant's contribution to MPSE, and at those times when a participant approaches the new CEF per participant sublimit, DGOC will call upon the participant to provide additional margin.[5] If necessary, DGOC will also set additional trading limits if the participant approaches the CEF's per participant sublimit.[6]

The proposal will also change the applicant approval process. That process requires all entities that have issued part of the CEF, as well as DGOC, to approve all participant applications. Under the proposal, DGOC and CapMAC, in its capacity as issuer of the surety bond, will have to approve an applicant before the applicant can become a participant in DGOC. Under the current process, DGOC and both Security Pacific, in its capacity as issuer of the letter of credit, and CapMac, in its capacity as issuer of the surety bond, must approve an applicant before it can become a participant.

II. Discussion

The Commission believes that DGOC's proposed rule change is consistent with section 17A of the Act and, specifically, with section 17A(b)(3) of the Act.[7] Section 17A(b)(3)(F) of the Act requires that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this requirement.

In order to insure sufficient protection against the risk of participant default, which is the principal source of financial risk to DGOC, DGOC's procedures require DGOC to maintain CEF in an amount equal to three times its MPSE. During periods of volatility, DGOC satisfies this requirement by: (i) Requiring participants to post additional margin, (ii) restricting trading to closing positions only, or (iii) purchasing more CEF.

DGOC believes that carrying a large prepurchased CEF does not represent the most cost effective method for managing risk.[8] Under the proposed rule change, DGOC will monitor the total MPSE and will take the necessary steps to ensure that MPSE does not exceed ⅓ the total CEF rather than maintaining a large prepurchased CEF. DGOC will require participants to deposit additional margin or will set additional trading limits at those times when one or more participants approach the new CEF's per participant sublimit.[9] DGOC has represented to the Commission that DGOC believes that the proposal will have no adverse impact on: (1) DGOC's ability to safeguard securities or funds, (ii) DGOC's operational system and procedures and the safety and soundness of those systems and procedures, or (iii) the overall safety and soundness of the system.

The proposed rule change should also increase the usage of the system through an increase in its participant base by providing a more efficient method of approving applicants. Under the proposal, applicants will require approval from only DGOC and CapMAC. DGOC believes that potential applicants may have been discouraged by the approval process as it currently exists because of the existence of two CEF providers and the time involved for their independent review processes. Thus the Commission believes that DGOC's proposal will facilitate the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds under DGOC's control or for which it is responsible as required under Section 17A of the Act.

The Commission also finds that good cause exists to approve the proposal prior to the thirtieth day after publication of the notice of filing. DGOC's current arrangement with

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[22] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 30710 (May 18, 1992), 57 FR 22004.

[3] To acquire the standby $50,000,000 surety bond, DGOC will be required to give the provider ten days advanced notice of DGOC's intention to make use of the surety bond.

[4] Basically, the MPSE is defined as the aggregate counterparty exposure that would be incurred should there be an adverse market movement of six standard deviations in the market price of treasury securities underlying DGOC options. DGOC Rules, Article I.

[5] DGOC is authorized by its rules to require participants to deposit additional margin if DGOC believes it is necessary for the safety of DGOC or participants. DGOC Rules, Article VI, section 603.

[6] As a condition of admission to DGOC, each participant must agree to conduct its trading of DGOC options within the trading limit DGOC establishes for that participant at the time of admission. DGOC is authorized to revise a participant's trading limit. DGOC Rules, Article II, section 204.

[7] 15 U.S.C. 78q-1(b)(3)(F).

[8] DGOC represented that the current prepurchased CEF is often ten to twenty times MPSE.

[9] DGOC represented that it has discussed the proposed rule change with its participants and that the participants have not objected to the requirement of posting additional margin.

Security Pacific will expire in the near future. In order to allow DGOC to put its new CEF into place concurrently with the expiration of the old CEF, the Commission finds good case for approving the proposal on an accelerated basis.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–DGOC–92–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13363 Filed 6–5–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30766; International Series Release No. 391; File No. SR–NASD–92–7]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. To Obtain Permanent Approval of the OTC Bulletin Board Service

June 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 12, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the SEC's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service offers a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for equity securities traded over-the-counter that are not listed on the Nasdaq Stock Market nor on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Service supports NASD members' market making in unlisted securities through authorized Nasdaq Workstation ™ PCs. Real-time access to quotation information displayed in the Service is available to subscribers of Level ⅔ Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTC Bulletin Board data. The Service is currently operating under an interim approval that expires on June 30, 1992.[2]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to obtain permanent approval of the OTCBB Service. This filing does not propose any modification to the update restriction applicable to market makers' quotations in foreign securities/American Depository Shares ("ADS") included in the Service

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to obtain Commission approval of the OTCBB Service on a permanent basis. Since the Service's launch in June, 1990, it has evolved into a significant electronic quotation medium for NASD members that actively trade unlisted securities. As of February 28, 1992, the Service reflected 10,408 market making positions with 261 NASD member firms displaying quotations/indications of interest in 4,085 unlisted securities. In addition, as a result of rule amendments approved by the Commission, quotations disseminated through the OTCBB are required to be firm for 100 shares. Further, several major vendors now distribute real-time quotation information emanating from the Service and its market maker participants.

As of February 28, 1992, the population of foreign securities and American Depository Shares (collectively referred to as "foreign/ADS issues") quoted in the OTCBB Service consisted of approximately 369 securities. This population has consistently represented less than 10% of all securities quoted in the Service. The NASD is not seeking, in conjunction with this proposal, to modify the quotation update restriction that has applied to these securities since the Service began operating in June 1990. Consistent with this restriction, Service market makers may only update their quotations in foreign/ADS issues twice daily, once between 8:30 and 9:30 a.m. E.T., and once between noon and 12:30 p.m. E.T.[3]

When the OTCBB Service was originally proposed in 1989, the inclusion of foreign/ADS issues triggered negative comment letters from the New York and American Stock Exchanges ("NYSE" and "AMEX", respectively). Essentially, the NYSE and AMEX argued that if such issues were included in the Service, they should no longer qualify for the exemption from Executive Act registration provided by Rule 12g3–2(b) because they would be quoted in an "automated inter-dealer quotation system."[4] Pursuant to paragraph (b)(3) of the rule, this exemption is not available for any foreign/ADS issue that becomes quoted on such a system. The NASD argued that "automated inter-dealer quotation system" was meant to cover the Nasdaq system, but not an electronic quotation medium such as the Service. Further, because inclusion of an unlisted security in the Service did not provide benefits equivalent to listing on Nasdaq, the NASD has maintained that the rule 12g3–2(b) exemption should be available for all foreign/ADS issues quoted in the Service. The NASD cited the following factors in support of its position: (i) The absence of a listing agreement between the NASD and any

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[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] Securities Exchange Act Release No. 30531 (March 30, 1992), 57 FR 11625.

[3] As a consequence of this restriction, the Service carries only non-firm bid/ask prices or unpriced indications of interest in these securities. In contrast, priced bids/offers for domestic securities quoted in the Service must be firm for one unit of trading.

[4] Rule 12g3–2 does not define the term "automated inter-dealer quotation system." However, when rule 12g3–2 was amended to incorporate this language, the intent was to eliminate this exemption for prospective listings on the Nasdaq stock market.

issuer whose security is quoted in the Service; (ii) the fact that participating market makers, rather than issuers, determine whether an unlisted security will be quoted in the Service; (iii) the absence of any financial criteria to qualify an unlisted security for inclusion in the Service; (iv) the absence of affirmative market making obligations upon registered broker-dealers quoting unlisted securities in the Service as contrasted to requirements attendant to the quotation of securities listed or Nasdaq on an exchange market; and (v) the non-firm and essentially static character of quotations displayed in the Service respecting foreign/ADS issues.[5] In approving File No. SR–NASD–88–19 in 1990, the Commission acknowledged these factors and preliminary determined to allow the inclusion of foreign/ADS issues in the Service without relinquishing the rule 12g3–2(b) exemption.

The NASD asserts that these same factors remain valid bases for differentiating the status of a security quoted in the OTCBB Service from that of a security listed on an organized U.S. market. In particular, the update limitation and the non-firm character of market makers' quotations in foreign/ADS issues provide a far different market environment than that of the Nasdaq System. Accordingly, the NASD urges that the Commission, in connection with granting permanent approval, determine that the Service does not constitute an "automated inter-dealer quotation system", for purposes of rule 12g3–2 and that foreign/ADS issues included in the Service would remain eligible for the rule 12g3–2(b) exemption. Absent this finding, foreign/ADS issues will cease to be quoted in the Service and investors will be denied access to the limited quotation information now being disseminated through vendors' system for these securities. Removal of foreign/ADS issues from the Service also would deprive the NASD of quotation data that is used to supplement Schedule H price and volume information gather by the NASD for surveillance purposes.

The NASD believes that permanent approval of the Service is necessary to justify the resource allocations for certain system enhancement contemplated by section 17B of the Act. This provision, which was part of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"), mandates establishment of an automated quotation system for "penny stocks" and certain other unlisted equity securities. The statute specifies creation of a system that would operate under the auspices of a self-regulatory organization and be capable of collecting and disseminating reliable quotation and transaction information for covered securities. The OTCBB Service substantially meets the statutory quotation requirements in its present form. Assuming permanent approval of the Service, the NASD staff will work closely with the Commission staff to fully conform the Service's operational capabilities to the requirements of Section 17B, particularly, the collection and dissemination of transaction information. Thus, permanent approval of the Service is integral to achieving the structured market system and regulatory envisioned by the Congress in adopting the Reform Act.

Finally, permanent approval of the OTCBB Service will materially aid small domestic companies that do not qualify to have their shares listed on Nasdaq. Such companies benefit from the Soviet because it provides a cost-effective vehicle for competing dealers to quote continuous markets in their equity securities. Further, vendor dissemination of market marker's quotations facilitates price discovery and efficient execution of investors' order for the shares of these small companies. Collectively, these factors increase the liquidity of secondary markets for the affected companies' shares and therefore service to lower the costs of capital raising. Moreover, the NASD's surveillance of trading activity in the Service offers a much greater degree of investor protection than that provided by any other quotation medium for unlisted securities. In sum, permanent approval of the Service would yield significant benefits to hundreds of small domestic companies and their shareholders.

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The NASD relies on sections 11A(a)(1), 15A(b) (6) and (11), and section 17B of the Act as the statutory basis for the instant rule change proposal. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD submits that permanent approval of the Service is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the instant proposal will not create any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Specifically, the Commission invites comment regarding its original determination, in the order approving a one-year pilot period for the Service, that the Service would not be considered an "automated interdealer quotation system" or an "electronic interdealer quotation system" so that the exemption from Exchange Act reporting provided by Rule 12g3–2(b)

[5] See letter from Frank J. Wilson, Executive Vice President and General Counsel, National Association of Securities Dealers, to Jonathan G. Katz, Secretary, SEC, dated March 9, 1989.

would be available to foreign companies with securities quoted on the Service."[6] In the approval order, the Commission stated that it would review its decision at the end of the one-year pilot period to determine whether its assumptions about how exempt foreign securities trade continue to hold true and, accordingly, whether to continue the foregoing Rule 12g3–2(b) treatment of foreign securities quoted on the Service. We encourage interested persons to comment on this, and any other matters pertinent to the Service.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 29, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12)

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13366 Filed 6–5–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30767; File No. SR–NYSE–92–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Publication of Market-on-Close Imbalances

June 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of procedures for publishing market-on-close ("MOC") imbalances of 50,000 shares or more in certain widely-held stocks, the so-called "pilot stocks",[1] on trading days other than expiration days, and, on any day, in stocks which are to be added to or dropped from an index after the close of trading on that day.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to facilitate dissemination of MOC imbalance information for pilot stocks on a daily basis and for stocks which are to be added to or dropped from an index after the close of trading on that day. The Exchange believes that publication of such information may help attract contra side interest and minimize potential price volatility at the close in the subject securities.

The proposed policy regarding the pilot stocks requires, for trading days other than expiration Fridays, the dissemination of order imbalances of 50,000 shares or more as soon as practicable after 3:45 p.m. for stocks that are currently identified as "expiration Friday pilot stocks".[3]

The proposed policy regarding stocks being added to or dropped from an index provides that, upon notification by the specialist in the subject security, the Exchange will publish on the tape, as soon as practicable after 3:45 p.m., any MOC imbalance of 50,000 shares or more in any stock which is to be added to or dropped from the S&P 500, S&P 100 or Major Market Index after the close of trading on that day. The policy further provides that, for a stock which after the close of trading is to be added to or dropped from an index other than one of the three major indexes previously listed, the specialist should notify a Floor Official if he notes an imbalance of 50,000 shares or more of MOC orders in such stock. The Floor Official will then determine whether to publish an imbalance of MOC orders greater than 50,000 shares in such stock on the tape.

The publication of imbalance information for such stocks does *not* preclude the subsequent entry or cancellation of MOC orders on either side of the market in such stocks.

(2) Statutory Basis

The statutory basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such

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[1] The pilot stocks include the 50 highest-weighted Standard & Poors ("S&P") 500 index stocks, based on market values, and any of the 20 Major Market Index ("MMI") stocks that are not already included as part of that group.

[2] The Commission notes that substantially similar procedures governing the dissemination of MOC imbalances have been utilized on quarterly expiration Fridays (*i.e.*, days when stock index futures, stock index options and options on stock index futures expire) since September, 1986, and on monthly expiration Fridays since November, 1988 on a pilot basis. See generally Securities Exchange Act Release No. 29871 (October 26, 1991), 56 FR 56434 (order granting accelerated approval to File No. SR–NYSE–91–31).

[3] See note 1, *supra*.

[6] *See Supra* note 1.

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-12 and should be submitted by June 29, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13357 Filed 6-5-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30763; File No. SR-OCC-92-11]

Self-Regulatory Organizations; The Options Clearing Corp.; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Revisions to the Standards For Letters of Credit

June 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 22, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis through August 31, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the Commission's previous temporary approval of OCC's modifications to its rules respecting letters of credit deposited with OCC as a form of margin.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 16, 1991, OCC filed with the Commission a proposed rule change (File No. SR-OCC-91-13) which proposed to modify the standards for letters of credit used as a form or margin. On august 30, 1991, the Commission issued an order granting accelerated approval of the proposed rule change on a temporary basis through February 28, 1992.[2] Subsequently, on February 6, 1992, OCC filed with the Commission a proposed rule change (File No. SR-OCC-92-06) which requested that the Commission make permanent the Commission's temporary approval of the letter of credit filing. On February 28, 1992, the Commission granted accelerated approval of that filing on a temporary basis through May 31, 1992.[3]

This filing (File No. SR-OCC-92-11) once again proposes to make permanent the Commission's temporary approval of OCC's modification's to its rules respecting the standards for letters of credit deposited with OCC as a form of margin. Like the previous filings, this filing proposes to modify the rules respecting letters of credit in several ways. First, in order to conform to the Uniform Commercial Code and to avoid any ambiguity as to the latest time for honoring demands upon letters of credit, letters or credit must state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, letters of credit must be irrevocable. Third, letters of credit must expire on a quarterly basis. Fourth, OCC included language in its rules to make explicit its authority to draw upon letters of credit at any time, whether or not the Clearing Member that deposited the letter of credit has been suspended or is in default, if OCC determines that such a draw is advisable to protect OCC, other Clearing Members, or the general public.[4]

In the interim since its original letter of credit filing, OCC has received no complaints from any of its Clearing Members, banks issuing such letters of credit, or other interested parties with respect to the implementation of the revised letter of credit standards. Accordingly, OCC requests that the Commission grant permanent approval of the revisions to its rules respecting letters of credit deposited as margin.

OCC believes the proposed rule change is consistent with the requirements of section 17A of the Act. Specifically, OCC believes the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its possession or subject to its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 29641 (August 30, 1991), 56 FR 46027.

[3] Securities Exchange Act Release No. 30424 (February 28, 1992), 57 FR 8160.

[4] For detailed discussion of the modifications of OCC's rules governing letters of credit deposited as margin, refer to Securities Exchange Act Release No. 29641, *supra* note 2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposal is consistent with section 17A of the Act and specifically with section 17A(b)(3)(F) of the Act.[5] That section requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible. The revised standards should make such letters of credit more liquid instruments and, consequently, should permit OCC to more safely rely upon letters of credit as deposited margin. Because the revised standards will induce letter of credit issuers to reexamine Clearing Members' financial conditions every three months rather than annually, as under the prior standards, the financial condition of Clearing Members electing to deposit letters of credit as margin may be assessed more frequently thereby facilitating the discovery of any adverse developments in a more timely manner. In addition, since the letters of credit will be irrevocable, issuers of letters of credit will no longer be able to revoke letters of credit at times when the Clearing Members most need credit facilities (*e.g.*, when a Clearing Member is experiencing financial difficulties or during times of market volatility). By approving the proposed rule change on a temporary basis through August 31, 1992, OCC, the Commission, and other interested parties will be able to assess further, prior to permanent Commission approval, any effects these revised standards have on letter of credit issuance and on margin deposited at OCC.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because the Commission believes it desirable that the proposed rule change be approved before the expiration of the Commission's previous order that temporarily approved these changes to the standards for letters of credit deposited as margin with OCC. By approving this proposed rule filing before expiration of the prior temporary approval order, the changes that have been implemented pursuant to the temporary approval order may remain in place pending permanent approval.

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File Number SR–OCC–92–11 and should be submitted by June 29, 1992.

V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposal (File No. SR–OCC–92–11) be, and hereby is, approved temporarily through August 31, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13362 Filed 6–5–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30759; File No. SR–OCC–92–10]

Self-Regulatory Organizations; The Options Clearing Corp. ("OCC"); Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OCC to Conform the Restated Certificate of Incorporation to OCC's By-Laws

May 29, 1992.

Pursuant to Section 91(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend certain language in OCC's Restated Certificate of Incorporation ("Certificate") to conform the Certificate to the language of OCC's By-Laws

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Purpose of the proposed rule change is to conform OCC's Certificate to changes that were made in OCC's By-Laws in Filing No. SR–OCC–92–2. Filing No. SR–OCC–92–2 was approved by the Commission on March 6, 1992.[1] However, at or about the time of Commission approval, OCC discovered that it needed to make a technical change to the Certificate. In Filing No. SR–OCC–92–2, OCC amended the By-Laws to reflect that the current number of Exchange Directors is six, not seven. However, a similar change was not made to the Certificate at that time. This proposed rule filing would rectify that inconsistency by changing the language in the Certificate to likewise reflect that the current number of Exchange Directors is six and not seven.

The proposed rule change is consistent with the requirements of section 17A of the Act. Specifically, the

[1] Securities Exchange Act Release No. 30449 (March 6, 1992), 57 FR 8949.

proposal would fulfill the clearing organization's obligation to provide clear and consistent rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

OCC has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because it is concerned solely with the administration of the self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Those wishing to make a written submission should file six copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, subsequent amendments, written statements with respect to the proposed change that are filed with the Commission, and written communications relating to the proposal between the Commission and any persons, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–92–10 and should be submitted by June 29, 1992.

For the Commission by the Division of Market Regulation, Pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13364 Filed 6–5–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30761; File No. SR–OCC–92–15]

Self-Regulatory Organizations; The Options Clearing Corp.; Notice of Filing and Order Granting Approval, on an Accelerated Basis, of a Proposed Rule Change Regarding the Theoretical Intermarket Margin System for Equity Options

May 29, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 21, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will extend one year the Commission's temporary approval of OCC's Theoretical Intermarket Margin System ("TIMS"), which OCC currently uses to calculate margin for equity options.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 3, 1989, OCC submitted a proposed rule change to the Commission which would implement a new margin system for calculating Clearing Member margin requirements on equity options ("Equity TIMS"), and make other conforming, technical changes to accommodate the use of Equity TIMS. Equity TIMS utilizes options price theory (*i.e.*, an option pricing model) to: (1) Project the cost of liquidating a Clearing Member's equity options positions, taking into consideration (a) short options positions, and (b) all long positions over which OCC is entitled to assert a lien, in the event of a "worst case" theoretical change in the price of the underlying securities; and (2) set Clearing Member margin requirements to cover that cost.[3]

On March 1, 1991, the Commission temporarily approved OCC's use of Equity TIMS through May 31, 1992.[4] For the past year, OCC has used Equity TIMS to calculate Clearing Member's margin requirements on equity option positions. OCC believes that the use of Equity TIMS has resulted in a better assessment of its risk exposure than was possible under the previous margin system. Moreover, OCC has received no adverse comments or complaints from its Clearing Members regarding Equity TIMS.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act.[5] Specifically, OCC believes that Equity TIMS in consistent with section 17A(b)(3) (A) and (F) of the Act [6] in that it enhances OCC's operating efficiency and its ability to safeguard the securities and funds for which it is responsible. Accordingly, OCC requests that the Commission extend, until May 31, 1993, its temporary approval of Equity TIMS to give OCC additional time to complete its report regarding equity option volatility.[7]

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[2] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 28928 (March 1, 1991), 56 FR 9995 (File No. SR–OCC–89–12) (Order approving the use of TIMS methodology to calculate margin on equity options).

[3] See *id.* for a more complete description of the Equity TIMS methodology.

[4] *Id.* In connection with the temporary approval order, OCC represented that it would (1) undertake to analyze the efficacy of including equity option volatility over longer periods in determining its margin intervals, and (2) report the results of its analysis to the Commission's staff.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[7] See *supra*, note 4. OCC has asked that the Commission extend the report's submission date to December 31, 1992.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC has not solicited comments with respect to the proposed rule change and no comments have been received. Notice of the proposed rule change was published in the **Federal Register** in connection with the previous temporary approval of Equity TIMS.[8] OCC will notify the Commission of written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission preliminarily believes that the proposal meets the requirements of the Act and, in particular, the requirements of section 17A of the Act.[9] Specifically, section 17A(b)(3) (A) and (F) of the Act [10] require that a clearing agency be so organized and that its rules be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which the clearing agency is responsible; to facilitate the prompt and accurate clearance and settlement of securities transactions; and to protect investors and the public interest.

Equity TIMS represents an improvement over OCC's previous "production" margin system in several respects. Nevertheless, the Commission remains concerned about the potential lack of diversification of equity option holdings within clearing members' individual portfolios on which credit is being granted. Moreover, while the Commission believes that the margin methodology employed by Equity TIMS is basically sound, the Commission is concerned that the system may be overly dependent on short-term analyses of historical and implied volatility. Such analyses must provide the basis for any clearing corporation margin system, but its limitations also must be recognized. Accordingly, the Commission continues to believe that it would be beneficial for OCC to collect additional margin to cover the financial shocks caused by sudden, drastic price movements. Specifically, while OCC monitors the volatility of the markets in an effort to anticipate such movements, the Commission believes OCC should explore ways to ensure that its margin levels are not substantially reduced as a result of a decrease in short-term (three-to-twelve months) average volatility.[11]

OCC represented, in connection with the previous Equity TIMS temporary approval order of March 1, 1991, that it would undertake to include price volatility data for equity options over longer terms in determining its margin intervals and that it would report by April 30, 1992, concerning how such a procedure could best be effected. OCC, however, has requested more time to complete this report and has undertaken to deliver such report to the Commission's staff by December 31, 1992. The Commission believes that by extending the temporary period through May 31, 1993, it will be providing sufficient time: (1) For OCC to prepare and submit the report, and (2) for the Commission to analyze the report before determining whether to grant permanent approval.

OCC has requested that the Commission find good cause for approving its request for an extension of the Commission's temporary rule change. Failure to extend the temporary approval period would require OCC to stop using Equity TIMS and to revert back to the previous margin system to calculate margin for equity options. The Commission believes that Equity TIMS is an improvement over the previous margin system and that it would be consistent with Section 17A of the Act to approve the proposed temporary extension of Equity TIMS prior to the expiration of the existing temporary approval period. Thus, the Commission believes that good cause exists for approving the proposed rule change prior to the thirtieth day after notice of the proposal in the **Federal Register.**

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-92-15 and should be submitted by June 29, 1992.

V. Conclusion

On the basis of the foregoing, the Commission preliminary finds that OCC's proposed rule change is consistent with the Act, in particular, with section 17A of the Act, and the Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication.

It is therefore Ordered, Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR-OCC-92-15) be, and hereby, is approved on a temporary basis through May 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 92-13365 Filed 6-5-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30758; File No. SR-PTC-92-03]

Self-Regulatory Organizations; Participants Trust Co.; Order Approving a Proposed Rule Change Relating to New Procedures for Financing Transactions Through the Collateral Loan Facility

May 29, 1992.

On March 20, 1992, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission"□ a proposed rule change (SR-PTC-92-03) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b). The purpose of the proposed rule change is to adopt a new procedure to provide for the bulk transfer of securities underlying a repurchase agreement through PTC's collateral loan facility ("CLF"). Notice of

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[8] Securities Exchange Act Release No. 27394 (October 26, 1989), 54 FR 46175 [File No. SR-OCC-89-12] (Original notice of filing for the Equity TIMS proposal).

[9] 15 U.S.C. 78q-1 (1988).

[10] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

[11] The Commission's staff has found that the number of severe price swings in the marketplace has increased dramatically in recent years. *See* Division of Market Regulation, Market Analysis of October 13 and 16, 1989, at 162-163 (December 1990).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30-3(a0(12) (1991).

the proposed rule change appeared in the Federal Register on April 28, 1992 to solicit comments from interested persons.[1] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

PTC is adding a new CLF procedure, Procedure IA, to provide for bulk transfers of the entire interest of securities rather than processing GNMA pools underlying a repurchase agreement ("repo") on an individual pool-by-pool basis. a delivering participant will make the transfer by effecting a bulk financing transfer ("BFT") of those securities.[2] The BFT designation by the delivering participant and the acceptance of a BFT by a receiving participant would constitute a representation by both parties that the transfer reflects a financing transaction. Use of this BFT code will have the legal effect of transferring the entire interest in the securities, not a limited interest.

The proposed rule change will enable PTC to process bulk transfers of GNMA pools underlying a repo. PTC's rules, however, will not characterize transactions as either a "pledge" or a "repo" so a participant may use this procedure to effect a pledge or a repo.[3] The underlying agreements between the parties to the transaction will govern the nature of the transaction. Currently, PTC rules do not allow the bulk transfer of securities involving a repo transaction and require that the transfer of securities involving a repo transaction be done by individual pool-by-pool book-entry movements. PTC, however, does allow the bulk transfer of securities involving pledges through CLF. Thus, PTC is characterizing the BFT transfer as a transfer of the entire interest, as opposed to a limited or a security interest, to allow participants to make bulk transfers of securities involving repos.

Under the proposal, PTC will assume that the agreement underlying the transaction provides for the delivering participant to receive principal and interest ("P&I") payments.[4] As with any CLF movement, however, the participant receiving a BFT may exercise the securities access command ("SAC") which gives the receiving participant (or successive tmasferees) full control of the securities, including the right to all future credits of P&I and the right to withdraw or retransfer the securities to another account (either free or versus payment).[5]

II. Discussion

The Commission believes that PTC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3) (A) and (F) of the Act.[6] Sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with these requirements.

Repos are used regularly by government securities dealers to finance their short-term financing or investment needs. PTC participants, many of which are government securities dealers, routinely use PTC's facilities to effect repo transactions to meet their end of day settlement obligations. The proposed rule change will provide participants a more efficient mechanism to effect those repos transactions.

Currently, participants executing a repo must do so by transferring the securities through pool-by-pool book entry movements which is a costly and time-consuming process. Revisions to the CLF procedure will allow PTC participants to transfer, by book-entry delivery, the entire interest of the securities to a repo purchaser or a lender. Thus, the procedure will provide participants an efficient method to effect their short-term financing regardless of whether the transaction is characterized as a pledge or a repo.

PTC's proposal does not govern the nature of the transaction, but relies on underlying agreements between the parties to the transaction to govern the actual interest of the various parties in the BFT securities.[7] The agreements between the delivering and receiving participants will govern the rights of the delivering participant. Moreover, PTC's proposal will provide the facilities through which participants may effect deliveries of securities in bulk for financing or repo transactions and either retain P&I payments or redirect those P&I payments to the receiver. Thus, the Commission believes that the proposal will facilitate the prompt and accurate clearance and settlement of repo transactions and the safeguarding of government securities and funds under PTC's control or for which it is responsible as required under section 17A of the Act.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–PTC–92–03) be, and hereby is, approved.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13367 Filed 6–5–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18739; 812–7862]

AEGON USA Managed Portfolios, Inc. et al.; Notice of Application

May 29, 1992

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: AEGON USA Managed Portfolios, Inc. ("AEGON Fund"), IDEX

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[1] Securities Exchange Act Release No. 30605 (April 20, 1992), 57 FR 17936.

[2] In a BFT, although the pledgee accounts are used, participants delivering or receiving securities are not referred to as pledgor or pledgee participants, but rather as delivering or receiving participants.

[3] Although the BFT designation may be used for transactions involving the pledge of securities, participants can use the regular CLF command to transfer a limited interest in securities in bulk. PTC's proposal is designed to accommodate participants that need to make a bulk transfer of securities to effect repo transactions or transactions involving both repo and pledge agreements.

[4] See "Form of PSA Master Repurchase Agreement," Public Securities Association ("PSA") Government Securities Manual, Chapter 11, Exhibit A.

[5] PTC will use its repo accounting facility to account for BFT transactions/ Under a BFT, a receiving participant would, by exercising the SAC, acquire the attributes of possession of the securities with the corresponding ability to retransfer them in a repo secondary transaction. The procedures for closing out a repo accounting record also allow the repo buyer to request a closeout upon representation to PTC that its obligation to resell is terminated. Securities Exchange Act Release No. 29617 (August 27, 1991), 56 FR 43822.

[6] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[7] Under applicable law, if the receiving party is a PTC participant, the delivery is complete when PTC records the delivery on its books. U.C.C. 8–313(1)(q) and 8–320. If the purchaser/lender is not a direct participant, the transaction is complete as a legal matter after (i) PTC's books reflect the delivery; (ii) PTC's participant's books reflect the delivery for the account of its customer; and (iii) a confirmation is delivered to the ultimate purchaser or lender. U.C.C. 8–313(1) (d) and (g) and 8–320.

II Series Fund ("IDEX II Fund"), MidAmerica Management Corporation ("MidAmerica"), InterSecurities, Inc. ("ISI"), Idex Management, Inc. ("IMI"), and AEGON USA, Inc. ("AEGON USA").

RELEVANT ACT SECTIONS: Order requested under (a) section 17(b) of the Act granting an exemption from section 17(a) of the Act and (b) section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) for an exemption from section 17(a) and an order under section 17(d) and rule 17d–1 thereunder to permit each portfolio of the IDEX II Fund to acquire substantially all of the assets of corresponding portfolios of the AEGON Fund in exchange for shares of the applicable portfolio of the IDEX II Fund.

FILING DATE: The application was filed on February 5, 1992, and amended on May 21, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, pesonally or by mail. Hearing requests should be received by the SEC by 5:30 on June 23, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NE., Washington, DC 20549. Applicants: AEGON Fund, MidAmerica, and AEGON USA, 4333 Edgewood Road, NW., Cedar Rapids, Iowa 52499; IDEX II Fund, ISI, and IMI, 201 Highland Avenue, Largo, Florida 34640.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922 or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The AEGON Fund and the IDEX II Fund are open-end management investment companies organized in Maryland and Massachusetts, respectively, and registered under the Act. The AEGON Fund and the IDEX II Fund are sometimes referred to herein as the "Funds."

2. Subject to and contingent upon receipt of the affirmative vote of the holders of at least a majority of the outstanding common stock of each portfolio of the AEGON Fund, (each an "AEGON Portfolio"), each portfolio of the IDEX II Fund (each an IDEX II Portfolio") proposes to acquire all of the assets, subject to liabilities, of a corresponding AEGON Portfolio, in exchange for shares of beneficial interest of each IDEX II Portfolio, such shares then to be distributed *pro rata* to shareholders of the corresponding AEGON Portfolio. The IDEX II Portfolios and the AEGON Portfolios may be referred to herein as the "Portfolios."

3. The AEGON Fund is comprised of the following four series: the AEGON USA Tax-Exempt Portfolio ("AEGON Tax-Exempt Portfolio"); the AEGON USA High Yield Portfolio ("AEGON High Yield Portfolio"); the AEGON USA Capital Appreciation Portfolio ("AEGON Capital Appreciation Portfolio"); and the AEGON USA Growth Portfolio ("AEGON Growth Portfolio") (collectively, "AEGON Portfolios"). The AEGON Tax-Exempt Portfolio and the AEGON High Yield Portfolio are sometimes collectively referred to herein as the "AEGON Bond Portfolios;" the AEGON Capital Appreciation Portfolio and the AEGON Growth Portfolio are sometimes collectively referred to herein as the "AEGON Equity Portfolios."

4. The IDEX II Fund consists of the following three series: The IDEX II Tax-Exempt Portfolio; the IDEX II High Yield Portfolio; and the IDEX II Growth Portfolio (collectively, "IDEX II Portfolios"). The IDEX II Tax-Exempt Portfolio and the IDEX II High Yield Portfolio are sometimes collectively referred to herein as the "IDEX II Bond Portfolios." The IDEX II Bond Portfolios have not issued any of their respective shares and therefore have no operating history. The IDEX II Fund filed a post-effective amendment to its Registration Statement to register the IDEX II Bond Portfolios and their shares, which became effective on May 8, 1992. The IDEX II Bond Portfolios intend to commence offering shares to the public on or about the closing date of the proposed reorganizations. The IDEX II Fund has established a fourth series, the IDEX II Global Portfolio, which is not involved in the proposed reorganizations.

5. Pursuant to the proposed reorganizations, the AEGON Tax-Exempt Portfolio will be reorganized with and into the IDEX II Tax-Exempt Portfolio, the AEGON High Yield Portfolio will be reorganized with and into the IDEX II High Yield Portfolio, and each AEGON Equity Portfolio will be reorganized with and into the IDEX II Growth Portfolio.

6. MidAmerica is the investment adviser to each AEGON Portfolio. ISI serves as the investment adviser to each IDEX II Bond Portfolio. It is anticipated that MidAmerica will serve as the sub-adviser to each IDEX II Bond Portfolio on an interim basis until AEGON USA Investment Management, Inc. ("AEGON Management"), which owns 100% of the outstanding stock of MidAmerica, is prepared to serve as the sub-adviser. IMI is the investment adviser to the IDEX II Growth Portfolio. MidAmerica, AEGON Management, ISI, and IMI are sometimes collectively referred to herein as the "Investment Advisers."

7. MidAmerica, AEGON Management, and ISI are each directly or indirectly wholly-owned subsidiaries of AEGON USA. AEGON USA also indirectly owns 50% of the outstanding stock of IMI, the balance of which is owned by Janus Capital Corporation ("Janus") the sub-adviser to the IDEX II Growth Portfolio. AEGON USA also indirectly owns 100% of PFL Life Insurance Company ("PFL Life"), AUSA Life Insurance Company ("AUSA Life"), and Bankers United Life Assurance Company ("Bankers Life"). Subsidiaries of AEGON USA are the record owners of shares of certain AEGON Portfolios.

8. For its services as the investment adviser to the AEGON Fund, MidAmerica currently receives investment advisory fees payable at the rate of 0.60% of the average daily net assets of each AEGON Bond Portfolio, and 0.50% of the average daily net assets of each AEGON Equity Portfolio. In addition, in accordance with a plan of distribution adopted pursuant to rule 12b–1 under the Act, each AEGON Portfolio may pay MidAmerica, as principal underwriter, an annual distribution fee of up to 0.35% of the Portfolio's average daily net assets.

9. As the investment adviser to each IDEX II Bond Portfolio, ISI receives investment advisory fees payable at the annual rate of 0.60% of the Portfolio's average daily net assets. As the sub-adviser to each IDEX II Bond Portfolio, MidAmerica, and thereafter AEGON Management, would receive from ISI 50% of the net advisory fees received by ISI. In addition, in accordance with a proposed plan of distribution pursuant to rule 12b–1 under the Act that would be substantially the same as that currently in effect for each AEGON

Bond Portfolio, and which remains subject to shareholder approval, each IDEX II Bond Portfolio is authorized to pay ISI, as the principal underwriter, an annual distribution fee of up to 0.35% of the Portfolio's average daily net assets.

10. For its services as investment adviser, IMI receives an annual fee of 1% of the IDEX II Growth Portfolio's average daily net assets. For its services as sub-adviser, Janus receives from IMI 50% of the net fees received by IMI. In addition, for its services as the administrator to the IDEX II Growth Portfolio, ISI receives from IMI 50% of the net fees received by IMI. Moreover, ISI, as the principal underwriter for the shares of the IDEX II Growth Portfolio, may receive an annual distribution fee of up to 0.25% of the IDEX II Growth Portfolio's average daily net assets in accordance with the IDEX II Growth Portfolio's plan of distribution adopted pursuant to rule 12b–1 under the Act, which became effective on May 1, 1991.

11. In connection with the proposed reorganizations, the corresponding Portfolios of the Funds have each entered into a separate Agreement and Plan of Reorganization and Liquidation ("Reorganization Agreement") that was unanimously approved by the Board of Directors of the AEGON Fund ("AEGON Board"), including the disinterested directors thereof, on December 20, 1991, and by the Board of Trustees of the IDEX II Fund ("IDEX II Board"), including the independent trustees thereof, on January 2, 1992. The AEGON Board and the IDEX II Board have no common members. Each Board based its decision to approve the reorganizations on a number of factors, including: (1) The relative past growth in assets and investment performance of the AEGON Portfolios and the IDEX II Growth Portfolio; (2) the future prospects of the Portfolios, both under circumstances where they are not reorganized and if the reorganizations are effected; (3) the compatibility of the investment objectives, policies and restrictions of the respective AEGON Portfolios and the corresponding IDEX II Portfolios; (4) the effect of the reorganizations on the expense ratios of each Portfolio of the Funds based on a comparison of the expense ratios of the existing Portfolios with those of the IDEX II Portfolios on a "pro forma" basis; (5) the costs of the reorganizations to the Funds; (6) whether any future cost savings could be achieved by combining the AEGON Equity Portfolios with the IDEX II Growth Portfolio; (7) the tax-free nature of the reorganizations; (8) alternatives to the reorganizations; and (9) the actual and potential benefits to the Funds' affiliates, including their respective Investment Advisers and their parent, AEGON USA.

12. Each Reorganization Agreement will be submitted for approval by the shareholders of the affected AEGON Portfolios at a joint meeting of AEGON Fund shareholders tentatively scheduled to be held on July 15, 1992. A prospectus/proxy statement comparing the two Funds and describing the proposed reorganizations and the reasons therefore will be sent to the shareholders of each Aegon Portfolio on or about June 10, 1992. The prospectus/proxy statement of the IDEX II Fund on Form N–14 (File No. 33–47325) was filed with the Commission on April 20, 1992 and became effective on May 20, 1992. Assuming that the required shareholder votes are obtained at the shareholders meetings, the closing of the reorganizations is expected to occur shortly thereafter.

13. Pursuant to each Reorganization Agreement, the number of shares of the IDEX II Portfolio to be issued to the corresponding AEGON Portfolio will be determined on the basis of net asset values, by dividing the net asset value of each AEGON Portfolio's assets and liabilities by the net asset value of a share of the corresponding IDEX II Portfolio. As soon as practicable after the closing date, the AEGON Portfolio will liquidate and distribute *pro rata* to its shareholders of record the shares of the corresponding IDEX II Portfolio received by the AEGON Portfolio pursuant to the reorganization. Shareholders of record will be determined as of the close of business on the closing date. After such distribution and the winding up of its affairs, each AEGON Portfolio, and the AEGON Fund, will be dissolved.

14. Although each Reorganization Agreement provides that any of its provisions may be waived, amended, modified or supplemented by mutual written agreement of the parties, with respect to each Reorganization Agreement, applicants agree not to make any material changes to the Reorganization Agreement after the entry of any order granting exemptive relief that affect the order without prior approval of the SEC staff.

15. All of the direct expenses of the reorganizations, including professional fees and the cost of soliciting proxies for the meetings of each AEGON Portfolio's shareholders, will be borne by one or more of the Investment Advisers.

Applicants' Legal Analysis

1. The AEGON Fund and the IDEX II Fund have investment advisers that are under "common control" within the meaning of section 2(a)(9) of the Act. In addition, the AEGON Fund is an "affiliated person" of AEGON USA within the meaning of section 2(a)(3)(B) of the Act because AEGON USA, through its subsidiaries, owns 5% or more of the shares of certain AEGON Portfolios. Because of these relationships, the proposed reorganizations may be prohibited by section 17(a) of the Act. Section 17(a) generally prohibits the sale of securities or property to a registered investment company by an affiliated person of an affiliated person of such company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. The proposed reorganizations would be exempt from the provisions of section 17(a) by virtue of rule 17a–8 but for the fact that AEGON USA, through its subsidiaries, beneficially owns 5% or more of the outstanding shares of certain AEGON Portfolios and wholly owns the investment advisers for both Funds. Although the nature of the affiliations precludes applicants from relying on the exemption rule 17a–8 affords, applicants represent that the respective Boards, including the respective disinterested trustees and directors, have made the findings required by rule 17a–8.

3. Section 17(b) of the Act provides that, notwithstanding section 17(a), any person may file an application for an order exempting a proposed transaction and the SEC shall grant such order if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. After considering the relevant factors concerning the advisability of each proposed reorganization, each Board found that participation in each reorganization as contemplated in each respective agreement was in the best interests of the relevant portfolio and that the interests of the existing shareholders of each portfolio would not be diluted as a result of the reorganization. In addition, each Board determined that the terms of each

reorganization and the consideration to be paid or received are fair and reasonable and do not involve overreaching by any person. Applicants assert that the proposed reorganizations will be consistent with the policies of each Portfolio, and are consistent with the general purposes of the Act.

5. Section 17(d) of the Act prohibits any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of such a person, acting as principal from effecting any transaction in which such registered company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered company on a basis different from, or less advantageous than, that of such other participant. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the Commission grants an exemptive application after considering whether the participation of the investment company is consistent with the provisions, policies and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

6. Because PFL Life, AUSA Life, Bankers Life, and MidAmerica, individually or in the aggregate, own of record 5% or more of the outstanding shares of certain of the AEGON Portfolios, and because AEGON USA may be deemed to control the investment advisers for both Funds, the Funds may be considered affiliated persons or affiliated persons of affiliated persons of each other. The proposed sale of assets by each AEGON Portfolio to the corresponding IDEX II Portfolio and the related transactions involved in each reorganization might therefore be deemed to be a joint enterprise or arrangement prohibited by section 17(d) and rule 17d–1.

7. Applicants submit that the terms of the proposed transactions are consistent with the provisions, policies, and purposes of the Act in that they are reasonable and fair to all parties, do not involve overreaching, and are consistent with the investment policies of each of the Portfolios. Applicants also submit that the participation in the reorganizations by each Portfolio is not on a basis different from or less advantageous than that of other participants.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13358 Filed 6–5–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18738; 812–7881]

Hartford Life & Accident Insurance Co., et al.; Application

May 29, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Hartford Life & Accident Insurance Company ("HL&A"), Hartford Life & Accident Insurance Company/ Separate Account One (the "Separate Account") and Hartford Equity Sales Company, Inc. ("HESCO").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemption from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain deferred variable annuity contracts.

FILING DATE: The Application was filed on February 25, 1992 and amended on April 28, 1992 and May 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 23, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Kathleen A. McGah, Counsel, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272–3046, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. HL&A is a stock life insurance company licensed to do business in all states except New York and the District of Columbia. HL&A is a wholly owned subsidiary of the Hartford Fire Insurance Company. In turn, the Hartford Fire Insurance Company is a subsidiary of the ITT Corporation.

2. The Separate Account is registered under the 1940 Act as a unit investment trust. The Separate Account will issue only individual and group flexible premium deferred variable annuity contracts (the "Contracts"). Under the Contracts, Contract owners have the right to allocate purchase payments to any one or more of the underlying mutual funds. HESCO, a registered broker-dealer, is the principal underwriter of the Contracts funded through the Separate Account.

3. No sales charges are deducted from premium payments when made. However, a contingent deferred sales charge may be assessed against Contract values when they are surrendered. The charge, a percentage of the amount withdrawn (not to exceed the aggregate amount of purchase payments made), declines from 7% for withdrawals made during the first contract year of 0% for withdrawals or surrenders made after the seventh contract year. Purchase payments are deemed to be surrendered in the order in which they are received and all surrenders are first taken from purchase payments and then from other Contract values.

4. An annual maintenance fee of $25 is deducted from Contract values each Contract year. Applicants represent that the annual maintenance fee will not be more than the actual cost of the administrative services provided.

5. HL&A will deduct on a daily basis a 1.25% annual charge from the assets of the Separate Account to reimburse HL&A for assuming mortality and expense risks under the Contracts. Of that charge, .90% is attributable to mortality expense risk while a .35% is attributable to expense risk. HL&A assumes a mortality risk under the Contract by undertaking to make annuity payments to Contract owners regardless of how long an annuitant may live, and regardless of how long all annuitants as a group may live.

HL&A also assumes a mortality risk by promising to pay a minimum death benefit under the Contract. Under the Contract, where either the annuitant or Contract owner dies before the Annuity Commencement Date and has not yet attained the age of 85, the beneficiary of the Contract will receive the greater of (a) the Contract value determined as of the day written proof of death of such person is received by HL&A, or (b) 100% of the total purchase payments made under the Contract, reduced by any prior surrenders, or (c) the Contract value on the specified Contract anniversary immediately preceding the date of death, increased by the dollar amount of any purchase payments made and reduced by the dollar amount of any partial terminations since the immediately preceding specified Contract anniversary. HL&A also assumes the risk that actual expenses associated with administering the Contracts may exceed the administrative charge under the Contracts.

If the mortality and expense risk charge proves more than sufficient to meet actual costs, the excess will be added to the surplus of HL&A and can be used by HL&A for any business purpose. HL&A expects a reasonable profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission enter an Order exempting them from the provisions of sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction of the mortality and expense risk charge assessed under the Contracts from the assets of the Separate Account.

2. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts. Applicants make this representation based upon a review of (i) current charge levels; (ii) minimum death benefit guarantees; (iii) guaranteed annuity purchase rates; (iv) accounting systems for separage account unit value administration; and (v) the markets in which the contracts are offered. HL&A undertakes to maintain at its home office and make available to the Commission upon request a memorandum setting forth in detail the methodology underlying this representation and the contracts analyzed.

3. Applicants state that there is a likelihood that the proceeds from explicit sales load will be insufficient to cover the expected costs of distributing the contracts and, therefore, they have concluded that there is a reasonable likelihood that the Separate Account's distribution financing agreement will benefit the Separate Account and Contract owners. HL&A undertakes to maintain at its home office and make available to the Commission upon request a memorandum setting forth the basis for this representation.

4. Applicants represent that the Separate Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company within the meaning of section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13359 Filed 6–5–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18737; 812–7886]

Hartford Life & Accident Insurance Co. et al.; Application

May 29, 1992

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Hartford Life & Accident Insurance Company ("HL&A"), Hartford Life & Accident Insurance Company/Putnam Capital Manager Separate Account One (the "Separate Account") and Hartford Equities Sales Company, Inc. ("HESCO").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemption from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk change from the assets of the Separate Account under certain deferred variable annuity contracts.

FILING DATE: The Application was filed on March 6, 1992 and amended on April 28, 1992 and May 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 23, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Kathleen A. McGah, Counsel, Hartford Life Insurance Company, 200 Hopemeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Attorney, at (202) 272–2058, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. HL&A is a stock life insurance company licensed to do business in all states except New York and the District of Columbia. HL&A is a wholly owned subsidiary of the Hartford Fire Insurance Company. In turn, the Hartford Fire Insurance Company is a subsidiary of the ITT Corporation.

2. The Separate Account is registered under the 1940 Act as a unit investment trust. The Separate Account issues only individual and group flexible premium tax deferred variable annuity contracts (the "Contracts"). Under the Contracts, Contract Owners have the right to allocate purchase payments to any one or more of the underlying mutual funds. HESCO, a registered broker-dealer, is the principal underwriter of the

Contracts funded through the Separate Account.

3. A declining contingent deferred sales charge may be assessed against contract values when they are surrendered. The sales charge declines from 7% for withdrawals made during the first contract year to 0% for withdrawals or surrenders made after the seventh contract year. Purchase payments are deemed to be surrendered in the order in which they are received and all surrenders are first taken from purchase payments and then from other Contract values. No sales charges are deducted from premium payments when made.

4. Contract Owners may make partial surrenders each year up to 10% of the aggregate premium payments made under the Contract without the application of the contingent deferred sales charge.

5. A Maintenance Fee of $25 is deducted each Contract Year from Contract values. Applicants represent that the annual maintenance fee will not be more than the actual cost of the services provided. HL&A also deducts an administrative fee of .15% per annum against all contract values during the accumulation and annuity phases of the Contract. This charge is guaranteed for the life of the Contract and will not exceed the average expected cost of the services during the life of the Contract.

6. HL&A will deduct on a daily basis a 1.25% annual charge from the assets of the Separate Account to reimburse HL&A for providing mortality and expense guarantees under the Contracts. Of that charge, .90% is attributable to mortality risk while .35% is attributable to expense risk. HL&A assumes a mortality risk under the Contracts by undertaking to make annuity payments to Contract Owners regardless of how long an Annuitant may live, and regardless of how long all Annuitants as a group may live.

HL&A also assumes a mortality risk by promising to pay a minimum death benefit under the Contract. Under the Contract, where either the Annuitant or Contract Owner dies before the Annuity Commencement Date and has not yet attained the age of 85, the Beneficiary of the Contract will receive the greater of (a) the Contract Value determined as of the day written proof of death of such person is received by HL&A, or (b) 100% of the total purchase payments made under the Contract, reduced by any prior surrenders, or (c) the Contract Value on the Specified Contract Anniversary immediately preceding the date of death, increased by the dollar amount of any purchase payments made and reduced by the dollar amount of any partial terminations since the immediately preceding Specified Contract Anniversary. HL&A also assumes the risk that actual expenses associated with administering the Contracts may exceed the administrative charges under the Contracts.

If the mortality and expense risk charge proves more than sufficient to meet actual costs, the excess will be added to the surplus of HL&A and can be used by HL&A for any business purpose. HL&A expects a reasonable profit from the mortality and expense risk charge.

Applicant's Legal Analysis and Conditions

1. Applicants request that the Commission enter an Order exempting them from the provisions of sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction by HL&A and the payment to HL&A of the fee for providing the mortality and expense undertakings.

2. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts. Applicants make this representation based upon a review of (i) current charge levels; (ii) minimum death benefit guarantees; (iii) guaranteed annuity purchase rates; (iv) accounting systems for separate account unit value administration; and (v) the markets in which the Contracts are offered. HL&A undertakes to maintain at its home office and make available to the Commission upon request a memorandum setting forth in detail the methodology underlying this representation and the contracts analyzed.

3. Applicants state that there is a likelihood that the proceeds from explicit sales load will be insufficient to cover the expected costs of distributing the contracts. In this regard, HL&A has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and Contract Owners. HL&A undertakes to maintain at its home office and make available to the Commission upon request a memorandum setting forth the basis for this representation.

4. Applicants represent that the Separate Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company within the meaning of section 2(a)(19) of the 1940 Act, formulate and approve and plan under rule 12b–1 to finance distribution expenses.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13361 Filed 6–5–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreement Filed During the Week Ended May 29, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48167.
Date filed: May 26, 1992.
Parties: Members of the International Air Transport Association.
Subject: MV/CSC/024 dated April 22, 1992
Mail Vote S057 (Reso 695–Airmail Board).
Proposed Effective Date: September 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–13372 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 29, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.) The due date for Answers, Conforming Applications, or

Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48168.
Date filed: May 27, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 24, 1992.
Description: Application of Aerolineas Mundo, S.A./ta AMSA, pursuant to section 402 of the Act and subpart Q of the Regulations requests a renewal of its foreign air carrier permit for authority to operate non-scheduled cargo service between the Dominican Republic and Puerto Rico (San Juan, Borrinquen, and Ponce), the United States Virgin Islands, and Miami, Florida, along with charter services under 14 CFR part 212.

Docket Number: 43272
Date filed: May 28, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 25, 1992
Description: Application of Continental Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for renewal of the Honolulu-Vancouver authority in its Route 531 certificate for a period of five years.

Docket Number: 44141
Date filed: May 28, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 25, 1992
Description: Application of Continental Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations for renewal of its certificate authority between Houston and Cancun, Cozumel, Merida, Puerto Vallarta and Acapulco permanently or for a period of at least five years.

Docket Number: 47703
Date filed: May 29, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 13, 1991
Description: Application of Reno Air, Inc., applies for issuance of a Notice, pursuant to § 201.6(a)(2) of the Economic Regulations of the Department of Transportation, authorizing Reno Air to begin issuing tickets and accepting payment for the air transportation proposed in its application in this proceeding. Reno Air requests such authority commencing on Monday, June 25, 1992 and continuing until Reno Air is issued an effective certificate on or about July 1, 1992.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-13373 Filed 6-5-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Intent to Rule on Application to Impose and use the revenue from a passenger facility charge (PFC) at Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Adminstration, DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 8, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 602 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Donald W. Bennett, Director of Airports, City of St. Louis Airport Authority, at the following address: Lambert-St. Louis International Airport, P.O. Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of St. Louis Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, PFC Coordinator, FAA, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106, (816) 426-7425. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 17, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of St. Louis Airport Authority, was not substantially completed within the requirements of § 158.25 of part 158. The City of St. Louis Airport Authority submitted supplemental information on May 13, 1992, to complete the application. The FAA will approve or disapprove the supplemented application, in whole or in part, no later than September 11, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: July 1, 1992.
Proposed charge expiration date: July 1, 1997.
Total estimated PFC revenue: $131,453,450.
Brief description of proposed project(s): Acquire land for noise compatibility purposes; terminal building expansion; construct two light rail stations; land acquisition for obstruction removal; construct access road; and rehabilitate apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-Demand Air Taxis Operating Exclusively Under FAR Part 135 Certification.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Director's Office, City of St. Louis Airport Authority, Lambert-St. Louis International Airport.

Issues in Kansas City, Missouri on May 22, 1992.

George A. Hendon,
Manager, Airports Division Central Region.
[FR Doc. 92-13300 Filed 6-5-92; 8:45 am]
BILLING CODE 4910-13-M

RTCA Technical Management Committee; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the meeting of the Technical Management Committee to be held June 19, 1992, in the RTCA conference room, 1140 Connecticut

Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Opening remarks and introductions; (2) Review/approve April 23, 1992, Technical Management Committee meeting summary, RTCA paper no. 373–92/TMC–27 (previously distributed); (3) Special committee activities overview; (a) SC–165 progress and schedule; (b) HIRF review; (c) SC–150 closout status; (d) Methodology to facilitate special committee oversight; (4) Consider for approval SC–165 report, "Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services (AMSS), Part A: Purpose and Scope and Equipment Performance Requirements"; (5) Consider for approval proposed Change no. 2 to DO–160C; revised Section 22.0, "Lightning Induced Transient Susceptibility," RTCA paper no. 413–92/SC–135–355 (preiously distributed); (6) Receive report of ad hoc group on proposed update of DO–195 and 196; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 28, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–13304 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 166 User Requirements for Future Airport and Terminal Area Communication, Navigation, And Surveillance Systems, Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the fifteenth meeting of Special Committee 166 to be held June 24–26, 1992, in the Hughes Aircraft Conference Room, 19th floor, 1100 Wilson Boulevard, Arlington, VA (two blocks south of Rosslyn Metro station orange and blue line), commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of minutes of the fourteenth meeting held on April 30 thru May 1, 1992; (3) Reports on action items assigned during the fourteenth committee meeting; (4) Approval of the eighth draft of the committee report preparatory to publishing a completed final report containing the Conclusions and Recommendations section agreed to after deliberations; (5) Discussion and approval of Conclusions and Recommendations section of the report; (6) Other business; (7) Date and place of next meeting (only if required).

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on June 2, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–13305 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. Task Force 1; GNSS Transition and Implementation Strategy Task Force (TF–1); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the third meeting of the GNSS Transition and Implementation Strategy Task Force to be held June 23–25, 1992, at the Software Productivity Consortium, SPC Building, 2214 Rock Hill Road, Herndon, VA 22070, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) Approval of March 26/27, 1992, meeting summary; (3) Working group reports: accomplishments, issues, status; (4) Discussion/comments on initial draft of the GNSS Task Force Report; (5) Individual working group sessions; (6) Working group reports: status, plans; (7) Joint review of new issues; (8) Review of Task Force schedule; (9) Other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 28, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–13303 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–13–M

Sonoma County Airport, CA; Intent to Rule on Application

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Rule on application to impose a Passenger Facility Charge (PFC) at Sonoma County Airport, Santa Rosa, California.

SUMMARY: The Federal Aviation Administration (FAA) proposed to rule and invites public comment on the application to impose a PFC at Sonoma County Airports under the provision of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and 14 CFR part 158).

On May 29, 1992, the FAA determined that the application to impose a PFC submitted by Sonoma County Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 14, 1992.

DATES: Comments must be received on or before July 8, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009 or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Andrews, Airport Director, Sonoma County Airport, 2200 Airport Boulevard, Santa Rosa, California 95403–1091. Comments from air carriers and foreign air carriers may be in the same form as provided to Sonoma County Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303, Telephone: (415) 876–2805. The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of proposed PFC: $3.00

Proposed charge effective date: 11/01/92
Proposed charge expiration date: 10/01/94
Total estimated PFC revenue: $113,000
Brief description of proposed project:
Airport Master Plan Update; Airport Drainage, Roadway, Taxiway and Ramp Improvements; Land for Approach Zone and Resident Relocation Cost.

Availability of Application

Any person may inspect the application in person at the FAA office listed above. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sonoma County Airport.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Issued in Hawthorne, California, on April 3, 1992.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92-13302 Filed 6-5-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. app. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS-AP)-No. 3166

Applicant: Atchison, Topeka and Santa Fe Failway Company, Mr. W. S. Seery, Director Signal Systems, System Communications Building, 4515 Kansas Avenue, Kansas City, Kansas 66106.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed modification of the traffic control system, on the single main track and controlled sidings, near Sais, New Mexico, milepost 875.9, Becker, New Mexico, milepost 881.6, and Bodega, New Mexico milepost 886.6, on the Central Region, Clovis Subdivision; consisting of the discontinuance and removal of six automatic block signals.

The reason given for the proposed changes is improved train operations through the installation of electronic-coded track circuits and poleline elimination.

BS-AP-No. 3167

Applicants:

National Railroad Passenger Corporation, Mr. P.A. Cannito, Vice President—Engineering, 30th and Market Streets, Philadelphia, Pennsylvania 19104.

Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Enginer—C&S, 15 North 32d Street, Philadelphia, Pennsylvania 19104-2849.

The National Railroad Passenger Corporation (Amtrack) and Consolidated Rail Corporation jointly seek approval of the proposed discontinuance and removal of Ford Interlocking, in Philadelphia, Pennsylvania, milepost 81.2, on the Main Line, of Amtrak's Philadelphia Division; consisting of the conversion of the No. 11 power-operated crossover to hand operation equipped with an electric lock, the conversion of the No. 13 and No. 15 power-operated switches to hand operation, the discontinuance and removal of seven controlled signals and the No. 9 crossover, and the installation of two automatic signals.

The reason given for the proposed changes is to improve operations.

BS-AP-NO. 3168

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201-9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the signal systems, on the single main track, between Staples, Minnesota, milepost 32.0 and Carlton, Minnesota, milepost 27.0 on the Dakota Division, Fourth Subdivision; consisting of the discontinuance and removal of one automatic block signal.

The reason given for the proposed changes is due to pole line elimination associated with the installation of electronic-coded track circuits.

BS-AP-No. 3169

Applicants:

National Railroad Passenger Corporation, Mr. P.A. Cannito, Vice President—Engineering, 30th and Market Streets, Philadelphia, Pennsylvania 19104.

Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 15 North 32d Street, Philadelphia, Pennsylvania 19104-2849.

The National Railroad Passenger Corporation (Amtrak) and Consolidated Rail Corporation jointly seek approval of the proposed reduction of the interlocking limits of Shoreline Junction Interlocking, milepost 75.2, near New Haven, Connecticut, on the Main Line, of Amtrak's Boston Division; consisting of the conversion of power-operated switch 7524Y to hand operation, the discontinuance and removal of signal 75201Y, and the relocation of signal 750324Y.

The reason given for the proposed changes is that the reduction in yard train operations no longer requires the power operation of switch 7524Y.

BS-AP-No. 3170

Applicant: Wheeling & Lake Erie Railway Company, Mr. John Bell, Senior Signal Technician, 100 East 1st Street, Brewster, Ohio 44613.

The Wheeling & Lake Erie Railway Company seeks approval of the proposed discontinuance and removal of the traffic control system on the single and double main tracks of the Bellevue Line between CP Rex, milepost 184, near Rexford, Ohio and Yeomans West, milepost 54.8, near Bellevue, Ohio, a distance of approximately 129 miles.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS-AP-No. 3171

Applicant: Wheeling & Lake Erie Railway Company, Mr. John Bell, Senior Signal Technician, 100 East 1st Street, Brewster, Ohio 44613.

The Wheeling & Lake Erie Railway Company seeks approval of the proposed discontinuance and removal of the signal system on the single track of the Huron Branch between Huron Junction, milepost 0.0 and milepost 2.0, near Norwalk, Ohio.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS-AP-No. 3172

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201-9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control systems, on the single main track, between Bow, Washington, milepost 80.2 and South Bellingham, Washington, milepost 92.2, on the Pacific Division, Ninth Subdivision; consisting of the discontinuance and removal of four automatic signals, the relocation of six automatic signals, and

the installation of two new automatic signals.

The reason given for the proposed changes is due to pole line elimination associated with the installation of electronic coded track circuits.

BS–AP–No. 3173

Applicant: Atchinson, Topeka and Santa Fe Railway Company, Mr. W.S. Seery, Director Signal Systems, System Communications Building, 4515 Kansas Avenue, Kansas City, Kansas 66106.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of "Ottawa" control point, milepost 57.1 near Ottawa, Kansas, on the Eastern Region, Emporia Subdivision; consisting of the discontinuance and removal of seven controlled signals and the conversion of two power-operated switches to hand operation, one equipped with an electric lock.

The reason given for the proposed changes is due to current operating changes the control point is no longer needed.

BS–AP–No. 3174

Applicant Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, room 920, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system on the single main track, between Osawatomie, Kansas, milepost 335.0 and Herington, Kansas, milepost 451.5, on the Hoisington Subdivision, a distance of approximately 116.5 miles; consisting of the discontinuance and removal of 106 automatic block signals, the retention of 4 automatic block signals as operative approach signals, and the removal of the high water detector at milepost 340.4.

The reason given for the proposed changes is that the reduced volume of traffic operated over the line does not require the signal system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on June 3, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety

[FR Doc. 92–13371 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–06–M

Federal Transit Administration

Environmental Impact Statement on Southtown Corridor Transit Improvements in Kansas City, MO

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Kansas City Area Transportation Authority (KCATA) are undertaking the preparation of an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), for transit improvements in the Southtown Corridor of Kansas City. The EIS is being prepared in conformance with 40 CFR part 1500, Council on Environmental Quality, regulations for implementing the procedureal requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR part 622, Federal Transit Administation and Federal Highway Administration, Environmental impact and related procedures. In addition to fixed guideway or rail transit alternatives, the EIS will include an evaluation of the No-Action and Transportation System Management (TSM) alternatives and any additional alternatives which result from the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations and federal state and local agencies and through three public meetings.

DATES: Written comments on the scope of alternatives and impacts to be considered must be recived by KCATA on or before July 10, 1992. Public scoping meetings will be held on Wednesday, June 24, 1992 at 1:30 p.m. at Kansas City, MO. City Hall; Wednesday, June 24, 1992 at 7 p.m. at Health Midwest; and on Thursday, June 25, 1992 at 7 p.m. at the Country Club Congregational Church. Interested persons may view exhibits explaining the Southtown Corridor beginning one hour prior to each meeting; See **ADDRESSES** below.

ADDRESSES: Written comments on the project scope should be sent to Mr. Jim Pritchett, Director of Marketing and Rail Planning, Kansas City Area Transportation Authority, 1200 East 18th Street, Kansas City, Missouri 64108. Scoping Meetings will be held at the following locations:

1. June 24 meeting—12:30 exhibit viewing: 1:30—public meeting
   Kansas City, MO. City Hall, 414 E. 12th St., 6th Floor Forum, Kansas City, Missouri 64106
2. June 24 meeting—6 exhibit viewing: 7 public meeting
   Health Midwest, Student Residence Gym, 2300 E. Meyer Blvd., Kansas City, Missouri
3. June 25 meeting—6 exhibit viewing: 7 public meeting
   Country Club Congregational Church, 205 W. 65th St., South Door, Kansas City, Missouri 64113

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Donald, Director of Planning, Federal Transit Administration, Phone: (816) 926–5053.

SUPPLEMENTARY INFORMATION: .

Scoping

The FTA and KCATA invite interested individuals, organizations and federal, state and local agencies to public scoping meetings to be held on June 24 and 25, 1992 at the three times and location indicated under **DATES** and **ADDRESSES** (above), to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives.

An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program and the preliminary project schedule is being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the scoping materials by contacting Mr. Jim Pritchett at the address above or by calling him at (816) 346–0216. Scoping comments may be made verbally at any of the public scoping meetings or in writing. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluted and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives.

Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Drat EIS has been completed. If you wish to

be placed on a mailing list to receive further information as the project develops, contact Mr. Jim Pritchett as previously described.

Description of Study Area and Project Needs

The Southtown Corridor is a north-south travel corridor stretching about 12 miles in length from downtown Kansas City, Missouri on the north to the I–435 beltway on the south. At its widest, the corridor is 4.5 miles across and extends form State Line Road to the west approximately Van Brunt Blvd. on the east. The area forms a corridor with predominant north-south travel patterns generally independent of other regional travel flow.

The Southtown Corridor is a fairly densely developed urban corridor containing a number of important employement and activity centers, such as downtown Kansas City, Crown Center, Westport, The Plaza Waldo, Brookside, UMKC, the Linwood Shopping Center area and the historic 18th & Vine area. Urban redevelopment and grouth are centered on several major activity centers. Population decline indicates a need for action to stabilize the community. Opportunities exist to use the improvements and accessibility resulting from major transit capacity improvements as part of a program to accomplish this.

Transit improvements in the Southtown Corridor are intended to improve transit accessibility in the corridor. A protion of the corridor is largely composed of a low-income, and transit-dependent population. Improved transit may help maintain regional air quality by providing an alternative to the automobile for many trips.

Alternatives

Transportation alternatives proposed for consideration in the Southtown Corridor are the following:

1. A No-Build option, which involves no change to transportation services or facilities in the corridor beyond already committed projects;
2. A Transportation System Management (TSM) approach, which represents the optimum bus service improvements that can be made without construction of a fixed guideway;
3. Light rail transit extending from the River Market area to the Crown Center complex.
4. Light rail transit from the River Market area to 85th Street via the Bruce Watkins Drive alignment and/or the County Club alignment.

These alignments have been selected based on the results of prior planning efforts in the corridor area. Other alternatives using these alignments may emerge during the course of this Study.

Probable Effects

The FTA and KCATA plan to evaluate all significant social, economic, and environmental impacts of these and other alternatives and publish findings in the EIS. Among the primary issues are:

- Transportation service, including transit cost, transit service, patronage change and effect on traffic movement;
- Transit financial implications;
- The impact of the proposed alternatives on strengthening the urban core and other proposed improvements by other public and private agencies;
- Community impacts, including land use planning and zoning compatibility, neighborhood compatibility and impacts, local and regional economic impacts, aesthetics, utility relocations required, cultural impacts including the effects on historic, archeological, and park resources;
- Natural resource impacts, including air quality, noise and vibration, and effects on water resources and quality, natural features, and eco-systems. The proposed impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed impact evaluation and criteria will take into account both positive and negative impacts, direct and indirect impacts, and site-specific and corridor-wide impacts. Evaluation criteria will be consistent with the applicable federal, state, and local standards, criteria, regulations, and policies. Mitigation (reduction) measures will be explored for any adverse impacts that are identified as part of the analysis.

FTA Procedures

In accordance with the Federal Transit Act, as amended, and FTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering, the next step in project planning. After its publication, the Draft EIS will be available for public and agency review and comment, and public hearings will be held. On the basis of the Draft EIS and the comments received, the KCATA will select a locally preferred alternative and seek approval from the FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: June 3, 1992.

Lee O. Waddleton,

Midwestern Area Director.

[FR Doc. 92–13298 Filed 6–5–92; 8:45am]

BILLING CODE 4910–57–M

National Highway Traffic Safety Administration

[Docket No. 92–24, No. 1]

Chrysler Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Chrysler Corporation (Chrysler) of Detroit, MI has determined that some of its vehicles are equipped with seat belt assemblies that fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR part 573. Chrysler has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.c. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

S4.6(b) of Standard No. 209 requires that a seat belt assembly that meets the requirements of manual belts subject to crash protection requirements of Standard No. 208 shall be permanently and legibly marked or labelled with the following statement:

This dynamically-tested seat belt assembly is for use only in (insert specific seating position(s), e.g., "front right") in (insert specific vehicle make(s) and model(s)). Chrysler estimates that it produced 375,000 vehicles for sale in the United States whose front outboard seat belt assemblies were not marked or labelled as required by S4.6(b). The vehicles involved were produced in the 1992 model year. They are as follows:

Make	Model
Chrysler	Town and Country
Plymouth	Voyager
	Grand Voyager
Jeep	Comanche
	Cherokee

Make	Model
Dodge	Ram Van
	Ram Maxivan
	Ram Wagon
	Ram Maxiwagon
	Ram Pickup
	Ramcharger
	Caravan
	Caravan C/V
	Grand Caravan
	Dakota

Chrysler supports its petition with the following:

The system utilized by Chrysler dealers to obtain replacement parts prevents the misapplication for which the statement is apparently intended. The service parts ordering system is organized to guide the user to the proper component as follows:

—Parts micro fiche and catalogs are issued separately by model year and major vehicle category; i.e., passenger car, light truck, Jeep or Import.

—Every vehicle is broken down into major groups throughout the Service and Parts division systems; i.e., engine, transmission, body, etc.

—Within each major group, components are further organized by sub group; i.e., engine size, transmission type, body-interior trim, etc.

—Within each sub group, models are indexed by vehicle family; i.e., AB, AD, AN bodies for the light truck vehicle category, MJ, XJ bodies for the Jeep category and AS body for minivans.

—Each sub group of components contains a minimum of two pages—a detailed graphic (exploded view) with all components numbered, followed by the listing description of the identified parts, showing the part number, application, quantity, and other vehicle specifics as necessary.

* * *

—The general part number system utilized is even numbers for right (passenger side) components and odd numbers for left (driver side) components.

All seat belt assemblies utilized in the subject vehicles are identified with a part number label. The replacement parts are individually packaged with the part number prominently displayed. Application questions that arise during replacement can be resolved by simply comparing the O.E.M. and replacement part numbers.

Each vehicle family (body) has a unique part number prefix (first 3 characters) in addition to the even/odd numbering system indicating right/left side.

Chrysler Corporation has maintained a very reasonable pricing structure for seat belt retractor assembles to encourage replacement whenever necessary. Therefore, we believe the incentive for one to circumvent our parts ordering system for purposes of obtaining a less costly used part (and any resulting concern for potential misapplication) is minimal.

All of the subject seat belt assemblies meet both the new dynamic requirements and the static requirements of FMVSS 209 from which they are now exempt.

The seat belt assembles utilized in the subject vehicles are not likely to be replaced with units intended for other models due to a variety of significant differences as follows:

—Various mounting configuration and location differences,

—Retractor locking device, spool size, webbing length and housing configuration differences,

—Differences in retractor trim covers, which are in many cases a part of the replacement unit,

—Inconsistent color availability between vehicle models,

—Various "B" post upper anchorage attachment configurations,

—Differences in buckle latch plate configuration, and the inclusion of belt webbing cinch mechanisms in some assemblies.

NHTSA has delayed extending the subject statement requirement to passenger cars, and is currently evaluating other means to address the issue for which the statement is intended.

Chrysler is not aware of any owner complaints, field reports or allegations of hazardous circumstances relating to the omission of the statement or the misapplication of seat belt assemblies in the subject vehicles.

Interested persons are invited to submit written data, views and arguments on the petition of Chrysler described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 8, 1992.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: June 2, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–13299 Filed 6–5–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0052

Form Number: FMS Forms 469, 460, 459, and 458

Type of Review: Extension

Title: Financial Institution Forms For Federal Tax and Treasury and Loan Depositary

Description: Tax Administration system, Bank Deposit Financial institutions are required to complete a contract application to participate in the FTD/TT&L Program. The approved application designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 450

Estimated Burden Hours Per Response: 30 minutes

Frequency of Response: Other (Once for the duration of authorization)

Estimated Total Reporting Burden: 450 hour

Clearance Officer: Jacqueline R. Perry (301) 436–6453, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and

Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-13325 Filed 6-5-92; 8:45 am]

BILLING CODE 4810-35-M

Public Information Collection Requirements Submitted to OMB for Review

June 1, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550-0013
Form Number: None
Type of Review: Reinstatement
Title: Request for Service Corporation Activity
Description: 12 CFR 545.74 requires Federal Associations to obtain approval prior to operating a service corporation engaged in activities not preapproved by regulation. The regulation also requires a recordkeeping requirement for securities brokerage services. These requirements allow the OTS to review service corporation activity and ensure it will not adversely affect an institution's safety and soundness.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 152
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours
Frequency of Response: Other (Submission required each time a service corporation is requested.)
Estimated Total Reporting/ Recordkeeping Burden: 464 hours
OMB Number: 1550-0017
Form Number: None
Type of Review: Reinstatement
Title: Request to Amend Association's Bylaws
Description: 12 CFR 544.5 and 552.5 require Federal Associations to obtain OTS approval of any change in their bylaws which is not preapproved by regulation. The purpose of the bylaw amendment application is to evaluate whether the bylaw change is justified and will not negatively impact the association and its members.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 180
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Other (Submission required when bylaws are amended.)
Estimated Total Reporting Burden: 360 hours
OMB Number: 1550-0018
Form Number: None
Type of Review: Reinstatement
Title: Request to Amend Association's Charter
Description: 12 CFR 544.5 and 552.4 require Federal association to obtain OTS approval of any change in their charter which is not preapproved by regulation. The charter amendment application evaluates whether there is a need for the proposed amendment and whether change could be accomplished under existing statutes and regulations
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 83
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Other (Submission required each time applicant needs to amend its charter.)
Estimated Total Recordkeeping Burden: 166 hours
Clearance Officer: John Turner (202) 906-6840, Office of Thrift Supervision, 2d Floor, 1700 G Street, NW, Washington, DC 20552
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-13322 Filed 6-8-92; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

June 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0010
Form Number: IRS Form W-4
Type of Review: Revision
Title: Employee's Withholding Allowance Certificate
Description: Employee file this form to tell employers (1) the number of withholding allowances claimed. (2) dollar amount they want withholding increased each pay period. (3) if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages
Respondents: Individuals or households, State of local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small business or organizations
Estimated Number of Respondents/ Recordkeepers: 54,209,079
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 48 minutes
Learning about the law or the form: 10 minutes
Preparing the form: 69 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 112,754,884 hours
OMB Number: 1545-0219
Form Number: IRS Form 5884
Type of Review: Extension
Title: Job Credit
Description: Internal Revenue Code (IRC) section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure this jobs credit. IRS uses the information on the form to verify that the correct amount credit was claimed
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number Respondents/ Recordkeepers: 85,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 3 hours, 50 minutes
Learning about the law or the form: 35 minutes
Preparing and sending the form to the IRS: 41 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 434,350 hours

OMB Number: 1545–0895
Form Number: IRS Form 3800
Type of Review: Revision
Title: General Business Credit
Description: Internal Revenue Code (IRC) section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, disabled access credit, and enhanced oil recovery credit. Form 3800 is used to figure the correct credit
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 247,500
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 10 hours, 46 minutes
Learning about the law or the form: 42 minutes
Preparing and sending the form to the IRS: 54 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 3,059,100 hours
OMB Number: 1545–0984
Form Number: IRS Form 8586
Type of Review: Revision
Title: Low-Income Housing Credit
Description: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 50,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 5 hours, 59 minutes
Learning about the law or the form: 1 hour, 32 minutes
Preparing and sending the form to the IRS: 4 hours, 6 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 580,000 hours
OMB Number: 1545–1007
Form Number: IRS Form 8606
Type of Review: Extension
Title: Nondeductible IRS Contributions, IRA Basis, and Nontaxable Distributions
Description: Internal Revenue Code (IRC) section 408(o) allows taxpayers to make nondeductible contributions to individual retirement plans. This section also requires taxpayers to report to the Service certain information regarding nondeductible contributions
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 997,748
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 26 minutes
Learning about the law or the form: 7 minutes
Preparing the form: 22 minutes
Copying, assembling, and sending the form to the IRS: 20 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,267,140 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–13323 Filed 6–5–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

June 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0101
Form Number: None
Type of Review: Extension
Title: Declaration of Ultimate Consignee that Articles Were Exported for Temporary Scientific or Educational Purposes
Description: The owner of duty-free containers or holders is required to keep adequate records open to inspection by Customs Officers to document that they are being used in international traffic and therefore are still entitled to duty-free status. Owners are usually companies involved in foreign trade
Respondents: Businesses or other for-profit
Estimated Number of Recordkeepers: 20
Estimated Burden Hours Per Recordkeeper: 50 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,000 hours
Clearance Officer: Ralph Meyer (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmetmental Reports Management Officer.
[FR Doc. 92–12324 Filed 6–5–92; 8:45 am]
BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

June 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0006
Form Number: ATF F 3310.4
Type of Review: Extension
Title: Report of Multiple Sales or Other Disposition of Pistols and Revolvers
Description: This form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers
Respondents: Businesses or other for-profit

Estimated Number of Respondents: 10,000
Estimated Burden Hours Per Respondent: 12 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 8,000 hours
OMB Number: 1512–0042
Form Number: ATF F 7 (5310.12)
Type of Review: Extension
Title: Application for License, Under 18 USC Chapter 44, Firearms
Description: This form is used by the public when applying for a Federal firearms license for activities as a dealer, importer, manufacturer, or collector. The information requested on the form establishes eligibility for the license
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 35,000
Estimated Burden Hours Per Respondent: 57 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 33,250 hours
OMB Number: 1512–0119
Form Number: ATF F 2149/1250 (5200.14)
Type of Review: Extension
Title: Notice of Removal of Tobacco Products, Cigarette Papers, or Cigarette Tubes
Description: Tobacco manufacturers or export warehouse proprietors are liable for tax on tobacco products on their premises. Tobacco products, cigarette papers and tubes may be removed without payment of tax, for specific and verifiable purposes. This form documents and verifies these removals
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 314
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 21,195 hours
OMB Number: 1512–0162
Form Number: ATF F 3067 (5210.9)
Type of Review: Extension
Title: Inventory—Manufacturer of Tobacco Products
Description: This form is necessary to determine the beginning and ending inventories of tobacco products at the premises of a tobacco products manufacturer. The inventory is recorded on this form by the proprietor and is used to determine tax liability, compliance with regulations and for protection of the revenue
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 34
Estimated Burden Hours Per Respondent: 5 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 170 hours
OMB Number: 1512–0164
Form Number: ATF F 3069 (5200.7)
Type of Review: Extension
Title: Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn From the Market
Description: ATF F 3069 (5200.7) is sued by persons who intend to withdraw tobacco products from the market for which the tax has already been paid or determined. The form describes the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form notifies ATF when withdrawal or destruction is to take place, and ATF may elect to supervise withdrawal or destruction
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 119
Estimated Burden Hours Per Respondent: 45 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,071 hours
OMB Number: 1512–0209
Form Number: ATF F 5110.50
Type of Review: Extension
Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico)
Description: ATF F 5110.50 is the bond form to secure payment of excise taxes on distilled spirits shipped to the U.S. from Puerto Rico on deferral of tax. The form identifies the principal, the surety, purpose of bond, and allocation of the penal sum among the principal's locations
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 10
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 10 hours
OMB Number: 1512–0334
Form Number: ATF REC 5150/3
Type of Review: Extension
Title: Usual and Customary Business Records Relating to Tax-Free Alcohol
Description: Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal purposes by educational organizations, hospitals, laboratories, etc. Records maintain spirits accountability and protect tax revenue and public safety
Respondents: State and local governments, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 4,444
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1 hour
OMB Number: 1512–0335
Form Number: ATF REC 5150/4
Type of Review: Extension
Title: Letterhead Application and Notices Relating to Tax-Free Alcohol
Description: Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. Permits/Applications control authorized uses and flow. Protect tax revenue and public safety
Respondents: State or local governments, Businesses of other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 4,444
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,222 hours
OMB Number: 1512–0345
Form Number: ATF REC 5150/12
Type of Review: Extension
Title: Manufacturers Recovering Taxpaid Alcohol
Description: Apothecaries, pharmacists and manufacturers of certain nonbeverage products may use and recover taxpaid alcohol in the manufacture of such products. The manufacturer may then claim drawback of the tax paid on the alcohol so used. Records of recovered spirits protect against duplication of claims or diversion to beverage use
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 20
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 1,800 hours
OMB Number: 1512–0358
Form Number: ATF REC 5210/1
Type of Review: Extension
Title: Tobacco Products Manufacturers—Records of Operations
Description: Tobacco products manufacturers must maintain a system of records that provide accountability over the tobacco

products received and produced. Needed to ensure tobacco transactions to be traced, and ensure that tax liabilities have been totally satisfied
Respondents: Businesses or other for-profit
Estimated Number of Recordkeepers: 114
Estimated Burden Hours Per Respondent: 150 hours
Frequency of Response: Other
Estimated Total Reporting Burden: 17,100 hours
OMB Number: 1512–0363
Form Number: ATF REC 5210/6
Type of Review: Extension
Title: Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States
Description: Used by tobacco products manufacturers to record removals of tobacco products for the use of the United States. Used by ATF to verify that removal was tax exempt. Needed to maintain accountability over removals; allows transactions to be traced. Protects tax revenue.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 125
Estimated Burden Hours Per Recordkeeper: 5 hours
Frequency of Response: Other
Estimated Total Reporting Burden: 625 hours
OMB Number: 1512–0368
Form Number: ATF REC 5230/1
Type of Review: Extension
Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices
Description: Used by tobacco products importers or manufacturers who import or make large cigars. Record needed to verify wholesale prices of those cigars; tax is based on those prices. Ensures that all tax revenues due the government are collected
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 112
Estimated Burden Hours Per Respondent: 2 hours, 20 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 261 hours
OMB Number: 1512–0391
Form Number: ATF REC 5210/10
Type of Review: Extension
Title: Tobacco—Record of Disposition More than 60,000 Cigarettes in a Single Transaction
Description: Records must be maintained by tobacco products manufacturers and cigarette distributors showing details of large cigarette transactions; used to trace the movement of contraband cigarettes. Helps curtail the illicit traffic in cigarettes between states
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 9,500
Estimated Burden Hours Per Recordkeeper: 120 hours
Frequency of Response: Other
Estimated Total Reporting Burden: 1,140,000 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–13327 Filed 6–5–92; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF TREASURY

Internal Revenue Service

[Delegation Order No. 97 (Rev. 31)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This delegation order extends to all Associate Chief Counsels the authority, for matters under their respective jurisdictions, to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of that person for a taxable period ended prior to the date of agreement and related specific items affecting other taxable periods. The revised delegation order also permits the Chief Counsel to redelegate any authority delegated to him under the delegation order to the Associate Chief Counsels and their Deputies for cases under their respective jurisdictions, and to the Assistant Chief Counsels for cases under their respective jurisdictions that do not involve precedent issues.

FOR FURTHER INFORMATION CONTACT: Philip E. Bennet, Technical Advisor to the Associate Chief Counsel (Domestic), 1111 Constitution Avenue, NW., room 5541, Washington, DC 20024. Tel. No. (202) 566–3179 (not a toll-free number).

DATES: Effective date: October 1, 1991.

SUBJECT: Closing agreements concerning Internal Revenue Tax Liability.

[Amended and Supplemented by Delegation Order No. 225].

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7121–1(a); Treasury Order No. 150–07; Treasury Order No. 150–09; and Treasury Order No. 150–17, subject to the transfer of authority covered in Treasury Order No. 120–01, as modified by Treasury Order No. 150–27, as revised, this authority is hereinafter delegated.

1. The Chief Counsel is hereby authorized in cases under his/her jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in respect to any prospective transactions or completed transactions if the request to the Chief Counsel for determination or ruling was made before any affected returns have been filed.

2. The Associate Chief Counsels and the Assistant Commissioners (Examination) and (International) are hereby authorized for matters under their respective jurisdictions to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods. The Assistant Commissioner (International) is also authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) with respect to the performance of his/her functions as the competent authority under the tax conventions of the United States.

3. The Assistant Commissioner (Employee Plans and Exempt Organizations) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction that is in respect of any transaction concerning employee plans or exempt organizations.

4. The Assistant Commissioner (International); Regional Commissioners; Regional Counsel; Assistant Regional Commissioners (Examination); Service Center Directors; Director, Austin Compliance Center; District Directors; Chiefs and Associate Chiefs of Appeals Offices and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in

cases under their jurisdiction (but excluding cases docketed before the United States Tax Court) to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods.

5. The Associate Chief Counsels; the Assistant Commissioners (Employee Plans and Exempt Organizations) and (International); Regional Commissioner; Regional Counsel; Chiefs and Associate Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her teams cases, are hereby authorized in cases under their jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel or his/her delegate to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) but only in respect to related specific items affecting other taxable periods.

6. The Assistant Commissioner (International) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate from whom he/she acts) in cases under his/her jurisdiction, and to provide for the mitigation of economic double taxation under section 3 of Revenue Procedure 64–54, 1964–2 C.B. 1008, under Revenue Procedure 72–22, 1972–1 C.B. 747, and under Revenue Procedure 69–13, 1969–1 C.B. 402, and to enter into and approve a written agreement providing the treatment available under Revenue Procedure 65–17, 1965–1 C.B. 833.

7. The authority delegated herein does not include the authority to set aside any closing agreement.

8. Authority delegated in this Order may not be redelegated, except that the Chief Counsel may redelegate the authority contained in paragraph 1 to the Associate Chief Counsels and the Deputy Associate Chief Counsels for cases under their respective jurisdictions, and to the Assistant Chief Counsels for cases under their respective jurisdictions that do not involve precedent issues; the Assistant Commissioners (Examination) and (International) may redelegate the authority contained in paragraph 2 of this Order to the Deputy Assistant Commissioners (Examination) and (International); the Deputy Chief Counsel may redelegate the authority in paragraph 2 of this Order but not lower than the Deputy Associate Chief Counsels; and the Assistant Commissioner (Employee Plans and Exempt Organizations) may redelegate the authority in paragraph 2 of this Order but not lower than the Deputy Associate Chief Counsels; and the Assistant Commissioner (Employee Plans and Exempt Organizations) may redelegate the authority contained in paragraph 3 of this Order to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) and to the Technical Advisors on the Staff of the Assistant Commissioner (Employee Plans and Exempt Organizations) for cases that do not involve precedent issues; Service Center Directors and Director, Austin Compliance Center may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Examination Support Unit with respect to agreements concerning the administrative disposition of certain tax shelter cases; and not below the Chief; Windfall Profit Tax Staff, Austin Service Center or Austin Compliance Center with respect to entering into and approving a written agreement with the Tax Matters Partner/Person (TMP) and one or more partners or shareholders with respect to whether the partnership or S corporation acting through its TMP, is duly authorized to act on behalf of the partners or shareholders in the determination of partnership or S corporation items for purposes of the tax imposed by chapter 45, and for purposes of assessment and collection of the windfall profit tax for such partnership or S corporation taxable year. The Assistant Commissioner (International) and District Directors may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Quality Review Staff/Section with respect to all matters, and not below the Chief, Examination Support Staff/Section, or Chief, Planning and Special Programs Branch/Section with respect to agreements concerning the administrative disposition of certain tax shelter cases, or Chief, Special Procedures function with respect to the waiver of right to claim refunds for those responsible officers who pay the corporate liability in lieu of a 100-percent penalty assessment under IRC 6672.

9. To the extent that the authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

10. Delegation Order No. 97 (Rev. 30), effective October 1, 1991, is hereby superseded.

Approved:

Dated: May 18, 1992.

Michael P. Dolan,

Deputy Commissioner.

[FR Doc. 92–13261 Filed 6–5–92; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Dutch and Flemish Seventeenth Century Paintings: The Harold Samuel Collection" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Mississippi Museum of Art, Jackson, Mississippi, from on or about August 1, to on or about September 27, 1992; the Virginia Museum of Fine Arts, Richmond, Virginia, from on or about October 13, to on or about December 6, 1992; The Frick Art Museum, Pittsburgh, Pennsylvania, from on or about December 19, 1992, to on or about February 14, 1993; the Museum of Fine Arts, Boston, Massachusetts, from on or about March 13, to on or about May 9, 1993; and the Seattle Art Museum, Seattle, Washington, from on or about June 3, to on or about July 25, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: June 2, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92–13272 Filed 6–5–92; 8:45am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Luisa Alvarez of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Public Law 92–463, the Department of Veterans Affairs gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 M Street NW., Washington, DC July 14 through July 17, 1992. The session on July 14, 1992, is scheduled to begin at 6:30 p.m. and end at 9:30 p.m. The sessions on July 15, 16, 17, 1992, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and developmet applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the July 14, session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 15–17, 1992, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 522b(c)(6), and (c)(9)(b) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veteran Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, (Phone: 202–535–7278) at least five days before the meeting.

Dated: June 1, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–13394 Filed 6–5–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 110
Monday, June 8, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 10, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Warren Steen Construction, Inc.*, Docket No. LAKE 89-68-M. (Issues include whether the judge erred in concluding that Warren Steen violated 30 C.F.R. § 56.12071, and whether the violation was the result of unwarrantable failure.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay; 1-800-877-8339 for toll free.

Dated: June 3, 1992.

Jean H. Ellen

[FR Doc. 92-13532 Filed 6-4-92 2:30 p.m.

BILLING CODE 6735-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 9-92

Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and time	Subject matter
Tues., June 23, 1992 at 2:00 p.m.	Consideration of Proposed Decisions on claims against Iran.
Wed., June 24, 1992 at:	Oral Hearings on objections to Proposed Decisions issued on claims against Iran:*
10:00 a.m.	IR-0416—Joseph A. Sokoloski.
10:30 a.m.	IR-1143—Estate of Beunus E. Kinney, Dec'd.
11:00 a.m.	IR-0691—James C. Medlock.
11:30 a.m.	IR-1125—Charles M. Carriger.
2:00 p.m.	IR-0013—Jon L. Buczek.

*The hearing site will be: 601 D Street, NW., Classroom B, 10th Floor, Patrick Henry Bldg., Washington, DC.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, DC on June 3, 1992.

Judith H. Lock,

Administrative Officer.

[FR Doc. 92-13453 Filed 6-4-92; 10:59 am]

BILLING CODE 4410-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-14]

TIME AND DATE: June 18, 1992 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda of future meeting
2. Minutes
3. Ratification List
4. Petitions and complaints—Certain bulk bags (Docket number 1695)
5. Inv. 701-TA-318 (Preliminary) and 731-TA-560-561 (Preliminary) (Sulfanilic Acid from the Republic of Hungary and India)—briefing and vote.
6. Inv. 731-TA-520-521 (Final) (Carbon Steel Butt-Weld Pipe Fittings from China and Thailand)—briefing and vote.
7. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: June 3, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-13439 Filed 6-4-92; 10:48 am]

BILLING CODE 7020-02-M

NATIONAL SCIENCE BOARD

DATE AND TIME:

June 18, 1992, 8:30 a.m. Closed Session
June 19, 1992, 8:30 a.m. Closed Session
June 19, 1992, 11:15 a.m. Closed Session

PLACE: National Science Foundation; 1800 G Street, NW, Rm. 540, Washington, DC 20550.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 18—Closed Session: 8:30 a.m.—4:00 p.m.

8:30a
Introduction—(Dr. Massey)
9:00a
Theme No. 1—Intellectual Integration
10:00a
Theme No. 2—Organizational Integration
11:00a
Theme No. 3—People, the Source of Success
12:00-1p
Lunch
1:00p
Theme No. 4—NSF, an Adaptive Institution
2:00p
Theme No. 5—Accountability
3:00p
Discussion

Friday, June 19—Closed Session: 8:30 a.m.-11:15 a.m.

8:30a
Minutes of May 1992 Meeting
8:35a
Chairman's Report
8:45a
Grants & Contracts (Dr. Baker)
9:00a
Long Range Plan/1994 Budget

Friday, June 19—Open Session 11:15 a.m.-Noon

11:15a
Minutes of May 1992 Meeting
11:20a
Director's Report
1130a

Report of Committee on Industrial Research & Development

Marta Cehelsky,

Executive Officer.

[FR Doc. 92-13475 Filed 6-4-92; 12:06 pm]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 8, 15, 22, and 29, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 8

Thursday, June 11

2:00 p.m.
Discussion of Internal Management Issues (Closed—Ex.2)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 15—Tentative

Friday, June 19

10:00 a.m.
Briefing on Requests to DOE for Technology Transfers Under 10 CFR Part 810 (Closed—Ex. 1 and 4)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 22—Tentative

Wednesday, June 24

9:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

2:30 p.m.
Briefing on Proposed Part 100 Rule Change (Public Meeting)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, June 25

9:00 a.m.
Briefing by NUMARC on First-of-a-Kind Engineering (Foake) (Public Meeting)

1:30 p.m.
Meeting with Professor Feshbach on Electrical Energy Production in the Former Soviet Union (Public Meeting)

Week of June 29—Tentative

Thursday, July 2

9:30 a.m.
Periodic Briefing on Operation Reactors and Fuel Facilities (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Commission Order on Shoreham Decommissioning Issues in Response to SECY-92-140" scheduled for June 3, *postponed.*

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on the date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: June 3, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-13531 Filed 6-4-92; 2:29 pm]

BILLING CODE 7590-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on June 1, 1992, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for July 6, 1993, in Washington, DC. The members will 1) consider a filing with the Postal Rate Commission for a Discount for Bulk Small Parcels and 2) be briefed on a future filing with the Postal Rate Commission for a Mail Classification Change Regarding Delivery Point Barcoding.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Mackie, Nevin, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to sections 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39 United States Code; and section 7.3(c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 92-13458 Filed 6-4-92; 8:45 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 57, No. 110
Monday, June 8, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AC91

Correction of Earnings Records After Expiration of Time Limitation

Correction

In rule document 92-11944 beginning on page 21599 in the issue of Thursday, May 21, 1992, make the following correction:

On page 21599, in the first column, under **SUMMARY:**, in the third line, "establish" was mispelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-73]

Federal Property Suitable as Facilities to Assist the Homeless

Correction

In notice document 92-8090 beginning on page 12506 in the issue of Friday, April 10, 1992, make the following correction:

On page 12515, in the second column, insert the file line and the billing code to read:

[FR Doc. 92-8090 Filed 4-9-92; 8:45 am]

BILLING CODE 4210-10-M

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-02-4212-13; IDI-27581, IDI-28415]

Issuance of Land Exchange Conveyance Documents; ID

Correction

In notice document 92-10145 beginning on page 18903 in the issue of Friday, May 1, 1992, on page 18904, in the second column, in the second line, delete "Q02".

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095-AA42

Disposition of Federal Records

Correction

In rule document 92-12426 beginning on page 22431 in the issue of Thursday, May 28, 1992, make the following correction:

§ 1228.76 [Corrected]

On page 22432, in the second column, in § 1228.76, in the fifth line, after "Archives" insert "in accordance with subpart J of this part".

BILLING CODE 1505-01-D

federal register

Monday
June 8, 1992

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H-033-d]

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: In this final standard the Occupational Safety and Health Administration (OSHA) amends its present standards for regulating occupational exposure to asbestos in general industry (29 CFR 1910.1001) and construction (29 CFR 1928.56).

OSHA has reviewed available relevant evidence concerning the health effects of nonasbestiform tremolite, anthophyllite and actinolite and has also examined the feasibility of various regulatory options. Based on the entire rulemaking record before it, OSHA has made a determination that substantial evidence is lacking to conclude that nonasbestiform tremolite, anthophyllite and actinolite present the same type or magnitude of health effect as asbestos. Further, substantial evidence does not support a finding that exposed employees would be at a significant risk because nonasbestiform tremolite, anthophyllite or actinolite was not regulated in the asbestos standards.

OSHA hereby lifts the Administrative Stay, removes and reserves 29 CFR 1910.1101, and amends the revised asbestos standards to remove nonasbestiform tremolite, anthophyllite and actinolite from their scope.

DATES: *Effective date:* This final rule shall become effective May 29, 1992.

Administrative stay: The Administrative Stay expired May 30, 1992.

ADDRESSES: For additional copies of this document, contact OSHA Office of Publications; U.S. Department of Labor, room N-3101, 200 Constitution Ave., NW., Washington, DC 20210, Telephone (202)-523-9667.

For copies of materials in the docket, contact: OSHA Docket Office, Docket No. H-033d, U.S. Department of Labor, room N-2625, 200 Constitution Ave., NW., Washington, DC 20210, Telephone (202)-523-7894. The hours of operation of the Docket Office are 10 a.m. until 4 p.m.

In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of this final decision, under section 6(f) of the OSH Act, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, room S-4004, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N-3649, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Pertinent Legal Authority
III. Regulatory History
IV. Mineralogical Considerations
V. Health Effects
VI. Other Regulatory Issues
VII. Summary and Explanation of the Amendments
VIII. Authority

I. Introduction

This preamble discusses OSHA's decision to remove nonasbestiform tremolite, anthophyllite, and actinolite (herein referred to as ATA and/or nonasbestiform ATA) from the asbestos standards for general industry and construction (29 CFR 1910.1001 and 1926.58). Instead, exposure to nonasbestiform ATA will be regulated by the particulates not otherwise regulated (PNOR) limit in Table Z-1-A of 1910.1000 [15 mg/m³ (total dust); 5 mg/m³ (respirable dust)]. Becuase nonasbestiform ATA is found in combination with other minerals, some of which are regulated by other exposure limits in Table Z-1-A, some employees exposed to nonasbestiform ATA will be protected by those exposure limits as well.

OSHA is also removing and reserving 29 CFR 1910.1101, which was designated "Asbestos" and which has been applied to nonasbestiform ATA during the administrative stay of the revised asbestos standards (29 CFR 1910.1001 and 29 CFR 1926.58). OSHA has determined that the 1972 asbestos standard, which had been redesignated 1910.1101, no longer applies to nonasbestiform ATA and thus, there is no current reason to continue to include it in the Code of Federal Regulations.

As discussed further in this preamble, OSHA's determination to remove nonasbestiform ATA from the scope of the asbestos standards, is based on the insufficiency of evidence to support determinations that their further inclusion would protect exposed employees from a risk of disease which was the equivalent in incidence and gravity to asbestos related disease, and that removing coverage would pose a significant risk to exposed employees.

The Agency also finds that the evidence is insufficient to regulate nonasbestiform ATA as presenting a significant health risk to employees other than as a physical irritant, without regard to its analogy to asbestos. Thus no separate standard is necessary at this time and the PNOR limit is appropriate.

In summary the basis for these findings is as follows. Asbestos and nonasbestiform ATA appear to be distinguishable mineral entities on a population basis, and in most instances on a particle basis. The characteristics which differentiate them generally appear to correspond to the properties which may dictate different biologic response. There are mechanistic data from experimental animals exposed to various durable minerals which support counting some particles of nonasbestiform ATA like all asbestos fibers. However, available toxicological and epidemiologic evidence related specifically to nonasbestiform ATA is negative or inconclusive on the issue. Also, in most cases, particles of nonasbestiform ATA appear to be a very small fraction of the dust population to which employees are exposed. Therefore, OSHA finds there is insufficient evidence to support regulating nonasbestiform ATA as presenting a risk similar in kind and extent to asbestos.

Regulating nonasbestiform ATA on its own is also precluded by the limitations of the available evidence. Dose response data concerning nonasbestiform ATA exposure alone is not available; human and animal studies concerning nonasbestiform ATA are individually and collectively, equivocal. Most of the studies do not, on their face report results which show a statistically significant positive response due to nonasbestiform ATA exposure. Criticisms concerning their interpretation mainly concern their power to disprove an association between nonasbestiform ATA exposure and abestos-related disease. OSHA, finds that even if these criticisms are accepted, the totality of evidence still does not constitute affirmative evidence supporting regulating nonasbestiform ATA as presenting a significant health risk.

This rulemaking record therefore is distinguishable from the body of evidence in the EtO rulemaking which was considered "compelling" in the aggregate, although most of the studies were individually flawed. *(Public Citizen Health Research Group* v.

Tyson, 796 F2d 1479). Accordingly, the Agency has determined to not regulate nonasbestiform ATA exposure in a separate standard, since it is unable to conclude, given the information currently available, that it presents a significant risk to exposed employees, at current exposure levels, at any of the asbestos PELs which applied during the history of asbestos standards, or at any other specific level.

OSHA also believes that evidence in this record does not show that removing nonasbestiform ATA from the scope of the asbestos standards will pose a significant risk to exposed employees. As discussed later in this document, testimony and evidence which is not controverted, indicates that, although there is a risk of nonmalignant respiratory disease from high exposures to talc containing nonasbestiform ATA, (See discussion during regulatory alternatives), nonasbestiform ATA is not identified as the causative agent of such nonmalignant disease. OSHA has also determined that there is insufficient health effects evidence linking exposure to nonasbestiform ATA to a heightened risk of cancer. Historic exposure levels of talc containing nonasbestiform ATA (converted from mppcf) linked to production of excess nonmalignant disease have been estimated as approximately 4 to 12 mg/m ^{3}. At levels estimated at approximately 1.5 to 6.5 mg/m ^{3} (Ex. 84–141, docket H–033c, Kleinfeld et al., at 665; conversion made by ACGIH 1986) excess nonmalignant respiratory disease appears to be eliminated. The current PEL for talc is 2 mg/m ^{3}. (Talc is measured on a gravimetric basis rather than by fiber and is thus measured in mg/m ^{3}.)

Without inclusion in the asbestos standards, employees exposed to nonasbestiform ATA will be covered by various dust limits in OSHA's Air Contaminant Standards (29 CFR 1910.1000 and 29 CFR 1926.55). Those employees exposed to tremolitic talc, will be covered by the talc standard as well, for that fraction of their exposure which constitutes talc. Where exposure occurs to a mixture of substances the mixture formula in the Air Contaminant Standard applies. Therefore workers exposed to nonasbestiform ATA contaminated talc, the commercial product most likely to contain sizable amounts of nonasbestiform ATA, will be protected by several permissible exposure limits and hazard communication provisions.

The other industries where nonasbestiform ATA exposure occur are those where ATA are constituents of crushed rock and stone. At the time of the proposal, OSHA's contractor reported the following conclusions about the potential for exposure to nonasbestiform ATA in industries which consume crushed stone, sand, and gravel. "The occurrence of nonasbestiform tremolite, actinolite, and/or anthophyllite is erratic and unpredictable. However, when it does occur—even in significant quantities—it does not appear that construction or other activities which disrupt the minerals and produce dust result in airborne fiber levels which exceed OSHA's action level 0.1 f/cc. "(CONSAD report, Ex. 465 at 1.14). (In this example, particles of nonasbestiform ATA, which are greater than 5 microns in length and have aspect ratios greater than or equal to 3:1, are measured as "fibers/cc" as opposed to the example above where dust was measured on a gravimetric basis.)

No evidence was presented in the rulemaking which showed that workers will be exposed to airborne levels of nonasbestiform ATA during activities involving crushed rock or stone which significantly exceed CONSAD's estimate. Therefore, OSHA concludes that removing these workers from the protection of the asbestos standard will not result in a significant health risk to them because, even if workers were exposed to levels estimated by OSHA's contractor, there would likely be no significant risk.

The Agency acknowledges that certain public health organizations have recommended that OSHA continue to regulate nonasbestiform ATA under the asbestos standards. Thus, the American Thoracic Society (ATS) concluded that "(a)t present, the prudent public health policy course is to regard appropriately sized (non-asbestiform) tremolite "fibers" in sufficient exposure dose (concentration and duration), as capable of producing the recognized asbestos-related diseases, and they should be regulated accordingly. (Ex. 525 at 15). As discussed in detail in the section on mineralogy, OSHA continues to believe that fiber dimension is the most significant indicator of fiber pathology. However, there is insufficient evidence in the record to determine the parameters of "appropriately sized" tremolite particles. In addition the evidence which is available most likely associates fibers with dimensions common to asbestos populations with disease causing potential than particles found in nonasbestiform ATA populations. For example, the Stanton index particle of at least 8 μm in length and less than .25 μm in width, is rarely associated with nonasbestiform ATA particles, but is a common dimension for asbestos fibers.

NIOSH also recommends that OSHA continue to regulate nonasbestiform ATA under the asbestos standards. Its major rationale is similar to the ATS's, i.e. "NIOSH concludes for regulatory purposes that cleavage fragments of the appropriate aspect ratio and length from the nonasbestiform minerals should be considered as hazardous as fibers from the asbestiform minerals." (Tr. 5/9, p. 9). As stated above, OSHA does not believe that the current record provides an evidentiary basis to determine "the appropriate aspect ratio and length," for determining pathogenicity. Even if dimensional cut-offs were known for asbestos fibers, additional data do not support a standard for all ATA minerals based on fiber dimension alone. Available data show that asbestos containing dusts have much greater potency than non-asbestos containing dusts. Nor is there direct evidence showing fiber equivalency for asbestos and nonasbestiform ATA. NIOSH's additional concern is that by deregulating nonasbestiform ATA, OSHA will leave unprotected workers who may be exposed to asbestos, as a contaminant of a nonasbestiform mineral deposit or product to which they are exposed. (See Tr. 5/9, pp. 10–14). In this regard OSHA notes that available evidence indicates that significant contamination of nonasbestiform mineral deposits is identifiable and thus amenable to regulations under applicable asbestos standards.

Thus, OSHA does not believe that potential asbestos contamination of nonasbestos minerals, including nonasbestiform ATA, is sufficient reason to include such nonasbestiform minerals in the asbestos standard. If the presence of asbestos is known, it should be evaluated for extent and exposure potential. The definition of asbestos in the asbestos standards, and the counting criteria therein are sufficiently broad so as to cover all identifiable asbestos fibers. As discussed later in this document, OSHA has not changed these provisions. If an identification error is made, it is likely to be a false positive for asbestos rather than a false negative. Airborne exposure data in the record relating to naturally occurring asbestos as a contaminant, show that exposure potential is likely to be very low, even where asbestos is a major contaminant. (CONSAD study, Ex. 465)

Also, answering NIOSH's concerns, evidence in the record shows that differential analysis of mineral deposits and products can and is being performed using a variety of methods.

(See Langer, Tr. 5/11, pp. 225–227). Based on these considerations, OSHA does not believe that including nonasbestiform ATA in the asbestos standards in order to insure that asbestos contamination of nonasbestiform ATA deposits will not be ignored is necessary to protect employees exposed to mineral products where asbestos contamination is a possibility. In consequence of this decision ATA will be regulated as a PNOR at 5 mg/m^3 or 15 mg/m^3 because of physical irritation. Because a mixture of talc and nonasbestiform ATA has been shown to cause nonmalignant respiratory disease, the mixture formula clearly is applicable.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. *et. seq.*), and the regulations issued pursuant thereto (5 CFR part 1320), OSHA is required to submit the information collection requirements contained in its standards to the Office of Management and Budget (OMB) for review under section 3504(h) of the Act. However, in this final there are no information collection requirements.

Federalism

This document has been reviewed in accordance with Executive Order 12612, 52 FR 41685 (October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with States prior to taking any actions that would restrict actions only when there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective as the Federal standards in providing safe and healthful employment and places of employment.

To the extent that there are any State or regional peculiarities, States with occupational safety and health plans approved under Section 18 of the OSH Act would be able to develop their own State standards to deal with any special problems.

Those States which have elected to participate under Section 18 of the OSH Act would not be preempted by this final standard and would be able to deal with special, local conditions within the framework provided by this standard while ensuring that their standards are at least as effective as the Federal standard.

State Plans

The 23 States and 2 territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard (i.e. a standard which is at least as effective as the federal standard) within 6 months after the publication of a final standard for occupational exposure to nonasbestiform ATA or amend their existing standard if it is not "at least as effective" as the final federal standard. States with their own OSHA-approved occupational safety and health plans may also elect to be more protective than the federal standard. The states and territories with occupational safety and health state plans are Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, the Virgin Islands, Washington, and Wyoming. (In Connecticut and New York, the plan covers only State and local government employees.)

II. Pertinent Legal Authority

The primary purpose of the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) (The Act) is to assure, so far as possible safe and healthful working conditions for every American worker over the period of his or her working lifetime. One means prescribed by the Congress to achieve this goal is the mandate given to and the concomitant authority vested in, the Secretary of Labor to set mandatory safety and health standards. The Congress specifically mandated that:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standards which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this section shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. (Section 6(b)(5)).

Where appropriate, OSHA standards are required to include provisions for labels or other appropriate forms of warning to apprise employees of hazards, suitable protective equipment, exposure control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, appropriate medical examinations or other tests. These must be available at no cost to the employee (Section 6(b)(7)). Standards may also prescribe recordkeeping requirements where necessary or appropriate for the enforcement of the Act or for developing information regarding occupational accidents and illnesses (Section 8(c)).

Section 3(8) of the Act, 29 U.S.C. 652(8), defines an occupational safety and health standard as follows:

> A standard which requires condition, or the adoption or use of one or more practices, means, methods, operations or processes, reasonably necessary or appropriate to provide a safe or healthful employment and place of employment.

The Supreme Court has said that Section 3(8) must be applied to the issuance of a permanent standard to determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment (*Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980)). This "significant risk" determination constitutes a finding that, in the absence of the changes in practices mandated by the standard, the workplaces would be "unsafe" in the sense that workers would be threatened with a significant risk of harm. (Id. at 642).

The court indicated, however, that the significant risk determination is not a "mathematical straitjacket," and that "OSHA is not required to support its finding that significant risk exists with anything approaching certainty." The Court ruled that "a reviewing Court (is) to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge (and that) * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over protection rather than under protection" (448 U.S. at 655).

The Court also stated that "while the Agency must support its finding that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based

largely on policy considerations" (488 U.S. at 655, n.62). It is in the Agency's burden to make this showing, based on substantial evidence that it is at least more likely than not that such a substantial risk exists.

After OSHA has determined that significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employees will suffer material impairment of health" (section 6(b)(5) of the Act). The Supreme Court has interpreted this section to mean that when adopted an OSHA standard must be the most protective possible to eliminate significant impairment of health, subject to the constraints of technological and economic feasibility (*American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981)).

In addition, section 4(b)(2) of the Act provides that OSHA's general industry standards would apply to construction and other workplaces where the Assistant Secretary has determined those standards are more effective than the standard which would otherwise apply.

In this document, OSHA is amending the revised standards for Asbestos (29 CFR 1910.1001 and 1926.58) to remove nonasbestiform ATA from their scope. The basis for this decision is the Agency's determination that the available evidence is insufficient to conclude that nonasbestiform ATA present the same type or magnitude of health effect as asbestos.

The inclusion of the nonasbestiform minerals under the 1972 standard was based on the Agency's view that nonasbestiform ATA likely subjected exposed employees to a significant risk of asbestos related disease and in the same way as asbestos. Additional evidence and evaluations which have been submitted to OSHA led to a reassessment of OSHA's views.

The Supreme Court in *Motor Vehicle Manufacturers Association* v. *State Farm Mutual Automobile Insurance Co.* (State Farm), (463 U.S. 29, 1983) held that "an Agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance * * *" 463 U.S. at 42. OSHA has previously stated the approach it will follow in raising or eliminating exposure limits in two places. Those are in its reconsideration for the exposure to cotton dust in the nontextile sector at 50 FR 51132–3, October 12, 1985 and in its Air Contaminants Final Rule (54 FR 2698), January 19, 1989.

The evidence must indicate that significant risk is unlikely to exist as a result of the change in the regulation. OSHA's final action in this rulemaking is based on the direction of the Supreme Court in State Farm and is consistent with OSHA's previous approach.

Also, the Supreme Court in its State Farm decision held that recision of a rule is arbitrary if, inter alia the Agency does not consider an important aspect of the problem (463 U.S. at 43). The Court held that an essential component of reasoned decisionmaking requires discussing why alternative ways of achieving the objectives of the Act cannot be adopted. OSHA believes that here it must consider such regulatory alternatives presented by its review of the record, or which are suggested by participants who show the significant benefit and feasibility of such recommendations.

Significance of Risk for Nonasbestiform-ATA

OSHA is empowered to regulate exposure to toxic substances where substantial evidence shows the existence of a significant risk of material impairment. For asbestos, OSHA has found that a lifetime excess cancer risk of 6.7 per thousand and a lifetime asbestosis risk of 5 cases per thousand are correlated with asbestos exposure at the 1986 time-weighted average PEL of 0.2 f/cc and that a still significant risk exists at that level.

OSHA's 1986 risk assessment for asbestos, which was upheld by the United States Court of Appeals for the District of Columbia Circuit, was based on the results of a large number of epidemiologic studies which evaluated human cohorts which were undisputedly exposed to asbestos. For lung cancer, OSHA looked at eight studies which contained good data for the calculation of the dose-response relationship for lung cancer, and six studies to calculate the dose-response relationship for mesothelioma OSHA's evaluation of these studies indicated that the potency coefficients of lung cancer appeared lower where airborne fibers are relatively coarse, than in certain manufacturing operations where the fibers are fine (See 51 FR at 22623).

OSHA did not use the results of any study involving worker exposure to nonasbestiform ATA in its asbestos risk assessment. In determining to include ATA in its 1986 asbestos standards the Agency reasoned that the chemical and structural similarities in varieties of the same minerals allowed a presumption of similar risk, so long as OSHA's fiber definition corresponded to dimensions likely to be carcinogenic. Confirming evidence of similar risk consisted of epidemiologic studies of tremolitic talc miners which showed excess lung cancer and other asbestos related disease. However, at the time, OSHA acknowledged that the studies, although showing positive results, were inconclusive in that the studies did not prove a causal relationship between the mineral exposure and cancer (51 FR 22631).

Thus, the primary basis for including the nonasbestiform varieties of ATA in OSHA's asbestos standards was the Agency's belief that fiber populations with similar "index" fiber counts, presented essentially the same risk, regardless of whether those "index" fibers were strictly asbestos in the mineralogical sense. Dimensions of the "index" fiber in the asbestos standards was a length of at least 5 micrometers with a 3:1 or greater aspect ratio. OSHA believed that the primary determinant of biological activity of asbestos is fiber dimension, and that varieties of asbestos minerals of relevant dimension have the same carcinogenic and fibrogenic potential per fiber. (See 51 FR at 22638).

This determination was the practical equivalent of a qualitative risk assessment for ATA. Given the chemical and structural similarities between nonasbestiform and asbestiform ATA, OSHA determined that similar regulation of both varieties was warranted, so long as dimensionally appropriate fibers were counted.

This decision squarely fit OSHA's mainstream authority to regulate less known substances based on extrapolation from evidence of known related carcinogens. OSHA believed that the Agency was not required to demonstrate the toxicity of each chemical it seeks to regulate through studies demonstrating a clear line of causation. (See *Environmental Defense Fund* v. *E.P.A.*, 598 F.2d 62(C.A.D.C. 1978). OSHA's decision to regulate like asbestos the closely related non-asbestiform varieties of three asbestos minerals was not the first time that OSHA or other regulatory agencies had regulated closely related substances based primarily on evidence relating to the more known variant. In its arsenic standard OSHA had treated pentavalent arsenic as presenting the same health risk as trivalent arsenic, which was conclusively carcinogenic. OSHA based its decision on evidence consisting of studies which demonstrated positive mutagenic and genetic effects by both

trivalent and pentavalent varieties and two positive epidemiologic studies of pentavalent arsenic. A negative study of pentavalent arsenic was rejected by OSHA for problematic exposure description and small numbers of workers studied. OSHA determined that substantial evidence existed to consider both forms of arsenic carcinogenic, and regulated them under the same standard. (43 FR 19584.) This was upheld in *ASARCO* v. *OSHA*, 746 F2d. 483, (4th Circuit, 1984).

Similarly, EPA has regulated less chlorinated PCBs as carcinogens based on extrapolations from data concerning more chlorinated PCBs, which undisputedly showed carcinogenicity. Confirming evidence consisted of some positive in vivo and in vitro tests for the less chlorinated variety. (*EDF* v. *EPA*, supra).

Thus, OSHA and other agencies have based risk assessments for one substance on the quantitative data relating to a related substance if substantial data in the record support the equivalency of risk in a qualitative way, even though dose-response data allowing a separate risk assessment are not available. For example, in the PCB case, positive *in vivo* and *in vitro* studies showed excess risk of about the same magnitude. In the arsenic case, positive epidemiologic and animal data of the less studied substance, corresponded to risk estimates for the more studied variant. Further in both cases, the biological relationship was based on the same factors as the assumed toxic mechanisms.

In this rulemaking, OSHA has reopened the issue of whether nonasbestiform ATA should be regulated like asbestos based on its similarity to the known carcinogen. The evidence submitted to this record includes, in the Agency's view, virtually all relevant data and comment existing on this issue, much of which was not previously considered by the Agency. OSHA has examined this record to evaluate whether the risk of the nonasbestiform varieties of ATA can be derived by analogy to asbestos. After a review of this greatly enhanced record, OSHA has reversed its decision of 1986, and determined that there is insufficient evidence to regulate nonasbestiform ATA primarily by extrapolation from data relating to asbestos. Reliable confirming evidence is lacking; animal experimental evidence either shows no or greatly reduced effect for nonasbestiform ATA, epidemiologic evidence relating to nonasbestiform ATA is inconclusive and/or flawed, and dimensional hypotheses of carcinogenicity appear to offer only partial explanations, and in any event are too imprecise for regulatory use. Thus, the record does not contain substantial evidence to support a determination that nonasbestiform ATA presents a health risk similar to asbestos, based primarily on extrapolation from evidence relating to asbestos.

As further discussed in the Health Effects section, below, OSHA has also determined that substantial evidence is lacking in this record to support the regulation of nonasbestiform ATA in the asbestos standards or in a separate health standard based on a separate risk assessment which shows that these mineral forms present the same kind and extent of risk as asbestos, or a lesser but still significant risk to exposed employees greater than the risk caused by particulates not otherwise regulated.

III. Regulatory History

OSHA first regulated asbestos in 1971 when, under authority of section 6(a) of the Occupational Safety and Health Act, it adopted the existing Federal standard for asbestos under the Walsh-Healey Public Contracts Act (29 CFR 1910.93, Table G–3 (36 FR 10466, May 29, 1971). The standard consisted of a permissible exposure limit listed in Table G–3 "Mine Dusts". The Walsh-Healey standard for tremolite was also adopted and separately listed in Table G–3.

Following an emergency temporary standard (ETS) for exposure to "asbestos dust" in 1971 (36 FR 23207, December 7, 1971), OSHA conducted rulemaking and issued a permanent standard under section 6(b) of the OSH Act, which regulated occupational exposure to asbestos. The standard defined asbestos as chrysotile, crocidolite, amosite, tremolite, anthophyllite, and actinolite (29 CFR 1910.93a (later renumbered as § 1910.1001); 37 FR 11318, June 7, 1972). The 1972 standard regulated only fibers longer than 5 micrometers, measured by phase contrast illumination (37 FR 11318, 29 CFR 1910.1001 (1985)). Also at that time, OSHA deleted the entry for tremolite in Table G–3.

On October 18, 1972, OSHA made clarifying revisions to Table G–3. The existing permissible exposure limit for "talc" was explained to apply only to "non-asbestos form" talc, while new entries for "fibrous talc" and tremolite instructed readers to use the permissible limit for asbestos (37 FR 22102, 22142).

All major provisions of the standard which were initially challenged were upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Industrial Union Department, AFL–CIO* v. *Hodgson*, 499 F.2d 467 (1974).

Because the 1972 standard did not distinguish between asbestiform and nonasbestiform ATA, OSHA began to inspect employers whose employees were exposed to either mineralogic variety.

One supplier of industrial talc containing non-asbestiform anthophyllite and tremolite (the R.T. Vanderbilt Company) petitioned OSHA to restrict the application of the 1972 standard so that nonasbestiform anthophyllite and tremolite would not be covered by it. In October 1974 OSHA interpreted the applicability of the asbestos standard to mean only asbestiform termolite with and aspect ratio of 5 to 1 (Letter from OSHA Assistant Secretary John Stender to R.T. Vanderbilt Company, August 6, 1974; OSHA Field Information Memorandum (FIM) # 74–02, Novermber 21, 1974 (Ex. 411)). However, because of preliminary information received from NIOSH regarding medical evaluations of workers exposed to tremolitic talc, FIM # 74–02 was canceled on January 4, 1977 (Ex. 412). OSHA reverted to its regulatory definition of asbestos, which included all termolite fibers, whether asbestiform or nonasbestiform.

In 1975 OSHA proposed to reduce the PEL and otherwise revise and tighten the asbestos standard to protect employees against carcinogenic effects of asbestos (40 FR 47652, October 9, 1975). No change was proposed concerning the six minerals defined as asbestos, but OSHA proposed to define "asbestos fiber" as a "particulate" instead of a "fiber" so as to stress its "morphology and toxicity * * * rather than its geologic or mineralogic origin." (40 FR 46758). It also proposed to add a three to one aspect ratio and a five micrometer maximum diameter to the definition of fiber in recognition of fiber respirability and the ACGIH recommended methods for fiber sampling and counting using phase contrast microscopy. No hearings were held on this proposal.

In 1983 OSHA issued an Emergency Temporary Standard (ETS) for asbestos, lowering the permissible exposure limit from 2 fibers per cubic centimeter (2 f/cc) to 0.5 f/cc (48 FR 51086, November 4, 1983). In the preamble to the ETS, which also constituted a proposal for a revised permanent standard, OSHA raised the possibility of revising the definition of "asbestos" and "asbestos fiber" and included an extensive discussion of the relative carcinogenicity and toxicity of different fibers (48 FR 51110–51121). As with the 1972 standard, OSHA

concluded there was no basis to regulate fiber types differently (48 FR 51110). The ETS itself was vacated by the Fifth Circuit Court of Appeals on March 7, 1984 for reasons not related to the issue of the mineralogical definition of asbestos.

In its supplemental proposed rule (49 FR 11416, April 10, 1984), OSHA said it was considering a revision of its definition of asbestos to conform to the practice of other federal agencies (the Mine Safety and Health Administration, the Consumer Product Safety Commission, the Environmental Protection Agency, and the Department of Education) which regulated only mineralogically correct "asbestos". The definition under consideration would include only the asbestiform varieties of the six covered minerals. However, OSHA noted that health evidence existed implicating nonasbestiform minerals in the production of asbestos-related disease; that morphology may be a significant causative factor; and that the Agency would examine all relevant evidence before its final decision on coverage (51 FR 14122).

Several parties addressed the issue in written comments and in oral testimony during the rulemaking. A primary proponent of including only a "mineralogically correct" definition of asbestos was the R.T. Vanderbilt Company, a miner and producer of tremolitic talc (See generally Ex. 337). Vanderbilt claimed that health studies at its mine and mill do not show the presence of asbestos-related disease; and that therefore its products should not be regulated with the same stringency as asbestos. Other participants also supported limiting coverage to "mineralogically" defined asbestos (See e.g. 90–3 and 90–143).

Other commentors opposed excluding nonasbestiform tremolite, anthophyllite, and actinolite from the scope of the standard. Public Citizen Health Research Group (Ex. 122; Tr. June 22, pp. 51–52) and the United Brotherhood of Carpenters and Joiners of America (Tr. June 28, pp. 168–172) contended that a revised asbestos standard should include these minerals because of their asbestos-like health effects. Their comments in part were based on findings of the NIOSH studies of upstate New York talc miners and millers, working at Vanderbilt which found an excess of respiratory disease.

OSHA's final standards (29 CFR 1910.1001 and 1926.58) define "asbestos" as "chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these materials that has been chemically treated or altered" (29 CFR 1910.1001(b); 29 CFR 1926.58(b)). However, these standards also regulate the nonasbestiform varieties of tremolite, anthophyllite, and actinolite. Only "fibers" of these materials are regulated; fibers are defined as particles of the covered materials which are five micrometers or longer with an aspect ratio of at least 3 to 1. These nonasbestiform "fibers" were regulated because OSHA determined that there was substantial evidence to support protection under the revised asbestos standards for workers exposed to nonasbestiform tremolite, anthophyllite and actinolite (51 FR 22631). OSHA, however, did not separately analyze the economic and technological feasibility of the revised provisions in industries using the nonasbestiform minerals.

Following issuance of the standards, a number of parties filed petitions in the Second, Fifth, and District of Columbia Circuit Courts of Appeals for review of the standards under section 6(f) of the OSH Act based on broad challenges to the standard's validity. On June 20, 1986, the R.T. Vanderbilt Company requested an administrative stay of the standard pending judicial review based on its claim that OSHA improperly included nonasbestiform minerals (Ex. 403). This request was denied on July 9, 1986 in a letter from OSHA Assistant Secretary John Pendergrass (Ex. 404). Vanderbilt also filed a stay motion in the United States Court of Appeals for the Second Circuit (Ex. 502). The National Stone Association (NSA) and Vulcan Materials Company, nonparticipants in the rulemaking, also requested a stay of the standards on July 11, 1986 insofar as they applied to tremolite and actinolite exposure from the use of crushed stone in construction (Ex. 406 & 407). In their request for a stay, the NSA claimed that the technological and economic impacts of the new standard on users of crushed stone in the construction industry was never considered in the rulemaking. It alleged severe adverse impacts on the industry and the public as the result of applying the new standard to crushed stone.

Vanderbilt requested OSHA to reconsider its denial of an administrative stay on July 24, 1986 (Ex. 416). Court papers filed by Vanderbilt brought to OSHA's attention internal memoranda from three NIOSH scientists which disputed OSHA's regulatory treatment of nonasbestiform tremolite, anthophyllite and actinolite. Dr. Donald Millar, the Director of NIOSH, wrote to OSHA on July 17, 1986 to reaffirm NIOSH's support for OSHA's positions in the final standards (Ex. 408). On July 18, 1986, OSHA granted a temporary stay insofar as the standards applied to nonasbestiform tremolite, anthophyllite and actinolite (51 FR 37002). OSHA said it was granting the stay in part to enable the agency to review Dr. Millar's letter, the NIOSH memoranda, the submissions of Vanderbilt and various trade associations, and to conduct supplemental rulemaking on whether nonasbestiform tremolite, anthophyllite and actinolite should be regulated in the same manner as asbestos and the feasibility of regulating the affected industries. The stay was extended to July 21, 1988 (52 FR 15722) and thereafter (53 FR 27345), (54 FR 30704) and (56 FR 43699) in order to complete rulemaking. The current stay expires May 30, 1992.

Pursuant to the stay and its extension, the standard, covering tremolite, anthophyllite, and actinolite were to remain in effect as they had applied to minerals under the previous standard. The 1972 standard was republished as 29 CFR 1910.1101 (1987).

On February 12, 1990 OSHA published a Notice of Proposed Rulemaking (NPRM) in which the Agency proposed to remove nonasbestiform tremolite, anthophyllite and actinolite from the scope of the revised standards for Asbestos. At that time OSHA also presented and requested comment on various alternatives for regulating nonasbestiform ATA.

Public hearings on the proposed standard were held in Washington, DC May 8–14, 1990, to provide interested parties and the public with the opportunity to comment on the proposed action. Post hearing submissions of data, comments, and briefs were received through July 23, 1990.

After the close of the post hearing briefing comment periods, the American Thoracic Society (ATS) submitted a report to the record concerning the health risks of nonasbestiform tremolite (Ex. 525). The Agency set an additional period, later extended to December 14, 1990 to enable the public to submit written comments and analyses on all issues raised by the ATS report. In order to review comments on this document, as well as the entire rulemaking record, the Administration Stay was extended to February 28, 1992 (56 FR 43699) and again to May 30, 1992 (57 FR 7877).

The record of the public hearing contains the original transcript of the hearing, which incorporated the record as a whole and exhibit numbers 505 to 553. Copies of the materials contained in the record may be obtained from the OSHA Docket Office, room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The Docket Office is open to the public

from 10 a.m. to 4 p.m. Monday through Friday except Federal Holidays.

The final decision on the occupational exposure to nonasbestiform ATA is based on full consideration of the entire record of this proceeding, including material discussed or relied upon in the proposal, the record of the informal hearing, and all comments and exhibits received.

IV. Mineralogical Considerations

The following is a discussion of the mineralogical evidence submitted to this record concerning defining and differentiating the types of minerals commonly designated as "asbestos", "asbestiform" and "nonasbestiform". OSHA's position, expressed in the proposal and in the 1986 standards, was that precise mineralogic definitions are helpful in describing the scope of the standard, but absent strong evidence that mineralogic distinctions are biologically relevant, such distinctions by themselves, should not dictate regulatory health based decisions. In the 1986 standards, OSHA defined "asbestos" and "nonasbestiform ATA" separately, but covered both varieties based on health effects evidence.

Much evidence and testimony in this proceeding related to the extent to which different mineral varieties can be distinguished. OSHA's overall regulatory approach to this issue is shaped by its mandate to protect employee health, and to err on the side of protection when presented with a close scientific question. The Agency believes that mere difficulties in differentiating between these mineral varieties should not dictate uniform regulatory treatment, unless such difficulties reflect the fact that the varieties, in biologically relevant respects, behave the same. Of course, misidentification of mineral type affects the confidence in and usefulness of studies reporting the biological potential of different mineral types. Also, the extent of analytical difficulty in distinguishing even well characterized mineral types, would be relevant to OSHA in making feasibility determinations concerning analytic methods.

In general there was agreement concerning the broad definitions of these mineral classifications. Thus, asbestos is not a precisely defined chemical compound, but rather, a collective term given to a group of similar silicate minerals having commercial significance. Historically six silicate minerals have made up the group of minerals which has been collectively referred to as Asbestos. These six minerals are chrysotile, crocidolite, amosite (which is mineralogically known as cummingtonite-grunerite asbestos), tremolite asbestos, anthophyllite asbestos, and actinolite asbestos. Chrysotile belongs to the family of minerals called serpentine minerals. The remaining five minerals belong to the family of minerals called amphiboles.

Dr. Arthur Langer pointed out in his testimony and comments to OSHA, that the definition of asbestos is comprised of a mineralogical definition and an economic geology definition. Langer states:

> Asbestos is described in the mineralogical literature as several silicate minerals with the following characteristics: Minerals occurring in nature as fibers; Fibers are bundles composed of "hair-like" (filiform) fibrils, each with a high length-to-width ratio; Fiber bundles are polyfilamentous and the fibril strands may be easily separated by hand. Unit fibrils cannot be resolved by [the] unaided eye; In addition to the mineralogical criteria, the economic geology literature contains additional descriptive terms, mostly pertaining to properties exhibited by asbestos which render it useful in commerce. Among these are: fibers exhibit stability in acids and alkalies; act as electrical insulators; act as thermal insulators; fibers are highly flexible and can be woven into asbestos cloth or rope; fibers possess diameter dependent high tensile strength. Together, both geological disciplines have defined what asbestos is mineralogically. (Ex. 517, Tab 5)

Dr. Ann Wylie, testified that "Asbestos is a commercial term applied to a group of highly fibrous silicate minerals that readily separate into long, thin, strong fibers of sufficient flexibility to be woven, are heat resistant and chemically inert, and possess a high electical insulation and therefore are suitable for uses where incombustible, nonconducting, or chemically resistant material is required." (Ex. 479–23).

Similarly, the Bureau of Mines stated in comments to the NPRM that a correct mineralogical definition of asbestos was:

> A term applied to six naturally occurring serpentine- and amphibole- group minerals that are exploited commercially because they crystallize into long, thin, flexible fibers that are easily separable when crushed or processed, can be woven, are resistant to heat and chemical attack, and are good electrical insulators. The six serpentine- and amphibole-group minerals commonly referred to as asbestos are chrysotile, cummingtonite-grunerite asbestos (amosite), riebeckite asbestos (crocidolite), anthophyllite asbestos, tremolite asbestos, and actinolite asbestos (Ex. 478–6).

The above minerals which are collectively termed asbestos, are also described as being asbestiform. Asbestiform is a mineralogical term describing a particular mineral habit. The habit of a mineral is the shape or form a crystal or aggregate of crystals take on during crystallization and is dependent on the existing environmental/geological conditions at the time of formation. The National Stone Association (NSA) and the American Mining Congress (AMC) state that, "The asbestiform habit can be defined as a habit where mineral crystals grow in a single dimension, in a straight line until they form long, thread-like fibers with aspect ratios of 20:1 to 100:1 and higher. When pressure is applied, the fibers do not shatter but simply bend much like a wire. Fibrils of a smaller diameter are produced as bundles of fibers are pulled apart. This bundling effect is referred to as polyfilamentous." (Ex. 467) Dr. Wylie testified that the asbestiform habit can be recognized by certain characteristics using light microscopy. For example she testified that:

> Populations of asbestiform fibers, and this would include all, not just commercial asbestos, but all asbestiform fibers that I have looked at, they have mean aspect ratios greater than twenty to one for particles longer than five microns—and again, it's very important that we qualify, when speaking of aspect ratio, length, because aspect ratio by itself as a population characteristic has no meaning—very thin fibrils that are usually less than half a micrometer in width. And you will see in any population of asbestiform fiber[s] at least two of the following characteristics. Normally they are all present, but two, I think is enough to convince me. Parallel fibers occurring in bundles, fibers displaying splayed ends, the matted masses of individual fibers, and fibers showing curvature. (Tr. 5/9, p. 92)

However Dr. Wylie emphasized that these are characteristics which apply to populations of asbestiform fibers and not a particular particle. She states that "The characteristics that were listed were population characteristics, not characteristics on a fiber by fiber discriminator. They weren't meant to say a particular particle must meet all these criteria in order to say that this is an asbestos particle or population present. And that's the way that definition is approached that if we have a bulk sample, and we are looking in that sample for the presence of—asbestos," (Tr. 5/8, p. 144)

In further clarification of the asbestiform habit Dr. Tibor Zoltai, a professor of mineralogy at the University of Minnesota, states that:

> The development of the asbestiform properties is a gradual process, (and) depends on the extent of the appropriate conditions of crystallization. Consequently, there are variable qualities of asbestiform fibers. The poor quality asbestiform fibers of

amphiboles are called byssolite, or brittle asbestos. The high quality asbestiform fibers because of their highly developed flexibility, strength and physical-chemical durability, constitute desirable industrial materials and are exploited under the generic term of asbestos. Although practically all amphiboles and most other minerals are known to occur in asbestiform habit, only a few amphiboles are known in sufficient concentration and quantity to produce commercial asbestos: * * * (Ex. 546).

Thus, asbestos is a collective term composed of both mineralogical and economic elements which has been used to refer to a specific set of asbestiform minerals which are, or were in the past, regarded as being commercially significant. The term asbestiform is a mineralogical term used to refer to those minerals which are found in a particular mineral habit. That is, while all asbestos is asbestiform, not all asbestiform minerals are asbestos.

As the above discussion shows, the term "asbestos" is based on more than mineralogic criteria, and its meaning also reflects to a certain extent the interests of the affected commercial communities. Nonasbestiform mineral varieties have a different commercial history. For the most part, they have had little commercial significance. This is related to their different crystallization habit. Because, unlike asbestos, they do not grow unidirectionally, into long thin fibers, therefore they often do not possess properties such as weavibility or high tensile strength which make them valuable for asbestos-like uses. For the most part nonasbestiform minerals are not mined for any special property, but rather, they are mined generally with other minerals as a basic stone product. However, nonasbestiform tremolite when mined with talc, results in enhanced usefulness to industries such as ceramic manufacturing, because of the other properties specific to nonasbestiform minerals.

The record makes clear, that from a mineralogic perspective the crystallization growth pattern of these minerals determines whether they develop as asbestos, or as nonasbestiform varieties. In joint comments to the record, the NSA and the AMC stated that "in the nonasbestiform variety crystal growth is random, forming multi-dimensional prismatic patterns. When pressure is applied, the crystal fractures easily, fragmenting into prismatic particles. Some of the particles or cleavage fragments are acicular or needle-shaped as a result of the tendency of amphibole minerals to cleave along two dimensions but not the third" (Ex. 467).

In his comments to the record, Dr. Zoltai notes that: Both asbestiform and nonasbestiform amphibole minerals have the same chemical composition and crystal structure. They are not distinguishable by instrumental analysis and x-ray diffraction. The difference between them is in their respective crystallization habit, that is, in their respective condition of crystallization. Nonasbestiform prismatic crystals are the common crystal habits of amphiboles. The asbestiform crystallization habit is the unusual one, it requires unique temperature and pressure conditions inducing unidirectional and rapid crystal growth. (Ex. 446)

In the NPRM, OSHA stated that unlike asbestiform minerals, nonasbestiform minerals do not separate into fibrils but, during processes such as mining, milling and/or processing can be broken down into fragments resulting from cleavage along the minerals two or three dimensional plane of growth. OSHA also stated that particles thus formed, are generally referred to as cleavage fragments and these fragments may occur in dimensions equal to asbestiform fibers.

Various commentors agreed with OSHA's definition of a cleavage fragment but objected to OSHA's characterization that nonasbestiform cleavage fragments and asbestiform fibers occur in similar dimensions. In testimony to OSHA, Kelly Bailey, an Industrial Hygienist with Vulcan Chemical Company speaking for the NSA stated:

The NSA believes that this statement is deliberately misleading in that it fails to take into account the population characteristics of both cleavage fragments and asbestiform fibers. It is true that there are some cleavage fragments that may have dimensions of 10:1, 20:1 or higher in aspect ratio when examined with PCM and that there may be a few asbestos fibers that have low aspect ratio dimensions similar to cleavage fragments; however, to imply that cleavage fragments do not differ from asbestiform fibers in an observable, dimensional way is poppycock! (Ex. 479–23).

Similarly, in earlier testimony to OSHA during the rulemaking for the 1986 revised standards, Dr. Wylie stated:

A particle of any mineral which is formed by regular breakage is called a cleavage fragment. Mineralogically, a fiber or fibril is a crystal which has attained its shape through growth, in contrast to a cleavage fragment which has attained its shape through regular breakage. The shape of amphibole cleavage fragments is somewhat variable depending upon the history of the mineral sample. Some amphiboles when crushed will produce a population of particles which may have the average aspect ratio of 5 to 1 or 6 to 1, whereas other amphibole samples when crushed may produce a population of particles whose aspect ratios average closer to 8 to 1 or 10 to 1. And in almost any population of amphibole cleavage fragments, it is possible to find a few particles whose aspect ratios may extend up to 20 to 1 or perhaps even higher. Amphibole asbestos populations, on the other hand, are characterized by aspect ratios which are considerably greater than this." (Ex. 230, Docket # H–033c).

Dr. Ann Wylie reiterated her earlier opinions in the current rulemaking stating:

Throughout OSHA's Notice of Proposed Rulemaking, they imply that cleavage fragments are similar in size to asbestos fibers, and the distinctions between them are fuzzy. In most cases, this is simply not so. Asbestos crystallizes from a fluid medium; growth takes place rapidly in one direction; the chemical makeup of the fluid may inhibit growth laterally. * * * These fibrils are single or twin crystals and they have very, very narrow widths and long lengths. It is the narrow width and long lengths that give asbestos flexibility and high tensile strength. Fibrils share a common axis of growth, but they are randomly [ar]ranged in the direction perpendicular to the fiber axis, and when disturbed, they are easily desegregated. Because their origin is different, population of cleavage fragments and fibers of the same minerals are simply different. Dr. Wylie adds that: While there may be some cleavage fragments that cannot be distinguished from asbestos solely on dimensions, and there are some particles in asbestos samples that can't be distinguished from cleavage fragments, the populations are as wholes easily distinguishable. (Tr. 5/9, pp. 102–103)

As evidence of these differences Dr. Wylie cited to her paper entitled "An Analysis of the Aspect Ratio Criterion for Fiber Counting". Dr. Wylie testified:

As a part of the record, I have prepared a paper entitled "An Analysis of the Aspect Ratio Criterion for Fiber Counting; and that is part of OSHA's record. The paper reviews the distribution of aspect ratio for fiber and fiber bundles of amosite, crocidolite, chrysotile, and they clearly show that for those fibers and fiber bundles, again, that are longer than five micrometers, 100 percent or close to it, have aspect ratios greater than ten to one, and in every population that I have ever looked at that has the asbestiform habit, more than 50 percent have aspect ratios in excess of twenty to one * * * but most of them are 90 percent.

Also included in that paper are data from bulk and airborne samples of cleavage fragments, and there are cleavage fragments [with] aspect ratios greater than ten to one, and there are some that have aspect ratio[s] greater than twenty to one, but they are in much lower abundance, as a population. (Tr. 5/9, pp. 94–95)

While Dr. Wylie notes that there are differences in the distribution of aspect ratios when one looks at populations of asbestos fibers and nonasbestiform cleavage fragments, she also states that

"aspect ratio is a dimensionless parameter" and "* * * it lacks information about the size particles; it only describes shape." (Tr. 5/9, p. 95). Rather than aspect ratio, Dr. Wylie stressed that "width is a much more fundamental parameter of asbestos fibers, and perhaps will shed some light on how we tell particles that are elongated, whether they are cleavage fragments, or whether they are asbestos." (Tr. 5/9, p. 95).

To illustrate this point Dr. Wylie presented data in her testimony on the widths of various populations of asbestos fibers and nonasbestiform cleavage fragments from both bulk and airborne data (Transcripts, May 9, pp. 2–95 to 2–98). This data showed that in the populations of asbestos fibers she studied, the majority of fibers had widths less than one micrometer. For example, 85–90% of the crocidolite fibers she studied had widths less than one micrometer and 60% had widths less than 0.5 micrometers. In amosite samples, greater than 90% had widths less than one micrometer and 75% had widths less than 0.5 micrometers. In tremolite asbestos samples, 85–95% of the fibers had widths less than one micrometer and 75% had widths less than 0.5 micrometers. Wylie stated that when looking at these fiber populations "* * * it really doesn't make any difference, much, whether you look at particles longer than five micrometers, or all particles in a population, when you look at width. Because of the nature of asbestos, width changes very little as length increases, * * *" (Transcripts May 9, p. 2–96). Dr. Wylie acknowledged, however, that asbestos fiber bundles may have widths greater than one micrometer, but she added that even in these cases the majority of particles are less than one micrometer.

Dr. Wylie was criticized for inconsistencies in her comparative population: i.e., sometimes using all fibers, other times citing only those exceeding certain dimensions, e.g. longer than 5 micrometers. Dr. Wylie agreed that, "depending upon which of those qualifiers you put forth, you get vastly different datasets. Now, I took all my cleavage fragment data and I first looked at the particles that are longer than five micrometers, and of these—I'm just going to use a ten to one as aspect ratio—11 percent have aspect ratios greater than ten to one. If we look at that dataset * * * and only at the particles that have aspect ratios greater than three to one * * * and are longer than five micrometers, then we would say its six percent are longer than five micrometers and have aspect ratios greater than ten to one. And finally if we look at particles that are both longer than five micrometers, and have an aspect ratio greater than three to one, we have 19 percent with aspect ratios greater than ten to one." (Tr. 5/9 at 106–107).

The record contains some additional, but less comprehensive evidence on comparative dimensions of nonasbestiform cleavage fragments and their asbestiform analogues. For example, in 1979, the Bureau of Mines compared 8 samples of ground tremolite of varying habit. It concluded that "based on this limited study, there is a relationship between the number of particles of 'critical' dimensions, >10 μm in length and <0.5 μm in width, and the habit of the tremolite-actinolite prior to grinding. * * * Only the asbestos variety gave long, thin particles of the dimensions established by some medical scientists as necessary to produce adverse biological effects in laboratory animals." (See RI 8367, p. 17 as part of the NIOSH pre hearing submission Ex. 478–15)

A critical dimensional distinction between asbestiform fibers and ATA appears to be their widths. Thus, Dr. Wylie stated that her analyses of width show that "About 80 percent of the amphibole cleavage fragments longer than five micrometers, have widths greater than one micron, and none have widths less than 0.25." (Tr. 5/9, p. 98)

Dr. Wylie also pointed out how the width of asbestos fibers will influence their aspect ratio. She states that "the mean width of asbestos fibers is less than half a micron, and if you have five micrometer particles, you have to have an aspect ratio of at least 10 to 1." (Tr. 5/9, p. 101–102). Moreover in her comments to NPRM she states that "while low aspect ratio fiber (or fiber bundles) are present in asbestos populations, they are characteristic of short asbestos fibers * * *. Since the mean width of asbestos fibers is less than 0.5 micrometers, the mean aspect ratio of a 5 micrometer fiber is about 10:1." (Ex. 479–23).

Dr. R.J. Lee, a microscopist and mineralogist with R.J. Associates, also noted the importance of width in distinguishing asbestos fibers from nonasbestiform cleavage fragments. Dr. Lee testified the following:

> First asbestos—airborne asbestos is less than one micrometer in diameter, unless it's present as bundles or cluster, which exhibit the characteristic fibrillar structure of asbestos, or as Dr. Wylie indicated, the hallmark of asbestos. Asbestos larger than a half a micron is a bundle—.
>
> Second, nonasbestos particles longer than five micrometers in length are generally [more] than one micrometer in diameter, and only rarely less than half a micrometer in diameter. When larger than one mocrometer in diameter, they do not exhibit the fibrillar structure of asbestos. (Tr. 5/9, pp. 114–115).

Similarly in their joint comments to the record the NSA and the AMC stated the following observations about particle width:

> Due to the straight line fibrillar crystal growth of asbestos, the width of an asbestos fiber is essentially independent of its length and is not easily altered by processing. In contrast, cleavage fragment populations show increasing width as particle length increases due to the characteristics imparted from normal three dimensional crystal growth. The result of this difference is cleavage fragments with widths rarely less than 0.5 micrometer and almost never less than 0.25 micrometer. Asbestos tends to show a high proportion of fibers less than 0.25 micrometer in width. (Ex. 467)

Dr. Charles Spooner, a microscopist and mineralogist with Charles Spooner and Associates Inc., concurred in his testimony that asbestos fibrils have widths less than 1 micrometer and that most cleavage fragments have low aspect ratio (Tr. 5/8, pp. 120–121). However he also noted that cleavage fragments may also have high aspect ratios. Dr. Spooner stated that "In the universe of amphibole cleavage fragments it seems likely that a greater proportion will exist as more or less equant bodies, however, there will be those instances where high aspect ratio respirable cleavage fragments will be generated upon crushing of the amphibole bearing rock." (Ex. 512).

As noted earlier in this discussion, Dr. Wylie acknowledged that one may find a few cleavage fragments with high aspect ratios, but she added that populations of asbestos fibers and cleavage fragments, as a whole, are distinguishable from one another. However, Dr. Spooner points out that "* * * from the industrial hygiene perspective, very often we are dealing with air samples. We are looking at an airborne fiber and trying to assess its respirability. And again, we are often in the industrial hygiene setting, we don't have the opportunity to know where the material is coming from, nor do we have the opportunity to look at a very large population of fibers * * *" (Tr. 5/8, pp. 117–118). Thus OSHA believes that while one can differentiate between mineral types when populations of particles are examined, when single, isolated particles are examined (e.g. particles from air samples) the ability to differentiate may become more difficult.

In the NPRM OSHA stated that at the microscopic level, on a particle by

particle basis, differences in gross growth characteristics may not be readily observable. Similarly, Dr. Art Langer acknowledged that "* * * in some instances single, isolated particles may be impossible to distinguish, i.e. acicular cleavage fragment from asbestiform fibril" (Ex. 517, Tab 5). Dr. Langer also noted however that while there are some particles which defy mineralogical identification, the percentage of particles that comprise this group is a small percentage (Tr. 5/11, p. 230).

Identification of fibers is confounded by the existence of particles which do not fit a precise mineralogic definition. For example, some samples of industrial talc have been shown to contain "intermediate fibers." Dan Crane, a microscopist at OSHA's Salt Lake City Technical Center, describes these intermediate fibers which are found in industrial talc samples and notes that "It is only by a combined optical/electron optical approach can the nature of the intermediate fibers can be determined. Even at that, they defy definite description." (Ex. 410–23). Mr. Crane goes on to explain that:

> When one looks at the industrial talcs in the microscope, he sees large numbers of particles that are much longer than 20 to 1 even to nearly 100 to 1 in aspect ratio. The first reaction is to say these are the asbestos fibers of tremolite and anthophyllite indicated by the known presence of those minerals in the products. Unfortunately, this is a false assumption. They are for the most part fibers of industrial talc. They have been dubbed intermediates by us, as talcboles by Malcom Ross and fibrous biopyriboles by David Veblan. What they are not is anthophyllite or tremolite. (Ex. 410–23)

In his description of these intermediate fibers Crane notes that examining these particles by light microscopy (e.g. using indices of refraction and dispersion oils) one would not call these particles anthophyllite. However, when one uses electron microscopy one would conclude that these particles are indeed anthophyllite. Mr. Crane explains why this difference occurs:

> The fault can be corrected when the analyst realizes that in this particular mineral, the deposit *was* anthophyllite at one time. The particular mechanics of this are beyond the scope of this letter. Suffice it to say that it is being done in such a way as to leave the more major structure of the anthophyllite fibers intact while transforming them to talc. This residual structure has given rise to electron diffraction patterns that mimic amphibole patterns. Very careful measurement and calibration of these patterns reveal subtle strains in the structure leading to a mineral with similar features to talc and to anthophyllite and yet the numbers fall in between. * * * I have described these other fibers because they are the fibers with the closest morphological similarity to asbestos. They do have splintering and bundle of sticks and frayed ends as characteristics. These are characteristics which we often ascribe to truly asbestiform minerals. All the samples we have examined have been crushed prior to our receiving them. Therefore, we cannot say whether they grew in nature as asbestos fibers. They do look like asbestos and if morphology is the major role in toxicity or carcinogenicity these should be considered more important tha[n] the non-fibrous cleavage fragments of tremolite and anthophyllite. (Ex. 410–23)

Dr. Arthur Langer, in his testimony, also discussed the difficulties in identifying these intermediate fibers. He stated that:

> * * * some of us might call this a pyrobole, pyroxene and amphibole. This has also been described in various deposits, and you're going to ask me about the Vanderbilt talc deposit. That's fine because they're intergro[wthes] like this in the Vanderbilt talc deposit. These are the complex fibers that we have talked about that defy mineralogical classification. (Ex. Tr. 5/11, pp. 170)

The significance of "intermediate" or "transitional" fibers was also addressed by Dr. Langer, who stated that OSHA's major question should be "how common are they in the work place?" and answered "I don't think they're terribly common in the work place. They are only described in certain specific locales." (Tr. 5/11, p. 219).

OSHA notes that even those mineralogists who contend that asbestos is a separate mineral entity from nonasbestiform ATA, agree that intermediate forms exist. Dr. Tibor Zoltai, Professor of Geology at the University of Minnesota, explained that "* * * (T)he development of asbestiform properties is a gradual process, (and) depends on the extent of the appropriate conditions of crystallization. Consequently, there are variable qualities of asbestiform fibers. The poor quality asbestiform fibers of amphiboles are called byssolite, or brittle asbestos. The high quality asbestiform fibers, because of their highly developed flexibility, strength and physical-chemical durability, constitute desirable industrial materials and are exploited under the generic term of asbestos." (Ex. 546). Dr. Langer testified that based on Dr. Wylie's work, it is known that byssolite is not composed of unit fibrils. "So we would not classify byssolite as an asbestos mineral. Now some people consider this as a transition kind of mineral in characteristics." (Tr 5/11 at 518) Other mineral forms exist which are intermediate between anthophyllite and talc, as discussed above.

In summary, the discussion indicates that populations of fibers and populations of cleavage fragments can be distinguished from one another when viewed as a whole. For example one can look at the distribution of aspect ratios or even widths for a population of particles and can then generally identify that population of particles as being asbestiform or nonasbestiform. However when one looks at individual particles, (e.g. particles from air sampling filters) sometimes these mineralogical distinctions are not clear. Unfortunately the data in the record is insufficient at this time to precisely determine how often these situations occur.

The record also describes the presence of various kinds of "intermediate" fibers, which "defy mineralogic classification". Various participants have requested OSHA to base its regulatory decisions on precise mineralogic definitions. Clearly, any significant presence of mineral types which "defy classification", would defeat such an approach. Although these transitional fibers exist OSHA does not believe that independent evidence of their health effects exists which would support regulation. Dr. Langer testified that there are some fibers which "defy mineralogical identification" but they are a "small percentage" (Tr. 5/11, p. 230). Thus, although their presence lends credence to the explanation that asbestos minerals and nonasbestiform varieties developed on a continuum it does not change the fact that for most mineral deposits, asbestos and nonasbestiform habits are distinguishable.

OSHA finds, based on this record that while these intermediate fibers do exist, the record indicates that they are minor constituents of most mineral deposits. In general, when observed in their natural habit of growth, the two habits of asbestiform and nonasbestiform minerals are distinctly different. The record also indicates that populations of particles derived from mining, crushing or processing these minerals, are also distinctly different (e.g. in the distribution of widths and aspect ratios). However on an individual particle basis, which is often the case for particles from air monitoring samples, these distinctions may become less clear. The record indicates that there are situations where individual particles of

asbestiform and nonasbestiform minerals may be indistinguishable. These situations are likely to be rare in occupational contexts but OSHA has little information upon which to make such a determination.

The regulatory implication of these findings are as follows: Several participants suggested that all forms of asbestos and their nonasbestiform analogues should be treated as a single mineral entity for purposes of regulation because the forms of ATA cannot be distinguished, and there is no clear mineralogic dividing line between various varieties of ATA. Dr. Charles Spooner, a witness for OSHA, a geochemist, a mineralogist and an industrial hygienist, in response to a question concerning how his laboratory distinguishes asbestos from fibers that are not asbestos, stated that "at this point if we identify the mineral tremolite, we make no distinction on the basis of fiber." (Tr. 5/8, p. 119). Dr. Spooner's post-hearing submission again noted that distinguishing asbestiform and non-asbestiform cannot be made reliably either on the basis of a hand sample or microscopic examination: Hand-specimen characterization of mineral habit does not necessarily carry over to mineral habit on the micro scale; and, on the micro scale, high-aspect ratio cleavage fragments and asbestiform fragments can co-exist. Dr. Spooner recommended that "the issue must be resolved on the basis of biological activity and aspect ratio of the respirable fibrous bodies." (Ex. 512).

Dr. Bruce Case, in a letter to the British Journal of Industrial Medicine, November, 1990, provides a clear summary of the mineralogic argument for considering asbestiform ATA and non-equant nonasbestiform ATA to be a single substance for purposes of regulation:

> The major flaw in the substitution of mineralogical definitions for microscopical characteristics is a reliance of the former on gross morphology. For regulatory and health assessment purposes, it is microscopical morphology that counts: there is no evidence that potential-affected cells can distinguish between "asbestiform" and "non-asbestiform" fibers having equivalent dimensions. The lack of agreement as to what is and what is not "asbestiform" tremolite would be less critical if those who advocate such a definition could show that there is a clear line between the two forms when they present 'fibrous' morphology. Unfortunately, this is not the case. Pooley has noted that the differences in structure between massive, acicular and fibrous morphology are not "sharply defined", but rather represent points on a continuum. So-called cleavage fragments may, in a strict morphological sense, be fibrous in their appearance in microscopic fields, and there is no convincing evidence that these 'fibers' are of no public health concern. (Ex. 529.4)

The ATS's report also concluded that mineralogic distinctions between different forms of anthophyllite, actinolite and tremolite were not clear: "It became apparent both from our review of the literature and from submissions made to this committee by experienced mineralogists, that the distinction between cleavage fragment and asbestiform fibers, although theoretically clear, is in practice extremely murky." (Ex. 525 at 3)

As noted above, other participants took issue with these statements. In particular, in a post-hearing submission, the R.T. Vanderbilt Company directly took issue with the ATS statement quoted above as follows: "(a)t the OSHA hearing, Dr. Wylie, Dr. Langer and Mr. Addison explained that the distinctions at issue were in no way 'murky' (theoretically, practically, or otherwise). While we do not disagree that some gray areas exist (i.e., at the single crystal level), the important day-to-day distinctions at issue in this rulemaking simply do not fit this 'murky' characterization". (Ex. 529–6 at 3). Other presenters made similar statements. (See e.g., testimony of Dr. Wylie at Tr. 5/9, at 103 and Dr. Lee at Tr. 5/9, at 1).

OSHA has determined that nonasbestiform ATA and asbestos anthophyllite, actinolite, and tremolite should be defined separately for regulatory purposes to conform to common mineralogic usage. As discussed above, the testimony of Dr. Wylie, Dr. Langer, Dr. Nolan, Dr. Campbell, the Bureau of Mines and others agreed that populations of asbestos and nonasbestiform ATA are separate mineral entities, which for the most part have widely diverging population characteristics which are the result of its habit of crystallization in nature. In addition, these characteristics, such as high fibrosity, fiber shape and size, and easy separability appear to be biologically relevant in producing disease. The agency notes that the position it adopted in the 1986 standards, where it stated: "(t)he Agency recognizes that the minerals tremolite, actinolite and anthophyllite exist in different forms", and therefore required that warning signs and labels for ATA need not include the term "asbestos" (See 51 FR at 22679, 29 CFR 1910.1001 (j)(2)(iii), 1926.58(k)(1)(iii), recognized the mineralogic distinctions, but did not distinguish the minerals based on biologic effects. Thus, the difference between the Agency's 1986 and its current positions is not mineralogical and as explained above, is related to its view of the health effects evidence. Thus although the Agency now reaches a different conclusion than it did in 1986 concerning the evidence of health risks of nonasbestiform ATA, it continues to believe that the mineralogic forms are sufficiently distinctive to be treated differently for regulatory purposes. Also, unlike its determination in 1986, which was based on a far less extensive review of health effects evidence, the Agency now finds that differences in biologic effect between asbestos and its nonasbestiform analogues are likely related to the distinctions which define the two groups as separate mineral entities.

V. Health Effects

In its proposal OSHA reviewed the available health effects evidence and preliminarily concluded that "there are a number of studies which raise serious questions about the potential health hazard from occupational exposures to non-asbestiform tremolite, anthophyllite and actionolite. However, the currently available evidence is not sufficiently adequate for OSHA to conclude that these mineral types pose a health risk similar in magnitude or type to asbestos. The Agency believes, however, that the evidence suggests the existence of a possible carcinogenic hazard and other impairing non-carcinogenic adverse health effects." (55 FR 4943).

After reviewing the rulemaking record compiled subsequent to the publication of the proposal, OSHA reaffirms its view of the health effects evidence. The few new studies that have come to light in this rulemaking are still inconclusive. It should be noted that OSHA believes the health effects evidence falls short regardless of whether this proceeding is viewed as deregulatory or as a regulatory initiative.

More specifically, OSHA believes that the evidence viewed as a whole does not rule out a possible carcinogenic effect of certain subpopulations of nonasbestiform ATA at an unspecified exposure level. However, as discussed below, various uncertainties in the data, and a body of data showing no carcinogenic effect, do not allow the Agency to perform qualitative or quantitative risk assessments concerning occupational exposures. Further, the subpopulations of nonasbestiform ATA which, based on mechanistic and toxicological data, may be associated with a carcinogenic effect, do not appear to present an occupational risk. Their presence in the workplace is not apparent from the record evidence.

1. Human Studies

Summary

The epidemiologic studies submitted to this record consisted of no studies which were not available to OSHA at the time of the proposal. The interpretations submitted in comment and testimony also reiterated positions taken prior to the proposal, although participants expanded on them. Additional analyses concerning reported cases of cancer in the NIOSH study cohort were submitted, both in support of the position that the talc exposure was correlated to cancer, and in support of the opposing view that smoking was a likely cause of any elevated SMR.

A review of the human studies in the record follows: Where no new interpretative comment was offered, only a summary describes it. Where new comment or updated data was submitted, a discussion is presented. The discussion is organized around the categorization of the minerals to which the cohorts were exposed. As discussed at length in the proposal, uncertainty about the content of the mineral exposure at times made definitive interpretation difficult. However, because the substances to which workers are exposed are mixed, OSHA believes that mixtures can be evaluated in their own right. If disease cannot be correlated to exposure to a specific mineral in a mixed mineral product, then prudent health policy allows OSHA to ascribe causation to the mineral mixture, rather than to any component.

a. *Studies of exposures to ATA and asbestos contaminated ores.* As OSHA noted in its proposal, McDonald et al. (Ex. 410–6) reported an excess of respiratory cancer including mesotheliomas, among vermiculite miners in Libby, Montana. Vermiculite, a mica-like mineral ore, was contaminated with four to six percent tremolite-actinolite fibers. Mineralogic analysis of the Libby mine's ore showed the fibers to be mostly an asbestiform type of fiber. However there were also "massive amphibole crystals, which when pulverized produced cleavage fragments resembling fibers" (p. 439). OSHA noted, "[a]lthough the fiber analyses indicate that some of the particles were non-asbestiform in origin, the predominant fiber exposure appears to be from asbestiform tremolite. * * * Standardized Mortality Ratios (SMRs) were computed for the cohort of 406 Men. When compared to death rates of men in the U.S., there was a substantial excess number of deaths from respiratory cancer (SMR=245). Four of the 43 deaths were from mesothelioma. There was also a substantial excess number of deaths from non-malignant respiratory disease (SMR=255). There was no excess number of deaths from cancers of non-respiratory sites. When compared to the death rates of Montana men, the cohort's excess mortality was even greater; for example the SMR for respiratory cancer rose from 245 to 303." OSHA stated in the proposal that the result of the Libby, Montana study and other studies of workers exposed to tremolite asbestos contaminated ores "provide additional evidence on the high potency of asbestiform tremolite. Although non-asbestiform tremolite was present it is not possible, from the data presented, to discern what contributing effect the non-asbestiform minerals may have had." (55 FR 4944).

Most comment and testimony during the rulemaking concerning the Libby Montana study reiterated OSHA's earlier analysis. The American Thoracic Society pointed out that the mineralogic characterization of the Libby deposit as containing tremolite asbestos has been challenged, and for that reason and because this is a "non-replicated" study, warned against relying on it. (Ex. 525, p. 5) Dr. Nicholson, in his testimony, pointed out that the presence of nonasbestiform minerals in the deposit, made the study compatible with the risk expected on the basis of measured fiber concentrations (Tr. 5/8, p. 55). NSA noted that "the Libby vermiculite workers were exposed to asbestiform tremolite and asbestiform actinolite and thus this study is not useful in the examination of the nonasbestiform ATA question." (Ex. 524, p. 26.) As stated in the preamble to the proposal, OSHA believes that the results of the Libby, Montana study, and other studies where miners were exposed to both asbestos tremolite and nonasbestiform tremolite (see e.g. Kleinfeld et al., Ex. 84–402 and Brown et al. (Ex. 84–25) provide additional evidence on the high potency of asbestiform tremolite. Although nonasbestiform tremolite was present it is not possible from the data presented, to discern what contributing effect the nonasbestiform minerals may have had to the excess cancer observed in this study.

b. *Studies of exposures to mixtures of other nonasbestiform analogues with nonasbestos minerals.* The Homestake gold mine study (Ex. 84–45, Docket H–033c) was a retrospective cohort mortality study of 3328 gold miners who worked in full-time underground jobs for at least one year between 1940 and 1965. There were 861 observed versus 765 expected deaths overall. The primary exposures were to amphibole minerals in the cummingtonite-grunerite series (the nonasbestiform analogue of amosite) and silica. According to the study's investigators "no association, as measured by length of employment underground, dose (total dust × time), or latency was apparent with lung cancer mortality (43 observed vs. 43 expected). However Dr. Nicholson noted that the conclusion of no excess lung cancer risks associated with exposures at the mine was based on calculations using U.S. mortality rates, rather than South Dakota mortality rates. Had South Dakota mortality rates been used, SMRs would have been raised to 160, rather than the 100 reported by the investigators, (Tr. 5/8, p. 81–2). Dr. Bob Reger who testified for the American Mining Congress (AMC) suggested that such an adjustment is improperly made without adjusting for age (See Tr. 5/8, p. 82). Although OSHA believes that uncertainty in interpretation is introduced by the study's use of U.S. mortality rates, reconstruction of the SMRs applying the South Dakota mortality rate is hindered by the lack of data which would allow an age specific reconstruction. Dr. Nicholson also noted that the Homestake results were not incompatible with an asbestos effect, because in the longer duration category there is a total of only three deaths, an additional uncertainty, and there is a possibility that one has individuals that are survivors and "* * * demonstrate a lower risk by virtue of the fact that they could have had lesser exposure jobs, and, thus, be at lesser risk * * *" (Tr. 5/9, p. 83). OSHA believes Dr. Nicholson's comments correctly state some uncertainties of the study, i.e., small number of deaths, and the possibility that retirees can be a survivor population. These uncertainties do not, by themselves, provide a basis for interpreting the Homestake studies as confirming evidence for the carcinogenic effect of nonasbestiform minerals. The study is not inconsistent with a positive association and does not prove that there is no association. However, it can also not be interpreted as clear evidence of association.

Other studies concerned two groups of iron ore miners and processors, who were exposed to taconite dust which may have contained cleavage fibers of the cummingtonite-grunerite series (Higgins et al., 1983 (Ex. 410–18): Cooper et al., 1988 (Ex. 427)). OSHA agrees with the analysis of all participants who commented on these studies, to the effect that they do not inform as to the carcinogenicity of nonasbestiform ATA, perhaps because of the low exposures in one mine and the lack of latency to observe lung cancer in the other (See

e.g., NSA's post-hearing brief (Ex. 524, p. 27), Dr. Nicholson's testimony (Tr. 5/8, pp. 55–56)).

In its proposal OSHA described at considerable length the studies of the New York State tremolitic talc miners and millers, which had been undertaken by NIOSH. The entire preamble discussion is incorporated here (see 55 FR 4946). One significant interpretive issue concerns the mineral content of the deposit and thus the employees exposures. Vanderbilt testified that "the ore composition is fairly consistent * * * the content of the talc being between 20 to 40 percent, serpentine, 20 to 30 percent; the tremolite 40 to 60 percent, the anthophyllite between zero and five (percent), and * * * quartz * * * in very trace amounts." (Tr. 5/11, p. 103). Testimony in the record supports Vanderbilt's claim that any of the asbestos minerals that falls into the scope of this standard is not a component of the ore. (See Langer et al., and Dunn GeoScience in the prehearing submission of the American Mining Congress and the NSA, Ex. 479–6, 479–23; R.J. Lee in the Vanderbilt Dust Project, Ex. 433). While the reports of these analysts find no evidence of the six asbestos types in the Vanderbilt talc mines, all three noted the presence of asbestiform talc fibers and "transitional particles". These are the same "transitional particles", described earlier in the section on Mineralogic Considerations, which resemble asbestos and talc but are not technically asbestos. NIOSH reiterated its original evaluation that the Vanderbilt deposits contained asbestiform as well as nonasbestiform tremolite and anthophyllite. (See Tr. 5/9, p. 11.) OSHA notes that the debate over the mineralogic content of the Vanderbilt mines remains unresolved. OSHA believes however that the presence of asbestiform talc and the so called "transitional particles" together with the undisputed presence of nonasbestiform tremolite and anthophyllite may have led to the identification of various particles as asbestiform tremolite and/or anthophyllite.

Various industry and government sponsored reviews and updates of NIOSH's study have been conducted. In the NPRM, OSHA concluded that "the NIOSH studies provide evidence to support the possibility that exposure to minerals at the mine is correlated to the excess mortality from lung cancer and nonmalignant respiratory disease and an excess of pleural thickening and lung decrements. However due to uncertainties in the mineral content and mixed mineral contents, the study does not show that it is more likely than not that non-asbestiform fibers are the cause of the disease." (55 FR 4947).

A former NIOSH researcher, Dr. John Gamble, who has criticized basing the regulation of ATA as asbestos on the NIOSH study, submitted additional material to substantiate his contention that attributing excess cancer to nonasbestiform ATA was speculative (Ex. 478–8). Gamble performed an update and re-evaluation of the 1980 NIOSH study in which he added eight more years of follow-up, an exposure latency analysis, and a nested case-control study to control for smoking and other occupational exposures. In his analysis Gamble found a significant increase in mortality for all cause (SMR=128), all respiratory diseases (SMR=251), all malignant neoplasms (SMR=145), and lung cancer (SMR=207). The lung cancer SMRs were elevated in the 20–36 year latency group (SMR=258) and for workers with less than one year tenure at the mine (SMR=357). In the nested case-control study Gamble found no apparent increased risk associated with non-Vanderbilt jobs. However he did find that the odds ratio for cases who smoked was six times that of combined ex-smokers and nonsmokers. Gamble stated in his conclusions that "Although lung cancer SMRs are elevated, we could not find an exposure-response relationship. The lack of an increased risk of lung cancer is consistent with other mining populations exposed to nonasbestiform minerals. The time occurrence of lung cancer is consistent with a smoking etiology." (Ex. 478–8, p. 2)

NIOSH has stated that Dr. Gamble's opinions "are his alone; arise from activities he performed which, in part, created the appearance of a conflict of interest; and represent conclusions, as judged by independent reviewers, which are not supported by data." (Ex. 520, p. 3). NIOSH continues to support the findings of its earlier studies in the New York talc mines, which, they concluded, provide clear evidence of an increase in lung cancer and other asbestos related disease in talc workers. (Ex. 478–15, Tr. May 8, p. 24)

In its post hearing comments NIOSH submitted an update of the Gouverneur Talc study which added eight new lung cancers to the ten identified in the earlier report (Ex. 532). According to NIOSH the SMR for lung cancer was uniform across tenure strata and increased with increasing latency. There was a statistically significant excess in lung cancer in those with 20 years of more latency and with less than one year employment. Those in this latency group with greater than one year duration also exhibited an increased risk but it was not statistically significant. The increased risk of lung cancer among those with short duration also was observed in the 1989 analysis. (Ex. 532 at p .5). NIOSH offered three explanations: cohort members may have been employed in other New York State talc mines and mills where there may have been additional exposures to the same or to similar types of mineral dust and noted that it is known that half of the lung cancer cases worked on other talc mining operations; some of the short duration group may have had very high exposures; and smoking habits among the employees may have been different from the reference population. However, NIOSH performed an exercise to show that differences in smoking could not account for the observed increase in lung cancer. NIOSH calculated SMRs assuming that 100% of the cohort were smokers. NIOSH noted that the SMR for lung cancer would have been only 160, instead of 207. In addition, the updated results show the SMR for non-malignant respiratory disease was significantly elevated among those with more than one year of tenure (SMR=290, CI 144, 518). The types of nonmalignant disease observed in this study is not known to be smoking related.

OSHA notes, however, that virtually no other participant endorses the NIOSH study as a basis for regulation. For example, the ATS report noted that the results of the case-control study and the lack of any dose-response relationship for lung cancer risk in the cohort study do not support a conclusion that the elevated risk in this population was attributable to mine exposures. (Ex. 525, p. 6) Dr. Richard Morgan, testifying for the NSA, stated that "Even if subsequent studies of the Vanderbilt mine permit a conclusion that an occupational exposure at the mine contribute to the risk, there will remain the problem of deciding which exposures (among many) are likely responsible. At this time, however, there is no evidence from these studies that will permit any conclusion concerning nonasbestiform ATA." (Ex. 490C, p. 180).

In summary, OSHA believes that the epidemiological studies, as a whole, provide insufficient evidence to inform as to the carcinogenicity of nonasbestiform ATA. For example, epidemiological studies involving exposures to nonasbestiform amphiboles other than nonasbestiform ATA are hindered by low "fiber" counts and short latency periods. It is likely that even if exposures had been to

"true" asbestos, a positive response would not have been observed under similar low dose, low latency conditions. Epidemiological studies of upstate New York talc miners are hindered by the fact that workers were exposed to a mixture of minerals (the identification of which is still somewhat at debate). Although plausible arguments have been presented that suggest that the increase in lung cancer is consistent with a smoking etiology, OSHA believes that it is also likely that exposures at the mine are responsible for the observed disease, especially in the case of nonmalignant respiratory disease. Nevertheless, due to the mixed mineral exposures OSHA concludes that it is not possible from the present data, to determine what role the nonasbestiform ATA may have played in the induction of that disease.

2. Lung Burden Studies

In the proposal OSHA discussed the findings of several lung burden studies. One study discussed the case study of a mesothelioma death in which an analysis of the autopsied lungs showed elevated levels of tremolite (Ex. 410–10). The fibers of tremolite were of low aspect ratio (i.e. 7:1) and OSHA concluded that low aspect ratio tremolite appeared to have contributed to the induction of mesothelioma (55 FR 4944). However, Mr. Kelly Bailey, testifying for the NSA, took issue with OSHA's conclusion noting that this study involved only a single case study of an individual who was also exposed to chrysotile and the authors of the report stated that the possible effects of tremolite are uncertain. Mr. Bailey also noted that the tremolite "present in the lungs of this case had a *mean* aspect ratio of 7:1" and " * * * it is obvious that a *distribution* of asbestos fibers were found, many with aspect ratios greater than 20:1" (Bailey testimony, Ex. 479–23).

In the proposal OSHA also discussed lung burden studies among miners exposed to both chrysotile and tremolite (Rowlands et al., Ex. 84–178; McDonald et al., Ex. 84–175; Glyseth Ex. 312). These studies indicated that despite high exposure levels of chrysotile, analyses of autopsied lungs showed higher lung burdens of tremolite. OSHA concluded however that the fact that there was a mixture of mineral fiber types precluded one from ascribing causation to one particular mineral type.

The American Thoracic Society (ATS) reviewing the same studies concluded that "although the role of chrysotile versus tremolite in producing disease in these patients could not be clearly sorted out, the * * * data appear to indicate that fairly low aspect ratio fibers of tremolite are capable of causing disease, probably in fairly low concentrations in the case of pleural plaques, but certainly only in very high concentrations in regard to mesothelioma and asbestosis" (Ex. 525, p. 10).

In response to the ATS report, Dr. Arthur Langer, a mineralogist, noted that the "fairly low aspect ratio fibers of tremolite" referred to in the ATS report involve fibers measurements made counting all fibers (i.e. not only those greater than 5 micrometers) and using geometric means. Langer states that "geometric means can be very misleading and the raw data are needed. If one only counts the fibers *longer* than the *5um* geometric mean, the aspect ratio of the tremolite fibers is greater than 20:1." Dr. Langer adds that "the data from Canada are problematic in that there is a mixed population of tremolite (when present) which skews size distribution in lung burden studies towards short wide 'fibers'. The disease (plaques) may have been caused by thin fibers (asbestos) at the pleura. The thick cleavage fragments in the lung parenchyma may have little to do with the disease process at the pleura" (Ex. 529–7, pp. 15–17).

Lung burden analyses were also performed by Dr. Jerrold Abraham, a physician and pathologist at the State University of New York. In his testimony and written comments to the proposal, Dr. Abraham presented his analyses of the lung tissues of deceased talc miners from upstate New York. Dr. Abraham testified that these analyses showed that the lungs of these talc miners included both asbestos and nonasbestiform minerals, despite the fact that the talc miners are claimed by some parties to be exposed to only nonasbestiform tremolite. (Tr. May 10, p. 119).

However several hearing participants objected to Dr. Abraham's analyses (See Morgan and Reger for the American Mining Congress, Ex. 506; Langer et al., Ex. 511; and the R.T. Vanderbilt Co., Ex. 513). In summary, these commentors stated that the review and analyses of the talc miner cases lacked documentation and included neither smoking histories nor prior occupational exposures. They suggested that these cases may have had heavy smoking histories or prior exposure to asbestos which could have induced the observed disease. In particular Dr. Langer, a mineralogist, stated that the "limitations of the report are so great that the data are reduced to anecdotal observations" (Ex. 511).

OSHA acknowledges the limitation of these analyses. However, the finding of a rare disease such as mesothelioma, among a group of miners exposed to mixed mineral environments, raises concern over these type of exposures. Furthermore smoking is not known to induce mesothelioma. However, as was stated in the case of the Canadian chrysotile miners, the mixture of mineral types precludes one from ascribing causation to nonasbestiform minerals. This problem, in addition to the uncertainties involved in Dr. Abraham's analyses, do not provide sufficient information to conclude that nonasbestiform ATA present a risk similar in magnitude or type to asbestos.

In summary, lung burden analyses indicate that nonasbestiform minerals are present in the lungs of cases diagnosed with lung cancer and mesothelioma. Several arguments have been put forth by hearing participants both for and against the implication that nonasbestiform contributed to the observed disease. OSHA believes that it is difficult to discern what contributing effect the nonasbestiform minerals may have had because other asbestiform minerals are also present.

3. Animal Studies

a. *Mechanistic studies.* OSHA noted in the proposal that several studies in the record suggested that fiber dimension is an important factor in asbestos-related disease development. (55 FR at 4944). Dr. Merle Stanton's landmark study (Stanton et al. (Ex 84–195, Docket H–033c)) is generally accepted as showing that fiber dimension is an important determinant in mesothelioma production. Dr. William Nicholson, testifying for OSHA described Stanton's study in his testimony. "Seventy-two separate experiments were conducted with different mineral materials, including the commercial asbestos varieties, man-made mineral fibers and minerals containing varying other percentages of fibers. The results of those studies indicated, and his major conclusion was, that the length and diameter of the fibers were the most important factors determining carcinogenicity. Longer fibers were more carcinogenic than shorter ones, and thinner ones more so than thicker ones * * *." (Tr. 5/8, p. 40).

Most comment and testimony acknowledged that Stanton's work demonstrated that fiber dimension is generally related to tumor production. (See e.g. NSA's post-hearing brief at 19, Ex. 524; Dr. Oehlert's testimony Tr. 5/9, p. 88) For example, Dr. Oehlert, a statistician testifying for NSA stated "In

agreement with Stanton. I find that the log number of index particles per microgram in a sample is the best single predictor of tumor probability for that sample. The index particles—I believe the term was coined by Stanton—are those particles longer than 8 micrometers and narrower than .25 micrometers." (Tr. 5/9, p. 88).

However, participants disagreed over more specific interpretations of Stanton's study. For example Dr. Nicholson (Ex. 484, Tr. 5/8), NIOSH (Ex. 478–15, Tr. 5/9), and Dr. Groth (Tr. 5/10) asserted that Stanton's work showed that all fibers with certain dimensions had tumorigenic potential; that the greatest correlation existed between fibers of a diameter less than .25 micrometers and greater than 8 micrometers (the "index particles"), but that even a size dimension of 4 to 8 micrometers in length, with a diameter of .25 to 1.5 micrometers had a correlation coefficient of .45. (See e.g. testimony of Dr. Nicholson, 5/8 at 41).

The NSA, in its cross-examination and post-hearing submissions, challenged the interpretation that Stanton's studies show that fibers with aspect ratios as low as 3:1 or 5:1 increase tumor response stating:

> During the hearing testimony, the fact that all of the studies involved exposures to a population of fibers or particulates was consistently agreed upon. This fact does not allow one to attribute a specific aspect ratio or dimension as the cause of a response in these animal studies * * *. It is important to recognize that the entire particle size profile of the exposure (width, length, and aspect ratio distribution) contributes to the results of any study. When one looks at the particle width, length, and aspect ratio distributions of cleavage fragments and compares these same distributions to those for asbestos, the population characteristics are easily seen to be quite different * * * (NSA, post-hearing brief, Ex. 524 at 16).

Various statistical analyses of Stanton's studies were submitted. The study cited as supporting low aspect ratio toxicity, is Bertrand and Pezerat (Ex. 84–114, Docket H–033c). OSHA described this study in its proposal as finding "a high correlation between aspect ratio and tumor probability for durable minerals. In their analysis tumor probability began to rise at aspect ratios of about 3 to 5". (55 FR at 4944). However, the Bureau of Mines stated in their comments that OSHA did not fully describe Bertrand and Pezerat's findings. They pointed out that "the slope of the curve was extremely small at 3:1 to 5:1 aspect ratios and aspect ratios of 3:1 to 5:1 represent about 5 percent probability (base level in the study)" and "No indication was given as to whether 5 percent is statistically significant to control populations." (Ex. 478–6) Similarly the NSA stated that since Bertrand and Pezerat's "analyses deal with distributions of aspect ratios, it is inappropriate to suggest that an aspect ratio of three or five or any specific value is the reason for the carcinogenic response". (Ex. 524, p. 22).

NSA's witness, Dr. Gary Oehlert presented a statistical reanalysis of Stanton's data. Dr. Oehlert stated that his analysis showed that the log number of index particles was the most significant predictor of tumor probability and once index particles have been accounted for, aspect ratio has no further predictive information to provide. (Tr. 5/9, p. 90). However, it should also be noted that although Dr. Oehlert concluded that the number of index particles is the "best" predictor of tumor probability, his analyses also show that aspect ratio is statistically significantly correlated to tumor probability. Dr. Oehlert suggested that this correlation is likely due to the fact that aspect ratio is related to the number of index particles. Nevertheless he states that nonindex particles may contribute to carcinogenicity, but that the Stanton data are not precise enough to determine their influence. In addition, Dr. Oehlert noted that the mineral type is a significant predictor of tumor probability * * * and should be included when estimating tumor risk. (Tr. 5/9 at 2–87).

Dr. David Groth, a pathologist, testifying on his own, concluded from review of Stanton's work that "the results of these studies (i.e. Stanton's) clearly document the importance of fiber size and the induction of cancer by fibers. They also indicate that the chemistry and crystalline structure of the fibers play either no role or a secondary role in the induction of cancer by fibers." Dr. Groth stated that "the results of these experiments have not been seriously challenged by data derived from other animal experiments, and remain as valid today as they were in 1981" (Tr. 5/10, pp. 30–31).

Other dimensional hypotheses were also submitted to the record. Dr. Morton Lippman's 1988 paper which, after reviewing various human and animal studies, identified dimensional ranges for different health effects, was submitted by NIOSH (Ex. 478–15) and others (NSA, Ex. 479–23; AMC, Ex. 479–6). Based on his review of animal injection studies and human lung analyses, Dr. Lippman concluded that the various hazards associated with asbestos (i.e. asbestosis, mesothelioma and lung cancer), are associated with critical fiber dimensions and these dimensions are different for each disease. For example, Dr. Lippman concluded that asbestosis is most closely associated with the surface area of fibers with lengths greater than 2 micrometers (um) and widths greater than 0.15 um; mesothelioma is most closely associated with the number of fibers with lengths greater than 5 um and widths less than 0.1 um; and lung cancer is most closely associated with the number of fibers with lengths greater than 10 um and widths greater than 0.15 um.

The data in the record support and OSHA concludes that fiber dimension is certainly a significant determinant of biological function. OSHA also concludes that despite the various reanalyses of the Stanton study, the basic premise of this study still holds true, that is, that tumor probability increases with the number of long and thin durable particles. However the data available are not precise enough to determine at what point there is no significant carcinogenic potential.

OSHA further concludes that longer, thinner fibers are likely to be more pathogenic. The evidence shows that dusts containing cleavage fragments, rather than asbestiform material, contain substantially fewer longer thinner particles. Thus, a dimensional theory of pathogenicity does not by itself demonstrate that nonasbestiform ATA has similar health effects to asbestos. Even if dimension were the principal determinant of biologic potential for mineral dusts, the evidence in this record is not sufficient to allow OSHA to draw the line for regulation for nonasbestiform ATA at specific dimensions.

b. *Empirical studies.* OSHA stated in the proposal that the empirical studies in animals are not sufficiently supportive of the mechanistic information to conclude that the risks are similar in magnitude and type for both asbestiform and nonasbestiform minerals. (55 FR at 4946). Although OSHA discussed a preliminary report of early results in its proposal, the one totally new study submitted to the record concerned intraperitoneal injection studies in rats of six samples of tremolite of different morphological types conducted by a Scottish team consisting of John Davis, John Addison and others. Dr. Addison testified at the hearing and submitted both draft and final papers describing the experiment (Ex. 479–22; Tr. 5/11). In this study six different samples of tremolite of different morphological types were prepared as dusts of respirable size and used in intraperitoneal injection studies in rats. Three samples were identified as

being tremolite asbestos (California, Korean and Swansea samples). A fourth sample, called Italian tremolite, was initially identified to be nonasbestiform but was later identified, after the tumors were observed, as a "brittle type of fibrous tremolite". The two remaining samples were identified as nonasbestiform tremolite (Dornie and Shinness samples). The three asbestiform tremolite samples produced mesotheliomas in almost all animals tested (California, 100%; Swansea, 97%; and Korean, 97%). The Italian sample which had "relatively few asbestos fibers" produced mesotheliomas in 67% of the animals tested although at significantly longer induction periods. The two remaining samples produced "relatively few tumors" (Dornie, 12% and Shinness 5%) and were considered, by Dr. Addison to be within the range of background incidence of mesotheliomas observed in historical controls in his lab.

TABLE 1.—SUMMARY OF SURVIVAL DATA AND FIBER NUMBER FOR 10MG DOSE

Sample	#animals	#mesothelioma (%)	Median survival time (days)	#fibers (10^9)/mg	#fibers (10^9)/mg len. >8um dia. <.25
Calif.	36	36 (100)	301	13430	121
Swansea	36	35 (97)	365	2104	8
Korea	33	32 (97)	426	7791	48
Italian	36	24 (67)	755	1293	1
Dornie	33	4 (12)	*	899	0
Shinness	36	2 (5)	*	393	0

*Not calculated; table extracted from Davis et al. (Ex. 479–22).

From these results Dr. Addison concluded that all the samples possessed some potential to produce mesotheliomas. However, he pointed out two apparent anomalies. One, the Swansea sample had fewer fibers than the Korean sample, but both produced a maximum response. Dr. Addison explained that one possible explanation may be that the relationship between fiber number and mesothelioma production is blurred by the overdose situation (i.e. a saturation effect). The second anomaly noted by Addison was the difference in fiber number and mesothelioma production between the Italian and Dornie samples. From Table 1 above, as presented in the Addison study, the Italian sample had 1293×10^6 fibers/mg and the Dornie had 899×10^6 fibers/mg. Dr. Addison notes however that when only those fibers from this group (i.e. fibers with aspect ratios >3:1) which have lengths greater than 8 um are counted, the Italian sample had ⅓ fewer fibers, but produced a higher percentage of tumors (See for example Tables 2(d) and 2(e), Ex. 470–22). Addison also states that while "it is true that many of the long fibers in the Dornie specimen were greater than 1 μm in diameter * * * if only fibers greater than 8 μm in length and less than 0.5 μm in diameter were considered, the two specimens have approximately equal numbers which still does not conform to their very different carcinogenic potential." (Ex. 479–22, p. 13).

This study was interpreted differently by various participants. The NSA and National Aggregates Association's joint submission found the results of the Davis et al study consistent with its position that "the higher the proportion of tremolite federal fibers (i.e. particles with aspect ratios > 3:1) with widths less than 0.5 μm, the greater the incidence of tumors. Conversely, the higher the proportion of tremolite federal fibers with widths greater than 1 μm, the lower the incidence of tumors." (Ex. 529–6, p. 3). The NSA in its post hearing comments further stated that the Davis et al. data "showed an absence of excess tumors from nonasbestiform ATA, and that the best parameter to explain the formation of tumors was the number of >32:1 aspect ratio Stanton particles, not 3:1 cleavage fragments." (Ex. 524, p. 2)

NIOSH found that the Davis et al. study showed that all forms of tremolite asbestos should be considered carcinogenic, and that it presents no clear evidence indicating that non-asbestiform tremolite is not carcinogenic. However, NIOSH expressed serious concerns about the protocol and presentation of the study as follows: lack of controls or historic incidence data for the strain of rat used; unclear mineralogic classification of various samples, particularly numbers 4, 5 and 6; the small number of fiber and particle counts obtained for each sample may limit the accuracy of the size distributions reported; lack of knowledge concerning the representativeness of the non-asbestiform varieties used, and because of saturation doses causing maximal responses for three samples, dose-response relationships cannot be developed for these samples. NIOSH cautioned that because the study has been neither peer reviewed nor published, lacks controls, and has other defects, it should not be relied upon by OSHA for any significant regulatory decision. (Ex. 532)

Langer et al. took issue with most of the NIOSH criticisms in their post hearing comments (Ex. 550). In particular they state that NIOSH is incorrect in its statement that the mineralogic classification of samples 4, 5 and 6 is unclear. Langer et al. point out that the minerals were characterized by "continuous scanning X-ray diffraction, polarized light microscopy as well as scanning and transmission electron microscopy equipped with an energy dispersive X-ray spectrometer." They also disagree with NIOSH statements that "the small number of fiber and particle counts obtained for each sample may limit the accuracy of the size distribution reported." Langer et al. note that "in each operation 300 fibers of all sizes were counted and measured * * *", and "to improve the statistical quality for long fibers the count was continued only for fibers >5 μm * * * until 100 fibers >5 μm had been counted * * * this was done twice for most of the samples and three for the Ala di Stura (i.e. Italian) and Dornie samples (Ex. 550, p. 7).

Dr. David Groth, a former NIOSH scientist, testifying on his own behalf, disagreed with statements made by Addison that the tumor incidence observed for the Dornie sample (12%) and the Shinness sample (5%) was within the background incidence for historical controls. Dr. Groth contends that this observation is not supported by the data published from Addison's lab. Dr. Groth states that "In two separate publications in 1986 * * * using the same strain of rats (AF/HAN) in full life-span experiments *no* mesotheliomas were observed in 61 control rats in one experiment and 64 control rats in

another experiment." (Ex. 529-1, p. 2) In addition, Dr. Groth cites several other results from Addison's lab which show no background incidence of mesothelioma for this strain of rat. Dr. Groth concludes that "the finding of peritoneal mesotheliomas in 6% of rats injected with the Shinness tremolite sample, is a significant finding and provides further support for Stanton's theory regarding the carcinogenic potential of all fibers, including nonasbestiform fibers." (Ex. 529–2, p. 3).

According to Dr. Addison, a co-author of the study, "the results of the * * * study suggest that a wide ranging group of tremolite samples all possessed some potential to produce mesotheliomas following injection into the rat peritoneal cavity" and "In general carcinogenicity relates to the number of long thin fibers than to any of the other dimensional characteristics of the dusts that were considered but the relationship was by no means exact." (Ex. 479–22, p. 13). Dr. Addison added, however, that "the intraperitoneal injection test is, however, extremely sensitive and it is usually considered that, with a 10 mg dose, any dust which produces tumors in less than 10% of the experimental group is unlikely to show evidence of carcinogenicity following dust administration by the more natural route of inhalation". (Ex. 479–22, p. 14–15). He thus concluded that human exposure to such a material "will certainly produce no hazard."

Based on the record evidence, OSHA believes that the Davis et al study confirms the view that various forms of tremolite have different pathogenic potential. For five of the six samples, constant relationships prevailed between asbestiform fibers and high potency and between nonasbestiform dusts and low potency. Interpreting the Italian sample is more problematic, and only speculative explanations exist for why it is more potent than would have been predicted based on its relatively small number of high aspect ratio fibers.

Other animal studies were the subject of testimony and comment, but the analyses essentially reiterated positions taken by the parties in communications to the Agency prior to the proposal. OSHA described the Smith study in its proposal as follows: "Smith et al injected four different talc samples intrapleurally into hamsters. The samples included fibrous tremolitic talc from New York State, tremolitic talc from the facility studied by NIOSH, tremolitic talc from the Western U.S. and asbestiform tremolite. Only the western talc and the asbestiform tremolite induced tumors in hamsters." (55 FR 4948).

Various mineralogic characterizations of the western talc have been made. Dr. Wylie, in cross-examination, reiterated her earlier characterization of the western talc, as fibrous form of tremolite. Dr. Wylie further explained "it wasn't obviously only a sample of asbestos. I think I referred to it as byssolite." However because evidence of that sample consists of one photograph of that material, Dr. Wylie cautioned against drawing "too many conclusions * * * about that one sample." (Tr. 5/9, p. 235.) OSHA agrees with Dr. Wylie and additionally notes that other deficiencies make the Smith study inconclusive. (See discussion in the preamble to the proposal, where OSHA noted the small number of animals, early death of many animals, lack of systematic characterization of fiber size and aspect ratio; 55 FR 4948).

The few additional animal studies undertaken to examine the toxicity of nonasbestiform ATA, either do not inform or do not show equivalent toxicity of ATA. The 1974 intraperitoneal injection rat study conducted by Pott et al, showed no tumor development for the animals injected with the primarily nonasbestiform actinolite sample (Ex. 479–6). The Cook studies of ferroactinolite fibers, show that the sample which was observed to undergo a higher degree of in vivo longitudinal splitting, resulted in more retained fibers, and in a higher concentration of retained fibers. Dr. Wylie noted that "(t)he durability of amphiboles in vivo is well known and the only way for this sample to break down into fibers of smaller widths is for separation of the fiber bundles to have occurred in vivo. They don't dissolve. Fiber bundles are the hallmark of asbestos and this characteristic is clearly revealed in the behavior of Coffin's ferroactinolite". (Tr. 5/9 at 104). Additional evidence was submitted in support of the view that the ferroactinolite sample was, in significant part, asbestiform. Thus, Dr. Lee concluded, based on his electron microscopic analysis, that as much as 61 percent of the sample may be asbestos with 33 percent existing as bundles (Ex. 490F Attach. A, p.2). OSHA concludes that it is more likely that the ferroactinolite sample that resulted in excess tumors is asbestiform and for that reason, the experimental results are not informative concerning the biological potential of nonasbestiform ATA.

OSHA believes that as a whole the animal experiments conducted confirm that for clearly differentiated dust populations, qualitative differences in carcinogenic potential exist between what is commonly considered "asbestos" and "cleavage fragments". Virtually all participants in this rulemaking agreed with this assessment. Even participants who endorsed regulation of nonasbestiform ATA as asbestos agreed that the longer, thinner fibers were more potent. (See Nicholson at Tr. 5/8, p. 60).

c. *Conclusions.* Based on the rulemaking record before it, OSHA reaffirms its preliminary determination in the proposal that there is insufficient evidence to conclude that nonasbestiform ATA present a health risk similar in kind and magnitude to that of their asbestiform counterparts.

Asbestos is regulated as a carcinogen. Some health effects data relating to nonasbestiform ATA involved exposures to mixed mineral populations or particles which were poorly characterized such that no conclusions could be made regarding the carcinogenicity of nonasbestiform ATA. In other cases there were health effects data in humans, reportedly exposed to nonasbestiform ATA, which did not show excess cancer risks similar to those observed among animals and humans exposed to asbestos. However some of these data suffer from methodological deficiencies (e.g., low fiber exposure, poor animal survival and poor mineralogical characterization). These flaws may limit the studies' ability to detect the carcinogenic potential of nonasbestiform ATA if one is present. However, in many of the studies, asbestiform and nonasbestiform minerals were tested in the same experiment using the same protocol and only the asbestiform minerals induced a positive response. Thus, while the studies' results cannot be used to show that nonasbestiform ATA presents no carcinogenic risk, due to certain methodological flaws, the results from these studies do suggest that if a carcinogenic risk does exist for nonasbestiform ATA, the risk is likely to be substantially less than that of asbestos. Given both the lower potency of any potential carcinogenic risk, and the high degree of uncertainty that would accompany any such estimate, OSHA believes the health effects evidence does not support treating nonasbestiform ATA as presenting a risk equivalent in kind or extent to asbestos.

In addition, OSHA finds that the evidence is insufficient to conclude that exposure to nonasbestiform ATA may result in a significant risk of

nonmalignant respiratory disease (NMRD). Unquestionably, exposure to historic levels of tremolitic talc carried with it a significant risk of NMRD (i.e. pneumoconiosis). For example, studies by NIOSH, of tremolitic talc miners and millers in upstate New York (Ex. 84–181, Docket H–033c) have shown an excess risk for NMRD (SMR=280), among exposed workers. Similar findings of excess NMRD have also been observed in updated studies of this same group of workers both by NIOSH (SMR=250) and Gamble et al (SMR=251) (Exs. 532 and 478–8). Moreover NIOSH concluded in their update, that the observed excess in NMRD is more consistently associated with exposures at the mine. NIOSH's conclusion is based on their observation that a larger excess risk is observed among those employees with greater than one year employment at the mine (SMR=289) compared to those employees with less than one year employment at the mine (SMR=194). Even officials at the mine acknowledge the NMRD risk associated with the tremolitic talc. For example, in his testimony at the hearings, John Kelse, an industrial hygienist for the R.T. Vanderbilt Company, stated that "(t)he Company has long believed that excess exposure to our talc—and indeed any talc or mineral dust, can result in pulmonary impairment. We have never claimed otherwise. Non-neoplastic respiratory disease has indeed occurred among our talc miners and to an alarming degree among those exposed prior to the advent of modern dust control systems. * * * We have never denied this pneumoconiosis potential." (Tr. 5/11 at 4–104). Similarly, Dr. Brian Boehlecke, testifying as a medical expert for the R.T. Vanderbilt Company, stated: "So my conclusion is that there is a risk of pneumoconiosis from exposure to the type of talc mined and processed at Gouverneur Talc. I believe this is recognized and acknowledged by the company." (Tr. 5/11 at 4–100).

However although exposures at the mine are attributed to the observed excess in NMRD among exposed workers, the data is insufficient to determine that the nonasbestiform tremolite is the causative agent. The tremolitic talc to which workers are exposed is composed of a variety of different minerals. The nonasbestiform tremolite, although a major constituent, is but one of those minerals. In addition, studies of workers exposed to talcs which do not contain nonasbestiform minerals, have also shown an excess risk of NMRD similar to the excess risk which has been observed among the New York State tremolitic talc workers. (See studies of Vermont Talc workers, Selevan et al; Ex. 479–4 Ex. A). Although the study is too imprecise to conclude that nonasbestiform minerals do not induce pulmonary disease, the study of the Vermont miners does suggest that some agent other than nonasbestiform minerals may be the causative agent in the induction of NMRD. Thus OSHA is unable to conclude that the nonasbestiform content in tremolitic talc is the etiologic agent of NMRD evident at high exposure levels. As a result, OSHA is also unable to conclude that nonasbestiform ATA presents a significant risk of NMRD.

VI. Other Regulatory Issues

a. *Regulatory Options*

In the proposal OSHA discussed a number of regulatory options to the proposed removal of nonasbestiform ATA from the asbestos standards. Because of OSHA conclusions regarding the health effects evidence, certain of these options are not supported by this rulemaking record.

(1) The first option discussed in the proposal is to continue to regulate ATA in the 1986 asbestos standards. The Agency has determined that on this record, there is a lack of substantial evidence to conclude that nonasbestiform ATA presents a risk of asbestos-related disease to exposed workers of similar incidence or magnitude to the risk created by asbestos. Therefore the evidence does not support regulating nonasbestiform ATA exposure in the same manner as asbestos exposure.

The health data are too uncertain to provide a basis for estimating potential risk from nonasbestiform ATA. This evidence is not sufficient to perform a reasonable independent risk assessment for ATA. Therefore, continuing regulation in the same standard, at a different PEL is not a viable option. OSHA concludes that the evidence and analyses available at this time do not show sufficient similarities between nonasbestiform ATA and asbestos to regulate them together.

(2) Another option was to continue to regulate nonasbestiform ATA under the 1972 asbestos standard. However, the conclusion that the record evidence is insufficient to show that nonasbestiform ATA presents a health risk similar in type and magnitude to asbestos and thus should not be regulated under the 1986 asbestos standards, substantially weakens a major rationale for regulating OSHA under the 1972 asbestos standard as well. The 1972 standard was based on the health effects of asbestos and not the nonasbestiform minerals.

Virtually all of the health data submitted and examined in this rulemaking was not available in 1972. Therefore, the determination of health effects for nonasbestiform ATA based on the record of this proceeding is based on more evidence and superior analyses than in any earlier asbestos rulemaking.

Also, OSHA's regulatory decisions are required by law to be based on "the best available evidence". (OSH Act, section 6(b)(5)). Although OSHA is not necessarily required to reopen regulatory determinations when new evidence is presented, once a rulemaking proceeding is held, and new, previously unavailable evidence is submitted to that record on important issues. OSHA may consider the issue in light of such new evidence. The agency notes that it stated its intention to make a new determination on the current record concerning the health effects of nonasbestiform ATA.

In addition, OSHA finds that removing nonasbestiform ATA from the scope of the 1972 asbestos standard will not pose a significant risk to employees exposed to those minerals. OSHA incorporates here, its previous discussion in the health effects section, which sets forth the Agency's view of the evidence relating to the non-malignant disease potential of ATA. The evidence available implicates talc containing ATA as a causative agent of nonmalignant respiratory disease; however, exposure to ATA alone is insufficiently linked to the production of such disease.

As noted above employees exposed to talc containing ATA will be protected under the Air Contaminants Standard (29 CFR 1910.1001). OSHA believes that the application of the talc limit in the Air Contaminants Standard, for that portion of their exposure which is related to talc, or the standard's mixture formula, will protect exposed employees against a significant risk of nonmalignant disease.

Also, removing the protection of the 1972 asbestos standard from workers exposed to nonasbestiform ATA will not leave them with a significant risk of developing malignant disease. OSHA has found that the available evidence is insufficient to conclude that exposure to nonasbestiform ATA is linked to the development of cancer. The suggestion that long thin fibers of nonasbestiform ATA, which exceed the dimensions for counting asbestos fibers, may have carcinogenic potential was not disproven by the evidence in this proceeding, however, neither was it supported by substantial evidence. Also, even if long, thin nonasbestiform ATA

fibers have some carcinogenic potential, the record shows that it is not likely that workers may be exposed to a significant risk from such fibers if the 2 f/cc limit of the 1972 standard is lifted.

First, evidence in the record indicates that, long, thin particles of nonasbestiform ATA occur infrequently. For example, in the industries using tremolitic talc, which are the industries with the highest potential exposure to ATA, there is little evidence that exposures to long, thin particles of nonasbestiform ATA have ever exceeded the 1972 asbestos limit of 2 f/cc. Nor is there evidence that nonasbestiform ATA particles, appearing as a contaminant of any other industrial product (e.g. crushed stone products), attain enhanced dimensions which, if measured, would exceed the 2 f/cc limit of the 1972 standard. Second, there are no dose-response data which can be used to derive a quantitative risk estimate for nonasbestiform ATA as a carcinogen, so OSHA's risk estimate for ATA would be based on qualitative information. The approach formerly considered most promising, basing ATA risk on asbestos risk, has been rejected by the Agency, as explained at length in this document. The Agency believes that no other qualitative approach to assessing nonasbestiform ATA carcinogenic risk is supported by the evidence.

Third, for the industries with the highest potential ATA exposure, which includes those which purchase tremolitic talc as a constituent of products such as ceramic tile and paint, the talc limit, and the mixture formula in the Air Contaminants Standard will apply. OSHA believes that these limits will protect employees against any possible excesses of any malignant disease as well as non-malignant disease.

Therefore, OSHA finds that removing nonasbestiform ATA from the 1972 standard meets the requirements set out by the Supreme Court for agency deregulation in Motor Vehicles Manufacturers Association v. State Farm Mutual Automobile Insurance Co. (State Farm), 463 U.S. 29, 1983, and is consistent with Agency interpretations of that decision.

(3) The third option discussed in the proposal is to exclude nonasbestiform ATA from the scope of the revised asbestos standards and to initiate a separate 6(b) rulemaking for either industrial talc (tremolitic talc) or nonasbestiform ATA minerals which attain certain dimensions, such as a 3:1 aspect ratio and are longer than 5 μm. As stated above, the results of OSHA's examination of the health effects evidence in this proceeding do not provide sufficient data to permit the Agency to estimate the risk, if any, to exposed employees from continued exposure at the 1972 asbestos standard's PEL of 2 f/cc, or at current exposure levels in covered places of employment. There was agreement among participants who addressed the issue that exposure to tremolitic talc at historic levels is associated with excess nonmalignant respiratory disease (see e.g., Dr. Boehlecke, testifying for R.T. Vanderbilt, at Tr. 5/10, pp. 100–101). OSHA's contractor estimated current exposure levels in industries using such talc containing products, even without local exhaust ventilation, as far less than such historic levels. (See CONSAD report, Ex. 465). No additional data concerning exposure levels of such workers was submitted to the rulemaking record. With no basis to estimate risk to exposed employees from talc containing nonasbestiform ATA, OSHA is unable to formulate a proposed standard to protect such workers at this time. As stated above, OSHA believes that the application of the appropriate exposure limits in the Air Contaminants Standard to exposures to constituents of tremolitic talc, and to ATA, will protect employees against significant risks of disease.

If further information is submitted to OSHA in the future, which shows that workers in industries using talc containing nonasbestiform ATA, or other nonasbestiform ATA using industries, are at present risk of developing exposure related disease, OSHA may reconsider this regulatory decision.

(4) The fourth option is to regulate nonasbestiform ATA under a specific listing in the air contaminants standard, including consideration of a listing for nonasbestiform ATA. OSHA has chosen this approach but nonasbestiform ATA will be covered by listing for particulates not otherwise regulated (PNOR) in Table Z–1–A of 1910.1000 (15 mg/m (total dust); 5 mg/m (respirable dust)), which is designed to protect against the significant risk of respiratory effects which all particulates create at higher levels of exposure.

OSHA is not regulating ATA under the listing for talc. OSHA notes that the health evidence concerning the nonmalignant disease potential of talc containing tremolite is not specific to any one component of the product, and there is evidence suggesting that talc, not containing nonasbestiform ATA, also may cause respiratory disease (See for example the preamble to the Air Contaminants Standard, 54 FR at 2526). Accordingly, OSHA revised the PEL for talc to 2 mg/m³ on January 19, 1989 (54 FR 2332 to 2983, 29 CFR 1910.1000). As talc causes respiratory disease and nonasbestiform ATA as a particulate causes respiratory effects, OSHA concludes that when workers are exposed to mixtures of such dusts with different PELs, the mixture formula applies. Where exposure is to talc containing nonasbestiform ATA, if the employer wishes to avoid separately identifying each component to apply the mixture formula, the entire product may be considered as the substance with the lower PEL.

b. *Fiber Definition Issues*

During this rulemaking the NSA and other participants requested that OSHA validate for industry a feasible method of distinguishing asbestos fibers from nonasbestiform particles or other mineral particles which meet the dimensional cutoffs in the asbestos standards. Further, OSHA is asked to define "asbestos" in terms of such differential counting strategy. NSA agrees with the Agency that when the environment is one in which "known asbestos is likely to be the only airborne particle of regulatory concern, it (3:1 aspect ratio criterion) can be an acceptable and economical basis for monitoring worker exposure to substances that pose health risks." (479–1G, p. 22). However, in the crushed stone industry, other particles, NSA insists, will be counted even though they are not asbestos, or even nonasbestiform minerals simply because they have attained aspect ratios of 3:1. OSHA does not believe these scenarios are realistic. The asbestos standards have been in effect since 1972; yet industry presented no data, evidence or testimony that showed the impact of the 3:1 aspect ratio on the crushed stone industry. Producers should know if their products contain asbestos fibers, by surveying deposits, examining hand samples, and doing bulk sampling.

The issue of whether individual fibers of ATA can be identified as to mineral type was further addressed by other witnesses. Dr. Arthur Langer, testifying on his own behalf, noted that "* * * in some instances single, isolated particles may be impossible to distinguish, i.e., acicular cleavage fragment from asbestiform fibril". (Ex. 517, Tab 5). Dr. Spooner pointed out that identification of an airborne fiber is hindered, when as happens in an industrial hygiene setting "we don't have the opportunity to know where the material is coming from, nor do we have the opportunity to look at a very large population of fibers * * *". (Tr. 5/8, p. 117–118). NIOSH testified

that it was "unaware of any routine analytical methods that can be used to differentiate between airborne exposures to asbestos fibers and nonasbestiform cleavage fragments that meet the microscopic definition of a fiber." (Tr. 5/9, p. 13).

The OSHA reference method may be insufficient in mixed fiber environments to distinguish asbestos from other particles in all cases. However, OSHA believes that currently, producers and users of mineral products feasibly identify asbestos and distinguish it from other mineral fibers or particles. Dr. Langer noted "I would use polarized light microscopy to characterize materials used in the work place or characterize mine environments. Someone has to go to some mine or quarry or operation or plant or factory to see whether or not asbestos materials are present, and there are standard techniques to analyze materials and find out whether or not asbestos is present. You could use phase contrast microscopy once you establish what you're dealing with." (Tr. 5/11 at 226). Dr. Langer recommended that OSHA define "asbestos" as certain minerals which display certain properties, which apply to "large aggregates". Such properties are for example, polyfilamentous bundles, made up of unit fibrils, displaying anomalous optical properties, etc. (Id at 227). Dr. Addison commented that for "at the last eight years we've been training a regular number of people in polarized light microscope techniques, * * * to recognize the characteristic properties on the macroscopic scale and on the microscopic scale, to come up with what we consider to be a fully authoritative identification of the material as asbestos. It's really not a difficult task." (Ibid).

Dr. Langer also noted that in his knowledge the former Manville Corporation routinely used polarized light microscopy in many of their plants to analyze air samples, where manmade vitreous fiber was mixed with asbestos fiber" (Tr. 5/11, p. 225).

OSHA also notes that differential counting of fibers has been performed by its laboratory and other laboratories in the past. According to the Agency's chief microscopist, identification of individual fibers is assisted by knowledge of the source of the contaminant, the industrial context, and the skill of the microscopist. (Ex. 410–23).

However, Dr. R.J. Lee, testifying on behalf of the NSA, presented a new analytical method for use in mixed mineral environments. (Ex. 490F) This method was presented as a differential counting procedure for assessing the asbestiform particle population in dusts that include both asbestiform and nonasbestiform particles. Dr. Lee's proposed method uses the current NIOSH 7400 PCM method but in addition incorporates steps to account for particles with widths less than 1 micrometer and particles which are bundles in order to differentiate between those particles which are fibers and those particles which are cleavage fragments.

During the hearing Dr. Lee was questioned as to the validity of this method and whether or not it would alter asbestos counts. In response to this questioning Dr. Lee conducted and submitted the results of a round robin analysis of his proposed method (Ex. 534). In the round robin analysis 6 different labs performed comparisons of particle counts on a variety of different dust samples using the current NIOSH 7400 PCM method and Dr. Lee's proposed method. Although somewhat limited, the results of the round robin analysis indicate that there is little variability between the asbestos fiber counts using the NIOSH method and the asbestos fiber counts using Lee's proposed method. However, according to Dr. Lee, the proposed method allows one to differentiate between asbestos fibers and nonasbestiform cleavage fragments more readily than current differential counting procedures.

Despite the fact that the proposed method appears to provide a feasible means of discriminating between asbestiform fibers and nonasbestiform cleavage fragments, OSHA is reluctant to change its current approved methodology based on such limited data (i.e. one round robin analysis), especially since the Agency notes that changes to the asbestos standards affect a much wider regulated community than participants in this rulemaking. OSHA believes that the adoption of any method would require more extensive testing using a broader range of samples more closely associated with the typical types of occupational exposures covered by the OSHA standards. In addition, considerable expenditures of time and money could be required to insure that labs are adequately training technicians and proficiently using the new method. Before such costs are imposed OSHA believes it would be prudent to better examine the validity of a new method. The Agency notes that the high hazard presented by asbestos exposure requires that any regulatory change affecting counting asbestos fibers err on the side of worker protection. OSHA believes that the burden on employers in affected industries to show that particles are not asbestos is not unreasonable, given the risk presented by undercounting of asbestos, and the claims that asbestos contamination of nonasbestiform products is not common. For these reasons, as well as the fact that OSHA has acknowledged and allowed the use of differential counting with the current method, the Agency does not believe it is either appropriate or necessary at this time to change its current analytical method. The Agency intends to include in its compliance policy governing mixed fiber settings, provision for the introduction of appropriate evidence concerning fiber width, and other relevant evidence to show that particles counted by PCM are not asbestos fibers.

As discussed in the NPRM, rather than change the analytical procedure, Dr. Ann Wylie proposed changing the aspect ratio from 3:1 to 10:1 as a means of discriminating between asbestos fibers and nonasbestiform cleavage fragments (See 55 FR 4951–52). Dr. Wylie reiterated her proposal in the hearings and presented evidence to show that when populations of particles are viewed with respect to the distribution of their aspect ratios, one can easily distinguish between populations of asbestos fibers and populations of cleavage fragments (Tr. 5/9, pp. 102–107). Dr. Wylie stated that for particles which are greater than 5 μm in length, the majority of nonasbestiform particles have aspect ratios less than 10:1 and the majority of asbestos particles (i.e. fibers) have aspect ratios greater than 10:1. Thus she concluded that changing the aspect ratio from 3:1 to 10:1 provides a means of excluding nonasbestiform particles from particles counts while maintaining the same asbestos particle counts one would have obtained using a 3:1 aspect ratio. However as noted above in this discussion, Dr. Spooner points out that Dr. Wylie's observations, as do her definitions of asbestos, apply to populations of particles and the analyst is often not looking at a population of particles when viewing air exposure monitoring samples (Tr. 5/8, pp. 117–118). Moreover as was noted in the proposal, OSHA is reluctant to change its current method based on the findings of one report. OSHA reaffirms its earlier finding and is not, in this rule, changing its dimensional criteria for aspect ratio in its definition of asbestos.

VII. Summary and Explanation of the Amendments

1. Definitions

Asbestos

In the 1986 revised asbestos standards (29 CFR 1910.1001 and 1926.58) OSHA

amended its definition of asbestos in recognition of the fact that different mineral forms exist. "Asbestos was defined to include only the six asbestiform minerals chrysotile, crocidolite, amosite, tremolite asbestos, anthophyllite asbestos, and actinolite asbestos. However in these 1986 revised standards OSHA also added a definition for tremolite, anthophyllite and actinolite. Tremolite, anthophyllite or actinolite without a modifying term such as asbestos or asbestiform referred to only the nonasbestiform forms of these minerals. This definition was added to make clear that all mineral forms would continue to come under the scope of the revised standards.

In this final rule OSHA retains its definition of asbestos as stated in the 1986 revised standards. However the Agency is removing the nonasbestiform minerals from the scope of the revised standards for asbestos and from all paragraphs, and appendices which reference "nonasbestiform tremolite, anthophyllite and actinolite". This removal is based on the determination, made by the Agency, that the health effects data is insufficient to conclude that the nonasbestiform forms of tremolite, anthophyllite and actinolite present the same magnitude or type of effect as their asbestiform analogues.

VIII. Authority

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210.

Accordingly, pursuant to sections 4(b), 6(b), 8(c), and 8(g) of the Occupational and Safety and Health Act of 1970 (U.S.C. 655, 657), 29 CFR part 1911 and Secretary of Labor's Order No. 9–83 (48 FR 35736), Construction Work Hours and Safety Standard Act (Construction Safety Act), 40 U.S.C. 333, 29 CFR parts 1910 and 1926 are amended as set forth below.

List of Subjects

29 CFR Part 1910

Asbestos, Hazardous substances, Occupational safety and health.

29 CFR Part 1926

Asbestos, Construction industry, Hazardous substances, Occupational safety and health.

Signed at Washington, DC on this 29th day of May, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary.

Part 1910 of title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1910—[AMENDED]

Subpart Z—[Amended]

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table A–1–A, which have identical limits listed in the Transitional Limits columns of Table A–1–A, Table A–2 or Table A–3. The latter were issued under Section 6(a) (2a U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns for Table Z–1–A, Table Z–2 and Table Z–3 also issued under 5 U.S.C. 553. Section 1910.1000 the Transitional Limits Column of Table Z–1–A, Table Z–2 and Table Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under section 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 CFR part 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under 20 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499, and 1910.1500 also issued under 5 U.S.C. 553.

Section 1910.1450 is also issued under sec. 6(b), 8(c) and 8(g)(2), Pub. L. 91–596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657.

§1910.1001 [Amended]

2. Section 1910.1001 (including the appendices to the section) is amended as follows:

a. By revising the term "Asbestos, tremolite, anthophyllite, and actinolite" to read "Asbestos" in the section heading, paragraph (j)(4)(i), and appendices B and G.

b. By revising the term "asbestos, tremolite, anthophyllite, and actinolite" to read "asbestos" in the following places: Paragraphs (a)(1), (a)(2), (h)(2)(iii), (h)(3)(ii), (i)(3)(iv), and (j)(5)(iii)(B) and Appendices A, B, G, and H.

c. By revising the term "Asbestos, Tremolite, Anthophyllite, and Actinolite" to read "Asbestos" in paragraph (g)(2) Table 1 heading and Appendices B, H, and I.

d. By revising the term "asbestos, tremolite, anthophyllite or actinolite" to read "asbestos" in the following places: Paragraphs (b) (in the definition for "fiber"), (e)(2), (f)(1)(vi), (f)(1)(viii), (f)(1)(ix), (h)(2)(i), (h)(3)(v), (j)(2)(i), (j)(3), j(5)(iii)(A), (j)(5)(iii)(C), (j)(5)(iii)(E), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), (l)(2)(i), (l)(7)(i)(A), (l)(7)(i)(C), (l)(7)(ii), (m)(1)(i), (m)(1)(ii)(B), (m)(2)(i), (m)(2)(ii)(C), (m)(3)(ii)(C), (n)(1) and (n)(2).

e. By revising the term "asbestos, tremolite, anthophyllite, and actinolite, or a combination of these minerals" to read "asbestos" in paragraph (h)(3)(iii).

f. By revising the term "asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals" to read "asbestos" in the following places: Paragraphs (b) (in the definitions for "action level", "employee exposure", and "regulated area"), (c)(1), (c)(2), (d)(2)(iii), (e)(1), (f)(1)(v), (f)(1)(viii), (g)(2) Table 1, (h)(1), (h)(3)(iv), (i)(1)(i), (j)(4)(i), (j)(5)(i), (l)(1)(i) and (l)(4)(i) and Appendices D and H.

g. By revising the term "Asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals" to read "Asbestos" in paragraph (j)(4)(ii).

h. By removing in paragraph (b) Definitions, the definition "Tremolite, anthophyllite, or actinolite".

i. By removing and reserving paragraph (j)(1)(iii) and by removing paragraph (j)(2)(iii).

j. By removing the Note on the administrative stay at the end of the section.

§ 1910.1101 [Removed]

3. Section 1910.1101 is removed.

Part 1926 of title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1926—[AMENDED]

Subpart D—[Amended]

4. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction

Safety Act) (40 U.S.C. 333); sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

§ 1926.58 [Amended]

5. Section 1926.58 (including the appendices to the section) is amended as follows:

a. By revising the term "Asbestos, tremolite, anthophyllite, and actinolite" to read "Asbestos" in the section heading, paragraph (a)(5), and appendix H.

b. By revising the term "Asbestos, Tremolite, Anthophyllite, and Actinolite" to read "Asbestos" in paragraph (h)(2) Table D–4 heading and in appendices B, I, and J.

c. By revising the term "asbestos, tremolite, anthophyllite, and actinolite" to reads "asbestos" in the following places: Paragraphs (k)(3)(iii)(A), (k)(3)(iii)(C), and (k)(3)(iii)(D), and appendices A, B, H, and I.

d. By revising the term "Asbestos, tremolite, anthophyllite, or actinolite" to read "Asbestos" in paragraph (k)(2)(vi)(A).

e. By revising the term "asbestos, tremolite, anthophyllite, or actinolite" to read "asbestos" in the following places: Paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (b) (in the definitions for "competent person", "decontamination area", "demolition", "fiber", "regulated area", "renovation", and "repair"), (d), (e)(6)(iii), (f)(2)(i), (f)(2)(ii), (f)(2)(iii), (f)(7)(i), (f)(7)(ii), (g)(1)(i)(D), (g)(2)(i), (j)(2)(i), (j)(2)(iii)(A), (k)(2)(i), (k)(2)(v), (k)(3)(iii)(B), (l)(1), (m)(4)(i)(A), (m)(4)(i)(C), (m)(4)(ii), (n)(1)(i), (n)(1)(ii)(C), (n)(2)(i), (m)(2)(ii)(B) and (n)(3)(ii)(D).

f. By revising the term "asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals" to read "asbestos" in the following places: Paragraphs (b) (in the definitions for "action level", "employee exposure", and "regulated area"), (c)(1), (e)(1), (e)(2), (f)(1)(i), (f)(2)(ii), (h)(2) Table D–4, (i)(1), (i)(2)(i), (i)(2)(ii), (j)(1)(iii), (k)(1)(i), (k)(2)(vi)(A), (k)(2)(vi)(B), (k)(3)(i), (m)(1)(i), and (m)(2)(i)(B) and appendix D.

g. By revising the term "asbestos, tremolite, anthophyllite, or actinolite or a combination of these minerals" to read "asbestos" in paragraph (n)(1)(i).

h. By revising the term "asbestos, tremolite, anthophyllite, actinolite" to read "asbestos" in the following places: Paragraph (e)(6)(iii).

i. By revising the term "asbestos, tremolite, anthophyllite, or actinolite or materials containing asbestos, tremolite, anthophyllite, or actinolite" to read "asbestos" in the following places: Paragraphs (b) (in the definition for "removal") and (g)(2)(ii).

j. By removing in paragraph (b) Definitions, the definition "Tremolite, anthophyllite and actinolite".

k. By removing and reserving paragraphs (k)(1)(iii) and (K)(2)(iv).

l. By removing the Note on the administrative stay at the end of the section.

[FR Doc. 92–12903 Filed 6–3–92; 9:05 am]
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Monday
June 8, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Administration

48 CFR Parts 2401, et al.

HUD Acquisition Regulation; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2401, 2402, 2403, 2405, 2406, 2409, 2413, 2414, 2415, 2416, 2419, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2446, 2452

[Docket No. R-91-1600; FR-2473-P-01]

RIN 2535-AA16

HUD Acquisition Regulation (HUDAR)

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the HUD Acquisition Regulation (HUDAR) to reflect recent changes to the Federal Acquisition Regulation (FAR) and to make technical corrections. This rule would also amend the HUDAR to reflect a change in procurement authority for the Acquired Property program.

DATES: Comment due date: August 7, 1992.

ADDRESSES: Interested parties are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, room 5262, 451 Seventh Street, SW., Washington, DC 20410–3000 (voice (202) 708–0294, TDD (202) 708–1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

A. Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 984 (49 FR 7696).

The HUDAR (title 48, chapter 24, of the Code of Federal Regulations) is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective January 19, 1976 (41 FR 2665); and the general authorization in FAR 1.301.

The purpose of this proposed rule would be to amend the HUD Acquisition Regulation (HUDAR) to update existing coverage and to include additional necessary procedures to reflect recent changes to the Federal Acquisition Regulation (FAR).

HUDAR 2401.601–70, 2402.101, 2406.304–70, 2409.504, 2413.505, 2414.406–3, 2415.407, 2415.608, 2416.504, 2426.201, 2428.203, 2428.203–70, 2432.402, 2437.110, and 2446.710 contain editorial corrections, clarifications, and office changes. HUDAR 2403.670, 2437.110, and 2452.203–70 would be added to implement FAR 3.601.

HUDAR 2406.304–71, 2409.503, 2415.612–70, 2415.613, 2415.613–70, 2415.613–71, 2415.613–72, 2425.402, 2432.906, and 2452.215–71 would be included to implement recent changes to the FAR and General Services Board of Contract Appeals (GSBCA) decisions on approval of justifications for other than full and open competition, debarment, the authority of the Contracting Officer, the application of the Trade Agreements Act, prompt payment, agency protests, and DUNS numbers.

HUDAR 2409.502 and 2437.2 would make changes to reflect new terminology in OMB Circular A–120, Guidelines for the Use of Advisory and Assistance Services, and the FAR. HUDAR 2415.407, 2437.110, 2452.215–70, and 2452.237–76 would be added to implement OMB Circular A–130, Management of Federal Information Resources. HUDAR 2437.110 and 2452.237–77 would be added to provide procedures for handling legal holidays for services performed on-site in HUD buildings. HUDAR 2419.708 and 2452.219–70 would be added to implement FAR 19.704 and provide instructions to offerors regarding subcontracting plans. HUDAR 2409.501 and 2415.611 would be deleted.

HUDAR 2401.601–70, 2401.601–72, 2401.601–73, 2401.601–74, 2401.603–3, 2402.101(3) through 2402.101(6), 2406.304–70, 2406.304–71, 2406.304–72, 2414.406–3, and 2433.104–70 are revised to reflect the transfer of the procurement responsibilities of the Acquired Property Program from the Office of Housing to the Office of Administration.

The Department will request that the Federal Acquisition Regulation be amended to include the proposed coverage at HUDAR 2415.612–70, 2452.203–70, 2452.203–71, 2452.215–70, 2452.219–70, and 2452.237–77. If the FAR is amended before the Department issues a final rule, the cited HUDAR coverage will be removed; if not, those sections will be designated as an interim rule.

B. Other Matters

Paperwork Reduction Act

The information collection requirements contained sections 2452.203–71, 2452.215–70, 2452.219–70, and 2452.237–76 of this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. The following table discloses the Department's estimated burden for each of the collections of information in this rule:

Description	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Certification (2452.203-71)	300	1	300	0.1	30
Proposal preparation (2452.215-70)	40	1	40	1.0	40
Subcontracting plan (2452.219-70)	25	1	25	0.5	12.5
Security information (2452.237-76)	40	2	80	1.0	80
Total Annual Burden Hours					162.5

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) (NEPA) is unnecessary, since the activities described in this rule are categorically excluded from the Department's NEPA procedures under 24 CFR 50.20(k).

Executive Order 12291, Federal Regulation

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291, *Federal Regulation*, issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities because the changes relate to the internal organization of HUD and conform the HUDAR to the FAR.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The requirements of this proposed rule would update the HUD Acquisition Regulation (HUDAR) to reflect recent changes to the Federal Acquisition Regulation (FAR) and would make technical corrections to the agency's regulation. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The proposed rule involves Departmental procedures.

Semiannual Agenda of Regulations

This proposed rule was listed as Item No. 1483 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53386) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Parts 2401, 2402, 2403, 2405, 2406, 2409, 2413, 2414, 2415, 2416, 2419, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2446, 2452

Government procurement, HUD acquisition regulations.

Accordingly, title 48, chapter 24 of the Code of Federal Regulations, would be amended as follows:

SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR part 2401 would be revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2. Section 2401.601–70 would be revised to read as follows:

2401.601–70 Senior Procurement Executive.

The Assistant Secretary for Administration is the Department's Senior Procurement Executive and is responsible for all Departmental procurement policy, regulations, and procedures, except for internal procedures related to programmatic procurements of the Government National Mortgage Association. The Senior Procurement Executive is also responsible for the development of HUD's procurement system standards, evaluation of the system in accordance with approved criteria, enhancement of career management of the procurement work force, and certification to the Secretary that the Department's procurement system meets approved criteria.

2401.601–72 [Removed]

3. Section 2401.601–72 would be removed.

2401.601–73 [Redesignated as 2401.601–72]

4. Section 2401.601–73 would be redesignated as 2401.601–72.

2401.601–74 [Redesignated as 2401.601–73 and Revised]

5. Section 2401.601–74 would be redesignated as 2401.601–73 and revised to read as follows:

2401.601–73 Regional Offices.

(a) Procurement of supplies and services for HUD Regional requirements is accomplished at each Regional Office by the Regional Contracting Division, which may redelegate contracting authority to qualified Administration employees in Regional and Field Offices.

(b)(1) The Regional Administrator shall redelegate to Field Office Directors of Housing Management the following procurement authority related to the management or disposition of properties owned or held by HUD as mortgagee-in-possession under the National Housing Act (12 U.S.C. 1701–1749):

(i) Emergency procurement authority (pursuant to FAR 6.302–2); and

(ii) In those Field Offices without full-time contracting personnel, small purchase authority (pursuant to FAR part 13).

(2) The Regional Administrator may also redelegate small purchase authority to Office of Housing employees designated by the Field Office Director of Housing Management in those Field

Offices without full-time contracting personnel.

(c) Any redelegation of procurement authority in paragraphs (a) and (b) of this section shall be accomplished on a Standard Form 1402, Certificate of Appointment, which may be revoked upon a showing that the individual has consistently failed to adhere to sound procurement practices. Any revocation of authority in paragraph (b) of this section shall only occur after consultation with the Assistant Secretary for Housing-Federal Housing Commissioner.

2401.603–3 [Amended]

6. Section 2401.603–3, paragraph (b) would be amended by removing the words "Field Office Managers or Supervisors" and adding, in their place, the words "Appointing officials."

PART 2402—DEFINITIONS OF WORDS AND TERMS

7. The authority citation for 48 CFR part 2402 would be revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2402.101 [Amended]

8. In section 2402.101, under the definition "Head of Contracting Activity" paragraphs (3), (4), and (5) would be removed, and paragraph (6) would be redesignated as paragraph (3).

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

9. The authority citation for 48 CFR part 2403 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d).

Subpart 2403.3—[Amended]

10. The heading for subpart 2403.3 would be amended by removing the words "Identical Bids and".

11. A new section 2403.670 would be added to subpart 2403.6, to read as follows:

2403.670 Solicitation provision and contract clause.

Insert the clause at 2452.203–70 in solicitations and contracts, and the provision at 2452.203–71 in solicitations, where the contracting officer has reason to believe that one or more offerors may be owned or controlled by Government employees.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2405—PUBLICIZING CONTRACT ACTIONS

12. The authority citation for 48 CFR part 2405 would be revised to read as follows:

Authority: 42 U.S.C. 253; 40 U.S.C. 486(c); 42 U.S.C. 3535(d); and FAR class deviation approved November 15, 1990.

13. Subpart 2405.3, consisting of section 2405.301, would be added to read as follows:

Subpart 2405.3—Synopses of Contract Awards

2405.301 General

(b) All contract awards exceeding the small purchase limitation shall be synopsized in the Commerce Business Daily, without exception.

PART 2406—COMPETITION REQUIREMENTS

14. The authority citation for 48 CFR part 2406 would be revised to read as follows:

Authority: 42 U.S.C. 253; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2406.304–70 [Removed]

15. Section 2406.304–70 would be removed.

2406.304–71 [Redesignated as 2406.304–70]

16. Section 2406.304–71 would be redesignated as 2406.304–70.

2406.304–72 [Redesignated as 2406.304–71]

17. Section 2406.304–72 would be redesignated as 2406.304–71.

PART 2409—CONTRACTOR QUALIFICATIONS

18. The authority citation for 48 CFR part 2409 would be revised to read as follows:

Authority: 40 U.S.C. 486 (c); 42 U.S.C. 3535(d).

2409.501 [Removed]

19. Section 2409.501 would be removed.

2409.502 [Amended]

20. Section 2409.502 would be amended by removing the words "consulting services" and adding, in their place, the words "advisory and assistance services".

21. A new section 2409.503 would be added, to read as follows:

2409.503 Waiver

The Senior Procurement Executive is authorized to waive any general rule or procedure in FAR Subpart 9.5 by determining that its application to a particular situation would not be in the Government's interest.

2409.504 [Amended]

22. Section 2409.504 would be amended by revising the introductory text to read as follows:

2409.504 Contracting officer responsibilities.

The following actions are required for all contract actions covered by 2409.502:

* * * * *

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 2413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

23. The authority citation for 48 CFR part 2413 would be revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

24. In section 2413.505–2, paragraph (b) would be revised to read as follows:

2413.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

* * * * *

(b) For small purchases under the Acquired Property Program, Contracting Officers may use HUD Form 2542, Purchase Order and Payment Authorization. This form may also be used for the following:

(1) Construction work under the small purchase limitation; however, if over $2,000, the Davis-Bacon Act and related requirements/clauses are applicable; or

(2) Services, including indefinite delivery purchase orders; however, if over $2,500, the Service Contract Act and related requirements/clauses are applicable.

PART 2414—SEALED BIDDING

25. The authority citation for 48 CFR part 2414 would be revised to read as follows:

Authority: 41 U.S.C. 253; 42 U.S.C. 486(c); 42 U.S.C. 3535(d).

26. Section 2414.403–3 would be revised to read as follows:

2414.406–3 Other mistakes disclosed before award.

(e) The determination to allow a bidder to: Correct a mistake in bid discovered before award (other than obvious clerical errors); withdraw a bid;

or, neither correct nor withdraw a bid shall be submitted to the Head of the Contracting Activity for approval.

PART 2415—CONTRACTING BY NEGOTIATION

27. The authority citation for 48 CFR part 2415 would be revised to read as follows:

Authority: 41 U.S.C. 253; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

28. In section 2415.407, paragraph (a) would be revised to read as follows:

2415.407 Solicitation provisions.

(a) The Contracting Officer shall insert a provision substantially the same as the provision at 2452.215–70, Proposal Content and Outline, in all negotiated solicitations above the small purchase limitation. Include section 6 in paragraph (b) of the provision if the solicitation requires work on or access to sensitive automated systems and HUDAR clause 2452.237–76 is included.

* * * * *

2415.608 [Amended]

29. In section 2415.608, paragraph (a)(3)(iii) would be amended by removing the words "negotiation and award" at the end of the sentence, and by adding, in their place, the words "negotiation and/or award;"

2415.611 [Removed]

30. Section 2415.611 would be removed.

2415.613 [Redesignated as 2415.612 and Revised]

31. Section 2415.613 would be redesignated as section 2415.612 and revised to read as follows:

2415.612 Formal source selection.

(a) *General.* For those procurements with an estimated dollar amount of $500,000 or more, the following procedures apply. These procedures, which are more formal than those applying to procurements under $500,000, may also be used at the request of the funding Assistant Secretary for procurements under $500,000.

(b) *Responsibilities.* (1) Selection of the source(s) for award shall be made by the Source Selection Official (SSO), who is the head of the funding office, or by his or her designee.

(2) To assist the SSO in evaluating proposals and making the selection, the SSO shall designate a Source Evaluation Board (SEB) composed of a chairperson, voting members, and advisors.

32. A new section 2415.612–70 would be added to read as follows:

2415.612–70 Procedures.

(a) *Evaluation.* (1) After the date for receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the SEB Chairperson or his or her designee, who shall be responsible for custody of the proposals throughout the evaluation process. The cost portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the SEB.

(2) The SEB shall evaluate each proposal in strict conformance with the requirements in 2415.608(a)(2).

(3) After the initial technical evaluation, the Contracting Officer and the SEB shall evaluate the cost portion of each proposal.

(b) *Competitive range.* Unless the SEB is prepared to recommend, in accordance with FAR 15.610(a)(3), that the award be made on the basis of the most favorable initial proposal, the Contracting Officer shall, with the advice of the SEB, establish a competitive range based on evaluation of all the factors for award, including cost or price.

(c) *Written or oral discussions.* The contracting Officer, with the assistance of the SEB, shall conduct written or oral discussions with all offerors within the competitive range, as required by FAR 15.610.

33. Section 2415.613 would be added to read as follows:

2415.613 Alternative source selection procedures.

(a) The Department of Housing and Urban Development uses procedures authorized by FAR 15.613 for all research and development contracts and other contracts where the contractor's proposed methodology of carrying out the work is a significant selection factor.

(b) These procedures allow for limited oral or written discussions to avoid technical levelling, a request for best and final offers, and selection of source(s) for negotiation of a final contract.

34. Section 2415.613–70 would be revised to read as follows:

2415.613.70 Technical evaluation.

Depending on the anticipated dollar value of the procurement (see 2415.604 and 2415.612(a)), either a TEP or SEB shall perform the required technical evaluation of proposals received in accordance with 2415.608 and 2415.612, respectively.

35. Section 2415.613–71 would be revised to read as follows:

2415.613–71 Limited written or oral discussions.

Limited written or oral discussions shall be conducted with each offeror considered to be within the competitive range. These discussions should address technical weaknesses of the particular offer, as well as cost issues, to the fullest extent practicable while avoiding technical leveling.

36. A new section 2415.613–72 would be added to read as follows:

2415.613–72 Selection and final negotiation.

(a) *Selection.* After the close of discussions and receipt of best and final offers, the TEP or SEB shall perform a final evaluation and prepare its selection recommendation for the contracting officer or SSO, respectively. Based on this evaluation, the contracting officer or SSO shall select for final contract negotiation the offeror(s) whose proposal is most advantageous to the Government in terms of price/cost, technical and other relevant factors included in the solicitation.

(b) *Final negotiation.* This includes reaching agreement with the selected source on any remaining cost/price, technical, socioeconomic, or other issues that will condition performance of the contract and setting forth those terms and conditions in a mutually acceptable contract document. No factor or condition that could have had any effect on the selection process may be changed at this point. These negotiations are led by the contracting officer and may include any technical, audit, or support personnel he/she deems necessary.

PART 2416—TYPES OF CONTRACTS

37. The authority citation for 48 CFR part 2416 would continue to read as follows:

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

38. Section 2416.504 would be revised to read as follows:

2416.504 Indefinite-quantity contracts.

(e) The contracting officer shall insert the clause at 2452.216–75, Unpriced Task Orders, in contracts for which task orders are individually negotiated and there may be a need to issue unpriced task orders; provided, however, that the contracting officer shall ensure that the cost of the work authorized by the task order is not in excess of the funds obligated under the contract.

PART 2419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

39. The authority citation for 48 CFR part 2419 would be revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

40. Subpart 2419.7 consisting of section 2419.708, would be added to read as follows:

Subpart 2419.7—Subcontracting with Small Businesses and Small Disadvantaged Business Concerns

2419.708 Solicitation provisions and contract clauses.

(d) The Contracting Officer shall insert the provision at 2452.219–70 in negotiated solicitations exceeding $500,000.

(e) The Contracting Officer shall insert the provision at 2452.219–70 with Alternate I in sealed bid solicitations exceeding $500,000.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

41. A new part 2425, consisting of section 2425.402, would be added to read as follows:

PART 2425—TRADE AGREEMENTS ACT

Authority: 42 U.S.C. 3535(d).

2425.402 Policy.

It is the Department's policy to determine whether the Trade Agreements Act applies based on the total estimated dollar value of the proposed acquisition before the solicitation is issued, including all line items and options.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

42. The authority citation for 48 CFR part 2426 would be added to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2426.201 [Amended]

43. Section 2426.201 would be amended by removing the term "OSDBU", wherever it appears, and inserting in its place the words "Deputy Assistant Secretary for Intergovernmental Relations, in coordination with OSDBU".

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2428—BONDS AND INSURANCE

44. The authority citation for 48 CFR part 2428 would be revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2428.203 and 2428.203–70 [Redesignated as 2428.204 and 2428.204–70]

45. Sections 2428.203 and 2428.203–70 would be redesignated as sections 2428.204 and 2428.204–70, respectively.

PART 2432—CONTRACT FINANCING

46. The authority citation for 48 CFR part 2432 would be revised to read as follows:

Authority: 31 U.S.C. 3901–3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

47. Section 2432.402 would be revised to read as follows:

2432.402 General.

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts for Headquarters contracts, or the Director of Administration, for Regional/Field contracts.

(2) Each advance payment situation shall be coordinated with the Office of Finance and Accounting, for Headquarters, or the Regional Accounting Division, for Regional/Field contracts, before authorization may be given, to ensure that there are controls in place to assure proper administration of advance payments.

48. A new section 2432.906 would be added to subpart 2432.9, to read as follows:

2432.906 Contract financing payments.

Periods for payment shorter than 30 days shall not be specified in contracts without the prior approval of the Office of Finance and Accounting, for Headquarters contracts, and shall be coordinated with the Regional Accounting Division, for Regional/Field Office contracts, to ensure that procedures are in place to allow timely payment.

PART 2433—PROTESTS, DISPUTES, AND APPEALS

49. The authority citation for 48 CFR part 2433 would be revised to read as follows:

Authority: 31 U.S.C. 3551–3556; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

50. Section 2433.103 would be revised to read as follows:

2433.103 Protests to the agency.

(a)(2) When the Contracting Officer makes a determination to award a contract notwithstanding a protest, as authorized by FAR 33.103(a)(2), that determination shall be approved by the HCA before award, after consultation with the Office of General Counsel.

(a)(4) Protests received after award that are filed only with the Department shall be decided promptly by the Contracting Officer after consultation with appropriate officials, including the program office and the Office of General Counsel.

2433.103–70 [Removed]

51. Section 2433.103–70 would be removed.

2433.103–71 [Redesignated as 2433.103–70]

52. Section 2433.103–71 would be redesignated as section 2433.103–70.

2433.104–70 [Removed]

53. Section 2433.104–70 would be removed.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

54. The authority citation for 48 CFR part 2436 would be revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2436.602–2 [Amended]

55. Section 2436.602–2(a) would be amended to add the words "(which may include preselection boards)" after the words "permanent or ad hoc" in the first sentence.

2436.602–5. [Amended]

56. Section 2436.602–5 would be revised to replace the number "$10,000" with the words "the small purchase limitation".

PART 2437—SERVICE CONTRACTING

57. The authority citation for 48 CFR part 2437 would be revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2437.2—Advisory and Assistance Services

58. Subpart 2437.2 would be retitled to read as set forth above.

59. In section 2437.110, new paragraphs (g) and (h) would be added to read as follows:

2437.110 Solicitation provisions and contract clauses.

* * * * *

(g) The contracting officer shall insert the clause at 2452.237–76 in solicitations and contracts that involve work on or access to sensitive automated systems.

(h) The Contracting Officer shall insert the clause at 2452.237–77, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any HUD office.

2437.205 [Amended]

60. In section 2437.205, paragraph (b)(6) would be amended by removing the words "consulting services" wherever they appear, and adding in their place the words "advisory and assistance services".

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2446—QUALITY ASSURANCE

61. The authority citation for 48 CFR part 2446 would be revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

62. A new subpart 2446.7 consisting of section 2446.710 would be added to read as follows:

Subpart 2446.7—Warranties

2446.710 Contract clauses.

(c)(1) The contracting officer may include a clause substantially the same as FAR 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, whenever it is in the Government's interest.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

63. The authority citation for 48 CFR part 2452 would be revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

64. A new section 2452.203–70 would be added to read as follows:

2452.203–70 Prohibition against the use of Federal employees.

As prescribed in 2403.670, insert the following clause in solicitations and contracts:

Prohibition Against the Use of Federal Employees

([Insert month and year of final rule])

In accordance with Federal Acquisition Regulation 3.601, contracts are not to be awarded to Federal employees or a business concern or other organization owned or substantially owned or controlled by one or more Federal employees. For the purposes of this contract, this prohibition against the use of Federal employees includes any work performed by the Contractor or any of its employees, subcontractors, or consultants.

[End of clause]

65. A new section 2452.203–71 would be added to read as follows:

2452.203–71 Certification regarding Federal employment.

As prescribed in 2403.670, insert the following provision in solicitations:

Certification Regarding Federal Employment

([Insert month and year of final rule])

The offeror certifies that it is [ ], is not [ ] owned or substantially owned or controlled by one or more Federal employees.

[End of provision]

66. In 2452.215–70, paragraph (b) of the provision would be amended by adding a new section 6 to the end of the paragraph, and by revising paragraph (c) and (d), to read as follows:

2452.215–70 Proposal content and outline.

* * * * *

(b) *Part I—Technical and Management.*

* * * * *

Section 6: *Security Investigation.* The offeror shall address in its technical proposal how it intends to manage the security of automated systems as required by HUDAR clause 2452.237–76. This includes developing security procedures, requesting background investigations for employees and subcontractors as required, and requesting investigations for replacements of such individuals as necessary due to turnover, rotation, or other reasons.

(c) *Part II—Cost and Pricing Data.* (1) Furnish cost or pricing data using the SF–1411, Contract Pricing Proposal, provided in Section L of this solicitation, and the instructions attached to it, which are also printed at FAR 15.804–6. Round all amounts to the nearest dollar. Your data will be subject to review and evaluation by various Government personnel, and thus the estimates furnished on the SF–1411 should be supported by the required supplementary data so that the review and evaluation can be conducted with a minimum amount of delay and effort. In particular, ensure that the following essential elements are provided:

(i) A summary of total cost by cost element cross-reference to each proposed contract line item (instruction number 1).

(ii) Identification of the basis for the kinds, quantities, and cost of all material elements proposed; and a consolidated priced summary of individual material quantities, or a consolidated priced bill of material (BOM), for the entire proposal. A well prepared BOM includes: part number/description, unit cost, quantity required, any nonrecurring costs, extended cost, and basis for the proposed price (quotation, prior buy, similar item, etc.) (instruction number 1, Materials).

(iii) For each subcontract over $100,000 show: source, deliverable, quantity, price, type of subcontract, degree of competition, basis for selecting vendor and establishing reasonableness of price. When required, the subcontractor's cost or pricing data must be submitted with the offeror's initial proposal. If available and if required by FAR 15.806, the contractor should provide the results of review and evaluation of subcontract proposals. Though not required, the offeror should provide reasons for omitted data/reviews with dates when the data/reviews will be available (instruction number 1, Materials).

(iv) A justification, submitted on an SF–1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when claiming an exemption from submitting cost or pricing data (instruction number 1, Materials).

(v) A time phased, e.g., quarterly, annual, breakdown of labor rates and hours by category or skill level, and the basis for the estimates of rates and hours, e.g., historical experiences, engineering estimates, learning curves, etc. If labor is the allocation base for indirect costs, summarize for each overhead pool and year (instruction number 1, Direct Labor).

(vi) In the absence of a forward pricing rate agreement or indirect rate proposal, the contractor should show how indirect rates were estimated and applied as a basis for evaluating the reasonableness of the proposed rates. Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data (instruction number 1, Indirect Costs).

(vii) Identification of all other costs by category and basis for pricing (instruction number 1, Other Costs).

(viii) When claiming cost of money, the contractor must submit Form CASB–CMF and show the calculation of the proposed amount (instruction number 1, Facilities Capital Cost of Money).

(ix) Identification of cost or pricing data, i.e., data that are verifiable and factual, and an explanation of the estimating process. When applicable, the following items should be specifically identified:

(A) Judgmental factors and the methods used in the estimate, including those used in projecting from known data; and

(B) The nature and amount of any contingencies (nstruction number 2).

(x) An index referencing all cost or pricing data and information accompanying or identified in the proposal (instruction number 4).

(xi) For change order proposals: an estimate of the cost to complete deleted work not yet performed; identification of the actual or estimated cost of deleted work already performed; and an estimate of the cost of work added (instruction number 7B).

(2) The Offeror Representations and Certifications provided in Section K of this

solicitation shall be included in this Part II—Cost and Pricing Data of your proposal.

(d) Proposals shall be submitted in _____ copies of Part I and _____ copies of Part II.

(End of provision)

2452.215-71 [Removed]

67. Section 2452.215-71, DUNS contractor establishment number, would be removed.

68. In section 2452.216-75, the introductory text would be revised to read as follows:

2452.216-75 Unpriced task orders.

As prescribed in 2416.504(e), insert the following clause:

* * * * *

69. Section 2452.219-70 would be added to read as follows:

2452.219-70 Small Business and small disadvantaged business subcontracting plan.

As prescribed in 2419.708, insert the following provision in negotiated solicitations exceeding $500,000:

Small Business and Small Disadvantaged Business Subcontracting Plan

([Insert month and year of final rule])

(a) This provision is not applicable to small business concerns.

(b) Consistent with the national interest, it is HUD policy that small business and small business concerns that are owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of HUD work at the prime and subcontract level. Therefore, any contract awarded as a result of this solicitation shall fully comply with the intent of this policy, and the successful offeror shall agree to pursue an effective and comprehensive small business and small disadvantaged business subcontracting progsam in compliance with the clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns."

(c) Prior compliance with subcontracting plans shall be considered in determining the responsibility of an offeror (see FAR 9.104-3). Therefore, offerors having previous contracts with subcontracting plans shall provide the following information: agency name; agency point of contact; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and, the applicable goals and actual performance (dollars and percentages) for subcontracting with small and small disadvantaged business concerns. This information shall be provided for the three most recently (within the last three years) completed contracts with such subcontracting plans.

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219-9, "Small Business and Small Disadvantaged Business Subcontracting Plan." In accordance with that clause, the offeror shall submit the complete subcontracting plan with the response to this solicitation. The content of the final plan is subject to negotiation. Failure to submit a complete subcontracting plan and negotiate its content in good faith shall make the offeror ineligible for the contract award.

(End of provision)

Alternate I ([Insert month and year of final rule])

(a) This provision is not applicable to small business concerns.

(b) Consistent with the national interest, it is HUB policy that small business and small business concerns that are owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of HUD work at the prime and subcontract level. Therefore, any contract awarded as a result of this solicitation shall fully comply with the intent of this policy, and the successful bidder shall agree to pursue an effective and comprehensive small business and small disadvantaged business subcontracting program in compliance with the clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns."

(c) Prior compliance with subcontracting plans shall be considered in determining the responsibility of a bidder (see FAR 9.104-3). Therefore, bidders having previous contracts with subcontracting plans shall provide the following information: Agency name; agency point of contact; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and, the applicable goals and actual performance (dollars and percentages) for subcontracting with small and small disadvantaged business concerns. This information shall be provided for the three most recently (within the last three years) completed contracts with such subcontracting plans.

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219-9, "Small Business and Small Disadvantaged Business Subcontracting Plan (Alternate I)." The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a part of the resultant contract. The Contracting Officer will review the adequacy of the subcontracting plan as part of the responsibility determination. Failure to submit an adequate subcontracting plan where applicable shall make the bidder ineligible for the contract award.

70. Section 2452.237-76 would be added to read as follows:

2452.237-76 Background investigations for sensitive automated systems/applications.

As prescribed in 2437.110(g), insert the following clause:

Background Investigations for Sensitive Automated Systems/Applications

([Insert date and month of final rule])

(a) *General.* This contract involves work on or access to an automated system [name] that has a sensitivity rating of [3 or 4], as defined in appendix A of HUD Handbook 2400.23, "ADP Security." All contractor employees working on this contract are required to have a background investigation commensurate with the rating of the automated system (position designation of: 6, High Risk; 5, Moderate Risk; or 1, Low Risk) in accordance with Federal Personnel Manual (FPM) chapters 731, 732, and 736. Any employee who is required to have a background investigation shall not be permitted to work on this contract without the required investigation; however, contractor employees in Low Risk positions are eligible for immediate (interim) approval if the contractor submits the required security package described in paragraph (c) of this section with 14 days of contract award. The contractor shall establish personnel security procedures that meet, as a minimum, the requirements of Handbook 2400.23 and shall provide a copy to the GTR.

(b) *Citizenship-related requirements.* Every contractor employee working on the sensitive applications of this contract shall satisfy at least one of the following requirements:

(1) Be a citizen living in the U.S.; or

(2) Owe allegiance to the U.S.

(c) *Approval process.* To obtain a background investigation, the contractor shall submit the following completed forms to the GTR for screening and transmittal to the Office of the Inspector General's (OIG) Security Staff for initiation of the required investigation: SF 85-P, Questionnaire for Public Trust Positions; SF 86A, continuation Sheet (if needed); SF-171, Application for Federal Employment; FD-258, Fingerprint Chart; and other forms or information as may be necessary. An original and two copies of SF-171 and SF 85-P are necessary. The investigation process shall consist of: a range of personal background inquiries and contacts (written and personal) pertaining to verification of the information provided on the security forms. The background investigation may be waived by HUD upon presentation of acceptable evidence that an employee has received a timely appropriate background investigation.

Upon completion of the investigation process, the Contracting Officer, after conferring with the appropriate HUD offices, shall notify the contractor in writing of the individual's eligibility or ineligibility to work on this contract. The contractor is responsible for ensuring that such investigations are requested as necessary for the performance of this contract. If contractor personnel will be working on-site in any HUD office, the contractor shall comply with the requirements of HUDAR clause 2452.237-75—Clearance of Personnel and obtain building passes for those personnel.

(d) *Signed pledges.* The contractor shall require that any employees who may have access to the automated systems identified in section C of this contract sign a pledge of

nondisclosure of information. These pledges shall be signed by the employees before they are assigned to this contract and shall be maintained by the contractor for a period of three years after final payment under the contract.

(e) *Nondisclosure of information.* Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized Government personnel with an established need to know or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD are the sole property of HUD.

(f) *Contract performance.* If HUD receives disqualifying information on a contractor employee, the contractor, upon written notice, will immediately remove the employee from work on this contract. Contractor employees may be barred from working on this contract for failing to meet or maintain the suitability standards prescribed in FPM chapter 731, as applicable. Failure to comply with the terms of this clause may result in termination for default.

(g) *Notification.* The contractor shall notify the Government Technical Representative (GTR) in writing (with a copy to the contracting officer) whenever a cleared employee terminates employment or is no longer working on this contract, and the GTR shall notify the HUD ADP Security Staff, who will notify the OIG Security Staff. The contractor shall immediately notify the Contracting Officer of any breach or suspected breach of security or any unauthorized disclosure of the information contained in the automated sysfem specified in this contract.

(h) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (a) of this section are applicable to performance of the subcontract.

[End of clause]

71. Section 2452.237–77 would be added to read as follows:

2452.237–77 Observance of legal holidays and adminstrative leave.

As prescribed in 2437.110(h), insert the following clause:

Observance of Legal Holidays and Administrative Leave

([Insert month and year of final rule])

(a) The Department of Housing and Urban Development observes the following days as holidays:

New Year's Day
Martin Luther King's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Christmas Day
Columbus Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(b) When any such day falls on a Saturday, the preceding Friday is observed; when any such day falls on a Sunday, the following Monday is observed. Observances of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(c) When HUD grants administrative leave to its Government employees, assigned contractor personnel in Government facilities shall also be dismissed. However, the contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled, and shall be guided by the instructions issued by the Contracting Officer or his/her duly authorized representative.

(d) For fixed-price contracts, if services are not required or provided because the building is closed due to inclement weather, unanticipated holidays declared by the President, failure of the Congress to appropriate funds, or similar reasons, deductions will be computed as follows:

(1) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(2) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided.

If services are provided for portions of days, appropriate adjustment will be made by the Contracting Officer to ensure that the contractor is compensated for services provided.

(e) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any "Excusable Delays" clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

Dated: June 1, 1992.

Jim E. Tarro,

Assistant Secretary for Administration.

[FR Doc. 92–13171 Filed 6–5–92; 8:45 am]

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federal register

Monday
June 8, 1992

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Sea Grant Review Panel Meeting; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel Meeting in the areas of new technology and research, law and policy, management and organization, long-range planning, new procedures and strategic and tactical issues.

DATES: The announced meeting is scheduled during two days: Tuesday, June 9, 1992 (8 a.m.–12 noon and 1–3 p.m.), and Wednesday, June 10, 1992, (8 a.m.–12 noon and 1 p.m.–2 p.m.)

ADDRESSES: Silver Spring Metro Center 1 Building, 1335 East-West Highway, Conference Room—Lobby Level, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1335 East-West Highway, #5104, Silver Spring, Maryland 20910, (301) 713–2431.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Tuesday, June 9, 1992—8 a.m.–12 Noon

Introduction and Welcome of New Members
Logistics and Such
Approval of Minutes
OAR Comments
Activity Reports
  Executive Committee
  Sea Grant Director's Meeting
  New Procedures and Allocation Bylaws
Priority Issues for Sea Grant
  —Funding and Future Growth
  —Outreach and Marine Advisory Service
  —Bureaucratic Inefficiencies
  —Resource Allocation
  —Evaluation of Management and Orientation
  —Rationalization of Number of Sea Grant Entities
Sea Grant College Directors Report

Tuesday, June 9, 1992—1 p.m.–3 p.m.

National Sea Grant Office Director's Report
  —Appropriations
  —Biotechnology Initiative
  —Success Themes
  —NOAA University Policy
  —NASULGC Study
  —Regional Marine Research Programs Update
Congressional Communications
National Sea Grant Office Issues
  —Staffing
  —New Procedures
  —Strategic and Tactical Issues

Wednesday, June 10, 1992—8 a.m.–12 Noon

Committee Meetings
Joint Committee Discussions
Open Panel Session
Subcommittee Reports:
  —Law and Policy
  —New Technology and Research
  —Economic Development
  —Management and Organization
  —Long-Range Planning

Wednesday, June 10, 1992—1 p.m.–2 p.m.

Specific Actions and Motions
Report to Secretary of Commerce
Next Meeting
New Business
New Business
  —Fall Site Visits

The meeting will be open to the public.

Dated: June 4, 1992.

Ned A. Ostenso,

Assistant Administrator Oceanic and Atmospheric Research.

[FR Doc. 92–13547 Filed 6–4–92; 4:21 pm]

BILLING CODE 3510–12–M

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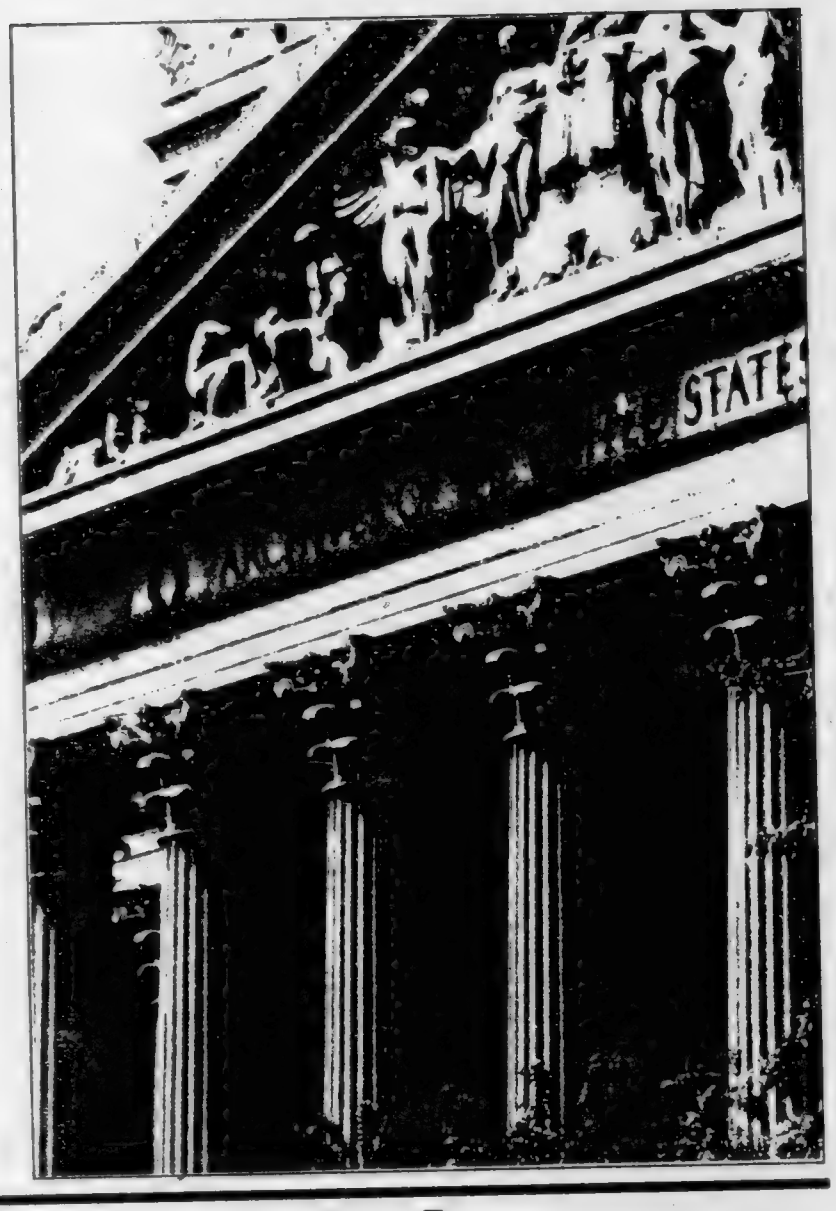

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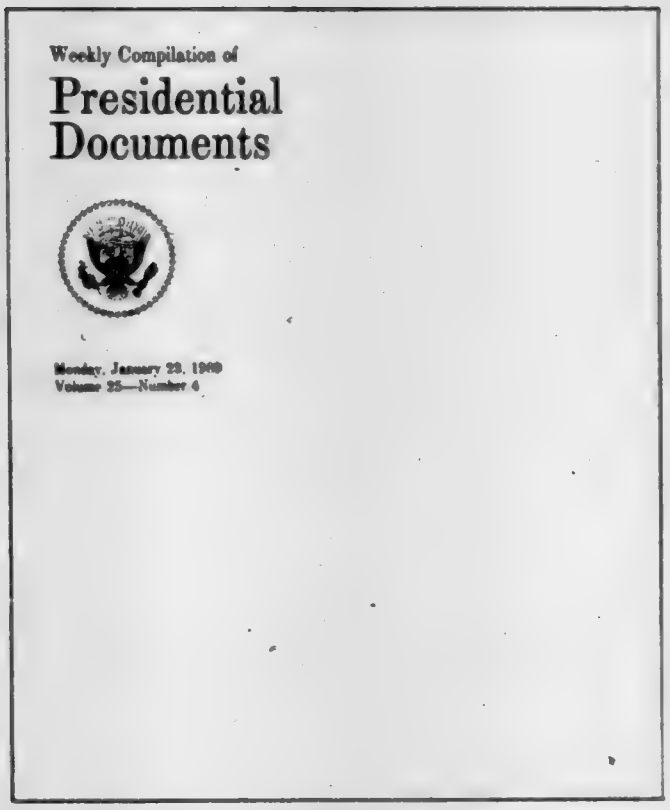

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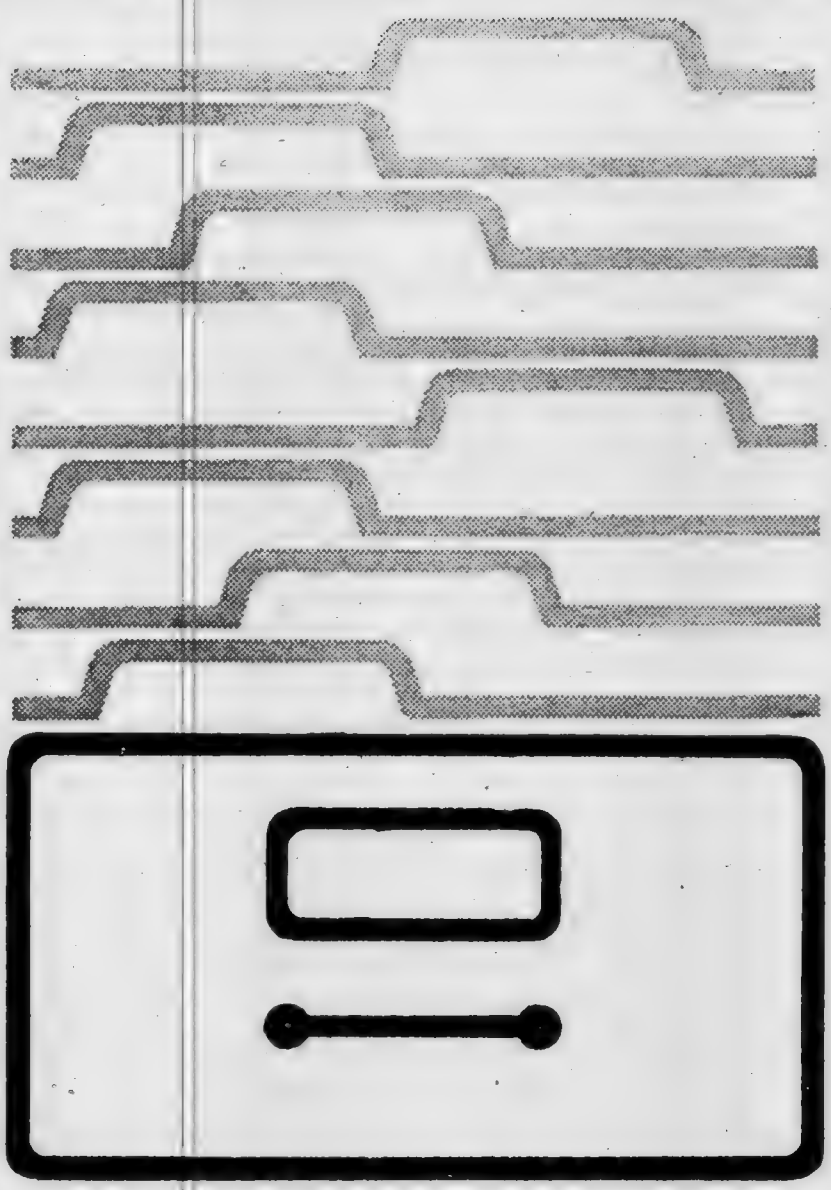

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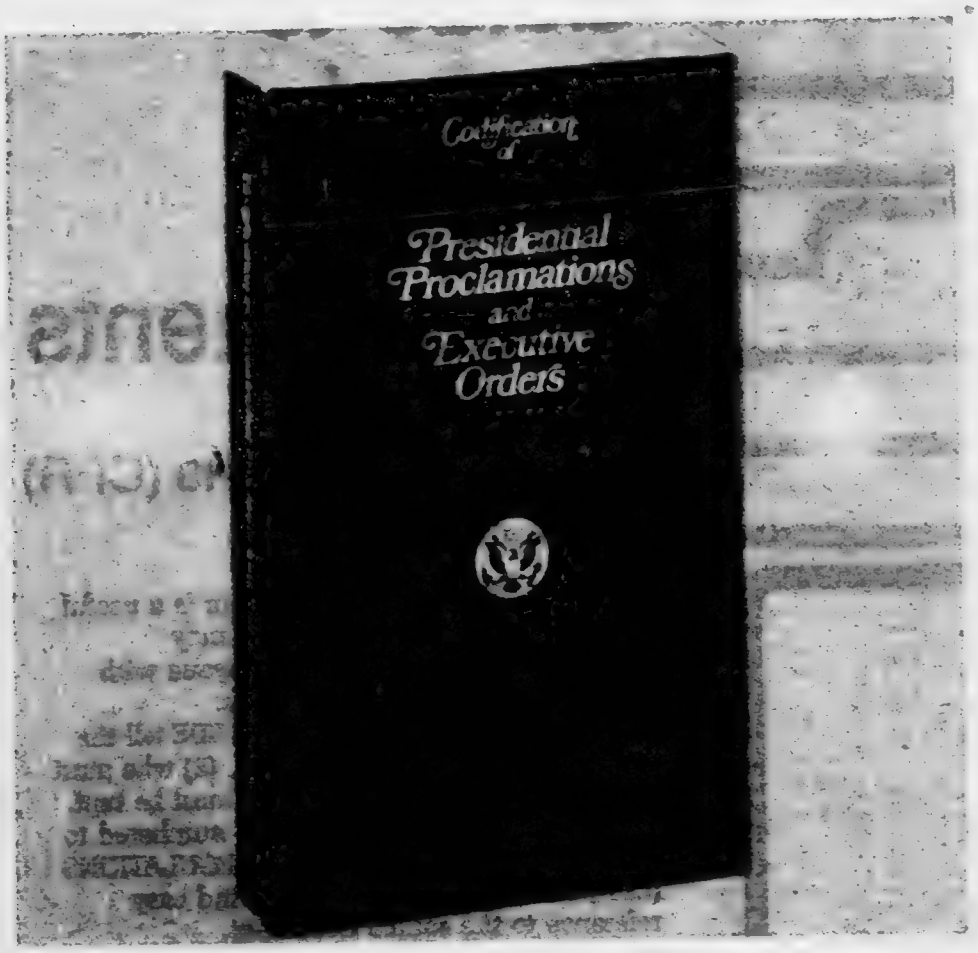

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Presidential Documents

Title 3—

The President

Memorandum of February 10, 1992

Delegation of Authority To Report to the Congress and To Publish in the Federal Register Proposed Changes in the Social Security Number Card

Memorandum for the Secretary of Health and Human Services

Section 205(c)(2)(F) of the Social Security Act (section 405(c)(2)(F) of title 42 of the United States Code) directs the Secretary of Health and Human Services to issue Social Security number cards to individuals who are assigned Social Security numbers.

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 274A(d)(3)(A) of the Immigration and Nationality Act (the "Act") (section 1324a(d)(3)(A) of title 8 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act, I hereby:

(1) Authorize you to prepare and transmit, to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on the Judiciary and the Committee on Finance of the Senate, a written report regarding the substance of any proposed change in Social Security number cards, to the extent required by section 274A(d)(3)(A) of the Act, and

(2) Authorize you to cause to have printed in the **Federal Register** the substance of any change in the Social Security number card so proposed and reported to the designated congressional committees, to the extent required by section 274A(d)(3)(A) of the Act.

The authority delegated by this memorandum may be further redelegated within the Department of Health and Human Services.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, February 10, 1992.

[FR Doc. 92-13644
Filed 6-5-92; 1:14 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12810 of June 5, 1992

Blocking Property of and Prohibiting Transactions With the Federal Republic of Yugoslavia (Serbia and Montenegro)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), the National Emergencies Act (50 U.S.C. 1601, *et seq.*), section 1114 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1514), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3 of the United States Code, in view of United Nations Security Council Resolution No. 757 of May 30, 1992, and in order to take additional steps with respect to the actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the national emergency described and declared in Executive Order No. 12808,

I, GEORGE BUSH, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, all property and interests in property of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), and property and interests in property held in the name of the Government of the Federal Republic of Yugoslavia or of the former Government of the Socialist Federal Republic of Yugoslavia, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. The following are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order:

(a) The importation into the United States of any goods originating in, or services performed in, the Federal Republic of Yugoslavia (Serbia and Montenegro), exported from the Federal Republic of Yugoslavia (Serbia and Montenegro) after May 30, 1992, or any activity that promotes or is intended to promote such importation;

(b) The exportation to the Federal Republic of Yugoslavia (Serbia and Montenegro), or to any entity operated from the Federal Republic of Yugoslavia (Serbia and Montenegro), or owned or controlled by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), directly or indirectly, of any goods, technology (including technical data or other information controlled for export pursuant to the Export Administration Regulations, 15 C.F.R. Parts 768, *et seq.*), or services, either (i) from the United States, (ii) requiring the issuance of a license by a Federal agency, or (iii) involving the use of U.S.-registered vessels or aircraft, or any activity that promotes or is intended to promote such exportation;

(c) Any dealing by a United States person related to property originating in the Federal Republic of Yugoslavia (Serbia and Montenegro) exported from the Federal Republic of Yugoslavia (Serbia and Montenegro) after May 30, 1992, or property intended for exportation from the Federal Republic of

Yugoslavia (Serbia and Montenegro) to any country, or exportation to the Federal Republic of Yugoslavia (Serbia and Montenegro) from any country, or any activity of any kind that promotes or is intended to promote such dealing;

(d) Any transaction by a United States person, or involving the use of U.S.-registered vessels and aircraft, relating to transportation to or from the Federal Republic of Yugoslavia (Serbia and Montenegro), the provision of transportation to or from the United States by any person in the Federal Republic of Yugoslavia (Serbia and Montenegro) or any vessel or aircraft registered in the Federal Republic of Yugoslavia (Serbia and Montenegro), or the sale in the United States by any person holding authority under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), of any transportation by air that includes any stop in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(e) The granting of permission to any aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same flight or as a continuation of that flight, is destined to land in or has taken off from the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro);

(f) The performance by any United States person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(g) Any commitment or transfer, direct or indirect, of funds, or other financial or economic resources by any United States person to or for the benefit of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) or any other person in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(h) Any transaction in the United States or by a United States person related to participation in sporting events in the United States by persons or groups representing the Federal Republic of Yugoslavia (Serbia and Montenegro);

(i) Any transaction in the United States or by a United States person related to scientific and technical cooperation and cultural exchanges involving persons or groups officially sponsored by or representing the Federal Republic of Yugoslavia (Serbia and Montenegro), or related to visits to the United States by such persons or groups other than as authorized for the purpose of participation at the United Nations.

Sec. 3. Nothing in this order shall apply to (i) the transshipment through the Federal Republic of Yugoslavia (Serbia and Montenegro) of commodities and products originating outside the Federal Republic of Yugoslavia (Serbia and Montenegro) and temporarily present in the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro) only for the purpose of such transshipment, and (ii) activities related to the United Nations Protection Force (UNPROFOR), the Conference on Yugoslavia, or the European Community Monitor Mission.

Sec. 4. Any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited.

Sec. 5. For the purposes of this order:

(a) The term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or any person in the United States, and vessels and aircraft of U.S. registration;

(b) The term "the Federal Republic of Yugoslavia (Serbia and Montenegro)" means the territory of Serbia and Montenegro;

(c) The term "the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro)" includes the government of the newly constituted Federal Republic of Yugoslavia, the Government of Serbia, and the Government of

Montenegro, including any subdivisions thereof or local governments therein, their respective agencies, instrumentalities and controlled entities, and any persons acting or purporting to act for or on behalf of any of the foregoing, including the National Bank of Yugoslavia, the Yugoslav National Army, and the Yugoslav Chamber of Economy, the National Bank of Serbia, the Serbian Chamber of Economy, the National Bank of Montenegro, and the Montenegrin Chamber of Economy.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purposes of this order. Such actions may include prohibiting or regulating payments or transfers of any property, or any transactions involving the transfer of anything of economic value, by the any United States person to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), any person in the Federal Republic of Yugoslavia (Serbia and Montenegro), or any person or entity acting for or on behalf of, or owned or controlled, directly or indirectly, by any of the foregoing. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 7. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under Executive Order No. 12808 and not revoked administratively shall remain in full force and effect under this order until amended, modified, or terminated by proper authority.

Sec. 8. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 9. (a) This order is effective immediately.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**

THE WHITE HOUSE,
June 5, 1992.

[FR Doc. 92-13715
Filed 6-5-92; 4:39 pm]
Billing code 3195-01-M

Editorial note: For the President's letter to the Speaker of the House and the President of the Senate, Executive Order 12808, and a message to Congress regarding the national emergency with respect to Yugoslavia, see issue 23 of the *Weekly Compliation of Presidential Documents.*

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV-91-456]

Table Grapes Grown in Southeastern California; Final Rule Establishing Interest and Late Payment Charges on Late Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes interest and late payment charges on late assessments owed handlers regulated under the marketing order. This action will contribute to the efficient operation of the program by ensuring that adequate funds are available to cover budgeted expenses incurred under the marketing order.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 690–3670.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 925 [7 CFR part 925], regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, grapes are subject to assessments. An assessment rate established under the marketing order is intended to be applicable to all assessable grapes handled during a fiscal year. This action establishes interest and late payment charges on late assessments. As provided in this rule, these charges will not be imposed until 45 days after the initial billing date. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California desert grapes subject to regulation under the marketing order, and approximately 90 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the grape handlers and producers may be classified as small entities.

The California Desert Grape Administrative Committee (committee), the agency responsible for local administration of the order, met on October 31, 1991, and unanimously recommended establishing interest and late payment charges on handler assessments payable to the committee.

Under the terms of the marketing order, each regulated table grape handler is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's shipments. It is important for handlers to pay their assessments promptly so that the committee has sufficient funds to cover its expenses. The order also authorizes the committee, with the Secretary's approval, to establish interest and late payment charges on delinquent assessments.

The committee recommended imposing a late payment charge of 5 percent of the unpaid balance and charging interest of 1½ percent per month on late assessments. The committee believes that this action will encourage handlers to pay their assessments in a timely manner. The interest and late payment charges will not be imposed until 45 days after the initial billing date, so that handlers will have ample time to pay their assessments and avoid incurring the additional charges.

A proposed rule was published in the January 23, 1992, **Federal Register** [57 FR 2690] and interested persons had until February 24, 1992, to submit written comments. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, it is hereby found that

this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the shipping season starts in mid-April and this rule should be implemented as soon as possible. Further, handlers are aware of this rule, which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 925

Grapes, marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended to read as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Part 925 is amended by adding a new section 925.141 to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 925.141 Late payments.

(a) The committee shall impose a late payment charge of 5 percent on the unpaid balance on any handler whose assessment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 45 days of the invoice date shown on the handler's assessment statement.

(b) In addition to that specified in paragraph (a) of this section, the committee shall impose an interest charge on any handler whose assessment payment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 45 days of the invoice date. The rate of 1½ percent per month shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 45 day period.

(c) The committee, upon receipt of a late payment, shall promptly notify the handler (by registered mail) of any late payment charge and/or interest charge due as provided in paragraphs (a) and (b) of this section. If such charges are not paid, or the envelope containing payment is not legibly postmarked by the U.S. Postal Service, within 45 days of the date of such notification, late payment and interest charges as provided in paragraphs (a) and (b) of this section will accrue on the unpaid amount.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13416 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 925

[Docket No. FV–91–451 FR]

California Desert Grapes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 925 for the 1992 fiscal period. Authorization of this budget will permit the California Desert Grape Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: January 1, 1992, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–3923.

SUPPLEMENTARY INFORMATION: This final rule is effective under Marketing Agreement and Order No. 925, regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, grapes are subject to assessments. It is intended that the assessment rate will be applicable to all assessable grapes handled during the 1992 fiscal year, beginning January 1, 1992 through December 31, 1992. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California Desert grapes under this marketing order, and approximately 90 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of grape producers and handlers may be classified as small entities.

The budget of expenses for the 1992 fiscal period was prepared by the California Desert Grape Administrative Committee (committee), the agency responsible for local administration of the marketing order, and submitted to

the Department of Agriculture for approval. The members of the committee are handlers and producers of California Desert grapes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of California desert grapes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on November 21, 1991, and unanimously recommended a 1992 budget of $55,100. Major increases in this year's budget are in the telephone and communications, office equipment and repairs, rent, vehicle—field supervisor, and insurance—workman's compensation categories.

The committee also unanimously recommended an assessment rate of $0.0025 per lug, the same as last season. This rate, when applied to anticipated shipments of 8,000,000 lugs, would yield $20,000 in assessment income. This, along with $1,100 in interest income and $34,000 from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1992 fiscal period, estimated at $16,360, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on January 3, 1992 [57 FR 219]. That document contained a proposal to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through January 16, 1992. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of the section until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992 fiscal period for the program began on January 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 925

Marketing agreements, Grapes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 925.211 is added to read as follows:

Note: This section will not appear in the *Code of Federal Regulations.*

§ 925.211 Expenses and assessment rate.

Expenses of $55,100 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.0025 per lug of grapes is established for the fiscal period ending December 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13419 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 932

[Docket No. FV–91–458]

Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 932 for the 1992 fiscal year (January through December) established for that order. The rule is needed for the California Olive Committee (committee) to incur operating expenses during the 1992 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1992, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 932 (7 CFR part 932) regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives are subject to assessments. It is intended that the assessment rate will be applicable to all assessable olives handled during the 1992 fiscal year, beginning January 1, 1992 through December 31, 1992. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or

has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6 handlers of California olives regulated under this marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

The California olive marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable olives received by regulated handlers from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are olive producers and handlers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected olive receipts (in tons). Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on December 2, 1991, and unanimously recommended 1992 fiscal year expenditures of $1,832,230 and an assessment rate of $20.68 per ton of assessable olives received by handlers under M.O. 932. In comparison, 1991 fiscal year budgeted expenditures were $2,115,975 and the assessment rate was $20.23 per ton.

Major expenditure items budgeted for the 1992 fiscal year compared with those budgeted in 1991 (in parentheses) are $348,230 ($354,975) for program administration, $65,500 ($126,000) for production research, $786,000 ($830,000) for consumer advertising, $516,000 ($632,000) for food service advertising, and $117,000 ($173,000) for public relations. The $283,745 decrease in budgeted expenditures from 1991 is attributed to decreases in production research, consumer advertising, foodservice advertising, public relations, and administrative costs. Expenses will be covered by both assessment income and reserves.

Estimated assessment income is approximately $1,182,730 for the 1992 fiscal period based on handler receipts of 57,192 tons of assessable olives during the 1991–92 crop year (August–July). This amount will be augmented by approximately $650,000 from reserve funds to enable the committee to pay its estimated expenses. The committee's reserves are well within the maximum amount authorized by the order—one fiscal year's expenses. Last year's assessment income was approximately $2,116,058 on receipts of 104,600 assessable tons.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on January 15, 1992 (57 FR 1663). That document contained a proposal to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through January 27, 1992. No comments were received.

It is found that the specific expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992 fiscal period for the program began on January 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable olives handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 932.225 is added to read as follows:

Note: This action will not appear in the Code of Federal Regulations.

§ 932.225 Expenses and assessment rate.

Expenses of $1,832,230 by the California Olive Committee are authorized, and an assessment rate of $20.68 per ton of assessable olives is established, for the fiscal year ending on December 31, 1992. Unexpended funds from the 1991 fiscal year may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13430 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 998

[Docket No. FV–91–464]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Increase in Expenses for the Peanut Administrative Committee for the 1991–92 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the level of authorized expenses under Marketing Agreement No. 146 for the

1991–92 fiscal period. The increase is needed for the Peanut Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1991, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–6862.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing agreement now in effect peanut handlers are subject to assessment. Funds to administer the peanut agreement program are derived from such assessments. This final rule increases the level of authorized expenditures incurred by the Peanut Administrative Committee for the crop year beginning July 1, 1991. This action will not impose additional costs on handlers as current crop conditions are projected to yield sufficient assessment funds to cover the increases in the budget. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing agreements and orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of peanuts subject to regulation under Peanut Marketing Agreement 146 (7 CFR part 998). Also, there are about 47,000 peanut growers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. Small agricultural producers also have been defined as those having annual receipts of less than $500,000. Some handlers who are signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e. July 1). An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of peanuts and are familiar with the committee's needs and with the costs for goods, services, and personnel for program operations. Thus, they are in a position to formulate appropriate budgets. Such budgets are discussed at industry-wide public meetings and all directly affected persons have an opportunity to participate and provide input into their formulation. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

A final rule establishing administrative expenses in the amount of $985,000 for the committee for the crop year ending June 30, 1992, was published in the **Federal Register** on May 14, 1991 (56 FR 22108).

The committee met on December 12, 1991, and reviewed a proposal to increase the 1991–92 budget by $24,258. This increase provides: (1) $10,000 for the purchase of new computer equipment; and (2) $14,258 for committee staff salary bonuses recognizing the increased work effort of each staff member during the 1991 calendar year in handling a record number of indemnification claims.

Thus, the Peanut Administrative Committee 1991–92 budget of $985,000 is increased by $24,258 to $1,009,258. This increase in budgeted expenses for the 1991–92 fiscal period was approved unanimously by the committee, the agency responsible for local administration of the marketing agreement.

This action will not impose additional costs on handlers as current crop conditions are projected to yield sufficient assessment funds to cover the increases in the budget. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on February 3, 1992 (57 FR 3965). This document contained a proposal to amend § 998.404 to increase the level of authorized expenses. This rule provided that interested persons could file comments through February 13, 1992. No comments were filed.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee needs to have approval for this recommended expense increase.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is hereby amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 998.404 is amended by revising paragraph (a) to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 998.404 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1991, shall be in the amount of $1,009,258, such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the

marketing agreement, determine to be appropriate.

* * * * *

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-13424 Filed 6-8-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-109-AD; Amendment 39-8271; AD 92-10-51]

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T92-10-51 that was sent previously to all known U.S. owners and operators of Lockheed Model L-1011-385 airplanes by individual telegrams. This AD requires a one-time inspection to detect missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary. This amendment is prompted by reports of detached, fractured, and deformed pins found in the horizontal stabilizer lower actuator attach fitting. Loss of a single pin could result in an increased load on the remaining pins; this condition, if not corrected, could result in the accelerated failure of the remaining pins, and consequent total loss of pitch control.

DATES: Effective June 24, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-10-51, issued May 11, 1992, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 10, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-109-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aerospace Engineer, Flight Test Branch, ACE-160A, FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-3915; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION: On May 11, 1992, the FAA issued telegraphic AD T92-10-51, applicable to Lockheed Model L-1011-385 series airplanes, which requires an inspection to detect missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary. That action was prompted by a recent report that, during an inspection of the horizontal stabilizer control system, an operator of a Model L-1011-385 series airplane found that one of the four stabilizer actuators was detached from the stabilizer box. Further investigation revealed that the lower actuator pin had completely fractured, allowing the actuator rod end to pull free from the fitting. The flanged end of the pin was in place in the fitting; however, the threaded end of the pin had migrated out of the other lug until the actuator tore out of the fitting. Stabilizer inputs had caused the free end of the actuator to do considerable damage to the fitting, the bearings, and the remains of the pin. There were no indications or reports of any stabilizer abnormalities.

The operator inspected the airplane's remaining three pins and found that two of the pins were also cracked, but were still carrying load. Magnaflux inspection of one of the pins showed a longitudinal crack 11/16 inch long through the pin. Subsequently, an eddy current inspection was used to confirm this crack. Another pin showed several crack indications, but these were in the inner surface only and did not extend through to the outer surface.

Further investigation of this operator's fleet revealed that a total of 12 pins were cracked out of 17 examined. All four pins on two of these airplanes examined by magnaflux and/or visual inspection showed indications of longitudinal cracks.

These stabilizer actuators are the only means of airplane pitch control. The loss of a single pin is not detectable by pre-flight inspection or pre-takeoff controllability checks. Although the loss of one pin will not cause degradation of control authority, it could result in an increased load on the remaining pins. This condition, if not corrected, could result in the accelerated failure of the remaining pins, and consequent total loss of pitch control.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T92-10-51 to prevent loss of pitch control due to failure of the horizontal stabilizer lower actuator attach pins. The AD requires a one-time inspection to detect missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary.

This is considered to be interim action. The FAA is considering further rulemaking to require non-destructive inspection of the actuator pins for cracks.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on May 11, 1992, to all known U.S. owners and operators of Lockheed Model L-1011-385 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–109–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–10–51. Lockheed Aeronautical Systems Company-Georgia: Amendment 39–8271. Docket 92–NM–109–AD.

Applicability: Model L–1011–385 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of airplane pitch control, accomplish the following:

(a) Prior to the accumulation of 12,000 landings, or within 3 days after the effective date of this AD, whichever occurs later, accomplish the procedures specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Gain access to the lower end of the stabilizer hydraulic actuators (four per airplane) where they attach to the front spar of the horizontal stabilizer center box structure at Fuselage Station FS 1875.

(2) Inspect for missing, sheared, or deformed stabilizer lower actuator attach pins, part number 1563117–101 (one per actuator).

(3) If any pin is missing, sheared, or deformed, replace the pin prior to further flight.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Atlanta ACO.

Note.—Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on June 24, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92–10–51, issued on May 11, 1992, which contained the requirements of this amendment.

Issued in Renton, Washington, on May 28, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13502 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–8]

Amended Transition Area; Albany, OR

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: TheFederal Aviation Administration established a 700-foot transition area at Albany, Oregon, on October 2, 1991. This action amends the airspace designation of the Albany Transition Area previously published in the **Federal Register**, by correcting a typographical error and clarifying the limits of the transition area.

EFFECTIVE DATE: 0901 UTC July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, Washington 98055–4056; Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

The FAA established a 700-foot Transition Area at Albany, Oregon, on October 2, 1991 (FR Doc. 91–23664, Airspace Docket No. 91–ANM–8, 56 FR 49843). A typographical error was discovered in the airspace designation. This action corrects that error. This action also adds wording to the description which more clearly describes the Transition Area. The airspace designation for the transition area, as amended, will be published in section 71.181 of Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations corrects the reference "Cowalis, Oregon VDR/DME" to "Corvallis, Oregon VOR/DME," in the airspace designation of the Albany Transition Area. This amendment also clarifies the limits of the transition area by defining the extent of the airspace on either side of the Corvallis VOR/DME 048" radial. Because this is a minor amendment in which the public is not particularly interested, notice and public procedure under 5 U.S.C. section 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

ANM OR TA Albany, Oregon [Revised]

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of the Albany, Oregon Airport and within 1.7 miles either side of the Corvallis, Oregon VOR/DME 048° radius extending from the 6.1 mile radius to the Corvallis VOR/DME; excluding that airspace within the Eugene, Oregon, 700 foot transition area.

* * * * *

Issued in Seattle, Washington, on May 26, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92–13507 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 26885; Amdt. No. 370]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: June 25, 1992 at 0901 G.m.t.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Air traffic control, Aircraft, Airspace, Alaska, Navigation (air), Puerto Rico.

Issued in Washington, DC on May 26, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective on June 25, 1992 at 0901 G.m.t.:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910–13–M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 370 EFFECTIVE DATE, JUNE 25, 1992

FROM	TO	MEA

§95.1001 DIRECT ROUTES-U.S.

IS AMENDED TO READ IN PART

GLINA, NM FIX	BOLES, NM VOR/DME	
VIA BWS VOR/DME 351		#*13000
*9900 - MOCA		MAA-24000
#RADAR REQUIRED WHEN IN HOLLOMAN APCH CTL ARSPC.		
INT CNX VORTAC 315 & OTO VOR 168	GLINA, NM FIX	
VIA OTO VOR 168		*12000
*9000 - MOCA		
NEWMAN, TX VORTAC	TURQE, NM FIX	*8000
*6700 - MOCA		MAA-17500
TURQE, NM FIX	BOLES, NM VOR/DME	#*8000
*6600 - MOCA		MAA-17500
#MAA 11000 MSL WHEN R-5103C IN USE		
#ROUTE NOT USABLE WHEN R-5103A OR R-5103B IN USE.		
#RADAR REQD WHEN IN HOLLOMAN APCH CTL AIRSPACE.		

§95.1001 DIRECT ROUTES-U.S.

PUERTO RICO ROUTES

IS AMENDED TO READ IN PART

ROUTE 8		
ARECA, PR FIX	*PONCE, PR VOR/DME	16000
*13000 - MCA PONCE VOR/DME, W BND		
*PONCE, PR VOR/DME	TUUNA, PR FIX	**6000
*13000 - MCA PONCE VOR/DME, W BND		
**4500 - MOCA		

§95.6002 VOR FEDERAL AIRWAY 2

IS AMENDED TO READ IN PART

DICKINSON, ND VORTAC	BISMARCK, ND VOR/DME	4600
BISMARCK, ND VOR/DME	*OSERT, ND FIX	**4000
*5300 - MRA		
**3300 - MOCA		

§95.6004 VOR FEDERAL AIRWAY 4

IS AMENDED TO READ IN PART

LEXINGTON, KY VORTAC	CICKE, KY FIX	5000
CICKE, KY FIX	NEWCOMBE, KY VORTAC	3100

§95.6012 VOR FEDERAL AIRWAY 12

IS AMENDED TO READ IN PART

PALMDALE, CA VORTAC	EFFOR, CA FIX	6000
EFFOR, CA FIX	HELDE, CA FIX	
	E BND	7500
	W BND	6000
HELDE, CA FIX	HECTOR, CA VORTAC	7500

§95.6026 VOR FEDERAL AIRWAY 26

IS AMENDED TO READ IN PART

PHILIP, SD VOR/DME	PIERRE, SD VORTAC	*4400
*3700 - MOCA		

§95.6069 VOR FEDERAL AIRWAY 69

IS AMENDED TO DELETE

JOLIET, IL VORTAC	BOJAK, IL FIX	2500

§95.6078 VOR FEDERAL AIRWAY 78

IS AMENDED TO READ IN PART

WATERTOWN, SD VORTAC	CLAPS, MN FIX	*4000
*3400 - MOCA		

§95.6097 VOR FEDERAL AIRWAY 97

IS AMENDED TO READ IN PART

LEXINGTON, KY VORTAC	DARKS, KY FIX	5000
DARKS, KY FIX	CINCINNATI, KY VORTAC	2700

§95.6116 VOR FEDERAL AIRWAY 116

IS AMENDED TO READ IN PART

PEORIA, IL VORTAC	PONTIAC, IL VORTAC	2400
PONTIAC, IL VORTAC	JOLIET, IL VORTAC	2500

IS AMENDED TO DELETE

JOLIET, IL VORTAC	BOJAK, IL FIX	2500

§95.6134 VOR FEDERAL AIRWAY 134

IS AMENDED TO READ IN PART

*FAIRFIELD, UT VORTAC	**CARBON, UT VOR/DME	#12700
*10800 - MCA FAIRFIELD VORTAC, E BND		
**10200 - MCA CARBON VOR/DME, W BND.		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		

§95.6143 VOR FEDERAL AIRWAY 143

IS AMENDED TO READ IN PART

POTTSTOWN, PA VORTAC	YARDLEY, PA VORTAC	6900

FROM	TO	MEA

§95.6165 VOR FEDERAL AIRWAY 165

IS AMENDED TO READ IN PART

OLYMPIA, WA VORTAC *4000 - MRA	*CARRO, WA FIX	4000

§95.6178 VOR FEDERAL AIRWAY 178

IS AMENDED TO READ IN PART

NEW HOPE, KY VOR/DME	MAUDD, KY FIX	2700
MAUDD, KY FIX	LEXINGTON, KY VORTAC	5000
LEXINGTON, KY VORTAC	TRENT, KY FIX	5000

§95.6181 VOR FEDERAL AIRWAY 181

IS AMENDED TO READ IN PART

SIOUX FALLS, SD VORTAC *4000 - MRA **3200 - MOCA	*OBITT, SD FIX	**3700

§95.6189 VOR FEDERAL AIRWAY 189

IS AMENDED TO READ IN PART

FRANKLIN, VA VORTAC *10000 - MRA	*WAIKS, VA FIX	3000
WAIKS, VA FIX *1500 - MOCA	HOPEWELL, VA VORTAC	*2000

§95.6190 VOR FEDERAL AIRWAY 190

IS AMENDED TO READ IN PART

ACOMA, NM FIX	*ALBUQUERQUE, NM VORTAC	**9000
*11500 - MCA ALBUQUERQUE VORTAC, NE BND		
*11500 - MCA ALBUQUERQUE VORTAC, SW BND		
**8400 - MOCA		
LAS VEGAS, NM VORTAC *9000 - MOCA	DALHART, TX VORTAC	*10000

§95.6223 VOR FEDERAL AIRWAY 223

IS AMENDED TO READ IN PART

FLAT ROCK, VA VORTAC *7000 - MRA	*HANEY, VA FIX	2800

§95.6258 VOR FEDERAL AIRWAY 258

IS AMENDED TO READ IN PART

BECKLEY, WV VORTAC	ZOOMS, WV FIX	6500
ZOOMS, WV FIX	ROANOKE, VA VORTAC	6000

FROM	TO	MEA

§95.6260 VOR FEDERAL AIRWAY 260

IS AMENDED TO READ IN PART

HOPEWELL, VA VORTAC *10000 - MRA **1500 - MOCA	*WAIKS, VA FIX	**2000
WAIKS, VA FIX	FRANKLIN, VA VORTAC	3000

§95.6262 VOR FEDERAL AIRWAY 262

IS AMENDED TO READ IN PART

BRADFORD, IL VORTAC	MOTIF, IL FIX	2700
MOTIF, IL FIX	JOLIET, IL VORTAC	2500

IS AMENDED TO DELETE

JOLIET, IL VORTAC	BOJAK, IL FIX	2500

§95.6286 VOR FEDERAL AIRWAY 286

IS AMENDED TO READ IN PART

DERIN, WV FIX	TEAKK, VA FIX	13000
TEAKK, VA FIX *6100 - MOCA	CASANOVA, VA VORTAC	*6600

§95.6287 VOR FEDERAL AIRWAY 287

IS AMENDED TO READ IN PART

OLYMPIA, WA VORTAC *4000 - MRA *5400 - MCA CARRO FIX, N BND	*CARRO, WA FIX	4000
CARRO, WA FIX *6000 - MRA *7000 - MCA LOFAL FIX, S BND	*LOFAL, WA FIX	7000
LOFAL, WA FIX	PAINE, WA VOR/DME	6000
PAINE, WA VOR/DME *1700 - MOCA	ISLND, WA FIX	*5000
ISLND, WA FIX	BELLINGHAM, WA VORTAC	5000

§95.6349 VOR FEDERAL AIRWAY 349

IS AMENDED TO READ IN PART

ISLND, WA FIX	BELLINGHAM, WA VORTAC	5000

§95.6375 VOR FEDERAL AIRWAY 375

IS AMENDED TO READ IN PART

GORDONSVILLE, VA VORTAC *7000 - MRA	*HANEY, VA FIX	4500

FROM	TO	MEA
§95.6439 VOR FEDERAL AIRWAY 439 IS AMENDED TO READ IN PART		
DICKINSON, ND VORTAC	WILLISTON, ND VORTAC	*5600
*4000 - MOCA		
§95.6444 VOR FEDERAL AIRWAY 444 IS AMENDED TO READ IN PART		
BRONX, AK FIX	EVANSVILLE, AK NDB	*10000
*9100 - MOCA		
EVANSVILLE, AK NDB	BETTLES, AK VORTAC	*3500
*3500 - MOCA		
BETTLES, AK VORTAC	*CYCLE, AK FIX	**3500
*4400 - MCA CYCLE FIX, SE BND		
**3500 - MOCA		
CYCLE, AK FIX	BRION, AK FIX	*6000
*5200 - MOCA		
BRION, AK FIX	LIVEN, AK FIX	*9000
*5200 - MOCA		
BIG DELTA, AK VORTAC	NORTHWAY, AK VORTAC	*8000
*7800 - MOCA		
§95.6453 VOR FEDERAL AIRWAY 453 IS AMENDED TO READ IN PART		
GORDONSVILLE, VA VORTAC	CASANOVA, VA VORTAC	4500
§95.6493 VOR FEDERAL AIRWAY 493 IS AMENDED TO READ IN PART		
LEXINGTON, KY VORTAC	BEAER, KY FIX	5000
BEAER, KY FIX	YORK, KY VORTAC	3000

FROM	TO	MEA
§95.6509 VOR FEDERAL AIRWAY 509 IS ADDED TO READ		
ST PETERSBURG, FL VORTAC	HULLA, FL FIX	3000
HULLA, FL FIX	HALLR, FL FIX	3000
§95.6511 VOR FEDERAL AIRWAY 511 IS ADDED TO READ		
LAKELAND, FL VORTAC	HALLR, FL FIX	*3000
*2000 - MOCA		
HALLR, FL FIX	MIKKI, FL FIX	*9000
*1600 - MOCA		
MIKKI, FL FIX	BISCAYNE BAY, FL VORTAC	*6000
*1400 - MOCA		
§95.6595 VOR FEDERAL AIRWAY 595 IS ADDED TO READ		
*MEDFORD, OR VORTAC	CUTTR, OR FIX	
	NE BND	10500
	SW BND	6100
*5100 - MCA MEDFORD VORTAC, NE BND		
CUTTR, OR FIX	COPPR, OR FIX	10500
COPPR, OR FIX	DRACK, OR FIX	
	NE BND	9900
	SW BND	10500
DRACK, OR FIX	*REDMOND, OR VORTAC	
	NE BND	6200
	SW BND	10500
*7900 - MCA REDMOND VORTAC, SW BND		

FROM	TO	MEA	MAA

§95.7036 JET ROUTE NO. 36

IS AMENDED TO READ IN PART

MINEO, PA FIX	LAKE HENRY, PA VORTAC	18000	37000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT			CHANGEOVER POINTS
FROM	TO	DISTANCE	FROM

V-4

IS AMENDED BY ADDING

LEXINGTON, KY VORTAC	NEWCOMBE, KY VORTAC	37	LEXINGTON

V-493

IS AMENDED BY ADDING

LEXINGTON, KY VORTAC	YORK, KY VORTAC	41	LEXINGTON

[FR Doc. 92-13378 Filed 6-8-92; 8:45 am]
BILLING CODE 4910-13-C

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

25 CFR Part 700

New Lands Grazing Regulations

AGENCY: Office of Navajo and Hopi Indian Relocation.

ACTION: Final rule.

SUMMARY: These rules amend grazing regulations for the lands which have been acquired pursuant to Public Law 96–305 for the use of Navajo families required to relocate under Public Law 93–531. The amendment has been requested by the Department of Justice because the government is involved in mediating a long-standing land dispute between the Hopi Tribe and the Navajo Nation. The intended effect of the rule is to extend the deadline for application for New Lands Grazing permits.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Paul Tessler (Legal Counsel), Office of Navajo and Hopi Indian Relocation, at (602) 779–2721.

SUPPLEMENTARY INFORMATION: On April 2, 1991, the Office of Navajo and Hopi Indian Relocation (ONHIR) published in the **Federal Register** (Vol. 56 No. 63 at p. 13396) a final rule regarding New Lands Grazing Regulations. The rule, 25 CFR 700.709(d), provided that certain persons who were listed as eligible to receive grazing permits would be given priority status to be issued such permits provided they file an application for New Lands Grazing Permit by June 1, 1992, or thereafter lose their priority. Since publication of the regulation, the United States Court of Appeals for the Ninth Circuit ordered that certain cases concerning relocation issues, *Jenny Manybeads, et. al.* v. *United States of America*, 9th Circuit No. 90–15003, and *Vernon Masayesva* v. *Leonard Haskie*, 9th Circuit No. 90–15304, be remanded for settlement negotiations under the authority of United States Magistrate Judge Harry R. McCue. The settlement negotiations are still in progress. It has been determined by the Department of Justice that the June 1, 1992, deadline to apply for New Lands Grazing Permits as required by 25 CFR 700.709(d) could be detrimental to the settlement process. The Office of Navajo and Hopi Indian Relocation has been requested by the Department of Justice, the Department of Interior and the United States Magistrate to take immediate action to extend the deadline of June 1, 1992 for New Lands Grazing Applications. The date for application will be extended until a new date for closure of receipt of applications is determined. A new rule will be published in the **Federal Register** giving notice of that date.

Preamble: The primary author of this document is Paul Tessler, Legal Counsel, Office of Navajo & Hopi Indian Relocation.

It has been determined that this final rule is not a major rule as that term is defined in Executive Order 12291, because it will have a limited economic impact on a small number of people and does not require a regulatory analysis. It has been determined that the final rule will not have a significant economic impact on a substantial number of small entities with the meaning of Regulatory Flexibility Act, 5 U.S.C., 601 et. seq.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The rule does not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C., 3501 et seq.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of Interest, Freedom of Information, Grant program—Indians, Indian—claims, Privacy, Real property acquisition, Relocation assistance, and New Lands Administration.

Accordingly, the Office is amending chapter IV as follows:

1. Authority citation for part 700 continues to read as follows:

Authority: Pub. L. 99–590; Pub. L. 93–531, 88 Stat. 1712 as amended by Pub. L. 96–305, 94 Stat. 929, Pub. L. 100–666, 102 Stat. 3929 (25 U.S.C. 640d).

2. Section 700.709 is amended by revising paragraph (d) to read as follows:

§ 700.709 Grazing privileges.

* * * * *

(d) Persons on this list must file an application for a New Lands Grazing Permit. The Commissioner will determine when the application period will close and will publish notice of that date. After the close of the period for application, the Commissioner, in his sole discretion, may issue permits to individuals if it is determined that to do so will facilitate relocation.

* * * * *

Dated: June 3, 1992.

Christopher J. Bavasi,

Executive Director, Office of Navajo and Hopi Indian Relocation.

[FR Doc. 92–13447 Filed 6–8–92; 8:45 am]

BILLING CODE 7565–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 208

[DoD Instruction 4650.4]

Federal Radionavigation Plan

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense hereby removes 32 CFR part 208 (DoD Instruction 4650.4). This part has served the purpose for which it was issued and is no longer valid.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 208

Armed forces; Radio.

PART 208—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 131, 32 CFR part 208 is removed.

Dated: June 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13468 Filed 6–8–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

Schedule for Rating Disabilities; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations, which were published Thursday, August 11, 1988, (53 FR 30261–4), and Friday, December 1, 1989, (54 FR 49754–5). The regulations related to tables in the

Schedule for Rating Disabilities for evaluating impairment of muscle function (diplopia) and diseases of the peripheral nerves.

EFFECTIVE DATE: September 12, 1988 for diagnostic codes 6091 and 6092, and November 24, 1989 for diagnostic codes 8510 through 8719.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On August 11, 1988, VA amended § 4.84a in its rating schedule by publishing a new method for evaluating diplopia under diagnostic code 6090. The disabilities classified under diagnostic codes 6091 (symblepharon) and 6092 (diplopia due to limited muscle function) were inadvertently omitted from the schedule as a result of this change which was effective September 12, 1988. Similarly, effective November 24, 1989, VA amended § 4.124a by publishing a correction to the table of Diseases of the Peripheral Nerves on December 1, 1989. The neurological conditions classified under diagnostic codes 8510 through 8719 were also omitted inadvertently at that time. These omissions are hereby restored.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Dated: May 22, 1992.

B. Michael Berger,

Director, Records Management Service.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is corrected by making the following correcting amendments:

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

2. In 4.84a, the chart entitled "Ratings for Impairment of Muscle Function" is revised to read as follows:

§ 4.84a Schedule of ratings—eye.

* * * * *

RATINGS FOR IMPAIRMENT OF MUSCLE FUNCTION

[6090 Diplopia (double vision)]

Degree of diplopia	Equivalent visual acuity
(a) Central 20°	5/200
(b) 21° to 30°:	
(1) Down	15/200
(2) Lateral	20/100
(3) Up	20/70
(c) 31° to 40°:	
(1) Down	20/200
(2) Lateral	20/70
(3) Up	20/40

RATINGS FOR IMPAIRMENT OF MUSCLE FUNCTION—Continued

[6090 Diplopia (double vision)]

Notes: (1) Correct diagnosis reflecting disease or injury should be cited.

(2) The above ratings will be applied to only one eye. Ratings will not be applied for both diplopia and decreased visual acuity or field of vision in the same eye. When diplopia is present and there is also ratable impairment of visual acuity or field of vision of both eyes the above diplopia ratings will be applied to the poorer eye while the better eye is rated according to the best corrected visual acuity or visual field.

(3) When the diplopia field extends beyond more than one quadrant or more than one range of degrees, the evaluation for diplopia will be based on the quadrant and degree range that provide the highest evaluation.

(4) When diplopia exists in two individual and separate areas of the same eye, the equivalent visual acuity will be taken one step worse, but no worse than 5/200.

6091 Symblepharon.

Rate as limited muscle function, diagnostic code 6090.

6092 Diplopia, due to limited muscle function.

Rate as diagnostic code 6090.

3. In 4.124a, the chart entitled "Diseases of the Peripheral Nerves" is revised to read as follows:

§ 4.124a Schedule of ratings—neurological conditions and convulsive disorders.

* * * * *

DISEASES OF THE PERIPHERAL NERVES

Schedule of ratings	Rating	
	Major	Minor
The term "incomplete paralysis," with this and other peripheral nerve injuries, indicates a degree of lost or impaired function substantially less than the type picture for complete paralysis given with each nerve, whether due to varied level of the nerve lesion or to partial regeneration. When the involvement is wholly sensory, the rating should be for the mild, or at most, the moderate degree. The ratings for the peripheral nerves are for unilateral involvement; when bilateral, combine with application of the bilateral factor.		

DISEASES OF THE PERIPHERAL NERVES—Continued

Schedule of ratings	Rating	
	Major	Minor
Upper radicular group (fifth and sixth cervicals)		
8510 Paralysis of:		
Complete; all shoulder and elbow movements lost or severely affected, hand and wrist movements not affected	70	60
Incomplete:		
Severe	50	40
Moderate	40	30
Mild	20	20
8610 Neuritis.		
8710 Neuralgia.		
Middle radicular group		
8511 Paralysis of:		
Complete; adduction, abduction and rotation of arm, flexion of elbow, and extension of wrist lost or severely affected	70	60
Incomplete:		
Severe	50	40
Moderate	40	30
Mild	20	20
8611 Neuritis.		
8711 Neuralgia.		
Lower radicular group		
8512 Paralysis of:		
Complete; all intrinsic muscles of hand, and some or all of flexors of wrist and fingers, paralyzed (substantial loss of use of hand)	70	60
Incomplete:		
Severe	50	40
Moderate	40	30
Mild	20	20
8612 Neuritis.		
8712 Neuralgia.		
All radicular groups		
8513 Paralysis of:		
Complete	90	80
Incomplete:		
Severe	70	60
Moderate	40	30
Mild	20	20
8613 Neuritis.		
8713 Neuralgia.		
The musculospiral nerve (radial nerve)		
8514 Paralysis of:		
Complete; drop of hand and fingers, wrist and fingers perpetually flexed, the thumb adducted falling within the line of the outer border of the index finger; can not extend hand at wrist, extend proximal phalanges of fingers, extend thumb, or make lateral movement of wrist; supination of hand, extension and flexion of elbow weakened, the loss of synergic motion of extensors impairs the hand grip seriously; total paralysis of the triceps occurs only as the greatest rarity	70	60
Incomplete:		
Severe	50	40
Moderate	30	20
Mild	20	20

DISEASES OF THE PERIPHERAL NERVES—Continued

Schedule of ratings	Rating	
	Major	Minor
8614 Neuritis.		
8714 Neuralgia.		
Note: Lesions involving only "dissociation of extensor communis digitorum" and "paralysis below the extensor communis digitorum," will not exceed the moderate rating under code 8514.		
The median nerve		
8515 Paralysis of:		
Complete; the hand inclined to the ulnar side, the index and middle fingers more extended than normally, considerable atrophy of the muscles of the thenar eminence, the thumb in the plane of the hand (ape hand); pronation incomplete and defective, absence of flexion of index finger and feeble flexion of middle finger, cannot make a fist, index and middle fingers remain extended; cannot flex distal phalanx of thumb, defective opposition and abduction of the thumb, at right angles to palm; flexion of wrist weakened; pain with trophic disturbances	70	60
Incomplete:		
Severe	50	40
Moderate	30	20
Mild	10	10
8615 Neuritis.		
8715 Neuralgia.		
The ulnar nerve		
8516 Paralysis of:		
Complete; the "griffin claw" deformity, due to flexor contraction of ring and little fingers, atrophy very marked in dorsal interspace and thenar and hypothenar eminences; loss of extension of ring and little fingers cannot spread the fingers (or reverse), cannot adduct the thumb; flexion of wrist weakened	60	50
Incomplete:		
Severe	40	30
Moderate	30	20
Mild	10	10
8616 Neuritis.		
8716 Neuralgia.		
Musculocutaneous nerve		
8517 Paralysis of:		
Complete; weakness but not loss of flexion of elbow and supination of forearm	30	20
Incomplete:		
Severe	20	20
Moderate	10	10
Mild	0	0
8617 Neuritis.		
8717 Neuralgia.		
Circumflex nerve		
8518 Paralysis of:		
Complete; abduction of arm is impossible, outward rotation is weakened; muscles supplied are deltoid and teres minor	50	40
Incomplete:		
Severe	30	20

DISEASES OF THE PERIPHERAL NERVES—Continued

Schedule of ratings	Rating	
	Major	Minor
Moderate	10	10
Mild	0	0
8618 Neuritis.		
8718 Neuralgia.		
Long thoracic nerve		
8519 Paralysis of:		
Complete; inability to raise arm above shoulder level, winged scapula deformity	30	20
Incomplete:		
Severe	20	20
Moderate	10	10
Mild	0	0
Note: Not to be combined with lost motion above shoulder level.		
8619 Neuritis		
8719 Neuralgia.		
Note: Combined nerve injuries should be rated by reference to the major involvement, or if sufficient in extent, consider radicular group ratings.		

	Rating
Sciatic nerve	
8520 Paralysis of:	
Complete; the foot dangles and drops, no active movement possible of muscles below the knee, flexion of knee weakened or (very rarely) lost	80
Incomplete:	
Severe, with marked muscular atrophy	60
Moderately severe	40
Moderate	20
Mild	10
8620 Neuritis.	
8720 Neuralgia.	
External popliteal nerve (common peroneal)	
8521 Paralysis of:	
Complete; foot drop and slight droop of first phalanges of all toes, cannot dorsiflex the foot, extension (dorsal flexion) of proximal phalanges of toes lost; abduction of foot lost, adduction weakened; anesthesia covers entire dorsum of foot and toes	40
Incomplete:	
Severe	30
Moderate	20
Mild	10
8621 Neuritis.	
8721 Neuralgia.	
Musculocutaneous nerve (superficial peroneal)	
8522 Paralysis of:	
Complete; eversion of foot weakened	30
Incomplete:	
Severe	20
Moderate	10
Mild	0
8622 Neuritis.	
8722 Neuralgia.	
Anterior tibial nerve (deep peroneal)	
8523 Paralysis of:	
Complete; dorsal flexion of foot lost	30
Incomplete:	

	Rating
Severe	20
Moderate	10
Mild	0
8623 Neuritis.	
8723 Neuralgia.	
Internal popliteal nerve (tibial)	
8524 Paralysis of:	
Complete; plantar flexion lost, frank adduction of foot impossible, flexion and separation of toes abolished; no muscle in sole can move; in lesions of the nerve high in popliteal fossa, plantar flexion of foot is lost	40
Incomplete:	
Severe	30
Moderate	20
Mild	10
8624 Neuritis.	
8724 Neuralgia.	
Posterior tibial nerve	
8525 Paralysis of:	
Complete; paralysis of all muscles of sole of foot, frequently with painful paralysis of a causalgic nature; toes cannot be flexed; adduction is weakened; plantar flexion is impaired	30
Incomplete:	
Severe	20
Moderate	10
Mild	10
8625 Neuritis.	
8725 Neuralgia.	
Anterior crural nerve (femoral)	
8526 Paralysis of:	
Complete; paralysis of quadriceps extensor muscles	40
Incomplete:	
Severe	30
Moderate	20
Mild	10
8626 Neuritis.	
8726 Neuralgia.	
Internal saphenous nerve	
8527 Paralysis of:	
Severe to complete	10
Mild to moderate	0
8627 Neuritis.	
8727 Neuralgia.	
Obturator nerve	
8528 Paralysis of:	
Severe to complete	10
Mild or moderate	0
8628 Neuritis.	
8728 Neuralgia.	
External cutaneous nerve of thigh	
8529 Paralysis of:	
Severe to complete	10
Mild or moderate	0
8629 Neuritis.	
8729 Neuralgia.	
Ilio-inguinal nerve	
8530 Paralysis of:	
Severe to complete	10
Mild or moderate	0
8630 Neuritis.	
8730 Neuralgia.	
8540 Soft-tissue sarcoma (of neurogenic origin)	100

	Rating

Note: The 100 percent rating will be continued for 6 months following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.

* * * * *

[FR Doc. 92-13189 Filed 6-8-92; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AF13

Dependents' Education; Verification of Pursuit and Continued Enrollment

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: These amended regulations require most students receiving Dependents' Educational Assistance to submit a monthly verification of pursuit and enrollment or continued enrollment in order to receive educational assistance. The intent of these regulations is to prevent overpayments to these students. The amended regulations also contain a change to the effective date for reductions in Dependents' Educational Assistance.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 49735 through 49737 of the **Federal Register** of October 1, 1991, there was published a Notice of Intent to amend 38 CFR part 21 in order to require individuals receiving Dependents' Educational Assistance to submit monthly verifications of pursuit and enrollment. Individuals were given 30 days to submit comments, suggestions or objections. VA received one letter from an educational organization containing objections.

At present, veterans pursuing a program of education under the Montgomery GI Bill—Active Duty have to submit a monthly verification of pursuit before receiving their monthly benefit payment. The letter writer examined this program in determining how he thought this same requirement would work in Dependents' Educational Assistance.

He pointed out that some overpayments in the Montgomery GI Bill—Active Duty are caused by VA (Department of Veterans Affairs) error. Others are caused by veterans who do not verify their own pursuit correctly. The writer suggested that VA, in order to make monthly verifications of pursuit appear to be cost effective for Dependents' Educational Assistance, was including the cost reductions caused by these errors.

VA wishes to assure the public that this is not so. When VA did its study, it examined the complete records of many veterans. The department discovered that as of the time of the study 7.47% of the overpayments under the Montgomery GI Bill—Active Duty were due to VA error. Claimant error accounted for 10.27% of the overpayments. The study does not count the reductions in benefits made by these errors as part of the cost savings to be realized by implementing monthly verifications of pursuit for Dependents' Educational Assistance, because when VA discovers these errors it corrects them. Neither does the study suggest that monthly verifications of pursuit will eliminate all overpayments resulting from these or other causes. It does show that there will be substantial reductions in the amount of overpayments under Dependents' Educational Assistance.

VA is making the amended regulations final. However, the final regulations differ somewhat from those which were proposed.

Subsequent to the proposal of October 1, 1991, VA made final amended regulations which implement some provisions of the Veterans' Educational Assistance Amendments of 1991. One of those amended regulations was 38 CFR 21.4135(s). The amended § 21.4135(s) which appears here reflects the changes made by that amendment.

Furthermore, the authority citations printed in the proposal of October 1, 1991, reflected the way in which the sections of title 38, U.S. Code were numbered before the enactment of Public Law 102-83. Since Public Law 102-83 renumbered those cited sections, the authority citations reflect the numbering system introduced by that law.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Paperwork Reduction Act

The amendment to § 21.4204 requires an increased information collecting burden for individuals, while at the same time reducing the information burden for educational institutions. Currently, dependents who are enrolled in courses not leading to a standard college degree and those pursuing apprenticeships and other on-job training certify their continued pursuit to VA monthly. Those enrolled in courses leading to a standard college degree do not. Requiring all to submit a monthly certification will result in a public report burden of 5 minutes per response and a total of an additional 20,500 burden hours during fiscal year 1992. Since VA projects a small but steady decline in those receiving dependents' educational assistance in subsequent fiscal years, the number of annual hours will decline also during those years.

All individuals receiving benefits under the Montgomery GI Bill—Active Duty must submit this monthly certification. The information collection has been approved under OMB number 2900-0465. As required by section 3504(h) of the Paperwork Reduction Act, VA submitted to OMB (the Office of Management and Budget) a request that it modify its current approval to include the additional hours required by these amended regulations. This request has been approved.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-

education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 27, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 21 is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 21.4135, paragraph (s) and its authority citation are revised to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(s) *Reduction in rate of pursuit of course (§ 21.4270).* (1) VA will reduce an individual's educational assistance allowance effective the first date of the term in which the individual reduces training by withdrawing from part of a course, if the reduction occurs at the beginning of the term.

(2) VA will reduce an individual's educational assistance allowance effective the earlier of the end of the month or end of the term in which an individual reduces training by withdrawing from part of a course when:

(i) The reduction does not occur at the beginning of the term;

(ii) The individual received a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(3) VA will reduce an individual's educational assistance allowance effective the date on which an individual reduces training when:

(i) The reduction does not occur at the beginning of the term;

(ii) The individual did not receive a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(4) If the individual reduces training by withdrawing from a part of a course and the withdrawal does not occur because the individual was ordered to active duty; there are no mitigating circumstances; and the individual receives a nonpunitive grade from that portion of the course from which he or she withdrew; VA will reduce the individual's educational assistance effective the later of the following:

(i) The first date of enrollment of the term in which the reduction occurs; or

(ii) December 1, 1976. See paragraphs (e) and (w) of this section also.

(5) An individual who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in others, may receive an interval payment based on the subjects completed, if the requirements of § 21.4138(f) of this part are met. If those requirements are not met, VA will reduce the individual's educational assistance allowance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 5113, 3680)

* * * * *

3. In § 21.4138 paragraph (e) is revised and its authority citation is added to read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(e) *Other payments.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to an individual (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lump-sum payment) only after—

(i) The educational institution has certified his or her enrollment as provided in § 21.4203; and

(ii) VA has received from the individual a verification of the individual's enrollment or verification of pursuit and continued enrollment, as appropriate. Generally, this verification will be required monthly, resulting in monthly payments.

(2) VA will pay educational assistance to an individual pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in § 21.4203; and

(ii) VA has received from the individual and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to an individual who is pursuing a correspondence course only after—

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the individual a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the individual's certificate, as to the number of lessons completed by the individual and serviced by the educational institution.

(Authority: 38 U.S.C. 5113, 3680(b), 3680(g))

* * * * *

4. In § 21.4204 paragraph (a) and its authority citation are revised to read as follows:

§ 21.4204 Periodic certifications.

* * * * *

(a) *Reports by eligible persons.* An eligible person enrolled in a course which leads to a standard college degree, excepting eligible persons pursuing the course on a less than half-time basis, must verify each month his or her continued enrollment in and pursuit of his or her courses. In the case of an eligible person who completed, interrupted or terminated his or her course, any communication from the student or other authorized person notifying VA of the eligible person's completion of course as scheduled or earlier termination date, will be accepted to terminate payments accordingly. Reports by other eligible persons will be submitted in accordance with § 21.4203 (e), (f) or (g).

(Authority: 38 U.S.C. 1780(g), 3103)

* * * * *

5. Section 21.4204 is amended by adding the OMB control number to the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2900-0465.)

[FR Doc. 92-13194 Filed 6-8-92; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

RIN 2900-AF75

Veterans Education; Verifying Enrollments Telephonically

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulations.

SUMMARY: Currently, the veterans receiving educational assistance under

the Montgomery GI Bill—Active Duty must verify their pursuit of their program periodically. The regulation requiring that verification contains wording which implies that the verification must be done on paper. VA (Department of Veterans Affairs) intends to start a pilot program which will let some veterans verify their pursuit by toll-free telephone. The amended regulation will allow VA to do this.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: Currently, all veterans receiving educational assistance under the Montgomery GI Bill—Active Duty must periodically verify their pursuit of their program of education. Most veterans do this monthly. Payments are not issued until VA receives the verification. The wording of the regulation which requires this verification states that it must be signed by the veteran or servicemember. Use of the word "signed" implies that the verification be on paper. VA has been using paper verifications.

VA believes that the payments of educational assistance may be expedited if verification could be carried out over a telephone provided that there were security procedures which would permit only the veteran or servicemember to make the verification and would prevent the veteran or servicemember from providing data that would affect the claims of others. VA is planning to test this method of verification by permitting veterans training in California to submit verifications by telephone. This system should be ready to test in 1992. If successful, VA will consider expanding it to other areas of the nation. In order to allow VA to test this method of verification, VA is amending § 21.7154.

VA is amending the regulations without prior public comment because this change is procedural only. While providing a verification system which should be quicker and more convenient for the veteran, it will not change the information required from the veteran in order for VA to issue him or her a payment.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The information collection contained in the monthly verification has been approved under OMB number 2900–0465. While the proposed regulation will permit a change in the medium used to collect information, the amount and content of the information will not be changed.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 15, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501(a).

2. In § 21.7154 paragraph (a)(2)(ii), (iii) and the authority citation for paragraph (a) are revised to read as follows:

§ 21.7154 Pursuit and absences.

* * * * *

(a) *Requirements for all veterans and servicemembers.*

* * * * *

(2) * * *

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the veteran or servicemember on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period, and

(iii) If submitted on paper, clearly show the date on which it was signed.

(Authority: 38 U.S.C. 3034, 3684; Pub. L. 98–525, Pub. L. 99–576)

* * * * *

[FR Doc. 92–13190 Filed 6–8–92; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL 014–5242; FRL–4140–6]

Approval and Promulgation of Implementation Plans Alabama: Approval of Revisions to the Prevention of Significant Deterioration (PSD) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Alabama State Implementation Plan (SIP). These revisions were submitted to EPA by the State of Alabama through the Alabama Department of Environmental Management on October 22, 1990, in response to the requirement that states either revise their SIP to include the federal nitrogen dioxide (NO_2) increments for PSD or request delegation from EPA. The revisions being approved today incorporate the federal NO_2 increments into the Alabama PSD regulations.

EFFECTIVE DATE: This action will be effective August 10, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is

delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Liz Wilde of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Division, Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Liz Wilde of the EPA Region IV Air Programs Branch at (404) 347–2864 or (FTS) 257–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On October 17, 1988 (53 FR 40656), EPA published a final rule for the Prevention of Significant Deterioration (PSD) for Nitrogen Oxides. States could either submit a revision to the SIP to incorporate the new nitrogen dioxide (NO_2) increments for PSD or request delegation of authority for the revised federal PSD Regulations. On September 19, 1990, the Alabama Environmental Management Commission adopted revisions to the Alabama PSD regulations which incorporated the NO_2 increments. The Alabama Department of Environmental Management submitted the revisions to the Alabama PSD regulations to EPA on October 22, 1990, which became state effective on November 1, 1990. Alabama requested that the revisions be adopted as part of the federally approved SIP. EPA is today approving the following revisions:

335–3–14–.04 Air Permits Authorizing Construction in Clean Air Areas

(2)(c)4. The terms "nitrogen oxides" and "minor source baseline" have been added to an applicability rule for sulfur dioxide and particulate matter.

(2)(m)1. Baseline concentration has been redefined to incorporate minor source baseline date and major source baseline date.

(2)(m)2. Exemptions from baseline concentration have been redefined to incorporate minor source baseline date and major source baseline date.

(2)(n)1. Major source baseline date has been redefined to be January 6, 1975, for particulate matter and sulfur dioxide, and February 8, 1988, for nitrogen dioxide.

(2)(n)2. Minor source baseline date has been defined in terms of the trigger date, and the trigger date has been defined as August 7, 1977, for particulate matter and sulfur oxides, and February 8, 1988, for nitrogen dioxide.

(2)(n)3. Has been renumbered from (2)(n)2. and "base line date established" has been redefined to incorporate minor source baseline date.

(2)(o) "Baseline Area" has been redefined to include minor source baseline date.

(3) The new federal NO_2 increments have been added for Class I, Class II, and Class III areas.

(5)(a)5. Excluded concentrations is redefined to incorporate nitrogen oxides.

(15)(e) Class I Variances are redefined to incorporate nitrogen oxides.

Chapter 2 of the Alabama State Implementation Plan, Control Strategy, has been revised to contain a new section; 4.2.3, Statewide—Nitrogen Oxides.

In addition to the SIP submittal, the State in a letter dated April 30, 1991, has committed to the following minimum program elements as required by EPA's guidance of August 17, 1990. The NO_x increment guidance required the following minimum program elements:

1. Analysis—Agencies must require NO_2 increment consumption analysis for all major new or modified sources, and nitrogen oxides (NO_x) emissions from minor sources must be considered in those analyses.

2. Increment Consumption—Agencies must determine NO_2 increment consumption for the transition period between February 8, 1988, and the date the State program goes into effect, and conduct a periodic assessment of NO_2 increment status.

The revisions being approved meet all of the requirements for incorporating the federal NO_2 increments into the Alabama SIP.

Final Action

EPA is today approving the revisions to the Alabama PSD air quality regulations listed above. All of the revisions being approved are consistent with Agency policy.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. If, however, notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: April 30, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(58) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(58) Revisions to include NO_2 increment requirements in Chapter 2 of the SIP and the PSD regulations, Chapter 335–3–14 of the Alabama Department of Environmental Management Administrative Code which was submitted on October 22, 1990.

(i) *Incorporation by reference.* (A) Revisions to 335–3–14–.04, "Air Permits Authorizing Construction in Clean Air Areas," of the Alabama Department of Enironmental Management Administrative Code, which became effective November 1, 1990.

(ii) *Other material.* (A) Letter dated October 22, 1990, from the Alabama Department of Environmental Management.

(B) Letter dated April 30, 1991, from the Alabama Department of Environmental Management regarding minimum program elements.

3. Section 52.65 is added to read as follows:

§ 52.65 Control Strategy: Nitrogen Oxides.

On October 22, 1990, the Alabama Department of Environmental Management submitted a revision to Chapter 2, Control Strategy, by adding subsection 4.2.3. This revision addressed the strategy Alabama is using to implement provisions of the Prevention of Significant Deterioration regulations for nitrogen oxides.

[FR Doc. 92–13385 Filed 6–8–92; 8:45am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[FL–036–5318; FRL–4095–1]

Approval and Promulgation of Implementation Plans Florida: Vehicle Anti-tampering

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Florida State Implementation Plan (SIP). These revisions were submitted to EPA in two parts. The first part, regarding driving tampered vehicles on Florida roads and visible emissions from motor vehicles, was submitted on March 20, 1990. The second part was submitted on June 18, 1990, and prohibited the sale of tampered vehicles in Florida. This plan has been submitted by the FDER as an integral part of the program to achieve and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. These regulations meet all EPA requirements and therefore EPA is approving the SIP revisions.

EFFECTIVE DATE: This action will be effective August 10, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Yasmin Yorker of EPA, Region IV (see EPA Region IV address below).

Copies of the materials submitted by Florida may be examined at the following locations during normal business hours:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.
Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Yasmin Yorker of the Region IV Air Programs Branch, at the above address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On June 5, 1987, the Florida Legislature created the Motor Vehicle Emissions Study Commission. The Commission was charged with the responsibility of recommending an Inspection/Maintenance (I/M) program design that would be effective at both reducing vehicular emissions and protecting the health of the citizens of Florida. This was in response to two key issues: (1) Continued ozone nonattainment in various Florida counties, and (2) a Florida Department of Environmental Regulation (FDER) study that demonstrated that over 70% of the emissions of volatile organic compounds (VOCs) in Florida result from mobile sources.

The commission members visited various I/M programs throughout the country to evaluate alternative program designs. Public hearings were also conducted in the nonattainment counties to solicit citizen input. The Florida Motor Vehicle Study Commission delivered its report to the Governor of Florida on March 1, 1988. The report concluded that "A centralized, contractor-operated I and M program is best suited to Florida's needs." The report also addressed tampering, enforcement, compliance, fleets, waivers, and public education elements.

Following the study, the 1988 Florida Legislature passed chapter 88–129, Laws of Florida, entitled the Clean Outdoor Air Law (COAL). The law was amended by the 1989 Florida Legislature and is codified in chapter 325, Florida Statutes (F.S.), and section 316.2935, F.S. The FDER was charged by the COAL to develop test procedures, regulations and emission standards. This was done in two phases. Phase I involved the implementation of an I/M program in nonattainment counties pursuant to chapter 325, F.S. After a series of public hearings, the Florida Environmental Regulation Commission, on December 7, 1988, approved Florida Administrative Code, Chapter 17–242 (Mobile Source—Motor Vehicle Emissions Standards and Test Procedures). That rule was adopted by FDER by filing with the Florida Secretary of State on January 31, 1989, and was submitted to EPA on March 20, 1989. The approval of chapter 17–242 is being handled in a separate rulemaking. That program began operation in April 1991. All counties that are nonattainment for ozone or carbon monoxide (CO) require the program.

Phase II, which this notice is addressing, includes regulations adopted by FDER pursuant to section 316.2935 of the F.S. to address the tampering and visible emission problem in Florida (chapters 17–243 and 17–244). These regulations apply in all of the Florida counties, not just the ones designated nonattainment, and are resultant from EPA and FDER studies that found there is a significant automobile tampering problem in Florida as well as a visible automobile emissions problem. Also, the statewide prohibition against tampering would address the concerns of citizens in I/M program counties that tampered vehicles from other, non-I/M program counties were responsible for the air pollution problem in their counties.

On March 20, 1990, FDER submitted to EPA for approval, as part of the SIP, these two new regulations, chapter 17–243 (Tampering with Motor Vehicle Pollution Control Equipment) and 17–244 (Visible Emissions from Motor Vehicles). On June 18, 1990, FDER submitted to EPA for approval changes to chapter 17–243 which provides that beginning July 1, 1990, no person or motor vehicle dealer shall offer or display for sale or lease, sell, lease, or

transfer title to a motor vehicle in Florida that has been tampered with.

Chapter 17-243 of the Florida Administrative Code concerns tampering with motor vehicle air pollution control equipment. This rule specifically prohibits operating a vehicle on public roads if the emission control equipment has been tampered with. It also prohibits the sale, lease, or transfer of a tampered vehicle in Florida (June 18, 1990, submittal). All 1975 and newer vehicles, with a net vehicle weight (unloaded) less than 5,000 pounds or a gross vehicle weight (loaded including passengers and luggage) less than 10,000 pounds, are subject to this rule. Enforcement shall consist of a three point tampering check. The three components are the catalytic converter, fuel inlet restricter, and unvented fuel cap. Any person found violating this rule will be charged with a non-criminal traffic infraction.

Chapter 17-244 of the Florida Administrative Code concerns visible emissions from motor vehicles. This rule prohibits operating any gasoline powered vehicle on public roads that emits visible emissions for more than 5 continuous seconds. It also prohibits operating any diesel powered vehicle on public roads that emits visible emissions for more than 5 continuous seconds with exception if the vehicle is accelerating, lugging, or decelerating. The rule will be enforced by visual observations of law enforcement officers.

Final Action:

EPA is today approving revisions to the Florida SIP incorporating a statewide anti-tampering and visible emissions program. All of the revisions being approved are consistent with Agency policy. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with the requirements of the Act irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 16, 1991.

Patrick M. Tobin,

Acting, Regional Administrator.

Part 52, chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(69) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(69) Vehicle Anti-tampering and visible emissions regulations (Chapter 17-243 and Chapter 17-244 of the Florida Administrative Code respectively) which were submitted to EPA on March 20, 1990, and revisions to Chapter 17-243 submitted on June 18, 1990.

(i) *Incorporation by reference.*

(A) New Florida Administrative Code (FAC) regulations 17-243 (Tampering with Motor Vehicle Pollution Control Equipment) and 17-244 (Visible Emissions from Motor Vehicles) which became state effective on February 21, 1990.

(B) Revisions to FAC Chapter 17-243 (Tampering with Motor Vehicle Air Pollution Control Equipment) which became state effective May 29, 1990.

(ii) *Other material.*

(A) March 20, 1990, and June 18, 1990, letters from the Florida Department of Environmental Regulation.

[FR Doc. 92-13383 Filed 6-8-92; 8:45 am]

BILLING CODE 6560-60-M

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40 CFR Part 52

[GA-020-5419; FRL-4133-7]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the Prevention of Significant Deterioration (PSD) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 3, 1991, the State of Georgia submitted a complete SIP revision incorporating the federal nitrogen dioxide (NO_2) increment program into the Georgia PSD regulations. They were submitted in response to the requirement that states either revise their SIP to include the federal nitrogen dioxide (NO_2) increments for PSD or request delegation from EPA. The revisions being approved today incorporate by reference the federal NO_2 increment requirements into the Georgia PSD regulations.

EFFECTIVE DATE: This action will be effective August 10, 1992 unless notice is

received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Liz Wilde of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted by the Georgia Department of Natural Resources may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.
Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 205 Butler Street, Southeast, Room 1162, East Tower, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Liz Wilde of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On October 17, 1988 (53 FR 40656), EPA published a final rule for the Prevention of Significant Deterioration (PSD) for Nitrogen Oxides. States could either submit a revision to the SIP to incorporate the new nitrogen dioxide (NO_2) increments for PSD or request delegation of authority for the revised federal PSD Regulations. On December 5, 1990, the Georgia Department of Natural Resources adopted revisions to the Georgia PSD regulations which incorporated by reference the federal NO_2 increment regulations. The Georgia Department of Natural Resources submitted the Georgia PSD regulation revision to EPA on January 3, 1991, which became state effective on January 9, 1991. However it was not until April 3, 1991, that the State submitted all of the necessary information enabling EPA to determine the SIP submittal as being complete. Georgia requested that the revisions be adopted as part of the federally approved SIP.

On February 10, 1982 (47 FR 6017), EPA approved the Georgia PSD SIP. The State's PSD regulation (391–3–1–.02(7)) adopted by reference the appropriate sections of 40 CFR 52.21. It also submitted the phrase "Director of EPD" for the word "Administrator" in those adopted sections. For ease of adopting revisions to the Federal PSD regulation, the State normally deletes the regulation in its entirety and then readopts the same material, thus updating the federal version that is adopted by reference. The provisions that were readopted by the State of Georgia are listed as follows

391–3–1–.02(7) Prevention of Significant Deterioration of Air Quality

Delete paragraph (7) and replace with the following:

(7) *Prevention of Significant Deterioration of Air Quality.*

(a) General Requirements:

1. The provisions of this section (7) shall apply to any source and the owner or operator of any source subject to any requirement under 40 Code of Federal Regulations (hereinafter, CFR), § 52.21 as amended.

2. Definitions: For the purpose of this section, 40 CFR, § 52.21 (b) as amended, is hereby incorporated by reference.

(b) Prevention of Significant Standards:

1. Ambient air increments: 40 CFR, § 52.21(c), as amended, is hereby incorporated and adopted by reference.

2. Ambient air ceilings: 40 CFR, § 52.21(d), as amended, is hereby incorporated and adopted by reference.

3. Restrictions on area classifications: 40 CFR, § 52.21(e), as amended, is hereby incorporated and adopted by reference.

4. Stack heights: 40 CFR, § 52.21(h), as amended, is hereby incorporated and adopted by reference.

5. Review of major stationary sources and major modifications—source applicability and general exemptions: 40 CFR, § 52.21(i), as amended, is hereby incorporated and adopted by reference.

6. Control technology review: 40 CFR, § 52.21(j), as amended, is hereby incorporated and adopted by reference.

7. Source impact analysis: 40 CFR, § 52.21(k), as amended, is hereby incorporated and adopted by reference.

8. Air quality models: 40 CFR, § 52.21(l), as amended, is hereby incorporated and adopted by reference.

9. Air quality analysis: 40 CFR, § 52.21(m), as amended, is hereby incorporated and adopted by reference.

10. Source information: 40 CFR, § 52.21(n), as amended, is hereby incorporated and adopted by reference.

11. Additional impact analysis: 40 CFR, § 52.21(o), as amended, is hereby incorporated and adopted by reference.

12. Sources impacting federal class I areas—additional requirements: 40 CFR, § 52.21(p), as amended, is hereby incorporated and adopted by reference.

13. Public participation: 40 CFR, § 52.21(q), as amended, is hereby incorporated and adopted by reference.

14. Source obligation: 40 CFR, § 52.21(r), as amended, is hereby incorporated and adopted by reference.

15. Innovative control technology: 40 CFR, § 52.21(v), as amended, is hereby incorporated and adopted by reference.

16. Permit rescission: 40 CFR, § 52.21(w), as amended, is hereby incorporated and adopted by reference.

In addition to the SIP submittal, the State in a letter dated August 6, 1991, has committed to minimum program elements as required by EPA's guidance dated August 17, 1990. The NO_x increment guidance requires the following minimum program elements.

1. Analysis—Agencies must require NO_2 increment consumption analyses for all major new or modified sources, and nitrogen oxides (NO_x) emissions from minor sources must be considered in those analyses.

2. Increment Consumption—Agencies must determine NO_2 increment consumption for the transition period between February 8, 1988, and the date the State program goes into effect, and conduct a periodic assessment of NO_2 increment status.

The revisions being approved meet all of the requirements for incorporating the federal NO_2 increments in the Georgia SIP.

Final Action

EPA is today approving the revisions to the Georgia PSD air quality regulations listed above. All of the revisions being approved are consistent with Agency policy.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. If, however, notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: April 30, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(40) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(40) Revisions to include NO_2 increment requirements in the PSD regulations, Chapter 391–3–.02(7) of the Georgia Department of Natural Resources Administrative Code which was submitted on January 3, 1991.

(i) *Incorporation by reference.*

(A) Rule 391–3–1–.02(7) entitled "Prevention of Significant Deterioration of Air Quality" which became state effective on January 9, 1991.

(ii) *Other material.*

(A) Letters dated January 3, 191, and April 3, 1991, from the Georgia Department of Natural Resources.

(B) Letter dated August 6, 1991, from the Georgia Department of Natural Resources regarding minimum program elements.

[FR Doc. 92–13379 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[OR10–1–5475, OR9–1–5477, OR8–1–5254; FRL–4135–2]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves the new Division 34—Residential Woodheating in OAR Chapter 340 which contains OAR 340–34–001 to 34–115 (Oregon Woodstove Certification—previously Division 21–100 to 21–190 of OAR Chapter 340); a new section OAR 340–34–150 to 34–175 (Woodburning Curtailment); and a new section OAR 340–34–200 to 34–215 (Woodstove Removal Contingency Program for PM_{10} Nonattainment Areas). In addition, EPA approves revisions to OAR 340–23–030, 043, & 090 (Rules for Open Burning).

The above revisions to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations) were made to support Oregon's PM_{10} Nonattainment Area control strategy(ies) and in response to section 110(a)(2)(A) of the Clean Air Act Amendments of 1990. The provisions of OAR 340–34–001 to 34–115 will also reduce the level of PM_{10} emissions statewide.

EFFECTIVE DATE: This action will be effective on August 10, 1992, unless notice is received before July 9, 1992 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Air Programs Branch, Environmental Protection Agency, Dockets # OR10–1–5475, OR9–1–5477, OR8–1–5254), 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

Oregon Department of Environmental Quality, 811 SW. Sixth, Portland, Oregon 97204.

Comments should be addressed to: Laurie Kral, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Lorinda M. Ramos, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553–6510, FTS: 399–6510.

SUPPLEMENTARY INFORMATION:

I. Background

Oregon's Woodstove Certification Rules (OAR 340–21–100 to 21–190) were first approved by EPA on August 2, 1985, prior to promulgation of the Federal New Source Performance Standards for New Residential Wood Heaters (40 CFR 60 subpart AAA). Revisions to these rules were submitted to EPA by the Oregon State Department of Environmental Quality (ODEQ) on March 12, 1990, and on November 15, 1991. The November 15, 1991, submittal, therefore, supercedes the March 12, 1990 submittal. OAR 340–21–100 to 21–190 is revised in the following manner:

(1) The Division 21 rules were renumbered and incorporated into a newly formed Division 34 of OAR chapter 340.

(2) EPA's New Source Performance Standards for New Residential Wood Heaters (40 CFR 60 subpart AAA, 53 FR 5873, February 26, 1988) were adopted. The ODEQ retained its laboratory efficiency accreditation requirement and overall retail enforcement authority. This action satisfies ODEQ's statutory (ORS 468.630–468.655) requirements, promotes a uniform national emission standard, simplifies Oregon's certification process and reduces cost for regulated communities.

(3) An amendment was made to OAR 340–34–075 requiring Oregon's temporary label to show only overall efficiency.

(4) Provisions prohibiting the sale of used non-certified woodstoves were added (OAR 340–34–010(2) & (3)). This prohibition is applicable on a statewide basis.

A Woodburning Curtailment section was added (OAR 340–34–150 through 340–34–175). This section grants ODEQ the authority to implement a mandatory curtailment should an enforceable woodburning curtailment program be required as an emission reduction control strategy for a PM_{10} nonattainment area. This section would

be invoked should ODEQ determine that the local government or regional authority has failed to adopt or adequately implement the required woodburning curtailment program.

An additional section in Division 34, Woodstove Removal Contingency Program for PM_{10} Nonattainment Areas (OAR 340–34–205 through 340–34–215), was submitted for inclusion in Oregon's Air Quality Control Program Plan Volume 2. Provisions in this section apply to any area classified as a nonattainment area for PM_{10} that does not achieve attainment by December 31, 1994. The removal and destruction of used, noncertified woodstoves upon sale of a home would be required in an area that did not attain the PM_{10} standards.

Revisions to OAR 340–23–030, 043, & 090 (Rules for Open Burning) were also submitted for approval. The purpose of these revisions are to improve consistency between local and state open burning requirements and provide an open burning contingency measure in the PM_{10} control strategies for the Medford-Ashland and Grants Pass PM_{10} nonattainment areas.

OAR 340–23–030 was revised to define "disease and pest control." OAR 340–23–043 was revised to: (1) increase the ventilation index to 400 (from the less stringent 200 index) throughout the Rogue Basin; (2) grant the burning of orchard prunings during February 1992 and February 1993 on days when the ventilation index is 200 and the Rogue Basin woodburning advisory is green; and (3) grant an exemption for disease and pest control burning when the ventilation index is 200 and the Rogue Basin woodburning advisory is green. OAR 340–23–090 was revised to include a provision which would prohibit all open burning within the Rogue Basin open burning control area during November, December, January, and February unless authorized pursuant to OAR 340–23–030. This provision would not be triggered unless EPA published a notice in the **Federal Register** that the Medford-Ashland Air Quality Maintenance Area or the Grants Pass Urban Growth Area failed to attain the national ambient air quality standards for PM_{10} by the December 31, 1994 deadline.

II. EPA Action

Today EPA is approving Division 34—Residential Woodheating in OAR Chapter 340 which contains OAR 340–34–001 to 34–115 (Oregon Woodstove Certification—previously Division 21–100 to 21–190 of OAR chapter 340); a new section OAR 340–34–150 to 34–175 (Woodburning Curtailment); and a new section OAR 340–34–200 to 34–215 (Woodstove Removal Contingency Program for PM_{10} Nonattainment Areas). In addition, EPA approves revisions to OAR 340–23–030, 043, & 090 (Rules for Open Burning).

III. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing is this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 3 revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 8, 1992.

Dana A. Rasmussen,

Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1972.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(92) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(92) On November 15, 1991, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (the Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: Division 34—Residential Woodheating in OAR Chapter 340 which contains OAR 340–34–001 to 34–115 (Oregon Woodstove Certification—previously Division 21–100 to 21–190 of OAR Chapter 340); a new section OAR 340–34–150 to 34–175 (Woodburning Curtailment); and a new section OAR 340–34–200 to 34–215 (Woodstove Removal Contingency Program for PM_{10} Nonattainment Areas). Also OAR 340–23–030, 043, & 090 (Rules for Open Burning).

(i) Incorporation by reference.

(A) November 15, 1991 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, Chapter 340, Division 34 (Residential

Wood Heating), section—001 (Purpose); –005 (Definitions); –010 (Requirements for the Sale of Woodstoves); –015 (Exemptions); –020 (Civil Penalties); –050 (Emission Performance Standards & Certification); –055 (Efficiency Testing Criteria & Procedures); –060 (General Certification Procedures); –065 (Changes in Woodstove Design); –070 (Labelling Requirements); –075 (Removal Label); –080 (Label Approval); –085 (Laboratory Accreditation Requirements); –090 (Accreditation Criteria); –095 (Application for Laboratory Efficiency Accreditation); –100 (On-Site Laboratory Inspection and Stove Testing Proficiency Demonstration); –105 (Accreditation Application Deficiency, Notification and Resolution); –110 (Final Department Administrative Review and Certificate of Accreditation); –115 (Revocation and Appeals); –150 (Applicability); –155 (Determination of Air Stagnation Conditions); –160 (Prohibition on Woodburning During Periods of Air Stagnation); –165 (Public Information Program); –170 (Enforcement); –175 (Suspension of Department Program); –200 (Applicability); –205 (Removal and Destruction of Uncertified Stove Upon Sale of Home); –210 (Home Seller's Responsibility to Verify Stove Destruction); –215 (Home Seller's Responsibility to Disclose) as adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

(C) Oregon Administrative Rules, Chapter 340, Division 23 (Rules for Open Burning), section –030 (Definitions); –043 (Open Burning Schedule); and –090 (Coos, Douglas, Jackson and Josephine Counties) as adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

3. Section 52.1977 is revised to read as follows:

§ 52.1977 Content of approved State submitted implementation plan.

The following sections of the State air quality control plan (as amended on the date indicated) have been approved and are part of the current State implementation plan.

State of Oregon Air Quality Control Program

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

Section

1. Introduction (1–86)
2. General Administration (1–86)
2.1 Agency Organization (1–86)
2.2 Legal Authority (1–86)
2.3 Resources (1–86)
2.4 Intergovernmental Cooperation and Consultation (1–86)
2.5 Miscellaneous Provisions (1–86)
3. Statewide Regulatory Provisions
3.1 Oregon Administrative Rules—Chapter 340 (1–86)

Division 12—Civil Penalties

Sec. 030 Definitions (11–8–84)
Sec. 035 Consolidation of Proceedings (9–25–74)
Sec. 040 Notice of Violation (12–3–85)
Sec. 045 Mitigating and Aggravating Factors (11–8–88)
Sec. 050 Air Quality Schedule of Civil Penalties (11–8–84)
Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (11–8–84)
Sec. 075 Compromise or Settlement of Civil Penalty by Director (11–8–84)

Division 14—Procedures for Issuance, Denial, Modification, and Revocation of Permits (4–15–72)

Sec. 005 Purpose (4–15–72)
Sec. 007 Exceptions (6–10–88)
Sec. 010 Definitions (4–15–72), except (3) "Director" (6–10–88)
Sec. 015 Type, Duration, and Termination of Permits (12–16–76)
Sec. 020 Application for a Permit (4–15–72), except (1), (4)(b), (5) (6–10–88)
Sec. 025 Issuance of a Permit (4–15–72), except (2), (3), (4), (5), (6) (6–10–88)
Sec. 030 Renewal of a Permit (4–15–72)
Sec. 035 Denial of a Permit (4–15–72)
Sec. 040 Modification of a Permit (4–15–72)
Sec. 045 Suspension or Revocation of a Permit (4–15–72)
Sec. 050 Special Permits (4–15–72)

Division 20—General

Sec. 001 Highest and Best Practicable Treatment and Control Required (3–1–72)
Sec. 003 Exceptions (3–1–72)

Registration

Sec. 005 Registration in General (9–1–70)
Sec. 010 Registration Requirements (9–1–70)
Sec. 015 Re-registration (9–1–70)

Notice of Construction and Approval of Plans

Sec. 020 Requirement (9–1–70)
Sec. 025 Scope (3–1–72)
Sec. 030 Procedure (9–1–72), except (4)(a) Order Prohibiting Construction (4–14–89)
Sec. 032 Compliance Schedules (3–1–72)

Sampling, Testing, and Measurement of Air Contaminant Emissions

Sec. 035 Program (9–1–70)
Sec. 037 Stack Heights & Dispersion Techniques (4–25–86)
Sec. 040 Methods (9–11–70)
Sec. 045 Department Testing (9–1–70)
Sec. 046 Records; Maintaining and Reporting (10–1–72)
Sec. 047 State of Oregon Clean Air Act Implementation Plan (9–30–85)

Air Contaminant Discharge Permits

Sec. 140 Purpose (1–6–86)
Sec. 145 Definitions (1–6–76)
Sec. 150 Notice Policy (6–10–88)
Sec. 155 Permit Required (5–31–83)
Sec. 160 Multiple-Source Permit (1–6–76)
Sec. 165 Fees (3–14–86)
Sec. 170 Procedures For Obtaining Permits (1–11–74)
Sec. 175 Other Requirements (6–29–79)
Sec. 180 Registration Exemption (6–29–79)
Sec. 185 Permit Program For Regional Air Pollution Authority (1–6–76)

Conflict of Interest

Sec. 200 Purpose (10–13–78)
Sec. 205 Definitions (10–13–78)
Sec. 210 Public Interest Representation (10–13–78)
Sec. 215 Disclosure of Potential Conflicts of Interest (10–13–78)

New Source Review

Sec. 220 Applicability (9–8–81)
Sec. 225 Definitions (10–16–84)
Sec. 230 Procedural Requirements (10–16–84), except (3)(D) (6–10–88)
Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9–8–81)
Sec. 240 Requirements for Sources in Nonattainment Areas (4–18–83)
Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10–16–85)
Sec. 250 Exemptions (9–8–81)
Sec. 255 Baseline for Determining Credit for Offsets (9–8–81)
Sec. 260 Requirements for Net Air Quality Benefit (4–18–83)
Sec. 265 Emission Reduction Credit Banking (4–18–83)
Sec. 270 Fugitive and Secondary Emissions (9–8–81)
Sec. 275 Repealed
Sec. 276 Visibility Impact (10–16–85)

Plant Site Emission Limits

Sec. 300 Policy (9–8–81)
Sec. 301 Requirement for Plant Site Emission Limits (9–8–81)
Sec. 305 Definitions (9–8–81)
Sec. 310 Criteria for Establishing Plant Site Emission Limits (9–8–81)
Sec. 315 Alternative Emission Controls (9–8–81)
Sec. 320 Temporary PSD Increment Allocation (9–8–81)

Stack Heights and Dispersion Techniques

Sec. 340 Definitions (4–18–83)
Sec. 345 Limitations (4–18–83)

Division 22—General Gaseous Emissions

Sulfur Content of Fuels

Sec. 005 Definitions (3–1–72)
Sec. 010 Residual Fuel Oils (8–25–77)
Sec. 015 Distillate Fuel Oils (3–1–72)
Sec. 020 Coal (1–29–82)
Sec. 025 Exemptions (3–1–72)

General Emission Standards for Sulfur Dioxide

Sec. 050 Definitions (3–1–72)
Sec. 055 Fuel Burning Equipment (3–1–72)
Sec. 300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR Part 60 are approved (6–15–89)

Division 23—Rules for Open Burning

Sec. 022 How to Use These Open Burning Rules (9–8–81)
Sec. 025 Policy (9–8–81)
Sec. 030 Definitions (6–16–84) (15) "Disease and Pest Control" (11/13/91)
Sec. 035 Exemptions, Statewide (6–16–84)
Sec. 040 General Requirements Statewide (9–8–81)
Sec. 042 General Prohibitions Statewide (6–16–84)
Sec. 043 Open Burning Schedule (11/13/91)
Sec. 045 County Listing of Specific Open Burning Rules (9–8–81)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (11/13/91)

Open Burning Prohibitions

Sec. 55 Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (9–8–81)
Sec. 060 Benton, Linn, Marion, Polk, and Yamhill Counties (6–16–84)
Sec. 065 Clackamas County (6–16–84)
Sec. 070 Multnomah County (6–16–84)
Sec. 075 Washington County (6–16–84)
Sec. 080 Columbia County (9–8–81)
Sec. 085 Lane County (6–16–84)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (9–8–81)
Sec. 100 Letter Permits (6–16–84)
Sec. 105 Forced Air Pit Incinerators (9–8–81)
Sec. 110 Records and Reports (9–8–81)
Sec. 115 Open Burning Control Areas (6–16–84)

Division 24–Visible Emissions

Motor Vehicle Emission Control Inspection Test Criteria, Methods, and Standards

Sec. 300 Scope (4–1–85)
Sec. 301 Boundary Designations (9–9–88)
Sec. 305 Definitions (4–1–85)
Sec. 306 Publicly Owned and Permanent Fleet Vehicle Testing Requirements (12–31–83)
Sec. 307 Motor Vehicle Inspection Program Fee Schedule (8–1–81)
Sec. 310 Light Duty Motor Vehicle Emission Control Test Method (9–9–88)
Sec. 315 Heavy Duty Gasoline Motor Vehicle Emission Control Test Method (12–31–83)
Sec. 320 Light Duty Motor Vehicle Emission Control Test Criteria (9–9–88)
Sec. 325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (9–9–88)
Sec. 330 Light Duty Motor Vehicle Emission Control Cutpoints or Standards (8–1–81) Subpart (3) (9–12–86)
Sec. 335 Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards (9–12–86)
Sec. 340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (12–31–83)
Sec. 350 Gas Analytical System Licensing Criteria (9–9–88)

Division 25—Specific Industrial Standards Construction and Operation of Wigwam Waste Burners

Sec. 005 Definitions (3–1–72)
Sec. 010 Statement of Policy (3–1–72)
Sec. 015 Authorization to Operate a Wigwam Burner (3–1–72)
Sec. 020 Repealed
Sec. 025 Monitoring and Reporting (3–1–72)

Hot Mix Asphalt Plants

Sec. 105 Definitions (3–1–73)
Sec. 110 Control Facilities Required (3–1–73)
Sec. 115 Other Established Air Quality Limitations (3–1–73)
Sec. 120 Portable Hot Mix Asphalt Plants (4–18–83)
Sec. 125 Ancillary Sources of Emission—Housekeeping of Plant Facilities (3–1–73)

Primary Aluminum Plants

Sec. 255 Statement of Purpose (6–18–82)
Sec. 260 Definitions (6–18–82)
Sec. 265 Emission Standards (6–18–82)
Sec. 270 Special Problem Areas (12–25–73)
Sec. 275 Highest and Best Practical Treatment and Control Requirement (12–25–73)
Sec. 280 Monitoring (6–18–82)
Sec. 285 Reporting (6–18–82)

Regulations for Sulfite Pulp Mills

Sec. 350 Definitions (5–23–80)
Sec. 355 Statement of Purpose (5–23–80)
Sec. 360 Minimum Emission Standards (5–23–80)
Sec. 365 Repealed
Sec. 370 Monitoring and Reporting (5–23–80)
Sec. 375 Repealed
Sec. 380 Exceptions (5–23–80)

Laterite Ore Production of Ferronickel

Sec. 405 Statement of Purpose (3–1–72)
Sec. 410 Definitions (3–1–72)
Sec. 415 Emission Standards (3–1–72)
Sec. 420 Highest and Best Practicable Treatment and Control Required (3–1–72)
Sec. 425 Compliance Schedule (3–1–72)
Sec. 430 Monitoring and Reporting (3–1–72)

Division 26—Rules for Open Field Burning (Willamette Valley)

Sec. 001 Introduction (7–3–84)
Sec. 003 Policy (3–7–84)
Sec. 005 Definitions (3–7–84)
Sec. 010 General Requirement (3–7–84)
Sec. 011 Repealed
Sec. 012 Registration, Permits, fees, Records (3–7–84)
Sec. 013 Acreage Limitations, Allocations (3–7–84)
Sec. 015 Daily Burning Authorization Criteria (3–7–84)
Sec. 020 Repealed
Sec. 025 Civil Penalties (3–7–84)
Sec. 030 Repealed
Sec. 031 Burning by Public Agencies (Training Fires) (3–7–84)
Sec. 035 Experimental Burning (3–7–84)
Sec. 040 Emergency Burning, Cessation (3–7–84)
Sec. 045 Approved Alternative Methods of Burning Propane Flaming) (3–7–84)

Division 27—Air Pollution Emergencies

Sec. 005 Introduction (10–24–83)
Sec. 010 Episode State Criteria for Air Pollution Emergencies (10–24–83)
Sec. 012 Special Conditions (10–24–83)
Sec. 015 Source Emission Reduction Plans (10–24–83)
Sec. 020 Repealed
Sec. 025 Regional Air Pollution Authorities (10–24–83)

Division 30—Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area

Sec. 005 Purpose and Application (4–7–78)
Sec. 010 Definitions (5–6–81)
Sec. 015 Wood Waste Boilers (10–29–80, 6–13–86)
Sec. 020 Veneer Dryer Emission Limitations (1–28–80)
Sec. 025 Air Conveying Systems (4–7–78)
Sec. 030 Wood Particle Dryers at Particleboard Plants (5–6–81)
Sec. 031 Hardwood Manufacturing Plants (5–6–81)
Sec. 035 Wigwam Waste Burners (10–29–80)
Sec. 040 Charcoal Producing Plants (4–7–78)
Sec. 043 Control of Fugitive Emissions (4–18–83)
Sec. 044 Requirement for Operation and Maintenance Plans (4–18–83)
Sec. 045 Compliance Schedules (4–18–83)
Sec. 050 Continuous Monitoring (4–7–83)
Sec. 055 Source Testing (4–7–78)
Sec. 060 Repealed
Sec. 065 New Sources (4–7–78)
Sec. 070 Open Burning (4–7–78)

Division 31—Ambient Air Quality Standards

Sec. 005 Definitions (3–1–72)
Sec. 010 Purpose and Scope of Ambient Air Quality Standards (3–1–72)
Sec. 015 Suspended Particulate Matter (3–1–72)
Sec. 020 Sulfur Dioxide (3–12–72)
Sec. 025 Carbon Monoxide (3–1–72)
Sec. 030 Ozone (1–29–82)
Sec. 035 Hydrocarbons (3–1–72)
Sec. 040 Nitrogen Dioxide (3–1–72)
Sec. 045 Repealed
Sec. 050 Repealed
Sec. 055 Ambient Air Quality Standard for Lead (1–21–83)

Prevention of Significant Deterioration

Sec. 100 General (6–22–79)
Sec. 110 Ambient Air Increments (6–22–79)
Sec. 115 Ambient Air Ceilings (6–22–79)
Sec. 120 Restrictions on Area Classifications (6–22–79)
Sec. 125 Repealed
Sec. 130 Redesignation (6–22–79)

Division 34—Residential Wood Heating

Sec. 001 Purpose (11/13/91)
Sec. 005 Definitions (11/13/91)
Sec. 010 Requirements for Sale of Woodstoves (11/13/91)
Sec. 015 Exemptions (11/13/91)
Sec. 020 Civil Penalties (11/13/91)

Sec. 050 Emission Performance Standards & Certification (11/13/91)
Sec. 055 Efficiency Testing Criteria & Procedures (11/13/91)
Sec. 060 General Certification Procedures (11/13/91)
Sec. 065 Changes in Woodstove Design (11/13/91)
Sec. 070 Labelling Requirements (11/13/91)
Sec. 075 Removable Label (11/13/91)
Sec. 080 Label Approval (11/13/91)
Sec. 085 Laboratory Accreditation Requirements (11/13/91)
Sec. 090 Accreditation Criteria (11/13/91)
Sec. 095 Application for Laboratory Efficiency Accreditation (11/13/91)
Sec. 100 On-Site Laboratory Inspection and Stove Testing Proficiency Demonstration (11/13/91)
Sec. 105 Accreditation Application Deficiency, Notification and Resolution (11/13/91)
Sec. 110 Final Department Administrative Review and Certification of Accreditation (11/13/91)
Sec. 115 Revocation and Appeals (11/13/91)
Sec. 150 Applicability (11/13/91)
Sec. 155 Determination of Air Stagnation Conditions (11/13/91)
Sec. 160 Prohibition on Woodburning During Periods of Air Stagnation (11/13/91)
Sec. 165 Public Information Program (11/13/91)
Sec. 170 Enforcement (11/13/91)
Sec. 175 Suspension of Department Program (11/13/91)
Sec. 200 Applicability (11/13/91)
Sec. 210 Removal and Destruction of Uncertified Stove Upon Sale of Home (11/13/91)
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3.2 Lane Regional Air Pollution Authority Regulations

Title 11 Policy and General Provisions

11-005 Policy (8-2-72)
11-010 Construction and Validity (8-2-72)
11-015 Definitions (6-29-79)
.013 Air Conveying Systems (3-11-82)

Title 12 General Duties and Powers of Board and Director

12-005 Duties and Powers of Board of Directors (6-29-79)
12-010 Duties and Function of the Program Director (6-29-79)
12-015 Civil Penalties (8-2-72)
12-020 Advisory Committee (8-2-72)
12-025 Confidential Information (8-2-72)
12-025 Conflict of Interest (9-9-88)

Title 13 Enforcement Procedures (6-29-79)

Title 20 Indirect Sources

20-100 Policy and Jurisdiction (11-18-75)
20-110 Definitions (6-29-79)
20-115 Indirect Sources Required to Have Indirect Source Construction Permits (6-29-79)
20-120 Establishment of an Approved Regional Parking and Circulation Plan(s) by a City, County or Regional Planning Agency (6-29-79)
20-125 Information and Requirements Applicable to Indirect Source(s) Construction Permit Applications Where An Approved Regional Parking and Circulation Plan is on File (6-29-79)
20-129 Information and Requirements Applicable to Indirect Source(s) Construction Permit Application Where No Approved Regional Parking and Circulation Plan is On File (6-29-79)
20-130 Issuance or Denial of Indirect Source Construction Permits (6-29-79)
20-135 Permit Duration (11-18-75)

Title 21 Registration, Reports & Test Procedures

21-005 Registration of Sources (8-2-72)
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21-035 Notice of Completion (8-2-72)
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21-045 Source Emission Tests (8-2-72)
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Title 22 Permits, except for Definition Number 7 "Dispersion Techniques" and Definition Number 11 "Good Engineering Practice Stack Height" (4-13-82)

Title 31 Ambient Air Standards

31-005 General (8-2-72)
31-015 Suspended Particulate Matter (8-2-72)
31-025 Sulfur Dioxide (8-2-72)
31-030 Carbon Monoxide (8-2-72)
31-035 Ozone (7-12-83)
31-040 Hydrocarbons (8-2-72)
31-045 Nitrogen Dioxide (8-2-72)

Title 32 Emission Standards

32-005 General (6-29-79)
32-010 Restriction in Emission of Visible Air Contaminant (6-29-79)
32-025 Exceptions—Visible Air Contaminant Standards (8-2-72)
32-030 Particulate Matter Weight Standards (8-2-72)
32-035 Particulate Matter Weight Standards—Existing Sources (8-2-72)
32-040 Particulate Matter Weight Standards—News Sources (8-2-72)
32-045 Process Weight Emission Limitions (8-2-72)
32-055 Particulate Matter Size Standard (8-2-72)
32-060 Airborne Particulate Matter (8-2-72)
32-065 Sulfur Dioxide Emission Limitations (8-2-72)
32-100 Plant Site Emission Limits Policy (9-14-82)
32-101 Requirement for Plant Site Emission Limits (9-14-82)
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32-103 Alternative Emission Controls (Bubble) (9-14-82)
32-104 Temporary PSD Increment Allocation (9-14-82)
32-800 Air Conveying Systems (1-6-85)
32-990 Other Emissions (8-2-72)

Title 33 Prohibited Practices and Control of Special Classes

33-020 Incinerator and Refuse Burning Equipment (8-2-72)
33-025 Wigwam Waste Burners (8-2-72)
33-030 Concealment and Masking of Emissions (8-2-72)
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33-060 Board Products Industries (8-2-72)
33-065 Charcoal Producing Plants (5-15-79)
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Title 36 Rules for Open Outdoor Burning (1-30-80)

Title 42 Rules of Practice and Procedure—Hearing Procedure (6-29-79)

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Title 51 Air Pollution Emergencies

51-005 Introduction (8-2-72)
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4. Control Strategies for Nonattainment Areas (1-86)

4.1 Portland-Vancouver AQMA-Total Suspended Particulate (12-19-80)
4.2 Portland-Vancouver AQMA-Carbon Monoxide (7-16-82)
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4.6 Eugene-Springfield AQMA-Total Suspended Particulate (1-30-81)
4.7 Eugene-Springfield AQMA-Carbon Monoxide (6-20-79)
4.8 Medford-Ashland AQMA-Ozone (1-85)
4.9 Medford-Ashland AQMA-Carbon Monoxide (8-82)
4.10 Medford-Ashland AQMA-Particulate Matter (4-83)
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5. Control Strategies for Attainment and Nonattainment Areas (1-86)

5.1 Statewide Control Strategies for Lead (1-83)
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6. Ambient Air Quality Monitoring Program

6.1 Air Monitoring Network (1-86)
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8. Public Involvement (1–86)

9. Plan Revision and Reporting (1–86)

OAR Chapter 629–43–043 Smoke Management Plan Administrative Rule (12–12–86) Directive 1–4–1–601 Operational Guidance for the Oregon Smoke Management Program (12–86)

[FR Doc. 92–13384 Filed 6–3–92; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[FL–040–5421; FRL–4131–7]

Approval and Promulgation of Implementation Plans, Florida; Vehicle Anti-tampering

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Florida State Implementation Plan (SIP). These revisions, amending the tampering with motor vehicle air pollution control equipment guidelines, were submitted to EPA by the Florida Department of Environmental Regulation (FDER) on January 24, 1991. This plan has been voluntarily submitted by the FDER as an integral part of the program to achieve and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. These regulations do not represent a relaxation of federal regulations or EPA standards and EPA is therefore approving the SIP revisions.

EFFECTIVE DATE: This action will be effective August 10, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Eric Maurer of EPA, Region IV (see EPA Region IV address below).

Copies of the materials submitted by Florida may be examined at the following locations during normal business hours:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Eric Maurer of the Region IV Air Programs Branch, at the above address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Following a study of Florida's air quality problems by the Motor Vehicle Emissions Study Commission, established by the 1987 Florida Legislature, the 1988 Legislature passed the Clean Outdoor Air Law (COAL) which charged the Florida Department of Environmental Regulation (FDER) with developing motor vehicle test procedures, regulations, and emission standards. The FDER initiated a two-phase plan to address these issues, the first phase concerning the implementation of a motor vehicle inspection and maintenance (I/M) program, and the second phase addressing the tampering and visible emission problem.

Florida was not required to have a motor vehicle inspection and maintenance program prior to the 1990 Clean Air Act Amendments, and the state was therefore not subject to the Savings Clause in section 182(a)(2)(B) of the amended Clean Air Act. However, Florida began implementation of a voluntary, state-initiated I/M program in April 1991, and EPA approved the program on March 3, 1992 (57 FR 7550).

Although Florida has benefitted from some reduction of motor vehicle emissions achieved through the Federal Motor Vehicle Emissions Control Program, which requires new cars to be equipped with air pollutant emission control devices, and the state I/M program which began in April 1991 in carbon monoxide and ozone nonattainment counties, the effectiveness of these programs have been significantly reduced by the sale of tampered vehicles through the used car market. The State of Florida has been found, through EPA and FDER field inspections, to have some of the highest emission control system tampering rates in the country.

On March 20, 1990, pursuant to section 316.2935 of the Florida Statutes, FDER submitted to EPA for approval chapter 17–243 (Tampering with Motor Vehicle Air Pollution Control Equipment), to be included in the Florida SIP for ozone. This anti-tampering program was voluntarily implemented by Florida in response to state legislative requirements and affected not only I/M counties but all counties statewide. The anti-tampering regulation represented a state-initiated effort to prevent high-emitting, tampering vehicles from being "dumped" into non-I/M counties.

On June 18, 1990, FDER submitted to EPA for approval changes to chapter 17–243 which provided that it is unlawful for any person or motor vehicle dealer to knowingly offer or display for sale or lease, sell, lease or transfer title to a motor vehicle that has been tampered with. All 1975 and newer vehicles with a net unloaded weight under 5,000 pounds or a gross loaded weight less than 10,000 pounds are subject to this rule. Any person found violating this rule will be charged with a non-criminal traffic violation. The March 20, 1990, and June 18, 1990, anti-tampering program submittals were approved by EPA in a separate **Federal Register** notice.

The current amendment to chapter 17–243, F.A.C. (made in response to HB 951 which was passed by the Florida Legislature) changes the "tampering inspection" (required for licensed motor vehicle dealers) definition from the previous eleven-point inspection to a "six-point check" of the catalytic converter, fuel inlet restrictor, unvented fuel cap, exhaust gas recirculation system (EGR), air pump and/or air injection system (AIS), and fuel evaporative emissions system. This "check" is an inspection to confirm that the aforementioned six air pollution control devices and systems, when applicable, are in place and appear properly connected and undamaged as determined by visual observation. Exemptions to the tampering inspection now include first-time retail sales or leases of new motor vehicles subject to certification under section 207, Clean Air Act, 42 U.S.C. 7541, as well as sales, reassignments, and trade by licensed motor vehicle dealers to licensed motor vehicle dealers.

Certification requirements at the time of title transfer are also set forth in the revision. On and after January 1, 1991, the seller/lessor is required to visually observe and certify in writing to the buyer/lesseor that the vehicle has been inspected and found not to be tampered with in violation of the statute. Licensed motor vehicle dealers must use the newly enacted six-point component check on any vehicle designated as model year 1981 or newer; persons other than motor vehicle dealers must continue to use the unamended three-point check for vehicles designated as model year 1975 through 1980, and may use either the three-point or six-point check for 1981 and later model year vehicles. Sales and trade-ins of tampered vehicles to licensed motor vehicles dealers are allowed, providing an incentive for owners of tampered vehicles to dispose of them through licensed dealers and the opportunity for dealers to repair tampered vehicles before being resold.

Final Action

EPA is today approving revisions to the Florida SIP amending the voluntary state-initiated tampering with motor vehicle air pollution control equipment program. All of the revisions being approved are consistent with Agency policy. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 2 action by the Regional Administrtor under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, econimic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate curcuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1 1982.

Dated: April 13, 1992.

Patrick M. Tobin,

Acting, Regional Administrator.

Part 52—chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52 [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(74) to read as follows

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(74) Vehicle Anti-tampering revisions (Chapter 17–243 of the Florida Administrative Code) which were submitted to EPA on January 24, 1991.

(i) *Incorporation by reference.*

(A) Revisions to FAC Chapter 17–243 (Tampering with Motor Vehicle Air Pollution Control Equipment) which became state effective January 2, 1991, as follows:

17–243.200—Definitions: (1); (2) Introductory Paragraph and (a); and (3) Introductory paragraph

17–243.300—Exemptions: (2); (3) Introductory paragraph and (b); (4) Introductory paragraph, (b), (c) and (d)

17–243.400—Prohibitions

17–243.500—Certification: (1)(a) thru (d)

17–243.600—Enforcement: (2); (3) Introductory paragraph and (b), (4); (6); and (7)

(ii) *Other material.*

(A) Letter dated January 24, 1991, from the Florida Department of Environmental Regulation.

[FR Doc. 92–13378 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 91–115 FCC No. 92–168]

Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 8, 1992, the Commission released a Report and Order and Request for Supplemental Comment (Report and Order). In the Report and Order the Commission reviews certain local exchange carrier (LEC) calling practices and services and concludes that they are subject to the requirements of title II of the Communications Act. This action adopts a rule requiring that all LECs provide non-discriminatory access to LEC joint use card validation data and to LEC line number screening data and that any LEC entering into a card honoring agreement with one interexchange carrier (IXC) must stand ready to enter such an agreement with all requesting IXCs. This action also amends part 69 of the Commission's Rule to establish a new switched access element for validation database query service.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara Esbin, 202–632–6917.

SUPPLEMENTARY INFORMATION: The Common Carrier Bureau in 1989 initiated a tariff investigation to examine certain practices of Cincinnati Bell Telephone Company (CBT) relating to the issuance and validation of telephone calling cards. Parties to that investigation maintained that many of the issues examined were not limited to CBT. On May 24, 1991, the Commission issued a Notice of Proposed Rulemaking, 56 FR 26644, June 10, 1991, 6 FCC Rcd 3506 (1991), seeking information on LEC card practices and proposing requirements for LECs which provide to IXCs access to certain validation and billing information and services for LEC joint use calling cards and LEC line screening data.

Accordingly, *it is ordered*, That the policies, rules and requirements set forth herein are adopted.

It is further ordered, That the provisions in this Report and Order and Request for Supplemental Comment will be effective 30 days after **Federal Register** publication.

List of Subjects in 47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.4 is amended by adding paragraph (b)(8) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) * * *

(8) Line information data base.

* * * * *

3. Section 69.120 is added to read as follows:

§ 69.120 Line information database.

(a) A charge that is expressed in dollars and cents per query shall be assessed upon all carriers that access validation information from a local exchange carrier database to recover the costs of:

(1) The transmission facilities between the local exchange carrier's signalling transfer point and the database; and

(2) The signalling transfer point facilities dedicated to the termination of the transmission facilities connecting the database to the exchange carrier's signalling network.

(b) A charge that is expressed in dollars and cents per query shall be assessed upon all carriers that access validation information from a local exchange carrier line information database to recover the costs of the database.

4. Section 69.305 is amended by redesignating paragraph (c) as paragraph (d) and revising it, and adding a new paragraph (c) to read as follows:

§ 69.305 Carrier cable and wire facilities (C&WF).

* * * * *

(c) Carrier C&WF that is used to provide transmission between the local exchange carrier's signalling transfer point and the database shall be assigned to the Line Information Database sub-element at § 69.120(a).

(d) All Carrier C&WF that is not apportioned pursuant to paragraphs (a), (b), and (c) of this section shall be assigned to the Special Access element.

5. Section 69.306 is amended by revising paragraph (c) to read as follows:

§ 69.306 Central office equipment (COE).

* * * * *

(c) COE Category 2 (Tandem Switching Equipment) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States* v. *Western Electric Co.* shall be assigned to the Common Transport Element. COE Category 2 which is used to provide transmission facilities between the local exchange carrier's signalling transfer point and the database shall be assigned to the Line Information Database sub-element at § 69.120(a). All other COE Category 2 shall be assigned to the interexchange category.

* * * * *

6. Section 69.307 is amended by designating the existing paragraph as paragraph (b) and revising it, and adding a new paragraph (a) to read as follows:

§ 69.307 General support facilities.

(a) General purpose computer investment used in the provision of the Line Information Database sub-element at § 69.120(b) shall be assigned to that sub-element.

(b) All other General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Limited Pay Telephone, Local Switching, Information, Dedicated Transport, Common Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities excluding Category 1.3, combined.

[FR Doc. 92-13463 Filed 6-8-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1001

[Ex Parte No. MC-204]

Historical Retention of International Joint Ocean-Motor Through-Rate Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies its regulations to reflect the elimination of its historical retention of international joint ocean-motor through-rate tariffs which are also filed with the Federal Maritime Commission (FMC). FMC, which retains copies of these tariffs in paper or microfiche form, will make them available for public inspection and copying. This change will help to alleviate the Commission's shortage of storage space and personnel, and eliminate the accompanying costs. The Commission will obtain any necessary approval for changes in its schedule of records retention from the National Archives and Records Service pursuant to the Federal Records Act.

EFFECTIVE DATE: This rule is effective July 9, 1992.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 927-5597 or Charles E. Langyher, III (202) 927-5160 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking (NPR) served March 12, 1992 (57 FR 8858, March 13, 1992), the Commission proposed to eliminate its historical retention of international joint ocean-motor through-rate tariffs which are also filed with the Federal Maritime Commission (FMC). The Commission currently receives approximately 75,000 FMC-ICC tariff publications per year and retains them for 10 years after cancellation.

Requests from the public to review these tariffs at the Commission have been very rare. Due to the minimal need for the information at the Commission, its availability at the FMC and the Commission's severe shortage of space and personnel, we proposed to dispose of the tariffs after their effective date.

The Commission indicated that it would continue to undertake appropriate review of the tariffs at the time they are filed, and that it would continue to make them available for initial public review. However, after the tariffs become effective, the Commission's copies would be destroyed. Any party requesting historical information on a tariff or tariffs would be referred to the FMC. The practice of referring the public to the FMC has been in effect informally for some time without any apparent problems, and FMC has indicated its willingness to see this system formalized.

We received no comments in response to the notice of proposed rulemaking, which is a further indication of the lack of any public need for continued retention of FMC-ICC tariffs at the Commission. We have therefore decided

to finalize the rules, as set forth in this rule.

Energy and Environmental Considerations

This action will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

This action will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1001

Confidential business information, Freedom of Information.

Decided: June 2, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips and Emmett. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, the Commission amends title 49, chapter X, part 1001 as follows:

PART 1001—INSPECTION OF RECORDS

1. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 552 and 49 U.S.C. 10301 and 10321.

2. In § 1001.1, paragraph (a) is revised to read as follows:

§ 1001.1 Records available at the Commission's Washington office.

* * * * *

(a) Copies of tariffs (*except those specified in § 1001.3*), rate schedules, quotations or tenders under 49 U.S.C. 10721(b)(2); classifications, powers of attorney, concurrences, and contracts filed with the Commission pursuant to 49 U.S.C. 10762, 10764, 10765, 10766, 10721.

* * * * *

3. Sections 1001.3, 1001.4 and 1001.5 are redesignated as §§ 1001.4, 1001.5, and 1001.6 respectively and a new § 1001.3 is added to read as follows:

§ 1001.3 Records available at the Federal Maritime Commission.

Copies of international joint ocean-motor through-rate tariffs filed with the Commission will not be retained past the expiration of the notice period. These tariffs are also filed with the Federal Maritime Commission (FMC) and are available to the public at the FMC's Washington, DC office for inspection, in either paper or microfiche form, during its regular business hours.

[FR Doc. 92-13477 Filed 6-6-92; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 911172-2021]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Pacific halibut and red king crab bycatch rate standards and request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1992 for the purposes of the vessel incentive program that has been implemented to reduce prohibited species bycatch rates in the groundfish trawl fisheries. This action is necessary to implement the bycatch rate standards that must be met by individual trawl vessel operators who participate in specified groundfish fisheries included in the incentive program. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 am, Alaska local time (A.l.t.), July 1, 1992, through 12 midnight A.l.t, December 31, 1992. Comments on this action are invited through June 30, 1992.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9100 Mendenhall Mall Road, Federal Building Annex, Suite 5, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fishery Management Biologist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI) and Gulf of Alaska (GOA) are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Island Area and the FMP for Groundfish of the Gulf of Alaska. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce halibut and red king crab bycatch rates in specified groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must comply with Pacific halibut bycatch rate standards specified for the BSAI and GOA Pacific cod trawl fisheries, the BSAI flatfish fishery, and the GOA "bottom rockfish" trawl fishery. Vessel operators must also comply with red king crab bycatch standards specified for the BSAI flatfish fishery in Zone 1, as defined in § 675.2. Definitions of the fisheries included under the incentive program are set forth in regulations at § 672.26(b) and § 675.26(b).

Regulations implementing the incentive program require the Regional Director to publish a notice in the **Federal Register** specifying halibut and red crab bycatch rate standards for each fishery monitored under the incentive program. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Any vessel whose monthly bycatch rate exceeds the bycatch rate standard is in violation of the regulations implementing the incentive program.

Halibut and red king crab bycatch rate standards for the first half of 1992 were published in the **Federal Register** on January 24, 1992 (57 FR 2854). At its April 22-26, 1992, meeting, the Council recommended bycatch rate standards for the second half of 1992. These standards are set forth in Table 1. The Council's recommended bycatch rate standards for July 1 through December 31 are based on the following information, as required by § 672.26(c) and § 675.26(c):

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under § 672.20(f) and § 675.21;

(D) Anticipated groundfish harvests; and

(E) Anticipated seasonal distribution of fishing effort for groundfish.

The Council's halibut bycatch rate standards for the BSAI Pacific cod and

flatfish trawl fisheries are largely based on anticipated seasonal fishing effort for these species and historic halibut bycatch rates observed in the Pacific cod and flatfish fisheries. The Council recommended that the halibut bycatch rate standards for the BSAI Pacific cod and flatfish trawl fisheries during the second half of 1992 be set at levels that approximate the average rates observed on trawl vessels participating in these fisheries during the past several years. For the third and fourth quarters of 1992, the recommended bycatch rate standards are 30 kilograms (kg) of halibut per metric ton (mt) of groundfish (3.0 percent) in the Pacific cod trawl fishery and 5 kg of halibut per mt of groundfish (0.5 percent) in the flatfish fishery.

Observer data for the BSAI Pacific cod trawl fishery during the last halves of 1990 and 1991 are not available because the fishery was closed during this period due to halibut bycatch restrictions. Therefore, the Council recommended that the bycatch rate standard for the BSAI Pacific cod trawl fishery during the last half of 1992 be set at a level that approximates the average rate observed on trawl vessels participating in this fishery during the first halves of 1990–1992 fishing years. The average quarterly rate during these years ranged from 1.35 percent to 2.22 percent. The 3.0 percent bycatch rate standard recommended by the Council for the second half of 1992 is an increase from the average rates observed during the first halves of the 1990–1992 fishing years because halibut bycatch rates normally increase during summer months after halibut migrate to shallower waters and become more vulnerable to shallow water trawl operations, such as the Pacific cod fishery.

When the Council recommended a bycatch rate standard for the BSAI Pacific cod trawl fishery, most of the annual 1992 halibut bycatch allowance specified for this fishery under a March 30, 1992, emergency rule (57 FR 11433, April 3, 1992) had been taken. Subsequent halibut bycatches in the Pacific cod trawl fishery resulted in a closure of this fishery for the remainder of the year (57 FR 23347, June 3, 1992). Nevertheless, NMFS is publishing a bycatch rate standard for the BSAI Pacific cod trawl fishery consistent with regulations at § 675.26(c).

The halibut bycatch rate standard recommended for the BSAI flatfish fishery approximates the average 1991 halibut bycatch rate observed in the yellowfin sole fishery, which is the predominate flatfish fishery after the season opens on May 1 (§ 675.23(c)).

Mid-summer bycatch rates in the flatfish fishery may increase as fishermen target on other flatfish species (e.g., flathead sole) that are normally associated with higher halibut bycatch rates, or as new vessels enter the flatfish fishery after the closure of the Bering Sea pollock fishery. A proposed rule has been submitted for Secretarial review that would address differences in halibut bycatch rates between the yellowfin sole and the rock sole/"other flatfish" fisheries by amending regulations to specify separate bycatch rate standards for these fisheries (57 FR 22695, May 29, 1992). If approved by the Secretary, the final rule would be effective by late summer, 1992, and alternative bycatch rate standards would be published in the **Federal Register** for public review and comment prior to the effective date of the final rule.

If vessels participating in the BSAI flatfish fisheries maintained halibut bycatch rates at the 0.5 percent bycatch rate standard recommended by the Council during the second half of 1992, the Council recognized that portions of the 1992 total allowable catch (TAC) amounts specified for yellowfin sole, rock sole, and "other flatfish" may not be harvested by trawl vessels under the halibut prohibited species catch (PSC) restrictions set forth for these fisheries at § 675.21. The Council further recognized that its recommended halibut bycatch rates standards for the BSAI Pacific cod trawl fishery will not allow for the trawl harvest of the 1992 TAC specified for Pacific cod under halibut PSC limit restrictions at § 675.21. The Council determined that its recommended bycatch rate standards would reduce halibut bycatch rates during the second half of 1992, consistent with the Council's intent for the incentive program, and that other gear types could continue to harvest the Pacific cod TAC under existing halibut PSC regulations.

The Council's recommended red king crab bycatch rate standard for the flatfish fishery in Zone 1 of the Bering Sea subarea is 2.5 crab per mt of groundfish during the third and fourth quarters of 1992. This standard is consistent with the red king crab halibut bycatch rate standards specified for the first half of 1992, but is an increase over the 1991 bycatch rate standard of 1.5 red king crab per mt of groundfish.

Little fishing effort for flatfish occurred in Zone 1 during 1991 because commercial concentrations of yellowfin sole normally occur north of this area by the time the fishery opens May 1. Consequestly, limited observer data exist for the 1991 fishery in Zone 1. These data indicate average red king crab bycatch rates between 1 and 1.5 crab per mt of groundfish. During late summer 1991, some flatfish fishermen experienced relatively high bycatch rates of halibut north of Zone 1 and expressed a desire to explore fishing grounds in Zone 1 that may have lower halibut bycatch rates. Fishermen were reluctant to fish in Zone 1 because they were concerned about possibly exceeding the red king crab bycatch rate standard. The total 1991 bycatch of red king crab by vessels participating in the rock sole, yellowfin sole, and "other flatfish" fisheries was less than 75,000 crab, or about 40 percent of the combined red king crab bycatch allowances specified for these fisheries (190,000 crab). In recognition that the red king crab bycatch allowance specified for the yellowfin sole fishery will restrict bycatch amounts to specified levels, the Council increased the 1992 bycatch rate standards for red king crab to support those fisherman who actively pursue alternative fishing grounds in an attempt to reduce halibut bycatch rates. The Council further recognized that by July 1, Zone 1 will be closed to vessels participating in the directed fisheries for rock sole and "other flatfish," because these fisheries will have taken their primary halibut bycatch allowance specified under the April 3, 1992, emergency rule.

The Council recommended a single halibut bycatch rate standard for the GAO Pacific cod and "bottom rockfish" fisheries of 50 kg per mt groundfish (5 percent). This recommendation was based on Council intent to simplify the GOA incentive program by specifying a single bycatch rate standard for the fisheries under the incentive program, while maintaining the Council's objective of reducing halibut bycatch rates in the GOA trawl fisheries. The Council recognized that the Pacific cod fishery is closed in the GOA for the remainder of 1992 because total allowable catch amounts specified for each of the three regulatory areas of the GOA have been or will be taken. Nevertheless, NMFS is publishing a bycatch rate standard for the GOA Pacific cod trawl fishery consistent with regulations at § 672.26(c). The justification for the Council's recommendations for a 5 percent bycatch rate standard for the Pacific cod and "bottom rockfish" trawl fisheries is discussed in the January 24, 1992, notice of Pacific halibut bycatch rate standards for the GOA fisheries (57 FR 2854)

The Regional Director has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 672.26(c) and § 675.26(c). Therefore, he concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the second half of 1992 as set forth in Table 1. These bycatch rate standards may be revised by notice in the **Federal Register** when deemed appropriate by the Regional Director pending his consideration of the information set forth at § 672.26(c) and § 675.26(c).

Classification

This action is taken under 50 CFR parts 672.26 and 675.26 and complies with E.O. 12291.

To avoid a lapse in vessel accountability under the vessel incentive program, this notice must be effective by July 1, 1992, when the bycatch rate standards specified for the first half of 1992 expire. Without this accountability, prohibited species bycatch rates will increase in the groundfish trawl fisheries, prohibited species bycatch allowances will be reached sooner, specified groundfish trawl fisheries will be closed prematurely, and owners and operators of groundfish trawl vessel will incur additional foregone revenues. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to extend prior notice and comment on this notice beyond June 30 or to delay its effective date. Comments on the bycatch rate standards will be accepted through June 30, 1992, and should be sent to the address noted above.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 3, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE SECOND HALF OF 1992 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

[Halibut bycatch as kg of halibut/mt of allocated groundfish catch]

Fishery and quarter	1992 bycatch standard
BSAI Pacific cod:	
Qt 3	30.0
Qt 4	30.0
BSAI flatfish:	
Qt 3	5.0
Qt 4	5.0
GOA rockfish:	
Qt 3	50.0
Qt 4	50.0
GOA Pacific cod:	
Qt 3	50.0
Qt 4	50.0
Zone 1 red king crab bycatch rates (number of crab/mt of allocated groundfish)	
BSAI flatfish:	
Qt 3	2.5
Qt 4	2.5

[FR Doc. 92-13429 Filed 6-8-92; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 111
Tuesday, June 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-92-052PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Proposed Expenses and Assessment Rate for the 1992-93 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1992-93 fiscal period (August 1-July 31) under Marketing Order No. 905. This proposed action is needed so the Citrus Administrative Committee (committee) established under the marketing order can pay its expenses and collect assessments from handlers to pay those expenses. This proposed action would enable the committee to perform its duties and the marketing order to operate.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-5331.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Department Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, and tangelos grown in Florida are subject to assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable citrus fruit during the 1992-93 fiscal period, beginning August 1, 1992, through July 31, 1993. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable citrus fruit handled from the beginning of such period. An annual budget of expenses and assessment rate is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Florida citrus. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually recommended by the committee shortly

before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee recommended a budget with expenses of $200,000, for the 1992–93 fiscal period, compared with budgeted expenses of $216,000 for 1991–92. The expense items in the 1992–93 budget are for administration of the marketing order, and include such major expenditure items as employee salaries, benefits, and travel; office operations expenses; and the purchase of shipping information. These proposed administrative expense items for 1992–93 are $10,000 higher than those for approved for 1991–92, reflecting inflationary pressures. However, overall proposed expenses for 1992–93 are $16,000 lower than those in approved for 1991–92, because the 1991–92 budget contained an additional budget item of $26,000 to fund committee travel expenses relating to member attendance at the Texas-Mexico Citrus Conference in 1992.

The committee also recommended a 1992–93 assessment rate of $0.003 per ⅘ bushel carton of fresh fruit shipped, compared with $0.0025 established for 1991–92. Assessment income for 1992–93 is expected to total $187,500, based on estimated shipments of 60,500,000 cartons of assessable fruit. Interest income for 1992–93 is estimated at $4,000, compared with $8,000 estimated for 1991–92. The estimated $8,500 deficit for 1992–93 would be drawn from the committee's reserve fund.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program begins on August 1, 1992, and marketing order requires that the rate of assessment for the fiscal period apply to all assessable Florida citrus fruit during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the committee. Therefore, it is found and determined that comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 905 be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 905.231 is added to read as follows:

§ 905.231 Expenses and assessment rate.

Expenses of $200,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.003 per ⅘ bushel carton of assessable fruit is established for the fiscal period ending July 31, 1993. Any unexpended funds from the 1991–92 fiscal period may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13415 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 911

[Docket No. FV–92–008]

Florida Limes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 911 for the 1992–93 fiscal year. Authorization of this budget would permit the Florida Lime Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–690–4244.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 911, regulating the handling of limes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable limes handled during the 1992–93 fiscal year, beginning April 1, 1992 through March 31, 1993. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later

than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Florida limes under this marketing order, and approximately 260 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of lime producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal year was prepared by the Florida Lime Administrative Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Florida limes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Florida limes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on January 8, 1992, and unanimously recommended a 1992–93 budget of $226,310. Last season's budget was $269,000. Major expense items include employee benefits ($21,500), salaries ($50,000), travel ($14,000), research ($49,060) and marketing activities ($45,000). The committee recommended a reduced budget for the 1992–93 fiscal year from the last fiscal year's budget based on decreases in expenditures for travel, research and contingencies. Specific marketing and production research project proposals will be forwarded for approval at a later date. Funds to be used for such activities will be held in an escrow account until the specific proposals receive Department approval.

The committee also unanimously recommended an assessment rate of $0.16 per bushel (55 pounds), a decrease of $0.02 from last season. Anticipated shipments of 1.4 million 55-pound bushels of limes would yield $224,000 in assessment income. This, along with $10,310 in interest income on savings would be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1991–92 fiscal period, estimated at $219,192, would be within the maximum permitted by the order of three fiscal periods' expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The fiscal year for the marketing order begins on April 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable limes handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 911 be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 911.231 is added to read as follows:

§ 911.231 Expenses and assessment rate.

Expenses of $226,310 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13422 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 915

[Docket No. FV–92–009PR]

Expenses and Assessment Rate for the Marketing Order Covering Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 915 for the 1992–93 fiscal year (April 1–March 31). These proposed expenditures and assessment rate are needed by the administrative committee established under this order to pay its expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the committee to perform its duties and the order to operate.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington,

DC 20090–6456; telephone: (202) 720–5331.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 915 [7 CFR Part 915] regulating the handling of avocados grown in South Florida. This agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, avocados are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable avocados handled during the 1992–93 fiscal year, beginning April 1, 1992 through March 31, 1993. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 handlers of Florida avocados subject to regulation under this marketing order, and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

This marketing order administered by the Department requires that the assessment rate for a particular fiscal year shall apply to all assessable avocados handled from the beginning of such year. An annual budget of expenses is prepared by the Avocado Administrative Committee (committee) and submitted to the Department for approval. The members of the committee are handlers and producers of avocados. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected shipments of avocados in bushels (55 pounds). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and assessment rate are usually acted upon by the committee shortly before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met January 8, 1992, and unanimously recommended a 1992–93 budget with expenditures of $180,000 and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados shipped under the marketing order. Budgeted expenditures for 1991–92 were $187,000, while the assessment rate was $0.16. Committee assessment income for 1992–93 is estimated at $176,000, based on shipments of 1,100,000 bushels of assessable avocados, and interest income is estimated at $7,000. The committee plans to place the projected $3,000 surplus in its reserve fund, which is currently well within the maximum authorized under the marketing order.

Major expenditure items in the committee's proposed budget for the 1992–93 fiscal year, compared with those budgeted in 1991–92 (in parentheses), are $130,750 ($143,000) for program administration, $45,250 ($34,000) for production research, and $5,000 ($10,000) for marketing research and development. The proposed program administration expenditures include employee salaries and benefits, office operations, a financial audit, marketing order enforcement, committee travel, a contingency reserve, and miscellaneous expenses. The proposed production research expenditures include $25,000 for water table research by Ghioto, Inc.; $2,750 for grove maintenance research; $2,500 for tree topping and thinning research; $10,000 for pollution biology research; and $5,000 for avocado variety research. The proposed marketing expenditures includes $5,000 for projects to be considered later by the committee.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 10 days is deemed appropriate for this action, because approval of the expenses and assessment rate must be expedited. The fiscal year for this marketing order begins on April 1, 1992, and the committee's expenses are incurred on a continuous basis.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 915 be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 915.231 is added to read as follows:

§ 915.231 Expenses and assessment rate.

Expenses of $180,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13421 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 921, 922, 923, and 924

[Docket No. FV–92–043PR]

Proposed 1992–93 Fiscal Year Expenditures and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates for the 1992–93 fiscal year (April 1–March 31) under Marketing Order Nos. 921, 922, 923 and 924. These expenditures and assessment rates are needed by the marketing committees established under these marketing orders to pay marketing order expenses and collect assessments from handlers to pay those expenses. The proposed action would enable these committees to perform their duties and the orders to operate.

DATES: Comments must be received by June 19, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Candace J. Mintz, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 205–2829.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order Nos. 921 [7 CFR part 921] regulating the handling of fresh peaches grown in designated counties in Washington; 922 [7 CFR part 922] regulating the handling of apricots grown in designated counties in Washington; 923 [7 CFR part 923] regulating the handling of cherries grown in designated counties in Washington; and 924 [7 CFR part 924] regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Washington peaches, Washington apricots, Washington cherries, and Washington-Oregon prunes are subject to assessments. It is intended that the assessment rates as proposed herein will be applicable to all assessable Washington peaches, Washington apricots, Washington cherries, and Washington-Oregon prunes handled during the 1992–93 fiscal year (April 1–March 31). This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 65 handlers of Washington peaches, 59 handlers of Washington apricots, 63 handlers of Washington cherries, and 32 handlers of Washington-Oregon prunes subject to regulation under their respective marketing orders. In addition, there are about 890 Washington peach producers, 190 Washington apricot producers, 1,100 Washington cherry producers and 350 Washington-Oregon prune producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the U.S. Department of Agriculture (Department), require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted

upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Stone Fruit Executive Committee (SFEC) met on January 30, 1992, and unanimously recommended 1992–93 fiscal year expenditures and assessment rates for each of these marketing orders. The SFEC is made up of officers of the four stone fruit marketing committees established under these orders. The SFEC is authorized to take this action under the by-laws of the stone fruit marketing committees. The SFEC's recommendations are based on preseason projections of 1992 season shipments, expenses, and reserve fund levels under these orders.

The proposed 1992–93 budgeted expenditures for these marketing orders are higher than those for 1991–92. Most of the higher expenditures reflect salary increases and the addition of a new line item, "Contingency." Contingency funds would be used for payment of accrued vacation and/or sick leave when an employee is terminated or if any of the committees leave the joint office management. The assessment rates for the 1992 season however, remained constant. In addition, each stone fruit committee has adequate reserves to fund any expenditures in excess of income for 1992–93.

The proposed expenditures are all for administration of these orders, except for cherry market development activities. Administrative expenses include those for salaries, travel, and office operations. The stone fruit marketing committees share office expenses, based on an agreement among the committees.

For the Washington Fresh Peach Marketing Committee, the SFEC recommended 1992–93 expenditures of $23,578 and an assessment rate of $3.00 per ton of peaches shipped under M.O. 921. In comparison, 1991–92 budgeted expenditures were $21,394 and the assessment rate was $3.00 per ton.

For the Washington Apricot Marketing Committee, the SFEC recommended 1992–93 expenditures of $8,403 and an assessment rate of $4.00 per ton of apricots shipped under M.O. 922. In comparison, 1991–92 budgeted expenditures were $7,760 and the assessment rate was $4.00 per ton.

For the Washington Cherry Marketing Committee, the SFEC recommended 1992–93 expenditures of $112,482 and an assessment rate of $5.00 per ton of cherries shipped under M.O. 923. In comparison, 1991–92 budgeted expenditures were $104,130 and the assessment rate was $5.00 per ton.

For the Washington-Oregon Fresh Prune Marketing Committee, the SFEC recommended 1992–93 expenditures of $18,287 and an assessment rate of $3.00 per ton of prunes shipped under M.O. 924. In comparison, 1991–92 budgeted expenditures were $18,115 and the assessment rate was $3.00 per ton.

This proposed rule provides that comments must be received by June 8, 1992. Extending the comment period until that date will allow all four stone fruit marketing committees to meet and make any necessary adjustments in their proposed 1992–93 expenses and assessment rates prior to issuance of a final rule. The peach, apricot, and cherry committees plan to meet during the second week in May and the prune committee during the fourth week of May to review 1992 season crop and market conditions for these fruits.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Parts 921, 922, 923, and 924

Apricots, Cherries, Marketing agreements, Peaches, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 921, 922, 923 and 924 be amended as follows:

1. The authority citation for 7 CFR parts 921, 922, 923 and 924 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 921.231 is added to read as follows:

§ 921.231 Expenses and assessment rate.

Expenses of $23,578 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $3.00 per ton of assessable peaches is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new section 922.231 is added to read as follows:

§ 922.231 Expenses and assessment rate.

Expenses of $8,403 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $4.00 per ton is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

4. A new § 923.232 is added to read as follows:

§ 923.232 Expenses and assessment rate.

Expenses of $112,482 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $5.00 per ton is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

5. A new § 924.232 is added to read as follows:

§ 924.232 Expenses and assessment rate.

Expenses of $18,287 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $3.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13417 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 958

[Docket No. FV-92-059]

Idaho-Eastern Oregon Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 958 for the 1992–93 fiscal period (July 1, 1992 through June 30 1993). Authorization of this budget would permit the Idaho-Eastern Oregon Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 130 and Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties of Idaho, and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non–major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, onions are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable onions handled during the 1992–93 fiscal period, beginning July 1, 1992 through June 30, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Idaho-Eastern Oregon onions under this marketing order, and approximately 450 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Idaho-Eastern Oregon onion producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the Idaho-Eastern Oregon Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon onions. Because that rate will be applied to actual shipments, it must be estimated at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met March 24, 1992, and unanimously recommended a 1992–93 budget of $954,312, $62,747 more than the previous year. Major increases are in the Committee expenses, management salary, office salaries, miscellaneous, promotion/advertising, and contingency categories, plus the addition of a compliance survey category.

The Committee also unanimously recommended an assessment rate of $0.11 per hundredweight, $0.01 less than last season. This rate, when applied to anticipated shipments of 7,600,000 hundredweight, would yield $836,000 in assessment income. This, along with $30,000 in interest income and $88,312 from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $800,000 to $900,000, would be within the maximum permitted by the order of one fiscal period's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program begins on July 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to

all assessable Idaho-Eastern Oregon onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 958 be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 958.236 is added to read as follows:

§ 958.236 Expenses and assessment rate.

Expenses of $954,312 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.11 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1993. Unexpended funds from the 1991–92 fiscal period may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13420 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 985

[FV–92–045PR]

Expenses and Assessment Rate for Spearmint Oil Produced in the Far West

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 985 for the 1992–93 marketing year established under the spearmint oil marketing order. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Spearmint Oil Administration Committee (Committee), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program and to facilitate program operations. An annual budget of expenses is prepared by the Committee and submitted to the Department of Agriculture (Department) for approval.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985) regulating the handling of spearmint oil produced in the Far West. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, spearmint oil is subject to assessments. It is intended that the assessment rate will be applicable to all assessable spearmint oil handled during the 1992–93 fiscal year, beginning June 1, 1992, through May 31, 1993. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small equity orientation and compatibility.

There are approximately 9 handlers of spearmint oil produced in the Far West who are subject to regulation under the spearmint oil marketing order and approximately 253 producers of spearmint oil in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable spearmint oil handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are producers of the regulated spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected

persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of spearmint oil. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay their expenses.

The Committee met on February 13, 1992, and unanimously recommended 1992–93 marketing order expenditures of $183,972 and an assessment rate of $0.08 per pound of spearmint oil. Assessment income for the 1992–93 marketing year is estimated at $166,000 based on shipments of 2,075,000 pounds of spearmint oil. Additionally, interest and incidental income for the 1992–93 marketing year is estimated at $10,000. In comparison, the 1991–92 marketing year budgeted expenditures were $199,000 and the assessment rate was $0.08 per pound of spearmint oil.

Major expenditure categories in the 1992–93 budget are $72,000 for program administration, $89,972 for salaries, and $22,000 for Committee travel and compensation. Comparable budgeted expenditures for the 1991–92 marketing year were $86,100, $90,600, and $22,000, respectively.

The Committee may expend operational reserve funds of $7,972 to meet budgeted expenses and additional reserve funds may be used to meet any deficit in assessment income. Also, any unexpected funds may be carried to the next marketing year as a reserve.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows.

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new section 985.312 is proposed to be added as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

§ 985.312 Expenses and assessment rate.

Expenses of $183,972 by the Spearmint Oil Administrative Committee are authorized and an assessment rate payable by each handler, in accordance with section 985.41, is established at $0.08 per pound of salable spearmint oil for the 1992–93 marketing year ending May 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13423 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 998

[Docket No. FV–92–051]

Proposed Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures for administration and indemnification, establish an assessment rate, and authorize continuation of an indemnification reserve under Marketing Agreement 146 for the 1992–93 crop year (July 1, 1992, through June 30, 1993). The proposal is needed for the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay these expenses, and settle indemnification claims during the 1992–93 crop year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–6862.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments, and deductible type insurance for 1992–93 indemnification expenses. This proposed rule would authorize expenditures and establish an assessment rate for the Peanut Administrative Committee for the fiscal period beginning July 1, 1992. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 70 handlers of peanuts covered under the peanut marketing agreement, and approximately 47,000 producers in the 16 States covered under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and a majority of producers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received by handlers from July 1, 1992. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The Committee met on March 4–5, 1992, and unanimously recommended 1992–93 crop year administrative expenses of $1,042,000 and an administrative assessment rate of $0.57 per net ton of assessable farmers' stock peanuts received by handlers. In comparison, 1991–92 crop year budgeted administrative expenditures were $1,009,258, and the administrative assessment rate was $0.54 per ton.

Administrative budget items for 1992–93 which have increased compared to those budgeted for 1991–92 (in parentheses) are: Executive salaries, $138,364 ($131,775); clerical salaries, 158,366 ($140,000); field representatives salaries, $266,420 ($251,352); payroll taxes, $46,850 ($42,873); employee benefits, $147,000 ($133,500); Committee members travel, $32,000 ($30,000); field representative travel, $107,000 ($95,000); insurance and bonds, $7,500 ($6,500); office rent and parking, $54,000 ($51,000); repairs and maintenance agreements, $6,000 ($4,000); and audit fees, $8,000 ($7,000). Items which have decreased compared to those budgeted for 1991–92 (in parentheses) are: Furniture and equipment, $4,000 ($15,000); office supplies and stationery, $14,000 ($24,000); postage and mailing, $13,000 ($24,000); and employee bonus for 1990 claims work, $0 ($14,258). All other items are budgeted at least year's amounts. The administrative budget includes $9,000 for contingencies.

The Committee also unanimously recommended 1992 crop indemnification expenses of up to $9,000,000 and an indemnification assessment of $2.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. The $9,000,000 of indemnification coverage to be provided on 1992 crop peanuts includes $5,000,000 in excess loss insurance to be purchased by the Committee.

The total recommended assessment rate is $2.57 per ton of assessable peanuts ($0.57 for administrative and $2.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,828,070 would yield $1,042,000 for program administration and $3,656,140 for indemnification. The indemnification amount, when added to expected cash carry over from 1991–92 indemnification operations of $9,136,000, would provide $12,792,140, which should be adequate for the 1992 fund, and to maintain an adequate reserve.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact no a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 crop year for the program begins on July 1, 1992, and the marketing agreement requires that the rate of assessment for the crop year apply to all assessable peanuts handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 998 be amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 998.405 is added to read as follows:

§ 998.405 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1992, shall be in the amount of $1,042,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee not to exceed $9,000,000 for indemnification payments, pursuant to the terms and conditions of indemnification applicable to the 1992 crop, effective July 1, 1992, are authorized.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of $2.57 per net ton of farmers' stock peanuts received or acquired other

than from those described in §§ 998.31 (c) and (d). A total of $0.57 shall be for administrative expenses and a total of $2.00 shall be for indemnification. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate not expended in providing indemnification benefits on 1992 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13418 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

Standard Design Certification Rulemaking Procedures; Public Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing a public workshop concerning the procedures to be followed in the first design certification rulemaking proceeding. To facilitate understanding of the issues concerning the establishment of design certification rulemaking procedure, the Commission is making available to the public a paper (SECY–92–170) prepared by the Office of the General Counsel (OGC) which provides a preliminary identification and assessment of important issues related to procedures for design certification rulemaking proceedings. Advance notice of desire to attend the workshop is requested. A 30-day period following the workshop to submit written comments on issues relating to design certification rulemaking procedures is also being provided. Following this workshop and receipt of any written comments the Commission will establish the procedures to be used in the first design certification rulemaking proceeding in the notice of proposed rulemaking (NPR) for that proceeding.

DATES: The workshop will be held on July 20, 1992. Notification of intent to attend the workshop should be received no later than July 1, 1992. Written comments on the topics discussed at the workshop should be received by August 19, 1992.

ADDRESSES: The workshop will be held at the Capitol Hyatt, 400 New Jersey Ave. NW., Washington, DC. Request for copies of the OGC paper (SECY–92–170), NUMARC's submission and OCRE comments, and notification of intent to attend the workshop should be sent to Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Send post-workshop comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Deliver post-workshop comments to: The Office of the Secretary, One White Flint North, 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received and the transcript of the workshop may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC, between the hours of 8:45 a.m. and 5:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504–1639.

SUPPLEMENTARY INFORMATION:

SUPPLEMENTARY INFORMATION

Introduction

10 CFR part 52 established general procedures and requirements for certification of standard nuclear power plant designs through rulemaking. Under part 52, the public will have an opportunity to submit written comments on the proposed design certification rule, as required by the Administrative Procedure Act (APA). However, part 52 goes beyond the requirements of the APA by providing in a design certification rulemaking the opportunity to request a hearing before an Atomic Safety and Licensing Board. Although hearings in an NRC rulemaking are not unprecedented, e.g., the rulemaking associated with the proposed adoption of the Generic Environmental Statement on Mixed Oxide Fuel (GESMO) (see 40 FR 53056; November 14, 1975, 41 FR 1133; January 5, 1976), the NRC has had little experience with rulemaking hearings.

The Commission has received applications for standard design certifications under 10 CFR part 52 for the GE Nuclear Energy (GE) Advance Boiling Water Reactor (ABWR) (57 FR 9749; March 20, 1992) and the ABB Combustion Engineering Nuclear Power (CE) System 80+ (56 FR 21395; May 8, 1991, modified, 56 FR 23602; May 22, 1991).The NRC also expects to receive a design certification application from Westinghouse Electric (Westinghouse) for the AP–600 in early summer 1992.

In anticipation of the first design certification rulemaking, the Commission directed OGC to prepare a preliminary paper which identifies and analyzes the major procedural steps and associated issues for the notice of rulemaking for the initial design certification proceedings. The OGC paper (SECY–92–170) was prepared after consideration of proposed rulemaking procedures submitted by NUMARC, and comments on NUMARC's proposals provided by OCRE [1]. The Commission now wishes to receive comments on OGC's preliminary paper from the public and the industry, and is making OGC's paper, NUMARC's submission [2], and OCRE's comments available to the public.

The Commission will hold a workshop to provide for public discussion of the significant issues that should be considered in establishing design certification rulemaking procedures, and to provide an opportunity for the public to present their views on design certification rulemaking procedures. In addition, the Commission is providing a 30-day period after the workshop for the public to submit written comments on certification rulemaking procedures. More detailed information will be mailed to all individuals and organizations who notify NRC of their intent to attend and to others who request it.

Following the workshop and receipt of any written comments, the Commission will establish the procedures to be followed in the design certification proceeding in the notice of proposed rulemaking (NPR) for that proceeding.

A tentative agenda and structure for the conduct of the workshop are set forth below. A final agenda and description of the workshop will be provided to all individuals and

[1] NUMARC's and OCRE's submissions are attached to OGC's paper, SECY–92–170.

[2] The Commission is not requesting public comments on Enclosure 2 of the NUMARC submission, "Part 52 Implementation: General Principles," nor will the workshop discuss Enclosure 2 of the NUMARC submission, since that enclosure discusses substantive aspects of design certification rather than procedures for the conduct of design certification rulemaking proceedings.

organizations who notify the NRC of their intent to attend the workshop and to others who request it.

Tentative Workshop Agenda

8–9 a.m. Registration
9–9:05 a.m. Welcome
9:05–9:45 a.m. Address: Chairman Selin
9:45–10 a.m. Break
10–10:10 a.m. Brief description of design certification under 10 CFR part 52
10:10–10:12 a.m. Introduction of Panel Members
10:12–12 p.m. Panel Discussion, Session 1
- Public Comment Hearing Request Period
  - Adequacy of 90—day period
  - Concurrent Period for Submission of Written Comments and Requests for Hearings
- Threshold for Informal Hearing Request
  - Desirability of Threshold for Requesting an Informal Hearing
  - Criteria for Requesting an Informal Hearing
  - Who makes Decision on Informal Hearing Request: Commission or Licensing Board?

12–1 p.m. Lunch
1–2:45 p.m. Panel Discussion, Session 2
- Scope of Licensing Board Authority in Informal Hearing
  - "Limited Magistrate," "Full Magistrate," or "Initial Decisionmaker"
  - Sua Sponte Authority of the Licensing Board
- Conduct of Informal Hearing
  - Oral Presentations; Questions by Licensing Board
  - Role and Responsibilities of the Commenting parties, the Applicant, and the NRC Staff

2:45–3 p.m. Break
3–4:45 p.m. Panel discussion, Session 3
- Requests for Additional Hearing Procedures and Formal Hearings
- Use of, and Access to, Proprietary Portions of the Design Certification Application
- Separation of Functions and *EX PARTE* Limitations
- Negotiated Rulemaking

4:45–4:55 p.m. Break
4:55–5:15 p.m. Questions from audience; other topics which panelists wish to discuss
5:15–5:25 p.m. Panelists' recommendations
5:25–5:30 p.m. Closing remarks
5:30 p.m. Adjournment

Tentative Workshop Structure

A "roundtable panel discussion" is currently being considered for the workshop. The panelists will be chosen by the NRC to represent a wide range of interests, in order to assure that a broad perspective is obtained from the public on the issues associated with establishing design certification rulemaking procedures. The NRC is arranging to have the following organizations represented on the panel: An individual from OGC and an individual representing the NRC Staff, a representative from the nuclear industry, a representative from the U.S. Department of Energy (DOE), three public interest groups, and an individual representing the states. A moderator will preside over the panel discussion.

The panel discussions will be divided into three sessions for administrative purposes. Before the first session, an OGC representative will provide a brief overview of design certification under part 52. Panel discussion on each topic would begin with a concise description by OGC of the topic based upon OGC's paper. Each panelist would then have up to two minutes to present a concise statement of position. Thereafter, there would be a general dialogue between the panelists on the topic. At least five minutes before the time allotted to the topic expires, the moderator would ask for questions from the audience, or read questions from the audience which are presented in written form. Cards will be provided to the audience for written questions, which will be periodically collected and provided to the moderator.

Following the final panel discussion session, an opportunity will be provided for the audience to raise any other matters not discussed by the panel, or to ask further questions of the panel on issues previously discussed in the panel sessions. Each panelist (except the OGC representative) will then be afforded a brief (approximately two minute) opportunity to present final recommendations.

Other Information

A final agenda and list of panel members will be available two weeks before the workshop and will be mailed to all individuals and organizations who notify the NRC of their intent to attend the workshop, and to others who request it.

A transcript will be made of the workshop, which will be available for public inspection in the NRC Public Document Room five days after the workshop.

Dated at Rockville, MD, this 2d day of June, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–13409 Filed 6–8–92; 8:45 am]

BILLING CODE 7590–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 700

Definitions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On April 23, 1992, the NCUA issued a proposed revision to its regulations defining "risk assets." The proposed rule was published in the **Federal Register** on May 1, 1992 (see 57 FR 18836). The NCUA Board requested that comments on the proposed rule be submitted on or before June 1, 1992. Due to requests made, the Board has decided to reopen the comment period. All comments received on or before June 30, 1992, will be considered by NCUA.

DATES: Comments must be submitted by June 30, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, or Kimberly A. Iverson, Federal Program Officer, Office of Examination and Insurance at the above address, or telephone (202) 682–9640.

By the National Credit Union Administration Board on June 4, 1992.

Becky Baker,

Secretary of the Board.

[FR Doc. 92–13518 Filed 6–8–92; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–167–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes, which would have required the implementation of a corrosion

prevention and control program. That proposal was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes; these incidents have jeopardized the airworthiness of the affected airplanes. This action revises the proposed rule by including an optional procedure that would require the accomplishment of specific inspection procedures, rather than a maintenance program change; and by eliminating certain proposed reporting and other administrative requirements. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to the problems associated with corrosion.

DATES: Comments must be received by July 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 90–NM–167–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications, C1–HDR (54–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90–NM–167–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 90–NM–167–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to add an airworthiness directive (AD) that is applicable to Model DC–10 series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 30, 1990 (55 FR 49641). The NPRM would have required that operators revise their FAA-approved maintenance programs to include a corrosion prevention and control program as specified in McDonnell Douglas Document Number MDC K4607, "DC–10/KC–10 Corrosion Prevention and Control Document." That NPRM was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that have jeopardized the airworthiness of the affected airplanes. This condition, if not corrected, could degrade the structural capabilities of the affected airplanes.

Based on a review of the comments received in response to the notice, and extensive discussions both internally and with the regulated industry, the FAA has reconsidered the specific approach it previously had taken in addressing the identified unsafe condition. The FAA has become aware of two factors that necessitate providing an alternative to what was proposed:

1. In accordance with existing bilateral airworthiness agreements with foreign countries, the FAA recognizes that one of the purposes of this AD is to advise foreign authorities of the unsafe condition to which the proposed AD is addressed, and to provide them with guidance as to appropriate methods for correcting the unsafe condition. The original proposal would have required that operators revise their FAA-approved maintenance/inspection programs to include a corrosion prevention and control program. While such a programmatic approach may be effective for U.S. carriers, other countries do not regulate carriers in the same way. Specifically, foreign authorities may not have the same regulatory system of "approved maintenance programs" to use as the method for implementing the changes that would be required by the proposal. Since the AD is formulated to address a worldwide system for preventing unsafe levels of corrosion, the FAA considers that it is appropriate to include provisions for addressing the corrosion problem on a task-by-task basis. Accordingly, including the proposed AD a requirement to "perform the corrosion tasks" is a more appropriate method for advising the foreign authorities of the necessary corrective action.

2. While the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of FAR Part 125 by Section 125.1. Because the applicability of the rule would include all Model DC–10 series airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not have been able to comply with the AD as originally proposed. Under these circumstances, operators of these airplanes would have been required to obtain approval of an alternative method of compliance that would enable them to comply with the proposed AD by accomplishing the specified corrosion tasks.

In order to address both of these issues, the FAA has revised the proposal specifically to provide an alternative for compliance by accomplishment of the corrosion tasks specified in the reference McDonnell Douglas document. The optional procedure of revising the maintenance program would remain available, however, to all operators operating under such programs.

In implementing the approach that was proposed in the originally issued

notice, the FAA now considers that there may be inherent in it unnecessary administrative burdens on affected operators, and inflexibility in the ability of operators to administer and fulfill the purpose of the program, which is to prevent unsafe levels of corrosion. The reasons prompting this reconsideration, as well as other changes in the proposed rule, are discussed below.

General Changes

The original notice proposed to require a change in operators' FAA-approved maintenance/inspection programs and to require submission of reports to the FAA Aircraft Certification Office (ACO) to ensure that changes were being implemented to the program in a way that fulfilled the objective of the AD, i.e., to maintain the airplane fleet at an acceptable level of corrosion (defined as Level 1). As explained previously, the FAA now considers it more appropriate, in some cases, to implement the program described in the Document by specific inspection requirements, rather than by mandating a program change; and to permit operators to avoid unnecessary recordkeeping requirements by allowing them the option of adopting a maintenance program change with the approval of the FAA.

The roles of the Principal Maintenance Inspector (PMI) and the Manager of the Los Angeles ACO have been revised with regard to the requirements of the proposed AD that are applicable to those operators having FAA-approved maintenance programs. Based on a review of general comments received in response to the original notice and internal discussion, the FAA now has determined that, for those affected operators, it is more appropriate for the PMI to serve as the primary point of FAA oversight for the actions regarding this proposed AD. Because the proposed corrosion prevention and control program is so integral to the maintenance/inspection programs of operators, and because the PMI normally has oversight for those maintenance/inspection programs, the FAA considers it appropriate to designate the PMI as the prime liaison for the mandated corrosion program as well. Doing so will eliminate any possibility of duplication of effort that otherwise could have occured on the part of the PMI and the ACO.

Therefore, the supplemental notice now would provide for the approval of certain revisions to the corrosion task repetitve inspection intervals and recordkeeping methods to be made by the PMI rather than the Manager of the Los Angeles ACO. The supplemental notice also would require that reports of determinations of Level 3 corrosion be submitted to the PMI rather than the ACO. These revisions to the proposal would permit the PMI's to continue to serve as the FAA's critical link with the operators; their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD.

The PMI will coordinate closely with the ACO when engineering issues arise. As a tool to define the responsibilities of the PMI's and to define the relations between the PMI and the ACO specifically with regard to this AD, the FAA is developing detailed internal guidance for the PMI's to consider when approving corrosion prevention and control programs and related actions as being in compliance with this proposed AD. (When completed, a copy of this guidance material will be placed in the Rules Docket related to this AD action.)

Information has been added to this supplemental notice (by means of a "Note") to clarify the cognizant FAA official (or office) who is responsible for the approval of inspection schedules and revisions to such schedules submitted by different operators, and to whom various reports must be submitted. The term "the FAA" has been substituted throughout this supplemental notice where previously references were made to specific FAA officials/offices. However, this term is defined differently for different operators, as follows:

1. For those operators who comply with the rule by accomplishing the corrosion tasks specified in the referenced McDonnell Douglas document (the task-by-task approach), "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)."

2. For those operators operating under FAR part 121 or 129 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)."

3. For those operators operating under FAR Part 91 or Part 125 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Specific Provisions of the Supplemental Notice

Paragraph (a) of the supplemental notice has been revised to set forth the compliance times for the initial "corrosion task" of each corrosion inspection area. These compliance times are extracted from the Document. In order to be consistent with what was originally proposed, the compliance times specified in paragraph (a) are measured from a date one year after the effective date of the final rule. Generally, operators would be required to complete the initial corrosion task before reaching the "implementation age (IA)" plus one "repetitive (R) interval" for the area, as detailed in the Document. The corrosion task would be required to be repeated at a time interval not to exceed the R interval for that area, as detailed in the Document.

Paragraph (a) of the supplemental notice includes paragraph (a)(1)(iv), which states that performance of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). While this provision is also consistent with the Document, the FAA recognizes that this may cause an undue hardship on some small operators. In those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule.

Paragraph A. of the original notice contained a "Note" to inform the public that all structure found corroded or cracked was required to be addressed in accordance with FAR part 43. Section 43.13, which is the relevant provision of part 43, requires that:

"* * * persons performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Adminstrator."

Since issuance of the original notice, the FAA has reconsidered this item and has determined that more specific and useful guidance as to the necessary action to be taken is set forth in the Document itself, within the definition of a "corrosion task." Therefore, this note has been revised to reference this portion of the Document and to emphasize the importance of these correction actions. The new note explains that a "corrosion task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well.

Paragraph (b) of the supplemental notice provides an optional method of complying with the proposed rule. In

lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document, or an equivalent program approved by the FAA.

In response to questions previously raised concerning recordkeeping and record retention requirements as they relate to the programmatic approach originally proposed [and retained in paragraph (b) of this supplemental notice], the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this supplemental notice, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each corrosion task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each corrosion task on each airplane. Once this cross-reference system has been established, this recording provision of Sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under § 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time a corrosion task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, sections 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and Section 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) (current status) of AD's and current inspection status be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed by operators regarding the recordkeeping obligations imposed by § 121.380 with regard to this proposed rule, the FAA has included in the supplemental notice certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (As discussed previously, the FAA is currently developing guidance material that will contain information to be considered by PMI's when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the supplemental notice provides for increasing a repetitive inspection interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the supplemental notice sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is found. A similar requirement was proposed in the originally issued notice; however, upon reconsideration, the FAA finds that the original notice was ambiguous as to which corrosion findings operators were required to report. This particular requirement has been changed to clarify that it is upon the "determination" of Level 3 corrosion (not merely the "finding" of it) that the operator must notify the FAA. Within 7 days after such determination is made, an operator would be required to accomplish one of the following actions:

1. submit a report of the determination to the FAA and complete the corrosion task in the affected area on the remainder of the operator's Model DC–10 fleet; or

2. submit a proposed schedule, for approval by the FAA, for performing the corrosion tasks in the affected area on the remainder of the operator's Model DC–10 fleet; or

3. submit date substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, if appropriate, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the corrosion tasks performed on the remainder of the operator's Model DC–10 fleet.

Paragraph (d)(2) of the supplemental notice specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model DC–10 fleet is detected in a timely manner.

Paragraph (d)(3) of the supplemental notice would require that, within the time schedule approved by the FAA, the operator must accomplish the corrosion tasks in the affected areas on the remaining airplanes in its Model DC–10 fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that an operator, upon finding corrosion exceeding Level 1 during repetitive inspection, adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of

corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that, if corrosion found is not considered representative of an operator's fleet, no further corrective action may be necessary, since a means to reduce corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (d). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the supplemental notice is similar to paragraph F. of the original notice in that it concerns adding airplanes to an operator's fleet and procedures that must be followed with regard to corrosion prevention and control. However, the applicability of paragraph (f) of the supplemental notice has been expanded to include not only air carrier operators, but all operators. The FAA has determined that the need to ensure that corrosion is prevented and controlled is equal for all Model DC–10 series airplanes, whether they are newly acquired by air carrier operators or other types of operators.

Additionally, proposed paragraph (f) differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The supplemental notice has been clarified to state that the specified procedures would be required to be accomplished before any operator places into service any airplane subject to the requirements of the proposed rule.

Paragraph (g) of the supplemental notice would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to the McDonnell Douglas Corporation. A note has been added to this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

General Comments Received in Response to the Original Notice

One commenter contends that the proposed program requires too much phased maintenance, which is contradictory to the Aging Aircraft Task Force's (AATF) recommendations to minimize phased maintenance. The commenter suggests that the FAA reevaluate and adjust the proposed inspection intervals to minimize phased maintenance. The FAA does not concur. The Document provides a baseline corrosion prevention and control program which establishes a "minimum" standard. Affected operators would have the opportunity to adjust maintenance intervals by obtaining FAA approval of deviations from the specific program defined in the Document.

One commenter notes that there are 15 corrosion tasks listed in the Document that are not airworthiness concerns; therefore, these tasks should be deleted from the requirements of the proposed rule. The FAA disagrees. Although the commenter may consider the referenced tasks as "not airworthiness concerns," the selection of the corrosion tasks specified in the Document is a product of a series of extensive group meetings, comprised of aviation industry and government experts. In each case, the group came to a consensus to include preventative procedures that would preclude the serious repairs required by findings of Level 3 corrosion, which is definitely an airworthiness concern. The corrosion tasks referred to by the commenter are those entailing such preventative procedures.

One foreign operator questions the procedure for submitting reports from airlines operating under FAA registration and European maintenance. In order to be in phase with the reporting requirements to PMI's this operator asks if the reports should be copied to the Brussels or Frankfurt FAA maintenance base. The FAA notes that procedures currently exist in which operators of U.S.-registered, foreign-maintained aircraft submit the required reports to the local cognizant regulatory authority.

Textual Changes to the Proposal

References to the cited McDonnel Douglas Document have been revised to read, "Revision 1," which was issued in December 1990. The FAA has reviewed and approved this revision, which was issued subsequent to the issuance of the original notice. Revision 1 merely provides further clarification and editorial changes to the original issue of the Document. The supplemental notice cites Revision 1 as the appropriate source for service information.

References to the program have been changed to read, "corrosion prevention and control program," rather than merely a "corrosion control program." This phrasing is more descriptive of the addressed program and is consistent with the applicable phrasing in the Document.

The format of the supplemental notice has been restructured to be consistent with the standard **Federal Register** style.

Since the changes discussed above address a number of issues that were not specifically addressed in the originally proposed rule, the comment period has been reopened for 45 days to solicit comments from the public on these changes.

There are approximately 423 Model DC–10 series airplanes of the affected design in the worldwide fleet. It is estimated that 244 airplanes of U.S. registry would be affected by this AD. It would take approximately 16 work hours per area to accomplish the inspection of each of the 59 areas called out in the McDonnell Douglas

Document. The average labor cost would be $55 per work hour. The total cost to inspect each airplane would be $51,920. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $12,668,480.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilites among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Polices and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, postive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 90–NM–167–AD.

Applicability: All Model DC–10 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: This AD references McDonnell Douglas Document Number MDC K4607, "DC–10/KC–10 Corrosion Prevention and Control Document." Revision 1, dated December 1990, for corrosion tasks, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in that Document. Where there are differences between the AD and the Document, the AD prevails.

Note: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards Office."

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in section 4 of McDonnell Douglas Document Number MDC K4607, "DC–10/KC–10 Corrosion Prevention and Control Document," Revision 1, dated December 1990 (hereafter refered to as "the Document"), in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note: A "corrosion task," as defined in the Section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note: Corrosion tasks complete in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR § 43.13.

(1) Complete the initial corrosion task of each "corrosion inspection area" defined in section 4 of the Document as follows:

(i) For aircraft areas that have not yet reached the "implementation age" (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For aircraft areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the R interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one R interval, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) In all cases, accomplishment of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each "corrosion inspection area" must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR § 91.417 or § 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days.

Note: Notwithstanding section 2.1, paragraph 14, of the Document, any extensions to an IA must be approved in accordance with paragraph (h) of this AD.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model DC–10 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model DC–10 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note: Notwithstanding the provisions of Section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model DC-10 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have been previously maintained in accordance with this AD, the first corrosion task for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas Corporation in accordance with section 5 of the Document.

Note: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspections results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Issued in Renton, Washington, on May 14, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13503 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-166-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, Including Model DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 series airplanes, including Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) series airplanes, which would have required the implementation of a corrosion prevention and control program. That proposal was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes; these incidents have jeopardized the airworthiness of the affected airplanes. This action revises the proposed rule by including an optional procedure that would require the accomplishment of specific inspection procedures, rather than a maintenance program change; and by eliminating certain proposed reporting and other administrative requirements. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to the problems associated with corrosion.

DATES: Comments must be received by July 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 90-NM-166-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, Cl-HDR (54-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Airframe Branch, ANM-120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5323; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-NM-166-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 90-NM-166-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to add an airworthiness directive (AD) that

is applicable to Model DC–9 series airplanes, including Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 30, 1990 (55 FR 49638). That NPRM would have required that operators revise their FAA-approved maintenance programs to include a corrosion prevention and control program as specified in McDonnell Douglas Document Number MDC K4606, "DC–9/MD–80 Corrosion Prevention and Control Document." That NPRM was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that have jeopardized the airworthiness of the affected airplanes. This condition, if not corrected, could degrade the structural capabilities of the affected airplanes.

Based on a review of the comments received in response to the notice, and extensive discussions both internally and with the regulated industry, the FAA has reconsidered the specific approach it previously had taken in addressing the identified unsafe condition. The FAA has become aware of two factors that necessitate providing an alternative to what was proposed:

1. In accordance with existing bilateral airworthiness agreements with foreign countries, the FAA recognizes that one of the purposes of this AD action is to advise foreign authorities of the unsafe condition to which the proposed AD is addressed, and to provide them with guidance as to appropriate methods for correcting the unsafe condition. The original proposal would have required that operators revise their FAA-approved maintenance/inspection programs to include a corrosion prevention and control program. While such a programmatic approach may be effective for U.S. carriers, other countries do not regulate carriers in the same way. Specifically, foreign authorities may not have the same regulatory system of "approved maintenance programs" to use as the method for implementing the changes that would be required by the proposal. Since the AD is formulated to address a worldwide system for preventing unsafe levels of corrosion, the FAA considers that it is appropriate to include provisions for addressing the corrosion problem on a task-by-task basis. Accordingly, including in the proposed AD a requirement to "perform the corrosion tasks" is a more appropriate method for advising the foreign authorities of the necessary corrective action.

2. While the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of FAR part 125 by section 125.1. Because the applicability of the rule would include *all* Model DC–9 series airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not have been able to comply with the AD as originally proposed. Under these circumstances, operators of these airplanes would have been required to obtain approval of an alternative method of compliance that would enable them to comply with the proposed AD by accomplishing the specified corrosion tasks.

In order to address both of these issues, the FAA has revised the proposal specifically to provide an alternative for compliance by accomplishment of the corrosion tasks specified in the referenced McDonnell Douglas document. The optional procedure of revising the maintenance program would remain available, however, to all operators operating under such programs.

In implementing the approach that was proposed in the originally issued notice, the FAA now considers that there may be inherent in it unnecessary administrative burdens on affected operators, and inflexibility in the ability of operators to administer and fulfill the purpose of the program, which is to prevent unsafe levels of corrosion. The reasons prompting this reconsideration, as well as other changes in the proposed rule, as discussed below.

General Changes

The original notice proposed to require a change in operators' FAA-approved maintenance/inspection programs and to require submission of reports to the FAA Aircraft Certification Office (ACO) to ensure that changes were being implemented to the program in a way that fulfilled the objective of the AD, i.e, to maintain the airplane fleet at an acceptable level of corrosion (defined as Level 1). As explained previously, the FAA now considers it more appropriate, in some cases, to implement the program described in the Document by specific inspection requirements, rather than by mandating a program change; and to permit operators to avoid unnecessary recordkeeping requirements by allowing them the option of adopting a maintenance program change with the approval of the FAA.

The roles of the Principal Maintenance Inspector (PMI) and the Manager of the Los Angeles ACO have been revised with regard to the requirements of the proposed AD that are applicable to those operators having FAA-approved maintenance programs. Based on a review of general comments received in response to the original notice and internal discussions, the FAA now has determined that, for those affected operators, it is more appropriate for the PMI to serve as the primary point of FAA oversight for the actions regarding this proposed AD. Because the proposed corrosion prevention and control program is so integral to the maintenance/inspection programs of operators, and because the PMI normally has oversight for those maintenance/inspection programs, the FAA considers it appropriate to designate the PMI as the prime liaison for the mandated corrosion program as well. Doing so will eliminate any possibility of duplication of effort that otherwise could have occurred on the part of the PMI and the ACO.

Therefore, the supplemental notice now would provide for the approval of certain revisions to the corrosion task repetitive inspection intervals and recordkeeping methods to be made by the PMI rather than the Manager of the Los Angeles ACO. The supplemental notice also would require that reports of determinations of Level 3 corrosion be submitted to the PMI rather than the ACO. These revisions to the proposal would permit the PMI's to continue to serve as the FAA's critical link with operators; their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD.

The PMI will coordinate closely with the ACO when engineering issues arise. As a tool to define the responsibilities of the PMI's and to define the relationship between the PMI and the ACO specifically with regard to this AD, the FAA is developing detailed internal guidance for the PMI's to consider when approving corrosion prevention and control programs and related actions as being in compliance with this proposed AD. (When completed, a copy of this guidance material will be placed in the Rules Docket related to this AD action.)

Information has been added to this supplemental notice (by means of a "Note") to clarify the cognizant FAA official (or office) who is responsible for the approval of inspection schedules

and revisions to such schedules submitted by different operators, and to whom various reports must be submitted. The term "the FAA" has been substituted throughout this supplemental notice where previously references were made to specific FAA officials/offices. However, this term is defined differently for different operators, as follows:

1. For those operators who comply with the rule by accomplishing the corrosion tasks specified in the referenced McDonnell Douglas document (the task-by-task approach), "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)."

2. For those operators operating under FAR part 121 or 129 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)."

3. For those operators operating under FAR part 91 or part 125 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Specific Provisions of the Supplemental Notice

Paragraph (a) of the supplemental notice has been revised to set forth the compliance times for the initial "corrosion task" of each corrosion inspection area. These compliance times are extracted from the Document. In order to be consistent with what was originally proposed, the compliance times specified in paragraph (a) are measured from a date one year after the effective date of the final rule. Generally, operators would be required to complete the initial corrosion task before reaching the "implementation age (IA)" plus one "repetitive (R) interval" for the area, as detailed in the Document. The corrosion task would be required to be repeated at a time interval not to exceed the R interval for that area, as detailed in the Document.

Paragraph (a) of the supplemental notice includes paragraph (a)(1)(iv), which states that performance of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). While this provision is also consistent with the Document, the FAA recognizes that this may cause an undue hardship on some small operators. In those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule.

Paragraph A. of the original notice contained a "Note" to inform the public that all structure found corroded or cracked was required to be addressed in accordance with FAR part 43. Section 43.13, which is the relevant provision of Part 43, requires that:

"* * * persons performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator."

Since issuance of the original notice, the FAA has reconsidered this item and has determined that more specific and useful guidance as to the necessary action to be taken is set forth in the Document itself, within the definition of a "corrosion task." Therefore, this note has been revised to reference this portion of the Document and to emphasize the importance of these corrective actions. The new note explains that a "corrosion task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well.

Paragraph (b) of the supplemental notice provides an optional method of complying with the proposed rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document, or an equivalent program approved by the FAA.

In response to questions previously raised concerning recordkeeping and record retention requirements as they relate to the programmatic approach originally proposed (and retained in paragraph (b) of this supplemental notice), the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this supplemental notice, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each corrosion task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each corrosion task on each airplane. Once this cross-reference system has been established, this recording provision of Sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under Section 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time a corrosion task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, Sections 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and § 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph

121.380(a)(2) [current status of AD's and current inspection status] be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed by operators regarding the recordkeeping obligations imposed by Section 121.380 with regard to this proposed rule, the FAA has included in the supplemental notice certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (As discussed previously, the FAA is currently developing guidance material that will contain information to be considered by PMI's when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the supplemental notice provides for increasing a repetitive inspection interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the supplemental notice sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is found. A similar requirement was proposed in the originally issued notice; however, upon reconsideration, the FAA finds that the original notice was ambiguous as to which corrosion findings operators were required to report. This particular requirement has been changed to clarify that it is upon the "determination" of Level 3 corrosion (not merely the "finding" of it) that the operator must notify the FAA. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the corrosion task in the affected area on the remainder of the Model DC–9 series, DC–9–80 series, C–9 series, and MD–88 airplanes (hereafter referred to as "Model DC–9 series") in the operator's fleet; or

2. Submit a proposed schedule, for approval by the FAA, for performing the corrosion tasks in the affected area on the remainder of the operator's Model DC–9 series fleet; or

3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, if appropriate, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the corrosion tasks performed on the remainder of the operator's Model DC–9 series fleet.

Paragraph (d)(2) of the supplemental notice specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model DC–9 series fleet is detected in a timely manner.

Paragraph (d)(3) of the supplemental notice would require that, within the time schedule approved by the FAA, the operator must accomplish the corrosion tasks in the affected areas on the remaining airplanes in its Model DC–9 series fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that an operator, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that, if corrosion found is not considered representative of an operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (d). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the supplemental notice is similar to paragraph F. of the original notice in that it concerns adding airplanes to an operator's fleet and procedures that must be followed with regard to corrosion prevention and control. However, the applicability of paragraph (f) of the supplemental notice has been expanded to include not only air carrier operators, but all operators. The FAA has determined that the need to ensure that corrosion is prevented and controlled is equal for all Model DC–9 series airplanes, whether they are newly acquired by air carrier operators or other types of operators.

Additionally, proposed paragraph (f) differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The supplemental notice has been clarified to state that the specified procedures would be required to be

accomplished before any operator places into service any airplane subject to the requirements of the proposed rule.

Paragraph (g) of the supplemental notice would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to the McDonnell Douglas Corporation. A note has been added to this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

General Comments Received in Response to the Original Notice

One commenter contends that the proposed program requires too much phased maintenance, which is contradictory to the Aging Aircraft Task Force's (AATF) recommendations to minimize phased maintenance. The commenter suggests that the FAA reevaluate and adjust the proposed inspection intervals to minimize phased maintenance. The FAA does not concur. The Document provides a baseline corrosion prevention and control program which establishes a "minimum" standard. Affected operators would have the opportunity to adjust maintenance intervals by obtaining FAA approval of deviations from the specific program defined in the Document.

One commenter notes that there are 15 corrosion tasks listed in the Document that are not airworthiness concerns; therefore, these tasks should be deleted from the requirements of the proposed rule. The FAA disagrees. Although the commenter may consider the referenced tasks as "not airworthiness concerns," the selection of the corrosion tasks specified in the Document is a product of a series of extensive group meetings, comprised of aviation industry and government experts. In each case, the group came to a consensus to include preventative procedures that would preclude the serious repairs required by findings of Level 3 corrosion, which is definitely an airworthiness concern. The corrosion tasks referred to by the commenter are those entailing such preventative procedures.

One foreign operator questions the procedure for submitting reports from airlines operating under FAA registration and European maintenance. In order to be in phase with the reporting requirements to PMI's, this operator asks if the reports should be copied to the Brussels or Frankfurt FAA maintenance base. The FAA notes that procedures currently exist in which operators of U.S.-registered, foreign-maintained aircraft submit the required reports to the local cognizant regulatory authority.

Textual Changes to the Proposal

References to the cited McDonnell Douglas Document have been revised to read, "Revision 1," which was issued in December 1990. The FAA has reviewed and approved this revision, which was issued subsequent to the issuance of the original notice. Revision 1 merely provides further clarification and editorial changes to the original issue of the Document. The supplemental notice cites Revision 1 as the appropriate source for service information.

References to the program have been changed to read, "corrosion prevention and control program," rather than merely a "corrosion control program." This phrasing is more descriptive of the addressed program and is consistent with the applicable phrasing in the Document.

The format of the supplemental notice has been restructured to be consistent with the standard Federal Register style.

Since the changes discussed above address a number of issues that were not specifically addressed in the originally proposed rule, the comment period has been reopened for 45 days to solicit comments from the public on these changes.

There are approximately 1,655 Model DC-9 series airplanes, including Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) airplanes, of the affected design in the worldwide fleet. It is estimated that 1,016 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per area to accomplish the required actions. There are 99 areas called out in the McDonnell Douglas document, and for an average labor cost of $55 per manhour, the total cost to inspect each airplane would be $87,120. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $88,513,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 90-NM-166-AD.

Applicability: All Model DC-9 series airplanes, including Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: This AD references McDonnell Douglas Document Number MDC K4606, "DC-9/MD-80 Corrosion Prevention and Control Document," Revision 1, dated December 1990, for corrosion tasks, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in that Document. Where there are differences between the AD and the Document, the AD prevails.

Note: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the

cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Note: Throughout this AD, the term "Model DC–9 series" is used to refer to all McDonnell Douglas Model DC–9 series airplanes, including Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes.

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in section 4 of McDonnell Douglas Document Number MDC K4606, "DC–9/MD–80 Corrosion Prevention and Control Document," MDC K4607, Revision 1, dated December 1990 (hereafter referred to as "the Document"), in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note: A "corrosion task," as defined in the section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of the Document, the standards and procedures used must be acceptable to the Administator in accordance with FAR § 43.13.

(1) Complete the initial corrosion task of each "corrosion inspection area" defined in section 4 of the Document as follows:

(i) For aircraft areas that have not yet reached the "implementation age" (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For aircraft areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the R interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one R interval, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) In all cases, accomplishment of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each "corrosion inspection area" must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR § 91.417 or § 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days.

Note: Notwithstanding Section 2.1, paragraph 14, of the Document, any extensions to an IA must be approved in accordance with paragraph (h) of this AD.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accompish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model DC–9 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model DC–9 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note: Notwithstanding the provisions of Section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model DC–9 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas Corporation in accordance with Section 5 of the Document.

Note: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspections results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.* and have been assigned OMB Control Number 2120–0056.

Issued in Renton, Washington, on May 14, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13508 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90-NM-165-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-8 series airplanes, which would have required the implementation of a corrosion prevention and control program. That proposal was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes; these incidents have jeopardized the airworthiness of the affected airplanes. This action revises the proposed rule by including an optional procedure that would require the accomplishment of specific inspection procedures, rather than a maintenance program change; and by eliminating certain proposed reporting and other administrative requirements. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to the problems associated with corrosion.

DATES: Comments must be received by July 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 90-NM-165-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Cecil, Airframe Branch, ANM-120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5322; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receiopt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-NM-165-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 90-NM-165-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to add an airworthiness directive (AD) that is applicable to Model DC-8 series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 30, 1990 (55 FR 49634). That NPRM would have required that operators revise their FAA-approved maintenance programs to include a corrosion prevention and control program as specified in McDonnell Douglas Document Number MDC K4608, "DC-8 Corrosion Prevention and Control Document." That NPRM was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that have jeopardized the airworthiness of the affected airplanes. This condition, if not corected, could degrade the structural capabilities of the affected airplanes.

Based on a review of the comments received in response to the notice, and extensive discussions both internally and with the regulated industry, the FAA has reconsidered the specific approach it previously had taken in addressing the identified unsafe condition. The FAA has become aware of two factors that necessitate providing an alternative to what was proposed:

1. In accordance with existing bilateral airworthiness agreements with foreign countries, the FAA recognizes that one of the purposes of this AD action is to advise foreign authorities of the unsafe condition to which the proposed AD is addressed, and to provide them with guidance as to appropriate methods for correcting the unsafe condition. The original proposal would have required that operators revise their FAA-approved maintenance/inspection programs to include a corrosion prevention and control program. While such a programmatic approach may be effective for U.S. carriers, other countries do not regulate carriers in the same way. Specifically, foreign authorities may not have the same regulatory system of "approved maintenance programs" to use as the method for implementing the changes that would be required by the proposal. Since the AD is formulated to address a worldwide system for preventing unsafe levels of corrosion, the FAA considers that it is appropriate to include provisions for addressing the corrosion problem on a task-by-task basis. Accordingly, including in the proposed AD a requirement to "perform the corrosion tasks" is a more appropriate method for advising the foreign authorities of the necessary corrective action.

2. While the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of FAR part 125 by § 125.1. Because the applicability of the rule would include all Model DC-8 series airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not have been able to comply with the AD as originally proposed.

Under these circumstances, operators of these airplanes would have been required to obtain approval of an alternative method of compliance that would enable them to comply with the proposed AD by accomplishing the specified corrosion tasks.

In order to address both of these issues, the FAA has revised the proposal specifically to provide an alternative for compliance by accomplishment of the corrosion tasks specified in the referenced McDonnell Douglas document. The optional procedure of revising the maintenance program would remain available, however, to all operators operating under such programs.

In implementing the approach that was proposed in the originally issued notice, the FAA now considers that there may be inherent in it unnecessary administrative burdens on affected operators, and inflexibility in the ability of operators to administer and fulfill the purpose of the program, which is to prevent unsafe levels of corrosion. The reasons prompting this reconsideration, as well as other changes in the proposed rule, are discussed below.

General Changes

The original notice proposed to require a change in operators' FAA-approved maintenance/inspection programs and to require submission of reports to the FAA Aircraft Certification Office (ACO) to ensure that changes were being implemented to the program in a way that fulfilled the objective of the AD, i.e., to maintain the airplane fleet at an acceptable level of corrosion (defined as Level 1). As explained previously, the FAA now considers it more appropriate, in some cases, to implement the program described in the Document by specific inspection requirements, rather than by mandating a program change; and to permit operators to avoid unnecessary recordkeeping requirements by allowing them the option of adopting a maintenance program change with the approval of the FAA.

The roles of the Principal Maintenance Inspector (PMI) and the Manager of the Los Angeles ACO have been revised with regard to the requirements of the proposed AD that are applicable to those operators having FAA-approved maintenance programs. Based on a review of general comments received in response to the original notice and internal discussions, the FAA now has determined that, for those affected operators, it is more appropriate for the PMI to serve as the primary point of FAA oversight for the actions regarding this proposed AD. Because the proposed corrosion prevention and control program is so integral to the maintenance/inspection programs of operators, and because the PMI normally has oversight for those maintenance/inspection programs, the FAA considers it appropriate to designate the PMI as the prime liaison for the mandated corrosion program as well. Doing so will eliminate any possibility of duplication of effort that otherwise could have occurred on the part of the PMI and the ACO.

Therefore, the supplemental notice now would provide for the approval of certain revisions to the corrosion task repetitive inspection intervals and recordkeeping methods to be made by the PMI rather than the Manager of the Los Angeles ACO. The supplemental notice also would require that reports of determinations of Level 3 corrosion be submitted to the PMI rather than the ACO. These revisions to the proposal would permit the PMI's to continue to serve as the FAA's critical link with the operators; their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD.

The PMI will coordinate closely with the ACO when engineering issues arise. As a tool to define the responsibilities of the PMI's and to define the relationship between the PMI and the ACO specifically with regard to this AD, the FAA is developing detailed internal guidance for the PMI's to consider when approving corrosion prevention and control programs and related actions as being in compliance with this proposed AD. (When completed, a copy of this guidance material will be placed in the Rules Docket related to this AD action.)

Information has been added to this supplemental notice (by means of a "Note") to clarify the cognizant FAA official (or office) who is responsible for the approval of inspection schedules and revisions to such schedules submitted by different operators, and to whom various reports must be submitted. The term "the FAA" has been substituted throughout this supplemental notice where previously references were made to specific FAA officials/offices. However, this term is defined differently for different operators, as follows:

1. For those operators who comply with the rule by accomplishing the corrosion tasks specified in the referenced McDonnell Douglas document (the task-by-task approach), "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)."

2. For those operators operating under FAR part 121 or 129 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)."

3. For those operators operating under FAR part 91 or part 125 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Specific Provisions of the Supplemental Notice

Paragraph (a) of the supplemental notice has been revised to set forth the compliance times for the initial "corrosion task" of each corrosion inspection area. These compliance times are extracted from the Document. In order to be consistent with what was originally proposed, the compliance times specified in paragraph (a) are measured from a date one year after the effective date of the final rule. Generally, operators would be required to complete the initial corrosion task before reaching the "implementation age (IA)" plus one "repetitive (R) interval" for the area as detailed in the Document. The corrosion task would be required to be repeated at a time interval not to exceed the R interval for that area, as detailed in the Document.

Paragraph (a) of the supplemental notice includes paragraph (a)(1)(iv), which states that performance of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). While this provision is also consistent with the Document, the FAA recognizes that this may cause an undue hardship on some small operators. In those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule.

Paragraph A. of the original notice contained a "Note" to inform the public that all structure found corroded or cracked was required to be addressed in accordance with FAR part 43. Section 43.13, which is the relevant provision of part 43, requires that:

"* * * persons performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator."

Since issuance of the original notice, the FAA has reconsidered this item and has determined that more specific and useful guidance as to the necessary action to be taken is set forth in the Document itself, within the definition of a "corrosion task." Therefore, this note has been revised to reference this portion of the Document and to emphasize the importance of these corrective actions. The new note explains that a "corrosion task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well.

Paragraph (b) of the supplemental notice provides an optional method of complying with the proposed rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document, or an equivalent program approved by the FAA.

In response to questions previously raised concerning recordkeeping and record retention requirements as they relate to the programmatic approach originally proposed [and retained in paragraph (b) of this supplemental notice], the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this supplemental notice, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each corrosion task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each corrosion task on each airplane. Once this cross-reference system has been established, this recording provision of 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under § 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of parts 91 and 121 requires most of the recording that would result from this proposed AD. Each time a corrosion task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, parts 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and § 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in § 121.380(a)(2) [current status of AD's and current inspection status] be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed by operators regarding the recordkeeping obligations imposed by § 121.380 with regard to this proposed rule, the FAA has included in the supplemental notice certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (As discussed previously, the FAA is currently developing guidance material that will contain information to be considered by PMI's when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the supplemental notice provides for increasing a repetitive inspection interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the supplemental notice sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is found. A similar requirement was proposed in the originally issued notice; however, upon reconsideration, the FAA finds that the original notice was ambiguous as to which corrosion findings operators were required to report. This particular requirement has been changed to clarify that it is upon the "determination" of Level 3 corrosion (not merely the "finding" of it) that the operator must notify the FAA. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the corrosion task in the affected area on the remainder of the operator's Model DC–8 fleet; or

2. Submit a report of the determination to the FAA and complete the corrision task in the affected area on the remainder of the operator's Model DC–8 fleet; or

3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, if appropriate, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the corrosion tasks performed on the remainder of the operator's Model DC–8 fleet.

Paragraph (d)(2) of the supplemental notice specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model DC–8 fleet is detected in a timely manner.

Paragraph (d)(3) of the supplemental notice would require that, within the time schedule approved by the FAA, the operator must accomplish the corrosion tasks in the affected areas on the remaining airplanes in its Model DC–8 fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that an operator, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective active is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that, if corrosion found is not considered representative of an operator's fleet, no further corrective action may be necessary, since a means to reduce corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (d). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the supplemental notice is similar to paragraph F. of the original notice in that it concerns adding airplanes to an operator's fleet and procedures that must be followed with regard to corrosion prevention and control. However, the applicability of paragrah (f) of the supplemental notice has been expanded to include not only air carrier operators, but all operators. The FAA has determined that the need to ensure that corrosion is prevented and controlled is equal for all Model DC–8 series airplanes, whether they are newly acquired by air carrier operators or other types of operators.

Additionally, proposed paragrah (f) differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prvention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The supplemental notice has been clarified to state that the specified procedures would be required to be accomplished before any operator places into service any airplane subject to the requirements of the proposed rule.

Paragraph (g) of the supplemental notice would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to the McDonnell Douglas Corporation. A note has been added to this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

General Comments Received in Response to the Original Notice

One foreign operator questions the procedure for submitting reports from airlines operating under FAA registration and European maintenance. In order to be in phase with the reporting requirements to PMI's, this operator asks if the reports should be copied to the Brussels or Frankfurt FAA maintenance base. The FAA notes that procedures currently exist in which operators of U.S.-registered, foreign-maintained aircraft submit the required reports to the local cognizant regulatory authority.

Textual Changes to the Proposal

References to the cited McDonnell Douglas Document have been revised to read, "Revision 1," which was issued in December 1990. The FAA has reviewed and approved this revision, which was issued subsequent to the issuance of the original notice. Revision 1 merely provides further clarification and editorial changes to the original issue of the Document. The supplemental notice cites Revision 1 as the appropriate source for service information.

References to the program have been changed to read, "corrosion prevention and control program," rather than merely a "corrosion control program." This phrasing is more descriptive of the addressed program and is consistent with the applicable phrasing in the Document.

The format of the supplemental notice has been restructured to be consistent with the standard **Federal Register** style.

Since the changes discussed above address a number of issues that were not specifically addressed in the originally proposed rule, the comment period has been reopened for 45 days to solicit comments from the public on these changes.

There are approximately 337 Model DC–8 series airplanes of the affected design in the worldwide fleet. It is estimated that 222 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1,922 manhours per airplane to accomplish the requried actions. At an average labor cost of $55 per manhour, the total cost to inspect each airplane would be $105.710. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $23,467,620.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant

rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the capiton "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Adminsitrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 90–NM–165–AD.

Applicability: All Model DC–8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: This AD references McDonnell Douglas Document Number MDC K4608, "DC–8 Corrosion Prevention and Control Document," Revision 1, dated Decemer 1990, for corrosion tasks, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in that Document. Where there are differences between the AD and the Document, the AD prevails.

Note: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in section 4 of McDonnell Douglas Document Number MDC K4608, "DC–8 Corrosion Prevention and Control Document," Revision 1, dated December 1990 (hereafter referred to as "the Document"), in accordance with the procedures of the Document, and the schedule specified in paragraph (a)(1) and (a)(2) of the AD.

Note: A "corrosion task," as defined in the section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of this Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR § 43.13.

(1) Complete the initial corrosion task of each "corrosion inspection area" defined in section 4 of the Document as follows:

(i) For aircraft areas that have not yet reached the "implementation age" (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For aircraft areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the R interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one R interval, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) In all cases, accomplishment of the intitial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each "corrosion inspection area" must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR § 91.417 or § 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days.

Note: Notwithstanding section 2.1, paragraph 14, of the Document, any extensions to an IA must be approved in accordance with paragraph (h) of this AD.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination of the FAA and complete the corrosion task in the affected areas on all Model DC–8 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model DC–8 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note: Notwithstanding the provisions of section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model DC–8 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraph (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas Corporation in accordance with section 5 of the Document.

Note: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Issued in Renton, Washington, on May 14, 1992.

Darrell M. Pederson,

Acting Manager, Transportation Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13509 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AEA-10]

Proposed Alteration of Transition Area; Dunkirk, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: An error was discovered in the notice of proposed rulemaking on the alteration of the Transition Area at Dunkirk, NY, that was published in the **Federal Register** on April 27, 1992 (57 FR 15265), Airspace Docket No. 91-AEA-10. This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Curtis L. Brewington, (718) 553-0857.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 91-AEA-10, published on April 27, 1992 (57 FR 15265), proposed to amend the description of the 700 foot Transition Area established at Dunkirk, NY. An error was discovered in one of the bearings used from the Chautauqua County/Dunkirk Airport, Dunkirk, NY. This action corrects that error.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 91-AEA-10, as published in the **Federal Register** on April 27, 1992, is corrected to read as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AEA TA NY Dunkirk, NY
Chautauqua County/Dunkirk Airport, Dunkirk, NY
(lat. 42°29'36"N, long. 79°16'20"W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Chautauqua County/Dunkirk Airport and within a 11.8-mile radius of the airport extending clockwise from a 022° to a 264° bearing from the airport.

Issued in Jamaica, New York, on May 22, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-13306 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASW-29]

Proposed Establishment of Transition Area: Walnut Springs, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area located at Walnut Springs, TX. The development of a new special instrument approach procedure (SIAP) to the Flat Top Ranch Airport has made this proposal necessary. The intended effect of this proposal is to provide controlled airspace for aircraft executing the very high frequency omninavigational range/distance measuring equipment (VOR/DME) runway (RWY) 18 SIAP. If adopted, this proposal would change the status of the Flat Top Ranch Airport from visual flight rules (VFR) only, to include operations under instrument flight rules (IFR).

DATES: Comments must be received on or before August 1, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92-ASW-29, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone (817) 624-5535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92-ASW-29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing

date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at Walnut Springs, TX. The development of a new VOR/DME RWY 18 SIAP to the Flat Top Ranch Airport has made this proposal necessary. The intended effect of this proposal is to provide controlled airspace for aircraft executing the VOR/DME Runway 18 SIAP. If this proposal is adopted, the status of the Flat Top Ranch Airport would change from VFR only, to include IFR operations. A description of the transition area would be published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Areas, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration, proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is proposed as follows:

Section 71.181 Designation

* * * * *

Walnut Springs, TX. [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Flat Top Ranch Airport (latitude 32°03'35"N., longitude 097°47'40"W.).

* * * * *

Issued in Fort Worth, TX, on May 22, 1992.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 92–3504 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AGL–17]

Proposed Modification of Transition Area and Control Zone; Mitchell, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the existing Mitchell, SD, transition area and control zone by updating the geographic position of Mitchell Municipal Airport, Mitchell, SD, and correcting the Mitchell VOR/DME radial from 300 to 301. This proposal would also increase the lengths of the northwest and southeast control zone extensions to accommodate existing standard instrument approach procedures (SIAPs) to Mitchell Municipal Airport. The intended effect of this action is to ensure segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 24, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Attn: Rules Docket No. 91–AGL–17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–AGL–17". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in his notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East

Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the existing Mitchell, SD, transition area and control zone by updating the geographic position of Mitchell Municipal Airport, Mitchell, SD, and correcting the Mitchell VOR/DME radial from 300 to 301. The proposal would also increase the lengths of the northwest and southeast control zone extensions to accommodate existing SIAPs to the airport.

The FAA finds it necessary to alter the designated airspace to ensure that the procedures will be contained within controlled airspace. The minimum descent altitude for these procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The airspace designations for the transition area and control zone listed in this document are published in sections 71.171 and 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designations would be published subsequently in Handbook 7400.7, if this regulation is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones, transition areas, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

AGL SD CZ Mitchell, SD [Revised]
Mitchell Municipal Airport, Mitchell, SD
(lat. 43°46'29" N., long. 98°02'18" W.)
Mitchell VOR (MHE)
(lat. 43°46'37" N., long. 98°02'14"W.)

Within a 4.2 nautical mile radius of Mitchell Municipal Airport and within 2.4 nautical miles each side of the Mitchell VOR/DME 149° radial, extending from the 4.2 nautical mile radius zone to 7 nautical miles southeast of the VOR/DME; and within 2.4 nautical miles each side of the Mitchell VOR/DME 301° radial, extending from the 4.2 nautical mile radius zone to 7 nautical miles northwest of the VOR/DME. This control zone is effective during the specific dates and times published in the Airport/Facility Directory.

* * * * *

Section 71.181 Designation

* * * * *

AGL SD TA Mitchell, SD [Revised]
Mitchell Municipal Airport, Mitchell, SD
(lat. 43°46'29" N., long. 98°02'18"W.)
Mitchell VOR (MHE)
(lat. 43°46'37"N., long. 98°02'14"W.)

That airspace extending upward from 700 feet above the surface within a 7.4 nautical mile radius of Mitchell Municipal Airport, and that airspace extending upward from 1,200 feet above the surface within 4 nautical miles southwest and 8 nautical miles northeast of the Mitchell VOR/DME to 16 nautical miles southeast of the VOR/DME; and within 4 nautical miles northeast and 8 nautical miles southwest of the Mitchell VOR/DME 301° radial, extending from the VOR/DME to 16 nautical miles northwest of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within 4 nautical miles southwest and 8 nautical miles northeast of the Mitchell VOR/DME, 149° radial, extending from the VOR/DME to 16 nautical miles southeast of the VOR/DME; and within 4 nautical miles northeast and 8 nautical miles southwest of the Mitchell VOR/DME 301° radial, extending from the VOR/DME to 16 nautical miles northwest of the VOR/DME; and that airspace southwest of Mitchell within the area bounded on the east by V—159, on the south by V–148 and Nebraska/ South Dakota state line, on the west by a line from lat. 43°00'00"N., long. 99°00'00"W.; to lat. 44°00'00"N., long. 99°43'00"W.; and on the north by the Pierre, SD, 1,200 foot Transition Area and V–120.

* * * * *

Issued in Des Plaines, Illinois, on May 29, 1991.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92–13506 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 911184–1284]

Limit on Duty-Free Insular Watches in Calendar Year 1992; Withdrawal of Proposed Rule

AGENCIES: Import Administration, International Trade Administration, Commerce; Office of Territorial and International Affairs, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing the proposed rule to amend rules which govern duty-exemption allocations and duty-refund entitlements for watch procedures in the United States' insular possessions (the Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands (15 CFR part 303) which was published in the **Federal Register** on January 6, 1992 (57 FR 384) as no longer necessary (see Supplementary

Information, below). The effect of this withdrawal will be to continue the duty-exemption limit and shares established in 1991.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, Statutory Import Programs Staff, room 4211, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. (202) 377–1660.

SUPPLEMENTARY INFORMATION: Section 110 of Public Law 97–446 (96 Stat. 2331) (1983) (19 U.S.C. 1202 note) authorizes the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year as well as the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. Section 303.3(a) of this part provides that the limit and the respective territorial shares established for the previous year shall remain in effect if the Secretaries do not establish a new limit and shares. Our review of the industry's needs and the territories' interests since publication of the proposed rule persuades us that leaving the existing limit and shares in place will adequately serve those needs and interests (see 56 FR 9621, March 7, 1991).

Alan M. Dunn,

Assistant Secretary for Import Administration.

Stella G. Guerra,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 92–13513 Filed 6–8–92; 8:45 am]

BILLING CODE 3510–DS–M and 4310–93–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–30772; International Series Release No. 393; File No. S7–13–92]

RIN 3235–AE41

Short Sales

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Commission is proposing for comment several amendments to Rule 10a–1 ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act") and an amendment to Rule 3b–3 under the Exchange Act. The proposed amendments to Rule 10a–1 would: (1) Provide an exception for a short sale that equalizes the opening price of a foreign security on a United States exchange with its price in the principal foreign market for the security; (2) exclude from application of the Rule transactions in corporate bonds and debentures effected on an exchange; and (3) codify a staff no-action position relating to certain liquidations of index arbitrage positions, subject to certain modifications. In addition, the proposed amendments to Rule 10a–1 would restructure and redesignate certain current provisions of Rule 10a–1. The proposed amendment to Rule 3b–3 would clarify the definition of ownership of a security.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Interested persons should submit three copies of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549, and should refer to File No. S7–13–92. All submissions will be made available for public inspection and copying at the Commission's Public Reference Section, Room 1024, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: M. Blair Corkran, Jr. or George E. Scargle, Office of Legal Policy and Trading Practices, Division of Market Regulation, at (202) 272–2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

A. Background

The Securities and Exchange Commission ("Commission") is publishing for public comment proposed amendments to Rules 3b–3 [1] and 10a–1 ("Rule 10a–1" or "Rule") [2] under the Securities Exchange Act of 1934 ("Exchange Act").[3] Rule 3b–3 under the Exchange Act defines the term "short sale," [4] and Rule 10a–1 governs short sales generally. Section 10(a) of the Exchange Act [5] authorizes the Commission to regulate short sales of securities registered on national securities exchanges.[6]

Paragraph (a) of Rule 10a–1 covers transactions in any security registered on, or admitted to unlisted trading privileges ("UTP") on, a national securities exchange ("exchange-traded securities"), if trades in such security are reported pursuant to an effective transaction reporting plan.[7] Paragraph (a), therefore, also applies to over-the-counter ("OTC") transactions in exchange-traded securities that are reported pursuant to an effective transaction reporting plan. Paragraph (b) applies to transactions on a national exchange in securities that are not covered by paragraph (a). Transactions in nonexchange-traded securities and transactions in securities covered by paragraph (b) that are effected in the OTC market are not subject to the Rule.[8]

Rule 10a–1(a)(1) provides that, subject to certain exceptions, short sales of securities covered by the Rule may be effected only (1) at a price above the price at which the immediately preceding sale was effected ("plus tick"), or (2) at the last sale price if it was higher than the last different price ("zero-plus tick").[9] The price at which

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[1] 17 CFR 240.3b–3.

[2] 17 CFR 240.10a–1.

[3] 15 U.S.C. 78a *et seq.*

[4] The term "short sale" is defined as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." 17 CFR 240.3b–3 (first sentence).

[5] 15 U.S.C. 78j(a).

[6] Congress granted the Commission plenary power to regulate short sales in such securities to "purge the markets of the abuses connected with these practices." *See* Stock Exchange Practices, Report of the Senate Comm. on Banking and Currency, S. Rep. No. 1455, 73d Cong., 2d Sess. 55 (1934). See also H.R. Rep. No. 1383, 73d Cong., 2d Sess. 11 (1934). Following a Commission inquiry into the effects of concentrated short selling in the 1937 market break, the Commission in 1938 adopted Rule 10a–1 which prohibited all short sales in exchange-traded securities at or below the last sale price, subject to certain exceptions. *See* Securities Exchange Act Release No. 1548 (January 24, 1938), 3 FR 213 ("Release 34–1548"). In that release, the Commission also adopted Rule 3b–3.

For a detailed discussion of the development of Rule 10a–1, see Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530.

[7] The Commission's transaction reporting rule defines an "effective transaction reporting plan" as a plan approved by the Commission for collecting, processing, and disseminating transaction reports in reported securities. 17 CFR 240.11Aa3–1(a)(3).

[8] 17 CFR 240.10a–1(a)(1)(ii). See generally I. Pollack, Short-Sale Regulation of NASDAQ Securities 18–26 (July 1966), reprinted in Short Selling Activity in the Stock Market: The Effects on Small Companies and the Need for Regulation, Hearings Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Affairs, 101st Cong., 1st Sess. 270–356 (1989). Although the Rule applies to any security registered on, or admitted to UTP on, a national securities exchange for which last sale information is reported pursuant to an effective reporting plan [which would include certain OTC National Market System ("NMS") designated securities], the Commission specifically excluded from the coverage of the Rule transactions in OTC NMS securities that are traded on a listed or UTP basis. See Securities Exchange Act Release No. 22975 (March 6, 1986), 51 FR 8601 (adopting 17 CFR 240.10a–1(a)(1)(i)). See also n. 10 *infra*.

[9] 17 CFR 240.10a–1(a)(1).

short sales may be effected is established by reference to the last sale price reported in the consolidated system [10] or on a particular marketplace.[11]

The Rule is designed to limit short selling of a security in a declining market, by requiring, in effect, that each successive lower price be established by a long seller. This reduces the ability to employ short selling as a manipulative device to accelerate a decline in the price of a security by exhausting all bids at one price level.[12] At the same time, the Rule allows for relatively unrestricted short selling in an advancing market.

B. Summary of Proposed Amendments

Since the adoption of the Rule in 1938, the Commission has, from time to time, and in response to market developments and changing trading practices, exempted certain types of transactions from the Rule. These exceptions are designed to permit transactions that are believed to be beneficial to the markets or that present little risk of the kind of manipulative or destabilizing trading that the Rule was designed to address.[13] The amendments proposed today are designed to except certain additional transactions that the Commission believes need not be subject to the "tick" provisions of the Rule, and to redesignate certain current exceptions to the Rule.

The Commission is proposing to add new paragraph (e)(12) to the Rule to provide an international equalizing exception from the "tick" provisions of the Rule.[14] The exception would permit short sales in the United States ("U.S.") in order to equalize the opening price of the security on a U.S. exchange with its price in the principal foreign market for the security.[15] This proposed amendment corresponds to an NYSE petition for rulemaking.

The second proposed amendment responds to a rulemaking petition by the Amex and would exclude from the coverage of the Rule transactions in corporate bonds effected on an exchange. The amendment would accomplish this by excluding bonds and debentures from the application of paragraph (b) of the Rule.

In addition, the Commission is proposing to add new paragraph (g) to the Rule to codify with modifications a staff no-action position regarding the liquidation of existing index arbitrage positions.[16] The proposed amendment would apply to the sale of long baskets of stock and the purchase of index futures or options without requiring the aggregation of the index arbitrage positions with short positions in those stocks in certain other proprietary accounts if those other short positions are fully hedged.

The Commission is proposing structural revisions to the Rule to redesignate current paragraph (e)(12), which defines "depositary receipt" and "third market maker," as paragraph (h), as well as revise newly designated paragraph (h), to more fully account for the definitional character of that section; to redesignate current paragraph (e)(13), which relates to positions acquired while acting as a block positioner, as paragraph (f), as well as revise newly designated paragraph (f), to reflect more accurately the fact that the paragraph does not provide an exception but rather deals with the computation of a person's net long position; and to redesignate paragraph (f) as paragraph (i), in order to locate the Rule's residual exemptive authority at the Rule's end.

Finally, the Commission is proposing to amend Rule 3b–3 to clarify that the ownership of a security must be based upon a fixed, currently ascertainable amount of a security at a fixed, currently ascertainable price.

II. Discussion of Proposed Amendments

A. International Equalizing Exception

As the internationalization of the world's securities markets has progressed, the Commission has recognized the need to provide a flexible response to rapidly evolving market developments without compromising the fundamental underpinnings of the federal securities laws.[17] Specifically, the Commission has noted the increasing tendency for securities of "world-class" issuers to be traded not only in the markets of their country of origin, but also in other financial centers around the world.[18] The market price of such world-class issuers may diverge from market to market, depending upon currency fluctuations, the information content available to each market, tax considerations, and other factors.

Pursuant to requests from officials of the NYSE in recent years, the Commission's staff has provided short sale relief to NYSE specialists in foreign NYSE-listed securities on a case-by-case basis. Where the specialist sought to open trading in a security by selling short on a "minus tick" or "zero-minus tick" with reference to the prior day's closing price on the NYSE, because the latest price for the security on the principal foreign exchange was lower than the previous closing price for the security (or related security) on the NYSE, the specialist has been permitted to equalize the U.S. price with the foreign price. Relief has been granted provided that the principal market for the security was an established foreign securities exchange and the specialist's offer on a minus tick was necessary to provide a narrower spread. The NYSE also filed a petition for rulemaking [19] to

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[10] 17 CFR 240.10a–1(a)(1). The "consolidated system," also known as the Consolidated Tape, refers to "the consolidated transaction reporting system for which a plan originally was submitted to the Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the [Exchange] Act * * *" 17 CFR 240.11Ac1–1(a)(16). The Consolidated Tape Association ("CTA"), comprised of various national securities exchanges and the National Association of Securities Dealers ("NASD"), collects and disseminates reports for transactions on those markets on the Consolidated Tape.

[11] 17 CFR 240.10a–1(a)(2). Pursuant to Rule 10a–1(a)(2), an exchange may require that short sales effected on that exchange be measured by reference to the last sale on that exchange rather than by reference to the last sale as reported on the consolidated system. The New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") have exercised this option. *See* Securities Exchange Act Release No. 11488 (June 12, 1975), 40 FR 25444. *See also* NYSE Rule 440B.19 and Amex Rule 7.

[12] See SEC, Report of Special Study of Securities Markets (1963), reprinted in H.R. Doc. No. 95, 88th Cong., 1st Sess. 251 ("Special Study"); Division of Market Regulation, The October 1987 Market Break (February 1988) ("Market Break Report"), reprinted in Fed. Sec. L. Rep. (CCH) No. 1271 Extra Edition (February 9, 1988) at 3–26.

[13] As originally adopted, Rule 10a–1 contained five exceptions. *See* Release 34–1548.

[14] As discussed *infra*, current paragraph (e)(12) would be redesignated as paragraph (h).

[15] The term "principal market" is defined in proposed Rule 3b–10 under the Exchange Act. *See* n. 22 *infra*.

[16] See Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949 ("Release 34–27938"), commenting on the scope of the staff no-action position.

[17] See, *e.g.*, SEC, Policy Statement on Regulation of International Securities Markets, Securities Act Release No. 6807 (Nov. 14, 1988), 53 FR 46983 ("Policy Statement"); Internationalization of the Securities Markets, Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce (July 27, 1987) ("Internationalization Report") at III–312.

[18] See Securities Exchange Act Release No. 21958 (April 18, 1985), 50 FR 16902 ("Release 34–21958") (request for comments concerning the internationalization of the world's securities markets).

[19] See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC (February 24, 1989) ("NYSE Petition"). The NYSE petition is included in File No. S7–13–92. The NYSE filed its petition pursuant to the Commission's Rules of Practice and Investigations which provide a procedure pursuant to Section 3(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), allowing any person to file a petition requesting that the Commission issue, amend, or

Continued

amend Rule 10a-1 to incorporate a new exception to permit a short sale on the opening transaction on a national securities exchange to "equalize" the opening price in a foreign security with the last reported price of that security in its principal foreign market.[20]

The Commission is proposing to amend paragraph (e) of Rule 10a–1 to permit the equalization of the price of a foreign equity security [21] on a U.S. exchange with the last reported price in its principal market.[22] Proposed new exception (e)(12) would permit any market participant, at the opening of trading on a U.S. national securities exchange of a foreign security, or a depositary share or depositary receipt relating to such a security, to sell short such foreign security, depositary share, or depositary receipt at a price equal to or above the last reported price (taking into account current exchange rates [23] and the ratio of shares to ADRs) of that security on the principal foreign market for the security. The Commission preliminarily believes that, as in other contexts (and as expressed in the NYSE Petition), the appropriate reference price for an equalizing exception is the principal market for the security, because that market is most likely to reflect the current level of over-all supply and demand. Prices in other markets may be subject to greater fluctuations based upon low trading volume and continuity.

For purposes of illustrating the application of this proposed exception, assume that a foreign security trades in ADR form on the NYSE, with each ADR representing one share of the foreign security. Assume that the foreign security closed on its principal foreign exchange at the U.S. equivalent of $10 per share (taking into account currency exchange rates),[24] and that the last U.S. sale on the previous trading day occurred at 10½, on a minus tick. Absent relief, a U.S. specialist that did not have a net long position would not be able to sell the ADR at the opening at a price below 10⅝ without violating Rule 10a–1(a).[25] The proposed exception would enable the specialist (or other market participant) to sell the ADR at $10 or above, and thus to open the security at a price more closely related to the price in the principal market.[26] The exception would apply only to the opening transaction. Subsequent short sales would have to be effected in compliance with the tick provisions of the short sale rule.

The Commission solicits comment on the scope of proposed exception (e)(12). Comment is specifically requested on whether it would be preferable to limit the exception to registered specialists and registered exchange market makers,[27] and whether, in that case, exchange approval should be required for transactions utilizing the exception.[28]

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repeal a rule of general application. See 17 CFR 201.4(a).

The NYSE Petition also requested a separate staff interpretation that the opening trade on the NYSE of a security being distributed in an initial public offering ("IPO") be deemed to be on a "zero-minus" tick if the opening trade is below the offering price. The Amex has proposed a similar position. *See* Securities Exchange Act Release No. 28423 (September 10, 1990), 55 FR 38180 (File No. SR–Amex–90–13; notice of proposed rule change to Amex Rule 7 to the same effect as the NYSE Petition). No comments were received in response to the Amex filing.

The requested interpretation would reverse a prior Commission staff interpretation provided at the request of the NYSE that the first transaction of a security just admitted to trading on a national securities exchange could be a short sale. *See* SEC Staff Interpretive Letter to NYSE (July 20, 1955), [1952–56] Fed. Sec. L. Rep. (CCH) ¶76,355. The staff interpretation focuses on the fact that the Rule prohibits short sales only on minus or zero-minus ticks with reference to transactions reported on the consolidated tape or on the relevant exchange. The staff reasoned that, until there has been a transaction in a newly-listed security (*e.g.*, following an IPO), a "tick" cannot be determined. Once a trade occurs, the tick provisions of the Rule apply.

The staff preliminarily has determined not to reverse the interpretation because it believes that the position is consistent with the Rule, and that the possibility of short selling on the opening of trading acts as an appropriate market discipline on the pricing of IPOs. Moreover, underwriters may prevent a decline in the market price from the IPO price through stabilizing activity in compliance with Rule 10b–7 under the Exchange Act, 17 CFR 240.10b–7.

Commenters nevertheless are invited to address the NYSE and Amex positions. The NYSE letter is included both in File No. SR–NYSE–90–10 and in the file for this amendment (File No. S7–13–92).

[20] As described below, the Commission is proposing an amendment to Rule 10a–1 that differs in form but not in substance from the text of the NYSE proposal, in order to incorporate defined terms in the Exchange Act, and to reflect the stated objective in the NYSE Petition that the exception permit market participants to equalize the U.S. exchange price with the price on the *principal* (or primary) foreign market. The NYSE Petition also suggests that the price at the close of the foreign markets be used for purposes of the exception. The exception as proposed for comment refers to the last reported price in order to include situations where the primary market may still be open for trading when the relevant U.S. exchange opens.

[21] The Commission has proposed general definitions of certain terms under the Exchange Act to address the increasing internationalization of world securities markets rather than adopting identical definitions in the context of individual rulemaking proposals. *See* Securities Exchange Act Release No. 28733 (January 3, 1991), 56 FR 820 ("Release 34–28733").

A "depositary share" means "a security, evidenced by a depositary receipt, that represents a foreign security or a multiple of or fraction thereof deposited with a depositary." *Id.* A "foreign security" means "a security issued by a 'foreign government' or a 'foreign private issuer' as those terms are defined in Rule 3b–4 [17 CFR 240.3b–4]." *Id.*

Currently, paragraph (e)(12) of the Rule provides that "[f]or the purposes of paragraph (e)(8) of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt." 17 CFR 240.10a–1(e)(12). The Commission proposes to amend and to redesignate paragraph (e)(12) of the Rule as new paragraph (h) to reflect the definitional nature of that section. New paragraph (h) would provide that: "*(h) Definitions. (1) For the purposes of [paragraph (e)(8) of] this section, a depositary receipt of* ■ *security shall be deemed to be the same security as the security represented by such receipt* * * *" *(deletions [bracketed], additions italicized)*.

[22] Proposed Rule 3b–10 under the Exchange Act, defines "principal market" as "the single United States market or foreign securities market with the largest aggregate trading volume for the class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation." See Release 34–28733.

[23] As defined by proposed Rule 3b–10, "current exchange rate" means the "current rate of exchange between two currencies, which is obtained from at least one major independent commercial bank or independent foreign bank which regularly maintains currency exchange operations." *Id.*

[24] Proposed exception (e)(12) would permit a market participant to reflect the current exchange rate between the U.S. dollar and the currency in which the foreign security trades on its principal market.

[25] Because the last price in the consolidated system was on a minus tick at 10½, the specialist with a short position could only sell the ADR on an uptick, *i.e.*, at 10⅝ or above (assuming that ⅛ is the smallest trading differential, or tick).

[26] This international equalizing exception is designed to operate in much the same way as the regional equalizing exception. Exception (e)(6) of the Rule, 17 CFR 240.10a–1(e)(6), excepts transactions in a security covered by paragraph (b) of the Rule that equalize the price of a security on a regional exchange with its price in the principal U.S. exchange market for the security. Exception (e)(6) of the Rule effectively allows regional exchanges to keep their stock prices on a par with the prices on the NYSE. *See* Securities Exchange Act Release No. 1579 (February 10, 1938), 3 FR 382. Exception (e)(6) was last amended in Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25444.

Exception (e)(5) of the Rule, 17 CFR 240.10a–1(e)(5), functions, subject to certain conditions, as a regional equalizing exemption as well. The provision excepts short sales of a security covered by paragraph (a) of the Rule (*i.e.*, transactions in any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, where trades in such security are reported in the consolidated system) by regional exchange specialists and third market makers. Subparagraph (ii) of exception (e)(5) allows specialists and third market makers to honor their quotations that are equal to or above the last sale when communicated. As with exception (e)(6), an exchange may prohibit use of this equalizing exception by its registered specialists and market makers. To date, only the NYSE has done so. See NYSE Rule 440B.15. Exceptions (e)(5) and (e)(6) are critical to permit secondary market specialists to ensure that orders routed to their markets receive execution at least equal to the price in the principal market.

[27] To date, no market participants other than NYSE exchange specialists have expressed difficulties in the application of Rule 10a–1 at the opening of exchange trading in a foreign security.

[28] Perhaps approval should be required only for sales of paragraph (b) securities. *Cf.* paragraph (e)(6) of the Rule.

Continued

In addition, the Commission seeks comment on whether the last reported price in the principal foreign market should also be the reference point for short sale rule compliance, rather than the NYSE's prior day closing price, when the price in such market has risen above the NYSE close.[29] Finally, the Commission seeks comment on whether the exception should be broadened, in cases where the principal foreign market for a security is closed, to allow equalizing with a subsequent price in other foreign markets.[30]

From and after the date of this release until the Commission takes final action on proposed exception (e)(12), the staff of the Division will not recommend that the Commission take enforcement action under Rule 10a–1, if a short sale is effected at the opening on a U.S. exchange in a manner consistent with proposed exception (e)(12).

B. Exchange-Listed Corporate Bonds

The Commission is proposing an amendment to paragraph (b) of the Rule to exclude from its application transactions in corporate bonds listed and effected on an exchange. In a petition for rulemaking ("Amex Petition"), the Amex recommended that the Commission amend paragraph (b) of the Rule to exclude corporate bonds from short sale regulation.[31] The Amex noted that because bond prices generally are related to and move in tandem with interest rate changes, the potential for market manipulation is significantly reduced.[32] The Amex also noted that, while bond transactions on the Amex are reported to the Consolidated Tape Association, they are not reported on a consolidated basis with other markets.[33] The Amex reasoned that because the majority of corporate bond transactions occur in the OTC market, which does not have a short sale rule, there would be little realistic ability to effect a manipulation of the primary bond market through short sale transactions on an exchange.[34] The Amex also argued that the discrepancy between the OTC and the exchange markets has given rise to a competitive inequity between the two markets and suggested that such disparate regulatory treatment based upon the market in which the same security is traded is unwarranted.

Prior to 1974, Rule 10a–1, as a practical matter, did not apply to exchange transactions in bonds by virtue of the Rule's original exception for odd-lot transactions.[35] In eliminating the exception for the sale of odd-lots in 1974, the Commission did not address specifically the effect of that amendment upon the sale of exchange-listed bonds. Rather, the Commission acted on its conclusion that disparate treatment of odd-lots and round lots was not justified.[36] An apparently unintended consequence of eliminating the distinction between odd-lots and round lots was the extension of the short sale rule to cover exchange-traded corporate bonds.

The Commission previously has recognized differences between the exchange and the OTC markets for bonds. For example, in considering whether to include exchange-traded bonds within the scope of the proprietary trading restrictions of section 11(a) of the Exchange Act,[37] the Commission found that the OTC market handles the majority of bond trading, characterized by a predominance of large-scale, institutional transactions. Conversely, the exchange market handles a considerably smaller volume, with most trades being small-sized and executed on behalf of retail customers.[38] Exchange bond trading continues to be characterized by transactions in small size and small volume relative to OTC trading. For example, the average trade size in corporate bonds on the NYSE in 1991 was 20.2 bonds, and the par value of corporate bonds traded on the NYSE in 1991 was $12.7 billion.[39] The par value of corporate bonds traded on the AMEX in 1991 was $952 million.[40] In contrast, the average *daily market* value of institutional trading in the secondary corporate bond market was $23.3 billion in 1991.[41]

The Commission has preliminarily concluded that the application of Rule 10a–1 to bonds may impose an unnecessary regulatory burden on the exchange market because exchange trading of such bonds generally is not susceptible to the type of market abuse the short sale rule is designed to prevent.[42] Moreover, given the limited

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The Commission does not believe that it would be appropriate to permit equalizing short sales to be made into stabilizing bids complying with Rule 10b–7 of the Exchange Act, 17 CFR 240.10b–7. Accordingly, proposed exception (e)(12) would prohibit the use of the international equalizing exception for a short sale of a security into a stabilizing bid complying with Rule 10b–7 under the Exchange Act. Current exceptions (e)(5) and (e)(6) of the Rule have similar restrictions.

[29] This would, in effect, require the "tick" to be measured with respect to the foreign principal market rather than the close of trading on the U.S. exchange. For example, if the U.S. exchange closed at 10, and the principal foreign market then rose to 12, a market participant could not sell short below 12 at the opening of trading on a U.S. exchange.

[30] Commenters suggesting a broader scope should include market and timing criteria. Irrespective of the parameters of any exception that may be adopted, the Commission will continue to consider requests for relief from the Rule in appropriate circumstances.

[31] *See* Letters from Carrie E. Dwyer, Vice President and Associate General Counsel, Amex, to John Wheeler, Secretary, SEC (December 30, 1985 and January 22, 1986), and Letter from Scott I. Nooh, Assistant Vice President and Associate General Counsel, Amex, to Jonathan G. Katz, Secretary, SEC (November 22, 1989) ("Amex Letters"). The Amex Letters are included both in File No. SR–Amex–85–36 and in the file for this amendment (File No. S7–13–87). See also Securities Exchange Act Release No. 22920 (November 13, 1985), 50 FR 48280 (order granting accelerated approval of File No. SR–Amex–85–36).

[32] *See* January 22, 1986 Amex Letter, at 2. A bear raid is a form of market manipulation which occurs when short sales are made at successively lower prices in a concerted attempt to induce others to sell and to drive the price down to a level where covering purchases can be effected profitably. See 2 Special Study, *supra* n. 12, at 251.

[33] At this time, there does not exist any consolidated transaction reporting system for the corporate bond market. Transactions in NYSE-listed bonds are reported to the public on the NYSE bond tape; Amex transactions are reported pursuant to the Consolidated Tape. *See* n.10 *supra*. For OTC transactions in exchange-listed bonds, which constitute the majority of volume in these issues, there exists no mechanism for last sale reporting. Accordingly, transactions in exchange-traded bonds are subject to paragraph (b) of the Rule. As noted *supra*, paragraph (b) of the Rule applies only to transactions effected on a national securities exchange.

[34] *See* January 28, 1986 Amex Letter at 1. The Commission notes that the NASD has filed a proposed rule change that would implement a short sale rule employing a "bid test" for NASDAQ/NMS securities. The proposal would prohibit short sales at or below the inside bid when the current inside bid is lower than the preceding inside bid. See File No. SR–NASD–92–12 (April 9, 1992). It is not understood that any such rule would relate to OTC transactions in bonds.

[35] See Release 34–1548.

[36] See Securities Exchange Act Release No. 11030 (September 22, 1974), 39 FR 35870. The Commission extended exceptions permitting odd-lot dealers to sell short to offset customer odd-lot orders, and to liquidate an odd-lot by a single round lot sell order, to transactions by third market makers. *See* 17 CFR 240.10a–1(e) (3), (4), and (12). The term third market maker means "any dealer who holds itself out as being willing to buy and sell a reported security for its own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size." 17 CFR 240.10a–1(e)(12). The provisions of current paragraph (e)(12) of the Rule are proposed to be redesignated as paragraph (h).

[37] 15 U.S.C. 78k(a).

[38] See Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557, 18558 [adopting Rule 11a1–4(T), 17 CFR 240.11a1–4(T)].

[39] NYSE Fact Book (1992) at 48.

[40] Amex Fact Book (1992) at 23.

[41] Securities Industry Association, Investor Activity Report (May 12, 1992).

[42] The Commission notes that conduct that artificially affects the price of securities may violate, e.g., Section 17(a) of the Securities Act, 15 U.S.C. 77q(a); Sections 9(a), 10(b), and 15(c)(1) of the Exchange Act, 15 U.S.C. 78i(a), 78j(b), and 78o(c)(1); and Exchange Act Rule 10b–5, 17 CFR 240.10b–5. *See In the Matter of Halsey, Stuart & Co., Inc.*, 30 S.E.C. 106 (1949); *In the Matter of Kidder Peabody & Co.*, 19 S.E.C. 559 (1945) (manipulation of bond prices on an exchange).

amount of bond trading effected on exchanges, there would appear to be little reason for concern over the effect of short selling of bonds on the exchanges.

Accordingly, the Commission is proposing to amend paragraph (b) of Rule 10a–1 by adding the phrase "except a bond or debenture" thereby excluding exchange transactions in all bonds or debentures from the Rule. [43] From and after the date of this release until the Commission takes final action on the proposed amendment to Rule 10a–1(b), the staff of the Division will not recommend that the Commission take enforcement action under Rule 10a–1 if short sales in exchange-listed bonds and debentures are effected without complying with the Rule.

C. Application of the Rule to Liquidation of Index Arbitrage Positions

Arbitrage typically involves the purchase or sale of one or more securities coupled with the near-simultaneous sale or purchase of the same or related securities in a different market in order to profit from any price difference between the markets. Arbitrage also may involve the purchase or sale of an economically equivalent instrument which, by its terms, entitles the holder to obtain the first security or its current market value in cash. The range of traded instruments that are economically equivalent has increased significantly and includes standardized put and call options on individual stocks and stock indices, and commodity futures contracts on stock indices. [44]

Index arbitrage involves the purchase or sale of a "basket" of all stocks comprising a securities index or a smaller number of stocks designed to track day-to-day price movement of an index, and a contemporaneous offsetting sale or purchase of one or more commodity futures or options on a future or standardized option contracts on that index in an attempt to profit from price discrepancies between the stocks and the derivative index products. [45] Index arbitrage often involves a liquidation (or "unwinding") transaction in order to realize arbitrage profits. Liquidation may consist of either simple elimination of each long or short stock position at expiration of the futures or option contract, or earlier termination of both the stock positions and the futures or option contract position.

Pursuant to Rule 3b–3 under the Exchange Act, [46] a seller of an equity security subject to Rule 10a–1 must aggregate all of the seller's positions in that security in order to determine whether the seller has a "net long position" in the security. [47] Additionally, Rule 10a–1(c) [48] provides that all sell orders effected by a person on a national securities exchange must be marked either "long" or "short." Therefore, if a person does not have a net long position in a security, any sale of that security must be designated as a short sale and must comply with the "uptick" provisions of Rule 10a–1. [49] If the transaction is subject to Rule 10a–1, a person liquidating an index arbitrage position involving a long basket of stock is often unable to sell all the securities contemporaneously with closing out the derivative instrument position because of the requirement to net short security positions in other proprietary accounts, even if those short positions are fully hedged. [50]

In 1986, [51] the Division took a limited no-action position under paragraphs (a) and (b) of Rule 10a–1 for sales of securities held as a part of an index arbitrage position relating to a securities index that is the subject of a financial futures (or options on such futures) contract traded on a board of trade, and/or a standardized options contract as defined in Rule 9b–1(a)(4) under the Exchange Act. [52] Specifically, pursuant to the no-action position, a security may be sold short without regard to paragraphs (a) and (b) of Rule 10a–1 if:

(1) The firm has a "long" stock position as part of an index arbitrage position;

(2) The stock is being sold in the course of "unwinding" an index arbitrage position; and

(3) The sale would be deemed to be a short sale as defined in Rule 3b–3 solely as a result of the netting of the index arbitrage long position with one or more short positions created in the course of *bona fide* arbitrage, risk arbitrage, or *bona fide* hedge activities as those terms

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[43] The Commission solicits comment on whether the terms "bond or debenture" are sufficiently precise and comprehensive for purposes of the proposed exception. Would it be preferable to incorporate a definition of "debt security" for purposes of the proposed exclusion? "Debt security" could be defined as "(1) a note, bond, debenture, or evidence of indebtedness, (2) a certificate of interest or participation in any such note, bond, debenture, or evidence of indebtedness, or (3) a temporary certificate for, or guarantee of, any such note, bond, debenture, evidence of indebtedness, or certificate."

Convertible bonds are defined as "equity securities" in the Exchange Act. Exchange Act Section 3(a)(11), 15 U.S.C. 78c(a)(11), defines the term "equity security" to include "any stock or similar security, or any security convertible, with or without consideration, into such a security, * * *" Short selling of convertible bonds (at least in the much larger OTC market) may have an impact on the price of related exchange-traded equity securities. See, *e.g.*, 4 Special Study, *supra* n. 12, at 24. Therefore, the Commission seeks comment on whether convertible bonds should remain subject to the Rule.

[44] See Market Break Report, *supra* n. 12, at 3–1.

[45] See, *e.g.*, NYSE Rule 80A, NYSE Guide (CCH) ¶2080A, which defines index arbitrage as follows: "Index arbitrage" means an arbitrage trading strategy involving the purchase or sale of a "basket" or group of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts (collectively, "derivative index products") in an attempt to profit by the price difference between the "basket" or group of stocks and the derivative index products. * * *

[46] 17 CFR 240.3b–3.

[47] See Release 34–27938, 55 FR at 17950 (aggregation must be based on a netting of securities positions in all proprietary accounts as determined at least once each trading day); Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119, 45120 (to determine whether a person has a "net long position" in a security, all accounts must be aggregated). See also Letter regarding Rules 3b–3, 10a–1, and 10b–4 and File Nos. SR–Amex–85–1 and TP 85–152 (December 10, 1986), and Letter regarding Rules 3b–3, 10a–1, and 10b–4 and File Nos. SR–NYSE–85–25 and TP 85–152 (December 10, 1986). Rules 3b–3 and 10a–1 "require a netting of security positions to determine whether a person is net short or long when effecting a sale of a security. [A] person and all affiliates of that person must net their positions to determine whether they have an aggregate net short or long position in the security." The Division's no-action positions permitted specialists and specialist affiliates, *inter alia*, to sell securities short in compliance with Rule 10a–1 without netting security positions between themselves (available December 12, 1986, on LEXIS, Fedsec library, Noact file).

[48] 17 CFR 240.10a–1(c).

[49] See Salomon Brothers Inc, Securities Exchange Act Release No. 26838 (May 25, 1989), [1989] Fed. Sec. L. Rep. (CCH) ¶84,416.

[50] See Letter from Andrew M. Klein, Esq., to Richard G. Ketchum, Director, Division (October 2, 1986) (available December 17, 1986, on LEXIS, Fedsec library, Noact file).

Rule 10a–1 presently provides short sale exceptions for *bona fide* arbitrage undertaken to profit from a current difference between a convertible security and the underlying common stock [17 CFR 240.10a–1(e)(7)]; between a security traded both in the U.S. and abroad [17 CFR 240.10a–1(e)(8)]; and for certain block positioning activities by broker-dealers who engage in both block positioning and arbitrage [17 CFR 240.10a–1(e)(13)]. Exception (e)(7) excepts short sales effected in *bona fide* domestic arbitrage transactions involving convertible, exchangeable and other rights to acquire the securities sold short, where such rights of acquisition were "originally attached to or represented by another security or [were] issued to all the holders of any such class of securities of the issuer." *See* Securities Exchange Act Release No. 1645 (April 8, 1938) [adopting current exception (e)(7)]. Because standardized options and futures do not fall within these categories, exception (e)(7) does not extend to index arbitrage transactions. Accordingly, unless otherwise excepted or exempted, index arbitrage transactions are fully subject to Rule 10a–1. The Commission solicits comment on whether exception (e)(7) should be amended to include *bona fide* arbitrage not currently within the scope of the exception.

[51] See Letter regarding Merrill Lynch, Pierce, Fenner & Smith, Inc. (December 17, 1986) ("1986 position"), published in Release 34–27938, 55 FR at 17950.

[52] 17 CFR 240.9b–1(a)(4).

are employed in Securities Exchange Act Release No. 15533.[53]

Accordingly, the no-action position permits market participants to liquidate (or "unwind") certain existing index arbitrage positions involving long baskets of stock and short index futures or options without aggregating short stock positions in other proprietary accounts if those short stock positions are fully hedged.[54] The Division took this position based on its view that the unwinding of an existing long index arbitrage position does not create a new short position, nor should any price decline resulting from the selling of the stock benefit the seller because its remaining positions are fully hedged.[55]

The Commission in 1990 published a staff clarification of the 1986 position to address misperceptions by market participants and the public and to address the scope of relief afforded.[56] Release 34–27938 made the following points:

1. The no-action position does not apply to the creation of an index arbitrage position. The no-action position is "strictly limited to the application of Rule 10a–1 to sales pursuant to 'unwinding' the index arbitrage positions described [therein]." Therefore, the position does not provide any relief from the "uptick" provisions of Rule 10a–1(a) and (b) when securities are sold to establish a short stock-long futures or options index arbitrage position.

2. The Release modifies the no-action position by limiting the no-action position to the liquidation of an index arbitrage position established in compliance with Rules 3b–3 and 10a–1 under the Exchange Act. Accordingly, the no-action position does not apply to the liquidation of an index arbitrage position that was established off-shore unless the holder of the index arbitrage long stock position purchased its securities from a seller that acted in compliance with Rules 3b–3 and 10a–1 or other comparable provision of foreign law.

3. The no-action position applies only where, in liquidating an index arbitrage position, action is taken to reverse both sides of the position as nearly simultaneously as practicable. In particular, although the no-action position refers to a "concurrent" unwinding, it is not intended to cover any situation where an avoidable delay in reversing one side results in "legging-out" of the position.

4. The no-action position provides relief from the aggregation requirements of Rule 3b–3 only with respect to securities positions that are the subject of *bona fide* arbitrage, risk arbitrage, or *bona fide* hedge positions.[57] Accordingly, where the seller seeks to liquidate an index arbitrage position and has one or more short positions in the component securities of the index that are not the subject of *bona fide* arbitrage, risk arbitrage, or *bona fide* hedge positions, the seller must aggregate those short positions with the index arbitrage positions that it seeks to liquidate.[58] Moreover, when selling securities from a proprietary account in a transaction not involving the liquidation of an index arbitrage position, the 1986 position does not provide any relief to market participants from the requirement to aggregate short positions established in index arbitrage transactions with such proprietary stock positions.

The Commission proposes, in a new paragraph (g) to be added to Rule 10a–1, to delete the condition imposed by numbered paragraph (2) of Release 34–27938, discussed above, and change the focus of the availability of the relief from the time and circumstances surrounding the establishment of the index arbitrage position [59] to the time the index arbitrage position is liquidated.[60] The Commission believes that paragraph (2) may result in unnecessary compliance and interpretive complexity. It appears that the intent of that no-action position can be achieved more efficiently by tying the availability of the relief to conditions that exist at the time that a person seeks to unwind an index arbitrage position

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[53] In Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 ("Release 34–15533"), *bona fide* arbitrage is described as "an activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to 'lock in' a gross profit or spread resulting from a current differential in pricing." 44 FR at 6089. Risk arbitrage is described as a transaction effected with a view to profit from the consummation of a merger, acquisition, tender offer or other similar transaction involving a recapitalization. *Id.* at 6090. The release states that the concept of a *bona fide* hedge is largely a matter of custom and practice but must involve long and short positions in related securities where one security is exercisable, convertible, or otherwise related by its terms to the other security, and substantially offsets the risk of that security. *Id.* Hedges that do not offset most or all of the risk (*i.e.*, that are not fully hedged), or are not composed of such securities, would not be *bona fide* for purposes of proposed new paragraph (g).

[54] The no-action position fundamentally is a limited relaxation of the requirement that a person selling a security aggregate all of his positions in that security to determine whether he has a net long position. See nn. 46 and 47 *supra* and accompanying text.

[55] Market Break Report, *supra* n.12, at 3–27. It does not appear that the availability of aggregation relief has been a significant factor in the timing or incidence of index arbitrage liquidations. *See also, e.g.*, Market Break Report at 3–26 ("[The Division does not] believe that the [1986] position providing for a narrow exemption from the Rule for certain bona fide arbitrage activity substantially contributed to price volatility during the market break.")

[56] Release 34–27938. See also Power, " 'Uptick' Rule Exemption Ticks Off Program-Trade Foes," Wall St. J., November 16, 1989, at C1. *Cf.* NYSE Information Memos 88–5 (March 10, 1988) and 88–13 (May 18, 1988).

[57] *Cf.* Release 34–15533.

[58] Release 34–27938 stated that, for purposes of this paragraph only, fully-hedged index arbitrage positions may be considered as "*bona fide* arbitrage" for aggregation purposes. See n.53 *supra*.

[59] Release 34–27938 focused on whether the index arbitrage position was established in compliance with Rules 3b–3 and 10a–1 or comparable provision of foreign law.

More recent exemption positions similarly refer to the point at which the index arbitrage position was established. *See* Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (order approving File Nos. SR–NYSE–90–52 and SR–NYSE–90–53), and Letter regarding Operation of Off-Hours Trading Sessions by the NYSE (June 13, 1991) ("NYSE OHT Letter") (the no-action position regarding index arbitrage transactions expressed in Release 34–27938 does not apply to the "unwinding" of an index arbitrage position that was established during either OHT Session on a day when NYSE Rule 80A(c) was in effect at the close as a result of a decline in the Dow Jones Industrial Average Index ("DJIA") of at least 50 points from the previous day's close); Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (order approving File No. SR–Amex–91–15), and Letter regarding Operation of Off-Hours Trading Sessions by the Amex (August 5, 1991) ("Amex OHT Letter") (same).

[60] The economic rationale for the no-action position and the proposed exception is closely analogous to that underlying exception (e)(13) of Rule 10a–1 concerning block positioning. See Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119 ("Release 34–20230") (proposing exception (e)(13)); Securities Exchange Act Release No. 20715 (March 6, 1984), 49 FR 9414 ("Release 34–20715") (adopting exception (e)(13)).

Block positioning is an activity engaged in by certain broker-dealers whereby a broker-dealer acts as principal in taking all or part of a block order placed with the broker-dealer by a customer in order to facilitate a transaction that might otherwise be difficult to effect in the ordinary course of floor trading. *Cf.* NYSE Rule 97.10. Exception (e)(13) enables a broker-dealer that establishes an "arbitrage" or "hedge" position in an arbitrage account, with a short position fully hedged or covered by an equivalent security, not to be handicapped by Rule 10a–1 in its block positioning activities in that security. Release 34–20230, 48 FR at 45120. In that release, the Commission noted that exception (e)(13) would be limited to circumstances where it would facilitate activity beneficial to the market and where manipulative incentives do not appear to exist.

Under exception (e)(13), in determining whether it is long or short for purposes of the "tick" provisions of the short sale rule, a broker-dealer selling a security acquired while acting in the capacity of a block positioner may disregard a proprietary short position in that security if and to the extent that such short position is the subject of one or more offsetting positions created in the course of *bona fide* arbitrage, risk arbitrage, or *bona fide* hedge activities. Release 34–20715, 49 FR at 9414. For purposes of the exception, the terms "block positioner," *bona fide* arbitrage," "risk arbitrage," and "*bona fide* hedge" are as used in Release 34–15533. *See* n. 53 *supra*. The Commission proposes to redesignate paragraph (e)(13) as paragraph (f).

rather than the conditions that existed at the time that the particular index arbitrage position was established.

Proposed new paragraph (g) and the present staff no-action position,[61] have the same intent and effect, namely, facilitating pricing efficiency while preserving the fundamental objectives of Rule 10a–1. Paragraph (g) focuses on the timing of the *liquidation* of *all* index arbitrage positions, rather than the timing or the circumstances of the *establishment* of *individual* index arbitrage positions, as is the case with the no-action position.[62] This shift of focus would relieve firms from the compliance burden of tracking different positions of fungible securities according to the timing or circumstances surrounding their acquisition.

Proposed new paragraph (g)(2) would provide that the limited relief from the "uptick" provisions of Rule 10a–1(a) and (b) in connection with the liquidation of an index arbitrage position is not available if the "unwinding" occurs during a period commencing at the time that the value of the DJIA has declined by 50 points or more from the previous day's closing value and terminating upon the establishment of the closing value of the DJIA on the next business day. If the market decline restriction is in effect, each individual security position of an index arbitrage position must be aggregated in the usual way with all of the seller's other positions (whether fully hedged or not) in that security to determine whether the seller has a net long position. If the seller does not have a net long position, then the sale must comply with Rule 10a–1.

Proposed paragraph (g)(2) substantially parallels the operation of NYSE Rule 80A(c).[63] The restrictions of paragraph (g)(2) would be invoked simultaneously with the triggering of NYSE Rule 80A(c), which is a well-publicized signal of a change in index arbitrage liquidation procedures. NYSE Rule 80A(c) provides in part that when the DJIA declines by 50 points or more from the previous day's close, all index arbitrage sales of securities on the NYSE may occur only on plus ticks or zero-plus ticks. The NYSE Rule 80A(c) execution procedures are more restrictive than paragraph (g)(2), however, in that they require all NYSE index arbitrage stock transactions, whether undertaken by a short or long seller, to be effected on a plus tick or zero plus tick.[64]

The most significant difference between the operation of these two provisions is that paragraph (g)(2) would continue to operate for a longer period of time than the provisions of NYSE Rule 80A(c), which terminate once the DJIA recovers 25 points from the NYSE Rule 80A(c) trigger level. In contrast, the operation of new paragraph (g)(2) of Rule 10a–1 would terminate upon the establishment of the closing value of the DJIA on the next succeeding trading day when NYSE Rule 80A(c) had not been triggered.[65] The reason for the longer application of proposed paragraph (g)(2) would be to allow the markets to avoid incremental selling pressure at the close of trading on a volatile trading day (even if NYSE Rule 80A is not in effect at the close of trading) and at the opening of trading on the following day, since trading activity at these times may have a substantial effect on the market's short-term direction.[66]

The Commission specifically requests comment on the appropriateness and scope of the proposed amendment, including experiences of market participants in complying with condition (2) of Release 34–27938.[67] The Commission also requests comment on whether the availability of the relief afforded by new paragraph (g) should coincide more closely with the operation of NYSE Rule 80A(c).

D. Proposed Amendment to Rule 3b–3

Rule 3b–3 defines the term "short sale" as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller."[68] Rule 3b–3 further states that a person shall be deemed to own a security if "he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it."[69] The Commission is proposing to amend Rule 3b–3 to clarify that, if the ownership of a security is claimed by virtue of having entered into a contract to purchase it, the contract must involve a fixed, currently ascertainable amount of the security at a fixed, currently ascertainable price. The proposed amendment is designed to address potentially abusive trading practices.

The question of the price of shares owned for purposes of Rule 3b–3 and Rule 10a–1 arises, for example, when a customer contracts to sell to a broker-dealer shares of stock or a portfolio of stocks with the price agreed in advance to be the next following closing price on the primary market for the stock or stocks.[70] The broker-dealer may then sell the securities that are the subject of the contract prior to the close of trading on the primary market.[71] The Commission questions whether contracts for the purchase of a security that do not specify the purchase price should entitle the purchaser to be considered an owner of the shares for purposes of Rule 3b–3 because the purchaser may have an incentive to depress the market price of the security, and thereby obtain the shares pursuant to the contract at a lower price. This incentive appears to be the type of manipulative concern that Rule 10a–1 is designed to address. Accordingly, the Commission solicits comment on whether it would be appropriate to amend Rule 3b–3 to clarify that an "unconditional contract" must specify a fixed, currently ascertainable price.

The question of the quantity of shares owned for purposes of Rule 3b-3 and Rule 10a-1 has arisen in the context of certain issuer dividend reinvestment plans ("DRPs"). Under such plans, shareholders of record generally may purchase additional shares with cash dividends and with optional cash contributions (which may be substantial) directly from the issuer or in

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[61] If proposed new paragraph (g) is adopted, the 1988 position and Release 34–27938, and the NYSE and Amex OHT Letters (in relevant part), would be withdrawn.

[62] The Commission notes that Release 34–27938 may have the unintended effect of penalizing buy-side index arbitrage strategies involving the purchase of stocks in times of market stress.

[63] *See* NYSE Guide (CCH) ¶2060A(c). See also Securities Exchange Act Release No. 29854 (Oct. 30, 1991), 56 FR 55963 (File No. SR–NYSE–91–21).

[64] The Commission notes, however, that NYSE Rule 80A covers only NYSE-listed stocks, while Rule 10a–1 and proposed paragraph (g)(2) apply to a larger universe of securities.

[65] Therefore, if the DJIA declined on the next trading day (day 2) by 50 or more points from its close on the initial trading day (day 1), NYSE Rule 80A(c) would be triggered on day 2 and the paragraph (g)(2) restrictions would apply on day 2 and until the close of the next trading day (day 3). The application of NYSE Rule 80A(c) would terminate at the end of day 2 (if it had not earlier terminated by a 25 point recovery in the DJIA from the NYSE Rule 80A(c) trigger level).

[66] As discussed above, the operation of paragraph (g)(2) does not preclude short sales of securities held in an index arbitrage position. The effect of paragraph (g)(2) is to require such sales to comply with the "tick" provisions of Rule 10a–1.

[67] Among other issues, commenters are invited to address whether the definitions of *bona fide* arbitrage, *bona fide* hedge, and, particularly, risk arbitrage, as defined in Release 34–15533, are appropriate in this context. See n.53 *supra*.

[68] 17 CFR 240.3b–3.

[69] 17 CFR 240.3b–3 [subparagraph (b)].

[70] For example, a customer, generally an institutional investor, managing an indexed portfolio may desire to obtain the closing prices in order that the performance of the portfolio more precisely tracks that of the index.

[71] The Commission notes that some broker-dealers may consider themselves long by virtue of having entered into such a contract, while others may consider themselves short. The proposed amendment to Rule 3b– is intended to resolve this interpretive question.

market transactions at the closing price of the issuer's stock as of a particular date, or based upon an average price formula ("Formula Price").[72] Certain DRPs also provide for the purchase of shares at a discount (usually from 2 to 5 percent) from the closing price or Formula Price.

In recent years, some trading strategies have developed to take advantage of these discounts. For example, on or about the day or days involved in calculating the price for the DRP shares, a broker-dealer will sell in the market the estimated amount of shares that the broker-dealer and/or its customers expect to purchase through the DRP. The broker-dealer may estimate this amount by dividing the amount of the optional cash contributions sent to the DRP agent by the expected Formula Price less the discount. In this way, the DRP participant can capture as gross profit the discount provided by the plan. Sales pursuant to strategies designed to capture the discount, however, also have the inherent potential for lowering the price of the security.[73] If the Formula Price is driven below the average price realized on the shares sold in the market, the DRP participant will capture the amount of this difference in addition to the plan's discount.[74] Of course, to the extent that such sales induce other persons to sell and lower the market price further, the opportunity for profit by the DRP participant increases.

Some of these persons may consider the shares expected to be received pursuant to the DRP to be "owned" for purposes of Rules 3b-3, so that their sales of those shares may be effected as "long" sales for purposes of Rule 10a-1. The apparent basis for this position is that the Plan participants, upon deposit of their funds for the purchase of shares by the Plan administrator, deem themselves to have "an unconditional contract, binding on both parties thereto, to purchase it but [have] not yet received it."

The Commission questions whether it is appropriate for a person to be considered the owner of a security for purposes of Rules 3b-3 and 10a-1 where the person can only estimate the number of shares that the person will receive pursuant to a contract or otherwise.[75] In order to make clear that sales by DRP participants of the shares expected to be received through the DRP under the circumstances described above are not within the definition of ownership (and thus must be sold "short"), the Commission solicits comment on whether it should amend Rule 3b-3 to provide that ownership must be based upon a specific amount of such security at the time of sale. If so, a person will be deemed to own a security for purposes of Rule 3b-3 only where the exact amount of securities owned is known at the time of sale.[76]

Therefore, the Commission proposes to add a proviso to Rule 3b–3 that a person would be deemed to own a security for short sale purposes where ownership is claimed by virtue of having a contract to purchase it only where the contract specifies a fixed, currently ascertainable amount of the security at a fixed, currently ascertainable price.[77]

The Commission seeks comment on whether this amendment is necessary or appropriate, and whether the definitional change would affect adversely the important liquidity function provided by broker-dealer capital commitments to customer facilitation operations or trading strategies not related to DRPs.[78] The Commission is particularly interested in possible alternative approaches which may address the identified concerns.

III. Regulatory Flexibility Act Considerations

Section 603(a) [79] of the Administrative Procedure Act ("APA"),[80] as amended by the Regulatory Flexibility Act ("Flexibility Act"),[81] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities." Section 605(b) of the Flexibility Act specifically exempts from this requirement any proposed rule, or proposed rule amendment, which, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act establishes procedural requirements applicable to agency rulemaking that has a significant economic impact on a substantial number of small entities.[82] The Chairman of the Commission has certified pursuant to that Act that the proposed amendments to Rules 10a–1 and 3b–3, if adopted, will not have a significant economic impact on a substantial number of small entities. The certification is attached to this release as Exhibit A. The amendments to Rule 10a–1 would provide for an exemption to equalize the price of a foreign security on a exchange with its price in the principal foreign market for the security; provide for an exemption for certain

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[72] Similar to the activities described above, the question of the price of shares owned for purposes of Rule 3b-3 and Rule 10a-1 is also relevant to certain DRPs transactions.

[73] See n. 42 *supra*.

[74] The Commission observes that this practice is analogous to the short selling and covering in connection with registered public offerings that is prohibited by Rule 10b-21(T) under the Exchange Act, 17 CFR 240.10b-21(T).

[75] Irrespective of whether a DRP participant can be considered to have a qualifying contract to purchase securities, where a DRP participant sells securities in anticipation of receipt of DRP securities and delivers borrowed shares to effect delivery on those sales, the sale is a short sale. *See* Rule 3b-3.

[76] See Letter regarding RFG Options Co. (December 19, 1985) ("RFG Options letter") (available January 21, 1986, on LEXIS, Fedsec library, Noact file). See also Letter from Larry E. Bergmann, Assistant Director, Division, to Michael Seely, Manager, Market Trading Analysis, NYSE, (February 19, 1985) (available on LEXIS, Fedsec library, Noact file). In the RFG Options letter, the Division adhered to the above analysis of Rule 3b-3, but nevertheless took a no-action position with respect to Rule 10a-1 under the Exchange Act to permit RFG Options Company to continue to participate in certain DRP plans. The RFG Options letter would be modified to the extent that the Commission adopts the proposed amendment to Rule 3b-3.

Of course, without considering any securities expected to be received from the DRP purchases, a DRP participant with a net long position in the security (without considering the shares that are the subject of a contract of the type discussed above) may sell long based upon that ownership.

[77] Accordingly, securities that are to be acquired pursuant to a contract without such specificity would not be considered to represent a "long" position for purposes of determining the person's net position under Rule 3b–3.

[78] The Commission understands that in connection with partial exchange offers, the NYSE permits tendering security holders to sell securities they anticipate receiving in the exchange offer as "long," provided that the tendering security holder tenders (and does not withdraw) all its securities into the exchange offer. The amount of shares to be sold long is based upon a "conservative" calculation of the amount of shares anticipated to be received in the partial exchange offer. For example, a tendering holder who tenders (and does not withdraw) all its securities into an exchange offer for 80 percent of the outstanding securities may conservatively estimate that at least 80 percent of its tendered securities will be accepted, and may sell the shares expected to be received in the exchange "long" after the expiration of the tender period but prior to the announcement of the proration factor, if any.

The NYSE's practice is based on Rule 3b–3(c), 17 CFR 240.3b-3, which states that a person is deemed to own a security if "he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange." *See also* NYSE Rule 440B.14. The Commission requests comment on the appropriateness of the NYSE view.

[79] 5 U.S.C. 603(a).

[80] 5 U.S.C. 551 *et seq.*

[81] Public Law No. 96–354 (September 19, 1980), 94 Stat. 1164 (1980), U. S. Code Cong. & Ad. News 1169.

[82] Although Section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. See Securities Exchange Act Release No. 18452 (January 28, 1982), 47 FR 5215.

liquidations of existing index arbitrage positions; and exclude from short sale restrictions transactions in non-convertible corporate bonds effected on an exchange. The proposed amendments to the Rule would restructure and redesignate certain exceptions to the Rule. The amendment to Rule 3b–3 would alter the definition of ownership of a security pursuant to contract. These provisions of the amendment would clarify Rules 3b–3 and 10a–1, and therefore will not result in any adverse economic impact to small entities.

IV. Statutory Basis and Text of Rule Amendments

The proposed amendments to Rule 3b–3 and Rule 10a–1 would be adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 2, 3(b), 10(a), 10(b), 15(c), and 23(a); 15 U.S.C. 78b, 78c(b), 78j(a), 78j(b), 78o(c), and 78w(a).

List of Subjects in 17 CFR Part 240

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

Note—Arrows indicate text proposed to be added. Brackets indicate text proposed to be removed.

2. Section 240.3b–3 is revised to read as follows:

§ 240.3b–3 Definition of "short sale."

The term "short sale" means any sale of a security which the seller does not own or any sale which is consummated by the delivery of security borrowed by, or for the account of, the seller. A person shall be deemed to own a security if:

(a) He or his agent has the title to it; or

(b) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; or

(c) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or

(d) he has an option to purchase or acquire it and has exercised such option; or

(e) he has rights or warrants to subscribe to it and exercised such rights or warrants:

Provided, however, That >ownership based upon paragraphs (a) through (e) of this section is established only where such person or his agent has, or will receive, a fixed, currently ascertainable amount of the security at a fixed, currently ascertainable price, and Provided further, that< a person shall be deemed to own securities only to the extent that he has a net long position in such securities.

3. Section 240.10a–1 is amended by revising paragraph (b); by redesignating paragraphs (e)(12), (e)(13), and (f) as paragraphs (h), (f), and (i), respectively; revising newly designated paragraphs (f) and (h); and adding new paragraphs (e)(12) and (g) to read as follows.

§ 240.10a–1 Short sales.

* * * * *

(b) No person shall, for his own account or for the account of any other person, effect on a national securities exchange a short sale of any security>, except a bond or debenture,< not covered by paragraph (a) of this section:

(1) below the price at which the last sale thereof, regular way, was effected on such exchange; or

(2) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on such exchange.

In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all sale prices prior to the "ex" date may be reduced by the value of such distribution.

* * * * *

(e) * * *

>(12) Any sale of a security (except a sale to a stabilizing bid complying with § 240.10b-7) at the opening of trading on a national securities exchange of a foreign security, or a depositary share or depositary receipt relating to such a security, at a price equal to or above the last reported price (adjusted for current exchange rate) of that security in the principal foreign market for the security;<

[(e)(13)] >(f) For purposes of this section, a broker-dealer that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of § 240.3b–3 (Rule 3b–3) and of this section notwithstanding that such broker-dealer may not have a net long position in such security if and to the extent that such broker-dealer's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.<

>(g) This section shall not apply to any sale of a security by a person, for that person's own account, effected in connection with the liquidation in a manner as nearly simultaneously as practicable of both sides of an index arbitrage position relating to a securities index that is the subject of a financial futures (or options on such futures) contract traded on a contract market designated by the Commodity Futures Trading Commission, or a standardized options contract as defined in § 240.9b–1(a)(4) [Rule 9b–1(a)(4)], or stock index warrants traded on a national securities exchange, notwithstanding that such person may not have a net long position in that security, Provided, however, That:

(1) such person's net short position is solely the result of one or more short positions created and maintained in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities; and

(2) the sale does not occur during a period commencing at the time that the Dow Jones Industrial Average ("DJIA") has declined by 50 points or more from its closing value on the previous day and terminating upon the establishment of the closing value of the DJIA on the next succeeding trading day during which the DJIA has not declined by 50 points or more from its closing value on the previous day.<

[(12)] >(h) Definitions.<

>(1)< For the purposes of [paragraph (e)(8) of] this section, a depositary receipt of a security shall be deemed to be the same security represented by such receipt.

>(2)< For the purposes of paragraphs (e)(3), (4) and (5) of this section, the term "third market maker" shall mean any broker or dealer who holds itself out as being willing to buy and sell a reported security for its own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size.

By the Commission.

Dated: June 3, 1992.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to

Rules 3b–3 and 10a–1 under the Securities Exchange Act of 1934 set forth in Securities Exchange Act Release No. 30772, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that (i) the proposed amendments to Rule 10a-1, if adopted, would provide regulatory relief to a variety of market participants in a variety of recurring contexts; and (ii) to the extent that the proposed amendments to Rules 3b–3 and 10a–1, if adopted, would impose any costs on market participants, those costs are not significant and would not impact a substantial number of small entities.

June 3, 1992

Richard C. Breeden,

Chairman.

[FR Doc. 92–13465 Filed 6–8–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 204

[Docket No. R–92–1582; FR–3131–P–01]

RIN No. 2502–AF61

Electronic Payment of Up-Front Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes that all Up-front Mortgage Insurance Premium (MIP) collections in accordance with 24 CFR 203.284 (see 56 FR 24622, 24625, May 30, 1990) be made by the Automated Clearing House (ACH) program. The purpose of this rule is to improve the efficiency of the single family mortgage insurance program and reduce costs to HUD lenders.

DATES: Comment due date: August 10, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. An original and four copies of comments should be provided. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Tucker, Acting Director, Single Family Insurance Operations Division, room 2246, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone: voice, (202) 708–2438. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

In August 1985, the Department of Housing and Urban Development (HUD) implemented the Automated Clearing House (ACH) program for the remittance of Up-front Mortgage Insurance Premiums. The ACH program is designed to provide FHA approved lenders the opportunity to utilize their mainframe and personal computers to authorize electronically the payment of Up-front Mortgage Insurance Premiums, instead of sending checks and HUD–27001 forms by mail. Currently, more than 32 percent of HUD's up-front premiums are being collected through the ACH program.

The ACH system is designed to process Up-front premium collections from mortgagees and remit confirmations back to mortgagees, using remote terminals in lieu of sending checks and confirmations by mail. The mortgagee's terminal operator dials a number that ties the terminal or micro computer into the collection agent's telenet system. After keying the logon commands, the operator enters the day's transactions.

Each day at 8 p.m. EST, the collecting agent originates an ACH file of debit transactions based on the data keyed by the mortgagee. When the debit transactions have been processed, the ACH will transmit the up-front premium data to HUD's premium collection system. Through this ACH process, the debit amount is drawn from the designated lender's bank account electronically the next day, or can be "warehoused" and drawn on the lender's bank account on a future date. The corresponding credit entry will update HUD's account located at the collecting agent. If the lender's bank is unable to receive an ACH entry, a paper Depository Transfer Check (DTC) is used.

After transmission, the Up-front Premium transactions are processed in the same manner as in the past. The premium transactions are edited; then, using the results of the edit, appropriate letters are sent to the mortgagee via Electronic Mail (ECOM). The possible letters that can be sent are:

—Endorsement Authorization, or

—Bill for Late Charges, or

—Request for Additional Information.

The request for additional information results from edits on the HUD–27001 data. Correct remittance confirmation data is required to allow the system to calculate an amount of mortgage based on the premium paid. Without this data, the MIP amount cannot be calculated and an Endorsement Authorization to endorse the loan cannot be made.

There are other problems that cause delays in production of Endorsement Authorization letters:

- Late charges and/or interest charges are due.
- Incorrect mortgagee numbers.
- Additional information is needed.

Without ACH, these conditions had to be corrected by HUD personnel and the correction transaction prepared, keyed and then reprocessed by the HUD system. The ACH transfer system eliminates these errors. The ACH transfer system uses the mortgagee number as part of the logon procedure. Any error in the mortgagee number results in the ACH transfer system rejecting the logon attempt. In addition, the ACH transfer system balances the dollar fields in each detail transaction to the amount entered, along with the unit number. Where there is an error, the system produces an error message that describes the problem. The error must be corrected before the ACH transfer system will prepare the ACH entries.

The general Late Charge policy for the ACH program is the same as for Up-front Premiums sent to the Atlanta lockbox address. Late charges are levied if payment is received later than 15 days after the closing date. For the ACH program, the late charge amount is automatically calculated by the system.

ACH provides lenders with numerous tangible benefits that should reduce their servicing costs. The advantages of ACH are:

(1) Control of payment timing—The use of ACH debits and credits can increase control of payment initiation and funds availability.

(2) Banking costs are reduced—ACH transfer costs less than paper check and wire transfer.

(3) Accounting reconciliation is reduced—Payments are computerized and cash application is more automated than with manual systems.

(4) On-line edits can reduce data errors created by manual recording.

(5) The chance of lost/late mail is eliminated.

(6) ACH permits utilization of the new capability of submitting refinanced cases.

Because ACH provides mortgage lenders as well as the Department with numerous tangible benefits that reduce servicing costs, the Department is proposing that ACH become the sole method for collecting Up-front Mortgage Insurance Premiums. The Department feels that this rule does not have a significant economical impact on the smaller lending community since personal computing is so pervasive within the industry. The rule implements a program that will enhance operations and be cost beneficial for all mortgage lenders. Implementation of this process will be phased in and coordinated with lenders on an individual basis.

Up-front MIP's to be collected by the ACH program would be for mortgages insured under the Mutual Mortgage Insurance Fund, *i.e.*, National Housing Act Sections 203(b), 203(h), 203(i), and 203(n). (This includes mortgages insured under section 203(b) pursuant to sections 244 (coinsurance), 245 (graduated payment mortgages and growing equity mortgages) or 251 (adjustable rate mortgages).)

This rule does not affect the collection of monthly mortgage premiums. The Department does anticipate proposing at a future date collecting monthly premium payments in accordance with 24 CFR 203.284, solely by means of ACH. The Department invites interested persons to submit comments regarding this future proposal.

Also excluded are any section 203(b) mortgages insured pursuant to section 223(e) (older declining areas), 238(c) (military impacted areas), 248 (Indian reservations), and 247 (Hawaiian home lands), since those mortgages are not obligations of the Mutual Mortgage Insurance Fund.

The Department does anticipate proposing at a future date collecting monthly premium payments in accordance with 24 CFR 203.284, solely by means of ACH. The Department invites interested persons to submit comments regarding this future proposal.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a program that will enhance operations and be cost beneficial for all mortgage lenders. In addition, the plan to phase in the program with lenders on an individual basis assures that small organizations will not be put under undue burdens in adapting to it.

Under HUD's National Environmental Policy Act regulations at 24 CFR 50.20(k), this rule is exempt from the requirement of an environmental finding. The rule relates solely to internal administrative procedures whose content does not involve a developmental decision or affect the physical condition of project areas or building sites, but only relates to the performance of accounting, auditing and fiscal functions.

This rule was listed as item number 1144 in the Department's Seminannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16824) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, had determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The proposed rule involves only technical and procedural specifications associated with the payment of premiums on FHA insured mortgages.

The Catalog of Federal Domestic Assistance program number(s) are 14.117, 14.112, 14.121, 14.122, 14.132, and 14.133.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians: Lands loan programs: housing and community development, Mortgage insurance, Reporting and record keeping requirements, Solar energy.

24 CFR Part 204

Mortgage insurance.

Accordingly, 24 CFR parts 203 and 204 are proposed to be amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for part 203 would be revised to read as follows:

Authority: 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d). Subpart C is also issued under 12 U.S.C. 1715u.

2. In § 203.259a, paragraph (b) would be revised to read as follows:

§ 203.259a Scope.

* * * * *

(b) The Commissioner will charge an Up-front MIP pursuant to § 203.284 for mortgages, executed on or after July 1, 1991, that are obligations of the Mutual Mortgage Insurance Fund. The Commissioner may require, by means of instructions communicated to all affected mortgagees, that Up-front MIP be remitted electronically.

* * * * *

PART 204—COINSURANCE

3. The authority citation for part 204 would be revised to read as follows:

Authority: 12 U.S.C. 1715z –9, 1715b; 42 U.S.C. 3535(d).

4. Section 204.260 would be revised to read as follows:

§ 204.260 Mortgage insurance premiums for coinsured mortgages.

The provisions of § § 203.260 through 203.268, or the provisions of § § 203.284 and 203.259a(b) of this chapter, as appropriate, concerning mortgage insurance premiums with respect to mortgages insured under section 203(b)

of the National Housing Act, apply to mortgages covering one-to-four family dwellings to be insured under this part.

Dated: May 22, 1992.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-13514 Filed 6-8-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-88-86

RIN 1545-AJ35

Real Estate Mortgage Investment Conduits; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations that relate to the real estate mortgage investment conduits, or REMICs.

DATES: The public hearing originally scheduled for Wednesday, June 17, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or 202-566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 860A and 860G of the Internal Revenue Code of 1986. A notice of public hearing appearing in the **Federal Register** for Monday, April 20, 1992 (57 FR 14371), announced that the public hearing on the proposed regulations would be held on Wednesday, June 17, 1992, beginning at 10 a.m., in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Thursday, June 17, 1992, has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-13413 Filed 6-8-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-264-82]

RIN 1545-AE88

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to adjustments to the basis of a shareholder's stock in an S corporation to a shareholder as well as proposed regulations relating to the treatment of distributions by an S corporation to its shareholders.

DATES: The public hearing will be held on Monday, September 14, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, August 24, 1992.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-264-82], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9232, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 1367 and 1368 of the Internal Revenue Code. These regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, August 24, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the person testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-13414 Filed 6-8-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-264-82]

RIN 1545-AE88

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1367 of the Internal Revenue Code relating to adjustments to the basis of a shareholder's stock in an S corporation and the basis of indebtedness of an S corporation to a shareholder. This document also contains proposed regulations under section 1368 of the Internal Revenue Code relating to the treatment of distributions by an S corporation to its shareholders. Changes to the applicable law were made by the subchapter S Revision Act of 1982, the Technical Corrections Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986. The proposed regulations affect S corporations and their shareholders and are necessary to provide them with the guidance they need to comply with the applicable tax law.

DATES: Written comments, requests to appear and outlines of oral comments to be presented at a public hearing scheduled for September 14, 1992 at 10 a.m. must be received by August 24, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS–264–82), room 5228, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Michael Slaughter, Regulations Unit, (202) 377–9232 (not a toll-free number); concerning a particular regulation section, Christine Ellison, (202) 377–3352 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Informaiton and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collections of Information in these proposed regulations are in § 1.1368–1 (f) and (g). This information is required by the Internal Revenue Service to assure that section 1368 and the regulations thereunder are properly applied to distributions made by the corporation. This information will be used to verify that a taxpayer is reporting the correct amount of income or gain on a distribution made by the corporation. The respondents will be S corporations and shareholders of S corporations.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on the information that is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting and recordkeeping burden: 18 hours.

Estimated average annual burden hours per respondent and recordkeeper varies from .05 to .2 hours, depending on individual circumstances, with an estimated average of .1 hours.

Estimated number of respondents and recordkeepers: 200.

Estimated annual frequency of response: On occasion.

Background

This document proposes amendments to part 1 of title 26 of the Code of Federal Regulations that provide rules under sections 1367 and 1368 of the Internal Revenue Code of 1986, as amended (the Code). The proposed amendments would conform the regulations to amendments made to sections 1367 and 1368 by sections 2 and 6 of the Subchapter S Revision Act of 1982, section 305 of the Technical Corrections Act of 1982, sections 721 (d), (r) and (w) and 722(e)(2) of the Tax Reform Act of 9184, and section 1879(m)(1)(B) of the Tax Reform Act of 1986.

Explanation of Provisons

Adjustments to Basis of Stock and Indebtedness

In General

The basis of a shareholder's stock in an S corporation and of the S corporation's indebtedness to a shareholder (S corporation debt) is relevant for determining (1) the amount of the shareholder's gain, loss, or tax-free return of capital on the disposition of stock or indebtedness and (2) the limitation on the deductibility of losses and deductions passed through from the corporation to the shareholder under section 1366 of the Code. The basis of a shareholder's stock in an S corporation also is relevant for determining the tax effect of distributions made by the corporation to the shareholder. Section 1367 provides special rules for adjusting the basis of a shareholder's stock and S corporation debt to take into account the shareholder's share of the corporation's income, losses, and deductions, and distributions made by the corporation to the shareholder. The proposed regulations implement these special rules.

Provisions of the Code other than those found in subchapter S also may affect the determination of the basis of a shareholder's stock or S corporation debt. For example, the original basis of a shareholder's stock or S corporation debt is determined under the rules contained in section 1012 or under other provisions of the Code. Adjustments to the basis of a shareholder's stock or S corporation debt may be required if, for example, the shareholder makes a contribution to the capital of the corporation, or receives a repayment of principal on the debt of the corporation. The proposed regulations address only the adjustments required by section 1367.

The Service adopts a separate basis approach (comparable to the basis of a shareholder in C corporation stock) in these regulations. The Service invites comments on whether another approach such as an aggregate/average basis (comparable to the basis of a partner in a partnership interest) should be used for purposes of sections 1367, 1368, and 1012. Comments advocating an aggregate/average basis should address how a shareholder would determine his or her holding period when disposing of stock.

Adjustments to Basis of Stock

Sectio 1367 (a) and the proposed regulations prescribe adjustments required by subchapter S to the basis of a shareholder's stock and the manner in which those adjustments are made. The basis of a shareholder's stock is increased by the shareholder's pro rata share (determined on a per share, per day basis under section 1377(a)) of (1) the corporation's separately stated items of income, (2) the corporation's nonseparately computed income, and (3) the excess of the corporation's deductions for depletion (other than depletion for any oil and gas) over the basis of the property subject to depletion. The basis of shareholder's stock is not increased for any depletion with respect to oil and gas property because each shareholder computes that deduction separately pursuant to section 613A(c)(11)(B). A shareholder increases stock basis for items of income that are required to be included in gross income only if the shareholer in fact includes the items in gross income on the shareholder's return.

Under the proposed regulations, the basis of a shareholder's stock is decreased (but not below zero) by (1) distributions that are not includible in the shareholder's income under section 1368, (2) the shareholder's pro rata share of separately computed items of loss and deduction, nonseparately computed loss, and any expense of the corporation that is not deductible in computing its taxable income and not properly chargeable to a capital account (noncapital, nondeductible expenses), and (3) deductions for depletion for any oil and gas property to the extent the deduction does not exceed the portion of the adjusted basis of that property allocated to the shareholder under section 613A(c)(11)(B). The basis of a shareholder's stock is decreased by the amount of any loss or deduction that is allowed for the taxable year under section 1366(d), regardless of whether the loss or deduction is disallowed or deferred under another provision of the

Code, such as the passive loss rules of section 469.

The adjustments to basis required for the shareholder's pro rata share of the corporation's items of income, loss, or reduction are made to each share of stock on a per share, per day basis under the principles of section 1377(a). If the amount of the loss or deduction attributable to a share exceeds its basis, the excess is applied to reduce (but not below zero) the remaining bases of all other shares of stock owned by the shareholder in proportion to the remaining basis of each of those shares.

Under the proposed regulations, adjustments are made to the basis of a share of stock in the following order: (1) Increases for income items and the excess of the deductions for depletion, (2) decreases for nondeductible, noncapital expenses and certain oil and gas depletion deductions; (3) decreases for items of loss or deduction, and (4) decreases for distributions. The Service invites comments on these ordering rules and suggestions for alternatives to the rules proposed here.

Adjustments to Basis of Indebtedness: Reduction and Restoration

Under section 1366(d)(1), a shareholder whose stock basis has been reduced to zero may take into account losses and deductions (but not distributions) allocated to the shareholder to the extent of the shareholder's basis in S corporation debt. Under the proposed regulations, if the amount of the items that decrease the basis of a shareholder's stock (other than distributions) exceed the basis of all the shareholder's shares of stock (after adjustment for items that increase stock basis), the excess is applied to reduce (but not below zero) the shareholder's basis of any S corporation debt. The reduction of basis of S corporation debt generally applies only to those debts held by the shareholder at the end of the corporation's taxable year and does not apply to debts satisfied, disposed of, or forgiven during the taxable year. If the shareholder holds more than one debt at the end of the corporation's taxable year, the reduction of basis applies to each debt in the same portion that the basis of each debt bears to the aggregate bases of all S corporation debt.

The proposed regulations provide that if for any taxable year there has been a reduction of the shareholder's basis of an S corporation debt, any net increase for any subsequent taxable year must be used to restore the basis of the debt before it may be used to increase the basis of the shareholder's stock. The net increase is the amount by which the sum of the shareholder's items of income and excess deductions for depletion exceeds the sum of the items of loss, deduction, nondeductible noncapital expenses, distributions, and certain oil and gas depletion deductions. The basis restoration rules apply to S corporation debt held by the shareholder on the first day of the taxable year in which the net increase arises, and the basis restoration is limited to the outstanding balance of the S corporation debt as of that day. In addition, if the shareholder holds more than one S corporation debt during the corporation's taxable year, any net increase is applied first to restore the reduction of basis of any debt repaid in whole or in part during that taxable year. In the case of a debt that is repaid in part during the corporation's taxable year, the basis is retored only to the extent necessary to offset any gain that would otherwise be realized on repayment. The remaining net increase, if any, is applied to restore the basis of each outstanding debt in proportion to the amount that the basis of each debt has been reduced under the basis reduction rules of section 1367(b)(2)(A), and the proposed regulations and not restored.

The proposed regulations do not address the treatment of indebtedness where the advances to the S corporation by a shareholder and repayments on these advances are treated as one account by the S corporation (open account debt). The Service invites comments regarding the proper treatment of open account debt for purposes of reducing and restoring basis in indebtedness. In particular, the Service invites comments as to whether it is appropriate to treat each advance as a separate debt or all advances as a single debt.

Timing Rules for Adjustments to Basis of Stock and Debt

The proposed regulations provide that adjustments to a shareholder's basis of stock and debt are determined as of the close of the corporation's taxable year. If a shareholder disposes of stock during the taxable year, however, the basis adjustments with respect to that stock are effective immediately prior to the disposition. If a share holder ceases to be a shareholder of the corporation, the adjustments to basis of S corporation debt are effective immediately prior to the termination of the shareholder's interest in the corporation. If a debt is repaid in whole or in part during the taxable year, any restoration of basis with respect to that debt is effective immediately before the first payment on the debt is made during the year.

If the corporation makes the election under section 1377(a)(2) (to terminate the S corporation's taxable year when the shareholder terminates his or her interest in the corporation) or the election under § 1.1368–2(b)(2) (to terminate the S corporation's taxable year when a shareholder disposes of substantial amounts of stock), the basis adjustment rules apply as if the taxable year consists of separate taxable years, the first of which ends on the date on which the shareholder terminates his or her interest in the corporation or disposes of a substantial amount of stock.

Distributions By S Corporations

In General

Under the provisions of the Subchapter S Revision Act of 1982, an S corporation does not generate earnings and profits for taxable years beginning after 1982. Instead, the balance of the S corporation's accumulated adjustments account (AAA) generally represents the post-1982 undistributed net earnings of the corporation. Distributions of amounts represented by the AAA are not treated as distributions made from the earnings and profits of the corporation and therefore are not taxed as dividends to the shareholder. An S corporation may nevertheless have earnings and profits, either from years in which the corporation was taxable under subchapter C of the Code (a C corporation) or from years before 1983 in which the corporation was an S corporation (subchapter S earnings and profits). Distributions of these earnings and profits are taxed as dividends to the shareholder.

Section 1368 and the proposed regulations provide rules for determining the source of a distribution made by an S corporation with respect to its stock and the tax effect of the distribution on the shareholders. One set of rules governs distributions made by S corporations with no earnings and profits at the close of the taxable year of the corporation, and another governs distributions made by S corporations with earnings and profits at the close of the corporation's taxable year.

S Corporations Without Earnings and Profits

The proposed regulations provide that a distribution by an S corporation without earnings and profits is not included in the shareholder's gross income to the extent the distribution does not exceed the adjusted bases of all the shareholder's shares of stock. If the amount of the distribution exceeds

the adjusted bases of all the shareholder's shares of stock, the excess is treated as gain from the sale or exchange of property.

S Corporation With Earnings and Profits

In general, a distribution by an S corporation with earnings and profits is treated as made out of AAA, to the extent of the AAA, and has the same effect as a distribution by a corporation without earnings and profits as described above (*i.e.*, return of basis and then gain from the sale or exchange of property). The portion of the distribution in excess of the AAA is treated as a dividend made out of the corporation's earnings and profits to the extent of the earnings and profits. Any remaining portion of the distribution in excess of earnings and profits as treated as a distribution made by an S corporation without earnings and profits (*i.e.*, return of basis and then gain from the sale or exchange of property).

Previously Taxed Income

The proposed regulations provide special rules for S corporations that have, with respect to one or more of their shareholders, previously taxed income (PTI) as defined under section 1375 (d) prior to its amendment by the Subchapter S Revision Act of 1982. These rules provide that a distribution by an S corporation in excess of the AAA is not included in the gross income of such a shareholder to the extent the distribution is an actual distribution of money and the portion in excess of the AAA does not exceed the shareholder's net share of the corporation's PTI immediately before the distribution. Thus, in general, a distribution by an S corporation to a shareholder with PTI is treated as a distribution made out of PTI after the AAA has been exhausted, but before a distribution is deemed to be a dividend out of earnings and profits. The portion of a distribution treated as a distribution made out of PTI decreases the adjusted basis of the shareholder's stock and, if that portion exceeds the adjusted basis of all the shareholder's shares, the excess is treated as gain from the sale or exchange of property. Distributions made from PTI do not decrease the AAA and earnings and profits of the corporation.

Adjustments Required Before Determining Tax Effect of Distribution

The proposed regulations provide that the tax effect of a distribution to a shareholder is determined only after taking into account the adjustments to the bases of the shareholder's shares of stock for the items described in section 1367 for the corporation's taxable year (without regard to distributions made during the taxable year). In addition, the proposed regulations provide that the determination of the source of a distribution is made only after the AAA has been adjusted to reflect (1) increases for income items (other than income that is exempt from tax) and the excess of the deductions for depletion, (2) decreases for nondeductible, noncapital expenses (other than Federal taxes attributable to any taxable year in which the corporation was a C corporation and expenses related to income that is exempt from tax), (3) decreases for certain oil and gas depletion deductions, and (4) decreases for items of loss or deduction.

Elections Under Section 1368

Elections to Modify the Rules for Determining the Source of Distributions

The general rule of section 1368 and the proposed regulations have the effect of treating distributions by an S corporation with earnings and profits as made first from the AAA until the AAA is exhausted and only then from earnings and profits. Although this ordering rule normally produces a taxpayer-favorable result, there are circumstances where the rule may not be to the taxpayer's advantage. For example, if an S corporation with C corporation earnings and profits has passive investment income in excess of a certain threshold, section 1375 imposes a corporate level tax on a prescribed portion of the passive investment income. If the corporation has excessive passive investment income for three consecutive taxable years, the corporation's S election terminates under section 1362(d)(3).

A corporation that seeks to avoid these adverse effects by distributing its C corporation earnings and profits may find it desirable to treat a distribution as made first from C corporation earnings and profits. The proposed regulations provide three elections that are designed to facilitate an S corporation's distribution of its earnings and profits: (1) An election to bypass the AAA, (2) an election to make a deemed dividend, and (3) an election to bypass PTI.

(1) *Election to bypass the AAA.* Under section 1368(e)(3) of the Code, a corporation with earnings and profits may elect to treat all distributions made during the taxable year as made first from earnings and profits. The proposed regulations provide that if this election is made, distributions out of subchapter C earnings and profits and then out of subchapter S earnings and profits.

(2) *Election to make a deemed dividend.* A corporation that wishes to distribute C corporation earnings and profits may lack sufficient liquid asset to make such a distribution. The proposed regulations provide an election that permits a corporation that elects to bypass the AAA to distribute its C corporation earnings and profits through a deemed dividend. A deemed dividend is a hypothetical distribution that is treated as made by the corporation from its subchapter C earnings and profits with respect to its stock on the last day of its taxable year to all shareholders holding stock on that day. The amount of the deemed dividend is limited to the excess of the corporation's C corporation earnings and profits on the first day of the corporation's taxable year over actual distributions of C corporation earnings and profits made during the taxable year. The deemed dividend is considered, for all purposes of the Code, a distribution by the corporation in money from C corporation earnings and profits, received by the shareholder on the last day of the corporation's taxable year, and immediately contributed by the shareholder as capital to the corporation on that day.

(3) *Election to bypass PTI.* Under the general rules, if an S corporation with earnings and profits also has PTI with respect to one or more of its shareholders from a taxable year ending before the effective date of the subchapter S Revision Act of 1982, distributions made in excess of the AAA are treated as made out of PTI before they are treated as made out of earnings and profits. Thus, even if an S corporation makes the election to bypass the AAA, absent a special rule, the distribution would be treated as made first out of PTI and then out of earnings and profits. The proposed regulations permit an S corporation to elect to treat distributions as not made from PTI.

Election in Case of Disposition of Substantial Amounts of Stock

A shareholder who disposes of a substantial interest in the corporation before the end of the year cannot be certain of the tax consequences of the disposition or of the distributions made to the shareholder during the taxable year before that shareholder disposes of his or her stock. To alleviate this uncertainty, the proposed regulations provide that, if a shareholder disposes of 20 percent or more of the corporation's issued shares of stock in one or more transactions during any thirty-day period during the taxable year of the corporation, the corporation may elect to treat the taxable year as if it

consists of separate taxable years, the first of which ends on the date on which the shareholder disposes of 20 percent or more of the corporation's issued stock. Under the election, the taxable year is treated as if it consists of separate years for purposes of allocating items of income and loss, making adjustments to the AAA, basis, and earnings and profits, and determining the tax effect of distributions.

Rules Relating to the AAA

In General

The AAA is an account of the S corporation that generally reflect the accumulated undistributed net income of the corporation for the corporation's post-1982 years. S corporations with earnings and profits must maintain the AAA to determine the tax effect of distributions during S years and the post-termination transition period. An S corporation without earnings and profits does not need to maintain the AAA in order to determine the tax effect of distributions. Nevertheless, if an S corporation without earnings and profits engages in certain transactions to which section 381(a) applies, such as a merger into an S corporation with C corporation earnings and profits, the S corporation must be able to calculate its AAA at the time of the merger for purposes of determining the tax effect of post-merger distributions.

Adjustments Made to the AAA

Certain adjustments are made to the AAA each taxable year. As described above under distributions by S Corporations, except for the treatment of tax-exempt income (and related expenses) and certain Federal tax liabilities, the AAA adjustments are the same as those made to the basis of stock under section 1367. The AAA may not be reduced below zero for distributions, but, unlike the basis of stock, the AAA may be reduced below zero if losses and deductions of the corporation exceed income. Moreover, the AAA is adjusted to reflect the entire amount of any loss or deduction even though a portion of the loss or deduction is disallowed to a shareholder for the taxable year under section 1366(d)(1) or another provision of the Code.

Special Rules

The proposed regulations provide that if the sum of all distributions (other than distributions made out of earnings and profits or PTI) during the taxable year exceeds the amount in the AAA at the close of the taxable year, the balance of the AAA is allocated among these distributions in proportion to their respective sizes. The regulations also provide special rules for distributions consisting of money and other property the basis of which exceeds its fair market value. In this case, the AAA must be allocated further between the money and the other property distributed, based on the proportion of the money or the fair market of the other property to the amount of the distribution.

In the case of a redemption that is treated as an exchange of stock under section 302(a) or 303(a), the AAA of the corporation is adjusted in an amount equal to the ratable share of the corporation's AAA attributable to the redeemed stock. In the case of a taxable year in which ordinary distributions and redemption distributions occur, the ratable share of the AAA attributable to the redeemed stock is determined under the method used to determine the pro rata portion of total earnings and profits attributable to shares redeemed in a C corporation. See Rev. Rul. 74–338, 1974–2 C.B. 101, and Rev. Rul. 74–339, 1974–2 C.B. 103. The rules set forth in these revenue rulings, rather than the general rules previously described, also apply to determine the effect on the AAA for distributions made during the taxable year of the redemption. For purposes of applying these rules, the portion of the corporation's AAA as of the beginning of the first day of the taxable year in which a redemption occurs is considered the Accumulated AAA and is treated in the same manner as accumulated earnings and profits. The portion of the corporation's AAA attributable to the taxable year of the corporation in which the redemption occurs is considered the current AAA and is treated in the same manner as current earnings and profits. In making any adjustments to the AAA in years in which a redemption occurs, the amount of the accumulated AAA or the current AAA may not exceed the amount of the AAA as of the end of the taxable year of the redemption. The Service invites comments regarding alternative approaches that appropriately reduce the AAA in the case of redemptions.

In the case of an S corporation that acquires the assets of another S corporation in a transaction to which section 381(a)(2) applies, the acquiring corporation succeeds to and merges its AAA with the AAA of the distributor or transferor corporation. Thus, the AAA of the acquiring corporation after the transaction is the sum of the AAA of both corporations immediately prior to the transaction.

In the case of a corporate separation to which section 368(a)(1)(D) applies, the proposed regulations provide that the AAA is allocated among the corporations in a manner similar to the allocation of earnings and profits under section 312(f) and the regulations thereunder.

Effective Date

The proposed regulations under sections 1367 and 1368 apply to taxable years of the corporation beginning after [_____ the regulations are published as final regulations in the **Federal Register**].

Special Analysis

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel For Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Written comments, requests to appear and outlines of oral comments to be presented at a public hearing scheduled for September 14, 1992 at 10 a.m. must be received by August 24, 1992. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Judith C. Winkler and Christine E. Ellison of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1361–0A Through 1.1388–1

Income taxes, Reporting and recordkeeping requirements, and Small businesses.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.1368–1 (f) and (g) also issued under 26 U.S.C. 1377(c). Section 1.1368–2(b) also issued under 26 U.S.C. 1368(c).

Par. 2. Sections 1.1367–0 through 1.1367–3 and 1.1368 through 1.1368–4 are added to read as follows:

§ 1.1367–0 Table of Contents.

The following table of contents is provided to facilitate the use of §§ 1.1367–1 through 1.1367–3:

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

(a) In general.
(1) Adjustments under section 1367.
(2) Applicability of other Code provisions.
(b) Increase in basis of stock.
(1) In general.
(2) Amount of increase in basis of individual shares.
(c) Decrease in basis of stock.
(1) In general.
(2) Noncapital, nondeductible expenses.
(3) Amount of decrease in basis of individual shares.
(d) Time at which adjustments to basis of stock are effective.
(1) In general.
(2) Adjustment for nontaxable item.
(3) Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).
(e) Ordering rules.
(f) Examples.

§ 1.1367–2 Adjustments to basis of indebtedness to shareholder.

(a) In general.
(b) Reduction in basis of indebtedness.
(1) General rule.
(2) Termination of shareholder's interest in corporation during taxable year.
(3) Multiple indebtedness.
(c) Restoration of basis.
(1) General rule.
(2) Multiple indebtedness.
(d) Time at which adjustments to basis of indebtedness are effective.
(1) In general.
(2) Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).
(e) Examples.

§ 1.1367–3 Effective date.

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

(a) *In general.*—(1) *Adjustments under section 1367.* This section provides rules relating to adjustments required by section 1367 to the basis of a shareholder's stock in an S corporation. Paragraph (b) of this section provides rules concerning increases in the basis of a shareholder's stock, and paragraph (c) of this section provides rules concerning decreases in the basis of a shareholder's stock.

(2) *Applicability of other Code provisions.* In addition to the adjustments required by section 1367 and this section, the basis of stock is determined or adjusted under other applicable provisions of the Code.

(b) *Increase in basis of stock*—(1) *In general.* Except as provided in § 1.1367–2(c) (relating to restoration of basis of indebtedness to the shareholder), the basis of a shareholder's stock in an S corporation is increased by the sum of the items described in section 1367(a)(1). The increase in basis described in section 1367(a)(1)(C) for the excess of the deduction for depletion over the basis of the property subject to depletion does not include the depletion deduction attributable to oil or gas property. See section 613(A)(c)(11).

(2) *Amount of increase in basis of individual shares.* The basis of a shareholder's share of stock is increased by an amount equal to the shareholder's pro rata portion of the items described in section 1367(a)(1) that is attributable to that share, determined on a per share, per day basis in accordance with section 1377(a).

(c) *Decrease in basis of stock*—(1) *In general.* The basis of a shareholder's stock in an S corporation is decreased (but not below zero) by the sum of the items described in section 1367(a)(2).

(2) *Noncapital, nondeductible expenses.* For purposes of section 1367(a)(2)(D), expenses of the corporation not deductible in computing its taxable income and not properly chargeable to a capital account (*noncapital, nondeductible expenses*) are only those items for which no loss or deduction is allowable and do not include items the deduction for which is deferred to a later taxable year. Examples of noncapital, nondeductible expenses include (but are not limited to) the following: Illegal bribes, kickbacks, and other payments not deductible under section 162(c); fines and penalties not deductible under section 162(f); expenses and interest relating to tax-exempt income under section 265; losses for which the deduction is disallowed under section 267(a)(1); the portion of meals and entertainment expenses disallowed under section 274; and two-thirds of treble damages paid for violating antitrust laws not deductible under section 162.

(3) *Amount of decrease in basis of individual shares.* The basis of a shareholder's share of stock is decreased by an amount equal to the shareholder's pro rata portion of the item described in section 1377(a)(2) attributable to that share, determined on a per share, per day basis in accordance with section 1377(a). If the amount attributable to a share exceeds its basis, the excess is applied to reduce (but not below zero) the remaining bases of all other shares of stock in the corporation owned by the shareholder in proportion to the remaining basis of each of those shares.

(d) *Time at which adjustments to basis of stock are effective*—(1) *In general.* The adjustments described in section 1367(a) to the basis of a shareholder's stock are determined as of the close of the corporation's taxable year, and the adjustments generally are effective as of that date. However, if a shareholder disposes of stock during the corporation's taxable year, the adjustments with respect to that stock are effective immediately prior to the disposition.

(2) *Adustment for nontaxable item.* An adjustment for a nontaxable item is determined with respect to the taxable year in which the item would have been includible or deductible under the corporation's method of accounting for federal income tax purposes if the item had been subject to federal income taxation.

(3) *Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).* If an election under section 1377(a)(2) (to terminate the year in the case of the termination of a shareholder's interest) or under § 1.1368–1(g)(2) (to terminate the year in the case of a disposition of a substantial amount of stock) is made with respect to the taxable year of a corporation, this paragraph (d) applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder either terminates the shareholder's interest in the corporation or disposes of a substantial amount of stock, whichever the case may be.

(e) *Ordering rules.* For any taxable year, the adjustments required by section 1367(a) are made in the following order:

(1) Any increase in basis attributable to the income items described in section

1367(a)(1) (A) and (B) and the excess of the deductions for depletion described in section 1367(a)(1)(C);

(2) Any decrease in basis attributable to nondeductible, noncapital expenses described in section 1367(a)(2)(D) and the oil and gas depletion deduction described in section 1367(a)(2)(E);

(3) Any decrease in basis attributable to the items of loss or deduction described in section 1367(a)(2)(B) and (C); and

(4) Any decrease in basis attributable to a distribution by the corporation described in section 1367(a)(2)(A).

(f) *Examples.* The following examples illustrate the principles of § 1.1367–1. In each example, the corporation is a calendar year S corporation:

Example 1. Adjustments to basis of stock in general. (i) On December 31, 1992, A owns a block of 50 shares of stock with an adjusted basis per share of $6 in Corporation S. On January 1, 1993, A purchases for $400 an additional block of 50 shares of stock with an adjusted basis of $8 per share. Thus, A holds 100 shares of stock for each day of the 1993 taxable year. For S's 1993 taxable year, A's pro rata share of the amount of the items described in section 1367(a)(1) (relating to increases in basis of stock) is $300, and A's pro rata share of the amount of the items described in section 1367(a)(2) (B) through (D) (relating to decreases in basis of stock) is $500. S makes a distribution to A in the amount of $100 during 1993.

(ii) Pursuant to the ordering rules of paragraph (e) of this section, A increases the basis of each share of stock by $3 ($300/100 shares) and decreases the basis of each share of stock by $5 ($500/100 shares). Then A reduces the basis of each share by $1 ($100/100 shares) for the distribution. Thus, on January 1, 1994, A has a basis of $3 per share in his original block of 50 shares ($6+$3−$5−$1) and a basis of $5 per share in the second block of 50 shares ($8+3−$5−$1).

Example 2. Adjustments attributable to basis of individual shares of stock. (i) On December 31, 1992, B owns one share of S corporation's 10 outstanding shares of stock. The basis of B's share is $30. On July 2, 1993, B purchases from another shareholder two shares for $25 each. During 1993, S corporation has no income or deductions but incurs a loss of $365. Under section 1377(a)(1)(A) and paragraph (c)(3) of this section, the amount of the loss assigned to each day of S's taxable year is $1.00 ($365/365 days). For each day, $.10 is allocated to each outstanding share ($1.00 amount of loss assigned to each day/10 shares).

(ii) B owned one share for 365 days and, therefore, reduces the basis of that share by the amount of loss attributable to it, *i.e.*, $36.50 ($.10×365 days). B owned two shares for 182 days and, therefore, reduces the basis of each of those shares by the amount of the loss attributable to each, *i.e.*, $18.20 ($.10×182 days).

(iii) The bases of the shares are decreased as follows:

Share	Original basis	Decrease	Adjusted basis	Excess basis reduction
No. 1	$30.00	$36.50	$0	$6.50
No. 2	25.00	18.20	6.80	
No. 3	25.00	18.20	6.80	
Total remaining basis			13.60	

(iv) Because the decrease in basis attributable to share No. 1 exceeds the basis of share No. 1 by $6.50 ($36.50−$30.00), the excess is applied to reduce the bases of shares No. 2 and No. 3 in proportion to their remaining bases. Therefore, the bases of share No. 2 and share No. 3 are each decreased by an additional $3.25 ($6.50×$6.80/$13.60). After this decrease, Share No. 1 has a basis of zero, Share No. 2 has a basis of $3.55, and Share No. 3 has a basis of $3.55.

Example 3. Effects of section 1377(a)(2) election and distribution on basis of stock. (i) On January 1, 1994, individuals B and C each own 50 of the 100 shares of issued and outstanding stock of Corporation S. B's adjusted basis in each share of stock is $120, and C's is $80. On June 30, 1994, S distributes $6,000 to B and $6,000 to C. On June 30, 1994, B sells all of her S stock for $10,000 to D. S elects under section 1377(a)(2) to treat its 1994 taxable year as consisting of two taxable years, the first of which ends at the close of June 30, the date on which B terminates her interest in S.

(ii) For the period January 1, 1994, through June 30, 1994, S has income of $6,000 and deductions of $4,000. Therefore, on June 30, 1994, B and C, pursuant to the ordering rules of paragraph (e) of this section, increase the basis of each share by $60 ($6,000/100 shares) and decrease the basis of each share by $40 ($4,000/100 shares). Then B and C reduce the basis of each share by $120 ($12,000/100 shares) for the distribution.

(iii) The basis of B's stock is reduced from $120 to $20 per share ($120+$60−$40−$120). The basis of C's stock is reduced from $80 to $0 per share ($80+$60−$40−$120). See section 1368 and § 1.1368-1 (c) and (d) for rules relating to the tax treatment of the distributions.

(iv) Pursuant to paragraph (d)(3) of this section, the net reduction in the basis of B's shares of the S stock required by section 1367 and this section is effective immediately prior to B's sale of her stock. Thus, B's basis for determining gain or loss on the sale of the S stock is $20 per share, and B has a gain on the sale of $180 ($200−$20) per share.

§ 1.1367–2 Adjustments to basis of indebtedness to shareholder.

(a) *In general.* This section provides rules relating to adjustments required by subchapter S to the basis of indebtedness of an S corporation to a shareholder. The basis of indebtedness of the S corporation to a shareholder is reduced as provided in paragraph (b) of this section and restored as provided in paragraph (c) of this section.

(b) *Reduction in basis of indebtedness*—(1) *General rule.* If, after making the adjustments required by section 1367(a)(1) for any taxable year of the S corporation, the amounts specified in section 1367(a)(2) (B), (C), (D), and (E) (relating to losses, deductions, nondeductible noncapital expenses, and certain oil and gas depletion deductions) exceed the basis of the shareholder's stock in the corporation, the excess is applied to reduce (but not below zero) the basis of any indebtedness of the S corporation to the shareholder held by the shareholder at the close of the corporation's taxable year. Any such indebtedness that has been satisfied by the corporation, or disposed of or forgiven by the shareholder, during the taxable year, is not held by the shareholder at the close of that year and is not subject to basis reduction.

(2) *Termination of shareholder's interest in corporation during taxable year.* If a shareholder terminates his or her interest in the corporation during the taxable year, the rules of this paragraph (b) are applied with respect to any indebtedness of the S corporation held by the shareholder immediately prior to the termination of the shareholder's interest in the corporation.

(3) *Multiple indebtedness.* If the shareholder holds more than one indebtedness at the close of the corporation's taxable year or, if applicable, immediately prior to the termination of the shareholder's interest in the corporation, the reduction in basis is applied to each indebtedness in the same proportion that the basis of each indebtedness bears to the aggregate bases of the indebtedness to the shareholder.

(c) *Restoration of basis*—(1) *General rule.* If, for any taxable year of an S corporation beginning after December 31, 1982, there has been a reduction in the basis of an indebtedness of the S corporation to the shareholder under section 1367(b)(2)(A), any net increase in any subsequent taxable year of the corporation is applied to restore that reduction. For purposes of this section, net increase with respect to a shareholder means the amount by which the shareholder's pro rata share of the items described in section 1367(a)(1) (relating to income items and excess deduction for depletion) exceed the items described in section 1367(a)(2) (relating to losses, deductions, nondeductible noncapital expenses, certain oil and gas depletion deductions, and certain distributions) for the taxable year. These restoration rules apply only to indebtedness held by the shareholder on the first day of the taxable year in which the net increase arises. The reduction in basis of indebtedness must be restored before any net increase is applied to restore the basis of a shareholder's stock in an S corporation, but in no event may the shareholder's basis of indebtedness be restored above the outstanding balance of the indebtedness determined as of the first day of the taxable year in which the net increase arises.

(2) *Multiple indebtedness.* If the shareholder holds more than one indebtedness on the first day of the corporation's taxable year, any net increase is applied first to restore the reduction of basis in any indebtedness repaid (in whole or in part) in that taxable year to the extent necessary to offset any gain that would otherwise be realized on the repayment. Any remaining net increase is applied to restore each outstanding indebtedness in proportion to the amount that the basis of each outstanding indebtedness has been reduced under section 1367(b)(2)(A), and paragraph (b) of this section and not restored under section 1367(b)(2)(B) and this paragraph (c).

(d) *Time at which adjustments to basis of indebtedness are effective*—(1) *In general.* The amounts of the adjustments to basis of indebtedness provided in section 1367(b)(2) and this section are determined as of the close of the corporation's taxable year, and the adjustments are generally effective as of the close of the corporation's taxable year. However, if the shareholder is not a shareholder in the corporation at that time, these adjustments are effective immediately before the shareholder terminates his or her interest in the corporation. If a debt is disposed of or repaid in whole or in part before the close of the taxable year, the basis of that indebtedness is restored under paragraph (c) of this section, effective immediately before the disposition or the first repayment on the debt during the taxable year.

(2) *Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).* If an election is made under section 1377(a)(2) (to terminate the year in the case of the termination of a shareholder's interest) or under § 1.1368–1(g)(2) (to terminate the year in the case of a disposition of a substantial amount of stock), this paragraph (d) applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder either terminates his or her interest in the corporation or disposes of a substantial amount of stock, whichever the case may be.

(e) *Examples.* The following examples illustrate the principles of § 1.1367–2. In each example, the corporation is a calendar year S corporation. The lending transactions described in the examples do not result in foregone interest (within the meaning of section 7872(e)(2)), original issue discount (within the meaning of section 1273), or total unstated interest (within the meaning of section 483(b)).

Example 1. Reduction in basis of indebtedness. (i) A has been the sole shareholder in Corporation S since 1992. In 1993, A loans S $1,000 (Debt No. 1), which is evidenced by a ten-year promissory note in the face amount of $1,000. In 1996, A loans S $5,000 (Debt No. 2), which is evidenced by a demand promissory note. On December 31, 1996, the basis of A's stock is zero; the basis of Debt No. 1 has been reduced under paragraph (b) of this section to $0; and the basis of Debt No. 2 has been reduced to $1,000. On January 1, 1997, A loans S $4,000 (Debt No. 3), which is evidenced by a demand promissory note. For S's 1997 taxable year, the sum of the amounts specified in section 1367(a)(1) (relating to income items and excess deduction for depletion) is $6,000, and the sum of the amounts specified in section 1367(a)(2) (B), (C), (D), and (E) (relating to losses, deductions, nondeductible noncapital expenses and certain oil and gas depletion deductions) is $10,000. Corporation S makes no payments to A on any of the loans during 1997.

(ii) The $4,000 excess of loss and deduction items is applied to reduce the basis of each indebtedness in proportion to the basis of that indebtedness over the aggregate bases of the indebtedness to the shareholder (determined immediately before any adjustment under section 1367(b)(2)(A) and paragraph (b) of this section is effective for the taxable year). Thus, the basis of Debt No. 2 is reduced in an amount equal to $800 ($4,000 (excess) x $1,000 (basis of Debt No. 2) / $5,000 (total basis of all debt)). Similarly, the basis in Debt No. 3 is reduced in an amount equal to $3,200 ($4,000 x $4,000/$5,000). Accordingly, on December 31, 1997, A's basis in his stock is zero and his bases in the three debts are as follows:

Debt	1/1/96 basis	12/31/96 reduction	1/1/97 basis	12/31/97 reduction	1/1/98 basis
No. 1	$1,000	$1,000	$0	$0	$0
No. 2	5,000	4,000	1,000	800	200
No. 3			4,000	3,200	800

Example 2. Restoration of basis of indebtedness. (i) The facts are the same as in Example 1. On July 1, 1998, S completely repays Debt No. 3, and, for S's 1998 taxable year, the net increase (within the meaning of paragraph (c) of this section) with respect to A equals $4,500.

(ii) The net increase is applied first to restore the bases in the debts held on January 1, 1998, before any of the net increase is applied to increase A's basis in his shares of S stock. The net increase is applied to restore first the reduction of basis in indebtedness repaid in 1998. Any remaining net increase is applied to restore the bases of the outstanding debts in proportion to the amount that each of these outstanding debts have been reduced previously under paragraph (b) of this section and have not been restored. As of December 31, 1998, the total reduction in A's debts held on January 1, 1998 equals $9,000. Thus, the basis of Debt No. 3 is restored by $3,200 (the amount of the previous reduction) to $4,000. A's basis in Debt No. 3 is treated as restored immediately before that debt is repaid. Accordingly, A does not realize any gain on the repayment. The remaining net increase of $1,300 ($4,500–$3,200) is applied to restore the bases of Debt No. 1 and Debt No. 2. As of December 31, 1998, the total reduction in these outstanding debts is $5,800 ($9,000–$3,200). The basis of Debt No. 1 is restored in an amount equal to $224 ($1,300 × $1,000/$5,800). Similarly, the basis in Debt No. 2 is restored in an amount equal to $1,076 ($1,300×$4,800/$5,800). On December 31, 1998, A's basis in his S stock is zero and his bases in the two remaining debts are as follows:

Original bases	Amount reduced	1/1/98 basis	Amount restored	12/31/98 basis
$1,000	$1,000	$0	$224	$224
5,000	4,800	200	1,076	1,276

Example 3. Restoration of basis in indebtedness when debt is repaid in part during the taxable year. (i) C has been a shareholder in Corporation S since 1992. In 1997, C loans S $1,000. S issues its note to C in the amount of $1,000, of which $950 is payable on March 1, 1998, and $50 is payable on March 1, 1999. On December 31, 1997, C's basis in all her shares of S stock is zero and her basis in the note has been reduced under paragraph (b) of this section to $900. For 1998, the net increase (within the meaning of paragraph (c) of this section) with respect to C is $300.

(ii) Because C's basis of indebtedness was reduced in a prior taxable year under § 1.1367–2(b), the net increase for 1998 is applied to restore this reduction in an amount that does not exceed the outstanding balance of the debt on the first day of 1998. The outstanding balance of the debt on January 1, 1998 was $1,000. Therefore, $100 of the $300 net increase is applied to restore the basis of the debt from $900 to $1,000 effective immediately before the repayment. The remaining net increase of $200 increases C's basis in her stock.

Example 4. Determination of net increase—distribution in excess of increase in basis. (i) D has been the sole shareholder in Corporation S since 1990. On January 1, 1996, D loans S $10,000 in return for a note from S in the amount of $10,000 of which $5,000 is payable on each of January 1, 2000, and January 1, 2001. On December 31, 1997, the basis of D's shares of S stock is zero, and his basis in the note has been reduced under paragraph (b) of this section to $8,000. During 1998, the sum of the items under section 1367(a)(1) (relating to increases in basis of stock) with respect to D equals $10,000, and the sum of the items under section 1367(a)(2)(B), (C), (D), and (E) (relating to decreases in basis of stock) with respect to D equals $0. During 1998, S also makes distributions to D totaling $11,000. This distribution is an item that reduces basis of stock under section 1367(a)(2)(A) and must be taken into account for purposes of determining whether there is a net increase for the taxable year. Thus, for 1998, there is no net increase with respect to D because the amount of the items provided in section 1367(a)(1) do not exceed the amount of the items provided in section 1367(a)(2).

(ii) Because there is no net increase with respect to D for 1998, none of the 1997 reduction in D's basis in the indebtedness is restored. The $10,000 increase in basis under section 1367(a)(1) is applied to increase D's basis in his S stock. Under section 1367(a)(2)(A), the $11,000 distribution with respect to D's stock reduces D's basis in his shares of S stock to $0. See section 1368 and § 1.1368–1 (c) and (d) for the tax treatment of the $1,000 distribution in excess of D's basis.

Example 5. Distributions less than increase in basis. (i) The facts are the same as in *Example 4*, except that in 1998 S makes distributions to D totaling $8,000. On these facts, for 1998, there is a net increase with respect to D of $2,000 (the amount by which the items provided in section 1367(a)(1) exceed the amount of the items provided in section 1367(a)(2)).

(ii) Because there is a net increase of $2,000 with respect to D for 1998, $2,000 of the $10,000 increase in basis under section 1367(a)(1) is first applied to restore D's basis in the indebtedness to $10,000 ($8,000 + $2,000). Accordingly, on December 31, 1998, D has a basis in his shares of S stock of $0 ($0 + $8,000 (increase in basis remaining after restoring basis in indebtedness)—$8,000 (distribution)) and a basis in the note of $10,000.

§ 1.1367–3 Effective date.

Sections 1.1367–1 and 1.1367–2 apply to taxable years of the corporation beginning after [the date that these regulations are published as final regulations in the **Federal Register**].

§ 1.1368–0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1368–1 through 1.1368–4:

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§ 1.1368–2 Accumulated adjustments account (AAA).

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§ 1.1368–3 Examples.

§ 1.1368–4 Effective date.

§ 1.1368–1 Distributions by S corporations.

(a) *In general.* This section provides rules for distributions made by an S corporation with respect to its stock to which, but for section 1368(a) and this section, section 301(c) and other rules of the Code that characterize a distribution as a dividend, would apply.

(b) *Date distribution made.* For purposes of section 1368, a distribution is taken into account on the date the corporation makes the distribution, regardless of when the distribution is treated as received by the shareholder.

(c) *S corporation with no earnings and profits.* A distribution made by an S corporation that has no accumulated earnings and profits as of the end of the taxable year of the S corporation in which the distribution is made is treated in the manner provided in section 1368(b).

(d) *S corporation with earnings and profits—(1) General treatment of distribution.* Except as provided in paragraph (d)(2) of this section, a distribution made with respect to its stock by an S corporation that has accumulated earnings and profits as of the end of the taxable year of the S corporation in which the distribution is made is treated in the manner provided in section 1368(c) (1), (2), and (3). See section 316 and § 1.316–2 for provisions relating to the allocation of earnings and profits among distributions.

(2) *Previously taxed income.* This paragraph (d)(2) applies to distributions by a corporation that has both accumulated earnings and profits and previously taxed income (within the meaning of section 1375(d)(2), as in effect prior to its amendment by the subchapter S Revision Act of 1982, and the regulations thereunder) with respect to one or more shareholders. In the case of such a distribution, that portion remaining after the application of section 1368(c)(1) (relating to distributions from the accumulated adjustments account (AAA) as defined in § 1.1368–2(a)) is treated in the manner

provided in section 1368(b) (relating to S corporations without earnings and profits) to the extent that portion is a distribution of money and does not exceed the shareholder's net share immediately before the distribution of the corporation's previously taxed income. The AAA and the earnings and profits of the corporation are not decreased by that portion of the distribution. Any distribution remaining after the application of this paragraph (d)(2) is treated in the manner provided in section 1368(c) (2) and (3).

(e) *Certain adjustments taken into account. Paragraphs (c) and (d) of this section are applied only after taking into account*—

(1) The adjustments to the basis of the shares of a shareholder's stock described in section 1367 (without regard to section 1367(a)(2)(A)) (relating to decreases attributable to distributions not includible in income) for the S corporation's taxable year; and

(2) The adjustments to the AAA required by section 1368(e)(1)(A) (but without regard to the adjustments for distributions under § 1.1368–2(a)(3)(iii)) for the S corporation's taxable year.

(f) *Elections relating to source of distributions*—(1) *In general.* An S corporation may modify the application of paragraphs (c) and (d) of this section by—

(i) Electing to distribute earnings and profits first as described in paragraph (f)(2) of this section;

(ii) Election to make a deemed dividend as described in paragraph (f)(3) of this section; or

(iii) Electing to forego previously taxed income as described in paragraph (f)(4) of this section.

Rules relating to the time and manner of making the elections provided in this paragraph (f) are set forth in paragraph (f)(5) of this section.

(2) *Election to distribute earnings and profits first*—(i) *In general.* As S corporation with accumulated earnings and profits may elect under this paragraph (f)(2) for any taxable year to distribute earnings and profits first as provided in section 1368(e)(3). Except as provided in paragraph (f)(2)(ii) of this section, distributions made by S corporation making this election are treated as made first from earnings and profits under section 1368(c)(2) and second from the AAA under section 1368(c)(1). Any remaining portion of the distribution is treated in the manner provided in section 1368(b). This election is effective for all distributions made during the year for which the election is made. In applying the preceding sentence, any election to terminate the taxable year under section 1377 or § 1.1368–1(g)(2) is disregarded.

(ii) *Previously taxed income.* If a corporation to which paragraph (d)(2) of this section (relating to corporations with previously taxed income) applies makes the election provided in this paragraph (f)(2) for the taxable year, and does not make the election to forego previously taxed, income under paragraph (f)(4) of this section, distributions by the S corporation during the taxable year are treated as made first, from previously taxed income under paragraph (d)(2) of this section; second, from earnings and profits under section 1368(c)(2); and third, from the AAA under section 1368(c)(1). Any portion of a distribution remaining after the previously taxed income, earnings and profits, and the AAA are exhausted is treated in the manner provided in section 1368(b).

(iii) *Corporation with subchapter C and subchapter S earnings and profits.* If an S corporation that makes the election provided in this paragraph (f)(2) has both subchapter C earnings and profits (as defined in section 1362(d)(3)(B)) and subchapter S earnings and profits in a taxable year of the corporation in which the distribution is made, the distribution is treated as made first from subchapter C earnings and profits, and second from subchapter S earnings and profits. Subchapter S earnings and profits are earnings and profits accumulated in a taxable year beginning before January 1, 1983 (or in the case of a qualified casualty insurance electing small business corporation or a qualified oil corporation, earnings and profits accumulated in any taxable year), for which an election under subchapter S of chapter 1 of the Code was in effect.

(3) *Election to make a deemed dividend*—(i) *In general.* As S corporation that makes the election provided in paragraph (f)(2) of this section also may elect under this paragraph (f)(3) to distribute all or part of its subchapter C earnings and profits through a deemed dividend. The amount of the deemed dividend may not exceed the subchapter C earnings and profits of the corporation on the last day of the taxable year, reduced by any actual distributions of subchapter C earnings and profits made during the taxable year. The amount of the deemed dividend is considered, for all purposes of the Code, as if it were distributed in money to the shareholders in proportion to their stock ownership, received by the shareholders, and immediately contributed by the shareholders to the corporation, all on the last day of the corporation's taxable year.

(ii) *Special rules for election and shareholder consent.* In addition to the information required under paragraph (f)(5) of this section, a statement of election to make a deemed dividend election under this paragraph must include the amount of the deemed dividend that is distributed to each shareholder. Each shareholder that owns stock on the last day of the taxable year of the corporation must provide in writing, under penalties of perjury, its consent to the corporation's deemed dividend election and agreement to treat the deemed dividend consistently with the rules of this section.

(4) *Election to forego previously taxed income.* As S corporation may elect to forego distributions of previously taxed income. If such an election is made, paragraph (d)(2) of this section (relating to corporations with previously taxed income) does not apply to any distribution made during the taxable year (determined without regard to any elections made under section 1377 or § 1.1368–1(g)(2)). Thus, distributions by a corporation that makes the election to forego previously taxed income for a taxable year under this paragraph (f)(4) and does not make the election to distribute earnings and profits first under paragraph (f)(2) of this section are treated in the manner provided in section 1368(c) (relating to distributions by corporations with earnings and profits). Distributions by a corporation that makes both the election to distribute earnings and profits first under paragraph (f)(2) of this section and the election to forego previously taxed income under this paragraph (f)(4), are treated in the manner provided in paragraph (f)(2)(i) of this section.

(5) *Time and manner of making elections.* A corporation makes an election for a taxable year under this paragraph (f) by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for that taxable year. The statement must state that the corporation is making an election under § 1.1368–1(f), identify the election, and be signed under penalties of perjury by an officer of the corporation on behalf of the corporation and by each shareholder of the corporation who receives a distribution during the taxable year (including a deemed dividend as described under paragraph (f)(3) of this section). For purposes of the elections under this paragraph (f), a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). The elections under this

paragraph (f) are irrevocable and are effective only for the taxable year for which they are made. (In applying the preceding sentence, an election to terminate the taxable year under section 1377(a)(2) or § 1.1368–1(g)(2) is disregarded.)

(g) *Special rules*—(1) *Election to terminate year under section 1377 or § 1.1368–1(g)(2).* If an election is made under section 1377(a)(2) (to terminate the year when the shareholder terminates his or her interest in the corporation) or under paragraph (g)(2) of this section (to terminate the year when shareholder disposes of substantial amounts of stock), this section applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder terminates his or her interest in the corporation or makes a substantial disposition of stock, whichever the case may be.

(2) *Election in case of disposition of substantial amounts of stock*—(i) *In general.* If there is a disposition by any shareholder of 20 percent or more of the issued stock of the corporation in one or more transactions during any thirty-day period during the corporation's taxable year (a qualifying disposition), the corporation may elect under this paragraph (g)(2) to treat the year as if it consisted of separate taxable years, the first of which ends at the close of the day on which the qualifying disposition occurs. A corporation making this election treats the taxable year as separate taxable years for purposes of allocating items of income and loss; making adjustments to the AAA, earnings and profits, and basis; and determining the tax effect of distributions under section 1369 (b) and (c). This election may be made upon the occurrence of any qualifying disposition. Dispositions of stock by a shareholder that are taken into account as part of a qualifying disposition are not taken into account in determining whether the shareholder has made a subsequent qualifying disposition.

(ii) *Time and manner of making election.* A corporation makes an election under this paragraph (g)(2) for a taxable year by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for a taxable year (without regard to the election under this paragraph (g) (2)). The statement must state that the corporation is electing for the taxable year under § 1.1368–1(g)(2) to treat the taxable year as if it consisted of separate taxable years. The statement also must set forth the facts relating to the qualifying disposition (e.g., sale, gift), and must be signed under penalties of perjury by an officer of the corporation on behalf of the corporation and by all shareholders who held stock in the corporation during the taxable year (without regard to the election under this paragraph (g)(2)). For purposes of this election, a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). A single election statement may be filed for all elections made under this paragraph (g)(2) for the taxable year. An election made under this paragraph (g)(2) is irrevocable.

§ 1.1368–2 Accumulated adjustments account.

(a) *Accumulated adjustments account (AAA)*—(1) *In general.* The accumulated adjustments account is an account of the S corporation and is not apportioned among shareholders. The AAA is relevant for all taxable years beginning on or after January 1, 1983, for which the corporation is an S corporation. On the first day of the first year for which the corporation is an S corporation, the balance of the AAA is zero. The AAA is increased in the manner provided in paragraph (a(2) of this section and is decreased in the manner provided in paragraph (a)(3) of this section. For the adjustments to the AAA in the case of redemptions, reorganizations, and corporate separations, see paragraph (d) of this section.

(2) *Increases to the AAA.* The AAA is increased for the taxable year of the corporation by the sum of the following items with respect to the corporation for the taxable year:

(i) The items of income described in section 1366(a)(1)(A) other than income that is exempt from tax;

(ii) Any nonseparately computed income determined under section 1366(a)(1)(B); and

(iii) The excess of the deductions for depletion over the basis of property subject to depletion unless the property is an oil or gas property the basis of which has been allocated to shareholders under section 613A(c)(11).

The AAA is increased under this paragraph (a)(2) before it is decreased under paragraph (a)(3) of this section for the taxable year.

(3) *Decreases to the AAA*—(i) *In general.* The AAA is decreased for the taxable year of the corporation by the sum of the following items with respect to the corporation for the taxable year—

(A) The items of loss or deduction described in section 1366(a)(1)(A);

(B) Any nonseparately computed loss determined under section 1366(a)(1)(B);

(C) Any expense of the corporation not deductible in computing its taxable income and not properly chargeable to a capital account, other than—

(*1*) Federal taxes attributable to any taxable year in which the corporation was a C corporation, and

(*2*) Expenses related to income that is exempt from tax; and

(D) The sum of the shareholders' deductions for depletion for any oil or gas property held by the corporation described in section 1367(a)(2)(E).

The AAA is decreased under this paragraph (a)(3)(i) of this section before it is decreased under paragraph (a)(3)(iii) of this section.

(ii) *Extent of allowable reduction.* The AAA may be decreased under paragraph (a)(3)(i) of this section below zero. The AAA is decreased by the entire amount of any loss or deduction even though a portion of the loss or deduction is not taken into account by a shareholder under section 1366(d)(1) or is otherwise not currently deductible under the Code. However, in any subsequent taxable year in which the loss or deduction is treated as incurred by the corporation with respect to the shareholder under section 1366(d)(2) (or in which the loss or deduction is otherwise allowed to the shareholder), no further adjustment is made to the AAA.

(iii) *Decrease to the AAA for distributions.* The AAA is decreased (but not below zero) by any portion of a distribution to which section 1368 (b) or (c)(1) applies.

(b) *Distributions in excess of the AAA.* A portion of the AAA is allocated to each of the distributions made for the taxable year if—

(1) An S corporation makes more than one distribution of property with respect to its stock during the taxable year of the corporation (including an S short year as defined under section 1362(e)(1)(A));

(2) The AAA has a positive balance at the close of the year; and

(3) The sum of the distributions made during the corporation's taxable year exceeds the balance of the AAA at the close of the year.

The amount allocated to each distribution is determined by multiplying the balance of the AAA at the close of the current taxable year by a fraction, the numerator of which is the amount of the distribution and the denominator of which is the amount of all distributions made during the taxable year. For purposes of this paragraph (b), the term all distributions made during the taxable year does not include any distribution treated as from earnings and profits or previously taxed income

pursuant to an election made under section 1368(e)(3) and § 1.1368–1(f)(2). See paragraph (d)(1) of this section for rules relating to the adjustments to the AAA for redemptions and distributions in the year of a redemption.

(c) *Distribution of money and loss property.* The amount of the AAA allocated to a distribution under this section must be further allocated if the distribution—

(1) Consists of money and other property the adjusted basis of which exceeds its fair market value on the date of the distribution;

(2) Is a distribution to which § 1.1368–1(d)(1) applies; and

(3) Exceeds the amount of the corporation's AAA properly allocable to that distribution.

The amount of the AAA allocated to the other property is equal to the amount of the AAA allocated to that distribution multiplied by a fraction, the numerator of which is the fair market value of the other property on the date of distribution and the denominator of which is the amount of the distribution. The amount of the AAA allocated to the money is equal to the amount of the AAA allocated to the distribution reduced by the amount of the AAA allocated to the other property.

(d) *Adjustment in the case of redemptions, reorganizations, and divisions*—(1) *Redemptions*—(i) *General Rule.* In the case of a redemption distribution by an S corporation that is treated as an exchange under section 302(a) or section 303(a) (a redemption distribution), the AAA of the corporation is adjusted in an amount equal to the ratable share of the corporation's AAA (whether negative or positive) attributable to the redeemed stock as of the date of the redemption.

(ii) *Special rule for years in which the corporation makes both ordinary and redemption distributions*—(A) *In general.* The rules governing the allocation of a C corporation's current and accumulated earnings and profits under section 312(n)(7) apply in any year in which the corporation—

(*1*) Makes one or more distributions to which section 1368 (a) and § 1.1368–1 apply (ordinary distributions);

(*2*) Makes one or more redemption distributions to which this paragraph (d)(1) applies; and

(*3*) Has a positive AAA balance after making the adjustments required under paragraphs (a)(2) and (a)(3)(i) of this section.

For purposes of this paragraph (d)(1)(ii), the portion of the corporation's AAA that is attributable to the taxable year of the corporation in which the distributions are made (current AAA) is treated in the manner prescribed for current earnings and profits of a C corporation. The portion of the corporation's AAA that is attributable to taxable years ending before the taxable year in which the distributions are made (accumulated AAA) is treated in the manner prescribed for accumulated earnings and profits of a C corporation.

(B) *Special rule for taxable years in which corporation's current AAA or accumulated AAA is less than zero.* If, for any year of the corporation for which paragraph (d)(1)(ii) applies, the corporation's current AAA or accumulated AAA is less than zero,

(*1*) The amount of the AAA allocated under paragraph (d)(1)(ii)(A) may not exceed the sum of the current AAA and the accumulated AAA; and

(*2*) The AAA is allocated in the manner prescribed for that portion of the AAA that gives rise to the corporation's positive AAA balance.

(iii) *Adjustment to earnings and profits.* See section 312(n)(7) and the regulations thereunder for the adjustment to earnings and profits for a redemption that is treated as an exchange under section 302(a) or 303(a).

(2) *Reorganizations.* An S corporation acquiring the assets of another S corporation in a transaction to which section 381(a)(2) applies will succeed to and merge its AAA with the AAA of the distributor or transferor S corporation as of the close of the date of distribution or transfer. Thus, the AAA of the acquiring corporation after the transaction is the sum of the AAAs of the corporations prior to the transaction.

(3) *Corporate separations to which section 368(a)(1)(D) applies.* If an S corporation with accumulated earnings and profits transfers a part of its assets constituting an active trade or business to another corporation in a transaction to which section 368(a)(1)(D) applies, and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, the AAA of the distributing corporation immediately before the transaction is allocated between the distributing corporation and the controlled corporation in a manner similar to the manner in which the earnings and profits of the distributing corporation are allocated under section 312(h). See § 1.312–10(a).

(e) *Election to terminate year under section 1377(a)(2) or § 1.1368–1(g)(2).* If an election is made under section 1377(a)(2) (to terminate the year in the case of termination of a shareholder's interest) or § 1.1368–1(g)(2) (to terminate the year in the case of disposition of substantial amounts of stock), this section applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder terminated his or her interest in the corporation or makes a substantial disposition of stock, whichever the case may be.

§ 1.1368–3 Examples.

The principles of §§ 1.1368–1 and 1.1368–2 are illustrated by the examples below. In each example Corporation S is a calendar year corporation:

Example 1. Distributions by S corporations without C corporation earnings and profits. (i) Corporation S, an S corporation, has no earnings and profits as of January 1, 1996, the first day of its 1996 taxable year. S's sole shareholder, A, holds 10 shares of S stock with a basis of $1 per share as of that date. On March 1, 1996, S makes a distribution of $38 to A. For S's 1996 taxable year, A's pro rata share of the amount of the items described in section 1367(a)(1) (relating to increases in basis of stock) is $50 and A's pro rata share of the amount of the items described in section 1367(a)(2) (B) through (D) (relating to decreases in basis of stock for items other than distributions) is $26.

(ii) Under section 1368(d)(1) and § 1.1368–1(e)(1), the adjustments to the basis of A's stock in S described in section 1367 are made before the distribution rules of section 1368 are applied. Thus, A's basis per share in the stock is $3.40 ($1 + [$50 − $26] / 10 shares) before taking into account the distribution. Under section 1367(a)(2)(A), the basis of A's stock is decreased by distributions to A that are not includible in A's income. Under § 1.1367–1(c)(3), the amount of the distribution that is attributable to each share of A's stock is $3.80 ($38 distribution/10 shares). However, A only has a basis of $3.40 in each share, and basis may not be reduced below zero. Therefore, the basis of each share of his stock is reduced by $3.40 to zero, and the remainder of the distribution ($4.00) is treated as gain from the sale or exchange of property. As of January 1, 1997, A has a basis of $0 in his shares of S stock.

Example 2. Distributions by S corporations with C corporation earnings and profits. (i) B, an individual, organizes Corporation S, a C corporation, on January 1, 1995. B transfers $100 to S in exchange for 10 shares of S's stock, representing all of S's outstanding shares. Thus, B's basis in each share of stock is equal to $10. In addition, B lends $30 to S evidenced by a demand note. For its 1995 taxable year, S does not elect to be an S corporation. S's accumulated earnings and profits as of December 31, 1995, are $40. S properly elects to be an S corporation for its taxable year beginning January 1, 1996.

(ii) During 1996, S has a loss of $150. S makes no distributions to B during 1996. Under section 1366(d)(1), B is allowed a loss equal to $130, the amount equal to the sum of B's bases in his shares of stock and his basis

in the debt. Under section 1367, the loss reduces B's adjusted basis in his stock and debt to $0. Under § 1.1368–2(a)(3), S's AAA as of December 31, 1996, has a deficit of $150 as a result of S's loss for the year.

(iii) For 1997, S has $240 of income, of which $60 is interest from tax-exempt bonds. During 1997, S distributes $110 to B. For 1997, B is allocated $240 of S's 1997 income and the $20 of loss from 1996 (which is treated as incurred by S with respect to B in 1997 under section 1366(d)(2)). Under § 1.1367–2(c), there is a net increase of $220 with respect to B. Thus, B's basis in the loan is fully restored to $30, and B's basis in the S stock (before taking the distribution into account) is increased from zero to $19 per share ([$220 − $30]/10). The AAA (−$150 from 1996) is first increased by $180 to $30 under § 1.1368–2(a)(2) for items of income. (The $60 of tax-exempt income does not increase the AAA.) The AAA is decreased by $30 to zero under § 1.1368–2(a)(3)(iii) for the portion of the $110 distribution that is treated as being from the AAA. The $80 remainder of the distribution is considered a dividend to B to the extent of S's $40 of earnings and profits, and finally as a $40 reduction of B's basis in the S stock. Thus, B's basis in the S stock as of December 31, 1997, is $12 per share ($190 − $70) (portion of distribution that is not a dividend/10 shares). The balance in the AAA is $0, S's earnings and profits is $0, and B's basis in the loan is $30.

Example 3. Election in case of disposition of substantial amount of stock. (i) Corporation S has earnings and profits of $3,000 and a balance in the AAA of $1,000 on January 1, 1997. C, an individual and the sole shareholder of Corporation S, has 100 shares of S stock with a basis of $10 per share. On July 3, 1997, C sells 50 shares of his S stock to D, an individual, for $250. For 1997, S has taxable income of $1,000, of which $500 was earned on or before July 3, 1997, and $500 earned after July 3, 1997. During its 1997 taxable year, S makes the following distributions:

(1) $1,000 to C on February 1; and

(2) $1,000 to each of C and D on August 1.

S does not make the election under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA. S makes the election under § 1.1368–1(g)(2) to treat its taxable year as if it consisted of separate taxable years, the first of which ends at the close of July 3, 1997, the date of the qualifying disposition.

(ii) Under section § 1.1368–1(g)(2), for the period ending on July 3, 1997, S's AAA is $500 ($1,000 (AAA as of January 1, 1997) + $500 (income earned from January 1, 1997 through July 3, 1997) − $1,000 (distribution made on February 1, 1997)). C's bases in his shares of stock is decreased to $5 per share ($10 (original basis) + $5 (increase per share for income) − $10 (decrease per share for distribution)).

(iii) The AAA is adjusted at the end of the taxable year for the period July 4 through December 31, 1997. It is increased from $500 (AAA as of the close of July 3, 1997) to $1,000 for the income earned during this period and is decreased by $1,000, the portion of the distribution ($2,000 in total) made to C and D on August 1 that does not exceed the AAA. The $1,000 portion of the distribution that remains after the AAA is reduced to zero is attributable to earnings and profits. Therefore C and D each have a dividend of $500, which does not affect their basis or S's AAA. The earnings and profits account is reduced from $3,000 to $2,000.

(iv) As of December 31, 1997, C and D have bases in their shares of stock of zero ($5 (basis as of July 4) + $5 ($500 income/100 shares) − $10 ($1,000 distribution/100 shares)). C and D each will report $500 as dividend income, which does not affect their basis or S's AAA.

Example 4. Election to distribute earnings and profits first. (i) Corporation S has been a calendar year C corporation since 1975. For 1982, S elects for the first time to be taxed under subchapter S, and during 1982 has $60 of earnings and profits. As of December 31, 1995, S has an AAA of $10 and earnings and profits of $160, consisting of $100 of subchapter C earnings and profits and $60 of subchapter S earnings and profits. For 1996, S has $200 of taxable income and the AAA is increased to $210 (before taking distributions into account). During 1996, S distributes $240 to its shareholders. With its 1996 tax return, S properly elects under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA.

(ii) Because S elected to distribute its earnings and profits before its AAA, the first $100 of the distribution is characterized as a distribution from subchapter C earnings and profits; the next $60 of the distribution is characterized as a distribution from subchapter S earnings and profits. Because $160 of the distribution is from earnings and profits, the shareholders of S have a $160 dividend. The remaining $80 of the distribution is a distribution from S's AAA and is treated by the shareholders as a return of capital or gain from the sale or exchange of property, as appropriate, under § 1.1368–1(d)(1). S's AAA, as of December 31, 1996, equals $130 ($210–$80).

Example 5. Distributions in excess of the AAA. (i) On January 1, 1995, Corporation S has $40 of earnings and profits and a balance in the AAA of $100. S has two shareholders, E and F, each of whom own 50 shares of S's stock. For 1995, S has taxable income of $50, which increases the AAA to $150 as of December 31, 1995 (before taking into account distributions made during 1995). On February 1, 1995, S distributes $60 to each shareholder. On September 1, 1995, S distributes $30 to each shareholder. S does not make the election under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA.

(ii) The sum of the distributions exceed S's AAA. Therefore, under § 1.1368–2(b), a portion of S's $150 balance in the AAA as of December 31, 1995, is allocated to each of the February 1 and September 1 distributions based on the respective sizes of the distributions. Accordingly, S must allocate $100 ($150 (AAA) x ($120 (February 1 distribution)/$180 (the sum of the distributions))) of the AAA to the February 1 distribution, and $50 ($150 x $60/$180)) to the September 1 distribution. The portions of the distributions to which the AAA is allocated are treated by the shareholder as a return of capital or gain from the sale or exchange of property, as appropriate. The remainder of the two distributions is treated as a dividend to the extent that it does not exceed S's earnings and profits. E and F must each report $10 of dividend income for the February 1 distribution. For the September 1 distribution, E and F must each report $5 of dividend income.

§ 1.1368–4 Effective date.

Regulations §§ 1.1368–1, 1.1368–2 and 1.1368–3 apply to taxable years of the corporation beginning after the date the final regulations are published in the **Federal Register**.

Shirley D. Peterson,

Commissioner of Internal Revenue.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H–71]

RIN 1218–AA98

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of informal public hearing; reopening of written comment period.

SUMMARY: This notice schedules informal public hearings concerning OSHA's proposal (56 FR 57036, November 7, 1991) to modify the existing provisions for controlling employee exposure to methylene chloride. The Agency requests that interested parties present testimony and evidence regarding the issues raised by the proposed standard and by this hearing notice. In addition, this notice reopens the rulemaking record so OSHA can receive additional comments regarding the proposed rule.

DATES: All informal public hearings will begin at 9:30 a.m. on the first day of the hearing and at 9 a.m. on each succeeding day. The two informal public hearings are scheduled to begin on the following dates:

Washington, DC: September 16, 1992
San Francisco, CA: October 14, 1992

Notices of intention to appear at the informal public hearings must be postmarked by August 24, 1992.

Testimony and all evidence which will be introduced into the hearing record must be postmarked by August

24, 1992 for the Washington, DC hearing and by September 22, 1992 for the San Francisco, CA hearing.

Comments must be postmarked by August 24, 1992.

ADDRESSES: Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615.

Comments are to be submitted in quardruplicate to: The Docket Office, Docket No. H–71, room N–2634, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone No. (202) 523–7894.

Comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 523–5046, provided that the original and three copies of the comment are sent to the Docket Officer thereafter.

The locations of the informal public hearings are as follows:

Washington, DC: The Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210

San Francisco, CA: The Coit Room, Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA, 94108; (415) 433–6600

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615.

Proposal: Mr. James F. Foster, Office of Public Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-8151

SUPPLEMENTARY INFORMATION: On November 7, 1991, OSHA proposed to amend its existing regulation for employee exposure to Methylene Chloride (MC), so that the permissible exposure limits (PELs) would appropriately reflect the available animal and human data. The Agency proposed to reduce the permissible 8-hour time-weighted average (TWA) exposure from 500 parts per million (ppm) to 25 ppm. In addition, OSHA proposed to delete the existing ceiling limit concentration of 1000 ppm and to reduce the short-term exposure limit (STEL) from 2,000 ppm (measured over 5 minutes in any 2 hours as a maximum peak concentration) to 125 ppm, measured as a 15-minute TWA.

The proposal also set requirements for exposure control, personal protective equipment, employee exposure monitoring, training medical surveillance, hazard communication, regulated areas, emergency procedures and recordkeeping. In order to minimize the compliance burdens of employers whose employees have consistently low exposures to MC, the Agency has proposed an "action level" of 12.5 ppm, measured as an 8-hour TWA.

The Agency developed the MC proposal using information generated by OSHA and other agencies, as well as the comments received in response to an Advance Notice of Proposed Rulemaking (ANPR) published on November 24, 1986 (51 FR 42257). The NPRM presented 48 issues regarding which OSHA sought information and comments. In particular, the Agency requested input on the preliminary quantitative risk assessment, the feasibility of engineering controls to protect employees from excessive MC exposure, and the anticipated impacts of the proposed rule on the affected industries.

At the time the NPRM was published, the Agency had not yet consulted with the Advisory Committee on Construction Safety and Health (ACCSH) regarding the application of the proposed rule to the construction industry because the Committee's members, whose terms expired in June 1990, had not yet been reappointed or replaced. OSHA stated (56 FR 57115–16) that the NPRM for MC provides the necessary rationale for regulatory action and sets out the requirements needed to protect employees in all industries, including construction, from the health hazards associated with occupational exposure to MC.

OSHA set a 5-month comment period, ending on April 6, 1992, to facilitate public response to the NPRM. In response to the proposed rule, OSHA has received 58 written comments (Exs. 19–1 through 19–58). Those comments raised a number of serious concerns regarding the provisions of the proposed rule and OSHA's preliminary conclusions about MC-related health effects and the means by which employee exposure would be controlled. In addition, several commenters (Exs. 19–18, 19–22, 19–23, 19–38 and 19–45) requested that OSHA convene informal public hearings to address their concerns. These comments are available for inspection and copying in the OSHA Docket Office, Docket no. H–71, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

OSHA is issuing a hearing notice at this time to give the public the greatest opportunity to consider and address the hearing issues. The Advisory Committee on Construction Safety and Health was reconstituted on May 4, 1992 (57 FR 19139) and held its first meeting on May 19–20, 1992. The Committee established a working group on methylene chloride to consider the information provided by OSHA and to develop further information for consideration by the full Committee, which is scheduled to make its formal recommendations at the next meeting, on July 28–29, 1992.

OSHA expects to issue a supplemental notice that reflects the Committee's recommendations. If the Agency determines, after completing consultation with the ACCSH, that revisions to the proposed rule are needed for the construction industry, the supplemental notice would function as an amended proposal. That notice would also reopen the written comment period for the limited purpose of receiving comments and information concerning any issues or proposed revisions that arise from consultation with the Committee. The Committee's recommendations and any public input regarding those recommendations would be considered by the Agency in the course of drafting the final rule.

Accordingly, pursuant to section 6(b)(3) of the OSH Act, the Agency has scheduled informal public hearings to begin on September 16, 1992 in Washington, DC and on October 14, 1992 in San Francisco, CA. In addition, OSHA has decided to reopen the written comment period for this rulemaking. This will enable interested persons to submit information and suggestions regarding the NPRM and the issues raised in this hearing notice even if they do not participate in the informal public hearings.

Through these hearings, OSHA expects to obtain testimony and other information pertinent to the issues which were raised in the hearing requests, in the notices of intention to appear, and at OSHA's initiative. In particular, the Agency solicits testimony, with supporting information, on the issues presented below.

Issue 1

As discussed in the Preliminary Quantitative Risk Assessment (section VIII of the NPRM) and in Issue 6 of the NPRM, OSHA has based its preliminary estimate of human cancer risk on the NTP mouse study. There has been a considerable amount of research and analysis aimed at identifying the mechanism by which MC caused cancer

in mice. Researchers have generated pharmacokinetic data for mice, hamsters, rats and humans to characterize the differences in MC metabolism across species. Mice were observed to metabolize MC to the putative carcinogen (glutathione-S-transferase metabolite) at the highest rate. Based on those studies, researchers have theorized that mice would be more susceptible to MC-induced cancer and, therefore, direct extrapolation from the NTP study, without incorporation of pharmacokinetic factors, would not provide a valid basis for estimating human cancer risk (such as exs. 7–125, 7–126, 7–128, 7–147, 8–14d, 10–39, 19–45).

OSHA expressed serious concerns regarding the appropriate use of the above-cited pharmacokinetic data in Issue 6 of the NPRM. That Issue presented several questions intended to elicit information that would assist the Agency in determining what use could be made of the pharmacokinetic data.

In response to the NPRM, several commenters discussed the pharmacokinetic data and the implications of using this data to adjust OSHA's risk estimates (exs. 19–17, 19–28, 19–45, 19–46, 19–48, and 19–57). Some commenters (ex. 19–28, 19–45, 19–48 and 19–57) have stated that the Reitz and Andersen physiologically-based pharmacokinetic model is a plausible representation of the metabolism of MC and, accordingly, that it should be used in the risk assessment process. NIOSH (ex. 19–46), on the other hand, stated that significant questions regarding the mechanism of action of MC still remain and that those questions should be resolved before OSHA uses the pharmacokinetic model to adjust risk estimates. Based on its review of the comments, OSHA has determined that it is appropriate to solicit testimony, with supporting documentation, regarding the utility of pharmacokinetics data, through a reprise of the questions that appeared in Issue 6 of the NPRM, as follows:

a. How can pharmacokinetics be best applied to the risk assessment of MC and what are the current limitations of this approach in the quantification of health risks? What weight should OSHA give to pharmacokinetic data in its risk assessments and why?

b. Given that five separate risk assessments have utilized the pharmacokinetic models for MC in five different ways (resulting in from 0 to 170 fold reduction in the final risk when compared with assessments not utilizing pharmacokinetic data), how can OSHA best utilize the existing pharmacokinetic data and still be certain of protecting worker health?

c. Which parameters in the pharmacokinetic models are most sensitive to errors in measurement or estimation? Can an increased database reduce the uncertainties in these parameters?

d. How much confidence can be placed in the human *in vitro* MC metabolism data, especially that for lung tissue? How will human variability in these parameters affect the extrapolation of risk from rodent species?

e. Are there any studies in progress which attempt to verify the predictive ability of the model *in vivo*, (i.e., by giving doses in a lifetime bioassay which will produce cancer in a species other than the $B6C3F_1$ mouse and the F344 and Sprague-Dawley rats)?

f. OSHA recognizes the large areas of uncertainty which exist in applied dose risk assessment procedures. If pharmacokinetic modeling reduces these uncertainties, can the reduction in uncertainty be quantified? Are additional uncertainties introduced into the risk assessment process by the use of pharmacokinetic models?

g. By using the pharmacokinetic models in the risk assessment process, one is making an assumption about the carcinogenic mechanism of action of MC. Are there any new studies on the carcinogenic mechanism of action of MC which would support or refute this assumption?

h. OSHA solicits information supporting or refuting the assumption that the MC metabolite(s) from the GST pathway is (are) responsible for its carcinogenic action. If the carcinogenic process is, in fact, not the result of the metabolite(s) from the GST pathway alone, but is due to a combination of metabolites or a combination of the parent compound plus the metabolites, how would the pharmacokinetic model and the subsequent risk assessments be affected? Can these effects be quantified?

i. One of the assumptions made in the pharmacokinetic model is that the target tissues for MC are liver and lung. Can this model predict cancer incidences at other sites? If not, is there a way to factor in consideration of possible MC-induced human cancers at other sites than liver and lung?

j. OSHA solicits information supporting or refuting interspecies allometric scaling based on body weight or body surface area.

Issue 2

In response to the NPRM, several commenters discussed the epidemiological evidence. Kodak (ex. 19–18), NIOSH (ex. 19–46) and Dr. Carl Shy (ex. 19–41) had extensive comments on the comparison of the epidemiological data with animal bioassay data used to predict human risks. There was also discussion of the significance of the increased incidence of biliary cancers in the Hoechst-Celanese study, and whether they warranted being labelled as "suggestive evidence of a positive effect." For example, Dr. Shy stated that . . . "at the present time, there is no direct human evidence that MC increases the risk of cancer in exposed workers." Dr. Shy also stated that "[G]iven the many uncertainties in extrapolating from animal bioassay results to risks at low doses in humans . . . I believe that the non-positive human data do not justify any conclusion that the epidemiological results are consistent with positive risk estimates based on the animal studies." Accordingly, Dr. Shy disagreed with the Agency's decision to use the human studies to calculate the upper confidence limits on human risk.

In addition, NIOSH (ex. 19–46) stated that evaluation of the results of the epidemiology studies could have missed increased mortality related to the acute effects of MC on the heart among physically active employees who were exposed to MC, because the mortality experiences of workers during acute exposures to MC were not examined. NIOSH suggested that OSHA consider the possibility that increases in mortality may occur during short-term acute exposure to MC (such as 125 ppm for a 15-minute period). Based on its review of the comments regarding the MC epidemiological data, OSHA solicits testimony, with supporting documentation, on the following issues:

a. There is controversy regarding how OSHA should compare results from epidemiological mortality studies with those from rodent bioassays. For MC, two different methods have been used to determine whether upper bounds on risk estimates derived from the epidemiology are consistent with the rodent bioassay risk estimates (exs. 7–77 and 7–249). Investigators using these two methods have reached very different conclusions as to the consistency of the human and animal data.

NIOSH has summarized the two methods that have been used to compare the results of animal and human studies (ex. 19–46) as follows:

Hearne et al. [1987] (ex. 7–77) used a linearized multistage model developed by EPA to compute the number of liver and lung cancer deaths expected in their epidemiologic study. Adjustments were made in this analysis accounting for the discontinuous exposures and less than lifetime follow-up of the workers. The number of deaths predicted based on this model were significantly greater than the number observed in the epidemiologic study, which led Hearne et al. to conclude that the model based on the animal bioassay substantially overestimated cancer mortality for these sites. Tollefson et al. [1990] (ex. 7–249) used an approach based on statistical power to compare the consistency between the animal bioassay-based models and the epidemiologic results from Hearne et al. Tollefson et al. computed the expected number of deaths and corresponding relative risk based on the animal-based model using correction factors that were similar to those used by Hearne et al. They then computed the statistical power of the epidemiologic study to detect the expected relative risk which was 0.50. A statistical power of at least 0.80 is generally

considered adequate for epidemiologic studies. Thus, Tollefson et al. concluded that the epidemiologic study had insufficient power and that the results from the epidemiologic study do not refute the results from the animal bioassay-based model.

The Agency solicits testimony and supporting information concerning methods for comparing results of rodent cancer bioassays and epidemiological studies. What are the relative merits of these methods for comparing the results of rodent cancer bioassays and epidemiological studies? What other methods can be used to compare these results?

b. The Health Effects section of the NPRM presents a discussion of MC cardiac toxicity (56 FR 57081–82). MC is metabolized in humans to carbon dioxide and carbon monoxide (CO). Workers with silent or symptomatic heart disease (or with exacerbating exposure to CO, such as those from smoking or combustion sources) may be especially susceptible to the cardiac toxicity of MC or MC metabolites. NIOSH (ex. 19–46) stated:

> Because exposure to MC induces the formation of COHb, it is possible that the increased ischemic heart disease risk associated with MC exposure is transitory and would, therefore, only be observed among actively exposed workers. Unfortunately, none of the [epidemiological] studies have analyzed the risk of ischemic heart disease among workers during the period when they were actively exposed to MC. Such analyses could and need to be performed on these studies.

The Agency is concerned that total observed mortality from heart disease, which does not account for the employment status of each case, may not show the postulated effects of acute MC exposures on cardiovascular risk. Therefore, OSHA is requesting testimony, with supporting information, regarding the incidence of heart disease concurrent with MC exposures. Particularly, OSHA is interested in obtaining this information for the cohorts in which mortality studies have been completed.

c. Please submit any additional or updated epidemiological studies or updated information on exposures for the employee populations in the studies OSHA included in the NPRM.

Issue 3

A commenter (ex. 19–16) has indicated that state-of-the-art vapor degreasers are now equipped with a super-heated vapor zone which eliminates drag-out of MC. What MC emission control systems have been developed for other segments of the metal cleaning industry? OSHA is interested in information about any feasible engineering and work practice controls which can be used in degreasing operations. Therefore, OSHA solicits testimony and supporting information regarding the specifications of any such systems, including operating parameters, and any exposure data that has been collected during their use.

Issue 4

Several commenters (such as exs. 19–11, 19–31 and 19–45) stated that there are situations where ventilation systems are already in place and where it would be infeasible to increase local exhaust ventilation to further control MC emissions. Those commenters stated that increased air flow in the workplace would increase the volume of MC required for operations and would increase the amount of MC emitted to the atmosphere, resulting in increased material costs and facility heating costs and in greater difficulty regarding compliance with any Clean Air Act-mandated emission limits. OSHA notes that ventilation systems constitute the primary means by which the Agency expects employers to control MC exposure. Accordingly, OSHA requests testimony, with supporting information, regarding the following questions:

a. What is the rate at which MC is lost when ventilation systems are in operation during a typical workshift at particular workplaces?

b. How do variations in ventilation rates and system designs affect the rate of MC emissions?

c. To what extent can employers rely on portable ventilation systems, as opposed to systems permanently installed in the workplace structure, for control of MC exposure?

d. To what extent can MC-loss be eliminated or minimized through recapture systems?

e. To what extent can MC-containing products be reformulated (such as through the addition of paraffins to paint strippers) to reduce evaporation of MC?

f. What are the impacts of MC-loss and loss-control efforts on the safety and efficiency (measured in terms of dollar cost, time required, and quality of product) of MC-using operations?

Issue 5

OSHA is aware that there are products and processes which can replace MC use in certain situations. As explained in the NPRM (56 FR 57045–57053), there are some applications such as paint stripping, coffee decaffeination and ink formulation, where employers have partially or completely eliminated MC use. In particular, high pressure water, dry ice and sodium bicarbonate blasting have been suggested as alternatives to MC for paint stripping of aircraft, ship hulls, automobiles and for other coating removal applications. The Agency requests testimony, with supporting information, on these and other alternatives to MC use, with regard to their technological and economic feasibillity. Please submit testimony, with supporting information, on the anticipated availablity, costs, effectiveness, applicability and possible hazards or disadvantages of using substitutes for MC.

Issue 6

Comments in response to the NPRM have indicated that MC is currently used in pesticides (ex. 19–58), particularly in wasp and hornet sprays. OSHA solicits testimony, with supporting information, on the extent to which MC is used during the formulation of pesticides (either as an ingredient or for other purposes), the exposure levels experienced during manufacture or use of these pesticides and any engineering or work practice controls which are successful in reducing exposure to MC. In addition, please submit testimony, with supporting information, regarding substitutes for MC in pesticide manufacturing or use.

Issue 7

In response to the NPRM, the Paint Remover Manufacturer's Association (PRMA) stated (ex. 19–11, p. 42):

> The cost of regulation [as estimated by OSHA] does not include the increase in operating costs due to substitution. The best available substitutes vary in cost from 4 to 6 times the current cost per 55 gallon drum of MC paint remover. The substitutes average four times as long to work compared to MC. This greatly increases operational costs and results in loss of production. The current best available substitutes will only remove 8 of the 32 most common household coatings. Even if the industry can double the removable coatings for the substitutes, at least 50% of known coatings cannot be removed.

OSHA is concerned about the issues raised by the PRMA and by the supporting information presented in the Appendices to the PRMA comment (ex. 19–11H). Therefore, the Agency solicits testimony, with supporting information, regarding the following questions:

a. What coatings are used by furniture manufacturers or refinishers?

b. What coatings can be stripped without using MC-containing products?

c. Which coatings can be removed using stripping agents that contain N-methylpyrrolidone instead of MC?

d. Which coatings can be removed using stripping agents that contain dibasic esters instead of MC?

e. What other alternative ingredients for furniture stripping products are available?

What are the costs, effectiveness and safety of any such ingredients?

f. To what extent do the costs of using non-MC stripping agents to strip particular pieces of furniture differ from the costs of using MC-containing strippers? What cost factors account for any such differences?

g. What percentage of the furniture handled in a furniture refinishing shop would be finished with the 8 "most common household coatings"?

h. To what extent is it feasible to use more than one substitute for MC during a single stripping job, in order to improve the efficiency of the paint removal process? Please provide examples of any cases where alternative ingredients have been used in tandem to remove coatings and describe the stripping processes used.

Issue 8

The NPRM requested (issue 25) information regarding the impact of the proposed rule on small business. Some commenters responded that small businesses would experience very adverse affects. For example, the Paint Remover Manufacturer's Association (PRMA) (ex. 19–11, pp. 18–20) commented that furniture refinishing businesses, most of which are small businesses, would be adversely affected by the proposed rule. In particular, the PRMA has apparently assumed that the promulgation of the proposed rule would prevent the use of MC in furniture stripping. Therefore, the PRMA expressed concern that appropriate substitutes for MC were not available and stated that those chemical substitutes which have been used to strip furniture cost 300 percent more than MC-based chemicals. The PRMA stated:

> This will undoubtedly prevent the recycling (refinishing) of common household furniture, leaving only valuable antiques within the refinishing range. This would have a serious environmental impact since with methylene chloride paint removers, furniture can be refinished with a less than 10 percent environmental impact as compared with constructing new.

As indicated by issue 7, above, there are serious questions regarding the extent to which substitution will be a major factor in the efforts of the furniture refinishing industry to achieve compliance with the proposed rule. OSHA has anticipated that most refinishers would comply with the proposed PELs through improved engineering and work practice controls. Based on the PRMA comment, the Agency is interested in obtaining additional information regarding the impacts of the proposed rule on small businesses, such as the smaller furniture refinishing operations.

Therefore, OSHA solicits testimony, with supporting documentation, regarding the following questions:

a. What is the likelihood that the amount and types of furniture refinished would be reduced if OSHA promulgated the proposed rule?

b. What constitutes "common household furniture" as distinct from "antiques"?

c. What percentage of the furniture refinished is such furniture?

d. To what extent does the furniture refinishing industry rely on the refinishing of common household furniture for its financial wellbeing?

e. What changes in the work practices of furniture refinishers would mitigate the impacts predicted by the PRMA?

f. To what extent have furniture refinishers been able to offset increased costs through higher prices?

g. To what extent would small businesses in other industries that use MC be impacted by the proposed rule? Please describe any anticipated changes in the operations of those small businesses that would result from efforts to comply with the proposed rule.

h. How many small businesses would be impacted by the proposed standard?

i. With which provisions would small establishments most encounter difficulties when attempting to comply? How could the proposed requirements be altered or simplified to help small entities comply, while affording comparable protection for their employees?

j. What timetable would allow small businesses sufficient time to comply with the proposed standard?

Also, the Halogenated Solvents Industry Alliance, Inc. (HSIA) commented (ex. 19–45A, pp. 84–87) that OSHA had significantly underestimated the impact of the proposal on small businesses, such as furniture refinishers. In particular, the HSIA stated that the Agency had underestimated: (1) The number of furniture strippers who used MC-based strippers (the number of firms affected by the proposal); (2) regional variation in the extent to which refinishers could use substitutes for MC (flammability is less of a concern in southern cities where MC can be used in outdoor setting); (3) and the cost of compliance with the proposed rule. OSHA solicits testimony, with supporting information, regarding the concerns raised by the HSIA. To what extent do those concerns accurately reflect conditions in the furniture refinishing industry? To what extent do those concerns reflect conditions in other MC-using industries where there are a number of small businesses?

In addition, the Agency is interested in receiving testimony, with supporting information, regarding any cost and process-related data that distinguished those furniture stripping operations which already use substitutes for MC from those operations which use MC-based chemicals. What considerations should furniture refinishers take into account when they choose between switching to substitutes and implementing or maintaining the engineering and work practice controls needed to achieve compliance with the proposed PELs?

Issue 9

The NPRM (56 FR 57044–57070) discussed the industries where MC is used and the measures available to control MC exposure. Based on OSHA's interest in basing its regulations on the best available information, the Agency believes that additional information related to MC use and exposure would be useful. In particular, OSHA is interested in information about any use of MC in food extraction, longshoring, and agriculture. Also, commenters from the pharmaceutical (ex. 19–25), furniture and industrial paint stripping (ex. 19–21, 19–23), foam blowing (ex. 19–39), shipyard (ex. 19–56) and construction (ex. 19–36) industries expressed concerns regarding the NPRM coverage of MC use and exposure in those industries. Therefore, OSHA solicits testimony, with supporting documentation, regarding the following questions:

a. What are the processes or products in which MC is used?

b. How many establishments in a particular industry, or what percentage of such establishments, use MC?

c. What means are used to recover and recycle MC in particular industries?

d. What volume, or percentage of the volume, of MC used in particular industries is recovered and recycled?

e. How many employees are exposed to MC in particular industries or types of operations?

f. What are the exposure levels for employees in particular industries or operations, measured either over a work shift or during short-term exposures?

g. What engineering or work practice controls are used to protect employees from MC exposure?

h. To what extent are MC-exposed employees in particular industries provided with personal protective equipment (PPE)?

i. What costs are associated with the provision of engineering controls, work practice controls and PPE to MC-exposed employees in particular industries?

Issue 10

As discussed above and in the NPRM (56 FR 57115–16), the Agency must satisfy requirements for consultation with the ACCSH regarding proposed regulatory action that covers the construction industry. Therefore, when the ACCSH was reconstituted (57 FR

19139), OSHA presented the proposed regulatory text, with background materials, to the ACCSH for its recommendations. On May 19, 1992 the Committee voted to set up a work group that would gather information to be used by the full Committee in making its formal recommendations at the next meeting, scheduled for July 28–29, 1992.

The Agency is interested in obtaining additional information regarding any special difficulties that the construction industry may face in complying with the MC proposed rule. In particular, OSHA is interested in learning about any construction-specific problems associated with respirator use and medical surveillance, and in obtaining information on workplaces where construction workers are exposed to MC. Accordingly, OSHA requests testimony, with supporting information, regarding the following questions:

a. In which jobs are construction workers exposed to MC? Are there specific trades where exposure is particularly significant?

What data are available on the amount of time employees spend on projects where employees are exposed to MC?

b. To what extent are exposure data available for construction workers exposed to MC? How often do employers monitor for MC at construction worksites? What exposure levels have been detected?

c. What engineering controls, work practices and personal protective equipment have been used to protect construction workers from MC exposure?

d. To what extent do circumstances specific to the construction industry determine the level or type of MC exposures and the feasibility of reducing those exposures?

e. Are there employee exposures to MC in confined spaces or other areas of particular concern? What engineering controls have been (or could be) implemented in these areas? Are there any circumstances which would limit air-supplied respirator use or make such use impractical in these areas?

f. To what extent would the construction industry encounter special problems in complying with requirements for medical surveillance and exposure monitoring? If so, what problems would be encountered?

g. To what extent can the construction industry substitute other materials or processes for MC?

h. Which construction employees currently wear respirators for protection from MC exposure? How many? What percentage of the work force? What types of respirators are used?

i. What changes would be introduced in construction worksites or work practices in order to comply with an 8-hour TWA PEL of 25 ppm? How would these changes impact overall work operations? Job costs?

j. Do construction workers, in general, know the dangers associated with exposure to MC?

Issue 11

In response to a request from OSHA, NIOSH has performed a study to determine the breakthrough characteristics of organic vapor cartridges and canisters for MC (ex. 46–D). OSHA solicits testimony, with supporting information, regarding this study and requests any other data on MC breakthrough of air-purifying respirators (including data on media other than activated charcoal).

Issue 12

Several commenters (ex. 19–17, 19–22, 19–23 and 19–36) stated that compliance with the proposed 25 ppm 8-hour time-weighted-average (TWA) permissible exposure limit (PEL) may not adequately protect employees from significant risks of material impairment of health. OSHA solicits testimony, with supporting information, regarding the suggestions that the health effects and feasibility data support lowering the 8-hour TWA below 25 ppm. What 8-hour TWA PEL is needed to protect employees from MC hazards? What 15-minute STEL is needed to supplement the protection afforded by compliance with the recommended 8-hour TWA PEL? Please submit any data on health effects, risk assessment and technological or economic feasibility supporting your recommendations.

Issue 13

OSHA has proposed to require compliance with the provisions of this standard within 180 days of the effective date of this standard, except for initial monitoring and engineering controls, which should be completed within 120 days and one year of the effective date, respectively. The Agency solicits evidence regarding the reasonableness of these dates for purposes of complying with the standard. If problems are anticipated for particular industries to comply with the proposed effective dates, please explain why the dates should be extended and indicate the minimum time necessary for compliance.

Issue 14

How would the proposed standard affect industry's economic position, particularly with regard to foreign competition in the U.S. market and the price of U.S. goods for export?

Issue 15

The MC record includes copies of OSHA's Preliminary Regulatory Impact Analysis and reports on studies conducted for OSHA by CONSAD Research Corporation entitled "Economic Analysis of OSHA's Proposed Standards for Methylene Chloride" (1990) (ex. 15) and "Economic Analysis of OSHA's Proposed Standards for Methylene Chloride in the Construction and Shipbuilding Industries" (1991) (ex. 15c). OSHA solicits testimony, with supporting information, regarding these analyses.

Issue 16

Please provide any information available on potentially significant (negative or positive) environmental effects that may occur as a result of the proposed standard.

Persons interested in participating in the hearing should refer to the notice of proposed rulemaking on Occupational Exposure to Methylene Chloride (56 FR 57036) for the text of the proposed standard and a more thorough discussion of issues related to this proceeding.

Public Participation-Notice of Hearing

Pursuant to section 6(b) of the Act, an opportunity to submit oral testimony concerning the issues raised by this notice will be provided at an informal public hearing scheduled to begin at 9:30 a.m. on September 16, 1992 in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210 and at 9:30 a.m. on October 14, 1992 in the Coit Room, Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA 94108.

Notice of Intention to Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before August 24, 1992, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H–71, room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523–8615. The notice of intention to appear also may be transmitted by facsimile to (202) 523–5986, provided the original and 3 copies of the notice are sent to the above address thereafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, room N–2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523–7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed; and

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked by August 21, 1992 for the DC hearing and September 22, 1992 for the San Francisco hearing. These materials will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

Any participant who requires audiovisual equipment during the oral testimony, must submit a request for such equipment in the Notice of Intent to Appear, specifying the type of equipment needed.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m., on September 16, 1992 in Washington, DC. An additional hearing will convene at 9:30 a.m. on October 14, 1992 in San Francisco. At those times, any procedural matters relating to the proceeding will be resolved. The informal nature of the rulemaking hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15 (a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearings will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR 1911 including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections and comparable matters;

(3) To confine the presentation to the matters pertinent to the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any person who participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Written Comments

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. These comments must be postmarked on or before August 24, 1992, and submitted in quadruplicate to the Docket Officer, Docket No. H–71, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments limited to 10 pages or less also may be transmitted by facsimile to 202–523–5046, provided the original and three copies are sent to the Docket Office thereafter. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address.

All timely written submissions will be made a part of the record of the proceeding.

Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC, on this 1st day of June, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–13397 Filed 6–8–92; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 92–051]

Safety Zone: Bristol Harbor, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in Bristol Harbor, Bristol, RI, during the Bristol Fourth of July fireworks display. The safety zone will be established within a 350 yard radius around the fireworks barge anchored in the harbor. This safety zone is necessary to protect pleasure/spectator craft and personnel aboard the vessels from injury due to potential hazards associated with the fireworks.

DATES: Comments must be received on or before June 24, 1992.

ADDRESSES: Comments should be mailed to the Commanding Officer, Marine Safety Office Providence, John O'Pastore Federal Building, Providence, RI, 02903–1790, or may be delivered to room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through

Friday, except federal holidays. The telephone number is (401) 528–5335. The Marine Safety Office maintains a public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Tina Burke, Marine Safety Office Providence, (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 92–051) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **"ADDRESSES."** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LTJG T. Burke, Project Manager, and LCDR J. Astley, Project Counsel, District Legal Office.

Background and Purpose

On July 4, 1992, the Bristol fourth of July Committee plans to sponsor a Fourth of July fireworks display between the hours of 9 p.m. and 11 p.m. The fireworks will be launched from a barge anchored in Bristol Harbor, approximate position 41–39–55N, 71–16–59W, 350 yards due west of the Coast Guard Aids to navigation station. The sponsor notified the Coast Guard of this event on April 30, 1992. Approximately 500 spectator vessels are expected to attend the event. The fireworks display is necessary to allow the communities of Bristol and surrounding areas, as well as other public interests, to celebrate Independence Day.

A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area of Bristol Harbor over which the fireworks will be launched, in order to protect these vessels from personal injury, fire, or other damage as a result of stray projectiles and hot/burning falling debris. The Coast Guard proposes to establish this safety zone in the area within a 350 yard radius around the fireworks barge. This zone will be in effect between the hours of 9 p.m. and 11 p.m. on July 4, 1992.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal because these regulations will be in effect for only a short period, specifically for two hours on one day. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water as well as other pleasure craft wishing to transit the area. The vessels wishing to view the fireworks will still be able to view the fireworks from the water but will be required to do so at a distance more than 350 yards from the barge, which will not cause them undue hardship. Other pleasure craft in the area have alternate areas in Bristol Harbor in which to carry out their recreational activities. Because of this fact, plus the fact that the display will only last a short time, these vessels will not be heavily impacted by the proposed zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **"ADDRESSES"**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **"ADDRESSES."**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is proposed to be amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6, and 160.5.

2. Section 165.T01–051 is added to read as follows.

§165.T01–051 ´ Safety Zone: Bristol Harbor, RI.

(a) *Location.* The following area is a safety zone: A 350 yard radius around the fireworks barge anchored in Bristol Harbor, RI, in approximate position 41–39–55N, 71–19–59W.

(b) *Effective date.* The regulation in this section becomes effective at 9:00 p.m. on July 4, 1992. It terminates at 11:00 p.m. on July 4, 1992, unless

terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: June 1, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92-13347 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF72

Exchange of Evidence; Social Security Administration and Department of Veterans Affairs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning the exchange of evidence between the Social Security Administration (SSA) and VA. This proposed amendment is necessary because VA's General Counsel has determined that the wording of the current regulation is overbroad. The intended effect of this amendment is to assure that the regulations accurately reflect the statutory conditions under which evidence received by SSA is also considered evidence received by VA.

DATES: Comments must be received on or before July 9, 1992. Comments will be available for public inspection until July 20, 1992. This amendment is proposed to be effective 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until July 20, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 601 of the Servicemen's and Veterans' Survivor Benefits Act, Public Law No. 881, 70 stat. 857, 886 (1956) added 38 U.S.C. 5105 (formerly 3005) which authorized the Administrator of Veterans Affairs (now the Secretary of Veterans Affairs) and the Secretary of Health, Education, and Welfare (now the Secretary of Health and Human Services (HHS)) to jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing applications for dependency and indemnity compensation (DIC) from VA and benefits under title II of the Social Security Act. That statute also stipulated that an application on such form filed with either VA or the Secretary of HHS would be deemed an application for both benefits, and it provided for transmission of applications and supporting documentation between VA and HHS. The purposes of section 601 were to obviate the necessity for a claimant to file more than one basic application for benefits under the Social Security Act and the DIC program and to avoid, to the maximum feasible extent, the necessity for a claimant to file any particular item of documentary evidence substantiating a claim more than once. VA published regulations at 38 CFR 3.201(a) to put this statutory directive into effect.

The central purpose of § 3.201(a) is to spare claimants the inconvenience of filing duplicate claims or furnishing duplicate evidence. It also establishes the date that the application or evidence is considered to have been received by VA (See 38 CFR 3.156(a), 3.158(a), and 3.400(q)(1)(i)). It is not, however, intended to require that evidence before the SSA be treated as if it were part of the record before VA, or to require that VA affirmatively seek such evidence from SSA in the absence of a request from the claimant, or to apply to claims for any VA benefit other than DIC. In order to prevent claimants and the general public from misconstruing § 3.201(a), we are proposing to amend it for the sake of clarity.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. Sections 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program number is 64.110)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 26, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 388; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.201, paragraph (a) and the authority citation at the end of the section are revised to read as follows:

§ 3.201 Exchange of evidence; Social Security and Department of Veterans Affairs.

(a) A claimant for dependency and indemnity compensation may elect to furnish to the Department of Veterans Affairs in support of that claim copies of evidence which was previously furnished to the Social Security Administration or to request that the Department of Veterans Affairs obtain such evidence from the Social Security Administration. For the purpose of determining the earliest effective date for payment of dependency and indemnity compensation, such evidence will be deemed to have been received by the Department of Veterans Affairs on the date it was received by the Social Security Administration.

* * * * *

(Authority: 38 U.S.C. 501(a) and 5105)

[FR Doc. 92-13195 Filed 6-8-92; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 21

RIN 2900-AF61

Veterans Training; Time Limit for Submitting Employer's Certifications Under the Veterans' Job Training Act

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: Payments under the Veterans' Job Training Act are made to employers only after VA (Department of Veterans Affairs) receives periodic certifications concerning the number of hours worked by the veteran during the period being certified. Since the Act has a sunset provision, all work for which payments are due has been completed. This will serve notice to all employers participating under the Act that VA will not accept any certifications submitted after September 30, 1993.

DATES: Comments must be received on or before July 9, 1992. Comments will be available for public inspection until July 20, 1992.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays), until July 20, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Under the Veterans' Job Training Act VA made periodic payments to employers while they trained veterans of the Korean Conflict and the Vietnam Era who had experienced a lengthy period of unemployment. Section 5c of that Act provides that the maximum period of training for which assistance may be provided on behalf of a veteran is 15 months. Section 17 states that assistance may not be paid for a program which begins after March 31, 1990. The effect of the two sections is that the last period of training for which VA may provide assistance ended on June 30, 1991.

VA has provided by regulation (38 CFR 21.4632(c)(3)) that payments will be made only after the employer submits a certification that the veteran's progress during the period was satisfactory and the number of hours the veteran worked during the period. The length of the period may be either a month or a quarter.

Since the purpose of the law was to assist employers who were training veterans while that training was underway, VA believes that those employers should exercise due diligence in submitting the certifications needed to release that assistance. Furthermore, since the last date for training permissible under the VJTA has expired, it is appropriate to provide a reasonable time limit for closing the administration of the program. VA is doing this in this proposal.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Although the amended regulation will affect some small entities, this certification can be made because VA believes that the overwhelming majority of small entities have already submitted all the necessary periodic certifications. The department does not believe that requiring the remainder to submit them before October 1, 1993 will cause a significant economic impact. Therefore, the amended regulation will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.121.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 27, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart F-1—Veterans' Job Training

For the reasons set out in the preamble, 38 CFR part 21, subpart F-1 is amended as set forth below.

1. The authority citation for part 21, subpart F-1 continues to read as follows:

Authority: Public Law 98-77, 97 Stat. 443.

2. In § 21.4632 paragraph (c)(4) and its authority citation are added to read as follows:

§ 21.4632 Payment restrictions.

* * * * *

(c) *Release of payments.* * * *

(4) VA will not release any payments for training provided by an employer if VA receives the employer's certification for that training after September 30, 1993.

(Authority: Sec. 8, Pub. L. 98-77, 97 Stat. 443)

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[FR Doc. 92-13196 Filed 6-8-92; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans

[OAQPS No. CA 12-14-5354; FRL-4140-4]

California State Implementation Plan Revision; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) adopted by the San Diego County Air Pollution Control District (SDCAPCD) on December 18, 1990. The California Air Resources Board (ARB) submitted this revision to EPA on April 5, 1991. The revision concerns Rule 67.15, Pharmaceutical and Cosmetic Manufacturing Operations, which controls the emission of volatile organic compounds (VOCs) from solvents used in the manufacturing of pharmaceuticals

and cosmetics. EPA is proposing to approve this revision under section 110 (k)(3) as meeting the requirements of section 110 (a) and part D of the Clean Air Act, as amended in 1990 (CAA).

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Northern California, Nevada, and Hawaii Rulemaking Section, Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184, FAX: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962), EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended CAA) that included the San Diego County Air Pollution Control District (APCD). 43 FR 8964; 40 CFR 81.305. Because San Diego was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested and EPA approved under Section 172 of the 1977 Act, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. San Diego did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the San Diego County APCD portion of the California State Implementation Plan (SIP) was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. Sections 7401–7671q. In amended section 182 (a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991, for states to submit corrections of those deficiencies.

Section 182 (a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. San Diego County APCD has been classified as severe;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on April 5, 1991 [3], including the rule on which EPA is acting in this notice. This notice addresses EPA's proposed action for SDCAPCD Rule 67.15, Pharmaceutical and Cosmetic Manufacturing Operations. This submitted rule was found to be complete on May 21, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR Part 51, Appendix V,[4] and is being proposed for approval.

Description of Regulation

San Diego County APCD Rule 67.15 controls the emission of volatile organic compounds (VOC) from the solvents used in the manufacture of pharmaceuticals and cosmetics. VOCs contribute to the production of ground level ozone and smog. Rule 67.15 is a new rule which has been adopted to meet EPA's SIP-Call and the CAA RACT Fix-up requirement. The following is EPA's evaluation and proposed action for SDCAPCD's Rule 67.15.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] San Diego County APCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107 (d) and 181 (a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] The State of California submitted an earlier version of SDCAPCD's Rule 67.15 to EPA on March 26, 1990 but that version was superseded by a resubmittal of the rule on April 5, 1991.

[4] EPA has since amended the completeness criteria pursuant to section 110 (k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the provisions of the CAA, is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for stationary sourcers of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Techniques Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See Section 182 (a)(2)(A). The CTG applicable to Rule 67.15, Pharmaceutical and Cosmetic Manufacturing, is entitled, "Control of Volatile Organic Emissions form the Manufacture of Synthesized Pharmaceutical Products", No. EPA–450/2–78–029. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Summary of the Rule Provisions

Rule 67.15 applies to any person who manufacturers pharmaceutical or cosmetic products, formulates ointments, produces and/or separates medicinal chemicals such as antibiotics and vitamins for micro-organisms, manufactures botanical products by the extraction of organic chemicals from vegetative materials or animal tissues, or formulates pharmaceutical products into various dosage forms such as tablets, capsules or injectable solutions. The following are some of the provisions contained in the rule:

—definitions for the following terms: cosmetic manufacturing plant, cosmetic products, fugitive liquid leaks, fugitive vapor leak, pharmaceutical manufacturing plan, pharmaceutical product, process tanks, and volatile organic compounds.

—reactors, distillation columns, crystallizers, or centrifuges that have emissions of more than 15 pounds a day of VOC must be equipped with a surface condenser.
—control devices other than condensers may be used if they are approved by the Air Pollution Control Officer (APCO) and their combined collection and abatement efficiency is at least 90 percent by weight.
—centrifuges, rotary vacuum filters, or other filters or devices which have an exposed liquid surface must be used with a VOC collection and abatement system which reduces VOC emissions by a minimum of 90 percent.
—process tanks for material containing VOC must be covered or otherwise sealed at all times, except while loading, unloading or during maintenance of such tanks.
—VOC cannot be transferred into a stationary storage tank unless that tank is equipped with a permanent submerged fill pipe, vapor return line, and a pressure-vacuum relief valve.
—Fugitive vapor leaks, from equipment storing, mixing, blending, reacting, or transferring, containing VOC must be immediately recorded and promptly repaired.
—An operational and maintenance program must be submitted to the Air Pollution Control Officer for approval of the equipment required by the rule. The operation and maintenance program must identify all key system operating parameters and include proposed daily inspection schedules, anticipated ongoing maintenance steps, and proposed daily recordkeeping practices.
—Test methods are listed for the measurement to total absolute vapor pressure, VOC content, collection efficiency, and VOC content of fluids.

EPA Proposed Action

EPA has evaluated SDCAPCD's Rule 67.15 for consistency with the CAA, EPA regulations, and EPA policy and has found that the rule addresses all of EPA's requirements. The adoption and approval of this rule results in controlling a previously uncontrolled source and will, therefore, lead to additional emission reductions towards attainment in the San Diego County area. Therefore, SDCAPCD Rule 67.15 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. Sections 7401–7671q.

Dated: May 28, 1992.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 92–13382 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA21–1–5454; FRL–4116–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) adopted by the Sacramento Metropolitan Air Quality Management District (SMAQMD) on April 30, 1991. The California Air Resources Board (CARB) submitted that version of the rule to EPA on October 24, 1991 as a new rule for the SIP. The rule is SMAQMD's Rule 447, Organic Liquid Loading, which controls volatile organic compound (VOC) emissions from the loading of organic liquids into mobile or stationary tanks. EPA has evaluated SMAQMD's Rule 447 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA), because the rule strengthens the SIP. At the same time, EPA is proposing a limited disapproval of SMAQMD's Rule 447 because the rule does not fully meet the part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada & Hawaii, Rulemaking Section (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.
Sacramento Metropolitan Air Quality Management District, 8411 "K" Street, Sacramento, CA 95828.

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Southern California & Arizona, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105; Telephone: (415) 744–1187, FTS: 484–1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act) that included Sacramento County. 43 FR 8964; 40 CFR 81.305. Because SMAQMD was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987. 1977 CAA section 172(a)(2). The SMAQMD was unable to attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the SMAQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments were enacted.

Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Sacramento is classified as a serious nonattainment area;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many RACT rules to EPA for incorporation into its SIP on October 25, 1991,[3] including Rule 447 being acted on in this notice. The rules submitted on October 25, 1991 were found to be complete on December 18, 1991 pursuant to EPA's completeness criteria adopted pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991). (These will replace the completeness criteria currently set forth in 40 CFR part 51, appendix V.) Rule 447 is being proposed for limited approval and limited disapproval.

The SMAQMD Rule 447 controls the emission of volatile organic compounds (VOCs) from the loading of organic liquids. VOCs contribute to the production of ground level ozone and smog. The rule was adopted as part of Sacramento's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and was revised and submitted as a new SIP rule in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SMAQMD's Rule 447.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for specific source categories. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is RACT for specific source categories. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" RACT rules. See section 182(a)(2)(A). The CTGs applicable to Sacramento's Rule 447 are (1) "Control of Volatile Organic Emissions from Bulk Gasoline Plants", EPA document EPA–450/2–77–035, and (2) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA document EPA–450/2–77–026. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SMAQMD's Rule 447 is a new SIP rule which was adopted by SMAQMD to control VOC emissions from the loading of organic liquids. It includes the following significant provisions:

—The rule is applicable to liquids with a true vapor pressure of 0.5 pounds per square inch or more.
—Facilities are to be maintained leak free and vapor tight.
—Facilities are required to have California Air Resources Board certification of vapor control systems. Certified systems achieve 90–95% efficiency in controlling vapors.
—Facilities are limited to emissions amounting to 0.6 pounds per 1000 gallons of liquid for those receiving product by truck or 0.08 pounds per 1000 gallons for facilities receiving product by pipeline.
—Test methods for determining compliance with the emissions limits and vapor tightness are referenced.
—Recordkeeping provisions are included.

EPA has evaluated Sacramento's submitted new Rule 447 for consistency with the CAA, EPA regulations and EPA policy and has found that the rule addresses and corrects many of the deficiencies identified by EPA during the SMAQMD's rulemaking process. These corrections have resulted in a clearer, more enforceable rule. Although the approval of the Sacramento rule will strengthen the SIP, the rule contains a deficiency which was required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. Sacramento's Rule 447 is deficient because it allows the Air Pollution Control Officer to approve the use of alternate, unspecified and unapproved test methods in place of the specified EPA test methods. A detailed discussion of the rule and the deficiency can be found in the Technical Support Document for this rule (dated January 28, 1992) which is available from the U.S. EPA, Region 9 office. Because of the deficiency, the rule is not approvable pursuant to the section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the pre-amended Act as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiency, EPA cannot grant approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rule strengthens the SIP; however, the rule does not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiency. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of SMAQMD's submitted Rule 447 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of the rule because it contains a deficiency that must be corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control of technique guidelines (CTGs).

[2] Upon the date of enactment of the CAA, the designation of SMAQMD as nonattainment, continued under section 107(d) and the area was classified by operation of law pursuant to section 181(a). See 56 FR 56694 (November 6, 1991).

[3] The State of California submitted an earlier version of SMAQMD's Rule 447 to EPA on March 26, 1990 but that version was superseded by a resubmittal of the rule on October 25, 1991.

requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes the final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Upon publishing a final notice of a limited approval and limited disapproval, that action will approve the rule into the SIP so that the rule is federally enforceable, and, at the same time, the final notice will require that the District correct the deficiency in the rule within eighteen months in order to avoid the promulgation of sanctions.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated March 13, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–13482 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA–12–4–5352; FRL–4122–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District and Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the San Diego County Air Pollution Control District (APCD) on October 16, 1990, and by the Placer County APCD on September 25, 1990. The California Air Resources Board (CARB) submitted these revisions to EPA on April 5, 1991. The revisions concern San Diego's Rule 61.1, Receiving and Storing of Volatile Organic Compounds at Bulk Plants and Bulk Terminals, and Placer's Rule 212, Storage of Petroleum Products. Both rules control emissions of volatile organic compounds (VOCs) from the transfer and/or storage of organic liquids. EPA has evaluated San Diego's Rule 61.1 and Placer's Rule 212 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act as amended (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) of San Diego's Rule 61.1 and Placer's Rule 212 because the rules do not fully meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's Technical Support Document for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

San Diego County APCD, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

Placer County APCD, 11464 "B" Avenue, Auburn, CA 95603.

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183, FTS: 484–1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the San Diego County APCD. 43 FR 8964, 40 CFR 81.305. On September 12, 1979, EPA promulgated a list of ozone nonattainament areas under the provisions of the 1977 CAA that included Placer County (excluding the Tahoe Basin) APCD. 44 FR 53081, 40 CFR 81.305. Because both the San Diego and Placer County APCDs unable to reach ozone attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date for ozone to December 31, 1987. 1977 CAA section 172(a)(2). The two districts did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that those portions of the California State Implementation Plan (SIP) for the San Diego and Placer County APCDs were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-

amendment guidance.[1] EPA's SIP-Call used that guidance to indicate corrections necessary for specific nonattainment areas. The San Diego County area is classified as a server nonattainment area and the Placer County area is classified as a serious nonattainment areas; [2] therefore, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on April 5, 1991, including the rules being acted on this notice. This notice addresses EPA's proposed action for San Diego Rule 61.1, Receiving and Storing of Volatile Organic Compounds at Bulk Plants and Bulk Terminals, and Placer Rule 212, Storage of Petroleum Products. These submitted rules were found to be complete on May 21, 1991 pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V [3] and are being proposed for limited approval and limited disapproval.

San Diego's Rule 61.1 controls the emission of VOCs from the transfer of organic liquids, primarily gasoline, between storage tanks and mobile tanks, while both San Diego's Rule 61.1 and Placer's Rule 212 control VOC emissions from storage of gasoline and other organic liquids in tanks. VOCs contribute to the production of ground level ozone and smog. Both San Diego's Rule 61.1# and Placer's Rule 212 were originally adopted as part of their effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action on the two rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations as found in section 110 and Part D of the CAA and in 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forward from the pre-amended Clean Air Act.

For the purpose of assisting states and local authorities in developing RACT rules, EPA has prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is RACT for specific source categories. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A).

The CTGs applicable to both the San Diego and Placer County rules are EPA CTG documents # EPA–450/2–77–036, "Control of Volatile Organic Emissions from Storage of Petroleum Products in Fixed-Roof Tanks", and # EPA–450/2–78–047, "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks". Further interpretations of the requirements of the CAA and EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

San Diego County APCD Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals

This is a revised rule which controls VOC emissions from facilities having tanks with a capacity of 40,000 gallons or more. The following are the significant revisions:

1. An EPA approved test method for Reid vapor pressure determinations has been added.

2. Several CTG provisions for tanks and tank roof seals have been added. Some are more stringent than the CTG.

3. Provisions for, and an EPA approved test method applying to, vapor and liquid leaks have been added.

4. Inspection and recordkeeping provisions have been added.

Placer County APCD Rule 212, Storage of Petroleum Products

This is also a revised rule which is intended to control VOC emissions from petroleum storage tanks with a storage capacity of 40,000 gallons or more. The following are the significant changes:

1. The applicability of the rule has been lowered from liquids with a vapor pressure of 1.5 pounds per square inch to 0.5 pounds per square inch.

2. Discretionary approval by the Control Officer for unspecified control equipment has been deleted.

3. California Air Resources Board certification of vapor control systems has been added.

4. Recordkeeping provisions have been expanded.

5. An EPA approved test method for vapor leak detection has been added.

EPA has evaluated San Diego's Rule 61.1 and Placer's Rule 212 as submitted for consistency with CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many of the deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although the approval of these rules will strengthen the SIP, both rules still contain deficiencies which were required to be corrected pursuant to the section 182 (a)(2)(A) requirement of Part D of the CAA. The San Diego Rule 61.1 is deficient because it lacks recordkeeping provisions for exemption of low-throughput service stations and also lacks test methods for determining true vapor pressure and the efficiency of control devices. The Placer Rule 212 is deficient because it also lacks a test method for determining true vapor pressure. Because of these deficiencies, the rules are not consistent with the interpretation of section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems. Details of these deficiencies may be found in EPA's Technical Support Documents for each rule.

Because of the above deficiencies, EPA cannot grant full approval of the rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing Control Technique Guidelines (CTGs).

[2] The two areas were redesignated nonattainment and classified by operation of law pursuant to section 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991). These will replace the completeness criteria currently set forth in 40 CFR part 51, appendix V.

adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) requirement of Part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of submitted San Diego County APCD Rule 61.1 and Placer County APCD Rule 212 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of the rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin to run at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 19, 1992.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 92–13483 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[OAQPS No. CA14–2–5382; FRL–4127–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the Kern County Air Pollution Control District (Southeast Desert Portion) (KCAPCD)[1] on April 11, 1991 and May 6, 1991 respectively. The California Air Resources Board (ARB) submitted the SJVUAPCD and KCAPCD rules to EPA on May 30, 1991. These revisions concern KCAPCD Rule 410.4, Surface Coating of Metal Parts and Products and the SJVUAPCD Rule 460.3, Surface Coating of Metal Parts and Products. Both of these rules regulate volatile organic compound (VOC) emissions from the surface coating of metal parts and products. EPA has evaluated both the KCAPCD Rule 410.4 and the SJVUAPCD Rule 460.3 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) of (Southeast Desert Portion) Rule 410.4 and SJVUAPCD Rule 460.3 because the rules do not fully meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada, and Hawaii, Rulemaking Section (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, suite 275, Bakersfield, CA 93301.

San Joaquin Valley Unified Air Pollution Control District, 2314 Mariposa Street, Fresno, California 93711.

FOR FURTHER INFORMATION CONTACT: Dave Hodges, Southern California and Arizona, Rulemaking Section (A–5–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188, FTS 484–1188, FAX: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (CAA or the Act) that included the following eight air pollution control districts (APCDs) located in the San Joaquin Air Basin: Fresno County APCD, Kern County APCD,[2] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8962, 40 CFR 81.305. Because the eight counties of the San Joaquin Valley Air Basin were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date for ozone to December

[1] The portion of Kern County affected by KCAPCD Rule 410.4 is that portion of Kern County which lies outside of San Joaquin Valley Air Basin and is contained in the Southeast Desert Air Basin.

[2] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1990).

31, 1987.[3] 1977 CAA section 172(a)(2). The districts did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the portion of the SIP for the eight air pollution control districts of the San Joaquin Valley Air Basin were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In section 182(a)(2)(A) of the amended Act, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin, which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the southeast desert portion of Kern County.

Section 182(a)(2)(A) applies to pre-enactment section 107 nonattainment areas that were designated non-attainment upon enactment and classified as marginal or above under section 181(a)(1) by operation of law. Such areas must adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[4] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. APCDs found in the San Joaquin Valley Air Basin (now collectively known as the SJVAUPCD) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.[5] KCAPCD was subject to EPA's SIP-Call, but was not subject to the RACT fix-up requirement and the May 15, 1991 deadline.[6]

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on May 30, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3. These submitted rules were found to be complete on July 10, 1991 pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V [7] and are being proposed for limited approval and limited disapproval.

KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3 both control the emission of VOCs from the surface coating of metal parts and products. VOCs contribute to the production of ground level ozone and smog. KCAPCD Rule 410.4 was originally adopted as part of the KCAPCD's effort to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and has been revised to meet EPA's SIP-Call. SJVUAPCD Rule 460.3 is a new rule adopted in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. In addition, SJVUAPCD Rule 460.3 was adopted to unify and replace the existing surface coating of metal parts and products rules in the eight air pollution control districts of the San Joaquin Valley Air Basin. The following is EPA's evaluation and proposed action for KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 4. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA has prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is considered RACT for specific source categories. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring states to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to the surface coating of metal parts and products Rule 410.4 and 460.3 in this notice, is entitled Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products, EPA document #450/2-78-015. Further EPA policy determinations of RACT requirements are also found in the Blue Book. In general, these requirements have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3 will replace the existing surface coating of metal parts and products rules of the eight APCDs of the SJVUAPCD and the southeast desert portion of Kern County. Both rules were adopted to control emissions from the surface coating of metal parts and products through regulation of VOC content in coatings, storage and cleanup requirements, and other administrative procedures. KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3 are nearly identical and include the following revisions from the current SIP rules:

—Revision of the VOC definition for consistency with EPA requirements;
—Revision downward to 15 pounds per day or less (existing rules allow up to 50 pounds per day) of VOC emissions that a facility may emit and be exempt from this rule;
—Addition of VOC standards for specialty coatings;
—Exempt compounds and water are subtracted in the calculation of grams of VOC per liter of coating applied and grams of VOC per liter of material;
—Addition of recordkeeping requirements;
—Specification of test methods to be used for compliance determination;

[3] This extension was not requested for Kern County. Thus, Kern County's attainment date remained December 31, 1982.

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGS).

[5] The San Joaquin Valley Air Basin was redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See FR 56694 (November 6, 1991).

[6] KCAPCD was not subject to the RACT fix-up requirement and the May 15, 1991 deadline because the Southeast Desert Air Basin portion of Kern County was not a pre-enactment nonattainment area, and thus, was not automatically designated nonattainment on the date of enactment of the CAA. (See § 107(d) and § 182(a)(2)(A) of the amendments.) However, the KCAPCD is still subject to the requirements of EPA's SIP-Call because the SIP-Call included all of Kern County. The substantive requirements of the SIP-Call are the same as those of § 182(a)(2)(A).

[7] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

—Addition of surface preparation and cleanup provisions;
—Deletion of provision allowing alternative emission control requirements as approved by the executive office;
—Deletion of transfer efficiency requirement.

EPA has evaluated the submitted rules for consistency with the CAA, EPA regulations, and EPA policy and found that the revisions address and correct many of the deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the addition of a more stringent exemption cutoff in submitted Rules 410.4 and 460.3 should lead to more emission reductions.

Although the approval of KCAPCD (Southeast Desert Portion) Rule 410.4 and SJVUAPCD Rule 460.3 will strengthen the SIP, each rule still contains provisions that do not fulfill the requirements of Part D of the CAA. These deficient provisions consists of VOC content limitations for speciaity coatings which do not meet RACT limits, and include:

Coating	VOC (proposed)(gm/l)	VOC (CTG)(gm/l)
High Temperature	550	420
Silicone Release	700	420

The provisions are unapprovable because they are not consistent with the guidance found in the aforementioned CTG and the Districts have not supported their proposed VOC limits as RACT. These deficiencies were required to be corrected under the EPA SIP-Call and section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book.

Because of the above deficiency, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. EPA also cannot grant partial approval of these rules pursuant to section 110(k)(3) because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA. However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules are approvable under sections 110(k)(3) and 301(a) of the Act for strengthening the SIP. However, the rules do not meet the section 182(a)(2)(A) requirement of Part D because of the noted deficiency. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of submitted Rules 410.4 and 460.3 under sections 110(k)(3) and 301(a) of the CAA in order to strengthen the SIP.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by the EPA SIP-Call and section 182(a)(2)(A) of the CAA, and, as such, the rules do not meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin to run at the time EPA publishes final notice of this disapproval. At the end of that period, if EPA has not approved these rules as meeting the applicable requirements of section 182(a)(2)(A), EPA will impose one of these two sanctions. Moreover, the final disapproval triggers the federal implementation plan (FIP requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (see 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 15, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–13484 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA–12–6–5376; FRL–4141–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District

ATENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) adopted by the San Diego County Air Pollution Control District (SDCAPCD) on October 16, 1990. The California Air Resources Board (CARB) submitted this revision to EPA on April 5, 1991. The revision concerns Rule 67.3, Coating of Metal Parts and Products, which limits volatile organic compound (VOC) emissions from thinners, diluents, primers, and coatings used on metal parts and products, and from clean-up solvents used on associated equipment. EPA has evaluated the revision to Rule 67.3 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act as amended in 1990 (CAA) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval of Rule 67.3 under section 110(k)(3) because the rule does not fully meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed or telecopied to: Daniel A. Meer, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Fax: (415) 744–1076.

Copies of the rule revision and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section 1219 "K" Street, Sacramento, CA 95814.
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: Dave Hodges, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188, FTS: 484–1188.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the CAA, as amended in 1977 (1977 CAA or the 1977 Act) that included San Diego County. 43 FR 8964, 40 CFR 81.305. Because San Diego County APCD was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987, 1977 CAA section 172(a)(2). San Diego County APCD did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the San Diego County APCD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Public Law 101–549, 104 Stat. 1399, codified at 42 U.S.C. 7401–7671q. In section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-1990 Act section 172(b), as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. San Diego County is classified as "severe" [2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP, including the rule being acted on in this notice. This notice addressed EPA's proposed action for SDCAPCD Rule 67.3, Coating of Metal Parts and Products. This submitted rule was found to be complete on May 21, 1991 pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V [3] and is being proposed for limited approval and limited disapproval.

Rule 67.3 controls the emissions of VOCs from operations involving the coating of metal parts and products. VOCS contribute to the production of ground level ozone and smog. San Diego County's Rule 67.3 was originally adopted as part of the SDCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SDCAPCD Rule 67.3.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA, 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis of today's action, appears in various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norm for what is RACT for specific source categories. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring states to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Metal Parts and Products, Rule 67.3, is entitled, "Surface Coating of Miscellaneous Metal Parts and Products", EPA document number EPA-450/2–78–015. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SDCAPCD's submitted Rule 67.3, "Coating of Metal Parts and Products", includes the following revisions from the current SIP rule:

—Added capture and control limitations,
—Added specific EPA and ASTM test methods,
—Added specific recordkeeping provisions,
—Deleted daily weighted averaging for cross-line equivalency determinations.

EPA has evaluated SDCAPCD's submitted Rule 67.3 for consistency with the CAA, EPA regulations and EPA policy, and finds that the revision addresses and corrects many deficiencies previously identified by EPA. These corrected deficiencies result in a clearer, more enforceable rule. Furthermore, the addition of more stringent limits in submitted Rule 67.3 should lead to more emission reductions.

Although the approval of SDCAPCD Rule 67.3 will strengthen the SIP, this rule still contains deficiencies which are required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. The rule contains specialty coating limitations which exceed those in the CTG as well as air pollution control officer discretionary provisions within the recordkeeping requirements. The rule fails to include provisions to require that sources make and maintain usage records needed to demonstrate and ensure continuous compliance with the add-on capture and control equipment limitations in the rule. A detailed discussion of rule deficiencies can be found in the

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The entirety of San Diego County was designated nonattainment for ozone and classified severe by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694, November 6, 1991 (40 CFR 81.305).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991). These will replace the completeness criteria currently set forth in 40 CFR part 51, appendix V.

technical support document for submitted Rule 67.3 (January 15, 1992), which is available from the U.S. EPA Region 9 office. Because of these deficiencies, the rule is not approvable under section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the pre-amended Act, as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of the rule under section 110(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3), in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of SDCAPCD's submitted Rule 67.3

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. At the end of that period, if EPA has not approved these rules as meeting the applicable requirements of section 182(a)(2)(A), EPA will impose one of these two sanctions. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671.

Dated: April 20, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–13485 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 86

[AMS–FRL–4140–5]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Regulations Requiring On-Board Diagnostic Systems on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop and reopening of comment period.

SUMMARY: This notice announces that on June 30, 1992, the Environmental Protection Agency (EPA) will hold a public workshop to address certain issues that have been raised in connection with EPA's Notice of Proposed Rulemaking (NPRM) for On-Board Diagnostic Systems (OBD) that was published in the **Federal Register** on September 24, 1991 (56 FR 48272). The public workshop is being conducted so that EPA and interested parties can discuss certain issues pertaining to the requirement of section 202(m)(5) of the Clean Air Act (CAA) that emission-related repair information be made available to "any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines." Specifically, the issues to be discussed will include the following: Restricting access to recalibration information to qualified technicians; guidelines or minimum requirements as to what emission-related repair information must be provided by vehicle manufacturers; and factors relevant to the determination of the cost of emission-related repair information. This notice also announces that the docket in this proceeding shall be reopened for thirty days following the workshop for comments pertaining to issues discussed at the workshop.

DATES: The workshop will convene at 9 a.m. on June 30, 1992, and will adjourn after the time necessary to complete the presentations and discussion, but no later than the close of business on June 30, 1992. Persons interested in making presentations at the workshop are requested to notify the Agency contact person listed below at least five days prior to the workshop so that a final agenda can be prepared. Interested parties may submit written comments pertaining to the issues addressed at the public workshop on or before July 31, 1992.

ADDRESSES: The workshop will be held at the U.S. EPA National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Written comments must be sent in duplicate to: EPA Air Docket LE–131, Attention: Docket No. A–90–35, U.S. Environmental Protection Agency, room M–1500, 401 M Street SW., Washington, DC 20460, (202) 382–7548. This docket is located at the above address on the first floor of Waterside Mall and is open for public inspection weekdays from 8:30 to 12 noon and from 1:30 p.m. to 3:30 p.m. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying services.

FOR FURTHER INFORMATION CONTACT: Cheryl F. Adelman, Certification Division, U.S. EPA National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4434.

SUPPLEMENTARY INFORMATION: EPA is holding this workshop to provide EPA and the public with an opportunity to further discuss EPA's proposals regarding certain issues related to the availability of emission-related repair information, and for the public to offer suggestions or alternatives to EPA's proposals. These issues were discussed previously at a public hearing that was held on November 6, 1991. A copy of a

transcript of that hearing is available in the docket. A court reporter will be present at the workshop announced here to make a written transcript of the proceedings and a copy will be placed in the docket following the workshop.

I. Background

Section 202(m)(5) of the CAA directs EPA to promulgate a rule that requires all light-duty vehicles and light-duty trucks manufactured in model years 1994 and thereafter to contain an on-board diagnostic (OBD) system which will monitor emission-related components for malfunction or deterioration. To assure that the OBD system will continue to perform properly and that the repair and service industry will have the information needed to perform necessary emission-related repairs, section 202(m)(5) of the CAA directs EPA to promulgate regulations that require "manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines * * * any and all information needed to make use of the emission control diagnostics system * * * and such other information including instructions for making emission-related diagnosis and repairs." In the September 24, 1991 NPRM, EPA proposed regulations to implement section 202(m)(5) of the Act by establishing certain criteria that a manufacturer would be required to meet. These proposed criteria will be discussed below.

EPA received extensive comments on its proposed availability requirement. Generally, commenters opposed to EPA's proposed criteria provided alternative recommendations. However, on certain issues, commenters criticized EPA's position without providing alternative solutions. In light of this, as well as the number of responses received on these issues and EPA's concern that commenters did not consider all of the potentially relevant factors that must be addressed to resolve each issue, EPA has decided to provide the public with a further opportunity to comment on certain issues.

First, EPA requests comment on whether access to recalibration information, i.e., information that is required to verify or alter emission operating parameters or performance settings of an engine, should be restricted to qualified technicians. Recalibration information may be necessary to perform emission-related repairs; however, if used improperly, recalibration may cause an increase in emissions and poor vehicle performance. Commenters expressed concern over the potential for misuse of recalibration information, but failed to adequately address how technicians could perform emission-related repairs without access to such information.

Second, EPA requests comment concerning the need for and content of any guidelines or minimum requirements regarding what emission-related repair information manufacturers should make available. The comments of manufacturers indicate that they believe that such guidelines or requirements are necessary to ensure that EPA does not deny a certificate of conformity to such manufacturers based on inadequate information availability.

Last, EPA requests comment on what factors are relevant to the determination of the appropriate cost of emission-related repair information. EPA believes that a determination of such factors is necessary to assure that the cost charged for service information will be reasonable. Otherwise, independent technicians may be unable to purchase service information for a wide variety of vehicles due to the cost of such information.

A. Restricted Access to Recalibration Information

Recalibration information is information that is required to verify or alter any emission operating parameters or performance settings of an engine. As such, it is a type of information that appears to fall within the scope of emission-related repair information. Recalibration information may be necessary to perform emission-related repairs; however, if used improperly, recalibration of the engine may cause an increase in emissions and poor vehicle performance.

In the NPRM, EPA recognized the importance of having only legitimate OEM recalibrations performed on a vehicle. EPA requested comment on the best mechanism for providing nonfranchised technicians with recalibration information necessary to perform recalibrations.

EPA received numerous comments from all sectors of the automotive industry on the issue of the availability of recalibration information. Many of the commenters expressed concern over potential problems. These problems could include increased emissions, poor vehicle performance, and warranty and recall liability for manufacturers that could result from unqualified technicians performing improper recalibrations. Several commenters suggested that this concern could be addressed by restricting access to recalibration information to qualified technicians or repair facilities.

This workshop will provide interested parties the opportunity to further comment on the availability of recalibration information, whether qualified technicians or repair facilities should be able to receive recalibration information, and how technicians would qualify to receive recalibration information.

B. Information Guidelines for Manufacturers

Another criteria proposed by EPA in the OBD NPRM related to the scope of emission-related repair information that EPA would require manufacturers to make available to persons engaged in repairing or servicing motor vehicles or motor vehicle engines. EPA proposed that "all information needed to make emission-related repairs" be made available to the automotive service industry. EPA did not provide guidelines or specify the types of information that this would encompass.

Several commenters responded that EPA should define or provide guidelines as to what information must be provided. They asserted that failure to do so could result in manufacturers providing different levels of information due to different interpretations of the phrase "all information". In addition, some manufacturers indicated that without guidelines, they could be at risk for last-minute denial of certification approval. They asserted that EPA could delay the certification process by denying certification based on the fact that the provisions of a certification plan were inadequate to assure the availability of "all information" needed to make emission-related repairs. EPA believes this concern is based on EPA's proposal to withhold certification if manufacturers fail to describe in their application for certification how they would make information available in a manner which satisfies their regulatory responsibilities. (56 FR 48282)

The workshop will allow interested parties the opportunity to present ideas regarding specific types of, or guidelines to determining the information that should be encompassed by the phrase "all information necessary to make emission-related repairs."

C. Cost of Emission-Related Repair Information

In the September 24 NPRM (56 FR 48272), EPA proposed that manufacturers make emission-related information available to independent technicians at a reasonable price. In determining whether the price of information is reasonable, EPA proposed to consider all relevant

factors, including, but not limited to, the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which the information is provided, and the price charged by other manufacturers for similar information. EPA also proposed that when manufacturers provide the same exact information to independent technicians and dealerships, the price to independent technicians for such information would not exceed the lowest price charged to any of a manufacturer's authorized dealerships. EPA requested comment on what information is needed to determine the reasonableness of the cost for information provided by an OEM to an authorized dealership as part of a franchise agreement.

EPA received numerous comments on the issue of cost. Many of the comments from manufacturers and manufacturer associations suggested one or more additional factors that EPA should take into consideration in determining the reasonable cost of service information. Among the factors suggested were the following: a manufacturer's cost to create, develop, administer, warehouse and distribute publications for one-time transactions; the cost of other similar aftermarket information; the size of a manufacturer; the thoroughness of the information; and the number of product lines covered by a publication.

Some manufacturers asserted that requiring them to provide any information to independent technicians at a price that would not exceed the lowest price charged to any of a manufacturer's authorized dealerships would be unfair to the dealerships. This claim is based on the fact that some manufacturers subsidize the cost of information provided to dealerships and employ variable pricing strategies. Therefore, the cost to a dealership may not reflect the true cost or value of information. According to the commenters, since manufacturers would be unable financially to similarly subsidize thousands of independent technicians, they would be forced to increase the price of repair information to authorized dealerships.

A few manufacturers argued that restrictions on the cost of information would restrict flexibility as to the information that would be provided, and could result in a decision to provide less information. Other manufacturers indicated that a reasonable price for service information would be its fair value as determined in the marketplace.

Independent technicians, technician associations, and equipment manufacturers commented that independent technicians need numerous manuals to work on a wide variety of vehicles. Therefore, they asserted that the EPA should consider the amount of information independents need to purchase and the size of the business which purchases the information. They also stated that the definition of "reasonable cost" should take into account factors such as volume or other discounts and inflation.

A few commenters indicated that it is inappropriate to presume that cost of repair information is "reasonable" on the basis that a manufacturer is selling the information at that price to its dealers. In some cases, dealers have a longstanding relationship with the manufacuters that entails dealers paying a price for some materials in exchange for lower prices for other materials or services. They asserted that this approach to "reasonable cost"could be subverted where the manufacturer chooses an expensive approach to make the information available in lieu of an equally effective but less expensive approach.

Independents suggested that the concerns raised by the determination of the reasonable cost could be resolved by the formation of a central data repository.

As the summary of comments above reveals, the determination of the reasonable cost for emission-related repair information involves consideration of many factors. Based on the arguments presented in the comments, EPA is concerned that many of the commenters failed to adequately consider all of the potentially relevant factors. In doing so, it is also likely that they failed to consider alternatives for assuring that information is distributed at an appropriate cost. Therefore, EPA is conducting this workshop to provide interested parties the opportunity to participate further in the resolution of the cost issue.

II. Issues

EPA believes that given the issues discussed above, the following subject areas are likely to be discussed at the workshop:

—Factors to be considered in determining the reasonable cost of repair information.
—Options for assuring that repair information is made available at a reasonable cost: For example, a central repository.
—The specific costs incurred by manufacturers in providing repair information.
—The projected total cost to independent technicians for acquiring repair information from various manufacturers.
—Other issues related to the determination of the cost of repair information.
—Guidelines to assist manufacuters in determining what information must be provided to technicians to satisfy the requirement that manufactures make available "all information necessary to make emission-related repairs."
—Criteria for classifying a technician or repair facility as qualifed.
—Mechanism for assuring that only qualified technicians or repair facilities receive recalibration information.
—Other issues related to the availability of recalibration information.

III. Format of Workshop

The workshop will be conducted informally. EPA will make a presentation highlighting the information availability provisions in the September 1991 NPRM. After EPA's presentation, attendees will be encouraged to make oral presentations and participate in a discussion of issues addressed in this workshop notice. A court reporter will be present to make a written transcript of the proceedings. A copy of the transcript and all documents received at the workshop will be placed in the docket. The docket in this proceeding shall be reopened for thirty days following the workshop for comments pertaining to issues discussed at the workshop.

Dated: June 2, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-13380 Filed 6-8-92; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 91-115 FCC No. 92-168]

Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action invites further comment to assist the Commission in determining whether to establish billing name and address (BNA) service requirements for BNA associated with

local exchange carrier (LEC) joint use cards.

DATES: Comments must be filed on or before June 10, 1992, and reply comments on or before June 25, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Esbin, 202–632–6917.

SUPPLEMENTARY INFORMATION: On April 9, 1992 the Commission adopted a Report and Order and Request for Supplemental Comment (Report and Order) in CC Docket No. 91–115, FCC No. 92–168, released May 8, 1992. In this Report and Order the Commission reviewed LEC calling card practices. The order requires that all LECs provide non-discriminatory access to LEC joint use card validation data and to LEC line number screening data and that any LEC entering into a card honoring agreement with one interexchange carrier (IXC) must stand ready to enter such an agreement with all requesting IXCs. The Commission seeks further comment to assist it in determining whether to establish BNA service requirements. The full text of this Commission proposal is available for public inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this proposal may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114—21st Street, NW., Washington, DC 20036.

Paperwork Reduction

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose new or modified information collection requirements on the public.

List of Subjects in 47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–13398 Filed 6–8–92; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 57, No. 111
Tuesday, June 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Cancellation of Public Meeting

The June 11, 1992 meeting, 2–4 pm of the Committee on Governmental Processes of the Administrative Conference, notice of which appeared in the **Federal Register**, Wednesday, May 20, 1992. Vol. 57, No. 98, page 21386, is now cacelled.

Dated: June 4, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–13580 Filed 6–8–92; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Carlota Copper Project, Tonto National Forest, Gila and Pinal Counties, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) for a proposal from Carlota Copper Company to develop a mine for copper extraction in the Pinto Creek/Powers Gulch area southwest of the existing Pinto Valley Mine. The Carlota project area is located approximately 6 miles west of Miami, Arizona, in T. 1 S., R. 13 E., portions of sections 1, 2, 12; T. 1 S., R. 14 E., portions of Sections 6, 7; T. 1 N., R. 13 E., portions of Sections 25, 26, 35, 36; and T. 1 N., R. 14 E., portion of Section 31. The purpose of the EIS will be to develop and evaluate a range of alternatives for mining and related construction. The alternatives will include a no action alternative, involving no mining or road construction, and additional alternatives to respond to issues generated during the scoping process. Following analysis and selection of an alternative, it may be determined that an amendment is necessary to the Tonto National Forest Land and Resource Management Plan (Forest Plan) which provides the overall guidance for management of the area and proposed projects. The Forest Service invites written comments on the scope of this project. In addition, the Forest Service gives notice of this analysis so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis must be received in writing by July 27, 1992.

ADDRESSES: Submit written comments to Stuart Herkenhoff, Recreation and Lands Staff Officer, Globe Ranger District, Rt. 1, Box 33, Globe, Arizona 85501.

RESPONSIBLE OFFICIAL: The responsible official who will make the decision regarding this proposal is James L. Kimball, Forest Supervisor, Tonto National Forest, P.O. Box 5348, Phoneix, Arizona 85010, (602) 225–5200. He will decide under what circumstances the mining operation may proceed.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action, public scoping meetings, and the environmental impact statement to Stuart Herkenhoff, (602) 425–7180.

SUPPLEMENTARY INFORMATION: The Forest Service proposed Carlota Copper Project (Project) would consist of a mine with three open pits, waste rock dumps, topsoil storage areas, a leach pad, process ponds, a solvent extraction/electrowinning plant, roads, buildings for maintenance, and offices. Approximately 1250 acres will be disturbed by the project out of an approximate 3500 acres of analysis area. Most of the analysis area is on National Forest System (NFS) land, with the remainder being on private land. The waste rock dumps will be designated to contain approximately 130 million total tons of rock and will disturb approximately 400 total acres of land. The open pits will disturb approximately 370 total acres. The project has an estimated life of 10 to 12 years and ore production will total approximately 54 to 70 million tons. The ore will be processed on site by conventional leaching, solvent extraction, and electrowinning to produce copper cathodes.

During construction, an estimated 250 temporary workers will be employed. Approximately 225 employees will be employed at the project during operations. The project will require approximately 1200 acre feet of water per year. Approximately 50 megawatt hours per year of electric energy will be supplied by the Salt River Project.

The ore bodies will be mined using conventional open pit mining techniques and mining equipment. The planned ore mining rate is five million tons per year. Waste rock and alluvium will be mined at an average rate of about 14 million tons per year. Waste rock will be hauled to the waste rock dumps. Ore will be hauled by truck from the pits to an adjacent crushing plant and conveyed to the leach pad, or hauled directly from the pits to the pad. As required, ore will be crushed to approximately minus 6-inch size at the crushing plant prior to being conveyed to the leach pad. A single crushing plant is planned to serve all pits. This plant and associated conveyors will be relocated as needed. The nominal capacity of the plant is five million tons per year. The leach pad will have sufficient capacity for the total ore from three pits. Crushed ore will be "cured" with a strong sulfuric acid solution and allowed to rest in the heap for a minimum of three days. After curing, the ore will be leached using barren solution recirculated from the plant, producing copper-bearing leach solution. High quality copper cathodes will be produced in the plants using standard hydrometallurgical processes. Following mining, the area will be reclaimed.

Environmental studies will include air, surface and groundwater, scenic and recreational values, fish, wildlife, plants (including threatened and endangered species), soils, cultural resources, and socioeconmics. Measures to protect the environment will include reclamation, employee environmental education, spill prevention/emergency response planning, protection of archaeological sites, surface and ground water quality monitoring, erosion and sediment control, dust control, threatened and endangered species and wildlife protection, and public safety.

The following permits or licenses may be required to implement the proposed action:

1. Forest Service—Plan of Operations.
2. Environmental Protection Agency (EPA)—National Pollution Discharge Elimination System permit,
3. Army Corps of Engineers/EPA—Section 404 permit,
4. EPA/Arizona Department of Environmental Quality—
   a. Aquifer protection permit
   b. Air quality permit
   c. Stormwater discharge permit.

A number of issues have been identified to date. The major issues concern water quality and quantity, riparian areas, wildlife habitat, threatened and endangered species, cultural resources, and recreation.

This EIS will tier to the final EIS for the Forest Plan. The Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, and desired future conditions for the lands within the Forest. This direction guides management practices that will be utilized during the implementation of the Forest Plan. The Project analysis area is located in Management Area 2F, which is designed to provide watershed protection, livestock grazing, non-wilderness dispersed recreation, wildlife habitat improvement, and to support environmentally sound minerals development. The analysis will evaluate a range of alternatives. Alternatives to be evaluated range from no action, with no mining or road construction, to alternatives that allow for full development of the mining and processing facilities.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies, Native American Tribes, and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. Public scoping meetings will be held in mid-July, 1992, in the Phoenix metropolitan area and in Globe, Arizona. Dates, times, and locations to be announced. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested members of the public of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (e.g. newsletters, correspondence, etc.).

The Forest Service will be lead agency and is responsible for the preparation of the EIS. The U.S. Fish and Wildlife Services, Arizona Game and Fish Department, and Arizona Department of Environmental Quality have been invited to be co-operating agencies in accordance with 40 CFR 1501.6.

The draft EIS is expected to be filed with the EPA and to be available for public review by August, 1993. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The EPA will publish a Notice of Availability of the draft EIS in the Federal Register. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The final EIS is scheduled to be completed by December, 1993. In the final EIS, the Forest Service is required to respond to comments received during the comment period. The responsible official will consider the comments, responses, environmental consequences disclosed in the final EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. He will document the decision and reasons for the decision in the Record of Decision. The Record of Decision will be prepared and filed with the final EIS. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: June 2, 1992.

James L. Kimball,

Forest Supervisor Tonto National Forest.

[FR Doc. 92-13446 Filed 6-8-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[(A-588-806]

Electrolytic Manganese Dioxide From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on electrolytic manganese dioxide (EMD) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period April 1, 1990 through March 31, 1991. The review preliminarily indicates the existence of a *de minimis* margin for this manufacturer/exporter during the period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher Beach, Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW.,

Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1991, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 14927) of the antidumping duty order on EMD from Japan for the period April 1,1990 through March 31, 1991. On April 30, 1991, the respondent, Tosoh Corporation (TOSOH), requested an administrative review for the period April 1, 1990 through March 31, 1991. We initiated the review on May 21, 1991 (56 FR 23271). The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930 as amended (the Act).

Scope of Review

Imports covered by the review are shipments of electrolytic manganese dioxide. EMD is manganese dioxide (MnO2) that has been refined in an electrolysis process. During the review period, such merchandise was classified under item 2820.10.0000 of the Harmonized Tariff Schedule (HTS). The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

On January 6, 1992, the Department published a final scope ruling, Electrolytic Manganese Dioxide from Japan; Final Scope Ruling (January 6, 1992; 57 FR 395), in which it affirmed that high-grade chemical manganese dioxide (CMD–U) is a "later-developed product" and is included in the scope of the order on EMD from Japan. The Department determined that CMD–U was not specifically included or excluded from the original scope of the order because development of CMD–U was not yet complete at the time the petition was filed. For a detailed discussion, see also Electrolytic Manganese Dioxide from Japan; Preliminary Scope Ruling (November 7, 1991; 56 FR 56977).

The review covers one manufacturer/exporter to the United States of the subject merchandise, TOSOH, and the period April 1, 1990 through March 31, 1991.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772(b) of the Act. We used purchase price as the basis for determining United States price since the merchandise was sold to an unrelated purchaser in Japan with the knowledge that the purchaser would then export the merchandise to the United States.

Purchase price sales were based on the packed, f.o.b. and ex-works price to unrelated purchasers in Japan. Where applicable, we made deductions for foreign inland freight and foreign brokerage and handling.

Petitioners allege that Mitsubishi is the "exporter" within the meaning of 19 U.S.C. 1677(13) and, therefore, U.S. price must be determined on an exporter's sales price (ESP) basis. We have determined that there is insufficient evidence to establish that TOSOH and Mitshubishi are "related parties", or that Mitsubishi is TOSOH's agent. We also have determined that there was insufficient evidence to support petitioner's allegation of "middleman dumping." (For further discussion of these issues *see* Decision Memorandum to the File).

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, rebates, discounts, other miscellaneous movement expenses, and for the differences in packing and credit between the home and U.S. markets.

Petitioners allege that the EMD sold in the U.S. is a "specialty" product that is different than the EMD sold in the home market.

Petitioners also allege that the home market sales are "fictitious." We have determined that there is insufficient evidence to support either allegation. (For further discussion see Decision Memorandum to file).

Preliminary Results of the Review

As a result of this review, we preliminarily determine the dumping margin to be:

Manufacturer/exporter	Time period	Margin (Percent)
TOSOH	04/1/90–03/31/91	0.03

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption

that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 29, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-13516 Filed 6-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-803]

Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 10, 1992, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on light-walled welded rectangular carbon steel tubing from Taiwan. This review covers one exporter for the period March 1, 1990, through February 28, 1991. We preliminarily found that dumping margins exist with respect to the exporter.

We gave interested parties an opportunity to comment on the preliminary results. We accepted comments on the preliminary results from the petitioners and rebuttal comments from the respondent. Based on our analysis of those comments, the dumping margins have changed from the preliminary results.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Will Sjoberg or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230, telphone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On Feburary 10, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 4826) the preliminary results of the administrative review of the antidumping duty order (54 FR 5532, February 3, 1989) on light-walled welded rectangular carbon steel tubing ("LWRT") from Taiwan for the period March 1, 1990, through February 28, 1991.

The Department has now completed this review in accordance with Section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by this review are shipments of light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch. This merchandise is classifiable under item number 7306.60.5000 of the Harmonized Tariff Schedule ("HTS"). The HTS number is provided for convenience and customs purposes. The written product description remains dispositive.

This review covers shipments made by Ornatube Enterprise Co. Ltd. ("Ornatube") during the period March 1, 1990, through February 28, 1991.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of this review. We received timely written comments from both petitioner and respondent.

The Department was not able to accept respondent's case brief, however, because respondent failed to comply with the Department's regulations by submitting a case brief containing new factual information subsequent to the deadlines set forth in § 353.31(a)(1)(ii) of the Department's regulations. In accordance with § 353.31(a)(3) of the Department's regulations, we returned respondent's case brief with written notice specifying the information which the Department deemed to be new factual information. In addition to outlining the specific reasons for returning the comments, the Department provided the respondent with an opportunity to resubmit the case brief with the additional factual information expunged.

Despite the fact the respondent's resubmitted case brief was timely, it contained information which the Department specifically requested the respondent to expunge from the initial case brief. Again, in accordance with § 353.31(a)(3) of the Department's regulations, we returned the case brief to the respondent with written notice specifying the information which the Department deemed to be new factual information.

Because the respondent was given an opportunity to conform to the Department's regulatory guidelines and failed to do so, the Department decided not to provide the respondent with any additional opportunities to submit its case brief commenting on the preliminary results.

Neither the petitioners nor the respondent requested a hearing to discuss the preliminary results.

The following comments are based on the petitioners' case brief and the respondent's rebuttal brief.

Comment 1: The petitioners contend that Department's use of best information available ("BIA") was proper because, when viewed in the context of the entire administrative record, respondent's submissions were unresponsive, untimely and inadequate. Petitioners argue that the Department should again use the information in the petitioner's cost of production ("COP") allegation as the basis for calculating constructed value ("CV").

In its rebuttal Ornatube contends that the Department wrongfully used BIA to calculate foreign market value ("FMV") instead of using respondent's questionnaire responses.

Ornatube insist that the Department should use its initial questionnaire response as well as its COP questionnaire response to calculate antidumping margins.

Ornatube argues that it would have been "extremely costly, time-consuming, and beyond the business reality" to fully respond to the Department's COP questionnaire because it requested production costs for each model sold in the home market and constructed value information for each model sold in the United States market. Morever, Ornatube argues that the weighted-average cost information submitted in the COP questionnaire response was sufficient to analyze whether sales in the United States were made at less than fair market value because of the "huge" volume of its annual production and the fact that only a small portion of its production was exported to the United States.

Department's Position: We agree with the petitioners that the use of BIA was fully justified under the circumstances.

Section 776(c) of the Act and § 353.37 of the Department's regulations provide that, whenever a party refuses or is unable to produce accurate information requested in a timely manner and in the form required the Department will use BIA.

On June 18, 1991, the Department received a questionnaire response from Ornatube. The Department subsequently received an allegation from petitioners that Ornatube made its home-market sales at prices below the cost of production. The Department determined

that an adequate COP allegation had been made and subsequently issued a COP questionnaire on September 18, 1991.

The respondent's October 23, 1991, COP questionnaire response was deemed deficient by the Department. The weighted-average cost information submitted by Ornatube, which represented the varied products under the scope of this review, was determined to be insufficient to conduct a thorough cost analysis. The Department requires costs to be allocated on a per-unit basis, as differently-sized products may have different cost structures.

Furthermore, the respondent failed to provide responses to much of the Department's COP questionnaire. The respondent failed to provide the actual, per unit direct material, direct labor and factory overhead costs incurred for production during the period of review. The respondent failed to answer questions pertaining to its financial accounting practices for fixed assets, its inventory, or its use of alternative accounting methodologies. The respondent also failed to describe the cost accounting system it uses to record the production costs of the subject merchandise. The respondent's description of its manufacturing process consisted of a flowchart with virtually no narrative explanation. The description of the manufacturing process should have included a complete flowchart of the production process, including descriptions of each stage in the process and identification of the points in the process where one or more production stages comprise a direct cost center. The respondent failed to provide the methodology used to derive its reported material, direct labor, overhead, general, selling, administrative and interest expenses. No methodology was provided explaining how profit was derived in the COP questionnaire response. Lastly, no information on costs of preparing the products for shipment in the home market was provided in the COP questionnaire response.

Due to the deficient response to the initial COP questionnaire, the Department issued a deficiency questionnaire. In its response to the deficiency questionnaire, the respondent claimed it had made a good faith effort to comply with the first COP questionnaire and further claimed that if the information requested was not specifically contained in the first COP questionnaire response, it could be derived from the original COP questionnaire response, which the Department had already deemed to be deficient.

Because the respondent's cost information was so deficient as to provide an inadequate basis for analysis, the Department decided to bypass the cost test and proceed to best information otherwise available, as directed by section 776(c) of the Act, in calculating FMV (See Certain Brass Sheet and Strip from Italy; Final Results of Antidumping Duty Administrative Reviews (57 FR 9235, 9236, March 17, 1992)). The best information otherwise available is petitioners' cost of production data and allegation that all of Ornatube's home-market sales were at prices below COP.

Therefore, the Department has used constructed value, based on petitioners' information, as the basis for FMV, in accordance with section 773(b) of the Act.

Comment 2: Ornatube takes issue with the fact that two wall thicknesses (.047" and .063") were used in the CV calculations while Ornatube manufactures LWRT with seven different wall thicknesses (0.047", 0.063" 0.072", 0.083", 0.095", 0.120", 0.018"). Ornatube argues that the result is an overstated CV, as the two wall thicknesses used in the CV are the smallest and, therefore, have the highest production costs.

Department's Position: We disagree. Because the respondent's cost information was so deficient, the Department, in accordance with section 776(c) of the Act, used BIA in its CV calculations. Due to the fact that petitioners' submission, containing cost information for only two wall thicknesses, was the only relevant data we had on the record, the Department reaffirms its use in the CV calculations. The Department matched the smallest wall thickness (with the highest associated cost) only with products with a like wall thickness. All other LWRT was matched with 0.063" LWRT, therefore giving the respondent the benefit of the lowest costs on the record.

Comment 3: The petitioners argue that the Department's methodology understates the cost of ("COM"), and therefore CV, in two ways.

The petitioners first argue that the Department should include in COM both conversion overhead and conversion yield loss. The petitioners recognize the Department's inclusion of conversion yield loss in its calculation of the cost of production of U.S. sales, but they argue that its exclusion from COM results in a lowered COM on which the selling, general and administrative expense ("SG&A") was calculated for purposes of determining CV. Petitioners also argue that conversion overhead is part of factory overhead and must be included in COM.

Second, the petitioners contend that the Department erred in calculating the cost of production of the U.S. sales by adding COM, yield loss expense and an SG&A expense equal to the higher of the conversion overhead factor or ten percent of COM. The petitioners argue that the actual cost of production is the sum of the properly calculated COM (including overhead) and SG&A expense. The petitioners also argue that the SG&A expense is determined by multiplying the total COM (including overhead) by the company's SG&A percentage, which may not be less than ten percent of COM.

The respondent argues against all adjustments to CV.

Department's Position: The Department agrees with petitioners' argument that COM was understated by both conversion overhead and conversion yield loss, thereby understating SG&A as well. The CV calculation has been adjusted accordingly.

The Department agrees that the cost of production of the U.S. sales should be the sum of COM (including overhead and yield loss expense) and the SG&A expense which may not be less than ten percent of COM, rather than the sum of COM, yield loss expense and an SG&A expense equal to the higher of the conversion overhead factor or ten percent of COM. The CV calculation has been adjusted accordingly.

Comment 4: The petitioners argue that the LWRT sold to the United States on which the respondent claimed a duty drawback was made with imported coil; therefore, they contend that the Department should use the average price of steel coil imported into Taiwan as best information available for steel coil costs for those sales, rather than the average price of steel exported from Taiwan.

The respondent argues that petitioners' calculation of the cost of imported coil, which was calculated by averaging the FOB value of hot- and cold-rolled coil exported from Taiwan and adding the rebate that Ornatube received from China Steel, was inaccurate because Ornatube manufactures its own cold-rolled coil for use in LWRT.

Department's Position: The Department agrees with the petitioners argument that for all sales on which respondent claimed a duty drawback, CV should be based on the cost of

imported coil. The Department has adjusted the CV calculation accordingly.

Although respondent's COP questionnaire response states that it manufactures cold-rolled coil for use in LWRT, the respondent has failed to provide adequate information on the cost of manufacturing this cold-rolled coil. Therefore, as BIA the Department is using the information provided by the petitioner (see our response to Comment 1).

Comment 5: The petitioners argue that it is inappropriate to offset U.S. sales commissions with home market indirect selling expenses in the calculation of CV because the Department is constructing the value of U.S. sales. The petitioner states that by doing so, the addition of the commission to CV is either partially or wholly negated.

Department's Position: The Department disagrees with the petitioners' contention that home market indirect selling expenses should not be used to offset U.S. sales commissions. Section 353.56(b)(1) of the Department's regulations states that if sales commissions are paid in one market and not in the other, the Secretary normally will make a reasonable allowance for indirect selling expenses, not to exceed the lesser of the indirect selling expenses incurred in one market or the commissions allowed in the other market. Accordingly, we have offset U.S. sales commissions with home indirect selling expenses in the calculation of CV.

Comment 6: The petitioners allege that CV must be adjusted by adding the imputed cost of credit to home market sales because there is a lag between the data of shipment and the date of payment on home market sales.

Department's Position: The Department disagrees with petitioners. In accordance with § 353.50(a)(2) of the Department's regulations, the Department is required to include general expenses (e.g., general and administrative expenses, general research and development, direct and indirect selling expenses and credit expenses) in all constructed value calculations (See Final Results of Antidumping Duty Administrative Review; Certain Values and Connections of Brass for use in Fire Protection Systems from Italy (55 FR 8971, 8973, March 9, 1990)). The Department has correctly applied the methodology in its calculation of constructed value by applying the statutory ten percent for SG&A expenses (which includes credit expenses) to COM.

Final Results of the Review

As a result of our comparison of United States price to foreign market value and the correction of a computer programming error in our preliminary analysis, we determine that the following margin exists for the review period:

Manufacturer/ exporter	Period of review	Percent margin
Ornatube	03/01/90–02/28/91	18.05

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual difference between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 752(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-vale investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 18.05%. This rate represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with § 353.34(d) of the Commerce Department's regulations (19 CFR 353.34(d)). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and § 353.22 of the Department's regulations (19 CFR 353.22).

Dated: June 2, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–13517 Filed 6–8–92; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–810]

Preliminary Affirmative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Paulo F. Mendes or Annika L. O'Hara, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–5050 or 377–0588, respectively.

Preliminary Determination

The Department preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Brazil of the subject merchandise.

Case History

Since the publication of the notice of initiation in the **Federal Register** (56 FR 52530, October 21, 1991), the following events have occurred.

A. Change of Period of Investigation

On January 22, 1992, we changed the period of investigation ("POI") from calendar year 1990 to calendar year 1991 so that our investigation would cover a more recent time period.

B. Staging of the Questionnaire

On December 17, 1991, the respondents requested that the Department stage the questionnaire on upstream subsidies. According to the respondents' proposal, the first stage would only request the data necessary for the Department to make a competitive benefit determination, while the second stage would cover alleged subsidies provided to the companies that supplied Persico Pizzamiglio ("Persico") with hot-rolled carbon steel in flat-rolled coils ("flat-rolled steel"), which is the main input product used in the production of circular welded non-alloy steel pipe ("standard pipe"). The respondents argued that staging the questionnaire in this way would save both the Department and the upstream respondents time and expense.

On February 14, 1992, we informed the respondent companies and the Government of Brazil ("GOB") that we would not stage the questionnaire. We explained that if the Department were to find a competitive benefit, and the respondents failed to provide a response regarding subsidies to the companies that supplied Persico with flat-rolled steel (hereinafter: "the flat-rolled steel producers/suppliers" or "the upstream suppliers"), the Department would view the response as incomplete and would resort to best information available ("BIA"). However, if the Department were to find no competitive benefit, it would not use BIA because of a failure to provide a response concerning subsidies to the upstream suppliers.

C. Limiting Respondent Selection

On December 17, 1991, the respondents also requested that the Department only require Persico to respond to the Department's questionnaire because of its share of the exports of standard pipe from Brazil to the United States. On December 30, 1991, we decided that only Persico would be required to answer our questionnaire, because of its share of the standard pipe exports to the United States.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of the investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finishing rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

A. Analysis of Direct Subsidy Programs

According to the questionnaire responses, Persico did not use any of the following programs during the POI:

1. Exemption from the IPI tax and import duties under the BEFIEX program.
2. Preferential export financing under the FINEX program.
3. Preferential export financing under the PROEX program.

No other programs were alleged by the petitioners or exported in the questionnaire responses.

B. Analysis of Upstream Subsidies

The petitioners have alleged that manufacturers, producers, or exporters of standard pipe in Brazil receive benefits in the form of upstream subsidies.Section 771A(a) of the Act defines upstream subsidies as follows:

> The term "upstream subsidy" means any subsidy * * * by the government of a country that:
>
> (1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
>
> (2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and
>
> (3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to determine the existence of an upstream subsidy. The absence of any one element precludes the finding of an upstream subsidy.

1. Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the producer of the subject merchandise, section 771A(b) directs that:

> * * * a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of the merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

The Department's proposed regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (54 FR 23366, May 31, 1989)) offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

> * * * In evaluating whether a competitive benefit exists * * * the Secretary will determine whether the price for the input product is lower than:
>
> (1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or
>
> (2) A world market price for the input product.

Therefore, in determining whether the price the standard pipe producer would have paid in an arms-length transaction exceeds the price it actually paid for its allegedly subsidized input—flat-rolled steel—we first look for the price at which the standard pipe producer could have bought the input from an unsubsidized supplier in Brazil. During the POI, all Persico's flat-rolled steel suppliers received countervailable subsidies and we have no information on other suppliers. Lacking an unsubsidized domestic price, we look to world market prices as a potential benchmark. Since there is no one published world market price for the input product, flat-rolled steel, we constructed such a price for calendar

year 1991 by averaging the following data:

(a) Prices published in the Metal Bulletin for "hot-rolled coil (dry)" sold by steel companies in the member countries of the European Coal and Steel Community ("ECSC");

(b) Prices published by the Metal Bulletin for "hot coil" traded on the steel trading exchange in Brussels;

(c) Prices published by the Metal Bulletin for "hot-rolled coil (dry)" sold by steel companies in Latin America;

(d) Export prices for U.S. flat-rolled steel as provided by the U.S. Census Bureau (these data and the data from the two sources listed below include only the prices for the three HTS categories of hot-rolled steel in flat-rolled coils which, according to Persico, correspond to the steel it uses in its production of standard pipe);

(e) Export prices for Korean hot-rolled steel in flat-rolled coils as provided by official Korean export statistics; and

(f) Export prices for Japanese hot-rolled steel in flat-rolled coils as provided by official Japanese export statistics.

We collected the prices listed under (a) through (c) on a weekly basis and the prices listed under (d) through (f) on a monthly basis. We then calculated a simple average of these prices for each month, expressed in U.S. dollars per metric ton.

In developing this benchmark, we used f.o.b. world market prices rather than c.i.f. prices, which differs from our practice in previous upstream subsidy investigations (see Steel Wheels From Brazil; Final Affirmative Countervailing Duty Determination (54 FR 15523, April 18, 1989) ("Steel Wheels") and Certain Agricultural Tillage Tools From Brazil; Final Affirmative Countervailing Duty Determination (50 FR 34525, August 26, 1985)). Based on extensive comments submitted by petitioners and respondents on this issue, we have preliminarily determined that the proper focus of a competitive benefit inquiry is the price that would exist in Brazil if the input suppliers did not receive subsidies. When it is not possible to observe this price directly because all the input suppliers receive subsidies and we are forced to find a surrogate for this price, we turn to a world market price. however, in doing so, we are still attempting to create the price that would exist for the input product in Brazil but for the subsidies. Accordingly, it would be inappropriate to include ocean freight in the benchmark, since such freight charges would not have been incurred by Persico purchasing in the domestic market.

Using f.o.b. prices, we calculated the weighted average price Persico paid each of its suppliers during the POI. (Persico has requested that the names of its suppliers be treated as proprietary information.) We compared these weighted average prices to identically weighted world market prices. We found that during the POI, only one Brazilian steel producer sold flat-rolled steel to Persico at a price below the world market price. Therefore, we preliminarily determine that Persico received a competitive benefit from only one of its steel suppliers. Since we found no competitive benefit arising from purchases from the other steel suppliers, there is no need to analyze these other steel suppliers further.

2. Subsidies Bestowed Upon Input Product

a. *Upstream subsidy programs preliminarily determined to be countervailable.* We preliminarily determine that benefits were bestowed with respect to flat-rolled steel, a substantial input product used in the manufacture or production in Brazil of standard pipe, under the following programs:

i. Government equity infusions. Historically, the GOB has been the principal owner of the Brazilian steel industry, primarily through the state-owned holding company Siderurgia Brasileira S.A. ("SIDERBRAS"). In March 1990, the GOB decided to liquidate SIDERBRAS and privatize its steel mills, including the one steel producer subject to our analysis in this determination. Since the beginning of the privatization process, which is expected to be completed in 1992 or 1993, this steel producer has operated largely as an independent entity. SIDERBRAS ceased operations following the GOB's March 1990 liquidation decision and did not exercise any operational or financial control over its subsidiary during the POI.

According to the questionnaire responses, the one steel producer under investigation has received government equity infusions, mostly from SIDERBRAS, in the form of cash transfers and debt assumptions in return for equity. The equity infusions were made pursuant to two GOB plans:

(1) The Stage III Expansion Project for the state-owned steel mills, which was initiated in 1975 and completed in 1988. The purpose of this project was to expand the Brazilian steel industry's production capacity, improve the quality of its products, and reduce its costs. Only steel companies received assistance under this project; and

(2) The Financial Restructuring Plan for SIDERBRAS, which was approved in January 1987 and completed in 1991. The objective of this plan was to stabilize the financial condition of the steel industry, offset the adverse effects of delays in the implementation of the Stage III Expansion Project, and reduce the steel companies' debt load. Only steel companies were eligible to participate in this plan, which replaced the Stage III Expansion Project.

We have consistently held that government provision of equity does not *per se* confer a subsidy (see *e.g.*, Steel Wheels). Government equity infusions bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. Therefore, we examined whether the steel producer was a reasonable investment (a condition we have termed "equityworthy") in order to determine whether the equity infusions were inconsistent with commercial considerations.

A company is a reasonable investment if it shows the ability to generate a reasonable rate of return within a reasonable period of time. To make this determination, we examine the company's financial ratios, profitability, and other factors, such as market demand projections and current operating results to evaluate its current and future ability to earn a reasonable rate of return on investment. The steel producer analyzed in this determination was previously found by the Department to be unequityworthy for a certain period of time. Nothing on the record of this investigation leads us to believe that this determination was wrong. For a subsequent time period, we preliminarily determine that the steel producer continued to be unequityworthy.

Therefore, based on our analysis of the information on the record and a previous determination, we conclude that the company was unequityworthy in each year it received an equity infusion. Accordingly, we determine that the equity infusions made into this steel company by the GOB were inconsistent with commercial considerations and may confer a subsidy.

To the extent that we find government investment to be commercially unreasonable and the government's rate of return on its investment less than the national average rate of return on investment, we consider the investment to provide a countervailable benefit. We examine the "rate of return shortfall" for the POI, which is the difference between the national average rate of return on equity during the POI and the steel

company's rate of return on equity. If no shortfall exists for the POI, there is no countervailable subsidy for that year. If a shortfall does exist, we multiply the rate of the shortfall by the amount of the original equity infusion to find the benefit for the POI.

Due to inflation, the nominal values of the original equity infusions have increased substantially. We have, therefore, used the indexed values of the equity infusions in our calculations. In its response to our questionnaires, the steel producer used the following indices when correcting the monetary value of the equity infusions:

(a) For 1977–1990: the values of the BTN (Brazilian Treasury Bill) as provided in notice RF 45/90 issued by the GOB; and

(b) For 1991: the FAP (Equity Adjustment Factor) index as published by the Brazilian Treasury.

For each equity infusion, the nominal amount received was converted into a BTN or FAP equivalent by dividing the nominal amount received by the value of the BTN/FAP. To obtain the 1991 value of the equity infusions, we multiplied the BTN/FAP equivalents by the value of the FAP on December 31, 1991, in order to correct the value of all equity infusions to this date.

We measured the rate of return for the steel producer by dividing its net result in 1991 by its total capital. We then compared the result with the national average rate of return on equity in Brazil in 1991, as reported in the January 1992 edition of Exame, a Brazilian business publication. This national average rate of return on equity is only based on the first three quarters of 1991. Since the rate of return for the whole year was not available at the time of this preliminary determination, we used the data for the first three quarters of 1991 as the best information available. We will use the average rate of return for the entire year in our final determination if it is available by then. The steel producer's rate of return on equity was lower than the national average of 1.8 percent. The difference between the company's rate of return on equity and the national average rate of return on equity constitutes the rate of return shortfall. We multiplied the rate of return shortfall by the December 31, 1991, value of all equity infusions provided to the company that we have found to be inconsistent with commercial considerations. Finally, we divided this benefit amount by the December 31, 1991, value of the steel producer's total sales for 1991.

On this basis, we determine that the subsidy to the steel producer from the government equity infusions was 10.09 percent *ad valorem*.

ii. IPI incentives. This program, which consists of a rebate of the IPI tax (Imposto sobre Produtos Industrializados, a value-added sales tax paid on domestic sales of industrial products), was established by Decree-law 1.547 in 1977. Law 7.988 of December 28, 1989, lowered the rebate from 95 percent to 47.5 percent, effective retroactively to January 1, 1989. However, projects which had been authorized before December 28, 1989, would still be granted a 95 percent reduction of the IPI tax. Steel producers are eligible to receive IPI rebates under this program, provided that they meet the following conditions:

(a) They must have an ongoing capital investment project originally approved by the Conselho do Desenvolvimento Industrial ("CDI"; the Industrial Development Council);

(b) They must also receive quarterly approval from the Industry and Commerce Department of the Ministry of Economy, Finance and Planning which ensures that capital investment in the approved project is continuing; and

(c) They must have a net IPI tax obligation in each quarter.

After several amendments to Decree Law 1.547, the program was suspended on April 12, 1990, by Decree Law 8.034. Pursuant to this law, only companies with projects approved prior to April 1990 are eligible to continue to receive benefits from this program. The steel producer received residual benefits under this program during the POI.

Because only steel producers are eligible to receive IPI rebates, we preliminarily determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. To calculate the benefit, we divided the total amount of the IPI rebate received during the POI by the steel producer's total sales in 1991. On this basis, we determine the subsidy provided to the steel producer under this program to be 0.69 percent *ad valorem*.

b. *Upstream Subsidy Programs Preliminarily Determined Not To Be Used by Persico's Steel Supplier.*

i. Long-term loan guarantees.

ii. Government privatization assistance.

iii. Government provision of operating capital.

iv. Fiscal benefits by virtue of a project approved by CDI.

3. Significant Effect

For purposes of determining whether the upstream subsidies have a significant effect on the cost of manufacturing standard pipe, we multiplied the total *ad valorem* subsidy rate on the steel input by the proportion of the total manufacturing cost of standard pipe accounted for by the steel input.

In Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil (50 FR 34525, August 26, 1985), we established thresholds regarding the existence of a significant effect. We presume no significant effect if the *ad valorem* subsidy rate on the input product multiplied by the proportion of the input product in the cost of manufacturing the merchandise accounts for less than one percent. If the result of the calculation is higher than five percent, we presume that there is a significant effect. If the result is between one and five percent, we examine the effect of the input subsidy on the competitiveness of the merchandise. Since in this case, the steel input subsidy allocated to standard pipe yields a rate in excess of five percent, we presume that there is a significant effect. Therefore, based on the above analysis, we preliminarily determine that Persico received an upstream subsidy.

D. Calculation of the Upstream Subsidy to Persico

As discussed above, the weighted average world market price exceeds the weighted average price charged by one of Persico's suppliers. For the same supplier, the difference between the world market price and its price is higher than the amount of the domestic subsidies the supplier received. Therefore, we conclude that there is a full pass-through of the subsidies from this steel supplier to Persico. To calculate the benefit to Persico we multiplied the value of the steel purchased from this supplier by the subsidy received by the supplier and divided this amount by the value of Persico's sales of standard pipe during the POI. Using this methodology, we determine the upstream benefit for Persico to be 9.53 percent.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with Section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of standard pipe from Brazil which are entered or withdrawn from warehouse, for consumption on or

after the date of the publication of this notice in the **Federal Register** and to require a cash deposit or bond for such entries of the merchandise in the amount of 9.53 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission ("ITC") of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Department's regulations, we will hold a public hearing, if requested, on July 29, 1992, at 9:30 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or participate in a hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In accordance with 19 CFR 355.38(c) and (d), ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than July 22, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than July 27, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with Section 355.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: June 2, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-13520 Filed 6-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-806]

Preliminary Affirmative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Beth Graham or Larry Sullivan, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4105 or 377-0114, respectively.

Preliminary Determination

The Department preliminarily determines that benefits which constitute bounties or grants within the meaning of Section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Venezuela of the subject merchandise.

Case History

Since the publication of the notice of initiation in the **Federal Register** (56 FR 52532, October 21, 1991), the following events have occurred.

A. Additional Program Allegations

On November 4, and 20, 1991, LTV Corporation (LTV), an interested party, alleged that both standard pipe producers and Siderurgica Del Orinoco (SIDOR), the upstream supplier of flat-rolled steel, benefitted from programs other than those alleged by petitioners and referenced in the Department's notice of initiation. LTV alleged that the VENEXPORT financing program provides bounties or grants to producers or exporters of standard pipe. LTV also alleged that the following actions provide bounties or grants to the producers of hot-rolled steel coil: (1) Cancellation of Government of Venezuela (GOV) equity in SIDOR (resulting in erasure of 3,816 million bolivares of net cumulative losses); (2) Corporacion Venezolana de Guyana Guarantee of SIDOR public debt bonds; and (3) Equity infusions made to SIDOR from 1985 through 1990. On December 31, 1991, we determined that the above-mentioned programs would be included in our investigation.

B. Change of Period of Investigation

On December 17, 1991, the Department held an ex parte meeting with C.A. Conduven (Conduven), a respondent in this investigation. Conduven requested that the Department change the period of investigation (POI) to calendar year 1991, which would be the most recently completed fiscal year.

On December 30, 1991, petitioners requested that the Department not alter the POI to calendar year 1991 because they did not believe SIDOR's annual report would be published prior to the submission of questionnaire responses. On January 14, 1992, we determined that the POI should be calendar year 1991.

C. Staging of the Questionnaire

On December 17, 1991, the respondents also requested that the Department stage the questionnaire so that Conduven would not be penalized if SIDOR, the hot-rolled steel coil producer, did not respond to the upstream subsidy portion of the questionnaire. Conduven argued that without competitive benefit, no pass-through of subsidies can occur. Therefore, if Conduven proved that there was no competitive benefit during the POI, SIDOR's response to the upstream questionnaire was essentially irrelevant.

On January 8, 1992, petitioners objected to Conduven's proposal. Petitioners asserted that the Department should require respondents to submit all program-specific information in order for the Department to make a proper analysis of competitive benefit and that staging the response would only cause delays in the case. On January 9, 1992, we received comments from LTV, objecting to respondents' proposal to stage the questionnaire and for the POI to be calendar year 1991.

On February 14, 1992, we informed Conduven and the GOV that we would not stage the questionnaire. We explained that if we were to find a competitive benefit, and respondents

failed to provide a response regarding subsidies to the upstream supplier, we would view the response as incomplete and would resort to best information available (BIA). However, if we were to find no competitive benefit, we would not resort to BIA for a failure to provide a response concerning subsidies to the upstream supplier.

D. Limiting Respondent Selection

During the December 17, 1991, ex parte meeting, respondents also requested that the Department only require Conduven to respond to the Department's questionnaire, because of its share of the exports of standard pipe to the United States.

On January 16, 1992, we limited the investigation to Conduven, because of its share of the standard pipe exports to the United States.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. *All* carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

I. Analysis of Direct Subsidy Programs

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Venezuela of standard pipe under the following program:

Export Bond Program

The Export Bond Program was established in 1973. The program was designed to provide partial compensation for the requirement that exporters convert export earnings at an official exchange rate significantly lower than the free market exchange rate. The export bonds can only be used for the payment of taxes; they cannot be redeemed for cash. The value of the export bond is based on a percentage of the FOB value of the product exported. The applicable export bond percentage for a company corresponds to that company's national value-added percentage. To receive an export bond, exporters must submit the following export documents to their commercial bank: (1) Commercial Invoice; (2) Bill of Lading; (3) Certificate of Income on Foreign Currency; (4) Export Manifest; and (5) Classification de Valor Agregado Nacional (includes national value-added percentage (VAN)). The application documents are reviewed by the commercial bank and forwarded to the Central Bank of Venezuela which issues the export bond.

Because this program is limited to exporters, we determine that this program confers an export bounty or grant on standard pipe. To calculate the benefit for the POI, we divided the bolivar amount of bonds earned on export sales of standard pipe to the United States by the export sales of standard pipe to the United States. On this basis, we calculated a net subsidy of 4.86 percent *ad valorem*.

On June 13, 1991, before the filing of the petition in this case, the Ministry of Foreign Relations and the Ministry of Finance excluded all manufactured products, including standard pipe, from eligibility for the Export Bond Program. Consistent with our policy of taking into account any measurable program-wide changes that occur before the preliminary determination, we are taking into account the termination of the export bond program for duty deposit purposes. Therefore, for purposes of the preliminary determination, the duty deposit rate for this program is equal to zero for all manufacturers, producers, and exporters in Venezuela of standard pipe.

According to the questionnaire responses, Conduven did not use any of the following programs:

A. *Short-Term FINEXPO Financing*
B. *Preferential Export Financing*
C. *Excessive Tariff Drawbacks*
D. Preferential Financing Company of Venezuela (FIVCA) Financing

According to the questionnaire responses, the following programs do not exist or were terminated prior to the POI:

A. *Provision of Preferential Pricing on Raw Materials for Export*
B. *Venexport Financing*

II. Analysis of Upstream Subsidies

The petitioners have alleged that manufacturers, producers, or exporters of standard pipe in Venezuela receive benefits in the form of upstream subsidies. Section 771A(a) of the Tariff Act of 1930, as amended (the Act), defines upstream subsidies as follows:

The term *upstream subsidy* means any subsidy * * * by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to determine the existence of an upstream subsidy. The absence of any one element precludes the finding of an upstream subsidy.

Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the producer of the subject merchandise, section 771A(b) directs that:

* * * A competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the

product in obtaining it from another seller in an arms-length transaction.

The Department's proposed regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)) offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

> * * * In evaluating whether a competitive benefit exists pursuant to paragraph (a)(2) of this section, the Secretary will determine whether the price for the input product is lower than:
>
> (1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or
>
> (2) a world market price for the input product.

Therefore, in determining whether the price a standard pipe producer would have paid in an arm's-length transaction exceeds the price it actually paid for its allegedly subsidized input—flat-rolled steel—we first look for the price at which the standard pipe producer could have bought the input from an unsubsidized seller in Venezuela. During the POI, Conduven's flat-rolled steel supplier, SIDOR was the only producer of hot-rolled steel coil in Venezuela, and it allegedly received bounties or grants. Lacking an unsubsidized domestic price, we look to world market prices as a potential benchmark. Since there is no one published world market price for the input product, flat-rolled steel, we constructed such a price for calendar year 1991 by averaging the following data:

(a) Prices published in the Metal Bulletin for "hot-rolled coil (dry)" sold by steel companies in the member countries of the European Coal and Steel Community (ECSC);

(b) Prices published by the Metal Bulletin for "hot coil" traded on the steel trading exchange in Brussels;

(c) Prices published by the Metal Bulletin for "hot-rolled coil (dry)" sold by steel companies in Latin America;

(d) Export prices for U.S. hot-rolled steel in flat-rolled coils as provided by the U.S. Census Bureau (these data and the data from the two sources listed below include only the prices for the three HTS categories of hot-rolled steel in flat-rolled coils which, according to Conduven, correspond to the steel it uses in the production of standard pipe);

(e) Export prices for Korean hot-rolled steel in flat-rolled coils as provided by official Korean export statistics; and

(f) Export prices for Japanese hot-rolled steel in flat-rolled coils as provided by official Japanese export statistics.

We collected the prices listed under (a) through (c) on a weekly basis and the prices listed under (d) through (f) on a monthly basis. We then calculated a simple average of these prices for each month, expressed in U.S. dollars per metric ton.

In developing this benchmark, we used f.o.b. world market prices rather than c.i.f. prices, which differs from our practice in previous upstream subsidy investigations (see Steel Wheels from Brazil; Final Affirmative Countervailing Duty Determination (54 FR 15523, April 18, 1989) and Certain Agricultural Tillage Tools from Brazil; Final Affirmative Countervailing Duty Determination (50 FR 34525, August 26, 1985)). Based on extensive comments submitted by petitioners and respondents on this issue, we have preliminarily determined that the proper focus of competitive benefit inquiry is the price that would exist in Venezuela if the input suppliers did not receive subsidies. When it is not possible to observe this price directly because all the input suppliers receive subsidies and we are forced to find a surrogate for this price, we turn to a world market price. However, in doing so, we are still attempting to estimate the price that would exist for the input product in Venezuela but for the subsidies. Accordingly, it would be inappropriate to include ocean freight in the benchmark, since such freight charges would not have been incurred by Conduven purchasing in the domestic market.

Using f.o.b. prices, we calculated the weighted average price Conduven paid SIDOR during the POI. We compared these weighted average prices to identically weighted world market prices. We found that during the POI, SIDOR sold steel to Conduven at a price above the world market price. Since we find no competitive benefit and, therefore, no significant effect, there is no need to analyze the alleged subsidies provided to SIDOR. We preliminarily determine that Conduven did not receive an upstream subsidy through its purchases of hot-rolled coil from SIDOR because we find no competitive benefit was passed through from SIDOR to Conduven.

Verification

Inaccordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

The estimated net bounty or grant is 4.86 percent *ad valorem*, for all manufacturers, producers, or exporters of standard pipe from Venezuela. However, since the export bond program was terminated prior to our preliminary determination, the duty deposit rate is zero. Therefore, we are not directing the U.S. Customs Service to suspend liquidation of entries of standard pipe from Venezuela.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on July 31, 1992, at 1:00 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone, the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than July 17, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than July 24, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: June 2, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration

[FR Doc. 92-13519 Filed 6-8-92; 8:45 am]

BILLING CODE 3510-DS-M

The Research Corporation of the University of Hawaii; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–036. *Applicant:* The Research Corporation of the University of Hawaii, Honolulu, HI 96826. *Instrument:* Multiple Corer System. *Manufacturer:* Adolf Wuttke GmbH and Company, Germany. *Intended Use:* See notice at 57 FR 14388, April 20, 1992. *Advice Received:* May 20, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides light cored samples of undisturbed deep-sea sediments (to 4800 m) per drop using a hydraulic damper to minimize topwater sloshing. Private research institutes advise that (1) this capability is pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–13512 Filed 6–8–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Mississippi/Louisiana Habitat Protection Advisory Panel (Panel) on June 24, 1992, from 9 a.m. until 3 p.m. The meeting will be held at the Sabine National Wildlife Refuge, U.S. Fish and Wildlife Service, Highway 27 South, 3000 Main Street, Hackberry, Louisiana (the refuge is located seven miles south of Hackberry on Highway 27).

The Panel will review the Cameron-Creole Fisheries Study and the Caernarvon Freshwater Diversion Structure Operations Study; and discuss the status of the Bonnet Carre' and Davis Pond Freshwater Diversion Projects, the Coastal Wetlands Planning, Protection, and Restoration Act Activities, and the Corps of Engineers/National Oceanic and Atmospheric Administration's Memorandum of Agreement for Habitat Restoration.

For more information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: June 3, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–13470 Filed 6–8–92; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Change in Public Meeting Date and Agenda

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date and agenda for a public meeting of the Pacific Fishery Management Council's Groundfish Management Team (GMT) originally published in the **Federal Register** at 57 FR 23205 on June 2, 1992, have been changed as follows. The changes are noted below; all other information originally published on June 2, 1992, remains unchanged.

Change: June 18, 1992, meeting to end at 4:30 p.m.

To: June 19, 1992, and adjournment at 4:30 p.m.

Add Agenda Item: The Council's Enforcement Consultants will meet jointly with the GMT to discuss enforcement and monitoring needs associated with a proposed system of individual fisherman quotas for the sablefish and fixed gear halibut fisheries. The remainder of the meeting will be as announced earlier.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 3, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–13471 Filed 6–8–92; 8:45 am]

BILLING CODE 3510–22–M

COMPETITIVENESS POLICY COUNCIL

Announcement of Forthcoming Meetings

ACTION: Notice of forthcoming meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the Competitiveness Policy Council announces several forthcoming meetings.

DATES: June 23, 1992; July 21, 1992; September 14, 1992; October 5, 1992; and November 9, 1992; 8:30 a.m. to 5:30 p.m.

ADDRESSES: Eighth Floor Conference Center, 11 Dupont Circle, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Howard Rosen, Executive Director, Competitiveness Policy Council, suite 650, 11 Dupont Circle, NW., Washington, DC 20036, (202) 387–9017.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210, as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the U.S. economy. The Council's chairman, Dr. C. Fred Bergsten, will chair each meeting.

Each meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA: The Chairman will open each meeting with a report on developments related to the activities of the Council. The work of each of the eight subcouncils will be discussed. The subcouncils include: Capital formation, corporate governance, critical technologies, education, manufacturing, public infrastructure, trade policy, and training. The Council will also consider additional business as suggested by its members.

Dated: Dated June 4, 1992.

C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 92-13528 Filed 6-8-92; 8:45 am]

BILLING CODE 6820-11-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Technical Advisory Committee for Water Management at Army Corps of Engineers Reservoirs

ACTION: Notice.

SUMMARY: The Technical Advisory Committee for Water Management at Army Corps of Engineers Reservoirs was established, effective June 3, 1992, pursuant to section 310, Public Law 101-640, the "Water Resources Development Act of 1990. The Technical Advisory Committee will function in accordance with the provisions of Public Law 92-463, the Federal Advisory Committee Act.

The Technical Advisory Committee will provide advice to the Secretary of the Army and the Assistant Secretary for Civil Works on the research and application of water management methods, practices, and policies for improvement and advancement of the water management programs at Army Corps of Engineers reservoirs. The Committee will be composed of a well-balanced membership comprised of experts in the technical aspects of the management of major reservoirs, and will include individuals from academic, industrial, and scientific sectors.

For further information on the Technical Advisory Committee, contact: Ms. Sandy Riley, Office of the Administrative Assistant to the Secretary of the Army, (703) 697-6900.

Dated: June 4, 1992

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-13467 Filed 6-8-92; 8:45 a

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on Thursday, June 25, 1992 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations and Low-Intensity Conflict forces.

In accordance with section 10(d) of Public Law 92-463, the Federal Advisory Committee Act, and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: June 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-13466 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 162. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 162 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 1992

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and transportation Allowance Committee for no-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Alaska:						
Adak [5]	$10		$34		$44	10-01-91
Anaktuvuk Pass	83		57		140	12-01-90
Anchorage						
05-15—09-15	174		71		245	05-15-92
09-16—05-14	85		62		147	05-01-92
Aniak	73		36		109	07-01-91
Atqasuk	129		86		215	12-01-90
Barrow	86		73		159	06-01-91
Bethel						
05-01—09-30	93		83		176	05-01-92
10-01—04-30	80		81		161	02-01-92
Bettles	65		45		110	12-01-90
Cantwell	62		46		108	06-01-91
Cold Bay	71		54		125	12-01-90
Coldfoot	75		47		122	12-01-90
Cordova	83		77		160	02-01-92
Craig	67		35		102	07-01-91
Dillingham	76		38		114	12-01-90
Dutch Harbor-Unalaska	113		67		180	05-01-92
Eielson AFB						
05-15—09-15	100		66		166	05-15-92
09-16—05-14	66		63		129	05-01-92
Elmendorf AFB						
05-15—09-15	174		71		245	05-15-92
09-16—05-14	85		62		147	05-01-92
Emmonak	60		40		100	06-01-91
Fairbanks						
05-15—09-15	100		66		166	05-15-92
09-16—05-14	66		63		129	05-01-92
False Pass	80		37		117	06-01-91
Ft. Richardson						
05-15—09-15	174		71		245	05-15-92
09-16—05-14	85		62		147	05-01-92
Ft. Wainwright						
05-15—09-15	100		66		166	05-15-92
09-16—05-14	66		63		129	05-01-92
Homer						
05-01—09-30	71		60		131	05-01-92
10-01—04-30	57		58		115	01-01-92
Juneau						
05-01—10-01	88		74		162	05-01-92
10-02—04-30	75		73		148	01-01-92
Katmai National Park	89		59		148	12-01-90
Kenai-Soldotna						
04-02—09-30	94		68		162	04-02-92
10-01—04-01	69		66		135	01-01-92
Ketchikan						
05-14—10-14	77		61		138	05-14-92
10-15—05-13	62		59		121	01-01-92
King Salmon [5]	75		59		134	12-01-90
Klawock	75		36		111	07-01-91
Kodiak	71		61		132	01-01-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Kotzebue	125		72		197	01-01-92
Kuparuk Oilfield	75		52		127	12-01-90
Metlakatla	79		44		123	07-01-91
Murphy Dome						
05-15—09-15	100		66		166	05-15-92
09-16—05-14	66		63		129	05-01-92
Nelson Lagoon	102		39		141	06-01-91
Noatak	125		72		197	01-01-92
Nome						
05-15—09-15	87		72		159	05-15-92
09-16—05-14	76		71		147	05-01-92
Noorvik	125		72		197	01-01-92
Petersburg	72		64		136	05-01-92
Point Hope	99		61		160	12-01-90
Point Lay	106		73		179	12-01-90
Prudhoe Bay-Deadhorse	64		57		121	12-01-90
Sand Point	75		36		111	07-01-91
Seward						
05-01—09-30	107		53		160	05-01-92
10-01—04-30	61		48		109	01-01-92
Shungnak	125		72		197	01-01-92
Sitka-Mt. Edgecombe	72		69		141	01-01-92
Skagway						
05-14—10-14	77		61		138	05-14-92
10-15—05-13	62		59		121	01-01-92
Spruce Cape	71		61		132	01-01-92
St. George	100		39		139	06-01-91
St. Mary's	60		40		100	12-01-90
St. Paul Island	81		34		115	12-01-90
Tanana						
05-15—09-15	87		72		159	05-15-92
09-16—05-14	76		71		147	05-01-92
Tok	68		55		121	01-01-92
Umiat	97		63		160	12-01-90
Unalakleet	58		47		105	12-01-90
Valdez						
05-01—09-01	98		53		151	05-01-92
09-02—04-30	84		51		135	01-01-92
Wainwright	90		75		165	12-01-90
Walker Lake	82		54		136	12-01-90
Wrangell						
05-14—10-14	77		61		138	05-14-92
10-15—05-13	62		59		121	01-01-92
Yakutat	70		40		110	12-01-90
Other [2], [4]	63		47		110	07-01-91
American Samoa	85		47		132	12-01-91
Guam	112		75		187	05-01-92
Hawaii:						
Island of Hawaii: Hilo	65		61		126	06-01-92
Island of Hawaii: other	80		61		141	06-01-92
Island of Kauai	99		55		154	06-01-92
Island of Kure [1]			13		13	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Island of Maui	79		64		143	06-01-92
Island of Oahu	105		55		160	06-01-92
Other	59		47		106	12-01-90
Johnston Atoll [2]	18		18		36	10-01-91
Midway Islands [1]			13		13	12-01-90
Northern Mariana Islands:						
Rota	45		31		76	12-01-90
Saipan	68		47		115	12-01-90
Tinian	44		24		68	12-01-90
Other	20		13		33	12-01-90
Puerto Rico:						
Bayamon						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Carolina						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Fajardo (Including Luquillo						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Ft. Buchanan (Incl GSA Serv Ctr, Guaynabo)						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Mayaguez	84		58		142	07-01-91
Ponce	113		90		203	07-01-91
Roosevelt Roads						
04-16—12-14	66		61		127	07-01-91
12-15—04-15	102		64		166	12-15-91
Sabana Seca						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
San Juan (Incl San Juan Coast Guard Units)						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Other	63		63		126	07-01-91
Virgin Islands of The U.S.						
05-01—11-30	95		63		158	05-01-91
12-01—04-30	128		66		194	12-01-90
Wake Island [3]	4		17		21	12-01-90
All Other Localities	20		13		33	12-01-90

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the Traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $16.25 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US. Government or Contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. government or contractor quarters.

Dated June 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 92-13469 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL) Veterans' Status Decision

In a decisional document signed May 13, 1992, the Secretary of the Air Force, acting upon a recommendation by the Department of Defense Civilian/Military Service Review Board, determined that the service of the group known as the "U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), Who Served Overseas as a Result of UAL's Contract With the Air Transport Command During the Period December 14, 1941 through August 14, 1945" would be considered active duty in accordance with Public Law 95–202. Members of the group are now eligible to receive discharge certificates from the U.S. Air Force and to apply for Department of Veterans Affairs benefits.

To be eligible for VA benefits, each member of the group must establish they:

1. Were employed by United Air Lines as a flight crew personnel (pilot, co-pilot, navigator, flight engineer, radio operator) or
2. Were employed by United Air Lines as aviation ground support personnel (aircraft mechanic, station manager, dispatcher) and
3. Served outside the continental United States in direct support of Air Transport Command-directed flight operations during the period December 14, 1941 through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: HQ AFMPC/DPMARS2, Randolph AFB, TX 78150–6001, ATTN: Sgt White.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be employment records from United Air Lines headquarters. Other supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from U.S., USAAF passes to leave the limits of an overseas base, military orders, miscellaneous USAAF papers, etc. Additionally, the captain of a flight crew may provide written confirmation for other crew members on his flight.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330–1000, telephone (703) 692–4745.

POC: Lt Col Robert Dunlap, AFPC, 692–4745

Benefit Information

A determination of "active duty" under Public law 95–202 is "for the purposes of all laws administered by the Veterans' Administration" (38 U.S.C. 106). Benefits are not retroactive and do not include such things as increased military or Federal Civil Service retirement pay, or a military burial detail, for example. Entitlement to state veterans benefits vary and are governed by each state. Therefore, for specific benefits information, contact your nearest Veterans Administration Office and your state veterans service office after you have received your Armed Forces discharge documents.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–13402 Filed 6–8–92; 8:45 am]

BILLING CODE 3910–01–M

U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA) Veterans' Status Decision

In a decisional document signed May 13, 1992, the Secretary of the Air Force, acting upon a recommendation by the Department of Defense Civilian/Military Service Review Board, determined that the service of the group known as the "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of TWA's Contract with the Air Transport Command during the Period December 14, 1941 through August 14, 1945" would be considered active duty in accordance with Public Law 95–202. Members of the group are now eligible to receive discharge certificates from the U.S. Air Force and to apply for Department of Veterans Affairs benefits.

To be eligible for VA benefits, each member of the group must establish they:

1. Were employed by Transcontinental and Western Air, Inc. as a flight crew personnel (pilot, co-pilot, navigator, flight engineer, radio operator) or
2. Were employed by Transcontinental and Western Air, Inc. as aviation ground support personnel (aircraft mechanic, station manager, dispatcher) and
3. Served outside the continental United States in direct support of Air Transport Command-directed flight operations during the period December 14, 1941 through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: HQ AFMPC/DPMARS2, Randolph AFB, TX 78150–6001, ATTN: Sgt White.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be any employment records from TWA headquarters. Other supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from U.S., USAAF passes to leave the limits of an oversea base, military orders, miscellaneous USAAF papers, etc. Additionally, the captain of a flight crew may provide written confirmation for other crew members on his flight.

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For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330–1000, telephone (703) 692–4745.

Benefit Information

A determination of "active duty" under Public Law 95–202 is "for the purposes of all laws administered by the Veterans' Administration" (38 U.S.C. 106). Benefits are not retroactive and do not include such things as increased military or Federal Civil Service retirement pay, or a military burial detail, for example. Entitlement to state veterans benefits vary and are governed by each state. Therefore, for specific benefits information, contact your nearest Veterans Administration Office and your state veterans service office after you have received your Armed Forces discharge documents.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–13403 Filed 6–8–92; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Interim Columbia and Snake Rivers Flow Improvement Measures for Salmon

LEAD AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft SEIS.

SUMMARY: The Corps of Engineers (Corps), in cooperation with other Federal agencies, intends to prepare a supplement to the Final 1992 Columbia River Salmon Flow Measures Options Analysis/Environmental Impact

Statement (OA/EIS). The final 1992 OA/EIS, which was released in January 1992, identified a plan of action to assist the instream migration of juvenile and adult salmon in the Lower Snake and Columbia Rivers during the 1992 migration season. This supplement will address water management activities for 1993 and future years until the plan of action may be modified as a result of several ongoing studies including the Columbia River System Operation Review (SOR), the Columbia River System Mitigation Analysis (CRSMA), and the salmon recovery plan to be issued by the National Marine Fisheries Service (NMFS).

The alternatives under consideration are similar to those measures evaluated in the 1992 OA/EIS and identified in formal consultation/conferencing with NMFS on the 1992 plan of action. Elements of a plan of action may include modifying releases from Dworshak, Brownlee, and Grand Coulee Reservoirs, operating the Lower Snake River and John Day reservoirs at lower levels, and various other strategies to improve instream conditions for migrating salmon. Activities may also include testing and evaluation measures to obtain additional biological information. The action is being considered in response to a need to protect stocks of Snake River salmon that have been listed as threatened or endangered species under the Endangered Species Act. The Corps of Engineers, Walla Walla District (Corps), is the lead agency. The U.S. Department of Energy, Bonneville Power Administration (BPA), U.S. Department of the Interior, Bureau of Reclamation (BOR), and the U.S. Department of Commerce, NMFS are cooperating agencies.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Poolman, Department of the Army, Walla Walla District, Corps of Engineers, CENPW–PL–ER, Building 603, Walla Walla, Washington 99362–9265, (509) 522–6619.

SUPPLEMENTARY INFORMATION: The proposed action is being considered under the authority of the Endangered Species Act, the Fish and Wildlife Coordination Act, and the authorizing legislation for the respective projects potentially involved in the proposed action. Additional information on the proposed action, alternatives, scoping, and the SEIS process is summarized below.

The proposed action is being considered in response to the listing of the Snake River sockeye salmon as an endangered species and the Snake River fall and spring/summer chinook salmon as threatened species under the Endangered Species Act. The NMFS identified hydropower development in the Columbia River Basin as one of the factors considered to be contributing to the decline of the salmon populations. There is regional support for developing plans to alter the operating regime of Corps reservoirs and other water resources projects during the salmon migration period as a way of increasing the salmon populations. The proposed action includes recommendations from the Biological Opinion prepared by NMFS for the 1992 actions.

The action ultimately proposed for implementation in 1993 and future years, may involve some combination of measures similar to those selected in the 1992 OA/EIS and identified through consultation with the NMFS. These measures could involve releases from Dworshak Reservoir on the North Fork Clearwater River in Idaho, Brownlee Reservoir on the Snake River in Idaho, and Arrow Reservoir on the upper Columbia River in Canada; operating the four Lower Snake River Project reservoirs in Washington at minimum operating pool; releases and flood control transfer involving Lake Roosevelt behind Grand Coulee Dam in Washington; and operating Lake Umatilla behind John Day Dam on the Lower Columbia River in Oregon and Washington at a level below normal pool.

The SEIS will select a plan of action which is within the authority of the cooperating agencies to perform and is implementable in the near future. Those measures which require additional congressional authority, involve construction activities spread over several years, or require extended analysis of the effects on salmon and the environment, are being pursued in the SOR and the CRSMA. The SOR, which was initiated in July 1990, is a joint effort by the Corps, BPA, and BOR to review the multiple-purpose management of Federal projects in the Columbia River Basin and implement a system operating strategy for improving survival of salmon. The CRSMA evaluates modifications or additions to the existing projects which would be necessary to change system operation or which would improve migration conditions for salmon. It is the intent of the Corps and the cooperating agencies to act upon any measure which would improve the survival of the listed salmon species, in a timely manner after the appropriate design and evaluation studies are completed.

Alternatives being considered for the proposed action include a range of water management measures similar to

those evaluated in the 1992 OA/EIS. The SEIS will consider information gained from 1992 water management operation. In addition, alternative ways to obtain biological data including information on anadromous and resident fish populations in some reservoirs and obtaining data on fish movement and survival, if possible, will be considered. Based on preliminary consideration to date, the following have been identified as some of the significant issues requiring analysis in the SEIS:

—Travel time and survival changes for downstream migrating salmonid juveniles
—Changes in upstream passage, timing, and survival of adult salmon
—Effects on resident fish
—Effects on recreation
—Effects on hydropower generation

The Corps, BPA, BOR, and NMFS, as cooperating agencies, will share responsibility for determining and evaluating impacts within their respective areas of jurisdiction and expertise. The cooperating agencies welcome input to the SEIS from affected Federal, State and local agencies, Indian tribes, and other interested organizations and parties. Other agencies desiring status as cooperating parties should submit written requests to the Corps.

The normal range of environmental review and consultation in accordance with other environmental statutes, rules, and regulations shall apply to the proposed action. Of primary importance will be compliance with the Endangered Species Act. Compliance will include preparation of Biological Assessment and formal consultation with NMFS.

Scoping has been an ongoing process with interested parties since preparation of the 1992 OA/EIS. However, the Corps plans to conduct a series of public information meetings in early July 1992 discussing the results of the 1992 drawdown test of Lower Granite and Little Goose reservoirs on the Lower Snake River, providing a status report of the Columbia River System Mitigation Analysis, and presenting information on the SEIS. Meeting times and places will be announced later.

The draft SEIS is tentatively scheduled for release to the public and agencies for review in mid-October 1992.

Robert D. Volz,

LTC, EN, Commanding.

[FR Doc. 92–13436 Filed 6–8–92; 8:45 am]

BILLING CODE 3710–GC–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) For a Proposed Replacement of the Fairfield Atlantic Intracoastal Waterway Bridge, Hyde County, North Carolina

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action consists of replacing the existing swing-span bridge across the Atlantic Intracoastal Waterway (AIWW) at Fairfield, North Carolina, with a high-level, fixed-span, two-lane bridge. The existing bridge is obsolete and presents serious traffic hazards to the public because of restricted carrying capacities. The new bridge would improve the flow of traffic on N.C. 94, reduce operating costs of the bridge, and improve the flow of land and waterborne traffic.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Hugh Heine; Environmental Resources Branch; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, North Carolina 28402–1890; telephone: (919) 251–4070.

SUPPLEMENTARY INFORMATION: Replacement of the Fairfield AIWW Bridge was authorized by the River and Harbor Act of 1970 (P.L. 91–611), contingent upon the State of North Carolina contributing 25 percent of the actual first costs. The authorization was amended by the Water Resources Development Act of 1986 (Pub. L. 99–662), to provide for 100-percent Federal funding of the first costs. The State will be required to accept maintenance, replacement, and ownership responsibilities after construction.

1. The replacement bridge would be a two-lane, high-level, fixed-span bridge with a 65-foot vertical clearance over the waterway. A number of bridge types, including post and beam continuous span structure, Delta-frame structure, and prestressed concrete drop-in structure, will be considered. Preliminary investigations indicate that an alignment could be located on either the east or west side of the existing bridge and that the total length of new road, approach, and bridge could vary between 5,500 feet and 6,600 feet. Various alignments will be investigated and a selection will be made based on economic, engineering, environmental, and social considerations.

2. The only alternative to the proposed project being considered, other than the various alignments and bridge designs, will be the no-action alternative.

3. The scoping process will consist of public notification to explain and describe the proposed action, early identification of resources that should be considered during the bridge alignment study, and public review periods. Coordination with the public and other agencies will be carried out through public announcements, letters, report review periods, telephone conversations, and meetings.

a. All private interests and Federal, State, and local agencies having an interest in the project are hereby notified of project authorization and are invited to comment at this time. A scoping letter requesting input to the study will be sent to all known interested parties in May 1992.

b. The significant issues to be addressed in the DEIS are the impacts of the project on wetlands, fish and wildlife habitat, and the social and economic conditions of the project area. Also to be considered will be the effect of the project on traffic patterns and safe vehicle operation.

c. The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, nor requested by, any other agency.

d. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders.

4. No formal scoping meetings are planned at this time, but based on the responses received, scoping meetings may be held with specific agencies or individuals as required.

5. The DEIS is currently scheduled for distribution to the public in April 1993 and the Final EIS is scheduled for distribution in August 1993.

Dated: May 21, 1992.

Jason C. Hauck,

Major, Corps of Engineers, Acting District Engineer.

[FR Doc. 92-13437 Filed 6-8-92; 8:45 am]

BILLING CODE 3710-GN-M

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Proposed Disposal and Reuse of Naval Air Station Chase Field, Beeville, Texas

Pursuant to the National Environmental Policy Act (NEPA) as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the disposal and reuse of Naval Air Station (NAS) Chase Field, Beeville, Texas.

Pursuant to 40 CFR 1501.6, the Federal Aviation Administration will be a cooperating agency in the preparation of the EIS.

In accordance with recommendations of the 1991 Base Closure and Realignment Commission, the Navy plans to disestablish NAS Chase Field in September 1993. Operations conducted at NAS Chase Field are currently relocating to NAS Meridian, Mississippi, and NAS Kingsville, Texas. The proposed action involves the disposal of land, buildings, and infrastructure of NAS Chase Field for subsequent reuse. These facilities include an off-station housing area and the Naval Auxiliary Landing Field (NALF) Goliad.

The Navy intends to analyze the environmental effects of the disposal of NAS Chase Field based on the reasonably foreseeable reuse of the property, taking into account uses identified by the Beeville/Bee County Redevelopment Council, determined during the scoping process. It is anticipated that reuse of NAS Chase Field will include, but not be limited to, aviation uses, education or institutional uses, commercial and light industry, office space, wildlife preserve, recreational uses, or a combination of those uses. In accordance with CEQ regulations, the "no action" alternative of Navy retention of NAS Chase Field land, buildings, and infrastructure in caretaker status will also be addressed in the EIS. However, because of the process mandated by the Base Closure and Realignment Act, selection of the "no action" alternative would be considered outside the jurisdiction of the Navy.

Major environmental issues that will be addressed in the EIS include, but are not limited to, air quality, water quality wetlands, endangered species, cultural resources, and socioeconomic impacts.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeing on June 23, 1992, beginning at 7 pm, at the Bee County Coliseum, Beeville, Texas. This meeting will be advertised in Beeville area newspapers.

A brief presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the

public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address.

Written statements and or questions regarding the scoping process should be mailed no later than July 15, 1992, to Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 10068, Charleston, SC 29411 (Attn: Mr. Laurens Pitts, Code 20), telephone (803) 743-0894.

Dated June 3, 1992.

Wayne Baucino,

Lt, Jagc, USNR, Department of the Navy, Federal Register Liaison Officer.

[FR Doc. 92-13408 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Stealth and Stealth Countermeasures Task Force will meet June 22-23, 1992, from 9 am to 5 pm, at Naval Weapons Center, China Lake, California. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy requirements for stealth and stealth countermeasures systems. The entire agenda for the meeting will consist of discussions of key issues related to stealth, stealth countermeasures, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria Virginia 22302-0268, Phone (703) 756-1205.

Dated: May 21, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-13406 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-AE-F

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on S&T Techbase Strategy for the year 2010 will meet on June 15 and 16, 1992. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Room 915, Arlington, Virginia. The meeting will commence at 8 am and terminate at 5 pm on June 15; and commence at 8 am and terminate at 3 pm on June 16, 1992.

The purpose of the meeting is to provide the Navy with an evaluation of the science and technology "techbase" in the outyears. Discussions will focus on the current and perceived threat that will face the Navy in the year 2010 and the technology that will be required to meet that threat. The agenda will include briefings, discussions, and technical presentations of information involving the current state of Basic Research, Basic Technology and Advanced Technology relative to the perceived threat of the 2010 timeframe. Public disclosure of this information will be likely to reveal national defense secrets and could significantly frustrate implementation of any proposed DON agency actions. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000 Telephone Number: (703) 696-4780.

Dated: May 21, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-13404 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-AE-F

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Fedeal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on STOVL (Short Take-off/ Vertical Landing) Strike Fighter (SSF) Replacement Aircraft in the 2010-2020 timeframe will meet on June 23 and 24, 1992. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 am and terminate at 6 pm on June 23; and commence at 8 am and terminate at 4 pm on June 24, 1992.

The purpose of the meeting is to provide the Navy with an assessment of the need for an SSF as a multi-mission replacement aircraft for the 2010-2020 timeframe, and identify the key technology issues and trade-offs associated with the SSF versus Conventional Take-off and Landing (CTOL) aircraft. The agenda will include briefings and discussions related to threat projections and future program requirements for the U.S. Navy, the U.S. Marine Corps and the U.S. Air Force, and industry preliminary design efforts for a STOVL/Strike Fighter aircraft. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concering this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: May 20, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-13405 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-409-000, et al.]

Commonwealth Edison Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER92-409-000]

June 1, 1992.

On March 20, 1992, Commonwealth Edison Company (Edison) tendered for filing Amendment No. 2, dated October 21, 1991, to the Electric Coordination Agreement (ECA), dated December 31, 1988, between Edison and the Village of Winnetka, Illinois (Village). Take notice that on May 21, 1992, Edison filed additional information regarding Amendment No. 2.

Edison requests expedited consideration of the filing and all effective date of June 1, 1992. Accordingly, Edison requests a waiver of the Commission's Notice Requirements to the extent necessary.

Copies of this filing were served upon the Village and the Illinois Commerce Commission.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Ridge Generating Station, L.P.

[Docket No. QF92-158-000]

June 1, 1992.

On May 26, 1992, Ridge Generating Station, L.P., a Florida limited partnership, 400 North New York Avenue, suite 101, Winter Park, Florida 32789, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located between Lakeland and Winter Haven in Polk County, Florida. The facility will include a boiler and a steam turbine generating unit. The maximum net electric power production capacity of the facility will be 39.6 MW. The primary energy source will biomass in the form of wood waste.

Comment date: July 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER92-571-000]

June 1, 1992.

Take notice that on May 22, 1992, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and City of Homestead, Florida. FPL requests an effective date of July 1, 1992.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Power Company

[Docket No. ER92-572-000]

June 1, 1992.

Take notice that on May 26, 1992, Consumers Power Company (Consumers) tendered for filing two supplemental agreements which extend the term of agreements under which Consumers provides service to the City of Holland (Holland). One supplemental agreement extends the term of an interruptible wholesale agreement (*i.e.*, Supplement No. 1 to Consumers Rate Schedule FERC No. 66) and increases the maximum amount of service available. The other extends the term of a firm wholesale agreement (*i.e.*, Consumers Rate Schedule FERC No. 66) and provides rates that would go into effect if the agreement is extended again. If that firm agreement is extended again, Consumers will file the new rates.

Copies of the filing were served upon the Michigan Public Service Commission and Holland.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER92-512-000]

June 1, 1992.

Take notice that New England Power Company (NEP), on May 26, 1992, tendered for filing an amendment to its earlier filing in this docket which seeks to terminate all transmission agreements for entitlements from the Yankee Rowe Nuclear Plant.

The proposed amendment concerns only the transmission of the entitlement of Central Maine Power Company (CMP). According to NEP, the purpose of the proposed amendment is to file the original service agreement between NEP and CMP which, according to NEP, was never filed with the Commission due to the initial inclusion of CMP's Yankee Rowe entitlement in the transmission service agreement of Public Service Company of New Hampshire.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER92–582–000]

June 1, 1992.

Take notice that on May 27, 1992, New England Power Company (NEP) filed an amendment to its notices of termination of service under its FERC Electric Tariff, Original Volume No. 3 filed in this docket on April 27, 1992. The termination concerned service to the Holyoke (Mass.) Gas & Electric Department and Westfield (Mass.) Gas & Electric Light Department for transmission of their respective Point LePreau entitlements. Under the amended filing NEP requests acceptance of these service agreements which, according to NEP, apparently were not previously filed with the Commission. NEP requests effective dates of November 1 and November 9, 1982, respectively, for these agreements.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No. ER92–570–000]

June 1, 1992.

Take notice that Florida Power & Light Company (FPL) on May 22, 1992, tendered for filing one revised Exhibit A which provides for the contract demand for the City of Jacksonville Beach under Rate Schedule PR–3 of FPL's FERC Electric Tariff Second Revised Volume No. 1. The proposed effective date for the contract demand for the City of Jacksonville Beach is June 1, 1992.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Ridge Generating Station, L.P.

[Docket No. ER92–576–000]

June 1, 1992.

Take notice that on May 26, 1992, Ridge Generating Station, L.P. submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Florida Power Corporation.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER92–379–000]

June 1, 1992.

Take notice that on May 15, 1992, The KPL division of Western Resources, Inc. (formally The Kansas Power and Light Company) tendered for filing an amendment to its March 13, 1992 filing in this docket concerning a change to its Federal Power Commission Electric Service Tariff No. 127. KPL states that the amendment is to provide additional cost support for a proposed new point of delivery under its existing interconnection agreement with the City of McPherson, Kansas, Board of Public Utilities. The change is proposed to become effective June 1, 1992.

Copies of the filing were served upon the KPL division of Western Resources, Inc. and the Kansas Coporation Commission.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Hartwell Energy Limited Partnership

[Docket No. ER92–521–000]

June 1, 1992.

Take notice that on May 4, 1992, Hartwell Energy Limited Partnership tendered for filing a petition for an order accepting rates for filing and determining rates to be just and reasonable and waiving certain regulations. The proposed rates are for sales of electric energy and capacity to Oglethorpe Power Corporation from an approximately 300 MW combustion turbine electric generating facility to be located near Hartwell, Georgia and to be owned by Hartwell Energy Limited Partnership.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER92–575–000]

June 1, 1992.

Take notice that on May 26, 1992, Wisconsin Electric Power Company (WEPCO) tendered for filing on behalf of itself and Minnesota Power & Light Company (MP), and Interchange Agreement between the two companies and accompanying service schedules setting rates, terms and conditions for sales of negotiated capacity, general purpose energy and economy energy between the companies. MP submitted a certificate of concurrence in the filing.

Copies of the filing have been served on MP, the Minnesota Public Utilities Commission, the Minnesota Department of Public Service, and the Public Service Commission of Wisconsin.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Union Electric Company

[Docket No. ER92–574–000]

June 1, 1992.

Take notice that Union Electric Company, on May 25, 1992 tendered for filing a First Amendment and Attachment to Exhibit B, to the Wholesale Service Agreement of December 7, 1988 between City of Rolla, Missouri, and Union Electric Company.

Union Electric states the purpose of the First Amendment and Attachment to Exhibit B is to provide for a new delivery point between the parties.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER92–580–000]

June 1, 1992.

Take notice that New England Power Company, on May 27, 1992, tendered for filing an Interconnection and Support Agreement between New England Power and Milford Power Limited Partnership. New England Power seeks an effective date of March 20, 1992, the date of execution of the Agreement. The purpose of the Agreement is to interconnect Milford Power Limited Partnership's gas-fired cogeneration facility with New England Power's transmission system.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Company

[Docket No. ER92–410–000]

June 1, 1992.

Take notice that on May 15, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an addendum dated May 12, 1992 to the Rate Settlement Agreement between PG&E and the Department of Water Resources of the State of California (DWR) dated March 23, 1992 previously filed with the Commission on March 27, 1992. Pursuant to the Commission Staff verbally requesting PG&E and DWR to change the cap applicable to the California Public Utilities Commission's (CPUC) PG&E Rule No. 2 Cost of Ownership Rate for transmission-level company-financed Special Facilities from 19.7% annually (1.6% monthly) to 18.48% annually (1.54% monthly), PG&E and DWR have amended the Rate Settlement Agreement to reflect this change.

Copies of this filing were served upon DWR and the CPUC.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Lakewood Cogeneration, L.P.

[Docket No. QF88-418-003]

June 2, 1992.

On May 19, 1992, Lakewood Cogeneration, L.P. tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides certain technical corrections to the operating and efficiency calculations related to a reduction in the net output of the facility from 237.4 MW to 236.7 MW and a revised and updated copy of the Thermal Sales Agreement with American Eagle Distillation Corporation.

Comment date: July 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Pasco Cogen, Ltd.

[Docket No. QF92-156-000]

June 2, 1992.

On May 22, 1992, Pasco Cogen, Ltd. of 1100 Town & Country Road, Suite 800, c/o North Canadian Power, Inc., Orange, California 92668, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission s regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Dade City, Florida. This facility will consist of two combustion turbine generators, two heat recovery steam generators and one steam turbine generator. The useful thermal output of the facility will be used in the production of fruit juice concentrate. The maximum net electric power production capacity will be approximately 106.4 MW. The construction of the facility began in February 1992 and is expected to commence operation in July 1993.

Comment date: July 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20406, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13428 Filed 6-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-519-000, et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP92-519-000]

June 2, 1992.

Take notice that on May 27, 1992, K N Energy, Inc. (K N), P. O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP92-519-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate 3 new delivery points for use in an existing transportation service for K N Gas Marketing, Inc. (KNGM), under K N's blanket certificate issued in Docket No. CP83-140-000, *et al.*, all as more fully described in the request which is on file with the Commission and open to public inspection.

K N proposes to construct and operate the 3 new delivery points on its Tyrone System in Texas County, Oklahoma, and Beaver County, Oklahoma. It is stated that the 3 delivery points would be used for deliveries to Phillips 66 Natural Gas Company, to which K N redelivers the gas it transports for KNGM. It is stated that K N transports natural gas for KNGM under K N's blanket certificate issued in Docket No. CP89-1043-000. It is asserted that the proposal complies with the requirements of part 157, subpart F, of the Commission's Regulations.

Comment date: July 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP92-520-000]

June 2, 1992.

Take notice that on May 27, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-520-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an existing sales service provided to the Town of Lapel, Indiana (Lapel), whose initial service was certificated in Docket No. G-452, all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle states that Lapel, which previously elected to receive sales service pursuant to a June 26, 1990, offer of settlement under Panhandle's Rate Schedule SSS (Sole Supplier Service), has now requested termination of service (1,000 Mcf per day contract demand) provided under Rate Schedule SSS so that it may convert to firm transportation service (1,000 dekatherms per day) provided under Panhandle's Rate Schedule SCT (Small Customer Transportation Service). Panhandle proposes that the abandonment authorization be made effective as of May 1, 1992.

Command date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation Penn York Energy Corporation

[Docket No. CP92-508-000]

June 2, 1992.

Take notice that on May 21, 1992, National Fuel Gas Supply Corporation (National) and Penn-York Energy Corporation (Penn-York, collectively referred to as Applicants, both of 10 Lafayette Square, Buffalo, New York, 14203, filed a joint application pursuant to section 7(b) and 7(c) of the Natural Gas Act, for

(1) A certificate of public convenience and necessity authorizing Natonal to:

(a) Acquire by merger all of Penn-York's facilities;

(b) Provide storage services to all of Penn-York's customers;

(2) An order authorizing the abandonment of:

(a) Penn-York's services and facilities;

(b) National's existing services to Penn-York.

The details of the Applicant's proposal are more fully set forth in the application which is on file with the Commission and open to public inspection.

The Applicants propose to merge Penn-York into National, and have National provide services to Penn-York's customers in the same manner and for the same rates as Penn-York would have done in the absence of a merger. The Applicants are not seeking authority to build facilities, change the way facilities are operated, or change the rates charged to any National or Penn-York customer.

Comment date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

El Paso Natural Gas Company

[Docket No. CP92–511–000]

June 2, 1992.

Take notice that on May 22, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket CP92–511–000 according to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity to authorize El Paso to construct and operate two new compressor stations and pipeline replacement on the Havasu Crossover line, this undertaking is known as the West-End Flexibility Project, is more fully set forth in the application on file with the Commission and open to public inspection.

The traditional primary flow of gas on El Paso's system is from the Permian Basin to the West utilizing the South System. Recently, the production and the increase in demand of gas from the San Juan Basin has exceeded the Permian Basin as the largest supply source on the system. As a result, El Paso is seeking to enhance its ability to provide maximum flexibility and greater transportation alternatives by the implementation of the West-End Flexibility Project.

The application states that El Paso is presently able to move up to approximately 61 MMcf/d of gas north and 192 MMcf/d of gas south of the Havasu Crossover line in a west flow mode of operation. In order to direct additional volume bi-directionally and to maximize system operations, El Paso proposes to construct and operate the Dutch Flat and the Alamo Lake Compressor Stations consisting of 12,000 and 6,500 horsepower, respectively. In addition, El Paso will replace 1,200 feet of 30-inch Grade X–52 pipe with 30-inch Grade X–70 pipe above the Bill Williams River in La Paz and Mohave Counties, Arizona. The construction of these facilities will permit the compression and discharge of an additional 450 MMcf/d of gas north and 278 MMcf/d of gas south on the Havasu Crossover line for delivery to western markets. The total estimated cost for the proposed facilities including overhead, contingency and required filing fees is $23,795,550 which will be financed by internally generated funds.

El Paso emphasizes that this proposal is a system enhancement project that will result in increased operational flexibility. The project is not an incremental firm expansion of the West-End System. The addition of the proposed facilities will increase El Paso's capability to move San Juan gas to the South System increasing the flexibility and reliability of the entire system. El Paso's interstate pipeline system will acquire a "backup" in case of weather-induced problems or required maintenance. The "backup" system could shift or divert gas from either the North System or the South System for delivery into Southern California.

Comment date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92–515–000]

June 2, 1992.

Take notice that on May 26, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92–515–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Coastal Eagle Point Oil Company (Coastal), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to abandon the transportation for Coastal, which was authorized by the Commission in Docket Nos. CP63–222 and CP70–193 and carried out according to the provisions of Transco's Rate Schedule X–42. Transco proposes to replace the service with a comparable service under blanket authorization pursuant to Transco's blanket certificate issued in Docket No. CP88–328–000. In order to protect Coastal's priority as a shipper, Transco requests a waiver of the priority queue provisions of its tariff.

Comment date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92–517–000]

June 2, 1992.

Take notice that on May 26, 1992, Transcontinental Gas Pipe Line Coraportion (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92–517–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Texaco Refining and Marketing Inc. (Texaco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to abandon the transportation for Texaco, which was authorized by the Commission in Docket No. CP71–30 and carried out according to the provisions of Transco's Rate Schedule X–52. Transco proposes to replace the service with a comparable service under blanket authorization pursuant to Transco's blanket certificate issued in Docket No. CP88–328–000. In order to protect Texaco's priority as a shipper, Transco requests a waiver of the priority queue provisions of its tariff.

Comment date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protests with reference to said filing should be on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time requried herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, withing 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of

the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If to protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13427 Filed 6-8-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-60-NG]

Sunrise Energy Co.; Application for Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on May 6, 1992, of an application filed by Sunrise Energy Company (Sunrise) requesting blanket authorization to export up to 100 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. Sunrise intends to use existing pipeline facilities for transportation of the exported volumes and states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 9, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Sunrise, a Texas corporation with its principal of business in Dallas, is engaged in the marketing of oil and gas. Sunrise proposes to export natural gas, either for its own account or as an agent for other parties, for sale on a short-term or spot market basis to purchasers in Mexico. Sales could be made on a firm or interruptible basis. The arrangements will be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Sunrise's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 3, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-13497 Filed 6-8-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-23-NG]

Universal Resources Corp.; Order Granting Blanket authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Universal Resources Corporation blanket authorization to import up to 50 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 2, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-13498 Filed 6-8-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-56-NG]

Unocal Canada Limited; Application for Blanket Authorization To Import Natural Gas, Including Liquefied Natural Gas, From Canada, Mexico, and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 27, 1992, of an application filed by Unocal Canada Limited (Unocal) requesting authorization to import up to 100 Bcf of natural gas, including liquefied natural gas (LNG), from Canada, Mexico, and other countries over a two-year period beginning with the date of first delivery. Unocal intends to use existing facilities for the importation of the gas supplies, and will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below not later than 4:30 p.m., eastern time July 9, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Unocal, a wholly owned subsidiary of Unocal International corporation, is a Canadian corporation that has its principal place of business in Calgary, Alberta. Unocal is engaged in the business of marketing natural gas supplies in the United States and Canada. Unocal requests authorization to import natural gas on a short-term or spot-market basis for its own account, as well as for the accounts of others for which Unocal may agree to act as an agent.

The decision on this application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive and otherwise consistent with DOE import policy. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

In an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and

responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Unocal's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 2, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-13496 Filed 6-8-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed the Week of May 8 Through May 15, 1992

During the Week of May 8 through May 15, 1992, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 3, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 8 through May 15, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 8, 1992	Gulf/Hayes Gulf, Inc., Atlantic Beach, FL	RR300-150	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The March 22, 1991 Dismissal Letter (Case No. RF300-13884) issued to Hayes Gulf, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 11, 1992	Gulf/Freeman's Gulf, Atlantic Beach, FL	RR300-151	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The January 1, 1992 Dismissal Letter (Case No. RF300□12856) issued to Freeman's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 11, 1992	Gulf/Kurenda's Gulf, Woodbridge, VA	RR300-149	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The August 28, 1991 Decision and Order (Case No. RF300-12064) issued to Kurenda's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 11, 1992	Texaco/American Breeders Service Washington, DC.	RR321-114	Request for modification/rescission in the Texaco Refund Proceeding. If granted: The December 6, 1990 Decision and Order (Case No. RF321-4828) issued to American Breeders Service would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
May 12, 1992	Amoco I/Nebraska, Amoco II/Nebraska, Lincoln, Nebraska.	RM21-258 & RM251-125	Request for modification/rescission in the Amoco I & Amoco II Refund Proceeding. If granted: The December 1, 1987 and October 19, 1988 Decision and Orders Case Nos. RM21-88 & RM251-125) issued to Nebraska would be modified regarding the state's application for refund submitted in the Amoco I & Amoco II second stage refund proceeding.
May 12, 1992	Gulf/Howard's Drive-In Woodbridge, VA	RR300-152	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The August 29, 1991 Decision and order (Case No. RF300-12047) issued to Howard's Drive-In would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 12, 1992	Gulf/Gulf Wholesale Woodbridge, VA	RR300-153	Request for modification/rescission in the Gulf Refund proceeding. If granted. The October 18, 1988 decision and order (Case No. RF300-1188) issued to Gulf Wholesale would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 14, 1992	Gulf/E.B. Dowden's Gulf Woodbridge, VA	RR300-155	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The March 20, 1992 Dismissal Letter (Case No. RF300-12918) issued to E.B. Dowden's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 14, 1992	Gulf/Lewis Big Gulf Woodbridge, A	RR300-154	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300-13619) issued to Lewis Big Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

Date received	Name of refund proceeding/name of refund application	Case No.
5/11/92	Gleger Bottled Gas Company.	RF340-170.
5/11/92	Beach's Gulf Service	RF300-20000.
5/11/92	H.I. Creech Farm	RF300-20001.
5/11/92	J.T. Baker Chemical Company.	RF300-20002.
5/11/92	Koonce Service Station	RF300-20003.
5/11/92	Moore's Gulf	RF300-20004.
5/11/92	Oklahoma Refining Company.	RF300-20005.
5/11/92	Puckett's Gulf	RF300-20006.
5/11/92	Sikes Gulf	RF300-20007.
5/11/92	Kwik-Chek Grocery	RF300-20008.
5/12/92	Harley Clark Super 100	RF342-208.
5/15/92	Donald Taylor	RF342-209.
5/8/92 thru 5/15/92.	Crude Oil, applications received.	RF272-92294 thru RF272-92352.
5/8/92 thru 5/15/92.	Atlantic Richfield, applications received.	RF304-13035 thru RF304-13102.
5/8/92 thru 5/15/92.	Texaco Refund applications received.	RF321-18600 thru RF321-18613.

[FR Doc. 92-13500 Filed 6-8-92; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders the Week of April 27, through May 1, 1992

During the week of April 27 through May 1, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Agway, Inc./Mills' Service Station, et al., 4/30/92, RF324-20, et al.

The DOE issued a Decision and Order granting refunds totalling $5,349 to twenty-four applicants in the Agway, Inc. (Agway), subpart V special refund proceeding. All of the applicants purchased Agway branded products indirectly through the Davis Oil Company of Statesville, Inc. (Davis). Davis was in turn supplied directly by Agway. Davis previously received a refund in the Agway proceeding under the small claims presumption of injury. Since Davis did not attempt to prove injury, the applicants were presumed to have been overcharged in the same manner as Agway's direct purchasers and their claims were evaluated accordingly.

In addition to its purchases of Agway petroleum products, Davis purchased petroleum products from two other sources. Because Davis resold petroleum products without reference to the original source, we presumed that Davis resold its supplier's petroleum products in the same proportion as it had purchased those products. Therefore, because Davis purchased 20 percent of its supply of petroleum products from Agway during the consent order period, the volume of Davis petroleum products purchased by each claimant was multiplied by 20 percent to obtain the proportionate volume of Agway petroleum products that each claimant purchased.

Citronelle-Mobile Gathering, Inc./ United Western Energy Corp., 5/1/92, RF336-17

The DOE issued a Decision and Order concerning an Application for Refund filed by Rio Arriba Minerals, Inc. (Rio Arriba) in the Citronelle-Mobile Gathering, Inc., special refund proceeding. Based upon the refined product purchases of United Western Energy Corp. (United Western), Rio Arriba, a company that purchased certain assets of the Big E. Division of United Western on January 29, 1986, claimed that it was the rightful recipient of a new Citronelle refund based upon United Western's purchases of New England Petroleum Company (NEPCO) products during the consent order period. However, Rio Arriba did not claim that it had acquired all of the outstanding stock of United Western. Rio Arriba also declined to provide a copy of the purchase and sales agreement whereby it acquired assets of United Western. As a result, the DOE concluded that any potential refunds were not among the assets transferred by United Western to Rio Arriba. Since the right to a refund was not conveyed to the buyers, the original owners of United Western retained the right to any potential refunds based upon its purchases. The Application was therefore denied.

New York Telephone, 5/1/92, RF272-89517

The DOE issued a Decision and Order granting an Application for Refund filed by New York Telephone, a provider of subscriber telephone services, in the subpart V crude oil special refund proceeding. A group of States and Territories (States) objected to the Application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. The States argued that because New York Telephone was regulated by the New York Public Service Commission, its rates were established to cover its operating expenses and to permit a certain rate of return on investment. However, the DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The refund granted to the applicant in this Decision was $134,667.

Ryder Truck Rental, Inc., 4/30/92, RR272-78, RR272-79

The DOE issued a Decision and Order concerning two Motions for Reconsideration filed on behalf of Ryder Truck Rental, Inc. (Ryder), in the subpart V crude oil special refund proceeding. On August 25, 1988, and on January 23, 1990, the two Applications filed on behalf of Ryder (Case Nos. RF272-73139 and RF272-327) were denied because it appeared that Ryder's business was based solely on leasing and renting. Therefore, Ryder was considered to be a reseller, rather than an end-user, for the purpose of the subpart V refund proceeding. In the Motions for Reconsideration, Energy Refunds, Inc., submitted additional information on behalf of Ryder which showed that during the refund period Ryder was engaged in three types of businesses: Short-term truck rentals to consumers; commercial truck services; and contract-carriage operations. Ryder claimed that the three lines of business were considered district and that it wished to pursue a refund for only the refined products that it had purchased and consumed as an end-user. However, five of Ryder's subsidiaries had participated in the Stripper Well refund proceeding and, in doing so, had waived each of the subsidiaries right, as well as that of its parent, Ryder, to participate in any future subpart V refund proceeding based on crude oil overcharges. Consequently, the Motions for Reconsideration were denied.

Quantum Chemical Corp./Smith Oil Co., 4/28/92, RF330-45

The Department of Energy (DOE) issued a Decision and Order denying an Application for Refund submitted by Smith Oil Co., in the Quantum Chemical Corporation (Quantum) subpart V special refund proceeding. The basis for the denial was that the total refund the applicant was eligible to receive was less than the $15 minimum refund established by the Quantum Implementation Order.

Shell Oil Co./Barge Transport Co., Inc., 4/29/92, RF315–3309

The DOE issued a Decision and Order granting, in part, an application for Refund filed in the Shell Oil Company subpart V special refund proceeding on behalf of Barge Transport Co., Inc. (Barge). In the Application, Barge claimed a refund based upon its indirect purchases of Shell petroleum products from John W. Stone Oil Distributor, Inc., (Stone). However, in *Shell Oil Co./John W. Stone Oil Distributor, Inc.*, 22 DOE ¶ 85,055 (1992), the DOE had previously determined that Barge's supplier, Stone, had been injured in its direct purchases from Shell, *i.e.*, that it did not pass through any Shell overcharges to its downstream customers. As a result, the DOE concluded that Barge had not been charged a higher price as a result of Shell's alleged overcharges and denied the firm's request for a refund based upon its purchases of Shell products from Stone. However, the DOE granted Barge a refund based upon its indirect purchases of Shell products from suppliers that had not demonstrated injury or that had not filed applications in the Shell proceeding. The total amount of the refund granted in this Decision and Order is $1,113 (comprised of $776 in principal and $337 in interest).

Tesoro Petroleum Corp./Apex Oil Co., 4/27/92, RF326–282

The DOE issued a Decision and Order granting the Apex Oil Co. (Apex) a full volumetric refund of $178,897 in the Tesoro Petroleum Corporation subpart V special refund proceeding. The Apex refund was based upon purchases of 179,777,675 gallons of Tesoro motor gasoline. Apex submitted data which showed banks of unrecovered increased product costs substantially in excess of its full allocable share of the Tesoro consent order fund. In addition, a competitive disadvantage analysis based upon data covering 77 percent of Apex's total gasoline purchases, showed that the firm paid Tesoro prices that were uncompetitively high during the refund period. Accordingly, Apex was granted a full volumetric refund of $144,002 in principal and $34,895 in accrued interest.

Texaco Inc./Lyle's Texaco, 4/29/92, RF321–18581

On July 19, 1990, the DOE issued a Decision and Order in the Texaco Inc. subpart V special refund proceeding in response to an Application for Refund filed by Lyle's Texaco, a retailer of Texaco products. That refund was based upon the applicant's claim that her husband operated Lyle's Texaco during the period March through August 1973 and made purchases from Texaco during that period. Subsequently, another applicant filed an Application for Refund based upon Texaco purchases at the same retail location for the period March 1973 to May 1976, a period that encompassed the purchases alleged in support of the Lyle's Texaco Application. The second applicant submitted documentary evidence to support its claim. As a result, the DOE found that Lyle Crowell, the owner of Lyle's Texaco and the operator named in the first claim, ceased operating the outlet before the refund period. Accordingly, the DOE rescinded the refund granted to Lyle's Texaco and directed the applicant to repay the refund which had been granted, with interest. The second Application will be considered in another proceeding.

Texaco Inc./Southside Texaco, 4/29/92, RF321–18580

On August 23, 1990, the DOE issued a Decision and Order in the Texaco Inc. subpart V special refund proceeding concerning an Application for Refund filed by Southside Texaco, a retailer of Texaco products. That refund was based upon the applicant's claim that her husband operated Southside Texaco during the period March 1973 to January 1979 and the claim that he had made purchases from Texaco at that location between those dates. Subsequently, another applicant filed an Application for Refund based upon Texaco purchases at the same retail location for the period beginning January 1978. That second applicant submitted documentary evidence to support its claim. Accordingly, the DOE found that Mrs. Westbrook, the widow of the owner of Southside Texaco, should repay, with interest, that portion of the refund attributable to purchases made after January 1978.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Adams ARCO *et al*	RF304-12725	04/27/92
Atlantic Richfield Company/Alger Oil Co., Inc	RF304-38	04/30/92
Atlantic Richfield Company/Chicago and North Western Transportation Company	RF304-3203	04/27/92
Atlantic Richfield Company/John Hector's ARCO #2 *et al*	RF304-13014	05/01/92
Boncosky Transportation, Inc.	RF272-78219	04/30/92
Emsee Transportation, Inc.	RF272-78220	
Chembond Corporation	RD272-29724	04/29/92
Chembond Corporation	RF272-29724	
General Chemical Corporation	RD272-29733	
General Chemical Corporation	RF272-29733	
City of Oklahoma City *et al*	RF272-77719	04/28/92
Clark Oil & Refining Corp./Al's Clark Super 100	RF342-202	04/29/92
Gulf Oil Corporation/Carolina Fuel Company	RR300-140	04/28/92
Shell Oil Company/Cochran Farms, Inc.	RF315-77	05/01/92
Cochran Farms, Inc.	RF315-78	
Shell Oil Company/Kent Oil & Trading Company	RF315-6166	04/29/92
Shell Oil Company/Molner's Shell *et al*	RF315-325	04/27/92
Shell Oil Company/USX Corporation *et al*	RF315-8892	04/27/92
Texaco Inc./Bailie Oil Co., Inc. *et al*	RF321-7892	04/28/92
Texaco Inc./Don's Texaco *et al*	RF321-6301	04/28/92
Texaco Inc./Ellerbe Oil Co.	RF321-18546	04/29/92
Texaco Inc./Holbrook Texaco *et al*	RF321-1043	05/01/92
Texaco Inc./Norman R. Sanders *et al*	RF321-6356	04/30/92
Texaco Inc./Petroleum Marketers, Inc. *et al*	RF321-8585	04/30/92
Texaco Inc./Westbank Texaco	RF321-18587	04/29/92
Time Oil Company/Hoosier Oil, Inc.	RF334-9	04/30/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Albertus Magnus High School	RF272-77885
Benedictine Academy	RF272-77783
Bill Jarrell's Texaco	RF321-6619
Broadway Shell	RF315-87
Broadway Texaco	RF331-9039
Burlington Pike Texaco	RF321-7699
Church of the Blessed Sacrament	RF272-89754
Dale's Shell Service	RF315-60
Dandeneau Country Store	RF321-18444
David Diss Texaco	RF321-9991
Defense Fuel Supply Center (DFSC-G).	RF342-197
Delamo Shell Service	RF315-99
Di Grazia Shell Service	RF315-978
Dick's Self Service	RF300-16124
Ed McMillan's Texaco	RF321-9928
Ed's Motor I	RF321-6621
Ed's Motor II	RF321-6622
Fairgrove Texaco	RF321-9994
Fort Mill Texaco	RF321-9038
Freeman's Texaco Service	RF321-6617
Hankins Shell Service	RF315-250
Interstate Texaco	RF321-9990
John H. Tua	RF321-10841
Johnson's Gulf	RF300-14577
Karol Green	RF300-16193
L & M Texaco	RF321-9997
Madison Silos, Inc.	RF300-11667
Montaup Electric Company	RF323-34
Newby's Texaco	RF321-9193
North Broadway	RF321-7717
Philip's Texaco on Dewey	RF321-9117
Quincy Adams Coal Co., Inc.	RF323-33
R & R Garage & Shell Service	RF315-6637
Roseland Park Texaco Service	RF321-9027
South End Shell	RF315-971
St. Brendan Parish	RF272-91892
St. Casimir R.C. Parish	RF272-77888
St. Charles Parish	RF272-89671
Thruway Gulf	RF300-12990
Under Pass Texaco	RF321-7712
West Pike Shell	RF315-10159

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 3, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-13499 Filed 6-8-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4141-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 9, 1992. For information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Policy, Planning and Evaluation

Title: Total Quality Management Studies (ICR No. 1616.01).

Abstract: This ICR is for a new collection of information in support of the EPA's Total Quality Management (TQM) initiative. This initiative challenges the EPA to develop more efficient and effective methods of doing business. As part of this initiative, EPA outreach programs (hotlines, information clearinghouses, etc.) are seeking to improve their services by conducting "TQM" studies on frequent users. EPA outreach programs conducting TQM studies will gather information, either by mail or telephone questionnaires, on problems that users have encountered with their outreach services. These programs will use this information to develop strategies for improving the quality of their services.

EPA outreach programs conducting TQM studies will request information from the users of their services that may include:

(1) The user's accessibility to the service;

(2) The value the service has provided to the user;

(3) The quality and timeliness of the EPA response;

(4) The demeanor of the EPA representative that helped the user; and

(5) Any additional questions or comments the user might have for the improvement of the service.

An estimated 10 TQM studies (5 mail, 5 telephonic) will be conducted each year. Each study will target an average of 500 respondents for voluntary participation in the study. There are no recordkeeping activities associated with this collection.

Burden Statement: Public reporting burden for respondents subject to this collection of information is estimated at 0.09 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the collection of information.

Respondents: Frequent users of EPA outreach services.

Estimated Number of Respondents: 5,000.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 450 hours.

Frequency of Collection: One-time.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 3, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-13486 Filed 6-8-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4142-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces OMB responses to Agency PRA clearance requests.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1058.04; NSPS (subpart E) for Municipal Incinerators—Reporting and Recordkeeping Requirements; was approved 04/22/92; OMB No. 2060-0040; expires 04/30/95.

EPA ICR No. 0168.03; NPDES Requirements for Approved State

Programs; was approved 04/28/92; OMB No. 2040–0057; expires 08/31/92.

EPA ICR No. 1237.04; State Sludge Management Program Regulations; was approved 04/30/92; OMB No. 2040–0128; expires 07/31/92.

EPA ICR No. 0995.06; Land Disposal Permitting Standards; was approved 05/05/92; OMB No. 2050–0007; expires 05/31/95.

EPA ICR No. 0193.04; NESHAP for Beryllium (subpart C)—Information Requirements; was approved 05/04/92; OMB No. 2060–0092; expires 05/31/95.

EPA ICR No. 1078.03; NSPS for Phosphate Rock Plants (subpart NN); was approved 05/10/92; OMB No. 2060–0111; expires 05/31/95.

EPA ICR No. 1051.05; NSPS for Portland Cement Plant Monitoring Provisions; was approved 05/11/92; OMB No. 2060–0025; expires 05/31/95.

EPA ICR No. 1084.03; NSPS for Nonmetallic Mineral Processing Plants—Reporting and Recordkeeping—40 CFR subpart 000; was approved 05/11/92; OMB No. 2060–0050; expires 05/31/95.

OMB Extension of Expiration Date

EPA ICR No. 1170.03; Collection of Emergency Economic and Regulatory Support Data: Request for Generic Clearance; OMB No. 2070–0034; expiration date extended to 09/30/92.

June 3, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–13487 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4141–7]

Public Water System Supervision Program Revision for the State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations, that the State of North Dakota has revised its approved Public Water System Supervision (PWSS) Primacy Program. North Dakota has developed drinking water regulations for Total Coliforms that correspond to the National Primary Drinking Water Regulations for Total Coliforms promulgated by EPA on June 29, 1989, FR 5427544). EPA has approved this State program revision. This determination shall become effective July 9, 1992 and was based upon a thorough evaluation of North Dakota's PWSS program which has met the requirements stated in 40 CFR part 142, subpart B.

North Dakota's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before July 9, 1992. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Jack W. McGraw, Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, CO 80202–2466.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of North Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of North Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on July 9, 1992.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region VIII, Drinking Water Branch, 999 18th Street (4th floor), Denver, Colorado; (2) State Department of Health and Consolidated Laboratories, Municipal Facilities Division, 1200 Missouri Avenue, Bismarck, North Dakota, 58505–5520.

FOR FURTHER INFORMATION CONTACT: Marty Swickard, EPA Region VIII 8WM–DW, 999 18th Street, suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1629.

Dated: May 29, 1992.

Jack W. McGraw,

Acting Regional Administrator, EPA, Region VIII.

[FR Doc. 92–13489 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

EPA Border Environmental Plan Public Advisory Committee; Open Meeting

AGENCY: U.S. Environmental Protection Agency, Office of International Activities.

ACTION: Notice.

SUMMARY: The EPA Border Environmental Plan Public Advisory Committee was established on March 28, 1992, pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, to advise the Administrator of EPA on matters concerning the Agency's involvement in the protection and enhancement of the environment within the U.S.-Mexico Border Area. EPA, in a **Federal Register** notice dated Tuesday, March 10, 1992 (57 FR 8452), gave the public notice of the establishment of the Advisory Committee, as called for by the Integrated Environmental Plan for the Mexican-U.S. Border Area (First Stage, 1992–1994) (the "Border Plan"). The Advisory Committee will make recommendations to the Administrator of EPA concerning the implementation of the Border Plan.

TIME AND PLACE: The EPA Border Environmental Plan Public Advisory Committee will meet on June 24, 1992 from 9 a.m. to 3:30 p.m., with a luncheon

break from noon to 1:30 p.m. The meeting will take place at the Picacho Plaza Hotel, 750 North St. Francis Drive, Santa Fe, New Mexico 87501.

AGENDA:

1. Introduction of Advisory Committee members and description of the manner in which the Advisory Committee will perform its functions.
2. Discussion focusing on the implementation of, and any recommended elaboration on, the Border Plan.
3. Selection of Steering Committee members.
4. Combined meeting of EPA's Border Environmental Plan Public Advisory Committee and the committee formed to advise EPA's Mexican counterpart agency, together with relevant U.S. and Mexican officials.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating for interested members of the public, which is limited, will be available on a first-come, first-served basis. Public comments to the Advisory Committee can be made at any time through the submission of written statements. Written statements to be reviewed by Advisory Committee members prior to this meeting must be received prior to this meeting must be received by Sylvia I. Correa, the Designated Federal Officer, at the address or telefax numbers listed below, no later than 5 p.m. on June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Mexico Program Manager, Office of International Activities, Mail Code A-106, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone: (202) 260-4890; telefax: (202) 260-8512 or (202) 260-4470.

Dated: June 2, 1992.

Richard Kiy,

Acting Mexico Program Manager.

[FR Doc. 92-13490 Filed 6-8-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4141-4]

Ozone Transport Commission for the Northeast United States; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Ozone Transport Commission to be held on June 16, 1992.

This meeting is the annual organizational meeting of the Transport Commission in accordance with the By-laws of the Commission. The Commission will deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended.

DATES: The meeting will be held on June 16, 1992.

PLACE: The meeting will be held at: Holiday Inn, 1 Olympic Drive, Lake Placid, New York 12946 (518) 523-2556.

FOR FURTHER INFORMATION OR PRESS INQUIRES CONTACT: Bruce Carhart, Executive Director, Ozone Transport Commission, 444 North Capitol Street NW., suite 604, Washington, DC 20001, (202) 508-3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 new provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Transport Commission is to deal with appropriate matters within the ozone transport region.

The purpose of this notice is to announce that this Commission will meet on June 16, 1992. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits. Seating will begin at 7:30 a.m.

TYPE OF MEETING: Open.

AGENDA: The meeting begins at 8 a.m. and is expected to last until 3 p.m. In accordance with the Commission's By-laws, at the end of this meeting the Vice Chair will become the Commission's Chair. Therefore, at the June 16, 1992 meeting, the Commissioners will elect a new Vice Chair of the Commission. The term of the Commission's officers is until the end of next year's annual meeting.

The Commission will also receive reports from its committees, particularly on (1) revisions to the Commission's By-laws to enhance participation of non-governmental organizations in the Commission's activities, (2) emissions trading and offset issues, (3) mobile source emissions estimate methodologies and (4) 1992 State Implementation Plan revisions.

A final agenda will be available from the Ozone Transport Commission on Tuesday, June 9, 1992 at the address given for the information contact person.

Dated: June 1, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator, EPA Region II.

[FR Doc. 92-13491 Filed 6-8-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4141-5]

South Cavalcade Street Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the South Cavalcade Street Site, Houston, Texas, with the following current and former owner/operators: Baptist Foundation of Texas, Merchants Fast Motor Lines, Inc., Palletized Trucking, Inc., and Trucking Properties, Inc. A previous settlement with Beazer East, Inc. in the form of a judicially entered Consent Decree (*U.S. v. Beazer East, Inc.*, Civil Action No. H-90-2406, S.D. Texas) provided for implementation of EPA's selected remedy for the site, recovery of 96% of EPA's past costs, and reimbursement of 100% of future oversight costs. The proposed de minimis settlement with the site landowners provides for recovery of the remaining 4% in past costs, secures access for conducting remedial activities, and ensures proper maintenance of existing site facilities to prevent further migration of contamination. EPA will consider public comments on the proposed settlement for 30 days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Mr. Mark Fite, Texas Construction Section, Hazardous Waste Management Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Written comments may be submitted to the aforementioned person within 30 days of the date of publication.

Dated: May 19, 1992.

George Alexander Jr.,

Acting Regional Administrator, U.S. EPA-Region 6.

[FR Doc. 92-13495 Filed 6-8-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 2, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0010.
Title: Ownership Report.
Form Number: FCC Form 323.
Action: Revision of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting and annually.
Estimated Annual Burden: 9,599 responses, 7.166 hours average burden per response; 68,786 hours total annual burden.
Needs and Uses: Each permittee of a commercial AM, FM, TV and international broadcast station shall file an Ownership Report (FCC Form 323) within 30 days of the date of grant by the FCC of an application for an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment of license. A permittee is also required to file another report or to certify that it has reviewed its current Report on file and that it is accurate, in lieu of filing a new report, when the permittee applies for a station license. Each licensee of a commercial AM, FM and TV broadcast station shall file an Ownership Report (FCC Form 323) annually. Each licensee with a current and unamended Report on file at the Commission may certify that it has reviewed it current Report and that it is accurate, in lieu of filing a new Report. The form has been revised to include fee processing data. The data is used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set down by the Commission's Rules and is in compliance with the Communications Act.

OMB Number: 3060-0214.
Title: Section 73.3526, Local public inspection file of commercial stations.
Action: Revision of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 10,815 recordkeepers; 106.74 hours average burden per recordkeeper, 1,154,393 hours total annual burden.
Needs and Uses: Section 73.3526 requires that each licensee/permittee of a commercial broadcast station maintain a file for public inspection. The contents of the file vary according to the type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports and annual employment reports, statements certifying compliance with filing announcements in connection with renewal applications, etc. Section 73.3526(a)(8) requires commercial television broadcast licensees to maintain records sufficient to verify compliance with commercial limits and to maintain records of educational and informational programming designed to serve children's needs. In addition, § 73.3526(a)(9) requires that each broadcast licensee of a commercial radio station place in a public inspection file a list of community issues addressed by the station's programming. This list is kept on a quarterly basis and contains a brief description of how each issue was treated. On 3/12/92, the Commission adopted a Report and Order, MM Docket No. 91-140, Revision of Radio Rules and Policies. Among other things, this proceeding will require radio licensees who provide programming to another licensee's station in the same market, pursuant to time brokerage agreements, to keep copies of those agreements in their public inspection files, with confidential information blocked out where appropriate. The data is used by the public and FCC to evaluate information about the licensee's performance, to ensure that station is addressing issues concerning the community to which it is licensed to serve and to ensure that radio stations entering into time brokerage agreements comply with Commission policies pertaining to licensee control and to the Communications Act and the antitrust laws.

OMB Number: 3060-0368.
Title: Section 97.523, Question pools.
Action: Extension of a currently approved collection.
Respondents: Individuals or households and non-profit institutions.
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 3 recordkeepers; 160 hours average burden per recordkeeper; 480 hours total annual burden.
Needs and Uses: The recordkeeping requirement contained in Section 97.523 is necessary to permit question pools used in preparing amateur examinations to be maintained by Volunteer-Examiner Coordinators (VEC's). These question pools must be published and made available to the public before the questions are used in an examination. The information maintained by the VEC's is used to prepare amateur examinations. If this information was not maintained, the amateur examination program would deteriorate and become outdated. These examinations would not adequately measure the qualifications of the applicants.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13399 Filed 6-8-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-942-DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: May 26, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-942-DR), dated May 2, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 26, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–13462 Filed 6–8–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–941–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: May 26, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–941–DR), dated April 15, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 22, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–13460 Filed 6–8–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–944–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–944–DR), dated May 19, 1992, and related determinations.

EFFECTIVE DATE: May 30, 1992.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, dated May 19, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in this declaration of May 19, 1992:

The City of Lexington, the City of Radford, and Pittsylvania County for Individual Assistance and Public Assistance; and

The City of Lynchburg for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–13461 Filed 6–8–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Emerald Maritime Services, 4700 42nd Ave., SW., #550, Seattle, WA 98116, Thomas M. Alderson, Sole Proprietor.

Sofana Freight Forwarding Corp. USA, 50 Carnation Ave., Blvd. #6, Floral Park, NY 11001, Officer: Roy G. Nester, President.

Airconex, Inc., 161 Prescott Street, East Boston, MA 02128, Officers: Lawrence Giangregorio, President/Stockholder, Stephen George, V. President/Treasurer/Stockholder, John E. Smith, Stockholder, Maria A. DeFeo, Stockholder, Peter R. DeFeo, Assistant Clerk.

Lahyan Y. Diab dba L. Diab Forwarding, 7822 Freehollow Drive, Falls Church, VA 22042, Lahyan Y. Diab, Sole Proprietor.

SCL Shipping (USA) Inc., 150–30 132nd Avenue, rm. 208, Jamaica, NY 11434, Officer: Dennis Choy, Vice President.

South Bay Express of California, 1995 E. El Segundo Blvd., El Segundo, CA 90245, Ruben Posada, Sole Proprietor.

Dated: June 4, 1992.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13450 Filed 6–8–92; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 90.
Name: W. G. Carroll, Inc.
Address: One Clay Place, P.O. Box 20729 Atlanta, GA 30320.
Date Revoked: May 8, 1992.
Reason: Surrendered license voluntarily.

License Number: 645.
Name: W. N. Proctor Company, Inc.
Address: 115 Broad St., P.O. Box 192, Boston, MA 02101.
Date Revoked: May 8, 1992.
Reason: Surrendered license voluntarily.

License Number: 3088.
Name: Capital Shipping Corporation.
Address: 125 E. Union Ave., E. Rutherford, NJ 07073.
Date Revoked: May 13, 1992.
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92–13444 Filed 6–8–92; 8:45 am]

BILLING CODE 6730–01–M

Spain-Italy/Puerto Rico Island POOL, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

Agreement No.: 212–011213–028.

Title: Spain-Italy/Puerto Rico Islar.d Pool Agreement.

Parties: Compania Trasatlantica Espanola, S.A., Nordana Line A/S, Sea-Land Service, Inc.

Synopsis: The proposed amendment will add a new provision to the Agreement setting forth the distribution of excess pool funds remaining in the Pool Common Fund in the Italian Section of the Pool after the payment of undercarrier compensation for the Pool period beginning July 1, 1991 and ending December 31, 1991.

Agreement No.: 224–010925–001.

Title: South Carolina State Ports Authority/COSCO Terminal Agreement.

Parties: South Carolina State Ports Authority, China Ocean Shipping Company ("COSCO").

Synopsis: The subject modification extends the Agreement between the parties through June 1, 1995.

Agreement No.: 224–200611–001.

Title: North Atlantic Conference of Port Authorities.

Parties: Massachusetts Port Authority, Port Authority of New York and New Jersey, South Jersey Port Corporation, Delaware River Port Authority, Maryland Port Administration.

Synopsis: This modification adds the New Hampshire State Port Authority as a party to the Agreement.

Agreement No.: 224–200630–002.

Title: Port Authority of New York & New Jersey/Maher Terminals, Inc. Terminal Agreement.

Parties: The Port Authority of New York and New Jersey Maher Terminals, Inc. ("Maher").

Synopsis: The subject modification permits Maher the continued use of the open area adjacent to its Tripoli Street Container Terminal through July 31, 1992.

Agreement No.: 224–200668.

Title: Georgia Ports Authority/Pan Ocean Shipping Co., Ltd. Terminal Agreement.

Parties: Georgia Ports Authority ("GPA"), Pan Ocean Shipping Co., Ltd. ("Pan Ocean").

Synopsis: The subject Agreement provides for a refund of dockage charges by GPA to Pan Ocean at the end of each month period, based on vessel tonnages and days of dockage.

Dated: June 4, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13451 Filed 6–8–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Deuel County Interstate Banc Company; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Deuel County Interstate Banc Company, Chappell, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Deuel County State Bank, Chappell, Nebraska, and Community Insurance Agency, Inc., Haxtun, Colorado, and thereby indirectly acquire Haxtun Community Bank, Haxtun, Colorado.

In connection with this application, Applicant will engage in general insurance agency activities in a community with a population of less than 5,000 (Haxtun, Colorado) through Community Insurance Agency, Inc., pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13442 Filed 6–8–92; 8:45 am]

BILLING CODE 6210–01–F

First American Bank of Virginia, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 2, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First American Bank of Virginia, McLean, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of First

American Bank of Georgia, N.A. (in liquidation), Marietta, Georgia. **Comments regarding this application must be received not later than June 23, 1992.**

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Wilson Bank Holding Company, Lebanon, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Wilson Bank & Trust, Lebanon, Tennessee.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Rockwood Bancshares, Inc., Eureka, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Rockwood Bank, Eureka, Missouri.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Central Financial Corporation, Hutchinson, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Central Kansas Bankshares, Inc., Hutchinson, Kansas, and thereby indirectly acquire Central Bank & Trust Co., Hutchinson, Kansas.

2. Fourth Financial Corporation, Wichita, Kansas; to merge with KNB Bancshares, Inc., Prairie Village, Kansas, parent of Kansas National Bank and Trust Company, Prairie Village, Kansas.

3. Resource One, Ulysses, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Grant County State Bank, Ulysses, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Roscoe (Delaware), Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The Roscoe State Bank, Roscoe, Texas.

2. Roscoe Financial Corporation, Roscoe, Texas; to acquire 75.1 percent of the voting shares of The Roscoe State Bank, Roscoe, Texas.

Board of Governors of the Federal Reserve System, June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13440 Filed 6–8–92; 8:45 am]

BILLING CODE 6210–01–F

James Schwertley, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James Schwertley, Missouri Valley, Iowa, Donald Schwertley, Council Bluffs, Iowa, and James King, Mondamin, Iowa; to acquire 100 percent of the voting shares of Overton Bank Shares, Inc., Mondamin, Iowa, and thereby indirectly acquire Mondamin Savings Bank, Mondamin, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Vincent Joseph Riggio, Du Quoin, Illinois; to acquire an additional 2.71 percent, for a total of 13.34 percent, of the voting shares of Du Quoin Bancorp, Inc., Du Quoin, Illinois, and thereby indirectly acquire Du Quoin National Bank, Du Quoin, Illinois.

Board of Governors of the Federal Reserve System, June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13441 Filed 6–8–92; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–3382]

RMED International, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Colorado-based company, that makes "TenderCare" disposable diapers, and its president from making degradability claims in the future unless they possess competent scientific evidence to substantiate such claims.

DATES: Complaint and Order issued May 14, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz or Georgianna Forbes, FTC/S–4002, Washington, DC 20580. (202) 326–3158 or 326–3183.

SUPPLEMENTARY INFORMATION: On Wednesday, February 26, 1992, there was published in the **Federal Register**, 57 FR 6608, a proposed consent agreement with analysis In the Matter of RMED International, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisidctional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

FR Doc. 92–13480 Filed 6–8–92; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–2755]

U.S. Pioneer Electronics Corp.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies the consent order issued in 1975 (40 FR 57197) with Pioneer Electronics (USA) Inc. so that Pioneer is no longer prohibited from unilaterally terminating a dealer who sells Pioneer home-electronics products at a price other than suggested retail price.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DATES: Consent Order issued October 24, 1975. Modifying Order issued May 19, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Eric Rohlck, FTC/S–2155, Washington, DC 20580. (202) 326–2687.

SUPPLEMENTARY INFORMATION: In the Matter of U.S. Pioneer Electronics Corp. The prohibited trade practices and/or corrective actions as set forth at 40 FR 57197, are deleted, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92–13481 Filed 6–8–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 230]

State Health Departments and Public Health Agencies To Conduct Site-Specific Health Activities

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1992 funds for a grant and/or cooperative agreement program to assist state health departments and public health agencies in conducting site-specific health activities (SSHA) to determine the public health impact of human exposure to hazardous substances at hazardous waste sites or releases. SSHA are to be conducted in communities located near hazardous waste sites for which ATSDR (or a state under cooperative agreement) has prepared a Preliminary Public Health Assessment, Public Health Assessment, Public Health Advisory, or Health Consultation that ATSDR's Health Activities Recommendation Panel (HARP) has evaluated and determined public health actions are warranted. Preference for the SSHA will be given to sites listed in appendix A.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under sections 104(i)(7)(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604(i)(7)(A) and (15)).

Eligible Applicants

Assistance will be provided only to the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $500,000 is available in FY 1992 to fund approximately 7 awards. It is anticipated that approximately $750,000 will be available in FY 1993 to fund 10 awards. It is expected that the average award will be $71,000, with the range being $10,000 to $100,000. It is expected that the awards will begin on or about September 30, 1992, for a 12-month budget and project period. Recipients in any given year will have to recompete for funding in a subsequent year. Funding estimates may vary and are subject to change.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the awardee, as the direct and primary recipient of PHS funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Accordingly, eligible applicants may enter into contracts (epidemiologic, medical consultant, statistical analysis, environmental sampling, data entry, etc.) as necessary to meet the requirements of the program and strengthen the overall application.

Purpose

The purpose of this program is to assist public health agencies in conducting site-specific health activities that: (1) Assess the public health impact of human exposure to hazardous substances in communities located near specific sites or releases and, (2) determine if comprehensive epidemiologic studies are warranted based on the findings of such site-specific activities that have been determined as needed by HARP.

Pertinent definitions are presented in the following paragraphs:

Site-Specific Health Activity (SSHA)—This activity involves the collection and/or limited evaluation of data and information about a defined population for the purpose of determining the extent of exposure to hazardous substances, and if the possibility of adverse health effects warrants, a comprehensive epidemiologic investigation. Those activities will be undertaken at sites for which HARP has determined that such activities are indicated based on information developed in a Public Health Assessment, Preliminary Public Health Assessment, Public Health Advisory, or Health Consultation performed by ATSDR or by a state through a grant or cooperative agreement with ATSDR.

The following are seven types of site-specific health activities.

1. *Disease-and-Symptom Prevalence Study*—A study designed to measure the occurrence of self-reported disease, that may in some instances be validated through medical records or physical examination if available, and determine those adverse health conditions which may require further investigation because they are considered to have been reported at excess rate. This study design can only be considered hypothesis-generating (55 FR 12019, March 30, 1990).

2. *Biological Indicators of Exposure Study*—A study designed to use biomedical testing or the measurement of a chemical (analyte), its metabolite, or another marker of exposure in human body fluids or tissues in order to validate environmental exposure to a hazardous substance (55 FR 12019, March 30, 1990). This study will require a comparison population and is designed to determine past and/or current exposure(s).

3. *Cluster Investigation*—A review of an unusual number—real or perceived—of health events (for example, reports of cancer, grouped together in time and location). Cluster investigations are designed to confirm case reports; determine whether they represent an unusual disease occurrence; and, if possible, explore causes and environmental factors (55 FR 12019, March 1990).

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 6th & Pa. Ave., NW., Washington, DC 20580.

4. *Biomedical Study*—Biological testing of persons to evaluate a qualitative or quantitative change in a physiologic function that may be predictive of a health impairment resulting from exposure to hazardous substance(s). This study will require a comparison population and is designed to determine effects associated with past and/or current exposure(s).

5. *Case Study*—The medical or epidemiologic evaluation of a single person or a small number of individuals through interview or biomedical testing to determine descriptive information about their health status or potential for exposure.

6. *Health Statistics Review*—Evaluation of information and/or relevant health outcome data for an involved population, including reports of injury, disease, or death in the community. Databases may be local, state, and/or national; information from private health care providers and organizations may also be used. Databases may include morbidity and mortality data, tumor and disease registries, birth statistics, and surveillance data.

7. *Community Health Investigation*—Medical or epidemiologic evaluation of descriptive health information about individual persons or a population of persons to evaluate and determine health concerns and to assess the likelihood they may be linked to exposure to hazardous substances.

Public Health Assessment—Is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other health recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects.

Preliminary Public Health Assessment—Is prepared only when preliminary environmental contamination data are available or no relevant health outcome or environmental data exist (e.g., at the time the site is proposed for listing on the NPL). Preliminary Public Health Assessments may be followed by Public Health Assessments if and when additional data become available. Preliminary Public Health Assessments may lead to the determination that specific public health actions, such as biologic testing, are needed.

Health Consultation—Is a written or verbal response to a specific question or specific request for information from ATSDR staff or a request for information about health risks posed by a specific site, chemical release, or hazardous material. Consultations may lead to specific recommendations, including public health actions such as biologic testing. A Health Consultation may need to be prepared and indicated actions performed rapidly in order to mitigate or prevent adverse human health effects from exposure to hazardous substances in the environment.

Public Health Advisory—Is a communication from the ATSDR Administrator to the Administrator of the Environmental Protection Agency (EPA), state health officials, and other pertinent individuals stating ATSDR's concern that a public health threat exists of such importance and magnitude that immediate action should be taken, including biologic testing if indicated. The Public Health Advisory is also provided to the appropriate EPA regional office and state health department.

Health Activities Recommendation Panel (HARP)—Is an ATSDR-wide multidisciplinary panel composed of staff with expertise in several fields including environmental epidemiology, medicine, environmental health, toxicology, and health education. HARP evaluates the data and information developed in Public Health Assessments, Preliminary Public Health Assessments, Public Health Advisories, and Health Consultations using established criteria to determine the appropriate public health activities that should be undertaken in populations whose health is impacted by hazardous waste sites. Site-specific health activities are among the determinations that may be made. ATSDR proposes to provide financial assistance to public health agencies to conduct those site-specific health activities.

Program Requirements

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. These two types of Federal assistance are explained below.

A. Grants

ATSDR will provide financial assistance without substantial programmatic involvement to applicants in conducting site-specific health activities to determine the extent of exposure to hazardous substances, and if possible adverse health effects warrant a comprehensive epidemiologic investigation. The program requirements include one of the following:

1. Studies designed to measure the occurrence of self-reported disease;

2. Biomedical testing to validate environmental exposure to a hazardous substance;

3. Review of an unusual number of health events, i.e., reports of cancer;

4. Biological testing to evaluate change predictive of a health impairment resulting from exposure to hazardous substances;

5. Medical or epidemiological evaluation of individuals(s) to determine health status or potential for exposure;

6. Evaluation of health outcome data for a population, including reports of injury, disease, or death; and

7. Medical or epidemiologic evaluation of individual(s) to determine health concerns and assess linkage to hazardous substance exposure.

The activities of the recipient and the ATSDR for a cooperative agreement are described in paragraph B below.

B. Cooperative Agreements

In a cooperative agreement, ATSDR will assist the recipient in conducting the activities. The application should be presented in a manner that demonstrates the applicant's ability to address the health issues in a collaborative manner with ATSDR. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under 1., below, and the ATSDR will be responsible for conducting activities under 2., below:

1. Recipient Activities

a. Background review—review all data and information developed in the Public Health Assessment, Public Health Advisory, Health Consultation, and other appropriate information to identify the population (potentially) exposed to hazardous substances.

b. Study design and implementation—design, develop, and implement a protocol to conduct the necessary study. The protocol will cover all aspects of the project.

c. Quality Assurance/Quality Control—provide a mechanism to ensure the quality of the data and the statistical and/or laboratory procedures used. Develop a schedule for reporting progress to ATSDR.

2. ATSDR Activities

a. Provide technical assistance in both the planning and implementation phases of the field work called for under the study protocol.

b. Consult with and assist in monitoring the collection and handling of information and the sampling and testing activities.

c. Participate in the analysis.

d. Collaborate in the interpretation of the study findings.

e. Provide technical and scientific review of the draft report.

Determination of which instrument to use—applicants must specify the type of award for which they are applying, either grant or cooperative agreement. ATSDR will review the applications in accordance with the appropriate criteria.

Evaluation Criteria

A. Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and Technical Review Criteria of New Applications

a. *Proposed Program*—50%

The extent to which the applicant's proposal addresses: (1) The scientific merit of the proposed project, including approach, feasibility, adequacy, and rationale of the design; (2) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the **Purpose** section of this announcement and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (3) the proposed project timeline, including clearly established project objectives for which progress toward attainment can and will be measured; (4) the proposed community involvement strategy; and (5) the proposed method to disseminate the results to state and local public health officials, community residents, and to other concerned individuals and organizations.

b. *Program Personnel*—30%

The extent to which the proposal has described the (1) qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership, and (2) the competence of associates to accomplish the proposed activity and their commitment and time they will devote.

c. *Applicant Capability*—20%

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed activity.

d. *Program Budget*—(not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before July 20, 1992. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or (b) above are considered late applications. Late competing applications *not* accepted for processing may either be returned to the applicant or held for the next review cycle.

3. *Receipt and Review Schedule:*

This is a continuous announcement and the proposed timetable for receiving applications and making awards is shown below:

Receipt of new applications	Review date	Award date
July 20, 1992.....	Aug. 20, 1992.	Sept. 30, 1992.

Future dates for this announcement submission are as follows:

Receipt of new applications	Review date	Award date
Jan. 15, 1993.....	Feb. 15, 1993.	Mar. 31, 1993.
July 15, 1993.....	Aug. 16, 1993.	Sept. 20, 1993.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management assistance, may be obtained from Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (Telephone 404–842–6630).

Programmatic technical assistance may be obtained from Dr. Cynthia R. Lewis, Senior Medical Officer, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, (Telephone 404–639–0610).

Please refer to announcement number 230 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone 202-783-3238).

Dated: June 2, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

Appendix A—Sites for Which Preference Will be Given For Award for Announcement Number 230

Site Name	State
Air Quality Petition	CT
Allen Park Clay Mine	MI
Allied Paper	MI
American Creosoting Company	FL
Anderson Equipment	MI
Artic Surplus	AK
Baird & McGuire	MA
Basket Creek Drum Disposal/Drum Disposal Area	GA
Bofors—Nobel	MI
C&D Recycling	PA
Calvert City Industrial Complex	KY
Carson River Mercury Site	NV
Coeur d'Alene	ID
Chemical Sales	CO
Crossley Farm	PA
Dublin Water	PA
E.I. DuPont De Nemours	NJ
Economy Chrome	KS
Falls Township AKA Corco Chemical	PA
Frontera Creek	PR
Greenwood Chemical	VA
Groton Gratuity	MA
GSX	SC
Hansen Container/Layton Drum	CO
Holton Circle	NH
Industrial Excess Landfill	OH
Jackson Park Housing Area	WA
Jackson Township	NJ
Keyser Avenue Borehole	PA
Marine Shale Processors Inc	LA
Maywood Chemical	NJ
Mitchell Systems	NC
Navajo-Desiderio	NM
New Bedford Harbor	MA
Nutmeg Valley Road	CT
Ottawa Radiation	IL
Parker Landfill	VT
Powell Road Landfill	OH
Precision Plating	CT
Savage Municipal Water	NH
Shaffer Equipment Company	WV
Solvents Recovery	CT
Southeast Rockford	IL
Southern Wood Piedmont	GA
Spiegelbreg & Rasmussen Dump Sites	MI
Stringfellow	CA
Sulfur Bank Mercury Mine	CA
Union Chemical	ME
United Creosoting Company	TX
United Heckathorn	CA
Wausau Ground Water Contamination	WI
Welsh Road Landfill	PA
Zinc Corporation of America	OK

[FR Doc. 92-13448 Filed 6-8-92; 8:45 am]

BILLING CODE 4160-70-M

National Institutes of Health National Cancer Institute

Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on June 10-12, 1992, The Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

This meeting will be open to the public on June 10, 1992, from 7:30 p.m. to 8:30 p.m., to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 11 from 8 a.m. to recess and on June 12 from 8 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, room 809, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7978) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: May 28, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-13659 Filed 6-8-92; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S7, the Office of the Deputy Commissioner for Human Resources is being amended to establish division-level components and functions within the Office of Labor Management Relations (S7C). The new material is as follows:

Section S7C.10 *The Office of Labor Management Relations*—(Organization):

Add:

D. The Division of Labor and Employee Relations Operations (S7CA).

E. The Division of Labor and Employee Relations Policy (S7CB).

Section S7C.20 *The Office of Labor Management Relations*—(Functions):

Delete Items C.1 through C.6.

Add:

D. The Division of Labor and Employee Relations Operations (S7CA).

1. Administers the Master Agreement nationwide. Negotiates midterm contractual issues with the recognized bargaining unit(s). Serves as liaison with HHS on the administration of the National Agreement between HHS and recognized bargaining units.

2. Provides technical and advisory services and expertise to management in establishing management negotiating positions and for representation in third-party proceedings. Coordinates SSA representation in unfair labor practice complaints before the Federal Labor Relations Authority.

3. Develops, implements and evaluates SSA programs involving disciplinary and adverse actions, performance-based actions, grievances, appeals and serious misconduct cases. Provides advisory services to management and prepares documentation for headquarters' managers pertaining to such cases. Provides consultation to SSA management on nonbargaining unit grievances.

4. Represents SSA at unemployment compensation hearings and on management-initiated actions under appeal to the Merit Systems Protection Board and before arbitrators.

5. Provides technical guidance in developing, implementing and administering performance plans and standards.

E. The Division of Labor and Employee Relations Policy (S7CB).

1. Responsible for negotiation, administation and implementation of SSA national labor agreements which include prenegotiation activities, team preparation, advisory services and problem resolution.

2. Maintains files of case law which affect contracts and researches bargaining history relevant to establishing management's position at third-party proceedings and negotiations.

3. Formulates SSA policy for the labor management and employee relations programs, and researches policy questions for management.

4. Negotiates national midterm personnel policy-related issues and coordinates SSA management representation at national-level arbitration, unfair labor practice hearings and national-level meetings with the recognized barging units.

5. Conducts statutory review of all Memoranda of Understanding negotiated agencywide. Administers and maintains arbitration panels.

Dated: May 18, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92-13345 Filed 6-8-92; 8:45 am]

BILLING CODE 4190-29-M

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is hereby given that Chapter S5, of the Office of the Deputy Commissioner, Policy and External Affairs, is being amended to reflect the establishment of a new staff within the Office of Public Affairs (S5E). The Regional Support and Special Projects Staff (S5EK5) and the Regional Public Affairs Staff (S5EK6) are being deleted from the Office of External Affairs (S5EK), and the functions and positions combined to create the Regional Affairs Staff (RAS) (S5EM). RAS ensures an effective public information/public affairs program in the 10 regional offices. It defends and provides information about SSA and the Administration to Congress, the media and the public in order to enhance understanding of and support for SSA's programs and efforts. The changes are as follows:

Section S5E.10 *The Office of Public Affairs*—(Organization):

G. The Office of External Affairs (S5EK)

Delete:

3. The Regional Public Affairs Staff (S5EK6).

4. The Regional Support and Special Projects Staff (S5EK5).

Renumber:

"5" to "3."

Add:

H. The Regional Affairs Staff (S5EM).

Section S5E.20 *The Office of Public Affairs*—(Functions):

G. The Office of External Affairs (S5EK)

Delete:

3. The Regional Public Affairs Staff (S5EK6) in its entirety.

4. The Regional Support and Special Projects Staff (S5EK5) in its entirety.

Renumber:

"5" to "3."

Add:

H. The Regional Affairs Staff (S5EM) provides onsite leadership and direction to the regional SSA public affairs program. Analyzes and evaluates regional public affairs activities and issues regional public affairs policies consistent with nationally-issued policies. Serves as the primary regional contact with the news media, community organizations and congressional staffs on questions and problems of a regionwide nature. Plans, directs and coordinates the development of regional policies, directives and procedures concerning the relationships of SSA programs to public and private welfare and community service programs. Coordinates SSA's regional interaction with other agencies and organizations, including the extension and improvement of social services. Manages and oversees the regional public information program. Prepares and disseminates public information materials. Coordinates the development and implementation of regional information and referral programs. Provides direction to the Regional Public Affairs Officers in carrying out SSA and HHS public information policy, plans and activities. Provides guidance and assists in interpreting, analyzing and evaluating public affairs/public information needs of the regions.

Coordinates workgroups representing SSA components for the purpose of solving complex problems resulting from adverse impacts of SSA programs and program service delivery on special groups or the general public.

Dated: May 13, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92-13396 Filed 6-8-92; 8:45 am]

BILLING CODE 4190-29-M

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is hereby given that Chapter S5, the Office of the Deputy Commissioner, Policy and External Affairs, is being amended to reflect nomenclature changes to the Director and Deputy Director of the Office of Research and Statistics. The changes are as follows:

Section S5H.10 *The Office of Research and Statistics*—(Organization):

In all instances, change titles of the Director and Deputy Director to Associate Commissioner and Deputy Associate Commissioner.

Section S5H.20 *The Office of Research and Statistics*—(Functions):

In all instances, change titles of the Director and Deputy Director to Associate Commissioner and Deputy Associate Commissioner.

Dated: May 13, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 92-13410 Filed 6-8-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-92-3362; FR-3190-N-04]

Notice of Deadline Extension; FY 1992 Fund Availability; HOPE for Public and Indian Housing Homeownership Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of deadline extension.

SUMMARY: HUD is extending, for the second time, the application deadline for implementation grants in the HOPE for Public and Indian Housing Homeownership (HOPE 1) program for those applicants who were adversely affected in their application preparation as a result of civil disturbances in the City of Los Angeles, California on and following April 29, 1992. Today's document extends the deadline to Monday, June 15, 1992.

DATES: For qualified applicants, the application deadline, previously extended to May 26, 1992, is further extended to June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Office Resident Initiatives, Department of Housing and

Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-4233.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: On January 14, 1992, HUD published Notices of Fund Availability announcing the availability of FY 1992 funds for the Hope for Public and Indian Housing Homeownership program (HOPE 1) (see 57 FR 1550).

By notice published on May 21, 1992 (57 FR 21666), HUD extended the deadline for applications until May 26, 1992.

In today's Notice HUD is extending the application deadline for implementation grants in the HOPE 1 program for those applicants who were adversely affected in their preparation of applications as a result of the civil disturbances in the City of Los Angeles, California on and following April 29, 1992. For those applicants who qualify, the application deadline is being extended for an additional brief period—from May 26, 1992 until close of business on Monday, June 15, 1992. (No additional extensions of time for applications for the HOPE 1 program are anticipated.)

An applicant may qualify for an extension of the application deadline for Implementation Grants under the HOPE 1 program if:

(A) The applicant submits a certification with its application describing the reasons which justify a delayed submission pursuant to this Notice; and

(B) HUD determines that the certification adequately demonstrates that the applicant's ability to prepare or submit the HOPE 1 Implementation Grant application was substantially impaired as a result of the civil disturbances in the City of Los Angeles, California, on and following April 29, 1992. If HUD approves the certification, the application will be accepted for review.

A qualified applicant may submit such an application, or may revise and resubmit a previously submitted application, as long as the application is received by the appropriated HUD field office by close of business on June 15, 1992. All submission requirements other than the date by which the applications must be received remain unaffected by this Notice.

Dated: June 3, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92-13515 Filed 6-8-92; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3410; FR 3031-C-02]

Funding Availability (NOFA) for the HOPE for Elderly Independence Program for FY 1992; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for FY 1992; Correction.

SUMMARY: On May 29, 1992 (57 FR 23008), the Department published a NOFA to announce the availability of supportive services and section 8 rental voucher funding for a national competition for Fiscal Year (FY) 1992 for the HOPE for Elderly Independence Demonstration Program. This document makes a correction to section IV of the May 29, 1992 NOFA, which concerns the process for correcting technically deficient applications.

DATES: The due date for submission of applications in response to this NOFA is set forth in the May 29, 1992 Federal Register notice, published at 57 FR 23008. This document does not change this due date.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone number (202) 708-0477. Hearing or speech impaired individuals may call HUD's TTD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This Notice of Funding Availability for the HOPE for Elderly Independence Demonstration Program for Fiscal Year 1992 was published in the Federal Register on May 29, 1992, at 57 FR 23008. Today's document corrects section IV of the May 29, 1992 NOFA, which concerns the process for correcting technically deficient applications.

Section IV of the May 29, 1992 NOFA provided a "complete list" of the items that constitute technical deficiencies, and which may be requested and submitted after the application submission deadline. After publication of the NOFA, the Department realized that certain items were inadvertently omitted from the list. This document therefore corrects section IV of the NOFA to remove the enumerated list of items, and simply provide that curable technical deficiencies are those application items which do not improve the substantive quality of the application relative to the ranking factors.

Accordingly, the following correction is made to FR Doc. 92-12002, published on May 29, 1992 at 57 FR 23008.

SECTION IV—[CORRECTED]

1. On page 23013, in the first and second columns, section IV is corrected to read as follows:

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the Field Office no later than the application submission deadline date and time specified at section II(b) of the NOFA. The Field Office will initially screen all applications and notify PHAs/IHAs of technical deficiencies by letter. Field Office notification of PHAs/IHAs must be uniform.

The purpose of this process is to assist an applicant in completing a ratable proposal and not to provide for an application to be substantively improved once it has been submitted. Curable technical deficiencies relate only to items which do not improve the substantive quality of the application relative to the ranking factors.

All PHAs/IHAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after close of business on the fourteenth day of the correction period will not be accepted and the application will be rejected on the basis of being incomplete. All PHAs/IHAs are encouraged to review the initial screening checklist provided in section III of the notice. The checklist identifies all technical requirements needed for application processing.

Dated: June 4, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-13510 Filed 6-8-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ORO80-01-6310-12 (G-2-247)]

Salem District Advisory Council Meeting; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Salem District Advisory Council; Correction.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780 that a meeting of the Salem District Advisory Council will be held on Wednesday, August 26, beginning at 1 p.m. The meeting will be held in the Salem District Office, 1717 Fabry Rd. SE, Salem, OR. This document corrects an earlier notice published June 4, 1992 (57 FR 23594).

AGENDA: The agenda for the meeting will include:

(1) Introduction of the new members.
(2) Appointment of a new chairperson.
(3) Discussion of the BLM Salem District Land Use Plan and Preferred Alternative.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306 by August 19, 1992. Written comments will also be received for the council's considerations. Summary minutes will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Van W. Manning,

Salem District Manager.

[FR Doc. 92-13438 Filed 6-8-92; 8:45 am]

BILLING CODE 4310-33-M

[NV-030-92-4333-13]

Rules of Conduct and Supplementary Rules, Carson City District, Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Establishment of supplementary rules.

SUMMARY: In the interest of public safety and for the protection of public and private resources, supplementary rules regulating recreational target shooting, hunting with a firearm and bonfires on public lands that adjoin developed private lands are necessary. The continuing encroachment of urban development upon public land boundaries is eroding the safety zones for these activities. Therefore, the Bureau of Land Management, Carson City District is establishing supplementary rules which compliment local municipal codes and ordinances.

The public lands included in the following descriptions adjoin developed private lands within Carson City:

Mt. Diablo Meridian, Nevada

T. 14N, R. 20E.,
Secs. 2, 3, 4, 9, 10;
T. 15.N, R. 20E.,
Secs. 1, 4, 5, 11-15, 21-28, 32-36;
T. 16.N, R. 20E.,
Secs. 31-36.

The supplementary rules that will apply to the above described lands are as follows:

1. It is unlawful for any person to fire off or discharge:

(a) Any gun, rifle, pistol or other firearm—including shotguns, air rifles and B-B guns—within the Prison Hill Recreation Area.

Prison Hill Recreation Area lands are included in the above description and specifically described as:

Mt. Diablo Meridian, Nevada

T. 14N., R. 20E,
Sec. 2, W½ Lot 2 of NW¼;
Sec. 3, Lots 1 and 2 of NE¼, Lots 1 and 2 of NW¼, N½SW¼, NW¼SE¼;
Sec. 4, E½ Lot 1 of NE¼, E½ Lot 2 of NE¼, NE¼SE¼.
T. 15N, R. 20E.,
Sec. 21, SE¼NE¼, E½SE¼;
Sec. 22, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 27, W½, W½SE¼, SE¼SE¼;
Sec. 28, Lots 26, 27, 32-37, 41-43, E½NE¼, SW¼NE¼, NE¼SW¼, N½SE¼, NE¼SW¼SE¼, SE¼SE¼;
Sec. 33, E½E½;
Sec. 34, All;
Sec. 35, W½W½.

(b) Any gun, rifle, pistol or other firearm—with the exception of shotguns, air rifles and B-B guns—within 5,000 feet of any dwelling, building or other place of public resort.

(c) Any shotgun, air rifle or B-B gun within 500 feet of any dwelling, building or other place of public resort.

(d) Any gun, pistol, rifle, shotgun, air rifle, B-B gun or other firearm in, on or across any public trail, road or highway.

(e) This section does not apply to peace officers or to persons shooting in any regularly established and lawfully authorized and licensed rifle range, gun club or shooting gallery or to any person lawfully discharging a firearm in protection of life and property.

2. It is unlawful to make any bonfire or burn any hay, straw, shavings, pallets or any other combustible material without written permit from the managing agency. (Bonfire being any fire humanly designed that produces a flame height of more than 2' and has no purpose for cooking food.)

(a) A small campfire for the purpose of cooking food or warming persons engaged in recreational camping upon lands approved for such activities is approved unless restricted by seasonal closures.

EFFECTIVE DATE: July 15, 1992.

COMMENT PERIOD: The BLM requests comments from the public concerning establishment of shooting regulations for public lands administered by Carson City District. The comment period will be open until July 1, 1992. Comments received or postmarked after the close of the comment period will not be considered when finalizing these shooting regulations.

FOR FURTHER INFORMATION CONTACT: Blaine Heald, District Ranger, or John Matthiessen, Area Manager, Bureau of Land Management, 1535 Hot Springs Road, #300, Carson City, Nevada 89706. Telephone (702) 885-6000.

SUPPLEMENTAL INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1-6. These rules will be posted at the local office having jurisdiction over the lands affected.

Dated: May 27, 1992.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 92-13433 Filed 6-8-92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-010-4370-08]

Wells Resource Management Plan Draft Wild Horse Amendment and Environmental Assessment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of Wells Resource Management Plan (RMP) Draft Wild Horse Amendment and Environmental Assessment (EA).

SUMMARY: Notice is given that the Bureau of Land Management (BLM), has released, for a 30 day public review and comment period, the Wells RMP Draft Wild Horse Amendment and EA. This wild horse amendment is being completed to assist with the management of wild horses in the Wells Resource Area of the BLM's Elko District in the southeastern part of Elko County, Nevada.

DATES: Written comments on the Wells RMP Draft Wild Horse Amendment and EA must be postmarked no later than July 15, 1992 to be considered in the

development of the Proposed Amendment and Final EA.

ADDRESSES: Written comments should be addressed to: District Manager, Bureau of Land Management, ATTN: District Wild Horse Specialist, P.O. Box 831, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Bruce Portwood, Elko District Wild Horse Specialist at the above address or telephone (702) 753-0200.

SUPPLEMENTARY INFORMATION: The Wells RMP Wild Horse Amendment analyzes three alternatives, including the No Action Alternative, for the management of wild horses in the Wells Resource Area of the BLM's Elko District. The purpose of this amendment is to establish wild horse herd management areas, solve problems with checkerboard land pattern conflicts, identify habitat requirements and management practices, establish initial herd size, develop factors for adjustments in herd size, identify constraints on other resources, and combine herd areas for the purpose of improving management of wild horses.

A copy of the Wells RMP Draft Wild Horse Amendment will be sent to all individuals, agencies and groups who have expressed an interest in wild horse management for this part of Nevada.

Copies of the Draft Amendment are also available for review at the following locations:

BLM's Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520-0006
Elko County libraries in Elko, Wells, and Wendover, Nevada.

A Proposed Wild Horse Amendment and Final EA will be completed in response to comments received on the Draft Amendment.

Dated: June 3, 1992.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92-13444 Filed 6-8-92; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

RIN 1018-AB32

Public Meeting for Draft Recovery Plan for the Northern Spotted Owl (Strix occidentalis caurina)

AGENCY: Department of the Interior.

ACTION: Draft Recovery Plan; notice of public meeting.

SUMMARY: The Department of the Interior (Department), under the Endangered Species Act of 1973, as amended (Act), gives notice that three public meetings will be held on the draft recovery plan for the northern spotted owl (*Strix occidentalis caurina*). The intent of these meetings is to review the technical aspects of the draft recovery plan and solicit any new information on that plan. At the meetings, interested parties are invited to participate in asking questions of and discussing the draft plan with members of the Recovery Team. In addition, oral or written comments on the draft plan can be submitted.

DATES: Comments from all interested parties must be received by July 13, 1992. The Department intends to conduct one public meeting at each of the following locations:

1. Friday, June 19, Arcata, California; 1 to 4 and 6:30 to 8:30 p.m.
2. Monday, June 22, Roseburg, Oregon; 1 to 4 and 6:30 to 8:30 p.m.
3. Friday, June 26, Seattle, Washington; 3 to 6 and 7:30 to 9:30 p.m.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Northern Spotted Owl Recovery Team, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon, 97232-4181 (telephone: 503-231-6238). Written comments and materials regarding the plan should be directed to the same address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address. The public meetings will be held at the following locations:

1. Arcata—McKinleyville High School, 1300 Murray Road, McKinleyville, CA.
2. Roseburg—Umpqua Community College, Jacobi Auditorium, 1130 Umpqua College Road, Roseburg, OR.
3. Seattle—University of Washington, Room 130, Kane Hall, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Knowles, Associate Deputy Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (telephone: 202-208-6254), or Mr. Marvin Plenert, Regional Director, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232 (503-231-6118).

SUPPLEMENTARY INFORMATION:

Background

A primary goal of the Endangered Species Act of 1973 (Act) is the recovery of endangered and threatened species so that they are again secure, self-sustaining members of their ecosystems. The Act requires preparation of a recovery plan to help guide recovery efforts for any listed species likely to benefit from such a plan. A recovery plan describes actions considered necessary to conserve a species, establishes criteria for downlisting or delisting, and estimates time and cost for implementing recovery measures.

Section 4(f) of the Act, as amended in 1988, (16 U.S.C. 1531 *et seq.*), requires that public notice and an opportunity for public review and comment be provided during development of a recovery plan. On May 15, 1992, the Department published a notice (57 FR 20847) announcing the availability of the draft recovery plan. This supplementary notice announces the time and locations of the public meetings. All information presented during a public comment period must be considered prior to approval of a new or revised recovery plan. Federal agencies must also take these comments into account in the course of implementing an approved recovery plan.

The northern spotted owl (*Strix occidentalis caurina*) occurs in southern British Columbia, Canada; western Washington; western Oregon; and northwest California. Within its range, the owl demonstrates an affinity for older forested habitat. Evidence of significant reduction and fragmentation of suitable owl habitat and of concomitant decline in owl populations have led to concern for its continued survival. A final rule to list the owl as a threatened species was published on June 26, 1990 (55 FR 26114). Details regarding the evidence upon which the listing was based are available in that publication.

On February 15, 1991, a recovery team was appointed and given the charge of preparing a recovery plan for the owl. The team is multidisciplinary in composition, and includes biologists, foresters, economists, attorneys, individuals representing concerned Federal agencies, and representatives of the Governors of the three States involved. This draft recovery plan prepared by the team is available for public review.

Public Comments Solicited

The Department solicits written comments on the recovery plan. Parties wishing to make statements for the record should bring a copy of their statements to the meeting. Oral statements may be limited in length, if the number of parties present at the meeting necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the meeting or mailed to the Service. Written comments will be given the same weight as oral comments. The comment period closes

on July 14, 1992. Written comments should be submitted to the Service in the "**ADDRESSES**" section.

Author

The primary author of this notice is Barry S. Mulder, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181, 503–231–6730.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 1, 1992.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92–13172 Filed 6–8–92; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for following properties being considered for listing in the National Register were received by the National Park Service before May 30, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 24, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Russell County

Pitts, Samuel R., Plantation, E of US 431, S of Southern RR tracks, Pittsview vicinity, 92000819

FLORIDA

Flagler County

Old Bunnell State Bank Building, 101—107 N. Bay St., Bunnell, 92000824

Pinellas County

Pinellas County Courthouse, Old, 315 Court St., Clearwater, 92000828

Volusia County

Young S. Cornelia, Memorial Library, 302 Vermont Ave., Daytona, 92000823

KANSAS

Johnson County

WPA Beach House at Gardner Lake, W shore of Gardner Lake, N of Gardner, Gardner vicinity, 92000826

Shawnee County

Woodward, Chester B., House 1272 SW. Fillmore St., Topeka, 92000817

MINNESOTA

Brown County

Chicago and North Western Depot, Oak St., NW., Sleepy Eye, 92000822

Pine County

District School No. 74, Co. Hwy. 22 N of Co. Hwy. 30, Danforth Township, Sandstone vicinity, 92000820

Ramsey County

Harriet Island Pavillion, 75 Water St., St. Paul, 92000821

NEBRASKA

Douglas County

Omaha Bolt, Nut and Screw Building (Warehouses in Omah MPS), 1316 Jones St., Omaha, 92000816

TENNESSEE

Rutherford County

Jordan, William, B., Farm, 2665 Taylor Ln., Eagleville vicinity, 92000825

WISCONSIN

Richland County

Coumbe, John, Farmstead, Jct. of WI Trunk Hwy. 60 and Co. Trunk Hwy. X, Town of Richwood, Port Andrew, 92000827

[FR Doc. 92–13282 Filed 6–8–92; 8:45 am]

BILLING CODE 4136–65–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Victoria Dettmar, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202 927–5750 or (202) 927–6211.

Comments on the following assessment are due 15 days after the date of availability:

AB–55–422X, CSX Transportation, Abandonment in Ludington and Mason Counties, Michigan. EA available 5/27/92.

Comments on the following assessment are due 30 days after the date of availability:

AB–55 (Sub–No. 414X), CSX Transportation Inc., Abandonment Exemption in Bell County, KY. EA available 5/22/92.

AB–55 (Sub–No. 417X), CSX Transportation Inc., Abandonment in Randolph County, WV. EA available 5/22/92.

AB–55 (Sub–No. 406X), CSX Transportation, Abandonment in Weakley County, Tennessee. EA available 6/2/92.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 92–13478 Filed 6–8–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement; Design, Development, and Implementation of Community Corrections Options

May 29, 1992.

This solicitation requests grant proposals for a cooperative agreement to conduct a training and technical assistance project aimed at increasing the effectiveness of community corrections programs by supporting purposeful design, development and implementation efforts in state and local agencies. The Project will be a collaborative venture with NIC's Community Corrections Division. The maximum amount available is $150,000 for a 12 to 15 month period.

Background

Corrections is expressing enormous interest in experimentation with community punishments. Agencies are struggling to provide a more diverse array of sanctions, higher quality supervision, and more accountability for a growing number of offenders—all at a time when resources are decreasing for many agencies. Recent literature on the development of community corrections programs has focused attention on the critical need for more purposeful and disciplined program design, implementation, and evaluation if community sanctions are to achieve articulated and measurable results.

A continuing interest of the Community Corrections Division is to provide assistance to agencies in the early stages of program design and implementation. In 1990, the Division supported a program design workshop for community corrections practitioners Three-person teams from five jurisdictions participated in two, intensive 1-week seminars, which were separated by a period for program design work at participants' home agencies. The workshop was conducted

by the Crime and Justice Foundation, Boston, Massachusetts, under a cooperative agreement grant with NIC. The project cost $90,000.

In the current fiscal year, the Division expanded resources for this project and revised the project strategy to enable more intensive technical assistance to agencies throughout the entire program design, development and implementation process. Changes in project strategies included: The addition of substantial on-site work with each jurisdiction team prior to participating in a single seminar (i.e., dropping the required two-seminar format), greater attention to the development of a sound information base to support rational program design, and expanded attention to the organizational climate in the agencies in which the program changes will occur.

Project services will continue to be provided by a grantee agency under the terms of a cooperative agreement. The Division has chosen the cooperative agreement as its funding vehicle because it provides the most appropriate structure for close collaboration between the Division and the service provider. The Division will be actively involved in all aspects of the work, including the selection of applicants, and the design and delivery of project services. NIC will retain the authority to approve the final selection of participating jurisdictions.

Scope

The goal of the project is to improve program effectiveness by supporting careful program development and more complete implementation of program changes through an integrated program of training and technical assistance. Project services will be provided to teams of community corrections executives and key staff from a limited number of agencies/jurisdictions seeking to introduce, modify, or expand community sanctions for sentenced adult offenders.

The project assumes that for community corrections programs to succeed they must be well designed and fully implemented. This requires agencies to engage in a rational development process, including articulating clear policy on the goals, outcomes, intervention approaches and target populations of the proposed program. The agencies need to weigh the impact of proposed changes on other parts of the criminal justice system, carefully target offender populations, consider cost implications and work to gain the external and internal support of major stake holders and implementers.

The project intends to help community corrections agencies do a better job of designing and implementing whatever changes in program or procedures are important to them in order to achieve their defined outcomes. It will in no way direct or coerce agencies toward specific program choices or activities. It also is important to distinguish this project from the policy development assistance offered by such efforts as the joint NIC/State Justice Institute' Intermediate Sanctions Project. This is not primarily a policy development project. We expect that agencies will be proceeding with the program development tasks of this project within the context of an articulated policy direction.

In sum, the project offers an opportunity to slow down the development process, to resist the often extreme pressure to adopt a "quick fix" or a model solution, and to plan a rational and practical approach.

Agencies Targeted to Receive Project Services

State, county, and large city, adult community corrections agencies (probation, parole, or other community-based agencies) with sufficient staff and financial resources to support the planning process will be eligible to apply for the project. Applicant agencies must demonstrate a strong interest and commitment to implementing the proposed change in their sanctioning and supervision practices. They also need to supervise a large enough population so that the proposed change will impact a significantly sized offender group. They should propose a three person team with the experience and authority to succeed in the program development effort (e.g., the chief administrator, principal planner, and/or key staff responsible for program implementation). The team may also include senior managers or officials, from any branch of government (e.g., a funding agency), who are critical to the successful design and implementation of the program.

Project Activities

A formal announcement of project services will be made by NIC's Community Corrections Division and the grantee. The announcement will describe fully the project approach and services, application requirements, selection criteria, number of participating jurisdictions and the deadline for the receipt of applications.

Prior to selecting agencies for this project, telephone interviews and, in some cases, on-site visits should be conducted with promising candidates to assess both the internal, organizational climate and external factors which may indicate whether the agency is in a good position to engage in program change or innovation at this time.

Project activities will begin with on-site work by the local agency team, assisted by project (grantee) staff, and in some cases by the NIC project manager. The initial work should focus on an assessment of such issues as the level of support for proposed changes among significant stake holders, the quality of data with which to engage the program development process, and the capacity of the agency to conduct the effort including any organizational issues which should be addressed.

Several months after project initiation, a three to five day seminar will be offered to participating teams. Teams may be asked to do advanced reading and other preparation work for the seminar. The seminar should provide a common framework for program development and implementation, offer hands-on experience with some critical aspects of the work, offer opportunities for peer consultation, and result in a work plan for the agency which will include a preliminary outline of further technical assistance needed from the project.

Technical assistance, tailored to the specific needs of each jurisdiction, will be provided for the duration of the project. Participating agencies must make a commitment to attend the seminar and participate in the entire, fifteen month project.

Expenses for travel, lodging, meals and seminar materials will be covered by the project for up to three members of each agency team. Additional team members may attend the seminar at the expense of the jurisdictions, however, such additional participation will depend on the seminar goals and approach.

Application Requirements

Applicants are expected to define the conceptual framework(s) which best applies to this project, propose a number of agencies to receive assistance, discuss the varying purposes of technical assistance to support the work of participating teams, and define the likely content and timing for the seminar for participating agencies. Recognizing the various kinds of expertise required by the project, applicants are to identify the principal members of the applicant team and their specific, relevant expertise. Because this is a cooperative venture with the Community Corrections Division, applicants also should address

how they would perform the project tasks in collaboration with NIC.

At a minimum, applications must address:

• The development and implementation of a plan: to publicize the project and solicit applications from eligible community corrections agencies; develop selection criteria; screen applications with telephone calls and, in some cases, on-site visits; and recommend a number of agencies to receive assistance. As stated earlier, NIC will retain the authority under the cooperative agreement to approve final participant selections.

• The planning, delivery and management of an integrated, technical assistance project, consisting of preliminary on-site work with the participating agencies, a 3 to 5 day seminar, and follow-on technical assistance. Efforts should be made to include community corrections practitioners as peer consultants, where appropriate. This is the primary task of the project.

• Preparation of a report which summarizes the activities of the participating agencies and makes recommendations concerning ways to improve program development and implementation in community corrections agencies. While NIC is interested in summarizing the practical experience and learning from this effort, the primary intent of the project is to maximize the technical assistance to participating agencies. This task is an important but secondary objective of the project.

Application Procedures

1992 Project. Funding for this project has been set at $150,000. This amount will support one cooperative agreement award. Project activities must be completed within a 15 month period.

1993 Project Continuation. Subject to satisfactory performance in the FY 1992 project, the approval of a grant proposal for the FY 1993 continuation project, and the availability of funds; an award will be made to the successful cooperative agreement grantee from this solicitation to continue the project approach with a number of additional jurisdictions. Funding for the 1993 continuation project is set at $150,000.

The following criteria will be used to evaluate applications:

1. The applicant's understanding of the concepts and critical issues in a) the design, implementation and evaluation of community corrections programs; b) planned change in a criminal justice system context; and c) organizational development and management to support major program changes.

2. The applicant's demonstrated capacity to collaborate with other organizations on such efforts.

3. The applicant's experience, both in terms of key project staff and the organization, in working with community corrections agencies on program design issues, planning and conducting training for community corrections practitioners, and delivering and managing technical assistance programs.

4. The soundness of the proposed project objectives and methodology, including the approach to publicizing the program, selecting participants, providing the integrated technical assistance services, and planning and conducting the seminar.

5. The feasibility of the proposed management plan, the specificity of the proposed tasks, the nature of the proposed roles and responsibilities relating to collaboration with NIC, and the identification of realistic milestones and task completion dates.

6. The reasonableness and clarity of the proposed budget and budget narrative.

Applications should not exceed twenty -five, double-spaced, typed pages in length, not including standard grant forms, attachments and appendices. Applications should be received in six copies by the Community Corrections Division, National Institute of Corrections, 320 First Street, NW., Washington, DC 20534, no later than 4 p.m., Eastern time, Friday, July 10, 1992. The street address for overnight mail or hand delivery of applications is 500 First Street, NW., room 700, Washington, DC 20534. If you have any questions regarding the solicitation, please write or call Phyllis Modley, (202) 307–3995.

Dated: June 4, 1992.

George M. Keiser,

Acting Director, National Institute of Corrections.

[FR Doc. 92–13511 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–36–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by July 3, 1992, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by June 24, 1992.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Final Descriptive Report Form and Instructions for the State and Regional and the Arts in Education Programs

Frequency of Collection: Annually

Respondents: State governments

Use: Form elicits relevant information and will be used for monitoring state and regional arts agency activities; coordination of Endowment activities with those of state and regional arts agencies; and reporting on the types of projects, groups, and localities benefiting from state and regional arts agency support.

Estimated Number of Respondents: 63

Average Burden Hours Per Response: 2.75

Total Estimated Burden: 173.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92–13428 Filed 6–8–92; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Underserved Set-Aside Advisory Group (Presidential Initiative on Rural Development Section) to the National Council on the Arts will convene on June 22, 1992 from 1 p.m.–4 p.m. via teleconference from room 520 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–13400 Filed 6–8–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Antarctic Tour Operators; Meeting

The National Science Foundation announces the following meeting:

Name: Antarctic Tour Operators Meeting
Date & Time: July 8, 1992, 9 a.m.–5 p.m.
Place: National Science Foundation, Room 540, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Nadene G. Kennedy, Polar Coordination Specialist, Division of Polar Programs, National Science Foundation Washington, DC 20550, Telephone: 202/357/7817.
Purpose of Meeting: Pursuant to the National Science Foundation's responsibilities under the Antarctic Conservation Act (Public Law 95–541) and the Antarctic Treaty, the U.S. Antarctic Program Manages plan to meet with Antarctic Tour Operators to exchange information concerning dates and procedures for visiting U.S. Antarctic stations, review the latest Antarctic Treaty Recommendations concerning the environment and protested sites, and other items designed to protect the Antarctic environment.

Agenda:

- Introduction and Overview
- Review of 1991–92 visits to Palmer Station
- Tour Operator's Comments on 1991–92 Season Visits
- 1992–93 Visits to Palmer Station
- 1992–93 Visits to McMurdo Station
- Status of Palmer Station Long-Range Development
- Southwest Anvers Island Multiple Use Planning Area
- USAP Observers Reports
- 1992–93 Season Observer Program
- Review of Sites Visited 1990–92
- Scientific Study on Tourism and the Environment/Long-Term Ecological Research (LTER)
- East Base Clean-up and Future Visits
- Proposed Waste Management and Waste Disposal Regulations
- Legislation and Implementation of the Protocol on Environmental Protection to the Antarctic Treaty
- Administration Legislation
- 17th Antarctic Treaty Consultative Meetings—Tourism Issues
- Other Items.

John B. Talmadge,

Head, Polar Coordination and Information Section, Division of Polar Programs.

[FR Doc. 92–13434 Filed 6–8–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–530]

Arizona Public Service Co., et al.; Palo Verde Nuclear Generating Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. NPF–74, issued to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power and Southern California Public Power Authority (the licensees), for operation of the Palo Verde Nuclear Generating Station, Unit No. 3, located in Maricopa County, Arizona.

Environmental Assessment

Identification of Proposed Action

The exemption from 10 CFR 50.46, 10 CFR part 50, appendix K, and 10 CFR 50.44 would allow the substitution of up to a total of 80 fuel rods clad with advanced zirconium-based alloys in two fuel assemblies for in-reactor performance evaluation purposes during cycles 4, 5, and 6.

The exemption is in accordance with the licensee's application for Technical Specification amendment dated December 20, 1991.

The Need for the Proposed Action

The licensee's basis for the exemption is presented below:

The Code of Federal Regulations, 10 CFR 50.46 and 10 CFR 50, appendix K contain requirements for emergency core cooling systems (ECCS) at light-water nuclear power plants fueled with uranium oxide pellets within cylindrical zircaloy cladding. Requirements for control of hydrogen gas at light-water reactors fueled with oxide pellets within cylindrical zircaloy are contained in 10 CFR 50.44. The regulations do not define what is considered zircaloy. Therefore, it is not clear whether the deviations from the composition specifications of Zircaloy-4 of some of the fuel rods in the proposed demonstration program are within the regulatory basis of the zircaloy specified in 50.46, appendix K, and 50.44. Arizona Public Service Company requests that an exemption be granted to 10 CFR 50.46, 10 CFR 50, appendix K, and 10 CFR 50.44 to permit the use of fuel rods clad with zirconium-based alloys whose compositions are outside the range of Zircaloy-4.

The underlying purpose of 10 CFR 50.46 and 10 CFR part 50 appendix K is to establish requirements for calculations of emergency core cooling systems. The safety analysis for the Technical Specification change to allow the use of the advanced alloy cladding in the PVNGS Unit 3 demonstration assemblies identifies that the behavior of the alloys is expected to be essentially the same as that of conventional Zircaloy-4 under all conditions experienced during both normal operation and under the conditions existing during the loss-of-coolant accident (LOCA) transient. Therefore, the 10 CFR 50.46 and 10 CFR 50, appendix K criteria will be satisfied for the advanced alloys.

The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a LOCA. The safety analysis for the Technical Specification change to allow the use of the advanced alloys in the PVNGS Unit 3 demonstration assemblies identifies that the B phase oxidation rate of the advanced alloys will be comparable to or lower than that of Zircaloy-4. Therefore, the use of the advanced alloys will have no significant effect on previous assessments of hydrogen gas production.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of this proposed exemption, and concludes that unfavorable operational or safety considerations will not be introduced by this action, and no perceptible impact on the environment will result. The advanced cladding alloys are expected to perform as well

as the Zircaloy-4 cladding. The fuel assemblies meet the same design bases as fuel currently in the reactor. No safety limits have been changed or set points altered to permit the use of these new assemblies. In addition, the FSAR analyses are bounding for the new assemblies. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption involves the use of fuel rods with advanced zirconium-based alloys. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption and associated amendment. This would not reduce environmental impacts of plant operation and would deny the licensee the opportunity to test cladding with improved corrosion resistance properties.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Palo Verde Nuclear Generating Station, Unit No. 3 dated February 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 19, 1992 (57 FR 6034). No request for hearing or petition for leave to intervene was filed following this notice. For further details with respect to this action, see the licensee's application for amendment dated December 20, 1991, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 2nd day of June, 1992.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Project III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13522 Filed 6-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8903]

Homestake Mining Co., Milan Mill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend source material license SUA-1471 for the Milan Mill to approve a plan for reclamation of the facility.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-1471, Homestake Mining Company's Milan Mill, to add a new license condition approving a reclamation plan and to revise an existing license condition.

DATES: The comment period expires July 9, 1992.

ADDRESSES: Copies of the license amendment request and the staff evaluation which is the basis for revision of the license are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC complete review and approval of detailed reclamation (i.e., final closure) plans, for nonoperational tailing impoundments as soon as practicable, but in any event not later than September of 1993.

The NRC in a letter dated May 22, 1986, informed the licensee that a reclamation plan and surety arrangement adequate to meet the requirements of 10 CFR 40, appendix A, was required. The licensee provided a conceptual reclamation plan on December 1, 1986. This reclamation plan was revised and supplemented several times, and on January 31, 1991, the final reclamation plan was submitted.

The NRC has reviewed the proposed final reclamation plan and other supporting information, against current design guidance, and has determined that the plan meets the requirements of 10 CFR 40, appendix A. In addition to the commitments in the reclamation plan, the licensee will be required to provide additional information on any design changes to the radon barrier necessitated by the results of ongoing physical testing, additional information on settlement of the top of the large pile, quality assurance and controls to be utilized during construction, and details of the designs of the toe aprons and toe drainage systems on both piles.

Dated at Denver, Colorado, this 1st day of June 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-13524 Filed 6-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8907]

United Nuclear Corp., Church Rock Mill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent to Amend Source Material License SUA-1475 for

the Church Rock Mill to Incorporate Reclamation Schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-1475, United Nuclear Corporation's Church Rock Mill, to incorporate a revised reclamation schedule and to add a new license condition.

DATE: The comment period expires July 24, 1992.

ADDRESSES: Copies of the response from United Nuclear Corporation and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, Colorado, and the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 80226.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO 80225. Telephone: 303-231-5800.

The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also specified dates for completion of placement of a final earthen cover for each site.

The NRC requested by a letter dated October 22, 1991, that the licensee submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a response on November 28, 1991.

The proposed schedule calls for placement of the final cover by December 31, 1997, which is the same date as in the MOU for this mill. The NRC staff reviewed the reclamation milestone schedule and concluded that it is reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA-1475 to incorporate the schedules proposed by the licensee by adding License Condition No. 35 to read as follows:

35. The licensee shall complete site reclamation in accordance with the approved reclamation plan and ground-water corrective action plan, as authorized by License Condition Nos. 34 and 30, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile-complete.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion—complete.

(3) Placement of final radon barrier designed and constructed to limit radon emission to an average flux of no more than 20 $pCi/m^2/s$ above background—December 31, 1997.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40—December 31, 1997.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 1995.

C. Any license amendment request to revise the completion dates specified in section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in section B above must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 29th day of May 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-13525 Filed 6-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-2900092; License No. 47-24832-01; EA 91-116]

Order Imposing Civil Monetary Penalty; Dag Hammarskjold Cancer Treatment Center, Beckley, WV

I

Dag Hammarskjold Cancer Treatment Center (Licensee) is the holder of a Medical Private Practice License No. 47-24832-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on August 28, 1986. The license authorizes the Licensee to practice nuclear medicine in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on August 14-15, 1991. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 23, 1991. The Notice stated the nature of the violations, the NRC requirements violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letters dated November 26 and December 4, 1991. In its responses, the Licensee denied three violations, admitted seven violations, contended two violations were inaccurate and requested total mitigation of the civil penalty.

III

In consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations, with the exception of Violations F and G, occurred as stated and that the penalty proposed for the violations identified in the Notice should be imposed. No monetary penalty was assessed for Violation A due to the reasons described in the Appendix. With respect to Violations F and G, Violation G is withdrawn and Violation

F is amended as described in the Appendix to this Order.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $1,040 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street NW., suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission requirements as set forth in Violations A, F, as amended, H, and I of the Notice, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland, this 2d day of June 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusion

On October 23, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Dag Hammarskjold Cancer Treatment Center responded to the Notice on November 26 and December 4, 1991. In its responses, the licensee denied three violations (A, F, and G), admitted seven violations (B, C, D, E, J, K, and L) and contended two violations (H and I) were inaccurate. In addition, the licensee requested mitigation of the civil penalty and that the violations be treated as minor. The NRC's evaluation and conclusion regarding the licensee's denial and contention of inaccurate Violations and request for mitigation of the civil penalty are as follows:

Restatement of Violation A

10 CFR 35.13(b) requires that a licensee apply for and must receive a license amendment before it permits anyone, except a visiting authorized user described in 10 CFR 35.27, to work as an authorized user under the license.

Contrary to the above, from September 1987 to August 15, 1991, the licensee permitted a physician to work as an authorized user under License No. 47–24832–01; however, that individual was not a visiting authorized user as described in 10 CFR 35.27, and the licensee had not received a license amendment naming that individual as an authorized user.

Summary of Licensee's Response to Violation A

The licensee denied this violation and states that it is untrue that the Director, the physician referenced in the violation, was permitted to work as an authorized user of radiopharmaceuticals for human uses (including diagnostic purposes). The licensee stated that, at worst, there may have been unintentional confusion, but no intentional violation. The licensee supported its statements by the following:

1. The Director understood he was not an authorized user when the license was applied for in 1986; that is why he had listed Radiologists on the license as authorized users. Because of the distance from the office of the identified authorized users to the Director's clinic, arrangements were made for the Director to work under the listed Radiologists' supervision. The licensee asserts that there would have been no need to include the other physicians on the license if it had been the Director's intention or interpretation to serve as an authorized user.

2. The Director believed that the Radiologists' interpretation of each study performed and the followup of any suggestions they made on these studies satisfied the requirement of "used under supervision." The patients were seen and followed up by the Director in the clinic, and each study was analyzed and reported by the Radiologists.

3. In the 1987 NRC inspection, the arrangement described in Item 2 above was found to be satisfactory and no violations were found. Therefore, the Director had no reason to believe continuation of the arrangement with the Radiologists constituted any form of violation.

The licensee indicated that as soon as a different interpretation was made after the August 1991 NRC inspection, corrective actions were taken. The licensee also requested the violation be treated as minor.

NRC Evaluation of Licensee's Response

The licensee acknowledges that the Director was using radiopharmaceuticals under the NRC license during the period cited in the violation for diagnostic nuclear medicine procedures on humans. The licensee agrees that the Director was not listed on the NRC license as an authorized user. The licensee argues, however, that the Director was acting under the supervision of authorized users (the Radiologists), as permitted by the NRC. The NRC disagrees. The Director did not operate under the supervision of any of the physicians listed on the license as authorized users between September 1987 and August 15, 1991. Section 35.25 of 10 CFR 35 specifies particular actions which must be taken if the licensee permits an individual to use materials under the supervision of an authorized user. The August 1991 inspection included interviews of the two authorized users named on the license at the time of the inspection and concluded that authorized users had not performed any of the actions listed in § 35.25. One physician stated he had never visited the licensee's facility, nor had he consulted with the licensee or evaluated nuclear medicine scans for the licensee. The second physician stated that he read scans delivered to him by the licensee, but he had not visited the facility nor had he consulted with the licensee prior to the ordering and administration of radiopharmaceuticals to humans. In addition, information acquired during the inspection indicated that the original eight physicians named on the license as authorized users had not visited the facility and provided only nuclear medicine scan reading services for the licensee. By letter dated August 28, 1986, the NRC transmitted the license and designated specific individuals by

name to act as authorized users and perform certain human use medical procedures. Additionally, the letter stated that the NRC had not authorized the Director to "independently use licensed materials for medical purposes." The letter also documented a telephone conversation on August 12, 1986, between the license reviewer and the Director in which this restriction was explained to the Director. Notwithstanding these communications, the Director assumed all the responsibilities of an authorized physician-user specified by Regulatory Guide 10.8, Revision 1, referenced in the licensee's application for a license dated March 6, 1986, with the exception of interpreting the results of diagnostic procedures in which radiopharmaceuticals are used.

The Director indicated that he had no reason to believe his understanding and actions were in violation of Commission requirements, since a 1987 NRC inspection found no violations. The NRC inspection report does indicate no violations in this area and indicates that licensed material was being used by authorized individuals "as per application," although at the time of the inspection in 1987, none of the named authorized users were present at the facility, nor were they interviewed.

The Director may have believed he was working under the supervision of an authorized user and that his actions were in compliance with NRC regulations. However, the evidence clearly indicates that he was not being supervised by an authorized user, and in fact had assumed the responsibilities of an authorized user contrary to the regulation. The NRC does not agree that this violation is minor. Independent use of radiopharmaceuticals on humans by unauthorized or unsupervised physicians raises a regulatory concern which could manifest itself as a significant safety issue. The licensee initiated corrective actions after the 1991 inspection to clarify the supervisory role of its authorized users in relation to licensed activities.

The NRC concludes that the violation did occur as stated in the Notice. However, as a result of the questions concerning the 1987 inspection, the proposed civil penalty for this violation is withdrawn.

Restatement of Violation F

10 CFR 35.51(c) requires, in part, that a licensee check each survey instrument for proper operation with the dedicated check source each day of use.

Contrary to the above, from September 1987 to August 15, 1991, the licensee routinely did not check its survey meter with a dedicated check source on days when the instrument was used. The licensee did not have a dedicated check source in its possession.

Summary of Licensee's Response to Violation F

The licensee denied that radiation survey instruments were not routinely checked with a dedicated check source on days when the instrument was used and denied that it did not possess a check source. The licensee stated that the two instruments in its possession both contained built-in cesium 137 check sources, and that the survey meters were checked with the built-in check source on each day of use. Additionally, the licensee stated that a cobalt 57 source was available. The licensee stated that the survey meters were tested with the check sources.

NRC Evaluation of Licensee's Response

With regard to the licensee's statement concerning the possession of check sources, the NRC acknowledges that the radiation survey instruments in the possession of the licensee contained built-in check sources. Additionally, the NRC accepts the licensee's contention that a cobalt 57 source was possessed by the licensee and available for checking survey instruments, though 10 CFR 35.51(c) specifies the use of a "dedicated" check source when checking survey meters. Therefore, the NRC has concluded that the citation in this regard was in error. Although the licensee's response indicates survey meters were checked with check sources each day of use, during the inspection, the technologist who performed radiological surveys for the licensee was not aware that the instrument contained built-in check sources, nor was the technologist aware that a cobalt-57 source was available for checking survey instruments. Additionally, the technologist stated that she did not check each instrument with any dedicated check source prior to performing radiation surveys.

Therefore, the NRC concludes that the licensee did fail to routinely check its survey meter on days when the instrument was used, and this aspect of the violation did occur as stated in the Notice. However, the violation is amended by deleting the sentence "The licensee did not have a dedicated check source in its possession." Deleting this sentence does not impact the civil penalty in that the violation was for failure to check the survey instruments, not for failure to possess a source to perform such checks.

Restatement of Violation G

10 CFR 35.70(d) requires, in part, that a licensee establish radiation dose trigger levels for daily and weekly surveys of areas where radiopharmaceuticals are routinely prepared for use or administered and areas where radiopharmaceuticals or radiopharmaceutical waste is stored.

Contrary to the above, from September 1987 to August 15, 1991, the licensee did not establish radiation dose trigger levels for its daily surveys of the nuclear medicine imaging and hot lab rooms where radiopharmaceuticals were prepared, administered, stored, or held as waste.

Summary of Licensee's Response to Violation G

The licensee denied that radiation dose trigger levels for daily surveys of the nuclear medicine imaging and hot lab rooms had not been established, and provided representative copies of survey data sheets to demonstrate that the trigger levels were included in the survey record forms.

NRC Evaluation of Licensee's Response

During the inspection, the licensee's technologist indicated that the licensee had not established radiation dose rate trigger levels for daily surveys. However, the data sheets submitted with the response do indicate trigger levels. The NRC determines this to be a misunderstanding of what the NRC was requesting during the inspection. Based on the copies of survey data sheets with radiation dose rate trigger levels provided in the licensee's response to the Notice, the NRC is withdrawing this violation.

Restatement of Violation H

10 CFR 35.70(e) requires that a licensee survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

Contrary to the above, during the weeks of October 1987 to August 15, 1991, the licensee did not survey for removable contamination in the nuclear medicine imaging and hot lab rooms, areas where radiopharmaceuticals were routinely prepared, administered, and stored.

Summary of Licensee's Response to Violation H

The licensee stated that the violation is inaccurate in that some contamination surveys have been performed since October 1987. The licensee provided examples of weekly survey results

performed in 1988 which they state are contamination surveys because the records show background levels of less than 30 counts per minute (cpm). The licensee admits there were no contamination surveys performed during weeks when technetium-99m (Tc-99m) was used one time. The licensee contends that when radiopharmaceuticals containing Tc-99m are prepared and used in the nuclear medicine department, and if the frequency of use is once per week, a daily radiation survey for measuring exposure rates in preparation and use areas is adequate for detecting removable contamination. The licensee explains that the nuclear medicine department used radiopharmaceuticals containing Tc-99m at a frequency of only once a week during the majority of the time. The licensee states that under these conditions, the weekly removable contamination survey was not performed because it will not detect any removable contamination since Tc-99m only has a six hour half-life.

The licensee indicates that a program has been implemented to perform weekly surveys for removable contamination whether or not radiopharmaceuticals containing Tc-99m are used once a week or not at all.

NRC Evaluation of Licensee Response

Weekly surveys were not performed for removable contamination as described in 10 CFR 35.70. First, the licensee admits the surveys were not done during some weeks. Second, at the time of the inspection, the inspector noted that the technologist who performs the licensee's radiological surveys indicated that she had performed contamination surveys with a survey instrument and had recorded the results on the data sheets in units of cpm. After explaining to the technologist how a wipe survey for removable contamination should be conducted per the regulations, the technologist acknowledged that she had never performed a wipe survey for removable contamination in the manner described. Statements made by the technologist indicated that weekly radiation surveys for measuring ambient exposure rate, rather than weekly wipe surveys for detecting removable contamination, had been performed. The technologist was unaware of the difference between the two different types of surveys and the associated results.

The NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I

10 CFR 35.70(g) requires, in part, that a licensee establish removable contamination trigger levels for weekly surveys of all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

Contrary to the above, from September 1987 to August 15, 1991, the licensee did not establish removable contamination trigger levels for surveys of the nuclear medicine imaging and hot labs rooms where radiopharmaceuticals were prepared, administered, and stored.

Summary of Licensee's Response to Violation I

The licensee stated the violation is inaccurate in that removable contamination trigger levels had been established for weekly surveys of the nuclear medicine imaging and hot lab rooms. The licensee indicated that the trigger levels were included on the bottom of each survey sheet as background for non high radiation areas and 5 mR/hr (which represents 1000 cpm) for high radiation areas.

NRC Evaluation of Licensee's Response

The NRC agrees that the licensee had established trigger levels for various areas of "less than 5 mR/hr" and "should not exceed background levels" on each survey sheet, but these were used as trigger levels for measuring ambient exposure rates and not for levels of removable contamination. Discussions with the licensee's technologist and Radiation Safety Officer (Director of clinic) and reviews of the licensee's response to Violation H concerning removable contamination surveys indicated that contamination surveys were neither properly performed, nor had trigger levels been established for removable contamination. Also, during the inspection, the technologist was not aware of established trigger levels for removable contamination.

The licensee contends that the trigger levels of 5 mR/hr could be equated to 1000 counts per minute for removable contamination. However, the NRC determined that the licensee's Radiation Safety Officer and technologist were incorrectly comparing direct radiation surveys for measuring ambient exposure rates to contamination trigger levels established for removable contamination surveys. As discussed in Violation H, the licensee failed to perform removable contamination surveys.

The NRC concludes that the violation did occur as stated in the Notice

Summary of Licensee's Request for Mitigation

The licensee stated that the violations should be classified as Severity Level V violations and not considered in the aggregate as Severity Level III. The licensee bases this request on (1) each violation is minor because no harm or "untoward effects" occurred, (2) first time violations have been cited, (3) there were inaccurate citations, (4) there was no willful disregard for the requirements, nor was there any economic advantage gained and (5) the director's desire to provide needed care to his patients and handle all pressures for a small clinic led to his being unaware of the presence of the violations. The licensee also requested that the civil penalty be mitigated based on the following: (1) Violations were corrected as soon as possible and preventive measures taken to prevent recurrences, (2) the director was unaware of the violations and thus, did not have the opportunity to identify them himself, (3) none of the violations caused any harmful effects, (4) the clinic is small with limited nuclear medicine studies, (5) none of the violations were willful, and (6) there had been no previous violations.

NRC Evaluation of Licensee's Request for Mitigation

The NRC expects the licensee, particularly the Radiation Safety Officer, to identify violations of NRC requirements promptly and to take effective corrective action to prevent recurrences. In this case, the licensee's system in place to promptly identify and correct violations broke down, and as a result some of these violations continued for more than three years. In the Enforcement Conference and in the responses to the Notice, the licensee admits this breakdown and contends it was due, in part, to the loss of staff whom the Director had delegated to oversee the program. Although the licensee took immediate corrective action once the problems were identified by the NRC, it failed to develop a definitive plan for re-establishing effective long-term oversight of the radiation safety program until prompted by the NRC. For example, the licensee did not pursue recalibrating instruments and setting up an oversight scheme until the NRC issued a Confirmatory Action Letter.

The licensee states the violations were minor because there were no harmful effects. This is fortuitous. For example, for more than three years the licensee did not check its instrument

used to measure patient doses for accuracy. The failure to test a dose calibrator for accuracy is a violation of more than minor safety significance. The failure to calibrate survey instruments and the failure of the Radiation Safety Officer (the Director in this case) to assure that radiation activities were being performed on a day-to-day basis in accordance with approved procedures are also of more than minor safety significance.

The nature and scope of the business conducted by "Academic or Medical Institutions" were considered in developing the base civil penalty in Table 1A, Category "h" of the NRC Enforcement Policy. In addition, the NRC took into account the size and scope of this licensee's program when assessing the civil penalty in this case. In view of the actions taken and upon review of the licensee's response to the Notice, the NRC has determined that the licensee has not demonstrated that its ability to safely conduct licensed activities would be adversely affected by this civil penalty. The NRC considered that none of the violations were willful and that they had not been previously cited in 1987 when determining the civil penalty in this case. For the violations that were not withdrawn or modified, the licensee's response to the Notice does not provide any information that was not already known at the time the NRC determined the civil penalty.

NRC Conclusion

The NRC concludes that, with the amendment of Violation F and the exception of Violation G, the violations occurred as stated. No monetary penalty was assessed Violation A. Since the civil penalty was assessed equally among 12 violations, the withdrawal of Violation G and the withdrawal of the monetary penalty associated with Violation A results in a reduction of the civil penalty by 1/6 or approximately $210. Consequently, a civil penalty in the amount of $1,040 is being imposed.

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[Docket No. 50-315]

Indiana Michigan Power Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-58 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Plant, Unit No. 1 located in Berrien County, Michigan.

The proposed amendment would change TS Sections 4.4.5.2, 4.4.5.3, 4.4.5.4, 4.4.5.5, 3.4.6.2, and the Bases 3/4.4.5, 3/4 4.6.2 and 3/4 4.8 to allow the implementation of interim steam generator tube plugging criteria for the tube support plant evaluations. The amendment also reduces the allowed primary-to-secondary operational leakage from any one steam generator from 500 gallons per day to 150 gallons per day. The total allowed primary-to-secondary operational leakage through all steam generators is reduced from one gallon per minute (1440 gallons per day) to .42 gallons per minute (600 gallons per day). This proposed amendment is only applicable for fuel cycle 13.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Relative to the expected leakage during accident condition loadings, the accidents that are affected by primary-to-secondary leakage and steam release to the environment are: Feedwater system malfunction, loss of external electrical load and/or turbine trip, loss of all AC power to station auxiliaries, major secondary system pipe failure, steam generator tube rupture, reactor coolant pump locked rotor, and rupture of a control rod drive mechanism housing. Of these, the major secondary system pipe failure is the most limiting for Cook Nuclear Plant Unit 1 in considering the potential for off-site doses. Upon implementation of the interim plugging criteria, it will be verified that the distribution of cracking indications at the tube support plate intersections is such that primary-to-secondary leakage would result in site boundary doses within a small fraction of the 10 CFR part 100 guideline, i.e., 30 rem thyroid, during a postulated Steam Line Break (SLB) event. Data indicates that a threshold voltage of 2.8 volts would result in through-wall cracks with the potential to leak at SLB conditions. Application of the proposed plugging criteria requires that the current distribution of number of crack indications versus voltage be obtained. The indicated bobbin coil voltage is then combined with the rate of change in voltage measurement to establish an end-of-cycle (EOC) voltage distribution and, thus, leak rate during SLB pressure differential. If it is found that the projected SLB leakage for degraded intersections planned to be left in service exceeds 120 gpm, then additional tubes will be plugged to reduce projected SLB leakage below 120 gpm. Results from analyses, based on the Cook Nuclear Plant Unit 1 growth rate and assumed eddy current uncertainties, indicate that over 4000 indications, all with a bobbin coil (BOC) voltage of 2.0 volts, would contribute less than 1 gpm leakage at SLB conditions. Based on the inspection results from the last outage (1990), indications left in service are expected to have a total predicted SLB leak rate of 0.1 gpm at EOC conditions. Therefore, it has been shown that an interim plugging criteria of 1.0 volt will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the Possibility of a New or Different Kind of Accident From any Previously Analyzed

Implementation of the proposed amendment does not introduce any changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the tube support plant elevations. Neither a single nor multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions). The bobbin coil signal amplitude interim plugging criteria of 1.0 volt is established such that neither operational leakage nor excessive leakage during a postulated SLB condition are anticipated.

Indiana Michigan Power Company will implement a maximum leakage rate

limit of 150 gpd (0.1 gpm) per steam generator to help preclude the potential for excessive leakage during all plant conditions upon application of the interim plugging criteria. The current technical specification limit on primary-to-secondary leakage at operating conditions is a maximum of 1.0 gpm (1440 gpd) for all steam generators or a maximum of 500 gpd for any one steam generator. The 150 gpd limit provides for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. Therefore use of the interim plugging criteria of 1.0 volt will not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a Significant Reduction in a Margin of Safety

The use of the interim plugging criteria for the tube support plate at Cook Nuclear Plant Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the requirements of Regulatory Guide (RG) 1.121. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection. Tubes with unacceptable cracking will be removed from service. The most limiting effect would be a possible increase in leakage during a steam line break event. Once the interim plugging criteria is applied, excessive leakage during a steam line break event is precluded by verifying that the expected end-of-cycle distribution of crack indications at the tube support plate elevations would result in minimal and acceptable primary-to-secondary leakage during all plant conditions. This helps to demonstrate that radiological conditions are less than a small fraction of the 10 CFR part 100 guideline.

Implementation of the interim plugging criteria is supplemented by 100% inspection requirements at the tube support plate elevations having outer diameter stress corrosion cracking indications (ODSCC), reduced operating leak rate limits, and eddy current inspection guidelines to provide consistency in voltage normalization. Implementation of the interim plugging criteria will decrease the number of tubes which must be repaired or taken out of service by plugging. The installation of steam generator tube plugs reduces the reactor coolant system (RCS) flow margin and, thus, implementation of the interim plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Therefore, it is concluded that the proposed change does not result in a significant reduction in a margin of safety with respect to plant safety as defined in the Final Safety Analysis Report or any bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 9, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to

matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ledyard B. Marsh: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 27, 1992, and supplements dated April 21 and May 21, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 3d day of June 1992.

For The Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–13526 Filed 6–8–92; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Proposed Amendments to the Columbia River Basin Fish and Wildlife Program

May 29, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed amendments to the Columbia River Basin Fish and Wildlife Program (measures for anadromous fish, phase 3).

SUMMARY: Pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et seq.*) the Pacific Northwest Electric Power and Conservation Planning Council (Council) has proposed amendments to the Columbia River Basin Fish and Wildlife Program (program). The amendments propose major changes to the salmon and steelhead provisions of the program. Copies of the proposed amendments are now available, and comments are solicited.

BACKGROUND: The Council is in the third phase of a four-part process to amend the Columbia River Basin Fish and Wildlife Program (program). In phases one and two, the Council adopted amendments regarding priority habitat and production amendments and major mainstem and harvest measures. The Council is now initiating phase three, by proposing a series of further amendments to the program, to be circulated for public comment. Proposed phase three amendments address program goals and objectives, system planning, monitoring and evaluation, and major salmon and steelhead habitat and production issues. Phase four, to address resident fish and wildlife, is expected to begin in September, 1992.

OPPORTUNITY FOR COMMENT: The Council will receive written comment on the proposed amendments (including any provisions adopted previously in phases one or two) through 5 p.m. Pacific time, July 9, 1992. Comments should be clearly marked "Salmon Amendment Comments," and submitted to the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204. After the close of comment, the Council may initiate further consultations. July 30 and 31 have been identified as tentative dates for such consultations. A final decision whether to hold such consultations has not been made. Please call the Council's central office at 1–800–222–3355 and leave your name and telephone number if you wish to receive notice of such consultations.

HEARINGS: Hearings will be held on the proposed amendments, or on recommendations submitted on August 9, as follows:

June 2—Red Lion Hotel, Pasco, WA, 1 p.m. and 5:30 p.m.

June 3—Angus Inn, Eugene, OR, 7 p.m. to 10 p.m.

June 3—Sheraton Hotel, Aronson Room, Great Falls, MT, 3 p.m. to 7 p.m.
June 4—Holiday Inn, Ballroom B, Missoula, MT, 3 p.m. to 7 p.m.
June 8—Hoke Memorial Center, Eastern Oregon State College, Rooms 309–310, LaGrande, OR, 7 p.m. to 10 p.m.
June 10–11—Templin's Resort Hotel, Post Falls, ID, 10 a.m.
June 16—Community Center, Salmon, ID, 7 to 10 p.m.
June 16—Clatsop Community College, Performing Arts Center, Astoria, OR, 7 p.m. to 10 p.m.
June 24—Central office, Portland, OR, time to be announced.
June 29—Holiday Inn, Sea-Tac, Seattle, WA, 1 p.m. and 5:30 p.m.
June 30—Owyhee Plaza, Boise, ID, 3 p.m. to 5 p.m. and 7 p.m. to 9 p.m.
July 8–9—Outlaw Inn, Kalispell, MT, time to be announced.

Please contact the Council's Public Affairs Division to reserve a time to testify. Witnesses should be prepared to summarize briefly, rather than read, any written statement they wish to enter into the record.

FOR FURTHER INFORMATION: For copies of the proposed amendments (request document no. 92–16), contact the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355.

Edward W. Sheets,
Executive Director.

[FR Doc. 92–13435 Filed 6–8–92; 8:45 am]
BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30769; File No. SR–MCC–92–3]

Self-Regulatory Organization; Midwest Clearing Corp.; Filing and Order Approving on an Accelerated Basis a Proposed Rule Change To Allow Participants To Access Fund/SERV Through DTC

June 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] notice is hereby given that on April 30, 1992, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MCC. The Commission is publishing this notice and order to solicit comments from interested persons and to approve the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1) (1988)

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow MCC members to participate in the National Securities Clearing Corporation's ("NSCC") Mutual Fund/Settlement, Entry, Registration, and Verification System ("Fund/SERV") through The Depository Trust Company's ("DTC") Participant Terminal System ("PTS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 31, 1989, the Commission permanently approved a proposed rule change by MCC to establish facilities for MCC participants' use of Fund/SERV.[2] Generally under Fund/SERV, MCC participants exchange data with NSCC, MCC's Fund/SERV facilities manager, either directly or through the use of service bureaus. Most, if not all, MCC participants utilize service bureaus. Currently, MCC participants transmit Fund/SERV data to NSCC, and NSCC retransmits the data to the appropriate mutual fund. MCC participants, however, settle Fund/SERV transactions at MCC.

The purpose of the proposed rule change is to allow MCC participants greater flexibility in exchanging Fund/SERV data with NSCC by enabling them to transmit such data to DTC through PTS. DTC will then retransmit the data directly to NSCC through existing communications facilities between NSCC and DTC.[3] Use of PTS will be limited to Fund/SERV transactions.

This alternative communication link between MCC participants and NSCC will allow MCC participants to avoid entering into costly and time-consuming interfacing arrangements with independent service bureaus.[4] By facilitating participant communication through preexisting linkages between DTC and NSCC, the proposed rule change also encourages the further use of data processing arrangements and linkages among clearing agencies and settlement facilities.

The proposed link through DTC will not change MCC's Fund/SERV rules except that MCC participants using the linkage will be required to sign a Fund/SERV Interface Participant's Agreement and MCC will sign DTC's standard Fund/SERV Interface Participant's Agreement. Participants in the enhanced service will agree to abide by both DTC's and NSCC's procedures as they relate to the Fund/SERV Interface. MCC participants will continue to settle Fund/SERV transactions at MCC. MCC will, in effect, sponsor its participants into the Fund/SERV link at DTC.

The proposed rule change is consistent with Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of mutual fund transactions. By encouraging the use of more efficient means of communications among Fund/SERV participants, the link with DTC will likely result in more effective and efficient clearance and settlement of mutual fund transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MCC has neither solicited nor received comments on the proposed rule change.

[2] Securities Exchange Act Release No. 26506 (January 31, 1989), 54 FR 6051; *see also* Securities Exchange Act Release No. 26216 (October 25, 1988), 53 FR 43954 (temporary approval order).

[3] Securities Exchange Act Release No. 27056 (July 24, 1989), 54 FR 31752 (order approving establishment of Fund/SERV interface between DTC and NSCC).

[4] In addition to providing communication links between MCC participants and Fund/SERV, service bureaus also provide various back-office services. Because many service bureaus lack the necessary front-end communications linkages needed to interface with NSCC, the development of such linkages typically involves considerable expenditures of both time and money. Telephone conversation between David Kiwaiko, Product Development Manager, MCC, and Richard C. Strasser, Attorney, Division of Market Regulation, Commission (May 6, 1992).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposal is consistent with Section 17A of the Act and specifically with Section 17A(b)(3)(F) of the Act. That section requires, among other things, that the rules of a clearing agency be designed to "remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions * * *" [5] Permitting MCC participants to access Fund/SERV directly through DTC rather than through service bureaus improves the existing Fund/SERV linkage between MCC and NSCC by providing participants a quick and efficient alternative way to access a service that promotes the prompt and accurate clearance and settlement of mutual fund transactions. The proposal is, therefore, consistent with the Commission's ongoing mandate to remove impediments to and perfect the mechanism for a national clearance and settlement system.

MCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving because it believes that to delay approval would unnecessarily hinder MCC's efforts to provide a valuable, time-saving, and cost-effective service to its participants. Currently, as discussed above, it is generally a time-consuming and expensive process for participants to establish, either directly or through independent service bureaus, the necessary front-end linkages necessary to allow MCC participants to access Fund/SERV. Under the proposed rule change, participants, through DTC's PTS, will be able to access Fund/SERV quickly and efficiently. Such cost and time savings justify approval of MCC's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR-MCC-92-3 and should be submitted by June 30, 1992.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule filing is consistent with the Act and in particular with Section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR-MCC-92-3) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13459 Filed 6-8-92; 8:45 am]

BILLING CODE 8010-01-M

[5] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30-3(a)(12) (1991).

SUSQUEHANNA RIVER BASIN COMMISSION

Increase in Interim Consumptive Use Fee

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of adoption of increase in interim consumptive use fee.

DATES: This action shall be effective on January 1, 1993.

SUMMARY: Notice is hereby given that the Susquehanna River Basin Commission has adopted an increase in its interim consumptive use fee.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel/Secretary to the Commission, 717/238-0423.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Susquehanna River Basin Commission adopted an increase in its interim consumptive use fee from $.06 per 1,000 gallons consumed to $.14 per 1,000 gallons consumed at its meeting on May 14, 1992.

The Commission has been charging this interim fee for certain permitted consumptive use projects which have not yet arranged to provide consumptive use makeup water or limit consumption to 20,000 gpd during periods of low flow as required under Regulation 18 CFR 803.61. The Commission reserved the right to increase this fee in the docket decisions approving these projects.

This action was first proposed in notices appearing in the **Federal Register** on April 1, 1992 at p. 11132, the New York Register on April 15, 1992 at p. 91, the Pennsylvania Bulletin on April 4, 1992 at p. 1632 and the Maryland Register on April 17, 1992 at p. 840. Public hearings were held on April 30, 1992 at Harrisburg, PA and on May 14, 1992 at Elmira NY. A number of written and oral comments were received which are summarized below along with responses thereto.

Comment: Commission calculation of the increase is incorrect for a number of reasons including: (1) They are based on costs for eight projects which are only proposed at this time; (2) Annualized cost estimates are too high; (3) The project costs have not yet actually been incurred and the Commission's estimates are therefore speculative. The increases should not be made effective until actual costs of storage are incurred.

Response: Staff analysis used to calculate the proposed increase was based on one existing project—the Cowanesque Water Storage Project; the proposed Curwensville Water Storage Project, a project for which staff possessed good, though not final, cost estimates; and six other projects for which the Commission possesses reasonably current and accurate data. Staff recommendations were based on the costs at Cowanesque and Curwensville, with the other six projects providing supporting evidence.

Staff annualized all costs (including ancillary costs like O&M and contract negotiations) to make them fully comparable with the Cowanesque and Curwensville analyses. The Cowanesque and Curwensville data indicate that such ancillary costs represent about 12% of the annual capital costs. Thus, this 12% figure has nothing to do with estimates of consumer price increases as suggested by one commentator.

The Commission rejects the idea that the careful economic analysis performed by staff is speculative. As for waiting until costs are actually incurred, certain costs, such as the Commission's non-federal share of the Curwensville Feasibility Study, have already been incurred. All monies collected by the Commission are being placed into a special fund to be used only for storage projects such as Curwensville or other

projects or programs designed to mitigate low flows.

Comment: Because of long-term contractual obligations, private, non-utility entities cannot pass on the increase in the interim consumptive use fee to ratepayers. The increase itself, from $.06 to $.14 per one thousand gallons consumed is unreasonable and burdensome to such entities, is an economic disincentive, and should be phased in more gradually.

Response: All permittees currently paying the interim consumptive use fee were given notice at the time of their docket approvals that the fee was subject to increase by the Commission. They were further informed that the fee was only being accepted by the Commission as an interim measure and that they were expected to make good faith efforts to locate a source of makeup water. Many other similarly situated private entities subject to the same economic forces have already made arrangements to provide makeup water during low flow events.

Rather than move vigorously to locate makeup water sources, however, some permittees have been content to continue paying the fee. To the extent that the increase fee will cause these permittees to renew their interest in locating a source of makeup water, it will have accomplished one of its objectives.

The Commission is not making the increase effective until January 1, 1993. This should provide sufficient time for permittees to adjust their budgets accordingly.

Comment: The Commission should give a credit to payers for such things as improved water quality discharges or removal of coal waste.

Response: The primary purpose of the Commission's consumptive use regulation is to mitigate the adverse effects associated with man's consumption of water during periods of low flow. Thus, it is a quantitatively rather than a qualitatively oriented regulation. Improved water quality or reduction in coal wastes do not, per se, add water to the river system during periods of low flow. Thus, an automatic credit for serendipitous impacts may not be appropriate, though the Commission may be willing to consider the merits of such credits on a case-by-case basis.

Resolution Adopting Increase in Interim Consumptive Use Fee

A resolution of the Susquehanna River Basin Commission providing for an increase in the SRBC interim consumptive use fee.

Whereas, under the Commission's Consumptive Use Regulation (18 CFR 803.61(c) (2) & (3)), alternatives to compensation may be allowed by the Commission, including "a monetary payment to the Commission in an amount to be determined by the Commission from time-to-time;" and

Whereas, the Commission, by docket decision, has allowed a number of consumptive use permittees to make monetary payments to the Commission at the rate of $.06 per 1,000 gallons of water consumed on an interim basis pending the location of a viable source of compensation; and

Whereas, in the said docket decisions, the Commission reserved the right to adjust this rate in the future; and

Whereas, Commission staff has completed an analysis of a revised fee schedule and its expected economic impacts; and

Whereas, the Commission, based on the findings of the staff analysis, believes that the current rate of $.06 per 1,000 gallons does not equitably reflect the true cost of providing compensation and therefore does not provide sufficient economic incentive for permitees to seek out sources of compensation as preferred by the Commission; and

Whereas, the Commission has held two public hearings affording an opportunity to the regulated community and the general public to comment on this matter.

Now therefore be it resolved that:

1. Pursuant to Commission Regulation 18 CFR 803.61(c)(2)&(3), and in accordance with the findings of the staff analysis, the interim consumptive use fee is hereby increased to the rate of $.14 per 1,000 gallons of water consumed for the above described projects and for all such prospective projects wherein an interim consumptive use fee is approved by the Commission.

2. This action shall be effective on January 1, 1993.

Authority: Susquehanna River Basin Compact, 84 Stat. 1509 et seq.

Dated: June 1, 1992.

Paul O. Swartz,

Executive Director.

[FR Doc. 92-13407 Filed 6-8-92; 8:45 am]

BILLING CODE 7040-01-M

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice 1635]

Announcement of FY 1992 Russian, Eurasian and East European Studies Grant Recipients

On May 18, 1992, the U.S. Department of State approved the November 8, 1991, recommendations of the Russian, Eurasian and East European Studies Advisory Committee for awards in the competition which ended September 20, 1991.

1. American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study

Grant: $418,295.

Purpose: To provide fellowships for advanced in-country language training and combined on-site research and language training in Russian, Czech/Slovak, Hungarian, Polish, and Serbian/Croatian.

Contact: Dan E. Davidson, Director, USSR Program Group, ACTR/ACCELS, Fifth Floor, 1619 Massachusetts Avenue NW., Washington, DC 20036 (202) 328-2287.

2. Council on International Educational Exchange

Grant: $233,000.

Purpose: To support 8 academic year and 9 semester fellowships for intensive in-country language training; 8 graduate research fellowships; and 20 fellowships for "Social Sciences Program for Advanced Students of Russian" at St. Petersburg University.

Contact: Damon B. Smith, Deputy Executive Director, Cooperative Russian Language Program/CIEE, 205 East 42nd Street, New York, NY 10017 (212) 661-1414.

3. Hoover Institution on War, Revolution and Peace at Stanford University

Grant: $200,000.

Purpose: To support postdoctoral fellowships (6-12 months duration) and summer grants for individual research projects on the Commonwealth of Independent States, Georgia, the Baltic countries, and Eastern Europe at Hoover.

Contact: Richard F. Staar, Coordinator, International Studies Program, Hoover Institution, Stanford, CA 94305 (415) 723-1348.

4. University of Illinois at Urbana-Champaign

Grant: $189,000.

Purpose: To provide partial funding for the University's Summer Research laboratory on Russia and Eastern Europe, and the Slavic Reference Service.

Contact: Diane Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 1208 W. California Avenue, Urbana, IL 61801 (217) 333-1244.

5. Institute on International Education

Grant: $92,570.
Purpose: To support Professional Development Fellowships for advanced graduate students and junior faculty in professional fields for research on policy analysis of East Central Europe, including the Baltic countries.
Contact: Mary E. Kirk, Program Manager, East Central Europe, Institute on International Education, 809 United Nations Plaza, New York, NY 10017–3580 (212) 883–8200, Fax (212) 984–5452.

6. International Research and Exchanges Board

Grant: $2,205,313.
Purpose: To support a variety of programs facilitating American scholarly access to the Commonwealth of Independent States, Georgia, the Baltic countries, and Eastern Europe: grants for independent short-term research; collaborative projects and senior scholar travel grants; special projects in Social Sciences & Humanities; specialized on-site language training grants; developmental fellowships; predeparture orientation for Americans; long-term individual research fellowships for American graduate students; research residencies in the former Soviet republics; and dissemination of field results.
Contact: Linda Sitea, IREX, 126 Alexander Street, Princeton, NJ 08540–7102 (609) 683–9500.

7. Joint Committee on Eastern Europe

Grant: $950,000.
Purpose: To support fellowships for advanced graduate training, dissertation completion, pre- and post-doctoral research; language training (elementary domestic and advanced on-site); research conferences; the Junior Scholars' Training Seminar; and a Teaching and Curriculum workshop.
Contact: Jason Parker, Executive Associate, JCEE/American Council of Learned Societies, 228 East 45th Street, New York, NY 10017 (212) 697–1505.

8. Joint Committee on Soviet Studies

Grant: $2,029,000.
Purpose: To support a national fellowship program for graduate training, dissertation completion, and postdoctoral research; a program for annual workshops in underrepresented fields; institutional language training awards for languages of the former Soviet Union; Research & Development program; and a national program for Slavic libraries, including support for the American Bibliography for Soviet and East European Studies (ABSEES).
Contact: Robert Huber, Staff Associate, JCSS/Social Science Research Council, 605 Third Avenue, New York, NY 10158 (212) 661–0280.

9. National Academy of Sciences

Grant: $240,000.
Purpose: To support training for young researchers in Energy Development and Environmental Protection with colleagues from Czechoslovakia, Ukraine and Byelarus.
Contact: Glenn Schweitzer, Director, Office of Soviet and East European Affairs, National Academy of Sciences, 2101 Constitution Avenue NW., HA-166, Washington, DC 20418 (202) 334–2644, Fax (202) 334–2614.

10. National Council for Soviet and East European Research

Grant: $2,459,185.
Purpose: To conduct a national competition among American institutions of higher education and non-profit corporations in support of postdoctoral research projects on the former Soviet Union and Eastern Europe.
Contact: Robert Randolph, Executive Director, NCSEER, 1755 Massachusetts Avenue, NW., suite 304, Washington, DC 20036 (202) 387–0168.

11. The Woodrow Wilson Center for International Scholars

Grant: $1,126,637 ($715, 865 to Kennan; $410,772 to EES).
Purpose: To support the fellowships, meetings, and publications programs of the Kennan Institute for Advanced Russian Studies and the East European activities of the East and West European Program, including an annual Junior Scholars' Training Seminar, co-sponsored with the JCEE.
Contact: Blair Ruble, Secretary, Kennan Institute, or John Lampe, East and West European Program. The Wilson Center, 370 E'Enfant Promenade, suite 704, Washington, DG 20024–2518 (202) 287–3000.

Dated: May 28, 1992.

Kenneth E. Roberts,

Executive Director, Russian, Eurasian and East European Studies Advisory Committee.

[FR Doc. 92–13289 Filed 6–8–92; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Roanoke Regional Airport, Roanoke, VA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Roanoke Regional Airport Commission for the Roanoke Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of FAA's determination on the noise exposure maps is June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA—Eastern Regional Office, Airports Division, AEA–610, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430, (718) 553–0902.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Roanoke Regional Airport are in compliance with applicable requirements of part 150, effective June 1, 1992.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the way in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Roanoke Regional Airport Authority. The specific maps under consideration are the noise exposure maps: Figure 14.2, 1991 Ldn Contours and Figure 14.3, 1996 Ldn Contours, appearing in the May 1992 revised submission of Volume 1 Noise Exposure Map Report.

The FAA has determined that these maps for Roanoke Regional Airport are in compliance with applicable

requirements. This determination is effective on June 1, 1992. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Eastern Regional Office, FAA—Fitzgerald Federal Building, Airports Division, rm. 337, JFK International Airport, Jamaica, NY 11430.

Washington Airports District Office, FAA—101 W. Broad St., suite 300, Falls Church, VA 22046.

Roanoke Regional Airport Authority, Roanoke Regional Airport, 5202 Aviation Drive, NW., Roanoke, VA 24012.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Jamaica, NY on June 1, 1992.

Peter A. Nelson,

Assistant Manager, Airports Division, Eastern Region.

[FR Doc. 92-13505 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

NHTSA Technical Industry Meeting (6/24/92); Amendment To Include Communication for Individuals With Disabilities

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Amendment of previous Notice.

The National Highway Traffic Safety Administration (NHTSA) is amending the Notice concerning the NHTSA Technical Industry Meeting published on Tuesday, May 26, 1992, page 22017 of the **Federal Register** to include the requirement of accessibility for the disabled individual.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366-1810, by COB June 15, 1992.

SUPPLEMENTARY INFORMATION: The meeting will be held at the Ramada Inn, 8270 Wickham Road, Romulus, Michigan. The Ramada Inn includes facilities that are accessible to disabled individuals.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Carnes, Office of Rulemaking, NHTSA, 400 7th Street, SW., Washington, DC 20590. Ms. Carnes telephone number is (202) 366-1810.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13432 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC-34; OTS No. 0864]

Merit Savings Association, Cincinnati, OH; Final Action; Approval of Conversion Application

Notice is hereby given that on May 28, 1992, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Merit Savings Association, Cincinnati, Ohio, for permission to convert to the stock form of organization, in connection with a holding company merger conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and at the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601.

Dated: June 3, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-13454 Filed 6-8-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-36; OTS No. 4901]

Peoples Federal Savings & Loan Association of Bellevue, Bellevue, KY; Final Action; Approval of Conversion Application

Notice is hereby given that on May 28, 1992, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Peoples Federal Savings and Loan Association of Bellevue, Kentucky, for permission to convert to the stock form of organization, in connection with a holding company for inspection of the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and at the Central Regional Office, Office of the Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601.

Dated: June 3, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-13457 Filed 6-8-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-35; OTS No. 0718]

Suburban Federal Savings & Loan Association of Covington, Covington, KY; Final Action; Approval of Conversion Application

Notice is hereby given that on May 28, 1992, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Suburban Federal Savings and Loan Association of Covington, Covington, Kentucky, for permission to convert to the stock form of organization, in connection with a

holding company merger conversion. Copies of the application are available for inspection at the information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and at the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601.

Dated: June 3, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-13456 Filed 6-8-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-33; OTS No. 0317]

Thrift Savings Loan Company, Cincinnati, OH; Final Action; Approval of Conversion Application

Notice of hereby given that on May 28, 1992, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Thrift Savings and Loan Company, Cincinnati, Ohio, for permission to convert to the stock form of organization, in connection with a holding company merger conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and at the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601.

Dated: June 3, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-13455 Filed 6-8-92; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 111
Tuesday, June 9, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 11, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED Choking Hazards (Small Human Figures).

The Commission will consider options to address the risk of choking injuries and deaths from small human figures and other toys of similar dimensions with rounded ends.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary. 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: June 4, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–13613 Filed 6–5–92;12:27 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Wednesday, June 10, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Infant Cushions: Final Rule.

The Commission will consider a final rule addressing the risk of injury and death presented by infant cushions.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: June 4, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–13614 Filed 6–5–92; 12:41 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

Notice

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: June 10, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 960th Meeting—June 10, 1992, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 7225–006, Little Salmon River Estates, Inc.
Project Nos. 7378–008, 7380–009 and 7383–009, Renewable Resources Development and Carlson Hydroelectric Corporation
Project No. 7899–009, Renewable Resources Development and Jungert Corporation, Inc.

CAH–2.
Project No. 3206–028, City of New Martinsville, West Virginia

CAH–3.
Project No. 6901–015, City of New Martinsville, West Virginia

CAH–4.
Project No. 2570–020, Ohio Power Company

CAH–5.
Project No. 2205–011, Central Vermont Public Service Corporation

CAH–6.
Omitted

CAH–7.
Project No. 7728–015, Robley Point Hydro Partners Limited Partnership

CAH–8.
Project No. 7270–008, Northern Wasco County People's Utility District

CAH–9.
Omitted

CAH–10.
Project No. 10727–001, Robert W. Shaw

CAH–11.
Omitted

CAH–12.
Project No. 6433–003, Warren B. Nelson
Project No. 6434–006, Thomas A. Nelson
Project No. 6435–001, Joseph B. Nelson

Consent Electric Agenda

CAH–1.
Project No. ER92–461–000, People's Electric Cooperative

CAE–2.
Docket Nos. ER92–317–000 and ER92–456–000, Public Service Company of Colorado

CAE–3.
Docket Nos. ER91–620–000 and EL92–31–000, Central Maine Power Company

CAE–4.
Docket No. EF92–5171–001, United States Department of Energy—Western Area Power Administration (Salt Lake City Area Integrated Projects)

CAE–5.
Docket Nos. ER92–323–001 and ER92–324–001, Appalachian Power Company

CAE–6.
Docket Nos. ER91–494–002 and ER91–471–002, PacifiCorp Electric Operations

CAE–7.
Omitted.

CAE–8.
Docket Nos. ER92–143–001 and EL92–21–001, Florida Power and Light Company

CAE–9.
Docket No. ER91–505–003, Pacific Gas & Electric Company
Docket No. EL92–2–001, City of Vernon, California v. Pacific Gas and Electric Company
Docket No. EL91–8–002, Transmission Agency of Northern California V. Pacific Gas and Electric Company
Docket No. EL92–18–001, Pacific Gas and Electric Company

CAE–10.
Docket No. ER91–616–000, The Empire District Electric Company

CAE–11.
Docket No. RM92–3–001, Annual Update of Commission Filing Fees

CAE–12.
Docket No. ER91–562–000, Virginia Electric and Power Company

Consent Oil and Gas Agenda

CAG–1.
Omitted

CAG–2.
Docket No. TM92–6–25–000, Mississippi River Transmission Corporation

CAG–3.
Docket No. RP92–161–000, Penn-York Energy Corporation

CAG–4.
Omitted

CAG–5.
Omitted

CAG–6.
Docket No. RP92–48–003, Viking Gas Transmission Company

CAG–7.
Docket Nos. RP90–104–106, RP88–115–027, RP92–131–002 and CP91–676–002, Texas Gas Transmission Corporation
CAG–8.
Docket No. RP89–242–006, Tennessee Gas Pipeline Company
CAG–9.
Docket No. RP91–203–013, Tennessee Gas Pipeline Company
CAG–10.
Docket No. RP92–134–001, Southern Natural Gas Company
CAG–11.
Docket No. RP87–15–032, Trunkline Gas Company
Docket No. RP92–128–001, Panhandle Eastern Pipe Line Company
CAG–12.
Docket No. RP92–122–001, Trunkline LNG Company
Docket No. RP92–124–001, Trunkline Gas Company
Docket No. RP92–125–001, Panhandle Eastern Pipe Line Company
CAG–13.
Docket No. RP92–126–001, Trunkline Gas Company
Docket No. RP92–127–001, Panhandle Eastern Pipe Line Company
CAG–14.
Docket No. RP92–120–001, Panhandle Eastern Pipe Line Company
CAG–15.
Docket Nos. RP92–104–000, 001, RP92–131–001 and 002, K N Energy, Inc.
CAG–16.
Omitted
CAG–17.
Docket No. TA92–1–7–001, Southern Natural Gas Company
CAG–18.
Omitted
CAG–19.
Docket Nos. TM92–6–48–000 and 001, ANR Pipeline Company
CAG–20.
Docket No. TM91–7–28–000, Panhandle Eastern Pipe Line Company
CAG–21.
Docket Nos. CP86–578–034, CP89–1740–008 and RP90–147–002, Northwest Pipeline Corporation
CAG–22.
Docket Nos. RP91–212–002, 003, 004, 005, 006 and 007, Stingray Pipeline Company
CAG–23.
Docket Nos. RP91–79–006, 001, TM91–4–2–000, 001, 002, TM92–2–2–000, RP91–204–003, RP90–111–000 and RP85–47–000, East Tennessee Natural Gas Company
CAG–24.
Docket No. PR92–2–000, Phillips Texas Border Pipeline Company
CAG–25.
Docket No. PR91–23–000, Midcoast Ventures I
CAG–26.
Docket No. RP92–142–000, Penn-York Customer Group v. Penn-York Energy Corporation
CAG–27.
Docket No. RP92–145–000, Natural Gas Clearinghouse v. Panhandle Eastern Pipe Line Company
CAG–28.
Docket No. RM91–8–001, Qualifying Certain Tight Formation Gas for Tax Credit
CAG–29.
Docket No. GP92–5–000, Wyoming Oil and Gas Conservation Commission, Wyoming 23—Second Frontier Formation, Sweetwater County, FERC No. JD92–00803T
CAG–30.
Docket Nos. GP92–2–000 and 001, Michigan Consolidated Gas Company
CAG–31.
Docket Nos. RP91–140–000 and 001, Questar Pipeline Company
CAG–32.
Docket Nos. RP92–73–000, RS92–21–000 and CP92–508–000, National Fuel Gas Supply Corporation
CAG–33.
Docket Nos. RS92–18–000 and RS92–102–000, Kentucky West Virginia Gas Company
CAG–34.
Docket Nos. RP92–83–000 and RP91–141–005, Williston Basin Interstate Pipeline Company
CAG–35.
Docket No. CP89–1281–017, Natural Gas Pipeline Company of America
CAG–36.
Docket No. RP91–169–000, Northern Border Pipeline Company
CAG–37.
Docket Nos. RS92–45–000 and CP89–1281–020, Natural Gas Pipeline Company
CAG–38.
Docket No. RS92–71–000, Overthrust Pipeline Company
CAG–39.
Docket No. RS92–85–000, Trailblazer Pipeline Company
CAG–40.
Omitted
CAG–41.
Docket No. CP91–2759–001, Northern Natural Gas Company
CAG–42.
Docket No. CP92–256–001, Transcontinental Gas Pipe Line Corporation
CAG–43.
Docket No. CP91–2394–001, Questar Pipeline Company
CAG–44.
Docket No. CP91–1110–000 and 001, Colorado Interstate Gas Company
CAG–45.
Omitted
CAG–46.
Docket Nos. CP91–2322–003 and CP90–767–006, Paiute Pipeline Company
CAG–47.
Docket Nos. CP91–780–000, 001, 002, 003, RP92–112–000 and 001, Northwest Pipeline Corporation
CAG–48.
Docket Nos. CP92–243–000, Transwestern Pipeline Company
CAG–49.
Docket No. CP92–358–000, Colorado Interstate Gas Company
CAG–50.
Docket Nos. CP92–134–000 and 001, TOMCAT, a Texas Intrastate Pipeline
CAG–51.
Docket Nos. CI63–195–003, Tenneco Oil Company, TOC-Rocky Mountains Inc. and Amoco Production Company
CAG–52.
Docket No. RS92–90–000, Wyoming Interstate Company, Ltd.

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. ER91–576–000, Ocean State Power II. Order on rate filing for Phase II.
E–2.
Docket No. ER91–313–001, Pennsylvania Electric Company. Order on rehearing of Commission order on rate filing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Docket No. CP89–83–007, Williams Natural Gas Company. Whether the Commission has jurisdiction over facilities located entirely within Oklahoma used to provide transportation to an end-user.
PC–2.
Docket No. CP92–285–000, Richfield Gas Storage System. Order on application to construct and operate a new storage field to provide unbundled open access storage.
PC–3.
Docket No. CI88–496–001, O&R Energy, Inc.
Docket No. CI91–98–000, Southern California Gas Company
Docket No. CI91–115–000, San Diego Gas & Electric Company
Docket No. CI92–20–000, MASSPOWER
Docket No. CI92–22–000, The Berkshire Gas Company
Docket No. CI92–27–000, Boston Gas Company
Docket No. CI92–32–000, Oregon Natural Gas Development Corporation
Docket No. CI92–38–000, The Brooklyn Union Gas Company
Docket No. CI92–41–000, NI–TEX, Inc.
Docket No. CI90–151–001, Indeck Energy Services, Inc.
Docket No. CI91–34–001, Midland Cogeneration Venture Limited Partnership
Docket No. CI92–11–000, Tenaska Gas Company
Docket No. CI92–18–000, Tenaska Marketing Venture
Docket No. CI92–21–000, Destec Gas Services, Inc.
Docket No. CI92–39–000, MCV Gas Acquisition General Partnership
Docket No. CI92–43–000, Encogen Northwest, L.P.
Docket No. CI92–40–000, ONG Western, Inc., *et al.* Order on applications for new blanket marketer certificates and for amendment of existing blanket marketer certificates.

PC-4.
Docket Nos. CI90-58-001 and 002, New England Power and The Narragansett Electric Company
Docket No. CI91-33-002, JMC Fuel Services, Inc.
Docket No. CI91-35-002, Connecticut Natural Gas Corporation
Docket No. Docket No. CI91-52-002, Providence Gas Company and Prov. Energy Investments, Ltd.
Docket No. CI91-28-002, Northern Minnesota Utilities.
Docket No. CI91-75-000, Peoples Natural Gas Company, Division of Utilicorp United, Inc.
Docket No. CI91-78-000, Gulf States Pipeline Corporation
Docket No. CI91-79-002, Transock, Inc.
Docket No. CI91-85-002, Commonwealth Gas Company
Docket Nos. CI91-94-001 and 002, New York State Electric & Gas Corporation
Docket Nos. CI91-97-001 and 002, Niagara Mohawk Power Company
Docket Nos. CI91-104-001 and 002, New Jersey Natural Gas Company
Docket Nos. CI92-1-001 and 002, Washington Natural Gas Company
Docket Nos. CI89-461-001 and 002, Quantum Chemical Corporation
Docket Nos. CI91-68-001 and 002, Doswell Limited Partnership
Docket Nos. CI91-93-001 and 002, Lockport Energy Associates, L.P.
Docket Nos. CI91-101-001 and 002, Northeast Jersey Energy Associates
Docket Nos. CI91-102-001 and 002, Northeast Energy Associates
Docket No. CI91-103-000, Ocean State Power II
Docket No. CI91-106-001, Honda of America Mfg., Inc.
Docket Nos. CI91-126-001 and CI91-126-002, Manville Corporation, *et al.*
Docket Nos. CI91-128-001 and 002, Cogen Energy Technology, L.P. Order on requests for rehearing of orders issuing blanket marketing certificates.

PC-5.
Docket No. RM92-9-000, Regulations Governing Blanket Marketer Sales Certificates. proposed changes to regulations.

Dated: June 3, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13550 Filed 6-4-92; 4:51 pm]

BILLING CODE 6717-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 11, 1992, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Service Corporations—Amending part 611, subpart I, title VIII (Final).
b. Equal Access to Justice Act Implementation (Proposed).

2. Other

a. Charter Cancellations—Valentine PCA and O'Neill PCA.

Closed Session *

A. New Business

1. Enforcement Actions

Dated: June 4, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-13549 Filed 6-4-92; 4:50 pm]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

DATE TIME AND PLACE: June 30, 1992, 10:30 a.m., Commission Meeting Room (Room 856), 1919 M Street, N.W., Washington, D.C.

The agenda for the meeting will consist of:

1. Introduction
2. Minutes of Last Meeting
3. Report of Working Party 1 Policy and Regulation
4. Report of Working Party 2 Transition Scenarios
5. Scheduling of Final Report Submissions
6. General Discussion
7. Other Business
8. Date and Location of Next Meeting
9. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairs.

Any questions regarding this meeting should be directed to George Vradenburg III at (213) 203-1334, Dr. James J. Tietjen at (609) 734-2237, or Gina Harrison at (202) 623-7792.

Dated: June 4, 1992

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13595 Filed 6-5-92; 10:44 am]

BILLING CODE 6712-01-M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Monday, June 15, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13682 Filed 6-5-92; 3:48 pm]

BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 16, 1992.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Docket No. AB-117 (Sub-No. 6), *Elgin, Joliet and Eastern Railway Company—Abandonment—Will County, IL*
Ex Parte No. 346 (Sub-No. 14A), *Rail General Exemption Authority—Miscellaneous*

Agricultural Commodities—Petition of G. & T. Terminal Packaging Co., Inc. et al. to Revoke Conrail Exemption
Ex Parte No. 502, *Bulk Grain and Grain Products—Loss and Damage Claims*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 92–13476 Filed 6–4–92; 12:16 pm]
BILLING CODE 7503–01–M

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Open Forum on Library and Information Services' Roles in the National Research and Education Network (NREN)

DATE AND TIME:
July 20, 1992—9:00 a.m.–4:30 p.m.
July 21, 1992—9:00 a.m.–4:30 p.m.

PLACE: Department of Labor (Auditorium), 200 Constitution Avenue, N.W., Washington, D.C.

STATUS: Open.

PURPOSE OF THE FORUM: NREN is part of the High-Performance Computing Act of 1991. The NCLIS forum will help clarify the issues and concerns of the national library information services community, both as providers of information to be carried on NREN and as representatives of large groups of network users and potential users. Representatives of libraries, information services, and other industries, associations, agencies and institutions are invited to comment. The forum's findings will be made available to the Office of Science and Technology Policy (OSTP) prior to the December 1992, OSTP report to Congress on the NREN.

Those wishing to present oral and/or written statements should specifically address one or more of the areas to be covered in the report to Congress:

(1) Effective mechanisms for providing operating funds for the maintenance and use of the Network, including user fees, industry support, and continued Federal investment;

(2) The future operation and evolution of the Network;

(3) How commercial information service providers could be charged for access to the Network, and how Network users could be charged for such commercial information services;

(4) The technological feasibility of allowing commercial information service providers to use the Network and other federally funded research networks;

(5) How to protect the copyrights of material distributed over the Network; and

(6) Appropriate policies to ensure the security of resources available on the Network and to protect the privacy of users of networks.

Individuals interested in providing oral testimony should contact Kim Miller, NCLIS, 1111 18th St., N.W., Suite 310, Washington, D.C. 20036, Telephone: 202 254–3100, by June 30. Written statements must be received by August 31.

If you need special accommodations due to a disability, please contact Barbara Whiteleather (202) 254–3100.

FOR FURTHER INFORMATION CONTACT: Barbara Whiteleather, NCLIS.

Dated: June 4, 1992.

Peter R. Young,
NCLIS Executive Director.
[FR Doc. 92–13593 Filed 6–5–92; 10:44 am]
BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 57, No. 111
Tuesday, June 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-063-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

Correction

In notice document 92-11208 beginning on page 20449, in the issue of Wednesday, May 13, 1992, make the following corrections:

1. On page 20450, in the table, in the fourth column, under "Organisms", in the third paragraph, "Repeseed" should read "Rapeseed".

2. On the same page, in the same column, in the last paragraph, in the 2d line "*B*÷cillus", should read "*Bacillus*".

3. On the same page, in the first column, in the last paragraph, in the 2d line, from the end of the paragraph, "44 R 52172-51274," should read "44 FR 51272-51274".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

Correction

In notice document 92-12605 beginning on page 22727 in the issue of Friday, May 29, 1992, make the following correction:

1. On page 22728, in the first column, under **Commodities**, in the fourth line from the end of the paragraph should read "6510-00-582-7993".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0209]

Drug Export; Pronestyl®(Procainamide Hydrochloride) Capsules

Correction

In notice document 92-11003 beginning on page 20286, in the issue of Tuesday, May 12, 1992, make the following corrections:

1. On page 20286, in the 3d column, under **SUPPLEMENTARY INFORMATION:**, in the 8th and 11th lines, "Section 820(b)(3)(B) and (C)" should read "Section 802(b)(3)(B) and (C)".

2. On the same page, in the same column, in the same paragraph:

a. In the 18th line, "30 days" should read "10 days".

b. In the 10th line from the end of the paragraph "pronesty®" should read "pronestyl®".

c. In the 2d line from the end of the paragraph "March 30, 1992" should read "March 20, 1992".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-314 through 317 (Preliminary), and Investigations Nos. 731-TA-552 through 555 (Preliminary)]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil France, Germany, and the United Kingdom

Correction

In notice document 92-9040 beginning on page 14431 in the issue of Monday, April 20, 1992, the heading should read as set forth above.

BILLING CODE 1505-01-D

federal register

Tuesday
June 9, 1992

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172

Improvements to Hazardous Materials Identification Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-206; Notice No. 92-6]

RIN 2137-AB75

Improvements to Hazardous Materials Identification Systems

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), requires that the Secretary of Transportation initiate a rulemaking proceeding to determine: (1) Methods to improve the current system of placarding vehicles transporting hazardous materials; (2) methods for establishing and operating a central reporting system and computerized telecommunications data center; and (3) the feasibility, necessity and safety benefits of requiring carriers to establish continually monitored emergency response telephone systems. The purpose of this notice is to solicit public comments on these issues.

DATES: Comments must be received on or before August 10, 1992.

ADDRESSES: Copies of the HMTUSA may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371 (202) 275-2091. Comments to this ANPRM should be addressed to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590/0001. Comments should identify the Docket (HM-206) and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5046. Fax number: (202) 366-3753. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Potter, Office of Hazardous Materials Standards, RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. (202) 366-4488.

SUPPLEMENTARY INFORMATION:

I. Legislative Requirements

On November 16, 1990, the President signed into law the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Pub. Law 101-615) resulting in a number of amendments to the Hazardous Materials Transportation Act (HMTA) of 1974. Section 25 of HMTUSA requires DOT to initiate a rulemaking to determine methods of improving the current system of placarding vehicles transporting hazardous materials and to determine methods for establishing and operating a central reporting system and computerized telecommunications data center for tracking hazardous materials shipments.

The Act directs the Department to consider methods of improving the placarding system to include: (1) Methods to make placards more visible, (2) methods to reduce the number of improper and missing placards, (3) alternative methods of marking vehicles for the purpose of identifying hazardous materials being transported, (4) methods of modifying the composition of placards to ensure their resistance to fire, (5) improving the coding system used with respect to such placards, (6) identification of appropriate emergency response procedures through symbols on placards and (7) whether or not telephone numbers for continually monitored emergency response telephone systems should be displayed on vehicles transporting hazardous materials.

Section 25 also requires DOT to evaluate in a rulemaking proceeding: (1) Whether a central reporting system and computerized telecommunications center should be operated by the Federal government or a private entity, either on its own initiative or under contract with the United States, (2) the estimated annualized cost of establishing, operating and maintaining such a system and center and for carrier and shipper compliance with such a system, (3) methods for financing the cost of establishing, operating and maintaining such a system and center, (4) the projected safety benefits of establishing, operating and maintaining such a system and center, (5) whether or not shippers, carriers and handlers of hazardous materials should have access to such a system, (6) methods for ensuring the security of the information and data stored in such a system, (7) types of hazardous materials and types of shipments for which information and data should be stored in such a system, (8) the degree of liability of the operator of such a system and center for providing incorrect, false or misleading information, (9) deadlines by which shippers, carriers and handlers of hazardous materials should be required to submit information to the operator of such a system and center, and minimum standards relating to the form and content of such information, (10) measures for ensuring compliance with the deadlines and standards for operating such a system, and (11) methods for accessing such a system through mobile satellite service or other technologies having the capability to provide two-way voice, data or facsimile service.

Section 26 of HMTUSA requires DOT to initiate a rulemaking on the feasibility, necessity and safety benefits of requiring hazardous materials carriers (in addition to the existing requirement for shippers) to maintain continually monitored telephone systems to provide emergency response information and assistance. DOT is required to determine which hazardous materials, if any, would be covered by such a requirement.

II. Hazard Identification and Communication System Under the Hazardous Materials Regulations (HMR)

Over the last 25 years, DOT has developed a comprehensive hazardous materials identification and communication system for hazardous materials. The system is designed to provide enforcement, fire and emergency response personnel with information in the event of transportation incidents or accidents involving the release of hazardous materials. Hazard communication requirements are set forth in subparts C through G of part 172 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). The system involves communication of the following types of information: (1) Hazardous materials descriptions, including specific or generic proper shipping names, chemical or technical names, hazard classes, identification numbers, and other vital information, entered on shipping papers carried on the transport vehicle by the transporter; (2) hazardous materials proper shipping names and identification numbers, marked on non-bulk and bulk packages, (3) primary and subsidiary hazards, identified by labels affixed to packages, (4) primary hazards, identified by placards affixed to transport vehicles, freight containers and bulk packagings, and (5) emergency response information, entered on shipping papers, or presented in separate documents.

Emergency response information must be maintained on the transport vehicle, train, vessel or aircraft during transportation of the hazardous material in the same manner as is required for shipping papers. On aircraft, emergency response information must be maintained in the same manner as is required for the notification to the pilot-in-command. The information describes immediate hazards to health, risks of fire or explosion, precautions to be taken by responders first arriving at the scene of an incident, initial methods for handling spills and leaks in the absence of fire, and preliminary first aid measures to be taken. This information may be entered on shipping papers, presented on appropriate guide pages in DOT's "Emergency Response Guidebook," on material safety data sheets, or in other appropriate emergency response guidance documents.

Shippers who offer hazardous materials for transportation must also enter an emergency response telephone number on the shipping paper. The number must be monitored at all times while shipments are being transported or are stored incident to transportation. In effect, a first responder using that number must be able to contact, in one phone call, a person who is either knowledgeable about the material and has comprehensive response and mitigation information, or has immediate access to such a person.

Firefighters and emergency response personnel have been trained to use hazard communication and emergency response information in responding to incidents. DOT shipping paper information, package commodity markings, hazard warning labels and vehicle placards are cross-referenced in DOT's Emergency Response Guidebook (ERG), which provides guidance for initial actions to be taken in response to hazardous materials incidents. Since 1980, RSPA has distributed more than 3.5 million copies of the ERG to emergency response entities without charge.

The current hazard communication system is recognized worldwide. DOT has aligned U.S. hazard communication requirements with international standards with adoption in 1976 of labels and placards conforming to United Nations (UN) recommendations.

III. Placarding System: Background and Potential Changes

In September 1976, the Materials Transportation Bureau (predecessor of RSPA) issued final rules under Docket HM–103/112 (41 FR 40614–40691, September 20, 1976) to adopt a uniform vehicle placarding system. Final rules in HM–103/112 also required cargo tanks, portable tanks and tank cars to be uniformly marked and prescribed format improvements for shipping paper entries. Prior to the adoption of the uniform system that is now employed, shippers and carriers claimed they were burdened with a complex placarding system that failed to adequately communicate hazard information. Each mode of transportation had its own placarding system. While motor vehicles displayed hazard warnings (e.g., Flammable) text on rectangular background placards, rail car placarding contained detailed text on a square-on-point background.

Under HM–103/112, DOT established uniform placard formats and procedures among the different modes of transportation. In place of extensive textual elaboration of hazards on placards (e.g., "CAUTION This Car Contains POISON GAS Beware of Fumes from Leaking Packages") DOT revised its placarding format to display only single hazard class names with associated colors and pictographs. A final rule issued in 1977 achieved a unified placarding system.

DOT more closely aligned with the UN-recommended hazard communications system under Docket HM–181 (55 FR 52402–52729, Dec. 21, 1990). For example, DOT adopted the UN-recommended Dangerous When Wet (4.2) placard to replace the Flammable Solid W placard and added the Spontaneously Combustible (4.3) placard for which, under the old system, there is no separate hazard class. The placards displayed in subpart F of part 172 under Docket HM–181 largely retain the DOT format established in 1976. They are basically consistent with international and Canadian requirements, with minor differences in placard size and format. Provisions for placarding in subpart F of 49 CFR part 172 cover placard visibility, display and location (§ 172.516), placard size and construction specifications (§ 172.519), placard graphics (§§ 172.522–560), placarding exceptions and prohibited placarding (§ 172.502), and hazard class numbers on placards (§ 172.334). For most materials, changes to placarding requirements under Docket HM–181 go into effect on October 1, 1994.

Under HM–181, RSPA also adopted the UN-recommended Class 9 placard for miscellaneous materials many of which were previously regulated by DOT as other regulated materials (ORMs) and were not subject to placarding requirements. The UN-recommended "Keep Away From Food" placard for low-hazard Class 6 poison materials also was adopted. Petitions to reconsider the final rule questioned the need for these placards. They pointed out that some ORMs excepted from placarding under 49 CFR are regulated under HM–181 as Table 2 materials requiring placarding when transported in amounts exceeding 1,000 pounds gross weight. Under § 391.11(a)(7) of the Federal Motor Carrier Safety Regulations (FMCSR), a vehicle used to transport hazardous materials is defined as a "commercial vehicle" requiring the driver to carry a commercial license if the vehicle contains a quantity of materials requiring placarding under 49 CFR. Petitioners stated that motor carriers transporting Class 9 miscellaneous materials or materials classified under the existing ORM class, other than hazardous wastes, have not been subject to the FMCSR because these materials were not subject to placarding. For the same reasons, petitioners also recommended excepting Molten Sulfur from Class 9 placarding, as now required by § 172.504(a).

In recent years, at least one organization has advocated replacement of the existing placarding system. During 1989 Congressional hearings on HMTA Amendments, the International Association of Fire Fighters (IAFF) expressed the view that DOT's placarding system is inadequate to provide essential response information. IAFF testified before the House Subcommittee on Surface Transportation on July 12, 1989 that, "current Federal law requires shippers to place placards on vehicles to identify hazardous cargoes, but often the placard is missing, burning or inaccurate." ("Hearings before the Subcommittee on Surface Transportation of the Committee on Public Works, House of Representatives, 101st Congress, First Session," pp. 896) IAFF stated that emergency responders would be better served by a computerized telecommunication system proposed in legislation introduced on June 8, 1989 (H.R. 2584), which was subsequently enacted in HMTUSA.

In this notice, RSPA also addresses whether or not the general prohibition contained in § 172.502(b) should be modified to specifically apply to the practice of displaying logos and slogans (e.g.; "Drive Safely") on closed flip-type placard devices. Section 172.502(b) prohibits any display which "* * * by its color, design, shape or content could be confused with any placard described * * *" in the HMR. RSPA and the Federal Highway Administration believe that the use of logos and slogans on flip-type devices diminishes the

effectiveness of required placarding and that consideration should be given to specifically prohibiting them.

IV. Central Reporting System and Telecommunications Center: Background

Section 109(d)(1)(B) of the HMTA, which was not amended by the HMTUSA, requires the Secretary to establish and operate a central computerized data center to provide "technical and other information and advice for meeting emergencies" to firefighters and law enforcement personnel.

Since March 13, 1980, DOT has considered the section 109 requirement satisfied by recognizing the Chemical Transportation Emergency Center (CHEMTREC) operated by the Chemical Manufacturers Association (CMA) in a "Statement of Formal Recognition and Attendant Understandings." The Statement describes the CHEMTREC service "as a source of case-by-case telephonically issued information and advice to public and private bodies and organizations and other persons confronted with chemical and other hazardous materials emergency incidents."

CHEMTREC has been in operation 24 hours a day, seven days a week, since September 1971 providing fire service, law enforcement, emergency response, medical, and industry personnel with essential on-scene emergency information. Through its operation of an "800" number, CHEMTREC provides immediate guidance to any caller, at no charge, from the private and public sector who has an emergency involving any hazardous material. CHEMTREC also acts as a bridge to thousands of entities for immediate, detailed guidance on how to handle emergencies involving hazardous materials. Since adoption of a requirement to enter an emergency response telephone number on shipping papers (Docket HM–126C; 55 FR 33707; August 17, 1990), a number of entities now offer emergency response information services in addition to CHEMTREC.

The need for a central computerized reporting system for all hazardous materials shipments has been at issue for over five years among three different Congressional committees, the emergency response community, including firefighter organizations, industry, and RSPA. Proponents of a mandated central computerized reporting system, including IAFF, believe that there are inadequacies in existing information systems that threaten the safety of firefighters and the public. Opponents have expressed the view that it is unlikely that any of the few serious accidents that have occurred in recent years would have been prevented or mitigated by the information a centralized system would provide, and that such a system would be costly and impractical given the number of shipments involved.

Section 25 of HMTUSA directs DOT to institute this rulemaking report to Congress on ways such a system could be implemented. The Secretary also must give substantial weight in the rulemaking to recommendations made by the National Academy of Sciences (NAS) regarding the "feasibility and necessity" of implementing a centralized reporting and data system. The NAS study is mandated by section 25(b)(1) of HMTUSA.

In May 1991, DOT entered into a contract with NAS to conduct the study. A 16-member committee was formed, representing industry, academic, emergency response and firefighter communities. The first meeting of the Committee for the Assessment of a National Hazardous Materials Shipment Information System took place on November 13–14, 1991, establishing parameters for the study and project time-lines. The committee is scheduled to complete its study and report to Congress and the Secretary of Transportation in November 1992.

V. Request for Comments

Comments are requested in regard to methods for improving the current placarding system, establishing a centralized reporting system and computerized data center and requiring carriers to establish continually monitored emergency response telephone systems. Reasons should be given for supporting or opposing any of the proposed changes. Comments should identify and quantify expected benefits of such requirements and expected costs which would be incurred or saved as a result of each suggested regulatory change. If hazardous materials transportation incidents are referenced to demonstrate a need for changes to DOT's hazard communications system, please provide specific dates, locations and consequences directly attributable to inadequate hazard communication. Comments simply stating that there have been many transportation incidents in which emergency responders were unable to recover sufficient response information would not be as helpful in our evaluation as would specific cause/effect information.

For the convenience of commenters, questions are numbered consecutively. RSPA requests that commenters preface responses to questions raised in this ANPRM with the identifying number of each question. Comments need not be limited to the questions but should be pertinent to the subject matter.

Comments pertaining to improvements in DOT's hazard communication system already received pursuant to the review of Departmental regulations under the Regulatory Review Process initiated by the President (57 FR 4744, February 7, 1992) are addressed by the questions in this document or will be addressed in forthcoming corrections to Docket HM–181.

A. Improvements to the placarding identification system. Section 25(a)(2)(A) of HMTUSA requires the Secretary to initiate a rulemaking to determine methods of improving the current system of placarding vehicles transporting hazardous materials.

Placard Visibility, Size and Location

1. Would increasing the size of placards, incorporating larger identification numbers and hazard class symbols, improve hazard recognition? What size would be most effective? Are there any specific incidents in which the use of larger placards would have improved emergency response? The HMR specify a minimum size of 273 millimeters (mm) on edge for domestic placards and 250 mm for those conforming to international standards.

2. Is the existing square-on-point configuration too restrictive for adding emergency response guidance and hazard identification information? What changes, if any, should be made? And if so, what would be the costs and benefits?

3. To improve placard visibility, should RSPA require placards to be affixed on a vehicle in a manner so that, in the event of an accident, they can be observed regardless of orientation of the vehicle? For example, should placards be located on the tops and bottoms (in addition to each side and end) of transport vehicles to ensure placard visibility in the event of rollover incidents? This was suggested by the National Transportation Safety Board (NTSB) Safety Recommendation I–90–11 addressing a November 30, 1988 incident involving an overturned motor vehicle. NTSB pointed out that "front placards on the trailer have often been obscured by the tractor, and rear placards attached to removable gates have been thrown from the vehicle during an accident sequence." Section 172.504(a) prescribes the location of placards on transport vehicles.

4. Should the three-inch (76 mm) separation distance between placards and other information displayed on

transport vehicles specified in § 172.516(c)(4) be increased to improve the presentation of placards? If so, please specify what distance or height would be effective to ensure that placards are readily identifiable by emergency responders.

5. RSPA is aware of comments that claim that slogans or advertisements displayed on configurations similar to placards can confuse emergency responders. Should RSPA prohibit display of advertisements and such slogans as "Drive Safely" or other information configured in shapes similar to DOT placards?

6. As an alternative to placarding, are there other methods of marking a transport vehicle to improve hazard communication including visibility and durability? For example, would a color banding scheme for marking transport units, as allowed under Canadian Transport of Dangerous Goods (TDG) Regulations, be a workable alternative to placarding?

7. To improve hazard identification and communication during emergencies, should RSPA consider an additional placarding system to include a national motor vehicle numbering system similar to the Universal Machine Language Equipment Register (UMLER) system now used to identify all rail cars in North America?

8. Domestically, use of reflective placards is permitted but not required under the HMR. However, placards constructed of reflective styrene material have been required under Part 5.27 of the Canadian TDG regulations for explosives and certain bulk shipments since January 1986. We estimate the cost per reflective placard as ranging between $6.85 and $15.85 depending on the quantity of placards ordered and information contained. Should reflective placards be required? If so, for what class of hazardous materials? What would be the cost of replacing existing placards with reflective placards?

9. Should RSPA require placards to be displayed at places where hazardous materials are stored incidental to transportation? If so, under what circumstances and in what manner?

Placard Information and Format

10. Should placards display information identifying appropriate emergency response procedures related to the hazardous materials being transported? Should placards display appropriate DOT Emergency Response Guidebook Guide numbers referencing potential hazards and corresponding emergency actions?

11. Should there be changes in basic placard format? What specific incidents, if any, demonstrate the need for such changes? Do existing hazard class symbols on placards, like the burning "O" on the OXYGEN placard, adequately convey hazard information to emergency responders? Are there other symbols that could be used to more effectively display hazard warnings?

12. Should RSPA require an additional rectangular placard for information that cannot effectively be contained in the square-on-point configuration? For example, the square-on-point placard could be used as an immediate indicator to responders that hazardous materials are present in the transport vehicle. Responders could then refer to the rectangular placard for essential response and hazard identification information.

13. Should the display of hazardous materials (UN, NA) identification numbers be more extensively used to convey emergency response information? Section 13.7.5 of the UN Recommendations on the Transport of Dangerous Goods (7th Edition) recommends that a fully-loaded truckload of a packaged commodity be identified with the UN identification number for that commodity.

14. Would the display of the Class 9 or "Keep Away From Food" placards provide emergency responders with needed information in the event of an incident or accident? Should a Class 9 placard be required for Elevated Temperature Materials?

15. Should DOT develop a new "Poison Inhalation Hazard" placard to more specifically identify liquids and gases that are poisonous by inhalation? If so, what should the placard design be? Under § 172.505 in Docket HM–181, any quantity of a poisonous material subject to the "Poison-Inhalation Hazard" shipping description in § 172.203(m)(3) must be placarded with either a "POISON" or a "POISON GAS" placard.

16. Under § 172.510, if Division 2.3 Zone A gases and Division 6.1 Packing Group I Hazard Zone A liquids poisonous by inhalation are shipped by rail, the "POISON" and "POISON GAS" placards must be placed within a white square background. Should this requirement be extended to other modes? Should other hazard classes be included in such a requirement?

17. Technical specifications for color tolerance charts for determining the acceptability of colors used on labels and placards are set forth in appendix A to part 172. Are color tolerance charts meeting these or other specifications (e.g., the Pantone Color Code System which is used in Canada) available from commercial sources? Are there color standards available which could be incorporated by reference into the HMR? What would be the cost of these standards to users?

Placard Construction and Attachment

18. Should the composition of placards be improved to minimize destruction and loss during a fire incident? General placard specifications are contained in § 172.519. Please provide examples where fire-resistant placards effectively conveyed hazard warning information to first responders at incidents involving vehicular fires?

19. Should means for attaching placards be improved to minimize tampering or placard loss in an incident? Specifications for a recommended placard holder are contained in appendix C to part 172.

Exceptions From Placarding Requirements

20. Should the aggregate gross weight exception for Table 2 materials in § 172.504(d) be raised or lowered? If so, to what level?

21. If the 1,000-pound placarding exception is maintained, should it be modified to require that transport vehicles containing packages of certain size (volume or weight) be placarded? For example, should a transport vehicle containing a 55-gallon package be required to be placarded?

22. Should use of the DANGEROUS placard, now specified in § 172.504(b) to indicate the presence of two or more classes of Table 2 materials, be further restricted or eliminated? Under § 172.504(b), a transport vehicle or freight container containing two or more classes of materials requiring different placards specified in Table 2 may be placarded DANGEROUS in place of the separate placarding. However, if 5,000 pounds or more of one class of material is loaded at one loading facility, the placard specified for that material in Table 2 must be used.

23. Should RSPA require the DANGEROUS placard for all shipments of Table 2 materials in amounts less than 1,000 pounds, and specific placards for all shipments of more than 1,000 pounds or other amounts? Should all hazardous materials, regardless of quantity, be required to be placarded when in transportation? Would the meaning and impact of placarding be diminished should all hazardous materials, regardless of quantity, be required to be placarded?

24. Based on the risks involved, should RSPA transfer certain Table 2

materials to Table 1? If so, please detail your recommendation.

Transition Period

25. Is there a need for a longer transition period, beyond October 1, 1994 as required in § 171.14(b)(4) under HM–181, for the implementation of placarding requirements? What effect would a longer transition period have on the ability of emergency responders to respond to hazardous materials incidents?

B. Central Reporting System and Telecommunications Data Center

Section 25(a) of HMTUSA also requires the Secretary to determine, by rulemaking, methods for establishing and operating a central reporting system and computerized data center for hazardous materials transportation that is capable of receiving, storing and retrieving data pertaining to all shipments of hazardous materials; a system that can identify hazardous materials being transported by any mode of transportation and provide emergency response information as needed by responders to accidents and incidents involving the transportation of hazardous materials.

26. Should a central reporting system and computerized telecommunications data center be established? If so, should it be operated by the Federal Government or by a private entity, either on its own initiative, or under contract to the Government?

27. What would be the projected safety benefits of establishing and operating such a system?

28. Should remote locations, such as Alaska, be excluded from mandatory participation in a central computerized data reporting system?

29. To what extent do existing centralized data reporting systems already provide dispatcher-to-vehicle transmissions? Could these systems be modified to provide information to emergency responders in the event of incidents or accidents involving hazardous materials?

30. What elements of DOT's hazard communication system, if any, could be eliminated by the use of centralized reporting? Marking, Labeling and/or Placarding? Shipping papers? Incident reporting?

Data Entry and Removal

31. When, and by whom, would data be entered into the system? For example, must a farmer who picks up a variety of pesticides from a chemical distributor enter data into this system? Who would enter data, and when would data be entered, for shipments originated by foreign shippers? How would required data be entered by shippers and carriers who do not have computer capabilities?

32. At what points in the distribution chain would additional entries have to be made, e.g., highway/rail interchanges? How would the system accommodate data interchange between carriers? Between modes? Who would be responsible for entering data regarding intermodal shipments?

33. If only shippers enter data, how would the system include less-than-truckload distribution where an average shipment will involve multiple vehicles (pickup, line hauls, and delivery)?

34. Should a shipment report contain: The name and address of the party providing the data; point of shipment origin; point of shipment destination; vehicle identification; DOT proper shipping name, hazard class and commodity identification number; emergency telephone contact number; and quantity of materials involved and reportable quantities for hazardous materials that are also hazardous substances? Are disclosures related to so-called "blind" shipments of any relevance to current business practices?

35. What additional information should be included for hazardous waste shipments? Who should be required to enter hazardous waste data? The original shipper or generator? The consolidator of various waste shipments from small generators? The treatment facility? The disposal facility?

36. How can the accuracy of data entered into the system be assured?

37. Once data is entered into the system, how long should it remain in the data base until it is purged? Who should purge the system once shipments reach consignees: The originating shipper; carrier; consignee or system personnel?

System Access and Safeguards

38. Who should have access to such a system for obtaining information about hazardous materials shipments and technical and other emergency response information? Should other governmental organizations, such as Federal and state emergency response teams, or law enforcement agencies monitoring the distribution of chemicals commonly used in illegal drug manufacture, be permitted to access the system? Should industry emergency response teams have access?

39. What methods should be employed for ensuring the security of the information in such a system?

40. How can shipment information be limited to persons who have no competitive interest in other shippers' or carriers' information?

Emergency Responders: Use of the System

41. What data elements pertaining to emergency response should be required to be entered into the system? If emergency response information is to be a part of the system, who should be responsible for its inclusion for uniformity of presentation and content?

42. How would emergency responders identify individual shipments in transit by using this system? By vehicle identification numbers? By vehicle registration numbers? By aircraft tail numbers? By other means?

43. How would the system deliver information to emergency responders? Direct data center-to-response vehicles? Data center-to state or local level dispatching units-to-vehicle? Modem-to-modem? Telephonic link? Facsimile hard copy to vehicle receivers? Other methods? Would data from an electronic notification system reach on-scene responders in time to make basic first-response decisions?

44. How can such a system be accessed through mobile satellite service or other technologies having the capability of providing 2-way voice, data or facsimile services?

45. Would only satellite tracking-augmented realtime information (providing vehicle identification at all times) be of any use to responders?

46. If the electronic shipment notification system is extended to the local level, would it be more cost-effective to link the system with local emergency planning committees (LEPCs) established under Superfund Amendments and Reauthorization Act (SARA) of 1986, local fire departments, police departments or other local organizations?

47. Please provide details regarding any accident in which emergency response personnel have been killed or injured due to involvement of hazardous materials transported in compliance with existing regulations (e.g., placarding, labeling, package marking and shipping paper requirements) that would have been averted had a centralized data system been established and operating at that time.

Training in the Use of the System

48. How would training for operating a central computerized tracking system be presented? How often? To whom should training be presented or required?

49. How would the system be organized to allow for different operational training levels or operator sophistication?

System Costs

50. What would be the total annualized estimated costs of employing a nationwide central reporting system?

51. What would be the capital costs, operating costs (including telecommunication costs), and personnel or contractor costs for establishing and maintaining a centralized reporting system?

52. Should user fees be imposed to cover the costs of operating such a system? If so, should fees be based on total annual shipments? On a per shipment basis? On a per entry basis? Should governmental agencies using the system be charged a fee based on the amount of system usage?

53. What would be the impact of the added costs of complying with mandatory electronic shipment notification requirements on the ability of U.S industry to compete in the international marketplace?

54. What would be the impact of imposing a user fee on foreign shippers or carriers?

55. What would be the cost impact of requiring Federal agencies to comply with mandatory electronic shipment notification requirements? (Federal agencies make over 500,000 hazardous materials shipments a year.)

C. Continually-Monitored Telephone Systems

56. Should carriers, in addition to shippers, be required to maintain continually-monitored emergency response telephone systems for all or certain hazardous materials in transportation as specified in 49 CFR 172.604? Why? What would be the costs or benefits? What specific incidents, if any, demonstrate the need for the carrier requirement?

57. What has been the experience of the continually-monitored telephone system requirement in 49 CFR 172.604 imposed on shippers?

58. Should a requirement for a carrier continually-monitored telephone system be triggered by a specific amount of hazardous materials being carried? Should a requirement for carrier continually-monitored telephone systems be applied only to shipments of hazardous materials in bulk packaging?

59. Should such a requirement be applied only to certain types and quantities of hazardous materials, such as Packing Group I or II poisons, flammable or corrosive materials; certain classes of explosives, or highway-route-controlled radioactive materials?

60. Should a carrier's continually-monitored number be added to shipping papers or other shipper documentation? Or should it be marked on the transport vehicle or on the transport vehicle placarding? Any or all of these options?

61. How would carriers obtain detailed emergency response information regarding the hazardous materials on their vehicles? Would placement of continually-monitored phone numbers on placards, or transport vehicles, be useful to emergency responders? Would the addition of this kind of information diminish the effectiveness of placards?

62. What qualifications should be established for carriers to carry out response assistance through a continually-monitored telephone system?

63. As shippers are permitted to do, should carriers be authorized to use such chemical information services such as CHEMTREC to perform the carrier's monitored phone responsibility?

VI. Administrative Notices

A. Executive Order 12291

The effect of this advance notice of proposed rulemaking (ANPRM) does not meet the criteria specified in section 1(b) of Executive Order 12291 because it is not yet a major rule. However, this ANPRM is a significant rulemaking under the regulatory procedures of the Department of Transportation [44 U.S.C. 11034]. This ANPRM does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act [42 U.S.C. 4321 *et seq.*]. A preliminary regulatory evaluation will be prepared based on comments to this ANPRM.

B. Executive Order 12612.

This ANPRM has been analyzed in accordance with the principles and criteria in Executive Order 12612 and, based on information available at this time, RSPA does not believe that this ANPRM would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Impact on Small Entities

As part of this rulemaking process, RSPA is required to consider economic impacts on small businesses and local governments under criteria of the Regulatory Flexibility Act. Comments are invited to help RSPA assess probable costs to small entities of implementing any of the actions suggested in this ANPRM.

Issued in Washington, DC on June 1, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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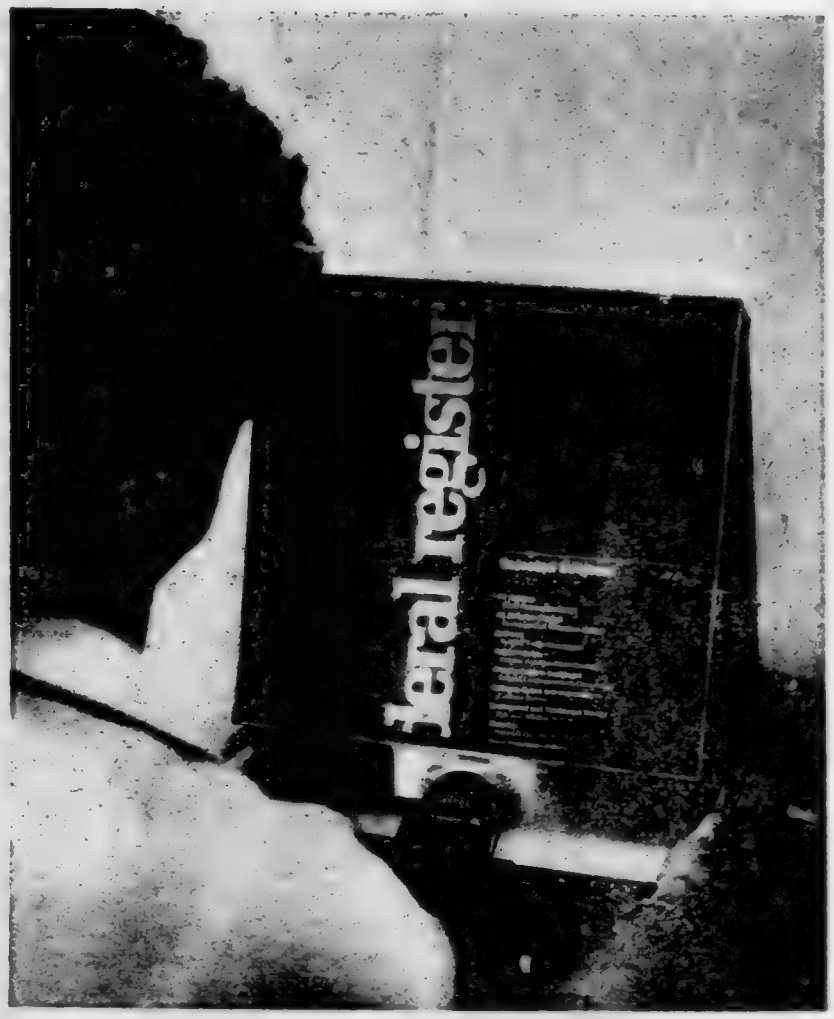

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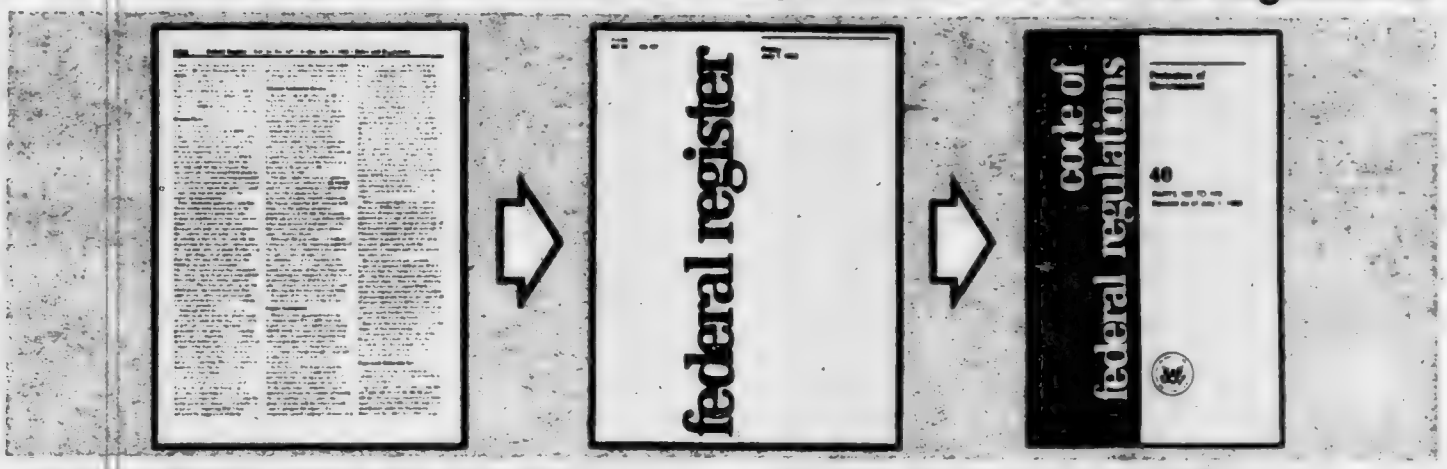

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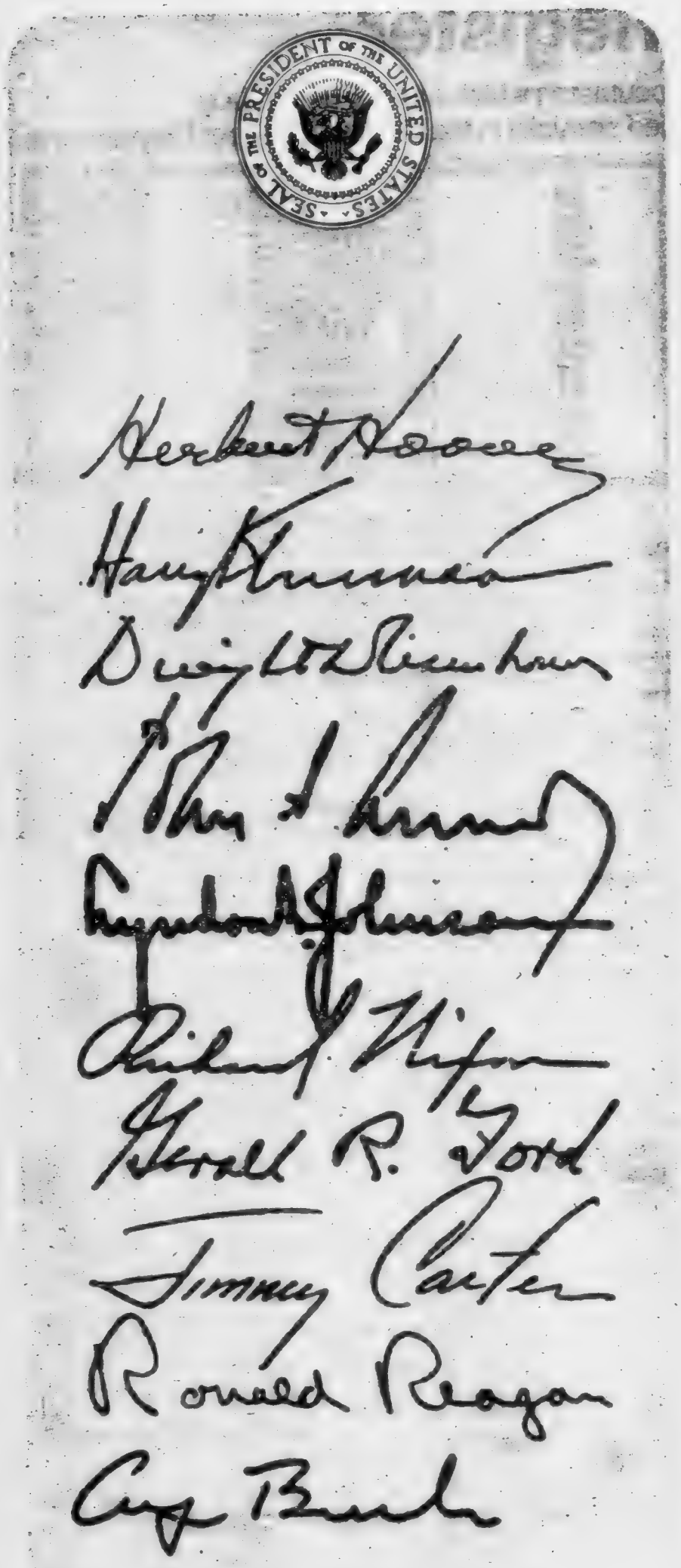

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Federal Register
Vol. 57, No. 112
Wednesday, June 10, 1992

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The President

Presidential Determination No. 92–29 of June 2, 1992

Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter "the Act"), having determined, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objectives of section 402 of the Act, I further determine that the continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, June 2, 1992.

[FR Doc. 92–13814
Filed 6–8–92; 3:17 pm]
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Rules and Regulations

Federal Register
Vol. 57, No. 112
Wednesday, June 10, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-92-0491FR]

Oregon-California Irish Potatoes; Interim Final Rule to Relax Pack Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes the pack regulations for Oregon-California Irish potatoes to allow handlers to ship U.S. No. 2 grade Irish potatoes, weighing at least 10 ounces, in 50-pound cartons. This action will enable handlers to ship a substantial amount of this season's U.S. No. 2 grade potatoes in cartons, thus meeting customer demands and maximizing grower returns.

DATES: This interim final rule is effective on June 10, 1992. Comments which are received by July 10, 1992 will be considered prior to finalization on this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2170.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 947 (7 CFR part 947), as amended, regulating the handling of Irish potatoes grown in Oregon (except Malheur County) and certain counties in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition.

The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Oregon-California potatoes subject to regulation under the marketing order and approximately 470 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Oregon-California potato producers and handlers may be classified as small entities.

The handling requirements for fresh Oregon-California potatoes are specified in 7 CFR 947.340 (56 FR 55984, October 31, 1991). Current requirements specify a minimum grade of U.S. No. 1 (with additional tolerances for damage by hollow heart and/or internal discoloration and for serious damage by internal defects) for potatoes packed and shipped in 50-pound cartons. U.S. No. 2 grade potatoes are shipped in other kinds of containers. Potatoes shipped to points within the continental United States are required to be at least 2 inches in diameter or 4 ounces in weight, and potatoes shipped to export destinations must be at least 1½ inches in diameter. Also, red-skinned varieties of potatoes may be shipped without regard to a minimum size requirement, if they otherwise grade at least U.S. No. 1. Non-red-skinned varieties of potatoes that are 1¾ inches in diameter or less may be shipped if they grade at least U.S. No. 1.

At a meeting held on March 4, 1992, the Oregon-California Potato Committee (committee), the agency responsible for local administration of the marketing order, recommended, by a 10–1 vote, a change in the pack regulation.

Currently, potatoes packed in 50-pound cartons are required to grade at least U.S. No. 1, except that potatoes that fail to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped, provided that no more than ten percent hollow heart and/or internal

discoloration is present or not more than five percent serious damage by internal defects. Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because the currently used 50-pound burlap sacks and paper bags are messy, unsanitary and do not stack well on pallets. Some retail and restaurant trade buyers have complained that burlap sacks are dirty and can shed fibers. Further, paper bags can tear before arriving at their destination.

Many customers now purchase potatoes from other areas where U.S. No. 2 grade potatoes are packed in 50-pound cartons. The committee would like to respond to these changing market conditions so handlers will not lose sales.

The committee member opposing the recommendation was concerned that the lower grade (U.S. No. 2) potatoes would compete against U.S. No. 1 grade potatoes packed in 50-pound cartons, thus lowering the price received for 50-pound cartons of the modified U.S. No. 1 grade potatoes, causing marketing problems. The remainder of the committee does not believe that pricing or other marketing problems will result from this relaxation in pack requirements. The committee recommended that only 10-ounce or larger U.S. No. 2 grade potatoes be shipped in 50-pound cartons. For these reasons, carton prices should remain at levels which will not weaken the prices for U.S. No. 1 or better grade potatoes packed in cartons.

This action authorizes Oregon-California potato handlers to ship U.S. No. 2 grade potatoes, weighing at least 10 ounces, in 50-pound cartons. This action will increase overall potato shipments from the production area, increase financial returns to the industry and satisfy customer needs.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee would like the recommendation effective in May of 1992, so handlers can market inventories of U.S. No. 2 grade potatoes currently on hand; (2) this action would relax requirements; (3) potato shippers are aware of this action which was recommended at an open meeting by the committee; (4) there is no special preparation required of affected handlers; and (5) this interim final rule provides a 30-day comment period and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 947.340 is amended by revising paragraph (e) to read as follows:

§ 947.340 Handling regulation.

* * * * *

(e) *Pack.* Potatoes packed in 50-pound cartons shall be either: (1) U.S. No. 1 grade or better, except that potatoes that fail to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, or not more than 5 percent serious damage by internal defects; or (2) U.S. No. 2 potatoes weighing at least 10 ounces.

* * * * *

Dated June 4, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13602 Filed 6–9–92; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 88–032F]

[RIN 0583–AB00]

Elimination of Jar Closure Requirements for Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations by eliminating the current requirements for jar closures. Under the present regulations, vacuum-packed containers that are sealed with quick-twist, screw-on, or snap-on lids must either not have an annular space between the lid and the container, or the annular space must be sealed. The Agency is eliminating this requirement because it increases production cost and there is no evidence that it provides any public health and safety benefits.

EFFECTIVE DATE: July 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The final rule concerns the packaging of meat and poultry products. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing marking, labeling, packaging, or ingredient requirements in addition to, or different than, those imposed under the FMIA and the PPIA. Any State or local jurisdiction may, consistent with the requirements under the FMIA and the PPIA, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products which are adulterated or misbranded, or, in the case of imported articles, which are not at such

an establishment, after their entry into the United States.

This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provision of this rule or the application of its provision, all applicable administrative procedures must be exhausted. Those administrative procedures are set forth in § 306.5 of the Federal meat inspection regulations (9 CFR 306.5) and § 381.35 of the Poultry products inspection regulations (9 CFR 381.35).

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The effect of this final rule is to remove a cost that currently restricts competition by both large and small businesses. Certain establishments making products that are not subject to FSIS inspection could expand production lines to include meat and poultry products without having to invest in additional jar-closure equipment. However, the number of small entities known to the Agency that are likely to benefit from the proposal is not substantial. Therefore, the final rule will not have a significant effect on a substantial number of small entities.

Background

As part of its responsibility to assure that meat and poultry products are wholesome and not adulterated, FSIS enforces regulations governing the packaging of processed meat and poultry products, including meat and poultry products in vacuum-packed glass containers. Section 317.23 (redesignated from § 317.19 on November 30, 1990, 55 FR 49833) of the Federal meat inspection regulations (9 CFR 317.23) and § 381.143 of the poultry products inspection regulations (9 CFR 381.143) are identically worded as follows: "Vacuum packed containers sealed with quick-twist, screw-on, or snap-on lids (or closures) shall not have an annular space between the inner edge of the lid's rim (lip or skirt) and the container itself or shall have such space sealed in a manner that will make it inaccessible to filth and insects." An annular space is the area between the glass finish and the lid of a jar.

The existing regulations were promulgated on June 10, 1974, (39 FR 20369) by the Animal and Plant Health Inspection Service (APHIS—predecessor Agency to FSIS). They became effective on December 10, 1977, allowing time for affected manufacturers to comply.

In the early 1970's, the most common closure for vacuum-packed product in glass jars was the quick-twist cap. This closure, commonly referred to as a "lug cap," is still widely used for products other than meat and poultry. A glass jar equipped with the quick-twist cap has a relatively large annular space inherent in its design. The current regulations were developed following consumer complaints regarding insect infestation in the annular space of some baby food jars sealed with quick-twist closures.

Today, however, the baby food industry uses only the press twist (PT) type of cap. Jars with PT caps do not present the same level of concern as jars sealed with quick-twist closures because they have a much smaller annular space than jars sealed with a quick-twist closure. This is evidenced by the fact that there has been no repetition of the 1970's baby food contamination incidents since that industry began using the PT cap. Moreover, the Agency believes that when the existing regulations are rescinded, there will be no compelling reasons to discontinue the use of the PT cap. In fact, the popularity of this closure is such that processors of baby foods use it for their nonamenable products.

Meat and poultry products other than baby food that are vacuum packed in jars are sealed with PT caps or are packaged by some other method that is in compliance with the current regulations. For example, one widely used method involves the use of plastic shrink band with the quick-twist closure; the shrink band seals off the annular space.

The Food and Drug Administration (FDA) did not promulgate similar rules regarding jar closure requirements. Thus, the quick-twist cap without a secondary seal is still used with many FDA-regulated products, which do not contain meat or poultry. According to FDA, there has not been any evidence of annular space contamination problems. But, when manufacturers of such food products wish to pack meat or poultry items, they must convert their entire operation to new containers and closures, add a distinct production line for meat and poultry products, or invest in the equipment and labor needed to apply secondary seals.

Proposed Rule

On August 26, 1991, FSIS published a proposed rule (56 FR 41967) to amend the Federal meat and poultry products regulations by eliminating the jar closure requirements at 9 CFR 317.19 (since redesignated as 9 CFR 317.23) and 9 CFR 381.143. The Agency was petitioned on July 11, 1988, by the National Food Processor Association (NFPA) to take this action.

The petitioner argued that the requirements were no longer necessary to prevent contamination and that they imposed unwarranted costs on manufacturers wishing to prepare products with meat and poultry. There are no comparable jar closure requirements for non-meat and non-poultry products regulated by the FDA. The NFPA cited the costs involved in purchasing new equipment to comply with the requirements, including the equipment needed to apply plastic shrink bands over quick-twist jar caps. The association also cited slowed production rates caused by the application of the shrink bands. The shrink bands are wet when applied, and then the jars are placed in climate-controlled rooms. In addition to permitting the bands to become dry and secure, this helps to prevent yeast or mold contamination underneath them. Production and shipping delays result from the time needed to dry the shrink bands.

The NFPA further noted that the FDA had not been aware of any recent complaints of infestation in the annular space of jars with the quick-twist closures. Before FSIS published the proposed rule, FDA confirmed that it had received no complaints of such infestation with respect to products in its jurisdiction since the 1988 NFPA petition. No human illnesses have been traced to the use of quick-twist jar lids. The absence of recent data demonstrating a current problem was the major consideration in the FSIS decision to proceed with the proposed rulemaking. Further, FSIS agreed that there were substantial costs involved in complying with the regulations.

Comments

The Agency received three comments, including one from the petitioner, all strongly supportive of the proposal. One commenter and the petitioner reported that compliance with the current regulation by applying a secondary seal actually increased the chance of microbial growth and infestation in the area the seal is intended to protect. The petitioner and the other commenter stressed the fact that the FDA has never imposed similar requirements for jar closures, even though there is a much greater volume of FDA-regulated product vacuum packed in glass jars equipped with the quick-twist closure. Rescission of the current FSIS regulations on jar closures would bring FSIS and FDA regulations into greater harmony. They also noted that the costs

of compliance with the current FSIS regulations can be substantial. The petitioner observed that buying secondary seal application equipment can more than double the annual capital equipment budget for a small processor.

The jar closure requirements for meat food products were redesignated from 9 CFR 317.19 to 9 CFR 317.23 as part of the final rule on net weight requirements published November 30, 1990 (55 FR 49833). The Agency is now amending the Federal meat and poultry regulations by removing and reserving 9 CFR 317.23 and 381.143.

List of Subjects

9 CFR Part 317

Meat inspection, Labeling, Marking devices, and Containers, Jar closure requirements.

9 CFR Part 381

Poultry products inspection, Labeling and containers, Jar closure requirements.

Final Rule

For the reasons set out in the preamble, parts 317 and 381 of the Federal meat and poultry products inspection regulations (9 CFR 317 and 381) are amended as set forth below:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for 9 CFR part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 317.23 [Removed]

2. Section 317.23 is removed and reserved.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for 9 CFR part 381 continues to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.143 [Removed]

4. Subpart N of part 381 is amended by removing and reserving § 381.143.

Done at Washington, D.C., on June 2, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92–13600 Filed 6–9–92; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 3

[Docket No. 92N–0243]

Food and Drug Industry Exchange Meetings on Combination Products Jurisdiction; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration (FDA) will hold a series of industry exchange meetings. These meetings will provide a forum to discuss new agency policies, requirements, and regulations which are being implemented to enforce the Safe Medical Devices Act (the SMDA) of 1990.

DATES: The industry exchange meetings will be held on Thursday, June 11, 1992, 8:15 a.m. to 3:30 p.m.; Wednesday, June 24, 1992, 8:30 a.m. to 4:30 p.m.; Monday, June 29, 1992, 1 p.m. to 5 p.m.; Tuesday, July 7, 1992, from 8:15 a.m. to 3:30 p.m.; Monday, July 20, 1992; and Tuesday, September 15, 1992.

ADDRESSES: The industry exchange meetings will be held at the following locations:

June 11, 1992: The LaGuardia Marriott Hotel, 102–05 Ditmars Blvd., East Elmhurst, NY.

June 24, 1992: Engineer's College of Puerto Rico, Rm. "Salon Salvador V. Caro," Calle Antonlin Nin, Hato Rey, PR.

June 29, 1992: National Transportation Systems Center, 55 Broadway-Kendall Sq., Cambridge, MA.

July 7, 1992: The Sheraton Los Angeles Airport Hotel, 6101 West Century Blvd., Los Angeles, CA.

July 20, 1992, Denver CO, and September 15, 1992, Philadelphia, PA. The specific locations and times for these two remaining meetings will be announced at a later time.

FOR FURTHER INFORMATION CONTACT: Jeanne White, Office of Small Business, Scientific, and Trade Affairs (HF–51), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

Those persons interested in attending these meetings should call the contact person listed above to preregister. Early registration is suggested because meeting space is limited.

SUPPLEMENTARY INFORMATION: FDA is holding a series of meetings to explain to the industry the recently issued Product Jurisdiction Regulation, and accompanying Inter-Center Agreements. Senior representatives from FDA's Centers for Biological Evaluation and Research (CBER), Drug Evaluation and Research (CDER) and Devices and Radiological Health (CDRH) will discuss the Inter-Center Agreements. The meetings will be co-sponsored by these Centers and the Office of Small Business, Scientific, and Trade Affairs, Office of the Commissioner.

The three Inter-Center Agreements specify how the Centers will handle specific products or classes of products that may present jurisdictional issues. In addition, the Agreement between CDER and CBER provides for certain products that may present jurisdictional questions.

The successful implementation of these new measures will not depend only on ensuring that members of the regulated industries are well informed, but also on getting feedback on the impact of this regulation and the various complex issues that may still need resolution. This also will be an opportunity to raise issues or concerns about the approval process.

Dated: June 5, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–13740 Filed 6–8–92; 11:59 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

31 CFR Part 26

United States Government Procedures for the Consideration of Environmental Impact Assessments for Multilateral Development Bank Projects

AGENCY: Departmental Offices, Treasury.

ACTION: Temporary rule; request for public comment.

SUMMARY: This document establishes temporary procedures governing the availability of environmental information on projects of multilateral development banks, comments on such projects, and the consideration by the U.S. Government of such information and comments. Section 1307(d) of the International Financial Institutions Act requires the Secretary of the Treasury to prescribe procedures for the consideration of comments on such environmental information in order to develop the U.S. Government position on such projects.

DATES: This temporary rule is effective June 10, 1992. Written comments must be received by July 31, 1992.

ADDRESSES: Send comments (preferably 3 copies) to: Office of Multilateral Development Banks, room 5400, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, Attn: Priscilla S. Coburn.

FOR FURTHER INFORMATION CONTACT: Priscilla S. Coburn, Office of Multilateral Development Banks, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington DC 20220 (202–622–0765, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 1307 of the International Financial Institutions Act (22 U.S.C. 262m–7), as added by section 521 of Public Law 101–240 (December 19, 1989), imposes certain requirements concerning the review by the U.S. Government of certain actions proposed to be taken by multilateral development banks (MDBs) when those actions will have a significant effect on the human environment.

Section 1307(d) requires the Secretary of the Treasury, in determining the position of the U.S. Government on any action which is proposed to be taken by a MDB and which would have a significant effect on the environment, to develop and prescribe procedures for the consideration of an environmental impact assessment (EIA), interagency and public review of the EIA, and other environmental review of such action otherwise required by law. Section 1307(c) provides that either an EIA or a comprehensive summary thereof (prepared pursuant to section 1307(a)) serve as the basis for interagency review. Together, subsections (c) and (d) provide that the requirement for U.S. Government and public review is satisfied by circulating a comprehensive summary of an EIA and making the full EIA available upon request.

The primary purpose of the environmental assessment and comment process is to encourage a borrowing country to conduct a wide-ranging and detailed environmental assessment, including consultation and full sharing of information with local non-governmental organizations and affected parties. The U.S. Government is working toward this goal by strongly encouraging each MDB to ensure that such public disclosure occur before the MDB Executive Directors vote on a particular project. The U.S. Government also is working to ensure that the public will have direct access to EIAs and summaries thereof at the MDBs and in the borrowing countries, without the U.S. Government's acting as intermediary.

Request for Comments

Before the final adoption of these procedures, consideration will be given to any written comments submitted by July 31, 1992 to the address specifed above. All comments will be available for public inspection and copying in their entirety.

Special Analyses

Because this document concerns a foreign affairs function of the United States, neither a notice of proposed rulemaking nor a delayed effective date is required pursuant to 5 U.S.C. 553(a)(1), and the provisions of Executive Order 12291 do not apply. Moreover, the Department of the Treasury has determined that delaying the establishment of procedures governing the environmental review of and comment on MDB projects would be contrary to the public interest. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal authors of this document are Priscilla s. Coburn, Office of Multilateral Development Banks, Department of the Treasury; and David D. Joy, Office of the Assistant General Counsel (International Affairs), Department of the Treasury. Other personnel in the Department of the Treasury participated in the development of this document.

List of Subjects in 31 CFR Part 26

Environmental impact statements, Environmental Protection, Foreign relations.

Part 26 is added to 31 CFR subtitle A, to read as follows:

PART 26—ENVIRONMENTAL REVIEW OF ACTIONS BY MULTILATERAL DEVELOPMENT BANDS (MDBs)

Sec.

26.1 Purpose.
26.2 Availability of project listings.
26.3 Availability of Environmental Impact Assessment Summaries (EIA Summaries) and Environmental Impact Assessments (EIAs).
26.4 Comments on MDB projects.
26.5 Upgrades and additional environmental information.

Authority: 22 U.S.C. 262m–7, 31 U.S.C. 321.

§ 26.1 Purpose.

This part prescribes procedures for the environmental review of, and comment by Federal agencies and the public on, proposed projects of multilateral development banks (MDBs).

§ 26.2 Availability of project listings.

(a) The Office of Multilateral Development Banks of the Department of the Treasury (hereinafter "MDB Office") will ensure that the Environmental Protection Agency (EPA), the Council on Environmental Quality (CEQ), the Department of State, the Agency for International Development (AID), the National Oceanic and Atmospheric Administration (NOAA), and the Bank Information Center (BIC) (which is a private, nongovernmental organization located in Washington, DC), receive copies from each multilateral development bank (MDB) of project listings describing future MDB projects and assigning environmental categories based on the environmental impact of each project. If an MDB has not provided a project listing to one of these entities, these entities may obtain the project listing by contacting the MDB Office, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 622–0765.

(b)(1) Members of the public may obtain copies of project listings from the BIC, 2025 Eye Street NW., suite 522, Washington, DC 20006 ((202) 466–8191, not a toll-free call).

(2) If a copy is not available from the BIC, members of the public may arrange to review and/or copy a project listing by contacting the MDB Office which will make a copy available at the Department of the Treasury Library, 1500 Pennsylvania Avenue NW., Washington, DC ((202) 622–0990, not a toll-free call). Members of the public are advised that they must make an appointment with the Treasury Library before they visit and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier.

§ 26.3 Availability of Environmental Impact Assessment Summaries (EIA Summaries) and Environmental Impact Assessments (EIAs).

(a) *EIA summaries.* (1) The MDB Office will provide for the distribution of EIA Summaries to the entities identified in section 26.2(a).

(2) (i) Members of the public may obtain copies of EIA Summaries from the BIC, 2025 Eye Street, NW., suite 522, Washington, DC 20006 ((202) 466–8191, not a toll-free call).

(ii) If a copy of an EIA Summary is not available from the BIC, members of the

public may arrange to review and/or copy an EIA Summary by contacting the MDB Office at (202) 622–0765 (not a toll-free call), which will make a copy available at the Department of the Treasury Library, 1500 Pennsylvania Avenue NW., Washingon, DC. Members of the public are advised that they must make an appointment with the Treasury Library (202) 622–0990) before they visit, and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier. To the extent possible, EIA Summaries will be available for review and copying at least 120 days before scheduled consideration of a project by the MDB Executive Directors.

(b) *EIAs*—(1) *The African Development Bank, the European Bank for Reconstruction and Development, and the Asian Development Bank.* Arrangements to review an EIA may be made by contacting the MDB Office ((202) 622–0765 (not a toll-free call)), which will obtain a copy of the EIA through the Office of the United States Executive Director of the appropriate MDB and make it available for review and copying in the Department of the Treasury Library. Members of the public are advised that they must make an appointment with the Treasury Library, ((202) 622–0900 (not a toll-free call), before they visit, and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier.

(2) *The International Bank for Reconstruction and Development, the International Development Association, and the Inter-American Development Bank.* (i) Members of the public may review EIAs at the public reading room of the concerned MDB.

(ii) If a particular MDB does not have a public reading room, members of the public may arrange to review and/or copy an EIA by contacting the MDB Office ((202) 622–0765 (not a toll-free call)), which will obtain a copy through the Office of the United States Executive Director of the concerned MDB and make it available in the Department of the Treasury Library, 1500 Pennsylvania Avenue NW., Washington, DC. Members of the public are advised that they must make an appointment with the Treasury Library ((202) 622–0990 not a toll-free call) before they visit, and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier.

§ 26.4 Comments on MDB projects.

(a) *Public comments*—(1) *Written comments* (i) A member of the public wishing to provide written comments on a MDB project must provide 2 copies of the comments to the Office of Multilateral Development Banks, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., room 5400, Washington, DC 20220. Written comments should be submitted not later than two weeks after the member of the public has access to the particular document on which it wishes to offer comments—either the project listing, the EIA Summary, or the EIA for a particular project. Written public comments will be provided by the MDB Office to the U.S. Government agencies participating in meetings of the Working Group for Multilateral Assistance (WGMA), which meetings are described in § 26.4(c). The WGMA is an intergovernmental subcommittee of the Development Coordination Committee whose functions are set forth in the Presidential announcement of May 19, 1978, Vol. 14, No. 20, p. 932 of the Weekly Compilation of Presidential Documents. The WGMA meets to discuss the U.S. position on upcoming MDB projects.

(ii) All written comments will be available for inspection and copying in their entirety in the Department of the Treasury Library, 1500 Pennsylvania Avenue NW., Washington, DC ((202) 622–0990). Members of the public are advised that they must make an appointment with the Treasury Library before they visit, and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier.

(2) *Oral comments.* Oral comments from a member of the public may be made in periodic meetings convened by the BIC. Information concerning these meetings may be obtained by contacting the BIC or the MDB Office. The MDB Office will summarize and present such comments in the WGMA meetings described in § 26.4(c).

(b) *U.S. agency comments.* Comments from U.S. agencies shall be provided through the WGMA.

(c) *Consideration of comments.* The WGMA will consider all comments made by the public and U.S. agencies. The WGMA may review a project up to three times. The first review will consider whether the project has been assigned the appropriate environmental category by the MDB. This review will take place as far in advance as possible of Board consideration of the project. The second review will consider the EIA Summary or the EIA (or information discussed in § 26.5(b)(1)), and comments received from the public on such documentation. The third WGMA review, which will take place shortly before Board consideration of the project, will consider the position of the U.S. Government on the project.

§ 26.5 Upgrades and additional environmental information.

(a) *Environmental category upgrades.* If the WGMA and the Department of the Treasury determine that a project would have a significant impact on the human environment, but that the level of environmental analysis planned by the MDB is insufficient, the Department of the Treasury will instruct the United States Executive Director of the concerned MDB to request that the MDB upgrade the project to an environmental category requiring additional environmental analysis. Members of the public may call the MDB Office to inquire about upgrade requests for specific projects.

(b) *Additional environmental information.* (1) If the WGMA and the Department of the Treasury determine on the basis of the first WGMA review that:

(i) A MDB project would have a significant impact on the human environment, and

(ii) The MDB appears to have made an appropriate decision that such project merits environmental analysis, but less than a full-fledged environmental impact assessment as defined by that MDB's own procedures, the Department of the Treasury will obtain, through the United States Executive Director of the concerned MDB, such environmental information from the MDB (*e.g.*, environmental chapters from project feasibility studies or environmental data sheets) which contains this environmental analysis. The MDB Office will provide this environmental information to the entities described in § 26.2(a).

(2) If such environmental information is insufficient to provide an adequate basis for analyzing the environmental impact of the proposed project and alternatives to the proposed project, the Department of the Treasury will instruct the United States Executive Director of the concerned MDB not to vote in favor of the project.

Dated: May 25, 1992.

Olin L. Wethington,

Assistant Secretary for International Affairs.

[FR Doc. 92–13412 Filed 6–8–92; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[OSD Privacy Program]

Office of the Joint Staff; Privacy Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense, Office of the Joint Staff, is amending the system name of one existing exempt system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The name change is from JS006.CND, USSOUTHCOM Counternarcotics Database to JS006.CND, Department of Defense Counternarcotics C4I System.

EFFECTIVE DATE: June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970.

SUPPLEMENTARY INFORMATION: Executive Order 12291. The Director, Administration and Management has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act. The Director, Administration and Management certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

The Office of the Secretary of Defense, Office of the Joint Staff, is amending 32 CFR part 311 by revising the subsection from which records contained in the system of records can be exempt.

List of Subjects in 32 CFR part 311

Privacy

Accordingly, the Office of the Secretary of Defense is amending 32 CFR part 311 as follows:

PART 311 - PRIVACY PROGRAM

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 311.7 is amended by revising the introductory text of paragraph (2) as follows:

§ 311.7 Procedures for exemptions.

* * * * *

(b) *General exemptions.*

* * * * *

(2) *System Identification and Name–* JS006.CND, Department of Defense Counternarcotics C4I System.

* * * * *

Dated: May 22, 1992.

L. M. Bynum.

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13474 Filed 6–9–92; 8:45 am]

BILLING CODE 3810–01–F

Office of the Inspector General

32 CFR Part 312

[Office of the Inspector General Policy and Procedures Manual, Chapter 33]

Office of the Inspector General (OIG) Privacy Program

AGENCY: Inspector General, DOD

ACTION: Final rule.

SUMMARY: The Office of the Inspector General, DOD, is publishing as a final rule an exemption that will exempt a system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Nadine K. Dulacki at (703) 695–9568.

SUPPLEMENTARY INFORMATION: On April 14, 1992, the OIG published a proposed rule for an exempt system of records identified as CIG–16, DOD Hotline Program Case Files. During the public comment period, no comments were received. Therefore, the exemption rule is to be added to existing OIG exemption rules found at 32 CFR 312.12.

List of Subjects in 32 CFR Part 312

Privacy.

Accordingly, the OIG is amending 32 CFR part 312 as follows:

1. The authority citation for 32 CFR part 312 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 312.12 is amended by adding paragraph (g) as follows:

§ 312.12 Exemptions.

* * * * *

(g) *System Identifier:* CIG–16.

(1) *System name:* DOD Hotline Program Case Files.

(2) *Exemption:* Any portions of this system of records which fall under the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(5) From subection (d) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence of documents. Disclosures could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(6) From subsection (e)(1) because the nature of the investigation functions creates unique problems in prescribing specific paramenters in a particular case as to what information is relevant or necessary. Due to close liaison and working relationships with other Federal, state, local, and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcment purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(7) From subsection (e)(4)(G) through (H) because this system of records is exempt from the access provisions of subsection (d).

(8) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment

of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

Dated: June 4, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-13473 Filed 06-09-92; 8:45 am]

BILLING CODE 3810-01-F

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972, (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined Large Harbor Tugs YTB 799 and YTB 811, are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval vessels. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 26, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. ROSSI, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that Large Harbor Tugs YTB 799 and YTB 811, are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the location of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; Annex I, section 2(a)(i), pertaining to the height above the hull of the masthead light; and Annex I, section 3(b), pertaining to the placement of the sidelights, without interfering with their special function as naval vessels. YTB 799 and YTB 811 are tugs of special construction and functions. They perform towing services for naval vessels.

In the case of each tug, the mast is hinged and is lowered only when the tug is actually engaged in towing alongside or pushing ships having radically flared bows or sponsoned sides and sterns. When the mast is in the lowered position, the masthead lights, and task lights mounted on the mast, cannot be displayed. During such operations only the pilot house top-mounted auxiliary masthead light, sidelights, and sternlight will be exhibited.

The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the vessels ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Three of § 706.2 is amended by adding the following vessels:

TABLE THREE

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex I
Natchitoches	YTB 799				3.00	14.05		
Houma	YTB 811				3.20	14.05		

3. Paragraph 14, Table Four of § 706.2 is amended by adding the following vessels:

Vessel No.	Distance in meters of aux. masthead light below minimum required height. Annex 1 sec. 2(a)(1)
YTB 799	4.07
YTB 811	4.07

Dated: May 26, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 92-13538 Filed 6-9-92; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS No. CA-8-1-5324; FRL-4126-9]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving a revision to the California State Implementation Plan (SIP) that was adopted by the Bay Area Air Quality Management District (Bay Area AQMD) on May 4, 1988. The California Air Resources Board (CARB) submitted this revised rule to EPA on February 7, 1989. This rule controls emissions from organic liquids, primarily gasoline. EPA has evaluated the rule in this notice for conformance with the provisions of the Federal Clean Air Act as amended on November 15, 1990. The Agency has determined that this rule conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

EFFECTIVE DATE: This action will become effective on July 10, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Northern California, Nevada, and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Environmental Protection Agency, Public Information Reference Unit, 401 "M" Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Esther Hill, Northern California, Nevada, and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1203, FTS: 484–1203.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the San Francisco-Bay Area (Bay Area). 43 FR 8964; 40 CFR 81.305. Because San Francisco-Bay Area was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987. 1977 CAA section 172(a)(2). The San Francisco-Bay Area did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the Bay Area's portion of the California State Implementation Plan (SIP) was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–540, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas.The Bay Area is classified as moderate; [2] therefore, this area is subject to the RACT fix-up requirements and the May 15, 1991, deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on February 7, 1989, including the rule being acted on in this notice. This notice addresses EPA's final action for Bay Area AQMD Regulation 8, Rule 5 (Rule 8–5), Storage of Organic Compounds. This submitted rule was found to be complete on May 5, 1989 pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V [3] and is being granted approval.

Rule 8–5 controls volatile organic compound (VOC) emissions from organic liquids, such as gasoline. VOCs contribute to the production of ground level ozone and smog. Bay Area AQMD's Rule 8–5 was originally adopted as part of Bay Area AQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP–Call and the section 182(a)(2)(A) CAA requirement.

On November 27, 1990, (55 FR 49306–49309), EPA published a notice of proposed rulemaking in the **Federal Register** to approve the above rule into the California State Implementation Plan because it corrected the specified deficiencies identified under the SIP Call. EPA provided a 30-day comment period. No public comments were received. For a complete discussion of EPA's evaluation of the submitted rule, the reader is directed to the **Federal Register** notice referenced above.

EPA Action

In today's notice, EPA takes final action to approve the State's February 7, 1989 submittal of Bay Area AQMD Rule 8–5, Storage of Organic Compounds, for inclusion into the California SIP. Although this submittal preceded the date of enactment of the Clean Air Act Amendments of 1990, EPA is approving the submittal as meeting all the requirements of section 182(a)(2)(A) of the amended Act. The Bay Area nonattainment area is classified as moderate, and is, therefore, subject to the RACT fix-up requirement. The Bay Area AQMD's revised rule, although submitted in response to the SIP call letter, also fulfills all the RACT fix-up requirements.

Because EPA proposed approval of this submittal prior to enactment, EPA

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (The Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Bay Area was redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991). These will replace the completeness criteria currently set forth in 40 CFR part 51, appendix V.

did not propose approval based on the requirements of new section 182(a)(2)(A). However, EPA believes that the good cause exception to notice-and-comment rulemaking applies and that the Agency, therefore, is not required to repropose approval of the submittal as meeting section 182(a)(2)(A). The agency's action on a SIP or SIP elements is rulemaking that is subject to the procedural requirements of the Administrative Procedure Act (APA). Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency for good cause determines that notice and comment are "impracticable, unnecessary or contrary to the public interest."

Notice and comment are impracticable and unnecessary in the present circumstance. Section 182(a)(2)(A) does not impose new requirements on the subject nonattainment areas. Rather, section 182(a)(2)(A) codifies the corrections nonattainment areas needed to make subject to the EPA SIP call letters issued in 1987 and 1988. Because the Bay Area AQMD SIP submittal meets the SIP call and, therefore, is consistent with the applicable pre-amendment guidance, EPA believes that the submittal also necessarily meets the requirements of section 182(a)(2)(A) of the amended Act. In EPA's earlier proposed approval of the Bay Area AQMD rule, EPA provided notice and an opportunity for comment on the consistency of the District's rule with EPA's pre-enactment guidance. Since notice and an opportunity for comment have been provided on that set of issues, and section 182(a)(2)(A) does not expand those requirements, it is unnecessary to repeat that process. In addition, it is impracticable for the Agency to take such action because, in light of the statutory time constraints on acting on SIPs, such a process would divert valuable agency resources from action on the large number of SIPs addressing new substantive requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). The Office of Management and Budget provided a two year waiver for Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: April 14, 1992.

John Wise,

Acting Regional Administrator.

Note: This document was received at the Office of the Federal Register on June 3, 1992.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1.The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(177)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(177) * * *

(E) Bay Area Air Quality Management District.

(*1*) Rule 8–5 adopted on May 4, 1988.

* * * * *

[FR Doc. 92–13377 Filed 6–9–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 60

[FRL 4136–3]

Standards of Performance for New Stationary Sources; Appendix A—Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: A rule entitled "Standards of Performance for New Stationary Sources; Addition of Methods for Measurement of Polychlorinated Dibenzo-p-Dioxins, Polychlorinated Dibenzofurans, and Hydrogen Chloride Emissions from Stationary Sources" was published in the **Federal Register** on February 13, 1991 (56 FR 5758). This rule promulgated Methods 23 and 26 for use at municipal waste combustors. In the rule, Method 26 contained several minor errors. This action corrects the method.

EFFECTIVE DATE: June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Terry Harrison, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0163.

List of Subjects in 40 CFR Part 60

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Municipal waste combustors, and Reporting and recordkeeping requirements.

Dated: May 14, 1992.

William K. Reilly,

Administrator.

Accordingly, 40 CFR part 60 is corrected by making the following correcting amendments:

PART 60—[Amended]

1. The authority citation for 40 CFR part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. In appendix A, Method 26, sections 2.1.1, 2.1.2, 2.1.5, 2.3.3, 4.1.2, 4.4.1, 6.4, and Citations 1 and 3 of 8. Bibliography are revised; the first listing of sections 4 through 4.1.2, and the relisting of Equation 26–1 and Section 3.2.4 that follow are removed; Sections 2.1.6 through 2.1.9 are redesignated as Sections 2.1.7 through 2.1.10, and Sections 4.1.3 and 4.1.4 are redesignated as Sections 4.1.4 and 4.1.5; and new

Sections 2.1.6, 2.1.11, 2.1.12, 4.1.3. and 6.4.1 through 6.4.3 are added to read as follows:

Appendix A—Test Methods

* * * * *

Method 26—Determination of Hydrogen Chloride Emissions From Stationary Sources

* * * * *

2. * * *

2.1 * * *

2.1.1 Probe. Borsilicate glass, approximately 3/8-in. (9-mm) I.D. with a heating system to prevent moisture condensation. A Teflon-glass filter in a mat configuration shall be installed behind the probe to remove particulate matter from the gas stream (see section 2.1.5). A glass wool plug should *not* be used to remove particulate matter since a negative bias in the data could result.

2.1.2 Three-Way Stopcock. A borosilicate glass three-way stopcock with a heating system to prevent moisturecondensation. The heated stopcock should connect to the outlet of the heated filter and the inlet of the first impinger. The heating system shall be capable of preventing condensation up to the inlet of the first impinger. Silicone grease may be used, if necessary, to prevent leakage.

* * * * *

2.1.5 Filter. A 25-mm (or other size) Teflon-glass mat, Pallflex TX40HI75 (Pallflex Inc., 125 Kennedy Drive, Putnam, CT 06260). This filter is in a mat configuration to prevent fine particulate matter from entering the sampling train. Its composition is 75 percent Teflon/25 percent borosilicate glass. Other filters may be used, but they must be in a mat (as opposed to a laminate) configuration and contain at least 75 percent Teflon.

2.1.6 Filter Holder and Support. The filter holder should be made of Teflon or quartz. The filter support shall be made of Teflon. All-Teflon filter holders and supports are available from Savillex Corp., 5325 Hwy 101, Minnetonka, MN 55345.

* * * * *

2.1.11 Temperature Measuring Devices. Temperature measuring device to monitor the temperature of the probe and a thermometer or other temperature measuring device to monitor the temperature of the sampling system from the outlet of the probe to the inlet of the first impinger.

2.1.12 Ice Water Bath. To minimize loss of absorbing solution.

* * * * *

2.3 * * *

2.3.3 Ion Chromatograph. Suppressed or nonsuppressed, with a conductivity detector and electronic integrator operating in the peak area mode. Other detectors, strip chart recorders, and peak height measurements may be used.

* * * * *

4. * * *

4.1 * * *

4.1.2 Adjust the probe temperature and the temperature of the filter and the stopcock, i.e., the heated area in Figure 26–1 to a temperature sufficient to prevent water condensation. This temperature should be at least 20° C above the source temperature, but not greater than 120° C. The temperature should be monitored throughout a sampling run to ensure that the desired temperature is maintained.

4.1.3 Leak-Check Procedure. A leak-check prior to the sampling run is optional; however, a leak-check after the sampling run is mandatory. The leak-check procedure is as follows: Temporarily attach a suitable (e.g., 0–40 cc/min) rotameter to the outlet of the dry gas meter and place a vacuum gauge at or near the probe inlet. Plug the probe inlet, pull a vacuum of at least 250 mm Hg (10 in. Hg), and note the flow rate as indicated by the rotameter. A leakage rate not in excess of 2 percent of the average sampling rate is acceptable. (*NOTE:* Carefully release the probe inlet plug before turning off the pump.) It is suggested (not mandatory) that the pump be leak-checked separately, either prior to or after the sampling run. If done prior to the sampling run, the pump leak-check shall precede the leak-check of the sampling train described immediately above; if done after the sampling run, the pump leak-check shall follow the train leak-check. To leak-check the pump, proceed as follows: Disconnect the drying tube from the probe-impinger assembly. Place a vacuum gauge at the inlet to either the drying tube or pump, pull a vacuum of 250 mm (10 in.) Hg, plug or pinch off the outlet of the flowmeter, and then turn off the pump. The vacuum should remain stable for at least 30 sec. Other leak-check procedures may be used, subject to the approval of the Administrator, U.S. Environmental Protection Agency.

* * * * *

4.4 * * *

4.4.1 The IC conditions will depend upon analytical column type and whether suppressed or nonsuppressed IC is used. An example chromatogram from a nonsuppressed system using a 150-mm Hamilton PRP–X100 anion column, a 2 ml/min flow rate of 4 mM 4-hydroxy benzoate solution adjusted to a pH of 8.6 using 1 N NaOH, a 50-μl sample loop, and a conductivity detector set on 1.0 μS full scale is shown in Figure 26–2.

* * * * *

6. * * *

6.4 Audit Results.

6.4.1 Calculate the concentrations in mg/dscm using the specified sample volume in the audit instructions.

Note: Indication of acceptable results may be obtained immediately by reporting the audit results in mg/dscm and compliance results in total μg HCl/sample to the responsible enforcement agency. Include the results of both audit samples, their identification numbers, and the analyst's name with the results of the compliance determination samples in appropriate reports to the EPA Regional Office or the appropriate enforcement agency. Include this information with subsequent analyses for the same enforcement agency during the 30-day period.

6.4.2 The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance samples and audit samples, and include initial and reanalysis values in the test report.

6.4.3 Failure to meet the 10 percent specification may require retests until the audit problems are resolved. However, if the audit results do no affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

* * * * *

8. * * *

1. Steinsberger, S.C. and J.H. Margeson, "Laboratory and Field Evaluation of a Methodology for Determination of Hydrogen Chloride Emissions form Municipal and Hazardous Waste Incinerators," U.S. Environmental Protection Agency, Office of Research and Develpment, Report No. 600/3–89/064, April 1989. Available from the National Technical Information Service, Springfield, VA 22161 as PB89220586/AS.

* * * * *

3. Cheney, J.L. and C.R. Fortune. Improvements in the Methodology for Measuring Hydrochloric Acid in Combustion Source Emissions. J. Environ. Sci. Health. *A19*(3): 337–350. 1984.

* * * * *

Appendix A—[Amended]

3. In appendix A, sections 1.1, 1.2, 1.3, and 1.4 of Method 26, by revising "Cl^-", "Cl_2", "HCl", and "HOCl" wherever they occur to read "Cl^-", "Cl_2", "HCl", and "HOCl", respectively.

4. In sections 1.3 and 2.2.2 of Method 26, by removing the last two sentences.

5. In section 3.2.3 of Method 26, by revising "100" in the third sentence to read "110", and by revising Eq. 26–1 to read as follows:

$$\mu g\ Cl^-/ml = g\ of\ NaCl \times 10^3 \times 35.45/58.44 \qquad \text{Eq. 26–1}$$

6. In newly designated section 4.1.5 of Method 26, by revising "Figure 26–3" in the first sentence to read "Figure 26–1".

7. By amending section 7.2 of Method 26 as follows:

a. By removing "(35.453)" and "(102.84)" in Equation 26–2 and adding in their respective places "(35.45)" and "(102.8)".

b. By revising "Hcl" in the first definition after Equation 26–2 to read "HCl".

c. By revising "35.453" in the last definition after Equation 26–2 to read "35.45".

8. In section 7.3 of Method 26, by revising Equation 26–3 to read as follows:

$$C = K\ m/V_{m(std)} \qquad \text{Eq. 26–3}$$

[FR Doc. 92–12302 Filed 6–9–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 2E4050/1149; FRL-4067-5]

RIN 2070-AB78

Exemption From the Requirement of a Tolerance for 3-Carbamyl-2,4,5-Trichlorobenzoic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for the residues of the soil metabolite 3-carbamyl-2,4,5-trichlorobenzoic acid in or on all raw agricultural commodities which occur from the direct appliction of the fungicide clorothalonil to certain crops and/or as inadvertent residues resulting from the soil metabolism of chlorothalonil when applied to certain crops, and subsequent uptake by rotated crops when used according to approved agricultural practices. This exemption from the requirement for a tolerance was requested by ISK Biotech Corp.

EFFECTIVE DATE: This regulation becomes effective June 3, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 2E4050/R1149], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 15, 1992 (57 FR 13073), EPA issued a proposed rule that gave notice that the ISK Biotech Corp., P.O. Box 8000, Mentor, OH 44061-8000, had submitted pesticide petition (PP) 2E4050 to EPA. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), establish an exemption from the requirement of a tolerance for the residues of 3-carbamyl-2,4,5-trichlorobenzoic acid and 4-hydroxy-2,5,6-trichloroisophthalonitrile in rotated crops.

ISK biotech Corp. amended the petition to request that EPA establish an exemption from the requirement of a tolerance as follows: An exemption from the requirement for a tolerance is proposed for the residues of 3-carbamyl-2,4,5-trichlorobenzoic acid in or on all raw agricultural commodities which occur from the direct application of chlorothalonil to crops in § 180.275(a) and (b) and/or as inadvertent residues resulting from the soil metabolism of chlorothalonil when applied to crops in § 180.275(a) and (b), and subsequent uptake by crops when used according to approved agricultural practices. The purpose of this exemption from the requirement of a tolerance is to allow the rotation to crops for which there are no chlorothalonil tolerances in fields where preceding crops were treated with chlorothalonil. Residue studies show that the soil metabolite, 3-carbamyl-2,4,5-trichlorobenzoic acid, is the only residue of chlorothalonil which may be detected in the rotated crops.

In response to the proposed rule, nine comments have been received from peanut growers, the Georgia Peanut Producers Association, the North Carolina Peanut Growers Association, Inc., and the North Carolina Department of Agriculture. All stated that BRAVO®, chlorothalonil, is essential to efficient peanut production and that the rotational crop restriction should be removed from BRAVO® labeling as soon as possible.

There were no requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompnaied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 3, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1110, to read as follows:

§ 180.1110 3-Carbamyl-2,4,5-trichlorobenzoic acid; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for the residues of 3-carbamyl-2,4,5-trichlorobenzoic acid in or on all raw agricultural commodities which occur from the direct application of chlorothalonil to crops in § 180.275(a) and (b) and/or as an inadvertent residue resulting from the soil metabolism of chlorothalonil when applied to crops in § 180.275(a) and (b), and subsequent uptake by rotated crops when used acoording to approved agricultural practices.

[FR Doc. 92-13620 Filed 6-9-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1F3951/R1153; FRL-4069-3]

RIN 2070 AB-78

Pesticide Tolerance for Quizalofop-P Ethyl Ester

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the residues of the herbicide quizalofop-p ethyl ester [ethyl (*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy]phenoxy])-propanoate], and its acid metabolite quizalofop-p [*R*-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoic acid], and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-*p*-ethyl ester in or on the raw agricultural commodity cottonseed at 0.05 part per million (ppm). The regulation was requested by the E.I. du Pont de Nemours & Co., Inc., and establishes the maximum permissible level for residues of the herbicide in or on cottonseed.

EFFECTIVE DATE: Effective on June 10, 1992.

ADDRESSES: Written objections may be submitted to the: Hearing Clerk (A-110), Rm. M3708, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 3, 1991 (56 FR 13642), which announced that the E.I. du Pont de Nemours & Co., Inc., Walkers Mill Bldg., Barley Mill Plaza, Wilmington, DE 19880, had submitted pesticide petition (PP) 1F3951 to EPA proposing that under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), 40 CFR 180.441 be amended by establishing a regulation to permit the combined residues of the herbicide quizalofop ethyl (ethyl-(2-[4-(6-chloroquinoxalin-2-yl-oxy) phenoxy] propanoate)), its metabolite 2-[4-(6-chloroquinoxalin-2-yl-oxy) phenoxy] propanoic acid, and conjugates, all expressed as quizalofop ethyl, in or on the raw agricultural commodity cottonseed at 0.05 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petitioner subsequently amended the petition and proposed to establish a tolerance for residues of the herbicide quizalofop-p ethyl ester [ethyl (*R*)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoate], and its acid metabolite quizalofop-p [*R*-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoic acid], and the *S* enantiomers of both the ester and acid, all expressed as quizalofop-p ethyl ester in or on the raw agricultural commodity cottonseed at 0.05 ppm. Because these revisions were a redefinition of the proposal to more accurately describe the residues and because they did not significantly alter the proposal, a period of public comment is not necessary.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance.

1. Several acute toxicology studies placing technical-grade quizalofop ethyl in toxicity Category III.

2. An 18-month oncogenicity study with CD-1 mice fed dosages of 0, 0.2, 1.5, 12, and 48 mg/kg/day with no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day and a marginal increase in the incidence of hepatocellular tumors at 48 mg/kg/day HDT (highest dose tested) which exceeded the maximum tolerated dose (MTD).

3. A 2-year chronic toxicity/oncogenicity study in rats fed dosages of 0, 1.25, 5, and 20 mg/kg/day with no carcinogenic effects observed under the conditions of the study at levels up to and including 20 mg/kg/day (HDT) and a systemic NOEL of 1.25 mg/kg/day based on altered red cell parameters and slight/minimal centrilobular enlargement of the liver at 5 mg/kg/day.

4. A 1-year feeding study in dogs fed dosages of 0, 0.625, 2.5, and 10 mg/kg/day with a NOEL of 10 mg/kg/day (HDT).

5. A developmental toxicity study in rats fed dosage levels of 0, 30, 100, and 300 mg/kg/day (HDT), with a maternal toxicity NOEL of 300 mg/kg/day and a developmental toxicity NOEL of greater than 300 mg/kg/day (HDT).

6. A developmental toxicity study in rabbits fed dosage levels of 0, 7, 20, and 60 mg/kg/day with no developmental effects noted at 60 mg/kg/day (HDT), and a maternal toxicity NOEL of 20 mg/kg/day based on decreases in food consumption and body weight gain at 60 mg/kg/day (HDT).

7. A two-generation reproduction study in rats fed dosages of 1, 1.25, 5, and 20 mg/kg/day with a reproductive (developmental) NOEL of 1.25 mg/kg/day based on an increase in liver weight and increase in the incidence of eosinophillic changes in the liver at 5.0 mg/kg/day and a parental NOEL of 5.0 mg/kg/day based on decreased body weight and premating weight gain in males at 20 mg/kg/day (HDT).

8. Mutagenicity data included gene mutation assays with *E. coli* and *S. typhimurium* (negative); DNA damage assays with *B. subtillis* (negative) and a chromosomal aberration test in Chinese hamster cells (negative).

The Toxicology Peer Review Committee of HED evaluated the data on the incidence of liver tumors found in the mouse oncogenicity study with quizalofop ethyl, and the same data were also considered by the Science Advisory Panel (SAP). It was concluded that quizalofop ethyl would be classified as a Category D carcinogen (not classifiable as to human carcinogenicity), "because limitations in the data from an adequately performed mouse study precluded an accurate interpretation of oncogenic risk."

Based on the NOEL of 0.9 mg/kg/bwt/day in the 2-year rat feeding study, and using a hundredfold uncertainty factor, the RfD acceptable daily intake (ADI) for quazalofop ethyl is calculated to be 0.009 mg/kg/ bwt/day. The theoretical maximum residue contribution (TMRC) is 0.000217 mg/kg bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by 0.000002 mg/kg bwt/day (0.01 percent of the ADI). These tolerances and previously established tolerances utilize a total of 2.42 percent of the ADI for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6 years, the current action and previously established tolerances utilize, respectively, a total of 10.2 percent and 5.7 percent of the ADI, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

The nature of the residue is adequately understood, and an adequate analytical methodology (high-pressure liquid chromatography using either ultraviolet or fluorescence detection) is available for enforcement purposes in Vol. II of of the Food and Drug Administration Pesticide Analytical Method (PAM II, Method I). There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

Based on the information cited above, the Agency has determined that the establishment of the tolerance by

amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 21, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.441, by adding new paragraph (c), to read as follows:

§ 180.441 Quizalofop ethyl; tolerances for residues.

* * * * *

(c) Tolerances are established for the combined residues of the herbicide quizalofop-p ethyl ester [ethyl (*R*)-[2-[4-[(6-chloroquinoxalin-2-yl)oxy]phenoxy]]-propanoate], and its acid metabolite quizalofop-p [*R*-[2-[4-[(6-chloroquinoxalin-2-yl)oxy]phenoxy]] propanoic acid], and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the raw agricultural commodity cottonseed at 0.05 part per million.

[FR Doc. 92-13619 Filed 6-9-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-11; RM-7881]

Radio Broadcasting Services; Inglis, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 282A to Inglis, Florida, as the community's first local FM service at the request of Lucille Ann Lacy. *See* 57 04180, February 4, 1992. Channel 282A can be allotted to Inglis in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) northwest, in order to avoid a short-spacing to Station WZTU(FM), Channel 281C, Cocoa Beach, Forida. The coordinates are North Latitude 29-02-45 and West Longitude 82-40-53. With this action, this proceeding is terminated.

DATES: Effective July 20, 1992; the window period for filing applications will open on July 21, 1992, and closed on August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-11, adopted May 19, 1992, and released June 4, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Inglis, Channel 282A.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-13533 Filed 6-9-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-15; RM-7886]

Radio Broadcasting Services; Poipu, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 240A to Poipu, Hawaii, as the community's first local FM service at the request of Lu Ann Uchida Lane. See 57 FR 05412, February 14, 1992. Channel 240A can be allotted to Poipu in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates are North Latitude 21-52-35 and West Longitude 159-27-14. With this action, this proceeding is terminated.

DATES: Effective July 20, 1992; the window period for filing applications will open on July 21, 1992, and close on August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-15, adopted May 19, 1992, and released June 4, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Poipu, Channel 240A.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-13534 Filed 6-9-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2803, 2804, 2805, 2806, 2807, 2810, 2813, 2817, 2833, and 2834

[Justice Acquisition Circular 92-1]

Miscellaneous Amendments to Justice Acquisition Regulations (JAR)

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: Justice Acquisition Circular 92-1 amends the JAR to reflect a number of miscellaneous changes implementing higher level issuances and other changes with respect to Justice internal or administrative matters. The major changes include: amending section 2801.603 to clarify that the existing contracting officers standards are not applicable to realty leasing and sales personnel and to add additional subject areas to the training requirements for contracting officers with authority to enter into leasehold interest in real property; adding a new section 2803.104, Procurement integrity, to incorporate agency procedures which implement the Procurement Integrity requirements of the Office of Federal Procurement Policy Act of 1988, as amended; adding a new subpart 2803.8, Limitation on the Payment of Funds to Influence Federal Transactions, to incorporate agency procedures for reporting lobbying disclosure forms; amending section 2807.103, Agency-head responsibilities to require the consideration of the use of the metric system of measurements in the acquisition planning phase, in accordance with section 5164 of the Omnibus Trade and Competitiveness Act of 1988; adding section 2810.001, Definitions, to incorporate definitions used in DOJ's Metric Program and section 2810.002, Policy, to establish the policy for using metric units of measurements in solicitations; and adding subpart 2813.70, Certified Invoice Procedure, to incorporate existing certified invoice procedures.

EFFECTIVE DATE: June 10, 1992.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division, (202) 514-6868.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291, except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612).

List of Subjects in 48 CFR Part 2801, 2803, 2804, 2805, 2806, 2807, 2810, 2813, 2817, 2833, and 2834.

Government Procurement.

Harry H. Flickinger,

Assistant Attorney General for Administration.

1. The authority citation for 48 CFR parts 2801, 2803, 2804, 2805, 2806, 2807, 2810, 2813, 2817, 2833, and 2834 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

2. Part 2801 is amended as set forth below:

a. Subpart 2801.2 is added as follows:

Subpart 2801.2—Administration

Sec.
2801.270 Amendment of regulation.
2801.270-1 Revisions.
2801.270-2 Policy Directives.
2801.270-3 Effective date.
2801.270-4 Numbering.

Subpart 2801.2—Administration

2801.270 Amendment of regulation.

This Regulation will be amended from time to time to set forth improved procedures which reduce contract preparation time, simplify and standardize contract forms, improve the contracting process and reflect changes in statutes, Executive Orders, the FAR and other policies. Acquisition personnel are encouraged to submit suggestions, based on operating experience, for improving and simplifying the procedures set forth in this Regulation. Such suggestions should be submitted through the Bureau Chief of Procurement to the Office of the Procurement Executive.

2801.270-1 Revisions.

This Regulation will be amended by issuance of Justice Acquisition Circulars (JACs) containing loose-leaf replacement pages which revise parts, subparts, paragraphs or subparagraphs. A vertical bar (edit bar) at the beginning or end of a line indicates that a change has been made within that line.

2801.270-2 Policy Directives.

(a) Policy Directives will be used to supplement this regulation when it is necessary or advisable to promulgate specific information or procedures as rapidly as possible.

(b) Unless otherwise indicated, each item in a Policy Directive will remain in effect until the effective date of that subsequent Justice Acquisition Circular revision, which incorporates the item into the JAR, or until specifically cancelled.

2801.270-3 Effective date.

(a) Statements in Justice Acquisition Circulars and Policy Directives to the effect that the material published therein is "effective upon receipt," or upon a specified date, or that changes set forth in the Circulars or Directives are "to be used upon receipt," mean that any new or revised clauses or forms included in the Circulars or Directives shall be included in invitations for bids and requests for proposals issued thereafter.

(b) Procurements initiated after receipt of new or revised clauses should include such clauses.

(c) Unless otherwise stated, invitations for bids which have been issued and bilateral agreements, upon which negotiations have been completed prior to the receipt of new or revised contract clauses, need not be amended to include the new or revised clauses, if such amendment would unduly delay the procurement action.

2801.270-4 Numbering.

Justice Acquisition Circulars and Policy Directives are consecutively numbered, beginning with number 1, prefixed by the last two digits of the calendar year of issuance.

2801.603 [Amended]

b. In section 2801.603, paragraph (f)(1) introductory text is revised and (f)(3)(v) is added as set forth below, paragraph (h) is removed, and existing paragraph (i) is redesignated as paragraph (h).

* * * * *

(f) *Training subject areas.* (1) It is understood that the following are meant

to be general subject areas, not course titles. The Bureau in determining the acceptability of a particular course will make a determination based on what is generally understood in the procurement field to be procurement or procurement related training. Training may be accomplished in-house or obtained from outside sources. (Does not apply to realty leasing and sales personnel.)

* * * * *

(f)(3) * * *

(v) Techniques of Negotiating Federal Real Property Leases (recommended 40 hrs).

The Cost and Price Analysis and Negotiation Techniques courses listed in (f)(1) may be substituted for the required Pricing of Lease Proposal and Techniques of Negotiating Federal Real Property Leases courses listed above.

PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Part 2803 is amended as set forth below:

a. Subpart 2803.1 is revised to read as follows:

Subpart 2803.1—Safeguards

Sec.
2803.101–3 Agency regulations.
2803.104 Procurement integrity.
2803.104–5 Disclosure, protection, and marking of proprietary and source selection information.
2803.104–9 Certification requirements.
2803.104–11 Processing violations or possible violations.
2803.104–12 Ethics program training requirements.

Subpart 2803.1—Safeguards

2803.101–3 Agency regulation.

The DOJ regulations governing Standards of Conduct are contained in 28 CFR part 45. Agency authorized exceptions to FAR 3.101–2 are contained in 28 CFR 45.735–14.

2803.104 Procurement integrity.

2803.104–5 Disclosure, protection, and marking of proprietary and source selection information.

(a) The head of the agency, or his or her designee, or the contracting officer are permitted by FAR 3.104–5(d) to authorize persons, or classes of persons, access to proprietary or source selection information when access is necessary to the conduct of the procurement. Authorizations to individuals should be made in writing only after confirmation by the contracting officer that the individual has completed a certification in accordance with FAR 3.104–12(a)(2). Authorizations to classes of persons must be made at a level not lower than the chief of the contracting office.

(b) The head of the office receiving the proprietary or source selection information, or his or her designee, shall maintain a list of persons, or classes of persons, who have authorized access to the information. The list shall be forwarded to the contracting office responsible for the conduct of the procurement to be included in the contract file.

2803.104–9 Certification requirements.

(a) *Record-keeping requirements.* (1) For those contracts over $100,000, the contracting officer's and the contractor's certifications shall be filed in the contract file. Also, the list of personnel having access to source selection information submitted by the program office head will be filed in the contract folder in accordance with FAR 3.104–5.

(2) Bureaus are required to maintain a central file of all certifications required by FAR 3.104–12.

(b) *Exception to certification requirements.* In an exceptional case, the Attorney General may determine in writing that the certification requirement should be waived. The contracting officer, with approval of the Bureau Director, shall submit a request for waiver to the Office of the Procurement Executive. The request shall clearly identify the procurement, or class of procurements, and provide a detailed justification for the requested waiver. The Procurement Executive will evaluate the request, provide recommendations, and forward the request to the Attorney General for his determination. The resulting decision of the Attorney General shall state the reasons for approval or disapproval of the waiver. The Attorney General shall promptly notify Congress, in writing, of each waiver approved. The authority to approve a waiver may not be delegated.

2803.104–11 Processing violations or possible violations.

(a) If any certification received by, or signed by, the contracting officer contains any information of a violation, or possible violation of the procurement integrity section of the OFPP Act, the contracting officer shall determine whether the reported violation, or possible violation has any impact on the pending award, or selection of the source thereof. If the contracting officer concludes that there is no impact, the contracting officer shall report the violation, accompanied by the appropriate documentation supporting that conclusion, to the head of the procurement office. With the concurrence of the head of the procurement office, the contracting officer may immediately proceed with award, and the head of the procurement office shall notify the head of the bureau, or his or her designee, of a violation, or possible violation.

(b) The head of the bureau, or his or her designee, receiving a certification describing an actual, or possible violation of the procurement integrity provisions of the OFPP Act, shall review all information available and he or she may make a determination that the prohibitions of section 27 of the Act have not been violated. This signed determination will be sent to the contracting officer for inclusion in the contract file.

(c) If the head of the bureau, or his or her designee, determines that the prohibitions of section 27 of the Act have been violated, he/she shall submit the file to the Procurement Executive with an explanation of his/her intentions to remedy the situation. If the Procurement Executive concurs in the intended actions, a written concurrence will be sent to the head of the bureau or designee. The contracting officer will then be advised, or directed by the head of the bureau, or designee, as to the action to be taken. The types of actions that would normally be taken when a violation has occurred that affected the outcome of a procurement are listed in FAR 3.104–11(d).

(d) If the head of the bureau, or his or her designee, receiving the certification of a violation, or possible violation, determines that award is justified by urgent and compelling circumstances, or is otherwise in the interest of the Government, then he or she may authorize the contracting officer to award the contract after notification to the Procurement Executive.

2803.104–12 Ethics program training requirements.

It is the responsibility of the bureaus to provide training for "procurement officials" concerning the requirements of FAR 3.104. The bureau procurement training efforts should be coordinated with the Department's Ethics Official, who is responsible for developing agency ethics training plans, to include briefings on ethics and standards of conduct for all employees who are contracting officers and procurement officials. The Ethics Official should be contacted directly to schedule training.

b. Subpart 2803.8 is added to read as follows:

Subpart 2803.8—Limitation on the Payment of Funds to Influence Federal Transactions

2803.804 Policy.

(a) Copies of all contractor disclosures furnished pursuant to the clause at FAR 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, and a summary report, containing a compilation of the information contained in the disclosures received, shall be forwarded, by the Bureau Procurement Chief, to the Procurement Executive. Negative reports are required to be submitted if no disclosures have been received from the contractors.

(b) The disclosures, or negative reports, shall be submitted in accordance with the following schedule:

(1) For the six month period from October 1 to March 31, reports are due to the Procurement Executive by April 30.

(2) For the six month period from April 1 to September 30, reports are due to the Procurement Executive by October 31.

(c) The Procurement Executive shall consolidate the disclosures and reports and submit the semi-annual report and disclosures to the Assistant Attorney General for Administration, for subsequent submission to Congress, on behalf of the Attorney General, by May 31 and November 30 of each year.

PART 2804—ADMINISTRATIVE MATTERS

4. Part 2804 is amended as set forth below:

a. In section 2804.601, paragraph (b) is revised to read as follows:

2804.601 Federal Procurement Data System.

* * * * *

(b) Bureau Procurement Chiefs shall provide to the Procurement Executive, the name, office, mailing address, and telephone number of the individual who will provide day-to-day operational contact within the bureau for the implementation of the FPDS. Changes and updates shall be forwarded to the Office of the Procurement Executive (OPE) within 30 days after they occur. It is the responsibility of the bureau contacts to ensure that all actions are reported and submitted to the OPE in a timely manner and that all statistics and reports are accurate, current, and complete. Bureau procurement chiefs shall obtain and review a hard copy computer printout of the ACF entries on a periodic basis, for validation purposes.

b. Section 2804.803–70 is amended by adding paragraph (c) as follows:

2804.803–70 Contents of contract files.

* * * * *

(c) The preaward contract file shall contain, for all contract requirements which do not appear on an Advance Procurement Plan (APP), a memorandum which documents those circumstances. The documentation shall include, as a minimum, the following:

(1) The reasons why the requirement did not get placed on an APP or subsequent revision; and

(2) A description as to how and when the requirement materialized.

c. Subpart 2804.70 is added to read as follows:

Subpart 2804.70—Procurement Requisitions

2804.7000 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with bureau instructions.

(b) Except in unusual circumstances, the contracting office shall not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions, up to the point of contract obligation, before receipt of the approved procurement request certifying that funds are available when—

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and funds to cover the procurement will be available prior to the date set for contract award or contract modification;

(3) The item has been listed on the component Advance Procurement Plan; and

(4) The Bureau Procurement Chief authorizes such action in writing before solicitation issuance.

(c) All procurement requisitions must be supported by a realistic cost estimate of the requirement. Whether the cost estimate is based on historical data, or other appropriate techniques, the estimates must be prepared in sufficient detail to enable the contracting officer to determine the accuracy and realism of the estimate. If the contracting officer has reason to doubt the validity of the estimate, he or she has a responsibility to review the estimate with the program office and reconcile any differences.

PART 2805—PUBLICIZING CONTRACT ACTIONS

5. Part 2805 is amended as set forth below:

a. Subpart 2805.2 is added to read as follows.

Subpart 2805.2—Synopses of Proposed Contract Actions

2805.201–70 Departmental notification.

(a) A copy of each synopsis of a proposed contract action sent to the Department of Commerce, shall be furnished to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Justice Management Division.

(b) Contracting officers shall document, in the contract file, that a copy of the notice has been forwarded to the OSDBU. A "cc" to the OSDBU on the file copy of the CBD notice shall be considered adequate documentation.

b. Subpart 2805.3 is added to read as follows:

Subpart 2805.3—Synopses of Contract Awards

2805.302–70 Departmental notification.

(a) The contracting officer shall forward a copy of the synopsis of contract award, as prepared under FAR 5.302, to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Justice Management Division.

(b) Contracting officers shall document in the contract file that a copy of the notice has been forwarded to the OSDBU. A "cc" to the OSDBU on the file copy of the CBD notice shall be considered adequate documentation.

PART 2806—COMPETITION REQUIREMENTS

6. Part 2806 is amended as set forth below:

a. Subpart 2806.3 is amended by adding sections 2806.303–2 and 2806.304.

2806.303–2 Content.

In addition to the information required by FAR 6.303–2, justifications over $10,000,000 shall contain the following documents:

(a) A written Acquisition Plan as required by FAR 7.102 and DOJ Order 2300.5A. If a plan was not prepared, explain why planning was not feasible or accomplished.

(b) A copy of the CBD announcement or proposed announcement in accordance with the requirements of FAR 5.203.

(c) As part of the description of the supplies or services required in FAR 6.303–2, the justification should include the statement of need as submitted by the requiring activity and any subsequent changes or revisions to the specifications.

(d) Any additional documentation that may be unique to the proposed procurement and is relevant to the justification.

2806.304 Approval of the justification.

(a) All justifications for contract actions over $100,000 shall be submitted to the bureau Procurement Chief for concurrence before being forwarded to the bureau Competition Advocate for approval. Justifications over $10,000,000 shall be further submitted for the concurrence of the bureau competition advocate and the head of the contracting activity, before being forwarded to the Procurement Executive for approval.

(b) The original and one copy of the justification shall be forwarded to the Office of the Procurement Executive. After approval by the Procurement Executive, the signed original will be returned to the contracting activity and one copy will be retained in the Office of the Procurement Executive.

PART 2807—ACQUISITION PLANNING

7. Section 2807.103 is revised to read as follows:

2807.103 Agency-head responsibilities.

(a) The Department's Advance Procurement Planning System provides that the heads of components shall appoint a Program Planning Coordinator to coordinate acquisition planning. The coordinator shall work with the component procurement representative and financial officer in developing an approved procurement plan.

(b) The heads of the contracting activities shall ensure that, during the acquisition planning phase, requirements personnel consider the use of the metric system of measurement consistent with 15 U.S.C. 2205 et seq. Use of the metric system must be coordinated with the contracting office and be consistent with security, operational, economic, technical, training, and safety requirements.

PART 2810—SPECIFICATIONS, STANDARDS AND OTHER PURCHASE DESCRIPTIONS

8. Part 2810 is amended to add sections 2810.001 and 2810.002 to read as follows:

2810.001 Definitions.

Dual systems means the use of both inch-pound and metric systems. For example, an item is designed, produced, and described in inch-pound values with soft metric values also shown for information or comparison purposes.

Hybrid systems means the use of both inch-pound and hard metric values in specifications, standards, supplies, and services; e.g., an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

Metric system means the International System of Units established by the General Conference of Weights and Measures in 1960.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents in specifications, standards, supplies, and services. The physical dimensions are not changed.

2810.002 Metric Policy.

Consistent with the policy expressed in FAR 10.002(c), solicitations must include specifications and purchase descriptions stated in metric units of measurement whenever metric is the accepted industry system. Whenever possible, commercially developed metric specifications and internationally, or domestically developed voluntary standards, using metric measurements, must be adopted. While an industry is in transition to metric specifications, solicitations must include specifications and purchase descriptions stated in soft metric, hybrid, or dual systems except when impractical or inefficient.

PART 2813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

9. Part 2813 is amended by adding subpart 2813.70 to read as follows:

Subpart 2813.70—Certified Invoice Procedure

Sec
2813.7001 Policy.
2813.7002 Procedure.

Subpart 2813.70—Certified Invoice Procedure

2813.7001 Policy.

Under limited circumstances as described in this subpart, supplies or services directly related to mission accomplishment, may be acquired on the open market from local suppliers at the site of the work or use point, using vendor's invoices under the certified invoice procedure, instead of issuing purchase orders. Certified invoice procedures may not be used to place orders under established contracts, unless, specific authorization for their use is included in the contract document.

2813.7002 Procedure.

(a) Purchases utilizing the certified invoice procedure shall be effected only in accordance with FAR part 13 and JAR 2813, subject to the following:

(1) The amount of any one purchase does not exceed 10 percent of the small purchase limitation;

(2) A purchase order is not required by either the supplier or the Government;

(3) Appropriate invoices can be obtained from the supplier; and

(4) The items to be purchased shall be domestic source end products, except as provided in FAR subpart 25.1.

(b) Use of the certified invoice procedures does not eliminate the requirements in FAR part 13 or JAR part 2813 to:

(1) Reserve small purchases for small business in accordance with the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, et seq.), or document the file as to why a small business was not selected;

(2) Certify that the quality and quantity of item/services furnished are in accordance with the verbal agreement made with the vendor; and

(3) Obtain competitive quotes as is reasonable for the item being purchased.

(c) The Chief of the Contracting Office, as defined in JAR 2802. 102(f), shall delegate the authority to use the certified invoice procedure. Each delegation must specify any limitation placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services which can be procured.

(d) Each individual using this purchasing technique shall require the supplier to immediately submit properly prepared invoices which itemize property or services furnished. Upon receiving the invoice, the individual making the purchase shall annotate the invoice with the date of receipt, verify the arithmetic accuracy of the invoiced amount and verify on the invoice that the supplies and/or services have been received and accepted. If the invoice is correct, the individual making the purchase shall sign the invoice indicating acceptance and immediately forward it to his/her Executive Office. The invoice shall be approved by his/her appropriate administrative office and be forwarded to the Finance Office for payment within 5 workdays after receipt of the invoice, or acceptance of supplies or services, whichever is later. Before forwarding the invoice to Finance, the administrative office shall place the following statement on the invoice, along with the accounting and appropriation data:

I certify that these goods and/or services were received on _____ (date) and accepted on _____ (date). Oral purchase was authorized and no confirming order has been issued.

_____

Signature

Date

Printed or Typed Name and Title

PART 2817—SPECIAL CONTRACTING METHODS

10. Part 2817 is amended by adding subpart 2817.2 to read as follows:

Subpart 2817.2—Options

§ 2817.200 Scope of Subpart.

FAR subpart 17.2 prescribes policies and procedures for the use of option solicitation provisions and contract clauses. For standardization purposes, the option solicitation provisions and contract clauses will be used in all applicable Department of Justice procurement documents, including those for services involving the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property; architect-engineer services; research and development services; and for automatic data processing (ADP) equipment systems and telecommunications equipment and services, unless the Federal Information Resources Management Regulation (FIRMR) is applicable.

PART 2833—PROTESTS, DISPUTES AND APPEALS

11. Part 2833 is amended by adding subpart 2833.1 to read as follows:

Subpart 2833.1—Protests

§ 2833.105–70 Protests to GSBCA.

(a) Upon notification of an ADP protest to the GSBCA, the contracting officer shall forward, through the Bureau Procurement Chief, a notification to the Procurement Executive. This notification should be in the form of a memorandum and include the following information:

(1) Protestor.
(2) Nature of protest.
(3) Date protest received in GSBCA.
(4) Procurement item description.
(5) Estimated dollar amount.
(6) Status of award.
(7) Brief summary of bureau position regarding protestor's allegations.

(b) The protest notification to the Procurement Executive should be delivered within two working days after bureau notification. Copies to all final decisions should be delivered to the Procurement Executive within two working days after bureau notification.

PART 2834—MAJOR SYSTEM ACQUISITION

§ 2834.002–70 [Amended]

12. In section 2834.002–70, paragraph (c) is removed, and existing paragraphs (d), (e), and (f) are redesignated paragraphs, (c), (d) and (e), respectively.

[FR Doc. 92–13585 Filed 6–9–92; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for shortraker/rougheye rockfish (SRRE) in the Eastern Regulatory area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for SRRE in this area.

DATES: Effective 12 noon, Alaska local time (A.l.t.), June 6, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The SRRE TAC in the Eastern Regulatory area of the GOA (Eastern Gulf), which is defined at § 672.2, is established by the final notice of specifications (57 FR 2844, January 24, 1992) as 570 metric tons.

Under § 672.20(c)(2), the Director of the Alaska Region, NMFS has determined that the SRRE TAC in the Eastern Gulf will soon be reached. Consequently, NMFS is prohibiting directed fishing for SRRE in the Eastern Gulf, effective from 12 noon, A.l.t., June 6, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 5, 1992.

Alfred J. Bilik,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–13618 Filed 6–5–92; 8:45 am]
BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in Zone 1 of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the annual bycatch allowance of *C. bairdi* Tanner crab for the yellowfin sole trawl fishery in Zone 1 of the BSAI has been caught.

DATES: Effective 12 noon, Alaska local time (A.l.t.), June 6, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Zone 1 annual bycatch allowance of *C. bairdi* Tanner crab to the yellowfin sole trawl fishery, which is defined at § 675.21(g)(4)(ii)(A), was established by emergency rule (57 FR 11433, April 3, 1992) as 100,000 animals.

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(h)(1)(i), that U.S. fishing vessels have caught the 1992 Zone 1

bycatch allowance of *C. bairdi* Tanner crab specified for the yellowfin sole trawl fishery. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in Zone 1 of the BSAI from 12 noon, A.l.t., June 6, 1992, until 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is in compliance with E. O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 5, 1992.

Alfred J. Bilik,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-13617 Filed 6-5 92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 112
Wednesday, June 10, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV-92-037]

Irish Potatoes Grown in Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 946 for the 1992–93 fiscal period (July 1, 1992, through June 30, 1993). Authorization of this budget would permit the State of Washington Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by July 10, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect Washington potato handlers are subject to assessment. Funds to administer the Washington potato order are derived from such assessments. This proposed rule would authorize expenditures and establish an assessment rate for the State of Washington Potato Committee for the fiscal period beginning July 1, 1992. While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the Requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington potatoes under this marketing order, and approximately 450 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Washington potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal year was prepared by the State of Washington Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met February 7, 1991, and unanimously recommended a 1992–93 budget of $38,100, $3,100 more than the previous year. Major increases are in the compliance audits, salaries, and compensation categories.

The Committee also unanimously recommended an assessment rate of $0.005 per cwt., the same as last season. This rate, when applied to anticipated shipments of 7 million hundredweight, would yield $35,000 in assessment income. This, along with $3,100 from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $27,634, would be within the maximum permitted by the order of two fiscal periods' expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has

determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 946.245 is added to read as follows:

§ 946.245 Expenses and assessment rate.

Expenses of $38,100 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

Dated: June 4, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13603 Filed 6–9–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 947

[Docket No. FV–92–055]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 947 for the 1992–93 fiscal period (July 1, 1992, through June 30, 1993). Authorization of this budget would permit the Oregon-California Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 22, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marcha Sue Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (17 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12278, Civil Justice Reform. Under the marketing order now in effect Oregon-California potatoes are subject to assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes during the 1992–93 fiscal period, beginning July 1, 1992, through June 30, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition.

The Act provides that the district court of the United States in any district which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of Oregon-California potatotes under this marketing order, and approximately 550 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal year period was prepared by the Oregon-California Potato Committee the agency reponsible for local administration of the marketing order, submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because the same rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met March 4, 1992, and unanimously recommended a 1992–93 budget of $44,750, $500 less than the previous year. Slight increases in the

inspection fees, miscellaneous, office supplies, postage, and telephone categories would be offset by a decrease in the equipment category.

The Committee also unanimously recommended an assessment rate of $0.005 per hundredweight, $0.001 more than last season. This rate, when applied to anticipated shipments of 7,350,000 hundredweight, would yield $36,750 in assessment income. This, along with $8,000 from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $12,000, would be within the maximum permitted by the order of one fiscal period's expenses.

While this proposed action would impose some additional costs on handlers, the cost are in the form of uniform assessments on all handlers. Some the additional costs may be passed on to producers. However, there costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.The 1992–93 fiscal year for the program begins on July 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Oregon-California potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 947 be amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority. Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 947.243 is added to read as follows:

§ 947.243 Expenses and assessment rate.

Expenses of $44,750 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

Dated: June 4, 1992

Robert C. Keeney,

Deputy Director.

[FR Doc. 92–13604 Filed 6–9–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 982

[FV–92–053PR]

Expenses and Assessment Rate for Filberts/Hazelnuts Grown in Oregon and Washington for the 1992–93 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 982 for the 1992–93 marketing year (July 1, 1992, through June 30, 1993). Authorization of this budget would permit the Filbert/Hazelnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 22, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Cleark, F&V, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2170.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, filberts/hazelnuts grown in Oregon and Washington are subject to assessments. It is intended that the assessment rate proposed herein would be applicable to all assessable filberts/hazelnuts handled during the 1992–93 fiscal period, beginning July 1, 1992, through June 30, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of filberts/hazelnuts grown in Oregon and Washington subject to regulation under the filbert/hazelnut marketing order, and approximately 1,000 producers of filberts/hazelnuts in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of filbert/hazelnut producers and handlers may be classified as small entities.

The filbert/hazelnut marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable filberts/hazelnuts from the beginning of such year. An annual budget of expenses is prepared by the Filbert/Hazelnut Marketing Board (Board) and submitted to the Department for approval. The members of the Board are handlers and producers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and assessment rate are usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board conducted a telephone vote on March 13, 1992, and unanimously recommended 1992–93 marketing order expenditures of $387,605 and an assessment rate of $14.00 per ton of assessable filberts/hazelnuts. In comparison, 1991–92 marketing year budgeted expenditures were $388,050 and the assessment rate was $14.00 per ton.

Major expenditure categories in the 1992–93 budget, compared to those budgeted for 1991–92 (in parenthesis), are: Administation—$73,355 ($72,350); promotion—$200,000 ($200,000); and emergency reserve fund—$98,000 ($100,000). The emergency reserve fund would only be used if the crop exceeds 20,000 merchantable tons and an unforeseen emergency occurs during the fiscal year. In 1991–92, only $35,900 of the $100,000 emergency fund was used for promotion and marketing and computer services.

Assessment income for 1992–93 is expected to total $378,000 based on a crop estimate of 27,000 tons of assessable filberts/hazelnuts. Interest and incidental income for 1992–93 is estimated at $7,000. Operating reserve funds at the beginning of the 1992–93 fiscal period, estimated at $205,539, are well within the maximum permitted by the order of one fiscal period's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program begins on July 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable filberts/hazelnuts grown in Oregon and Washington during the fiscal period. In additional, handlers are aware of this action which was unanimously recommended by the Board. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is proposed to be amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 982.337 is added to read as follows:

§ 982.337 Expenses and assessment rate.

Expenses of $387,605 by the Filbert/Hazelnut Marketing Board are authorized and an assessment rate payable by each handler in accordance with section 982.61 is fixed at $14.00 per ton of assessable filberts/hazelnuts for the 1992–93 marketing year ending June 30, 1993. Unexpended funds may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keenev,

Depty Director, Fruit and Vegetable Division.

[FR Doc. 92–13431 Filed 6–9–92; 8:45 am]

BILLING CODE 3410–02–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Order No. 926; Docket No. RM91–1]

Rules of Practice and Procedure

Issued June 2, 1992.

AGENCY: Postal Rate Commission.

ACTION: Request for Further Comments and Notice of Conference.

SUMMARY: The Commission initiated this rulemaking to solicit suggestions for improvements to its rules of practice and procedure. On June 1, 1992, a Joint Task Force on Postal Ratemaking established by the Commission and the Board of Governors of the Postal Service issued a report recommending some changes designed to improve the ratemaking process. The Joint Task Force recommended expeditious adoption of modifications. Interested parties are invited to submit, by June 15, 1992, written comments addressing the Joint Task Force's recommendations. Additionally a conference will be held on June 12, 1992, at 9:30 am in the Commission's hearing room for parties who wish to discuss the Task Force's ratemaking proposals. Copies of the Joint Task Force's report are available from the Commission.

DATES: June 12, 1992, for the conference. June 15, 1992, for written comments.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission 1333 H Street, NW., suite 300, Washington, DC 20268 (telephone: 202/789–6840). The conference will be held at that address.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street, NW., suite 300, Washington, DC 20268 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On June 1, 1992, the Commission received Postal Ratemaking in a Time of Change, a

report by the Joint Task Force on Postal Ratemaking established by the Postal Rate Commission and the Board of Governors of the United States Postal Service. That report contains a number of suggestions designed to improve the process for consideration of changes to postal rates and mail classifications. As such, it is directly relevant to Docket No. RM91–1, the rulemaking established by the Commission for the purpose of considering improvements to our rules of practice and procedure.

The Commission wants to have a broad spectrum of public viewpoints to assist it in its consideration of the proposals contained in this report. Therefore, we are providing a copy of this report to all participants in that rulemaking, as well as to all participants in the most recent omnibus rate case, Docket No. R90–1. Additionally, any interested person may obtain a copy of this report, either in person or by mail, from the Commission offices. We request that all interested members of the public review this report and provide their advice on whether the proposals offered by the Task Froce have the potential to improve the process for public review of postal rate and classification changes; and are likely to assist that process to arrive at recommendations which reflect realistic projections of Postal Service's future costs and revenues.

The Task Force report suggests that the Commission initially focus on its proposals for changes affecting rate cases. It suggests the Commission attempt to implement new rate case rules by mid-August 1992, so that the Postal Service will have sufficient notice of any new procedures to incorporate them into its next omnibus rate case filing, which the Task Force evidently assumes may occur early in 1993.

The Commission recognizes that developing new rules which preserve procedural fairness while incorporating significant procedural changes within the two and half-month period suggested by the Task Force may not be possible. However, we also recognize the wisdom of attempting to implement improvements in the ratemaking process sufficiently promptly so that the benefits of these improvements will be enjoyed during the next rate case. Therefore, we shall attempt to expedite the consideration of the rate case-related proposals contained in the Task Force report.

The first step in considering these proposal will be to seek general comments on the theories and policies underlying these proposals. In particular, the Commission requests that interested members of the public provide their views on either, or both, of the following two concepts, as described more fully in the Report:

(1) That the Commission use a four-year prospective test period in omnibus rate cases, with the expectation that rates would change at the beginning of this period, and be adjusted to reflect events after half the period has elasped (see especially Chapter III of the report); and

(2) That mail services in direct competition with similar private services be accorded broad rate recommendations which allow increased pricing flexibility for the Postal Service (as described in Chapter IV of the report).

A conference to allow parties to express their views orally, and comment concerning positions presented by others will be convened on Friday, June 12, at 9:30 a.m. in the hearing room at the Commission, 1333 H Street, NW., suite 300, Washington, DC.

Interested participants are also invited to submit written comments on these topics on or before June 15, 1992. While additional written comments on the legal and policy issues involved in the Task Force proposals will be welcome at any time during this rulemaking proceeding, this initial set of written and oral comments will be used by the Commission to develop draft rules designed to implement the most promising aspects of these two specific Task Force ratemaking proposals.

The Commission contemplates publishing draft proposals so that interested participants will have an opportunity to comment on actual proposals as well as on inchoate policy suggestions. It is our current expectation to develop such proposed rules promptly and seek additional comments during July 1992.

It is ordered:

1. The report entitled Postal Ratemaking in a Time of Change prepared by the Joint Task Force on Posal Ratemaking established by the Postal Rate Commission and the Board of Governors of the United States Postal Service is incorporated into the record of this proceeding.

2. A conference to discuss rate case-related proposals contained in this report will be held on June 12, at 9:30 a.m., in the Commission hearing room.

3. Interested persons are invited to submit written comments on the legal and/or policy issues arising from the rate case-related proposals contained in this report by June 15, 1992.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 92–13543 Filed 6–9–92; 8:45 am]

BILLING CODE 7710-FW-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3060/P544; FRL–4066–8]

RIN 2070-AC18

Pesticide Tolerance for 2,4-D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide 2,4-dichlorophenoxyacetic acid (referred to in this document as 2,4-D) in or on the raw agricultural commodity soybeans. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on soybeans was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 4E3060/P544], must be received on or before July 10, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency

Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3060 to EPA on behalf of the Agricultural Experiment Stations of Illinois, Iowa, Ohio, and South Dakota. The petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), establish a tolerance for residues of the herbicide 2,4-D in or on the raw agricultural commodity soybeans at 0.1 part per million (ppm). The Agency proposes to establish the requested tolerance with an expiration date of December 1995. Conditional registration will be issued for 2,4-D ester and 2,4-D amine formulations concurrent with the establishment of this tolerance to control susceptible broad-leaf weeds prior to planting soybeans under no-tillage or reduced-tillage production. As a condition of registration, EPA is requiring the submission of additional studies described later in this document. Conditional registration will expire in December 1994.

No-tillage or reduced tillage are agricultural practices that involve planting and crop production with minimum disruption of the soil surface. Soil conservationists largely advocate reduced or no-tillage practices to reduce soil and fertilizer run-off, soil water loss, and fuel costs. Soil conservation compliance is mandated by the 1990 Farm Bill and by an agreement between the United States and Canada through the International Joint Commission. The International Joint Commission is in charge of reducing sediment and phosphorus in the Great Lakes.

One of the disadvantages of reduced tillage is the frequent need for herbicides to "burn-down" weeds prior to planting. At present there are two herbicides, glyphosate and paraquat, that can be used for "burn-down" of weeds prior to planting soybeans. The use of either of these herbicides would increase production costs by $5 to $8 per acre over the cost of 2,4-D. Data from the Conservation Technology Information Center indicate that by 1995, 20 million acres of soybeans may be grown under reduced tillage.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance for 2,4-D include:

1. A subchronic dietary study with mice fed diets containing 0, 1, 15, 100, and 300 milligrams(mg)/kilogram (kg)/day with a no-observed-effect-level (NOEL) of 15 mg/kg/day. The lowest-observed-effect-level (LOEL) was established at 100 mg/kg/day based on decreased glucose and thyroxine levels, increases in absolute and relative kidney weights, and histopathological lesions in the liver and kidneys.

2. A 90-day dietary study in rats fed diets containing 0, 1, 15, 100, or 300 mg/kg/day resulted in a NOEL of 15 mg/kg/day and an LOEL of 100 mg/kg/day. The LOEL was based on decreases in body weight and food consumption, alterations in clinical pathology, changes in organ weights, and histopathological lesions in the kidney, liver, and adrenals of both sexes of rats.

3. A 90-day feeding study in dogs fed diets containing 0, 0.3, 1, 3, and 10 mg/kg/day with a NOEL of 1 mg/kg/day. The LOEL was established at 3 mg/kg/day based on histopathological changes in the kidneys of male dogs.

4. A two-generation reproduction study in rats with NOEL's for parental and developmental toxicity of 5 mg/kg/day. The LOEL's for this study are established at 20 mg/kg/day based on reductions in body weight gain in F_0 and F_{2b} pups, and reduction in pup weight at birth and during lactation.

5. A teratology study in rabbits given gavage doses at 0, 10, 30, and 90 mg/kg on days 6 through 18 of gestation was negative for developmental toxicity at all doses tested.

6. A teratology study in rats given gavage doses at 0, 8, 25, and 75 mg/kg on days 6 through 15 of gestation was negative for developmental toxicity at all doses tested. A NOEL for fetotoxicity was established at 25 mg/kg/day based on delayed ossification at the 75 mg/kg dose level.

7. Mutagenicity studies including gene mutation, chromosomal aberrations, and direct DNA damage tests were negative for mutagenic effects.

8. A 2-year feeding/carcinogenicity study in mice fed diets containing 0, 1, 15, and 45 mg/kg/day with a NOEL of 1 mg/kg/day. The systemic LOEL was established at 15 mg/kg/day based on increased kidney and adrenal weights and homogeneity of renal tubular epithelium due to cytoplasmic vacuoles. No carcinogenic effects were observed under the conditions of the study at any dosage level tested.

9. A 2-year feeding/carcinogenicity study in rats fed diets containing 0, 1, 15, and 45 mg/kg/day with a NOEL of 1 mg/kg/day. Although there appeared to be a slight treatment-related incidence of benign brain tumors (astrocytomas) in male rats fed diets containing 45 mg/kg/day, two different statistical evaluations found no strong statistical evidence of carcinogenicity in male rats. There were no carcinogenic effects observed in female rats.

The Agency has concluded that new mouse and rat carcinogenicity studies are needed to assess the carcinogenicity potential of 2,4-D. New studies are required since the Agency believes that the maximum tolerated dose was not achieved at the highest feeding level in either study. New carcinogenicity studies are required to be submitted to EPA by October 1993.

EPA issued preliminary notifications of Special Review to the registrants of 2,4-D on September 22, 1986, based on the findings of an epidemiology study which reported an association between the use of phenoxy herbicides, including 2,4-D, and non-Hodgkins lymphomas (NHL), a type of cancer that originates in the lymphatic system. After completing a thorough examination of the epidemiology and laboratory evidence, EPA published a proposed decision not to initiate Special Review based on the opinion of scientists in EPA's Office of Pesticide Programs (OPP), toxicology and epidemiology experts, and the FIFRA Scientific Advisory Panel (SAP) that existing data are inadequate or insufficient to assess the carcinogenic potential of 2,4-D. Information relating to the carcinogenicity potential of 2,4-D and EPA's proposed decision not to initiate a Special Review are discussed in a **Federal Register** notice of March 23, 1988 (53 FR 9590).

The Agency subsequently announced in a **Federal Register** notice of October 13, 1989 (54 FR 42032), that two new epidemiology studies, initiated by the National Cancer Institute (NCI), will be considered along with existing epidemiologic, toxicologic, and other supporting data before making a determination on whether or not to initiate a Special Review for 2,4-D. In the interim, the Office of Pesticide Programs has classified 2,4-D as a Category D carcinogen (not classifiable as to human carcinogenicity) based on inadequate evidence of cancer in humans and laboratory animals.

Tolerances for 2,4-D are established for a wide variety of raw agricultural commodities ranging from 0.05 ppm on strawberries to 1,000 ppm on rangeland

and pasture grasses. Tolerances for 2,4-D are currently listed in 40 CFR 180.142, paragraphs (a) through (j). The paragraphs correspond to specific formulations of 2,4-D and/or use patterns approved for use. Tolerances established in support of agricultural uses of 2,4-D (i.e., the application of 2,4-D for crop production purposes) are listed in paragraphs (a), (b), (d), (e), and (j) of 40 CFR 180.142. Tolerances for 2,4-D listed under paragraphs (c), (f), and (i) of the section are established for residues resulting from the use of 2,4-D for aquatic weed control or application to irrigation ditch banks in the western U.S. The tolerances listed under paragraphs (c) and (f) of the section are established specifically for residues resulting from the use of irrigation water on growing crops from aquatic sites or irrigation ditch banks treated with 2,4-D. Tolerances are also established for secondary residues of 2,4-D and/or its metabolite 2,4-dichlorophenol in food products of animal origin ranging from 0.05 ppm in eggs and poultry, 0.1 ppm in milk, to 0.2 ppm in a variety of byproducts from cattle, goats, hogs, horses, and sheep.

Although tolerances are already established under 40 CFR 180.142(f) for residues of 2,4-D on members of the crop group seed and pod vegetables (which includes soybeans) at 1.0 ppm, these tolerances were not established in support of the proposed preplant use of 2,4-D for soybean production. Tolerances listed under § 180.142(f) are established for residues of 2,4-D on seed and pod vegetables resulting from use of irrigation water from aquatic sites approved for the application of the dimethylamine salt of 2,4-D for water hyacinth control in programs conducted by the Corps of Engineers or other Federal, State, or local public agencies.

Field residue studies conducted at the maximum proposed application rate and at exaggerated application rates from Maryland and Iowa indicate that residues of 2,4-D will be nondetectable in soybeans from the proposed use of the 2,4-D ester formulation for reduced-tillage soybean production. Residues resulting from the proposed use of 2,4-D amine formulations are also expected to be nondetectable.

In making tolerance decisions, EPA compares the reference dose (RfD) with the theoretical maximum residue contribution (TMRC) or the anticipated residue contribution (ARC) of the pesticide to the daily diet. The amount of a pesticide in the human diet to which people are exposed depends on the amount of the pesticide remaining on various foods at the time the food is consumed, the percentage of the crop treated with the pesticide, and the composition of the diet. The TMRC is a "worst case" assessment, which is a useful tool for identifying potential dietary exposure problems. When a TMRC exposure estimate shows risk levels of concern, EPA then reassesses dietary exposure using available information to develop the ARC, which is a more accurate measure of dietary exposure.

The TMRC is based on assumptions that residues are at tolerance level for all foods and that all commodities that have established tolerances are treated with the pesticide. Although tolerances define the maximum allowable levels for pesticide residues in food, the method of establishing tolerances assures that pesticide residues are below the tolerance when the food is consumed. Actual residue monitoring data for many pesticides confirm that pesticide residues are well below tolerance. Tolerances are set high enough to cover residues that result from the use of the pesticide at maximum application rates, maximum frequency of application, and the minimum preharvest interval. Even under this maximum-use scenario, average residue values are generally well below the tolerance level. Lower use rates will generally decrease these levels even further. In addition, available pesticide usage data generally confirm that the total acreage of many crops is not treated with all pesticides for which tolerances are established. The ARC is a more realistic assessment of dietary exposure since it more closely approximates the amount of pesticide residues on food at the time it enters the market. The ARC may also account for adjustments to dietary exposure based on the estimated percentage of the commodity treated with the pesticide.

An estimate of 2,4-D residues in the human diet, based on available data, is likely to overstate dietary exposure for two important reasons. First, tolerance level residues were used for all commodities to estimate dietary exposure. There are insufficient data to estimate the amount of residue on treated commodities when they enter the market. As explained above, an estimate of dietary exposure based on tolerance level residues can significantly overstate exposure. Second, in the absence of actual usage data, the Agency assumed 100-percent treatment for several commodities that represent a significant contribution to the human diet.

Another factor to be considered in estimating dietary exposure is the existence of tolerances established for residues of 2,4-D at various levels on the same commodity. For example, there are three different tolerances established for stone fruits ranging from 0.1 ppm to 1.0 ppm. There is a tolerance of 0.1 ppm for negligible residues resulting from application of the dimethylamine salt of 2,4-D to irrigation ditch banks in the western U.S. (40 CFR 180.142(c)); a tolerance of 0.2 ppm for residues resulting from agricultural uses (40 CFR 180.142(a)); and a tolerance of 1.0 ppm for residues from application of the dimethylamine salt for water hyacinth control in programs conducted by the Corps of Engineers or other Federal, State, or local public agencies (40 CFR 180.142(f)). Since agricultural uses are the major sources of 2,4-D residues in food, the Agency has calculated dietary exposure for 2,4-D based on tolerances established for its agricultural uses (40 CFR 142(a), (b), (d), (e), and (j)) and the tolerances established for secondary residues in meat, milk, poultry, and eggs. Although the tolerances established for agricultural uses are in some cases lower than the tolerances established for aquatic uses of 2,4-D, any underestimate of dietary exposure resulting from the use of the agricultural tolerances will be overshadowed by overestimates of dietary exposure produced by the factors mentioned above.

The provisional reference dose (RfD), based on the 2-year feeding study in rats (NOEL of 1 mg/kg/day) and using an uncertainty factor of 300, is calculated to be 0.003 mg/kg body weight (bwt)/day. Tolerance level residues and available percent of crop-treated information were used to calculate dietary exposure from the agricultural uses of 2,4-D. Dietary exposure to residues of 2,4-D is estimated at 0.003246 mg/kg bwt/day (108 percent of the RfD) for the U.S. population and 0.017838 mg/kg bwt/day (595 percent of the RfD) for nonnursing infants. Assuming tolerance level residues of 0.1 ppm on 100 percent of the soybean acreage, this action will increase dietary exposure by 0.000034 mg/kg (bwt)/day for the general population and 0.000163 mg/kg (bwt)/day for nonnursing infants, an increase of approximately 1 percent for each group.

The Agency concludes that the amount of pesticide added to the human diet from this use will not significantly increase dietary exposure. Thus the tolerance established by this proposed rule is considered to pose a negligible incremental risk to human health.

EPA's experience with pesticides which appear to have an RfD exceedance has generally been that

these exceedances disappear when more realistic exposure data are obtained. Nonetheless, EPA is usually unwilling to establish new uses and the concomitant tolerances for pesticides where exposure exceeds the RfD. EPA has approved additional uses of some pesticides when the total exposure from all uses appears to exceed the RfD, provided the additional uses result in insignificant exposure. EPA believes such actions are appropriate given its experience showing that many risk estimates substantially overstate risk when tolerance level residues are used to estimate dietary exposure. As noted above, there are other factors which strongly indicate EPA's estimate of exposure to 2,4-D is overstated, including the assumption that 2,4-D is used on 100 percent of several commodities and the available data that report nondetectable residues of 2,4-D in soybeans. Establishment of a tolerance for preplant soybean use of 2,4-D is additionally justified by the potentially large benefits accruing from this use.

Because residue studies have not been submitted which are geographically representative of the total U.S. soybean production area, residue studies from several additional soybean-producing States will be required as a condition for registration of the proposed use. In addition, EPA requires data depicting the total terminal residue of carbon-14 labeled 2,4-D in three dissimilar crops, and ruminants and poultry to complete an evaluation of the metabolism of 2,4-D in plants and animals. The metabolism studies, which are required in association with the reregistration of 2,4-D, are due to be submitted to the Agency in 1992. In the interim, for purposes of this tolerance, the regulated residues are 2,4-dichlorophenoxyacetic acid for plants and 2,4-dichlorophenoxyacetic acid and 2,4-dichlorophenol for animal commodities. The registrant has been notified that additional data requirements such as livestock feeding studies, analytical methods, storage stability, and residue studies may be required, pending the outcome of EPA's evaluation of the 2,4-D plant and animal metabolism studies.

EPA is limiting the period of time that the proposed tolerance for 2,4-D on soybeans is to be in effect due to the requirements for additional residue chemistry and carcinogenicity studies. Limiting the time period of the tolerance will require the proponents of a permanent tolerance for this use of 2,4-D to demonstrate that the additional data support such a decision. The Agency concludes that residues of 2,4-D in the human diet from the proposed use are unlikely to pose a significant incremental risk, pending the submission of the required studies and a reassessment of 2,4-D food and feed tolerances.

An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual (PAM), Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-5232.

Any secondary residues occurring in meat, milk, poultry, or eggs from the feeding of processed soybean byproducts to livestock will be covered by existing tolerances for these commodities. A restriction against the grazing of treated fields and the feeding of treated soybean forage, hay, and fodder to livestock will be imposed on the registration. There are currently no actions pending against the continued registration of this chemical.

Based on the above information, the Agency concludes that the tolerance established by amending 40 CFR 180.142 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3060/P544] . All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 19, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.142, by adding new paragraph (k), to read as follows:

§ 180.142 2,4-D; tolerances for residues.

* * * * *

(k) A tolerance that expires on December 1995 is established for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) resulting from the preplant use of 2,4-D ester or amine in or on the raw agricultural commodity as follows:

Commodity	Parts per million
Soybeans	0.1

[FR Doc. 92-13615 Filed 6-9-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 799

[OPPTS-42002M; FRL-4055-9]

Fluoroalkenes; Proposed Withdrawal of Test Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to rescind the requirement in the fluoroalkenes final rule issued under the authority of the Toxic Substances Control Act (TSCA) for mouse specific locus (MSL) testing of vinyl fluoride (VF; CAS No. 72–02–5), vinylidene fluoride (VDF; CAS No. 75–38–7), hexafluoropropene (HFP; CAS No. 116–15–4), and tetrafluoroethene (TFE; CAS No. 116–14–3). EPA's proposed decision is based on the analysis of scientific data submitted by the testing sponsors of these substances which demonstrated that VF, VDF, HFP, and TFE are unlikely to elicit gene mutation effects in humans.

DATES: Submit written comments on or before July 27, 1992.

ADDRESS: Submit written comments, identified by the document control number (OPPTS–42002M), in triplicate to: TSCA Public Docket Office (TS–793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is proposing to rescind its requirement under section 4(a) of TSCA for MSL testing of VF, VDF, TFE, and HFP.

I. Introduction

EPA promulgated a final test rule for fluoroalkenes (FAs; 52 FR 21516, June 8, 1987) under TSCA section 4(a)(1)(A) to include tiered mutagenicity testing of VF. This testing was the sex-linked recessive lethal (SLRL) test in *Drosophila*, where a positive result would lead to a MSL assay; and the dominant lethal test in rodents, where a positive result would lead to a heritable translocation assay. VF was also required to be tested for oncogenicity by inhalation in both rats and mice (final reports due July 22, 1992). Three other fluoroalkenes, VDF, TFE, and HFP were also required to be tested for mutagenicity.

II. Results from Required Testing

Under the FAs test rule, the test leading to MSL testing, the *Drosophila* SLRL test, was performed for VF and was positive. However, this was not an automatic trigger to MSL testing. The FAs test rule provided for a public review of the *Drosophila* data, with opportunity for public comment on EPA's assessment of the weight of the evidence, before proceeding with MSL testing. The only other fluoroalkene for which *Drosophila* SLRL testing was necessary was VDF, which was negative in this test. Furthermore, both HFP and TFE were negative in the somatic cells in culture assay (which was an automatic trigger (if positive) to *Drosophila* SLRL testing). Therefore, *Drosophila* SLRL testing and MSL testing were not required for them.

A public program review was held on July 19, 1989, with E. I. du Pont de Nemours Company, Inc. (DuPont), the test sponsor, as a participant. At this meeting, DuPont presented evidence that two other assays, the unscheduled DNA synthesis (UDS) and alkaline elution (AE) assays in rat testicular cells, are better correlates than the *Drosophila* SLRL test to the MSL assay. In light of this evidence, EPA agreed, conditioned on protocol approval and subsequent review of the study results by EPA, to allow DuPont to perform both of these tests, and, if both were negative, to re-review the available data. The UDS and AE assays have been performed, and EPA has completed its review. Both the UDS and AE assays were negative. Furthermore, the dominant lethal assay was also negative (the dominant lethal assay, an *in vivo* test, is used primarily to evaluate cytogenetic effects, but does have some relevance to gene mutation effects as well). EPA believes the weight of these three negative studies in mammals contraindicates performing MSL testing for VF, despite the positive *Drosophila* SLRL test. Therefore, EPA is proposing to rescind the MSL testing requirement that was triggered for VF, and to concurrently withdraw the requirement for MSL testing for VDF, HFP, and TFE.

III. Rulemaking record

EPA has established a record for this rulemaking (docket number OPPTS–42002M). This record includes:

(1) **Federal Register** notices pertaining to this rule, consisting of:

(a) Notice of the Agency's Proposed Decision to Adopt a Negotiated Testing Program on Fluoroalkenes (49 FR 23112, June 4, 1984).

(b) Notice of the Agency's Proposed Rulemaking on Fluoroalkenes (50 FR 46133, November 6, 1985).

(c) Notice of the Agency's Final Rulemaking on Fluoroalkenes (52 FR 21516, June 8, 1987).

(2) Transcript of Proceedings of the Public Meeting of July 19, 1989, on Fluoroalkenes.

(3) Reports—published and unpublished factual materials, including mutagenicity protocols and testing results on VF.

(4) Communications consisting of:

(a) Written letters.

(b) Memoranda.

List of Subjects in 40 CFR Part 799

Chemicals, Environmental Protection, Hazardous substances, Laboratories, Reporting and recordkeeping requirements, Testing.

Dated: May 31 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 799 is proposed to be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

§ 799.1700 [Amended]

2. In § 799.1700, by removing paragraph (c)(l)(i)(C).

[FR Doc. 92–13616 Filed 6–9–92; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 560, and 572

[Docket No. 92-33]

Marine Terminal Facilities Agreements—Exemption

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: The Federal Maritime Commission (Commission) proposes to amend its regulations to exempt marine terminal facilities agreements among marine terminal operators and between marine terminal operators and common carriers by water from the agreement filing requirements of the Shipping Act, 1916, the Shipping Act of 1984, and the Commission's regulations, on condition that certain agreement information be filed in marine terminal operator's tariffs and that terminal operators make copies of such agreements available to requesting parties. This proposed exemption would relieve the industry of the administrative burden and associated costs of filing marine terminal facilities agreements with the Commission.

DATES: Comments due July 10, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Austin L.Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5787.

SUPPLEMENTARY INFORMATION: 46 CFR part 515, Filing of Tariffs by Marine Terminal Operators, sets forth regulations covering the filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common carrier by water in the foreign or domestic offshore commerce of the United States.

46 CFR part 560, Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916, implements those provisions of the Shipping Act, 1916 ("1916 Act"), 46 App. U.S.C. 801 *et seq.*, that govern agreements between common carriers by water in interstate commerce or other persons subject to the 1916 Act. Part 560 establishes procedures for filing agreements and supporting statements pursuant to section 15 of the 1916 Act, 46 App. U.S.C. 814, filing comments and protests to such agreements, the disposition of agreements, and agreement reporting and record retention requirements.

46 CFR part 572, Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, implements those provisions of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.*, that govern agreements between ocean common carriers, agreements (to the extent they involve ocean transportation in the foreign commerce of the United States) between marine terminal operators, and agreements between one or more marine terminal operators and one or more ocean common carriers. Part 572, *inter alia*, identifies those classes of agreements that are exempt from filing or information requirements.

The Commission proposes to discontinue the requirement contained in 46 CFR parts 560 and 572 that marine terminal facilities agreements be filed with the Commission. This proposed exemption is conditioned on marine terminal operators listing their marine terminal facilities agreements (e.g., leases, sub-leases, licenses, permits, assignments), and amendments thereto, in the individual tariffs they file with the Commission pursuant to 46 CFR part 515 (and in part 514, which, when finalized, will implement the Automated Tariff Filing and Information System ("ATFI")—see §§ 514.1(b) and 514.1(c)(3) of part 514 as proposed in Docket No. 90–23 on September 9, 1991 (56 FR 46055)). Such listings would identify: (1) The names of the parties involved, (2) the facilities covered by the agreement, and (3) the date on which the facilities agreement becomes effective.

This proposed exemption would relieve the industry of the administrative burden and associated costs of filing marine terminal facilities agreements with the Commission. Additionally, the Commission would realize cost savings resulting from termination of the current process of reviewing, processing, and maintaining maritime facilities agreements, noticing them in the **Federal Register** and retrieving, copying, and providing copies of them to requesting parties (who appear to be almost exclusively other marine terminal operators).

Although interested parties no longer would be able to obtain copies of marine terminal facilities agreements from the Commission under the proposed exemption, the Commission proposes to require marine terminal operators to make their current marine terminal facilities agreements available to any and all interested parties. A nominal copying fee for this service will be permissible. Thus, any benefits associated with the public availability of marine terminal facilities agreements should be preserved.

Finally, the proposed exemption applies only to the filing requirement and does not absolve the parties to marine terminal facilities agreements from other requirements of the 1916 an 1984 Acts.

Section 35 of the 1916 Act, 46 app. U.S.C. 833a, and section 16 of the 1984 Act, 46 U.S.C. app. 1715, provide that the Commission may by order or rule exempt for the future any specified activity of persons subject to the 1916 Act or the 1984 Act from any requirement of the 1916 Act, the 1984 Act, or Intercoastal Shipping Act, 1933, 46 App. U.S.C. 843 *et seq.*, where the Commission finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition (1984 Act only), or be detrimental to commerce. It appears that the proposed exemption would meet these criteria.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nevertheless has reviewed the rule in terms of that Order and has determined that the rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The Federal Maritime Commission also certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

The collection of information requirements contained in the proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended. Public reporting burden for this amendment is estimated to average 45 minutes per response for part 560 and 45 minutes per response for part 572, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the review and collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 515

Freight; Harbors; Reporting and recordkeeping requirements; Tariffs; Warehouses.

46 CFR Part 560

Administrative practice and procedure; Agreements, Antitrust; Freight; Maritime carriers; Penalties; Reporting and recordkeeping requirements.

46 CFR Part 572

Administrative practice and procedure; Agreements; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 841a, 1709, 1714 and 1716, parts 515, 560, and 572 of title 46, Code of Federal Regulations, are proposed to be amended as follows:

PART 515—[AMENDED]

1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 833a, 841a, 1709, 1714, 1715, and 1716.

2. Section 512.2 is amended by revising the first sentence to read as follows:

§ 515.2 Purpose.

The purpose of this part is to enable the Commission to discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of current terminal facilities agreements, practices, rates and charges related thereto, instituted and to be instituted by marine terminals, and by keeping the public informed of such practices. * * *

3. Section 515.4 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 515.4 Filing of tariffs and tariff changes.

(a) * * *

(b) Every tariff shall identify all marine terminal facilities agreements currently in effect to which the terminal operator is a party as prescribed in §§ 560.309 and 572.311 of this chapter.

PART 560—[AMENDED]

4. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 833a and 841a.

5. Part 560 is amended by adding § 560.309 to subpart C to read as follows:

§ 560.309 Marine terminal facilities agreement—exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more common carriers by water in interstate commerce, which conveys to any of the involved parties any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 560.309(a) are exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, and this part 560, on the condition that copies of the marine terminal facilities agreement be made available to any requesting party, and that information identifying facilities agreements currently in effect appear in the marine terminal tariff filed with the Commission as required by part 515 of this chapter. A nominal copying fee may be charged for providing copies of agreements. The identifying information shall include:

(1) The names and mailing address of all parties to all marine terminal facilities agreements, and subsequent amendments thereto, currently in effect to which the terminal operator is a party;

(2) Identification of the terminal facilities covered by the agreement and amendments thereto; and

(3) The effective date for each marine terminal agreement, and amendments thereto, currently in effect.

PART 571—[AMENDED]

6. The authority citation for part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

7. Part 572 is amended by adding § 572.311 to subpart C to read as follows:

§ 572.11 Marine terminal facilities agreement—exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, which conveys to any of the involved parties any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 572.311(a) are exempt from the filing and waiting period requirements of sections 5 and 6 of the Shipping Act of 1984 and this part 572, on the condition that copies of the marine terminal facilities agreement be made available to any requesting party, and that information identifying facilities agreements currently in effect appear in the marine terminal tariff filed with the Commission as required by part 515 of this chapter. A nominal copying fee may be charged for providing copies of agreements. The identifying information shall include:

(1) The names and mailing addresses of all parties to all marine terminal facilities agreements, and subsequent amendments thereto, currently in effect to which the terminal operator is a party;

(2) Identification of the terminal facilities covered by the agreement and amendments thereto; and

(3) The effective date for each marine terminal agreement, and amendments thereto, currently in effect.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91–13612 Filed 6–9–92; 8:45 am]

BILLING CODE 6730–01–M

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46 CFR Parts 560 and 572

[Docket No. 92–32]

Amendments to Agreement Recordkeeping Regulations

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission ("Commission") proposes to amend its regulations in parts 560 and 572 governing the filing of agreements under, respectively, the Shipping Act, 1916 ("1916 Act") and the Shipping Act of 1984 ("1984 Act"). The intent of this proposal is to ease the regulatory burden of recordkeeping and filing of required reports with the Commission.

DATES: Comments due July 10, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the filing date in this proceeding.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, 1100 L Street, NW., Washington, DC 20573, (202) 523–5787.

SUPPLEMENTARY INFORMATION:

Background

46 CFR part 560 implements those provisions of the 1916 Act that govern agreements between common carriers by water in interstate commerce or other persons subject to that Act. This part also establishes procedures for filing agreement approval requests and supporting statements pursuant to section 15 of the Act, filing comments

and protests to such agreements and responses, the disposition of agreement approval requests, and reporting and record retention requirements.

Likewise, 46 CFR part 572 implements those provisions of the 1984 Act that govern agreements between ocean common carriers, agreements (to the extent they involve ocean transportation in the foreign commerce of the U.S.) between marine terminal operators, and agreements between one or more marine terminal operators and one or more ocean common carriers. This part identifies those classes of agreements that require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission.

Discussion

The Commission believes that it is possible to revise several of the regulations under 46 CFR parts 560 and 572 in such a manner as to decrease the costs to the private sector with no apparent impact on efficient and effective regulation. For the most part, these revisions consolidate the filing of shippers' requests and complaints, index of documents and reports on carrier consultation with shippers and shippers' associations into one filing as part of agreement minutes.

Given that shippers' requests and complaints and consultations are discussed at agreement meetings, and documents of potential interest to the Commission are circulated at these meetings, it is appropriate to require such reports to be filed with the agreement minutes rather than separately at different intervals, as is currently required in 46 CFR parts 560 and 572. These proposed revisions should reduce the paperwork burden and associated costs on a conference, since shippers' requests and complaints would be included with minutes filings instead of their own separate annual report. Nor should there be a diminution in the information received by the Commission, since information in the minutes would be identical to that currently provided in the annual shippers' request and complaints report.

The Commission also proposes to reduce the number of filings required by certain other regulations in 46 CFR parts 560 and 572. Again, such revisions should produce cost savings without impairing effective regulation.

A. Revisions to Part 560

Specifically, under subpart G of part 560, Reporting and Record Retention Requirements, the Commission proposes to delete that portion of § 560.702 requiring each conference to file with the Commission annual reports covering shippers' requests and complaints. The remaining portion § 560.702 requiring conference tariffs to contain full instructions as to where and by what method shippers may file their requests and complaints would be moved to § 560.703. However, under the Proposed Rule such shippers' requests and complaints and conference action relative those requests and complaints would now be required to be reported as part of each conference's minutes of meetings filed with the Commission. This proposed reporting change also requires an appropriate revision of the minutes requirements under § 560.703.

In addition, the Proposed Rule:

1. Amends § 560.307(e)(1) to reduce to 10 from 15 the number of copies of an original marine terminal agreement that must accompany an original agreement filed with the Commission.

2. Amends § 560.401(a) to reduce to 10 from 15 the number of copies of an original agreement and original supporting information that must accompany an original agreement and original supporting information filed with the Commission.

3. Deletes § 560.404(c) which requires that a notice of cancellation of an approved agreement be filed not less than 60 days prior to the effective date of cancellation. This regulation is in conflict with § 560.302(b), which requires only a 30-day notice. Upon the termination date of § 560.404(c), the 30-day requirement of § 560.302(b) would apply for the cancellation of agreements.

Section 560.602 is also amended to delete from the comments and protests procedures the reference to Director, Bureau of Domestic Regulation, since agreements are longer filed in that Bureau's successor, the Bureau of Tariffs, Certification and Licensing.

B. Revision to Part 572

In the analogous sections of Part 572—Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, specifically at Subpart G, Reporting and Record Retention Requirements, the Commission proposes to amend § 572.703 to include section 572.702(a), "Shippers' requests and complaints," and § 572.702(b), "Consultations," thereby eliminating the requirement that each conference file with the Commission annual reports covering all shippers' requests and complaints and shippers' consultations, but requiring the filing of such information as part of agreement minutes.

Similarly, the Commission proposes the deletion of § 572.704, which would eliminate the requirement that each conference file with the Commission quarterly reports indexing documents prepared for discussion at conference meetings. In its place, the Proposed Rule requires that a list of any reports, circulars, notices, statistics, analytical studies or other documents (not otherwise filed with the Commission) that are distributed and used by the members be included as part of the minutes of meetings filed. This proposed reporting change will also necessitate an appropriate revision of the minutes of meetings requirements under § 572.703.

The Proposed Rule also:

1. Amends § 572.309(a)(2)(i) to exempt filed membership changes to voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority) from the Information Form, notice, and waiting period requirements of the 1984 Act, provided that such modifications are filed for informational purposes in the proper format.

2. Amends § 572.401(a)(1) to reduce to 10 from 15 the number of copies of an original agreement that must accompany an original agreement that must be filed with the Commission for review and disposition pursuant to section 6 of the 1984 Act.

3. Amends § 572.402(d) to delete the requirement that each appendix to a filed agreement be accompanied by a separate signature page, since the appendix is an integral part of a filed agreement which requires a signature page.

4. Amends § 572.572.603(a) to reduce to 10 from 15 the number of copies of written comments regarding a filed agreement.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of that Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) Annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of the States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of

the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units small government jurisdictions.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended. Public reporting burden for this amendment is estimated to result in an average reduction of 7½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 560

Administrative practice and procedure; Antitrust; Freight; Maritime carriers; Penalties; Rates and fares; Reporting and recordkeeping requirements.

46 CFR Part 572

Administrative practice and procedure, Antitrust, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements.

Therefore, parts 560 and 572 of Title 46 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

2. Section 560.307(e)(1) is revised to read as follows:

§ 560.307 Marine terminal agreements—exemption.

* * * * *

(e) * * *

(1) A true copy and 10 additional copies of the filed agreement;

* * * * *

3. The second sentence in § 560.401(a) is revised to read as follows:

§ 560.401 Filing of agreements.

(a) * * *. Such requests shall consist of a true copy and 10 additional copies of the agreement and all supporting information. * * *

§ 564.404 [Amended]

4. Section 560.404(c) is removed.

5. The first sentence in § 560.602(e) is revised to read as follows:

§ 560.602 Comments and protests.

* * * * *

(e) Except as provided in this section and § 560.403, or except, in the case of an unprotested agreement, as the Director, Bureau of Trade Monitoring and Analysis may in his/her discretion initiate, or unless specifically requested in writing by the Commission, with copies to the proponents and persons which have filed protests or comments, no other written or oral communication concerning a pending agreement shall be permitted. * * *

6. Sections 560.702 and 560.703 are amended by revising the title to § 560.702, removing § 560.702(a), redesignating § 560.702(b) as § 560.702(c), adding a new § 560.702(b), redesignating § 560.703 (a), (b), and (c) as § 560.702 (a), (d), and (e) respectively, and reserving § 560.703 to read as follows:

§ 560.702 Filing of minutes—including shippers' requests and complaints.

* * * * *

(b) Each report subject to paragraph (a) of this section shall provide the following information for all shippers' requests and complaints received since the previous such report filed with the Commission:

(1) Date request or complaint was received;

(2) Identity of the person or firm submitting the request or complaint;

(3) Nature of request or complaint, i.e., rate reduction, rate establishment, classification, overcharge, undercharge, measurement, etc.;

(4) If final action was taken, date and nature thereof;

(5) If final action was not taken, an identification of the request or complaint as pending;

(6) If denied, the reason.

* * * * *

§ 560.703 [Reserved]

PART 572—[AMENDED]

7. The authority citation for part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712, and 1714–1717.

8. Section 572.309(a)(2)(i) is revised to read as follows:

§ 572.309 Miscellaneous modifications to agreements—exemptions.

(a) * * *

(2) * * *

(i) *Article 3*—Parties to the agreement (limited to conference agreements, voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority), and discussion agreements among passenger vessel operating common carriers which are open to all ocean common carriers operating passenger vessels of a class defined in the agreements, which do not contain ratemaking, pooling, joint service, sailing or space chartering authority).

* * * * *

9. Section 572.401(a)(1) is revised to read as follows:

§ 572.401 Filing of agreements.

(a) * * *

(1) A true copy and 10 additional copies of the filed agreement;

* * * * *

10. Section 572.402(d) is revised to read as follows:

§ 572.402 Form of agreements.

* * * * *

(d) Each agreement and/or modification filed will be accompanied by a separate signature page, appended as the last page of the item, which is signed in the original by each of the parties personally or by an authorized representative, indicating immediately below each signature the typewritten full name of the signing party and his or her position, including organizational affiliation.

* * * * *

11. The second sentence in § 572.603(a) is revised to read as follows:

§ 572.603 Comment.

(a) * * *. Such comments will be submitted in an original and ten (10) copies and are not subject to any limitations except the time limits provided in the **Federal Register** notice.

* * *

* * * * *

§ 572.702 [Removed]

12. Section 572.702 is removed.

§ 572.703 [Redesignated as § 572.702]

13. Section 572.703 is redesignated as § 572.702 and is amended by revising the title, amending the reference to "paragraph (c)" in the first sentence of

paragraph (b) to read "Paragraph (f)", redesignating paragraph (c) as paragraph (f), and adding new paragraphs (c), (d), and (e) to read as follows:

§ 572.702 Filing of minutes—including shippers' requests and complaints, consultations, and other documents.

* * * * *

(c) *Shippers' requests and complaints.* (1) Each report subject to paragraph (b) of this section shall provide the following information for all shippers' requests and complaints received since the previous such report filed with the Commission:

(i) The total number of shippers' and shippers' associations' requests and complaints received;

(ii) The total number which were fully granted;

(iii) The total number which were partially granted; and

(iv) The total number which were denied.

(2) Each report shall also show the total number of requests or complaints which were pending disposition at the start and at the end of the report period.

(3) Each of the totals which are reported to the Commission shall be divided into three categories:

(i) Those involving rates or charges;

(ii) Those involving transportation services; and

(iii) Those involving other matters.

(d) Consultations. (1) Each report subject to paragraph (b) of this section shall provide the following information for all shippers' and shippers' associations' requests for consultations received since the previous such report filed with the Commission:

(i) The total number of shipper and shippers' association requests for consultations; and

(ii) The total number of such consultations.

(2) Each of the totals which are reported to the Commission shall be divided into two categories:

(i) Consultations involving commercial disputes; and

(ii) Consultations involving cooperation with shippers in preventing and eliminating malpractices. (e) *Other documents.* Each agreement required to file minutes pursuant to paragraph (b) of this section shall publish in its minutes a list of all reports, circulars, notices, statistics, analytical studies, or other documents, not otherwise filed with the Commission pursuant to this subpart, which have been distributed to the member lines since the previous such report filed with the Commission, and which are used to reach a final decision on any of the following matters:

* * * * *

§ 572.704 [Removed]

14. Section 572.704 is removed.

§ 572.705 [Redesignated as § 572.703]

15. Section 572.705 is redesignated as § 572.703.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-13354 Filed 6-9-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket 92-77; FCC No. 92-169]

Billed Party Preference for 0+ InterLATA Calls

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission initiated a rulemaking proceeding to consider the merits of an automated "billed party preference" routing methodology for 0+ interLATA payphone traffic and for other types of interLATA traffic. The Commission tentatively concluded that, in concept, billed party preference routing of all 0+ interLATA calls is in the public interest, the Commission seeks further comment on the costs and benefits of billed party preference and how such a system should be implemented. The Commission also seeks comment, under a separate expedited pleading cycle, on proposals to address alleged competitive consequences arising from AT&T's issuance of a proprietary calling card.

DATES: Interested parties may file comments on the Commission's billed party preference proposal on or before July 7, 1992 and reply comments on or before August 6, 1992. Interested parties may file comments on proprietary calling cards on or before June 2, 1992 and reply comments on or before June 17, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 92-169, adopted April 9, 1992, and released May 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422.

Summary of Notice of Proposed Rulemaking

1. On April 13, 1989, Bell Atlantic filed a petition for rulemaking proposing a new equal access plan for all pay telephones in equal access area. This plan, which it terms "billed party preference," would fundamentally change the routing of 0+ calls. Currently, 0+ calls are sent directly to the operator service provider (OSP) presubscribed to the originating line. Under billed party preference, as proposed by Bell Atlantic and others, 0+ calls would be sent instead to the OSP chosen by the party paying for the call. For example, a collect call would be routed to the called party's OSP. A calling card call would be routed to the interexchange carrier (IXC) that issued the calling card or, if the caller uses a local exchange carrier (LEC) calling card, to the OSP predesignated by the LEC cardholder. A call billed to a third number would be routed to the OSP presubscribed to the third number. In each case, LECs would perform the necessary carrier identification functions at their operator service switch (OSS). Thus, unlike the situation today, in which 0+ interLATA calls are sent directly to the IXC, each 0+ call would be sent first to the LEC OSS for carrier identification functions, and then to the appropriate OSP.

2. The Commission tentatively concluded that, in concept, a nationwide system of billed party preference for all 0+ interLATA calls is in the public interest. More specifically, the Commission tentatively concluded that billed party preference could make operator services more "user-friendly" since callers would be able to make all of their operator-assisted calls on a 0+ basis, and they could do so with the knowledge that their call would be automatically handled by the OSP with which the billed party wishes to do business.

3. The Commission stated that another apparent advantage of billed party preference is that it would focus competition in operator services towards end users. OSPs currently compete for 0+ traffic by obtaining presubscription contracts for public phones. They compete for such contracts by offering commission

payments to payphone providers. Billed party preference would redirect the competitive efforts of OSPs towards providing better services and lower prices to end users, as opposed to paying higher commissions.

4. The Commission also stated that billed party preference might increase parity in the operator services marketplace by giving every IXC the same opportunity to offer customers 0+ dialing, regardless of the size of its customer base and regardless of whether other IXCs use proprietary calling cards. Currently, the presubscription system for public phones tends to favor the OSP—in this case AT&T—with the largest number of customers. That OSP can pay a lower commission rate than other OSPs, yet still offer higher overall commission payments because of the larger amount of commissionable traffic that it carries. Billed party preference could eliminate this disparity.

5. Notwithstanding that billed party preference would appear to offer a number of public interest benefits, the Commission needs more information before it can mandate implementation of billed party preference and determine exactly how this service should be structured. First and foremost, the Commission requests additional information about the costs of a billed party preference system, and how those costs are affected by the scope of billed party preference. Specifically, the Commission seeks further information and comment on the estimated total costs of implementing and operating a billed party preference system for: (a) InterLATA payphone traffic alone; (b) all interLATA public phone traffic, including traffic from hotel rooms and other aggregator locations; (c) all interLATA 0+ traffic from any phone; and (d) all interLATA 0+ and 0− traffic from any phone.

6. Second, concerns have been raised as to whether billed party preference would require callers to provide certain information about their call (such as the calling card number) twice: First to the LEC so that the LEC may identify the OSP that will receive the call, and then again to the OSP so that the OSP can process and bill for the call. It appears that if LECs deploy common channel signaling (SS7) between their OSSs and OSP points of presence, they would be able to pass on the information provided to them for carrier identification purposes to the OSP, thus obviating the need for the caller to repeat that information to the OSP. Moreover, if LECs deploy Automated Alternate Billing Services (AABS), LECs would be able to identify collect and third number calls on an automated basis, thus eliminating the need for the caller to speak with two operators. The Commission seeks comment on: (a) The extent to which callers would have to provide the same information twice or speak with two operators in a billed party preference system; (b) the extent to which this problem would be alleviated by LEC deployment of SS7 and AABS; (c) the cost of deploying these capabilities and how those costs may vary from LEC to LEC; (d) the extent to which independent LECs will either implement SS7 and AABS or otherwise be able to eliminate the "double operator system problem" in their regions; (e) the time it would take to deploy the necessary technology to eliminate this problem; (f) the availability and cost of any OSP technology required for OSPs to receive the necessary information from the LECs; and (g) the possible availability and cost of customer premises equipment that could perform these functions by storing the necessary processing and billing information and then transmitting it to the OSP at the caller's prompting.

7. Third, the Commission seeks comment on the impact billed party preference would have on access times for operator service calls. Specifically, the Commission seeks comment on the observation in the record that access times on 0+ calls could be increased up to four seconds per call, but that the implementation of SS7 and AABS would eliminate this increase. The Commission also asks commenters to address any increase in access time in light of (a) callers saving time in not having to dial access codes, and (b) callers receiving instructions from the LEC during the call set-up period, which could reduce the incidence of call abandonment.

8. Fourth, the Commission seeks comment on the effect billed party preference would have on competition in the provision of payphones and the public interest ramifications of any such impact, given the other benefits and costs of billed party preference. Billed party preference would effectively eliminate OSP commissions to competitive payphone providers on 0+ traffic. On the other hand, the Commission's mechanism to compensate payphone providers for originating access code calls, as well as some other mechanism, might be applied to all operators-assisted calls and therefore provide competitive payphone providers a different means of compensation for originating such calls.

9. Fifth, the Commission seeks comment on whether some or all of the benefits of billed party preference might be obtainable through alternative, less costly technologies rather than the billed party preference system that has been described in this Notice.

10. The Commission also seeks comment on how billed party preference should be implemented if it decides that it is in the public interest. First, the Commission seeks comment on whether it should: (a) Require all LECs to implement this system for such calls, and (b) amend Part 68 of our rules to preclude traffic aggregators and payphone providers from using automatic dialing mechanisms to program their phones to dial around billing party preference on such calls. The Commission tentatively concluded that both would be required to implement a billed party preference system. The Commission also seeks comment on when billed party preference could be implemented by all LECs.

11. Second, the Commission requests comment on the types of calls for which billed party preference should be implemented. In particular, the Commission seeks comment on whether billed party preference should apply to: (a) InterLATA 0+ payphone traffic only; (b) all interLATA 0+ public phone traffic; (c) all interLATA 0+ traffic; or (d) all interLATA 0+ and 0− traffic. The Commission stated that a uniform dialing plan for all 0+ calls would be more readily accepted and understood by callers than a patchwork of different plans for different types of phones. In addition, the Commission seeks comment on whether billed party preference could be applied to calls originating from non-equal access areas, and if so, in what manner.

12. Third, the Commission asks for comment on the process by which a 0+ carrier should be assigned to each telephone line. One possibility would be for each LEC to send a ballot to its subscribers explaining their right to choose a 0+ carrier and setting forth their choices. Customers that did not send in their ballots would be defaulted to their 1+ carrier. Another possibility would be for each LEC simply to notify customers of their right to presubscribe to a 0+ carrier different from their 1+ carrier. Such unbundling would be implemented upon customer request. The Commission seeks comments on these and any other proposals for determining 0+ presubscriptions.

13. Fourth, the Commission seeks comment on how commercial credit cards and foreign-issued calling cards

would be handled in a billed party preference environment The Commission also seeks comment on how LECs would handle calls billed to users in foreign countries.

14. Fifth, the Commission seeks comment on the process by which a secondary OSP might be assigned to each telephone line. Several commenters have proposed that the primary OSP should choose a secondary OSP that would handle traffic originating in areas in which the primary OSP was not available. This proposal, however, would not permit a primary OSP to choose more than one secondary OSP for its traffic. The Commission seeks comment on whether primary OSPs could and should be able to designate different secondary OSPs for different regions of the country, thereby enabling regional OSPs to establish partnership arrangements with one another. The Commission also seeks comment on whether it would be technically and administratively feasible to permit each end user to choose its own secondary OSP or OSPs.

15. In addition to seeking comment on billed party preference, the Commission also seeks comment, under a special expedited pleading cycle, on whether, prior to the implementation of billed party preference, it should require IXCs to share with other IXCs billing and validation data for any calling card usable with 0+ access. AT&T has recently begun issuing new calling cards in the so-called card issuer identification (CIID) format. These calling cards are proprietary, in that AT&T does not provide other OSPs with the data needed to validate them. Consequently, AT&T is the only IXC that can accept calls made with these cards.

16. AT&T contends that there are public interest benefits to its proprietary CIID card. It argues that many consumers assume that if they use an AT&T calling card, they necessarily receive service from AT&T. AT&T claims that even if another OSP identifies itself to the customer before carrying the call, customers using an AT&T card do not always realize that they are not receiving AT&T service and rates.

17. On the other hand, some of AT&T's competitors allege that AT&T's CIID card confers on AT&T a significant and unfair advantage in competing for public phone presubscriptions. In particular, they claim that the inability of OSPs other than AT&T to accept the large number of calls made with this card, coupled with AT&T's efforts to educate CIID cardholders to dial 10288 to avoid the presubscribed OSP when that OSP is not AT&T, substantially decreases the amount of 0+ traffic that OSPs other than AT&T can handle. Consequently, they state, the dissemination of this card by AT&T gives aggregators and premises owners strong incentives to presubscribe their phones to AT&T.

18. It appears that deployment of billed party preference at public phones would eliminate any advantage AT&T derives from its CIID card, since billed party preference would replace presubscription as the basis for routing 0+ traffic. Nevertheless, it appears that billed party preference might not be implemented for some time.

19. Some of AT&T's competitors urge us to take steps in the interim to deny AT&T the ability to derive any competitive advantage from its proprietary calling card. They propose that we do this by requiring all IXCs to share with other IXCs the billing and validation data for any calling card that could be used with 0+ access. Under this proposal, IXCs would have the choice of either sharing billing and validation data for a calling card or restricting the use of the card to access code dialing.

20. The Commission seeks comment on this proposal. In particular, the Commission seeks comment on the public interest costs and benefits of this proposal, and on how, specifically, it would be implemented and would work. For example, the Commission seeks comment on: (1) How and by whom the choice between a proprietary access code card and a nonproprietary 0+ card should be made; (2) how IXCs would distinguish and screen proprietary and nonproprietary card calls; (3) whether carriers should be obligated merely to instruct proprietary cardholders to dial access codes, or whether they should also be required to reject 0+ calls by customers using proprietary calling cards; (4) what information would have to be made available to enable OSPs to carry and bill for nonproprietary 0+ calls; (5) the impact the above-described proposal would have on consumers; and (6) the impact this proposal might have on the costs and benefits of billed party preference or the timeliness with which it could be implemented. The Commission also invites parties to discuss alternative proposals for addressing alleged competitive inequities resulting from AT&T's issuance and dissemination of a proprietary calling card.

21. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on whether the Commission should restrict the use of proprietary calling cards on 0+ calling on or before June 2, 1992 and reply comments on or before June 17, 1992. Interested parties may file comments on the Commission's billed party preference proposal on or before July 7, 1992 and reply comments on or before August 6, 1992. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission; Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. For further information, contact Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau (202) 632–4047.

Ordering Clauses

1. Accordingly, it is ordered that, pursuant to sections 1, 4, 201–205, 218, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154, 201–205, 218, 220, and 403, a notice of proposed rulemaking is hereby provided as explained herein.

2. It is further ordered that, pursuant to § 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, comments on the proposal for restricting the use of proprietary calling cards on 0+ calling shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554, on or before June 2, 1992 and reply comments shall be filed with the Secretary on or before June 17, 1992.

3. It is further ordered that, pursuant to §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, comments on the billed party preference proposal shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554, on or before July 7, 1992 and reply comments shall be filed with the Secretary on or before August 6, 1992.

4. It is further ordered that the Petition for Rulemaking filed by Bell Atlantic is granted to the extent indicated herein, and is otherwise denied.

List of Subjects in 47 CFR Chapter 1

Communications common carriers; Long-distance calls.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–13594 Filed 6–9–92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-118, RM-7667]

Radio Broadcasting Services; Wrightsville, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Wrightsville Communications Company, Inc., permittee of Station KYTN(FM), Channel 299A Wrightsville, Arkansas, seeking the substitution of FM Channel 299C2 for Channel 299A and modification of its permit accordingly. Coordinates for this proposal are 34–36–24 and 92–14–17.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 299C2 at Wrightsville, Arkansas, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before July 27, 1992, and reply comments on or before August 11, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James E. Edmundson and Mark Van Bergh, Esqs., Gardner, Carton & Douglas, suite 750N, 1001 Pennsylvania Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–118, adopted May 18, 1992, and released June 4, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rule Division, Mass Media Bureau.

[FR Doc. 92–13535 Filed 6–9–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–552; RM–7331]

Radio Broadcasting Services; Monterey, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses the petition of Manna Broadcasting Company, Inc., now Joe B. Wilmoth, proposing the allotment of Channel 284A to Monterey, Louisiana, at petitioner's request. See 55 FR 48870, November 23, 1990. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–552, adopted May 18, 1992, and released June 4, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–13536 Filed 6–9–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 920543–2143]

RIN 0648–AE21

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA issues this proposed rule that would implement conservation and management measures as prescribed in Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). The chief objective of Amendment 2 is to reduce the fishing mortality rate enough to rebuild the severely depleted stock of summer flounder. Management measures contained in Amendment 2 include: (1) Annual quotas for the commercial fishery allocated on a state-by-state basis; (2) minimum mesh size for trawl gear; (3) a seasonal restriction for the recreational fishery; (4) bag limits on a trip basis for the recreational fishery; (5) minimum fish size requirements for the commercial and recreational fisheries; (6) a 5-year moratorium on entry into the commercial fishery; (7) permits for dealers wishing to purchase summer flounder; (8) mandatory logbook reporting by permitted dealers (weekly); (9) a prohibition on sale of summer flounder caught by the recreational fishery; and (10) authorization to collect application fees for charter, party, and commercial vessel permits and dealer permits. Amendment 2 also contains management measures designed to protect endangered and threatened sea turtles, especially to reduce the likelihood of incidental catch or injury to sea turtles in the winter trawl fishery for summer flounder.

DATES: Comments on the proposed rule must be received on or before July 20, 1992.

ADDRESSES: Comments on the proposed rule, Amendment 2, or supporting documents should be sent to Mr. Richard Roe, Regional Director, National marine Fisheries Service, Northeast Regional Office, One Blackburn Street, Gloucester, MA 01930. Mark the outside envelope "Comments on Summer Flounder Plan".

Comments regarding the burden-hour estimates or any other aspect of the

collection-of-information requirements contained in this proposed rule should be sent to the Northeast Regional Director (address listed above) and the Office of Management and Budget (Attention NOAA Desk Officer), Washington, DC 20503.

Copies of Amendment 2, its regulatory impact review (RIR) and the initial regulatory flexibility analysis (IRFA) contained within the RIR, and the final environmental impact statement (FEIS) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Richard G. Seamans, Jr., Senior Resource Policy Analyst, (508) 281-9244.

SUPPLEMENTARY INFORMATION:

Background

Amendment 2 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC) and the New England and South Atlantic Fishery Management Councils. A notice of a draft environmental impact statement (DEIS) was published on March 27, 1992 (57 FR 10667). The public comment period for the DEIS ended on April 10, 1992. A notice of availability for Amendment 2 was published in the **Federal Register** on May 8, 1992 (57 FR 19874). One management measure in Amendment 2 was disapproved by the Secretary of Commerce on May 7, 1992 during preliminary review under section 304(a) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. section 1854; this measure proposed to require that the Regional Director prohibit fishing for summer flounder in the exclusive economic zone by fishermen of any state not in compliance with the FMP.

Amendment 2 is designed to revise management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended. The management unit remains unchanged and is summer flounder in U.S. waters in the western Atlanta Ocean from the southern border of North Carolina northward to the U.S.-Canadian border. The objectives of the FMP are:

1. Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur.
2. Reduce fishing mortality on immature summer flounder to increase spawning stock biomass.
3. Improve the yield from the fishery.
4. Promote compatible management regulations between state and Federal jurisdictions.
5. Promote uniform and effective enforcement of regulations.
6. Minimize regulations to achieve the management objectives stated above.

Amendment 2 is a joint effort in planning with the ASMFC, its member states and the Council. It establishes a management system to reduce the current fishing effort in this severely overfished fishery, and stabilize the fishery at its maximized harvest level after 1995. Measures to accomplish these target levels are imposed on both the commercial and the recreational sectors of the fishery in a cooperative manner between the states and the Federal Government. All member states of the ASMFC voted in favor of a virtually identical ASMFC version of this Amendment.

Summer flounder are overexploited. The best currently published indicators, on which the Amendment is based, show that instantaneous fishing mortality (F) is at least 1.4, while the rate that maximizes the harvest (F_{max}) is 0.23. Thus, fishing mortality is six times the rate that would produce the maximum yield per recruit. The instantaneous fishing mortality rate is easily translated into an annual survival estimate. With a fishing mortality rate of 1.4, only about 20 percent of all summer flounder that are alive now will survive 1 year. The level of survival that corresponds to the F_{max} rate is 65 percent. Obviously, gains in long-term yield from the fishery and increases in stock size could be realized by significantly reducing fishing mortality from current levels. More important, the current stock condition of summer flounder indicates that significant and timely reductions in fishing mortality are needed to avoid stock collapse. Overfishing is defined in the FMP as fishing in excess of the F_{max} level (adopted by the Council and approved by NMFS in Amendment 1).

Both commercial and recreational catches of summer flounder are now comprised primarily of 0- to 2-year-old fish, because of high rates of fishing mortality. Females of this species have previously been known to live up to 20 years, and males have been captured that were as old as 7 years, yet older and larger fish are now infrequent in the landings. This indicates a severely compressed age composition of the summer flounder stock. Such age class compression poses a great risk to recruitment because very few older, more fecund spawning adults exist in the population and nearly all of the new recruits are being spawned by a small number of females, which are also less fecund, thereby reducing the likelihood of any strong year classes.

The Mid-Atlantic mixed species trawl fishery, which relies principally on summer flounder, scup, and black sea bass, also harvests significant quantities of *Loligo* squid, winter flounder, witch flounder, yellowtail flounder, and other species either as bycatch or in directed fisheries. Many of these species are also principal components of the southern New England trawl fisheries since stock migrations occur between the Mid-Atlantic Bright and this area.

Generally, fishing activity follows this species as it makes annual migrations from south to north, and back to the south, and from offshore to inshore waters, and back offshore. Fishing effort is concentrated northerly and inshore in summer when a wide range of vessels have access to the stocks. In winter, effort is concentrated southerly and offshore, primarily with larger vessels. Although the majority of landings (96 percent) are taken by otter trawls, summer flounder are landed by other types of fishing gear, including: Pound nets, crab trawls, shrimp trawls, gill nets, and scallop dredges.

Proposed Management Measures

The commercial sector would be constrained through the use of state commercial quotas based on a state's share of the overall commercial landings over the 10-year time period of 1980 through 1989. The quota would apply throughout the management unit, that is, in both state and Federal waters. All commercial landings in a state would count toward that state's quota. When a state's quota has been caught, the amendment contemplates that the state would prohibit fishing for and/or landing summer flounder in that state.

NMFS would monitor the fishery and inform each state of its landings relative to its quota. It would be the responsibility of each state to assure that its quota is not exceeded. Each state would have to close its waters to commercial fishing for summer flounder when its quota is reached and prohibit landing by commercial vessels. Also, each state would have to submit to the Council and Regional Director a plan setting forth the means by which it would manage the quota, size limit, and mesh regulation. Each state's plan would be reviewed by Summer Flounder Monitoring Committee.

Fishing effort in the commercial sector would be reduced through the establishment of a 5-year permit moratorium of vessels, other than party or charter boats, into the commercial

sector. However, the initial eligibility requirements would be broad. Thus the initial impact of the moratorium would be minimal but would increase over the 5-year period of the moratorium. Vessels that landed and sold summer flounder between January 26, 1985, and January 26, 1990, would qualify for a moratorium permit. Vessels that were being constructed and/or rerigged for the summer flounder fishery during this period, providing that they caught and sold summer flounder before the final rule implementing this Amendment is effective, would also be eligible for the annual moratorium permit. However to take advantage of the eligibility criteria, a person would have to apply to have his vessel permitted before the expiration of 12 months from the date of the final rule.

Owners or operators of vessels permitted under the moratorium would be the only individuals who could sell their catch, and they could sell only to licensed dealers. Party and charter boats with a moratorium permit carrying passengers for hire or with crews in excess of five or three, respectively, are subject to the possession limits.

A recreational vessel, other than party or charter boat (vessel for hire), would be exempt from the permitting requirements if it catches, per trip, no more than the recreational possession limit of summer flounder multiplied by the number of persons on board.

Moratorium permits would not be restricted to otter trawlers. Scallopers or any other vessels that meet the eligibility criteria could obtain a moratorium permit. Otter trawlers would, however, be subjected to certain gear restrictions. They would have to have a minimum mesh size of 5½ inches (14.0 cm) in the terminal 75 meshes of the net (or the last one-third of the net if it has less than 75 meshes) if the owner or operator wanted to catch and retain more than 100 pounds (45.4 kg) of summer flounder, subject to three exceptions. The mesh requirement would not apply to using a fly net, or a pelagic net meeting specified mesh requirements, or to vessels issued an exemption permit to fish for a designated period in a designated area off southern New England, called the "Exemption Area."

Vessels fishing with 5½ inch (14.0 cm) mesh, or with exempted gear, could not have smaller mesh nets or netting on board. Vessels with an exemption permit could fish with small mesh, but could not fish outside the exemption area during the period the permit is in force. Vessels fishing with small mesh could have 100 pounds (45.4 kg) or less of summer flounder on board, provided the fish are stored in a single box easily accessible for inspection by an authorized officer.

Vessels with a moratorium permit could be replaced only if they involuntarily left the fishery (e.g., sank) not due to a lack of reasonable maintenance. The replacement vessel would have to be of the same gross registered tonnage and length, or smaller. If an individual owns two or more vessels that involuntarily leave the fishery, they could not be replaced with one larger vessel. If a vessel with a moratorium permit fails to land summer flounder for 52 consecutive weeks, it would be considered retired from the fishery and its permit would expire.

Recreational fishermen, commercial vessels not eligible for a moratorium permit, and party and charter boats with a moratorium permit but carrying passengers for hire or carrying more than three crew members if a charter boat or more than five crew members if a party boat would be subject to the recreational bag limit (six fish per person on board in the first year of implementation). Also, these categories of fishermen could retain the possession limit only during the recreational open season (May 15 to September 30, 1993). These fishermen could not sell their catch. They could fillet their catch at sea, but any part retained would have to meet the minimum size requirement of 14 inches (35.6 cm). This filleting provision would also apply to commercial vessels fishing with a moratorium permit. However, the minimum size for any part retained would be 13 inches (33 cm) for commercial vessels. The size differential corresponds to the escapement factor of 5½ inch mesh for commercial trawling gear.

Any person receiving summer flounder for commercial purposes other than transport from a vessel issued a moratorium permit would have to have a dealer permit. A state dealer permit would have to be recognized as meeting this requirement in certain circumstances to reduce costs and avoid unnecessary duplication. Dealers could purchase summer flounder only from vessels issued a moratorium permit.

To keep track of the commercial catch in order to determine when a commercial quota will be harvested, dealers and fishermen would be required to submit reports. Dealers would have to submit these reports on a weekly and annual basis. Owners and operators of a vessel with a moratorium permit would have to submit their daily fishing logs on a monthly basis and provide an annual report. Owners and operators of vessels with a party and charter boat permit would have to submit a monthly report even if no fishing trips were made.

To defray the administrative costs of processing vessel and dealer permits, authorization would be provided to the Regional Director to charge a fee not to exceed actual processing costs. This cost is estimated to be approximately $20 to $35 per applications.

There would be an annual review to determine if the existing measures are adequate to meet the reduced fishing mortality target levels. If these measures are not adequate, modification could be made to any of the management measures imposed on the commercial and recreational fisheries. Also, additional measures could be imposed on other categories of vessels issued a moratorium permit, such as scallopers, in order to reduce the mortality of summer flounder.

In order to gather more specific data on the summer flounder resources, permitted vessels could be required to take a sea sampler. Notice of such a requirement would be provided to the vessel owner who in turn would provide notice of when the vessel will leave on its next fishing trip. The sea sampler requirement could be waived if the vessel is unsafe or not equipped to carry a sea sampler on board. The cost of carrying a sea sampler on board would be borne by the vessel owner.

Due to the known interaction of the summer flounder fishery with populations of endangered and threatened species of sea turtles, Amendment 2 includes several management measures to promote sea turtle conservation in a circumscribed area off North Carolina. These measures are almost identical to those contained in an emergency interim rule that was originally effective from December 2, 1991, through March 5, 1992 (56 FR 63685; December 5, 1991), and extended from March 6, 1992, through June 3, 1992 (57 FR 8582; March 11, 1992). Proposed measures in Amendment 2 that are the same as those in the emergency rule and are designed to promote sea turtle conservation include: (1) Reference to the proper methods for sea turtle handling and resuscitation by summer flounder fishermen; (2) establishment of a monitoring and assessment program in cooperation with the State of North Carolina to measure the incidental take of sea turtles in the summer flounder fishery; (3) restricted tow-times for trawlers operating in a designated area off North Carolina; (4) authority for the Regional Director to revise tow-time requirements for up to one year; (5) authority for the Regional Director to

close the summer flounder fishery if a determination is made that such a closure is necessary to avoid jeopardizing continued existence of any species listed under the Endangered Species Act (ESA); (6) authority for the Regional Director to reopen the summer flounder fishery if sufficient conservation measures for sea turtles are added to ensure that operation of the fishery is not likely to jeopardize the continued existence of any species listed under the ESA; (7) authority for the Regional Director to require the use of turtle excluder devices; (8) authority for the Regional Director to require observers on all or a certain portion of vessels in the summer flounder fishery to gather data on incidental capture of sea turtles; and (9) authority for the Regional Director to allow experimental projects to measure incidental capture rates to monitor turtle abundance, or to test alternative gear. Amendment 2 contains a detailed description of the observer program in the event that the Regional Director requires observers as listed under item (8) above. This detailed description of the observer program was not included in the emergency rule.

Proposed Changes to Regulatory Text

Due to the extensive amendments required to regulations at 50 CFR part 625 if Amendment 2 is approved by the Secretary, that part would be revised in its entirety. Sections 625.5, 625.20, 625.21, 625.22, 625.24, and 625.25 are currently reserved; headings would be changed and text would be added to these sections if Amendment 2 is approved. Sections 625.26 and 625.27 would be added, and §§ 625.1, 625.2, 625.4, 625.6, 625.7, 625.8, 625.9, 625.10, and 625.23 would be substantially revised if amendment 2 is approved. Section 625.3 is the only section that would remain the same if Amendment 2 is approved.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of the receipt of the FMP or FMP amendment and its proposed regulations. At this time the Secretary has not determined that the remaining provisions of the FMP amendment that this rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an FEIS for Amendment 2 describing the possible impacts on the environment as a result of this rule. A copy of the FEIS may be obtained from the Council (see **ADDRESSES**) as soon as a notice of availability of the FEIS is published in the **Federal Register**.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the RIR, which demonstrates negative net short-term impacts, but positive long-term economic benefits to the fishermen under the proposed management measures. A copy of this RIR may be obtained from the Council (see **ADDRESSES**).

The proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of the order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not be a significant economic impact on a substantial number of small entities because of the reasons set forth in the RIR prepared by the Council, a copy of which may be obtained from the Council (see **ADDRESSES**). The proposed management measures will have some negative impact on small entities; however, it will be moderated by the fact that summer flounder is only one component of a mixed-species fishery and participants will be able to catch other species. This impact is clearly preferable to the impact of continued fishing without enactment of the conservation program proposed in Amendment 2. Existing summer flounder management measures have not been sufficient to conserve the resource and the stock is over exploited. Stock abundance has been reduced to less than 20 percent of the level of the late 1970's and commercial landings in 1989 were the lowest in the past 15 years. Continued fishing under existing regulations is likely to lead to stock collapse and the loss of substantial income from the summer flounder fishery for the foreseeable future.

The Assistant Administrator has initially determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina.

The proposed rule contains six new collection-of-information requirements and revises two existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval. The public's reporting burdens for these collection-of-information requirements are indicated in the parentheses in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements are:

(1) Dealer permits, Office of Management and Budget (OMB) #0648–0202 (5 minutes/response);

(2) Small-mesh exemption permits, OMB #0648–0202 (5 minutes/response);

(3) Notice requirements for sea sampling trips, OMB #0648–0202 (2 minutes/response);

(4) Vessel logbooks for commercial fishing vessels and charter/party vessels (5 minutes/response);

(5) Annual dealer reports, OMB #0648–0229 (10 minutes/response); and

(6) Annual vessel characteristics reports (5 minutes/response).

Revisions to the existing requirements are:

(1) Moratorium permits (OMB #0648–0202) will be issued to vessels with documented history of participation in the fishery—appeal of denied permits will require written submission (30 minutes/response); and

(2) Dealer purchase reports, which were previously voluntary (OMB #0648–0229), will be mandatory (2 minutes/response).

Send comments regarding these burden-hour estimates or any other aspect of these collection-of-information requirements, including suggestions for reducing the burden hours, to Richard Roe, NMFS, and to the Office of Management and Budget (Attention NOAA Desk Officer) (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

A Biological Opinion regarding the implementation of the FMP was issued on August 2, 1988, pursuant to section 7 of the Endangered Species Act. The

opinion considered the impacts of the fishery and related management activities. Takes of endangered and threatened sea turtles in the fishery were determined to occur in some areas and years, but were felt to be below levels that would jeopardize the continued existence of any endangered populations.

The fishery continued without restruction, and between November 26, and December 7, 1990, 54 sea turtles, including at least 8 endangered Kemp's ridleys (*Lepidochelys kempi*), stranded on North Carolina beaches. Consultation was reinitiated due to new information collected during the stranding event and subsequent experimental trawls. A second Biological Opinion, issued on November 15, 1991, concluded that continued unrestricted operation of the summer flounder fishery in waters off North Carolina and southern Virginia would jeopardize the continued existence of the endangered Kemp's ridley population. Reasonable and prudent alternatives were given which included requirements for vessels trawling for summery flounder to limit tow times to 75 minutes or use NMFS-approved turtle excluder devices in waters within 10 miles of the North Carolina and southern Virginia coasts. Implementation of these alternatives is necessary to allow fishing activities to continue. This rule would enable the Regional Director to take actions consistent with the reasonable and prudent alternatives. Copies of these biological opinions are available from the Regional Director (see **ADDRESSES**).

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: June 5, 1992.

David S. Crestin,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is proposed to be revised to read as follows:

PART 625—SUMMER FLOUNDER FISHERY

Subpart A—General Provisions

Sec.

625.1 Purpose and scope.
625.2 Definitions.
625.3 Relation to other laws.
625.4 Vessel permits.
625.5 Dealer permit.
625.6 Recordkeeping and reporting requirements.
625.7 Vessel identification.
625.8 Prohibitions.
625.9 Facilitation of enforcement.
625.10 Penalties.

Subpart B—Management Measures

625.20 Catch quotas and other restrictions.
625.21 Closure.
625.22 Time restrictions.
625.23 Minimum sizes.
625.24 Gear restrictions.
625.25 Possession limit.
625.26 Sea sampler program.
625.27 Sea turtle conservation.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 625.1 Purpose and scope.

The regulations in this part implement the Fishery Management Plan for the Summer Flounder Fishery (FMP), which was prepared and adopted by the Mid-Atlantic Fishery Management Council in cooperation with the Atlantic States Marine Fisheries Commission and the New England and South Atlantic Fishery Management Councils. These regulations govern the conservation and management of summer flounder.

§ 625.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Being rerigged means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for summer flounder.

Charter or party boat means any vessel that carries passengers for hire to engage in fishing.

Commission means the Atlantic States Marine Fisheries Commission.

Council means the Mid-Atlantic Fishery Management Council.

Dealer means any person who receives summer flounder for a commercial purpose from the owner or operator of a vessel issued a moratorium permit under § 625.4 for other than solely for transport.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Summer Flounder Fishery and any amendments thereto.

Fishing commercially means retaining summer flounder in excess of the possession limit specified in section 625.25.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, telephone 508–281–9243, or a designee.

Substantially similar harvesting capacity means the same Gross Registered Tonnage (GRT) and vessel registered length.

Summer flounder means the species *Paralichthys dentatus.*

Summer Flounder Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Northeast Regional Office of NMFS, the Northeast Fisheries Science Center, the Southeast Fisheries Science Center and Commission representatives. The Council Executive Director or his designee chairs the Committee.

Total length (TL) means the distance from the tip of the head to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Under construction means that the keel has been laid.

Vessel registered length means that registered length specified on U.S. Coast Guard documentation or state registration if the state registered length is verified by a NMFS authorized official.

§ 625.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in §620.3 of this chapter and paragraph (B) of this section.

(b) Additional regulations governing fishing for summer flounder by foreign vessels in the EEZ are set forth in 50 CFR part 611, subparts A and C.

§ 625.4 Vessel permits.

(a) *General* (1) *Requirement.* Subject to the eligibility requirements specified in paragraphs (b) and (c) of this section, the owner of a vessel of the United States, including a party or charter vessel, must obtain a permit issued under this part to fish for and regain summer flounder in the EEZ.

(2) *Exemption.* Any vessel other than a party or charter boat that observes the possession limit in § 625.25 is exempt from the permit requirement.

(3) *Condition.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch and pertinent gear (without regard to whether such fishing occurs in the EEZ, or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all requirements of this part. All such fishing, catch and gear will remain subject to all applicable state requirements. If a requirement of this part and a management measure required by state law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Moratorium permit* (effective through 1997).

(1) A vessel is eligible to receive a permit to fish for and retain summer flounder in excess of the possession limit in § 625.5 in the EEZ if it meets any of the following criteria:

(i) The owner or operator of the vessel landed and sold summer flounder between January 26, 1985, and January 26, 1990; or

(ii) The vessel was under construction for, or was being rerigged for, use in the directed fishery for summer flounder on January 26, 1990, provided the vessel landed summer flounder for sale prior to implementation of the final regulations implementing the FMP; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the summer flounder fishery during the moratorium, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(iv) Vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel of substantially similar harvesting capacity.

(v) If there is no further amendment of this section, the above restrictions on eligibility to apply for and receive a moratorium permit expire after 1997.

(2) *Restriction.* The permit specified in paragraph (b)(1) of this section may not be applied for more than 12 months following either the effective date of the final regulations or the events specified under paragraphs (h)(1) and (2) of this section. This section does not affect annual permit renewals.

(c) *Party and charter boat permit.* Any party or charter boat is eligible for a permit to fish, other than a moratorium permit, if it is carrying passengers for hire, and is then subject to the possession limits specified in §625.25.

(d) *Permit application.* (1) An application for a permit under this section must be submitted and signed by the owner of the vessel on an appropriate form obtained from the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned. Applicants for moratorium permits shall provide information with the application sufficient for the Regional Director to determine if the vessel meets the eligibility requirements. Dealer weighout forms signed by the dealer and notarized statements from marine architects or surveyors or shipyard officials will be considered acceptable forms of proof.

(2) *Permit information.* An applicant must provide all the following information:

(i) The name, mailing address including ZIP code, and telephone number of the owner and master of the vessel;

(ii) The name of the vessel;

(iii) The vessel's U.S. Coast Guard documentation number or the vessel's state registration number for a vessel not required to be documented under title 46 of the U.S. Code;

(iv) Home port and principal state of landing, gross tonnage, radio call sign, and registered length of the vessel;

(v) Engine horsepower of the vessel and the year the vessel was built;

(vi) Type of construction, type of propulsion, navigational aids (e.g., Loran C), type of onboard computer, and type of echo sounder of the vessel;

(vii) Permit number of any current or previous Federal fishery permit issued to the vessel;

(viii) Approximate fish hold capacity of the vesel (to the nearest 100 lbs. or 45.4 kg);

(ix) Type and quantity of fishing gear used by the vessel;

(x) Average size of the crew, including the captain, which may be stated in terms of a normal range;

(xi) Directed fishery or fisheries;

(xii) Quantity of summer flounder landed (in pounds) during the calendar year prior to the one for which the permit is being applied.

(xiii) Average crew share by percentage;

(xiv) Number of passengers the vessel is licensed to carry (party and charter boats); and

(xv) Any other information concerning vessel characteristics requested by the Regional Director.

(3) *Change in permit information.* Any change in the information specified in paragraph (d)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change.

(e) *Fees.* The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under paragraphs (b) and (c) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit.

(f) *Issuance.* (1) The Regional Director will issue a permit at any time during the fishing year to an applicant if:

(i) The application is complete; and

(ii) The applicant has complied with all applicable reporting requirements of § 625.6 during the 12 months immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 625.6 during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(g) *Appeal of denial of permit.* (1) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (b) (1) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director erred in his decision.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(3) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(h) *Expiration.* Except as provided in paragraph (b)(1)(iii) of this section, a permit expires:

(1) When the owner or operator retires the vessel from the fishery;

(2) When the vessel fails to land any summer flounder for 52 consecutive weeks; or

(3) On December 31 of each year; or

(4) When the ownership of the vessel changes; however, the Regional Director may authorize the continuation of a moratorium permit for the summer flounder fishery if the new owner requests. Applications for permit continuations must be addressed to the Regional Director.

(i) *Duration.* A permit will continue in effect until December 31 of each year, unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report any change in the information on the permit application to the Regional Director.

(j) *Alteration.* No person may alter, erase, or mutilate any permit. Any permit that has been altered, erased, or mutilated is invalid.

(k) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator, stating the need for replacement, the name of the vessel and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. The fee for a replacement permit shall be the same as for an initial permit.

(l) *Transfer.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the fishing vessel and owner for which it is issued.

(m) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit shall be subject to inspection upon request by any authorized official.

(n) *Suspension and revocation.* Subpart D of 15 CFR part 904 (Civil Procedures) governs the imposition of enforcement-related sanctions against a permit issued under this part.

(o) *Exemption permits.* Owners or operators of vessels seeking an exemption from the minimum mesh-size requirement under the provisions of § 625.24(a)(1)(i) must apply to the Regional Director under paragraph (d) of this section at least 7 days prior to the date they wish the permit to become effective. The applicant shall mark "Exemption Permit Request" on the permit application at the top. A permit issued under this paragraph does not meet the requirements of paragraph (a) of this section but is subject to the other provisions of this section. Persons issued an exemption permit must surrender it to the Regional Director at least 1 day prior to the date they wish to fish not subject to the terms of the exemption specified in § 625.24(a)(1). The Regional Director may impose additional procedural requirements by publication of a notice or rule in the **Federal Register**.

§ 625.5 Dealer permit.

(a) *General.* Any dealer must have a permit issued under this section. A valid dealer permit issued by a state may meet this requirement if it contains substantially the same information required in paragraph (b) of this section and a copy of it is forwarded to the Regional Director by the appropriate state. The Regional Director will notify the applicant of the acceptability of that person's state dealer permit.

(b) *Permit application.* (1) An applicant must apply for a dealer permit on a form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. Applications must contain the name, principal place of business, mailing address and telephone number of the applicant. The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned. As a condition of the permit, the applicant agrees to submit all the information required under § 625.6 (a) before the permit may be made effective.

(2) *Change in permit information.* Any change in the information specified in paragraph (b)(1) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change.

(3) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of the receipt of a completed application.

(4) *Expiration.* A permit expires on December 31 of each year or if ownership of the business changes.

(5) *Duration.* Any permit issued under this section remains valid until it is revoked, suspended or modified under 15 CFR Part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director.

(6) *Alteration.* Any permit that is altered, erased , or mutilated is invalid.

(7) *Replacement.* The Regional Director may issue replacement permits for lost permits. Any application for a replacement permit shall not be considered a new permit.

(8) *Transfer.* A permit is not transferable or assignable. It is valid only for the person to whom it is issued.

(9) *Display.* The permit must be displayed for inspection upon request by an authorized officer or any employee or NMFS designated by the Regional Director.

(10) *Suspension and revocation.* The Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing permit enforcement-related sanctions or denials are found at subpart D of 15 CFR part 904.

(11) *Fees.* The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit.

§ 625.6 Recordkeeping and reporting requirements.

(a) *Dealers (1) Weekly report.* Dealers shall provide at least the following information to the Regional Director on a weekly basis, on forms supplied by the Regional Director:

(i) Name and mailing address of dealer;

(ii) Name and permit number of the vessel from which summer flounder are landed or received;

(iii) Dates of purchases;

(iv) Pounds of summer flounder purchased;

(v) Price per pound;

(vi) Pounds purchased of all other species landed by the vessel landing summer flounder; and

(vii) Any additional information the Regional Director determines is necessary for the orderly management of the summer flounder resource.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section shall also provide the following information to the Regional Director on an annual basis, on forms supplied by the Regional Director.

(i) Number of dealer employees during each month of the year just ended;

(ii) Number of employees engaged in production of summer flounder, during each month of the year just ended;

(iii) Capacity to process summer flounder; and

(iv) An estimate, for the next year, of the capacities described in paragraph (a)(2)(iii) of this section. If the capacities described in paragraph (a)(2)(iii) of this section change more than 10 percent during any year, the processor shall notify the Regional Director within 30 days of the change in capacity.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections.

(4) *Record retention.* For one year after the date of the last entry in the log, the owner or operator shall retain each logbook at the owner's or operator's principal place of business.

(5) *At-sea activities.* All persons purchasing, receiving, or processing any summer flounder at-sea for transport to any port of the United States must submit information identical to that required by paragraphs (a) (1) and (2) of this section and provide those reports to the Regional Director on the same frequency basis.

(b) *Owners and Operators of vessels issued a moratorium permit*—(1) *Daily fishing log.* The owner or operator of any vessel issued a moratorium permit shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director, showing at least:

(i) Name and permit number of the vessel;

(ii) Total amount in pounds of each species taken;

(iii) Date(s) caught;

(iv) Time at sea;

(v) Duration of fishing time;

(vi) Number of tows;

(vii) Area fished;

(viii) Crew size;

(ix) Landing port;

(x) Date sold; and

(xi) Buyer.

(2) *When to fill in log.* To the extent possible, owners or operators shall fill out such logbooks before landing any summer flounder at the end of any fishing trip. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For 1 year after the date of the last entry in the log, the owner or operator shall retain each logbook at the owner's or operator's principal place of business.

(5) *Monthly reports.* The owner or operator shall submit monthly reports to the Regional Director, on forms supplied by the Regional Director within 2 days after the end of each reporting month which shall end at midnight on the last calendar date of each month. If no fishing trip is made during a month, a report so stating must be submitted.

(6) *Annual reports.* All persons required to submit reports under paragraph (b) of this section shall submit annually to the Regional Director, on forms supplied by the Regional Director, at least the following information relating to vessel characteristics: Name of the vessel, vessel's U.S. Coast Guard documentation number or state license number, engine horsepower, home port of vessel, registered length, and hold capacity (in pounds).

(c) *Owners and operators of party and charter boats*—(1) *Daily fishing log.* The owner or operator of any party or charter boat issued a permit under § 625.4 and carrying passengers for hire shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director, showing at least:

(i) Name and permit number of the vessel;

(ii) Total amount in pounds and numbers of each species taken;

(iii) Date(s) fished;

(iv) Number of trips;

(v) Duration of trip;

(vi) Locality fished;

(vii) Crew size;

(viii) Landing port;

(ix) Number of anglers carried on each trip; and

(x) Discard rate of sub-legal regulated species.

(2) *When to fill in log.* To the extent possible, owners or operators shall fill out such logbooks at the end of any fishing trip. All logbook information required in paragraph (c)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For 1 year after the date of the last entry in the log, the owners or operator shall retain each logbook at the owner's or operator's principal place of business.

(5) *Monthly reports.* The owner or operator shall submit monthly reports to the Regional Director, on forms supplied by the Regional Director within 2 days after the end of each reporting month which shall end at midnight on the last calendar date of each month. If no fishing trip is made during a month, a report so stating must be submitted.

§ 625.7 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and over 25 feet (7.6 m) in registered length must affix permanently its name on the port and starboard sides of the bow and, as possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part and over 25 feet (7.6 m) in registered length shall display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft.

(c) *Numerals.* Except as provided in paragraph (e) of this section, the official number must be displayed in block Arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 feet (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in U.S. Coast Guard or state records.

(d) *Duties of owner or operator.* The owner or operator of each vessel subject to this part will:

(1) Keep the vessel's name and official number clearly legible and in good repair, and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(e) *Nonpermanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermananet markings must be displayed in conformity with the above requirements when the vessel is fishing for summer flounder.

§ 625.8 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a moratorium permit under § 625.4 to do any of the following:

(1) Land or possess at sea any summer flounder, or parts thereof, that fail to meet the minimum fish size specified in § 625.23;

(2) Fail to affix and maintain markings as required by § 625.6;

(3) Possess 100 or more pounds (45.4 or more kg) of summer flounder, unless the vessel meets the minimum mesh-size requirement specified in § 625.24, or is fishing in the exempted area with an exemption permit, or is fishing with exempted gear specified in § 625.24(a) (2 and 3);

(4) Possess summer flounder in other than a box specified in § 625.25(d) if fishing with nets, other than exempted nets, with mesh that does not meet the minimum mesh-size requirement specified in § 625.24;

(5) Possess nets or netting on board with mesh that does not meet the requirements of § 625.24, or nets that are modified or otherwise obstructed, if

subject to the minimum mesh-size requirements specified in § 625.24, except pieces of neting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh-size requirement applies;

(6) Possess nets or netting on board with mesh less than 5½ inches (14.0 cm) if fishing with exempted gear described in § 625.24, except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh requirements applies;

(7) Fish west or south, as appropriate, of the line specified in § 625.25(a)(1), if exempted from the minimum mesh-size requirement specified in § 625.24 by an exemption permit issued under § 625.4;

(8) Sell or transfer to another person for a commercial purpose, other than transport, any summer flounder, unless that person has a dealer permit issued under § 625.5;

(9) Carry passengers for hire or more than three crew members for a charter boat or five crew members for a party boat while fishing commercially pursuant to a moratorium permit issued pursuant to § 625.4; or

(10) Refuse to embark a sea sampler if requested by the Regional Director.

(b) It is unlawful for the owner or operator of a party or charter boat issued a moratorium permit pursuant to § 625.4, when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess summer flounder in excess of the possession limit established pursuant to § 625.25;

(2) Possess summer flounder smaller than the minimum size limit established pursuant to § 625.23(b);

(3) Fish for summer flounder during a season closed pursuant to § 625.22; or

(4) Refuse to embark a sea sampler if requested by the Regional Director.

(c) It is unlawful for any person to do any of the following:

(1) Possess in or harvest from the EEZ summer flounder either in excess of the possession limit specified in § 625.25 or before or after the time period specified in § 625.22, unless the person is operating a vessel issued a moratorium permit under § 625.4 and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended;

(2) Offload, cause to be offloaded, sell or buy any summer flounder, whether on land or at sea, as an owner, operator, dealer, buyer or receiver in the summer flounder fishery without preparing accurately and submitting in a timely fashion the documents required by § 625.6;

(3) Purchase or otherwise receive, except for transport, summer flounder from the owner or operator of a vessel issued a moratorium permit under § 625.4 unless in possession of a valid permit issued under § 625.5;

(4) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a moratorium permit.

(5) Make any false statement, oral or written, to an authorized officer, concerning the catching, taking, harvesting, landing, purchase, sale, possession, or transfer of any summer flounder;

(6) Fail to report the Regional Director within 15 days any change in the information contained in the permit application;

(7) Fail to comply with any sea turtle conservation measure specified in § 625.26, including any sea turtle conservation measure implemented by notice in the **Federal Register** in accordance with paragraph § 625.26(d);

(8) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized sea sampler or observer while performing their duties as described under §§ 625.26 and 625.27, respectively; or

(9) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(d) All summer flounder possessed aboard a party or charter boat issued a permit under § 625.4(c) are deemed to have been harvested from the EEZ.

§ 625.9 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 625.10 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 625.20 Catch quotas and other restrictions.

(a) *Annual Review.* The Summer Flounder Monitoring Committee will review the following data on or before August 15th of each year to determine the allowable levels of fishing and other restrictions necessary to result in a fishing mortality rate of 0.53 in 1993 through 1995, and a fishing mortality rate of 0.23 in 1996 and thereafter:

(1) Commercial and recreational catch data;

(2) Current estimates of fishing mortality;

(3) Stock status;

(4) Recent estimates of recruitment;

(5) Virtual population analysis results;

(6) Levels of noncompliance by fishermen or individual states;

(7) Impact of size/mesh regulations;

(8) Impact of gear other than otter trawls on the mortality of summer flounder; and

(9) Any other relevant information.

(b) *Recommended measures.* Based on this review, the Summer Flounder Monitoring Committee will recommend to the Demersal Species Committee of the Council and the Commission the following measures to assure that the applicable fishing mortality rate specified in paragraph (a) of this section is not exceeded:

(1) The commercial quota will be set from a range of 0 to the maximum allowed to achieve the fishing mortality rate specified in paragraph (a) of this section;

(2) Commercial minimum fish size;

(3) Minimum mesh size;

(4) The recreational possession limit will be set from a range of 0 to 15 summer flounder to achieve the fishing mortality rate specified in paragraph (a) of this section;

(5) Recreational minimum fish size;

(6) Recreational season; and

(7) Restrictions on gear other than otter trawls.

(c) *Annual fishing measures.* The Demersal Specifies Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the applicable fishing mortality rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director with respect to the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. Included in the recommendation will be supporting documents as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish in the **Federal Register** a proposed rule on or before September 15th to implement these measures, if he determines that these measures are necessary to assure that the fishing

mortality rates specified in paragraph (a) of this section are not exceeded. After considering public comment on this proposed rule, the Regional Director will publish a final rule in the **Federal Register** to implement the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded.

(d) *Distribution of annual quota.* (1) The annual commercial quota will be distributed to the states based upon the following percentages:

State	Share (percent)
Maine	0.0482
New Hampshire	0.0005
Massachusetts	6.9111
Rhode Island	15.8914
Connecticut	0.9532
New York	7.7486
New Jersey	16.9473
Delaware	0.0180
Maryland	2.0662
Virginia	21.6001
North Carolina	27.8155

(2) All summer flounder sold in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(e) *Review of state plans.* [Reserved]

§ 625.21 Closure.

(a) *Noncompliance.* [Reserved]

(b) *EEZ closure.* The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing a notice of the **Federal Register** if he determines that the inaction of one or more states will cause the fishing mortality rate in § 625.20 to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Director may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the fishing mortality rate in section 625.20 to be exceeded.

(c) *State inaction.* [Reserved]

§ 625.22 Time restrictions.

Owners or operators of vessels that are not eligible for a moratorium permit under § 625.4 and fishermen subject to the possession limit may fish for summer flounder only during the period May 15th to September 30th. This time period may be adjusted pursuant to the procedures in § 625.20.

§ 625.23 Minimum sizes.

(a) The minimum size for summer flounder is 13 inches (33 cm) total length for all vessels issued a moratorium permit under § 625.4, except party and charter boats carrying passengers for hire or carrying more than three crew members if a charger boat or more than five crew members if a party boat.

(b) The minimum size for summer flounder is 14 inches (35.6 cm) total length for all vessels that do not qualify for a moratorium permit, or party and charter boats holding moratorium permits but fishing with passengers for hire or carrying more than three crew members if a charter boat or more than five crew members if a party boat.

(c) The minimum size applies to any part of the fish, such as fillets, These minimum sizes may be adjusted pursuant to the procedures in § 625.20.

§ 625.24 Gear restrictions.

(a) *General.* Owners or operators of otter trawlers issued a moratorium permit under § 625.4 that land or possess 100 or more pounds (45.4 or more kg) of summer flounder, per trip, must fish with nets that have a minimum mesh size of 5½ inches (14.0 cm) diamond mesh or 6 inches (15.2cm) square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or the terminal one-third portion of a net, measured from the terminus of the codend to the head rope for nets with less than 75 meshes.

(b) *Exemptions to the minimum mesh-size restriction.* The minimum mesh-size requirement does not apply to:

(1) Owners or operators of vessels issued a permit under paragraph § 625.4(e) and fishing from 1 November through 30 April in the "exemption area" which is east or north, as appropriate, of a line that follows 71°30.0′ W. longitude south to 40°53.1′ N. latitude, 71°30.0′ W. longitude; thence northeasterly 41°00.0′ N. latitude, 70°49.5′ W. longitude, thence easterly to 41°00.0′ N. latitude, 70°30.0′ W. longitude, thence southerly to 40°50.0′ N. latitude, 70°30.0′ W. longitude, thence easterly to 40°50.0′ N. latitude, 69°40.0′ W. longitude, thence southerly to 40°33.5′ N. latitude, 69°40.0′ W. longitude, thence southwesterly to 40°26.5′ N. latitude, 70°40.0′ W. longitude, thence northerly to 40°40.5′ N. latitude, 70°40.0′ W. longitude, then southwesterly to 40°30.0′ N.. latitude, 72°00.0′ W. longitude, thence southerly to 40°17.8′ N. latitude, 72°00.0′ W. longitude, thence southwesterly to 40°15.5′ N. latitude, 72°20.0′ W. longitude, thence southerly along 72°20.0′ W. longitude until it intersects the outer boundary of the EEZ. Vessel owners or operators of vessels fishing with an exemption permit cannot fish west or south, as appropriate, of the foregoing line.

(i) The Regional Director may terminate this exemption if he determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent of their entire catch of summer flounder per trip. If he makes such a determination, the Regional Director shall publish a notice in the **Federal Register** terminating the exemption for the remainder of the calendar year.

(ii) Vessels issued a permit under § 625.4(e) may transit the area west and south of the line described in paragraph (a)(1)(i) of this section if the vessel's fishing gear is stowed in a manner prescribed under 50 CFR 651.20(f) so that it is not "available for immediate use" outside the exempted area.

(2) *Fly nets.* Owners or operators of vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5½ inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm);

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm); and

(iii) The mesh decreases in size throughout the body of the net to as small as 2 inches (5 cm) or smaller towards the terminus of the net.

(iv) The Regional Director may terminate this exemption if he determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If he makes such a determination, the Regional Director shall publish a notice in the **Federal Register** terminating the exemption for the remainder of the calendar year.

(3) *Pelagic nets.* Owners or operators of vessels fishing with a four-seam otter trawl pelagic net with the following configuration, provided that no other nets or netting with mesh smaller than 5½ inches (14.0 cm) are on board:

(i) The wings of the net have mesh that measures 32 inches (81.3 cm) or greater;

(ii) The first body section (belly) of the net consists of 40 meshes of 15 inches (38.1 cm) or greater; and

(iii) The mesh in the remaining portion of the net decreases in size to a mesh size as small as 1⅞ inches (3.81 cm) or smaller in the terminal portion of the net.

(iv) The Regional Director may terminate this exemption if he determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If he makes such a determination, the Regional Director shall publish a notice in the **Federal Register** terminating the exemption for the remainder of the calendar year.

(c) *Restriction.* Owners or operators subject to the minimum mesh-size requirement may not have nets or pieces of netting on board the vessel that do not meet the minimum mesh-size requirement except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh-size requirement applies.

(d) *Mesh-size measurement.* Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurement of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(e) *Net modifications.* The owner or operator of a fishing vessel shall not use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chaffing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present), consisting of line or rope no more than 2 inches (5 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the cod end along each of the following: The top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

§ 625.25 Possession limit.

(a) No person shall possess more than six summer flounder in or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a moratorium permit under § 625.4. Persons on board a commercial vessel that is not eligible for a moratorium permit under § 625.4 are subject to this possession limit. The owner or operator and crew of a charter or party boat issued a moratorium permit under § 625.4(b) are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) If whole summer flounder are processed into fillets, an authorized officer will convert the number of fillets to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and/or operator.

(d) Owners or operators of otter trawlers issued a moratorium permit under § 625.4 and fishing with or possessing on board nets or pieces of net that do not meet the minimum mesh-size requirements, except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh-size requirement applies, may not possess more than 100 pounds (45.4 kg) of summer flounder. Summer flounder on board these vessels shall be stored on board the vessel in a separate box that measures 36 inches (91.4 cm) long, 15 inches (38.1 cm) wide, and 12 inches (30.4 cm) high for a volume of 3.75 cubic feet (0.1 cubic meters) and which is readily available for inspection.

§ 625.26 Sea sampler program.

(a) *Request to take sea sampler.* The Regional Director may request a fishing vessel issued a permit under § 625.4 to take on board an observer or sea sampler to accompany the vessel on all fishing trips conducted during the period specified in the request. If requested by the Regional Director to take an observer or sea sampler, a vessel may not engage in any fishing operations for summer flounder unless an observer or sea sampler is on board or unless the requirement is waived.

(b) *Responsibility for sea sampler placement.* If requested by the Regional Director to take a sea sampler, it is the responsibility of the vessel owner to arrange for and facilitate sea sampler placement. Upon 48-hours notice, the Regional Director will provide information concerning sea sampler availability and placement.

(c) *Waiver.* The Regional Director may waive the sea sampler requirement based on a finding that the facilities for housing the sea sampler or for carrying out sea sampler functions are so inadequate or unsafe that the health or safety of the sea sampler or the safe operation of the vessel would be jeopardized.

(d) *Sea sampler functions.* If requested by the Regional Director to take a sea sampler, the vessel owner, vessel operator, and crew must cooperate with the sea sampler in the performance of the sea sampler's duties, including:

(1) Notifying the sea sampler in a timely fashion of when fishing operations are to begin and end;

(2) Allowing for the embarking and debarking of the sea sampler, as specified by the Regional Director, ensuring that transfers of sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea sampler involved;

(3) Providing adequate accommodations and food;

(4) Allowing the sea sampler access to all areas of the vessel necessary to conduct sea sampler duties;

(5) Allowing the sea sampler access to communications and navigation equipment and personnel as necessary to perform sea sampler duties;

(6) Providing true vessel locations, by latitude and longitude or loran coordinates, as requested by the sea sampler;

(7) Notifying the sea sampler of any sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel, as requested by the sea sampler;

(8) Providing the sea sampler with sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel, as requested by the sea sampler; and

(9) Providing storage for biological specimens, including cold storage if available, as requested by the sea sampler. These specimens must be retained on board the vessel, as instructed by the sea sampler or until retrieved by authorized NMFS personnel.

§ 625.27 Sea turtle conservation.

(a) *Sea turtle handling and resuscitation.* The sea turtle handling and resuscitation requirements specified in 50 CFR 227.72(e)(1) (i) and (ii) apply with respect to sea turtles incidentally taken by a vessel fishing for summer flounder.

(b) *Sea turtle monitoring and assessment program.* (1) The Regional Director will establish a monitoring and assessment program, in cooperation with the Council and the State of North Carolina, to measure the incidental take of sea turtles in the summer flounder fishery, monitor compliance with required conservation measures by trawlers, and predict interactions between the fishery and sea turtles to prevent turtle mortalities.

(2) A scientifically designed, observer-based monitoring program may be used to gather scientific data measuring the incidental take of turtles by trawlers in the summer flounder fishery and to report turtle distribution and abundance.

(3) A cooperative sea turtle monitoring and assessment program utilizing a variety of information, including aerial and vessel surveys; on-board observers; individually tagged turtles; physical parameters, such as sea surface temperatures, and reports from the sea turtle stranding network; and other relevant and reliable information, will assess and predict turtle distribution, abundance, movement patterns and timing to provide information to NMFS to prevent turtle mortality caused by the summer flounder fishery.

(c) *Restricted tow times.* (1) A vessel that is engaged in summer flounder fishing operations and is utilizing trawl gear must restrict tows to 75 minutes during periods established by the Regional Director as necessary to protect endangered turtles. This requirement applies to vessels within the EEZ bounded on the north by a line along 37°05' N. latitude, bounded on the south by a line along 33°35' N. latitude, and bounded on the east by a line 7 nautical miles from the shoreward boundary of the EEZ. Tow times are measured from the time trawl doors enter the water until they are removed from the water.

(2) The Regional Director may implement revisions to the tow-time requirement, for a period not to exceed 1 year, after consultation with the Council, the Director of the state of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing a notice in the **Federal Register.** The Regional Director may impose additional conditions to ensure compliance with the restricted tow-time requirement, such as conditions for synchronized tow times or additional observer coverage. The Regional Director may impose more restrictive tow-time requirements if he determines such action is necessary to protect sea turtles adequately. The Regional Director may eliminate or provide less restrictive tow-time requirements if existing requirements are not needed to protect sea turtles adequately and if the action would benefit the fishery. Revisions to tow-time restrictions may include alterations to the duration of the tow-time requirement, changes to the geographic area where or the time when the requirement is applicable, changes to the type of vessels to which the requirement applies, or changes to the boundaries where compliance with the measures is required.

(d) *Closure of the fishery.* The Regional Director may close the summer flounder fishery in Federal waters, or any part thereof, after consultation with the Council, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing a notice in the **Federal Register.** The Regional Director shall take such action if he determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under the Endangered Species Act (ESA). The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program. A closure will be applicable to those areas specified in the notice and for the period specified in the notice. The Regional Director will attempt to provide as much advance notice as possible consistent with the requirements of the ESA and will have the closure announced on channel 16 of the marine VHF radio. A closure may prohibit all fishing operations, may prohibit the use of certain gear, may require that gear be stowed, or may impose similar types of restrictions on fishing activities. The prohibitions, restrictions and duration of the closure will be specified in the notice.

(e) *Reopening of the fishery.* (1) The Regional Director may reopen the summer flounder fishery in Federal waters, or any part thereof, after consultation with the Council, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing a notice in the **Federal Register.** The Regional Director may reopen the summer flounder fishery in Federal waters, or any part thereof, if additional sea turtle conservation measures are implemented and if projections of NMFS's sea turtle monitoring program indicate that such measures will ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(2) The Regional Director may reopen the summer flounder fishery in Federal waters, or any part thereof, if the sea turtle monitoring program indicates changed conditions and if projections of the sea turtle monitoring program indicate that NMFS can ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(f) *Additional sea turtle conservation measures.* (1) The Regional Director may impose additional sea turtle conservation measures in Federal waters, after consultation with the Council, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing a notice in the **Federal Register.** The Regional Director shall take such action if he determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under the ESA or if such action would allow reopening of the summer flounder fishery in Federal waters. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program.

(2) The Regional Director may require the use of a turtle excluder device (TED). The type or types of TEDs that are required will be specified in the **Federal Register** notice. The requirement to use TEDs may apply to certain areas or during certain times of the year as specified in the notice.

(3) Additional conservation measures may require observers on all or a certain portion of the vessels engaged in fishing for flounder to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. This requirement may apply to certain types of vessels, certain areas, or during certain times of the year.

(g) *Experimental projects.* Notwithstanding paragraphs (a) through (f) of this section, the Regional Director may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture rates, to monitor turtle abundance, to test alternative gear or equipment, or for other research purposes. Research must be approved by the Regional Director, and it must not be likely to jeopardize the continued existence of any species listed under the ESA. The Regional Director will impose such conditions as he determines necessary to ensure adequate turtle protection during experimental projects. Individual authorizations may be issued in writing. Authorizations applying to multiple vessels will be published in a notice in the **Federal Register**.

(h) *Observer program*—(1) *Request to take observer.* The Regional Director may request a fishing vessel issued a moratorium permit under § 625.4 to take on board an observer to accompany the vessel on all fishing trips conducted during the period specified in the request. If requested by the Regional Director to take an observer, a vessel may not engage in any fishing operations for summer flounder unless an observer is on board or unless the observer requirement is waived.

(2) *Responsibility for observer placement.* If requested by the Regional Director to take an observer, it is the responsibility of the vessel owner to arrange for and facilitate observer placement. Upon 48-hours notice, the Regional Director will provide information concerning observer availability and placement.

(3) *Waiver.* The Regional Director may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) *Observer functions.* If requested by the Regional Director to take an observer, the vessel owner, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(i) Notifying the observer in a timely fashion of when commercial fishing operations are to begin and end;

(ii) Allowing for the embarking and debarking of the observer, as specified by the Regional Director, ensuring that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved;

(iii) Providing adequate accommodations and food;

(iv) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(v) Allowing the observer access to communications and navigation equipment and personnel as necessary to perform observer duties;

(vi) Providing true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer;

(vii) Notifying the observer of any sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel, as requested by the observer;

(viii) Providing the observer with sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel, as requested by the observer; and

(ix) Providing storage for biological specimens, including cold storage if available, as requested by the observer. These specimens must be retained on board the vessel, as instructed by the observer or until retrieved by authorized NMFS personnel.

[FR Doc. 92–13646 Filed 6–5–92; 3:45 pm]
BILLING CODE 3510–22–M

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50 CFR Part 663

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan, and request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 6 to the Fishery Management Plan for Pacific Coast Groundfish for Secretarial review and is requesting comments from the public. Amendment 6 proposes to implement a license limitation limited entry program for trawl, longline, and fishpot gear in the Pacific Coast groundfish fishery. Copies of the amendment, the draft supplemental environmental impact statement/regulatory impact review (DSEIS/RIR) may be obtained from the Council's address listed below. Written comments are requested from the public.

DATES: Comments on Amendment 6 must be received on or before August 4, 1992.

ADDRESSES: Comments should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 6 with its Draft Supplemental Environmental Impact Statement/Regulatory Impact Review (DSEIS/RIR) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney McInnis at 310–980–4040, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, on receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve Amendment 6.

If approved, Amendment 6 would implement a license limitation limited entry program for trawl, longline, and fishpot gear in the Pacific Coast groundfish fishery based on the issuance of Federal permits to vessels that demonstrated a minimum qualifying level of landings of groundfish with limited entry gear between July 11, 1984, and August 1, 1988. It also would implement an open access fishery for all other gear as well as vessels with longline or fishpot gear not qualifying for limited entry permits. It is expected that 90 to 95 percent of the allowable groundfish harvest would be allocated to the limited entry segment and the remainder allocated to the open access segment. Limited entry permits would be endorsed for specific gear usage. Other provisions of Amendment 6 include exceptions for vessel conversion/construction/purchase or replacement, and provisions for temporary permits to be issued to fish for Pacific whiting, shortbelly rockfish, and jack mackerel north of 39 degrees N. latitude if necessary for domestic utilization.

Regulations proposed by the Council to implement Amendment 6 are

scheduled to be published within 15 days of this notice.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 5, 1992.

Alfred J. Bilik,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-13645 Filed 5-9-92; 3:45 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 112
Wednesday, June 10, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Accreditation Committee of the National Organic Standards Board (NOSB); Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub Law 92–463), as amended, the Agricultural Marketing Service announces the forthcoming meeting of the Accreditation Committee.

DATES/TIME: 8 a.m. to 5 p.m. on June 27–28, 1992.

ADDRESSES: The Best Western El Rancho Inn, located at 1100 El Camino Real, Millbrae, California.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, National Organic Standards Board, Room 4006–South Building, P. O. Box 96456, Washington, DC 20090–6456. Telephone: (202) 720–2704.

SUPPLEMENTARY INFORMATION: Section 2119 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Fact Act), Public Law No. 101–624, requires establishment of a National Organic Standards Board. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and handling and to advise the Secretary on any other aspects of the implementation of title XXI of the Fact Act. The NOSB met for the first time in Washington, DC, in March and formed six committees to work on various aspects of the Program. One of the committees formed is the Accreditation Committee.

The purpose of the Accreditation Committee meeting is to review input from existing certifying agents concerning the development of a working model for organic certification accreditation pursuant to Sections 2115 and 2116 of the Organic Foods Production Act of 1990. The Accreditation Committee will focus on: (1) The possible criteria for certifier program management; (2) the possible procedure for determining certifier compliance; and, (3) possible approaches to implementing the program.

A final agenda will be available on June 5, 1992. Persons requesting copies should contact Mrs. Fox at the above address or telephone number.

The meetings will be open to the public, although seating will be limited. Individuals and organizations wishing to provide written comments on these issues or to express public comment on accreditation issues should forward the information and request to Harold S. Ricker at the above address or FAXED to 202, 690–0338 by June 12, 1992. The Accreditation Committee requests that public input be limited to accreditation issues at this time and wishes to note that the NOSB will provide opportunities for public input on other issues at a later date.

Dated: June 4, 1992.

Kenneth C. Clayton,

Deputy Administrator.

[FR Doc. 92–13601 Filed 6–9–92; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Exemption of Benchmark Blowdown Salvage Project From Appeal

AGENCY: Forest Service, Northern Region, USDA.

ACTION: Notification that a salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In the fall of 1991, several areas in the Benchmark 4744 Timber Sale, Clearwater National Forest, blew down in a windstorm. The area is located approximately 26 air miles east of Moscow, Idaho. In January 1992, the Palouse District Ranger proposed a salvage and reforestation project for the blowdown area. There are five areas of concentrated blowdown totalling approximately 22 acres.

The District Ranger has determined, through an environmental analysis documented in the Benchmark Blowdown Salvage Timber Sale Environmental Assessment (EA), that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the blowdown area must be accomplished within the spring and summer of 1992 to avoid further deterioration of sawtimber, and potential damage to other forest resources.

EFFECTIVE DATE: June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Dick Hodge; District Ranger; Palouse Ranger District; Clearwater National Forest; Route 2, Box 4; Potlatch, Idaho 83855.

SUPPLEMENTARY INFORMATION: The Benchmark 4744 Timber Sale was logged during the period of 1985 to 1991. Five areas, totalling 22 acres, were damaged by a windstorm in the fall of 1991. The blowdown timber is within three management areas, M2, A4 and E1 (Clearwater National Forest and Resource Management Plan (Forest Plan), September 23, 1987) which are to be managed for riparian dependent resources, timber production, and visual quality respectively. All lands are suitable for timber production. In January 1992, the Palouse District Ranger proposed the salvage harvest of the trees which were damaged in the windstorm. This proposal was designed to: (1) Salvage merchantable timber products in a timely manner before they deteriorate; (2) increase long-term timber yields by reducing delays in regeneration; (3) prevent further spread of insects such as Douglas-fir bark bettle, which is known to occur in this area; (4) approach the desired condition for amounts and distribution of woody debris in headwater streams; and (5) rehabilitate and recover commercial forest lands by planting trees in areas of concentrated blowdown. An interdisciplinary team was convened, and scoping began in January 1992. A scoping letter was sent to individuals and groups, and a meeting with industry and local conservation groups was held. Issues were identified, and served as the foundation of the environmental analysis.

The interdisciplinary team developed and analyzed three action alternatives and a no action alternative. The results

of the analysis are disclosed in the Environmental Assessment and accompanying project file. Alternatives ranged from no harvest to salvaging 22 acres of the blowdown as well as roadside salvage only.

The selected alternative (Alternative A) would salvage 500 MBF of timber on 22 acres adjacent to, and within, previously harvested areas and along existing roads. No road construction or reconstruction will occur. The sale and accompanying work is designed to accomplish the objectives as quickly as possible; minimize salvage volume lost; increase long-term timber yields; reduce risk of insect infestation, as well as reduce risk of further sedimentation; and facilitate prompt reforestation of areas affected by the blowdown. To expedite this salvage project and accompanying work, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as severe winds * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Benchmark Blowdown Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: June 4, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-13575 Filed 6-9-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Porcupine Blowdown Salvage Project From Appeal

AGENCY: Forest Service, Northern Region, USDA.

ACTION: Notification that a salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In the summer of 1991, approximately 30 acres within the Porcupine Timber Sale Area blew down in a windstorm. In January 1992, the Palouse District Ranger of the Clearwater National Forest proposed a salvage project for the blowdown area. The proposal would harvest blowdown timber along existing roads and adjacent to a previously harvested area.

The District Ranger has determined, through analysis documented in the Porcupine Blowdown Salvage Timber Sale Decision Memo, that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the blowdown area must be accomplished within the spring and summer of 1992 in order to avoid further deterioration of sawtimber and potential damage to other forest resources.

EFFECTIVE DATE: Effective on June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Dick Hodge; District Ranger; Palouse Ranger District; Clearwater National Forest; Route 2, Box 4; Potlatch, Idaho 83855.

SUPPLEMENTARY INFORMATION: The Porcupine Timber Sale was logged during the period of 1985 to 1991. An area of approximately 30 acres adjacent to an existing harvest unit was damaged by a windstorm in the summer of 1991. The blowdown timber is within a management area of the Clearwater National Forest Plan, which is to be managed for sustained production of wood products and provides for protection of soil and water quality. This project includes no activity within riparian areas.

This proposal was designed to: (1) Salvage merchantable timber products; (2) prevent further spread of insects such as Douglas-fir bark beetle, which is known to occur in this area; (3) protect existing seedlings and saplings to optimize long-term timber yield; and (4) reduce risk of potential wildfire that may damage other forest resources. An interdisciplinary team was convened, and scoping began January 1992. A scoping letter was sent to individuals and groups, and a meeting with industry and local conservation groups was held. Issues were identified and served as the foundation of the environmental analysis. The interdisciplinary team developed and analyzed two alternatives, the proposed action and a no action alternative. The results of the analysis are disclosed in the Decision Memo and accompanying project file.

The selected alternative would salvage 60 thousand board feet of blowdown timber on approximately 30 acres along existing roads adjacent to and within previously harvested areas. No road construction or reconstruction will occur.

The sale and accompanying work are designed to accomplish the objectives as quickly as possible, to minimize salvage volume lost and to reduce potential risk of insect infestations and wildfire. To expedite this salvage project and accompanying work, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based on the analysis documented in the Porcupine Blowdown Salvage Decision Memo, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR Part 217.

Dated: June 4, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-13578 Filed 6-9-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Idaho Salvage Timber Sale Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a fire recovery and salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In 1990, 14 acres of timber adjacent to the Idaho Gulch Timber Sale were killed as a result of an escaped prescribed burn. In 1992, the Wallace Ranger District of the Idaho Panhandle National Forest proposed a timber sale to salvage and rehabilitate the burned area. The District Ranger has determined, through an environmental analysis documented in the Idaho Salvage Timber Sale Environmental Assessment (EA), that there is good cause to expedite these actions to order to rehabilitate National Forest system lands and recover damaged resources. Salvage of commercial sawtimber within the fire area must be accomplished within the summer of 1992 in order to avoid further deterioration of sawtimber.

EFFECTIVE DATE: Effective on June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Williams; District Ranger; Wallace Ranger District; Idaho

Panhandle National Forest; Box 14; Silverton, Idaho 83867.

SUPPLEMENTARY INFORMATION: The Idaho Gulch Timber Sale was logged between 1983 and 1990. The units adjacent to the proposed salvage areas were treated with a prescribed burn in the spring of 1990. Approximately 14 acres of timber outside the harvest units were burned by an escaped fire. The fire-killed timber is within Management Areas 1 and 6 as designated by the Idaho Panhandle Forest Plan, August 1987. Management Area 1 includes lands designated for timber production. Management Area 6 lands are defined as lands designated for timber production within big game summer range. In May 1992, the Wallace District Ranger proposed the salvage of trees which were killed by fire. This proposal was designed to meet the following needs: (a) Salvage merchantable timber products, (b) provide long-term growth and production of commercially valuable wood products, (c) provide snag dependent species habitat and elk security, and (d) contribute to watershed recovery through application of management practices designed to minimize erosion and sedimentation potential. An interdisciplinary team was convened, and scoping began in 1991. Five issues were identified and were the basis for the analysis of the environmental consequences discussed in the Assessment.

The interdisciplinary team developed two alternatives, the no action alternative and the salvage alternative. The environmental consequences associated with these alternatives are disclosed in an Environmental Assessment which was prepared for the proposal.

The selected alternative (Action Alternative) would salvage 210 MBF of dead timber on 14 acres. No new road construction or reconstruction is planned for this sale. All units are accessible from existing roads. The sale and accompanying rehabilitation work is designed to accomplish the objectives as quickly as possible, minimize salvage volume lost, reduce risk of injury to naturally regenerating seedlings, facilitate prompt reforestation of burned areas, initiate watershed and fisheries habitat recovery projects, and restore and maintain elk security as rapidly as possible. To expedite this sale and accompanying work, procedures outlined in 36 CFR part 217(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exist to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Idaho Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: June 4, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-13577 Filed 6-9-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Fourth of July Fire Salvage Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a fire recovery and timer salvage sale project is exempt from appeals under provisions of 36 CFR part 217.

SUMMARY: In October 1991, the Sylvanite Complex Fires burned approximately 12,000 acres of the Kootenai National Forest. Lands within the burn area were treated during the fire suppression efforts to stabilize slopes and prevent damage to watersheds and other resources. The Kootenai Forest Supervisor has determined these initial efforts were not sufficient to meet long-term objectives of the Kootenai National Forest Land and Resource Management Plan (Forest Plan). In May 1992, the Forest Supervisor proposed a timber salvage and rehabilitation project consisting of four major actions: (1) Salvage timber damaged by fire and windthrow on 2,187 acres; (2) construction of 3.8 miles of specified, 1.7 miles of temporary, and reconstruction of 17 miles of roads to facilitate removal of timber (all temporary roads would be recontoured, revegetated, and closed after harvest operations); (3) reforestation and revegetation by planting tree and shrub species on 3,151 acres; and (4) reduction of fuel concentrations on 2,547 acres.

The Forest Supervisor has determined, through an environmental analysis documented in the Fourth of July Fire Recovery Project Environmental Assessment (EA), that there is good cause to expedite these actions for rehabilitation of National Forest System lands and recovery of damaged resources. Salvage of commercial sawtimber within the fire area must be accomplished quickly to avoid further deterioration of sawtimber.

This is notification that the decision to implement the Fourth of July Fire Recovery Project on the Kootenai National Forest is exempted from appeal. This conforms with the provisions of 36 CFR 217.4(a)(11).

EFFECTIVE DATE: Effective on June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, 506 U.S. Highway 2 West, Libby, MT 59923.

SUPPLEMENTARY INFORMATION: In October 1991, the Sylvanite Complex Fires burned and blew down timber on 12,500 acres of the Kootenai National Forest. The Fourth of July Fire Salvage Project analysis area contains approximately 8,310 of these affected acres. Approximately 6,287 acres affected by the fire contains timber stands within Management Areas that are considered suitable for timber production under the Kootenai National Forest Plan. A rehabilitation team surveyed the area and assessed damage to forest resources. Wildlife habitats were altered when vegetation was removed by the fire reducing effective cover and security areas. Fisheries and riparian areas were altered when stabilizing woody material in stream channels was partly or completely removed by the fire. In other areas, blowdown has blocked fisheries movement up streams and water quality has been lowered. In October and November of 1991, the most severely burned and disturbed areas were seeded by hand. Additional isolated areas of the fire were seeded and fertilized by helicopter, however, winter weather precluded extensive seeding operations.

In December 1991, the Three Rivers Deputy District Ranger proposed projects to recover damaged timber and rehabilitate areas affected by the fire. The proposal was designed to meet the following needs: (1) Recover merchantable timber products; (2) rehabilitate, through reforestation and revegetation, stands damaged by fire and windthrow to expedite establishment of wildlife hiding cover, promote watershed stabilization, and enhance future timber production; and (3) provide for the recovery of conditions essential to sustain ecological systems in the area by promoting species diversity.

An interdisciplinary team of resource specialists was formed to analyze opportunities to accomplish the

identified purpose and need. An environmental analysis of these actions was started in December 1991. Initial scoping of issues began in December 1991 and consisted of press releases, individual letters, and an open house which was conducted for individuals and organizations thought to have an interest in the area. In addition, contacts were made with other interested State and Federal agencies. As a result, three environmental issues were identified and formed the foundation for the analysis of environmental effects disclosed in the EA.

The EA discloses the analysis of five alternatives, including a "no action" alternative. Alternatives analyzed investigated recovery actions ranging from treatment of 2,316 acres, 2,187 acres, 1,486 acres, 1,210 acres, and no treatments. Estimated recovery of timber salvage material ranges from a high of 27.7 MMBF to no slavage operations. The selected alternative (Alternative 6) includes four major actions. The first is to harvest approximately 2,187 acres of fire- and blowdown-killed or damaged timber within the analysis area. Harvest in all cases is limited to removal of dead and severely damaged trees.

Second, an estimated 3.8 miles of specified, 1.7 miles of temporary, and 17 miles of recontructed roads will be needed to facilitate removal of timber. All temporary roads will be recontoured, revegetated, and closed after timber harvest operations are completed. Third, reforestation and revegetation would be accomplished by planting a mixture of coniferous species and shrubs. The objectives for these plantings include: (1) Reforestation of lands suitable for timber production as soon as possible; (2) establishment of wildlife hiding cover and winter forage for moose at a faster rate than natural conditions would allow; and (3) increased diversity of plant species as the area recovers. Fourth, treatment of fuels would be accomplished by braodcast burn, grapple pile, and yarding of unmerchantable material. The objectives for these treatments include: (1) Reduction in fuel loadings to lower the potential of a secondary wildfire and reburn; (2) break up continuous fuels to assist in future wildfire containment; and (3) break up fuel concentrations that would prohibit wildlife movement in travel corridors.

Further delay in removal of the dead and damaged trees will render them unmerchantable as sawtimber, lack of reforestation and revegetation treatments will result in unacceptable delays affecting long-term timber yields, reduced effectiveness of wildlife and fisheries habitat, and increased potential for catastrophic wildfire that could affect adjacent areas. Due to the length of time required to develop an acceptable project and evaluate its environmental effects, the time remaining for accomplishment has become critical. Additional delays will result in further damage to presently undamaged resoures and would decrease the ability to recover timber and other resources affected by the Sylvanite Complex Fires.

To expedite this recovery of salvage timber and associated rehabilitation work, procedures outlined in 36 CFR part 217 are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System Lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as, wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Fourth of July Fire Salvage EA and the Kootenai National Forest Supervisor's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: June 4, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-13576 Filed 6-9-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 5 p.m. and adjourn at 7 p.m. on Thursday, June 25, 1992, and reconvene at 9 a.m. and adjourn at 5 p.m. on Friday, June 26th at the City Council Chambers, City Hall, 125 N. Mid-America Mall, Memphis, Tennessee 38103. The purpose of the meeting is to: (1) To discuss the status of the Commission and SACs; (2) to discuss civil rights progress and/or problems in the State; (3) to update the current project, Racial Tensions in Tennessee; and (4) to receive information from community leaders and others on racial tensions in Memphis.

Persons desiring additional information, or planning a presentation to the Committee should contact Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 2, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-13539 Filed 6-9-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 59-91]

Foreign-Trade Zone 110A—Albuquerque, NM, Application for Expansion; Adria-SP, Inc., Pharmaceutical Products Plant; Amendment of Application

The pending application of the City of Albuquerque, New Mexico, grantee of FTZ 110, which requests an expansion of subzone status at the pharmaceutical plant of Adria-SP, Inc., Albuquerque (Subzone 110A), has been further amended. The application, which was filed in October 1991 (Docket 59-91, 56 FR 56054, 10/13/91) and amended in March 1992 (57 FR 8630, 3/11/92), requests extension of the scope of manufacturing authority and expansion of the subzone boundaries to include the entire manufacturing facility and a portion of the company's warehouse at 3700 Osuna Road, Albuquerque. This amendment expands the request regarding the subzone boundaries to include the entire warehouse facility (51,000 sq. ft.) on Osuna Road and two auxillary sites—Adria's packaging facility (4,200 sq. ft.) at 4221-B Balloon Park Road, Albuquerque; and its research facility (13,500 sq. ft.) at 4200 Balloon Park Road, Albuquerque. The application remains otherwise unchanged.

The comment period is reopened until July 2, 1992.

The application and amended material are available for public inspection at the following locations:

U.S. Department of Commerce, District Office, 625 Silver Street SW., 3rd FL, Albuquerque, NM

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: June 4, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-13647 Filed 6-9-92; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 577]

Resolution and Order Approving the Application of the Triangle J Council of Governments for Special-Purpose Subzone Status at the Mallinckrodt Medical, Inc., Plant (Pharmaceuticals) Wake County, NC

Proceedings of the Foreign-Tade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Triangle J Council of Governments, grantee of Foreign-Trade Zone 93, filed with the Foreign-Trade Zones Board (the Board) on February 27, 1991, requesting special-purpose subzone status at the pharmaceutical manufacturing plant of Mallinckrodt Medical, Inc., in Wake County, North Carolina (Raleigh/Durham, North Carolina area), the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including Section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status; Mallinckrodt Medical, Inc., Plant, Wake County, North Carolina

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Triangle J Council of Governments, Grantee of Foreign-Trade Zone No. 93, has made application (filed 2–27–91, FTZ Docket 12–91, 56 FR 10233, 3–11–91) to the Board for authority to establish a special-purpose subzone at the pharmaceutical manufacturing plant of Mallinckrodt Medical, Inc., in Wake County, North Carolina;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that the proposal is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone at the Mallinckrodt Medical, Inc., plant in Wake County, North Carolina (designated on the records of the Board as Foreign-Trade Subzone 93A), at the location described in the application, subject to the FTZ Act and the Board's regulations (as revised 56 FR 50790–50808, 10–8–91), including Section 400.28 (IBM subzone, Raleigh, NC area, Board Order 568, 57 FR 20673, 5–14–92, is redesignated Subzone 93B).

Signed at Washington, DC, this 2nd day of June 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-13648 Filed 6-9-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

November 1992 Japan Official Development Assistance Conference in Tokyo

AGENCY: International Trade Administration, Commerce.

ACTION: Invitation to participate in conference.

SUMMARY: The Department of Commerce (the "Department") together with other U.S. government agencies invite you to participate in the Japan Official Development Assistance (ODA) conference convening on Monday, November 9, 1992. This conference is a direct result of the President's January 1992 trip to Japan and is a follow-on to the two successful A.I.D.-Department of Commerce sponsored ODA conferences held in Orlando, Florida and San Francisco, California in May 1989.

To date, the Department has tracked at least $125 million of U.S. success stories in a large variety of products and services for Japanese ODA. U.S. companies have only just begun to realize the potential for pursuing business ventures under the auspices of Japan's ODA. This conference will provide a fast track for accessing information on ODA's mechanics. Moreover, attending the conference will give clear signals to Japanese companies and the Japanese lending agencies of U.S. companies' keen interest and commitment to obtaining contracts. This conference will offer two levels of participation, full and partial, which are described in this notice.

Presentations at the conference will be designed to illuminate and make more transparent Japan's ODA processes and provide fundamental information to enable participants to access procurement through Japan's foreign aid program. The U.S. government will assist in making the conference more effective for U.S. participants by arranging for presentations, hospitality, luncheons and receptions and by preparing a conference booklet in which all participants will be listed. Pre-conference preparations will emphasize information that will facilitate the development of participant ODA strategies.

DATES: The conference will convene in Tokyo on Monday, November 9, with a pre-conference in Washington, DC September 15 for full participants. Request for full participation must be received by June 26, 1992. The Department will accept applications for partial participation up to September 25, 1992.

ADDRESSES: Requests to participate should be addressed to Robert Lurensky, Office of International Major Projects, room 2015–B, HCHB, Department of Commerce, Washington, DC 20230. Telephone: (202) 377–4002. Facsimile: (202) 377–0316.

FOR FURTHER INFORMATION CONTACT: Elizabeth Johns, Office of Japan, room 2318, HCHB, Department of Commerce,

Washington, DC 20230. Telephone: (202) 377–4527. Facsimile: (202) 377–0469.

SUPPLEMENTARY INFORMATION: The Department invites U.S. companies to participate in a conference to convene in Tokyo on Monday, November 9, 1992, to develop business opportunities between U.S. and Japanese companies through Japan's official development assistance (ODA). Sponsored by the Government of the United States, the conference will focus specifically on the mechanics of Japan's official development assistance (ODA) program and upon bringing U.S. and Japanese firms together in a joint effort to help the peoples of the less developed countries (LDCs).

Background

There are two levels of conference participation, full and partial, and will be priced accordingly. Since the number of full participation registrants will be limited to 25 companies, and more than that number are expected to request participation, the Department has established criteria to determine which companies will be selected. These criteria are listed in the section below.

Full participation, based on selection by the Department and limited to company principals only, will include, in addition to attendance at the main conference in November, a pre-conference briefing in Washington, DC in September and pre-arranged meetings with similar Japanese firms in Tokyo. Partial participation will be limited to attendance at the plenary sessions of the conference in Tokyo and is open to any U.S. firm.

Registration costs of full participation are initially estimated to be $2,500 per company representative (a maximum of two per company). Partial participation will cost $1,000 per company representative and will include hospitality and conference costs.

A firm's participation in the conference should be part of a demonstrated long-term commitment to entering Japanese foreign aid funded projects. The conference goals do not include signing of contracts, but will afford an opportunity for qualified U.S. firms to promote themselves with Japanese corporate leaders in project planning worldwide.

Requests for full participation should be accompanied by information already compiled and maintained by requesters in the normal course of their activities such as the latest annual report and a company prospectus.

Selection Criteria

In selecting companies to participate in the ODA conference as a full participant, the Department will apply the following criteria:

Category I Company With Products or Services in the Following Sectors: Telecommunications, Power and the Environment

—The environment sector includes, but is not limited to, solid and liquid waste, water supply and treatment, renewable energy, industrial pollution, hazardous waste, clean and efficient energy/manufacturing systems and power plant cleanup.

Category II Company Which, at the Minimum, Meets One of the Following Criteria

(1) Is well established and financially solvent, with at least fifteen years in its industry;

(2) Has an established resident office in Japan for the purpose of either doing business in Japan or in developing countries through Japan's ODA; or.

(3) Has developed markets in Pacific Rim.

Category III Company Which has Demonstrated a Long-term Commitment to Entering Japanese Aid-Funded Projects by One of the Following

(1) Attending one of the two A.I.D. conferences convened in Orlando and San Francisco in 1989; or

(2) Registering on the Department of Commerce Japan ODA database before April 30, 1992; or

(3) Invested resources in an attempt to obtain Japan's ODA business and/or previously obtained an award of business through Japan's ODA.

Category IV Company Which Meets Most of the Following Characteristics (Listed in Priority Order)

(1) Has products/services that will make a contribution to developing countries.

(2) Is a well known technological leader in its field with recognized and demonstrated competence;

(3) Has experience in exporting;

(4) Has a regional intelligence and distribution network;

(5) Has some familiarity/contact with Japanese companies and with Japanese business practices.

Description of Participation Levels

Partial

Cost: $1,000 per person

Conference in Tokyo, Japan—November 9–11, 1992.

• Plenary program including:

—Pre-conference briefing on November 9;

—Two-day program which will include Government of Japan (GOJ) and Japanese private sector presentations to make more clear the operations and procedures of Japan's official development assistance (ODA);

—Briefing book;

—Bilingual inclusion of company name, address, and contact point (with telephone and facsimile number) in conference brochure;

—Luncheons and receptions.

• Open to any U.S. firm.

Full

Cost: $2,500 per person.

In addition to plenary program described above:

• Pre-conference in Washington, DC—September 15, 1992.

—Full-day program at which D.C.-based Government of Japan (GOJ) speakers will provide information on the operations and services of the Washington offices of the Japan International Cooperation Agency (JICA), the Overseas Economic Cooperation Fund (OECF), and the Export-Import Bank of Japan. U.S. Government officials will provide information on services provided by the U.S. Department of Commerce, the Trade and Development Program, and the Export-Import Bank of the United States. They will also discuss new initiatives that will help U.S. companies to develop ODA strategies.

• One-page company profile in English and Japanese listed in the conference brochure to be widely distributed to GOJ and ODA companies;

• On November 12, 1992, prearranged meetings in Tokyo with appropriate Japanese firms, including trading companies;

• Limited to a maximum of 25 companies, to be selected based on established criteria.

Request for Participation

To assist in preliminary planning, we ask that you mail an indication of interest by June 26 to Robert Lurensky, room 2015–B, HCHB, U.S. Department of Commerce, Washington, DC 20230 (or by facsimile 202–377–0316). Along with your request for participation, please also provide the following information: Your company name and address, appropriate contact person, telephone and facsimile numbers, and state the level or your participation interest, full participation or the Tokyo plenary sessions only. Requests for full participation should be accompanied by information already compiled and maintained by requesters in the normal

course of their activities such as the latest annual report and a company prospectus.

Dated: June 5, 1992.

Marjory E. Searing,

Deputy Assistant Secretary for Japan.

[FR Doc. 92-13649 Filed 6-9-92; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P771#61).

On April 7, 1992, notice was published in the **Federal Register** (57 FR 11708) that an application had been filed by the National Marine Fisheries Service's National Marine Mammal Laboratory, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115-0070 for permits to take California sea lions (*Zalophus californianus*) for purposes of scientific research. Application P771#61 proposed research to evaluate the immune system competence of free-ranging California sea lions to determine if high levels of organochlorine pollutants (DDT and PCB's) are associated with immunosuppression. This study is part of a comprehensive Injury Determination Study for the Southern California Damage Assessment.

Notice is hereby given that on May 28, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a permit for the above taking subject to certain conditions set forth in the permit.

The permit and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 (301/713-2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801-4213 (310/980-4016); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802.

Dated: June 3, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources.

[FR Doc. 92-13557 Filed 6-9-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Amendment of Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 5, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year and amending visa requirements.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In recent consultations, the Governments of the United States and Indonesia agreed to amend their current bilateral agreement for two consecutive one-year periods beginning on July 1, 1992 and extending through June 30, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period which begins on July 1, 1992 and extends through June 30, 1993. Also, the existing visa requirements are being amended.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 52 FR 20134, published on May 29, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 5, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended and extended, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on July 1, 1992 and extending through June 30, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	6,426,190 square meters.
225	4,500,000 square meters.
300/301	2,750,000 kilograms.
313	11,660,257 square meters.
314	40,714,695 square meters.
315	18,500,000 square meters.
317/617/326	17,868,332 square meters of which not more than 2,640,240 square meters shall be in Category 326.
331/631	1,640,863 dozen pairs.
334/335	150,383 dozen.
336/636	400,000 dozen.
338/339	812,000 dozen.
340/640	1,000,000 dozen.
341	601,452 dozen.
342/642	250,000 dozen.
345	290,796 dozen.
347/348	1,100,000 dozen.
351/651	325,000 dozen.

Category	Twelve-month restraint limit
359–C/659–C [a]	950,000 kilograms.
359–S/659–S [b]	1,000,000 kilograms.
369–S [c]	613,842 kilograms.
443	80,000 numbers.
445/446	53,607 dozen.
604–A [d]	477,429 kilograms.
600	750,000 kilograms.
611	4,240,296 square meters.
613/614/615	16,950,000 square meters.
618	4,000,000 square meters.
619/620	6,200,000 square meters of which not more than 6,000,000 square meters shall be in Category 619.
625/626/627/628/629.	18,971,705 square meters.
634/635	200,000 dozen.
638/639	1,040,000 dozen.
641	1,524,702 dozen.
645/646	526,271 dozen.
647/648	2,180,265 dozen.
669–P [e]	1,000,000 kilograms.
670–L [f]	1,000,000 kilograms.
847	275,471 dozen.
Group II 200, 201, 218, 220, 222–224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 350, 352–354, 359–O [g], 360–363, 369–O [h], 400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465, 469, 603, 604–O [i], 606, 607, 621, 622, 624, 630, 632, 633, 643, 644, 649, 650, 652–654, 659–O [j], 665, 666, 669–O [k], 670–O [l], 831–836, 838, 839, 840, 842–846, 850–852, 858 and 859, as a group.	62,000,000 square meters equivalent.
Subgroup in Group II 400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465 and 469, as a group.	2,400,000 square meters equivalent.

[a] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[b] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[c] Category 369–S: only HTS number 6307.10.2005.

[d] Category 604–A: only HTS number 5509.32.0000.

[e] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[f] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[g] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025; 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359–S).

[h] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[i] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A)

[j] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[k] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[l] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670–L).

Imports charged to these category limits for the periods July 1, 1991 through June 30, 1992; and October 1, 1991 through June 30, 1992 (Category 443) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Indonesia.

For visa purposes, you are directed, effective on July 1, 1992, to amend further the directive dated May 19, 1987, to include the following part and merged categories for goods exported on or after July 1, 1992:

Part-Categories

359–C—Cotton coveralls and overalls—only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

359–S—Cotton swimwear—only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359–S).

359–O—Other—all remaining HTS numbers in Category 359.

659–C—Man-made fiber coveralls and overalls—only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

659–S—Man-made fiber swimwear—only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

659–O—Other—all remaining HTS numbers in Category 659.

669–P—Man-made fiber bags—only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

669–O—Other—all remaining HTS numbers in Category 669.

670–L—Luggage—only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

670–O—Other—all remaining HTS numbers in Category 670.

Merged Category

300/301
331/631
340/640
359–C/659–C
359–S/659–S
634/635
647/648

Merchandise in the aforementioned merged categories may be accompanied by either the appropriate merged category visa or the correct category or part-category visa corresponding to the actual shipment.

Effective on July 1, 1992, a visa shall no longer be required for dish towels visaed as 369–D [1], which are produced or manufactured in Indonesia and exported from Indonesia on and after July 1, 1992. Consequently, dish towels currently visaed as 369–D shall require a 369–O (excluding shop towels) [2] visa.

You are directed to permit entry of dish towels, produced or manufactured in Indonesia and exported from Indonesia during the period July 1, 1992 through July 31, 1992 which are visaed either as Category 369–D or 369–O. Dish towels produced or manufactured in Indonesia and exported from Indonesia on and after August 1, 1992 which are visaed as 369–D shall be denied entry and a new 369–O visa must be obtained.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

In carrying out the above directions, the Commissioner of Customs should construe

[1] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[2] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-13651 Filed 6-9-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

June 5, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 12, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 56506, published on November 5, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 5, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 29, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on June 12, 1992, you are directed to amend the directive dated October 29, 1991 to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
338	234,893 dozen.
340	219,538 dozen.
641/840	149,047 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-13652 Filed 6-9-92; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of Export Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Turkey; Correction

June 5, 1992.

In the notice published in the **Federal Register** on May 27, 1992 (57 FR 22211), 3rd column, under the heading "Supplementary Information," change the last sentence of the 2nd paragraph to read as follows: "For goods exported on or after July 1, 1992 without the M.I.D. on the export visa document, a new visa containing this information must be obtained."

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-13650 Filed 6-9-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0095; FAR Case 89-29]

OMB Clearance Request for Commerce Patent Regulations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0095).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning FAR 27.3, Commerce Patent Regulations, Public Law 98-620.

DATES: Comments may be submitted on or before August 10, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

As a result of the Department of Commerce (Commerce) publishing a final rule in the **Federal Register** implementing Public Law 98-620 (52 FR 8552 March 18, 1987), a revision to FAR 27.3 to implement the Commerce regulation in the FAR was published in the **Federal Register** as an interim rule on June 12, 1989 (54 FR 25060).

A Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227-11(c), 52.228-12(c), and 52.227-13(e)(2)). Contractors are required to submit periodic or interim and final reports listing subject inventions (27.303(a); 27.304-1(e)(1)(i) and (ii); 27;204-1(e)(2)(i) and (ii); 52.227-12(f)(7); 52.227-14(e)(3)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227-11, Alternate IV; 52.227-12(f)(5); 52.227-13(e)(1)). In addition, the contractor must require his employees, by written agreements, to

disclose subject inventions (52.227–11(f)(2); 52.227–12(f)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(h); 52.227–12(h)).

B Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1,200; responses per respondent, 9.75; total annual responses, 11,700; preparation hours per response, 3.9; and total response burden hours, 45,630.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

Dated: June 2, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–13537 Filed 6–9–92; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Engineering in the Manufacturing Process

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Engineering in the Manufacturing Process will meet in closed session on June 25–26, 1992 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will identify manufacturing technologies and engineering methods that can meet the Department's future needs for fieldable prototypes, rapid transition to production on demand, and economic low volume manufacturing.

In accordance with section 10(d) fo the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: June 5, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13598 Filed 6–9–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Request for Verification of birth; DD Form 372; OMB Control Number 0704–0006.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: .083 hour.

Responses per Respondent: 1.

Number of Respondents: 150,000.

Annual Responses: 150,000.

Annual Burden Hours (Including Recordkeeping): 12,450.

Needs and Uses: In accordance with 10 U.S.C. 505, 3253, 5013, and 8253, applicants must meet minimum and maximum age standards and citizenship requirements for enlistment in the Armed Services and Coast Guard. If an applicant is unable to provide a birth certificate, the DD Form 372 is dispatched to the respective state or local agencies; e.g., Bureau of Vital Statistics.

Affected Public: State or local governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: June 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13599 Filed 6–9–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On May 14, 1992, the Secretary of the Air Force approved an addendum to an April 8, 1991 Secretarial decision determining the service of the group known as the "Civilian Crewmen of United States Coast and Geodetic Survey vessels who performed their service in areas of immediate military hazard while conducting cooperative operations with and for the United States Armed Forces within a time frame of December 7, 1941, to August 15, 1945" would be considered "active duty" under the provisions of Public Law 95–202 and be eligible for benefits according to all laws administered by the Department of Veterans Affairs.

The new paragraph 1 of the April 8, 1991 eligibility criteria includes three ships which were omitted (OCEANOGRAPHER, HYDROGRAPHER, and PATHFINDER).The new paragraph should read as follows:

1. Must have been a civilian employee of the United States Coast and Geodetic Survey and served as a crewman aboard one or more of the following USCGS vessels: Derickson; Explorer; Gilbert; Hilgard; E. Lester Jones; Lydonia; Patton; Surveyor; Wainwright; Westdahl; Oceanographer; Hydrographer; or Pathfinder.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–13592 Filed 6–9–92; 8:45 am]

BILLING CODE 3910–01–M

Privacy Act of 1974; Delete and Amend Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Delete and amend systems of records.

SUMMARY: The Department of the Air Force proposes to delete five and amend 16 existing systems of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deleted systems are effective immediately June 10, 1992.

The amended systems will be effective July 10, 1992, unless comments are received which result in a contrary determination.

ADDRESS: Send any comments to the Air Force Access Programs Manager, SAF/AAIA, The Pentagon, Washington, DC 20330–1000.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record systems notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

50 FR 22332, May 29, 1985 (DOD Compilation, changes follow)
50 FR 24672, Jun. 12, 1985
50 FR 25737, Jun. 21, 1985
50 FR 46477, Nov. 8, 1985
50 FR 50337, Dec. 10, 1985
51 FR 4531, Feb. 5, 1986
51 FR 7317, Mar. 5, 1986
51 FR 16735, May 6, 1986
51 FR 18927, May 23, 1986
51 FR 41382, Nov. 14, 1986
51 FR 44332, Dec. 9, 1986
52 FR 11845, Apr. 13, 1987
53 FR 24354, Jun. 28, 1988
53 FR 45800, Nov. 14, 1988
53 FR 50072, Dec. 13, 1988
53 FR 51301, Dec. 21, 1988
54 FR 10034, Mar. 9, 1989
54 FR 43450, Oct. 25, 1989
54 FR 47550, Nov. 15, 1989
55 FR 21770, May 29, 1990
55 FR 21900, May 30, 1990 (Air Force Address Directory)
55 FR 27868, Jul. 6, 1990
55 FR 28427, Jul. 11, 1990
55 FR 34310, Aug 22, 1990
55 FR 38126, Sep. 17, 1990
55 FR 42625, Oct. 22, 1990
55 FR 52072, Dec. 19, 1990
56 FR 1990, Jan. 18, 1991
56 FR 5804, Feb. 13, 1991
56 FR 12713, Mar. 27, 1991
56 FR 23054, May 20, 1991
56 FR 23876, May 24, 1991
56 FR 26800, Jun. 11, 1991
56 FR 31394, Jul. 10, 1991 (Air Force Index Guide)
56 FR 32181, Jul. 15, 1991 (Air Force Systems Identification)
56 FR 63718, Dec. 5, 1991
57 FR 1907, Jan. 16, 1992

The deleted and amended systems are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices published in their entirety.

Dated: May 22, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

DELETIONS

F030 AFSC A

SYSTEM NAME: Field Management Center (FMC) Personnel Data (50 FR 22365, May 29, 1985).

Reason: System is no longer needed. There are no plans to reinstate it in the future.

F030 SAC A

SYSTEM NAME: Automated Command and Control Executive Support System (51 FR 44332, December 9, 1986).

Reason: System is no longer needed. There are no plans to reinstate it in the future.

F035 ATC A

SYSTEM NAME: Officer Training School Resource Management System School Staff (50 FR 22400, May 29, 1985).

Reason: System is no longer needed. There are no plans to reinstate it in the future.

F050 ATC D

SYSTEM NAME: Individual Academic Records - Survival Training Students (50 FR 22449, May 29, 1985).

Reason: System is no longer needed. There are no plans to reinstate it in the future.

F050 ATC J

SYSTEM NAME: Branch Level Training Management System (BLTMS) (51 FR 44332, December 9, 1986).

Reason: System is no longer needed. There are no plans to reinstate it in the future.

AMENDMENTS

F030 ATC A

SYSTEM NAME:

Drug Abuse Control Case Files (50 FR 22367, May 29, 1985).

CHANGES:

SYSTEM IDENTIFICATION NUMBER:

Change system identification number to "F035 ATC J".

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; Air Force Regulation 39–10, Administration Separation of Airman, and Air Force Regulation 30–2, Social Actions Program."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Retained in office files for one year after annual cutoff, then destroy by tearing into pieces, shredding, pulping, macerating, or burning."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for accessing records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F035 ATC J

SYSTEM NAME:

Drug Abuse Control Case Files.

SYSTEM LOCATION:

Special Counseling Section, 3507 Airman Classification Squadron, Lackland Air Force Base, TX 78236–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty enlisted personnel and Reserve personnel referred to drug abuse office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various letters describing drug abuse information such as notification of disposition, recommendation for disposition, drug abuse determination of urinalysis cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties delegation by; Air Force Regulation 39–10, Administration Separation of Airman, and Air Force Regulation 30–2, Social Actions Program.

PURPOSE(S):

Discharge authority, Special Counseling Section, and squadron commanders determine extent of prior service drug abuse and make determinations of discharge or retention in the Air Force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of systems of records notices apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse, family advocacy, AIDS, or sickle cell prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3, 290ee–3, and 21 U.S.C. 1175. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Air Force "Blanket Routine Uses" do not apply to these types of records."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cutoff, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 3507 Airman Classification Squadron, Lackland Air Force Base, TX 78236–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, 3507 Airman Classification Squadron, Lackland Air Force Base, TX 78236–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 3507 Airman Classification Squadron, Lackland Air Force Base, TX 78236–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from squadron commanders, base surgeons, classification interviewers, medical institutions and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F030 ATC C

SYSTEM NAME:

Processing and Classification of Enlistees (PACE) (50 FR 22367, May 29, 1985).

CHANGES:

SYSTEM IDENTIFICATION NUMBER:

Change system identification number to "F035 ATC K".

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "10 U.S.C. 8012" to "10 U.S.C. 8013," and delete the word "Regulation" from end of paragraph.

PURPOSE(S):

In first sentence insert the word "Military" between the words "Level and Personnel". In third sentence insert the word "Unit" between the words "Joint and Military."

* * * * *

STORAGE:

Delete entry and replace with "Maintained in computers and on computer output products."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Add to end of entry "History file is destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "3507 Airman Classification Squadron (ATC), Lackland AFB, TX 78236–5000."

* * * * *

F035 ATC K

SYSTEM NAME:

Processing and Classification of Enlistees (PACE).

SYSTEM LOCATION:

Air Training Command (ATC), Randolph AFB, TX 78150–5000, input/output remotes at 3507 Airman Classification Squadron (ATC), Lackland AFB, TX 78236–5000 and HQ USAF Recruiting Service (ATC), Randolph AFB, TX 78150–5421.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty enlisted personnel. Attached records for Air National Guard and Air Force reserve personnel attending basic military training and Officer Training School. Active duty enlisted personnel attending Officer Training School in TDY status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Airmen trainee records containing name, Social Security Number, and other personal data for assignment from basic military training, security investigation, job preferences, dependent data, education, test scores, grade and promotions, biographical history, physical data, drug abuse history, enlistment personnel and guaranteed training enlistee program data, separation information, classification data, service dates, and basic training flight, squadron, entry and graduation dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Executive Order 9397; and Air Force Regulation 39–1, Airman Classification.

PURPOSE(S):

To create an initial record for the Base Level Military Personnel Data System (BLMPS); to provide Air Force Military Personnel Center (AFMPC) with initial accession information on non-prior service enlistees; provide for improved classification and assignment procedures using computer processes; provide necessary information to Joint Unit Military Pay System (JUMPS) and Lackland Entering Pay System (LEAPS) for establishment of military pay records; interface the data ring process to the maximum extent with other functional areas; and to standardize and simplify personnel processing for the 3700 Personnel Processing Group (ATC), Lackland AFB, TX, so that they may more effectively control record preparation, processing, and classification actions necessary to transition civilian enlistees to military status. Aptitude tests are administered; biographical history and job and assignment preferences are collected; and personal data is collected from enlistment records to establish a mechanized record necessary to support classification and assignment of trainees. Accession and update data is furnished through automatic interface to the advanced Personnel Data System (PDS) at AFMPC and Air Training Command, Randolph AFB, TX; to JUMPS at Defense Accounting and Finance Center, Denver, CO, and to LEAPS at accounting and finance, Lackland AFB, TX. History records are furnished monthly to the Human Resources Laboratory, Personnel Research Division (HRLPRD) Brooks AFB, TX, for statistical analysis and to HQ USAF Recruiting Service/RSO, Randolph AFB, TX, for use in the enlistee quality control monitoring system. Data is used to prepare forms, processing schedules, reassignment and promotion orders, classification actions, transaction and error rosters, autodin lists, and management products necessary to administer trainees while at Lackland AFB, TX. Standard BLMPS products such as JUMPS transaction registers, strength balance reports, and suspense lists are prepared. Changes in basic data, promotions, reassignments, separations, and duty status changes are reported to PDS, JUMPS, and LEAPS as the action occurs. History records used at HRLPRD and the enlistee quality control monitoring system are augmented by additional data from PDS and technical training centers and are used to evaluate the quality of airmen enlisted in the USAF and the effects of changes in procurement and classification policies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records for basic trainees are retained in active file until departure from basic military training is confirmed then transferred to history file on magnetic tape for one year. Records for Officer trainees are maintained in the active file until end of fiscal year in which they enter training and then transferred to history file on magnetic tape for one year. History file is destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

3507 Airman Classification Squadron (ATC), Lackland AFB, TX 78236–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the 3507 Airman Classification Squadron (ATC), Lackland AFB, TX 78236–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the 3507 Airman Classification Squadron (ATC), Lackland AFB, TX 78236–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for accessing records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR Part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces, from source documents such as reports, and from forms prepared during enlistment processing and completed during interviews and testing at 3507 Airman Classification Squadron.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC C

SYSTEM NAME:

Air Force Reserve Officer Training Corps (AFROTC) Qualifying Test Scoring System (50 FR 22402, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "AFROTC/RRFA, Maxwell Air Force Base, AL 36112–6663, and portions pertaining to each AFROTC detachment located at the respective detachment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Air Force Human Resources Laboratory, Brooks Air Force Base, TX 78235–5601 is official repository for permanent record of all Air Force Officer Qualifying Test Scores."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "10 U.S.C. 8012" to "10 U.S.C. 8013," and add "and Executive Order 9397" to end of entry.

PURPOSE(S):

Delete first sentence and replace with "Scores are used to evaluate applicants against criteria for entrance into AFROTC, and as a measure of quality."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name and Social Security Number, location of test administration and date of testing."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "HQ AFROTC/RRAF will maintain records of scores attained on tests administered at AFROTC detachments for a period of four years or when no longer needed for research. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Cadet Appointments and Special Actions Branch, HQ AFROTC/RRFA, Maxwell Air Force Base, AL 36112–6663."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F035 ATC C

SYSTEM NAME:

Air Force Reserve Officer Training Corps (AFROTC) Qualifying Test Scoring System.

SYSTEM LOCATION:

HQ AFROTC/RRFA, Maxwell Air Force Base, AL 36112–6663, and portions pertaining to each AFROTC detachment located at the respective detachment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Air Force Human Resources Laboratory, Brooks Air Force Base, TX 78235–5601 is official repository for permanent record of all Air Force Officer Qualifying Test scores.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force applicants testing at Air Force detachments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, detachment, date of test, test scores, Social Security Number, air science year, number of test administrations, institution category, race, sex, marital status, education level, and program applying for.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 103, Senior Reserve Officers' Training Corps; Military Selective Service Act of 1967, Section 6, (50 U.S.C. 456); 10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Regulation 45–48, Air Force Reserve Officer Training Corps (AFROTC), and Executive Order 9397.

PURPOSE(S):

Scores are used to evaluate applicants against criteria for entrance into AFROTC, and as a measure of quality. Scores are entered in cadet records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, visible file binders/cabinets, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number, location of test administration and date of testing.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

HQ AFROTC/RRAF will maintain records of scores attained on tests administered at AFROTC detachments for a period of four years or when no longer needed for research. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Cadet Appointments and Special Actions Branch, HQ AFROTC/RRFA, Maxwell Air Force Base, AL 36112–6663.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Cadet Appointments and Special Actions Branch, HQ AFROTC/RRFA, Maxwell Air Force Base, AL 36112–6663 or to agency officials at detachment of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests should include full name, Social Security Number, location of test administration, and date of testing.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Cadet Appointments and Special Actions Branch, HQ AFROTC/RRFA, Maxwell Air Force Base, AL 36112–6663 or to agency officials at detachment of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests should include full name, Social Security Number, location of test administration, and date of testing.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's knowledge of subject being tested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC D

SYSTEM NAME:

Basic Trainee Interview Record (50 FR 22402, May 29, 1985).

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete "(Recruiting Service)" from end of entry, and add "and Executive Order 9397."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are cut off at the end of each calendar year in which case files are closed, held for one additional year, then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F035 ATC D

SYSTEM NAME:

Basic Trainee Interview Record.

SYSTEM LOCATION:

United States Air Force Recruiting Service Liaison Office (USAFRS/RSL), Lackland Air Force Base, TX 78236–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Air Force Basic Trainees who register complaints concerning their enlistment in the United States Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records resulting from personal interviews with basic trainees who file complaints about their enlistment, including, but not limited to, investigations on each complaint, conclusions and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns; Air Training Command Regulation 33–2, Recruiting Procedures for the United States Air Force, and Executive Order 9397."

PURPOSE(S):

Provides a record of interviews with basic trainees who register complaints about the enlistment procedure. The data is used by the Recruiting Service Liaison Office to investigate the complaints and keep the Commander, United States Air Force Recruiting Service advised of the nature of complaints being received. It is also used as the basis for making procedural changes in the United States Air Force Recruiting Service when a trend develops in a specific area.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Records are cut off at the end of each calendar year in which case files are closed, held for one additional year, then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, United States Air Force Recruiting Service Liaison Office (USAFRS/RSL), Lackland Air Force Base, TX 78236–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Superintendent, United States Air Force Recruiting Service Liaison Office (USAFRS/RSL), Lackland Air Force Base, TX 78236–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Superintendent, United States Air Force Recruiting Service Liaison Office (USAFRS/RSL), Lackland Air Force Base, TX 78236–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records contain specific complaints/allegations made by the individual and responses to the complaints/allegations by appropriate Air Force Recruiting Service personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC F

SYSTEM NAME:

Lead Management System (LMS) (50 FR 22403, May 29, 1985).

CHANGES:

SYSTEM IDENTIFICATION NUMBER:

Change system identification number to "F033 ATC A"

SYSTEM LOCATION:

Delete entry and replace with "Air Force Opportunity Center (AFOC) (Duties of this Center are performed by a civilian contractor who is engaged by the Air Force to provide lead fulfillment services. Location depends on the contractor. Contact the system manager for specific locations). Headquarters, United States Air Force Recruiting Service, Randolph Air Force Base, TX 78150–5421, and recruiting activities."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete "SSN."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete "(Recruiting Service)" from end of entry.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete the word "None" and replace with "The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for

need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Retained by contractor at the AFOC for two years after end of FY in which all actions are completed. Records are then destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director of Advertising and Promotion, HQ USAF Recruiting Service (HQ USAFRS/RSA), Randolph Air Force Base, TX 78150–5421."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F033 ATC A

SYSTEM NAME:

Lead Management System (LMS).

SYSTEM LOCATION:

Air Force Opportunity Center (AFOC) (Duties of this Center are performed by a civilian contractor who is engaged by the Air Force to provide lead fulfillment services. Location depends on the contractor. Contact system manager for specific locations). Headquarters, United States Air Force Recruiting Service, Randolph Air Force Base, TX 78150–5421, and recruiting activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Respondents to United States Air Force Recruiting Service advertisements and referrals made by active duty military personnel, retired military personnel and Air Force civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Respondent's inquiry record containing name, address, date of birth, sex, telephone number, advertising medium, recruiting program in which interested, and source of referral, including name and Air Force base assigned. Recruiter contact records containing success of contact efforts, reason for not contacting, how contact was made, confirmation of educational level, qualification and status of individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns, and Air Training Command Regulation 33–2, Recruiting Procedures for the United States Air Force.

PURPOSE(S):

The contractor fulfills requests from respondents for information about the Air Force and notifies appropriate recruiting activities of respondent's interest. Contractor develops statistical summaries which are used by USAF Recruiting Service to evaluate the effectiveness of the advertising and referral programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained by contractor at the AFOC for two years after end of FY in which all actions are completed, then records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Advertising and Promotion, HQ USAF Recruiting Service (HQ USAFRS/RSA), Randolph Air Force Base, TX 78150–5421.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director of Advertising and Promotion, HQ USAF Recruiting Service (HQ USAFRS/RSA), Randolph Air Force Base, TX 78150–5421.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Advertising and Promotion, HQ USAF Recruiting Service (HQ USAFRS/RSA), Randolph Air Force Base, TX 78150–5421.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual respondent and automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC G

SYSTEM NAME:

Recruiting Activities Management Support System (RAMSS) (50 FR 46477, November 8, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "HQ United States Air Force Recruiting Service, Directorate of Recruiting, Randolph Air Force Base, TX 78150–5421, and recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete "(Recruiting Service)" from end of entry, and add "and Executive Order 9397."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who

are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Enlistment processing records and recruiter records are retained until no longer needed; recruiter personnel records are retained for one year after individual is removed from recruiter production status; potential enlistee records and high school test records are retained for two years or when no longer needed, whichever is sooner; advertising lead records are retained for two years after end of FY and interservice recruiting records are retained for three months after the end of the month case file was received by the recruiter. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting. These retentions are built into the computer system program with automatic software controlled deletions from the machine-readable record."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Directorate of Recruiting Operations, HQ United States Air Force Recruiting Service (HQ USAFRS/RSO), Randolph Air Force Base, TX 78150-5421."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F035 ATC G

SYSTEM NAME:

Recruiting Activities Management Support System (RAMSS).

SYSTEM LOCATION:

HQ United States Air Force Recruiting Service, Directorate of Recruiting, Randolph Air Force Base, TX 78150-5421, and recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force enlisted personnel entering active duty. Individuals tested and processed for Air Force enlistment. Potential Air Force enlistees qualified through the Armed Services Vocational Aptitude Battery (ASVAB) high school testing program. Other military services Delayed Enlistment Program (DEP) and active duty enlistees. Applicants for Air Force officer commissioning programs. Air Force enlisted personnel on recruiting duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Air Force enlistment processing records showing name, SSN, scores on all qualification tests, physical job qualifications, job preferences, jobs offered, jobs accepted, other personal data relevant to jobs offered, recruiting and processing locations, education data, and dates of processing.

Airman trainee history records containing name, SSN, and other personnel data for assignment from basic military training, revised job preferences, security clearance investigations, dependent data, education, test scores, grade and promotions, biographical history, physical information, drug abuse history, enlistment personal and guaranteed training enlistee program data, separation data, classification data, service dates, technical school eliminations, separations, honor graduates, and Article 15/courts-martial actions.

Records for high school seniors who are ASVAB tested and meet the basic Air Force enlistment criteria showing name, mailing address, test scores, and high school where tested.

Enlistment processing records for other military services showing SSN, name, state and county of residence, test scores, educational level, physical profile, processing date and location, prior service, and other personal data such as age, sex, race, marital status, and number of dependents.

Officer applicant records showing SSN, name, and other educational and personal data necessary for the processing of candidates for commissioning as Air Force Officer.

Air Force enlisted recruiter individual records showing such items as SSN, name, recruiting office assigned, and date assigned to Recruiting Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns, and Air Training Command Regulation 33-2, Recruiting Procedures for the United States Air Force, and Executive Order 9397.

PURPOSE(S):

To furnish leads to the field recruiters derived from the high school ASVAB testing program, evaluate Air Force recruiters on effectiveness of screening out potential under/overweight applicants, evaluate recruiter's and job counselor's activity and efficiency levels, analyze pre-enlistment job cancellations for common reasons, analyze post-enlistment training pipeline attritions for common reasons, evaluate Air Force job reservation pool and past enlistments for effect of potential changes in enlistment policies in areas such as mental qualifications and physical qualifications, evaluate interservice recruiting performance, screen other service enlistees from Air Force advertising lead files, determine pass/fail rates for mental and physical testing, track training performance of Air Force enlistees, study the correlation of job held with performance on the job, study correlation of quality indicators with post-enlistment performance, feedback to field recruiters of individual records on all training attritions, and analyze advertising responses.

Used by the personnel record maintenance activity to cross-check file completeness and accuracy. Individual records are aggregated into various statistical analyses for all levels to ascertain recruiting and seasonal procurement trends, to predict future potential developments, and to assist in the development of procurement, classification, and assignment policies for Air Force military personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in

locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Enlistment processing records and recruiter records are retained until no longer needed; recruiter personnel records are retained for one year after individual is removed from recruiter production status; potential enlistee records and high school test records are retained for two years or when no longer needed, whichever is sooner; advertising lead records are retained for two years after end of FY and interservice recruiting records are retained for three months after the end of the month case file was received by the recruiter. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting. These retentions are built into the computer system program with automatic software controlled deletions from the machine-readable record.

SYSTEM MANAGER(S) AND ADDRESS:

Directorate of Recruiting Operations, HQ United States Air Force Recruiting Service (HQ USAFRS/RSO), Randolph Air Force Base, TX 78150–5421.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Directorate of Recruiting Operations, HQ United States Air Force Recruiting Service (HQ USAFRS/RSO), Randolph Air Force Base, TX 78150–5421.

Request must contain full name and current mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Directorate of Recruiting Operations, HQ United States Air Force Recruiting Service (HQ USAFRS/RSO), Randolph Air Force Base, TX 78150–5421.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The source of all records in the system are from automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC H

SYSTEM NAME:

Recruiting Research and Analysis System (50 FR 22404, May 29, 1985).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete last sentence.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete "(Recruiting Service)" from end of entry, and add "and Executive Order 9397."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are retained until no longer needed. ASVAB records are destroyed after two months. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director of Recruiting Operations, HQ United States Air Force Recruiting Service (HQ USAFRS/RSO), Randolph Air Force Base, TX 78150–5421."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F035 ATC H

SYSTEM NAME:

Recruiting Research and Analysis System.

SYSTEM LOCATION:

HQ United States Air Force Recruiting Service, Randolph Air Force Base, TX 78150–5421.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force enlisted personnel entering active duty. Individuals tested and processed for Air Force enlistment. Potential Air Force enlistees qualified through the Armed Services Vocational Aptitude Battery (ASVAB) high school testing program. Applicants for the Officer Training School. Air Force active duty officer and enlisted personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Survey analysis records containing such items as Social Security Number, biographical and opinion survey data, supervisor's ratings, achievement, aptitude, reading, vocational interest and adjustment and temperament inventory scores, Air Force tech training class score, statistics and trend analysis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns, and Air Training Command Regulation 33–2, Recruiting Procedures for the United States Air Force, and Executive Order 9397.

PURPOSE(S):

Research statistical reference file used by HQ United States Air Force Recruiting Service. Specific uses are to: (1) Evaluate the quality of Air Force military personnel procured by Air Force Recruiting Service; (2) develop a more objective screening process for entry into recruiting duty; and (3) develop opinion-based recommendations for recruiting effort improvements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number, study control number or name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are retained until no longer needed. ASVAB records are destroyed after two months. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Recruiting Operations, HQ United States Air Force Recruiting Service (HQ USAFRS/RSO), Randolph Air Force Base, TX 78150–5421.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director of Recruiting Operations, HQ United States Air Force Recruiting Service (HQ USAFRS/RSO), Randolph Air Force Base, TX 78150–5421.

Social Security Number and full name are required to determine if the system contains a record relative to any specific individual. Valid proof of identity is required.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Recruiting Operations, HQ United States Air Force Recruiting Service (HQ USAFRS/RSO), Randolph Air Force Base, TX 78150–5421.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals, supervisors, from Air Force Technical Training Centers and from the Recruiting Activities Management Support System (RAMSS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F045 ATC C

SYSTEM NAME:

Cadet Records (50 FR 22436, May 29, 1985).

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the word "servicemen" and insert the words "service members." Delete the word "documents" and insert the word "records" throughout the paragraph.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to end of entry "Air Force Regulation 45–3, Air Force Reserve Officer Training Corps Field Training Program, and Executive Order 9397."

* * * * *

STORAGE:

Delete entry and replace with "Maintained in file folders, notebooks/binders, in computers and on computer output products."

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name, Social Security Number and detachment number."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records at unit of assignment are destroyed one year after acceptance of commission or one year after disenrollment. Records at HQ AFROTC for disenrolled cadets are destroyed after three years. Computer records are destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director of Senior Program, HQ AFROTC/RRU, Maxwell Air Force Base, AL 36112–6663, and Commander of the appropriate AFROTC detachment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F045 ATC C

SYSTEM NAME:

Cadet Records.

SYSTEM LOCATION:

HQ Air Force Reserve Officer Training Corp (HQ AFROTC/RRF), Maxwell Air Force Base, AL 36112–6663, and AFROTC detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

AFROTC cadets applying for, or enrolled or previously enrolled within the past three years in the professional officers course or the general military course, if the latter participation was in a scholarship status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for enrollment in the Air Force Reserve Officers' Training Corps (AFROTC) courses, applications for the AFROTC scholarship program, substantiation records of qualification for the courses or programs, acceptances of applications, awards of scholarships, records attesting to medical, academic, moral and civic qualifications, records recording progress in flying instruction, Euro-NATO Joint Jet Pilot Training (ENJJPT) application data, academic curriculum and leadership training, counseling summaries, records of disenrollment from other officer candidate training; records of separation or discharge from officer candidate training; records of separation or discharge of prior service members; financial record data, certification of degree requirements; Regular appointment nomination data, records tendering and accepting commissions, records verifying national agency checks or background investigation, records required or proffered during investigations for disenrollment, legal opinions, letters of recommendations, corroboration by civil authorities, awards, citations; and allied papers.

Field training administration records consist of student assignment/orders, in-processing checklist, counseling records, drill evaluation, weekly quarters inspection, discrepancy reports, student performance reports. Flight instruction program records consist of student eligibility, grade sheets and performance records, training certificates, waiver and elimination actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C. Chapter 33, Appointment in Regular Component, and Chapter 103, Senior Reserve Officers' Training Corps; Air Force Regulation 45–48, Air Force Reserve Officers' Training Corps (AFROTC), Air Force Regulation 45–3, Air Force Reserve Officer Training Corps Field Training Program and Executive Order 9397.

PURPOSE(S):

Used for recruiting and qualifying a candidate for acceptance as an AFROTC cadet, continuing the cadet in the program and awarding an Air Force commission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, note books/binders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name, Social Security Number and detachment number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records at unit of assignment are destroyed one year after acceptance of commission or one year after disenrollment. Records at HQ AFROTC for disenrolled cadets are destroyed after three years. Computer records are destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Senior Program, HQ AFROTC/RRU, Maxwell Air Force Base, AL 36112–6663, and Commander of the appropriate AFROTC detachment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the AFROTC Detachment Commander at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Request for information involving an investigation for disenrollment should be addressed to HQ AFROTC/RRF, Maxwell Air Force Base, AL 36112. Requests should include full name and SSN.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Senior Program, HQ AFROTC/RRU, Maxwell Air Force Base, AL 36112–6663 or the AFROTC Detachment Commander at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Both addresses may be visited by the requester.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources of records in the system are educational institutions, secondary and higher learning; government agencies; civilian authorities; financial institutions; previous employers; individual recommendations, interviewing officers; and civilian medical authorities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system which fall within 5 U.S.C. 552a(k)(5) are exempt from the following provisions of Title 5 U.S.C. 552a, sections (c)(3); (d); (e)(4), (G), (H), and (f) of the Act, but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F050 ATC A

SYSTEM NAME:

Officer Training School Resource Management System - Officer Trainees (50 FR 22447, May 29, 1985).

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "demographic data such as college degree, major institution, and year awarded; OTS selection data such as Air Force Officer Qualifying Test scores; performance data such as test scores, measurement evaluation, merits and demerits earned, involvement in remedial programs; health data to include height, weight aerobic program requirements and performance; injuries that require waivers to training or delay of commissioning; student disposition indicators showing in-training, eliminated, recycled, held over or graduated."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Chapter 907-Schools and Camps as implemented by Air Force Regulation 53–27, Officer Training School (OTS) Precommissioning Program, USAF, Air Training Command Regulation 53–3, Administration of the Officer Training School (OTS) Program, and Executive Order 9397."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by Social Security Number."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are retained for two years after class graduation then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F050 ATC A

SYSTEM NAME:

Officer Training School Resource Management System - Officer Trainees.

SYSTEM LOCATION:

Officer Training School (OTS), Lackland AFB, TX 78236–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer trainees while attending OTS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer trainee record showing name, Social Security Number; demographic data such as college degree, major institution, and year awarded; OTS selection data such as Air Force Officer Qualifying Test scores; performance data such as test scores, measurement evaluation, merits and demerits earned, involvement in remedial programs; health data to include height, weight aerobic program requirements and performance; injuries that require waivers to training or delay of commissioning; student disposition indicators showing in-training, eliminated, recycled, held over or graduated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 907-Schools and camps as implemented by Air Force Regulation 53–27, Officer Training School (OTS) Precommissioning Program, USAF, Air Training Command Regulation 53–3, Administration of the Officer Training School (OTS) Program, and Executive Order 9397.

PURPOSE(S):

To track attrition to the OTS program by cause and type comparing that against demographic and performance data of the individual, and to monitor the progress of an individual toward completion of the program. Records may be grouped by class, squadron, flight, a demographic or performance factor in the accomplishment of evaluations of the program or the individual in relation to cohorts. Studies, analyses, and evaluations that use these records are intended to improve the quality of the training program, and develop a more accurate profile of those individuals who can be expected to accomplish the OTS program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, disk units, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are retained for two years after class graduation then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Officer Training School (OTS/MTS), Lackland AFB, TX 78236–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Registrar, Officer Training School (OTS/MTS), Lackland AFB, TX 78236–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Registrar, Officer Training School (OTS/MTS), Lackland AFB, TX 78236–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, flight commanders, OTS instructors, personnel specialists and members of the registrar's office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 ATC I

SYSTEM NAME:

Defense English Language Management Information System (DELMIS) (50 FR 22451, May 29, 1985).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "International Military Students (IMS) and active duty military personnel assigned to the program."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by AFR 50–24/OPNAVINST 1550.11/MCO 1550.24, Management of the Defense English Language Program, and Executive Order 9397."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name or student control number."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in

computer storage devices are protected by computer system software. Access to the computer system requires user code and password."

RETENTION AND DISPOSAL:

Add to end of entry "Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F050 ATC I

SYSTEM NAME:

Defense English Language Management Information System (DELMIS).

SYSTEM LOCATION:

Defense Language Institute English Language Center, Lackland AFB TX 78236–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

International Military Students (IMS) and active duty military personnel assigned to the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and Social Security Number; demographic data such as date of birth, sex, marital status, ethnic group; educational data; performance data such as test scores; measurement data; individual training progress and proficiency; class schedule; locator, and academic status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by AFR 50–24/ OPNAVINST 1550.11/MCO 1550.24, Management of the Defense English Language Program, and Executive Order 9397.

PURPOSE(S):

To track attrition of the program by cause and type, and to compare that against demographic and performance data of the individual, and to monitor the progress of each individual toward completion of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computer and computer output products.

RETRIEVABILITY:

Retrieved by name or student control number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software. Access to the computer system requires user code and password.

RETENTION AND DISPOSAL:

Output products are retained until no longer needed; computerized records will be retained for ten years after individual completes or discontinues training. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Training Operations Branch, Defense Language Institute English Language Center (DLIELC/LEAX), Lackland AFB TX 79236–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Training Operations Branch, Defense Language Institute English Language Center (DLIELC/LEAX), Lackland AFB TX 79236–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Training Operations Branch, Defense Language Institute English Language Center (DLIELC/LEAX), Lackland AFB TX 79236–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, source documents, commanders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F051 AF A

SYSTEM NAME:

Flying Training Records (50 FR 25738, June 21, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "12th Flying Training Wing, 1st Flight Screening Squadron, Lackland Air Force Base, TX 78236–5000, and 557th Flying Training Squadron, United States Air Force Academy (USAF Academy), CO 80840–5001."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All students entered in T41 training at Hondo Municipal Airport, Hondo, TX, and the USAF Academy, CO."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Flying training grades and records. Complete record of training including class number, flying and academic course completed, flying hours, whether graduated or eliminated and date, reason for elimination. Training Review Board proceedings, student performance in each category of training, including grades, evaluations and performance documentation, background information including name, grade and Social Security Number."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Training Command Regulation 51–10, Student Administration; 10 U.S.C. 903, United States Air Force Academy, and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To determine flying training potential and to document and record performance, and manage training."

* * * * *

STORAGE:

Delete entry and replace with "Maintained in file folders, in computers and on computer output products."

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name or Social Security Number."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Student training records are destroyed 1 year after completion of the Flight Screening Program. Student training records for Air Force Reserve Officer Training Corp cadets are destroyed 2 years after completion of training. Student grade books are destroyed 18 months after class graduates (June). Training Review Board records are destroyed one year after closeout. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, 1st Flight Screening Squadron, Lackland AFB, TX 78236–5000 and Commander, 557th Flying Training Squadron, USAF Academy, CO 80840–5001."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F051 AF A

SYSTEM NAME:

Flying Training Records.

SYSTEM LOCATION:

12th Flying Training Wing, 1st Flight Screening Squadron, Lackland Air Force Base, TX 78236–5000, and 557th Flying Training Squadron, United States Air Force Academy (USAF Academy), CO 80840–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students entered in T41 training at Hondo Municipal Airport, Hondo, TX, and the USAF Academy, CO.

CATEGORIES OF RECORDS IN THE SYSTEM:

Flying training grades and records. Complete record of training including class number, flying and academic course completed, flying hours, whether graduated or eliminated and date, reason for elimination. Training Review Board proceedings, student performance in each category of training, including grades, evaluations and performance documentation, background information including name, grade and Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Training Command Regulation 51–10, Student Administration; 10 U.S.C. 903, United States Air Force Academy, and Executive Order 9397.

PURPOSE(S):

To Determine flying training potential and to Document and record performance, and manage training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Student training records are destroyed 1 year after completion of the Flight Screening Program. Student training records for Air Force Reserve Officer Training Corp cadets are destroyed 2 years after completion of training. Student grade books are destroyed 18 months after class graduates (June). Training Review Board records are destroyed one year after closeout. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 1st Flight Screening Squadron, Lackland AFB, TX 78236–5000 and Commander, 557th Flying Training Squadron, USAF Academy, CO 80840–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, 1st Flight Screening Squadron, Lackland AFB, TX 78236–5000 or to the Commander, 557th Flying Training Squadron, USAF Academy, CO 80840–5001.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 1st Flight Screening Squadron, Lackland AFB, TX 78236–5000 or to the Commander, 557th Flying Training Squadron, USAF Academy, CO 80840–5001.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Internally generated. Information from source documents such as grade sheets, written examinations, and flight examinations; from reports by instructors and from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F051 AF B

SYSTEM NAME:

Flying Training Records - Nonstudent (50 FR 22460, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Columbus Air Force Base, MS 39701–5000; Lackland Air Force Base, TX 78236–5001; Laughlin Air Force Base, TX 78843–5000; Mather Air Force Base, CA 95655–5000; Randolph Air Force Base, TX 78150–5000; Reese Air Force Base, TX 79489–5000; Sheppard Air Force Base, TX 76311–5000; Williams Air Force Base, AZ 85240–5000; 50th Airmanship Training Squadron (50ATS), United States Air Force Academy (USAF Academy), CO 80840– 5001, and Peterson AFB, CO 80914–5000. Headquarters Air Force Systems Command (AFSC), and AFSC divisions, centers, laboratories and bases. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Training Command Regulation 51–27, Academic Training; 10 U.S.C. 903, United States Air Force Academy; Air Force Systems Command Manual 51–1, Aircrew Flying Training, and Executive Order 9397."

* * * * *

STORAGE:

Delete entry and replace with "Maintained in file folders, microform, magnetic tape, in computers and on computer output products."

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SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Flight Evaluation Folders are maintained for the duration of the individual's assignment in Air Training Command or at the USAF Academy. Outdated material is returned to the individual. Aircrew instruction records and students flight training records are destroyed after 1 year, or on discontinuance of activity, whichever is sooner. Radio tapes are destroyed after 15 days unless circumstances dictate otherwise. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Deputy Chief of Staff Operations, Headquarters, Air Training Command (HQ ATC/DOV), Randolph Air Force Base, TX 78150–5001. Deputy Commandant for Operations, USAF Academy, CO 80840–5001; Commander, 50ATS, USAF Academy, CO 80840–5566; and Noncommissioned Officer in Charge, Operations System Management, Peterson AFB, CO 80914–5000. Detachment 24, HQ AFSC/OSE, Eglin AFB FL 32542–5000."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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F051 AF B

SYSTEM NAME:

Flying Training Records - Nonstudent.

SYSTEM LOCATION:

Columbus Air Force Base, MS 39701–5000; Lackland Air Force Base, TX 78236–5001; Laughlin Air Force Base, TX 78843–5000; Mather Air Force Base, CA 95655–5000; Randolph Air Force Base, TX 78150–5000; Reese Air Force Base, TX 79489–5000; Sheppard Air Force Base, TX 76311–5000; Williams Air Force Base, AZ 85240–5000; United States Air Force Academy (USAF Academy), CO 80840–5001, 50th Airmanship Training Squadron (50ATS), USAF Academy, CO 80840–5566, and Peterson AFB, CO 80914–5000. Headquarters Air Force Systems Command (AFSC), and AFSC Divisions, Centers, Laboratories and Bases. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aircrew personnel of Air Training Command (ATC), academic instructors in flying training courses; trainer instructors; aircrew personnel; academic and staff instructors attached to the Deputy Commandant for Operations in support of Airmanship and 50ATS flying programs; and students entered into AFSC flight training program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records which document aircrew training, evaluations, performance, and accomplishments. Taped radio transmissions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Training Command Regulation 51–27, Academic Training; 10 U.S.C. 903, United States Air Force Academy; and Air Force Systems Command Manual 51–1, Aircrew Flying Training, and Executive Order 9397.

PURPOSE(S):

To document the training, performance, and qualifications of aircrew and synthetic trainer personnel. Taped radio communications are used to investigate aircraft accidents, and to document aircrew training, evaluations, and performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, microform, magnetic tape, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Flight Evaluation Folders are maintained for the duration of the individual's assignment in Air Training Command or at the USAF Academy. Outdated material is returned to the individual. Aircrew instruction records and students flight training records are destroyed after 1 year, or on discontinuance of activity, whichever is sooner. Radio tapes are destroyed after 15 days unless circumstances dictate otherwise. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff Operations, Headquarters, Air Training Command (HQ ATC/DOV), Randolph Air Force Base, TX 78150–5001. Deputy Commandant for Operations, USAF Academy, CO 80840–5001; Commander, 50ATS, USAF Academy, CO 80840–5566; and Noncommissioned Officer in Charge, Operations System Management, Peterson AFB, CO 80914–5000. Detachment 24, HQ AFSC/OSE, Eglin AFB FL 32542–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Chief of Staff Operations, Headquarters, Air Training Command (HQ ATC/DOV), Randolph Air Force Base, TX 78150–5001; Deputy Commandant for Operations, USAF Academy, CO 80840–5001; Commander, 50ATS, USAF Academy, CO 80840–5566; and Noncommissioned Officer in Charge, Operations System Management, Peterson AFB, CO 80914–5000; Detachment 24, HQ AFSC/OSE, Eglin AFB FL 32542–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Chief of Staff Operations, Headquarters, Air Training Command (HQ ATC/DOV), Randolph Air Force Base, TX 78150–5001; Deputy Commandant for Operations, USAF Academy, CO 80840–5001; Commander, 50ATS, USAF Academy, CO 80840–5566; and Noncommissioned Officer in Charge, Operations System Management, Peterson AFB, CO 80914–5000; Detachment 24, HQ AFSC/OSE, Eglin AFB FL 32542–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from source documents prepared by personnel administering training or evaluating performance; voice radio communications. Information is obtained from the individual, from instructor supervisors, and personnel involved in the evaluation and analysis of training effectiveness.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F051 AF C

SYSTEM NAME:

Flying Training Records - Student (50 FR 22461, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Headquarters, Air Training Command (HQ ATC), Randolph AFB TX, 78150–5001; Washington National Records Center, Washington, DC 20409; 94th Airmanship Training Squadron (94 ATS), United States Air Force Academy (USAF Academy), CO 80840–5001, and 50th Airmanship Training Squadron (50 ATS), USAF Academy, CO 80840–5566. All ATC pilot and navigator training wings. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete paragraph numbers and change "Faculty Board" to "Training Review Board."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Training Command Regulation 51–9, Training Review Process; Air Training Command Regulation 51–10, Student Administration, and 10 U.S.C. 903, United States Air Force Academy, and Executive Order 9397."

PURPOSE(S):

Delete paragraph numbers and change "Faculty Board" to "Training Review Board."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name or Social Security Number."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Student grade books are destroyed one year after completion of training; Summary Training Records are retained in office files for two years after completion or discontinuance of course, then retired to Washington National Records Center, Washington, DC, for eight years; other records are retained in office files until superseded, obsolete, no longer needed for reference or on inactivation. Training Review Board records are retained for one year. Student cadet records are destroyed after graduation. Student grade books are retained for 1 year after course completion. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

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CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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F051 AF C

SYSTEM NAME:

Flying Training Records - Student.

SYSTEM LOCATION:

Headquarters, Air Training Command (HQ ATC), Randolph AFB TX, 78150–5001; Washington National Records Center, Washington, DC 20409; 94th Airmanship Training Squadron (94

ATS), United States Air Force Academy (USAF Academy), CO 80840–5001, and 50th Airmanship Training Squadron (50 ATS), USAF Academy, CO 80840– 5566. All ATC pilot and navigator training Wings. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students entered into undergraduate pilot and navigator training; students entered into airmanship flying training courses at USAF Academy, and students entered in Aviation Science courses at USAF Academy who fly the T–43A as part of these courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complete record of training including class number, flying and completed, flying hours, whether graduated or eliminated and date, reasons for elimination, Training Review Board proceedings, student's performance in each category of training, including grades, evaluations and performance documentation; background information including name, grade, Social Security Number; source of commission, college, subject matter, etc; past training unit of assignment; class standing prior to Dec. 31, 1974; progress records on minority students academic course completed; complete record of evaluations including section number, student name, grades on each phase of flight evaluations and overall flight evaluation grades.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Training Command Regulation 51–9, Training Review Process; Air Training Command Regulation 51–10, Student Administration, and 10 U.S.C. 903, United States Air Force Academy, and Executive Order 9397.

PURPOSE(S):

Document and record student performance, analyze student performance in follow-on training in order to evaluate training and revise course content; provide background information; report to Air National Guard/Air Force Reserve and other Air Force training units on qualifications of graduates; used to monitor student performance by source of entry, education level, and minority status; record and document Training Review Board proceedings; used to monitor student performance and as a record in the event of Training Review Board proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, note books/ binders, card files in computers and on computer products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Student grade books are destroyed one year after completion of training; summary training Records are retained in office files for two years after completion or discontinuance of course, then retired to Washington National Records Center, Washington, DC, for eight years; other records are retained in office files until superseded, obsolete, no longer needed for reference or on inactivation. Training Review Board records are retained for one year. Student cadet records are destroyed after graduation. Student grade books are retained for 1 year after course completion. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff Operations, Headquarters, Air Training Command (HQ ATC/DOTF), Randolph Air Force Base, TX 78150–5000. Commander, 94 ATS (94 ATS/CC), USAF Academy, CO 80840–8876. Commander, 50 ATS (50 ATS/CC), USAF Academy, CO 80840–5566.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Chief of Staff Operations, Headquarters, Air Training Command (HQ ATC/DOTF), Randolph Air Force Base, TX 78150–5000; Commander, 94 ATS (94 ATS/CC), USAF Academy, CO 80840–8876; or the Commander, 50 ATS (50 ATS/CC), USAF Academy, CO 80840–5566.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Chief of Staff Operations, Headquarters, Air Training Command (HQ ATC/DOTF), Randolph Air Force Base, TX 78150–5000; Commander, 94 ATS (94 ATS/CC), USAF Academy, CO 80840–8876; or the Commander, 50 ATS (50 ATS/CC), USAF Academy, CO 80840–5566.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information comes from source documents such as grade sheets, written examinations, and flight examinations, and flight grade sheets; from reports by instructors and students, automated system interfaces, and from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F060 AF A

SYSTEM NAME:

Air Force Operations Resource Management Systems (AFORMS) (50 FR 22466, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Headquarters United States Air Force and major command headquarters. Air Force Inspection and Safety Center, Norton Air Force Base, CA 92409–7001. Host, tenant and squadron Operations System Management offices at Air Force installations, and McDonnell Douglas Training Systems, McDonnell Aircraft Company, 12301 Missouri Bottom Road, Hazelwood, MO 63042. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "37 U.S.C. 301a, Incentive pay: Public Law 92–204 (Appropriations Act for 1973), Section 715; Public Law 93–570 (Appropriations Act for 1974); Public Law 93–294 (Aviation Career Incentive Act of 1974; DOD Directive 7730.57 (Aviation Career Incentive Act and Required Annual Report); Air Force Regulation 60–1, Flight Management, and Executive Order 9397."

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CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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F060 AF A

SYSTEM NAME:

Air Force Operations Resource Management Systems (AFORMS).

SYSTEM LOCATION:

Headquarters United States Air Force and major command headquarters. Air Force Inspection and Safety Center, Norton Air Force Base, CA 92409. Host, tenant and squadron Operations System Management offices at Air Force installations, and McDonnell Douglas Training Systems, McDonnell Aircraft Company, 12301 Missouri Bottom Road, Hazelwood, MO 63042. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, Air Force civilian employees, Air Force Reserve and Air National Guard personnel, Army, Navy and Marine Corps active duty military personnel and those foreign military personnel who are assigned to aviation duties by competent authority and attached to the USAF for flying support or who have been suspended from flying duties for a period of not more than 5 years.

CATEGORIES OF RECORDS IN THE SYSTEM:

The base-level AFORMS data base contains a master file of flying records for each individual in categories listed above, a month-to-date transaction file and a twelve month history file. A centralized file of selected information from each individual's master record is also maintained at HQ USAF, and flying history information is maintained at Norton Air Force Base, CA. In addition to automated data files, this system uses manual files for maintaining historical data and important source documents. An Individual Flight Record Folder (FRF) is established for each category of fliers listed above and is the prime repository for a computer listing which itemizes each individual's flight accomplishments as well as various source documents which serve to validate information entered into the computer data base for the system. Each Host Operations System Management office maintains a file of Aeronautical Orders and Military Pay Orders to provide source documentation of flying pay actions initiated by the flight manager. Information which is maintained in the automated files is derived directly from the AFORMS master file or from subsequent processing of information entered into the master file.

Categories of information maintained in the master file are: IDENTIFICATION DATA - provides individual identifiers and other information directly related to each individual in the file.

DUTY ASSIGNMENT DATA - Includes information such as the major command of assignment for the individual, the Air Force Specialty Code indicating professional duties, the unit, the responsible Operations system manager, base of assignment, etc.

AIRCREW TRAINING AND QUALIFICATION DATA - includes information such as flight and ground professional flying training accomplishments, aircrew qualification status, physical status for flight duties, types of aircraft assigned, etc.

UTILIZATION MANAGEMENT DATA - Includes flying experience information, professional qualifications, aviation duties assigned, etc.

FLYING PAY ENTITLEMENT DATA - Includes information needed to administer the payment of flying incentive pay for each individual.

LOCAL USE DATA - contains information used by major or local command to supplement general system information as needed to meet unique unit requirements within the categories of information listed herein.

SYSTEM CONTROL DATA - Contains computer data used to automatically control internal system functions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

37 U.S.C. 301a, Incentive pay: Public Law 92–204 (Appropriations Act for 1973), Section 715; Public Law 93–570 (Appropriations Act for 1974); Public Law 93–294 (Aviation Career Incentive Act of 1974; DOD Directive 7730.57 (Aviation Career Incentive Act and Required Annual Report); Air Force Regulation 60–1, Flight Management, and Executive Order 9397.

PURPOSE(S):

The AFORMS provides information and automated data processing capabilities used to manage and administer Air Force operations such as aircrew training and evaluation, flight scheduling functions, flying safety and related functions needed to attain and maintain combat or mission readiness. All information is entered into the system at the air base level. This information is then processed for use by flying resource managers at all levels through periodic computer product reports or automated systems interfaces.

The specific uses of information and user categories for this system are: BASE LEVEL ACTIVITIES - (1) to establish each member's flying pay entitlement status and to monitor continuing entitlement in accordance with existing directions; (2) to record each individual's flying activities, both hours and specific events, and provide indications of successful attainment of standards or deficiencies; (3) to establish each individual's Aviation Service code for use in indicating type of flying activity or reason for inactive status if applicable; (4) to determine each rated member's eligibility to perform operational flying in accordance with existing USAF directives; (5) to provide an indication of each rated member's total operational flying time in terms of total aviation career duties as required by the Aviation Career Incentive Act of 1974; (6) to establish "suspense lists" for use in scheduling flying personnel for flights, schools, tests and similar events directly related to their duties as professional airmen; (7) to provide each applicable individual and manager with all aviation career profile information needed to monitor flying career development, professional qualifications and training deficiencies; (8) to provide information requested by Operations, or other base functions, which relates to the flying duties and accomplishments of all personnel in the file; (9) to provide statistical data for management analysis and review of all aspects of each base's flying programs, including flying safety data involving AFORMS flying hour/individual information stored in the Norton Air Force Base, flying safety data bank maintained by the USAF Inspection and Safety Center.

OTHER BASE USERS:
CONSOLIDATED BASE PERSONNEL OFFICE - uses information provided by this system, through an automated data interface, to report the flying status of all individuals in the files; provides flying career background information used for assignment actions.

ACCOUNTING AND FINANCE OFFICE - uses Military Pay Orders, prepared by flight management offices, to start and stop flying incentive pay in accordance with each individual's flying status and eligibility as reflected by the information in the system; uses the files to perform payment audits to identify individuals being paid improperly.

BASE SUPPLY - uses flying status information to determine which individuals are qualified to draw all authorized flying equipment.

BASE MEDICAL FACILITY - uses system data to determine projected workloads associated with scheduled flight physical examinations.

MAJOR COMMANDS - use all system data to measure the effectiveness of subordinate unit training programs and to check command-wide flying effectiveness.

AIR FORCE MANPOWER AND PERSONNEL CENTER - uses AFORMS information to establish assignment objectives and career development programs for USAF military personnel in the system.

USAF INSPECTION AND SAFETY CENTER - uses flying hour data for each individual to establish historical files for reconstruction of lost or damaged records and to augment the Flying Safety statistical data bank.

HQ USAF - uses various identification and flying data to establish statistical data needed to verify the effectiveness of standard procedures, determine the need for policy modification, provide a timely and accurate census of various types of flyers and provide a centralized point for collection and collation of data used by all levels of management. Air Force Accounting and Finance Center - uses AFORMS information to validate all flying payments in the JUMPS system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, on computer magnetic tapes and on magnetic disks.

RETRIEVABILITY:

Retrieved by name and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties and individuals in files. Access is specifically controlled by the Host Operations System Management office. Records are stored in locked cabinets or rooms. Computer terminals are locked when not in use or kept under surveillance.

RETENTION AND DISPOSAL:

Magnetic tape and hardcopy records are maintained in files for five years following removal of an individual from flying status. The magnetic tape records are then destroyed by degaussing or overwriting and the hardcopy files turned over to the individual. Personnel leaving military service are provided their hardcopy files and all disk and tape records are routinely erased except for historical records files maintained by AFISC. For deceased personnel, disk and tape records are routinely erased and hardcopy folders are provided to the survivors as part of the individual's personal effects.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Plans and Operations, Headquarters United States Air Force, Washington, DC 20330–5054.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Chief of Staff/Plans and Operations, Headquarters United States Air Force, Washington, DC 20330–5054 or to the commander of the unit of assignment. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

Include name and SSN. Make base level inquiries to base flight manager.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Operations Deputy Chief of Staff/Plans and Operations, Headquarters United States Air Force, Washington, DC 20330–5054 or to the commander of the unit of assignment. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals, aircrew managers, automated system interfaces and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F168 AF SG A

SYSTEM NAME:

Automated Medical/Dental System (51 FR 44356, December 9, 1986).

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to end of entry "and Executive Order 9397."

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with "The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system, except as stipulated in "Note" below. Information from the inpatient or outpatient medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents.

In addition, records may be disclosed to: (1) Officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force. (2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties

relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies. (3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies. (4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force. (5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. (6) Authorized surveying bodies for professional certification and accreditations. (7) The individual's organization or government agency as necessary when required by Federal statute, Executive Order, or by treaty.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse, family advocacy, AIDS, or sickle cell prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3, 290ee–3, and 21 U.S.C. 1175. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Air Force "Blanket Routine Uses" do not apply to these types of records."

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CONTESTING RECORD PROCEDURES:

Delete entry and replace with, "The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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F168 AF SG A

SYSTEM NAME:

Automated Medical/Dental Record System.

SYSTEM LOCATION:

At Air Force medical centers, hospitals and clinics, major command headquarters and separate operating agency headquarters; Air Force Data Service Center, Air Force Medical Service Center, USAF School of Aerospace Medicine, and USAF School of Health Care Sciences. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is hospitalized in, is dead on arrival at or has received medical or dental care at an Air Force medical treatment facility. Individuals who have received medical care at other DOD or civilian medical facilities but whose records are maintained at or processed by Air Force medical facilities. Any military active duty member who is on an excused-from-duty status, on quarters, or subsistence elsewhere, on convalescent leave, meets Medical Evaluation Board (MEB), or a Physical Evaluation Board (PEB), on an outpatient basis or who is hospitalized in a non-federal hospital and for whom an Air Force medical facility has assumed administrative responsibility. Any individual who has undergone medical or dental examinations at any Air Force medical facility (or whose records are maintained or processed by the Air Force), e.g., pre-employment examinations and food handlers examinations, or who has otherwise had medical or dental tests performed at any Air Force medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of automated records of treatment received and medical/dental test performed on an inpatient/outpatient basis in military medical treatment facilities and of military members treated in civilian facilities. These records may include radiographic images and reports, electrocardiographic tracings and reports, laboratory test results and reports, blood gas analysis reports, occupational health records, dental radiographic reports and records, automated cardiac catheterization data and reports, physical examination reports, patient administration and scheduling reports, pharmacy prescriptions and reports, food service reports, hearing conservation tests, cardiovascular fitness examinations and reports, reports of medical waivers granted for flight duty, and other inpatient and outpatient data and reports. They may contain information relating to medical/dental examinations and treatments, inoculations, appointment and scheduling information, and other medical and/or dental information. Subsystems of the Automated Medical/Dental Data System include: Air Force Clinical Laboratory Automation System (AFCLAS)/TRILAB I; Automated Cardiac Catheterization Laboratory System (ACCLS); Computer Assisted Practice of Cardiology (CAPOC) System; DATA STAT Pharmacy System (formerly PROHECA); Occupational Health and Safety System; Patient Appointment and Scheduling System (PAS); Tri-Laboratory System (TRILAB); Tri-Pharmacy System; Tri-Radiology System (TRIRAD); Health Evaluation and Risk Tabulation (HEART).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care, and Executive Order 9397.

PURPOSE(S):

Used as a record of patient's medical/dental health, diagnosis, and treatment and disposition while authorized care. Used to help determine individual's qualification for duty, for security clearances and for assignments. Used by an individual or his legal representative for further medical care, legal purposes, or other uses such as insurance requests or compensation and other health care providers for further care of the patient, research teaching, and legal purposes. Used by medical treatment facility staff for evaluation of staff performance in the care rendered; for preparation of statistical reports; for reporting communicable diseases and other conditions required by law to federal and state agencies. Used by Army, Navy, Veterans Administration, Public Health Service or civilian hospitals for continued medical care of the patient. Used by insurance companies, (only with the patient's written consent for release, except as authorized in 10 U.S.C. 1095; for arbitrating insurance claims. Used by other federal agencies such as Veterans Administration and Department of Labor (workmen's compensation) for adjudication of claims; for reporting communicable diseases or other conditions required by law. Used to provide input to other DOD medical records systems including the

Medical Record System (F168 AF SG C), the Dental Personnel Actions (F162 SG A), and other DOD agencies (e.g., Army Navy) when such agency is normally the primary source or repository of medical information about the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system, except as stipulated in "Note" below. Information from the inpatient or outpatient medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents. In addition, records may be disclosed to: (1) Officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force. (2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies. (3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies. (4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force. (5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. (6) Authorized surveying bodies for professional certification and accreditations. (7) The individual's organization or government agency as necessary when required by Federal statute, Executive Order, or by treaty.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse, family advocacy, AIDS, or sickle cell prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3, 290ee–3, and 21 U.S.C. 1175. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Air Force "Blanket Routine Uses" do not apply to these types of records.

RETENTION AND DISPOSAL:

Computer files are retained for variable lengths of time depending upon the type of information involved and the size and mission of the medical treatment facility. Retention time may vary from one day to ten years. Records are disposed of by erasure of the magnetic computer records and destruction of the computer related worksheets on paper, film, or other media by tearing, shredding, pulping, burning or other destructive methods. Identical medical/dental information may be retained for longer periods of time in other medical records systems (such as inpatient or outpatient charts), including the Medical Record System (F168 AF SG C) and Dental Personnel Actions (SG 162 SG A).

SYSTEM MANAGER(S) AND ADDRESS:

Major command and field operating agency headquarters and Air Force Medical Service Center; commanders of USAF medical centers; USAF School of Health Care Sciences; Aerospace Medical Division, Brooks AFB, Texas, and the USAF School of Aerospace Medicine, Brooks AFB, Texas. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquires to the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Requests should include complete name (including maiden name), sponsor's name, Social Security Number or Service Number of person through whom eligibility is established, category of record desired, year in which treatment was provided, whether treatment was inpatient or outpatient. If the individual establishes eligibility through a sponsor other than self, the request should include the relationship to the sponsor, e.g., spouse, second oldest child, parent, etc.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual whenever practical and possible; from other individuals when necessary, e.g. when the patient is a child or is in coma; from other medical institutions; from automated systems interfaces; from medical records, and from patient interactions with physicians and other health care providers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F168 AF SG C

SYSTEM NAME:

Medical Record System (51 FR 44357, December 9, 1986).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "10 U.S.C. 8012" to "10 U.S.C. 8013."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with, "The Department of the Air Force "Blanket Routine uses" published at the beginning of the agency's compilation apply to this system, except as stipulated in "Note" below.

Information from the inpatient or outpatient medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents. Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided. Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program. In addition, records may be disclosed to: (1) Officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force. (2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies. (3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies. (4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force. (5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. (6) Authorized surveying bodies for professional certification and accreditations." (7) The individual's organization or government agency as necessary when required by Federal statute, Executive Order, or by treaty.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse, family advocacy, AIDS, or sickle cell prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3, 290ee–3, and 21 U.S.C. 1175. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Air Force "Blanket Routine Uses" do not apply to these types of records."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with, "The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F168 AF SG C

SYSTEM NAME:

Medical Record System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), medical centers, hospitals and clinics, medical aid stations, National Personnel Record Centers, Air National Guard activities, and Air Force Reserve units. Official mailing addresses are published as an appendix to the Air Force compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons treated in an Air Force medical facility and active duty members for whom primary care is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inpatient and outpatient records of care received in Air Force medical facilities. Documentation includes, but is not limited to, patient's medical history; physical examination; treatment received; supporting documentation such as laboratory and x-ray reports; cover sheets and summaries of hospitalization; diagnoses; procedures or surgery performed; administrative forms which concern medical conditions such as Line of Duty Determinations; physical profiles, and medical recommendations for flying duty. Secondary files are maintained such as patient registers, nominal indices, x-ray and laboratory files, indices and registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care, 10 U.S.C. 8013, Secretary of the Air Force; powers and duties; delegation by, and Executive Order 9397.

PURPOSES:

Used to document, plan, and coordinate the health care of patients; aid in preventative health and communicable disease control programs; determine eligibility and suitability for benefits for various programs; adjudicate claims; evaluate care rendered; teach compile statistical data, and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system, except as stipulated in "Note" below.

Information from the inpatient or outpatient medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents. Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided. Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program. In addition, records may be disclosed to: (1) Officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force. (2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies. (3) Private organizations (including educational institutions) and individuals for authorized health research in the

interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies. (4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force. (5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. (6) Authorized surveying bodies for professional certification and accreditations. (7) The individual's organization or government agency as necessary when required by Federal statute, Executive Order, or by treaty.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse, family advocacy, AIDS, or sickle cell prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3, 290ee–3, and 21 U.S.C. 1175. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Air Force "Blanket Routine Uses" do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper and machine-readable form.

RETRIEVABILITY:

By name, Social Security Number, or by Military Service Number.

SAFEGUARDS:

Records are accessed by commanders of medical centers, hospitals, and clinics; by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

While on active duty, the Health Record of a US military member is maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to National Personnel Records Center/Military Personnel Records (NPRC/MPR) or other designated depository, such as Commandant, US Coast Guard for that agency's personnel, to appropriate Veterans Administration (VA) Regional Office if a VA claim has been filed. Records of non-active duty personnel may be handcarried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility for a minimum of 1 year after date of last treatment then retire to NPRC or other designated depository, such as, but not limited to, Medical Director, American Red Cross, Washington, DC 20006 for Red Cross personnel. At NPRC records for military personnel are retained for 50 years after date of last document, for all others 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters United States Air Force. Chief of Air Force Reserve, Headquarters United States Air Force. Director of Air National Guard, Headquarters United States Air Force. Commanders of medical centers, hospitals, clinics, medical aid stations; Commander, Air Force Manpower and Personnel Center. Official mailing addresses are published as an appendix to the Air Force's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contain information about themselves should address inquiries to the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

Requester must submit full name; Social Security Number (or Military Service Number) through whom eligibility for care is established; date (at least year) treatment was provided; name of facility providing treatment, and whether treatment was as inpatient or outpatient.

RECORD ACCESS PROCEDURES:

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 1806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians and other patient care providers such as nurses, dietitians, and physicians assistants. Administrative forms are completed by appropriate military or civilian officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–12376 Filed 6–9–92; 8:45 am]
BILLING CODE 3810–01–F

Department of the Navy

Privacy Act of 1974; Amend and Delete Record Systems

AGENCY: Department of the Navy, DOD.
ACTION: Amend and delete record systems.

SUMMARY: The Department of the Navy proposes to delete one and amend five existing systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion and amendments will be effective on July 10, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, Apr. 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30393, Aug. 26, 1986

51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22671, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25363, Jul. 6, 1988
53 FR 39499, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep. 29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51784, Dec. 18, 1989
54 FR 52976, Dec. 26, 1989
55 FR 21910, May 30, 1990 (Updated Navy Mailing Addresses)
55 FR 37930, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990
55 FR 47508, Nov. 14, 1990
55 FR 48678, Nov. 21, 1990
55 FR 53167, Dec. 27, 1991
56 FR 424, Jan. 4, 1991
56 FR 12721, Mar. 27, 1991
56 FR 27503, Jun. 14, 1991
55 FR 28144, Jun. 19, 1991
56 FR 31394, Jul. 10, 1991 (DOD Updated Indexes)
56 FR 40877, Aug. 16, 1991
56 FR 46167, Sep. 10, 1991
56 FR 59217, Nov. 25, 1991
56 FR 63503, Dec. 4, 1991
57 FR 2719, Jan. 23, 1992
57 FR 2726, Jan. 23, 1992
57 FR 2898, Jan. 24, 1992
57 FR 5430, Feb. 14, 1992
57 FR 9246, Mar. 17, 1992
57 FR 12914, Apr. 14, 1992
57 FR 14698, Apr. 22, 1992

The deletion and amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: June 4, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION
N01513-1

SYSTEM NAME: Navy Recruiting Command Attrition Tracking System (51 FR 18124, May 16, 1986).

Reason: Information is not retrieved or maintained by personal identifier.

AMENDMENTS
N01001-3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File (51 FR 18088, May 16, 1986).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, Social Security Number, individual's residence history, education, professional qualifications, occupational history, foreign country travel and knowledge, foreign language capabilities, history of active military duty assignments and military promotions."

* * * * *

STORAGE:

Delete entry and replace with "Computerized floppy/hard disk; microform; and paper records."

RETRIEVABILITY:

Delete entry and replace with "Name, Social Security Number, or any other record element."

SAFEGUARDS:

Delete entry and replace with "Controlled access within a Sensitive Compartmented Information Facility."

RETENTION AND DISPOSAL:

Records are maintained for a period of five years after last data filed and then destroyed.

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Intelligence Command, 4600 Silver Hill Road, Washington, DC 20389–5000.

The request should contain the full name of the requester, home address and date and place of birth. A notarized statement or unsworn declaration subscribed to be true under penalty of perjury is required for identity verification."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Intelligence Command, 4600 Silver Hill Road, Washington, DC 20389–5000.

The request should contain the full name of the requester, home address and date and place of birth. A notarized statement or unsworn declaration subscribed to be tru under penaly of perjury is required for identity verification."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Reserve data submitted by the individual and investigative reports from the Naval Investigative Service."

* * * * *

N01001-3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File.

SYSTEM LOCATION:

Naval Intelligence Command, 4600 Silver Hill Road, Washington, DC 20389–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel of the Naval Reserve Intelligence Program and applicants for affiliation with the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, individual's residence history, education, professional qualifications, occupational history, foreign country travel and knowledge, foreign language capabilities, history of active military duty assignments and military promotions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 503, Department of the Navy; 10 U.S.C. 6011, Navy Regulations; 44 U.S.C. 3101, Records Management by Federal Agencies, and Executive Order 9397.

PURPOSE(S):

To determine qualifications for members of the Naval Reserve Intelligence Program and to provide a personnel management device for career development programs, manpower and personnel requirements for program activities, assignment of support

projects of the reserve program and mobilization planning requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized floppy/hard disk; microform; and paper records.

RETRIEVABILITY:

Name, Social Security Number, or any file element.

SAFEGUARDS:

Controlled access within a Sensitive Compartmented Information Facility.

RETENTION AND DISPOSAL:

Records are maintained for a period of five years after last data filed and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Intelligence Command, 4600 Silver Hill Road, Washington, DC 20389–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Intelligence Command, 4600 Silver Hill Road, Washington, DC 20389–5000.

The request should contain the full name of the requester, home address and date and place of birth. A notarized statement or unsworn declaration subscribed to be true under penalty of perjury is required for identity verification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Intelligence Command, 4600 Silver Hill Road, Washington, DC 20389–5000.

The request should contain the full name of the requester, home address and date and place of birth. A notarized statement or unsworn declaration subscribed to be true under penalty of perjury is required for identity verification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reserve data submitted by the individual and investigative reports from the Naval Investigative Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01070–7

SYSTEM NAME:

Resale System Military Management Information System (51 FR 18097, May 16, 1986).

Changes:

SYSTEM NAME:

Delete entry and replace with "NEXCOM Military Personnel Information System"

SYSTEM LOCATION:

Delete entry and replace with "Navy Exchange Service Command (NEXCOM), Naval Station New York, Staten Island, NY 10305–5097."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Present and past military officers and key enlisted personnel assigned to the Navy Exchange System."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name; rank or rate; dependency status; Social Security Number; designation; date of rank; date reported; rotation date; educational level; lineal number; location of assignments; preference of assignment, biographical information, and orders."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5031; and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To assist officials and employees of the Navy Exchange Service Command in the management, supervision, and administration of its personnel."

* * * * *

STORAGE:

Delete entry and replace with "Computerized records, printed reports, card files, and file folders."

RETRIEVABILITY:

Delete entry and replace with "Name and Social Security Number."

SAFEGUARDS:

Delete entry and replace with "Supervised office spaces and computers are accessible only through the computer center whose entry is limited to authorized personnel only. All information is maintained in locked file cabinets or locked archives. Computer systems are password protected."

RETENTION AND DISPOSAL:

Delete entry and replace with "Destroyed three years following an individual's discharge/retirement from the Navy."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Official: Commander, Navy Exchange System, Naval Station New York, Staten Island, NY 10305–5097.

Record Holder: Director, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Written requests must include full name, Social Security Number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Written requests must include full name, Social Security Number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "U.S. Navy Manpower Information System; Bureau of Naval Personnel; the individual; and the individual's supervisor."

* * * * *

N01070-7

SYSTEM NAME:

NEXCOM Military Personnel Information System.

SYSTEM LOCATION:

Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305-5097.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past military officers and key enlisted personnel assigned to the Navy Exchange System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; rank or rate; dependency status; Social Security Number; designation; date of rank; date reported; rotation date; educational level; lineal number; location of assignments; preference of assignment, biographical information, and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5031; and Executive Order 9397.

PURPOSE(S):

To assist officials and employees of the Navy Exchange Service Command in the management, supervision, and administration of its personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized records, printed reports, card files, and file folders.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Supervised office spaces and computers are accessible only through the computer center whose entry is limited to authorized personnel only. All information is maintained in locked file cabinets or locked archives. Computer systems are password protected.

RETENTION AND DISPOSAL:

Destroyed three years following an individual's discharge/retirement from the Navy.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange System, Naval Station New York, Staten Island, NY 10305-5097.

Record Holder: Director, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305-5097.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305-5097.

Written requests must include full name, Social Security Number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305-5097.

Written requests must include full name, Social Security Number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

U.S. Navy Manpower Information System; Bureau of Naval Personnel; the individual; and the individual's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01211-1

SYSTEM NAME:

Naval Research Reserve Program Personnel Accounting System (51 FR 18105, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Naval Technology Mobilization Personnel Data"

SYSTEM LOCATION:

Delete entry and replace with "Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Military identification information, including Naval Officer Billet Codes, plus professional qualifications information, including education and occupation."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To effectively manage the Office of the Chief of Naval Research headquarters reserve unit. These records are used to maintain the unit's mobilization readiness."

* * * * *

STORAGE:

Delete entry and replace with "Paper records kept in a folder and stored in a file cabinet."

RETRIEVABILITY:

Delete entry and replace with "Name."

SAFEGUARDS:

Delete entry and replace with "Records kept in controlled access building; in a file cabinet under control of authorized personnel; and the office space in which the cabinet is located is locked outside official working hours."

RETENTION AND DISPOSAL:

Delete entry and replace with "Physically destroyed annually and updated on an annual basis."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Reserve Coordinator, Code 01RM, Office of the Chief of Naval Research, Arlington, VA 22217–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Reserve Coordinator, Code 01RM, Office of the Chief of Naval Research, Arlington, VA 22217–5000.

Requests should contain full name, rank, and Social Security Number. Personal visits may be made to the same address. Visitors must be prepared to show Naval Research ID Card."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Reserve Coordinator, Code 01RM, Office of the Chief of Naval Research, Arlington, VA 22217–5000.

Requests should contain full name, rank, and Social Security Number. Personal visits may be made to the same address. Visitors must be prepared to show Naval Research ID Card."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Provided by individual upon first reporting to reserve unit."

* * * * *

N01211–1

SYSTEM NAME:

Naval Technology Mobilization Personnel Data.

SYSTEM LOCATION:

Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Research reserve personnel, officer and enlisted.

CATEGORIES OF RECORDS IN THE SYSTEM:

Military identification information, including Naval Officer Billet Codes, plus professional qualifications information, including education and occupation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To effectively manage the Office of the Chief of Naval Research headquarters reserve unit. These records are used to maintain the unit's mobilization readiness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records kept in a folder and stored in a file cabinet.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Records kept in controlled access building; in a file cabinet under control of authorized personnel; and the office space in which the cabinet is located is locked outside official working hours.

RETENTION AND DISPOSAL:

Physically destroyed annually and updated on an annual basis.

SYSTEM MANAGER(S) AND ADDRESS:

Reserve Coordinator, Code 01RM, Office of the Chief of Naval Research, Arlington, VA 22217–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Reserve Coordinator, Code 01RM, Office of the Chief of Naval Research, Arlington, VA 22217–5000.

Requests should contain full name, rank, and Social Security Number. Personal visits may be made to the same address. Visitors must be prepared to show Naval Research ID Card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Reserve Coordinator, Code 01RM, Office of the Chief of Naval Research, Arlington, VA 22217–5000.

Requests should contain full name, rank, and Social Security Number. Personal visits may be made to the same address. Visitors must be prepared to show Naval Research ID Card.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Provided by individual upon first reporting to reserve unit.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05100–1

SYSTEM NAME:

Diving Log (51 FR 18140, May 16, 1986).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Navy military personnel and civilian employees of the Navy who are involved in diving or who have been exposed to a hyperbaric environment."

* * * * *

PURPOSE(S):

Delete entry and replace with "To furnish the commanding officer with a summarized diving report for individuals attached to the unit and to monitor types of dives, equipment usage, and mishap trends. To evaluate the diving program in the Navy and at specific activities. Pertinent individual records and/or statistical summaries prepared by Naval Safety Center analysts are also provided to all echelons within the Navy having a responsibility for the diving program and to the Bureau of Naval Personnel, Bureau of Medicine and Surgery, Naval Audit Service, or other activities having responsibility for the administration or control of personnel assignments and hazardous duty payments."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Records may be selected based on any

of the data elements contained in the file such as diver's name, Social Security Number, organization unit, type of dive and equipment used."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Permanent. Magnetic tape files contain all available records and are never purged. Reports are not transferred to a records center."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director of Afloat Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director of Afloat Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796.

Requests should contain full name, address, military status and Social Security Number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards."

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Director of Afloat Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796.

Requests should contain full name, address, military status and Social Security Number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N05100–1

SYSTEM NAME:

Diving Log.

SYSTEM LOCATION:

Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy military personnel and civilian employees of the Navy who are involved in diving or who have been exposed to a hyperbaric environment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Diving Log Report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To furnish the commanding officer with a summarized diving report for individuals attached to the unit and to monitor types of dives, equipment usage, and mishap trends. To evaluate the diving program in the Navy and at specific activities. Pertinent individual records and/or statistical summaries prepared by Naval Safety Center analysts are also provided to all echelons within the Navy having a responsibility for the diving program and to the Bureau of Naval Personnel, Bureau of Medicine and Surgery, Naval Audit Service, or other activities having responsibility for the administration or control of personnel assignments and hazardous duty payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Records may be selected based on any of the data elements contained in the file such as diver's name, Social Security Number, organization unit, type of dive and equipment used.

SAFEGUARDS:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not directly related to the diving program must be approved by the Commander, Naval Safety Center or his designated representative.

RETENTION AND DISPOSAL:

Magnetic tape files contain all available records and are never purged. Reports are not transferred to a records center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Afloat Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director of Afloat Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796.

Requests should contain full name, address, military status and Social Security Number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Director of Afloat Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796.

Requests should contain full name, address, military status and Social Security Number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Commanding Officer of naval units conducting diving or hyperbaric exposure incident to diving.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05870–1

SYSTEM NAME:

Patent, Invention, Trademark, Copyright, and Royalty Files (51 FR 18177, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Patent. Invention, Trademark, Copyright, Royalty, and License Files"

SYSTEM LOCATION:

Delete entry and replace with "Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

At end of entry, add "and licensees of Government owned inventions in the custody of the Secretary of the Navy.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 5022."

PURPOSE(S):

In line 16, after the word "awards" insert "and to license inventions."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraph three.

STORAGE:

At end of entry, add "and electronic computer memory."

RETRIEVABILITY:

In line one delete "patent" and replace with "invention".

SAFEGUARDS:

At end of entry, add "and on computer memory accessible only be authorized personnel in the Office of Counsel."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Counsel, Code OOCC, Office of the Chief of Naval Research, Arlington, VA 22217–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Counsel, Code OOCC, Office of the Chief of Naval Research, Arlington, VA 22217–5000."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Counsel, Code OOCC, Office of the Chief of Naval Research, Arlington, VA 22217–5000."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

In line five, delete sentence beginning with "Information" and ending on line nine with "supervisors."

* * * * *

N05870–1

SYSTEM NAME:

Patent, Invention, Trademark, Copyright, Royalty, and License Files.

SYSTEM LOCATION:

Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inventors and patent owners of inventions in which Government has an interest or which Department of the Navy has evaluated; copyright owners of works in which Government has an interest; claimants or parties in administrative proceedings or litigation with the Government involving patents, copyrights or trademarks and licensees of Government owned inventions in the custody of the Secretary of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Invention disclosures; disposition of rights in inventions of Government employees; patent applications and patented files; patent licenses and assignments; patent secrecy orders; copyright licenses and assignments; patent and copyright royalty matters; administrative claims and litigation with the Government involving patents, copyrights and trademarks including private relief legislation involving these matters; and documents and correspondence relating to the foregoing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5022.

PURPOSE(S):

Used by Navy patent personnel to determine rights of the Government and employees in employee inventions; to file and prosecute patent applications; to publish invention disclosures for public information and defensive purposes; to provide evidence and record of Government interest in or under patents or applications for patents; to provide evidence and record or patent and copyright licensing and assignment; to determine action or recommended action regarding disposition of claims or litigation; and to recommend Government employee incentive awards, and to license inventions. Used by other Navy/Marine Corps commands to determine Government interest in inventions; to permit utilization of inventions; and to support employee incentive awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the U.S. Patent and Trademark Office to determine respective rights of the Government and employee-inventors and to evidence legal interests in patent and copyright licenses and assignments; and for the prosecution of patent applications.

To the Commissioner of Patents and Trademarks to administer patent secrecy responsibilities.

To appropriate foreign government offices for prosecution of patent applications.

To officials and employees of the U.S. Copyright Office to evidence legal interests in patent and copyright licenses and assignments.

To the National Technical Information Service for publication of inventions available for licensing; non-governmental personnel (including contractors and prospective contractors) having an identified interest in particular inventions and Government rights therein, in infringement of particular patents or copyrights, or in allowance of royalties of contracts.

To the Congress in the form of reports on particular bills for private relief and reports of action on Congressional and constituent requests.

To government agencies involved in claims or litigation, including the Department of Justice, who have access to prosecute and defend cases.

To all government agencies who have access to license records.

To parties involved in particular licensing arrangements who have access to specific files involved.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files and electronic computer memory.

RETRIEVABILITY:

Subject matter; Navy invention case number; name of inventor, patentee, copyright owner, claimant or correspondent.

SAFEGUARDS:

Maintained in safes and file cabinets in controlled spaces accessible only by authorized personnel who are properly instructed in the permissible use of the information and on computer memory accessible only be authorized personnel in the Office of Counsel.

RETENTION AND DISPOSAL:

Maintained indefinitely, but records are transferred to the Federal Records Center two years after completed action on case to which record relates.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel, Code OOCC, Office of the Chief of Naval Research, Arlington, VA 22217–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Counsel, Code OOCC, Office of the Chief of Naval Research, Arlington, VA 22217–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Counsel, Code OOCC, Office of the Chief of Naval Research, Arlington, VA 22217–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individual inventor, patent or copyright owner, claimant, licensor or licensee, or from U.S. Patent and Trademark Office, or from U.S. Copyright Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–13472 Filed 6–9–92; 8:45 am]

BILLING CODE 3810–01–F

Department of the Army

Availability of Final Impact Statement for the Realignment of the 5th Infantry Division (Mechanized) From Fort Polk, LA, to Fort Hood, TX

AGENCY: United States Army, DOD.

SUMMARY: The realignment of the 5th Infantry Division (Mechanized) to Fort Hood, Texas, from Fort Polk, Louisiana, was mandated by Public Law 101–510, the Defense Base Closure and Realignment Act of 1990. The document focuses on the environmental and socioeconomic impacts and mitigations associated with the receiving of the division at Fort Hood, Texas.

The final EIS indicates there may be some significant enviromental impacts associated with the move of the 5th Infantry Division (Mechanized). However, the document identifies mitigations for all potentially significant impacts. Thus, these impacts will not impede the move. There are some significant socioeconomic impacts related to the population increase as a result of the realignment. These, however, are expected to have primarily positive impacts on the local economy.

Copies of the final EIS will be mailed to individuals who attended the public meetings. Copies will be sent to city, county and federal officials, civic organizations, and public libraries. Individuals not currently on the mailing list may obtain a copy of the final EIS by contacting U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF–PL–RE, 819 Taylor Street, Fort Worth, Texas 76102–0300 or calling (817) 334–3246.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), Office of the Assistant Secretary of the Army (Installations, Logistics and Environment).

[FR Doc. 92–13605 Filed 6–9–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Technical Assistance Conservation and Renewable Energy

Award Based on Acceptance of an Unsolicited Application; National Association of State Energy Officials (NASEO)

AGENCY: Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: DOE, Office of Technical Assistance Conservation and Renewable Energy through the Philadelphia Support Office, announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), DOE intends to award a grant to the NASEO. The anticipated overall objective is to identify the regulation and enforcement requirements of the Clean Air Act Amendments on the part of state energy officials and public commissions.

SUPPLEMENTARY INFORMATION: In this project, the NASEO, in conjunction with the Center of Clean Air Policy, will help state energy officials and state utility commissions explore the linkages between state energy policies and clean air, particularly the potential role of conservation and renewables in addressing acid rain control. Emphasis will be on the importance and potential economic value of incorporating conservation and renewables into utilities' overall acid rain compliance strategies in its acid rain compliance strategies. Particular emphasis will be placed on explaining how regulatory reform, specifically rate-making reform which allows utilities to make as much profit on conservation investments as on supply-side investments, would lead to greater reliance on conservation in both utilities' long-term resource plans and its long-term acid rain compliance strategies. In addition, NASEO will explore to have utilities work with state energy offices on the design and the implementation of conservation programs.

The project period for the grant is twelve (12) months, expected to begin in May 1992. Federal funding will consist of $70,000 from DOE, to be supplemented by an assistance grant of $30,000 from the Environmental Protection Agency (EPA).

DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for noncompetitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Christopher G. McGowan, Philadelphia Support Office, U.S. Department of Energy, Tenth Floor, 1421 Cherry Street, Philadelphia, Pennsylvania 19102–1492 phone (215) 597–3890.

Issued in Chicago, Illinois on May 27, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-13374 Filed 6-9-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 1904-008 New Hampshire & Vermont]

New England Power Company; Availability of Environmental Assessment

June 3, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license for the Vernon Project (FERC No. 1904).

The proposed amendment includes the redevelopment of the Vernon Project by replacing four existing 2.0-megawatt (MW) turbine/generator units with two new 14-MW units. The proposed change would increase the project's total installed capacity from the presently authorized 24.4 MW to 44.4 MW. Concurrently, the licensee would replace all interior electrical equipment connecting the remaining generator units and the existing control room with modern control systems and a new control room. The Vernon Project is located on the Connecticut River in Cheshire County, New Hampshire and Windham County, Vermont.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13565 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-06863T; Louisiana-12]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 3, 1992.

Take notice that on May 26, 1992, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination to § 271.703(c)(3) of the Commission's regulations, that a part of the Hosston Formation in DeSoto Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as:

T12N-R15W—Sections 34 and 36
T12N-R14W—Section 31
T11N-R14W—Sections 5 through 7

The notice of determination also contains Louisiana's findings that the referenced part of the Hosston Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13562 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-06865T; Oklahoma-18]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 3, 1992.

Take notice that on May 26, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Spiro Formation underlying a portion of Latimer County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of Sections 2, 3 and 4, Township 6 North, Range 22 East and Sections 25, 34, 35 and 36, Township 7 North, Range 22 East.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Spiro Formation meets the requirements of the commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13554 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-06980T, Oklahoma-20]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

June 3, 1992.

Take notice that on June 1, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Atoka Formation underlying portions of Latimer, LeFlore and Pushmataha Counties qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is more fully described on the appendix.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Atoka Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Township 5 North, Range 20 East
Sections 13-36
Township 5 North, Range 19 East
Sections 25-27 and 34-36
Township 4 North, Range 20 East
Sections 1-36
Township 4 North, Range 19 East
Sections 1-3, 10-15 and 19-36
Township 3 North, Range 19 East

Sections 1–18
Township 3 North, Range 20 East
Sections 1–36
Township 4 North, Range 21 East
Sections 19–36
Township 3 North, Range 21 East
Sections 1–36
Township 2 North, Range 20 East
Sections 1–18
Township 2 North, Range 21 East
Sections 4–9 and 16–18

All in Latimer, LeFlore and Pushmataha Counties, Oklahoma.

[FR Doc. 92–13558 Filed 6–9–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. JD92–06946T; Oklahoma–19]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 3, 1992.

Take notice that on June 1, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Heath-Hoxbar Formation underlying a portion of Stephens County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of Sections 13, 14, 15, 16, 22, 23 and 24, Township 2 North, Range 8 West and Sections 18 and 19, Township 2 North, Range 7 West.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Heath-Hoxbar Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13555 Filed 6–9–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. JD92–06864T Oklahoma–17]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 3, 1992.

Take notice that on May 26, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Spiro Formation underlying a portion of Latimer County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of sections 22, 23, 24, 25, 26 and 27, Township 5 North, Range 19 East.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Spiro Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13556 Filed 6–9–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. JD92–06862T; Texas–54]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 3, 1992.

Take notice that on May 22, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Hirsch Sand Formation in portions of La Salle and Webb Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area, consisting of approximately 6,700 acres, is described in the attached appendix.

The notice of determination also contains Texas's findings that the referenced portion of the Hirsch Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended Hirsch Sand Formation is located in La Salle and Webb Counties, Texas, within Railroad Commission Districts 1 and 4. The area of application covers approximately 6,700 acres and consists of all or portions of the following surveys:

Survey name	Survey No.	Abstract No.	County	Area
Ed. B. Kotula	42	1798	La Salle	165.0 Por.
BS & F	73	93	La Salle	521.0 Por.
K. Buckley	78	961	La Salle	222.0 Por.
Mrs. E. Clark	78½	1477	La Salle	162.5 Por.
T. B. Poole	42	1774	La Salle	320.0 All.
J. M. Smith	40	1775	La Salle	640.0 All.
BS & F	41	115	La Salle	643.5 All.
L Martinez	46	1832	La Salle	211.0 All.
D. M. Level	168	1543 and	Webb	35.0 All
		1826	La Salle	46.0 All.
Atascosa Co	297	3023 and	Webb	1483.0 All.
		1818	La Salle	731.0 All.
L. Martinez	1478	2352	Webb	267.0 All.
GC & SF RR	1239	1306	Webb	613.0 All.
HE & WT RR	1251	1960	WEBB	640.0 All.

[FR Doc. 92–13563 Filed 6–9–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TQ92-4-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 29, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1992.

Nineteenth Revised Sheet No. 26
Eleventh Revised Sheet No. 26.1
Nineteenth Revised Sheet No. 26A
Eleventh Revised Sheet No. 26A.1
Nineteenth Revised Sheet No. 26B
Tenth Revised Sheet No. 26B.1
Eighteenth Revised Sheet No. 26C
Fourth Revised Sheet No. 26C.1
Ninth Revised Sheet No. 26D
Nineteenth Revised Sheet No. 163

Columbia states the sales rates set forth on Eleventh Revised Sheet No. 26.1 reflect an increase of 23.40¢ per Dth in the commodity rate when compared with the total CDS rates currently in effect. In addition, the transportation rates set forth on Eighteenth Revised Sheet No. 26C and Ninth Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.56¢ per Dth.

Columbia states that copies of the filing is being mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92-13552 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-2-000]

East Tennessee Natural Gas Co.; Notice of Rate Filing

June 3, 1992.

Take notice that on May 29, 1992, East Tennessee Natural Gas Company (East Tennessee), tendered for filing Twenty First Revised Sheet Nos. 4 and 5 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective June 1, 1992.

East Tennessee states that the purpose of the instant filing is to implement an out-of-cycle PGA rate adjustment to East Tennessee's's current rate, to be effective from June 1, 1992 to June 30, 1992. East Tennessee further states that the total change in the East Tennessee Rate from the last schedule PGA is $0.1310 per dekatherm.

East Tennessee is requesting waiver of the Commission's regulations to cease the flow through of its ($0.0869) 191 surcharge effective June 1, 1992. East Tennessee believes that it is in the public interest to waive the regulations limiting adjustments to the surcharge to the annual filing. East Tennessee further requests a waiver of the thirty day notice requirement.

East Tennessee submits that copies of this filing has been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13506 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-179-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 3, 1992.

Take notice that on May 29, 1992, Florida Gas Transmission Company (Florida Gas) tendered for filing the following tariff sheets:

Twenty-Eighth Revised Sheet No. 8
Ninth Revised Sheet No. 8A
Seventh Revised Sheet No. 8B

Florida Gas proposes that these tariff sheets become part of its FERC Gas Tariff, to be effective on July 1, 1992. Copies of the filing are on file with the Commission and are available for public inspection.

Florida Gas states that section 25 of its tariff establishes a mechanism to permit recovery of transition costs via a volumetric surcharge. This rate filing adds $6.9 million of transition costs to the transition cost recovery (TCR) Account, as of April 30, 1992. Florida Gas submitted the documentation of these transition costs in a confidential submission made under § 388.112 of the Commission's Regulations. This data is available to parties to Florida Gas's TCR Proceeding who have signed the appropriate protective agreement with Florida Gas.

In conjunction with this filing, Florida Gas is also requesting waiver of portions of section 25 of the General Terms and Conditions of its FERC Gas Tariff. Such waiver, to the extent necessary, would permit Florida Gas to defer the inclusion of certain other transition costs in the existing TCR Mechanism.

To the extent necessary, Florida Gas requests that the Commission grant waiver of Section 25 of the General Terms and Conditions of its FERC Gas Tariff to:

(i) Allow Florida Gas to defer the inclusion of certain of its transition costs incurred since September 30, 1991,[1] while accruing carrying costs, until eligibility for inclusion under the Order No. 636 transition cost recovery mechanism ("Order No. 636 Mechanism") is determined;

(ii) In the event such costs are determined to be ineligible for recovery under the Order No. 636 Mechanism, allow Florida Gas to file for recovery under its existing TCR Mechanism of any such transition costs (including associated carrying costs) not included for recovery in the Order No. 636 Mechanism.

[1] Florida Gas submitted the documentation of the proposed deferred transition costs in a confidential submission made under §§ 388.112 of the Commission's Regulations. This data is also available to parties to Florida Gas's TCR Proceeding who have signed the appropriate protective agreement with Florida Gas.

Florida Gas says it is not asking the Commission to make an Order No. 636 eligibility determination at this time. Rather, Florida Gas is requesting a waiver of its existing tariff, if necessary, to afford Florida Gas the opportunity to make, at a later date, the section 4 filing contemplated by Order No. 636. Florida Gas says this waiver is in the public interest and does not constitute a burden to any party.

Florida Gas says the deferral of recovery of these costs does *not* change Florida Gas's existing TCR surcharge. Florida Gas's existing TCR surcharge is subject to a 3.5¢ per MMBtu cap. Florida Gas says the amounts for which Florida Gas has already sought recovery under its TCR mechanism are at a level which will result in its TCR surcharge remaining at the 3.5¢ cap through early 1993. Therefore, Florida Gas claims the deferral itself does not have any financial impact on Florida Gas's customers.

Any person desiring to be heard or to protest said filing should file motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13561 Filed 6–9–92; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5090–005]

City of Idaho Falls, ID; Technical Conference in Washington, DC, Regarding the Proposed Shelley Hydroelectric Project

June 3, 1992.

On Friday, June 12, 1992, from 9 a.m. to 12 p.m., representatives of the applicant and the Commission will hold a technical conference in room 1039 at 810 First Street, NE., Washington, DC 20426.

The primary purpose of the conference is to discuss the applicant's revised riparian habitat mitigative plan and other matters pertaining to the Shelley Project.

At the meeting, parties to the proceeding will have opportunities to ask questions and to comment on the technical issues under discussion. Persons and representatives of entities who are not on the Commission's Service List maintained for Project No. 5090–005 may attend the meeting as spectators only.

For further information, please contact FERC environmental Coordinator, Jim Haimes, at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13564 Filed 6–9–92; 8:45 am]

BILLING CODE 6717–01–M

Docket No. TQ92–5–16–000

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1992

Take notice that on May 29, 1992, National Fuel Gas Supply Corporation (National) tendered for filing the following revised tariff sheet as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective July 1, 1992:

Seventh Revised Eighteenth Revised Sheet No. 5

National states that the purpose of this filing is to reflect a quarterly Purchased Gas Cost Adjustment ((PGA). National states that the revised tariff sheet reflects a negative commodity current adjustment of 107.45 cents per dekatherm (Dt), from National's April Quarterly PGA on February 28, 1992, in Docket No. TQ92–4–16–000. National further states that the revised RQ and CD sales commodity rate of 215.03 cents per Dt is based upon a current average cost of purchased gas of 191.54 cents per Dt (in unit purchases), or 205.48 cents per Dt (in unit of sales).

National submits that copies of this filing were served on National's jurisdictional customers and on the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13559 Filed 6–9–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA92–1–86–000, and RP92–180–000]

Pacific Gas Transmission Co.; Notice of Change in Sales Rates Pursuant to Purchased Gas Adjustment

June 3, 1992.

Take notice that on June 1, 1992, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Commission's regulations under the Natural Gas Act, its Annual Purchased Gas Adjustment filing in accordance with Paragraph 21 of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective August 1, 1992.

PCT states that the filing incorporates PGT's latest projection of purchased gas commodity costs and sales quantities. PGT states that it has also included in the filing is PGT's assessment of past performance and a surcharge calculation for the 12-month deferral period ending March 31, 1992.

PGT states that copies of the filing has been served on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13568 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-183-000]

Paiute Pipeline Co.; Compliance Tariff Filing

June 3, 1992.

Take notice that on June 1, 1992, Paiute Pipeline Company (Paiute) tendered for filing First Revised Sheet No. 81 and Original Sheet No. 81A to be part of its FERC Gas Tariff, First Revised Volume No. 1-A.

Paiute indicates that the purpose of its filing is to revise its tariff in compliance with the Commission's final rule adopted in Order No. 537, issued on September 20, 1991, in which the Commission adopted a revised interpretation of the "on behalf of" standard under section 311 of the Natural Gas Policy Act of 1978. Paiute states that new § 284.102(e) requires that an interstate pipeline obtain from its shippers certifications, including sufficient information, to verify that their transportation services qualify under § 284.102. Paiute proposes to add a new paragraph to its tariff to clarify that it will require such certifications.

Paiute requests that the tendered tariff sheets be accepted for filing to become effective July 1, 1992.

Paiute states that copies of the filing were served upon all of Paiute's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13569 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-3-9-000 and TM92-4-9-000]

Tennessee Gas Pipeline Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 3, 1992.

Take notice that on May 29, 1992, Tennessee Gas Pipeline Company (Tennessee) filed the following revised tariff sheets to its FERC Gas Tariff to be effective July 1, 1992:

Item A

Third Revised Volume No. 1
- Tenth Revised Sheet No. 20
- Fourth Revised Sheet No. 20A
- Tenth Revised Sheet No. 21
- Fourth Revised Sheet No. 21A
- Eighth Revised Sheet No. 22

Item B

Third Revised Volume No. 1
- Fourth Revised Sheet Nos. 32-37

Item C

Original Volume No. 2
- Twenty Seventh Revised Sheet No. 5
- Second Revised Sheet No. 5A

Item D

Third Revised Volume No. 1
- Fifth Revised Sheet No. 21
- Sixth Revised Sheet No. 24
- Third Revised Sheet No. 24A
- First Revised Sheet No. 28B

Original Volume No. 2
- Twenty Fifth Revised Sheet No. 6

Revised Sheet No. 4
- First Revised Sheet No. 6A
- Ninth Revised Sheet No. 7
- First Revised Sheet No. 7A
- Tenth Revised Sheet No. 8
- First Revised Sheet No. 8A
- Ninth Revised Sheet No. 9
- First Revised Sheet No. 9A

Tennessee states that the current Purchased Gas Cost Rate Adjustments consist of a $.0773 per dekatherm adjustment applicable to the gas component of Tennessee's sales rates and a $(.12) per dekatherm adjustment applicable to the Demand D1 component.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13570 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-52-000; TA92-1-52-001]

Western Gas Interstate Co.; Notice of Proposed Changes in FERC Gas Tariff

June 3, 1992.

Take notice that Western Gas Interstate Company (Western), on June 1, 1992, tendered for filing the following tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1:

Eighth Revised Sheet No. 10

The proposed effective date for the tariff sheet is August 1, 1992.

Western states that its filing proposes changes to its rates in accordance with the terms of the Purchase Gas Adjustment provisions of its FERC Tariff.

Western states that the proposed changes to rates provide for (1) a decrease in cost under Western's Rate Schedule CD-N of $0.1723; and (2) an increase in cost under Western's Rate Schedule CD-S of $0.8093.

Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 385.11 and 385.214 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before June 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13560 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-35-000]

West Texas Gas, Inc.; Notice of Filing

June 3, 1992.

Take notice that on June 1, 1992, West Texas Gas, Inc. ("WTG") filed Second Revised Sheet No. 4 to its FERC Gas Tariff, Revised Volume No. 1, proposed to be effective July 1, 1992. Second Revised Sheet No. 4 and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased commissions.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 214. All such motions or protests should be filed on or before June 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13553 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL92-12-000]

Wisconsin Public Service Corp.; Order Denying Request for Rejection, Accepting for Filing and Suspending Proposed Rates, Establishing Hearing Procedures, Granting Waiver of Notice, and Announcing Policy Regarding Timing of Fuel Adjustment Clause Amendment Proposals

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

Issued June 2, 1992.

On December 31, 1991, as amended on January 24, 1992, Wisconsin Public Service Corporation (Wisconsin) filed a request for waiver of the requirements applicable to fuel adjustment clauses (FACs) under section 35.14 of the Commission's regulations.[1] Wisconsin seeks Commission authorization to amend its FACs in its rates to 10 wholesale customers [2] so as to permit the passthrough of the wholesale share of costs Wisconsin incurred in terminating certain coal contracts and related coal transportation contracts. Wisconsin specifically requests that the Commission waive the provisions of § 35.14(a)(9) [3] to allow Wisconsin to amend its FACs to provide for the buyout recovery without filing detailed cost support and cost of service data. Wisconsin contends further that many of the documents that support its request for waiver are coal purchase and coal transportation contracts which contain commercially sensitive information which should be shielded from public disclosure under section 388.112 [4] of the Commission's regulations.

As explained further below, we will accept Wisconsin's proposal for fuel clause recovery of its buyout costs, suspend the proposal, and set it for hearing. At Wisconsin's request, we will waive the 60-day prior notice requirement to permit an effective date of January 1, 1992 for Wisconsin's buyout plan. We will leave to the presiding administrative law judge the discretion whether to treat any of Wisconsin's documents as confidential and privileged under the Commission's regulations.

Background

Wisconsin recently entered into buyout agreements with Nerco Coal Sales Company (Nerco) and with Soo Line Railroad. Under the Nerco contract, dated September 20, 1985, as amended, Wisconsin agreed to purchase 75 percent of its coal requirements for its Weston Unit Nos. 1 and 2, and its Pulliam Unit Nos. 3 through 8, for the period 1986 to 2005. Wisconsin also agreed to take approximately 850,000 tons of coal in each year during the period from 1986 to 1995. Wisconsin states that it has agreed to buyout its obligations under the Nerco coal contact from 1992 to 2005 (the year the contract expires). Wisconsin states that its buyout costs for the Nerco contract are approximately $28.3 million.

Under the Soo Line Railroad agreement (effective May 16, 1984), Wisconsin agreed to transport, during the life of the Nerco contract: (1) 70 percent of its coal purchases for the Pulliam units; and (2) 100 percent of its northwestern coal purchases for the Weston units. The Soo Line Railroad agreement requires Wisconsin to transport at least 850,000 tons per year. Wisconsin states that it has agreed to buyout the Soo Line Railroad agreement for approximately $6 million.

In support of its requests for waiver of the requirements applicable to FACs, Wisconsin claims that, as a result of its buyout of the two contracts, it will be able to purchase alternative coal at significantly lower costs. Wisconsin states that it will realize a savings of about $138 million on a total company basis, [5] or about $23.5 million for the affected wholesale customers.[6] Wisconsin calculates these savings as the difference between the coal and transportation costs under the contracts which were bought out, and the costs of replacement coal and transportation. Under its proposal, Wisconsin can recover its buyout costs only to the extent that gross savings exceed total buyout costs. Wisconsin thus concludes that its proposal satisfies the Commission's "benefits test" for fuel clause recovery of buyout costs.[7]

Wisconsin requests that the Commission permit the proposal to become effective January 1, 1992, to "allow the Company to record buyout costs as they are paid and to amortize these costs as buyout related savings are realized by customers." [8] Wisconsin requests that the Commission waive the 60-day prior notice provisions of section 35.3(a) [9] to allow the buyout proposal and FAC amendment to become effective on that date. In the alternative, Wisconsin requests that the part of its original submittal (filed on December 31, 1991) that was not amended by its January 24, 1992 submittal be accepted for filing to become effective January 1, 1992. If the Commission adopts this approach, Wisconsin requests that the part of its original submittal which was

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[1] 18 CFR 35.14 (1991).

[2] The fuel clause amendments apply to customers served under Wisconsin's W-1, W-2, and W-3 requirements rates.

[3] 18 CFR 35.14(a)(9) (1991) (requiring filings which propose a new FAC or a change in an existing FAC to include, among other things, full cost of service data).

[4] 18 CFR 388.112 (1991).

[5] Wisconsin Amendment to Petition at 2.

[6] Wisconsin Petition at 2.

[7] *See* Kentucky Utilities Company, 45 FERC ¶ 61,409 (1988) (*Kentucky Utilities I*). In *Kentucky Utilities I*, the Commission imposed a requirement that utilities proposing buyout plans, and waiver of the regulations applicable to FACs, must provide "a timely and periodic verification of benefits" of the buyout. 45 FERC at 62,293.

[8] Wisconsin Petition at 5.

[9] 18 CFR 35.3(a) (1991).

amended on January 24, 1992 be accepted for filing to become effective March 25, 1992, sixty days after the date of the amended filing.[10]

Notices of Wisconsin's filings were published in the **Federal Register**, with comments, protests, or interventions due on or before February 18, 1992.[11]

Intervention

On January 28, 1992, the Algoma Group (Algoma) [12] filed a motion to intervene, a request for rejection of Wisconsin's filing or, alternatively, a request for rejection of confidential treatment, and a request for a five-month suspension and hearing.

Algoma requests that the Commission reject the filing because coal contract buyouts have become Wisconsin's *modus operandi*, not a one-time extraordinary decision. Algoma argues that the Commission's decision in Kentucky Utilities I contemplated that pass-throughs of buyouts costs would only be permitted if such costs are a one-time extraordinary expenditure.

In support of its allegations that Wisconsin has a repeated practice of contract buyouts, Algoma contends that the buyouts of the Nerco and Soo Line Railroad contracts are part of a pattern whereby Wisconsin enters into coal contracts which must later be terminated and bought out because they are uneconomic. Algoma states that, in Docket Nos. ER87–44–000, *et al.*,[13] in a similar situation, Wisconsin sought to flow through buyout costs to customers for three coal contracts. Furthermore, Algoma notes that in Docket No. EL89–22–000, [14] Wisconsin sought to flow through buyout costs to customers related to two additional coal contracts. Algoma maintains that Wisconsin entered into the Nerco contract at about the same time it was buying out these contracts. Algoma opines that Wisconsin entered into the Nerco contract without any provisions for renegotiation of price or termination in the event that contract also proved to be uneconomic. Further, Algoma states that Wisconsin had a separate, existing contact with Nerco at the time it signed the Nerco contract at issue here. Under the other Nerco contract, according to Algoma, Wisconsin paid a lower price for coal than under the instant contract. Based on these assertions, Algoma contends that the Commission should not treat these buyout costs the same as an incidental one-time buyout of a coal contract which may yield a benefit to customers. Algoma states that the Commission should instead treat the proposal as it would an abandoned property loss (which, according to Algoma, would be borne in part by utility shareholders).

Algoma alleges that the Soo Line Railroad contract was also used to transport coal from vendors other than Nerco and that the $6 million buyout payment includes costs related to the Nerco contract. Algoma notes that the Wisconsin Public Service Commission (Wisconsin Commission) permitted Wisconsin to recover only $5.4 million of the $6 million.

In further support of its request for rejection, Algoma contends that: (1) Wisconsin has claimed confidential treatment under section 388.112 and, therefore, the filing is lacking all of the specific cost data that would be needed to allow the customers to analyze the filing; and (2) the filing lacks the full cost support required by section 35.14(a)(9).[15]

Algoma objects to Wisconsin's request for confidential treatment of the coal contracts at issue as well as portions of its filed testimony and other support. Algoma maintains that section 388.112 places the burden on Wisconsin to establish some basis for the confidential treatment. Algoma contends that Wisconsin has made no showing why the information should be treated confidentially. While the contracts and the buyout costs may be embarrassing to Wisconsin, the contracts are terminated and parts of the contract are already in the public record. Algoma insists that the burden should be on Wisconsin to make a showing of the reason for confidentiality when it places the customers in the position of having to accept the company's claims with respect to any benefits.

If the Commission does not reject Wisconsin's filing, Algoma requests a five-month suspension for the following reasons: (1) The company has not entered into a replacement coal contract; therefore, neither the price of the replacement coal nor the savings are certain; (2) testimony by Wisconsin representatives before the Wisconsin Commission indicates that Wisconsin does not intend to purchase any new fuel prior to October 1992; (3) the customers lack information because of the company's request for confidentiality; [16] the company's proposed fuel costs lack cost support; (5) the company's decision to enter into the Nerco contract was imprudent; (6) the company's $6 million requested buyout amount for the Soo Line Railroad contract relates to disputes between Wisconsin and the railroad which are not related to the buyout; and (7) the company's carrying charges on the unamortized balance of the proposed buyout costs are excessive.

Algoma also argues that Wisconsin's net benefit test does not appear to track the Commission's requirements enunciated in Kentucky Utilities I and its progeny. Algoma contends that: (1) the proposal's true-up provisions seem to track estimates of net benefits rather than actual savings; (2) the proposal's definition of "replacement coal" quantities includes the minimum takes under the old contract, rather than the actual amount of coal purchased; (3) the proposal's benefits test assumes certain purchases and take-or-pay payments when Wisconsin has indicated excess coal on hand for 1992; and (4) the proposal's benefits test assumes a minimum quantity of coal higher than that contained in the Nerco contract.

Algoma requests that if the Commission sets this case for hearing, that the scope of that hearing should include Wisconsin's imprudence in entering into the Nerco contact. Algoma notes that Wisconsin entered into the Nerco contract at a time when fuel costs were falling, without negotiating a price reopener provision. Such a provision is particularly important in Algoma's view because it contends that the contract

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[10] Wisconsin originally negotiated a buyout of the Nerco contract under which it would make: (1) A fixed payment of $18.3 million; and (2) two payments tied to the amount of replacement coal Wisconsin consumes at its Weston and Pulliam units during the period 1992 through 2005. After its initial submittal here, Wisconsin negotiated with Nerco to make a fixed payment of $9.99 million rather than the two payments tied to the amount of replacement coal consumed. In effect, Wisconsin requests that, if the Commission does not grant a January 1, 1992 effective date for the entire submittal, it allow recovery of the $18.3 million payment to Nerco and the $6 million payment to Soo Line Railroad to commence on January 1, 1992, and permit the recovery of the $9.99 million payment to commence on March 25, 1992.

[11] 57 FR 2256 (1992); 57 FR 5145 (1992).

[12] Algoma consists of: the Cities and Villages of Manitowoc, Marshfield, Stratford and Wisconsin Rapids, Wisconsin, the City of Stephenson, Michigan, the Washington Island Electric Cooperative, the Alger Delta Electric Association, and the Wisconsin Public Power Inc., System.

[13] Wisconsin Public Service Corporation, 37 FERC ¶ 61,312 (1986), *reh'g granted*, 38 FERC ¶ 61,174 (1987) (clarifying scope of litigated proceeding to include fuel procurement policies), *settlement accepted*, 40 FERC ¶ 61,386 (1987).

[14] Wisconsin Public Service Corporation, 50 FERC ¶ 61,387 (1990), *settlement accepted*, 54 FERC ¶ 61,279 (1991).

[15] If the Commission does not reject Wisconsin's proposal, Algoma requests that the filing be made deficient for lack of cost data and other support.

[16] Algoma states that Wisconsin is using the fuel clause waiver to obtain a rate increase and, therefore, the Commission should require Wisconsin to include full cost support for its fuel costs. Algoma states that this is especially important since Wisconsin has not filed a full rate case since 1983.

was entered into when the projected load growth in the State of Wisconsin was falling. Algoma also requests a full investigation of the prudence of Wisconsin's fuel procurement program, including all fuel costs passed through to customers under the Nerco contract since its inception. Algoma states that the Commission should order refunds if it determines that certain fuel costs were imprudently incurred.

Algoma objects to Wisconsin's request for waiver of the 60-day prior notice requirement to allow Wisconsin's proposal to go into effect January 1, 1992. In support of its opposition to waiver, Algoma claims that the buyout occurred over six months ago and the company has not offered any reason for failing to file the proposal by November 1, 1991, 60 days before the proposed January 1, 1992 effective date.

Answer

On February 12, 1992, Wisconsin filed an answer to Algoma's pleading. Wisconsin contends that its filing complies with all of the requirements the Commission has established for fuel clause recovery of coal contract buyout costs. Wisconsin maintains that the Commission in Kentucky Utilities II,[17] determined that recovery of fuel contract buyout costs can be accomplished through the fuel clause without a full scale review of the utility's costs. Wisconsin argues further that the Commission has granted similar waivers of the full cost support requirement in several other fuel contract buyout cases.

With respect to Algoma's request for a five-month suspension, Wisconsin contends that the Commission's policy is to limit to one day the suspension of the coal buyout proposals that meet the requirements announced in Kentucky Utilities I. Wisconsin argues that the fact that it does not have in place a replacement coal contract should not affect the effective date of its proposal. Wisconsin notes that if it does not purchase replacement contract or spot market coal, it will not, under the terms of its proposal, recover any buyout costs.

With respect to Algoma's opposition to its request for privileged treatment, Wisconsin claims that it is entitled to protect itself and its customers from the detrimental consequences of disclosing commercially sensitive information. Wisconsin argues that privileged treatment of the coal supply and transportation contracts is consistent with the well-established Commission precedent. Wisconsin also notes that it has included with its filing a proposed protective agreement which would allow Algoma to view all of the documents at issue. Wisconsin notes that this protective agreement is essentially identical to the one that Algoma signed in Docket No. EL89-22-000.

With respect to each of Algoma's concerns regarding the mechanics of the proposal, Wisconsin contends that Algoma raises these concerns out of a misunderstanding of the proposal. For example, Wisconsin states that: (1) The minimum take reflected in the benefits test does not assume a higher minimum take than that contained in the Nerco contract; and (2) while the Wisconsin Commission did not allow recovery of the full $6 million buyout cost associated with the Soo Line Railroad contract, the Wisconsin Commission did so because it believed that Wisconsin's retail fuel clause (different than the wholesale clauses) failed to flow through to retail customers certain refunds Wisconsin received from the Soo Line Railroad.

Noting that Algoma requests that the Commission investigate the prudence of Wisconsin's fuel procurement program, Wisconsin maintains that, consistent with the Commission's action in Kentucky Utilities II, the Commission should refuse to broaden a fuel contract buyout proposal to include a general investigation of the utility's fuel purchase practices. Wisconsin claims that it acted prudently at all times with respect to the Nerco and Soo Line Railroad contracts and that Algoma's assertions are without foundation.

As to Algoma's opposition to Wisconsin's request for waiver of the 60-day prior notice requirement, Wisconsin argues that in Kentucky Utilities I the Commission found that fuel clause recovery plans may take effect as of the date filed. Wisconsin also notes that its requested January 1, 1992 effective date also provides the best match between receipt of the buyout benefits and the payment of the buyout costs.

Other Pleadings

On February 18, 1992 (the final day of the comment period), Algoma filed an amendment to its motion to intervene. Algoma objects to Wisconsin's filing on the ground that there is inadequate information on how the proposal will actually work in practice. Algoma is concerned that buyout costs may be recovered during the year on an estimated basis and that, after the fact, the Commission may determine that Wisconsin incurred no buyout savings in that year.

Algoma also states that, since the savings will be based on the amount of replacement coal purchased for the Weston and Pulliams units, if Wisconsin purchases replacement coal that is less expensive than the Nerco coal, it will dispatch the Weston and Pulliam plants more often and thereby inflate the amount of the savings resulting from the buyout. Algoma also alleges that the proposal is not in compliance with section 205(f) of the Federal Power Act (FPA), 16 U.S.C. § 824d(f) (1988), which requires that the Commission modify automatic adjustment clauses if the clauses violate economic principles.

Finally, Algoma notes that the buyout will significantly reduce the coal inventory at the Weston and Pulliam plants and will produce savings to Wisconsin's shareholders through such a reduction, rather than Wisconsin's ratepayers. Algoma contends that, if the company's shareholders are to share in the benefits of the buyout, they should also share in the costs of the buyout.

On March 3, 1992, Wisconsin filed an answer to Algoma's February 18, 1992 submittal. Wisconsin argues that its recovery of buyout costs is not based on estimates of monthly replacement coal purchases, but rather, the proposed recovery is based on the actual monthly purchases of replacement coal. Wisconsin also states that Algoma's concerns with respect to the redispatch of the Weston and Pulliam units may be proper issues for hearing, but are not a basis for rejection or suspension. Wisconsin points out that stockholders do not support coal inventories since coal inventories are included in rate base and are supported by ratepayers. Additionally, Wisconsin contends that the Commission has, in past cases, rejected the argument that shareholders should absorb part of the buyout costs. Wisconsin also maintains that the proposal will ensure the efficient use of resources, and that Algoma's allegation to the contrary is unsupported.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure, Algoma's timely motion to intervene serves to make it a party to this proceeding.

Section 35.14 of the Commission's regulations, 18 CFR § 35.14 (1991), permits fuel clause recovery of the identifiable costs of fossil and nuclear fuel consumed in the utility's own plants. As the Commission recognized in Kentucky Utilities I,[18] buyout costs—

[17] Kentucky Utilities Co., 49 FERC ¶ 61,008 at 61,029-30 (1989).

[18] 45 FERC ¶ 61,409 (1988).

incurred in obtaining the utility's release from fuel supply contracts—" are the very antithesis of the cost of fuel consumed." Accordingly, "waiver of the fuel clause regulations is required whenever a utility seeks to recover buyout costs in the fuel clause * * *."[19]

In Kentucky Utilities I, the Commission articulated a new policy permitting buyout costs to be passed through fuel clauses, but only to the extent the utility can "demonstrat[e] that ratepayers realize actual savings."[20] Recognizing that a buyout plan could extend for many years, the Commission also imposed a requirement that the utility provide a "timely and periodic verification of benefits."[21]

Our decision in Kentucky Utilities I was to permit a utility to revise the fuel clause for buyouts without a full review of the utility's overall rates. As the Commission repeatedly has recognized, fuel adjustment clauses are exceptions to the general notice and review requirements of section 205 of the FPA.[22] Clearly, fuel clause treatment has no benefit if it triggers a full rate case. While Kentucky Utilities I and related orders do not establish specific data requirements for a utility requesting waiver of the fuel clause regulations, they do describe the guidelines the Commission will use in reviewing such a request.

Wisconsin has addressed each of the criteria for a buyout proposal in sufficient detail such that the proposal is not patently deficient. Further, our review indicates that Wisconsin's proposal generally comports with the guidelines we first enunciated in Kentucky Utilities I. Accordingly, we shall deny Algoma's requests to reject Wisconsin's filing.

However, our preliminary review indicates that Wisconsin's proposed amendment to permit its buyout costs has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Algoma has raised several issues in this respect which warrant an evidentiary hearing. These issues include the reasonableness of Wisconsin's proposed recovery methodology and the degree of specificity in the description of the procedures that Wisconsin will adopt for the monthly fuel clause calculations and savings verification. Accordingly, we shall accept Wisconsin's amendment for filing, set the amendment for hearing,[23] and suspend the amendment as ordered below.

In West Texas Utilities Company,[24] we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Although we recognize that there are questions that must be resolved in the hearing which we shall order in this docket, Wisconsin's filing, as noted above, generally comports with the criteria outlined in Kentucky Utilities I. Therefore, we will impose only a nominal suspension.

Waiver of Notice

On March 29, 1991, Wisconsin entered into the buyout agreement with Nerco and, on May 23, 1991, Wisconsin entered into the buyout agreement with Soo Line Railroad. On December 31, 1991, Wisconsin filed its original proposal to recover costs associated with these buyouts through its fuel adjustment clause, requesting an effective date of January 1, 1992. On January 24, 1992, Wisconsin filed a revised buyout recovery plan resulting from its renegotiation of its buyout agreement with Nerco which, Wisconsin maintains, results in additional savings to customers. Wisconsin maintains that the Commission should grant waiver of the 60-day prior notice requirement so that the portion of its original submittal that was not amended by the January 24, 1992 filing can become effective January 1, 1992.

Wisconsin argues that, in Kentucky Utilities II, the Commission held that the public's receipt of advance notice of a proposed buyout justifies waiver of the 60-day prior notice requirement, and that under these circumstances the Commission will permit a fuel clause recovery plan to take effect as of the tender date.[25] Wisconsin states that its December 31, 1991 submittal gave such notice. Wisconsin also states that, in Kentucky Utilities II, the Commission found that the effective date should also provide the best match between the receipt of the buyout benefits and the payment of the buyout costs.[26] Wisconsin maintains that a January 1, 1992 effective date would provide the best match between costs and benefits.

Although in Kentucky Utilities II we granted, as an effective date, the date the submittal was filed, we did so because the specific facts of the case persuaded us that there had been adequate notice of the company's proposal.[27] In particular, in Kentucky Utilities II, Kentucky Utilities originally sought timely fuel clause treatment for buyout costs in an earlier proposal. In addressing that earlier proposal, the Commission established, for the first time, specific criteria for buyout cost recovery that Kentucky Utilities could not have then addressed. Accordingly, the Commission granted waiver back to the date of Kentucky Utilities' filing because adequate notice had been provided. Since that time, however, the Commission has consistently granted only a limited waiver of the notice requirements to permit an effective date as of the date of filing, and has denied waivers for earlier pre-filing periods.[28]

While no party specifically opposed waiver of the 60-day prior notice requirement in our previous cases, many did request rejection of the filing utility's entire proposal. The Commission granted waiver of the 60-day prior notice requirement in these cases, however, because it was concerned that buyout payments might begin less than 60 days after the buyout negotiations ended. In such circumstances, waiver of the 60-day prior notice requirement provides a better matching of costs to benefits. Moreover, if we were to insist on a 60-day notice in all circumstances, such a policy could encourage utilities to negotiate a delay in any buyout implementation and, thus, a delay in any fuel savings that result from the buyout.

In the instant case, Wisconsin was aware more than 60 days prior to the

[19] *Id.* at 62,292.

[20] *Id.*

[21] *Id.* at 62,293. See also Cities and Villages of Bangor versus FERC, 922 F.2d 861, 863–64 (D.C. Cir. 1991) (explaining the Commission's treatment of buyout costs in fuel clauses and its application of the Kentucky Utilities "ongoing benefits test").

[22] *See, e.g.*, Gulf Power Company, 55 FERC ¶ 61,352 at 62,042 (1991), appeal pending, Gulf Power Co. v. FERC, D.C. Cir. No. 91–1354.

[23] The hearing which we will institute in this proceeding is not necessarily limited to the issues discussed above (and to the issue of the prudence of Wisconsin's entry into and subsequent buyout of the Soo Line Railroad and Nerco contracts, discussed *infra* at page 13). As we recently explained in Cincinnati Gas and Electric Company, 59 FERC ¶ 61,072, slip op. at 4–5 (1992), "[w]hen the Commission sets for hearing the justness and reasonableness of proposed rates, it necessarily sets for hearing all issues that are relevant to [the presiding judge's] assessment of justness and reasonableness." Of course, the presiding judge does not have the discretion to consider issues (such as the prudence of Wisconsin's entire fuel procurement program, discussed *infra* at page 13) that the Commission explicitly has refused to set for hearing.

[24] 18 FERC ¶ 61,189 (1982).

[25] *See* 49 FERC at 61,029.

[26] *Id.*

[27] *See* 49 FERC at 61,029.

[28] *See, e.g.*, Northern States Power Company, 59 FERC ¶ 61,119, *reh'g denied*, 59 FERC ¶ 61,033 (1992); Gulf Power Company, 55 FERC ¶ 61,030 at 61,083, *reh'g denied*, 55 FERC ¶ 61,352 (1991), appeal pending, Gulf Power Co. v. FERC, D.C. Cir. No. 91–1354; Illinois Power Company, 51 FERC ¶ 61,209 at 61,587, *reh'g denied*, 52 FERC ¶ 61,162 (1990).

proposed January 1, 1992 effective date that buyout payments would commence January 1, 1992. We do not look favorably upon Wisconsin's unexplained delay in filing and the resulting urgency of its request for waiver of notice. Nevertheless, we shall grant Wisconsin's requested waiver of the 60-day prior notice requirement because Wisconsin has relied on our consistent precedent of granting waiver to permit an effective date as of the filing date.[29] In future fuel clause proceedings involving Wisconsin or any other utility, however, we will only grant waiver of the 60-day prior notice requirement if the utility demonstrates that there was insufficient time to provide 60-day's notice because the buyout negotiations were completed shortly before the date of the buyout.

Confidential Treatment of Portions of Wisconsin's Submittal

Wisconsin has requested, pursuant to section 388.112, confidential treatment of various aspects of its submittal, including coal and transportation contracts and replacement coal prices. Wisconsin states that it will make the confidential information available to customers when they agree not to disclose such information to third parties. Algoma objects to Wisconsin's request for confidentiality of various portions of its submittal. Algoma states that section 388.112 places the burden on Wisconsin to show that confidential treatment is necessary. Algoma contends that Wisconsin has made no such showing with respect to this matter.

We note that confidentiality issues frequently arise during litigation, and that the presiding administrative law judge routinely makes case-specific findings as to what information should be covered by a protective order. We therefore direct the presiding judge to determine what documents, if any, should be protected in this proceeding.

Other Issues

Algoma requests that any hearing ordered in this docket should include the issue of Wisconsin's imprudence with respect to its overall fuel procurement program rather than only with respect to the Soo Line Railroad and Nerco contracts. We order that the prudence of Wisconsin's entry into and its subsequent buyout of the Soo Line Railroad and Nerco contracts, for which Wisconsin requests fuel clause recovery herein, be set for investigation.[30] To the extent prior settlements resolve Wisconsin's prudence or refund issues related to the Nerco and Soo Line contracts, the presiding judge can limit those issues accordingly. With respect to the prudence of Wisconsin's entire fuel procurement program, we deny Algoma's request without prejudice to it filing a separate complaint.[31]

Algoma also requests that the Commission treat the buyout costs at issue here like abandoned plant costs and require shareholders to incur part of the costs associated with the buyout. The Commission, in Delmarva Power & Light Company *(Delmarva)*,[32] determined that buyout costs are distinguishable from abandonment costs because abandoned plants are facilities that were never used and useful. In contrast, the Commission noted, buyout costs reduce costs that would otherwise be paid by customers as a part of their fuel bill. We stated that while, as a matter of policy, we require shareholders and ratepayers to share abandoned plant costs, there is no reason that shareholders should share the costs of buyouts which immediately and directly benefit ratepayers. Accordingly, consistent with *Delmarva*, we deny Algoma's request to treat the buyout costs as abandoned plant costs.

The Commission orders:

(A) Algoma's request for rejection is hereby denied.

(B) Wisconsin's proposal to recover buyout costs is hereby accepted for filing and suspended for a nominal period to become effective January 1, 1992, subject to refund.

(C) Wisconsin's request for waiver of the 60-day prior notice requirement is hereby granted.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, chapter I), a public hearing shall be held concerning the justness and reasonableness of Wisconsin Public Service Corporation's proposed rates, as discussed in the body of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Wisconsin is hereby informed of the rate schedule designations shown on the attachment.

(G) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Secretary.

Attachment

WISCONSIN PUBLIC SERVICE CORPORATION, Docket No. EL92-12-000, RATE SCHEDULE DESIGNATIONS

Designations	Description
(1) Fourth revised sheet No. 11 under FERC Electric Tariff, original volume No. 2 (supersedes third revised sheet No., 11).	FAC amendment reflecting buyout costs of fuel supply contracts.
(2) Original sheet Nos. 11.1 through 11.3 under FERC Electric Tariff, original volume No. 2.	
(3) Second revised sheet No. 14 under FERC Electric Tariff, first revised volume No. 1 (supersedes first revised sheet No. 14).	
(4) Original Sheet Nos. 14.1 through 14.3 under FERC Electric Tariff, first revised volume No. 1.	
(5) First revised sheet No. 15 under FERC Electric Tariff, original volume No. 3 (supersedes original sheet No. 15).	
(6) Original sheet Nos. 15.1 through 15.3 under FERC Electric Tariff, original volume No. 3.	

[FR Doc. 92-13551 Filed 6-9-92; 8:45]

BILLING CODE 6717-01-M

[29] *See* cases cited *id.*

[30] We note that Algoma has filed, in Docket No. EL92-24-000, a complaint requesting that the Commission investigate the prudence of Wisconsin's entry into and the subsequent buyout of the Soo Line Railroad and Nerco contracts. Since the identical issue has been set for investigation in this docket, Algoma should consider withdrawing its complaint or explaining why the complaint is not moot considering our findings and order in this docket. For example, we see no relief that could be granted in Docket No. EL92-24-000 which could not be granted in this proceeding.

[31] *See Kentucky Utilities II*, 49 FERC at 61,029.

[32] 49 FERC ¶ 61,016 (1989).

[Docket Nos. TA92-1-49-000 and TM92-6-49-000]

Williston Basin Interstate Pipeline Company; Purchased Gas Cost Adjustment Filing

June 3, 1992.

Take notice that on June 1, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, tendered for filing its Annual Purchased Gas Cost Adjustment Filing (PGA) pursuant to 18 CFR 154.301, *et seq.* of the Commission's Regulations and sections 21, 30 and 35 of its FERC Gas Tariff (First Revised Volume No. 1 and Original Volume Nos. 1-A and 1-B, respectively).

The proposed effective date of the tariff sheets is August 1, 1992.

Williston Basin states that 2nd Rev 43rd Revised Sheet No. 10 (First Revised Volume No. 1) reflects a negative 32.273 cents per dkt Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1 and E-1 and a negative 6.372 cents per dkt Surcharge Adjustment applicable to rate Schedules G-1 and SGS-1. These changes result in an overall 42.345 cents per dkt decrease in the Cumulative Adjustment applicable to Rate Schedules G-1 and SGS-1, as compared to that contained in the Company's April 15, 1992 PGA filing in Docket No. TQ92-3-49-001, which became effective May 1, 1992.

Williston Basin also submitted for filing 2nd Rev 36th Revised Sheet No. 11, 2nd Rev 41st Revised Sheet No. 12 and 1st Rev 22nd Revised Sheet No. 97A (Original Volume No. 1-A), 2nd Rev 31st Revised Sheet Nos. 10 and 11 (Original Volume No. 1-B), 2nd Rev 43rd Revised Sheet No. 10 and 2nd Rev 37th Revised Sheet No. 11B (Original Volume No. 2) which reflect revisions to the fuel reimbursement charge, percentage and surcharge components of the Company's relevant gathering, transportation and storage rates as compared to that contained in the Company's April 15, 1992 filing in Docket No. TQ92-3-49-001 which was effective May 1, 1992.

Consistent with the Company's filing of two sets of tariff sheets (Primary and Alternate) in its Annual Take-or-Pay Reconciliation Filing submitted May 29, 1992 in Docket No. TM92-5-49-000, to be effective July 1, 1992, the instant filing also contains both Primary and Alternate tariff sheets. Williston Basin requests that the Commission accept the Alternate Tariff sheets only in the event that the Commission makes the Alternate tariff sheets contained in Docket No. RP92-163-000 effective prior to August 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are proceeding must file a motion to intervene. copies of the filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13567 Filed 6-9-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-26-NG]

Signal Fuels Trading Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanet authorization to import and export natural gas from and to Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Signal Fuels Trading Corporation blanket authorization to import up to 20 Bcf and to export up to 20 Bcf of natural gas from and to Canada and Mexico over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 3, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-13641 Filed 6-9-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-46-NG]

Texas-Ohio Gas, Inc.; Application for Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 3, 1992, as revised on April 21, 1992, of an application filed by Texas-Ohio Gas, Inc. (TOG) requesting blanket authorization to import up to 30 Bcf and export up to 30 Bcf of natural gas, including liquefied natural gas (LNG), from and to Canada, Mexico, and other countries over a two-year term beginning on the date of first import or export. The proposed imports and exports would take place at any point on the United States' international border where existing facilities are located. TOG would provide DOE with quarterly reports detailing any import or export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 10, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4587

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: TOG is a Texas corporation with its principal place of business in Houston, Texas. TOG is a privately held integrated energy company involved in gathering, transportation and marketing natural gas. TOG currently purchases natural gas from virtually all of the major supply regions in the United States and markets

that gas throughout the United States. TOG is primarily interested in the importation of Canadian gas to the United States and the exportation of United States gas to Canada and Mexico. While the bulk of its imports would come from Canada, TOG is also interested in securing authorization to import natural gas from countries other than Canada.

TOG requests authorization to import and export natural gas and LNG on its own behalf or acting as an agent on the behalf of others. TOG would use existing facilities for transportation of the imported and exported gas. TOG would import the natural gas and LNG for sales to pipelines, local distribution companies, and commercial and industrial end-users in the United States. TOG does not know the identity of the actual suppliers or transporters but anticipates that it would depend on various producers as sources of supply to be imported. TOG states that all shipments of imported gas would be based on the specific needs of its customers and would reflect market conditions existing at the time of negotiation of the purchase agreement. TOG further states that the purchase price of the imported gas would be determined by competitive factors in the gas market through arm's length negotiations between TOG and its suppliers. The domestically produced gas to be exported would come from fields in various producing states and would be incremental to the needs of any current domestic purchasers.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the application should comment in their responses on these issues. TOG asserts that its proposal is in the public interest and that there is no current need for the domestic gas to be exported under the proposed agreement. Parties opposing TOG's application bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TOG's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 3, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–13642 Filed 6–9–92; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Boulder Canyon Project; Proposed Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed Boulder Canyon Project Power Rate Adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing a rate adjustment (Proposed Rate) for the sale of energy and capacity for the Boulder Canyon Project (BCP). The BCP's Hoover Dam is the highest and third largest concrete dam in the United States. The dam, powerplant, and high-voltage switchyards are located in the Black Canyon of the Colorado River, on the Arizona-Nevada State line, approximately 36 miles from Las Vegas, Nevada. Lake Mead, the reservoir formed behind Hoover Dam, is capable of holding a 2-year average flow of the river. The reservoir provides for flood control, improvement of navigation, and river regulation. Waters impounded in Lake Mead are released, when needed, for use by downstream water users. Hoover Dam provides for the delivery of stored water for irrigation and other beneficial consumptive uses, as well as the generation of electrical energy.

The Power Repayment Spreadsheet Study (PRSS), based on the 5-year Cost Evaluation Period, and other analysis, indicates that the Proposed Rates for energy and capacity are necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required

investment within the allowable time period, plus repayment of the funds advanced (plus all suspended payments and interest). The PRSS is modeled after the Hoover Power Rates Methodology Review Standing Committee proposal, dated February 13, 1992. The rate impact is detailed in a rate brochure which will be distributed to all interested parties. The Proposed Rates for energy and capacity are expected to be placed in effect on October 1, 1992.

The Proposed Rates are based on a composite rate of 13.80 mills per kilowatthour (mills per kWh). This composite rate consists of an energy rate of 6.90 mills per kWh and a capacity rate of $1.22 per kilowatt-month (kW-mo).

The existing composite rate for BCP power is 10.21 mills per kWh, comprised of an energy rate of 5.11 mills per kWh and capacity rate of $1.05 per kW-mo.

The Deputy Secretary, U.S. Department of Energy (DOE), approved the existing rate schedule on an interim basis, effective on July 1, 1991, with such rate schedule to continue on an interim basis pending the Federal Energy Regulatory Commission (FERC) approval on a final basis or unitl replaced by a new rate schedule.

The following table compares the existing BCP power rates with the Proposed Rates:

Type of rate	Existing rates July 1, 1991	Proposed rates October 1, 1992	Percent change
Composite	10.21 mills per kWh.	13.80 mills per kWh.	35.16
Energy	5.11 mills per kWh.	6.90 mills per kWh.	35.03
Capacity	$1.05 per kW-mo.	$1.22 perk kW-mo.	16.19

In addition, Western will continue a charge of 2.5 mills for every kWh of energy generated from the BCP and sold to customers in California and Nevada, and 4.5 mills for every kWh of energy generated from the BCP and sold to customers in Arizona for augmentation of the Lower Colorado River Basin Development Fund.

Since the Proposed Rates constitute a major rate adjustment as defined by the current procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the Proposed Rates for approval on an interim basis by the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of DOE.

The new ratesetting methodology will be submitted to the FERC for a 5-year approval without further FERC review for annual adjustments during that 5-year period.

The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end on July 31, 1992. The decision to shorten the comment period to less than 90 days was made due to the fact that the new methodology was proposed, reviewed and agreed to by the Contractors, with concurrence by Western and the Bureau of Reclamation. Since all parties are in agreement as to the new methodology, we expect the focus will be on the data which is entered into the spreadsheet. Since BCP Contractors are represented on the Engineering and Operating Committee, they have had ample opportunity to review the majority of input data to the spreadsheet. Therefore, the shortened comment and review period should be adequate. A public information forum, at which Western will outline the methodology used in developing the Proposed Rates, will be held at 1:30 p.m. on July 7, 1992, at the Omni Adams Hotel, 111 North Central Avenue, Phoenix, Arizona. A public comment forum at which Western will receive oral and written comments will be held at 1:30 p.m. on July 16, 1992, at the Omni Adams Hotel, 111 North Central Avenue, Phoenix, Arizona.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

ADDRESSES: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2453.

A copy of the written comments should also be sent to the address below: Ms. Marilyn Eiler, Assistant Area Manager for Power Marketing, Phoenix Area Office, Wester Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2650.

SUPPLEMENTARY INFORMATION: Power rates for the BCP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501, *et seq.*), the Colorado River Storage Project Act of 1965 (43 U.S.C. 620, *et seq.*), the Boulder Canyon Project Act of 1928 (43 U.S.C. 617, *et seq.*), the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618, *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619, *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986, and the General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, Final Rule (General Regulations) (10 CFR Part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986.

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Assistant Secretary of DOE delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary of DOE; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC.

The procedures for public participation in rate adjustments for power and transmission serviced marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the Proposed Rates are and will be made available for inspection and copying at the Phoenix Area Office, located at 615 South 43rd Avenue, Phoenix, Arizona.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et. seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the BCP Proposed Rate adjustments are related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the Act. Since the BCP power rate is of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291 (46 FR 13193), published February 19, 1981. In addition, Western has an exemption from sections 3, 4, and 7 of said Executive Order 12291 and, therefore, will not prepare a regulatory impact statement.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666), dated March 31, 1983. Ample opportunity was provided in the proposed rule for the interested public to participate with the Power Marketing Administration in the development of rates. Nevertheless, participation is at their sole discretion. There is no requirement that members of the public participating in the development of the BCP power rate supply information about themselves to the Government. As a result, the BCP power rate is exempt from the Paperwork Reduction Act.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, Council of Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and DOE guidelines published at 57 FR 15122 on April 24, 1992, Western conducts an environmental evaluation of the BCP power rate adjustment and develops the appropriate level of environmental documentation prior to the implementation of any rate adjustment.

Issued at Golden, Colorado, May 22, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92–13643 Filed 6–9–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100111; FRL–4066–7]

Science Applications International Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corporation (SAIC) has been awarded a contract to perform work for the EPA Office of Water, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), to enable SAIC to fulfill the obligations of the contract.

DATES: SAIC will be given access to this information no sooner than June 15, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–C0–0035, SAIC will provide technical support to EPA's Office of Water in the development of effluent guidelines under the Clean Water Act for the pesticides formulators, packagers, or repackagers (PFP) industry. SAIC will also provide statistical analysis support and review of environmental fate, effects, and groundwater data in support of the assessment of risk from pesticide in the environment for registration, reregistration, or special review.

The Office of Water and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain analyses to be made under this contract. These analyses may be used in subsequent regulatory decisions under FIFRA and the Clean Water Act.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with SAIC, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Water. All information supplied to by EPA for use in connection with this contract will be returned to EPA when SAIC has completed its work.

Dated: May 26, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–13494 Filed 6–9–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100108; FRL–4063–1]

Dynamac Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Dynamac Corporation has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Dynamac Corporation consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2), and will enable Dynamac Corporation to fulfill the obligations of the contract.

DATES: Dynamac Corporation will be given access to this information no sooner than June 15, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program

Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7460.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–D2–0053, Dynamac Corporation will assist the Health Effects Division to review registration data summaries to identify data gaps and adverse effects, and will assist in the comprehensive examination of product chemistry and residue chemistry data. These evaluations may be used in subsequent regulatory decisions under FIFRA. This contract involves no subcontractor.

OPP has determined that access by Dynamac Corporation to information on all pesticide chemicals is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Dynamac Corporation prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Dynamac Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in OPP. All information supplied to Dynamac Corporation by EPA for use in connection with this contract will be returned to EPA when Dynamac Corporation has completed its work.

Dated: May 21, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–13493 Filed 6–9–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100112; FRL–4066–9]

Computer Sciences Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Sciences Corporation (CSC) has been awarded a contract to perform work for the EPA Office of Compliance Monitoring (OCM), and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to CSC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2), and will enable CSC to fulfill the obligations of the contract.

DATES: CSC will be given access to this information no sooner than June 15, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7460.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–W0–0043, Work Order Number 316, CSC will provide OCM with data entry, data management, data analysis/verification, and data base user support for the Section Seven Tracking System (SSTS), the FIFRA/TSCA Tracking System (FTTS), and the National Compliance Data Base (NCDB). This contract involves no subcontractor.

OCM and the Office of Pesticide Programs have determined that access by CSC to information on all pesticide chemicals is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with CSC prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, CSC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Delivery Order Project Officer for this contract in OCM. All information supplied to CSC by EPA for use in connection with this contract will be returned to EPA when CSC has completed its work.

Dated: May 26, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–13492 Filed 6–9–92; 8:45 am]

BILLING CODE 6560–50–F

[PF–564; FRL–4066–2]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. It also announces two amended petitions and a corrected petition.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential

may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM-13).	Rm. 202, CM #2, 703-557-2400.	1921 Jefferson Davis Hwy., Arlington, VA.
Phil Hutton (PM-18).	Rm. 213, CM #2, 703-305-7690.	Do.
Dennis Edwards (PM-19).	Rm. 207, CM #2, 703-305-5386.	Do.
Susan Lewis (PM-21).	Rm. 227, CM #2, 703-305-6900.	Do.
Cynthia Giles-Parker (PM-22).	Rm. 229, CM #2, 703-305-5540.	Do.
Joanne Miller (PM-23).	Rm. 237, CM #2, 703-305-7830.	Do.
Robert Taylor (PM-25).	Rm. 241, CM #2, 703-305-6800.	Do.
Hoyt Jamerson (PM-43).	Rm. 716C, CM #2, 703-305-5310.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the establishment and/or amendment of regulations for regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 2F4072.* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR 180.408 by establishing a regulation to permit combined residues of the fungicide metalaxyl (N-(2,6-dimethylphenyl)-N-(methoxyacetyl)aniline methyl ester) and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-methoxyacetyl) aniline methyl ester, each expressed as metalaxyl equivalents in or on brassica (cole) leafy vegetable crop grouping at 5.0 parts per million (ppm). (PM-21)

2. *PP 2F4075.* BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on rice grain at 0.1 ppm and rice straw at 0.5 ppm. (PM-25)

3. *PP 2F4078.* EcoScience Corp., 85 North Whitney St., P.O. Box 300, Amherst, MA 01004, proposes to amend 40 CFR part 180 by establishing a regulation for permanent exemption from the requirement of a tolerance for *Metarhizium anisopliae* in or on all raw agricultural commodities. (PM-18)

4. *PP 2F4077.* FMC Corp., Agricultural Chemicals Group, 1735 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of 2-(2-chlorophenyl) ethyl-4,4-dimethyl-3-isoxazolidinone in or on cottonseed at 0.05 ppm. (PM-25)

5. *PP 2F4079.* FMC Corp., Agricultural Chemicals Group, 1735 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of (±)*cis,trans*-3-(2,2-dichloro-ethenyl)-2,2-dimethylcyclopropane carboxylate cypermethrin and its metabolites dichlorovinyl acid (DCVA) and *m*-phenoxybenzoic acid (MPB Acid) in or on sorghum grain at 3.0 ppm, sorghum fodder/forage at 12.0 ppm, sorghum, green and chopped/silage at 6.0 ppm, and sorghum hay at 31.0 ppm. (PM-13)

6. *PP 2F4081.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR 180.364 by establishing a regulation to permit residues of glyphosate (N-(phosphonomethyl) glycine) and its metabolite aminomethylphosphonic acid resulting from the application of the isopropylamine salt of glyphosate and/ or the monoammonium salt of glyphosate in or on almond hulls at 25 ppm and tree nut crops at 1.0 ppm. (PM-25)

7. *PP 2F4082.* McLaughlin Gormley King Co., 8810 Tenth Ave. North, Minneapolis, MN 55427-4372, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of insecticide (S)-cyano(3-phenoxyphenyl)methyl-(S)-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on cocoa at 1.0 ppm. (PM-13)

8. *PP 2F4086.* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the fungicide propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole)], and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on oat grain at 0.1 ppm, and oat straw at 1.0 ppm. (PM-21)

9. *PP 2F4089.* Espro, Inc., 1015 15th St., NW., Suite 500, Washington, DC 20005, proposes to amend 40 CFR part 180, by establishing a regulation exempting acal from the requirement of a tolerance. (PM-18)

10. *PP 2F4090.* Espro, Inc., 1015 15th St., NW., Suite 500, Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to exempt cydx from requirement of a tolerance. (PM-18)

11. *PP 2F4091.* E. I. du Pont de Nemours Co., Inc., Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the insecticide methomyl (S-methyl N-[methylcarbamoyl] thioacetimidate in or on sugarbeet tops at 1.0 ppm. (PM-19)

12. *PP 2F4097.* Jellinek, Schwartz, Connolly, Freshman, Inc., 1015 15th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to permit the residues of pentachloronitrobenzene (PCNB) in or on potatoes at 2.0 ppm. (PM-21)

13. *PP 2F4098.* Versar, Inc., RiskFocus Division, 6850 Versar Center, Springfield, VA 22151, proposes to amend 40 CFR part 180, by establishing a regulation to permit residues of microbial pesticide Dr. Biosedge (Puccinia canaliculata) in or on food crops. (PM-21)

14. *PP 2F4100.* ICI Americas, Inc., Agricultural Products, Concord Pike & New Murphy Rd., Wilmington, DE 19897, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of lambdacyhalothrin [1-alpha(S),3-alpha(Z)]-(±)-cyano-(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate] in or on both dry bulb onions and garlic at 0.1 ppm. (PM-13)

15. *PP 2F4103.* FMC Corp., Agricultural Chemicals Group, 1735 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of (±)-a-cyano-(3-phenoxyphenyl)l (±)*cis,trans*-3-(2,2-dichloro-ethenyl)-2,2-dimethylcyclopropane carboxylate (cypermethrin) and its metabolites dichlorovinyl acid (DCVA) and *m*-phenoxybenzoic acid (MPB Acid) in or on tomato fruit at 0.5 ppm. (PM-13)

16. *PP 2F4104.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR 180.417 by increasing the existing tolerance in milk from 0.01 ppm to 0.05 ppm, and establishing a tolerance for residues of triclopyr (3,5,6-trichloro-2-pyridinyloxyacetic acid) in or on apples at 0.05 ppm. (PM-25)

17. *PP 2F4105.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR 180.408 by establishing a regulation to permit residues of the fungicide metalaxyl [N-(2,6-dimethylphenyl)-N-(methoxyacetyl)analine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl)anilina methyl ester, each expressed as metalaxyl equivalents in or on nongrass animal feed forage at 6.0 ppm, non-grass animal feed hay at 20.0 ppm. (PM-21)

18. *PP 2F4106.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR part 180 by establishing a regulation to permit combined residues of the soil microbiocide nitrapyrin [2-chloro-6-(trichloromethyl)pyridine and its metabolite, 6-trichloropicolinic acid in or on wheat forage at 2 ppm, wheat grain at 0.5 ppm, and wheat straw at 6 ppm. (PM-23)

19. *PP 2F4107.* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of difenoconazole 1-(2-[4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole in or on wheat forage at 0.1 ppm, wheat straw at 0.1 ppm, barley forage at 0.1 ppm, and barley straw at 0.1 ppm. (PM-21)

20. *PP 2F4109.* ICI Agricultural Products, Wilmington, DE 19897, proposes to amend 40 CFR 180.378 by establishing a regulation to permit residues of [1alpha(S),3alpha(Z)-(±cyano-(3-phenoxyphenyl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on corn fodder at 3.0 ppm, corn grain field, pop and seed at 0.05 ppm, corn grain dust at 0.1 ppm, and corn silage at 1.0 ppm. (PM-13)

21. *PP 2F4110.* Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR 180.287 by establishing a regulation to permit the residues of the insecticide amitraz (N'-[2,4-dimethylphenyl]-N-[[(2,4-dimethylphenyl)imino] methyl]]-N-methylmethanimidamide) and its metabolites N-(2,4-dimethylphenyl)-N-methyl formamide and N-(2,4-dimethylphenyl)-N-methylmethanimidamide (both calculated as the parent) in or on liver at 0.4 ppm, fat at 0.2 ppm, and meat-by-products at 0.6 ppm of cattle, goats, hogs, horses, and sheep. (PM-19)

22. *PP 2F4114.* ICI Americas, Inc., Agricultural Products, Wilmington, DE 19897, proposes to amend 40 CFR 180.438 by establishing a regulation to permit residues of lambda-cyhalothrin [1 alpha(S), 3 alpha(Z)]-(+)-cyano(3-phenoxyphenyl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on peanut hulls at 0.05 ppm and peanut nutmeats at 0.05 ppm. (PM-13)

23. *FAP 2H5618.* Nor-Am Chemical Co., P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of insecticide miticide amitraz (N'-[2,4-dimethylphenyl]-N-[[2,4-dimethylphenyl)imino]methyl]-N-methyl-methanimidamide) and its metabolites N-(2,4-dimethylphenyl)-N-methyl formamide and N-(2,4-dimethylphenyl)-N-methylmethanimidamide (both calculated as parent compound) in or on imported dried hops at 75 ppm. (PM-19)

24. *FAP 2H5619.* Sandoz Crop Protection Corp., 1300 East Touhy Ave., Des Plains, IL 60018, proposes to amend 40 CFR part 186 by establishing a feed additive for fluvalinate import tolerance in or on apple pomace, dry, at 2.0 ppm and hops, dried, at 15.0 ppm. (PM-13)

25. *FAP 2H5621.* BASF Corp., Agricultural Products Group, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of (ethoxyimino)butyl-5-(2-ethylthio)prop in or on canola rape soapstock at 160.0 ppm and canola meal at 40.0 ppm. (PM-25)

26. *FAP 2H5625.* E.I. du Pont de Nemours & Co., Wilmington, DE 19880-0038, proposes to amend 40 CFR part 186 by establishing a feed additive petition for residues of the fungicide benomyl, methyl 1-butylcarbamoyl-2-benzimidazolecarbamate, in or on raisin waste at 50.0 ppm. (PM-21)

27. *FAP 2H5626.* EcoScience Corp., 85 North Whitney St., P.O. Box 300, Amherst, MA 01004, proposes to amend 40 CFR parts 185 and 186 by exempting from the requirement of a tolerance in or on processed food and animal feed *Metarhizium anisopliae* used for roach control. (PM-18)

28. *FAP 2H5627.* FMC Corp., Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 10103, proposes to amend 40 CFR part 185 by establishing a food additive petition for cypermethrin (±)-a-cyano-(3-phenoxyphenyl)methyl (±)*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate (cypermethrin) and its metabolites dichlorovinyl acid (DCVA) and *m*-phenoxybenzoic acid (MPB Acid) in or on sorghum flour at 1.5 ppm. (PM-13)

29. *FAP 2H5628.* Miles Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 185 by establishing a food additive petition for tebuconazole (*a*-[2-(4-chlorophenyl) ethyl]-*a*-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) in or on peanut oil at 0.5 ppm and peanut soapstock at 0.5 ppm. (PM-21)

30. *FAP 2H5629.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 185 by establishing a feed additive petition to permit residues of the herbicide alachlor (2-chloro-2',6'-diethyl-N-(methoxymethyl) acetamide) and its metabolites (calculated as alachlor) in or on soybean grain dust at 2.0 ppm and soybean grain hulls at 1.0 ppm. (PM-25)

31. *FAP 2H5630.* BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR part 186 by establishing a feed additive petition to permit combined residues of Poast herbicide, 2-[1-ethoxyimino)butyl]-5-[2-(ethylthio) propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one, in or on rice hulls at 0.2 ppm and rice bran at 0.2 ppm. (PM-25)

32. *FAP 2H5631.* FMC Corp., Agricultural Chemicals Group, 1735 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR part 185 by establishing a food additive petition to permit the residues of cypermethrin (±)-a-cyano-(3-phenoxyphenyl)methyl(±)*cis,trans*-3-(2,2-dichloro-ethenyl)-2,2-dimethylcyclopropane carboxylate (cypermethrin) and its metabolites dichlorovinyl acid (DCVA) and *m*-phenoxybenzoic acid (MPB Acid) in or on tomato juice at 0.1 ppm, tomato puree at 0.1 ppm, tomato catsup at 0.2 ppm, tomato wet pomace at 1.0 ppm, and tomato dry pomace at 11.0 ppm. (PM-25)

33. *FAP 2H5633.* IR-4, Cook College, P.O. Box 231, Rutgers, State University of New Jersey, New Brunswick, NJ 08903-0231, proposes to amend 40 CFR part 185 by establishing a regulation to permit the residues of insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-

dimethylcyclopropanecarboxylate) in or on dried hops at 4.0 ppm. (PM-43)

34. *FAP 2H5634.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR part 185 by establishing a food additive petition to permit combined residues of the soil microbiocide nitrapyrin [2-chloro-6-(trichloromethyl)pyridine] and its metabolite, 6-chloropicolinic acid, in or on wheat bran at 2 ppm and wheat shorts at 1 ppm. (PM-23)

35. *FAP 2H5635.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR 185.3500 by establishing a food additive petition to permit combined residues of glyphosate (N-phosphonomethyl)glycine) and its metabolites aminomethylphosphonic acid resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of the glyphosate in or on wheat milling fractions (excluding flour) at 12 ppm. (PM-25)

36. *FAP 2H5636.* Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit the residues of Bayleton, 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-2,4-triazol-1-yl)-2-butanone, in or on pineapple bran at 5.0 ppm. (PM-22)

37. *FAP 2H5638.* American Cyanamid Co., P.O. Box 0400, Princeton, NJ 08543-0400, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the herbicide difenzoquat, (1,2-dimethyl-3,5-diphenyl-1H-pyrazolium ion), derived from application of the methyl sulfate salt and the cation, in or on barley milled fractions (except flour), and wheat milled fractions (except flour) at 1.0 ppm. (PM-23)

38. *FAP 2H5639.* Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94594-8025, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of fenpropathrin, alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate, in or on cotton seed oil at 3 ppm, raisins at 15 ppm, orange oil at 160 ppm, cottonseed soapstock at 2 ppm, raisin waste at 45 ppm, and grape pomace, wet and dry at 35 ppm, orange pulp, dry at 8 ppm. (PM-13)

39. *FAP 2H5640.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive petition to permit combined residues of cyromazine (N-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its principal metabolite melamine (1,3,5-triazine-2,4,6-triamine) calculated as cyromazine in or on processed tomato products at 1.2 ppm and dry tomato pomace at 1.6 ppm. (PM-18)

Amended Petitions

40. *FAP 2H5623.* BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR part 185 by establishing a regulation to permit combined residues of vinclozolin, 3-(3,5-dichloro-phenyl)-5-ethenyl-5-methyl-2,4 oxazolidinedione, and its metabolites containing the 3,5-dichloroaniline moiety in or on potato dry peel at 3.0 ppm. Notice of this petition originally published in the **Federal Register** of March 11, 1992 (57 FR 8658), and proposed establishing tolerances for potato dry peel at 3.0 ppm and potato granules, flakes, and chips at 0.2 ppm. (PM-21)

41. *FAP 2H5624.* Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR part 185 by establishing a food additive tolerance for phenmedipham [3-methoxycarbonylaminophenyl-3'-methylcarbanilate] in or on sugar beet pulp, dehydrated at 0.5 ppm, and sugar beet molasses at 0.2 ppm. Notice of this petition originally published in the **Federal Register** of March 11, 1992 (57 FR 8659), and proposed amending 40 CFR 186.278 to establish a feed additive tolerance for phenmedipham in or on sugar beet pulp, dehydrated at 0.5 ppm, and sugar beet molasses at 0.2 ppm. (PM-25)

Corrected Petition

42. *PP 2F4039.* In the **Federal Register** of March 11, 1992 (57 FR 8658), EPA issued incorrectly an initial filing of PP 2F4039. It is corrected to read as follows: PP 2F4039. Scentry, Inc., 610 Central Ave., Billings, MT 59102, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance the insect pheromone containing the active ingredients [E/Z]-4-tridecen-1-yl acetates in or on all raw agricultural commodities. (PM-18)

Authority: 7 U.S.C. 136a.

Dated: May 19, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-13621 Filed 6-9-92; 8:45 am]

BILLING CODE 6560-50-F

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 17]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, Eximbank has submitted a proposed collection of information to the Office of Management and Budget for review.

PURPOSE: The proposed form is to be used by commercial banks and other lenders in applying for guarantees on working capital loans advanced by the lenders to U.S. exporters.

SUMMARY: The following summarizes the information collection proposal submitted to OMB.

(1) *Type of request:* revised.

(2) *Number of forms submitted:* one.

(3) *Form Number:* EIB 84-1 (Rev.).

(4) *Title of information collection:* EIB 84-1 (Rev.), Application for Working Capital Loan Guarantee.

(5) *Frequency of use:* Upon application for guarantees on working capital loans advanced by the lenders to U.S. exporters.

(6) *Respondents:* Commercial banks and other lenders throughout the United States.

(7) *Estimated total number of annual responses:* 200.

(8) *Estimated total number of hours needed to fill out the form:* 400.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed application may be obtained from Helene H. Wall, Agency Clearance Officer, (202) 566-8111. Comments and questions should be directed to Lin Liu, Office of Management and Budget, Information and Regulatory Affairs, room 3235, New Executive Office Building, Washington, DC 20503, (202) 395-7340. All comments should be submitted within two weeks of this notice; if you intend to submit comments but are unable to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: May 21, 1992.

Helene H. Wall,

Agency Clearance Officer.

[FR Doc. 92-13542 Filed 6-9-92; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of the Communication Disorders Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Communication Disorders Review Committee on June 18–19, 1992. The Committee will meet at the Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814. Notice of the meeting room will be posted in the hotel lobby.

The Committee meeting will be open to the public on June 18 from 8 a.m. until 8:30 a.m. to discuss administrative details relating to Committee business. Attendance by the public will be limited to space available.

The meeting of the Committee will be closed to the public on June 18 from 8:30 a.m. until recess and on June 19 from 8 a.m. until adjournment at approximately 2 p.m. in accordance with provision set forth in secs. 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Committee meeting may be obtained from Dr. Marilyn Semmes, Scientific Review Administrator, National Institute on Deafness and Other Communication Disorders, Room 400B Executive Plaza South, Bethesda, Maryland 20892, 301–496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: June 1, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–13657 Filed 6–9–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the Biological and Clinical Aging Review Subcommittee A meeting.

This meeting will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Gateway Building, Room 2C218, National Institutes of Health, Bethesda, Maryland 20892 (301-496–9322), will provide summaries of the meeting and a roster of the committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated below:

Name of Committee: Biological and Clinical Aging Review Subcommittee A.

Executive Secretary: Dr. Daniel Eskinazi, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Date of Meeting: June 12, 1992.

Place of Meeting: Holiday Inn, 8120 Wisconsin Ave., Bethesda, Maryland 20814.

Open: June 12—8:30 a.m. to 8:45 a.m.

Closed: June 12—8:45 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: May 28, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–13658 Filed 6–9–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of C. I. Pigment Red 3

The HHS' National Toxicology Program (NTP) announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of C. I. Pigment Red 3, used for coloring paints, inks, plastics, rubber, and in textile painting.

Two-year toxicology and carcinogenesis studies were conducted by feeding groups of 60 rats of each sex diets containing 0, 6,000, 12,500 or 25,000 ppm C. I. Pigment Red 3. Groups of 60 mice of each sex were fed diets containing 0, 12,500, 25,000 or 50,000 ppm C. I. Pigment Red 3. The appropriate feed was supplied weekly and available ad libitum for 103 weeks.

Under the conditions of these 2-year feed studies, there was some evidence of carcinogenic activity* of C. I. Pigment Red 3 in male F344/N rats as exhibited by increased incidences of benign pheochromocytomas of the adrenal gland. The marginal increase in the incidences of squamous cell papillomas of the skin and Zymbal's gland carcinomas may have been related to C. I. Pigment Red 3 administration. There was some evidence of carcinogenic activity of C. I. Pigment Red 3 in female F344/N rats as indicated by the increased incidence of hepatocellular adenomas. There was some evidence of carcinogenic activity of C. I. Pigment Red 3 in male B6C3F1 mice as exhibited by the increased incidences of tubule adenomas of the renal cortex and follicular cell adenomas of the thyroid gland. There was no evidence of carcinogenic activity of C. I. Pigment Red 3 in female B6C3F1 mice that received 12,500, 25,000 or 50,000 ppm.

The incidences of mononuclear cell leukemia and preputial gland tumors in male rats and mononuclear cell leukemia, mammary gland fibroadenoma, and clitoral gland tumors in female rats were lower in the exposed groups. The incidences of liver foci were markedly increased in exposed male and female rats. The severity of chronic nephropathy was increased in male rats and to a lesser extent in female rats given C. I. Pigment Red 3. An increase in the severity of nephropathy was observed in male and female mice; cytomegaly (karyomegaly) of renal tubule epithelium was observed in male mice. Thyroid follicular cell hyperplasia occurred with an increased incidence in male and female mice receiving C. I. Pigment Red 3.

The Study Scientist for this bioassay is Dr. Kamal Abdo. Questions or comments about the contents of this Technical Report should be addressed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–7819.

Copies of Toxicology and Carcinogenesis Studies of C. I. Pigment Red 3 (CAS No. 2425–85–6) in F344/N Rats and B6C3F1 Mice (Feed Studies)

(TR 407) are available from NTP Central Data Management, NIEHS, P.O. Box 12233, MD A0–01, Research Triangle Park, NC 27709; telephone (919) 541–3419 or (919) 541–0941.

Dated: June 4, 1992.

Kenneth Olden,

Director, National Toxicology Program.

The NTP uses five categories of evidence of carcinogenic activity to summarize the evidence observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

[FR Doc. 92–13572 Filed 6–9–92; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Acquired Immune Deficiency Syndrome (AIDS), to be held on June 24, 1992. The meeting will take place at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 2 p.m. to 4 p.m. Attendance by the public will be limited to space available. Discussions will address issues related to scientific performance and conduct of the laboratory of Tumor Cell Biology in the discovery of HIV–1. Questions may be submitted in advance of the meeting by writing to the Acting Executive Secretary by June 17. These, as well as written questions submitted from the floor, may be accepted at the discretion of the Subcommittee Chairman.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, 9000 Rockville Pike, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and a roster of the Subcommittee members upon request.

Mrs. Barbara S. Bynum, Acting Executive Secretary, AIDS Subcommittee, National Cancer Advisory Board, Building 31, room 10A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5147), will furnish substantive program information.

Dated: June 3, 1992.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 92–13571 Filed 6–9–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–15; AA–8447–B, AA–8447–A2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to the Eyak Corporation for 2,337.30 acres. The lands involved are in the vicinity of Eyak, Alaska.

Copper River Meridian, Alaska

T. 15 S., R. 1 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 10, 1992 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 92–13574 Filed 6–9–92; 8:45 am]

BILLING CODE 4310–JA–M

[UT–040–02–4212–14; UTU–67778]

Beaver River Resource Area, Cedar City District; Notice of Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise the public that an environmental assessment and proposed planning amendment for the Cedar, Beaver, Garfield, Antimony Resource Management Plan (CBGA RMP), Beaver River Resource Area, Cedar City District, has been completed. The proposed decision provides for the sale of the 10-acre tract described below to Frank and Freida H. Harris of Beaver, Utah.

Salt Lake Meridian

T. 29 S., R. 7 W., sec. 5, SE¼SE¼SE¼.

DATES: The protest period for this plan amendment and decision will commence with the date of publication of this notice. Protests must be submitted on or before July 10, 1992.

ADDRESSES: Protests should be addressed to the Director of the Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Beaver River Resource Area Office, 365 South Main, Cedar City, Utah 84720, telephone (801) 586–2458.

SUPPLEMENTARY INFORMATION: This plan amendment is necessary since the existing plan does not identify this land for disposal. However, the environmental assessment identifies no significant impacts. Resource values, public values and objectives involved, and the public interest would be served by providing these lands to Frank and Fredia H. Harris.

This action is announced pursuant to section 203 of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The proposed planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5–2.

James M. Parker,

State Director.

[FR Doc. 92–13606 Filed 6–9–92; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ-010-92-4410-08]

Resource Management Plans; Shivwits and Vermillion Resource Areas, AZ

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Administrative determination.

SUMMARY: The Arizona Strip District has determined that the Resource Management Plan recently completed for the District will be divided into two plans for implementation purposes. One plan will be for the Shivwits Resource Area and the other will be for the Vermillion Resource Area.

SUPPLEMENTARY INFORMATION: Through this action, each Resource Area will be able to implement their own decisions, set their own priorities and on their own time schedule rather than on the District's. The Environmental Impact Statement developed in conjunction with the Resource Management Plan adequately addresses this plan separation. It has been determined that no further consideration is required regarding National Environmental Policy Act compliance.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 92-13590 Filed 6-9-92; 8:45 am]

BILLING CODE 4410-08-M

[ID-942-02-4730-12]

Idaho: Filing of Plats of Survey; Idaho

The plat, in two sheets, of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, Effective 9 a.m., June 2, 1992.

The plat, in two sheets, representing the dependent resurvey of a portion of the east boundary, T. 5 S., R. 5 W., portions of the north boundary, subdivisional lines, and boundaries of certain mineral surveys, the subdivision of certain sections, and a metes-and-bounds survey in sections, 5, 6, 7, 8, and 9, T. 5 S., R. 4 W., Boise Meridian, Idaho, Group No. 817, was accepted, June 2, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 2, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92-13583 Filed 6-9-92; 8:45 am]

BILLING CODE 4310-66-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018-0009), Washington, DC 20503, telephone 202-395-7340.

Title: Woodcock Wing Collection Envelope.

OMB Approval Number: 1018-0009.

Abstract: The woodcock wing collection provides data on annual recruitment to woodcock populations, distribution and chronology of the woodcock harvest, and hunter success. Survey cooperators provide data on their harvests and hunting activities, and from each bird taken, they submit one wing for certain biological determinations. Such data is used by the Service to develop annual hunting regulations for woodcock, i.e., to determine to what extent they may be hunted. The information is also essential to programs designed to conserve the migratory bird resource.

Service Form Number: 3-156a.

Frequency: On Occasion.

Description of Respondents: Individuals and households, Federal, State and Provincial personnel.

Estimated Completion Time: .067 hours per response.

Annual Responses: 10,000 (2,000 respondents average 5 responses per year).

Annual Burden Hours: 670.

Service Clearance Officer: James E. Pinkerton, 703-358-1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: May 13, 1992.

William F. Hartwig,

Assistant Director—Refuges and Wildlife.

[FR Doc. 92-13541 Filed 6-9-92; 8:45 am]

BILLING CODE 4310-55-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018-0017), Washington, DC 20503, telephone 202-395-7340.

Title: Application for Federal Bird Marking and Salvage Permit

OMB Approval Number: 1018-0017

Abstract: This form is used by persons who wish to apply for a Federal Bird Marking and Salvage Permit. The permit is required for persons who band, usually for research or management reasons. The data collected is used to determine the applicant's qualifications. It is essential that an applicant be well qualified by abilities and also have a valid research or management need for such permit.

Service Form Number: 3-481

Frequency: On Occasion

Description of Respondents: Individuals and households, Federal, State and Provincial personnel

Estimated Completion Time: 30 minutes (.5 hours)

Annual Responses: 450

Annual Burden Hours: 225

Service Clearance Officer: James E. Pinkerton, 703-358-1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: May 19, 1992.

Thomas J. Dwyer,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 92-13530 Filed 6-9-92; 8:45 am]

BILLING CODE 4310-55-M

Information Collection Submitted to the Office of Managment and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been sumitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0006), Washington, DC 20503, telephone 202–395–7340.

Title: Banding Schedule.

OMB Approval Number: 1018–0006.

Abstract: The use of band recovery information is one of the most important tools used in the preparation of annual United States and Canadian hunting and shooting regulations. Form 3–860 is used by licensed bird banders to record specific information on the use of each Service band once it has been placed on a bird and the bird is released in the wild again. The information is also used by the Service to make management recommendations and decisions for threatened and endangered species, and to further the understanding, management, and utilization of the North American migratory bird resource by Federal, State and private conservation oraganizations and the Canadian Wildlife Service.

Service Form Number: 3–860.

Frequency: On Occasion.

Description of Respondents: Individuals and households, Federal, State and Provincial personnel.

Estimated Completion Time: .2 hours per response.

Annual Responses: 2,500 respondents average 13.2 responses per year.

Annual Burden Hours: 6,600.

Service Clearance Officer: James E. Pinkerton, 703–358–1943; Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: May 8, 1992.

Thomas J. Dwyer,

Acting Assistant Director, Refuges and Wildlife.

[FR Doc. 92–13540 Filed 6–9–92; 8:45 am]

BILLING CODE 4310–55–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed jnformation collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0013), Washington, DC 20503, telephone 202–395–7340.

Title: Request for Banding Data.

OMB Approval Number: 1018–0013.

Abstract: The use of band recovery information is one of the most important tools used in the preparation of annual United States and Canadian hunting and shooting regulations. Form 3–860a is used by licensed bird banders to record specific information on each Service band once it has been placed on a bird and the bird is released in the wild again. When the Service receives a banding report on a specific bird band number and there is no banding information in the files, the bander is requested to provide us with such information. Banders are required to submit such information at least annually. Sometimes band recoveries are received before the required reporting date for band information. The data collected is initially used to process a report to the bird band finder. The curiosity about the banding information is a significant incentive for the public to voluntarily report the important band recovery information. The data accumulated and permanently stored in the banding program are used extensively in research on and in management of migratory birds.

Service Form Number: 3–860a.

Frequency: On Occasion.

Description of Respondents: Individuals and households, Federal, State and Provincial personnel.

Estimated Completion Time: 2 minutes.

Annual Responses: 4,000 per year.

Annual Burden Hours: 133.

Service Clearance Officer: James E. Pinkerton, 703–358–1943 Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: May 8, 1992.

Thomas J. Dwyer,

Acting Assistant Director - Refuges and Wildlife.

[FR Doc. 92–13529 Filed 6–9–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of Draft Recovery Plan for the Hawaiian Gardenia (Gardenia brighamii)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Hawaiian gardenia (*Gardenia brighamii*). This species is known only from the Hawaiian Islands and is currently limited to only six wild populations, made up of a total of less than twenty individuals, on the islands of Lanai, Molokai and Oahu.

DATES: Comments on the draft recovery plan must be received on or before August 10, 1992 to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (building address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813) (Phone: 808/541–2749 or FTS/552–2749) and U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 NE. 11th Avenue, Portland, Oregon 97232 (phone: 503/231–6131 or FTS/429–6131). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to Robert P. Smith, Field Supervisor of the Pacific Islands Office at the Honolulu address given abve.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Fish and Wildlife Biologist, at the Honolulu adddress given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing

the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is the Hawaiian gardenia (*Gardenia brighamii*). This species was once widespread in the dry land forests of all eight of the main Hawaiian Islands. The destruction of dry land habitats throughout the Hawaiian Islands, which began 1,500 years ago with the coming of the Polynesians to Hawaii and increased greatly with the arrival of the Europeans a little over 200 years ago, has led to the elimination of the Hawaiian gardenia on all of the islands, except Lanai, Molokai and Oahu. Alien plan competitors and browsing and trampling by introduced herbivores are now the major threats to the species' survival. Other threats are fire and pathogens.

The Hawaiian gardenia is currently represented by only six wild populations, made up of less than twenty individuals. The areas of emphasis for recovery actions are the population sites on Lanai, Molokai and Oahau. In addition, the recovery plan emphasizes reintroduction of the species on the islands of Hawaii and Maui.

Recovery efforts will focus on protection of all extant individuals from alien plant species, herbivores, fire and pathogens, propagation of genetically suitable plants to augment the existing populations, and reestablishment of the species throughout much of its former range.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 22, 1992.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 89-13596 Filed 6-9-89; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Revised Recovery Plan for the Selkirk Mountains Woodland Caribou for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the Selkirk Mountains woodland caribou (*Rangifer tarandus caribou*). This caribou population is on public lands managed mostly by the U.S. Forest Service in the southern Selkirk Mountains of northern Idaho and northeast Washington. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 10, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Ave., Portland, Oregon 97232-4181 or 503/231-6131. Written comments and materials regarding the plan should be addressed to the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charles H. Lobdell, Field Supervisor, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705 or call 208/334-1931.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To held guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Selkirk Mountains woodland caribou lives in old growth forest types above 4,000 feet elevation in the Selkirk Mountains of north Idaho and northeast Washington. The species faces extinction due to human caused mortality and habitat deterioration. The woodland caribou, which weighs 200-400 pounds and isn't quite four feet at the shoulder, is the only member of the deer family able to travel when snow reaches the depth it does in the Selkirks. Large hooves and long dewclaws aid stability where footing is treacherous. These natural snow-shoes keep caribou from sinking into all but the loosest snow.

To survive, caribou evolved behaviors like staying in dense cedar-hemlock stands during early winter, where the forest canopy slows the accumulation of deep snow and leaves some green browse available. Later in the season, as snow sets up and can support their weight, caribou leave the lower-elevation forests for open ridges above. There they walk on top of the snow to reach arboreal lichen ("old man's beard") hanging from tree branches high above the forest floor. They have, over time, come to depend on this mossy-looking plant for food to get through the winter.

The revised recovery plan resulted from a year-long effort by scientists from State and Federal agencies and the University of Idaho. It calls for reducing human caused mortality by preventing poaching and misidentification by

hunters; and maintaining habitat by reducing fire and insect impacts to forest habitat and through better management of timber harvesting. Once finished, the plan will guide the actions of all Federal and State agencies whose actions affect the conservation of this caribou. The ultimate goal is to restore the species to a secure status in its native ecosystem.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 21, 1992.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 92-13597 Filed 6-9-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: United States International Trade Commission.

ACTION: Notice of deadline to submit comments in connection with 1992 annual report.

EFFECTIVE DATE: May 22, 1992.

FOR FURTHER INFORMATION CONTACT: James E. Stamps (202-205-3227), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President on the impact of the act. The Commission instituted the present investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on March 21, 1986, for the purpose of gathering and presenting such information through the termination of duty-free treatment under the CBERA. Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The seventh report, covering calendar year 1991, is to be submitted by September 30, 1992.

In the original notice of investigation, it was announced that, as provided in section 215(b) of the CBERA, the Commission in such reports is required to assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and to assess the probable future effect which the act will have on the United States economy generally and on such domestic industries.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with the seventh annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than June 29, 1992. All submissions should be addressed to the Secretary to the Commission, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1809.

Issued: June 1, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-13640 Filed 6-9-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos 731-TA-532-537 (Final)]

Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes From Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: June 4, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas E. Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on these matters by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: On April 24, 1992, the Commission instituted the subject investigations and established a schedule for their conduct (57 FR 21428, May 20, 1992). Subsequently, the Department of Commerce extended the date for its final determination in these investigations from July 6, 1992, to September 10, 1992 (57 FR 22208, May 27, 1992). The Commission, therefore, is revising its schedule in these investigations to conform with Commerce's new schedule.

The Commission's new schedule for these investigations is as follows: the prehearing staff report will be placed in the nonpublic record on August 27, 1992; requests to appear at the hearing must be filed with the Secretary to the Commission not later than September 4; the deadline for filing prehearing briefs is September 9; the prehearing conference will be held at the U.S. International Trade Commission Building on September 11; the hearing will be held at the U.S. International Trade Commission Building on September 15; and the deadline for filing posthearing briefs is September 23.

For further information concerning these investigations see the Commission's notice of institution cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff At of 1930, title VII. This notice is published pursuant § 207.20 of the Commission's rules.

Issued: June 4, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-13622 Filed 6-9-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-336]

Certain Single In-Line Memory Modules and Products Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on July 7, 1992, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St., SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: June 3, 1992.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 92-13639 Filed 6-9-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-331]

Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on July 20, 1992, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: June 3, 1992.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 92-13623 Filed 6-9-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-371 (Sub-No. 1X)]

Clearfield and Mahoning Railway Co.—Abandonment Exemption—Between C&M Junction and East Bickford in Clearfield County, PA

[Docket No. AB-369 (Sub-No. 1X)]

Buffalo & Pittsburgh Railroad, Inc.—Discontinuance Exemption—Between C&M Junction and East Bickford in Clearfield County, PA

Clearfield and Mahoning Railway Company (C&M), as owner, and Buffalo & Pittsburgh Railroad, Inc. (B&P), as lessee, have filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments and Discontinuances for C&M to abandon and B&P to discontinue service over 17.4 miles of rail line between Milepost 0.0 at C&M Junction and Milepost 17.4 past East Bickford, near Curwensville on B&P's Clearfield Subdivision in Clearfield County, PA.

C&M and B&P have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment and discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 10, 1992 (unless stayed). Petitions to stay that do no involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 20, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by June 30, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to C&M's and B&P's representative: Charles D. Cramton, 700 Midtown Tower, Rochester, NY 14604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

C&M and B&P have filed an environmental report which addresses environment or energy impacts, if any, from this abandonment and discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 15, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE as (202) 927-6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 2, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-13611 Filed 6-9-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32066]

Consolidated Grain and Barge Co.—Continuance in Control—Garden Spot and Northern Corp.; Exemption

Consolidated Grain and Barge Co. (CGB) has filed a verified notice of exemption to continue to control of Garden Spot and Northern Corporation (Garden Spot), when Garden Spot purchase (a) approximately 43 miles of Indiana Rail Road Company (Rail Road) line running between Newton (MP B 161.5) and Browns, IL (MP B 204.3) and (b) more than 65 miles of incidental trackage rights over the line owned by Garden Spot & Ohio Limited Partnership (GS&O) between Browns and the connection with CSX Transportation at Evansville, IN (MP 283.9). CGB is a shipper on the line and formed Garden Spot to acquire the line and trackage rights.[1] The exemption became effective on May 18, 1992.

CGB controls MG Rail, Inc., an operator of 7.74 miles of leased rail line in Jeffersonville, IN. CGB also controls two motor carriers, River Bend Transport Company and River Terminals Transport, Inc., both with gerneral commodities authority.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). An entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as its retains jurisdiction to do so.

[1] Garden Spot has filed a notice of exemption in Finance Docket No. 32065, Garden Spot and Northern Corporation—Purchase Exemption—Indiana Rail Road Line Between Newton and Browns, IL.

Petitioner will place the motor carriers in a voting trust, while it seeks an exemption under section 10505 for common control of those motor carriers and Garden Spot.[2]

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock RY.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Any comments must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street, NW., suite 1107, Washington, DC 20006.

This notice is filed under 49 CFR 1180.2(d)(2). If the notice contains false or misleading information, the exemption is void *ab initio* . Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petiton to revoke will not automatically stay the transaction.

Decided: June 3, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-13606 Filed 6-9-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub 428X)]

CSX Transportation, Inc.—Abandonment Exemption—In Logan County, WV

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 3.27-mile line of railraod between milepost CLZ-3.50 near Yolyn and milepost CLZ-6.77 at Slagle, in Logan County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abondonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 10, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expression of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 22, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 30, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 15, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 4, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-13610 Filed 6-9-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32065]

Garden Spot and Northern Corporation—Purchase Exemption—Indiana Rail Road Line Between Newton and Browns, IL

Garden Spot and Northern Corporation (Garden Spot), a non-carrier, has filed a verified notice of exemption to purchase (a) approximately 43 miles of Indiana Rail Road Company (Rail Road) line running between Newton (MP B 161.5) and Browns, IL (MP B 204.3), and (b) more than 65 miles of incidental trackage rights over the line owned by Garden Spot & Ohio Limited Partnership (GS&O) between Browns and the connection with CSX Transportation at Evansville, IN (MP 283.9). Garden Spot is a newly-formed subsidiary of Consolidated Grain and Barge Co. (CGB), a shipper on the line.[1] The exemption became effective on May 18, 1992.

In Finance Docket No. 31593, Garden Spot & Northern Limited Partnership—Pur. and Oper.—Indiana Rail Road Co. Line Between Newton and Browns, IL (not printed), served March 28, 1991, the Commission exempted, under 49 U.S.C. 10505, a transaction in which GS&O would purchase the 43-mile line and its general partner, Indiana Hi-Rail Corporation (Hi-Rail), would operate the line. GS&O did not consummate the purchase, but Hi-Rail began operating the line, while it restructured the transaction to provide for the purchase by Garden Spot. Hi-Rail also operates the trackage rights over the GS&O line between Browns and Evansville. Upon consummation of the purchase by Garden Spot, Hi-Rail will continue to operate the line and the trackage rights.[2]

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[2] This class exemption notice applies only to the common control of Garden Spot and MG Rail, Inc., and thus does not exempt the control by petitioner of Garden Spot and the two motor carriers.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay based on environmental concerns should file its request as soon as possible to permit Commission review and action before the exemption's effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept late-filed trail use statements so long as it retains jurisdiction.

[1] CGB controls MG Rail, Inc. (MG), a rail operator, and two motor carriers. Therefore, it has filed a notice of exemption in Finance Docket No. 32066, *Consolidated Grain and Barge Co.—Continuance in Control Exemption—Garden Spot and Northern Corporation* for the continuance in control of Garden Spot and MG, when the purchase is consummated. Petitioner will place the motor carriers in a voting trust, while it seeks an exemption under 49 U.S.C. 10505 for common control of those motor carriers and Garden Spot.

[2] *See* Finance Docket No. 30726, *Michigan Interstate Ry. Co.—Exempt. from 49 U.S.C. 10901* (not printed), served September 25, 1985.

By acquiring the trackage rights, Garden Spot will be able to continue to operate between Browns and the CSX connection if Hi-Rail should cease its operation.

Any comments must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street NW., suite 1107, Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.

The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 3, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-13607 Filed 6-9-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 74X)]

Union Pacific Railroad Co.—Abandonment Exemption—in Buffalo County, NE

AGENCY: Interstate Commerce Commission..

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Union Pacific Railroad Company, of 5.77-miles of rail line in Buffalo County, NE, between milepost 3.75 near Kearney and the end of the line at milepost 9.52 near Riverdale, subject to salvage, public use, and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 10, 1992. Formal expression of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by June 22, 1992, petitions to stay must be filed by June 25, 1992, and petitions for reconsideration must be filed by July 6, 1992. Requests for public use conditions must be filed by June 30, 1992.

ADDRESSES: Send pleading referring to Docket No. AB-33 (Sub-No. 74X) to :

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289 4357/4359.

Decided: June 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-13609 Filed 6-9-92; 8:45 am]

BILLING CODE 7035-01-M

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Suspension of Deportation.

(2) Form I-256A. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. Form I-256A is filed with the Immigration Court by aliens in deportation proceedings who seek to have their deportation suspended by the Attorney General and to acquire lawful permanent resident status.

(5) 2251 annual responses at 1 hour per response.

(6) 2251 annual burden hours.

(7) Not applicable under 3504(h).

(1) Alien's Change of Address Card.

(2) Form AR-11. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. Section 265 Of the I & N Act requires all foreign nationals within the United States to notify the Service in writing of each change of address within ten days from the date of such change. This form (AR-11) provides a standardized format for compliance.

(5) 250,000 annual responses at .083 hours per response.

(6) 20,750 annual burden hours.

(7) Not applicable under 3504(h).

New Collections

(1) Prosecuting Gangs: A National Assessment.

(2) None. Office of Justice Programs.

(3) One time response.

(4) State or local governments. There is no central source of information on effective strategies used by local prosecutors to combat gangs and gang-related violence. A sample of county prosecutors will be surveyed to identify strategies, problems, and needs regarding gang prosecution.

(5) 244 annual responses at .42 hours per response.

(6) 102 annual burden hours.

(7) Not applicable under 3504(h).

(1) Less-Than-Lethal-Force Weapons: Policies and Practices of State and Local Law Enforcement and Correctional Agencies

(2) None. Office of Justice Programs.

(3) One time response.

(4) State or local governments. There is a need to document the kinds of less-than-lethal-force weapons that are currently being used by state and local law enforcement and correctional agencies, how often this type of weapon is being used, the circumstances of deployment, and the policies and procedures governing their use. A sample of state and local agencies will be surveyed.

(5) 740 annual responses at .93 hours per response.

(6) 691 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: June 4, 1992.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-13548 Filed 6-9-92; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 26, 1992, a proposed Consent Decree in *United States* v. *LTV Steel Company, Inc.*, Civil Action No. 92-185 was lodged with the United States District Court for the Northern District of Indiana, Hammond Division. The proposed Consent Decree requires LTV Steel Company ("LTV") to remove and dispose of contaminated sediment from a water intake channel adjacent to LTV's Indiana Harbor Works facility in East Chicago, Indiana, to complete remedial actions to prevent any future discharge of pollutants to the water intake channel, and to pay a Clean Water Act civil penalty of $250,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *LTV Steel Company, Inc.*, D.J. Ref. No. 90-5-1-1-3406.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Indiana, 507 State Street, Fourth Floor, Hammond, Indiana 46320; at the Region V Office of U.S. EPA, Records Center, Seventh Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Washington, DC 20044.

Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, [(202) 347-2072]. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page for reproduction cost), payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-13587 Filed 6-9-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202-523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 (202- 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Veterans' Employment and Training Service

Veterans' Post-Separation Employment Survey

1293-0008

One-time data collection effort

Individuals or households; State or local governments 5,259 individual respondents; 1,315 total hours;

15 minutes per response; and

24 State Employment Security Agencies; 384 total hours;

16 hours per response

Total burden hours 1,699.

The data will support an evaluation of the Congressionally mandated Transition Assistance Program (TAP). Two data collection methods are proposed: (1) Telephone survey of individuals, and (2) collection of computerized unemployment earnings data from up to 24 State Employment Security Agencies (SESA).

Signed at Washington, DC this 4th day of June, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92-13629 Filed 6-9-92; 8:45 am]

BILLING CODE 4510-79-M

Employment and Training Administration

[TA-W-27,000]

Applied Technologies, Inc. Boulder, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 16, 1992 in response to a worker petition which was filed on March 16, 1992 on behalf of workers at Applied Technologies, Incorporated, Boulder, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 26th day of May, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-13624 Filed 6-9-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 22, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 22, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC, 20210.

Signed at Washington, DC this 26th day of May 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Enseerch Exploration, Inc (wkrs)	Dallas, TX	05/26/92	05/12/92	27,290	Oil, gas producers.
Enseerch Exploration, Inc (wkrs)	Midland, TX	05/26/92	05/15/92	27,291	Oil, gas producers.
Webco Industries, Oil City Tube Div (wkrs)	Oil City, PA	05/26/92	05/11/92	27,292	Drawn tubing.
Johnson and Johnson (UPIU)	Milltown, NJ	05/26/92	05/07/92	27,293	Sanitary napkins and pads.
Torch Operating Co (Co)	Houma, LA	05/26/92	05/05/92	27,294	Crude oil and natural gas.
Fuel Resources Development (Co)	Denver, CO	05/26/92	05/12/92	27,295	Crude oil and natural gas.
Valley Steel Products (wkrs)	Centralia, IL	05/26/92	05/12/92	27,296	Steel pipe.
Mercer Rubber Co (URW)	Hamilton Square, NJ	05/26/92	05/11/92	27,297	Rubber hose and expansion joints.
J and G Shake Co (wkrs)	Forks, WA	05/26/92	05/12/92	27,298	Shakes and shingles.
Sprague Electric Co (wkrs)	Stamford, CT	05/26/92	05/04/92	27,299	Headquarters only.
Acme Electric Corp (wkrs)	Salt Lake City, UT	05/26/92	05/15/92	27,300	Linear power supplies.
Maine Cascade Iron Works (wkrs)	Clinton, ME	05/26/92	05/08/92	27,301	Structural steel.
General Motors, Inland Fisher Guide (UAW)	Grand Rapids, MI	05/26/92	05/01/92	27,302	Automobile seats.
Automatic Injection Molding (IBT)	Berkeley Heights, NJ	05/26/92	05/15/92	27,303	Plastic Medical products.
Kerr McGee Corp. (wkrs)	Morgan City, LA	05/26/92	05/14/92	27,304	Crude oil and natural gas.
Oxford of Tifton (Co)	Tifton, GA	05/26/92	05/18/92	27,305	Women's pants, shorts and skirts.
Cluett, Peabody Co., Inc. (Arrow Co) (Co)	Austell, GA	05/26/92	05/12/92	27,306	Men's shirts.
Thomas Industries, Inc. (IBEW)	Beaver Dam, KY	05/26/92	05/15/92	27,307	Residential lighting fixtures.
Chevron USA Production Co (Co)	Bakersfield, CA	05/26/92	05/19/92	27,308	Crude oil, natural gas.
Chevron USA Production Co (Co)	Midland, TX	05/26/92	05/19/92	27,309	Crude oil and natural gas.
Chevron USA Production Co (Co)	Houston, TX	05/26/92	05/19/92	27,310	Crude oil and natural gas.
Chevron USA Production Co (Co)	New Orleans, LA	05/26/92	05/19/92	27,311	Crude oil and natural gas.
Chevron USA Production Co (Co)	Englewood, CO	05/26/92	05/19/92	27,312	Crude oil and natural gas.
Chevron USA Production Co (Co)	Houston, TX	05/26/92	05/19/92	27,313	Crude oil and natural gas.
Fuel Resources Development Co (Co)	Meeker, CO	05/26/92	05/12/92	27,314	Crude oil and natural gas.
Fuel Resources Development Co (Co)	Durango, CO	05/26/92	05/12/92	27,315	Crude oil and natural gas.
Chevron USA Production Co (Co)	Houston, TX	05/26/92	05/19/92	27,316	Crude oil and natural gas.
Chevron USA Production Co (Co)	Houston, TX	05/26/92	05/19/92	27,317	Crude oil and natural gas.
Chevron USA Production Co (Co)	Concord, CA	05/26/92	05/19/92	27,318	Crude oil and natural gas.

[FR Doc. 92-13628 Filed 6-9-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,861]

Gerber Childrenswear, Inc., Pelzer, SC; Notice of Affirmative Determination Regarding Application for Reconsideration

On May 6, 1992, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on April 23, 1992 and published in the **Federal Register** on May 5, 1992 (57 FR 19314).

It's claimed that the closing down of the weaving operations at Pelzer was the direct result of imported competition. In further communications with the company it was learned that already woven material for the cloth diapers is currently being imported by the company.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 2nd day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 92-13626 Filed 6-9-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27, 152]

National Tank Co. (NATCO), Tulsa, OK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 and application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at National Tank Company (NATCO), Tulsa, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27, 152; National Tank Company (NATCO)
Tulsa, Oklahoma (May 19, 1992)

Signed at Washington, DC, this 28th day of May 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-13627 Filed 6-9-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,912]

North American Exploration Co., Inc., Grant Tensor Geophysical Corp., Denver, CO; Notice of Negative Determination on Reconsideration

On April 30, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The denial notice was published in the **Federal Register** on May 19, 1992 (57 FR 21302).

One of the petitioners states that the Department was inconsistent in its determinations by certifying its parent company and denying the workers at the subject field location.

Investigation findings show that North American Exploration is an affiliate of Grant Tensor Geophysical Corporation, a successor firm of Grant Norpac. Workers at Grant Norpac in Denver were certified for TAA under petition TA-W-21,101.

Findings on reconsideration show that at the time of Grant Norpac's Denver certification which expired on November 22, 1990, the workers were engaged in both seismic data collection and marketing. The remaining Denver workers filing under TA-W-26,912 do not collect seismic data but only perform the service of marketing and as such do not produce an article within the meaning of the Trade Act of 1974. Service workers are certifiable only under very limited conditions, namely that the reduction in demand for their services must come from a production facility of a firm related by ownership or control and whose workers are independently certified for TAA. These conditions were not met for the Denver workers of North American Exploration Company.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Grant Tensor Geophysical Corporation's North American Exploration Company, Inc., in Denver, Colorado.

Signed at Washington, DC, this 2nd day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 92-13625 Filed 6-9-92; 8:45 am]

BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 92-2]

Request for Information; Study on Waiver of Moral Rights in Visual Artworks

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: This Notice of Inquiry is issued to inform the public that the Copyright Office is examining the extent to which authors are waiving moral rights in their visual artworks under the waiver provisions of the Visual Artists Rights Act, which amended the Copyright Act, title 17, U.S. Code by adding section 106A. Section 608 of the Visual Artists Rights Act directs the Copyright Office to prepare a study on waivers of moral rights within five years of enactment. An interim report on the progress of the study is due on December 1, 1992, two years after the effective date of the law. The Office seeks public comments on and information about artists' contracts for the purpose of investigating how the waiver provision is working. We also seek information that will assist the Office in developing a survey of artists' contracts.

DATES: Comments should be received on or before September 8, 1992.

ADDRESSES: Interested persons should submit ten copies of their written comments as follows: If sent by mail: Dorothy Schrader, General Counsel, United States Copyright Office, Library of Congress, Department 17, Washington, DC 20540.

If delivered by hand: Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, room 407, First Street and Independence Avenue, SE., Washington, DC.

FOR ADDITIONAL INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Department 17, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION: On December 1, 1990, President Bush signed

into law Public Law 101–650. Title VI of this legislation contained provisions according visual artists certain rights of attribution (rights to receive name credit) and integrity (rights against distortion of visual arts works). These rights, also known as moral rights became generally effective on June 1, 1991. The most controversial feature of the legislation was whether or not the bill should provide for waiver of the moral rights, because of a concern that artists would be compelled to waive their rights without receiving fair remuneration. Congress decided, therefore, to continue to monitor this provision to see whether patterns were developing in artist's contracts that routinely provided for waiver of their moral rights. To that end, section 608 (a) of the legislation directs that:

> The Register of Copyrights shall conduct a study on the extent to which rights conferred by subsection (a) of the section 106A of title 17, United States Code, have been waived under subsection (e)(1) of such section.[1]

A progress report is to be presented to Congress two years after the date of enactment (December 1, 1992), and a final report is to be submitted not later than five years after the law was enacted (December 1, 1995). The present Notice is designed to assist the Copyright Office in fulfilling this mandate.

1. Impact of Berne Convention Adherence

On March 1, 1989, the United States adhered to the Berne Convention.[2] The provision for moral rights had long been considered a principal difference between U.S. law and the Berne Convention. Before 1989, the United States had relied for a worldwide copyright treaty on the Universal Copyright Convention (UCC), a multilaterial treaty to which the United States adhered as a founding member on September 16, 1955. The UCC does not require moral rights protection.

The Berne Convention's Article 6 *bis* provides that:

> Independent of the authority's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

Under this mandate, members must accord nationals of other member countries rights of paternity and integrity that survive the transfer of copyright. The intent of this requirement is to protect the author from both entrepreneurs and himself, in recognition of the author's economic necessity sometimes to contract against his own interest.[3]

The continental legal system of droit d'auteur (literally, "author's rights") encompasses both economic (copyright) and noneconomic (moral) rights. Civil law countries have more experience in dealing with these rights than do systems with origins in English common law. Before 1990, the primary moral rights provision in United States federal law was contained in the Lanham Act. Common law principles such as libel, defamation, misrepresentation, and unfair competition also have been applied by courts to give authors relief for moral rights violations.[4] The Berne Convention's underlying philosophy promotes greater harmonization among the laws of member states, but the details of moral rights protection are regulated by national law. Member countries are required to provide the means of redress for violation of moral rights in their national laws, but the spoecific means may take a variety of forms, incuding civil or criminal provisions encompassing a diversity of sanctions.[5]

This degree of flexibility with respect to moral rights, coupled with the agreed-upon strategy to change U.S. law only to the extent that it was incompatible with the Berne Convention, allowed Congress to defer consideration of additional federal moral rights legislation. The Berne Convention Implementation Act (BCIA),[6] did not provide additional moral rights for authors. The Berne Convention is not self-executing in the United States. With respect to moral rights, section 3 of the Berne Convention Implementation Act expressly states:

> The provisions of the Berne Convention, the adherence of the United States thereto, and satisfaction of United States obligation thereunder, do not expand or reduce any right of an author of a work, whether claimed under Federal, State, or the common law—(1) to claim authorship of the work, or (2) to object to any distortion mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author's honor or reputation.[7]

This specific language exemplifies the general philosophy that all United States obligations under the Berne Convention are satisfied by domestic law—either federal law or state common or statutory law.

2. The Visual Artists Rights Act of 1990

The Visual Artists Rights Act (VARA) responds to the public interest in protecting works of art against mutilation and destruction. A Picasso oil painting, "Trois Femmes," was cut up in 500 small pieces and sold as original work, with the entrepreneurs threatening to do more of the same with other works of art if the venture proved profitable. A Calder mobile was made stationary and painted to match an airport's color scheme.[8] These domestic wrongs were the target of the integrity rights granted to artists in the VARA.

Ten states provide some more rights protection for visual artists, which brings U.S. law in closer congruence with the Berne Convention.[9] Some of the state laws protect an authors' right of integrity while others have as their principle objective preserving the public's interest in works of art.

The Visual Artists Rights Act harmonized U.S. law with the Berne Convention to a greater degree. The legislation was narrowly crafted to limit visual artists' rights to a single subset of pictorial, graphic and sculptural works, restricted to the life of the author, and to two specific moral rights, paternity (the right of attribution) and integrity (the right against distortion, mutilation, or other modification).

The Visual Artists Rights Act (VARA) covers paintings, drawings, and sculptures that have been produced in an edition of 200 or fewer. It includes photographs produced for exhibition, but specifically excludes motion pictures and other audiovisual works. It does not include works made for hire or applied artworks.[10]

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[1] Visual Artists Rights Act of 1990. Pub L 101–650. 104 Stat 5128, 17 U.S.C. 106A (1990) (hereafter VARA).

[2] The Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886. The United States adhered to the 1971 Paris text of the Convention. See, M. Nimmer, Nimmer on Copyright, App.

[3] World Intellectual Property Organization Guide to the Berne Convention (WIPO Guide) 42 (1978).

[4] S. Rep. No. 352, 100th Cong. 2d Sess. 9–10 (1988).

[5] Berne Convention Article 6*bis* (3), WIPO Guide, 44.

[6] Berne Convention Implementation Act, Pub. L. 100–568, 102 Stat. 2853, (1988) (hereafter BCIA).

[7] BCIA, 17 U.S.C. 3(b) note.

[8] Ossola, "Law for Art's Sake", Legal Times, Dec. 10, 1990, at 27; Kernan, "The Great Debate Over Artists' Rights," Washington Post, May 22, 1988, at F1.

[9] Cal. Civ. Code, Sec. 987 *et seq.* (West 1989); Conn. C.G.S.A. Sec. 42–116s *et seq.* (West 1989); L. Rev. Stat. Ann. R.S. 51:2152 *et seq.* (West 1987); Me. Rev. Stat. Ann. tit. 27, Sec. 303 et seq. (1988); Mass. Ann. Laws ch. 231, Sec. 85s (1992); N.J. Stat. Ann. Sec. 2A: 24A–1 *et seq.* (West 1989); N.M. Stat. Ann. Sec. 13–4B–2 *et seq.* (1989); New York Arts and Cultural Affairs Law Sec. 14.01 *et seq.* (McKinney 1989); Pa. Stat. Ann. tit. 73, Sec. 2101 *et seq.* (Purdon Supp. 1989); R.I. Gen. Laws, Sec. 5–62–2 *et seq.* (1987).

[10] VARA, at 17 U.S.C. 101 ("work of visual arts").

The VARA gives artists the following rights of attribution and integrity: (1) The right to be named as author of the work; (2) the right not to be named as author of a work not created by that person; (3) the right not to be named as author of a work that is distorted, mutilated, or otherwise modified in a manner that damages the author's reputation; (4) the right to prevent the intentional distortion or modification of a work in a way that prejudices the author's reputation, including the right to relief for such damage; and (5) the right to prevent the destruction of a work of recignized stature, and the right to relief for such destruction.[11]

Integrity rights are subject to certain limitations when a work of art is incorporated into or otherwise made part of a building. Where such a work cannot be removed without being damaged, the owner of the building may secure written consent to install the work from the artist, including an acknowledgement of the possible damage to the work upon removal. This acknowledgement operates as a waiver for actions that would otherwise infringe the artist's rights of integrity in works installed in building.[12]

3. The Waiver Provision

Under the VARA, artists may waive their rights of attribution and integrity with respect to a particular work.

The VARA states that these rights

> may not be transferred, but [they] may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such right for all authors.[13]

The fact that one joint author may waive rights in the work for all joint authors follows traditional United States copyright law, in that one coauthor may license a work without agreement with the other coauthors, subject to an obligation to account for profits generated from licensing the work.

The legislative history of the VARA emphasizes that waivers and the circumstances surrounding them must be narrowly circumscribed. Waivers will be valid only if the parties follow the rules set forth in subsection (e)(1) of section 106A. Noting that the bill in essence permits the author to hold harmless activity that would otherwise violate the law, the House Judiciary Committee further stated that:

> A waiver applies only to the specific person to whom waiver is made. That person may not subsequently transfer the waiver to a third party. Any third parties must obtain waivers directly from the author.[14]

To further evidence the specificity of the waiver provision, the Committee reemphasized that blanket waivers are prohibited and that waivers apply only to a specifically identified work and a particular use. Additionally, waivers may not be implied from the transfer of copyright ownership or transfers of material objects.

Discussion during deliberations on the bill centered around whether providing for waiver might lead to a boiler-plate clause for waiver of moral rights in every contract for sale or other transfer of copyright.[15] Doubts were expressed about whether the artists would be able to contract at arms length. Some critics said the waiver provision eviscerates the moral rights otherwise conferred by the VARA.

Although the laws of member countries of the Berne Convention adopt varying measures to protect moral rights, they are generally broader than those granted by U.S. law. The laws of France provide that moral rights are inalienable and non-waivable. Under French law, for example, an American motion picture director ultimately prevailed in an action to prevent the performance of a motion picture colorized without the director's consent.[16]

On the other end of the spectrum is the United Kingdom's moral rights law of 1988,[17] which grants such rights to authors of literary, musical and artistic works, including motion pictures. The Copyright, Designs and Patents Act makes the rights of attribution subject to waiver and consent (oral). A further limitation is that the British law requires the author affirmatively to assert his right of attribution.

4. Freedom of Contract vs. Unwaivable Protection

Precisely because of varying degrees of overall uncertainty about the long-term validity of the waiver provision, Congress directed the Copyright Office to report on artists' experience in a national legal environment where waivers are freely available to a transferor.

Two fundamental questions about any waiver are: (1) Whether the author made an intentional relinquishment or abandonment of a known right or privilege, and (2) whether the right was voluntarily and intelligently waived. The argument in favor of artists' freedom to contract away moral rights is that authors can benefit for licensing their rights in a free market; the opposing argument is that most authors lack the bargaining power to negotiate at arm's length—publishers can compel waivers on an "accept this or get nothing" basis.[18] In weighing these two conflicting concepts—contractual freedom or paternalistic safeguards for authors, the public policy of maintaining the integrity of artwork's provenance must also be considered. The copyright law protects the author's economic interest despite the reality of his or her bargaining positions in the renewal and termination provisions, for example, by providing that these rights cannot be irretrievably transferred before the interest vests.[19]

In passing the VARA, Congress decided to follow the common law rule favoring freedom of contract and made moral rights waivable in the face of substantial concern that detrimental practices are difficult to dislodge once in place. The basic task for the Office will be to report on whether, in the short period since the VARA became law (June 1, 1991), Congress's purpose has been realized or frustrated. To monitor contractural developments, Congress has directed the Office to submit an interim report in a relatively short time, eighteen months after the effective date, followed by a full report in 1995—on the effectiveness of the waiver provision in achieving the desired goals—to protect the bond between the artist and his or her work, while facilitating marketing of the work.

In order to assist the Copyright Office in preparing these reports, public comment on the subject of moral rights waivers in contracts with artists is invited. The Office especially seeks objective factual information on contracts and contract offers for the purpose of preparing its final report. We also seek comment of an advisory nature on a proposed method of gathering factual information. For example:

1. How can information be gathered on contracts with individual artists who are out

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[11] VARA, at 17 U.S.C. 106A(a).

[12] VARA, at 17 U.S.C. 113(d)(1).

[13] 17 U.S.C. 106A(e)(1).

[14] The Visual Artists Rights Act of 1990, H.R. Rep. No. 514, 101st Cong. 2d Sess., 18–19 (1990).

[15] See, Damich, Edward, The Visual Artists Rights Act of 1990, 39 Cath. U.L. Rev. 945, 966 (Summer, 1990).

[16] *Turner Entertainment Co.* v. *Huston*, Cass. Civ. Ire, 89–19.522 (May 28, 1991).

[17] Copyright, Designs and Patents Act, 1988, ch. 48.

[18] See, *Gonsalez* v. *County of Hidalgo, Texas* 489 F.2d 1043, 1051 (5th Cir. 1973).

[19] *See*, 17 U.S.C. 203(b)(4), 304(c)(6)(D).

of touch with national organizations? Should the Office hold public hearings on artist waivers? Should the Office engage an independent research firm to conduct a survey of artists (assuming funds are authorized by Congress)?

2. Should the Office conduct surveys of artists' rights in foreign countries, particularly France, Germany, and Great Britain?

3. Are there any other methods of gathering factual information about waiver of moral rights?

In addition, we specifically request comment on the following questions:

1. What constitutes relative equivalence of bargaining power? Do even well-known artists inherently have unequal bargaining power in deadline with established museums and other organizations?

2. Are waivers of moral rights regularly included in artists' contracts? Are the parties to contracts generally aware of the provisions of the law granting integrity and attribution rights to authors? To what extent is any failure of contract language to mention waivers due to lack of knowledge about the new law?

3. How specific are the contracts? Are the works sufficiently identified? Are the uses particularly identified?

4. Do those who secure waivers exercise them or are waivers secured simply as "insurance policies?"

5. What is the ratio of attribution waivers to waivers of the right of integrity? Are waivers given for artistic work to be incorporated in buildings proportionately greater than waivers for other works?

6. In what kinds of contracts are waivers included—contracts for sale of the work of art; for copyright ownership; to commission a work of art; stand alone waivers? Are the waivers limited in time? Do artists find any particular offers for waiver disturbing?

7. What is the economic effect of the inclusion of a waiver in a contract? Does the waiver bring a separate price? Is the price of the work or other thing exchanged for value significantly lower than the market price when waiver is not included?

8. Does the artist's experience or renouwn have any effect on the presence, absence, or nature of a waiver in a contract? What effect?

9. Do the same factors that influence artists' decisions to waive rights of attribution and integrity influence their decisions to enter into other contracts?

10. Might constitutional problems be created by a new provision prohibiting authors from waiving their artists' rights?

11. Do public contracts differ in the extent or nature of waivers offered in contracts with artists?

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, in room 401, James Madison Memorial Building, Library of Congress, First Street and Independence Avenue SE., Washington, DC.

Dated: June 4, 1992.

Ralph Oman,

Register of Copyrights.

[FR Doc. 92-13544 Filed 6-9-92; 8:45am]

BILLING CODE 1410-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview/Distinguished Theater Artists Fellowships Section) to the National Council on the Arts will be held on June 22-23, 1992 from 9:30 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on June 22 from 9:30 a.m.-5:30 p.m. and June 23 from 9:30 am-2:30 p.m. The topics will be opening remarks and discussion of issues related to the field.

The remaining portion of this meeting on June 23 from 2:30 p.m.-5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 26, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-13584 Filed 6-9-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 15, 1992 through May 29, 1992. The last biweekly notice was published on May 27, 1992 (57 FR 22259).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 10, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: March 31, 1991

Description of amendments request: The proposed amendment changes were the result of a design basis reconstitution effort for the Ultimate Heat Sink (UHS). These changes include revising Technical Specification (TS) 3.7.5.b to require six fans on the mechanical draft cooling towers to be operable in the high speed mode when either or both units are in operating Modes 1-4. The unit specific fan requirements are removed and the essential service water pump discharge temperature limit in TS 3.7.5.d is being reduced. ACTION b for TS 3.7.5 is being revised to require that if only five fans are operable in the high speed mode, then within 1 hour verify that the remaining fans are capable of being powered from their respective emergency diesel generators (EDG). Restore at least six fans to operable status within 72 hours or shut down the units. TS 3.7.5.e is adding the UHS cooling tower basin level switches to the specification as items needing to be operable. ACTION statement 3.7.5.C.2 adds that the provisions of Specification 3.0.4 are not applicable. Several editorial changes were made for TS 3/4.7.5 to clarify the specification. Also the Bases were re-written to reflect the results of the design basis reconstitution effort initiated for the UHS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Essential Service Water (SX) system provides cooling water flow from the station's Ultimate Heat Sink (UHS) mechanical draft cooling towers to various safeguard equipment. The system is [composed] of two pumps per unit, divided into two trains, where the common trains (i.e., trains A or B) of the two units share a UHS cooling tower. Each cooling tower has four fans, (high and low speed capability, 480 volts AC) two of which are loaded on each unit's safeguard bus, thereby maintaining the required train separation. Providing makeup water to the UHS are two trains of SX makeup pumps using the Rock River as a source of water.

The UHS is designed to dissipate the maximum possible reactor decay heat and essential cooling system heat loads under worst case environmental conditions after normal reactor shutdowns and all UFSAR chapter 15 accident and transient scenarios. The Technical Specification Ultimate Heat Sink tower parameters of required number of fans, basin level, and basin temperature ensure the UHS will always be in a condition capable of performing its design functions from normal operations to its design basis limiting scenario of a Loss of Coolant Accident (LOCA), Loss of Offsite Power (LOOP) on one unit and a normal shutdown of the other unit from full power to cold shutdown and the most limiting single active failure. The UHS can [s]till perform its design function within the allowances of the Action Requirements assuming no single active failure. This is consistent with the methodology of action requirement development.

Design calculations show that the design basis accident limiting scenario can be met with a minimum of five fans operating in high speed with a basin temperature less than or equal to 98F. An EDG failure of the LOCA/LOOP unit would result in 4 fans operable, which is acceptable, since the LOCA unit heat input to the SX system is reduced by approximately one half. The proposed changes to the UHS LCO would require 6 of the 8 cooling fans to be operable when one or both units are in Modes 1 through 4. Also changed are the SX pump discharge temperature limits. The maximum basin temperature allowed has been reduced to 98F from 98F, provided the operable fans are running in high speed. These parameters do not, in themselves, factor into any initiating event of UPSAR chapter 15 accident scenarios and consequently do not increase the probability of occurrence for these previously evaluated accidents. However, although not a factor in initiating any accident, the UHS plays a vital role in mitigating the consequences of any accident or transient. The proposed changes will ensure that the minimum conditions necessary for the UHS to perform its design functions will always be met. Engineering calculations demonstrate that the SX supply design temperature limit of 100F, which was assumed as an initial input for the accident analyses, is preserved. Consequently, the proposed changes to the number of cooling tower fans operable and SX pump discharge temperature do not increase the consequences of any accidents previously evaluated.

The Byron UHS requires makeup capability in order to meet the design criteria of providing cooling for 30 days. This makeup capability is provided by the two trains of SX makeup pumps taking suction from the Rock River. Each UHS basin has a level switch which provides an automatic start of the appropriate SX makeup pump if basin level drops below the auto-start setpoint of 53%. Neither the UHS basin water level nor its automatic makeup feature factor into any initiating event of the UFSAR chapter 15 accidents and therefore does not increase the probability of occurrence of any of these accidents. The proposed addition of the basin level switches to the LCO requirements would uncouple their operability requirements from that of the SX makeup trains. The action requirement for one or two inoperable basin level switches would allow for an alternative means of ensuring adequate water inventory during the period of inoperability. Separate level channels provide operators indication of basin level. By ensuring [that] basin level is at least 82%, there is sufficient time after the limiting design basis accident scenario to monitor UHS basin level and manually initiate the start of an SX makeup pump or deep well pump in order to maintain necessary basin inventory. With this proposed change, the UHS can still perform its design function for the required 30 days. Therefore the consequences of any accident previously evaluated is not increased.

The proposed change to the action requirements for the SX makeup pump would allow a unit startup if in the 7 or 14 day Limiting Condition for Operation Action Requirement (LCOAR). A degraded SX makeup capability is not an initiating event for any chapter 15 accidents analyzed. The seismically qualified deep well pumps with safety related power supplies provide an adequate backup to the SX makeup trains. To rely on a deep well pump as a backup for one makeup pump for a limited period of time does not significantly increase the consequences of accidents previously evaluated.

The other proposed changes to the UHS Technical Specification are considered administrative in nature. They do not change in any manner the licensing basis, operations, maintenance or regulatory requirements of the UHS. Therefore these changes do not involve any increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed limits in the number of operable cooling tower fans and SX pump discharge temperature are fully within the design capabilities of the UHS. With these LCO and LCOAR limits the UHS will always be in a condition to dissipate the required heat load from the design limiting accident scenario of one unit undergoing large break LOCA/LOOP and the normal shutdown of

the other unit. These changes do not involve any new hardware changes or allow any new modes of operation. These changes are necessary to support the revised licensing basis of the UHS. Consequently, they do not create the possibility of a new or different kind of accident from those previously evaluated.

Allowing for a Unit startup while one train of SX makeup is inoperable does not affect plant safety. The analyses performed bound the situation of both units at full power. This does not, in itself, create a new or different kind of accident from those previously evaluated.

The new basin level switch LCO would allow for continued plant operations with the automatic makeup feature inoperable provided alternative actions are taken to ensure the UHS will be in a condition to perform its design functions. No physical modifications are being made to the plant. The proposed alternative means of ensuring adequate water for the UHS both initially and for long term cooling is adequate. Allowing continued plant operations with the automatic makeup inoperable does not create the possibility of a new or different kind of accident from those previously evaluated.

The other proposed changes to the UHS Technical Specification are administrative in nature. They do not in any manner change the licensing basis, operations, maintenance, or regulatory requirements of the UHS. Therefore they do not create the possibility of a new or different kind of accident from those previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The new LCO limits for number of fans and SX pump discharge temperature are based on the results of the UHS reconstitution effort which in part re-defined the Technical Specification margin of safety. These new limits will ensure under the most limiting accident scenario that cooling water from the basin will meet the accident analyses SX input limit of 100F. The proposed LCO limits would ensure, at the start of the limiting accident scenario, the required number of fans are operable, a basin level of greater than 50%, and basin temperature of no greater than 98F. Under worst case environmental conditions, for the worst case scenario evaluated, design calculations show the basin water temperature will reach a maximum of 99.1°F.

Allowing for continued operations with the automatic makeup feature inoperable does not significantly reduce any margin of safety. Compensatory actions required by the specification will be taken to ensure there is an adequate source of cooling water to meet the SX design bases.

The other proposed changes to the UHS specification are administrative in nature and do not reduce any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 30, 1988, as supplemented on May 30, 1990 (56 FR 11775), April 19, 1991 (56 FR 22462), and on February 27, 1992.

Description of amendments request: The proposed amendment would revise Technical Specification (TS) 3.0.4, 4.0.3, and 4.0.4 and those TSs that are affected by these sections. The amendments are based on the recommendations provided by the staff in Generic Letter (GL) 87-09, issued May 4, 1987, to solve three problems that have been encountered with the general requirements on the applicability of Limiting Conditions for Operation and Surveillance Requirements in Sections 3.0 and 4.0 of the Tss. The February 27 supplement was provided to revise the original amendment application to clarify the request relating to Surveillance Requirement 4.2.3.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes involve Technical Specifications 3.0.4, 4.0.3, and 4.0.4, plus those technical specifications that are affected by these sections. These changes are being made and requested in accordance with NRC Generic Letter 87-09, issued on May 4, 1987.

The first change involves Specification 3.0.4, its bases, and associated Technical Specifications that reference it. Inconsistent application of exceptions to Specification 3.0.4 impacts the operation of the facility in two ways. First, it delays startup under conditions in which conformance to the Action Requirements establishes an acceptable level of safety for unlimited continued operation of the facility. Second, it delays a return to power operation when the facility is required to be in a lower mode of operation as a consequence of other Action Requirements. In this case, the Limiting Condition for Operation must be met without reliance on the Action Requirements, before returning the facility to that operational mode or other specified condition for which unlimited continued operation was previously permitted, in accordance with the Action Requirements. As a consequence of the change to Specification 3.0.4, Specifications with Action Requirements that permit continued operations no longer need to reference "3.0.4 is not applicable".

The second and third changes involved Specifications 4.0.3 and 4.0.4. Some Action Requirements have allowable outage time limits that do not allow sufficient time for the completion of a missed surveillance, before the Action Requirements would necessitate a plant shutdown. If a plant shutdown is required before a missed surveillance is completed, it is likely that the surveillance would be conducted during the shutdown in an effort to terminate the shutdown requirement. This circumstance is undesirable for two reasons:

(a) increased pressures on plant staff to complete the surveillance could lead to errors that may result in plant upset, and

(b) the plant would be in a transient state involving potential upsets to the plant that could require a demand for the system when the system is removed from service for testing.

The proposed changes will also help clarify the potential conflicts between Specifications 4.0.3 and 4.0.4. The first conflict could arise when a plant shutdown is required as a consequence of an Action Requirement. This will require surveillances to become due prior to entry into a lower mode. This could result in delays reaching lower modes as a result of a Technical Specification Action Requirement.

The second conflict could arise when Surveillance Requirements can only be completed after entry into a mode or specified condition for which the Surveillance Requirements apply, and an exception to the requirements of Specification 4.0.4 is allowed. However, upon entry into this mode or condition, the requirements of Specification 4.0.3 may not be met because the Surveillance Requirements may not have been performed within the allowed surveillance interval. Allowing for a delay in the applicability of Action Requirements for Specification 4.0.3 will provide an appropriate time limit for the completion of Surveillance Requirements that are allowed an exception to Specification 4.0.4. It has been noted that some surveillances that state "4.0.4 not applicable", do involve performance times in excess of the 24 hours allowed by this change and Generic Letter 87-09. These specific surveillances have been identified, and changes are proposed to bound the conditions required to perform the surveillance, as well as limits for completion of the surveillance. This should provide an acceptable means to establish required conditions, as well as set a reasonable completion requirement.

The fourth change involves a revision to the incore-excore surveillance frequency. Currently, the single point comparison of incore to excore axial flux difference and the incore excore calibrations are being performed every 31 and 92 days, respectively. These checks and calibrations are core exposure related parameters. In the case of

an extended period of low power operations or outages, re-performance of these surveillances would not be warranted. The proposed revision will change the frequency of these surveillances from a fixed frequency to an exposure related frequency. This change has been previously reviewed and approved for Vogtle Unit 1.

The proposed changes do not increase the probability or consequences of a accident previously evaluated. In regards to the first change, systems and equipment that have indefinite allowable outage times have been shown not to have a direct impact on accidents. In regards to the second and third change, surveillance requirements are defined in 10 CFR 50.36 as those requirements that assure the necessary quality of systems and components are maintained such that safety limits are maintained and limiting conditions for operation are met under these changes. The appropriate surveillances will still be performed. The proposed changes will only allow flexibility in performing these surveillance requirements prior to a plant shutdown being necessitated in the case of a surveillance being inadvertently missed.

The conditions and bounding limits proposed on several surveillances are necessary due to the fact that these surveillances cannot be completed within 24 hours or entry into the required mode. These surveillances in some cases require specific power levels and stability to perform. The limitations chosen do not differ from the present method in which these surveillances are performed. Limitations are specified to ensure surveillance completion.

In regards to the fourth change, the required surveillances will still be performed. The bases for these surveillances is to calibrate and check the calibration of the excore instruments using the incore instruments. These checks and calibration are required due to shifting flux profiles due to flux redistribution. Flux redistribution is primarily a function of core depletion and not time. The proposed change will tie the performance of these surveillances to a direct measurement of core depletion.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. No new equipment is being introduced as a result of the changes. These changes do not result in equipment being operated in a manner different from present requirements. No change is being made which alters the function of any plant equipment.

The proposed changes do not involve a significant reduction in a margin of safety. In regards to the first change, conformance to Action Requirements that permit continued operation of the facility have been shown to provide an acceptable level of safety for indefinite operation. In regards to the second and third changes, allowing an appropriate time period for performance of a missed surveillance, a surveillance required by entry into an action statement or performance of one precluded by plant conditions, would in effect reduce the possibility for a potential plant upset. In regards to the fourth change, the surveillance frequencies involved are changes due to the parameters being core depletion dependent. The best measure for this is in effective full power days. Hence, the proposed change will not reduce the margin of safety, based on its performance being tied to a depletion based frequency.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: April 15, 1992

Description of amendments request: The proposed change will revise Technical Specification 2.2.1, 3.3.2, Table 2.2-1, Table 3.3-4 and their associated bases. This change reflects the results of the Setpoint Reconciliation Program. The results indicated a number of changes are required for the values of Total Allowance (TA), Sensor Error (SE), Allowable Value (AV) and Z which represents the statistical summation of errors assumed in the safety analysis excluding those associated with sensor and rack drift and the accuracy of their measurement.

Basis for proposed no significant hazards consideration determination: The proposed amendment involves the following changes:

As a result of the Setpoint Study performed by Commonwealth Edison Company (CECo), the Braidwood and Byron Station's are requesting changes in the AV for some reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation. CECo is requesting that the Turbine Trip Emergency Trip Header Pressure Trip Setpoint and AV be revised from $\geq$ 540 psig to $\geq$ 1000 psig and $\geq$ 520 psig to $\geq$ 816 psig, respectively. The TA, Z, and SE values currently in Technical Specification Tables 2.2-1 and 3.3-4 will be deleted from those tables. As a result of this proposed change, Equation 2.2-1 would also be deleted from Technical Specifications 2.2.1 and 3.3.2, along with the corresponding action statements and Bases.

CECo is requesting that the cycle specific requirements contained on page 2-8, Note 1, Parts (i), (ii), and (iii) be deleted for Byron and Braidwood and cycle specific relief for Byron Technical Specification 3.3.2 be deleted since they are no longer applicable.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the AVs for RTS and ESFAS instrumentation will continue to ensure that the associated RTS or ESFAS actuation signals will be generated when required within the bounds of the plant's safety analyses. The proposed changes to the RTS Turbine Trip Emergency Trip Header Pressure Trip Setpoint and AV will generate a reactor trip signal quicker than the current Technical Specification values due to the conservative nature of the change.

The proposed removal of the cycle specific relief or the TA, Z, and SE values from the Technical Specifications will have no effect on the analyses of record. These changes are considered administrative in nature.

Some of the proposed changes to the Avs for RTS and ESFAS instrumentation are in the conservative direction with respect to the current Technical Specification value. This will cause the associated RTS or ESFAS actuation to occur sooner when the monitored parameter exceeds its AV. The proposed change to the Turbine Trip Emergency Trip Header Pressure Trip Setpoint and AV will initiate a reactor trip sooner than the currently allowed Technical Specification values.

Many of the proposed changes to the Avs for RTS and ESFAS instrumentation are in the nonconservative direction with respect to the current Technical Specification value. This will cause a delay in the associated RTS or ESFAS actuation when the monitored parameter exceeds its AV. However, all of these changes in the nonconservative direction are bounded by the plant's safety analyses and therefore, do not impact the probability or consequences of previously analyzed transients.

Two transients required reanalysis to utilize existing analytical margin. These were the Turbine Trip on High-High Steam Generator Water Level and the RCS Low Flow Reactor Trip. Both transients were successfully reanalyzed with acceptable results.

The probability of either transient occurring will not increase. No change in the manner in which the actuation occurs is being proposed, nor are the actuation setpoints being revised.

The consequences of the Turbine Trip transient will not be increased. The increase in the AV for the D-4 SG High-High Water Level Turbine Trip and Feedwater Isolation Actuation will delay the generation of those actuation signals approximately 2.5 seconds from the time they would have occurred using the current Technical Specification AV. Increasing the Safety Analysis Limit (SAL) to accommodate the proposed AV will have no appreciable effect on the Departure from Nucleate Boiling Ratio (DNBR) since it is effectively constant at the time of signal actuation and remains well above the Departure from Nucleate Boiling (DNB) limit throughout the entire transient.

With respect to the RCS Low Flow transient, the consequences of this accident will not be increased. The decrease in the AV for RCS Flow Low can be accounted for by decreasing the SAL without affecting the outcome of the safety analysis. For the Locked Rotor/Shaft Break event, there will be no change in the time in which a reactor trip is initiated since the reduction in RCS flow is so rapid. For the Partial Loss of Forced Flow event, the change in the SAL will result in a delay of the initiation of the reactor trip signal by less than 0.1 second. This change will not significantly affect the DNBR transient.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to the Avs for RTS and ESFAS instrumentation will only affect the allowable setpoint at which a piece of equipment is actuated. No physical equipment changes are being made, and therefore, no new equipment failure modes are being introduced as a result of these proposed changes.

The proposed changes to the RTS Turbine Trip Emergency Trip Header Pressure Trip Setpoint and AV will affect the setpoint at which a reactor trip signal is generated as a result of decreasing pressure in the main turbine emergency trip header. No physical equipment changes are being made, and therefore, no new equipment failure modes are being introduced as a result of these proposed changes.

The proposed removal of the TA, Z, and SE values from the Technical Specifications will have no effect on plant equipment, and therefore, no new equipment failure modes are being introduced as a result of these proposed changes.

The proposed removal of cycle specific relief no longer applicable from the Technical Specifications will have no effect on plant equipment, and therefore, no new equipment failure modes are being introduced as a result of these proposed changes.

The probability of a malfunction of equipment important to safety will not increase. There will be no change in plant equipment as a result of these proposed changes. Sufficient redundancy of equipment currently exists to ensure that the appropriate actuation signals are generated when the monitored parameters exceed their associated trip setpoints.

The consequences of a malfunction of equipment important to safety will not increase. There will be no change in plant equipment as a result of these proposed changes. Sufficient redundancy of equipment currently exists to ensure that the appropriate actuation signals are generated when the monitored parameters exceed their associated trip setpoints.

The possibility of a new or different type of accident will not be created as a result of these proposed changes. Except for the two types of accidents previously discussed, these proposed changes were already bounded by the existing safety analyses. For the two accidents previously discussed, the corresponding SALs were changed to bound the proposed changes without affecting the outcomes of the corresponding safety analyses.

3. Does the proposed change involve a significant reduction in a margin of safety?

There is no significant reduction in the margin of safety from these proposed changes. Except for the two types of accidents previously discussed, these proposed changes were already bounded by the existing safety analyses. For the two accidents previously discussed, the corresponding SALs were changed to bound the proposed changes without affecting the outcomes of the corresponding safety analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Byron, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of application for amendment: April 24 and May 13, 1992

Description of amendment request: The proposed license change clarifies the reporting requirements of Section 2.G of Facility Operating License No. DRP-19. As currently written, Section 2.G specifies NRC notification for violations to any requirements specified in Section 2.C of the license. However, Section 2.C(2) to Facility Operating License No.DPR-19 includes requirements for Appendix A, Technical Specifications (TS), for the Dresden Nuclear Power Station. Section 2.G does not clearly define Dresden's responsibility for reporting to the NRC violations from the requirements of Appendix A, TS, beyond the specific reporting requirements already delineated within Dresden's TS. Therefore, Commonwealth Edison Company proposes changing Section 2.G of Facility Operating License No. DPR-19 to clarify Dresden's TS reporting requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant hazards consideration because it would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The individual license condition discussed [in the April 24, 1992 submittal] is not warranted; therefore, the clarification of this license condition is appropriate and safe. As a result of the proposed amendment, there are no physical changes to the facility and all operating procedures, limiting conditions for operation (LCO), limiting safety system settings, and safety limits specified in the Technical Specifications will remain unchanged. The proposed change is an administrative reporting requirement clarification that does

not in any way affect a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. The proposed changes are administrative in nature and do not affect any accident initiators for Dresden Station. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety. Plant safety margins are established through LCOs, limiting safety system settings, and safety limits specified in the Technical Specifications. As a result of the proposed amendment, there will be no changes to either the physical design of the plant or to any of these settings and limits. The proposed changes are administrative and do not affect the safe operation of Dresden Station. Therefore, there will be no changes to any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: April 24, 1992

Description of amendments request: The proposed amendments would delete Section 6.2.B (Radiation Protection Procedure) of the Technical Specifications and replace it with Sections 6.11 and 6.12 which define a Radiation Protection Program and specify the requirements of a High Radiation Area, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed change affects administrative controls exercised to restrict access to high radiation areas by plant personnel and does not affect plant system safety.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change affects administrative controls exercised to restrict access to high radiation areas by plant personnel and does not relate to plant system safety. Therefore, this change does not create the possibility of a new or different kind of accident previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety because:

The proposed change is administrative in nature and does not alter the manner in which equipment required for the safe operation of the plant is operated. There are no setpoint or operational limitations being altered or changed as a result of this revision. The changes will not affect the administrative limits in place and will not reduce the station's ability to enforce these limits. Therefore, this change has no effect on the margin of plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 7, 1992

Description of amendments request: Commonwealth Edison proposes to revise the Administrative Controls section of the Technical Specifications for all six of its nuclear stations. The proposed revision consists of administrative changes which revise the types of procedures which require review by the Onsite Review and Investigative Function (OSR&IF), specifies the level of review and approval for procedures governed by the proposed Technical Review and Control process, and clarifies the authority assigned to the OSR&IF. Specifically, the proposed change modifies the scope of items required to be reviewed by the OSR&IF by limiting the review of procedures to the applicable administrative procedures recommended in Appendix A of Regulatory Guide 1.33, Revision 2 and the Emergency Operating Procedures. Procedures which do not require review by the OSR&IF shall be subject to review and approval under the proposed Technical Review and Control process. Those procedure revisions which are determined to have the potential to impact nuclear safety will be referred to the OSR&IF as currently required.

The Technical Review and Control process will consist of an independent review conducted by a qualified individual knowledgeable in the area affected other than the individual who prepared the procedure. In addition to ensuring the procedure is technically correct, the technical reviewer will be responsible for determining if a cross-disciplinary review is required. The technical reviewer has the ability to increase discipline review requirements as necessary to assure an adequate review is performed.

In addition, editorial changes have been proposed to provide clarity, eliminate extraneous references to specific organizational titles, and provide conforming changes to the proposed administrative changes. All six stations' Section 6 OSR&IF descriptions are being standardized to the current Byron and Braidwood descriptions, as modified by this submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of an accident occurring has not been increased. The procedures governing plant operation will continue to ensure that the plant parameters are maintained within acceptable parameters. This change will not increase the likelihood that a transient initiating event will occur because most transients are initiated by equipment malfunction and/or catastrophic system failure. These failure mechanisms are not impacted by this proposed change.

The consequence of accidents previously analyzed remain unchanged. No change in

the required level of availability of mitigative equipment is being proposed. The procedures utilized to mitigate the design basis event will continue to be reviewed and approved by the Onsite Review Function. Additionally, no equipment modifications are being proposed which would impact the expected accident sequence.

The editorial and administrative changes do not effect the mechanisms by which accidents occur, progress, or are mitigated. Therefore, these changes will not adversely impact the accident analyses.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

This revision is not proposing new methods of operating equipment, nor is any new equipment being introduced. The environment that the equipment is being operated in is unchanged. No changes to equipment operating procedures will be implemented without the requisite technical review.

Because no new equipment is being introduced, and no equipment is being operated in a manner inconsistent with its design, the probability of equipment malfunction is not increased. The applicable procedures governing the operation of installed equipment will receive a review by technically qualified reviewers, and where appropriate, an interdisciplinary review will be required. These controls are sufficient to ensure that equipment is not operated in a manner or configuration which would increase the likelihood of failure.

The consequences of equipment malfunction are unchanged. This change addresses the control of the procedures implemented at CECo's station, and is unrelated to the consequences of equipment failure. Because no new failure modes are introduced, the plant will continue to be operated within acceptable limits, and the probability of equipment failure is not increased, the consequences of equipment failure will not change.

The plant will continue to be maintained within acceptable parameters by procedural controls which have been adequately reviewed and approved. Other procedures which could impact unit operation will be evaluated for the need for a cross-disciplinary review.

For the reasons described above, the possibility of a new or different type of accident is not directly or indirectly created.

3. Does the proposed change involve a significant reduction in a margin of safety?

The margin of safety is not affected by this change. The initial conditions utilized in the conduct of the accident analyses are unchanged. The methodologies used for the analyses are unchanged. The analysis results are not impacted. Sufficient controls are included in the proposed review methodology to ensure that the plant conditions and equipment availability required to support the integrity of the analyses, and hence the margin of safety will continue to be maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481; for Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for LaSalle, the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348; for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; for Zion, the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: September 27, 1991

Description of amendment request: The proposed amendment would change the Palisades Plant Technical Specifications (TS) by correcting an erroneous statement with regards to the amount of cooling water flow to the Containment Air Coolers (CACs). Specifically, the proposed amendment would change TS Section 5.2.3.a to indicate that three CACs [required to be operable per TS Section 3.4.1.a] with a total cooling water flow of 5580 gpm at an inlet temperature of 85°F will remove 230 million BTU per hour. TS Section 5.2.3.a currently identifies three CACs, each with a flow of 4875 gpm at an inlet temperature of 75°F for a heat removal rate of 229 million BTU per hour. The amendment request dated September 27, 1991 supersedes in its entirety the request dated October 20, 1986 as modified April 30, 1987. The previous request was published in the Federal Register on March 6, 1990 (55 FR 10530).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the possibility or consequences of an accident previously evaluated.

The proposed technical specification change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is a correction to the information contained in the FSAR, section 6.3, Table 6-10. These corrections are based on the results of a study performed on the containment air coolers for the purpose of determining the performance characteristics. This change has no effect on containment pressure and temperature analysis (FSAR Section 14.18) since the heat removal rate assumed in the analysis is consistent with this technical specification change. Furthermore, this change has no effect on the LOCA analysis (FSAR Section 14.17) since the assumptions made regarding the containment air cooler heat removal rate in the LOCA analysis are still conservative.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed technical specification change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change is a correction to the information contained in the FSAR. These corrections are based on the results of a study performed on the containment air coolers for the purpose of determining the performance characteristics. The plant hardware was not changed and the plant operating conditions were not changed.

3. Involve a significant reduction in the margin of safety.

The margin of safety, as defined by the plant licensing basis is not significantly reduced by the proposed technical specification change. The proposed change is a correction to the information contained in the FSAR. These corrections are based on the results of a study performed on the containment air coolers for the purpose of determining the performance characteristics. Heat removal capacity from the containment by the containment air coolers has not been changed, thus there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: April 21, 1992, as supplemented May 19, 1992

Description of amendment request: The proposed amendments would change Technical Specifications (TS) 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation" related to the 480 Volt load center

degraded voltage protection scheme. The proposed changes would eliminate reference to a specific type of relay used in the 480 Volt load center for both the non-safety injection and safety injection degraded voltage protection scheme. These changes would permit addition of two definite time relays for each safety-related load center, one each for Channel 1 and 2, to the existing two inverse time relays in the non-safety injection degraded voltage protection scheme. The four (two inverse and two definite time) protective relays for each load center would be interconnected and the channel trip configuration would be redesigned. A two-out-of-two logic channel trip configuration would be implemented such that the logic would trip if degraded voltage is detected by either the Channel 1 existing inverse time or the new definite time delay relay concurrently with either the Channel 2 inverse time or the definite time relay. The proposed changes do not include any additional relays or design logic changes to the 480 Volt load center safety injection degraded voltage protection scheme.

Specifically, the proposed changes would delete the phrases:

(1) "2 inverse time relays per load center" in Table 3.3-2 item 7c,

(2) "Inverse Time Relays" in Tables 3.3-3 and 4.3-2 item 7c,

(3) "2 instantaneous relays per load center" in Table 3.3-2 item 7b, and

(4) "Instantaneous Relays" in Tables 3.3-3 and 4.3-2 item 7b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [O]peration of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change[s] [do] not revise any equipment requirements or any plant operating parameters required to provide undervoltage protection. The equipment configuration for the 480 Volt load center degraded voltage protection scheme coincident with safety injection will not change. The addition of definite time relays to the 480 Volt load center (non-safety injection) degraded voltage protection scheme, are better suited to maintaining the required settings, thereby enhancing the ability to detect a degraded voltage condition at the required setpoint. As such, the 480 Volt load center degraded voltage protection scheme will continue to assure the capability to detect degraded voltage on any of the load center buses and, in response to a significant degraded voltage condition, to initiate a signal to the sequencers to transfer power from off-site power to on-site power sources. Therefore, the proposed change[s] [do] not increase the probability or consequences of accidents previously analyzed.

2. [O]peration of the facility in accordance with the proposed amendment[s] would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change[s] [do] not change the operation, function or modes of plant or equipment operation. The ability of the 480 Volt load center degraded voltage protection scheme to detect degraded voltage on any of the load center buses and, in response to a significant degraded voltage condition, initiate a signal to the sequencers to transfer power from off-site power to on-site power sources is maintained. No new hazards are created or postulated which may cause an accident different from any accident previously analyzed. Also, the definite time delay relays are proven for reliable service in the industry and, as such, do not create any new failure modes in themselves or for the load center protected circuit. Therefore, the proposed change[s] [do] not create the possibility of a new or different kind of accident from any previously evaluated.

3. [O]peration of the facility in accordance with the proposed amendment[s] would not involve a significant reduction in a margin of safety.

The ability of the 480 Volt load center degraded voltage protection scheme to perform its detection and actuation functions is confirmed by existing surveillance requirements. Installation of the definite time delay relays will enhance the ability to detect a degraded voltage condition at the required setpoints and to actuate the sequencer trip logic in sufficient time to assure motor protection. Also, the associated bases are not affected and the existing degraded voltage setpoint values are not changed. Therefore, the proposed amendment[s] [do] not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: December 3, 1991

Description of amendment request: The proposed amendment would modify the TMI-1 Technical Specifications in two areas. The first change would simplify the definition of "Heat Balance Calibration" by removing the formulae for a weighting factor between primary system and secondary system heat balance calculations as a function of reactor power. The second change would delete the requirement for a reactor shutdown in the event that one of the redundant narrow range reactor containment water level monitoring instruments should become inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposedamendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. Deletion of the wording beyond the point of term definition contained in the current definition of Heat Balance Calibration is an administrative change. The safety analysis requires that the heat balance error be not more than 2% and that the steady state difference between the Heat Balance and Nuclear Instrumentation be such that the Heat would not be more than 2% greater than the Nuclear Instrumentation. Neither requirement is affected by this change.

Deletion of the action to shutdown the Reactor on loss of a narrow range Containment Water Level monitoring instrument is appropriate because the accident analysis considerations were based on the original design and purpose of the Reactor Building Sump. Failure of the Containment Water Level monitoring instrument does not lead to an accident and it is not required for accident mitigation.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or kind of accident from any previously evaluated. The amendment does not modify plant operation. It will continue to be operated in accordance with the limits of the existing accident analysis and margins of safety. The 2% maximum power level measurement error is unaffected by the change to the definition.

The Containment Water Level monitoring instrument has no interface with reactor systems.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment does not change any existing safety margins since the 2% maximum power level measurement error s unaffected by the revision of the Heat Balance definition and there is no safety margin defined for the containment sump level instruments since they do not perform any accident-mitigating functions at TMI-1.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: March 27, 1992

Description of amendment request: The amendment would revise the limiting conditions for operation and surveillance requirements for primary containment integrity, secondary containment integrity and other systems and equipment of Technical Specifications Section 3.7.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested revisions do not affect the FSAR safety analyses involving these systems.

Definitions

The revisions to Definition 15, "Primary Containment Integrity" and Definition 16, "Secondary Containment Integrity" agree with the corresponding definitions of the STS. These changes are administrative in nature in that they only clarify the requirements for containment integrity and the appropriate means of isolating penetrations. These changes do not affect the operation or function of the containment isolation valves/dampers or the primary and secondary containment isolation systems and, therefore, do not result in a significant increase in the probability or consequences of an accident previously evaluated.

Primary Containment Integrity

The revision to TS section 3.7.A, "Primary Containment Integrity", only adds a specific requirement to restore primary containment integrity within 1 hour or commence a plant shutdown. These actions are consistent with the actions specified in STS for primary containment integrity. No changes to the primary containment boundary or the requirements for primary containment integrity have been proposed. Therefore, this change does not result in a significant increase in the probability or consequences of an accident previously evaluated.

Primary Containment Power Operated Isolation Valves

The revisions to TS section 3.7.B, "Primary Containment Power Operated Isolation Valves" are editorial in nature in that the wording has only been changed to be consistent with the STS requirements for primary containment isolation valves. These changes do not affect the function of the valves, the requirements to isolate a penetration with an inoperable containment isolation valve or the actual methods of isolation. Penetrations are still required to be isolated within 4 hours in a manner that cannot be adversely affected by a single active failure. Therefore, these changes do not result in a significant increase in the probability or consequences of an accident previously evaluated.

Drywell Average Air Temperature

The addition of limits, actions, and surveillance requirements for drywell average air temperature are intended to ensure that the initial assumptions in the DAEC Primary Containment Response Analysis to a DBA remain valid. The temperature limit (135F) corresponds to the initial drywell average temperature assumed for this analysis in the UFSAR. The specified limits, actions and surveillance requirements are consistent with STS. The addition of this limit to the TS will not affect the actual operation or function of any equipment but will ensure that the containment analysis remains valid. Therefore, the addition of this limit will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Pressure Suppression Chamber-Reactor Building Vacuum Breakers

The changes to TS section 3/4.7.D only provide additional detail and operability requirements for the pressure suppression chamber-reactor building vacuum breakers. These additional details are consistent with the requirements of STS. Specifying separate operability requirements for vacuum breakers inoperable for opening (but known to be closed) or open better reflects the dual functions of these valves (vacuum relief and containment isolation). The additional surveillance requirement will better ensure that the containment isolation function of these valves is maintained. The rewording of existing surveillances only clarifies current requirements. These changes do not affect the actual function, setpoints, or number of valves required to be operable and therefore do not result in a significant increase in the probability or consequences of an accident previously evaluated.

Drywell-Pressure Suppression Chamber Vacuum Breakers

The changes to TS section 3/4.7.E, only provide additional detail and operability requirements for the drywell-pressure suppression chamber vacuum breakers. These additional details are consistent with the requirements of STS. Specifying separate operability requirements for vacuum breakers inoperable for opening (but known to be closed) or open better reflects the dual functions of these valves. The additional requirement to verify that each vacuum breaker is closed at least once per week will better ensure that the isolation boundary between the drywell and torus is maintained. The elimination of the requirement to exercise all operable drywell-pressure suppression chamber vacuum breakers upon determination that a vacuum breaker is inoperable for opening will not affect the reliability of these vacuum breakers. The only valid reason to exercise the operable vacuum breakers is if a common mode failure is suspected. We have reviewed the maintenance history of these valves and have not identified any instances of common mode failures. Conditional testing of these vacuum breakers is not required by the STS. Therefore, these changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Main Steam Isolation Valve Leakage Control System (MSIV-LCS)

The change to TS Section 3/4.7.F, "MSIV-LCS", deletes the unnecessary and potentially non-conservative conditional surveillance testing of the redundant MSIV-LCS subsystems. Although the proposed change will reduce the amount of testing of the MSIV-LCS, reliability of these systems would not be decreased and the necessary assurance that the alternate systems/subsystems/components will operate when needed is provided by the ASME Section XI IST Program.

The possibility of human error will decrease with reduced testing. Human error such as misalignment of valves after the system is returned to its normal configuration following testing and the misdirection of the operators attention from monitoring and directing plant operations is less likely to occur if this testing is eliminated. Additionally, reducing the scope and frequency of surveillance testing will decrease the probability of equipment failure (due to testing) which could require plant shutdown. Therefore, this change will not increase the probability of occurrence or consequences of an accident previously evaluated.

Suppression Pool Level and Temperature

The changes to TS section 3/4.7.F, "Suppression Pool Level and Temperature", are intended to clarify these requirements and make them more consistent with STS. The revision to the applicability statement which deletes the requirement for suppression pool level and temperature to be within the specified limits during work which has the potential to drain the vessel is in accordance with STS. Suppression pool level and temperature limits ensure that the suppression pool has the capability of acting as a heat sink for design basis events but are not appropriate or applicable during the refueling or cold shutdown conditions. No changes have been made to the actual suppression pool temperature or level limits and therefore, the assumptions made in the accident and transient analyses remain valid. These limits are consistent with STS. The revisions to the surveillance requirements are also intended to improve clarity and consistency with STS. The deletion of the requirement to monitor suppression pool water temperature every 5 minutes during relief valve operation is appropriate in that

plant operating and emergency operating procedures already specify what actions are to be taken when suppression pool average water temperature increases above 95o F including initiation of suppression pool cooling. Monitoring pool temperature every 5 minutes during these events is not necessary and is redundant to other actions. Therefore, these changes will not significantly increase the probability of occurrence of the consequences of an accident previously evaluated.

Containment Atmosphere Dilution

The revisions to the applicability of TS section 3.7.H, "Containment Atmosphere Dilution", requiring the containment atmosphere dilution system to be operable only when the reactor is in power operation and the primary containment is required to be inerted will not significantly increase the probability or consequences of an accident previously evaluated because the CAD system can only function when the containment is inerted. The function of the CAD system is to inject nitrogen into the containment after a LOCA and ensure the containment remains inerted. Drywell inspections performed after plant startup and prior to plant shutdown require that the primary containment be de-inerted for personnel access. Therefore, CAD system operability is not required during these inspections. No changes to the actual function or purpose of the CAD system are proposed.

Oxygen Concentration

The changes to TS section 3/4.7.I, "Oxygen Concentration" are administrative in that they only clarify the requirement that both the suppression chamber and the drywell must have oxygen concentrations of less than 4% by volume. The revisions to the surveillance requirements are consistent with STS. Decreasing the frequency of verification of oxygen concentration from twice per week to once per week is in accordance with STS and reflects the fact that during power operation, the containment is inerted and slightly pressurized such that air (oxygen) cannot leak into the containment. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

Secondary Containment

The deletion of the requirement to operate the SGTS immediately after a secondary containment violation is identified will not affect the reliability of the secondary containment in that containment integrity is normally fully restored immediately after a violation is identified. The testing of the SGTS involves insertion of a Group III containment isolation signal and is only appropriate if the restoration of secondary containment involves a temporary or new secondary containment boundary. These modifications to a secondary containment boundary, however, would require that the SGTS be operated as part of post modification testing. Deleting the requirement for the SGTS to be operated after minor secondary containment violations will reduce the possibility of human error (such as misalignment of valves after the system is returned to its normal configuration) due to reduced testing. Operation of the SGTS after a secondary containment violation is not required by STS.

Revision of the definition of calm wind conditions will not affect the reliability or availability of the secondary containment or SGTS. An engineering evaluation on the effects of wind speed and direction on the ability of the SGTS to maintain 1/4" vacuum in secondary containment has been performed. The results indicate that while wind effects can be seen on individual instruments, there is minimal effect on the average instrument readings with wind speeds up to 15 mph. A discussion of this evaluation has been added to the Bases of TS section 3.7. Therefore, these changes will not significantly increase the probability or the consequences of an accident previously evaluated.

Secondary Containment Automatic Isolation Dampers

The addition of operability requirements, actions and surveillance requirements for secondary containment isolation dampers better ensures the integrity and isolation capability of the secondary containment. The new specifications are consistent with the requirements of the STS. The actual function or operation of the secondary containment isolation valves/dampers will not be affected. The appropriate valves/dampers will be incorporated in plant procedures that are subject to the change control provisions of TS. Therefore, these changes will not increase the probability of occurrence or consequences of an accident previously evaluated in the TS.

Standby Gas Treatment System

The change to the output requirements of the inlet heaters for each train of the SGTS from 11 kw to 22 kw better ensures that these heaters (and the SGTS) can perform their design function. The 22 kw output requirement ensures that the inlet air humidity does not exceed the 70% humidity specified in the UFSAR. This change does not affect the actual operation of the heaters or the SGTS.

The requirement to demonstrate the HEPA filter uniform air distribution after HEPA filter replacement or after structural maintenance on the filter system housing (rather than annually) will not decrease the reliability of the SGTS. The air flow test will be performed after work or modifications which have the ability to disrupt the system geometry or result in potential flow blockage.

Revising the shutdown LCO requirement in the various specifications from requiring the plant to be in Cold Shutdown in 24 hours to requiring Hot Shutdown in 12 hours and Cold Shutdown (or other condition not requiring equipment operability) in the following 24 hours is consistent with STS and the shutdown requirements in TS section 3.5. This new requirement will allow the reactor to be shutdown in a more controlled manner and will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The revisions to the Bases are administrative in that they only reflect the changes to the individual specifications described previously in this section or correct minor discrepancies. All changes are consistent with the applicable specifications.

(2) The proposed amendment will not increase the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons.

As described in the above response to question 1, none of the proposed changes alters the design of the plant or equipment or the plant's transient response. The changes to the definitions and limiting conditions for operation applicable to TS section 3.7 are consistent with STS and better ensure that equipment assumed to be operable in our accident analysis will be operable upon demand. The addition of limiting conditions for operation for drywell average temperature and secondary containment isolation valves will better ensure that the assumptions in our accident analysis remain valid.

The changes to the surveillance requirements are consistent with the STS. Those systems required to mitigate accidents evaluated in the UFSAR will still be operable and available.

The reduction in conditional surveillance testing of certain systems and equipment will reduce the probability of equipment failure as a result of excessive testing or due to human error.

(3) The proposed amendment will not involve a significant reduction in a margin of safety for the following reasons.

The revisions to the limiting conditions for operation in Chapter 3.7 of the TS will not invalidate the original licensing basis assumptions and will not invalidate any assumptions or input parameters for any DAEC event analysis. These changes provide more specific guidance only and are in accordance with the STS. Extending the time period within which the DAEC must achieve Cold Shutdown conditions will permit increased operator attention and minimal distractions for operators during shutdown, thus minimizing the risks of unexpected operational transients.

Additional surveillance testing for certain instrumentation and systems will provide additional assurance that these systems will be available when needed.

Elimination of unnecessary or conditional surveillance testing will not reduce the minimum necessary equipment operability requirements or equipment reliability. Elimination of the redundant testing will reduce equipment failure due to excessive testing or human error.

In summary, the proposed administrative changes do not change the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident and do not involve a reduction in the margin of safety.

Therefore, the proposed license amendment is judged to involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 22, 1992

Description of amendment request: The amendment would revise the Technical Specifications by incorporating the requirements for additional Reactor Water Cleanup (RWCU) system leak detection instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change will not increase the probability or consequences of an accident previously evaluated. The operation of the recently installed high ambient temperature monitoring instrumentation is identical to the existing instrumentation. Consequently, no new types of failures are introduced which would affect the probability of occurrence of any previously evaluated accident.

Regarding the consequences of previously evaluated accidents, the proposed change and the failure mechanisms of concern are bounded by the existing analysis for the worst case accident. Therefore, the consequences of previously evaluated accidents are not increased.

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The performance of the existing leak detection instrumentation will not be affected by the proposed change. The additional high ambient temperature monitoring instrumenation will operate in an identical manner as the existing instrumentation. No new or different types of failures are created. Therefore, no new or different types of accidents will be created by the proposed change.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The proposed change will add new ambient temperature monitoring and isolation capabilities to the existing instrumentation. Since the proposed change improves the detection and isolation capabilities for a postulated leak in the RWCU system, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 7, 1991

Description of amendment request: The requested change adds operational and surveillance requirements for the primary containment hydrogen concentration analyzer in accordance with the guidance of NRC Generic Letter No. 83-36.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The enclosed Technical Specification change is judged to involve no significant hazards based on the following:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The addition of operational and surveillance requirements for post-accident primary containment hydrogen analyzers into CNS Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will not affect any material feature or operational mode of the plant that could increase the probability of a design basis loss of coolant accident. The proposed change further ensures the availability of the primary containment hydrogen concentration monitoring capability for operator use in responding to various potential accidents. Hence, the proposed change will not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility for a new or different kind of accident from any accident previously evaluated?

The addition of operational and surveillance requirements for the post-accident primary containment hydrogen analyzer into CNS Technical Specifications incorporates additional restrictions and requirements upon plant operation, and will not result in any new plant configuration or modes of plant operation. Thus, this change will not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes to add operational and surveillance requirements for the post-accident hydrogen concentration analyzers into CNS Technical Specifications follow the guidance provided by NRC Generic Letter 83-36. No existing operating limits or setpoints are affected by this change. The proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 25, 1992

Description of amendment request: The changes consist of reformatting the CNS DC Power Systems Technical Specifications (TS). The limiting conditions for operation (LCO) actions statements have been revised, existing surveillance requirements have been reformatted, and additional surveillance requirements have been included to correspond with Standard Technical Specifications (STS). In addition, several changes were made to the Bases section concerning DC Power Systems to also maintain consistency with the STS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change reformats the existing DC Power System limiting conditions for operation and accompanying surveillance requirements into a format consistent with the Standard Technical Specifications, which is in accordance with applicable NRC guidance.

The CNS Technical Specifications, like the Standard Technical

Specifications, currently provide a set of surveillance acceptance criteria associated with the station DC power sources. These

criteria vary according to the appropriate surveillance interval, i.e., weekly, quarterly, or during refueling. However, the Standard Technical Specifications identify discrete actions associated with each surveillance requirement which are commensurate with the significance of surveillance results, and which provide an explicit means for determining DC Power System operability. In contrast, the CNS Technical Specifications provide only the action statement associated with the corresponding limiting condition for operation for battery inoperability, and while clearly defining surveillance test acceptance criteria, do not clearly define the criteria for battery operability as with the STS. This proposed change will reformat the DC Power System technical specifications to conform to the Standard Technical Specifications style which will assist the licensee in making accurate operability determinations and follow appropriate actions. Therefore, these format changes do not constitute a significant increase in the probability or consequences of an accident previously evaluated.

In addition to improving DC Power System operability determinations, the change to the Standard Technical Specifications format will reduce the allowable reactor operation time with an inoperable battery to correspond with applicable NRC guidance. Currently, the CNS Technical Specifications allow continued reactor operation with an inoperable station battery for a period of ten days. The Standard Technical Specifications, in accordance with NRC Regulatory Guide 1.93, "Availability of Electric Power Sources," allow reactor operation to continue while attempts are made to restore operability of the battery for a period of two hours after which the reactor must be in Hot Shutdown within the next 12 hours if battery operability cannot be restored. Therefore, this change will significantly reduce the allowable reactor operation time with an inoperable battery; accordingly, this change does not represent a significant increase in the probability of previously evaluated accidents.

This proposed change also adds additional DC Power System surveillance requirements, not currently in the CNS Technical Specifications, in accordance with the guidance provided in the Standard Technical Specifications. These new surveillance requirements provide further assurance of battery operability and clarify operability determinations, and accordingly do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change lowers the minimum float voltage for the pilot cell and other connected cells from 2.15 to 2.13 volts.

This value is consistent with the vendor (C & D) recommendations for the acceptable float voltage for the type of batteries installed (lead calcium) at CNS for the category A and B limits as defined in the STS and the attached Table 3.9.1. In no way does the reduction of this new float voltage value affect the capability of the DC power system to perform its intended safety function. The vendor has indicated and the District has verified that a voltage of 2.13 volts for each connected cell will ensure the battery's capability to perform its design function.

These category A and B values provide the first level of surveillance and resulting evaluation. The category B allowable value of 2.10 volts for a connected cell ensures the capability of the remaining battery cells to perform their design function. The battery vendor has indicated, and District engineering has verified that the battery is capable of performing its design function with a cell value much lower than the category B allowable value, therefore, reduction of the category A and B float voltage from 2.15 volts to 2.13 volts and the generation of a category B absolute allowable value of 2.10 volts and their attendant corrective actions does not constitute a significant increase in the probability or consequences of an accident previously evaluated.

Based on the above discussions, the changes proposed in this amendment request do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

This proposed change will revise the LCO action statements and the surveillance requirements for the CNS DC Power System to conform to the Standard Technical Specifications style which will assist and improve the ability of the licensee to make accurate operability determinations and follow appropriate actions concerning the DC power system. This proposed change will not involve any plant design change, affect any plant design criteria, or change the operation or the function of the DC power system as described in the USAR. This proposed change also does not allow any new mode of plant operation.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

This proposed change does not change existing facility equipment or represent any new mode of plant operation. This proposed change incorporates additional surveillance requirements and reformats the existing surveillance requirements of the DC power system, making them more stringent than previously required. The additional surveillance requirements and new format style is consistent with the existing requirements and use NRC endorsed criteria for DC power systems. Additionally, this proposed change will not reduce the capability of the 125 volt and 250 volt battery systems to perform their intended function, therefore maintaining the margin of safety. The remaining changes consist of reformatting the DC Power System technical specifications to conform to the Standard Technical Specifications style which will assist the District in making accurate operability determinations and follow appropriate actions. Based on this discussion, this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: May 7, 1992

Description of amendment request: The proposed amendment application requests the relocation of the Prairie Island Technical Specification (TS) Containment Penetration List into plant procedures in accordance with the guidance provided in Generic Letter 91-08, "Removal of Component Lists From Technical Specifications." The Containment Penetration List in TS Section 4.4 would be relocated into plant procedures that are subject to the change control provisions for plant procedures specified in the Administrative Controls Section of the TS. The removal of the Containment Penetration List from TS would permit administrative control of changes to this list without processing a license amendment. Any change to the Containment Penetration List once it is incorporated in the plant procedures will be subject to the requirements specified in the Administrative Controls Section of the TS on changes to plant procedures. The change control provisions of the TS provide an adequate means to control changes to the Containment Penetration List. The removal of the Containment Penetration List from the Prairie Island TS per the guidance described in Generic Letter 91-08 provides an acceptable alternative to identifying each containment penetration by its plant identification number in the Technical Specification Containment Penetration List. The amendment would not alter the operability and testing requirements of those components to which it applies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Relocation of the Containment Penetration List to plant procedures is consistent with the guidance in Generic Letter 91-08, it does not alter existing Technical Specification [TS] requirements or those components to which they apply. Any change to the Containment Penetration List, once it is incorporated in the plant procedures, will be subject to the requirements specified in the Administrative Controls Section of the [TS] on changes to plant procedures. The procedure change control provisions of the [TS] will provide an adequate means to control changes to the Containment Penetration List.

Therefore, because the removal of the Containment Penetration List from the Prairie Island [TS] does not alter existing [TS] requirements and because changes to the Containment Penetration List will be controlled per the Administrative Controls Section of the [TS], the proposed changes will not significantly affect the probability or consequences of an accident previously evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no new failure modes or mechanisms associated with the proposed changes. The proposed changes do not involve any modification in operational limits. Only the list of containment penetrations is being removed from [TS].

The proposed changes are consistent with the NRC Staff guidance provided by Generic Letter 91-08, "Removal of Component Lists From [TS]". The NRC Staff concluded in Generic Letter 90-09, that the removal of component lists from the [TS] per the guidance described in Generic Letter 91-08 provides an acceptable alternative to identifying every component by its plant identification number in the [TS] because the removal of the lists does not alter existing [TS] requirements or those components to which they apply.

Since the proposed changes conform with the guidance in Generic Letter 91-08, and because the removal of the Containment Penetration List from the Prairie Island [TS] does not alter existing [TS] requirements or those components to which they apply, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, and the accident analyses presented in the Updated Safety Analysis Report will remain bounding.

The proposed amendment will not involve a significant reduction in the margin of safety.

Relocation of the Containment Penetration List to plant procedures is consistent with the guidance in Generic Letter 91-08, it does not alter existing [TS] requirements or those components to which they apply. Any change to the Containment Penetration List, once it is incorporated in the plant procedures, will be subject to the requirements specified in the Administrative Controls Section of the [TS] on changes to plant procedures. The procedure change control provisions of the [TS] will provide an adequate means to control changes to the Containment Penetration List.

Therefore, because the removal of the Containment Penetration List from the Prairie Island [TS] does not alter existing [TS] requirements and because changes to the Containment Penetration List will be controlled per the Administrative Controls Section of the [TS], the proposed changes will not result in any reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: May 21, 1992

Description of amendment request: This amendment would make changes to the Unit 1 Technical Specifications to correct the flow dependent MCPR Operating Limits to be consistent with the licensee's NRC-approved methodology.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change corrects a single calculational error to ensure that the Technical Specification flow dependent MCPR Operating Limits are based on correct implementation of PP&L's NRC-approved licensing methods. This action will ensure SSES U1C7 operation is within its design basis, and preserves the validity of the U1C7 reload safety analysis. Therefore, it will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This proposal does not create the possibility of a new or different type of accident from any accident previously addressed. The proposed change corrects an error in a single calculation supporting development of MCPR Operating limits for a specific transient. This action therefore ensures that proper operating limits are in place for an event that has been previously addressed. It does not create the possibility of a new or different type of accident from any accident previously addressed.

3. This change does not involve a significant reduction in a margin of safety.

Implementation of the proposed change will ensure that the safety margin resulting from the reload safety analysis will be preserved for U1C7 operation. Therefore, it does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: May 8, 1991, and supplemented by letter dated May 15, 1992.

Description of amendment request: The amendments would change the technical specifications (Tss) to facilitate operation of Limerick Generating Station (LGS), Units 1 and 2, in a 24-month fuel cycle instead of the current 18-month fuel cycle. Specifically, the two changes would 1) revise the channel calibration frequency for the peak acceleration seismic monitoring recorder mounted on the reactor vessel head flange from 18 to 24 months and 2) change the frequency of surveillance testing of the main steam safety relief valves (SRVs) from 18 to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee has discussed each of the two changes separately, as presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Change 1

This proposed change involves a change in the channel calibration frequency for seismic instrument XR-VA-151 from 18 months to 24

months (i.e., a maximum of 30 months accounting for the allowable grace period). Seismic instrument XR-VA-151 is a passive device. This instrument does not interface with any other plant system or equipment, nor does this instrument provide on-line operational information to the plant operators. There is no accident previously evaluated which has as its initiator anything that is related to instrument XR-VA-151, its accuracy, or to the frequency of this instrument's surveillance testing. The proposed TS change to the surveillance testing interval for XR-VA-151 will not affect the ability of plant equipment important to safety to bring the plant to a safe shutdown condition, or mitigate the consequences of any accident. As a result, the proposed change will not impact on-site or off-site doses resulting from accident-related radiological releases. Therefore, the proposed change in the surveillance frequency of XR-VA-151 will not increase the probability or consequences of an accident.

Change 2

This proposed TS change involves a change in the frequency of surveillance testing of the main steam system SRVs from 18 months to 24 months (i.e., a maximum of 30 months accounting for the allowable grace period) for "50%" of the total of 14 SRVs, and from 40 months (i.e., accounting for two 18 month refueling cycles with one four month grace period) to 54 months (i.e., accounting for two 24 month refueling cycles with one six month grace period) for all 14 SRVs. There are no accidents that have as their initiators anything which would be related to the proposed change in frequency of the SRV surveillance testing. The proposed change will not change the design or function of any plant systems or equipment. An evaluation of LGS SRV set pressure surveillance data since initial plant operation, as well as industry data on Target Rock two-stage SRVs [reference to two Tables deleted from this notice], does not indicate a trend toward negative drift (i.e., decreasing set pressure). Therefore, the proposed change in frequency of surveillance testing of the SRVs will not impact the possibility of inadvertent opening of the SRVs.

As identified in [General Electric] GE report NEDE-30476, Target Rock two-stage SRVs experience an upward drift in set pressure due to corrosion induced bonding of the pilot disc and seat, and labyrinth seal induced friction due to insufficient clearances between the pilot rod and the pilot guide. An historical search of set pressure surveillance data [reference to two tables deleted from this notice] can lead to the conclusion that set pressure drift magnitude approaches a plateau (i.e., a constant value) early in the operating cycle, and therefore, the proposed extension in the surveillance testing interval will not have a significant effect on an SRV's ability to perform its self-actuated safety function.

Additionally, as documented in Section 3.9.3.4 of Supplement 3 to NUREG-0991, "Safety Evaluation Report Related to the Operation of Limerick Generating Station, Units 1 and 2," dated October 1984, the NRC concluded that LGS can be operated with no adverse effect on the health and safety of the public given the upward set pressure drift of the SRVs based on the following three items: 1) LGS has implemented all applicable supplements of General Electric Service Information Letter (SIL) No. 196 which incorporates the improved SRV maintenance and refurbishment recommendations specified in GE report NEDE-30476; 2) as stated in section 5.2 of the Final Safety Analysis Report (FSAR), LGS has installed considerably more SRV relieving capacity then required by the applicable edition of the [American Society of Mechanical Engineers] ASME Code; and 3) the TS required SRV set pressure testing frequency exceeds the current ASME Code Section XI requirements, i.e., at least 50% of the total of 14 SRVs are tested each refueling outage in accordance with TS versus 20% in accordance with ASME Code Section XI. None of these three bases will be affected by the proposed TS change. Therefore, there is no overall impact on the probability or the consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Change 1

The proposed change involves a change in the frequency of surveillance testing of XR-VA-151. This instrument does not interface with any equipment which is important to safety. The proposed TS change will not alter the design or function of this instrument, or any other plant equipment, nor will the proposed change introduce any new operating configurations or failure modes. The data recorded by this instrument are not available to the plant operators during plant operation (i.e., during either normal or abnormal operation). Therefore, the proposed change will not create the possibility of an accident of a new or different type from any accident previously evaluated.

Change 2

The proposed change involves a change in the frequency of SRV testing. The proposed change will not alter the design or function of any plant systems or equipment. The proposed change will not introduce any new operating configurations, or any failure mechanism of a different type than already evaluated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Change 1

The proposed change involves a change in the frequency of surveillance testing of XR-VA-151. Since this instrument does not interface with any other plant system or equipment, the proposed change in the surveillance frequency of XR-CA-151 will not impact the safety margin of any system, structure, or component in the plant. Therefore, this proposed change will not reduce a margin of safety.

Change 2

The proposed change involves a change in the frequency of SRV testing. The NRC's original basis for acceptable operation of the plant with SRV set pressure drift as documented in Section 3.9.3.4 of Supplement 3 to NUREG-0991 is not altered by the proposed change to the TS surveillance frequency requirement for the SRVs. All applicable supplements to GE SIL No. 196 will continue to be implemented. The total SRV relieving capacity will not change. The TS required SRV set pressure testing frequency will continue to exceed the ASME Code Section XI/OM-1-1981 requirements, i.e., at least 50% of the total of 14 SRVs will be tested each refueling outage versus at least 20%. Therefore, the proposed change will not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 21, 1992

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications (TS) requests changes to Table 4.2.1 entitled, "Minimum Test and Calibration Frequency for Primary Containment Isolation Systems (PCIS)" to reflect a plant modification which will deactivate the reactor vessel head spray portion of the Residual Heat Removal (RHR) system. This modification involves the elimination of the reactor vessel head spray function by removing and capping portions of the head spray piping and associated valves. The head spray is an optional capability and credit is not taken for it in the accident analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards considerations, as defined in 10 CFR 50.92, since the proposed changes would not:

(1) involve a significant increase in the probability of an accident or consequence previously evaluated.

This change will not increase the possibility of an accident or malfunction of safety-related structures, systems or components as evaluated previously in the FSAR (Final Safety Analysis Report). There are no safety-related functions associated with the operation of head spray. Head spray is an optional capability and credit is not taken for it in the accident analysis.

(2) create the possibility of a new or different kind of accident from those previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated because there are no new interfaces with safety-related equipment, systems or structures. No new systems have been introduced which by their failure or malfunction could create a new or different accident.

The change deletes the logic system functional test for the head spray containment isolation valves (CIVs) that will be removed as part of the plant modification. The Primary Containment Isolation System (PCIS) for all other CIVs will not be affected by this change. The logic functional test for other portions of PCIS will continue at the current frequency.

3) involve a significant reduction in the margin of safety as defined in the basis for Technical Specifications.

The change will not reduce the margin of safety as defined in the Technical Specification.

The head spray system is not described in the basis for any Technical Specification. This subsystem is not required to perform any safety-related functions. Head spray is an optional capability and credit is not taken for it in the accident analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: May 5, 1992

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to allow a relaxation in the pressurizer safety valve (PSV) and main steam safety valve (MSSV) setpoint tolerances to plus or minus 3 percent. New Hampshire Yankee (NHY) proposes to utilize the plus or minus 3 percent tolerance for the "as-found" acceptance criteria for additional valve testing required by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Article IWV-3513. NHY is also proposing to revise the BASES for Technical Specification 3/4.7.1.1 to specify the correct Edition of the ASME Code, Section III applicable to the MSSVs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

New Hampshire Yankee is proposing to revise the Seabrook Station Technical Specifications to allow a relaxation in the Pressurizer Safety Valve (PSV) and Main Steam Safety Valve (MSSV) setpoint tolerances to [plus or minus] 3 [percent] for ASME Section XI testing acceptance criteria. The proposed Technical Specification changes also require that the PSV and MSSV setpoints be restored to within [plus or minus] 1 [percent] of their nominal setpoints following testing. New Hampshire Yankee is also proposing to revise the BASES for Technical Specification 3/4.7.1.1 to specify the correct Edition of the ASME Boiler and Pressure Vessel Code, Section III applicable to the MSSVs. Additionally, NHY is proposing to correct a typographical error in the BASES for Technical Specification 3/4.7.1.1. The BASES currently contain an incorrect reference to Technical Specification Table 3.7-2, whereas the correct reference is to Table 3.7-1.

The impact of the relaxed PSV and MSSV setpoint tolerance on the licensing basis analysis documented in the Seabrook Station Updated Final Safety Analysis Report (UFSAR), Chapter 15, has been reviewed by Yankee Atomic Electric Company (YAEC) and documented in topical report YAEC-1847 "Seabrook Station Code Safety Valve Setpoint Tolerance Relaxation." YAEC-1847 demonstrates that the licensing basis criteria are still met when the relaxed Code safety valve tolerance of [plus or minus] 3 [percent] is assumed. YAEC1847 demonstrates the following:

1. For events where Departure From Nucleate Boiling Ratio (DNBR) is a concern, there will be no reduction in the calculated minimum DNBR,

2. For events where overpressurization is a concern, the safety limits are not exceeded, and

3. For events where offsite doses are a concern, the safety limits are not exceeded, and

4. For LOCA events, the acceptance criteria for Emergency Core Cooling System performance are not exceeded.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The overpressure protection function of the PSVs and MSSVs is not affected by the proposed relaxation of their setpoint tolerance. The nominal setpoint of the PSVs and the MSSVs will not be changed. New Hampshire Yankee proposes to utilize the [plus or minus] 3 [percent] tolerance for the "as-found" acceptance criteria for additional valve testing required by ASME Section XI, Article IWV-3513. The proposed Technical Specification revisions require that the PSV and MSSV setpoints be restored to within plus or minus 1 [percent] of their nominal setpoints following testing. The evaluation of the proposed relaxation of the PSV and MSSV setpoint tolerances documented in YAEC-1847 demonstrates that new or different kinds of accidents are not created by the proposed changes.

(3) The proposed changes do not result in a significant reduction in the margin of safety.

The Seabrook Station overpressure protection design incorporates three Code safety valves on the primary system pressurizer and a total of twenty Code safety valves on the four main steam lines (five per line) in the secondary system. The proposed Technical Specification changes involve a relaxation of the setpoint tolerance for the Code safety valves in the primary and secondary systems. The YAEC-1847 evaluation of the Code safety valve setpoint tolerance relaxation demonstrates that peak pressures in the primary and secondary systems during the limiting pressurization transient (Turbine Trip) will remain within the limits for Condition II events (Faults of Moderate Frequency). The limiting small break LOCA event which involves the opening of the MSSVs is evaluated in YAEC-1847 which predicts a small increase in the Peak Clad Temperature (PCT). The small break LOCA PCT increase is not significant as defined by 10CFR50.46 nor are the PCT limits of 10CFR50.46 exceeded. YAEC-1847 also demonstrates that the frequency of challenges to the Code safety valves will not increase nor will the reactor trip on high pressurizer pressure be impacted as a result of the lowered setpoint tolerance (- 3 percent). Additionally, YAEC-1847 demonstrates that the radiological consequences associated with a Steam Generator Tube Rupture (SGTR) event are only minimally increased and remain within the round-off error applied to the SGTR radiological consequences which were delineated in NHY's April 16, 1991 letter to the NRC.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Acting Project Director: Victor Nerses

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 19, 1992

Description of amendment request: This license change request proposes to allow an exception to Technical Specification 4.0.4 for the Intermediate Range Monitors (IRMs) and Source Range Monitors (SRMs) when Operational Condition 2 or 3 is entered from Operational Condition 1. The circuitry of the SRMs and IRMs precludes functional testing in Operational Condition 1 because all rod block and scram functions are bypassed when the mode switch is in Run. The surveillance requirements for these instruments can only be completed after entry into Operational Conditions 2 or 3.

Additionally, the licensee is proposing to change a note on Table 1.2 to permit the mode switch to be placed in the refueling position to test the switch interlock functions and related instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PSE&G has, pursuant to 10 CFR 50.92, reviewed the proposed amendment to determine whether our request involves a significant hazards consideration. We have determined that operation of the Hope Creek Generating Station, in accordance with the proposed changes:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

During performance of plant shutdowns, operability of the subject instrumentation will be confirmed in a timely manner by surveillance testing in accordance with the time requirements of Specification 4.0.3.

Furthermore, the proposed change would permit the performance of routine plant shutdowns without the invocation of the action requirements associated with the SRM and IRM specifications which include the insertion of the rod blocks and half scrams and potential voluntary entry into Specification 3.0.3. This would consequently decrease the probability of unwarranted transients.

The proposed change to permit the reactor mode switch to be placed in the Refueling position while in operational condition 3 or 4 to conduct testing provides the operational flexibility to operate the plant in a more conservative manner than presently required by the subject specification.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither the operation nor the function of the SRMs, IRMs, reactor mode switch interlocks, or instrumentation associated with the reactor mode switch will be modified by the proposed change. Performance of confirmatory, routine surveillance testing will not create the possibility of a new or different event.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes would permit the performance of routine plant shutdowns without requiring either: 1) the temporary modification of the subject instrumentation which would increase the likelihood of failure or inadvertent actuation, or 2) the invocation of the associated action statements which could increase the probability of unwarranted transients and could unnecessarily complicate plant operation.

The proposed change to permit the reactor mode switch to be placed in the Refueling position while in operational condition 3 or 4 to conduct testing provides an additional margin of safety in that the subject testing can be performed while the one-rod-out interlock is enabled.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 6, 1992

Description of amendment request: The amendment request modifies Technical Specification (TS) Section 3/4.3.1 Reactor Trip System Instrumentation, Limiting Conditions for Operation, Action Requirements, and Surveillance Requirements, including Associated Tables. The proposed changes contain administrative changes, provide consistency between Salem, Units 1 and 2 and ensure technical accuracy.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [do not] involve a significant increase in the probability or consequences of an accident previously analyzed.

A. Renumbering of line items within a specification is an administrative change, therefore, it would not increase the probability or consequences of a previously analyzed accident.

B1. The current Salem Accident Analysis does not support three loop operation. Three loop operation is not permitted at Salem. Removal of references to three and four loop operation from the functional units for Overtemperature [delta] T and Overpower [delta] T does not represent modifications to plant equipment or operation. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

B2. Changing the referenced Actions from Overtemperature [delta] T and Overpower [delta] T does not change the required actions. Actions 2 and 6 are identical except that Action 2 contains an additional subpart "c" that only applies to Power Range Nuclear Instrumentation. The proposed changes do not represent modifications to plant equipment or operation. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

B3. Changing the Undervoltage - Reactor Coolant Pumps and Underfrequency - Reactor Coolant Pumps MINIMUM CHANNELS OPERABLE requirement from 4 to 3 is necessary to apply Action 6 to these Functional Units. Action 6 allows for continued operation provided a failed channel is placed in the tripped condition within a given time period, and the Minimum Channels Operable requirement is satisfied. Continued operation is not possible unless the Minimum Channels Operable requirement is at least one less than the Total Number of Channels. The proposed changes do not represent modifications to plant equipment or operation. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

B4. Adding designators for Functional Units 18a and 18b is for identification only and is administrative. Therefore, this change would not increase the probability or consequences of a previously analyzed accident.

B5. Changing the Turbine Trip Stop Valve Closure Minimum Channels Operable requirement from 4 to 3 is necessary to apply Action 7 to these Functional Units. Action 7 allows for continued operation provided a failed channel is placed in the tripped condition within a given time period, and the Minimum Channels Operable requirement is satisfied. Continued operation is not possible unless the Minimum Channels Operable

requirement is at least one less than the Total Number of Channels. The proposed changes do not represent modifications to plant equipment or operation. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

B6. Deleting the notation is an administrative change, because it is not referenced in this table. Therefore, this change would not increase the probability or consequences of a previously analyzed accident.

B7. Adding the word POWER after RATED THERMAL corrects a typographical error and is an administrative change. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

B8. Relocating part of an action to a different page is an administrative change. Therefore, this change would not increase the probability or consequences of a previously analyzed accident.

B9. Adding a title to the action is an administrative change to correct a typographical error. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

B10. Deleting the words that describe the P-6 interlock is an administrative change, and therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

B11. Adding Action 8 and designating as Not Used is an administrative change, and therefore, this change would not increase the probability or consequences of a previously analyzed accident.

B12. Deleting the current Action 9 and changing to Not Used is an administrative change. Action 9 is not referenced in the table. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

B13. Changing Deleted to Not Used is an administrative change to provide a more clear description. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

C1. Adding Functional Unit 21, Reactor Trip Breakers, to Table 3.3-2 is an administrative change to ensure all functional units are addressed on each table. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

C2. Adding Functional Unit 22, Automatic Trip Logic, to Table 3.3-2 is an administrative change to ensure all functional units are addressed on each table. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

2. [do not] create the possibility of a new or different kind of accident.

As stated above, the proposed changes are either administrative, or do not represent modifications to plant equipment or operation. Therefore, there can be no impact on plant response to the point where a different accident is created.

3. [do not] involve a significant reduction in a margin of safety.

As stated above, the proposed changes are either administrative, or do not represent modifications to plant equipment or operation. Therefore, there can be no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: April 15, 1992

Description of amendment request: The proposed change would revise Engineered Safety Features response times to account for the sequential stroking of the outlet isolation valves on the refueling water storage tank and the volume control tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

South Carolina Electric & Gas Company (SCE&G or the licensee) has reviewed the proposed changes and determined that the proposed amendment does not involve a significant hazards consideration since the proposed changes will not:

(1) Involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed change increases the response time of certain ESF functions to account for the sequential stroking of the outlet isolation valves for the VCT [volume control tank] and RWST [refueling water storage tank]. The increase in response time is supported by the current accident analyses. This change is needed to ensure that assumptions utilized in the Steam Line Break accident analysis are properly addressed in the Technical Specifications.

(2) Create the possibility of a new or different kind of accident from any previously evaluated. This Technical Specification change is requested to ensure that the Technical Specification requirements support the assumptions utilized in the present safety analyses. The change does not introduce the potential for new or different accidents from those currently analyzed.

(3) Involve a significant reduction in a margin of safety. The proposed change is requested to incorporate into the Technical Specifications the response times associated with SI signals which support the plant's current safety analyses and margins of safety. Therefore, the change will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: April 7, 1992

Description of amendment requests: The licensee proposed to revise Technical Specifications (TS) Tables 3.3-3, 3.3-4, 3.3-5, and 4.3-2, "Engineered Safety Features Actuation System (ESFAS) Instrumentation." The proposed TS change will clarify that a manual Safety Injection Actuation Signal (SIAS) does not actuate a Containment Cooling Actuation Signal (CCAS). The licensee characterizes this change as an editorial change to make the TS consistent with plant design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Manual SIAS was never intended to initiate CCAS. This is an editorial change correcting a previous mistake in the TS. The error does not appear in any design documents or drawings, or any plant procedures. Deleting the requirements related to manual SIAS actuation of CCAS makes the TS consistent with plant design and procedures. There is no change in plant design, operation, or configuration. Therefore,

there is no significant increase in the probability or consequences of previously evaluated accidents.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No

Manual SIAS was never intended to initiate CCAS. This is an editorial change correcting a previous mistake in the TS. The error does not appear in any design documents or drawings, or any plant procedures. Deleting the requirements related to manual SIAS actuation of CCAS makes the TS consistent with plant design and procedures. There is no change in plant design, operation, or configuration. This change does not create the possibility of a new or different type of accident from those previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

Manual SIAS was never intended to initiate CCAS. This is an editorial change correcting a previous mistake in the TS. The error does not appear in any design documents or drawings, or any plant procedures. Deleting the requirements related to manual SIAS actuation of CCAS makes the TS consistent with plant design and procedures. There is no change in plant design, operation, or configuration. There is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station (YPNPS), Franklin County, Massachusetts

Date of amendment request: May 15, 1992

Description of amendment request: The proposed amendment would redefine the shift staffing requirements in the Technical Specifications in order to reflect the shutdown and defueled status of the facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

YNPS is now permanently shutdown and defueled. YNPS has ceased any activities for which 10 CFR Part 50.54 would require NRC Licensed Operators. Therefore, the appropriate training basis for YNPS requires an NRC approved Certified Fuel Handler (CFH) Training Program.

Maintenance of the facility has also been significantly simplified with the reduction in the numbers of systems, structures, and components required for a permanently shutdown and defueled condition. In addition, the reaction time required of operators to restore decay heat removal to the spent fuel pit is very long, measured in days. Therefore, the minimum shift crew composition required to safely maintain the facility has been reduced by one.

With the CFH Training Program reviewed and approved, the changes described above will more clearly reflect the facility staffing requirements and improve Technical Specification clarity and readability. Except for the reduction by one individual of the minimum shift crew composition, the remaining changes are administrative in nature. As such, these changes will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. This change reflects staffing requirements appropriate to the permanently shutdown and defueled status of YNPS. Specifically, the changes clarify the training, titles, minimum staff requirements for fuel handling, normal shift crew composition, and minimum staff requirements for the control room.

Without fuel in the reactor, the probability and consequences of most design basis accidents are reduced to zero. Only a fuel handling accident remains possible. However, this change does not affect the Limiting Conditions for Operations associated with handling fuel and the staffing requirements are clarified for title changes. The new minimum shift crew composition is commensurate with the reduction in operating systems and components and is adequate to safely maintain the facility. Therefore, there is no increase in the probability or consequences of an accident previously evaluated in the SAR as a result of this change.

2. Create the possibility of a new or different accident from any previously evaluated. The changes described in this proposal do not modify any plant systems or components and will not create the possibility of a new or different accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety. The reduction of the minimum shift crew size is commensurate with the significant increase in the margin of safety associated with the cessation of power operations. The administrative changes are consistent with the existing personnel qualifications and staffing practices and will not involve a significant reduction in a margin of safety.

Based on the above considerations, it is concluded that there is reasonable assurance that the maintenance of Yankee Nuclear Power Station, consistent with the proposed change, will not endanger the health and safety of the public.

This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Seymour H. Weiss

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses And Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration. For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: May 13, 1992 (TS 317T)

Description of amendment request: The proposed amendment would revise Technical Specifications Table 3.2.C and 3.5.K/4.5.K to allow continued power operation when the Rod Block Monitor (RBM) is inoperable and the Minimum Critical Power Ratio (MCPR) is within specified limits. Technical Specification Bases section 3.2 would also be revised to describe the basis for the proposed change. The proposed amendment is a temporary change which will expire at the end of the current Browns Ferry Unit 2 fuel cycle.

Date of publication of individual notice in Federal Register: May 22, 1992 (57 FR 21834)

Expiration date of individual notice: By June 22, 1992

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: December 10, 1991, and supplemented on April 17, 1992.

Brief description of amendment: The amendment revises the Unit 1 Technical Specifications to support Cycle 11 operation.

Date of issuance: May 26, 1992

Effective date: May 26, 1992

Amendment No.: 170

Facility Operating License No. DPR-53: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 22, 1992 (57 FR 2587) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 26, 1992 No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: March 28, as supplemented April 16, 1991, and February 28, 1992

Brief description of amendments: The amendments revise the Technical Specifications, which are contained in Appendices "A" and "B" to the licenses. The revisions include editorial changes, administrative corrections, and the deletion of footnotes. The amendments also include the replacement of all the Technical Specifications pages due to the elimination of double sided pages, adjusted line spacing (repagination), and the adjustment of text formats.

Date of issuance: May 19, 1992

Effective date: May 19, 1992

Amendment Nos.: 169 and 149

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20028). The supplemental submittals did not change the initial proposed no significant hazards consideration determination as detailed in the supporting Safety Evaluation. The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 19, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 21, 1992

Brief description of amendments: This amendment adds additional setpoint requirements to the Technical Specifications (TS) for the refueling mast loaded interlock and overload interlock setpoints. This addition is due to the station's plans to install a new refueling mast. The original refueling mast setpoints will remain in the TS because the original refueling mast for Unit 2 will be retained as a backup.

Date of issuance: May 19, 1992

Effective date: May 19, 1992

Amendment Nos.: 83 and 67

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9440) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 15, 1991, as supplemented July 1, 1991, August 14, 1991, and January 31, 1992.

Brief description of amendments: The amendments revise the Technical Specifications by deleting specific testing frequency requirements and replacing these requirements with references to Specification 4.0.5 as provided in the Westinghouse Standard Technical Specifications.

Date of issuance: May 12, 1992

Effective date: immediately, to be implemented within 30 days

Amendment Nos.: 136 and 125

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27040) The July 1 and August 14, 1991, submittals identified portions of the proposed amendment request needed to preclude a forced shutdown. The January 31, 1992, submittal provided additional clarifying information and did not change the initial proposed no

significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 12, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: May 30, 1991

Brief description of amendment: This amendment changes the Variable High Power Trip (VHPT) restart margin from 10% to 15%. The VHPT is incorporated in the reactor protection system to provide a reactor trip for transients exhibiting a core power increase from any initial power level.Specifically, Technical Specifications Table 2.3.1, "Reactor Protective System Trip Setting Limits," is proposed to be changed to incorporate the new 15% reset margin. The Basis and References sections, relating to this Technical Specification, are updated to reflect the set point change.

Date of issuance: May 18, 1992

Effective date: May 18, 1992

Amendment No.: 145

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 21, 1991 (56 FR 41577) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 28, 1991, as supplemented April 22, 1992

Brief description of amendment: The amendment revised Grand Gulf Nuclear Station, Unit 1 Technical Specifications and associated Bases to increase the surveillance test intervals and the allowed outage times for certain instrumentation associated with the Emergency Core Cooling System, Control Rod Block Function, and Isolation Actuation Instrumentation.

Date of issuance: May 20, 1992

Effective date: May 20, 1992

Amendment No: 97

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1991 (56 FR 33954) The April 22, 1992, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: September 11, 1991

Brief description of amendment: The amendment modifies Table 3.3.4.1-2 of the Grand Gulf Nuclear Station Technical Specifications to increase the Trip Setpoint and Allowable Value for the Anticipated Transient Without Scram Recirculation Pump Trip System from 1095 psig to 1126 psig and from 1102 psig to 1139 psig, respectively.

Date of issuance: May 26, 1992

Effective date: May 26, 1992

Amendment No: 98

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 16, 1991 (56 FR 51925) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 26, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: December 5, 1991

Brief description of amendment: The amendment revises a) the Safety Limit Maximum Critical Power Ratio (MCPR) values for Two-Loop Operation and Single-Loop Operation (SLO), b) the SLO Maximum Average Planar Heat Generation Rate (MAPLHGR) multiplier, c) the flow-dependent MCPR operating limits, d) the power-dependent MCPR operating limits, e) the exposure-dependent MCPR operating limits, f) Linear Heat Generation Rate (LHGR) limits for 8X8 fuel types for average planar exposures beyond 40,000 MWd/MTU, and g) the flow-dependent and power-dependent LHGR multipliers.

Date of issuance: May 28, 1992

Effective date: May 28, 1992

Amendment No: 99

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 22, 1992 (57 FR 2593)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: February 7, 1992

Brief description of amendment: The amendment revised the Environmental Protection Plan by terminating the Cooling Tower Drift Program and changing references to the program to reflect its termination.

Date of issuance: May 18, 1992

Effective date: May 18, 1992

Amendment No: 96

Facility Operating License No. NPF-29. Amendment revises the Environmental Protection Plan.

Date of initial notice in **Federal Register:** March 4, 1992 (57 FR 7810) The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated May 18, 1992, and a Safety Evaluation dated May 18, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S.

Commerce at Washington, Natchez, Mississippi 39120.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: September 21, 1990, as supplemented February 19, 1992

Brief description of amendments: The amendments modify the Technical Specifications (TS) relating to protective instrumentation for Hatch Units 1 and 2 by adding notes to (1) Unit 1 TS Tables 3.1-1 and 3.2-1 to allow for placing an inoperable channel in a tripped condition; and (2) Unit 1 TS Table 3.2-1 and Unit 2 TS Table 3.3.2-1 to allow the temporary bypassing of the reactor water clean-up (RWCU) system differential flow isolation instrumentation during periods of system restoration, maintenance or testing.

Date of issuance: May 19, 1992

Effective date: To be implemented within 60 days from the date of issuance

Amendment Nos.: 179, 120

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 14, 1991

Brief description of amendments: The amendments remove the Rod Sequence Control System (RSCS), enhance operation of the Rod Worth Minimizer (RWM), and make minor associated administrative corrections.

Date of issuance: May 20, 1992

Effective date: To be implemented within 60 days from the date of issuance.

Amendment Nos.: 180, 121

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13132) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 12, 1991, as supplemented April 21, 1992

Brief description of amendments: The amendments revise the minimum required thermal design flow (TDF) specified in the TS for Vogtle Units 1 and 2.

Date of issuance: May 28, 1992

Effective date: May 28, 1992

Amendment Nos.: 51 and 30

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1991 (56 FR 61283) The April 21, 1992, letter provided clarifying information that did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 28, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: March 10, 1992

Brief description of amendment: The amendment revises the Technical Specifications to delete requirements to demonstrate, by testing, that a redundant system/component is operable when a system/component is declared inoperable. In lieu of testing the redundant system/component to demonstrate its operability, the Technical Specifications are being revised to require an administrative check of plant records to verify operability of the redundant system/component. The amendment also makes administrative changes to delete superseded material and makes conforming changes to the Bases, Definitions, and paragraph numbers.

Date of issuance: May 18, 1992

Effective date: May 18, 1992

Amendment No.: 128

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13133) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 31, 1992

Brief description of amendment: The amendment changes references to the spent fuel pool area radiation monitors in the Technical Specifications to remove any inference that they perform a criticality monitoring function, thereby making the Technical Specifications consistent with the NRC Exemption issued October 18, 1991.

Date of issuance: May 20, 1992

Effective date: May 20, 1992

Amendment No.: 157

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9447) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 21, 1991, as supplemented June 11, 1991.

Brief description of amendment: The amendment changes Facility Operating License NPF-49 to authorize the transfer of Public Service Company of New Hampshire's (PSNH's) 2.8475 percent ownership in Millstone Unit 3 to a newly

formed and wholly owned subsidiary of Northeast Utilities (NU).

Date of issuance: May 29, 1992

Effective date: The date of the merger between NU and PSNH.

Amendment No.: 66

Facility Operating License No. NPF-49. Amendment revised the License.

Date of initial notice in **Federal Register:** May 13, 1991 (56 FR 22024) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas & Electric Company, Docket No. 50-133, Humboldt Bay Power Plant, Unit 3, Eureka, California.

Date of application for amendment: August 7, 1991, as supplemented November 22, 1991 (Reference LAR 91-01)

Brief description of amendment: This amendment revises the Technical Specifications Section VII, "Administrative Controls": by changing the following: (1) the committee name from General Office Nuclear Plant Review and Audit Committee (GONPRAC) to Nuclear Safety Oversight Committee (NSOC), and (2) change the committee composition, and eliminating the use of alternates on the committee.

Date of issuance: May 15, 1992

Effective date: May 15, 1992

Facility License No. DPR-7: Amendment revised the Technical Specifications.

Amendment No: 25

Local Public Document Room location: Eureka-Humboldt County Library, 421 I Street (County Court House), Eureka, California 95501.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7441, San Francisco, California 94210.

NRC Project Manager: Lawrence Bell

NRC Division Director: Richard L. Bangart

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 18, 1991 as supplemented November 4, 1991 and December 17, 1991.

Brief description of amendments: These amendments changed the technical specifications to revise the isolation setpoint for the leak detection temperature function in the Turbine Building main steam tunnel. The technical specifications involved are Item 3i of Table 3.3.2-2, which specifies the temperature requirements, and Section 3/4.3.2 of the Bases.

Date of issuance: May 21, 1992

Effective date: As of the date of issuance and to be implemented within 30 days after the date of issuance.

Amendment Nos.: 119 and 87

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22471) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 21, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: March 12, 1992 and supplemented by letter dated April 27, 1992.

Brief description of amendments: These amendments changed Technical Specification 3.8.4.1 (Primary Containment Penetration Conductor Overcurrent Protective Devices) to delete reference to fuses in the Limiting Condition for Operation, to delete requirements related to fuse testing in Action a, to delete requirements a.2.a and a.2.b from Surveillance Requirements, and to delete reference to primary containment penetration conductor overcurrent protective fuses in the Technical Specification Bases for surveillance requirements.

Date of issuance: May 21, 1992

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 120 and 88

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11113) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 21, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 8, 1992, as supplemented February 26, 1992.

Brief description of amendment: The amendment revised Technical Specifications Section 5.3 (Reactor) and Section 6.9 (Reporting Requirements) to address the use of ZIRLO ™, as well as Zircaloy-4, fuel rod cladding.

Date of issuance: May 15, 1992

Effective date: May 15, 1992

Amendment No.: 117

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 19, 1992 (57 FR 6041) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: November 13, 1990, as supplemented on January 14, 1991, August 28, 1991, December 13, 1991, January 30, 1992, and February 14, 1992. In addition, two letters dated May 13, 1992 were received from Northeast Utilities.

Brief description of amendment: Revises the Seabrook Unit 1 operating license to reflect the transfer of a 35.6 percent ownership interest in the Seabrook Station, Unit No. 1 from the Public Service Company of New Hampshire to North Atlantic Energy Company (NAEC), a wholly owned subsidiary of Northeast Utilities (NU).

Date of issuance: May 29, 1992

Effective date: May 29, 1992

Amendment No.: 11

Facility Operating License No. NPF-86: Amendment revised the License.

Date of initial notice in **Federal Register:** February 28, 1991 (56 FR 8373) The Commission's related evaluation of the amendment and final no significant hazards determination is contained in an Environmental Assessment published on January 31, 1992 (57 FR 3801), and a Safety Evaluation dated May 29, 1992.

No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: November 13, 1990, as supplemented on January 15, 1991, January 22, 1991, April 9, 1991, June 12, 1991, September 16, 1991, December 13, 1991, January 22, 1992, January 30, 1992, and February 14, 1992. In addition, two letters dated May 13, 1992, were received from Northeast Utilities.

Brief description of amendment: Revises the Seabrook Unit 1 operating license to authorize North Atlantic Energy Service Company to act as managing agent.

Date of issuance: May 29, 1992

Effective date: May 29, 1992

Amendment No.: 10

Facility Operating License No. NPF-86: Amendment revised the License.

Date of initial notice in **Federal Register:** March 16, 1991 (56 FR 9384) The Commission's related evaluation of the amendment and final no significant hazards determination is contained in an Environmental Assessment, published on October 28, 1991 (56 FR 55512) and a Safety Evaluation dated May 29, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Saxton Nuclear Experimental Corporation, Docket No. 50-146, Saxton Nuclear Reactor Facility, Bedford County, Pennsylvania

Date of application for amendment: September 22, 1987, as supplemented.

Brief description of amendment: The amendment removes outbuildings from the license and makes administrative changes to the technical specifications.

Date of issuance: May 28, 1992

Effective date: May 28, 1992

Amendment No.: 11

Amended Facility License No. DPR-4: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13137) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Dates of application for amendment: February 26, 1988, and December 12, 1989, as clarified by letters dated July 27, 1990, and September 23, 1991

Brief description of amendment: The amendment revises the San Onofre Unit 1 Radiological Effluent Technical Specifications in accordance with the guidance in NRC Generic Letter 89-01. The proposed change allows for the implementation of programmatic controls for the Radiological Effluent Technical Specifications (RETS) and Radiological Environmental Monitoring Program in the administrative controls section of the Technical Specifications and the relocation of procedural details to the Offsite Dose Calculation Manual (ODCM) or to the Process Control Program (PCP), as appropriate. In addition, the amendment revises Specification 3.5.5 to exempt the Containment Radioactivity-High Action requirement from Specification 3.0.4 and to clarify that there is not a single manual actuation switch for all five purge and exhaust valves.

Date of issuance: May 15, 1992

Effective date: May 15, 1992

Amendment No.: 145

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Dates of initial notice in **Federal Register:** July 27, 1988 (53 FR 28294) and March 7, 1990 (55 FR 8236). The additional information contained in the supplemental letters dated July 27, 1990, and September 23, 1991, was clarifying in nature and thus within the scope of the initial notices and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 7, 1991

Brief description of amendments: The amendments revise the current NA-1&2 TS to ensure adequate monitoring of groundwater levels for the service water reservoir.

Date of issuance: May 15, 1992

Effective date: May 15, 1992

Amendment Nos.: 160, 141

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64664) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: December 20, 1991

Brief description of amendments: The amendments eliminate the use of the reactor coolant resistance temperature detectors bypass system and implement in its place the use of thermowells that extend into main reactor coolant system piping.

Date of issuance: May 15, 1992

Effective date: May 15, 1992

Amendment Nos.: 161 and 142

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11117) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 21, 1991

Brief description of amendment: The amendment increases the surveillance interval to a quarterly basis for those channel functional tests of the emergency core cooling system (ECCS) actuation instrumentation which are currently specified as monthly, with the exception of the 4.16 kV emergency bus undervoltage which is not changed. The

amendment also increases the allowable outage time for trip system channel testing from 2 hours to 6 hours and provides a 24-hour allowable outage time to repair inoperable ECCS actuation instrumentation channels.

Date of issuance: May 15, 1992
Effective date: May 15, 1992
Amendment No.: 104
Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37592) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1992. No significant hazards consideration comments received: No.
Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 21, 1992
Brief description of amendment: This amendment revised Technical Specifications 3.4.2, "Safety/Relief Valves" and 3.3.7.5, "Accident Monitoring Instrumentation" to incorporate the added redundancy provided by the installation of a safety-grade safety/relief valve position indication instrumentation system.
Date of issuance: May 15, 1992
Effective date: May 15, 1992
Amendment No.: 105
Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13139) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1992. No significant hazards consideration comments received: No.
Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: September 13, 1991
Brief description of amendments: These amendments revise TS Section 15.3.1.B, Reactor Coolant System, Pressure/Temperature Limits, and its Bases, and removes TABLE 15.3.1-1 (Unit No. 1) and TABLE 15.3.1-2 (Unit No. 2), Reactor Vessel Surveillance Capsule Removal Schedule. These changes are consistent with the guidance in Generic Letter 91-01, "Removal of the Scheduler for the Withdrawal of Reactor Vessel Material Specimen from Technical Specifications."
Date of issuance: May 26, 1992
Effective date: May 26, 1992
Amendment Nos.: 131 and 135
Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 5, 1992 (57 FR 4496) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 26, 1992. No significant hazards consideration comments received: No.
Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document

Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By July 10, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 15, 1992

Brief description of amendments: These amendments would suspend the fire protection water flow testing requirements of TS 3/4.7.9.1, 3/4.7.9.2, and 3/4.7.9.5. These sections cover the fire pumps, water suppression systems, and hose stations. All other surveillance testing of fire protection systems will continue in accordance with the TS. This amendment is being treated as an emergency TS change in accordance with 10 CFR 50.91(a)(5).

Date of issuance: May 22, 1992

Effective date: May 22, 1992

Amendment Nos. 165 and 150

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 22, 1992.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room location: Maude Preston Palenske

Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

NRC Project Director: L. B. Marsh

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: May 22, 1992 (which superseded a May 19, 1992, letter)

Brief description of amendment: The amendment revises Technical Specifications Section 5.3 (Reactor) to allow substitution of a stainless steel filler rod in place of a fuel rod in fuel assemblies W51 and W06. The amendment is applicable for fuel cycles 9 and 10 only. The amendment also deletes the fuel cycle 8 specific fuel assembly description of Section 5.3 since cycle 8 has ended and this description is no longer applicable.

Date of issuance: May 28, 1992

Effective date: May 28, 1992

Amendment No.: 118

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment and final no significant hazards consideration determination are contained in a Safety Evaluation dated May 28, 1992.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRR Project Director: Robert A. Capra, Director

Dated at Rockville, Maryland, this 3rd day of June, 1992.

For the Nuclear Regulatory Commission

Gus C. Lainas,

Acting Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 92-13521 Filed 6-9-92; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF PERSONNEL MANAGEMENT

Director's Advisory Committee on Law Enforcement and Protective Occupations

AGENCY: Office of Personnel Management.

ACTION: Notice of open meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that the eighth meeting of the Director's Advisory Committee on Law Enforcement and Protective Occupations will be held at the time and place shown below:

DATE: June 25, 1992, 2 p.m.

PLACE: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC.

AGENDA: The focus of the June 25th meeting will be further exchange of ideas on various pay and classification issues affecting law enforcement and protective occupations and discussion of a range of options on pay and classification reform.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, Director, Law Enforcement and Protective Occupations Task Force, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 7H30, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views. Persons wishing to address the Advisory Committee orally at the meeting should submit a written request no later than the close of business on June 15, 1992. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-13545 Filed 6-9-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, 450 5th Street, NW., Washington, DC 20549.

New

File No. 270-365

Interviews Regarding Securities Registration Procedures

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to interview up to 150 persons or entities to obtain background information for use in formulating proposals to simplify securities registration procedures, including, but not limited to, short-form and shelf registration procedures and procedures for registering asset-backed securities. Each interview is estimated to require one burden hour.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13630 Filed 6-9-92; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2141.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

New

File No. 270-364, Proposed Rule 3a—7

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed rule 3a—7 under the Investment Company Act of 1940. Rule 3a—7 would exclude certain issuers that pool income-producing assets and issue securities backed by those assets ("structured financings") from the definition of investment company under certain conditions. One such condition would be that the trustee execute an agreement providing for the financing's sponsor or agent of the sponsor to keep a record of security holders. Each of the 54 respondents would incur an annual

estimated 16 burden hours to comply with this requirement.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13631 Filed 6-9-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9848]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Caretenders Health Corp., Common Stock, $.02 Par Value)

June 4, 1992.

Caretenders Health Corp. ("Company") has filed an application with the Securities and Exchange Commission, ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, it is requesting the delisting from the BSE because its Common Stock has not been trading on this Exchange for at least six months, and the Company does not want to maintain the additional expense of keeping its Common Stock listed on the BSE.

Any interested person may, on or before June 25, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-13632 Filed 6-9-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8801]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Graham-Field Health Products, Inc., Common Stock, $0.25 Par Value)

June 4, 1992.

Graham-Field Health Products, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors approved and adopted resolutions on March 27, 1992, to withdraw the Common Stock from listing on the Amex, and list the Common Stock on the New York Stock Exchange, Inc. ("NYSE"). The decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on the NYSE would be more beneficial to its stockholders than the present listing on the Amex because of the following reasons:

(1) The Company believes that the NYSE system will result in increased visibility and sponsorship for its Common Stock than is presently the case with the Amex;

(2) The Company believes that the NYSE system will offer the Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NYSE system will offer the opportunity for the Company to secure its own group of market makers and expand the capital base available for trading in the Common Stock; and

(4) The Company believes that the firms making a market in the Company's Common Stock on the NYSE system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before June 25, 1992 submit by letter to the Secretary the of Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-13634 Filed 6-9-92; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (International Testing Systems, Inc., Common Stock, $0.01 Par Value) File No. 1-10825

June 4, 1992.

International Testing Systems, Inc. ("Company") has filed an application with the Securities and Exchange Commission, ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, it requests such withdrawal from listing and registration because it believes that trading volume has been relatively low on the PSE, amounting to less than ten percent of the total trading in the Company's Common Stock. Additionally, the Company states that the continued listing of the Common Stock on the PSE is costly to the Company. Finally, the company's Common Stock will continue to be listed

and traded on the American Stock Exchange, Inc.

Any interested person may, on or before June 25, 1992, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-13635 Filed 6-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18751; 812-7803]

Oppenheimer Asset Allocation Fund, et al. Application

June 3, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Oppenheimer Asset Allocation Fund, Oppenheimer California Tax-Exempt Fund, Oppenheimer Discovery Fund, Oppenheimer Global Bio-Tech, Fund, Oppenheimer Global Environment Fund, Oppenheimer Global Fund, Oppenheimer Global Growth & Income Fund, Oppenheimer GNMA Fund, Oppenheimer Gold & Special Minerals Fund, Oppenheimer Fund, Oppenheimer Multi-Government Trust, Oppenheimer Multi-Sector Income Trust, Oppenheimer New York Tax-Exempt Fund, Oppenheimer Pennsylvania Tax-Exempt Fund, Oppenheimer Special Fund, Oppenheimer Target Fund, Oppenheimer Tax-Free Bond Fund, Oppenheimer Time Fund, Oppenheimer U.S. Government Trust, Oppenheimer Money Market Fund, Inc., Centennial California Tax Exempt Trust, Centennial Connecticut Tax Exempt Trust, Centennial Government Trust, Centennial Money Market Trust, Centennial New York Tax Exempt Trust, Centennial Tax Exempt Trust, Daily Cash Accumulation Fund, Inc., Centennial America Fund, L.P., First Trust Fund, First Trust Tax-Free Bond Fund, Main Street Funds, Inc., Oppenheimer Blue Chip Fund, Centennial Cash Reserves, Oppenheimer Champion High Yield Fund, Oppenheimer Equity Income Fund, Oppenheimer Integrity Funds, Oppenheimer High Yield Fund, Oppenheimer Strategic Income Fund, Oppenheimer Strategic Investment Grade Bond Fund, Oppenheimer Strategic Short Term Income Fund, Oppenheimer Tax-Exempt Cash Reserves, Oppenheimer Total Return Fund, Inc., Oppenheimer Variable Account Funds, Oppenheimer Management Corporation ("OMC"), Centennial Asset Management Corporation ("Centennial"), and all future management investment companies and series thereof which are advised by OMC, Centennial, or any existing or future affiliate thereof (the foregoing, except OMC and Centennial, are collectively referred to as the "Funds").

RELEVANT 1940 ACT SECTIONS: Section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the Funds to participate in joint trading accounts to be used to enter into repurchase agreements.

FILING DATE: The application was filed on October 11, 1991 and amended on April 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1992, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Andrew J. Donohue, Esq., Oppenheimer Management Corporation, 2 World Trade Center, 34th Floor, New York, NY 10048-0203.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504-2406 or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is a registered open-end management investment company, except for Oppenheimer Multi-Government Trust and Oppenheimer Multi-Sector Income Trust, which are registered closed-end management investment companies. Each Fund is a Massachusetts business trust, except for Oppenheimer Money Market Fund, Inc., Daily Cash Accumulation Fund, Inc., Main Street Funds, Inc. and Oppenheimer Total Return Fund, Inc., which are organized as Maryland corporations, and Centennial America Fund, L.P., which is organized as a Delaware limited partnership.

2. OMC serves as the investment adviser for each of the Funds listed above, except Daily Cash Accumulation Fund, Inc., Centennial California Tax Exempt Trust, Centennial Connecticut Tax Exempt Trust, Centennial Government Trust, Centennial Money Market Trust, Centennial New York Tax Exempt Trust, Centennial Tax Exempt Trust and Centennial Cash Reserves, which are advised by Centennial, a wholly-owned subsidiary of OMC. The Funds advised by Centennial or an affiliate thereof are referred to as the "Centennial Funds." The Funds advised by OMC or an affiliate thereof, except Centennial, are referred to as the "Oppenheimer Funds."

3. Each Fund has a custodial relationship with one of the following custodians: Citibank, N.A., The Bank of New York, Security Pacific National Bank, or State Street Bank and Trust Company. However, the Funds may use another custodian qualified under section 17 of the Act in the future if they deem it in their best interests to do so.

4. Each of the Funds has, or may be expected to have, uninvested cash balances in its account at its custodian which otherwise would not be invested in portfolio securities by its investment adviser at the end of each trading day. Ordinarily, some or all of such assets of each Fund are, or would be invested in overnight repurchase agreements, money market instruments, or other short-term investments authorized by its investment policies, in order to earn additional income for that Fund. Generally, there can remain, in the respective account of each Fund, some

amount of its assets which is received too late or is too small to be effectively invested in a separate transaction and/or at a competitive rate. Presently, each Fund must separately pursue, secure and implement the investment of such cash balances. This has resulted in certain inefficiencies and may limit the investment return which some or all Funds achieve. The Funds seek to invest their cash balances more productively by using the procedures described herein.

5. The Oppenheimer Funds intend to maintain a joint repurchase agreement account with one or more of their custodians. Each joint account will be used exclusively for the pooling of excess cash of the Funds participating in such account for the purchase of one or more repurchase agreements. The determination as to whether an Oppenheimer Fund will participate in the joint account at its custodian or in a joint account at another custodian will depend on whether the advantages of pooling its excess cash with other Oppenheimer Funds at another custodian outweigh the costs the Fund would incur in wiring its excess cash to and from such other custodian. The Centennial Funds intend to maintain a separate joint repurchase agreement account with Citibank, N.A. as the designated custodian. However, if in the future the Centennial Funds utilize different custodians as the Oppenheimer Funds do now, then the Centennial Funds may establish separate joint accounts at each such custodian.

6. Each Fund would be permitted to deposit daily all or a portion of its univested net cash balances into the respective separate custodian cash account. Each Fund's decision to invest in an account shall be solely at the Fund's option, and no Fund shall be obligated to invest in, or to maintain any minimum balance in, an account.

7. In connection with the use of repurchase transactions, each of the Funds has established standards and procedures. These include credit standards for counterparties of repurchase agreements and requirements that the repurchase agreements will be fully collateralized at all times. In addition, all joint repurchase agreement transactions contemplated herein would be effected in accordance with the guidelines set forth in Investment Company Act Release No. 13005 (February 2, 1983). The Funds, if necessary, will modify their systems and standards to comply with any positions taken by the staff or the Commission by rule and release relating to the joint repurchase agreement transactions.

8. The proposed custodian accounts would not be distinguishable from any other accounts maintained by a Fund with its custodian, except that monies from a Fund would be deposited in it on a commingled basis. An account would not have any separate existence which would have indicia of a separate legal entity. Each Fund could transfer all or a portion of its uninvested cash into an account. Applicants believe that the securities purchased through an account will not be subject to the claims of creditors, whether brought in bankruptcy, insolvency, or other legal proceedings, of any other participant Fund of such account. Each Fund's liability on any repurchase agreement purchasd by a joint account will be limited to its interest in such repurchase agreement. The sole function of this account would be to provide a convenient and productive way of aggregating what otherwise would be the one or more individual transactions for each Fund necessary to manage the daily uninvested cash balances of each Fund.

9. Each repurchase agreement would be entered into by calling one of the approved sellers and repurchase agreements and indicating the size of the desired repurchase agreements and negotiating the rate of interest. The particular securities to be held as collateral by an account would then be identified and the repsective custodian would be notified. The securities either would be (i) wired to the account of the custodian of the joint account at the proper Federal Reserve Bank, or (ii) physically transferred to a segregated account of the custodian.

10. Applicants believe that the joint accounts would save the Funds substantial amounts in annual transaction fees, and allow OMC and Centennial to negotiate higher rates of return when investing the excess cash. The Funds would collectively save approximately $37,000 in yearly transaction fees at present levels by the substitution of relatively few transactions for the approximately 1,726 yearly transactions which are necessary currently.

11. Each Fund would participate in an account on the same basis as every other Fund in conformity with its fundamental investment objectives and restrictions. Neither OMC nor Centennial would have any monetary participation in an account but would be responsible for investing amounts in an account, establishing accounting and control procedures and ensuring equal treatment of each Fund. The assets of the Funds would continue to be held under proper bank custodial procedures.

Applicants' Legal Analysis

1. Each Fund, by participating in the proposed joint accounts, and OMC and Centennial, by managing the proposed accounts, could be deemed to be "a joint or a joint and several participant" in "any transaction" within the meaning of section 17(d) of the Act, and the proposed accounts could be deemed to be a "joint enterprise or other arrangement" within the meaning of rule 17d–1 under the Act.

2. The Boards of Trustees, Directors, and Managing General Partners, as the case may be, of each of the existing Funds has considered the proposed joint accounts and determined that the use of such accounts would be fair, economically desirable, and beneficial to each Fund which engages in repurchase transactions for the reasons set forth herein.

3. On the basis of the information considered by each Board, the Trustees, Directors, or Managing Partners of each Fund have satisfied themselves that the proposed method of operating the joint accounts would not result in conflicts of interests between any of the Funds or between a Fund and its investment adviser. They have further determined that there does not appear to be any basis upon which to predicate greater benefits to one Fund than to another, because the daily uninvested cash balance in any one Fund on any given day is neither a function of the size of the Fund nor of the particular securities in which it invests, but is rather a function of other factors, such as portfolio managment decisions (such as delaying a planned purchase because of the occurrence of some event or temporary unavailability of suitable securities for investment in conformity with the Fund's investment policies), shareholder purchases and redemptions, or settlement of trades on dates other than predicted, relating to any one Fund on any one day. They have also considered the fact that although OMC and Centennial would gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries would be the Funds and their shareholders, because a joint account would be a more efficient and productive way of administering these daily investment transactions.

4. Applicants conclude that, for the reasons set forth herein, the granting of the requested order would be consistent with the provisions, policies, and

purposes of the Act, and that participation in the proposed joint trading accounts by each Fund would not be a basis different from or less advantageous than that of any other participant in the account. Applicants also conclude that the participation by OMC and Centennial would be ministerial only so that criteria for issuance of an order under section 17(d) of the Act and rule 17d–1 thereunder are met.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. A separate cash account would be established on behalf of the Oppenheimer Funds at one or more custodian banks and a separate cash account would be estblished on behalf of the Centennial Funds at a custodian bank. Each Fund would be permitted to deposit daily all or a portion of its uninvested net cash balances into the respective separate custodian cash account.

2. Cash in an account would be invested solely in repurchase agreements (with a duration not to exceed seven days) collateralized by suitable U.S. Government obligations, *i.e.*, obligations issued or guaranteed as to principal or interest by the U.S. Government or by any of its agencies or instrumentalities and satisfying the uniform standards set by the Funds for such investments.

3. All investments held by an account would be valued on an amortized cost basis. Each Fund subject to an exemptive order permitting valuation of its securities on an amortized cost basis, or the use of the penny rounding method of pricing its shares, or relying upon rule 2a–7 under the Act for either purpose, would use the average dollar weighted maturity of an account for the prupose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

4. In order to assure that there would be no opportunity for one Fund to use any part of a balance of an account credited to another Fund, no Fund shall be allowed to create a negative balance in an account for any reason, although it will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in an account would be solely at the Fund's option, and no Fund will be obligated to invest in or to maintain any minimum balance in, an account. In addition, each Fund shall retain the sole rights of ownership of any of its assets, including interest payable, on such assets invested in an account. Each Fund's investment in an account shall be documented daily on the books of each Fund as well as on the custodian's respective books.

5. Each Fund would participate in the income earned or accrued in an account, including all instruments held by such account, on the basis of the percentage of the total amount in such account on any day represented by its share of such account.

6. OMC on behalf of the Oppenheimer Funds and Centennial on behalf of the Centennial Funds, will administer and will invest the cash balance in the respective account as part of its duties under its existing or any future investment management contract with each Fund, and will not collect any additional or separate fee for the administration of an account.

7. The administration of an account would be within the fidelity bond coverage required by section 17(g) of the Act and Rule 17g–1 thereunder.

8. The Boards of Trustees or Directors or Managing General Partners, as the case may be, of the existing Funds and of future Funds participating in an account shall evaluate the joint account arrangements annually and shall continue an account only if they determine that there is a reasonable likelihood that continued participation in an account will benefit the Funds and their shareholders.

9. All repurchase agreements will have an overnight, over-the-weekend or over a holiday maturity, and in no event a maturity of more than seven days.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13837 Filed 6–9–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18746; 812–7788]

SBC Portfolio Management International, Inc.; Application

June 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of filing of application for an order of exemption under the Investment Company Act of 1940 (the "Investment Company Act").

APPLICANT: SBC Portfolio Management International, Inc. ("PMI").

RELEVANT INVESTMENT COMPANY ACT SECTIONS: Order requested under section 9(c) of the Investment Company Act granting an exemption from section 9(a) of the Investment Company Act.

SUMMARY OF APPLICATION: PMI seeks an order under section 9(c) of the Investment Company Act on behalf of itself and its affiliated person who in the future register as investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act") or as broker/dealers under the Securities Exchange Act of 1934 (the "Exchange Act") (the "Affiliates"). The order would exempt PMI and the Affiliates from the disqualification provisions of section 9(a) of the Investment Company Act solely with respect to an injunction entered against Swiss Bank Corporation, PMI's parent corporation, in 1975.

FILING DATE: The application was filed on September 16, 1991, and amended on March 12, 1992 and April 17, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personnally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One World Trade Center, suite 9051, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The folllowing is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. PMI is an investment adviser registered under the Advisers Act (File No. 801–17403) that has been providing investment advice to institutional investors since 1982. Swiss Bank Corporation ("SBC"), PMI's parent corporation, is a Swiss corporation primarily engaged in the business of banking through branches, agencies, and

representatives throughout the world. SBC has been providing banking services in the United States since 1939. If the requested relief is granted, PMI intends to act as investment adviser to registered investment companies.

2. On May 21, 1975, the SEC brought an action against various defendants, including SBC, alleging violation of sections 10(b) and 13(d) of the Exchange Act and rules 10b–5, 13d–1, and 13d–2 thereunder. *Securities and Exchange Commission* v. *General Refractories Company*, 400 F. Supp. 1248 (D.D.C. 1975). The complaint alleged that SBC, as custodian, held more than ten percent of the outstanding voting shares of General Refractories Company on behalf of one beneficial owner, and that SBC was advised by counsel that it might be held to have violated section 13(d) of the Exchange Act if it voted such shares without filing a Schedule 13D.[1] The complaint further alleged that, without altering the beneficial ownership of the shares, SBC divided the General Refractories shares into blocks of less than five percent and delivered such blocks to various correspondent institutions with the intent of avoiding the section 13(d) filing requirement. It also alleged that SBC, through one of its accounts at a correspondent institution, received additional shares of General Refractories Company that had been purchased on the open market for certain of its customers, including one of the named defendants. On September 4, 1975, SBC consented to the entry of a Judgment and Order of Permanent Injunction and Ancillary Relief without admitting or denying any of the allegations set forth in the complaint ("Swiss Bank Order"). PMI states that PMI and SBC have determined that neither they nor any of their affiliates have been subject to any proceedings or allegations of violations of the federal securities laws other than those discussed in the application since 1975.[2]

3. PMI seeks an order pursuant to section 9(c) of the Investment Company Act exempting it from the disqualification provisions of section 9(a) of the Investment Company Act solely with respect to the Swiss Bank Order. PMI also is requesting identical relief on behalf of the Affiliates.

Legal Analysis

1. Section 9(a)(2) of the Investment Company Act provides, in pertinent part, that it is unlawful for any person to serve or act in the capacity of "employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company" if such person, by reason of any misconduct, is permanently or temporarily enjoined from engaging in any conduct or practice in connection with the purchase or sale of any security. Under section 9(a)(3), "a company, any affiliated person of which is ineligible" by reason of section 9(a)(2) is similarly ineligible.

2. Because PMI is a wholly owned subsidiary of SBC, PMI and certain of its affiliated persons are affiliated persons of SBC.[3] Section 9(a)(3), therefore, subjects PMI and certain of its affiliated persons to the prohibitions of section 9(a) as a result of the Swiss Bank Order.

3. Section 9(c) of the Investment Company Act provides that, upon application, the SEC shall by order grant an exemption from the provisions of section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to applicant, are "unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application."

4. PMI believes the granting of an order is proper to avoid unduly and disproportionately severe consequences to it. In addition, PMI asserts that an order would not be against the public interest nor compromise in any way the protection of investors because of SBC's adherence to the procedures instituted in the Swiss Bank Order, the absence of any court orders relating to violations of the Federal securities laws during the past sixteen years, and the absence of any violations relating to the provisions of investment advisory services. Further, the alleged violations that give rise to the Swiss Bank Order did not involve any investment-advisory or investment-company activities.

5. In anticipation of serving as an investment adviser to registered investment companies, PMI has retained counsel experienced in issues arising under the Investment Company Act and the Advisers Act. With assistance from counsel, PMI will prepare a manual detailing its responsibilities under the Investment Company Act and the Advisers Act, copies of which will be distributed to PMI's operations and compliance staff who are engaged in activities relating to registered investment companies. All of PMI's operations and compliance personnel will be required to be familiar with these compliance procedures.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13836 Filed 6–9–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18747; File No. 812–7904]

SMA Life Assurance Company, et al.

June 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: SMA Life Assurance Company ("SMA Life"), Allmerica Select Separate Account ("Separate Account"), and Allmerica Investments, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940

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[1] Section 13(d) of the Exchange Act and the rules thereunder require any holder of more than five percent of any class of equity securities registered pursuant to section 12 of the Exchange Act to file Schedule 13D (or, in some cases, Schedule 13G) disclosing the identity of the benefical owner, the number of shares held, and certain other information.

[2] Although certain actions besides the one resulting in the entry of the injunction have been brought against SBC and/or its affiliated persons, those actions do not trigger the disqualification provisions of section 9(a) of the Investment Company Act. In the late 1980's, the New York Stock Exchange ("NYSE") brought a disciplinary action against SBCI Swiss Bank Corporation Investment, Inc. ("SBCI"), a wholly owned subsidiary of SBC, for violations of, among other things, federal minimum capital requirements. SBCI entered into a settlement of the charges and paid a fine to the NYSE of $150,000. On January 16, 1992, the Commission, together with the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System instituted an action against SBC Government Securities, Inc. ("GSI"), a wholly owned subsidiary of SBC, for alleged misdeeds conducted in connection with the primary distribution of unsecured debt securities issued by five government-sponsored enterprises. In the Matter of the Distribution of Securities Issued by Certain Government Sponsored Enterprises, Admin. Proc. File No. 3–7646 (Jan. 16, 1992). On the same date, GSI consented to the entry of an order that, among other things, imposed a civil money penalty of $10,000. Securities Exchange Act Release No. 30246 (Jan. 16, 1992).

[3] Pursuant to section 2(a)(3) of the Investment Company Act, an affiliated person of another person includes "any person directly or indirectly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person" and "any person directly or indirectly controlling, controlled by, or under common control with, such other person." Pursuant to section 3(a)(9), "[a]ny person who owns beneficially * * * more than 25 per centum of the voting securities of a company shall be presumed to control such company."

Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order approving the assessment and deduction of a mortality and expense risk charge from the assets of the Separate Account which serves as the funding medium for certain individual combination fixed/variable annuity contracts issued by SMA Life (the "Contracts").

FILING DATE: The application was filed on April 15, 1992, and amended on May 19, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 29, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Rodney J. Vessels, SMA Life Assurance Company, 440 Lincoln Street, Worcester, MA 01653.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, at (202) 272-3040, or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. SMA Life, a stock life insurance company incorporated in 1974 under the laws of Delaware, is a wholly-owned subsidiary of State Mutual Life Assurance Company of America ("State Mutual").

2. SMA Life is the depositor and sponsor of the Separate Account. The Separate Account is a registered unit investment trust under the 1940 Act, and was established to hold certain assets as reserves for the Contracts. The Separate Account presently consists of five subaccounts (the "Subaccounts"), each of which will invest solely in the shares of one of the investment portfolios of Allmerica Investment Trust (the "Trust"), a diversified open-end management investment company registered under the 1940 Act and organized as a Massachusetts business trust.

The Trust currently consits of five investment portfolios: Aggressive Growth Fund, Growth Fund II, Growth and Income Fund, Quality Income Fund, and Money Market Fund (the "Funds"). Shares of each Fund are purchased by SMA Life for the corresponding Subaccount at the net asset value per share of the Fund. Shares of the Funds also are offered to other separate accounts of SMA Life and State Mutual serving as funding media for variable life and annuity contracts.

4. Allmerica Investments, Inc., an indirect wholly-owned subsidiary of State Mutual, is the proposed principal underwriter for the Separate Account. Allmerica Investments, Inc. is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers.

5. The Contracts may be issued to plans qualifying for special federal income tax treatment under sections 401(a), 401(c), 403(a), 403(b), 408 and 457 of the Internal Revenue Code, and to individuals, plans and trusts that do not qualify for special tax treatment under the Internal Revenue Code. Purchase payments received under the Contracts may be allocated by the Contract Owner to any one or more of the Subaccounts, and to the general account of SMA Life for accumulation on a fixed basis.

6. Upon death of the annuitant prior to the annuity commencement date, SMA Life will pay the beneficiary a death benefit equal to the greatest of: (a) The accumulated value under the Contract (the "Accumulated Value"); (b) the total amount of gross purchase payments made under the Contract minus the amounts of all prior partial withdrawals; or (c) the amount that would have been paid on death of the annuitant at the most recent fifth year Contract anniversary, adjusted for subsequent purchase payments and withdrawals after that date. Upon death of a Contract owner who is not the annuitant, SMA Life will pay the beneficiary the Accumulated Value.

7. Prior to the annuity commencement date, SMA Life assesses an annual fee (the "Contract Fee") of $30 at each Contract anniversary and at full surrender of the Contract. SMA Life guarantees that this charge will not increase.

8. For certain administrative services, SMA Life assesses the Subaccounts a daily charge equal to 0.15% annually of the current value of the Subaccounts (the "Administrative Expense Charge"). The level of the Administrative Expense Charge is guaranteed not to increase. The Applicants represents that the Administrative Expense Charge and the Contract Fee are designed to reimburse SMA Life for the cost of administration and related expenses and are not expected to be a source of profit.

9. The Contracts do not assess a front-end sales charge from the purchase payments made by Contract owners. In lieu of a front-end sales charge, the Contracts assess a contingent deferred sales charge which is applied in the case of Contract surrender, partial redemption or annuitization under some period certain options.

10. For purposes of determining the contingent deferred sales charge, the Accumulated Value is divided into three categories: (a) Purchase payments received by SMA Life during the seven years preceding the date of the surrender (the "New Purchase Payments"); (b) purchase payments not defined as New Purchase Payments (the "Old Purchase Payments"); and (c) the amount of accumulated value in excess of all purchase payments that have not been previously surrendered (the "Earnings"). Redemptions will be deemed to be made first from Old Purchase Payments, then from New Purchase Payments, and then from Earnings. For the purpose of calculating the contingent deferred sales charges for New Purchase Payments, all amounts withdrawn plus any charges are assumed to be deducted first from the earliest New Purchase Payment and then from the next earliest New Purchase Payment and so on, until all New Purchase Payments have been exhausted. Old Purchase Payments and Earnings are not subject to a contingent deferred sales charge.

11. The contingent deferred sales charges are computed as follows:

Years from date of purchase payment to date of withdrawal	Charge as a percentage of new purchase payments withdrawn
0-1	6.5
2	6.0
3	5.0
4	4.0
5	3.0
6	2.0
7	1.0
More than 7	0

In no event will the contingent deferred sales charge assessed against a Contract exceed 6.5% of the gross New Purchase Payments.

12. After the first Contract year, SMA Life will waive the contingent deferred sales charge, if any, on an amount (the "Free Withdrawal Amount") equal to a given percentage of the Accumulated Value as of December 31 of the previous calendar year ("Year-End Accumulated Value"). If the Contract owner and the annuitant are different individuals, the Free Withdrawal Amount will equal 10% of the Year-End Accumulated Value. If the contract owner and the annuitant are the same individual, the Free Withdrawal Amount will be the greater of (a) 10% of the Year-End Accumulated Value, or (b) the amount calculated by SMA Life under a life expectancy distribution, whether or not the withdrawal was part of such distribution. If more than one partial withdrawal is made during the calendar year, on each subsequent withdrawal SMA Life will waive the contingent deferred sales charge, if any, until the entire Free Withdrawal Amount has been redeemed. In the event that a redemption attributable all or in part to New Purchase Payments is made in excess of the amount which may be redeemed free of charge, only the excess will be subject to a contingent deferred sales charge.

13. The contingent deferred sales charge is retained by SMA Life to reimburse it for the expenses incurred in connection with the distribution of the Contracts, including commissions, promotional costs, sales administration, and other sales-related expenses.

14. For assuming certain risks under the Contracts, SMA Life imposes a daily mortality and expense risk charge that equals an amount rate of 1.25% of the net asset value of each Subaccount. The mortality risks are that: (a) Annuitants under the Contracts may live longer as a group than had been anticipated in setting the annuity rates guaranteed in the Contracts; and (b) the annuitant death benefits might exceed the value of the Contracts. The expense risk is that the maximum charges permitted under the Contracts prove insufficient to cover the administrative costs incurred in regard to the Contracts. The approximate allocation of the mortality and expense risk charge is 0.80% for SMA Life's assumption of mortality risks and 0.45% for SMA Life's assumption of expense risks. Applicants represent that the level of the mortality and expense risk charge is guaranteed and will not increase.

15. If the charge for mortality and expense risk is insufficient to cover the actual cost of mortality experience and expense, SMA life will bear the loss. If the expenses are less than the amounts resulting from the charge, SMA Life will realize a profit. To the extent that this charge results in a profit to SMA Life, such profit may be used for any lawful purpose, including the payment of sales, distribution, and other expenses not covered by the contingent deferred sales charge.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent any relief is necessary to permit the deduction from the Separate Account of the mortality and expense risk charge under the Contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants represent that the mortality and expense risk charge of 1.25% is within the range of industry practice for comparable annuity products. This representation is based on SMA Life's analysis of publicly available information about similar annuity products, and takes into account such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. SMA Life will maintain at its administrative offices and make available to the Commission a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey of industry practice for mortality and expense risk charges.

3. Applicants acknowledge that revenues generated by the contingent deferred sales charge may be insufficient to cover the actual costs related to distribution of the Contracts. In such case, the costs will be paid from the assets of the general accounts of SMA Life. Such amounts will be derived, in part from gains from operations with respect to the Contracts, which may include any profit derived from purchase payments allocated to the fixed account of the Contract and from the mortality and expense risk charge. SMA Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the Contract owners.

4. SMA Life also will maintain at its administrative offices and make available to the Commission a memorandum setting forth the basis for the conclusion that there is a reasonable likelihood that the Separate Account's distribution financing arrangements will benefit the Separate Account and the Contract owners.

5. SMA Life represents that the Separate Account will invest only in open-end management investment companies which undertake, in the event they adopt plans under rule 12b-1 under the 1940 Act to finance distribution expenses, to have such plans formulated and approved by the board of trustees (or directors), a majority of whom are not "interested persons" of such investment companies within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons and for the facts set forth above, Applicants assert that the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. Applicants assert that the requested exemptions are necessary and appropriate in the public interest, and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13638 Filed 6-9-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-89 established the first interim SFFL, and Order 92-4-39 established the currently

effective two-month SFFL applicable through May 31, 1992.

In establishing the SFFL for the two-month period beginning June 1, 1992, we have projected non-fuel costs based on the year ended December 31, 1991 data, and have determined fuel prices on the basis of the lastest available experienced monthly fuel cost levels as reported to the Department.

By Order 92-6-4 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.5806
Latin America	1.3997
Pacific	1.9866
Canada	1.4141

For further information contact: Keith A. Shangraw, (202) 366-2439.

By the Department of Transportation.

Dated: June 3, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-13546 Filed 6-9-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Subcommittee on Aircraft Safety Research, Engineering, and Development Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-362; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Subcommittee on Aircraft Safety of the Research, Engineering, and Development (R, E&D) Advisory Committee to be held Thursday and Friday, June 25-26, 1992, at 9 a.m. each day. The meeting will take place at the Federal Aviation Administration Technical Center, Atlantic City International Airport, New Jersey 08495, in the Headquarters Building Auditorium on the first floor.

The agenda for this meeting will include the following:

Thursday, June 25, 1992.

Opening Remarks—Chair and Executive Director.
Review of Final Agenda.
Introduction and Program Overview.
Aircraft Safety Research and Development Program Overview.
Cabin Fire Safety Subprogram.
Flight Safety Subprogram.
Airworthiness Subprogram.
Crashworthiness Subprogram.
Aging Aircraft Subprogram.
Propulsion-Fuel Safety Subprogram.
Catastrophic Failure Prevention Subprogram.

Friday, June 26, 1992:

Discussion of Program Briefings.
Subcommittee Organization.
Discussion of Action Items.
Discussion of Future Activities.
Chair's Summary.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. William J. Sullivan, Executive Director of the Subcommittee and Assistant Director, Aircraft Certification Service, AIR-3, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9554.

Any member of the public may present a written statement to the Committee at any time by furnishing the Executive Director with 25 copies.

Issued in Washington, DC, on June 3, 1992.

Michael Gallagher,

Acting Director, Subcommittee on Aircraft Safety, Research, Engineering, and Development Advisory Committee.

[FR Doc. 92-13411 Filed 6-9-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project to construct a full interchange at the Chenoweth interchange in Wasco County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Engineer, Federal Highway Administration, Equitable Center, suite 100, 530 Center Street N.E., Salem, Oregon 97301. Telephone: (503) 399-5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct an interchange on the Columbia River Highway (I-84) in the northwestern part of The Dalles in Wasco County, Oregon. The project would replace the existing half interchange (an off-ramp for southbound traffic and an on-ramp for northbound traffic) with a full interchange. The new interchange would provide connector roads to the historic Columbia River Highway (U.S. Highway 30) west of I-84 and to River Road, east of I-84. The interchange is intended to provide improved access to Port of The Dalles industrial property east of I-84 and to the proposed U.S. Forest Service Columbia River Gorge Interpretive Center, to be located north of the interchange and accessed by historic U.S. Highway 30.

Three alternatives are under consideration: (1) A northerly alternative located partially outside the urban growth boundary and within a General Management Area of the Columbia River Gorge National Scenic Area; (2) An alternative located just south of the other alternative, almost entirely within the urban growth boundary (thus, outside of the Columbia River Gorge National Scenic area); and (3) taking no action.

Information describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies. Public meetings have been and will be held during project development, and a public hearing will be held. Project scoping has been a continuous process, conducted in the technical, interagency and public meetings. No formal scoping meeting is planned.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: June 2, 1992.

Elton H. Chang,

Environment Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 92-13591 Filed 6-9-92; 8.45 am]

BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

Public and Private Non-Profit Organizations In Support of International Education and Cultural Activities

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizens Exchanges (E/P) announces a discretionary grants program in support of non-profit organizations in support of projects that link their international exchange interests with counterpart institutions/groups in other countries in ways supportive of the aims of the

Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, August 28, 1992. Faxed documents will not be accepted, nor will documents postmarked on August 28, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through August 28, 1992, for projects whose activities will begin between January 1, 1993, and June 30, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: E/P Discretionary Grant Competition, Office of Grants Management (E/XE), Room 357, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizens Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street SW., Washington, DC 20547, 202/619–5348, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency announces a program to encourage, through limited awards to non-profit institutions, increased private sector commitment to and involvement in international exchanges. Awarding of any and all grants is contingent upon the availability of funds.

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' cultural and artistic traditions; social, economic, and political structures; and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: Leaders of cultural institutions, urban planners, jurists, specialized journalists (specialists in economics, business, culture, political analysis, international affairs), business professionals, environmental specialists, parliamentarians, educators, conflict management specialists, economic planning and other government officials.

The Office of Citizen Exchange strongly encourages the coordination of these activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc., and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support. Pursuant to the Bureau authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity of American political, social and cultural life.

Proposals for projects taking place in the United States or overseas are welcome. The Office will place priority on those programs that involve the Maghreb and Middle East, (the highest priority), Latin America, South and Southeast Asia (especially India, Indonesia, Malaysia, Thailand, New Zealand, the Philippines, and Africa).

Since the Office has or is in the process of conducting specific competitions for Central and Eastern Europe and the newly independent state of the former Soviet Union, we will not accept proposals involving those regions in the following thematic areas: Public administration, business management, independent media development, and journalism training, and local government administration and municipal management. While not a priority for consideration in this competition, proposals for this entire region in other thematic areas may be considered on a case by case basis.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a project larger in duration and scope that is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas.

The participation of a respected university or scholarly organization is decidedly advantageous. Further, the themes addressed in these exchange programs must be of long-term importance, rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. USIS post consultation by applicants, *prior* to submission of proposals, is strongly recommended for all programs.

Creative Arts Grant Program

The Creative Arts Division (E/PA), Office of Citizen Exchange, invites proposals from U.S. non-profit organizations for exchanges of professionals in the following fields: Music, dance, theater, literature, visual arts, architecture, folk arts, crafts and folklore, museum exchanges, historical/cultural conservation/preservation, and arts management.

Proposals must include an international exchange of persons component involving cultural leaders and commentators, critics, administrators and professionals in the above mentioned fields. Proposed projects may operate either to or from the United States, preferably in both directions. E/PA seeks institutionally-based projects involving artists in the creation of their particular art forms. Priority consideration will be accorded to projects that provide for substantive exchanges among artistic creators. Proposals leading to institutional linkages will receive priority consideration in the review process. Arts management projects should center on hands-on, practical aspects of the field.

E/PA projects support USIS posts by providing: (a) Vehicles for professional interaction between arts/museum communities in the United States and other countries; (b) vehicles for creating

ongoing institutional linkages between American arts/museum organizations and their counterparts in other countries; and (c) vehicles for USIS officers to use for substantive contacts with key members/groups in their arts constituencies.

E/PA projects taking place in the United States operate as competitions in which participating USIS posts retain exclusive nomination prerogative of candidates for awards, while the American arts organizations retain selection prerogative of award-winners. Awards consist of travel and per diem expenses to attend the event or participate in the activity partially funded under the terms of the E/PA grant.

Projects to send American professionals to other countries must include assurances of quality, fairness and balance in the selection of participants.

Creative Arts Program Exclusions

E/PA does not accept proposals for the support of performing arts productions or tours, film or video production and/or festivals, independently-operating international competitions, community-level arts presentations or festivals for general audiences, the production or presentation of visual arts exhibits, or academic projects or programs. E/PA does not support conferences or seminars, or tours consisting exclusively of verbal presentations about the arts.

Additional Guidelines and Restrictions

Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for youth or youth-related activities (participants' age under 25), for publications funding, for student and/or teacher/faculty exchanges, for film festivals and exhibits. Nor does this office provide scholarship or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register.**

For projects that would begin after June 30, 1993, competition details will be announced in the **Federal Register** on or about December 1, 1992. Inquiries concerning technical requirements are welcome prior to submission of applications.

Application Requirements

Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement of what the project is designed to accomplish, how it is consistent with the purposes of the USIA award program, and how it relates to USIA's mission.

2. A concise description of the project, spelling out complete program schedules and proposed itineraries, who the participants will be, where they will come from, and how they will be selected.

3. A statement of what follow-up activities are proposed, how the project will be evaluated, what groups, beyond the direct participants, will benefit from the project and how they will benefit.

4. A detailed three-column budget.

Funding and Budget Requirements for All Submissions

The Office of Citizen Exchanges requires co-funding with grantees in all projects. Proposals with cost sharing of less than 33 percent of the total project cost will be considered ineligible. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Grant applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects.

Funding assistance is limited to participant travel and per diem requirements with modest contributions to defray administrative costs (salaries, benefits, other direct and indirect costs), which for this year may not exceed 20 percent of the total funds requested. The grantee institution may wish to cost-share any of these expenses. Organizations with less than four years' experience in conducting international exchange programs are limited to $60,000 of USIA support, and their budget submissions should not exceed this amount. Grant proposals may not exceed $150,000 in the amount requested from USIA.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposal should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Institution Reputation/Ability/Evaluations:* Institutional grant recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants (if any) as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area should be evident.

7. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional ties.

9. *Cost-Effectiveness:* The overhead and administrative components should be kept as low as possible and shall not exceed 20% of the total funds requested. All other items should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which insures that USIA-

supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Technical Requirements

Proposals can only be accepted for review when they are fully in accord with the terms of this RFP, as well as with the application package.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. However, single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants also will be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 1, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements

Dated: June 8, 1992.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-13581 Filed 6-9-92; 8:45 am]

BILLING CODE 8230-01-M

Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice for the **Federal Register.**

The United States Advisory Commission on Public Diplomacy will meet in room 600, 301 4th Street, SW. on June 11 from 10 a.m. to 12:30 p.m.

The meeting will be closed to the public from 11 a.m.–12:30 p.m. because it will involve discussion with Commission consultant Robert Chatten of classified information relating to radio and television broadcasting policies and operations of the U.S. Information Agency. (5 U.S.C. 552b(c)(1))

From 10:15 a.m. to 11 a.m. the Commission will meet in open session with Mr. George Jacobs, President, George Jacobs & Associates, Inc. for a discussion of shortwave and space-based technologies in international broadcasting.

Please call Gloria Kalamets, (202) 619-4468 for further information.

Dated: June 4, 1992.

Henry E. Catto,

Director.

[FR Doc. 92-13582 Filed 6-9-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 112
Wednesday, June 10, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:33 a.m. on Friday, June 5, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), Vice Chairman Andrew C. Hove, Jr., and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(9)(B).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 8, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-13719 Filed 6-8-92; 8:58 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATES & TIME: Tuesday, June 16, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26 U.S.C.
Matters concerning participation in civil actions or proceedings or arbjtration.
Internal personnel rules and procedures or matters affecting a particular employee

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,

Administrative Assistant.

[FR Doc. 92-13812 Filed 6-8-92; 3:20 pm]

BILLING CODE 6715-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 9-92—Addendum

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Oral Hearing on Objection to Proposed Decision Issued on Claims Against Iran:

Wed., June 24, 1992 at 11:30 a.m.
—IR-0723—Michael B. Millar

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, D.C. on June 8, 1992.

Judith H. Lock,

Administrative Officer.

[FR Doc. 92-13808 Filed 6-8-92; 2:48 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register
Vol. 57, No. 112
Wednesday, June 10, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-4214-11; CAS 1037, CAS 2694, CAS 058127, CAS 058168, CAS 068455, CAS 073664, CAS 080236, CACA 7002, CACA 7005, CACA 7007, CACA 7012, CACA 7013, CACA 7014, CACA 7015, CACA 7017, CACA 7558, CACA 7579]

Proposed Continuation of Withdrawals; California

Correction

In notice document 92-4211 beginning on page 6521 in the issue of Tuesday, February 25, 1992, make the following corrections:

1. On page 6522, in the third column, in the first line, the comma should be deleted after "NW¼".

2. On page 6523, in the second column, in the land description, under "Sec. 23," in the second line, after"W½E½" insert a comma and "E¼SE¼" should read "SE¼SE¼".

3. On the same page, in the same column, in the land description, under "Sec. 24," in the first line, after "inclusive, N½" insert a comma.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-225D]

Occupational Exposure to Formaldehyde

Correction

In rule document 92-11911 beginning on page 22290 in the issue of Wednesday, May 27, 1992, make the following correction:

On page 22308, in the table, in the first column, delete the ninth line, and in the second column, the fifth line should follow at the end of "facepiece." in the fourth line. This table should read exactly as the table on page 22311.

BILLING CODE 1505-01-D

SECURITY AND EXCHANGE COMMISSION

[Release No. 34-30702; File No. SR-BSE-91-03]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval, and Filing of Amendments and Order Granting Accelerated Approval to Proposed Rule Change Relating to Amendments to the Arbitration Code

Correction

In notice document 92-11863 beginning on page 21680 in the issue of Thursday, May 21, 1992, the file number should read as set forth above.

BILLING CODE 1505-01-D

SECURITY AND EXCHANGE COMMISSION

[Release No. 34-30705; International Series Release No. 387; File No. SR-PHLX-92-10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Eligibility of Registered Representatives to Sell Foreign Currency Options

Correction

In notice document 92-11868 beginning on page 21688 in the issue of Thursday, May 21, 1992, the first release number should read as set forth above.

BILLING CODE 1505-01-D

federal register

Wednesday
June 10, 1992

Part II

Office of Personnel Management

48 CFR Chapter 21

Federal Employees' Group Life Insurance Program; Acquisition Regulations; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Chapter 21

RIN 3206–AE04

Federal Employees' Group Life Insurance Program; Acquisition Regulation

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management is proposing to establish Chapter 21 in Title 48 of the Code of Federal Regulations (Parts 2100–2199). This regulation describes the method by which the Office of Personnel Management (OPM) implements and supplements the Federal Acquisition Regulation (FAR) for the Federal Employees' Group Life Insurance (FEGLI) Program. OPM is proposing this regulation to identify basic and significant acquisition policies unique to the FEGLI Program. The regulation would be referred to as the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR).

DATES: Comments must be received on or before July 10, 1992.

ADDRESSES: Written comments may be sent to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: OPM is proposing this regulation to provide direction and uniformity in the agency's procurement of life insurance coverage for Federal employees, retirees, and survivors and to assist life insurance carriers and other interested parties in understanding OPM's application of the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) to the FEGLI Program. The FAR system was established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The FAR system consists of those Government-wide acquisition regulations in 48 CFR chapter 1 and agency acquisition regulations in subsequent chapters issued by individual agencies. OPM is now proposing the LIFAR, established as chapter 21 within title 48 of the Code of Federal Regulations, to describe the method by which it will implement and supplement the FAR for the specific purpose of acquiring and administering contracts with life insurance carriers in the FEGLI Program.

The fundamental principle underlying the LIFAR is that the FAR is applicable in general to contracts negotiated under the FEGLI Program although specific application of the FAR necessarily differs from its application to other procurement contracts because of the distinct nature of the service procured, i.e., life insurance coverage. Indeed, it is well understood that a number of provisions of the FAR would be impossible to apply literally in a practical manner to a life insurance contract. In accordance with FAR subpart 1.3, the LIFAR does not unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR.

Therefore, the LIFAR is not, by itself, a complete document as it must be used in conjunction with the FAR. Where the FAR has no practical applicability to the FEGLI Program, and attempts to apply a given provision would be counterproductive and inconsistent with the intent of the FAR, specific notation is provided along with the authority for the determination of nonapplicability. Where a FAR part or subpart is adequate for use without further OPM implementation or supplementation, or is clearly irrelevant, no mention is cited in the LIFAR. Thus, the order of use is (1) FAR; (2) LIFAR. The LIFAR is intended to identify basic and significant acquisition policies unique to the FEGLI Program.

It is also important to note that the LIFAR does not replace, incorporate, or supplement regulations found at 5 CFR part 870 which provide the substantive policy guidance for administration of the life insurance program under 5 U.S.C. chapter 87.

LIFAR subpart 2115.9 provides a profit opportunity for the contractor in the form of a service charge which may be negotiated in lieu of the risk charge that OPM has provided in the past. The service charge represents that element of the total remuneration that contractors may receive for contract performance over and above allowable costs (FAR 15.901). It does not guarantee a profit but is intended to be used as an incentive to stimulate efficient contract performance and as a guide to agencies entering negotiations. Thus, the proposed factors are intended to give structure to the process of determining a profit prenegotiation objective and to provide justification and documentation of the profits paid. The service charge formula allows for appropriate increases over time based on contractor performance.

While OPM was developing the LIFAR, Congress passed the Omnibus Budget Reconciliation Act of 1990. Section 11301 of title XI of this Act, now codified at 26 U.S.C. 848, prescribes new rules for the capitalization of insurance policy acquisition expenses (Deferred Acquisition Cost "DAC" tax). Since the DAC tax, as it relates to the FEGLI Program, is a tax on assets rather than net profit, it is an allowable contract expense under Government contract cost principles (see 2131.205–41(c)). For purposes of the LIFAR, the DAC tax includes the tax on additional premium remitted to the contractor to meet its DAC tax obligations.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation implements and supplements the Federal Acquisition Regulation, which has already been established for entities contracting with the Federal Government.

List of Subjects in 48 CFR Chapter 21

Administrative practice and procedure, Government contracts, Life insurance.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend title 48, Code of Federal Regulations, by adding chapter 21 (parts 2100–2199) to read as follows:

CHAPTER 21—OFFICE OF PERSONNEL MANAGEMENT, FEDERAL EMPLOYEES GROUP LIFE INSURANCE ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

Part

2101 Federal Acquisition Regulations System.
2102 Definitions of words and terms.
2103 Improper business practices and personal conflicts of interest.
2104 Administrative matters.

SUBCHAPTER B—ACQUISITION PLANNING

2105 Publicizing contract actions.
2106 Competition requirements.
2109 Contractor qualifications.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

2114 Sealed bidding.

2115 Contract by negotiation.
2116 Types of contracts.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

2122 Application of labor laws to government acquisitions.
2124 Protection of privacy and freedom of information.
2129 Taxes.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

2131 Contract cost principles and procedures.
2132 Contract financing.
2133 Protests, disputes, and appeals.
2137 Service contracting.
2143 Contract modifications.
2144 Subcontracting policies and procedures.
2146 Quality assurance.
2149 Termination of contracts.

SUBCHAPTER H—CLAUSES AND FORMS

2152 Contract clauses.

SUBCHAPTER A—GENERAL

PART 2101—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2101.1—Purpose, Authority, Applicability and Issuance

Sec.
2101.101 Purpose.
2101.102 Authority.
2101.103 Applicability.
2101.104 Issuance.
2101.104–1 Publication and code arrangement.
2101.104–2 Arrangement of regulation.

Subpart 2101.3—Agency Acquisition Regulation (LIFAR)

2101.301 Policy.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2101.1—Purpose, Authority, Applicability, and Issuance

2101.101 Purpose.

(a) This subpart establishes chapter 21, Office of Personnel Management Federal Employees' Group Life Insurance Acquisition Regulation, within title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be LIFAR.

(b) The purpose of the LIFAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering a contract, or contracts, for life insurance under the Federal Employees' Group Life Insurance (FEGLI) Program.

2101.102 Authority.

(a) The LIFAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. chapter 87 and other applicable law and regulation.

(b) The LIFAR does not replace or incorporate regulations found at 5 CFR part 870, et seq., which provide the substantive policy guidance for administration of the FEGLI Program under 5 U.S.C. chapter 87. The contractor should follow the following order of precedence in contracting with OPM under the FEGLI Program:

(1) 5 U.S.C. chapter 87.
(2) 5 CFR part 870, et seq.
(3) 48 CFR chapter 1.
(4) 48 CFR chapter 21.
(5) The FEGLI Program contract.

2101.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEGLI Program pursuant to 5 U.S.C. chapter 87. The LIFAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEGLI Program.

2101.104 Issuance.

2101.104–1 Publication and code arrangement.

(a) The LIFAR and its subsequent changes are published in—

(1) Daily issues of the **Federal Register**; and

(2) Cumulative form of the Code of Federal Regulations.

(b) The LIFAR is issued as chapter 21 of title 48 of the Code of Federal Regulations.

2101.104–2 Arrangement of regulation.

(a) *General.* The LIFAR conforms with the arrangement and numbering system prescribed by FAR 1.104. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding LIFAR part, subpart, etc. The LIFAR is to be used in conjunction with the FAR and the order for use is:

(1) FAR;
(2) LIFAR.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of chapter 21 material that has been published in the **Federal Register** will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 21 may be identified as "LIFAR" followed by the section number.

Subpart 2101.3—Agency Acquisition Regulation (LIFAR)

2101.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEGLI Program shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with certain unique aspects of life insurance or necessary to satisfy specific needs of the Office of Personnel Management, to the extent not otherwise regulated in the FAR, shall be implemented as amendments to the LIFAR and published in the **Federal Register**, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides which are necessary to clarify or implement the LIFAR within OPM may be issued by agency officials designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the LIFAR must:

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

PART 2102—DEFINITIONS OF WORDS AND TERMS

Subpart 2102.3—Definitions of FEGLI Terms

Sec.
2102.370 Scope of subpart.
2102.371 Definitions.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2102.3—Definitions of FEGLI Terms

2102.370 Scope of subpart.

This subpart defines words and terms commonly used in this regulation.

2102.371 Definitions.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

Contract means a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by 5 U.S.C. Chapter 87.

Contractor means an insurance company contracted to provide the

benefits specified by 5 U.S.C. Chapter 87.

Director means the Director of the Office of Personnel Management.

Employees' Life Insurance Fund means the trust fund established under 5 U.S.C. 8714.

FEGLI Program means the Federal Employees' Group Life Insurance Program.

Fixed price with limited cost redetermination plus fixed fee contract means a contract which provides for:

(1) A fixed price during the contract year with a cost element that is adjusted at the end of the contract term based on costs incurred under the contract; and,

(2) A profit or fee that is fixed at the beginning of the contract term. The amount of adjustment for costs is limited to the amount in the Employees' Life Insurance Fund. The fee will be in the form of either a risk charge or a service charge.

Insurance company, as provided in 5 U.S.C. 8709, means a company licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia. It must have in effect, on the most recent December 31 for which information is available to the Office of Personnel Management, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

OPM means the Office of Personnel Management.

Reinsurer means a company that reinsures portions of the total amount of insurance under the contract as specified in 5 U.S.C. 8710 and is not an agent or representative of the contractor.

Subcontract means a contract entered into by any subcontractor that furnishes supplies or services for performance of a prime contract under the FEGLI Program. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term "subcontract" does not include a contract with a reinsurer under the FEGLI Program.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor under the FEGLI contract. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term "subcontractor" does not include reinsurers under the FEGLI Program.

PART 2103—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2103.70—Misleading, Deceptive, or Unfair Advertising

Sec.
2103.7001 Policy.
2103.7002 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2103.70—Misleading, Deceptive, or Unfair Advertising

2103.7001 Policy.

(a) OPM prepares and makes available to enrolled Federal employees a booklet describing the provisions of the FEGLI Program which includes information about eligibility, enrollment, and general procedures. The booklet also operates as a certification of the employee's enrollment in the FEGLI Program. Because all necessary information is made available by OPM, advertising directed specifically at Federal employees and life insurance agent contacts with Federal employees for the purpose of selling FEGLI coverage are prohibited.

(b) The contractor is prohibited from making incomplete, incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to the benefits of the FEGLI Program. The contractor will use its best efforts to assure that its life insurance agents are aware of and abide by this prohibition.

(c) The contractor's failure to conform to the requirements of this subpart shall be considered by OPM in the determination of the service charge prenegotiation objective.

2103.7002 Contract clause.

The clause at 2152.203–70 shall be inserted in all FEGLI Program contracts and in all subcontracts as defined at 2102.371.

PART 2104—ADMINISTRATIVE MATTERS

Subpart 2104.7—Contractor Records Retention

Sec.
2104.703 Policy.
2104.705 Specific retention periods.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 40 CFR 1.301.

Subpart 2104.7—Contractor Records Retention

2104.703 Policy.

In view of the unique payment schedules of FEGLI contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1).

2104.705 Specific retention periods.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215–2, "Audit-Negotiation," the contracting officer shall insert the clause at 2152.204–70 in all FEGLI Program contracts.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2105—PUBLICIZING CONTRACT ACTIONS

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2105.70—Applicability

2105.7001 Applicability.

FAR part 5 has no practical application to the FEGLI Program because OPM does not issue solicitations. Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709.

PART 2106—COMPETITION REQUIREMENTS

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2106.70—Applicability

2106.7001 Applicability.

FAR part 6 has no practical application to the FEGLI Program in view of the statutory exception provided by 5 U.S.C. 8709.

PART 2109—CONTRACTOR QUALIFICATIONS

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2109.70—Minimum standards for FEGLI contractors

2109.7001 Minimum standards for FEGLI contractors.

(a) The contractor must meet the requirements of chapter 87 of title 5, United States Code; parts 870, 871, 872, 873, and 874 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations, and the standards in this subpart. The contractor shall continue to meet these and the following statutory and regulatory requirements while under contract with OPM. Failure to meet these requirements and standards is

cause for OPM's termination of the contract in accordance with part 2149 of this chapter.

(b) The contractor must actually be engaged in the life insurance business and must be licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia at the time of application.

(c) The contractor must not be a Federal, State, local or territorial government entity.

(d) The contractor must not be debarred, suspended or ineligible to participate in Government contracting or subcontracting for any reason.

(e) The contractor must keep statistical and financial records regarding the FEGLI Program separate from that of all its other lines of business.

(f) The contractor must enter into rate redeterminations as deemed necessary by OPM.

(g) The contractor must furnish such reasonable reports as OPM determines are necessary to administer the FEGLI Program.

(h) The contractor must establish and maintain a system of internal control that provides reasonable assurance that:

(1) The payment of claims and other expenses is in compliance with legal, regulatory, and contractual guidelines;

(2) Funds, property, and other FEGLI assets are safeguarded against waste, loss, unauthorized use, or misappropriation;

(3) Revenues and expenditures applicable to FEGLI operations are properly recorded and accounted for to permit the preparation of reliable financial reporting and to maintain accountability over assets; and,

(4) Data are accurately and fairly disclosed in all reports required by OPM.

(i) The contractor must permit representatives of OPM and of the General Accounting Office to audit and examine records and accounts pertaining to the FEGLI Program at such reasonable times and places as may be designated by OPM or the General Accounting Office.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2114—SEALED BIDDING

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2114.70—Applicability

2114.7001 Applicability.

FAR part 14 has no practical application to the FEGLI Program in view of the statutory exemption provided by 5 U.S.C. 8709, 8714a, 8714b, and 8714c.

PART 2115—CONTRACTING BY NEGOTIATION

Subpart 2115.1—General Requirements for Negotiation

Sec.
2115.170 Negotiation authority.

Subpart 2115.4—Solicitation and Receipt of Proposals and Quotations

2115.401 Applicability.

Subpart 2115.6—Source Selection

2115.602 Applicability.

Subpart 2115.8—Price Negotiation

2115.802 Policy.

2115.802–70 Contractor investment of FEGLI funds.

2115.802–71 Investment income clause.

Subpart 2115.9—Profit

2115.902 Policy.

2115.905 Profit analysis factors.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2115.1—General Requirements for Negotiation

2115.170 Negotiation authority.

The authority to negotiate FEGLI contracts is conferred by 5 U.S.C. 8709.

Subpart 2115.4—Solicitations and Receipt of Proposals and Quotations

2115.401 Applicability.

(a) FAR subpart 15.4 has no practical application to the FEGLI Program because OPM does not issue solicitations.

(b) OPM will announce any opportunities to submit applications to provide life insurance through the FEGLI Program in insurance industry periodicals and other publications as deemed appropriate by OPM. The announcement will contain information on the address to which requests for application packages should be submitted and on deadline dates for submission of completed applications.

(c) Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709. Offerors voluntarily come forth in accordance with procedures provided in 2115.602.

(d) OPM may approve one or more life insurance companies that, in its judgement, are best qualified to provide life insurance coverage to Federal enrollees.

Subpart 2115.6—Source Selection

2115.602 Applicability.

(a) FAR subpart 15.6 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and the following:

(b) Applications must be signed by an individual with legal authority to enter into a contract on behalf of the company of the dollar level of claims and expenses anticipated.

(c) Applications will be reviewed for evidence of substantial compliance in the following areas:

(1) *Management*: Stable management with experience pertinent to the life insurance industry and, in particular, large group management; sufficient operating experience to enable OPM to evaluate past and expected future performance.

(2) *Marketing*: Past ability to attract and retain large group contracts; steady or increasing amount of group life insurance in force.

(3) *Legal expertise*: Demonstrated competence in researching, compiling, and implementing various Federal and State laws that may impact payment of benefits; ability to defend legal challenges to payment of benefits.

(4) *Financial condition*: Establishment of firm budget projections and demonstrated success in keeping costs at or below those projections on a regular basis; evidence of the ability to sustain operations in the future and to meet obligations under the contract OPM might enter into with the company; adequate reserve levels; assets exceeding liabilities.

(5) *Establishment of Office:* Ability to establish an administrative office capable of assessing, tracking, and paying claims.

(6) *Internal Controls:* Ability to establish and maintain a system of internal control that provides reasonable assurance that the payment of claims and other expenses will be in compliance with legal, regulatory, and contractual guidelines; funds, property, and other FEGLI assets will be safeguarded against waste, loss, unauthorized use, or misappropriation; and revenues and expenditures applicable to FEGLI operations will be properly recorded and accounted for to permit the preparation of timely and accurate financial reporting and to maintain accountability over assets.

Subpart 2115.8—Price Negotiation

2115.802 Policy.

Pricing of FEGLI Program premium rates is governed by 5 U.S.C. 8707, 8708, 8711, 8714a, 8714b, and 8714c. FAR subpart 15.8 shall be implemented by applying cost analysis policies and procedures. To the extent that actuarial estimates are used for pricing, such estimates will be deemed acceptable and if inaccurate, do not constitute defective pricing.

2115.802–70 Contractor investment of FEGLI funds.

(a) The contractor is required to invest and reinvest all FEGLI funds on hand including any attributable to the special Contingency Reserve until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the contractor shall seek to maximize investment income.

(b) The contractor is required to credit income earned from its investment of FEGLI funds to the FEGLI Program. Thus, the contractor must be able to allocate investment income to the FEGLI Program in an appropriate manner. If the contractor fails to invest funds on hand, properly allocate investment income, or credit any income due the contract, for whatever reason, it shall return or credit any investment income lost to OPM or the FEGLI Program, retroactive to the date that such funds should have been originally invested in accordance with 2152.215–70.

(c) Investment income is the net amount earned by the contractor after deducting reasonable, necessary, and properly allocated investment expenses.

2115.802–71 Investment income clause.

The contracting officer shall insert the clause at 2152.215–70 in all FEGLI Program contracts.

Subpart 2115.9—Profit

2115.902 Policy.

(a) *Risk charge.* (1) Section 8711(d) of title 5, United States Code, provides for payment of a risk charge to FEGLI contractors as compensation for the risk assumed under the FEGLI Program. It is appropriate to pay such a charge when substantial risk is borne by the contractor; that is, when the balance in the Employees' Life Insurance Fund is no larger than five times annual claims.

(2) The risk charge is determined by agreement between the contractor and OPM. The amount of risk charge shall be specified in the contract.

(b) *Waiver of the risk charge.* (1) When the Fund balance is greater than five times annual claims, OPM and the contractor may agree that the contractor will relinquish the risk charge in favor of a profit opportunity in the form of a service charge for the contractor. The service charge so determined shall be the total service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to surpluses, etc.) that may have been negotiated by the prime contractor with any subcontractor. At no time may both a risk charge and a service charge be paid for the same portion of a policy year.

(2) Once agreement to relinquish the risk charge is made, the agreement may not be cancelled unless OPM and the contractor mutually agree to reinstitute payment of a risk charge; or unless the Fund balance falls below the level defined in 2115.902(a) and 30 days notice of cancellation is provided; or unless the contractor or OPM provide notice of cancellation for any reason 1 year prior to the date cancellation is sought.

(c) Any profit prenegotiation objective (service charge) will be determined on the basis of a weighted guidelines structured approach.

2115.905 Profit analysis factors.

(a) The OPM contracting officer will apply a weighted guidelines method when developing the prenegotiation objective (service charge) for the FEGLI contract. In accordance with the factors defined in FAR 15.905–1, OPM will apply the appropriate weights derived from the ranges specified in paragraph (b) of this section and will determine the prenegotiation objective based on the contractor's Basic and Family Optional insurance claims paid in the previous contract year.

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, effectiveness of internal controls systems in place, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's basic responsibility for contract compliance and will be a measure of the extent and nature of the contractor's contribution to the FEGLI Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a zero weight. Innovations of benefit to the FEGLI Program will generally receive a plus weight; documented inattention or indifference to effective operations, a zero weight.

(2) *Contract cost risk.* OPM will evaluate the contractor's risk annually in relation to the amount in the Employees' Life Insurance Fund and will evaluate this factor accordingly.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905–1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will result in a plus weight; indifference to Federal socioeconomic programs will result in a zero weight; and only deliberate failure to provide opportunities to persons and organizations that would benefit from these programs will result in a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEGLI Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEGLI Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost Control.* This factor is based on the contractor's previously demonstrated ability to perform effectively and economically. In addition, consideration will be given to measures taken by the contractor that result in productivity improvements and other cost containment accomplishments that will be of future benefit to the FEGLI Program. Examples are containment of costs associated with processing claims; success at preventing waste, loss, unauthorized use, or misappropriation of FEGLI assets; and success at limiting and recovering erroneous benefit payments.

(6) *Independent Development.* Consideration will be given to independent contractor-initiated efforts, such as the development of a unique and enhanced customer support system, that are of demonstrated value to the FEGLI Program and for which developmental costs have not been recovered directly or indirectly through allowable or allocable administrative expenses. This

factor will be used to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the Program at large. Improvements and innovations recognized and rewarded under any other profit factor cannot be considered.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth below:

Profit factor	Weight ranges
1. Contractor performance	0 to +.0005.
2. Contract cost risk	.000001 to +.00001.
3. Federal socioeconomic programs.	−.00003 to +.00003.
4. Capital investments	0 to +.00001.
5. Cost control	−.0002 to +.0002.
6. Independent development.	0 to +.00003.

PART 2116—TYPES OF CONTRACTS

Subpart 2116.1—Selecting Contract Types

Sec.
2116.105 Solicitation provisions.

Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.

2116.270–1 Contract clause.

2116.271 Fixed-Price with limited cost redetermination plus fixed fee contract.

2116.271–1 Contract clauses.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

SUBPART 2116.1—SELECTING CONTRACT TYPES

2116.105 Solicitation provisions.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 87 obviate the issuance of solicitations.

Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.

FEGLI Program contracts will be fixed price with limited cost redetermination plus fixed fee. The premium to the contractor will be based on an estimate of benefits and administrative costs, plus the fixed service or risk charge, and will be redetermined annually. Claims costs, including benefits and administrative expenses, in excess of premiums will be paid up to the amount in the Employees' Life Insurance Fund. Payment for costs exceeding the amount in the Fund are the responsibility of the contractor and reinsurers. The fee is fixed at the inception of each contract year. The fee does not vary with the actual costs, but may be adjusted as a result of changes in the work to be performed under the contract. The fee will be in the form of either a risk charge or a service charge.

(a) *Risk charge.* The risk charge will be determined as prescribed in 5 U.S.C. 8711(d) and paragraph 2115.902(a)(2) of this subchapter. It will consist of a negotiated amount which will reflect the risk assumed by the contractor and the reinsurers and may be adjusted as a result of increased or decreased risk under the contract. When the applicable fee is a risk charge, no service charge shall be payable for the same period of time.

(b) *Service charge.* The amount of the service charge will be determined using a weighted guidelines structured approach in accordance with 2115.905 and negotiated with the contractor at the beginning of the contract term. When the applicable fee is a service charge, no risk charge will be paid for the same portion of a policy year in which a service charge is paid.

2116.270–1 Contract clause.

The clause at 2152.216–70 shall be inserted in all FEGLI Program contracts.

2116.271 Fixed price with limited cost redetermination plus fixed fee contract.

2116.271–1 Contract clauses.

(a) The clause at 2152.216–71 shall be inserted in all FEGLI Program contracts when a risk charge is negotiated.

(b) The clause at 2152.216–72 shall be inserted in all FEGLI Program contracts when a service charge is negotiated.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2122—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 40 CFR 1.301.

Subpart 2122.1—Basic Labor Policies

2122.170 Contract clause.

The clause at 2152.222–70 shall be inserted in all FEGLI Program contracts.

PART 2124—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2124.70—Protection of Individual Privacy

Sec.
2124.7001 Policy.
2124.7002 Contract clause.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 40 CFR 1.301.

Subpart 2124.70—Protection of Individual Privacy

2124.7001 Policy.

Records retained by FEGLI contractors on Federal insureds and members of their families serve the contractors' own commercial function of paying FEGLI claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for the contractors to keep certain records confidential. The clause at 2152.224–70 addresses this concern.

2124.7002 Contract clause.

The clause at 2152.224–70 shall be inserted in all FEGLI Program contracts.

PART 2129—TAXES

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 40 CFR 1.301.

Subpart 2129.3—State and Local Taxes

2129.370 Application of State and local taxes to FEGLI contractors.

(a) 5 U.S.C. 8714(c)(1) prohibits the imposition of taxes, fees, or other monetary payment, directly or indirectly, on FEGLI premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision or governmental authority of those entities.

(b) Paragraph (a) of this section shall not be construed to exempt the contractor from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by it from business conducted under the FEGLI Program if the tax, fee, or payment is applicable to a broad range of business activity.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2131—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2131.2—Contracts With Commercial Organizations

Sec.
2131.200 Scope of subpart.
2131.201–70 FEGLI Program credits.
2131.203–70 FEGLI General and Administrative (G&A) expenses.
2131.205 Selected costs.
2131.205–41 Taxes.
2131.205–70 FEGLI public relations and advertising costs.
2131.205–71 FEGLI bad debts.
2131.205–72 FEGLI compensation for personal services.

Sec.
2131.205–73 Selling costs.
2131.205–74 Trade, business, technical and professional activity costs.
2131.205–75 FEGLI and nonrecurring costs.
2131.205–76 Major subcontractor service charge.
2131.205–77 Reinsurer administrative expense costs.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 40 CFR 1.301.

Subpart 2131.2—Contracts With Commercial Organizations

2131.200 Scope of subpart.

The cost principles under this subpart apply to all FEGLI Program contracts.

2131.201–70 FEGLI Program credits.

The provisions of FAR 31.201–5 shall apply to income, rebates and other credits resulting from benefit payments that include, but are not limited to—

(a) Uncashed and returned checks.

(b) Refunds attributable to litigation with regard to payments of FEGLI Program life insurance monies.

(c) Erroneous benefit payment, refunds, overpayment, and duplicate payment recoveries.

(d) Escheatments.

2131.203–70 FEGLI General and Administrative (G&A) expenses.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a "dividend or retention formula."

2131.205 Selected costs.

2131.205–41 Taxes.

(a) Any tax incurred by the contractor in connection with the operation of this contract shall be deemed an after-imposed tax and not an excepted tax within the meaning of FAR 52.229–4. However, the contractor shall be liable for any income tax assessed on the contractor's profit derived from administering this contract.

(b) The provision at FAR 31.205–41 is modified to include as unallowable costs taxes on FEGLI premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision or governmental authority of those entities (see 2129.370(a)).

(c) Federal tax paid on policy acquisition expenses (Deferred Acquisition Cost "DAC" tax) shall be an allowable cost. The DAC tax includes the tax on additional premium remitted to the contractor to meet its DAC tax obligations.

2131.205–70 FEGLI public relations and advertising costs.

The provisions of FAR 31.205–1 shall be modified to include the following:

(a) Costs of media messages are allowable if approved by the contracting officer and all of the following criteria are met:

(1) The primary objective of the message is to disseminate information on general health and fitness or encouraging healthful lifestyles;

(2) The costs of the contractor's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the contractor's messages to be charged to the FEGLI Program in advance of the policy year.

(b) Costs of media messages that inform enrollees about the FEGLI Program are allowable if approved by the contracting officer.

(c) In those instances where contracting officer approval of the total dollar amount is not solicited in advance, it is incumbent upon the contractor to show the contracting officer, for subsequent approval, that the costs are reasonable and do not unduly burden the administrative cost to the contract.

(d) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the contractor or subcontractor for the purpose of enhancing its overall image or selling its product or services are not allowable.

2131.205–71 FEGLI bad debts.

Erroneous benefit payments. If the contractor or OPM determines that a FEGLI benefit has been paid in error for any reason, the contractor shall make a diligent effort to recover such erroneous payment from the recipient. If the contractor is unable to recover the erroneous payment from the recipient, the contracting officer shall allow the amount of the payment to be charged to the contract provided the contractor has demonstrated that payment was made in accordance with an approved debt collection system as referenced in 2146.271(b) and that either a diligent effort to recover, or a determination that it would not be cost effective to recover, the erroneous overpayment has been made. The contractor's compliance with a system maintained under 2146.271(b) will be deemed to be a diligent effort to recover an overpayment.

2131.205–72 FEGLI compensation for personal services.

FAR 31.205–6 is supplemented as follows:

Overtime on a FEGLI contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

2131.205–73 Selling costs.

Selling costs are allowable costs to FEGLI contracts only to the extent that they are attributable to conducting contract negotiations with the Government and for liaison activities involving ongoing contract administration, including the conduct of informational and enrollment activities as directed by the contracting officer.

2131.205–74 Trade, business, technical and professional activity costs.

(a) FEGLI contractors shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities (FAR 31.205–43) when the allocable costs of such participation to the FEGLI Program will exceed $2,500 annually and the contractor allocates more than 50% of the membership cost of a trade, business, technical, or professional organization to the FEGLI Program.

(b) When approval of costs for membership in an organization is required, the contractor must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing services to FEGLI Program insureds, and that the organization is not engaged in activities such as those cited in FAR 31.205–22 (lobbying costs) for which costs are not allowable.

2131.205–75 FEGLI nonrecurring costs.

Nonrecurring costs that exceed $25,000, such as forms printing costs and any open season costs that may arise shall be allowed only to the extent provided for by advance agreement in accordance with FAR 31.109.

2131.205–76 Major subcontractor service charge.

When costs are determined on the basis of actual costs incurred, any amount that exceeds the allowable cost of a major subcontract (whether entitled service charge, incentive fee, profit, fee, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the risk charge or service charge negotiated between OPM and the contractor.

2131.205–77 Reinsurer administrative expense costs.

A charge of $500 per policy year per reinsurer of the FEGLI Program as set forth in the contract is an allowable cost when documented through an internal accounting entry of the contractor and actually paid. This amount is deemed to be sufficient to reimburse reinsurers for the minor administrative expenses incurred in reinsuring the FEGLI Program.

PART 2132—CONTRACT FINANCING

Subpart 2132.1—General

Sec.
2132.170 Recurring premium payments to contractors.
2132.171 Contract clause.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.

2132.617 Contract clause.

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special Contingency Reserve.

2132.771 Non-commingling of FEGLI Program funds.

2132.772 Contract clause.

Subpart 2132.8—Assignment of Claims.

2132.870 Contract clause.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 40 CFR 1.301.

Subpart 2132.1—General

2132.170 Recurring premium payments to contractors.

OPM and the contractor will concur on an estimate of benefits and administrative costs plus the fixed service or risk charge for the forthcoming contract year, as specified in the contract. The annual premium to the contractor will be determined based on this estimate. The premium will be redetermined annually and will be provided to the contractor in 12 equal monthly installments due on the first day of each month. Following the close of the contract year, a reconciliation of premiums, benefits, and other costs will be performed and additional payment by OPM or reimbursement by the contractor will be made as necessary.

2132.171 Contract clause.

The clause at 2152.232–70 shall be inserted in all FEGLI Program contracts.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.

FAR 32.607 has no practical application to FEGLI contracts. The statutory provisions at 5 U.S.C. 8707 and 8708 authorize joint enrollee and Government contributions to the Employees' Life Insurance Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, contractors may not offset debts to the Fund by a tax credit that is solely a Government obligation.

2132.617 Contract clause.

The clause at FAR 52.232–17 will be modified in FEGLI Program contracts to exclude the words "net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)."

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special Contingency Reserve.

Insurance premium payments and a special Contingency Reserve are made available to FEGLI Program contractors in accordance with 5 U.S.C. 8712 and 8714.

2132.771 Non-commingling of FEGLI Program funds.

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the contractor. Cash and investment balances reported on the FEGLI Program Annual Accounting Statement must be supported by the contractor's books and records.

(b) This requirement may be modified by the contracting officer in accordance with the clause at 2152.232–71 when adequate accounting and other controls are in effect. If the requirement is modified, such modification will remain in effect until rescinded by OPM.

2132.772 Contract clause.

The clause at 2152.232–71 shall be inserted in all FEGLI Program contracts.

Subpart 2132.8—Assignment of Claims

2132.870 Contract clause.

The clause set forth in 2152.232–72 shall be inserted in all FEGLI Program contracts.

PART 2133—PROTESTS, DISPUTES, AND APPEALS

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2133.70—Contract Appeals Board

2133.7001 Designation of the Board of Contract Appeals.

The Armed Services Board of Contract Appeals [ASBCA] serves as the Board of Contract Appeals for the FEGLI Program. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

PART 2137—SERVICE CONTRACTING

Subpart 2137.1—Service Contracts—General

Sec.
2137.102–70 Policy.
2137.110–70 Contract clause.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2137.1—Service Contracts—General

2137.102–70 Policy.

(a) The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated.

(b) To assure an orderly and efficient transition to a successor insurance company upon termination of the contract, the clause at FAR 52.237–3, Continuity of Services, will be modified in FEGLI contracts to extend the time period for contractor phase-in, phase-out services up to 10 months after termination of the contract.

(c) The contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed upon period after contract termination that result from phase-in, phase-out operations). The contractor also shall receive a fee (profit) for the full period after contract termination during which services are continued, not to exceed a pro rata portion of the fee (profit) for the final contract year. The amount of profit shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress.

(d) Paragraph (d) of FAR clause 52.237–3 shall be modified to read as follows: "(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract termination that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. The amount of profit shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress. In setting the final profit figure, obstacles overcome by the

contractor during the phase-in, phase-out period will be taken into consideration."

2137.110–70 Contract clause.

The clause at FAR 52.237–3, as modified in 2137.102–70(d), shall be inserted in all FEGLI contracts.

PART 2143—CONTRACT MODIFICATIONS

Subpart 2143.1—General

Sec.
2143.170 FEGLI Program contract modifications.
2143.171 Contract clause.
Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2143.1.—General

2143.170 FEGLI Program contract modifications.

Except as necessary to implement new or existing legislation, if the regulatory requirements published in accordance with 2301.301 are amended in a manner which would increase the contractor's liability under the contract, the amendment will be made effective for the contract period subsequent to the period in which the amendment is promulgated. However, if the amendment is promulgated after July 31, it will not be effective until the second contract year following the year in which it is promulgated, unless the contractor agrees to an earlier date.

2143.171 Contract clause.

The clause at FAR 52.243–3, Alternate I, shall be modified in FEGLI contracts by inserting the following at the beginning of paragraph (a) : "Except as provided in paragraph (f)," and by adding a new paragraph (f) to read as follows: "(f) Except as necessary to implement new or existing legislation, if the regulatory requirements published in accordance with 2101.301 are amended in a manner which would increase the contractor's liability under the contract, the amendment will be made effective for the contract period subsequent to the period in which the amendment is promulgated. However, if the amendment is promulgated in August or September, it will not be effective until the second contract year following the year in which it is promulgated, unless the contractor agrees to an earlier date."

PART 2144—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2144.1—General

Sec.
2144.170 Policy for FEGLI Program subcontracting consent.

Subpart 2144.2—Consent to Subcontracts

2144.270 Contract clause.
Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2144.1—General

2144.170 Policy for FEGLI Program subcontracting consent.

For all FEGLI contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the amount charged the FEGLI contract exceeds $200,000 and over 25% of the subcontract cost is charged to the FEGLI contract.

Subpart 2144.2—Consent to Subcontracts

2144.270 Contract clause.

The clause set forth at 2152.244–70 shall be inserted in all FEGLI Program contracts.

PART 2146—QUALITY ASSURANCE

Subpart 2146.2—Contract Quality Requirements

Sec.
2146.270 General.
2146.271 FEGLI Program quality assurance requirements.
Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2146.2—Contract Quality Requirements

2146.270 General.

(a) This part prescribes policies and procedures to ensure that services acquired under the FEGLI contract conform to the contract's quality requirements.

(b) OPM shall evaluate the contractor's system of internal controls under the quality assurance program required by 2146.271 prior to each contract year and will acknowledge in writing whether or not the system is consistent with the requirements set forth in this subpart. After the initial review, each annual review may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

2146.271 FEGLI Program quality assurance requirements.

(a) The contractor shall develop and apply a quality assurance program specifying procedures for assuring contract quality. At a minimum, the program should include procedures to address:

(1) Accuracy of payments and recovery of overpayments;

(2) Timeliness of payments to beneficiaries;

(3) Quality of services and responsiveness to beneficiaries;

(4) Quality of service and responsiveness to OPM; and

(5) Detection and recovery of fraudulent claims.

(b) The contractor shall prepare overpayment recovery guidelines to include a system of internal control for approval annually by the contracting officer. The contracting officer may withdraw such approval with 90 days' notice of prospective withdrawal.

(c) The contractor shall keep complete records of its quality assurance procedures and the results of their implementation and make them available to the Government during contract performance and for as long afterwards as the contract requires.

(d) The contracting officer or his or her representative has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract and for as long afterwards as the contract requires. The contracting officer or his, or her representative shall perform any inspections and tests in a manner that will not unduly delay the work.

(e) The contracting officer may order the correction of a deficiency or a modification in the contractor's services and/or quality assurance program. The contractor shall take the necessary action promptly to implement the contracting officer's order. If the contracting officer orders the correction of a deficiency or a modification of the contractor's services and/or quality assurance program pursuant to this paragraph after the contract year has begun, the costs incurred in correcting the deficiency or making the modification will not be considered to the contractor's detriment in the cost control factor of the service charge [if applicable]. However, if there is a deficiency, the deficiency itself may be taken into consideration.

PART 2149—TERMINATION OF CONTRACTS

Sec.
2149.002–70 Applicability of the FAR to FEGLI Program acquisitions.

Subpart 2149.1—General Principles

2149.170 FEGLI Program contract termination clause.
Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

2149.002–70 Applicability of the FAR to FEGLI Program acquisitions.

(a) *Termination.* (1) Termination of FEGLI Program contracts is controlled by 5 U.S.C. 8709(c) and this regulation. The procedures for termination of FEGLI contracts shall be those contained in FAR part 49. For the purpose of this Part, "discontinue" in 5 U.S.C. 8709(c) means "terminate."

(2) A life insurance contract entered into by OPM may be terminated by OPM at any time for default by the Contractor. A life insurance contract entered into by OPM may terminate at the end of the 31st day after default by OPM (see 2152.232–70, Payments).

(3) A life insurance contract entered into by OPM may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's notice to terminate.

(4) The contractor may terminate its contract with OPM at the end of any policy year when notice of intent to terminate is given to OPM in writing at least sixty days prior to the end of the policy year.

(b) *Continuation of services.* The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated. Consequently, the contract termination procedures contained in this paragraph must be used in conjunction with the provisions of the "Continuity of Services" clause at FAR 52.237–3, as modified at 2137.102–70.

(c) *Settlement.* The procedures for settlement of contracts after they are terminated shall be those contained in FAR part 49.

Subpart 2149.1—General Principles

2149.170 FEGLI Program contract termination clause.

The clause in 2152.249–70 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2152—CONTRACT CLAUSES

Sec.

2152.000 Applicable clauses.

Subpart 2152.2—Texts of FEGLI Program Contract Clauses

2152.203–70 Misleading, deceptive, or unfair advertising
2152.204–70 Contractor records retention
2152.215–70 Investment income
2152.216–70 Accounting and allowable cost
2152.216–71 Fixed price with limited cost redetermination-risk charge
2152.216–72 Fixed price with limited cost redetermination-service charge
2152.222–70 Notice of significant events
2152.224–70 Confidentiality of records
2152.232–70 Payments
2152.232–71 Non-commingling of FEGLI Program funds
2152.232–72 Approval for assignment of claims
2152.244–70 Subcontracts
2152.249–70 Renewal and termination

Subpart 2152.3—FEGLI Program Clause Matrix

2152.370 Use of the matrix.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c), 48 CFR 1.301.

2152.000 Applicable clauses.

The clauses of FAR subpart 52.2 specified below shall be applicable to FEGLI Program contracts. The most recent edition of the clause in the FAR shall be applied unless otherwise provided in the contract.

Section and Clause Title

52.202–1 Definitions
52.203–1 Officials not to Benefit
52.203–3 Gratuities
52.203–5 Covenant Against Contingent Fees
52.203–6 Restrictions on Subcontractor Sales to the Government
52.203–7 Anti-Kickback Procedures
52.203–9 Requirement for Certificate of Procurement Integrity— Modification
52.203–10 Price or Fee Adjustment for Illegal or Improper Activity
52.203–12 Limitation on Payments to Influence Certain Federal Transactions
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.215–1 Examination of Records by Comptroller General
52.215–2 Audit—Negotiation
52.215–22 Price Reduction for Defective Cost or Pricing Data
52.215–24 Subcontractor Cost or Pricing Data
52.215–27 Termination of Defined Benefit Pension Plans
52.215–30 Facilities Capital Cost of Money
52.215–31 Waiver of Facilities Capital Cost of Money
52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
52.219–13 Utilization of Women-Owned Small Businesses
52.220–3 Utilization of Labor Surplus Area Concerns
52.222–1 Notice to the Government of Labor Disputes
52.222–3 Convict Labor
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General
52.222–21 Certification of NonSegregated Facilities
52.222–22 Previous Contracts and Compliance Reports
52.222–25 Affirmative Action Compliance
52.222–26 Equal Opportunity
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts
52.222–29 Notification of Visa Denial
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans
52.222–36 Affirmative Action for Handicapped Workers
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
52.222–41 Service Contract Act of 1965, as Amended
52.223–2 Clean Air and Water
52.223–6 Drug-Free Workplace
52.227–1 Authorization and Consent
52.227–2 Notice and Assistance
52.228–7 Insurance—Liability to Third Persons
52.229–4 Federal, State, and Local Taxes (Noncompetitive Contract)
52.229–6 Taxes—Foreign Fixed-Price Contracts
52.232–9 Limitation on Withholding of Payments
52.232–17; 2132.617 Interest
52.232–23 Assignment of Claims
52.232–28 Electronic Funds Transfer Payment Method
52.233–1 Disputes (Alternate I)
52.237–3 Continuity of Services
52.242–1 Notice of Intent to Disallow Costs
52.242–13 Bankruptcy
52.243–1 Changes—Fixed-Price—Alternate I
52.244–5 Competition in Subcontracting
52.245–2 Government Property (Fixed-Price Contracts)
52.246–4 Inspection of Services—Fixed Price
52.246–25 Limitation of Liability—Services
52.247–63 Preference for U.S.-Flag Air Carriers
52.249–2 Termination for Convenience of the Government (Fixed Price)
52.249–14 Excusable Delays
52.251–1 Government Supply Sources
52.252–4 Alterations in Contract
52.252–6 Authorized Deviations in Clauses

Subpart 2152.2—Texts of FEGLI Program Contract Clauses

2152.203–70 Misleading, deceptive, or unfair advertising

As prescribed in 2103.7002, the following clause shall be inserted in all FEGLI Program contracts:

Misleading, Deceptive, or Unfair Advertising

The Contractor agrees that any advertising material released by the contractor which mentions the FEGLI Program shall be truthful and not misleading, and shall present an accurate statement of FEGLI Program benefits. The Contractor agrees to use its best efforts to assure that its agents are aware of and abide by this provision.

The Contractor agrees to incorporate this clause in all subcontracts as defined at LIFAR 2102.371.

(End of Clause)

2152.204–70 Contractor records retention.

As prescribed in 2104.705, the following clause shall be inserted in all FEGLI Program contracts.

Contractor Records Retention

Notwithstanding the provisions of FAR 52.215–2(d), "Audit-Negotiation," the Contractor will retain and make available all records applicable to a contract term that support the annual statement of operations for a period of 5 years after the end of the contract term to which the records relate. Individual enrollee and/or beneficiary claim records shall be maintained for 10 years after the end of the policy year to which the claim records relate.
(End of Clause)

2152.215–70 Investment income.

As prescribed in 2115.802–71, the following clause shall be inserted in all FEGLI Program contracts.

Investment Income

(a) The Contractor shall invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor shall seek to maximize investment income.

(b) All investment income earned on FEGLI Program funds shall be credited to the FEGLI Program.

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraph (a) or (b) of this clause, the Contractor shall pay to the Office of Personnel Management (OPM) the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's noncompliance. "Failed to comply with paragraph (a) or (b)" means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, uncashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d)(1) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of:

(i) The date the amounts are returned to OPM;

(ii) The date specified by the Contracting Officer; or (iii) The date of the Contracting Officer's Final Decision.

(2) Investment income lost as a result of failure to credit income due the contract or failure to place funds on hand in income-producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of:

(i) The date the amounts are returned to OPM;

(ii) the date specified by the Contracting Officer; or,

(iii) the date of the Contracting Officer's Final Decision.

(3) The Contractor shall credit to the FEGLI Program income that is due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95–563), during the periods specified in paragraphs (d)(1) and (d)(2).

(4) All amounts due and unpaid after the periods specified in paragraphs (d)(1) and (d)(2) shall bear simple interest at the rate applicable for each 6-month period as fixed by the Secretary until the amount is paid [see FAR 32.614–1].
(End of Clause)

2152.216–70 Accounting and allowable cost.

As prescribed in 2116.270–1, the following clause shall be inserted in all FEGLI Program contracts:

Accounting and Allowable Cost

(a) *Annual Accounting Statement.* (1) The contractor shall prepare annually an accounting statement summarizing the financial results of the FEGLI Program for the previous contract year. This statement shall be prepared in accordance with the requirements issued annually by OPM and shall be due to OPM in accordance with a date established by those requirements.

(2) The Contractor shall have the most recent financial statement for the FEGLI Program audited by an accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The report shall be submitted to OPM along with the annual accounting statement.

(3) Based on the results of either the independent audit or a Government audit, the annual accounting statements for the FEGLI Program may be (i) adjusted by amounts found not to constitute properly allocable or allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) The allowable costs chargeable to the contract for a policy year shall be the actual, necessary, reasonable, and allocable amounts incurred with proper justification and accounting support, determined in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 2131.2 of the Federal Employees Group Life Insurance Program Acquisition Regulation (LIFAR) applicable on October 1 of each year, and the terms of this contract.

(2) In the absence of specific contract terms to the contrary, contract costs shall be classified in accordance with the following criteria:

(i) *Benefits.* Claims costs consist of payments made and costs incurred for life insurance and accidental death and dismemberment insurance on behalf of FEGLI subscribers, including interest paid on delayed claims, less any overpayments, refunds, or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all allocable, allowable, and reasonable expenses incurred in the adjudication of beneficiary claims or incurred in the Contractor's overall operation of the business. Unless otherwise provided in the contract, FAR, or LIFAR, administrative expenses include, but are not limited to, taxes, insurance and reinsurance premiums, the cost of investigation and settlement of policy claims, the cost of maintaining files regarding payment of claims, and legal expenses incurred in the litigation of benefit payments. Administrative expenses exclude the expenses related to investment income in paragraph (iii) below.

(iii) *Investment income.* Within the constraints of liquidity and safety, the Contractor is required to invest and reinvest all FEGLI funds on hand until needed to discharge promptly the obligations incurred under the contract. Investment income represents the amount earned by the Contractor after deducting reasonable, necessary, and properly allocable investment expenses as a result of investing the FEGLI Program funds. The direct or allocable indirect expenses incurred with respect to the investment of Program funds, such as brokerage fees, are netted against investment income earned rather than as part of administrative expenses.

(c) *Certification of Annual Accounting Statement.* (1) The Contractor shall certify the annual accounting statement in the form set forth in paragraph (c)(3) of this clause. The certificate shall be signed by the chief executive officer for the Contractor's FEGLI operations and the chief financial officer for the Contractor's FEGLI operations and shall be returned with the annual accounting statement.

(2) The certification required shall be in the following form:

Certification of Annual Accounting Statement

This is to certify that I have reviewed this accounting statement and, to the best of my knowledge and belief, attest that:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this policy year in conformity with those guidelines;

2. The costs included in the statement are allowable and allocable in accordance with the terms of the contract and with the cost principles of the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR) and the Federal Acquisition Regulation (FAR);

3. Income, overpayments, refunds, and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement.

Contractor Name: _____

_____

Name of Chief Executive Officer for FEGLI Operations

Date signed: _____

_____

Name of Chief Financial Officer for FEGLI Operations

(Type or print and sign)

Date signed: _____

(End of Certificate)
(End of Clause)

2152.216-71 Fixed price with limited cost redetermination—risk charge.

As prescribed in 2116.271-1(a), the following clause shall be inserted in FEGLI Program contracts when a risk charge is negotiated.

Risk Charge

OPM shall pay the Contractor the risk charge specified in appendix ____ for the risk assumed in performing this contract.
(End of clause)

2152.216-72 Fixed price with limited cost redetermination—service charge.

As prescribed in 2116.271-1(b), the following clause shall be inserted in FEGLI Program contracts when a service charge is negotiated.

Service Charge

OPM shall pay the Contractor the service charge specified in appendix ____.
(End of clause)

2152.222-70 Notice of Significant Events.

As prescribed in 2122.170, the following clause shall be inserted in all FEGLI Program contracts:

Notice of Significant Events

(a) The Contractor agrees to notify OPM of any Significant Event within 10 working days after the Contractor becomes aware of it. As used in this section, a Significant Event is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Contractor's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of 25 percent or more of the Contractor's assets within a six-month period;

(2) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Contractor's obligations under this contract;

(3) Loss of 20 percent or more of FEGLI Program reinsurers in a policy year.

(4) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(5) The withdrawal of, or notice of intent to withdraw, by any State of its license to do business or any other change of status under Federal or State law;

(6) The Contractor's default on a loan or other financial obligation;

(7) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Contractor's facilities or facilities used by the Contractor in the performance of the contract;

(8) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Contractor's participation in the Federal Employees' Group Life Insurance Program;

(9) Any significant changes in policies and procedures or interpretations of the contract which would affect the benefits payable under the contract or the costs charged to the contract;

(10) Any fraud, embezzlement or misappropriation of FEGLI Program funds; or

(11) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Contractor to provide an opinion on the annual accounting statements required by OPM for the FEGLI Program.

(b) Upon learning of a Significant Event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to—

(1) Directing the Contractor to take corrective action;

(2) Making a downward adjustment to the weight in the "Contractor Performance" factor of the service charge; or,

(3) Withholding payment of the service charge.

(c) Prior to taking action as described in paragraph (b) of this clause, OPM will notify the Contractor and offer an opportunity to respond.

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification if both the amount of the subcontract or modification charged to the FEGLI Program exceeds $200,000, and the amount of the subcontract or modification to be charged to the FEGLI Program exceeds 25 percent of the total cost of the subcontract or modification.
(End of Clause)

2152.224-70 Confidentiality of records.

As prescribed in 2124.7002, the following clause shall be inserted in all FEGLI Program contracts:

Confidentiality of Records

(a) The Contractor shall use the personal data on employees and annuitants that is provided by agencies and OPM, including for the data and published annually in the **Federal Register** as a part of OPM's notice of systems of records.

(b) The Contractor shall also hold all medical records, evidence of insurability for insurance coverage, designations of beneficiaries, amounts of insurance, and information relating thereto, of the insured and family members confidential except for disclosure as follows:

(1) As may be reasonably necessary for the administration of this contract;

(2) As authorized by the insured or his or her estate;

(3) As necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions; and

(4) As necessary to audit the contract.
(End of Clause)

2152.232-70 Payments.

As prescribed in 2132.171, the following clause shall be inserted in all FEGLI Program contracts:

Payments

(a) OPM will provide to the Contractor, in full settlement of its obligations under this contract, subject to adjustment based on actual claims and administrative cost or for Contractor fraud, a fixed premium once per month on the first business day of the month. The premium will be determined by an estimate of costs for the contract year as provided in section ____, and will be redetermined annually. In addition, an annual reconciliation of premiums and actual costs will be performed, and additional payment by OPM or reimbursement by the contractor will be paid as necessary.

(b) If OPM fails to provide the premium in full by the due date, a grace period of 31 days shall be granted to OPM for providing any premium due, unless OPM has previously given written notice to the Contractor that the contract is to be discontinued on the premium due date. The contract shall continue in force during the grace period.

(c) If OPM fails to provide any premiums within the grace period, the contract shall be discontinued at the end of the 31st day of the grace period, unless the Contractor and OPM agree to continue the contract. OPM shall be liable to the Contractor for all premiums then due and unpaid. If during the grace period OPM presents written notice to the Contractor that the contract is to be discontinued before the expiration of the grace period, the contract shall be discontinued the later of the date of receipt of such written notice by the Contractor or the date specified by OPM for discontinuance. OPM shall be liable to the Contractor for all premiums then due and unpaid.

(d) The specific premium rates, charges, allowances and limitations applicable to the contract are set forth in 5 CFR part 870, et. seq., 48 CFR chapter 1, LIFAR, and this contract.

(e) In accordance with FAR 52.243-2, if a change is made to the contract that increases or decreases the cost of performance of the work under this contract, the Contracting Officer shall make an equitable adjustment to the estimate on which the monthly premiums are based.

(f) In the event this contract is terminated in accordance with LIFAR Part 2149, the special Contingency Reserve held by the Contractor shall be available to pay the necessary and proper charges against this contract after other Program assets held by the Contractor are exhausted.
(End of Clause)

2152.232-71 Non-commingling of FEGLI Program funds.

As prescribed in 2132.772, the following clause shall be inserted in all FEGLI Program contracts.

Non-Commingling of Funds

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the contractor. Cash and investment balances reported on the FEGLI Program Annual Accounting Statement must be supported by the contractor's books and records.

(b) The Contractor may request a modification of this requirement from the Contracting Officer. The modification shall be requested in advance and the Contractor shall demonstrate that accounting techniques

have been established that will clearly measure FEGLI Program cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.
(End of Clause)

2152.232–72 Approval for the Assignment of Claims.

As prescribed in 2132.870, the following clause shall be inserted in all FEGLI Program contracts:

Approval for Assignment of Claims

(a) The Contractor shall not make any assignment of FEGLI funds under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment of FEGLI funds shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.
(End of Clause)

2152.244–70 Subcontracts.

As prescribed by 2144.270, the following clause shall be inserted in all FEGLI Program contracts:

Subcontracts

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if both the amount of the subcontract or modification charged to the FEGLI Program exceeds $200,000 and is 25 percent of the total cost of the subcontract.

(b) The advance notification required by paragraph (a) of this clause shall include the information specified below:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraphs (a), (b), and (c) of this clause where the Contractor and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR Subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiations of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Officer to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Contractor of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d). Any profit or fee payable under a subcontract shall be in accordance with the provisions of Section ——, Service Charge.

(g) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.
(End of Clause)

2152.249–70 Renewal and termination.

As prescribed in 2149.170, the following clause shall be inserted in all FEGLI Program contracts:

Renewal and Termination

(a) This contract renews automatically each October 1st, unless written notice of termination is given by the Contractor not less than 60 calendar days before the renewal date.

(b) This contract may be terminated by OPM at any time for default by the Contractor. This contract terminates at the end of the 31st day after default by the Government, unless the Contractor and OPM agree to continue the contract.

(c) This contract may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's written notice of termination.

(d) Upon termination of the contract, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with FAR 52.237–3, Continuity of Services, as modified at 2137.102–70(b).

(e) After receipt of a termination notice, the prime contractor shall, unless directed otherwise by the Contracting Officer, terminate all subcontracts to the extent that they relate to the performance of the FEGLI contract. The failure of the prime contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not affect the Contracting Officer's right to require the termination of the subcontract; or increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.
(End of Clause)

Subpart 2152.3—FEGLI Program Clause Matrix

2152.370 Use of the matrix.

(a) The matrix in this section lists the FAR and LIFAR clauses to be used with the FEGLI Program contract. The clauses are to be incorporated in the contract in full text.

(b) Certain contract clauses are mandatory for FEGLI Program contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or LIFAR. An "M" in the "use Status" column indicates that the clause is mandatory. An "A" indicates that the clause is to be used only when the applicable conditions are met.

FEGLI PROGRAM CLAUSE MATRIX

Clause No.	Text reference	Title	Use status
FAR 52.202-1	FAR 2.2	Definitions	M
FAR 52.203-1	FAR 3.102-2	Officials Not to Benefit	M
FAR 52.203-3	FAR 3.202	Gratuities	M
FAR 52.203-5	FAR 3.404(c)	Covenant Against Contingent Fees	M
FAR 52.203-6		Restrictions of Subcontractor Sales to the Government	M
FAR 52.203-7	FAR 3.502-3	Anti-Kickback Procedures	M
FAR 52.203-9	FAR 3.104-10(b)	Requirement for Certificate of Procurement Integrity—Modification	M
FAR 52.203-10	FAR 3.104-10(c)	Price or Fee Adjustment for Illegal or Improper Activity	M
FAR 52.203-12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions	M
2152.203-70	2103.7002	Misleading, Deceptive, or Unfair Advertising	M
2152.204-70	2104.705	Contractor Records Retention	M
FAR 52.209-6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M
FAR 52.215-1	FAR 15.106-1(b)	Examination of Records by Comptroller General	M
FAR 52.215-2	FAR 15.106-2(b)	Audit—Negotiation	M
FAR 52.215-22	FAR 15.804-8(a)	Price Reduction for Defective Cost or Pricing Data	M
FAR 52.215-24	FAR 15.804-8(c)	Subcontractor Cost or Pricing Data	M
FAR 52.215-27	FAR 15.804-8(e)	Termination of Defined Benefit Pension Plans	M
FAR 52.215-30	FAR 15.904	Facilities Capital Cost of Money	M
FAR 52.215-31	FAR 15.904	Waiver of Facilities Capital Cost of Money	A
FAR 52.215-39	FAR 15.804-8(f)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	A
2152.215-70	2115.802-71	Investment Income	M
2152.216-70	2116.270-1	Accounting and Allowable Cost	M
2152.216-71	2116.271-1(a)	Fixed Fee—risk charge	A
2152.216-72	2116.271-1(b)	Fixed Fee—service charge	A
FAR 52.219-8	FAR 19.708(a)	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	M
FAR 52.219-13	FAR 19.902	Utilization of Women-Owned Small Businesses	M
FAR 52.220-3	FAR 21.302(a)	Utilization of Labor Surplus Area Concerns	M
FAR 52.222-1	FAR 22.103-5(a)	Notice to the Government of Labor Disputes	M
FAR 52.222-3	FAR 22.202	Convict Labor	M
FAR 52.222-4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act—Overtime Compensation—General.	M
FAR 52.222-21	FAR 22.810(a)(1)	Certification of Non-Segregated Facilities	M
FAR 52.222-22	FAR 22.810(a)(2)	Previous Contracts and Compliance Reports	M
FAR 52.222-25	FAR 22.810(d)	Affirmative Action Compliance	M
FAR 52.222-26	FAR 22.810(e)	Equal Opportunity	M
FAR 52.222-28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts	M
FAR 52.222-29	FAR 22.810(h)	Notification of Visa Denial	A
FAR 52.222-35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans	M
FAR 52.222-36	FAR 22.1408(a)	Affirmative Action for Handicapped Workers	M
FAR 52.222-37	FAR 22.1308(b)	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.	M
FAR 52.222-41	FAR 22.1006(a)	Service Contract Act of 1965, as Amended	M
2152.222-70	2122.170	Notice of Significant Events	M
FAR 52.223-2	FAR 23.105(b)	Clean Air and Water	A
FAR 52.223-6	FAR 23.505(c)	Drug-Free Workplace	M
2152.224-70	2124.7002	Confidentiality of Records	M
FAR 52.227-1	FAR 27.201-2(a)	Authorization and Consent	M
FAR 52.227-2	FAR 27.202-2	Notice and Assistance	A
FAR 52.228-7	FAR 28.311-2	Insurance—Liability to Third Persons	M
FAR 52.229-4	FAR 29.401-4	Federal, State, and Local Taxes (Noncompetitive Contract)	A
FAR 52.229-6	FAR 29.402-1(a)	Taxes—Foreign Fixed-Price Contracts	A
FAR 52.232-8	FAR 32.111(c)(2)	Limitation on Withholding of Payments (Modified)	M
FAR 52.232-17	FAR 32.617 Modification: 2132.617	Interest	M
FAR 52.232-23	FAR 32.806(a)(1)	Assignment of Claims	A
FAR 52.232-28	FAR 32.908(d)	Electronic Funds Transfer Payment Method	M
2152.232-70	2132.171	Payments	M
2152.232-71	2132.772	Non-Commingling of FEGLI Funds	M
2152.232-72	2132.870	Approval for Assignment of Claims	M
FAR 52.233-1	FAR 33.214	Disputes (Alternate I)	M
FAR 52.237-3	FAR 37.110-70 Modifications: 2137.102-70.	Continuity of Services	M
FAR 52.242-1	FAR 42.802	Notice of Intent to Disallow Costs	M
FAR 52.242-13	FAR 42.903	Bankruptcy	M
FAR 52.243-1	FAR 43.205(a)(2)	Changes—Fixed Price (Alternate I)	M
FAR 52.244-5	FAR 44.204(e)	Competition in Subcontracting	M
2152.244-70	2144.270	Subcontracts	M
FAR 52.245-2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts)	M
FAR 52.246-4	FAR 46.304	Inspection of Services—Fixed-Price	M
FAR 52.246-25	FAR 46.805(a)(4)	Limitation of Liability—Services	M
FAR 52.247-63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M
FAR 52.249-2	FAR 49.502(b)(1)	Termination for Convenience of the Government (Fixed Price)	M
FAR 52.249-8	FAR 49.504(a)(1)	Default (Fixed-Price Supply and Service)	M
2152.249-70	2149.170	Renewal and Termination	M
FAR 52.251-1	FAR 51.107	Government Supply Sources	A
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	M

FEGLI PROGRAM CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses	M

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June 10, 1992

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1209

Mushroom Promotion, Research and Consumer Information Order; Proposed Rule and Referendum Order

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[FV-91-276]

RIN: 0581-AA49

Mushroom Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: The U.S. Department of Agriculture (Department) is proposing to issue a Mushroom Promotion, Research, and Consumer Information Order (order). The order is authorized by the Mushroom Promotion, Research, and Consumer Information Act of 1990. The program would be funded by assessments collected from producers and importers who produce or import, on average, over 500,000 pounds of mushrooms annually that are marketed or imported for fresh use. The program would be administered by a Mushroom Council consisting of at least four but no more than nine producer and importer members. The Department is also announcing that a referendum will be conducted among eligible producers and importers to ascertain whether the order will go into effect. The order as proposed herein will become effective if the Secretary of Agriculture determines that it has been approved by a majority of eligible producers and importers voting in the referendum, which majority, on average, annually produces and imports more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

DATES: The representative period for establishing voter eligibility shall be the period from July 1, 1990, through June 30, 1992. A referendum shall be conducted from July 22, 1992, through August 12, 1992.

ADDRESSES: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2533–S, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard Schultz at the above address or telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: This proposed order is being published pursuant to the Mushroom Promotion, Research, and Consumer Information Act of 1990 (Subtitle B of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, November 28, 1990, 7 U.S.C. 6101–6112), as amended hereinafter referred to as the Act.

The proposal contained herein has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of the Mushroom Promotion, Research, and Consumer Information Act of 1990 provides that nothing in the Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized or operated under the laws of the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 1927 of the Act, a person subject to an order may file a petition with the Secretary stating that the order, a provision of the order, or an obligation imposed in connection with the order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which such person resides or does business has jurisdiction to review the Secretary's ruling on the petition, if a complaint if filed within 20 days after the date of the entry of a ruling by the Secretary.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The most recent Department census of mushroom growers in the United States indicates that there are 460 growers. For the purpose of this census, growers growing both Agaricus and specialty mushrooms were counted once. This census further indicates that there are 236 growers of Agaricus mushrooms and 238 growers of specialty mushrooms. There are between 100 and 150 growers who would fall under the definition of "producer" as defined in the Act and be subject to the provisions of the order. The vast majority of these producers are engaged in Agaricus mushroom production. Of these producers, a minority would be classified as small businesses. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include mushroom handlers and importers, have been defined as those having annual receipts of less than $3,500,000. There are approximately 100 handlers, including producers who are also handlers, and not more than 3 importers, out of approximately 30 importers, who would be subject to the provisions of the order, a majority of whom would be classified as small entities.

Department statistics indicate that during the period from July 1, 1990, through June 30, 1991, approximately 756 million pounds of mushrooms were produced in the United States. Of this total production, 518 million pounds or 69 percent was for the fresh market and 237 million pounds or 31 percent was for the processed market. During this period, the volume of sales for fresh market Agaricus mushrooms totaled 512 million pounds, while the volume of sales for commercially grown specialty mushrooms totaled 6 million pounds. Virtually all specialty mushrooms, which include Shiitake, Oyster, and others, were sold in the fresh market.

Department statistics indicate that during the period from July 1, 1990, through June 30, 1991, approximatey 3.5 million pounds of fresh mushrooms were imported into the United States. Major exporting countries, as a percentage of total fresh mushroom imports, were Canada (93.9%), Thailand (2.0%), Japan 1.9%), and Taiwan (1.0%). Department statistics for calendar year 1991 indicate that total imports of fresh mushrooms were approximately 4.6 million pounds. Major exporting countries, as a percentage of total fresh mushroom imports, were Canada (94.9%), Thailand (1.5%), Japan (1.2%), and Spain (0.9%).

The order provides for the payment of assessments by producers and importers who produce or import, on average, over 500,000 pounds of mushrooms annually that are marketed or imported for fresh use. For the first year the order is in effect such assessment cannot exceed one-quarter of one cent per pound of mushrooms. It could increase during the second and third year, and after the third year could be up to one cent per pound. The order would require an estimated 100 first handlers of fresh mushrooms, a majority of whom would be classified as small firms, to collect

and remit such assessments. During the first year of the order, should the order be approved in referendum, a maximum assessment rate of one-quarter of one cent per pound of fresh mushrooms marketed or imported could result in a total assessment collection of $1.1 million. Beginning in the fourth year of the order, a maximum assessment rate of one cent per pound of fresh mushrooms marketed or imported could result in a total assessment collection of $4.5 million. Although the maximum annual assessment collection could realize this sum annually, beginning in the fourth year of the order, the economic impact of a one cent or less assessment per pound on each producer or importer subject to the order would not be significant relative to the potential benefits to be gained from such a program. The order also imposes a reporting and recordkeeping burden on producers, first handlers, and importers. This burden should average approximately seven hours per year and its economic impact would not be significant relative to the potential benefits to be gained from such a program.

The promotion, research, consumer information, and industry information program funded by assessments is expected to benefit producers, handlers, and importers by strengthening the mushroom industry's position in the marketplace; maintaining and expanding existing markets and uses for mushrooms; and developing new markets and uses for mushrooms. Such benefits are expected to outweigh the costs of the program. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this action have been approved by the Office of Management and Budget (OMB) and assigned OMB number 0581–0093, except for the Mushroom Council nominee background statement form which is assigned OMB number 0505–0001. This action sets forth the provisions of a proposed nationwide program for mushroom promotion, research, consumer information, and industry information to be funded by mushroom producers and importers. Information collection requirements that are included in the proposed order include:

(1) A requirement that each first handler and importer of fresh mushrooms must file reports at specified intervals. The estimated number of first handlers and importers filing such reports is 103, each submitting a maximum of 12 reports per year, with an estimated average reporting burden of 30 minutes per report. However, these persons may alternatively prepay assessments annually, requiring only an initial report of anticipated assessments and a final annual report of actual handling;

(2) An exemption application for persons who produce or import, on average, 500,000 pounds or less of fresh mushrooms annually concerning exemptions from assessments and recordkeeping requirements. The estimated number of persons filing this application is 340, each submitting one application per year, with an estimated average reporting burden of 15 minutes per application;

(3) A referendum ballot to be submitted in a referendum prior to implementation of the program and periodically thereafter to indicate whether producers and importers favor continuance of the order. The estimated number of eligible voters completing this ballot is 153, each submitting one ballot approximately every five years, with an estimated average reporting burden of 6 minutes per ballot;

(4) A nominee background statement form for Mushroom Council membership. The estimated number of individuals completing this form is 18 during the first year of the order and approximately 6 per year thereafter. Two eligible individuals will be nominated for each open position on the Council, each of whom will have an estimated average reporting burden of 6 minutes per form; and

(5) A requirement to maintain records sufficient to verify reports submitted under the order. The estimated number of persons required to comply with this requirement is 203, each of whom will have an estimated average recordkeeping burden of 7 minutes per year.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a national mushroom promotion, research, consumer information, and industry information program. This program would be funded by an assessment on producers and importers who produce or import, on average, over 500,000 pounds of mushrooms annually that are marketed or imported for fresh use. The maximum assessment rate could not be realized until the fourth year of the order and could not exceed one cent per pound of mushrooms.

The Act provides for the establishment of such a national program through the issuance of an order by the Secretary. The Act further provides that an order contain certain specified terms and conditions. Such terms and conditions include provisions concerning the establishment of and composition of a Mushroom Council (Council), and the powers and duties of such a Council. Also included under terms and conditions are provisions concerning plans and budgets, contracts and agreements, books and records of the Council, assessments, prohibitions, books and records of first handlers and importers, and other terms and conditions.

The Act provides that the Council would be composed of at least four and not more than nine members. There would be four geographic regions established, which would represent the geographic distribution of mushroom production throughout the United States, with one member who is a producer nominated and appointed from each region that produces, on average, at least 35,000,000 pounds of mushrooms annually. There would be a fifth region established, which would represent importers throughout the United States, with one member who is an importer nominated and appointed from such region importing, on average, at least 35,000,000 pounds of mushrooms annually. Subject to the nine-member limit on the number of Council members, the Secretary would appoint an additional member to the Council from a region for each additional 50,000,000 pounds of production or imports per year, on average, within the region. Should, in the aggregate, regions be entitled to levels of representation that would exceed the nine-member limit on the Council, then those regions entitled to representation in excess of the basic quantity used in establishing representation on the Council would have representation allocated among them based on production or importation so that the Council does not exceed its nine-member limit.

In response to an invitation to submit proposals in the January 30, 1991, issue of the **Federal Register** (56 FR 3425), the Department received one proposal for a mushroom promotion, research, and consumer information order from the American Mushroom Institute, a national trade association, and several proposed order provisions from United Foods, Inc., a mushroom producer. The Department reviewed and considered the proposals, and then issued a

proposed rule which separately contained the provisions of both proposals, insofar as they were practicable and consistent with the Act, in the October 4, 1991, issue of the **Federal Register** (56 FR 50283). The Department reviewed and considered comments it had received on the proposed rule. The Department then issued another proposed rule which incorporated the proposed order provisions of both proposals into a single proposed order, and which addressed the comments received in the January 15, 1992, issue of the **Federal Register** (57 FR 1666).

The Department received 23 comments on the second proposed rule. Comments were received from the American Mushroom Institute and the Mushroom Council (AMI); United Foods, Inc. (United); the Office for Advocacy of the U.S. Small Business Administration (Office for Advocacy); the American Farm Bureau Federation; the Pennsylvania Farmers' Association; the National Customs Brokers & Forwarders Association of America, Inc.; the Geode Shiitake Producers Association; Kitchen Pride Mushroom Farms; Blue Mountain Mushroom Company, Inc.; Ostroms Farms; Mt. Baker Mushroom Farms; Homestead Mushrooms, Inc.; James H. Paxson & Sons, Inc.; Hastings Mushrooms; Mr. T.H. Bonifocino; Mr. Elmer Blosser; Forest Mushroom Farms; Pictsweet Mushroom Farms; Sun Rise Mushroom Company; B & C Fresh Sales; P. & V. D'Amico Mushrooms; John R. Stinson & Sons, Inc.; Sun Rise Mushroom Co.; and Kubla Khan Food Company.

Three commenters were in support of the order. Two of these commenters requested further clarification or modification of certain provisions of the order. Five commenters requested either clarification, modification, or deletion of certain provisions of the order. Several of these commenters also requested that the Department reconsider certain provisions that were denied in the previous proposed rule. Thirteen commenters were in opposition to the order. Eight of these commenters provided no information to support their points of view. One commenter was neutral to the order and provided no point of view. One commenter specified its organizational policy towards research and promotion programs. Comments were also received after the close of the comment period. These comments contained several issues which had already been addressed in other comments and which are discussed herein.

In addition to publishing the proposed order for public comment, a public meeting was held at the Department of Agriculture in Washington, DC on February 5, 1992. One purpose of this meeting was to provide an opportunity for a full discussion on the proposed rule to facilitate a better understanding of its intent and application. Prior to presenting their oral testimony, an agreement was reached, with the consent of the Department, between the AMI and United, the only persons presenting oral testimony. The agreement regarded the distribution of AMI's and United's written statements to persons attending the meeting in lieu of presenting oral testimony. The AMI and United assented to accept questions pertaining to their written statements by February 10, 1992, and to respond to such questions by February 13, 1992. The Department was the sole submitter of questions on the written statements. The Department's questions were submited to both the AMI and United.

The Department asked the AMI to clarify its statement regarding the term "first handler" in reference to §§ 1209.6 and 1209.51(a) of the order. The Department further asked for a clarification and AMI's intended usage of the term "on average" in reference to §§ 1209.8, 1209.14, 1209.30, 1209.31, and 1209.71 of the order. The Department also asked the AMI to explain the manner, as mentioned in § 1209.51(f) of the order, in which the Department could receive and hold assessments on behalf of the Council, prior to the formation of the Council. In response to United's concern regarding the absence of a definition for "fresh market", the Department asked United to propose such a definition for inclusion in the order. Also in response to United's concern regarding the fairness of the proposed nominations procedures for appointment on the Council, the Department asked United to propose alternative procedures.

In regard to several comments, there appears to be a need to clarify the distinction between marketing orders and research and promotion programs. The Fruit and Vegetable Division of the AMS oversees both programs. They consist of fruit, vegetable, and specialty crop marketing orders (marketing orders) and national research and promotion programs (R&P programs) for various commodities. All marketing orders are authorized by the same act, the Agricultural Marketing Agreement Act of 1937 (AMAA). On the other hand, each free standing R&P program is authorized by its own commodity specific legislation. The enabling acts for the R&P programs state, generally, as their policy objective: The development, financing, and carrying out of effective, continuous and coordinated national programs of research, development, consumer information, advertising and promotion to improve each commodity's competitive position in the marketplace. These programs do not directly regulate the handling or marketing of the affected commodities in terms of quality, quantity, or volume. The AMAA, however, generally authorizes only regional programs and its policy objectives are much broader. In brief, those objectives are to maintain orderly marketing conditions, avoid unreasonable fluctuations in supplies and prices, and establish parity prices to growers. Those objectives are met by direct regulation of the affected commodities through volume controls, minimum quality regulations, container and pack regulations, and inspection requirements. The AMAA also authorizes, under the marketing orders, production research, marketing research, and promotion and, for some commodities, paid advertising.

The AMI recommended that language be added to the order which would require an applicant seeking an exemption from assessments to ceritfy that such an applicant's previous year's production or imports did not exceed 500,000 pounds. The specifics involved in the exemption procedures are not intended to be part of the order and as such have not been incorporated into the order. At a later date, the Department intends to publish rules and regulations to implement the order, which will include a section on exemption procedures. Therefore, the recommended language will not be added to the order.

United and the Office for Advocacy expressed concern regarding increased cost and paperwork burden on persons seeking an exemption from the order. The Department does not anticipate a significant increase in cost or paperwork burden on persons seeking an exemption from the order. The Department views the use of an exemption application as a necessary safeguard. In the exemption process, the information collected would be held to a minimum, and affected persons should already possess most, if not all, of the information requested through the course of their normal business practices.

The AMI recommended that the language in paragraphs (f) (2) and (3) of § 1209.31 of the order regarding voting for nominees to the Council be modified. The commenter suggested that the

phrase "a majority of votes cast and a majority of the volume of production or imports voted" be replaced by "the highest number of votes cast and the highest volume of production or imports voted." Such a modification in language has merit. It could simplify and expedite voting for nominees to the Council. The Department has accepted this language and has incorporated it into paragraphs (f) (2) and (3) of § 1209.31.

United recommended several provisions to be added to § 1209.31 of the order regarding nomination procedures. The commenter questioned whether certain procedures outlining the nomination process were consistent with the Act. United was concerned that the nomination procedures in the order would, as a practical matter, guarantee certain large producers control over half of the nominations in their regions, presumably because volume is used as a measure of selecting nominees. The commenter further objected to the nomination procedures in § 1209.31 of the order in that instead of allowing each producer or importer to submit nominations directly to the Secretary, the order provides for selection of nominees through a regional caucus. The Department considers the procedures, as stated in the proposed rule, consistent with the Act. The Act as reflected in § 1925(b) allows the Secretary considerable discretion in the nomination process. The caucus system of selecting nominees as provided in the order is a practical and workable means of conducting the nomination process. Individual producers and importers would have the opportunity to submit candidates for consideration for selection through a caucus or a mail ballot as provided in § 1209.31(e) of the order. Also, basing the caucus or ballot vote equally on the highest number of votes cast and the highest volume of production or imports voted, as specified in the preceding paragraph, is deemed by the Department to be an equitable and fair way of establishing Council representation. At a later date, the Department intends to publish rules and regulations to implement the order, which will include any additional nomination procedures or safeguards deemed necessary. Therefore, the provisions will remain as proposed.

The same commenter questioned whether the language found in § 1209.33 of the order conformed with § 1925(b)(1)(B) of the Act. The commenter asked whether the phrase "* * * that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer" would be applicable to Council appointments beyond the first year of the order. This prohibition would be applicable beyond the first year of the order. The Department determined that a clarification would be appropriate and has modified the language used in § 1209.33 of the order by removing the word "initial." Section 1209.33 of the order also contained a provision prohibiting producers or importers from having more than one employee appointed to the Council in any year after the initial Council is appointed. The proponent of this prohibition indicated that its purpose is to ensure that no one entity has a dominant position on the Council. After considering the comments regarding appointment of Council members, it is the Department's opinion that any prohibition such as the one regarding employees should more appropriately appear in the rules and regulations implementing the order and not in the order itself. Therefore, § 1209.33 of the order has been modified by removing the second sentence.

The National Customs Brokers & Forwarders Association of America, Inc. requested a clarification of § 1209.8 of the order regarding the term "importer." This commenter recommended that the assessment or, where applicable, the obligation to submit an exemption application should be imposed upon the actual owner or purchaser of the imported goods. This commenter further proposed that additional language, regarding the responsibilities of a Customs broker, be inserted into §§ 1209.8 and 1209.52(b) of the order. The Department disagrees with the commenter that the term "importer" needs further clarification in the order. The definition of "importer" in the Act and in the order is used in general terms to mean any person who imports. If any further clarification is needed it will be accomplished through implementing regulations. It is intended that the term "importer" should include any person who imports, as principal or as an agent, broker, or consignee, mushrooms from outside of the United States for marketing in the United States.

In response to questions arising from the public meeting concerning the order, AMI submitted comments regarding the meaning of the term "on average." The Department has added a definition of that term to the order. A calculation of average production or importation is necessary in determining a region's membership on the Council, in terms of volume of production or imports, and in determining whether a person, in terms of volume of production or imports, would be subject to the order. The Department agrees with the commenter's first recommendation that a two-year rolling average would be an appropriate measure of average annual production or importation. The Department disagrees with the commenter's second recommendation that a person's actual volume of production or imports during the most recent fiscal year should be used in determining whether a person would be subject to the order. This recommendation does not permit for averaging because it relies solely on one year. After having considered both recommendations, the Department has defined the term "on average" in § 1209.12 of the order to mean "a rolling average of production or imports during the last two fiscal years, or such other period as may be determined by the Secretary." Specific procedures of calculating average production or importation for purposes of administering various provisions of the order will be implemented by regulation.

United and the Office for Advocacy expressed concern that the order had not provided a definition for the term "fresh market." United further stated that the exclusion of this term raises constitutional concerns. The same commenter also argued that the absence of this term affects the identification of producers, the calculation of production within regions, the allocation of Council seats, the calculation of assessments, and the determination of eligible referendum voters. The Department disagrees with this argument because data is available regarding the number of growers, total production, volume of sales, price per pound, and value of sales for fresh market and processed market mushrooms. The term "fresh market" includes the marketing of all varieties of cultivated mushrooms grown in or imported into the United States, except such mushrooms which are commercially marinated, canned, frozen, cooked, blanched, dried, packed in brine, or otherwise processed in such manner as the Council, with the approval of the Secretary, may determine. This is consistent with the intent of the Act.

United and the Office for Advocacy inquired about the standard to be used in determining the marketing of mushrooms to the fresh market. Such a determination would be triggered by the initial marketing of mushrooms by either a producer-handler, handler, or importer. This is reasonable considering the modest size of the industry, the perishability of the commodity, and the difference in price paid for mushrooms

based on whether they go to the fresh market or to processing. It is not the intent of the Act and the order to impose stringent recordkeeping requirements in terms of tracking the sale of mushrooms throughout the channels of commerce to their final disposition.

United expressed concern that the order's definition of "mushroom" was contrary to the definition found in the Act. The Department has determined that the definition found in the order is consistent with the intent of the Act. The changes that were made to this definition were for the purpose of clarifying the fact that mushrooms which are marketed for the fresh market are subject to the order.

The Office for Advocacy remarked that the order's definition of "first handler"found in § 1209.6 was unclear. The commenter did not make any recommendations to clarify this term. The definition in the order is consistent with the definition found in the Act. If necessary, any further clarification would be accomplished through implementing regulations.

United, Pictsweet Mushroom Farms, B & C Fresh Sales, P. & V. D'Amico Mushrooms, Blue Mountain Mushroom Company, Inc. recommended the inclusion of processed mushrooms under the order. The term "mushroom" as defined in Section 1923(9) of the Act excludes those "mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packed in brine, or otherwise processed . . ." Such an inclusion of processed mushrooms is beyond the intent, authority, and scope of the Act. Therefore, the comment is denied.

United, Pictsweet Mushroom Farms, and B & C Fresh Sales requested the inclusion of a provision allowing for creditable promotion and advertising. Pictsweet, B & C Fresh Sales, Kitchen Pride Mushroom Farms, and the Office for Advocacy requested the inclusion of a provision ensuring that funds be expended by the Council into mushroom market areas in reasonable proportion to the assessments collected from producers in those areas. United, B & C Fresh Sales, and the Office for Advocacy requested the inclusion of a provision allowing for refunding of assessments. These provisions were previously denied by the Department in the January 15, 1992, issue of the **Federal Register** [57 FR 1666] because they were determined to be beyond the authority, intent, or scope of the Act.

Blue Mountain Mushroom Company, Inc. recommended that, in order to test the program, persons subject to the Act should establish a voluntary research and promotion program for an unspecified trial period. United, B & C Fresh Sales, and the Office for Advocacy recommended that persons who would be subject to the Act should be permitted to opt out of the program. These comments are denied because they are not consistent with the Act.

The American Farm Bureau Federation and the Pennsylvania Farmers' Association recommended that the program should be subject to a periodic referendum at least once every five years. In addition, both commenters recommended that the program should be subject to a referendum at any time upon petition of at least 10 percent of the producers and importers. The Act provides for a referendum five years after the effective date of the order. It also provides that the Secretary may conduct a referendum among producers and importers if requested by 30 percent or more of such producers and importers. Therefore, the commenters' specific recommendations cannot be accepted.

The American Farm Bureau Federation and the Pennsylvania Farmers' Association also addressed the issue of voting in referenda. Both commenters were in favor of a referendum prior to the implementation of any program. Such a referendum is required under Section 1926 of the Act. Both commenters also provided comments on referendum procedures. The commenters presented policy statements in support of protecting voting rights, providing uniform voting procedures, and encouraging maximum participation by producers and importers. Referenda procedures are not intended to be part of the order and as such have not been incorporated into the order.

United expressed concern that the order violates an individual's right to free association and free speech under the First Amendment of the Constitution. United also expressed concern that the order constitutes a "taking" under the Fifth Amendment of the Constitution. The Department disagrees with the commenter's views concerning the constitutionality of the order which was designed to implement the provisions of the Act.

United expressed concern that the order does not address the Council's rulemaking authority or explain whether the regulations issued by the Council will supersede regulations issued by the Department. According to Section 1933 of the Act, the Secretary may issue such regulations as are necessary to carry out the provisions of the Act. Therefore, rules and regulations to implement provisions of the Act and the order would be issued by the Department. The Council's role would be to make recommendations to the Secretary regarding such rules and regulations. The type of rules that the Council is authorized to make are those rules which would allow it to carry out its duties under the order. These would include rules such as those pertaining to the Council's day-to-day administration of the program, including bylaws, internal rules, and procedures. Pursuant to the order, all fiscal matters, programs, plans or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Council would be submitted to the Secretary for approval.

United expressed concern that the order alters provisions setting the rate of assessment by adding the words "or the equivalent thereof" to paragraphs (b) (1), (2), (3), and (4) of § 1209.51. Such a modification was made in order to accommodate the collection of assessments on imported mushrooms by the U.S. Customs Service (USCS). Since most countries exporting fresh mushrooms to the United States use the metric system, the USCS requires that assessment rates be expressed in metric weights.

United also expressed concern over the collection of assessments by the USCS on all fresh imported mushrooms regardless of their ultimate destination. As in the case of domestic mushrooms, assessment under the order would be triggered by the initial marketing of the mushrooms by the importer. The USCS would collect an assessment on mushrooms assigned number 0709.51.0000 in the Harmonized Tariff Schedule of the United States, which covers fresh mushrooms. Imported mushrooms marketed by the importer for processing would be exempt from assessment, as provided in § 1209.52 of the order. Assessment exemption procedures will be developed in rules and regulations to implement the provisions of the order.

United expressed concern that the order contains powers and duties of the Council which could be inconsistent with the intent of the Act. The Department considers the powers and duties of the Council, as stated in the proposed rule, consistent with the Act. Furthermore, in accordance with provisions of the Act and the order, many activities of the Council are subject to prior approval of the Secretary.

United also expressed concern that the order does not specifically obligate Council members to be bound by the same ethical obligations as Department appointees and employees. Section

1209.35(c) of the order adequately addresses this subject including what action the Secretary may take to remover a member.

United remarked that the order as written fails to properly protect confidential business information. The Department does not agree with this comment. Section 1209.62 of the order deals with confidential treatment and provides adequate safeguards to properly protect the books, records, and reports of producers, importers, and first handlers.

United further remarked that the order includes provisions which allow the Council to lease a producer's physical facilities. United contends that these provisions would give any such producer an unfair competitive advantage. Section 1209.38(j) of the order specifies that "* * * the Council shall not contract with any producer or importer for the purpose of mushroom promotion or research. The Council may lease physical facilities from a producer or importer for such promotion or research, if such arrangement is determined to be cost effective by the Council and approved by the Secretary * * *" The requirement that such an arrangement be first approved by the Secretary provides an adequate safeguard to ensure fairness.

The Office for Advocacy commented that the Department should further clarify the order's impact on small producers. It is the Department's view that its analysis of the order's impact on small producers was appropriate. According to the Act, a person subject to assessment under the order is one who produces or imports, on average, over 500,000 pounds of mushrooms annually. Department statistics indicate that during the period from July 1, 1990, through June 30, 1991, the average price per pound of fresh market Agaricus mushrooms was $0.981, while the average price per pound of specialty mushrooms was $3.68. Accordingly under SBA's definition of small agricultural producers as those producers having annual receipts of less than $500,000, a majority of the persons engaged in mushroom production would be exempt from assessment. The Department utilizes the latest available information collected on the mushroom industry and continuously seeks to improve its information collection methods. The potential benefits to be derived by such a program are expected to accrue to the mushroom industry as a whole, regardless of the size of the commercial operation.

In addition, the Office of Advocacy commented that the Department should perform a regulatory flexibility analysis. In discussing this matter, some of the issues raised by the Office of Advocacy are beyond the Secretary's authority and would not be consistent with the Act. It is the Department's view that such an analysis is unwarranted. A majority of small mushroom growers would be exempt from the order. Further, this action is not considered a "major-rule" under the criteria contained in Executive Order 12291.

The Office of Advocacy commented that the Department should have considered the option of not implementing an order. The declared policy of Congress, as stated in Section 1922 of the Act, is that it is in the public interest to authorize the establishment of a promotion, research, consumer information, and industry information program regarding mushrooms. In order to effectuate this policy the Secretary is directed, subject to procedures provided in Section 1924 of the Act, to issue a mushroom promotion, research, and consumer information order. In response to proposals received, and pursuant to Section 1924(b) of the Act, the Department published a proposed order for comment. Pursuant to Section 1924(b)(3) of the Act, such order will become effective only if approved by producers and importers voting in a referendum.

In addition to the preceding review and consideration of comments, editorial changes have been made to the order provisions for the purpose of clarity.

The order provisions as proposed by the Department are summarized as follows:

Sections 1209.1–1209.20 of the order define certain terms which are used in the order.

Sections 1209.30–1209.39 of the order concern the establishment, membership, nominations, appointment, term of office, vacancies, procedure, compensation and reimbursement, powers and duties of a Mushroom Council, which would be the body organized to administer the order subject to the oversight of the Secretary of Agriculture.

Section 1209.40 of the order would authorize the Council to receive, develop, and evaluate programs, plans, and projects for promotion, research, consumer information, and industry information with respect to fresh mushrooms. The Secretary would approve such programs, plans or projects prior to their implementation.

Section 1209.50 of the order would authorize the Council to incur expenses necessary for the performance of its duties and to recommend an annual budget. Section 1209.51 of the order would provide for the collection of assessments. The maximum assessment rate would be one cent per pound of fresh mushrooms produced in or imported into the United States. The assessment section also contains the procedures to be followed by first handlers and importers when remitting assessments; the procedures to be followed by producers and importers seeking exemption from assessments; the establishment of a late payment charge and interest charges for unpaid or late assessments; the collection of assessments through approved third-party organizations; and the prepayment of assessments. Section 1209.52 of the order would authorize exemption from assessment provided that certain criteria are satisfied. Section 1209.53 of the order would prohibit funds received under this program from influencing governmental action, with specified exceptions.

Sections 1209.60–1209.62 of the order contain reporting and recordkeeping requirements for persons subject to the order, and provide that all information obtained by the Council or the Department from books and reports required by the order would be kept confidential. Sections 1209.70–1209.77 of the order concern miscellaneous provisions which include the right of the Secretary; procedures for the suspension or termination of the order; proceedings after the termination of the order; effect of termination or amendment of the order; personal liability of Council members; handling of intellectual property arising from funds collected by the Council; amendments to the order; and separability of order provisions.

Referendum Order

It is hereby directed that a referendum be conducted among mushroom producers and importers to determine whether producers and importers favor the establishment of a national mushroom promotion, research, consumer information, and industry information program. Such a program would be implemented through a mushroom promotion, research, and consumer information order. The representative period for establishing voter eligibility for the referendum shall be the period from July 1, 1990, through June 30, 1992. A referendum shall be conducted from July 22, 1992, through August 12, 1992.

The Act specifies that the Secretary will conduct a referendum among mushroom producers and importers to determine whether the order shall become effective. The Act further specifies that "the order shall become

effective, * * *, if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum."

Richard Schultz and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, U.S. Department of Agriculture, Washington, DC 20090–6456, are designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order, 7 CFR 1209.300–1209.307, which is being published separately, shall be used to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known mushroom producers and importers. Persons who have produced or imported, on average, over 500,000 pounds of mushrooms that were marketed or imported form fresh use during the representative period are eligible to vote. Such persons shall establish their eligibility by providing information on the ballot concerning their volume of production or importation. Such information may be subject to verification. Should any eligible producer or importer not receive a ballot and related material, such producer or importer should immediately contact the referendum agents.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

It is hereby proposed that title 7 of the Code of Federal Regulations, Chapter XI be amended by adding part 1209 to read as follows:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

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Authority: 7 U.S.C. 6101 *et seq.*

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

Definitions

§ 1209.1 Act.

Act means the Mushroom Promotion, Research, and Consumer Information Act of 1990, Subtitle B of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 7 U.S.C. 6101–6112, and any amendments thereto.

§ 1209.2 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1209.3 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

§ 1209.4 Council.

Council means the administrative body referred to as the Mushroom Council established under § 1209.30 of this subpart.

§ 1209.5 Department.

Department means the United States Department of Agriculture.

§ 1209.6 First handler.

First handler means any person who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

§ 1209.7 Fiscal year.

Fiscal year means the 12-month period from January 1 to December 31 each year, or such other period as recommended by the Council and approved by the Secretary.

§ 1209.8 Importer.

Importer means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

§ 1209.9 Industry information.

Industry information means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

§ 1209.10 Marketing.

(a) *Marketing* means the sale or other disposition of mushrooms in any channel of commerce.

(b) *To market* means to sell or otherwise dispose of mushrooms in any channel of commerce.

§ 1209.11 Mushrooms.

Mushrooms means all varieties of cultivated mushrooms grown within the United States and marketed for the fresh market, or imported into the United States and marketed for the fresh market, except such term shall not include mushrooms that are commercially marinated, canned, frozen,

cooked, blanched, dried, packaged in brine, or otherwise processed in such manner as the Council, with the approval of the Secretary, may determine.

§ 1209.12 On average.

On average means a rolling average of production or imports during the last two fiscal years, or such other period as may be determined by the Secretary.

§ 1209.13 Part and subpart.

Part means this mushroom promotion and research order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the mushroom promotion and research order.

§ 1209.14 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1209.15 Producer.

Producer means any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

§ 1209.16 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1209.17 Promotion.

Promotion means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

§ 1209.18 Region.

Region means one of the described geographic subdivisions of the production area described in § 1209.30(b) or as later realigned or reapportioned pursuant thereto, or the import region described in § 1209.30(c).

§ 1209.19 Research.

Research means any type of study to advance the image, desirability, safety, marketability, production, product development, quality, or nutritional value of mushrooms.

§ 1209.20 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1209.21 State and United States.

(a) *State* means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *United States* means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Mushroom Council

§ 1209.30 Establishment and membership.

(a) There is hereby established a Mushroom Council of not less than four or more than nine members. The Council shall be composed of producers appointed by the Secretary under § 1209.33, except that, as provided in paragraph (c) of this section, importers shall be appointed by the Secretary to the Council under § 1209.33 once imports, on average, reach at least 35,000,000 pounds of mushrooms annually.

(b) For purposes of nominating and appointing producers to the Council, the United States shall be divided into four geographic regions and the number of Council members from each region shall be as follows:

Region 1—including Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Ohio, Kentucky, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Minnesota, North Dakota, South Dakota, Montana, Colorado, and Wyoming—*2 Members*

Region 2—including Pennsylvania, Delaware, New Jersey, the District of Columbia, West Virginia, Virginia, and Maryland—*3 Members*

Region 3—including Washington, Oregon, Idaho, Utah, Arizona, California, Nevada, Alaska, and Hawaii—*3 Members*

Region 4—including New Mexico, Texas, Oklahoma, Arkansas, Louisiana, Alabama, Mississippi, Georgia, Tennessee, North Carolina, South Carolina, Florida, and the Commonwealth of Puerto Rico—*1 Member*

(c) Importers shall be represented by a single, separate region, referred to as Region 5, consisting of the United States as defined in § 1209.21(b) when imports, on average, equal or exceed 35,000,000 pounds of mushrooms annually.

(d) At least every five years, and not more than every three years, the Council shall review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years, and, based on such review, shall recommend to the Secretary reapportionment of the regions established in paragraph (b) of this section, or modification of the number of members from such regions, as determined under the rules established in paragraph (e) of this section, or both, as necessary to best reflect the geographic distribution of mushroom production volume in the United States and representation of imports, if applicable.

(e) Subject to the nine-member maximum limitation, the following procedure will be used to determine the number of members for each region to serve on the Council under paragraph (d) of this section:

(1) Each region that produces, on average, at least 35,000,000 pounds of mushrooms annually shall be entitled to one representative on the Council.

(2) As provided in paragraph (c) of this section, importers shall be represented by a single, separate region, which shall be entitled to one representative, if such region imports, on average, at least 35,000,000 pounds of mushrooms annually.

(3) Each region shall be entitled to representation by an additional Council member for each 50,000,000 pounds of annual production or imports, on average, in excess of the initial 35,000,000 pounds required to qualify the region for representation.

(4) Should, in the aggregate, regions be entitled to levels of representation under paragraphs (e) (1), (2) and (3) of this section that would exceed the nine-member limit on the Council under the Act, the regions shall be entitled to representation on the Council as follows:

(i) Each region first shall be assigned one representative on the Council pursuant to paragraphs (e) (1) and (2) of this section.

(ii) Then, each region with 50,000,000 pounds of annual production or imports, on average, in excess of the initial 35,000,000 pounds required to qualify the region for representation shall be assigned one additional representative on the Council, except that if under such assignments all five regions, counting importers as a region, if applicable, would be entitled to additional representatives, that region with the smallest on-average volume, in terms of production or imports, will not be assigned an additional representative.

(iii) After members are assigned to regions under paragraphs (e)(4) (i) and (ii) of this section, if less than the entire nine seats on the Council have been assigned to regions, the remaining seats on the Council shall be assigned to each region for each 50,000,000 pound

increment of annual production or import volume, on average, in excess of 85,000,000 pounds until all the seats are filled. If for any such 50,000,000 pound increment, more regions are eligible for seats than there are seats available, the seat or seats assigned for such increment shall be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

(f) In determining the volume of mushrooms produced in the United States or imported into the United States for purposes of this section, the Council and the Secretary shall:

(1) only consider mushrooms produced or imported by producers and importers, respectively, as those terms are defined in §§ 1209.8 and 1209.15; and

(2) use the information received by the Council under § 1209.60, and data published by the Department.

(g) For purposes of the provisions of this section relating to the appointment of producers and importers to serve on the Council, the term *producer* or *importer* refers to any individual who is a producer or importer, respectively, or if the producer or importer is an entity other than an individual, an individual who is an officer or employee of such producer or importer.

§ 1209.31 Nominations.

All nominations for appointments to the Council under § 1209.33 shall be made as follows:

(a) As soon as practicable after this subpart becomes effective, nominations for appointment to the initial Council shall be obtained from producers by the Secretary. In any subsequent year in which an appointment to the Council is to be made, nominations for positions whose terms will expire at the end of that year shall be obtained from producers, and as appropriate, importers, and certified by the Council and submitted to the Secretary by August 1 of such year, or such other date as approved by the Secretary.

(b) Nominations shall be made at regional caucuses of producers or importers, or by mail ballot as provided in paragraph (e) of this section, in accordance with procedures prescribed in this section.

(c) Except for initial Council members, whose nomination process will be initiated by the Secretary, the Council shall issue a call for nominations by February 1 of each year in which nominations for an appointment to the Council is to be made. The call shall include, at a minimum, the following information:

(1) A list by region of the vacancies for which nominees may be submitted and qualifications as to producers and importers.

(2) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3) A list of those States, by region, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Council, and national and State producer or importer associations, if known, and of the regional caucuses, if any.

(d)(1) Except as provided in paragraph (e) of this section, nominations for each position shall be made by regional caucus in the region entitled to nominate for such position. Notice of such caucus shall be publicized to all producers or importers within the region, and to the Secretary, at least 30 days prior to the caucus. The notice shall have attached to it the call for nominations from the Council and the Department's equal opportunity policy. Except with respect to nominations for the initial appointments to the Council, the responsibility for convening and publicizing the regional caucus shall be that of the Council.

(2) All producers or importers within the region may participate in the caucus. However, if a producer is engaged in the production of mushrooms in more than one region or is also an importer, such person's participation within a region shall be limited to one vote and shall only reflect the volume of such person's production or imports within the applicable region.

(3) The regional caucus shall conduct the selection process for the nominees in accordance with procedures to be adopted at the caucus subject to the following requirements:

(i) There shall be two individuals nominated for each open position.

(ii) Each nominee shall meet the qualifications set forth in the call.

(iii) If a producer nominee is engaged in the production of mushrooms in more than one region or is also an importer, such individual shall participate within the region that such individual so elects in writing to the Council and such election shall remain controlling until revoked in writing to the Council.

(e) After the regional caucuses for the initial Council, the Council may conduct the selection of nominees by mail ballot in lieu of a regional caucus.

(f) When producers or importers are voting for nominees to the Council, whether through a regional caucus or a mail ballot, the following conditions shall apply:

(1) Voting for any open position shall be on the basis of: (i) one vote per eligible voter; and

(ii) volume of on-average production or imports of the eligible voter within that region.

(2) Whenever the producers or importers in a region are choosing nominees for one open position on the Council, the proposed nominee with the highest number of votes case and the proposed nominee with the highest volume of production or imports voted shall be the nominees submitted to the Secretary. If a proposed nominee receives both the highest number of votes cast and the highest volume of production or imports voted, then the proposed nominee with the second highest number of votes cast shall be a nominee submitted to the Secretary along with such proposed nominee receiving both the highest number of votes cast and the highest volume of production or imports voted.

(3) Whenever the producers or importers in a region are choosing nominees for more than one open position on the Council at the same time, the number of the nominations submitted to the Secretary shall equal twice the number of such open positions, and for each open position shall consist of the proposed nominee with the highest number of votes cast and the proposed nominee with the highest volume of production or imports voted with respect to that position, subject to the rule set out in paragraph (f)(2). An individual shall only be nominated for one such open position.

(4) Voters shall certify on their ballots as to their on-average production or import volume within the region involved. Such certification may be subject to verification.

(g)(1) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members to the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary under the procedures set out in this section.

(2) Whenever producers or importers in a region cannot agree on nominees for an open position on the Council under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Council, the Secretary may appoint members in such manner as the Secretary, by regulation, determines appropriate.

§ 1209.32 Acceptance.

Each individual nominated for membership on the Council shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1209.33 Appointment.

From the nominations made pursuant to § 1209.31, the Secretary shall appoint the members of the Council on the basis of representation provided for in § 1209.30, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

§ 1209.34 Term of office.

(a) The members of the Council shall serve for terms of three years, except that the members appointed to the initial Council shall serve, proportionately, for terms of one, two, and three years.

(b) Members of the initial Council shall be designated for, and shall serve, terms as follows: One producer member each from regions 1, 2 and 3 shall be appointed for an initial term of one year; one producer member each from regions, 1, 2, and 3 shall be appointed for an initial term of two years; and one producer member each from regions 2, 3, and 4 shall be appointed for an initial term of three years. Because current imports of fresh mushrooms are less than 35,000,000 pounds, the minimum established for representation on the Council, importers will not initially have a member appointed to the Council.

(c)(1) Except with respect to terms of office of the initial Council, the term of office for each member of the Council shall begin on January 1 or such other date that may be approved by the Secretary.

(2) The term of office for the initial Council shall begin immediately following appointment by the Secretary, except that time in the interim period from appointment until the following January 1, or such other date that is the generally applicable beginning date for terms under paragraph (c)(1) of this section approved by the Secretary, shall not count toward the initial term of office.

(d) Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(e)(1) No member shall serve more than two successive three-year terms, except as provided in paragraph (e)(2)(ii) of this section.

(2)(i) Those members serving initial terms of two or three years may serve one successive three-year term.

(ii) Those members serving initial terms of one year may serve two successive three-year terms.

§ 1209.35 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Council, the Secretary may appoint a successor from the most recent nominations submitted for open positions on the Council assigned to the region that the vacant position represents, or the Secretary may obtain nominees to fill such vacancy in such manner as the Secretary, by regulation, deems appropriate. Each such successor appointment shall be for the remainder of the term vacated. A vacancy will not be required to be filled if the unexpired term is less than six months.

(b)(1) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Council, except as provided in paragraph (b)(2)(ii) of this section.

(2)(i) Any successor serving longer than one year may serve one successive three-year term.

(ii) Any successor serving one year or less may serve two successive three-year terms.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Council, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1209.36 Procedure.

(a) At a properly convened meeting of the Council, a majority of the members shall constitute a quorum.

(b) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Council, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph, or any other means of communication, but any such action shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(d) Meetings of the Council may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has an opportunity to be present either physically or by electronic connection.

(e) The organization of the Council and the procedures for conducting meetings of the Council shall be in accordance with its bylaws, which shall be established by the Council and approved by the Secretary.

§ 1209.37 Compensation and reimbursement.

The members of the Council shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a reasonable per diem allowance, as approved by the Council and the Secretary, incurred by such members in the performance of their responsibilities under this subpart.

§ 1209.38 Powers.

The Council shall have the following powers:

(a) To receive and evaluate or, on its own initiative, develop and budget for proposed programs, plans, or projects to promote the use of mushrooms, as well as proposed programs, plans, or projects for research, consumer information, or industry information, and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(d) To make rules and regulations to effectuate the terms and provisions of this subpart;

(e) To receive, investigate, and report to the Secretary for action complaints of violations of the provisions of this subpart;

(f) To disseminate information to producers, importers, first handlers, or industry organizations through programs or by direct contact using the public postal system or other systems;

(g) To select committees and subcommittees of Council members, including an executive committee whose powers and membership shall be determined by the Council, subject to the approval of the Secretary, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(h) To establish committees which may include individuals other than Council members, and pay the necessary and reasonable expenses and fees of the members of such committees;

(i) To recommend to the Secretary amendments to this subpart;

(j) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State mushroom producer organizations, or other organizations or entities, for the development and conduct of programs, plans, or projects authorized under § 1209.40 and with such producer organizations for other services necessary for the implementation of this subpart, and for the payment of the cost thereof with funds collected and received pursuant to this subpart. The Council shall not contract with any producer or importer for the purpose of mushroom promotion or research. The Council may lease physical facilities from a producer or importer for such promotion or research, if such an arrangement is determined to be cost effective by the Council and approved by the Secretary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) Any such program, plan, or project shall become effective upon approval of the Secretary;

(3) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Council of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Council may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor;

(k) With the approval of the Secretary, to invest, pending disbursement pursuant to a program, plan, or project, funds collected through assessments provided for in § 1209.51, and any other funds received by the Council in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(l) Such other powers as may be approved by the Secretary; and

(m) To develop and propose to the Secretary voluntary quality and grade standards for mushrooms, if the Council determines that such quality and grade standards would benefit the promotion of mushrooms.

§ 1209.39 Duties.

The Council shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans, or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 2109.50.

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books, and records that clearly reflect all the acts and transactions of the Council. Minutes of each Council meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any producer or importer;

(k) To follow the Department's equal opportunity/civil rights policies; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the marketplace, maintain and expand existing markets and uses for mushrooms, develop new markets and uses for mushrooms, and to carry out programs, plans, and projects designed to provide maximum benefits to the mushroom industry.

Promotion, Research, Consumer Information, and Industry Information

§ 1209.40 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to mushrooms; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of mushrooms and mushroom products, and the creation of new products thereof, to the end that marketing and use of mushrooms may be encouraged, expanded, improved or made more acceptable. However, as prescribed by the Act, nothing in this subpart may be construed to authorize mandatory requirements for quality control, grade standards, supply management programs, or other programs that would control production or otherwise limit the right of individual producers to produce mushrooms.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Council shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any mushrooms or mushroom product shall be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

Expenses and Assessments

§ 1209.50 Budget and expenses.

(a)(1) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(i) A statement of objectives and strategy for each program, plan, or project;

(ii) A summary of anticipated revenue, with comparative data for at least one preceding year;

(iii) A summary of proposed expenditures for each program, plan, or project; and

(iv) Staff and administrative expense breakdowns, with comparative data for at least one preceding year. Each budget shall include a rate of assessment for such fiscal year calculated, subject to § 1209.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (f) of this section. The Council may change such rate at any time, as provided in § 1209.51(b)(5).

(2)(i) Subject to paragraph (a)(2)(ii) of this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting of funds from one program, plan, or project to another.

(ii) Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(b) The Council is authorized to incur such expenses, including provisions for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(c) The Council shall not use funds collected or received under this subpart to reimburse, defray, or make payment of expenditures incurred in developing, drafting, studying, lobbying on or promoting the legislation authorizing this subpart. Such prohibition includes reimbursement, defrayment, or payment to mushroom industry associations or organizations, producers or importers, lawyers, law firms, or consultants.

(d) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use. The donor may recommend that the whole or a portion of the contribution be applied to an ongoing program, plan, or project.

(e) The Council shall reimburse the Secretary, from funds received by the Council, for administrative costs incurred by the Secretary in implementing and administering this subpart, except for the salaries of Department employees incurred in conducting referenda.

(f) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in the reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(g) With the approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§ 1209.51 Assessments.

(a) Any first handler initially purchasing, or otherwise placing into the current of commerce, mushrooms produced in the United States shall, in the manner as prescribed by the Council and approved by the Secretary, collect an assessment based upon the number of pounds of mushrooms marketed in the United States for the account of the producer, and remit the assessment to the Council.

(b) The rate of assessment effective during any fiscal year shall be the rate specified in the budget for such fiscal year approved by the Secretary, except that:

(1) The rate of assessment during the first year this subpart is in effect shall be one-quarter of one cent per pound of mushrooms marketed, or the equivalent thereof.

(2) The rate of assessment during the second year this subpart is in effect shall not exceed one-third of one cent per pound of mushrooms marketed, or the equivalent thereof.

(3) The rate of assessment during the third year this subpart is in effect shall not exceed one-half of one cent per pound of mushrooms marketed, or the equivalent thereof.

(4) The rate of assessment during each of the fourth and following years this subpart is in effect shall not exceed one cent per pound of mushrooms marketed, or the equivalent thereof.

(5) The Council may change the rate of assessment for a fiscal year at any time with the approval of the Secretary as necessary to reflect change circumstances, except that any such changed rate may not exceed the level of assessment specified in paragraphs (b)(1), (2), (3), or (4) of this section, whichever is applicable.

(c) Any person marketing mushrooms of that person's own production to consumers in the United States, either directly or through retail or wholesale outlets, shall be considered a first handler and shall remit to the Council an assessment on such mushrooms at the rate per-pound then in effect, and in such form and manner prescribed by the Council.

(d) Only one assessment shall be paid on each unit of mushrooms marketed.

(e)(1) Each importer of mushrooms shall pay an assessment to the Council on mushrooms imported for marketing in the United States, through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(2) The per-pound assessment rate for imported mushrooms shall be the same as the rate provided for mushrooms produced in the United States.

(3) The import assessment shall be uniformly applied to imported mushrooms that are identified by the number, 0709.51.0000, in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh mushrooms.

(4) The assessments due on imported mushrooms shall be paid when the mushrooms are entered or withdrawn for consumption in the United States, or at such other time as may be established

by rules and regulations prescribed by the Council and approved by the Secretary and under such procedures as are provided in such rules and regulations.

(5) Only one assessment shall be paid on each unit of mushrooms imported.

(f) The collection of assessments under this section shall commence on all mushrooms marketed in or imported into the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments until the Council is constituted, then remit such assessments to the Council.

(g)(1) Each person responsible for remitting assessments under paragraphs (a), (c), or (e) of this section shall remit the amounts due from assessments to the Council on a monthly basis no later than the fifteenth day of the month following the month in which the mushrooms were marketed, in such manner as perscribed by the Council.

(2)(i) A late payment charge shall be imposed on any person that fails to remit to the Council the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(ii) An additional charge shall be imposed on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(3) Any assessment that is determined to be owing at a date later than the payment due date established under this section, due to a person's failure to submit a report to the Council by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (g)(2)(i) and (g)(2)(ii) of this section shall be applicable.

(h) The Council, with the approval of the Secretary, may enter into agreements authorizing other organizations to collect assessments in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the Council for collection purposes. Any reimbursement by the Council for such services shall be based on reasonable charges for services rendered.

(i) The Council is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Council shall not be obligated to pay interest on any advance payment.

§ 1209.52 Exemption from assessment.

(a) Persons that produce or import, on average, 500,000 pounds or less of mushrooms annually shall be exempted from assessment.

(b) To claim such exemption, such persons shall apply to the Council, in the form and manner prescribed in the rules and regulations.

(c) Mushrooms produced in the United States that are exported are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

(d) Domestic and imported mushrooms used for processing are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

§ 1209.53 Influencing governmental action.

No funds received by the Council under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart, and to submit to the Secretary proposed voluntary grade and quality standards for mushrooms.

Reports, Books and Records

§ 1209.60 Reports.

(a) Each producer marketing mushrooms of that person's own production directly to consumers, and each first handler responsible for the collection of assessments under § 1209.51(a) shall be required to report monthly to the Council, on a form provided by the Council, such information as may be required under this subpart or any rules and regulations issued thereunder. Such information shall include, but not be limited to, the following:

(1) The first handler's name, address, and telephone number;

(2) Date of report, which is also the date of payment to the Council;

(3) Period covered by the report;

(4) The number of pounds of mushrooms purchased, initially transferred, or that in any other manner are subject to the collection of assessments, and a copy of a certificate of exemption, claiming exemption under § 1209.52 from those who claim such exemptions;

(5) The amount of assessments remitted; and

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of mushrooms determined under paragraph (a)(4) of this section multiplied by the applicable assessment rate.

(b) If determined necessary by the Council and approved by the Secretary, each importer shall file with the Council periodic reports, on a form provided by the Council, containing at least the following information:

(1) The importer's name, address, and telephone number;

(2) The quantity of mushrooms entered or withdrawn for consumption in the United States during the period covered by the report; and

(3) The amount of assessments paid to the U.S. Customs Service at the time of such entry or withdrawal.

(c) The words *final report* shall be shown on the last report at the end of each fiscal year.

§ 1209.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Council or the Secretary such books and records as are deemed necessary by the Council, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1209.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the rules and regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of the Department, and all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Council members, producers, importers, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be

disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1209.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

§ 1209.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b)(1) Five years after the date on which this subpart becomes effective, the Secretary shall conduct a referendum among producers and importers to determine whether they favor continuation, termination, or suspension of this subpart.

(2) Effective beginning three years after the date on which this subpart becomes effective, the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to determine whether producers and importers favor termination or suspension of this subpart.

(3) Whenever the Secretary determines that suspension or termination of this subpart is favored by a majority of the mushroom producers and importers voting in a referendum under paragraphs (b) (1) or (2) of this section who, during a representative period determined by the Secretary, have been engaged in producing and importing mushrooms and who, on average, annually produced and imported more than 50 percent of the volume of mushrooms produced and imported by all those producers and importers voting in the referendum, the Secretary shall:

(i) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(ii) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(4) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§1209.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Council, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Council and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Council or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1209.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1209.74 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgement, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1209.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Council under this subpart be the property of the United States Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Council and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council. Upon termination of this subpart, § 1209.72 shall apply to determine disposition of all such property.

§ 1209.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1209.77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Dated: June 3, 1992.

Kenneth C. Clayton,

Acting Administrator.

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June 10, 1992

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Harvest Information Program; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AB65

Migratory Bird Harvest Information Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish a national Migratory Bird Harvest Information Program (hereinafter Program). This Program would improve harvest estimates by requiring all migratory game bird hunters to supply their names and addresses in order to provide a sampling frame for a voluntary national harvest survey. All migratory game bird hunters would be required to have evidence that they have provided their name and address to their State wildlife agency in their possession while hunting migratory birds.

DATES: The comment period for the intended establishment of a Migratory Bird Harvest Information Program will end on July 10, 1992.

ADDRESSES: Written comments should be sent to: (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Office of Migratory Bird Management, 10800 Laurel-Bowie Road, Laurel, Maryland 20708–3600. Comments received will be available for public inspection during normal business hours in Building 158, 10800 Laurel-Bowie Road (Gate 4, Patuxent Wildlife Research Center), Laurel, Maryland.

FOR FURTHER INFORMATION CONTACT: Paul H. Geissler, Chief, Waterfowl Harvest Surveys Section, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10800 Laurel-Bowie Road, Laurel, Maryland 20708–3600, (301) 317–6300, FAX (301) 317–6301.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703–712), directs the Secretary of the Interior to periodically consider whether and how to permit hunting of migratory game birds. The Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742a–d and e–j) more specifically authorizes collection of such information as is necessary to determine appropriate regulations. This rule would facilitate the collection of needed migratory game bird harvest information.

This Program would include revision of the migratory bird hunting regulations to require all migratory game bird hunters to provide annually their names, addresses, and birth dates as a condition for hunting migratory game birds. This information would provide a sampling frame for the national Migratory Bird Harvest Survey.

Since publishing the Notice of Intent in the June 24, 1991, **Federal Register** (56 FR 28812) which opened the public comment period for the establishment of the Migratory Bird Harvest Information Program, the Service has considered several options to obtain the necessary information. One option would have minimized the impact on a State's licensing procedures by providing a separate system that would have operated in parallel with the State's hunting-license system. However, that option would have required a migratory bird hunter to carry a separate card as evidence of providing his or her name and address. The hunter would have had to provide duplicate information on the State license application and on a harvest-information form, and the license agent would have had to process a separate transaction. A second option would integrate a harvest-information system into the State's hunting-license system. This option would avoid duplication and reduce costs, but may require major changes to State licensing procedures. States would have better access to the names and addresses of their hunters and would be able to provide better service to these customers. State and Federal surveys could be coordinated to avoid asking a hunter to participate in both surveys. The Service recognizes that it may be difficult for some States to implement the second option, but the advantages of reducing costs and hunter burdens while improving State access to hunters' names and addresses supports this approach. Therefore, the Service proposes the second option in order to avoid duplicate Federal and State systems.

The Service plans to implement and study this Program starting with a 2-year experimental phase in three volunteer States in 1992. After evaluation of this experimental phase during 1994, and consideration of proposed changes, other States would be phased into the Program, with about 1 million migratory game bird hunters added each year. The States with the most migratory game bird hunters would participate in the Program first. States may participate in the Program earlier than their scheduled date if they wish, provided they notify the Service in advance. Under the following proposed schedule, all persons hunting migratory game birds in the respective States would be required to have on their person evidence of current participation in the Program after July 1 of the years indicated:

1992: (Experimental Phase) California, Missouri, and South Dakota.
1993: Pennsylvania.
1994: Texas.
1995: Louisiana, Georgia, and Minnesota.
1996: Alabama, North Carolina, Mississippi, Oklahoma, Illinois, Tennessee, and Michigan.
1997: South Carolina, Florida, Wisconsin, Arkansas, Colorado, Virginia, Maryland, Arizona, and Kentucky.
1998: New York, Washington, Kansas, Utah, Oregon, Nebraska, Idaho, Indiana, Iowa, North Dakota, New Jersey, Ohio, Massachusetts, Maine, Nevada, New Mexico, Wyoming, Montana, Alaska, Connecticut, West Virginia, New Hampshire, Delaware, Vermont, and Rhode Island.

The Program will be evaluated after the 2-year experimental phase to determine the adequacy and timeliness of the sample and the time burden, cost, and other impacts on hunters, State license agents, State wildlife agencies, and the Service. The approaches used in different States will be compared. Alternative survey designs will be investigated, and the U.S. Bureau of the Census will be asked to review the survey procedures.

Under the Service's proposal, States would continue to print State licenses or permits and distribute them to their license agents. All migratory game bird hunters would have a unique identifying number or State validation printed on their annual State hunting license or permit. The State might charge hunters a small handling fee to compensate agents and to cover the State's administrative costs associated with implementing this Program. A migratory bird hunter would not be required to obtain evidence of Program participation in more than one State per year.

State license agents would account for all validated licenses and would validate licenses only for hunters who provide their names, addresses, and birth dates. Agents would ask hunters to answer the following questions:

1. Do you plan to hunt migratory birds during [season]? [This screening question is needed only if a State asks all hunters to provide the above information. Only migratory bird hunters would be asked the following questions.]

2. Is this the first license you have had validated for hunting migratory birds this hunting season? ____ Yes ____ No

3. Did you hunt these birds last season in the U.S.?

____Ducks ____Mourning doves
____Geese ____White-winged doves
____Cranes ____Band-tailed pigeons
____Coots ____Woodcock

___Snipe ___Gallinules
___Rails

4. How many did you bag last season in the U.S.?

	None	1-5	6-10	11-30	31+
Ducks	___	___	___	___	___
Geese	___	___	___	___	___
Doves	___	___	___	___	___
Woodcock	___	___	___	___	___

States would develop adequate control procedures to ensure that agents (1) account for all validated licenses; (2) promptly provide the State with names, addresses, and other information; (3) have a low proportion of incomplete or illegible information; and (4) return information from all migratory game bird hunters.

States would provide the Service with migratory game bird hunters' State license numbers, county (or 5-digit ZIP code) where the licenses were issued, issue dates, names, addresses, birth dates, and their answers to the above questions in an acceptable form (diskette or machine-scannable paper form) within 5 days of issuance (10 days if the information is on diskette). The information is needed in time for the Service to contact survey participants and ask them to keep records of their migratory game bird hunting.

To protect hunters' privacy, it would be the policy of the Service to use the names and addresses only for conducting hunter surveys and for no other purpose. All records of hunters' names and addresses would be deleted after each year's surveys, and no permanent record of names and addresses would be maintained by the Service.

States would provide the Service with a report by April 15 each year of the total numbers of migratory bird hunters by county (or 5-digit ZIP Code) and the State license numbers for licenses issued to migratory bird hunters in each county (or 5-digit ZIP code). If that report is not complete, States would provide the Service with a corrected report by October 1. The Service would conduct post-season surveys and provide migratory game bird harvest and waterfowl age- and sex-ratio estimates prior to the development of the annual hunting regulations. Survey procedures would be the same as those for the existing Waterfowl Harvest Surveys except that the sampling frame would be derived from the State license- or permit-holders instead of from Federal Duck-Stamp purchasers. A separate survey would be conducted for duck, goose, and coot hunting; for dove, woodcock, and band-tailed pigeon hunting; and for snipe, rail, gallinule, and crane hunting to reduce the burden on individual respondents. No one would be asked to participate in more than one survey.

Written Comments Received

The Notice of Intent published in the **Federal Register** dated June 24, 1991 (56 FR 28812), opened the public comment period for the establishment of the Migratory Bird Harvest Information Program. As of August 28, 1991, the Service had received 38 comments, including comments from 19 State wildlife agencies and 1 Flyway Council. All supported the need for better migratory game bird harvest information, and almost all suggested changes in the proposal. Seventeen agencies supported the Program in some form and two opposed it. Comments were received from two non-governmental organizations that supported some form of the Program. Biologists and statisticians from 11 State wildlife agencies, 2 universities, and 1 consulting firm offered suggestions, and 2 citizens provided suggestions. Responses to all comments will be included in the final rule.

The Alabama Department of Conservation and Natural Resources recognized the need for collecting and analyzing data for migratory birds. Alabama believed the Program should provide the necessary data if hunters support it. Otherwise, the data would be of questionable accuracy and value. Legislative approval of hunter fees to recover State costs would be difficult. Migratory bird hunters who are not required to purchase an annual State license (those over 65, under 16, hunting on their own land, and lifetime license holders) might not know about the requirement and then be prosecuted. Lifetime license holders in Alabama have been advised previously that no additional fee would be imposed upon them. Alabama felt that data from annually licensed hunters should be sufficient with today's statistical techniques.

The Arizona Game and Fish Department suggested that crow hunting should be included in the survey. Under Arizona statutes, dealers realize 5% of the value of permits issued; however, the Harvest Information Card, as proposed, would not have a monetary value. Legislative action would be required to increase the agent commission. Arizona thought that limiting a hunter to one questionnaire would bias the survey. Dove harvest data should be compiled according to season segment.

The Arkansas Game and Fish Commission endorsed the Program and supported the incorporation of sufficient flexibility within the system to accommodate the variety of licensing systems used by the States.

The California Department of Fish and Game supported a system which enables the cooperative use of hunter data for purposes of conducting statistically valid surveys designed to improve migratory bird harvest monitoring, and conceptually supported the Program. The principal objective is to provide information necessary for adequate Federal waterfowl harvest surveys with little added burden to California hunters and license vendors, thereby ensuring their collective cooperation. California suggested a check-off on the State hunting license to indicate participation instead of a separate card. They felt that the requirement for vendors to return Survey cards within four days is unrealistic.

The Central Flyway Council supported the implementation of the Program. Improvement of our data bases for all migratory birds, including webless species, is important for the sound management of the Central Flyway's migratory bird resources.

The Florida Game and Fresh Water Fish Commission endorsed the Program because the changes are needed to resolve problems with the sampling frame for migratory bird hunters and improve harvest information. It is important to conduct the Program in a manner that would (1) minimize inconvenience to migratory bird hunters in Florida, (2) ensure that Florida would have timely access to the names and addresses of migratory bird hunters for their own hunter survey needs, and (3)

provide reliable information on migratory bird harvests in Florida.

The Game and Fish Division, Georgia Department of Natural Resources, agreed with the need for reliable harvest data. Georgia felt that funding should be 100% Federal because surveys are a Federal responsibility. State funds are not available, and increasing fees on hunters would risk driving casual hunters from the sport at a time when sales of hunting licenses are declining. Georgia believed that voluntary compliance should be adequate, and that returns by vendors should be required by the tenth day of the month, following issuance.

The Illinois Department of Conservation suggested that the Service sell both the Federal Duck Stamp and the Harvest Information Card through State vendors. They felt that the cost for the Card should be no more than the ventor's cost for those who buy a Federal Duck Stamp. Cards could not be combined with the Illinois license because senior and disabled hunters are exempted from the license. Responsibilities for ensuring vendor compliance should be specified. Illinois suggested that State agencies generate mailing labels for the Service to mail cards to the vendors. Agencies would assist the Service in following-up with delinquent vendors, and would distribute Cards to new vendors.

The Fish and Wildlife Division, Iowa Department of Natural Resources supported the Program. Iowa hunting licenses are sold on a calendar-year basis and materials need to be delivered to be available before December 1. They requested that Iowa's snipe, rail, and woodcock hunters be exempted from the Program because so few hunt these species that the survey would be ineffective. These species are taken opportunistically by hunters pursuing resident species and consequently the Program would create an unnecessary burden on them. Obtaining vendor compliance with reporting dates would be difficult, and the State does not wish to become involved in enforcing deadlines.

The Kentucky Department of Fish and Wildlife Resources supported the Program and recognized the need for such surveys to improve the management of migratory birds. Their only concern involved the ability to charge and collect monies for management of migratory birds other than waterfowl.

The Wildlife Division, Michigan Department of Natural Resources, reported that Michigan is replacing the manual hunting and fishing license system with a computerized system using driver's license information. The license would be printed at the time of sale by the vendor and all sales would be recorded into a central computer. They proposed that the Harvest Information Card be modified to print the necessary authorization as a separate item on the State hunting licenses. Answers to the harvest questions could be entered into the computer as part of the authorization process and would be used to identify hunter names and addresses that need to be sent to the Service in electronic form. The system avoids accountability problems, reduces the time necessary to obtain the names and addresses, and reduces State costs. They suggested that the Service assist State agencies in improving their licensing systems. If States had similar harvest inventories, the Service would not need to conduct national surveys.

The Division of Fish and Wildlife, Minnesota Department of Natural Resources, was committed to the Program and to helping develop it for proper implementation.

The Missouri Department of Conservation has a long history of support for the development and implementation of the Program through direct involvement in the International Association of Fish and Wildlife Agencies. The provision for State Agencies to require a small handling fee to cover administrative costs and compensate vendors is appealing to Missouri, but they reserve the option to merge the Harvest Information card with other permit types and establish fees accordingly. They suggested excluding crows from the Program until it is fully operational, primarily because season dates unduly complicate distribution and collection of materials from vendors. They also recommended exempting sandhill cranes and swans until full Program implementation, since existing permits provide names and addresses for surveys. Service cooperation in providing surveys to meet special management needs should be clarified. They did not fully agree that response rates would be increased by compensating vendors. They requested that the Harvest Information Card include birth-date and sale-date to aid in enforcement. It would be difficult to obtain vendor compliance with the requirement to return the Survey Card within four days after providing the Harvest Information Card to the hunter.

The North Carolina Wildlife Resources Commission opposed the Program because they are concerned with the impact the Program would have on the hunting public, although they recognize the need for more complete and accurate harvest-survey information. The hunters in the U.S. have repeatedly shown that they are willing to pay the cost to participate in their sport, but at some point the complexity of regulations and license requirements becomes an undue burden.

The Pennsylvania Game Commission expressed total support for the Program. While they are concerned about the impact of additional costs and requirements for those who wish to hunt these species, our first priority must be the wildlife resource. In order to develop an adequate database on migratory bird harvests in support of management actions and migratory bird seasons and bag limits, a sound method must be developed and implemented that would provide reliable samples of hunting pressure, activity, and harvest. They believe the proposed Program would accomplish exactly that.

The Rhode Island Division of Fish and Wildlife, Department of Environmental Management, strongly supported the Program.

The South Dakota Department of Game, Fish, and Parks pledged complete support of the efforts to establish the Program. It is a response to the need for more complete and better quality migratory bird harvest data and they believe the Program will meet the demands of management of the internationally important migratory bird resource.

The Tennessee Wildlife Resources Agency strongly supported the concept of the Program, as it appears to be the only way to significantly improve information on population trends, harvest, and hunters of "webless" migratory bird species.

The Division of Wildlife Resources, Utah State Department of natural Resources opposed the Program because they believed that a national survey which duplicates existing State surveys is inefficient and unnecessary, although better information on migratory bird harvest is needed. They thought that States with pro-active, long-standing harvest surveys and established trends in harvest statistics should not be penalized by requiring a new and different survey. They estimated that the additional cost and hassle for hunters would result in an estimated 10 percent reduction in hunters, license revenues, money for management of doves, and, most importantly, the continued deterioration in juvenile hunter numbers. As hunters are bombarded by more questionnaires, Utah felt that there is a marked tendency for them to ignore or even become irritated by the constant requests for more information. They

thought that skewed samples and distorted estimates would result from hunters obtaining Harvest Information Cards in neighboring States where the fee is lower. State administration, distribution, and accounting for the Harvest Information Cards would be cumbersome and time-consuming. None of the Western Management Unit Technical Committee concerns of 1990 are met by the proposal, and there is not widespread State Agency support. Utah suggested that a better solution is that the Service require States that hunt migratory wildlife to provide consistent survey results according to uniform methodology by the date needed. The Service could also require lists of migratory bird hunters' names and addresses. They believed that if vendors are required to mail Survey Cards within 4 days, they would simply choose not to participate. They recommended that the final design of the Program and survey be approved by each State representative on migratory bird technical committees before implementation.

The Washington Department of Wildlife supported the Program because they believed it would address current deficiencies in harvest data for migratory birds, particularly for doves and band-tailed pigeons.

The Unified Sportsmen of Pennsylvania endorsed the Program if it would achieve a useful purpose. However, if most people do not cooperate, it would be a waste of everyone's effort. They strongly opposed restrictions on crow and grackle hunting and their inclusion in the Program because these birds cause damage to crops and communities and because crow hunting encourages youth to take up the hunting sports.

The South Carolina Waterfowl Association strongly supported the Program. They suggested that the Service keep an updated list of names and addresses of all migratory bird hunters and make the list available to conservation organizations working to enhance our migratory bird populations.

Brian Collins, Statistician, Canadian Wildlife Service, commented that December is too early to distribute cards. Canada retains responding hunters in their survey for two years to increase the efficiency of reaching cooperating hunters. He felt that there was too much stratification and that vendors might not comply with the requirement to promptly return cards. The parts survey could be biased by selecting only hunters who bagged more than 10 birds in the previous season.

Thomas Whittendale, Jr., Wildlife Biologist, Delaware Division of Fish and Wildlife, expressed concern that another "license" would be unpopular and suggested that we combine the Migratory Bird Harvest Information Program with the duck stamp program. He thought that junior and senior hunters should be issued free Harvest Information Cards. The strata are too small in some situations.

Bill Anderson, Biologist, Illinois Department of Conservation, suggested that duck-stamp holders not be charged an additional fee. The Harvest Information Card could be combined with the Federal Duck Stamp for waterfowl hunters and also be available separately for other hunters. Vendor cooperation is a major concern. First-year hunters should not be eliminated from the sample. He felt that the cost of the Harvest Information Card should be standardized nationwide at $2.00, and that it is important to continue estimating crippling losses. It should be clear that all migratory bird hunters would be required to obtain a Harvest Information Card, including those who do not need a State license.

Roger E. Lake, Assistant Research Supervisor, Minnesota Section of Wildlife, suggested that it would be important to concentrate on obtaining vendor cooperation in promptly returning the cards and on designing an evaluation of their compliance. An information and education effort should be provided for the vendors. Incentives for vendor promptness would be helpful. If the Harvest Information Card is valid in all States and only the first Survey Card is used, a sample for State surveys would exclude hunters who first hunt migratory birds in another State. He thought that the survey design must accommodate the fact that the percentage of repeat hunters varies greatly among species.

Michael Riggs, Senior Wildlife Biometrician, Minnesota Department of Natural Resources, suggested that it would be helpful to develop an annotated flow chart of the process. Some form of monetary compensation to license vendors would be essential if noncompliance is to be minimized. The compensation and penalties for noncompliance should be specifically stated. He asked how the strata sampling fractions would be determined. He thought that hunters who purchase licenses far in advance of the season are more likely to forget about keeping records of their hunting. The Survey Card does not allow the separation of those who hunted unsuccessfully from those who did not hunt. The Survey Card should have a space for date of sale in order that vendor promptness can be measured.

Steven L. Sheriff, Wildlife Biometrician, Missouri Department of Conservation, recommended that vendors not be required to distribute hunting record forms because previous attempts have not been successful. However, all hunters should be asked to keep records because memory bias could be a problem. Dove hunters might complete most of their hunting before they receive the hunting record forms which would be three weeks after they receive the Harvest Information Card. There should be a separate stratum for those who are obtaining cards for others and cannot answer some or all of the questions. Telephone numbers should be solicited from hunters as an optional item to facilitate the telephone follow-up of nonrespondents. Cover letters should indicate that other hunters are being asked to record information on other species. The Harvest Information Cards should include the birth date and sale date for enforcement purposes. The Survey card should include sale date check on vendor promptness. Cards should be bound in books of 20 or 25 cards for ease in handling. To facilitate replacements of lost cards, he suggested adding a third part to the card for the vendor with the hunter's name, birth date and card serial number. The State name should appear on the Harvest Information Card and the serial number should identify the State. The cost should be printed on the cards. Harvest Information Cards should be valid from date of distribution until the expiration date. For States with calendar year licenses, Harvest Information Cards distributed in January would be valid for two survey years, introducing duplication problems. Vendors should be provided with instruction sheets.

J. Edward Kautz, Senior Wildlife Biologist, New York State Department of Environmental Conservation, noted that the proposed design does not address prestige bias. He felt that the cost of the Harvest Information Cards should be standardized among States. If they are free, Harvest Information Cards might be obtained by those who do not plan to hunt migratory birds. He thought that the Survey Card should request the hunter's telephone number to facilitate the telephone follow-up, and that the Harvest Information Card should include space for the Federal Duck Stamp.

Brad Bales, Staff Biologist, Oregon Department of Fish and Wildlife, indicated that the Department was supportive of the general concepts of the survey.

Kenneth L. Hess, Director, Bureau of Administrative Services, Pennsylvania

Game Commission, suggested that there should be an explanatory preamble on the card highlighting what species are covered and indicating that the Harvest Information Card does not replace either the Federal or any State duck stamp. Beginning dates should be explicitly referenced. The Harvest Information and Survey Cards should be identified as such and have the year printed on them. The Harvest Information Card should include birth date. It is important to distinguish between hunters and collectors. Vendors should mail Survey Cards daily.

Fred E. Hartman, Supervisor, Waterfowl and Migratory Game Bird Section, Pennsylvania Game Commission, was concerned that vendors might create a bias via distribution methods and stressed the need to keep procedures simple. He suggested that the Harvest Information Card be called a permit to let a hunter know that it is a legal requirement. He suggested asking hunters to record hunting zone on their hunting records. Junior hunters must be included in the Program. He believed that hunters must have records before the hunting season to avoid memory bias.

Kelly McPhillips, Wildlife Biologist, South Dakota Resource Analysis Section-Surveys, suggested minimizing vendor responsibilities because of the problem of obtaining cooperation. Vendors should not be asked to distribute hunting records to a systematic sample of hunters. Cards should be issued in continuous, sequentially-numbered books for handling convenience. South Dakota plans to combine the Harvest Information Card with the State hunting license and not charge an additional fee. An image of the card would be printed on the back of the license. Gallinules and rails should not be listed on South Dakota cards because these species do not occur in the State. He thinks it is important to monitor the harvest of crows and blackbirds. The use of hunting records is important when collecting detailed information, such as hunt date throughout a several-month season. A new sample of hunters should be selected each year. Monitoring vendor compliance is going to be a large and complicated task.

Steven E. Anderson, Middletown, CA, stated that the Program should not be used to reduce hunting opportunities on Federal refuges.

Lyman L. McDonald, President, Western EcoSystems Technology, Inc., Littleton, CO, expressed concern about Alaskan natives' subsistence hunting, including spring hunting and egg-gathering. He suggested that capture-recapture techniques would be better for estimating subsistence harvest. It is very important to include the certified letter and telephone follow-up as part of the survey. He thought that the importance of the previous year's hunting success should be emphasized using bold, red print, and that letters should be personally signed by a biologist for the Chief. He strongly recommended Dillman's Total Design Method.

Vernon L. Wright, Louisiana State University, recognized the need for a better survey of harvest. He believed that an index is adequate, and that a defendable harvest estimate is not needed, and that there would be a problem requiring the Harvest Information Card for junior, senior and other groups of hunters. With an index, these groups could be omitted as long as the harvest is consistent among groups. He thought that names of migratory bird hunters would be of limited use to States because resident game hunters are not included. Limiting the Parts Survey to hunters bagging at least 10 birds would bias the survey. Some strata should be pooled. There would be a problem with some vendors not returning the Survey cards until they close their books on July 1.

John M. Anderson, Vice President (Ret.), National Audubon Society, Abbeville, LA, strongly endorsed the establishment of the program, and believed that it is long overdue.

K. H. Pollock, Professor of Statistics, North Carolina State University, stated that it is a very good survey design and the only drawback is that the frame may be incomplete if there is a lack of vendor cooperation.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, might lead to final regulations that differ from these proposals.

The Service recognizes that it may be difficult for some States to fully comply with this rule. Therefore, the Service seeks comments regarding methods to provide technical assistance to the States in developing the capability to comply with these requirements.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, the need to establish a final rule at a point early enough in the year to allow for printing and distribution of the forms compresses the time in which the rulemaking process must operate. Therefore, the Service believes that to allow comment periods past the specified dates is contrary to the public interest.

Comment Procedures

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Office of Migratory Bird Management, 10800 Laurel-Bowie Road, Laurel, Maryland 20708–3600.

Comments received will be available for public inspection during normal business hours in Building 158, 10800 Laurel-Bowie Road (Gate 4, Patuxent Wildlife Research Center), Laurel, Maryland. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge the comments received, but substantive response to individual comments might not be provided.

NEPA Consideration

The establishment of this Harvest Information Program and options are being considered in the draft "Environmental Assessment: Migratory Bird Harvest Information Program." The public is invited to comment on the draft assessment. Copies of this draft document are available from the Service at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

A Determination of Effects, approved by the Assistant Secretary for Fish and Wildlife and Parks on June 14, 1991, concluded that the establishment of a Migratory Bird Harvest Information Program was not a "major" rule and, as such, was not subject to Regulatory Analysis under Executive Order 12291. It was also concluded that the rule would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.*

This proposed rule would eventually affect about 5 million migratory game bird hunters when it is fully implemented. It would require all migratory game bird hunters to supply their names and addresses in order that they can be sampled for a voluntary national harvest survey. All migratory

game bird hunters would be required to have evidence of providing their name and address to their State wildlife agency in their possession while hunting migratory birds.

The State wildlife agencies might require a small handling fee to compensate their hunting-license vendors and to cover their administrative costs. Many of the State hunting-license vendors are small entities, but this rule should not economically impact those vendors. Only migratory game bird hunters, individuals, would be required to provide this information, so this rule should not adversely affect small entities.

This rule contains information-collection requirements which require approval by the Office of Management and Budget (OMB). The information-collection requirements contained in this rule that are above and beyond those already contained in existing surveys and approved by OMB under #1018–0015 have been submitted to OMB for approval as required by 44 U.S.C. 3501 *et seq.* This Information Collection is required to obtain the benefit of hunting migratory game birds.

The public reporting burden for this collection of information is estimated to average 0.0182 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, MS–224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

Executive Order (EO) 12612—Federalism

The regulations do not have significant federalism effects as provided in EO 12612. Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act of 1918. State harvest surveys presently cannot provide adequate national estimates of migratory game bird harvests for the following reasons: Some States do not now conduct annual harvest surveys or maintain accessible lists of hunter names and addresses. Comparable information is not available from all States because each State has different licensing laws regulating who must buy a hunting license and different survey procedures. Some hunters can legally hunt without an annual State license. Hunters might buy more than one type of license in a single State and might buy licenses from more than one State, introducting duplication problems. Currently, many State license lists are not available in time to permit distribution of hunter records early in the hunting season. Budget constraints often prevent States from conducting harvest surveys during certain years or could cause some States to eliminate them completely.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State Governments, or intrude on State policy or administration. Therefore, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. In fact, the Service would cooperate with States in providing surveys to meet special management needs, and increased cooperation between Federal and State agencies would reduce duplication of survey efforts.

Executive Order 12360—Taking of Individual Property Rights

Executive Order 12360 discussed guidelines for the taking of individual property rights. These rules, authorized by the Migratory Bird Treaty Act, do not affect any constitutionally-protected property rights. These rules would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Authorship

The primary author of this proposed rule is Paul H. Geissler, Chief, Waterfowl Harvest Surveys Section, working under the direction of Thomas J. Dwyer, Chief, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 20, subpart C of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[Amended]

1. The authority citation for part 20 is revised to read as follows:

Authority: The Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703–712) and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a-d and e-j).

2. It is proposed that § 20.20 be added to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

(a) Information collection requirements. [Reserved]

(b) All persons hunting migratory game birds in the listed States after July 1, 1992, shall have on their person valid evidence of current participation in the Migratory Bird Harvest Information Program. To obtain this evidence, a person shall be required to provide his or her name, address, and date of birth. States to be included in the above requirement in 1992 are California, Missouri, and South Dakota.

Editorial Note: This document was received by the Office of the Federal Register on June 5, 1992.

Dated: January 27, 1992.

James F. Spagnole,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 92–13573 Filed 6–0–92; 8:45 am]

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Wednesday
June 10, 1992

Part V

Environmental Protection Agency

40 CFR Part 141

National Primary Drinking Water Regulations, Analytical Techniques; Coli Form Bacteria; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH-FRL-4108-6]

RIN: 2040-AB84

National Primary Drinking Water Regulations: Analytical Techniques; Coliform Bacteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 19, 1989, EPA promulgated revised National Primary Drinking Water Regulations (NPDWRs) for total coliforms (54 FR 27544, June 29, 1989) pursuant to section 1412 of the Safe Drinking Water Act (SDWA). In that notice, EPA approved the use of the Minimal Medium ONPG–MUG (MMO–MUG) test for total coliform analysis for compliance with the maximum contaminant level (MCL) for total coliforms under the Safe Drinking Water Act (SDWA). (ONPG is ortho-nitrophenyl-β-D-galactopyranoside; MUG is 4-methylumbelliferyl-β-D-glucuronide.) Today's action amends 40 CFR 141.21(f) by also approving the MMO–MUG test for the detection of *Escherichia coli* (*E. coli*).

EFFECTIVE DATE: July 10, 1992.

ADDRESSES: The public comments and supporting documents cited in the reference section of this notice, the proposed notice (55 FR 22752, dated June 1, 1990), the notice of availability (56 FR 49153, dated September 27, 1991), and associated material are available for review at EPA's Drinking Water docket, 401 M Street SW., Washington, DC 20460. For access to the docket materials, call (202) 260–3027 on Monday through Friday, excluding Federal holidays, between 9 a.m. and 3:30 p.m. Eastern Time for an appointment.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 5 p.m. Eastern Time. For technical questions, contact Paul S. Berger, Ph.D., Office of Ground Water and Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 260–3039.

SUPPLEMENTARY INFORMATION: .

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I. Statutory Authority

The SDWA requires EPA to promulgate NPDWRs which include MCLs or treatment techniques (section 1412). NPDWRs also contain "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels * * *" (section 1401(1)(D)). In addition, section 1445(a) of the SDWA authorizes the Administrator to require monitoring to assist in determining whether persons are in compliance with the requirements of the SDWA. EPA's promulgation of analytical techniques is authorized under these sections of the SDWA. EPA has promulgated analytical techniques for all currently regulated drinking water contaminants; persons must use one of the approved analytical techniques for determining compliance with the MCLs (see 40 CFR 141.21–30). Today's action promulgates an additional analytical method for the detection of *E. coli*.

II. Regulatory Background

On June 19, 1989, EPA promulgated revised regulations for total coliforms (54 FR 27544, June 29, 1989), with an effective date of December 31, 1990. Paragraph 141.21(e) of those regulations requires public water systems to test all total coliform-positive cultures for the presence of either fecal coliforms or *E. coli*. Fecal coliforms and *E. coli* are both indicators of fresh sewage. The regulations specified the analytical method to test for the presence of fecal coliforms (paragraph 141.21(f)(5)), but not for the presence of *E. coli*. On June 1, 1990, EPA proposed three analytical methods for the detection of *E. coli*. On January 8, 1991, EPA promulgated two of these methods, but deferred approval of the third one, the MMO–MUG test. On September 27, 1991, the Agency published a Notice of Availability (56 FR 49153) to provide notice and an opportunity for public comment on two recently completed studies with respect to the MMO–MUG test addressing concerns regarding the ability of the method to detect environmentally stressed *E. coli*. The Notice of Availability indicated that EPA intended to approve the MMO–MUG test based on the results of these studies unless data were received to the contrary. Today's action promulgates the MMO–MUG test for *E. coli* detection.

III. Discussion of Final Rule

A. Public Comments

EPA received 29 public comments during the comment period, and three comments after the close of the comment period. Of the 32 commenters, 28 supported approval of the MMO–MUG test for *E. coli* detection, while four raised concerns. The most important of the concerns raised are addressed below. All public comments are addressed in the comment-response document for this rule, which is available in EPA's Drinking Water docket for *E. coli*.

Source of *E. coli*

Two commenters expressed concern that sewage samples were used as the cource of *E. coli* in the Strandridge et al. study (one of the two recent studies cited in the Notice of Availability), as opposed to drinking water or ambient water samples. One of these commenters maintained that previous studies on the MMO–MUG test using naturally contaminated samples showed that the false-negative rate was high, implying that EPA should disapprove the MMO–MUG test.

EPA recognizes that *E. coli* in ambient water and drinking water probably have been subjected to greater environmental stress than those in sewage samples. The Agency believes, however, that sewage sources are more appropriate for determining the *E. coli* false-negative rate than other sources, primarily because (1) sewage sources have a greater diversity of *E. coli* strains than does ambient water, (2) *E. coli* density is greater in sewage than in other sources, thereby facilitating a chlorination study, and (3) drinking waters, especially if disinfected, rarely contain *E. coli*, which would make this source difficult to use as an *E. coli* source (SAB, 1991; Geldreich, 1992). Moreover, *E. coli* in the distribution system may be the result of fresh sewage directly contaminating the water supply via a cross connection or a line break, in which case sewage is a closer approximation than ambient water for these organisms.

In order to obtain low densities of stressed *E. coli* from sewage, recent investigators (Standridge et al., 1991; Covert et al., 1991; Pipes, 1991) first removed the heavier sewage particles, and then chlorinated and diluted the

sewage sample. EPA believes that *E. coli* in samples treated in this fashion adequately approximates the characteristics of those organisms in drinking water. The EPA's Science Advisory Board (SAB) reviewed the protocols employed in the investigations upon which EPA relied, and agreed that raw sewage treated in this manner was the most appropriate *E. coli* source for evaluating low densities of stressed *E. coli* (SAB, 1991).

Using these treated sewage samples, the investigators cited above found that the MMO–MUG test was sensitive to low densities of *E. coli*. Pipes, for example, found the false-negative rate to be about 9%. EPA believes this false-negative rate is satisfactory when compared to other tests. The Agency recognizes that some question still exists with regard to the most appropriate *E. coli* source, but believes this issue cannot be completely resolved without widespread comparison data using drinking water samples over a long period of time (to accumulate sufficient *E. coli* data). The Agency will continue to monitor available data periodically.

False-Positive Rate

One commenter suggested that Standridge et al. should have identified the bacteria in MMO–MUG-positive tests to ensure they were actually *E. coli*, and not false-positive. EPA disagrees. The Agency's disagreement is premised on technical literature that suggests few false-positives are associated with MUG-type tests. This was discussed in the preamble to the notices of June 1, 1990, and January 8, 1991, and in the Comment/Response document to the final rule of January 8. Although EPA is not certain why some samples were MUG-positive in MMO–MUG, but MUG-negative in EC+MUG, the Agency believes the false-positive rate for the *E. coli* portion of the MMO–MUG test is low. For this reason, this issue was not addressed in the studies by Standridge et al. and Covert et al. The Agency position is supported by Pipes (1991), who found that all MUG-positive cultures from the MMO–MUG test (total of 88) were also MUG-positive in EC Medium + Mug. Dr. Pipes used a test protocol developed by EPA and reviewed and approved by EPA's Science Advisory Board. For these reasons, EPA does not believe that the absence of false-positive data diminishes the Agency's reliance on the conclusions of Standridge et al. (1991).

Initial *E. Coli* Density

The test protocol in Standridge et al. (1991) called for use of the mTEC test to enumerate *E. coli* to determine the proper dilution for the initial test conditions. Standridge et al. found in the course of the investigation, however, that mTEC often underestimated *E. coli* density. For this reason, in order to provide more confidence that the initial *E. coli* densities were no more than five/tube, these investigators determined a Most Probable Number (MPN) from the MMO–MUG test tubes. One commenter objected to this procedure because it would have introduced a bias into the density calculation, because the variable being determined is the effectiveness of the MMO–MUG test itself. Thus, the commenter questioned whether the *E. coli* density used in the Standridge et al. study was within the range of interest (1–5 cells/100 ml).

While EPA shares the commenter's concern, the Agency notes that the MMO–MUG MPN test was only used to estimate the dilution of the chlorinated sample necessary to achieve an initial challenge dose in the range of interest. In spite of the difficulty encountered by Standridge et al. in estimating *E. coli* density by mTEC, EPA believes the initial *E. coli* density used in the analysis was generally within the range of interest. The Agency conclusion is based on two factors. First, *E. coli* densities were 5.1/100 ml or fewer in all 19 samples analyzed by EC+MUG, the Agency standard. Second, fecal coliform densities, as measured by gas production in EC+MUG, were 5.1/100 ml or fewer in 13 of 19 samples. The fecal coliform test used theoretically represents an unbiased upper boundary of *E. coli* densities, because gas production is not limited to *E. coli* strains. With the MMO–MUG test, *E. coli* densities were 5.1/100 ml of fewer in 11 of 19 samples analyzed. Thus, slightly higher densities of *E. coli* were found by the MMO–MUG test compared to the fecal coliform test, possibly as a result of statistical variation. By using the MMO–MUG test results to estimate initial *E. coli* densities, and thereby to determine needed sample dilutions, Standridge et al. used the most conservative data (i.e., greatest dilution factor) of the four tests available.

Wattage of Ultraviolet Lamp

One commenter noted that Standridge et al. had used both a 4-watt and a 6-watt ultraviolet lamp for detecting *E. coli*. The commenter requested information on whether any difference was observed.

During the public comment period, Standridge et al. provided EPA with a draft article on their comparison study that has been submitted for publication. This draft article, which the Agency has placed in its *E. coli* docket, provides additional detail on their investigation. The article states that no difference was observed between the 4-watt and 6-watt lamps with the EC+MUG test. However, the 6-watt lamp detected slightly more MUG-positive reactions (i.e., *E. coli* present) than the 4-watt lamp with the MMO–MUG test (331 vs. 321). The data indicate that difference is not statistically significant. Nevertheless, in the interest of public health, the Agency recommends the use of the 6-watt lamp.

MMO–MUG Medium Formulation

One commenter contended that the manufacturer has changed the formulation of the MMO–MUG medium by replacing the inorganic buffer with an organic buffer. The commenter argues that a change in formulation should necessarily prompt a new testing program before being approved by EPA. Apparently, the commenter is referring to the fact that the Agency approved the MMO–MUG test for total coliforms in June 1989 on the basis of test data using the earlier formulation, and that the reformulation invalidates that approval.

In investigating this comment, EPA learned that the commenter is correct that the manufacturer replaced the inorganic buffer with an organic buffer (hepes buffer) in April 1990. The Agency maintains, however, that this change is minor and should not reduce the effectiveness of the Colilert test. The rationale for this belief is based on three factors. First, the only change was in the buffer. Second, data show that hepes buffer is inert to *E. coli* (Ferguson et al., 1980). Finally, several enzymes produced by *E. coli*, though not associated with the MMO–MUG test, exhibit higher activity in a prepared test solution containing hepes buffer than in a solution containing phosphate buffer (Hulsmann et al., 1990; Good et al., 1966). Higher activity of these enzymes suggests that the hepes buffer may enhance activity (or be less inhibitory) for the two enzymes of interest in the MMO–MUG test.

The Agency's belief that the buffer change does not adversely impair MMO–MUG performance is also confirmed by several field studies. In one study of seven marine water samples, the MMO–MUG test formulation with hepes buffer (the new formulation) recovered many more *E. coli* than the old MMO–MUG formulation (average Most Probable Number was 24 vs. <2) (Ellgas et el., 1989). Although this data set is extremely limited, the Ellgas et al. study suggests that the new formulation

recovers *E. coli* more frequently than the old. In another comparison study (Layton, 1991), 143 samples were split and tested using both MMO–MUG formulations. Samples consisted of raw water and water from several different distribution systems, some of which were spiked with raw water or with laboratory strains. Of the 143 samples, 93 were total coliform-positive for both, 44 were total coliform-negative for both, one was total coliform-positive for the old formulation and not the new, and five were total coliform-positive for the new formulation and not the old. For the same sample set, 50 were *E. coli*-positive for both, 78 were *E. coli*-negative for both, four were *E. coli*-positive for the old and not the new, and 11 were *E. coli*-positive for the new and not the old. The results suggest that the new formulation is at least as good as the old one.

After learning that the MMO–MUG formulation had been changed, EPA gathered additional field date from water systems to confirm that the new MMO–MUG formulation was at least as good as the old formulation for total coliform detection. Specifically, the Agency reviewed data collected from more than 30 systems or States comparing the new formulation with one of the other three EPA-approved total coliform methods. Most of the total coliform data represented drinking water sources, although some were raw water sources. EPA evaluated only data sets in which at least one sample was total coliform-positive by at least one test (1315 such samples). By using McNemar's test (two-tailed χ^2 test with one degree of freedom and alpha of 0.05) for paired dichotomous data, EPA finds that the MMO–MUG test recovers coliforms at least as frequently as the Multiple Tube Fermentation Test, and exhibits greater sensitivity than the Membrane Filter Test and the Presence-Absence Coliform Test (USEPA, 1992). The Agency has placed this evaluation in the *E. coli* docket.

As a result of the above information and data, EPA is providing notice in today's rule that the MMO–MUG test with hepes buffer is an acceptable minor revision for the detection of total coliforms in drinking water. Ingredients per liter for the new formulation are listed below:

Ingredients (anhydrous)	Concentration
Ammonium sulfate	5 g.
Manganese sulfate	0.5 mg.
Zinc sulfate	0.5 mg.
Magnesium sulfate	100 mg.
Sodium chloride	10 g.
Calcium chloride	50 mg.
Sodium sulfite	40 mg.
Amphotericin B	1 mg.
Orthonitrophenyl-β-D-galactopyranoside (ONPG).	500 mg.
4-methylumbelliferyl-β-D-glucuronide (MUG).	75 mg.
Solarium [1]	500 mg.
Hepes buffer:	
Sodium salt	5.3 g.
Organic acid [2]	6.9 g.

[1] Solarium is a mixture of plant extracts used as a dispersant.

[2] N-2-Hydroxyethylpiperazine-N[1]-2-ethane sulphonic acid.

B. EPA's Conclusion of E. Coli Detection

After reviewing the data and public comments, EPA believes that the MMO–MUG test is satisfactory for *E. coli* detection, and is therefore approving the use of this test under the Total Coliform Rule. The Agency also believes that the benefit of approving use of a simple, rapid *E. coli* method outweighs any residual uncertainty concerning this test. However, since the use of the method for *E. coli* detection, and the modified formulation, is new and consequently has not been tested with the entire range of drinking water available in the United States, EPA encourages laboratories to perform parallel testing between the MMO–MUG test and other EPA-approved procedures for detecting *E. coli* for at least several months to assess the effectiveness of the MMO–MUG test for the specific water type being analyzed. To facilitate collection and evaluation of comparative data, EPA strongly recommends that laboratories identify which test(s) they use on the data form for each sample analyzed.

The test being promulgated today is based on the ability of *E. coli* to produce the enzyme beta-glucuronidase, which hydrolyzes 4-methylumbelliferyl-beta-D-glucuronide (MUG) contained in the test medium. This hydrolysis forms 4-methylumbelliferone, which fluoresces when exposed to ultraviolet light (366 nm). Few noncoliforms, or coliforms other than *E. coli*, produce the enzyme beta-glucuronidase. Thus, fluorescence should be a differential indicator for the presence of *E. coli* in a water sample.

IV. Regulation Assessment Requirements

A. Executive Order 12291

Executive Order 12291 requires EPA to judge whether a regulation is "major" and, if so, to prepare a regulatory impact analysis. A rule is considered major if it has an economic impact of $100 million or more, causes a significant increase in cost or prices, or any of the other adverse effects described in the Executive Order. Because the rule merely makes an additional analytical method available for use in complying with the regulation for total coliforms, EPA has determined that this action is not a major rule within the meaning of the Executive Order. Water systems/laboratories may use the new method or continue using previously-approved methods. Therefore, there will not be any adverse economic impacts.

This notice was submitted to the Office of Management and Budget for its review under the Executive Order.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant effect on a substantial number of small systems, means should be sought to minimize the effects. The Small Business Administration defines a small water utility as one which serves fewer than 3,300 people. Under this definition, this rule would affect about 200,000 small systems.

This final rule is consistent with the objectives of the Regulatory Flexibility Act because it will not have a significant economic impact on small entities. The rule provides laboratories with a third alternative for testing a total coliform-positive culture for *E. coli*. Because use of this method is optional, and because EPA is not promulgating any new requirement, the Agency believes that the impact of this notice does not have a significant effect on a substantial number of small entities.

C. Paperwork Reduction Act

This rule contains no information collection requirements and consequently is not covered by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

D. Science Advisory Board, National Drinking Water Advisory Council, and Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of the Safe Drinking Water Act, the Agency consulted with the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services and took their comments into account in developing this rule.

List of Subjects in 40 CFR Parts 141

Administrative practice and procedure, Analytical methods, Intergovernmental relations, Microorganisms, National Primary

Drinking Water Regulations, Total coliforms, Water supply.

Dated: May 29, 1992.

William K. Reilly,

Administrator.

V. References

Covert, T., E. Rice, S. Johnson, D. Berman, C. Johnson, P. Mason. 1991. Evaluation of the Autoanalysis Colilert Test, Coliquik Coliform Test and EC Medium with MUG for detection of *Escherichia coli* in water. (Submitted for publication).

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SAB, 1991. Science Advisory Board. Microbiological testing of drinking water. EPA–SAB–DWC–91–014. U.S. Environmental Protection Agency.

Standridge, J., S. McCarty, and R. Dergrigorian. 1991. Comparison of the ability of the Autoanalysis Colilert ONPG–MUG test system to the Standard Methods lauryl tryptose broth—EC–MUG system to detect chlorine stressed *Escherichia coli*. (Submitted for publication).

USEPA. 1992. Memorandum from P. Berger, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, to *E. coli* Docket. 4/3/92. Statistical analysis of raw data comparing Colilert test with EPA-approved total coliform methods.

For the reasons set out in the preamble, part 141 of title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4 and 300j-9.

2. Section 141.21 is amended by revising in paragraph (f)(3)(ii) the first word "Membrance" to read "Membrane", by adding a sentence to the end of (f)(3)(iv), by adding paragraph (f)(6)(iii), and by revising (f)(7) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

(iv) * * * The MMO–MUG Test with hepes buffer in lieu of phosphate buffer is an acceptable minor revision.

* * * * *

(6) * * *

(iii) Minimal Medium ONPG–MUG (MMO–MUG) Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with Presence-Absence Techniques" (Edberg et al.), Applied and Environmental Microbiology, Volume 55, pp. 1003–1008, April 1989. (Note: The Autoanalysis Colilert System is an MMO–MUG test). If the MMO–MUG test is total coliform-positive after a 24-hour incubation, test the medium for fluorescence with a 366-nm ultraviolet light (preferably with a 6-watt lamp) in the dark. If fluorescence is observed, the sample is *E. coli*-positive. If fluorescence is questionable (cannot be definitively read) after 24 hours incubation, incubate the culture for an additional four hours (but not to exceed 28 hours total), and again test the medium for fluorescence. The MMO–MUG Test with hepes buffer in lieu of phosphate buffer is the only approved formulation for the detection of *E. coli*.

(7) As an option to paragraph (f)(6)(iii) of this section, a system with a total coliform-positive, MUG-negative, MMO–MUG test may further analyze the culture for the presence of *E. coli* by transferring a 0.1 ml, 28-hour MMO–MUG culture to EC Medium + MUG with a pipet. The formulation and incubation conditions of EC Medium + MUG, and observation of the results are described in paragraph (f)(6)(i) of this section.

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[FR Doc. 92–13381 Filed 6–9–92; 8:45 am]

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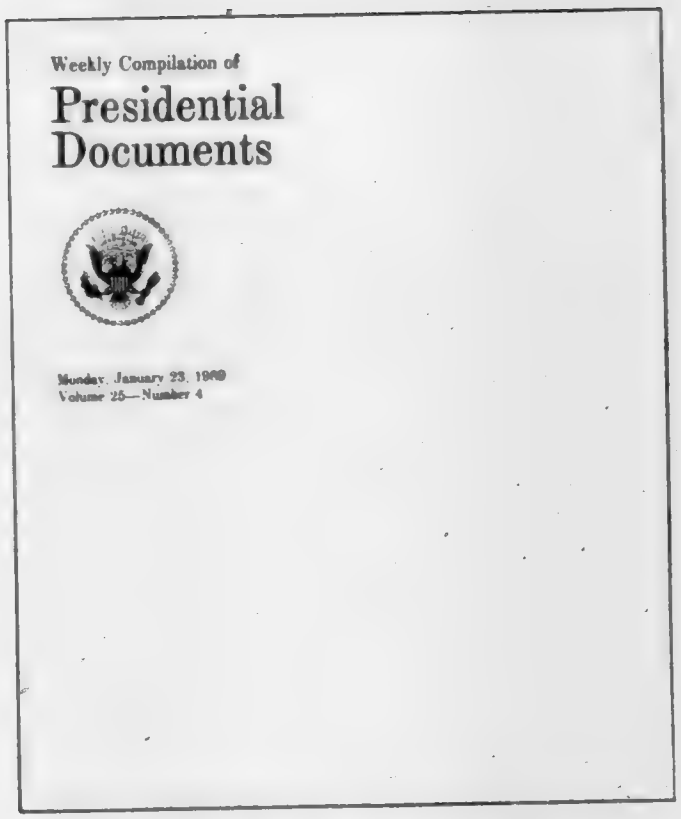

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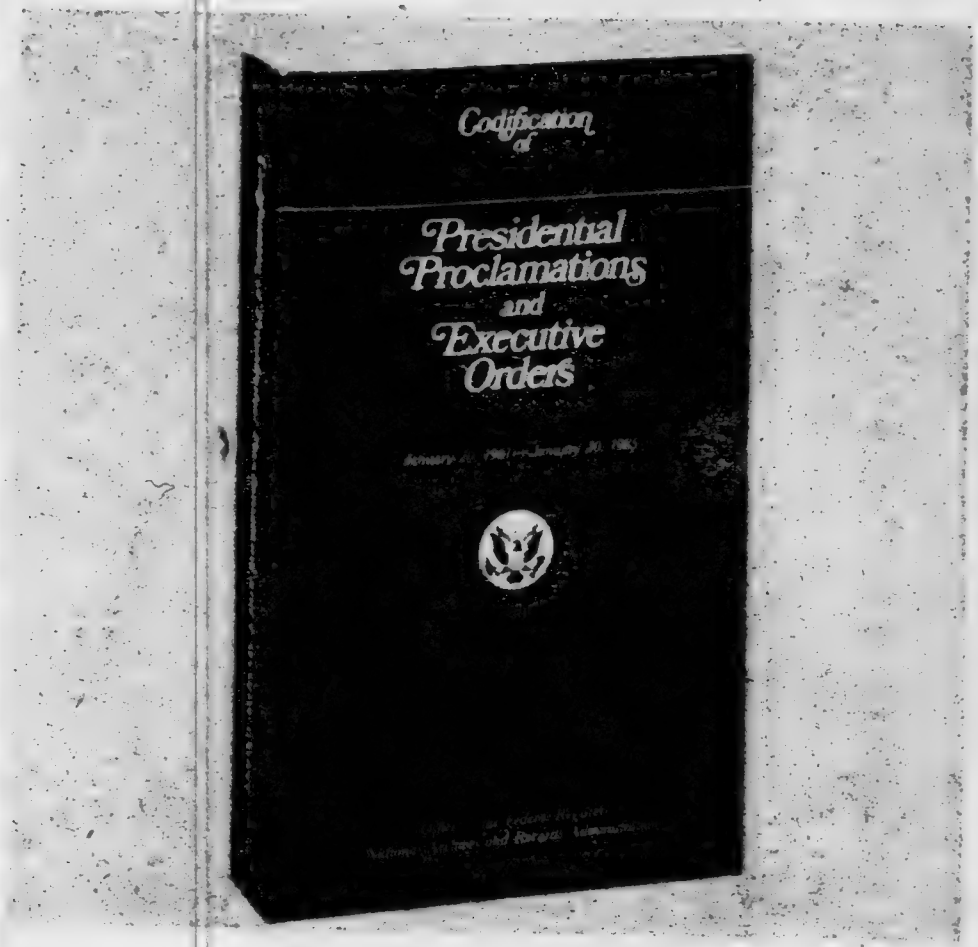

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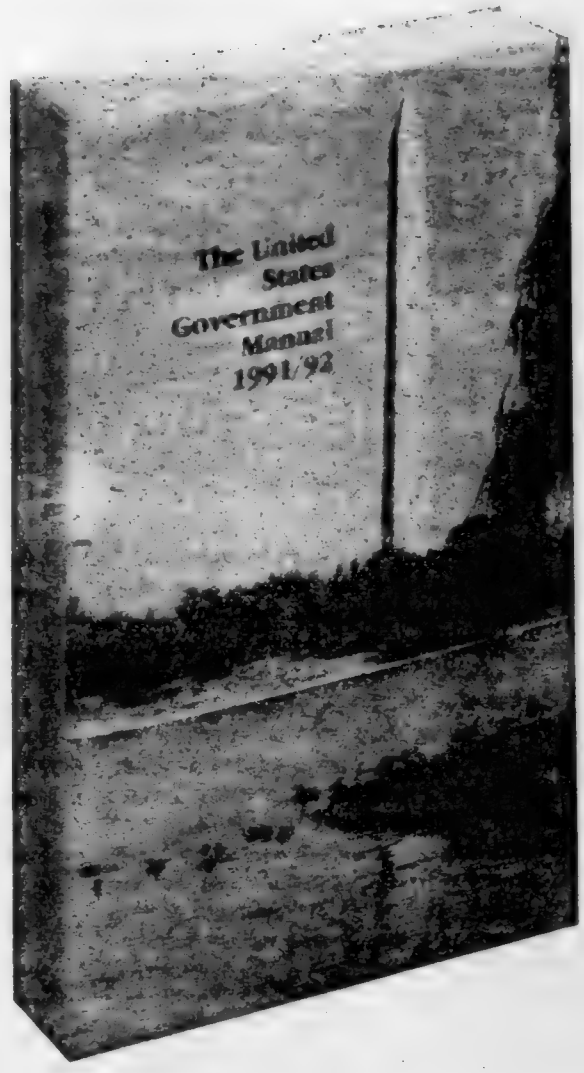

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Rules and Regulations

Federal Register
Vol. 57, No. 113
Thursday, June 11, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8420]

RIN 1545-AO90

Low-Income Housing Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code of 1986. The final regulations address the application of the not-for-profit rules of section 183 to activities entitling taxpayers to claim low-income housing credits.

EFFECTIVE DATE: The regulations are effective with respect to buildings placed in service after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman, (202) 377-6349 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1991, the Internal Revenue Service published in the **Federal Register** a notice of proposed rulemaking (56 FR 57605) under section 42. No public comments or requests for a public hearing were received concerning these regulations. Therefore, the proposed regulations are adopted by this Treasury decision unchanged.

Explanation of Provisions

Section 252 of the Tax Reform Act of 1986 (Pub. L. 99-514), as amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 101-647), the Revenue Reconciliation Act of 1989 (Pub. L. 101-239), the Revenue Reconciliation Act of 1990 (Pub. L. 101-508), and the Tax Extension Act of 1991 (Pub. L. 102-227), enacted and amended the low-income housing credit under section 42 of the Internal Revenue Code of 1986. Since the enactment of the low-income housing credit, taxpayers have raised questions concerning the application of the not-for-profit rules of section 813 to low-income housing credit activities.

The low-income housing credit under section 42 replaced a variety of tax preferences available under prior law for low-income rental housing because the credit was thought to be a more efficient mechanism for encouraging the provision of low-income housing. See S. Rep. No. 313, 99th Cong., 2d Sess. 758-59 (1986), 1986-3 (Vol. 3) C.B. 758-59.

Although no explicit reference is contained in section 42 or its legislative history regarding its interaction with section 183, the legislative history of the low-income housing credit indicates that Congress contemplated that tax benefits such as the credit and depreciation would be available to taxpayers investing in low-income housing, even though such an investment would not otherwise provide a potential for economic return.

Therefore, to reflect the congressional intent in enacting section 42, the regulatory authority under section 42(n) is being exercised to provide that section 183 will not be used to limit or disallow the credit.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.37-1 through 1.44A-1

Credits, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.42-4 is also issued under 26 U.S.C. 42(n) * * *

Par. 2. New § 1.42-4 is added to read as follows:

§ 1.42-4 Application of not-for-profit rules of section 183 to low-income housing credit activities.

(a) *Inapplicability to section 42.* In the case of a qualified low-income building with respect to which the low-income housing credit under section 42 is allowable, section 183 does not apply to disallow losses, deductions, or credits attributable to the ownership and operation of the building.

(b) *Limitation.* Notwithstanding paragraph (a) of this section, losses, deductions, or credits attributable to the ownership and operation of a qualified low-income building with respect to which the low-income housing credit under section 42 is allowable may be limited or disallowed under other provisions of the Code or principles of tax law. See, *e.g.*, sections 38(c), 163(d), 465, 469; *Knetsch* v. *United States*, 364 U.S. 361 (1960), 1961-1 C.B. 34 ("sham" or "economic substance" analysis); and *Frank Lyon Co.* v. *Commissioner*, 435 U.S. 561 (1978), 1978-1 C.B. 46 ("ownership" analysis).

(c) *Effective date.* The rules set forth in paragraphs (a) and (b) of this section are effective with respect to buildings

placed in service after December 31, 1986.

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: April 8, 1992.

Fred T. Goldberg, Jr.,
Assistant Secretary of the Treasury

[FR Doc. 92-13683 Filed 6-10-92; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Chicago Regulation CGD09-92-04]

Safety Zone Regulations; Ports of Chicago, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in and around waters and shoreline areas of the Chicago River, Main, North and South Branch to support repair and dewatering operations due to the collapse of a tunnel in the vicinity of the Kinzie Street Bridge in the port of Chicago.

The zone is needed to protect City and U.S. Army Corps of Engineers equipment and personnel involved in the sealing of the tunnel and the divers surveying other tunnels in the Main, North and South Branch of the Chicago River.

Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on April 16, 1992, and it terminates on July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.G. Tuttle at (312) 353-1226.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent further damage to the tunnel system and to protect the work and survey crews in the area affecting repairs.

Drafting Information

The drafters of this regulation are Lieutenant Commander J.G. Tuttle, project officer for the Captain of the Port, and Commander M. Eric Reeves, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur between April 16, 1992 and July 30, 1992. This safety zone is to support the U.S. Army Corp of Engineers in the performing statutory duties and ensure the safety of divers and work crews in the Main North and South Branch of the Chicago River conducting repairs to the damaged tunnel and survey of other river crossing of the tunnel system during dewatering operations.

List of Subjects in 33 CFR Part 165

Harbors Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 40 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new § 165.T09-40 is added to read as follows:

§ 165.T09-40 Safety Zone: Port of Chicago, IL.

(a) *Location.* The following area is a safety zone:

(1) Chicago River, North Branch, in the vicinity of the Kinzie Street Bridge between the entrance to the North Branch at Wolf Point (Mile 325.5) and the Grand Avenue Bridge (Mile 326.0) and the associated shorelines 10 feet from the water.

(2) Chicago River, Main Branch, from the Chicago Harbor Lock River Gate (mile 327.2) to Wolf Point (mile 325.5) and the associated shorelines 10 feet from the water.

(3) Chicago River, South Branch, from Wolf Point (mile 325.5) to the Cermak Road Bridge (mile 323.4) and the associated shorelines 10 feet from the water.

(b) *Effective Date.* This regulation becomes effective on April 16, 1992 it terminates at July 30, 1992 unless terminated sooner by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain Of The Port.

Dated: April 15, 1992.

L.J. Balok,
Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 92-13768 Filed 6-10-92; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Buffalo Regulation 92-001]

Safety Zone Regulations: Woodlawn Beach, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Lake Erie off Woodlawn Beach, NY. The zone is needed to ensure the safety of people, vessels, and aircraft participating in a joint military service airborne/seaborne amphibious assault exercise. It is also needed to protect spectator craft and other vessels from the hazards associated with the exercise. Entry into this zone is prohibited unless authorized by the Captain of the Port, Buffalo, New York, or his designated representative.

EFFECTIVE DATES: This regulation is effective from 9 a.m. to 4 p.m. on June 27, 1992 unless otherwise terminated by Captain of the Port, Buffalo, New York.

FOR FURTHER INFORMATION CONTACT: QM1 P. H. O'Keefe, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office, 111 W. Huron St., Buffalo, NY 14202-2395; telephone (716) 846-4168.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential danger to the vessels involved and to other waterway users. In preparing this regulation, local recreational fisherman were consulted. As a result, the western boundary of the safety zone was drawn inshore of Seneca Shoals, a popular fishing area.

Drafting Information

The drafters of this regulation are QM1 P. H. O'Keefe, project officer for the Captain of the Port, Buffalo, New York, and CDR M. E. Reeves, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is a joint service airborne/seaborne amphibious assault exercise centered around the USS BOULDER and simulating the assault of Woodlawn Beach on Lake Erie just south of Buffalo, NY. Amphibious assault vehicles launched from the USS BOULDER, Navy SEALS conducting water landings via parachute, and helicopters delivering additional troops to the beach are several evolutions that will be included in the exercise. A safety zone is needed to protect spectator craft and other vessels from the hazards inherent with this level and type of activity. It is also needed to ensure that the safety of the exercise is not compromised by wakes and other hazards associated with transiting vessels.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this emergency rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T0944 is added to read as follows:

§ 165.T0944 Safety Zone: Woodlawn Beach, NY.

(a) *Location.* The waters of Lake Erie within an area encompassed by the following boundaries is a safety zone: A southern boundary from the shoreline at position 42°46'48" N, 78°51'42" N, W running due west on a bearing of 270° true to position 42°46'48" N, 78°55' W. A western boundary from position 42°46'48" N, 78°55' W running due north on a bearing of 000° true to position 42°48'24" N, 78°55' W. A northern boundary from position 42°48'24" N, 78°55' W running due east on a bearing of 090° true to the intersection with the shoreline at position 42°48'24" N, 78°51'45" W, and an eastern boundary formed by the Woodlawn Beach shoreline.

(b) *Effective date.* This regulation is effective from 9 a.m. to 4 p.m. on June 27, 1992 unless otherwise terminated or revised by the Captain of the Port, Buffalo, New York.

(c) *Regulations.* In accordance with the general regulations in section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Buffalo, New York.

Dated: May 19, 1992.

G.S. Cope,

Commander, U.S. Coast Guard, Captain of the Port, Buffalo, NY.

[FR Doc. 92–13767 Filed 6–10–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 201

RIN 1810–AA63

Chapter 1—Migrant Education Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Chapter 1—Migrant Education Program, operated under subpart 1 of part D, chapter 1 of title I of the Elementary and Secondary Education Act of 1965. These amendments remove the requirement that the educational progress of migratory children be evaluated, to the extent possible, in comparison to an appropriate non-project comparison group.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of § 201.52. Section 201.52 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2149, FOB–6, Washington, DC, 20202–6135. Telephone: (202) 401–0744. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1989, final regulations for the Chapter 1—Migrant Education Program (34 CFR part 201) were published in the **Federal Register** (54 FR 43219). Sections 201.52 (b)(1), (c), and (d) and 201.54 of these regulations currently require that State educational agencies (SEAs) and local educational agencies (LEAs) use, to the extent possible, evaluation procedures that involve measurement of the educational progress of project participants against the performance of an appropriate non-project comparison group.

Since publication of the regulations, the Department has determined that the existing requirement for use of a non-project comparison group is difficult to implement for programs and projects serving migratory students.

On January 24, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (57 FR 2863). This NPRM proposed removing the requirements for non-project comparison groups from the regulations. Even without this requirement, evaluations of the migrant programs and projects would still have to be based upon objective measures of the educational progress of program participants including, if possible, the use of national or State-normed achievement tests. For this reason, the Secretary stressed in the NPRM that removing the non-project comparison requirements would not impact adversely on the Chapter 1—Migrant Education Program. Program grantees and subgrantees could, if they wish, continue to use non-project comparison groups as an option in designing and implementing evaluations of their own activities.

This change supports AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by providing flexibility while holding SEAs and LEAs accountable for results.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, the Department

received two comments. An analysis of the comments follows.

Comments: Of the two comments received, one supported and one disagreed with the change proposed in the NPRM. The commenter supporting the proposed change noted that special circumstances exist in migrant education that make identification of a comparison group inappropriate and indicated that the proposed change would improve program operations. The commenter who disagreed with the proposed change stated that reverting to a less stringent evaluation standard for migratory children was discriminatory and would have adverse future economic consequences for these children.

Discussion: The Secretary continues to believe that the requirement for evaluations to use non-project comparison groups, if possible, is unnecessary and that program accountability can be maintained adequately under the remaining evaluation requirements. The Secretary believes that this regulatory change is purely technical and will not have any discriminatory or otherwise adverse impact on migratory children.

Changes: None.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606

The Secretary certifies that these regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities because the regulations primarily affect States and State agencies, which are not defined as "small entities" under the Regulatory Flexibility Act.

The small entities that would be affected are small LEAs receiving Federal funds under this program. The regulations will remove a difficult and unnecessary requirement without imposing a significant economic impact on these small LEAs.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 201

Children, Education, Evaluation, Grant programs-education, Local educational agencies, Migratory children, Migratory workers, Reporting and recordkeeping requirements, State educational agencies.

(Catalog of Federal Domestic Assistance Number 84.011 Migrant Education Basic State Formula Grant Program)

Dated: May 8, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 201 of title 34 of the Code of Federal Regulations as follows:

PART 201—CHAPTER 1—MIGRANT EDUCATION PROGRAM

1. The authority citation for part 201 continues to read as follows:

Authority: 20 U.S.C. 2781–2782, unless otherwise noted.

2. Section 201.52 is amended by revising paragraphs (b)(1), (c), and (d) to read as follows:

§ 201.52 Evaluation information to be collected.

* * * * *

(b) * * *

(1) Objective measures of the educational progress of project participants (including educational achievement in basic skills) as measured, if possible, over a 12-month testing interval through the use of appropriate forms and levels of national or State normed achievement tests. If this is not possible, the SEA or operating agency may use other acceptable measures of educational progress of migratory children, such as changes in attendance patterns, dropout rates, and other objectively applied indicators of student achievement; and

* * * * *

(c) The evaluation design for the summer school instructional project must include objective measures of the educational progress of project participants (including educational achievement in basic skills) over the project performance period.

(d) During either the regular or summer terms, the evaluation design for any support-service components must include measures of the effects of the project on participants that are consistent with the defined support services objectives. (For example, changes in student attendance rates may be an appropriate measure of the effect of guidance and counseling services.)

* * * * *

§ 201.54 [Removed]

3. Section 201.54 is removed and reserved.

[FR Doc. 92-13709 Filed 6-10-92; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI9-1-5287; FRL-4112-S]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is approving a majority of the provisions, while disapproving certain provisions of the State of Michigan's submittal of revised particulate matter regulations. On May 17, 1985, the State submitted rules for the control of particulate matter from iron and steel sources and from other sources in the State. These rules were submitted to fulfill conditions of USEPA's May 22, 1981, approval (46 FR 27923) of the State's Part D total suspended particulates (TSP) State Implementation Plan (SIP). USEPA reviewed this submittal also for conformance with the provisions of the Clean Air Act Amendments enacted on November 15, 1990. USEPA has determined that today's action conforms with those requirements even though that submittal preceded the date of enactment.

EFFECTIVE DATE: This final rulemaking becomes effective on July 13, 1992.

ADDRESSES: Copies of the SIP revisions, public comments on the notice of rulemaking, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Christos Panos at (312) 353–8328, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.
U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Air and Toxics Radiation Branch (5AT–18J), U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590 (312) 353–8328.

SUPPLEMENTARY INFORMATION:

I. Background

On September 9, 1980, (45 FR 59329), USEPA published a notice of proposed rulemaking that identified deficiencies in Michigan's regulation for particulate matter and requested a schedule from Michigan for correcting the noted deficiencies. On May 22, 1981, (46 FR 27923), USEPA published a notice of final rulemaking which conditionally approved portions of Michigan's Part D TSP SIP. The conditional approval was based, in part, on a commitment by Michigan to adopt and submit additional or revised rules that reflect Reasonably Available Control Technology (RACT) for certain iron and steel sources (40 CFR 52.1173(b)). RACT-level emission limit and, in some cases, enforceability revisions or clarifications, were required for full USEPA approval.

On May 10, 1984, and May 24, 1984, the State of Michigan submitted draft regulations to USEPA containing proposed revisions to the particulate matter (PM) regulations. The submittal of May 10, 1984, contained initial proposed revisions for parts 1, 3, and 10 of Michigan's Administrative Rules governing air pollution control (Act 348 of 1967, as amended) applicable to PM, especially from iron and steel sources.

On May 17, 1985, the State submitted its final rules revising the regulations for particulate matter. These revised rules were effective at the State level on February 22, 1985. The majority of the revisions in the May 17, 1985, submittal were in response to USEPA's conditional approval based on the State's commitment to correct the deficiencies and adopt emission limits that represents RACT for iron and steel sources in particulate nonattainment areas.

USEPA revised the particulate matter standard on January 1, 1987 (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). Despite the new standard, at the State's request, USEPA may continue to process TSP SIP revisions which were in process at the time the PM_{10} standard was promulgated. USEPA stated that it would regard existing TSP SIPs as necessary interim plans until the approval of the State's new plans to attain the PM_{10} standard. Thus, USEPA would continue to approve revisions to the TSP plans if they contribute toward attainment of the PM_{10} standard, i.e., do not relax the TSP SIP.

On February 28, 1989 (54 FR 8354), USEPA published a notice of proposed rulemaking that proposed to approve certain sections and to disapprove other sections of the State's May 17, 1985 submittal. In response to USEPA's proposed rulemaking action, the Michigan Department of Natural Resources (MDNR), and National Steel, Great Lakes Division (Great Lakes) submitted comments. MDNR's comments focused on R336.1301, their general opacity rule. Great Lakes offered similar comments on R336.1301 and provided specific commentary on R336.1331 (Table 31, section C), R336.1352, R336.2031, and R336.2013.

On August 15, 1990, USEPA prepared a technical support document (TSD) to support a final rulemaking action. This document provides a review of comments on USEPA's proposed action, the criteria to be used in judging Michigan's rules, and a reevaluation of Michigan's rules and recommendations for final action. Copies of this TSD are available from the contact person identified above.

On November 15, 1990, the Clean Air Act Amendments of 1990 (Public Law Number 101–549) were signed into law. These Amendments designated certain areas, including a portion of Wayne County, Michigan, nonattainment by operation of law.

On February 20, 1991, an addendum to the August 1990 TSD reviewed the impact of the Clean Air Act Amendments on this rulemaking action. The addendum concluded that these amendments did not affect the criteria used to review Michigan's 1985 submittal. The rationale for this conclusion is explained in the following discussion of the general criteria used in reviewing Michigan's submittal.

II. General Criteria

The principal criterion USEPA used in the February 1989 proposed rulemaking was whether each emission limitation constituted RACT as required under section 172(b)(2) of part D of the August 1977 Clean Air Act. USEPA reviewed for RACT because this requirement was still applicable at the time Michigan submitted its revised rules on May 17, 1985. On July 1, 1987, USEPA replaced the TSP national ambient air quality standards (NAAQS) with a PM_{10} NAAQS. The promulgation replacing PM_{10} NAAQS for TSP NAAQS concluded that part D requirements no longer applied to particulate matter SIPs (52 FR 24677). Thus, the RACT requirement under part D no longer applied. However, the Clean Air Act Amendments of November 1990 amended part D to reinstate the requirement for RACT in certain designated nonattainment areas (e.g., a portion of Wayne County, Michigan). The Amendments provided further that States are required to submit implementation plans satisfying the amended part D requirements (including RACT) for these statutorily designated nonattainment areas by November 15, 1991. Michigan must submit a new plan for the Wayne County nonattainment area to satisfy amended part D requirements. Upon receipt of the plan, USEPA will then evaluate and act (approve, disapprove, or conditionally approve) upon that submittal based on the requirements of the November 1990 part D Amendments.

In this rulemaking action, USEPA concludes that Michigan's 1985 submittal as an interim plan intended to strengthen control of particulate matter in the State. USEPA is evaluating Michigan's submittal on the basis of whether it is more or less stringent than the existing SIP. This evaluation is accomplished by comparing the revised rules submitted on May 17, 1985, with the rules which were approved or conditionally approved on May 22, 1981. Thus, USEPA today is approving those revisions which would make the existing SIP more stringent and is disapproving those revisions which would make the existing SIP less stringent.

III. Discussion

The following sections discuss each of the rules in Michigan's submittal. Each section discusses the nature of the rule, the proposed action, response to comments (if any), and final evaluation of the rule underlying today's rulemaking.

A. Definitions

A variety of definition rules were included in Michigan's submittal. USEPA proposed to approve the following rules as they apply exclusively to iron and steel sources:

R 336.1101 (Definition A)
R 336.1103 (Definition C)
R 336.1106 (Definition F)
R 336.1116 (Definition P)
R 336.1119 (Definition S)

R 336.1122 (Definition V)

No adverse comments were received on these rules. Thus, in this rulemaking, USEPA is fully approving these rules as they apply to iron and steel sources.

B. Rule 336.1301 and the Associated Test Method Rules 336.1303 and 336.2004

Michigan's revision to rule 336.1301 revised the opacity limitations for sources not subject to category specific opacity limitations. Under the existing SIP, a violation is any single reading exceeding 40% opacity or more than 12 readings per hour exceeding 20% opacity. Under the revised State rule, a violation is any six-minute average opacity exceeding 27% or more than one six-minute average opacity exceeding 20%. The provision for six-minute averaging is the approach used in USEPA's opacity reading method known as Method 9, codified at title 40 of the Code of Federal Regulations, part 60 (40 CFR 60), appendix A. In its February 28, 1989, rulemaking, USEPA proposed to disapprove the revised rule on the basis that it would relax the SIP for intermittent and short-term non-stack emission sources.

The comments from both MDNR and Great Lakes Steel recommended approval of these rules. These comments include statements that (1) the rules should be approved for stack sources; (2) the opacity reading method is the same method used for new source performance standards for many similar source types; (3) separate rules exist for services warranting separate types of opacity limits; (4) a statistical analysis shows the new rule to be no less stringent than the existing rule; and (5) monitored trends of air quality improvements demonstrate that the rule does not represent a relaxation. The TSD contains a discussion of the two sets of comments and USEPA's evaluation of these comments.

A rule which provides more authority to the State to make discretionary decisions must be considered less stringent. The technical support document compares the extent of director's discretion in the revised rules as compared to the existing SIP. Most significantly, the existing SIP authorizes the State to fully exempt any source from the opacity limit, whereas the revised rule permits "exemptions" only for sources also subject to mass emissions limits and further requires that an alternate opacity limit be set. Thus, in these respects, the revised rule is clearly more stringent than the existing SIP. Therefore, USEPA is approving rule 336.1301, which provides opacity standards, and rules 336.1303 and 336.2004, which provide test methods to measure compliance with these standards.

C. Rules 336.1320 and 336.1330

No comments were received on rule 336.1320, which provides for written descriptions of compliance programs, and on rule 336.1330, which covers electrostatic precipitator equipment. Today, USEPA is taking final action to approve these rules into the Michigan SIP.

D. Rule 336.1331 (Mass Emissions Limits) and the Associated Rules on Test Methods (Part 10, Intermittent Testing and Sampling, of the May 1985 Submittal)

The May 1985 submittal modified the mass emissions limitations and source testing methods for a variety of operations listed under Table 31. USEPA previously proposed to approve some limits and to disapprove others based on whether these limits represent RACT. RACT, however, is no longer a criterion in this rulemaking action.

The test methods required to enforce rule 336.1331 are described in part 10 of Michigan's submittal, and specified in rule 336.2004, rules 336.2010 through 336.2014, and rule 336.2033. Rule 336.2004 provides a general specification of test methods for source testing, including referencing other rules in part 10. This rule adopts Methods 1 to 4, Methods 6 to 10, and Methods 24 and 25 as codified by USEPA in 40 CFR 60, appendix A. A final paragraph in rule 336.2004 states that "particulate matter emission rates for stationary sources shall be [tested with] 1 or more of" Methods 5A, 5B, 5C, 5D, 5E, and 208C, provided respectively in Rules 336.2010, 336.2011, 336.2012, 336.2013, 336.2014, and 336.2033. USEPA proposed to approve all of these rules except rule 336.2013.

Comments—USEPA proposed to disapprove rule 336.2013 because its provisions for testing pushing emissions define a testing period that includes time before the commencement of the actual pushing of coke. Great Lakes objected to this proposed disapproval. Great Lakes stated that "because the mass emissions [limit being tested against] is expressed in pounds of particulate matter per ton of coke, the measured emission rate will be accurate regardless of whether the testing begins when the coke guide and snorkels are engaged [prior to actual pushing] or when the first movement of coke occurs."

Final Evaluation—Again, the key criterion in evaluating these rules is whether they are at least as stringent as the previous rules as incorporated in the existing SIP. This evaluation compares the numerical limit (provided in rule 336.1331) and the test method (provided in part 10) with the emissions limits in the existing SIP as tested with existing SIP test methods.

Upon consideration of Great Lakes' comments and further review of Michigan's rules, USEPA concurs with Great Lakes' comments. Rule 336.2013 is enforcing a limit expressed in total pounds of emissions per ton of coke. Therefore, "dilution" of the test sample with clean air prior to actual pushing does not affect the calculated mass emissions rate used to determine compliance. Thus, USEPA is approving rule 336.2013 into the Michigan SIP in this rulemaking action.

A few limits in the revised rules are less stringent than the existing SIP. Quench towers are given a choice of limits in Table 31 of rule 336.1331. This table shows a limit of 1500 milligrams of total dissolved solids per liter (mg TDS/1) of quench water or 1500 mg TDS/1 in the makeup water. That is, Table 31 provides that the 1500 mg TDS/1 limit must be met in either the quench water or the makeup water, but need not be met both places. Rule 336.2033, which provides the test methods for enforcing this rule, suggests that the limit has to be met in the quench water but is ambiguous.

Makeup water is commonly much cleaner than quench water. Therefore, the choice of meeting the limits in the makeup water allows substantially more emissions than if the limit had to be met in the quench water. The result is a limitation which is less stringent than the process weight rate limitation in the existing SIP. USEPA disapproves rule 336.1331, Table 31, as it applies to emission limits for quench towers.

Michigan's 1985 submittal deletes limits for three source types subject to the State's 1980 rules. Two of these three deleted limits, specifically the limits for open hearth furnaces and for heating and reheating furnaces, were not approved as part of the existing SIP. Thus, approval of deleting these State limits clearly would not make the existing SIP any less stringent. However, the deletion of the limit for coke oven coal preheater equipment constitutes a relaxation. A specific emissions limitation for this type of facility was conditionally approved as part of the existing SIP. Thus, USEPA is disapproving the deletion of the limit for coke oven coal preheater equipment.

Table 31 of rule 336.1331 provides mass emissions limits for new sinter plants. These limits will generally be

superfluous, since new source review requirements will generally impose stricter limits. Nevertheless, since these limits make the SIP more stringent, and since these limits do not conflict with other requirements, USEPA approves these limits.

USEPA also compared the revised test methods against the prior test methods. Methods 5A, 5B, and 5C, now incorporated in rules 336.2010 through 336.2012, were also included in the existing SIPs and had essentially identical provisions. Methods 5D, 5E and 208C, incorporated respectively in rule 336.2013, rule 336.2014, and rule 336.2033, are new rules with new provisions.

Methods 5A, 5B, and 5C as found in the existing SIP contain a variety of provisions for State discretionary alternatives. Some of the alternatives authorized are questionable and make the test methods less effective. However, Michigan's 1985 submittal does not add any new provisions for such State discretion. Thus, these methods are not less stringent than the existing SIP and are therefore approvable.

Method 5D (rule 336.2013) provides a variety of specific instructions for testing emissions at each of several steelmaking operations. These instructions assure that the testing periods conform to the periods of actual emissions and that the testing effectively evaluates emissions from the affected facilities. The rule serves to authorize filter temperatures similar to the existing SIP. This rule clarifies test procedures for these operations and averts tests that reflect inappropriate combinations of emitting and non-emitting periods. After reviewing the comments, USEPA concurs with Great Lakes Steel that inclusion of time prior to actual pushing does not reduce the stringency of the pushing limit. Overall, this rule adds to the stringency of the existing SIP. Thus, USEPA approves rule 336.2013 in this rulemaking action.

Method 5E (rule 336.2014) describes a procedure for determining emissions from positive pressure fabric filters. This rule authorizes Michigan to approve various alternatives at its discretion. However, these provisions of State discretion are the same provisions present in the existing SIP. Consequently, Method 5E does not result in a relaxation of the SIP. Thus, USEPA approves rule 336.2014 in this rulemaking action.

In summary, USEPA is approving most of rule 336.1331 and its associated testing rules. USEPA is disapproving the limit for coke oven quench towers (item C.8 of Table 31) and the deletion of the limit for coke oven coal preheater equipment, because these are relaxations of existing limits. For the rest of rule 336.1331, USEPA approves the numerical emissions limits which, in combination with the appropriate testing methods, are at least as stringent as the existing SIP. Thus, USEPA is also approving rule 336.2004, rules 336.2010 through 336.2014, rule 336.2021, and rule 336.2033 because they provide the necessary test methods to measure the limits approved in rule 336.1331.

E. Rules 336.1350 Through 336.1367—Visible Emissions Limits

Rules 336.1350 through 336.1367 provide visible emissions limits for a variety of iron and steel facilities. The first eight of these rules concern coke oven emissions points. Rule 336.1350 limits the duration of visible emissions from larry-car charging of coke ovens to 100 seconds per four charges. Rule 336.1351 prohibits emissions from more than 4% of charging holes. Rule 336.1352 limits visible emissions from pushing and from travel of the coke-receiving car to 25% opacity, except that 1 in 8 pushes and 1 in 8 trips of the coke-receiving car may exceed that limit. Rule 336.1353 prohibits visible emissions during coking from more than 4% of the emission points in standpipe assemblies. Rule 336.1354 requires that standpipe lids be closed during decarbonization on ovens more than three ovens ahead of the oven being pushed. Rule 336.1355 generally prohibits visible emissions from the gas collector main. Rule 336.1356 provides that for coke oven doors of 5 meters or less, visible emissions are limited to 10% of the pushside doors, cokeside doors, or leveling doors. Rule 336.1357 provides that for coke oven doors of more than 5 meters, visible emissions are not permitted from more than 12% of the pushside doors or cokeside doors or 10% of the leveling doors.

Rules 336.1358 through 336.1367 provide opacity limits at other iron and steel making facilities. The rules subject facilities, and opacity limits are:

	Percent
Rule 336.1358—Roof monitors for electric arc furnaces and blast furnaces	20
Rule 336.1359—Scarfer operation stacks	25
Rule 336.1360—Coke oven push stacks	20
Rule 336.1361—Blast furnace casthouses	10
Rule 336.1362—Electric arc furnace stacks	10
Rule 336.1363—Argon-oxygen decarburization stacks	10
Rule 336.1364—Basic oxygen furnaces	20
Rule 336.1365—Hot metal transfer	20
Rule 336.1366—Hot metal desulphurization	20
Rule 336.1367—Sintering	20

The test methods used in enforcing rules 336.1350 to 336.1367 are provided in rule 336.2004(1)(h) and rules 336.2030 through 336.2032. Rule 336.2004(1)(h) is Method 9, with no authorization for Commission-approved alternatives. Rule 336.2030 provides Method 9A, which states that opacity measurements at scarfer operations shall reflect an average of six observations (90 second averaging). Rule 336.2031 provides Method 9B, which specifies procedures for reading opacity at coke ovens for charging, door leaks, charging port leaks, standpipe leaks, and pushing. Rule 336.2032 provides Method 9C, which specifies 12 observations (3 minute averaging) for opacity measurements at basic oxygen furnaces, hot metal transfer, and hot metal desulphurization.

In its February 1989 rulemaking, USEPA proposed to approve rule 336.1350, rule 336.1351, rules 336.1353 through rule 336.1357, and the associated test methods described in rules 336.2030 and 336.2032. USEPA also proposed to approve rule 336.1349 which provided compliance dates. USEPA proposed to disapprove rule 336.1352 in combination with rule 336.2031. Rule 336.1352 prescribed the visible emission limit while rule 336.2031 prescribed the test method to measure such limit.

Comments—USEPA proposed to disapprove rules 336.1352 and 336.2031 because the limit and the test method did not clarify whether opacity observations for pushing include observations during travel i.e., transit of the coke receiving car toward the quench tower. MDNR and Great Lakes commented that these rules have adequate clarity and urged their approval.

Final Evalution—USEPA reviewed rules 336.1352 and 336.2031 again for clarity. Within rule 336.2031, section (e)(v) provides the method for evaluating "fugitive visible emissions during the pushing of coke into the coke receiving car," and section (e)(vi) provides the method for evaluating "fugitive visible emissions during transit of the coke." Rule 336.2031(e)(v)(B) explicitly states: "[T]he reading shall commence when the coke begins to fall into the coke receiving car and shall end with the sixth reading." Given the typical duration of pushing, the sixth reading and perhaps the fifth and fourth readings will commonly occur during travel of the coke car, i.e., the explicit language of the rule for "pushing" commonly provides for a few readings during transit of the coke car as well as during actual pushing.

Michigan has opacity limits for travel that are separate from, but equal to, the opacity limits for pushing. A question may be raised whether some opacity observations are to be used for both activities. Section (e)(vi)(A) of rule 336.2031 states that opacity measurements for travel "shall be based on as many consecutive readings as are possible during transit." Section (e)(vi)(B) limits relevant readings to those "after the car leaves the hood until the car enters the quench tower." Collectively, these sections indicate that readings during compliance evaluation for travel could include readings during compliance evaluation for pushing. Accordingly, USEPA finds these provisions to be sufficiently clear as they relate to both rules, 336.1352 and 336.2031.

Thus, USEPA is approving rule 336.2031 and rule 336.1352 (both as submitted in May 1985) in today's rulemaking action.

The technical support document describes a concern with rule 336.1553. In particular, this rule appears less stringent than the rule in the SIP because of an ambiguous limit that is expressed as a percentage of emissions points rather than as an absolute number of emissions points. However, this ambiguity is also present in the existing SIP. Thus, rule 336.1153 is not less stringent than the existing SIP.

For rule 336.1355, which regulates coke oven gas collector mains, USEPA is concerned about the addition of exemptions relative to the existing SIP. Of particular concern is the unlimited authorization of emissions from emergency relief valves. Although limited emissions from these valves are acceptable, similar to the limited emissions which are tolerated from malfunctions, Rule 336.1355 would allow these emissions to be unlimited. Therefore, USEPA is disapproving rule 336.1355 in today's rulemaking action.

After comparing their provisions to the existing SIP, USEPA finds that Rules 336.1349 through 336.1354, rules 336.1356 through 336.1367, and rules 336.2030 through 336.2032 provide acceptable emissions limits, represent limits that are as stringent or more stringent than Michigan's prior limits, and do not allow the State less stringent alternative test methods or alternative limits. For these reasons, USEPA is approving these rules in today's rulemaking.

IV. Summary of USEPA's Final Rulemaking Action

Based upon the comments received, and USEPA's final evaluation of Michigan's 1985 submittal, USEPA is disapproving the following rules: (1) The quench tower limit in rule 336.1331, Table 31, section C.8, because allowing water quality limits to apply only to make up water yields a relaxation; (2) the deletion of the limit in rule 336.1331 for coke oven coal preheater equipment, because it represents a relaxation, and (3) rule 336.1355, because it provides an unlimited exemption for emissions from emergency relief valves in coke oven gas collector mains.

The USEPA is approving all the other rules included in the State's May 17, 1985, submittal, as identified below:

336.1101 336.1103 336.1106 336.1116 336.1119 336.1122 336.1301 336.1303 336.1320 336.1330 336.1331[1] 336.1349 336.1350 336.1351 336.1352 336.1353 336.1354 336.1356 336.1357 336.1358 336.1359 336.1360 336.1361 336.1362 336.1363 336.1364 336.1365 336.1366 336.1367 336.2004 336.2010 336.2011 336.2012 336.2013 336.2014 336.2021 336.2030 336.2031 336.2032 336.2033

The final approval of these rules also means that USEPA is lifting the conditions on the proposed approval of Michigan's Part D SIP for particulate matter (46 FR 27923).

V. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). The Office of Management and Budget also has exempted this action from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

Under 5 U.S.C. 605(b), the Administrator has certified that the disapproval in this action will not have a significant economic impact on small entities because it imposes no new requirements on any entity.

[1] Except for those items identified in the previous paragraph as being disapproved.

List of Subjects in 40 CFR Part 52

Air pollution control, Ambient standard, Environmental protection, Incorporation by Reference, Intergovernmental relations, Iron and steel, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for State of Michigan was approved by the Director of the Federal Register on July 1, 1982.

Note: This document was received at the Office of the Federal Register on June 8, 1992.

Dated: December 31, 1991.

Valdas V. Adamkus,

Regional Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(91) to read as follows:

§ 52.1170 Identification of plan.

(c) * * *

(91) On May 17, 1985, the State submitted revised rules for the control of particulate matter from iron and steel sources and from other sources in Michigan. These rules were submitted to fulfill conditions of USEPA's May 22, 1981, approval (46 FR 27923) of the State's part D total suspended particulates (TSP) State Implementation Plan (SIP). USEPA is approving these revised rules in the Michigan submittal except for the following provisions: The quench tower limit in rule 336.1331, Table 31, Section C.8, because allowing water quality limits to apply only to makeup water is a relaxation; the deletion of the limit in rule 336.1331 for coke oven coal preheater equipment, because it is a relaxation, and rule 336.1355, because it provides an unlimited exemption for emissions from emergency relief valves in coke oven gas collector mains.

(i) Incorporation by reference.

(A) Revision to parts 1, 3, and 10 of Michigan's administrative rules for air pollution control (Act 348 of 1967, as amended) as adopted by the Michigan Air Pollution Control Commission on

December 18, 1984. These rules became effective in Michigan on February 22, 1985.

[FR Doc. 92-13798 Filed 6-10-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 272

[FRL-4141-8]

Idaho; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Idaho has applied for final authorization of its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Idaho's application and has made a decision, subject to public review and comment, that Idaho's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Idaho's hazardous waste program revision. Idaho's application for program revision is available for public review and comment.

DATES: Final authorization for Idaho's program revision shall be effective August 10, 1992 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. The incorporation by reference of certain publications listed in the regulations are approved by the Director of the Federal Register as of August 10, 1992. All comments on Idaho's program revision application must be received by the close of business July 13, 1992.

ADDRESSES: Copies of Idaho's program revision application are available Monday through Friday, 8 a.m. to 5 p.m., at the following locations for inspection and copying: Idaho Department of Health and Welfare, Division of Environmental Quality, Planning and Evaluation Division, 1410 N. Hilton, Boise, Idaho 83706, phone, (208) 334-5879 and the U.S. EPA, Region 10, Library, 1200 6th Avenue, Seattle, WA, 98101, phone, (206) 553-1289. Written comments should be sent to Nina Kocourek, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail Stop HW-107, Seattle, WA 98101; phone, (206) 553-6502.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. EPA, Region 10, 1200 Sixth Avenue., Mail Stop HW-107, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to the State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266, 268, 124 and 270.

B. Idaho

Effective on April 9, 1990, Idaho received final authorization for the base, non-HSWA and HSWA requirements promulgated as of July 1, 1987 and interim authorization for those HSWA corrective action provisions of Section 3004(u), promulgated as of July 7, 1987 (see 55 FR 11015 dated March 26, 1990). Effective on June 5, 1992, Idaho received final authorization for those HSWA corrective action provisions of Section 3004(u) promulgated as of July 7, 1987 (see 57 FR 11580 dated April 6, 1992). On March 10, 1992, Idaho submitted its program revision application for those HSWA and non-HSWA federal provisions promulgated during the period July 1, 1990. Today, Idaho is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Idaho's application, and has made an immediate final decision that Idaho's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Idaho. The public may submit written comments on EPA's immediate final decision up until July 13, 1992. Copies of Idaho's application for this program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Idaho's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If a relevant adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Idaho's revision application includes all those HSWA and non-HSWA federal provisions promulgated during the period July 1, 1987 to July 1, 1990. To insure state consistency with federal regulations, the Idaho Board of Health and Welfare's regulatory rule-making incorporated by reference those delegable Federal Regulations in 40 CFR parts 124, 260-266, 268, and 270 that were promulgated and codified in the Code of Federal Register, as of July 1, 1990. Thus, at this time, the State is not seeking authorization for any changes made to the Federal program after July 1, 1990. Therefore, the scope, structure, coverage and processes of the Idaho hazardous waste management program is virtually identical to the federal provisions through July 1, 1990.

The more substantive changes included in this revision application are: the Toxicity Characteristic Leaching Procedures (TCLP) Rule, Mining Waste Rule, Land Disposal Restriction (LDR) Rule, Permit Modification Rule and Subpart X Rule. These regulatory changes were advertised through statewide media prior State law adoption. The regulatory changes in this program revision became State regulations effective on March 6, 1991.

As part of the requirements for a State to have an authorized hazardous waste program, a State must meet the RCRA section 3006(f) availability of information requirements in "substantially the same manner, and to the same degree" as EPA. Included as part of Idaho's initial base authorization approval EPA determined that the State of Idaho's hazardous waste public availability information regulation (IDAPA 16.01.5750) was equivalent to RCRA section 3006(f). On July 1, 1990 the State of Idaho Public Records Act (House Bill 860) and repealed IDAPA 16.01.5750. EPA has determined that the Idaho Public Records Act (Idaho Code Sections 9-337 *et seq.*) meets the requirements of RCRA Section 3006(f). Pursuant the Idaho Public Records Act the Idaho Department of Health and Welfare, Legal Services Division, has

developed and published the "Guidelines for Public Records" adopted December 31, 1990 revised March 7, 1991, specifying the public record procedures and fees for the Department.

This program revision will not authorize the State to operate the RCRA program over any Indian lands; this authority remains with EPA.

C. Decision

I conclude that Idaho's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Idaho is granted final authorization to operate its hazardous waste program as revised.

Idaho now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Idaho also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize Idaho's program and for incorporation by reference of those provisions of Idaho's statutes and regulations that EPA will enforce under section 3008 of RCRA. Therefore, EPA is amending § 272.651.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Idaho's program, thereby eliminating duplicate requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 1, 1992.

Dana A. Rasmussen,

Regional Administrator.

For reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart N—Idaho

2. Section 272.650 is amended by revising paragraphs (a) and (b) to read as follows:

§ 272.650 State authorization.

(a) The State of Idaho is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 et seq., subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), (Pub. L. 98–616, Nov. 8, 1984), 42 U.S.C. 6926 (c) and (g)). The Federal program for which a State may receive authorization is defined in 40 CFR part 271. The State's program as administered by the Idaho Department of Health and Welfare, was approved by EPA pursuant to 42 U.S.C. 6926 (b) and (g) and part 271 of this chapter. EPA's initial approval of Idaho's program for the base, HSWA and non-HSWA provisions promulgated as of July 1, 1987, was effective on April 9, 1990 (see 55 FR 11015 dated March 26, 1990). EPA's approval of Idaho's corrective action program for those provisions promulgated as of July 1, 1987 was effective on June 5, 1992 (see 57 FR 11580 dated April 6, 1992).

(b) Idaho is not authorized to implement any other HSWA requirements promulgated after June 30, 1990, in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a **Federal Register** notice granting Idaho authorization.

* * * * *

3. Section 272.651 is revised to read as follows:

§ 272.651 State-administered program: Final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b): Idaho has final authorization for the following elements submitted to EPA in Idaho's program application for final authorization and approved by EPA effective on April 9, 1990; revision application for final authorization of the corrective action provisions approved by EPA effective on June 5, 1992; and revision application for final authorization and approval by EPA effective on August 10, 1992.

(a) *State Statutes and Regulations.*

(1) The requirements in the Idaho statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et. seq.* This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587. Copies may only be inspected at the U.S. EPA, Office of Solid Waste, The RCRA Docket, room 2427, 401 M Street SW., Washington DC; The Office of Federal Register, 1100 "L" Street NW., room 8401, Washington, DC; U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA; and at the Idaho Department of Health and Welfare, Administrative Procedures Section, 1410 N. Hilton, Boise, ID.

(i) Statutory authority is vested in the State of Idaho, Board of Health and Welfare, by the Hazardous Waste Management Act of 1983 (HWMA). This includes the following statutes as contained in Chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.), General Laws of Idaho Annotated, Volume 7A, published in 1985 by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4406; 39–4407; 39–4412; 39–4416; 39–4421; and 39–4429 as contained in the 1991 Cumulative Pocket Supplement, Idaho Code, Volume 7A republished in September 1991; by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4403; 39–4404; 39–4405; 39–4408; 39–4409; 39–4410(3); 39–4411 [effective until July 1, 1993]; 39–4411 [effective July 1, 1993]; 39–4423; 39–4424; and 39–4429.

(ii) The following are the Idaho Department of Health and Welfare Rules and Regulations, as contained in title 1, chapter 5, "Rules, Regulations

and Standards for Hazardous Waste" (hereinafter referred to as the "IDHW Regulations"), in effect as of March 6, 1991, are part of the approved program under RCRA: IDHW Regulations, Sections: 16.01.5000; 16.01.5001; 16.01.5002; 16.01.5003; 16.01.5004; 16.01.5005; 16.01.5006; 16.01.5007; 16.01.5008; 16.01.5009; 16.01.5010; 16.01.5011; 16.01.5012; 16.01.5013; 16.01.5356; and appendix A.

(2) The following statutes are not incorporated herein for enforcement purposes although are part of the authorized state program. These statutes are as contained in chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.), General Laws of Idaho Annotated, Volume 7A, published in 1985 by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4413 ("Enforcement Procedures"), I.C. 39–4414 ("Remedies") and I.C. 39–4415 ("Violations Constituting Misdemeanors"); and as contained in the 1991 Cumulative Pocket Supplement Idaho Code, Volume 7A republished in September 1991; by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4413 ("Enforcement procedures"). The additional statutes are also not incorporated herein for enforcement purposes, although are part of the authorized state program. These statutes are as contained in Chapter 3 "Public Writings", Section 9 of the Idaho Code (I.C.), General Laws of Idaho Annotated, Volume 2, published in 1990 by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 9–337 *et seq.*; and as contained in the 1991 Pocket Supplement Idaho Code (I.C.), Volume 2, published in 1991; by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 9–337 *et seq.*

(3) The following statutes and regulations concerning routing of hazardous waste shipment are "broader in scope" than the Federal program, and are not incorporated herein for enforcement purposes and are not part of the authorized program, but remain part of the State hazardous waste program requirements. The statutes are as contained in chapter 44 "Hazardous Waste Management", Section 39 of the Idaho Code (I.C.), General Laws of Idaho Annotated, Volume 7A, published in 1985 by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4410 (1), (2), (4), (5), and (6); and as contained in the 1991 Cumulative Pocket Supplement, Volume 7A, republished September 1991; by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4410 (1), (2), (4), and (5); and the regulations as contained in title 1, chapter 5, "Rules, Regulations and Standards for Hazardous Waste", in effect as of March 6, 1991, hereinafter referred to as "IDHW Regulations" are: IDHW Regulations section 16.01.5500, 01 and 02.

(b) Memorandum of Agreement. The Memorandum of Agreement between EPA Region 10 and Idaho Department of Health and Welfare signed by the EPA Regional Administrator on March 25, 1992, is part of the authorized hazardous waste management program under Subtitle C of RCRA 42 U.S.C. 6921 *et seq.*

(c) *Statement of legal authority.* The Idaho Attorney General's Statement for Final Authorization for the Federal RCRA Program through June 30, 1987, signed by the Attorney General of Idaho on July 5, 1988; letter amending and supplementing the July 5, 1988 Attorney General Statement, signed by the Attorney General of Idaho on July 3, 1989; and Idaho's Revised Attorney General's Statement for Final Authorization for changes to the Federal RCRA Program from July 1, 1987 through June 30, 1990, signed by the Attorney General of Idaho on February 13, 1992, are part of the authorized hazardous waste management program under Subtitle C of RCRA 42 U.S.C. 6921 *et seq.*

(d) *Program description.* Program descriptions dated July 1988, and revised November 1991 and any other materials submitted as part of the original application or as supplements thereto are part of the authorized hazardous waste management program under Subtitle C of RCRA 42 U.S.C. 6921 *et seq.*

[FR Doc. 92–13773 Filed 6–10–92; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 281

[FRL–4142–7]

Maine; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Maine's application for final approval.

SUMMARY: The State of Maine has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Maine's application and has reached a final determination that Maine's underground storage tank program satisfies all the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Maine to operate its program.

EFFECTIVE DATE: Final approval for Maine shall be effective at 1 p.m. on July 13, 1992.

FOR FURTHER INFORMATION CONTACT: Rhona Julien, Office of Underground Storage Tanks, HPU–7, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203, 617/573–9655.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve state underground storage tank programs to operate in a state in lieu of the Federal underground storage tank program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program, and (2) provide for adequate enforcement section 9004(a) of RCRA, 42 U.S.C. 6991c(a).

On August 1, 1991, EPA acknowledged receiving from the State of Maine a complete official application to obtain final approval to administer its underground storage tank program. On February 24, 1992, EPA published a tentative decision announcing its intent to grant Maine final approval of its program. Further background on the tentative decision to grant approval appears at 57 FR 6302, February 24, 1992.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel for lack of public interest. Since there was no public request, the public hearing was canceled. No public comments were received regarding EPA's approval of Maine's underground storage tank program.

B. Decision

I conclude that the State of Maine's application for final approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA. Accordingly, Maine is granted final approval to operate its underground storage tank program. The State of Maine now has the responsibility for managing all regulated underground storage tank facilities within its borders and carrying out all aspects of the Federal underground storage tank program except with regard

to Indian lands where EPA will have regulatory authority. Maine also has primary enforcement responsibility, although EPA retains the right to conduct enforcement actions under section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain federal regulations in favor of the State of Maine's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks within the State. It does not impose any new burdens on small entities. This rule, therefore, does not require flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous substances, Insurance, Intergovernmental relations, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

(Authority: Section 9004 of the Solid Waste Disposal Act as amended (SWDA), 42 U.S.C. 6991c, section 2002(a) of SWDA, 42 U.S.C. 6912(a) and section 7004(b) of SWDA, 42 U.S.C. 6974(b).

Dated: June 4, 1992.

Julie Belaga,

Regional Administrator.

[FR Doc. 92-13775 Filed 6-10-92; 8:45 am]

BILLING CODE 6560-60-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-38

[FPMR Amendment G-97]

U.S. Government License Plates

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation adds the license plate code DECA for the Defense Commissary Agency and changes the designation of the Veterans Administration to the Department of Veterans Affairs. These actions are required because of the establishment of the Defense Commissary Agency under the Department of Defense and the establishment of the Department of Veterans Affairs as an executive department. This amendment will allow the Defense Commissary Agency to procure motor vehicle license plates showing the code designation DECA. The code designation for the Department of Veterans Affairs will be VA, the same code that was assigned to the Veterans Administration.

EFFECTIVE DATE: June 11, 1992.

FOR FURTHER INFORMATION CONTACT: Michael W. Moses, Sr., Fleet Management Division (FBF), (commercial) 703 305-6273, (FTS) 365-6273.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

On October 1, 1991, the Department of Defense reorganized the U.S. Army, Navy, Marine Corps, and Air Force commissary systems into the Defense Commissary Agency (DeCA).

Federal Property Management Regulations (FPMR) 101-38.202-4 provides letter codes for official U.S. Government tags. These letter codes designate the agency having accountability for the motor vehicle. FPMR 101-38.202-5 provides for the issuance of additional codes by the General Services Administration upon written request by an executive agency. On October 31, 1991, the Federal Supply Service, GSA, received a request from the Defense Commissary Agency to issue a letter code designation of "DECA". This request was endorsed by the Office of the Assistant Secretary of Defense for Transportation Policy.

List of Subjects in 41 CFR Part 101-38

Government property management, Motor vehicles.

For the reasons set forth in the preamble, 41 CFR part 101-38 is amended as follows:

PART 101-38—MOTOR EQUIPMENT MANAGEMENT

1. The authority citation for part 101-38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101-38.2—Registration, Identification, and Exemptions

2. Section 101-38.202-4 is revised to read as follows:

§ 101-38.202-4 Numbering and coding.

Official U.S. Government tags, except tags issued by the District of Columbia, Department of Transportation under § 101-38.203-1, shall be numbered serially for each executive agency, beginning with 101, and shall be preceded by a letter code designating the agency having accountability for the motor vehicle as follows:

ACTION	ACT
Agriculture, Department of	A
Air Force, Department of	AF
Army, Department of the	W
Commerce, Department of	C
Consumer Product Safety Commission.	CPSC
Corps of Engineers, Civil Works	CE
Defense Commissary Agency	DECA
Defense Contract Audit Agency	DA
Defense, Department of	D
Defense Logistics Agency	DLA
District of Columbia Redevelopment Land Agency.	LA
Education, Department of	ED
Energy, Department of	E
Environmental Protection Agency	EPA
Executive Office of the President Council of Economic Advisors, National Security Council, Office of Management and Budget	EO
Export-Import Bank of the United States.	EB
Federal Communications Commission	FC
Federal Deposit Insurance Corporation.	FD
Federal Emergency Management Agency.	FE
Federal Home Loan Bank Board	FB
Federal Mediation and Conciliation Service.	FM
Federal Reserve System	FR
Federal Trade Commission	FT
General Accounting Office	GA
General Services Administration	GS
Government Printing Office	GP
Health and Human Services, Department of.	HHS
Housing and Urban Development, Department of.	H
Interagency Fleet Management System, GSA.	G
Interior, Department of the	I
Interstate Commerce Commission	IC
Judicial Branch of the Government	JB
Justice, Department of	J
Labor, Department of	L

Legislative Branch	LB
National Aeronautics and Space Administration	NA
National Capital Housing Authority	NH
National Capital Planning Commission	NP
National Guard Bureau	NG
National Labor Relations Board	NL
National Science Foundation	NS
Navy, Department of the	N
Nuclear Regulatory Commission	NRC
Office of Personnel Management	OPM
Panama Canal Commission	PC
Railroad Retirement Board	RR
Renegotiation Board	RB
Securities and Exchange Commission	SE
Selective Service System	SS
Small Business Administration	SB
Smithsonian Institution	SI
National Gallery of Art	
Soldiers' and Airmen's Home, U.S.	SH
State, Department of	S
Tennessee Valley Authority	TV
Transportation, Department of	DOT
Treasury, Department of the	T
United States Information Agency	IA
United States Postal Service	P
Department of Veterans Affairs	VA

Note: This document was received at the Office of the Federal Register on June 8, 1992.

Dated: March 12, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-13748 Filed 6-10-92; 8:45 am]

BILLING CODE 6820-24-M

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41 CFR Part 101-38

[FPMR Amendment G-96]

Transportation and Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the Federal Property Management Regulations to prescribe the use of revised Standard Form (SF) 97, The United States Government Certificate to Obtain Title to a Vehicle and to reflect the canceling of SF 97A, Agency Record Copy of The United States Government Certificate of Release of a Motor Vehicle. The revised form will provide a standardized document to be used by most Federal activities when transferring title to Government-owned motor vehicles and will amend the odometer mileage disclosure statement on the SF 97 to comply with 49 CFR part 580.

EFFECTIVE DATE: June 11, 1992.

FOR FURTHER INFORMATION CONTACT: Michael W. Moses, Sr., Fleet Management Division, commercial 703-305-6273 or FTS 365-6273.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the lease net cost to society.

The National Highway Traffic Safety Administration (NHTSA) amended 49 CFR part 580, Odometer Disclosure Requirements, on August 5, 1988, to implement the Truth in Mileage Act of 1986, Public Law 99-579. The act requires that the seller or transferor make a specific, written disclosure as to the mileage of a motor vehicle upon transfer of ownership. The act also requires that the title document be manufactured by a secure process to deter counterfeiting or alterations. On August 30, 1989, NHTSA amended 49 CFR part 580 again to clarify responsibilities of all parties in conjunction with the disclosure of odometer mileage information and to define certain aspects of the regulation. As a result of these changes, the odometer disclosure statement on the current version of the SF 97 (dated 7/79) is being revised to comply with the new requirements set forth in 49 CFR part 580.

The American Association of Motor Vehicle Administrators (AAMVA) has requested that GSA address problems encountered by individual States involving titling of motor vehicles from Federal Government activities. Specific AAMVA recommendations included (1) the SF 97 be the only document used by the Federal Government to transfer ownership; (2) the form be printed on secure paper; and (3) the revised odometer statement be included on the form.

After coordination with representatives from NHTSA and AAMVA, the form has been re-titled to read: "The United States Government Certificate to Obtain Title to a Vehicle." The form will be printed on 4-part continuous feed paper with a tear-off margin. The form will be produced by means of a secure printing process, such as intaglio steel plate printing. The form will be serially numbered with pre-printed numbers and will be stocked as an accountable form. The form will be requisitioned, stocked, and issued by the using activity's accountable officer. The form is redesigned to omit unneeded information, to reformat information blocks, and to include the revised odometer disclosure statement required by NHTSA.

The SF 97A, Agency Record Copy of The United States Government Certificate of Release of a Motor Vehicle, is canceled. Copies 2, 3, and 4 of the revised SF 97 will replace the SF 97A.

The General Services Administration published a notice in the **Federal Register** on August 2, 1990 (55 FR 31442) indicating our intent to revise the form and to solicit comments from all interested parties. As a result of this notice, GSA received five comments.

One comment from a private citizen stated that "The United States of America" should be used throughout the text and form instead of "The United States Government." This suggestion was rejected based upon the need to reflect an administration or system establishing policy for governing the country rather than the country itself. The remaining comments were submitted by Federal agencies. One of the comments questioned what would be entered as the odometer reading if the actual mileage is in excess of the mechanical limits of the odometer. In that instance, the actual mileage showing on the odometer would be entered in the odometer reading block on the form and the statement "I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits" would be checked to indicate that the odometer has reached its limit and started over at "0" again. Another comment questioned the practice of printing the transferor's and transferee's name rather than typing each name. The act of actually printing these names and not typing them is required by NHTSA to allow additional means of identification of individuals signing this form.

Another comment stated that an assumption is made that the transferor would actually be the Federal activity owning the vehicle. In this instance, the suggestor states that it would be more appropriate to entitle the block in question "Transferor's Agent Signature" or "Transferor's Representative Signature" rather than "Transferor's Signature." The terms "agent" or "representative" connote an individual with a contract or agreement with the Government acting for the Government; and thus, such individual could be held personally liable for an act. Contrarily,

the "transferor" would be acting on behalf of the Government by virtue of his or her position or title. We believe that it would be in the best interest of the transferor, the transferee, and the Government to leave the block titles as they are. The last comment stated that the phrase "warning, odometer discrepancy" which follows the statement "I hereby certify that the odometer reading is not the actual mileage" should be in upper case and in bold type. The form was modified to reflect this change.

During October 1990, representatives from GSA's Fleet Management Division met with AAMVA representatives to discuss the final configuration of the form. Comments generated by the **Federal Register** notice were reviewed along with additional concerns of AAMVA's subcommittee on Federal and State titling problems. The AAMVA representatives requested that the form not be used for vehicles which are not legal for operation on highways or for vehicles that are designed specifically for other than highway use. GSA agreed that the form should only be used when Government-owned motor vehicles are sold to parties who intend to title the vehicle for operation on highways. Other vehicles and equipment not intended to be titled by State activities will be sold by the Federal Government using an appropriate bill of sale or award document, such as Optional Form 16, Sales Slip-Sale of Government Personal Property, or SF 114, Sale of Government Property-Bid and Award. GSA also endorsed the AAMVA suggestion that the title of the transferor be included on the form.

The use of the SF 97 will be mandatory for all executive agencies of the Federal Government, independent Federal establishments, and Government corporations. Additionally, the U.S. Postal Service has indicated that the SF 97 will be used exclusively when disposing of Postal Service motor vehicles which will be titled by a State motor vehicle administration.

List of Subjects in 41 CFR Part 101–38

Government property management, Motor vehicles.

For the reasons set forth in the preamble, 41 CFR part 101–38 is amended as follows:

PART 101–38—MOTOR EQUIPMENT MANAGEMENT

1. The authority citation for part 101–38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. Section 101–38.701 is revised to read as follows:

§ 101–38.701 Transfer of title for Government-owned motor vehicles.

(a) When disposing of a Government-owned vehicle, all executive agencies shall comply with the provisions listed below for transfer of ownership:

(1) All Government-owned motor vehicles to be titled by State motor vehicle activities shall be transferred by executing Standard Form (SF) 97, The United States Government Certificate to Obtain Title to a Vehicle. The use of this form in foreign countries is optional.

(2) SF 97 will be used only when motor vehicles owned by the Government are sold to parties who intend to title the vehicle for operation on highways. Vehicles that are either not designed to operate on highways or are deemed as not legal for operation on highways will be conveyed using an appropriate bill of sale or award document, such as Optional Form 16, Sales Slip-Sale of Government Personal Property, or SF 114, Sale of Government Property-Bid and Award. Vehicles commonly included in this category include construction equipment, farm machinery, and certain military design vehicles.

(3) All SF 97 certificates and copies shall be stocked as an accountable form and serially numbered with pre-printed numbers assigned by the printing activity. Each agency shall have an accountable officer who will be responsible for the requisition, storage, and issuance of SF 97. Certificates showing erasures or strikeovers may be considered invalid by State motor vehicle agencies and may not be honored. Proper precautions shall be exercised by agencies to prevent blank copies of SF 97 from being obtained by unauthorized persons.

(4) Standard Form 97 is a 4-part set printed on continuous feed paper. The original certificate is produced on secure paper to readily identify any attempt to alter the form. Upon completion, the original SF 97 shall be furnished to the purchaser or donee. One copy of SF 97 shall be furnished to the owning agency. Another copy of the SF 97 shall be furnished to the contracting officer of the agency effecting the sale or transfer of the motor vehicle. The disposition of the fourth copy shall be assigned by the owning agency.

(b) These requirements are not subject to the provisions of Public Law 96–511, Paperwork Reduction Act, and Federal Information Resources Management Regulation (FIRMR) 41 CFR 201–9.202–2, Interagency Reports Management Program. (Also see 41 CFR 101–45.303–3.)

Note: This document was received at the Office of the Federal Register on June 8, 1992.

Dated: March 12, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–13750 Filed 6–10–92; 8:45 am]

BILLING CODE 6820–24–M

Proposed Rules

Federal Register
Vol. 57, No. 113
Thursday, June 11, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30 and 35

RIN 3150-AE23

Departures From Manufacturer's Instructions; Elimination of Recordkeeping Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to eliminate certain recordkeeping requirements related to the preparation and use of radiopharmaceuticals. Specifically, the proposed rule would eliminate recordkeeping requirements related to the justification for and a precise description of the departure, and the number of departures from the Food and Drug Administration's (FDA) approved manufacturer's instructions. Both the NRC and the FDA staffs agree that the major trends in departures that may be identified by this recordkeeping are already discernible and collecting additional data is unnecessary.

DATES: Submit comments by July 13, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m., and 4:15 p.m. on Federal workdays.

Copies of any public comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Samuel Z. Jones, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3738.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1989 (54 FR 38239), the NRC published in the **Federal Register** a notice of receipt of a petition for rulemaking (PRM-35-9) from the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM). The ACNP and SNM requested, among other things, that the NRC amend its regulations in 10 CFR part 35, "Medical Use of Byproduct Material," to recognize their appropriate practice of medicine and to allow (1) departures from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals and (2) the use of radiopharmaceuticals for therapeutic indications and methods of administration not included in the FDA approved package insert.

On August 23, 1990 (55 FR 34513), the NRC published in the **Federal Register** an interim final rule granting the petition, in part, to specifically allow departures from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals using generators and reagent kits for which the FDA has approved a New Drug Application (NDA). The interim final rule included a provision which terminates the rule on August 23, 1993. This action was taken after consulting with the FDA and with the intention that the provision might become permanent after further experience had been gained under the new provision, including an assessment of data documenting the departures. The NRC's original intent was to examine this documentation and make it available to the FDA and to consult with the FDA prior to any decision regarding either revision or continuation of the interim final rule or making it permanent. The NRC staff has recently consulted with the FDA staff on the documentation collected to date.

The NRC and FDA staffs have concluded that the major trends in departures are already clear and that collection of additional data would not reveal any significant new information. The NRC is, therefore, proposing to amend 10 CFR parts 30 and 35 to eliminate recordkeeping requirements involving the justification for and a precise description of the departure, and the number of departures from the FDA-approved manufacturer's instructions. Also, the FDA staff has no objection to eliminating these recordkeeping requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22 (c)(3)(ii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this collection of information is estimated to be reduced by .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0010 and 3150-0017), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

In August 1990, the NRC implemented an interim final rule allowing licensees to depart from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals, and to depart from the package insert instructions regarding use of radiopharmaceuticals for therapy, provided that certain conditions are met. One of the conditions is for licensees to maintain records of such departures. The NRC is now proposing to amend 10 CFR parts 30 and 35 to delete these recordkeeping requirements.

The alternative to this proposed action is to maintain the status quo. However, the NRC and FDA staffs have concluded that the major trends in departures are already clear and that collection of additional data would not reveal any significant new information. Therefore, the NRC believes that these recordkeeping requirements are no longer necessary.

The estimated reduction in annual burden would be approximately 1000 hours for NRC licensees. The NRC concludes that this proposed action is justified due to the net annual savings to NRC licensees without compromising public health and safety.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect medical use licensees including some private practice physicians Some of these licensees would be considered small entities under the NRC's size standards (56 FR 56672; November 6, 1991). The proposed rule would eliminate recordkeeping requirements that the NRC and FDA staffs agree are no longer necessary. This would reduce the regulatory burden on all medical use licensees, including small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 30 and 35.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, amended (42 U.S.C. 2273); §§ 30.3, 30.10, 30.34(b), (c), (f), (g) and (i), 30.41 (a) and (c), and 30.53 are issued under secs. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 30.10 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 30.6, 30.9, 30.34(g), 30.36, 30.50, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.34, paragraph (i) is revised to read as follows:

30.34 Terms and conditions of licenses.

* * * * *

(i)(1) From August 23, 1990, to August 23, 1993, each licensee eluting generators and processing radioactive material with diagnostic reagent kits for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), may depart from the manufacturer's elution and preparation instructions (for radiopharmaceuticals authorized for use pursuant to 10 CFR 35.200), provided that the licensee follows the directions of an authorized user physician.

(2) The actions authorized in paragraph (i)(1) of this section are permitted in spite of more restrictive language in license conditions.

(3) Nothing in this section relieves the licensee from complying with other applicable NRC, FDA, and other Federal or State regulations.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation from part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.11, 35.13, 35.20 (a) and (b), 35.21 (a) and (b), 35.22, 35.23, 35.25, 35.27(a), (c) and (d), 35.31(a), 35.32(a), 35.49, 35.59 (a)–(d), 35.51 (a)–(c), 35.53 (a)–(b), 35.59 (a)–(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70 (a)–(f), 35.75, 35.80 (a)–(e), 35.90, 35.92(a), 35.120, 35.200 (b) and (c), 35.204 (a) and (b), 35.205, 25.220, 35.300, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610 (a) and (b), 35.615, 35.620, 35.630 (a) and (b), 35.632 (a)–(f), 35.634 (a)–(e), 35.636 (a) and (b), 35.641 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27 (a) and (c), 35.29(b), 35.32 (b)–(f), 35.33 (a)–(b), 35.36(b), 35.50(e), 35.51(d), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c) 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(f), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 35.200, paragraph (c) is revised to read as follows:

§ 35.200 Use of radiopharmaceuticals, generators, and reagent kits of imaging and localization studies.

* * * * *

(i)(1) From August 23, 1990, to August 23, 1993, a licensee may depart from the manufacturer's instructions for eluting generators and preparing reagent kits for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), by following the directions of an authorized user physician.

(2) Nothing in this section relieves the licensee from complying with other applicable NRC, FDA, and other Federal or State regulations.

5. In § 35.300, paragraph (b) is revised to read as follows:

§ 35.300 Use of radiopharmaceuticals for therapy.

* * * * *

(b)(1) From August 23, 1990, to August 23, 1993, a licensee may depart from the package insert instructions regarding indications or method of administration for a radiopharmaceutical for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), provided that the authorized user physician has prepared a written directive as required by § 35.32(a).

(2) Nothing in this section relieves the licensee from complying with other applicable NRC, FDA, and other Federal or State regulations.

Dated at Rockville, Maryland, this 28th day of May 1992.

For the Nuclear Regulatory Commission.
James M. Taylor,
Executive Director for Operations.
[FR Doc. 92-13666 Filed 6-10-92; 8:45 am]
BILLING CODE 7590-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL-4142-2]

Intent To Form an Advisory Committee To Negotiate the Hazardous Waste Manifest Rule

AGENCY: U.S. Environmental Protection Agency.

ACTION: Intent to form a negotiated rulemaking advisory committee under the Federal Advisory Committee Act.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is considering establishing an Advisory Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose would be to negotiate the Hazardous Waste Manifest rule to improve and standardize the present manifest system for shipments of hazardous waste under section 7004, 42 U.S.C. 6974(a) of the Resource Conservation and Recovery Act. The Committee would consist of representatives of parties that are substantially affected by the outcome of the proposed rule.

The EPA requests public comment on whether:

- It should establish a Federal Advisory Committee;
- It has properly identified interests it believes are affected by the suggested modifications listed in Part II (C) below;
- Regulatory negotiation is appropriate for this rulemaking, and the extent to which the procedures are adequate and appropriate.

DATES: The EPA must receive comments and suggestions by July 13, 1992.

ADDRESSES: An original and two copies of all comments should be submitted to RCRA Docket Information Center (OS-305), room M2427, EPA Headquarters, 401 M Street SW., Washington, DC 20460. Place the docket number F-92-HWMN-FFFFF on your comments. All comments and materials in this docket may be inspected at the EPA between 8 a.m. and 4 p.m. Monday through Friday. A reasonable fee may be charged for copying. The public must make an appointment to review docket materials by calling (202) 260-9327.

This notice also announces that an organizational meeting will be held to discuss the issues involved in the regulation of the Hazardous Waste Manifest rule, and how negotiations will proceed. This meeting is open and any parties interested in the negotiation are encouraged to attend.

DATES: July 28, 1992, from 9 a.m. to 4 p.m.

LOCATION: National Governors Association, Hall of the States, 444 North Capitol Street, Washington, DC 20001, in room 283.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the substantive and technical issues to be addressed in the negotiation, contact: Rick Westlund, PM-223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460; (202) 260-2745.

For information pertaining to the establishment of the negotiation committee and associated administrative matters contact: Deborah Dalton, PM-223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; (202) 260-5495.

SUPPLEMENTARY INFORMATION:

Outline of Notice

I. Negotiated Rulemaking Act
II. Subject and Scope of the Hazardous Waste Manifest Rule
  A. Need for Rule
  B. Subject and Scope of the Rule
  C. Manifest Modifications to be Negotiated
  D. Affected Interests and Potential Participants
  E. Schedule for the Negotiation
III. Formation of the Committee
  A. Procedure for Establishing an Advisory Committee
  B. Participants
  C. Requests for Representation
  D. Final Notice
IV. Negotiation Procedures
  A. Facilitator
  B. Good Faith Negotiation
  C. Administrative Support
  D. Meetings
  E. Committee Procedures
  F. Defining Consensus
  G. Failure of the Committee to Reach Consensus
  H. Record of Meetings

I. Negotiated Rulemaking Act

The Negotiated Rulemaking Act of 1990 (Pub. L. 101-648) establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use the process to enhance the informal rulemaking process. Under the Act the head of an agency shall consider whether—

(1) There is a need for a rule;

(2) There are a limited number of identifiable interests that will be significantly affected by the rule;

(3) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—

(A) Can adequately represent the interests identified under paragraph (2); and

(B) Are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;

(6) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal. All procedural requirements of the Federal Advisory Committee Act, the Administrative Procedure Act and other applicable statutes continue to apply.

II. Background on the Hazardous Waste Manifest Rule

A. Need for Rule

On January 8, 1990, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) petitioned EPA to modify the hazardous waste manifest regulations. A copy of this petition is available for inspection in docket number F-92-HWMN-FFFFF at the EPA RCRA Docket Center, room M2427, 401 M Street SW., Washington DC 20460.

ASTSWMO proposed modifications to the regulations to increase the effectiveness, efficiency and consistency of the national hazardous waste manifest system which at present is an inconsistent structure that can vary widely between States. As a result of such inconsistent formats and procedures, the information generated is also inconsistent and makes the access to and the dissemination of this information difficult.

EPA is initiating this Regulatory Negotiation to address the issues raised in the petition.

B. Subject and Scope of the Rule

The primary objective of this rulemaking is to increase uniformity among the States' manifest systems. The current federal manifest regulatory structure has not been able to deal with many practical circumstances that have developed since the regulations were promulgated. This has forced states to act unilaterally to address inadequacies and ambiguities in the current manifest regulations. In fact, twenty-three states print their own manifest forms. Modifications to the federal regulations are necessary to standardize the information and to create a truly uniform manifest.

C. Manifest Modifications to be Negotiated

The EPA will address whether and how to adopt the following modifications proposed in the ASTSWMO petition during the negotiations:

—Assign and preprint, from a standard formula, a 10-character State Manifest Document number to all forms
—Eliminate the State generator ID number
—Add a block for the actual site address from where the waste was generated
—Enter State transporter license plate number in the transporter section of the manifest
—Require transporter phone number
—Eliminate the state facility ID number
—Require an on-site facility phone number, not a corporate headquarters office number
—Make the USEPA waste number required information; if there is a State waste code which further defines the waste, that code may also be listed under the USEPA code
—Standardize and limit information required in the "Additional Descriptions for Materials Listed Above" block
—Use handling codes in 40 CFR that will be used on Biennial Reports; add recycling codes to the list; require two codes (on-site ultimate disposition at receiving facility, and final off-site disposition if any)
—Have an 8-part form with standardized copy distribution
—Have a 4-part form for in-State shipments where State elects not to require that manifest copy be submitted to it
—Have one optional information block remain on form
—Other modifications pertaining to printing of forms (i.e. color, screening), instructions, size of blocks and spaces, title/numbering/order changes, adding or deleting information, acquisition hierarchy, submission of copies to State, copy retention by States, placement of waste minimization statement on form
—Any other modifications regarding the form and format of the manifest brought to the table during the regulatory negotiation

D. Affected Interests and Potential Participants

The EPA has tentatively identified the following list of possible interests and/or parties

—State manifest coordinators
—USEPA Program Officials
—US Department of Transportation Officials dealing with hazardous material transport
—Hazardous Waste Transporters
—Hazardous Waste Generators
—Hazardous Waste Management Industry
—Citizen and Public Interest Groups

E. Schedule for the Negotiation

The EPA has set a deadline of April 1, 1993 for the committee to complete work on the proposed rule. The agency intends to terminate the activities of the Committee if it does not appear likely to reach consensus on a schedule that is consistent with Agency rulemaking needs.

The EPA will host an organizational meeting of the Committee on July 28, 1992, to discuss details of how the negotiations will proceed and how the Committee will function.

If the organizational meeting is successful and the charter approved, the EPA will hold the first meeting of the Advisory Committee in September, 1992. At this meeting, participants will complete action on any procedural matters outstanding from the organizational meeting, determine how best to address the principal issues, and begin to address them. Subsequent meetings of the Committee will be held monthly in Washington, DC.

III. Formation of the Negotiating Commitee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the federal government is required to comply with the requirements of the Federal Advisory Committee Act (FACA) when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with GSA and receipt of a charter. The EPA has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will EPA form the Committee and commence negotiations.

B. Participants

The number of participants in the group is estimated to be about 15 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the rule that EPA is developing would substantially affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this Notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. The EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule;
- Is already adequately represented in the negotiating group.

D. Final Notice

After evaluating the results of the organizational meeting, and reviewing any comments on this Notice and requests for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee and the date of the first negotiation meeting, unless (1) EPA decides, based on comments and other relevant considerations, that such action is inappropriate, or (2) EPA's charter request is disapproved. The negotiation process will begin once the Committee is appropriately chartered and notice is published in the **Federal Register**.

IV. Negotiation Procedures

The following procedures and guidelines will apply to the Committee,

if formed, unless they are modified as a result of comments received on this Notice or during the negotiating process.

A. Facilitator

EPA will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiation

Since participants must be willing to negotiate is good faith and be authorized to do so, each organization must designate a senior official to represent its interests. This applies to EPA as well. David Schwarz, Chief of the Information Policy Branch, will be EPA's representative at the negotiation.

C. Administrative Support

The National Governors Association will supply logistical, administrative and management support. If it is deemed necessary and appropriate, EPA will provide technical support to the committee in gathering and analyzing additional data or information.

D. Meetings

Meetings will be held in the Washington area at the convenience of the Committee. EPA will announce Committee meetings in the **Federal Register** in accordance with FACA. Such meetings will be open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meeting which they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

G. Failure of Advisory Committee to Reach Consensus

In the event the Committee is unable to reach consensus, EPA may proceed to develop its own rule. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Agency will evaluate whether the Committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking.

Dated: June 5, 1992.

Thomas E. Kelly,

Director, Office of Regulatory Management and Evaluation, U.S. Environmental Protection Agency.

[FR Doc. 92-13776 Filed 6-10-92; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-2

Payments to GSA for Supplies and Services Furnished Government Agencies

AGENCY: Office of the Chief Financial Officer, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes to amend 41 CFR part 101-2, Payments to GSA for Supplies and Services Furnished Government Agencies. The proposed regulation establishes for each Finance billing office of the General Services Administration, at their option, the authority to accumulate small dollar invoices to be released for billing on a quarterly basis to the various Federal customer agencies. By accumulating small dollar invoices on a quarterly basis, workload and paper accumulation would diminish thus reducing overall cost.

DATES: All comments must be in writing and received on or before July 13, 1992.

ADDRESSES: Written comments should be sent to Mr. LeRoy P. Boucher, Director of Finance (BC), General Services Administration, 18th & F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Smeltzer, Office of Finance, Financial Information Control Division (BCD), 202-501-2637.

SUPPLEMENTARY INFORMATION: These billings would be released when the total charges for a single BOAC (Customer Account Number) or Reimbursable Work Authorization (GSA Form 2957) reach a pre-established minimum threshold. Accounts which have not accumulated charges equal to the pre-established minimum threshold for a quarter, will defer the billing until the end of a subsequent quarter in which the threshold is reached. At the end of the fiscal year, GSA will prepare a final bill reflecting all unpaid charges. Reimbursable Work Authorizations (RWA) will bill upon completion of the RWA if the threshold has not been reached. One precedent for seeking this authority is the Air Force billing policy of not producing monthly invoices for less than a pre-established minimum threshold. These minimum amounts are held in their accounting system until the customer's charges total the threshold at the end of a quarter whereupon the customer is billed.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-2

Accounting, Government procurement, Government property management.

PART 101-2—PAYMENTS TO GSA FOR SUPPLIES AND SERVICES FURNISHED GOVERNMENT AGENCIES

1. The authority citation for 41 CFR part 101-2 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-2.1—Billings, Payments, and Adjustments

2. Section 101-2.102 is amended by revising paragraph (a) to read as follows:

§ 101-2.102 Billing procedures.

(a) Bills comprised of the accumulation of small dollar invoices may be issued in cycles that extend beyond a quarterly cycle.

* * * * *

Note: This document was received at the Office of the Federal Register on June 8, 1992.

Dated: February 4, 1992.
William B. Early, Jr.,
Acting Chief Financial Officer.
[FR Doc. 92-13749 Filed 6-10-92; 8:45 am]
BILLING CODE 6820-34-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

State Safety Oversight; Public Hearings

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of public hearings.

SUMMARY: The Federal Transit Administration (FTA) announces that it will hold three hearings concerning implementation of section 28 of the Federal Transit Act, as amended (Act). Section 28 requires the FTA to issue regulations requiring States to oversee the safety of fixed guideway systems.

DATES: The following public hearings will be held:

1. Wednesday, June 17, 1992, in Los Angeles, California;
2. Tuesday, June 30, 1992, in Portland, Oregon;
3. Tuesday, July 14, 1992 in Washington, DC.

ADDRESSES: The hearings will be held in the following locations:

1. The June 17, 1992, hearing will be held from 10 a.m.–2 p.m. at the Westin Bonaventure Hotel, Los Feliz Room, 404 South Figueroa, Los Angeles, CA;
2. The June 30, 1992, hearing will be held from 4 p.m.–6 p.m., Red Lion Hotel, Lloyd Center, 1000 Northeast Multnomah, Portland, Oregon;
3. The July 14, 1992, hearing will be held from 9 a.m.–Noon, U.S. Department of Transportation, room 3200, 400 7th Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: From the Office of Technical Assistance and Safety, Mr. Franz Gimmler or Mr. Roy Field, Federal Transit Administration, 400 7th Street SW., room 6432, Washington, DC 20590, (202) 366–2896 (telephone) or (202) 366–3765 (fax).

SUPPLEMENTARY INFORMATION: The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), added section 28 of the Federal Transit Act, as amended. Section 28 requires FTA to issue regulations requiring States to oversee the safety of rail fixed guideway systems. Section 28 requires a State to establish and implement a safety program plan for each rail system in the State, other than commuter rail operations, which are currently subject to the jurisdiction of the Federal Railroad Administration. It also requires a State to designate a State oversight agency to: (1) Require, review and approve, and monitor implementation of, such plans; (2) investigate hazardous conditions and accidents on such systems; and (3) require corrective actions to correct or eliminate such conditions.

The law also provides that when a single transit agency serves more than one State, the affected States may designate an entity other than that agency to ensure uniform safety standards and enforcement. As noted above, the statute exempts rail systems regulated by the Federal Railroad Administration.

Section 28 further provides that, beginning in fiscal year 1995, the FTA may withhold up to five percent of funds apportioned under section 9 of the Act to a State or urbanized area within a State if the State fails to comply with the requirements of section 28, or is not making efforts to comply. In addition, the Act provides that if funds are withheld under this provision for longer than three years, the funds shall be reapportioned for use among all other States. Finally section 28 requires the FTA to issue regulations implementing section 28 by December 18, 1992.

The FTA seeks general information at the hearings regarding the implementation of section 28, including current State practices in this area. The agency expects to publish an Advance Notice of Proposed Rulemaking (ANPRM) before the first hearing that will describe issues the agency particularly seeks comments on and provide the docket number for written comments.

Hearing Procedures

FTA has established the following procedures to facilitate the hearings. Those wishing to participate in the public hearings should either contact Mr. Franz Gimmler or Mr. Roy Field by telephone at (202) 366–2896, by fax at (202) 366–3765, or in writing at the address in the **FOR FURTHER INFORMATION CONTACT** section above at least three business days before the hearings is to be held or register with the FTA on the day of the hearing. Those contacting FTA at least three business days before the hearing is to be scheduled may request a particular time to testify. FTA will try to accommodate those requests.

For those who have not contacted FTA at least three business days in advance, a registration desk will be available at the hearing site on the day of the hearing. Individuals may register beginning one hour before the hearing is scheduled to start. The registration desk will remain open until the hearings begin, after which FTA staff will try to accommodate late registrants. Time permitting, individuals will testify in the order in which they have registered.

Those who request to testify may be given ten minutes to make a statement as well as other relevant documents which will be included in the docket. FTA encourages those individuals to submit a written statement which will be included in the docket.

Those individuals in need of an oral interpreter or an assistive listening device should inform Mr. Gimmler or Mr. Field of that need also at least three business days before the hearing is to be held. Unless requested three business days before the hearing, an oral interpreter will not be provided. Assistive listening devices will be available at the hearing site. The hearings sites are accessible to persons with disabilities.

A hearing officer will preside over the hearing. The hearing officer may make a statement to clarify issues or facilitate discussion during the hearing. Any statements the hearing officer makes during a hearing are not intended to be and should not be construed as a position of the FTA with respect to any future rulemaking.

The hearings will be recorded by a court reporter. A transcript of each hearing will be included in the official rulemaking docket and be available for inspection. Any individual interested in a copy of the transcript of a hearing may contact the court reporter directly.

The hearings are designed to solicit public views and information. Therefore, the hearings will be conducted in an informal and nonadversarial manner. However, the hearing officer may ask questions in order to clarify statements made at the hearing. To facilitate comment and get a broad cross-section of views, the FTA may ask some of those who register to testify in advance to participate as a panel during the hearing.

Issued on: June 9, 1992.
Brian W. Clymer,
Administrator.
[FR Doc. 92-13898 Filed 6-9-92; 1:34 pm]
BILLING CODE 4910-57-M

Notices

Federal Register
Vol. 57, No. 113
Thursday, June 11, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 5, 1992.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

- *Food and Nutrition Service*

Food Stamp Program Application to Accept & Redeem Food Stamps—FSP Regulations part 278.
FNS–252, FNS–252–2, FNS–350.
On occasion.
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 78,823 responses; 26,241 hours.
Marilyn Carpenter (703) 305–2456.

- *USDA/National Agricultural Statistics*

Monthly Cold Storage.
Monthly.
Businesses or other for-profit; 11,300 responses; 4,475 hours.
Larry Gambrell (202) 720–7737.

New Collection

- *Farmers Home Administration*

7 CFR 1944–E, Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations—Addendum 1.
FmHA 1944–30, 31.
On occasion.
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 5,220 responses; 2,160 hours.
Jack Holston (202) 720–9736.

- *Food and Nutrition Service*

Evaluation of the Low-Income Children's Nutritional Needs and Participation in USDA's Food Assistance Programs. .
Once per respondent.
Individuals or households; State or local governments; Non-profit institution; 274 responses; 342 hours.
Sharron Cristofar (703) 305–2115.

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 92–13708 Filed 6–10–92; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 92–080–1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that eight environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Enviromental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course or reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The enviromental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant lieterature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
92-007-02	Monsanto Agricultural Company.	05-06-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate..	Crittenden county, Arkansas; Christian County, Illinois; Benton County, Indiana; Story County, Iowa; and Queen Annes County, Maryland
92-007-03	Monsanto Agricultural Company.	05-06-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Polk County, Iowa; and Obion County, Tennessee.
92-035-01	Rogers NK Seed Company.	05-07-92	Tomato plants genetically engineered to express a deltaendotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* for resistance to lepidopteran insects.	Yolo County, California.
92-017-01	InterMountain Canola Company.	05-11-92	Rapeseed plants genetically engineered to express the phosphinothricin acetyltransferase (PAT) gene for tolerance to the herbicide glufosinate, and to express male sterile or male restrode and hybrid lines.	Fremont County, Idaho.
92-015-01	Monsanto Agricultural Company.	05-11-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Arkansas County, Arkansas.
92-034-02, renewal of permit 90-310-01, issued on 03-20-91.	U.S. Department of Agriculture, Agricultural Research Service.	05-12-92	Potato plants genetically engineered to express a modified *Galleria mellonella* larval serum protein for resistance to blackspot bruise.	Bingham County, Idaho; Aroostook County, Maine; Clay County, Minnesota; Grand Forks County, North Dakota.
92-045-01, renewal of permit 90-332-01, issued on 04-17-91.	U.S. Department of Agriculture, Agricultural Research Service.	05-12-p92	Potato plants genetically engineered to express a gene coding for an insect protein (cecropin B) for anti-bacterial activity.	Bingham County, Idaho; Aroostook County, Maine; Clay County, Minnesota; Grand Forks and Cass Counties, North Dakota.
92-045-02, renewal of permit 90-345-01, issued on 05-02-91.	U.S. Department of Agriculture, Agricultural Research Service.	05-12-92	Potato plants genetically engineered to express a gene coding for an insect protein (cecropin B) for anti-bacterial activity.	Bingham County, Idaho; Aroostook County, Maine; Clay County, Minnesota; Grand Forks and Cass Counties, North Dakota.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Enviromental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 8th day of June 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-13779 Filed 6-10-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-083-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 14 environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, and environmental impact statement before issuing a permit for the release into the environment of a regulated article [see 52 FR 22906].

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the ocnditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
92-015-04	Monsanto Agricultural Company.	05-13-92	Soybean plants genetically engineered to expess the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Story County, Iowa; White County, Indiana.
92-016-01	U.S. Department of Agriculture, Agricultural Research Service.	05-14-92	Potato plants genetically engineered to express a deltaendotoxin from *Bacillus thuringiensis* subsp. *thuringiensis* strain HD290 for resistance to the Colorado Potato Beetle.	Yakima County, Washington.
92-017-02	Northrup King Company.	05-14-92	Corn plants genetically engineered to express a coat protein gene from the maize dwarf mosaic virus strain B (MDMV-B) for resistance to MDMV-B.	Champaign County, Illinois; Goodhue County, Minnesota.
92-017-03	Northrup King Company.	05-14-92	Corn plants genetically engineered to express a deltaendotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD1 for resistance to European corn borer.	Champaign County, Illinois; Goodhue County, Minnesota.
92-037-01	Monsanto Agricultural Company.	05-14-92	Tomato plants genetically engineered to express tolerance to the herbicide glyphosate.	Jersey County, Illinois.
92-049-04	Dekalb Plant Genetics	05-14-92	Corn Plants genetically engineered to express a bacterial marker gene for hygromycin resistance, a betaglucuronidase (GUS) gene, and a methionine-rich storage protein gene.	Dekalb County, Illinois.
92-017-04	Hoechst-Roussel Agri-Vet Company.	05-15-92	Corn plants genetically engineered to express the phosphinothricin N-acetyltransferase (PAT) gene, for tolerance to the herbicide glufosinate.	Henry County, Illinois; Johnson County, Indiana; Iowa and Louisa Counties, Iowa; Saunders County, Nebraska.
92-034-03	Heinz U.S.A	05-15-92	Tomato plants genetically engineered to express an antisense pectin methylesterase (PME) chimeric gene to increase the soluble solid content.	San Joaquin County, California.
92-065-01, renewal of permit 91-007-06, issued on 05-09-91.	U.S. Department of Agricultural Research Service.	05-15-92	Potato plants genetically engineered to express a modified chicken lysozyme gene.	Bingham County, Idaho; Aroostook County, Maine; Clay County, Minnesota; Cass and Grand Forks Counties, North Dakota.
92-073-02	Monsanto Agricultural Company.	05-15-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl Shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Daviess County, Kentucky.
92-073-03	Monsanto Agricultural Company.	05-15-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Blue Earth, Watonwan, and Waseca Counties, Minnesota.
92-037-03	Monsanto Agricultural Company.	05-19-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Columbia County, Wisconsin.
92-037-04	Monsanto Agricultural Company.	05-19-92	Corn plants genetically engineered to express a deltaendotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* for resistance to lepidopteran insects and to express tolerance to the herbicide glyphosate.	Jersey County, Illinois.

Permit number	Permittee	Date issued	Organisms	Field test location
92-037-07	Upjohn Company	05-19-92	Cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus (CMV), watermelon virus 2 (WMV2), and zucchini yellow mosaic virus (ZYMV) for resistance to thse viruses.	Maricopa County, Arizona; Colusa, Merced, Stanislaus, and Imperial Counties, California; Collier County, Florida; Atkinson and Spaulding Counties, Georgia; Kane and Pope Counties, Illinois; Berrien County, Michigan; Huron County, Ohio; Reeves County, Texas.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 8th day of June 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-13781 Filed 6-10-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-079-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: A copy of the application referenced in this notice, with any confidential business information deleted, is available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of the document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
92-133-01, renewal of permit 91-123-01, issued on 06-20-92.	Amoco Technology Corporation.	05-12-92	Tobacco plants genetically engineered to express a eukaryotic gene for primary metabolism and a kanamycin resistance gene..	Fayette County, Kentucky.

Done in Washington, DC, this 8th day of June 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-13778 Filed 6-10-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-082-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to

Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
92-140-01	Ciba-Geigy Corporation.	05-19-92	Corn plants genetically engineered to express a phosphinothricin acetyl transferase (PAT) gene for tolerance to phos-phinothricin herbicides, and a delta-endo-toxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD-1 for resistance to lepidopteran insects.	Palm Beach, County, Florida.

Done in Washington, DC, this 8th day of June 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-13780 Filed 6-10-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Southern Region; Exemption From Appeal of Salvage Timber Sale Project on the Apalachicola National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11) the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the decision to sell dead and dying trees that were consumed by the Post Office Bay fire on the Apalachicola Ranger District of the Apalachicola National Forest and to rehabilitate damaged areas. High temperatures have created conditions suitable for the rapid spread of blue stain in the dead trees. If not salvaged quickly, these trees will be rendered unmerchantable as sawtimber.

EFFECTIVE DATE: This exemption is effective June 11, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this exemption should be directed to Jean P. Kruglewicz, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347-4867.

SUPPLEMENTARY INFORMATION: From May 25 to May 30, 1992, a wildfire (Post Office Bay) burned trees within an area covering 7,400 acres on the Apalachicola Ranger District of the Apalachicola National Forest. On the 4,400 acres that were actually burned, there are areas having significant amounts of dead and dying trees and areas with relatively few dead trees. In the first category, the fire has left approximately 200 acres with merchantable slash and longleaf pine that are dead or dying. There are also about 300 acres of pine plantation in which the vast majority of the seedlings and saplings have been consumed by the fire.

The timber stands severely affected by this fire need restoration, through salvage of the merchantable trees killed or heavily damaged, and rehabilitation, through site preparation of prompt reforestation, of both these stands and the burned plantations. High temperatures characteristic of Florida summers create conditions conducive to the rapid spread of blue stain in recently killed timber. Blue stain will begin to infect trees within days of their death, and within two months will spread to such an extent as to render the trees unmerchantable as sawtimber. Within three to four months their value as pulpwood would be greatly diminished. Insect infestations (for example, turpentine and southern pine beetles) may also occur and further compound the damage.

Following salvage of the burned trees, these areas, as well as the burned plantations which had no merchantable timber, will need to be reforested. Planting is normally accomplished in December. Prior to that time, the sites must be prepared for planting. Sufficient lead time will be needed to compose the site preparation and tree planting contracts, advertise and award them, and then actually do the work. It is estimated that if the entire process were to begin now, there will be sufficient time to complete it. Any delay will make it progressively more difficult to accomplish.

An analysis is currently underway on a proposed action to salvage dead or heavily damaged trees and to rehabilitate the damaged stands. The analysis includes the methods of harvest, site preparation, and reforestation. The environmental document and biological evaluation being prepared will disclose the effects of the proposed action on the environment, document public involvement, and address the issues raised by the public. Given the present condition of the burned timber and the high temperatures prevailing in the area, the need for action is critical. Any delay will result in losses to presently merchantable timber and will make subsequent rehabilitation efforts more difficult.

Dated: June 4, 1992.

John E. Alcock,

Regional Forester.

[FR Doc. 92-13579 Filed 6-10-92; 8:45 am]

BILLING CODE 3410-11-M

Southern Region; Administrative Determination Regarding the Need To Supplement the Final Environmental Impact Statement for the Suppression of Southern Pine Beetle—Southern Region

AGENCY: Forest Service, USDA.

ACTION: Notice; Administrative determination.

SUMMARY: Pursuant to 40 CFR 1502.9(c)(1), the Chief of the Forest Service has determined, after reviewing the empirical evidence and new southern pine beetle (SPB) research, that the Final Environmental Impact Statement for the Suppression of the Southern Pine Beetle—Southern Region is still adequate and does not require supplementation at this time.

EFFECTIVE DATE: The administrative determination was made on May 27, 1992.

FOR FURTHER INFORMATION CONTACT: Requests for copies of or questions

about the administrative determination should be directed to Wesley A. Nettleton, Entomologist, Forest Service—USDA, Forest Pest Management, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347–2961.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) for the Final Environmental Impact Statement for the Suppression of the Southern Pine Beetle—Southern Region (FEIS) was signed by the Chief of the Forest Service on April 6, 1987. Since 1987, southern pine beetle (SPB) suppression has been carried out by the national forests in the Southern Region of the Forest Service pursuant to that decision.

The Forest Service has reviewed the effectiveness of the Southern Pine Beetle suppression effort along with research studies concluded since the final EIS was completed. A report on new information relevant to the FEIS was prepared following the review.

The Forest Service has applied the criteria set out in 40 CFR 1502.9(c)(1) to the new information to determine the need to supplement the FEIS. After considering the agency's review of the empirical evidence on effectiveness of Southern Pine Beetle suppression and new SPB research, documented in the Report on New Information Relevant to the FEIS, the Forest Service concludes that the SPB control efforts are efficacious and that no other methods of control are available for operational use. The agency has not made substantial changes in the proposed action that are relevant to environmental concerns and there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Therefore, the Final Environmental Impact Statement for the Suppression of the Southern Pine Beetle—Southern Region is still adequate and does not need supplementation at this time.

Dated: June 4, 1992.

L. A. Amicarella,

Acting Deputy Chief for State and Private Forestry.

[FR Doc. 92–13769 Filed 6–10–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration (EDA).

Title: Special Adjustment Assistance.

Form Number: ED–540.

OMB Approval Number: 0610–0058.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 4,125 hours.

Number of Respondents: 75.

Avg Hours Per Respondent: 55 hours.

Needs and Uses: This collection enables State and local governments, Indian tribes, public authorities, and nonprofit organizations to be considered for financial assistance.

Affected Public: State or local units of government, Indian tribes, public authorities and nonprofit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Agency: International Trade Administration (ITA).

Title: Commercial News USA – Worldwide Services Program.

Form Number: ITA–4099P.

OMB Approval Number: 0625–0127.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 67 reporting hours.

Number of Respondents: 200.

Avg Hours Per Respondent: 20 minutes.

Needs and Uses: This collection allows ITA to promote U.S. services available for export in overseas markets as part of its trade promotion activities. The information reaches the U.S. Embassies and Consulates in printed form through ITA's magazine COMMERCIAL NEWS USA (CNUSA). CNUSA is a unique export promotion service for U.S. manufacturers (new products), service firms (Worldwide Services Program), and publishers of trade and technical literature (T&T). The Worldwide Services Program is one aspect of the magazine. It helps U.S. companies publicize their services overseas and test market interest there. Specifically, it is designed to encourage foreign companies to contact U.S. service firms interested in doing business overseas so that the U.S. firm can explore foreign market interest, find agents or other representatives, and make sales. The information is used to determine if the services meeting program criteria.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Agency: International Trade Administration.

Title: Special Access/Special Regime Export Declaration.

Form Number: ITA–370P.

OMB Approval Number: 0625–0179.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 10,200 hours.

Number of Respondents: 119,000.

Avg Hours Per Respondent: Ranges between 3 and 18 minutes.

Needs and Uses: The Special Access and Special Regime Programs have been established to provide increased access to the United States market for textile products assemble abroad from fabric formed and cut in the U.S. The information being collected is being used by the Committee for the Implementation of Textile Agreements (CITA) and the U.S. Customs Service in two ways: (1) to determine whether merchandise exported from a participating Caribbean country or Mexico is properly certified as entitled to entry under the Special Access or the Special Regime and (2) to conduct audits to determine whether U.S. formed and curt fabric was used to produce the final product.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Gary Waxman, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: June 4, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–13720 Filed 6–10–92; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Docket No. 16-92]

Foreign-Trade Zone 59—Lincoln, NE: Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Lincoln Foreign Trade Zone, Inc., grantee of FTZ 59, requesting authority to expand its zone in Lincoln, Nebraska. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 2, 1992.

FTZ 59 was approved on August 27, 1980 (Board Order 163, 45 FR 58637, 9/4/80). The zone is currently located at a site (250,000 sq. ft.) within the Lincoln Airpark West industrial park, adjacent to the Lincoln Municipal Airport. The site is owned by the Lincoln Airport Authority and operated by the grantee.

The applicant is now requesting authority to expand the zone to include the Lincoln Airpark North industrial park (372 acres), located directly north of the current site. It is owned by the Airport Authority and zone activity would be supervised by the grantee.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be adddressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 10, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 25, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 11133 "O" Street, Omaha, NE 68137.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC. 20230.

Dated: June 4, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-13797 Filed 6-10-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Scup and Black Sea Bass in the Atlantic Ocean from Cape Hatteras North to the Canadian Border

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and request for scoping comments.

SUMMARY: NOAA announces its intention to prepare, in cooperation with the Mid-Atlantic Fishery Management Council (Council), an SEIS to assess potential effects on the human environment of the management of scup (*Stenotomis chrysops*) and black sea bass (*Centropristis striata*) pursuant to the Magnuson Fishery Conservation and Management Act of 1976, as amended (Magnuson Act). This would be accomplished by amending the Fishery Management Plan for the Summer Flounder Fishery (FMP) by adding scup and black sea bass to the management unit and renaming the document the Summer Flounder, Scup, and Black Sea Bass FMP, and developing appropriate management measures. If such an amendment to the FMP is approved by the Secretary of Commerce (Secretary), implementation is expected in 1993.

In addition, the Council announces a public process for determining the scope of issues to be addressed and for identifying the significant issues related to instituting management of scup and black sea bass. The intended effect of this notice is to alert the interested public of the commencement of a scoping process and to provide for public participation. This action is necessary to comply with Federal environmental documentation requirements.

DATES: Scoping comments are invited until June 23, 1992. The scoping process will end at the conclusion of a scoping meeting that will begin at 7 p.m. on June 23, 1992. The meeting will be held at the Radisson/Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA 19113 (215-521-5900).

ADDRESSES: Send scoping comments to Mr. John C. Bryson, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19901-6790 (Phone 302-674-2331) (FAX 302-674-5399).

FOR FURTHER INFORMATION CONTACT: Mr. John C. Bryson.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic mixed-species trawl fishery relies principally on summer flounder, scup, and black sea bass, but also harvests significant quantities of *Loligo* squid, winter flounder, witch flounder, yellowtail flounder, and other species either by bycatch or in directed fisheries. Many of these species are also principal components of the southern New England trawl fisheries since stock migrations occur between the Mid-Atlantic Bight and southern New England. Regulations governing fishing for these species appear at 50 CFR parts 625, 651, and 655.

Generally, fishing activity follows these species as they make annual migrations from south to north and from offshore to inshore waters. Fishing effort is concentrated to the north and inshore in summer when a wide range of vessels have access to the stocks. In winter, effort is concentrated to the south and offshore, primarily with larger vessels. Although the majority of landings are taken by otter trawls, scup and black sea bass are landed by many other types of fishing gear: midwater trawls, pots and traps, gill nets, pound nets and hand lines. At any particular time, fishermen may target a single species with certain gear, but significant bycatch of other species usually occurs in conjunction with the targeted species, depending on the fishing technique. As a result, discarded bycatch in the commercial fisheries is probably underestimated as a component of total mortality for scup and black sea bass.

Problems to be considered during the development of the amendment are:

Scup Overexploitation

Commercial scup landings have declined substantially since peak landings in 1981. In fact, in 1989, commercial landings decreased to 6.2 million pounds, the lowest amount recorded during the ten-year period 1981 to 1990. Recreational landings in 1990 of 4.6 million pounds were also below the ten-year average of 6.5 million pounds. In addition, catch-per-unit-of-effort (CPUE) for otter trawl vessels from Southern New England decreased over 54 percent from 1979 to 1989, from 13.6 to 6.2 thousand pounds per day fished, reflecting a decline in stock abundance.

Abundance indices from NMFS trawl surveys, and surveys conducted by the States of Massachusetts, Rhode Island, and Connecticut indicate that recent adult biomass is at low levels. Although the 1989 index increased sharply, the 1990 index dropped below the mean and

was the seventh lowest value in the time series.

In addition, length frequency distributions of scup in commercial landings have shifted to small, younger fish less than one year old. Although scup may attain ages of 20 years, recent landings have been composed primarily of age 2- and 3-year old scup with a general absence of larger, older fish in the landed catch.

Current estimates of fishing mortality indicate that the current mortality rate is approximately 1.2 or higher, exceeding the F_{max} level of 0.25. This, coupled with the decrease in landings, reduced CPUE, and low survey indices, as well as the truncated age distributions, indicate that scup are overexploited.

Black Sea Base Overexploitation

Commercial landings of black sea bass from the Mid-Atlantic Bight have fluctuated without trend in the 1980's with average landings of 3.4 million pounds. Recreational landings have fluctuated markedly (over the time period from 1980–1990) with 1990 landings of 3.3 million pounds well below the ten-year average of 6.2 million pounds.

CPUE for vessels in the Mid-Atlantic trawl fishery peaked at 7,474 pounds per day fished in 1984 and declined to only 1,918 pounds in 1990, indicating a decline in population size for black sea bass from the Mid-Atlantic Bight. In addition, the commerical fishery tends to deplete incoming year classes rapidly, increasing the potential for reduced recruitment and further declines in stock abundance.

Abundance indices from the spring offshore bottom trawl survey conducted by the Northeast Fisheries Center of NMFS indicate a decrease in abundance of black sea bass from a peak in 1977 of 6.1 fish/tow to 0.5 fish/tow in 1990. Indices of pre-recruits (black sea bass less than 7.8 inches) indicate that above-average year classes occurred in 1977, 1982, and 1986 with recruitment in 1990 being about average.

Recent yield-per-recruit analysis indicates that F_{max} for black sea bass is 0.17. Based on length composition data from the commerical and recreational fisheries, current fishing mortality rates are 0.6 or higher. This indicates that black sea bass are overexploited.

Increased Fishing Pressure

Nearly all the major groundfish fisheries off New England (haddock, yellowtail flounder, redfish, and cod) have had their stocks severly depleted or have current catch levels which are below long-term potential catch levels. There have also been declines in South Atlantic and Gulf of Mexico fishery resources. Consequently, it is probable that more effort will be directed towards the southern New England/Mid-Atlantic species of scup and black sea bass, exacerbating current problems of high mortality rates. Because of the potential for an increased number of entrants into the fisheries, increases in effort by present participants, as well as technological advances that have increased the efficiency of gear, there is a need to limit and reduce effort in the scup and black sea bass fisheries.

Lack of Uniform Management

The migratory nature of scup and black sea bass complicate the development of management strategies since fishing activities in the Exclusive Economic Zone (EEZ) or waters of a few states could adversely impact the stocks. For example, the Atlantic coastal states have different size regulations pertaining to the harvest of scup and black sea bass. The inshore distribution also creates problems relative to management under the Magnuson Act.

Inconsistent and Inadequate Enforcement

There is a lack of uniform enforcement affecting the scup and black sea bass fisheries which is partly due to the inconsistent regulations among states and between states and Federal jurisdictions. FMP advisors report a lack of consistency in enforcement between States, the EEZ, and/or parts thereof, due to various interpretations of the rules by enforcement officers. This inconsistency leads to confusion and results in fishermen seeking ways to avoid the rules. Adequate funding at the state and Federal level for enforcement personnel, training, and equipment is problematic. In addition, sanctions resulting from noncompliance with regulations are insufficient to encourage conformity to state and Federal laws. Rigid permit sanctions are likely to be a more effective deterrent than seemingly arbitrarily assessed fines.

Lack of Data

National standard 2 of the Magnuson Act states that "management measures shall be based upon the best scientific information available." Although recreational and commerical catch data for scup and black sea bass are adequate to formulate and implement management measures, data collection should be improved. An improved data base will allow the Council to adjust the management system to the needs of the fishery. These data are necessary to assess the impact and effectiveness of management measures, and to monitor reductions in fishing mortality and increases in stock size to determine if additional amendments to the FMP will be necessary. For example, the absence of a permit-to-sell requirement in some states, which allows direct sale of catch to retail establishments by fishermen, may result in underreporting of commercial landings that complicates the development, implementation, and enforcement of fishery management strategies.

Habitat Degradation

Both scup and black sea bass are continental shelf species that spend significant portions of their lives in coastal waters. Both species make inshore and northern migrations during warm months and are found in tidal bays and sounds as well as the ocean environment. Those same areas are known to be increasingly affected by coastal development (e.g., destruction of wetlands, dredging, marinas, docks, etc.) and related declines in habitat quality and quantity. This increase in habitat degradation plays an important, yet undocumented, role in scup and black sea bass population health.

Possible management measures for the commercial fishery include:

	Scup	Black sea bass
Minimum fish size	X	X
Minimum mesh size	X	X
Closed seasons	X	X
Quotas	X	X
Minimum trap vent size		X
Biodegradable trap panels		X
Moratorium on vessels	X	X
Trip limits	X	X
Special management zones	X	X
Dealer and vessel permits	X	X
Dealer and vessel reports	X	X
Operator permits	X	X

Possible management measures for the recreational fishery include:

	Scup	Black sea bass
Minimum fish size	X	X
Maximum possession limit	X	X
Closed seasons	X	X
Special management zones	X	X
Dealer and vessel permits	X	X
Dealer and vessel reports	X	X
Operator permits	X	X

Scoping Process

The Council voted to develop a management plan for summer flounder, scup, and black sea bass in 1989. The first meeting of the Demersal Species Committee (with industry advisors) was

on January 26 and 27, 1990. The problems addressed (summarized above) and overfishing definitions were adopted by the Committee and Council in the spring of 1990. In the summer of 1990, the Council voted to postpone development of the scup and black sea bass portions of the plan in order to focus on measures to resolve the critical condition of the summer flounder resource. Amendment 2 to the summer flounder FMP is under Secretarial review, allowing the Council to focus on scup and black sea bass. The public may provide comments on the problems, the proposed management measures, or related considerations prior to or at the scoping meeting on June 23, 1992. All persons affected by or otherwise interested in a decision to amend the FMP to manage scup and black sea bass are invited to participate in this process to determine the scope of issues to be addressed and to identify the significant issues to be analyzed in the SEIS by submitting written comments to the above address. Scoping consists of the range of actions, alternatives, and impacts to be considered in the SEIS. Actions include those which may be closely related or cumulative. Alternatives include the no action alternative, other reasonable courses of action, and mitigation measures. Impacts may be direct, indirect, or cumulative. The scoping process also will identify and eliminate from detailed study issues which are not significant or which have been covered in prior environmental review. The scoping process will end on June 23, 1992, at the end of the public scoping meeting.

Timetable for SEIS Preparation and Decisionmaking

The Council has adopted a tentative schedule for amendment preparation, review, and approval for the scup and black sea bass amendment. Under this schedule, the draft SEIS is planned for completion prior to the Council's October 1992 meeting. If an acceptable draft is completed, the Council would decide at that meeting whether to submit the draft SEIS for public review. Oral comments to the Council on its decision could be made at that meeting. If the Council's decision is affirmative, public review and comments on the draft SEIS would be accepted during a 45-day comment period in November and December 1992. At its February 1993 meeting, the Council would decide on the management of scup and black sea bass. Again, oral comments on this decision could be made to the Council at that meeting. If the Council's decision is affirmative, the SEIS would be made final and submitted with the amendment recommendation and other rulemaking documents to the Secretary for review and approval. The Council reserves the right to modify or abandon this schedule, if necessary.

Under the Magnuson Act, Secretarial review and approval of a proposed amendment is completed in no more than 95 days and includes concurrent public comment periods on the amendment and proposed regulations. If approved by the Secretary under this schedule, the scup and black sea management measures would be effective late in 1993.

Dated: June 5, 1992.

David S. Crestin,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc 92-13714 Filed 6-10-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Receipt of Application to Modify Permit No. 704 (P77#39).

Notice is hereby given that Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038-0271, has requested a modification of Permit No. 704 issued on May 7, 1990 (55 FR 19976), under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

Permit No. 704 authorizes harassment of an unspecified number of northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*) during aerial photographic census, placement and recovery of photo-calibration markers, and while measuring natural objects. The research is conducted on the Channel Islands in the southern California Bight and islands off Baja California and Mexico.

The Permittee requests modification of this authorization to include: (1) Inadvertent harassment of up to 69,000 Stellar sea lions (*Eumetopias jubatus*), although no more than a total of 54,211 are expected to be taken annually during aerial surveys on haulouts and rookeries in Alaska (48,805), Washington (152), Oregon (3,222), California (2,032) and inadvertently harass up to 30 California sea lions while placing markers on Año Nuevo Island (no Stellers will be harassed because markers will be placed on the Island before their arrival); (2) inadvertent harassment of 1000 elephant seals while attempting to measure 2000 to derive a regression formula for converting the total body length of elephant seals obtained from aerial photographs to standard lengths which can be used in the regression analysis; (3) replace the "unspecified numbers" authorized in the original permit to be harassed each year during aerial surveys with the following specific numbers: (a) 86,000 elephants seals, (b) 143,000 California sea lions, and (c) 46,000 harbor seals, of which 7,000 elephant seals, 19,000 California sea lions, 400 harbor seals may be harassed during marker placement/recovery; and (4) extend the authorization until December 31, 1994.

ADDRESSES: Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713-2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802-4213 (310/980-4015);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526-6150); and

Director, Alaska Region, National Marine Fisheries Service, NOAA,

Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/568–7221).

Dated: June 4, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–13654 Filed 6–10–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Receipt of application to modify permit no. 765 (P70E).

Notice is hereby given that Dr. William A. Watkins, Senior Research Specialist, Woods Hole Oceanographic Institution, Woods Hole, MA 02543, has requested a modification of Permit No. 765 issued on February 25, 1992 (57 FR 7735) under authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act, as amended (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

The Permit currently authorizes the Holder to harass up to 25 sperm whales (*Physeter macrocephalus*) annually, over a 5-year period while attempting to tag five each year with HF, sonic and/or satellite tags. Animals can be double tagged and, in some instances, individuals may be approached up to five times during tagging or re-tagging maneuvers. Animals approached closer than 100 yards and those animals exhibiting signs of being harassed (e.g., repeated avoidance behavior) are considered taken and counted against the authorized take.

The Permittee requests that this authorization be modified to allow additional harassment of up to 60 animals during sound playbacks to tagged sperm whales. This is for purposeful, repeated exposure up to 10 times a day of up to 5 tagged whales and any close companions to playback of a variety of sounds at maximum source levels of 183 dB. The Permit Holder estimates that up to 12 companions of each of the five tagged whales would be exposed at least to lower level sounds.

ADDRESSES: Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by appointment in the Permit Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: June 4, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–13655 Filed 6–10–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, DOC.

ACTION: Notice of receipt of application for permit (P772#60).

Notice is hereby given that the NMFS Southwest Fisheries Science Center, P.O. Box 271, La Jolla, California 92038–0271, has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Southwest Fisheries Science Center requests authorization to collect tissue samples taken by projectile dart (biopsies) from various populations of bow-riding small cetaceans in the Eastern Tropical Pacific over a one-year period. The samples will be used in genetic analyses for the purpose of stock differentiation studies. The numbers of each species and stock requested to be biopsied are as follows:

20 common dolphin, northern stock (*Delphinus delphis*); 20 common dolphin, central stock (*D. delphis*); 20 common dolphin, "Guerrero" stock (*D. delphis*); 20 common dolphin, Baja neritic (long beaked) stock (*D. delphis*); 20 spinner dolphin, whitebelly stock (*Stenella longirostris*); 20 spinner dolphin, eastern stock (*S. l. orientalis*); 20 spinner dolphin, Costa Rican stock (*S. l. centroamericanus*); 20 spotted dolphin, coastal stock (*S. attenuata*); 20 spotted dolphin, offshore stock (*S. attenuata*); 30 striped dolphin, all stocks (*S. coeruleoalba*); 30 bottlenose dolphin, all stocks (*Tursiops truncatus*); 20 rough-toothed dolphin, unknown stock structure (*Steno bredanensis*); 20 Pacific white-sided dolphin, unknown stock structure (*Lagenorhynchus obliquidens*); 20 pygmy killer whales, unknown stock structure (*Feresa attenuata*); 20 false killer whales, unknown stock structure (*Pseudorca crassidens*); 20 Risso's dolphin, unknown stock structure (*Grampus griseus*).

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: June 4, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-13656 Filed 6-10-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, DOC.

ACTION: Receipt of application for scientific research permit (P772#61).

Notice is hereby given that the NMFS Southwest Fisheries Science Center, P.O. Box 271, La Jolla, CA 92038-0271, has applied in due form for a scientific research permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authority to import skin samples taken from ten Amazon River dolphins, *Inia geoffrensis*, in Venezuela. These samples would be used in genetic analyses with the objective of obtaining information on the genetic variability in natural *Inia* populations in the Orinoco River and its tributaries

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910 (301/713-2289); and

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980-4016).

Dated: June 5, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-13667 Filed 6-10-92; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 766]

Marine Mammals; Modification of Permit; Oregon Coast Aquarium, Inc., (P491)

Section B.5. is revised to read:

"5. The Permit Holder shall notify the Northwest Region (206/526-6140) or NMFS Office of Enforcement (206/526-6133) regarding planned transportation of marine mammals at least two working days in advance of any such transportation. Such notice shall specify the number, species and sex of the animals, and the origin of the shipment. The notification shall also include verification that the animals are from captive stock."

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910, (301) 713-2289; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700—Bldg. 1, Seattle, Washington 98115-0070, (206) 526-6150.

Dated: June 5, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-13668 Filed 6-10-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 8, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 200 is being reduced for carryforward used in 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 8, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on June 15, 1992, you are directed to amend the November 15, 1991 directive to reduce the current limit for Category 200 to 751,921 kilograms [1], as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Thailand.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

Sincerely,

Aaggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-13798 Filed 6-10-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

MidAmerica Commodity Exchange Proposed Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The MidAmerica Commodity Exchange (MCE or Exchange) has applied for designation as a contract market in three-month Eurodollar time deposit futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before July 13, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581. Reference should be made to the MCE three-month Eurodollar time deposit futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the Exchange in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions, or with respect to other materials submitted by the exchange in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 5, 1992.

Gerald D. Gay,

Director.

[FR Doc. 92-13760 Filed 6-10-92; 8:45 am]

BILLING CODE 6351-01-M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provision of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 12 p.m., on July 17, 1992 at the University of Arkansas—Pine Bluff, 1600 University Drive, Pine Bluff, Arkansas 72601. The purpose of the meeting is for SAC orientation and program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 5, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-13757 Field 6-10-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provision of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 8 p.m., on July 15, 1992 at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana 70130. The purpose of the meeting is for SAC orientation and program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Region Division (016) 426-5253 (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 5, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-13759 Filed 6-10-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda of Public Meeting of the Maryland State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland State Advisory Committee to the Commission will convene at 12 Noon and adjourn at 3 p.m. on Wednesday, June 24, 1992, St. John's College, Mellon Building, Conference Room, Annapolis, Maryland 21401. The purpose of the meeting is to plan a civil rights workshop on intergroup relations and racial tensions in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact John I. Binkley, Director, Eastern Regional Office at (202) 523-5264, TDD (202) 376-8116. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., June 5, 1992.
Carol-Lee Hurley,
Chief Regional Programs Coordination Unit.
[FR Doc. 92-13701 Filed 6-10-92; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On May 14, 1992, the Secretary of the Air Force approved an addendum to an August 30, 1990 Secretarial decision determining the service of the group known as the "U.S. Civilians of the American Field Service (AFS) Who Served Overseas Under U.S. Armies and U.S. Army Groups in World War II During the Period December 7, 1941, through May 8, 1945" would be considered "active duty" for purposes of all laws administered by the Department of Veterans Affairs.

Add paragraph 3 to the August 30, 1990 eligibility criteria which reads as follows:

3. Served honorably on flights with the 3d Combat Cargo Squadron, Army Air Forces, December 7, 1941 through August 14, 1945.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 92-13712 Filed 6-10-92; 8:45 am]
BILLING CODE 3410-01-M

DEPARTMENT OF EDUCATION

National Education Commission on Time and Learning; Meeting

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of meeting and public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting and public hearing of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this hearing is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: Meeting: June 25, 1992 from 1 p.m. to 4:30 p.m., Hearing: June 26, 1992 from 9 a.m. to 4:30 p.m.

ADDRESSES: Meeting: The Business Roundtable, 1615 L Street, NW., suite 1350, Wash., DC., Hearing: Senate Dirksen Building, room 628.

FOR FURTHER INFORMATION CONTACT: Julia Anna Anderson, Special Assistant, 555 New Jersey Ave., Capitol Place Room 610B, Washington, DC 20208. Telephone: (202) 219-2249.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221-1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, the extent and role of homework, how time is being used for academic subjects, year-round professional opportunities for teachers, and the use of school facilities for extended learning programs.

The meeting and hearing of the Commission are open to the public. The proposed agenda includes:

Meeting: Discussion of the Commission's workplan, as well as review of the preliminary materials submitted by the participants of the hearing.

Hearing: Hear testimony from invited participants and the general public. This hearing will focus on the quality and adequacy of time devoted to study and learning, views may also be presented on any of the additional mandates as outlined in Public Law 102-62.

Records are kept of all Commission proceedings, and are available for public inspection at the Office of the Commission at 555 New Jersey Ave., NW., Capitol Place room 610B, Washington, DC 20208 from the hours of 9 a.m. to 5:30 p.m.

Dated: June 5, 1992.
John Hodge Jones,
Chairman, National Education Commission on Time and Learning.
[FR Doc. 92-13673 Filed 6-10-92; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10141-002, Washington]

William C. Porter Farm Co.; Availability of Environmental Assessment

June 5, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Olson Creek Project, to be located on Olson Creek in Skagit County, near Marblemount, Washington, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.
[FR Doc. 92-13696 Filed 6-10-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD92-06981T Oklahoma-21]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

June 4, 1992.

Take notice that on June 1, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Spiro Formation underlying portions of Latimer, LeFlore and Pushmataha Counties qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is more fully described on the appendix.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Spiro Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,
Secretary.

Appendix

Township 5 North, Range 20 East
Sections 13-36
Township 5 North, Range 19 East
Sections 25-27 and 34-36
Township 4 North, Range 20 East
Sections 1-36
Township 4 North, Range 19 East

Sections 1–3, 10–15 and 19–36
Township 3 North, Range 19 East
Sections 1–18
Township 3 North, Range 20 East
Sections 1–36
Township 4 North, Range 21 East
Sections 19–36
Township 3 North, Range 21 East
Sections 1–36
Township 2 North, Range 20 East
Sections 1–18
Township 2 North, Range 21 East
Sections 4–9 and 16–18

All in Latimer, LeFlore and Pushmataha Counties, Oklahoma.

[FR Doc. 92–13694 Filed 6–10–92; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 10926–001 West Virginia]

Town of Gassaway, WV; Surrender of Preliminary Permit

June 5, 1992.

Take notice that the Town of Gassaway, West Virginia, permittee for the Sutton Hydro Project located on Elk River near Sutton, Braxton County, West Virginia, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 10, 1991, and would have expired on March 31, 1994.

The permittee filed the request on May 15, 1992, and the preliminary permit for Project No. 10926 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13699 Filed 6–10–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TQ92–4–31–000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

June 4, 1992

Take notice that on June 1, 1992, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following revised tariff sheets to become effective July 1, 1992:

Rate Schedule X–26
Original Volume No. 3
Nineteenth Revised Sheet No. 185.1

Rate Schedule No. G–2
Second Revised Volume No. 1
First Substitute Thirteenth Revised Sheet No. 11

Rate Schedule No. CD
Second Revised Volume No. 1
Thirteenth Revised Sheet No. 16

AER states that the tariff sheets reflect AER's first quarterly PGA filing made subsequent to its annual PGA effective April 1, 1992 under the Commission's Order Nos. 483 and 483–A.

AER states that the proposed changes reflect a decrease in AER's system cost of $493,114 and would decrease its revenue from jurisdictional sales and service by $4,813 for the PGA period of July, August and September 1992 as adjusted. AER states that the rate changes are based on the rates contained in AER's PGA Compliance Filing made on May 18, 1992 in Docket No. TA92–2–31.

AER states that copies of the filing is being mailed to the customers served under AER's Jurisdictional Rate Schedules and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13695 Filed 6–10–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP92–185–000]

El Paso Natural Gas Company; Tariff Filing

June 5, 1992.

Take notice that on June 2, 1992, El Paso Natural Gas Company ("El Paso") tendered for filing and acceptance, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, revisions to various provisions contained in the General Terms and Conditions of El Paso's FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1, to become effective July 1, 1992.

El Paso states that the tendered tariff sheets, when accepted for filing and permitted to become effective, will serve to: (1) Revise section 6.4, Failure to Pay Bills, of the Transportation General Terms and Conditions, and section 6.2, Suspension of Service for Non-Payment, of the General Terms and Conditions contained in El Paso's Volume Nos. 1–A and 1 Tariffs, respectively, by specifying proper notice and assurance procedures before suspension of service for failure to pay bills; (2) revise Section 6, Payments, of the General Terms and Conditions contained in its Volume No. 1 Tariff by adding a new section which reconfirms that El Paso will not be required to perform or continue service for any customer who is or becomes insolvent or who, at El Paso's request, fails within a reasonable period to demonstrate creditworthiness and otherwise to provide adequate assurances of due performance of customer's contract obligations; (3) revise sections 19.10 and 20.9 to the Transportation General Terms and Conditions contained in its Volume No. 1–A Tariff to clarify the events that would cause suspension or termination of service due to failure to provide assurances of performance; (4) revise sections 19.12 and 20.11 to the Transportation General Terms and Conditions contained in its Volume No. 1–A Tariff to reflect the elimination of the daily and monthly cumulative imbalance penalties and replace them with cash-out of imbalance procedures; (5) revise sections 19.13 and 20.12 to the Transportation General Terms and Conditions contained in its Volume No. 1–A Tariff to reflect certain clarifications to the Unauthorized Overpull Penalty; and (6) add a new section 27 to the Transportation General Terms and Conditions contained in its Volume No. 1–A Tariff to establish certain procedures to deter the introduction of Unauthorized Gas into El Paso's facilities.

El Paso further states that such revisions to El Paso's Volume Nos. 1–A and 1 Tariffs are necessary in order to update certain financial and operating provisions so that they are integrated as necessary for providing open access transportation service, to meet the business needs of El Paso and its customers in today's natural gas markets, and to assure the integrity and safety of the pipeline system. As an open access pipeline, El Paso's system is open to many types of customers and a wide variety of users of the system. In all cases, El Paso and its customers have had to learn to work with the new business and operational realities of

open access. In some cases, customer inability or failure to conform to necessary business and operational procedures have opened the door to abuse that may threaten the day-to-day operation of the pipeline system. The proposed tariff sheets are designed to facilitate open access transportation and ensure safe and reliable pipeline operations.

El Paso has respectfully requested that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on July 1, 1992.

El Paso states that copies of the filing were served on all of El Paso's interstate pipeline system transportation and sales customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.211 of this Chapter. All such motions, or protests should be filed on or before June 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell

Secretary

[FR Doc . 92-13693 Filed 6-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT92-4-000]

Gas Transport, Inc.; Proposed Changes in FERC Gas Tariff

June 4, 1992.

Take notice that on May 26, 1992, Gas Transport, Inc. ("Gas Transport") tendered for filing Second Revised Sheet Nos. 82-93 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to become effective on June 1, 1992.

Second Revised Sheet Nos. 85 and 86 contain the tariff provisions required § 250.16(b)(1) of the Commission's Regulations (18 CFR 250.16(b)(1)) to comply with the requirements of Order No. 497 applicable to pipelines which conduct transportation transactions with affiliated natural gas marketing entities.

Second Revised Sheet Nos. 87-91 reflect revisions in the Transportation Service Request and Customer Nomination Forms. Gas Transport states that the revisions make these forms more understandable, user-friendly, and similar to forms used by other pipelines. Also, Second Revised Sheet Nos. 82-84 were submitted to correct pagination errors.

Gas Transport states that copies of this filing were served upon its jurisdictional customers and the Regulatory Commissions of the states of Ohio and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 of 385.211). All such motions to intervene or protests should be filed on or before June 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13686 Filed 6-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-92-000]

Jupiter Energy Corp.; Institution of Restructuring Proceeding Under Order No. 636

June 5, 1992.

Take notice that the Commission is instituting a proceeding for Jupiter Energy Corporation (Jupiter) in which the pipeline will make the rate, tariff, or service changes necessary to comply with the revisions to title 18 of the Code of Federal Regulations promulgated by Order No. 636. Under the provisions of 18 CFR 284.14, the pipeline is required to make a compliance filing in the above-captioned docket on or before December 31, 1992.

Any person desiring to be heard in the instant proceeding must file a motion to intervene in that proceeding with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC, on or before June 12, 1992, in accordance with the requirements of rule 214 of the Commission Rules of Practice and Procedure (18 CFR 385.214). Motions to intervene must be filed in the docket for the restructuring of the individual pipeline and not in the docket for Order No. 636. Late motions to intervene in this proceeding, especially motions filed after the filing of the pipeline's compliance filing will not be viewed with favor.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13700 Filed 6-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-17-000]

Louisiana Resource Pipeline Co., Limited Partnership; Petition for Rate Approval

June 5, 1992.

Take notice that on May 29, 1992, Louisiana Resources Pipeline Company, Limited Partnership (LRP) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission allow it to continue in effect its existing maximum rate of 27.56 cents per MMBtu as a fair and equitable rate for transportation of natural gas under section 311(a)(2) of the natural Gas Policy Act of 1978 (NGPA).

LRP states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA operating in the State of Louisiana. LRP includes in its application data to illustrate the competitiveness of the Southern Louisiana market which it uses to justify the continuance of its existing rate. LRP states that its pipeline system is in an extremely competitive area in Southern Louisiana and the rates LRP charges for section 311 transportation services are a function of such competition and the marketplace, rather than the maximum section 311 rate which has been approved by the Commission. As a result, LRP proposes to retain its existing maximum section 311 rate in effect as a rate ceiling, recognizing, however, that the actual rates charged are set by the competitive transportation market in Southern Louisiana.

Pursuant to § 284.123(b)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion

to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 25, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13688 Filed 6-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-166-010]

Northwest Pipeline Corp.; Compliance Filing

June 5, 1992.

Take notice that on June 1, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing in the captioned docket the following tariff sheets, in compliance with Ordering Paragraph (D), of the Commission's order issued May 1, 1992 in Docket Nos. CP91-2392-0002 and CP91-2393-000, to be a part of its FERC Gas Tariff:

Second Revised Volume No. 1

ProForma Sheet No. 10
ProForma Sheet No. 11
ProForma Sheet No. 13
ProForma Sheet No. 138
ProForma Sheet No. 146

First Revised Volume No. 1-A

ProForma Sheet No. 2
ProForma Sheet No. 201
ProForma Sheet No. 406
ProForma Sheet No. 437

Original Volume No. 2

ProForma Sheet No. 2
ProForma Sheet No. 2.1
ProForma Sheet No. 2-A
ProForma Sheet No. 2-A.1
ProForma Sheet No. 2-B
ProForma Sheet No. 2-C

Northwest sates that Sheet Nos. 10, 11, and 13 of Volume No. 1, Sheet No. 201 of Volume 1-A, and Sheet Nos. 2, 2.1, 2-A and 2-A.1 of Volume No. 2 are filed to reflect the reclassification of facilities from the Transmission Function to the Gathering Function and the corresponding adjustment in Northwest's sales, transportation and storage rates. Northwest states that Sheet Nos. 2, 138 and 146 of Volume No. 1 and Sheet Nos. 406 and 437 of Volume No. 1-A are filed to remove any reference to gathering and processing from the foresaid tariff volumes. Northwest states that Sheet Nos. 2-B and 2-C of Volume No. 2 are filed to remove the previously approved gathering and processing rates from Volume No. 2 of Northwest's tariff.

Northwest states that it proposes to make the tariff sheets effective as of the date the facilities are conveyed to Williams Gas Processing Company (Williams).

Northwest states that of the filing is being mailed to each party in Docket Nos. CP91-2392, CP91-2393 and RP91-166 and to all affected customers and regulatory commissions of each state in which any customer distributes gas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13698 Filed 6-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-053

Northern Natural Gas Co.; Notice of Interim Gas Inventory Charge

June 5, 1992.

Take notice that Northern Natural Gas Company (Northern) on April 30, 1992, tendered for filing a reconciliation of the Interim Gas Inventory Charge (IGIC).

The instant filing is made in compliance with the Commission's Order in Docket No. RP88-259-034, et al. on November 19, 1990.

Additionally, Northern is also requesting a waiver of ordering paragraph (f) of the November 19, 1990 Order wherein any refunds were to be paid in cash based upon the actual customer's billing determinants during the interim period. As the IGIC period has been extended, Northern requests that the refunds be carried over into the current IGIC period with any balance accruing the appropriate carrying charges.

Northern states that copies of the filing were served upon Northern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13697 Filed 6-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP92-155-001]

Ozark Gas Transmission System; Proposed Change in FERC Gas Tariff

June 4, 1992.

Take notice that Ozark Gas Transmission System ("Ozark") on May 29, 1992, submitted the following revised tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1:

Substitute Second Revised Sheet No. 126

Ozark states that the purpose of this filing is to comply with the order issued by the Commission in the referenced docket on May 21, 1992. The proposed effective date is May 22, 1992. Ozark states that copies of the filing were served upon its jurisdictional customers and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13684 Filed 6-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-147-001]

Questar Pipeline Company; Tariff Filing

June 5, 1992

Take notice that Questar Pipeline Company on May 19, 1992, tendered for filing and acceptance Substitute Original Sheet No. 19A to Original Volume No. 1 of its FERC Gas Tariff.

Questar states that this filing is made in compliance with the Commission's May 1, 1992, order in Docket Nos. TM92-3-55-000 and RP92-147-000.

Questar requests an effective date of May 3, 1992, for the proposed tariff sheet and states that this filing has been served upon all parties on the official service list and the Utah and Wyoming public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13691 Filed 6-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-16-000]

Sonat Intrastate-Alabama Inc.; Petition for Rate Approval

June 5, 1992.

Take notice that on May 20, 1992, Sonat Intrastate-Alabama Inc. filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.326 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Sonat Intrastate-Alabama has submitted cost data to support its proposed rate in Exhibit I to its application.

Sonat Intrastate-Alabama's petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA operating in the State of Alabama. It states that its previous rate of $0.334 per MMBtu was approved by the Commission in Docket No. ST89-3601-000 on June 7, 1990.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person, desiring to particpate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 22, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13687 Filed 6-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-82-013 and RP92-97-003]

Tarpon Transmission Co., Tariff Filing

June 4, 1992.

Take notice that on May 29, 1992, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Eighth Sheet No. 2A, to be effective on June 1, 1992. Tarpon states that it has filed this tariff sheet (which reflects a transportation rate of 8.1 cents per Mcf, inclusive of a 3.4-cent per Mcf charge for nonrecurring regulatory commission expense), in compliance with Ordering Paragraph (B) of the Commission's "Order Granting Rehearing," issued in the above-referenced dockets on May 29, 1992 ("Rehearing Order"). The 8.1-cent compliance rate reflects a .6-cent per Mcf increase in Tarpon's previously effective compliance rate to permit Tarpon to recover carrying charges on its nonrecurring regulatory commission expenses.

Tarpon also submitted for filing Substitute First Sheet No. 86A (the rate exhibit to Tarpon's ITS pro forma contract) and Substitute Second Sheet No. 96A (the rate exhibit to Tarpon's FTS pro forma contract) to reflect Tarpon's new compliance rate, including the charge (with carrying costs) for nonrecurring regulatory commission expense. Tarpon requests that the Commission grant any waivers necessary to make these sheets effective on June 1, 1992.

Tarpon further noted that it filed tariff sheets on April 30, 1992 in Docket No. RP92-164 to increase its then-effective compliance rate of 7.5 cents per Mcf to 15.9 cents per Mcf. By order issued May 29, 1992, the Commission accepted Tarpon's 15.9-cent rate for filing, and suspended it to become effective October 1, 1992, subject to refund and to the condition that Tarpon file revised tariff sheets reflecting the recovery of carrying charges on nonrecurring regulatory commission expense permitted by the Rehearing Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13692 Filed 6-10-92; 8:45 pm]

BILLING CODE 6717-01-M

[Docket Nos. RS92-86-000, RP92-137-000, and RP92-108-000 (consolidated)]

Transcontinental Gas Pipe Line Corporation, Filing

June 4, 1992.

On May 26, 1992, Transcontinental Gas Pipe Line Corporation (Transco) filed a Filing to Determine Status under Order No. 636. Notice is hereby given that comments on Transco's filing are due on or before June 22, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13690 Filed 6-10-92; 8:45am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-43-003]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 4, 1992

Take notice that Williams Natural Gas Company (WNG) on June 1, 1992, tendered the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 to be effective May 1, 1992:

Substitute Ninth Revised Sheet No. 6
Substitute Tenth Revised Sheet No. 6A
Fourth Revised Sheet No. 260

WNG states that on February 28, 1992, it filed its annual purchased gas adjustment. The instant filing is being made in compliance with Ordering Paragraphs (D), (E), (F), and (G) of Commission order issued April 30, 1992 in Docket Nos. TA92-1-43-000, *et al.*

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 92-13685 Filed 6-10-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RS92-90-000]

Wyoming Interstate Company, Ltd., Filing

June 5, 1992.

On May 26, 1992, Wyoming Interstate Company, Ltd. (WIC) filed a Notification of Existing Compliance with Order No. 636 and Request to Limit Proceeding. Notice is hereby given that comments on WIC's filing are due on or before June 22, 1992.

Lois D. Cashell,
Secretary.

[FR Doc. 92-13689 Filed 6-10-92; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-07-NG]

LEDCO, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of a order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting LEDCO, Inc. authorization to import and export up to a combined total of 200 Bcf of natural gas for a two-year period beginning on the date of first import or export delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 5, 1992.

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 92-13792 Filed 6-10-92; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 92-13-NG]

Selkirk Cogen Partners, L.P.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Selkirk Cogen Partners, L.P. (Selkirk) on February 5, 1992, as supplemented May 14, 1992, requesting authorization to import up to 55,000 Mcf of natural gas per day from Canada for a period of fifteen years. This gas would be used as fuel for a 252 megawatt (MW) cogeneration facility to be constructed at the General Electric Company Plastics Division (GE) manufacturing complex in Selkirk, New York. The new cogeneration plant would be located adjacent to an existing 79.9 MW cogeneration plant owned by Selkirk and is expected to be in commercial operation in June 1994.

The proposed imports would take place under three gas purchase agreements. The gas would be transported by Iroquois Gas Transmission System (Iroquois) from the U.S./Canada border near Waddington, New York, to the Tennessee Gas Pipeline Company (Tennessee) system. Tennessee would then deliver the gas to Selkirk's cogeneration plant. Construction of additional pipeline facilities would be required on these two systems to transport the imported gas for Selkirk.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 13, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:
Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9482
Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Selkirk is a Delaware limited partnership whose principal office is located in Boston, Massachusetts. The proposed 252 MW cogeneration facility is the second phase of a project by Selkirk to construct sequentially two cogeneration units. Selkirk was authorized by DOE in DOE/FE Opinion and Order No. 447 (1 FE ¶ 70,375, November 15, 1990) to import Canadian natural gas to fuel the 79.9 MW unit. Selkirk states that Selkirk Cogen Partners II, L.P. (Selkirk II), also a Delaware limited partnership, is currently the developer of the second unit. However, Selkirk II will be merged with Selkirk prior to the construction of the second unit, leaving Selkirk as the surviving partnership and owner of both cogeneration facilities.

Under the import proposal to supply gas used by the second cogeneration unit, Makowski Selkirk, Inc. (Makowski), the general partner of Selkirk II, has entered into gas purchase contracts with ATCOR Ltd. (ATCOR), Esso Resources Canada (Esso), and PanCanadian Petroleum Limited (PanCanadian). Each contract has a primary term of fifteen years beginning on the date of the first firm delivery to the cogeneration facility. There is a provision in the contracts to extend the term by an additional five years, subject

to regulatory approvals. Interruptible deliveries may begin about six months earlier than firm deliveries to provide gas during the test phase of the cogeneration plant. These contracts will be assigned to Selkirk by Makowski when the two partnerships are merged. In view of the fact that the contracts will be assigned to Selkirk, references herein to the contracts will identify Selkirk.

The contract with ATCOR covers firm purchases of up to 17,000 Mcf of gas per day, and the contracts with Esso and PanCanadian each cover firm purchases of up to 19,000 Mcf per day. All of the gas to be purchased under these contracts would be delivered at the Alberta/Saskatchewan border at Empress, Alberta. Selkirk is responsible for paying the transportation charges on TransCanada Pipelines Limited's system from Empress to the Iroquois system at the international border at Waddington, New York and for the transportation in the United States.

All three contracts require Selkirk to purchase a minimum annual quantity equal to 75 percent of the sum of the maximum daily contract quantities (MDQ). If Selkirk, for reasons other than force majeure, takes less than the minimum amount and does not make up the deficiency in the following two consecutive contract years, then Atcor and PanCanadian may reduce proportionately the MDQ for the remainder of their contract terms. Esso may permanently reduce the MDQ if Selkirk does not make up the deficiency after one contract year.

The price of the imported gas under the ATCOR agreement consists of a two-part demand charge and a commodity charge. The first component of the demand charge is equal to the monthly transportation charges on the pipeline system of Nova Corporation of Alberta to Empress. The second component is a fixed monthly charge equal to $0.15 per MMBtu times one-twelfth of the minimum annual quantity, but is subject to retroactive readjustment following any year in which the cogeneration facility operates at less than 75 percent of its rated capacity.

The commodity price paid by Selkirk to ATCOR at Empress, Alberta, also has two parts covering two different tiers of purchase volumes. Tier 2 volumes may be nominated up to the MDQ on any day, but may not exceed 25 percent of the sum of the MDQs in any contract year. The Tier 1 commodity charge, applicable to Tier 1 volumes, is equal to a base price (initially $1.60 per MMBtu) adjusted monthly according to an index price reflecting the weighted average cost of fuel oil and natural gas used in New York, less $0.15 per MMBtu. Either party may requrie renegotiation of the Tier 1 commodity rate and the adjustment formula in the fifth, eighth, and eleventh contract years (and in the fourteenth and seventeenth contract years if the agreement is extended.) Renegotiation is intended to yield a delivered price in New York State that is comparable to and competitive with the delivered price of major competing energy supplies. The gas included as a major competing energy supply would be long-term firm supplies sold to local distribution companies and electric power generation customers in New York. The Tier 2 commodity charge, applicable to all volumes purchased under Tier 2, would be negotiated each month or, failing agreement by Selkirk and ATCOR, set at the adjusted base price level.

The price provisions of the Esso and PanCanadian contracts are similar to those in the ATCOR contract. However, the fixed monthly charge component of the demand charge under the Esso and PanCanadian contracts is $0.30 per MMBtu (instead of $0.15) times one-twelfth of the minimum annual quantity. In addition, the commodity charge for Tier 1 volumes (or "contract price volumes" in the PanCanadian contract) is equal to the adjusted base price (initially $1.70 per MMBtu) less $0.30 per MMBtu.

Based on the foregoing contractual terms, Selkirk estimates that if this gas was delivered in May 1992, the price at the U.S./Canada border under the ATCOR contract would be $ U.S. 2.52/MMBtu. The border price under the Esso and PanCanadian contracts would be $ U.S. 2.56/MMBtu.

The contracts contain supply assurance provisions. ATCOR is obligated to maintain a remaining reserves-to-production ratio greater than or equal to the number of contract years remaining in the agreement. Esso is required to provide a gas supply and deliverability report acceptable to Selkirk. PanCanadian is obligated to give Selkirk a copy of its annual reserves assessments prepared by the Alberta Energy Resources Conservation Board in connection with PanCanadian's removal permits. Further, warranty provisions require ATCOR, Esso, and PanCanadian to compensate Selkirk for additional costs incurred if it becomes necessary to obtain alternative supplies of gas for quantities nominated but not delivered.

In support of the application, Selkirk states that each of the gas purchase agreements entered into by Makowski is flexible with respect to both price and volumes. In Selkirk's view, the provisions regarding the pricing structure and renegotiation and arbitration would ensure that this Canadian gas would remain competitive with the cost of competing fossil fuels and other gas supplies in the State of New York over the life of the contracts. Further, Selkirk asserts that the quantity of gas is needed and supported by supply sources of demonstrated reliability.

The decision on Selkirk's application for import authority will be made consistent with DOE's natural gas import policy guidelines under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making the public interest determination including need for the gas and security of supply as set forth in the policy guidelines. Selkirk asserts that this proposed import is in the public interest because it would be competitive, the gas is needed, and the natural gas supply is secure. Parties opposing the proposed import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42, U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met it's NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulation in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through response to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference should materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Selkirk's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open betwen the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 5, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-13793 Filed 6-10-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 92-09; Certification Notice—102]

Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self-certification in accordance with section 201(d).

Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
EEA III, L.P., Bayonne Cogemation Project, Arlington, VA	05-23-92	Combined Cycle	150	Hudson County, NJ.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

This self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on June 5, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Program, Office of Fossil Energy.

[FR Doc. 92-13794 Filed 6-10-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-4142-8]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption, Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of waiver of Federal preemption.

SUMMARY: EPA is granting a waiver of Federal preemption to the State of California under section 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b). This waiver allows California to enforce its standards and test procedures for the certification of new heavy-duty motor vehicles and motor vehicle engines fueled with compressed natural gas (CNG) or liquified petroleum gas (LPG) (collectively referred to as gaseous fuels).

ADDRESSES: A copy of the above standards and procedures, the decision document containing an explanation of the Administrator's determination, and the record of those documents used in arriving at this determination are available for public inspection under Docket No. A-90-34. Interested persons may inspect the docket during the working hours of 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m. at the Environmental Protection Agency, Air Docket (LE-131), room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Copies of the decision can also be obtained from EPA's Manufacturers Operations Division by contacting Bruce Fergusson, as noted below.

FOR FURTHER INFORMATION CONTACT: Bruce Fergusson, Attorney/Advisor, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 260–9423.

SUPPLEMENTARY INFORMATION: Pursuant to 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b) (Act), I have decided to grant a waiver of Federal preemption to the State of California. This waiver allows California to enforce its standards and test procedures for the certification of new heavy-duty motor vehicles and motor vehicle engines fueled with compressed natural gas or liquefied petroleum gas. The standards and test procedures apply to new 1990 and later model year heavy-duty gaseous-fueled motor vehicles and motor vehicle engines.

By letter dated September 7, 1990, the California Air Resources Board (CARB) submitted to the U.S. Environmental Protection Agency (EPA) a request for waiver of Federal preemption to enforce certain amendments to its heavy-duty motor vehicle and motor vehicle engine emission control program.[1]

These amendments:

(1) Amend the existing California heavy-duty Otto-cycle (gasoline) and diesel-cycle emission standards and test procedures to make them applicable to heavy duty motor vehicles and motor vehicle engines fueled by CNG and LPG beginning with the 1990 model year;

(2) Establish an optional nonmethane hydrocarbon (NMHC) standard for heavy-duty motor vehicles and motor vehicle engines to which a manufacturer could choose to certify in lieu of the existing total hydrocarbon (THC) standard;

(3) Incorporate appropriate fuel specifications for both compressed natural gas and liquified petroleum gas. The specifications would apply to fuel used for both emission testing and durability service accumulation;

(4) Establish particulate averaging criteria for heavy-duty gaseous-fueled motor vehicles and motor vehicle engines;

(5) Establish appropriate exhaust emission sampling and calculation procedure for heavy-duty gaseous-fueled motor vehicles and motor vehicle engines;

(6) Amend the existing "California Motor Vehicle Emission Control Label Specifications" to make it applicable to gaseous-fueled motor vehicles and motor vehicle engines;

(7) Make other minor amendments to the existing regulations in order to correct, clarify or make them consistent with applicable Federal regulations.

On June 11, 1991, EPA published a notice of opportunity for a public hearing and a request for written comments concerning CARB's request.[2] EPA did not receive a request for a hearing, but did receive a joint comment from two interested trade associations, which has been addressed in the Decision Document. This determination is thus based on CARB's written submissions, the written comments received by EPA, and all other relevant information.[3]

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs the State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act. As previous decisions granting waivers of Federal preemption have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology given the cost of compliance within that time period or the Federal and State test procedures impose inconsistent certification requirements.[4]

CARB has made a determination that its proposed standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.[5] This conclusion is based on the lack of Federal standards for gaseous-fueled motor vehicles and motor vehicle engines. No comments were received that criticized CARB's protectiveness determination for these standards. Therefore, based on the record before me, I find that CARB's amendments do not undermine its determination that its State standards are, in the aggregate, at least as protective of public health and welfare as applicable standards.

CARB has repeatedly demonstrated the existence of compelling and extraordinary conditions in California justifying the need for its own motor vehicle pollution control program.[6] In its letter requesting this waiver, CARB stated that California continues to experience serious air pollution problems, unique to the State, which justify the need for its own motor vehicle emission control program.[7] Based on previous showings by California in this regard, CARB's submission to the record, and the absence of any public comments questioning the need for CARB's own motor vehicle pollution control program, I agree that California continues to face the requisite compelling and extraordinary conditions. Thus, I cannot deny the waiver request on the basis of a lack of compelling and extraordinary conditions.

CARB has submitted information demonstrating that the requirements of its emissions standards and test procedures are consistent with section 202(a) o the Act. CARB stated its finding that the emission standards are technologically feasible within the lead time provided considering the costs of compliance because the appropriated technology enabling vehicles and engines to meet these standards is widely available. No one submitted data or other evidence sufficient to satisfy its burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering the costs. With regard to certification, because there are no Federal standards and procedures for gaseous-fueled motor vehicles and motor vehicle engines, a manufacturer will not need to be concerned about inconsistent certification requirements. Therefore, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

This waiver of Federal preemption will affect not only persons in California but also manufacturers outside the State who must comply with California's requirements. As a result, I find that this determination is a final agency action of national applicability. Judicial review of this determination is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia within 60 days of publication. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in judicial proceedings

[1] See, letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated September 7, 1990.

[2] 56 FR 26817 (June 11, 1991).

[3] All this information is contained in Docket A-90-34.

[4] See e.g., 43 FR 32182 (July 25, 1978).

[5] CARB Resolution 89–79 at p. 3 (September 15, 1989).

[6] See e.g., 49 FR 18887, 18890–91 (May 31, 1984).

[7] See letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, at p. 4, dated September 7, 1990.

brought by EPA to enforce these requirements.

This determination is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget. Nor is it necessary to prepare a Regulatory Impact Analysis under Executive Order 12291.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a regulatory flexibility analysis which addresses the impact of is action on small business entities.

Finally, the Administrator has delegated the authority to make determinations on waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: June 5, 1992.

Michael Shapiro,

Acting Assistant Administrator.

[FR Doc. 92-13774 Filed 6-10-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4142-9]

Grand Canyon Visibility Transport Commission; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Grand Canyon Visibility Transport Commission to be held on June 21, 1992. The Commission was established on November 13, 1991 (see 56 FR 57522 (November 12, 1991)) under section 169B of the Clean Air Act Amendments of 1990 (Act). The primary purposes of this meeting are for the Commission to be presented with a revised draft workplan prepared by the Grand Canyon Visibility Transport Commission Operations Committee and for the Commission to decide upon the organization of a public advisory committee. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended.

DATES: The meeting will be held on June 21, 1992 from 2-3:45 p.m.

ADDRESSES: The meeting will be held at the Jackson Lake Lodge, Buffalo Room, Grand Teton National Park, Highway 80, Moran, Wyoming.

FOR FURTHER INFORMATION CONTACT: James M. Souby, Executive Director, Western Governors' Association, 600 17th Street, Suite 1705 South Tower, Denver, Colorado 80202. Phone number (303) 623-9378.

SUPPLEMENTARY INFORMATION: The Commission is charged with assessing currently available studies and information pertaining to visibility impairment at the Grand Canyon National Park from sources in the transport region (including potential or projected growth) and is to issue a report to U.S. EPA within four years recommending what measures, if any, should be taken under the Act to remedy such impairment. The Administrator of EPA has used his broad discretionary authority under section 169B of the Act to expand the scope of the Commission to include additional class I areas in the vicinity of Grand Canyon National Park—what is sometimes referred to as the "Golden Circle" of parks and wilderness areas. This includes most of the national parks and wilderness areas of the Colorado Plateau. The Administrator established the visibility transport region to include all or part of the following States: Arizona, California, Colorado, New Mexico, Nevada, Oregon, and Utah, and invited the Governors of those States or their designees to participate as members of the Commission. The Administrator also invited the Chief of the U.S. Forest Service and the Directors of the Bureau of Land Management, U.S. Fish and Wildlife Service and National Park Service to represent their Federal agencies on the Commission.

Dated: June 3, 1992.

Daniel W. McGovern,

Regional Administrator, U.S. Environmental Protection Agency, Region 9.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 92-13771 Filed 6-10-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: The submission is summarized as follows:

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Application for a Merger or Other Transaction Pursuant to section 18(c) of the Federal Deposit Insurance Act (Phantom or Corporate Reorganization).

Form Number: FDIC 6220/07.

OMB Number: 3064-0015.

Expiration Date of OMB Clearance: August 31, 1992.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks who apply for FDIC approval to effect a merger transaction for the principal purpose of corporate reorganization.

Number of Respondents: 200.

Number of Responses Per Respondent: 1.

Total Annual Responses: 200.

Average Number of Hours Per Response: 20.

Total Annual Burden Hours: 4,000.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0015, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 10, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the use of application form FDIC 6220/07, which is used by FDIC-supervised banks who apply for FDIC approval to effect a merger transaction under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)). This type of transaction involves a phantom bank merger or other merger transaction for the principal purpose of corporate reorganization. The application form requires the applicant to furnish information concerning the terms and conditions of the merger, structure of the transaction, and a statement of condition of recent date for the applicant and the other institution. The information collected on the form is used by the FDIC as a basis for evaluating certain factors as required by section 18(c) of the FDI Act before approving the application.

Dated: June 5, 1992.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 92-13710 Filed 6-10-92; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

BankAmerica Corporation; Application to Acquire a Savings and Loan Holding Company

BankAmerica Corporation, San Francisco, California ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(2) of the Board's Regulation Y (12 CFR 225.23(a)(2)), to acquire 100 percent of the outstanding voting shares of H.F. Holdings, Inc., Marina del Rey, California ("Company"). Company is a savings and loan holding company which engages indirectly in permissible and impermissible nonbanking activities. Applicant has committed to divest or terminate all impermissible nonbanking activities of Company consistent with Board policy. Specifically, Applicant proposes to acquire the following indirectly held subsidiaries of Company:

(1) HonFed Bank, a Federal Savings Bank, Honolulu, Hawaii ("HonFed"), a federal savings bank which may be acquired by a bank holding company pursuant to 12 CFR 225.25(b)(9) (HonFed Bank will be merged into Bank of America, Federal Savings Bank, Portland, Oregon);

(2) HonFed Financial Services Corporation, Honolulu, Hawaii, a wholly owned interim holding company of HonFed which serves solely as the holding company for First Collateral Services, Inc.;

(3) First Collateral Services, Inc., Honolulu, Hawaii, a company which is engaged in origination of mortgage warehouse lines of credit which is permissible for bank holding companies pursuant to 12 CFR 225.25(b)(1);

(4) H.F. Mortgage, Inc., Honolulu, Hawaii, a company which is engaged in making, acquiring, servicing, and collecting mortgage loans which is permissible for bank holding companies pursuant to 12 CFR 225.25(b)(1);

(5) SLH, Inc., Honolulu, Hawaii, a company which is engaged in operating an electronic funds transfer system which is permissible for bank holding companies pursuant to 12 CFR 225.25(b)(7);

(6) Honvest Corporation, Honolulu, Hawaii, a wholly owned interim holding company of HonFed which: serves as the holding company for six subsidiaries of HonFed; owns a 50 percent interest in Healani Ventures (a general partnership in the process of liquidation); has previously conducted certain real estate subdivision, development, and management activities; and has previously conducted real estate agency, brokerage, fiduciary, and rental agency activities (all impermissible activities of Honvest Corporation will be terminated prior to consummation or will be acquired subject to commitments to divest or cease the impermissible activities);

(7) Honofed Development Corporation, Honolulu, Hawaii, a company which is engaged in real estate development through its wholly owned subsidiaries, Honofed Bel Mar Corporation and Honofed Ben Lomond Corporation, and through a 50 percent interest in Bel Mar Estates (the real property indirectly held by Honofed Development Corporation will be either transferred to HFH Partners, a partnership to be formed by the present stockholders of Company, or will be held for sale with all further development activity halted);

(8) Honofed Bel Mar Corporation, Honolulu, Hawaii, a company which was previously engaged in real estate development activities (Applicant does not intend to continue these real estate development activities, and the indirect interest that Honofed Bel Mar Corporation has in two real properties will either be sold or distributed to HFH Partners prior to closing);

(9) Bel Mar Estates, a California general partnership (consisting of Honofed Development Corporation and Honofed Bel Mar Corporation) which owns a three acre parcel of undeveloped property in California and holds a 12 percent limited partner's interest in a limited partnership which is developing certain residential property in California (the three acre parcel of land that Bel Mar Estates holds will either be sold or transferred to HFH Partners prior to closing, and the limited partnership interest that it holds will be transferred to HFH Partners prior to closing);

(10) Honofed Ben Lomond Corporation, Honolulu, Hawaii, a company which is engaged in holding a mortgage which is permissible for bank holding companies pursuant to 12 CFR 225.25(b)(1), and which holds 51 percent of North Ogden Center;

(11) North Ogden Center, North Ogden, Utah, a partnership (51 percent is held by Honofed Ben Lomond Corporation and 49 percent is held by unrelated parties) which owns a 10 acre parcel of land in Utah (if the 10 acre parcel of land held by North Ogden Center is not sold before closing, Honofed Development Corporation and Honofed Ben Lomond Corporation will be acquired subject to an appropriate divestiture commitment);

(12) Weber Mortgage Corporation, North Ogden, Utah, a company which is engaged in holding and servicing loans which is permissible for bank holding companies pursuant to 12 CFR 225.25(b)(1);

(13) Honofed Insurance, Inc., Honolulu, Hawaii, a company which is engaged in acting as an agent and/or broker of insurance products, specifically credit life and credit disability insurance, and fixed rate annuities which is permissible for bank holding companies pursuant to 12 CFR 225.25(b)(8) (any impermissible activities conducted by Honofed Insurance, Inc. will be terminated within an appropriate time frame);

(14) Tel-Tec Hawaii, Inc., Honolulu, Hawaii, a company which buys, sells, leases, services, and repairs electronic equipment (any impermissible activities of Tel-Tec Hawaii, Inc. will be terminated or Tel-Tec Hawaii, Inc. will be divested within an appropriate time frame);

(15) HFSL Corporation, Honolulu, Hawaii, a company which holds for sale a masterlease in a Honolulu office building and subleases space under that masterlease, and which has conducted real property subdivision and development, rentals, commercial property development and investment, and investment and development of multifamily housing units (if the masterlease is not first sold, the masterlease or the stock of HFSL Corporation will be contributed to HFH Partners prior to closing);

(16) Advanced Computer Systems Corporation, Honolulu, Hawaii, a company which is inactive, is in the process of being dissolved, and has only one asset consisting of $160,000 in cash; and

(17) HFB Securities, Inc., Honolulu, Hawaii, a company which serves as a securities, insurance, and investment products broker and dealer (HFB Securities, Inc. is not active and will not commence any activity prior to closing and without prior approval from the Federal Reserve System).Applicant proposes to conduct certain of these activities indirectly on a nationwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or

managing or controlling banks as to be a proper incident thereto." Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined that certain of the above companies which Applicant proposes to acquire are engaged in activities closely related to banking and permissible for bank holding companies as indicated. Applicant has also committed to divest or terminate those activities of Company which are not permissible for bank holding companies as more fully described in the application.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 26, 1992. Any request for a hearing must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how that party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, June 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13727 Filed 6-10-92; 8:45 am]

BILLING CODE 6210-01-F

Bankers Trust New York Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Bankers Trust New York Corporation, New York, New York; to engage *de novo* in investing as a limited partner in New York Equity Fund 1992 Limited Partnership, which will supply equity financing to qualified low-income housing improvement projects and related facilities expected to be located predominantly in the New York City area, pursuant to § 225.25(b)(6) of the Board's Regulation Y. **Comments on this application must be received by June 25, 1992.**

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Pareto Partners, London, England, in providing investment or financial advice, providing foreign exchange advisory and transactional services, and providing investment advice on financial futures and options on futures to clients throughout the world, pursuant to §§ 225.25(b)(4), (17), and (19) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13728 Filed 6-10-92; 8:45 am]

BILLING CODE 6210-01-F

Conrad N. Freeman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 1, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Conrad N. Freeman, Morris, Minnesota; to acquire an additional 3.09 percent, for a total of 62.63 percent, of the voting shares of Morris State Bancorporation, Inc., Morris, Minnesota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Larry Rierson and Catherine Rierson, Clovis, New Mexico; to acquire an additional 3.23 percent, for a total of 13.03 percent, of the voting shares of Western Bancshares of Clovis, Inc., Carlsbad, New Mexico, and thereby indirectly acquire Western Bank of Clovis, Clovis, New Mexico.

Board of Governors of the Federal Reserve System, June 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13730 Filed 6-10-92; 8:45 am]

BILLING CODE 6210-01-F

Mid Am, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f)

of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 6, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am, Inc., Bowling Green, Ohio; to acquire Ultra Bancorp, Xenia, Ohio, and its wholly-owned subsidiary, Home Federal Savings Bank, Xenia, Ohio, and thereby engage in the operation of the target institution, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of South Carolina, Inc., Charleston, South Carolina; to acquire Carolina Financial Corporation, Charleston, South Carolina, and thereby indirectly acquire Home Federal Savings Bank, Charleston, South Carolina. Home Federal Savings Bank will then be merged with and into SouthTrust of South Carolina's bank subsidiary, SouthTrust Bank of Charleston, N.A., Charleston, South Carolina, pursuant to section 5(d)(3) of the Federal Deposit Insurance Act, as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991.

Board of Governors of the Federal Reserve System, June 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13729 Filed 6-10-92; 8:45 am]

BILLING CODE 6210-01-F

ONBANCORP, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 6, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. ONBANCORP, Inc., Syracuse, New York; to acquire 100 percent of the voting shares of The Merchants National Bank & Trust Company of Syracuse, Syracuse, New York, and Union National Bank, Albany, New York.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Bank Corporation of Georgia, Macon, Georgia; to acquire 100 percent of the voting shares of First South Bank of Jones County, N.A. (in organization), Gray, Georgia, First South Bank of Ben Hill County, N.A. (in organization), Fitzgerald, Georgia, and First South Bank of Coweta County, N.A. (in organization), Newnan, Georgia, all *de novo* banks.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Jones Bancorp, Inc., Marcellus, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of G.W. Exchange Bank, Marcellus, Michigan.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Stockgrowers State Banc Corporation, Ashland, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Stockgrowers State Bank, Ashland, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. U B & T Holding Co., Abilene, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, Abilene, Texas.

Board of Governors of the Federal Reserve System, June 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13731 Filed 6-10-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Draft Section 504 Self-Evaluation Report

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of 504 Self-Evaluation; request for comments.

SUMMARY: The Department of Health and Human Services is evaluating its current policies and practices to ensure that discrimination against individuals with handicaps does not occur in its programs and activities. This evaluation is being conducted to comply with the Department's regulation concerning Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services, 45 CFR

part 85 that requires the Department to perform this self-evaluation and to permit interested parties to participate in the process. Accordingly, this notice summarizes the results of the Department's self-evaluation to date and requests public comment from interested parties concerning that evaluation or any aspect of Department policies and practices with respect to individuals with handicaps.

DATES: Comments must be received on or before August 10, 1992.

ADDRESSES: Written comments should be addressed to Edward Mercado, Director, Office for Civil Rights, 330 Independence Avenue, SW., Washington, DC 20201. The Department's self-evaluation to date and all comments received will be available for public inspection in the Department's Office for Civil Rights, room 5525, at the above address, between the hours of 10 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: James Hood, phone (202) 619–1234 (voice) or (202) 863–0101 (TDD).

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap by recipients of Federal financial assistance. In 1978, Congress amended the Rehabilitation Act, and expanded the coverage of section 504 to programs and activities conducted by the Federal Government itself. The rationale was that the Federal Government should have the same Section 504 obligations as the recipients of Federal financial assistance.

HHS published its final regulation to implement the 1978 amendments, codified as 45 CFR part 85, on July 8, 1988, effective September 6, 1988. The implementing regulation prohibits the Department from discriminating against otherwise qualified individuals with handicaps on the basis of handicap in all of its operations, except for certain overseas activities. Part 85 extends to the Department's interaction with members of the public and its treatment of program applicants, participants and beneficiaries.

In order to acquaint the leader with the full scope of programs and activities conducted by the Department, a brief description of the relevant programs/activities is provided under each component heading. Each HHS component discussed in this notice:

1. Occupies facilities that the public may have occasion to visit,
2. Engages in written and oral communication with the public, and
3. Hires Federal employees.

The DHHS Operating Divisions are:

The Office of the Secretary (OS)—No major operating programs or activities conducted directly.

OS contains the following Staff Divisions:

- Assistant Secretary for Management and Budget
- Assistant Secretary for Personnel Administration
- Assistant Secretary for Planning and Evaluation
- Assistant Secretary for Legislation
- Assistant Secretary for Public Affairs
- Office of the Inspector General
- Office of the General Counsel
- Office for Civil Rights

Administration for Children and Families (ACF)—No major operating programs or activities conducted directly.

Administration on Aging (AOA)—Directly operates programs including community-based services and promotes personal and economic independence of all older people.

Public Health Service (PHS)—Directly operates programs including the Indian Health Service, and intramural research conducted by the National Institutes of Health.

Health Care Financing Administration (HCFA)—Directly operates the Medicare program.

Social Security Administration (SSA)—Directly operates the Old Age, Survivors, and Disability Insurance, and Supplemental Security Income for the Aged, Blind, and Disabled programs.

U.S. Office of Consumer Affairs (USOCA) is responsible for directing all consumer affairs activities at the Federal level. USOCA's major activities focus on voluntary mechanisms, marketplace innovations, consumer education/information and conferences.

Although the Department's employment program is subject to section 504 under 45 CFR 85.31, the Department has not included a detailed review of its employment practices as part of this report. The Department is subject to the requirements and procedures of section 501 of the Rehabilitation Act of 1973, as amended. Section 501 requires the Department to hire and advance in employment, qualified individuals with handicaps. The Equal Employment Opportunity Commission (EEOC) has established detailed regulations to implement section 501 at 29 CFR part 1613. The EEOC's section 501 program includes affirmative action requirements that go beyond the nondiscrimination requirements of section 504. The Department does not believe that a detailed review of its employment practices is necessary in light of its compliance with its section 501 responsibilities. However, some aspects of employment are mentioned in this notice since some aspects of program accessibility are inseparable from accessibility required for employment.

Also, because of the very large number of facilities, over 2500, used by the Department throughout the United States, including its territories and possessions, the Department has not examined each separate facility to determine accessibility. Any specific information persons may have regarding accessibility problems in facilities used by the Department, will be helpful in determining the steps needed to improve accessibility. All nonemployment-related complaints filed under Part 85 should be sent to the OCR regional office responsible for the State in which the complaint originated. (See Appendix A for a listing of regional offices). Responsibility for the acceptance, investigation, and the rendering of decisions with respect to employment complaints is vested in the EEO program managed by the Assistant Secretary for Personnel Administration.

The purpose of this notice is to provide an opportunity for individuals with handicaps, organizations representing individuals with handicaps, and other interested persons to review the Department's self-evaluation documents, and to provide oral and written comments. This notice announces the availability of the Self-Evaluation Report and contains a summary of the steps that the Department has taken to undergo its self-evaluation. The Department believes that public involvement in the self-evaluation process is not only valuable, but is essential to the effective and efficient implementation of section 504. The Department will consider revisions to the draft report based on the comments received as well as any further evaluations performed by the Department's component agencies between now and the end of the comment period.

The Department of Health and Human Services (HHS) was renamed from the Department of Health, Education and Welfare on October 17, 1979, because of the creation of the Department of Education. The primary mission of HHS is to serve as the Federal Government's principal agency for furthering the good health of Americans and to provide them with essential human services. The more than 300 programs administered by

HHS vary greatly in size, type, facilities used, and their respective missions.

The Department is administered by the Secretary of HHS, who carries out the functions of the Department through the Office of the Secretary and five operating Divisions. The operating Divisions are: the Social Security Administration, the Health Care Financing Administration, the Administration for Children and Families, the Public Health Service, and the Administration on Aging.

Ten regional offices are maintained by the Department. These offices are located in Boston, New York, Philadelphia, Atlanta, Chicago, Kansas City, Dallas, Denver, San Francisco, and Seattle. Heading these and various associated field offices are Regional Directors who administer Department programs at the regional level and maintain a liaison with the public, special interest groups, governors, mayors and various State and local officials. The Regional Director also serves as the key PHS representative in the region.

Implementing Section 504, Part 85

HHS published its final regulation to implement the 1978 amendments, codified as 45 CFR part 85, on July 8, 1988, effective September 6, 1988. This regulation requires that HHS operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. The regulation sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition of individual with handicaps and qualified individual with handicaps, and established a complaint mechanism for resolving allegations of discrimination against HHS.

Responsibility for coordinating the self-evaluation process was delegated to the HHS Office for Civil Rights (OCR). OCR will provide ongoing assistance to component agencies to review their programs and take the necessary steps to ensure that the agencies' programs are accessible to individuals with handicaps. Accordingly, OCR developed and secured approval for an action plan requiring that the head of each major organizational unit in the Department designate a staff person to work with OCR in this effort. OCR disseminated guidance that included a suggested self-evaluation format developed by the Department of Justice (DOJ). (DOJ has government-wide coordination authority under Section 504.) In addition, DOJ developed a facility review form that was distributed by OCT in order to evaluate the physical accessibility of facilities housing HHS programs and activities. Input from all major organizational units of the Department was requested.

Based on the OCR analysis of the reports submitted by the HHS components, few, if any, problems identified in the self-evaluation report on file, represent substantial program accessibility concerns. However, where potential problems were identified by a component, the report indicates what modifications will be made to improve program accessibility. The report is a detailed summary of the results of the various self-evaluations and facility reviews conducted by each component.

Report Conclusion

The results of the Department's section 504, Part 85 Self-Evaluation Study, based on information analyzed, indicate a strong commitment to the nondiscriminatory operation of HHS programs and activities. Findings emanating from the study were extensive. Also, the process of the study itself served to heighten the awareness and sensitivity of HHS staff to its section 504 responsibilities.

Most of HHS policies, practices, and facilities were found to meet section 504 program accessibility standards. However, there were those which required further study or corrective action. For example, HHS has established policies and procedures to help ensure the availability of readers and interpreters for qualified individuals with handicaps. While, on the other hand, some of the Department's vacancy announcements and job descriptions contain language that could possibly be discriminatory against persons with handicaps. Overall Department operations will be monitored by the HHS Office of Civil Rights for improvement and compliance with the requirements of the section 504, part 85 Regulation.

HHS views the Section 504 Self-Evaluation Study as an ongoing process. Accordingly, HHS components are encouraged (and obligated when a new division of formed) to conduct similar studies in the future. The primary objective of these studies will continue to focus on enhancing the accessibility of all HHS programs and activities to qualified individuals with handicaps.

Dated: April 20, 1992.

Edward Mercado,

Director, Office for Civil Rights.

Approved: June 3, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-13739 Filed 6-10-92; 8:45 am]

BILLING CODE 4150-04-M

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 215]

The Great Lakes Research Program; Availability of Funds for Fiscal Year 1992

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces that grant applications will be accepted to conduct research on the impact on human health of fish consumption in the Great Lakes region. ATSDR's mission includes the prevention of adverse health effects resulting from human exposure to hazardous substances in the environment. The ATSDR Great Lakes Research Program will focus on populations which have been identified to have a higher risk of long-term adverse health effects from exposure to contaminants in Great Lakes fish, i.e., Native Americans, sport anglers, urban poor, and fetuses and nursing infants of mothers who consume contaminated Great Lakes fish.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized in sections 104(i)(5)(A) and 104(i)(15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i) (5)(A) and (15)], and section 106, subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)(3)].

Eligible Applicants

Eligible applicants are the Great Lakes states and political subdivisions thereof, including federally recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant. The Great Lakes states includes Illinois,

Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York and Wisconsin and is consistent with Section 106, Subsection 118(e) of the Great Lakes Critical Programs Act of 1990 (33 U.S.C. 1268(e)(3)). ATSDR encourages collaborative efforts among these potential applicants.

Availability of Funds

Approximately $2 million is available in fiscal year 1992 to fund 5 to 10 research projects. It is expected that the average award will be $150,000 ranging from $100,000 to $200,000. It is expected that the awards will begin on or about August 15, 1992, and are usually made for a 12-month budget period within a project period up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds. However, the equipment proposed should be appropriate and reasonable for the research activity to be conducted. Property may be acquired only when authorized in the grant. The grantee, as part of the application process, should provide a justification of need to acquire property, the description, and the cost of purchase versus lease.

Purpose

The purpose of this announcement is to solicit scientific proposals designed to investigate and characterize the association between the consumption of contaminated Great Lakes fish and potential long-term adverse health effects. The objectives of this program are to 1) build upon and amplify the results from past and on-going research; 2) develop information, databases and/or research methodology that will provide long-term benefit to the Great Lakes human health research effort; 3) develop directions and methodology for future human health effects research; 4) provide health information to the subjects of the research and their medical professionals; and 5) increase the public awareness of the health implications of the toxic pollution problem in the Great Lakes.

Program Requirements

ATSDR will provide financial assistance to applicants in conducting studies on potential human health effects which result from human consumption of contaminated fish from the Great Lakes region. ATSDR encourages the submission of applications that emphasize research that will extend existing studies. ATSDR is also interested in funding applicant programs that identify populations which have a higher risk of long-term adverse health effects from exposure to Great Lakes contaminants in fish, i.e., Native Americans, sport anglers, urban poor, and fetuses and nursing infants of mothers who consume contaminated Great Lakes fish. The program areas of research may include, but are not limited to:

1. Characterizing exposure and determining the profiles and levels of Great Lakes contaminants in biological tissues and fluids in high risk populations;

2. Identifying sensitive and specific human reproductive/developmental endpoints and correlating them to exposure to Great Lakes contaminants;

3. Determining the short- and long-term risk(s) adverse health effects in progeny which result from parental exposure to Great Lakes contaminants (special emphasis on reproductive/developmental, behavioral, neurological, and endocrinological endpoints);

4. Investigating the feasibility of establishing registries and/or surveillance cohorts in the Great Lakes region; and

5. Establishing a chemical mixtures database with emphasis on tissue and blood levels in order to identify new cohorts, conduct surveillance and health effects studies, and establish registries and/or surveillance cohorts.

In awarding grants pursuant to the ATSDR Great Lakes Research Program, ATSDR shall consider proposed projects that will help fill information gaps and address research needs regarding the human health impact of consumption of contaminated fish from the Great Lakes. ATSDR encourages collaborative efforts among potential applicants in pursuing these research needs.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and Technical Review Criteria of New Applications

A. Proposed Program—60%

The extent to which the applicant's proposal addresses:

(1) The scientific merit of the hypothesis of the proposed project, including the originality of the approach and the feasibility, adequacy, and rationale of the design;

(2) The technical merit of the methods and procedures (including Quality Assurance and Quality Control) for the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the Purpose section of this announcement;

(3) The proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured;

(4) The proposed mechanism to be utilized as a resource to address community concerns and opinion, and create lines of communication; and

(5) The proposed method to disseminate the study results to state and local public health officials, community residents, and to other concerned individuals and organizations.

B. Program Personnel—30%

The extent to which the proposal has described:

(1) The qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership; and

(2) The competence of associate investigators to accomplish the proposed study, their commitment, and time devoted to the study.

C. Applicant Capability—10%

Description of the adequacy and commitment of the institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

D. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

2. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

a. Satisfactory progress has been made in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives;

d. Budget request is clearly justified and consistent with the intended use of grant funds, and;

e. Availability of funds for the remaining project years, if any.

Executive Order 12372 Review

The applications submitted under this announcement are not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. Technical Review

All protocol, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA section 104(i)(13) as amended by SARA.

B. Protection of Human Subjects

If the proposed project involves research on human subjects, the applicants must comply with Department of Health and Human Services Regulations (45 Code of Federal Regulations 46) regarding the protection of human subjects. Assurances must be provided that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

C. Cost Recovery

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), provides for the recovery of costs incurred for health-related activities at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated costs including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final financial status report, unless there is a litigation, claim, negotiation, audit, or other action involving the specific site; then the records will be maintained until resolution of all issues on the specific site.

Application Submission and Deadline Dates

The original and two copies of application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia, 30305 by July 15, 1992. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline*: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date or,

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applications should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications*: Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and phone number and will need to refer to Announcement Number 215. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, or by calling (404) 842–6797. Programmatic technical assistance may be obtained from Mr. Michael Youson, Office of the Director, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–29, Atlanta, Georgia 30333, or by calling (404) 639–6001.

Please Refer to Announcement Number 215 When Requesting Information and Submitting an Application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC. 20402–9325 (Telephone 202–783–3238).

Dated: June 4, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92–13736 Filed 6–10–92; 8:45 am]

BILLING CODE 4160–70–M

Health Care Financing Administration

[OIS–017–N]

Medicare Program; Quarterly Listing of Program Issuances and Coverage Decisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during January, February, and March 1992 that relate to the Medicare program. Section 1871(c) of the Social Security Act requires that we publish a list of our Medicare issuances in the **Federal Register** at least every 3 months.

We also are providing the content of the revisions to the Medicare Coverage Issues Manual published during this quarter. On August 21, 1989 (54 FR 34555), we published the content of the Manual and indicated that we will publish quarterly any updates. Adding the Medicare Coverage Issues Manual changes to this listing allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT: Margaret Cotton (410) 966–5260 (For Instruction Information)

Sam DellaVecchia (410) 966–5395 (For Coverage Information)
Margaret Teeters (410) 966–4678 (For All Other Information)

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program that pays for health care and related services for 35 million Medicare beneficiaries. Administration of the program involves (1) providing information to beneficiaries, health care providers, and the public; and (2) effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the program efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** no less frequently than every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). As in prior notices, although both substantive and interpretive regulations published in the **Federal Register** in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements, we are including those regulations (proposed and final) published.

II. Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Table IV of this notice contains the text of revisions to the Coverage Issues Manual published between January 1 and March 31, 1992. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquires we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

We issued our first update that included the text of changes to the Coverage Issues Manual on March 20, 1990 (55 FR 10290), our second on February 6, 1991 (56 FR 4830), our third on July 5, 1991 (56 FR 30752), our fourth on November 22, 1991 (56 FR 58913), our fifth on January 22, 1992 (57 FR 2558), and our sixth on March 16, 1992 (57 FR 9127). The issuance update found in Table IV of this notice, when added to material from the manual published on August 21, 1989, and the updates published on March 20, 1990, February 6, 1991, July 5, 1991, November 22, 1991, January 22, 1992, and March 16, 1992 constitute a complete manual as of March 31, 1992. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

III. How To Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577); those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication; and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice. We have divided this current listing into four tables.

Table I describes where interested individuals can get a description of all previously published HCFA manuals and memoranda.

Table II of this notice lists, for each of our manuals or Program Memoranda, a transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Table III lists all substantive and interpretive Medicare regulations and general notices published in the **Federal Register** during this period. For each item, we list the date published, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changed.

Table IV sets forth the revisions to the Medicare Coverage Issues Manual that were published during this quarter. For each revision, we give a brief synopsis of the revision as it appears on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revision by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised sections, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Attn: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 783–3238, or fax your credit card order using (202) 512–2250; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS will give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the Government Printing Office at the same address indicated above for manual issuances. When ordering individuals copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

V. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Table II, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 3—Claims Process (HCFA—Pub. 14–3) transmittal entitled "Common Working File," use the Superintendent of Documents No. HE 22.8/7 and the HCFA transmittal number 1409.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Individuals are expected to purchase copies or arrange to review them as noted above.

Questions concerning items in Tables I or II may be addressed to Margaret Cotton, Office of Issuances, Health Care Financing Administration, room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5260.

Questions concerning items in Table IV may be addressed to Sam DellaVecchia, Office of Coverage and Eligibility Policy, Health Care Financing Administration, Room 445 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5395.

Questions concerning all other information may be addressed to Margaret Teeters, Regulations Staff, Health Care Financing Administration, room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–4678.

Table I—Description of Manuals, Memoranda and HCFA Rulings

An extensive descriptive listing of manuals and memoranda was previously published at 53 FR 21730 and supplemented at 53 FR 38891 and 53 FR 50577. Also, for a complete description of the Medicare Coverage Issues Manual, please review 54 FR 34555.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JANUARY–MARCH 1992

Trans. No.	Manual/subject/publication No.
	Intermediary Manual: Part 2—Audits, Reimbursement Program Administration (HCFA—Pub. 13–2) (Superintendent of Documents No. HE 22.8/6–2)
387	● Maximum Payment Per Visit for Independent Rural Health Clinics.
	Intermediary Manual: Part 3—Claims Process (HCFA—Pub. 13–3) (Superintendent of Documents No. HE 22.8/6)
IM–92–1	● Partial Hospitalization Services Provided by Community Mental Health Centers.
	● Bill Review Instructions for Partial Hospitalization Services in Community Mental Health Centers.
1555	● Common Working File.
1556	● General Information about the Common Working File System.
	● CWF Inpatient/SNF Bill—Satellite to Host.
	● CWF Outpatient/Home Health/Hospice Bill—Satellite to Host.
	● CWF Hospice Notice of Election—Satellite to Host.
	● CWF Inpatient/SNF Bill Basic Reply Record and Trailers—Host to Satellite.
	● CWF NOE/Hospice Bill Basic Reply Record and Trailers—Host to Satellite.
	● CWF Utilization Edit Error Codes.
	● Medical Review and A/B Crossover Rejects/Alerts.
	● CWF Inpatient, SNF, Outpatient, Home Health, Hospice Consistency Edits.
	● MSP Maintenance Transaction Error Codes.
1557	● Benefit Period (Spell of Illness).
	● Review of Form HCFA–1450 for Inpatient and Outpatient Bills.
	● Spell of Illness.
	● Initial Determinations with Respect to Beneficiaries.
1558	● Bill Processing and Workload Reporting and Section 3446 Indemnification Procedures for Claims Falling Within the Limitation of Liability Provision
1559	● Drugs and Biologicals.
	Epoetin.
1560	● Disclosure of Beneficiary-Specific Data to Medicare Providers and Suppliers in Coordination with the Social Security Administration.
1561	● Health Insurance Card.
	Health Insurance Claims Numbers.
	Procedures for Obtaining Missing or Incorrect HICNs and Other Data.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JANUARY–MARCH 1992—Continued

Trans. No.	Manual/subject/publication No.
	Cross Reference Health Insurance Claim Number.
	Guidelines for Use of Carrier Alphabetic State File.
	Guidelines for Use of Health Insurance Beneficiary State Tape (BEST—General.
	Common Working File Record Maintenance.
	The Health Insurance Master Record Inquiry.
	CWF File Display Utility Screen.
	Master Beneficiary Record Display.
	Retrieving History Records.
	Inpatient/SNF Summary File Display.
	Outpatient/HHA Summary File Display.
	Part B Summary Record Display.
	Catastrophic Part A Summary Display.
	Hospice Master Utilization Record Display.
	Hospice Summary File Display.
	MSP Auxiliary File Summary.
	Retrieving Records With TA or TB BIC HICN.
	Retrieving Full History Records.
	Inpatient/SNF Full History Record Display.
	Outpatient/HHA Full History Record Display.
	Part B Full History Record Display.
	Hospice Full History Record Display.
	MSP Auxiliary File Display.
	Representative Payee Display.
	HMO Auxiliary Record Display.
	Cross-Reference Record Display.
	Out-of-Service Area Response File.
	Transfer Not-in-File Record Display.
	Archived Claim Pointers Update Screen Display.
	Requesting Assistance in Resolving Problem Areas in the Inquiry/Inquiry Response Procedures.
	Critical Case Procedures—Establishing Entitlement Under Part A and Part B.
1562	● Inpatient Hospital Deductible.
	Coinsurance.
	Basis for Determining the Coinsurance Amounts.
	Part B Annual Deductible.
	Special Carryover Rule for Expense Incurred Prior to 1981.
	Exceptions to Annual Deductible and Coinsurance.
	Application of the Deductible and Coinsurance in Limitation of Liability and Indemnification Situations.
	Form HCFA–1450 Consistency Edits.
	Determining Covered/Noncovered Days and Charges.
	Processing No-Payment Bills.
	Processing Indemnified Bills.
	Waiver of Liability Provision.
	General Responsibilities of Hospitals, PROs and Intermediaries.
	Participating Provider.
	Notification to the Beneficiary When Recovery is Sought from the Provider.
	Sample Letter to Beneficiary Where Recovery is Sought from Provider.
	Amended Medicare Benefit Notices, HCFA–1533.
1563	● Review of Form HCFA–1450 for Inpatient and Outpatient Bills.
1564	● Payment for Blood Clotting Factor Administered to Hemophilia Inpatients.
	Medical Review For Coverage of Skilled Nursing Facility Services.
1565	● Outpatient Services Treated As Inpatient Services.
1566	● Disallowance Form Letters HCFA–1954 and HCFA–1955.
1567	● Electronic Media Claims.
	Requirements for Submission of EMC Data.
	Carriers Manual: Part 3—Claims Process (HCFA—Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1409	● Common Working File.
1410	● Rebundling of CPT–4 Codes.
1411	● Clinical Diagnostic Laboratory Services Subject to Fee Schedule.
	Calculation of Fee Schedule Amounts.
	Specimen Collection Fee.
	Travel Allowance.
1412	● Drugs and Biologicals—General.
	Epoetin.
	Drugs and Biologicals.
1413	● Submitted Bills—No Form HCFA–1490S.
	Physician and Supplier Billing Requirements For Services Furnished On or After September 1, 1990.
	Disclosure of Beneficiary-Specific Data to Medicare Providers and Suppliers in Coordination with the Social Security Administration.
1414	● Optometrists.
1415	● Postpayment Alert List.
1416	● Office of Audit Services.
	Office of Evaluation and Inspection.
	Medicare Carriers.
	Sources of Leads.
	Use of Contractor Resources.
	Abuse.
	Fraud.
	Possible Unethical or Unprofessional Conduct by a Provider.
	Referral to the RPO.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JANUARY–MARCH 1992—Continued

Trans. No.	Manual/subject/publication No.
	Referral from Social Security Administration District Offices.
	Referrals From Beneficiaries.
	Beneficiary and Provider Outreach Program.
	Initial Actions.
1417	● Payment to Ambulatory Surgical Centers.
	Carrier Adjustment of Payment Rates.
	Payment for Intraocular Lens.
	Carrier Adjustment of Payment Rates.
	Payment for Multiple Procedures.
1418	● ASC Payment Groups and Rates.
	1992 CPT–4 Additional Procedures Codes.
	Program Memorandum Carriers (HCFA—Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–92–1	● Counting Physicians, Limited License Practitioners, and Suppliers Who Have Elected to Participate in the Medicare Program Effective January 1, 1992.
B–92–2	● Implementation of section 4114 of the Omnibus Budget Reconciliation Act of 1990 and Application of Uniform Review Guidelines For Physician Visits to Rehabilitation Hospitals/Units.
B–92–3	● Revised Effective Date for Implementation of Medicare Carriers Manual Transmittal No. 1411.
	State Operations Manual (HCFA—Pub. 7) (Superintendent of Documents No. HE 22.8/12)
248	● Deeming and Waiver of Nurse Aide Training and Competency Evaluation Requirements.
	Nurse Aide Training and Competency Evaluation Programs and Competency Evaluation Programs.
	Nurse Aide Registry.
	Hospital Manual (HCFA—Pub. 10) (Superintendent of Documents No. HE 22.8/2)
629	● Indemnification Procedures for Claims Falling Within the Limitation of Liability Provision.
630	● Drugs and Biologicals.
	Epoetin.
631	● Form HCFA–1450 Consistency Edits.
	Liability for Overpayments Discovered Subsequent to Third Calendar Year After the Year of Payment.
632	● Completion of Form HCFA–1450 for Inpatient and/or Outpatient Billing.
633	● Outpatient Services Treated As Inpatient Services.
	Payment for Blood Clotting Factor Administered to Hemophilia Inpatients.
634	● Outpatient Services Treated As Inpatient Services.
	Home Health Agency Manual (HCFA—Pub. 11) (Superintendent of Documents No. HE 22.8/5)
250	● Indemnification Procedures for Claims Falling Within the Limitation of Liability Provision.
251	● Completion of Form HCFA–1450 for Home Health Agency.
	Skilled Nursing Facility Manual (HCFA—Pub. 12) (Superintendent of Documents No. HE 22.8/3)
307	● Indemnification Procedures for Claims Falling Within the Limitation of Liability Provision.
308	● Limitation of Liability for SNF Claims Under Parts A and B of the Medicare Program.
	Claims Processing Timeliness.
	Billing Medicare for the Professional Component of SNF-Based Physician's Services.
	Where Charges Which Include Accommodations Charges are Incurred in Different Accounting Years.
	Total and Noncovered Charges.
	Assuring That Providers No Longer Participating or No Longer Receiving Payments for New Admissions, Continue to Bill for Covered Services.
	Billing Procedures for a Provider Being Assigned Multiple Provider Numbers or a Change in Provider Number.
	Scope of Limitation of Liability Provision.
	Submitting Beneficiary Demand Bills for Noncovered Admissions.
	Beneficiary Demand Bills for Continued Stay Denial.
	Submitting Discharge Bills in No-Payment Cases.
	Situation Requiring Submission of No-Payment Bills.
	Completion of Form HCFA–1450 for Inpatient and/or Outpatient Billing.
	Requirements for Submission of Machine Readable Data.
309	● Completion of Form HCFA–1450 for Inpatient and/or Outpatient Billing.
	Health Maintenance Organization/Competitive Medical Plan Manual (HCFA—Pub. 75) (Superintendent of Documents No. HE 22.8/21:989)
8	● Marketing.
9	● Benefits.
	Rural Health Clinic Manual (HCFA—Pub. 27) (Superintendent of Documents No. HE 22.8/19)
45	● Maximum Payment Per Visit for Independent Rural Health Clinic.
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA—Pub. 29) (Superintendent of Documents No. HE 22.8/13)
52	● Epoetin
53	● Completion of Form HCFA–1450 by Independent Facilities For Home Dialysis Items and Services Billed Under the Composite Rate (Method I).
	Hospice Manual (HCFA—Pub. 21) (Superintendent of Documents No. HE 22.8/10)
28	● Determining Beneficiary Liability, and Section 277 Indemnification Procedures for Claims Falling Within the Limitation of Liability Provision

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JANUARY–MARCH 1992—Continued

Trans. No.	Manual/subject/publication No.
	Coverage Issues Manual (HCFA—Pub. 6) (Superintendent of Documents No. HE 22.8/14)
55	● Air-fluidized Beds.
56	● Blood Platelet Transfusion and Bone Marrow Transplantation.
57	● Infusion Pumps. Safety Rollers.
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA—Pub. 9) (Superintendent of Documents No. HE 22.8/21)
IM–92–1	● Partial Hospitalization Services Provided By Community Mental Health Centers. Billing Instructions for Partial Hospitalization Services Provided in Community Mental Health Centers.
105	● Completion of Form HCFA–1450 for Billing Comprehensive Outpatient Rehabilitation Facility, Outpatient Physical Therapy, Occupational Therapy or Speech Pathology Services.
	Provider Reimbursement Manual: Part 1 (HCFA—Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
366	● Provider of Services. Interim Rates. Interim Rate-Initial Reporting Period.
	Provider Reimbursement Manual: Part 1—Chapter 27 (HCFA—Pub. 15–27) (Superintendent of Documents No. HE 22.8/4)
18	● Charges for Eye and Tissue Donations and Services.
19	● Erythropoietin.
	Provider Reimbursement Manual: Part II—Provider Cost Reporting Forms and Instructions (Hospital) Chapter 19—Form HCFA 2552–85 (HCFA Pub. 15–II–S) (Superintendent of Documents No. HE 22.8/4)
12	● Part II—Outpatient Capital Reduction. Part IV—Direct Graduate Medical Education and ESRD Outpatient Direct Medical Education Costs. Supplemental Worksheet F–2—Computation of Difference Between Interim Payments and Net Cost of Covered Services.
13	● Part I—Computation of Ratio of Cost to Charges.
	Provider Reimbursement Manual: Part II—Provider Cost Reporting Forms and Instructions (Hospital) Chapter 24—Form HCFA 2552–89 (HCFA Pub. 15–II–X) (Superintendent of Documents No. HE 22.8/4)
4	● Calculation of Outpatient Cost to Charge Ratios Net of Reductions. Worksheet D—Cost Apportionment. Part III—Apportionment of Medical and Other Health Services Costs. Part IV—Direct Graduate Medical Education and ESRD Outpatient Direct Medical Education Costs. Supplemental Worksheet F–2—Computation of Difference Between Total Interim Payments and Net Cost of Covered Services. Supplemental Worksheet J–3—Calculation of Reimbursement Settlement—CORF Services.
	Carrier Quality Assurance Handbook (HCFA—Pub. 25) (Superintendent of Documents No. HE 22.8:C 23/982)
47	● Sample Review results. Subsample Review Materials.

TABLE III—REGULATIONS AND NOTICES PUBLISHED, JANUARY–MARCH 1992

Publication date/citation	42 CFR part	Title
		Final Rules
02/28/92 (57 FR 7002)	405, 410, 416, 417, 418, 440, 482, 483, 484, 485, 488, 491, 493, 494.	Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA).
02/28/92 (57 FR 7188)	493	Clinical Laboratory Improvement Act Program Fee Collection.
02/28/92 (57 FR 7218)	493	Medicare Program; Medicare and Laboratory Certification Program; Enforcement Procedures for Laboratories.
03/06/92 (57 FR 8194)	417, 431, 434, 483, 484, 489, 498.	Medicare and Medicaid Programs; Advance Directives.
		Proposed Rules
02/05/92 (57 FR 4516)	418, 440, 441, 482, 483, 488.	Medicare and Medicaid Programs; Omnibus Nursing Home Requirements (Correction Notice Published 03/13/92 (57 FR 8961)).
03/11/92 (57 FR 8588)	411	Medicare Program; Physician Ownership of, and Referrals to, Health Care Entities that Furnish Clinical Laboratory Services.

Publication date/citation	Title
	Notices
01/02/92 (57 FR 57)	Medicare Program; Data, Standards and Methodology Used to Establish Fiscal Year 1992 Budgets for Fiscal Intermediaries and Carriers.

Publication date/citation	Title
01/06/92 (57 FR 413)	Medicare Program; HMO Qualification Determinations and Compliance Actions.
01/08/92 (57 FR 749)	Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1991 (Correction to the Notice with Comment Period Published 12/09/91 (56 FR 64256)).
01/22/92 (57 FR 2558)	Medicare Program; Quarterly Listing of Program Issuances and Coverage Decisions.
01/27/92 (57 FR 3015)	Medicare Program; Prospective Payment for Inpatient Hospital Capital-Related Costs (Correction to the Final Rule Published 08/30/91 (56 FR 43358)).
02/03/92 (57 FR 4044)	Medicare Program; Recognition of the Joint Commission on the Accreditation of Healthcare Organizations Standards for Home Care Organizations.
03/16/92 (57 FR 9127)	Medicare Program; Quarterly Listing of Program Issuances and Coverage Decisions.

Table IV—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 55; section 60–19, Air-fluidized bed.

Clarification—Effective Date: Not Applicable.

Section 60–19, Air-fluidized bed.

This section has been clarified so that home use of the air-fluidized bed is not covered when the patient requires treatment with wet soaks or moist wound dressings that are not protected with an impervious covering such as plastic wrap or other occlusive material. Formerly, the section provided for non-coverage for the bed if the patient required moist dressings, which some interpreted to include all moist dressing situations, regardless of whether the wound was capable of being kept moist by occlusive material.

60–19 Air-Fluidized Bed (Effective for services rendered on or after: 07/30/90)

An air-fluidized bed uses warm air under pressure to set small ceramic beads in motion which simulate the movement of fluid. When the patient is placed in the bed, his body weight is evenly distributed over a large surface area which creates a sensation of "floating." Medicare payment for home use of the air-fluidized bed for treatment of pressure sores can be made if such use is reasonable and necessary for the individual patient.

A decision that use of an air-fluidized bed is reasonable and necessary requires that:

- The patient has a stage 3 (full thickness tissue loss) or stage 4 (deep tissue destruction) pressure sore;
- The patient is bedridden or chair bound as a result of severely limited mobility;
- In the absence of an air-fluidized bed, the patient would require institutionalization;
- The air-fluidized bed is ordered in writing by the patient's attending physician based upon a comprehensive assessment and evaluation of the patient after conservative treatment has been tried without success;
- A trained adult caregiver is available to assist the patient with activities of daily living, fluid balance, dry skin care, repositioning, recognition and management of altered mental status, dietary needs, prescribed treatments, and management and support of the air-fluidized bed system and its problems such as leakage;
- A physician directs the home treatment regimen, and reevaluates and recertifies the need for the air-fluidized bed on a monthly basis; and
- All other alternative equipment has been considered and ruled out.

Home use of the air-fluidized bed is not covered under any of the following circumstances:

- The patient has coexisting pulmonary disease (the lack of firm back support makes coughing ineffective and dry air inhalation thickens pulmonary secretions);
- *The patient requires treatment with wet soaks or moist wound dressings that are not protected with an impervious covering such as plastic wrap or other occlusive material;*
- The caregiver is unwilling or unable to provide the type of care required by the patient on an air-fluidized bed;
- Structural support is inadequate to support the weight of the air-fluidized bed system (it generally weighs 1600 pounds or more);
- Electrical system is insufficient for the anticipated increase in energy consumption; or
- Other known contraindications exist.

Coverage of an air-fluidized bed is limited to the equipment itself. Payment for this covered item may only be made if the written order from the attending physician is furnished to the supplier prior to the delivery of the equipment. Payment is not included for the caregiver or for architectural adjustment such as electrical or structural improvement.

Cross refer: Carriers Manual, § 5102.2.

Transmittal No. 56; section 35–30, Blood Platelet Transfusion and Bone Marrow Transplantation.

Clarification—Effective Date: Not Applicable.

Section 35–30, Blood Platelet Transfusion and Bone Marrow Transplantation.

This section has been revised to be consistent with International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) coding changes effective October 1, 1991.

35–30 Blood Platelet Transfusions and Bone Marrow Transplantation

A. Blood Platelet Transfusions (Effective for services performed on or after August 1, 1978).—Blood platelet transplants are safe and effective for the correction of thrombocytopenia and other blood defects. It is covered under Medicare when treatment is reasonable and necessary for the individual patient.

B. *Allogeneic Bone Marrow Transplantation.—Allogeneic bone marrow transplantation (ICD–9–CM codes 41.02 and 41.03) is a procedure in which a* portion of a healthy donor's bone marrow is obtained and prepared for intravenous infusion to restore normal marrow function in recipients having an inherited or acquired marrow deficiency or defect. The following uses of allogeneic bone marrow transplantation are covered under Medicare:

- *Effective for services performed on or after August 1, 1978, for the treatment of leukemia, leukemia in remission (ICD–9–CM codes 204.00 through 208.91), or aplastic anemia (ICD–9–CM codes 284.0 through 284.9) when it is reasonable and necessary.*
- *Effective for services performed on or after June 3, 1985, for the treatment of severe combined immunodeficiency disease (SCID) (ICD–9–CM code 279.2), and for the treatment of Wiskott-Aldrich syndrome (ICD–9–CM 279.12).*

C. Autologous Bone Marrow Transplantation (Effective for Services

Performed on or After 04/28/89).—Autologous bone marrow transplantation is a technique for restoring bone marrow stem cells using the patient's own previously stored marrow.

1. *Covered Conditions.—Autologous bone marrow transplantation (ICD–9–CM code 41.01, CPT–4 code 38241) is considered reasonable and necessary under* § 1862(a)(1)(A) of the Act for the following conditions and is covered under Medicare for patients with:

- *Acute leukemia in remission (ICD–9–CM codes 204.01, lymphoid; 205.01, myeloid; 206.01, monocytic; 207.01, acute erythremia and erythroleukemia; and 208.01 unspecified cell type) who have a high probability* of relapse and who have no human leucocyte antigens (HLA)-matched;
- Resistant non-Hodgkin's lymphomas (ICD–9–CM codes 200.00–200.08, 200.10–200.18, 200.20–200.28, 200.80–200.88, 202.00–202/08, 202.80–.88, and 202.90–202.98) or those presenting with poor prognostic features following an initial response;
- Recurrent or refractory neuroblastoma (see ICD–9–CM Neoplasm by site, malignant); or
- *Advanced Hodgkin's disease (ICD–9–CM codes 201.00–201.98) who have failed conventional therapy and have no HLA-matched donor.*

2. Noncovered Conditions.—Insufficient data exist to establish definite conclusions regarding the efficacy of autologous bone marrow transplantation for the following conditions:

- *Acute leukemia not in remission (ICD–9–CM codes 204.00, 205.00, 206.00, 207.00 and 208.00);*
- *Chronic granulocytic leukemia (ICD–9–CM codes 205.10 and 205.11); or*
- Solid tumors (other than neuroblastoma) (ICD–9–CM codes 140.0–199.1).

In these cases, autologous bone marrow transplantation is not considered reasonable and necessary within the meaning of § 1862(a)(1)(A) of the Act and is not covered under Medicare.

Transmittal No. 57; sections 60–14, Infusion Pumps, and 60–15, Safety Roller. (Note to the reader: These sections of the Coverage Issues Manual were accidentally omitted when the Manual was recently reprinted. They were reformatted, edited and reissued in March 1992 in the following transmittal.)

Printing error—Effective date: Not applicable.

Transmittal No. 57; sections 60–14, Infusion Pumps, and 60–15, Safety Roller.

These pages were inadvertently omitted when this manual was reprinted. The new pages have been reformatted and edited.

60–14 Infusion Pumps

The Following Indications for Treatment Using Infusion Pumps are Covered Under Medicare:

A. External Infusion Pumps

(Effective for services performed on or after 9/26/84.)

1. Iron Poisoning—when used in the administration of deferoxamine for the treatment of acute iron poisoning and iron overload, only external infusion pumps are covered.

2. Thromboembolic Disease—When used in the administration of heparin for the treatment of thromboembolic disease and/or pulmonary embolism, only external infusion pumps used in an institutional setting are covered.

(**Note:** For end-stage renal disease patients, see 60–1.)

(Effective for services performed on or after 1/29/85.)

3. Chemotherapy for Liver Cancer—The external chemotherapy infusion pump is covered when used in the treatment of primary hepatocellular carcinoma or colorectal cancer where this disease is unresectable or where the patient refuses surgical excision of the tumor.

(Effective for services performed on or after 4/22/85.)

4. Morphine or Intractable Cancer Pain—Morphine infusion via an external infusion pump is covered when used in the treatment of intractable pain caused by cancer (in either an inpatient or outpatient setting, including a hospice).

Other uses of external infusion pumps are covered if the contractor's medical staff verifies the appropriateness of the therapy and of the prescribed pump for the individual patient.

B. Implantable Infusion Pumps

(Effective for services performed on or after 9/26/84.)

Chemotherapy for Liver Cancer.—The implantable infusion pump is covered for intra-arterial infusion of 5–FUdR for the treatment of liver cancer for patients with primary hepatocellular carcinoma or Duke's Class D colorectal cancer, in whom the metastases are limited to the liver, and where (1) the disease is unresectable or (2) where the patient refuses surgical excision of the tumor.

Note: Payment may also be made for drugs necessary for the effective use of the pump, as long as the drug being used with the pump is itself reasonable and necessary for the patient's treatment.

The Following Indications for Treatment Using Infusion Pumps are not Covered Under Medicare:

A. External Infusion Pumps

(Effective for services performed on or after 1/29/85.)

Diabetes—the use of an external infusion pump for the subcutaneous infusion of insulin in the treatment of diabetes is not covered.

B. Implantable Infusion Pump

(Effective for services performed on or after 9/26/84.)

Thromboembolic Disease.—According to the Public Health Service, there is insufficient published clinical data to support the safety and effectiveness of the heparin implantable pump. Therefore, the use of an implantable infusion pump for infusion of heparin in the treatment of recurrent thromboembolic disease is not covered.

Other uses of the implanted infusion pump are currently under investigation by the Public Health Service and would still be considered experimental, and therefore not covered under Medicare.

60–15 Safety Roller

(Effective for claims adjudicated on or after 6/3/85.)

"Safety roller" is the generic name applied to devices for patients who cannot use standard wheeled walkers. They may be appropriate, and therefore covered, for some patients who are obese, have severe neurological disorders, or restricted use of one hand, which makes it impossible to use a wheeled walker that does not have the sophisticated braking system found on safety rollers.

In order to assure that payment is not made for a safety roller when a less expensive standard wheeled walker would satisfy the patient's medical needs, carriers will refer safety roller claims to their medical consultants. The medical consultant will determine whether some or all of the features provided in a safety roller are necessary, and therefore covered and reimbursable. If it is determined that the patient could use a standard wheeled walker, the charge for the safety roller will be reduced to the charge of a standard wheeled walker.

Some obese patients who could use a standard wheeled walker if their weight did not exceed the walker's strength and stability limits can have it reinforced and its wheel base expanded. Such modifications are routine mechanical adjustments and justify a moderate surcharge. In these cases the carrier will reduce the charge for the safety roller to

the charge for the standard wheeled walker plus the surcharge for modifications.

In the case of patients with medical documentation showing severe neurological disorders or restricted use of one hand which makes it impossible for them to use a wheeled walker that does not have a sophisticated braking system, a reasonable charge for the safety roller may be determined without relating it to the reasonable charge for a standard wheeled walker. (Such reasonable charge should be developed in accordance with the instructions in Medicare Carriers Manual §§ 5010 and 5205.)

Cross Refer: Carriers Manual §§ 2100ff., § 60–9.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 27, 1992.

William Toby,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–13675 Filed 6–10–92; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Genome Research Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, June 25, 1992, at the Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC. This meeting will be open to the public on June 25 from 11 a.m. to 12 p.m. to discuss administrative details or other issues relating to the committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public June 25 from 12 p.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892, (301) 402–0838, will furnish the meeting agenda, rosters of committee members and consultants, and substantive program information upon request.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: June 01, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–13660 Filed 6–10–92; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the first session of each meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7548, will furnish summaries of the meetings and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Name of Panel: NHLBI SEP on clinical investigator development awards and 1 small grant.

Scientific Review Administrator: Dr. Kathryn Ballard. Telephone 301–496–7361.

Dates of Meeting: June 23–23, 1992.

Place of Meeting: Hyatt Regency, Bethesda, Maryland.

Time of Meeting: 1 p.m.

Name of Panel: NHLBI SEP on RFA for multicenter studies of diet and Lipoproteins in humans.

Scientific Review Administrator: Dr. Louise Corman, Telephone 301–496–7363.

Dates of Meeting: June 23–25, 1992.

Place of Meeting: Stouffer Concourse Hotel, Arlington, Virginia.

Time of Meeting: 6:45 p.m

Name of Panel: NHLBI SEP on program project grants.

Scientific Review Administrator: Dr. Beborah Beebe, Telephone 301–496–4485.

Dates of Meeting: June 24, 1992.

Place of Meeting: Hyatt Regency, Bethesda, Maryland.

Time of Meeting: 7 p.m.

Name of Panel: NHLBI SEP on clinical trial for research project grant.

Scientific Review Administrator: Dr. Lynn Amende, Telephone 301–496–8818

Dates of Meeting: June 30, 1992.

Place of Meeting: Hyatt Regency, Bethesda, Maryland.

Time of Meeting: 3 p.m.

Name of Panel: NHLBI SEP on clinical investigator development awards.

Scientific Review Administrator: Dr. Lynn Amende, Telephone 301–496–8818.

Dates of Meeting: June 20–21, 1992.

Place of Meeting: Hyatt Regency, Bethesda, Maryland.

Time of Meeting: 8 a.m.

Name of Panel: NHLBI SEP on lung diseases, smoking and exercise.

Scientific Review Administrator: Dr. Louise Corman, Telephone 301–496–7363.

Dates of Meeting: July 21–22, 1992.

Place of Meeting: Crystal Gateway Marriott, Arlington, Virginia.

Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: June 1, 1992.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 92–13662 Filed 6–10–92; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Research Training Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National I[illegible] on June 21 and 22, 19[illegible] Regency Bethesda, one Bethesda Met[illegible] Center, Bethesda, Maryland 20814.

This meeting will be open to the public on June 21, from 7:30 p.m. to approximately 8:30 p.m., to discuss

administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 21, 1992, from 8:30 p.m. to 10 p.m., and on June 22, from approximately 8 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, room 550, Bethesda, Maryland 20892, (301) 498–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 28, 1992.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 92–13663 Filed 6–10–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Call for Public Comments; Chemicals Proposed for the Ninth Annual Report on Carcinogens

Background

The National Toxicology Program (NTP) requests comments on actions which the Program plans to take with regard to the Ninth Annual Report on Carcinogens. The report is a Congressionally-mandated listing of certain carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services. The pertinent provision of Public Law 95–622 requires an Annual Report which contains "a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed * * *." The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk of public health from exposure to these chemicals.

The proposed new entries for the Ninth Report have undergone a multiphased peer review process involving a variety of Federal research and regulatory agencies. All evidence of carcinogenicity of the proposed new entries was peer reviewed by scientists of either the International Agency for Research on Cancer (IARC) or the Technical Reports Review Subcommittee of the NTP Board of Scientific Counselors before the chemicals were considered for selection. All data relevant to the criteria for inclusion of candidate substances in the Annual Report have been evaluated by the two scientific review committees which develop the list of proposed additions to these reports. This notice is being published to provide for appropriate public comment to supplement these selection and review processes.

Proposed Actions

In the Ninth Annual Report on Carcinogens, the National Toxicology Program is proposing the addition of 6 substances to existing listings. One of the additional substances is being added to those listed as "known carcinogens" and one chemical, tris(1-aziridnyl)phosphine sulfide, currently included on the list of "reasonably anticipated to be carcinogens," is proposed to be moved to the list of "known carcinogens." The five remaining substances are being proposed to be added as "reasonably anticipated to be carcinogens." These chemicals are listed in the Appendix with their Chemical Abstract Services (CAS) Registry numbers and references. The Program seeks public comment on this action, including information and data pertaining to these substances.

Submission of Comments on the Ninth Annual Report

Comments on the actions proposed for the Ninth Annual Report on Carcinogens will be accepted for a period of 60 days from date of publication of this announcement in the **Federal Register**. Comments should be sent to the National Toxicology Program Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

Dated: June 4, 1992.

Kenneth Olden,

Director, National Toxicology Program.

Appendix

SUBSTANCES PROPOSED FOR THE NINTH ANNUAL REPORT ON CARCINOGENS

CAS Nos.	Substance	NTP Technical Reports	IARC Vol.
A. Known To Be Carcinogens:			
59865–13–3	Cyclosporin		50 (1990)
52–24–4	Tris(1-aziridnyl)phosphine Sulfide		50 (1990)
B. Reasonably Anticipated To Be Carcinogens:			
320–67–2	Azcytidine	42	50 (1990)
54749–90–5	Chlorozotocin		50 (1990)
117–10–2	1,8-Dihydroxyanthraquinone		50 (1990)
91–23–6	o-Nitroanisole	416	
96–18–4	1,2,3-Trichloropropane	384	

[FR Doc. 92–13661 Filed 6–10–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-340-4333-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0133), Washington, DC 20503, telephone 202–395–7340.

Title: Permit Fee Envelope, 36 CFR 71.

OMB Approval Number: 1004–0133.

Abstract: Respondents supply identifying information and data on the campsite number, dates camping, number in party, zip code, fee paid, vehicle license number, and primary purpose of visit. This information allows the Bureau of Land Management to determine if all users have paid the required fee, the number of users, and their State of origin.

Bureau Form Number: 1370–36.

Frequency: On occasion.

Description of Respondents: Individuals desiring to use the campground.

Estimated Completion Time: Three minutes.

Annual Responses: 94,376.

Annual Burden Hours: 4,719.

Bureau Clearance Officer (Alternate): Gerri Jenkins 202–653–6105.

Dated: April 13, 1992.

Kemp Conn,

Assistant Director—Land and Renewable Resources.

[FR Doc. 92–13290 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–84–M

[CO-920-92-4120-11; COC 53810]

Colorado: Notice of Invitation for Coal Exploration License Application, Consolidation Coal Company

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Consolidation Coal Company in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Gunnison County, Colorado:

T. 13S., R. 90 W., 6th P.M
Sec. 11, lots 9 and 12;
Sec. 12, lots 7 to 9, inclusive, and NW¼SW¼.

The area described contains approximately 221.89 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial Number COC 53810 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the BLM Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401.

Written Notice of Intent to Participate should be addressed to the following persons and must be received by them within 30 days after the publication of this Notice of Invitation in the **Federal Register:**

Richard D. Tate, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.
and
Randy Stockdale, Resident Manager, Consol. Inc, Exploration Group, Central Shop, 2nd floor, P.O. Box 159, Pinckneyville, Illinois 62274.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: June 3, 1992.

Richard D. Tate,

Chief, Mining Law and Solid Minerals, Adjudication Section.

[FR Doc. 92–13751 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–JB–M

[MT-020-08-4121-14; MTM 80697]

Intent To Hold Scoping Meetings and Prepare an Environmental Analysis on Western Energy's Coal Lease Application—MTM 80697 for Federal Coal Resources Within the Powder River Coal Production Region; Montana

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to hold scoping meetings and prepare an environmental analysis on the proposed lease tracts.

SUMMARY: On January 29, 1992, Western Energy Coal Company filed a lease application, MTM 80697, for Federal coal resources within the Powder River Coal Production Region.

The land included in coal lease application MTM 80697 is located in Rosebud County, Montana, and is described as follows:

T. 1 N., R. 39 E., P.M.M.
Sec. 2: S½NW¼, N½NE¼SE¼
T. 1 N., R. 40 E., P.M.M.
Sec. 6: Lots 1,2,3,4, S½N½, S½
Sec. 8: E½, N½NW¼
Sec. 14: S½SW¼, SE¼
T. 2 N., R. 40 E., P.M.M.
Sec. 32: All

The 2,061.00 acre tract contains an estimated 39.3 million tons of recoverable reserves.

An environmental analysis will be prepared to analyze the proposed lease of these Federal Coal resources and the resonably foreseeable consequences of this action as well as the impacts of development of the coal. No decision has been made as to whether an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is the appropriate environmental documentation. This will be determined after scoping is complete.

All interested parties, including Federal, state and local agencies are invited to participate in the Environmental Analysis scoping process. The scoping period will begin immediately and will close on August 1, 1992.

The following issues and concerns have been identified:

—Possible impact to the hydrologic resources
—Potential for social and economic impacts to the area
—Potential for social and economic impacts to the Northern Cheyenne and Crow Tribes

—Need for a cultural resource inventory, including cultural properties and traditional lifeway values

—The level of environmental documentation necessary (EA or EIS)

The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns will be considered in the preparation of the environmental analysis.

The scoping process used to collect issues and concerns on the proposed lease application will involve three public meetings and a written comment period which will begin immediately and will close on Aguust 1, 1992.

SUPPLEMENTARY INFORMATION: Western Energy is lessee and operator of several Federal coal leases at the Rosebud Mine near Colstrip, Montana. The area applied for is within an existing approved life-of-mine plan, with the exception of a portion of section 14 in T. 1 N., R. 40 E., which is included within the Area B Extension Mine application now under final stages of review by the Montana Department of State Lands and the Office of Surface Mining.

No additional exploration and/or exploratory drilling is anticipated for these areas prior to leasing. Exploration and drilling was conducted in the 1980–1985 era in preparation for the submittal of the Area C Amendment Permit Application and the Area B Extension Permit Application.

The mining production sequence for the proposed lease tracts will be incorporated into the existing mine plan for Area C and the proposed mine plan for Area B Extension.

DATES: Written response and comments will be accepted now and through August 1, 1992. Public meetings will be held at the following locations and times:

(1) July 14, 1992, at 7 p.m. at the Human Resources Building, 417 Willow, Colstrip, Montana 59323

(2) July 15, 1992, at 7 p.m. at the Big Horn County Court House, 121 W. 3rd Street, Hardin, Montana 59034

(3) July 16, 1992, at 7 p.m. at the Dull Knife Memorial College, 1ST College Drive, Lame Deer, Montana 59013.

FOR FURTHER INFORMATION CONTACT: All comments and request for additional information should be addressed to Mary Alice Spencer, Area Manager, Bureau of Land Management, Powder River Resource Area, Miles City Plaza, Miles City, Montana 59301, telephone number (406) 232–7000.

Arnold E. Dougan,

Acting Associate District Manger.

[FR Doc. 92–13737 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–DN–M

[OR–030–92–4410–08: 2–245]

Planning Amendment: Northern Malheur Management Framework Plan

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Northern Malheur Management Framework Plan.

SUMMARY: In accordance with 43 CFR 1610.8, the Malheur Resource Area of the Vale District proposes to amend the Northern Malheur Management Framework Plan to address potential designation of the Coal Mine Basin Area of Critical Environmental Concern/ Research Natural Area (ACEC/RNA). The proposed ACEC/RNA would be designated to protect unusual paleontological resources and sensitive plant species, including one Candidate 2 species, smooth blazing star, which is under review by the U.S. Fish and Wildlife Service for listing as a federally threatened species.

The 2200 acre area straddles the Oregon-Idaho state line and is located approximately 60 miles south of Ontario, Oregon, in Township 27 South, Range 46 East, Sections 13 and 24 and Township 27 South, Range 46 East, Sections 7, 18, and 19. The proposal would be addressed in the ongoing BLM Boise District's Owyhee Resource Management Plan/Environmental Impact Statement which has been underway since October 11, 1989. Approximately 788 acres of the proposed area are administered by the Malheur Resource Area, Vale District, with the balance administered by the Owyhee Resource Area, Boise District. Public input on issues, management concerns, data needs and analysis of potential impacts for the Oregon portion of the potential ACEC are requested at this time for 30 days from the date of this notice. Documents pertinent to this proposal may be examined at the address shown below. Issues anticipated in the Owyhee RMP/EIS and related to this specific area are expected to include interpretation and protection of paleontological resources, protection and enhancement of native plant communities and sensitive status species, rangeland resources and locatable mineral resources. The following disciplines are expected to be represented on the Vale BLM planning team as they support the Boise District RMP effort: paleontology/archaeology, botany, range management, hydrology, wildlife management, geology and recreation management.

The public is invited to participate in the plan amendment scoping at this time by commenting to or visiting the Vale district office. There will be a 90-day public review period of the Draft Owyhee (RMP/EIS in the fall of 1992. There will be a 30-day public review and protest period on the proposed Owyhee RMP/Northern Malheur Plan Amendment in the spring of 1993. Public meetings and comment periods will be announced in the **Federal Register** and local newspapers by the Boise district office. Both Oregon and Idaho state government agencies and local government and native American groups will be notified and briefed, if requested.

Planning criteria to be used include: Policy, legal and regulatory constraints as well as requirements to protect and enhance sensitive plant and animal species, protect and enhance paleontological and cultural resources, consider potential effects on existing or potential and uses and set management objectives to protect the resources identified within the proposed ACEC in a common manner across the state line.

FOR FURTHER INFORMATION CONTACT: Ralph Heft, Malheur Resource Area, Bureau of Land Management, 100 Oregon Street, Vale, OR 97918, Telephone (503) 473–3144.

James E. May,

District Manager.

[FR Doc. 92–13752 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–JB–M

Grazing Advisory Board Meeting; Susanville District Grazing Board, Susanville, CA

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on July 28, 1992.

The July 29 meeting will begin at 10 a.m. at the Susanville District Office, Bureau of Land Management, 705 Hall Street, Susanville, California.

The meeting will consist of setting policy for the leasing of base property and setting standards for livestock control agreements in the Susanville District, an update on the East Lassen Integrated Vegetation Management

Plan, an update on the Wild Horse and Burro Program, a progress report of FY 1992 range improvement projects and a discussion of other items as appropriate.

The meeting is open to the public.

Summary minutes of the Board Meeting will be maintained in the district Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 92-13756 Filed 6-10-92; 8:45 am]

BILLING CODE 4310-41-M

[WY-010-02-4410-02]

Worland District Multiple Use Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Worland District (Wyoming) Multiple Use Advisory Council.

SUMMARY: This notice provides the schedule and agenda for a field tour and meeting of the Worland District Multiple Use Advisory Council.

DATES: A field tour is scheduled to begin at 6:30 a.m. on Tuesday, July 14, 1992 followed with a regular meeting starting at 9 a.m. on Wednesday, July 15, 1992.

ADDRESSES: The field tour will begin and end at the Bureau of Land Management's Worland District Office, 101 South 23rd Street, Worland, Wyoming The regular meeting will be held at the same address.

FOR FURTHER INFORMATION CONTACT: George B. Hollis, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone (307) 347-9871.

SUPPLEMENTARY INFORMATION: The agenda for the field tour will include:

1. Riparian Management.
2. Horse Creek Cooperative Study.
3. Hamilton Stewardship Plan.
4. Wilderness Study Areas.
5. Back-Country Byway.
6. Off Road Vehicle Plan—Washakie Resource Area.

The agenda for the regular meeting will include:

1. Field Tour issue discussion.
2. BLM downsizing and Two Tier organization.
3. Animal Damage Control.
4. Major Grass Creek RMP issues.
5. Statements from the public, if any.

The meeting will be open to the public. Interested persons may make oral statements to the Council during the public comment period of may submit written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the Worland District Manager in writing by June 10, 1992.

Dated: June 3, 1992.

Darrell C. Barnes,

District Manager.

[FR Doc. 92-13753 Filed 6-10-92; 8:45 am]

BILLING CODE 4310-22-M

[CA-050-02-4333-12]

Off-Road Vehicle Designation Changes; King Range National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given related to the use of off-road vehicles in accordance with regulations contained in 43 CFR 8342.3. Approximately 50 acres within the zone lying between the ordinary tide levels (foreshore) from Telegraph Creek in section 9, T.5S., R.1E., HM to Gitchell Creek in Section 20, T.4S., R.1E. HM are temporarily changed from an "OPEN" designation to a "LIMITED" designation. Only those vehicles less than 50 inches in width are allowed to operate in this area.

DATES: The effective date of this designation change is June 11, 1992.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, 1125 16th Street, rm. 219, Arcata, CA 95521 Telephone: (707) 822-7648.

SUPPLEMENTARY INFORMATION: The purpose of this designation change is to protect persons, property, and public lands and resources. Due to recent storm activity during the winter of 1992, the access route to the beach zone (previously designated open to all types of vehicles) became too narrow to provide safe passage for vehicles over 50 inches in width. A post and cable barrier was installed to reduce the safety hazard but larger vehicles continued to access the beach area. This temporary designation change will help keep these larger vehicles off this narrow, unsafe access route because the beach will now be closed to this type of use. Once the access route is repaired to provide safe travel by all vehicle types, this notice will no longer remain in effect.

Dated: May 21, 1992.

Daniel E. Averill,

Acting Area Manager.

[FR Doc. 92-13754 Filed 6-10-92; 8:45 am]

BILLING CODE 4310-40-M

[WY-920-41-5700; WYW114528]

Proposed Reinstatement of Terminated Oil and Gas Lease

June 3, 1992.

Pursuant to the provisions of 30 U.S.C. 188(d) and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW114528 for lands in Fremont County, Wyoming, was timely filed and was accompanied all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalities at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW114528 effective February 1, 1992, subject to the originial terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 92-13742 Filed 6-10-92; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-63-7122 08 1016 CACA 27555]

Realty Action: San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to the Notice of Realty Action published in the **Federal Register** December 13, 1990, Volume 55 Number 240, Pages 51353 and 51354.

SUMMARY: This amendment adds the following parcel containing 640 acres to the offered private lands in San Bernardino County for exchange CACA 27555. The exchange will be equalized as stated in the original Notice of Realty Action published December 13, 1990.

Mount Diablo Meridian, California

T. 32 S., R. 44 E.

Sec. 21, All;

The surface and all minerals will be conveyed to the United States.

EFFECTIVE DATE: June 11, 1992.

FOR FURTHER INFORMATION CONTACT: Additional information about this

exchange is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, California 92311 (619) 256–3591, and the California Desert District Office, 6221 Box Springs Blvd., Riverside, California 92507–0714.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert District at the above address.

Dated: June 2, 1992.

Jean Rivers-Council,

Associate District Manager.

[FR Doc. 92–13755 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–5410–10–B027; CACA 29875]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, containing 260.68 acres, are segregated and made unavailable for filings under the United States mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E–2841, Sacramento, CA 95825, (916) 978–4820.

T. 11 N., R. 13 W., San Bernardino Meridian
Sec. 4, E½SW¼E½ lot 1 NE¼, E½E½ lot 1 NE¼, NE¼W½ lot 1 NE¼, E½SW¼W½ lot 1 NE¼, W½NE¼E½ lot 1 NW¼, E½NW¼E½ lot 1 NW¼, W½SW¼E½ lot 1 NW¼, NW¼W½ lot 1 NW¼, E½SW¼W½ lot 1 NW¼, W½E½ lot 2 NE¼, E½SE¼W½ lot 2 NW¼, E½NE¼SW¼, E½NW¼NE¼SW¼, E½NW¼SW¼, W½NE¼SW¼SW¼, W½NW¼SW¼SW¼, SW¼SW¼SW¼, W½SE¼SW¼, W½SE¼SW¼, W½SE¼SE¼, W½NE¼SE¼, E½NW¼NW¼SE¼, E½NE¼SW¼SE¼, W½NW¼SW¼SE¼, SE¼SW¼SE¼, N½SE¼SE¼, E½SW¼SE¼SE¼.

County—Kern

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the United States mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other documet of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: June 4, 1992.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 92–13758 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–92–4212–14; N–55753

Non-Competitive Sale of Public Lands in Clark County, NV; Notice of Realty Action

The following described public land in Henderson, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (FLPMA). The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 22 S., R. 64 E.,
Sec. 20: E½SW¼, NW¼SW¼, E½SW¼SW¼.
Aggregating 140.00 acres (gross)

This parcel of land, situated in Clark County was patented under the Recreation and Public Purposes Act for a golf course on May 9, 1962. The patentee has requested clear title under the Federal Land Policy and Management Act through a direct sale.

This land is not required for any Federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the Untied States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

2. Those rights for overhead distribution line purposes which have been granted to Nevada Power Company by Permit No. N–54313 under the Act of October 21, 1976.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws.

Dated: May 28, 1992.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 92–13401 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–HC–M

[UT-942-4212-13; UTU-54732]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 180.00 acres of public land out of Federal ownership. This action also opens 121.18 acres of reconveyed lands to operation of the public land laws and 320.73 acres of reconveyed lands to operation of the public land laws including the mining laws.

FOR FURTHER INFORMATION CONTACT: Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4118.

SUPPLEMENTARY INFORMATION:

1. The United States has issued an exchange conveyance document to Carbon County, Utah, for the following described lands pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716:

Salt Lake Meridan

T. 14 S., R. 10 E.,
Sec. 14, E½SE¼;
Sec. 23, E½NE¼NE¼, S½NE¼.
The areas described contain 180.00 acres.

2. In exchange for these lands, the United States acquired the surface estate of the following described lands:

Salt Lake Meridan

T. 13 S., R. 11 E.,
Sec. 31, lots 3 and 4.
T. 14 S., R. 11 E.,
Sec. 6, lot 4.

3. The United States acquired the surface and mineral estates on the following described land:

Salt Lake Meridian

T. 13 S., R 10 E.,
Sec. 11, SE¼;
Sec. 14, NW¼NE¼, NE¼NW¼.
T. 14 S., R. 11 E.,
Sec. 7, lots 1 and 2.
The areas described aggregate 441.91 acres.

3. At 7:45 a.m., on July 13, 1992, the lands described in paragraph 2 will be open to the operation of the public land laws generally and the lands described in paragraph 3 will be open to the operation of the public land laws and the mining laws generally. These lands are subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m., on the date state above, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order filing.

4. The purpose of this exchange was to acquire critical deer winter habitat.

James M. Parker,

State Director.

[FR Doc. 92-13732 Filed 6-10-92; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-050-4410-08]

Draft Stateline Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Draft Stateline Resource Management Plan (RMP) and Environmental Impact Statement (EIS), Las Vegas District of the Bureau of Land Management (BLM), Nevada. This is also a "Notice" of the proposed designation of 19 areas of critical environmental concern (ACECs).

SUMMARY: Pursuant to section 202(f) of the Federal Land Policy and Management Act (FLPMA) of 1976, section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and 43 Code of Federal Regulations (CFR), part 1610, a draft RMP and EIS for the Stateline Resource Area, Las Vegas District, Nevada, has been prepared and is available for review and comment.

The draft RMP and EIS describes and analyzes future options for managing approximately 3,671,341 acres of public land and approximately 4,684,928 acres of federal mineral estate in Clark County and the southern portion of Nye County, Nevada. It also examines the proposed designation of 19 ACECs and their restrictions on various resource uses within the Stateline Resource Area.

Final approved decisions generated during this planning process will supersede land use planning guidance presented in the Clark County Management Plan (1984) and the Esmeralda-Southern Nye Resource Management Plan (1986), to meet the rapidly changing public land use demands of southern Nevada.

DATES: All written comments on the Draft RMP and EIS must be submitted and postmarked no later than September 15, 1992. Oral and written comments may also be presented at seven scheduled public meetings. All meetings will be held from 7:30 to 10:30 p.m. each evening. The meeting dates and locations are listed below:

Wednesday, July 8, 1992, Las Vegas BLM District Office, 4765 West Vegas Drive, Las Vegas, Nevada.
Thursday, July 9, 1992, Convention Center, 200 Water Street, Henderson, Nevada.
Tuesday, July 14, 1992, Riverside Resort, Laughlin, Nevada.
Wednesday, July 15, 1992, Community Center, Searchlight, Nevada.
Thursday, July 16, 1992, Virgin Valley High School, Mesquite, Nevada.
Tuesday, July 21, 1992, Community Center, Pahrump, Nevada.
Wednesday, July 22, 1992, Las Vegas BLM District Office, 4765 West Vegas Drive, Las Vegas, Nevada.

ADDRESSES: Written comments should be addressed to: Stateline Area Manager, Attn: RMP Team Leader, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126.

FOR FURTHER INFORMATION CONTACT: Jerry Wickstrom, RMP Team Leader, Bureau of Land Management, P.O. Box 26569, 4765 West Vegas Drive, Las Vegas, Nevada 89126; Phone (702) 647-5000.

SUPPLEMENTARY INFORMATION: The Draft RMP and EIS was prepared as a single planning document to provide new management goals, objectives and direction where needed for the Stateline Resource Area. It will also bring forward valid existing management strategies from the two current land use plans.

Five alternatives were considered in detail in the draft RMP. The No-Action Alternative represents a continuation of current management direction within the framework of present laws and regulations, including existing Memoranda of Understanding and Cooperative Agreements. The No-Action Alternative provides a baseline for comparison of the environmental effects of the other alternatives. Alternative A is designed to provide for a full spectrum of public land uses in the traditional sense of multiple use and sustained yield. Consumptive and non-consumptive uses would be balanced. Alternative B would provide maximum opportunities for land-based growth and development needs of the State of Nevada, while continuing to provide for multiple use and sustained yield of the public lands. Alternative C provides for the management of the public lands on an ecosystematic basis, with an

emphasis on biodiversity, non-consumptive uses and the protection and recovery of the desert tortoise in accordance with the Endangered Species Act of 1971, as amended. Alternative D, the BLM's preferred alternative, would continue to allow for multiple use of the public lands, permit maximum flexibility in the disposal of public lands, provide for the protection and recovery of the desert tortoise and allow mining/mineral material extraction under 3809 mining regulations.

While the alternatives establish broad management guidelines and firm direction, considerable flexibility is maintained through continued site and project specific compliance with NEPA, the Endangered Species Act and many other laws and regulations. This Draft RMP is the first step in developing an approved plan that will provide management guidance to BLM for the next 20 years.

ACECs nominated by the public, as well as those recommended by BLM, that met the "relevance" and "importance" criteria as defined in CFR 1610.7–2(a) resulted in 19 ACECs being considered for designation in the Stateline Resource Area. The proposed resource limitations and their impacts have been analyzed in the alternatives of the Draft RMP and EIS. The following is a list of the ACECs and their size as discussed in the BLM's Preferred Alternative:

	Acres
Piute Valley	189,900
Ivanpah	147,860
Pahrump Valley	116,600
Coyote Springs Valley/Mormon Mesa	296,200
Virgin	216,500
Ash Meadows	37,078
Big Dune	1,000
River Mountains	14,600
Armagosa Mesquite	9,600
Hidden Valley District	3,360
Stump Springs Prehistoric/Historic Site	560
Sloan Rock Art Site	320
Crescent Mining Townsite	320
Red Rock Canyon	83,100
Gold Butte Historic Mining Townsite	120
Keyhole Canyon Rock Art Site	160
Bird Spring Archaeological Site	160
Arrow Canyon Archaeological/Paleontological District	3,100
Sunrise Mountain	31,400

Because of the complexity of displaying the resource limitations of each proposed ACEC in this "Notice," we ask the public to refer to the Special Management Areas section for each alternative, especially the Preferred Alternative, in the Draft RMP and EIS.

Public participation has occurred throughout the RMP process to date. A "Notice of Intent" do do the RMP was filed in the **Federal Register** of March 28, 1990. Since that time, several public meetings and mailings were conducted to solicit comments and ideas. Comments presented throughout the process have been considered in the development of this draft RMP.

Copies of the Draft RMP and EIS may be obtained from the Las Vegas District Office. Public reading copies will be available for review at the public libraries of Clark and Nye Counties, all government document repository libraries and at the following BLM locations: Public Room, Office of External Affairs, Main Interior Building, room 5000, 18th and C Streets NW., Washington, DC; Nevada State Office, 850 Harvard Way, Reno, Nevada; and Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada.

Background information and maps used in developing the draft RMP and EIS are available at the Las Vegas District Office.

Dated: June 3, 1992.

Billy R. Templeton,

State Director.

[FR Doc. 92–13733 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–HC–M

[CO–942–92–4730–12]

Colorado: Filing of Plats of Survey

May 27, 1992.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., May 27, 192.

The plat representing the dependent resurvey of portions of the Twelfth Standard Parallel North (south boundary, T. 49 N., R. 11 W.), south and east boundaries, and subdivisional lines, and the subdivision of certain sections, T. 48 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 787, was accepted February 10, 1992.

The supplemental plat correcting the notation of the latitudes and longitudes shown on the plat of the dependent resurvey and subdivision of section, T. 50 N., R. 2 W., New Mexico Principal Meridian, Colorado, was accepted February 7, 1992.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of the Ninth Standard Parallel North along the south boundary, T. 37 N., R. 11 W. and a portion of R. 10 W., the exterior boundaries, and a portion of the subdivisional lines, and the subdivision of certain sections, T. 36 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 862, was accepted March 3, 1992.

The plat (in two sheets) representing the dependent resurvey of a portion of the rights-of-way boundaries in sections 26 and 34, T. 3 N., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 884, was accepted February 14, 1992.

The plat representing the dependent resurvey of a portion of the rights-of-way boundaries and the metes-and-bounds survey of lot 17 in section 6, T. 3 N., R. 75 W., Sixth Principal Meridian, Colorado, Group No. 884, was accepted February 11, 1992.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 9, T. 3 N., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 888, was accepted February 11, 1992.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of sections 4 and 9, T. 6N., R. 82 W., Sixth Principal Meridian, Colorado, Group No. 902, was accepted February 12, 1992.

The supplemental plat creating new lots 5, 6, 7, and 8, in section 3, T. 15 S., R. 87 W., Sixth Principal Meridian, Colorado, was accepted April 1, 1992.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 92–13743 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–JB–M

National Park Service

Antietam National Battlefield; Notice of Availability of the Final Environmental Impact Statement and General Management Plan, Antietam National Battlefield, Sharpsburg, MD

SUMMARY: This notice announces the availability of the final environmental impact statement (FEIS) and General Management Plan (GMP) for Antietam National Battlefield. A Summary is also available.

The 30 day no-action period following the Environmental Protection Agency's notice of availability of the FEIS will end 30 days from the date of that notice.

The FEIS/GMP analyzes 3 alternatives for future management and use of Antietam National Battlefield.

The alternatives range from maintaining existing conditions to restoring most of the historic scene. Although the alternatives propose distinct actions, they all share the common objective of preserving Antietam National Battlefield while continuing to provide for visitor understanding and appreciation of its resources and the events that took place there. Alternative A, the no-action alternative, describes the conditions that would exist if current management and strategies were continued. Alternative B, the proposed action, is the National Park Service's preferred alternative and general management plan. It provides for restoration of the battlefield landscape to its approximate appearance on the eve of the battle of September 17, 1862. It also includes simplifying the automobile tour route so that it focuses on the three main battle phases, incorporating new interpretive features and media to enhance visitor experiences and cooperating with state, local and private entities to ensure preservation of the rural/agricultural landscape inside and adjacent to the battlefield boundary. Alternative C proposes restoration of structures and vegetation patterns to their approximate appearance in 1862, retention of the 1890's tour road system and development of a one-way circulation system. The FEIS/GMP evaluates the environmental consequences of the proposed action and the other alternatives on cultural and natural resources and the socioeconomic environment.

The documents will be available to the public on June 10, 1992. Public reading copies of the FEIS will be available for review at the following locations:

Office of the Superintendent, Antietam National Battlefield, Sharpsburg, Maryland (301) 431–5124.

Washington County Free Library, 100 S. Potomac St., Hagerstown, (301) 739–3250.

Office of Professional Services, Division of Planning, National Capital Region, North Capital Region, National Park Service, 1100 Ohio Dr., SW., Washington, DC (202) 619–7277.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets, NW., Washington, DC 20240 (202) 208–6843.

For further Information Contact: Mr. Jacob J. Hoogland, National Park Service, 18 & C Streets, NW., room 3014, Washington, DC 20240, (202) 208–3163.

To request individual copies of the FEIS/GMP or the Summary, please contact: Superintendent Rich Rambur, Antietam National Battlefield, Sharpsburg, Maryland 21782, (301) 432–5124.

The responsible official is Mr. Robert Stanton, Regional Director, National Capital Region, National Park Service.

Dated: June 3, 1992

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 92–13680 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore, MA; Public Scoping Meetings

Pursuant to the notification in the April 24, 1992, **Federal Register** (FR 57–15100), and in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service (NPS), Cape Cod National Seashore (Seashore), is announcing the schedule for public scoping meetings concerning the preparation of a General Management Plan (GMP) and Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies for the Seashore. A range of alternatives will be formulated for natural and cultural resources protection, visitor use and interpretation, facilities development, and operations.

The NPS will hold public scoping meetings regarding the GMP/EIS as follows:

June 23 (Tuesday), 7 p.m., Eastham Town Hall.

June 24 (Wednesday), 7 p.m., Wellfleet Elementary School.

June 25 (Thursday), 7 p.m., Provincetown Town Hall.

June 26 (Friday), 7 p.m., Truro Elementary School.

June 27 (Saturday), 9 a.m., Barnstable Town Hall.

June 29 (Monday), 7 p.m., Chatham Town Hall.

June 30 (Tuesday), 7 p.m., Orleans Elementary School.

The purpose of these meetings is to obtain both written and verbal comments concerning purpose of the Seashore, appropriate visitor use, and issues that need to be resolved. Persons wishing to provide input to the scoping process may also contact the Superintendent, Cape Cod National Seashore, Marconi Station, South Wellfleet, Massachusetts 02663, or telephone (508) 349–3785.

For further information, please contact Jeffrey Heywood, Team Captain, or Linda Dahl, Public Information Specialist, Denver Service Center/TEA, P.O. Box 25287, Denver, CO 80225, (303) 969–2410.

Dated: June 3, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92–13679 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–70–M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held Saturday, June 13, 1992, at the Glen Echo Town Hall, 6106 Harvard Avenue, Glen Echo, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC.
Mrs. Dorothy Tappe Grotos, Delaplane, Virginia
Mr. Samuel S.D. Marsh, Bethesda, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Mr. Rockwood H. Foster, Washington, DC.
Mr. Barry A. Passett, Washington, DC.
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland

Mr. Robert L. Ebert, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Superintendent's Report
2. Old & New business
3. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: June 7, 1992.

John G. Parsons,

Acting Regional Director, National Capital Region.

[FR Doc. 92-13678 Filed 6-10-92; 8:45 pm]

BILLING CODE 4310-70-M

Preservation of Jazz Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a public hearing will be held on June 25, 1992, and a Preservation of Jazz Advisory Commission meeting on June 26, 1992, in New Orleans, Louisiana.

The Preservation of Jazz Advisory Commission was established by Public Law 101-499 to advise the Secretary of the Interior in the preparation of a study of the suitability and feasibility of preserving and interpreting the origins of jazz in New Orleans.

The following is the schedule and purpose/agenda for the public hearing and meeting:

Public hearing	Purpose/agenda
—Thursday, June 25, 1992 —4:00–8:00 p.m. —Superdome, Room 19 New Orleans, Louisiana (enter building through Gate G from the Northwest Parking Garage)	—Discussion of preliminary alternative concepts for preserving and interpreting the origins of jazz in New Orleans.

Note: The National Park Service has developed preliminary alternative concepts outlined in a Newsletter available at the Jean Lafitte National Historical Park and Preserve Visitor Center. The Visitor Center is located in the French Quarter at 916 North Peters Street. The Newsletter includes a postage-paid response form for public comments.

Advisory commission meeting	Purpose/agenda
—Friday, June 26, 1992 —9 a.m.–5 p.m. —World Trade Center, 18th Floor Crescent City Conference Room New Orleans, Louisiana	—Report from the Interpretive Subcommittee —Report from the Historic Sites and Structures Subcommittee —Report from the National Park Service on written comments in response to the newsletter —Discuss public comments and range of alternatives —Old Business —New Business

Note: If necessary, the Commission Meeting will be extended to Saturday, June 27 at the Customs House, 423 Canal Street, room 223, beginning at 9 a.m. to as late as 5 p.m.

The public hearing and commission meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. The Commission encourages those who wish to make presentations to do so at the June 25, 1992, public hearing. Any member of the public may file a written statement concerning the matters to be discussed before the commission, with the Superintendent, Jean Lafitte National Historical Park and Preserve. The public will also have an opportunity to submit written and oral comments for the record during the hearing.

Persons who wish further information concerning the Newsletter, public hearing and meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130-2341, Telephone 504/589-3882.

Minutes of the commission meeting will be available for public inspection eight weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: May 28, 1992.

Richard W. Marks,

Deputy Regional Director, Southwest Region.

[FR Doc. 92-13707 Filed 6-10-92; 8:45 am]

BILLING CODE 4310-70-M

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, Massachusetts; Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 s 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Tuesday, June 30, 1992.

The Commiteee was established pursuant to Public Law 101-628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic River System.

The meeting will convene at 7:30 p.m. at the Costin Room, Framingham Public Library, Lexington St., Framingham, MA (to get to the library from intersection of Rtes 9 and 126, go south on Route 126—Concord Street. After four traffic lights, turn right on Lincoln Street. Take first left onto Pearl Street, then turn right at Union. Lexington is the first street on the right).

Agenda

1. Welcome, introductions—Bill Sullivan;
2. Approval of minutes and ratification of 5/28/92 meeting;
3. Public Involvement Subcommittee report;
4. Resource Inventory update—Cassie Thomas;
5. Opportunity for Public Comments;
6. Other Business;
   A. Next Meeting Dates and Location.

Dated: June 3, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92-13706 Filed 6-10-92; 8:45 am]

BILLING CODE 4310-70-M

History Areas Committee of Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9

a.m. on the following date and at the following location.

DATES: July 7, 1992.

LOCATION: National Park Service Director's Conference Room 3119, Main Interior Building, 1849 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patty Henry, Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Telephone (202) 343–8163.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on August 10, 1992 of the qualifications of properties being proposed for National Historic Landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, Chairperson
Mr. Robert Burley, FAIA
Mrs. Anne Walker
Judge Robert Flynn Orr
Lt. Governor Connie B. Binsfeld
Mr. Paul F. Cole
Dr. Stuart Kaufman
Mr. F. C. Duke Zeller

The meeting will include presentations and discussions on the national historic significance and the integrity of a number of properties being nominated for National Historic Landmark designation. These nominations include 7 architectural properties located in Alabama, Connecticut, Illinois, Indiana, Michigan, Rhode Island, and Virginia; 2 maritime resources in Connecticut, and Washington; 10 properties being considered for archeology located in Connecticut, Kentucky, Maine, Mississippi, and Rhode Island; 5 sites relating to the women's history theme study in Illinois, Maryland, Ohio, South Carolina, and West Virginia; a westward exploration and settlement site in Arkansas; a site in Virginia dealing with military history; a recreation site in New Jersey; and 3 properties related to the Civil War in Kentucky, Pennsylvania, and South Carolina.

The Committee will consider a potential National Historic Trail, associated with Coronado, extending from Arizona through New Mexico, Texas, and Oklahoma to Kansas, in order to recommend to the full Board whether the potential trial is of national historic significance. The Committee will also be considering an alternatives study for the preservation and interpretation of historic resources at Dutch Harbor Naval Operating Base and U.S. Defense, Unalaska, Alaska to determine whether to make recommendations to the full Board regarding transmittal of a report on this property to Congress.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written statement concerning matters to be discussed. Written statements may be submitted to the Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

Dated: June 2, 1992.

Rowland T. Bowers,

Deputy Associate Director, Cultural Resources, National Park Service, WASO.

[FR Doc. 92–13681 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–70–M

Affirmation of Previous Determination of Eligibility

On the basis of consideration of the comments received prior to March 20, 1992, as well as all other information collected by the National Park Service, the Battle of Brandy Station, as defined in the Brandy Station Battlefield and Related Locations historic district, was affirmed as meeting National Register of Historic Places criteria for evaluation as originally determined on February 28, 1991. This decision was made by the Keeper of the National Register of Historic Places on April 30, 1992.

Carol D. Shull,

Chief, Registration, National Register of Historic Places, Interagency Resources Division.

[FR Doc. 92–13677 Filed 6–10–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32070]

Union Pacific Railroad Co. & Washington Central Railroad Co.—Joint Relocation Project Exemption

On May 11, 1992, Union Pacific Railroad Company (UP) and Washington Central Railroad Company (WCRC), filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate certain operations in Benton and Yakima Counties, WA. UP operates over a line of rail between Richland (milepost 19.5) and Yakima, WA (milepost 98.0) and over a short segment of line between Midvale (milepost 0.00) and Sunnyvale, WA (milepost 3.21). WCRC's line of rail parallels that of UP's.

The joint project involves (1) a car haulage agreement whereby WCRC will operate over its lines and access segments of UP's track to provide rail service to UP's customers [1]; (2) acquisition of trackage rights by UP; (3) the abandonment of certain segments of UP's existing line; and (4) the construction by WCRC of a connector tract at Granger, WA.

Under the joint project UP will abandon approximately 66.13 miles of track.[2] It will retain approximately 12.37 miles of rail line for which WCRC will seek trackage rights.[3] The segments being retained are as follows: (1) Between mileposts 48.2 and 49.52 near Biggam, WA; (2) between mileposts 57.3 (at Elm Street) and 58.75 near Grandview, WA; (3) between mileposts 62.75 and 63.75 near Midvale, WA; (4) between mileposts 73.4 near Granger, WA and 78.5 near Zillah, WA; (5) between mileposts 94.5 and 98.0 to the end at Yakima, WA; and (6) between mileposts 0.00 at Midvale, WA and 3.21 near Sunnyside, WA.

UP is acquiring trackage rights beginning at WCRC's point of connection with UP at Kennewick, WA (milepost 3.20) to Yakima, WA (milepost 89.5) and at Gibbon, WA (milepost 34.4) and Granger, WA (milepost 63.1). Operations by UP over this line of track will not be instituted unless WCRC defaults in providing service to UP's customers pursuant to the car haulage agreement.

The shippers of UP will continue to be served without any disruption of service. There will be no expansion into new territory; nor will there be a change in the existing competitive situation.

The joint relocation project will result in the elimination of duplicate rail lines and provide for a more efficient and effective utilization of railroad equipment and resources. The transaction was to have been consummated on or after May 18, 1992.

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[1] The Commission has held that car haulage is a private arrangement between the carriers and does not require Commission approval.

[2] The mileage involved in the incidential abandonment was modified by letter dated May 11, 1992, and further modified by letter dated May 24, 1992.

[3] The notice of exemption indicates that WCRC will file a trackage rights application to operate over those segments of line being retained by UP.

The Commission will exercise jurisdiction over the abandonment and/or construction component of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). Under these standards, the abandonment and construction of track are not subject to the Commission's jurisdiction. The remainder of the joint relocation project involving UP's acquisition of overhead trackage rights over WCRC's line qualifies under the class exemption procedures at 49 CFR 1180.2(d) that line relocations embrace trackage rights transactions (5) and (7). The Commission has determined such as the one proposed here. See D.T. & I.R.—Trackage Rights, 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast RY., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), and as clarified in Wilmington Term. R.R., Inc.—Pur. & Lease—CSX Transp. Inc., 6 I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor Executives Ass'n* v. *ICC*, 930 F.2d 511 (6th Cir. 1991).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, 1416 Dodge Street, room 830, Omaha, NE 68170.

Dated: May 18, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-13770 Filed 6-10-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984, Agricultural Container Research Council, Inc.

Notice is hereby given that, on May 19, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Agricultural Container Research Council, Inc. filed a written notification simultaneously with the Attorney General and the Federal Trade Commission. The notification discloses (1) the identities of the parties to the Council and (2) the nature and objectives of the Council. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activity are given below.

The parties to the Council are: American Cyanamid Company, Wayne, New Jersey; BASF Corporation, Research Triangle Park, North Carolina; Cenex/Land-O'-Lakes, St. Paul, Minnesota; CIBA GEIGY Corporation, Greensboro, North Carolina; DowElanco, Indianapolis, Indiana; E.I. Dupont de Nemours & Co., Wilmington, Delaware; Ecogen, Inc., Langhorne, Pennsylvania; FMC Corporation, Philadelphia, Pennsylvania; Helena Chemical, Memphis, Tennessee; Hoechst-Roussel Agri-Vet Co., Somerville, New Jersey; ICI Agricultural Products, Wilmington, Delaware; ISK Bio-Tech, Mentor, Ohio; Miles, Inc., Kansas City, Missouri; Monsanto Agricultural Company, St. Louis, Missouri; Nor-Am Chemical Co., Wilmington, Delaware; PBI/Gordon Corporation, Kansas City, Missouri; Rhone-Poulenc Ag Company, Research Triangle Park, North Carolina; Rohm and Haas, Philadelphia, Pennsylvania; Sandoz Agro Inc., Des Plaines, Illinois; Terra International, Sioux City, Iowa; Uniroyal Chemical Company, Bethany, Connecticut; United Agriproducts, Tampa, Florida; and Valent, Walnut Creek, California.

The objective of the Council is to promote the interests of manufacturers, formulators and packagers of agricultural crop protection or specialty pest control products, micro-nutrient/fertilizer products and/or adjuvants packaged and/or distributed for end-use markets in North America by (a) conducting research regarding potentially acceptable uses of material recovered from empty and properly rinsed containers; (b) making the results of such research available to the general public, including federal, state, local and foreign environmental regulatory authorities; (c) developing and supporting a collection and utilization program for empty and properly-rinsed containers; and (d) protecting the interests of the Council and research data under the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA"), and comparable state laws.

Membership in the Council remains open, and the parties intend to file additional written notification disclosing all changes in membership to this Council.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-13744 Filed 6-10-92; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et. seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on April 23, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and describing the status of its research projects. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as active members of NCMS:

A.I. Technology, Inc., Trenton, New Jersey 08618
Cadkey Inc., Windsor, Connecticut 06095
Cincinnati Milacron, Inc., Cincinnati, Ohio 45209
Diffracto Limited, Inc., Windsor, Ontario, Canada N8T3B7
Forming Technologies, Incorporated, Oakville, Ontario, Canada L8M2G2
Kohol Systems, Inc., Dayton, Ohio 45459
Light Machines Corporation, Manchester, New Hampshire 03190-5317
Poly Circuits, Inc., Bensenville, Illinois 60106
Thixomat, Inc., Ann Arbor, Michigan 48104

The following organizations recently were accepted as affiliate members of NCMS:

American Electroplaters and Surface Finishers Society, Inc., Orlando, Florida 32826
Arizona Department of Education, Phoenix, Arizona 85007
Center for Process Analytical Chemistry, Seattle, Washington 98195
Composites Automation Consortium, Burbank, California 91505-1055
DemMaTec Foundation, Inc., Rolla, Missouri 65401-2124
Electronics Manufacturing Productivity Facility, Indianapolis, Indiana 46202
National Center for Tooling and Precision Components, Toledo, Ohio 43607
New Mexico State University, Las Cruces, New Mexico 88003
Valencia Community College, Orlando, Florida 32802

Also, Industrial Machining Services, Inc., Zeeland, Michigan 49464 recently

resigned from active NCMS membership, and, because it was acquired, the active NCMS membership of Measurex Automation Systems, Inc., Cupertino, California 95014 was terminated. Finally, the name of the National Machine Tool Builders Association, McLean, Virginia 22102–4269, a NCMS affiliate member, has changed to The Association for Manufacturing Technology.

Except as indicated above, no other changes have been made in the membership, objectives, or planned activities of NCMS.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, February 5, 1991, March 18, 1991, April 29, 1991, July 25, 1991, October 31, 1991, and January 27, 1992, notices of which the Department published in the **Federal Register** on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), March 12, 1991 (56 FR 10444), May 16, 1991 (56 FR 22740–41), June 13, 1991 (56 FR 27273), September 4, 1991 (56 FR 43796), February 3, 1992 (57 FR 4062), and March 11, 1992 (57 FR 8675–76), respectively.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92–13746 Filed 6–10–92; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984—Feasibility Study on Using Molecular Sieves for Diesel NO_x Control

Notice is hereby given that, on May 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its project entitled "Feasibility Study on Using Molecular Sieves for Diesel NO_x Control". The notification was filed for the purposes of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Cummins Engine Company, Columbus, Indiana (effective February 11, 1992) has become a party to the project.

No other changes have been made in either the membership or planned activity of the project.

On July 1, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("The Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1991, 56 FR 35877. On September 19, 1991, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on November 5, 1991, 56 FR 56528. On November 25, 1991, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on January 14, 1992, 57 FR 1493–1494. On February 28, 1992, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 23, 1992, 57 FR 14850–14851. Additionally, a correction notice to the November 5, 1991 notice was published on December 17, 1991, 56 FR 65541.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–13745 Filed 6–10–92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree in United States v. Ariens Co., et al.

In accordance with section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 US.C. 9622(d)(2), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Ariens Company, et al.*, Civil Action No. 91–0999, was lodged with the United States District Court for the Western District of Wisconsin on June 1, 1992. This action was brought to remediate soil contamination at the "Lemberger Landfill, Inc. Site," and groundwater contamination beneath and in the vicinity of the "Lemberger Landfill, Inc. Site" and the "Lemberger Transport & Recycling Site," (See the National Priorities List in 40 CFR part 300, appendix B) which are located within a quarter a mile of each other in Manitowoc County, Franklin Township, Wisconsin, and for the recovery of costs expended by the United States in connection these sites.

The proposed consent decreee is entered into between Co-Plaintiffs, the United States and the State of Wisconsin, and eleven entities that have been identified as potentially responsible parties ("PRPs") with respect to the Lemberger Landfill Site or the Lemberger Transport & Recycling Site, or both. Under the proposed decree, the group of eleven "Settling Defendants" will finance and perform a remedy which the United States Environmental Protection Agency ("U.S. EPA") previously selected. The main components of the remedial action that will be implemented by Settling Defendants include: (1) placing a clay cap over, and constructing a slurry wall around, the Lemberger Landfill Site; (2) constructing and operating a gas venting system for the Lemberger Landfill Site; (3) installing and operating a groundwater extraction and treatment system aimed at capturing the contaminated groundwater beneath the Lemberger Landfill Site and the Lemberger Transport & Recycling Site; and (4) installing a security fence, and posting warning signs around the Lemberger Landfill Site. The Settling Defendants responsible for implementing the remedial action include Ariens Company, GTE North Company, Inc., Holy Family Memorial Medical Center, Inc., the Manitowoc, Newell Company, Primerica Holdings, Inc., Shade Information Systems Inc., Sheboygan Paint Company, Inc., and Weyerhaeuser Company.

In addition, under the proposed decree, the eleven Settling Defendants have agreed to pay the United States $700,000 in partial reimbursement of past costs incurred by the United States, and approximately $68,000 in past costs incurred by the State of Wisconsin, in connection with the Lemberger Landfill Site and the Lemberger Transport & Recycling Sites. The Settling Defendants have also agreed to pay future oversite costs of the United States and the State of Wisconsin.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources

Division, Department of Justice, Washington, DC. 20503. All comments should refer to *United States* v. *Ariens Company, et al.* DJ Ref. # 90–11–2–712.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Wisconsin, 330 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202; the Region V Office of the U.S. Environmental Protection Agency, 77 West Jackson Street, Seventh Floor, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20004 (202–347–2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $24.00 (twenty-five cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92–13673 Filed 6–10–92; 8:45 am]

BILLING CODE 4410–01–M

Chaparral Steel Co., Lodging of Consent Decree

In accordance with Department of Justice policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on June 3, 1992, a proposed Consent Decree in *United States* v. *Chaparral Steel Company*, Civil Action No. CA–3–91–0392–H, was lodged with the United States District Court for the Northern District of Texas. The Complaint against the Defendant, Chaparral Steel Company, was brought pursuant to section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6928(a) and (g), for alleged violations of the land disposal regulations established pursuant to RCRA Subtitle C, 42 U.S.C. 6921–6939b, and set forth at 40 CFR part 268. The Complaint set forth a claim against Chaparral Steel for illegally disposing electric arc furnace baghouse dust in Chaparral's on-site landfill after the effective date of land disposal regulations banning such disposal.

The proposed Consent Decree requires the Defendant Chaparral Steel Company to pay a civil penalty of $221,125.00. Defendant has also agreed to commence implementation of the amended closure plan for the landfill into which the waste was illegally disposed after the plan is approved by the Texas Water Commission.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chaparral Steel Company*, D.J. Ref. No. 90–7–1–597.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Texas, Dallas Division, U.S. Federal Building and Courthouse, room 16G28, 1100 Commerce Street, Dallas, Texas 75242; at the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20004, (202) 347–7829. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–7829. In requesting copies, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–13765 Filed 6–10–92; 8:45 am]

BILLING CODE 4410–01–M

Folkertsma, et al.; Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 29, 1992, a proposed Consent Decree in *United States* v. *Folkertsma, et al.* (Civil Action No. 1:92–CV–365 was lodged with the United States District Court for the Western District of Michigan. The proposed Consent Decree concerns the hazardous-waste site known as the Folkertsma Refuse Site (the "Folkertsma Site") located in the City of Walker, Kent County, Michigan. The proposed Consent Decree requires the settlers, which include the owner of the Folkertsma Site, a former Site operator, and nine generators of hazardous substances sent to the Folkertsma Site, to perform and finance the final remedy set forth in the Record of Decision with respect to the Site issued by the U.S. Environmental Protection Agency on July 28, 1991. In addition, the settlers will reimburse the United States for a portion of its response costs associated with the Folkertsma Site. Under the terms of the Consent Decree, the United States will recover approximately $919,000 of its past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20530, and should refer to *United States* v. *Folkertsma, et al.* and D.J. reference 90–11–2–686. The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Michigan, Gerald R. Ford Federal Building and U.S. Courthouse, 110 Michigan Street NW., room 399, Grand Rapids, Michigan 49503; at the Region V Office of the Environmental Protection Agency, 77 West Jackson Boulevard, 7th Floor, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20530, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $37.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–13764 Filed 6–10–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–8955, et al.]

Proposed Exemptions; CISCO Systems, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of

the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Cisco Systems, Inc. Located in Menlo Park, California

[Application No. D–8955]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) a proposed loan (the Loan) by Cisco Systems, Inc. (the Employer) to the Cisco Systems, Inc. 401(k) Plan (the Plan), which is sponsored by the Employer, with respect to group annuity contract GA 07049–0000 (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the Plan's potential repayment of the Loan (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party, (b) no interest and/or expenses are paid by the Plan, (c) the Loan is made only in lieu of payments due from Mutual Benefit with respect to the accumulated book value of the GAC at the time of the Loan, (d) the Repayments are restricted to the amounts, if any, paid to the Plan by Mutual Benefit or other responsible third parties with respect to the GAC (the GAC Proceeds), (e) the Repayments do not exceed the total amount of the Loan, and (f) the Repayments are waived to the extent the Loan exceeds the GAC Proceeds.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with approximately 450 participants and assets of approximately $3,397,720.43 as of October 31, 1991. The Employer is a Deleware public corporation with its principal place of business in Menlo Park, California, and is engaged in the development, manufacture and marketing of internetworking products. The trustee of the Plan is First National Bank of Boston (the Trustee). Since June 8, 1989, investment decisions of behalf of the Plan have been made by a committeee (the Committee) comprised of two officers and one employee of the Employer. The Employer represents that between September 1, 1988 and June 8, 1989, such investment decisions were made by Lloyd Embry (Embry), who was a trustee of the Plan and the Employer's chief financial officer during such period.

2. Contributions to the Plan on behalf of Plan participants are maintained in individually-directed participant accounts (the Accounts). Participants may invest their Account balances among various investment funds (the Funds), including a guaranteed investment fund (the G Fund) designed for investments in guaranteed investment contracts issued by insurance companies. Participants whose Accounts are invested in the G Fund are entitled, on scheduled dates occurring quarterly (the Direction Dates), to direct withdrawls from their G Fund Account balances in order to fund Account distributions upon employment termination or under hardship conditions, transfers by partipants of their Account balances from the G Fund to another Fund, and participant loans (collectively, the Withdrawal Events). The sole asset of the G Fund is the GAC, a benefit-responsive group annuity contract which was purchased for the Plan by Embry and issued by Mutual Benefit on February 23, 1989, with an effective date of September 1, 1988.

3. The terms of the GAC provide for the establishment and maintenance of a separate sub-fund (the Sub-funds) for deposits during each defined deposit year. Each Sub-fund provides its own guaranteed interest rate (the Contract Rate) and maturity date (the Maturity Date). The Sub-funds are described as follows:

Sub-fund #1: Consisting of contributions deposited from September 1, 1988 through July 31, 1989, providing a Contract Rate of 9.10 percent, and maturing on July 31, 1992;

Sub-fund #2: Consisting of contributions deposited from August 1, 1989 through July 31, 1990, providing a Contract Rate of 8.90 percent, and maturing on July 31, 1993;

Sub-fund #3: Consisting of contributions deposited from August 1, 1990 through July 31, 1991, providing a Contract Rate of 9.10 percent during the deposit year and a Contract Rate of 8.60 percent in all future years, and maturing on July 31, 1995;

Sub-fund #4: Consisting of contributions deposited from August 1, 1991 through July 31, 1992, providing a Contract Rate of 8.10 percent during the deposit year and a Contract Rate of 7.60 percent in all future years, and maturing on July 31, 1996.

Under the GAC terms, withdrawals from the Sub-funds by the Plan prior to the Maturity Dates (the Withdrawals) are authorized to fund the Withdrawal Events with respect to Accounts invested in the G Fund. The Employer represents that the Sub-funds had a combined accumulated book value of $1,118,385.70 as of September 12, 1991, representing total principal deposits in the Sub-funds plus accrued interest at the Contract Rates, less previous Withdrawls. The Employer represents that the GAC constituted approximately 22 percent of the Plan's total assets as of March 31, 1992.

4. On July 16, 1991 Mutual Benefit was placed in conservatorship and rehabilitation by the insurance commissioner of the State of New Jersey (the Commissioner), and the Superior Court of New Jersey imposed a moratorium on maturity and most other payments with respect to Mutual Benefit group annuity contracts (the Moratorium), including the GAC held by the Plan.[1] The Commissioner and Mutual Benefit are proceeding with the development of a plan of rehabilitation with respect to all of Mutual Benefit's obligations outstanding as of the commencement of the rehabilitation. Because of the Moratorium, no Withdrawal Events have been funded by the G Fund since Mutual Benefit was placed in conservatorship. The Employer represents that under prevailing circumstances it is unknown whether or when Mutual Benefit will resume payments on its obligations, and that it is unlikely that Mutual Benefit will resume timely payments for Withdrawals or make timely payments upon the Maturity Dates of the Sub-funds. Additionally, the Employer is concerned that there is some risk that Mutual Benefit will be unable to pay the full value fo the GAC Sub-Funds at any time.

The Employer represents that the adverse developments surrounding Mutual Benefit have created anxiety among participants whose Accounts are invested in the G Fund. Additionally, as a result of these developments, the Employer represents that the Plan's inability to make Withdrawals prevents the Plan's performance of obligations with respect to participants whose Accounts are invested in the G Fund. In order to relieve the anxieties of interested Plan participants, and to preserve the G Fund's investment in the GAC, the Employer proposes the Loan, and has requested an exemption for the Loan, and for the potential Repayments of the Loan, under the terms and conditions described herein.

5. The Loan and the Repayment will be detailed in an agreement (the Agreement) between the Employer and Trustee. The Agreement will authorize the Loan in an amount sufficient to enable Plan participants to transfer their Account balances, and to make any other Withdrawals to which they are entitled as of a certain date (the Direction Date), determined on the basis of principal deposits under the GAC plus accrued interest at the applicable Contract Rates as of the Direction Data (the Face Value).

The Employer proposes to announce to affected Plan participants the availability of funds from the G Fund, for termination and hardship distributions, withdrawals, loans and transfers out of the G Fund, during a limited time period (the Window Period). The Window Period will commence on the date the requested exemption, if granted, is published in the **Federal Register** and will close on September 30, 1992, which is the Direction Date. The Direction Date occurs on one of the regular quarterly dates which are designated under the Plan for participants to enter their investment directions with respect to their Account balances. Distributions, withdrawals, loans and transfers which are directed by participants during the Window Period will be executed as of the September 30, 1992 Direction Date, and Plan participants will be informed that their directions will be effective as of that date.

With respect to Accounts invested in the G Fund, only participant requests entered during the Window Period will be honored. Participant requests for distributions, withdrawals, loans, and transfers from the G Fund will be accepted during the Window Period and then will be funded with the Loan, a single, lump-sum payment by the Employer to the Plan in the amount necessary for the G Fund to distribute amounts due as of September 30, 1992 to all participants who entered requests during the Window Period. The Employer's obligation to make the Loan is reduced, with respect to each participant request, by the amount, if any, paid by Mutual Benefit, or by its successors, assigns, or guaranty fund or other responsible third party (collectively, the GAC Payors), with respect to Mutual Benefit's obligations under the GAC to fund such participant request.

The Agreement provides that the Loan is to be repaid, if at all, solely from any proceeds (the GAC Proceeds) which the Plan receives from Mutual Benefit or the GAC Payors with respect to Mutual Benefit's obligations under the GAC. The Plan will not be charged any interest or other expenses for the Loan. To the extent the Loan exceeds the total GAC Proceeds, the Plan will be under no obligation to repay such amounts, and repayment of such amounts will be waived.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) Plan participants whose Accounts are invested in the G Fund will be able to avoid any further risk and uncertainty with respect to payments due from Mutual Benefit under the GAC; (2) The proposed transaction will enable the G Fund to accomplish all withdrawal Events requested during the Window Period; (3) The affected Accounts in the G Fund will receive Withdrawals based on the full Face Values under the GAC as of September 30, 1992, without any reductions attributable to the Mutual Benefit conservatorship; (4) The Plan will pay no interest or expenses with respect to the Loan; (5) The Repayments, if any, of the Loan will be limited to the GAC Proceeds; and (6) the Repayments will be waived to the extent the Loan exceeds the GAC Proceeds.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Cappuccio, Inc. Defined Benefit Pension Trust (the Plan) Located in Monterey, California

[Application No. D–8960]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

[1] The Department notes that the decision to acquire and hold the GAC is governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GAC.

and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain improved real property (the Property) to Frank Cappuccio (Mr. Cappuccio), a party in interest with respect to the Plan; provided that the Plan receives the greater of either: (i) $1,100,000; (ii) the total costs the Plan has incurred with respect to the acquisition of the land and the construction of the improvements on the Property, plus any operational expenses which may exceed the rental income on the Property, as of the date of sale; or (iii) the fair market value of the Property as of the date of sale, as appraised by an independent, qualified real estate appraiser.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of December 2, 1991, had seven participants and total assets of $2,940,935. The trustees of the Plan (the Trustees) are Mr. Cappuccio and Judy Morgan. The Trustees are affiliates of Cappuccio, Inc. (the Employer), the Plan's sponsor. Mr. Cappuccio owns 94% of the outstanding stock of the Employer. The Employer is a California corporation engaged in the business of processing and packing seafood. The Employer's principal place of business is located at 595 Figueroa Street in Monterey, California.

2. The Property consists of land and a building (the Building) located at 659 Albrego Street in Monterey, California. The Property contains approximately 10,000 square feet of level land which is essentially all covered by the Building and a small parking lot. The Building is a two-story, wood framed, stucco veneer structure that is approximately seven years old. The Building provides office space for multiple commercial tenants, all of whom are unrelated to the Employer and its affiliates. The Building has not been leased to, or used by, a party in interest with respect to the Plan. In addition, neither the Employer nor its affiliates own any property which is adjacent to the Property.

3. The land on the Property was purchased by the Plan from Pacific Southwest Realty Company, an unrelated party, in December 1983 for $400,000. Thereafter, the Plan paid $631,364 for the construction of the Building and other improvements, making the Plan's total costs for the Property approximately $1,031,364.[2] The applicant states that as of August 31, 1991, the Plan had received a total of approximately $765,220 in rental income from the Property and incurred a total of approximately $167,156 in operational expenses, making the Plan's net income approximately $598,064 as of such date.

The Property was acquired by the Plan as an investment which, at the time of acquisition, was expected to appreciate significantly in volue. However, the applicant states that the market for commercial real estate in the Monterey area has recently been depressed and that most properties require approximately a two year selling period. The applicant believes that the value of the Property may decline significantly during the next few years due, in part, to the announced closure by mid-1994 of Fort Ord, a U.S. military based located near Monterey.

4. The Property was appraised on December 2, 1991 by Edward J. O'Connor of Seyferth Associates (the Appraiser), an independent, qualified real estate appraiser in Pacific Grove, California. The value of the Property was appraised in fee simple as encumbered by the existing leases to the Building's tenants. The Appraiser states that the Property had a fair market value of $1,010,000, as of December 2, 1991. The Appraiser's valuation of the Property relied mostly on the income approach to value. The Appraiser capitalized the current income producing potential for the Property based on the present year's income under the existing leases and a five year projection for future income and expenses. This approach allowed the Appraiser to take into consideration the impact of a reduction in rental income on the value of the Property during the next few years when many of the existing leases are due to expire. However, the Appraiser's valuation of the Property based on sales of similar properties in the Monterey area during the last three years indicated that the Property would be worth approximately $1,100,000, as of the date of the appraisal. The Trustees have reviewed the findings of the Appraiser and propose to sell the Property for at least $1,100,000 (as discussed below).

5. The Trustees represent that it would be in the best interests of the Plan and its participants and beneficiaries to sell the Property. The Trustees propose to sell the Property to Mr. Cappuccio for cash. Mr. Cappuccio is willing to pay at least $1,100,000 for the Property, which is the current market value established by the Appraiser's sales comparison approach (see Item 4 above). Such an amount would ensure that the Plan is at least made "whole" for the total costs incurred by the Plan for the acquisition of the land on the Property and the construction of the Building. However, the operational expenses incurred by the Plan for the Property will not be considered part of the Plan's total costs because such expenses have been offset each year by the rental income received from the Property. The Trustees will obtain an updated appraisal of the Property prior to the proposed sale. In addition, the Trustees will review all of the Plan's costs with respect to the Property, including any operational expenses which may exceed the rental income from the Property, prior to the transaction. The applicant represents that in no event will the Plan receive less than the higher of either: (i) The fair market value of the Property as currently appraised under the Appraiser's sales comparison approach (i.e. $1,100,000); (ii) the total costs incurred by the Plan for the acquisition of the land on the Property and the construction of the Building, plus any operational expenses which may exceed the rental income on the Property, as determined by the Trustees as of the date of sale; or (iii) the fair market value of the Property at the time of the transaction as established by an independent, qualified appraiser.

6. The applicant states that the proposed transaction will allow the Plan to dispose of the Property for its fair market value without a prolonged wait for a prospective buyer. The Plan will not pay any commissions or other expenses with respect to the sale. Thus, the Plan will save the transaction costs, such as a real estate commission equal to 6% of the sales price, which would normally be associated with such a sale. In addition, the proposed transaction will relieve the Plan of the risk of securing adequate rental income for the Building during the next few years. The Trustees believe that the announced closure of Fort Ord will have a negative impact on the commercial real estate market in the area and may affect the rental income which the Plan will receive from the Building. Finally, the

[2] The Department expresses no opinion in this proposed exemption as to whether the acquisition of the land on the Property and the construction of the Building violated any provision of part 4 of title I of the Act. In this regard, the Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

proposed transaction will allow the Plan to diversify its investment portfolio and meet certain liquidity needs associated with paying benefits to participants during the next few years.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The sale of the Property to Mr. Cappuccio will be a one-time transaction for cash; (b) the Plan will receive an amount which will be no less than the greater of either the fair market value of the Property as currently appraised under the Appraiser's sales comparison approach (i.e. $1,100,000), the total costs incurred by the Plan with respect to the acquisition of the land on the Property and the construction of the Building, plus any operational expenses which may exceed rental income, as of the date of sale, or the fair market value of the Property as of the date of sale, as established by an independent, qualified appraiser; (c) the Plan will not pay any commissions or other expenses with respect to the sale; and (d) the transaction will allow the Plan to sell the Property within a reasonable time in order to meet certain investment objectives and liquidity needs of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

The Equitable Life Assurance Society of the United States (Equitable) and Equitable Real Estate Investment Management, Inc. (EREIM)

[Exemption Application No. D–8708]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the lease (the Lease) of 16,560 square feet of office space and 1,215 square feet of storage space in One Bush Plaza, a commercial office building located in San Francisco, California, by the Asset Enhancement Fund (AEF), a pooled separate account established by Equitable, to EREIM, or to the renewal of the Lease for an additional term not in excess of five years (the Lease Renewal) provided that: (a) The Lease and the Lease Renewal are for a limited term; (b) the terms of the Lease and the Lease Renewal are negotiated and approved by a qualified independent fiduciary who determines that the terms of the transactions are no less than fair market value and at least as favorable to AEF as the terms would have been in arm's length transactions between unrelated parties; and (c) the independent fiduciary continues to monitor the Lease and the Lease Renewal on behalf of AEF.

EFFECTIVE DATE: This exemption, if granted, will be effective April 27, 1991.

Summary of Facts and Representations

1. Equitable is a mutual life insurance company organized under the laws of the State of New York. Equitable is licensed to do business in all fifty states and the District of Columbia. It is one of the largest insurance companies in the United States and one of the largest managers of employee benefit plan assets in the United States. As of December 31, 1990, Equitable had total assets of approximately $60.5 billion and, together with its affiliates, a total of approximately $72.9 billion of employee benefit plan assets under its managment.

2. In 1984, Equitable created EREIM, a wholly-owned subsidiary of Equitable. EREIM acquires, develops, manages, finances, and sells properties of all types in every region and major city in the country for Equitable and several hundred pension funds and international clients. It is headquartered in Atlanta and employs more than 450 real estate professionals in 16 regional and divisional offices in the United States. As of December 31, 1990, EREIM had approximately $36.9 billion in assets under its management, including approximately $11.4 billion in employee benefit plan assets.

3. Equitable offers several different kinds of real estate investment opportunities to employee benefit plans. Among these is AEF, which Equitable has established for the purpose of allowing plans to invest collectively in commercial real estate. Equitable is the investment manager for AEF. EREIM provides investment advice to Equitable with respect to Equitable's responsibilities as investment manager. As investment advisor, EREIM assists Equitable in determining the types of properties to be purchased by AEF, the number and location of the properties, the structure of the transactions and the amount of third-party financing, if any, that is appropriate. In addition, EREIM, together with Equitable, is responsible for assuring that AEF's properties are managed in accordance with AEF's investment objectives.

4. The applicant represents that Equitable opened AEF in 1987 in conformity with the requirements of New York insurance law applicable to insurance company separate accounts. AEF consists solely of assets of employee pension benefit plans. AEF is a "closed-end" pooled separate account. Amounts received by AEF as income from the account's properties, or upon disposition of properties, generally are distributed to investors rather than reinvested. As of December 31, 1990, the investors in AEF consisted of 10 contract holders whose contributions to AEF ranged from $875,000 to approximately $28 million. The rights and responsibilities of each plan investing in AEF are set forth in a group annuity contract between Equitable and the appropriate fiduciary of the investing plan. As of December 31, 1990, AEF had net assets of approximately $123.6 million and total real estate investments valued at approximately $138.2 million. Among AEF's real estate investments is a 50 percent allocated interest in the property at One Bush Plaza.[3]

5. EREIM retained Russell-Zisler on February 19, 1991 to act as independent fiduciary on behalf of AEF in connection with the Lease, subject to the approval of plans holding in excess of two-thirds of the outstanding interests AEF. Russell-Zisler's appointment as independent fiduciary was approved by the plans on April 26, 1991 and is subject to annual confirmation by a simple majority of the plans that participate in AEF.

Russell-Zisler is an investment adviser registered under the Investment Advisers Act of 1940, founded in 1988 as a wholly-owned subsidiary of Frank

[3] The applicant represents that the remaining 50 percent interest is held by Equitable's general account. The Department notes that the applicant has not requested and the Department is not proposing an exemption for any possible prohibited transactions which may have occurred as a result of AEF and Equitable's general account each holding interests in One Bush Plaza.

In this regard, the applicant notes that Prohibited Transaction Exemption (PTE) 88–92 (53 FR 38796, October 3, 1988) provides relief for certain transactions that may arise in connection with investments that are shared by Equitable and its ERISA covered separate accounts. The applicants represents that AEF and Equitable have not engaged in any transaction involving One Bush Plaza that is subject to PTE 88–92. Equitable might, however, rely on PTE 88–92 in the future for transactions involving One Bush Plaza, and in that event would adhere to the conditions of the exemption with respect to such transactions.

Russell Trust Company. Russell-Zisler represents that neither Russell-Zisler itself, nor Russell-Zisler and its affiliates in the aggregate received more than 5 percent of their gross revenues, determined as of the end of their last fiscal year, from business transactions with Equitable and its affiliates.

The applicant represents that the appointment of Russell-Zisler as independent fiduciary will remain in effect until: (i) 60 days after receipt by Equitable of a notice of resignation from Russell-Zisler; or (ii) 60 days after Russell-Zisler receives a notice of removal for cause (which is limited to cases of fraud, negligence, or breach of fidicuary duty) from Equitable; or (iii) 60 days after Russell-Zisler receives a notice or removal (with or without cause) from a simple majority of the plans participating in AEF. Upon the termination of Russell-Zisler's appointment as independent fiduciary, a successor independent fiduciary will be designated by Equitable and will also be subject to the approval of at least a two-thirds majority in interest of the plans participating in AEF. The successor independent fiduciary will be subject to annual confirmation by a simple majority of the plans participating in AEF.

The applicant represents that any successor independent fiduciary must be an individual, group of individuals, or a business entity which has substantial experience and expertise in the commercial real estate field. Neither the successor independent fiduciary nor any affiliate may have any ownership interest in Equitable or its affiliates, nor may Equitable or its affiliates have any ownership interest in the successor independent fiduciary or its affiliates. In addition, neither the successor independent fiduciary itself, nor the successor independent fiduciary and its affiliates in the aggregate, may receive more than 5 percent of their total annual gross revenue, determined as of the end of their last fiscal year, from business transactions with Equitable (including AEF) or its affiliates. The applicant further represents that any successor independent fiduciary would be removable as independent fiduciary under the same conditions as Russel-Zisler, as discussed above.

6. The responsibilities of Russell-Zisler with respect to the Lease are set forth in a letter agreement (the Agreement) dated February 19, 1991. Under the Agreement, Russell-Zisler assumed responsibility as independent fiduciary on behalf of AEF to negotiate the terms of the Lease. In connection with the negotiation of the Lease on AEF's behalf, Russell-Zisler conducted the following activities.

(a) Performed a market review of the Lease;

(b) Inspected One Bush Plaza to evaluate the building, its common areas, the space subject to the Lease, and the space occupied by existing tenants;

(c) Interviewed representatives of Equitable's building management as well as other sources within the San Francisco real estate brokerage and asset management firms;

(d) Inspected buildings deemed comparable to One Bush Plaza and, within those buildings, the premises of recent comparable leases; and

(e) Reviewed the terms of the Reimbursement Agreement (described in paragraph 8 below).

In connection with its market review of the Lease, Russell-Zisler identified several office properties it considered to be competitive properties to One Bush Plaza. Russell-Zisler evaluated twenty-one comparable leases, which included leases in these competitive properties as well as other leases in One Bush Plaza. In order to evaluate the economic terms of comparable leases, Russell-Zisler performed a present value analysis on each such comparable lease. The methodology provided a present value equivalent effective rent that accounts for the term of the lease, free rent, rent steps, and initial tenant improvement costs (such as those stipulated in the Reimbursement Agreement). Based on its review, Russell-Zisler concluded that the terms of the Lease are not less than fair market value and at least as favorable to AEF as the terms would have been if negotiated in an arm's length transaction between unrelated parties. Russell-Zisler also concluded that the Lease is in the best interest of the plans that participate in AEF.

7. The Agreement also provides that Russell-Zisler is obligated as independent fiduciary to monitor EREIM's performance under the Lease. In connection with its responsibility under the Agreement to monitor the Lease, Russell-Zisler must review any matter which requires the approval of the landlord under the terms of the Lease and determine on behalf of AEF whether to grant approval. The Agreement also provides that, in the event of EREIM's default under the Lease, Russell-Zisler has the right to take such action as may be necessary to protect the interest of the plans participating in AEF. The Agreement further provides that Russell-Zisler, as independent fiduciary, must review and approve of the Lease Renewal as well as monitor EREIM's performance thereunder. Before the Lease Renewal can be entered into, Russell-Zisler must find that it is in the best interest of the plans participating in AEF and that the terms of the Lease Renewal are at least at fair market rental rates at the date of such renewal. In this connection, Russell-Zisler must prepare a detailed written report setting forth its reasons for approving the Lease Renewal, which will be available for inspection by the Department at its request.

8. As discussed in paragraph 6 above, the terms of the Lease were negotiated by Russell-Zisler, acting as independent fiduciary on behalf of AEF. The Lease is for a term of seven years, commencing on April 27, 1991, at a base rent of $27.50 per square foot per year for 16,560 square feet on the twelfth floor of One Bush Plaza.[4] The Lease also provides that EREIM will rent 1,215 square feet of basement storage space at One Bush Plaza on a month to month basis at a rate of $1.00 per square foot per month. The Lease contains a rent abatement for the initial six months of the Lease, and provides for a tenant improvement allowance of $400,000 to be paid by the landlord. In addition, under the Lease, EREIM has the option, with Equitable's approval, of converting the abatement allowance into additional tenant improvements.

The applicant represents that tenant improvements were made in anticipation of the commencement of the Lease. In this regard, EREIM and Russell-Zisler orally agreed to the terms of the Reimbursement Agreement [5] on January 1991, pursuant to which EREIM agreed to advance AEF's share of the cost of the tenant improvements, up to a maximum of $400,000 and AEF agreed to reimburse EREIM for such expenses. The applicant represents that in the event that the lease transaction is for any reason not completed (i.e., if the exemption is not granted), EREIM will not be entitled to reimbursement of the amounts advanced. Construction work on these improvements commenced on January 18, 1991, after EREIM and Russell-Zisler agreed to this arrangement. The applicant represents that Russell-Zisler has reviewed and approved the Reimbursement Agreement and has informed Equitable and EREIM that it has concluded that the construction of tenant improvements prior to the execution of a lease for

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[4] The applicant represents that the Lease is terminable by EREIM after five years in certain limited circumstances.

[5] The Department expresses no opinion herein as to whether the Reimbursement Agreement constitutes a violation of any of the provisions of part 4 of Title I.

commercial office space is a customary practice and that the Reimbursement Agreement is in the interests of AEF and the plans that participate in AEF. In addition, Russell-Zisler has taken into account the fact that AEF has agreed to assume responsibility for the cost of tenant improvements in reviewing the rental under the Lease. The applicant further represents that the Reimbursement Agreement AEF entered into with EREIM in January did not obligate AEF to rent the office space in One Bush Plaza to EREIM. In the event the proposed exemption is not granted, or the Lease is otherwise terminated, EREIM will not be permitted to seek reimbursement from AEF for the cost of tenant improvements.

The applicant asserts that the Lease is beneficial to AEF because it is at fair market value and will reduce the amount of remaining vacant rentable office space in One Bush Plaza by approximately one-third. The applicant further notes that there are currently relatively few quality tenants in the market for office space such as One Bush Plaza. Without the proposed exemption, the office space may remain vacant for an indeterminate period of time, and AEF would be deprived of any income attributable to the space during that period.

9. In summary, the applicant represents that the transactions satisfy the terms and conditions of section 408(a) of the Act because: (a) The Lease is for a limited term; (b) the Lease and the Reimbursement Agreement have been reviewed by a qualified independent fiduciary who determined that the terms of the transactions are no less than fair market value and at least as favorable to AEF as the terms would have been in arm's length transactions between unrelated parties; (c) the independent fiduciary will continue to monitor the Lease on behalf of AEF; (d) the Lease Renewal must be approved by the independent fiduciary acting on behalf of AEF; (e) the Reimbursement Agreement will protect the rights of the plans that participate in AEF because it ensures that, in the event the proposed exemption is not granted and the Lease is terminated, EREIM will not be permitted to seek reimbursement from AEF for the cost of tenant improvements; and (f) the terms of the Reimbursement Agreement have been reviewed and approved by a qualified independent fiduciary, who has taken into account the fact that AEF has agreed to assume responsibility for the cost of tenant improvements.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Anderson of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (the Trust) Located in Boston, Massachusetts

[Application No. D–8974]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to (1) a certain lease (the Lease) of space in commercial real property (the Property) located at Piney Point Office Park in Houston, Texas to the Townsend Company, a party in interest with respect to the Trust; (2) the potential amendments, renewals, or extensions of the Lease; and (3) the proposed leasing by the Trust of space in the Property to any other persons that may be parties in interest with respect to the Trust or parties in interest with respect to any employee benefit plans participating in the Trust (except for fiduciaries with respect to the Property),[6] including the amendments, renewals, or extensions thereof; provided that the terms and conditions of any leases subject to this exemption, including any amendments, renewals, or extensions thereof are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties; and provided further that any such leases, including any amendments, renewals, or extensions thereof, are approved on behalf of the Trust by Eastdil Advisers, Inc.

EFFECTIVE DATE: The effective date of the proposed exemption, if granted, will be May 6, 1991, as to the Lease of the Property to Townsend Company.

Summary of Facts and Representations

1. The Trust

The Trust is a group trust, qualified under section 410(a) of the Code pursuant to *Rev. Rul.* 81–100, which is utilized for the investment on an undivided basis of certain real estate assets of its participating employee benefit plans (the Plans). The Plans were established by the companies which resulted from the reorganization of American Telephone and Telegraph Company (AT&T) and its subsidiaries pursuant to the Plan of Reorganization approved by the U.S. District Court for the District of Columbia in the matter of *U.S.* v *Western Electric Co., Inc. et al.* (Civil Action No. 82–0192) (Plan of Reorganization).

In furtherance of the Plan of Reorganization, as of January 1, 1984, provision was made for the allocation of the assets of the predecessor plans held in the Bell System Pension Plan Trust and the Bell System Management Pension Plan Trust to be merged into the Bell System Trust (the BST). This action was followed by substantially all of the non-real estate assets in the BST being transferred to a new AT&T trust. The BST retained the real estate assets of the prior Bell System trusts and was amended and restated as the Trust. As of September 31, 1991, the Trust had total assets of approximately $3.1 billion.

Only four Plans (AT&T Management Pension Plan, AT&T Pension Plan, Bell South Management Pension Plan, and Bell South Pension Plan; collectively, the Plans) retain an interest in the Trust and have assets affected by the proposed transaction for which the exemption has been requested.

The Plans provide pension and death benefits to eligible employees, former employees who have retired and their beneficiaries for both the management and salaried group, and as well as employees who are or have been in the bargaining unit represented by one of several unions: The Communications Workers of America, Washington, DC; The International Brotherhood of Electrical Workers, Washington, DC; and The Telecommunications International Union, Hamden, Connecticut.

2. Sponsors of the Plans

AT&T, a New York corporation headquartered in New York City and sponsor of two of the Plans having an interest in the Trust, provides a wide variety of nationwide and international telecommunications services. It designs, manufacturers, markets, and services transmission and switching equipment, central office products, apparatus for use in residential and business markets. This includes silicon chip products and other electronic components, software and computers for general use in communications systems, and products and services sold primarily to the Department of Defense and other government agencies.

[6] Fiduciaries as used here include the American Telephone and Telegraph Company and its affiliates, Bell South Corporation and its affiliates, and Eastdil Advisers, Inc. and its affiliates.

The sponsor of the other two Plans having an interest in the Trust is BellSouth Corporation (BellSouth), a Georgia corporation, which was created as a result of AT&T reorganization and diverstiture. The primary business of BellSouth and its subsidiaries is the furnishing of exchange telecommunications and exchange access services within specific geographic areas. In addition, it provides advanced mobile communications services using cellular technology, directory advertising and publishing, marketing of customer premises telecommunications equipment, and other miscellaneous business activities.

3. Eastdil

Eastdil Advisers, Inc. (Estdil) is a Delaware corporation, based in New York City, and registered as an investment adviser under the Investment Advisers Act of 1940, as amended. It is wholly owned by Eastdil Realty, Inc., a Delaware corporation, which in turn is 50 percent owned by Nomura Babcock & Brown Real Estate, Inc., a Delaware corporation and a wholly-owned subsidiary of Normura Securities Co., Inc., a Japanese securities firm. The remaining 50 percent of Eastdil Realty, Inc. is owned in varying amounts by different executives of Eastdil Realty, Inc.

Eastdil was incorporated in 1978 for the purpose of investing in and managing real estate assets for large pension plans. It manages approximately $450 million in pension plan assets on an individual account basis, which primarily consists of multi-tenant commercial and industrial properties.

As of January 1, 1984, Eastdil began serving as investment manager for a portion of the assets of the Trust pursuant to an Investment Management Agreement between AT&T and Eastdil. As of December 31, 1990, Eastdil was managing approximately $350 million (estimated market value) in real estate assets of the Trust.

4. The Property

The Property consists of two commercial office buildings located in Piney Point Office Park in Houston, Texas at 2450 and 2500 Fondren Road. Each address has 78,435 and 75,523 square feet of net rental space, respectively. Title to the Property is held by a joint venture, Piney Point Joint Venture No. 1 (the Joint Venture), which has 98 percent of its equity owned by Pintel I, Inc. (Pintel) and the remaining 2 percent of its equity owned by Telepine, Inc. (Telepine). The Property is the sole asset of the Joint Venture.

Both Pentel and Telepine are title-holding corporations, incorporated in Delaware and exempt from federal taxation under section 501(c)(2) of the Code. Each corporation is wholly owned by State Street Bank & Trust Company, a Massachusetts banking corporation with its principal office in Boston, Massachusetts, in its capacity as trustee of the Trust.

Pintel and Telepine were organized by Eastdil, acting in its capacity as investment manager for the Trust, for the purpose of having the Joint Venture hold title to the Property on behalf of the Trust, collect income from leases of the Property, and distribute to the Trust the collected rental income.

5. The Tenants

The Townsend Company (Townsend), a Maryland corporation, is a diversified investment firm whose officers jointly contribute experience in fields of real estate, law, accouting, engineering, and finance in evaluating and managing the firm's portfolio, which is approximately five million square feet of office, industrial, and retail space. It is a wholly owned subsidiary, and the principal operating corporation, of Windsor Financial, Inc. a Maryland corporation. Townsend has three subsidiaries: DWT Venture, Incorporated, that serves as a co-general partner with Townsend in the majority of investment partnerships formed by Townsend; Townsend Associates, Inc., that is the marketing arm of Townsend; and TTC Management, Inc. (TTC) that provides property management and leasing agency services. All three subsidiaries are incorporated under the laws of Maryland.

Townsend has a corporate staff of 30 individuals and a total of 300 employees, which includes the personnel in its subsidiaries. Its headquarters are in Baltimore, Maryland with a regional office in Houston, Texas. The Asset Management Group of Townsend is divided into three divisions: (a) Management and operations, (b) leasing and marketing, and (c) construction management.

6. The Lease Transaction

On May 6, 1991, the Joint Venture entered into the Lease, which expires on May 5, 1994, with Townsend for a portion of the Property, covering approximately 1,804 rentable square feet (RSF) which is 2.4 percent of the Property's net rentable space. The Lease provides for a rental of approximately $9.00 per RSF in the first year and $10.00 per RSF in the second and third years of the Lease term. The Joint Venture may terminate the Lease if Townsend engages in any "event of default" as defined in the Lease, including failure to pay rent when due and payable.

As an inducement to Townsend to enter into the Lease, the first two monthly payments of rent was waived and rental payments began on July 6, 1991. Eastdil, as Applicant, represents that rental waivers are common in the real estate industry. Eastdil further represents that the inducement under the Lease was reasonable and necessary under the facts and circumstances then existing.

Eastdil represents that the Lease was negotiated and entered into in an arm's-length transaction between Eastdil, on behalf of the Joint Venture, and Townsend. The rental rates and the other terms and conditions of the Lease are comparable in the aggregate to those of similar leases of space in Joint Venture properties and in similar commercial office buildings in Houston, Texas area at the time of the Lease.

7. Amendments, Extensions and Renewal of the Lease

The Applicant is requesting that exemptive relief be granted on a prospective basis to amendments, extensions, or renewals of the Lease, provided that (a) Eastdil negotiates and approves the amendments, extensions or renewals of the Lease; (b) any amendments, extensions, or renewals of the Lease are for adequate consideration; and (c) that the terms and conditions of the Lease are comparable to the terms and conditions then negotiated with regard to similar leases of space in the Property and in similar office buildings in the Houston, Texas area.

8. Prospective Leases with Parties in Interest

Upon considering the size of the Trust and its participating Plans with the actual and potentially large number of parties in interest with respect to the Trust and the Plans, the Applicant also seeks exemptive relief on a prospective basis for any lease of space in the Property to a party in interest with respect to either the Trust or to the Plans. The Applicant represents: (a) each such lease to a party in interest would be negotiated on an arm's-length basis on behalf of the Trust by Eastdil, which would not be affiliated with or otherwise related to such parties in interest in any manner which would affect the exercise of its judgment as a fiduciary; (b) the terms and conditions of any such lease would be comparable to

those of similar leases of space in the Property and in similar buildings in the area entered into at the same time; and (c) neither the Lease or any other lease to be covered by the requested proposed exemption is a part of any larger integrated transaction. Further, none of the leases will be with persons who are fiduciaries with respect to the Property.

9. The Management Agreement

On May 6, 1991, the Joint Venture entered into a management agreement and an exclusive rental agency agreement with TTC. The terms of each agreement were negotiated at arm's-length between TTC and Eastdil acting on behalf of Joint Venture.

The management agreement provides that TTC will act as managing agent with regard to the Property pursuant to the terms and conditions of the management agreement and under the supervision of Eastdil as fiduciary with respect to the Property.

Under the rental agency agreement, TTC was appointed as the exclusive marketing and leasing agent for the Property for which TTC receives commissions in accordance with the terms of the rental agency agreement.

The Applicant represents that both the management and rental agency agreements with TTC comply with section 408(b)(2) of the Act and the regulations thereunder.[7]

TTC will utilize the space provided by the Lease to Townsend to facilitate its carrying out its duties as property manager and rental agent. Townsend will also use the space provided by the Lease for business purposes unrelated to TTC's duties with respect to the Property

10. Eastdil represents in its fiduciary capacity that the Lease and the prospective leases, including their respective amendments, extensions and renewals thereof to be prudent and in the best interests and protective of the Trust, the Plans, and their respective participants and beneficiaries. Eastdil also represents that the Lease and each future lease, in form and substance, is or will be a standard commercial office lease generally utilized for all tenants of the Property. The negotiations of the terms and conditions of the Lease do, and the future leases will, reflect common industry practices as well as the practices established for similar leases in the Property. Eastdil further represents that it has had and will continue to have full responsibility on behalf of the Joint Venture to approve or disapprove the Lease or any amendments, extensions, and renewals of the Lease or any leases as well as any amendments, extensions, and renewals thereto that the Joint Venture is a party. All leases of space in the Property in form and substance must be satisfactory to the approval of Eastdil, and all tenants in the Property must be satisfactory in all respects to the standards set by Eastdil on behalf of the Joint Venture. Eastdil represents that it has no relationship with Townsend, TTC or any of their affiliates and had decided to retain TTC as the management and leasing agent at a time when Townsend was looking for rental office space in the the Houston, Texas area. At that time Eastdil determined that it would be in the best interest of the Trust to have TTC located at the Property. As a result of this determination, Eastdil decided to enter into the Lease and the management and leasing agent agreements and apply for an administrative exemption.

11. In summary, Eastdil represents the past and proposed transactions satisfy the requirements of section 408(a) of the Act for the following reasons: (a) The Lease with Townsend was negotiated and entered into in an arm's-length transaction on behalf of the Trust by the Venture under the control and direction of Eastdil, an independent fiduciary of the Trust and unrelated to Townsend or its affiliates; (b) any amendments, renewals, and extensions of the Lease and any executions of future leases in the Property with parties in interest with respect to the Trust or the Plans, or their affiliates, including any amendments, renewals, and extensions thereof, will require the approval of Eastdil; (c) none of the leases will be with fiduciaries with respect to the Property; (d) the Lease is, and any future leases subject to this proposed exemption will be standard commercial office leases which are utilized generally for all tenants of the Property and which reflect common industry practices; and (e) the rentals provided under the Lease and the prospective future leases are and will be no less than the fair market rental values of the demised promises at the times of their executions.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

[7] The Department is proposing exemptive relief solely for the lease transactions as specified. No exemptive relief is provided herein concerning the management agreement or the rental agency agreement beyond that provided by section 408(b)(2) of the Act.

Sheboygan Drugs, Inc., Retirement Plan (The Plan) Located in Sheboygan, Wisconsin

[Application No. D–9024]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain coins (the Coins) by the Plan to William J. Zajkowski, a disqualified person with respect to the Plan, provided that (1) the Plan incurs no commissions, fees, or other expenses from the Sale, and (2) the Plan receives as consideration from the Sale the asking price in the open-market as stated in writing by a qualified, independent coin dealer on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a money purchase plan with one participant and total assets of approximately $106,853, as of March 3, 1992. William J. Zajkowski, a pharmacist, is the sole shareholder of Sheboygan Drugs, Inc., the sponsoring employer of the Plan (the Employer), as well as the fiduciary of the Plan and its only participant.[8] Approximately 89 percent of the assets in the Plan are invested in the Cash Equivalent Fund of Kemper Securities Group, Inc., through its office in Sheboygan, Wisconsin. The Plan's investment in the Cash Equivalent Fund had a balance of $94,474.21, as of January 15, 1992. The remaining 11 percent of the assets of the Plan are invested in the Coins. The Coins were purchased for the sum of $16,572 on November 19, 1987, from Investment Rarities, Incorporated, Minneapolis, Minnesota, an unrelated person with respect to Mr. Zajkowski, the Employer, or the Plan. The Coins have produced no income for the Plan and have not appreciated in value since being purchased. As of March 3, 1992, the Coins were determined by Investment Rarities, Incorporated to

[8] Since William J. Zajkowski is the sole shareholder of the Employer and the only participant in the Plan, there is no jurisdiction under title I of the Act pursuant to 29 CFR 2510.3–3. However there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

have an aggregate asking price of $12,379.40. The Coins consisted of 10 AU $20 St. Gaudens ($485) with a total asking price of $4,850, and 20 $50 U.S. Eagles ($376.47) with a total asking price of $7,529.40.

2. Mr. Zajkowski proposes to purchase the Coins for cash from the Plan with no expenses or commissions incurred by the Plan from the Sale. The consideration the Plan will receive from the Sale will be the asking price in the open-market as stated in writing by a qualified, independent coin dealer, on the date of the Sale. The Applicant represents that the proposed transaction will enable the Plan to divest itself of assets which have depreciated in value and invest the proceeds from the Sale in income producing assets that also have an opportunity to appreciate invalue. It is further represented by Mr. Zajkowski that the Coins have never been used by him or any other disqualified person for personal purposes. It is represented that the Coins are currently held and have been continuously held since their acquisition in a safe of the Employer. The expense of maintaining the safe has been paid by the sponsor of the Plan and not by the Plan. At no time has the Plan paid the Employer or any other person any consideration for using the safe for storing the Coins.

3. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because (a) the proposed Sale will be a one-time transaction for cash; (b) the Plan will receive from the Sale the asking price in the open-market as stated in writing by a qualified, independent coin dealer on the date of the Sale; (c) the Plan will not pay any commissions, fees, or other expenses involved in the Sale; (d) the cash proceeds will be invested in assets that return income to the Plan; and (e) the applicant who is the only participant in the Plan desires that the Sale be consummated.

Notice to Interested Persons

Since Mr. Zajkowski is the only participant in the Plan, it has been determined that there is no need to distribute the notice of the proposed exemption to interested persons. Comments are due 30 days after publication of this notice in the **Federal Register**.

FOR FURHTER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of June, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 92–13790 Filed 6–10–92; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 92–34; Exemption Application No. D–8923, et al.]

Grant of Individual Exemptions; Vital Signs, Inc., Savings and Protection Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Vital Signs, Inc. Savings and Protection Plan (the Plan) Located in Totowa, New Jersey

[Prohibited Transaction Exemption 92–34; Exemption Application No. D–8923]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past and proposed extension of credit to the Plan (the Advances) by Vital Signs, Inc., the sponsor of the Plan, with respect to three guaranteed investment certificates (the GICs) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the potential repayment of the Advances by the Plan; provided that (a) no interest and/or expenses are paid by the Plan; (b) the Advances are used only in lieu of withdrawals due from the GICs; (c) repayment of the Advances is restricted to cash proceeds paid to the Plan by or on behalf of Mutual Benefit with respect to Mutual Benefits obligations under the GICs, and (d) repayment of the Advances will be waived to the extent the Plan receives less from the disposition of the GICs than the total amount of the Advances.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1992 at 57 FR 13770.

EFFECTIVE DATE: This exemption is effective as of March 31, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Blue Cross and Blue Shield of New Jersey, Inc., Management Employees' Savings and Investment Plan (the Plan) Located in Newark, New Jersey

[Prohibited Transaction Exemption 92–35; Exemption Application No. D–8935]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed guaranty by Blue Cross and Blue Shield of New Jersey, Inc. (the Employer), the sponsor of the Plan, of the maturity values of each subfund, plus interest thereon (together, the Guaranteed Amount), under group annuity contract number GA–3814 (the GAC) issued to the Plan by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); (2) the proposed extensions of credit to the Plan by the Employer (the Advances) as advances on the Guaranteed Amount; and (3) the Plan's potential repayment of the Advances (Repayments); provided that (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party, (b) no interest and/or expenses are paid by the Plan, (c) the Advances are made only in lieu of payments due from Mutual Benefit with respect to the GAC, (d) the Repayments shall not exceed the lesser of (1) the total Advances, or (2) the Guaranteed Amount, and (e) the Repayments shall in no event exceed the amounts actually received by the Plan From Mutual Benefit and other responsible third party payors with respect to the GAC.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1992 at 57 FR 13771.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Campbell Soup Company Savings and 401(k) Plan for Salaried Employees, and Campbell Soup Company Savings and 401(k) Plan for Hourly Employees (collectively, the Plans), Located in Camden, New Jersey

[Prohibited Transaction Exemption 92–36; Exemption Application Nos. D–8937 and D–8938]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective December 31, 1991, to the cash sale by the Plans to Campbell Soup Company, the sponsor of the Plans, of their shared interest (the Interest) in quaranteed investment contract number CG01305A3A (the GIC) issued by Executive Life Insurance Company of California; provided that (1) the sale is a one-time transaction for cash; (2) the Plans did not suffer any loss or incur any expenses in the transaction; and (3) the Plans received no less than the fair market value of the Interest at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 1, 1992 at 57 FR 11096.

EFFECTIVE DATE: This exemption is effective as of December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a tool-free number.)

Exports, Inc. 401(k) Savings Plan (the Plan) Located in Blaine, Washington

[Prohibited Transportation Exemption 92–37; Exemption Application No. D–8948]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1))(A) through (E) of the Code, shall not apply to the sale by the Plan of three Guaranteed Investment Contracts (the GICs) of Fidelity Bankers Life Insurance Company to Exports, Inc. (Exports), a party in interest with respect to the Plan, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GICs at the time of the transaction; (3) the Plan's independent fiduciary, Judith Goode Moran, CPA (Moran) has determined that the sales price is not less than the current fair market value of the GICs; and (4) Moran has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 17, 1992 at 57 FR 13773.

WRITTEN COMMENTS: The Department received one written comment which was submitted by the applicant to correct a typographical error which appeared in the notice of proposed exemption. The correct number of participants in the Plan is 94, rather than 894.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Synergistic Marketing, Inc. Profit Sharing Plan (the Plan) Located in New York, New York

[Prohibited Transaction Application 92-38; Exemption Application No. D-8979]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash purchase by Randolph Aversano's (Mr. Aversano) individually-directed account (the Account) in the Plan of two parcels of unimproved real property (collectively; the Property) from Mr. Aversano and his wife Mrs. Jane Aversano, parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The price paid by the Account will be the aggregate fair market value of the Property at the time of the sale as determined by an independent, qualified appraiser;

(b) The proposed purchase will be a one-time cash transaction;

(c) The Account will pay no expenses associated with the purchase; and

(d) The proposed purchase will not exceed 25% of the assets of the Account.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1992 at 57 FR 13774.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of June, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 92-13791 Filed 6-10-92; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation hereby announces its intention to award grants to twenty-two (22) law school clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 57, No. 28, pages 4777 and 4778 of the **Federal Register** of February 7, 1992, a total of $1,229,000 will be awarded to the following schools:

Name of School	State	Amount
1. Yale Law School	CT	$75,000
2. University of Connecticut	CT	75,000
3. Yeshiva University	NY	33,072
4. District of Columbia School of Law	DC	75,000
5. D.C. Law Students in Court Program	DC	60,000
6. Temple University	PA	33,072
7. University of Pittsburgh	PA	20,000
8. Villanova University	PA	54,990
9. University of Mississippi	MS	70,563
10. University of Arkansas	AR	60,500
11. Nova University	FL	54,000
12. Northwestern University	IL	35,000
13. Indiana University/Indianapolis	IN	74,843
14. University of Michigan	MI	55,000
15. University of Houston	TX	75,000
16. St. Mary's University	TX	63,910
17. University of Wisconsin	WI	40,000
18. Marquette University	WI	75,000
19. University of North Dakota	ND	37,695
20. University of Denver	CO	50,000
21. University of Colorado	CO	50,000
22. University of California/Berkeley	CA	61,000
Total:		1,229,000

These one-time, one-year grants are awarded under the authority of the legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of the Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed upon the expiration of this thirty-day public comment period.

DATE: This notice issued on June 11, 1992. All comments and recommendations must be received on or before the close of business on July 13, 1992 at the Office of Field Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Leslie Q. Russell, Manager, Program Support and Technical Assistance Division, Office of Field Services, (202) 336–8824.

Dated: June 5, 1992.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 92–13653 Filed 6–10–92; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Meeting; Arts Education Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Advisory Panel on Arts Education (Arts Plus #2: Dance Section) to the National Council on the Arts will be held on June 30, 1992 from 9 a.m.–4 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, as amended, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–13713 Filed 6–10–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors Review of the Division of Integrative Biology and Neuroscience, Neuroscience Program (formerly the Biological Basis of Behavior and Neuroscience Programs of the Division of Behavioral and Neural Science).

Date and Time: July 6 and 7, 1992—9 a.m. to 5 p.m. and July 8, 1992—9 a.m. to 12 noon.

Place: Rooms 1242 and 1243, 1800 G Street, NW, Washington, D.C.

Type of Meeting: Closed.

Contact Person: Dr. Bruce L. Umminger, Director, Division of Integrative Biology and Neuroscience, room 321, National Science Foundation, Washington, DC 20550. Telephone: (202) 357–7905.

Purpose of Meeting: To provide oversight review of the Biological Basis of Behavior and the Neuroscience programs.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: June 8, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–13724 Filed 6–10–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design and Manufacturing Systems.

Date and Time: June 30, 1992; 8:30 a.m. to 5 p.m.

Place: Rooms 500–D & E, 1110 Vermont Ave., Washington, DC.

Type of Meeting: Closed.

Contact Person: Drs. Bruce M. Kramer and Suren B. Rao, Program Directors, 1800 G St., NW., room 1128, Washington, DC 20550. Telephone: (202) 357–7676.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Manufacturing Processes and Equipment Program.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 8, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–13723 Filed 6–10–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–462, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: June 30, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, National Science Foundation (NSF), 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Brian Clifton, Program Director, Division of Electrical and Communications Systems, NSF, 1800 G Street, NW., rm. 1151, Washington, DC 20550. Telephone: (202) 357–9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the National Science Foundation and the Electronics Technology and Devices Laboratory Cooperative Research Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 8, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–13721 Filed 6–10–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Experimental Programs to Stimulate Competitive Research (EPSCoR): Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental Programs to Stimulate Competitive Research (EPSCoR).

Dates: July 9–10, 1992.

Times: 3:30 p.m.–9 p.m., July 9, 1992. 8:30 a.m.–12 noon, July 10, 1992.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Type of Meeting: Closed.

Contact: Mr. James B. Hoehn, Project Director, Office of Experimental Programs to Stimulate Competitive Research, National Science Foundation, room 1227, Washington, DC 20550 (202) 357–7560.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals from three states (Kansas, Nebraska, and West Virginia) submitted to the EPSCoR Advanced Development competition.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 8, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–13725 Filed 6–10–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates and Times: The list of MRG site visits follows:

Site	Date	Time
State University of New York at Stony Brook.	06/29/92	7 p.m.–9 p.m.
National Synchrotron Light Source at Brookhaven, Building 725, 75 Brookhaven Avenue, Upton, NY 11973.	06/30/92	8 a.m.–5 p.m.
University of Texas at Austin.	06/30/92	7 p.m.–9 p.m.
National Synchrotron Light Source at Brookhaven, Building 725, 75 Brookhaven Avenue, Upton NY 11973.	07/01/92	8 a.m.–5 p.m.

Types of Meetings: Closed.

Contact Person: Dr. John C. Hurt, Program Director, Materials Research Groups Program, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9791.

Purpose of Meetings: To provide advice and recommendations concerning support for Materials Research Groups.

Agenda: To perform a site visit, examine proposals, reviewer's evaluations and make recommendations for new and renewal awards for Materials Research Groups in FY 1992 competition.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 8, 1992.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 92–13722 Filed 6–10–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8584]

Final Finding of No Significant Impact Regarding the Renewal and Transfer of Source Material License SUA–1350 for the Sweetwater Uranium Mill, Located in Sweetwater County

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact.

1. Proposed Action

The administrative action consists of a renewal of Source Material License SUA–1350, authorizing the Sweetwater Uranium Mill located in Sweetwater County, Wyoming, to remain in a standby status. In conjunction with this renewal, the license will be transferred from Minerals Exploration Company to Kennecott Uranium Company.

2. Reasons for a Finding of No Significant Impact

An environmental assessment for the license renewal and transfer, was prepared by the Nuclear Regulatory Commission staff and issued by the NRC's Uranium Recovery Field Office. The environmental assessment evaluated potential onsite and offsite impacts due to radiological releases that may occur as a result of maintaining the facility in a standby status. Documents used in preparing the environmental assessment include the previous assessment dated May 29, 1985, the request for license renewal dated January 23, 1991, the previous application for renewal dated March 1984, environmental monitoring data from 1985 through 1991, and the Final Environmental Statement related to operation of the Sweetwater Uranium Project dated December 1978 (NUREG CR/0505). Based on the review of these documents, the NRC has determined that no significant impacts will result from the proposed action, and that an addendum to the Final Environmental Statement is not warranted.

The following statements support the finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. Radiological effluents from the facility will be below regulatory limits. Environmental monitoring is sufficient to detect any radiological releases.

B. No additional land will be disturbed by maintaining the facility in a standby status.

C. The ground-water corrective action program will be maintained to remove hazardous constituents and restore ground-water quality.

D. Radioactive wastes will be minimal and will be disposed of in an approved manner in accordance with applicable Federal and State regulations.

E. The physical structures will be decommissioned and the site reclaimed in accordance with applicable Federal and State requirements at the end of the operational phase. A surety arrangement exists to ensure completion of the reclamation activities.

The public was informed of the proposed action in a Draft Finding of No Significant Impact published in the **Federal Register** on April 2, 1992. A subsequent 30-day comment period expired with no public comments received.

In accordance with 10 CFR 51.33(e), 51.34(a), and 51.35(a), the Director of the Uranium Recovery Field Office has made the determination to issue a final

finding of no significant impact in the Federal Register.

This finding, together with the environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the NRC's Uranium Recovery Field Office located at 730 Simms Street, Suite 100, Golden, Colorado and at the NRC's Public Document Room located at 2120 L Street Street NW., Washington, DC.

Dated at Denver, Colorado this 2 day of June 1992.

For the U.S. Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-13664 Filed 6-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Power Authority, Shoreham Nuclear Power Station, Unit 1 (SNPS); Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order authorizing decommissioning for the Long Island Power Authority's (LIPA) Shoreham Nuclear Power Station, Unit 1 (SNPS). The Decommissioning Plan involves immediate dismantlement of the reactor pressure vessel and internals, contaminated systems, and plant structures (DECON).

Description of Proposed Action

On June 28, 1989, the Long Island Lighting Company (LILCO), the previous owner of SNPS, entered into an agreement with the state of New York. This settlement agreement between LILCO and New York State specifies that LILCO transfer ownership of SNPS to LIPA, an entity of New York State. LIPA will decommission SNPS. All spent fuel has been removed from the reactor and is stored in the SNPS Spent Fuel Pool. Approval of the Decommissioning Plan will allow immediate dismantlement of the reactor pressure vessel and internals, contaminated systems, and plant structures.

Environmental Impacts

The NRC staff has reviewed LIPA's proposed Decommissioning Plan, and Supplemental Environmental Report prepared in accordance with 10 CFR 51.53(b). To document its review, the staff has prepared an Environmental Assessment (EA). The proposed DECON of SNPS will allow unrestricted use of the remaining portion of SNPS sooner than SAFSTOR, but will result in some additional exposure for workers because of exposure during the immediate dismantlement operations.

Finding of No Significant Impact

The staff has reviewed the proposed decommissioning relative to the requirements set forth in 10 CFR part 51. Based upon the Environmental Assessment, the staff concluded that there are no significant environmental impacts associated with the proposed action and that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement.

For further details with respect to this action, see: (1) The licensee's application for authorization to decommission the facility, dated January 2, 1991, as supplemented August 26, November 27, and December 6, 1991; and (2) the Environmental Assessment and Finding of No Significant Impact. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III/IV/V.

Dated at Rockville, Maryland this 5th day of June 1992.

For The Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13783 Filed 6-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co.; The Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS) located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise Technical Specification (TS) ¾.4.5, "Steam Generators," and its bases to allow sleeving of steam generator tubes to effect repairs of defective steam generator tubes.

The proposed action is in accordance with the licensee's application for amendment dated August 16, 1991, as supplemented on February 3, 1992.

The Need for the Proposed Action

The DBNPS has two B&W once-through-steam-generators (OTSG). Currently, 20 tubes in Steam Generator 1-1 and 54 tubes in Steam Generator 1-2 have been removed from service due to tube defects. Repairs by means other than plugging are not currently addressed in the DBNPS TS. The licensee proposes to utilize tube sleeving as an alternative to plugging. The advantage of tube sleeving versus tube plugging is that the tube will remain in service with the structural integrity of the tube maintained and only a small reduction in flow and heat transfer capabilities.

Environmental Impacts of the Proposed Action

The repaired tubes will have a structural integrity similar to their original condition. Accordingly, accident radiological releases will not be greater than previously determined.

Tube repair by sleeving produces individual occupational radiation doses and solid radioactive wastes approximately in the same amount as that incurred by tube plugging. Tube plugging at the DBNPS has resulted in estimated radiation exposures of 40-45 mrem per tube. The estimated radiation exposure from installing OTSG sleeves utilizing the B&W sleeving process is approximately 35 mrem/sleeve, excluding equipment setup and tear down. The effect on the cumulative occupational radiation dose to plant workers is, therefore, projected not to be significantly different from that discussed in the "Final Environmental Statement for the Davis-Besse Nuclear Power Station, Unit 1" dated March 1973 and its supplement dated October 1975.

The normal sleeving process does not directly produce any significant radioactive waste or effluent. No water, hydraulic fluid, or machining chips are generated or expanded during the sleeving process.

Accordingly, the NRC staff concludes that this proposed action would result in

no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed allowance of SG tube sleeving will not cause significant increase in the nonradiological impacts and will not change any conclusions reached by the staff in the "Final Environmental Statement for the Davis-Besse Nuclear Power Station, Unit 1" dated March 1973 and its supplement dated October 1975. Therfore, the staff concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission's staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of the plant operations.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the Davis-Besse Nuclear Power Station, Unit 1" dated March 1973 and its supplement dated October 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has reviewed the proposed change to the Technical Specifications of Operating License No. NPF–3 relative to the 10 CFR part 51 requirements.

Based upon the foregoing environmental assessment, the staff concludes that proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated August 16, 1991, as supplemented February 3, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the University of Toledo Library, Documents Department, 2081 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 4th day of June 1992.

For The Nuclear Regulatory Commission.

James R. Hall,

Acting Director, Project Directorate III–3, Division of Reactor Projects-III/IV–V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–13784 Filed 6–10–92; 8:45 am]

BILLING CODE 7590–01–M

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives:

New Appointees:

Jesse L. Funches, Deputy Controller, Office of the Controller

Francis P. Gillespie, Director, Program Management Policy Development & Analysis Staff, Office of Nuclear Reactor Regulation

Clemens J. Heltemes, Deputy Director, Generic Issues & Rulemaking, Office of Nuclear Regulatory Research

Martin Malsch, Deputy General Counsel for Licensing and Regulation, Office of General Counsel

Luis A. Reyes, Director, Division of Reactor Projects, Region II

In addition to the above new appointments, the following members are continuing on the PRB:

Guy A. Arlotto, Deputy Director, Office of Nuclear Material Safety and Safeguards

Harold R. Denton, Director, Office of International Programs

Edward L. Jordan, Director, Office for Analysis and Evaluation of Operational Data

James Lieberman, Director, Office of Enforcement

James G. Partlow, Associate Director for Projects, Office of Nuclear Reactor Regulation

Dennis K. Rathbun, Director, Office of Congressional Affaris

William B. Kerr, Director, Office of Small and Disadvantage Business Utilization and Civil Rights, continues to serve as an ex officio non-voting member.

The following individuals will continue to serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

William C. Parler, General Counsel

James H. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, Office of the Executive Director for Operations

Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations

All appointments are made pursuant to section 4314 of chapter 43 of title 5 of the United States Code.

FOR FURTHER INFORMATION CONTACT: James M. Taylor, Chairman, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–1700.

Dated at Rockville, Maryland, this 3rd day of June 1992.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Chairman, Executive Resources Board.

[FR Doc. 92–13785 Filed 6–10–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8904]

Sohio Western Mining Co, L–Bar Mill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent to Amend Source Material License SUA–1472 for the L–Bar Mill to Incorporate Reclamation Schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA–1472, Sohio Western Mining Company's L–Bar Mill, to incorporate a revised reclamation schedule and to add a new license condition.

DATES: The comment period expires July 27, 1992.

ADDRESSES: Copies of the response from Sohio Western Mining Company and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, Suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO, 80225.

Comments may be hand-delivered to Room P–223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303–231–5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also listed expected dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that the licensee submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a written response on November 21, 1991, with additional information supplied by telephone on February 12, 1992.

The proposed schedule calls for placement of the final cover by December 31, 1992, which is the same date as in the MOU for this mill. The NRC staff reviewed the reclamation milestone schedule and concluded that it is reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA–1472 to incorporate the schedules proposed by the licensee by adding License Condition No. 34 as follows:

34. The licensee shall complete site reclamation in accordance with the approved reclamation plan and ground-water corrective action plan, as authorized by License Condition Nos. 33 and 31, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile—complete.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion—complete.

(3) Placement of final radon barrier designed and constructed to limit randon emissions to an average flux of no more than 20 pCi/m ^{2}/s avove background—December 31, 1992.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of appendix A of 10 CFR part 40—December 31, 1997.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 2016.

C. Any license amendment request to revise the completion dates specified in Section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

Any license amendment request to change the target dates in section B above, must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 3rd day to June 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92–13788 Filed 6–10–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–47]

Order Authorizing Dismantling of Facility and Disposition of Component Parts

In the Matter of the U.S. Army Materials Technology Laboratory; (The U.S. Army Materials Technology Laboratory Research Reactor)

By application dated October 8, 1991, as supplemented on March 16, 1992, and March 31, 1992, the U.S. Army Materials Technology Laboratory (the licensee or AMTL) requested authorization to dismantle the AMTL Research Reactor (AMTLRR), Amended Facility License No. R–65, located at the Materials Technology Laboratory in Watertown, Massachusetts, and to dispose of the component parts, in accordance with the "Decommissioning Plan for U.S. Army Materials Technology Laboratory Research Reactor" (Decommissioning Plan) submitted as part of the application. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on February 24, 1992, (57 FR 6339). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the application with respect to the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts as stated in the licensee's Decommissioning Plan will be consistent with the regulations in 10 CFR chapter I, and will not be inimical to the common defense and security or the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action (57 FR 23435, June 3, 1992). Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, the licensee is hereby ordered to dismantle the U.S. Army Materials Technology Laboratory Research Reactor facility covered by Amended Facility License No. R–65, as amended, and dispose of the component parts in accordance with the Decommissioning Plan, as amended, and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it has performed to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the Decommission Plan and in the Commission's guidance which is set forth in the staff's Safety Evaluation. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Amended Facility License No. R–65.

For further detail with respect to this action, see (1) the licensee's application for authorization to dismantle the facility, dispose of component parts, and terminate Amended Facility License No. R–65, dated October 8, 1991, as supplemented; (2) the Commission's Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Copies of items (2) (3) may be obtained by request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III/IV/V. Dated at Rockville, Maryland the 3rd day of June 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–13665 Filed 6–10–92; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Accounts; Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on June 15, 1992, at the Office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 19th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of assumptions to be used in the 19th Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the Committee before the meeting.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Acturary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

Dated: June 5, 1992.

Beatrice Ezerski,

Secretary to the Board

[FR Doc. 92–13782 Filed 6–10–92; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30773; International Series No. 395; File No. SR–NASD–91–48]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Listing Guidelines Applicable to Index Warrants

June 3, 1992.

On September 18, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] a proposed rule change to allow the NASD to include in NASDAQ warrants based upon established foreign and domestic stock market indexes.

The proposed rule change was published in Securities Exchange Act Release No., 29787 (October 7, 1991), 56 FR 51432. No comments were received on the proposed rule change.

The NASD proposes to amend Schedule D of the NASD By-Laws and the NASD's Rules of Fair Practice to establish inclusions standards for index warrants in the NASDAQ/National Market System ("NMS") and a regulatory framework applicable to all index warrants, trading over-the-counter ("OTC") regardless whether they are NASDAQ/NMS securities or not.[3] These index warrants may overlie an established foreign or domestic stock index. The proposed warrants will be cash-settled, unsecured obligation of the issuer with a term of between one to five years. Only index warrants based on established domestic and foreign market indexes will be accepted for inclusions on NASDAQ. The NASD plans to trade over NASDAQ both American-style warrants (*i.e.*, exercisable throughout their life) and European-style warrants (*i.e.*, exercisable only upon their expiration date). Upon exercise, or at the warrant's expiration date if not exercisable prior to such date, the holder of a warrant resembling a put option would receive payment in U.S. dollars to the extent that the underlying index has declined below a pre-stated cash settlement value, while the holder of a warrant resembling a call option would receive payment in U.S. dollars to the extent that the index has increased above the per-state cash settlement value. Warrants that are "out-of-the money" at the end of the stated term would expire worthless.

The NASD will consider stock index warrants for inclusions on its NASDAQ/NMS system on a cases-by-case basis. Because the warrant will represent unsecured obligations of their issuer, only warrants issued by companies that exceed the NASD's financial criteria for inclusion on its NASDAQ/NMS system and that have assets in excess of $100 million will be eligible for listing. For each warrant issue, the NASD proposes to require a minimum public distribution of 1,000,000 warrants together with a minimum of 400 public holders, and an aggregate market value of $4 million.

The NASD also proposes to amend the policy of the NASD's Board of Governors contained in Article III, section 2 of the NASD's Rules of Fair Practice to require the use of certain options standards and rules in connection with all public customer transactions in index warrants, regardless of whether these transactions are NASDAQ/NMS securities or in other index warrants traded OTC. Specifically, the proposal applies options suitability, discretionary account and supervision standards to customers transactions in index warrants. First, the proposal provides that section 19 of appendix E to the Rules of Fair practice will apply to index warrants. Section 19 prohibits NASD members from making recommendations to customers that are unsuitable based upon the NASD member's reasonable belief regarding a customer's investment objectives, financial situation and needs and any other information known by the NASD member. Second, the proposal provides that section 18 of appendix E will apply to index warrants. This section will require NASD members to obtain written authorization from customers prior to exercising any discretionary authority over their accounts with respect to index warrants and also will require each index warrant transaction effected pursuant to the grant of discretionary power to be approved by a branch office manager or Registered Options Principal ("ROP"). Third, section 20 of appendix E to the Rules of Fair Practice will apply to index warrants. This section will require members to develop and implement written procedures for the diligent

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19–4 (1989).

[3] The American Stock Exchange and the New York Stock Exchange, among other exchanges, also have developed a similar regulatory framework and listing standards for index Warrant. See Securities Exchange Act Releaser Nos. 26152 (October 3, 1988), 53 FR 39832, 28153 (June 26, 1990), 55 FR 27734.

supervision of all customer accounts engaged in index warrants transactions.

In addition to applying these standards and requirements to customers that wish to trade index warrants in the OTC market, the proposed policy stipulates that NASD members can only effect OTC index warrant transactions with customers whose accounts have been approved for options trading. The NASD also proposes to distribute circulars to its members regarding the trading on NASDAQ of each type of stock index warrant.

Finally, with respect to NASDAQ warrants overlying foreign stock indexes, the NASD represents that it will ensure that there will be an adequate mechanism in place for sharing surveillance information between the NASD and the market(s) on which the securities underlying the foreign indexes are traded. Accordingly, prior to listing a warrant on an index of foreign securities, the NASD will undertake to establish an appropriate mechanism for information sharing, such as entering into a surveillance sharing agreement with relevant foreign self-regulatory organizations.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 15A(b)(6).[4] More specifically, the Commission believes that index warrants provide investors with a novel vehicle for their hedging and investment requirements and serve as an alternative to the use of stock index futures and stock index options.

Because index warrants are derivative in nature and closely resemble index options, the Commission has several specific concerns regarding these instruments. In particular, index warrants raise special customer suitability, disclosure, and secondary market trading issues. The Commission, however, believes that the NASD has designed reasonable rules and procedures to address the special concerns attendant to the secondary trading of index warrants in the OTC market. By imposing special suitability, disclosure, and compliance requirements on index warrants, the Commission believes the NASD has addressed the potential public sales practice problems that could arise from the derivative nature of these products.

Specifically, the NASD will apply the same customer safeguards that are applicable to options trading to transactions in index warrant in the OTC market. For example, the branch office manager or ROP will be required to review any discretionary index warrant transaction on the day the transaction is executed. As with index options, this procedure will ensure that appropriate supervisory personnel at member firms will review these transactions promptly. In addition, the NASD will require that index warrants traded in the OTC market be sold only to options-approved accounts. Moreover, the distribution of circulars regarding trading in index warrants on NASDAQ should ensure that the risks and characteristics of index warrants are adequately disclosed to investors. Finally, the NASDAQ inclusion standard for index warrants should ensure that only substantial companies capable of meeting their warrant obligations issue the index warrants.

The Commission believes further that it is appropriate to apply an options suitability standard to index warrants traded in the OTC market. Because index warrants possess many of the same basic risks as index options,[5] the Commission believes that the same standards should apply to recommendations in the two products. Accordingly, the Commission believes that applying existing options suitability procedures to index warrants traded in the OTC market should ensure that only customers with an understanding of index warrants and the financial capacity to bear the risks attendant to index warrants trading will be trading index warrants based on their broker's recommendations.

Finally, the Commission has reviewed the surveillance procedures established by the NASD for index warrant trading on NASDAQ. The Commission finds these to be adequate to detect and deter any potential manipulation or other abusive trading activity involving index warrants trading on NASDAQ.

Warrants, unlike standardized options, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. To some extent this risk is minimized by the NASD standard that warrant issuers included within the NASDAQ/NMS system possess at least $100,000,000 in assets. In any event, financial information regarding the issuers of index warrants will be disclosed or incorporated in the prospectuses accompanying the offerings of the warrants.

Finally, although the proposed rule change provides a structure for including index warrants on NASDAQ, the NASD will be required to submit, as separate 19(b)(2) rule changes for Commission approval, each specific stock index that it proposes for inclusion on the NASDAQ/NMS system. The rule change will provide the Commission with an opportunity to determine, among other things, if a particular index raises the potential for manipulations or other trading abuse concerns.[6]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that proposed rule change (SR–NASD–91–48) that establishes a regulatory framework to permit the trading of index warrants based on both domestic and foreign market indexes be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13704 Filed 6–10–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18753; 812–7845]

The Advantage Growth and Treasury Securities Trust, et al.; Application

June 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "act").

APPLICANTS: The Advantage Growth and Treasury Securities Trust, Series 1 and subsequent series (the "Advantage Trust"), The First Trust Special Situations Trust, Series 1 and subsequent series (the "Situations Trust") (the Advantage Trust and the Situations Trust are collectively referred to herein as the "Trusts"), and The Advantage Government Securities Fund, The Advantage High Yield Bond Fund, The Advantage Income Fund, The Advantage Growth Fund, The

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[4] 15 U.S.C. 78o–3 (1982)

[5] Both are leveraged products and wasting assets.

[6] In this connection, the Commission notes that for warrants based on a foreign stock index, adequate surveillance sharing agreements between the NASD and the foreign market(s) where the index's component stocks are traded would be a necessary prerequisite for a Commission determination that a given stock index warrant was not readily susceptible to manipulation or for a manipulations or other improper or illegal trading.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1989).

Advantage Special Fund, and the Scottish Widows International Fund, on behalf of themselves and any series of portfolio thereof other than any series or portfolios thereof that are money market or no-load funds; Advest, Inc. (the "Distributor"); Boston Security Counsellors, Inc. (the "Adviser"); and any open-end management investment companies (other than any funds that are money market or no-load funds) that may in the future be advised by the Adviser or an investment adviser controlled by or under common control with the Adviser, or have as their principal underwriter the Distributor or an underwriter controlled by or under common control with the Distributor (all of the named investment companies and investment companies listed or described above being hereinafter referred to as the "Funds"); and Nike Securities L.P. (the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting exemptions from sections 12(d)(1), 14(a), 19(b) and 22(d) and rule 19b–1, under sections 11(a) and (c) permitting certain offers of exchange, and under section 17(d) and rule 17d–1 permitting certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants seek a conditional order: (a) Permitting series of the Advantage Trust to invest in shares of one of the Funds and zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trusts; (c) permitting the Trusts to distribute capital gains resulting from redemption of Fund shares within a reasonable time after receipt; (d) permitting waiver of any sales load otherwise applicable on Fund shares that the Advantage Trust has purchased; (e) permitting certain offers of exchange involving the Advantage Trust; and (f) permitting certain affiliated transactions involving the Advantage Trust.

FILING DATE: The application was filed on January 6, 1992, and amended on March 25, 1992 and May 12, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Advest, Inc., One Commercial Plaza, 280 Trumball Street, Hartford, Connecticut 06103; Nike Securities L.P., 1001 Warrenville Road, Lisle, Illinois 60532; all other applicants, 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Branch Chief, at (202) 272–3018, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Fund is an open-end management investment company registered under the Act. The Adviser is an investment adviser registered under the Investment Advisers Act of 1940 and provides advisory services to all of the Funds. The Distributor is a broker-dealer registered under the Securities Exchange Act of the 1934 and acts as principal underwriter of shares of all of the Funds.

2. All of the Funds have adopted rule 12b–1 plans. All of the Funds currently impose contingent deferred sales charges, except for the Scottish Widows International fund, which charges a front-end sales load.

3. The Trusts will be registered under the Act as unit investment trusts and units of the trusts will be offered in series. The Advantage Trust will invest in stripped U.S. government obligations ("zero coupon obligations") and shares of one of the funds. The Advantage Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. The objectives of the Situations Trusts will vary in accordance with the nature of the portfolio of each trust. The Situations Trust will invest in equity securities exclusively, or in equity securities and zero coupon obligations. Each Trust series will be organized pursuant to a trust indenture that will incorporate a master trust agreement relating to the entire Trust and that will name a qualified bank as trustee (the "Trustee").

4. Each Trust series will be sponsored by the Sponsor. The Sponsor will deposit zero coupon obligations and equity securities in the Trust at the price determined by an independent evaluator. The Sponsor expects to deposit in the trusts substantially more than $100,000 aggregate value of zero coupon obligations, Fund shares or equity securities. Shares of the Funds will be deposited in the Trust at their net asset value. Simultaneously with such deposit, the Trustee will deliver to the Sponsor registered certificates for units which will represent the entire ownership of the Trust series.

5. Trust units will be offered for sale to the public through the final prospectus by the Sponsor following the declaration of the effectiveness of the registration statement for the securities of that Trust series under the Securities Act of 1933 (the "Securities Act") and clearance by the blue sky authorities of the various states. Trust series are intended to be offered to the public initially at prices based on the net asset value of the shares of the Fund selected for deposit in an Advantage Trust series, or the net asset value of the equity securities selected for deposit in a Situations Trust series, plus the offering side value of the zero coupon obligations contained therein, if any, plus a sales charge. The Trusts will redeem units at prices based on the aggregate bid side evaluation of the zero coupon obligations, if any, and the net asset value of the Fund shares or the equity securities.

6. With the deposit of the securities in the Trust series containing zero coupon obligations on the initial date of deposit, the sponsor will have established a proportionate relationship between the principal amounts of zero coupon obligations and Fund shares or equity securities in the Trust series. The Sponsor will be permitted under the Trust Agreement to deposit additional securities, which may result in a potential corresponding increase in the number of units outstanding. Such units may be continuously offered for sale to the public by means of the prospectus. The Sponsor anticipates that any additional securities deposited in the Trust series subsequent to the initial date of deposit in connection with the sale of these additional units will maintain the proportionate relationship between the principal amounts of zero coupon obligations and Fund shares or equity securities in the Trust series.

7. The contingent deferred sales charge or front-end sales load that would normally be applicable on sales of Fund shares will be waived.

Moreover, payments to the Sponsor or Distributor in respect of units under any plans that have been adopted by the Funds pursuant to rule 12b–1 will be rebated to the Trustee.

8. The Trusts containing zero coupon obligations will be structured so that each such Trust series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust series, the purchaser of a unit will receive back at least the total amount of the original investment in the Trust, including the sales charge. Such investor will receive more than the original investment to the extent that the underlying Fund or equity securities made any distributions during the life of the Trust and had any value at the maturity of the Trust series.

9. The Sponsor intends to maintain a secondary market for units of the Trust based on the aggregate bid side evaluation of the zero coupon obligations, but is not obligated to do so. The existence of such a secondary market will reduce the number of units tendered to the Trustee for redemption and thus alleviate the necessity of selling portfolio securities to raise the cash necessary to meet such redemptions. In the event that the Sponsor does not maintain a secondary market, the Trust Agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust series until shares of the Fund have been liquidated in order not to impair the protection provided by the zero coupon obligations, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportional relationship to unit value and, further, the zero coupon obligations may not be sold to meet Trust expenses.

10. The Advantage Trust has taken certain steps to reduce the impact of the termination of a series of the Advantage Trust on the fund deposited therein. First, the Advantage Trust will, with respect to all unitholders still holding units at scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of Fund shares from the Advantage Trust to a registration in the investor's name in lieu of redeeming such shares and, second, the Fund will offer all such unitholders the option of reinvesting the proceeds of the zero coupon obligations in fund shares at net asset value (i.e., without the imposition of a sales load). Proceeds from the zero coupon obligations will be paid in cash unless the unitholder elects reinvestment. The Fund also will offer unitholders the option of reinvesting all distributions from the Advantage Trust during the life of the Advantage Trust series in Fund shares at net asset value.

Applicants' Legal Conclusions

1. Section 12(d)(1) generally limits acquisition by an investment company, such as the Advantage Trust, of shares of a registered investment company, such as a Fund, in the following ways: (a) The acquiring company may not acquire more than 3 percent of the total outstanding voting stock of the acquired company; (b) the securities issued by the acquired company may not have a value in excess of 5 percent of the value of the assets of the acquiring company; and (c) securities issued by the acquired company and all other investment companies may not have an aggregate value in excess of 10 percent of the total assets of the acquiring company.

2. A major purpose of section 12(d)(1) is to prevent the duplication of costs and other adverse consequences to investors incident to the pyramiding of investment companies. This proposal is structured so as to eliminate the pyramiding of expenses. There will be no sales charge or distribution fee imposed on Fund shares deposited in an Advantage Trust, there will be no investment advisor fee charge with respect to the Advantage Trust since it will be unmanaged, and no evaluation fee will be charged with respect to Fund shares in the Advantage Trust. Another concern addressed by section 12(d)(1) is potentially abusive control problems that could result from the concentration of voting power in a fund holding company. To address this concern, applicants have agreed that shares of a Fund held by the Advantage Trust will be voted by the Trustee in the same proportion as all other shares of that fund not held by the Advantage Trust are voted. Another concern underlying section 12(d)(1) is the possibility of large scale redemptions of shares of the underlying fund. The Trust Agreement will, however, permit the Advantage Trust to sell Fund shares only when necessary to meet redemptions or pay Advantage Trust expenses. Neither the Trustee nor the Sponsor will have any discretionary authority to determine when shares of the Funds are to be sold or to substitute shares of another Fund for those deposited in the Advantage Trust. The threat to a Fund from large-scale redemptions is further reduced by the fact that each Advantage Trust series is prohibited from acquiring more than 10 percent of the outstanding shares of any Fund.

3. Section 14(a) requires that registered investment companies have $100,000 of net worth prior to making a public offering. Since the Trust will have an initial net worth in excess of $100,000 invested in zero coupon obligations, Fund shares, or equity securities prior to the date on which effectiveness is requested for the Trust's registration statement under the Securities Act, applicants believe that each Trust series will comply fully with section 14(a). Applicants request an exemption to the extent that section 14(a) would require the Sponsor to take for its own account or place with others $100,000 worth of units under an investment letter. Applicants intend to comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that each Trust series will not restrict its portfolio to "eligible trust securities."

4. Section 19(b) and rule 19b–1 provide that, except under limited circumstances, no registered investment company may distribute long-term capital gains more than once every twelve months. These provisions were designed to remove the temptation to realize capital gains on a frequent and regular basis, and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Moreover, there was concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distribution of investment income. Applicants request an exemption from rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption to Fund shares or the sale of equity securities to be distributed to unitholders along with the Trust's regular distributions. The requested exemption is consistent with the purposes of section 19(b) and rule 19b–1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust since the Trust and its Sponsor have substantially no control over events, other than the selection the portfolio, that might trigger capital gains (i.e., the tendering of units for redemption). For the reasons stated above, and because distributions of capital are clearly indicated in accompanying reports to unitholders as a return of principal and are relatively small in comparison to normal dividend distributions, the danger of confusion is not present in the operations of the Trusts.

5. Section 22(d) generally prohibits a registered investment company from

selling its shares except at a current offering price described in the prospectus. Applicants request an exemption from section 22(d) to permit the waiver of any otherwise applicable contingent deferred sales charge on: (a) Redemptions by the Advantage Trusts of any of its holdings of the Funds; and (b) redemptions by investors of their holdings of the Funds attributable to their (i) reinvestment of proceeds of the zero coupon obligations at maturity of an Advantage Trust series, (ii) transfer of registration at maturity or upon dissolution of an Advantage Trust series, of the proportionate number of Fund shares from the Advantage Trust to the investor, and (iii) reinvestment, if any, of Advantage Trust distributions made during the life of a Trust series. The imposition of the contingent deferred sales charge on the above-described redemptions of Fund shares would be duplicative to investors in the Advantage Trusts and, accordingly, would raise concerns under section 12(d)(1) regarding the pyramiding of expenses. Waiver of the contingent deferred sale charge will not harm the Funds or their remaining shareholders or unfairly discriminate among shareholders or purchasers of Fund shares. The Funds will fully disclose the waiver provision in the applicable prospectuses.

6. Section 11(a) makes it unlawful for any registered open-end investment company or principal underwriter for such company to make or cause to be made certain offers of exchange on any basis other than the relative net asset values of the securities to be exchanged unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Applicants seek an order pursuant to sections 11 (a) and (c) of approving the termination option described below. At the termination of each Advantage Trust series, unitholders holding units at maturity will have the option of either (a) transferring the registration of their proportionate number of Fund shares from the Advantage Trust to a registration in the investor's name or (b) receiving a cash distribution. Such unitholders also will have the option of either (a) reinvesting the proceeds of the zero-coupon obligations in additional Fund shares (without imposition of a CDSL or sales load) or (b) receiving a cash distribution. This termination option will give unitholders the flexibility of a choice.

7. Fund shares held by participants after the termination of an Advantage Trust series will, however, be subject to any applicable rule 12b–1 fees, as are all other shares held directly by investors. Although the Fund shares have a sales load or are subject to a CDSL, none will be charged to the unitholders in the proposed termination option. In addition, there will be no other transaction fees since the proposed termination option will involve no selling effort or expense. Thus, there will be no additional cost, other than the rule 12b–1 fee, to unitholders who choose to retain Fund shares upon termination of an Advantage Trust series. If unitholders chose instead to take a cash distribution upon termination of an Advantage Trust series and later decide to invest in Fund shares, they would have to pay a front-end sales load or would be subject to the imposition of a contingent deferred sales load. Furthermore, the unitholder will already be acquainted with the specific investment objectives, policies and procedures of the Fund through investment in the Advantage Trust.

8. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of or principal underwriter for a registered investment company, or any affiliated person of such affiliated person or principal underwriter, acting as principal, to engage in a joint transaction with the registered investment company unless the joint transaction has been approved by the Commission. Neither the Funds nor their shareholders will suffer any detriment from creation of the Trusts, nor will affiliated persons or principal underwriters of the Funds receive any special benefits from which the Funds would be excluded. Applicants have structured the Trusts to eliminate as many potential areas of concern involving affiliated transactions as possible. There will be no duplication of sales charges or distribution fees with respect to Fund shares and Units. In addition, there will be no overlap of fees for portfolio management, no management fee will be charged at the Trust level and, recognizing that the price of Fund shares can be easily obtained, no evaluation fee will be assessed with respect to that portion of a Trust's portfolio represented by such shares. The proposed arrangements are consistent with the provisions, policies and purposes of the Act, and participation by each registered investment company is not on a basis less advantageous than that of other participants.

Applicants' Conditions

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Advantage Trust expenses should distributions and rebated rule 12b–1 fees received on Fund shares prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor or Distributor in connection with the distribution of Fund shares to the Advantage Trust will be immediately rebated to the Trustee.

3. No one series of the Advantage Trust will, at the time of any deposit of any Fund shares, hold as a result of that deposit, more than 10% of the then-outstanding shares of a Fund.

4. All Advantage Trust series investing in shares of the same Fund will be structured so that their maturity dates will be at least thirty days apart from one another.

5. Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trusts will not restrict their portfolio investments to "eligible trust securities."

6. Shares of a Fund that are held by a series of the Advantage Trust will be voted by the Trustee of the Advantage Trust, and the Trustee will vote all shares of a Fund held in an Advantage Trust in the same proportion as all other shares of that Fund not held by the Advantage Trust are voted.

7. No sales charge or redemption fee will be imposed on any shares of the Funds deposited in any series of the Advantage Trust or on any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination.

8. Applicants agree to comply with rule 6c–10 as currently proposed, and as it may be reproposed, adopted or amended.

9. The prospectus of each Trust series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13705 Filed 6–10–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC-18755; 811-3367]

Hutton AMA Cash Fund, Inc.; Application for Deregistration

June 4, 1992

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Hutton AMA Cash Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on January 14, 1992, and amended on May 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Maryland corporation. On December 30, 1981, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. The registration statement became effective on March 23, 1982, and applicant's initial public offering commenced immediately thereafter.

2. On August 5, 1988, applicant's board of directors approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to Shearson Lehman Daily Dividend Inc. ("Successor Fund") in exchange for shares of the Successor Fund and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors approved the Plan on July 20, 1988. On or about September 19, 1988, proxy materials relating to the Plan were mailed to applicant's shareholders, who approved the Plan at a special meeting held on November 22, 1988.

3. On December 2, 1988, pursuant to the Plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant. The net asset value of applicant as of December 2, 1988 was $1,720,167,303.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $561,559.77. These expenses were borne by applicant ($242,853.43), the Successor Fund ($24,722.04), and Shearson Lehman Brothers Inc., applicant's investment adviser ($293,984.30). Applicant is aware that such expenses, in the aggregate, are in excess of those incurred in most other reorganizations. Applicant represents that the primary reason for the elevated level of expenses was the number of accounts involved in the reorganization, *i.e.*, 198,932. The amount expended, per account, in the reorganization was $2.82. Applicant submits that, on a per account basis, the expenses incurred were not in excess of those reasonably incurred in other reorganizations.

5. Articles of Transfer were filed on December 2, 1988, and Articles of Dissolution will be filed, on behalf of applicant with the Maryland State Department of Assessments and Taxation to effect the dissolution of applicant as a Maryland corporation.

6. Applicant has no shareholders, assets, or liabilities, and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13702 Filed 6-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18754; 811-3439]

Hutton Government Fund, Inc.; Application for Deregistration

June 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Hutton Government Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N-8F was filed on January 14, 1992, and amended on May 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representation

1. Applicant is an open-end diversified management investment

company organized as a Maryland corporation. On April 2, 1982, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. The registration statement became effective on June 11, 1982, and applicant's initial public offering commended immediately thereafter.

2. On August 5, 1988, applicant's board of directors approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to Shearson Government and Agencies, Inc. ("Successor Fund") in exchange for shares of the Successor Fund and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors approved the Plan on July 20, 1988. On or about September 19, 1988, proxy materials relating to the Plan were mailed to applicant's shareholders, who approved the Plan at a special meeting held on November 22, 1988.

3. On December 2, 1988, pursuant to the Plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant. The net asset value of applicant as of December 2, 1988 was $880,919,150.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $1,276,686.16. These expenses were borne by applicant ($562,142.75), the Successor Fund ($46,180.57), and Shearson Lehman Brothers Inc., applicant's investment adviser ($668,362.84). Applicant is aware that such expenses, in the aggregate, are in excess of those incurred in most other reorganizations. Applicant represents that the primary reason for the elevated level of expenses was the number of accounts involved in the reorganization, *i.e.*, 424,240. The amount expended, per account, in the reorganization was $3.01. Applicant submits that, on a per account basis, the expenses incurred were not in excess of those reasonably incurred in other reorganizations.

5. Articles of Transfer were filed on December 2, 1988, and Articles of Dissolution will be filed, on behalf of applicant with the Maryland State Department of Assessments and Taxation to effect the dissolution of applicant as a Maryland corporation.

6. Applicant has no shareholders, assets, or liabilities, and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it proposed to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13701 Filed 6-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18756; 811-3697]

Hutton National Municipal Fund Inc.; Application for Deregistration

June 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Hutton National Municipal Fund Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on January 14, 1992, and amended on May 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representation

1. Applicant is an open-end diversified management investment company organized as a Maryland corporation. On November 24, 1982, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. The registration statement became effective on May 27, 1983, and applicant's initial public offering commenced immediately thereafter.

2. On August 5, 1988, applicant's board of directors approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to SLH Managed Municipals Fund Inc.[1] ("Successor Fund") in exchange for shares of the Successor Fund and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors approved the Plan on July 20, 1988. On or about September 19, 1988, proxy materials relating to the Plan were mailed to applicant's shareholders, who approved the Plan at a special meeting held on October 25, 1988.

3. On November 4, 1988, pursuant to the Plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant. The net asset value of applicant as of November 4, 1988 was $964,384,301.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $210,366.41. These expenses were borne by applicant ($16,663.59), the Successor Fund ($83,573.10), and Shearson Lehman Brothers Inc., applicant's investment adviser ($110,129.72). Applicant is aware that such expenses, in the aggregate, are in excess of those incurred in most other reorganizations. Applicant represents that the primary reason for the elevated level of expenses was the number of accounts involved in the reorganization, *i.e.*, 74,730. The amount expended, per account, in the reorganization was $2.82. Applicant submits that, on a per account basis, the expenses incurred were not in excess of those reasonably incurred in other reorganizations.

5. Articles of Transfer were filed on

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[1] Effective December 15, 1988, Shearson Lehman Managed Municipals Fund Inc. changed its name to SLH Managed Municipals Fund Inc.

November 4, 1988, and Articles of Dissolution will be filed, on behalf of applicant with the Maryland State Department of Assessments and Taxation to effect the dissolution of applicant as a Maryland corporation.

6. Applicant has no shareholders, assets, or liabilities, and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13703 Filed 6-10-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 45-2A; Identification and Registration Marking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular 45-2A, Identification and Registration Marking. Advisory Circular 45-2A updates the guidance and information concerning the identification and marking requirements of Federal Aviation Regulations (FAR) part 45, and describes an acceptable means, but not the only means, of compliance with the regulations.

ADDRESSES: Copies of Advisory Circular 45-2A can be obtained from the following: Department of Transportation, Utilization and Storage Section, M443.2, 400 Seventh Street SW., Washington, DC 20591.

Issued in Washington, DC, on June 5, 1992.

Dana D. Lakeman,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 92-13738 Filed 6-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Security Advisory Committee; Meetings

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of aviation security advisory committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held June 23, 1992, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-7416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held June 23, 1992, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for the meeting will include an introduction of new committee members, a report from the Security Operations Subcommittee on the carriage of weapons aboard aircraft issue, an update on the Notice of Proposed Rulemaking on the Unescorted Access Privilege, the Cargo and Mail Study, and the All Cargo Air Carrier Security Program. There will also be a report given by the Security Research and Development (R&D) Panel of the FAA R&D Advisory Committee. Attendance at the June 23, 1992, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-7416.

Issued in Washington, DC on June 4, 1992.

O.K. Steele,

Assistant Administrator, Civil Aviation Security.

[FR Doc. 92-13734 Filed 6-10-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at Kent County International Airport, Grand Rapids, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Kent County International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 13, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James A. Koslosky, Director, of the Kent County Department of Aeronautics at the following address: Kent County International Airport, 5500 44th Street, SE., Grand Rapids, Michigan 49512.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kent County Department of Aeronautics under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Peter A. Serini, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487-7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Kent County International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 27, 1992, the FAA determined that the application to impose a PFC submitted by Kent County Department of Aeronautics was substantially complete within the requirements of § 158.25 of part 158. The FAA will

approve or disapprove the application, in whole or in part, no later than September 8, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1992.

Proposed charge expiration date: April 30, 1998.

Total estimated PFC revenue: $12,450,000.

Brief description of proposed project: Realign and extend Runway 18/36 in 17/35 configuration, including taxiways and navigational aids.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kent County Department of Aeronautics.

Issued in Des Plains, Illinois, on June 2, 1992.

W. Robert Billingsley,

Manager, Airports Division Great Lakes Region.

[FR Doc. 92-13735 Filed 6-10-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 91-12]

Metric Conversion Policy

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notification of FHWA metric conversion policy and plan.

SUMMARY: The FHWA has initiated a phased five year plan to convert its activities and business operations to the metric system of weights and measures, as required by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 Stat. 1107, 1451). Section 3 of this Act sets a deadline date of September 30, 1992, when each Federal Government agency must begin using the International System of Units (SI) in procurements, grants, and other business-related activities, except to the extent that such use is impractical or would likely cause significant inefficiencies or loss of markets to United States firms. This document includes a summary and discussion of the comments received from all sources in response to the April 5, 1991, notice of proposed metric conversion policy, a statement of the FHWA's metric conversion policy, and a summary of the approved FHWA metric conversion plan.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Geiger, Chief, Contract Administration Branch, Office of Engineering, (202) 366-0355, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The President's Executive Order No. 12770, signed July 25, 1991, and published in the **Federal Register** on July 29, 1991 (56 FR 35801), requires all Federal agencies to formulate metric transition plans. The FHWA's metric transition plan, titled FHWA Metric Conversion Plan, was approved by the Secretary of Transportation on October 31, 1991. In advance of completing its plan, the FHWA published a notice of proposed metric conversion policy in the **Federal Register** on April 5, 1991 (56 FR 14145). Comments on the proposed policy were solicited (Docket No. 91-12) from State/local governments, the highway industry, and the general public. The comment period closed on May 20, 1991.

Discussion of Docket Comments

General

A total of 65 responses were received from 55 commenters, including private individuals, business firms, professional associations, national trade associations, local and State highway agencies, and other governmental agencies. The majority of responders (33) were State highway agencies (SHA's). Overall, of those providing comments, 35 percent expressed some reservations about the proposed FHWA metric conversion policy and indicated there were specific areas of concern that they thought were in need of special attention during any future conversion efforts. Eighteen percent of the responses were strongly supportive, and 47 percent indicated strong opposition to converting to the metric system of measurement.

The following is a discussion of the comments submitted to Docket No. 91-12 arranged by topics of main concern as identified and expressed by the commenters. Also included are FHWA observations and general responses to the comments.

Exceptions to Conversion

Nearly all of the commenters opposed to metric conversion took issue with the FHWA's position against proposing exceptions to conversion for any of its programs. They felt that the U.S. highway construction industry should be excluded in whole or at least in part from having to convert to the metric system of measurement, mainly because such a conversion policy would be impractical or likely to cause significant inefficiencies throughout the highway industries. One SHA felt that, as a minimum, there should be an exclusion for those types of measurements which affect the general public, including acres, miles, and possibly tons and cubic yards. Another SHA suggested that the FHWA reconsider its exception policy with regard to highway signing. Several SHA's and industry commenters expressed the position that the highway program is totally domestic and questioned whether designing and constructing highway projects in metric will increase the United States' international competitiveness.

A number of positive comments were also received. A national trade association supported the FHWA's position of no exceptions. It noted that excluding programs from metric usage would weaken the conversion efforts and result in a heterogeneous system. Also, a local government respondent expressed its position that the short-term impacts would be greatly outweighed by bringing the nation into line with the world market. It believed that metric conversion will prove to be an economic benefit to the nation. Further, it felt the obvious benefits of the conversion could not be overstated; the efforts are worthwhile, and conversion should be strongly supported by the political, academic and scientific communities. Several SHA's also provided supportive comments. One observed that the metric system is a viable, worldwide system of measurement and conversion may, in fact, improve the United States' ability to compete in the world market place. It also noted, however, that conversion for transportation-related items will be costly. Finally, included in one SHA's comments was the observation that the conversion to metric from English units would have only a moderate impact in the area of pavement design; if implementation takes advantage of the simplicity of the metric system, computations that are time-consuming in English units would be performed quickly in metric units. Last, it was noted that the metric system of units

could be much easier to deal with, and would result in more efficiency for that SHA department.

The FHWA recognizes that there may be some short-term loss of efficiency due to unfamiliarity with the metric system. We do not, however, believe, based on the information presented, that loss of efficiencies will be long term, significant, or will compromise public safety. On the contrary, based on reports from Canada, which converted to metric in the early 1980's, metric conversion has proven to be much less difficult than had been anticipated.

Some mitigating factors which should offset loss of efficiency in the conversion of the Federal-aid highway program include: (1) Engineers have had first hand experience using metric measurements in college; (2) all other Federally funded programs will be going metric and the general public will be fully exposed to the use of metric in many aspects of daily life; and (3) highway construction is, for the most part, work built in-place and as such should pose minimal problems for metric conversion, as essentially everything is custom built. Therefore, based on information currently available, the FHWA does not believe that an exception to metric conversion is at present warranted for any of its programs.

Implementation Schedule

Approximately 50 percent of the commenters to the docket offered comments relating to the FHWA's proposed metric transition timetable. Of these, approximately one-half felt that the timetable was inadequate or unreasonable. Examples of comments received include, "[T]here is no timetable that would be to our advantage in regards to converting to the Metric System." Also, "If metrication is inevitable or to be forced on us by government, why not pick a distant date, let's say the year 2025, so that kids born this year can be taught from kindergarten on to use the metric system. Let America's public and industries adjust more gradually." Several SHA's commented that it would be to the advantage of the industry to extend changeover to metric from the FHWA proposed 5-year period (1991–1996) to an 8- to 10-year period. They felt that such an extension would permit contractors and testing facilities to make adjustments, as well as SHA's to convert signing, manuals, right-of-way documents, computer programs, and conduct training.

On the other hand, approximately 20 percent of the commenters indicated that the FHWA's proposed timetable for conversion was reasonable and allowed sufficient time for an orderly conversion to the metric system. One SHA did not object to the timetable but felt that sufficient time for education and the development of State and local implementation plans must be assured.

A number of commenters noted concerns they had with a phased-in transition period. Several expressed reservations about using for a period of time dual English/metric units. One expressed a position that at no time should duplicate measurements be stipulated, while another noted that any duplication of data in English/metric units should be minimized. It was suggested that the FHWA allow an adequate length of time for conversion of documents, inventories, specifications, etc., to the metric system and that a specific date in the future should be established when all design documents would be required to include metric measurements. In the interim, use of dual systems of measurements should be at the discretion of the States rather than mandated by the FHWA. Several commenters expressed concern about the handling of projects in the development stage during such a transition period. One suggested the need to exclude projects under design that may not go to contract until after September 30, 1996. Another felt that construction projects that have currently authorized preliminary engineering budgets should be exempted from metric measurements.

After due consideration of the comments received on the proposed 5-year metric conversion timetable, it is the FHWA's belief that the timetable is reasonable and achievable. Further, in response to those commenters who support a much longer phase-in conversion period, it is the FHWA's position that neither the law implementing Department of Commerce (DOC) regulation nor the Executive Order permit a longer timeframe for full implementation of metric conversion than that proposed in the FHWA's implementation schedule. In response to the concerns regarding the use of dual English/metric measurements during the transition period, the FHWA will not mandate such an approach, preferring instead to permit the SHA's to use dual measurements if they believe it appropriate. After fiscal year 1993, the FHWA plans as a general policy to discontinue its use of dual English and metric measurements. Presently, it is the FHWA's intent that all Federal and Federal-aid construction contracts advertised for bids after September 30, 1996, will contain only metric measurements. The FHWA believes, based on its knowledge of the Federal-aid highway program and information provided, that the establishment of this ultimate implementation date, almost 5 years hence, will allow SHA's and others committed to conversion sufficient time to adopt necessary metric standards and develop metric-only project plans, specifications and proposals.

The FHWA metric transition timetable categories I, II, III and IV address actions and target dates established for the FHWA. Only the category V target date will have equal meaning for all parties involved in the Federal lands and Federal-aid highway programs. Therefore, each recipient of the Federal lands and Federal-aid highway programs, with the assistance and cooperation of the FHWA, will undertake the actual development of an implementation plan.

Metric Conversion Costs

Over one-third of the commenters expressed serious concerns about the costs of conversion to metric measurement. These commenters, however, provided very little documented data regarding specific cost impacts. One SHA, from a State with a slightly smaller than average-size highway program, did offer that based on preliminary estimates, its total direct highway department costs of conversion would be almost $9 million. Another SHA, with an average-size highway program, estimated that converting signs to the metric system would cost from $1 to $4 million.

In 1974, an AASHTO ad hoc metrication task force documented a rough estimate of the nationwide cost of metrication to Federal, State and local highway agencies at $200,000,000. Further, the task force report predicted that signing changes, estimated at about 30 percent of total conversion costs, would constitute the major portion of the capital cost of metric conversion. The task force also identified the following as significant metric conversion costs: creating and converting existing computer programs (estimated at 25 percent of total cost); training (at 10 percent); and the revising and reprinting of manuals, specifications, standard plans and similar material (at 10 percent).

In an attempt to get a more definitive handle on what actual conversion costs could be in the 1990s, AASHTO's current metrication task force has requested that the Transportation Research Board undertake a study of the financial impact of metric conversion on SHA's and the highway industry. The

financial study is one element of a larger effort being conducted under NCHRP Project 20–7, Task 54, that is intended to identify specific activities required for accomplishing metric conversion at a minimum cost and inconvenience to present practices. Relevant information developed by the study may be used to guide the FHWA's metric conversion activities. The FHWA anticipates the study will be completed by January 1993, at which time copies will be available from AASHTO.

Many of those commenting on the costs of metric conversion recommended that special Federal funding be established to reimburse States for costs associated with conversion. Several commenters noted that in 1978 Congress prohibited the use of Federal-aid funds for highway signs solely using the metric system of measurement. Although the Congress has not authorized the FHWA, or any other Federal agency, special funding to provide reimbursement for costs associated with metric conversion, section 1053 of the Intermodal Surface Transportation Efficiency Act of 1991 repealed section 144 of the Federal-aid Highway Act of 1978 (Pub. L. 95–599, 92 Stat. 2713). Therefore, the FHWA may now reimburse States, at the appropriate pro-rata share, for costs they incur in changing highway signs to reflect metric units under existing Federal-aid categorical programs. As noted earlier, converting signs to metric is anticipated to be one of the most costly conversion efforts. This legislative change means that Federal-aid funds can now participate in a significant portion of the metric conversion cost. It will be the FHWA's policy to authorize the use of Federal-aid funds to reimburse States for costs they incur in the metric conversion process to the maximum extent allowable under Federal law.

FHWA Metric Conversion Policy and Plan

General Policy

It is the FHWA's policy to pursue and promote an orderly changeover to the metric system for all of its programs in accordance with the statutory requirements, Executive Order, DOC policy guidance, and DOT guidance. Metric conversion of the FHWA's direct procurement operations will be governed by the Federal Acquisition Regulations issued by the General Services Administration (GSA), as well as other applicable GSA and DOT regulations and policies.

To assure an orderly transition to the metric system, the FHWA has developed pursuant to Executive Order No. 12770 and DOT Order 1020.1C, dated May 8, 1990, a Metric Conversion Plan (MCP).

Definitions

Metric System means the International System fo Units (SI) established by the General Conference of Weights and Measures in 1960, as interpreted or modified from time to time for the United States by the Secretary of Commerce under the authority of the Metric Conversion Act of 1975 and the Metric Education Act of 1978 (Sec. 311(a) of Pub. L. 95–561, 92 Stat. 2211).

Other business-related activities means measurement-sensitive commercial or business directed transactions or programs, i.e., standard or specification development, procedure or practice requirements of an agency.

Measurement-sensitive means the choice of a measurement unit is a critical component of the activity, i.e., an agency rule/regulation to collect samples or measure something at specific distances or to specific depths, specifications, require certain volumes or flow rates for the intake or discharge of a product, or to act as guidelines for clearances between objects for safety, security or environmental purposes, etc.

Metric Conversion Plan

The main objective of the FHWA's MCP is to provide for an orderly transition by the FHWA to the metric system in its procurements, grants and other business related activities, at the least cost and with the least disruption to government agencies, industries affected, and the traveling public.

The FHWA MCP, pursuant to DOT Order 1020.1C, proposes a phased plan of action developed to contribute to the Department of Transportation's plan to assure an orderly transition to the metric system of measurement to the extent practical in accordance with Section 5164 of Pub. L. 100–418. The FHWA MCP aggregates individual Metric Work Plans (MWP's) developed by the FHWA Washington Headquarters Offices for the program elements/activities for which they have responsibility. The MCP, in total, covers all major functional areas and programs for which the FHWA has responsibility. The MCP requires that the transition of program elements/activities to metric will accommodate to the extent practicable:

(1) Suitable lead time for those actions that are dependent upon input from other activities or whose output will influence activities in other areas;

(2) An appropriate degree of flexibility to permit adjustments to be made, due to the interdependence of many FHWA activities with internal and external organizations and industries;

(3) Development of implementation timetables in cooperation with the highway organizations and industries involved;

(4) An effective public awareness program prior to implementation, particularly when high impact or visibility changes are to be made; and

(5) A gradual but not prolonged changeover to the metric system, in a manner that would be least costly and disruptive to Government agencies, industries affected, and to the traveling public.

Conversion Program Guidelines

The following guidelines have been established for the uniform management of the individual MWP's of the various FHWA Washington Headquarters program offices, and to provide a basic framework for the consolidation and coordination of the individual MWP's in the FHWA MCP. Program offices will:

(1) Review individual MWP's at least every 6 months, or when significant events occur that may affect the MWP's, and revise as necessary. The FHWA Metric Coordinator will annually review and update the MCP as appropriate;

(2) Integrate metric conversion elements/activities into regular program operations within the existing organizational structure and through normal channels and working relationships;

(3) Assign staff and resources as needed to assure that all aspects of metric conversion are carried out in a cooperative, timely and effective manner;

(4) Convert historic records and data to metric units only when necessary for ongoing operations and future projections;

(5) Develop metric consensus standards, guidelines, and schedules through active participation and cooperation with other organizations in government and industry;

(6) Use the American Society of Testing and Materials' (ASTM's) "Standard Practice for Use of the International System of Units (SI) (the Modernized Metric System), E380–89a" as the authoritative reference for application of SI units of measurement, with "-er" the preferred spelling of meter and liter;

(7) Undertake "hard" metric conversions when appropriate and to the extent practicable;

(8) Avoid the dual use of English and metric measurements beyond fiscal year 1993, unless it is determined in specific

instances that such usage will be beneficial;

(9) Develop, after fiscal year 1992, all new or revised FHWA technical publications standards and specifications in metric units; and

(10) Each FHWA region and division office will designate an individual to cooperate with and assist State and local governments in their overall metric conversion process, and keep them informed of the FHWA's ongoing metric activities.

Sequence of Events

The normal sequence of events for converting FHWA programs to the metric system will include a planning, coordination, and preparation phase, to attain a state of readiness prior to actual implementation for each program element/activity. Even though uncertainties exist regarding the specific dates of availability of metric consensus standards, guidelines, products, and services provided by others involved in activities that affect the FHWA's diverse operations, an effort has been made to set definite milestone target dates in the FHWA MCP for the completion of implementation phases for all relevant FHWA program elements/activities.

The table set forth below provides transition target dates for major program elements/activities. In developing the target dates, the FHWA has attempted to be sensitive to all parties affected by the planned actions, recognizing that various industries and sectors of the economy may differ in the timing of their transition efforts toward use of metric measurements.

METRIC TRANSITION TIMETABLE

Program Elements/ Activities	Target Dates (Completed)
I. FHWA metric conversion plan.	(Approved 10/31/91).
II. Initiate revision of pertinent laws and regulations that serve as barriers to metric conversion.	(1991).
III. Full metric conversion of FHWA manuals, documents, and publications.	1994.
IV. Full metric conversion of FHWA data collection and reporting.	1995.
V. Newly authorized Federal Lands Highway and Federal-aid construction contracts in metric units only.	September 30, 1996.

A copy of the FHWA MCP may be obtained upon written request to the FHWA Contract Administration Branch, HNG–22, room 3203, 400 Seventh Street SW., Washington, DC, 20590 or by calling (202) 366–0355.

(Sec. 5164, Pub. L. 100–418, 102 Stat. 1107, 1451 (codified at 15 U.S.C. 205a); Pub. L. 94–168, 89 Stat. 1007; Sec. 311(a), Pub. L. 95–561, 92 Stat. 2211; 23 U.S.C. 315; 49 CFR 1.48)

Issued on: June 3, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92–13716 Filed 6–10–92; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket S–891]

American President Lines, Ltd.; Notice of Application for Amendment of Existing Waiver

American President Lines, Ltd. (APL), by application dated May 28, 1992, requests a change in an existing waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended, for foreign-flag operations of APL, under Operating-Differential Subsidy Agreement, Contract MA/MSB–417.

APL has authority, under a previous section 804 waiver, to operate one foreign-flag vessel of up to 350 FEU capacity between Colombo or Fujayrah and ports in the Red Sea, including Aqaba. APL requests a change to increase the authorized capacity of the vessel from 350 FEU to 500 FEU.

The request is occasioned by APL's inability to maintain a fortnightly frequency with this service when it calls Aqaba. Aqaba, of course, is at the northern most point of the Red Sea. APL claims that ships in the 350 range do not have adequate speed to serve the northern portion of the Red Sea from Fujayrah and maintain a regular, fortnightly service. Larger ships do have adequate speed to accomplish such a frequency. APL has been serving Aqaba by the use of foreign-flag, common carriers. However, APL believes that the volume of cargo—which has grown markedly since the Kuwait war—justifies a direct call by APL. Moreover, the rates charged by foreign-flag, common carriers serving Aqaba are extremely high. APL can achieve material savings by using its own feeder to provide the service.

APL's application for a section 804 waiver to serve Aqaba and the balance of the Red Sea (excluding Egypt and Ethiopia) was the subject of public notice and favorable Maritime Administration action in (Docket S–881) within the past nine months. APL concludes that the purpose and result of its current request is simply to permit it to make effective use of the authority recently granted in that docket.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on June 24, 1992. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: June 4, 1992.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 92–13718 Filed 6–10–92; 8:45 am]

BILLING CODE 4910–81–M

[Docket P–006]

Decision of the Maritime Administrator Under Section 804 of the Merchant Marine Act of 1936 Directing Lykes Bros. Steamship Co., Inc. Not To Serve Cartagena, Colombia

On April 3, 1992, the Secretary of Transportation took review of the decision of the Maritime Administration that Lykes Bros. Steamship Co., Inc. (Lykes), a subsidized U.S.-flag carrier, not serve Cartagena, Colombia with foreign-flag vessels unless permission was obtained under section 804 of the Merchant Marine Act of 1936, because of alleged competing U.S.-flag service by another carrier, Crowley Maritime Corporation. The Secretary also provided sixty days, until June 2, 1992, for interested persons to submit comments on the issues raised by the

review. On May 29, 1992 the major subsidized U.S.-flag liner operator, American President Lines, Ltd. (APL), and the major nonsubsidized U.S.-flag liner operator, Sea-Land Service, Inc. (Sea-Land), jointly petitioned for a 30-day extension of that comment deadline in order for them to exchange their views on the issues before submitting them.

Notice is hereby given that by order dated June 4, 1992, the Secretary of Transportation ordered that:

1. The deadline for submitting comments to this Docket is extended until July 1, 1992.

2. This Order shall be served by the Secretary of Maritime Administration upon all parties of record in this Docket and Docket No. S–873, and noticed in the **Federal Register.**

Dated: June 4, 1992.

By Order of the Secretary of Transportation.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 92–13717 Filed 6–10–92; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Senior Executive Service; Financial Management Service Performance Review Board (PRB)

AGENCY: Treasury Department; Fiscal Service; Financial Mangement Service.

ACTION: Notice of members of the FMS PRB.

SUMMARY: Pursuant to 5 U.S.C. (c)(4), this Notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB). This Board reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Three voting members constitute a quorum. The names and titles of the FMS PRB members are as follows:

Primary Members

Michael T. Smokovich, Deputy Commissioner; Bland T. Brockenborough, Assistant Commissioner, Management; Diane E. Clark, Assistant Commissioner, Financial Information; Michael D. Serlin, Assistant Commissioner, Agency Services.

Alternate Members

Larry D. Stout, Assistant Commissioner, Federal Finance; Mitchell A. Levine, Assistant Commissioner, Regional Operations; Ronald A. Nervitt, Assistant Commissioner, Information Resources.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Michael T. Smokovich, Deputy Commissioner, Financial Management Service, 401 14th Street, Washington, DC 20227; telephone (202) 874–7000.

Michael T. Smokovich,

Acting Commissioner

[FR Doc. 92–13766 Filed 6–10–92; 8:45pm]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 57, No. 113
Thursday, June 11, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 92-11837 beginning on page 21394 in the issue of Wednesday, May 20, 1992, make the following correction:

On page 21395, in the third column, in the 12th line "^{14}" should read "$^{14}N_2$".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; Gas Utilization Research Forum

Correction

In notice document 92-10080 appearing on page 18528 in the issue of Thursday, April 30, 1992, in the first column, the last line at the bottom should read "6(a) of the Act. The Department of Justice published notices in the **Federal**".

BILLING CODE 1505-01-D

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Correction

In notice document 92-12573 beginning on page 22842, in the issue of Friday, May 29, 1992, make the following correction:

1. On page 22843, in the first column, under **Summary of Proposal(s)** , the fourth line should read "(3) *OMB Number:* 3220-0072."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8416]
RIN 1545-AK20

Minimum Tax—Tax Benefit Rule

Correction

In rule document 92-10257 beginning on page 19253 in the issue of Tuesday, May 5, 1992, make the following corrections:

1. On page 19254, in the second column, under **Public Comments**, in the first paragraph, in the last line, before "58(h)" insert "section".

§ 1.58-9 [Corrected]

2. On page 19257, in § 1.58-9(c)(3)(iii)(A)(*3*)(iii), in the table, in the first column, delete "Do" each time it appears and insert elipses.

3. On page 19260:

a. In § 1.58-9(d), in the first column, in *Example 1*(ii)11, in the table, in the first column, delete "Do" and insert elipses.

b. In the second column, in § 1.58-9(d), in *Example 1*(ii)17, delete "(d) Under this method....494)" the first five lines.

c. In the 3d column, in § 1.58-9(d), in *Example 2*(ii)11, in the 11th line, "beginning a" should read "beginning at".

4. On page 19261, in the first column, in § 1.58-9(e)(2)(i), in the fourth line, "arose." should read "arose;".

BILLING CODE 1505-01-D

federal register

Thursday
June 11, 1992

Part II

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 1992 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications; and Request for Public Comment on the Proposed Developmental Disabilities Priorities for Projects of National Significance for Fiscal Year 1993; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Fiscal Year 1992 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications; and Request for Public Comment on the Proposed Developmental Disabilities Priorities for Projects of National Significance for Fiscal Year 1993

AGENCY: Administration for Children and Families, HHS.

ACTION: Announcement of availability of funds and request for applications under the Administration for Children and Families' Coordinated Discretionary Funds Program.

SUMMARY: The Administration for Children and Families (ACF) announces its Coordinated Discretionary Funds Program (CDP) for Fiscal Year 1992. Funding for ACF grants and cooperative agreements under this announcement is authorized by legislation governing discretionary programs of the following ACF components: Administration on Children, Youth and Families; Administration for Native Americans; Office of Community Services; and the Office of Policy and Evaluation. This announcement contains forms and instructions for submitting an application.

Unlike previous years, the Administration on Developmental Disabilities will not be funding applications under this announcement. Instead, it is requesting comments on its proposed priorities for Projects of National Significance for fiscal year 1993.

DATES: The closing date for submittal of applications under this announcement is August 10, 1992.

ADDRESSES: Application receipt point: Department of Health and Human Services, ACF/Division of Discretionary Grants, 330 C Street SW., Room 1209–B, Washington, DC 20201–0001, Attn: ACF–92–1.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, 330 C Street, SW., room 1209–B, Washington, DC 20201–0001. Telephone (202) 755–4560 or (202) 205–9860. To provide 24-hour coverage, calls to this number will be answered by an answering machine.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts. Part I provides information on the establishment of ACF, and the ACF programs and statutory funding authorities applicable to this announcement; general information on the CDP; and where a "sample application" for prospective applicants may be obtained.

Part II describes the Administration on Developmental Disabilities priorities for FY 1993 projects of National Significance, published for public comment.

Part III describes the review process and the programmatic priorities under which applications are being solicited. Part IV provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application follow Part IV. Please copy and use these forms in submitting an application under this announcement. No additional application materials are available or needed to submit an application.

Applicants should note that grants and cooperative agreements to be awarded under this program announcement are subject to the availability of funds.

Part I—Introduction

A. Establishment of the Administration for Children and Families

Effective on April 15, 1991, Louis W. Sullivan, M.D., Secretary of the Department of Health and Human Services (HHS), established the Administration for Children and Families as a new HHS operating division, combining the Family Support Administration and the Office of Human Development Services.

The purpose of this consolidation is to bring together in a single agency many child and family programs which have been created over the years in order to better target and coordinate services. It will increase the Department's ability to deliver services and will provide States, communities, and the Congress a single agency concerning children's programs and policies. This reorganization will also facilitate integration of services for children and their families by States and communities.

Among the Programs administered by ACF are Head Start, Job Opportunities and Basic Skills (JOBS), Aid to Families with Dependent Children, Child Support Enforcement, Adoption Assistance, Foster Care, Social Services Block Grant, Child Care and Development Block Grant, Child Abuse, and Runaway and Homeless Youth programs.

B. Principles and Goals of the Administration for Children and Families

While ACF program and staff offices are varied in the programs that they administer and the populations that they target, they are all guided by the same three common principles. First, all programs strive to create and stimulate self-sufficiency in their target populations. Second, these programs promote parents' responsibility for their children financially as well as for their social, emotional, physical and cognitive development. Third, all programs encourage the integration of services among specialized service providers to eliminate fragmentation, reduce duplication and improve the impact of ACF services on children and families.

As an agency, ACF has established the following three strategic planning goals:

- To expand coordination among ACF programs to ensure holistic treatment of families and children so that those served establish or maintain self-sufficiency;
- To establish or strengthen the Federal leadership role of ACF programs; and
- To improve the efficiency and effectiveness of individual ACF programs at the Federal, State and local levels.

For the past ten years, the Coordinated Discretionary Funds Program (CDP) has been a primary vehicle for articulating the agency's principles and goals. The CDP has been used to translate these principles and goals into research, demonstration and training activities which further ACF's legislative missions.

C. The Administration for Children and Families' Program and Staff Offices

Below is a brief description of ACF organizational components and the programs under which funding is available.

Administration on Children, Youth and Families

The Administration on Children, Youth and Families (ACYF) serves as the focal point within the Federal government for programs, activities, and initiatives designed to improve the quality of life for children, youth and families. ACYF administers the following major programs which relate to discretionary grants made under this announcement:

- *Head Start* provides comprehensive educational, health, nutritional, social and other services primarily to low-income preschool children, age three to

the age of compulsory school attendance, and their families. An essential feature of every Head Start program is the involvement of parents, both in the development of their children and in the direction of the program at the local level.

• *Child Welfare Research and Demonstration* provides financial support to State and local governments or other nonprofit institutions, agencies, and organizations engaged in research or demonstrations in the field of child welfare.

Research and demonstrations supported under this program address preventive intervention, the development of alternative placements for children such as foster care or adoption, and reunification services so that children can return home if at all possible.

• *Child Welfare Training* provides discretionary grants to accredited public or other nonprofit institutions of higher learning to develop and improve educational and training programs to assist child welfare agencies to upgrade skills and qualifications of staff.

• *Adoption Opportunities* provides financial support for demonstration projects to improve adoption practices, to eliminate barriers to adoption and to find permanent homes for children, particularly children with special needs.

• *Child Abuse and Neglect* discretionary activities are designed to assist and enhance national, State, and community efforts to prevent, identify, and treat child abuse and neglect. These activities include conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; and coordinating Federal activities related to child abuse and neglect.

Administration for Native Americans

The Administration for Native Americans (ANA) promotes the goal of social and economic self-sufficiency for American Indians, Native Hawaiians, Native Alaskans and Native American Pacific Islanders. ANA defines self-sufficiency as the level of development at which a Native American community can control and internally generate resources to provide for the needs of its members and meet its own short and long-range social and economic goals.

Office of Community Services

The Office of Community Services is responsible for administering a variety of discretionary grant programs that foster family stability, economic security, responsibility and self-support, promote and provide services to homeless and low-income individuals, and develop new and innovative approaches to reduce welfare dependency. In addition, it administers the following grant program under this announcement:

• *The Family Violence Prevention and Services Act* provides grants to States and Indian Tribes to prevent family violence and provide immediate shelter and related assistance to victims of family violence and their dependents. Demonstration grants also support efforts to prevent family violence by providing training and technical assistance to States and Indian Tribes.

Office of Policy and Evaluation

The Office of Policy and Evaluation is a staff office in ACF which administers the following discretionary grant program under this announcement:

• *Social Services Research and Demonstration* grants and cooperative agreements are awarded for innovative research and demonstration projects that are responsive to the ACF program priorities. This program promotes the demonstration of effective and innovative social services for dependent and vulnerable populations such as the poor, the aged, children and youth, Native Americans and the disabled.

Administration on Developmental Disabilities

The Administration on Developmental Disabilities is the principal agency in the Federal government which ensures that all persons with developmental disabilities can receive the services and other assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community. Under the Projects of National Significance grant program for Fiscal Year 1993, support is provided to public and private non-profit organizations and agencies for research and demonstration, technical assistance and data collection.

D. Statutory Authorities Covering This Announcement

The following is a list of the priority areas included in this announcement and the statutory authorities which relate to these priority areas:

Priority areas	Related program and statutory authority
1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19.	Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended (42 U.S.C. 5113 et seq.);
1.22, 1.23, 1.24, 1.25, 1.26, 1.27, 1.28, 1.29.	Child Abuse and Neglect: Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5101 et seq.);
1.11, 1.12, 1.20, 1.21	Child Welfare Research and Demonstration: Section 426 of the Social Security Act, as amended (42 U.S.C. 626);
1.09, 1.10	Child Welfare Training Grants: Section 426 of the Social Security Act, as amended (42 U.S.C. 626);
3.01	Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended (42 U.S.C. 10401 et seq.);
1.01, 1.02, 1.03, 1.04, 1.05, 1.06, 1.07, 1.08.	Head Start: Head Start Act, as amended (42 U.S.C. 9801 et seq.);
2.01, 2.02, 2.03.	Native Americans Programs: Native American Programs Act of 1974, as amended (42 U.S.C. 2991 et seq.);
4.01, 4.02, 4.03, 4.04	Social Services Research and Demonstration: Section 1110 of the Social Security Act, as amended (42 U.S.C. 1310).

E. Principles of the Coordinated Discretionary Funds Program

For the past ten years, ACF (formerly, the Office of Human Development Services) has issued a Coordinated Discretionary Funds Program announcement combining the research, demonstration and training initiatives for several ACF programs. The priority areas identified in this announcement derive from ACF's legislative mandates as well as agency and Departmental goals and initiatives. The priorities reflect the state of current knowledge as well as emerging issues which come to ACF's attention by several means, including public comment and consultation with advocates, policymakers, and practitioners in the field. The priorities seek to focus attention on and to encourage research and demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular social problems and to promote the dissemination and utilization of the knowledge and model practices developed under these priorities.

The principles which underlie ACF research and demonstration program include the following:

• *Human service needs are best defined and addressed through*

institutions and organizations at the local community level. Public agencies, private and voluntary organizations, the business sector, community institutions, families and clients must all share in finding solutions to protect the vulnerable and to reduce dependence on public programs.

• *Social problems are complex.* Better use should be made of existing knowledge, resources and services. Differing perspectives of specialists and practitioners offer the promise of better and more timely solutions and service delivery. Interagency coordination can help to avoid duplication and fragmentation of services, maximize utilization of existing resources and promote joint solutions to benefit clients.

• *Administrators and service providers at all levels must be accountable for investment of resources, programs and services under their direction.* Knowledge of one's own and others' prior efforts and experience needs to be applied to maximize the benefits of new and ongoing resource investments. Objectives and measures of progress must be clear. Monitoring, evaluation and information feedback are necessary to modify practice, improve program performance, assure greater accountability and achieve better outcomes.

• *Both applied research and demonstration efforts are needed to solve emerging social issues.* Research is needed to help in understanding social phenomena and emerging issues and to measure the results of past and ongoing efforts. Demonstrations are needed to put existing knowledge into practice and to develop and test new models. Translation of research into practice is essential to progress; experience in practice is essential to guide research. More rigorously structured research and demonstration studies promise more definitive answers to policy and programmatic questions.

• *Dissemination and utilization of the results and findings of research and demonstration projects are essential to progress.* The benefits of investments made in research and demonstration efforts depend on the application of findings, experience, and products in both policy and practice. Well-reasoned and thoughtful reports of experiences, both positive and negative, help to inform policymakers, researchers, professionals, and practitioners. Well-articulated negative experience can help others to avoid similar pitfalls; positive accounts help to avoid unnecessary repetition, allow for implementation of tested approaches or replication for further validation, and permit others to build on successes.

• *Projects typically have multiple audiences which can benefit from their results.* The type of information needed by various audiences can best be utilized if it is tailored to their needs or expressed in language familiar to them. Audiences which can benefit from project results need to be identified at the outset of the project. When feasible, it is useful to engage such audiences in a dialogue early in the project. Their perspectives can be useful in shaping the project to yield the information which will be most helpful to them, and to encourage their interest and support in the effort.

F. Sample Application

A *Sample Application* containing the narrative section of a funded application and related evaluative comments has been adapted by ACF to assist prospective applicants in developing better applications through an understanding of what ACF considers to be the essential attributes of a strong project narrative. A copy of this publication will be sent to you upon request by contacting the CDP information line at (202) 755–4560 or (202) 205–9860.

Part II.—Fiscal Year 1993 Developmental Disabilities Proposed Priority Areas of National Significance—Public Comment

Closing date for receipt of public comments is August 10, 1992.

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (HHS), and is the lead agency responsible for planning and administering programs which promote self-sufficiency and protect the rights of persons with developmental disabilities. ADD's goals relate to increased familial and individual self-sufficiency, and improved services for those with developmental disabilities. Emphasis on these goals, and progress towards them, will help more persons with developmental disabilities to live productive and independent lives, integrated into their communities.

It is through the Projects of National Significance Program that ADD attempts to promote the achievement of these goals. In fiscal year 1993, ADD will support and encourage the dissemination and replication of project findings and models of successful innovations, and the transfer of information and methods for successfully accessing services.

The Developmental Disabilities Assistance and Bill of Rights Act of 1990 (Pub. L. 101–496) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that all persons with developmental disabilities receive the services, assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity and integration into the community.

The Act emphasizes that persons with developmental disabilities include those with severe functional limitations attributable to physical impairments, mental impairments, and combinations of physical and mental impairments. It recognizes that, notwithstanding their severe disabilities, these persons have capabilities, competencies, and personal needs and preferences. Most importantly, the Act points out that a substantial portion of persons with developmental disabilities remain unserved or underserved.

The Act also stresses that the family and members of the community can play a central role in enhancing the lives of persons with developmental disabilities, especially when the family is provided with the necessary support services; that public and private employers tend to be unaware of the capability of persons with developmental disabilities to be engaged in competitive work in integrated settings; and that it is in the national interest to offer persons with developmental disabilities the opportunity to make decisions for themselves and to live in homes and communities where they can exercise their full rights and responsibilities as citizens.

In addition, in administering the Act at the Federal level, ADD seeks to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential (through self-advocacy and empowerment); in supporting the increasing ability of persons with developmental disabilities to perform leadership functions and determine changes of their choice; as well as in ensuring the protection of the legal and human rights of these individuals.

Programs funded under the Act are:

• Basic State formula grants;

• State systems for the protection and advocacy of individual rights;

• Grants to University Affiliated Programs for interdisciplinary training, exemplary services, technical

assistance, and information dissemination; and

• Grants for Projects of National Significance.

B. Description of Projects of National Significance

Under part E of the Act, grants and contracts are awarded for projects of national significance to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities, and to support the development of national and State policy which enhances the independence, productivity, and integration of these individuals. These projects may include, but are not limited to:

• Projects to conduct data collection and analysis;

• Projects to provide technical assistance to program components;

• Projects to provide technical assistance for the development of information and referral systems;

• Projects to improve supportive living and quality of life opportunities which enhance recreation, leisure and fitness;

• Projects to educate policymakers;

• Projects to pursue Federal interagency initiatives;

• Projects that support the enhancement of minority participation in public and private sector initiatives in developmental disabilities; and

• Other projects of sufficient size and scope which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities (especially those who are multidisabled or disadvantaged, including minority groups such as Native Americans, Native Hawaiians, and other underserved groups).

In addition, funds may be awarded for technical assistance and demonstration projects (including research, training and evaluation in connection with such projects) which expand or improve the advocacy functions of the State Planning Councils, the functions performed by University Affiliated Programs and Satellite Centers, and the Protection and Advocacy System.

Section 162(c) of the Act requires that ADD publish annually in the **Federal Register** proposed priorities for grants and contracts to carry out Projects of National Significance. The Act also requires a period of 60 days for public comment concerning such proposed priorities. After analyzing and considering such comments, ADD must publish in the **Federal Register** final priorities for such grants and contracts, and solicit applications for funding based on the final priorities.

The following section presents the proposed priority areas for fiscal year 1993 Projects of National Significance. We welcome specific comments and suggestions as well as suggestions for additional priority areas.

C. Fiscal Year 1993 Proposed Priority Areas for Projects of National Significance

ADD is interested in all comments and recommendations concerning research, demonstration, evaluation, training or technical assistance projects which address areas of existing or evolving national significance related to the field of developmental disabilities.

We also solicit recommendations for project activities which will advocate for public policy change and community acceptance of all people with developmental disabilities and their families so that such persons receive the services, supports, and other assistance and opportunities necessary to achieve their maximum potential through increased independence, productivity, and integration into the community.

ADD is also interested in activities which promote the inclusion of all persons with developmental disabilities, including persons with the most severe disabilities, in community life; which promote the interdependent activity of all persons with developmental disabilities and people who are not disabled; and which recognize the contributions of these individuals (whether they have a disability or not) as such individuals share their talents at home, school, work and in recreation and leisure time.

In FY 1992, ADD is planning to award continuation funds for projects involved with self-advocacy and empowerment, youth leadership development, ongoing data collection, cultural diversity, and home ownership. ADD also proposes to award FY 1992 funds to provide technical assistance to improve the functions of the University Affiliated Program. Contracts were awarded in FY 1991 to provide technical assistance to the Developmental Disabilities Councils and Protection and Advocacy System and will not be recompeted in FY 1992.

ADD will focus the majority of its efforts in FY 1992 in the provision of technical assistance for the implementation of the ADD Commissioner's national initiative, "Leadership Through Collaboration." The purpose of this initiative is to create innovative, effective and goal-oriented collaboration among all network components of the Developmental Disabilities program.

ADD plans to conduct a Projects of National Significance funding competition in the fall of 1992 based on the development of final priority areas resulting from the input received from this public comment notice and, pending the availability of funds, award new grants in the first quarter of FY 1993 (October–December, 1992).

ADD will not respond to individual comment letters. However, all comments will be considered in preparing the final funding solicitation announcement and will be acknowledged and addressed in that announcement.

No proposals, concept papers or other forms of application should be submitted at this time. Any such submission will be discarded.

Comments should be addressed to: Deborah L. McFadden, Commissioner, Administration on Developmental Disabilities, Department of Health and Human Services, room 349–F HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

Proposed Fiscal Year 1993 Priority Area 1: Home of One's Own

This proposed priority area is designed to fund a variety of projects and to disseminate information on innovative approaches that will result in persons with disabilities having control of their own residence through ownership or lease. ADD is particularly interested in fostering state-level coalitions between Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs, and advocacy and consumer groups to achieve system changes in this area. Examples of successful projects that ADD has funded include:

• South Shore Association for Retarded Citizens: A Home of One's Own (Mary Burt: 617/335–3023)

• Melwood Horticultural Training Center: "Home of Your Own" Project—An Innovative Approach to Increasing Housing and Support Service Options for and Control Over These Options by Persons with Disabilities (Earl Copus, Jr.: 301/599–8000)

• University of New Hampshire: New Hampshire's Home of Your Own (Jan Nisbet: 603/862–4320)

Examples of activities which new projects may wish to initiate include:

• Promoting successful community integration through home ownership/leasing;

• Identifying solutions to barriers (fiscal, policy and programmatic) to individualized housing and individual control; and

• Establishing collaborative arrangements/agreements with local

housing agencies, builders and developers.

Proposed Fiscal Year 1993 Priority Area 2: Personal Assistance Services

The purpose of this new ADD priority area is to fund demonstration projects on how personal assistance services can contribute to the independence, productivity and integration into the community of persons with developmental disabilities. ADD is particularly interested in fostering State-level coalitions between Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs, and advocacy and consumer groups to achieve systems change in this area.

Examples of project activities include:

- Identifying, modifying and impacting on the various services and options available;
- Demonstrating how access to PAS can be facilitated; and
- Identifying the sources of PAS, how they are acquired, and the ways in which services can be financed.

Proposed Fiscal Year 1993 Priority Area 3: Leadership/Advocacy

The purpose of this priority area is to fund a variety of projects that strengthen the ability of individuals to serve as leaders and advocates on critical issues in the developmental disabilities field—in their region, state, community, etc. The ADD is particularly interested in fostering State-level coalitions between Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs, and advocacy and consumer groups to achieve high visibility, influence and impact on consumers and families in all facets of service delivery. Examples of successful projects that ADD has funded include:

- Strengthening Families/Self-Advocacy and Empowerment

—Minnesota Developmental Disabilities Planning Council: Strengthening American Families through National and Grassroots Strategies (Colleen Wieck: 612/296–9964)

—University of Alabama at Birmingham: Strengthening Families via Partnerships—Minority Families and Families with Challenging Life Circumstances (Sharon Landesman Ramey: 205/934–8900)

—People First of Washington: People First Self-Advocacy Project (Bob Furman: 206/272–2811)

- Youth Leadership Development

—World Interdependence Fund: Project Interdependence—Youth Leadership Development Program (William Bronston: 916/944–0100)

—Association for Retarded Citizens of Northern Virginia: Participation, Independence and Empowerment for Youth with Disabilities Supported by Youth without Disabilities through Leadership Development (Elaine Joyce: 703/532–3214)

Examples of activities which new projects may wish to initiate include:

- Identifying model service programs and projects which promote the leadership qualities essential to serving as a leader/advocate; and
- Identifying State and local linkages that would be essential to establishing collaborative agreements/arrangements on critical issues in the developmental disabilities field that would strengthen an individual's capacity to serve as a leader/advocate.

Proposed Fiscal Year 1993 Priority Area 4: Community Integration

Projects proposed under this priority area would support people with developmental disabilities so they can live and be accepted in the communities in which they live. ADD is particularly interested in fostering State-level coalitions between Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs, and advocacy and consumer groups to achieve systems change in this area. The follow project is an example of a successful model that ADD has funded:

- Human Services Research Institute: Integration/Recreation—An Examination of Recreational/Leisure Experiences that have Enabled People with Developmental Disabilities to More Fully Participate in the Life of Their Communities (Valerie Bradley: 617/876–0426)

Examples of activities which new projects may wish to initiate include:

- Identifying successful models of integration that can be replicated and disseminated Statewide and nationally; and
- Identifying exemplary models for replication that effectively integrate persons with developmental disabilities into the community through cooperative working relationships between the local service system, individuals and relevant organizations.

Proposed Fiscal Year 1993 Priority Area 5: Ongoing Data Collection and Information Dissemination

The purpose of this priority area is to fund a variety of projects through grants and/or cooperative agreements to collect data on public expenditures, employment and economic status, and other factors as they impact on the independence, productivity and integration into the community of persons with developmental disabilities ADD is particularly interested in the maximum use of already existing databases and in fostering the widespread dissemination and use of the data by consumers, families and advocacy audiences. Examples of successful projects that ADD has funded include:

- University of Minnesota: National Recurring Data Set Project on Residential Services—Ongoing National and State-by-State Data Collection and Policy/Impact Analysis on Residential Services for Persons with Developmental Disabilities (Robert Bruininks: 612/624–2097)
- University of Illinois at Chicago: Fourth National Study of Public Mental Retardation/Developmental Disabilities Spending (David Braddock: 312/413–1647)
- Boston Children's Hospital: Ongoing National Collection on Data and Employment Services for Citizens with Developmental Disabilities (Bill Kiernan: 617/735–6506)

Examples of activities which new projects may wish to initiate include:

- Identifying, collecting and disseminating new databases;
- Modifying, expanding and/or reformulating existing databases; and
- Connecting, integrating or analyzing available databases.

Proposed Fiscal Year 1993 Priority Area 6: Technical Assistance Projects

Under current contractual arrangements, ADD will be awarding funds to provide technical assistance to improve the functions of the Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs, and to provide additional technical assistance to the developmental disabilities field in the areas of housing, leadership and policy development.

CLOSING DATE: The closing date for submittal of comments is August 10, 1992.

Part III—The Review Process and CDP Priority Areas

A. Eligible Applicants

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the

competition, and the applicant will be so informed.

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Since eligibility varies among priority areas depending on statutory provisions, it is critical that the "Eligible Applicants" section under each specific priority area be read carefully.

Only agencies and organizations, not individuals, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the applications must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

For-profit organizations may be eligible to apply for certain grants under the authority of the Native American Programs Act and the Head Start Act. For-profit organizations are also eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all of the priority areas.

Any non-profit agency which has not previously received Federal support must submit proof of non-profit status with its grant application. The non-profit agency can accomplish this by either making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or submitting a copy of its letter from the IRS under IRS Code section 501(c)(3). ACF cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Applications that are postmarked by the deadline date and are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this part to review and score the applications. The results of this review are a primary factor in making funding decisions.

ACF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACF in making funding decisions.

In making decisions on awards, ACF may give preference to applications which focus on or feature: Minority populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACF may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

There are two sets of evaluation criteria: Demonstration and training applications will be evaluated against one set, while research applications will be evaluated against another set. Using the appropriate evaluation criteria below (see sections C.1. and C.2.), a panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the appropriate evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

1. Demonstration and Training Projects

Applications under all priority areas, except those listed under Research Projects, will be evaluated against the following criteria.

A. *Objectives and Need for Assistance (20 points).* The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

B. *Results or Benefits Expected (20 points).* The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

C. *Approach (35 points).* The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

D. *Staff Background and Organization's Experience (25 points).* The application identifies the background of the project director/

principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant with Federal assistance.

2. Research Projects

The following research priority areas will be evaluated using the evaluation criteria below:

1.01 Head Start and University Partnerships
1.02 Correlates of Positive Outcomes for Different Types of Head Start Children and Families
1.03 Support for Graduate Students: The Head Start Research Fellows Program
1.20 Field Initiated Research in Child Welfare by Recent Recipients of Doctoral Degrees
1.21 Field Initiated Research in Child Welfare
1.22 Field Initiated Research on Child Abuse and Neglect
1.23 Graduate Research Fellowships in Child Abuse and Neglect
1.24 Research on the Non-Offending Maternal Parent of Victims of Intrafamilial Child Sexual Abuse
1.25 Infrastructure for the Support of Research on Child Abuse and Neglect

A. Objectives (15 points). The extent to which the application concisely states the specific objectives of the project and describes what the research project is intended to accomplish. The research issue(s) to be addressed or the specific theory driven question(s) to be answered and the hypothesis(es) to be tested are well formulated. (The response to this criterion should be reflected in the "Objectives and Need for Assistance" section of the Program Narrative Statement.)

B. Background and Significance (15 points). The extent to which the application effectively discusses the current state of knowledge relative to the issue or area that is addressed, and provides a review of the literature, including previous work of the author(s) of the proposal (a list of references must be included with the application). The results of any pilot tests are described. The application indicates how the proposed research will build on the current knowledge base and contribute to policy, practice and future research. (The response to this criterion should be reflected in the "Objectives and Need for Assistance" section of the Program Narrative Statement.)

C. Approach (45 points). The extent to which the application delineates how the terms used in the study will be defined and operationalized; identifies variables and data sources, and discusses the selection, adaptation or development of instruments to be used, including information on reliability and validity. The application outlines the experimental design features and the procedures for data collection, processing, analysis and interpretation. As applicable, it includes a sampling plan for the selection of site(s) and subjects. The sample sizes must be sufficiently large for both statistical power and significance.

The application describes the characteristics of the target population, utilizing approaches that are culturally sensitive, and details recruitment procedures for the study subjects. For intervention studies, the theory base, ecological setting, and level of intervention are described. The application discusses any potential difficulties in the proposed procedures, provides realistic estimates of attrition and discusses statistically appropriate ways of adjusting the sample.

The extent to which the application reflects sensitivity to ethical issues that may arise, such as potential deception, delayed or diminished treatment for control groups placed on waiting lists, provision for treatment and removal from the project if a potentially dangerous behavior is exhibited, plans for stopping an intervention that proves harmful or unsuccessful, or lag in debriefing the subject. The extent to which the applicant addresses procedures for the protection of human subjects, confidentiality of data and consent procedures. (Where applicable, a Protection of Human Subjects Assurance must be included with the application, in addition to the other required assurances.)

The extent to which the application indicates that the data sets will be prepared according to sound documentation practices and that the final report will be prepared in a format that ensures its ease for dissemination and utilization. The application proposes strategies for dissemination of findings in a manner that will be of use to researchers and practitioners in the field.

The extent to which the application outlines a sound and workable plan of action and details how the proposed work will be accomplished. The activities to be carried out are listed in chronological order, showing a reasonable schedule of accomplishments and target dates. The application includes an adequate staffing plan that lists key staff and consultants along with their responsibilities on the project, and that allocates a sufficient amount of time for each person to these activities. The application delineates how the research team will be assembled and the use of any advisory panels. It also lists each organization, agency, or other key groups that will work on the project, along with a description of their activities and training plans. The application indicates the ability to gain access to necessary information, data and clients. A sound administrative framework for maintaining quality control over the implementation and operation of the study is detailed. The author(s) of the application and his/her role in the proposed project is/are identified. (Letters of commitment, where appropriate, must be included with the application.) The proposed project costs are reasonable, and the funds are appropriately allocated across component areas and are sufficient to accomplish the objectives. (The response to this criterion should be reflected in the "Approach" section of the Program Narrative Statement.)

D. Staff Background and Organization's Experience (25 points). The extent to which the application describes the background, experience, training and qualifications of the key staff and consultants, including work on related research and similar projects. It describes the personal resources available for sampling, experimental design, statistical analysis and field work. Key personnel have a working knowledge of the proposed research and are geographically accessible. (Two Curriculum vitae for each key person must be included with the application.) The adequacy of the available facilities and organizational experience related to the tasks of the proposed project are detailed. (A two page organizational capability statement must be included with the application.) Any collaborative efforts with other organizations, including the nature of their contribution to the project, are described. (Letters of commitment, where appropriate, must be included with the application.)

The extent to which the application demonstrates the ability of the staff and organization to effectively and efficiently administer a project of the size, complexity and scope proposed. It further reflects the capacity to coordinate activities with other agencies for the successful accomplishment of project objectives. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant with Federal assistance. (The

response to this criterion should be reflected in the "Staff Background and Organization Experience" section of the Program Narrative Statement.)

D. Structure of Priority Area Descriptions. Each priority area description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization which is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background Information:* This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACF and/or others State models are noted, where applicable. Some priority areas specify individuals to contact for more information.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.
- *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement:* This section specifies the minimum non-Federal contribution, either through cash or in-kind match, that is required to the maximum Federal funds requested for the project.
- *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects that ACF anticipates it will fund in the priority area.
- *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Please note that applicants that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be included in the review process. Applicants should also note that non-responsiveness to the section "Minimum Requirements for Project Design" will result in a low evaluation score by the panel of expert reviewers. Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

E. Available Funds

ACF intends to award new grants and cooperative agreements resulting from this announcement during the fourth quarter of fiscal year 1992 and the first and second quarters of fiscal year 1993, subject to the availability of funding. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon proof of satisfactory performance and the availability of funds from future appropriations.

F. Grantee Share of Project Costs

Other than the exceptions described below, Federal funds will be provided to cover up to 75% of the total allowable project costs. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that, for every $3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least $1.

For example, the cost breakout for a project costing $100,000 to implement would be:

Federal request	Non-federal share	Total cost
$75,000 75%	$25,000 25%	$100,000 100%

Exceptions: The first exception to the grantee cost sharing requirement relates to projects funded under the Native American Programs Act. Successful applicants funded under this Act must contribute $1 for every $4 in Federal grant funds received up to the maximum specified in the priority area description. This non-Federal grantee share amounts to at least 20% of the entire project cost. For example, the project cost breakout for a $100,000 project would be:

NATIVE AMERICAN PROGRAMS ACT

Federal request	Non-federal share	Total cost
$80,000 80%	$20,000 20%	$100,000 100%

Applicants requesting funds under the Native American Programs Act (priority areas 2.01, 2.02 and 2.03) should note that, if necessary, they may also include in their applications a request to the Administration for Native Americans for a waiver of the non-Federal cost-sharing requirement for the project based on the criteria specified in 45 CFR 1336.50(b). Each request will be reviewed on a case-by-case basis under the applicable laws and regulations. However, Native American organizations and Tribes applying under other priority areas must meet the 25% cost-sharing requirement.

The second exception pertains to projects to be funded under the following priority areas, which similarly require a 20% non-Federal match or cost sharing:

1.04 Head Start Teaching Centers
1.05 Increasing Higher Education Opportunities for Head Start Component Coordinators at Historically Black Colleges and Universities
1.06 Collaborative Training Effort to Support Children With Severe Disabilities in Head Start
1.07 Immunization of Younger Siblings of Head Start Children
1.08 Assisting Settled-out Migrant Families

The third exception relates to priority area 1.09, "Professional Education for Public Child Welfare Practitioners," which requires no matching funds fo

the portion of the budget that pays for traineeships. However, a 25% match is required for all other project costs.

The fourth exception relates to applications originating from American Samoa, Guam, the Virgin Islands, Palau and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under section 501(d) of Public Law 95–134, which requires that the Department waive "any requirement for local matching funds for grants under $200,000."

The fifth and final exception pertains to projects to be funded under the following priority areas, which require no non-Federal match or cost sharing:

1.01 Head Start and University Partnerships
1.02 Correlates of Positive Outcomes for Different Types of Head Start Children and Families
1.03 Support for Graduate Students: The Head Start Research Fellows Program
1.18 Assistance to States to Improve Adoption Data
1.20 Field Initiated Research in Child Welfare by Recent Recipients of Doctoral Degrees
1.21 Field Initiated Research in Child Welfare
1.22 Field Initiated Research on Child Abuse and Neglect
1.23 Graduate Research Fellowships in Child Abuse and Neglect
1.24 Research on the Non-Offending Maternal Parent of Victims of Intrafamilial Child Sexual Abuse
1.25 Infrastructure for the Support of Research on Child Abuse and Neglect

The applicant contribution must always be secured from non-Federal sources, except for American Indian Tribes and Native American organizations. The non-Federal share of total project costs may be in the form of grantee-incurred costs and/or third party in-kind contributions. ACF strongly encourages applicants to meet their match requirement through a cash contribution, as opposed to an in-kind contribution. For further information on in-kind contributions, refer to the instructions for completing the SF 424A—Budget Information, in Part IV.

The required amount of non-Federal share to be met by the applicant is the amount indicated in the approved application. Grant recipients will be required to provide the agreed upon non-Federal share, even if this exceeds 25% (or other required portion) of the project costs. Therefore, an applicant should ensure the availability of any amount proposed as match prior to including it in its budget.

The non-Federal share must be met by a grantee during the life of the project. Otherwise, ACF will disallow any unmatched Federal funds.

G. Cooperation in Evaluation Efforts

Grantees funded under particular priority areas may be requested to cooperate in evaluative efforts funded by ACF. A statement is included in the priority area description of those priority areas involving common ACF-funded evaluators. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area. To the degree possible, grantees under these priority areas will be expected to coordinate their data gathering efforts with one another, as appropriate, under the direction of an ACF-supported evaluator.

H. Closed Captioning for Audiovisual Efforts

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

I. Public Comments

The Administration on Developmental Disabilities has included its request for public comment on its FY 1993 proposed priorities for the Projects of National Significance in this program announcement (part II). The due date for the receipt of public comments is August 10, 1992.

The Child Abuse and Neglect program published its proposed priority areas for public comment in the **Federal Register** on December 11, 1991 (56 FR 238, Page 64634). The final priorities in this announcement reflect consideration of the comments and recommendations received from the public on the proposed priorities published in December. For additional information on the public comments relative to the Child Abuse and Neglect Program, see the discussion immediately preceding the Child Abuse and Neglect priority area descriptions under the Administration on Children, Youth and Families.

J. Index of Priority Areas

To assist potential applicants in the use of this announcement, a priority area index in numerical order, is presented below:

1. Administration on Children, Youth and Families

Head Start Bureau

1.01 Head Start and University Partnerships
1.02 Correlates of Positive Outcomes for Different Types of Head Start Children and Families
1.03 Support for Graduate Students: The Head Start Research Fellows Program
1.04 Head Start Teaching Centers
1.05 Increasing Higher Education Opportunities for Head Start Component Coordinators at Historically Black Colleges and Universities
1.06 Collaborative Training Effort to Support Children With Severe Disabilities in Head Start
1.07 Immunization for Younger Siblings of Head Start Children
1.08 Assisting Settled-out Migrant Families

Children's Bureau

1.09 Professional Education for Public Child Welfare Practitioners
1.10 Child Welfare Training Conferences and Coordination
1.11 Achieving Permanency for Children in Relative Foster Care
1.12 Assistance for Children in Residential Group Care to Obtain Permanent Homes
1.13 Adoptive Placement of Foster Care Children
1.14 Recruitment and Retention of Adoptive Parents for Minority Males
1.15 Recruitment of Military Families for the Adoption of Special Needs Children
1.16 Recruitment of Rural Families for the Adoption of Special Needs Children
1.17 Adoptive Parent Groups as Partners in the Adoption of Special Needs Children
1.18 Assistance to States to Improve Adoption Data
1.19 Field Initiated Proposals to Improve Adoption Services to Children with Special Needs
1.20 Field Initiated Research in Child Welfare by Recent Recipients of Doctoral Degrees
1.21 Field Initiated Research in Child Welfare

National Center on Child Abuse and Neglect

1.22 Field Initiated Research on Child Abuse and Neglect
1.23 Graduate Research Fellowships in Child Abuse and Neglect
1.24 Research on the Non-Offending Maternal Parent of Victims of Intrafamilial Child Sexual Abuse
1.25 Infrastructure for the Support of Research on Child Abuse and Neglect
1.26 New Field-Initiated Demonstrations and Replications of Successful Projects Addressing Child Abuse and Neglect
1.27 Culturally Sensitive Child Maltreatment Prevention Demonstration Programs for Populations of Differing Cultures
1.28 Model Approaches to Service Delivery to Combat Child Maltreatment in Rural Communities
1.29 National Training Program for Effective Models of Child Sexual Abuse Treatment Programs

2. Administration for Native Americans

2.01 Developing a Comprehensive National Model for Native American Veterans to Access and Utilize Services and Benefits
2.02 Stabilizing and Expanding National and International Markets for Tribal Manufacturing Companies
2.03 Developing Innovative Community Approaches to Entrepreneurial Activities for Native American Youth

3. Office of Community Services

3.01 Public Information/Community Awareness Projects for the Prevention of Family Violence

4. Office of Policy and Evaluation

4.01 Improving the Administration of Child Welfare Services
4.02 Multi-State Foster Care Data Archive
4.03 Transfer of International Innovations
4.04 Decategorization of Services

K. CDP Priority Areas

1. Administration on Children, Youth and Families Head Start Bureau

1.01 Head Start and University Partnerships

Eligible Applicants: Universities and four-year colleges.

Purpose: To develop new knowledge that will enhance the effectiveness of Head Start and other early childhood programs in serving children and families.

Background Information: As the Nation's foremost child and family development program, one of Head Start's mandates is the support of new research which will enhance Head Start's effectiveness and inform other early childhood development programs about new research findings. One of Head Start's most significant features is its enormous variability both in terms of program design and the population served. This variability offers a unique opportunity for research which will contribute to understanding differences in these diverse populations as well as determine how to most effectively tailor services and interventions for children and families with different characteristics.

ACF is interested in funding projects which actively engage universities in research and/or demonstration efforts directed to the issues described below, are conducted with Head Start populations and use Head Start programs as study sites.

Research is needed on the particular learning styles, social development, and developmental trajectories of children as well as on indicators of family functioning as they are manifested in specific cultural and/or linguistic groups, among children with specific disabilities, and among families at different levels of functioning. Research is also needed on appropriate intervention strategies for these particular groups.

One area which applicants might consider is the need for suitable instruments for measuring child and family functioning for different subpopulations. There is a need to identify and adapt promising instruments that have been used in small studies on non-Head Start populations and/or on older children, or to develop new ones where no such instruments exist.

Currently, there are 10 University/Head Start research projects funded by ACF. A listing of these projects is available from Adrienne Brigmon, Head Start Bureau, at (202) 245–1902.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Propose one or more research questions which would contribute to the knowledge base targeted under this priority area.
- Place the proposed project in the context of previous research or existing knowledge. A strong and convincing rationale for the need for the proposed project should be provided that is supported by results from any relevant planning studies, pilot studies or other preparatory work conducted by the applicant.
- Describe the research design and any proposed statistical analyses that would be employed, including a discussion of the proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures.
- Provide evidence of the key research staff's ability to conduct the project, including vitae and other appropriate documentation.
- Identify the Head Start program(s) with which the applicant institution would collaborate in the conduct of the research, and include letters indicating the local Head Start program's willingness to participate in and to comply with all aspects of the research design (e.g., random assignment of children, if appropriate).
- Describe the population served by the Head Start program(s) including size, ethnicity, income levels, percent of single parent families, welfare status and other relevant information.
- Provide assurances that the principal investigator or another appropriate staff member would attend two 2–3 day grantee meetings in Washington, DC each year.
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $150,000 for the first 12-month budget period or a maximum of $450,000 for a 3-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 5 projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.02 Correlates of Positive Outcomes for Different Types of Head Start Children and Families

Eligible Applicants: Universities and four-year colleges.

Purpose: To develop new knowledge concerning the relationship of program, family and community variables which predict positive outcomes for different types of Head Start children and families during Head Start and in future years.

Background Information: Although the short-term effects of Head Start have been well documented, the literature suggests that there is a decline in these effects by the end of the third grade. Findings from longitudinal studies of Head Start are compatible with those of a larger body of literature on the "fourth grade slump" experienced by most low-income children. While these studies shared a common methodology for comparing children who attended Head Start with low-income children who did not, they treated Head Start as a monolithic program and Head Start children and families as a homogeneous population. One of Head Start's significant features, however, is its enormous variability in terms of the populations that are served, the communities in which they are located and the methods by which services are delivered. Moreover, within programs, children and families vary in their level of functioning, ethnicity and other variables which interact with program interventions.

Head Start is embarking on a new generation of research which examines such questions as "What works best for children and families with different characteristics under what conditions?" and "What program, family and community variables foster positive effects in Head Start and in future years?" ACF is interested in funding longitudinal studies in which investigators examine these issues with specific Head Start subpopulations.

Currently, there are 10 University/Head Start research projects funded by ACF. A listing of these projects is available from Adrienne Brigmon, Head Start Bureau, at (202) 245–1902.

Minimum Requirements for Project Design: In order to compete successfully

under this priority area, the applicant should:

- Present a theoretical framework which would guide the conduct of and analyses under the study.
- State the hypotheses which would be tested under the study.
- Present the major study variables, along with a strong rationale for the selection of these variables, for the specific population under consideration.
- Present the previous research or existing knowledge on which the selection of the variables is based.
- Describe the design that would be employed in the conduct of the study including research methods; sample selection; proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures; and proposed analyses.
- Identify the Head Start program(s) in which the applicant would conduct the research and provide letters assuring the program's willingness to participate in and to comply with all aspects of the research design.
- Describe the characteristics of the Head Start sample that would be involved in the study including size, ethnicity, income levels, family composition, welfare status and other relevant information.
- Provide assurances that the principal investigator would be willing to participate in a consortium with the investigators of other projects funded under this priority area for the purposes of coordinating and integrating the studies.
- Provide assurances that the principal investigator or another appropriate staff member would attend two 2–3 day meetings in Washington, DC each year to meet with investigators of other projects funded under this priority area.
- Provide evidence of the key research staff's ability to conduct the project, including vitae and other appropriate documentation.
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of this project must not exceed 60 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $500,000 for a 5-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects To Be Funded: It is anticipated that 5 projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.03 Support for Graduate Students: The Head Start Research Fellows Program

Eligible Applicants: Institutions of higher education on behalf of qualified doctoral candidates enrolled in the sponsoring institution. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation.

Purpose: To provide support for graduate students to conduct research with Head Start populations which will contribute to the knowledge base for improving services for Head Start children and families.

Background Information: A large body of literature exists on the early years of the Head Start program. A significant number of these studies are of dissertations and other research conducted by graduate students. Most of this literature consists of studies on the effectiveness of the Head Start program through comparisons of children who were enrolled in Head Start and low-income children who did not receive Head Start services. These studies generally considered Head Start to be a monolithic program, and Head Start children and families were treated as a homogeneous population.

A new generation of Head Start research is needed that recognizes the great diversity among Head Start programs and the populations which it serves. Although Head Start delivers a core set of services which are defined by the Head Start Program Performance Standards, there is wide variability across programs in terms of the methods by which these services are delivered. Within programs, moreover, children and families vary in their levels of functioning, ethnicity and other variables which interact with program interventions. The Head Start population offers a unique opportunity for research which will contribute to understanding the differences in this diverse population and how to effectively tailor services and interventions for children and families with different characteristics.

Research is needed on the particular learning styles, the cognitive and social development, and the developmental trajectories of children as well as on indicators of family functioning as they are manifested in specific cultural and/or linguistic groups, children with specific disabilities, and families at different levels of functioning. In addition, suitable measures of child, adult and family functioning must be identified and adapted for specific subgroups of this diverse population.

ACF is interested in supporting doctoral-level students, through their sponsoring institutions, who are now conducting or wish to conduct research on the Head Start population, and which will contribute to the literature.

Currently, there are 5 Head Start research fellows programs funded by ACF. A list of these projects is available from Adrienne Brigmon at the Head Start Bureau (202) 245–1902.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Provide evidence of the candidate's ability to conduct the research including education, employment experiences, publications, and information on current academic status.
- Provide a letter from a faculty member providing assurances that he or she has read and approved the proposal and would serve as a mentor/advisor to the student throughout the life of the project.
- Propose one or more research questions which would contribute to the body of knowledge about Head Start children, families and programs.
- Place the proposed project in the context of previous research or existing knowledge, and provide a strong and convincing rationale for the need for the proposed project.
- Present specific results from any relevant planning studies, pilot studies, or other preparatory work conducted by the candidate.
- Describe the research design that would be employed including the research methods; sample selection; proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures; and proposed statistical analyses.
- Identify the Head Start programs(s) in which the research would be conducted and describe the characteristics of the Head Start sample including size, ethnicity, income levels, family composition, welfare status and other relevant variables.
- Provide letters of commitment from the local Head Start program(s) assuring its participation in the plan for the study and its agreement to participate in the study.
- Provide assurances that the grant would be used to pay a stipend to the

candidate; any appropriate university fees; and major project costs for conducting the proposed research, including any necessary travel.

• Consider, because of the small amount of these awards, waiving any overhead or indirect costs.

• Provide assurances that the candidate would attend one 2–3 day meeting of the Head Start Research Fellows in Washington, DC each project year.

• Describe the report and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $10,000 for the first 12-month budget period or a maximum of $20,000 for a 2-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 7 projects will be funded. No individual university will be funded for more than one candidate.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.04 Head Start Teaching Centers

Eligible Applicants: Head Start grantees.

Purpose: To demonstrate effective methods for the training of Head Start staff at individual Head Start programs. Head Start Teaching Centers will be Head Start sites which provide exemplary services and have the capacity to teach, through participatory training, practice in all components of Head Start services.

Background Information: Head Start programs are responsible for assuring that staff have the skills needed to perform effectively. It is important that grantees provide ongoing, up-to-date training to local Head Start staff, especially as Head Start expands, new staff are added, staff responsibilities change and the needs of children and families change. Providing effective training for staff with varied skill levels remains a challenge in Head Start.

As part of its efforts to develop new approaches for Head Start training, ACF is interested in testing the concept of "Head Start Teaching Centers." The most useful analogy is that of the Teaching Hospital, where quality medical services are provided *and* visiting doctors receive on-site training. Head Start Teaching Centers must provide quality Head Start services in all components of Head Start, and must also be able to provide quality training to visiting Head Start staff. The training provided at the Head Start Teaching Centers will be participatory in nature, relying heavily on observation, guided practice and immediate feedback. Didactic information sharing is not the purpose of the Head Start Teaching Centers.

Head Start Teaching Centers may provide intensive training over a relatively short timeframe, e.g., one to two weeks, or may provide training periodically over a longer timeframe, e.g., six months to one year. Teaching Centers may be designed as residential programs or "commuter" programs.

Trainees may include staff from other nearby Head Start programs as well as staff from the applicant's Head Start program. Trainees must have had some Head Start experience and be ready to benefit from the training provided in the Teaching Center setting.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

• Document that its current program provides high-quality services to Head Start children and their families.

• Describe its record of providing high quality services in each of the Head Start component areas.

• Describe current training practices and curriculum.

• Demonstrate an understanding of the essential elements of developing a Head Start Teaching Center. These would include, for example, facilities, equipment, staff, and supervision and management.

• Discuss the objectives of the training program and how these objectives would be achieved.

• Provide a proposed training design. The design must include training in all four major Head Start components: education, health, social services and parent involvement. The design must be participatory in nature, including observation, guided practice and immediate feedback. The discussion of the design should also address the length of the training that would be provided, timeframes for providing this training, and, to the extent practicable, schedules for the training activities.

• If the proposed training design requires the technical assistance of colleges, universities, or nonprofit agencies, include letters of commitment assuring their willingness to participate and indicating the roles they would play in the project.

• Describe how the delivery of the local Head Start program services would be coordinated with the training activities provided through the Head Start Teaching Center project.

• Describe how the Teaching Center would demonstrate the full range of services to children and their families and demonstrate how it would access training and technical assistance resources.

• Discuss any necessary arrangements that would be made to ensure that the training is not disruptive to the delivery of Head Start services and/or that the confidentiality of families enrolled in the Head Start program is respected.

• Describe the target population for the proposed Head Start Teaching Center, e.g., the number of trainees and their skill levels as well as how the project would recruit/market the training opportunities to potential trainees.

• Document that the space to be used for the Teaching Center meets, or would be modified to meet, local and State licensing requirements and that it would be able to accommodate the additional adults who would participate in the training.

• Document that the space is physically appropriate for a Head Start Teaching Center or could be modified as necessary. At a minimum, the physical layout of the space must provide for one-way viewing of the classroom and the area where interactions with families take place, unobtrusive space for viewing playground activities, and an area outside of the classroom for trainees to meet.

• Discuss any physical improvements necessary to meet the objectives of the Head Start Teaching Center. Describe how physical improvements would address one-way viewing of the classroom, family interaction space, playground viewing and trainee meeting space. Document how these improvements would be made, the schedule for doing so, and what improvements would be supported through this grant.

• Describe how the Center will be equipped with state-of-the-art furniture, learning materials and resources reflective of the children and families being served. Applicants are encouraged to incorporate resources unique to the community into the program activities, such as agricultural products and locally manufactured items. This equipment must meet both the applicable Head Start Program Performance Standards and the Multicultural Principles for

Head Start Programs, and must be developmentally appropriate.

• If appropriate to the training design, describe what arrangements would be made to provide residential accommodations for the trainees. Applicants are encouraged to explore relationships with local colleges or universities and other private or public non-profit agencies.

• Describe the project staffing, including numbers and qualifications of the staff and the role of each staff member in the proposed project. Identify the percentage of each staff member's time that would be dedicated to the project as opposed to any other duties in the regular Head Start program.

• Provide for a Project Coordinator whose duties shall include:

(1) As appropriate, directing the recruitment of potential trainees;

(2) Coordinating trainees' schedules with the planned activities of the ongoing program so as not to disrupt the work of the local staff;

(3) Arranging for and scheduling the training sessions;

(4) As appropriate, coordinating and arranging for residential accommodations; and

(5) Conducting orientation and training sessions for trainees and visitors.

• Provide assurances that the Project Coordinator or another appropriate staff member would attend an annual 2–3 day meeting of Head Start Teaching Center grantees in Washington, DC.

• Describe one of the following approaches that would be implemented to evaluate the project's effectiveness:

(1) Arranging with a local university to conduct the evaluation; or

(2) Securing the services of a consultant with training and experience in research and evaluation to conduct the evaluation.

• Describe the evaluation plan that would be implemented, including the outcomes that would be measured, the measures to be used, and how the data would be analyzed. The evaluation design must provide for comparison groups, unless another proposed method can be documented to be equally effective. No less than 15 percent of the total project budget shall be set aside for the evaluation each year.

• Provide vitae for the key program staff and for the person(s) who would be responsible for the evaluation.

• Specify operating costs separately from one-time costs in the budget. Provide a unit cost to describe the cost per trainee.

Project Duration: The length of the project must not exceed 60 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $1,000,000 for a 5-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $1,000,000 is $250,000 for a 5-year project period. This constitutes 20 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 7 projects will be funded. In making funding decisions, consideration will be given to an urban/rural mix, ethnic/racial diversity focus, and variety in project designs. Applications submitted by the American Indian and Migrant Head Start grantees will each be reviewed separately, in order to address the unique programmatic needs of families served by these programs. It is anticipated that one Teaching Center grant will be awarded each to an American Indian and a Migrant Head Start grantee.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.05 Increasing Higher Education Opportunities for Head Start Component Coordinators at Historically Black Colleges and Universities.

Eligible Applicants: Historically Black Colleges and Universities (HBCUs), as defined in Executive Order 12677, which offer courses of study in the areas of human services delivery, early childhood education and care, health care services, and/or human resources development that lead to a bachelor's or master's degree. Preference will be given to those schools that are in rural areas and offer degrees in at least two of the relevant subject matter areas.

Purpose: To utilize the capabilities of HBCUs to improve the quality and long-term effectiveness of Head Start by developing models of academic training for Head Start education, health, social services and parent involvement coordinators who are currently employed within the geographic area served by that college or university.

Background Information: The overall goal of Head Start is to bring about a greater degree of social competence in the children of low-income families. In order to accomplish this goal, Head Start provides comprehensive services to low-income children and their families. These services include education, health, social services and parent involvement. Typically, each service component is administered by a component coordinator. Many of these coordinators need specialized training to adequately implement a quality Head Start program.

In FY 1990, ACF funded two HBCUs to provide higher education services for Head Start Program coordinators. Alabama A and M University in Normal, Alabama, and LeMoyne-Owens College in Memphis, Tennessee, were awarded three-year grants. Both schools have tailored their programs to meet the needs of Head Start coordinators who work full-time and offer the "weekend college" format.

The project at Alabama A and M University is offering a program that will lead to a Master of Arts (MA) degree in Home Economics. It is expected that 10 of the 12 coordinators enrolled in the program will complete their MA requirements. The students can choose to focus on such topics as nutrition, early childhood education, and human services delivery.

LeMoyne-Owens College is offering a teacher preparation program to 12 students which will lead to a Bachelor's in Education (BA) degree. The College will continue to enroll and serve any student who will not have completed the BA requirements by the close of the three-year grant period.

Under this announcement, eligible HBCUs may propose to replicate one of these approaches or to use another approach. For example, the HBCU could offer academic degrees in social services and early childhood education which would be appropriate training areas for at least two component coordinators. These projects will improve the capacity of Historically Black Colleges and Universities to provide degree level training to Head Start staff. The projects funded under this priority area should benefit both the Head Start program and HBCUs.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

• Document the need for such a training program in the community to be served, identify potential students and provide maps indicating the location of the Head Start grantees.

• Document that the applicant HBCU currently offers credit courses in the areas of community health services, education and early childhood development, including infant/toddler development, social work and social services, and parent involvement and/or human resources development.

• Describe how the course work would be contextually and culturally relevant to the Head Start environment and would be available to all interested

and eligible Head Start program coordinators.

• Provide assurances that only the first six months of the project would be considered planning time.

• Ensure that the Head Start coordinators participating in the training are currently in good standing, would continue to be full-time employees and have not completed their bachelor's or master's degrees. Describe the assurances that would be required of trainees that they would remain with Head Start for at least one year after completion of their training program, including the written agreement to be obtained from the trainees regarding the reimbursement of training cost if the commitment is not fulfilled.

• Ensure that training/coursework is offered at no cost to Head Start trainees.

• Describe the relevant curricula which would be used; how the courses would be scheduled; how students would earn credits and degrees; what support activities would be provided to the students to ensure their success; the number of students that would be involved (a minimum of 10 students must be trained per project during the grant period); the recruitment strategies that would be employed; and plans for the dissemination of information about the project.

• Describe the activities that would continue after the completion of this project that would maintain the HBCU's involvement with Head Start.

• Describe one of the two following approaches that would be implemented to evaluate the project's effectiveness:

(1) Arrangements with a local university to conduct the evaluation; or

(2) Securing the services of a consultant with training and experience in research and evaluation to conduct the evaluation.

• Identify who would conduct the evaluation of the project's effectiveness and describe the evaluation plan that would be implemented, the outcomes that would be measured and the evaluation design that would be employed, including the measures to be used and how the data would be analyzed. No less than 15 percent of the total project budget shall be set aside for the evaluation each year.

• Provide vitae for the key program staff and for the person(s) who would be involved in the evaluation.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $65,000 per budget year or a maximum of $195,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $195,000 is $48,750. This constitutes 20 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that up to 3 projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.66 Collaborative Training Efforts to Support Children With Severe Disabilities in Head Start

Eligible Applicants: Head Start grantees or University Affiliated Programs (UAPs).

Purpose: To demonstrate the capacity of Head Start and the University Affiliated Programs (UAPs) to implement collaborative efforts to enable Head Start to more effectively serve children with severe disabilities. The Resource Access Projects (RAPs) may facilitate this collaboration and serve as a bridge between Head Start grantees and the UAPs. The collaboration should result in training and resource materials delineating strategies to enable other Head Start programs to replicate successful approaches to better serve children with severe disabilities. Because the RAPs are knowledgeable about Head Start and its mandate to provide services to children with disabilities, the RAPs may serve as a valuable resource to the Head Start grantees and the UAPs in designing the collaboration.

Background Information: Head Start serves children from age three to the age of compulsory school attendance and Parent Child Centers (PCCs) serve children from birth to age three. The parent is the primary agent used to foster children's development in both programs. Although Head Start has been successful in serving children with disabilities, staff and parents need further training in how Head Start might more effectively foster the development of children with severe disabilities.

The University Affiliated Programs (UAPs) are a national network of programs which provide interdisciplinary training for personnel and identify future research needs regarding children and adults with disabilities. UAPs have extensive experience in providing training. Historically, most of the UAP training has taken place at the UAP. Several UAPs have formed relationships with Head Start grantees and currently provide training for Head Start staff to increase their capacity to serve children with disabilities. This priority area provides an opportunity for UAPs to further build on their relationships with Head Start as well as to expose more Head Start programs to the expertise of UAPs.

Minimum requirements for Program Design: In order to compete successfully under this priority area, the applicant should:

• Describe the design of the project to be implemented, including the nature of the collaboration that would be established; the training design that would be employed (the majority of the training must be provided on-site at the Head Start program); and, when appropriate, how the training would include the use of assistive technology.

• How children with more severe disabilities would be recruited; what support and consultation would be made available to the Head Start program to serve these children; and the strategies to be employed for the continued provision of services to children with severe disabilities after the conclusion of the project.

• Describe the combined expertise and specify the commitment of staff time and other resources by the Head Start grantee and the UAP to provide training to Head Start teachers, aides, and parents to enable them to work more effectively with children with severe disabilities.

• Document the collaboration between the Head Start grantee (or PCC) and the UAP in both the design and implementation of the project.

• Describe how family involvement would be fostered in the development and implementation of the Individual Education Plan for preschoolers and the Individual Family Service Plan for infants and toddlers.

• Specify collaborative activities that would be established with other related public and private agencies (State Developmental Disabilities Councils, Protection and Advocacy Agencies, title V (formerly Crippled Children's Services), and local affiliates of organizations such as United Cerebral Palsy or the Association for Retarded Citizens, community mental health centers, local education agencies, and others).

• Describe how other sources of special assistance or related services for which the children or programs are eligible would be located and used such as title V, Medicaid, EPSDT, third party insurers or donated volunteer assistance.

• Describe the types, numbers and levels of disability for the children currently being served by the Head Start grantee(s) as well as the target number of children that would be enrolled under

the proposed project, by type of disability.

• Describe the levels of disability of the children that would be served under this collaboration.

• Document that the goal of the project would be to provide services for children with disabilities in the least restrictive environment.

• Provide assurances that a final report would be developed which would describe the strategies employed which proved effective as well as those which failed and how special services were accessed and used.

• Provide assurances that the project director or another key project person would attend one 2–3 day grantee meeting in Washington, DC each project year.

• Describe one of the two following approaches that would be implemented to evaluate the project's effectiveness:

(1) Arrangements with a local university to conduct the evaluation; or

(2) Securing the services of a consultant with training and experience in research and evaluation to conduct the evaluation.

• Describe the evaluation that would be implemented, including the outcomes that would be measured, the evaluation design to be employed, and how the data would be analyzed. No less than 15 percent of the total project budget shall be set aside for the evaluation each year.

• Describe the report and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

• Provide vitae for the key staff and for the person(s) who would be involved in the evaluation.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $50,000 for the first 12-month budget period or a maximum of $150,000 for a 3-year project period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $150,000 is $37,500 for a 3-year project period. This constitutes 20 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 3 projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.07 Immunization for Younger Siblings of Head Start Children

Eligible Applicants: Head Start grantees in collaboration with a public or private nonprofit health provider; and public and private nonprofit health providers in collaboration with Head Start grantees.

Purpose: To demonstrate effective models for immunizing the younger siblings of Head Start children. These projects will work in collaboration with other Federal, State, and local programs as well as private providers to improve access to immunization services for infants and toddlers in Head Start families.

Background Information: Protection against preventable diseases continues to present a major challenge to both public and private health care providers. The American Academy of Pediatrics estimates that, nationally, only 70 percent of 2 year olds have received their required immunizations. This lack of protection in this country has led to rising numbers of cases of measles and other preventable diseases such as whooping cough. More than half of the measles cases occurred in unvaccinated preschool children, and an estimated 80 percent of the cases in children 18 months to 5 years old could have been prevented by timely vaccinations, according to the National Vaccine Advisory Committee. The Head Start program is in a unique position to assist in efforts to reach infants and toddlers who might otherwise be unlikely to receive needed immunization services. Many of the younger siblings of Head Start children who will be aided by projects funded under this priority area may themselves become Head Start enrollees in the future. Proper immunizations will improve these children's health by the time they enter Head Start.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

• Indicate an understanding of the nature of the problems and major barriers faced in delivering immunizations services to low-income families.

• Substantiate the need for the proposed project in the community to be served, using available statistics on the immunization rate of preschool children.

• Describe how the proposed project would collaborate with other Federal, State, and local programs to implement effective strategies for improving access to immunization services such as the use of the local health department or the local Healthy Mothers/Healthy Babies coalition.

• Describe what immunization service delivery efforts are available in the community and how this project would enhance these efforts.

• Provide letters of commitment from local Head Start program(s) or health providers to participate in the project, including descriptions of how they would be involved.

• Describe where the immunizations would take place and who would pay for them.

• Describe one of the two following approaches that would be implemented to evaluate the project's effectiveness:

(1) Arrangements with a local university to conduct the evaluation; or

(2) Securing the services of a consultant with training and experience in research and evaluation to conduct the evaluation.

• Describe the evaluation plan that would be implemented, the outcomes that would be measured and the evaluation design that would be employed, including the measures to be used and how the data would be analyzed. No less than 15 percent of the total project budget shall be set aside for the evaluation each year.

• Provide vitae for the key program staff and for the person(s) who would be involved in the evaluation.

• Describe the report and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $50,000 for the 17-month project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $50,000 is $12,500 for a 17-month project period. This constitutes 20 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 7 projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.08 Assisting Settled-Out Migrant Families

Eligible Applicants: Migrant Head Start grantees in partnership with regionally-funded Head Start grantees or regionally-funded Head Start grantees in partnership with Migrant Head Start grantees.

Purpose: To demonstrate the effectiveness of providing transitional services for families settling out of the migrant stream who are still eligible for Head Start services.

Background Information: Within Migrant Head Start programs, there are many families which have decided to settle-out of the migrant stream and, therefore, are no longer eligible for Migrant Head Start services. In most cases these families are still income eligible for Head Start, although regular Head Start programs often do not recruit them. In addition, non-migrant Head Start programs also may lack knowledge of the lifestyles and culture of these former migrant families.

With the guidance and support of Migrant Head Start grantees, local non-migrant Head Start programs could serve as bridges in helping families settling-out of the migrant stream achieve self-sufficiency in their new communities. With the help of Migrant Head Start programs, local Head Start program services in these communities could assist in the child's transition to a new Head Start program or to public school as well as assist the family in accessing local resources such as housing, social services, employment, and bilingual services.

Minimum Requirements: In order to compete successfully under this priority area, the applicant should:

- Indicate knowledge of and experience in working with communities where migrant families are settling out of the migrant stream.
- Provide letters indicating clear commitment to participate in the project from both the Migrant and non-migrant Head Start programs. The local Head Start programs must express a willingness to learn more about migrant families, recruit migrant children, and assist in locating and providing services to these families.
- Include letters from local social service agencies that they would cooperate and assist in the proposed project.
- Describe the process which would be used to assist families in the transition to new communities, including the process that would be used to secure needed services for those families.
- Provide assurances that the director of the project or another appropriate staff member would attend an annual 2–3 day meeting in Washington, DC to meet with staff from other projects funded under this priority area.
- Describe one of the two following approaches that would be implemented to evaluate the project's effectiveness:

(1) Arrangements with a local university to conduct the evaluation; or

(2) Securing the services of a consultant with training and experience in research and evaluation to conduct the evaluation.

- Describe the evaluation plan that would be implemented, including the outcomes that would be measured and the evaluation design that would be employed which includes comparison groups, the measures to be used and how the data would be analyzed. No less than 15 percent of the total project budget shall be set aside for the evaluation each year.
- Provide vitae for the key program staff and for the person(s) who would be involved in the evaluation.
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $50,000 for the first 12-month budget period or a maximum of $150,000 for a 3-year project period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $150,000 is $37,500 for a 3-year project period. This constitutes 20 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 3 projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

Children's Bureau

1.09 Professional Education for Public Child Welfare Practitioners

Eligible Applicants: Institutions of higher education with accredited social work programs or other bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Purpose: To develop and/or strengthen the training of public child welfare staff through the provision of critical information and the development of skills which impact on the problems confronting public child welfare agency clients and through the provision of specific competency-based child welfare training. Trainees will be enrolled as bachelor; or graduate level students at schools with accredited social work programs or other bachelor or graduate level programs leading to a degree relevant to work in child welfare. Applicants which did not receive interdisciplinary training grants in fiscal years 1991–1992 will be given priority for funding.

Background Information: Because of the increasingly complex nature of the problems affecting vulnerable children and their families, the public child welfare services delivery system is hard-pressed to hire and retain staff with the needed competencies. Recent university training programs for social work have been weak in two major areas: First, many curricula have included few child welfare courses. This limits the value of these graduates to child welfare agencies in terms of being able to meet the complex needs of the client populations served by these agencies. Second, opportunities for students to obtain traineeships in public child welfare agencies are very limited and often are unappealing, in part because of the limited number of professional agency staff to supervise these students. This reduces the value of the preparation students receive for any subsequent employment in these agencies. It also reduces the likelihood that they will seek employment in public agencies.

Competency-based child welfare training is training to learn the specific knowledge and skills necessary to provide child welfare services in a public child welfare agency. Competency-based training emphasizes the practical realities which public child welfare workers confront in their day-to-day work. Staff need to know how to deal with the multiple problems of clients affected by poverty, to encourage and assist clients to be responsible parents, to reunify families, to cope with the results of drug use and to deal with complex court procedures.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe who the students would be (bachelor and/or graduate level); how many are expected to be trained over the life of the project; the criteria for the selection of students; how the students would be recruited; and the strategy which would be used to insure that students work in public child welfare after graduation.
- Describe the curriculum, including course titles that would be utilized. Indicate which are child welfare courses.
- Describe the strategies that would be used to place students in public child welfare agencies as part of their training. Specify the type of supervision which would be provided including the professional qualifications of the supervisory staff.
- Describe the strategies which would be used to recruit trainees, with a particular emphasis on racial and ethnic minorities.

• Include a plan for evaluation which, at a minimum, includes measures of effectiveness of the training and a follow-up of students to determine their subsequent employment in public child welfare agencies.

• Describe the final report and/or other products, such as curricula or training modules, that would be developed under the project, including the types of information that would be presented, and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

• Describe plans for offering traineeships with the grant funds and the criteria to be used in awarding traineeships. A minimum of two-thirds of the funds shall be used for traineeships.

• Include in the project budget funds for at least one key staff person from the university and one key staff person from the public child welfare agency to jointly attend a one-day orientation meeting in the HHS Regional Office shortly after the award of the grant and a two to three day annual grantee meeting in Washington, D.C.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 per 12-month budget period. A traineeship may not exceed $7,500 per student, per budget year.

Matching Requirement: No matching funds are required for the portion of the budget which pays for traineeships. A 25 percent match is required for all other project costs. Because this is a training grant, indirect costs for this training project shall not exceed 8 percent.

Anticipated Number of Projects to be Funded: It is anticipated that 26 projects will be funded.

CFDA: 93.648 Child Welfare Training Grants: Section 426 of the Social Security Act, as amended.

1.10 Child Welfare Training Conferences and Coordination

Eligible Applicants: Institutions of higher education with degree programs relevant to the field of child welfare.

Purpose: To conduct conferences, promote information sharing, and bring faculty and agency administrators together in cooperative activities, in order to make undergraduate and graduate education more relevant for child welfare agency staff.

Background Information: While there once was a high degree of collaborative activity between universities/colleges and child welfare agencies, this is no longer generally true. A large majority of public child welfare agency staff have had no university or college-based training in child welfare. In addition, existing university/college curricula have insufficient content applicable to current child welfare practice.

Nonetheless, there is considerable interest on the part of many schools and agencies to re-establish cooperative efforts to raise the quality of child welfare staff. In April 1991, Florida International University, under a grant from ACYF with additional funds from other collaborating organizations, conducted a symposium in Arlington, Virginia. Faculty and agency administrators from approximately 40 States and several national organizations met to address the staffing crisis and the need for relevant curricula to enable competent practitioners to move into public child welfare. Over 200 faculty and public agency staff attended. Child welfare services and staffing issues were addressed and strategies for instituting collaboration discussed. The symposium was the beginning of a major capacity building effort involving a large coalition of organizations nationwide. Although this symposium was very successful, much additional work is needed.

Minimum Requirements for Project Design: This is a two year cooperative agreement project in which substantial Federal involvement is anticipated. This project will arrange for two annual conferences, possibly with additional regional meetings, and serve as a conduit for information sharing and coordination among and between universities/colleges and agencies The amount of cooperative effort on the part of diverse interests and geographically scattered organizations will require careful ongoing coordination. The specific respective responsibilities of Federal staff and the awardee will be negotiated prior to the cooperative agreement award. In order to compete successfully under this priority area, the applicant should:

• Outline a plan of interaction with ACF for implementation of the project under a cooperative agreement including, as appropriate, activities involving Headquarters and Regional office staff.

• Describe in general terms the content and quality of current graduate child welfare training courses (including direct services and management administrative courses) and the current level of education of child welfare agency staff.

• Provide an overview of existing training materials available for use by universities/colleges for persons in, or planning to enter, child welfare agencies.

• Provide a plan for identifying additional training materials needed to adequately train staff for working with current agency clientele, and include recommendations for needed further development and utilization.

• Describe the conferences that would be held including purpose, location, time and intended participants.

• Describe how new technologies such as teleconferencing would be used to allow for participation of a larger group of people.

• Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented, and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

• Describe in detail a plan for facilitating information sharing among and between universities/colleges and public child welfare agencies.

• Describe current known existing networks of universities and colleges, child welfare administrators and other relevant organizations with specific plans regarding how these would be expanded and utilized, and include letters of commitment from these networks to participate in the project.

• Provide assurances that at least one key staff person would attend a two to three day annual grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 per 12-month budget period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a 2-year project period. This constitutes 25 percent of the total project budget. Because this is a training project, indirect costs shall not exceed 8 percent.

Anticipated Number of Projects to be Funded: It is anticipated that 1 cooperative agreement will be funded.

CFDA: 93.648 Child Welfare Training Grants: Section 426 of the Social Security Act, as amended.

1.11 Achieving Permanency for Children in Relative Foster Care

Eligible Applicants: Public child welfare agencies in cooperation with private foster care and adoption agencies and/or university and social service research organizations in cooperation with public and private foster care and adoption agencies.

Purpose: To increase the adoption of children in relative foster care and to

study the barriers to such adoptions within the foster care and adoption systems.

Background Information: Relative foster care, also called kinship foster care, has become increasingly common. Information about these placements is limited, but there is general agreement that children placed with relatives are not returned to their parents or placed in permanent homes as quickly as children in non-relative homes. (See: Issues in Relative Foster Care, Office of Inspector General, DHHS, October 1991.) In addition to the limited use of adoption, agencies are concerned about the appropriate level of supervision, the appropriate certification standards for the relative's home, the permanency goals for the children, and the disparity between AFDC support payments available to relatives and those allowed under foster care and adoption assistance.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Demonstrate access to an adequate number of children (more than 100) who have already been placed with relatives for more than one year.
- Provide letters of commitment in the application from both foster care and adoption agencies or divisions of these agencies indicating that they would actively participate in the review of cases and assist in the development of criteria for the selection of demonstration cases.
- Specify a plan for the review of cases and the criteria that would be employed in determining the appropriateness of moving to adoption, including the requirement that children selected must be those for whom reunification with birth parents is not possible.
- Propose to develop and test effective methods for moving the case toward an alternative permanent goal, e.g. adoption by relatives currently acting as foster parents; adoption within the kinship group, that is, by other appropriate family members; non-subsidized legal guardianship to a relative; or adoption by non-relatives.
- Identify existing barriers within the system which prevent or inhibit the increase of adoptions, or other permanent arrangements as specified above. Barriers may include, but are not limited to, agency and court practices; regulations and policies at the State and Federal level; lack of appropriate knowledge concerning the orientation of relatives to the values of legal adoption; and attitudes, beliefs and values of agency staff, as well as the values, economic status and other circumstances of relatives which may inhibit or delay the movement of children into permanent adoptive homes or other permanent arrangements.
- Specify a plan for evaluating the effectiveness of the various approaches to facilitating the movement from relative foster care to adoption or other permanent care. The evaluation plan must identify a qualified person from a university or agency research unit who would be a member of the demonstration staff. This person would assist in developing: Criteria for case identification; research instruments for the study; and methodology for data collection, including determining an adequate sample size at each stage of the demonstration.
- Provide assurances that at least one key staff person would attend the annual three-day Adoption Opportunities grantees meeting in Washington, DC.
- Provide assurances and documentation that the project would be fully staffed and implemented within 90 days of the notification of the grant award.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $150,000 for the first 22 month budget period or a maximum of $450,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $450,000 is $150,000. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 5 projects will be funded.

CFDA: 93.608 Child Welfare Research and Demonstration: Section 426 of the Social Security Act, as amended.

1.12 Assistance for Children in Residential Group Care to Obtain Permanent Homes

Eligible Applicants: Public child welfare agencies administering title IV–B and IV–E programs, or private child welfare agencies under contract to the public child welfare agency to provide services (but not residential care), or universities in collaboration with the public child welfare agency.

Purpose: To develop a model program for use by child placing agencies which identifies and moves children from residential group child care into their own or adoptive families.

Background Information: While permanency planning concepts for reunification and adoption generally have been incorporated into family foster care programs, there are indications that the incorporation of these concepts is less prevalent in residential child care. However, with effective services, children in residential care can be prepared to live in families and to have permanent homes of their own. In addition to returning children to their own families, projects would directly provide adoptive homes for children who might otherwise stay in residential child care longer than necessary. These activities would also help reduce costs and free needed residential care resources for other children.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Identify and describe existing barriers to the reunification and adoption of the children they have placed into residential group care as well as children placed in these programs by other agencies; the number of children and families they expect to serve; and the geographic location of the children and families.
- Describe the cooperation needed from other organizations, including residential group care programs and juvenile courts, and provide letters of commitment from those organizations.
- Describe how permanency resources would be developed and utilized, including the family reunification and adoption preparation services that would be provided.
- Describe plans for the development or identification of assessment tools to evaluate children's readiness to leave group care for family care, activities to facilitate their readiness, and policies and procedures needed to assure implementation.
- Describe the aftercare and post-legal adoption services that would be provided.
- Describe the training that would be provided to agency staff and group care providers and how the permanency planning program would be developed.
- Identify a third party evaluator for the project and include a description of the proposed design that would be employed to evaluate the project's effectiveness.

• Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

• Document and describe how the project would be an ongoing part of the agency program following the termination of Federal funding and the steps the agency would take to accomplish this.

• Provide assurances that at least one key staff person from the project would attend an annual two to three day grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs The maximum Federal share is not to exceed $150,000 per 12-month budget period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $450,000 is $150,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 2 projects will be funded.

CFDA: 93.608 Child Welfare Research and Demonstration: Section 426 of the Social Security Act, as amended.

1.13 Adoptive Placement of Foster Care Children

Eligible Applicants: Eligibility is limited to State social service agencies.

Purpose: To develop programs which will assist States in their efforts to increase the adoption of foster children legally free for adoption according to a pre-established plan and goals for improvement.

Background Information: Title II of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended, authorizes the funding of grants to States to improve adoption services for the placement of special needs children legally free for adoption. Children in foster care who are free for adoption, particularly children with special needs, do not always move smoothly through the child welfare system into placement with a permanent family.

States have received grants to make systemic changes in their adoption programs; to obtain computer hardware, software and fees for membership in the National Adoption Network; and to develop a consortium of nine States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs and to increase the placement of children residing in those States. More than half of the States have received grants to improve adoption services; however, only a small number have been able to sustain these efforts.

Increasingly, children entering foster care have more complex problems which require intensive services. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved so that the children in foster care who are legally free for adoption can move into adoptive placement in a timely manner. Further, agencies must commit resources for the ongoing support of adoptive families not only at placement, but also after legalization of the adoption. Past projects have demonstrated that greater improvements in placing these children are achieved when permanent plans are made and carried out very early in the placement; when there are sufficient trained and experienced staff; and when there are available resources and administrative commitment to adoption and to coordinated community-based efforts.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

• Identify and verify the number of foster care children in the area to be served who are legally free and waiting for adoptive placement.

• Provide and verify the rate of placement of foster care children placed in adoption in the year preceding the application (the rate of placement is the number of children placed divided by the number of children waiting for adoption).

• Describe the methods that would be employed to increase the rate of placement of foster care children into adoption and the goals for improvement to be achieved during the period of the grant.

• Describe how the proposed improvements, if successful, would be continued in the absence of Federal funds.

• Propose and describe an evaluation component which focuses on the innovations used to improve the placement of children who are legally free for adoption and which addresses the successes and failures of the initiative. The evaluation should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Data should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures used in implementing the project. This information should be used to assess placement rates and the success or failure of the innovative program methodologies used.

• Provide assurances that at least one key staff person would attend the annual three-day Adoption Opportunities Grantees Meeting in Washington, DC.

• Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 12 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $100,000.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $100,000 is $33,333. This constitutes 25 percent of the total annual project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 2 projects will be funded.

CFDA: 93.652 Adoption Opportunities: Title II of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.14 Recruitment and Retention of Adoptive Parents for Minority Males

Eligible Applicants: Local or State child welfare agencies, private nonprofit child placement agencies, and organizations in conjunction with child placing agencies.

Purpose: To develop and test innovative models for recruiting and retaining adoptive families for minority males, especially Black males, using culturally sensitive interventions.

Background: Policy makers, social workers, and child welfare agencies and organizations increasingly express concern over the plight of minority males growing up in the child welfare system. In many instances, these youth are unable to return to their biological parents. Many are in foster family homes, group homes or institutions, and large numbers of them are not being prepared for independent living or encouraged to further their educational goals.

Not only are minority children overrepresented in the child welfare system, but Hispanic, Black and Native

American children also have a higher out-of-home-placement rate and remain in care longer. Much attention has been focused on the recruitment of adoptive families for these minority youth; however, follow-up services to families beyond the recruitment stage are often minimal. Many families that are recruited drop out of the process or are screened out before the placement of a child.

The concern for minority males has been expressed in numerous focused efforts. The Department of Health and Human Services has implemented a Minority Male Initiative which is being conducted throughout the Department. In FYs 1990 and 1991, funds were available through the Department to support grants for conferences on minority male service issues and for the development of community coalitions to meet the health and human service needs of minority males. Likewise, some States are currently addressing the unique problems faced by minority males. For example, the State of Maryland created a Commission on Black Males to address problems in education, health, employment and criminal justice. In Virginia, a Commission on African-American Males was created to propose solutions to problems facing young Black males.

Social and fraternal organizations are making efforts to reach minority males through mentor programs and by providing role models for deprived youth. Minority males in the child welfare system need skilled workers who understand them and their culture and who are capable of providing culturally sensitive services not only to these youth, but also to prospective adoptive parents.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Identify and describe existing barriers to minority male adoption in the locale where the project would be implemented with a particular focus on the barriers that exist beyond the recruitment stage of the process; the number of minority males awaiting adoption in the locale; and the number of placements anticipated as a result of the project.
- Describe a plan for recruiting adoptive parents and placing minority male children which addresses all potential parent groups, including single parents (male/female) and older individuals or couples, and for providing supporting services after the adoption.
- Describe collaborative efforts with community groups or other social service agencies that would be established to carry out the goals of the project, including the types and amount of participation, and provide letters of commitment from these groups.
- Describe collaborative efforts, if any, that would be undertaken with the National Resource Center for Special Needs Adoption.
- Provide for a third party independent evaluation of the project designed to assess its effectiveness in placing minority males who are legally free for adoption. The evaluation should include the collection and analysis of data to determine placement rates and the availability of adoptive families during the project period.
- Describe how the project would continue after Federal funding ends.
- Provide assurances that at least one key staff person would attend the annual three-day Adoption Opportunities grantees' meeting in Washington, DC.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $150,000 per 12-month budget period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 5 projects will be funded.

CFDA: 93.652 Adoption Opportunities: Title II of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.15 Recruitment of Military Families for the Adoption of Special Needs Children

Eligible Applicants: Public or private non-profit, licensed child welfare or adoption agencies.

Purpose: To develop resources for recruiting military families to adopt children with special needs.

Background Information: Over the past 12 years ACF, through the Administration on Children, Youth and Families, has been actively involved in publicizing the plight of waiting special needs children and the need to recruit and process families who may be interested in becoming parents to these children. Funding has been provided to States to recruit potential adoptive families as well as to establish a pool of waiting families for identified groups of children. Families responded to these recruitment campaigns, and many placements resulted. Military families were not specifically targeted; however, social service workers and adoptive parents report that these families represent an excellent resource for children with special needs. These families have experienced difficulties in working with local agencies because of the mobility inherent in military service.

ACF is interested in supporting efforts to develop models for the recruitment of military families as a placement resource. To achieve this purpose, it is necessary for agencies to identify strategies for targeting resources, to develop effective strategies for reaching these families and to follow them through the adoptive process. Adoptive parent groups, schools, and churches are available to assist social service agencies in publicizing the need for adoptive families.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe the need for the project and the number of families that would be recruited.
- Describe the collaboration that would be established between State and local social service agencies and military social services.
- Describe the special training that would be provided agency staff; the recruitment methods that would be used; and the plan for executing interstate placement.
- Provide for a third party to conduct an independent evaluation of the project and include a description of the proposed design that would be employed to evaluate its effectiveness.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and provide the utilization of project products and findings.
- Provide assurances that at least one person from the project would attend the annual three-day Adoption Opportunities grantees meeting in Washington, DC.
- Provide assurances and document that the project would be staffed and

implementation begun within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $125,000 per 12-month budget period.

Matching Requirement: The matching requirement in proportion to the maximum Federal share of $250,000 is $83,333. This match represents 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 5 projects will be funded.

CFDA: 93.652 Adoption Opportunities: Title II of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.16 Recruitment of Rural Families for the Adoption of Special Needs Children

Eligible Applicants: Public or private non-profit licensed child placement agencies.

Purpose: To recruit and develop a pool of adoptive families in rural communities for children with special needs.

Background Information: Considerable effort has been devoted to the recruitment of prospective adoptive families by child welfare workers. Workers, however, sometimes avoid placing older children from urban communities in rural areas because of the limited services available to adoptive families and the fear that urban children will have difficulty adapting to a rural community.

ACF believes that many rural families could be recruited for adoption if adoption programs were adapted to meet the needs of the families by refining the adoption process; helping the families obtain required documents (marriage/divorce records, etc.); establishing an office in close proximity to the families; and expediting the process between approval of the family and placement of a child.

Minimum requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe the geographical area that would be targeted in terms of its distinctive features, the basis for its selection, and the service delivery system that is available within the targeted area or the plan for the development of such a system if none exists.
- Project and discuss the number of families that would be recruited, the special recruitment techniques which could be used in rural areas and the plan that would be employed in serving interested families.
- Describe the culturally sensitive family preparation process that would be used to prepare prospective families; and the efforts that would be undertaken by the agency to "screen in" rather than "screen out" potential adoptive families, taking into consideration family values and cultural norms as well as organizational systems such as churches and social and civic organizations and their roles in working with the project.
- Describe the changes that would be made in staff training, agency policies and requirements in order to respond to the needs of the population of children and prospective adoptive parents to be served.
- Describe the services that would be provided to urban children to assist with their adjustment to a rural community.
- Describe how services would be structured to ensure that fees (services and legal) do not act as a barrier for any family.
- Provide for a third party to conduct an independent evaluation designed to assess the effectiveness of the project in recruiting rural families for the adoption of children with special needs.
- Provide assurances that at least one key staff person from the project would attend the annual three-day Adoption Opportunities grantees meeting in Washington, DC.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Describe how the project would continue beyond termination of Federal funding.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $125,000 per 12-month budget period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $250,000 is $83,000. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 5 projects will be funded.

CFDA: 93.652 Adoption Opportunities: Title II of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.17 Adoptive Parent Groups as Partners in the Adoption of Special Needs Children

Eligible Applicants: Voluntary or public social service agencies, adoption exchanges, or other national, regional or statewide adoption-related organizations.

Purpose: To utilize adoptive parent groups to support families adopting children with special needs.

Background: Through the years, adoptive parents have aggressively promoted the adoption of children with special needs. As consumers of adoption services, these parents bring to the adoption field a special perspective of both the children to be served and the agencies that serve them. They have been effective advocates for children and have challenged the term "unadoptable" by demonstrating that children with special needs can be placed with families of their own. The 600 existing adoptive parent organizations, comprised of volunteers, have limited funds to develop projects on behalf of children with special needs. Support for these groups is important, because historically they have been productive and successful in the activities they pursue. These activities have included information and referral services, recruitment and orientation for prospective adoptive parents and work with social service agencies to support families following placement and legalization. With additional support, new groups can be established, existing groups strengthened and needed services developed.

Minimum Requirements: In order to compete successfully under this priority area, the applicant should:

- Document that the applicant organization has the capability to assist local or State adoptive parent groups to work with child welfare agencies.
- Describe the process that would be used in developing new adoptive parent groups, especially minority groups, and the number of new groups to be developed.
- Describe a plan for awarding sub-grants, not to exceed $5,000 each, to incorporated non-profit local or State adoptive parent groups to work with child welfare agencies and adoptive families, including pre- and post-adoption services.
- Discuss the methods that would be used to request proposals from parent groups to focus on special needs adoption problems or issues.
- Provide assurances that at least one key staff person would attend the

annual three-day Adoption Opportunities grantees' meeting in Washington, DC.

• Provide assurances that the project would be fully staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $85,000 for a 17-month project period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $85,000 is $28,333. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 5 projects will be funded.

CFDA: 93.652 Adoption Opportunities: Title II of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.18 Assistance to States to Improve Adoption Data

Eligible Applicants: Units of State government which have access to information on adoption. Generally, these include departments of social services, offices of vital statistics and offices of court administrators. No county or city agency may apply. Only one grant will be awarded per State. States other than DE, ME, MN, NV, NH, NJ, NC, OK, RI, VA, WA and WI (States which received funding in FY 1991) are eligible.

Purpose: To provide funds to meet the one-time or short-term expenses associated with State activities designed to improve the collection and reporting of data on all adoptions within the State, not simply on the adoption of children under the care and responsibility of the State department of social services.

Background: ACF has been encouraging the States to develop coordinated efforts to improve the collection and reporting of data on all types of adoptions for a number of years. Many States have also expressed interest in participating in the *voluntary* portion of the adoption data collection system described in the "Notice of Proposed Rulemaking on Data Collection for Foster Care and Adoption" that was published in the **Federal Register** on September 27, 1990.

The National Center for State Courts (NCSC), through a grant from the Administration on Children, Youth and Families, has offered technical assistance to various State governmental units and is currently providing telephone and on-site technical assistance to help States improve their adoption data collection and reporting systems. Examples of the types of technical assistance being provided by the National Center for State Courts are: facilitating coordination among the various agencies within each State; identifying problems with matching adoption data elements from different sources within States; assessing the capability of existing hardware and software; and providing the information to legislative bodies or courts required to change laws, regulations or court rules to permit the exchange of adoption data among agencies. However, in addition to this assistance, States which want to improve their data collection and reporting on all adoptions and to participate in the voluntary portion of the adoption and foster care reporting system may have other needs which cannot be met by NCSC or through current State budgets. These would include the purchase of computer hardware and software, development of software, hiring short-term employees, or engaging consultants to help in the resolution of highly technical computer issues. Grants awarded under this priority area should be used for these and related purposes. Potential applicants are encouraged to seek consultation on their needs for assistance from Victor E. Flango, Ph.D., Project Director, National Center for States Courts, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, (804) 220–0449.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

• Describe how the unit of State government applying for assistance would coordinate its efforts with other relevant units of the State government.

• Describe how the funds would be used to facilitate the collection and reporting of data on all adoptions within the State. The application should describe the hardware or software which would be purchased, the type of consultation which would be obtained, or other specific uses which would be made of the funds and provide justification of the need for and appropriateness of such assistance.

• Discuss why State funds are not being used for these purposes.

• Describe the difference that the receipt of this assistance would make in terms of the speed with which data on all adoptions would be collected and reported.

Project Duration: The length of the project must not exceed 6 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $10,000 for a 6-month project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 10 projects will be funded.

CFDA: 93.652 Adoption Opportunities: Title II of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.19 Field Initiated Proposals to Improve Adoption Services to Children with Special Needs

Eligible Applicants: State, regional or local public child welfare or adoption agencies and voluntary child welfare or adoption agencies or organizations, Voluntary agencies which apply should coordinate their applications with relevant public agencies.

Purpose: To improve adoption services to children with special needs through activities which are not addressed elsewhere in this announcement. This priority area provides public and voluntary agencies and organizations involved in the adoption process with an opportunity to present innovative ideas for improving child welfare and adoption systems.

Background Information: Public child welfare workers who provide adoption services are overburdened because of a shortage of staff and an increasing child welfare caseload. In many public agencies, the adoption staff are expected to provide services not only to children with special needs and their potential adoptive families, but also to families requesting independent, intercountry and other types of adoption. This places substantial burdens on the limited adoption agency resources which are needed to serve the special needs population.

At any given time, approximately 30,000 children are legally free for adoption. Minority children continue to be over represented among this group. Older children and sibling groups also continue to present unique challenges. Other sub-populations, such as drug-exposed infants, will be or are currently testing the capacity of adoption programs. Innovative efforts, embodying the spirit of public-private partnerships, are needed to provide permanent adoptive homes to all waiting children.

Because there are so many different issues that face the public and voluntary sectors, ACF is requesting field initiated proposals that address areas most problematic in serving children with special needs for whom adoption is the plan. These proposals must be

innovative and cannot be a replication of a previous project or be responsive to other priority areas in this announcement.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe the agency's current adoption program and the specific problem(s) that would be addressed.
- Describe the approach that would be used to alleviate the problem(s).
- Document that this is a new approach that has not been used before based on a review of the literature and any other relevant sources.
- Provide specific written commitments from cooperating or collaborating agencies, if any.
- Describe the arrangements that would be made to contract with a third party to conduct an independent evaluation of the project, and describe in detail the design that would be implemented. The evaluation should focus on child and family outcome measures (e.g., placement rates, number of children placed, disruption rates).
- Describe how the agency would incorporate successful results of the project into its ongoing program.
- Provide assurances that at least one key person from the project would attend the annual three-day Adoption Opportunities grantees meeting in Washington, D.C.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $150,000 per 12-month budget period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000. This constitutes 25 percent of the project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 6 projects will be funded.

CFDA: 93.652 Adoption Opportunities: Title II of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.20 Field Initiated Research in Child Welfare by Recent Recipients of Doctoral Degrees

Eligible Applicants: Universities and four-year colleges applying on behalf of recent recipients of doctoral degrees who are members of the teaching faculty.

Purpose: To support pilot research projects initiated by new researchers in the child welfare field. The principal investigator must have a terminal research degree (e.g., Ph.D., DSW, DPH, DPA, MD, etc.), but not be more than five years beyond it at the time of the grant award. No individual who received an award under this priority area in FY 1991 will be eligible for a second grant.

The pilot research projects should be developmental in nature, i.e., they should be designed to lay the groundwork for a continuing research career in the field of child welfare by the investigator. The research topic area should be such that subsequent research activities in the area will inform State and local (public and private) agencies on ways to improve policy, practice, management and evaluation of child welfare programs.

Background Information: There is a continuing need in the child welfare field to generate new knowledge to guide the delivery of services to children and their families. Issues need to be raised and research projects developed which challenge assumptions about the nature and the needs of clients, service delivery strategies, and effective policies and practice opportunities for new researchers entering the child welfare field.

Projects could address the range of services which are delivered by public and private child welfare agencies including, but not limited to, services to prevent foster care, foster care, reunification services, independent living, adoption (particularly special needs), and post-adoption services. Projects may also address the development of valid, reliable and appropriate outcome measures for children and their families or measures of service system delivery effectiveness and efficiency. Economic and ethnic issues can also be addressed. Applicants are encouraged to develop projects which take an original viewpoint and/or propose an innovative methodology.

Projects which are primarily secondary data analyses, research syntheses, or literature reviews, and which are included under other research priority areas in this announcement, will not be supported under this priority area. Research involving demonstration projects or clusters of such projects will be supported only if the research to be conducted is distinct from the evaluation of these demonstration projects.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe the investigator's commitment to research in child welfare and how receipt of this award would contribute to the research career development of the investigator.
- Briefly describe, based on a review of the literature, how the pilot project would lay the groundwork for carrying out a major effort which would fill a critical gap in information needed to improve policy, practice, management and/or evaluation in child welfare programs.
- Describe the overall research design that would be employed in the pilot project including sampling procedures, types of data to be collected, procedures for data collection, measures to be used and plans for data analysis.
- Describe how the information from the pilot project could be used to design a larger, more comprehensive project.
- Describe the strategies that could be implemented in conducting the larger project after the pilot project is completed.
- Describe the reports that would be developed under the project, including the types of information that would be presented, and the steps, including submission for publication to a referred journal, that would be undertaken to disseminate and promote the utilization of project findings.
- Provide assurances that the principal investigator would attend a 2–3 day grantees' meeting in Washington, DC.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $40,000 for the 17-month project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 2 projects will be funded.

CFDA: 93.608 Child Welfare Research and Demonstration: Section 426 of the Social Security Act, as amended.

1.21 Field Initiated Research in Child Welfare

Eligible Applicants: State or local, public or nonprofit, agencies, universities, organizations or institutions.

Purpose: To support innovative projects initiated by researchers in the child welfare field. The research should be designed to inform State and local (public and private) child welfare agencies of ways to improve policy, practice, management and evaluation of child welfare programs.

Background Information: There is a continuing need in the child welfare field to generate new knowledge to guide the delivery of services to children and their families. Issues need to be raised and research projects developed which challenge assumptions about the nature and needs of clients, service delivery strategies, and effective policies and practices.

Research topics can include the range of services which are delivered by public and private child welfare agencies including, but not limited to, services to prevent foster care, foster care, reunification services, independent living, adoption (particularly special needs), and post-adoption services. Projects are encouraged which have as their focus child welfare services but which relate them to other ACF programs such as Child Support, Aid to Families with Dependent Children, Job Opportunities and Basic Skills, etc. Projects may also address the development of valid, reliable and appropriate outcome measures for children and their families or measures of service delivery effectiveness and efficiency. Economic and ethnic issues can also be addressed. Applicants are encouraged to develop projects which take an original viewpoint and/or propose an innovative methodology.

Projects which are primarily secondary data analyses, research syntheses, or literature reviews, and which are included under other priority areas in this announcement, will not be supported under this priority area. Research involving demonstration projects or clusters of such projects will be supported only if the research to be conducted is distinct from the evaluation of these demonstration projects.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Describe, based upon a review of the literature, how the project would fill a critical gap in information needed to improve policy, practice, management and/or evaluation in child welfare programs.
- Describe the overall research design that would be employed including sampling procedures; types of data to be collected; procedures for data collection; instruments and measurements to be utilized, adapted or developed, including assessments of their reliability and validity; and plans for data analysis.
- Discuss the scientific merit of the design selected including its strengths and weaknesses as well as the identification of alternative designs which were considered but rejected and the reasons for rejecting them.
- Indicate the ability to gain access to necessary information, data, and clients.
- Describe the reports that would be developed under the project, including the types of information that would be presented, and the steps, including submission for publication to a referred journal, that would be undertaken to disseminate and promote the utilization of project findings.
- Provide assurances that the principal investigator would attend a 2–3 day annual meeting of grantees in Washington, D.C.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $125,000 per 12-month budget period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 2 projects will be funded.

CFDA: 93.608 Child Welfare Research and Demonstration: Section 426 of the Social Security Act, as amended.

National Center on Child Abuse and Neglect

On December 11, 1991, a notice soliciting comments on the National Center on Child Abuse and Neglect's (NCCAN) proposed priority areas for FY 1992 was published in the **Federal Register**. A 60-day period was provided to allow the public to comment on the proposed areas. After the review and analysis of these comments, NCCAN is publishing its final priorities.

The NCCAN received 133 written responses. A number of supportive and general comments were provided. These included the importance of research on maltreatment of children and youth with disabilities; a continued focus on issues of ethnic and cultural relevance in studies of child maltreatment; community-wide approaches to prevention programs; and the need for treatment outcome studies. A few comments were made regarding the applicant eligibility criteria, and these have now been expanded to include American Indian and Alaskan Native Tribes as requested. Other comments were made on the review process, the amount and use of discretionary grant funds, and the Tenth National Conference on Child Abuse and Neglect. Comments were also submitted for each of the seven research and demonstration priority areas, along with recommendations on symposia and additional priority areas.

The responses came from a variety of sources, including the following: The Advisory Board on Child Abuse and Neglect, Members of the House of Representatives and the Senate, a Member of a State legislative body, State and county departments of social welfare and human services, local educational agencies, law enforcement agencies and the judiciary, Children's Trust Funds, child advocacy centers and community agencies for children and families, national, State and local associations and non-profit organizations, universities and students, hospitals, medical centers and mental health services, service providers and practitioners, private citizens, and a foundation. The largest number of responses came from State and county departments of social welfare and human services, followed closely by responses received from universities.

The responses were generally supportive of the seven research and demonstration priority areas and the symposia topics included in the announcement. The largest group of respondents (45) wrote in support of the replication of child advocacy centers; this is specifically included as a topic under the priority area on field initiated demonstration programs to address child abuse and neglect.

To the extent feasible, NCCAN addressed these public comments in preparing its final FY 1992 priority areas. Comments intended to further clarify and focus the priorities were incorporated into the revised descriptions. For example, based on the comments received regarding the need to broaden the definition for research on the non-offending parent of victims of intrafamilial sexual abuse, the focus of this priority area has been expanded to include any perpetrator responsible for the child's welfare, and specifies that all systems involved with the family should be studied for their impact on maternal support. Changes were also made in terminology to reflect the comments received.

Based both on the need identified by the field and on comments received from members of the U.S. Senate, an additional priority area was added on training for model community-based programs on child sexual abuse treatment that integrate self-help. Limited FY 1992 funds prevent consideration of some of the suggested priorities. Suggested priorities not

adopted this year will be taken into consideration in the development of proposed priorities for succeeding years.

1.22 Field Initiated Research on Child Abuse and Neglect

Eligible Applicants: State or local, Tribal, public or nonprofit agencies, organizations, and institutions of higher learning. Collaborative efforts and interdisciplinary approaches are encouraged.

Purpose: To support new research designed to carry out the legislative responsibilities established for the National Center on Child Abuse and Neglect (NCCAN) by the Child Abuse Prevention and Treatment Act of 1988, as amended. These responsibilities include the conduct of research on the causes, prevention, identification and treatment of child abuse and neglect; and on appropriate and effective investigative, administrative and judicial procedures with respect to cases of child abuse, particularly child sexual abuse.

Background Information: The generation of new knowledge that promotes an understanding of critical issues in child abuse and neglect is essential in order to improve prevention, identification and treatment. Research areas to be addressed are those that will expand the current knowledge base, build on prior research, contribute to practice and provide insights into new approaches to the prevention and treatment of child maltreatment. The areas include, but are not limited to, mediating factors and mechanisms in the intergenerational transmission of family processes that lead to, as well as prevent, child maltreatment and other forms of family and interpersonal dysfunction; the relationships between child maltreatment and sibling abuse and spousal violence; the role of neighborhood safety factors in the etiology and reporting of child abuse and neglect; cultural factors in maltreatment; needs of children and families with disabilities and the child protective services (CPS) system's response; clients' perceptions, including those of the CPS authority and its use; utilization of service referrals provided by CPS or related agencies, including how service needs are identified by CPS and the factors that facilitate or hinder client follow-up; the relationship between two or more risk conditions (e.g., disabilities, substance abuse) among family members and child maltreatment; the unique issues of the youth population, including the identification of successful strategies utilized for the prevention of maltreatment and averting of victimization, successful approaches to bolstering teenage credibility in the reporting of maltreatment, the effectiveness of interventions and supportive services for maltreated teenagers, and the impact of removal from the home and separation from the non-offending parent as well as supportive adolescent peer groups; and comparative studies on effective administrative procedures for the identification, handling and treatment of child abuse cases.

The use of common data collection instruments across studies is encouraged where applicable. It is also expected that initial planning for data sets will be carried out in accordance with good practice and that final reports will be prepared in an NCCAN-suggested format. Information on all projects supported by NCCAN as well as other studies on child maltreatment is available through the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe how the proposed research addresses current and emerging issues that have direct application to the field of child abuse and neglect within the context of the National Center's legislative responsibilities.
- Demonstrate an indepth understanding of the issues and problems associated with child abuse and neglect, and provide an up-to-date review of the relevant literature.
- Propose an approach that is comprehensive and culturally responsive to the populations included in the study.
- Describe the overall research design that would be employed, including as applicable: sampling procedures, experimental design, the kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.
- Demonstrate an ability to gain access to necessary information, data, and clients.
- Describe strategies for the dissemination of the findings in a manner that would be of use to other researchers and practitioners in the field.
- Provide assurances that at least one key staff person would attend a three-day annual spring meeting in Washington, D.C.; that the data set would be prepared according to sound documentation practices; and that the final report would be prepared in a format ensuring its ease for dissemination and utilization.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $200,000 per 12-month budget period. Applications for lesser amounts, including those for small grants of $25,000 or less, will also be considered under this priority area.

Matching Requirements: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded at the maximum funding level or more than four if acceptable applications for lesser amounts are funded.

CFDA: 13.670 Research and Demonstration: Title I of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.23 Graduate Research Fellowships in Child Abuse and Neglect

Eligible Applicants: Institutions of higher education, including Historically Black Colleges and Universities, Native American institutions of higher learning and other institutions of higher learning with a history of serving Hispanic and Asian populations, on behalf of qualified doctoral candidates enrolled in the sponsoring institution. To be eligible to administer such a grant on behalf of a student, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Post-Secondary Accreditation.

Purpose: To provide support for graduate students to conduct research on critical issues in child abuse and neglect.

Background Information: The research community has highlighted the need to draw new researchers into the field of child abuse and neglect. The Administration for Children and Families (ACF) is continuing to provide support for individual fellowships for doctoral candidates to complete dissertations addressing critical issues in child abuse and neglect.

ACF seeks to expand the research capacity of the field by encouraging more students to seek careers in child abuse and neglect research through the granting of individual graduate fellowships for doctoral candidates to complete their dissertations. The questions to be addressed and the issues to be studied for graduate fellowships are those related, but not

limited, to the priority area on Field Initiated Research on Child Abuse and Neglect (See priority area # 1.22).

ACF is interested in supporting doctoral-level candidates, through their sponsoring institutions, who are now conducting or wish to conduct research on child abuse and neglect for their dissertations. While an individual is considered to be the beneficiary of the grant support, awards will be made to eligible institutions on behalf of qualified candidates. Doctoral-level candidates in interdisciplinary programs and related programs, such as special education or early childhood education, are also encouraged to apply for support through their institutions.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Provide evidence that the candidate is enrolled as a doctoral candidate in the sponsoring institution and provide documentation that the institution's dissertation committee has accepted the research proposal.
- Provide evidence of the candidate's ability to conduct research including education, employment experiences, publications, and information on current academic status. A letter of support from a sponsoring faculty member must also be provided for each doctoral candidate seeking a Fellowship.
- Propose one or more research questions to be addressed by the candidate which would contribute to the body of knowledge about child maltreatment.
- Demonstrate the candidate's indepth understanding of the issues and problems associated with child abuse and neglect and provide an up-to-date review of the relevant literature.
- Present specific results from any relevant planning studies, pilot studies or other preparatory work conducted by the candidate.
- Describe the overall research design which would be employed, including as applicable: sampling procedures, experimental design, kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.
- Indicate how the proposed study is distinguished from other ongoing research at the university of which it is a part, if applicable.
- Demonstrate the candidate's ability to gain access to necessary information, data, and clients. Identify any limitations in carrying out the research (e.g., obtaining the sample) or potential barriers to the completion of the study.
- Provide assurances that the full amount would go directly: To the graduate student as a stipend; some dependent allowances; any appropriate university fees; and major project costs for conducting the proposed research, including any necessary travel. No overhead costs (indirect costs) are allowed for this program.
- Provide all required assurances and certifications, including Certification of Protection of Human Subjects Assurances, as part of the application.
- Provide assurances that the candidate would attend a three-day annual spring meeting in Washington, DC., and would prepare quarterly progress reports and a final project report in a format ensuring its ease for dissemination and utilization.

Project Duration: The length of the project must not exceed 12 months.

Federal Share of the Project Costs: The maximum Federal share of the project is not to exceed $10,000.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that ten projects will be funded. No more than two awards per institution will be made.

CFDA: 13.670 Research and Demonstration: Title I of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.24 Research on the Non-Offending Maternal Parent of Victims of Intrafamilial Child Sexual Abuse

Eligible Applicants: State or local, Tribal, public or nonprofit agencies, organizations, and institutions of higher learning. Collaborative efforts are encouraged.

Purpose: To support studies on the variables that promote maternal support of victims of intrafamilial sexual abuse.

Background Information: Intrafamilial abuse affects all members of the family that experience it. The literature reflects considerable discussion and research on the impact of intrafamilial sexual abuse on the child victim, the appropriate actions to be taken regarding the perpetrator and the treatment to be provided to the family. Key to the healing of the child victim is the role that the non-offending parent plays at disclosure, treatment, disposition and beyond. Although there are cases where the non-offending parent is the father, this priority area focuses on the non-offending maternal parent of the child victim of intrafamilial sexual abuse. For purposes of this priority area, intrafamilial sexual abuse is limited to that committed by related family members who are responsible for the child's welfare, especially that committed by a parent, step-parent, adoptive parent, uncle, aunt, or a grandparent.

Discussions in the literature describe the mother of the incest victim in a variety of ways, often negative. She has been characterized as weak, unassertive, and over-dependent (Zephan, 1982). The mother's depression, illness, or absence have been cited as risk factors for the abuse to occur (Pecora, in press). At least one researcher has suggested that the mother could prevent disclosure of abuse (Kohn, 1987).

This priority area intends to build on current research on the factors that contribute to an understanding of why some mothers of child sexual abuse victims are supportive and others are not. In order to plan treatment for this population, it is important to look at factors that may assist the mothers in supporting their children both upon disclosure and through the numerous interviews and investigations conducted by a variety of professionals involved in the case. The family may also experience changes in financial status and living conditions as a result of the perpetrator being removed from the home.

These changes place a great strain on the mother at a time when the victim and other children most need a stable and nurturing environment. ACF is interested in studies that further explore the variables that promote maternal support. Information is needed on the characteristics of the non-offending parent and family composition including the number of children and their ages; the mother's background and own victimization experiences, if any; her perceptions of and relationship to her child and the perpetrator; and her attitudes toward treatment for her child, herself and the perpetrator. It is important to determine at what point the non-offending parent provides support to the child victim, the number and type of support services available to the family, and which intervention strategies facilitate effective maternal support. All systems involved with this family should be taken into consideration. This research should contribute to a theoretical framework for different types of intervention that will enable the non-offending parent to provide for the well-being of the child victim and other family members.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Demonstrate an indepth understanding of the issues and

methodological problems associated with the study of maternal support of child victims of intrafamilal sexual abuse.

• Include an up-to-date review of the relevant literature.

• Propose an approach that is comprehensive and culturally responsive to the populations that would be included in the study.

• Describe the overall research design that would be employed, including as applicable: sampling procedures, experimental design, the kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.

• Demonstrate an ability to gain access to necessary information, data, and clients.

• Describe strategies for the dissemination of the findings in a manner that would be of use to other researchers and practitioners in the field.

• Ensure that the data set would be prepared according to sound documentation practices; and that the final report would be prepared in ■ format ensuring its ease for dissemination and utilization.

• Provide assurances that at least one key staff person would attend a three-day annual spring meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of the Project Costs: The maximum Federal share of the project is not to exceed $150,000 per 12-month budget period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

CFDA: 13.670 Research and Demonstration: Title I of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.25 Infrastructure for the Support of Research on Child Abuse and Neglect

Eligible Applicants: State or local, Tribal, public or nonprofit agencies, organizations, and institutions of higher learning.

Purpose: To support three activities which will assist researchers in their studying child abuse and neglect: A national archive for processing and housing high quality data sets; a directory of measures used in studies of child abuse and neglect; and the identification of state-of-the-art information on the methodological, legal and ethical issues in conducting research on child maltreatment.

Background Information: NCCAN has initiated a multifacet approach to the conduct of research and the support of sound research strategies, particularly relevant to critical issues in the child abuse and neglect field. Toward this end, a 19-month grant has been awarded to the National Academy of Sciences' National Research Council to conduct a comprehensive review and synthesis of research on child abuse and neglect and recommend research priorities for the next decade. The study is being implemented by a multidisciplinary panel of distinguished scientists.

Two priority areas in this announcement indicate ACF's intent to continue support for field initiated-research and graduate research fellowships. NCCAN has also conducted a symposium on how to bridge the gaps between research and practice. Further, the NCCAN-funded Consortium for Longitudinal Studies, in its initial implementation year, is generating the first multidisciplinary collaborative effort of its kind in this field among research scientists to address questions about the life course of at-risk and child maltreating families.

In this priority area, ACF seeks to ensure funding for three other components of an infrastructure identified as critical for the support of research on the prevention, identification and treatment of child abuse and neglect. Each of these three components is discussed in further detail below.

A. The ACF recognizes the need to provide support for a national archive for child abuse and neglect data. There are several functions that a national archive can perform for researchers in the field of child abuse and neglect. While a major function is to process, house, and preserve quality data sets from studies on child abuse and neglect, an archive also plays a critical role in setting standards and establishing good practices for the documentation of data sets.

Establishing such procedures enables data to be more readily and easily shared with other researchers and provides the additional capacity for further and secondary analyses. A centralized archive can also facilitate collaboration among researchers for knowledge building, and encourage new researchers to enter the field. Such an archive, for example, can also provide training and technical assistance opportunities for new researchers or postdoctoral candidates through the conduct of summer training institutes which bring a small number of researchers together to work on these data sets.

B. Another important component for facilitating research on child abuse and neglect is updated information on measures and instruments used in conducting studies on its prevention, identification and treatment. ACF seeks to provide support for building on and expanding the current computerized directory and related resources on measures used in studies of the prevention, identification, and treatment of child abuse and neglect. It is important that timely information be available on how and what instruments have been utilized, what the strengths and weaknesses of the measures are and under what circumstances they might be best utilized. These resources enable collaboration among researchers through the use of common batteries of known measures across studies where applicable, thereby enhancing the knowledge building capacity of the field. This work would also contribute to the identification of the need for instruments and the development of new measures.

C. Finally, ACF seeks to identify and address the most critical methodological problems and legal and ethical issues encountered in the conduct of research on the identification, prevention and treatment of child abuse and neglect. Examples include the problems associated with defining maltreatment for research studies, developing and utilizing adequate evaluation approaches to determine the effectiveness of various prevention and treatment strategies, selection of appropriate statistical techniques for analyses of research data, and issues of confidentiality, informed consent and protection of human subjects in conducting child maltreatment research. There is a need for state-of-the-art information on these problems and issues. Such information may be obtained through the convening of technical conferences or workshops, the preparation of technical papers or commission of monographs on given topics, and the development of materials and instructional papers on exemplary procedures. This activity should contribute to the knowledge building capacity of the field both in the use of sounder techniques and in the development of new ways to address critical research questions.

Minimum Requirements for Project Design: In order to compete successfully under this priority area for any one of the three types of activities described above, each applicant should:

• Specify which component, either A, B or C, that the applicant is addressing on the SF–424; it is expected that each application will address one component only. However, an applicant may submit more than one application providing that each addresses a different component.

• Demonstrate an understanding of the issues and problems associated with the component being addressed.

• Demonstrate an awareness of current activities being undertaken on this component and how the approach being proposed would build on this work.

• Propose an approach that is comprehensive and reflects cultural sensitivity to the issues being addressed.

• Describe the approach that would be employed for the specific function being addressed and demonstrate sufficient resources and the appropriate facilities to undertake the project.

• Demonstrate an ability to gain access to necessary information and data sets as applicable.

• Describe strategies for the dissemination of the products in a manner that would be of use to other researchers and practitioners in the field.

• Provide assurances that at least one key staff person would attend a three-day annual spring meeting in Washington, DC.

Project Duration: The length of each of the projects must not exceed 36 months.

Federal Share of the Project Costs: The maximum Federal share for each of the three projects is not to exceed $150,000 for the first 12-month budget period or a maximum of $450,000 for a 3-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded for each component or a total of three projects.

CFDA: 13.670 Research and Demonstration: Title I of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.26 New Field-Initiated Demonstrations and Replications of Successful Projects Addressing Child Abuse and Neglect

Eligible Applicants: State or local, Tribal, public or nonprofit agencies, organizations, and institutions of higher learning. Collaborative efforts and multidisciplinary approaches are encouraged.

Purpose: To support the development of innovative approaches to combating child maltreatment. These demonstration and replication projects must be documented and include a strong evaluation component.

Background Information: There is a critical need to know which child abuse and neglect programs work for which families, children and youth, in which settings and under what circumstances. There is a further need to have the capacity to replicate sound and effective child abuse and neglect prevention and treatment programs.

Demonstration areas to be addressed are those that will expand the capacity of the field to prevent, identify and treat child abuse and neglect. These would include replications of successful approaches to address other populations under a given sponsor in other geographical locations; full implementation of a successful pilot program; and demonstrations of a new approach to a continuing problem or addressing a new area of concern. Examples of the types of projects which can be supported under this priority area include collaborative efforts between child abuse and neglect and family violence programs as well as those programs already working with children, youth and families in the community such as Project Head Start and Runaway and Homeless Youth Programs; comprehensive school-based programs to serve children with disabilities, adolescent youth, or low-income families at risk of child maltreatment; collaborative efforts for establishing a neighborhood-based prevention program of services for assisting self-referred parents in a non-punitive manner; establishment of a comprehensive integrated services delivery system; and replication of child advocacy centers.

Strong efforts should be made to develop and implement comprehensive services that are culturally sensitive, age appropriate and need specific. Any proposed demonstration or replication project should also provide for comprehensive evaluation strategies that are appropriate and culturally sensitive. The evaluation should include a description and careful assessment of the clients receiving services, assessment of program effectiveness, and the differential impact of various interventions and their components. Plans should include documentation of the development and implementation of the project in a form that can be readily used to promote replication of successful components.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

• Describe how the project builds on the literature and how any information from pilot projects would be used.

• Describe the design of the project to be developed and implemented, including the nature of any collaborative efforts and the geographical area to be targeted in terms of its distinctive features and the population to be recruited and served.

• Propose an approach that is comprehensive and culturally responsive to the populations included in the demonstration.

• Describe the evaluation that would be carried out, including the kinds of data to be collected on clients and services provided, the outcomes that would be measured, the evaluation design to be employed, and how the data would be analyzed.

• Demonstrate an ability to gain access to necessary information, data, and clients.

• Ensure that the manual, related products and the final report would be prepared in a format to ensure the dissemination and utilization of findings, including the replication of the demonstration.

• Provide assurances that at least one key staff person would attend a meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $600,000 is $200,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

CFDA: 13.670 Research and Demonstration: Title I of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.27 Culturally Sensitive Child Maltreatment Prevention Demonstration Programs for Populations of Differing Cultures

Eligible Applicants: State or local, Tribal, public or nonprofit agencies and institutions of higher learning. Collaborative efforts and multidisciplinary approaches are encouraged.

Purpose: To support the development of culturally sensitive child maltreatment prevention demonstration

programs for serving populations of differing cultures.

Background Information: Many populations in the U.S. belong to cultures with differing child rearing customs, attitudes, traditions, practices and cultural norms. Among these populations are recent immigrants including Hispanic and Amerasian families, Southeast Asian refugees and migrant workers and geographically isolated populations.

This priority area is designed to support culturally sensitive prevention demonstration projects aimed at improving the level of family functioning by building on the strengths within these families. This effort should provide for enhancing service delivery systems to meet the needs of culturally diverse families. Demonstrations may include culturally relevant parenting programs, the provision of appropriate social and health services, and educational efforts that deal with parents' fears of losing their cultures, customs and traditions. Such programs may be appropriate adaptations of proven technologies as well as the development of intervention strategies.

The proposed demonstrations should provide documentation in support of the issues being addressed and detail the specific interventions to be implemented and their timeframes. Any proposed demonstration project should also provide for comprehensive evaluation strategies that are appropriate and culturally sensitive. The evaluation should include a description and careful assessment of the clients receiving services, assessment of program effectiveness, and the differential impact of various interventions and their components. Plans should include documentation of the development and implementation of the demonstration to be used in disseminating information on successful components.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe how the project builds on the literature and how any information from pilot projects would be used.
- Describe the design of the project to be developed and implemented, including the nature of any collaborative efforts and the geographical area to be targeted in terms of its distinctive features and the populations to be recruited and served.
- Propose an approach that is comprehensive and culturally responsive to the populations included in the demonstration.
- Describe the evaluation that would be carried out, including the kinds of data that would be collected on clients and services provided; the outcomes that would be measured; the evaluation design that would be employed; and how the data would be analyzed.
- Demonstrate an ability to gain access to necessary information, data, and clients.
- Ensure that any products, including the final report, would be prepared in a format to ensure the dissemination and utilization of findings, including the replication of the demonstration.
- Provide assurances that at least one key staff person would attend a meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months

Federal Share of Project Cost: The maximum Federal Share of the project is not to exceed $150,000 for the first 12-month budget period or a maximum of $450,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal Share of $450,000 is $150,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Project to be Funded: It is anticipated that two projects will be funded.

CFDA: 12.670 Research and Demonstration: Title I of the Child Abuse Prevention, Adoption and Family Services Act of 1988 as amended.

1.28 Model Approaches to Service Delivery to Combat Child Maltreatment in Rural Communities

Eligible Applicants: State or local, Tribal, public or nonprofit agencies, organizations, and institutions of higher learning. Collaborative efforts and multidisciplinary approaches are encouraged.

Purpose: To support the development of model approaches to service delivery to combat child maltreatment in rural communities.

Background Information: There is a need to identify, develop or adapt model approaches to service delivery for children and their families residing in rural settings who are affected by child maltreatment. These approaches should build on the strengths and address the unique needs of children and families in rural communities. These families may have inadequate access to services in areas such as employment, housing, health, legal assistance, transportation, and recreation.

ACF is interested in supporting the development of model programs for the identification, prevention and treatment of child maltreatment in rural settings. These demonstration programs may be adapted from or linked with other community-based programs such as Head Start, mental health centers, and agricultural extension services. An evaluation component should be included.

As appropriate, these programs should be designed to:

- Mobilize local public and private resources including employment and housing services, legal services, churches, schools, businesses and service clubs;
- Coordinate community service delivery around central sites such as schools, libraries and community centers;
- Recognize the transportation needs of children and their families;
- Build on natural relationships and informal networks in the community;
- Establish roving medical and dental teams from the county seats to outstation sites in the more geographically isolated areas;
- Link up with telephone systems for medical, mental health, social service, and legal consultations;
- Make use of media including newspapers, radio and television;
- Make use of self-instruction training materials for families and community services providers; and
- Provide home visiting programs.

These approaches may be implemented on a multi-county, State or regional basis. Such programs may be appropriate adaptations of proven technologies as well as the development of new service delivery strategies.

The proposed demonstrations should provide documentation in support of the issues being addressed and detail the specific plans for service delivery. Any proposed demonstration project should also provide for comprehensive evaluation strategies that are appropriate and culturally sensitive. The evaluation should include a description of the geographical area, target population, and the clients receiving services and an assessment of program effectiveness. Plans should include documentation of the development and implementation of the demonstration providing for dissemination of information on successful components.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe how the project builds on the literature and how any information from pilot projects would be used.
- Describe the design of the project that would be developed and implemented, including the nature of any collaborative efforts and the geographical area to be targeted in

terms of its distinctive features and the populations to be recruited and served.

• Propose an approach that is comprehensive and culturally responsive to the populations included in the demonstration.

• Describe the evaluation that would be carried out, including the kinds of data that would be collected on clients and services provided, the outcomes that would be measured, the evaluation design that would be employed, and how the data would be analyzed.

• Demonstrate an ability to gain access to necessary information, data, and clients.

• Describe how the project would continue beyond termination of Federal funding.

• Ensure that any products, including the final report, would be prepared in a format to ensure the dissemination and utilization of findings, including the replication of the demonstration.

• Provide assurances that at least one key staff person would attend a meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $600,000 is $200,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

CFDA: 13.670 Research and Demonstration: Title I of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

1.29 National Training Program for Effective Models of Child Sexual Abuse Treatment Programs

Eligible Applicants: State or local, Tribal, public or nonprofit agencies, organizations, and institutions of higher learning. Collaborative efforts and multidisciplinary approaches are encouraged.

Purpose: To support the establishment of a national training program for a model comprehensive community-based child sexual abuse treatment program integrating treatment with self-help.

Background Information: In response to the need identified by experts in the field for training and for the development of model comprehensive community-based treatment programs for child sexual abuse across the nation and in response to comments received from members of the U.S. Senate, ACF seeks to support the establishment of a national training program for the development of model comprehensive community-based treatment programs for child sexual abuse.

This program should be designed to provide training on the most effective community-based treatment approaches for child sexual abuse that integrate self-help. Such approaches should be multifaceted, multidisciplinary and address the needs of all those involved in the abuse. The program should provide for onsite training by visiting professionals as well as the utilization of advanced audio and visual technologies, including satellites, for distributing training information at sites across the nation.

Applicants should include information on how participants would be targeted and recruited for participation in this training, which would be provided at a minimal charge to the participants. The training plan should also detail the number and type of trainees, the proposed curriculum along with information on any pilot studies of the effectiveness of the curriculum and training programs, and describe who would conduct the training. An evaluation plan should be included that addresses the effectiveness of the training provided.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

• Describe how the project integrates self-help, builds on the child sexual abuse treatment literature, and how any information from pilot projects would be used.

• Describe the design of the project to be developed and implemented, including the nature of any collaborative efforts, the population to be recruited and trained, and the treatment population to be served.

• Propose an approach that is comprehensive and culturally responsive to the populations being treated and those being trained.

• Describe the evaluation that would be carried out, including the kinds of data that would be collected on participants and training provided, the outcomes that would be measured, the evaluation design that would be employed, and how the data would be analyzed.

• Demonstrate an ability to gain access to necessary information, data, and participants.

• Ensure that any products, including the final report, would be prepared in a format to ensure the dissemination and utilization of findings including the replication of the training.

• Provide assurances that at least one key staff person would attend a meeting in Washington, DC.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $750,000 for the 17-month budget.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $250,000 for the 17-month budget period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

CFDA: 13.670 Research and Demonstration: Title I of the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended.

2. Administration for Native Americans

2.01 Developing a Comprehensive National Model for Native American Veterans to Access and Utilize Services and Benefits

Eligible Applicants: National non-profit Native American organizations with national perspectives, or consortia of nonprofit Native American organizations which together have a national perspective.

Purpose: To develop and test an effective comprehensive national services access model for Native American veterans, which can be replicated nationwide, to assist in eliminating the problem of inaccessible, fragmented, and uncoordinated services experienced by Native American veterans at all levels of government (tribal, State and Federal). During the project period, the model must be tested in two sites.

A secondary purpose of this priority area is to develop a national database on Native American veterans which will provide critical information necessary to and in support of the national services access model. The database also will assist tribal and Federal leaders in better targeting services to Native American veterans. The development of this database, which should also serve as a replicable model, must include national census data on Native American veterans, information on the geographic distribution of Native American veterans on/off reservations, information on utilization levels of various services, barriers to the use of services, and other pertinent data.

Background Information: The Native American population, as a whole,

experiences more poverty and social ills, including the highest unemployment rates, poorer health and less education, than any other group in America. Many of these problems can be attributed to the lack of access to opportunities in the areas of education, health care and employment and training.

As a result of their service in the armed forces of this country, veterans are provided with special opportunities and services not necessarily available to other groups. However, every study of Native Americans indicates that current Federal and State programs designed to help all veterans are not adequately meeting the needs of Native American veterans in terms of availability of access to and utilization of services despite the overwhelming social and economic problems that Native American veterans face.

In the final report of the Advisory Committee on Native American Veterans (required by Pub. L. 99–272), two major problems related to the Department of Veterans' Affairs (VA) services to Native American veterans were identified. These problems are a lack of statistical data on Native American veterans and the lack of statistical data on Native American veterans and the under-utilization by Native American veterans of benefits to which they are entitled, including health care, education, and other supportive services.

Although the exact number varies depending on definition, there seems to be general agreement that about 12 percent of the Native American population are veterans. The 1985 Veterans Administration Statistical Brief identifies a population of 159,900 American Indian, Aleut, and Eskimo veterans. Hearings held in November 1989 by the Select Committee on Indian Affairs indicated that there are 170,000 Native American veterans. Although specific numbers are not available, there is evidence that Native Hawaiian and Native American Pacific Islander veterans are also underrepresented in receiving services.

Because Native American veterans experience such a gross level of needs, there is a need to develop and implement a national Native American Veterans model that identifies services and benefits available to Native American veterans and improves access to and receipt of needed services by these veterans. The goal of developing and implementing such a model should be to encourage social self sufficiency and sustained improvement in the health and social conditions of Native American veterans. Additionally, a secondary focus of the project is to develop a model national database of information on Native American which will assist in the development of the comprehensive national services access model and provide needed information to tribal and Federal leaders in addressing the problems of Native American veterans.

The project should seek not only to improve the responsiveness of State and Federal services in meeting the needs of Native American veterans but, where appropriate and in response to the concerns of Tribal Governments and Native American veterans organizations, identify alternative and innovative approaches for Tribal Governments in providing services for their veterans, e.g., direct provision of services through 638 contracting procedures.

This priority area directly supports several Departmental initiatives, such as strengthening the family's capability to care for its members and the integration of services to improve the effectiveness and efficiency of social service delivery. In addition, this priority area emphasizes the Departmental initiatives to improve access to health care and enhancing health promotion.

The model developed should increase the availability and accessibility to Government services, including VA benefits, to which Native American veterans are entitled through targeting benefits and services especially to those with physical disabilities and service-related mental/emotional impairments. The model to be developed and its implementation is aimed at eliminating the problem of inaccessible, fragmented and uncoordinated services at all levels of tribal, State and Federal governments.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Provide an overall design for the entire proposed three year project period, including an identification of project phases (planning, design, implementation, evaluation, dissemination) and timeframes.
- Describe a services access model which is comprehensive, including, at a minimum, benefits/services in the areas of health, job training/employment, financial benefits, and social services available to Native American veterans.
- Provide for and describe how effective coordination of all appropriate services and efforts on behalf of Native American veterans will be accomplished, including strong interface with tribal government agencies, the Department of Veterans Affairs, the social services offices of VA medical centers, and other tribal, local, State, and/or Federal agencies. Letters of commitment, specifying their roles in the project and level of involvement, should be included in the application.
- Describe how the project will provide for consultation with the Native American veterans community to obtain their input concerning the services access model, how it should be implemented, and possible site locations.
- Discuss related issues such as how case management, outreach, referral, and transportation in rural areas may help to increase access to services; and culturally appropriate support systems such as traditional healing practices.
- Describe how a national database of information on Native American veterans and their utilization of services will be developed and utilized to address the purposes of this priority area and how and to whom these data will be disseminated, e.g., to tribal/State governments, services agencies, and Native American veterans organizations as part of project activities and outcomes.
- Include the use of television, radio and print media as an integral part the design to inform Native American veterans and organizations about the project and to encourage their participation in the project. This should include plans to inform veterans with physical disabilities and service-related mental and emotional impairments who might not learn of the project through normal channels.
- Include a plan for pilot testing the model at two sites, describing geographically and demographically the communities in which the model will be tested. The two sites should be sufficiently different to provide test results that the model can be successfully implemented in different settings, a prerequisite to nationwide replication.
- Specify how the effectiveness and suitability of the model will be evaluated, including the indicators to be used, for its replication elsewhere in the Native American community.
- Describe how the project will be able to continue following the end of ANA support, including an identification of other potential funding sources which could be used to support or replicate the model.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $250,000 for the first 12-month budget period or a maximum of $750,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $187,500 for a 3-year project period. This constitutes 20 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

CFDA: 93.621 Native American Programs Act of 1974, as amended.

2.02 Stabilizing and Expanding National and International Markets for Tribal Manufacturing Companies

Eligible Applicants: American Indian Tribes, for-profit Native American organizations, and non-profit Native American organizations and tribal consortia.

Purpose: To develop and implement a national multi-tribal manufactured products marketing service to assist American Indian manufacturing companies in marketing their products to a wide range of public and private sector markets in the United States and in the international community and to help institutionalize greater marketing expertise for Indian manufacturing companies in order to strengthen, stabilize, and expand their business growth and marketing opportunities.

It should be emphasized that the purpose of this project is not to design/deliver third party training and technical assistance to Tribal companies in developing new markets for their manufactured goods, but rather to develop and implement a marketing service for the purpose of expanding Indian manufactured goods into new markets. Additionally, it is emphasized that the purpose of the project is to facilitate the transfer of expertise to each participating tribal enterprise in order that marketing capabilities will exist in each manufacturing business at the termination of the project. An expected outcome of this project, therefore, is the transfer of technological "know-how" to Tribal manufacturing companies so they will have the capabilities to undertake future endeavors to broaden their markets for manufactured goods both nationally and internationally.

Background Information: In recent years Indian Tribes have identified unemployment as their principal problem. On most reservations unemployment ranges from 40–80 percent. It has been projected that on larger reservations as many as 125 manufacturing businesses employing large numbers of tribal members would be needed to create enough jobs to substantially reduce unemployment.

To address this problem, a number of large Indian manufacturing businesses—employing or having the potential to employ 50 or more persons—have been established at considerable Federal and tribal expense and effort. Federal agencies are interested in and supportive of the growth and stability of these businesses because of their potential for reducing American Indian unemployment rates.

When these tribal manufacturing companies were formed, they were intended to be profitable on a long-term basis at a level at least equal to their direct competition. For many of them, however, a major problem encountered in their start-up was under-capitalization or debt-financing, thus placing them in a noncompetitive, subsidized "8(a)" status. These businesses are now approaching a developmental stage where they must move to a more competitive position in relation to both the general market economy and other similar businesses. Because of their tight financial structuring, many of these tribal businesses find it difficult to compete in this new and open market without support.

The long-term success of Indian manufacturers requires, in part, movement from the marketing of their products solely to governmental agencies (such as the U.S. Defense Department) to targeting on a broader spectrum of commercial or private sector markets. U.S. Government markets will fluctuate with the rise and fall of Congressional appropriations. Defense Department appropriations, for example, are expected to be reduced considerably in the immediate future.

To address these problems of expanding the potential national and international markets for Indian manufacturing businesses and, thus, impact tribal unemployment, this proposed marketing project should emphasize transitional strategies for these businesses to assist them in reducing dependency on Defense-related governmental contracting and to increase the development of stable, diverse, and profitable markets in the non-Defense related public sector. Particular emphasis also should be strongly placed concurrently on development and implementation of a national/international marketing strategy that will generate private sector sales opportunities for Indian manufacturing businesses.

The approach(es) proposed for carrying out this project may include a manufacturing market representative to provide direct sales support for the tribal manufacturing businesses participating in the project. Such a representative's role may include advertising products, locating buyers, arranging and consummating sales, facilitating the delivery of products, and providing follow-up to the tribal companies. Applicants may wish to consider a working arrangement with an existing advertising/marketing agency with a substantial past record in government and commercial marketing. The approach proposed may also include an advertising campaign for the tribal businesses participating in the project.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe in detail the specific strategies/approaches that will be utilized to develop and implement a manufactured products marketing service which will promote the products and expand the sales of tribal manufacturing companies in both the government (non-Defense) and private sectors and in the national and international marketplace.
- Describe how tribal manufacturing companies participating in the project will be directly involved in decision-making, planning, and other advisory capacities that will help ensure that the purposes of the project are realized and that transfer of greater marketing expertise to these companies is achieved.
- Provide a detailed implementation plan, with specified activities and milestones, for carrying out the project.
- Indicate how the project will help ensure that expanded markets and increased sales will be achieved for tribal companies and by what (quantifiable) measures success of the project will be determined.
- Indicate how the marketing expertise will be institutionalized within each tribal manufacturing business in order that successful marketing efforts will continue after the termination of the project.
- Demonstrate organizational capacity, knowledge, and experience in Indian economic development and how this capability is directly related to the purposes of this priority area, including knowledge of preferential contracting opportunities available to tribal Governments.
- Describe the knowledge and experience of proposed key staff in areas of tribal economic development, marketing, advertising, and sales.
- Provide specific written assurances of commitments from tribal manufacturing companies of their

cooperation and participation in the proposed project.

• Identify how the outcomes and findings of this project will directly benefit existing and future Indian manufacturing companies in identifying and expanding their sales of manufactured goods into stable public/private sector and national and international markets.

• Provide a plan describing how the project's activities and outcomes will be evaluated.

• Describe a strategy for disseminating information on the results of this project, including an identification of the intended audience and recipients.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $250,000 for the first 12-month budget period or a maximum of $750,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $187,500 for a 3-year project period. This constitutes 20 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

CFDA: 93.612 Native American Programs Act of 1974, as amended.

2.03 Developing Innovative Community Approaches to Entrepreneurial Activities for Native American Youth

Eligible Applicants: Non-profit Native American organizations including Urban Indian Centers, American Indian Tribal Coalitions, Non-profit Alaskan Native Regional Associations and Native Hawaiian Organizations. Eligible applicants also include public and private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands.

Purpose: To develop and test a community-based model demonstration project for youth entrepreneurial training through which work-related skills, knowledge of business development, and business implementation and management skills are transmitted to Native American youth. Such a model should provide training opportunities for the acquisition and development of skills for Native American youth. In addition, the model should meet a community's need to train persons with entrepreneurial orientations and management skills. This model also should directly benefit and support youth social development while addressing the longer-range economic needs of these youth and their communities. Although the participating youth should be the primary beneficiaries of this demonstration project, the project should be designed to benefit the larger Native American community in which it is implemented and be applicable to other such communities.

Background Information: Native Americans have the highest birth rate of all major groups in the United States, including persons of Black, White, and Hispanic descent. The Native American population is also younger than the overall population of the United States with two-fifths of the Native American population (43.8 percent) under the age of twenty (as compared to 30.3 percent for Whites and 32 percent for the total U.S. population).

Recent studies have pointed out that the lack of entrepreneurial and management skills within Native American communities is a barrier to economic development. Reservation economic development in particular is still in the embryonic stage of development offering tremendous economic potential for the future.

Native Americans have not had the opportunity to develop entrepreneurial skills through traditional avenues. Few Native American children have been exposed to entrepreneurial activity through their school experience or through community role models. In comparison with the larger United States population, the idea of private ownership and/or private profit is not a traditionally held value among Native Americans. Since a large segment of the Native American population is young and will provide the leadership of tomorrow, an entrepreneurial experience for training future community and economic leaders is highly desirable.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

• Demonstrate a thorough understanding of the need for entrepreneurial activities for Native American youth and of the expected benefits (quantifiable, where possible) to be derived from the project for both the participating youth and the larger Native American community.

• Include a detailed work plan which describes the steps involved in promoting and implementing entrepreneurship among Native American junior and/or senior high school students.

• Address the development of entrepreneurial enterprises that are student-operated and that include the expectation of income producing benefits for participating youth. These enterprises may include the development of services needed by the community; co-ops providing for the needs of the participants; and/or, individual or group-managed businesses for which markets may be identified within or outside the tribal community where the demonstration project is being implemented.

• Identify the expected benefits of the project to both the participating youth and the larger Native American community. Objectives should be quantifiable to the extent possible.

• Include and document through letters of commitment the support of institutions and organizations at the local community level such as financial institutions, private industry councils, local secondary school systems, colleges and universities and successful businesses.

• Describe how the model to be developed and implemented relates to activities in boarding schools, public schools, reservation day schools or after-school programs outside of the school setting.

• Describe how the results of the model demonstration project will be applicable to other Native American communities with similar needs and resources and how the results will be disseminated.

• Provide a plan describing how the project's activities and outcomes will be evaluated.

• Describe a strategy for disseminating information on the results of this project, including an identification of the intended audience and recipients of project results.

• Describe how the project will be able to continue following the end of ANA support.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $200,000 for the first 12-month budget period or a maximum of $400,000 for a 2-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $400,000 is $100,000 for a 2-year project period. This match constitutes 20 percent of the total project budget.

Anticipated Number of Projects To Be Funded: It is anticipated that one project will be funded.

CFDA: 93.612 Native American Programs Act of 1974, as amended.

3. Office of Community Services

3.01 Public Information/Community Awareness Projects for the Prevention of Family Violence

Purpose: To assist in the development of public information and educational projects and activities that will serve as models for the prevention of family violence. These projects should provide information on resources, facilities, and service alternatives available to family violence victims and their dependents, community organizations, local school districts, and other individuals seeking assistance.

Eligible Applicants: State agencies and Native American Tribes and Tribal Organizations who are, or have been, recipients of Family Violence Prevention and Services Act Basic State grants; State and local private non-profit agencies experienced in the field of family violence prevention; and public and private non-profit educational institutions, community organizations and community-based coalitions, and other entities that have designed and/or implemented family violence prevention information activities or community awareness strategies. Recipients of fiscal year 1991 discretionary grant awards for Public Information/ Community Awareness Activities for the Prevention of Family Violence are not eligible applicants for this announcement.

Background: Based on the encouraging response to the announcement for community awareness and informational activity grants for family violence prevention in fiscal year 1991, ACF plans to make these grants available in fiscal year 1992. Current surveys and research studies have indicated that, all too often within families, the response to stressful situations tends to be physically or emotionally violent. There are data which substantiate the inference that the violent response to conflicts or stressful situations may be a "learned" response, an adaptive and modeled behavior used to control or extricate a person from a particularly stressful situation.

It also has been shown, particularly in anecdotal reports, that there are victims of family violence still unaware of sources of assistance that may be available in their communities. Victims and batterers alike have indicated that they remained in their situations or felt powerless to change because they were uninformed of their options or of the community resources that may have assisted them. We also may assume that the so-called "new minorities" (e.g., Southeast Asians, Central Americans) may have both language and cultural barriers to surmount in sorting out the matrix of services and community mores in dealing with family violence. Moreover, the African American and Hispanic communities often have complained that, in general, they do not receive the most current or accurate information on available services or facilities.

The goal of this priority area is to add credible and persuasive information to the arsenal of weapons necessary to break the so-called "cycle of family violence." The achievement of this goal will help assure that individuals, particularly within minority communities, are aware of available resources and alternative responses for the prevention of violence.

The focus of this priority area requires the development of an innovative informational model that may be used by public and private agencies, schools, churches, boys and girls clubs, community organizations, and individuals. The products of this priority area will increase the amount of information on services and other available alternatives to prevent family violence. They will provide the victims, their dependents, and perpetrators, with the knowledge that assistance is available and where it can be found. Accurate information is critical to any community awareness strategy and activity. How information is communicated must be modified where communication barriers may exist because of perceived or real language differences and cultural insensitivities.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Present a plan for the prevention of family violence which clearly reflects how the applicant would coordinate with public agencies and with other community organizations and institutions active in the field of family violence prevention.
- Describe, as an element of the plan, a proposed model approach to the prevention of family violence. Two examples are:

(a) Alternate ways in which children in primary schools learn to handle conflict and disagreements; and

(b) Intervention strategies for adult perpetrators and victims.

- Include, as a critical element in the plan, the development and use of non-traditional sources as information providers. Applicants should present specific plans for the use of local organizations, businesses and individuals in the distribution of service information and materials.
- Include, as a critical element in the plan, how the applicant would be responsive to and would demonstrate its sensitivity to the minority communities to which these strategies will be addressed.
- Include a description of how the results of this plan would be measured, and provide a set of achievable objectives; provide a description of a long-range family violence prevention plan for the community that is designed to break the cycle of family violence and show how the use of the long-term plan would achieve this goal.

Project Duration: The length of the project should not exceed 12 months.

Federal Share of the Project: The maximum Federal share of the project is not to exceed $60,000 for the 1-year project period. Applications for lesser amounts also will be considered under this priority area.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the Federal share of $60,000 is $20,000 for a 1-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded at the maximum level; more than four projects may be funded depending on the number of acceptable applications for lesser amounts which are received.

CFDA: 93.671 Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended.

4. Office of Policy and Evaluation

4.01 Improving the Administration of Child Welfare Services

Eligible Applicants: State public child welfare agencies administering the title IV–E program or county agencies in State supervised-county administered States.

Purpose: To demonstrate improvements in child welfare service delivery and program cost effectiveness that are attainable by utilizing more efficient administrative processes, including workflow management and control, record keeping, and management information.

Background and Information: Recent Children's Bureau reviews of State child welfare programs indicate that inefficient administrative procedures exist which are adversely affecting the quantity and quality of services delivered to clients. Such inefficiencies can also put unnecessary pressure on agency budgets.

Record keeping, report writing and other paperwork activities consume such a significant portion of workers' time that they adversely affect the number of clients who can be served and the quality of the services that are delivered. Much of the required paperwork activities are repetitive, overlapping, and duplicative. Sometimes the same information must be entered on form after form, from intake through case closure.

Despite the often extensive record keeping requirements, the information collected is not always that which is needed for optimal effectiveness or efficiency. In addition, useful information which is available is not always provided to those who need it or is not presented in a usable form.

It is likely that the data collection and information management problems cited above are also associated with more general problems related to overall workflow and resource management. A thorough needs assessment and analysis is needed of the existing child welfare workflow, information processing, case record maintenance practices and reporting requirements. This needs assessment and analysis should result in the development of a plan, with recommendations for improvements in the general areas noted. These recommendations would include, but not be limited to, changes needed to improve program operations related to workflow, resource management or information management, and may include the development of a simple, more efficient automated system. The plan that is developed should also detail how these recommendations should be implemented in a pilot test and provide for an evaluation of the pilot to assess the extent of any accrued benefits.

Minimum Requirements for Project Design: This is a multi-phase cooperative agreement project in which substantial Federal involvement is anticipated. The 4-year project involves problem definition, developing a proposal for program modifications necessary to address identified problems, baseline data collection, conducting a pilot test on the implementation of recommended modifications, gathering and evaluating data on the process of the test and its outcomes and disseminating the findings. The specific respective responsibilities of Federal staff and the awardees will be negotiated prior to the cooperative agreement award. In order to compete successfully under this priority area, the applicants should:

- Outline a plan of interaction with ACF for implementation of the project under a cooperative agreement including, as appropriate, activities involving Headquarters and Regional Office staff.
- Identify the tasks that would be associated with each phase.
- For county agencies in State supervised-county administered States, include an agreement with the State agency to participate, to the extent necessary, in the project.
- Identify a medium sized State or local public child welfare agency that employs approximately 30 to 50 child welfare caseworkers to be used as the pilot test site.
- Retain the services of a qualified evaluator with experience in working with child welfare systems or other public or private service systems. This evaluator could be a consultant from a school of public administration or business management, a consulting firm or a resource center which has the demonstrated success and technical expertise required of this project. The evaluator's services would be required through all phases of the project. The evaluator should be independent of the agency. In addition to assisting the grantee in finalizing recommendations for administrative improvements, this consultant will also be required to identify and measure service delivery, and the costs and benefits (direct and indirect) which accrue from the improvements made. A provisional agreement worked out with such a consultant should be included with the application and should outline the terms of the agreement and the costs involved. To minimize costs, the proposed consultant should be located within the applicant's State or in a nearby State.
- Provide a description of the current child welfare program and a preliminary analysis of current problems associated with the management and administration of the program. This program description and problem analysis should indicate how the following tasks would be carried out:
- An assessment and conduct of a systems analysis of the agency's work methods and information needs, including data collection, processing and record keeping functions, and the attendant flow of information and clients through the child welfare "system" from the viewpoint of both the caseworker and the agency.
- The identification of all of the forms and reports that are routinely completed, including the information that is recorded during intake, investigation, assessment, placement and change of care, case transfer, case plan development, court and administrative case reviews, inter- and intraagency referrals for services, multi-disciplinary staffing, payment rate changes, status reports, aftercare, case closure processes, and other purposes.
- The identification of each data element on these forms, the specific origin of the data requirement and how it is used.
- An evaluation of the flow, utility and the redundancy of each form, report and information requirement and the development of recommendations regarding the elimination, restructuring, consolidation, or retention of each requirement, process or form, as appropriate. As part of this process there should be a clear delineation of the amount of time spent by the average caseworker on direct services to the client as well as the time required for paperwork and other procedural activities.
- The identification of how the required information is related to the State's current or proposed child welfare information system and will be related to the proposed Federally mandated Adoption and Foster Care Analysis and Reporting System (AFCARS).
- The identification of how the required information is related to the State's current or proposed National Child Abuse and Neglect Data System (NCANDS).
- The development of a plan for streamlining the information and paperwork flow which includes recommendations for automation and projects the amount of staff time to be freed for direct casework practice if the plan is implemented. To the extent possible the recommendations should be prioritized.
- The development of guidelines for recording case activities.
- Provide a description of how the proposal for a new/revised system would address the following concerns and activities:
- Child welfare record keeping and how it can reduce paperwork and avoid repetition of functions by streamlining and simplifying the existing information flow through the child welfare system so as to reduce the total reporting time.
- How the proposed system would be responsive to changing information that needs to be periodically updated and reexamined to create a database that would provide information and improve the quality of decisions made for children such as reunification with their family, termination of parental rights, adoption, and independent living.
- How the proposed system would address the use of and accessibility to information, and an adequate level of system security and client confidentiality.

• How the proposed system would move information and clients from workstation to workstation.

• The requisite hardware that would be purchased or leased to implement the pilot test, the instructional manuals that would be developed, and the training that would be provided staff. The cost involved in these activities should be separately identified and justified in the budget.

• The conduct of a pilot test of the proposed system and continuing the process of trouble shooting, improving, and modifying the system as required.

Note: The grantee's analysis and proposal will provide the initial basis for the consultant/evaluator's independent assessment of the problems and for developing a final work plan. After review of and agreement by the agency and ACF regarding this work plan and the collection of necessary baseline data, the adopted recommendations would be implemented and then tested during the pilot phase.

• Propose an evaluation plan that would begin collecting benchmark data prior to the time that the pilot test is initiated as well as post-implementation data after the pilot program adjustments are made. This plan should provide for monitoring the pilot test and measuring effects related to improving the efficiency and effectiveness of program services and costs (including assessing the extent to which problems identified prior to the introduction of the modifications have been remedied). The evaluation plan should be developed and implemented by persons who are independent of the agency (e.g., an outside consultant). It must provide for a final report that would be the product of the cooperative effort between the agency and the consultant/evaluator.

• Propose a dissemination plan which includes:

• writing articles for publication in child welfare journals and other publications;

• disseminating project findings through meetings and conferences sponsored by the Children's Bureau, the Child Welfare League of America, the American Public Welfare Association, the Association of State Foster Care Directors and other appropriate organizations; and

• developing a monograph to be sent to other State and local public child welfare agencies that may wish to replicate the methods and results of the project.

• Describe how any software developed under this project would be made available to other agencies.

• Provide a detailed budget for the project.

The cooperative agreement awarded under this priority area will fund that portion of the proposed project which is not paid for through title IV–E administrative costs and the appropriate State matching funds, since discretionary financial assistance may not be used to fund activities which can be supported and claimed through entitlement programs. Thus, the discretionary funds awarded for this project may only pay for that portion of the project which cannot normally be claimed under title IV–E. The activities proposed in this cooperative agreement are allowable costs under title IV–E administrative costs to the extent that they improve the efficiency and effectiveness of the title IV–E program. The costs of such activities, however, must be allocated based on the proportion of title IV–E children served by the applicant agency.

Project Duration: The length of the project must not exceed 48 months. The timing and duration of each phase will be proposed by the applicant.

Federal Share of Project Costs: The maximum Federal share of the project must not exceed:

• $600,000 in discretionary funds, over the life of the four year project, which may be used on behalf of nontitle IV–E eligible children served by the applicant agency under the project, plus

• 50 percent of the allowable title IV–E administrative costs that may be claimed based on the percentage of title IV–E eligible children served by the system developed during the period of the project. The title IV–E administrative costs must be claimed on the quarterly IV–E–12 submittal in the customary manner.

Matching Requirement: There is no non-Federal matching requirement for the Federal discretionary cooperative agreement of $600,000 for this project. The minimum non-Federal matching requirement by the applicant agency for title IV–E administrative costs must equal 50 percent of allowable IV–E administrative costs. The actual amount of allowable title IV–E administrative costs depends upon the percentage of title IV–E eligible children served by the system that is developed during the period of the project.

Examples of the Budget Matching Formula:

Example 1: Based on the assumption that 40 percent of the caseload in the subject agency is title IV–E eligible.

Source of funds	4-year cost
Federal discretionary grant (60 percent of project cost)	$600,000
Title IV–E administrative costs (40 percent of project cost)	400,000
Federal share of IV–E allowable administrative costs at 50 percent	200,000
Non-Federal match for IV–E allowable administrative costs at 50 percent	200,000
Total budget	1,000,000

Example 2: Based on the assumption that 27 percent of the caseload in the subject agency is title IV–E eligible.

Source of funds	3-year cost
Federal discretionary grant (73 percent of project cost)	$600,000
Title IV–E administrative costs (27 percent of project cost)	221,918
Federal share of IV–E allowable administrative costs at 50 percent	110,959
Non-Federal match for IV–E allowable administrative costs at 50 percent	110,959
Total budget	821,918

Anticipated Number of Projects to be Funded: It is anticipated that 2 cooperative agreements will be funded: one from a State administered State; and one from a State or county agency in a State supervised-county administered State. Projects will be funded as cooperative agreements with ACF.

CFDA: 93.647 Social Services Research and Demonstration; Section 1110 of the Social Security Act, as amended.

4.02 Multi-State Foster Care Data Archive

Eligible Applicants: State or local, public or nonprofit, agencies, universities, and nonprofit organizations or institutions.

Purpose: To support the development, implementation and maintenance of a single multi-State foster care data archive, utilizing State administrative data, for use in policy development and research.

Background Information: For many years, concerns have been raised about the lack of information available on children in foster care and their families. To address some of these concerns, in 1986 Congress amended title IV–E of the Social Security Act by adding section 479 which required the Federal Government to institute a foster care and adoption data collection system. In response to this legislative mandate, the Administration for Children and Families (ACF) will soon implement the Adoption and Foster Care Analysis and Reporting System (AFCARS). The AFCARS will collect information on children in foster care and children adopted through the public child welfare

system. The system will be mandatory, and the failure of a State to participate will result in financial penalties.

Although AFCARS will substantially improve information available on children in foster care and children being adopted, it is not intended to, nor will it ever, provide all of the information necessary to develop policy at the Federal, State and local levels on this population of children. There are, however, other existing data sources that have historically been underutilized. Primary among these are the statewide information and tracking systems on children in foster care established to meet the requirements of Public Law 96–272, the Adoption Assistance and Child Welfare Act of 1980. In addition, States have other administrative databases which relate to children in foster care, such as data on payments made for services provided to these children.

Other relevant administrative databases available at the State level may include data on Medicaid utilization, education, Aid to Families with Dependent Children (AFDC) or Child Support Enforcement, and data maintained by vital statistics offices. These and other administrative databases maintained by the States can be used to provide detailed information on foster care population changes over time, services being utilized and their costs, and comparisons of how foster care children and their families might differ in the frequency of their receipt of services or participation in various programs from other children and their families.

The proposed project will be voluntary for the States and should include a wider range of information and data sources than will be mandated by AFCARS. Information generated by the project will be used to supplement information generated by AFCARS and will provide an opportunity for detailed longitudinal studies of children in foster care.

Analytical work utilizing State administrative data has been conducted by the Chapin Hall Center for Children at the University of Chicago. Chapin Hall staff have worked with the States of Illinois, New York, Michigan and California to develop comparable analytical files and to conduct analyses addressing such issues as the use of relative foster care and the placement histories of children. The process of developing comparable analytical files and conducting parallel analyses across States requires extensive work with State staff and with university-based or nonprofit research institute-based researchers to gain access to the data, create analytical files and analyze the data. The goal of the project to be funded under this priority area is to have at least ten large States actively participating in this single effort by the end of five years.

Minimum Requirements for Project Design: This is a five year cooperative agreement project in which substantial Federal involvement is anticipated. The specific respective responsibilities of Federal staff and the awardee will be negotiated prior to the grant award. In order to compete successfully under this priority area, the applicant should:

- Describe the applicant's experience in developing analytical files from large, complex case-specific databases; conducting analyses of case-specific child welfare and other related administrative data files; linking data through time and from different databases; and developing and maintaining data archives and insuring the confidentiality of the data. Also describe the hardware and software currently available to the applicant in the conduct of the project as well as additional hardware and/or software needed to conduct the project.
- Describe how at least ten large States would be identified and recruited to participate in the project. This should include a discussion of how State staff and university researchers would be identified; how access to the administrative databases would be achieved; how the appropriateness of administrative databases would be assessed; and how full participation of the States would be assured by the end of the project.
- Describe how technical assistance in developing analytical files and conducting analyses would be delivered to those States which need it.
- Describe how an advisory committee for the project would be established. The project advisory committee should be composed of both State agency and university researchers as well as policymakers and practitioners and other interested persons in this area. A discussion of the composition and function of the committee should be included in the application.
- Describe the reports that would be developed under the project, including the types of information that would be presented, and the steps, including submission for publication to referred journals, that would be undertaken to disseminate and promote the utilization of project findings. Also describe how information on project findings would be disseminated to both participating and non-participating States.
- Describe how support would be obtained from sources other than this cooperative agreement during the period of the project to enhance its work and how the project would continue with funds from other sources after the five-year project period has ended.
- Provide assurances that the principal investigator would attend a 2–3 day annual meeting of grantees in Washington, DC.
- Outline a plan of interaction with the Administration for Children and Families (ACF) for the implementation of the project under a cooperative agreement including, as appropriate, activities involving Headquarters and Regional Office staff.

Project Duration: The length of the project must not exceed 60 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $300,000 per 12-month budget period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $1,500,000 is $500,000 for a 5-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 1 project will be funded.

CFDA: 93.647 Social Services Research and Demonstration, Section 1110 of the Social Security Act, as amended.

4.03 Transfer of International Innovations

Eligible Applicants: Any State, local, or public nonprofit organization or agency (including colleges and universities) in the United States or other countries may apply to this priority area.

Purpose: To improve the quality, accessibility and accountability of social service programs in the United States by transferring to this country innovations occurring in social service delivery systems in other countries, particularly community-based solutions to meet the social service needs of children and families at risk.

In light of the HHS Secretary's Eastern European initiative, applications that propose cooperation with social service organizations in the "emerging democracies" of Eastern Europe are encouraged. This is not meant to exclude applications that propose cooperation with social services organizations in other parts of the world, but aims to focus the attention of some of the applications to this geographic area of interest.

Background information: While the United States is a natural field for research and demonstration in the area

of social services, we can gain considerable insight from other countries through a knowledge of their social service programs, authorizations, governance, and delivery systems. Transferring these innovations can lead to an enhancement of, or adaptations to, our domestic social service activities.

The "Transfer of International Innovations" priority area included in the FY 1990 and 1991 CDP announcements listed the titles of and the grantees for the seventeen projects that had been funded under this priority area in previous years. The subjects of these projects include:

- Improved learning and living environments of children in underprivileged communities;
- Job placement for low-income unemployed youth;
- Home-based intervention for low-income minority preschool children and mothers;
- Community self-help associations: mediating structures for volunteers/professionals;
- Opening technology to the developmentally disabled;
- Exchange of technology regarding spina bifida;
- Innovative social service techniques for working with the Latino family;
- Decentralization of services for the disabled;
- Micro-enterprise credit and technical assistance;
- Family preservation; and
- Developmental disabilities and concomitant severe behavioral and psychiatric disorders.

In earlier years, the "Transfer of International Innovations" priority area solicited proposals related to aging. Since the Administration on Aging is not organizationally located within the Administration for Children and Families, projects related to aging and aging issues are not being solicited. The subjects of the aging-related projects that were funded include:

- Income generating projects for the elderly;
- Increasing self-sufficiency and self-esteem in old age through employment;
- Home care for the elderly;
- Application of innovative techniques to study and improve the quality of care in domiciliary care facilities; and,
- Community-based and in-home services for frail and economically disadvantaged elderly;

During the FY 1991 CDP process, an additional four projects were funded:

- "Developing Child Welfare Ombudsman Programs in the United States" by the American Bar Association's Center on Children and the Law in Chicago. The project will investigate programs which provide ombudsman services to children and parents involved in public child protection and child welfare systems throughout the world.
- "Going Local: Patch and Neighborhood Approaches—A Transfer from the United Kingdom" by the University of Iowa's School of Social Work. The project aims to improve social services for children, youth, and families using a policy process analysis which demonstrates the transferable elements of the British "Patch" system of community-based service delivery through demonstration in an Iowa county.
- "Personal Assistance Services—International Models for U.S. Adaptation and Replication" by the World Institute on Disability in Oakland, California. The project will explore exemplary, consumer-driven European personal assistance services for the disabled, especially Eastern European models, for replication.
- "Transfer of International Innovations—Development of A Clinical Monitoring System to Support Foster Care in Michigan" by the Merrill-Palmer Institute at Wayne State Institute, Detroit, Michigan. The project aims to enhance effective and accountable services via the transfer of an innovative clinical information system for foster care.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the application should:

- Be relevant to domestic research with the possibility of complementing ongoing or new projects in the United States.
- Have the promise of contributing significantly to the achievement of one or more of the major ACF goals and be of benefit to one or more of the ACF target groups—Native Americans, the social and economically needy, refugees, the developmentally disabled, and at-risk children, youth, and families.
- Relate to the U.S. commitment to its participation in international organizations, both governmental and nongovernmental, and to United Nations-sponsored events, such as the International Year of the Family—1994 and follow-up to the World Summit for Children, the UN Decade of Disabled Persons and the UN International Youth Decade.
- Include an adequate mechanism to allow for wide dissemination and replication of project findings.
- Indicate a focus either in the United States or shared with the transferring country. The focus cannot be exclusively in another country. The application must include a U.S. component and a U.S. project director or co-director.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $100,000 per budget period. Neither Federal funds nor the non-Federal match can be used for expenditures related to international travel. However, applicants may use other sources of funds available to them for this purpose.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

CFDA: 93.647 Social Services Research and Demonstration, Section 1110 of the Social Security Act, as amended.

4.04 Decategorization of Services

Eligible Applicants: State agencies currently implementing child welfare decategorization projects in one or more jurisdictions within the State (e.g., cities, counties).

Purpose: To demonstrate the benefits of decategorization of child welfare services on a community-wide basis, including pooled funding and collaborative planning. The purpose of the decategorization of services is to allow the community to implement a service delivery system that is family centered, comprehensive, flexible, and oriented to prevent out-of-home placement and serve troubled families and children.

Background Information: Over the past several years, there has been increasing interest in state child service systems change with the goal of improving the integration, coordination, and continuity of services available to families. One example of service system change has been to decategorize services at the local or community level. A few States have undertaken to restructure the delivery of child and family services by pooling numerous categorical funds and developing a comprehensive community planning process for the flexible and efficient use of the funding pool. This new approach allows for the development of more effective and efficient State and local methods of supporting vulnerable families and protecting children through

a service delivery system designed to be community-based, family centered, and oriented towards prevention of out-of-home placement. Such services emphasize family support, family preservation, family reunification, and services tailored to meet individual and family needs.

In large part, decategorization projects have been developed in response to escalating foster care placement rates and fragmented, complex patterns of categorical child welfare funding and services delivery. For example, funds typically are available for out-of-home placement but are more limited for prevention and placement-prevention efforts. Decategorization is seen as a means of deploying resources to support families more effectively.

Under decategorization, funding streams are combined to create a child welfare service fund within each county or other local jurisdiction participating in the program. These funding streams may include funds from such programs as Federal title IV–B child welfare services; State foster care; in-home services; State institutional care for delinquent, mentally ill, or mentally retarded children; adoption services; day care services; as well as direct agency staff funds.

All existing State projects are not identical but, based on descriptive material from current projects, each typically establishes a governance structure or mechanism, develops a community child welfare services plan, develops methods to maintain budget neutrality (no more money can be spent under the new system than would have been projected to have been spent under the prior system), and attempts to reduce excessive reliance on expensive out-of-home placements of children so that cost savings can be retained locally for reinvestment in enhanced community-based services. Considerable collaboration between and among agencies is necessary; individual and family outcomes are primary measures of the success of the program.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the application should:

- Describe how the existing decategorization program provides for a service delivery system that is community-wide and locally managed and is based on a community child welfare services plan. (The project is not required to be Statewide.)
- Identify the several categorical sources of funding which have been combined in a single child welfare fund.
- Describe the existing joint governance structure of the project, (e.g., the local county director of social services, the chief juvenile court judge, and the county board of supervisors) and any planned modification.
- Describe how the existing project utilizes a system that is flexible in providing a comprehensive program of services to meet the child welfare and social service needs of children and families, including the delivery of services based on the needs of families and children rather than on categorical criteria and the availability of categorical funding.
- Describe how early intervention and prevention services are emphasized to reduce the likelihood of larger problems or entrenchment of existing problems within families. Describe current and proposed efforts to reduce excessive reliance on expensive placements of children (residential, out-of-state placements) so that child placements are not at great distances from their homes and those funds can be retained locally for investment in community-based services.
- Indicate the mechanisms used to assure collaboration among agencies and service providers which provide easy access to services on behalf of families, e.g., uncomplicated, flexible collaborations and client movements among service providers, an intake process that is uniform across entry points, and a data/information exchange process among agencies.
- Describe how the State plans to use the additional funds under this announcement including any proposed modifications or changes to the existing decategorization effort.
- Include a detailed plan for a credible third party evaluation. The evaluation must, at minimum, contain a process evaluation explaining how the new system was developed and implemented, its strengths and weaknesses, and its effect on program administration. In addition, the evaluation must describe decategorization's effect on service delivery, including an assessment of whether there was improvement in the match between services needed and those provided, the efficiency and timeliness of service delivery, and the overall volume of services. At least one third of project costs must be set aside for the evaluation.
- Include an assurance that Federal funds under this announcement will not be used for the direct provision of services and will not supplant State and local funds currently being utilized for the decategorization effort. Funds made available under this announcement may be used for activities such as planning, administration (including personnel), coordination, training, data collection, and other activities directed at improving the coordination of services.

Project Duration: The length of the project period must not exceed 17 months.

Federal share of Project Costs: The maximum Federal share will not exceed $300,000 depending on the scope of the project proposed.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that no more than four projects will be funded.

CFDA: 93.647 Social Services Research and Demonstration: Section 1110 of the Social Security Act, as amended.

Part IV—Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in part III.

A. Required Notification of the State Single Point of Contact

All applications under the following priority areas are required to follow the Executive Order (E.O.) 12372 process:

1.01–1.06 Head Start
1.22–1.29 Child Abuse and Neglect

All States and territories, except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Pennsylvania, Oregon, Virginia, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

It is imperative that the applicant submit all required materials to the SPOC and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF

424, item 16a. The SPOCs will be notified of any applicant not indicating SPOC contact on the application, when SPOC contact is required. ACF must obligate the funds for these awards by September 30, 1992. Therefore, the required 60-day comment period for State processes' review and recommendation has been reduced and will end on September 11, 1992, in order for ACF to review, consider and attempt to accommodate SPOC input.

These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in grant award. This process of notifying the State Single Point of Contact is required when a program is covered under E.O. 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. Therefore, the applicant should contact his or her SPOC directly to determine what materials, if any, the SPOC requires. Contact information for each State's SPOC is found at the end of this part.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application Standard Form (SF) 424. When comments are submitted directly to ACF, they should be addressed to the application mailing address located in Part I of this announcement.

B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is August 10, 1992. Applications must be either postmarked or hand-delivered no later than August 10, 1992, to the address indicated in part I of this announcement.

Hand-delivered applications will be accepted Monday through Friday prior to and on August 10, 1992, during the working hours of 9 a.m. to 5:30 p.m. in the lobby of the Mary E. Switzer building located at 330 C Street, SW., in Washington, DC. When hand-delivering an application prior to the deadline, call (202) 755–4560 or (202) 205–9860 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either:

1. Received at, or hand-delivered to, the mailing address on or before August 10, 1992, or,

2. Postmarked on August 10, 1992, or before and received in time to be considered during the competitive review process expected to be held within four weeks of the deadline date.

When mailing proposal packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. If proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the August 10, 1992, deadline are considered late applications and will not be considered or reviewed in the current competition. The ACF will send a letter to this effect to each late applicant.

The ACF reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; if there is widespread disruption of the mail; or if ACF determines a deadline extension to be in the best interest of the Government. However, ACF will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A, Page 2 and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

In order to assist applicants in correctly completing the SF 424 and SF 424A, a sample of completed forms has been included at the end of part IV of this announcement. This sample is to be used only as a guide for submitting your application.

Where specific information is not required under this program, NA (not applicable) has been preprinted on the form.

Please prepare application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information"

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. "Descriptive Title of Applicant's Project" Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter "00."

Items 15. Estimated Funding Levels

In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see part III, sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 11, 1992.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR Part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated

total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section 8, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6i. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, § 74.51, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. The key words are to be selected from the list provided at the end of part IV of this announcement. These key words will be used for computerized information retrieval for specific types of funded projects.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in part III. The narrative should also provide information concerning how the application meets the evaluation criteria (see section C, part III), using the following headings:

(a) *Objectives and Need for Assistance;*

(b) *Results and Benefits Expected;*

(c) *Approach;* and

(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in section C of part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½ x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed-material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages)

background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part V—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;
—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);
—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.
—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
—Budget justification for Section B—Budget Categories;
—Table of Contents;
—Letter from the Internal Revenue Service to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project summary description and listing of key words;
—Program Narrative Statement (See part III, section C);
—Organizational capability statement, including an organization chart;
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
—Certification Regarding Lobbying; and
—Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application and of the four digit identification number assigned to their application. This number and the priority area must be referred to in ALL subsequent communication with ACF concerning the application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACF by telephone at (202) 755–4560.

Dated: June 3,1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

S. Timothy Wapato,

Commissioner, Administration for Native Americans.

Howard Rolston,

Director, Office of Policy and Evaluation.

Eunice S. Thomas,

Director, Office of Community Services.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905.

Alaska

None.

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, The Capitol, Office of Planning and Budgeting, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855.

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5883, FAX (808) 548–6172.

Idaho

None.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610.

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725.

Kansas

None.

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382.

Louisiana

None.

Maine

State Single Point of Contact, ATTN: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490.

Massachusetts

State Single Point of Contact, ATTN: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7111.

Please direct correspondence to:, Manager, Federal Project Review, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Minnesota

None.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522.

Nebraska

None.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4420, Attention: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155.

Please direct correspondence and questions to: Attention: Jim Bieber, Telephone (603) 271–2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Aurelia M. Sandoval, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770.

Oregon

None.

Pennsylvania

None.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676.

Texas

Thomas Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778.

Utah

Carolyn Wright, Office of Planning and Budget, Utah State Clearinghouse, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326.

Virginia

None.

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop CH–51, Olympia, Washington 98504–4151, Telephone (206) 753–4978.

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010.

Wisconsin

William C. Carey, Federal State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741.

Please direct correspondence and question to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, Telephone (608) 266–0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574.

American Samoa

None.

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Palau

None.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750.

List of Key Words

Abandoned infants/children
Abuse
Accreditation
Administration
Adoption
Advocacy and guardianship
Adult day care (use home care with aging and elderly)
Adults
African Americans
Aging and elderly
Aging-out
Agriculture
Alcoholism
Allied professional education
Alternative financing
Archive
Asians
At-risk youth
Audio-visual
Barrier-free design
Blacks
Budgeting and finance
Business development training
Cable television
Career and vocational education
Caregiving
Case management
Challenge grants
Child abuse and neglect
Child care
Child care centers
Child development
Child health
Child protective services
Child welfare
Children
Clearinghouse
Client outcome measures
Coalitions
Collaboration
Colleges
Community
Community care
Community-based
Community college
Community integration
Community foundation
Competitive employment
Comprehensive care
Computer networks
Computers
Conferences
Congregate housing
Consumer education
Continuing education
Contracting
Cooperative agreement
Cooperatives
Coordination
Coordinated services
Correctional facilities
Corrections
Counseling
Courts
Crisis intervention
Crisis nurseries
Cross-cultural
Cross-cutting
Cultural activities
Cultural sensitivity
Curriculum
Curriculum development
Data collection
Day care
Day care centers
Decategorization
Deinstitutionalization
Design
Developmental child care
Developmental disabilities
Disabilities
Disabled
Dissemination
Dropouts
Dysfunctional families
Drug-exposed infants
Economic development
Education and training
Effectiveness measures
Efficiency
Elderly persons
Emergency services
Emergency shelters
Employer-supported human services
Employment
Entrepreneurship
Environment
Environmental design
Environmental protection
Evaluation
Exploited youth
Families
Family counseling
Family day care
Family preservation
Family violence
Fellowships
Field initiated
Films
Finance
Fire safety
Fiscal management
Food and nutrition
Food banks
Forecasting
Foster care
Foster grandparents
Foundations
Frail elderly
Friendly visitors
Gerontology training
Group homes
Guardianship
Handbooks
Head Start
Head Start children with handicaps
Health
Higher education
Hispanics
Historically Black Colleges and Universities (use HBCU)
Home-based services
Home care
Home equity conversions
Homeless
Hospitals
Hospices and nursing homes
Housing
Human services
Immigrants and refugees
Immunization
Income generation
Independent living
Indians
Infants and toddlers
Informal caregivers
Information centers
Information and referral
Information transfer
In-home care
Institutionalization
Information transfer
Interagency cooperation
Interdisciplinary
Intergenerational
International
Interstate agreements
Intervention
Intrafamilial
Investigations
Isolated elderly
Job bank
Job clubs
Job placement
Judicial system
Juvenile justice
Latchkey and school-age children
Law enforcement
Legal
Legal counseling

Legislation and model codes
Liability and legal issues
Linkages
Literacy
Living skills
Local government
Low-cost alternatives
Low-income
Males
Mainstreaming
Management
Management information systems
Management training
Manuals
Marketing
Materials
Meals
Mediating structures
Media
Medical
Mental health
Mentally disabled
Mentors
Microcomputers
Migrants
Military
Minorities
National
Native Alaskans
Native Americans
Native Hawaiians
Needs assessment
Neglect
Networking
Newsletters
Newspapers
Nursing homes
Nutrition counseling
Older persons
On-the-job training
Outreach
Parent
Parent involvement
Parent education
Pediatric AIDS
Peer counseling
Performance-based contracting
Permanency planning
Placement prevention
Physically disabled
Planning
Prenatal substance abuse
Preschools
Prevention
Preventive care
Primary schools
Private sector
Professional education
Prostitution
Protective services
Public education
Public/private partnership
Public-private cooperation
Radio
Rate-setting
Readiness skills
Recreation
Recruitment
Recycling
Referral
Refugees
Relative foster care
Religious institution(s)
Replication
Research
Research center
Residential care
Resource allocation
Resource center
Respite care
Retirement
Runaway and homeless youth
Rural
Samoans
School-age children
Secondary schools
Self-care
Self-help
Self-sufficiency
Seminars
Service integration
Sexual abuse
Sheltered workshops
Siblings
Single parents
Small business
Social services
Software
Special education
Special needs adoption
Speech impairment
Standards
States
Stipends
Substance abuse
Support groups
Synthesis
Target populations
Taxes
Teaching
Technical assistance
Technology
Technology transfer
Teenage parents
Teenage pregnancy
Telecommunications
Television
Temporary child care
Therapeutic day care
Toddlers
Training
Training of trainers
Transitional Living
Transitioning
Transportation
Treatment
Tribally Controlled Community Colleges
Unemployed
University
Urban
Urban Indian Centers
User fees
Veterans
Video
Visual impairment
Vocational training
Volunteers
Vouchers
Women
Workplace
Workshops
Youth

BILLING CODE 4130-01-M

Priority Area Number /1.16/

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED: 05/08/92	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name: Children's Center	Organizational Unit:
Address (give city, county, state, and zip code): 3242 Montgomery Street Trenton, NJ 08650	Name and telephone number of the person to be contacted on matters involving this application (give area code): Harriet Thomas (609) 555-8237

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 08-7654321

7. TYPE OF APPLICANT: (enter appropriate letter in box) N

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): Nonprofit Org.

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify):

9. NAME OF FEDERAL AGENCY: Administration for Children and Families

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.608
TITLE: Child Welfare R&D

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Specialized Family Foster Care

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Mercer County, N.J.

13. PROPOSED PROJECT: Start Date 01/01/92; Ending Date 09/30/95

14. CONGRESSIONAL DISTRICTS OF: a. Applicant 5; b. Project 5

15. ESTIMATED FUNDING:

a. Federal	$ 75,000 .00
b. Applicant	$ 25,000 .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 100,000 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE 05/01/92
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative: Alice Farber	b. Title: Executive Director	c. Telephone number: 609/555-8235
d. Signature of Authorized Representative: Alice Farber		e. Date Signed: 05/08/92

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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SAMPLE

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Child Welfare	93.608	$	$	$ 75,000	$ 25,000	$ 100,000
2.						
3.						
4.						
5. TOTALS		$	$	$ 75,000	$ 25,000	$ 100,000

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ NA	$ NA	$ NA	$ NA	$ 60,000
b. Fringe Benefits	NA	NA	NA	NA	9,000
c. Travel	NA	NA	NA	NA	2,000
d. Equipment	NA	NA	NA	NA	5,000
e. Supplies	NA	NA	NA	NA	3,500
f. Contractual	NA	NA	NA	NA	15,500
g. Construction	NA	NA	NA	NA	NA
h. Other	NA	NA	NA	NA	5,000
i. Total Direct Charges (sum of 6a - 6h)	NA	NA	NA	NA	100,000
j. Indirect Charges	NA	NA	NA	NA	0
k. TOTALS (sum of 6i and 6j)	$ NA	$ NA	$ NA	$ NA	$ 100,000
7. Program Income	$ NA	$ NA	$ NA	$ NA	$ 0

SAMPLE

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$ NA	$ NA	$ NA	$ NA
9.	NA	NA	NA	NA
10.	NA	NA	NA	NA
11.	NA	NA	NA	NA
12. TOTALS (sum of lines 8 and 11)	$ 25,000	$ 0	$ 0	$ 25,000

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ NA	$ NA	$ NA	$ NA	$ NA
14. Nonfederal	NA	NA	NA	NA	NA
15. TOTAL (sum of lines 13 and 14)	$ NA	$ NA	$ N A	$ NA	$ NA

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$ NA	$ NA	$ NA	$ NA
17.	NA	NA	NA	NA
18.	NA	NA	NA	NA
19.	NA	NA	NA	NA
20. TOTALS (sum of lines 16 -19)	$ 70,000	$ 60,000	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges: NA

22. Indirect Charges: NA

23. Remarks

Non-Federal Share of Project Cost: $23,333 (2nd year); $20,000 (3rd year)

SF 424A (4-88) Page 2
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Priority Area Number /____/

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:
Administration for Children and Families

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ NA	$ NA	$ NA	$ NA	$
b. Fringe Benefits	NA	NA	NA	NA	
c. Travel	NA	NA	NA	NA	
d. Equipment	NA	NA	NA	NA	
e. Supplies	NA	NA	NA	NA	
f. Contractual	NA	NA	NA	NA	
g. Construction	NA	NA	NA	NA	NA
h. Other	NA	NA	NA	NA	
i. Total Direct Charges (sum of 6a - 6h)	NA	NA	NA	NA	
j. Indirect Charges	NA	NA	NA	NA	
k. TOTALS (sum of 6i and 6j)	$ NA	$ NA	$ NA	$ NA	$
7. Program Income	$ NA	$ NA	$ NA	$ NA	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$ NA	$ NA	$ NA	$ NA
9.	NA	NA	NA	NA
10.	NA	NA	NA	NA
11.	NA	NA	NA	NA
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ NA	$ NA	$ NA	$ NA	$ NA
14. Non-Federal	NA	NA	NA	NA	NA
15. TOTAL (sum of lines 13 and 14)	$ NA	$ NA	$ NA	$ NA	$ NA

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$ NA	$ NA	$ NA	$ NA
17.	NA	NA	NA	NA
18.	NA	NA	NA	NA
19.	NA	NA	NA	NA
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges: NA	22. Indirect Charges:
23. Remarks	

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BILLING CODE 4130-01-C

OMB Approval No. 0348-0040

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with Pub. L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title: _____

Applicant Organization: _____

Date Submitted: _____

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made

or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

Title

Organization

Date

Grant Number

BILLING CODE 4130-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	**13. Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:	**Authorized for Local Reproduction** **Standard Form - LLL**

BILLING CODE 4130-01-C

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-AContinuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Note: Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

BILLING CODE 4130-01-M

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when HHS determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, HHS may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the HHS agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," " primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR part 76. See the attached definitions.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by HHS.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by as prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, HHS may terminate this transaction for cause or default.

Certification Regarding Debarment Suspension and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Grant No. _____

Signature _____

Date _____

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549: 45 CFR part 76. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations or the definitions.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a

participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in its transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Definitions

(From 45 CFR Part 76, Governmentwide Debarment and Suspension (Nonprocurement))

Covered transaction. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: Grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304 (g) and 41 U.S.C. 253 (g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(3) Researchers.

Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: Foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(i) Principal investigators.

(ii) Researchers.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communications by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

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June 11, 1992

Part III

Department of Justice

Office of Justice Programs

28 CFR Part 32

Public Safety Officers' Benefits Program; Regulations Revision; Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 32

Revision of the Regulations for the Public Safety Officers' Benefits Program

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: The regulations covering public safety officers' death benefits and the appendix to those regulations are being revised to comply with the statutory amendments to the Public Safety Officers' Benefits (PSOB) Act (the "Act"). The revisions to the regulations will implement these statutory amendments which provide a lump sum benefit to Federal, State and local public safety officers who become permanently and totally disabled as the direct result of a catastrophic personal injury received in the line of duty.

EFFECTIVE DATE: This regulation is effective June 11, 1992.

FOR FURTHER INFORMATION CONTACT: William F. Powers, Director, Public Safety Officers' Benefits Office, 633 Indiana Avenue, NW., Washington, DC 20531. Telephone (202) 307-0635.

SUPPLEMENTARY INFORMATION: Title XIII of Public Law 101-647, 104 Stat. 4834-35, amends section 1201 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3796-3796c, to provide benefits to public safety officers who have become permanently and totally disabled as the direct result of a catastrophic personal injury sustained in the line of duty. Catastrophic injury is defined to mean "consequences of an injury that permanently prevent an individual from performing any gainful work." Section 1301(c), Public Law 101-647, 104 Stat. 4834. Thus, a Federal, State or local public safety officer injured in the line of duty who is permanently prevented from performing any gainful work is, by statutory definition, permanently and totally disabled.

The Bureau of Justice Assistance (BJA) on October 3, 1991 published in the **Federal Register** (56 FR 50160) proposed changes in the regulations for the Public Safety Officers' Benefits Program (PSOB) to accommodate the new disability program. Reviewers were invited to comment for a thirty-day period ending on November 4, 1991.

Several comments were received. However, these commentators simply expressed support for the statutory amendment that authorized new benefits eligibility for public safety officers who have become permanently and totally disabled by a catastrophic personal injury sustained in the line of duty.

One commentator, the International Association of Fire Fighters (IAFF), expressed concern that the criteria specified as essential to a PSOB eligibility determination for the disability award might be adopted by State and local officials for similar disability programs in their jurisdictions. Following review, BJA concurred in the validity of the IAFF's concern on this intergovernmental issue affecting the nation's public safety officers.

Accordingly, a new paragraph, (3), has been added to § 32.2(p). The new section makes clear that the criteria specified for PSOB's "Prerequisite Disability Certification" are not intended to influence nor affect in any way the substantive or procedural provisions of public safety disability programs administered at the State and local levels of government.

In its administration of the disability program, the Public Safety Officers' Benefits Office (the "Office") will examine and validate the following prerequisite disability certifications prior to acceptance of a claim for determination of benefits eligibility under the statute, regulations and policies of the PSOB disability program. The Office's validation of the listed disability certifications, therefore, is prerequisite to initiation of eligibility determination procedures and the award or denial of the prescribed PSOB disability benefit. Accordingly, one of the following must be received by the Office before validation can occur:

a. The employing agency's official, certified award to the claimant public safety officer of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as specified in 28 CFR 32.2 (p)(1); or

b. If the employing agency does not itself make such disability awards, then an official, certified award to the claimant, public safety officer by the cognizant judicial, political or administrative agency or body of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as specified in § 32.2 (p)(2).

Following its review and validation of a public safety officer's prerequisite permanent and total disability as specified in the cited certifications, the Office will execute and complete its final disability benefits eligibility analysis and findings in accordance with the Act and its implementing regulations.

To determine whether or not a public safety officer will be unable permanently to perform any "gainful work" as defined in § 32.2(q), medical experts designated by the Office will examine a claimant public safety officer's "residual functional capacity" as defined in 28 CFR 32.2(r). Residual functional capacity is what a disabled public safety officer can still do despite limitations imposed by a disability.

Residual functional capacity is a medical determination to be made by the Office's designated medical experts. The medical determination will be based on examination of prerequisite disability certifications as specified in 28 CFR 32.2, (p) (1) and (2), and examination by these medical experts of any additional case specific medical documentation necessary to a medical assessment and determination of residual functional capacity.

If these medical experts determine that the level of a public safety officer's residual functional capacity permanently will prevent that individual from performing any gainful work, the Office will make a finding of permanent and total disability and award the prescribed disability benefit to the claimant. If the Office's medical experts determine that the level of a public safety officer's residual functional capacity will not permanently prevent that individual from performing any gainful work, the Office will make a finding of ineligibility for the prescribed disability payment.

If the Office's medical experts are unable to make a definitive determination as to whether or not a public safety officer's residual functional capacity will prevent that individual permanently from performing any gainful work, the Office will examine, in addition to the findings of its medical experts, a disabled public safety officer's "age," "education" and "work experience" as specified and defined in 28 CFR 32.2 (s), (t) and (u) to assess residual functional capacity and to determine whether or not the public safety officer permanently will be prevented from performing any gainful work.

To ensure accurate, timely and systematic review and determination of disability claims, the existing PSOB death benefit regulations have been amended where necessary to accommodate definitions and procedures essential to the administration of the disability program. The existing regulations were first

published on May 6, 1977. Since that time, the Office has awarded approximately $185 million to eligible beneficiaries in 3,100 line-of-duty deaths.

That extended experience and the existing regulations have facilitated development of the disability program and its implementing regulations. For example, 32.3 has been amended to include permanently and totally disabled public safety officers as eligible recipients of the prescribed benefits payment. Additionally, disability benefits are included in references to the disqualifying conditions specified in §§ 32.6–32.9.

Additional payment conditions are delineated at 32.18(c). This regulation articulates a statutory prohibition on death benefit payments if a decedent public safety officer had been a recipient of a PSOB disability award.

The amended regulations at § 32.20(c) ensure adequate time for a claimant to file for the disability benefit. Where, for example, eligible beneficiaries may file for death benefits for up to 1 year following a public safety officer's death, disability applicants may file for up to one year following receipt of the required prerequisite disability certification.

This standard recognizes that such certification will be awarded at some substantial time subsequent to the injury that caused the disability. A disability claimant, therefore, will have a full year to apply for the PSOB benefit after having received the qualifying disability certification as specified in § 32.2(p) (1) and (2).

Similarly, a number of the definitions in 32.2 have been amended to ensure achievement of the disability amendment's legislative objectives and to implement the functional procedures essential to program administration. For example, § 32.2(d) now defines "direct" or "proximate" in addition to the existing definition for "direct and proximate," while § 32.2(e) now defines "injury" as well as the existing definition for "personal injury."

Definitions unique to the disability program are included throughout § 32.2. For example, § 32.2(f) adheres precisely to the statutory definition of "catastrophic injury," while "permanent and total disability," "gainful work," "residual functional capacity," "education" and "work experience" are defined at § 32.2 (h), (g), (r), (t) and (u) respectively.

Finally, § 32.24 has been amended to conform the Office's appeal procedures to denials of disability claims. Accordingly, a public safety officer denied disability benefits may request reconsideration of the denial decision within 30 days after notification of benefits ineligibility.

As with a death benefits appeal, an oral appeal hearing will be scheduled within 60 days of the reconsideration request, and a new benefits adjudication will be made in accordance with the regulatory procedures specified in §§ 2.24 (a) through (i).

Executive Order 12291

These regulations are not a "major rule" as defined by section 1(b) of Executive Order No. 12291, 3 CFR part 127 (1981), because they do not result in: (a) an effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

These regulations are not a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. These regulations will not have a "significant" economic impact on a substantial number of small "entities," as defined by the Regulatory Flexibility Act.

Paperwork Reduction Act

The collection of information requirements contained in this rule have been approved by the Office of Management and Budget under OMB No. 1121–0166 pursuant to the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Emergency medical services, Firefighters, Law enforcement officers, and Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 32, title 28, of the Code of Federal Regulations is revised to read as follows:

PART 32—PUBLIC SAFETY OFFICERS' DEATH AND DISABILITY BENEFITS

Subpart A—Introduction

Sec.
32.1 Purpose and OMB control number.
32.2 Definitions.

Subpart B—Officers Covered

32.3 Coverage.
32.4 Reasonable doubt of coverage.
32.5 Findings of State, local, and Federal agencies.
32.6 Conditions on payment.
32.7 International misconduct of the officer.
32.8 Intention to bring about death or permanent and total disability.
32.9 Voluntary intoxication.

Subpart C—Beneficiaries

32.10 Order of priority.
32.11 Contributing factor to death.
32.12 Determination of relationship of spouse.
32.13 Determination of relationship of child.
32.14 Determination of relationship of parent.
32.15 Determination of dependency.

Subpart D—Interim and Reduced Death Payments

32.16 Interim payment in general.
32.17 Repayment and waiver of repayment.
32.18 Reduction of payment.

Subpart E—Filing and Processing of Claims

32.19 Persons executing claims.
32.20 Claims.
32.21 Evidence.
32.22 Representation.

Subpart F—Determination, Hearing, and Review

32.23 Finding of eligibility or ineligibility.
32.24 Request for a hearing.

Subpart G—National Programs for Families of Public Safety Officers Who Have Died in the Line of Duty

32.25 National programs.

Appendix to Part 32—PSOB Hearing and Appeal Procedures

Authority: Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42. U.S.C. 3711 *et seq.*).

Subpart A—Introduction

§ 32.1 Purpose and OMB control number.

(a) The purpose of this part is to implement the Public Safety Officers' Benefits Act of 1976, as amended, which authorizes the Bureau of Justice Assistance, Office of Justice Programs, to pay a benefit of $100,000, adjusted in accordance with § 32.3(b), to specified survivors or public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty, and to claimant public safety officers found to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty. The Act also authorizes funds to establish national programs to assist the families of public safety officers who have died in the line of duty. (The Act is part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3711 et seq.)

(b) The information collection requirements in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 1121–0166.

§ 32.2 Definitions.

(a) *The Act* means the Public Safety Officers' Benefits Act of 1976, 42 U.S.C.

3796, et seq., Pub. L. 94-430, 90 Stat. 1346 (September 29, 1976), as amended.

(b)(1) *Bureau* or *BJA* means the Bureau of Justice Assistance of the Office of Justice Programs;

(2) *PSOB* means the Public Safety Officers' Benefits Program of the Bureau of Justice Assistance.

(c) *Line of duty* means:

(1) Any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires; and

(2) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulation, condition of employment or service, or law to perform.

(d) *Direct and proximate, direct,* or *proximate* means that the antecedent event is a substantial factor in the result.

(3) *Personal injury* or *injury* means any traumatic injury, as well as diseases which are caused by or result from such an injury, but not occupational diseases.

(f) *Catastrophic injury* means consequences of an injury that permanently prevent an individual from performing any gainful work.

(g) *Traumatic injury* means a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

(h) *Permanent and total disability* means medically determinable consequences of a catastrophic, line-of-duty injury that permanently prevent a former pubic safety officer from performing any gainful work.

(i) *Occupational disease* means a disease which routinely constitutes a special hazard in, or is commonly regarded as a concomitant of the officer's occupation.

(j) *Public safety officer* means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, rescue squad member or ambulance crew member.

(k) *Public agency* means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing.

(l) *Public employee* means an employee of a public agency.

(m) *Law enforcement officer* means any individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal law, including but not limited to police, corrections, probation, parole, and judicial officers.

(n) *Firefighter* includes any individual serving as an officially-recognized or designated member of a legally-organized volunteer fire department.

(o) *Rescue squad or ambulance crew member* means an officially recognized or designated employee or member of a rescue squad or ambulance crew.

(p) *Prerequisite disability certification* means:

(1)(i) The employing agency's official, certified award to the claimant public safety officer of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty; or

(ii) If the employing agency does not itself make such disability awards, then an official, certified award to the claimant public safety officer by the cognizant judicial, political or administrative agency or body of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty.

(2) Nothing in this paragraph (p) shall be construed to affect State, municipal, or local laws, regulations, policies, or agencies, which have been or will be established for the purpose of granting public safety officer disability pensions, including heart and lung laws and similar benefits, nor is any standard for the granting of such benefits implied in any way by this part.

(q) *Gainful work* means work activity that is both substantial and gainful.

(1) *Substantial work activity* means work activity that involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if the public safety officer does less, gets paid less, or has less responsibility than when he or she was a member of the former employing public safety agency.

(2) *Gainful work activity* means work activity that is done for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized or pay is received.

(r) *Residual functional capacity* means that which a former public safety officer can still do despite limitations imposed by a disability. Residual functional capacity is a medical assessment, a determination to be made by the Office's medical experts. Such medical determination will be based on examination of prerequisite disability certifications as specified in 28 CFR 32.2(p), and by examination of any additional case specific medical and other relevant documentation necessary to a medical assessment and determination of residual functional capacity.

(s) *Age* means a former public safety officer's chronological age, and the extent to which that individual's age affects his or her ability to adapt to a new work situation or to do work in competition with others. PSOB will evaluate age in the context of residual functional capacity within the following general parameters:

(1) *Youthful* means that a former public safety officer under age 50 will generally be considered able to adapt to a new work activity and environment.

(2) *Early middle age* means that a former public safety officer, between age 50 and age 59, will generally be considered to experience significant difficulty in adapting to a new work activity and environment.

(3) *Middle and advanced age* means that a former public safety officer age 60 or over will generally be considered to experience substantial difficulty in adapting to a new work activity or environment.

(t) *Education* means primarily the level and content of a former public safety officer's formal schooling, including vocational training. Education also includes completion of in-service training seminars and educational programs while a member of the former employing public safety agency or while formerly employed.

(u) *Work experience* means the skills and abilities acquired by the former public safety officer before, during and following service in the former public safety agency, suitable to use in adapting to a new work activity and environment.

(v) *Child* means any natural, illegitimate, adopted, or posthumous

child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(1) Eighteen years of age or under;

(2) Over eighteen years of age and a student, as defined in section 8101 of Title 5, United States Code; or

(3) Over eighteen years of age and incapable of self-support because of physical or mental disability.

(w) *Stepchild* means a child of the officer's spouse who was living with, dependent for support on, or otherwise in a parent-child relationship, as set forth in § 32.13(b), with the officer at the time of the officer's death. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural or adoptive parent.

(x) *Student* means:

(1) An individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(ii) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(iii) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited for credit on the same basis as if transferred from an institution so accredited; or

(iv) An additional type of educational or training institution as defined by the Secretary of Labor.

(2) An individual is deemed to be a student during an interim between school years if the interim is not more than 4 months and if the student shows to the satisfaction of the Bureau, that the student intends to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Bureau, the student is prevented by factors beyond the student's control from pursuing the student's education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(y) *Spouse* means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(z) *Dependent* means any individual who was substantially reliant for support upon the income of the deceased public safety officer.

(aa) *Intoxication* means a disturbance of mental or physical faculties:

(1) Resulting from the introduction of alcohol into the body as evidenced by—

(i) A blood alcohol level of .20 per centum or greater; or

(ii) A blood alcohol level of at least .10 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to the officer's death or catastrophic personal injury which resulted in permanent and total disability; or

(2) Resulting from drugs or other substances in the body.

(bb) *Rescue* means the provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons lost, missing, or in imminent danger of bodily harm.

(cc) *Support* means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

Subpart B—Officers Covered

§ 32.3 Coverage.

(a) When the Bureau determines under this part, that a public safety officer, as defined in § 32.2(h) has died or become permanently and totally disabled as the direct and proximate result of an injury sustained in the line of duty, the Bureau shall pay a benefit of $100,000, adjusted in accordance with § 32.3 (b) or (c), subject to the conditions set forth in § 32.6. Payment of death benefits shall be made in the order specified in § 32.10.

(b) For the death benefit program, on October 1 of each fiscal year after October 15, 1988, the Bureau shall adjust the level of the death benefit payable immediately before such October 1 under paragraph (a) of this section, to reflect the annual percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, occurring in the 1-year period ending on June 1 immediately preceding such October 1.

(c) For the disability benefit program, the annual cost of living adjustment shall be made in accordance with the effective date of the enactment of this program, *viz.* November 29, 1990.

(d) The amount payable under paragraph (a) of this section with respect to the death or permanent and total disability of a public safety officer shall be the amount payable under paragraphs (b) or (c) of this section as of the date of death or permanent and total disability of such officer, as the case may be.

§ 32.4 Reasonable doubt of coverage.

The Bureau shall resolve any reasonable doubt arising from the circumstances of the officer's death or permanent and total disability in favor of payment of the death or disability benefit.

§ 32.5 Findings of State, local, and Federal agencies.

The Bureau will give substantial weight to the evidence and findings of fact presented by State, local, and Federal administrative and investigative agencies. The Bureau will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Bureau with a rational basis for a decision on a material element of eligibility.

§ 32.6 Conditions on payment.

(a) No benefit shall be paid—

(1) If the death or permanent and total disability was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about the officer's death or injury;

(2) If the public safety officer was voluntarily intoxicated at the time of the officer's death or catastrophic personal injury;

(3) If the public safety officer was performing the officer's duties in a grossly negligent manner at the time of the officer's death or catastrophic personal injury;

(4) To any individual who would otherwise be entitled to a benefit under this part if such individual's actions were a substantial contributing factor to the death of the public safety officer; or

(5) To any individual employed in a capacity other than a civilian capacity.

(b) The Act applies to State and local public safety officers killed in the line of duty on or after September 29, 1976; federal public safety officers killed on or after October 12, 1984; rescue squad or public emergency employees killed in the line of duty on or after October 15, 1986; and to each of these classes of officers permanently and totally disabled as a result of a catastrophic personal injury received in the line of duty on or after November 29, 1990.

§ 32.7 Intentional misconduct of the officer.

The Bureau will consider at least the following factors in determining whether death or permanent and total disability was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws, and—

(1) Whether the officer knew the conduct was prohibited and understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the officer had previously engaged in similar misconduct;

(c) Whether the officer's intentional misconduct was a substantial factor in the officer's death or permanent and total disability; and

(d) Whether there was an intervening force which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit pursuant to this part.

§ 32.8 Intention to bring about death or permanent and total disability.

The Bureau will consider at least the following factors in determining whether the officer intended to bring about the officer's own death or injury:

(a) Whether the death or permanent and total disability was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death or injury;

(b) Whether the officer had a prior history of attempted suicide or attempts to cause physical incapacitation;

(c) Whether the officer's intent to bring about the officer's death or injury was a substantial factor in the officer's death or permanent and total disability; and

(d) The existence of an intervening force or action which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit pursuant to this part.

§ 32.9 Voluntary intoxication.

The Bureau will apply the following evidentiary factors in cases in which voluntary intoxication is at issue in an officer's death or permanent and total disability.

(a) The primary factor in determining intoxication at the time the injury occurred, from which death or permanent and total disability resulted, is the blood alcohol level, including a post-mortem blood alcohol level in the case of a death.

(1) Benefits will be denied if a deceased or permanently and totally disabled public safety officer had a blood alcohol level of .20 per centum or greater; or

(2) Benefits will be denied if a deceased or permanently and totally disabled public safety officer had a blood alcohol level of at least .10 per centum but less than .20 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to death or the receipt of a catastrophic personal injury.

(b) Convincing evidence includes, but is not limited to: Affidavits or investigative reports demonstrating that the deceased or permanently and totally disabled public safety officer's speech, movement, language, emotion, and judgment were normal (for the officer) immediately prior to the injury which caused the death or the permanent and total disability.

(c) In determining whether an officer's intoxication was voluntary, the Bureau will consider:

(1) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(2) Whether and to what degree the officer had previously used the intoxicant in question; and

(3) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage.

Subpart C—Beneficiaries

§ 32.10 Order of priority.

(a) When the Bureau had determined that a death benefit may be paid according to the provisions of subpart B of this part and § 32.11 of subpart C of this part, a benefit of $100,000, adjusted in accordance with § 32.3(b), shall be paid in the following order of precedence:

(1) If there is no surviving child of such officer, to the surviving spouse of such officer;

(2) If there are a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares, and one-half to the surviving spouse;

(3) If there is no surviving spouse, to the surviving child or children of such officer in equal shares; or

(4) If none of the above in paragraphs (a)(1) through (3) of this section to the surviving parent, or to the surviving parents in equal shares.

(b) If no one qualifies as provided in paragraph (a) of this section, no benefit shall be paid.

§ 32.11 Contributing factor to death.

(a) No death benefit shall be paid to any person who would otherwise be entitled to a death benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficiary is denied death benefits under paragraph (a) of this section, the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied death benefits did not survive the officer.

§ 32.12 Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference:

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occurred while the officer was employed with such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

(6) In jurisdictions where "common law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they

were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the Bureau that a valid marriage actually existed.

(b) BJA will not recognize a claimant as a "common law" spouse under § 32.12(a)(6) unless the State of domicile recognizes him or her as the spouse of the officer.

(c) If applicable, certified copies of divorce decrees of previous marriages or death certificates of the former spouses of either party must be submitted.

§ 32.13 Determination of relationship of child.

(a) *In general.* A claimant is the child of a public safety officer if the individual's birth certificate shows the officer as the individual's parent.

(b) *Alternative.* If the birth certificate does not show the public safety officer as the claimant's parent, the sufficiency of the evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(1) An acknowledgement in writing signed by the public safety officer; or

(2) Evidence that the officer has been identified as the child's parent by a judicial decree ordering the officer to contribute to the child's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child; or

(ii) Affidavits or sworn statements of persons who know that the officer accepted the child as his or her own; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1)(i) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) of this section; or

(ii) If adopted by the spouse, evidence of adoption as required by paragraph (c) of this section; or

(iii) Other evidence, such as that specified in § 32.13(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse;

(2) Evidence that the stepchild was either—

(i) Living with; or

(ii) Dependent for support, as set forth in § 32.15; or

(iii) In a parent-child relationship, as set forth in § 32.13(b), with the officer at the time of the officer's death; and

(3) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

§ 32.14 Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as the officer's parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decree ordering the claimant to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Affidavits or sworn statements of persons who know the claimant had accepted the officer as the claimant's child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the claimant had been named as the parent of the child.

(c) *Adoptive parent.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1)(i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse or the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b) of this section, which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parent, as required by § 32.12.

§ 32.15 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a stepchild not living with the deceased officer at the time of the officer's death shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

(b) The claimant stepchild shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or of the personal injury that was the substantial factor in the officer's death.

(c) The claimant stepchild shall demonstrate dependency by submitting a signed statement of dependency within a year of the officer's death. This statement shall include the following information—

(1) A list of all sources of income or support for the twelve months preceding the officer's injury or death;

(2) The amount of income or value of support derived from each source listed; and

(3) The nature of support provided by the each source.

(d) Generally, the Bureau will consider a stepchild "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

Subpart D—Interim and Reduced Death Payments

§ 32.16 Interim payment in general.

(a) Whenever the Bureau determines upon a showing of need and prior to final action that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Bureau may make an interim benefit payment not exceeding $3,000 to the individual entitled to receive a benefit under subpart C of this part.

(b) The amount of an interim payment under this subpart shall be deducted from the amount of any final benefit paid to such individual.

§ 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Bureau may waive all or part of such repayment considering for this purpose the hardship which would result from such repayment.

§ 32.18 Reduction of payment.

(a) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, except—

(1) Payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, Sec. 4–622);

(2) Benefits authorized by section 8191 of title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States. Such beneficiaries shall only receive benefits under such section 8191 that are in excess of the benefits received under this part; and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

(b) No benefit paid under this part shall be subject to execution or attachment.

(c) No benefit is payable under this part:

(1) With respect to the death of a public safety officer if a benefit is paid under this part with respect to the disability of such public safety officer; or

(2) With respect to the disability of a public safety officer if a benefit is payable under this part with respect to the death of such public safety officer.

Subpart E—Filing and Processing of Claims

§ 32.19 Persons executing claims.

(a) The Bureau shall determine who is the proper party to execute a claim in accordance with paragraphs (a) (1) through (3) of this section—

(1) The claim shall be executed by the claimant or the claimant's legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim and—

(i) Has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative; or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Bureau may accept a claim executed by a person other than one described in paragraphs (a)(1) and (a)(2) of this section.

(b) Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of such person's authority to execute the claim on behalf of such claimant in accordance with paragraph (b) (1) and (2) of this section—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such a legally designated representative, the evidence shall be a statement describing such person's relationship to the claimant or the extent to which such person has the care of such claimant or such person's position as an officer of the institution of which the claimant is an inmate or patient. The Bureau may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

§ 32.20 Claims.

(a) Claimants are encouraged to submit their claims on OJP Form 3650/5 for death benefits, or the disability benefits claim form, which can be obtained from: Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Washington, DC 20531.

(b) Where an individual files OJP Form 3650/5 for death benefits, or the disability benefits claim form, or other written statement with the Bureau which indicates an intention to claim benefits, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(c) A claim by a permanently and totally disabled public safety officer or on behalf of survivor of a deceased public safety officer shall be filed within 1 year after the date of death or prerequisite disability certification unless the time for filing is extended by the Director for good cause shown.

(d) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19.

§ 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and this part shall submit such evidence of eligibility or other material facts as is specified by this part. The Bureau may require at any time additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and this part has submitted no evidence or insufficient evidence of any material issue or fact, the Bureau shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request the claimant to submit such evidence within a reasonably specified time. The claimant's failure to submit evidence on a material issue or fact as requested by the Bureau shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

§ 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Bureau must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee the petitioner may charge or receive, if any, shall be determined by the Bureau on the basis of the factors described in paragraphs (e) and (g) of this section.

(d) Written notice of a fee determination made under this section

shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Bureau assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Bureau, a representative, upon completion of the proceedings in which the representative rendered services, must file with the Bureau a written petition containing the following information—

(1) The dates the representative's services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

(3) The amount of the fee the representative desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered on behalf of the claimant in connection with other claims or causes of action arising from the officer's death or permanent and total disability before any State or Federal court or agency;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled the representative to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the claimant and that the claimant was advised of the claimant's opportunity to submit his or her comments on the petition to BJA within 20 days.

(f) No fee determination will be made by the Bureau until 20 days after the date the petition was sent to the claimant. The Bureau encourages the claimant to submit comments on the petition to the Bureau during the 20-day period.

(g) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors:

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required to render the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Bureau and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

(h) In determining the fee, the Bureau shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which had previously been obtained by the Bureau, and no reimbursement shall be allowed for expenses incurred in establishing or pursuing the representative's application for approval of the fee.

Subpart F—Determination, Hearing, and Review

§ 32.23 Finding of eligibility or ineligibility.

Upon making a finding of eligibility, the Bureau shall notify each claimant of its disposition of his or her claim. In those cases where the Bureau has found the claimant to be ineligible for a benefit, the Bureau shall specify the reasons for the finding. The finding shall set forth the findings of fact and conclusions of law supporting the decision. A copy of the decision, together with information as to the right to a hearing and review shall be mailed to the claimant at his or her last known address.

§ 32.24 Request for a hearing.

(a) A claimant may, within thirty (30) days after notification of ineligibility by the Bureau, request the Bureau to reconsider its finding of ineligibility. The Bureau shall provide the claimant the opportunity for an oral hearing which shall be held within 60 days after the request for reconsideration. The claimant may waive the oral hearing and present written evidence to the Bureau within 60 days after the request. The request for hearing shall be made to the Director, Public Safety Officers' Benefits Program, BJA, Washington, DC 20531.

(b) If requested, the oral hearing shall be conducted before a hearing officer authorized by the Bureau to conduct the hearing in any location agreeable to the claimant and the hearing officer.

(c) In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by Chapter 5 of the Administrative Procedure Act (5 U.S.C. 551 et seq.), but must conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

(d) Pursuant to sections 805, 806 and 1205(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3786, 3787 and 3796c, the hearing officer may, whenever necessary:

(1) Issue subpoenas;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Receive evidence at any place in the United States.

(e) If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may adjourn the hearing and, at any time prior to mailing the decision, reopen the hearing for the receipt of such evidence.

(f) A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision by written notice to the hearing officer so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing, and does not, within 10 days after the time set for the hearing, show good cause for such failure to appear.

(g) The hearing officer shall, within 30 days after receipt of the last piece of evidence relevant to the proceeding, make a determination of eligibility. The determination shall set forth the findings of fact and conclusions of law supporting the determination. The hearing officer's determination shall be the final agency decision, except when it is reviewed by the Director under paragraphs (h) or (i) of this section.

(h)(1) The Director may, on his or her own motion, review a determination made by a hearing officer. If the BJA Director decides to review the determination, he or she shall:

(i) Inform the claimant of the hearing officer's determination and the BJA Director's decision to review that determination; and

(ii) Give the claimant 30 days to comment on the record and offer new evidence or argument on the issues in controversy.

(2) The BJA Director, in accordance with the facts found on review, may affirm or reverse the hearing officer's determination. The BJA Director's determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA Director's determination shall be the final agency decision.

(i)(1) A claimant determined ineligible by a hearing officer under paragraph (g) of this section may, within 30 days after notification of the hearing officer's determination:

(i) Request the BJA Director to review the record and the hearing officer's determination; and

(ii) Comment on the record and offer new evidence or argument on the issues in controversy.

(2) The BJA Director shall make the final agency determination of eligibility within 30 days after expiration of the comment period. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA Director's determination shall be the final agency decision.

(j) No payment of any portion of a death or permanent and total disability benefit, except interim death benefits payable under § 32.16, shall be made until all hearings and reviews which may affect that payment have been completed.

Subpart G—National Programs for Families of Public Safety Officers Who Have Died in the Line of Duty

§ 32.25 National programs.

The Director is authorized and directed to use up to $150,000 of the funds appropriated for this part to establish national programs to assist the families of public safety officers who have died in the line of duty.

Appendix To Part 32—PSOB Hearing and Appeal Procedures

a. Notification to Claimant of Denial

These appeal procedures apply to a claimant's [1] request for reconsideration of a denial made by the Public Safety Officers' Benefits (PSOB) Office. The denial letter will advise the claimant of the findings of fact and conclusions of law supporting the PSOB Office's determination, and of the appeal procedures available under § 32.24 of the PSOB regulations. A copy of every document in the case file that (1) contributed to the determination, and (2) was not provided by the claimant shall also be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The attached material might typically include medical opinions offered by the Armed Forces Institute of Pathology or other medical experts, legal memoranda from the Office of General Counsel of the Office of Justice Programs, or memoranda to the file prepared by PSOB Office staff. A copy of the PSOB regulations (28 CFR part 32) shall also be enclosed.

b. Receipt of Appeal

1. When an appeal has been received, the PSOB Office will assign the case and will transmit the complete case file to a hearing officer. Assignments will be made in turn, from a standing roster, except in those cases where a case is particularly suitable to a specific hearing officer's experience.

2. The PSOB Office will inform the claimant of the name of the hearing officer, request submission of all evidence to the hearing officer, and send a copy of this appeals procedure. If an oral hearing is requested, the PSOB Office will be responsible for scheduling the hearing and making the required travel arrangements.

3. The PSOB Office will be responsible for providing all administrative support to the hearing officer. An attorney from the Office of General Counsel (OGC) who has not participated in the consideration of the claim will provide legal advice to the hearing officer. The hearing officer is encouraged to solicit the advice of the assigned OGC attorney on all questions of law.

4. Prior to the hearing, the hearing officer shall request the claimant to provide a list of expected witnesses and a brief summary of their anticipated testimony.

c. Designation of Hearing Officers

A. In an internal instruction the BJA Director designated a roster of hearing officers to hear PSOB appeals.

1. The hearing officers are specifically delegated the Director's authority to:

(i) Issue subpoenas;

(ii) Administer oaths;

(iii) Examine witnesses; and

(iv) Receive evidence at any place in the United States the officer may designate.

d. Conduct of the Oral Hearing

A. If requested, an oral hearing shall be conducted before the hearing officer in any location agreeable to the officer and the claimant.

1. The hearing officer shall call the hearing to order and advise the claimant of (1) the findings of fact and conclusions of law supporting the initial determination; (2) the nature of the hearing officer's authority; and (3) the manner in which the hearing will be conducted and a determination reached.

2. In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules or procedures, or by Chapter 5 of the Administrative Procedure Act, but must conduct the hearing in such a manner as best to ascertain the rights of the claimant.

3. The hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim.

4. Evidence may be presented orally or in the form of written statements and exhibits. All witnesses shall be sworn by oath or affirmation.

5. If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing may be adjourned and, at any time prior to the mailing of notice of the decision, reopened for the receipt of such evidence. The officer should, in any event, seek to conclude the hearing within 30 days from the first day of the hearing.

6. All hearings shall be attended by the claimant, his or her representative, and such other persons as the hearing officer deems necessary and proper. The wishes of the claimant should always be solicited before any other persons are admitted to the hearing.

7. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

8. The hearing will be deemed closed on the day the hearing officer receives the last piece of evidence relevant to the proceeding.

9. If the claimant waives the oral hearing, the hearing officer shall receive all relevant written evidence the claimant wishes to submit. The hearing officer may ask the claimant to clarify or explain the evidence submitted, when appropriate. The hearing officer should seek to close the record no later than 60 days after the claimant's request for reconsideration.

e. Determination

1. A copy of the transcript shall be provided to the hearing officer, to the claimant, to the PSOB Office, and to the OGC after the conclusion of the hearing.

2. The hearing officer shall make his, or her, determination no later than the 30th day after the last evidence has been received. Copies of the determination shall be made available to the PSOB Office and the OGC for their review.

3. If either the PSOB Office or the OGC disagrees with the hearing officer's final determination, that office may request the BJA Director to review the record. If the BJA Director agrees to review the record, he or she will send the hearing officer's determination, all comments received from the PSOB Office, the OGC, or other sources (except where disclosure of the material would result in an unwarranted invasion of privacy), and notice of his or her intent to review the record to the claimant. The BJA Director will also advise the claimant of his or her opportunity to offer comments, new evidence, and argument within 30 days after the receipt of notification. The BJA Director shall seek to advise all parties of the final agency decision within 30 days after the expiration of the comment period.

4. If the PSOB Office and the OGC agree with the hearing officer's determination or the BJA Director declines to review the

[1] As used in this procedure, the word, "claimant" means a claimant for benefits or, where appropriate, the claimant's designated representative.

record, the hearing officer's determination will be the final agency decision and will be sent to the claimant by the PSOB Office immediately.

5. If the hearing officer's determination is a denial, all material that (1) contributed to the determination and (2) was not provided by the claimant shall be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The claimant will be given an opportunity to request the BJA Director to review the record and the hearing officer's decision, and to offer comments, new evidence, or argument within 30 days. The BJA Director shall advise all parties of the final agency decision within 30 days after the expiration of the comment period.

6. The PSOB Office will provide administrative support to the hearing officer and the BJA Director throughout the appeal process.

Elliott A. Brown,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 92-13633 Filed 6-10-92; 8:45 am]

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Thursday
June 11, 1992

Part IV

The President

Presidential Determination No. 92-27—Determination and Certification Under Section 8 of the Horn of Africa Recovery and Food Security Act: Ethiopia

Presidential Determination No. 92-28—Eligibility of the Comoros To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Presidential Determination No. 92-30—Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Presidential Determination No. 92-31—Determination Under Section 402(c)(2)(A) of the Trade Act of 1974, as Amended—Tajikistan and Turkmenistan

Presidential Determination No. 92-32—Determination Under Section 2(b)(2) of the Export-Import Bank Act of 1945, as Amended: People's Republic of Angola

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Federal Register
Vol. 57, No. 113
Thursday, June 11, 1992

Presidential Documents

Title 3—

The President

Presidential Determination No. 92–27 of May 26, 1992

Determination and Certification Under Section 8 of the Horn of Africa Recovery and Food Security Act: Ethiopia

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 8 of the Horn of Africa Recovery and Food Security Act (Public Law 102–274; 106 Stat. 115), I hereby determine and certify that the Government of Ethiopia:

(1) has begun to implement peace agreements and national reconciliation agreements;

(2) has demonstrated a commitment to human rights within the meaning of sections 116 and 502B of the Foreign Assistance Act of 1961;

(3) has manifested a commitment to democracy, has established a timetable for free and fair elections, and has agreed to implement the results of those elections; and

(4) has agreed to distribute developmental assistance on the basis of need without regard to political affiliation, geographic location, or the ethnic, tribal, or religious identity of the recipient.

You are authorized and directed to report this determination and certification to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, May 26, 1992.

[FR Doc. 92–13980
Filed 6–10–92; 11:54 am]
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Presidential Documents

Presidential Determination No. 92–28 of May 26, 1992

Eligibility of the Comoros to be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act (22 U.S.C. 2753(a)(1)), I hereby find and determine that the furnishing of defense articles and services to the Government of the Comoros will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, May 26, 1992.

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Presidential Documents

Presidential Determination No. 92–30 of June 3, 1992

Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter "the Act"), I determine, pursuant to section 402(d)(1) of the Act (19 U.S.C. 2432(d)(1)), that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to Albania, Armenia, Azerbaijan, Bulgaria, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Ukraine, and Uzbekistan will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

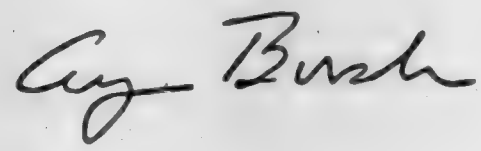

THE WHITE HOUSE,
Washington, June 3, 1992.

[FR Doc. 92–13992
Filed 6–10–92; 11:56 am]
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Presidential Determination No. 92–31 of June 3, 1992

Determination Under Section 402(c)(2)(A) of the Trade Act of 1974, as Amended—Tajikistan and Turkmenistan

Memorandum for the Secretary of State

Pursuant to section 402(c)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2432(c)(2)(A)), as amended (the "Act"), I determine that a waiver by Executive order of the application of subsections (a) and (b) of section 402 of the Act with respect to Tajikistan and Turkmenistan will substantially promote the objectives of section 402.

You are authorized and directed to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, June 3, 1992.

[FR Doc. 92–13991
Filed 6–10–92; 11:57 am]
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Presidential Documents

Presidential Determination No. 92–32 of June 3, 1992

Determination Under Section 2(b)(2) of the Export-Import Bank Act of 1945, as Amended: People's Republic of Angola

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 2(b)(2)(C) of the Export-Import Bank Act of 1945, as amended (the Act), 12 U.S.C. 635(b)(2)(C), I hereby determine that the People's Republic of Angola has ceased to be a Marxist-Leninist country within the definition of such terms in subparagraph (B)(i) of such section.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

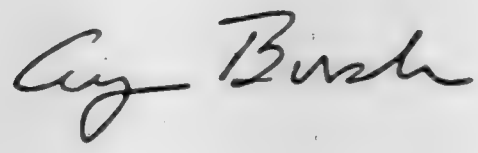

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Vol. 57, No. 113

Thursday, June 11, 1992

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102d Congress, 2nd Session, 1992

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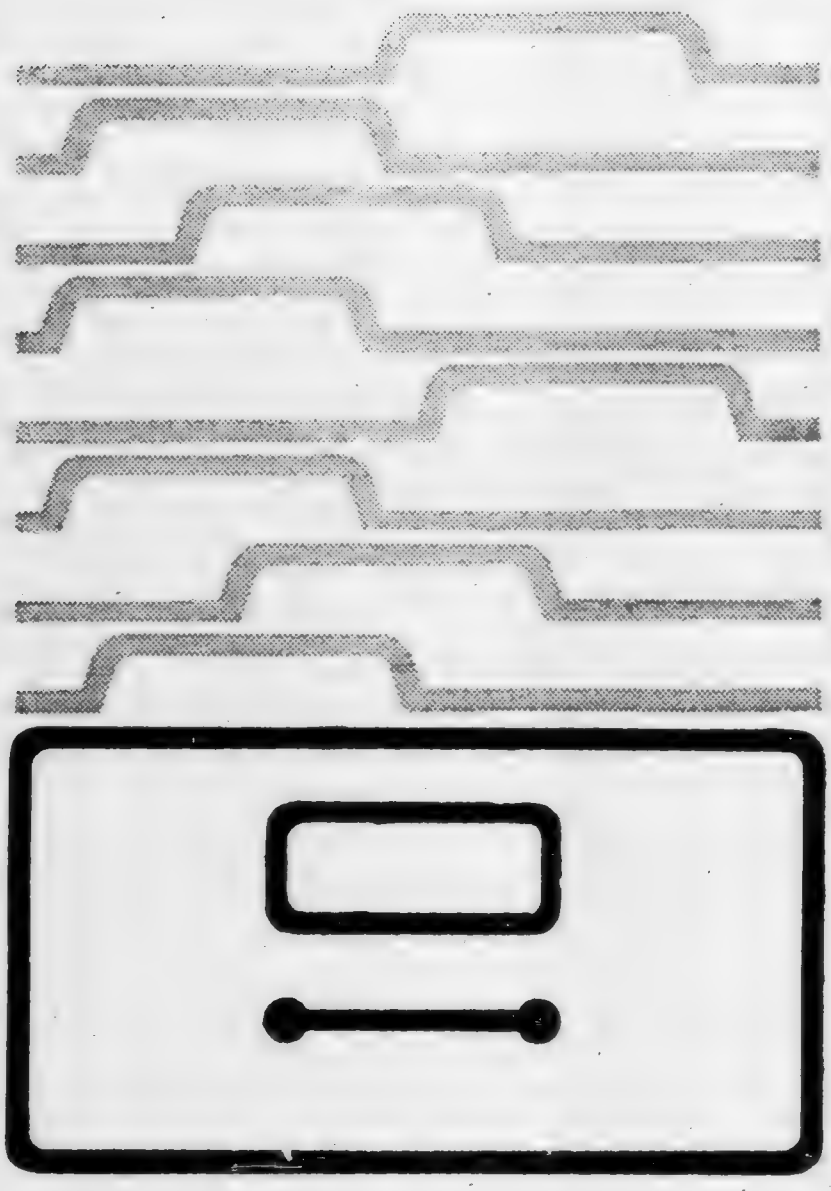

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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6-12-92
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No. 114

federal register

Friday
June 12, 1992

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federal register

Friday
June 12, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Chicago, IL, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Federal Register
Vol. 57, No. 114
Friday, June 12, 1992

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Title 3—

The President

Proclamation 6444 of June 10, 1992

Flag Day and National Flag Week, 1992

By the President of the United States of America

A Proclamation

"I have seen the glories of art and architecture," said Senator George Frisbie Hoar over a century ago, ". . . and the full moon rise over Mont Blanc; but the fairest vision on which these eyes ever looked was the flag of my country in a foreign land." As the great emblem of the United States, the Stars and Stripes has symbolized freedom and security to millions of people around the world. To the U.S. citizen abroad, Old Glory has offered comfort and reassurance, calling to mind the love of liberty that unites all Americans, wherever we may be. To the service member standing watch at some distant, lonely post, the flag has recalled the pride and support of our Nation—as well as the example of earlier patriots who likewise labored and sacrificed in the defense of liberty. While the flag has inspired deeper feelings of patriotism and duty among generations of Americans, it has also moved the hearts of countless other peoples, who have seen in its bright hues and gentle folds the shining promise of freedom—and the character of a Nation whose might and strength have been devoted to the service of justice and humanity.

Generations of American children have learned to show respect for the flag by reciting the Pledge of Allegiance, which is 100 years old this year. As we celebrate the centennial of this simple yet stirring promise, we know that it is much, much more than a mnemonic verse for school boys and girls. Rather, it is—as its author, Francis Bellamy, had hoped it would be—an ageless creed that embodies "the fundamental idea of patriotic citizenship, comprehending in broadest lines the spirit of our history and the deepest aim of our National life." When we recite the Pledge and promise our allegiance to this "one Nation, under God, indivisible, with liberty and justice for all," we reaffirm both the unity of our people and what President Eisenhower aptly described as "the transcendence of religious faith in America's heritage and future." As the Pledge of Allegiance states so eloquently, we Americans believe in Almighty God, the Source of all life and liberty; we believe in the inherent and unalienable rights and dignity of each human being; and we believe in equal opportunity, as well as equal protection of the law, for every citizen. Those are the convictions embodied by our flag, and those are the convictions that must ever be our guide, our hope, and our example to the world.

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 14, 1992, as Flag Day and the week beginning June 14, 1992, as National Flag Week. I direct the appropriate officials of the government to display the flag of the United States on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211) as a time to honor America, by having public gatherings and activities at which they can honor our country in an appropriate manner, including publicly reciting the Pledge of Allegiance. On June 14, communities across the United States will join in a special "Pause for the Pledge of Allegiance" program in honor of the 100th anniversary of this tribute to our flag.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

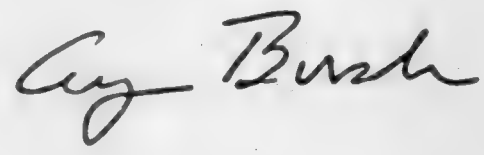

[FR Doc. 92-14077
Filed 6-11-92; 10:29 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 114
Friday, June 12, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

RESOLUTION TRUST CORPORATION

12 CFR Part 1609

Interim Statement of Policy on Lower Income Occupancy Requirements for Bulk Sales in the Multifamily Affordable Housing Disposition Program

AGENCY: Resolution Trust Corporation.
ACTION: Interim statement of policy.

SUMMARY: The Resolution Trust Corporation (Corporation) has adopted an interim policy statement concerning properties marketed under the Affordable Housing Disposition Program. Under this interim policy statement, when more than one multifamily property is purchased from the Corporation as part of the same negotiation, the Corporation will require that not less than 15 percent of the dwelling units in each separate property purchased be made available to low- or very-low income individuals.

On May 6, 1992 (57 FR 19500) the Corporation published an Interim Final Rule (12 CFR part 1609) concerning the Affordable Housing Disposition Program and has requested public comments.

DATES: This interim policy statement affects multifamily property marketed under the Affordable Housing Disposition Program for which the Corporation: (1) Issues a Notice of Marketing Period pursuant to 12 CFR 1609.7(b) on or after June 2, 1992, or (2) issues a Notice of Marketing Period pursuant to RTC Circular 10150.11 on or after June 2, 1992.

Comments must be received by July 13, 1992.

ADDRESSES: Written comments regarding this interim policy statement should be addressed to John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001. Comments may be hand delivered to room 321 on business days between 9 a.m. and 5 p.m. Comments may also be inspected in the Public Reading Room, 801 17th Street, NW., between 9 a.m. and 5 p.m. on business days. Phone number (202) 416–6940; FAX (202) 416–4753.

FOR FURTHER INFORMATION CONTACT: Stephen S. Allen, Director, Affordable Housing Disposition Program, (202) 416–7348, or Barry R. Wides, Financing Coordinator, Affordable Housing Disposition Program, (202) 416–7138. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

1. Purpose

To establish a policy concerning the application of RTC's lower-income occupancy requirements for multifamily properties sold in bulk under the Affordable Housing Disposition Program as part of the same negotiation.

2. Scope and Applicability

This policy addresses application of certain procedures established in accordance with the affordable housing provisions of section 21A(c) of the Federal Home Loan Bank Act, as amended by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1441a).

3. Background

Under the Affordable Housing Disposition (AHD) Program, as described in 12 CFR 1609, published in the **Federal Register** on May 6, 1992 (57 FR 19500), not less than 35 percent of all dwelling units purchased by a qualifying multifamily purchaser in a single transaction shall be made available for occupancy by and be maintained affordable for, lower-income families during the remaining useful life of the property in which the units are located, provided not less than 20 percent of all units shall be made available for occupancy by, and be maintained affordable for, very low-income families during the remaining useful life of such property. If an eligible multifamily purchaser, buys more than one eligible multifamily property as part of the same negotiation, the purchaser may meet the lower-income occupancy requirements "in the aggregate." For example, if 1,000 units in 10 properties (each with 100 units) were sold as part of the same negotiation with a single purchaser, the purchaser could place deed restrictions on as few as four of the buildings (350 units), leaving the remaining six buildings free of lower-income occupancy restrictions.

Administration of the "aggregation" provision in this manner has raised questions regarding the consistency of this approach with the statutory mandate that the RTC conduct operations in a manner which "maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals." If only a portion of the properties which are marketed through the AHD Program are actually subject to deed restrictions, then fewer properties are made available at restricted rents to low-income individuals. RTC believes that the goals of the AHD Program are better served by requiring that at least 15 percent of the units in each property marketed under the Program be made available to low- or very low-income individuals consistent with RTC's statutory mandate. Beyond this minimum, bulk purchasers are given maximum flexibility to meet the requirements "in the aggregate."

4. Policy and Guidelines

If a qualifying multifamily purchaser buys more than one Eligible Multifamily Property as part of the same negotiation, the lower-income occupancy requirements established in 12 CFR 1609.2(o)(1) (and the additional lower-income occupancy restrictions committed to pursuant to 12 CFR 1609.7(b)(9)) shall apply in the aggregate to the properties so purchased, provided that not less than 15 percent of the dwelling units in each separate property purchased shall be made available for occupancy by and maintained affordable (at rent levels established in 12 CFR 1609.7(b)(4)) for either very low-income or lower-income families for the remaining useful life of the property in which the units are located.

Dated at Washington, DC, this 8th day of June 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 92–13809 Filed 6–11–92; 8:45 am]
BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-95-AD; Amendment 39-8274; AD 92-13-04]

Airworthiness Directives; Piper Models PA-23-150 and PA-23-160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 90-23-18, which required new preflight fuel system drainage procedures and fuel system modifications on certain Piper PA-23 series airplanes until its effectiveness was suspended on December 13, 1990. The Federal Aviation Administration (FAA) has since determined that the preflight fuel system drainage procedures required by AD 90-23-18 on the Piper Models PA-23-150 and PA-23-160 airplanes are necessary if a new dual fuel drain has not been installed, but that the modifications should not be mandatory. The actions specified by this AD are intended to prevent rough engine operation or complete power interruption caused by water contamination in the fuel.

DATES: Effective August 21, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 21, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper Models PA-23-150 and PA-23-160 airplanes that have not been modified by the installation of a dual fuel drain kit, part number 765-363, was published in the **Federal Register** on January 27, 1992 (57 FR 3033). The action proposed retaining the preflight fuel draining procedures that were required by suspended AD 90-23-18, but would not include the fuel system modifications requirement that was part of that AD. The proposed action would supersede AD 90-23-18.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 18 comments received. Fourteen of the commenters support the proposed rule. These commenters agree that the use of standard inspection and maintenance procedures as specified in the proposed AD would eliminate water-in-the-fuel problems on certain Piper PA-23 series airplanes.

Two of the commenters propose the incorporation of airplane modifications to prevent or remove water in the fuel. These modifications are:

- The installation of an inclinometer on the side of the airplane and putting the airplane in a 2-degree nose-down attitude position when checking for water in the fuel after refueling; and
- The incorporation of a drain in the reservoir around the fuel cap to drain any water that collects in this area.
- The other two commenters are against the proposed rule and feel that an airplane design improvement is required to prevent water-in-the-fuel problems.

The FAA does not concur that a design improvement or the modifications referenced in the comments discussed above are necessary by this AD action in order to prevent water-in-the-fuel problems on certain Piper PA-23 series airplanes. Water can enter the fuel system on the affected airplanes through (1) condensation; (2) contaminated fuel; or (3) leaky fuel tank caps and door seals. The FAA has determined that (1) condensation is a small contributor to water-in-the-fuel problems and can be practically eliminated by promptly refilling all fuel tanks after each flight; (2) industry and federal controls on aviation fuels minimize the likelihood of contaminated fuel; and (3) the principal cause of water in the fuel for certain Piper PA-23 series airplanes is improperly sealed fuel filler caps and ineffective door seals. The problems with fuel filler caps and door seals are already addressed by AD 88-21-07 R1 for the affected airplanes.

Based on an extensive analysis of all available information including the comments discussed above, the FAA has determined that the use of standard inspection and maintenance procedures as specified by the provisions of the proposed AD are adequate to prevent the water-in-the-fuel problems on certain Piper PA-23 series airplanes. The AD has not been changed as a result of the comments discussed above. The FAA has added a note that recommends precautions that could be taken in the event water exceeding one tablespoon is found in the fuel during the preflight draining procedures that are specified in Piper Service Bulletin No. 827A, dated November 4, 1988. Additional fuel drainings are recommended after the wings are rocked, or the airplane has been put in a nose-down attitude. If water continues to be found, then drainage and inspection of the tanks is recommended.

No comments were received on the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the note discussed above and minor editorial corrections. The FAA has determined that the addition of the note and the minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is not feasible for the FAA to determine how many Piper Models PA-23-150 and PA-23-160 airplanes have been modified by the installation of a dual fuel drain kit, part number 765-363. The following cost information is based on none of the fleet having these kits installed. The FAA estimates that 1,107 airplanes in the U.S. registry will be affected by the required AD, that it will take approximately .5 workhours (at the most) per airplane to incorporate the preflight draining procedures into the Owner Handbook and Pilots Operating Manual, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $30,442.50.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact,

positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90–23–18, Amendment 39–6782 (55 FR 46787, November 7, 1990), and adding the following new AD:

92–13–04 Piper Aircraft Corporation: Amendment 39–8274; Docket No. 91–CE–95–AD. Supersedes AD 90–23–18, Amendment 39–6782.

Applicability: Models PA–23–150 and PA–23–160 airplanes (serial numbers 23–1 through 23–2046) that have not been modified by the installation of a dual fuel drain kit, part number 765–363, in accordance with the instructions in Part II of Piper Service Bulletin No. 827A, dated November 8, 1988, certificated in any category.

Compliance: Required within the next 180 calendar days after the effective date of this AD, unless already accomplished.

To prevent rough engine operation or complete power interruption caused by water contamination in the fuel, accomplish the following:

(a) Incorporate paragraphs 1 through 5 of the Aircraft Systems Operating Instructions that are contained in Part I of Piper Service Bulletin (SB) No. 827A, dated November 4, 1988, into the Owner Handbook and Pilots Operating Manual.

Note 1: Paragraphs 6 and 7 of the Handling and Servicing instructions that are contained in Part I of Piper SB No. 827A, dated November 4, 1988, are covered by AD 88–21–07 R1.

Note 2: If more than one tablespoon of water is found in the fuel during preflight draining procedures, then it is recommended that fuel draining procedures be repeated after the wings are rocked or the airplane has been put in a nose-down attitude. If water continues to be found, drainage and inspection of the fuel tanks is recommended.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) The procedures required by this AD shall be done in accordance with Piper Service Bulletin No. 827A, dated November 4, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(e) This amendment (39–8274) supersedes AD 90–23–18, Amendment 39–6782.

(f) This amendment (39–8274) becomes effective on August 21, 1992.

Issued in Kansas City, Missouri, on June 3, 1992.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13829 Filed 6–11–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–CE–89–AD; Amendment 39–8276; AD 92–13–06]

Airworthiness Directives; Piper Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Piper Aircraft Corporation (Piper) Models PA–46–310P (Malibu) and PA–46–350P (Mirage) airplanes. This action requires inspection of the elevator trim cable guide tube to determine if it has been severed, and, if severed, installation of an elevator trim cable guide sleeve. Investigation of the trim system on one of the affected airplanes revealed a lockup of the trim tab system because the elevator trim cable guide tube was severed and the mismatched halves had jammed the trim cable turnbuckles. The actions specified by this AD are intended to prevent sudden pitch changes related to a jammed trim tab, which could result in loss of control of the airplane.

DATES: Effective August 21, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Miller, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3020; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper Models PA–46–310P and PA–46–350P airplanes was published in the **Federal Register** on March 2, 1992 (57 FR 7328). The action proposed an inspection to determine if the elevator trim cable guide tube has been severed, and, if severed, installation of an elevator trim cable guide sleeve in accordance with the instructions in Elevator Trim Cable Guide Tube Splice Kit, Piper Part Number 766–272. This kit is referenced in Piper Service Bulletin No. 953, dated October 29, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 403 airplanes in the U.S. registry will be affected by

this AD, that it will take approximately 1.5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $25 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $43,322.50.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92-13-06 Piper Aircraft Corporation: Amendment 39-8276; Docket No. 91-CE-89-AD.

Applicability: The following model airplanes, certificated in any category:

Models	Serial Nos.
PA-46-310P PA-46-350P	46-8408001 through 46-8608067 and 4608001 through 4608140. 4622001 through 4622117.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent sudden pitch change related to a jammed trim tab, which could result in loss of control of the airplane, accomplish the following:

(a) Visually inspect the elevator trim cable guide tube for severance. Severance is defined as any cut, break, or division of the elevator trim cable guide tube (generally performed to gain access to the trim cable turnbuckles).

(b) If severance is found, prior to further flight, splice the elevator trim cable guide tube and install an external sleeve in accordance with the instructions in Elevator Trim Cable Guide Tube Splice Kit, Piper Part Number 766-272.

Note 1: Revised maintenance procedures on gaining access to the trim cable turnbuckles may be obtained from the manufacturer at the address specified in paragraph (e) of this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) The possible modification required by this AD shall be done in accordance with Elevator Trim Cable Guide Tube Splice Kit, Piper Part Number 766-272, which is referenced in Piper Service Bulletin No. 953, dated October 29, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(f) This amendment (39-8276) becomes effective on August 21, 1992.

Issued in Kansas City, Missouri, on June 3, 1992.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13828 Filed 6-11-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-99-AD; Amendment 39-8275; AD 92-13-05]

Airworthiness Directives; Piper Aircraft Corporation Models PA-34-200 and PA-34-200T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Piper Aircraft Corporation (Piper) Models PA-34-200 (Seneca) and PA-34-200T (Seneca II) airplanes. This action requires an inspection to ensure that a clevis-head bolt is installed correctly in the nose gear centering spring assembly, reinstallation if found incorrectly installed or replacement if a hex-head bolt is installed, and the incorporation of a placard that references the clevis-head bolt installation. Reports of nose gear extension problems prompted the Federal Aviation Administration (FAA) to investigate the nose landing gear system on several of the affected airplanes. The FAA found that the nose gear centering spring assembly was incorrectly installed in many instances. The actions specified by this AD are intended to prevent loss of control of the airplane during landing operations because of the inability to fully extend the nose landing gear.

DATES: Effective August 21, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite

210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper Aircraft Corporation (Piper) Models PA–34–200 (Seneca) and PA–34–200T (Seneca II) airplanes was published in the **Federal Register** on February 3, 1992 (57 FR 3966).

This action proposed (1) an inspection to ensure that a clevis-head bolt is installed correctly in the nose gear centering spring assembly; (2) reinstallation if found incorrectly installed or replacement if a hex-head bolt is installed; and (3) incorporation of placard No. 582–943, which references the clevis-head bolt installation. The proposed actions would be done in accordance with Piper Service Bulletin No. 893, dated October 11, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 2,048 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $5 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $122,880.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92–13–05 **Piper Aircraft Corporation:** Amendment 39–8275; Docket No. 91–CE–99–AD.

Applicability: Model PA–34–200 airplanes (serial numbers 34–7250001 through 34–7450220) and Model PA–34–200T airplanes (serial numbers 34–7570001 through 34–8170082), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane during landing operations because of the inability to fully extend the nose landing gear, accomplish the following:

(a) Inspect the nose gear centering spring assembly and determine whether a clevis-head bolt or hex-head bolt is installed.

(b) If a part number (P/N) 400–910 clevis-head bolt is installed, ensure that it is correctly installed in accordance with paragraph 2 of the Instructions section of and Sketch "A" in Piper Service Bulletin (SB) No. 893, dated October 11, 1988.

(1) If the bolt is correctly installed, incorporate placard P/N 582–943 in accordance with paragraph 6(C) of the Instructions section of Piper SB No. 893, dated October 11, 1988.

(2) If the bolt is incorrectly installed, disassemble and reinstall in accordance with paragraphs 3 through 6 of the Instructions section of Piper SB No. 893, dated October 11, 1988, and incorporate placard P/N 582–943 in accordance with paragraph 6(C) of the Instructions section of Piper SB No. 893, dated October 11, 1988.

(c) If a hex-head bolt or a clevis-head bolt that is not P/N 400–910 is installed, replace with a P/N 400–910 clevis-head bolt in accordance with paragraphs 3 through 6 of the Instructions section of Piper SB No. 893, dated October 11, 1988, and incorporate placard P/N 582–943 in accordance with paragraph 6(C) of the Instructions section of Piper SB No. 893, dated October 11, 1988.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) The inspection, installations, and replacements required by this AD shall be done in accordance with Piper Service Bulletin No. 893, dated October 11, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street NW.; room 8401, Washington, DC.

(g) This amendment (39–8275) becomes effective on August 21, 1992.

Issued in Kansas City, Missouri, on June 3, 1992.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13830 Filed 6–11–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–CE–101–AD; Amendment 39–8277; AD 92–13–07]

Airworthiness Directives; Piper Aircraft Corporation Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Piper Aircraft Corporation (Piper) Models PA–46–310P (Malibu) and PA–46–350P (Mirage) airplanes. This action requires the replacement of certain empennage

countersunk rivets with universal head rivets of a larger diameter. General maintenance inspections of the empennage of the affected airplanes have revealed loose rivets working into the skin. Undetected loose rivets could eventually lead to a weakened airplane structure. The actions specified by this AD are intended to prevent structural deterioration because of loose empennage rivets.

DATES: Effective August 21, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 21, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper Models PA–46–310P and PA–46–350P airplanes was published in the **Federal Register** on March 2, 1992 (57 FR 7330). The action proposed the replacement of certain empennage countersunk rivets with universal head rivets of a larger diameter in accordance with Piper Service Bulletin No. 944, dated October 5, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 512 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $5 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $115,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92–13–07 **Piper Aircraft Corporation:** Amendment 39–8277; Docket No. 91–CE–101–AD.

Applicability: Model PA–46–310P airplanes (serial numbers (S/N) 46–8408001 through 46–8608067 and S/N 4608001 through 4608140) and Model PA–46–350P airplanes (S/N 4622001 through 4622109), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent structural deterioration because of loose empennage rivets, accomplish the following:

(a) Replace the empennage countersunk rivets indicated in Piper Service Bulletin (SB) No. 944, dated October 5, 1990, with universal head rivets of a larger diameter in accordance with the instructions section of Piper SB No. 944.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) The replacements required by this AD shall be done in accordance with Piper Service Bulletin No. 944, dated October 5, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(e) This amendment (39–8277) becomes effective on August 21, 1992.

Issued in Kansas City, Missouri, on June 3, 1992.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13831 Filed 6–11–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 19, 123, 141, 143, 145, and 148

[T.D. 92–56]

Customs Form for Collection Receipt or Informal Entry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth amendments to the Customs Regulations to reflect adoption of Customs Forms 368 and 368A, Collection Receipt or Informal Entry. Customs Forms 368 and 368A are identical forms which combine and replace Customs Form 5104 (Cash Receipt) and Customs Form 5119–A (Informal Entry). The amendments involve substituting references to the new forms wherever references to the superseded forms appear in the regulations. In addition, one of the affected regulatory provisions is further amended by correcting an out-of-date reference to the informal entry value limit.

EFFECTIVE DATE: June 12, 1992.

FOR FURTHER INFORMATION CONTACT: John Accetturo, Acting Chief, Revenue Branch, National Finance Center (317–298–1308).

SUPPLEMENTARY INFORMATION:

Background

Until recently, Customs administered separate forms for purposes of issuing a receipt for funds paid to Customs (Customs Form 5104, Cash Receipt) and for purposes of informal entries (Customs Form 5119–A, Informal Entry). Customs Form 5104 consisted of a serially numbered, triplicate form and was used principally as a cash receipt and as a receipt for other payments made to Customs not involving payment of duties in connection with the filing of a formal entry/entry summary on Customs Form 7501 (for example, payment of vessel tonnage tax and light money and payment of processing fees for services provided by Customs to arriving vessels, commercial trucks and other conveyances). Customs Form 5119–A was a serially numbered form used in those cases in which merchandise is allowed to be entered under informal entry procedures (for example, most merchandise not exceeding $1,250 in value and certain classes of merchandise entitled to free entry).

In July 1991 Customs instituted use of Customs Forms 368 and 368A, Collection Receipt or Informal Entry. These new forms are identical, serially numbered, triplicate forms which combine the essential elements of, and thus are intended to replace, Customs Forms 5104 and 5119–A. The new forms provide for insertion of information at the top to identify the payer/importer and the remainder of each form is principally divided into two separate parts identified as "Receipt" and "Informal Entry"; each form can be used either as a receipt document or as an informal entry document but an individual form cannot be used for both purposes. The new forms differ from each other only in regard to the manner in which they are distributed and controlled by Customs: Customs Form 368 is distributed as a pad containing 50 triplicate forms attached thereto for use at busier Customs field locations, Customs Form 368A is distributed as a package containing 50 loose triplicate forms to be issued out singly at lower volume Customs field locations, and the recordkeeping procedures to be followed by Customs officers vary somewhat depending on the version being used.

Certain sections with parts 4, 19, 123, 141, 143, 145 and 148 of the Customs Regulations (19 CFR parts 4, 19, 123, 141, 143, 145 and 148) refer to superseded Customs Form 5104 or 5119–A. In order to reflect the adoption of Customs Forms 368 and 368A, this document replaces each such outdated reference with a reference to the new forms. (It should be noted that the amendments to sections 141.68(f) and 145.4(c), as set forth in this document, reflect earlier amendments to those sections effected by T.D. 91–73 which was published in the **Federal Register** on August 28, 1991 (56 F.R. 42526)). In addition, one of the affected provisions, section 123.4(b), is being further amended by replacing the reference to "$250" with a reference to "$1,250" in order to reflect the current limit for informal entries as provided in 19 U.S.C. 1498(a)(1); this provision was inadvertently omitted when the Customs Regulations were amended to reflect the statutory limit by T.D. 89–62 which was published in the **Federal Register** on August 31, 1989 (54 F.R. 36025).

Inapplicability of Notice and Delayed Effective Date Requirements

Inasmuch as these amendments constitute a rule of agency management and merely conform the Customs Regulations to, and thus clarify, existing administrative procedures and do not impose any additional substantive requirements on the general public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedures are unnecessary and contrary to the public interest and, for the same reasons pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because these amendments constitute a rule of agency management, this rule is not subject to E.O. 12291 and, accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Imports, Maritime carriers, Vessels.

19 CFR Part 19

Customs duties and inspection, Imports, Bonded warehouses.

19 CFR Part 123

Customs duties and inspection, Imports, Canada, Mexico.

19 CFR Part 141

Customs duties and inspection, Imports, Entry procedures.

19 CFR Part 143

Customs duties and inspection, Imports, Entry procedures.

19 CFR Part 145

Customs duties and inspection, Imports, Postal service.

19 CFR Part 148

Customs duties and inspection, Imports.

Amendments to the Regulations

Accordingly, for the reasons stated above, parts 4, 19, 123, 141, 143, 145 and 148, Customs Regulations (19 CFR part 4, 19, 123, 141, 143, 145 and 148), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

§ 4.23 [Amended]

2. Section 4.23, first sentence, is amended by removing the words "(Customs Form 5104)" and adding, in their place, the words "(Customs Form 368 or 368A)".

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

§ 19.9 [Amended]

2. Section 19.9(c), second sentence, is amended by removing the words "Customs Form 3461, 7501, 5119–A," and adding, in their place, the words "Customs Form 3461, 7501, 368 or 368A,".

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

* * * * *

§ 123.4 [Amended]

2. Section 123.4(b), first sentence, is amended by removing the words "$250 in value entered on Customs Form 5119–A," and adding, in their place, the words "$1,250 in value entered on Customs Form 368 or 368A".

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.68 also issued under 19 U.S.C. 1315;

* * * * *

§ 141.68 [Amended]

2. Section 141.68 is amended as follows:

(a) Paragraph (f) is amended by removing the words "Customs Form 3419, 3419A or 5119–A" and adding, in their place, the words "Customs Form 3419 or 3419A or Customs Form 368 or 368A".

(b) Paragraph (h) is amended by removing the words "Customs Form 5119A" wherever they appear and adding, in their place, the words "Customs Form 368 or 368A".

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.23 [Amended]

2. Section 143.23, introductory text, is amended by removing the words "Customs Form 5119–A," and adding, in their place, the words "Customs Form 368 or 368A".

§ 143.24 [Amended]

3. The section heading to § 143.24 is revised to read "Preparation of Customs Form 7501 and Customs Form 368 or 368A (serially numbered)."

§ 143.24 [Amended]

4. Section 143.24, second sentence, is amended by removing the words "Customs Form 5119–A" and adding, in their place, the words "Customs Form 368 or 368A".

§ 143.25 [Amended]

5. Section 143.25 is amended by removing the words "Customs Form 5119–A" and adding, in their place, the words "Customs Form 368 or 368A".

PART 145—MAIL IMPORTATIONS

1. The authority citation for part 145 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

* * * * *

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

* * * * *

§ 145.4 [Amended]

2. Section 145.4(c), first sentence, is amended by removing the words "Customs Form 3419, 3419A or 5119–A (serially numbered) or 7501" and adding, in their place, the words "Customs Form 3419 or 3419A or Customs Form 368 or 368A (serially numbered) or Customs Form 7501".

§ 145.12 [Amended]

3. Section 145.12 is amended as follows:

(a) Paragraph (b)(1), second sentence, is amended by removing the words "(Customs Form 5119–A), (serially numbered)" and adding, in their place, the words", Customs Form 368 or 368A (serially numbered),".

(b) Paragraph (c), first sentence, is amended by removing the words "Customs Form 5119–A, (serially numbered)" and adding, in their place, the words "Customs Form 368 or 368A (serially numbered)".

(c) Paragraph (e)(1), second sentence, is amended by removing the words "Customs Form 5119–A, (serially numbered)" and adding, in their place, the words "Customs Form 368 or 368A (serially numbered),".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for part 148 continues to read as follows:

Authority: 19 U.S.C. 66, 1496, 1624. The provisions of this part, except for subpart C, are also issued under General Note 8, Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202;

§ 148.12 [Amended]

2. Section 148.12(c) is amended by removing the words "Customs Form 5104" and adding, in their place, the words "Customs Form 368 or 368A".

§ 148.27 [Amended]

3. Section 148.27 is amended by removing the words "Customs Form 5104" and adding, in their place, the words "Customs Form 368 or 368A".

Michael H. Lane,

Acting Commissioner of Customs.

Approved: May 26, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury (Enforcement).

[FR Doc. 92–13847 Filed 6–11–92; 8:45 am]

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INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

22 CFR Part 1101

Privacy Act of 1974

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Final rule.

SUMMARY: This document revises the United States Section, International Boundary and Water Commission (IBWC), regulations to implement the provisions of the Privacy Act of 1974 and to assure compliance with the Office of Management and Budget (OMB) Privacy Act Implementation Guidelines and Responsibilities.

EFFECTIVE DATE: June 12, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Reinaldo Martinez, U.S. Section Privacy Act Officer (915–534–6674).

SUPPLEMENTARY INFORMATION: On April 22, 1992, the United States Section, IBWC, published this agency's Privacy Act proposed rules in the **Federal**

Register (Vol. 55, pages 14674–14680). The comment period was from date of publication to May 22, 1992. No formal comments were received by this agency, therefore the rules remain as published in the April 22, 1992, Federal Register.

This document revises the regulations relating to the Privacy Act of 1974 (Pub. L. 93–579, as amended, 5 U.S.C. 552a) by changing or adding the following:

a. Address information is being updated.

b. Section 1101.3, paragraph (d) has been added. Previous rules did not mention that the request should state that it is being made under the Privacy Act.

c. Section 1101.03, paragraph (i) has been changed. It now includes a statement to the effect that every effort will be made to provide the requested records within thirty (30) days.

d. Section 1101.6, paragraph (c) has been changed. Previous rules did not mention that a request to correct or amend a record should state that it is for a record that falls under the Privacy Act. Subparagraphs (1) thru (5) have been changed to clarify the five basic elements needed in a request for correcting or amending records that fall under the Privacy Act.

e. Section 1101.10, paragraph (a) has been changed. It has been rewritten to clarify that only copying fees may be charged under the Privacy Act and that no fees will be charged for search time or interpretation of the Act.

f. Section 1101.17, Annual report to Congress, has been added.

List of Subjects in 22 CFR Part 1101

Privacy.

22 CFR part 1101 is revised as follows:

PART 1101—PRIVACY ACT OF 1974

Sec.

1101.1 Purpose and scope.
1101.2 Definitions.
1101.3 General policy: Collection and use of personal information.
1101.4 Reports on new systems of records: computer matching programs.
1101.5 Security, confidentiality and protection of records.
1101.6 Requests for access to records.
1101.7 Disclosure of records to individuals who are subjects of those records.
1101.8 Disclosure of records to third parties.
1101.9 Exemptions.
1101.10 Accounting for disclosures.
1101.11 Fees.
1101.12 Request to correct or amend a record.
1101.13 Agency review of request to correct or amend a record.
1101.14 Appeal of Agency decision not to correct or amend a record.
1101.15 Judicial review.
1101.16 Criminal penalties.
1101.17 Annual Report to Congress.

Authority: Privacy Act of 1974 (Pub. L. 93–579, as amended, 5 U.S.C. 552a).

§ 1101.1 Purpose and scope.

The purpose of these regulations is to prescribe responsibilities, rules, guidelines, and policies and procedures to implement the Privacy Act of 1974 (Pub. L. 93–579, as amended; 5 U.S.C. 552a) to assure that personal information about individuals collected by the United States Section is limited to that which is legally authorized and necessary and is maintained in a manner which precludes unwarranted intrusions upon individual privacy. Further, these regulations establish procedures by which an individual can: (a) Determine if the United States Section maintains records or a system of records which includes a record pertaining to the individual and (b) gain access to a record pertaining to him or her for the purpose of review, amendment or correction.

§ 1101.2 Definitions.

For the purpose of these regulations:

(a) *Act* means the Privacy Act of 1974.

(b) *Agency* is defined to include any executive department, military department, Government corporation, Government controlled corporation or other establishment in the executive branch of the Government (including the Executive Office of the President, or any independent regulatory agency) (5 U.S.C. 552)).

(c) *Commission* means the International Boundary and Water Commission, United States and Mexico.

(d) *Commissioner* means head of the United States Section, International Boundary and Water Commission, United States and Mexico.

(e) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(f) *Maintain* includes maintain, collect, use, or disseminate.

(g) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(h) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it is collected.

(i) *Section* means the United States Section, International Boundary and Water Commission, United States and Mexico.

(j) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8 (Census data).

(k) *System of records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 1101.3 General policy: Collection and use of personal information.

(a) Heads of Divisions, Branches, and the projects shall ensure that all Section personnel subject to their supervision are advised of the provisions of the Act, including the criminal penalties and civil liabilities provided therein, and that Section personnel are made aware of their responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to ensure that no system of records concerning individuals, no matter how small or specialized, is maintained without public notice.

(b) Section personnel shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility or function of the Section.

(2) Collect from individuals only that information which is necessary to Section responsibilities or functions;

(3) Collect information, wherever possible, directly from the individual to whom it relates;

(4) Inform individuals from whom information is collected of the authority for collection, the purpose thereof, the uses that will be made of the information, and the effects, both legal and practical, of not furnishing the information;

(5) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless (i) the individual has volunteered such information for his own benefit; (ii) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (iii) the activities involved are pertinent to and within the

scope of an authorized investigation or adjudication activity;

(6) Advise an individual's supervisors of the existence or contemplated development of any system of records which retrieves information about individuals by individual identified;

(7) Maintain an accounting of all disclosures of information to other than Section personnel;

(8) Disclose no information concerning individuals to other than Section personnel except when authorized by the Act or pursuant to a routine use published in the **Federal Register**;

(9) Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made to other than Section personnel; and

(10) Call to the attention of the PA Officer any information in a system maintained by the Section which is not authorized to be maintained under the provisions of the Act, including information on First Amendment activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(c) The system of records maintained by the Section shall be reviewed annually by the PA Officer to ensure compliance with the provisions of the Act.

(d) Information which may be used in making determinations about an individual's rights, benefits, and privileges shall, to the greatest extent practicable, be collected directly from that individual. In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following criteria, among others, may be considered:

(1) Whether the nature of the information sought is such that it can only be obtained from a third party;

(2) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(3) Whether there is a risk that information requested from the third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(4) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(5) Whether provisions can be made for verification by the individual of information collected from third parties.

(e) Employees whose duties require handling of records subject to the Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(f) No employee of the section may alter or destroy a record subject to the Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision of the Commissioner or the decision of a court of competent jurisdiction.

§ 1101.4 Reports on new systems of records; computer matching programs.

(a) Before establishing any new systems of records, or making any significant change in a system of records, the Section shall provide adequate advance notice to:

(1) The Committee on Government Operations of the House of Representatives;

(2) The Committee on Governmental Affairs of the Senate; and

(3) The Office of Management and Budget.

(b) Before participating in any computerized information "matching program," as that term is defined by 5 U.S.C. 552a(a)(8) the Section will comply with the provisions of 5 U.S.C. 552a(o), and will provide adequate advance notice as described in § 1101.4(a) above.

§ 1101.5 Security, confidentiality and protection of records.

(a) The Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience or unfairness to any individual on whom information is maintained.

(b) When maintained in manual form (typed, printed, handwritten, etc.) records shall be maintained, at a minimum, subject to the following safeguards, or safeguards affording comparable protection:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 1101.3 and state that the Act contains a criminal penalty for the unauthorized dislosure of records to which it applies.

(2) During working hours: (i) The area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, that security shall be supplemented by: (i) Providing lockable file cabinets or containers for the records or (ii) changing the lock or locks for the room so that they may not be opened with a master key. For purposes of this paragraph, a master key is a key which may be used to open rooms other than the room containing records subject to the Act, unless those rooms are utilized by officials or employees authorized to have access to the records subject to the Act.

(5) Personnel handling personal information during routine use will ensure that the information is properly controlled to prevent unintentional or unauthorized disclosure. Such information will be used, held, or stored only where facilities or conditions are adequate to prevent unauthorized or unintentional disclosure.

(c) When the records subject to the Act are maintained in computerized form, safeguards shall be utilized based on those recommended in the National Bureau of Standard's booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of the records.

§ 1101.6 Requests for access to records.

(a) Any individual may submit an inquiry to the Section to ascertain whether a system of records contains a record pertaining to him or her.

(b) The inquiry should be made either in person or by mail addressed to the PA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C–310, El Paso, TX 79902–1422. The PA Officer shall provide assistance to the individual making the inquiry to assure the timely identification of the appropriate systems of records. The office of the PA Officer is located in Suite C–316 and is open to an individual between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (excluding holidays).

(c) Inquiries submitted by mail should be marked "PRIVACY ACT REQUEST" on the bottom left-hand corner of the envelope.

(d) The letter should state that the request is being made under the Privacy Act.

(e) Inquiries concerning whether a system of records contains a record

pertaining to an individual should contain the following:

(1) Name, address and telephone number (optional) of the individual making the inquiry;

(2) Name, address and telephone number (optional) of the individual to whom the record pertains, if the inquiring individual is either the parent of a minor or the legal guardian of the individual to whom a record pertains;

(3) A certified or authenticated copy of documents establishing parentage or guardianship;

(4) Whether the individual to whom the record pertains is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States;

(5) Name of the system of records, as published in the **Federal Register**;

(6) Location of the system of records, as published in the **Federal Register**;

(7) Such additional information as the individual believes will or might assist the Section in responding to the inquiry and in verifying the individual's identity (for example: date of birth, place of birth, names of parents, place of work, dates of employment, position title, etc.);

(8) Date of inquiry; and

(9) Signature of the requester.

The Section reserves the right to require compliance with the identification procedures appearing at paragraph (f) of this section where conditions warrant.

(f) The requirement for identification of individuals seeking access to records are as follows:

(1) In person: Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document bearing the individual's signature, preferably issued for participation in a federally sponsored program (for example, Social Security card, unemployment insurance book, employer's identification card, national credit card and professional, craft or union membership card); and

(iii) A document bearing either the photograph or the signature of the individual, preferably issued for participation in a federally sponsored program (for example, Medicaid card). In the event the individual can provide no suitable documentation of identity, the Section will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3).

(2) Not in person: If the individual making a request does not appear in person before the PA Officer, a certificate of a notary public or equivalent officer empowered to administer oaths must accompany the request.

(3) Parents of minors and legal guardians: An individual acting as the parent of a minor or the legal guardian of the individual or an heir or legal representative of a deceased person to whom a record pertains shall establish his or her personal identity in the manner prescribed in either paragraph (f)(1) or (2) of this section. In addition, such individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. A parent or legal guardian may act only for a living individual, not for a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the requirements of paragraph (f) of § 1101.7 are satisfied. In the case of an heir or legal representative of a deceased person the proof of identity shall be a certified copy of the Will, if any; the order of a court of competent jurisdiction admitting the Will to probate; the order of a court of competent jurisdiction appointing an executor, executrix, or administrator; a letter of administration; or any other documentary evidence which establishes the identity of the individual as an heir or legal representative of a deceased person.

(g) When the provisions of this part are alleged to have the effect of impeding an individual in exercising his or her right to access, the Section will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(h) An inquiry which is not addressed as specified in paragraph (b) of this section or which is not marked as specified in paragraph (c) of this section will be so addressed and marked by the Section's personnel and forwarded immediately to the PA Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until forwarding of the inquiry to the PA Officer has been effected. In each instance when an inquiry so forwarded is received, the PA Officer shall notify the individual that his or her inquiry was improperly addressed and the date when the inquiry was received at the proper address.

(i) Each inquiry received shall be acted upon promptly by the PA Officer. Although there is no fixed time when an agency must respond to a request for access to records under the Act, every effort will be made to respond within ten (10) days (excluding Saturdays, Sundays and holidays) of the date of receipt. If a response cannot be made within ten (10) days, the PA Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. Every effort will be made to provide the requested records within thirty (30) days.

(j) An individual shall not be required to state a reason or otherwise justify his or her inquiry.

§ 1101.7 Disclosure of records to individuals who are subjects of those records.

(a) Each request received shall be acted upon promptly by the PA Officer. Every effort will be made to respond within ten (10) days (excluding Saturdays, Sundays, and holidays) of the date of receipt. If a response cannot be made within ten (10) days due to unusual circumstances, the PA Officer shall send an acknowledgment during that period providing information on the status of the request and asking for such further information as may be necessary to process the request. Every effort will be made to provide the requested records within thirty (30) days. "Unusual circumstances" shall include circumstances where a search for and collection of requested records from inactive storage, field facilities or other establishments are required, cases where a voluminous amount of data is involved, instances where information on other individuals must be separated or expunged from the particular record, and cases where consultations with other agencies having a substantial interest in the determination of the request are necessary.

(b) Grant of access:

(1) Notification.

(i) An individual shall be granted access to a record pertaining to him or her except where the record is subject to an exemption under the Act and these rules.

(ii) The PA Officer shall notify the individual of such determination and provide the following information:

(A) The methods of access, as set forth in paragraph (b)(2) of this section;

(B) The place at which the records may be inspected;

(C) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty (30) days from the date of notification;

(D) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 1101.11. In no event shall be estimated date be later than thirty (30) days from the date of notification;

(E) The fact that the individual, if he or she wishes, may be accompanied by another individual during the personal access, subject to the procedures set forth in paragraph (f) of this section; and

(F) Any additional requirements needed to grant access to a specific record.

(2) Method of access: The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be made in the office specified by the PA Officer, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (excluding holidays);

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the PA Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of the section or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 1101.11. The Section, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged to the individual.

(c) Access to medical records: Upon advice by a physician that release of medical information directly to the requester could have an adverse effect on the requester, the Section may attempt to arrange an acceptable alternative. This will normally involve release of such information to a physician named by the requester, with the requester's written consent. (Note that release to any third party, including a physician or family member, must comply with the provisions of § 1101.8 of this part.)

(d) The Section shall supply such other information and assistance at the time of access to make the record intelligible to the individual.

(e) The Section reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape of disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example 5, U.S.C. 552(k)(1)). In no event shall original records of the Section be made available to the individual except under the immediate supervision of the PA Officer or his designee. Title 18 U.S.C. 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy a record filed in a public office, or to attempt to do any of the foregoing.

(f) Any individual who request access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing and shall include the name of the other individual, a specific description of the record to which access is sought, and the date and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the PA Officer or his designee. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during the personal access to a record.

(g) Initial denial of access:

(1) Grounds. Access by an individual to a record which pertains to that individual will be denied only upon a determination by the PA Officer that:

(i) The record is subject to an exemption under the Act and these rules;

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 1101.7(c) pertaining to medical records have been temporarily invoked; or

(iv) The individual unreasonably has failed to comply with the procedural requirements of these rules.

(2) Notification. The PA Officer shall give notice of denial of access of records to the individual in writing and shall include the following information:

(i) The PA Officer's name and title or position;

(ii) The date of denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and these rules;

(iv) The individual's opportunities for further administrative consideration, including the identity and address of the responsible official;

(v) If stated to be administratively final within the Section, the individual's right to judicial review under 5 U.S.C. 552a(g) (1) and (5).

(3) Administrative review: When an initial denial of a request is issued by the PA Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, the sole procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). Such petition shall be filed with the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C–310, El Paso, TX 79902–1422. If the exception was determined by another agency, the PA Officer will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the Section, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the Commissioner.

(ii) As to denial under paragraphs (g)(1), (ii), (iii) or (iv) of this section, the individual may file for review with the Commissioner, as indicated in the PA Officer's initital denial notification.

(h) If a request is partially granted and partially denied, the PA Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 1101.8 Disclosure of records to third-parties.

(a) The Section will not disclose any information about an individual to any person other than the individual except in the following instances:

(1) Upon written request by the individual about whom the information is maintained;

(2) With prior written consent of the individual about whom the information is maintained;

(3) To the parent(s) of a minor child, or the legal guardian of an incompetent person, when said parent(s) or legal guardian act(s) on behalf of said minor or incompetent person.

(4) When permitted under 5 U.S.C. 552a(b) (1) through (11) which provides as follows:

(i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552 of the U.S. Code;

(iii) For a routine use as defined in the Act at 5 U.S.C. 552a(a)(7);

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the U.S. Code;

(v) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee, and to a Congressman who is acting on behalf of his constituent;

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(xi) Pursuant to the order of a court of competent jurisdiction;

(5) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b). These situations include the following:

(i) Dissemination of a corrected or amended record or notation of a disagreement statement (5 U.S.C. 552a(c)(4));

(ii) Disclosure of records to an individual to whom they pertain (5 U.S.C. 552a(d));

(iii) Civil actions by an individual (5 U.S.C. 552a(g));

(iv) Release of records or information to the Privacy Protection Study Commission (Section 5 of Pub. L. 93–579);

(v) Fulfill the needs of Office of Management and Budget to provide continuing oversight and assistance to the section in implementation of the Act (Section 6 of Pub. L. 93–579).

§ 1101.9 Exemptions.

The following are exempt from disclosure under 5 U.S.C. 552a (j) and (k):

(a) Any record originated by another agency which has determined that the record is exempt. If a request encompasses such a record, the Section will advise the requester of its existence, and of the name and address of the source agency.

(b) Records specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy, and which are, in fact, properly classified pursuant to such executive order.

(c) Those systems of records listed as exempt in the Notice of Records of the **Federal Register**, including: Certificates of Medical Examination; Occupational Health and Injury Files; and Investigative Records.

§ 1101.10 Accounting for disclosures.

(a) Each system manager shall establish a system of accounting for all disclosures of records, either orally or in writing made outside the Section, unless otherwise exempted under this section. Accounting procedures may be established in the least expensive and most convenient form that will permit the PA Officer to advise individuals promptly upon request of the persons or agencies to which records concerning them have been disclosed. Accounting of disclosures made under 5 U.S.C. 552a(b)(7) relating to civil or criminal law enforcement activities shall not be made available to the individual named in the record.

(b) Accounting records, at a minimum, shall include the date, nature, and purpose of each disclosure of a record and the name and address of the person or agency to whom the disclosure was made. Accounting records shall be maintained for at least five years or the life of the record, whichever is longer.

(c) Accounting is not required to be kept for disclosure made within the Section or disclosures made pursuant to the Freedom of Information Act.

(d) If an accounting of the disclosure was made, the PA Officer shall inform any person or other agency about any correction or notation of dispute made by the Section in accordance with 5 U.S.C. 552a(d) of any record that has been disclosed to the person or agency.

§ 1101.11 Fees.

(a) Under the Act, fees can only be charged for the cost of copying records. No fees may be charged for the time it takes to search for the records or for the time it takes to determine if any exemptions apply. The Section will not charge a fee for the first copy of an individual's personnel record.

(b) The Section will charge a fee of $0.10 per page for copies of documents which are identified by an individual and reproduced at the individual's request for retention, except that there will be no charge for requests involving costs of $1.00 or less, but the copying fees for contemporaneous request by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at the request of the individual, such as certification or authentication, will be charged to the individual in accordance with other published regulations of the Section pursuant to statute (for example, 22 CFR part 1102—Freedom of Information Act.)

(d) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the U.S. Section, International Boundary and Water Commission, and delivered to or mailed to the PA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C–310, El Paso, TX 79902–1422. The Section will assume no responsibility for cash sent by mail.

(e) A receipt for fees paid will be given only upon request.

§ 1101.12 Request to correct or amend a record.

(a) Any individual may submit a request for correction of or amendment to a record to the Section. The request should be made either in person or by mail addressed to the PA Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial

determinations on requests for correction or amendment.

(b) Since the request, in all cases, will follow a request for access under § 1101.6, the individual's identity will be established by his or her signature on the request.

(c) A request for correction or amendment should be in writing. The envelope containing the request should be marked "Privacy Act Amendment Request" on the lower left hand corner. The request should include the following:

(1) First, the letter should state that it is a request to amend a record under the Privacy Act of 1974.

(2) Second, the request should identify the specific record and the specific information in the record for which an amendment is being sought.

(3) Third, the request should state why the information is not accurate, relevant, timely, or complete. Supporting evidence may be included with the request.

(4) Fourth, the request should state what new or additional information, if any, should be included in place of the erroneous information. Evidence of the validity of new or additional information should be included. If the information in the file is wrong and needs to be removed rather than supplemented or corrected, the request should make this clear.

(5) Fifth, the request should include the name, address, and telephone number (optional) of the requester.

§ 1101.13 Agency review of request to correct or amend a record.

(a) (1) Not later than ten (10) days (excluding Saturdays, Sundays and holidays) after receipt of a request to correct or amend a record, the PA Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in § 1101.7(a). No acknowledgment will be sent if the request can be reviewed, processed and the individual notified of the results of review (either compliance or denial) within ten (10) days (excluding Saturdays, Sundays and holidays). Requests filed in person will be acknowledged in writing at the time submitted.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within ten (10) days, the PA Officer shall either.

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in an electronic data bank); or

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The PA Officer's name, title and position;

(B) The date of denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and these rules;

(D) The procedures for appeal of the denial as set forth in § 1101.14.

The term promptly in this paragraph means within thirty (30) days (excluding Saturdays, Sundays and holidays). If the PA Officer cannot make the determination within thirty (30) days, the individual will be advised in writing of the reason therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the PA Officer shall notify all persons and agencies to which copies of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a receipt agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it has disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the PA Officer in reviewing a request for correction or amendment.

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

(3) The relevance and necessity of the information in terms of purpose for which it was collected.

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Section will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the PA Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended was compiled in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The record sought to be corrected or amended is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or

(5) The individual unreasonably has failed to comply with the procedural requirements of these rules.

(f) If a request is partially granted and partially denied, the PA Officer shall follow the approrpriate procedures of this section as to the records within the grant and the records within the denial.

§ 1101.14 Appeal of agency decision not to correct or amend a record.

(a) An appeal of the initial refusal to amend a record under § 1101.13 may be requested by the individual who submitted the request. The appeal must be requested in writing, and state that the appeal is being made under the Privacy Act of 1974, it should identify the denial that is being appealed and the records that were withheld, it should include the requester's name and address and telephone number (optional), and it should be signed by the individual making the request. It should be received by the Section within sixty (60) calendar days of the date the individual is informed of the PA Officer's refusal to amend a record in whole or in part. The request should be addressed and sent via certified mail to the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, suite C–310, El Paso, TX 79902–1422. The processing of appeals will be facilitated

if the words "PRIVACY APPEAL" appear in capital letters on both the envelope and the top of the appeal papers. An appeal not addressed and marked as provided herein will be marked by Section personnel when it is so identified and will be forwarded immediately to the Commissioner.

(b) The time for decision on the appeal begins on the date the appeal is received by the Commissioner. The appeal should include any documentation, information or statements advanced for the amendment of the record.

(c) There shall be a written record of the reason for the final determination. The final determination will be made not later than thirty (30) days (excluding Saturdays, Sundays and holidays) from the date the Commissioner receives the appeal; unless, for good cause shown, the Commissioner extends such determination beyond the thirty (30) day period.

(d) When the final determination is that the record should be amended in accordance with the individual's request, the Commissioner shall direct the office responsible for the record to comply. The office responsible for the record shall:

(1) Amend the record as directed;

(2) If a distribution of the record has been made, advise all previous recipients of the record of the amendment and its substance;

(3) So advise the individual in writing.

(e) When the final decision is that the request of the individual to amend the record is refused, the Commissioner shall advise the individual:

(1) Of the refusal and the reasons for it;

(2) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the Section;

(3) Of the procedures for filing the statement of disagreement;

(4) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Section, a brief statement by the Section summarizing its reasons for refusing to amend the record;

(5) That prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained; and

(6) Of his or her right to seek judicial review of the Section's refusal to amend the record.

(f) When the final determination is to refuse to amend a record and the individual has filed a statement under paragraph (e)(2) of this section, the Section will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to use or disclose it. When information that is the subject of a statement of dispute filed by an individual is subsequently disclosed, the Section will note that the information is disputed and provide a copy of the individual's statement. The Section may also include a brief summary of the reasons for not making a correction when disclosing disputed information. Such statements will normally be limited to the reasons given to the individual for not amending the record. Copies of the Section's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by the individual under these rules.

(g) An appeal will be decided on the basis of the individual's appeal papers and the record submitted by the PA officer. No personal appearance or hearings on appeals will be allowed.

§ 1101.15 Judicial review.

After having exhausted all administrative remedies set forth in § 1101.7(g)(3) or § 1101.14, a requester may bring a civil action against the Section, in a United States District Court of proper venue, within two years of the final administrative decision which the requester seeks to challenge.

§ 1101.16 Criminal penalties.

(a) Under the provisions of the Act, it is a Federal crime for any person to knowingly and willfully request or obtain information from a Federal agency, including this Section, by false pretenses.

(b) It is also a crime for any officer or employee of the Section to knowingly and willfully:

(1) Make an unauthorized disclosure; or

(2) Fail to publish public notice of a system of records as required by 5 U.S.C. 552a(e)(4).

§ 1101.17 Annual report to Congress.

(a) On or before August 1 of each calendar year the Commissioner shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include:

(1) The U.S. Section's point of contact responsible for implementing the Privacy Act of 1974;

(2) The number of active systems, new systems published, systems deleted, systems automated, either in whole or part, number of existing systems for which new routine uses were established, number of existing systems for which new exemptions were claimed, number of existing systems from which exemptions were deleted, and number of public comments received by the agency of publication of rules or notices;

(3) Total number of requests for access, number of requests wholly or partially granted, number of requests totally denied, number of requests for which no record was found, number of appeals of denials of access, number of appeals in which denial was upheld, number of appeals in which denial was overturned either in whole or part, number of requests to amend records in system, number of amendment requests wholly or partially granted, number of amendment requests totally denied, number of appeals of denials of amendment requests, number of appeals in which denial was upheld, number in which denial was overturned either in whole or in part, whether the U.S. Section denied an individual access to his or her records in a system of record on any basis other than a Privacy Act exemption under 5 U.S.C. 552(j) or (k), and the legal justification for the denial, number of instances in which individuals litigated the results of appeals of access or amendment, and the results of such litigation, and a statement of our involvement in matching programs;

(4) Any other information which will indicate the U.S. Section's effort to comply with the objectives of the Act, to include any problems encountered, with recommendations for solving thereof;

(5) And, a copy of these regulations.

Reinaldo Martinez,

FOIA/Privacy Act Officer.

[FR Doc. 92-13801 Filed 6-11-92; 8:45 am]

BILLING CODE 4710-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 92-015]

Great Kennebec River Whatever Race, Kennebec River, Maine

AGENCY: Coast Guard, DOT.

ACTION: Implementation of rule.

SUMMARY: This document puts into effect the permanent regulations, 33 CFR 100.108, for the Great Kennebec River Whatever Race to be held on Sunday, July 5, 1992 from 6 a.m. to 6 p.m. The regulations in 33 CFR 100.108 are

necessary in order to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: The regulations, 33 CFR 100.108 are effective from 6 a.m. to 6 p.m. on Sunday, July 5, 1992 and will be in effect each year thereafter during the same time period on the first Sunday of July or as published in a **Federal Register** notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8310.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1992 running of the Great Kennebec River Whatever Race, Augusta to Gardiner, Maine. The regulations, 33 CFR 100.108, will be in effect from 6 a.m. on July 5, 1992 through 6 p.m. on July 5, 1992. A portion of the Kennebec River will be closed during this time to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that portion of the Kennebec River, extending bank to bank, between the Maine Route 126 Bridge (connecting Randolph and Gardiner, Maine), to the U.S. Route 201–202 bridge in Augusta, Maine. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners.

Drafting Information

The principal persons involved in drafting this document are LTJG E.G. Westerberg, Project Manager, First Coast Guard District Boating Safety Division, and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Division.

Dated: June 1, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 92–13858 Filed 6–11–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore, Regulation 92–05–12]

Security Zone Regulations: Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone in the Severn River, Annapolis, Maryland. The security zone is needed to protect the participants attending the SEALINK 92 Symposium being sponsored by the Government of the United States from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry in this zone is prohibited unless authorized by the Captain of the Port or his authorized representative.

EFFECTIVE DATE: These regulations are effective each day from 6 a.m. to 11:59 p.m., June 17 through June 20, 1992 unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: MSTC C. R. Moberg, at U.S.C.G. Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of **Federal Register** publication. Publishing an NPRM and delaying the effective date of this security zone would be contrary to the public interest since immediate action is needed to protect the participants attending the SEALINK 92 Symposium from injury due to sabotage or other subversive acts.

Drafting Information

The drafters of this regulation are MSTC C. R. Moberg, project officer for the Captain of the Port, Baltimore, Maryland and LT M. L. Lombardi, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Coast Guard is establishing a security zone in the Severn River, Annapolis, Maryland, to protect the participants attending the SEALINK 92 Symposium being sponsored by the Government of the United States from sabotage or other subversive acts, accidents, or other causes of a similar nature. The symposium will be held at the U.S. Naval Academy from June 17, 1992 through June 20, 1992. No vessels will be allowed to enter or operate within the security zone except by specific permission and direction from the Captain of the Port or representative of the Captain of the Port. Coast Guard vessels will be on scene to notify boaters of restrictions and to enforce the security zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T0512 is added to read as follows:

§ 165.T0512 Security Zone: Severn River and Annapolis Harbor, Annapolis, Maryland.

(a) *Location.* The following area is a security zone: The waters of the Severn River and College Creek bounded by the Naval Academy seawall, and a line connecting the following points:

Latitude	*Longitude*
38 59' 13.2" N.	76 29' 09.1" W.
38 59' 14.0" N.	76 29' 04.3" W.
38 59' 10.0" N	76 28' 58.1" W.

(b) *Effective Times.* This area is effective each day from 6 a.m. to 11:59 p.m., June 17 through June 20, 1992.

(c) *Representative of the Captain of the Port.* A "representative of the Captain of the Port" is any uniformed United States Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Baltimore, Maryland to act on his behalf with respect to this zone.

(d) *Regulations.* (1) No person or vessel may enter, or operate in the security zone without the permission of the Captain of the Port or a representative of the Captain of the Port.

(2) Each person and vessel in the security zone shall immediately obey any direction or order of the Captain of the Port or any representative of the Captain of the Port.

(3) For further information contact the Coast Guard Marine Safety Office, Baltimore, at (410) 962–5100 or the on scene Coast Guard patrol vessels on VHF FM 16.

(4) The general regulations in § 165.33 of this part do not apply to this security zone.

Dated: June 8, 1992.

R. L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92–13857 Filed 6–11–92; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Louisville, Kentucky Regulation 92-04]

Safety Zone Regulations; Ohio River Mile 603.7 to 604.3

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 603.7 to 604.3. The zone is needed to protect all vessels and spectators from a safety hazard associated with the Louisville City Fair fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port Louisville, Kentucky.

EFFECTIVE DATE: This regulation becomes effective at 9:45 pm EDST on 14 June 1992. It terminates at 10:20 pm EDST on 14 June 1992 unless sooner terminated by the Captain of the Port Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dale L. Hutchinson, (502) 582-5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessels involved.

Drafting Information

The drafters of this regulation is Lieutenant Dale L. Hutchinson, project officer for the Captain of the Port Louisville, Kentucky.

Discussion of Regulation

The event requiring this regulation will begin on 14 June 1992 at 10 pm EDST and end on 14 June 1992 at 10:20 pm EDST. The fireworks display will take place at mile 603.9 on the Ohio River. The river closure is needed to protect river traffic and spectators. The Captain of the Port Louisville, Kentucky representative may be contacted on VHF radio Channel 16 during the event.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Lists of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T0226 is added to read as follows:

§ 165.T0226 Safety Zone: Ohio River from Mile 603.7 to 604.3.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 603.7 to 604.3.

(b) *Effective Date.* This regulation becomes effective at 9:45 pm EDST on 14 June, 1992. It terminates at 10:20 pm EDST on 14 June 1992, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Louisville, Kentucky, or a Coast Guard Commissioned, Warrant, or Petty Officer designated by him.

Dated: June 1, 1992.

W.J. Morani, Jr.,

Commander, U.S. Coast Guard, Captain of the Port, Louisville, Kentucky.

[FR Doc. 92-13859 Filed 6-11-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 671

RIN 1840-AA69

Foreign Periodicals Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to govern the Foreign Periodicals Program. These regulations are needed to implement section 607 of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986. The Foreign Periodicals Program is intended to provide a framework for strengthening specialized library collections dealing with foreign area studies and world affairs.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte, Deputy Director, Center for International Education, U.S. Department of Education, room 3053, ROB 3, 400 Maryland Avenue SW., Washington, DC 20202-5248. Telephone: 202-708-7283. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Under the Foreign Periodicals Program, the Secretary awards grants to institutions of higher education, public or nonprofit private library institutions, or consortia of these institutions. To receive a grant, an applicant must have an established library or consortium of libraries with collection strengths in specific geographical areas of the world or in particular fields or issues in world affairs that concern one or more countries, or both. The applicant also must demonstrate a commitment to share the resources of its collection.

Grant funds may be used: (1) To acquire periodicals published outside the United States that are not commonly held by American academic libraries and that are of scholarly or research importance; (2) to preserve those periodicals; (3) to make those periodicals available to researchers and scholars; and (4) to maintain machine-readable bibliographic information on the acquired periodicals and to enter that information into one or more of the widely available bibliographic data bases.

On December 29, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for the Foreign Periodicals Program in the Federal Register (52 FR 49122). Final regulations were not adopted because the program was not funded until FY 1992. There are no significant differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, nine parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made in the regulations since the publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 671.1—What is the Foreign Periodicals Program?

Comment: One commenter suggested the addition of the phrase "in the region of the recipient" to the end of paragraph (a) of § 671.1, to ensure the availability of specialized collections in more than one region of the United States.

Discussion: The Secretary believes that developing specialized collections in more than one region of the United States is consistent with the program's goal of helping to develop national resources, and the Secretary intends to make grant awards that are consistent with this goal. Thus, an application should include a description of any special or regional needs in a persuasive way and relate them to national needs. These factors will be considered in the evaluation of applications under § 671.11, particularly paragraphs (f) and (g) of that section.

Changes: None.

Section 671.2—Who Is Eligible for an Award?

Comment: One commenter urged that specialized, "affiliated," or branch libraries within a single university be eligible to apply "as their collections fit the eligibility criteria and the priorities" outlined in the proposed regulations.

Discussion: The authorizing statute, 20 U.S.C. 1125a, provides that eligible applicants are institutions of higher education, public or nonprofit private library institutions, and consortia of these institutions, and these provisions are reflected in § 671.2. The Secretary anticipates that the wording of this section will permit the strengthening of whatever collections the institution may choose, subject (as the commenter notes) to the "criteria and the priorities" of the program. Applications prepared by individual units of a university must be submitted under the authority of the university's central administration.

Changes: None.

Comment: A commenter requested the addition of the phrase "with a basic collection and the demonstrated intent to develop" to paragraph (a) of § 671.2 with a view to encouraging institutions that have made an initial investment in a new field.

Discussion: The current wording of the paragraph, which is drawn from 20 U.S.C. 1125a(c), indicates that the library itself must be established but does not specify that any minimum strength would be required in the specialized collection at the time the application is submitted. The competitive process is likely to determine the level of collection development that might be needed for an institution to receive title VI funds.

Changes: None.

Comment: In relation to paragraph (b), one commenter expressed concern that grantees might be permitted to exercise discriminatory lending practices, to refuse to lend to certain borrowers, or to impose excessive charges on those using the federally funded collections.

Discussion: Under § 671.2(b), an institution is eligible for a grant only if it demonstrates a commitment to share the resources of its library collection with researchers and scholars. The Secretary agrees that this program should not in any way sanction restrictive, unreasonable, or costly lending or dissemination practices. However, these issues are more appropriately dealt with through the grant application, review, and monitoring processes.

Changes: None.

Section 671.3—What Activities May the Secretary Fund?

Comment: Three commenters expressed concern about the content of paragraph (a). One noted that the library community has no absolute definition of periodicals that are "not commonly held" and urged flexibility in applying this requirement. All three noted the importance of continuity in the acquisition of periodicals, in contrast with the unpredictability of annual funding patterns. Two suggested that, under these circumstances, the program might focus on the acquisition of backfiles.

Discussion: The Secretary recognizes that flexibility and continuity will be important considerations in the administration of the program. The wording of the regulations does not prevent the acquisition of backfiles.

Changes: None.

Comment: Two commenters emphasized the importance of cooperative projects in conjunction with the bibliographic information activity described in paragraph (d). One commenter suggested the addition, to paragraph (d), of "described in paragraph (a) of this section" to assure that information about acquisitions funded under this program is disseminated.

Discussion: The Secretary wishes to encourage cooperative bibliographic efforts to acquire foreign periodicals. Because entering appropriate information about acquisitions in national bibliographic database networks is an important kind of cooperation, it would be unwise to limit funding for these cooperative bibliographic efforts to periodicals purchased under this program.

Changes: None.

Section 671.5—What Definitions Apply?

Comment: One commenter urged the expansion of the definition of "foreign periodical" in paragraph (b) by the addition of "or other serial publication of a continuing nature" to clarify the scope of the program.

Discussion: The Secretary finds that this addition would not clarify the scope of the program. A publication issued serially and on a continuing basis would be considered a periodical.

Changes: The definition has been revised to clarify that the foreign periodicals referred to in this part must be produced outside the United States as well as published there. This requirement was contained in § 671.3(a) of the proposed regulations, and the change is therefore technical in nature. Conforming changes have been made in §§ 671.1(a), 671.3(a), and 671.20(a).

Section 671.11—What Selection Criteria Does the Secretary Use?

Comment: Two commenters, focusing on paragraph (g)(1), suggested replacing "serve national needs" with "support the goals of Title VI of the Higher Education Act," citing the 1986 report of the House of Respresentatives' Committee on Education and Labor.

Discussion: The phrase "serve national needs" is intended to embrace the overall purposes of the program, which are described in section 601 of the Higher Education Act.

Changes: Section 671.11(g)(1) has been revised to refer to the statutory provision that contains the findings and purposes applicable to the program.

Comment: One commenter expressed concern that the phrase "available at the institution" in paragraph (g)(2) of this section might not require the periodicals to be available beyond the institution.

Discussion: The intent of the paragraph is, as the commenter recognized, to emphasize the need for preservation of the periodicals; the dissemination function of the program is covered in paragraphs (g)(3) and (h).

Changes: None.

Comment: In conjunction with paragraph (h), one commenter noted the importance of flexibility in evaluation plans for dissemination activities, particularly emphasizing the timeliness

of responses to resource-sharing questions and the extent to which the bibliographic records will be available beyond the institution holding the periodicals.

Discussion: The Secretary agrees that flexibility will be important in evaluating the quality of services that an applicant proposes to provide, and an application should contain a detailed statement of proposed dissemination activities.

Changes: None.

Comment: Three commenters urged the deletion of paragraph (i) dealing with priorities. They argued that it undermines continuing funding for periodicals, which they regarded as an important objective of the program.

Discussion: The regulations do not require that priorities be established, but simply make it possible to establish priorities if they are desired.

Changes: None.

Section 671.12—What Priorities May the Secretary Establish?

Comment: With arguments similar to those for the previous paragraph, four commenters urged the deletion of this section. The Secretary's priorities, it was suggested, might change from year to year, thus working against the need for multi-year funding for the acquisition of increasingly expensive foreign periodicals.

Discussion: Potential applicants are reminded that appropriations for programs are made on an annual basis and that, therefore, it will be difficult to ensure the kind of long-term, multi-year support the commenters envision. However, the Secretary will consider soliciting applications for multi-year project periods to address commenters' concerns. Under 34 CFR 75.101(a)(3), the Secretary announces any multi-year project period in the application notice published in the **Federal Register.**

Changes: Section 671.12 has been revised to clarify the priority categories addressed by this provision.

Section 671.20—What Costs are Allowable?

Comment: Two commenters urged that grant funds be allowed to pay for staff salaries for the indexing and analytical work needed to prepare the bibliographies envisioned under § 671.3(d).

Discussion: The Secretary agrees that funds for staff salaries should be allowable for these purposes. The standards for allowable costs are referenced in the Education Department General Administrative Regulations, 34 CFR 74.170–74.176.

Changes: Section 671.20 has been revised to permit grant funds to be used for purposes necessary to carry out any of the authorized activities described in § 671.3.

Comment: Two commenters expressed concern that travel expenditures not be allowed to "intrude unduly into the very modest levels of assistance likely to be available."

Discussion: The Secretary agrees that travel should make up a relatively low percentage of the expenditures in this program. This can be managed, however, through the usual grant negotiation process.

Changes: None.

Section 671.21—What are the Limitations on Allowable Costs?

Comment: Two commenters expressed concern about paragraph (b), with one suggesting provision for a waiver of the prohibition on supplanting funds. Problems with fluctuations of the purchasing power of the dollar and other circumstances beyond the control of the institution were noted.

Discussion: The Secretary recognizes that where institutional purchasing power is rapidly diminishing, the proposed prohibition on supplanting funds might lead to inequitable results and he believes the prohibition should be modified.

Changes: Section 671.21(b) has been revised to prohibit the use of grant funds to supplant funds that would be made available by recipients for the purposes of part 671 in the absence of the grant.

Comment: In addition, several commenters stressed the importance of adding a provision for multi-year funding, as it would help provide continuity in purchasing periodicals that become available only over an extended period of time.

Discussion: The provisions of 34 CFR part 75 (Direct Grant Programs) govern awards under this program, and § 75.250 permits the Secretary to approve a project period of up to 60 months. The duration of projects, as well as probable funding levels, will be described in any application notice.

Changes: None.

Other changes: Section 671.4 has been updated to reflect changes in the Education Department General Administrative Regulations (EDGAR).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 671

Colleges and universities, Education, Grant program, Libraries, reporting and recordkeeping requirements, Research.

(Catalog of Federal Domestic Assistance Number 84.251—Foreign Periodicals Program)

Dated: June 8, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 671 to read as follows:

PART 671—FOREIGN PERIODICALS PROGRAM

Subpart A—General

Sec.

671.1 What is the Foreign Periodicals Program?
671.2 Who is eligible for an award?
671.3 What activities may the Secretary fund?
671.4 What regulations apply?
671.5 What definitions apply?

Subpart B—How Does the Secretary Make an Award?

671.10 How does the Secretary evaluate an application?
671.11 What selection criteria does the Secretary use?
671.12 What priorities may the Secretary establish?

Subpart C—What Conditions Must be Met by a Grantee?

671.20 What costs are allowable?
671.21 What are the limitations on allowable costs?

Authority: 20 U.S.C. 1125a, unless otherwise noted.

Subpart A—General.

§ 671.1 What is the Foreign Periodicals Program?

Under the Foreign Periodicals Program, the Secretary awards grants to selected institutions of higher education, public or nonprofit private library institutions, or consortia of these institutions, for the purpose of—

(a) Acquiring foreign periodicals that are not commonly held by American academic libraries and that are of scholarly or research importance;

(b) Preserving those periodicals;

(c) Making those periodicals available to researchers and scholars; and

(d) Maintaining machine-readable bibliographic information on acquired periodicals and entering that information into one or more of the widely available bibliographic databases.

(Authority: 20 U.S.C. 1125a)

§ 671.2 Who is eligible for an award?

An institution of higher education, a public or nonprofit private library institution, or a consortium of these institutions is eligible to receive a grant under this part if the institution or consortium—

(a) Has an established library with strengths in either—

(1) Specific geographical areas of the world; or

(2) Particular fields or issues in world affairs that concern one or more countries; or

(3) Both; and

(b) Demonstrates a commitment to share the resources of its library collection with researchers and scholars.

(Authority: 20 U.S.C. 1125a)

§ 671.3 What activities may the Secretary fund?

Grants awarded under this part may be used to—

(a) Acquire foreign periodicals that are not commonly held by American academic libraries and that are of scholarly or research importance;

(b) Preserve the periodicals described in paragraph (a) of this section;

(c) Make the periodicals described in paragraph (a) of this section available to researchers and scholars; and

(d) Maintain machine-readable bibliographic information on acquired periodicals and enter that information into one or more of the widely available bibliographic databases.

(Authority: 20 U.S.C. 1125a)

§ 671.4 What regulations apply?

The following regulations apply to the Foreign Periodicals Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 82 (New Restrictions on Lobbying).

(5) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(6) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) 34 CFR part 655.

(c) The regulations in this part 671.

(Authority: 20 U.S.C. 1125a)

§ 671.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) *Other definitions.* The following definition also applies to this part:

Foreign periodical means a periodical produced and published outside the United States.

(Authority: 20 U.S.C. 1125a)

Subpart B—How Does the Secretary Make an Award?

§ 671.10 How Does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 671.11.

(b) The Secretary awards up to 100 points for these criteria.

(c) The Secretary may award up to 20 additional points under the criterion in § 671.11(i) (degree to which priorities are served).

(d) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1125a)

§ 671.11 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Plan of operation* (15 points). (See 34 CFR 655.31(a).)

(b) *Quality of key personnel* (10 points). (See 34 CFR 655.31(b).)

(c) *Budget and cost-effectiveness* (5 points). (See 34 CFR 655.31(c).)

(d) *Evaluation plan* (5 points). (See 34 CFR 655.31(d).)

(e) *Adequacy of resources* (10 points). (See 34 CFR 655.31(e).)

(f) *Commitment to the subject area on which the project focuses* (25 points). The Secretary reviews each application to determine—

(1) The strength of the institution's library in the area on which the project focuses; and

(2) The extent to which the institution provides financial and other support to the project, adequate staffing, and services for researchers and scholars in fields related to the project.

(g) *Need and potential impact* (15 points). The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs, as described in section 601 of the Higher Education Act.

(2) The extent to which an improved collection will be available at the applicant institution at the conclusion of the grant period; and

(3) The potential effect of the proposed project in improving the knowledge of languages, areas, or international studies at the national level.

(h) *Dissemination activities* (15 points). The Secretary reviews each application to determine the quality of the services the project would provide to researchers and scholars.

(i) *Degree to which priorities are served* (20 points). If, under the provisions of § 671.12, the application notice lists specific priorities for this program, the Secretary determines the degree to which those priorities are served.

(Approved by the Office of Management and Budget under control number 1840–0809)

(Authority: 20 U.S.C. 1125a)

§ 671.12 What priorities may the Secretary establish?

(a) The Secretary each year may select as a priority the collection of periodicals dealing with one or more of the following categories:

(1) Specific countries or geographical regions, such as Mexico or South Asia.

(2) Specific fields or issues in world affairs, such as business, energy, environmental affairs, military and security programs, or development issues.

(3) Any combination of the categories referred to in paragraph (a) of this section.

(b) The Secretary announces any priority described in paragraph (a) of this section in the application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1125a)

Subpart C—What Conditions Must Be Met by a Grantee?

§ 671.20 What costs are allowable?

Grant funds may be used for purposes necessary to carry out any of the activities described in § 671.3, including equipment and supplies, staff salaries, and travel.

(Authority: 20 U.S.C. 1125a)

§ 671.21 What are the limitations on allowable costs?

(a) Equipment costs exceeding 5 percent of the grant are not allowable.

(b) Grant funds may not be used to supplant funds that would be made available by recipients for the purposes of this part in the absence of the grant.

(Authority: 20 U.S.C. 1125a)

[FR Doc. 92-13870 Filed 6-11-92; 8:45 am]
BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL15-2-5533; FRL-4139-8]

Approval and Promulgation of Air Quality Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final Rule; removal.

SUMMARY: In a March 24, 1992, final rule (57 FR 10140), USEPA approved a site-specific revision to the Illinois State Implementation Plan (SIP) for ozone without prior proposal. The rule applied to a facility in Richland County, Illinois operated by Roadmaster Corporation. Roadmaster's facility uses black and white flowcoaters to apply extreme performance coatings to miscellaneous metal parts and products. This SIP revision set a ceiling of 5.9 pounds of volatile organic matter (VOM) per gallon of paint, based on weekly averaging, for the existing black and white flowcoaters, and would have expired on January 1, 2000.

Today, USEPA is removing its rule, because notice was received from the Natural Resources Defense Council of intention to submit comments adverse to the rulemaking. In a subsequent **Federal Register** Notice USEPA will propose rulemaking on this requested revision to the Illinois SIP.

EFFECTIVE DATE: June 12, 1992.

ADDRESSESS: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Volatile organic compounds.

Dated: May 18, 1992.

Valdas Adamkus,

Regional Administrator.

For the reasons stated in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

Subpart O—Illinois

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

§ 52.720 [Amended]

2. Section 52.720 is amended by removing paragraph (c)(83).

[FR Doc. 92-13894 Filed 6-11-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300248A; FRL-4067-3]

RIN 2070-AB78

N,N-Bis 2-(Omega-Hydroxypolyoxyethylene/ Polyoxypropylene) Ethyl Alkylamine; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of *N,N*-bis 2-(omega-hydroxypoloyxyethylene/ polyoxypropylene) ethyl alkylamine when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops only. This regulation was requested by Akzo Chemicals, Inc.

EFFECTIVE DATE: This regulation becomes effective June 12, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300248A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 711I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 15, 1992 (57 FR 13069), EPA issued a proposed rule that gave notice that Akzo Chemicals, Inc., 800 South Riverside Plaza, Chicago IL 60606, had requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of *N,N*-bis 2-(omega-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include but are not limited to the following types of ingredients (exept when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such

issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 3, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, paragraph (d) is amended in the table therein by adding and alphabetically inserting the following inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirments of a tolerance.

* * * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
N,N-Bis 2-(omega-hydroxy poly oxyethylene/poly oxypropylene ethyl alkylamine; the reaction product of 1 mole of N,N-bis(2-hydroxyethyl) alkylamine and 3-60 moles of ethylene oxide and propylene oxide, where the alkyl group (C_{8}-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids	Not more than 0.5% of pesticide formulation	Surfactant.
* * * * *		

[FR Doc. 92-13772 Filed 6-11-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 766 and 799

[OPPTS-40023; FRL 4045-9]

Technical Amendments to Test Rules and Consent Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to 40 CFR 790.55 and 790.68, EPA has approved by letter certain modifications to test standards and schedules for chemical testing programs under section 4 of the Toxic Substances Control Act (TSCA). These modifications, requested by test sponsors, will be incorporated and codified in the respective test regulation or consent order. Because these modifications do not significantly alter the scope of a test or significantly change the schedule for its completion, EPA approved these requests without seeking notice and comment. EPA will annually publish a notice describing all of the modifications granted by letter for the previous year.

EFFECTIVE DATE: June 12, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA issued an interim final rule published in the Federal Register of September 1, 1989 (54 FR 36311), amending procedures for modifying test standards and schedules for test rules and testing consent orders under section 4 of TSCA. The amended procedures allow EPA to approve requested modifications which do not alter the scope of a test or significantly change the schedule for its completion. These modifications are approved by letter without public comment. The rule also requires immediate placement of these letters in EPA's public files and publication of these modifications in the Federal Register. This document includes modifications approved from January 1, 1991, through December 31, 1991. For a detailed description of the rationale for these modifications, refer to the submitters' letters and EPA's responses in the public record for this rulemaking.

I. Discussion of Modifications

Each chemical discussed in this rule is identified by a specific CAS number and docket number. Copies of correspondence relating to specific chemical modifications may be found in docket number (OPPTS-40023) or the chemical-specific docket established for this rule. The following table lists all chemical-specific modifications approved from January 1, 1991, through December 31, 1991:

MODIFICATIONS TO TEST STANDARDS AND CONSENT ORDERS JANUARY 1, 1991 THROUGH DECEMBER 31, 1991

Chemical/CAS Number	40 CFR Cite	Required Test	Modifications	Docket No.
Final Rule Chemicals				
allyl ether of tetrabromobisphenol-A (25327-89-3)	766.35	Analytical testing	5	40023/830021

MODIFICATIONS TO TEST STANDARDS AND CONSENT ORDERS JANUARY 1, 1991 THROUGH DECEMBER 31, 1991—Continued

Chemical/CAS Number	40 CFR Cite	Required Test	Modifications	Docket No.
tetrabromobisphenol-A-bisethoxylate (4162-45-2)	766.35	Analytical testing	5,8	40023/83002L
3,4',5-tribromosalicylanilide (87-10-5)	766.35	Analytical testing	8	40023/83002L
tetrabromobisphenol-A (79-94-7)	766.35	Analytical testing	5	40023/83002L
2,4,6-tribromophenol (118-79-6)	766.35	Analytical testing	5	40023/83002L
decabromodiphenyloxide (1163-19-5)	766.35	Analytical testing	5	40023/83002L
pentabromodiphenyloxide (32534-81-9)	766.35	Analytical testing	5	40023/83002L
octabromodiphenyloxide (32536-52-0)	766.35	Analytical testing	5	40023/83002L
1,2-bis(tri-bromophenoxy)ethane (37853-59-1)	766.35	Analytical testing	5	40023/83002L
2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione (118-75-2)	766.35	Analytical testing	5	40023/83002L
1,2,4-trichlorobenzene (120-82-1)	799.1053	oncogenicity study	5	40023/47002J
fluoroalkenes, vinyl fluoride (75-02-5)	799.1700	oncogenicity test in rats	9	40023/42002M
commercial hexane (110-54-3), (96-37-7)	799.2155	pharmacokinetics	5	40023/42084K
tributyl phosphate (126-73-8)	799.4360	daphnid chronic toxicity test, fish early-life stage test, oral/dermal pharmacokinetics test.	5	40023/42100D
unsubstituted phenylenediamines (95-54-5 and 106-50-3)	799.3300	chronic Daphnia testing with *o*-pda and *p*-pda	5	40023/42008I
Consent Orders				
C.I. disperse blue 79:1 (3618-72-2)	799.5000	rainbow trout early life cycle test	5	40023/42103C
crotonaldehyde (4170-30-3)	799.5000	fish early life stage testing (fathead minnow), daphnid chronic toxicity testing.	5	40023/42108A
diisodecyl phenyl phosphite (25550-98-5)	799.5000	subchronic delayed neurotoxicity study of organophosphorus substances, neurotoxic esterase assay.	5	40023/42101C
4-nonylphenol, branched (84852-15-3)	799.5000	fathead minnow test, tadpole bioassay, midge bioassay	5	40023/42104D
octamethylcyclotetrasiloxane (556-67-2)	799.5000	bioconcentration test, biodegradation test, bioaccumulation test, sediment/invertebrate studies.	5,8	40023/42071D
1,1,1-trichloroethane (71-55-6)	799.5000	dose levels and dose selection, delayed matching-to-position test, breeding, duration of dosing.	7	40023/42058F
triethylene glycol monomethyl ether (112-35-6)	799.5000	Analytical testing	8	40023/42080H

MODIFICATIONS
1. Modify sampling schedule.
2. Change to test substance (form/purity).
3. Change in non-critical test procedure or condition.
4. Add satellite group for further testing.
5. Extend test or protocol deadline, delete test initiation date.
6. Clarify and/or add specific guideline requirement.
7. Alternate specific guideline requirement approved for certain test(s).
8. CAS No. correction.
9. Test standard amendment

II. Public Record

EPA has established a public record for this rulemaking (docket number OPPTS-40023). The record includes the information considered by EPA in evaluating the requested modifications.

The record is available for inspection from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in rm. G-004, NE Mall, 401 M St., SW., Washington, DC 20460.

III. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule, listing modifications of test standards and schedules for tests required under test rules and testing consent agreements under the authority of section 4 of TSCA, is not major because it does not meet any of the criteria set forth in section 1(b) of the Order.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601 et seq.), EPA is certifying that this rule will not have a significant impact on a substantial number of small businesses because the modifications listed in this rule have been made to expedite the development of test data and to reduce certain paperwork burdens associated with current regulations.

C. Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. and have been assigned OMB control number 2070-0033.

EPA has determined that this rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding this rule including suggestions for reducing this burden to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070-0033) Washington, DC 20503.

List of Subjects In 40 CFR Parts 766 and 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing.

Dated: May 29, 1992.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 766 and 799 are amended as follows:

1. In part 766:

PART 766—[AMENDED]

a. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

b. In § 766.35, by revising paragraphs and (a)(2)(ii)(A), (b)(4)(i) and (f) to read as follows:

§ 766.35 Dibenzo-para-dioxins/dibenzofurans.

(a) * * *

(2) * * *

(ii) * * *

(A) Except as noted for the submitter and substance specified in the following table, protocols for testing must be submitted 24 months after manufacture or importation begins for chlorinated chemical substances.

CAS No.	Submitter	Chemical	Due Date
118-75-2	Rhone Poulenc	2,3,5,6-Tetrachloro-2,5-cyclohexadiene-1,4-dione	June 19, 1992

* * * * *

(b) * * *

(4) *Test results.* (i) Test results must be submitted to EPA not later than 270 days after EPA's transmission of comments or 180 days after a final protocol is submitted to EPA, whichever is shorter, except as noted for the submitters and substances specified in the following table:

CAS No.	Submitter	Chemical	Due Date
79-94-7	Great Lakes	Tetrabromobisphenol-A	May 26, 1992
79-94-7	Ethyl	Tetrabromobisphenol-A	May 26, 1992
79-94-7	Ameribrom	Tetrabromobisphenol-A	May 26, 1992
87-10-5	Pfister	3,4',5-tribromosalicylanilide	45 days after protocol approval
118-79-6	Great Lakes	2,4,6-Tribromophenol	May 26, 1992
1163-19-5	Ameribrom	Decabromodiphenyloxide	May 26, 1992
1163-19-5	Ethyl	Decabromodiphenyloxide	May 26, 1992
1163-19-5	Great Lakes	Decabromodiphenyloxide	May 26, 1992
4162-45-2	Great Lakes	Tetrabromobisphenol-A-bisethoxylate	May 26, 1992
25327-89-3	Great Lakes	Allyl Ether of Tetrabromobisphenol-A	May 26, 1992
32534-81-9	Great Lakes	Pentabromodiphenyloxide	May 26, 1992
32534-81-9	Ameribrom	Pentabromodiphenyloxide	May 26, 1992
32536-52-0	Ameribrom	Octabromodiphenyloxide	May 26, 1992
32536-52-0	Ethyl	Octabromodiphenyloxide	May 26, 1992
32536-52-0	Great Lakes	Octabromodiphenyloxide	May 26, 1992
37853-59-1	Great Lakes	1,2-bis(tribromophenoxy)ethane	90 days after protocol approval

* * * * *

(f) *Effective date.* (1) The effective date of this final rule is July 6, 1987, except for paragraphs (a)(2)(i)(B), (a)(2)(ii)(A), and (b)(4)(i) of this section.

(2) The effective date for paragraph (a)(2)(i)(B) is May 21, 1991. The effective date for paragraphs (a)(2)(ii)(A), and (b)(4)(i) is June 12, 1992.

(3) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

2. In part 799:

PART 799—[AMENDED]

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. In § 799.1053, by revising paragraphs (e)(1)(ii)(A) and (g) and by adding and revising paragraph (e)(2) to read as follows:

§ 799.1053 Trichlorobenzenes.

* * * * *

(e) * * *

(1) * * *

(ii) *Reporting requirements.* (A) The oncogenicity test shall be completed and the final results submitted to EPA by June 30, 1994.

* * * * *

(2) [Reserved]

* * * * *

(g) *Effective date.* (1) The effective date of the final phase II rule is August 14, 1987, except for paragraphs (d)(4)(iii)(A) and (e)(1)(ii)(A) of this section. The effective date for paragraph (d)(4)(iii)(A) of this section is March 1, 1990. The effective date for paragraph (e)(1)(ii)(A) of this section is [insert date of publication in the **Federal Register**].

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

c. In § 799.1700 by adding paragraph (c)(4)(i)(A)(*2*)(*ii*) and removing and reserving paragraph (c)(4)(i)(C) and by revising paragraph (d) to read as follows:

§ 799.1700 Fluoroalkenes.

(c) * * *

(4) * * *

(i) * * *

(A) * * *

(*2*) * * *

(*ii*) All rats of test groups in which survival is approximately 25 percent of rats at risk (approximately 25 percent of 60, or approximately 15 rats) will be sacrificed near the time that 25 percent survival is achieved. All rats surviving the 24-month test period will be sacrificed and necropsied. The order of sacrifice for rats at all pathological evaluations will be random among all exposure groups within a sex. Moribund animals should be removed and sacrificed when noticed.

* * * * *

(C) [Reserved]

* * * * *

(d) *Effective date.* (1) The effective date of the final rule is July 22, 1987, except for paragraphs (c)(1)(i)(C)(*1*), (c)(1)(ii)(A), and (c)(4)(i) of this section.

(2) The effective date of paragraphs (c)(1)(i)(C)(*1*) and (c)(1)(ii)(A) is May 21, 1990. The effective date for paragraphs (c)(4)(i)(A)(*1*), (c)(4)(i)(A)(*2*)(*i*), (c)(4)(i)(B), and (c)(4)(i)(D) is May 21, 1991. The effective date of paragraphs (c)(4)(i)(A)(*2*)(*ii*) and (c)(4)(i)(C) is June 12, 1992.

(3) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

d. In § 799.2155 by revising paragraphs (c)(8)(i), (c)(8)(ii)(A) and (d) read as follows:

§ 799.2155 Commercial hexane.

* * * * *

(c) * * *

(8) * * *

(i) *Required testing.* (A) Pharmacokinetics testing shall be conducted in rats in accordance with § 795.232 of this chapter, except for paragraph (c)(1)(ii) of § 795.232.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *Test animals.* Adult male and female rats shall be used for testing. The rats shall be 9 to 11 weeks old and their weight range should be comparable from group to group. The animals shall be purchased from a reputable dealer and shall be permanently identified upon arrival. The animals shall be selected at random for the testing groups, and any animal showing signs of ill health shall not be used.

(*2*) *Species and strain.* The rat strain used shall be the same as the strain used in the subchronic and chronic tests required under § 798.2450(d)(1)(i) and § 798.3300(b)(1)(i).

(ii) *Reporting requirements.* (A) The inhalation and dermal pharmacokinetics tests shall be completed and the final report submitted to EPA by August 21, 1992.

* * * * *

(d) *Effective date.* (1) The effective date of this final rule is November 17, 1988, except for the provisions of paragraphs (c)(5)(i)(D), (c)(5)(ii)(A)(*4*), (c)(5)(ii)(C), (c)(8)(i) and (c)(8)(ii)(A) of this section. The effective date for paragraphs (c)(5)(i)(D), (c)(5)(ii)(A)(*4*) and (c)(5)(ii)(C) of this section is May 21, 1990. The effective date for paragraphs (c)(8)(i) and (c)(8)(ii)(A) of this section is June 12, 1992.

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

* * * * *

e. In § 799.3300 by revising paragraphs (e)(2)(ii)(A) and (f) to read as follows:

§ 799.3300 Unsubstituted Phenylenediamines.

* * * *

(e) * * *

(2) * * *

(ii) *Reporting requirements.* (A) The fish partial life-cycle flow-through test shall be completed and final results shall be submitted to EPA no later than December 1, 1992.

* * * * *

(f) *Effective dates.* (1) The effective date of this final rule is January 16, 1990, except for paragraphs (c)(1)(i)(B), (c)(1)(ii)(A), (c)(1)(ii)(C), (c)(1)(ii)(F), (c)(3)(ii)(A), (e)(1)(ii), (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. The effective date for paragraphs (c)(1)(i)(B), (c)(1)(ii)(C) and (c)(1)(ii)(F) of this section is May 21, 1990. The effective date for paragraphs (c)(1)(ii)(A), (c)(3)(ii)(A), (e)(1)(ii) and (e)(2)(ii)(B) of this section is May 21, 1991. The effective date for paragraph (e)(2)(ii)(A) of this section is June 12, 1992.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

f. In § 799.4360 by revising paragraphs (c)(8)(ii), (d)(5)(ii)(A), (d)(6)(ii)(A) and (f) to read as follows:

§ 799.4360 Tributyl phosphate.

* * * * *

(c) * * *

(8) * * *

(ii) *Reporting requirements.* (A) The pharmacokinetics test required in paragraph (c)(8)(i) of this section shall be completed and the final report submitted to EPA by June 27, 1992.

(B) Interim 6 month progress reports shall be submitted to EPA beginning at 6 months after the effective date of the final rule and continuing until submission of the final report.

(d) * * *

(5) * * *

(ii) *Reporting requirements.* (A) The daphnid chronic toxicity test, if required, shall be completed and the final report submitted to EPA by September 27, 1991.

* * * * *

(6) * * *

(ii) *Reporting requirements.* (A) The fish early-life stage flow-through toxicity test shall be completed and the final report submitted to EPA by December 27, 1991.

* * * * *

(f) *Effective date.* (1) The effective date of this final rule is September 27, 1989, except for paragraphs (c)(2)(ii)(A), (c)(3)(ii)(A), (c)(8)(i), (c)(8)(ii)(A), (d)(5)(ii)(A), (d)(6)(ii)(A), (e)(1)(ii), (e)(2)(ii)(A), and (e)(3)(ii) of this section. The effective date for paragraphs (c)(2)(ii)(A), (c)(3)(ii)(A), (c)(8)(i), (e)(1)(ii), (e)(2)(ii)(A) and (e)(3)(ii) of this section is May 21, 1991. The effective date for paragraphs (c)(8)(ii)(A), (d)(5)(ii)(A) and (d)(6)(ii)(A) of this section is June 12, 1992.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

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§ 799.5000 [Amended]

g. In the table to § 799.5000, change the CAS No. "556–57–2" to read "556–67–2."

[FR Doc. 92–13862 Filed 6–11–92; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 407, 410, 417, 420, 424, 488, 491, and 498

[BPD–726–FC]

RIN 0938–AF14

Medicare Program; Payment for Federally Qualified Health Center Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These regulations establish a new category of facility known as a Federally qualified health center (FQHC), the services of which are covered under the Medicare program. This new type of entity is one that is receiving a grant under section 329, 330, or 340 of the Public Health Service (PHS) Act, a non-grant receiving entity that is determined by the Secretary to meet the PHS Act requirements for receiving such a grant, and certain facilities that have previously been identified as Federally funded health centers. These regulations also establish requirements for coverage and payment of FQHC services under the Medicare program. Related Medicaid rules are being developed in a separate rulemaking document.

These regulations implement section 4161 of the Omnibus Budget Reconciliation Act of 1990 (OBRA Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508.

DATES: These regulations are effective June 12, 1992. Written comments will be considered if we receive them at the

appropriate address, as provided below, no later than 5 p.m. on August 11, 1992.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–728–FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC, 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

If you wish to submit comments on the information collection requirements contained in this final rule, you may submit comments to:

Allison Herron-Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code BPD–728–FC. Written comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT:

Janice Flaherty, (410) 966–4574 (Medicare payment)

Jacqueline Sheridan, (410) 966–4635 (Medicare coverage)

SUPPLEMENTARY INFORMATION:

Background

General

Prior to the enactment of OBRA '90 Medicare paid for comprehensive health services in medically-underserved, low-income areas furnished by Federally Funded Health Centers (FFHCs). These were, for example, community health centers and migrant health centers that received unrestricted funds for operations directly in the form of a grant from Federal sources such as the Public Health Service (PHS).

FFHCs were eligible for payment for the scope of services normally covered under Medicare Part B. FFHCs were reimbursed by the Medicare program (Title XVIII of the Social Security Act (the Act)) for covered medical and other health services furnished to Medicare beneficiaries on a reasonable charge basis through Medicare carriers, or on a charge related to reasonable cost basis reimbursed through an intermediary. In general, the payment rate was an all-inclusive rate determined by dividing the center's allowable and covered costs by covered physician visits furnished during the cost reporting period, subject to certain screening guidelines and a payment limit. An FFHC's all-inclusive rate was compared to the statewide payment limit, and the FFHC rate was set at the lesser of the all-inclusive rate or the statewide payment limit. This rate was paid to the center (on a per-bill basis subject to the Medicare Part B deductible and coinsurance) each time a Medicare beneficiary had a face-to-face encounter with a physician furnishing a covered service.

Recent Statutory Changes

Section 4161(a) OBRA '90 amends section 1861(aa) of the Act, establishing a new Medicare benefit, outpatient services furnished by provider-based and independent Federally qualified health centers (FQHCs). Section 4161(a)(2)(C) of OBRA '90 defines an FQHC as an entity that is receiving a grant under section 329, 330, or 340 of the Public Health Service Act; or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 329, 330, or 340 of the Public Health Service Act; or based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant; or was treated by the Secretary, for purposes of Medicare Part B, as an FFHC as of January 1, 1990. For example, FFHCs are grandfathered in as FQHCs under the statute and do not have to meet the standards in 42 CFR part 491 prior to signing a Medicare participation agreement.

Section 4161(a)(2) of OBRA '90 defines FQHC services as the services described in section 1861(aa)(1)(A) through (C) of the Act, which, generally, are rural health clinic (RHC) services provided by physicians, physician assistants, nurse practitioners, qualified clinical psychologists, clinical social workers, and certain visiting nurse services. Section 4161(a)(2) of OBRA '90 also adds to the definition of FQHC services a new service that only an FQHC may be paid for under Medicare: preventive primary health services that a center is required to provide under sections 329, 330, and 340 of the Public Health Service Act. Section 4161(a)(3)(B) of OBRA '90 amends section 1833(b) of the Act and provides that the Part B deductible does not apply to FQHC services.

Section 4161(a)(3)(C)(i) of OBRA '90 amends section 1862(a)(2) of the Act. Section 1862(a)(2) provides that no payment is made under Medicare Parts A or B for any expenses incurred for items or services furnished to an individual for which the individual has no legal obligation to pay. The OBRA '90 provision provides an exception to this requirement in the case of FQHCs. Section 4161(a)(3)(C)(ii) provides a similar exception to section 1862(a)(3) of the Act. That section prohibits Medicare payment for services which are paid for directly or indirectly by a governmental entity. OBRA '90 provides for payment to FQHCs for beneficiaries who receive services that are paid for directly or indirectly by a governmental entity. Section 4161(a)(3)(C)(iii) further amends section 1862(a)(7) of the Act. Section 1862(a)(7) of the Act describes certain medical expenses not generally covered under Medicare, such as routine physical checkups, eye examinations, and hearing aids. Section 4161(a)(3)(C)(iii) of OBRA '90 specifies that section 1862(a)(7) does not apply to FQHC services described in section 1861(aa)(3)(B) of the Act (the preventive primary health services added to Medicare as an FQHC benefit).

Section 1128B(b) (1) and (2) of the Act provides that individuals who solicit, receive, offer or pay any remuneration (including any kickbacks, bribes or rebates) to induce referrals, purchasing, leasing, ordering, etc., under Medicare or any State health care program are guilty of a felony and, if convicted, are subject to fines or prison terms. Exceptions are provided in certain circumstances. One of the exceptions was added by section 4161(a)(4) of OBRA '90, which adds to the list of situations to which an exception applies the waiver of coinsurance under Medicare Part B for services furnished an individual by an FQHC. The implementation of this provision is the responsibility of the Office of the Inspector General, and implementing regulations are found at 42 CFR 1001.952(k)(2), published at 56 FR 35987 on July 29, 1991.

The statutory provisions are effective on October 1, 1991.

Provisions of the Regulation

In 42 CFR part 405 subpart X, we have established new §§ 405.2430 through 405.2452 to specify the scope of services to be furnished by Federally qualified health care centers and basic qualification requirements associated

with the benefit. We redesignate existing §§ 405.2418 through 405.2430 as §§ 405.2460 through 405.2472, respectively, to specify the payment provisions for RHCs and Federally qualified health centers. In addition, in § 405.2410, we revise the definition of a visit and add a definition of FQHC. We are also revising certain provisions in part 410 which pertain to RHCs to include FQHCs and clarify that other pertinent regulations are applicable to FQHCs.

A. Qualification Requirements

In § 405.2401, Scope and Definitions, we define an FQHC. The definition is applicable to provider-based FQHCs as well as independent FQHCs. The entity must be receiving a grant under section 329, 330 or 340 of the PHS Act, or be receiving funding from such a grant under a contract with the recipient of such a grant and meet the requirements to receive a grant under section 329, 330 or 340 of the PHS Act. Alternatively, the entity may be determined by the Secretary to meet the requirements for receiving such a grant, based on the recommendation of the Health Resources and Services Administration (HRSA) within the PHS. We refer to such an entity generally as a "look-alike," for although it does not receive any PHS grant monies, HRSA will have reviewed the entity's application and recommended that it qualify for FQHC status because it meets all grant requirements under one of the pertinent sections of the PHS Act. HRSA will base its review and recommendations for look-alike status using the requirements of the PHS Act, as set forth in 42 CFR parts 51c and 56.

FQHC look-alikes must meet the same standards as grantees under section 329, 330, or 340 of the PHS Act. To demonstrate compliance with program requirements, applicants for Medicare look-alike status must provide the same information requested of grantees in the same format except that FQHC look-alikes are not required to provide: (1) A rationale for Federal funding, (2) a proposal for use of Federal grant funds, (3) data for a special clinical study being conducted, or (4) maximization of non-Federal revenues. The Medicaid statute (Title XIX of the Act) also provides for look-alike qualification, but it permits temporary waiver of certain provisions of the PHS Act in granting FQHC qualification. The Medicare statute does not contain a provision for waiver. This means that Medicaid FQHCs that are approved on the basis of a temporary waiver may not qualify as Medicare FQHCs.

Entities should apply for FQHC qualification through HRSA Regional Offices. HRSA will notify HCFA of entities that it recommends for qualification as FQHCs because they meet the PHS requirements, either as grant recipients or as look-alikes. Additionally, HRSA is responsible for all activities related to monitoring grantees to assure that they continue to meet the statutory FQHC qualifications (i.e., they continue to meet the conditions in the PHS Act). HRSA will notify HCFA of grantees which no longer meet the FQHC qualification criteria.

Another alternative by which an entity may qualify as an FQHC is to have been treated by the Secretary, for purposes of Part B, as a comprehensive Federally funded health center as of January 1, 1990. Since HCFA knows that these entities meet the qualification requirements, application to HRSA will not be necessary. HCFA Regional Offices will secure appropriate execution of an agreement as discussed below.

FQHCs may participate in the Medicare program and receive payment for FQHC services, including preventive primary services, regardless of whether they are free-standing or provider-based entities. The qualification requirements for FQHCs are the same for free-standing or provider-based entities. However, the payment methodologies for these two types of FQHCs differ, as discussed later in this preamble and as set forth in § 405.2462.

Basic Requirements

For any entity that meets the above qualification requirements to be paid for FQHC services, it must enter into a signed agreement with HCFA to meet Medicare program requirements under 42 CFR 405.2432 and 405.2434. HCFA will enter into an agreement with the entities when: (1) Based on the recommendation of PHS, we determine that the entity meets the FQHC qualification requirements; (2) the entity assures HCFA that is meets the applicable requirements of part 405, subpart X and part 491, as described in § 405.2434(a); and (3) any other agreement between HCFA and the entity under Medicare is terminated. PHS regulations regarding staffing requirements, for example, 42 CFR 51c.303(a), require that a clinic's professional staff be adequate to provide the clinic's health services to residents of the catchment area. Under PHS requirements, a clinic has flexibility in the makeup of its staff. Therefore, the staff of a PHS-approved clinic that seeks Medicare FQHC participation may vary in the proportions of physicians and other health care personnel providing services. Accordingly, we are modifying § 491.8 (a)(1) and (6) to provide that an FQHC is not required to include in its health care staff specific numbers of physician's assistants or nurse practitioners and is not required to maintain the availability of physician assistants and nurse practitioners to furnish patient care services at least 60 percent of the time the clinic operates. Section 491.8(a), paragraphs (1) and (6) continue to apply, without modification, to Medicare approved RHCs.

Although the law does not explicitly require an agreement between the FQHC and HCFA, we believe tha' Congress intended that HCFA's relationship with FQHCs would parallel that with RHCs. Further, we have required participation agreements with other non-provider entities, such as ambulatory surgery centers and End Stage Renal Disease facilities, to assure protection for Medicare beneficiaries. Thus, we have developed participation agreements for FQHCs that are similar to those of the RHCs. In general, the Medicare basic requirements for RHCs will apply to FQHCs and will help assure that they are generally held to standards in 42 CFR part 405, subpart X and part 491 that apply to RHCs.

However, we request public comment on the impact that these standards would have on FQHCs. We are aware that, for example, FFHCs that are grandfathered in as FQHCs may not have been subject to health and safety requirements.

Within 42 CFR part 491, there are two issues that we particularly call to the reader's attention. First, we do not believe that it is necessary to mandate a list of medical tests that FQHCs must perform; therefore, we are exempting FQHCs from the requirements that apply to RHCs in § 491.8(c)(2). FQHCs that choose to perform clinical laboratory tests are subject to the applicable provisions of the Clinical Laboratory Improvement Amendments of 1988 since that law is applicable by its own terms. Section 491.8(c)(2) continues to apply to RHCs. Second, § 491.11 of this regulation requires RHCs and FQHCs to do annual evaluations of their programs. We believe this is a reasonable requirement in order to evaluate utilization of services, compliance with established policies, and to determine if changes are needed. We invite public comment, however, on the appropriateness of this Medicare requirement for FQHCs.

In summary, our purpose in establishing requirements for FQHCs is to establish standards for enforcement

purposes. HCFA will not survey FQHCs prior to approving agreements for FQHC participation. However, HCFA is responsible for resolving complaints about FQHCs and for determining whether an FQHC continues to meet applicable standards after it signs the participation agreement. We believe, as does the PHS, that the standards we have established will not impose an additional burden on the entities in question.

However, since the PHS already closely monitors and conducts periodic onsite reviews of grantees, we have not incorporated the certification procedure applicable to RHCs into the FQHC requirements. HCFA will not routinely conduct surveys of FQHCs. However, entities that qualify for FQHC status must assure HCFA that they meet and will continue to meet the applicable regulatory standards. These requirements involve standards for practitioners; compliance with Federal, State, and local law; health and safety; standards; organizational roles, including disclosure of ownership; staff responsibilities; provision of services; maintenance of health records, including confidentiality; and program evaluation carried out by the center itself.

Section 4161(a)(2) of OBRA '90 also specifies that the requirements for RHCs that are not physician directed apply to FQHCs as well. These rules concern periodic physician review of services provided by physician assistants and nurse practitioners, medical orders, referrals, and consultation, all of which are subject to State and local law relative to the practice, performance, and delivery of health services.

An FQHC must notify HCFA immediately if it no longer meets the standards. Further, HCFA will investigate complaints regarding staffing or health and safety violations to assure that entities are complying with the requirements. Failure to meet these requirements may result in criminal penalties for submission of false assurances, as well as termination of the participation agreement.

Rural health clinics that are certified for Medicare participation will be required to satisfy the requirements of sections 329, 330, and 340 of the Public Health Service Act in order to qualify as Medicare FQHCs. This means that, for example, a rural health clinic that operates on a for-profit basis will not qualify as a Medicare FQHC.

Because some facilities now functioning as another kind of entity under Medicare will become FQHCs, it is essential for proper program oversight and payment that FQHCs be clearly identified prior to the beginning of their coverage under Medicare as FQHCs and at the conclusion of the coverage as FQHCs. For example, we are aware that a number of RHCs currently providing services under Medicare are also recipients of PHS section 329, 330, or 340 grants and thereby will qualify for status as FQHCs. Since we do not believe it is appropriate for an entity to operate as both an RHC and FQHC simultaneously, these entities may cease to be RHCs and become FQHCs.

Further, we will terminate the charge-related-to-reasonable-cost-based payment methodology for FFHCs following publication of this regulation. Thus, all current charge related to reasonable cost-based FFHCs must sign an FQHC participation agreement or begin billing the Part B carrier for services under the usual Part B payment methods. Payment to FFHCs under § 410.152(j) and (b)(6) is no longer applicable.

The agreement, among other provisions, will assure that the FQHC is paid only as an FQHC for services covered under the FQHC benefit. If an entity that is not provider-based has other agreements under Medicare, they must be terminated before the FQHC agreement is effective. Consequently, we are requiring that entities that are not provider-based terminate other Medicare agreements as a basic requirement for FQHC status. Practitioners, such as physician employees of the FQHC, may continue to maintain any identification necessary for direct billing of Medicare for non-FQHC services. Thus, such physicians may continue to follow patients and provide non-FQHC services, such as services furnished to inpatients, and preserve continuity of care.

HCFA will notify entities that meet the qualification requirements of their eligibility for FQHC status and forward the entity two copies of the agreement. The entity must sign and return both copies of the agreement to HCFA. If HCFA accepts the agreement filed by the FQHC, HCFA will return to the center one copy of the agreement with the notice of acceptance specifying the effective date.

An entity is entitled to a hearing in accordance with 42 CFR part 498 if HCFA fails to enter or renew an agreement with an entity for FQHC services.

Since Congress provided for payment for FQHC services beginning October 1, 1991 to FQHCs that satisfy the requirements of the law on that date, we find that, once these rules are published, to further delay the effective date would serve no useful purpose. Medicare will pay for FQHC services furnished on or after that date by entities that met the criteria in this regulation on that date and file a signed agreement within 60 days of the date of publication. For other entities, the effective date of the agreement is the date that the agreement is signed and all Federal requirements are met. Payment begins with the effective date of the agreement.

Content and Terms of Agreement

New § 405.2434 describes the content and terms of the agreement. Under the terms of the agreement, the FQHC agrees generally to maintain compliance with the terms of the agreement and not charge the beneficiary (or any other person acting on behalf of the beneficiary) for any FQHC services for which the beneficiary is entitled to have payment made on his or her behalf by the Medicare program.

The FQHC may, however, charge the beneficiary for items and services that are not FQHC services and may collect coinsurance amounts. If the items or services are covered under Part B of Medicare, and the FQHC agrees to receive reasonable charge payment under the assignment method, the FQHC may not charge the beneficiary more than 20 percent of the reasonable and customary charge. However, under Medicare, no coinsurance is due for a second or third opinion obtained in accordance with section 1164C of the Act or for pneumococcal vaccine and its administration. FQHCs may also charge beneficiaries any amounts for services not covered by Medicare for which the beneficiary is liable.

The FQHC also must agree to refund as promptly as possible any money incorrectly collected from Medicare beneficiaries or from someone on their behalf. The term "incorrectly collected" means any amount for covered services that is greater than the amount for which the beneficiary was liable because of the coinsurance requirements. Amounts also are considered incorrectly collected if the FQHC believed the beneficiary was not entitled to Medicare benefits but he or she was later determined to have been entitled, the beneficiary's entitlement period fell within the time the FQHC's agreement with HCFA was in effect, and the amounts exceed the beneficiary's coinsurance liability.

In the agreement, the FQHC also must agree to accept Medicare beneficiaries for care and treatment and not impose any limitations on care and treatment of Medicare beneficiaries that it does not also impose on all other individuals receiving care and treatment from the FQHC. If the FQHC does not furnish

treatment for certain illnesses and conditions to patients who are not Medicare beneficiaries, it is not required to furnish such treatment to Medicare beneficiaries. However, the FQHC may not refuse to furnish treatment for certain illnesses or conditions to Medicare beneficiaries if it furnishes such treatment to others.

Termination of Agreement

In new § 405.2436, we specify termination procedures for the agreement, notice provisions, and appeal procedures. We provide that the agreement is assigned to the new owner when an FQHC undergoes a change of ownership if the new owner meets the FQHC qualification requirements. We define a change of ownership as:

- The incorporation of an unincorporated FQHC;
- The merger of the center corporation into another corporation, or the consolidation of two or more corporations, one of which is the center corporation, resulting in the creation of a new corporation (The merger of another corporation into the center corporation does not constitute change of ownership.); or
- The lease of all or part of an entity (constitutes change of ownership of the leased portion).

Effect of Termination

In § 405.2436(d), we provide that no payment will be made to an FQHC for services it furnishes to Medicare beneficiaries on or after the effective date of termination, whether the termination is initiated by the FQHC or by HCFA.

Notice to the Public

We provide in new § 405.2442 that when an FQHC voluntarily terminates the agreement and we have approved or set an effective date for the termination, the FQHC must notify the public through publication in at least one newspaper in general circulation in the area serviced by the FQHC. The notice must contain the effective date and the effect of termination of the agreement. When we terminate the agreement, we will notify the public in a similar fashion.

Appeals

An FQHC may appeal HCFA's decision to terminate the agreement by using the procedures specified in part 498 (§ 405.2436).

Conditions for Reinstatement After Termination by HCFA

Once we have terminated an agreement with an FQHC, we will not enter into another agreement with that entity until we find that the reason for the termination no longer exists, and we are assured that the reason for the termination of the prior agreement will not recur (new § 405.2440).

B. Scope of Services

New § 405.2446 provides that FQHC services that are payable by Medicare are the type of outpatient services furnished by RHCs plus certain preventive services. Services furnished by RHCs consist of services of physicians, physician assistants, nurse practitioners, nurse midwives, visiting nurses under certain conditions, clinical psychologists, and clinical social workers. Clinical psychologist services were added to the RHC benefit by section 4077(a) of the Omnibus Reconciliation Act of 1987, Public Law 100–203 (OBRA '87). Clinical social worker services were added to the RHC benefit by section 6213(b) of OBRA '89, Public Law 101–239. Since the RHC regulations have not previously been modified to incorporate these services, we define the terms clinical psychologist and clinical social worker in § 405.2450, as discussed later in this preamble.

In § 405.2445, we require that FQHC services be covered only in outpatient settings, including the patient's place of residence (which may be a skilled nursing facility or nursing facility), in accordance with section 1861(aa)(3)(B) of the Act, which restricts the provision of FQHC services to services furnished to outpatients of the FQHC. FQHC services would not be covered when furnished to inpatients of hospitals or rural primary care hospitals because of the provisions of section 1862(a)(14) of the Act, which prohibits payment for most services provided to hospital patients unless they are provided directly by the hospital or under arrangements in accordance with section 1861(w) of the Act. Although Medicare does not cover FQHC services for Medicare hospital inpatients, services of individual practitioners who may be employed in FQHCs, including qualified clinical psychologists, clinical social workers, nurse practitioners, nurse midwives, and physicians, may be covered under Medicare Part B and would be billable separately (in other words, not as FQHC services) under Part B.

Preventive Primary Services

Section 1861(aa)(3)(B) of the Act defines FQHC preventive care services as "* * * preventive primary health services that a center is required to provide under sections 329, 330, and 340 of the PHS Act." The regulations at 42 CFR part 56 and 42 CFR part 51c, which implement these provisions of the PHS Act, define primary preventive services as "including medical social services, nutritional assessment and referral, preventive health education, children's eye and ear examinations, prenatal and post-partum care, prenatal services, well child care (including periodic screening), immunizations, and voluntary family planning services." The Guide to Clinical Preventive Services, prepared under the supervision of the U.S. Preventive Services Task Force, for presentation to the U.S. Department of Health and Human Services, provides recommendations for clinical practice on 169 preventive interventions.

The Public Health Service believes that the preventive primary services in the U.S. Preventive Services Task Force Report for people over age 65 are preventive primary services consistent with the services its grantees are already required to provide and will be issuing clarifying guidelines to its grantees to this effect.

Ordinarily, items and services such as routine physical checkups, eyeglasses, and hearing aids are excluded from Medicare coverage under section 1862 of the Act. However, section 4161 of OBRA '90 amended section 1862 of the Act to specify that this exclusion does not apply to these items and services furnished under FQHC benefit. However, the FQHC benefit covers only services of a physician or other health care professional and services that are incident to these services. Thus, it would not include eyeglasses and hearing aids. Despite the fact that there is an exception to the general exclusion for certain items and services included under the F QHC benefit, we do not believe that payment may be made for eyeglasses and hearing aids provided by an FQHC, because they are not preventive primary health care services under the PHS law. Thus, while a health care professional in an FQHC may counsel an individual about the need to obtain eyeglasses or a hearing aid, the purchase of the items would not be considered part of the service provided and would not be covered by Medicare.

The PHS Act provides for provision of other services that some individuals and/or centers may believe should be included as FQHC preventive services. For example, the PHS Act provides for preventive dental services as a primary health care benefit separate from primary preventive health services. Further, the PHS Act provides for supplemental health services as a benefit separate from preventive primary health care. Supplemental health services specifically delineated in

the PHS Act include vision services (other than vision screening), public health services (including nutrition education), health education services, and outreach services.

While we recognize that these may be helpful and necessary services, especially to those living in medically underserved areas, we do not believe that the Medicare statute may be read as extending Medicare coverage to such services, as discussed in more detail below. The Medicare law specifically refers only to primary preventive health care services in defining the scope of FQHC preventive services. Consequently, the regulations specifically exclude mass information programs, health education classes and dental services from the definition of FQHC preventive services.

In our regulation, we are listing a group of preventive services that are generally covered as FQHC services when provided to a beneficiary. We also are excluding from FQHC services preventive services that are covered separately under special provisions of Medicare, such as screening mammography services. The Medicare law provides coverage of screening mammography services under Medicare under explicit requirements including the same of payment for services, and, further, requires that an entity that provides screening mammography be certified for such services. (The requirements for Medicare coverage of screening mammography were published as an interim final rule with comment period on December 31, 1990 at 55 FR 53510.) Although we recognize that screening mammography is a preventive service, payment and coverage for it are governed by the specific provisions for applying that benefit. Therefore, we will not pay for screening mammography as an FQHC preventive service. If the FQHC meets the applicable certification and coverage rules, we will pay for mammography under the regular Part B benefit provisions applicable to that service.

Screening pap smear services are also covered under regular Medicare Part B benefit provisions. We will pay for screening pap smear services as FQHC preventive services if provided by center employees. As with other services, the requirements of the Clinical Laboratory Improvement Amendments of 1988 apply to these services.

Preventive dental services are non-covered services under Medicare. Section 1862(a)(12) of the Act prohibits payment for "services in connection with the care, treatment, filling, removal or replacement of teeth or structures directly supporting * * *" There are other exclusions from coverage in section 1862(a) of the Act that Congress chose to render inapplicable to the FQHC benefit when it defined that benefit. Section 4161(a)(3)(C) of OBRA '90 amended section 1862(a) of the Act by declaring that section 1862(a)(7) does not apply to FQHC preventive services (in section 1861(aa)(3)(B)). This means, for example, that certain previously uncovered services or certain immunizations could be paid for under this new benefit. Therefore, we conclude that Congress considered the exclusions in section 1862(a) of the Act and decided not to include preventive dental services or any preventive services not covered by the applicable provisions of the PHS Act as part of this new Medicare benefit.

We are defining covered preventive primary services as services that must be furnished by center staff or meet the definition of physician services in § 405.2412. Preventive primary services are those services an entity is required to provide as primary preventive services under the PHS Act. Preventive services include children's eye and ear examinations to determine the need for vision or hearing correction, prenatal services, well child services and family planning services. Preventive services also include those services included in the U.S. Preventive Services Task Force Report for persons age 65 and older.

Clinical Psychologists and Clinical Social Workers

We are providing that the services furnished in an FQHC by a clinical psychologist or clinical social worker are payable under the Medicare program when the services would be covered if furnished by a physician and are of a type that these practitioners are legally permitted to perform by the State in which the services are furnished. Services furnished by a clinical social worker must be for the diagnosis and treatment of mental illnesses and services which the clinical social worker is legally authorized to perform under State law. The practitioners must be employed by or receive compensation from the FQHC. The entity must meet the physician supervision requirements specified in § 491.8(b)(1)(i) and any other requirements in State law. If State law or regulations require that the services of clinical psychologists or clinical social workers be performed under a physician's order and no order was issued, then the services are not covered.

Services and supplies incident to a clinical psychologist's or clinical social worker's services are payable if the services or supply is of a type commonly furnished in a physician's office, commonly furnished either without charge or included in the FQHC's bill, furnished as an incidental, although integral part of professional services furnished by a clinical psychologist or clinical social worker. The services or supply must also be furnished under the direct, personal supervision of a clinical psychologist, clinical social worker or physician, and in the case of a service, furnished by a member of the center's health care staff who is an employee of the center. Direct personal supervision under the written policies governing the FQHC means that a person is considered to supervise such services, i.e., he or she is immediately available for consultation.

Services and supplies incident to a clinical psychologist's services and a clinical social worker's services are payable if the service or supply is of a type commonly furnished in a physician's office. Section 1861(ii) of the Act, which defines "qualified psychologist services," explicitly includes services and supplies furnished incident to the service furnished by a clinical psychologist. Section 1862(hh) of the Act, which defines "clinical social worker," is silent about coverage of services that are furnished incident to a clinical social worker's services.

Section 1861(aa)(1) of the Act provides that the term "rural health clinic services" means "(B) such services furnished by * * * a clinical social worker (as defined in subsection (hh)(1), and such services and supplies furnished as an incident to his services as would otherwise be covered if furnished by a physician or as an incident to a physician's service * * *" Section 1861(aa)(3) defines Federally qualified health center services to mean "(a) services of the type described in subparagraphs (A) through (C) of paragraph (1) * * *" We have concluded that, for purposes of the FQHC benefit, services incident to a clinical social worker's services are covered FQHC services.

Payment provided for FQHC services furnished by clinical psychologists and clinical social workers is subject to the limitations in § 410.155(c).

We also are revising the definition of "visit" in § 405.2401 to recognize clinical psychologists and clinical social workers in the list of practitioners that may provide services in FQHCs. We are not making the corresponding change for RHCs, since we are addressing only provisions of OBRA '90 in this regulation.

C. Payment Provisions

We considered using several methodologies for payment to FQHCs, but because the benefit is so similar to the RHC benefit, we believe that for simplicity and administrative ease, it is more feasible to adopt the RHC methodology for FQHCs.

RHC Payment Methodology

The following is a general description of the payment policy reflected in regulations at 42 CFR part 405, subpart X regarding the RHC methodology.

Medicare reimburses independent RHCs (IRHCs) (i.e., those that are not part of a hospital, skilled nursing facility, or home health agency) on a reasonable cost related basis. Generally, Medicare fiscal agents (intermediaries) provide payment to clinics based on an all-inclusive rate for each visit by a Medicare beneficiary. At the beginning of each reporting period, the intermediary sets the all-inclusive rate based on the clinic's estimates of allowable cost to be incurred by the clinic during the reporting period and the number of visits for RHC services expected to be furnished during the reporting period. The allowability of costs is governed by the applicable principles of reimbursement for provider cost in 42 CFR part 413 and subject to additional tests of reasonableness defined in the RHC regulations at 42 CFR part 405, subpart X.

The term "visit" is defined in § 405.2401(b) as a face-to-face encounter between a patient and a physician, physician assistant, nurse practitioner, nurse midwife, specialized nurse practitioner, or visiting nurse, during which an RHC service is furnished. (We note that, for clarity, the term "nurse practitioner" throughout this document is used to encompass the services of nurse midwives, specialized nurse practitioners, and visiting nurses.) Encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit, except for cases in which the patient, subsequent to the first encounter, suffers an illness or injury requiring additional diagnosis or treatment. In determining the payment rate, the intermediary applies screening guidelines and the maximum payment per visit limitation. The RHC is paid 80 percent of the lesser of the all-inclusive rate or the maximum payment per visit limit, once the patient has fully met the Medicare Part B deductible amount.

At the end of each reporting period, the clinic must report to the intermediary its actual reasonable costs and the total number of visits for RHC services it actually furnished during the period. The intermediary then adjusts the payments made during that period to equal 80 percent of the net Medicare cost. The net Medicare cost is Medicare covered visits multiplied by the lesser of the adjusted cost per visit or the maximum payment rate per visit less beneficiary deductibles. Intermediaries will add to this amount 100 percent of the Medicare reasonable cost of pneumococcal vaccine and its administration, less payments to the clinic during the reporting period, plus reimbursable bad debts to determine the total amount due to, or from, the Medicare program. We clarify in section 410.152(h)(4) that RHCs and FQHCs are paid 100 percent of reasonable cost for pneumococcal vaccine and its administration. This is a technical correction and consistent with Congressional intent that this service be paid for at 100 percent based on section 1833(a)(1) of the Act.

The all-inclusive rate is subject to tests of reasonableness. The tests include productivity screening guidelines intended to identify situations where costs will not be allowed without acceptable justification by the clinic and limits on the amount of payment. Congress mandated the use of a national payment limit which is adjusted annually by the percentage increase in the Medicare Economic Index applicable to primary care physicians' services. The productivity screening guidelines conform to those set by the Public Health Service for clinics receiving funds from that agency.

As we mentioned, IRHCs are subject to guidelines to test the reasonableness of the productivity of the RHC's health care staff. The guidelines are applied to staff for RHC services furnished both at the clinic site and in other locations. The productivity guidelines are as follows:

- At least 4,200 visits per year per full-time equivalent physician employed by the clinic;
- At least 2,100 visits per year per full-time equivalent physician assistant or nurse practitioner employed by the clinic; or
- If physicians and nurse practitioners or physician assistants are coordinated into a team, at least 6,300 visits per year for each team that consists of a full-time equivalent physician and full-time equivalent nurse practitioner or physician assistant.

The number of "full-time equivalent" employees of each type (i.e., physician, physician assistant, or nurse practitioner) is determined by the following formula: divide the total number of hours per year worked by all employees of that type by the greater of:

- The number of hours per year for which one employee of that type must be compensated to meet the clinic's definition of a full-time employee; or
- 1,600 hours per year (40 hours per week for 40 weeks).

As stated above, IRHCs are subject to guidelines to a maximum payment rate per visit. The limit on payments at the beginning of the program was set at $27.30 in 1978 with subsequent increases to $32.10 in 1980, and $46 in 1988. In OBRA '87, Congress set the limit at $46, effective April 1, 1988. The statute mandates that the payment limit be updated annually as of the first day of the year by the percentage increase in the Medicare Economic Index (MEI) applicable to primary care physicians' services. (OBRA '89, however, delayed the 1990 update from January 1, 1990 to April 1, 1990.) The payment limits and the MEI increases since April 1, 1988 are as follows:

Payment limit	MEI increase	period
$46.00		04/01/88–12/31/88
$47.38	3.0%	01/01/89–03/31/90
$49.37	4.2%	04/01/90–12/31/90
$50.36	2.0%	01/01/91–12/31/91

The MEI is determined in accordance with section 1842(b)(3) of the Act and regulation at 42 CFR 405.504. The term "primary care services" is defined in section 1842(i)(4) of the Act.

We are redesignating §§ 405.2418 through 405.2430 as §§ 405.2460 through 405.2472 and making technical revisions to reflect that these provisions apply to Medicare payment for FQHC services. The existing sections currently apply only to RHCs.

All references to carrier have been changed to refer to intermediary since intermediaries are the fiscal entities that service RHCs and FQHCs. We originally used the term "carrier" in the regulation because Part B payment is involved and carriers usually process Part B payment. Intermediaries service RHCs and FQHCs because these entities are paid on a cost-related basis instead of a reasonable charge basis. A cost report is used to determine the payment rate for RHCs and FQHCs. Because intermediaries have experience in working with cost reports of providers, intermediaries are used to service RHCs and FQHCs. We have contracted with a single intermediary to process all FQHC claims. The will promote national uniformity in rate setting and review of services, especially preventive services.

Section 405.2427, redesignated as § 405.2466, Annual reconciliation, provides that payments made to an RHC and FQHC during a reporting period are subject to reconciliation to assure that those payments are not greater or lesser than the allowable costs of covered services furnished to Medicare beneficiaries during that period. In paragraph (c), the clinic has the right to appeal the determination to the Provider Reimbursement Review Board (PRRB) if the amount in controversy is at least $10,000. Section 1878 of the Act was amended by section 4161(a)(6) and (b)(11) of OBRA '90 to include an RHC and an FQHC as a "provider of services," for the purpose of PRRB review of cost reports. In the past, RHCs could only appeal to the intermediary for a hearing if they disagreed with the rate of payment determined by the intermediary at the end of the cost reporting period. Subpart R of part 405 includes procedures for provider reimbursement determinations and appeals. All requirements applicable to appeal procedures in subpart R now apply to both RHCs and FQHCs. This includes the right to a hearing before the PRRB, subject to applicable requirements of the law and subpart R.

FQHC Payment Methodology

The FQHC payment methodology will parallel the RHC payment requirements in new §§ 405.2462 through 405.2472 (redesignated from §§ 405.2425 through 405.2430). We will pay freestanding FQHCs on an all-inclusive rate basis subject to tests of reasonableness. Provider-based FQHCs will be paid on the same basis as provider-based RHCs. The discussion in this section applies to the payment methodology for freestanding FQHCs except as specifically indicated. We require that FQHCs use the RHC cost report (Form HCFA–222), with minor modifications made to accommodate FQHC variations. Certain differences between RHC and FQHC payment methods, however, exist, as described below.

For purposes of payments to FQHCs, one all inclusive rate will be calculated which will include all Medicare covered FQHC services. This includes preventive services as well as the core RHC services. The cost report is being modified to allow for the expanded scope of service under the FQHC benefit. The calculation of the rate is subject to the limits specified in regulation and discussed below. We will address Medicaid payment policy in a separate regulation. Since other ambulatory services are provided for under Medicaid, payment will need to be adjusted for these services.

Additionally, we are modifying the cost report form, HCFA–222, to indicate that the Medicare deductible does not apply to FQHCs, in accordance with section 4161(a)(3)(B) of OBRA '90.

Bad Debts

Since the general reasonable cost principles contained in regulations apply to both provider-based and free-standing FQHCs, there is an allowance for bad debts, in accordance with § 413.80. Recognition of bad debts is subject to specific criteria. For purposes of FQHC payment, bad debts are limited to Medicare coinsurance amounts that remain unpaid by the Medicare beneficiary since no deductible is applied to these services. An FQHC must establish that reasonable efforts were made to collect these coinsurance amounts in order to receive payment for bad debts. Bad debts are only allowed as defined under the reasonable cost rules in § 413.80.

When the FQHC waives coinsurance, it may not claim bad debt amounts for which it assumed the beneficiary's liability OBRA '90 gives a safe harbor from criminal or civil violations under Medicare's anti-kickback rules when an FQHC gives a low-income beneficiary, who qualifies for services subsidized under the PHS Act, a partial or full waiver of Medicare coinsurance amounts based on a PHS-mandated sliding fee scale.

Overall Payment Limits

Sections 1833(a)(3) and 1861(v)(1)(A) of the Act provide general authority to apply cost limits to FQHCs. We intend to apply cost limits to FQHCs under these authorities. We previously discussed in detail how the RHC payment limit is set; however, we will not be applying the same payment limit to FQHCs.

Payment Under Usual Medicare Part B Method

OBRA '90 allows FFHCs electing payment on a reasonable charge basis as of January 1, 1990 to continue under that basis. FQHCs that elect this option will be paid under the Part B payment rules applicable to the particular service, and, for that reason, the usual Part B payment requirements apply. FFHCs electing payment under usual Part B methods are not entitled to be covered, or paid, for the additional FQHC services provided for by OBRA '90; for example, the expansion of payment for preventive primary services as specified in section 4161(a)(8)(B) of OBRA '90. We believe this reflects Congressional intent since section 4161 of OBRA '90 states that the amendment made by paragraph (3)(A) of that section does not apply to FQHCs electing reasonable charge reimbursement as of January 1, 1990 until the center so elects.

The amendment made by paragraph (3)(A) adds FQHCs to section 1832(a)(2)(D) of the Act. Section 1832(a)(2)(D) provides entitlement to have payment made for FQHC services. Since this amendment does not apply to those FQHCs electing the option for payment under usual Part B methods, there is no entitlement to have payment made for broader FQHC services. These FQHCs will continue to be entitled to receive payment for other Part B services under Medicare, just as in the past. They will not be entitled to payment for the expanded scope of services available as part of the FQHC benefits.

Charge Related to Reasonable Cost Payment

FFHCs were paid based on charges related to reasonable cost. FFHCs receiving payment under this methodology were brought under the FQHC benefit which requires payment based on section 1833(a)(3) of the Act. Since this benefit requires payment under §§ 410.152(j) and 411.8(b)(6), based on methods specified under section 1833(a)(3) of the Act, payment based on charges related to reasonable cost is no longer applicable to entities receiving section 329, 330, and 340 PHS grants as of the effective date of the legislation, October 1, 1991.

Cost Reporting Period

Payment for FQHC services will be made to the center for the cost of services incurred as of the effective date of its FQHC participation. Institutions will be provided from the servicing intermediary or carrier as to the procedures necessary to make the transition from the present form of payment to an FQHC. These instructions will be provided to:

- FFHCs paid based on charges related to reasonable cost;
- RHCs paid on a reasonable cost related basis; and
- Entities currently paid under usual Part B payment rules through the carrier.

The FQHC payment methodology differs from the methodology applicable to centers eligible under the FFHC benefit. There were approximately 246 FFHCs as of January 1991. FFHCs will have the option to begin a new cost reporting period as of the effective date of their FQHC participation or they may maintain the cost reporting period they are presently using. In the latter case, the entity would submit both the FFHC

cost report and the FQHC cost report 90 days after the end of the entity's cost reporting period. The FFHC cost report will apply to the period up until FQHC participation begins and the FQHC cost report will apply until the end of the FQHC's reporting period. The FFHC methodology and cost report will not be applicable after the date of publication of this regulation except as provided for in the exceptions process.

Outpatient Clinical Diagnostic Laboratory Tests

We will pay for outpatient clinical diagnostic laboratory tests in FQHCs the same way we pay for them in RHCs. In general, under Medicare Part B, a fee schedule applies to all clinical diagnostic laboratory tests with some exceptions. One exception in which the fee schedule does not apply is to clinical diagnostic laboratory tests furnished to patients of an RHC under an all-inclusive rate. However, payment is made on a fee schedule basis for purchased clinical diagnostic laboratory tests furnished to Medicare patients by an independent laboratory. Claims for such services should be billed directly to the Medicare carrier for payment and should not be included in the calculation of the all-inclusive rate. Section 1833(h) of the Act discusses clinical diagnostic laboratory tests. Payment for outpatient clinical diagnostic laboratory tests is further discussed in section 5114.1 of the Carriers Manual.

Lower of Cost or Charges

Reimbursement for services provided in provider-based FQHCs will be made on the same basis as payment as provider-based RHC services. Presently, as an element of Medicare's cost reimbursement principles, the lesser of costs or charges (LCC) principle applies to the whole of a provider's outpatient area, including the provider-based RHC. We intend that LCC continue to apply to the whole of the outpatient areas, including provider-based FQHCs. We have chosen to be consistent with the RHC policy and not apply LCC to freestanding FQHCs.

While deliberating on this change in the regulations, we considered applying LCC separately to the FQHC. We knew that in providing for payment to FQHCs, the statute requires payment to be made on a reasonable cost-related basis or based on such other tests of reasonableness prescribed in regulations, including the reasonable cost principles. Furthermore, section 1833(b)(5) of the Act provides that the deductible will not apply to FQHC services. Also, coinsurance may be waived (see section 1128B(b)(3)(D) of the Act) for those individuals that qualify for subsidized services under a provision of the Public Health Service Act. However, we eventually rejected the separate approach for two reasons. First, it would not be consistent with the method of payment for provider-based RHCs and our treatment of Medicare providers in general. Second, we believe that a separate application of LCC to FQHCs would probably not have a very different result than its application to the outpatient department as a whole because one requirement for establishing an FQHC is that it must be located in a medically-underserved area or medically-underserved population (MUA/MUP). The designation process for becoming an MUA/MUP takes into consideration the percentage of the population that is below the poverty line. Accordingly, patients served by the provider's outpatient department would be reflective of the population in the MUA/MUP.

Under the LCC principle, of course, the provider may avoid application of LCC by meeting one of the LCC exceptions contained in § 413.13(c); for example, given the low-income status of a number of patients, the hospital could meet the nominal charges test (i.e., if a significant portion of its patients are low income and its charges are less than costs because its customary practice is to charge patients based on their ability to pay), and therefore, it would not be subject to an LCC disallowance.

Tests of Reasonableness

Tests of reasonableness for RHC cost and utilization are set in accordance with § 405.2428, Allowable costs, which we propose to redesignate as § 405.2468. This section addresses application of the productivity screening guidelines intended to identify situations in which costs will not be allowed without reasonable justification by the clinic.

On December 1, 1982, a final notice was published at 47 FR 54163, which established revised productivity screening guidelines, eliminated overhead screening guidelines and revised the upper payment limit.

Currently, the RHC productivity screening guidelines include visits of physicians, physician assistants, and nurse practitioners. As discussed previously, OBRA '87 expanded coverage to allow for payment to clinical psychologists, and OBRA '89 expanded coverage to clinical social workers. The all-inclusive rate will be paid for visits of these practitioners. We considered applying the same productivity screening guideline that is used for a physician assistant and nurse practitioner (at least 2,100 visits per year per full-time equivalent) to the clinical psychologist and the clinical social worker, but because we have not had sufficient experience with measuring appropriate productivity levels, we will not apply these screening guidelines at this time. Also, as mentioned previously, the RHC productivity screening guidelines conform to those set by the Public Health Service. Currently, the Public Health Service guidelines do not include clinical psychologists or clinical social workers.

We intend to look at the productivity of the clinical psychologist and clinical social worker in the future to determine what productivity screening guidelines can be appropriately applied to these practitioners. We intend to publish these guidelines in the **Federal Register** for public comment. In the meantime, they will be treated on the cost report in the same manner as physicians under agreement with the clinic, which is, their total visits will be added to total clinic visits of physicians, physician assistants and nurse practitioners to determine the cost per visit. However, in § 405.2468, we add clinical psychologists and clinical social workers to the list of practitioners which are included in allowable costs for RHCs and FQHCs and to the list of practitioners subject to screening guidelines.

In § 405.2425, Payment for rural health clinic and Federally qualified health center services, and § 405.2428, Allowable costs, (redesignated as §§ 405.2462 and 405.2468, respectively), we change the cross reference to subpart D to cross refer to part 413 instead. This is merely a conforming change; Subpart D was incorporated in part 413 several years ago.

Combined Screening Approach

Section 4161(b)(3) of OBRA '90 states, "In employing any screening guideline in determining the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in an RHC, the Secretary of Health and Human Services shall provide that the guideline shall take into account the combined services of such staff (and not merely the service within each class of practitioner)." In the past, screening guidelines allowed for teams providing at least 6,300 visits (encounters) per year. A team consisted of a physician and at least one other practitioner. OBRA '90 requires a broader approach.

In implementing the OBRA '90 provisions, we will apply a broader approach by applying a guideline that reflects the total combined services of the staff regardless of whether there is a

"team." We will use a level of 4,200 visits for each physician and a level of 2,100 visits for each nonphysician practitioner. Rural health clinic staffing levels could consist of various combinations of practitioners and the productivity screen would reflect the total combination of services. For example, if a clinic has three physicians and one nurse practitioner, we calculate a limit as follows: $3 \times 4,200 = 12,600 + 1 \times 2,100 = 2,100$ (12,600 + 2,100 = 14,700). Another example would be a clinic with four non-physician practitioners ($4 \times 2,100 = 8,400$). At this time, we do not intend to apply the productivity screen to clinical psychologists and clinical social workers.

Screening Guideline for Purchased Physicians' Services

FQHCs will be subject to the same screening guideline for purchased physicians' services as RHCs. The current RHC guideline is outdated. It limits the costs of purchased physicians' services to the reasonable charges for these services as determined under Subpart E. Because a fee schedule is now used for Medicare Part B payment of physicians' services provided on or after January 1, 1992, we are adding to § 405.2468(d)(2)(v), previously § 405.2428(d)(2)(v), a reference to Part 415 to reflect that in determining the guideline for purchased physicians' services, we will look to payments for Medicare physicians' services under the fee schedule which was effective January 1, 1992.

Payment Limits

The FQHC payment limit is set in accordance with the requirements of OBRA '90 specifying payment for FQHC services and under the authority of sections 1833(a)(3) and 1861 (v)(1) of the Act.

The all-inclusive rate will be compared to the payment limit. The FQHC will be paid 80 percent of the lesser of the all-inclusive rate or the payment limit.

For FQHC services there will be two FQHC payment limits. One limit will apply to entities located in urban areas and one limit will apply to entities located within rural areas. In general, each FQHC payment limit will consist of a core component and a preventive services adjustment. There will be one payment limit applied to all FQHC services, both core and preventive. Beginning October 1, 1991, the rural core component is $59.65 and the rural preventive service adjustment is $2.60. The total rural limit is $62.25. Also beginning October 1, 1991, the urban core component is $69.37 and the urban preventive service adjustment is $3.02. The total urban FQHC payment limit is $72.39.

Both the rural and urban limit are adjusted annually by the percentage increase in the Medicare Economic Index (MEI) applicable to primary care physicians' services.

The core services component will be the RHC limit computed in accordance with section 1833(f) of the Act with an adjustment for the projected FQHC visit mix. The $50.36 RHC limit, $2.30 adjustment to the RHC limit to reflect different visit mix, and the $6.99 primary practitioner adjustment form the 1991 rural FQHC core limit component of $59.65.

General Core Services Limit Component (Rural)

Since RHC and FQHC core services are essentially identical, we believe the RHC payment limit computed in accordance with section 1833(f) of the Act is an appropriate base for the FQHC core component. In general, RHC and FQHC core components consist of the following identical services: physician, physician assistant, nurse practitioner, clinical psychologist, clinical social worker services, and services and supplies incident to these services. The calendar year 1991 RHC limit is $50.36.

Adjustment to RHC Limit to Reflect Different Visit Mix

Since FFHCs and entities eligible for section 329, 330, and 340 grants will comprise the majority of entities qualifying for the FQHC program, we anticipate that the use of physician services in FQHCs will be comparable to the FFHC setting. A study of RHC and FFHC visit data was conducted to determine whether there is a difference in the percentage of physician visits as a percentage of total visits between the RHC and FFHC settings. Visit data from RHC cost reports indicate that physician visits comprise 59 percent of total visits, while data from FFHC cost reports indicate that physician visits are 83 percent of total visits. The RHC limit corresponds with the RHC visit mixture of 59 percent physician and 41 percent non-physician practitioner visits. We adjusted the RHC limit to account for the projected 83 percent physician and 17 percent non-physician practitioner visit mix.

The magnitude of the adjustment also reflects the difference in payments between a physician service and a physician assistant or nurse practitioner service. Under Medicare Part B, the average amount of payments for nurse practitioners (section 1833(r)(2)(B) of the Act) and physician assistants (section 1842(b)(12)(B) of the Act) are 80 percent of what a physician would be paid for the same service.

Based on these data, we adjusted the practitioner component of the RHC limit. We estimate the practitioner component to be $44.32 ($50.36 less a 12 percent allowance for a lab service). We derived the 12 percent lab allowance as follows. Since the calculation of the original RHC limit included an allowance for a glucose blood test, the lab percentage (as a percentage of the total RHC limit) was calculated using the glucose blood test national allowable charge of $6.26 (1989 inflated to 1991). This amount is approximately 12 percent of the RHC limit. Taking these factors into consideration, we calculated a 5.2 percent adjustment to the practitioner component of the RHC limit:

- Physician visits increased from 59 percent of the total visits to 83 percent.
- Nursing practitioners and physician assistants are paid generally 80 percent of what a physician would be paid for the same Medicare service.
- The unadjusted practitioner component of the RHC limit is $44.32.

Primary Care Family Practice Adjustment

Section 6102 of OBRA '89 added section 1848 of the Act, which is the authority for the physician fee schedule. The physician fee schedule resulted in a general increase in payment of approximately 15 percent for family practice physicians. We believe that it is appropriate to reflect a similar increase for FQHC payment purposes. Application of the 15 percent adjustment to the already adjusted practitioner portion of the core component (practitioner base plus adjustment to RHC limit to reflect different visit mix) yields a $6.99 increase over what the practitioner component amount would otherwise be.

General Core Services Limit Component (Urban)

We recognize the potential for higher FQHC operating costs within urban areas. Since FQHCs may be located in urban as well as rural areas, we believe that it is necessary to have a separate payment limit applicable for entities located within an urban area. This limit is the FQHC core limit, as described above, increased by 16.3 percent. Application of the urban area adjustment yields a 1991 urban core limit component of $69.37.

Urban Area Adjustment

To determine the urban FQHC payment limit adjustment, a cost per visit comparison was conducted for cost-based Federally Funded Health Centers (FFHC's) (133 urban, 80 rural) based on entity-specific 1990 costs per visit. FFHC costs per visit were selected for our analysis because these entities are eligible for FQHC approval, are considered representative of FQHCs and are located in every region of the country.

In our analysis, an urban area is defined as a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA) (New England). An urban area can be classified as either a "large urban area" or "other urban area." A rural area is any area that is not in an MSA or NECMA and can not be classified as a large or other urban area.

The interim 1990 median urban FFHC cost per visit is 16.3 percent more than the interim 1990 median rural FFHC cost per visit. To accommodate the anticipated urban FQHC cost difference, the rural FQHC core component (as described in the above general core services section), is increased by 16.3 percent for entities located within an urban area.

FQHC Designation as Urban or Rural

An FQHC will be designated as an urban or rural entity based on the urban and rural definitions in section 1886(d)(2)(D) of the Act. The urban and rural definitions are discussed below.

—*Urban Area*: An urban area is defined as a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA) (New England). An urban area can be classified as either a "large urban area" or "other urban area." A large urban area means an urban area with a population of more than one million (or more than 970,000 in New England) as determined by the Secretary using the most recent available population data published by the Bureau of Census. An other urban area means an urban area that is not a large urban area.

—Rural Area: A rural area is any area outside a large urban area or other urban area as defined above.

If an FQHC is located within an MSA or NECMA *and* can be classified as a large or other urban area as determined by the Bureau of Census, then the urban limit will apply. If an FQHC is not in an MSA or NECMA and can not be classified as a large or other urban area, the rural limit will apply.

Preventive Service Adjustment

OBRA '90 allows FQHC coverage to include certain services that are for preventive purposes. To determine the appropriate adjustment for preventive services, we depended largely upon the recommended preventive services for ages 65 and older in the U.S. Preventive Services Task Force's Guide to Clinical Preventive Services (1989). The preventive service adjustment will be added to the core component, which will be applied to each all-inclusive rate per visit without regard to whether the visit is for provision of a preventive service of other Medicare FQHC covered services. Either an urban or rural limit, as appropriate, will be applied to the all-inclusive rate per visit without regard to type of service. The core component already represents practitioner services. The preventive service adjustment accounts for those preventive services that would not be considered part of a physician visit. (Such services as a general physical exam and preventive individual counseling related to diet and exercise, substance abuse, and injury prevention are considered part of a preventive physician visit.) We based our determination to account for those preventive services outside a physician visit largely upon a study undertaken to estimate the cost of preventive care at the levels recommended by the U.S. Preventive Service Task Force ("Cost for Preventive Care According to the Recommendation of the U.S. Preventive Task Force," Trapnell and Chu, September 1989). This study estimates that the cost of a preventive service physician visit is comparable to an extended physician office visit under Medicare Part B. Further, the Medicare Part B procedure file indicates that the national average allowable charge for an extended physician visit is less than the base portion of the FQHC core component. This comparison illustrates that payments for a preventive physical exam have been accounted for within the base portion of the FQHC core component.

Additionally, we included a factor for high risk procedures, as defined by the U.S. Preventive Service Task Force, in the preventive service adjustment. We selected the fecal occult blood test as a common high risk procedure. The addition of this service does not indicate that this service will be provided during each visit, but it is used as an allowance for high risk procedure costs attributable to some preventive visits.

To determine the preventive service adjustment, an estimated lifetime Medicare preventive service cost was calculated from a model preventive check-up schedule covering a 21 year period for ages 65 through 85 (The estimated Medicare life time preventive service cost was calculated from services that could not be adequately accounted for within the FQHC core limit component). In addition, the national average allowable charge updated to the current period (1991), of individual services were obtained from the Medicare Part B system's national procedure file. A yearly cost was determined by dividing the Medicare lifetime cost by 21 years.

Further, the yearly Medicare preventive services cost estimate was adjusted by the percentage of preventive visits (as a percentage of total visits). This adjustment represents the yearly preventive services cost amount on a per visit basis and accounts for the percentage of patients that will utilize preventive services. We estimate that 10 percent of the total visits will be attributed to preventive services. This estimate was derived after researching current studies on this subject. These studies include the following: Wagner, Edward H. MD. MPH., Bledsoe, Turner, MD., "The Rand Health Insurance Experiment and HMO's Study," Medical Care, March 1990, Vol. 28, No. 3; and Manning, Willard G., Leibowitz, Arleen, et. al., "A Controlled Trial of the Effect of a Prepaid Group Practice on Use of Services," New England Journal of Medicine, June 1984, Vol. 310, No. 23.

Services and Frequency of Preventive Utilization

Recommended preventive services for the Medicare population were based on the U.S. Preventive Services Task Force Guide to Clinical Preventive Services (1989). Utilization of preventive services is based on the utilization estimates (when available) in the preventive study undertaken by Trapnell and Chu to estimate the cost of preventive care at the levels recommended by the Task Force. We used the utilization figures representing the "more frequent" use of preventive services. When no preventive service utilization estimates were available, we consulted with HCFA staff physicians to derive estimates.

Calculation of the addition includes the following services with recommended frequency of utilization:

—Non fasting total blood cholesterol, every 5 years;
—Dipstick urinalysis, every 2 years;
—thyroid function tests, (females only) every 3 years;
—Hearing Screening every 2 years;
—Tetanus-Diphtheria (TD) booster, every 10 years;

—Fecal occult blood testing, every year;
—Influenza vaccine, every year.

Preventive services, costs, and utilization assumptions are detailed below.

PREVENTIVE SERVICE ADJUSTMENT WORKSHEET

[(Model Medicare preventive service check-up schedule); Preventive Service [1] w/ CPT Code]

Age	Cholesterol (82465)	Urinalysis (81005)	Thyroid* (80070)	Hearing (92551)	DT booster (90718)	Fecal occult (82270)	Influenza (90724)	Annual amount
65	$6.71	$3.35	$14.60	$15.26	$6.22	$3.93	$6.75	[2] $56.62
66						3.93	6.75	[3] 10.68
67		3.35		15.26		3.93	6.75	29.29
68			14.60			3.93	6.75	25.28
69		3.35		15.26		3.93	6.75	29.29
70	6.71					3.93	6.75	17.39
71		3.35	14.60	15.26		3.93	6.75	43.89
72						3.93	6.75	10.68
73		3.35		15.26		3.93	6.75	29.29
74			14.60			3.93	6.75	25.28
75	6.71	3.35		15.26	6.22	3.93	6.75	42.22
76						3.93	6.75	10.68
77		3.35	14.60	15.26		3.93	6.75	43.89
78						3.93	6.75	10.68
79		3.35		15.26		3.93	6.75	29.29
80	6.71		14.60			3.95	6.75	31.99
81		3.35		15.26		3.93	6.75	29.29
82						3.93	6.75	10.68
83		3.35	14.60	15.26		3.93	6.75	43.89
84						3.93	6.75	10.68
85	6.71	3.35		15.26	6.22	3.93	6.75	42.22
Total	33.55	36.85	102.20	167.86	18.66	82.53	141.75	[3] 583.40

[1] Preventive services recommended by the U.S. Preventive Service Task Force for ages 65 and older. "Pass throughs," and services adequately accounted for within the core limit, have not been included. CPT codes were obtained from the 1991 Physicians Current Procedural Terminology.

*Preventive Thyroid Function test is recommended for Females only.

[2] Utilization of services are based primarily on "Cost for Preventive Care According to Recommendations of the U.S. Preventive Task Force" (more frequent use of services), Trapnell and Chu 1989.

[3] Charges for services were obtained from the Medicare Part B system's national procedure file and represent the national allowable charge.

Preventive Service Adjustment (Rural)

To determine the rural adjustment, the national average was adjusted by the percent difference between:

- The $46 median 1990 FFHC cost per visit for all FFHC's utilized in the urban/rural cost per visit comparison; and
- The $43 median 1990 rural FFHC cost per visit.

The median interim 1990 rural FFHC cost per visit is 6.5 percent less than the interim 1990 median cost per visit for all (213) FFHCs included in the urban analysis. Therefore, the national average Medicare preventive cost per visit was decreased by 6.5 percent for rural entities yielding a rural preventive service adjustment of $2.60.

Preventive Service Adjustment (Urban)

We recognize that all components of the FQHC payment limit need to be adjusted for potentially higher costs within urban areas. As with the core component, there will be a separate preventive service addition applicable to entities located within an urban area. Beginning October 1, 1991, the urban preventive service adjustment is $3.02. The national average allowable charges were adjusted by the percent difference between:

- The $46 median 1990 FFHC cost per visit for all FFHCs utilized in the urban/rural cost per visit comparison; and
- The $50 median 1990 urban FFHC cost per visit.

The median interim 1990 urban FFHC cost per visit is 8.7 percent more than the interim 1990 median cost per visit for all (213) FFHCs included in the urban/rural analysis. Therefore, the national average per visit preventive services adjustment was increased by 8.7 percent for urban entities yielding an urban preventive service adjustment of $3.02.

Payment for Pneumococcal Vaccine

Calculation of the preventive service adjustment excludes pneumococcal vaccines and their administration. This service will be treated as a "pass through" and will not be included within the all-inclusive rate and also will not be subject to the cost per visit limit. When pneumococcal vaccines are furnished by an FQHC, the cost for this service will be accounted for on the FQHC cost report and the FQHC will bill the intermediary for pneumococcal vaccines. Medicare payment for pneumococcal vaccine and its administration is 100 percent of reasonable cost.

Annual Payment Limit Adjustment

Medicare will pay FQHCs based on the entity's reasonable cost incurred in furnishing covered FQHC services to Medicare beneficiaries. Payments are based on an all-inclusive rate, subject to a payment limit, for each visit by a Medicare beneficiary for covered services.

The payment limit for an FQHC is $62.25 (rural) and $72.39 (urban) for covered services provided October 1, 1991–December 31, 1991. For services furnished on or after January 1 of each subsequent year the payment limit is increased as of the first day of the year by the percentage increase in the MEI applicable to primary care physicians' services.

The MEI is defined in section 1842(i)(3) of the Act and regulations at § 405.509(a)(3) and issued in accordance with section 1842(b)(3) of the Act and regulations at § 405.504. The term "primary care services" is defined in section 1842(i)(4) of the Act.

Changes in the Limit

Updates will be published annually through a routine program issuance such as a manual issuance. Any changes in the methodology used in calculating the limit will be published in the **Federal Register** in accordance with the

Department's established rulemaking procedures.

Exception Option for Current FFHCs

FFHCs paid on a charge related to cost basis as of September 30, 1991 may request an exception to the cost limits.

A payment adjustment can be made only to the extent the costs are reasonable under Medicare principles of payment, attributed to the circumstances specified below and verified by the intermediary.

There is only one basis for an exception. An FFHC must document a disadvantage due to a decrease in revenues as a result of the application of the FQHC payment limit. This determination will be made based on a filing of the FFHC cost report subject to the current FFHC State by State limits. The FFHC cost report to support a request for an exception must be submitted to the FQHC fiscal intermediary within 180 days of the date of the intermediary's initial notice of program reimbursement. The amount of the exception will be calculated based on payments that would be made using the FFHC methodology and cost report. This amount is based on the lower of the FFHC all-inclusive rate or the applicable FFHC limit multiplied by the number of physician encounters, consistent with current FFHC payment procedures. The FFHC limits will be adjusted to reflect the FQHC scope of services. This adjustment will result in a slight increase to the FFHC payment limit.

This exception is limited to three cost reporting periods ending August 31, 1995. This may include 3 full year cost reports or a combination of 1 partial and 2 full years. A separate exception request must be filed each year. This approach is an interim approach. Actual cost report data for FQHCs will be gathered and analyzed during this period of time. The limits imposed in this regulation will be evaluated and adjusted as necessary based on these data. A proposed notice will be issued and the public will have an opportunity to comment on any change in methodology used to compute the limits.

Response to Comments

Because of the large number of items of correspondence we normally receive on a final rule with comments, we are not able to acknowledge or respond to them individually. However, in preparing any subsequent final rule, we will consider all comments that we receive by the date and time specified in the "**DATES**" section of this preamble, and we will respond to the comments in the preamble of that rule.

Waiver of Proposed Rulemaking

We normally publish a notice of proposed rulemaking in the **Federal Register** and afford public comment on proposed rules. Such notice includes a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, section 4207(j) of OBRA '90 provides authority to the Secretary to issue interim final rules to implement the provisions of OBRA '90. The provisions contained in these final regulations implement section 4161 of OBRA '90 and, thus, their publication as interim final rules is authorized by section 4207(j) of that law. We are, however, affording the public an opportunity to comment on these regulations, following publication.

Waiver of 30-Delay in Effective Date

These regulations provide the authority for HCFA to increase access to primary health care and primary preventive services by entering into agreements with entities that can provide such services to Medicare beneficiaries. We believe that it is important to have these rules in effect as soon as possible, so as to expedite the availability of FQHC services, and that no compelling purpose would be served by delaying the effective date beyond the date of publication. We therefore find good cause to waive our normal 30-day delay in effective date.

Revisions to the Regulations

We are making the following revisions to the regulations in title 42:

(1) In part 405, we redesignate existing §§ 405.2418 through 405.2430 as §§ 405.2460 through 405.2472, which specify the Medicare payment methodology applicable to RHC and FQHC services.

(2) We add new §§ 405.2430 through 405.2448 to part 405 to specify the scope of services of the Medicare FQHC benefit, qualification requirements, content and terms of the provider agreement, termination of the agreement, notice requirements, appeals and other general requirements.

(3) In parts 400, 407, 410, 417, 420, 424, 488, 491 and 498 we add references to FQHCs since they are a new category of suppliers of services.

Collection of Information Requirements

Sections 405.2440, 405.2470(a), (b), and (c), 491.9(b)(3), and 491.10 contain information collection or recordkeeping requirements, or both, that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern the notice to the public given by an FQHC that, in accordance with § 405.2440, voluntarily terminates its agreement with HCFA. The respondents who will provide the information include FQHCs. Public reporting burden for this collection of information is estimated to be 5 hours per FQHC that voluntarily terminates its agreement. We estimate that only about 10 such organizations may do so annually. Section 405.2470 (a), (b), and (c) provides reports and maintenance of records requirements for RHCs and FQHCs. We estimate that it will take 10 hours for an entity to complete the required cost report. We estimate that approximately 800 entities will be required to use the cost report to receive Medicare payment. This estimate reflects entity projections over the next 5 years.

In accordance with 42 CFR 491.9(b)(3) each center must have in place a description of the services the center furnished or directed and those treated; guidelines for management of health problems; and rules for managing drugs and biologicals. We estimate that the effort of centers that have not already met this requirement will take approximately 10 hours. We estimate the number of "new" centers to be approximately 350. Annual review may take approximately 2 hours. Clinic records are maintained in accordance with accepted professional standards and practice. The information required by 42 CFR 491.10 with respect to clinical records is consistent with good medical practice and is already followed by the majority of the centers. Since many entities would already be in compliance and collect this information to some extent, it is estimated that it would take each center approximately 26 additional hours per year for approximately 800 centers to comply with this requirement.

These requirements have been sent to OMB for its review pursuant to the requirements of the Paperwork Reduction Act. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "**ADDRESS**" section of this preamble.

Regulatory Impact Statement

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a

regulatory impact analysis for any proposed regulation that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all FFHCs, FQHCs and RHCs to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if this rule has a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

B. Statutory Changes

These provisions generally reflect changes made by recent legislation (OBRA '90). OBRA '90 provides for payment to FQHCs, not only for primary health care services already covered by Medicare in rural health clinics, but also for preventive primary health services not previously covered by Medicare. Under the OBRA '90 provisions, payment is made to FQHCs for each face-to-face encounter between a physician, physician assistant, nurse practitioner, clinical psychologist, and clinical social worker. Previously, Federally Funded Health Clinics (FFHCs) receiving grants under sections 329 and 330 of the PHS Act were paid only for a face-to-face encounter with a physician. As a result of OBRA '90, many FFHCs will qualify as FQHCs in addition to clinics which are not actually PHS grant recipients but which the PHS recommends as qualified candidates for designation as FQHCs. We estimate that these provisions will potentially affect approximately 800 entities over the next 5 years. These entities include approximately 650 community and migrant health center grantees (PHS grantees under section 329 and 330 of the PHS Act) and 90 homeless center grantees (PHS grantees under section 340 of the PHS Act) as well as a number of entities that meet the requirements to receive such a grant based on recommendations of the PHS and determined by the Secretary.

C. Positive Impact on Health Status

This regulation will expand Medicare payment to community health centers (CHCs) and similar entities that qualify as FQHCs and serve the working poor. Some of these organizations are under economic pressures to provide services to people who have turned to them as their first source providers. This new type of provider is also able to offer preventive services, a benefit not generally available to Medicare beneficiaries and an underpinning to improving overall health status of Americans.

D. Reporting Requirements

Reporting requirements will be less burdensome than previous requirements under the FFHC cost-based payment methodology. Changes in reporting requirements are part of the many benefits for FQHCs. FQHCs will be spared the administrative costs of preparing three cost reports annually. (FFHC's are required to submit three cost reports yearly: a projected, semi-annual, and annual report). The FQHC methodology will require only two reports per cost reporting year, a projected and an annual report.

E. Administrative Costs

Administrative costs are minimally affected as follows:

- Current claims volume for FFHCs is approximately 40,000 per month—fewer than 500,000 per year;
- These regulations are estimated to increase claims volume by 100,000 per year; and
- Any costs to be incurred as a result of the implementation of these regulations will be funded out of current OBRA '90 budget disbursements.

We have determined, and the Secretary certifies, that this rule does not meet the requirements to be determined a major rule nor does it meet criteria as having a significant economic impact on a substantial number of small entities. Also, this rule would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory impact analysis, a small rural hospital analysis, or an initial regulatory flexibility analysis.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 407

Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 420

Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 491

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

TITLE 42—PUBLIC HEALTH

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR chapter IV is amended as follows:

A. Part 400 is amended as follows:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. chapter 35.

2. Section 400.200 is amended by adding a definition for FQHC in alphabetical order and reprinting the introductory language to read as follows:

Subpart B—Definitions

§ 400.200 General definitions.

In this chapter, unless the context indicates otherwise—

* * * * *

FQHC means Federally qualified health center.

* * * * *

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

B. Part 405 is amended as follows:

1. The authority citation for part 405 subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842(b) and (h), 1848, 1861(b), (v) and (aa), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u(b) and (h), 1395w-4, 1395x(b), (v) and (aa), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. Section 405.501(b) is revised to read as follows:

§ 405.501 Determination of reasonable charges.

* * * * *

(b) Part B of Medicare pays on the basis of "reasonable cost" (see part 413 of this chapter) for certain institutional services, certain services furnished under arrangements with institutions, and services furnished by entities that elect to be paid on a cost basis (including health maintenance organizations, rural health clinics, Federally qualified health centers and end-stage renal disease facilities).

* * * * *

3. Section 405.502(f)(4) is revised to read as follows:

§ 405.502 Criteria for determining reasonable charges.

* * * * *

(f) *Determining charge payments for certain physician services furnished in outpatient settings.*

* * * * *

(4) *Services excluded from limits.* The limits established under this paragraph do not apply to the following:

(i) Rural health clinic services.

(ii) Surgical services included on the ambulatory surgical center list of procedures published under § 416.65(c) of this chapter.

(iii) Services furnished in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) Placing the patient's health in serious jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part.

(iv) Anesthesiology services and diagnostic and therapeutic radiology services.

(v) Federally qualified health center services paid under the rules in part 405 subpart X.

* * * * *

4. The authority citation for subpart X is revised to read as follows:

Authority: Sec. 1102, 1833, 1861(aa), 1871, Social Security Act; 42 U.S.C. 1302, 13951, 1395(aa), and B95hh.

5. The title of subpart X is revised to read as follows:

Subpart X—Rural Health Clinic and Federally Qualified Health Center Services

6. Section 405.2401 is amended by revising paragraph (a), in paragraph (b) by removing the arabic number designations for each definition, substituting arabic numbers for lower case Roman numerals, substituting lower case Roman numerals for upper case letters, adding a new definition of *Federally qualified health center*, and revising the definitions of *allowable cost, deductible, reporting period*, and *visit* to read as follows:

§ 405.2401 Scope and definitions.

(a) *Scope.* This subpart establishes the requirements for coverage and reimbursement of rural health clinic and Federally qualified health center services under Medicare.

(b) *Definitions.* As used in this subpart, unless the context indicates otherwise:

* * * * *

Allowable costs means costs that are incurred by a clinic or center and are reasonable in amount and proper and necessary for the efficient delivery of rural health clinic and Federally qualified health center services.

* * * * *

Deductible means: (1) The first $100 of expenses incurred by the beneficiary during any calendar year for items and services covered under Part B of title XVIII; and

(2) The expenses incurred for the first 3 pints of blood or 3 units of packed red blood cells furnished to a beneficiary during any calendar year. (See §§ 410.160 and 410.161 of this chapter for greater detail.)

* * * * *

Federally qualified health center (FQHC) means an entity that has entered into an agreement with the HCFA to meet Medicare program requirements under §§ 405.2434 and—

(1) Is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 329, 330 or 340 of the Public Health Service Act;

(2) Based on the recommendation of the PHS, is determined by the Secretary to meet the requirements for receiving such a grant; or

(3) Was treated by the Secretary, for purposes of Part B, as a comprehensive federally funded health center (FFHC) as of January 1, 1990.

* * * * *

Reporting period means a period of 12 consecutive months specified by the intermediary as the period for which a clinic or center must report its costs and utilization. The first and last reporting periods may be less than 12 months.

* * * * *

Visit means a face-to-face encounter between a clinic or center patient and a physician, physician assistant, nurse practitioner, nurse midwife, specialized nurse practitioner or visiting nurse. For Federally qualified health centers, a visit also means a face-to-face encounter between a patient and a qualified clinical psychologist or clinical social worker. Encounters with more than one health professional and multiple encounters with the same health professional which take place on the same day and at a single location constitute a single visit, except for cases in which the patient, subsequent to the first encounter, suffers illness or injury requiring additional diagnosis or treatment.

* * * * *

7. Section 405.2410 is revised to read as follows:

§ 405.2410 Application of Part B deductible and coinsurance.

(a) *Application of deductible.* (1) Medicare payment for rural health clinic services begins only after the beneficiary has incurred the deductible.

(2) Medicare payment for services covered under the Federally qualified health center benefit is not subject to the usual Part B deductible.

(b) *Application of coinsurance.* (1) The beneficiary is responsible for a coinsurance amount which cannot exceed 20 percent of the clinic's reasonable customary charge for the covered service; and

(2)(i) The beneficiary's deductible and coinsurance liability, with respect to any one item or service furnished by the rural health clinic, may not exceed a reasonable amount customarily charged by the clinic for that particular item or service.

(ii) For any one item or service furnished by a Federally qualified health center, the coinsurance liability may not exceed 20 percent of a reasonable amount customarily charged by the center for that particular item or service.

§ 405.2418 [Redesignated as § 405.2460]

8. Section 405.2418 is redesignated as § 405.2460 and revised as follows:

§ 405.2460 Applicability of general payment exclusions.

The payment conditions, limitations, and exclusions set out in subpart C of this part, part 410 and part 411 of this chapter are applicable to payment for services provided by rural health clinics and Federally qualified health centers, except that preventive primary services, as defined in § 405.2448, are covered in Federally qualified health centers and not excluded by the provisions of section 1862(a) of the Act.

§ 405.2425 [Redesignated as § 405.2462]

9. Section 405.2425 is redesignated as § 405.2462.

Newly redesignated § 405.2462 is revised to read as follows:

§ 405.2462 Payment for rural health clinic and Federally qualified health center services.

(a) *Payment to provider-based rural health clinics and Federally qualified health centers.* A rural health clinic or Federally qualified health center is paid in accordance with parts 405 and 413 of this subchapter, as applicable, if:

(1) The clinic or center is an integral and subordinate part of a hospital, skilled nursing facility or home health agency participating in Medicare (i.e., a provider of services); and

(2) The clinic or center is operated with other departments of the provider under common licensure, governance and professional supervision.

(b) *Payment to independent rural health clinics and freestanding Federally qualified health centers.* (1) All other clinics and centers will be paid on the basis of an all-inclusive rate for each beneficiary visit for covered services. This rate will be determined by the intermediary, in accordance with this subpart and general instructions issued by HCFA.

(2) The amount payable by the intermediary for a visit will be determined in accordance with paragraph (b)(3) and (4) of this section.

(3) *Federally qualified health centers.* For Federally qualified health center visits, Medicare will pay 80 percent of the all-inclusive rate since no deductible is applicable to Federally qualified health center services.

(4) *Rural health clinics.* (i) If the deductible has been fully met by the beneficiary prior to the rural health clinic visit, Medicare pays 80 percent of the all-inclusive rate.

(ii) If the deductible has not been fully met by the beneficiary before the visit, and the amount of the clinic's reasonable customary charge for the services that is applied to the deductible is—

(A) Less than the all-inclusive rate, the amount applied to the deductible will be subtracted from the all-inclusive rate and 80 percent of the remainder, if any, will be paid to the clinic;

(B) Equal to or exceeds the all-inclusive rate, no payment will be made to the clinic.

(5) To receive payment, the clinic or center must follow the payment procedures specified in section 410.165 of this chapter.

(6) Payment for treatment of mental psychoneurotic or personality disorders is subject to the limitations on payment in § 410.155(c).

§ 405.2426 [Redesignated as § 405.2464]

10. Section 405.2426 is redesignated as § 405.2464, and is revised to read as follows:

§ 405.2464 All-inclusive rate.

(a) *Determination of rate.* (1) An all-inclusive rate is determined by the intermediary at the beginning of the reporting period.

(2) The rate is determined by dividing the estimated total allowable costs by estimated total visits for rural health clinic or Federally qualified health center services.

(3) The rate determination is subject to any tests of reasonableness that may be established in accordance with this subpart.

(b) *Adjustment of rate.* (1) The intermediary, during each reporting period, periodically reviews the rate to assure that payments approximate actual allowable costs and visits for rural health clinic or Federally qualified health center services and adjusts the rate if:

(i) There is a significant change in the utilization of clinic or center services;

(ii) Actual allowable costs vary materially from the clinic or center's allowable costs; or

(iii) Other circumstances arise which warrant an adjustment.

(2) The clinic or center may request the intermediary to review the rate to determine whether adjustment is required.

§ 405.2427 [Redesignated as § 405.2466]

11. Section 405.2427 is redesignated as § 405.2466 and revised to read as follows:

§ 405.2466 Annual reconciliation.

(a) *General.* Payments made to a rural health clinic or a Federally qualified health center during a reporting period are subject to reconciliation to assure that those payments do not exceed or fall short of the allowable costs attributable to covered services furnished to Medicare beneficiaries during that period.

(b) *Calculation of reconciliation.* (1) The total reimbursement amount due the clinic or center for covered services furnished to Medicare beneficiaries is based on the report specified in § 405.2470(c)(2) and is calculated by the intermediary as follows:

(i) The average cost per visit is calculated by dividing the total allowable cost incurred for the reporting period by total visits for rural health clinic or Federally qualified health center services furnished during the period. The average cost per visit is subject to tests of reasonableness which may be established in accordance with this subpart.

(ii) The total cost of rural health clinic or Federally qualified health center services furnished to Medicare beneficiaries is calculated by multiplying the average cost per visit by the number of visits for covered rural health clinic or Federally qualified health center services by beneficiaries.

(iii) For rural health clinics, the total reimbursement due the clinic is 80 percent of the amount calculated by subtracting the amount of deductible incurred by beneficiaries that is attributable to rural health clinic services from the cost of these services. The reimbursement computation for

Federally qualified health centers does not include a reduction related to the deductible because Federally qualified health center services are not subject to a deductible.

(2) The total reimbursement amount due is compared with total payments made to the clinic or center for the reporting period, and the difference constitutes the amount of the reconciliation.

(c) *Notice of program reimbursement.* The intermediary sends written notice to the clinic or center:

(1) Setting forth its determination of the total reimbursement amount due the clinic or center for the reporting period and the amount, if any, of the reconciliation; and

(2) Informing the clinic or center of its right to have the determination reviewed at a hearing under the procedures set forth in subpart R of this part.

(d) *Payment of reconciliation amount*—(1) *Underpayments.* If the total reimbursement due the clinic or center exceeds the payments made for the reporting period, the intermediary makes a lump-sum payment to the clinic or center to bring total payments into agreement with total reimbursement due the clinic or center.

(2) *Overpayments.* If the total payments made to a clinic or center for the reporting period exceed the total reimbursement due the clinic or center for the period, the intermediary arranges with the clinic or center for repayment through a lump-sum refund, or, if that poses a hardship for the clinic or center, through offset against subsequent payments or a combination of offset and refund. The repayment must be completed as quickly as possible, generally within 12 months from the date of the notice of program reimbursement. A longer repayment period may be agreed to by the intermediary if the intermediary is satisfied that unusual circumstances exist which warrant a longer period.

§ 405.2428 [Redesignated as § 405.2468]

12. Section 405.2428 is redesignated as § 405.2468. In newly redesignated § 405.2468, paragraphs (a), (b), and (d) are revised to read as follows:

§ 405.2468 Allowable costs.

(a) *Applicability of general Medicare principles.* In determining whether and to what extent a specific type or item of cost is allowable, such as interest, depreciation, bad debts and owner compensation, the intermediary applies the principles for reimbursement of provider costs, as set forth in Part 413 of this subchapter.

(b) *Typical rural health clinic and Federally qualified health center costs.* The following types and items of cost are included in allowable costs to the extent that they are covered and reasonable:

(1) Compensation for the services of physicians, physician assistants, nurse practitioners, nurse midwives, specialized nurse practitioners, visiting nurses, qualified clinical psychologists, and clinical social workers employed by the clinic or center.

(2) Compensation for the duties that a supervising physician is required to perform under the agreement specified in § 491.8 of this chapter.

(3) Costs of services and supplies incident to the services of a physician, physician assistant, nurse practitioner, nurse midwife, specialized nurse practitioner, qualified clinical psychologist, or clinical social worker.

(4) Overhead costs, including clinic or center administration, costs applicable to use and maintenance of the entity, and depreciation costs.

(5) Costs of services purchased by the clinic or center.

* * * * *

(d) *Screening guidelines.* Costs in excess of amounts established by the guidelines are not included unless the clinic or center provides reasonable justification satisfactory to the intermediary.

(2) Screening guidelines will be used to assess the costs of services, including:

(i) Compensation for the professional and supervisory services of physicians and for the services of physician assistants, nurse practitioners, nurse midwives, and specialized nurse practitioners;

(ii) Services of physicians, physician assistants, nurse practitioners, specialized nurse practitioners, nurse midwives, visiting nurses, qualified clinical psychologists, or clinical social workers;

(iii) The level of administrative and general expenses;

(iv) Staffing (e.g., the ratio of other clinic or center personnel to physicians, physician assistants, and nurse practitioners); and

(v) The reasonableness of payments for services purchased by the clinic or center, subject to the limitation that the costs of physicians' services purchased by the clinic or center may not exceed amounts as determined under the applicable provisions of subpart E of part 405 or part 415.

* * * * *

§ 405.2429 [Redesignated as § 405.2470]

13. Section 405.2429 is redesignated as § 405.2470 and is revised to read as follows:

§ 405.2470 Reports and maintenance of records.

(a) *Maintenance and availability of records.* The rural health clinic or Federally qualified health center must:

(1) Maintain adequate financial and statistical records, in the form and containing the data required by HCFA, to allow the intermediary to determine payment for covered services furnished to Medicare beneficiaries in accordance with this subpart;

(2) Make the records available for verification and audit by HHS or the General Accounting Office;

(3) Maintain financial data on an accrual basis, unless it is part of a governmental institution that uses a cash basis of accounting. In the latter case, appropriate depreciation on capital assets is allowable rather than the expenditure for the capital asset.

(b) *Adequacy of records.* (1) The intermediary may suspend reimbursement if it determines that the clinic or center does not maintain records that provide an adequate basis to determine payments under Medicare.

(2) The suspension continues until the clinic or center demonstrates to the intermediary's satisfaction that it does, and will continue to, maintain adequate records.

(c) *Reporting requirements*—(1) *Initial report.* At the beginning of its initial reporting period, the clinic or center must submit an estimate of budgeted costs and visits for rural health clinic or Federally qualified health center services for the reporting period, in the form and detail required by HCFA, and such other information as HCFA may require to establish the payment rate.

(2) *Annual reports.* Within 90 days after the end of its reporting period, the clinic or center must submit, in such form and detail as may be required by HCFA, a report of:

(i) Its operations, including the allowable costs actually incurred for the period and the actual number of visits for rural health clinic or Federally qualified health center services furnished during the period; and

(ii) The estimated costs and visits for rural health clinic services or Federally qualified health center services for the succeeding reporting period and such other information as HCFA may require to establish the payment rate.

(3) *Late reports.* If the clinic or center does not submit an adequate annual report on time, the intermediary may

reduce or suspend payments to preclude excess payment to the clinic or center.

(4) *Inadequate reports.* If the clinic or center does not furnish a report or furnishes a report that is inadequate for the intermediary to make a determination of program payment, HCFA may deem all payments for the reporting period to be overpayments.

(5) *Postponement of due date.* For good cause shown by the clinic or center, the intermediary may, with HCFA's approval, grant a 30-day postponement of the due date for the annual report.

(6) *Reports following termination of agreement or change of ownership.* The report from a clinic or center which voluntarily or involuntarily ceases to participate in the Medicare program or experiences a change in ownership (see §§ 405.2436–405.2438) is due no later than 45 days following the effective date of the termination of agreement or change of ownership.

§ 405.2430 [Redesignated as § 405.2472]

14. Section 405.2430 is redesignated as § 405.2472, the undesignated introductory matter is reprinted, and paragraph (a) is revised to read as follows:

§ 405.2472 Beneficiary appeals.

A beneficiary may request a hearing by an intermediary (subject to the limitations and conditions set forth in subpart H of this part) if:

(a) The beneficiary is dissatisfied with an intermediary's determination denying a request for payment made on his or her behalf by a rural health clinic or Federally qualified health center; or

* * * * *

15. In subpart X, an undesignated center heading is added immediately following existing § 405.2417, and new §§ 405.2430 through 405.2452 are added immediately after the undesignated center heading to read as follows:

Federally Qualified Health Center Services

§ 405.2430 Basic requirements.

(a) *Filing procedures.* (1) In response to a request from an entity that wishes to participate in the Medicare program, HCFA enters into an agreement with an entity when—

(i) PHS recommends that the entity qualifies as a Federally qualified health center;

(ii) The Federally qualified health center assures HCFA that it meets the Federally qualified health center requirements specified in this subpart and part 491, as described in § 405.2434(a); and

(iii) Any other agreement under Medicare is terminated, except for provider-based entities.

(2) HCFA sends the entity a written notice of the disposition of the request.

(3) When the requirement of paragraph (a)(1) of this section is satisfied, HCFA sends the entity two copies of the agreement. The entity must sign and return both copies of the agreement to HCFA.

(4) If HCFA accepts the agreement filed by the Federally qualified health center, HCFA returns to the center one copy of the agreement with the notice of acceptance specifying the effective date (see § 489.11), as determined under § 405.2434.

(b) *Recommendations by PHS about Federally qualified health centers.* (1) An entity must—

(i) Meet the applicable requirements of the PHS Act, as specified in § 405.2401(b); and

(ii) Be recommended by PHS to HCFA as a Federally qualified health center.

(2) The PHS notifies HCFA of entities that meet the requirements specified in § 405.2401(b).

(c) *Provider-based and freestanding Federally qualified health centers.* The requirements and benefits under Medicare for provider-based or freestanding Federally qualified health centers are the same, except that payment methodologies differ, as described in § 405.2462.

(d) *Appeals.* An entity is entitled to a hearing in accordance with part 498 of this chapter when HCFA fails to enter into an agreement with the entity.

§ 405.2434 Content and terms of the agreement.

Under the agreement, the Federally qualified health center must agree to the following:

(a) *Maintain compliance with the requirements.* (1) The Federally qualified health center must agree to maintain compliance with the Federally qualified health center requirements set forth in this subpart and part 491, except that the provisions of § 491.3 do not apply.

(2) Centers must promptly report to HCFA any changes that result in noncompliance with any of these requirements.

(b) *Effective date of agreement.* (1) Except as specified in paragraph (b)(2) of this section, the effective date of the agreement is the date HCFA accepts the signed agreement, which assures that all Federal requirements are met.

(2) For facilities that met all requirements on October 1, 1991, the effective date of the agreement can be October 1, 1991.

(c) *Charges to beneficiaries.* (1) The beneficiary is responsible for payment of a coinsurance amount which is 20 percent of the amount of Part B payment made to the Federally qualified health center for the covered services. There is no coinsurance for a second or third opinion obtained in accordance with section 1164 of the Act or for pneumococcal vaccine and its administration.

(2) The beneficiary is responsible for blood deductible expenses, as specified in § 410.161.

(3) The Federally qualified health center agrees not to charge the beneficiary (or any other person acting on behalf of a beneficiary) for any Federally qualified health center services for which the beneficiary is entitled to have payment made on his or her behalf by the Medicare program (or for which the beneficiary would have been entitled if the Federally qualified health center had filed a request for payment in accordance with § 410.165 of this chapter), except for coinsurance amounts.

(4) The Federally qualified health center may charge the beneficiary for items and services that are not Federally qualified health center services. However, if the item or service is covered under Part B of Medicare, and the Federally qualified health center agrees to receive Part B payment under the assignment method, the Federally qualified health center may not charge the beneficiary more than 20 percent of the Part B payment.

(d) *Refunds to beneficiaries.* (1) The Federally qualified health center must agree to refund as promptly as possible any money incorrectly collected from Medicare beneficiaries or from someone on their behalf.

(2) As used in this section, "money incorrectly collected" means any amount for covered services that is greater than the amount for which the beneficiary was liable because of the coinsurance requirements specified in part 410, subpart E.

(3) Amounts also are considered incorrectly collected if the Federally qualified health center believed the beneficiary was not entitled to Medicare benefits but—

(i) The beneficiary was later determined to have been so entitled;

(ii) The beneficiary's entitlement period fell within the time the Federally qualified health center's agreement with HCFA was in effect; and

(iii) The amounts exceed the beneficiary's coinsurance liability.

(e) *Treatment of beneficiaries.* (1) The Federally qualified health center must

agree to accept Medicare beneficiaries for care and treatment.

(2) The Federally qualified health center may not impose any limitations with respect to care and treatment of Medicare beneficiaries that it does not also impose upon all other persons seeking care and treatment from the Federally qualified health center. Failure to comply with this requirement is a cause for termination of the Federally qualified health center's agreement with HCFA in accordance with § 405.2436(d).

(3) If the Federally qualified health center does not furnish treatment for certain illnesses and conditions to patients who are not Medicare beneficiaries, it need not furnish such treatment to Medicare beneficiaries.

§ 405.2436 Termination of agreement.

(a) *Termination by Federally qualified health center.* The Federally qualified health center may terminate its agreement by—

(1) Filing with HCFA a written notice stating its intention to terminate the agreement; and

(2) Notifying HCFA of the date on which the Federally qualified health center requests that the termination take effect.

(b) *Effective date.* (1) Upon receiving a Federally qualified health center's notice of intention to terminate the agreement, HCFA will set a date upon which the termination takes effect. This effective date may be—

(i) The date proposed by the Federally qualified health center in its notice of intention to terminate, if that date is acceptable to HCFA; or

(ii) Except as specified in paragraph (2) of this section, a date set by HCFA, which is no later than 6 months after the date HCFA receives the Federally qualified health center's notice of intention to terminate.

(2) The effective date of termination may be less than 6 months following HCFA's receipt of the Federally qualified health center's notice of intention to terminate if HCFA determines that termination on such a date would not—

(i) Unduly disrupt the furnishing of Federally qualified health center services to the community; or

(ii) Otherwise interfere with the effective and efficient administration of the Medicare program.

(3) The termination is effective at the end of the last day of business as a Federally qualified health center.

(c) *Termination by HCFA.* (1) HCFA may terminate an agreement with a Federally qualified health center if it finds that the Federally qualified health center—

(i) No longer meets the requirements specified in this subpart; or

(ii) Is not in substantial compliance with—

(A) The provisions of the agreement; or

(B) The requirements of this subpart, any other applicable regulations of this part, or any applicable provisions of title XVIII of the Act.

(2) *Notice by HCFA.* HCFA will notify the Federally qualified health center in writing of its intention to terminate an agreement at least 15 days before the effective date stated in the written notice.

(3) *Appeal.* A Federally qualified health center may appeal HCFA's decision to terminate the agreement in accordance with part 498 of this chapter.

(d) *Effect of termination.* When a Federally qualified health center's agreement is terminated whether by the Federally qualified health center or HCFA, payment will not be available for Federally qualified health center services furnished on or after the effective date of termination.

§ 405.2440 Conditions for reinstatement after termination by HCFA.

When HCFA has terminated an agreement with a Federally qualified health center, HCFA will not enter into another agreement with the Federally qualified health center to participate in the Medicare program unless HCFA—

(a) Finds that the reason for the termination no longer exists; and

(b) Is assured that the reason for the termination of the prior agreement will not recur.

§ 405.2442 Notice to the public.

(a) When the Federally qualified health center voluntarily terminates the agreement and an effective date is set for the termination, the Federally qualified health center must notify the public prior to a prospective effective date or on the actual day that business ceases, if no prospective date of termination has been set, through publication in at least one newspaper in general circulation in the area serviced by the Federally qualified health center of the—

(1) Effective date of termination of the provision of services; and

(2) Effect of termination of the agreement.

(b) When HCFA terminates the agreement, HCFA will notify the public through publication in at least one newspaper in general circulation in the Federally qualified health center's service area.

§ 405.2444 Change of ownership.

(a) *What constitutes change of ownership*—(1) *Incorporation.* The incorporation of an unincorporated FQHC constitutes change of ownership.

(2) *Merger.* The merger of the center corporation into another corporation, or the consolidation of two or more corporations, one of which is the center corporation, resulting in the creation of a new corporation, constitutes a change of ownership. (The merger of another corporation into the center corporation does not constitute change of ownership.)

(3) *Leasing.* The lease of all or part of an entity constitutes a change of ownership of the leased portion.

(b) *Notice to HCFA.* A center which is contemplating or negotiating change of ownership must notify HCFA.

(c) *Assignment of agreement.* When there is a change of ownership as specified in paragraph (a) of this section, the agreement with the existing center is automatically assigned to the new owner if it continues to meet the conditions to be a Federally qualified health center.

(d) *Conditions that apply to assigned agreements.* An assigned agreement is subject to all applicable statutes and regulations and to the terms and conditions under which it was originally issued including, but not limited to, the following:

(1) Compliance with applicable health and safety standards.

(2) Compliance with the ownership and financial interest disclosure requirements of part 420, subpart C of this subchapter.

§ 405.2446 Scope of services.

(a) For purposes of this section, the terms *rural health clinic* and *clinic* when they appear in the cross references in paragraph (b) of this section also mean Federally qualified health centers.

(b) Federally qualified health center services that are paid for under this subpart are outpatient services that include—

(1) Physician services specified in § 405.2412;

(2) Services and supplies furnished as an incident to a physician's professional services as specified in § 405.2413;

(3) Nurse practitioner or physician assistant services specified in § 405.2414;

(4) Services and supplies furnished as an incident to a nurse practitioner or physician assistant's services as specified in § 405.2415;

(5) Clinical psychologist and clinical social worker services specified in § 405.2450;

(6) Services and supplies furnished as an incident to a clinical psychologist or clinical social worker's services as specified in § 405.2452;

(7) Visiting nurse services specified in § 405.2416; and

(8) Preventive services specified in § 405.2448 of this subpart.

(c) Federally qualified health center services are covered when provided in outpatient settings only, including a patient's place of residence, which may be a skilled nursing facility or a nursing facility or other institution used as a patient's home.

(d) Federally qualified health center services are not covered in a hospital, as defined in section 1861(e) (1) of the Act.

§ 405.2448 Preventive primary services.

(a) Preventive primary service are those health services that—

(1) A center is required to provide as preventive primary health services under section 329, 330, and 340 of the Public Health Service Act;

(2) Are furnished by or under the direct supervision of a nurse practitioner, physician assistant, nurse midwife, specialized nurse practitioner, clinical psychologist, clinical social worker, or a physician;

(3) In the case of a service, are furnished by a member of the center's health care staff who is an employee of the center or by a physician under arrangements with the center; and

(4) Except as specifically provided in section 1861(s) of the Act, include only drugs and biologicals that cannot be self-administered.

(b) Preventive primary services which may be paid for when provided by Federally qualified health centers are the following:

(1) Medical social services;

(2) Nutritional assessment and referral;

(3) Preventive health education;

(4) Children's eye and ear examinations;

(5) Prenatal and post-partum care;

(6) Prenatal services;

(7) Well child care, including periodic screening;

(8) Immunizations, including tetanus-diptheria booster and influenza vaccine;

(9) Voluntary family planning services;

(10) Taking patient history;

(11) Blood pressure measurement;

(12) Weight;

(13) Physical examination targeted to risk;

(14) Visual acuity screening;

(15) Hearing screening;

(16) Cholesterol screening;

(17) Stool testing for occult blood;

(18) Dipstick urinalysis;

(19) Risk assessment and initial counseling regarding risks; and

(20) For women only:

(i) Clinical breast exam;

(ii) Referral for mammography; and

(iii) Thyroid function test.

(c) Preventive primary services do not include group or mass information programs, health education classes, or group education activities, including media productions and publications.

(d) Screening mammography is not considered a Federally qualified health center service, but may be provided at a Federally qualified health center if the center meets the requirements applicable to that service specified in § 410.34 of this subchapter. Payment is made under applicable Medicare requirements.

(e) Preventive primary services do not include eyeglasses, hearing aids, or preventive dental services.

§ 405.2450 Clinical psychologist and clinical social worker services.

(a) For clinical psychologist or clinical social worker professional services to be reimbursable under this subpart, the services must be—

(1) Furnished by an individual who is employed by or receives compensation from the Federally qualified health center.

(2) Of a type that the clinical psychologist or clinical social worker who furnishes the services is legally permitted to perform by the State in which the service is furnished;

(3) Performed by a clinical social worker or clinical psychologist who is legally authorized to perform such services under State law or the State regulatory mechanism provided by the law of the State in which such services are performed; and

(4) Covered if furnished by a physician.

(b) If State law prescribes a physician supervision requirement, it is met if the conditions specified in § 491.8(b) of this chapter and any pertinent requirements of State law are satisfied.

(c) The services of clinical psychologists or clinical social workers are not covered if State law or regulations require that the services be performed under a physician's order and no such order was prepared.

§ 405.2452 Services and supplies incident to clinical psychologist and clinical social worker services.

(a) Services and supplies incident to a clinical psychologist's or clinical social worker's services are reimbursable under this subpart if the service or supply is—

(1) Of a type commonly furnished in a physician's office;

(2) Of a type commonly furnished either without charge or included in the Federally qualified health center's bill;

(3) Furnished as an incidental, although integral part of professional services furnished by a clinical psychologist or clinical social worker;

(4) Furnished under the direct, personal supervision of a clinical psychologist, clinical social worker or physician; and

(5) In the case of a service, furnished by a member of the center's health care staff who is an employee of the center.

(b) The direct personal supervision requirement in paragraph (a)(4) of this section is met only if the clinical psychologist or clinical social worker is permitted to supervise such services under the written policies governing the Federally qualified health center.

16. In subpart X, an undesignated center heading is added immediately following new § 405.2452 to read as follows:

Payment for Rural Health Clinic and Federally Qualified Health Center Services

C. Part 407 is amended as follows:

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

1. The authority citation for part 407 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. Section 407.2 is revised to read as follows:

Subpart A—General Provisions

§ 407.2 General description of program.

Part B of Title XVIII of the Act provides for voluntary "supplementary medical insurance" available to most individuals age 65 or over and to disabled individuals who are under age 65 and entitled to hospital insurance. The SMI program is financed by premiums paid by (or for) each individual enrolled in the program, plus contributions from Federal funds. It covers certain physicians' services, outpatient services, home health services, services furnished by rural health clinics (RHCs), Federally qualified health centers (FQHCS), ambulatory surgical centers (ASCs), and comprehensive outpatient rehabilitation facilities (CORFs), and other medical and other health services.

D. Part 410 is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 is revised to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861(r), (s) and (cc), 1861(aa), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395n, 1395x(r), (s) and (cc), 1395x(aa), 1395hh, and 1395rr).

2. Section 410.3(a)(1) is revised to read as follows:

§ 410.3 Scope of benefits.

(a) *Covered services.* The SMI program helps pay for the following:

(1) Medical and other health services such as physicians' services, outpatient hospital services, diagnostic tests, outpatient physical therapy and speech pathology services, rural health clinic services, Federally qualified health center services, and outpatient renal dialysis services.

(2) * * *

(3) * * *

* * * * *

3. Section 410.5(b) is revised to read as follows:

§ 410.5 Other applicable rules.

* * * * *

(b) Part 405, Subpart X: Rural Health Clinic and Federally Qualified Health Center services.

* * * * *

4. Section 410.10 is amended by adding a new paragraph (s) to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in this subpart, *medical and other health services* includes the following services:

* * * * *

(s) Federally qualified health center services.

5. Section 410.32 is amended by adding a new paragraph (b)(6) and reprinting the introductory language to read as follows:

§ 410.32 Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

* * * * *

(b) *Diagnostic laboratory tests.* Medicare Part B pays for covered diagnostic laboratory tests that are furnished by any of the following:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) A Federally qualified health center.

6. Section 419.150 is amended by revising paragraph (b) (8) to read as follows:

§ 410.150 To whom payment is made.

* * * * *

(b) *Specific rules.* * * *

* * * * *

(8) To a rural health clinic or Federally qualified health center on the individual's behalf for rural health clinic or Federally qualified health center services furnished by the rural health clinic or Federally qualified health center, respectively.

* * * * *

7. Section 410.152 is amended by revising paragraphs (f), (h), and the heading of (j) to read as follows:

§ 410.152 Amounts of payment.

* * * * *

(f) *Amount of payment: Rural health clinic and Federally qualified health center services.* Medicare Part B pays, for services by a participating independent rural health clinic or Federally qualified health center, 80 percent of the costs determined under subpart X of part 405 of this chapter, to the extent those costs are reasonable and related to the cost of furnishing rural health clinic or Federally qualified health center services or reasonable on the basis of other tests specified by HCFA.

* * * * *

(h) *Amount of payment: Pneumococcal vaccine.* Medicare Part B pays for pneumococcal vaccine and its administration as follows:

(1) For services furnished by a nominal charge provider, 100 percent of fair compensation.

(2) For services furnished by a provider that is not a nominal charge provider, the reasonable cost of the services or the customary charge for the service, whichever is less.

(3) For services furnished by other than a provider, a rural health clinic or a Federally qualified health center, 100 percent of the reasonable charge.

(4) For services furnished by a rural health clinic or a Federally qualified health center, 100 percent of the reasonable cost.

* * * * *

(j) *Amount of payment: services of Federally funded health facilities prior to October 1, 1991.* * * *

8. Section 410.160(b) is revised to read as follows:

§ 410.160 Part B annual deductible.

* * * * *

(b) *Exceptions.* Expenses incurred for the following services are not subject to the Part B annual deductible and do not count toward meeting that deductible:

(1) Home health services.

(2) Pneumococcal vaccines and their administration.

(3) Federally qualified health center services.

(4) ASC facility services furnished before July 1987 and physician services furnished before April 1988 that met the requirements for payment of 100 percent of the reasonable charges.

* * * * *

9. Section 410.165(a) is revised to read as follows:

§ 410.165 Payment for rural health clinic services and ambulatory surgical center services: Conditions.

(a) Medicare Part B pays for covered rural health clinic and Federally qualified health center services if—

(1) The services are furnished in accordance with the requirements of subpart X of part 405 of this chapter and subpart A of part 491 of this chapter; and

(2) The clinic or center files a written request for payment on the form and in the manner prescribed by HCFA.

* * * * *

E. Part 417 is amended as follows:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1861(aa), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395x(aa), 1395hh, 1395kk, and 1395mm); section 114(c) of Pub.L. 97-248 (42 U.S.C. 1395mm note); section 9312(c) of Pub. L. 99-509 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e) and 31 U.S.C. 9701.

2. Section 417.416(d)(1) is revised to read as follows:

Subpart C—Health Maintenance Organizations and Competitive Medical Plans

§ 417.416(d) Qualifying condition: Furnishing of services.

* * * * *

(d) *Exceptions to physician supervision.* * * *

(1) The organization may permit the services of physician assistants and nurse practitioners (as defined in § 491.2 of this chapter), and the services and supplies incident to their services, to be furnished without the direct personal supervision of a physician. For purposes

of this section, the definitions of physician assistants' and nurse practitioners' services and the services and supplies incident to their services for rural health clinics and Federally qualified health centers as specified in §§ 405.2414 and 405.2415 of this chapter are applicable.

(2) * * *

* * * * *

F. Part 420 is amended as follows:

PART 420—PROGRAM INTEGRITY: MEDICARE

1. The authority citation for part 420 is revised to read as follows:

Authority: Secs. 1102, 1124, 1126, 1861(aa), 1866, and 1871, of the Social Security Act (42 U.S.C. 1302, 1320a–3, 1320a–5, 1395x(aa), 1395cc, and 1395hh).

2. Section 420.201 is amended by revising the definition of *disclosing entity* and reprinting the introductory language to read as follows:

Subpart C—Disclosure of Information

§ 420.201 Definitions.

As used in this subpart unless the context indicates otherwise:

* * * * *

Disclosing entity means:

(1) A provider of services, an independent clinical laboratory, a renal disease facility, a rural health clinic, a Federally qualified health center, or a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act); and

(2) A carrier or other agency or organization that is acting as a fiscal intermediary or agent for one or more providers of services for purposes of Part A or Part B of Medicare.

* * * * *

G. Part 424 is amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870(e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg(e) and (f), 1395hh and 1395ii).

2. Section 424.1(c) is revised to read as follows:

Subpart A—General Provisions

§ 424.1 Basis and scope.

* * * * *

(c) *Other applicable rules.* Except for § 424.40(c)(3), this part does not deal with the conditions for payment of rural health clinic (RHC) services, Federally qualified health center (FQHC) services, or ambulatory surgical center (ASC) services. Those conditions are set forth in part 405, subpart X, and part 481 subpart A of this chapter for RHC and FQHC services; and in part 416 of this chapter, for ASC services. The rules for physician certification of terminal illness, required in connection with hospice care, are set forth in § 418.22 of this chapter.

2. Section 424.40(c)(3) is revised to read as follows:

Subpart C—Claims for Payment

§ 424.40 Request for payment effective for more than one claim.

* * * * *

(c) Signed statement in the provider record—

(1) * * *

(2) * * *

(3) *Services to outpatients: Independent rural health clinics and Federally qualified health centers.* A signed request for payment statement retained in the clinic's or center's files may be effective indefinitely for all claims for services furnished to that beneficiary by the clinic.

* * * * *

H. Part 488 is amended as follows:

PART 488—SURVEY AND CERTIFICATION PROCEDURES

1. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881, 1883, 1913 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt.

2. Section 488.1 is amended be revising the definition of "supplier" and reprinting the introductory language to read as follows:

Subpart A—General Provisions

§ 488.1 Definitions.

As used in this party—

* * * * *

Supplier means any of the following: Independent laboratory; portable X-ray services physical therapist in independent practice; ESRD facility; rural health clinic; Federally qualified health center; or chiropractor.

I. Part 491 is amended as follows:

PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES

1. The authority citation for part 491 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Part 491 is amended by revising the title of subpart A to read as follows:

Subpart A—Rural Health Clinics: Conditions for Certification; and Federally Qualified Health Centers Conditions for Coverage

3. Section 491.1 is revised to read as follows:

§ 491.1 Purpose and scope.

This subpart sets forth the conditions that rural health clinics or Federally qualified health centers must meet in order to qualify for reimbursement under Medicare (Title XVIII of the Social Security Act) and that rural health clinics must meet in order to qualify for reimbursement under Medicaid (Title XIX of the Act).

4. Section 491.2 is amended by removing the lower case letter designations before each definition, reprinting the introductory language, and adding a new definition of Federally qualified health center to read as follows:

§ 491.2 Definitions.

As used in this subpart, unless the context indicates otherwise:

* * * * *

Federally qualified health center means an entity as defined in § 405.2401(b).

* * * * *

5. Section 491.4 revised to read as follows:

§ 491.4 Compliance with Federal, State and local laws.

The rural health clinic or Federally qualified health center and its staff are in compliance with applicable Federal, State and local laws and regulations.

(a) *Licensure of clinic or center.* The clinic or center is licensed pursuant to applicable State and local law.

(b) *Licensure, certification or registration of personnel.* Staff of the clinic or center are licensed, certified or registered in accordance with applicable State and local laws.

6. Section 491.5(a) is revised to read as follows:

§ 491.5 Location of clinic or center.

(a) *Basic requirement.* The clinic is located in a rural area that is designated as a shortage area. The Federally qualified health center is located in a rural or urban area that is designated as a shortage area. Both the clinic and the center may be permanent or mobile units.

(1) *Permanent unit.* The objects, equipment and supplies necessary for the provision of the services furnished

directly by the clinic or center are housed in a permanent structure.

(2) *Mobile unit.* The objects, equipment, and supplies necessary for the provision of the services furnished directly by the clinic or center are housed in a mobile structure which has fixed, scheduled location(s).

Under this requirement, if clinic services are furnished at permanent units in more than one location, each unit will be independently considered for certification as a rural health clinic or for coverage as a Federally qualified health center.

* * * * *

7. Section 491.6 is revised to read as follows:

§ 491.6 Physical plant and environment.

(a) *Construction.* The clinic or center is constructed, arranged, and maintained to insure access to and safety of patients, and provides adequate space for the provision of direct services.

(b) *Maintenance.* The clinic or center has a preventive maintenance program to ensure that:

(1) All essential mechanical, electrical and patient-care equipment is maintained in safe operating condition;

(2) Drugs and biologicals are appropriately stored; and

(3) The premises are clean and orderly.

(c) *Emergency procedures.* The clinic or center assures the safety of patients in case of non-medical emergencies by:

(1) Training staff in handling emergencies;

(2) Placing exit signs in appropriate locations; and

(3) Taking other appropriate measures that are consistent with the particular conditions of the area in which the clinic or center is located.

8. Section 491.7 is revised to read as follows:

§ 491.7 Organizational structure.

(a) *Basic requirements.* (1) The clinic or center is under the medical direction of a physician, and has a health care staff that meets the requirements of § 491.8.

(2) The organization's policies and its lines of authority and responsibilities are clearly set forth in writing.

(b) *Disclosure.* The clinic or center discloses the names and addresses of:

(1) Its owners, in accordance with section 1124 of the Social Security Act (42 U.S.C. 132 A–3);

(2) The person principally responsible for directing the operation of the clinic or center; and

(3) The person responsible for medical direction.

9. Section 491.8 is revised to read as follows:

§ 491.8 Staffing and staff responsibilities.

(a) *Staffing.* (1) The clinic or center has a health care staff that includes one or more physicians. Rural health clinic staffs must also include one or more physician's assistants or nurse practitioners.

(2) The physician member of the staff may be the owner of the rural health clinic, an employee of the clinic or center, or under agreement with the clinic or center to carry out the responsibilities required under this section.

(3) The physician's assistant or nurse practitioner member of the staff may be the owner of the rural health clinic or an employee of the clinic or center.

(4) The staff may also include ancillary personnel who are supervised by the professional staff.

(5) The staff is sufficient to provide the services essential to the operation of the clinic or center.

(6) A physician, nurse practitioner, or physician assistant is available to furnish patient care services at all times the clinic or center operates. In addition, for rural health clinics, a nurse practitioner or a physician assistant is available to furnish patient care services at least 60 percent of the time the clinic operates.

(b) *Physician responsibilities.* (1) The physician:

(i) Provides medical direction for the clinic's or center's health care activities and consultation for, and medical supervision of, the health care staff.

(ii) In conjunction with the physician's assistant and/or nurse practitioner member(s), participates in developing, executing, and periodically reviewing the clinic's or center's written policies and the services provided to Federal program patients; and

(iii) Periodically reviews the clinic's or center's patient records, provides medical orders, and provides medical care services to the patients of the clinic or center.

(2) A physician is present for sufficient periods of time, at least once in every 2 week period (except in extraordinary circumstances), to provide the medical direction, medical care services, consultation and supervision described in paragraph (b)(1) of this section and is available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral. The extraordinary circumstances are documented in the records of the clinic or center.

(c) *Physician assistant and nurse practitioner responsibilities.* (1) The physician assistant and the nurse practitioner members of the clinic's or center's staff:

(i) Participate in the development, execution and periodic review of the written policies governing the services the clinic or center furnishes;

(ii) Participate with a physician in a periodic review of the patients' health records.

(2) The physician assistant or nurse practitioner performs the following functions, to the extent they are not being performed by a physician:

(i) Provides services in accordance with the clinic's or center's policies;

(ii) Arranges for, or refers patients to, needed services that cannot be provided at the clinic or center; and

(iii) Assures that adequate patient health records are maintained and transferred as required when patients are referred.

10. Section 491.9 is revised to read as follows:

§ 491.9 Provision of services.

(a) *Basic requirements.* (1) All services offered by the clinic or center are furnished in accordance with applicable Federal, State, and local laws; and

(2) The clinic or center is primarily engaged in providing outpatient health services and meets all other conditions of this subpart.

(3) The laboratory requirements in paragraph (c)(2) of this section apply to RHCs, but do not apply to FQHCs.

(b) *Patient care policies.* (1) The clinic's or center's health care services are furnished in accordance with appropriate written policies which are consistent with applicable State law.

(2) The policies are developed with the advice of a group of professional personnel that includes one or more physicians and one or more physician assistants or nurse practitioners. At least one member is not a member of the clinic or center staff.

(3) The policies include:

(i) A description of the services the clinic or center furnishes directly and those furnished through agreement or arrangement.

(ii) Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, the maintenance of health care records, and procedures for the periodic review and evaluation of the services furnished by the clinic or center.

(iii) Rules for the storage, handling, and administration of drugs and biologicals.

(4) These policies are reviewed at least annually by the group of professional personnel required under paragraph (b)(2) of this section and reviewed as necessary by the clinic or center.

(c) *Direct services*—(1) *General.* The clinic or center staff furnishes those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(2) *Laboratory.* These requirements apply to RHCs, but not to FQHCs. The RHC provides basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

(i) Chemical examinations of urine by stick or tablet methods or both (including urine ketones);

(ii) Microscopic examinations of urine sediment;

(iii) Hemoglobin or hematocrit;

(iv) Blood sugar;

(v) Gram stain;

(vi) Examination of stool specimens for occult blood;

(vii) Pregnancy tests;

(viii) Primary culturing for transmittal to a certified laboratory; and

(ix) Test for pinworm.

(3) *Emergency.* The clinic or center provides medical emergency procedures as a first response to common life-threatening injuries and acute illness and has available the drugs and biologicals commonly used in life saving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

(d) *Services provided through agreements or arrangements.* (1) The clinic or center has agreements or arrangements with one or more providers or suppliers participating under Medicare or Medicaid to furnish other services to its patients, including:

(i) Inpatient hospital care;

(ii) Physician(s) services (whether furnished in the hospital, the office, the patient's home, a skilled nursing facility, or elsewhere); and

(iii) Additional and specialized diagnostic and laboratory services that are not available at the clinic or center.

(2) If the agreements are not in writing, there is evidence that patients referred by the clinic or center are being accepted and treated.

11. Section 491.10 is amended by revising paragraphs (a) and (b) to read as follows:

§ 491.10 Patient health records.

(a) *Records system.* (1) The clinic or center maintains a clinical record system in accordance with written policies and procedures.

(2) A designated member of the professional staff is responsible for maintaining the records and for insuring that they are completely and accurately documented, readily accessible, and systematically organized.

(3) For each patient receiving health care services, the clinic or center maintains a record that includes, as applicable:

(i) Identification and social data, evidence of consent forms, pertinent medical history, assessment of the health status and health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient;

(ii) Reports of physical examinations, diagnostic and laboratory test results, and consultative findings;

(iii) All physician's orders, reports of treatments and medications, and other pertinent information necessary to monitor the patient's progress;

(iv) Signatures of the physician or other health care professional.

(b) *Protection of record information.* (1) The clinic or center maintains the confidentiality of record information and provides safeguards against loss, destruction or unauthorized use.

(2) Written policies and procedures govern the use and removal of records from the clinic or center and the conditions for release of information.

(3) The patient's written consent is required for release of information not authorized to be released without such consent.

* * * * *

12. Section 491.11 is revised to read as follows:

§ 491.11 Program evaluation.

(a) The clinic or center carries out, or arranges for, an annual evaluation of its total program.

(b) The evaluation includes review of:

(1) The utilization of clinic or center services, including at least the number of patients served and the volume of services;

(2) A representative sample of both active and closed clinical records; and

(3) The clinic's or center's health care policies.

(c) The purpose of the evaluation is to determine whether:

(1) The utilization of services was appropriate;

(2) The established policies were followed; and

(3) Any changes are needed.

(d) The clinic or center staff considers the findings of the evaluation and takes corrective action if necessary.

J. Part 498 is amended as follows:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

1. The authority citation for part 498 is revised to read as follows:

Authority: Secs. 205(a), 1102, 1861(aa), 1869(c), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x(aa), 1395ff(c), 1395hh and 1395ii), unless otherwise noted.

2. Section 498.2 is amended by revising the definition of "supplier" and reprinting the introductory language to read as follows:

Subpart A—General Provisions

§ 498.2 Definitions.

As used in this part—

* * * * *

Supplier means an independent laboratory, supplier of portable X-ray services, rural health clinic (RHC), Federal qualified health center (FQHC), ambulatory surgical center (ASC), organ procurement organization (OPO), or end-stage renal disease (ESRD) treatment facility that is approved by HCFA as meeting the conditions for coverage of its services, and

* * * * *

3. Section 498.3(b)(7) is revised to read as follow:

§ 498.3 Scope and applicability.

* * * * *

(b) *Initial determinations by HCFA.*

* * *

(7) the termination of a provider agreement in accordance with § 489.53 of this chapter, or the termination of a rural heath clinic agreement in accordance with § 405.2404 this chapter or the termination of a Federally qualified health center agreement in accordance with § 405.2440.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 18, 1992.

J. Michael Hudson,

Acting Administrator, Health Care Financing Administration.

Approved: March 19, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–13672 Filed 6–11–92; 8:45am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order

[AK-932-4214-10; F-14223]

Modification of Public Land Order No. 5150, as Amended, for Selection of Lands by the State of Alaska; AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order insofar as it affects approximately 676,987 acres of public lands withdrawn for use as a utility and transportation corridor. This action also classifies as suitable for and opens the lands to selection by the State of Alaska, if such lands are otherwise available. Any lands described herein that are not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5150, as amended. This order does not otherwise change the provisions or limitations of Public Land Order Nos. 5150 and 5180, as amended, or any other withdrawal of record. Public Land Order No. 5150 was made pursuant to sections 17(c) and 17(d) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(c) and 1616(d), the authority vested in the President, and Executive Order No. 10355 of May 26, 1952 (17 FR 4831). The lands described below as the Coldfoot Unit, Sagavanirktok Unit, and Gas Arctic Unit lie north and west of the Porcupine-Yukon-Kuskokwim line described in section 10 of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988). Selection of these lands is subject to the approval of the Secretary of the Interior and the Secretary of Defense pursuant to section 6(b) of the Alaska Statehood Act and Executive Order No. 10950 of June 27, 1961. This classification meets the requirement of section 6(b) of the Alaska Statehood Act and Section 906(p) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(p) (1988).

EFFECTIVE DATE: June 12, 1992.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by sections 17(c), 17(d)(1), and 22(h)(4) of the Alaska Native Claims Settlement Act; 43 U.S.C. 1616(c), 1616(d)(1), and 1621(h)(4) (1988); and by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 5150, as amended, which withdrew public lands for use as a utility and transportation corridor, is hereby modified to allow State selection insofar as it affects the following described lands:

Fairbanks Meridian (Partly Surveyed)

South of the Yukon River Unit

T. 10 N., R. 9 W.,
Secs. 5 to 8, excluding those lands south of the right bank of Hess Creek.
T. 11, N., R. 10 W.,
Secs. 4 to 9, inclusive;
Secs. 14 to 36, inclusive.
T. 12 N., R. 11 W.,
Secs. 19 to 22, excluding those lands north of the right bank of the Yukon River;
Secs. 27 and 28;
Secs. 29, 30, and 31, excluding those lands north of the right bank of the Yukon River;
Secs. 32 to 36, inclusive.

The *South of the Yukon River Unit* area as described contains approximately 26,551 acres.

Fairbanks Meridian (Unsurveyed)

Coldfoot Unit

T. 28, N., R. 12 W.,
Sec. 3;
Secs. 4 and 9, excluding those lands west of the left bank of the Middle Fork Koyukuk River;
Sec. 10;
Secs. 15 and 16, excluding those lands west of the left bank of the Middle Fork Koyukuk River, and excluding three parcels as described below:

Parcel 1

A parcel of land lying within the W½ of sec. 15, and the E½ of sec. 16, the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail; Thence, N. 75° W., approximately 180 feet to corner No. 1; Thence, N. 40° E., approximately 570 feet to corner No. 2; Thence, N. 18°30′ W., approximately 480 feet to corner No. 3; Thence, S. 49°30′ W., approximately 1,020 feet to corner No. 4; Thence, S. 60° E., approximately 330 feet to corner No. 5; Thence, S. 75° E., approximately 300 feet to close at corner No. 3.

This parcel contains approximately 8.80 acres.

Parcel 2

A parcel of land lying within the W½ of sec. 15, and the E½ of sec. 16, the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail; Thence, S. 69° W., approximately 210 feet to corner No. 1; Thence, N. 75° W., approximately 270 feet to corner No. 2; Thence, N. 60° W., approximately 360 feet to corner No. 3; Thence, S. 49°30′ W., approximately 840 feet to corner No. 4; Thence, S. 69° E., approximately 810 feet to corner No. 5; Thence, N. 40° E., approximately 900 feet to close at corner No. 1.

This parcel contains approximately 15 acres.

Parcel 3

A parcel of land lying within the W½ of sec. 15, the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail; Thence, S. 77° E., approximately 100 feet to corner No. 1; Thence, continuing S. 77° E., approximately 750 feet to corner No. 2; Thence, N. 40° E., approximately 360 feet to corner No. 3; Thence, N. 77° W., approximately 750 feet to corner No. 4; Thence, S. 40° W., approximately 360 feet to close at corner No. 1.

This parcel contains approximately 4.60 acres.

Secs. 17 and 20, excluding those lands west of the left bank of the Middle Fork Koyukuk River;
Secs. 21 and 22.
T. 29 N., R. 12W.,
Secs. 23, 24, and 26, excluding those lands west of the left bank of the Middle Fork Koyukuk River, and excluding two parcels are described below:

Parcel 1

A parcel of land lying within the E½ of sec. 23, and the W½ of sec. 24, the Point of Beginning being the intersection of the centerline of the Dalton Highway and the middle of the channel of Marion Creek within sec. 23; Thence, N. 61°30′ E., approximately 875 feet to corner No. 1; Thence, S. 69°06′ E., approximately 344 feet to corner No. 2; Thence, S. 23°50′ E., approximately 429 feet to corner No. 3; Thence, S. 62°07′ E., approximately 306 feet to corner No. 4; Thence, S. 75°27′ E., approximately 704 feet to corner No. 5; Thence, S. 66°11′ E., approximately 795 feet to corner No. 6; Thence, S. 23°48′ E., approximately 480 feet to corner No. 7; Thence, N. 66°11′ W., approximately 465 feet to corner No. 8; Thence, N. 54°31′ W., approximately 1,800 feet to corner No. 9; Thence, S.4 36°21′ W., approximately 696 feet to close at corner No. 1.

This parcel contains approximately 35 acres.

Parcel 2

A parcel of land lying within the S½ of sec. 23, and the N½ of sec. 26, the Point of Beginning being the intersection of the centerline of the Dalton Highway and the middle of the channel of Marion Creek within sec. 23; Thence, S. 13°30′ W., approximately 1,020 feet to corner No. 1; Thence, S. 40°30′ E., approximately 600 feet to corner No. 2; Thence, S. 23° E., approximately 200 feet to corner No. 3; Thence, S. 70° E., approximately 900 feet to corner No. 4; Thence, N. 20°30′ E., approximately 1,150 feet to corner No. 5; Thence, N. 70° W., approximately 1,580 feet to corner No. 6; Thence, S. 19° W., approximately 720 feet to close at corner No. 1.

This parcel contains approximately 36.00 acres.

Sec. 25, N½;
Secs. 27, 34 and 35, excluding those lands west of the left bank of the Middle Fork Koyukuk River.

The *Coldfoot Unit* area as described contains approximately 7,289 acres.

Umiat Meridian (Unsurveyed)

Sagavanirktok Unit

Tps. 1 N., Rs. 13, 14, and 14 E.
Tps. 1 to 7 S., Rs. 13, 14, and 15 E.
Tps. 8 S., Rs. 12, 13, and 14 E.

The *Sagavanirktok Unit* area as described contains approximately 671,616 acres.

Umiat Meridian (Unsurveyed)

Gas Arctic Unit

T. 1 S., R. 24 E.,
Secs. 1 to 18 inclusive.
T. 1 S., R. 25 E.,
Sec. 4, excluding lands within the Arctic National Wildlife Refuge;
Secs. 5 to 9, inclusive;
Secs. 10, 14, and 15, excluding lands within the Arctic National Wildlife Refuge;
Secs. 16 to 21, inclusive;
Secs. 22 and 27, excluding lands within the Arctic National Wildlife Refuge;
Secs. 28 to 33, inclusive;
Sec. 34, excluding lands within the Arctic National Wildlife Refuge.

The *Gas Arctic Unit* area as described contains approximately 25,531 acres.

The areas described aggregate a total of approximately 676,987 acres.

2. Subject to valid existing rights, the lands described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), or section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. The filing of selections by the State of Alaska has been approved by the Secretary of the Interior and the Secretary of Defense pursuant to section 6(b) of the Alaska Statehood Act. The State of Alaska applications for selection made under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), become effective without further action by the State upon publication of this public land order in the **Federal Register**, if such lands are otherwise available. Lands not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5105, as amended.

4. This order does not change any provisions or limitations of Public Land Order Nos. 5150 and 5180, as amended, or any other withdrawal of record except as expressly provided above.

Dated: June 9, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-13983 Filed 6-11-92; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR part 1

[FCC 92-212]

Standards for Assessing Forfeitures

AGENCY: Federal Communications Commission.

ACTION: Policy Statement.

SUMMARY: By this action, the Commission denies petitions for reconsideration of the Policy Statement, Standards for Assessing Forfeitures, 56 FR 37665 (August 8, 1991) (Policy Statement). Several petitioners argued that the Policy Statement is really a binding substantive rule of law that was improperly adopted without notice and comment proceedings. The Commission disagrees because it considers the Policy Statement a general statement of policy that is not binding on the Commission or on its licensees, and notes that it expressly reserved the right in the Policy Statement to exercise discretion in specific cases. On its own motion, the Commission amended the base forfeiture amounts for tower lighting and marking violations to $8,000 for all services, and made clarifying edits to several non-section 503(b) forfeiture standards to achieve consistency with the relevant statutory sections.

EFFECTIVE DATE: May 14, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas Cooper, Office of General Counsel, Federal Communications Commission (202) 632-6990.

SUPPLEMENTARY INFORMATION: .

Memorandum Opinion and Order

Adopted: May 14, 1992; *Released:* June 4, 1992.

By the Commission: Commissioner Quello dissenting and issuing a statement; Commissioner Duggan concurring and issuing a statement.

I. Introduction

1. In this *Memorandum Opinion and Order*, we deny several petitions for reconsideration of our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991) (*Policy Statements.*)[1]

II. Background

2. In 1989, Congress amended the Communications Act of 1934 to increase substantially the maximum dollar amounts of forfeitures the Commission could impose under section 503(b) and under other sections of the Act.[2] Previously, section 503(b) limited the Commission's forfeiture authority to $20,000 for broadcasters and common carriers and to $5,000 for all other services. The amended section 503(b) now provides the Commission with authority to assess forfeitures of up to $25,000 against broadcasters, cable operators or applicants for such facilities, $100,000 against common carriers or applicants for such facilities, and $10,000 against others. In addition, there is a limit on forfeitures for continuing violations involving a single act or failure to act of $250,000 for broadcasters, cable operators or applicants for such facilities and $1,000,000 for common carriers or applicants for such facilities. A limit of $75,000 applies to continuing violations involving a single act or failure to act by others. The Commission's forfeiture rule has been amended to reflect the higher forfeiture amounts. 47 CFR 1.80(b)(1)-(3).

3. On August 1, 1991, the Commission released the *Policy Statement* to assist both the Commission and licensees in adjusting to the statutory increases. The *Policy Statement* provides base forfeiture amounts for a wide range of generic violations, *e.g.*, "[f]ailure to file required forms or information." The base forfeiture amount for each type of violation is a percentage of the statutory maximum for the service involved for each violation or each day of a continuing violation as set forth in section 503(b). The base forfeiture amount may be increased or decreased by applying adjusting criteria as

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[1] Petitions for Reconsideration were filed by the following: Alliance of Small Common Carriers (Alliance); the Illinois Telephone Association (Illinois); Blooston, Mordkofsky, Jackson & Dickens on behalf of 24 common carrier radio licensees (Licensees); the National Telephone Cooperative Association (NTCA); the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO); Telocator; Telephone and Data Systems, Inc. (TDS); the United States Telephone Association (USTA); and the National Association for the Advancement of Colored People, the League of United Latin American Citizens, the National Black Media Coalition, and the Office of Communication of the United Church of Christ (Civil Rights Organizations). Comments were filed by: Civil Rights Organizations; the Land Mobile Communications Council (LMCC); Metropolitan Houston Paging Services, Inc. (MHP); Midwestern Relay Company (Midwestern); Mobile Marine Radio (MMR); the National Association of Broadcasters (NAB); Pacific Bell; Seattle Marine Radio, Inc. (SMR); and Waterway Communications System Inc. (WATERCOM). Reply Comments were filed by: NTCA; Telocator; and USTA. We also received informal comments from KFS World Communications and the Puerto Rico Radio Broadcasters Association. In addition, we received a Motion to Supplement the Record from Victoria Cellular Corporation, which we will treat as an informal comment.

[2] Pub. L. 239, 101st Cong., 1st Sess., 103 Stat. 2131 (1989) (amending 47 U.S.C. 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 362, 386, 503(b)).

relevant to the facts in any particular case.

4. In adopting the *Policy Statement*, the Commission expressly retained "discretion in situations that arise" in individual cases and did not consider the Policy Statement to be a binding rule. *Policy Statement*, 6 FCC Rcd at 4695 (para. 1), *quoting Guardian Federal Savings & Loan Ass'n* v. *Federal Savings and Loan Insurance Co.*, 589 F.2d 658, 666 (D.C. Cir. 1978). Accordingly, the Commission issued the *Policy Statement* without conducting a rulemaking proceeding pursuant to section 553 of the Administrative Procedure Act (APA). The *Policy Statement* explicitly stated that the notice and comment provisions of the APA do not apply and cited the exception to general rulemaking requirements reserved for general statements of policy. *Policy Statement*, 6 FCC Rcd at 4696 (para. 10), *citing* 5 U.S.C. 553(b)(A).

III. Discussion

5. The primary argument of most of the petitioners and commenters is that the *Policy Statement* is in reality a substantive rule, not a general statement of policy, and therefore was improperly adopted without notice and comment.[3] For the reasons set forth below, we disagree.

6. As noted above, at the beginning of the *Policy Statement* the Commission expressly indicated its intent to retain discretion in specific cases. 6 FCC Rcd at 4695. As we elaborated in denying a request for stay:

> [T]he *Policy Statement* simply describes the general approach the Commission may take in forfeiture cases and is not binding on any licensees or the Commission. The *Policy Statement* does not impose any obligations on [licensees] or require the Commission to issue a forfeiture of any particular magnitude—or any forfeiture at all. • • • Most importantly, proposed forfeiture amounts may be challenged in any proceeding in which they are applied and the commission has broad discretion to take any equitable factors into account, as relevant, to ensure that [licensees] are not assessed substantial forfeitures unless warranted.

Order, 6 FCC Rcd 7016 (1991) (footnote omitted).[4] To the extent any confusion remains, we reiterate that the *Policy Statement* may guide us and the staff in particular cases, we do not intend for the Commission or the staff to be bound by it. In addition, both the Commission and the staff intend to apply these guidelines flexibly.[5] In particular, we and the staff remain committed to deciding every forfeiture case on the basis of the specific facts and equities presented in the record of that case.[6] See 47 U.S.C. 503(b)(2)(D) (in addition to enumerated factors for setting forfeiture amounts, Commission is required to take into account "such other matters as justice may require").

7. We believe viewing the forfeiture standards as a policy statement rather than a rule fits comfortably within judicial precedent. As the D.C. Circuit recently stated, in determining whether action constitutes a substantive rule or a policy statement, "the ultimate issue is 'the agency's intent to be bound.' " *Public Citizen, Inc.* v. *NRC*, 940 F.2d 679, 682 (D.C. Cir. 1991), *quoting Vietnam Veterans* v. *Secretary of the Navy*, 843 F.2d 528, 538 (D.C. Cir. 1988). As noted above, we explicitly do not intend to be bound by the *Policy Statement*. The *Policy Statement* "does not establish a 'binding norm,' " is "not finally determinative of the issues or rights to which it is addressed," and does not "impose any rights and obligations"; moreover, it "genuinely leaves the agency and its decisionmakers free to exercise discretion." *American Hospital Ass'n* v. *Bowen*, 834 F.2d 1037, 1046 (D.C. Cir. 1987) (internal citations omitted).[7] Thus, the *Policy Statement* is not a rule.

8. Some petitioners also argue that the *Policy Statement* constitutes a substantive rule because it allegedly changes § 1.80(b)(4) of the Commission's Rules.[8] That section lists the statutory factors that the agency is required to consider in establishing a forfeiture level—"the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree or culpability, any history or prior offenses, ability to pay, and such other matters as justice may require." *See also* 47 U.S.C. 503(b)(2)(D). As is apparent from even a cursory review of the adjustment factors in the *Policy Statement*, they closely track the statutory factors repeated in § 1.80(b)(4) of the Rules.[9] In any event, the Commission and the staff will continue to evaluate all evidence in the record of a particular case regarding the factors set forth in the Act and the rules, including any equitable arguments made by a licensee. Thus, the *Policy Statement* is consistent with § 1.80(b)(4).

9. Our statement of the *Policy Statement* since its adoption is consistent with our intent that it not limit our discretion under the Communications Act.[10] For example, in several Notices of Apparent Liability involving violations of the tariff-filing requirements of the Telephone Operator Services Improvement Act of 1990, 47 U.S.C. 226, the Commission took into account the fact that a new statute was at issue, even though this did not fit within any of the adjustment factors in the *Policy Statement*.[11] Conversely, the Commission has chosen not to take into account the fact that a violation was repeated even though this is an adjustment factor in the *Policy Statement*.[12]

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[3] See Petitions from Alliance, Licensees, NTCA, OPATSCO, TDS, Telocator, USTA; Comments from MHP, NAB, Pacific Bell; and Reply Comments from NTCA, Telocator, USTA.

[4] Licensees filed a Petition for Reconsideration of Stay Denial on December 30, 1991. Because we are denying the petitions for reconsideration of the *Policy Statement*, we dismiss Licensees' petition as moot.

[5] We continue to believe that it would be inappropriate to proceed by notice and comment rulemaking to adopt binding rules rather than a general statement of policy. Such an approach would unduly limit our discretion in particular cases, which we do not want to do. We note that in urging agencies to adopt forfeiture standards, the Administrative Conference of the United States specifically sanctioned the use of rulemaking or policy statements. *Agency Assessment and Mitigation of Civil Monetary Penalties (Recommendation No. 79-3)*, 1 CFR 305.79-3(A)(3).

[6] We recognize that, taken out of context, certain language in the *Policy Statement* could be read as indicating an intent by the Commission to be bound by its terms. *See, e.g.*, Licensees Petition at 19–20. We clarify here that that was not our intent.

[7] The standards set forth in the *Policy Statement* appear to be much less specific than the parole eligibility guidelines that the court determined to be substantive rules rather than a statement of policy. *See Pickus* v. *United States Board of Parole*, 507 F.2d 1107 (D.C. Cir. 1974). One set of "guidelines" in that case consisted of "nine general categories or factors, broken down into a total of 32 sub-categories, often fairly specific," and another set was even "more formula like." *Id.*, 507 F.2d at 1113. Nor is there any suggestion in that decision that the agency intended to retain broad discretion to act in particular cases. In contrast, here the Commission has stated from the outset that it intends to retain discretion to act as appropriate in particular cases.

[8] *See* NTCA Petition at 4–5, TDS Petition at 7, Telocator Petition at 4, USTA Petition at 15–16; NAB Comments at 2; USTA Reply at 3.

[9] The nature, circumstances, extent and gravity of the violation are reflected in the following adjustment factors: egregious misconduct; substantial harm; substantial economic gain; and minor violation. The degree of culpability and history of prior offenses are reflected in the following adjustment factors: intentional violation; prior violations of same or other requirements; repeated or continuous violation; good faith or voluntary disclosure; and history of overall compliance. Ability to pay is reflected in the ability to pay and inability to pay adjustment factors. Finally, such other matters as justice may require will be taken into account in particular cases as they arise.

[10] The D.C. Circuit has recognized that application of agency action can provide evidence of whether it is properly categorized as a policy statement. *Public Citizen*, 940 F.2d at 689.

[11] *See, e.g., National Tele-Sav., Inc.*, 6 FCC Rcd 6947 (1991); *Coll West*, 6 FCC Rcd 6941 (1991).

[12] *See, e.g., TVX Broadcast Group*, 6 FCC Rcd 7494 (1991).

10. Finally, we note that petitioners raise a wide variety of concerns regarding how the *Policy Statement* will be implemented.[13] In light of the fact that the *Policy Statement* simply provides some general guidance that may be used in particular cases, we believe such concerns are more appropriately addressed in the context of specific cases. Accordingly, we will not address such implementation matters here.

[13] *See, e.g.*, Illinois Petition at 1–5 (base forfeiture amounts for common carriers are too high); Alliance Petition at 7–13 (application of base forfeiture amounts to all common carriers in uniform manner is discriminatory and should instead be applied on a tiered basis); Civil Rights Organizations Petition at 3–7 (broadcast Equal Employment Opportunity violations should be assigned higher priority within the spectrum of rule violations); Licensees Petition at 6–9 (the *Policy Statement* contravenes policies protecting small businesses).

11. We will, however, on our own motion, make one adjustment to the *Policy Statement*. Because licensees in various services share towers, we believe it is appropriate that the base amount for failure to comply with prescribed lighting and marking requirements should be the same for all services. Accordingly, we are changing the base amount in the *Policy Statement* for such violations to $8,000 for all services. In addition, we previously neglected to include violations of 18 U.S.C. 1342 (fraud by wire, radio or television), and are now adding this violation to the *Policy Statement* on our own motion. A copy of the amended Appendix to the *Policy Statement* is attached hereto.[14]

[14] We are also clarifying in the Appendix that certain non-section 503 forfeitures are evaluated on a per day basis under the relevant statutory provisions. *See, e.g., The Cargo Vessel Kodiak Enterprise*, 7 FCC Rcd 1847 (1992).

12. Accordingly, *It is ordered* That the petitions for reconsideration of the *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), are denied. *It is further ordered* That Licensees' Petition for Reconsideration of Stay Denial filed December 30, 1991 is dismissed as moot. *It is further ordered* That the Appendix to the *Policy Statement* is revised to read as set forth hereto, effective upon adoption.

List of Subjects in 47 CFR Part 1

Penalties.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Standards for Assessing FCC Forfeitures

I. Base Amounts for Section 503 Forfeitures

Violation	Percent of stat. max.[1]	BC/cable ($25,000)	CC ($100,000)	Other ($10,000)
Misrepresentation/lack of candor	80	20,000	80,000	8,000
Construction and/or operation without an instrument of authorization for the service	80	20,000	80,000	8,000
Unauthorized substantial transfer of control	80	20,000	80,000	8,000
Violations of rules relating to distress and safety frequencies	80	20,000	80,000	8,000
False distress communications	80	20,000	80,000	8,000
Failure to permit inspection	75	18,750	75,000	7,500
Violations of operator services requirements	75	n.a.	75,000	7,500
Malicious interference	70	17,500	70,000	7,000
Failure to respond to Commission communications	70	17,500	70,000	7,000
Importation or marketing of unauthorized equipment	70	n.a.	70,000	7,000
Exceeding authorized antenna height	60	15,000	60,000	6,000
Exceeding power limits	50	12,500	50,000	5,000
Unauthorized emissions	50	12,500	50,000	5,000
Using unauthorized frequency	50	12,500	50,000	5,000
EBS equipment not installed or operational	50	12,500	n.a.	n.a.
Transmission of indecent/obscene material	50	12,500	n.a.	5,000
Violation of broadcast EEO rules	50	12,500	n.a.	n.a.
Violation of political rules: reasonable access, lowest unit charge, equal opportunities and discrimination	50	12,500	n.a.	n.a.
Fraud by wire, radio or television	50	12,500	50,000	5,000
Unauthorized discontinuance of service	40	10,000	40,000	4,000
Use of unauthorized equipment	40	10,000	40,000	4,000
Violation of children's television commercialization or programming requirements	40	10,000	n.a.	n.a.
Violation of main studio rule	40	10,000	n.a.	n.a.
Construction or operation at unauthorized location	40	10,000	40,000	4,000
Failure to engage in required frequency coordination	40	10,000	40,000	4,000
Failure to comply with prescribed lighting and marking	varies	8,000	8,000	8,000
Failure to file required forms or information	30	7,500	30,000	3,000
Violation of public file rules	30	7,500	n.a.	n.a.
Violation of sponsorship ID requirements	25	6,250	n.a.	n.a.
Violation of requirements pertaining to broadcasting of lotteries or contests	25	6,250	n.a.	n.a.
Violation of technical logs/time brokerage agreements file requirements	20	5,000	n.a.	n.a.
Broadcasting telephone conversations without authorization	20	5,000	n.a.	n.a.
Failure to make required measurements or conduct required monitoring	10	2,500	10,000	1,000
Violation of enhanced underwriting requirements	10	2,500	n.a.	n.a.
Failure to provide station ID	10	2,500	10,000	1,000
Unauthorized pro forma transfer of control	10	2,500	10,000	1,000
Failure to maintain required records	10	2,500	10,000	1,000
Miscellaneous violations	5	1,250	5,000	500

[1] The forfeiture ceilings per violation or per day of a continuing violation contained in section 503 of the Communications Act and the Commission's Rules are $100,000 for common carriers or applicants, $25,000 for broadcasters and cable operators or applicants, and $10,000 for all others. 47 U.S.C. 503(b)(2); 47 CFR 1.80. In addition, for continuing violations involving a single act or failure to act, there is an overall limit of $1,000,000 for common carriers or applicants, $250,000 for broadcasters and cable operators or applicants, and $75,000 for all others. *Id.* The base amounts listed are for a single violation or single day of a continuing violation. Unless Commission authorization is required for the behavior involved, a section 503 forfeiture proceeding against a non-license or non-applicant who is not a cable operator or is not operating in the radio control or citizens band radio services can only be initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. 503(b)(5). Forfeitures issued under other sections of the Act are dealt with separately in Section III below.

II. Adjustment Criteria for Section 503 Forfeitures

	Percent
Upward Adjustment Criteria [1]	
(1) Egregious misconduct	50–90
(2) Ability to pay/relative disincentive [2]	50–90
(3) Intentional violation	50–90
(4) Substantial harm	40–70
(5) Prior violations of same or other requirements	40–70
(6) Substantial economic gain	20–50
(7) Repeated or continuous violation	[3] varies
Downward Adjustment Criteria	
(1) Minor violation [4]	50–90
(2) Good faith or voluntary disclosure	30–60
(3) History of overall compliance	20–50
(4) Inability to pay	[5] varies

[1] Both upward and downward adjustments are applied to the base forfeiture amount. More than one factor may apply in a given case.

[2] The Commission is required by the Communications Act to take ability to pay into consideration in assessing forfeiture amounts. 47 U.S.C. 503(b)(2)(D).

[3] The percentage adjustment for this criterion could vary up to the statutory maximum per violation or per day of a continuing violation.

[4] A "minor" violation is misconduct which is at a low level of seriousness within the violation category. A minor violation is the opposite of "egregious misconduct."

[5] As noted above, the Commission is required by the Communications Act to take ability to pay into consideration in assessing forfeiture amounts. 47 U.S.C. 503(b)(2)(D). The application of a downward adjustment for inability to pay is based upon a showing of substantial financial hardship. Inability to pay would generally be considered as a downward adjustment factor only upon a specific showing by the entity against whom forfeiture action is taken.

III. Non-Section 503 Forfeitures

Violation	Statutory amount
Sec. 202(c) Common carrier discrimination	$6,000 + $300/day.
Sec. 203(e) Common carrier tariffs	$6,000 + $300/day.
Sec. 205(b) Common carrier prescriptions	$12,000.
Sec. 214(d) Common carrier line extensions	$1,200/day.
Sec. 219(b) Common carrier reports	$1,200.
Sec. 220(d) Common carrier records & accounts	$6,000/day.
Sec. 223 Dial-a-Porn	$50,000 maximum/day
Sec. 364/386 Ship radio	$5,000/day (owner) $1,000 (master).
Sec. 506 Great Lakes Agreement	$500/day (owner) $100 (master).
Sec. 634 Cable EEO	$200/day.

[7] Unlike section 503, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. The one exception is section 223 of the Act, which provides a maximum of $50,000 per day. For convenience, the Commission will treat the $50,000 per day set forth in section 223 as if it were a prescribed base amount, subject to downward adjustments.

Note: Non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in Section II above.

[FR Doc. 92–13916 Filed 6–11–92; 8:45 am]

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47 CFR Parts 2 and 15

[GEN Docket No. 89–44; FCC 92–183]

Procedure for Measuring Electromagnetic Emissions From Digital Devices

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action incorporates into the FCC Rules by reference the American National Standards Institute's (ANSI) test procedure C63.4–1991 (C63.4) except for sections 5.7, 9 and 15 as the standard the Commission will use for determining compliance of digital devices regulated under part 15 of the FCC Rules. It updates and replaces the present FCC test procedure, FCC/OET MP–4 (1987). Sections 5.4.5 through 5.5 of C63.4 also include new criteria for determining the suitability of a test site used for testing digital devices, which replace the current Commission criteria in FCC/OET Bulletin 55. Adoption of C63.4 will benefit both digital device manufactures and the Commission, since it is intended to harmonize FCC test procedures with the international procedures for such devices and it represents a consensus agreement on test procedures to be used to obtain repeatable measurement results.

EFFECTIVE DATE: July 13, 1992. The incorporation by reference of ANSI C63.4–1991 listed in the regulations was approved by the Director of the Federal Register as of July 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh L. Van Tuyl, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, (301) 725–1585, extension 221.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in General Docket 89–44, adopted April 16, 1992, and released May 21, 1992. The full text of this R&O, including the Final Regulatory Flexibility Analysis, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice

1. Personal computers and other digital electronic equipment are required to meet radionoise limits set forth in part 15 of the rules in order to control interference to radio communications. The current Commission measurement procedure for determining compliance of this equipment is contained in FCC publication MP–4, adopted in 1983 and updated in 1987. Information submitted by the computer industry, along with our own experience in testing computers at the FCC Laboratory, indicated an update and revision of MP–4 was required. Accordingly, the Notice of Proposed Rule Making (NPRM) in this proceeding 54 FR 11415, March 20, 1989 proposed a new measurement procedure, called TP–5, as a replacement for MP–4.

2. The comments submitted in response to the NPRM expressed many reasonable differing viewpoints on the best way to measure emissions from digital devices. The Commission elected to work with the voluntary industry standards developing organization, ANSI C63 Committee (C63), to obtain a consensus agreement among the concerned industry parties before adopting a digital device measurement procedure. In a joint effort between the Commission staff and the ANSI C63 Committee, ANSI C63.4–1988 was revised and modified for use in testing digital devices. Each technical issue received considerable debate in C63 before a compromise was agreed upon and accepted as the best possible

solution to that issue. The resulting test procedure basically follows the technical framework and initiatives set forth in the TP–5 proposal, however, it resolves the many technical issues raised in this proceeding in a competent and reasonable manner. We reviewed C63.4 after it was revised and approved by C63 as a National Standard and found that it appears to meet our needs for testing digital devices for compliance with part 15 of the FCC Rules. Accordingly, the Commission adopted a Further Notice of Proposed Rule Making (FNPRM) 56 FR 7004, February 21, 1991 proposing to replace MP–4 with C63.4, instead of TP–5. The FNPRM also proposes to use the new criteria in C63.4 to determine the suitability of a test facility used for testing digital devices.

3. Twenty parties, consisting of individuals, trade associations, digital device manufacturers, and test firms filed comments to the FNPRM. Ten parties filed reply comments. Most of the commenters supported the adoption of ANSI C63.4–1991, by stating that it represents a reasonable industry consensus of the state-of-the-art techniques for measuring electromagnetic emissions from digital devices. Further, they note that the differing viewpoints on testing of digital devices raised in the NPRM have been resolved in a technically competent manner. Many of the supporting parties also observe that adoption of C63.4 will provide harmonization of the FCC test procedures with the procedures contained in or proposed for inclusion in CISPR Publication 22, the international standard and test procedure for measuring emissions from information Technology Equipment (ITE), the international term for digital devices. The supporting parties also state that this will simplify the procedures for determining compliance of digital equipment marketed in both the U.S.A. and in other countries.

4. Two parties oppose the adoption of the FNPRM. The opposing comments were considered and dismissed since they are either outside the scope of the proceeding or unacceptable. Several other parties offer suggestions for, or request clarifications of, the C63.4 specifications. In response to these comments on how the Commission will implement and use C63.4, the Commission clarified the following issues in the Report and Order: (1) The use of flush-mounted turntables; (2) the use of log-periodic antennas above 1 GHz; (3) the importance of physical site characteristics, in addition to site attenuation measurements, for evaluating a test facility; (4) the use of on-site measurements for large digital devices; (5) the importance of the Appendices to C63.4; (6) the adoption process of modified versions of C63.4; (7) the use of a C63.4 interpretation panel; and (8) the extension of the transition period from MP–4 to C63.4 to January 1, 1994. In summary, ANSI C63.4–1991, except for sections 5.7, 9 and 15, is incorporated by reference into part 15 of the FCC Rules as the test procedure to be used by the Commission for determining the compliance of digital devices. In addition, sections 5.4.5 through 5.5 are incorporated by reference into part 2 of the rules as the new criteria for evaluating the suitability of measurement facilities used for testing digital devices.

5. Accordingly, it is ordered that under the authority contained in sections 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. section 154(i), 302, and 303, part 2 and part 15 of the Commission's Rules and Regulations *are amended* as set forth below. These rules are effective July 13, 1992. *It is further ordered* That this proceeding is *Terminated.*

List of Subjects

47 CFR Part 2

Site attenuation, Description of measurement facility, Incorporation by reference, Communications equipment.

47 CFR Part 15

Digital device measurement procedure, Incorporation by reference, Communications equipment.

Parts 2 and 15 of title 47 of the Code of Federal Regulations are amended as follows:

Rule Changes

A. Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.948 is amended by revising paragraph (b)(8) to read as follows:

§ 2.948 Description of measurement facilities.

* * * * *

(b) * * *

(8) A plot of site attenuation data.

(i) For a measurement facility that will be used for testing radiated emissions from a digital device for certification or verification on or after May 1, 1994, the site attenuation data shall be taken pursuant to the procedures contained in sections 5.4.5 through 5.5 of the following procedure: American National Standards Institute (ANSI) C63.4–1991, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on March 21, 1991, with a correction sheet dated July 2, 1991, as document number SH13896. ANSI C63.4–1991, except for sections 5.7, 9 and 15, is incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI C63.4–1991 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of ANSI C63.4–1991 may be inspected at the following locations:

(A) Federal Communications Commission, 1919 M Street, NW., Dockets Branch (room 239), Washington, DC,

(B) Federal Communications Commission, 2025 M Street, NW., Office of Engineering and Technology (room 7002), Washington, DC, or (C) Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(ii) For a measurement facility that will be used for testing radiated emissions from a device other than a digital device or, prior to May 1, 1994, from a digital device, the site attenuation data shall be taken pursuant to either ANSI C63.4–1991, sections 5.4.5. through 5.5, or FCC/OET Bulletin 55. See (section 2.948(b)(8)(i)) for more information on ANSI C63.4–1991.

(iii) This requirement does not apply to equipment that is not measured on an open field test site.

* * * * *

Part 15 is amended as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Paragraph (a) of § 15.31 is revised to read as follows:

§ 15.31 Measurement standards.

(a) The following measurement procedures are used by the Commission to determine compliance with the technical requirements in this Part. Except where noted, copies of these procedures are available from the Commission's current duplicating

contractor whose name and address are available from the Commission's Consumer Assistance Office at 202–632–7000.

(1) FCC/OET MP–1: FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers.

(2) FCC/OET MP–2: Measurement of UHF Noise Figures of TV Receivers.

(3) FCC/OET MP–3: FCC Methods of Measurements of Output Signal Level, Output Terminal Conducted Spurious Emissions, Transfer Switch Characteristics and Radio Noise Emissions from TV Interface Devices.

(4) FCC/OET MP–4 (1987): FCC Procedure for Measuring RF Emissions from Computing Devices

Note: This procedure may be used only on digital devices for which verification is obtained or an application for certification is filed, before May 1, 1994. For compliance testing of digital devices on or after May 1, 1994, see paragraph (5) of this section.

(5) Digital devices for which verification is obtained, or an application for certification is filed, on or after May 1, 1994, are to be measured for compliance using the following procedure excluding section 5.7, section 9 and section 15: American National Standards Institute (ANSI) C63.4–1991, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on March 21, 1991, with a correction sheet dated July 2, 1991, as document number SH13896. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The Commission encourages the use of this procedure for testing digital devices as soon as practical. Copies of ANSI C63.4–1991 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of ANSI C63.4–1991 may be inspected during normal business hours at the following locations: (i) Federal Communications Commission, 1919 M Street NW., Dockets Branch (room 239), Washington, DC, (ii) Federal Communications Commission, 2025 M Street NW., Office of Engineering and Technology (room 7002), Washington, DC or (iii) Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(6) FCC/OET MP–0: FCC Procedures for Measuring Cable Television Switch Isolation.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–13835 Filed 6–11–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 91–66; RM–6146, RM–6361, FCC 92–233]

Private Land Mobile Radio Services; Secondary Fixed Operations in the 450–470 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order amending part 90 of its Rules to make the frequencies in the 450–470 MHz band designated in § 90.261 for secondary fixed operations available in expanded geographical areas to a greater number of part 90 eligibles. This rule change will also reduce the time and expense for frequency coordination of secondary fixed assignments.

EFFECTIVE DATE: The effective date of the rule changes is July 13, 1992.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 91–66, adopted May 22, 1992, and released June 5, 1992. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, telephone (202) 452–1422.

Summary of Report and Order

Section 90.261 of the Rules identifies frequencies in the 450–470 MHz band that may be assigned to applicants for fixed use on a secondary basis to base/mobile operations. In March 1991, a Notice of Proposed Rule Making, 56 FR 13791, April 4, 1991 6 FCC Rcd 1800 (1991), was released that proposed to increase the number of 450–470 MHz frequencies available for secondary fixed operations and simplify the coordination requirements for applicants requesting these frequencies.

The Report and Order amends the Commission's Rule to (a) permit all part 90 eligibles (with the exception of Business Radio Service eligibles) to use all designated 450–470 MHz frequencies for secondary fixed use; (b) limit the availability of Business Radio Service frequencies for secondary fixed use only to Business Radio Service eligibles, as provided for in the current rules; (c) allow the coordination of secondary fixed applications to be made by the applicants "home" coordinator or by another certified frequency coordinator (with notification to all "primary" coordinators if an out-of-service frequency is recommended); (d) reduce maximum authorized transmitter power to 75 watts for non-urban secondary fixed stations, and permit secondary fixed stations to operate in previously restricted urban areas at 20 watts.

List of Subjects in 47 CFR Part 90

Radio.

Amendatory Text

47 CFR Part 90 is amended as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 331, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 and 332 unless otherwise noted.

§§ 90.17, 90.19, 90.21, 90.23, 90.25, 90.53, 90.63, 90.65, 90.67, 90.73, 90.79, 90.81, 90.89, 90.91, 90.93, 90.95 [Amended]

2. 47 CFR 90.17(c)(10), 90.19(e)(15), 90.21(c)(6), 90.23(c)(7), 90.25(c)(13), 90.53(b)(12), 90.63(d)(14), 90.65(c)(27), 90.67(c)(17), 90.73(d)(18), 90.79(d)(12), 90.81(d)(3), 90.89(c)(9), 90.91(c)(9), 90.93(c)(3) and 90.95(d)(7) are revised to read as follows:

"The requirements for secondary fixed use of frequencies in this band are set forth in § 90.261."

3. 47 CFR 90.71 is amended by adding the entry 450–470 MHz to the Relay Press Radio Service Frequency Table in paragraph (b) and adding paragraph (c)(11) to read as follows:

§ 90.71 Relay Press Radio Service.

* * * * *

(b) * * *

RELAY PRESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
450–470	Fixed	11

(c) * * *

(11) The requirements for secondary fixed use of frequencies in this band are set forth in § 90.261.

* * * * *

§ 90.173 [Amended]

4. 47 CFR 90.173 is amended by removing the words "or 90.261 of the rules" at the end of the sentence in paragraph (j).

5. 47 CFR 90.175 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(a) * * * Frequencies in the 450–470 MHz band, when use for secondary fixed operations, shall be assigned and coordinated pursuant to § 90.261.

* * * * *

6. 47 CFR 90.176 is amended by adding a paragraph (c) to read as follows:

§ 90.176 Interservice sharing of frequencies in the 150–174 and 450–470 MHz bands.

* * * * *

(c) Provisions governing the assignment and use of frequencies in the 450–470 MHz band for secondary fixed operations are provided in § 90.261.

7. 47 CFR 90.261 is revised to read as follows:

§ 90.261 Assignment and use of the frequencies in the band 450–470 MHz for fixed operations.

(a) Except as provided for in paragraphs (d) and (e) of this section, frequencies in the 450–470 MHz band as listed in the tables of frequencies for the radio services in this Part may be assigned to all eligibles, with the exception of Business Radio Service eligibles, for fixed use on a secondary basis to land mobile operations.

(b) Fixed stations located 140 km (87 mi) or more from the center of any urbanized area of 600,000 or more population are limited to a transmitter output power of 75 watts. Fixed stations less than 140 km (87 mi) from the centers of these areas are limited to a transmitter output power of 20 watts. Urbanized areas of 600,000 or more population are defined in the U.S. Census of Population 1970, Vol. 1, Table 20, pages 1–74. The centers of the urbanized areas are determined from the Appendix, page 226, of the U.S. Department of Commerce publication "Airline Distance Between Cities in the United States."

(c) All fixed systems are limited to one frequency pair with 5 MHz spacing and must employ directional antennas with a front-to-back ratio of 15 dB, except that omnidirectional antennas having unity gain may be employed by stations communicating with a minimum of three receiving locations encompassed in a sector of at least 160° in azimuth. Stations authorized for secondary fixed operations prior to (effective date of the rules) may continue to operate under the conditions of their initial authorization.

(d) Frequencies in the Business Radio Service subject to § 90.75(c)(26) will be authorized only to Business Radio Service eligibles. Business Radio Service eligibles may not access frequencies allocated to another radio service for the purposes of conducting secondary fixed operations.

(e) Coordination of assignable frequencies subject to the provisions of this section will be permitted by any certified frequency coordinator. If an applicant elects to obtain a frequency recommendation from the certified frequency coordinator for the service in which the applicant is eligible, the coordinator shall first attempt to recommend a frequency within the applicant's own radio service. If none are available, the coordinator may then recommend a frequency allocated to another radio service. If an applicant elects to obtain a frequency recommendation from a certified coordinator of a service in which the applicant is not eligible, that coordinator may only recommend a frequency allocated to the service for which the coordinator is certified. If a coordinator recommends a frequency allocated to a service where the applicant is not eligible on a primary basis, then the coordinator must notify all coordinators certified to recommend that frequency on a primary basis before submitting the application to the Commission. Concurrence by these coordinators will not be required, but if any of these coordinators objects to a recommendation, they must notify the coordinator making the frequency recommendation of such objection within 10 working days of certified receipt of the recommendation.

(f) Secondary fixed operations pursuant to paragraph (a) of this section will not be authorized on the following frequencies:

Frequencies (MHz)
451.800/456.800
452.525
452.550
452.575
452.600
452.925/457.925
452.950/457.950
453.025/458.025
453.075/458.075
453.125/458.125
453.175/458.175
454.000/459.000
462.950/467.950
462.975/467.975
463.000/468.000
463.025/468.025
463.050/468.050
463.075/468.075
463.100/468.100
463.125/468.125
463.150/468.150
463.175/468.175

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–13670 Filed 6–11–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of closures.

SUMMARY: NMFS is rescinding the closures to directed fishing for sablefish by vessels using hook-and-line gear in the Southeast Outside and East Yakutat (SEEY) districts, West Yakutat (WY) district, and Central Regulatory Area (CRA) of the Gulf of Alaska (GOA) for a period coinciding with the Pacific halibut fishery. NMFS is announcing a new effective date for closures to directed fishing for sablefish by vessels using hook-and-line gear in the SEEY and WY districts and the CRA. These actions are necessary to ensure optimum utilization of sablefish and prevent unnecessary waste of sablefish bycatch in the directed Pacific halibut fishery.

EFFECTIVE DATE: 12 noon, A.l.t, June 8, 1992 through 12 midnight, A.l.t, December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries

Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672. The Pacific halibut fishery is managed in accordance with regulations developed by the International Pacific Halibut Commission and adopted by the governments of the United States and Canada. The 1992 Pacific Halibut fishery regulations are codified at 50 CFR part 301 (57 FR 12878, April 14, 1992.)

Directed fisheries for sablefish by operators of vessels using hook-and-line gear in the SEEY and WY districts and the CRA were previously closed by the following actions:

SEEY: 57 FR 22182, May 27, 1992
WY: 57 FR 23348, June 3, 1992
CRA: 57 FR 23965, June 4, 1992

The Director of the Alaska Region, NMFS (Regional Director), has determined that sufficient sablefish total allowable catch (TAC) remains in these areas to allow retention of sablefish during the Pacific halibut fishery, which is scheduled to open in the GOA at noon on June 8, 1992, in amounts greater than the amount allowed under the directed fishing closure. Failure to allow this retention would result in increased waste of sablefish bycatch in the Pacific halibut fishery. Therefore, NMFS is rescinding the closures to directed fishing for sablefish by operators of vessels using hook-and-line gear in the SEEY and WY districts and the CRA for the period from 12 noon A.l.t, June 8, 1992 until 12 noon, A.l.t, June 9, 1992, the scheduled closure of the Pacific halibut fishery.

The Regional Director, in accordance with § 672.24(c)(3)(i), has determined that the share of the sablefish TAC assigned to hook-and-line gear in the SEEY and WY districts and the CRA that will remain after the June 9, 1992, Pacific halibut fishery closure will be taken before the end of the year.

Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by vessels using hook-and-line gear in the SEEY and WY districts and the CRA, effective from 12 noon A.l.t, June 9, 1992 through 12 midnight, A.l.t, December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 8, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-13799 Filed 6-8-92; 2:48 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 114
Friday, June 12, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 92-247]

RIN 1550-AA41

Savings Association Membership in the Federal Home Loan Bank System

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule, reopening of comment period and notice of public hearing.

SUMMARY: The Office of Thrift Supervision (OTS) is hereby: (1) Reopening and extending until July 15, 1992 the comment period on the proposed rule entitled "Savings Association Membership in the Federal Home Loan Bank System" published for comment on March 12, 1992 (57 FR 8732 (March 12, 1992)); and (2) announcing a public hearing on the proposed rule to be held on July 15, 1992.

DATES: Comments must be received on or before July 15, 1992. The public hearing will be held on July 15, 1992 from 9 a.m. until 12 p.m. Requests to participate in the hearing must be received no later than June 24, 1992. The written statements of those accepted as participants in the hearing must be received no later than July 3, 1992.

ADDRESSES: Send comments, requests to participate in the hearing, and written statements of hearing participants to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. [92-247]. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Richard Blanks, Counsel (Banking and Finance), (202) 906-7037, Chief Counsel's Office; Robyn Dennis, Program Manager, (202) 906-5751; or John Price, Deputy Assistant Director, (202) 906-5745; Policy; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On March 12, 1992, the Office of Thrift Supervision (OTS) proposed to adopt a rule which would require that all savings associations obtain and maintain membership in a Federal Home Loan Bank. The 60-day comment period for the proposed ended on May 11, 1992.

In light of the nature of the comments received in response to the proposal the Director of the OTS has determined that it would be appropriate to reopen briefly the comment period on the proposed rule for the specific and limited purpose of soliciting public comment on the following topics:

(1) The future of the Federal Home Loan Bank System in light of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Stat. 2236 (1991);

(2) The costs and benefits associated with mandatory or voluntary membership for thrift institutions; and

(3) The appropriate treatment of Savings Association Insurance Fund-insured institutions that are no longer savings associations as a result of so called "Oakar" or "Sasser" transactions. See 12 U.S.C. 1815(d)(2), (3) of the Federal Deposit Insurance Act. 12 U.S.C 1811, *et seq.*

At the close of this reopened comment period, on July 15, 1992, the OTS will hold a public hearing on these issues. Persons wishing to participate in this hearing should send a written request to participate to the address listed in the "**ADDRESSES**" portion of this document, to be received no later than June 24, 1992. The request to participate in the hearing must include the following information: (1) The name, address, and business telephone of the participant; (2) the entity or entities that the participant will be representing; and (3) a brief summary of the participant's remarks, identifying the specific issues to be addressed.

Depending on the number of requests received, participants may be limited in the length of their oral presentations. The OTS will notify participants of the time scheduled for their presentation. The OTS anticipates establishing panels of participants for presentations and reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if it receives more requests for participation than may be accommodated in the time available.

Participants will be required to submit written statements in advance of the hearing date. These written statements should incorporate the major points to be presented at the hearing and, if they exceed 25 double-spaced, typewritten pages, should be accompanied by an Executive Summary of no more than 3-5 pages. Written statements must be received no later than July 3, 1992, and should be sent to the address listed in the "**ADDRESSES**" portion of this document.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-13893 Filed 6-11-92; 8:45 am]

BILLING CODE 6720-01-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

12 CFR Part 1503

Privacy Act Procedures

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Proposed rule.

SUMMARY: This proposed rule prescribes procedures to implement the Privacy Act of 1974, 5 U.S.C. 552a. The Thrift Depositor Protection Oversight Board, which is an agency for the purposes of the Privacy Act, is required to promulgate regulations establishing such procedures. The objective of this rule is to facilitate the exercise of the rights conferred on individuals by the Privacy Act and to ensure that the disclosure of information contained in systems of records maintained by the Board is in compliance with the Privacy Act.

DATES: Comments must be submitted on or before August 11, 1992.

ADDRESSES: Comments may be mailed to Office of General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, telephone (202) 786–9681.

SUPPLEMENTARY INFORMATION:

Background

The Thrift Depositor Protection Oversight Board ("Board") is a corporate instrumentality of the United States, established as the "Oversight Board" by section 21A(a)(1) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(a)(1), as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The Oversight Board was redesignated as the Thrift Depositor Protection Oversight Board by the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Pub. L. No. 102–233, sec. 302(a), 105 Stat. 1761, 1767. The Board's principal duty is to oversee the Resolution Trust Corporation ("RTC"), also established under FIRREA, whose principal duty is to manage and resolve cases involving failing and failed thrift institutions.

Pursuant to 12 U.S.C. 1441a(a)(2), the Board is an agency of the United States for the purposes of the Privacy Act of 1974, 12 U.S.C. 552a. The promulgation of regulations establishing procedures for access to and amendment of records pertaining to an individual maintained in a system of records is required by 5 U.S.C. 552a(f).

Proposed Rule

The Board reviews overall strategies, policies, and goals established by the RTC for its activities, approves its periodic financing requests prior to implementation, and reviews the RTC's regulations, procedures, and overall performance. With respect to case-specific matters involving individual case resolutions, asset dispositions, and its day-to-day operations, the RTC makes determinations and takes such actions as it deems appropriate without any prior review, approval, or disapproval by the Board. As a consequence of the Board's focus on issues of policy and overall review, the files of the Board are generally not organized in groups of records from which information about an individual may be retrieved by the use of the individual's name or personal identifier, the "systems of records" that are the concern of the Privacy Act. Board information that is retrievable by use of the name or symbol of an individual person is restricted to files concerning Board employees, applicants for employment, members of advisory boards established by the Board pursuant to 12 U.S.C. 1441a(d) (who are special government employees), and cadidates for advisory board membership.

The rule proposed by the Board implements Privacy Act requirements with respect to the promulgation and contents of regulations concerning systems of records in which information is retrievable by the name or personal identifier of an individual. Section 1503.3 would establish procedures whereby an individual can be notified in response to his or her request whether any system of records of the Board contains a record pertaining to such individual. Section 1503.4 sets forth reasonable requirements for identifying an individual who requests his or her records. Sections 1503.4, 1503.5, and 1503.6 would establish procedures for the disclosure to an individual of records pertaining to such individual that are maintained by the Board. Sections 1503.7, 1503.8, and 1503.9 would establish procedures for reviewing a request from an individual concerning the amendment of a record pertaining to such individual maintained by the Board and for an appeal within the agency of an initial adverse determination with respect to such request. Section 1503.11 would establish fees that may be charged an individual for duplicating copies of his or her records, excluding the cost of any search for and review of such records. The regulations as a whole would provide the means necessary for an individual to exercise fully his or her rights under the Privacy Act.

This rule is proposed pursuant to the requirement of 5 U.S.C. 552a(f) and to implement the provisions and intent of the Privacy Act.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number 3203–0001, which expires December 31, 1994. Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (Agency Code 1551), Washington, DC 20503, with copies to the Thrift Depositor Protection Oversight Board at the address previously specified.

The collections of information in this proposed rule are in §§ 1503.3, 1503.4 and 1503.7. This information is required by the Board under §§ 1503.3 and 1503.4 to identify inquirers seeking to know whether a system of records contains information relating to an individual and to identify individuals or representatives of individuals seeking access to records pertaining to such individuals. Information is required under § 1503.7 for the appropriate amendment or correction of records pertaining to individuals. This information will be used to process such inquiries and requests, amend or correct records, and protect records pertaining to individuals in accordance with the Privacy Act. The likely respondents are individuals or their representatives: Board employees, former employees, applicants for employment, and special government employees providing services for the Board.

The total annual reporting and recordkeeping burden that will result from these sections is estimated not to exceed ten hours. The estimated average burden hours per response is not more than one half hour under §§ 1503.3 and 1503.4 and one hour under § 1503.7. The annual number of likely respondents is estimated not to exceed fifteen, and the proposed frequency of response is on occasion.

Executive Order 12291

This proposed rule is not a major rule under Executive Order No. 12291. The economic impact of the rule is minimal.

Regulatory Flexibility Act

The Thrift Depositor Protection Oversight Board certifies that the rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Board's systems of records are expected to be few, small in size, and generally limited in scope to records concerning Board employees, former employees, applicants for employment, and special government employees.

List of Subjects in 12 CFR Part 1503

Privacy, Records.

For the reasons set forth in the preamble, it is proposed to amend chapter XV of title 12 of the Code of Federal Regulations by adding new part 1503 to subchapter A to read as follows:

PART 1503—PRIVACY ACT PROCEDURES

Sec.
1503.1 Purpose and scope.
1503.2 Definitions.
1503.3 Procedures for determining if an individual's records are contained in a system of records.
1503.4 Requests for disclosure of records.
1503.5 Disclosure of requested records.
1503.6 Special procedure: Medical records.
1503.7 Requests for amendment of records.
1503.8 Board review of requests for amendment of records.
1503.9 Appeal of initial adverse determinations on access or amendment.
1503.10 Disclosure of a record to a person other than the individual to whom it pertains.
1503.11 Fees.
1503.12 Exception.

Authority: 5 U.S.C. 552a; 12 U.S.C. 1441a(a)(2); 12 U.S.C. 1441a(a)(13).

§ 1503.1 Purpose and scope.

The purpose of this part is to establish regulations implemeting the provisions of the Privacy Act with regard to access to and review of personal information in systems of records maintained by the Board.

§ 1503.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Board* means the Thrift Depositor Protection Oversight Board.

(b) *Business day* means any day other than a Saturday, Sunday, or legal Federal public holiday.

(c) *Guardian* means the parent of a minor individual or the legal guardian of an individual who has been declared to be incompetent due to physical or mental incapactiy or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* means maintain, collect, use, disseminate, or control.

(f) *Privacy Act* means the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(g) *Privacy Officer* means an officer or employee of the Board designated by the President of the Board to implement the Privacy Act in accordance with this part.

(h) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(i) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected or created.

(j) *System of records* means a group of any records under the control of the Board from which information is retrievable by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

(k) *Vice President* means a Vice President of the Board designated by the President of the Board to review actions and determinations of the Privacy Officer and to take action on behalf of the Board with respect to appeals under this part.

§ 1503.3 Procedures for determining if an individual's records are contained in a system of records.

(a) An individual or his or her guardian desiring to know if a specific system of records maintained by the Board contains a record pertaining to such individual shall address an inquiry in writing to the Privacy Officer, Oversight Board, 1777 F Street, NW., Washington, DC 20232. The written inquiry shall:

(1) Identify the system of records maintained by the Board or reasonably describe the type of record in sufficient detail to permit the Privacy Officer to identify an existing system of records; and

(2) Identify the individual making the inquiry or on whose behalf the inquiry is made. The Privacy Officer may require such information concerning the identity or authority of an individual or guardian as the Privacy Officer deems appropriate, as provided under § 1503.4(b).

(b) The Privacy Officer shall ordinarily inform an inquirer whether a system of records described in the written inquiry contains a record pertaining to an individual within ten business days following receipt of the inquiry. If the Privacy Officer is unable to respond to a written inquiry within ten business days following its receipt, the Privacy Officer shall inform the inquirer of the reasons for delay and the anticipated date of response.

(c) An affirmative response shall describe or reference the procedures to be followed in order to gain access to a record.

§ 1503.4 Requests for disclosure of records.

(a) Requests by or on behalf of an individual for access to records pertaining to such individual in a system of records shall be submitted in writing to the Privacy Officer, Oversight Board, 1777 F Street, NW, Washington, DC 20232, in accordance with the requirements of paragraph (b) of this section. The written request may be mailed, or presented in person on a business day between 9 a.m. and 5 p.m. to the Privacy Officer at the offices of the Board specified in the preceding sentence. The written request and the envelope (if the request is mailed) shall be clearly marked "Privacy Act Request." Notwithstanding the first sentence of this paragraph (a), an individual employed by the Oversight Board is not required while so employed to request access to his or her records in writing.

(b) Each written request shall be dated and signed and shall include:

(1) The name, address, and telephone number of the person signing the request;

(2) The name, address, and telephone number of the individual to whom a requested record pertains, if such individual is not the person signing the request;

(3) Verification of identity, by providing a document, such as a photocopy of a driver's license, bearing the signature of the person signing the request.

(4) Certified or authenticated copies of documents establishing parentage or guardianship if the request is made by the guardian of the individual to whom the requested record pertains;

(5) A statement that the individual whose records are requested is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(6) The name and location of the system of records in which the requested records are contained; and

(c) An individual who appears in person at the offices of the Board to submit a written request for access to his or her records shall present two forms of identification, such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) Unless a requested record is publicly available pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Officer may require certification by a notary public attesting to the identity of a requesting individual or other evidence establishing the identity of the requesting individual as a condition of making available or releasing a copy of a record pertaining to such individual. If a request is made by a guardian, the Privacy Officer may require appropriate evidence of authority to act on behalf of the individual whose records are requested.

(e) Requests by or on behalf of an individual for an accounting made

pursuant to 5 U.S.C. 552a(c) of previous disclosures of records pertaining to such individual in a system of records shall also be made and processed in accordance with paragraphs (a) through (d) of this section.

§ 1503.5 Disclosure of requested records.

(a) The Privacy Officer shall ordinarily respond to a request for access to records or an accounting of previous disclosures within ten business days following receipt of a request. If the Privacy Officer is unable to respond within ten business days following receipt of a request, the Privacy Officer shall inform the requester within ten business days following receipt of a request of the reasons for delay and the anticipated date of response.

(b) The Privacy Officer, in responding to a request for access to records, shall inform the requester:

(1) Whether or not a requested record is maintained by the Board in a system of records;

(2) Whether or not access will be granted;

(3) If access is granted, of a reasonable time, place, and procedure for providing access to and copies of the requested records;

(4) Of any fees that may be required pursuant to § 1503.11;

(5) Of any additional information that may be required as a condition of granting access; and

(6) If access to a record is denied, the reason or reasons for denial and the procedures for obtaining a review of such denial.

(c) The requester of records may be accompanied in the inspection and discussion of such records by a person chosen by the requester, provided that the requester submits a written and signed statement authorizing the presence of such person during such inspection and discussion.

§ 1503.6 Special procedure: Medical records.

Medical records requested pursuant to § 1503.4 will be disclosed to the requester unless the disclosure of such records directly to the requester, in the judgment of the Privacy Officer, could have an adverse effect upon the requester. In such case, such information will be forwarded to a licensed physician named by the requester.

§ 1503.7 Requests for amendment of records.

(a) An individual or his or her guardian may request amendment or correction of records pertaining to such individual in accordance with the requirements of this section. Such request shall be in writing and shall be submitted to the Privacy Officer, Oversight Board, 1777 F Street, NW., Washington, DC 20232, by mail, or in person on a business day between 9 a.m. and 5 p.m. The written request and the envelope (if the request is mailed) shall be clearly marked "Privacy Act Record Amendment."

(b) Each request shall be dated and signed and shall:

(1) Identify the system of records containing the record for which amendment or correction is requested;

(2) Specify the record requested to be amended or corrected;

(3) Specify requested additions and deletions;

(4) State the reasons for each requested amendment or correction, with appropriate supporting information or documentation; and

(5) Identify the requester, referring specifically to any previous written request for access submitted pursuant to § 1503.4 or providing the documentation concerning the individual and his or her guardian required by § 1503.4(b).

(c) An individual who appears in person at the offices of the Board to submit a written request for amendment or correction of his or her records shall present two forms of identification such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) The Privacy Officer may require additional evidence of the identity or authority of the requester.

(e) This section does not authorize or permit collateral attack upon the results or findings of a previous judicial or administrative proceeding.

§ 1503.8 Board review of requests for amendment of records.

(a) The Privacy Oficer shall acknowledge in writing the receipt of a request made pursuant to § 1503.7 within ten business days of such receipt. Such acknowledgement may include a request for additional information necessary for a decision concerning the requested amendment of a record.

(b) The Privacy Officer shall promptly review each request made pursuant to § 1503.7 in light of relevant criteria of the Privacy Act, including, but not limited to, 5 U.S.C. 552a(e) (1) and (5).

(c) Upon completion of such review, the Privacy Oficer shall direct amendment of the record as requested, giving notice of such action to the requester, or immediately notify the requester that the request for amendment of a record is denied. If an accounting of disclosures of such record has been made pursuant to 5 U.S.C. 552(a)(c), any person or agency listed in such accounting shall be informed of any amendment.

(d) If a request made pursuant to § 1503.7 is denied in whole or in part, the Privacy Officer shall inform the requester of the reasons for such denial, the procedures for obtaining a review of such denial, and the name and business address of the Vice President.

§ 1503.9 Appeal of initial adverse determinations on access or amendment.

(a) A requester may appeal the denial of a request made pursuant to § 1503.4 or § 1503.7 in accordance with the provisions of this section.

(b) An appeal shall be submitted in writing to the Secretary, Oversight Board, 1777 F Street, NW., Washington, DC 20232, within 60 days following issuance of notice of a denial. The written appeal and the envelope in which it is mailed shall be clearly marked "Privacy Act Appeal." The written appeal shall be dated and signed and shall:

(1) State clearly in summary form the request that was denied, attaching a copy of the Privacy Officer's notice of denial or giving the date of such notice; and

(2) Set forth the reasons why the requester believes that access to a record should be granted or a record should be amended.

(c) The Vice President shall complete review of an appeal and, with the advice of the General Counsel to the Board, make a final determination within 30 business days following the date on which review is requested unless, for good cause shown, the President of the Board extends such period. A requester shall be promptly notified of an extension of the review period and the reasons therefor. The Vice President shall promptly give notice to the requester of the detemination to grant access to a record, to amend a record as requested, or to affirm an initial adverse determination.

(d) If on appeal a request for access to a record made pursuant to § 1503.4 is granted, the Vice President's notice shall provide the information described in § 1503.6(b) (3) and (4). If the initial denial of such request is affirmed, the Vice President's notice shall include a statement of the reasons for such determination and advise the requester of the provisions of the Privacy Act concerning judicial review of such determination, as set forth in 5 U.S.C. 552a(g).

(e)(1) If on appeal a request for amendment of a record made pursuant to § 1503.7 is granted, the Vice President shall direct amendment of the record as

requested, and the Vice President's notice shall so inform the requester. If an accounting of disclosures of the record has been made pursuant to 5 U.S.C. 552a(c), any person or agency listed in the accounting shall be informed of the amendment.

(2) If the initial adverse determination of a request pursuant to § 1503.7 is affirmed, the Vice President's notice shall:

(i) Confirm, amplify, or modify the statement of reasons given by the Privacy Officer for denial of the request;

(ii) Advise the requester of the rights to file with the Board a concise statement of the requester's reasons for disagreeing with the determination not to amend a record in accordance with the request, as provided by 5 U.S.C. 552a(d)(3); and

(iii) Advise the requester of the provisions of the Privacy Act concerning judicial review of the determination, as set forth in 5 U.S.C. 552a(g).

(f) If a requester seeking amendment of a record ("disputed record") files a concise statement of disagreement pursuant to 5 U.S.C. 552a(d)(3) and paragraph (e)(2)(ii) of this section, a copy of such statement shall be provided by the Board to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement. If an accounting of previous disclosures of such disputed record has been made pursuant to 5 U.S.C 552a(c), a notation of the disagreement shall be provided by the Board to any person or agency listed in such accounting. If deemed appropriate by the President of the Board, a concise statement of the Board's reasons for not amending the disputed record shall also be provided to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement.

§ 1503.10 Disclosure of a record to a person other than the individual to whom it pertains.

(a) Except as provided in paragraph (b) of this section, the Board shall not disclose by any means of communication any record contained in a system of records to any person or agency except with the prior written consent of the individual to whom the record pertains or of his or her guardian.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to disclosure:

(1) To those officers and employees of the Board who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act, 5 U.S.C. 552;

(3) For a routine use;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code;

(5) To a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, the record to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 1503.11 Fees.

(a) Records disclosed to requesters pursuant to the Privacy Act and this part shall be duplicated at a cost of $0.10 per page, except as follows:

(1) If the Privacy Officer determines that access to a record may be provided only by furnishing a copy of the record, no fee will be charged for the first copy of the record or any portion thereof;

(2) If duplication fees do not exceed $2 for one request, the fees will be waived; and

(3) If the Privacy Officer determines it to be in the public interest, the Privacy Officer may waive any duplication fees.

(b) Requesters will not be charged for search or review of a record.

(c) If it is anticipated that duplication fees will exceed $25, the requester shall be notified promptly, and processing of the request shall be suspended until an agreement to pay the requested fees has been provided by the requester.

§ 1503.12 Exception.

Nothing in this part shall allow access to any information compiled in reasonable anticipation of a civil action or proceeding.

Peter H. Monroe,

President.

[FR Doc. 92-13906 Filed 6-11-92; 8:45 am]

BILLING CODE 2222-01

FEDERAL TRADE COMMISSION

16 CFR Parts 19, 23, and 245

Request for Comments Concerning the Guides for the Jewelry Industry, the Guides for the Watch Industry and the Guides for the Metallic Watch Band Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: The Commission is requesting public comment on proposed revisions to the Commission's Guides for the Jewelry Industry, 16 CFR part 23, the Commission's Guides for the Watch Industry, 16 CFR part 245, and the Commission's Guides for the Metallic Watch Band Industry, 16 CFR part 19. The Jewelers Vigilance Committee, Inc., a jewelry industy trade association, has proposed the revisions in a petition to the Commission.

In addition, as part of the Commission's oversight responsibilities in reviewing rules and guides, the Commission has determined to ask questions about the costs and benefits of these guides and their regulatory and economic impact. These questions will assist the Commission in identifying rules and guides that warrant modification or rescission.

DATES: Written comments will be accepted until August 26, 1992.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Washington, DC 20580. Copies of the petition, the current guides and a document comparing the two are

on the public record and can be viewed in or obtained from the Public Reference Section, room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Susanne S. Patch, Attorney, Federal Trade Commission, room S–4631, 601 Pennsylvania Ave., NW., Washington DC 20580, Telephone: 202/326–2981.

SUPPLEMENTARY INFORMATION:

I. Background

The Jewelers Vigilance Committee, Inc. (JVC), a voluntary, non-profit association formed to advance ethical practices in the jewelry industry, has petitioned the Federal Trade Commission to revise the Guides for the Jewelry Industry, 16 CFR part 23 (1992), and other related guides. The Guides were last substantively revised in 1959. Before the Commission determines whether the Guides should be revised and, if so, what revisions should be made, it seeks comment from all interested persons.

The JVC petition is a 71-page document comprised of several letters from JVC officials, an introductory statement and the text of the Jewelry Guides, as the JVC proposes that they appear in the Code of Federal Regulations.[1] The JVC petition proposes incorporation of the Commission's Guides for the Metallic Watch Band Industry, 16 CFR part 19 (1992), and the Guides for the Watch Industry, 16 CFR part 245 (1992), with the Guides for the Jewelry Industry.[2] The petition further proposes that the text of five voluntary product standards formerly administered by the Bureau of Standards of the U.S. Department of Commerce (now the National Institute of Standards and Technology) be incorporated into the Jewelry Guides. These standards are at present only referred to in the Guides.[3]

The proposed revisions fall into seven categories, as follows: Jewelry industry products in general; precious metals and pewter; diamonds, genuine and imitation; pearls, genuine, cultured and imitation; gemstones, genuine, synthetic and imitation; watches and permanently attached watch bands; and detachable metal watch bands. The current guides set out industry standards for many of these products. The JVC proposal adds guides concerning standards for products not currently covered, such as "vermeil," "pewter" and "platinum filled."

The petition describes new methods of gem treatment or "enhancement" and proposes that these treatments (*e.g.*, concealing flaws and cleavage cracks in diamonds), be disclosed to the purchaser.

Most proposed changes are addressed in the "Request for Comment" part of this notice. Other changes are proposed in the following subject areas: Misrepresentation of the character or identity of business, parts of jewelry that are exempt from quality-marking requirements, application of trademarks to quality-marked platinum, and prohibition of the term "blue-white" as descriptive of diamond color.

The Commission is interested in comments on any or all of the proposed revisions and the other issues posed by the Commission. Specific questions appear below, and where appropriate, the question is accompanied by a citation to the pertinent part of the guides. The Commission also advises interested members of the public that, if retained, in addition to any revisions identified in this Notice that are deemed appropriate, the legal discussion in the guides will be updated to reflect the Commission's current practices.[4]

Following each request for comment there appears, where appropriate, a citation to the pertinent part of the guides.

II. Request for Comment

1. Have the current guides had a significant economic impact (costs or benefits) on entities subject to their requirements?

2. Is there a continuing need for the guides?

3. What burdens does compliance with the guides place on entities subject to their requirements?

4. What changes should be made to the guides to minimize the economic effect on such entities?

5. Do the guides overlap or conflict with other federal, state, or local government laws or regulations?

6. Has technology or have economic changes since the guides were issued had an effect on the guides? Please specify.

7. The JVC petition proposes stating that, if an industry product is described as "certified," a certificate be available to the purchaser that discloses the name of the certifier and the matters and qualities certified. Should the guides include such a provision? If so, why? If not, why not? If gemstones are among the items certified, should the guides also require such a certificate to disclose the degree of subjectivity present in diamond and colored stone grading and valuing? Section 23.1(c).

8. Should the guides, as the JVC proposes in § 23.1 (d) through (f), require, in the sale of gemstones as investments, the disclosure that appreciation or profit cannot be assured, that no organized market exists for resale of these gemstones by private owners, and that the seller is in compliance with all applicable laws and regulations governing securities dealers? Should the use of such terms as "investment gem," "investment grade," or "investment quality" to imply a quality superior to that of gemstones marketed for use in jewelry be prohibited? Should limiting a purchaser's ability to examine any industry product by delivering the product in a sealed container under a warranty that becomes void if the seal is broken be prohibited? Can the Commission expect voluntary compliance with such requirements?

9. Should the guides be expanded to include appraisals of jewelry in addition to sales and offers to sell jewelry?

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[1] This document is on the public record and available for inspection. Copies also may be requested from Commission staff. In addition, staff has prepared a document showing how the current guides would be changed by the JVC proposal. Deletions are identified by strike-throughs. This document cannot be reproduced in the **Federal Register**, but it is on the public record and copies are available upon request.

The major areas of revisions proposed by the JVC are discussed briefly in this announcement. In some places, most notably in § 23.5, staff has partly restructured the JVC proposals, but has made no substantive changes. Many of the proposed revisions are the subject of a specific request for comment. See Part II. A few questions pertain to issues of interest to staff that were not raised by the JVC. Interested persons are encouraged to obtain either or both the petition and the comparison document to review all the proposed revisions. Comment on any or all proposed revisions, whether or not there is a specific request for comment, is encouraged.

[2] The JVC proposes omitting current Watch Guides 11 through 16. These are guides covering areas that were deleted from the Guides for the Jewelry Industry in 1978 when the Jewelry Guides (but not the Watch Guides) were being reviewed. The titles of the omitted guides are: "Deceptive Pricing"; "Commercial Bribery"; Coercing Purchase of One Product as a Pre-requisite to the Purchase of Other Products"; "Misrepresentation of the Character and Size of Business, Extent of Testing, etc."; "Guarantees, Warranties, etc."; and "Use of the Word 'Free'." This material is covered in other FTC guides of general application.

[3] The specific standards are: PS 67–76, Marking of Gold filled and Rolled Gold Plate Articles Other Than Watch Cases; PS 68–76, Marking of Articles Made of Silver in Combination with Gold; PS 69–76, Marking of Articles Made Wholly or in Part of Platinum; PS 70–76, Marking of Articles made of Karat Gold; and PS 71–76, Marking of Jewelry and Novelties of Silver.

[4] For example, the references to "it is an unfair trade practice" would be deleted and other pertinent language revised to conform to the deception standard formulation as expressed in the Commission's 1983 Statement on Deception. See appendix to Cliffdale Associates, 103 F.T.C. 110, 174 (1984).

10. Should standards for the gold or silver content of pens, pencils and optical products be the same as current standards for jewelry, as described in proposed § 23.5 C(1) and proposed § 23.6, Section I(b)? Should a standard for these products be included at all in the guides?

11. "Gold plate" historically is a general term covering all gold plate, however applied. The trade appears to use the term as descriptive of gold electroplate only. The current guides, however, in § 23.5(b)(4), limit its use to mechanically plated gold. Please comment on how gold plate should be defined in the guides.

12. Are there newer methods of plating gold that should be included in the guides? If so, describe those methods and how they should be addressed in the guides.

13. Should the guides amend the standard for gold-filled jewelry to prohibit the insertion of nickel between the gold-filled item and the surface coating of gold electroplate, as the JVC proposes in § 23.5C(2), Footnote 2? Would it be acceptable to permit the insertion of nickel so long as the lessened durability of such an item is disclosed? If so, what type of disclosure should be made and in what manner?

14. Is the proposed standard of a plating of 120 millionths of an inch of fine gold, or its equivalent, over sterling appropriate for "vermeil," described in § 23.5D?

15. The term, "substantial thickness," as applied to silver plate in the Note to § 23.6(e) is defined as "durable." Should the thickness of the coating be defined in numerical terms?

16. The proposed guides reduce the minimum amount of platinum in articles (without solder) marked "platinum" from 985 parts in a thousand to 950 parts. Is the proposed minimum, as specified in § 23.7 B and C, appropriate? If so, why? If not, why not?

17. Should a standard be established for a product described variously as "platinum-filled," "platinum overlay" or "platinum clad?" If so, is the standard proposed in § 23.7D, that the platinum plating constitute at least ½oth of the weight of the entire article, appropriate?

18. What is the industry standard for solder-filled platinum chain? Is the standard of 850 parts per thousand pure platinum, as proposed in § 23.7E, an appropriate standard? Should the Guides state that marking the platinum content on an item without disclosing the name or U.S.-registered trademark of the company responsible for the accuracy of the mark is deceptive?

19. Should the guides include a standard for pewter? If so, is the standard (any alloy consisting of at least 900 parts per thousand Grade A Tin) proposed in § 23.7A appropriate?

20. Should the guides prohibit the term "perfect" as a synonym for "flawless" in describing diamonds? Proposed § 23.10(1) limits this use of perfect but does not prohibit it.

21. Should the use of "points" to describe diamond weights be limited to oral representations as proposed in § 23.16? If so, why? If not, why not?

22. Should the guide require items containing one or more diamonds to be marked with the minimum weight of the diamond or diamonds as described in § 23.16 (f) and (g)?

23. Should the guides, as set out in § 23.20(a), prohibit the use of the term "gemstone" as descriptive of snythetic or imitation products? If so, why?

24. In addition to disclosing gemstone enhancement (see § 23.20(c)), should sellers be required to disclose to consumers in writing any special care requirements? If so, should specific disclosures be identified in the guides? Also, should the method of disclosure be specified?

25. Should the term "semi-precious" be prohibited in conjunction with gemstones, as proposed in § 23.23(b)?

26. Should foreign words or phrases like "faux" be added to the list of terms in § 23.24(b) that are not to be used to describe industry products?

27. Is the proposed standard of ¾ of 1,000th of an inch of 10K gold or better over a base of sterling silver for "vermeil" watchcases appropriate? See § 23.25C(1).

28. Comment is invited on the porposal in § 23.31 that any person who alters the name or any other feature of a brand name watch or opens a "water resistant" watch without authorization invalidates the warranty and must so inform the purchaser.

29. Should the metallic composition of all parts of watchcases be marked on the watchcase back as described in § 23.25?

30. Should the current definitions and tests for protective features of watchcases (*e.g.*, water resistance, shock resistance) as described in § 245.5 be retained?

31. Should the Commission's Guides for the Metallic Watch Band Industry, 16 CFR part 19 (1991), and Guides for the Watch Industry, 16 CFR part 245 (1991), be consolidated into the Guides for the Jewelery Industry?

32. Are there any provisions setting forth particular requirements that do not accurately and fairly reflect the accepted customs, practices and patterns of dealing prevalent in the industry, including the terminology and nomenclature customarily used in the course of trade? If so, please identify these provisions and describe the extent and effects of such differences in requirements.

33. Would any of the proposed changes to the guides result in: a lessening of competition among different segments of the industry, barriers to entering the industry, or increased prices to consumers?

34. Should the petition to revise be rejected and the current guides retained?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Parts 19, 23, and 245

Advertising, Labeling, Trade practices, Watches, Watch Bands and jewelry.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–13902 Filed 6–11–92; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–90–043]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is issuing a revised proposed rule for the operation of the Jordan drawbridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 2.8, in Chesapeake, Virginia. This change would allow commercial vessels carrying liquefied flammable gas or other harmful substances identified by commercial users of this waterway passage through the bridge at any time. This revised proposed rule also includes a provision that allows heavily laden cargo vessels, including tugs with tows, passage through the bridge during rush hours provided a 2-hour advance notice is given to the Jordan Bridge Office. This proposal is intended to provide for the safety of the public while providing regularly scheduled drawbridge openings.

DATES: Comments must be received on July 27, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LT Monica L. Lombardi, Project Attorney, Fifth Coast Guard District.

Regulatory History

The original proposal was published on July 27, 1990, in the **Federal Register** (55 FR 30723). It would have closed the Jordan Bridge to all vessels during morning and evening rush hours, Monday through Friday, except Federal holidays, from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m. The Commander, Fifth Coast Guard District, also published the proposed rule as a public notice on August 2, 1990. Interested persons were given until September 10, 1990, to submit comments. The comment period for the public notice also ended September 10, 1990. Based on comments received, a public notice was issued on August 23, 1990, extending the comment period to October 10, 1990.

Discussion of Comments

As a result of the proposed rule and the public notice, comments were received from the maritime community and the motoring public. The motorists were all in favor of the proposed restrictions during peak traffic hours since elimination of draw openings during these hours would help reduce traffic disruption, delays, congestion and minor accidents. The commercial marine industry were opposed to restricting openings of the drawbridge to them based on economic impact concerns, safety and deep-draft vessel navigation requirements. The Coast Guard Marine Safety Office, Hampton Roads, commented in their memorandum dated October 9, 1990, that liquefied flammable gas carriers should be allowed passage through the Jordan Bridge any time with no restrictions due to the need for establishing safety zones and the risk and hazard involved in transporting a loaded liquefied flammable gas vessel.

As a result of these comments, a revised Proposed Rule was published in the **Federal Register** (56 FR 34046) on July 25, 1991, and the Commander, Fifth Coast Guard District, published the supplemental proposed rule as a public notice on July 31, 1991. The revised proposal included the original proposal with additional provisions which allowed commercial vessels with a draft of 22 feet or greater access through the bridge during morning and evening rush hours, provided they gave a 6–hour advance notice of their arrival, and liquefied flammable gas carriers access through the bridge any time with no restrictions. The decision to allow deep draft vessels access through the Jordan Bridge during peak traffic hours was based on these vessels requiring high tide to transit upstream from the bridge to commercial marine terminals where the channel depths are reduced to as little as 27 feet. Due to the hazards involved in shipping liquefied flammable gas, it was decided to allow liquefied flammable gas vessels unrestricted access through the bridge any time of the day. The comment period for the public notice and the proposed rule ended September 9, 1991. A supplement to the public notice was issued on September 5, 1991, extending the comment period to October 9, 1991, to allow the maritime industry more time to submit their comments.

Additional comments were received during the last comment period, and have been thoroughly considered by the Coast Guard. Specifically, comments from the motoring public remained the same; however, the maritime industry expressed further concern over the safety factor of transporting any harmful substance through this bridge and requested that the type of ships and harmful substances by extended to include all flammable products. Also, they requested that the 6-hour advance notice requirement for other commercial vessels be relaxed to 2 hours and include heavily laden cargo vessels, including tugs with tows.

Discussion of Proposed Rule

The International Federation of Professional and Technical Engineers, Local No. 10, requested that the regulations for this drawbridge be amended to eliminate all bridge openings during morning and evening peak highway traffic hours to help reduce highway traffic congestion, but remain open on signal during the rest of the time.

Currently, only pleasure boats are restricted from requesting bridge openings during morning and evening rush hours. The original notice of proposed rulemaking would have closed the Jordan Bridge to commercial, recreational, and public vessels of the United States on Monday through Friday, except Federal holidays, from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m. A provision that would allow the draw to open on signal at all times for vessels in distress was made a part of the proposal. This revision to the proposed rule exempts heavily laden cargo vessels, including tugs with tows, from the weekday morning and evening rush hour restrictions provided 2 hours advance notice is given to the Jordan Bridge Office. Commercial vessels transporting any flammable product (e.g., residual fuel, distillate fuel or gasoline) or other harmful substances (e.g., styrene monomer [white liquid used in processing plastic], phenol, and petroleum products) as well as vessels in distress and public vessels of the United States will be able to pass through the bridge any time. This proposed change closes the drawbridge to recreational vessels, and other commercial vessels that do not fall under the above categories from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays. The rest of the time, the draw will open on signal. Imposing the 2-hour advance notice for certain vessels will provide motorists with an opportunity to learn about scheduled bridge openings for these vessels by radio broadcasts and any other means established by the bridge owner.

In developing the proposal, the Coast Guard considered all these views. However, the decision to exempt certain vessels from rush hour restrictions is based on the need to maintain safety along the Southern Branch of the Elizabeth River. This waterway is a busy thoroughfare for both recreational craft and marine traffic transporting fuel oil, gasoline, liquid natural gas, chemicals and other types of harmful cargoes. Restricting all commercial vessels during rush hours would force many different sizes and types of vessels to hold in the vicinity of the bridge. This would increase the chance of collision or allision, especially during periods of high winds, fog, rain or tidal fluctuations. The risk of damage to property or to the environment is a major concern and will be greatly reduced by permitting hazardous commercial traffic to pass during rush hours.

Request for Comment

Public comments are requested on the liquefied flammable gas carrier and harmful substance carrier exemption,

and the 2-hour advance notice requirement for heavily laden cargo vessels, including tugs with tows, to ensure that this proposal is both reasonable and workable. Persons submitting comments should include their name and address, identify the bridge and give reasons for their comments. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this supplemental proposal. This rule may be changed based on comments received.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

Federalism

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499: 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In section 117.997, paragraph (a) is revised to read as follows:

§ 117. 997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albermarle and Chesapeake Canal.

(a) The draw of the Jordan (S337) bridge, mile 2.8, in Chesapeake:

(1) Shall open on signal at any time for public vessels of the United States, vessels in distress and commercial vessels carrying liquefied flammable gas or other harmful substances.

2. From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of pleasure craft or commercial vessels that do not qualify under subparagraph (ii) of this section.

(ii) Need not open for heavily laden cargo vessels, including tugs with tows, unless 2 hours advance notice has been given to the Jordan Bridge Office at (804) 545–4695.

(3) Shall open on signal at all other times.

* * * * *

Dated: May 28, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander. Fifth Coast Guard District.

[FR Doc. 92–13856 Filed 6–11–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13 92–05]

Drawbridge Operations Regulation; Lake Washington, Washington

AGENCY: Coast Guard, DOT

ACTION: Proposed temporary rule.

SUMMARY: At the request of the Washington State Department of Transportation (WADOT), the Coast Guard is considering a temporary change to the regulations governing the Evergreen Point Bridge (SR–520) across Lake Washington between Seattle and Bellevue, Washington. The temporary regulation would be in effect through summer of 1993. This change would insure safe operation of the drawspan while malfunctions of the operating mechanism are being diagnosed and repaired. This action should provide for the reasonable needs of navigation by allowing the bridge owner to provide limited opening for navigation during period of reduced vehicular traffic. Also, it should provide the time needed to return the draw to the closed position before the next period of peak vehicular traffic.

DATES: Comments must be received on or before July 13, 1992.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 553–5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information:

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Discussion of the Proposed Regulations

The operating mechanism for drawspan of the Evergreen Point Bridge has been plagued with serious electrical malfunctions. In the interest of safety, the Coast Guard has granted WADOT and emergency departure from the operating regulations. WADOT has now asked that the change in regulations be extended until the problem has been diagnosed and the necessary repairs are made. If approved, the temporary regulation would require that the draw of the Evergreen Point Bridge open on signal from 11 p.m. to 2 a.m. Sunday through Friday and from 11 p.m. to 5 a.m. Friday through Sunday, if at least 12 hours advance notice is given. This mode of operation would allow WADOT to provide limited openings for navigation during periods of reduced vehicular traffic. Also, it would provide the time necessary to diagnose and repair any operational problems that might arise and to then return the draw to the closed position before the next period of peak vehicular traffic. It is anticipated that this temporary regulation would be in effect through summer of 1993, after which time the present regulation would be reinstated or a less restrictive regulation would be proposed.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12291, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The Evergreen Point Bridge has average 29.5 openings per year for vessels over the last five years. This level of activity is expected to remain fairly constant for the foreseeable future. Although some vessel operators may be inconvenienced during the span of temporary regulation, openings will still be provided on a daily basis. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), the Coast Guard certifies that, if adopted, the proposed regulations will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review on the docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.1049 is amended by revising paragraphs (a) and (c)

§ 117.1049 Lake Washington.

* * * * *

(a) The draw shall open on signal for the passage of vessels from 11 p.m. to 2 a.m. Sunday through Friday and from 11 p.m. to 5 a.m. Friday through Sunday if at least 12 hours notice is given. At all other times the draw need not open.

* * * * *

(c) All non-self-propelled vessels, rafts, and other watercraft navigating this waterway which require an opening of the draw shall be towed by a suitable self-propelled vessel while passing through the draw.

* * * * *

Dated: June 3, 1992.

J. E. Vorbach,

Rear Admiral, U. S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 92–13880 Filed 6–11–92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–4142–5]

The State of Louisiana; Proposal for Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal for final approval on application of Louisiana for final approval, public hearing and public comment period.

SUMMARY: The State of Louisiana has applied for final approval of its underground storage tank program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Louisiana's application and proposes that Louisiana's underground storage tank (UST) program satisfies substantially all of the requirements necessary to qualify for final approval. Thus, EPA proposes to grant final approval to the State to operate its program in lieu of the Federal program upon resolution of differences between Louisiana UST Regulations and the Federal UST Regulations. Louisiana's application for final approval is available for public review and comment and a public hearing will be held to solicit comments on the application, if requested.

DATES: A public hearing is scheduled for July 13, 1992. Louisiana will participate in the public hearing held by EPA on this subject. All comments on Louisiana's final approval application must be received by the close of business on July 13, 1992.

ADDRESSES: The Agency will hold a public hearing at 1:30 p.m. c.s.t. in the Maynard Ketchum Building, room 341 (Recital Room), 7290 Bluebonnet Street, Baton Rouge, Louisiana, 70810. Copies of Louisiana's final approval application are available for inspection and copying, 9 a.m. – 4 p.m. at the following addresses: Louisiana Department of Environmental Quality, Underground Storage Tank Division, 7290 Bluebonnet Street, Baton Rouge, Louisiana 70810, Phone: 504/765–0243; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: 202/382–5926; and U.S. EPA, Region 6, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/655–6444. Written comments should be sent to Samuel Coleman, Manager, Office of Underground Storage Tanks, U.S. EPA, Region 6, Mailcode: 6H–A,

1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/655-6755.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr., Louisiana State Program Officer, Office of Underground Storage Tanks, U.S. EPA, Region 6, Mailcode: 6H-A, 1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/655-6755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank program. Program approval is granted by EPA if the Agency finds that the State program: (1) Is "no less stringent" than the Federal program in the following seven elements: corrective action; financial responsibility; new tank standards; release detection; release detection recordkeeping; reporting of releases (section 9004(b)(2), 42 U.S.C. 6991c(b)(2)); and notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)).

B. Louisiana

On October 15, 1991, Louisiana submitted an official application for final approval. Prior to its submission, Louisiana provided an opportunity for public notice and comment in the development of its underground storage tank program. This is required under 40 CFR 281.50(b). EPA has reviewed Louisiana's application, and has determined that there are apparent differences between Louisiana's regulations and federal regulations. The differences are in various sections of the Louisiana UST Regulations and involve minor aspects of variances; notification; owner/operator certification of installation, repair, and closure; specification of hazardous substances; and sampling procedures.

EPA and the State of Louisiana have discussed these differences and the State has agreed, pursuant to a Memorandum of Agreement (MOA) transmitted to the State on April 2, 1992, to amend its current regulations to address each instance of the differences noted above. The specific differences and Louisiana's proposed regulation changes are documented in the MOA. The MOA is available for review as a part of the State Program Approval Application.

The State also agrees to provide documentation to EPA attesting to completion of the revisions and their adoption in accordance with the State's established rulemaking procedures. The State also agrees that all revisions are to become effective and enforceable in the State no later than July 20, 1992.

EPA proposes that Louisiana's program substantially meets all of the requirements necessary to qualify for final approval; therefore, following their mutual agreement on the terms and provisions of the MOA and the completion of the revisions to the Louisiana UST Regulations, EPA proposes to grant final approval to the State of Louisiana to operate its program in lieu of the Federal program.

In accordance with section 9004 of RCRA, 42 U.S.C. 6991c, 40 CFR 281.50e, the Agency will hold a public hearing on its proposal at the time and place indicated in the "**ADDRESSES**" section of this notice. The public may also submit written comments on EPA's proposal until July 13, 1992. Copies of Louisiana's application are available at the "**ADDRESSES**" indicated in this notice.

EPA will consider all public comments on its proposal received at the hearing or during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Louisiana. EPA expects to make a final decision regarding approval of Louisiana's program by September 10, 1992 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

The State of Louisiana is not authorized to operate the UST program on Indian lands and this authority will remain with EPA.

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This Notice is issued under the authority of section 9004 of RCRA, 42 U.S.C. 6991(c).

Dated: May 14, 1992.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 92-13777 Filed 6-11-92; 8:45 am]

BILLING CODE 6560-5-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

RIN 0925-AD31

Privacy Act; Proposed Exempt System

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services proposes to exempt a new system of records, 09-37-0021, "Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/OASH/OSIR", from certain requirements of the Privacy Act to protect records compiled in the course of scientific misconduct inquiries and investigations and to protect the identity of confidential sources in such investigations.

DATES: Comments on the proposed amendment must be received on or before July 13, 1992.

ADDRESSES: Written comments should be sent to: Carl C. Coleman, Director, Freedom of Information/Privacy Division, Office of the Assistant Secretary for Public Affairs, Room 645F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC. 20201.

Comments will be available for public inspection at this address on Monday through Friday of each week from 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Barbara Bullman, J.D. (301) 443-5300.

SUPPLEMENTARY INFORMATION: The Office of Scientific Integrity Review (OSIR), established in the Office of the Assistant Secretary for Health, Public Health Service (PHS) is responsible for overall PHS policies and procedures for dealing with misconduct in science, for overseeing the activities of the PHS research agencies to ensure that these policies and procedures are implemented and for reviewing all final reports of investigations to assure that the findings and recommendations are

sufficiently documented. In addition, the Office of Scientific Integrity (OSI), a component of the Office of the Director, National Institutes of Health (NIH), is responsible for overseeing the implementation of all PHS policies and procedures related to scientific misconduct. This responsibility includes monitoring and conducting inquiries and investigations into alleged or suspected scientific misconduct.

The scientific misconduct inquiry and investigation records are located in the Office of Scientific Integrity Review; the Office of Scientific Integrity, PHS Agency Misconduct Policy Offices and PHS Agency senior intramural research managers' offices. The Public Health Service is preparing to organize and operate these records as a "system of records" as that term is defined by the Privacy Act. When PHS is prepared to organize and operate the records as a system and after the proposed rule is issued in final form, PHS will publish a notice of this new system in the **Federal Register**.

Under the Privacy Act, individuals have a right of access to information pertaining to them which is contained in a system of records. At the same time, the Act permits certain types of systems to be exempt from some of the Privacy Act requirements. For example, paragraph (k)(2) allows agency heads to exempt a system of records compiled in the course of an investigation of an alleged or suspected violation of law. This exemption is qualified in that if the material results in the denial of any right, privilege or benefit that the individual would be entitled to by Federal law, the individual must be granted access to the material unless the access would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. In addition, paragraph (k)(5) permits an agency to exempt material from the individual access provision of the Act where investigatory material is compiled for the purpose of determining suitability, eligibility or qualification for federal employment or financial assistance if release of the material would cause the identity of a confidential source to be revealed.

Since the OSI scientific misconduct inquiry and investigative files are records compiled for administrative and law enforcement purposes, the paragraph (k)(2) exemption is applicable. Moreover, since investigations of individuals alleged to have engaged in scientific misconduct may lead to determinations that such individuals are not suitable for appointment as special Government employees or eligible for Federal grants or contracts from PHS agencies, the paragraph (k)(5) exemption is applicable.

In addition, often it is necessary in the course of investigations to give an express promise to withhold the identity of an individual who has provided relevant information. Sources of information necessary to complete an effective investigation may be reluctant to provide sensitive information unless they can be assured that their identities will not be revealed. These exemptions are proposed to maintain the integrity of the process and to ensure that the OSI's efforts to obtain accurate and objective information will not be hindered.

The exemptions will assure that the investigative files will not be disclosed inappropriately and that the identities of confidential sources will be protected. Accordingly, the Department proposes to exempt this system under paragraphs (k)(2) and (k)(5) of the Privacy Act from the notification, access, correction and amendment provisions of the Privacy Act (paragraphs (c)(3), (d), (e)(4)(G) and (H), and (f)). However, consideration will be given to requests for access, notification and corrections which are addressed to the system manager.

The Department has determined that the amendment to exempt part or all of a system of records from certain requirements of the Privacy Act is not a major rule within the meaning of Executive Order 12291, nor will it have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Finally, the proposal does not impose any new information collection requirements within the Paperwork Reduction Act.

List of Subjects in 45 CFR Part 5b

Privacy.

Accordingly, The Department of Health and Human Services proposes to amend 45 CFR part 5b as set forth below:

Dated: September 24, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: January 28, 1992.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

PART 5B—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. In part 5b, § 5b.11 is amended by adding paragraph (b)(2)(vii) as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(vii) Pursuant to subsections (k)(2) and (k)(5) of the Act: Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/PHS/OSIR.

* * * * *

[FR Doc. 92-13926 Filed 6-11-92; 8:45 am]
BILLING CODE 4160-17-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 552, 553, and 555

[Docket No. 92-34]

Domestic Offshore Financial Filing Regulations; Exemption Under Section 35 of The Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations pertaining to financial filing requirements for carriers in the domestic offshore trades. It is the intent of this proposal to eliminate part 553, which pertains to financial exhibits and schedules of non-vessel-operating common carriers ("NVOs") in the domestic offshore trades, and part 555, which specifies auditing procedures in the domestic offshore trades. A confidentiality provision in part 555 would be incorporated in part 552, which concerns financial reports of vessel-operating common carriers ("VOCCs"). Parts 553 and 555 no longer appear to serve a continuing regulatory purpose. Given the elimination of part 553, part 550 would be amended by adding an exemption for NVOs from the requirements of section 3 of the Intercoastal Shipping Act, 1933. Section 3, among other things, deals with Commission investigations and suspension of domestic offshore rate changes. The amendments would reduce recordkeeping and other regulatory requirements.

DATES: Comments due July 13, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the filing date in this proceeding.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime

Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring & Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5787.

SUPPLEMENTARY INFORMATION: 46 CFR part 553 prescribes the form and content of certain financial exhibits and schedules of NVOs in the domestic offshore trades and establishes the methodology that the Federal Maritime Commission ("Commission") would follow in evaluating proposed rate changes submitted by such NVOs subject to the provisions of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 *et seq.* ("1933 Act"). This part also provides for the retention and orderly acquisition of the data required for the methodology so established.

The regulations specify that the Commission will employ the operating ratio methodology when evaluating proposed rate changes by NVOs. Specifically, § 553.4 requires each NVO to maintain its records in such a manner as to permit the timely preparation of the exhibits and schedules that are to be filed in the event that the Commission institutes an investigation and hearing with respect to proposed rate changes. The Commission has not had reason to institute an investigation and hearing with respect to an NVO's proposed rate change in the 14 years since the rule was promulgated. Therefore, 46 CFR part 553 would not appear to be necessary given the costs associated with the requirements of § 553.4. In sum, 46 CFR part 553 imposes a burden on NVOs that appears to outweigh any identifiable benefits. Accordingly, the Commission proposes to relieve NVOs from these recordkeeping requirements by terminating part 553.

As a corollary to removal of these recordkeeping requirements, the Commission also proposes to exempt NVOs from the provisions of section 3 of the 1933 Act, 46 U.S.C. app. 845 and implementing regulations in title 46 CFR. Section 3 authorizes the Commission to suspend and investigate new and amended tariff matter filed by carriers, including NVOs, in the domestic offshore trades. Strict time limits are placed upon proceedings conducted under this section, and the carrier is required to refund any unsuspended portion of a general increase in rates found unjust and unreasonable.

Section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a, provides exemption authority as follows:

The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

Having found no cause to institute an investigation of NVO rates during the past 14 years, the Commission does not believe that exempting NVOs from the requirements of section 3 of the 1933 Act will substantially impair effective regulation, be unjustly discriminatory, or be detrimental to commerce.

Moreover, section 18 of the Shipping Act, 1916, 46 U.S.C. app. 817, provides a continuing basis for investigating the reasonableness of NVO rates in the domestic offshore trades, without the strict time constraints (and consequent recordkeeping requirements) imposed by section 3 of the 1933 Act. A proceeding under section 18 could be instituted by complaint or on the Commission's own motion and the NVO respondent in such a proceeding could be required to produce financial data in support of its rates. In addition, section 4 of the 1933 Act, 46 U.S.C. app. 845a, would continue to provide a right of reparation to complainants for rates found unjust or unreasonable under section 18.

46 CFR part 555 pertains to audits and auditing procedures in the domestic offshore trades and to those carriers who are required to file periodic reports with the Commission pursuant to 46 CFR part 552.* Part 555 establishes rules governing audits by Commission auditors of the books and records of carriers engaged in the domestic offshore trades of the United States and who are required to file periodic reports with the Commission pursuant to part 552 of this chapter. Section 555.5 provides for the confidentiality of the information obtained by the Commission.

No audits have been conducted under part 555 during the past 15 years. Moreover, the critical regulation under this part, § 555.2, contains essentially the same audit and access to records language already contained in 46 CFR 552.4. These sections provide the Commission with access to all financial documents, records and working papers used by a carrier in preparation of the financial reports and exhibits submitted to the Commission under 46 CFR part 552. However, 46 CFR part 552 does not provide for confidentiality as does 46 CFR part 555. Considering the foregoing, the Commission proposes to terminate 46 CFR part 555, while incorporating its confidentiality provisions into 46 CFR 552.4

*Part 552 contains the requirements for financial reports of VOCCs in the domestic offshore trades.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of that Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) Annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

This proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 552

Maritime carriers, Reporting and recordkeeping requirements, Uniform system of accounts.

46 CFR Part 553

Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements, Uniform system of accounts.

46 CFR Part 555

Confidential business information, Maritime carriers, Uniform system of accounts.

Therefore, pursuant to 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847, parts 550, 552, 553 and 555 of Title 46, Code of Federal Regulations, are proposed to be amended as follows:

PART 550—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. Section 550.1 is amended by adding a new paragraph 550.1(c) to read as follows:

§ 550.1 Exemptions.

* * * * *

(c) Non-vessel-operating common carriers ("NVOs") providing transportation in domestic offshore commerce are exempt from the provisions of section 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845 and, thus, from the provisions of § 550.13 of this part. The reasonableness of NVO rates in domestic offshore commerce may be determined under the provisions of section 18 of the Shipping Act, 1916, 46 U.S.C. app. 817.

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

1. The authority citation for part 552 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

2. Section 552.4 is amended by adding a new paragraph 552.4(c) to read as follows:

§ 552.4 Access to and audits of records.

* * * * *

(c) All information obtained by the Commission or its duly accredited special agents or auditors as a result of an audit carried out pursuant to the provisions of this part shall be withheld from public disclosure and shall be treated as confidential information in the files of the Commission; except that any confidential information derived from an audit may be utilized by the Commission as the basis for a formal proceeding instituted pursuant to section 22 of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933, and may also be utilized in such a proceeding.

PART 553—FINANCIAL EXHIBITS AND SCHEDULES OF NON-VESSEL-OPERATING COMMON CARRIERS IN THE DOMESTIC OFFSHORE TRADES

1. Part 553 is removed.

PART 555—AUDITS AND AUDITING PROCEDURES IN THE DOMESTIC OFFSHORE TRADES

1. Part 555 is removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc 92-13637 Filed 6-11-92; 8:45 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1035

[Ex Parte No. 495]

Bills of Lading

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served May 13, 1992, (57 FR 20442, May 13, 1992), the comment due date was extended to June 18, 1992. By petition filed May 29, 1992, The National Industrial Transportation League (NITL) requests an additional 90-day extension to September 16, 1992, to file comments. NITL states that additional time is needed due to ongoing meetings between members of NITL and the Association of American Railroads and its members (collectively AAR). On April 14, 1992, AAR made a presentation to NITL's Data and Computer System Committee proposing certain changes to the front of the form of the rail bill of lading. Further discussion between NITL and AAR is scheduled for June 10, 1992, in Chicago, IL. NITL further states that the content of the bill of lading also may be the subject of further discussion at a meeting of its Executive Advisory Council in early July.

On June 3, 1992, AAR filed a statement in support of NITL's extension request.[1] On June 5, 1992, National Grain and Feed Association filed a reply in support of NITL's request for a 90-day extension. The extension request is reasonable and will be granted.

DATES: Initial comments are due on September 16, 1992.

ADDRESSES: Send a original and 10 copies of comments referring to Ex Parte No. 495 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

[1] AAR also requests the Commission to bifurcate the proceeding and to seek comments on the use of a Negotiated Rulemaking to address concerns about the substantive terms included on the bill of lading. AAR's request for other relief will be considered in a further Commission order.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721].

Decided: June 9, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-13874 Filed 6-11-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Proposed Designation of Critical Habitat for Six Endangered Forest Species From Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period on proposed designation of critical habitat.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period for the proposed designation of critical habitat for six endangered forest species from Guam is reopened. The proposed rule was published on June 14, 1991 (56 FR 27486). The comment period was reopened from October 15, 1991, through October 31, 1991 (56 FR 51668), to obtain additional information on the economic impacts of the proposed designation. The Service believes the comment period should be reopened at this time based on the availability of an Environmental Assessment pertaining to the establishment of an overlay refuge on Guam and a request to reopen the comment period by the National Wildlife Federation.

DATES: Comments on the proposed designation of critical habitat for six endangered forest species from Guam must be submitted by July 15, 1992.

ADDRESSES: Information, comments or questions on the designation of critical habitat on Guam should be submitted to the Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Materials pertaining to the proposed designation of critical habitat will be available for public inspection during

normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above Honolulu address (telephone 808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1991, (56 FR 27486), the Service proposed to designate critical habitat for six endangered forest species from Guam: The little Mariana fruit bat (*Pteropus tokudae*), Mariana fruit bat (*Pteropus mariannus mariannus*), Guam broadbill (*Myiagra freycineti*), Mariana crow (*Corvus kubaryi*), Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), and Guam bridled white-eye (*Zosterops conspicillatus conspicillatus*). On July 12, 1991 (56 FR 31902), the Service announced the scheduling of a public hearing on the subject proposal. The public hearing was held in Agana, Guam, on July 31, 1991. The public was asked to submit written comments and materials by August 13, 1991. Subsequent to that date, the Guam Uranao Resort Corporation requested the opportunity to submit additional information on the economic impacts of the proposed designation of critical habitat for consideration by the Service. The comment period was, therefore, reopened for two weeks on October 15, 1991, to accommodate this request (56 FR 51668). Since that date, the Service has prepared an Environmental Assessment for the establishment of an overlay refuge on Guam, and, on May 19, 1992, the National Wildlife Federation requested that the comment period be reopened, so that additional information on the proposed designation of critical habitat may be submitted for consideration. The Service believes that the Environmental Assessment for designation of an overlay refuge may contain additional information that should be reviewed and considered in the process of arriving at a final decision for designation of critical habitat on Guam. The National Wildlife Federation wishes to submit comments addressing the scope of the legal protection which will be accorded designated critical habitat for endangered species that are no longer present in the wild but which may be reintroduced.

The six species for which critical habitat has been proposed are found in the Mariana Islands in the western Pacific in the Territory of Guam; two species, the Mariana fruit bat and the Mariana crow, are also found on the island of Rota in the Commonwealth of the Northern Mariana Islands. All were listed as endangered on August 27, 1984, due to one or more of the following activities: Poaching, predation by the introduced brown tree snake, and habitat loss.

The proposed rule to designate critical habitat includes a total of 16,893 acres in northern Guam and 7,669 acres in southern Guam. The land is primarily under Federal ownership, with a smaller percentage owned by the Government of Guam and private landowners.

Additional information and comments may be submitted through July 15, 1992, to the Service office in the **ADDRESSES** section.

Author

This notice was prepared by Ms. Karen Rosa, U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (telephone 808/541–2749).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Notice: Reopening of public comment period on proposal to designate critical habitat for six endangered forest species from Guam.

Dated: May 29, 1992.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–13787 Filed 6–11–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 114
Friday, June 12, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-92-38]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: June 26, 1992.

Time: 1:30 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: To recommend market opening dates, and final approval of the policies and procedures for the 1992 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 205-0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: June 10, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92-14017 Filed 6-11-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Visiting Committee on Advanced Technology of the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Wednesday, June 24, 1992, from 10:30 a.m. to 11:30 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to fully examine and discuss FY 1994 budget planning information for the National Institute of Standards and Technology.

DATES: The meeting will convene June 24, 1992, at 10:30 a.m. and adjourn at 11:30 a.m on June 24, 1992.

ADDRESSES: The meeting will be held in room 5840, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 30, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: June 8, 1992.

John Lyons,

Director.

[FR Doc. 92-13888 Filed 6-11-92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Endangered Species; Application for Scientific Research Permit; Andre M. Landry, Jr., Co-Director, Institute of Marine Life Sciences, Texas A&M University, Galveston, Texas (P512)

Notice is hereby given that an applicant has applied in due form for a Scientific Research Permit to take an endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217-222).

1. Applicant: Andre M. Landry, Jr., Co-Director, Institute of Marine Life Sciences, Texas A&M University, P.O. Box 1675 California, San Diego, Galveston, Texas 77553
2. Type of Permit: Scientific Research.
3. Name and Number of Species:
   100 Kemp's Ridley Sea Turtles, *Lepidochelys kempi*
   20 Hawksbill Sea Turtles, *Eretmochelys imbricata*
   2 Leatherback Sea Turtles, *Dermochelys coriacea*
   300 Green Sea Turtles, *Chelonia mydas*
   200 Loggerhead Sea Turtles, *Caretta caretts*
4. Type of Take: The applicant proposes to capture sea turtles of various species to investigate habitat preference, movement and migration, foraging patterns and the impacts of man's activities, such as dredging and habitat alteration, upon sea turtles. Capture methods covered by this permit would include: (1) Entanglement nets, (2) trawls; (3) haul seines; and (4) hand capture (via SCUBA). Once captured, individual turtles may be subjected to specific research procedures including: Tagging, weighing and measuring, blood sampling and fecal pellet collection in an effort to generate data for the purposes mentioned above.

5. Location and Duration of Activity: The applicant requests a permit for the period of 1 July 1992 through 30 September 1993. In-water research will consist of netting surveys and tag-release-recapture and tracking experiments within the nearshore and estuarine waters of Texas and southwestern Louisiana.

Written data or views, or requests for a public hearing on this application should be submitted to the NMFS, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of NMFS. Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, SSMC#1, room 8268, Silver Spring, Maryland 20910, (301/713–2289); and Director, Southeast Region, NOAA, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: June 9, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–13886 Filed 6–11–92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Modification of Permit; Southwest Fisheries Science Center; Modification No. 3 to Permit No. 691

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Department of Commerce.

On April 9, 1992, notice was published in the **Federal Register** (57 FR 12293) that an application for modification to Permit No. 691 has been filed by the Southwest Fisheries Science Center, NMFS P.O. Box 271, La Jolla, California 92038, to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA) and NOAA, NMFS, regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

This modification would allow the take of up to 900 olive ridley, 50 green, 75 loggerhead, 10 hawksbill, and 10 leatherback sea turtles to be captured, measured, tagged, and photographed. Up to 300 sea turtles may be stomach and blood sampled. The modification also proposes to extend the permit period from December 31, 1992, to December 30, 1993.

Notice is hereby given that on June 9, 1992, as authorized by the provisions of the ESA, NMFS issued a modification for the above taking, subject to certain conditions set forth therein.

Issuance of this modification, as required by the ESA, is based on the finding that such modification (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the modification; and (3) will be consistent with the purposes and policies set forth in section 2 of the ESA. This modification was also issued in accordance with and is subject to title 50 CFR parts 220–222 of NMFS' regulations govening endangered species permits.

The original Permit and modification numbers 1, 2, and 3 are available for review in the following offices: Office of Protected Resources, NMFS, 1335 East-West Highway, Room 8268, Silver Spring, Maryland 20910, phone 301/713–2289; and Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, suite 4200, Long Beach, California 90802–4213.

Dated: June 9, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–13885 Filed 6–11–92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Modification No. 1 to Scientific Research Permit No. 717.

SUMMARY: On Tuesday, March 31, 1992, notice was published in the **Federal Register** (57 FR 10887) that a request to modify Permit No. 717 had been submitted by Dr. Howard W. Braham, Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Bldg. 4, Seattle, WA 98115, to recapture up to 100 California sea lions (*Zalophus californianus*) up to four times each per year, in order to recover data-recording instruments and to outfit the animals with new instruments.

Notice is hereby given that on June 4, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the National Marine Fisheries Service issued the requested modification to Permit 717 for the above activities subject to the Special Conditions set forth therein.

The modified Permit is available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, AK 99802 (909/586–7233);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150); and

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: June 4, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–13802 Filed 6–11–92; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

[Docket No. 920532–2132]

Current and Future Requirements for the Use of Radio Frequencies in the United States

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of inquiry; Request for comments.

SUMMARY: NTIA is conducting a broadly-based investigation of future requirements for the use of the radio frequency spectrum in the United States, and technology trends that would impact use of the radio spectrum. Public comment is requested on issues relevant to such an investigation. Additionally, comments are requested on issues concerning International Telecommunication Union radio conferences, such as the 1992 World Administrative Radio Conference. After analyzing the comments, NTIA intends to issue a report on national spectrum requirements and technologies and use the information and analysis as the basis for more effective long-range planning for national spectrum management.

DATES: Comments should be filed on or before October 1, 1992, and Reply

Comments should be filed on or before December 1, 1992, to receive full consideration.

ADDRESSES: Comments and Reply Comments (6 copies) should be sent to: Office of Spectrum Management, NTIA, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., room 4099, Washington, DC 20230, attention W. Russell Slye.Q02

FOR FURTHER INFORMATION CONTACT: W. Russel Slye, 202–377–1850, or Rob Haines, 301–261–8002, Office of Spectrum Management.

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I. Introduction

1. In this Notice of Inquiry (Notice), the National Telecommunications and Information Administration (NTIA) requests broadly-based technical and marketplace information on spectrum requirements [1] for different radio services and classes of users over the next ten years. We are requesting this information from users, manufacturers and service providers in the private sector, as well as users, system developers, and system managers in federal, state, and local governments. No person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition to NTIA's full consideration of the comment. NTIA intends to use the information we obtain in response to this *Notice* to develop more effective planning for U.S. spectrum management and to issue a report on national spectrum requirements.

2. Responses should include information on: New, currently unsatisfied spectrum requirements; current uses that will diminish with time; current uses of continuing or increasing dimensions; and future spectrum uses now in the early stages of formulation. Further, responses should include information on the amount of bandwidth and spectrum location required to satisfy various telecommunications needs. In most cases, this could be best stated in terms of the size of the user base by radio service, the estimated volume of information flow, the estimated amount of spectrum required, and the technical methods or procedures used to equate the telecommunications needs with the stated spectrum requirement.

3. Responses should include information, if available, on how new, currently unsatisfied spectrum requirements are being met in other countries (if they are being met) as well as any other current or anticipated spectrum allocation decisions abroad which will impact upon U.S. decisions.

4. Until recently, advancing technology has kept ahead of the demand for spectrum. As demand has increased, developing technology has resulted in radios that can perform the functions of earlier systems at higher, less used frequencies, or with decreased bandwidth at the same frequency. Moreover, advanced coding and spread spectrum techniques can permit multiple, concurrent uses of a single frequency band. Now, demand for spectrum is growing rapidly, from both expanded use of current services like digital cellular radio-telephone, and the development of new uses, such as personal communication systems (PCS), digital audio broadcasting (DAB), and advanced television (ATV). However, the technical advances in spectrum conserving techniques needed to meet that demand may be pushing the limits of practicality, at least in the short term.

5. This Notice will week to identify major technical and marketplace trends affecting spectrum usage, including the increased demand anticipated for various services (such as mobile radio), and any associated increased requirement for spectrum; how the use of new spectrum-based systems will be implemented; and the extent to which certain current spectrum requirements can be satisfied using other transmission media. As discussed in detail below, we seek specific comments on these technical and marketplace issues.

6. In examining both private sector and government needs in this *Notice*, spectrum requirements for systems supporting national security operations will continue to have a high priority. NTIA will work closely with the U.S. military services and other federal government agencies involved in national security regarding spectrum requirements that are of a classified nature. Classified spectrum requirements will not be included in the report resulting from this Notice, but we anticipate that they will be available to NTIA for analysis and evaluation in cases where potential spectrum allocation or frequency sharing options may impact these requirements.

7. Although we are seeking technical information on spectrum requirements, we are not soliciting requests for specific frequencies to support a commenter's individual radio systems or networks. We also do not seek to reexamine the fundamental policy issues considered in the NTIA Spectrum Notice [2] and addressed in the NTIA Spectrum Study.[3] Responses to the questions in this Notice should, as much as possible, also take into account the decisions made at the February 1992 World Administrative Radio Conference

[1] The term "spectrum requirement" as used herein means generally spectrum required or needed, under stated conditions, to support the accomplishment of a goal, mission, or business function consistent with efficient and effective use of the spectrum.

[2] Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum, Notice of Inquiry, 54 FR 50,694 (1989) [hereinafter *NTIA Spectrum Notice*].

[3] National Telecommunications and Information Administration, U.S. Dep't of Commerce, Special Pub. No. 91–23, U.S. Spectrum Management Policy: Agenda for the Future (Feb. 1991) [hereinafter NTIA Spectrum Study].

(WARC–92),[4] and current proceedings [5] of the Federal Communications Commission (FCC) that may lead to domestic spectrum reallocation.

II. Background

A. NTIA's Telecommunications Role

8. The Communications Act of 1934 (the Act) [6] established the FCC and gave it the authority to assign frequencies to all radio stations in the United States, except for those belonging to the federal government. Under section 305 of the Act, the President is authorized to assign the frequencies to federal government stations. The President has delegated this authority to the Secretary of Commerce, who has in turn delegated it to the Administrator of NTIA.[7] Section 2–401 of Executive Order 12,046 provides that "[t]he Secretary of Commerce shall serve as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry." [8] Thus, NTIA, on behalf of the Secretary of Commerce, develops telecommunications policies in the overall national interest, rather than limiting its scope to the interests of federal government agencies. In coordination with the Department of State and the FCC, NTIA develops plans, policies and programs which relate to international telecommunications issues. NTIA conducts studies and evaluations concerning telecommunications research and development, and ensures that Executive Branch views on telecommunications matters are effectively presented to the Congress, the FCC, and the public.

B. Recent NTIA Spectrum Planning Efforts

9. NTIA recently completed a comprehensive study recommending fundamental changes to the existing spectrum management system in the United States. The NTIA Spectrum Study contains a number of proposals regarding planning for innovative uses of the spectrum and emphasized "the importance of long-range planning by the FCC and NTIA * * * to anticipate user needs and to avoid unnecessary conflicts among proposed uses." [9] The report also states that:

NTIA will move to open its process of managing federal government spectrum use to permit a greater degree of public participation * * *.[10]

When practical, NTIA will publicize, and seek public comment on, major new policy proposals that could significantly affect the private sector * * *.[11]

To aid in long-range planning through forecasting, NTIA and the FCC should draw expert input from their constituent users to attempt to predict spectrum requirements for five years, ten years, and beyond. Users should identify specific trends and new technologies * * *.[12]

NTIA and the FCC should seek to institute a coordinated, strategic, long-range planning process. A two- to five-year planning cycle should be established * * *.[13]

NTIA and the FCC should seek to modify [the block allocation system] in the next decade to increase flexibility.[14]

10. NTIA, on behalf of the Department of Commerce, is also required to "[d]evelop, in cooperation with the Federal Communications Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources."[15] NTIA has published editions of the Long-Range Plan for Management and Use of the Spectrum (LRP) in 1986, 1988, and 1989.[16] The later editions increasingly have emphasized goal, policies, and plans primarily for federal spectrum management processes because of a lack of detailed private sector information on spectrum requirements.

11. Several bills currently under consideration in Congress also address planning for the accommodation of emerging telecommunications technologies.[17] These bills require that the Secretary of Commerce (or the Assistant Secretary of Commerce for Communications and Information) meet twice a year with the Chairman of the FCC to conduct joint spectrum planning.[18] The FCC and the Department of Commerce would also be required to submit a joint annual report to Congress on their joint spectrum planning activities, including recommendations for action developed pursuant to such activities.[19]

C. Strategic Long-Range National Planning and Spectrum Reform

12. NTIA has consistently advocated reform of the spectrum management process through greater use of flexible, market-based mechanisms and better long-range planning for spectrum management. These policy goals are closely related. Greater reliance on market incentives, through such reforms as competitive bidding for spectrum licenses [20] and more flexibility for licensees to use and transfer spectrum,[21] can help to ensure that spectrum, a renewable but limited resource, is used most efficiently to serve user needs.

13. At the same time, improve planning by NTIA and the FCC can ease the transition from the current highly centralized U.S. management system to one that relies more on market principles, by permitting modification of existing spectrum allocations in an organized, non-disruptive way. In particular, such planning helps ensure that adequate spectrum will continue to be available for public safety needs, other non-commercial uses such as amateur radio and scientific research, and local, state, and federal government uses. Moreover, improved planning is essential for the U.S. government to represent effectively the interests of all U.S. spectrum users in international spectrum negotiations. Such planning is especially important to permit the presentation of consistent policies in

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[4] Decisions of WARC–92, as detailed in the Final Acts of the conference, will change portions of the International Telecommunication Union (ITU) Table of Frequency Allocations. The U.S. National Table of Frequency Allocations will also reflect appropriate revisions from WARC–92. International Telecommunication Union, Final Acts of the World Administrative Radio Conference (WARC–92) (1992) [hereinafter WARC–92 Final Acts].

[5] See, e.g., Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92–9, 7 FCC Rcd 1542 (released Feb. 7, 1991) [hereinafter Emerging Technology Rulemaking]; Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90–314, 5 FCC Rcd 3995 (released June 28, 1990) [hereinafter PCS Docket]; Spectrum Efficiency in the Private Land Mobile Radio Bands in Use Prior to 1968, PR Docket No. 91–170, 6 FCC Rcd 4128 (released July 2, 1991).

[6] 47 U.S.C. 151 *et seq.*

[7] See Exec. Order No. 12046, as amended, *reprinted in* 47 U.S.C. § 305 n. (1989); U.S. Dep't of Commerce, Department Organization Orders 10–10 and 25–7.

[8] Exec. Order No. 12046, *supra* note 7, § 2–401.

[9] NTIA Spectrum Study, *supra* note 3, at 2.

[10] *Id.* at 1.

[11] *Id.* at 3.

[12] *Id.* at 11.

[13] *Id.*.

[14] *Id.* at 5

[15] Exec. Order No. 12046, *supra* note 7, §2–409.

[16] National Telecommunications and Information Administration, U.S. Dep't of Commerce, Special Pub. No. 89–22, Long Range Plan for Management and Use of the Radio Spectrum by Agencies and Establishments of the Federal Government (June 1989).

[17] H.R. 1407, Emerging Telecommunications Technologies Act of 1991, 102d Cong., 1st Sess. (1991); S. 218, Emerging Telecommunications Technologies Act of 1991, 102d Cong., 1st Sess. (1991); and H.R. 531, Emerging Telecommunications Technologies Act of 1991, 102d Cong., 1st Sess. (1991).

[18] *Id.*, §3(a) of each Bill.

[19] *Id.*, §3(b) of each Bill.

[20] See, HR 1407, *supra* note 17; NTIA Spectrum Study, *supra* note 3, at 115–118.

[21] See NTIA Spectrum Study, *supra* note 3, at 79–84; Emerging Technologies Inquiry, *supra* note 5.

such forums as the new series of biennial World Administrative Radio Conferences recommended by the High Level Committee of the International Telecommunication Union (ITU). Thus, the long-range planning effort that this Notice supports can aid spectrum reform in the United States generally.

14. This Notice is thus a natural outgrowth of the recommendations of the NTIA Spectrum Study regarding planning, market-based spectrum management, and open interchange of information with the public, the ITU regulatory development processes (*e.g.*, WARC–92), our earlier long-range planning efforts, and the interest in planning displayed by Congress. The information received in response to this *Notice* will be used to identify national spectrum requirements, identify technology trends that impact the use of the spectrum, and plan for the accommodation of new radio systems.[22] The spectrum planning we contemplate will consider both the implementation of market-based and other innovative spectrum management techniques, and the changes to the traditional regulatory processes necessary to implement such techniques while maintaining effective regulatory oversight.

15. Based on the responses to this Notice and our own analysis, NTIA intends to prepare a "requirements study" to help identify national spectrum requirements and technology trends.[23] The study will be prepared in consultation with the FCC,[24] the Interdepartment Radio Advisory Committee (IRAC),[25] and the Spectrum Planning Advisory Committee (SPAC).[26] The "requirements" study will specify: (a) Anticipated national spectrum requirements, (b) a forecast of radiocommunication technology and trends, and (c) the future spectrum requirements that should be addressed by the FCC and NTIA.[27] Depending on the record that we obtain in this proceeding, we may undertake additional detailed investigations of the technical, policy, and economic factors affecting the potential of accommodating specific new radio services in the currently allocated frequency bands.

III. Areas of Inquiry

A. National Spectrum Requirements

16. Within this are of inquiry, NTIA solicits broadly-based technical and marketplace information concerning the future requirements for the use of the radio frequency spectrum in the United States, including requirements for systems that have international operations and implications. The specific information we seek for each group of radio services includes: How much spectrum does each require, and what are the technical methods or procedures used to calculate this requirement? When will any additional spectrum be required or excess be available for other uses? Are there any requirements limited to specific geographic areas? Can these requirements be satisfied in bands shared with other services and classes of users? For a given service, with which services or types of services can frequency resources not be shared? If no sharing is possible, why? Are there physical limitations that preclude the use of particular portions of the radio spectrum? What alternatives to spectrum use are available to meet a requirement? Responses should include information on new, currently unsatisfied spectrum requirements, current uses that will diminish with time, current uses of continuing or increasing importance, and future spectrum uses now in the early stages of formulation. The following paragraphs indicate specific additional information of interest to NTIA for each group of services.

1. Mobile and Mobile-Satellite Services

17. The mobile service is a "radiocommunication service between mobile and land stations, or between mobile stations."[28] This includes the conventional dispatch-oriented land-, maritime-, and aeronautical-mobile services and the newer public-switched operations like cellular radio and PCS. Mobile service is used by the federal, state, and local government sector for may purposes, including such critical areas as national defense, law enforcement, public safety, and air traffic control. The private sector uses the mobile service to satisfy a myriad of communications requirements, including specialized needs such as electronic news gathering, aeronautical passenger communications, and biomedical telemetry.

18. Although mobile radiocommunication applications have been in use for most of this century, only in recent years have we seen their tremendous growth. This expansion has been stimulated both by technological advances and by increased demand for mobile services. In comments on the NTIA Spectrum Notice, several organizations predicted serious spectrum shortfalls for mobile services in the near future.[29] However, one organization commented that this shortage was more a perception than a reality, and that the lack resulted from resistance to the use of more efficient digital technologies.[30] Some have also postulated that a part of any spectrum shortage can be attributed to undue regulatory constraints on how the spectrum can be used.[31] The FCC itself has expressed concerns about the effects of its regulations on efficient spectrum use for mobile services and is presently investigating the elimination of certain regulatory constraints now imposed on the frequency bands below 470 MHz that are used by Private Land Mobile Radio Service (PLMRS) licensees.[32]

19. In the 1980s, mobile-satellite service technology advanced from initial concepts to practical system designs and service demonstrations. Now, in the early 1990s, successful implementation of the mobile-satellite service, in many different forms, is expected at the national and international levels. The

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[22] NTIA expects that this series of studies will be among the inputs to the preparatory process for the new series of biennial World Administrative Radio Conferences mentioned *supra* para. 13.

[23] All data collected as a result of this Notice will be made available to the FCC for their use in spectrum planning.

[24] The FCC consultation will involve the Administrator of NTIA, the Chairman of the FCC, and appropriate staff. See NTIA Spectrum Study, *supra* note 3, at 5, where this group is called the Joint Strategic Planning Council.

[25] The IRAC is an advisory committee consisting of representatives from 20 federal government agencies and a liaison member from the FCC. The IRAC advises NTIA on spectrum-related matters and assists in the development of federal spectrum policies and the assignment of frequencies to federal government entities.

[26] The SPAC is an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C.A. app. 2 §9 (Supp. 1992). SPAC consists of 15 members from the private sector and 4 members from the federal government.

[27] This report will provide a basis on which the FCC can initiate its own inquiries as recommended by the NTIA Spectrum Study, *supra* note 3, at 169, 178.

[28] National Telecommunications and Information Administration, U.S. Dep't of Commerce, Manual of Regulations & Procedures for Federal Radio Frequency Management, § 6.1.1 at 6–8 (May 1989 ed., rev. through Sept. 1991) [hereinafter *NTIA Manual*]. The NTIA Manual an all changes to it are incorporated by reference in 47 CFR 300.1 (1990). The NTIA Manual defines a land station as: "A station in the mobile service not intended to be used while in motion" [e.g., a base station or a repeater]. NTIA Manual, supra § 6.1.1 at 6–7.

[29] *See, e.g.*, Comments of Advanced MobileComm, Inc. at 27, Comments of Land Mobile Communications Council at iii, and Comments of Motorola Inc. at 22–24 NTIA Spectrum Notice, supra note 2.

[30] Comments of Personal Radio Steering Group at 2, NTIA Spectrum Notice, supra note 2.

[31] Gilder, What Spectrum Shortage?, Forbes Magazine, May 27, 1991, at 324, 324.

[32] Spectrum Efficiency in the Private Land Mobile Radio Bands In Use Prior to 1968, 6 FCC Rcd 4126 (1991) [hereinafter Refarming Inquiry].

mobile-satellite service can support land, maritime and aeronautical operations (including personal communications). Systems using geostationary or low-Earth orbit (LEO) satellites are in place or being proposed to provide users with mobile service over most of the Earth's surface. The number of mobile-satellite service systems that are being proposed and developed indicates that this is a significant growth area with increased spectrum requirements. For example, the International Civil Aviation Organization (ICAO) assembly recently endorsed the move away from a purely terrestrial system for air traffic control to the satellite-based Future Air Navigation Systems (FANS).[33]

20. We seek comments on the future spectrum requirements for the mobile services. We are not requesting duplication of any spectrum requirements information associated with PCS that may have been recently supplied in the FCC's PCS Docket, supra note 5, as this information is available to NTIA. What categories (*e.g.*, land, maritime, or satellite) require spectrum and how much do they require? When will any additional spectrum be required or excess be available? Do these requirements pertain to specific geographic areas? Are there physical limitations that preclude the use of particular portions of the radio spectrum? What alternate means to radio are available to meet this telecommunication requirement? Do these requirements include any additional features (*e.g.*, need for priority and preemptive capabilities)? Would it be practical to reallocate spectrum to the general mobile service, thereby permitting accommodation of all categories of mobile user in the same bands? Would the general mobile service lead to greater and more uniform usage of mobile service spectrum and provide a stimulant for the development of new and innovative services? What are the requirements for support for mobile services involved in the national security mission, including weapons system requirements?

21. What effect will advances in services like cellular radio or personal communications services have on traditional dispatch land-mobile services? [34] What are the implications of WARC–92 decisions on the development of mobile services and future requirements? When will worldwide personal, mobile voice and data communications services become technically and economically feasible and widely available to the public? Information concerning the expected users of the service and the number of projected users is also requested.

22. To what extent can mobile service requirements be satisfied in bands shared by several classes of users and by different services? With which services or types of services can frequency resources not be shared? If no sharing is possible, why? Are there any reasons for or benefits to restricting certain frequency bands to terrestrial mobile services, rather than sharing the band with the mobile-satellite service? If so, what frequency bands should be used in this manner?

23. To what extent can satellites designed for the mobile services be used to meet requirements for remote telephone service? Can some of the current mobile service requirements for use of the High Frequency (HF) band for longer distance communications be satisfied by the mobile-satellite service? How much HF spectrum could be made available for other applications? How should INMARSAT spectrum requirements for the mobile-satellite service be factored into U.S. spectrum plans? To what extent can LEO satellite services share the same spectrum with geostationary satellite services? To what extent have WARC–92 decisions satisfied future needs for the mobile-satellite services? What is the impact of present allocation regulations upon efficient use of the mobile service frequency bands?

2. Fixed and Fixed-Satellite Services

24. The fixed service is "radiocommunication * * * between specified fixed points." [35] Major users of the fixed service in the United States include common carrier, private operational, auxiliary broadcast, and cable TV relay service users, and the federal government. The federal government uses a number of fixed service systems in its internal cross-country voice and data communications systems; the military uses them for both tactical and strategic communications. In addition to operations in the microwave and higher bands, there are a number of continuing applications in the HF channels for single channel emergency and message communications. Alternatives to fixed point-to-point radiocommunications include land lines and satellite communications. In many telecommunications networks, fiber optic cables are replacing fixed point-to-point microwave systems, especially in and between city centers and other communications hubs and in areas where rights-of-way for cable laying can be inexpensively obtained.[36]

25. To what extent will alternative transmission media replace fixed microwave service? If such replacement occurs, what should be done with any unused frequencies? [37] Could unused microwave bands allocated to the fixed service be geographically shared with other services in a practical manner? [38] What factors tend to discourage the use of fiber optic cables as an alternative to microwave systems? What other trends are there that would affect the future use of the fixed service?

26. NTIA is seeking information on how much spectrum will be required for future fixed service operations. Can fixed service requirements migrate to higher frequency bands in the future? What types of applications are most likely at the higher frequencies and which cannot be moved to higher frequencies? What new modulation techniques are being developed for fixed service applications and what effect do these techniques have on bandwidth, channel capacity, and spectrum requirements?

27. NTIA is also seeking similar information on the future use of the fixed-satellite service. What effect does increased fixed-satellite service use have on fixed service use? What trends are there that affect the future use of the fixed-satellite service (*e.g.*, voice, data, and video trends)? What are the trends concerning separate fixed-satellite service systems (*e.g.*, PANAMSAT, Columbia) performing the same functions as INTELSAT's international communications satellites? What are future plans concerning very small

[33] International Civil Aviation Organization, Council Action on Recommendation 9/1 of the 1991 Air Navigation Conference (Dec. 11, 1991).

[34] These newer technologies are discussed in greater detail *infra* paras. 57–62.

[35] NTIA Manual, *supra* note 28, § 6.1.1 at 6–5.

[36] National Telecommunications and Information Administration, U.S. Dep't of Commerce, Special Pub. No. 91–26, The NTIA Infrastructure Report: Telecommunications in the Age of Information 94–97 (Oct. 1991).

[37] Note that under current FCC rules, unused licenses must be returned to the FCC. See 47 CFR 21.303(b), 22.309, 23.49 (1991) for common carriers, which require FCC approval to discontinue service. See also 47 CFR 73.1750, 80.31, 87.35, 90.157, 94.53 (1991), respectively, for the broadcast radio services, the safety and special radio services, the aviation services, the private land mobile radio services, and the private operational-fixed microwave service.

[38] That is, could the replacement by fiber optic cable in hubs allow sharing with other services that could not be permitted in areas where microwave systems are still required?

aperture terminals (VSATs) used for data transmissions to central collection points and LEO satellites? Will teleports [39] continue to develop, and if so, what will be the effect on the ability to geographically share the spectrum used by the fixed-satellite service? How will the use of alternative transmission media, such as submarine fiber optic cables, affect the spectrum requirements of the fixed-satellite service?

3. Broadcasting and Broadcasting-Satellite Services

28. Radio and telephone broadcasting is the spectrum use that most directly touches the American public. Virtually all Americans own or make use of broadcast radio and television receivers. Thus, any technical changes in the AM, FM or television broadcasting services potentially can affect almost all U.S. citizens and accordingly require very careful planning. The spectrum allocations for AM, FM, and television broadcasting have undergone several changes over the years. In 1974, the FCC reallocated 115 MHz of spectrum from broadcast to land mobile use.[40] In addition, the FCC revised rules regarding UHF television channels 14–20 to allow broadcast/land mobile sharing.[41] Recently the AM broadcast band was expanded by 100 kHz to include the 1605 kHz frequency range.[42]

29. Furthermore, the FCC is currently considering significant changes to broadcast delivery systems, such as ATV in television and DAB in radio, that could affect future requirements for commercial broadcast spectrum.[43] With regard to ATV spectrum needs, the FCC has tentatively concluded that the UHF and VHF spectrum currently allocated for television broadcasting using the National Television System Committee (NTSC) standard will be used for ATV.[44] Furthermore, the FCC has determined that most, perhaps all, existing full-serivce NTSC broadcasters can be accommodated using this spectrum,[45] and that after a suitable transition period, the NTSC channels should be surrendered to the FCC.[46]

30. Similar spectrum use issues exist for the development and implementation of DAB in the United States. The broadcast industry is actively developing both "in-band" and "out-of-band" approaches for DAB, and the results of these development efforts will affect the range of feasible options available to the FCC in making spectrum management decisions to accommodate this new service. Moreover, recent actions at WARC–92 have focused increased attention on this technology.[47]

31. Considering the requirements of new broadcast technologies such as ATV and DAB, are current allcoations for broadcast technologies sufficient? What is the likely impact of WARC–92 on availability of spectrum for DAB? Are there different requirements depending on whether the service is provided on a terrestrial or satellite basis? On the other hand, given the increasing demand for spectrum access in the major broadcast markets, and the transition to new, potentially more efficient broadcast technologies, will there be opportunities for greater flexibility or increased sharing in the use of broadcasting spectrum, particularly in the long-run?

32. The United States Information Agency, through the Voice of America, carries out HF radio broadcast operations in the United States, in addition to its other broadcast services, for audiences outside the United States. The Armed Forces Radio and Television Service, and a number of private sector broadcasters also have broadcast operations that reach audiences outside the United States. What are the future spectrum requirements for HF broadcasting, both government-sponsored and private?

33. Satellite-based television broadcasting is now being provided in Europe and in Japan. In the United States, the FCC has allocated and assigned spectrum for television from satellites and a number of proponents have plans to begin offering services in the near future. The large number of television receive-only (TVRO) systems in the United States indicates that consumers may be willing to pay for satellite broadcasting, particularly as the size of the antennas and overall prices of the systems are reduced. TVRO systems, however, currently receive television from satellites operating in the fixed-satellite service, not the broadcasting-satellite service. Spectrum requirements for satellite broadcasting may compete with spectrum requirements for other satellite-based radio services. NTIA thus seeks comments on the outlook for satellite-based broadcast systems, including television, audio, or other forms of broadcast services. What will be the total spectrum requirements in the next ten years for broadcasting-satellite services? Will the spectrum allocations for broadcasting established by WARC–92 be adequate in the long term? Are there domestic or international spectrum coordination concerns? Will broadcasting via satellite, either as a supplement to or replacement of HF broadcasting, be realized and will this affect HF needs?

4. Radiodetermination, Radiodetermination-Satellite, and Meteorological Aids Services

34. Radiodetermination is "the determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves." [48] The radiodetermination service includes radiolocation and radionavigation, with a wide variety of applications such as surveillance for enemy aircraft, missile tracking, target detection, weapon control, air traffic control, maritime navigation and aircraft altimeters. Although radiodetermination stations are predominantly radars, the service includes a number of non-radar systems such as LORAN–C, the Global Positioning System (GPS), and Glide Slope systems for aircraft. Radiodetermination bands are typically not shared with other services because the high power of most radar transmitters, the use of rotating or

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[39] A teleport is a concentration of co-located Earth stations under a single management, usually operating in the fixed-satellite service.

[40] Land Mobile Radio Service, Second Report and Order, 46 FCC 2d 752 (1974).

[41] Land Mobile/UHF–TV Sharing Plan, Fifth Report and Order, 48 FCC 2d 360 (1974).

[42] Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd 6273 (1991).

[43] Amendment of the Commission's Rules with regard to the Establishment and Regulation of New Digital Audio Radio Services, Gen. Docket No. 90–357, 5 FCC Rcd 5237 (released Aug. 21, 1990); Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, 6 FCC Rcd 7024, 7036 (1991) [hereinafter Advanced Television].

[44] See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Tentative Decision and Further Notice of Inquiry, 3 FCC Rcd 6520 (1988).

[45] Advanced Television, *supra* note 43, at 7029.

[46] In addition, the FCC has tentatively concluded that it should not propose additional spectrum allocations for broadcast auxiliary purposes at this time; Advanced Television, *supra* note 43, at 7031.

[47] For ATV, the U.S. proposed a new broadcasting-satellite service allocation at 24.65–25.25 GHz to augment the current allocation at 12 GHz; U.S. Dep't of State, United States Proposals for the 1992 World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum 6 (1991) [hereinafter WARC–92 Proposals]. The WARC allocated 17.3–17.8 GHz for Region 2 and 21.4–22 GHz for Regions 1 and 3 for BSS, while deleting the allocation at 22.5–23 GHz; WARC–92 Final Acts, *supra* note 4, at 20, 24. For DAB, the WARC allocated 1452–1492 MHz, 2310–2360 MHz (in the U.S. and India), and 2535–2655 MHz (in several Asian and eastern European administrations); *Id.* addendum + corrigendum at 5–6, 20, 23.

[48] *NTIA Manual*, *supra* note 28, § 8.1.1 at 8–10.

scanning antennas, the mobility of the stations (*e.g.*, on ships and aircraft), and the critical functions they perform (*e.g.*, safety-of-life and military functions). However, sharing has been practicable for uses where interference from radars can be accommodated and interference to the radiodetermination stations will not occur (*e.g.*, amateurs). NTIA seeks information on all future applications of radar technology.

35. Many of the newer military airborne radars are capable of performing both radiolocation and radionavigation functions with the same signal through the use of complex signal processing techniques. These "multifunction radars" are spectrum efficient devices, since they perform the functions of at least two radars with only one signal. Do these multifunction radars point to a more general merging of functions? Should the radiolocation and radionavigation services continue to use separate frequency bands? Do multifunction radiodetermination systems require separate spectrum allocations? Is there a need to further define the radionavigation or the radiolocation services? What types of radio systems or services can share spectrum with radar systems? What conditions could be required? How should broadband (low-energy, impulse-type) radars be supported?

36. Radars are also used in the meteorological aids service to detect precipitation, wind speeds and wind gusts. Meteorological radars include weather radars at airports and meteorological forecast stations and those used in navigation aboard ships and aircraft. What effect will the current upgrading of the National Oceanic and Atmospheric Administration's weather forecasting system, in particular the use of the Next Generation Radar (NEXRAD) technology and the Wind Profiler radar systems, have on the spectrum?

37. Uses of the radiodetermination-satellite service (radiodetermination involving one or more spacecraft) [49] include spacecraft docking and Earth-surface mapping. What are the future spectrum requirements for space-based radar?

38. Some non-radar radionavigation systems like the GPS and the Global Navigation Satellite System (GLONASS), are satellite based. Others, like the LORAN–C system, use a series of terrestrial transmitters. Still others like the Distance Measuring Equipment (DME) and Tactical Air Navigation (TACAN) systems determine aircraft locations relative to a beacon transmitter. Some of these systems perform overlapping functions. Which of the non-radar associated radionavigation systems will continue to be needed? Which may be safely discontinued and when may that occur? Are there any new types of radionavigation systems being developed or investigated?

5. Other Space Services and Radio Astronomy

39. The satellite services for mobile, fixed, broadcasting, and radiodetermination applications have been discussed previously in this *Notice* in conjunction with the analogous terrestrial services.[50] This section covers the Earth exploration- and meteorological-satellite services, the inter-satellite service, the space operation [51] and space research services, and a proposed general-satellite service. The radio astronomy service, which, like the space services, involves equipment receiving radio signals from space, is also covered. NTIA is seeking information on future requirements in these services. How do technology and propagation characteristics of the space services and radio astronomy limit the frequency ranges in which they can be accommodated? What other services can share frequency bands with the space services and radio astronomy? When will additional spectrum be required or excess spectrum be available for other uses? Does the geographical distribution of Earch stations and radio telescopes suggest possible geographic sharing of spectrum?

(a) Earth Exploration- and Meteorological-Satellite Services

40. Systems in the Earth exploration-satellite service, which includes the meteorological-satellite service, are used where "information relating to the characteristics of the Earth and its natural phenomena is obtained from active sensors or passive sensors on earch satellites [and] from airborne or Earth-based platforms." [52] The meteorological-satellite service is "[a]n earth exploration-satellite service for meteorological purposes." [53] Both geostationary and non-geostationary satellites are used for these functions. To what extent are the uses of Earth exploration and meteorological satellites, both in the public and private sectors, expected to grow? Are current allocations adequate to meet anticipated requirements?

(b) Inter-Satellite Service

41. The inter-satellite service is "[a] radiocommunication service providing links between artificial earth satellites." [54] Inter-satellite links have grown in importance in the United States over the past several years as data relay satellites have largely replaced the ground tracking network. Although current data relay satellites operate space-to-space links in the space research service, future data relay satellites are expected to use the inte-satellite service. Thus, the inter-satellite service will become more important.[55] Will this trend continue? To what extent will future data relay satellites continue to operate in the space research service?

42. WARC–92 created new, primary inter-satellite service allocations at 24.45–24.75 GHz and 25.25–27.5 GHz.[56] Will these additional allocations be sufficient to meet future requirements for links between satellites, including those in low-Earth orbit?

(c) Space Operation Service

43. The space operation service is defined as "[a] radiocommunication service concerned exclusively with the operation of spacecraft, in particular space tracking, space telemetry and space telecommand." [57] Spectrum managers originally intended for tracking, telemetry and command (TT&C) communications for spacecraft to be accommodated in the same bands as the other functions of the spacecraft (mission bands).[58] However, the space operation service was created so that TT&C requirements for a wide variety of satellites could be accommodated using a few data relay satellites or Earth stations. In the United States, commercial satellite operators generally use the mission bands for TT&C while the government agencies generally use three bands near 2 GHz.[59]

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[49] *Id.*

[50] See supra paras. 19, 27, 33, 37.

[51] Requirements for tracking, telemetry, and command of space systems are included in the discussion of the space operation service, although they are often accommodated in other space services.

[52] NTIA Manual, *supra* note 28, § 6.1.1 at 6–4.

[53] *Id.* § 6.1.1 at 6–8.

[54] *Id.* § 6.1.1 at 6–7.

[55] WARC–92 Proposals, *supra* note 47, at 7.

[56] WARC–92 Final Acts, *supra* note 4, at 25–26.

[57] NTIA Manual, *supra* note 28, § 6.1.1 at 6–12.

[58] International Radio Consultative Committee, Rep. No. 845–1, Space Operation Systems § 1 (1990). The use of these "mission bands" for TT&C is still the stated norm; *NTIA Manual*, *supra* note 28, § 6.1.1 at 6–12 (defining the space operation service).

[59] NTIA Manual, *supra* note 28, § 4.1.3, at 4–62 and footnotes G42 (allocating the 1761–1842 MHz

Continued

As satellite systems move to frequencies above 15 GHz, the mission bands will become less suitable for space operations, placing more emphasis on the space operation service.[60] In the future, how will the TT&C functions be divided between the space operation service and the mission bands?

44. The advent of commercially-owned expendable launch vehicles (ELVs) promised a new alternative for launching commercial payloads. Six frequencies in the 2310–2390 MHz band were allocated in 1988 to support launch telemetry for flight testing of commercial ELVs.[61] Government tracking facilities have begun to reconfigure their telemetry systems to support these operations. The frequency band 2300–2450 MHz was reallocated at WARC–92 to include an additional allocation in the sub-band 2310–2360 MHz for broadcasting-satellite (sound) and complementary terrestrial sound broadcasting in the United States and India.[62] Implementation of this allocation and any subsequent development of broadcasting-satellite systems in this sub-band may impact the use of the three lower frequencies set aside for commercial ELV support. NTIA seeks comments regarding the future spectrum requirements for launch vehicles, both commercial and government-owned, considering the results of WARC–92. Will the commercial launch industry spawn private launch facilities? If so, does the private sector have spectrum requirements for related operations, such as tracking for launch vehicles and flight termination systems?

45. For government spacecraft in low-Earth orbit, TT&C communications are provided through the National Aeronautics and Space Administration (NASA) Tracking and Data Relay Satellite System (TDRSS). Commercial satellites can also use TDRSS for in-orbit telemetry in the 2285–2290 MHz and 14.896–15.121 GHz bands.[63] Is this allocation adequate to meet future requirements for commercial satellite telemetry via data relay satellites? What other in-orbit TT&C communications will be required, both for government and commercial spacecraft?

(d) Space Research Service

46. The space research service is "[a] radiocommunication service in which spacecraft or other objects in space are used for scientific or technological research purposes." [64] The space research service encompasses both deep space systems [65] and those nearer to the Earth. As a research-oriented organization, NASA operates most of its systems in the space research service. This results in a broadening of space research service applications to include such things as data relay links for a wide variety of spacecraft, both government and commercial. Is the continued use of the space research service for such systems appropriate? If not, what services should be used? Are current space research allocations adequate to meet future requirements if data relay satellites continue to use this service?

47. At WARC–92, the United States proposed new space research allocations for extra-vehicular activities (410–420 MHz) and for use in proximity of a space station (400.15–401 MHz).[66] WARC—92 created these allocations, though the space research service is secondary to the fixed and mobile services in the 410–420 MHz band.[67] How much are such space research activities expected to increase? Are these new allocations, in addition to the current space research activities expected to increase? Are these new allocations, in addition to the current space research allocations, adequate to meet future spectrum requirements? Under what service should radiocommunications requirements involving satellites of the sun, moon, and other planets be met?

(e) General-Satellite Service

48. Another U.S. proposal at WARC–92 would have created a new "general-satellite service" to "provide for both mobile-and fixed-satellite applications within one radio service." [68] The proposal would have replaced the current fixed-and mobile-satellite service allocations at 19.7–20.2 GHz and 29.5–30 GHz with general-satellite service allocations.[69] Rather than establishing the new service immediately, WARC–92 upgraded the existing mobile-satellite service allocations in those bands to primary status in Region 2 [70] and recommended further study of the issue.[71] Considering the decisions of WARC–92, should the concept of a general-satellite service above 30 GHz be pursued? What types of systems would operate in the service? What are their spectrum requirements? Should other space services allocations above 20 GHz also be replaced with general-satellite service allocations?

(f) Radio Astronomy Service

49. The radio astronomy service is a service used in scientific research for "the reception of radio waves of cosmic origin." [72] However, radio astronomy receivers require exceptionally high antenna gain and receiver sensitivity in order to detect the desired signals. This makes them highly susceptible to interference. How can radio astronomy be adequately protected as the use of other portions of the radio spectrum increases? In particular, what protection should be afforded from out-of-band airborne and satellite-borne transmitters? What is the potential impact of the proliferation of non-licensed devices on radio astronomy? [73]

50. Radio telescopes are designed to detect two types of radio emissions from space: continuum radiation and spectral line radiation. For continuum emissions, observations at frequency intervals of about one octave are usually adequate to determine the special distribution.[74] Are current radio astronomy allocations adequate in bandwidth and spacing to meet future needs? Very long baseline interferometry (VLBI) techniques are used to improve spatial resolution of

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band for Earth-to-space links), G101 (allocating the 2200–2290 MHz band for space-to-Earth and space-to-space links), and US90 (allocating the 2025–2110 MHz band for Earth-to-space and space-to-space links).

[60] Internatonal Radio Consultative Committee, Rep. No. 678, Technical Feasibility of Frequency Sharing Between the Space Operation Service and the Space Research Service in the 1 to 10 GHz Band § 1 (1990).

[61] NTIA Manual, *supra* note 28, § 4.1.3, footnote US270. The specific frequencies are 2312.5 2332.5, 2352.5, 2364.5, 2370.5, and 2382.5 MHz.

[62] WARC–92 Final Acts, *supra* note 4, addendum + corrigendum at

[63] NTIA Manual, *supra* note 28, § 4.1.3, footnotes US303, US310.

[64] NTIA Manual, *supra* 28, § 6.1.1 at 6–12.

[65] Deep space is defined as "[s]pace at distances from the Earth equal to or greater than 2×10^6 kilometers." NTIA Manual, *supra* note 28, § 6.1.1 at 6–3.

[66] WARC–92 Proposals, *supra* note 47, at 3.

[67] WARC–92 Final Acts, *supra* note 4, at 17–18.

[68] WARC–92 Proposals, *supra* note 47, at 12.

[69] *Id.* at 8.

[70] WARC–92 Final Acts, *supra* note 47, at 22–23, 27.

[71] In its Recommendation COM4/D, WARC–92 recommended that the International Radio Consultative Committee (CCIR) carry out studies of the compatibility between multiservice geostationary satellite networks and the fixed-satellite service, and that a future WARC consider the requirement for a single service encompassing both fixed-and mobile-satellite service applications. *Id.* at 128–129.

[72] NTIA Manual, *supra* note 28, § 6.1.1, at 6–10.

[73] However, radar astronomy, a related discipline involves high power emissions in radiolocation bands.

[74] International Radio Consultative Committee, Rep. No. 852–2, Characteristics of the Radio Astronomy Service and Preferred Frequency Bands § 2.2.2 (1990).

observed objects. These techniques currently employ antennas located in different countries to provide adequate spacing. The use of VLBI techniques requires the simultaneous protection of the frequencies in all the countries involved.[75] How can requirements for VLBI experiments in many countries be accommodated?

51. While radio telescopes have observed hundreds of spectral lines, certainly not all of the frequencies can be protected. The most important lines, selected by the International Astronomical Union, have largely received protection internationally.[76] Are the spectral lines used in radio astronomy adequately protected? Will radio astronomy require protection for additional lines in the future? If so, how can this protection be provided in bands allocated to other services? [77]

6. Amateur Radio Service

52. Amateur radio operators provide many non-commercial public services via radiocommunications, including emergency communications during natural disasters. Many of the technological advances in radiocommunications can be traced back to initial experimentation carried out in the amateur service. Currently, the amateur service performs an important and useful function as an adaptor of complicated and expensive technologies, often producing versions of communications systems more suitable for practical use. The present amateur service frequency allocations cover a wide range of frequencies and vary in status from operation on a non-interference, unprotected basis [78] to primary (exclusive) status [79] in the National Table of Frequency Allocations. Some amateur operations share frequency bands with government radiolocation, fixed, or mobile services.

53. NTIS seeks comments on the future spectrum requirements for the amateur radio service. What factors could either increase or reduce the spectrum requirements of the service? Is the current spectrum used by amateurs adequate? What new techniques may increase the ability of the amateur service to share with other radio services in certain frequency bands?

7. Other Services

54. NTIA also seeks comments on other currently allocated radio services not specifically addressed above (*e.g.*, Standard Frequency and Time Signal Service). We are also interested in proposed new and innovative uses of the spectrum that are not currently accommodated with the National Table of Frequency Allocations or for which no specific radio service has been defined. What spectrum requirements can reasonably be anticipated for these services, and what frequency bands are suitable or required to accommodate these services? In addition, are the current arrangements, if any, for temporary assignments for experimental purposes adequate? Or, do they tend to hamper innovation when the development fits in no existing service? Similarly, does that lack of conformity to the service definitions of multifunction systems (*e.g.*, those that combine voice communications with positioning) hamper their development? Considering the decisions of WARC–92 and the Voluntary Group of Experts (VGE) [80], should general radio service categories be developed?

B. Technologies

55. In this part of the inquiry, NTIA solicits information concerning emerging or existing technologies that could have an impact on requirements for spectrum use. We specifically request information on (a) technologies whose implementation would result in more efficient and effective use of the spectrum while at the same time satisfying service requirements, and (b) those technologies whose implementation may require increased spectrum usage. Further guidance on the information desired is contained in the following paragraphs.

1. Technologies That Increase the Utility of Higher Frequencies

56. Usage of the radio spectrum is less concentrated at higher frequencies than at lower frequencies, but, as noted above, technological limitations in design and manufacture of radio systems often preclude the use of higher frequencies for many services. The physics of radio frequency propagation often limit the usage even further (e.g. the combination of high signal propagation loss and low-gain mobile antennas severely limits mobile coverage range). However, progress is being made. The application of newer, solid-state devices might support development of mobile service equipment that operate at higher frequencies than those presently in use. Wireless local area computer networks are being developed at 18 GHz. [81] Point-to-point communications are also being implemented at higher frequencies. [82] In order to assess the full impact of future spectrum requirements, we are soliciting information on techniques and devices that have been developed or are under development that could facilitate the use of higher frequencies. What are the specific functions of such techniques or devices? What radio services will they support? Does the capability represent a mature technology or is it under development? Information on the limitations and costs associated with the techniques or devices is requested. To what portion of the spectrum is the particular technique or device applicable?

2. Microprocessor-based Radio Technologies

57. In recent years, microprocessors increasingly have been incorporated into radio systems, making possible new technologies that use the spectrum more efficiently. [83] Most of these technologies are related to mobile communication. For example, trunked systems use a computer to select an available channel so that the assigned channels are used more efficiently. Priority access could allow users having diverse missions to share the same trunked system, ensuring that critical communications could preempt routine communications. Cellular radio systems employ relatively low power transmitters and frequency reuse to improve efficiency. Future computer-controlled communications systems could dynamically apportion spectrum resources, further improving efficiency. What other microprocessor-

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[75] *Id.*

[76] *Id.* § 4.3.

[77] IN 1987, emissions from interstellar methanol masers were discovered at 12.179 GHz, which lies in a band allocated for fixed-satellite service downlinks. Observations of this line have been severely limited. At least one party has stated that such observations would be very difficult to accommodate because of heavy commercial investment. *See* Comments of National Science Foundation at 9, NTIA Spectrum Notice, supra note 2.

[78] For example, footnote US275 to the National Table of Frequency Allocations allows amateur operations in the 902–928 MHz band on a secondary and unprotected basis to other services operating in accordance with the Table, and other certain radio services (*i.e.*, Automatic Vehicle Monitoring). NTIA Manual, supra note 28, § 4.1.3.

[79] For example, the frequency band 144–146 MHz is allocated to the Amateur and Amateur-Satellite services on an exclusive basis.

[80] International Telecommunication Union, Resol. No. 1009, Establishment of a Voluntary Group of Experts to Study Allocation and Improved Use of the Radio-Frequency Spectrum and Simplification of the Radio Regulations (Nov. 2, 1990).

[81] Gilder, *supra* note 31, at 324, 330.

[82] See Emerging Technologies Inquiry, *supra* note 5.

[83] This section covers technologies that employ microprocessors in the radio frequency portions of communications systems. NTIA supports the use of such technologies to improve spectrum efficiency. See NTIA Spectrum Study, *supra* note 3, at 148.

based technologies could improve the efficiency of spectrum use? How will their use affect future spectrum requirements?

(a) Trunking

58. Whereas conventional land mobile systems have exclusive use of their channels in a geographic area, regardless of how heavily those channels are used, trunked systems assign numerous users to a few channels, increasing spectrum efficiency. When a user activates a transmitter in a trunked system, the system locates an available channel and assigns it to that transmitter. [84] When the user is finished the channel is available for assignment to another user. This process is known as "demand assignment." What developments in trunking technology are possible that might increase even further the spectrum efficiency of trunked systems? What sort of spectrum savings could be reasonable anticipated? For what types of mobile radio users is the use of trunking technology impractical or otherwise inappropriate?

59. In addition to assigning channels to users only when needed, trunked systems can also provide priority access to certain users. In a priority access system, available channels are assigned to users based on a priority basis instead of "first come, first served." A user having high enough priority can even preempt a lower priority user if all other channels are used. How can priority access systems be used to increase the effectiveness of trunked systems?

(b) Cellular Radio

60. Cellular radio [85] is another microprocessor-based technology that conserves spectrum. Cellular systems use service areas, called "cells," that are typically much smaller than the service areas used with trunked systems. Each cell has a base station and a set of frequencies. The frequencies can be "reused" in non-adjacent cells without interference. While the mobile units in a cell communicate with the base station by radio, the base stations are tied to the telephone system or to other base stations by wire or by fixed microwave. Each cell operates, in effect, like a trunked system using computer-selected frequencies to link the base station with the mobile units. Computers also control the "handoff" from one base station to another as mobile units move between cells. Since the service areas are smaller in a cellular system than in a conventional land mobile system, fewer frequencies are required, even considering the need to avoid using the same frequencies in adjacent cells. Some have argued that dividing the cells into sectors with different frequencies can increase the efficiency even more.[86] To what extent could "cellular-type" technology be applied to private land mobile dispatch usage? What percentage of the private land mobile market, whether trunked or not, can be satisfied by the use of cellular telephone or PCS having access to the public switched network?

(c) Dynamic Control of Spectrum Resources

61. Permanent band allocations result from international and national regulatory processes and can take months or years to change. The benefits of dynamic control of spectrum resources can, in a sense, replace these permanent band allocations and can theoretically be extended to the control of power and bandwidth. If a band were allocated to a number of different services, a computer linking or managing a system theoretically could be used to rapidly adjust the proportion of the bank available to each service in response to changing requirements.[87] What services could benefit from dynamic control of spectrum resources? What potential drawbacks would be associated with such a system?

62. For many systems, communications requirements, including the relative locations of the transmitter and receiver and the bandwidth of the baseband signal, vary with time. Typically, the systems are designed conservatively, always operating so as to be able to meet the most demanding scenario. However, the unnecessarily large bandwidth or transmitter power that could result from this design wastes spectrum resources. In its comments to the NTIA Spectrum Notice, the Personal Radio Steering Group (PRSG) described in the "radio of tomorrow" as "a computer with an RF 'front end.' " [88] The PRSG envisions computer-controlled communications networks, each able to "dynamically shift its capabilities and performance to meet only the actual immediate demand, * * * consuming only the necessary resources and releasing unneeded resources * * *." [89] How could the spectrum resources "released" by such a system be made available to other users? Are such systems practical? How soon could technology be available to implement such a system?

63. During U.S. preparations for WARC–92, several developing technologies and dynamic spectrum management techniques were discussed. These techniques have a potentially significant impact on the current level of congestion in the HF bands. The technologies include: (a) Low cost single-sideband (SSB) HF broadcast receivers; (b) frequency agile mobile and fixed HF radio systems; and (c) automatic link establishment HF radio systems. The dynamic spectrum management techniques include the use of computerized data bases containing the operating schedules of the major users of a band and real time computer control of frequency agile radio equipment. What will be the likely impact of the above and other technologies and spectrum management techniques on current users of the HF bands?

3. Antenna and Propagation Technologies

64. Technological innovations can increase the usability of the radio spectrum, through either the use of higher frequencies, as noted above, or techniques that allow more users in the same frequency bands. Antenna innovations and design improvements along with increased understanding of propagation effects, have, in the past, contributed to increases in spectrum efficiency. For example, the development of antennas with increased directivity and increased discrimination for cross-polorized signals has allowed increased sharing of frequency bands. Increased understanding of radio frequency propagation effects, *e.g.*, fading characteristics, has supported the development of communication systems that provide a more effective use of the spectrum. NTIA, recognizing the importance of understanding radio

[84] If, however, all channels are being used, the user requesting a channel is "blocked." The quality of such multiple access systems is often measured either as the probability that a user will be blocked, or as the expected time required to obtain a clear channel.

[85] The term "cellular radio" as used here refers to the cellular technology as a whole, not just to cellular telephone.

[86] Kucar, Mobile Radio: An Overview, IEEE Communications Magazine, Nov. 1991, at 72, 80.

[87] The 1545–1559 MHz and 1646.5–1660.5 MHz bands are allocated on a primary basis to the aeronautical mobile-satellite service (AMSS). Segments of these bands, 1549.5–1558.5 MHz and 1651–1660 MHz, also have primary allocations to the mobile-satellite service (MMS). However, in these segments, AMSS requirements have priority over MSS requirements when the former cannot be met elsewhere in the bands. Thus, the co-primary segments are, in effect, reallocated when required by the AMSS demand. NTIA Manual, *supra* note 28, § 4.1.3, at 4–59 to 4–60 and footnote US308.

[88] Comments of Personal Radio Steering Group at 2, NTIA Spectrum Notice, *supra* note 2.

[89] *Id.* at 5.

frequency propagation effects, conducts various propagation studies at its laboratories in the Institute for Telecommunication Sciences, in Boulder, Colorado.

65. We request comments on technological developments in the areas of antennas and propagation that could contribute to more effective utilization of the radio spectrum. What are the antenna developments that will support the utilization of certain services, *e.g.*, small and efficient antennas for use with personal communication devices? Similarly, what propagation developments, such as increased understanding of ionospheric sky-wave progagation, will contribute to the usability of the spectrum? What are the specific attributes of the development that impact spectrum utilization? Does the capability represent a mature technology or is it under development? Is the particular technology applicable to a specific frequency band, and, if so, what is the frequency range of applicability?

4. Signal Modulation

66. Many efficiencies in the use of the spectrum have come about because of advancements in signal modulation. Signal modulation is the process whereby desired information is impressed onto the "carrier" signal. For many years, double-sideband amplitude modulation (DSB), such as still used in our AM broadcast band, was the predominant modulation for a wide variety of applications, including fixed, aeronautical, and maritime-mobile operations. For many applications DSB has been replaced by single-sideband (SSB) suppressed (or reduced) carrier modulation, with the result that transmitted bandwidth was reduced by almost 50 percent, and transmitter power requirements were reduced. Amplitude companded SSB, along with other recent modulation processes, is now capable of operating in 5 kHz channels. Systems using these modulation processes are candidates for operation in the 220–222 MHz band where the channelization is 5 kHz. What other bands should employ narrowband techniques?

67. Frequency modulation (FM) has been the mainstay for many mobile operations. Over time, advances in technology have allowed single channel bandwidths to be reduced from 100 kHz to 25 kHz, and in some cases to 12.5 kHz, with the promise of 6.25 kHz or better for the future. What types of modulation will be used in mobile operations in the future, and what bandwidths will be practicable?

68. Other types of modulation—some new, some envisioned for many years—have come to the forefront as advanced solid-state devices have made some other modulation schemes, especially digital modulation, practicable. For several years, government agencies have been using digitized voice and the Digital Encryption Standard (DES) for voice privacy requirements. The effective data rate possible with such systems has increased over the years, due to modulation processes such as Quadrature-Amplitude-Modulation (QAM). Time Division Multiple Access (TDMA) and Code Division Multiple Access (CDMA) are other high-efficiency processes that allow many users to share a single radio channel. What radio services would benefit from the use of these modulation processes? Will digital modulation replace analog modulation in most radio services? What will be the effect of using increased digital modulation schemes on standardized channeling schemes?

69. The introduction of new modulation techniques has not always resulted in lessened bandwidth. One such technique, spread-spectrum, has become popular with the military services because of its inherent interference-resistant and low-detectability characteristics. Spread spectrum systems typically use up to 1000 times the baseband information bandwidth for transmission. At the same time, the transmitted power density is very low, making the signals difficult to detect by unauthorized entities, and, in some cases, allowing them to be "overlaid" on existing signals without causing interference. What types of services can best share with spread-spectrum "overlaid" signals?

70. One of the major advantages of digital modulation is the potential for data compression, removing redundant information from signals to reduce the bit rate and thus the required bandwidth. The decreased bandwidth permits smaller channel spacing, allowing more users to operate in a given frequency band. What are the potential effects of data compression on spectrum requirements? What other digital signal processing techniques can be used to conserve spectrum? What services can take advantage of these techniques?

71. In view of this mix of narrow- and wide-band systems, NTIA seeks comments on the future of modulation processes. Will spectrum efficiency be gained through systems with high bits-per-Hertz ratings, or through spread-spectrum systems, with the attendant low probability of interference? What new modulation types are yet to come? Which of the known types will stay with us for the foreseeable future? Can new modulation techniques lead to increased spectrum sharing or increased efficiency in spectrum use? What technologies (*e.g.*, improved batteries and solid state devices) are critical to the future use of innovative modulation systems?

5. Other Technologies

72. The preceding paragraphs contain examples of technologies that could impact future spectrum requirements. However, these examples might not be complete. There could well be other technologies, outside the scope of the examples, that have been developed or are being developed that could have an impact on the use of the spectrum. These other technologies might be so different or unique as to not fall into our current notions for capabilities that impact spectrum use. We request information on such innovative technologies. What are their specific functions? What radio services will they support? What is the status of the development of the technology? Is the technology limited to particular portions of the spectrum? If so, what portions of the spectrum would be affected?

C. Spectrum Sharing Issues

73. As noted above, the existing practice of allocating separate portions of the spectrum to different radio services and to different classes of users has become increasingly complex and spectrum has become congested in some areas and frequency bands while remaining almost empty in others. Both the FCC and NTIA are introducting flexibility in the spectrum management process by assigning frequencies to stations operating in bands not normally allocated for that class of user, thereby increasing the amount of sharing of spectrum resources. Federal law enforcement agencies, for example, are permitted to operate radios in bands normally limited to state and local policy during emergencies.[90] Similarly, state and local police forces are permitted to operate radios in federal bands when necessary to communicate with their federal counterparts.[91] Sharing of trunked land mobile systems is being implemented at several military bases where base administrative and emergency functions share the base's system, which also provides services to the larger federal community in the area. Many military training and exercise

[90] NTIA Manual, *supra* note 28, §§ 7.3.4, 7.12, 8.3.3.

[91] 47 CFR 90.173(c) (1991).

activities in the United States use frequencies in bands allocated to private sector users, after careful coordination of frequencies and operating times with the FCC.[92] However, additional sharing by other radio services or classes of users may not be feasible within the strictures of the existing limited-access allocation bands.

74. The NTIA Spectrum Study calls for increased flexibility in spectrum management by restructuring the ways in which radio system operators are given greater flexibility to use the spectrum through a number of regulatory changes.[93] First, the study recommended that the FCC and NTIA remove artificial barriers between similar radio services wherever possible. In its broadest interpretation, all forms of land mobile radio, belonging to private sector or government (state, local or federal) users could operate in all regions of the spectrum allocated to that service. Second, the study calls for the FCC (whose technical regulations are generally more restrictive than NTIA's) to remove rigid technical standards regarding how services operate in a band. Under such conditions, users can change the type of technology used in each band without regulatory action. The FCC has employed this approach, with some success, in implementing new digital cellular radio services.[94] Third, the study recommends that NTIA and the FCC should explore using interference criteria and compatibility control procedures to permit sharing of the spectrum by dissimilar services.

75. The ITU is also exploring ways to enhance the use of the spectrum. It has chartered the VGE to consider ways to improve the ITU's role in spectrum management and, in particular, to simplify the ITU Radio Regulations. The ITU's International Radio Consultative Committee (CCIR) has established a Task Group to support the VGE by examining the technical and operational methods used for the allocations.[95]

76. There are already a number of users seeking access to the spectrum in order to provide services not currently available in the marketplace. Thus, the FCC, NTIA, and the ITU are attempting to increase sharing of the spectrum among radio services and classes of users so that the spectrum will be capable of supporting more users. If these sharing proposals are successful, a vastly different spectrum management process could result. It could feature large blocks of spectrum in which a number of different radio services and classes of users could operate. Such a system would replace the existing process of allocating bands to specific radio services and classes of users. Any number of ways of using computers, controllable transmitters with varying powers, bandwidths and frequencies, and receivers that are addressable over a wide range of frequencies are possible. This approach could include increased use of lower powered devices, similiar to Part 15 devices, that operate without licenses and theoretically without affecting other devices and systems.

77. If sharing between dissimilar classes of spectrum users is to increase, what kinds of standards or performance guidelines will promote this sharing and improve spectrum efficiency? What are the radio service requirements for worldwide spectrum allocations, and should they be exclusive in the United States? What are the specific national requirements for exclusive frequency bands? What radio services are required in these bands, and why must they be exclusive in the United States?

D. International Radio Conferences

78. Any study of U.S. spectrum requirements must also address international spectrum management issues. The ITU is the focal point for development of international radio regulations and spectrum allocations. The rapid development of radio-based technologies and the internalization of telecommunications development have dramatically increased the importance of the ITU decision-making processes. The changing international order, made evident at the WARC–92, has created new alliances and centers of cooperation resulting in many common proposals from groups of administrations that tend to vote together as a bloc on major issues, *e.g.*, the Conference of European Postal and Telecommunications Administrations (CEPT). The expansion of existing groups and the creation of others will significantly influence the ITU processes—WARCs, CCIR meetings, and others. Further, there has been a significant increase in interest by commercial entities in the ITU processes by many administrations in both developed and developing countries.

79. In recognition of these factors, and with the understanding that future WARCs will be held at two year intervals, a number of questions can be raised. What options does the United States have to strengthen ties and cooperation with these new, strong groups of administrations? How can the relationships between countries in ITU Region 2 be strengthened to achieve greater cooperation and common good? How can U.S. commercial interests which are sometimes competing with one another be addressed during the preparatory process in a manner that is fair and equitable to all concerned? We solicit views regarding how to reconcile competing spectrum requirements of the federal government and the private sector. We request information on how to best present U.S. proposals to ITU WARCs, given their international nature, in order to promote U.S. commercial and government interests? Regarding this, should the ITU schedule for submitting proposals eight months before a conference be rigidly adhered to in order to maximize the possibility of acceptance of the proposals? What are the pros and cons regarding early submission of proposals? Further, should the United States have a cut-off date after which no new proposals would be accepted for consideration in order to improve the preparatory process?

80. WARC–92 addressed many diverse issues over a four-week period. Resolution of divergent views on the "conference floor" was found to be extremely difficult, especially when protection of existing services or competitive concerns were involved. We solicit views on how the United States can better coordinate and narrow differences with other administrations prior to such conferences in order to minimize widespread controversy. Further, can the national spectrum planning activities broached by this Notice be used as a basis for a more strategic consideration of U.S. international interests and dialog with other administrations?

81. The topic of appointing the chairperson of the delegation as early as possible, at least one year in advance, has been raised in past reviews of the U.S. WARC preparatory process. During this would provide more continuity for preparations; but, each conference delegation usually has a different chairperson. It has also been suggested that the United States should consider

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[92] Sharing is also possible by users with widely differing status. The amateur service, on a secondary basis, has successfully shared radiolocation bands with high-priority military radars for many years.

[93] NTIA Spectrum Study, *supra* note 3, Chapter 3.

[94] *See* 47 CFR §§ 22.900–22.930 (1991); see also Libralization of Technology and Auxiliary Service Offerings in Domestic Cellular Radio Telecommunications Service, Report and Order, 3 FCC Rcd 7033 (1988); Memorandum Opinion and Order, 5 FCC Rcd 1138 (1990).

[95] International Radio Consultative Committee, Circular CE1/1598 (Nov. 13, 1990).

appointing a chairperson "at-large" who would serve for an interval that covers two or more conferences. In light of a more intense conference schedule, we solicit comments on the advantages and disadvantages of such an approach.

82. Finally, we solicit comments on the long-term effects of international radio conferences on meeting spectrum requirements, and the appropriate U.S. approach to gain international acceptance of U.S. proposals for future international conferences.

IV. Conclusion

83. NTIA hereby requests comments in this inquiry to be filed on or before October 1, 1992, and reply comments to be filed on or before December 1, 1992.

Dated: June 1, 1992.

Thomas J. Sugrue,

Acting Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 92-13848 Filed 6-11-92; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 8, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 8, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on June 15, 1992, you are directed to amend the November 22, 1991 directive to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not subject to a group	
436	14,568 dozen.
438	25,494 dozen.
444	193,074 numbers.
448	21,300 dozen.
649	780,931 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-13846 Filed 6-11-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 13, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Comments should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List:

Commodity Dustpan, Short Handle
7290-00-816-0109.
Nonprofit Agency: Royal Maid Association for the Blind, Inc., Hazlehurst, MS.
Services Commissary Shelf Stocking, Naval Air Station, Corpus Christi, TX.
Nonprofit Agency: Nueces County Mental Health/Mental Retardation Community Center, Corpus Christi, TX.
Commissary Shelf Stocking and Custodial, Fort McClellan, AL.
Nonprofit Agency: Alabama Goodwill Industries, Inc., Birmingham, AL.
Commissary Shelf Stocking and Custodial, Fort Rucker, AL.
Nonprofit Agency: Goodwill Industries of Central Alabama, Inc., Montgomery, AL.
Commissary Shelf Stocking and Custodial, Fort Irwin, CA.
Nonprofit Agency: Job Opportunities and Benefits, Hesperia, CA.
Commissary Shelf Stocking and Custodial, Naval Station, Treasure Island, CA.
Nonprofit Agency: Calidad Industries, Oakland, CA.
Commissary Shelf Stocking and Custodial, Naval Air Station, Jacksonville, FL.
Nonprofit Agency: Clay County Association for the Retarded, Inc., Green Cove Springs, FL.
Commissary Shelf Stocking and Custodial, Fort Campbell, KY.
Nonprofit Agency: Pennyroyal Regional Mental Health/Mental Retardation Board, Inc., Hopkinsville, KY.
Commissary Shelf Stocking and Custodial, Fort Devens, MA.
Nonprofit Agency: Worcester Area Association for Retarded Citizens, Inc. Worcester, MA.
Commissary Shelf Stocking and Custodial, Selfridge Air National Guard Base, Mount Clemens, MI.
Nonprofit Agency: Goodwill Industries of Greater Detroit, Detroit MI.
Commissary Shelf Stocking and Custodial, Naval Construction Battalion Center, Gulfport, MS.
Nonprofit Agency: Goodwill Industries of South Mississippi, Inc., Gulfport, MS.
Commissary Shelf Stocking and Custodial, Fort Hamilton, NY.
Nonprofit Agency: Federation Employment and Guidance Service, Brooklyn, NY.
Commissary Shelf Stocking and Custodial, Seneca Army Depot, Seneca, NY.
Nonprofit Agency: Seneca County Chapter, NYSARC, Waterloo, NY.
Commissary Shelf Stocking and Custodial, U.S. Marine Corps, Camp Lejeune, NC.
Nonprofit Agency: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC.
Commissary Shelf Stocking and Custodial, Fort Jackson, SC.
Nonprofit Agency: South Carolina Vocational Rehabilitation Department, West Columbia, SC.
Commissary Shelf Stocking and Custodial, Naval Air Station, Memphis, TN.
Nonprofit Agency: Memphis Goodwill Industries, Inc., Memphis, TN.
Commissary Shelf Stocking, Custodial and Warehousing, Beale Air Force Base, CA.
Nonprofit Agency: Pride Industries, Roseville, CA.
Commissary Shelf Stocking, Custodial and Warehousing, Hanscom Air Force Base, MA.
Nonprofit Agency: Work, Inc., Quincy, MA.
Commissary Shelf Stocking, Custodial and Warehousing, Keesler Air Force Base, MS.
Nonprofit Agency: Goodwill Industries of South Mississippi, Inc., Gulfport, MS.
Commissary Shelf Stocking, Custodial and Warehousing, Seymour-Johnson Air Force Base, NC.
Nonprofit Agency: Goodwill Industries of East Central North Carolina, Durham, NC.
Janitorial/Custodial, Naval Weapons Center, China Lake, CA.
Nonprofit Agency: Indian Wells Valley Association for Retarded Citizens, Ridgecrest, CA.
Janitorial/Custodial, Camp Pendleton, CA.
Nonprofit Agency: Mental Health Systems, Inc., San Diego, CA.
Janitorial/Custodial, DOD Housing Facility, Hamilton, CA.
Nonprofit Agency: North Bay Rehabilitation Services, Inc., San Rafael, CA.
Janitorial/Custodial, Naval Construction Battalion Center, Port Hueneme, CA.
Nonprofit Agency: ARC Ventura County, Camarillo, CA.
Janitorial/Custodial Naval Air Station Commissary Store, Cecil Field, FL.
Nonprofit Agency: Clay County Association for the Retarded, Inc., Geeen Cove Springs, FL.
Janitorial/Custodial, Naval Station Commissary Store, Mayport, FL.
Nonprofit Agency: Renaissance Center, Inc., Jacksonville, FL.
Janitorial/Custodial, Marine Corps Air Station, Kaneohe Bay, HI.
Nonprofit Agency: Lanakila Rehabilitation Center, Honolulu, HI.
Janitorial/Custodial, Naval Supply Activity, New Orleans, LA.
Nonprofit Agency: Goodwill Industries of Southeastern Louisiana, Inc., New Orleans, LA.
Janitorial/Custodial, Offutt Air Force Base, Nebraska (excluding Hospital, Commissary, Buildings 500 and 501 and all AAFES Facilities).
Nonprofit Agency: Goodwill Industries, Inc., Omaha, NE.
Janitorial/Custodial for the following locations: Hadnot Point, Camp Lejeune, NC, Terrawa Terrrace, Camp Lejeune, NC.
Nonprofit Agency: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC.
Janitorial/Custodial, Marine Corps Base, New River, NC.
Nonprofit Agency: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC.
Janitorial/Custodial, Naval Station Commissary Store, Charleston, SC.
Nonprofit Agency: Goodwill Industries of Lower South Carolina, Inc., Charleston, SC.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 92-13900 Filed 6-11-92; 8:45 am]
BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 13, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman; (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 14, April 17 and May 1, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 5420, 13715 and 18869) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the services at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government

under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial

Southeast Federal Center, Building at 49 L Street, SE, Washington, DC.

Microfilm Reproduction

Mare Island Naval Shipyard, Vallejo, CA.

Parts Machining (Conventional)

Naval Supply Center, Puget Sound, Bremerton, WA.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92–13901 Filed 6–11–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Language Institute Board of Visitors

AGENCY: Defense Language Institute Foreign Language Center.

ACTION: Notice of meeting.

SUMMARY: The Defense Language Institute Board of Visitors will hold a semi-annual open meeting at the Defense Language Institute Foreign Language Center, Presidio of Monterey, California.

DATES: September 29–30, 1992.

ADDRESSES: Those desiring to attend should contact LCDR Linell McCray, USN, Commandant, Defense Language Institute, attn: ATFL-DIC, Presidio of Monterey, California 93944–5006, for further details.

Dated: June 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13851 Filed 6–11–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Inspector General

Membership of the Performance Review Board

AGENCY: Office of the Inspector General, Department of Defense (OIG, DOD).

ACTION: Notice of membership to the Performance Review Board, OIG, DOD.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the OIG, DOD as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings, performance awards and recertification to the Inspector General.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Peterson, Chief, Employee Relations Division, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Information Management, OIG, DOD, 400 Army Navy Drive, Arlington, VA, (703) 693–0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the appointed members of the PRB for the OIG, DOD are identified in the enclosures. They will serve until further notice.

Dated: June 9, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Performance Review Board, Office of the Inspector General, Department of Defense

Derek J. Vander Schaaf, Deputy Inspector General, OIG, DOD
Nancy L. Hendricks, Director, Financial Management, Office of the Assistant Inspector General for Auditing, OIG, DOD
David A. Brinkman, Assistant Inspector General for Analysis and Followup, OIG, DOD
Katherine A. Brittin, Assistant Inspector General for Inspections, OAIG–INS, DOD
Donald E. Davis, Deputy Assistant Inspector General for Audit Policy and Oversight, OIG, DOD
Edward R. Jones, Deputy Assistant Inspector General for Auditing, OIG, DOD
Robert J. Lieberman, Assistant Inspector General for Auditing, OIG, DOD
Nicholas T. Lutsch, Assistant Inspector General for Administration and Information Management, OIG, DOD
Donald Mancuso, Assistant Inspector General for Investigations, OIG, DOD
William F. Thomas, Director, Readiness and Operational Support Directorate, Office of the Assistant Inspector General for Auditing, OIG, DOD
Donald E. Reed, Director, Acquisition Management Directorate, Office of the Assistant Inspector General for Auditing, OIG, DOD
William G. Dupree, Deputy Assistant Inspector General for Investigations, OIG, DOD
Stephen A. Whitlock, Director, Inspections Directorate, Office of the Assistant Inspector General for Inspections, OIG, DOD
C. Frank Broome, Deputy Assistant Inspector General for Administration and Information Management, OAIG, AIM
David K. Steensma, Director, Contract Management Directorate, OAIG, AUD
Michael B. Suessmann, Assistant Inspector General for Departmental Inquiries
Shelton R. Young, Director, Logistics and Support Office of Assistant Inspector General for Auditing, OIG, DoD
John F. Keenan, Director, Investigative Operations, Office of the Assistant Inspector General for Investigations, OIG, DoD
William F. Thomas, Director, Readiness and Operational Support Directorate, Office of the Assistant Inspector General for Auditing, OIG, DoD
Joel Leson, Director for Criminal Policy and Oversight, Office of the Assistant Inspector General for Investigations, OIG, DoD
Edward F. Hefferon, Deputy Inspector General, General Services Administration
John Connors, Deputy Inspector General, Department of Housing and Urban Development
Joseph Willever, Deputy Inspector General, Office of Personnel Management
Leon Snead, Inspector General, Department of Agriculture

[FR Doc. 92–13852 Filed 6–11–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.251]

Foreign Periodicals Program; Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: The Foreign Periodicals Program provides grants to eligible institutions to acquire and provide access to certain types of

periodicals published outside the United States.

Eligible Applicants: An institution of higher education, a public or nonprofit private library institution, or a consortium of these institutions that meets the requirements in 34 CFR 671.2 (a) and (b) is eligible to receive a grant.

Deadline for Transmittal of Applications: July 31, 1992.

Applications Available: June 16, 1992.

Available Funds: $500,000.

Estimated Range of Awards: $25,000 to $50,000.

Estimated Average Size of Awards: $33,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86, and (b) The regulations for this program in 34 CFR part 671, as published in this issue of the Federal Register.

For Applications or Information Contact: Joseph F. Belmonte, U.S. Department of Education, 400 Maryland Avenue, SW., room 3052, ROB-3, Washington, DC 20202-5331. Telephone (202) 708-7283. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300 between 8 a.m. and 7 p.m., Eastern time.)

Program Authority: 20 U.S.C. 1125a.

Dated: June 8, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-13871 Filed 6-11-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.128A]

Special Projects and Demonstrations for Providing Supported Employment Services to Individuals With Severe Handicaps—Community-Based Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide grants for community-based special projects and demonstrations to stimulate the development of innovative approaches for improving and expanding the provision of supported employment services to individuals with severe handicaps and to enhance local capacity to provide supported employment services.

The community-based projects support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing supported employment services for individuals with severe handicaps. National Education Goal five specifically calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Applications for community-based projects may be submitted by public and nonprofit rehabilitation facilities, designated States units, and other public and private agencies and organizations.

Deadline for Transmittal of Applications: September 1, 1992.

Deadline for Intergovernmental Review: November 2, 1992.

Application Available: June 29, 1992.

Available Funds: $1,500,000.

Estimated Range of Awards: $100,000-$130,000.

Estimated Average Size of Awards: $114,000.

Estimated Number of Awards: 13.

Note: The Department is not bound by any esitmates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR part 380.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Unserved and Underserved Populations: Projects that: (1) Provide supported employment services to unserved or underserved disability populations that include, but are not limited to, individuals with severe physical disabilities, individuals with sensory impairments with at least one other disabling condition, and individuals with traumatic brain injuries; (2) provide rehabilitation engineering and transportation services to those individuals for whom these services are appropriate; and (3) arrange for the provision of extended services for all individuals served by the project.

For Applications or Information Contact: Peter Ebel, U.S. Department of Education, 400 Maryland Avenue, SW., room 3217, Switzer Building, Washington, DC. 20202-2899. Telephone: (202) 732-4625 (until June 29) or (202) 205-9625 (after June 29). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 29 U.S.C. 777a(d).

Dated: June 8, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-13832 Filed 6-11-92; 8:45 am]

BILLING CODE 4000-01-M

Grants and Cooperative Agreements; Availability, Research and Demonstration Projects

AGENCY: Department of Education.

ACTION: National Institute on Disability and Rehabilitation Research notice of proposed funding priorities for fiscal years 1993-1994 for certain research and demonstration projects.

SUMMARY: The Secretary proposes funding priorities for Research and Demonstration (R&D) projects under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993-1994. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before July 13, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Betty Jo Berland, U.S. Department of Education, 400 Maryland Avenue, SW., room 3422, Switzer Building, Washington, DC 20202-2601.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland. Telephone: (202) 732-1139. Deaf and hearing-impaired individuals may call (202) 732-5316 for TDD services.

SUPPLEMENTARY INFORMATION: This notice contains two proposed priorities in the R&D program. These proposed priorities are for (1) a project on children with epilepsy, and (2) one or more model projects for burn rehabilitation. Authority for the R&D program of NIDRR is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760-762).

Under this program the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies

and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

The Secretary will announce the final funding priorities in a notice in the **Federal Register.** The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds and the quality of the application received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priority 1—Family, Psychosocial, and Transitional Issues of Children with Epilepsy

Background

According to the 1988 National Health Interview Survey, the incidence of epilepsy was 3.8 per thousand in the population (NCHS, 1989). The Epilepsy Foundation of America estimates that 2.5 million children and adults in America have epilepsy (New England Medical Center and Tufts University School of Medicine, 1991). Some 300,000 new cases of epileptic seizure occur annually in the United States, 40 percent of which affect individuals under age 18.

Epilepsy may also be accompanied by other disabilities. For example, epilepsy exists frequently in individuals with mental retardation, cerebral palsy, and autism (McLin, 1991). The consequences of epilepsy are varied and dependent upon, among other factors, the severity of the seizure disorder, the degree of control and the understanding that the individual has, and the support that the child or adult has in coping with the disorder (McLin, 1991).

Children with epilepsy appear to have a higher incidence of adaptation problems than children with other chronic physical conditions (Matthews, 1982; Marglit and Hermann, 1983; Rutter, Graham, and Yule, 1970; Hoare, 1984; Scott, 1979). Little is known, however, about those factors that influence child adaptation to epilepsy (Austin, 1991). The poor self-concept and behavioral problems often exhibited by children with epilepsy have been attributed to problems in the family as a whole, particularly to high family stress and lack of social supports (Austin, 1991).

Other issues affecting adaptation include social support, diagnosis resolution, seizure type and control, child characteristics and types of parent-child interactions (Pianta, 1991). The consensus of existing research is that a direct relationship does not exist between improving seizure control and improving psychosocial functioning (Parks-Trusz, 1991).

Priority

This proposed priority will support a Research and Demonstration project on childhood epilepsy to develop, demonstrate, evaluate, and disseminate findings about—

- An integrated approach to counseling parents, other family members, children with epilepsy, and teachers, administrators, and other students or peers about epilepsy;
- Techniques that might be used by parents, providers of services to children with epilepsy, and educators to foster a sense of independence and control among children with epilepsy; and
- Methods to involve the child with epilepsy and the parents and other members of that child's family in the clinical and rehabilitation planning and care of the child, especially with regard to the appropriateness and timing of interventions and outcomes of the clinical and rehabilitation programs.

Proposed Priority 2—Model System for Burn Injury Rehabilitation

Background

More than 60,000 people are hospitalized in the United States each year for the treatment of burn injuries. With medical advances in burn care, people are surviving severe burns that cover more than 70 percent of the body surface. Burn patients undergo multiple operations for skin grafting and repeated admissions to hospitals for reconstructive surgery, and they live with permanent scarring. Individuals who incur severe burns are often left with functional limitations in reach, grasp, and sensation. A severe burn is considered by many to be the most devasting injury a person can survive (Locke, Rossignol, Boyle, and Burke, 1986). Fire and burn injuries cost $3.8 billion annually (Cost of Injury in the United States, A Report to Congress, 1989).

Of the two million people in the United States burned each year, one-half will require medical attention or incur a burn severe enough to restrict daily activities in the home, school, or workplace. One-fourth of these injuries will require bed confinement. The recent report Healthy People 2000 notes that burns are complex to treat, carry higher risks, require longer hospitalization than other types of injuries, and cause more intense and more prolonged suffering than other traumas.

As defined by the American Burn Association Rehabilitation Committee, the rehabilitation of burn patients includes those therapeutic and social activities, both early and late, the primary goals of which are to restore, with safety and dignity, to fullest possible measure: (1) The individual's physical, psychological, cognitive, and social status, and (2) the role of the individual and the family in the home, school, work, social, and recreational environments.

Recent improvements in mortality rates are attributed to the expansion of specialized burn centers. Approximately one-third of all patients hospitalized for burns are treated yearly in these centers. However, a large number of patients do not remain at a burn center for outpatient treatment but receive care in local hospitals and private clinics (Helm, 1991). A survey of 114 burn centers conducted by the American Burn Association Rehabilitation Committee showed that: (1) One-third of centers with 1 to 80 admissions each year did not have outpatient programs; (2) one-fifth of centers with 81–120 admissions each year did not have outpatient programs; and (3) only 12 percent of burn centers with over 121 admissions did not have outpatient programs. Outpatient care is a critical issue in burn rehabilitation service delivery, as is the provision of long-term social and psychological supports in the community.

Research indicates that early comprehensive and coordinated acute rehabilitation care is likely to improve the outcomes for this population. NIDRR proposes a priority that would (1) demonstrate a comprehensive, multidisciplinary model system of rehabilitative services for individuals with severe burns; and (2) evaluate the efficacy of that system through the collection and analysis of uniform data on system benefits, costs, and outcomes.

The model system demonstration and the collection of uniform and standardized data must be conducted within the context of a comprehensive program of services that coordinates all aspects of care and rehabilitation. The model system must include emergency medical services; intensive and acute medical and surgical care; comprehensive rehabilitation management; psychosocial adjustment services; educational and vocational preparation; and community reintegration with extended follow-along services that promote independence and vocational success. Any projects to be funded under this priority must involve individuals with burn disabilities and their families in planning, implementing, evaluating, and disseminating project activities.

Priority

This proposed priority will support one or more Research and Demonstration projects for a model system for burn injury rehabilitation that will—

- Establish, demonstrate, and evaluate a multidisciplinary coordinated system of comprehensive rehabilitation that offers services to both children and adults with severe burns, from point of injury through intensive and acute medical surgical care, comprehensive medical rehabilitation, vocational rehabilitation, educational preparation, job placement, family and community participation, and long-term community followup;
- Conduct a scientific program of site-specific and collaborative research to generate new information for reducing disability and for treating and rehabilitating individuals with severe burns and related complications;
- Demonstrate and evaluate the development and use of burn injury treatment and rehabilitation methods, equipment, and assistive technology essential to the care, management, and vocational rehabilitation of an individual surviving severe burns;
- Demonstrate and evaluate approaches to independent living, vocational rehabilitation, and community reintegration for severely burned children and adults;
- Study the clinical course and physiological, family, psychosocial, educational, and vocational adjustment to burn impairments, with special attention to the developmental needs of children and adolescents; and
- Participate in clinical and systems analysis studies of the operations and effectiveness of the model system by contributing to a national database in burn injury treatment and rehabilitation to be prescribed by the Scretary.

INVITATION TO COMMENT: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3423, Mary Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

APPLICABLE PROGRAM REGULATIONS: 34 CFR parts 350 and 351.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Research and Demonstration Projects)

Dated: May 13, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–13872 Filed 6–11–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92–585–000, et al.]

Florida Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Power Corp.

[Docket No. ER92–585–000]

June 3, 1992.

Take notice that on May 29, 1992, Florida Power Corporation (Florida Power) filed a supplement to the service agreement between itself and Tampa Electric Company (TECO) under Florida Power's T–1 Transmission Tariff. The suppplement describes transmission service to be provided for TECO's service to the City of Wauschula beginning June 1, 1992. Florida Power requests that the supplement be allowed to become effective June 1, 1992.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Co.

[Docket No. ER92–24–000]

June 3, 1992.

Take notice that on June 1, 1992, the Northeast Utilities Service Company as agent for Connecticut Light and Power Company and Western Massachusetts Electric Company (NU) tendered for filing supplemental information regarding proposed rate schedules between NU and Public Service Company of New Hampshire (PSNH) and Boston Edison Company (BE).

NU states that the amendment was filed in response to a request by the Commission for additional information.

NU states that copies of this filing has been mailed to PSNH and BE.

NU requests that the Commission waive its standard notice period and filing notice regulations to the extent necessary to permit the rate schedule orignally filed to become effective May 1, 1990.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Co.

[Docket No. ER92–541–000]

June 3, 1992.

Take notice that Duke Power Company (Duke Power) tendered for filing on May 11, 1992, a supplement to the Company's Electric Power Contract with the City of Kings Mountain, N.C. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further indicates that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for decreased capacity as follows: Delivery Point No. 2 with a contracted demand of 6,500 KW.

Duke power indicates that this supplement also includes an estimate of sale and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of December 20, 1991.

According to Duke Power, copies of this filing were mailed to Kings Mountain, North Carolina.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Co. and Newport Electric Corp.

[Docket No. ER91-301-001]

June 3, 1992.

Take notice that on June 1, 1992, Montaup Electric Company (Montaup) and Newport Electric Corporation (Newport) filed a rate schedule revision and Montaup M-rate fuel clause revisions in compliance with the Commission's order approving the filing in this docket. The rate schedule revision makes explicit in the rate schedule the explanation provided to the FERC in a March 20, 1992 response to a deficiency letter that Montaup and Newport are each allocated (a) energy costs as if its net generation and purchases were dispatched on a stand-alone basis to meet its load and (b) one-half of the energy affiliation savings resulting from dispatching their combined resources to meet their combined loads. The revised Montaup M-rate fuel clause revisions incorporate by reference in current period fuel cost, "F(c)," the costs and savings allocated to Montaup under the revised Montaup/Newport rate schedule. Montaup and Newport request that the enclosed rate schedule and fuel clause revision be accepted for filing and permitted to become effective as of May 1, 1990 as provided in the Commission's order.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. The United Illuminating Co.

[Docket No. ER92-589-000]

June 3, 1992.

Take notice that on May 29, 1992, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Green Mountain Power Corporation (GMP). The rate schedule corresponds to a letter agreement, dated April 27, 1992 between UI and GMP. The commencement date for service under the agreement is May 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to GMP.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Co. of New Hampshire

[Docket No. ER92-590-000]

June 3, 1992.

Take notice that Public Service Company of New Hampshire (PSNH), on May 29, 1992, tendered for filing an Agreement For Sale of Capacity and Energy Between Public Service Company of New Hampshire and The Connecticut Light and Power Company and Western Massachusetts Electric Company, collectively known as the Northeast Utilities Service Companies (NU). The Agreement provides for the sale by PSNH to NU of capacity and energy from PSNH's entitlement in the Seabrook Unit #1 nuclear facility. PSNH asks that the Commission waive its notice period and filing requirements to allow the Agreement to become effective as of June 1, 1992.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corp.

[Docket No. ER92-594-000]

June 3, 1992.

Take notice that Central Vermont Public Service Corporation (Central Vermont) on June 1, 1992, tendered for filing thirteen Service Agreements which provide for service pursuant to Central Vermont's FERC Electric Tariff No. 5.

Central Vermont requests that the Commission waive its notice requirement in order to allow the Service Agreements to become effective in accordance with their individual terms. In support of its requests Central Vermont states that it has arranged for the sale of power to the Village of Orleans pursuant to the Tariff and is engaged in discussion with others for potential power sales.

Comment date: June 17, 1992, in accordance with Standard Paragraph E end of this notice.

8. Tampa Electric Co.

[Docket No. ER92-591-000]

June 3, 1992.

Take notice that on May 29, 1992, Tampa Electric Company (Tampa Electric) tendered for filing revised Exhibits A-1 and A-2 to the Full Requirements Service Agreement between Tampa Electric and the Sebring Utilities Commission (Sebring), showing revised delivery point specifications for service under the Agreement.

Tampa Electric proposes an effective date of March 25, 1992, for the Exhibits A-1 and A-2, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Sebring and the Florida Public Service Commission.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Co.

[Docket No. ER92-579-000]

June 3, 1992.

Take notice that on May 27, 1992, Arizona Public Service Company (Arizona) tendered for filing a Notice of Cancellation of the Off-Peak Power Sales Agreement between Arizona Power Pooling Association on behalf of Electrical District No. 2 and Arizona.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Power Co.

[Docket Nos. ER92-331-001 and ER92-332-001]

June 3, 1992.

Take notice that on May 27, 1992, Consumers Power Company (Consumers) tendered for filing amendments to its Open Access Transmission Tariff providing for various classifications of firm and non-firm transmission service which is available to eligible utilities, including PURPA Qualifying Facilities, independent power producers, and municipal and cooperative utilities. Consumers also tendered for filing amendments to its unexecuted Coordinated Agreement between Consumers and the Michigan Public Power Agency and Wolverine Power Supply Cooperative, Inc. These amendments conform the prior filings to the Commission's order dated April 30, 1992, and to commitments made by Consumers in prior pleadings in the above-referenced dockets. A copy of the filing was served on the Michigan Public Service Commission and parties to the above-referenced docket which have been consolidated for hearing and decision by the Commission's order dated April 30, 1992.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Co.

[Docket No. ER92-542-000]

June 3, 1992.

Take notice that Duke Power Company (Duke Power) on May 11, 1992, tendered for filing a supplement to the Company's Electric Power Contract with the City of Kings Mountain, NC. Duke Power states that this contract is on file with the Commission and has been

designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for a new delivery with capacity as follows: Delivery Point No. 3 with a contracted demand of 14,000 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of November 26, 1991.

According to Duke Power, copies of the filing were mailed to Kings Mountain, North Carolina.

Comment date: June 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corp.

[Docket No. ER92-588-000]

June 4, 1992.

Take notice that on May 29, 1992, Central Vermont Public Service Corporation tendered for filing the Actual 1991 Cost Report required under Article 2.3(A) on Original Sheet No. 21 of FERC Electric Tariff, Original Volume no. 4, of Central Vermont Publice Service Corporation ("Company") under which the Company provides Unreserved System Power Service to the following Customers:

Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Seminole Electric Cooperative, Inc v. Florida Power Corporation

[Docket No. EL92-30-000]

June 4, 1992.

Take notice that on May 21, 1992, Seminole Electric Cooperative, Inc. (Seminole) filed a complaint against Florida Power Corporation (FPC). In its complaint Seminole seeks an order from the Commission: (1) Finding that the rates currently charged by FPC for partial requirements and transmission services under FPC FERC Rate Schedule 106 are unjust and unreasonable, produce excessive revenues from Seminole, and should be reduced; (2) establishing a refund-effective date of November 1, 1992; (3) finding that certain of the terms and conditions of service of FPC's FERC Rate Schedule 106 are unjust and unreasonable; (4) setting this matter for hearing for the purposes of (i) determining and fixing just and reasonable rates for the services at issue, (ii) determining and fixing appropriate changes to the terms and conditions of service to Seminole; and (iii) determining the appropriate amount of, and ordering, refunds; (5) ordering consolidation of the consideration of the matters raised by this complaint with the ongoing proceedings in Docket No. ER92-436-000; and (6) affording Seminole such other relief as may be warranted.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Co.

[Docket No. ER92-596-000]

June 4, 1992.

Take notice that on June 1, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes to certain rates, terms, and conditions concerning certain services rendered by PG&E to the Department of Water Resources of the State of California (DWR) as reflected in: (1) A new Rate Settlement Agreement which amends Rate Schedule FERC No. 77; and (2) amendments modifying Rate Schedule FERC Nos. 92, 93, 94 and 100.

The filing seeks an overall decrease to the transmission rates and revision of the special facilities charges under the DWR Comprehensive Agreement, Rate Schedule FERC No. 77. The filing also seeks to change the rate basis in Rate Schedule FERC Nos. 92, 93, 94 and 100 from PG&E's system average ownership charge for transmission facilities to the California Public Utilities Commission's (CPUC) PG&E Electric Rule No. 2 Cost of Ownership Rate for transmission-level, customer-financed Special Facilities. In addition, this filing requests automatic rate adjustments for both the transmission rates and all of the special facilities charges.

Copies of this filing were served upon DWR and the CPUC.

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Central Vermont Public Service Corp.

[Docket No. ER92-587-000]

June 4, 1992.

Take notice that on May 29, 1992, Central Vermont Public Service Corporation (Central Vermont) tendered for filing its Actual 1991 Cost Report required under Article 2.4 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of Central Vermont under which Central Vermont provides transmission and distribution service to the following Customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Rochester Electric Light and Power Company

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. City of Vernon, California v. Pacific Gas and Electric Co.; Southern California Edison Co., and San Diego Gas and Electric Co.

[Docket No. EL92-32-000]

June 4, 1992.

Take notice that on May 28, 1992, the City of Vernon, California (Vernon) tendered for filing an application for an order prescribing terms and conditions for interconnection and coordinated operation of the California-Oregon Transmission Project with what Vernon describes as essential facilities of the Pacific Gas and Electric Company and the Pacific AC Intertie which Vernon states is owned and operated principally by the three named respondents.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Central Vermont Public Service Corp.

[Docket No. ER92-586-000]

June 4, 1992.

Take notice that on May 29, 1992, Central Vermont Public Service Corporation tendered for filing the Actual 1991 Cost Report required under Paragraph Q-1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 ("RS-2 rate schedule") under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc. (Customer). The Company states that the Cost Report reflects changes to the RS-2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88-456-000.

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13822 Filed 6-11-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2294-003, et al.]

Transwestern Pipline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Co.

[Docket No. CP90-2294-003]

June 3, 1992.

Take notice that on May 22, 1992, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-2294-003, pursuant to section 7 of the Natural Gas Act, to amend its certificate of public convenience and necessity to authorize construction and operation of approximately 4.3 miles of additional 6-inch pipeline facilities in Coconino County, Arizona, all as more fully set forth in the application which is on file with the Commission and is open to public inspection.

Transwestern requests that the Commission amend its previous Orders in this docket to authorize Transwestern to construct approximately 7.6 miles of 6-inch pipeline from Transwestern's mainline facilities in Coconino County, Arizona to an interconnect near Flagstaff, Coconino County, Arizona. Transwestern plans to construct these facilities in lieu of the 3.0 miles of 6-inch pipeline presently authorized by the Commission's Orders in Docket No. CP90-2294. Transwestern requests the Commission to grant expeditious authorization so these facilities can be completed and placed into service prior to the 1992-1993 winter heating season.

Comment date: June 24, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Tarpon Transmission Co.

[Docket No. CP92-522-000]

June 3, 1992.

Take notice that on May 28, 1992, Tarpon Transmission Company (Tarpon), Suite 1320, 300 Crescent Court, Dallas, Texas 75201, filed in Docket No. CP92-522-000 a petition pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, (18 CFR 385.207(a)(2)), for a declaratory order (1) finding that Tarpon's offshore facilities are gathering facilities exempt from Commission jurisdiction pursuant to Section 1(b) of the Natural Gas Act and (2) vacating the orders issuing and amending the certificates of public convenience and necessity in Docket Nos. CP77-315 and CP88-89-000, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Tarpon states that its pipeline system consists of a 40.4-mile long, 16-inch diameter pipeline and appurtenant facilities originating at a production platform located in Eugene Island Block 380-A on the Outer Continental Shelf, offshore Louisiana and extending in a generally northeasterly direction to its terminus at an interconnection with Trunkline Gas Company's (Trunkline) facilities in Block 274 of the Ship Shoal Area, South Addition. Tarpon further states that it receives gas from Block 380 and Block 174, South Marsh Island Area, South Addition and from Block 361 Eugene Island Area, South Addition, for delivery to Trunkline.

Tarpon explains that the sole purpose of its facilities, which are located in a producing area and operate without processing or compression, is to function as a gathering system to deliver gas from numerous wells in several offshore blocks to Trunkline.

Tarpon further explains that it sought certificate authourity only because at the time of its application, Commission procedent and policy indicated that certificate authority was necessary for the construction and operation of such facilities.

Tarpon asserts that its facilities meet the Commission's present modified primary function test for gathering facilities and therefore requests that the Commission find that the Tarpon pipeline system is a gathering system and therefore exempt from the Commission's Regulations pursuant to section 1(b) of the NGA. Tarpon further requests that its certificates in Docket Nos. CP77-315 and CP88-89-00 be rescinded.

Comment date: June 24, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line

[Docket No. CP92-516-000]

June 3, 1992.

Take notice that on May 28, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-516-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transporation service between Transco and CNG Transmission Corporation (CNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to abandon the transportation service provided under a transportation service agreement (agreement) between Transco and CNG dated April 12, 1978, under Transco's Rate Schedule X-56, to be effective the first day of the first calendar month following Commission approval. Transco states that Transco transports, pursuant to the agreement, up to the dekatherm (dt) equivalent of 71,548 Mcf of natural gas per day, on a firm basis, and up to an additional 100,000 dt of natural gas per day on an interruptible basis delivered by CNG at various points on Transco's system to a primary delivery point of interconnection between Transco and CNG in Clinton County, Pennsylvania. Since the agreement contains no notice requirement upon expiration of the term on October 31, 1992, Transco and CNG have agreed to the termination of the agreement, it is indicated.

However, Transco states that CNG has agreed to the abandonment of Rate Schedule X-56 on the condition that Transco provide CNG replacement firm and interruptible transportation service pursuant to Transco's blanket certificate authorization under Rate Schedules FT and IT. The replacement transportation service would provide for the same firm and interruptible volumes and would be available from the receipt points currently provided for under Rate Schedule X-56, as well as from other mutually agreeable receipt points in accordance with Transco's Rate Schedules FT and IT, to CNG's existing delivery points and other mutually agreeable points, it is stated. Transco, also, requests that the Commission confirm that pregranted abandonment should not apply to the replacement service agreement for the long term FT service to be provided to CNG.

In order to provide CNG replacement service under Rate Schedule FT,

Transco requests waiver of section 8.1 of Transco's Rate Scheduler FT which requires Transco to treat all requests for service received during a period of 21 days after Transco announces availability of firm capacity (21-day window) as if those requests were received on the same day. Transco states that waiver of the 21-day window would allow firm transportation service to continue for CNG under Transco's Rate Schedule FT through capacity which has been reserved for CNG under Rate Schedule X–56. In addition, Transco requests waiver of the applicable provisions of the General Terms and Conditions in its FERC Gas Tariff to the extent necessary to allow replacement interruptible transportation service under Rate Schedule IT for CNG to maintain the same queue priority as that which exists under Rate Schedule X–56. The replacement interruptible transportation service under Rate Schedule IT would not be a new service but rather a conversion of regulatory authorizations, it is stated.

No facilities are proposed to be abandoned herein.

Comment date: June 24, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. Southwest Royalties, Inc.

[Docket No. CS92–8–000]

June 3, 1992.

Take notice that on May 27, 1992, Southwest Royalties, Inc., (Southwest) of P.O. Box 11390, Midland Texas 79702, filed an application requesting a small producer certificate of public convenience and necessity. Southwest requests authorization to make sale for resale of natural gas in interstate commerce, as set forth in the application which is on file with the Commission and open to public inspection.

Comment date: June 19, 1992, in accordance with Standard Paragraph J at the end of this notice.

5. GEMCO Gas Marketing Inc. and Allegheny Energy Marketing Co.

[Docket Nos. CI92–53–000, CI92–54–000]

June 4, 1992.

Take notice that on May 19, 1992, GEMCO Gas Marketing Inc. (GEMCO) and Allegheny Energy Marketing Company (Allegheny) of 109 Northpark Boulevard, P.O. Box 3134, Covington, Louisiana 70434–3134, filed applications under sections 4 and 7 of the Natural Gas Act (NGA) for unlimited-term blanket certificates with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas subject to the Commission's NGA jurisdiction, imported natural gas, and gas purchased from non-first sellers such as interstate pipelines, intrastate pipelines and local distribution companies. GEMCO's and Allegheny's applications are on file with the Commission and open for public inspection.

Comment date: June 24, 1992, in accordance with Standard Paragraph J at the end of this notice.

6. Gateway Pipeline Co.

[Docket No. CP89–471–006]

June 4, 1992.

Take notice that on May 26, 1992, Gateway Pipeline Company (Gateway) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with an effective date of April 24, 1992.

Substitute First Revised Sheet No. 4
Substitute Original Sheet No. 11
Substitute Original Sheet No. 13
Substitute Original Sheet No. 16
Substitute Original Sheet No. 30
Substitute Original Sheet No. 31
Substitute Original Sheet No. 32
Substitute Original Sheet No. 36
Substitute Original Sheet No. 37
Substitute Original Sheet No. 38
Substitute Original Sheet No. 54

Gateway states that in its April 23, 1992 order the Commission tolled Gateway's request for a reduction of the load factor for usage rates from 95 percent of capacity to 90 percent of capacity. Thereinafter the Commission recalculated Gateway's FT and IT maximum usage rates based upon 95 percent load factor of capacity, which produced an usage rate of $.0285. The Commission calculated the usage rate with the amended facility costs and SFV rate design filed in CP89–471–005 and approved by the April 23, 1992 order. Gateway states that the usage rate is reflected on Substitute First Revised Sheet No. 4.

Gateway also states that the Commission directed Gateway to revise section 9(c) of Rate Schedule FTS to provide for an overrun penalty, rather than for the retention of gas in overrun situations with an interruption order. Gateway states that it has removed the retention provision and added an overrun penalty of $2.00 per Mcf for tenders in excess of 110% of quantities specified in an interruption order, consistent with Section 9(d) of Rate Schedule ITS. Gateway states that the change is reflected on Substituted Original Sheet No. 16.

Gateway states that it is serving the filling on all parties on the service list in the above reference docket.

Comment date: June 11, 1992, in accordance with the first subparagraph of Standard Paragraph J at the end of this notice.

7. Southern Natural Gas Co.

[Docket No. CP92–523–000]

June 4, 1992.

Take notice that on May 29, 1992, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–7114, filed in Docket No. CP92–523–000 as request pursuant to §§ 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act to abandon a meter station, rebuild a meter station and provide higher contract pressure, and consolidate sales contract demands at various delivery pints for Atlanta Gas Light Company (AGL) in Georgia, under the Southern's blanket certificate authority in Docket No. CP82–406–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that at the request of AGL, Southern proposes to abandon the Harlem Meter Station serving AGL and to consolidate the sales contract demand specified for said station with deliveries to AGL under the Augusta Area delivery point. It is also stated that such consolidation does not require the construction of any new facilities. Southern also requests authorization to rebuild the East Point Meter Station serving AGL because it is obsolete. Southern also states that in conjunction with rebuilding the station Southern requests authorization to move the regulators and to delivery AGL mainline contract pressure between 200 psig and 385 psig. Finally, Southern states that AGL has requested that Southern revise Exhibit A to their sales service agreement to include the Hampton Meter Station with AGL's Atlanta Area delivery point and to include the Jeffersonville Meter Station in the Macon Area delivery point. These latter changes require no additional facilities, it is stated. It is further stated that these proposed activities would cause no change in AGL's total sales contract demand and could be accomplished without detriment or disadvantage to Southern's other customers.

Comment date: July 20, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. Northwest Pipeline Corp. and The Washington Water Power Co.

[Docket No. CP92–247–001]

June 4, 1992

Take notice that on May 26, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake

City, Utah 84158, and the Washington Water Power Company (Water Power), East 1411 Mission Avenue, Spokane, Washington 99202, jointly filed in Docket No. CP92–247–001, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, an amendment to Northwest's application pending in Docket No. CP92–247–000 in order to incorporate, in conjunction with the service changes sought by Northwest in the original application herein, a request for any additional certificate modifications necessary to sanction the temporary, partial releases to BC Gas, Inc. (BC Gas) of Water Power's best-efforts storage entitlements in the Jackson Prairie storage field; all as more fully set forth in the amendment which is on file with the Commission and available for public inspection.

It is said that, in order to effectuate Water Power's best-efforts storage release to BC Gas, Northwest filed an application in Docket No. CP92–247–000 pursuant to section 7(b) and 7(c) for approvals to: (1) Implement temporary partial abandonments of up to 19,000 Dth per day of best-efforts storage service for Water Power at the Jackson Prairie storage field under Northwest's Rate Schedule SGS–1, consistent with an agreed upon release of such storage capacity between Water Power and BC Gas, and (2) amend the certificated Rate Schedule X–82 transportation service which Northwest currently provides for Water Power, for the account of BC Gas, in order to provide additional flexibility and interruptible capacity for the transportation of BC Gas storage volumes to and from Jackson Prairie.

In addition to the authorizations specifically requested in Northwest's original application herein, Northwest and Water Power hereby request an amendment of Water Power's existing certificate authorization for storage capacity releases to BC Gas under its April 21, 1989, Release Agreement to the extent necessary to authorize the temporary additional releases to BC Gas on a day-by-day basis of up to 19,000 Dth per day of Water Power's rights to Jackson Prairie storage deliverability on a best-efforts basis, pursuant to the November 30, 1990, amendment to the Release Agreement.

It is said that the day-by-day release of any best efforts capacity requested by BC Gas will be subject to approval by both Water Power and Washington Natural Gas Company, the Jackson Prairie Project Operator.

Comment date: June 25, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion belives that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §385.211, .214). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13821 Filed 6–11–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–26–NG]

Energy International Marketing Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas and Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ENERGY International Marketing Corporation blanket authorization to import from any foreign country and to export to any foreign country a combined total of up to 200 Bcf of natural gas, including liquefied natural gas, over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issue in Washington, DC, June 5, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Program, Office of Fossil Energy.

[FR Doc. 92–13909 Filed 6–11–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92-25-NG]

UNIGAS Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada, Mexico and Other Foreign Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Unigas Corporation blanket authorization to import and export up to 200 Bcf of natural gas from and to Canada, Mexico and other foreign countries over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m, Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 5, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-13910 Filed 6-11-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4142-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 25, 1992 Through May 29, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-AFS-L65164-ID Rating EC2, Mex Mountain Area Timber Harvest, Implementation, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID.

Summary: EPA expressed environmental concerns regarding potential project impacts to water quality in a Designated Stream Segment of Concern; the potential for adverse air quality impacts in a Class I airshed; and the potential for impacts to a federally-listed endangered species (gray wolf).

ERP No. D-AFS-L65165-WA Rating EC2, Breezin Timber Sales Management Plan, Implementation, Olympic National Forest, Quilcene Ranger District, Clallam and Jefferson Counties, WA.

Summary: EPA expressed environmental concerns based on the potential for adverse water quality and air quality effects. Additional information is needed to describe the effectiveness of mitigation measures, clarify water quality and wetland effects, update information on the threatened Northern Spotted Owl, present a broader analysis of cumulative effects, and evaluate noise effects from helicopter logging.

ERP No. D-COE-K36106-CA Rating E02, Folsom Dam and Reservoir Reoperation Plan and Flood Control for portions of the Sacramento Metropolitan Area, Implementation, Sacramento County, CA.

Summary: EPA expressed environmental objections with the proposed action and identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment: water temperature increases and reduced flows that may significantly reduce future population sizes of the fall-run Chnook salmon, the permanent loss of marsh and riparian habitats, and increased salinities in the lower Sacramento River basin. The DEIS did not provide sufficient information on other feasible alternatives, potential impacts to the Federal candidate or sensitive species and potential cumulative impacts.

ERP No. D-FAA-L51014-WA Rating EC2, Seattle-Tacoma International Airport Improvement, South Aviation Support Area, Airport Layout Plan, Airport Master Plan, Funding, Section 10 and 404 Permits and NPDES Permit, Port of Seattle, King County, WA.

Summary: EPA expressed environmental concerns about the potential effects to land and aquatic resources. Additional information is needed on alternatives to prevent wetland losses, mitigation plans and noise impacts.

ERP No. DS-UMT-K54019-HI Rating L01, Honolulu Rapid Transit System Improvements, Additional Information, Waiaua through downtown Honolulu to Waikiki and the University of Hawaii, Funding, Coast Guard Bridge, EPA and Possible COE Permits, Honolulu County, HI.

Summary: EPA expressed a lack of objections with the action proposed, although it did request additional clarification in the FEIS on surface and ground water issues, underground storage tanks and Clean Air Act conformity.

Final EISs

ERP No. F-AFS-K65137-CA Cottonwood and Golf Timber Sales, Implementation, Timber Harvesting in the Breckenridge Compartment, Sequoia National Forest, Greenhorn Ranger District, Kern County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the agency.

EIS No. F-UAF-K11049-CA Mather Air Force Base Disposal and Reuse, Implementation, Sacramento County, CA.

Summary: EPA expressed objections because the FEIS does not contain the level of detail necessary to ensure that reuse decisions will provide for appropriate protection of air quality, groundwater quality and wetlands. The Air Force was encouraged to reexamine the full range of EPA's earlier concerns and provide more specific responses in the Record of Decision (ROD). Supplemental environmental documentation (if additional specifics cannot be provided in the ROD) and environmental protection stipulations attached to the property conveyance were also recommended.

Dated: June 9, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

FR Doc. 92-13910 Filed 6-11-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4142-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Availability of Environmental Impact Statements Filed June 1, 1992 Through June 05, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920204, Final EIS, AFS, ID, Far East Salvage Project, Rehabilitation and Recovery of Insect Damaged Resource Timber Management Plan, Implementation, Upper South Fork Payette River, Boise National Forest, Lowman Ranger District, Boise County, ID, Due: July 13, 1992, Contact: Dautis Pearson (208) 259-3361.

EIS No. 920205, Draft EIS, FHW, NJ, NJ-21 Freeway Extension Project, Construction and Modification, Monroe

Street in Passaic to Route 46/Lexington Avenue Intersection, Funding, and section 10 and 404 Permits, Cities of Passaic and Clifton, Passaic County, NJ. Due: July 27, 1992, Contact: Andras Fekete (609) 530–2824.

EIS No. 920206, Draft EIS, BOP, PA, Philadelphia, Pennsylvania Metropolitan Detention Center Construction and Operation, Site Selection near the existing Byrne Federal Courthouse, City of Philadelphia, PA, Due: July 28, 1992, Contact: Patricia Sledge (202) 514–6470.

EIS No: 920207, Final EIS, COE, PA, Curwensville Lake Water Storage Reallocation, Implementation, Susquehanna River Basin, Susquehanna River, Clearfield County, PA, Due: July 13, 1992, Contact: Claire D. O'Neill (301) 962–4958.

EIS No. 920208, Draft EIS, COE, CA, Los Angeles and Long Beach Harbors Navigation Improvements and Landfill Development Project, Construction and Approval of Master Plan Amendment, San Pedro Bay, Los Angeles County, CA, Due: July 27, 1992, Contact: Frank Piccola (213) 894–0244.

EIS No. 920209, Draft EIS, AFS, WY, Shoshone National Forest Oil and Gas Exploration and Development, Leasing, Fremont, Hot Springs Park, Sublette and Teton Counties, WY, Due: September 09, 1992, Contact: Robert Rossman (307) 527–6241.

EIS No. 920210, Draft EIS, FHW, PA, Park Road Corridor Project, West Shore Bypass/US 422/222 and Warren Street Bypass Connection to the Outer Bypass/PA–3055, Funding and section 404 Permit, Berks County, PA, Due: September 01, 1992, Contact: Daniel Johnson (717) 782–2276.

EIS No. 920211, Final EIS, COE, TX, Fort Polk Louisiana Realignment of the 5th Infantry Division (Mechanized) to Fort Hood Texas, Implementation, Bell, Coryell, McClennan, West Bell and Lampasas Counties, TX, Due: July 13, 1992, Contact: Arver Ferguson (817) 334–3246.

EIS No. 920212, Draft EIS, UAF, MO, B–2 Advanced Technology Bomber, A/OA–10 Thunderbolt and T–38 Talon Jet Trainer Aircrafts Basing at Whiteman Air Force Base, Implementation, Johnson County, MO, Due: July 27, 1992, Contact: Eric Wilbur (816) 687–6347.

EIS No. 920213, Draft EIS, AFS, CO, Trout Mountain Analysis Area Timber Harvest, Road Construction and Aspen Management Plan Projects, Implementation, Trout and Decker Creeks, Del Norte Ranger District, Rio Grande National Forest, Rio Grande and Mineral Counties, CO, Due: July 27, 1992, Contact: James B. Webb (719) 852–5941.

Dated: June 9, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–13811 Filed 6–11–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL 4143–6]

Public Water System Supervision Program Revision for the State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of Section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of Montana has revised its approved Public Water System Supervision (PWSS) Primacy Program. Montana has developed drinking water regulations for filtration, disinfection, turbidity, *Giaradia Lamblia*, viruses, Legionella and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, *Giardia Lamblia*, viruses, Legionella and heterotrophic bacteria promulgated by EPA on June 29, 1989 (FR Vol. 54, No. 124, pg. 25690). EPA has determined that this State program revision is no less stringent than the corresponding federal regulation and has approved this State program revision. This determination shall become effective July 13, 1992 and was based on a thorough evaluation of Montana's PWSS program which has met the requirements stated in 40 CFR 142.10.

Montana's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability. Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before July 13, 1992. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Jack W. McGraw, Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, CO 80202–2466.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following (1) the name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, and signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Montana. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Montana. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on July 13, 1992.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspecton at the following locations: U.S. EPA Region VIII Regional Library, 999 18th Street, Denver, Colorado 80202–2466, between the hours of 10 a.m. and 4 p.m. (M.D.T.), Mon-Fri. and the MT Department of Health and Environmental Sciences, Drinking Water/Subdivision Section, Cogswell Building, Helena, Montana 59620 between the hours of 8 a.m. and 5 p.m. (M.D.T.), Mon-Fri.

FOR FURTHER INFORMATION CONTACT: Robert Clement, EPA Region VIII, Public Water Supply Program Section (8WM–DW) at the Denver address given above, telephone (303) 293–1417.

Dated: May 29, 1992.

Jack W. McGraw,

Acting Regional Administrator, EPA, Region VIII.

[FR Doc. 92-13864 Filed 6-11-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4143-5]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; Burgess Brothers Superfund Site, Woodford and Bennington, VT

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Burgess Brothers, Inc., Eveready Battery Company and Clyde Burgess, Jr. for costs incurred by EPA in conducting response actions at the Burgess Brothers Superfund Site in Woodford and Bennington, Vermont as of April 16, 1991.

DATES: Comments must be provided on or before July 13, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of Burgess Brothers Superfund Site, Bennington, VT, U.S. EPA Docket No. I-91-1101.

FOR FURTHER INFORMATION CONTACT: Rona Gregory, U.S. Environmental Protection Agency, Office of Regional Counsel, RCU, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 565-3051 .

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Burgess Brothers Superfund Site in Woodford and Bennington, VT. The settlement was approved by EPA Region I on June 2, 1992 subject to review by the public pursuant to this Notice. Burgess Brothers, Inc., Eveready Battery Company and Clyde Burgess, Jr., the Settling Parties, have executed signature pages committing them to participate in the settlement. Under the proposed settlement, the Settling Parties are required to pay $72,797.51 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on May 13, 1992.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Rona Gregory, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCU, Boston, Massachusetts 02203, (617) 565-3051.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts (U.S. EPA Docket No. I-91-1101).

Dated: June 2, 1992.

Julie Belaga,

Regional Administrator.

[FR Doc. 92-13866 Filed 6-11-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-59308A; FRL 4070-9]

Certain chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-92-10. The test marketing conditions are described below.

EFFECTIVE DATE: June 4, 1992.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-613, 401 M St. SW., Washington, D.C. 20460, (202) 260-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-92-10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-92-10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-92-10

Date of Receipt: May 4, 1992.

Notice of Receipt: May 19, 1992 (57 FR 21244).

Applicant: Confidential.
Chemical: (G) Fatty acid esters of trimethylolpropane.
Use: (G) Metal working fluid.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: Confidential.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

Dated: June 4, 1992.

John W. Melone,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-13863 Filed 6-11-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235, NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0166.
Title: Part 42—Preservation of Records of Communication Common Carriers.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 68 recordkeepers; 2 hours average burden per recordkeeper; 136 hours total annual burden.
Needs and Uses: Part 42 of the Commission's rules prescribes guidelines to ensure that carriers maintain the necessary records needed by the FCC for its regulatory obligations. Section 42.4 requires carriers to maintain at its operating company headquarters a master index of records which identifies the records retained, the related retention period, and the locations where the records are maintained. Carriers must explain, by adding a certified statement to the index, the premature loss or destruction of records pursuant to section 42.4. Records maintained in a machine readable medium must be accompanied by a statement indicating the type of data included in the record and certifying that the information contained in it has been accurately duplicated pursuant to section 42.5(b). Section 42.6 requires the retention of telephone toll records for 18 months providing the following billing information about telephone toll calls: The name, address, and telephone number of the caller, telephone number called, date, time and length of the call. Pursuant to section 42.7 carriers are allowed to establish their own retention periods, except for in the case of telephone toll records and records relevant to complaint proceedings. Moreover, this Section specifies requirements for complaint proceedings, and proceedings or inquiries directed by the FCC. Documentation of premature destruction is necessary so the Commission can be aware of the frequency and consequence of such destruction. If carriers were allowed to destroy records at will, the Commission could lose its historical base of information thus making it impossible to properly regulate the industry. A specific retention period for telephone toll records is imposed to assist Department of Justice in law enforcement.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13915 Filed 6-11-92; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for renewal of license of Station WUCI-FM, Binghampton, New York, and for a New Noncommercial FM Station at Binghampton, New York:

Applicant, city and state	File No.	MM docket No.
A. UHURU Communications, Inc.; Binghampton, New York	BRED-910130WF	92-116
B. WSKG Public Telecommunications; Binghampton, New York	BPED-910501MB	
C. Arrowhead Christian Center; Binghampton, New York	BPED-910501MC	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each issue has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, published May 29, 1986. The letter shown before each applicant's name is used below to signify whether the issue applies to that particular applicant.

Issue Heading and Applicant

1. (See Appendix), A.
2. Site Availability, B.
3. Environmental Impact, A,B,C.
4. Comparative-Noncommercial Educational FM, A,B,C.
5. Ultimate, A,B,C.

3. If there is any non standardized issue in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC, 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M

Street, NW., Washington, DC, 20037 (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Non standardized issue

1. To determine whether A (Uhuru) has violated 47 CFR 73.1740 and/or 73.1750 and, in light of the evidence adduced, whether Uhuru is qualified to be and remain a licensee of the Commission.

[FR Doc. 92–13807 Filed 6–11–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

The San Francisco Port Commission et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–002813–009.

Title: San Francisco Port Commission/Metropolitan California Stevedore Company Nonexclusive Management Agreement.

Parties:

The San Francisco Port Commission ("Port")

Metropolitan California Stevedore Company ("MCSC")

Synopsis: The Agreement provides for: (1) MCSC to be responsible for billing demurrage and wharf storage, and for the port to pay MCSC a fee for the service; (2) the Port to be responsible for dredging, wharf maintenance, crane maintenance and building structural maintenance; (3) the Port to furnish a portable generator to service the increased volume of containers; and (4) all other terms and conditions in the Agreement to remain the same.

Agreement No.: 206.011276–002.

Title: United States/Southern and East Africa Interconference Agreement.

Parties:

United States/Southern African Conference

United States/East Africa Conference

Synopsis: The proposed amendment modifies the Agreement to allow the parties to discuss and agree upon joint service contracts, time/volulme rates, and time/revenue rates. It also makes other technical changes.

Dated: June 8, 1992.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13815 Filed 6–11–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Cascade Bancor I, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 6, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Cascade Bancor I, Inc., Cascade, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Cascade Bancorporation, Inc., Altoona, Iowa, and thereby indirectly acquire State Bank of Cascade, Cascade, Wisconsin.

2. Jones Bancorp, Inc., Marcellus, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of G.W. Jones Exchange Bank, Marcellus, Michigan.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Healthcare Bancorp, Inc., Fayetteville, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Century National Bank of Oklahoma, Pryor, Oklahoma.

Board of Governors of the Federal Reserve System, June 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13839 Filed 6–11–92; 8:45 am]

BILLING CODE 6210–01–F

John Horace Day, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 2, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. John Horace Day and *Susan Beasley Day*, both of Orlando, Florida; to retain 9.02 percent and to acquire an additional 6.90 percent, for a total of 29.99 percent, of the voting shares of Orange Banking Corporation, Orlando, Florida, and thereby indirectly acquire Orange Bank, Orlando, Florida.

Board of Governors of the Federal Reserve System, June 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13840 Filed 6–11–92; 8:45 am]

BILLING CODE 6210–01–F

Old Kent Financial Corporation; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 6, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to invest as a limited partner in Grand Rapids Hope Limited Partnership, Grand Rapids, Michigan, and thereby provide transitional housing for low- and moderate-income women with children, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

2. Old Kent Financial Corporation, Grand Rapids, Michigan; to invest as a limited partner in Mount Mercy Limited Partnership, Grand Rapids, Michigan, and thereby provide housing for low- and moderate-income elderly persons, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13841 Filed 6-11-92; 8:45 am]

BILLING CODE 6210-01-F

Texas Independent Bancshares, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Texas Independent Bancshares, Inc., Texas City, Texas; to engage *de novo* in providing to others data processing and data transmission services, facilities, data bases or access to such services, facilities, or data bases by technological means, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13838 Filed 6-11-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of roundtable meeting.

SUMMARY: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will sponsor a roundtable discussion on Tuesday, June 30, 1992, from 9 a.m. to noon in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The purpose of the discussion is to provide Board members with the opportunity of listening to state officials' viewpoints on user needs with respect to federal accounting and financial reporting. Recognizing that many state officials have been active supporters of improvements to federal financial management, including the passage of the Chief Financial Officers Act of 1990, the Board believes it is important to have a forum for an exchange of ideas with state officials as to what are appropriate objectives of accounting and financial reporting for the federal government. Any interested person may attend the discussion as an observer.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St., NW., room 302, Washington, DC 20001, or call (202) 504-3336.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: June 8, 1992.

Jimmie Brown,

Deputy Director.

[FR Doc. 92-13806 Filed 6-11-92; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of June 1992:

Name: Grants Information and Tracking System with Contracts Component (GIAnT II): Programming and Implementation Advisory Subcommittee.

Dates and Times: June 12, 1992, 2 p.m.

Place: Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR) regarding the scientific and technical merit of a contract proposal submitted in response to a specific Request for Proposal. The purpose of this contract is to provide for the software development, programming, implementation and installation of a computerized grant and contract information tracking system.

Agenda: The session of this Subcommittee will be devoted entirely to the technical review and evaluation of a contract proposal submitted in response to a specific Request for Proposal. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposal that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a) (6), and procurement regulations, 48 CFR 315.804(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Management Systems and Services Branch, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852, (301) 227-8441.

Dated: June 8, 1992.

Linda K. Demlo,

Acting Administrator, AHCPR.

[FR Doc. 92-13845 Filed 6-11-92; 8:45 am]

BILLING CODE 4160-90-M

Centers for Disease Control

[Program Announcement Number 271]

Study of Human Health Consequences of Poly-Brominated Biphenyls (PBB) Contamination in Michigan; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control, the Nation's prevention agency, announces the availability of funds in Fiscal Year 1992 to continue a cooperative agreement with the Michigan Department of Public Health to study the human health consequences of exposure to poly-brominated biphenyls (PBB) on farms in Michigan, with particular emphasis on cancer incidence.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Eligible Applicant

Assistance will be provided only to the Michigan Department of Public Health (MDPH) for this project. No other applications will be solicited.

The MDPH is the most appropriate and qualified agency to provide the services specified under this cooperative agreement because:

1. The MDPH has provided technical and management oversight and has collected data for the study of the PBB exposed cohort (4000 participants) in Michigan since 1976.

2. Funds available for this fiscal year are to be used to resurvey (recharacterize) the same cohort continuously studied for the past 15 years and to develop improved data retrieval procedures for the database. The MDPH is in a unique position to continue the collection of this information given the well established infrastructure already in place from this project.

3. The Michigan PBB project is currently moving from primarily field collection of data to scientific analysis and study of the collected data. To facilitate and effect the best transition, the MDPH is the only source which is able to meet the objectives of this long-term project in the desired time-frame.

Availability of Funds

Approximately $370,000 will be available in Fiscal Year 1992 to support this project. It is expected the award will begin on July 1, 1992 and will be made for a 12-month budget period with a project period of 1 year.

Purpose

The purpose of this award is to provide funds to accelerate the data collection necessary for the recharacterization of the cohort that is currently underway. This will allow:

1. Examination of the cause-specific mortality of the Michigan PBB cohort.

2. Examination of the site-specific cancer incidence of the PBB cohort.

3. Identification of risk factors for site-specific cancer outcomes among the PBB cohort.

4. Examination of agricultural chemical exposures and exposures unique to the Michigan PBB population.

5. Comparison of total birth defects to national rates.

6. Comparison of reproductive outcomes of the PBB cohort to a control population.

7. Continuation of updating and maintenance of the PBB registry at a decreased level, but sufficient to allow research questions to be addressed using the database. Consideration will be given to establishing a surveillance system to collect cancer incidence information on the PBB cohort using methods similar to the Surveillance, Epidemiology, and End Results (SEER)[®] program.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Complete the recharacterization of the PBB cohort by applying a questionnaire compatible with that used at enrollment. This accelerated recharacterization will require the contractual employment of additional field staff.

2. Identify and medically confirm reported deaths and cancers as well as hospitalizations, surgeries and diagnoses concerning benign and malignant tumors.

3. Continue to identify pregnancies and enroll newborns into the cohort.

4. Develop working file packages, index of data files and manual for collaborative research use of the data. This will require the contractual employment of statistical technician services.

5. Maintain and update the registry of 4000 participants using proven means to prevent losses to the cohort and identify and account for such losses if they occur.

6. Continue computer entry of collected field and laboratory data and assembly of working files for longitudinal characterization.

7. Encourage and participate in the development of research proposals utilizing the PBB cohort and its data base.

B. CDC Activities

1. Provide technical and scientific consultation and assistance for the developmental and implementation aspects of the PBB cohort recharacterization and improvement of the data retrieval and analysis procedures.

2. Provide epidemiology and surveillance training/education materials and on-site assistance on data collection, computer entry, and analysis objectives and procedures.

3. Provide guidance on program management and administrative matters related to the conduct of scientific aspects of the cooperative agreement.

4. Collaborate in the definition and preparation of reports that will result from the cooperative agreement supported activities.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Understanding of the problem—35%

The applicant's understanding of the requirements, objectives, research intent, problems, complexities, and interactions required for the conduct of a successful program.

2. Technical Approach—35%

The adequacy of the description and plan to carry out the overall environmental surveillance data collection and research program as specified in the program announcement, including: (a) The specific field data collection activities and schedule of tasks and expected results; (b) the identification of the administrative, computer/data processing services necessary to conduct the program; and (c) the contractual and collaborative arrangements and laboratory services to be obtained to ensure the completion of program as specified.

3. Program Personnel—30%

The extent to which the proposal has described: (a) The qualifications and commitment of the applicant professional and support staff; and (b) the allocation of time and effort of key program staff to agreed upon program activities.

4. Budget Justification and Adequacy of Facilities—(unscored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR 46) regarding the protection of human subjects. Assurance must be provided that demonstrates that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing such assurance in accordance with appropriate guidelines and form provided in the application kit.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 93.283.

Application Submission and Deadline

The Michigan Department of Public Health must submit an original and two copies of the application PHS Form 5161–1 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta Georgia 30305, on or before June 14, 1992.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 271 and contact Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mail Stop E–14, Atlanta, Georgia, 30305, (404) 842–6630. Programmatic technical assistance may be obtained from Lawrence E. Posey, Health Studies Branch, Division of Environmental Health, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488–4682.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: June 8, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–13834 Filed 6–11–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92E–0144]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ismo®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ismo® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joel P. Sparks, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so

long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ismo®. Ismo® (isosorbide mononitrate) is indicated for the prevention and control of stable angina pectoris. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Ismo® (U.S. Patent No. 4,431,629) from Boerhinger Mannheim, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 29, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Ismo® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Ismo® is 2,878 days. Of this time, 1,157 days occurred during the testing phase of the regulatory review period, while 1,721 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* February 12, 1984. The applicant claims February 7, 1984, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was February 12, 1984, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: April 14, 1987. FDA has verified the applicant's claim that the new drug application (NDA) for Ismo® (NDA 19-091) was submitted on April 14, 1987.

3. *The date the application was approved*: December 30, 1991. FDA has verified the applicant's claim that NDA 19-091 was approved on December 30, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 11, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before December 9, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 5, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92-13844 Filed 6-11-92; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS. The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The HCFA has requested expedited review by OMB. In keeping with the requirements for expedited reviews, we are including a copy of the forms and instructions. Comments may be sent to OMB at the address below for seven (7) days after the date of this notice.

Type of Request: Revision; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Application Forms; *Form Numbers:* HCFA-114 and 116; *Use:* The CLIA of 1988 require the Department of Health and Human Services (HHS) to establish certification requirements for any laboratory that performs tests on human specimens and to certify through the issuance of a certificate that those laboratories meet the established requirements. These forms, which replace Forms HCFA-109 and 3063, will be completed by entities performing laboratory testing on human specimens for health purposes and will initiate the certification process. *Frequency:* Biennially; *Respondents:* State/local governments, businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 100,000; *Average Hours per Response:* 5.5; *Total Estimated Burden Hours:* 550,000. *Additional Information or Comments:* Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building Room 3208, Washington, DC 20503.

Date: June 2, 1992.

William Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

Supporting Statement for the CLIA Application Forms, HCFA–114 and HCFA–116

A. Background

The Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578, was enacted on October 31, 1988. CLIA established a new section 353 of the Public Health Service Act to replace the existing section 353. The new section 353 requires the Department of Health and Human Services (HHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by HHS. Also, the legislation contains certificate requirements and specifies circumstances that permit certificates of waiver to be issued. The law also includes requirements for approval of accreditation bodies and State licensure bodies, sanctions, judicial review, fees and disclosure of information to the public.

Section 6141 of the Omnibus Budget Reconciliation Act of 1989 (OBRA'89), Public Law 101–239, requires that laboratories participating in the Medicare program comply with CLIA requirements. Subject to specified exceptions, laboratories must have a current unrevoked and unsuspended certificate to be eligible for reimbursement in the Medicare or Medicaid programs or both.

Final CLIA regulations (with comment) were published in the **Federal Register** on February 28, 1992. While actual compliance surveys of laboratories will not begin until September of 1992, the process of issuing certificates will begin in the next few months. Entities that completed a HCFA 109, "Information to Implement CLIA'88," (this questionnaire was initially mailed in November 1991 in order to develop a data base of entities subject to CLIA) will be mailed a coupon for CLIA fee remittance. If the laboratory only conducts tests that are on the waived list it will be issued a certificate of waiver upon payment of the fee of $100. If the laboratory conducts any tests that are not waived, it must obtain a registration certificate. Upon payment of the appropriate fee (which is dependent on testing specialties and annual testing volume) these laboratories will be issued a registration certificate. Certificates are valid for up to 2 years.

Laboratories issued a certificate of waiver will not be subject to biennial surveys to determine compliance with CLIA requirements. Laboratories issued a registration certificate must obtain a regular certificate or certificate of accreditation (once accrediation programs are approved). These certificates will be issued based on a survey to determine compliance. Such surveys will be conducted by HCFA (or its agents) or the approved accreditation program. Costs for the surveys conducted by HCFA must be paid prior to the survey and are based on a specific fee schedule related to the number of testing specialties and volume of testing conducted.

The attached application forms will be mailed to laboratories issued registration certificates and to entities requesting to be regulated by HCFA who did not complete a HCFA–109. Information obtained on the application is needed to determine the applicable fee schedule, to assign appropriate user fees and to update information essential to the survey process. These application forms will also replace and consolidate the HCFA–109 as well as other HCFA forms that are used in the current survey process (e.g., HCFA–3083, Laboratory Personnel Qualification Appraisal).

HCFA is requesting the Office of Management and Budget (OMB) review and approval of the HCFA–114 and HCFA–116 application forms that laboratories will be required to complete in order to obtain CLIA certificates.

B. Justification

1. Need and Legal Basis

Legislative authority for this activity is found in section 353 of the Public Health Service Act. Section 353(b) specifies that the laboratory must submit an application in such form and manner as the Secretary shall prescribe that describes the characteristics of the laboratory and examinations and other procedures performed by the laboratory including—

—The number and types of laboratory and examinations and other procedures performed;
—The methodologies for the laboratory examinations and other procedures employed;
—The qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures; and
—Such other information as the Secretary may require to determine compliance with this section.

The application will consist of three separate forms (HCFA–116, "General Laboratory Information;" HCFA 114, "Personnel Information," copies attached; and the HCFA–115, "Testing Information," which will be developed (and separately submitted for OMB approval) once initial test categorization is completed by the Centers for Disease Control (CDC). We are planning in conjunction with CDC and the Food and Drug Administration, to develop a standard coding system for the tests. The format to collect this information will be developed once the initial categorization of tests/methodologies is completed by the CDC.

The approach of using separate forms to collect application information was used in the application process under CLIA'67 and worked well. It will enable us to revise or update information on one form without having to re-clear and reprint all three. The forms have been designed to address the statutory and regulatory requirements of the application process.

Information requested on these forms is essential for administering the CLIA program, including responding to inquiries regarding certification status and information regarding the size and scope of laboratory operations across the country and conducting the Congressionally mandated studies. Obtaining certain informatioin (i.e., locations of multiple sites, hours of operation and personnel qualifications) on the application forms wil also allow for the use of fewer resources and a more efficient method of preparing, scheduling and conducting surveys to assess compliance.

Following is a detailed justification for informtion requested on each form:

HCFA–116 Clinical laboratory information. This form captures basic identifying information of the laboratory and its operation. If the laboratory has completed a HCFA–109 and paid the applicable user fee, we intend to have certain information (laboratory name, address, etc.) pre-printed on the form or a pre-printed re-usable label, if the cost to do this is not prohibitive.

The information collected on this form will enable us to determine the appropriate certificate and compliance fees based on volume and scope of testing, schedule and conduct surveys in a timely and cost efficient manner and provide an easily accessible database of clinical laboratory identification data.

HCFA–114 Laboratory personnel report. Completion of this form will be

dependent on the level of testing performed. The statue requires that all laboratories, even those performing only waived tests, provide information concerning the qualifications (educational background, training and experience) of individuals involved in laboratory testing.

Since the qualifications for personnel are related to the complexity of the testing performed in the laboratory, the form has been designed to accommodate complexity of testing. For all personnel areas, with the exception of laboratory director, information collected on this form will be limited in the *numbers* of individual functioning in the various laboratory positions (for example, technical supervisor, clinical consultant, etc.). The laboratory must list the name of the laboratory director and may voluntarily provide the Social Security number. The informtion gathered for personnel also reflects levels of education, training and experience. The classifications correlate with the regulatory requirements and are structured so that the applicant can complete the form without having to continuously refer to the regulations.

This format for collecting personnel information will eliminate the massive paper flow that currently exists. In the existing certification process the laboratory submits resumes, and/or the existing personnel qualification form (HCFA–3083) for *each* individual functioning in the laboratory. The HCFA–3083 will no longer be used in the CLIA survey process.

The HCFA–3083 was estimated to take .33 hour to complete for each individual. This form was completed only once by laboratory personnel, unless the individual wished to qualify for a different or higher position. In that case, the individual only completed the portion for the HCFA–3083 related to the new position. Failure to furnish the requested information could result in the facility not being certified or recertified for Medicare participation. Since interstate and interregional movement of laboratory personnel was common, the State Survey Agencies could exchange HCFA–3083 information so that personnel need not refile a HCFA–3083 when they moved to new areas. This information was not maintained in a computer database.

If we assume that this information is available on all personnel for the currently regulated laboratories and only newly regulated entities must complete this form for individuals in the laboratory it still is an overwhelming burden. Using the time estimate for completion of the current HCFA–3083, the low assumption for physician office laboratories (POLs) from the Regulatory Impact Analysis and, assuming that 2 individuals in each POL are involved in laboratory testing, the additional burden would be as follows:

110,000 POLs × 2 individuals × .33 hrs. = 72,600 hrs for completion of HCFA3083

The format we propose would eliminate the HCFA–3083, minimize the information collection burden, and eliminate the excessive paper flow, while fulfilling the requirements of the law and inspector needs. This format will also facilitate availability of data for program evaluation purposes (i.e., conducting surveys, responding to Congressional and professional inquiries, etc.). It will also provide statistical information necessary for conducting the CLIA studies mandated by Congress on the correlation between personnel and accuracy and reliability of results of testing performed by the laboratory. The information from this application is vital to responding to such requests and required data needs. During the survey the surveyor will randomly select personnel files to verify the accuracy of the personnel information submitted. The information on the application is also validate by the signature of the director.

2. Information Users

The information collected will be used by HCFA to identify entities performing laboratory testing and to issue the appropriate certificates so that the entities comply with CLIA and appropriate fees are paid in a timely manner.

This information will also be part of the database used by carriers, intermediaries and the Medicaid program to ensure appropriate Medicare/Medicaid payment.

3. Improved Information Technology

This information collection does not lend itself to electronic transmission.

4. Duplication

These application forms do not duplicate any information currently collected. They contain information required by the statute and regulations and are essential to efficient operation of the program.

5. Similar Information

These application forms are the only standardized mechanism available to record data on entities applying for CLIA certification. The HCFA–109 contains a few of the same data elements but was developed as a questionnaire prior to publication of the final regulation. This form does not reflect any requirements of the regulation, particularly as they relate to personnel and multiple sites of laboratories. The HCFA–109 will no longer be used once these application forms are approved and printed. In addition, existing forms used by laboratories for obtaining Medicare/interstate approval (HCFA–3083) will also become obsolete.

6. Small Business

These application forms will have an impact on small businesses that operate as laboratories which are regulated under CLIA. These forms have been designed to collect only the information necessary to meet and implement the CLIA statute and regulations. We have attempted to minimize the burden as much as possible.

7. Less Frequent Collection

These forms will be completed by all entities subject to CLIA. Those entities that completed a HCFA–109 and only do waived tests will not be requested to complete these forms until it is time to renew their certificates. Laboratories performing non-waived tests will be required to complete these forms, as well as any entity that did not complete a HCFA–109 prior to approval of these certification forms.

8. General Collection Guidelines

This information collection complies with all general guidelines in 5 CFR 1320.6.

9. Outside Consultation

We did not seek outside consultation on these forms since the information is necessary to meet the statutory and regulatory requirements of CLIA. We have attempted to design the forms to minimize the burden on the entity while at the same time obtaining information that is essential to the certification process.

10. Condfidentiality

We do not pledge confidentiality.

11. Sensitive Questions

There are no questions of sensitive nature associated with these forms.

12. Cost Estimates

Cost estimates are based on printing 210,000 sets of forms, with 200,000 being used as the basis for estimating costs and burden. While we realize the Regulatory Impact Analysis estimations ranged from a low of 180,000 laboratories subject CLIA to a high of 250,000, we have made this prudent

estimation based on the following factors:

—We do not know the number of entities that may decide to cease testing;
—We do not know how many laboratories will qualify for one certificate for multiple locations;
—We do not know the number of laboratories who have completed a HCFA–109 and require only a certificate of waiver;
—This number should meet the immediate need based on the response to the HCFA–109 mailing and allow for a supply to be sent to all regional offices and State agencies for distribution to laboratories who did not complete a HCFA–109; and
—We may need to modify the form prior to the expiration of OMB approval based on our early experience during the initial implementation of CLIA.

If we find that we have underestimated the universe we will modify the burden statement and reprint the forms.

Federal. Congress provided the Secretary with the authority to establish a user fee system in order that the entire cost of administering the CLIA program be borne by the laboratories, thus making the CLIA program self-supporting.

The following costs are associated with this information collection. These funds will be advanced from the administrative budget and will be reimbursed once fees are collected. As explained above, we are basing our costs on a printing of 210,000 sets of forms. Laboratoreis performing only waived tests will not initially need to complete this information if they completed a HCFA–109 and are in our data base. Utilizing the intermediate projections in the regulatory Impact Analysis of HSQ–176–FC, we estimated that approximately 10,000 laoratories will meet the waived criteria, with 200,000 that will need to initially complete these application forms.

(HCFA 114–7 pages: HCFA 116–4 pages)

Printing	$ 50,000
Mailing	130,000
Date Entry	750,000
Total Federal Cost	*$930,000

*Since the CLIA certificate is valid for 2 years, actual annual cost is one-half this amount ($465,000).

Respondent. The cost to each respondent for completion of the application forms has been calculated at the standard rate of $10 per hour. As previously indicated, laboratories performing only waived tests will not need to complete this information if they completed a HCFA–109 and are in our data base. Utilizing the intermediate projections in the Regulatory Impact Analysis of HSQ–176–FC, we estimate that approximately 10,000 laboratories will meet the waived criteria, thus 200,000 will need to initally complete these application forms.

Based on the estimates in item 13 we have calculated the respondent cost estimates as follows:

HCFA–114 4.25 hour/laboratory × 200,000 = $8,500,000
HCFA–116 1.25 hour/laboratory × 200,000 = 2,500,000
Total Respondent Cost $11,000,000*

*Since the CLIA certificate is valid for 2 years, actual annual cost is one-half this amount ($5,500,000).

13. Estimate of Burden

These forms contain information necessary to implement and maintain the CLIA program. The application forms are completed by entities which provide laboratory services as defined under CLIA.

The information contained on the HCFA–114 is information concerning the education, training, and experience of the laboratory director and personnel of the laboratory. This is based on the regulatory requirements. We anticipate it will take between 30 minutes to 8 hours to complete depending on the size of the laboratory.

The information contained on the HCFA–116 is basic information concerning the operation of the laboratory that is needed to assess the appropriate user fee and if applicable, conduct the survey. We anticipate it will take between thirty minutes to two hours to complete depending on the size of the laboratory.

Burden Computation:

HCFA–114–4.25 (average time) × 200,000 = 850,000 hours
HCFA–116–1.25 (average time) × 200,000 = 250,000 hours
Total Burden 1,100,000 hours*

*Since the CLIA certificate is valid for 2 years, actual annual burden is one-half this amount. (550,000 hours)

14. Changes in Burden

This is a new collection of information required by CLIA. Forms previously used by laboratories for Medicare or interstate approval will no longer be used. In addition, Form HCFA–109 which was used to obtain preliminary information from CLIA laboratories will no longer be used upon approval of these forms.

15. Publication and Tabulation Dates

Not applicable.

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-

LABORATORY PERSONNEL REPORT

CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988

Public reporting burden for this collection of information is estimated at average 30 minutes to 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to HCFA, Office of Financial Management, P.O. Box 26684, Baltimore, MD 21207; and to the Office of Management and Budget, Paperwork Reduction Project (OMB 0938-XXXX), Washington, D.C. 20503.

LABORATORY NAME	CLIA IDENTIFICATION NUMBER		
LABORATORY ADDRESS (NUMBER AND STREET)	CITY	STATE	ZIP CODE

PLEASE NOTE: The authority for the solicitation of the requested information is Section 353 of the Public Health Service Act (42 U.S.C. 263a). The principal purpose for collecting the names and Social Security numbers (SSN) of persons directing laboratory testing is to assure that requirements of CLIA are met. Your SSN is helpful for identification, but you are not required to indicate it if you do not desire to do so. HCFA will not be maintaining this information in a system of records.

WAIVED TESTING

Laboratories performing only waived tests do not have to meet CLIA personnel requirements, but must identify and submit to the Secretary information on individuals directing, supervising and performing laboratory testing as required by 353 (d)(2)(A)(i) of the PHSA.

If you perform ONLY waived tests, complete this page only. ***(If you perform waived and nonwaived tests or only nonwaived tests, do not complete this page.)***

DIRECTOR

Instructions for completion: List the name, SSN and the appropriate codes (listed below) for education and laboratory training/experience for the primary director *(i.e., individual responsible for overall performance of laboratory testing).*

CODE	EDUCATION(ED)
01	MD/DO
02	PhD
03	MS/MA
04	BS/BA
05	Other (specify) _____

CODE	TRAINING/EXPERIENCE (T/E)
01	0-1 yr
02	1-2 yrs
03	2-4 yrs
04	Over 4 yrs

DIRECTOR'S NAME	SSN	ED CODE	T/E CODE

LABORATORY TESTING PERSONNEL

Instructions: For each column under "Education" indicate the total number of individuals who perform laboratory testing and their corresponding years of laboratory experience by placing the appropriate number in the row (1-4) linking the education and training and experience of the personnel in the laboratory.

	EDUCATION						
LABORATORY TRAINING/EXPERIENCE	MD/DO	PHD	MS/MA	BS/BA	ASSOC. DEGREE	HS/GED	OTHER (specify)
1. 0-1 YR							
2. 1-2 YRS							
3. 2-4 YRS							
4. OVER 4 YRS							

ATTESTATION: I ATTEST THE ABOVE INFORMATION ACCURATELY REFLECTS THE OPERATION OF THIS LABORATORY.

SIGNATURE OF DIRECTOR (individual with overall responsibility for laboratory testing)	DATE

DIRECTOR QUALIFICATIONS - MODERATE AND HIGH COMPLEXITY TESTING

NOTE: A LABORATORY THAT PERFORMS BOTH MODERATE AND HIGH COMPLEXITY TESTING MUST HAVE A DIRECTOR WHO MEETS THE QUALIFICATIONS FOR HIGH COMPLEXITY TESTING.

Instructions: Listed below are the requirements that individuals serving as directors of laboratories performing moderate or high complexity testing must meet. Specific codes have been assigned to each possible way a director may meet the qualifications specified in the regulation. Please indicate the name, Social Security number and applicable code from the list below for the primary director of the laboratory. Select the highest applicable qualification code that relates to the highest level of testing performed in your laboratory. **Only one individual may be listed as director.** Note: The laboratory director must possess a current license as a laboratory director issued by the State in which the laboratory is located, if such licensing is required.

Example: An individual with a PhD in chemistry directs a laboratory performing only moderate testing. This individual has been serving as a director for 2 years. After completing the name and Social Security number, the appropriate qualification code to use would be M03.2.

DIRECTOR - MODERATE COMPLEXITY TESTING ONLY

Qualifications (Education, Training and Experience)	Qualification Code
M.D.,D.O. w/current medical license in State of laboratory's location and certified in anatomic and/or clinical pathology by ABP or AOBP or equivalent qualifications	M01
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and laboratory training/experience consisting of: •1 year directing or supervising nonwaived tests	M02.1
or	
•20 CME credit hours in laboratory practice commensurate with director responsibilities. (Effective 8/2/93)	M02.2
or	
•Equivalent laboratory training (20 CMEs) obtained during medical residency	M02.3
OR	
Doctorate in chemical, physical, biological or clinical laboratory science *and* certification by ABMM, ABCC, ABB, ABMLI	M03.1
OR	
Doctorate in chemical, physical, biological or clinical laboratory science and 1 year directing or supervising nonwaived testing	M03.2
OR	
Masters in clinical laboratory science, medical technology or chemical, physical, or biological science and 1 year laboratory training/experience and 1 year supervisory experience in a laboratory	M04
OR	
Bachelors in medical technology, or chemical, physical or biological science and 2 years laboratory training/experience and 2 years supervisory experience in a laboratory	M05
OR	
ON OR BEFORE 2/28/92 qualified or could have qualified as a director under the laboratory regulations published March 14, 1990 (55 FR 9538)	M06
OR	
ON OR BEFORE 2/28/92 qualified as a director by the State in which the laboratory is located	M07

DIRECTOR'S NAME	SSN	QUALIFICATION CODE

DIRECTOR - HIGH COMPLEXITY TESTING ONLY OR MODERATE AND HIGH

Qualifications (Education, Training and Experience)	Qualification Code
M.D.,D.O. w/current medical license in State of laboratory's location and certified in anatomic and/or clinical pathology by ABP or AOBP or equivalent qualifications	H01
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and 1 year laboratory training during medical residency	H02.1
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and 2 years experience in directing/supervising high complexity testing	H02.2
OR	
Doctorate in chemical, physical, biological or clinical laboratory science and certification by ABMM, ABCC, ABB, ABMLI, or other board deemed comparable by HHS	H03.1
OR	
UNTIL 9/1/94 Doctorate in physical, chemical biological or clinical laboratory science and 2 years laboratory training/experience and 2 years directing/supervising high complexity testing. On 9/1/94 must meet doctorate requirements listed above in H03.1	H03.2
OR	
ON OR BEFORE 2/28/92 serving as a laboratory director and must have previously qualified or could have qualified as a laboratory director under laboratory regulations published March 14, 1990 (55 FR 9538)	H04
OR	
ON OR BEFORE 2/28/92 qualified as director by the State in which the laboratory is located	H05

DIRECTOR'S NAME	SSN	QUALIFICATION CODE

CLINICAL CONSULTANT QUALIFICATIONS - MODERATE COMPLEXITY TESTING

Instructions: By the highest level of qualifications, indicate the total number of individuals performing in the laboratory as clinical consultants by placing the appropriate number in the box corresponding to the qualifications.

Qualifications (Education, Training and Experience)	Total No. of Individuals
M.D.,D.O. w/current medical license in State of laboratory's location and certified in anatomic and/or clinical pathology by ABP or AOBP or equivalent qualifications.	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and laboratory training/experience consisting of: •1 year directing or supervising nonwaived tests	
or	
•20 CME credit hours in laboratory practice commensurate with director responsibilities. (Effective 8/2/93)	
or	
•Equivalent laboratory training (20 CMEs) obtained during medical residency	
OR	
Doctorate in chemical, physical, biological or clinical laboratory science *and* certification by ABMM, ABCC, ABB, ASMLI	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location	

TECHNICAL CONSULTANT QUALIFICATIONS - MODERATE COMPLEXITY TESTING

Instructions: By the highest level of qualifications, indicate the total number of individuals performing in the laboratory as technical consultants by placing the appropriate number in the box corresponding to the qualifications. Note: Technical consultant(s) must possess a current license issued by the State in which the laboratory is located, if such licensing is required.

Qualifications (Education, Training and Experience)	Total No. of Individuals
M.D.,D.O. w/current medical license in State of laboratory's location and certified in anatomic and/or clinical pathology by ABP or AOBP or equivalent qualifications	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and 1 year laboratory training/experience in the designated specialty/subspecialty of responsibility	
OR	
Doctorate in chemical, physical, biological or clinical laboratory science or medical technology and 1 year laboratory training/experience in the designated specialty/subspecialty of responsibility	
OR	
Masters in clinical laboratory science, medical technology or chemical, physical or biological science and 1 year training/experience in the designated specialty/subspecialty of responsibility	
OR	
Bachelors in medical technology, or chemical, physical, or biological science and 2 years laboratory training/experience in the designated specialty/subspecialty of responsibility	

TESTING PERSONNEL QUALIFICATIONS - MODERATE COMPLEXITY TESTING

Instructions: By the highest level of education, indicate the total number of individuals performing laboratory testing and their years of laboratory training/experience by placing the appropriate number in the column linking laboratory training/experience to qualification. Note: Testing personnel must possess a current license issued by the State in which the laboratory is located, if such licensing is required.

Qualifications (Education)	Laboratory Training/Experience			
	0-1 YEAR	1-2 YEARS	2-4 YEARS	OVER 4 YEARS
M.D.,D.O. w/current medical license in State of laboratory's location				
OR				
Doctorate, laboratory science or chemical, physical or biological science				
OR				
Masters in medical technology, laboratory science or chemical, physical or biological science				
OR				
Bachelors in medical technology or chemical, physical or biological science				
OR				
Associate degree in chemical, physical or biological science or medical laboratory technology				
OR				
High School graduate or equivalent and successfully completed military training of 50 or more weeks and served as a medical laboratory specialist				
OR				
Academic high school diploma or equivalent and appropriate training/experience as specified in Part 493				

TECHNICAL SUPERVISOR QUALIFICATIONS - HIGH COMPLEXITY TESTING (EXCLUDING CYTOLOGY)

Instructions: For all areas of testing indicate by the highest level of education the total number of individuals functioning as technical supervisor(s) by placing the appropriate number in the box corresponding to the qualifications. Note: Technical supervisor(s) must possess a current license issued by the State in which the laboratory is located, if such licensing is required.

Qualifications (Education, Training and Experience)	Total No. of Individuals
FOR ALL SPECIALTY AREAS EXCEPT HISTOCOMPATIBILITY AND CLINICAL CYTOGENETICS	
M.D.,D.O. w/current medical license in State of laboratory's location and certified in anatomic and/or clinical pathology by ABP or AOBP or equivalent qualifications except for clinical cytogenetics and histocompatibility	
If the technical supervisor(s) does not meet the above qualifications, such individuals must meet one of the following qualifications for the applicable areas of testing:	
FOR MICROBIOLOGY WHICH INCLUDES THE SUBSPECIALTIES OF BACTERIOLOGY, MYCOLOGY, MYCOBACTERIOLOGY, PARASITOLOGY AND VIROLOGY	
M.D.,D.O. w/current medical license in State of laboratory's location and certified in clinical pathology by ABP or AOPB or equivalent qualifications	
M.D.,D.O. w/current medical license in State of laboratory's location and 1 year training/experience in high complexity testing in microbiology, with minimum 6 mos. in the respective subspecialty	
OR	
Doctorate in clinical laboratory science or chemical, physical or biological science and 1 year training/experience in high complexity testing in microbiology, with minimum 6 mos. in the respective subspecialty	
OR	
Masters in medical technology, clinical laboratory science, or chemical, physical or biological science and 2 years training/ experience in high complexity testing in microbiology, with minimum 6 mos. in the respective subspecialty.	
OR	
Bachelors in medical technology, or chemical, physical or biological science and 4 years training/experience in high complexity testing in microbiology, with minmum 6 mos. in the respective subspecialty	
FOR DIAGNOSTIC IMMUNOLOGY, CHEMISTRY, HEMATOLOGY AND RADIOBIOASSAY	
M.D.,D.O. w/current medical license in State of laboratory's location and certified in clinical pathology by ABP or AOBP or equivalent qualifications	
M.D.,D.O. w/current medical license in State of laboratory's location and 1 year training/experience in high complexity testing in the respective specialty	
OR	
Doctorate in clinical laboratory science, chemical, physical or biological science and 1 year training/experience in high complexity testing in the respective specialty	
OR	
Masters in medical technology, clinical laboratory science, or chemical, physical or biological science and 2 years training/ experience in high complexity testing in the respective specialty.	
OR	
Bachelors in medical technology, or chemical, physical, or biological science and 4 years training/experience in high complexity testing in the respective specialty	
FOR HISTOPATHOLOGY	
M.D.,D.O. w/current medical license in State of laboratory's location and certified in anatomic pathology by APB or AOBP or equivalent qualifications	
Resident in a program leading to ABP or AOBP certification in anatomic and clinical pathology or anatomic pathology who performs duties delegated by the technical supervisor for histopathology	

TECHNICAL SUPERVISOR QUALIFICATIONS (CONT. ON NEXT PAGE)

TECHNICAL SUPERVISOR QUALIFICATIONS - CONTINUED

Qualifications (Education, Training and Experience)	Total No. of Individuals
FOR ORAL PATHOLOGY AND TESTING IN DERMATOPATHOLOGY AND OPHTHALMIC PATHOLOGY	
M.D.,D.O. w/current medical license in State of laboratory's location	
and	
Certified in anatomic pathology by APB or AOBP or equivalent qualifications	
or	
Certified in the corresponding areas as follows: dermatology (ABD); dermatopathology (APD and ABP); ophthalmic pathology (ABO); oral pathology (ABOP) or possess equivalent qualifications required for such certification	
OR	
Resident in a program leading to certification in the respective areas listed above who performs duties delegated by the appropriate qualified technical supervisor for dermatopathology, ophthalmic pathology or oral pathology	
FOR IMMUNOHEMATOLOGY	
M.D.,D.O. w/current medical license in State of laboratory's location and certified in clinical pathology by ABP or AOPB or equivalent qualifications	
OR	
M.D.,D.O. w/current medical license in State laboratory's location and 1 year training/experience in high complexity testing in immunohematology	
FOR CLINICAL CYTOGENETICS	
M.D.,D.O. w/current medical license in State of laboratory's location and 4 years training/experience in genetics, including 2 years of training/experience in clinical cytogenetics	
OR	
Doctorate in clinical laboratory science or biological science and 4 years training/experience in genetics including 2 years of training/experience in clinical cytogenetics	
FOR HISTOCOMPATIBILITY	
M.D.,D.O. w/current medical license in State of laboratory's location and 4 years training/experience in histocompatibility	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and 2 years training/experience in general immunology and 2 years training/experience in histocompatibility	
OR	
Doctorate in clinical laboratory science or biological science and 4 years training/experience in histocompatibility	
OR	
Doctorate in clinical laboratory science or biological science and 2 years training/experience in general immunology and 2 years training/experience in histocompatibility	

CLINICAL CONSULTANT QUALIFICATIONS - HIGH COMPLEXITY TESTING

Instructions: By the highest level of qualifications, indicate the total number of individuals performing in the laboratory as clinical consultants by placing the appropriate number in the box corresponding to the qualifications.

Qualifications (Education, Training and Experience)	Total No. of Individuals
M.D.,D.O. w/current medical license in State of laboratory's location and certified in anatomic and/or clinical pathology by APB or AOBP or equivalent qualifications	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and 1 year laboratory training during medical residency	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and 2 years experience in directing/supervising high complexity testing	
OR	
Doctorate in chemical, physical, biological or clinical laboratory science and certification by ABMM, ABCC, ABB, ABMLI, or other board deemed comparable by HHS	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location	

GENERAL SUPERVISOR QUALIFICATIONS - HIGH COMPLEXITY TESTING (EXCLUDING CYTOLOGY)

Instructions: By the highest level of qualifications, indicate the total number of individuals performing in the laboratory as general supervisor(s) by placing the appropriate number in the box corresponding to the qualifications. Note: General supervisor(s) must possess a current license issued by the State in which the laboratory is located, if such licensing is required.

Qualifications (Education, Training and Experience)	Total No. of Individuals
Qualify as laboratory director of high complexity testing	
OR	
Qualify as technical supervisor of high complexity testing	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and 1 year training/experience in high complexity testing	
OR	
Doctorate in clinical laboratory science or chemical, physical or biological science and 1 year training/experience in high complexity testing	
OR	
Masters in clinical laboratory science, medical technology or chemical, physical or biological science and 1 year training/experience in high complexity testing	
OR	
Bachelors in medical technology, or chemical, physical or biological science and 1 year training/experience in high complexity testing	
OR	
Associate degree in laboratory science or medical laboratory technology and 2 years training/experience in high complexity testing	
OR	
ON OR BEFORE 2/28/92 qualified or could have qualified as a general supervisor under laboratory regulations published March 14, 1990 (55 FR 9538)	

EXCEPTIONS *(BLOOD GAS ANALYSIS, HISTOPATHOLOGY, DERMATOPATHOLOGY, OPHTHALMIC PATHOLOGY, & ORAL PATHOLOGY*

For blood gas analysis, qualify as general supervisor if:	
•Bachelors in respiratory therapy and 1 year training/experience in blood gas analysis	
•Associate degree related to pulmonary function and 2 years of training/experience in blood gas analysis	
For histopathology, oral pathology, dermatopathology, & ophthalmic pathology general supervisors must meet the following:	
•For histopathology, qualifies as a technical supervisor in histopathology	
•For dermatopathology, qualifies as a technical supervisor in dermatopathology	
•For ophthalmic pathology, qualifies as a technical supervisor in ophthalmic pathology	
•For oral pathology, qualifies as a technical supervisor in oral pathology	

TESTING PERSONNEL QUALIFICATIONS - HIGH COMPLEXITY TESTING (EXCLUDING CYTOLOGY)

Instructions: By the highest level of education, indicate the total number of individuals performing laboratory testing and their years of laboratory training/experience by placing the appropriate number in the column linking laboratory training/experience to qualification. Note: Testing personnel must possess a current license issued by the State in which the laboratory is located, if such licensing is required.

Qualifications (Education)	Laboratory Training/Experience			
	0-1 YEAR	1-2 YEARS	2-4 YEARS	OVER 4 YEARS
M.D.,D.O. w/current medical license in State of laboratory's location				
OR				
Doctorate in clinical laboratory science or chemical, physical or biological science				
OR				
Masters in medical technology, clinical laboratory science or chemical, physical or biological science				
OR				
Bachelors in medical technology, clinical laboratory science or chemical, physical or biological science				
OR				
Associate degree in laboratory science or medical laboratory technology				
OR				
ON OR BEFORE 2/28/92 qualified or could have qualified as a technologist under laboratory regulations published March 14, 1990 (55 FR 9538)				
OR				
UNTIL 9/1/97, academic high school degree or equivalent with appropriate training as specified in Part 493				

CYTOLOGY TESTING

Instructions: For all area of cytology indicate by the highest level of education the total number of individuals functioning as technical supervisor(s), general supervisor(s) and cytotechnologist(s) by placing the appropriate number in the box corresponding to the qualifications. Note: Individuals involved in cytology testing must possess a license issued by the State in which the laboratory is located for their respective position(s), if such licensing is required.

TECHNICAL SUPERVISOR Qualifications (Education, Training and Experience)	Total No. of Individuals
M.D.,D.O. w/current medical license in State of laboratory's location and certified in anatomic and clinical pathology by ABP or AOBP or equivalent qualifications	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and certified in anatomic pathology by ABP or AOBP or equivalent qualifications	
OR	
M.D.,D.O. w/current medical license in State of laboratory's location and certified in cytopathology by ASC	
OR	
Individual, in final year of training program leading to ABP or AOBP certification in anatomic and clinical pathology or anatomic pathology, who performs duties delegated by a qualified technical supervisor	
GENERAL SUPERVISOR	
Qualifies as a technical supervisor in cytology	
OR	
Cytotechnologist with 3 years of full-time experience (2080 hours per year) within the preceding 10 years	
CYTOTECHNOLOGIST	
Qualifies as a technical supervisor in cytology	
OR	
Graduated from a CAHEA-accredited school of cytotechnology	
OR	
Certified in cytotechnology by certifying agency approved by HHS	
OR	
BEFORE 9/1/92 •Completed 2 years in an accredited institution with at least 12 semester hours in science, 8 hours of which are in biology, *AND* •Completed 12 months of training in a school of cytotechnology accredited by an accrediting agency approved by HHS;	
or	
•Completed 2 years in an accredited institution with at least 12 semester hours in science, 8 hours of which are in biology, *AND* •Received 6 months of formal training in a school of cytotechnology accredited by an accrediting agency approved by HHS and 6 months of full-time experience in cytotechnology;	
OR	
Achieved a satisfactory grade to qualify as a cytotechnologist in a proficiency examination approved by HHS;	
OR	
BEFORE 9/1/92 •Have at least 2 years of full-time or equivalent experience within the preceding 5 years examining slide preparations under supervision and before January 1, 1969 must have– •graduated from high school •completed 6 months of training in a laboratory directed by pathologist or physician providing cytology services, and • completed 2 years of full-time supervised experience	
OR	
ON OR BEFORE 9/1/93 Have at least 2 years of full-time experience or equivalent examining cytology slide preparations within the preceding 5 years in the U.S. and on or before September 1, 1994 have either completed a CAHEA-accredited training program or become certified by an HHS-approved accrediting agency	

NOTE: Individuals involved in the examination of cytologic preparations will be required to submit additional information upon request.

I ATTEST THAT I HAVE VERIFIED THE QUALIFICATIONS OF ALL INDIVIDUALS INVOLVED IN ALL MODERATE AND/OR HIGH COMPLEXITY TESTING PERFORMED BY THIS LABORATORY AND THAT ALL PERSONNEL CONDUCT, CONSULT, SUPERVISE OR DIRECT ONLY TESTING FOR WHICH THEY ARE QUALIFIED. THE PERSONNEL INFORMATION REPRESENTS TO THE BEST OF MY KNOWLEDGE CURRENT INFORMATION ON LABORATORY PERSONNEL.

SIGNATURE OF DIRECTOR (meets director requirements and responsibilities) (sign in ink)	DATE

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO.

CLINICAL LABORATORY APPLICATION
CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988

Public reporting burden for this collection of information is estimated to vary between 30 minutes to 2 hours per response , including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send any comments including suggestions for reducing the burden to the Office of Financial Management, HCFA, P.O. Box 26684, Baltimore, MD 21207; and to the Office of Management and Budget, Paperwork Reduction Project (0938-xxxx), Washington, D.C. 20503.

I. GENERAL INFORMATION

Please check any preprinted information on this part of the form and make any necessary corrections. Complete the rest of the form according to the directions.

CLIA IDENTIFICATION NUMBER	FEDERAL TAX IDENTIFICATION NUMBER		
LABORATORY NAME	TELEPHONE NO. *(include area code)*		
LABORATORY ADDRESS *(number, street)*	CITY	STATE	ZIP
MAILING ADDRESS *(if different from above)*	CITY	STATE	ZIP

NAME OF DIRECTOR *(please print or type)*

last *first* *MI*

Indicate changes below as needed.

LABORATORY NAME	TELEPHONE NO. *(include area code)*		
LABORATORY ADDRESS *(number, street)*	CITY	STATE	ZIP
MAILING ADDRESS *(if different from above)*	CITY	STATE	ZIP

NAME OF DIRECTOR *(please print or type)*

last *first* *MI*

II. APPLICATION IS FOR: *(check one box)*

- ☐ Certificate
- ☐ **Certificate of Waiver
- ☐ Certificate of Accreditation
- ☐ Renewal of Certificate
- ☐ Renewal of Certificate of Waiver
- ☐ Renewal of Certificate of Accreditation

**IF YOU CONDUCT ONLY THE FOLLOWING WAIVED TESTS *(ONE OR MORE)*, YOU MAY APPLY FOR A CERTIFICATE OF WAIVER:

- Dipstick or tablet reagent urinalysis (nonautomated) for:
  - -bilirubin
  - -glucose
  - -hemoglobin
  - -ketone
  - -leukocytes
  - -nitrite
  - -protein
  - -pH
  - -specific gravity
  - -urobilinogen
- Fecal occult blood
- Ovulation test-visual color comparison tests for human luteinizing hormone
- Urine pregnancy test-visual color comparison tests
- Erythrocyte sedimentation rate (nonautomated)
- Hemoglobin-copper sulfate (nonautomated)
- Blood glucose, by glucose monitoring devices cleared by the FDA specifically for home use; and
- Spun microhematocrit

If applying for a certificate of waiver, complete all sections of this form except section VII.

III. TYPE OF LABORATORY *(check the one most descriptive of facility type)*

__ 01 Ambulatory Surgery Center
__ 02 Community Clinic
__ 03 Comp. Outpatient Rehab. Facility
__ 04 Ancillary Testing Site in Health Care Facility
__ 05 End Stage Renal Disease Dialysis Facility
__ 06 Health Fair
__ 07 Health Main. Organization
__ 08 Home Health Agency
__ 09 Hospice
__ 10 Hospital
__ 11 Independent
__ 12 Industrial
__ 13 Insurance
__ 14 Intermediate Care Fac. for Mentally Retarded
__ 15 Mobile Unit
__ 16 Pharmacy
__ 17 School/Student Health Service
__ 18 Skilled Nursing Facility/Nursing Facility
__ 19 Physician Office
__ 20 Other Practitioner *(specify)* _____
__ 21 Tissue Bank/Repositories
__ 22 Other *(specify)* _____

Was this laboratory previously regulated under the Federal Medicare/Medicaid and/or CLIA programs? (Regulations published March 14, 1990 at 55 FR 9538)..... ☐ Yes ☐ No

IV. HOURS OF ROUTINE OPERATION

List days and hours during which laboratory testing is performed

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
FROM: AM							
PM							
TO: AM							
PM							

V. MULTIPLE SITES

Are you applying for one certificate for multiple sites? ☐ No *If no,* go to next section.
☐ Yes *If yes,* total number of sites_____ and complete appropriate section below.

Identify which of the following exception requirements applies to your laboratory operation.

Is this a non-profit or Federal, State or local government laboratory engaged in limited *(e.g., few types of tests)* public health testing and filing for a single certificate for multiple sites? .....☐ Yes ☐ No
If yes, list name, address and testing performed for each site below.

Is this a hospital with several laboratories at the same street address and under common direction that is filing for a single certificate for these locations?.....☐ Yes ☐ No
If yes, list name, location within hospital and specialty/subspecialty areas for each site below.

If additional space is needed, check here ____ and attach the additional information using the same format.

NAME AND ADDRESS / LOCATION	TESTS PERFORMED / SPECIALTY / SUBSPECIALTY

FORM HCFA-116 (4-92)

VI. ACCREDITATION INFORMATION

Is your laboratory presently accredited by any private nonprofit organization ..... ☐ Yes ☐ No

If yes, check all that apply:

Accredited by:

- ☐ JCAHO
- ☐ AOA
- ☐ AABB
- ☐ AAB
- ☐ CAP
- ☐ COLA
- ☐ AACC
- ☐ ASCT
- ☐ ASHI
- ☐ GLaRGG
- ☐ ASM
- ☐ Other *(specify)* _____

VII. NONWAIVED TESTING

If you perform testing other than or in addition to waived tests, complete the information below. If applying for one certificate for multiple sites, include information for all sites.

Place a check (√) in the box preceding each specialty/subspecialty in which the laboratory performs testing. Enter the test volume for the previous calendar year for each specialty. If you are a new laboratory or have added new specialties/subspecialties, for test volume, enter your estimated annual test volume. Do not include testing not subject to CLIA, waived tests, or tests run for quality control, quality assurance or proficiency testing when estimating total volume. Also note that each profile (group of tests) is counted as the number of separate procedures or examinations (e.g., a chemistry profile consisting of 18 tests is counted as 18 separate procedures or tests) and that calculations are not included (e.g., T_s).

If applying for certificate of accreditation, indicate name of current accrediting body beside applicable specialty/subspecialty.

SPECIALTY / SUBSPECIALTY	ACCREDITED PROGRAM	ANNUAL TEST VOLUME
☐ **Histocompatibility**		
☐ Transplant		
☐ Non-transplant		
☐ **Microbiology**		
☐ Bacteriology		
☐ Mycobacteriology		
☐ Mycology		
☐ Parasitology		
☐ Virology		
☐ Other		
☐ **Diagnostic Immunology**		
☐ Syphilis Serology		
☐ General Immunology		
☐ **Chemistry**		
☐ Routine		
☐ Urinalysis		
☐ Other		
☐ Endocrinology		
☐ Toxicology		
☐ **Hematology**		
☐ **Immunohematology**		
☐ ABO & Rh Group		
☐ Antibody Detection		
☐ Compatibility Testing		
☐ Antibody Identification		
☐ **Pathology**		
☐ Histopathology		
☐ Oral Pathology		
☐ Cytology		
☐ **Radiobioassay**		
☐ **Clinical Cytogenetics**		

TOTAL ANNUAL TEST VOLUME

VIII. TYPE OF CONTROL	IX. TYPE OF OWNERSHIP
Enter the appropriate two digit code from the list below ____ ____	Enter the appriate two digit code from the list below ____ ____
Voluntary Nonprofit 01 Religious Affiliation 02 Private 03 Other **For Profit** 04 Proprietary **Government** 05 City 06 County 07 State 08 Federal 09 Other Government	01 Sole Proprietorship 02 Partnership 03 Corporation 04 Other *(specify)* _____

X. DIRECTOR AFFILIATION WITH OTHER LABORATORIES

If the primary director of this laboratory serves as primary director for laboratories that are separately certified, please complete the following:

NAME OF LABORATORY	ADDRESS	CLIA IDENTIFICATION NUMBER

XI. INDIVIDUALS INVOLVED IN LABORATORY TESTING

Indicate the total number of individuals involved in laboratory testing (directing, supervising, consulting or testing). Do not include individuals who only collect specimens or perform clerical duties. For nonwaived testing, individuals with multiple functions should be recorded only once at their highest level of functioning and in the total.

A. Waived TOTAL No. of Individuals _____

B. Nonwaived TOTAL No. of Individuals _____

Director _____ Technical supervisor _____
Clinical consultant _____ General supervisor _____
Technical consultant _____ Testing personnel _____

ATTENTION: READ THE FOLLOWING CAREFULLY BEFORE SIGNING APPLICATION

ANY PERSON WHO INTENTIONALLY VIOLATES ANY REQUIREMENT OF SECTION 353 OF THE PUBLIC HEALTH SERVICE ACT AS AMENDED OR ANY REGULATION PROMULGATED THEREUNDER SHALL BE IMPRISONED FOR NOT MORE THAN ONE YEAR OR FINED UNDER TITLE 18, UNITED STATES CODE OR BOTH, EXCEPT THAT IF THE CONVICTION IS FOR A SECOND OR SUBSEQUENT VIOLATION OF SUCH A REQUIREMENT SUCH PERSON SHALL BE IMPRISONED FOR NOT MORE THAN 3 YEARS OR FINED IN ACCORDANCE WITH TITLE 18, UNITED STATES CODE OR BOTH.

CONSENT: THE APPLICANT HEREBY AGREES THAT SUCH LABORATORY IDENTIFIED HEREIN WILL BE OPERATED IN ACCORDANCE WITH APPLICABLE STANDARDS FOUND NECESSARY BY THE SECRETARY OF HEALTH AND HUMAN SERVICES TO CARRY OUT THE PURPOSES OF SECTION 353 OF THE PUBLIC HEALTH SERVICE ACT AS AMENDED. THE APPLICANT FURTHER AGREES TO PERMIT THE SECRETARY, OR ANY FEDERAL OFFICER OR EMPLOYEE DULY DESIGNATED BY THE SECRETARY, TO INSPECT THE LABORATORY AND ITS OPERATIONS AND PERTINENT RECORDS AT ANY REASONABLE TIME.

SIGNATURE OF OWNER/AUTHORIZED REPRESENTATIVE OF LABORATORY *(sign in ink)*	DATE
last *first* *MI*	

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO

CLINICAL LABORATORY APPLICATION
CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988

Public reporting burden for this collection of information is estimated to vary between 30 minutes to 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send any comments including suggestions for reducing the burden to the Office of Financial Management, HCFA, P.O. Box 26684, Baltimore, MD 21207, and to the Office of Management and Budget, Paperwork Reduction Project (0938-xxxx), Washington, D.C. 20503.

I. GENERAL INFORMATION

Please check any preprinted information on this part of the form and make any necessary corrections. Complete the rest of the form according to the directions.

CLIA IDENTIFICATION NUMBER	FEDERAL TAX IDENTIFICATION NUMBER		
LABORATORY NAME	TELEPHONE NO. *(include area code)*		
LABORATORY ADDRESS *(number, street)*	CITY	STATE	ZIP
MAILING ADDRESS *(if different from above)*	CITY	STATE	ZIP

NAME OF DIRECTOR *(please print or type)*

last *first* *MI*

Indicate changes below as needed.

LABORATORY NAME	TELEPHONE NO. *(include area code)*		
LABORATORY ADDRESS *(number, street)*	CITY	STATE	ZIP
MAILING ADDRESS *(if different from above)*	CITY	STATE	ZIP

NAME OF DIRECTOR *(please print or type)*

last *first* *MI*

II. APPLICATION IS FOR: *(check one box)*

- ☐ Certificate
- ☐ **Certificate of Waiver
- ☐ Certificate of Accreditation
- ☐ Renewal of Certificate
- ☐ Renewal of Certificate of Waiver
- ☐ Renewal of Certificate of Accreditation

**IF YOU CONDUCT ONLY THE FOLLOWING WAIVED TESTS *(ONE OR MORE)*, YOU MAY APPLY FOR A CERTIFICATE OF WAIVER:

- Dipstick or tablet reagent urinalysis (nonautomated) for:
  - -bilirubin
  - -glucose
  - -hemoglobin
  - -ketone
  - -leukocytes
  - -nitrite
  - -protein
  - -pH
  - -specific gravity
  - -urobilinogen
- Fecal occult blood
- Ovulation test-visual color comparison tests for human luteinizing hormone
- Urine pregnancy test-visual color comparison tests
- Erythrocyte sedimentation rate (nonautomated)
- Hemoglobin-copper sulfate (nonautomated)
- Blood glucose, by glucose monitoring devices cleared by the FDA specifically for home use; and
- Spun microhematocrit

If applying for a **certificate of waiver**, complete all sections of this form except section VII.

FORM HCFA-116 (4-92)

III. TYPE OF LABORATORY *(check the one most descriptive of facility type)*

__ 01 Ambulatory Surgery Center
__ 02 Community Clinic
__ 03 Comp. Outpatient Rehab. Facility
__ 04 Ancillary Testing Site in Health Care Facility
__ 05 End Stage Renal Disease Dialysis Facility
__ 06 Health Fair
__ 07 Health Main. Organization
__ 08 Home Health Agency
__ 09 Hospice
__ 10 Hospital
__ 11 Independent
__ 12 Industrial
__ 13 Insurance
__ 14 Intermediate Care Fac. for Mentally Retarded
__ 15 Mobile Unit
__ 16 Pharmacy
__ 17 School/Student Health Service
__ 18 Skilled Nursing Facility/Nursing Facility
__ 19 Physician Office
__ 20 Other Practitioner *(specify)* _____
__ 21 Tissue Bank/Repositories
__ 22 Other *(specify)* _____

Was this laboratory previously regulated under the Federal Medicare/Medicaid and/or CLIA programs? (Regulations published March 14, 1990 at 55 FR 9538)..... ☐ Yes ☐ No

IV. HOURS OF ROUTINE OPERATION

List days and hours during which laboratory testing is performed

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
FROM: AM							
PM							
TO: AM							
PM							

V. MULTIPLE SITES

Are you applying for one certificate for multiple sites? ☐ No *If no,* go to next section.
☐ Yes *If yes,* total number of sites_____ and complete appropriate section below.

Identify which of the following exception requirements applies to your laboratory operation.

Is this a non-profit or Federal, State or local government laboratory engaged in limited *(e.g., few types of tests)* public health testing and filing for a single certificate for multiple sites? .....☐ Yes ☐ No
If yes, list name, address and testing performed for each site below.

Is this a hospital with several laboratories at the same street address and under common direction that is filing for a single certificate for these locations? .....☐ Yes ☐ No
If yes, list name, location within hospital and specialty/subspecialty areas for each site below.

If additional space is needed, check here ____ and attach the additional information using the same format.

NAME AND ADDRESS / LOCATION	TESTS PERFORMED / SPECIALTY / SUBSPECIALTY

VI. ACCREDITATION INFORMATION

Is your laboratory presently accredited by any private nonprofit organization ..... ☐ Yes ☐ No

If yes, check all that apply:

Accredited by:

- ☐ JCAHO
- ☐ AOA
- ☐ AABB
- ☐ AAB
- ☐ CAP
- ☐ COLA
- ☐ AACC
- ☐ ASCT
- ☐ ASHI
- ☐ GLaRGG
- ☐ ASM
- ☐ Other *(specify)* _____

VII. NONWAIVED TESTING

If you perform testing other than or in addition to waived tests, complete the information below. If applying for one certificate for multiple sites, include information for all sites.

Place a check (√) in the box preceding each specialty/subspecialty in which the laboratory performs testing. Enter the test volume for the previous calendar year for each specialty. If you are a new laboratory or have added new specialties/subspecialties, for test volume, enter your estimated annual test volume. Do not include testing not subject to CLIA, waived tests, or tests run for quality control, quality assurance or proficiency testing when estimating total volume. Also note that each profile (group of tests) is counted as the number of separate procedures or examinations (e.g., a chemistry profile consisting of 18 tests is counted as 18 separate procedures or tests) and that calculations are not included (e.g., T_3).

If applying for certificate of accreditation, indicate name of current accrediting body beside applicable specialty/subspecialty.

SPECIALTY / SUBSPECIALTY	ACCREDITED PROGRAM	ANNUAL TEST VOLUME
☐ **Histocompatibility**		_____
☐ Transplant	_____	
☐ Non-transplant	_____	
☐ **Microbiology**		_____
☐ Bacteriology	_____	
☐ Mycobacteriology	_____	
☐ Mycology	_____	
☐ Parasitology	_____	
☐ Virology	_____	
☐ Other	_____	
☐ **Diagnostic Immunology**		_____
☐ Syphilis Serology	_____	
☐ General Immunology	_____	
☐ **Chemistry**		_____
☐ Routine	_____	
☐ Urinalysis	_____	
☐ Other	_____	
☐ Endocrinology	_____	
☐ Toxicology	_____	
☐ **Hematology**		_____
☐ **Immunohematology**		_____
☐ ABO & Rh Group	_____	
☐ Antibody Detection	_____	
☐ Compatibility Testing	_____	
☐ Antibody Identification	_____	
☐ **Pathology**		_____
☐ Histopathology	_____	
☐ Oral Pathology	_____	
☐ Cytology	_____	
☐ **Radiobioassay**		_____
☐ **Clinical Cytogenetics**		_____

TOTAL ANNUAL TEST VOLUME

VIII. TYPE OF CONTROL	IX. TYPE OF OWNERSHIP
Enter the appropriate two digit code from the list below ____ ____	Enter the appriate two digit code from the list below ____ ____
Voluntary Nonprofit 01 Religious Affiliation 02 Private 03 Other **For Profit** 04 Proprietary **Government** 05 City 06 County 07 State 08 Federal 09 Other Government	01 Sole Proprietorship 02 Partnership 03 Corporation 04 Other *(specify)* _____

X. DIRECTOR AFFILIATION WITH OTHER LABORATORIES

If the primary director of this laboratory serves as primary director for laboratories that are separately certified, please complete the following:

NAME OF LABORATORY	ADDRESS	CLIA IDENTIFICATION NUMBER

XI. INDIVIDUALS INVOLVED IN LABORATORY TESTING

Indicate the total number of individuals involved in laboratory testing (directing, supervising, consulting or testing). Do not include individuals who only collect specimens or perform clerical duties. For nonwaived testing, individuals with multiple functions should be recorded only once at their highest level of functioning and in the total.

A. Waived TOTAL No. of Individuals _____

B. Nonwaived TOTAL No. of Individuals _____

Director _____ Technical supervisor _____
Clinical consultant _____ General supervisor _____
Technical consultant _____ Testing personnel _____

ATTENTION: READ THE FOLLOWING CAREFULLY BEFORE SIGNING APPLICATION

ANY PERSON WHO INTENTIONALLY VIOLATES ANY REQUIREMENT OF SECTION 353 OF THE PUBLIC HEALTH SERVICE ACT AS AMENDED OR ANY REGULATION PROMULGATED THEREUNDER SHALL BE IMPRISONED FOR NOT MORE THAN ONE YEAR OR FINED UNDER TITLE 18, UNITED STATES CODE OR BOTH, EXCEPT THAT IF THE CONVICTION IS FOR A SECOND OR SUBSEQUENT VIOLATION OF SUCH A REQUIREMENT SUCH PERSON SHALL BE IMPRISONED FOR NOT MORE THAN 3 YEARS OR FINED IN ACCORDANCE WITH TITLE 18, UNITED STATES CODE OR BOTH.

CONSENT: THE APPLICANT HEREBY AGREES THAT SUCH LABORATORY IDENTIFIED HEREIN WILL BE OPERATED IN ACCORDANCE WITH APPLICABLE STANDARDS FOUND NECESSARY BY THE SECRETARY OF HEALTH AND HUMAN SERVICES TO CARRY OUT THE PURPOSES OF SECTION 353 OF THE PUBLIC HEALTH SERVICE ACT AS AMENDED. THE APPLICANT FURTHER AGREES TO PERMIT THE SECRETARY, OR ANY FEDERAL OFFICER OR EMPLOYEE DULY DESIGNATED BY THE SECRETARY, TO INSPECT THE LABORATORY AND ITS OPERATIONS AND PERTINENT RECORDS AT ANY REASONABLE TIME.

SIGNATURE OF OWNER/AUTHORIZED REPRESENTATIVE OF LABORATORY *(sign in ink)*	DATE
last *first* *MI*	

[FR Doc. 92-13899 Filed 6-11-92; 8:45 am]
BILLING CODE 4120-03-C

Health Resources and Services Administration

Grants To Modify State Trauma Care Plans

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of grant funds.

SUMMARY: The Health Resources and Services Administration announces that up to $4 million is available in fiscal year 1992 for grants for assistance to States to develop, implement, and monitor modifications of the trauma care component of the State plan for the provision of emergency medical services. These grants are authorized by sections 1211 and 1232(c) of the Public Health Service Act, as amended. Funds are appropriated under Public Law 102–170.

DATES: To receive consideration, grant applications must be received by the close of business August 3, 1992. Applications will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Hand delivered applications must be received by 5 pm August 3, 1992. Applications received after the deadline will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical or program issues may be obtained from Mrs. Diane McMenamin, Trauma Implementation Activities, Bureau of Health Resources Development, Parklawn Building, room 11A–22, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–7577. Grant applications and additional information regarding business, administrative, or fiscal issues related to the awarding of grants under this Notice may be requested from the Grants Management Officer (GMO), Ms. Glenna Wilcom, Parklawn Building, room 13A–38, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2280. Applicants for grants will use Form PHS 5161–1, approved under OMB Control Number 0937–0189. Completed applications should be sent to the GMO.

SUPPLEMENTARY INFORMATION:

Background and Objective

This program provides grant funds for States to develop, implement, and monitor modifications to the trauma care component of the State plan for the provision of emergency medical services (EMS).

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–783–3238.

Purpose and Specifications of Grant Program

The principal purpose of this grant program is to ensure access to the highest possible quality of trauma care through modifications to the trauma care component of the plan. To accomplish this objective, grants will be awarded consistent with the statute as specified in this notice. As specified in the legislation, modifications should ensure that the plan:

1. Specifies that the modifications required by this legislation will be implemented by the principal State agency for EMS or the designee of such agency;

2. Specifies any public or private entity that will designate trauma care regions and trauma centers in the State;

3. Contains standards and requirements for the designation of level I, II and III trauma centers, including standards and requirements for:

- The number and types of trauma patients the center must serve to ensure sufficient experience and expertise to be able to provide quality care;
- Resources and equipment needed; and
- Availability of rehabilitation services;

4. Contains standards and requirements for regional trauma care systems, including standards and guidelines (consistent with the provisions of section 1867 of the Social Security Act for medically directed triage and transportation of trauma patients) prior to care in designated trauma centers;

5. Contains standards and requirements for medically directed triage and transport of severely injured children to designated trauma centers with specified capabilities in the care of the pediatric trauma patient;

6. Specifies procedures for the evaluation of designated trauma centers and trauma care systems;

7. Provides for the establishment and collection of data from each designated trauma center in the State to a central data reporting and analysis system:

- To identify number of severely injured trauma patients within regional trauma care systems;
- To identify the cause of injury and any factors contributing to the injury;
- To identify the nature and severity of injury;
- To monitor trauma patient care, including prehospital, in each designated trauma center for purposes of evaluating the diagnosis, treatment, and treatment outcome;
- To identify uncompensated trauma care expenditures for each year by each designated trauma center;
- To identify patients transferred within a regional trauma system, including reasons for transfer;

8. Provides for the use of procedures by paramedics and EMS technicians to assess severity of injury;

9. Provides appropriate transportation and transfer policies to ensure the delivery of patients to designated trauma centers and other facilities within and outside of the jurisdiction, including policies to ensure that only individuals appropriately identified as trauma patients are transferred to designated trauma centers, and provides periodic reviews of the transfers and the auditing of such transfers that are determined to be appropriate;

10. Conducts public education activities concerning injury prevention and obtaining access to trauma care; and

11. Provides for coordination between States with common standard metropolitan statistical areas.

Funds Available

Up to $4 million is available for this program. Grants will be awarded competitively. There will be approximately 20–26 grants awarded at an average amount of $150,000 to $175,000. The maximum size of an award will be limited to $250,000. The grant period will be 12 months from the date of award.

Eligible Applicants

Eligible applicants are the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Technical Assistance

The Health Resources and Services Administration (HRSA) intends to sponsor several technical assistance sessions on the intent and format of the grant application. Because of limited

State funds for travel to a workshop, the HRSA will conduct several telephone conference calls with approximately 10 potential State applicants assigned to each call. These calls will be conducted after application packages have been mailed and States have had an opportunity to review the official Application Guidance. To obtain instructions and sign up for one of these technicalassistance conference calls, applicants should contact Mrs. Doreen Brandes on (301) 443–7577.

Application Evaluation Criteria

Grant applications will be evaluated by an objective review committee according to the following criteria:

1. Adequacy of the description of the gap in EMS/trauma system components and of data presented in the needs assessment to support that the applicant is among those States that have the greatest need to develop, implement, and monitor trauma care systems;

2. Adequacy of documentation to support that the applicant is among those States that demonstrate the greatest commitment to establishing and maintaining such systems;

3. Completeness of the current State EMS plan and of anticipated modifications to ensure adequate availability of complementary components necessary to support the trauma care plan;

4. Adequacy of the rationale that the modifications proposed for development, implementation, or monitoring follow a rational sequence of EMS and trauma care planning activities, support the commitment to a continuum of care, and will improve the quality of trauma care provided;

5. Appropriateness and adequacy of the work plan, methodologies, and schedule for organizing and completing the project within the 1-year timeframe;

6. Preparation of application and proposed activities and workplan demonstrate coordination and consultation with, and commitment of, the medical, surgical, and nursing specialty groups, hospital associations, State and local EMS directors, concerned advocates and other interested parties;

7. Reasonableness of the proposed budget and the cost efficiency of the project relative to service vs. administrative costs; and

8. Proposal demonstrates an understanding of the problems in the State associated with developing, implementing, and monitoring a trauma care system and proposes effective measures to minimize these problems.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q and 45 CFR 92.22 for State and local governments.

Other Award Information

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J, and 45 CFR 92.40 for State and local governments. Interim progress reports and a final report will be required of grantees.

Executive Order 12372

This grant program to modify the trauma care component of the State plan for EMS has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance Number for this program is 93.953.

Dated: May 8, 1992.

John H. Kelso,

Acting Administrator.

[FR Doc. 92–13842 Filed 6–11–92; 8:45 am]

BILLING CODE 4160–15–M

Grants To Improve Emergency Medical Services and Trauma Care in Rural Areas

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of grant funds.

SUMMARY: The Health Resources and Services Administration announces that up to $500,000 is available in fiscal year 1992 for grants to public and private nonprofit entities for the purpose of carrying out research and demonstration projects with respect to improving the availability and quality of emergency medical services and trauma care in rural areas. These grants are authorized by section 1204 of the Public Health Service Act, as amended. Funds are appropriated under Public Law 102–170.

DATES: To receive consideration, grant applications must be received by the close of business August 10, 1992. Applications will meet the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Hand delivered applications must be received by 5 p.m. August 10, 1992. Applications received after the deadline will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical or program issues may be obtained from Mrs. Diane McMenamin, Bureau of Health Resources Development, Parklawn Building, room 11A–22, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–7577. Grant applications and additional information regarding business, administrative, or fiscal issues related to the awarding of grants under this Notice may be requested from the Grants Management Officer (GMO), Ms. Glenna Wilcom, Parklawn Building, room 13A–38, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2280. Applicants for grants will use Form PHS 5161–1, approved under OMB Control Number 0937–0189. Completed applications should be sent to the GMO.

SUPPLEMENTARY INFORMATION:

Background and Objectives

The program to Improve Trauma Care in Rural Areas provides assistance to public and private nonprofit organizations for the purpose of carrying out research and demonstration projects to improve the availability and quality of emergency medical services (EMS) and trauma care in rural areas by:

1. Developing innovative uses of communications technologies and the use of new communications technology;

2. Developing model curricula for training EMS personnel, including first responders, emergency medical technicians, emergency nurses and physicians, and paramedics—

a. In the assessment, stabilization, treatment, preparation for transport, and resuscitation of seriously injured patients, with special attention to problems that arise during long transports and to methods of minimizing delays in transport to the appropriate facility; and

b. In the management of the operation of the EMS system;

3. Making training for original certification, and continuing education, in the provision and management of EMS more accessible to emergency medical personnel in rural areas through telecommunications, home studies, providing teachers and training at locations accessible to such personnel, and other methods;

4. Developing innovative protocols and agreements to increase access to

prehospital care and equipment necessary for the transportation of seriously injured patients to the appropriate facilities; and

5. Evaluating the effectiveness of protocols with respect to EMS and systems.

The Public Health Service urges applicants to submit workplans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–783–3238.

Program Priorities

In making grants, special consideration will be given to an applicant that will provide services under this program in any rural area identified by a State for which:

1. There is no system of access to EMS through the telephone number 911; or

2. There is no basic life-support system; or

3. There is no advanced life-support system.

Special consideration means that approved applications providing services in such rural areas will be funded before approved applications providing services in other rural areas. In order to receive special consideration under this legislative provision, it is the responsibility of the applicant to include with the application a certification by the State EMS Office that the proposed services or study of such services will be provided in rural areas identified as meeting one or more of the three factors listed above. The definition of basic or advanced life-support systems will be determined by the State and must be consistent with the definition generally recognized and used by the State.

Availability of Funds

Up to $500,000 is available for this program. Approximately 2–5 grants will be funded ranging from $100,000 to $250,000. The grant period will be 12 months from the date of award.

Eligible Applicants

Any public or private nonprofit entity whose application has as its primary objective improving the availability and quality of EMS in rural areas may apply. The applicant entity is not required to reside in a rural area. The applicant must, however, provide services and otherwise perform a research and demonstration activity in a rural area(s). In order to meet the rural requirement, an area must be located outside a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget. A list of the cities and counties that are designated as being within a MSA will be included with the application. Thus, if the city or county name does not appear on this list, the area would meet the definition of rural as used in this program.

Application Evaluation Criteria

Grant applications will be evaluated by an objective review committee according to the following:

1. Applicant's demonstrated experience and qualifications to complete the project proposed and to function as the lead agency in performing research and demonstration projects related to improving availability and quality of EMS in rural areas;

2. Adequacy of documentation in support of the need and justification for the research and demonstration project, including innovative and creative proposals;

3. Appropriateness and adequacy of the work plan, methodologies, and schedule for organizing and completing the project within the 1 year timeframe, including adequate commitment and participation of the affected rural area if applicant is not located in a rural area;

4. Extent to which the proposed project would be capable of replication in other rural areas with similar needs and characteristics, including cost-effectiveness;

5. Coordination with the State EMS Office and the extent to which the proposed project demonstrates coordination and consistency with the State EMS and trauma care system in place or in the planning phase;

6. Reasonableness of the budget proposed and the cost efficiency of the project relative to service vs. administrative costs.

7. Proposal demonstrates an understanding of the problems with rural EMS and trauma care as they relate to this study and proposes effective measures to minimize these problems.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q. The four separate sets of cost principles prescribed for recipients of grants for public and private nonprofit entities are: OMB Circular A–87 for State and local governments; OMB Circular A–21 for institutions of higher education; 45 CFR part 74, Appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

Executive Order 12372

Grants awarded under this notice are subject to the provisions of Executive Order 12372, which sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribes) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCS is included in the application kit. The SPOC has 60 days after the application deadline date to submit its review comments. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

The OMB Catalog of Federal Domestic Assistance Number for this program is 93.952.

Dated: May 8, 1992.

John H. Kelso,

Acting Administrator.

[FR Doc. 92–13843 Filed 6–11–92; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Privacy Act of 1974; Computer Matching Programs

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Publication of Notice of Computer Matching to Comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: We are publishing notices of two of the computer matching programs that SSA conducts that are subject to the requirements of Pub. L. 100–503. The purpose of this publication is to meet the reporting and publication requirements of Pub. L. 100–503.

DATES: We filed a report of SSA's matching programs that are subject to Pub. L. 100–503 with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget on June 14, 1989. The matching programs

are effective as indicated in each of the notices that appear in this publication below.

ADDRESSES: Interested parties may comment on this notice by writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the address above.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to applicants and beneficiaries that their records are subject to matching.

(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress; and

(5) Establish a Data Integrity Board (DIB) that must approve match agreements.

B. SSA Computer Matches Subject to Pub. L. 100–503

We have taken action to ensure that all of SSA's computer matching programs which were being conducted prior to enactment of Pub. L. 100–503 comply with the requirements of the law. Included below is a brief description of two matches that SSA will be conducting as of July 1, 1992 or later. Also included in this publication are detailed notices of each of the matches.

(1) SSA State/Local Federal Exchange (SAFE).

Purpose: To enable SSA to determine eligibility for, and entitlement to Social Security title II Retirement, Survivors, and Disability Insurance (RSDI) benefits and Supplemental Security Income (SSI) payments. Also, to disclose information to Federal, State and local government agencies as required or permitted by Federal law for their administration of income-maintenance programs and health-maintenance programs.

(2) SSA Matching with State Prison Records.

Purpose: To identify certain prisoners receiving title II RSDI and/or title XVI SSI payments who may be ineligible to receive payments.

Dated: June 5, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) Matching With State/Local Records in the State and Federal Exchange (SAFE) Program

A. Participating Agencies

SSA and State/local governmental agencies.

B. Purpose of the Matching Program

The SAFE match has a two-fold purpose as follows:

(1) SSA is authorized by section 1137(a) of the Social Security Act (the Act) to obtain information from States and the Internal Revenue Service that may affect an individual's—

—Eligibility for, or amount of, payment under the title XVI Supplemental Security Income (SSI) program, and

—Continuing entitlement to, or amount of, benefits under the title II Retirement, Survivors, or Disability Insurance (RSDI) programs.

(2) SSA provides information to Federal, State, and local agencies as follows:

(a) Social Security benefit information and/or SSI program information is released to Federal, State, and local agencies for determining eligibility for, or the amount of, payment or continuing entitlement or eligibility to benefits/payments under State/locally-administered income-maintenance programs (e.g., Aid to Families with Dependent Children, general assistance, and Medicaid); and to verify Social Security numbers of applicants for, and recipients of such programs; and

(b) Internal Revenue Service tax information is released for:

—State and local agencies for administering certain procertain programs pursuant to 26 U.S.C. 6103(l)(7) (i.e. Aid to Families with Dependent Children under Part A of title IV of the Act, Medicaid under title XIX of the Act, unemployment compensation under section 3304 of the Internal Revenue Code, the food stamp program under the Food Stamp Act of 1977, and any State program under a plan approved under title I, X, XIV, or XVI of the Act); and

—State and local child support enforcement agencies for administering the child support enforcement program pursuant to 26 U.S.C. 6103(l)(8).

Generally, SSA is the matching agency under the SAFE matching program. However, in some cases, SSA may furnish information to a Federal or State agency which will conduct a matching operation.

C. Authority for Conducting the Matching Program

Sections 205, 1137, and 1631(e)(1)(B) of the Act (42 U.S.C. 405, 1320b–7, and 1383(e)(1)(B) and 26 U.S.C. 6103(l) (7) and (8), and 5 U.S.C. 552a.

D. Categories of Records and Individuals Covered by the Match

The SSA records are payment data pertaining to applicants for, and recipients of title II RSDI benefits and title XVI SSI payments. The RSDI records are maintained in the Master Beneficiary Record system (last published in the Federal Register (FR) on April 1, 1992, pages 12322, 12326–12329); the SSI records are maintained in the Supplemental Security Income Record (last published in the FR on April 9, 1992, pages 12322, 12329–12331). The State and/or local files include records of benefit payments such as State pensions, workers' compensation, general assistance, wage record, and tax files. The IRS tax information consists of net earnings from self-employment (as defined in 26 U.S.C. 1402), wages (as defined in 26 U.S.C. 3121(a) or 3401(a)), and payments of retirement income reported to SSA pursuant to 26 U.S.C. 6103 (l)(1) or (l)(5). This information is maintained in the SSA Earnings Recording and Self-Employment Income System (last published in the FR on September 18, 1991, page 47220).

E. Inclusive Dates of the Matching Program

The matching program will begin 30 days after publication in the FR or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit

comments to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA) Matching with State Prison Records

A. Participating Agencies

SSA and the State prison systems.

B. Purpose of the Matching Program

The purpose of this matching program is to obtain data from State prison systems to identify individuals who are subject to:

(1) Title II Retirement, Survivors, and Disability Insurance (RSDI) prisoner benefit suspensions under section 202(x) of the Social Security Act (the Act); and

(2) Title XVI Supplementary Security Income (SSI) eligibility restrictions to individuals in public institutions pursuant to section 1611(e)(1)(A) of the Act.

C. Authority for Conducting the Match

Sections 202(x), 1611(e)(1)(A) and 1631(f) of the Act [42 U.S.C. 402(x), 1382(e)(1)(A) and 1383(f)].

D. Categories of Records and Individuals Covered by the Match

SSA will match identifying information received from State-maintained prison records data with data in the Master Beneficiary Record (MBR) (last published in the **Federal Register** (FR) on April 9, 1992, pages 12326–12329) and the Supplementary Security Income Record (SSR) (last published in the **FR** on April 9, 1992 at pages 12322, 12329–12331). The SSA MBR and SSR contain identifying and payment information about individuals applying for benefits/payments under the title II and title XVI programs. The State records contain information about prisoner incarceration such as the prisoner's name, Social Security number, date of birth, sex, date of confinement, place of confinement, and length of sentence (used to determine felony and nonfelony convictions).

E. Inclusive Dates of the Match

The matching program will begin 30 days after publication in the **FR** or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235.

.[FR Doc. 92–13853 Filed 6–11–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–02]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Adminsitration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instruction for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the

landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: **U.S. Army**: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 593–4583; **GSA**: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; **Dept. of Veterans Affairs**: Douglas Shinn, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave. NW., Washington, DC 20420; (202) 233–8474; **Dept. of Transportation**: Ronald D. Keefer, Director, Administrtive Services & Property Management, DOT, 400 Seventh St., SW., room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: June 5, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 06/12/92

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. T08915, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210387
Status: Unutilized
Comment: 680 sq. ft., 1 story wood structure, most recent use—military police station, presence of asbestos, off-site use only.

Bldg. T08916, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210388
Status: Unutilized
Comment: 680 sq. ft., 1 story wood structure, most recent use—admin., presence of asbestos, off-site use only.

California

Bldg. 20—VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979210003
Status: Unutilized
Comment: 8,758 gross sq. ft., one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines.

Missouri

Bldg. T1464
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219210383
Status: Underutilized
Comment: 2,360 sq. ft., 1 story, presence of asbestos, off-site use only.

Bldg. T1462
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219210384
Status: Underutilized
Comment: 1,144 sq. ft., 1 story, presence of asbestos, off-site use only.

Bldg. T1463
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219210385
Status: Underutilized
Comment: 1,144 sq. ft., 1 story, presence of asbestos, off-site use only.

Bldg. T1377
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219210386
Status: Underutilized
Comment: 2,360 sq. ft., 1 story, presence of asbestos, off-site use only.

North Dakota

Bldg. D27
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220236
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, off-site use only, most recent use—storage.

Bldg. D28
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220237
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, off-site use only, most recent use—storage.

Bldg. D29
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220238
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, off-site use only, most recent use—storage.

Bldg. D46
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220239
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, off-site use only, most recent use—storage.

Bldg. D48
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220240
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, off-site use only, most recent use—storage.

Bldg. D53
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220241
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, offsite use only, most recent use—storage.

Bldg. D56
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220242
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, offsite use only, most recent use—storage.

Bldg. D75
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220243
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, offsite use only, most recent use—storage.

Bldg. D85
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220244
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, offsite use only, most recent use—storage.

Bldg. D87
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220245
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, offsite use only, most recent use—storage.

Bldg. D88
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220246
Status: Unutilized
Comment: 64 sq. ft., metal frame, 1 story, needs major rehab, offsite use only, most recent use—storage.

Bldg. 027
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220247
Status: Unutilized

Comment: 2,940 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 3-bedroom duplex.

Bldg. 028
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220248
Status: Unutilized
Comment: 2,940 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 3-bedroom duplex.

Bldg. 029
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220249
Status: Unutilized
Comment: 2,631 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 2-bedroom duplex.

Bldg. 048
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220250
Status: Unutilized
Comment: 2,105 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 2-bedroom duplex.

Bldg. 053
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220251
Status: Unutilized
Comment: 2,424 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 2-bedroom duplex.

Bldg. 056
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220252
Status: Unutilized
Comment: 2,631 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 2-bedroom duplex.

Bldg. 075
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220253
Status: Unutilized
Comment: 2,631 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 2-bedroom duplex.

Bldg. 085
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220254
Status: Unutilized
Comment: 2,105 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 2-bedroom duplex.

Bldg. 087
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220255
Status: Unutilized
Comment: 2,631 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 2-bedroom duplex.

Bldg. 088
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220256
Status: Unutilized
Comment: 2,631 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, 2-bedroom duplex.

Bldg. 303
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220257
Status: Unutilized
Comment: 1,692 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, most recent use—youth center.

Bldg. 345
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220258
Status: Unutilized
Comment: 10,200 sq. ft., wood frame, 1 story, needs major rehab, offsite use only, most recent use—medical dispensary.

Bldg. 348
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220259
Status: Unutilized
Comment: 29,040 sq. ft., wood frame, 2 story, needs major rehab, offsite use only, most recent use—barracks.

Bldg. 355
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220260
Status: Unutilized
Comment: 23,020 sq. ft., wood frame, 2 story, needs major rehab, offsite use only, most recent use—barracks.

Bldg. 366
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220261
Status: Unutilized
Comment: 21,408 sq. ft., temporary trailer complex (42 mobile office trailers), needs major rehab, off-site use only.

Bldg. T–002
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355
Landholding Agency: Army
Property Number: 219220262
Status: Unutilized
Comment: 1,728 sq. ft., 1 story, 4 mobile office trailers, needs major rehab, off-site use only.

Bldg. T–341
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219220263
Status: Unutilized
Comment: 3,500 sq. ft., 1 story, six trailers, needs major rehab, off-site use only, most recent use—religious education facility.

Oregon

Former Resource Area Hdqts.
6615 Officers Row
Tillamook Co: Tillamook OR 97141–
Landholding Agency: GSA
Property Number: 549220001
Status: Surplus
Comment: 4,400 sq. ft., 3-story wood bldg., needs repair, on 5.51 acres.
GSA Number: 9–I–OR–515F.

Pennsylvania

Bldg. 25—VA Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Landholding Agency: VA
Property Number: 979210001
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab.

Wisconsin

Bldg. 2
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010055
Status: Underutilized
Comment: 18,000 sq. ft., 3 story masonry, needs rehab, possible asbestos, potential utilities.

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized
Comment: 2,200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Louisiana

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010009

Status: Unutilized
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use—recreation/buffer area.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Minnesota

Land around Bldg. 240–249, 253
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized
Comment: 3.76 acres, potential utilities.

Pennsylvania

6.98 acres—Army Rsv Center
Edgemont Military Reservation
Delchester-Gradyville Road
Willistown Township Co: Chester PA 19013–
Landholding Agency: GSA
Property Number: 549220004
Status: Surplus
Comment: 6.98 acres with dilapidated building
GSA Number: 4–GR–PA–632A.

5.19 acres—Army Rsv Center
Edgemont Military Reservation
Delchester-Gradyville Road
Willistown Township Co: Chester PA 19013–
Landholding Agency: GSA
Property Number: 549220005
Status: Surplus
Comment: 5.19 acres with dilapidated building
GSA Number: 4–GR–PA–632B.

Texas

Northside Lateral Block 26
Tract 4, Socorro Grant
Socorro Co: El Paso TX 79901–
Location: Approx. 18 miles southeast of El Paso, Tx
Landholding Agency: GSA
Property Number: 549210023
Status: Surplus
Comment: 1.04 acre parcel, most recent use—alfalfa crop
GSA Number: 7–I–TX–1025.

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

VA. Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711–
Landholding Agency : VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, leased to Owens-Illinois Glass Plant, expiration date 10/31/92, most recent use—parking lot.

West Virginia

VA Medical Center
1540 Spring Valley Drive
Huntington Co: Wayne WV 25704–
Landholding Agency: VA
Property Number: 979010022
Status: Unutilized
Comment: 72 acres, very rough terrain and wooded, potential utilities

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency : VA
Property Number: 979110009
Status: Underutilized
Comment: 60,309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab, poss. asbestos in pipes/floor tiles, site access lim.

Bldg. 283
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agenc : VA
Property Number: 979110010
Status: Unutilized
Comment: 1,600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Minnesota

Bldg. 15
VA Medical Center
Near 5629 Minnehaha Avenue
Minnepolis Co: Hennepin, MN 55417–
Landholding Agency: VA
Property Number: 979010025
Status: Underutilized
Comment: 15,100 sq. ft., 2 story concrete/brick frame, asbestos present in pipe insulation, most recent use—laundry.

Bldg. 16
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010026
Status: Underutilized
Comment: 8,000 sq. ft.: 3 story concrete/brick, asbestos present on pipe insulation, most recent use—boiler plant.

Bldg. 21
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010027
Status: Underutilized
Comment: 3200 sq. ft., 1 story prefab/quonset, most recent use—garage for motor vehicles.

Bldg. 48
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010028
Status: Underutilized
Comment: 2,000 sq. ft., 1 story concrete/block, most recent use incinerator/storage.

Bldg. 64
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010029
Status: Unutilized
Comment: 380 sq. ft., 1 story prefab, potential utilities.

Bldg. T–10
Va Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010030
Status: Unutilized
Comment: 1,800 sq. ft., 1 story prefab/ quonset, potential utilities, most recent use—storage.

Bldg. 43
VA Medical Center
Minneapolis Co: Hennepin MN 55441–7
Location: 54th Street and 48th Avenue S.
Landholding Agency: VA
Property Number: 979010032
Status: Underutilized
Comment: 26,000 sq. ft., 8 story brick/steel frame, asbestos present on pipe insulation, most recent use—office/storage.

Bldg. 227
Va Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010033
Status: Unutilized
Comment: 850 sq. ft., 2 story wood frame and brick residence, utilities disconnected.

New York

Bldg. 5
V.A. Medical Center
Redfield Parkway
Batavia Co: Genesee NY 14020–
Landholding Agency: VA
Property Number: 979030001
Status: Underutilized
Comment: Portion of 16,800 sq. ft., 3 story, brick and masonry bldgs., needs minor repairs.

Bldg. 144, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210004
Status: Unutilized
Comment: 5,215 sq. ft.: 2 story wood frame residence, needs rehab, potential utilities.

Bldg. 143, VAECC

Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210005
Status: Unutilized
Comment: 5,215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities.

Bldgs. 142/146, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210006
Status: Unutilized
Comment: 5,215 sq. ft., 2 story wood frame residence with 380 sq. ft. attached garage, needs rehab, potential utilities.

Pennsylvania

Bldg. 3—VA Medical Center
University Drive C
Pittsburgh Co: Allegheny PA 15240–
Landholding Agency: VA
Property Number: 979210002
Status: Unutilized
Comment: Approx. 2,765 sq. ft., two story brick residence, needs renab.

Wyoming

Bldg. 13
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110001
Status: Unutilized
Comment: 3,613 sq. ft., 3 story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.

Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110003
Status: Unutilized
Comment: 45 sq. ft., 1 story brick and tile frame, limited utilities, most recent use—reservoir house, use for storage purposes.

Land (by State)

California

Land
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979010077
Status: Underutilized
Comment: Approx. 30 acres of 80 acre tract, 7 acre portion contaminated, portions may be environmentally protected.

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago Co: Lake IL 60064–
Landholding Agency: VA
Property Number: 979010082
Status: Underutilized
Comment: 2.5 acres, currently being used as a construction staging area for the next 6–8 years, potential utilities.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency : VA
Property Number: 979010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010005
Status: Underutilized
Comment: 8.9 acres, most recent use—parking, potential utilities.

Bldg. 227–229 Land
VA Medical Center
Fort Snelling
St Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized
Comment: 2.0 acres potential utilities, buildings occupied, residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized
Comment: 12.1 acres, most recent use—parking, potential utilities.

Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010031
Status: Unutilized
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Pennsylvania

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized
Comment: 52.42 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

Unsuitable Properties

Building (by State)

Michigan

Bldg. 402, U.S. Air Station
Traverse City Co: Grand Traverse MI 49684–3586
Landholding Agency: DOT
Property Number: 879220001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

North Carolina

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 979010008
Status: Underutilized
Reason: Other
Comment: Friable asbestos.

Tennessee

Bldg. 60, VAMC Mountain Home
Johnson Co: Washington TN 37604–
Landholding Agency: VA
Property Number: 979220005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Texas

Bldg. 24
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010050
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Bldg. 25
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010051
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Bldg. 28
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010052
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Wyoming

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110004
Status: Unutilized
Reason: Other
Comment: Sewage digester for disposal plant.

Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized
Reason: Other
Comment: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized
Reason: Other
Comment: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized
Reason: Other
Comment: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized
Reason: Other
Comment: Chlorination chamber for sewage disposal plant.

Land (by State)

California

DVA Medical Center
4951 Arroyo Road
Livermore Co: Alameda CA 94550–
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized
Reason: Other
Comment: 750,000 gallon water reservoir.

Louisiana

Land—3.4 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010010
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material.

Minnesota

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Sterns MN 56303–
Landholding Agency: VA
Property Number: 979010049
Status: Underutilized
Reason: Within 2,000 ft. of flammable or explosive material.

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010011
Status: Unutilized
Reason: Secured Area.

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010012
Status: Underutilized
Reason: Secured Area.

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010013
Status: Underutilized
Reason: Secured Area.

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010014
Status: Unutilized
Reason: Secured Area.

North Dakota

VAM & ROC—Land—6.1 acres
2101 Elm Street, N.
Fargo Co: Cass ND 58102–
Landholding Agency: VA
Property Number: 979010018
Status: Underutilized
Reason: Floodway.

VAM & ROC—Land—8.9 acres
2101 Elm Street, N.
Fargo Co: Cass ND 58102–
Landholding Agency: VA
Property Number: 979010019
Status: Underutilized
Reason: Floodway.

Virginia

(P) Defense General Supply Ctr.
Falling Creek Reservoir
Richmond Co: Chesterfield VA 23297–5000
Landholding Agency: GSA
Property Number: 549220009
Status: Excess
Reason: Floodway
GSA Number: 4–D–VA–565–C.

[FR Doc. 92–13711 Filed 6–11–92; 8:45 am]

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Office of the Inspector General

[Docket No. N–92–3452; FR–3260–N–01]

Privacy Act of 1974; Proposed Amendment to a System of Records and New Systems of Records

AGENCY: Office of Inspector General, HUD.

ACTION: Notification of a proposed amendment to an existing system of records and notice of three new systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Inspector General is giving notice that it proposes to: (1) Amend an existing system of records entitled "Investigation Files," which was last published on March 20, 1984 (49 FR 10373); and (2) establish three new systems of records entitled "Hotline Complaint Files of the Office of Inspector General," "Name Indices System of the Office of Inspector General," and "Independent Auditor Monitoring Files of the Office of Inspector General."

DATES: *Effective Date:* This proposal shall become effective without further notice on July 13, 1992, unless comments are received on or before that date which would result in a contrary determination. *Comment Due Date:* July 13, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374. For Program: Philip A. Kesaris, Deputy Assistant General Counsel, Inspector General and Administrative Proceedings Division, Office of General Counsel, Telephone Number (202) 708–2350. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The Inspector General has determined that the existing "Investigation Files" system notice is in need of updating and revision to more accurately reflect current OIG practices regarding the maintenance of law enforcement investigative information. The system notice is being amended to change the name of the system to "Investigative Files of the Office of Inspector General," which more precisely reflects its coverage and distinguishes it from other OIG systems of records.

The categories of individuals covered by the system are intended to identify only those individuals about whom records are currently indexed and retrieved—i.e., investigative subjects, complainants, and certain key witnesses. Information about HUD investigators is not indexed and retrieved by their names; thus, they are no longer a category of individuals covered by this system. In addition, the new system notice contains only those routine uses that are currently used by the OIG. Some of these are new routine uses. Other routine uses, such as the Department-wide routine uses that were incorporated by reference into the previous "Investigation Files" system notice, are no longer needed and have been deleted. Finally, the exemption portion of the system notice has been revised to more precisely state the scope of the applicable exemptions.

The Inspector General has also undertaken an internal review of its compliance with the Privacy Act and has determined that three additional systems of records notices are necessary in order to account for information maintained about individuals that is not included within its investigative files system of records. These new OIG systems of records are entitled "Hotline Complaint Files of the Office of Inspector General," "Name Indices System of the Office of Inspector General," and "Independent Auditor Monitoring Files of the Office of Inspector General."

The OIG's four systems of records notices are printed below. A report of the Inspector General's intention to amend the "Investigation Files" system notice, and to establish the three other systems, has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget ("OMB") pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: June 5, 1992.

John J. Connors,

Deputy Inspector General.

HUD/OIG–1

SYSTEM NAME:

Investigative Files of the Office of Inspector General.

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of: (1) HUD program participants and HUD employees who are subjects of OIG inquiries or investigations; and (2) complainants and key witnesses where necessary for future retrieval.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of investigatory material compiled for law enforcement purposes, and include initial complaints filed against subjects or other information relating to potential violations of law, reports of investigation, findings of HUD officials, and recommendations and dispositions to be made.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App., authorizes the Inspector General to conduct, supervise and coordinate investigations relating to the programs and operations of HUD.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices containing the name of the individual to whom the record pertains.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with General Records Schedule 22 (Inspector General Records), published by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Office of Management and Policy, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for requesting

amendment or correction of records appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from HUD, law enforcement agencies, program participants, subject individuals, complainants, witnesses and other nongovernmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled for law enforcement purposes, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

HUD/OIG–2

SYSTEM NAME:

Hotline Complaint Files of the Office of Inspector General.

SYSTEM LOCATION:

Headquarters

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of: (1) HUD program participants and HUD employees who are subjects of hotline complaints alleging possible violations of law, rules or regulations, mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety; and (2) HUD employees and members of the general public who are complainants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of all forms and documentation generated by the complaint, including recommended and final disposition of the matter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App., authorizes the Inspector General to conduct, supervise and coordinate activities that promote economy and efficiency in the programs and operations of HUD, and to receive and investigate complaints concerning possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health or safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG hotline complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices containing the name of the individual to whom the record pertains.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with General Records Schedule 22 (Inspector General Records), published by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Office of Management and Policy, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for requesting amendment or correction of records appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from HUD, the General Accounting Office, other federal agencies, program

participants, subject individuals, complainants, witnesses and other nongovernmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled for law enforcement purposes, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

HUD/OIG–3

SYSTEM NAME:

Name Indices System of the Office of Inspector General.

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of HUD program participants and HUD employees who have had some significant association with an OIG investigation, audit report, or hotline complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are contained in a computerized central reference system and can consist of one or more of the following items: Individual's name; alias or associated name; period covered by the audit; date of birth; report date; city and state where the individual is located; social security number or employer identification number; and the date the case was closed. This information is cross-referenced to an underlying OIG investigation, audit report, hotline complaint file number, or a departmental suspension/debarment or Mortgagee Review Board action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App., authorizes the Inspector General to conduct, supervise and coordinate audits and investigations related to the programs and operations of HUD, to engage in other activities that promote economy and efficiency in the programs and operations of HUD, and to receive and investigate complaints concerning possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health or safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None. Records in this system are only disclosed to officers and employees of HUD who have a need for such records in the performance of their official duties. However, records contained in other OIG systems of records may be disclosed pursuant to the routine uses that are applicable to those systems.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically in office automation equipment, and on Microfiche.

RETRIEVABILITY:

Records may be retrieved through computer search by the name of the individual to whom the record pertains.

SAFEGUARDS:

Computer terminals are secured in controlled areas which are locked when unoccupied. Access to records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition Schedule 3 (Administrative Records), Item No. 84, Appendix 3, HUD Handbook 2225.3 Rev-1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Office of Management and Policy, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for requesting amendment or correction of records appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from HUD, the General Accounting Office, other federal agencies, program participants, subject individuals, complainants, witnesses and other nongovernmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled for law enforcement purposes, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5

U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

HUD/OIG–4

SYSTEM NAME:

Independent Auditor Monitoring Files of the Office of Inspector General.

SYSTEM LOCATION:

Cherry Hill, New Jersey.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are non-federal independent auditors who have conducted audits of recipients of Federal funds received under HUD's programs. An independent auditor is: (a) A licensed certified public accountant or a person working for a licensed certified public accounting firm, or (b) a public accountant licensed on or before December 31, 1970, or a person working for a public accounting firm licensed on or before December 31, 1970.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of materials generated in connection with quality control reviews of the working papers of independent auditors, including standardized checklists for evaluating an independent auditor's work performance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App., requires the Inspector General to assure that any work performed by non-federal auditors complies with the auditing standards established by the Comptroller General of the United States for audits of federal establishments, organizations, programs, activities and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. In the event that records indicate pervasively unreliable or seriously deficient work by an independent auditor, the relevant records may be disclosed to an appropriate State board of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent accountant has been provided with an opportunity to respond in writing to the OIG's findings.

3. In the event that records indicate pervasively unreliable or seriously deficient work by an independent auditor, the relevant records may be disclosed to an auditee who is a HUD program participant, such as a Public Housing Authority, in order to assist such auditee in evaluating its contractual relationship with the independent auditor. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to the auditee, and the independent accountant has been provided with an opportunity to respond in writing to the OIG's findings.

4. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

5. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices containing the name of the individual to whom the record pertains.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with General Records Schedule 22 (Inspector General Records), published by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESSES:

Assistant Inspector General, Office of Management and Policy, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

The System Manager will accept inquiries from an individual seeking notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

The OIG collects information from the subject independent auditor, HUD, auditees, program participants, complainants and other nongovernmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92–13800 Filed 6–11–92; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–02–4130–09]

Proposed Amendment to the Mining Plan of Operation for Open Pit Mining, Baltic Mine, Kern County, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Baltic Mine Plan of Operation Environmental Impact Statement; Correction.

SUMMARY: In notice document 92–11978 beginning on page 22820 in the issue of Friday, May 29, 1992, make the following corrections:

On page 22820, in the third column, final paragraph, the date for the public meeting to be held in Johannesburg, California, is given as June 30, 1992, at 7 p.m. That date is incorrect. The correct

date for the public meeting is Monday, June 29, 1992 at 7 p.m.

Lee Delaney,

Area Manager.

[FR Doc. 92-13833 Filed 6-11-92; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-92-4212-13; N-53583]

Realty Actions, Sales, Leases, etc.: Nevada

June 4, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Issurance of Land Exchange Conveyance Document, Nevada.

SUMMARY: This notice identifies Federal and non-Federal lands involved in a recently completed exchange transaction. With the exception of oil and gas, the mineral estate in the Federal lands was conveyed with the surface estate. As to the non-Federal lands, the United States acquired only those minerals owned by the proponent.

EFFECTIVE DATE: July 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, (702) 785-6530.

SUPPLEMENTARY INFORMATION: On March 19, 1992, the United States issued Patent No. 27-92-0013 to Tropicana Durango Ltd. I, a Limited Partnership, for the following described land pursuant to section 206 of the Act of October 31, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 20, E½NE¼SE¼SW¼, E½SW¼NE¼SE¼, E½E½NW¼SE¼, SW¼NW¼SE¼, W½NW¼SW¼SE¼;
Sec. 29, SE¼NW¼NE¼, E½SE¼SW¼NE¼, E½SW¼SE¼NE¼, W½SE¼SE¼NE¼, E½NW¼NE¼SE¼.

The area described contains 65 acres in Clark County, Nevada.

In exchange for those lands, the United States acquired the following described land from the above-named party:

Mount Diablo Meridian, Nevada

T. 21 S., R. 59 E.,
Sec. 6, Parcel C.
T. 14 S., R. 69 E.,
Sec. 28, SE¼SW¼, SW¼SE¼;
Sec. 32, SE¼NE¼;
Sec. 33, W½NW¼NE¼, NE¼NW¼, W½NW¼.

The area described contains 299 acres in Clark County, Nevada. Title to the non-Federal land was accepted on March 19, 1992.

The value of the Federal lands exceeded the value non-Federal lands by $45,000.00. An equalization payment in that amount was paid to the United States by the exchange proponent.

This exchange resulted in the United States acquiring 39 acres of land for inclusion in the Red Rock Canyon National Conservation Area (RRCNCA) and 260 acres in the Virgin River area.

In accordance with Public Law 101-621, dated November 16, 1990, the RRCNCA lands are withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry and patent under the mining laws, and from operation under the mineral leasing and geothermal leasing laws, and all amendments thereto.

Because of their high value for cultural resources, riparian and desert tortoise habitat, the Virgin River lands will not be opened to the operation of the public land laws, or the mining and mineral leasing laws.

Maria B. Bohl,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-13803 Filed 6-11-92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-92-4212-13; N-50567]

Realty Actions; Sales, Leases, etc: Nevada

June 2, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Issuance of Land Exchange Conveyance Document and Order Providing for Opening of Land, Nevada

SUMMARY: This notice identifies Federal and non-Federal land involved in a recently completed exchange transaction. The mineral estate in the Federal and non-Federal land was conveyed simultaneously with the surface estate.

EFFECTIVE DATE: July 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, (702) 785-6530.

SUPPLEMENTARY INFORMATION: On May 29, 1992, the United States issued Patent No. 27-92-0019 to Newmont Gold Company for the following described land pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 34 N., R. 51 E.,
Sec. 2, lots 2, 3, 4, E½SW¼NW¼, SE¼NW¼.

The area described contains 183.48 acres in Eureka County, Nevada.

In exchange for that land, the United States acquired the following described land from the above-named party:

Mount Diablo Meridian, Nevada

T. 37 N., R. 55 E.,
Sec. 27, NE¼, NW¼SE¼, E½SE¼.

The area described contains 280 acres in Elko County, Nevada. Title to the non-Federal land was accepted on May 19, 1992.

The value of the Federal land exceeded the value of the non-Federal land by $6,700.00. An equalization payment in that amount was made to the United States by Newmont Gold Company.

The purpose of the exchange was for the United States to acquire non-Federal land with high values for mule deer and antelope summer range, sage grouse nesting and brood rearing habitat, habitat for nongame birds and mammals, and watershed for Dorsey Creek which supports Lahontan cutthroat trout, a Federally listed threatened species.

Initially, the following described Federal land was being considered as part of the subject exchange transaction; however, an acreage adjustment was necessary and said land was deleted from the exchange proposal:

Mount Diablo Meridian, Nevada

T. 34 N., R. 51 E.,
Sec. 2, W½SW¼NW¼, W½SW¼.

The area described contains 100 acres in Eureka County, Nevada.

At 10 a.m. on July 13, 1992, the land acquired by the United States and the land deleted from the exchange proposal will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

All valid applications received at or prior to 10 a.m. on July 13, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on July 13, 1992, the land acquired by the United States and the land deleted from the exchange proposal will be open to location under the United States mining laws, and to applications/offers under the mineral leasing laws, the material sale laws, and the Geothermal Steam Act.

Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right to possession are governed by

State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92-13804 Filed 6-11-92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-92-4212-14; N-45233]

Realty Action: Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in the town of Mesquite, Clark County, Nevada, has been determined to be suitable for sale utilizing non-competitive procedures under the Act of October 27, 1986; 100 Stat. 3061 (Pub. L. 99-548).

Mount Diablo Meridian, Nevada

T. 13 S., R. 70 E.,
Sec. 13: N½NE¼, SW¼NE¼, NW¼SE¼
T. 13 S., R. 71 E.,
Sec. 3: Lots 6 through 12, SW¼NW¼, W½SW¼
Sec. 4: Lots 5 and 12, SE¼NE¼, E½SE¼
Sec. 7: S½
Sec. 8: NE¼NE¼
Sec. 9: NW¼NW¼
Sec. 18: Lots 5 through 7, NW¼NE¼
Comprising 1232.46 acres of public land.

These lands are being offered as a direct sale to the City of Mesquite as a result of Public Law 99-548, which directs the Secretary of the Interior to sell certain lands to allow for community expansion. The lands will be sold at not less than fair market value as determined by appraisal. A deposit of fifteen (15) percent of the appraised fair market value must be paid to the Bureau of Land Management, Las Vegas District Office, no later than thirty (30) days from sale offering. The balance of the full purchase price shall be paid within 180 days of the City's posting of sale deposit.

The subject land is not needed for any federal purposes. The sale is compatible with the Clark County land use plan. The sale of the described land would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

Lands to be transferred from the United States will be subject to the following easements, reservations and exceptions:

1. Excepting and reserving to the United States of America a right-of-way for ditches and canals constructed pursuant to the Act of August 30, 1890 (43 U.S.C. 945).2.

2. All oil, gas, potassium, sodium, sand and gravel mineral deposits are reserved to the United States, together with the right to prospect for, mine and extract these minerals.

and will be subject to:

1. Those rights for highway purposes which have been granted to the Nevada Department of Transportation by right-of-way number N-125 under the Act of August 27, 1958 (23 U.S.C. 317).

2. Those rights for airport purposes which have been granted to the City of Mesquite by lease number N-43266 under the Act of May 24, 1928; 45 Stat. 0728; 49 U.S.C. 211-214.

3. Those rights for detention basin purposes which have been granted to the City of Mesquite by right-of-way number N-47155 under the Act of October 21, 1976; 90 Stat. 2776; 43 U.S.C. 1761.

4. Those rights for a sanitary landfill which have been granted to the City of Mesquite by lease number New-00616 under the act of June 14, 1926; 44 Stat. 0741; 43 U.S.C. 869.

5. Those rights for a sewage treatment facility which have been granted to the Clark County Sanitation District by lease number N-37133 under the Act of June 14, 1926; 44 Stat. 0741; 43 U.S.C. 869.

Publication of this notice in the **Federal Register** will segregate the public lands described above from all forms of appropriation under the public land laws, including the general mining laws for a period of 270 days from date of publication.

For a period of 45 days from date of first publication, interested parties may submit comments or request information from the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126.

Dated: June 1, 1992

Ben Collins,

District Manager.

[FR Doc. 92-13805 Filed 6-11-92; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 & 10), that the first meeting of the Maine Acadian Culture Preservation Commission will be held Thursday, June 25, 1992.

The Committee was established pursuant to Public Law 101-543. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary with respect to the development and implementation of an interpretive program of Acadian culture in the State of Maine and the selection of sites for interpretation and preservation by means of cooperative agreements.

The meeting will convene at 7 p.m. at the Wisdom Junior/Senior High School on Route 162 in St. Agatha, Aroostook County, Maine. Maine Route 162 intersects U.S. Route One at Frenchville, Maine. The agenda for the first meeting is as follows:

1. Overview of the role of the Maine Acadian Culture Preservation Commission and swearing-in of Commission members;

2. Overview of the National Park Service activities conducted and planned pursuant to the Maine Acadian Culture Preservation Act;

3. Proposed agenda, place and date of the next Commission meeting;

4. Opportunity for Public Comment.

The meeting is open to the public. Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning these meetings may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone: (207) 288-5472.

Dated: May 28, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92-13676 Filed 6-11-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-313 (Final)]

Portable Seismographs From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-313 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C.

1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of portable seismographs, provided for in subheading 9015.80.60 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Canada of portable seismographs. The investigation was requested in a petition filed on February 12, 1992, by GeoSonics Inc., Warrendale, PA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on July 10, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 23, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Jule 10. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 15, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is July 17, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 31, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 31, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public of BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: June 8,1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–13826 Filed 6–11–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32080]

Norfolk and Western Railway Co., Trackage Rights Exemption; Elgin, Joliet and Eastern Railway Co.

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1180.2(d)(7) for its acquisition from Elgin, Joliet and Eastern Railway Company (EJE) of overhead trackage rights over EJE's approximately 255–foot line of railroad in Chicago, Cook County, IL, between a junction with NW's line at or near milepost 506.22 and private trackage formerly owned by U.S. Steel Supply Company (USS). NW will use the trackage rights to gain access to shippers located on the former USS trackage. The transaction is to be consummated on June 17, 1992.

Any comments must be filed with the Commission and served on: James L. Howe III, Norfolk and Western Railway Company, Three Commerical Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected under *Norfolk and Western*

Ry. Co.—Trackage Rights—BN, 354, I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen and revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the effectiveness of the exemption.

Decided: June 5, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-13875 Filed 6-11-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging Consent Decree for Claims Under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 2, 1992, a proposed consent decree in *United States* v. *SKRL Die Casting, et al.*, Civil Action No. 5:90 CV 609, was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree resolves claims asserted by the United States under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9607, for recovery of response costs incurred by the United States with respect to the Petroleum & Power Maintenance Site ("PPM Site") located in Louisville, Ohio. The complaint in this action alleged that defendants SKRL Die Casting, Chrysler Motors Corporation, Pittsburg & Midway Coal Mining Company and USX Corporation were liable under CERCLA because they generated hazardous substances and arranged for the disposal or treatment of these substances at the PPM Site.

Under the terms of the proposed consent decress, the four defendants will pay the United States $230,000 within thirty days of entry of the decree for reimbursement of response costs incurred in connection with the PPM Site. The proposed consent decree also resolves contribution claims asserted by three defendants under section 113 of CERCLA against the United States Navy.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *SKRL Die Casting, et al.*, D.J. Ref. No. 90-11-3 599.

The proposed consent decree may be examined at the Region V Office of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed consent decree may also be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004 [(202) 347-7829]. Any request for a copy of the decree must be accompanied by a check in the amount of $3.25 (13 pages at 25 cents per page reproduction cost) payable to "Consent Decree Library."

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-13741 Filed 6-11-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

George T. Zahorian, III, D.O.; Revocation of Registration

On March 19, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to George T. Zahorian, III, D.O., of 845 Sir Thomas Court, Suite 4, Harrisburg, Pennsylvania 17109, proposing to revoke his DEA Certificate of Registration, AZ7037004, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Zahorian's lack of authorization to handle controlled substances in the Commonwealth of Pennsylvania. 21 U.S.C. 824(a)(3). The Order to Show Cause also alleged that Dr. Zahorian's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4) and that Dr. Zahorian had been convicted of felonies relating to controlled substances, as that term is used in 21 U.S.C. 824(a)(2), in the United States District Court for the Middle District of Pennsylvania on June 27, 1991.

The Order to Show Cause was sent to Dr. Zahorian by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Zahorian and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), George T. Zahorian, III, D.O., is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file, 21 CFR. 1301.57.

The Administrator finds that Dr. Zahorian's medical license was suspended by the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, State Board of Osteopathic Medicine effective January 2, 1992. This suspension was based upon felony convictions in the United States District Court for the Middle District of Pennsylvania of four (4) counts of intentionally and knowingly distributing controlled substances, to-wit: Tylenol with codeine #3, Tylenol with codeine #4, Valium and Vicodin. Consequently, Dr. Zahorian is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the Commonwealth of Pennsylvania.

The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. *See* 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See Howard J.Reuben, M.D., 52 FR 8375 (1987); Ramon Pla, M.D., Docket No. 86-54, 51 FR 41168 (1986); Dale D. Shahan, D.D.S., Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein. Since Dr. Zahorian lacks state authorization to handle controlled substances, it is not necessary for the Administrator to decide the issue of whether Dr. Zahorian's continued registration is inconsistent with the public interest at this time or whether his registration should be revoked based upon the aforementioned felony convictions in the United States District Court for the Middle District of Pennsylvania.

No evidence of explanation or mitigating circumstances has been offered by Dr. Zahorian. Therefore, the Administrator concludes that Dr. Zahorian's DEA Certificate of Registration must be revoked.

Accordingtly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AZ7037004, previously issued to George T. Zahorian, III, D.O., be, and it hereby is, revoked, and any pending applications for the

renewal of such registration, be, and they hereby are, denied. This order is effective June 12, 1992.

Dated: June 8, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-13876 Filed 6-11-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursusnt to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: July 8, 1992, 10 a.m.-12 noon, rm. S-4215 A&B, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523-2752.

Signed at Washington, DC this 5th day of June 1992.

Robert Bostick,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 92-13878 Filed 6-11-92; 8:45 am]

BILLING CODE 4510-28-M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume I

Delaware:
DE91-3 (June 12, 1992) ..... p. All.
Vermont:
VT91-8 (June 12, 1992) ..... p. All.

Volume II

Louisiana:
*LA91-15 (June 12, 1992) ..... p. All.
*LA91-16 (June 12, 1992) ..... p. All.
*LA91-17 (June 12, 1992) ..... p. All.

Volume III

Utah:
**UT91-21 (June 12, 1992) .... p. All.

*These new general wage determinations are applicable to building construction in Bossier, Caddo, Calcasieu, and Rapides Parishes, all of which were previously in LA91-5.

**This new general wage determination is applicable to building construction in Tooele County, previously in UT91-17. (Note that Salt Lake and Utah Counties, now in UT91-1, were previously also in UT91-17.)

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA91-1 (Feb. 22, 1991) ..... p. 421, p. 423.
Maryland:
MD91-16 (Feb. 22, 1991) ..... p. All.
New York:
NY91-17 (Feb. 22, 1991) ..... p. 921, p. 922.
Rhode Island:
RI91-1 (Feb. 22, 1991) ..... p. 1149, pp. 1150-1151.
Tennessee:
TN91-2 (Feb. 22, 1991) ..... p. 1195, p. 1196.

South Carolina:
SC91-12 (Feb. 22, 1991)..... p. All.
Virginia:
VA91-5 (Feb. 22, 1991)..... p. All.

Volume II

Illinois:
IL91-12 (Feb. 22, 1991)..... p. 171, p. 172.
Kansas:
KS91-6 (Feb. 22, 1991)..... p. All.
KS91-8 (Feb. 22, 1991)..... p. All.
KS91-14 (Feb. 22, 1991)..... p. All.
Louisiana:
LA91-5 (Feb. 22, 1991)..... p. 405, pp. 406-407, 409, pp. 411-412, pp. 414-421, pp. 423-427.
Michigan:
MI91-1 (Feb. 22, 1991)..... p. 442-443, pp. 445, 447.
MI91-2 (Feb. 22, 1991)..... p. 461, p. 464.
MI91-3 (Feb. 22, 1991)..... p. 477, p. 478.
MI91-4 (Feb. 22, 1991)..... p. 491, p. 492.
MI91-5 (Feb. 22, 1991)..... p. 499, p. 500.
MI91-7 (Feb. 22, 1991)..... p. 515, p. 516.
Missouri:
MO91-1 (Feb. 22, 1991)..... p. 651, pp. 656, 667-671.
New Mexico:
NM91-1 (Feb. 22, 1991)..... p. 779, pp. 781-782, pp. 784-794d.
Texas:
TX91-5 (Feb. 22, 1991)..... p. 1027, p. 1028.

Volume III

Alaska:
AK91-1 (Feb. 22, 1991)..... p. All.
Colorado:
CO91-1 (Feb. 22, 1991)..... p. 151, pp. 152-158a.
CO91-5 (Feb. 22, 1991)..... p. All.
CO91-8 (Feb. 22, 1991)..... p. 179, p. 180.
Idaho:
ID91-1 (Feb. 22, 1991)..... p. All.
ID91-4 (Feb. 22, 1991)..... p. All.
ID91-5 (Feb. 22, 1991)..... p. All.
Oregon:
OR91-1 (Feb. 22, 1991)..... p. All.
Utah:
UT91-1 (Feb. 22, 1991)..... p. All.
UT91-2 (Feb. 22, 1991)..... p. All.
UT91-17 (Feb. 22, 1991)..... p. All.
Washington:
WA91-2 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county. Subscriptions may be purchased from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402
(202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 5th Day of June 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-13674 Filed 6-11-92; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of May 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,065; Chromalloy Technologies Turbine Engine Support (TES) Div., Essexville, MI
TA-W-26,946; National Semiconductor Corp., South Portland, ME
TA-W-26,980; Moog, Inc., East Aurora, NY
TA-W-27,063; Ruffin Drilling Co., Roswell, NM
TA-W-27,054; Flexsteel Industries, Inc., Flexsteel Reclining Chair Div., Evansville, IN
TA-W-27,073; J.G. Furniture Systems, Inc., Quakertown, PA
TA-W-27,021; Trus Joist Macmillian, Boise, ID
TA-W-27,046; Keyes Fibre Co., Waterville, ME
TA-W-27,092; Ronnie "B" Blouse and Sportswear, Hazleton, PA
TA-W-27,959; AT&T Technologies, Inc., Oklahoma City, OK

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,142; Garlington Trucking, Inc., Bloomfield, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,020; Oilfield Testers, Inc., Morgan City, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,040; Vector Seismic Data Processing, Inc., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,057; Petroleum Management, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,004; Luebke Corp., Brookfield, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,080; TA-W-27,081; Oiltech Associated Services & Integrated

Supplies, Inc., Oilfield Distribution Co., Houston, TX and Oilfield Distribution Co., Inc., Beeville, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,076; Salant Corp., New York, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,059; & TA–W–27,060; Triangle Wire and Cable, Edison, NJ and New Brunswick, NJ

U.S. imports of electric wire and cable decreased absolutely in 1991.

TA–W–27,029; Joe N. Van Auken, CBL, Inc., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,032; Tesoro Petroleum Corp., Headquarters, San Antonio, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–27,033; Tesoro Alaska Petroleum Co., San Antonio, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–27,034; Tesoro Refining, Marketing & Crude Supply Co., San Antonio, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–27,035; Interior Fuels, San Antonio, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–27,036; Tesoro Northstore Co., San Antonio, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–27,037; Tesoro Petroleum Distributing Co., San Antonio, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–27,038; Tesoro Exploration & Production Co., San Antonio, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–27,078; Columbia Gas Development Corp., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,107; KP Exploration, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,091; Phillips Petroleum Co., Bartlesville, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–6–27,087; Roydon Wear, Inc., Reidsville, GA

A certification was issued covering all workers separated on or after March 17, 1991.

TA–W–26,998; Cabot Oil & Gas Corp. Pittsburgh, PA

A certification was issued covering all workers separated on or after March 3, 1991.

TA–W–27,016 & TA–W–27,016A; Cabot Oil & Gas Corp. Houston, TX and Oklahoma City, OK

A certification was issued covering all workers separated on or after March 3, 1991.

TA–W–27,017; Cabot Oil and Gas Corp., Charleston, WV

A certification was issued covering all workers separated on or after March 3, 1991.

TA–W–27,025; Williston Industrial Supply Corp., Williston, ND

A certification was issued covering all workers separated on or after March 10, 1991.

TA–W–27,062; Moutain Fir Lumber Co., Inc., Maupin, OR

A certification was issued covering all workers separated on or after March 18, 1991.

TA–W–27,047; Global Drilling Fluids, Inc., Lafayette, LA

A certification was issued covering all workers separated on or after March 13, 1991.

TA–W–27,082; Tinsley & Son Drilling Corp., Odessa, TX

A certification was issued covering all workers separated on or after March 20, 1991.

TA–W–27,070; Greif Companies, Shippensburg, PA

A certification was issued covering all workers separated on or after March 20, 1991.

TA–W–27,219 & TA–W–27,200; Greif Companies, Verona, CA and Allentown, PA

A certification was issued covering all workers separated on or after April 29, 1991.

TA–W–26,973; J.C. & Me, Inc., Trimming & Finishing Dept., Holsopple, PA

A certification was issued covering all workers separated on or after March 9, 1991.

TA–W–26,993 & TA–W–26,993A; White and Ellis Drilling., Wichita, KS and Other Locations in Kansas

A certification was issued covering all workers separated on or after February 20, 1991.

TA–W–27,058; Uniroyal-Goodrich Tire Co., Eau Claire, WI

A certification was issued covering all workers separated on or after May 18, 1991.

TA–W–27,007; Ampex Recording Data Corp., Opelika, AL

A certification was issued covering all workers separated on or after February 12, 1991.

TA–W–27,044; Odeco Oil and Gas Co., New Orleans, LA

A certification was issued covering all workers separated on or after March 3, 1991.

TA–W–27,050; Murphy Exploration & Production Co., New Orleans, LA

A certification was issued covering all workers separated on or after February 18, 1991.

TA–W–27,045; Stride Rite Manufacturing of, Missouri, Inc. Tipton, MO

A certification was issued covering all workers separated on or after March 3, 1991.

TA–W–27,178; Alaska United Drilling, Inc., Anchorage, AK

A certification was issued covering all workers separated on or after April 15, 1991.

TA–W–27,022; BJ Servcies Co., District Office, Snyder, TX

A certification was issued covering all workers separated on or after March 10, 1991.

TA–W–27,049; Computalog Wireline Services, Inc., Telfemer, TX

A certification was issued covering all workers separated on or after March 9, 1991.

TA–W–27,008; Global Marine Drilling Co., Houston, TX

A certification was issued covering all workers separated on or after March 5, 1991.

TA–W–27,074; Mid-Continent Div., & Gulf Coast Maine Div., Noble Drilling (U.S.), Inc., Houston, TX

A certification was issued covering all workers separated on or after February 27, 1991.

TA–W–27,090; Schlumberger Well Services, Offshore Production, Shreveport, LA

A certification was issued covering all workers separated on or after March 16, 1991.

TA–W–27,121, TA–W–27,121A, TA–W–27,121B & TA–W–27,121C; Schlumberger Well Services, Offshore Production, Houma, LA and Operating at Various Other Locations in Louisiana Alabama, and Texas

A certification was issued covering all workers separated on or after March 31, 1991.

I hereby certify that the aforementioned determinations were issued during the month of May 1992. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 7, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–13679 Filed 6–11–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26,858]

Ensco, Inc., Ensco Drilling Co., Broussard, LA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 6, 1992, applicable to the workers at the subject firm. The certification notice was published in the **Federal Register** on May 22, 1992 (57 FR 21828).

At the request of the Texas and Louisiana State Agencies, the Department reviewed the certification for workers of Ensco Drilling Company in Broussard, Louisiana. The investigation findings show that the Ensco Drilling Company claimants' wages are being reported under Ensco, Inc., in Dallas, Texas. Accordingly, the Department is correcting the certification to properly reflect the correct worker group.

The amended notice applicable to TA–W–26,858 is hereby issued as follows:

All workers of Ensco Drilling Company, Broussard, Louisiana, a subsidiary of Ensco, Inc., who became totally or partially separated from employment on or after February 1, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 5th day of June 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–13680 Filed 6–11–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26,970]

Freeport-McMoran Inc., Freeport-McMoran Oil & Gas Co., New Orleans, LA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 8, 1992, applicable to the workers at the subject firm. The certification notice was published in the **Federal Register** on May 28, 1992 (57 FR 22493).

At the request of the Texas and Louisiana State Agencies the Department reviewed the certification for workers of Freeport-McMoran Oil & Gas Company in New Orleans, Louisiana. The investigation findings show that Freeport-McMoran Oil & Gas Company claimants wages are being reported under Freeport-McMoran, Inc. Accordingly, the Department is correcting the certification to properly reflect the correct worker group.

The amended notice applicable to TA–W–26,970 is hereby issued as follows:

All workers of Freeport-McMoran Oil & Gas Company, New Orleans, Louisiana, a subsidiary of Freeport-McMoran, Inc. who became totally or partially separated from employment on or after February 24, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 4th day of June 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–13881 Filed 6–11–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26, 861]

Gerber Childrenswear, Inc., Pelzer, SC; Revised Determination on Reconsideration

On June 2, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers engaged in employment related to the production of diapers at the subject firm. This notice will soon be published in the **Federal Register.**

A company official claimed that the closing down of the weaving operations for diapers at Pelzer was the direct result of the company purchasing imported woven fabric for cloth diapers from offshore suppliers.

Investigation findings show that the subject plant produced all of its woven diaper fabric 1991. The findings also show that worker separations in the cloth weaving operation for diapers began in early 1991 and all production related to cloth weaving at Pelzer ceased on March 31, 1992.

On reconsideration, new information was obtained showing that Gerber Childrenswear made the decision to import woven diaper fabric in January, 1992 and that the company is currently importing woven diaper fabric from offshore suppliers.

Company imports of woven diaper fabric have adversely affected the pre-weaving operations of opening, picking, carding, roving, spinning, spooling, warping and bleaching of the diaper yarn at Pelzer, South Carolina.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that Gerber Childrenswear's workers in Pelzer, South Carolina were adversely affected by increased imports of articles like or directly competitive with woven cloth diaper material produced at Gerber Childrenswear Pelzer, South Carolina. In accordance with the provisions of the Act, I make the following revised certification for the Gerber Childrenswear workers in Pelzer, South Carolina.

All workers of Gerber Childrenswear, Inc., in Pelzer, South Carolina who became totally or partially separated from employment on or after February 7, 1991 and before June 1, 1992

are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of June 1992.

Robert O. Deslongchamps,

Director, Office of Legislation of Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-13882 Filed 6-11-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 501]

Komatsu Dresser, Inc., Galion, OH; Negative Determination on Remand

By order dated April 24, 1992, the United States Court of International Trade (USCIT) in *Former Employees of Komatsu Dresser* v. *Secretary of Labor* (USCIT) (91-08-00559) remanded this case to the Department for further investigation.

The initial investigation found that the workers at Komatsu Dresser in Galion produce construction machinery—compactors (rollers) cranes, graders, excavators, planners and hydraulic cylinders. Further, sales and production of all products increased in fiscal year (FY) 1990 compared to FY 1989 at Galion except for rollers and graders.

The Department's negative determination was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Komatsu's major customers showed that they did not import rollers or graders in 1989 or in 1990.

On remand, the Department contacted the petitioning union official for more information on the imported components which the former workers allege to have caused the worker separations at Galion. The union official responded that he didn't have any more information at this time.

Findings on remand show that the components (moldboards, tandem mounting sleeves, final drive housings, axle weldments, sprockets and excavator parts) are used internally for assembly of construction equipment at Galion and do not have a market outside the plant.

There were no significant imports of components previously produced at Galion during the investigation period. The remand findings further show that moldboards, tandem mounting sleeves and final drive housings, all motor grader components, were outsourced to domestic or foreign vendors after the Department's negative determination. Axle weldments had been outsourced to Brazil in 1985 but in 1991, during the investigation period, Galion resumed axle weldment production again. The few axle weldments purchased from Brazil in 1991 did not cause any worker separations at Galion. In fact, the resumption of axle weldment production at Galion created more work at the Galion plant.

Excavator parts and sprockets have always been purchased items for the Galion plant and were not made in Galion during the relevant period. Hydraulic cylinders, less than five percent of Galion's sales, were produced mainly for export to Canada.

The union's submission to the USCIT shows invoices and memos on component imports dated, for the most part, after the Department's investigation and negative decision, e.g., the invoices from CGL Manufacturing in Guelph, Ontario (October 6, 1991) and Canada Ingot Mould (August 1991); fax letters from Norinco in China (May 30, 1991 and May 28, 1991); Komatsu inter office memos (May 14, 1991 and May 20, 1991) and a Komatsu letter to NIC International Trade Corporation (May 31, 1991).

Those invoices dated within the time period of the Department's investigation involve component parts that were not produced at Galion and were purchased from either Japan or Brazil—e.g., the January 22, 1991 invoice for excavator components from Japan and a packing list dated October 19, 1990 from Komatsu in Brazil showing shipments of axle weldments whose production had resumed at Galion in 1991, and sprockets. None of the invoices concern components that were previously produced at Galion.

The findings show that imports of moldboards, tandem mounting sleeves and final drive housings occurred after the Department's investigation. Even if the imports occurred during the investigation period, the number of worker separations from outsourcing was not significant, (Suppl. Rec. p. 3).

If imports of components are now causing significant worker separations, then the Department would entertain a new petition from the adversely affected workers.

Other findings or remand from the company and its customers reveal that demand for construction machinery has been weak for the past two years because of the recession and the credit crunch resulting from the S&L debacle.

Conclusion

After reconsideration, I affirm the original notice of negative determination to apply for adjustment assistance to former workers of Komatsu Dresser, Inc., in Galion, Ohio.

Signed at Washington, DC, this 5th day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-13883 Filed 6-11-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 22, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 22, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of June 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner:Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Mobil Corp (wkrs)	Fairfax, VA	06/01/92	05/20/92	27,319	Oil and gas.
Mobil Pipeline Co (wkrs)	Dallas, TX	06/01/92	05/20/92	27,320	Oil and gas.
Hercules, Inc (Co)	Vero Beach, FL	06/01/92	05/21/92	27,321	Pectin.
Schnadig Corp. (USWA)	Henderson, KY	06/01/92	05/21/92	27,322	Furniture.
Weaver Services, Inc (wkrs)	Snyder, TX	06/01/92	05/13/92	27,323	Wireline service.
Wire Rope Corp of America, Inc (USWA)	St. Joseph, MO	06/01/92	04/13/92	27,324	Steel wire and cable.
Schoolhouse Togs, Inc (ILGWU)	Boston, MA	06/01/92	05/20/92	27,325	Childrens outerwear.
Southwestern Bell Telephone Co (wkrs)	Odessa, TX	06/01/92	05/19/92	27,326	Telephone access lines.
Graniteville Company (USHR)	Vaucluse, SC	06/01/92	04/19/92	27,327	Broadwoven duck fabric.
Graniteville Company, Granite Div (USHR)	Graniteville, SC	06/01/92	04/19/92	27,328	Broadwoven duck fabric.
Reading & Bates Drilling Co (wkrs)	Houston, TX	06/01/92	05/15/92	27,329	Oil and gas.
Bokenkamp Drilling Co., Inc (Co)	Lafayette, LA	06/01/92	05/18/92	27,330	Oil and gas.
Applied Machining Technology, Inc. (wkrs)	Orchard Park, NY	06/01/92	05/18/92	27,331	Machine centers.
Sonat Exploration Company (wkrs)	Fort Smith, AR	06/01/92	05/18/92	27,332	Oil and gas.
Pearl Laboratories (wkrs)	Saddle Brook, NJ	06/01/92	05/20/92	27,333	Contact lens.
Gemini Mining (wkrs)	Stoystown, PA	06/01/92	05/19/92	27,334	Coal.
Kenmar Manufacturing (wkrs)	Philadelphia, PA	06/01/92	05/19/92	27,335	Injection guns.
R and S Tons Service (wkrs)	Odessa, TX	06/01/92	05/20/92	27,336	Oil service.
Cebcor Service Corp. (wkrs)	Dallas, TX	06/01/92	05/20/92	27,337	Oil and gas.
ARCO Alaska, Inc (wkrs)	Anchorage, AK	06/01/92	05/18/92	27,338	Oil and gas.
All Fab Corporation (wkrs)	Everett, WA	06/01/92	05/18/92	27,339	Aircraft/Aerospace Components.
Certified Aerospace, Inc.(wkrs)	Shelton, WA	06/01/92	05/18/92	27,340	Aircraft/Aerospace Components.
Quiltex (ILGWU)	Brooklyn, NY	06/01/92	05/18/92	27,341	Snow suits.
Elf Exploration, Inc (wkrs)	Houston, TX	06/01/92	04/20/92	27,342	Oil and gas.
Jade Systems(Co)	Southampton, PA	06/01/92	04/18/92	27,343	Logic modules.

[FR Doc. 92-13884 Filed 6-11-92; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials; correction.

SUMMARY: This document corrects a typographical error in the notice of opening of Nixon Presidential materials that was published on June 4, 1992 (57 FR 23602). In the list of Staff Member and Office Files appearing at the bottom of the second column on page 23602, the name "Howard C. Cohen" should read "Howard A. Cohen."

Dated: June 9, 1992.

John A. Constance,

Federal Register Liaison Officer.

[FR Doc. 92-13947 Filed 6-11-92; 8:45 am]
BILLING CODE 7515-10-M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92-463, that the National Commission on American's Urban Families will hold a meeting and hearing in Oakland, California the evening of Tuesday, June 23, and Wednesday, June 24. For exact time and location of the meeting, please the Commission two days prior to the event at 202-245-6462.

The purpose of the meeting is to enable invited participants to express their views on the condition of American's urban families and inform the Commission about programs and approaches that work to strengthen families.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW., room 305-F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92-13861 Filed 6-11-92; 8:45 am]
BILLING CODE 4150-04-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Overview Section) will be held on June 29, 1992 from 9 a.m.—5:30 p.m. and June 30 from 9 a.m.—5 p.m. in Room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will be discussion of policy and issues related to the field.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-13903 Filed 6-11-92; 8:45 am]
BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the

Opera-Musical Theater Advisory Panel (Challenge IV Section) to the National Council on the Arts will be held on July 2, 1992 from 9 a.m.–5:30 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–10 a.m. and 4:30 p.m.–5:30 p.m. The topics will be welcoming remarks and policy discussion.

The remaining portion of this meeting from 10 a.m.–4:30 pm. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–13904 Filed 6–11–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by June 30, 1992. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335, and to:

(b) *OMB Desk Officer.* Office of Information and Regulatory Affairs, Attn: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Higher Education Survey #18, Survey on Alcohol and Drug Programs at Higher Education Institutions.

Affected Public: Non-Profit Institutions.

Respondents/Reporting Burden: 567 respondents, One hour per response.

Abstract: This and other HES panel surveys are responsible for a variety of policy issues. This survey measures to the extent to which insitutions have implemented new or strengthened existing prevention policies and prevention programs in response to the Drug Free School and Community Act Amendments of 1989.

Dated: June 9, 1992.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 92–13877 Filed 6–11–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of information collection:* Elimination of Record Keeping Requirements Associated with the Interim Final Rule, 10 CFR parts 30 and 35.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* This rulemaking proposes to eliminate the recordkeeping requirements previously approved for documenting departures from the elution and preparation instructions for diagnostic radiopharmaceuticals or from the package insert instructions regarding use or route of administration for therapeutic radiopharmaceuticals..

5. *Who will be required or asked to report:* This rulemaking would eliminate the recordkeeping burden for medical use and commercial nuclear pharmacy material licensees who make departures from the preparation and elution instructions for diagnostic radiopharmaceuticals or from the package insert instructions regarding indications for use or route of administration for therapeutic radiopharmaceuticals.

6. *Estimate of the number of responses:* Each departure is a response. It is estimated that annually this rulemaking would eliminate the recordkeeping burden for 23,000 diagnostic radiopharmaceuticals departures and 100 therapeutic radiopharmaceutical departures..

7. *An estimate of the total number of hours needed to complete the requirement or request:* The average burden reduction per response is: An estimated 6 minutes for each medical use licensee that elutes generators and prepares diagnostic radiopharmaceuticals when making the original written directive for a specific departure; 3 minutes for each medical use licensee that elutes generators and prepares diagnostic radiopharmaceuticals, when making a departure, when the directive references the original written directive; 5 minutes for each medical use licensee that orders its diagnostic radiopharmaceuticals from a commercial nuclear pharmacy when making the original written directive for a specific departure; 1 minute for each medical use licensee that orders its diagnostic radiopharmaceuticals from a commercial nuclear pharmacy when making a departure for subsequent departures, which references the original written directive; 1 minute for commercial nuclear pharmacy licensees; and 6 minutes for medical use licensees using therapeutic radiopharmaceuticals. The total annual burden reduction for the industry is 1,058 hours for the diagnostic radiopharmaceuticals and 10 hours for therapeutic radiopharmaceuticals.

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Applicable.

9. *Abstract:* The proposed rule amends 10 CFR part 30.34, 35.200, and 35.300 to

eliminate the recordkeeping requirements that document medical use or commercial nuclear pharmacy licensees' departure from the manufacturers' instructions for preparation of diagnostic radiopharmaceuticals using generators and reagent kits, or medical use licensees' departure from the package insert instruction regarding indications for use or route of administration when a written directive is made for the departure by a physician-authorized user.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0010 and 0017), Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated to OMB by telephone at (202) 395–3085. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132. Dated at Bethesda, Maryland, this 4th day of June 1992.

For the U.S. Nuclear Regulatory Commission.

George H. Messenger,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 92–13896 Filed 6–11–92; 8:45 am]

BILLING CODE 7590–01–M

Nomination of New Members of the Advisory Committee on the Medical Uses of Isotopes

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is inviting nominations of individuals for its Advisory Committee on the Medical Uses of Isotopes (ACMUI) who are qualified in the following areas: Medical research, hospital administration, radiation oncology, nuclear cardiology, medical physics, and radiopharmacy.

DATES: Nominations are due on or before August 11, 1992.

ADDRESSES: Submit nominations to: Secretary of the Commission, ATTN: Advisory Committee Management Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–504–3417.

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on changes in NRC rules, regulations, and guides concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and providing technical assistance in licensing, inspection, and enforcement cases.

Committee member possess the medical and technical skills needed to address evolving issues. The ACMUI currently consists of two physician specialists in therapeutic radiology, with experience in teletherapy and brachytherapy; three physician specialists in nuclear medicine, with backgrounds in radiology, internal medicine, and cardiology; a nuclear medicine technologist; a radiopharmacist; two specialists in medical physics; a patient's rights and care advocate; an individual with experience in State regulation of radioisotopes; and a representative from the Food and Drug Administration. Because issues in the medical use of byproduct material are becoming increasingly complex, NRC has chosen to expand the ACMUI to include individuals who can provide NRC with a broader base of information and advice on complex regulatory issues affecting the medical uses of byproduct radioactive materials.

NRC is soliciting nominations of persons who are qualified in the following areas: Medical research, with expertise in the medical use of monoclonal antibodies; hospital administration or management; radiation oncology with experience in teletherapy, brachytherapy, and/or stereotactic radiotherapy; radiopharmacy; nuclear cardiology; and medical physics. Persons having the aforementioned qualifications are encouraged to apply.

All new committee members will serve a 2 year term, with possible reappointment to two additional 2-year terms.

Nominees must include resumes describing their educational and professional qualifications, and provide their current addresses and telephone numbers.

Nominees must be United States citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per diem in lieu of subsistence), secretarial, and correspondence expenses.

Dated: Rockville, MD this 8th day of June, 1992.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–13895 Filed 6–11–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–06402; License No. 42–02964–01 EA 91–121]

Western Atlas International, Inc., Houston, TX; Order Imposing Civil Monetary Penalty

I

Western Atlas International, Inc. (Licensee) is the holder of Materials License No. 42–02964–01 issued by the Nuclear Regulatory Commission (NRC or Commission). The license authorizes the Licensee to possess a variety of radioactive byproduct materials for use in well tracer studies and well logging activities in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on September 6–7 and September 11, 1991, to review the circumstances surrounding a September 5, 1991 incident involving the loss of a cesium-137 sealed source being transported with other sources from Yukon, Oklahoma to Houston, Texas. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated December 20, 1991. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in letters dated January 24, 1992. In response, the Licensee admitted the violations that resulted in the proposed civil penalty, but requested mitigation of the penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC Staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the $10,000 penalty proposed for the

violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It Is Hereby Ordered That:*

The Licensee pay a civil penalty in the amount of $10,000 within 30 days of the date of this Order, by check, draft, or money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: Whether on the basis of the violations, which were admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 5th day of June 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusions

On December 20, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Western Atlas International, Inc. (WAII or Licensee) responded to the Notice on January 24, 1992. The Licensee admitted the violations which resulted in the proposed civil penalty but requested mitigation of the penalty. The NRC's evaluation and conclusions regarding the Licensee's requests are as follows:

Restatement of Violations (Part I of Notice, Violations Assessed a Civil Penalty)

A. 10 CFR 71.5(a) requires that each licensee who transports licensed radioactive material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the regulations appropriate to the mode of transport of the United States Department of Transportation (DOT) in 49 CFR parts 170 through 189.

49 CFR 177.842(d) requires that packages of radioactive material must be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on September 5, 1991, the licensee did not adequately block and brace a package containing licensed material to prevent the movement and subsequent accidental loss of that package from the transport vehicle. Specifically, a transport package containing a two curie cesium 137 sealed source was not sufficiently blocked and braced on the transport vehicle to prevent the accidental loss of the package under conditions normally incident to transportation while en route from Yukon, Oklahoma to Houston, Texas.

B. 10 CFR 71.5(a) requires that each licensee who transports licensed radioactive material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the regulations appropriate to the mode of transport of the United States Department of Transportation (DOT) in 49 CFR parts 170 through 189.

49 CFR 173.475 requires, in part, that prior to each shipment of radioactive material, the licensee ensure that the transport package is in unimpaired condition and that each closure device is properly installed and secured and free of defects.

Contrary to the above, on September 5, 1991, the licensee did not ensure that the transport package's closure device was properly installed and secured and free of defects. Specifically, the safety pin designed to secure the locking bar of the transportation package's closure device was not installed prior to the package's use in transporting a two curie cesium 137 sealed source. Subsequently, the closure device became dislodged during transport which allowed the sealed source to become separated from the transport package when the package was lost from the transport vehicle while en route from Yukon, Oklahoma to Houston, Texas.

Collecively, this is a Severity Level I problem. Cumulative Civil Penalty—$10,000 (assessed equally between the two violations).

Summary of Licensee's Response and Request for Mitigation

The Licensee admitted the violations which resulted in the proposed civil penalty but requested mitigation of the penalty from $10,000 to either the basic $2,000 (referring to the normal base value alluded to on Page 3 of NRC's December 20, 1991, Notice) or to something closer to $2,000. The Licensee based its request for mitigation on its arguments that:

(1) The amount of the civil penalty should not have been increased based on "prior notice" where the WAII Senior Safety Engineer performed an inspection in advance of the shipment of radioactive sources and instructed a district manager to take certain actions prior to shipping the sources.

(2) WAII does not need additional punishment to get its attention, as indicated by the fact that it terminated the employment of the district manager who, according to WAII, intentionally did not follow instructions which could have mitigated the consequences of the event; and by the fact that it took corrective actions to preclude recurrence, including modifications to its carrier vehicles.

(3) The penalty against WAII should reflect what actually occurred, not what could have occurred based on speculation.

(4) The penalty should reflect the past good record of WAII.

NRC Evaluation of Licensee's Response

(1) *Prior Notice*

NRC's December 20, 1991, letter stated ". . . it was determined that any mitigation based on your good past performance was offset by your prior notice regarding the defects in the shipping container's closure mechanism." NRC's Enforcement Policy (Section V.B.) permits increasing a civil penalty by as much as 100% in cases where the licensee had prior knowledge of a potential problem as a result of a licensee review, and failed to take effective corrective steps.

WAII questions whether this factor should be applied when, as it argues in this case, an inspection is performed by the licensee in advance of an activity and responsible individuals ignore instructions to take steps to preclude violations. "It would appear," WAII said in its reply, "that the NRC prefers WAII had not made the preliminary inspection so that any loss would have been simply inadvertent or without knowledge . . . Failing to do so should be a factor which increases the penalty, not the reverse. . . ."

It is expected that licensees conduct appropriate audits to assure that regulatory requirements are being met. Licensees who fail to perform such audits do so at their peril since they risk escalated enforcement action for NRC-identified violations. Therefore, NRC does not accept the contention that licensee management will not conduct audits to identify safety issues because of fear of enforcement action. Such an attitude is inconsistent with the safety ethic expected of licensees.

The NRC Enforcement Policy provides that meticulous attention to detail is expected from licensees in order to assure adequate protection of the public health and safety. The preliminary inspection performed by the Licensee's Senior Safety Engineer exemplifies this approach. The issue in this case is not that the civil penalty is being escalated for performing an audit, but rather that the penalty is being escalated because there was

not adequate follow up by management consistent with the safety significance of the problem that the audit uncovered.

As a result of the preliminary inspection, Licensee management had knowledge of a problem with significant health and safety implications; but subsequently, the District Manager, a Licensee official, failed to address the issue. The NRC Enforcement Policy defines a "licensee official" as a first line supervisor or above. Had the failure occurred on the part of a non-management employee, the outcome of the enforcement action would have been different.

The Licensee further seeks to distance itself from the failure of its employee by stating that "specific remedial instructions were given which were ignored by a District Manager who had no history of ignoring such instructions." NRC is not in a position to comment on whether the District Manager had a history of ignoring instructions. It is not clear why, in the absence of a history of not following instructions, he would do so here. Nevertheless, the use of inadequately prepared shipping containers is a serious matter that should have had further follow up to assure that the problem was corrected. Considering that the District Manager failed to follow through by executing the instructions of the Senior Safety Engineer, and that the Senior Safety Engineer failed to follow up with the District Manager to assure that the instructions were executed, it is clear that Licensee management, with the knowledge available, could have taken reasonable action that would have prevented the violation from occurring. As a result of the failure to follow through on the part of Licensee management, a violation occurred that involved the potential for very significant radiation exposure, and one member of the public did receive an exposure to his fingers of 3.5 to 5.5 rem.

Under these circumstances, the NRC Staff believes that it acted appropriately in balancing mitigation for prior good performance (in this case, 100% mitigation) against escalation for prior notice (in this case), 100% escalation. The Licensee has provided no basis for any additional mitigation.

2. Incentives to Take Corrective Action

The Licensee argues that the civil penalty is not necessary to cause it to take its responsibilities seriously and to take corrective actions. NRC licensees are always expected to take their responsibilities seriously and take appropriate corrective action. Additional action would be taken if a licensee argued otherwise. Civil penalties are assessed to deter future noncompliance on the part of all licensees and to emphasize the need for lasting corrective action. The deterrent effect is achieved when licensees, in order to avoid civil penalties, take prompt and effective action in advance of any potential violation so that the violation does not occur and the NRC does not have to become involved. Thus, the NRC Staff does not believe that the Licensee's argument warrants reconsideration of the civil penalty.

3. Actual vs. Hypothetical Consequences

The Licensee argues that the penalty should reflect what actually occurred, not what could have occurred. However, the NRC Enforcement Policy takes into account both actual and potential safety consequences. In this case, the NRC Staff, after consulting the Commission, assigned the highest possible severity level to the violations because they resulted in actual unnecessary radiation exposures to emergency response personnel and had a potential for much higher exposures to these individuals and to other members of the public. The regulations that were violated are designed to prevent licensed radioactive sources from posing this type of hazard. The entire system of containment—consisting of the source container itself and the securing of the container to the vehicle—failed due to these violations. As the Commission stated in *X-Ray Engineering*, "* * * our statutory obligation to protect the public health and safety is not subject to the condition precedent that actual injuries occur." 1 AEC 553, 555 (1960).

The Licensee also raises an issue as to whether the emergency response personnel acted reasonably and were adequately trained. However, the responsibility to adequately control licensed material so as to assure the protection of the public health and safety rests with the Licensee and not with emergency response personnel or other members of the general public. Moreover, any person could have stopped on the roadway and picked up the source. Only luck prevented that scenario, with its resulting adverse health and safety consequences, from happening.

Thus, the NRC Staff does not find that the Licensee's argument warrants reconsideration of the civil penalty.

4. Compliance History

The Licensee argues that the civil penalty should reflect the good past record of WAII. As discussed above, in proposing the penalty, NRC did take the Licensee's past performance into account and concluded that mitigation of the base penalty value was appropriate based on prior good performance. However, this mitigation was offset by the escalation of the base penalty value on the prior notice factor.

NRC Conclusion

The NRC Staff concludes that the Licensee has not provided an adequate basis for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $10,000 should be imposed.

[FR Doc. 92-13897 Filed 6-11-92; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-63A]

Proposed Determination of Action Concerning the European Community's Oilseeds Subsidy Regime; Request for Public Comment and Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed determination of action pursuant to sections 301(a) and 306(b) of the Trade Act of 1974, as amended (Trade Act); request for public comment pursuant to section 306(c) of the Trade Act; and notice of public hearing concerning the proposed action.

SUMMARY: Rights and benefits of the United States under the General Agreement on Tariffs and Trade (GATT) continue to be denied by subsidies on oilseeds granted by the European Community (EC). Accordingly, the United States Trade Representative (USTR or Trade Representative) intends to take action, subject to the direction, if any, of the President, as required by section 301(a), to enforce U.S. rights or to obtain the elimination of the EC's subsidies on oilseeds. Specifically, the Trade Representative proposes to increase duties affecting $1 billion in imports of EC goods into the United States, which is an amount equivalent in value to the burden or restriction imposed upon U.S. commerce by the EC's oilseed subsidies. The Trade Representative also seeks public comment and will hold a public hearing on July 13–14, 1992, concerning the proposed action.

DATES: Written comments from interested persons are due on or before July 10, 1992; requests to testify at the public hearings are due on or before June 24, 1992; written testimony is due on or before July 6, 1992; the public hearing will be held on July 13, 1992, and will continue on July 14, 1992, if necessary; and rebuttal briefs are due on or before July 17, 1992.

FOR FURTHER INFORMATION CONTACT: Marilyn Moore, Senior Economist (202) 395–5006; Bennett Harman, Director for European Community Affairs (202) 395–3074; or Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources (202) 395–7305, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On December 16, 1987, the American Soybean Association filed a petition pursuant to section 302 of the Trade Act alleging, among other things, that the EC's acts, policies, and practices concerning oilseeds were denying rights of the United States under the GATT and were imposing a burden or restriction upon U.S. commerce. On January 5, 1988, the Trade Representative initiated in investigation of these practices.

After extensive consultations failed to resolve the dispute, the United States requested the GATT Council of

Representatives (GATT Council) to establish a dispute settlement panel, in accordance with section 303(a)(2) of the Trade Act. The GATT panel found in 1989 that EC subsidies to oilseed producers and processors deny U.S. exporters the benefits of duty-free access to the EC market that were guaranteed to the United States in a 1962 trade agreement.

On January 25, 1990, the GATT Council adopted the panel report by consensus, and the EC representative confirmed the EC's intention to comply with the panel's recommendations. The EC advised that the necessary measures would be effective by the 1991 crop year.

On January 31, 1990, USTR determined, consistent with the GATT panel's conclusions, that the EC's production and processing subsidies on oilseeds deny rights of the United States under a trade agreement within the meaning of section 301(a)(1)(A) of the Trade Act, and that EC production subsidies deny benefits to the United States within the meaning of section 301(a)(1)(B)(i). Because the EC had agreed to take satisfactory measures within the meaning of section 301(a)(2)(B)(i) to comply with its GATT obligations, USTR determined pursuant to section 304(a)(1)(B) that the appropriate action at that time was to conclude the investigation, monitor the EC's compliance pursuant to section 306(a), and take further action if the EC failed to implement the panel report satisfactorily by the 1991 crop year.

On May 24, 1991, the EC advised that it would implement the GATT panel's recommendations by October 31, 1991, and that the reforms would apply to all oilseeds harvested during calendar year 1992 and thereafter. The EC proposed a new subsidies regime that purported to comply with the GATT panel's recommendations.

After reviewing the new regime, the United States proposed that the GATT panel be reconvened to consider whether the EC had implemented the panel's findings. On March 16, 1992, the reconvened panel formally released its "follow-up" report, which confirmed that the EC is continuing to impair its duty-free tariff bindings on oilseeds. The reconvened panel recommended that the EC move expeditiously to modify its new support system. At the GATT Council meeting on April 30, 1992, the EC indicated that it is not now prepared to make the required changes.

Proposed Determination and Action

If, on the basis of monitoring, the Trade Representative considers that the EC is not satisfactorily implementing its commitment to comply with the panel's recommendations, section 306(b) of the Trade Act requires the Trade Representative to determine what further action the Trade Representative shall take under section 301(a). Section 301(a) requires the Trade Representative to take action, subject to the specific direction, if any, of the President, to enforce U.S. GATT rights or to obtain the elimination of the act, policy, or practice at issue. Section 301(c) specifically authorizes the Trade Representative to suspend or withdraw the benefits of trade agreement concessions and to impose duties or other import restrictions upon the products of a foreign country for such time as the Trade Representative determines appropriate.

The USTR considers that the EC has failed to implement satisfactorily its commitment to comply with the original GATT panel report or to take any steps to implement the recommendations contained in the panel's "follow-up" report. Accordingly, the Trade Representative proposes, pursuant to sections 301(a) and 301(c), to impose increased duties affecting $1 billion of EC imports into the United States, which is an amount equivalent to the burden or restriction imposed upon U.S. commerce by the EC's oilseed subsidies. The products upon which the increased duties will be imposed will be drawn from the list of products set forth in the Annex to this notice.

Public Comment

USTR invites all interested persons to provide written comments concerning the proposed action. Specifically, interested persons may provide comments regarding (1) the appropriateness of imposing increased duties upon the products listed in the Annex to this notice; (2) the levels at which U.S. customs duties should be set for particular items; and (3) the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b), and are due no later than July 10, 1992. Comments must be in English and provided in 20 copies to: Chairman, Section 301 Committee, room 223, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–63A) open to public inspection pursuant to 15 CFR 2006.13, except for confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the docket that is open to public inspection.

Public Hearing

A public hearing concerning the proposed action will be held on July 13, 1992, commencing at 10 a.m. and continuing on July 14, 1992, if necessary. The hearing will be held at the International Trade Commission, Courtroom A, room 100, 500 E Street, SW., Washington, DC 20436.

Interested persons wishing to testify orally must provide a written request to do so by noon on June 24, 1992, to Chairman, Section 301 Committee, room 223, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. In their request, they must provide the following information (1) Name, address, telephone nunber, and firm or affiliation; and (2) a summary of their presentation. After consideration of a request to present oral testimony at the public hearing, the chairman will notify the applicant of the time of his or her testimony, if the request conforms to the requirements of 15 CFR 2006.8(a).

Additionally, person presenting oral testimony must submit 20 copies of their complete written testimony, in English, by noon on July 6, 1992, to the Chairman, Section 301 Committee at the address listed above. All written submissions msut be filed in accordance with 15 CFR 2006.8.

Testimony, both written and oral, shall be limited to the following subjects: (1) The appropriateness of imposing increased duties upon the products listed in the Annex to this notice; (2) the levels at which U.S. customs duties should be set for particular items; and (3) the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex. Remarks at the hearing will be limited to five minutes.

In order to allow each party an opportunity to respond to information provided at the hearing by other parties, USTR will entertain rebuttal briefs filed

by any party, in accordance with 15 CFR 2006.8(c) by noon on July 17, 1992.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

ANNEX

HTS subheading	Article
	[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]
	Cheese and curd: Fresh cheese (including whey cheese) not fermented, and curd: [Chongos]
0406.10.50	Other
	Grated or powdered cheese of all kinds: Blue-veined cheese:
0406.20.10	Roquefort cheese
0406.20.20	Other
0406.20.30	Cheddar cheese
0406.20.35	Colby
0406.20.40	Edam and Gouda cheeses
0406.20.50	Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz and Goya cheeses
	Other, including mixtures of the above:
0406.20.55	Cheeses made from sheep's milk
0406.20.60	Other
	Processed (process) cheese, not grated or powdered:
0406.30.10	Blue-veined cheese other than Roquefort cheese
0406.30.20	Cheddar cheese
0406.30.30	Colby cheese
0406.30.40	Edam and Gouda cheeses
0406.30.50	Gruyere-process cheese
	Other, including mixtures of the above:
0406.30.55	Cheeses made from sheep's milk
0406.30.60	Other
	Blue-veined cheese: Roquefort:
0406.40.20	In original loaves
0406.40.40	Other
	Other:
0406.40.60	In original loaves
0406.40.80	Other
	Other cheese:
0406.90.05	Bryndza cheese
0406.90.10	Cheddar cheese
0406.90.15	Edam and Gouda cheeses
	Gjetost cheeses:
0406.90.20	Made from goat's milk whey or from whey obtained from a mixture of goat's milk and not more than 20 percent by weight of cow's milk
0406.90.25	Other
0406.90.30	Goya cheese
0406.90.35	Sbrinz cheese
0406.90.40	Romano made from cow's milk, Reggiano, Parmesan, Provolone and Provoletti cheeses
0406.90.45	Swiss or Emmentaler cheese with eye formation Gammelost and Nokkelost cheeses
	Other cheeses, and substitutes for cheese, including mixtures of the above: Cheeses made from sheep's milk: [In original loaves and suitable for grating; Pecorino, in original loaves, not suitable for grating]
0406.90.60	Other
0406.90.65	Colby cheese
	Other, including mixtures of the above:
0406.90.70	Containing Romano, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz or Goya, all the foregoing made from cow's milk
0406.90.80	Other
	Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared: Fresh: [Miniature (spray) carnations; Roses; Chrysanthemums, standard carnations, anthuriums and orchids]
0603.10.80	Other
0603.90.00	Other
	Other vegetables, fresh or chilled:
0709.60.00	Fruits of the genus *Capsicum* (peppers) or of the genus *Pimenta* (e.g., Allspice)
	Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Other vegetables; mixtures of vegetables:
0712.90.75	Tomatoes
	Wheat gluten, whether or not dried:
1109.00.10	To be used as animal feed
1109.00.90	Other
	Rapeseed, colza or mustard oil, and fractions thereof, whether or not refined, but not chemically modified: Crude oil:
1514.10.10	Imported to be used in the manufacture of rubber substitutes or lubricating oil
1514.10.90	Other
	Other:
1514.90.10	Imported to be used in the manufacture of rubber substitutes or lubricating oil: Other:
1514.90.50	Denatured
1514.90.90	Other
	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:
1601.00.20	Pork: Other:
1601.00.40	Beef in airtight containers
1601.00.60	Other
	Other prepared or preserved meat, meat offal or blood: Of swine: Shoulders and cuts thereof:

ANNEX—Continued

HTS subheading	Article
1602.42.20	Boned and cooked and packed in airtight containers
1602.42.40	Other
	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced; Anchovies: [In oil, in airtight containers] Other:
1604.16.40	In immediate containers weighing with their contents 6.8 kg or less each
1604.16.60	Other
	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: [Crab; Shrimps and prawns; Lobster; Other crustaceans] Other:
1605.90.05	Products containing fish meat; prepared meals
	Other: Clams: In airtight containers:
1605.90.06	Razor clams (*Siliqua patula*)
	Other:
1605.90.10	Boiled clams, whether whole, minced or chopped, and whether or not salted, but not otherwise prepared or preserved, in immediate containers, the contents of each container not exceeding 680 grams gross weight
1605.90.20	Other
1605.90.30	Other
	Oysters:
1605.90.40	Smoked
1605.90.50	Other
1605.90.55	Snails, other than sea snails
1605.90.60	Other
	Sugar confectionery (including white chocolate), not containing cocoa: [Chewing gum, whether or not sugar-coated] Other: Confections or sweetmeats ready for consumption:
1704.90.10	Candied nuts
1704.90.20	Other
	Other:
1704.90.40	Articles of milk or cream
1704.90.60	Other
	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:
1905.10.00	Crispbread [Gingerbread and the like]
1905.30.00	Sweet biscuits; waffles and wafers [Rusks, toasted bread, and similar toasted products] Other:
1905.90.10	Bread, pastry, cakes, biscuits and similar baked products, and pudding, whether or not containing chocolate, fruit, nuts or confectionery
1905.90.90	Other
	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: [Cucumbers including gherkins; Onions] Other: [Capers] Other: Vegetables:
2001:90.25	Artichokes
2001:90.30	Beans [Nopalitos]
2001:90.35	Pimientos (*Capsicum anuum*)
2001:90.39	Other
2001:90.42	Chestnuts
2001:90.45	Mangoes
2001:90.50	Walnuts
2001:90.60	Other
	Mushrooms and truffles, prepared or preserved otherwise than by vinegar or acetic acid:
2003.10.00	Mushrooms
	Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:
2009.70.00	Apple juice
	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009:
2202.10.00	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored
	Other: Milk-based drinks:
2202.90.10	Chocolate milk drink
2202.90.20	Other
2202.90.90	Other
	Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009: [Sparking wine] Other wine; grape must with fermentation prevented or arrested by the addition of alcohol: In containers holding 2 liters or less: [Effervescent wine] Other:
2204.21.40	Of an alcoholic strength by volume not over 14 percent vol.
	Of an alcoholic strength by volume over 14 percent vol.:
2204.21.60	If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Marsala" and if so designated on the approved label
2204.21.80	Other
	Other: In containers holding over 2 liters but not over 4 liters:
2204.29.20	Of an alcoholic strength by volume not over 14 percent vol.
2204.29.40	Of an alcoholic strength by volume over 14 percent vol.
	In containers holding over 4 liters:
2204.29.60	Of an alcoholic strength by volume not over 14 percent vol.
2204.29.80	Of an alcoholic strength by volume over 14 percent vol.
	Vermouth and other wine of fresh grapes flavored with plants or aromatic substances: In containers holding 2 liters or less:
2205.10.30	Vermouth
	Other: Vermouth:
2205.90.20	In containers each holding over 2 liters but not over 4 liters
2205.90.40	In containers each holding over 4 liters
	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages: [Compound alcoholic preparations of a kind used for the manufacture of beverages]
	Spirits obtained by distilling grape wine or grape marc (grape brandy):
2208.20.10	Pisco and singani Other: In containers each holding not over 4 liters:
2208.20.20	Valued not over $2.38/liter

ANNEX—Continued

HTS subheading	Article
2208.20.30	Valued over $2.38 but not over $3.43/liter
2208.20.40	Valued over $3.34/liter
	In containers each holding over 4 liters:
2208.20.50	Valued not over $2.38/liter
2208.20.60	Valued over $2.38/liter
	[Whiskies; Rum and tafia]
2208.50.00	Gin and Geneve
	Other:
2208.90.01	Aquavit
	Bitters:
2208.90.05	Not fit for use as beverages
2208.90.10	Fit for use as beverages
	Brandy: Slivovitz: Valued not over $3.43/liter:
2208.90.12	In containers each holding not over 4 liters
2208.90.14	In containers each holding over 4 liters
2208.90.15	Valued over $3.43/liter
	Other: In containers each holding not over 4 liters:
2208.90.20	Valued not over $2.38/liter
2208.90.25	Valued over $2.38 but not over $3.43/liter
2208.90.30	Valued over $3.43/liter
	In containers each holding over 4 liters:
2208.90.35	Valued not over $2.38/liter
2208.90.40	Valued over $2.38/liter
2208.90.45	Cordials, liqueurs, kirschwasser and ratafia
	[Tequila]
	Vodka: In containers each holding not over 4 liters:
2208.90.60	Valued not over $2.05/liter
2208.90.65	Valued over $2.05/liter
2208.90.70	In containers each holding over 4 liters
2208.90.71	Limitations of brandy and other spirituous beverages
	Other: Spirits: [Mescal in containers each holding not over 4 liters]
2208.90.75	Other
2208.90.80	Other
	Preparations of a kind used in animal feeding: [Dog or cat food, put up for retail sale] Other:
2309.90.10	Mixed feeds or mixed feed ingredients
	Other:
2309.90.30	Animal feeds containing milk or milk derivatives
	Other:
2309.90.60	Animal feeds containing egg
2309.90.90	Other
	Unmanufactured tobacco (whether or not threshed or similarly processed); tobacco refuse: Tobacco, partly or wholly stemmed/stripped: Not threshed or similarly processed:
2401.20.05	Leaf tobacco, the product of two or more countries or dependencies, when mixed or packed together
	Other:
2401.20.20	Containing over 35 percent wrapper tobacco
	Not containing wrapper tobacco, or not containing over 35 percent wrapper tobacco:
2401.20.30	Cigarette leaf
2401.20.50	Other, including cigar leaf
	Threshed or similarly processed:
2401.20.60	From cigar leaf
2401.20.80	Other
	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes: Cigarettes containing tobacco:
2402.20.10	Containing clove
	Other:
2402.20.80	Paper-wrapped
2402.20.90	Other
	Other manufactured tobacco and manufactured tobacco substitutes; "homogenized" or "reconstituted" tobacco; tobacco extracts and essences:
2403.10.00	Smoking tobacco, whether or not containing tobacco substitutes in any proportion
	Casein, caseinates and other casein derivatives; casein glues: Casein:
3501.10.10	Milk protein concentrate
3501.10.50	Other

[FR Doc. 92–13911 Filed 6–11–92; 8:45 am]
BILLING CODE 3190–01–M

[Docket No. 301–89]

Termination of Section 302 Investigation: Intellectual Property Acts, Policies, and Practices on Taiwan, and Revocation of Priority Foreign Country Designation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of investigation pursuant to section 302(b) of the Trade Act of 1974, as amended (Trade Act); monitoring under section 306(a) of the Trade Act; and revocation of "priority foreign country" identification pursuant to section 182(c)(1)(A) of the Trade Act.

SUMMARY: Pursuant to section 304(a)(1)(A)(ii) of the Trade Act, 19 U.S.C. 2414(a)(1)(A)(ii), the United States Trade Representative (USTR) has decided that the acts, policies and

practices of the authorities on Taiwan concerning the protection and enforcement of intellectual property rights are unreasonable and burden or restrict U.S. Commerce. The authorities on Taiwan, however, will take specific measures to improve the level of protection of intellectual property rights and the enforcement of those rights. Thus, pursuant to section 301(b), 19 U.S.C. 2411(b), the USTR has determined that the appropriate action in this case is to terminate the investigation and monitor implementation of these measures pursuant to section 306(a), 19 U.S.C. 2416. Because expeditious action was required in reaching an agreement to resolve the issues raised in this case, the USTR made her determinations prior to the receipt of the public comments that are to be submitted by July 6, 1992. (57 FR 23605) The USTR will review these comments upon receipt.

In view of the specific measures set forth in the Agreement, the USTR has decided to revoke the identification of Taiwan as a "priority foreign country" under section 182 of the Trade Act, 19 U.S.C. 2242.

DATES: This investigation was terminated and the identification of Taiwan as a "priority foreign country" revoked effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Laura Kneale Anderson, Director for Taiwan (202) 395–6813; Emery Simon, Deputy Assistant USTR for Intellectual Property (202) 395–6864; or Catherine Field, Associate General Counsel (202) 395–3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On May 29, 1992, pursuant to section 302(b)(2)(A) of the Trade Act, the USTR initiated an investigation of those acts, policies and practices of the authorities on Taiwan that were the basis for identification of Taiwan as a "priority foreign country" under section 182(a) of the Trade Act. In identifying Taiwan as a "priority foreign country," the USTR noted deficiencies in that trading partner's intellectual property acts, policies, and practices with respect to: (1) effective enforcement of intellectual property rights, in particular, the grant of effective remedies against infringement of copyright and trademarks; (2) the high level of exports worldwide of goods from Taiwan that infringe intellectual property rights; and (3) the level of protection provided under laws and agreements for owners of U.S. patents, copyrights, trade secrets, layout designs of integrated circuits, and industrial designs. The USTR has determined pursuant to section 304(a) of the Trade Act, 19 U.S.C. 2414(a), that these acts, policies and practices are unreasonable within the meaning of section 301(d)(3)(B)(II) and burden or restrict U.S. commerce.

On June 5, 1992, representatives of the authorities on Taiwan and representatives of the authorities in the United States reached an agreement on providing improved levels of protection for patents, copyrights, trade secrets, layout designs of integrated circuits and industrial designs. The Agreement also provides detailed commitments on the enforcement of intellectual property rights, including commitments on the prevention of exports of infringing goods from Taiwan and a commitment to obtain effective remedies against infringement of intellectual property rights. Based on this Agreement to eliminate the unreasonable acts, policies, and practices, and in the expectation that the commitments contained in the Agreement will be fully implemented, the USTR has decided that the appropriate action in this case is to terminate this investigation. In addition, pursuant to section 182(c)(1)(A) of the Trade Act, the USTR has decided that the information in the Agreement warrants revocation of the identification of Taiwan as a "priority foreign country."

The USTR will monitor compliance with this trade agreement pursuant to section 306 of the Trade Act, and if, on the basis of this monitoring, the USTR considers that the authorities on Taiwan are not satisfactorily implementing the Agreement, the USTR will determine what further action to take under section 301(a) of the Trade Act.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92–13913 Filed 6–11–92; 8:45 am]

BILLING CODE 3190–01–M

Membership of the Performance Review Board (PRB)

AGENCY: Office of the United States Trade Representative.

ACTION: Membership of the Performance Review Board (PRB).

SUMMARY: The following staff members are designated to serve on the Performance Review Board:

Chair—Kathryn Early,
Alternate—John Hopkins,
Members—
James M. Murphy, Jr.,
Christopher Marcich,
Kathleen Lyon,
Stephen Farrar, Ex-offico,
Lorraine Green, Executive Secretary,

EFFECTIVE DATE: June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lorraine Green, Director, Human Resources, (202) 395–7360.

John T. Hopkins,

Assistant United States Trade Representative for Administration.

[FR Doc. 92–13912 Filed 6–11–92; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18757; 811–2882]

Municipal Cash Reserve Management, Inc.; Application for Deregistration

June 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration Under the Investment Company Act of 1940 ("Act").

APPLICANT: Municipal Cash Reserve Management, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on January 14, 1992, and amended on May 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm. on June 29, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Maryland corporation. On November 2, 1978, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. The registration statement became effective on November 2, 1979, and applicant's initial public offering commenced immediately thereafter.

2. On August 5, 1988, applicant's board of directors approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to Shearson Daily Tax-Free Dividend Inc. ("Successor Fund") in exchange for shares of the Successor Fund and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors approved the Plan on July 21, 1988. On or about September 19, 1988, proxy materials relating to the Plan were mailed to applicant's shareholders, who approved the Plan at a special meeting held on November 22, 1988.

3. On December 2, 1988, pursuant to the Plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant. The net asset value of applicant as of December 2, 1988 was $1,184,348,846.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $246,267.64. These expenses were borne by applicant ($90,570.85), the Successor Fund ($26,772.28), and Shearson Lehman Brothers Inc., applicant's investment adviser ($128,924.51). Applicant is aware that such expenses, in the aggregate, are in excess of those incurred in most other reorganizations. Applicant represents that the primary reason for the elevated level of expenses was the number of accounts involved in the reorganization, *i.e.*, 87,085. The amount expended, per account, in the reorganization was $2.83. Applicant submits that, on a per account basis, the expenses incurred were not in excess of those reasonably incurred in other reorganizations.

5. Articles of Transfer were filed on December 2, 1988, and Articles of Dissolution will be filed, on behalf of applicant with the Maryland State Department of Assessments and Taxation to effect the dissolution of applicant as a Maryland corporation.

6. Applicant has no shareholders, assets, or liabilities, and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13819 Filed 6-11-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18758; 812-7808]

PaineWebber America Fund, et al.; Notice of Application

June 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: PaineWebber America Fund, PaineWebber Atlas Fund, PaineWebber Mutual Fund Trust, PaineWebber Regional Financial Growth Fund, Inc., PaineWebber Managed Investments Trust, PaineWebber Investment Series, PaineWebber Managed Assets Trust, PaineWebber Managed Municipal Trust, PaineWebber Master Series, Inc., PaineWebber Municipal Series, PaineWebber Olympus Fund, and each portfolio thereof and any future portfolios thereof that will issue multiple classes of shares which are identical in all material respects to the classes described herein, and any other open-end management investment companies established or acquired in the future that are in the same "group of investment companies" as that term is defined in rule 11a-3 under the Act and which issue multiple classes of shares that are identical in all material respects to the classes described herein (the "Funds"); PaineWebber Incorporated ("PaineWebber"); and Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for exemptions from sections 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order (i) to permit the Funds to sell a fourth class of securities pursuant to a multiple distribution arrangement (the "Flexible Pricing System"), and (ii) to permit the Funds to impose a contingent deferred sales charge ("CDSC") on redemptions within one year of purchase for shares that were sold pursuant to a complete front-end sales load waiver applicable to large purchases.

FILING DATES: The application was filed on October 22, 1991 and amended on April 23, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm. on June 29, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations:

1. Each of the Funds is an open-end management investment company registered under the Act. Several of the Funds consist of multiple investment portfolios, each of which has separate objectives, policies, and segregated assets. Each Fund is organized as a Massachusetts business trust, except PaineWebber Master Series, Inc. and PaineWebber Regional Financial Growth Fund Inc., which are Maryland corporations.

2. Each Fund has entered into or will enter into an investment advisory and administration agreement with Mitchell Hutchins. Each Fund has entered into or will enter into a distribution agreement with Mitchell Hutchins. Mitchell Hutchins, in turn, has an exclusive dealer arrangement with respect to each Fund with PaineWebber. As used herein, the term "Manager" refers to Mitchell Hutchins in its role as investment adviser of the Funds and the

term "Distributor" refers to both Mitchell Hutchins and PaineWebber in their respective roles as distributor and exclusive dealer of the Funds. Mitchell Hutchins is registered as an investment adviser under the Investment Advisers Act of 1940. Mitchell Hutchins and PaineWebber are each registered as broker-dealers under the Securities Exchange Act of 1934.

3. Class A shares of the Funds are offered to investors at their current net asset value plus a front-end sales load. The Funds, on behalf of the Class A shares, also pay fees to Mitchell Hutchins under rule 12b–1 plans. Class B shares of the Funds are currently offered to the public at their current net asset value per share without imposing a sales load at the time of purchase. The Funds, on behalf of the Class B shares, pay the Distributor fees pursuant to rule 12b–1 plans. These fees are imposed for a period of six years following the purchase of Class B shares, at which time such shares convert automatically to Class A shares. In addition, an investor's proceeds from a redemption of the Funds' Class B shares made within a specified period of time after purchase may be subject to a CDSC which is paid to Mitchell Hutchins. The CDSC is imposed pursuant to the exemptive relief previously granted to the Funds by the SEC (the "Prior Order"),[1] which allows the Funds to issue and, sell three classes of securities. Several Funds currently offer Class C shares to certain benefit plans and unit investment trusts without imposing either a front-end sales load, CDSC or a continuing service or distribution fee.

4. Applicants propose to amend the Prior Order to allow each of the Funds to offer a fourth class of shares subject to a distribution fee for an indefinite period, at an annual rate of up to 0.75% of each Fund's average daily net assets, and an ongoing service fee, currently expected to be charged at an annual rate of up to 0.25% of average daily net assets ("Class D shares"). The Class D shares will not be subject to either a front-end sales load or a CDSC. The Funds' public shareholders will approve the rule 12b–1 plan. The Funds reserve the right to impose such fees at such higher rates as may be determined. The public offering price of the Class D shares will be the current net asset value of such shares. The distribution and servicing fees imposed by the Funds under the Flexible Pricing System will comply with the amendment to the Rules of Fair Practice promulgated by the National Association of Securities Dealers, Inc. ("NASD") that would subject "asset-based" distribution charges, including rule 12b–1 fees, to regulation as sales loads under those rules, if such amendment is approved by the SEC.

5. Applicants believe the Flexible Pricing System permits investors to choose the method of purchasing shares that is most beneficial given the length of time the investor expects to hold his or her shares and other relevant circumstances. Investors who would qualify for a significant front-end sales load discount may prefer Class A, thus avoiding the CDSC and six years of distribution fees applicable to Class B, or the distribution fees imposed on Class D for an infinite period. Investors whose orders would not qualify for the front-end sales load discount, and who intend to remain invested in a Fund for more than the CDSC period, may prefer to choose Class B shares. Investors whose orders would not qualify for the front-end sales load discount, and who are uncertain as to their holding period or expect it to be shorter than the CDSC period, may prefer to purchase Class D shares.

6. Investment executives or sales personnel selling shares of the Funds may be compensated at different levels or in a different manner for sales of the different shares. Applicants believe that it is impossible to generalize as to which class will provide the investment executive with the higher levels of compensation. Each Fund's prospectus will reflect that investment executives may receive different levels of compensation for selling different shares. The Distributor will adopt guidelines as to when each class of shares may be sold to particular investors.

7. Each Fund's prospectus will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, and exchange privileges applicable to each class of shares sold through the prospectus. Class A, Class B, and Class D shares will be offered and sold through a single prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statements of assets and liabilities and the statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describe the expenses and/or performance data applicable to Class A, Class B, or Class D shares, it will disclose the expenses and/or performance data applicable to each of those classes.

8. If a shareholder owns both Class A and Class B shares, but not Class D shares, of a Fund, the shareholder's redemption request would be satisfied by redeeming the shareholder's Class A shares, unless the shareholder has made a specific election to redeem Class B shares. Redemption requests placed by shareholders who own Class A, Class B, and Class D shares of a Fund would be satisfied first by redeeming the shareholder's Class D shares, unless the shareholder has made a specific election to redeem the Class A or Class B shares first. If a shareholder owns both Class B and Class D shares, but not Class A shares, of a Fund, the shareholder's redemption request would be satisfied first by redeeming the shareholder's Class D shares, unless the shareholder has made a specific election to redeem Class B shares.

9. The gross income and all expenses of the outstanding shares of a Fund, except for the expenses specifically attributable to a particular class of shares ("Class Expenses"), will be allocated among the classes of shares of the Fund on the basis of their relative net assets.[2] Because of the ongoing distribution fee and potentially higher Class Expenses (specifically, as a result of a higher transfer agency fee) paid by the holders of Class B shares and the ongoing distribution fee paid by holders of Class D shares, the net income attributable to and the dividends payable on both Class B and Class D shares would be lower than the net income attributable and dividends payable on Class A shares. In addition, because the Class C shares will not bear any rule 12b-1 fee and because it is anticipated that the transfer agency fees may be lower than those attributed to the other shares, the net income attributable to the dividends payable on Class C shares would be higher than the net income attributable to and the dividends payable on the other classes of shares.

[1] Investment Company Act Release Nos. 18064 (April 9, 1991) (notice) and 18126 (May 1, 1991) (order)

[2] The Prior Order provided that each class of shares could bear any rule 12b-1 fees or transfer agency costs solely attributable to that class, and such other incremental expenses, subsequently identified as properly allocated to one class, which shall be approved by order of the SEC. Set forth in condition 1 below is a complete list of Class Expenses that would be permitted by the requested order.

10. Another difference among the Class A, Class B, Class C, and Class D shares will be the exchange privileges applicable to the shares. Currently, Class B shares of a Fund are exchangeable only for Class B shares of the other Funds, including Class B shares of PaineWebber Money Market Fund, a series of PaineWebber Master Series, Inc. which is a money market fund with a rule 12b-1 fee. Class A shares of a Fund are exchangeable only for Class A shares of the other Funds and shares of certain money market funds sponsored by the Manager, including Class A shares of PaineWebber Money Market Fund.[3] At present, the Class C shares of a Fund are not exchangeable; however, if the Class C shares become exchangeable, they will be exchangeable only for Class C shares of the other Funds and shares of certain money market funds, including Class C shares of PaineWebber Money Market Fund. Class D shares of a Fund likewise will be exchangeable only for Class D shares of the other Funds and Class D shares of PaineWebber Money Market Fund.

11. Applicants also request an amendment to the Prior Order to permit the Funds to assess a CDSC on redemptions of Class A shares sold pursuant to a complete front-end sales load waiver applicable to large purchases, if such shares are redeemed within one year of purchase. Currently, the front-end sales load is waived for sales of Class A shares where the amount of purchase exceeds $1,000,000, although this amount may be changed in the future. The CDSC would be imposed only on such Class A shares issued on or after the date the amended order requested hereby is granted. The CDSC applicable to these Class A shares would be calculated in the same manner as the CDSC with respect to the Class B shares described in the Prior Order. However, the amount of the CDSC will be limited to 1% of the investor's aggregate purchase payments.

Applicants' Legal Conclusions

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of Class A, Class B, Class C, and Class D shares representing interests in the Funds might be deemed: (a) To result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. Section 18 is intended to prevent investment companies from issuing excessive amounts of senior securities and thereby increasing unduly the speculative character of their junior securities, or from operating without adequate assets or reserves. The Flexible Pricing System does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. Under the Flexible Pricing System, mutuality of risk will be preserved with respect to each class of shares in a Fund. The flexible pricing system does not involve borrowings and does not affect the Funds' existing assets. Investors will not be given misleading impressions as to the safety or risk of any class of shares, and the nature of any class of shares will not be rendered speculative. The Funds' capital structures will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders, nor will it enable insiders to manipulate expenses and profits among the various classes of shares of a Fund.

3. The rights and privileges of each class of shares are substantially identical, and the possibility of conflicting interests is remote. The interests of the various classes with respect to distribution and/or service fees are protected by the required annual review of such fees by the Directors/Trustees.

4. The proposed allocation of expenses and voting rights relating to the rule 12b-1 plans in the manner described above is equitable and would not discriminate against any group of shareholders.

5. Under the proposed Flexible Pricing System, an investor will be able to choose the method of purchasing shares that is most beneficial given the amount of his or her purchase, the length of time that the investor expects to hold his or her purchase, and other relevant circumstances. The proposed arrangement would permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to method of purchasing shares without assuming excessive accounting and bookkeeping costs or unneccesary investment risks.

Applicants' Conditions

An order granting the requested exemptions will be subject to the following conditions set forth in the application:

Conditions Relating to the Flexible Pricing System

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will relate solely to: (a) The impact of the respective rule 12b–1 plan payments made by each of the Class A shares, Class B shares, or Class D shares of a Fund, or, in the case of the Class C shares, the absence of any such distribution or service fees, and any Class Expenses that may be imposed upon a particular class of shares and which are limited to (i) transfer agency fees attributable to a specific class of shares, (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class, (iii) blue sky registration fees incurred by a class of shares, (iv) SEC registration fees incurred by a class of shares, (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class, (vi) litigation or other legal expenses relating solely to one class of shares, (vii) Directors/Trustees' fees incurred as a result of issues relating to one class of shares, and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) voting rights on matters which pertain to rule 12b–1 plans; (c) the different exchange privileges of the various classes of shares as described in the prospectuses (and as more fully described in the statement of additional information) of the Funds; (d) the conversion feature applicable only to the Class B shares; and (e) the designation of each class of shares of a Fund.

2. The Directors/Trustees of each of the Funds, including a majority of the independent Directors/Trustees, shall have approved the Flexible Pricing System, and the amendments thereto, prior to the implementation or amendment of the Flexible Pricing System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement or amend the Flexible Pricing System will reflect in detail the reasons for

[3] Other money market fund shares that are initially purchased for cash are not exchangeable; rather, such money market fund shares must be redeemed and the redemption proceeds used to purchase Class A, Class B, or Class D shares. PaineWebber Money Market Fund will be the only money market fund whose shares will be exchangeable with shares of the Funds without imposition of any sales charge

determining that the Flexible Pricing System or the amendment thereof is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Directors/Trustees including a majority of the independent Directors/Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by a Fund to meet Class Expenses shall provide to the Directors/Trustees, and the Directors/Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Directors/Trustees, including a majority of the independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Manager and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

5. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class of shares first becomes effective.

6. The Directors/Trustees of the Funds will receive quarterly and annual statements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale of a class of shares will be used to support the rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale of a specific class of shares will not be presented to the Directors/Trustees to support rule 12b–1 fees charged to shareholders of such class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors/Trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that fee payments made under the rule 12b–1 plans relating to the Class A, Class B and Class D shares, respectively, will be borne exclusively by each such class and except that any Class Expenses may be borne by the applicable class of shares.

8. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among such classes will be reviewed by an expert (the "Independent Examiner"). The Independent Examiner has supplemented its prior report to the applicants and such supplement was filed with the SEC as an exhibit to the application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Directors, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System and Certain Compliance Tests" as defined and described in the Statement of Accounting Standards No. 44 of the American Institute of Certified Public Accounts, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (8) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

10. The prospectuses of the Funds relating to Class A, Class B and Class D shares will include a statement to the effect that an investment executive may receive different levels of compensation for selling one particular class of shares over another in a Fund.

11. The Distributor will adopt compliance standards as to when Class A, Class B, Class C, and Class D shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards. Applicants' compliance standards will require all investors eligible to purchase Class C shares of a Fund offering such shares to invest in Class C, rather than Class A, Class B, or Class D shares of such Fund.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Flexible Pricing System will be set forth in guidelines which will be furnished to the Directors/Trustees as part of the materials setting forth the duties and responsibilities of the Directors/Trustees.

13. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares offered through the

prospectus. Class A, Class B, and Class D shares will be offered and sold through a single prospectus. If Class C shares of a Fund are offered solely via a separate prospectus, the prospectus for the Class A, Class B, and Class D shares of that Fund All identify the existence of the Class C shares of the Funds and will identify the entities eligible to purchase such shares, and the Class C prospectus will identify the existence of the Fund's Class A, Class B, and Class D shares. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A, Class B, or Class D shares, it will disclose the expenses and/or performance data applicable to both classes. Advertising materials reflecting the expenses or performance data for Class C shares will be available only to Class C eligible investors. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present Class A, Class B, and Class D shares.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

15. Class B shares will convert to Class A shares on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee or other charge.

Condition Relating to the CDSC

Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (November 2, 1988), as such rule is currently proposed, and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13820 Filed 6–11–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25551; International Series Release No. 396]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 5, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 29, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Houston Industries Incorporated (70–7963)

Houston Industries Incorporated ("HII"), Five Post Oak Park, 4400 Post Oak Parkway, Houston, Texas 77027, a Texas public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, has filed an application in connection with the proposed acquisition of an interest in a to-be-formed Argentine electric public utility company ("Acquired Utility"). HII requests orders under section 3(b) of the Act granting an unqualified exemption to Acquired Utility and HII Sub, a to-be-formed wholly owned United States nonutility subsidiary company that will acquire up to a 25% ownership interest in Acquired Utility through a to-be formed partially owned Argentine subsidiary company ("Argentine Holding Company"). Alternatively, HII requests an order of the Commission under sections 9(a)(2) and 10 approving the proposed acquisition of an interest in Acquired Utility and granting exemptions under section 3(a)(5) from all provisions of the Act except section 9(a)(2) to HII Sub and Argentine Holding Company.

HII has one public-utility company subsidiary, Houston Lighting & Power Company ("HL&P"), which is engaged in the generation, transmission, distribution and sale of electric energy at retail and wholesale within the State of Texas. HII also owns all of the capital stock of several nonutility subsidiary companies. HII and HL&P reported operating revenues of approximately $4.18 billion and $3.47 billion, respectively, in 1990.

As part of its privatization program, the Argentine government has authorized Servicios Electricos del Gran Buenos Aires ("SEGBA"), a state corporation that currently serves the electricity needs of the City of Buenos Aires and the surrounding area, to sell a 51% interest in Acquired Utility. HII intends to participate with Techint Compania Tecnica Internacional S.A.C.I. ("Techint"), a privately owned Argentine company, in a bid for the 51% interest. If the bid is successful, HII and Techint will acquire the ownership interest through Argentine Holding Company, in which HII Sub will hold an ownership interest not exceeding 49%.[1] In addition, it is contemplated that HII Sub will provide management and technical services to Acquired Utility.

Although the actual amount of HII's investment will not be determined until a formal bid is made, the application states that HII will not invest more than $100 million. HII's investment will be made in cash derived from HII's general corporate funds through borrowings under established lines of credit or through other short-term borrowings. HII represents that: (1) No funds will be provided by HL&P; (2) neither HII nor any affiliate company of HII will provide, directly or indirectly, any guaranty or other form of credit support with respect to any indebtedness which may be incurred by HII Sub, Argentine Holding Company and/or Acquired Utility; and (3) there will be no business transactions between Acquired Utility and HII and/or any affiliate company of HII, other than HII Sub; except that employees of HL&P may provide management and technical services to

[1] Techint will own the remaining 51% interest. The application states, however, that certain financial institutions have expressed an interest in participating with Techint and HII in the acquisition, in which event the various indirect percentage interests of Techint, HII and HII Sub in Acquired Utility will be proportionately reduced.

Acquired Utility, for which HL&P will be appropriately compensated.

Acquired Utility will be an "electric utility company" as defined in section 2(a)(3). As a result, HII, HII Sub, Techint and Argentine Holding Company will each be a "holding company" within the meaning of section 2(a)(7) with respect to Acquired Utility, and Acquired Utility will be a direct or indirect "subsidiary company" of each within the meaning of section 2(a)(8). HII Sub will also be an "electric utility company" within the meaning of section 2(a)(3) because it will operate Acquired Utility.

HII requests orders of exemption under section 3(b) for Acquired Utility and HII Sub. The application states that neither Acquired Utility nor HII Sub will derive a material part of its income, directly or indirectly, from sources within the United States, and will not operate, or have any subsidiary company that operates as a public company in the United States. The application also states that, if unqualified exemptions are granted, Argentine Holding Company and HII Sub will rely upon rule 10(a)(1) to provide an exemption insofar as each is a holding company; and HII will rely on rule 11(b)(1) to provide an exemption from the approval requirements of sections 9(a)(2) and 10 to which HII would otherwise be subject.

If unqualified orders of exemption are not granted, HII requests authorization under sections 9(a) (2) and 10 to organize and acquire HII Sub, to participate in the organization and acquisition of up to a 49% interest in Argentine Holding Company through HII Sub, and to acquire up to a 25% interest in Acquired Utility through Argentine Holding Company. HII also requests orders under section 3(a)(5) exempting HII Sub and Argentine Holding Company from all provisions of the Act, except section 9(a)(2).[2]

The application states that one-half of SEGBA's total revenues for its fiscal 1990 year (the most recent financial data available) was equivalent to approximately $600 million. Based on a 25% interest in Acquired Utility, HII's pro forma share of such revenues would be $150 million (or approximately 3.5% of HII's consolidated revenues in 1990).[3]

HII states that it will continue to qualify as an exempt holding company under section 3(a)(1) after the acquisition.

HII has provided a copy of the application to the Public Utility Commission of Texas ("PUC") and has asked the PUC to communicate to this Commission any comments it may have with respect to the application prior to June 30, 1992. HII further states that it will file with this Commission copies of all material contracts to which HII Sub, Argentine Holding Company and/or Acquired Utility become parties, including, without limitation, any operating agreements, agreements for the provision of management and technical assistance, power supply agreements and shareholders' agreements.

System Fuels, Inc., et al. (70–8001)

System Fuels, Inc. ("SFI"), 225 Baronne Street, New Orleans, Louisiana 70112, a fuel supply company jointly owned by Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112, Mississippi Power & Light Company ("MP&L"), 308 East Pearl Street, Jackson, Mississippi 39201 and New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112 (all companies collectively, "Applicants"), each an electric public utility subsidiary of Entergy Corporation, a registered holding company, have filed an application under sections 9(a) and 10 of the Act.

By orders dated November 1, 1979, August 25, 1980, June 15, 1982 and May 15, 1984 (HCAR Nos. 21277, 21689, 22556 and 23309), the Commission authorized SFI to acquire by leveraged lease ("Lease") 600, 750, 580 and 320 coal railroad cars ("Equipment"), respectively, for the transportation of coal to the White Bluff and Independence Steam Electric Generating Stations ("Stations"). Pursuant to the Lease transactions, the obligations of SFI are supported by SFI's parent companies (AP&L, LP&L, MP&L and NOPSI, collectively "Parents") by means of "keep-well" arrangements. Under these keep-well arrangements, the Parents agree, severally and to the extent of their percentage ownership of SFI, to keep SFI in sound financial condition and to place SFI in a position, and cause SFI, to perform and discharge all its obligations under the relevant Lease transaction agreements.

The Applicants now propose that AP&L assume SFI's rights and obligations under the Leases. Such assumption would release and discharge SFI from its obligations under the Leases, and the Parents would be released and discharged from their keep-well obligations.

In addition, AP&L proposes to sublease to nonaffiliate companies up to 50% of the Equipment, at any one time, that are leased by AP&L. A sublease of Equipment will not exceed one year in duration, and AP&L will sublease only that Equipment which exceed the needs for the transportation of coal to the Stations.

It is stated that any revenues realized from any sublease of Equipment will be credited against AP&L's costs as lessee of the Equipment. The Applicants state that the benefit from such lower cost of leasing the Equipment shall accrue to the other owners of the Stations on a pass-through basis. It is also stated that such revenues shall be reflected accordingly in AP&L's ratemaking provisions, except to the extent the regulatory authority having jurisdiction over the matters authorizes a different treatment. It is further stated that such revenues will be credited to "Fuel Inventory Accounts" (account number 151 under the Federal Energy Regulatory Commission's Uniform System of Accounts). In the event that AP&L changes this method of accounting for the revenues from subleasing, the Applicants state that AP&L will notify the Commission pursuant to a Rule 24 notification within 30 days of such change. It is stated that it is not anticipated that the proposed transactions will increase the cost of transporting coal to the Stations.

Entergy Corporation, et al. (70–8002)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its wholly owned nonutility subsidiary, Electec, Inc. ("Electec"), 639 Loyola Avenue, New Orleans, Louisiana 70113, and Entergy Power, Inc. ("EPI") (Entergy together with Electec and EPI "Applicants"), 425 West Capital Avenue, Little Rock, Arkansas 72201, a wholly owned nonutility subsidiary of Electec, have filed an application-declaration under sections 2(a)(8), 3(a)(5), 3(b), 6(a), 7, 9(a), 10, 12(b), 13(b), and 13(f) of the Act and rules 10, 43, 45, 51, 83, 86, 87, 90, 91 and 95 thereunder.

Entergy has acquired an option ("Option") to participate in a consortium ("Consortium") with five other non-affiliated companies [4] to acquire a 60%

[2] The application states that Techint, as a foreign entity, will rely for exemption as a holding company upon rule 5, since it does not own any utility assets located within the United States and has no subsidiary company or affiliate owning any assets so located.

[3] Exhibit H to the application, filed on a confidential basis pursuant to rule 104(b), states the projected minimum annual revenue of Acquired Utility and minimum rate of return on HII's proposed investment.

[4] The other Consortium members are three Chilean companies, two Argentine companies and a

Continued

interest in Argentina's Costanera steam electric generating facility ("Facility") for $90.121 million and to operate and maintain the Facility.[5] The Facility presently is held by Central Costanera, S.A. ("Costanera"), a company wholly owned by the Argentine government and an electric utility company within the meaning of section 2(a)(3) of the Act. The remaining 40% of the shares of Costanera will be held by the Argentine government, with 10% to be transferred to employees of Costanera and the remainder to be sold in Argentina and internationally pursuant to public offerings. The Facility consists of seven natural gas/oil-fired generating units, with a total installed capacity of 1260 megawatts and serves the electricity needs of Buenos Aires. A Chilean member of the Consortium, Empresa Nacional de Electricidad, S.A., will operate the Facility.

Entergy seeks authority to exercise its Option prior to November 11, 1992, and thus to acquire indirectly up to a 5.99% voting interest in Costanera ("Alternative A"). A possibility exists that Entergy may indirectly acquire up to a 12.0% in Costanera ("Alternative B"). Under Alternative A, Entergy's obligations will not exceed $22.5 million and under Alternative B, Entergy's obligations will not exceed $45 million. Entergy's principal obligations will be the following: (1) To pay its percentage share of the Consortium's "common expenses" in connection with the submission of the bid to acquire 60% of Costanera; (2) to pay its share of the purchase price to the appropriate members of the Consortium, to make the required working capital contributions and to assume certain contingent liabilities of Costanera; [6] and (3) not to assign or dispose of its equity share in Costanera for a period extending five years after May 20, 1992 unless otherwise agreed by, among others, the Government of Argentina. The Consortium members' principal rights, with respect to Costanera, are to have no more than two voting members out of three on the Comptrolling Committee [7] of Costanera, and to have five voting members out of eight voting members on the Board of Directors of Costanera.[8]

For tax reasons, Applicants anticipate that Entergy, indirectly through Electec, will form a new wholly owned subsidiary ("Entergy, S.A."), organized under Argentine law, to purchase and exercise the Option. Under Alternative A, Entergy will purchase up to 22,500 shares of Electec for $1000 per share, and Electec, in turn, will acquire virtually all the common stock of Entergy S.A.[9] Entergy S.A. then will purchase shares of the common stock of Costanera for $9.01 million.

Should Entergy exercise Alternative B, Entergy will purchase up to 45,000 shares of the common stock of Electec for $1,000 per share, and Electec, in turn, will acquire virtually all the common stock of Entergy S.A. for $45 million. Entergy S.A. then will purchase up to 12% of the voting securities of Costanera for approximately $18 million.[10]

Electec seeks authority to provide consulting services to Costanera with respect to management, technical, operating, environmental and fuel supply training services on a competitive fee basis, which Applicants represent will neither favor nor discriminate against affiliates of Costanera. Electec expects that on an annual basis the provision of such services may range up to a maximum of $1 million, with the average likely to be substantially less. Applicants request that any possible consulting arrangement between Electec and Costanera be exempt from section 13 and the rules promulgated thereunder.[11]

Electec may obtain services from its associate companies, Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), New Orleans Public Service Inc. ("NOPSI"), EPI and Entergy Services, Inc. ("ESI") to carry out its consulting arrangements with Costanera. Electec will reimburse its associate companies at cost. Electec has been previously authorized to obtain services from AP&L, LP&L, MP&L, NOPSI and ESI (HCAR No. 23200, January 12, 1984).

Applicants request authorization for Electec to obtain services from EPI directly and for Electec to reimburse EPI at cost. EPI represents that it is not requesting authority in this application-declaration to purchase services from any other affiliate company.

As a result of the proposed transactions, under Alternative A, Entergy S.A. will become a subsidiary of Entergy within the meaning of section 2(a)(8) of the Act and Costanera will be an affiliate of Entergy within the meaning of section 2(a)(11)(A) of the Act.

Under Alternative B, both Entergy S.A. and Costanera will become subsidiaries of Entergy within the meaning of section 2(a)(8) of the Act, and Electec and Entergy S.A. will become holding companies within the meaning of section 2(a)(7) of the Act. Applicants request an order under section 3(b) exempting Entergy S.A. and Costanera, as subsidiary companies, from all provisions of the Act, and under section 3(a)(5), exempting Electec and Entergy S.A. as holding companies, from all provisions of the Act.

Applicants state that Entergy S.A. and Costanera will derive their income, directly or indirectly, only from Argentine sources and that neither Entergy S.A. nor Costanera nor any of their subsidiaries is a public-utility company operating within the United States. In addition, should Electec and Entergy S.A. become holding companies, Applicants state that Electec and Entergy S.A. will derive no material part of their income from subsidiary companies, which are companies the principal business of which within the United States is that of a public-utility company.

The Southern Company (70–8006)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346 has filed a declaration under section 12(b) of the Act and Rule 45 thereunder.

Southern proposes to use the proceeds from borrowing authorized in HCAR No. 25507 (March 31, 1992), together with treasury funds and proceeds from other external sources, to make capital contributions to its wholly owned

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United States utility company. The Chilean companies are Empresa Nacional de Electricidad, S.A. (30.01%), Enersis, S.A. and Distribuidora Chilectra Metropolitana S.A. (collectively, 12%); the Argentine companies are Inter-Rio Holdings Establishment (7.50%) and Perez Companc S.A.C.F.I.M.F.A. and Sade S.A.C.C.I.F.I.M. (collectively, 7.50%); the United States company is PSI Resources Inc. (2.99%, with an option to acquire an additional 3%).

[5] All monetary amounts are given in United States dollars.

[6] The principal contingent liability includes the joint assumption by Costanera and the members of the Consortium in accordance with their respective percentage interests of a $95 million, 20-year maturity, 1.5% interest rate loan from the Italian government to be utilized for the refurbishment of the Facility. Costanera also has $66 million of short-term debt payable to Gas del Estado, YPF, and Banco de Nacion.

[7] The Comptrolling Committee ("Commision Fiscalizadora") in Argentine corporations represents the shareholders before the Board of Directors.

[8] There is a requirement that the 40% of the shares of Costanera not acquired by the Consortium Members be represented on the Board; the Public Shares and the Employee Shares will each be entitled to one voting member. Each member of the Board of Directors will have one vote.

[9] One share of Entergy S.A. will be held by a nominee of Electec in order to conform with Argentine law.

[10] In this event, a change in the structure may be required under the Act to provide for Entergy to acquire the common stock of Entergy S.A. directly.

[11] Applicants make no representation that the consulting services to be provided to Costanera will be provided at greater than or less than cost.

electric utility subsidiary, Mississippi Power Company ("Mississippi"). Southern proposes to make such capital contributions, which will not exceed the aggregate amount of $100 million, from time-to-time through June 30, 1994.

Mississippi will use the proceeds of any such capital contributions, together with other funds, to finance its electric utility business, including payment of a portion of its construction program.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13818 Filed 6-11-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 92-06, Notice 2]

The Kelly-Springfield Tire Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by The Kelly-Springfield Tire Company (Kelly-Springfield) of Cumberland, Maryland, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq*) for a noncompliance with Standard No. 109 on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on February 13, 1992, and an opportunity afforded for comment (57 FR 5286).

Paragraph S4.3 of Standard No. 109 specifies that, "each tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 0.078 inches high the * * * (e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different; * * *".

During the period of November 3, 1991, to December 7, 1991, Kelly-Springfield produced 1,848 P195/60R15 Cordovan Grand Prix Radial G/T tires which did not comply with No. 109. The subject tires were mislabeled "Tread 4 Plies (2 Polyester Cord + 2 Steel Cord), Sidewall 2 Plies (Polyester Cord)" on the non-serial sidewall. That sidewall should have read "Tread 3 Plies (1 Polyester Cord + 2 Steel Cord), Sidewall 1 Ply (Polyester Cord)" as marked on the serial sidewall. The error occurred as a result of using an incorrectly stamped mold. Kelly-Springfield supported its petition for inconsequential noncompliance with the following:

All other labelled information as specified in Standard No. 109 Paragraph S4.3 (a) through (g) is correct and comply to Standard No. 109 in all respects, including the load and inflation pressure information. Additionally, all tires shipped with the above stated condition were properly labeled on the tread with the actual number of plies in the sidewall, and the actual number of plies in the tread area.

No comments were received on the petition.

As the petitioner states, the correct labeling information is to be found on the serial side of the tire, and on a paper label applied to the tread before the tire is sold. The improper information on the non-serial side of the tire bears no relationship to the performance of the tire. The petitioner has provided assurances that the tires comply with the strength and endurance requirements of the standard. The petition is similar to others which NHTSA has granted over the years.

Accordingly, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: June 9, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13889 Filed 6-11-92; 8:45 am]

BILLING CODE 4910-59-M

Denial of Motor Vehicle Petition

This notice sets forth the reason for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under Section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Donald L. Pevsner, Esq., petitioned the agency on February 12, 1992, to recall 1990 through 1992 model year Lexus LS 400, and 1992 model year Lexus models SC-400, ES-300, and SC-300. He included in his petition all other vehicles equipped with so-called electro-luminescent dashboards which do not have audible and visible headlamp warning systems. The subject vehicles are designed so that, when the ignition key is turned on, the dashboard is illuminated. The petitioner is concerned that the illuminated dashboard will result in a false signal to a driver that the vehicle's roadway illumination lights are on when, in fact, they are not. The petitioner believes that this can result in an unsafe condition and requests that such vehicles be recalled and be modified by adding an audible and visible headlight warning system.

The petitioner states that such warning systems are necessary to alert the driver to the fact that the headlamps are not illuminated when the ambient outside light falls below the lawful level for driving without having the headlamps illuminated. Mr. Pevsner based his petition on his observation that United States motorists have, over the course of more than half a century, become used to the fact that, when the dashboard lights are on, the parking lights or headlamps are also on.

The agency's safety standards for controls and displays in passenger cars, trucks, multipurpose vehicles, and buses are Federal Motor Vehicle Safety Standards Nos. 100 and 101, "Controls and Displays." These standards ensure the accessibility of motor vehicle controls and displays and facilitate their selection under daylight and nighttime conditions. There is no requirement which specifies a "telltale" indication for the headlamps being "on."

All new vehicles must be certified by the manufacturer to comply with applicable vehicle standards. Toyota has certified that the subject Lexus vehicles meet all applicable safety standards. A review of the information that Mr. Pevsner provided did not suggest a noncompliance to the safety standards on vehicle controls and displays.

The Pevsner also requested that the agency mandate the installation of the subject warning systems in all vehicles. Thus, in addition to petitioning the agency for a recall of existing vehicles, the petitioner has requested that NHTSA commence a rulemaking proceeding to require the installation of an audible and visible headlamp warning system.

The petitioner has provided no factual information indicating that accidents have occurred or will occur due to the lack of such a warning system. His request is based only on his view that the lack of such a warning system creates a safety concern. The agency reviewed its consumer complaint files and found no data to indicate that the drivers of the subject vehicles are experiencing safety-related problems with the electro-luminescent dashboard. The agency notes that vehicles with vacuum fluorescent displays exhibit performance similar to the electro-luminescent displays of concern to Mr. Pevsner, in that they are illuminated when the ignition is on, without the

headlamps being turned on. Such displays have been in vehicles for many years and the agency is unaware of any data to indicate that these vehicles have a greater risk of accident involvement because of such illuminated displays.

A review of the available information revealed no defect trend in vehicles equipped with electro-luminescent dasboards. Existing state and local laws concerning the required use of headlamps under specified ambient light conditions, coupled with human behavioral actions to turn headlamps on when warranted by light conditions, are providing satisfactory safety performance. Therefore, with respect to that portion of Mr. Pevsner's petition concerning a safety recall, in consideration of the available information, it was concluded that there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation.

With respect to that part of Mr. Pesvener's petition concerning requested regulatory changes, for the reasons cited above, it was also concluded that there is not a reasonable possibility that the requested rulemaking would be issued at the conclusion of a regulatory proceeding. Therefore, the petition is denied in its entirety.

Authority: Sec. 124, Public Law 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

William A. Boehly,

Associate Administrator for Enforcement.

Issued on: June 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–13892 Filed 6–11–92; 8:45 am]

BILLING CODE 4910–59–M

Denial of Motor Vehicle Petition

This notice sets forth the reason for the denial of a portion of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under Section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*) that requests a motor vehicle recall. It does not address another portion of the petition, which seeks a "stay" on the installation of passenger-side air bags in passenger cars.

Ms. Annemarie Shelness petitioned the agency on February 26, 1992, to order a halt of installation of passenger-side air bags until or unless it can be shown that a deploying air bag poses no danger to an infant in a rear-facing child restraint, and to recall all vehicles equipped with passenger-side air bags for the purpose of warning owners of a potential danger and provide them with a warning label, urging them to affix that label on the air bag housing.

A survey of Owner's Manuals from manufacturers who provide air bags for the right front seating position disclosed that all of the manuals already contain cautions and warnings covering the use of infant seats to alert the owner or driver as to the need for proper usage and placement of such infant seats. In addition, many vehicles with passenger-side air bags have similar warnings on the driver and passenger-side sun visors or in the glove box. Most manufacturers of vehicles with passenger-side air bags recommend that rear facing infant seats be placed in the rear seat, and warn that they should not be placed in the front passenger seat. The exception noted is Porsche, which reports that its vehicles have a confined rear seating area that is too small for the rear-facing child restraint to be installed. Instead, the right front seat has a long track which permits the seat to be moved sufficiently rearward to provide clearance for the installation of the rear-facing child restraint. The Porsche Owner's Manual contains the following caution: "Rearward facing child restraint system: Only use in the passenger seat in the rearmost adjusting position."

The agency has already acknowledged the value of consumer information concerning the interaction between passenger-side air bags and rear-facing child restraints. NHTSA's Consumer Advisory Bulletin, issued on December 10, 1991, stated, in part:

> The safest position for any type of child seat is in the rear seat, even if a car is not equipped with a passenger-side air bag. This is particularly true when rear-facing infant safety seats are placed in a car with a passenger-side air bag because the child could be seriously injured if the air bag deploys. Rear-facing infant seats extend closer to the dashboard.

It further stated that:

> If it is absolutely necessary to place a child in the front with the driver, the passenger seat should be moved back as far as possible. This will maximize the distance between the dashboard and the child seat and lessen the possibility of injury. The child seat should not come in contact with the dashboard.

A February 11, 1992, NHTSA News Release pointed out that a common error in child safety seat use is placing a rear-facing safety seat in the front seat of a car equipped with a passenger-side air bag. Finally, an April 1992 Consumer Information brochure points out that, "Rear-facing child safety seats should always go in the rear seat in cars equipped with passenger-side air bags."

The petitioner stated that she had viewed films and actual deployments concerning the interaction of air bags with rear-facing child restraints. On the basis of these, the petitioner indicated concern for the injuries that she believes could occur. However, the petitioner has presented no supporting information or factual data documenting the actual occurrence of child injuries resulting from the deployment of a passenger-side air bag while an infant was occupying a rear-facing child seat in the right front seating position. NHTSA has separately analyzed available data files on real-world crashes and found no record of child injuries in which a passenger-side air bag deployed and a rear-facing child seat was present. Additionally, analysis of the agency's computerized consumer complaint file has disclosed no complaints concerning this issue.

Because our review of all available information reveals that manufacturers have already provided owners with warnings concerning child restraint placement in vehicles equipped with passenger-side air bags, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of agency resources does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Public Law 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 9, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–13891 Filed 6–11–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Renewal of Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service and solicitation of committee members.

SUMMARY: It is in the public interest to renew the Advisory Committee for another two-year term. This notice also establishes criteria and procedures for the selection of members.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), (202) 622-0220.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. I (1982), and section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), the Assistant Secretary (Enforcement) announces the renewal of the following advisory committees:

Title: The Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

Purpose: The purpose of the Committee is to present advice and recommendations to the Secretary of the Treasury regarding commercial operations of the U.S. Customs Service and to submit a report to Congress containing a summary of its operations and its views and recommendations.

Statement of Public Interest: It is in the public interest to continue the existence of the Committee upon expiration, under the provisions of the Advisory Committee Act, of its current two-year term. The Committee provides a critical forum for distinguished representatives of diverse industry sectors to present their views on major issues involving commercial operations of the Customs Service. These views are offered directly to senior Treasury and Customs officials on a regular basis in a candid atmosphere. There exists no other single body that serves a comparable function.

SUPPLEMENTARY INFORMATION:

Background

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), Congress repealed the statutory mandate for a Customs User Fee Advisory Committee and directed the Secretary of the Treasury to create a new Advisory Committee on Commercial Operations of the U.S. Customs Service. The original Committee consisted of 20 members drawn broadly from industry sectors affected by Customs commercial operations. The Committee's charter was filed on October 17, 1988 and expired two years later. A new charter was filed on October 17, 1990, renewing the Committee for an additional two-year term. The renewed Committee held its first meeting on April 5, 1991, and it has met quarterly thereafter. The current term of the Committee will end with the expiration of the current charter on October 16, 1992. The Treasury Department plans to file a new charter by that date renewing the Committee for a third two-year term.

Objectives, Scope and Description of the Committee

The Committee's objectives are to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. It is expected that, during its third two-year term, the Committee will consider such issues as proposed customs modernization legislation, the North American Free Trade Agreement negotiations, the Merchandise Processing Fee, Harbor Maintenance Fee issues, administration of staff and resources for commercial operations, commercial and trade enforcement, administration and enforcement of export control laws, impact of Customs commercial operations on ports and carriers, automated systems, and the President's regulatory moratorium and deregulation initiative.

The Committee will be chaired by the Assistant Secretary of the Treasury for Enforcement. The Committee will function for a two-year period before renewal or abolishment and will meet approximately eight times (quarterly) during the period. The meetings will generally be held in the Treasury Department, Washington, DC. However, one or two meetings may be held outside of Washington during the two-year period, particularly at port locations (e.g. New York, San Diego, Miami).

The members shall be selected by the Secretary of the Treasury from representatives of the trade or transportation community serviced by Customs, the general public, or others who are directly affected by Customs commercial operations. In addition, members shall represent major regions of the country, and not more than ten members may be affiliated with the same political party. No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on an advisory committee. Members shall not be paid compensation nor shall they be considered Federal Government employees for any purpose. No per diem, transportation, or other expenses are reimbursed for the cost of attending Committee meetings at any location.

Members who are serving on the Committee during its expiring two-year term are eligible to reapply for membership. However, it is expected that approximately half of the current membership of the Committee will be replaced with new appointees. Membership on the Committee is personal to the appointee. Under the Committee By-Laws, a member may not send an alternate to represent him at a Committee meeting. However, since Committee meetings are open to the public, another person from a member's meetings are open to the public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; a member who is absent for two consecutive meetings or two meetings in a calendar year shall lose his seat on the Committee.

Application for Advisory Committee Appointment

Any interested person wishing to serve on the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service must provide the following:

—Statement of interest and reasons for application;
—Complete professional biography or resume;
—Political affiliation, in order to ensure balanced representation.

In addition, applicants must state in their applications that they agree to submit to reappointment and annual security and tax checks.

The application period for interested candidates will extend to August 1, 1992. Applications should be submitted in sufficient time to be received by the closing date to the Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Dated: June 5, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-13868 Filed 6-11-92; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 8, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex,

1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0028.
Form Number: POD 134.
Type of Review: Extension.
Title: Release Form.
Description: This form is used by Eligible Recipients of a Postal Savings account of a deceased depositor to transfer their rightful share to another person.
Respondents: Individuals or households.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion and other (as needed).
Estimated Total Reporting Burden: 10 hours.
Clearance Officer: Jacqueline R. Perry, (301) 436–6453, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–13823 Filed 6–11–92; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 8, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0001.
Form Number: CF 7509.
Type of Review: Extension.
Title: Air Cargo Manifest.
Description: The CF 7509 is the source of information that provides for the accountability, integrity and security of goods in air commerce that are imported into the United States.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 150.
Estimated Burden Hours Per Respondent/Recordkeeper: 34 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 116,586 hours.
OMB Number: 1515–0068.
Form Number: None.
Type of Review: Reinstatement.
Title: Foreign Assembler's Declaration (with Endorsement of Importer).
Description: The information is used to substantiate a claim for duty-free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the U.S.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 2,730.
Estimated Burden Hours Per Respondent/Recordkeeper: 50 minutes.
Frequency of Response: On occasion, Other (with every importation of merchandise under this tariff classification).
Estimated Total Reporting/Recordkeeping Burden: 283,469 hours.
OMB Number: 1515–0110.
Form Number: None.
Type of Review: Reinstatement.
Title: Declaration by Person Who Processed Goods Abroad.
Description: This declaration is needed to insure duty free entry of articles which were exported for processing and brought back into the United States.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 730.
Estimated Burden Hours Per Respondent/Recordkeeper: 46 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2,260 hours.
Clearance Officer: Ralph Meyer, (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–13824 Filed 6–11–92; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 5, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0026.
Form Number: IRS Form 926.
Type of Review: Extension.
Title: Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership.
Description: U.S. persons file Form 926 to report the transfer of property to a foreign entity and to report information required by section 6038B. The IRS uses Form 926 to determine if the excise tax is properly computed and if any of the exceptions from the excise tax apply.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hours, 25 minutes.
Learning about the law or the form—2 hours, 59 minutes.
Preparing and sending the form to the IRS—3 hours, 14 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 13,620 hours.
OMB Number: 1545–0044.
Form Number: IRS Form 973.
Type of Review: Extension.
Title: Corporation Claim for Deduction for Consent Dividends.
Description: Corporations file Form 973 to claim a deduction for dividends paid. If shareholders consent and IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if shareholders have included the dividend in gross income.
Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hours, 4 minutes.
Learning about the law or the form—24 minutes.
Preparing and sending the form to the IRS—29 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 2,475 hours.
OMB Number: 1545–0085.
Form Number: IRS Form 1040A, Schedules 1, 2, 3, and EIC.
Type of Review: Revision.
Title: U.S. Individual Income Tax Return.
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form is correct and are also for statistics use.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 19,954,530.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Form 1040A	1 hr., 3 min	2 hr., 7 min	2 hr., 46 min	35 min.
Sched. 1	20 min	4 min	10 min	20 min.
Sched. 2	33 min	11 min	37 min	28 min.
Sched. 3	13 min	14 min	26 min	35 min.
Sched. EIC	39 min	16 min	33 min	47 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 149,593,192 hours.
OMB Number: 1545–0714.
Form Number: IRS Forms 8027 and 8027–T.
Type of Review: Extension.
Title: Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027). Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027–T).
Description: To help IRS in its examinations of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit organizations.
Estimated Number of Respondents/ Recordkeepers: 52,050.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8027	Form 8027–T (minutes)
Recordkeeping	5 hr., 44 min	43
Learning about the law or the form.	35 min	
Preparing and sending the form to the IRS.	43 min	1

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 346,456 hours.
OMB Number: 1545–1132.
Regulation ID Number: INTL–536–89 Final.
Type of Review: Extension.
Title: Registration Requirements with Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984.
Description: The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j)) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations. The people reporting will be financial institutions holding bearer obligations.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 852 hours.
OMB Number: 1545–1266.
Form Number: IRS Form 8829.
Type of Review: Extension.
Title: Expenses for Business Use of Your Home.
Description: Internal Revenue Code (IRC) section 280A limits the deduction for business use minus certain business deductions. Amounts not allowed due to the limitations can be carried over to the following year. Form 8829 is used to verify that the deduction is properly figured.
Respondents: Individual or households.
Estimated Number of Respondents/ Recordkeepers: 4,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—52 minutes.
Learning about the law or the form—7 minutes.
Preparing the form—1 hour, 13 minutes.
Copying, assembling, and sending the form to the IRS—20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 10,200,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 92–13825 Filed 6–11–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review.

Date: June 8, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Focus Group Interviews on Form 9284, Request for Abatement of Delinquency or Failure to Pay Tax Penalty.
Description: Focus Group interviews are necessary to test the effectiveness of Form 9284 and to obtain taxpayer suggestions for any improvements or changes needed. Affected public is 80 participants.
Respondents: Individuals or households.
Estimated Number of Respondents: 800.
Estimated Burden Hours Per Respondent: 3 hours.
Frequency of Response: Other (One-time Focus Group).
Estimated Total Reporting Burden: 307 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–13849 Filed 6–11–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 8, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service.

OMB Number: 1545–0051.
Form Number: IRS Form 990–C.
Type of Review: Extension.
Title: Farmers' Cooperative Association Income Tax Return.
Description: Form 990–C is used by farmers' cooperative to report the tax by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 5,600.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—75 hours, 20 minutes
Learning about the law or the form—22 hours, 58 minutes
Preparing and sending the form to the IRS—40 hours, 7 minutes
Copying, assembling, and sending the form to the IRS—4 hours, 17 minutes
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 799,176 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–13850 Filed 6–11–92; 8:45 am]
BILLING CODE 4830–01–M

[Number: 19–01]

Directive; Delegation of Authority to Purchase Certain Equipment and Facilities

Dated: June 5, 1992.

1. *Delegation.* By virtue of the authority vested in the Treasurer of the United States by Treasury Order 101–05, I hereby delegate to the Director, United States Mint, without limitation, all the authority vested in the Secretary by section 5111(c)(1) of title 31 of the United States Code (U.S.C.), as amended, related to the acquisition of articles, materials, supplies, and services (including equipment, manufacturing facilities, patents, patent rights, technical knowledge, and assistance) necessary to produce the coins referred to in title 31 U.S.C., as amended. Any action heretofore taken by the Director, United States Mint, which involved the exercise of authority hereby granted is affirmed and ratified.

2. *Cancellation.* Treasury Directive 19–01, "Delegation of Authority to Purchase Certain Equipment and Facilities," dated November 14, 1986, is superseded.

3. *Office of Primary Interest.* Office of the Treasurer of the United States.

Catalina V. Villalpando,
Treasurer of the United States.
[FR Doc. 92–13827 Filed 6–11–92; 8:45 am]
BILLING CODE 4810–25–M

Customs Service

[T.D. 92–55]

Suspension of Individual Customs Broker License No. 4333; Milton Weinberg

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and §§111.52 and 111.74 of the Customs Regulations, as amended (CFR 111.52, 111.74), suspended the individual broker license (no. 4333) issued to Mr. Milton Weinberg, effective June 5, 1992. This suspension will last for a period of 270 days.

Dated: June 4, 1992.

C. L. Brainard,
Director, Office of Trade Operations.
[FR Doc. 92–13813 Filed 6–11–92; 8:45 am]
BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Samantha Smith Memorial Exchange Program; Youth Exchanges

AGENCY: United States Information Agency.
ACTION: Notice; Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of youth under the age of 21 with Albania, Bulgaria, the Commonwealth of Independent States, Czechoslovakia, Estonia, Georgia, Hungary, Latvia, Lithuania, Poland, Romania, and the following former republics of Yugoslavia: Bosnia-Hercegovina, Croatia, Macedonia, and Slovenia. These exchanges represent part of the activities of the Samantha Smith Memorial Exchange Program and are subject to the availability of funding for the Fiscal Year 1993 program. A request for proposals in support of exchanges of

college and university undergraduate students under the aegis of the Samantha Smith program will be published separately.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, September 25, 1992. Faxed documents will not be accepted, nor will documents postmarked on September 25 but received at a later date. It is the responsibility of each grant applicant to ensure that complete proposals are received by the above deadline. Grants should begin on or after May 1, 1993.

ADDRESSES: The original and 12 copies of the completed application (stapled, not bound), including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Samantha Smith Program—Youth Exchanges, Office of Grants Management, E/XE, room 357, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Bruce B. Brown, at the U.S. Information Agency, 301 4th Street SW., Youth Programs Division, E/VY, room 357, (202) 619–6299; FAX (202) 619–5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview

Grant funding is intended to promote the exchange of young people 21 years of age or younger between the U.S. and Albania, Bulgaria, the Commonwealth of Independent States, Czechoslovakia, Estonia, Georgia, Hungary, Latvia, Lithuania, Poland, Romania, and the following former republics of Yugoslavia: Bosnia-Hercegovina, Croatia, Macedonia, and Slovenia. The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values and information.

Twenty-five percent (25%) of the available funds will be reserved for projects that have not received Samatha Smith grants in the past three years.

Grants are awarded to expand or enhance existing exchange programs or to encourage the development of new exchanges. Programs may involve the U.S. organization in a partnership with organizations in one or more countries. The minimum length of stay in country for any project is three weeks. Three categories of grants are being offered.

Category A—School-to-School Exchanges

A school-to-school exchange is one that involves a direct linkage between two elementary, middle, or high schools. An applicant must be a school or school district. The maximum grant for this category is $10,000. The exchange should be reciprocal and should take place during the academic year when schools are in session. The proposal should provide detailed information on the classroom and other activities in both the U.S. and the partner country. The duration of projects may be one academic year, semester or short-term (generally understood to mean three to eight weeks). Schools receiving funding under other grants awarded by USIA for youth exchanges may not apply under this category.

Category B—Multiple School Partnership Programs

A maximum of $150,000 is available for grants generally in the range of $50,000 to $75,000 in support of programs of exchanges between the U.S. and the CIS based on multiple school linkages. At its most basic level the typical project involves the annual exchange of groups of students and teachers among several school linkages for short-term stays during the academic year. Semester and year-long exchanges of individual student are also possible. The grants are intended only to partially subsidize the costs of the programs, which will be funded on the American side primarily by contributions from the participating students, their schools and communities. Applicants for these grants should furnish written evidence of a commitment from a CIS entity describing the nature of the services and source of funding that will be provided in the participating CIS schools and communities. Consortia will also be eligible for this grant.

Category C—General Youth Exchanges

This category includes all other projects, which will be eligible for grants of up to $50,000. Semester and year-long high school study programs conducted by exchange organizations fall within this category. For short-term (3–8 weeks) exchanges, preference is given for projects with a thematic focus. Eligible foci may include, but are not limited to: the arts (theater, dance, music, fine arts, literature, folklore, and film/video); language and culture; science, technology, and mathematics; conservation and the environment; historic preservation; museum training; political, social and economic issues; business and administrative/management (including enterprise promotion); and agriculture.

Projects requesting support for tours of performing arts groups or sports teams are eligible if the primary purpose of the program is interaction between international participants and their hosts. Tours of performing arts groups or sports groups where the primary activity is performance or competition are not eligible.

Organizations other than schools that seek funds for an academic high school exchange of six months duration or more must be designated by USIA as a Secondary School Exchange Visitor Program Sponsor.

Reciprocity is not a requirement for this category, but in general USIA gives preference to proposals for reciprocal exchanges. The proposal should provide detailed information on the activities in both the U.S. and the partner country. The number of U.S. and foreign participants should be roughly equal. Such proposals should provide written evidence that the U.S. organization has the commitment of a counterpart organization in the partner country willing and able to engage in the proposed activities. In most cases the counterpart organization should assume responsibility for the cost of hosting the American participants in the reciprocal portion of the program.

Guidelines

All categories of proposals must include:

—Participant selection criteria and a description of the selection process. All participants must be under age 21 at the time they begin the program. Participants should be chosen for their actual or potential leadership qualities. The proposal should describe in detail the selection process for both U.S. and foreign participants. The ratio of adult escorts to youth participants should be as low as possible.

—Description of orientation programs. There should be ample introduction to the program theme, administrative procedures, basic historical, cultural and social information, and substantive issues likely to be raised by their U.S. of foreign counterparts.

—Information concerning stays in the host country—Preference is generally given to longer stays in country. The proposal should describe in detail the selection process for both U.S. and foreign host families/institutions. Consideration will be given to those projects which for reasons or requirements of the partner country or countries are of short duration, but the length of stay in country must be a minimum of three weeks.
—Information concerning language qualifications—Speaking ability in the language of the host country for both American and foreign participants is preferred, but not required. Ideally some participants in each incoming delegation should be conversant in English, and some participants in each outgoing delegation should be conversant in the host country language.
—Details on planning. Proposal should evidence adequate lead/planning time to ensure a successful exchange.

Proposed Budget

Organizations must submit a comprehensive line item budget for which specific details are available in the application packet.

Allowable costs: Grant-funded expenditures will generally be limited to the following categories:

—In country travel and per diem, i.e., lodging, meals, clothing maintenance, and incidentals, or stipends.
—Orientation, honoraria, or preparation costs; briefing materials. Honoraria is limited to $150/day/speaker.
—Educational and cultural enrichment at a limit of $150 per each program youth participant.
—Tutitions, conference/seminar registration fees, and other program admission fees.
—International travel, normally limited to partial support for Americans traveling to the CIS or East Europe, and East Europeans traveling to the U.S. CIS partner organizations should be encouraged to cover international travel.
—Administration costs (salaries, benefits, other direct and indirect costs) may not exceed 20% of the total funds requested.
—Applications should demonstrate substantial cost sharing in both program and administrative expenses.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA's contracting officer.

Review Criteria

Technically eligible applications will be reviewed according to the following criteria:

1. Quality of the program plan and adherence of proposed activities to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact. Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Value to U.S.-Partner Country Relations. Assessments by USIA's geographic area desk, and overseas officers of the need, potential, impact and significance in the partner country(ies).

5. Cost Effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Institutional Capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Track Record/Ability. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. Follow-on Activities. Proposals should provided a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Evaluation Plan. Proposals should provide a plan for evaluation by the grantee institution.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 8, 1992.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92–13887 Filed 6–11–92; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 114
Friday, June 12, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, June 9, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Matters relating to a certain financial institution.

Matters relating to the probable failure of certain insured banks.

Administrative enforcement proceedings.

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Mr. Jonathan Fiechter, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Dated: June 9, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-13978 Filed 6-10-92; 10:49 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 17, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13984 Filed 6-10-92; 9:53 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of June 15, 1992.

A closed meeting will be held on Tuesday, June 16, 1992, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 16, 1992, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities requires alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272-2300.

Dated: June 10, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-14037 Filed 6-10-92; 3:49 pm]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1449]

TIME AND DATE: 9 a.m. (EDT), June 16, 1992.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on May 21, 1992.

Action Items

New Business

B—Purchase Awards

B1. Negotiated Purchase Contract with Asea Brown Boveri-Combustion Engineering for Low NOX Burner Assemblies for Gallatin Fossil Plant (92T2-79080D).

B2. Requisition YD-94110D—Open Systems Technical Workstation/Server Procurement—Information Services.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement to Personal Services Contract No. TV-80854V with PLG, Inc.

F3. Supplement to Contract No. 92NNA–44877C with Rust Engineering.

F4. Supplement to Contract No. TV–83423V with Digital Engineering, Incorporated.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Media Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: June 9, 1992.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 92–13972 Filed 6–10–92; 10:31 am]

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LIST OF PUBLIC LAWS

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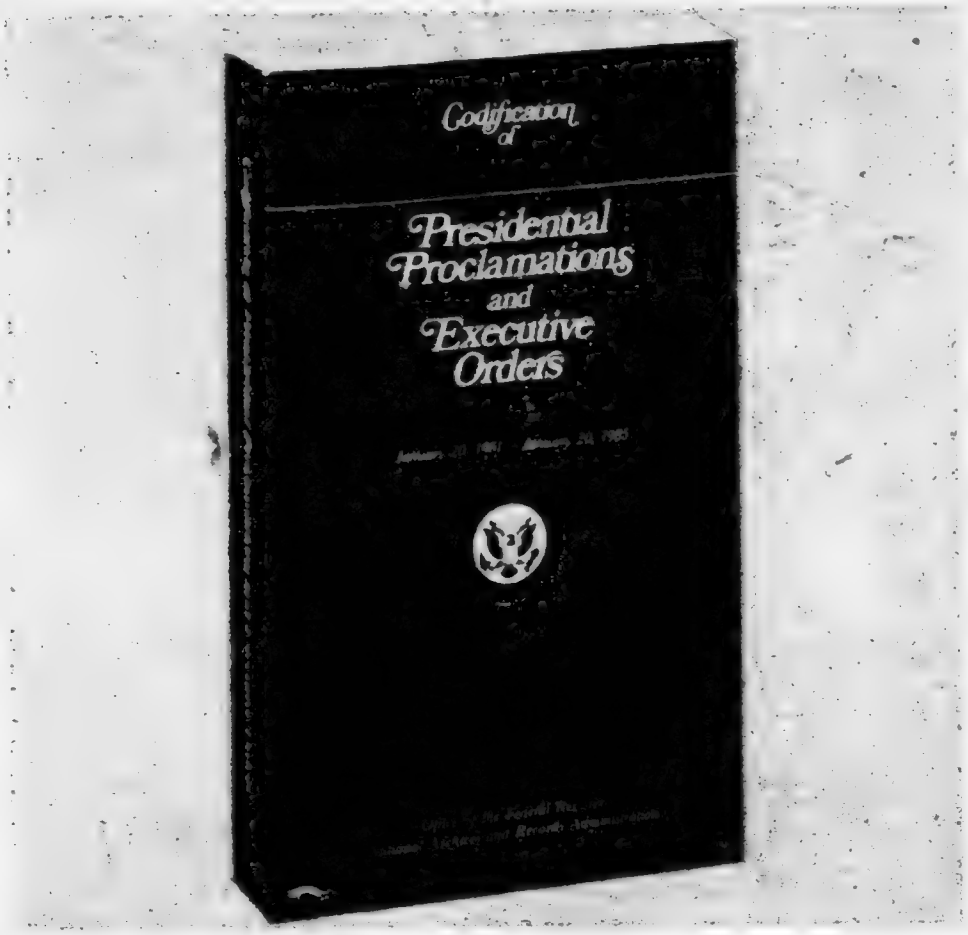

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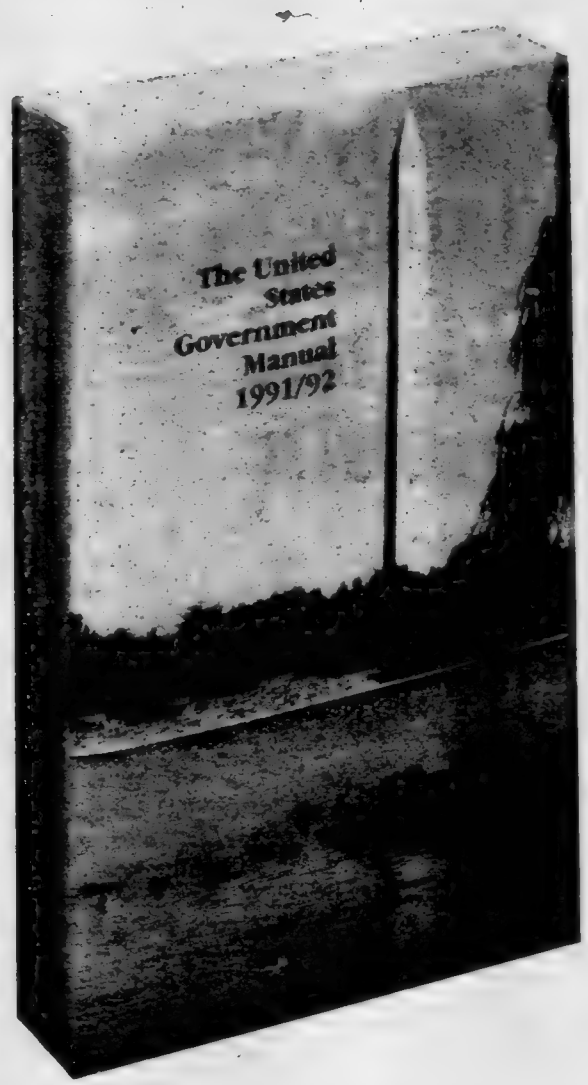

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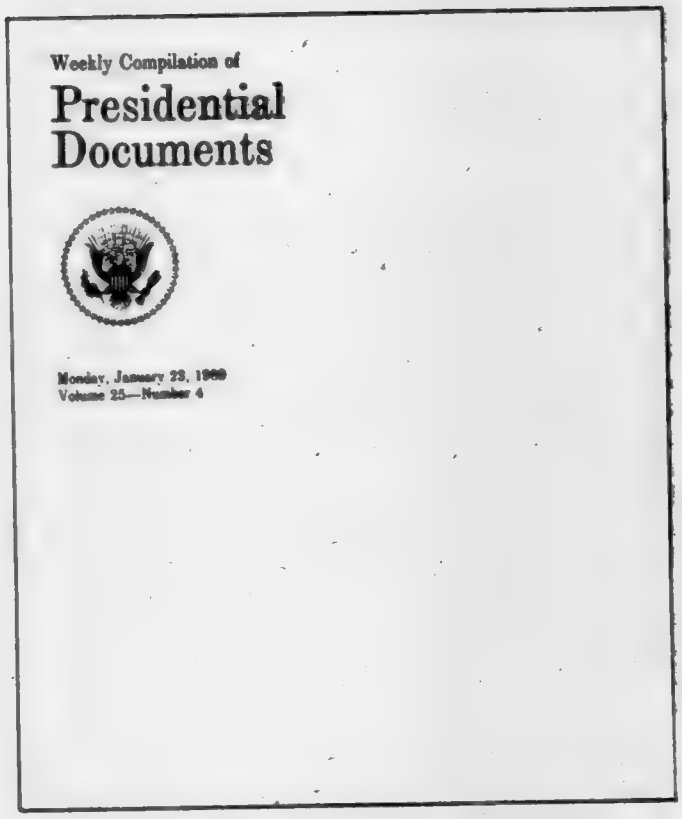

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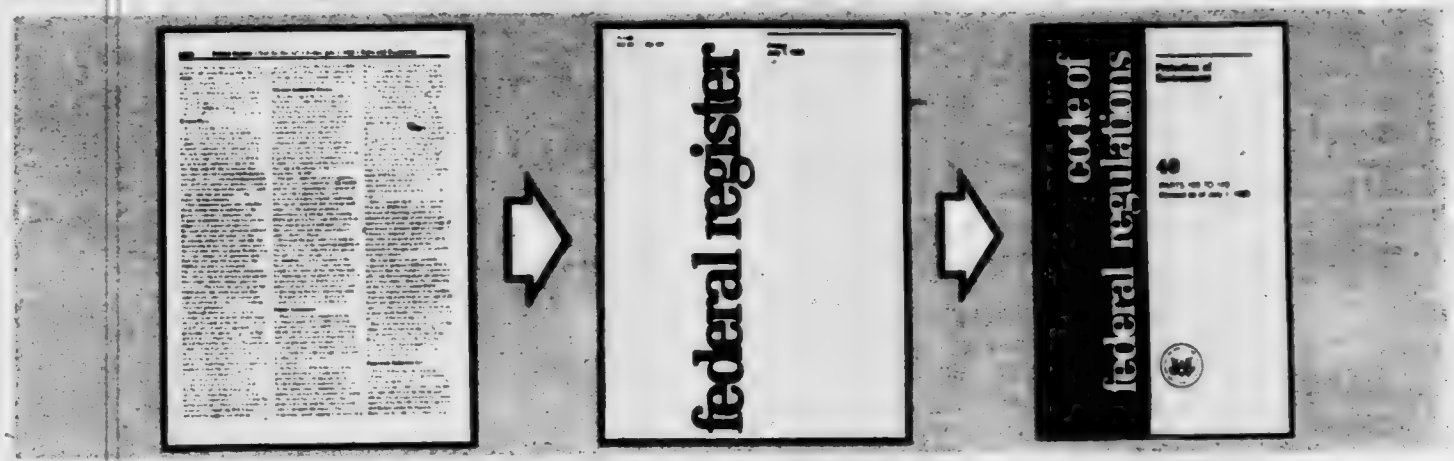

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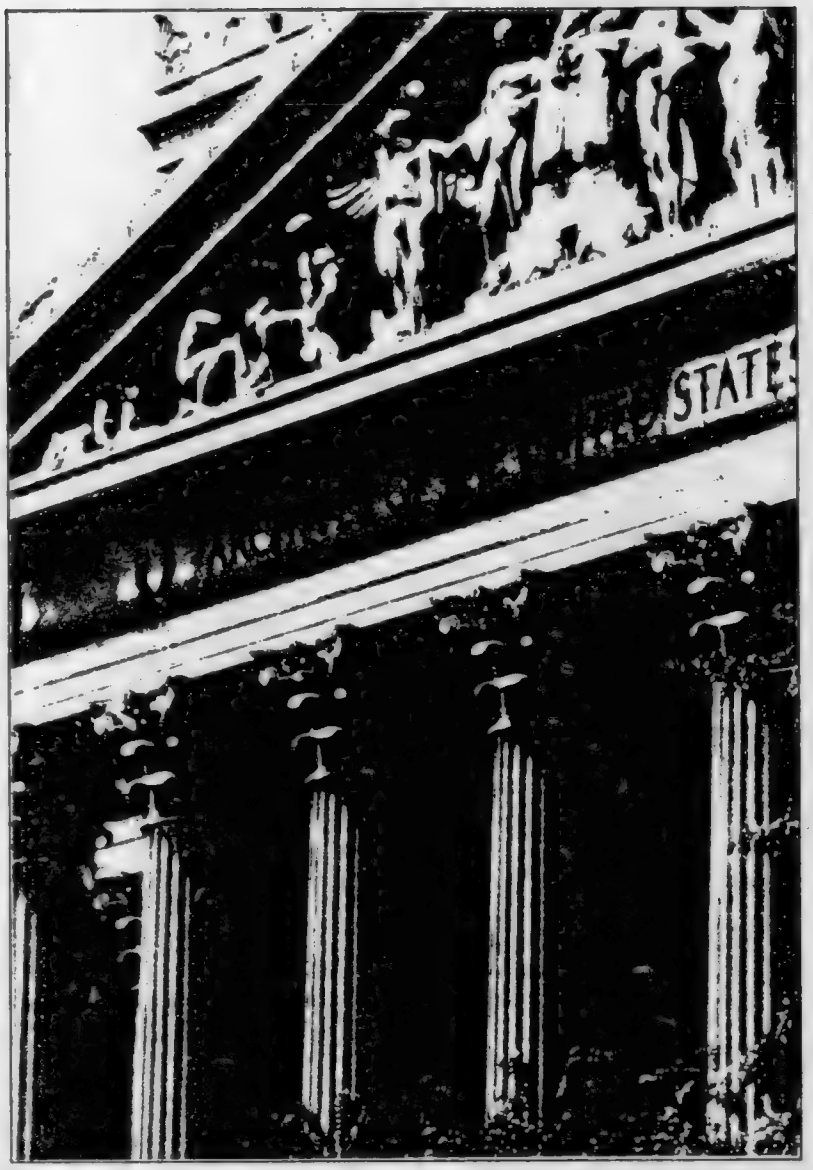

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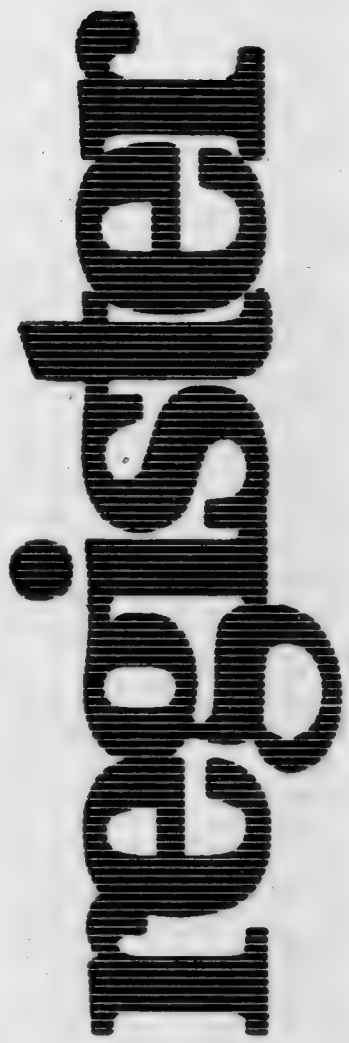

Book 2 of 2 Books

Friday, June 12, 1992

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910, et al.
Air Contaminants; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, 1928

[Docket No. H-020 A]

Air Contaminants

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to amend its existing air contaminant standards that set permissible exposure limits (PELs) for the maritime, construction and agriculture industry sectors. The existing standards for maritime and construction are based on either the 1968 or 1970 "Threshold Limit Values of Airborne Contaminants" of the American Conference of Government Industrial Hygienists (ACGIH). There are no permissible exposure limits applicable to agricultural employees.

Since those ACGIH recommendations were compiled, there has been new research and many new substances have entered general use. As a result both ACGIH and the National Institute of Occupational Safety and Health (NIOSH) have recommended new or lower exposure limits for many substances.

Based on those recommendations, on June 7, 1988 (53 FR 20960), OSHA proposed new exposure limits for general industry. After reviewing the record of a lengthy public hearing, many comments and extensive scientific data, OSHA issued on January 19, 1989 (54 FR 2332) new exposure limits for general industry. OSHA stated after reviewing feasibility data, it would propose the same new exposure limits for construction, maritime and agricultural employees.

In this notice of proposed rulemaking OSHA is proposing to issue more protective exposure limits for approximately 210 substances currently regulated in the construction and maritime industries and add new exposure limits for approximately 160 chemicals to protect these workers.

OSHA is also proposing that employees in agriculture be covered by these PELs as well as by approximately 220 additional limits which currently exist in general industry, maritime and construction, but do not exist for the agricultural industry. By appropriations act rider, only employees of farms with more than 10 employees are covered by OSHA standards.

OSHA preliminarily concludes that the new or more protective limits will substantially reduce significant risk of material impairment of health for construction, maritime and agriculture workers and are technologically and economically feasible for those industries. Diseases reduced include heart disease, cancer, neurological disorders, lung, liver and kidney disease, eye disorders, moderate and severe irritation and other disorders.

The new standard will prevent approximately 8 to 13 deaths and 31,000 illnesses per year.

The proposed changes will be carried out for the maritime sectors by adding a new § 1915.1000 for shipyards, by adding new § 1917.1000 for marine terminals and by adding a new § 1918.1000 for longshoring along with necessary consequential amendments. For construction § 1926.55 will be revised and for agriculture a new § 1928.1000 will be added.

DATES: Written comments on the proposed standard must be postmarked on or before September 25, 1992. Notices of Intention to Appear at the informal rulemaking hearings on the proposed standard must be postmarked on or before September 11, 1992. Individuals who wish to comment or appear during the public hearings must see Section VIII of this document for specific requirements.

Parties who request more than 10 minutes for their presentation at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence, postmarked on or before September 25, 1992. The informal rulemaking hearing is scheduled for October 20–30, 1992, in Washington, DC, for November 17–20, 1992 in San Diego, California, and on December 8–11, 1992 in Des Moines, Iowa.

ADDRESSES: Written comments should be submitted to OSHA Docket Office, Docket No. H–020A, room N–2634, U. S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523–7894.

Notice of intention to appear, testimony and documentary evidence to be submitted at the hearing are to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–020A, room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523–8615.

The hearing will be held in Washington, DC in the Auditorium, Frances Perkins Department of Labor Building, Third and Constitution Avenue NW. The informal public hearing will begin at 9:30 a.m. The hearing in San Diego will be held at the Holiday Inn on the Bay, 1355 North Harbor Drive, San Diego, California, 92101; Tel: (619) 232–3861. The hearing in Des Moines will be held at the Holiday Inn Des Moines, 1050 Sixth Ave., Des Moines, Iowa, 50314; Tel: (515) 283–0151.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, room N–3649, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

Introduction and Organization of this Document

This **Federal Register** notice proposes to update the exposure limits for air contaminants in the construction, maritime and agriculture sectors. As a result there will be more protective limits for approximately 210 substances currently regulated in construction and maritime and new exposure limits for approximately 160 substances in these sectors. These new and more protective limits will also be made applicable to agriculture as will the approximately 220 limits already applicable to other sectors which have not been applied to agriculture. This notice then proposes to add to 29 CFR a new § 1915.1000 for shipyards, a new § 1917.1000 for marine terminals, a new § 1918.1000 for longshoring along with necessary conforming amendments. Section 1926.55 will be revised for construction and a new § 1928.1000 added for agriculture.

The first part of this document (Sections I, II and III of the preamble) discusses the approach, regulatory history and the general need for updated and new health standards in the construction, maritime and agricultural industries. It discusses the legal basis for this rulemaking and the background of the rulemaking which updated exposure limits for general industry (54 FR 2322–2982; January 19, 1989). Various tables are presented identifying the substances to be covered and the changes being proposed. At the beginning of this part of the preamble there are questions to assist the public in commenting on the proposal.

Next, (in Section IV) the preamble discusses the health effects of the substances which OSHA proposes to regulate. This begins with a general discussion of the principles of toxicology

and dose-response analysis. (See Section IV A and B.) The substances covered are divided into categories based on their health effects, e.g. narcotic effects, ocular effects, systemic toxicity. Each category of substances is reviewed in a separate subsection of Section IV. The discussion begins with a general overview of the relationship between toxic substances in that category and the illnesses or material impairments of health which they cause, followed by individual discussions of each substance in the category addressing illnesses or health impairments associated with each substance and the most important studies which demonstrate those effects.

Because OSHA's health discussions draw on the Air Contaminants rulemaking for General Industry, they cover the major studies in OSHA's view and in the views of participants who submitted comments to that rulemaking. In addition, the discussions incorporate or respond to the comments already made by the public in the general industry rulemaking.

The health discussions in this preamble also incorporate newer studies (generally post 1987) which were not available prior to the general industry rulemaking and studies which may have specifically covered workers in the construction, maritime and agriculture sectors. Finally the individual discussions include OSHA's reasoning and preliminary conclusion that the new exposure limit is necessary to substantially reduce or eliminate a significant risk of material impairment of heath or functional capacity.

Section V of the preamble addresses the technologic and economic feasibility of the proposed exposure limits for the construction, maritime and agriculture sectors. A separate analysis is presented for shipyards, and for longshoring and marine terminals. This section also includes an estimate of the overall benefits for purposes of Executive Order 12291, and presents OSHA's preliminary conclusions on the technical and economic feasibility of the proposed new exposure limits.

This section of the preamble (V) then includes an analysis of the impact on small business under the Regulatory Flexibility Act. It also includes an environmental impact assessment.

Section VI contains the Clearance of Information Collection Requirements and the State Plan Applicability. Section VII of the preamble discusses the specific regulatory language for each sector. The regulatory changes are more complex for the maritime sector because of the need to integrate them with detailed existing provisions unique to those sectors. This is followed, in Section VIII, by information on how the public can file written comments and participate in the oral public hearings. The hearing rules are discussed. Reference to authority under which the document was prepared is made in Section IX. The proposed regulatory text and tables are presented in Section X, followed by appendixes in Section XI.

OSHA's intention is that after this rule is completed, all employees under OSHA's jurisdiction will be covered by the PELs. If any subsector has not been evaluated and discussed by OSHA, it should assume that OSHA's intention is to cover it, and it should submit relevant comments.

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I. Background

A. Need and Approach

There are 5 million workers in construction and 180,000 workers in the maritime industries who may be currently exposed to toxic substances which have no or inadequately protective exposure limits in these sectors. There are approximately 780,000 workers in agriculture under OSHA jurisdiction who may be exposed to some of the approximately 600 toxic chemicals which have protective exposure limits for workers in the general industry sectors. There are no protective exposure limits for these agricultural workers.

It is among OSHA's highest priorities to extend this needed health protection to all workers under OSHA's jurisdiction. All workers under OSHA's jurisdiction are equally important. The OSH Act states "The Congress declares it to be its purpose and policy * * * to assure so far as possible every working

man and woman in the nation safe and healthful working conditions * * *" (section (2)(b); emphasis added). OSHA estimates that accomplishing this goal will save 8 to 13 lives per year and prevent 31,000 illnesses annually.

In order to promulgate this rule efficiently and in a reasonable time, OSHA intends to utilize analyses previously conducted by OSHA and by other reputable scientific bodies. This information will be integrated with the latest available scientific and feasibility data.

OSHA believes the regulatory approach it has adopted is the best method for accomplishing the goal while meeting legal requirements and being consistent with good science.

The first step in the approach is to make use of the scientific work, public comment and experience gained during the Air Contaminants rulemaking for general industry. In that rulemaking, proposed June 7, 1988 (53 FR 20960) and issued January 19, 1989 (54 FR 2332), OSHA explained that it had issued more protective health standards for only 26 substances in its 18 years. However, there were many hundreds of toxic substances not covered by OSHA regulations and, in addition, many substances regulated by OSHA in its Z-tables were covered by exposure limits that were considered inadequate by the scientific community. It was clear that OSHA needed a more systematic approach to regulation; it had to move beyond substance-by-substance rulemaking.

OSHA determined that setting new exposures limits for a large number of toxic substances was of higher priority for protecting workers than promulgating a few standards with complete ancillary provisions (e.g., medical surveillance, exposure monitoring). It concluded that making use of the existing scientific work of the National Institute for Occupational Safety and Health (NIOSH) and the American Conference of Government Industrial Hygienists (ACGIH) as a starting point in OSHA's analysis, would expedite the regulatory process while still insuring that health decisions were based on sound science.

In developing and promulgating its General Industry Air Contaminants rule, OSHA reviewed the existing literature on control technology and its costs, engaged in a massive survey of 5700 firms in industry, reviewed approximately 1500 public comments and more than 2000 scientific studies, and held extensive public hearings. Consequently, its final decisions were based on full public input and complied with required rulemaking procedures. See discussions at 53 FR 20962–67, 20977–81 and 54 FR 2333–39, 2361–2383 for an extended discussion of OSHA's approach.

OSHA determined that it would be most effective to extend the new exposure limits to the construction, maritime, and agriculture sectors in a second rulemaking. This would permit OSHA to consult with the Construction Advisory Committee and the Shipyard Advisory Committee, to meet with representatives of the longshore and marine terminal sectors, and to make presentations to and have meetings with the agriculture community. In addition, it would give OSHA the time and resources to extensively analyze feasibility for these sectors. See 54 FR 2383. OSHA has completed its advisory committee consultations and economic analyses.

In addition, OSHA will consult with the Departments of Transportation and Agriculture, the Environmental Protection Agency, the Small Business Administration, and the Office of Science and Technology Policy regarding the extension of revised exposure limits to these three major industry sectors, and to small businesses within each sector.

OSHA is only opening the record for construction and maritime for the 376 substances where it concluded new or changed limits were appropriate in general industry. For each substance OSHA is proposing the exposure limit it concluded was appropriate in the 1989 General Industry rulemaking, which was determined after extensive review of scientific literature and public comments.

In addition, OSHA is opening the record for consideration of exposure limits for fiberglass, mineral wool and asphalt for construction, maritime, agriculture and general industry. OSHA did not reach final conclusions on these substances in the general industry rulemaking.

There are a few substances where OSHA has issued substance specific standards for general industry (in 29 CFR 1910.1001–1048), but has not made the exposure limit applicable to construction or maritime. These include lead for construction and cotton dust for both construction and maritime. OSHA is proposing to apply the exposure limit from the substance specific general industry standard to construction and maritime (but not the ancillary provisions which are not being considered in this rulemaking).

There are no exposure limits applicable to agriculture. OSHA believes that the Act, the need for health protection and good health policy all require that agricultural workers should be protected from the effects of toxic chemicals. (By appropriations rider, OSHA cannot issue or enforce regulations on agricultural operations with no more than 10 employees.) Accordingly, OSHA is proposing that agricultural workers be protected by all the exposure limits applicable to workers in other sectors. This includes exposure limits for the 376 substances being covered for construction and maritime, the approximately 220 substances already applicable to other workers, and the substances regulated with single-substance standards.

OSHA wishes to make it absolutely clear that it is considering the group of 220 substances only for agriculture. Opening the record for other sectors would excessively delay this rulemaking and workers already have protection in the other sectors.

In addition, OSHA is not opening the record of the 376 substances for general industry, and will not consider those substances for general industry. OSHA has just completed a review of all of these substances for general industry and it would be inappropriate to review them so shortly after full consideration. The only substances being considered for general industry are fibrous glass, mineral wool and asphalt fumes.

OSHA is not opening the record or considering any comments on ancillary provisions such as medical surveillance and exposure monitoring in this rulemaking. OSHA has already commenced consideration of whether to issue general exposure monitoring and medical surveillance provisions. Advanced notices of proposed rulemaking have been issued, and a major study is in process on medical surveillance. These matters are in the published regulatory agenda as separate rulemakings. It would unnecessarily delay this rulemaking and exposure limit protection for construction, agriculture and maritime workers to attempt to consider ancillary provisions in this rulemaking.

Table I–F lists the substances being considered for each sector and for the maritime subsectors.

In the future OSHA intends to update its Air Contaminant exposure limits at approximately 3 to 5 year intervals. These updates will consider changes to existing limits and inclusion of new substances. They will cover all sectors and workers within OSHA's jurisdiction. This process is listed in the published regulatory agenda. These updates are a more appropriate forum to consider, across the board, changes in current general industry exposure limits.

OSHA concludes, based on its expertise and experience, that this approach to air contaminant regulation is the best method for increasing health protection for all American workers in a reasonable time. As discussed below in the Legal Authority section, OSHA concludes this approach is legal. OSHA will continue to engage in single substance rulemakings as appropriate.

Technical Matters

OSHA is not considering in this rulemaking the 13 substances (29 CFR 1910.1003–16) for which it has work practices but no exposure limits. This rulemaking is designated to cover exposure limits. It is also not considering nine substances currently involved in ongoing single substance rulemakings. OSHA has already completed extensive consideration of these substances in those rulemakings, and it would be wasteful of resources to reconsider them here. It is also not considering a few substances for agriculture (e.g., coke oven emissions) which have absolutely no relevance in that sector.

OSHA will consider in the first future update and not this rulemaking, different limits for the four substances that it has committed to reconsider in response to the legal challenge brought by the AFL/CIO to the General Industry rule. These substances are carbon tetrachloride, vinyl bromide, trichloroethylene and gasoline. It will also reconsider the four substances it agreed to reconsider pursuant to settlement agreements reached with industry. These are nitroglycerin and ethylene glycol dinitrate for the civilian explosives industry and calcium oxide and hydroxide. The first update is a better forum because all industry sectors can be efficiently considered at one time.

Existing exposure limits vary among industry sectors. The existing limits for General Industry, Longshoring and Marine Terminals are based on the 1971 OSHA PELs, which were originally based on the 1968 ACGIH TLVs. The existing limits for Construction and Shipyards are based on the 1970 ACGIH TLVs. (See also the Legal Authority discussion on Shipyards for a further analysis). There are no existing limits for Agriculture. The Transitional Limits in the proposed Z–Tables are the existing limits for each sector, and vary accordingly. The Transitional Limits are effective until the new limits are phased in.

A few of the 376 substances changed for general industry are not being opened for consideration for Construction and Shipyards because the 1970 TLVs (the current construction PELs) already included the change which OSHA adopted in 1989 for General Industry.

Also, OSHA is not opening the record for Construction and Maritime for consideration of the 52 substances it considered but determined not to change for General Industry. It would be an inefficient use of resources to reopen in this proceeding substances for which OSHA so recently concluded, based on a full rulemaking record, that change was inappropriate at that time.

OSHA has attempted to make the tables of exposure limits for Shipyards, Marine Terminals & Longshoring, Construction and Agriculture as useful as possible. In keeping with its practice for General Industry, there will be a Table Z, Construction; a Table Z, Shipyards; a Table Z, Longshoring & Marine Terminals; and a Table Z, Agriculture. However, there will be only one Table Z for each sector, in contrast to the three for General Industry; Table Z–1–A, Z–2 and Z–3. General industry has 3 Tables because (1) Table Z–2 is based on ANSI standards, which utilize a different definition of ceiling than does ACGIH or OSHA. (The Z–2 definition of maximum peak is somewhat similar to OSHA's concept of a STEL.) And (2) Table Z–3 presents mineral dust limits, some of which are formulas, not specific numbers.

OSHA believes that a single table, with the same concepts and specific numbers rather than complex formulae will be easier for the public to use, understand and comply with. Accordingly OSHA is, where necessary for Table Z–2 substances, utilizing the Peak levels as STELs and not incorporating the ceilings. In addition, formulas are being converted to the nearest gravimetric measurement (weight per unit volume).

OSHA believes these slight adjustments are in the nature of technical changes and make no substantive difference in either health or feasibility. OSHA intends to make similar changes for General Industry as technical amendments in the future to achieve uniformity and consistency across all sectors regulated by OSHA.

The new Z–Tables list all substances for which OSHA has exposure limits, including those substances where there are single substance standards with ancillary provisions that are applicable. These substances will be footnoted or textual cross referenced indicating where the ancillary provisions are located. This will make it easier for the public to determine whether a substance is regulated by OSHA, what the exposure limit is, and whether there are ancillary provisions.

Approximately 100 substances listed in the Z–Tables are registered pesticides regulated by EPA. Where an agricultural employer uses any registered pesticide in accordance with the EPA label, OSHA has no jurisdiction pursuant to section (4)(b)(1) of the OSH Act. If the substance is used for non-pesticide purposes or the agricultural employer makes the substance and it is not labelled, then the OSHA exposure limit applies. See the discussion under Legal Authority.

B. Comments Solicited from Interested Parties

OSHA requests comments on all issues raised by this proposal including health effects, feasibility, risk and policy issues. The following are some specific questions which may assist interested parties in preparing their comments. If a commenter has data in a less detailed form than OSHA requests or just partial information to some questions, the information would still be useful to OSHA, and the commenter is requested to submit the data or information in whatever form it exists.

"Risk-Risk Analysis"

OSHA has preliminarily concluded that this standard could prevent approximately 8 to 13 deaths and 31,000 illnesses per year. See also, the "Economic Impacts" section of the PRIA below, V–B (Construction), V–C (Maritime), V–D (Agriculture), V–E (General Industry) for further information on OSHA's preliminary economic impact estimates. OSHA notes that these benefit estimates may change pending consideration of public comments about this proposed rule and the consideration of the issues raised by OMB.

OMB requested that OSHA consider "[h]ow will compliance with the proposed PEL rule affect workers' employment, wages, and therefore health?" OMB asked OSHA to assess comprehensively whether the net health benefit of this rule to workers is positive or negative. The objective of OMB'S request is to weigh the risks to workers from exposure to toxic substances regulated under the rule with the health risks posed to those same workers if compliance with the proposal lowers their incomes or employment levels. OMB asked OSHA to give serious thought to this kind of analysis to determine, in our judgement, if the arguments raised by OMB were valid, and to consider sponsoring additional empirical work in the future.

OMB has requested that the Department study this issue and section 3(a) of Executive Order 12291, states "each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis." If the type of analysis suggested by OMB is able to generate a clearer picture of the total benefits provided workers by regulatory proposals, then the Agency and the public will be better informed of the likely impact of the regulations. We clearly recognize, however, that information generated by any study can be used by OSHA only in accordance with the OSH Act and controlling case law. See the "Pertinent Legal Authority" section, infra, at Section II. The information needs to be relevant to analyzing whether workers are at significant risk of material impairment of health or whether compliance with the rules is feasible for it to be legally relevant to OSHA's decisions regarding the PELs.

The Department has thus agreed to study the questions raised by OMB, to the extent applicable to worker health, and will consider whether weighing the risks to workers' from exposures to toxic substances with the risks associated with lowering those same workers' incomes is appropriate and relevant. OSHA will consider the issue while simultaneously moving forward with the rulemaking.

To assist OSHA is assessing the issues raised by OMB, OSHA is soliciting comments on the following questions and on any other information that the commentator believes will assist OSHA in meeting its statutory obligations.

1. What are the advantages and disadvantages of introducing "risk-risk" analysis into this rule? Specifically, has the methodology been tested and verified?

2. What is the validity of the suggested economic analysis proposed by OMB?

3. How valid is the issue OMB raises with respect to the linkage between income and health?

4. How valid is the issue OMB raises with respect to the linkage between the costs of regulation and workers' incomes?

5. Can one empirically estimate the impact of the cost of a regulation on the incomes of the same workers?

6. Comment is requested on all aspects of whether any such analysis should consider indirect effects only on workers covered by the rule, or those effects on all workers covered by the OSH Act?

7. What general equilibrium considerations, if any, would need to be taken into account in performing such an analysis?

8. What macro-economic considerations, if any, would need to be taken into account in performing such an analysis?

9. Are there any methodological issues, not covered by the above questions, with the suggested economic analysis proposed by OMB?

To contribute to OSHA's effort to examine whether the estimated health benefits of this rule to workers are positive or negative, OSHA solicits public comment on concerns raised by OMB. Specifically, commenters should describe whether there are modelling techniques, data sources, or parameter estimates which provide accurate and unbiased estimates of two key relationships associated with this question: (1) The relationship between OSHA regulations (or this rule in particular) and measures of workers' economic welfare such as financial wealth, income, wages and employment status; (2) The relationship between these measures of workers' economic welfare and measures of health status such as mortality.

Regarding the relationship, if any, between regulatory compliance and changes in workers' economic welfare, commenters may discuss whether this rule is likely to affect workers' real income, employment, and/or productivity. Estimates of potential employment and wage effects due to OSHA regulations in general would also be helpful in this analysis. Most useful in such analysis would be data describing what changes in workers' economic welfare could occur in the industries affected by this rulemaking. Comments may include retrospective analyses of the effect of past OSHA regulations on workers' economic welfare, and discussions of why this rule's effects may be similar or different. Alternatively, commenters may offer prospective analyses of the effects of this rule. All comments should justify the underlying assumptions about key parameters in the analysis. Finally, commenters may discuss whether and how particular changes in variables such as employment or wages are in fact attributable to the rule.

Regarding the relationship, if any, between workers' economic welfare and their health status, OMB is interested in OSHA obtaining information on any research or studies which examine the positive relationship between income and health status. A preliminary review of the literature points to several studies which estimate the size of this income/health relationship. OMB is interested in OSHA obtaining information on all aspects of these studies, including the quality of their estimates and their applicability to the employment context. OMB is interested in OSHA obtaining information about the accuracy of these estimates and the existence of a relationship. This list is not comprehensive, and commenters are encouraged to submit any additional data or studies. Comments which consider international data on how incomes and health, or mortality, vary either over time or across countries are also invited.

OMB has provided OSHA with a summary and analysis of research which OMB cited as relevant to the questions it raised above regarding this proposed rule. OSHA solicits public comment on this research and on the questions raised by OMB to the extent relevant under the OSH Act to workers' health. OMB's summary and analysis of this research is listed as follows.

OMB Summary and Analysis of Selected Studies on Income and Health

The most careful large sample studies by Anderson and Burkhauser, by Duleep, and by Wolfson *et al.*, seem to suggest that losses in wages in the range of $1.9 to $6.5 million dollars annually are associated with one additional fatality annually. Although causality is not proven, an association between income and mortality persists after controlling for prior health status, for educational attainment, and for exposure to quantifiable occupational risks. Further, the association exists, although more weakly, at high income levels. Although most of the more careful studies focus on wages and worker mortality, the general effect that they are trying to measure is the relation between real income broadly defined, and health status of the family.

Several studies are summarized in the following table. To facilitate comparisons of the results of the various studies, the table includes estimates of the income gain necessary to avert one fatality. These estimates of "willingness-to-spend", which are calculated from the effect of income on mortality reported in the papers, are intended to be illustrative and not definitive. As the effect of income on mortality is likely to depend on age, income, and number of years of observations, estimates of willingness-to-spend to save a statistical life similarly depend on these variables. Differences among studies in the estimated willingness to spend depend in part on differences in the means and distributions of the age of respondents,

their income, and the number of years over which mortality was observed.

Among the studies is a commonly cited one by Ralph Keeney (1990), who estimated that under a particular set of assumptions, regulatory costs equal to $7.25 million could induce one fatality. His estimate is based in part on correlations between income and mortality reported in Kitagawa and Hauser (1973), who used 1960 Census data and matched death certificates for the 4 months following the month of the Census.

Another commonly cited study is More Medical Care, Better Health: An Economic Analysis of Mortality Rates, (1982) by Jack Hadley, Co-Director of Community and Family Medicine, Georgetown University. Hadley showed that increase in total family income of 1% were associated with statistically significant declines in mortality of 0.07% for white males between 45 and 64, and of 0.116% for black males between 45 and 64.[1] He used aggregate cross-sectional data for 400 county groups for 1970, and focused on mortality rates by age group, by sex and by race. Income effects were also large for white and black infants of both sexes. For some groups, e.g., black females, increases in income were associated with increases in mortality, but these were not statistically significantly different from zero.

Aggregate cross-sectional analyses, of which Hadley's study is a well-known example, tend to suffer from several well-known difficulties. First, measurement error in the explanatory variables due to the misclassification of data is likely to bias the estimates towards zero. Measurement error may result because current family income is a poor proxy for permanent income with which current mortality should correlate, and because decedents may have crossed county lines prior to death. The failure to correct for geographic variations in the cost of living also introduces measurement error. Second, since income effects on mortality are estimated separately for different subgroups of the populations, e.g., men, the estimated effect likely understates the overall effect of income changes on mortality. In fact the true effect of total family income on mortality may be the sum of the income effects for each subgroup making up a family. Finally, since healthier populations that have lower mortality can work harder and earn more, the estimated elasticity may be exaggerated by failing to correct for reverse causality.[2]

A 1984 study of the Joint Economic Committee (JEC) of Congress entitled "Estimating the Effects of Economic Change on National Health and Social Well-Being" reports that the 3% decline in real per capita income below trend during the 1973 recession is associated with a 3% increase in total mortality. Written by M. Harvey Brenner of Johns Hopkins University, the report examines relationships between economic variables such as changes in income, and unemployment, and indicators of social well-being, including mortality rates. Applying the reported relationships to today's economy implies that a decline in per capita income of 3%, or about $690 per capita would result in an increase in mortality of 3%, or about 65,000 premature deaths. A decline in income of between $1.8 million and $2.7 million would thus be associated with one death.[3]

The estimate by the JEC may be an overstatement of the long-run effect of income on health, since it reflects the effects of transitional income changes. Such income changes are likely to be associated with changes in mortality greater than those caused by permanent changes in income, since the former are associated with more stress than the latter.

Kathryn Anderson and Richard Burkhauser showed that an increase in wages of $1.00 (17%) implies a 4.2% decline in mortality risk over the next 10 years, (p. 321).[4] Their study, published in 1985 in the Journal of Human Resources, used 10 years of mortality data from 4878 male workers aged 58 to 63, to analyze the joint determination of health and retirement from the labor force. A decline in mortality risk of 4.2%, given their sample amounts to 200 fewer deaths over the 10 years, or approximately 20 fewer deaths per year. Thus an increase in wages of $1.00 per hour for the 4878 workers is expected to prevent 20 deaths annually. If workers are paid for 2080 hours annually, then the annual wage gain necessary to avert one death is approximately $510,000 in 1969 dollars. Using the Consumer Price Index to adjust for inflation implies that an increase in wages of $1.9 million would prevent one premature fatality.

Anderson and Burkhauser's study also implies that an increase of $10,000 in the value of worker's homes lowered the risk of death by 0.79%, and prevented 3.8 deaths annually. To translate these changes in the stock of wealth to changes in income flows, note that the annualized equivalent of $10,000 is $890 annually, if borrowed at mortgage rates of 8% for 30 years. Thus gains in income of $4.3 million (4878×$890 of additional income annually) are associated with 3.8 fewer deaths. Using the Consumer Price Index to convert these 1969 dollars to current dollars implies that a gain in income of $4.3 million should be associated with one averted death.

Several qualifications are necessary before interpreting the Anderson and Burkhauser results in this manner. Analyses on the mortality of older persons may underestimate the effect of income on mortality if low income people have already died at younger ages. Finally, as mentioned by Duleep, (1986), income's effect on mortality is dependent on the extent to which death is preventable. At older ages the income effect falls as death becomes unavoidable.

Harriet Duleep, using a sample of 9618 white married men showed that earnings of less than $3000 instead of more than $9000 have a direct effect on the probability of death by age fifty, of 0.089, and an indirect effect, (through the probability of becoming disabled), of 0.028, for a total effect of 0.117. Her study, published in 1986 in the Journal of Human Resources used data on earnings, disability, and mortality of men aged 35 to 64 to estimate the effects of earnings on mortality. Her analysis held constant educational achievement, corrected for the reverse causality of health on income by controlling for whether the workers were initially disabled, and used sophisticated statistical methods. Although Duleep's

[1] See Hadley, p. 112.

[2] Taking Hadley's estimate of 0.07% for the elasticity of middle-aged male mortality with respect to income implies that an income loss of $38 million is necessary to induce one fatality. This figure, which is higher than those mentioned below, is calculated by dividing a hypothetical 1% decline in US GNP, (57 billion), by 1500 deaths, the 0.07% increase in mortality that is predicted to occur by applying Hadley's elasticity estimate to U.S. mortality. Since lower elasticity estimates result in larger required income losses to induce one fatality, the fact that the $38 million estimate seems high may be ascribed to the various factors that appear to lower the estimated elasticity.

[3] The higher figure from applying the elasticity of unity to 1991 income and mortality data. In particular, a 1% decline in current GNP is a loss of about $57 billion, and this would be associated with a 1% rise in mortality, or about 21,000 premature deaths. Thus the dollar losses necessary to induce one fatality equal approximately $2.7 million, (2.7000,00 = $57 billion/21,000). The lower follows from applying the elasticity to 1975 data, and inflating to current dollars.

[4] The coefficient from their logit analysis is −.21, while the probability of death in their sample is .28. Applying the formula to interpret logit coefficients found on p. 791 of Judge *et.al* (1988) gives 4.2% as an estimate of the change in the risk of death attributable to an additional dollar of hourly wage income.

work seems to suggest that the observed relation may be causal, the effect of income on mortality is significant only in the lower income categories. For workers with earning greater than the mean, the effect of income on mortality is insignificantly different from zero. Her other key findings include the following:

(1) Having earnings of less than $3000, instead of more than $9000, raises the probability of becoming disabled between ages 25 and 35 by 8 percentage points, and the probability of becoming disabled between the ages of 25 and 50 by about 26 percentage points.

(2) "The probability of death (during a six year period) for a 50 year-old man in the lowest earnings category with a high school education is more than twice as high as for his counterpart in the highest earnings category." (See p. 242)

To estimate the wage increases necessary to avert one fatality, first note that an increase in wages to between $6000 and $9000 from between $3,000 and $6,000 lowers mortality risk by 0.023 over the six years, or by about 0.0038 over one year, assuming that the incremental risk is uniformly distributed over the period.[5]

On average, raising annual wages by $3000 for each of 264 workers currently earning between $3000 and $6000 would avert one fatality per year, (.38% × 264 = 1). Converting these figures to current 1992 dollars, a rise in wages of $2.5 million is on average associated with one averted fatality annually.

Duleep (1989), found that income was significantly related to mortality throughout six income levels. In particular, mortality was higher for men with annual incomes between $38,000 and $47,000, (in 1992 dollars), than for similar men with incomes above $47,000. The effect of income on mortality was stronger in the lower income ranges than in the higher income ranges. Comparing the third and fourth income categories, her results imply that an increase in income of $6.5 million annually is associated with one less fatality per year. Her study covered 13,954 white married men aged 25 to 64 during the years 1973 to 1978. Comparing the relationship between mortality and income with the findings of Kitagawa and Hauser who used 1960 data, she found an apparent lack of improvement in the relative mortality experience of low income men.

In a more recent paper, Duleep (1991) investigates whether low income is associated with higher mortality because poorly paid workers face higher occupational risks to health and safety. Using information from the National Occupational Hazards Survey on the distribution of potential employee exposures to chemical substances and physical hazards, she found that each of six different measures of occupational hazard has only statistically insignificant effects on mortality. Furthermore, the effects of income on mortality are changed only slightly when occupational hazards are controlled for. Her results indicate that wage gains of $3.9 million in current dollars are associated with one less premature fatality.[6]

Thus it appears that the effect of low income on mortality is not a consequence of lower paid workers being exposed to greater on the job hazards.

Wolfson, *et al.*, in a forthcoming article in the Journal of Gerontology, show that income effects on mortality of 500,000 older Canadian males exist even between the highest and second highest income quintiles. Since all Canadians had access to public health care during the sample period, it appears that access to medical care is not the key mechanism linking income to mortality. Wolfson *et al.*, show that the mortality risk of the married males retiring at age 65 with incomes in the 95th percentile is only 0.86 of the risk for the similar males with median average earnings. Given that the risk of death by age 70 is about 0.15 for married males with median income, a relative risk of 0.86 implies that an increase in income from the median to the 95th percentile is associated with declines in mortality of about 2%. To express this in terms of dollars per life, note that an increase in income from the median to the 95th percentile is about 25,000 Canadian dollars annually. Converting to U.S. dollars, and adjusting for inflation, this amounts to $24,000 1991 U.S. dollars. An increase in incomes by this amount for married workers close to 65 would decrease mortality by two percentage points. Thus increases of $24,000 per year for each of 50 such workers earning the median income would be expected to avert one fatality during the years when these workers are age 65 to 70. Increase in income of $24,000 per year for each of 250 workers ($6 million in total) would thus be expected to avert one fatality per year, assuming for simplicity that the fatalities are uniformly distributed over the years in question. Wolfson concludes that "the results cast doubt on the primacy of causal explanations such as reverse causality and health selection".

The National Institutes of Health of the U.S. Department of Health and Human Services has studied extensively the relation between mortality and various demographic, social and economic factors.[7] They report that higher incomes are associated with lower mortality in the vast majority of the many cohorts that they considered. Using a follow-up study of one million Americans over the 3 years from 1979 to 1981, they calculate simple correlations between mortality and family income, for particular age, sex, and race cohorts. Their study does not use multiple regression techniques that might control for reversal causality by including important variables such as prior health status. They also do not control for education while considering the effects of income on mortality. They find, for example, that the mortality rates for white males aged 25–34 with family incomes of between $5,000 and $9,999 annually were 28% higher than for all whites in this age group. For white males aged 25–34 with family incomes between $25,000 and $49,999, mortality rates were only 57% as high as for all white males in this age group. Similarly, for black females aged 55–64 with family incomes of $5,000 to $9,999 females in this age group. For black females aged from 55–64 with family incomes of $5,000 to $9,999 annually, mortality rates were 8% higher than for all black females in this age group. For black females aged from 55–64 with family incomes of $25,000 to $49,999 annually, mortality rates were 46% as high as for all black females in this age group. Similar patterns between family income and mortality seem to exist for most cohorts.

These data permit a rough estimate of the income gains necessary to avert one death. Focusing on white males age 35–44, increasing income from the $15,000 to $19,999 category to the $20,000 to $24,999 category lowers mortality rates over the three years from .45% to .38%. Thus the decline in mortality rates is about 0.023% per year. Shifting 10,000 families from the low income category to the

[5] See Table 1, column 5 in Duleep (1989).

[6] This estimate is derived by considering the effect of a change in income from the category of $3,000–$5,999 to the category $6,000–$8,999, as reported in the first column of Duleep's Table 1. Applying again the formula for interpreting logit coefficients found on p. 791 of Judge *et al.*, implies that the decline in the risk of mortality is 1.6% over the 6 years. Taking one sixth of this change as the annual effect implies that annual income gains of $1.1 million would be associated with one less mortality annually. Expressed in current dollars a gain of $3.8 million in workers income in this income range would reduce mortality by one.

[7] National Institutes of Health. A Mortality Study of One Million Persons: by Demographic Social, and Economic Factors: 1979–1981 Follow-up First Data Book, U.S. National Longitudinal Mortality Study, March 1988.

higher income category would save on average 2.3 adult male lives per year. Improvements in income sufficient to shift families from the $15,000 to $19,999 category to the $20,000 to $24,999 category would also lower the death rates for other family members. For girls aged less than 15 it would fall by .028%, for boys aged less than 15 it would decline by 0.026%, while for women aged 35–44 it would fall by 0.09%. Thus shifting 10,000 families all composed of two parents, one boy and one girl, would reduce mortality by 17 lives. Since improvements in income would range from $1 to $10,000 we take $5,000 as the midpoint. Thus income gains of $50,000,000 save 17 lives. Converting from 1980 dollars to current dollars using the Consumer Price Index gives $4.9 million per life. Although this estimate considers the relation between family income and family mortality, it does so only over a short period, (3 years), without controlling for education, or prior health status.

All these studies estimate imperfectly the effect of income on mortality. Since these studies, with the exception of the NIH report, consider only the association between wage earnings and mortality of the individual, (or of the worker), rather than the relation between family income and mortality of family members, they tend to underestimate the relationship between family income and mortality generally, including that of all family members.

SUMMARY OF SELECTED STUDIES ON INCOME AND HEALTH

Study	Data	Implicit income gains necessary to avert one death (millions)	Comments
Keeny (1990)	Used income and mortality correlations form Kitagawa and Hauser, (1960) data, and others.	$7.25	Cited in *UAW* v. *OSHA*.
Hadley (1982)	400 counties, family income and county-wide mortality rates.	$36	Aggregate cross-sectional study. Measurement error may exaggerate estimate.
Joint Economic Committee (1984)	Aggregate U.S. income, employment, mortality, and morbidity; 1950–1980.	$1.8 to 2.7	Reflects income loss from recession of 1974–75.
Anderson and Burkhauser (1985)	4878 male workers over 10 years, 1969–1979.	$1.9 (wages) $4.3 (other income)	Older workers aged 58–63. Measured effects of wages and of value of one's home on mortality.
Duleep (1986)	9618 white married male workers age 35–64 over 6 years, 1973–1978.	$2.6	Controls for prior disability, and educational attainment.
Duleep (1989)	13,954 white married male workers aged 25–64 over 6 years, 1973–1978.	$6.5	
Duleep (1991)	9618 white married male workers aged 35–64 over 6 years, 1973–1978.	$3.9	Same as above. Also corrects for exposure to occupational hazards.
Wolfson (1992)	500,000 Canadian workers, over 10–20 years.	$6	Investigates longevity rather than mortality. Finds income effects at highest quintiles of income.
National Institutes of Health (1988)	1,000,000 Americans, all ages, 1979–1981	$4.9	

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Additional Questions for Public Comment

General (Apply to Construction, Maritime & Agriculture)

1. Are there any exposures to substances considered in this rulemaking other than those identified by OSHA? If so, which activities? Which substances? How many employees are exposed? To what exposure levels? What controls are used?

2. Please submit any additional exposure monitoring data to supplement the data OSHA already has. If possible, the results should be accompanied by a

description of the activity and any controls used.

3. Is there information regarding laboratory analytical procedures which may be used in lieu of those suggested by OSHA to determine exposure to air contaminants?

4. Are there any circumstances in which the proposed changes in PELs would have significant impacts beyond those identified by OSHA?

5. What controls are available to reduce exposures below existing levels in addition to those identified by OSHA, and what are the estimated costs associated with these controls?

6. OSHA requests comments on all aspects of and approaches to the regulation of fibrous glass, including refractory ceramic fibers, and mineral wool. This includes the scientific evidence on nonmalignant respiratory disease, carcinogenicity, and irritant effects, feasibility data, and various approaches to regulation based on these factors.

7. OSHA's proposed final limit for silica is based on gravimetric measurement. The 1970 TLV for silica is measured in m.p.p.c.f. (millions of particles per cubic foot of air, based on impinger samples counted by light-field techniques). Should OSHA convert this sampling methodology to the more commonly utilized gravimetric measurement of mg/m^3, for the purpose of listing in the transitional table of the final rule on the effective date of the final rule? The advantages of using gravimetric measurement will occur sooner and OSHA does not foresee feasibility problems as this is the common practice.

8. Comments are requested on all aspects of the regulation of asphalt fumes including issues as to its respiratory effects and carcinogenicity, and other issues relating to its regulation.

9. A risk assessment for asphalt fumes is presented based on the Hanson study. There is scientific disagreement on whether the exposed employees were exposed significantly to coal tar pitch as well as asphalt as discussed in the preamble. Is this study appropriate for risk assessment? Is the quantitative risk assessment methodology used appropriate? Have there been any other quantitative risk assessments conducted for asphalt fumes? If so, OSHA requests all relevant information.

10. OSHA proposed that the PEL for asphalt fumes be measured and expressed as total particulate. Another view is that use of the "benzene-soluble fraction" is more appropriate. OSHA solicits comments on this issue.

11. OSHA is proposing effective dates of 6 months for compliance with any means of engineering, word practice controls, and personal protective equipment, and 4 years for engineering controls for longshoring and marine terminals. For agriculture the first date is 1 year and the second is 4 years. For shipyards and construction the dates are 3 months and 4 years based in part on the Advisory Committee recommendations. Are these dates appropriate? Should they be longer or shorter?

12. Based on the assumption that a 1 percent excess mortality rate among workers in the construction industry would result from non-compliance with the proposed PELs, OSHA has estimated that 8 to 13 extra deaths per year would occur without this rule (see PRIA, V–2). OSHA requests comment on this assessment methodology, especially data which confirm or deny the assumed excess mortality rate.

13. In assessing the number of illnesses that would occur in the absence of this regulation, OSHA has assumed that BLS illness estimates for this industry are under-reported by a factor of five (See PRIA, V–2B). OSHA requests comment on this estimate, especially data which confirm or deny the magnitude of any under-reporting in reported illness statistics.

14. OSHA preliminarily concludes that the proposed PELs are economically and technologically feasible for all sectors. OSHA requests comments on the technological and economic feasibility of attaining these PELs in industry sector where working conditions may be different from those in general industry. Commenters may address feasibility issues on an industry or sub-industry basis.

15. In order to assess the benefits associated with this rulemaking, OSHA has preliminarily projected that the proposed PELs will cause an 80 percent reduction in the incidence of occupationally related illnesses (see PRIA). OSHA requests comments about whether an eighty percent effectiveness rate is a reasonable estimate of the rule's efficacy.

Construction

1. In the process of estimating risk to workers, OSHA has estimated the extent of exposures in the construction industry as the number of full-time equivalent employees exposed (See PRIA, page VB–58). This is to say that the total risk of 100 workers exposed above the PEL full-time is equivalent to the risk to 1000 workers each exposed for one-tenth the time. OSHA requests comments on the validity of this assumption and on all other aspects of converting exposure estimates into risk estimates. Should strict linearity be assumed?

Maritime

1. OSHA has some data on what percentage of workers currently wear respirators. Additional data on what percentage of tank cleaners, welders and painters currently wear personal protective equipment, including respirators, and on what percentage of other occupational groups wear personal protective equipment, including respirators is requested.

2. The use of "real time" measurements may be useful in tank cleaning and other confined space entry situations. Identify methods or instruments used for making "real time" measurements, in addition to those identified by OSHA. How accurate are these methods? What costs are involved?

3. Ship repairing and shipbreaking reference the 1970 ACGIH TLVs. Ship building references OSHA's Z–1 Table. OSHA proposes that, as of the effective date of the standard, all of the previously mentioned subgroups within the maritime sector utilize the 1970 TLVs as transitional limits. This will facilitate conversion to the same levels for these groups and provide consistency. The Shipyard Employment Standards Advisory Committee generally supports this proposal. OSHA also solicits comments from other interested members of the public.

Agriculture

1. OSHA requests additional information concerning the controls and work practices presently used to reduce exposures to respirable dust during silo filling, grain dust during the filling of transport vehicles and respirable silica during the harvesting of grapes.

2. OSHA requests any information regarding exposure to pesticidal residue during cotton ginning or other post-harvest agricultural processing.

3. OSHA requests information concerning activities at large agricultural establishments which present exposure to hazardous substances not identified in OSHA's preliminary analysis.

4. In addition to those substances identified by OSHA, what other substances found in the Z Table for Agriculture are used in agriculture? During what operations or activities?

5. OSHA is proposing that agricultural workers be protected by all the same exposure limits as workers in other sectors since they face the same risks

when exposed. (The use of EPA-registered pesticides pursuant to the label is regulated by EPA.) OSHA intends, through non-mandatory appendices, special publications and/or outreach programs, to inform agricultural employers and employees of the more common substances for which there is exposure in agriculture and appropriate precautions to take. OSHA requests information on the best way to supply this information to the agricultural community and the substances for which this program would be most useful.

6. OSHA has proposed to set Permissible Exposure Limits for over 100 pesticides that are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These PELs would only apply if labelling instruction were not followed or if unlabelled pesticides were used. OSHA requests comment on whether additional regulation of registered pesticides is necessary, given the penalties of FIFRA. Would PELs cause confusion in the agricultural sector as to which regulatory requirements would take precedence or would the additional information provided by the exposure limits tend to reduce the number of poisonings from pesticides?

C. History and Need for Revision of PELs in Construction

Construction work sites are complex and varied, and may create special problems for identifying and controlling hazards (Bertinuson and Weinstein, (1978) Occupational Hazards of Construction). Construction sites are temporary and change constantly as the work moves ahead and as new trades arrive on the site. Several trades may share the same work area, exposing each other to toxic substances. The work is usually rushed, increasing the chances that an accident might occur or that a harmful chemical exposure goes unnoticed. Construction workers change jobs often, and some work for a number of employers during the same year. All of these factors contribute to the complex array of activities and related exposures, increasing the potential risk of accident or illness.

According to the Bureau of Labor Statistics, in 1989 the rate of work-related injuries in construction was the highest of any sector at 14.2 per 100 full-time workers. The average rate for all sectors combined was 8.2 injuries per 100 full-time workers. Construction also leads the other sectors in lost workdays, a measure of severity of injuries.

A construction worker is at least four times as likely to die on the job as workers in general. Occupational fatalities occurred at the rate of 5.4 in the private sector in 1989, with the rate for construction being 22.4 per 100,000 full-time workers according to BLS data for 1989.

Rates of occupational illnesses reported to BLS in construction appear to be lower than other sectors. There are a number of reasons for this. One is specifically related to the nature of occupational illnesses, which are more difficult to recognize, often have a long latency between exposure and development of disease, and are more difficult to relate to the workplace than injuries. As a result, injuries and fatalities, which are easy to recognize, have a short latency period, and are often more easily related to the workplace, are much more likely to be reported than illnesses.

Exposure profiles for construction workers vary from jobsite to jobsite, and typically include exposures to multiple substances, some of which they may not be working with directly. Workers tend to be employed on certain jobs or with particular contractors for short periods of time.

The difficulties inherent in identifying occupational illnesses and the transient nature of both the worksite and the workforce are the two major reasons for lack of reporting of occupational illnesses in construction.

The above analysis applies to BLS data. Recognizing this, OSHA has made its best estimate of illnesses and deaths avoided in construction. These are 22,000 illnesses and 15 to 20 deaths avoided per year. See the regulatory analysis for the approach used.

Construction Standards

Standards relevant to construction, primarily safety standards, are found in 29 CFR part 1926. Section 1926.20 of subpart C—General Safety and Health Provisions, under paragraph (a), Contractor requirements states:

> (1) Section 107 of the Act requires that it shall be a condition of each contract which is entered into under legislation subject to Reorganization Plan number 14 of 1950 (64 Stata. 1267), as defined in § 1926.12, and is for construction, alteration, and/or repair, including painting and decorating, that no contractor or subcontractor for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety."

The above regulation was first issued under the Construction Safety Act on April 17, 1971 at 36 FR 7340, and in 1971 became an occupational safety and health standard for all construction workers. (See pertinent Legal Authority.)

Section 1926.55 regulates exposure to gases, vapors, fumes, dusts, and mists, and references the "Threshold Limit Values of Airborne Contaminants for 1970" of the American Conference of Governmental Industrial Hygienists. These are the limits that currently exist and are enforced in construction. Much scientific knowledge in the area of health effects of toxic substances has been gained in the past twenty years. OSHA is proposing to update these limits. The levels that are being proposed in construction are those levels that are currently in effect in general industry. The objective of this rulemaking is to produce the same exposure limits across all sectors, resulting in the same level of protection for all workers.

In addition, the scope of many of the substance-specific health standards found in 29 CFR part 1910 includes coverage of the construction sector. Lead, 1910.1025, and coke oven emissions are the only substance-specific standards which specify exposure limits that do not cover construction. However, lead is covered in construction to the degree that the 1970 TLV for lead is 200 $\mu g/m^3$. And while the standard for coke oven emissions does not apply to construction, the coal tar pitch volatile TLV of 200 $\mu g/m^3$ does apply.

OSHA is proposing, as part of this current rulemaking, a PEL of 50 $\mu g/m^3$ for lead in construction. This is the level that has existed in general industry since 1978; this is also the level effective in the maritime sector. The ancillary provisions (e.g. medical surveillance, exposure monitoring) are outside the scope of this rulemaking. However, OSHA is currently developing a proposal to address all of the other issues in a comprehensive standard addressing workplace exposure to lead in the construction industry.

As per its legal mandate to do so, OSHA has consulted with the Advisory Committee on Construction Safety and Health (ACCSH) in regard to this proposal. On June 20–1, 1990 ACCSH met and unanimously passed the following motion:

> The Advisory Committee on Construction Safety and Health recommends to the Assistant Secretary of Occupational Safety and Health the adoption of the recommendations presented in the report of the workgroup on Permissible Exposure Limits for Construction and proceed with rulemaking to promulgate the D list (Table Z, Construction) as a 1926 construction standard and include in Table D provisions for mineral

wool, fibrous glass, asphalt fume, lead at 50 micrograms per cubic meter and cotton dust at 500 micrograms per cubic meter.

D. History and Need for Establishing PELs in Maritime

The Department of Labor has had some authority for many years for the maritime industry under the Longshore and Harbor Workers Compensation Act (33 U.S.C. 901 et seq.). Specific authority was granted prior to the OSH Act under Public Law 89-742, August 22, 1958, 33 U.S.C. 941 for the Secretary of Labor to issue regulations to protect the health and safety of longshoremen, marine terminal workers, ship repairers, shipbuilders and shipbreakers (See also 33 U.S.C. 902). Pursuant to section 4(b)(2) of the OSH Act, standards issued pursuant to 33 U.S.C. 941 became OSH standards on May 29, 1971 at 36 FR 10466.

At that time the Shipyard standards were in three Parts of 29 CFR part 1915 for ship repairing, part 1916 for shipbuilding and part 1917 for shipbreaking. These were recodified with the same basic organization on October 19, 1977 at 37 FR 22458.

On April 20, 1982 at 47 FR 16984, parts 1915, 1916 and 1917 were consolidated into a new part 1915, Shipyards, covering shipbuilding, ship repairing and shipbreaking. As a consequence of their history, the permissible exposure limits applicable to the new part 1915, Shipyards are complex. The shipbreaking and ship repairing subsectors and the use of toxic solvents and removers in the shipbuilding and ship repair subsectors are covered by the 1970 TLVs of the ACGIH. See §§ 1915.5, 1915.11, 1915.12, 1915.32 and 1915.33. For shipbuilding operations not involving toxic solvents and removers, the 1971 OSHA PELs apply. No specific exposure limits are specified for shipbuilding outside those 2 circumstances. When no standard is specified for a subsector, and there is a standard for general industry, then the general industry standard applies to the subsector. See 29 CFR 1910.5(c). The OSHA general industry standard for air contaminants are the Z Tables in 29 CFR 1910.1000. OSHA did not make the updated (1989) PELs applicable to maritime awaiting the completion of this rulemaking. See 29 CFR 1910.1000(f)(3)(ii). In addition, a number of OSHA single-substance standards (1910.1001-1048) are applicable to the maritime sectors. See the individual standards and 29 CFR 1910.19.

Clearly it is confusing both to the shipyard industry, its employees and for OSHA enforcement for slightly different standards to apply to different operations in the same work place. (The 1970 TLVs and the 1968 PELs do differ for some substances, though usually not by significant amounts.) Consequently, for shipyards, OSHA feels the existence of different standards for different subsectors should be eliminated as soon as possible. Accordingly, OSHA is proposing that the new PELs will take effect for all of shipyards on the effective date of the standard, to be achieved by any reasonable means of compliance. The preference for engineering controls in the transition period will apply to the 1970 TLVs for all subsectors of shipyards.

Pursuant to the Longshoremen and Harbor Worker Compensation Acts 1958 amendments (33 U.S.C. 941), OSHA in 1960 issued regulations protecting longshore employees (25 FR 1569). These regulations also covered marine terminal employees. They were adopted as OSHA standards on May 29, 1971 at 36 FR 10466. They were recodified as 29 CFR part 1918 on May 19, 1977 at 37 FR 22530.

On July 5, 1983 (48 FR 30886), OSHA issued a final standard specifically covering marine terminals separately from longshoring. The Marine Terminals Standard was designated 29 CFR part 1917. (It should be recalled that the earlier part 1917 covering shipbreaking had been recodified as part of part 1915—Shipyards.) The Marine Terminal Standard basically provides that employees not be exposed to air contaminants over the limit set in the 1971 Z Tables of CFR 1910.1000. See §§ 1917.2(p), 1917.22, 23, 25.

Longshoring operations continue to be regulated by 29 CFR part 1918. OSHA has consistently interpreted that the air contaminant exposure limits set forth in 1910.1000 are applicable pursuant to § 1910.5(c) to longshoring because no quantitative exposure limits are set forth for most air contaminants. Section 1918.93 only sets forth specific numerical limits for carbon monoxide. It is OSHA's intention to clarify in this rulemaking that all the air contaminant exposure limits in the 1971 Z Tables in 1910.1000 are applicable and will remain applicable to longshoring during the transition period.

OSHA is proposing to update the air contaminants standards used in the maritime sector. Ship repairing and shipbreaking are currently covered by the 1970 TLVs, and shipbuilding, marine terminals and longshoring are covered by the 1971 OSHA PELs-subpart Z. The product of this rulemaking will be one table used by all subsectors of Maritime. Thus, this proposed rulemaking will produce consistency across all subsectors of the maritime sector.

This proposal for maritime is necessary for several reasons. First, the existing limits are out-of-date and not sufficiently protective for 376 substances. Second, workers are regularly exposed to a variety of toxic substances in this sector. Third, current standards are inconsistent among the various subsectors of maritime leading to confusion. The Shipyard Advisory Committee has discussed and is supportive of these changes.

E. History and Need for Establishing PELs in Agriculture

Historically, OSHA has developed and applied few health and safety regulations in the agricultural sector. The OSH Act is intended to apply to agricultural workers, though Congress has exempted the employers of farms with ten or fewer employees by appropriations rider since 1977. See the discussion in the Legal Authority section.

When OSHA was formed, the Agency was given two years to adopt "consensus" standards, under section 6(a) of the OSH Act, so that it would have some regulations with which to start enforcement procedures. The issuance of very few standards for "agricultural operations" appears to have been based on the view that, since the 1910 consensus standards of the time were primarily ANSI and NFPA standards, and these standards had been developed by the industrial sector, this raised the question of whether these could be considered "consensus" standards when adopted to fit agricultural situations.

Part 1928 (source: 40 FR 18257, Apr. 25, 1975) of the CFR refers to those standards currently applicable in agriculture. Subpart B, 1928.21 specifically cites those standards in 29 CFR part 1910 (General Industry) which apply to agricultural operations:

(1) Temporary labor camps—§ 1910.142
(2) Storage and handling of anhydrous ammonia—§ 1910.111(a) and (b);
(3) Pulpwood logging—§ 1910.266;
(4) Slow-moving vehicles—§ 1910.145;
(5) Hazard communication—§ 1910.1200

In addition, standards which apply to Roll-Over Protective Structures in agriculture are found in subpart C of 29 CFR part 1928. Part 1928 subpart D addresses the use of guarding for agricultural equipment (Safety for Agricultural Equipment). Field Sanitation, 1928.110, is found in Subpart I—General Environmental Controls. 29 CFR 1928.21(b) specifically states that "(e)xcept to the extent specified in paragraph (a) of this section, the

standards contained in subparts B through T and subpart Z of 1910 of this title do not apply in agricultural operations."

There are no Permissible Exposure Limits (PELs) that apply to agriculture. OSHA states in its Air Contaminants Final Rule, [Federal Register, Vol. 54, No. 12, p. 2383]: "In the future OSHA will consider, based on relevance, priorities and administrative resources, whether or not it is appropriate to consider coverage for agriculture." The Agency has considered this issue and concluded that it is appropriate to provide the same level of protection from toxic substances to workers employed in the agricultural sector as workers employed in other sectors, e.g. general industry or construction.

For purposes of analysis of agriculture for this standard, OSHA has relied primarily on the classifications in OMB's Standard Industrial Classification (SIC) manual. The Standard Industrial Classification manual assigns agriculture the following SIC codes: Major Group 01, Agricultural Production—Crops; Major Group 02, Agricultural Production—Livestock; Major Group 07, Agricultural Services. The SIC manual defines agriculture as including an "establishment (e.g. farms, ranches, dairies, greenhouses, nurseries, orchards, hatcheries) primarily engaged in the production of crops, plants, vines or trees (excluding forestry operations); and the keeping, grazing, or feeding of livestock for the sale of livestock * * * also establishments primarily engaged in the production of mushrooms, bulbs, * * * seeds and in the growing of hydroponic crops." Nurseries and greenhouses are considered to be agricultural establishments only if the products they sell are grown primarily at the establishment. Otherwise these establishments are considered retail trade establishments. Forestry (08), (but not logging) comes under agriculture and is being considered in this rulemaking. Fishing (09) is considered to fall under general industry. However, fishing may wish to submit data, which OSHA will then consider.

OSHA has studied Major Group 07, Agricultural Services, but parts of that sector may be covered by the General Industry standard. Any subsector which believes it is covered but has not been studied, should submit appropriate comments. OSHA's intention is that after after this rule is completed, that all employees under OSHA's jurisdiction will be covered. If any sector believes it has feasibility matters it wishes to bring to OSHA's attention, which OSHA has not considered, it should submit this information.

Agriculture is one of the most hazardous of U.S. industries, with 1,300 deaths and 120,000 worker injuries in 1989, according to National Safety Council figures. These estimates indicate that agriculture has the second highest death rates of any major industry division, second only to mining, but greater than construction.

In terms of illnesses, the illness incidence rate among agricultural workers for 1989, the latest year reported by the Bureau of Labor Statistics, was 45.5 per 10,000 full-time workers, higher than mining and construction.

In addition, these statistics are believed to underestimate agricultural morbidity by a large margin because OSHA does not require recordkeeping and reporting by farms with 10 or fewer employees and because workers' compensation laws in most states do not cover farms with few employees. As a consequence, the reporting of agricultural injuries and illnesses on a national level is very poor. For illnesses that are the result of agricultural exposures, the statistics are further understated due to the problems inherent in identifying and reporting occupational illnesses.

The single most hazardous group of substances to which agricultural workers are exposed is pesticides. In the United States, any chemical that is to be used for pesticidal purposes must be registered in accordance with EPA, and in particular with Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), requirements. In addition to requiring registration, FIFRA has the authority to regulate conditions of use, including worker safety and health, for pesticidal substances. EPA first regulated pesticide worker safety in 1974, when it promulgated a Worker Safety standard (still being enforced) that applies only to workers performing hand labor at agricultural establishments. EPA has recently proposed to update and expand its worker protection standard for agricultural pesticides. The proposed standard also would apply to pesticide users at farm sites, nurseries, greenhouses, and forest areas used for the commercial production of wood fiber and timber products. EPA has left open the question of the size-class of agricultural establishments to be covered by these regulations and has solicited input on this issue. In contrast to the 1974 rule, the proposed standard would apply to workers engaged in all pesticide handling activities (e.g. mixing, loading, and application) conducted at agricultural establishments. The FIFRA proposal addresses the following areas: specific information to be provided to workers; training and labeling requirements; selection of personal protective equipment; avoidance of exposure to non-applicators; minimum reentry times; availability of water, soap, and towels; and biological monitoring of cholinesterase levels for pesticide handlers exposed to certain organophosphates for specified durations.

Once FIFRA's Worker Safety standard becomes final, EPA will have exercised its jurisdiction authorized under FIFRA, regulation of many safety and health issues related to worker exposure to use of labelled pesticides. In consequence, OSHA will not, in many cases, have authority to regulate pursuant to section 4(b)(1) of the OSHA Act when a labelled pesticide is used according to its label. See the discussion under Legal Authority.

In 1980, about 600 active ingredients (or groups of active ingredients) were registered under FIFRA (54 FR 7740). Since 1980, EPA has issued 194 registration standards (documents describing EPA's regulatory position and the Agency's underlying rationale for regulating particular pesticides); these 194 standards have addressed approximately 350 chemical substances used either as active or inert pesticide ingredients.

Some of the pesticides currently registered under FIFRA appear on OSHA's Z-Table. For the sake of completeness, and for use as a reference, a short discussion of these substances is included in the appropriate health effects section of the preamble. Where the substance has a FIFRA-registered application, that information is included. In many cases there are non-pesticidal uses of these substances that result in occupational exposures. Again, see the discussion under Legal Authority for OSHA jurisdictional issues.

A number of the substances on OSHA's Z Table, Agriculture are fertilizers. These are among the substances that are covered by this rulemaking. The following are OSHA-regulated substances used as fertilizers in agriculture:

Chemical	CAS No.
Ammonia	7664-41-7
Borax (borates, tetra, decahydrate)	1303-96-4
Calcium cyanamide	156-62-7
Diatomaceous earth (amorphous silicates)	617490-53-2
Dolomite (calcium carbonate)	1317-65-3
Furfural	98-01-1

Chemical	CAS No.
Gypsum	3397-24-5
Hydrochloric acid (hydrogen chloride)	7647-01-0
Limestone (calcium carbonate)	1317-65-3
Nitric acid	7647-01-0
Perlite	N/A
Phosphoric acid	7664-38-2
Sulfuric acid	7664-93-9

Source: Farm Chemicals Handbook.

Farm workers use many different cleansers and disinfectants that are regulated by OSHA in its Z-1-A Table. Among the most important are: Caustic soda (sodium hydroxide), used to clean milking equipment and containers; and ammonium hydroxide, used to neutralize formaldehyde, another substance commonly used.

Farm workers regularly use solvents, paints, acids, coatings, adhesives and other materials that contain toxic substances. They are thus exposed to heavy metals (e.g., in paints), solvents (when cleaning machinery and tools), fuels (when fueling farm vehicles), resins (in coatings and adhesives), welding fumes (when welding), and toxic gases (from manure pits), and a host of other contaminants. In addition, these workers are routinely exposed to grain dust, a major cause of pulmonary dysfunction in farm workers.

The agricultural work environment is often quite dusty. Agricultural dusts in the farm environment may come from any animal or plant source associated either specifically with agricultural production or in general with the rural environment. Agricultural dusts vary with the season, climate, weather conditions, and type of agricultural operation (Mutel et al., 1986 as cited in: Donham, K., (1986) Hazardous Agents in Agricultural Dusts and Methods of Evaluation, Am J of Ind Med 10:205–220). They are typically complex, including a mixture of both inorganic and organic particles and perhaps aerosolized pesticides and chemical fertilizers (Mutel et al., as cited in: Donham, K., (1986) Hazardous Agents in Agricultural Dusts and Methods of Evaluation, Am J of Ind Med 10:205–220).

Various agricultural activities can result in exposure to dusts. Harvesting, transporting, or storing grain, milling grain, mixing feed or feeding animals, during various activities. Swine and poultry confinement buildings are sources of especially high exposures. Trucking or otherwise moving grain or hay, cleaning out livestock structures, storing grain, unloading the top of silage from nonairtight silos, and harvesting grain can create exposure to dusts (Darke et al., 1976; Donham et al., 1978, 1983; Lacey and Lacey, 1984; Mutel et al., 1986; as cited in: Donham, K, (1986) Hazardous Agents in Agricultural Dusts and Methods of Evaluation, Am J Ind Med, 10:205–220).

Potential for exposure to animal-related dusts is encountered during routine animal care, including feeding, cleaning animal quarters, sorting and handling animals, administering medications, milking dairy cows, or replacing their bedding (Donham et al., 1977, as cited in: Donham, K, (1986) Hazardous Agents in Agricultural Dusts and Methods of Evaluation, Am J Ind Med, 10:205–220). An even greater potential for significant exposure to dusts exists when generated in an enclosed structure, such as a barn, silo, or livestock confinement structure.

The Air Contaminants Final Rule (FR Vol 54, No. 12, Jan. 19, 1989) adopted 164 new PELs where none previously existed and 212 PELs that were more protective than the old. There were approximately 160 substances that had been in effect since the publication of the Z-Table and were not considered for change during this rulemaking because there was no difference between the old PEL (Z-1 Table value) and the 1987–88 TLV. (One of the criteria for consideration of updating of a particular PEL was that the 1987–8 ACGIH TLV be significantly different from the old OSHA PEL.)

The situation in agriculture, however, is very different. Because there have been no Z-Tables, and thus no PELs in effect in agriculture, the approximately 160 substances referenced in the earlier paragraph are being proposed for the first time in agriculture. In addition, there are approximately 50 substances which OSHA is not proposing to change for construction and maritime because OSHA determined in the general industry rulemaking that change was not appropriate at that time. These are being proposed for agriculture also. There is the same need for health protection from the toxic effects of these chemicals in agricultural applications as in other sectors. Health write-ups are provided.

In addition, there are ten substances for which OSHA has developed comprehensive substance-specific standards. These standards are not limited to a Permissible Exposure Limit, but typically have other provisions (e.g. medical surveillance, exposure monitoring requirements, medical removal protection) which further reduce the risk of illness to workers exposed to these substances. None of the substance-specific standards has been applied to the agricultural sector. OSHA is attempting to correct this situation during this rulemaking. However, since this rulemaking is covering only the Permissible Exposure Limits and not other provisions, only the PELs for these substances will be proposed. The same PELs that have been previously established in other sectors are being proposed in agriculture for the following substances: Asbestos, vinyl chloride, inorganic arsenic, lead, benzene, cotton dust, 1,2'-dibromo-3-chloropropane (DBCP), acrylonitrile, ethylene oxide and formaldehyde.

It is important to note that farming operations that do not maintain a temporary labor camp and that employ 10 or fewer employees are exempt from OSHA regulations. In addition, immediate family members of farm employers are not regarded as employees when making the determination as to number. These situations are exempted by appropriations rider. See the discussion under Legal Authority.

Small farms constitute the majority (96%, see Preliminary Regulatory Impact Analysis) of American farms. Addressing the injuries, illnesses and fatalities which have become part of daily life on these farms is an area OSHA feels it does have a responsibility, albeit not a regulatory one. The focus of OSHA's current effort is to work with and through the U.S. Department of Agriculture to reach out to states, land grant universities, Farm Bureaus, Granges, 4-H Clubs, and others such as the National Safety Council and National Farmers Union in furthering education and awareness in agricultural health and safety. OSHA is also collaborating closely with NIOSH to facilitate information collection and dissemination to the benefit of both agencies and ultimately the agricultural community. Although a fair amount of groundwork has already been laid, OSHA is still in the early stages of its agricultural outreach initiative.

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
Abate (see Temephos)	3383-96-8						
Acetaldehyde	75-07-0	X	X	X	X	X	
Acetic acid	64-19-7					X	
Acetic anhydride	108-24-7	X	X	X	X	X	
Acetone	67-64-1	X	X	X	X	X	
Acetonitrile	75-05-8	X	X	X	X	X	
Acetylene dichloride; see 1,2-Dichloroethylene.							
Acetylene tetrabromide	79-27-6					X	
Acetylsalicylic acid (Aspirin)	50-78-2	X	X	X	X	X	
Acrolein	107-02-8	X	X	X	X	X	
Acrylamide	79-06-1	X	X	X	X	X	
Acrylic acid	79-06-1	X	X	X	X	X	
Acrylonitrile; see 1910.1045	107-13-1					X	
Aldrin	309-00-2					X	
Allyl alcohol	107-18-6	X	X	X	X	X	
Allyl chloride	107-05-1	X	X	X	X	X	
Allyl glycidyl ether (AGE)	106-92-3	X	X	X	X	X	
Allyl propyl disulfide	2179-59-1	X	X	X	X	X	
alpha-Alumina Total dust	1344-28-1	X	X	X	X	X	
Respirable fraction						X	
Aluminum (as Al) Metal	7429-90-5						
Total dust						X	
Respirable fraction						X	
Pyro powders			X	X	X	X	
Aluminum (con't.) welding fumes			X	X	X	X	
Soluble salts		X	X	X	X	X	
Alkyls		X	X	X	X	X	
2-Aminoethanol; see Ethanolamine							
2-Aminopyridine	504-29-0					X	
Amitrole	61-82-5	X	X	X	X	X	
Ammonia	7664-41-7	X	X	X	X	X	
Ammonium chloride fume	12125-02-9	X	X	X	X	X	
Ammonium sulfamate	7773-06-0						
Total dust		X	X	X	X	X	
Respirable fraction						X	
n-Amyl acetate	628-63-7					X	
sec-Amyl acetate	626-38-0					X	
Aniline and homologs	62-53-3	X	X	X	X	X	
Anisidine (o-, p-isomers)	29191-52-4					X	
Antimony and compounds (as Sb)	7440-36					X	
ANTU (alpha naphthylthiourea)	86-88-4					X	
Arsenic, inorganic compounds (as As); see 1910.1018.	7440-38-2					X	
Arsenic, organic compounds (as As)	7440-38-2					X	
Arsine	7784-42-1					X	
Asbestos; see 1910.1001; 1910.1101	(1)					X	X
Asphalt (petroleum) fumes	8052-42-4	X	X	X	X	X	
Atrazine	1912-24-9	X	X	X	X	X	
Azinphos-methyl	86-50-0					X	
Barium, soluble compounds (as Ba)	7440-39-3					X	
Barium sulfate	7727-43-7						
Total dust (as Ba)		X	X	X	X	X	
Respirable fraction						X	
Benomyl	17804-35-2						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Benzene; see 1910.1028	71-43-2					X	
p-Benzoquinone; see Quinone							
Benzo(a)pyrene; see coal tar pitch volatiles							
Benzoyl peroxide	94-36-0					X	
Benzyl chloride	100-44-7					X	
Beryllium and beryllium compounds (as Be).	7440-41-7					X	
Biphenyl; see Diphenyl							
Bismuth telluride, undoped	1304-82-1						
Total dust						X	
Respirable fraction						X	
Bismuth telluride, Se-doped		X	X	X	X	X	
Borates, tetra, sodium salts							
Anhydrous	1330-43-4	X	X	X	X	X	
Decahydrate	1303-96-4	X	X	X	X	X	
Pentahydrate	12179-04-3	X	X	X	X	X	
Boron oxide	1303-86-2						

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
Total dust		X	X	X	X	X	
Boron tribromide	10294-33-4	X	X	X	X	X	
Boron trifluoride	7637-07-2					X	
Bromacil	314-40-9	X	X	X	X	X	
Bromine	7726-95-6	X	X	X	X	X	
Bromine pentafluoride	7789-30-2			X	X	X	
Bromoform	75-25-2					X	
Butane	106-97-8	X	X	X	X	X	
Butanethiol; see Butyl mercaptan							
2-Butanone (Methyl ethyl ketone)	78-93-3	X	X	X	X	X	
2-Butoxyethanol	111-76-2	X	X	X	X	X	
n-Butyl-acetate	123-86-4	X	X	X	X	X	
sec-Butyl acetate	105-46-4					X	
tert-Butyl acetate	540-88-5					X	
Butyl acrylate	141-32-2	X	X	X	X	X	
n-Butyl alcohol	71-36-3	X	X	X	X	X	
sec-Butyl alcohol	78-92-2	X	X	X	X	X	
tert-Butyl alcohol	75-65-0	X	X	X	X	X	
Butylamine	109-73-9					X	
tert-Butyl chromate (as CrO_3)	1189-85-1					X	
n-Butyl glycidyl ether (BGE)	2426-08-6	X	X	X	X	X	
n-Butyl lactate	138-22-7	X	X	X	X	X	
Butyl mercaptan	109-79-5			X	X	X	
o-sec-Butylphenol	89-72-5	X	X	X	X	X	
p-tert-Butyltoluene	98-51-1	X	X	X	X	X	
Calcium carbonate	1317-65-3						
Total dust						X	
Respirable fraction						X	
Calcium cyanamide	156-62-7	X	X	X	X	X	
Calcium hydroxide	1305-62-0	X	X	X	X	X	
Calcium oxide	1305-78-8					X	
Calcium silicate	1344-95-2						
Total dust						X	
Respirable fraction						X	
Calcium sulfate	7778-18-9						
Total dust						X	
Respirable fraction						X	
Camphor, synthetic	76-22-2					X	
Caprolactam	105-60-2						
Dust		X	X	X	X	X	
Vapor		X	X	X	X	X	
Captafol (Difolatan)	2425-06-1	X	X	X	X	X	
Captan	133-06-2	X	X	X	X	X	
Carbaryl (Sevin)	63-25-2					X	
Carbofuran (Furadan)	1563-66-2	X	X	X	X	X	
Carbon black	1333-86-4					X	
Carbon dioxide	124-38-9	X	X	X	X	X	
Carbon disulfide	75-15-0	X	X	X	X	X	
Carbon monoxide	630-08-0	X	X	X	X	X	
Carbon tetrabromide	558-13-4	X	X	X	X	X	
Carbon tetrachloride	56-23-5	X	X	X	X	X	
Carbonyl fluoride	353-50-4	X	X	X	X	X	
Catechol (Pyrocatechol)	120-80-9	X	X	X	X	X	
Cellulose	9004-34-6					X	
Total dust						X	
Respirable fraction						X	
Cesium hydroxide	21351-79-1	X	X	X	X	X	
Chlordane	57-74-9					X	
Chlorinated camphene	8001-35-2	X	X	X	X	X	
Chlorinated diphenyl oxide	55720-99-5					X	
Chlorine	7782-50-5	X	X	X	X	X	
Chlorine dioxide	10049-04-4	X	X	X	X	X	
Chlorine trifluoride	7790-91-2					X	
Chloroacetaldehyde	107-20-0					X	
a-Chloroacetophenone (Phenacyl chloride).	532-27-4					X	
Chloroacetyl chloride	79-04-9	X	X	X	X	X	
Chlorobenzene	108-90-7					X	
o-Chlorobenzylidene malononitrile	2698-41-1					X	
Chlorobromomethane	74-97-5					X	
2-Chloro-1,3-butadiene; see beta-Chloroprene							
Chlorodifluoromethane	74-45-8	X	X	X	X	X	
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9					X	
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1					X	

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
1-Chloro,2,3-epoxypropane; see Epichlorohydrin							
2-Chloroethanol; see Ethylene chlorohydrin							
Chloroform (Trichloromethane)	67-66-3	X	X	X	X	X	
1-Chloro-1-nitropropane	600-25-9	X	X	X	X	X	
Chloropentafluoroethane	76-15-3	X	X	X	X	X	
Chloropicrin	76-06-2					X	
beta-Chloroprene	126-99-8	X	X	X	X	X	
o-Chlorostyrene	2039-87-4	X	X	X	X	X	
o-Chlorotoluene	95-49-8	X	X	X	X	X	
2-Chloro-6-trichloromethyl pyridine	1929-82-4						
Total dust						X	
Respirable fraction						X	
Chlorpyrifos	2921-88-2	X	X	X	X	X	
Chromic acid and chromate (as CrO_3)	(1)					X	
Chromium (II) compounds (as Cr)	7440-47-3					X	
Chromium (III) compounds (as Cr)	7440-47-3					X	
Chromium metal	7440-47-3					X	
Chrysene; see Coal tar pitch volatiles							
Clopidol	2971-90-6						
Total dust						X	
Respirable fraction						X	
Coal dust (less than 5% SiO_2), Respirable quartz fraction.		X	X	X	X	X	
Coal dust (greater than or equal to 5% SiO_2), Respirable quartz fraction.		X	X	X	X	X	
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene.	65966-93-2					X	
Cobalt metal, dust, and fume (as Co)	7440-48-4	X	X	X	X	X	
Cobalt carbonyl (as Co)	10210-68-1	X	X	X	X	X	
Cobalt hydrocarbonyl (as Co)	16842-03-8	X	X	X	X	X	
Coke oven emissions; see 1910.1029		X					
Copper	7440-50-8						
Fume (as Cu)						X	
Dusts and mists (as Cu)						X	
Cotton dust		X	X	X	X	X	
Crag herbicide	136-78-7						
(Sesone) Total dust		X	X	X	X	X	
Respirable fraction						X	
Cresol, all isomers	1319-77-3					X	
Crotonaldehyde	123-73-9					X	
	4170-30-3						
Crufomate	299-86-5	X	X	X	X	X	
Cumene	98-82-8					X	
Cyanamide	420-04-2	X	X	X	X	X	
Cyanides (as Cn)	(1)					X	
Cyanogen	460-19-5			X	X	X	
Cyanogen chloride	506-77-4	X	X	X	X	X	
Cyclohexane	110-82-7					X	
Cyclohexanol	108-93-0	X	X	X	X	X	
Cyclohexanone	108-94-1	X	X	X	X	X	
Cyclohexene	110-83-8					X	
Cyclohexylamine	108-91-8	X	X	X	X	X	
Cyclonite (RDX)	121-82-4			X	X	X	
Cyclopentadiene	542-92-7					X	
Cyclopentane	287-92-3	X	X	X	X	X	
Cyhexatin	13121-70-5	X	X	X	X	X	
2,4-D (Dichlorophenoxyacetic acid)	94-75-7					X	
Decaborane	17702-41-9	X	X	X	X	X	
Demeton (Systox)	8065-48-3					X	
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone).	123-42-2						
1,2-Diaminoethane; see Ethylenediamine.							
Diazinon	333-41-5	X	X	X	X	X	
Diazomethane	334-88-3					X	
Diborane	19287-45-7					X	
1,2-Dibromo-3-chloropropane; see 1910.1044.	96-12-8		X	X	X	X	
2-N-Dibutylaminoethanol	102-81-8	X	X	X	X	X	
Dibutyl phosphate	107-66-4	X	X	X	X	X	

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
Dibutyl phthalate	84-74-2					X	
Dichloroacetylene	7572-29-4			X	X	X	
o-Dichlorobenzene	95-50-1					X	
p-Dichlorobenzene	106-46-7	X	X	X	X	X	
Dichlorodifluoromethane	75-71-8					X	
1,3-Dichloro-5,5-dimethyl hydantoin	118-52-5	X	X	X	X	X	
Dichlorodiphenyltrichloroethane (DDT)						X	
1,2-Dichloroethane see Ethylene dichloride							
1,2-Dichloroethylene	540-59-0					X	
Dichloroethyl ether	111-44-4	X	X	X	X	X	
Dichloromonofluoromethane	75-43-4	X	X	X	X	X	
1,1-Dichloro-1-nitroethane	594-72-9	X	X	X	X	X	
1,2-Dichloropropane; see Propylene dichloride							
1,3-Dichloropropene	542-75-6	X	X	X	X	X	
2,2-Dichloropropionic acid	75-99-0	X	X	X	X	X	
Dichlorotetrafluoroethane	76-14-2					X	
Dichlorvos (DDVP)	62-73-7					X	
Dicrotophos	141-66-2	X	X	X	X	X	
Dicyclopentadiene	77-73-6	X	X	X	X	X	
Dicyclopentadienyl iron	102-54-5						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Dieldrin	60-57-0					X	
Diethanolamine	111-42-2	X	X	X	X	X	
Diethylamine	109-89-7	X	X	X	X	X	
2-Diethylaminoethanol	100-37-8					X	
Diethylene triamine	111-40-0	X	X	X	X	X	
Diethyl ether; see Ethyl ether							
Diethyl ketone	96-22-0	X	X	X	X	X	
Diethyl phthalate	84-66-2	X	X	X	X	X	
Difluorodibromomethane	75-61-6					X	
Diglycidyl ether (DGE)	2238-07-5	X	X	X	X	X	
Dihydroxybenzene; see Hydroquinone							
Diisobutyl ketone	108-83-8	X	X	X	X	X	
Diisopropylamine	108-18-9					X	
Dimethoxymethane; see Methylal							
Dimethyl acetamide						X	
Dimethylamine	124-40-3					X	
Dimethylaminobenzene; see Xylidine							
Dimethylaniline (N,N-Dimethylaniline)	121-69-7	X	X	X	X	X	
Dimethylbenzene; see Xylene							
Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate.	300-76-5	X	X	X	X	X	
Dimethylformamide	68-12-2					X	
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone.							
1,1-Dimethylhydrazine	57-14-7					X	
Dimethylphthalate	131-11-3					X	
Dimethyl sulfate	77-78-1	X	X	X	X	X	
Dinitolmide (3,5-Dinitro-o-toluamide)	148-01-6	X	X	X	X	X	
Dinitrobenzene (alpha, meta, para isomers).	528-29-0					X	
	99-65-0						
	100-25-4						
Dinitro-o-cresol	534-52-1					X	
Dinitrotoluene	25321-14-6					X	
Dioxane (Diethylene dioxide)	123-91-1	X	X	X	X	X	
Dioxathion (Delnav)	78-34-2	X	X	X	X	X	
Diphenyl (Biphenyl)	92-52-4					X	
Diphenylamine	122-39-4			X	X	X	
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate							
Dipropylene glycol methyl ether	34590-94-8	X	X	X	X	X	
Dipropyl ketone	123-19-3	X	X	X	X	X	
Diquat	85-00-7	X	X	X	X	X	
Di-sec octyl phthalate (Di-2-ethylhexylphthalate).	117-81-7	X	X	X	X	X	
Disulfiram	97-77-8	X	X	X	X	X	
Disulfoton	298-04-4	X	X	X	X	X	
2,6-Di-tert-butyl-p-cresol	1128-37-0	X	X	X	X	X	
Diuron	330-54-1	X	X	X	X	X	
Divinyl benzene	1321-74-0	X	X	X	X	X	
Emery	112-62-9						
Total dust		X	X	X	X	X	

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
Respirable fraction						X	
Endosulfan	115-29-7			X	X	X	
Endrin	72-20-8					X	
Epichlorohydrin	106-89-8	X	X	X	X	X	
EPN	2104-64-5					X	
1,2-Epoxypropane; see Propylene oxide							
2,3-Epoxy-1-propanol; see Glycidol							
Ethanethiol; see Ethyl mercaptan							
Ethanolamine	141-43-5	X	X	X	X	X	
Ethion	563-12-2	X	X	X	X	X	
Ethyl acetate	141-78-6					X	
Ethyl acrylate	140-88-5	X	X	X	X	X	
Ethyl alcohol (Ethanol)	64-17-5					X	
Ethylamine	75-04-7					X	
Ethyl amyl ketone (5-Methyl-3-heptanone).	541-85-5					X	
Ethyl benzene	100-41-4	X	X	X	X	X	
Ethyl bromide	74-96-4	X	X	X	X	X	
Ethyl butyl ketone (3-Heptanone)	106-35-4					X	
Ethyl chloride	75-500-3					X	
Ethyl ether	60-29-7	X	X	X	X	X	
Ethyl formate	109-94-4					X	
Ethyl mercaptan	75-08-1			X	X	X	
Ethyl silicate	78-10-4	X	X	X	X	X	
Ethylene chlorohydrin	107-07-3	X	X	X	X	X	
Ethylenediamine	107-15-3					X	
Ethylene dichloride (1,2-Dichloroethane).	107-06-2	X	X	X	X	X	
Ethylene glycol	107-21-1	X	X	X	X	X	
Ethylene glycol dinitrate	628-96-6	X	X	X	X	X	
Ethylene oxide; see 1910.1047	75-21-8					X	
Ethylidene norbornene	16219-75-3	X	X	X	X	X	
N-Ethylmorpholine	100-74-3	X	X	X	X	X	
Fenamiphos	22224-92-6	X	X	X	X	X	
Fensulfothion (Dasanit)	115-90-2	X	X	X	X	X	
Fenthion	55-38-9	X	X	X	X	X	
Ferbam	14484-64-1						
Total dust		X	X	X	X	X	
Ferrovanadium dust	12604	X	X	X	X	X	
Fibrous Glass (incl. RCFs)		X	X	X	X	X	X
Fluorides (as F)	(1)					X	
Fluorine	7782-41-4					X	
Fluorotrichloromethane (Trichlorofluoromethane).	75-69-4	X	X	X	X	X	
Fonofos	944-22-9	X	X	X	X	X	
Formaldehyde; see 1910.1048	50-00-00					X	
Formamide	75-12-7	X	X	X	X	X	
Formic acid	64-18-6					X	
Furfural	98-01-1	X	X	X	X	X	
Furfuryl alcohol	98-00-0	X	X	X	X	X	
Gasoline	8006-61-9	X	X	X	X	X	
Germanium tetrahydride	7782-65-2	X	X	X	X	X	
Glutaraldehyde	111-30-8	X	X	X	X	X	
Glycerin (mist)	56-81-5						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Glycidol	556-52-5	X	X	X	X	X	
Grain dust (oat, wheat, barley)		X	X	X	X	X	
Graphite, natural Respirable dust	7782-42-5	X	X	X	X	X	
Graphite, synthetic	7782-42-5						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Guthion; see Azinphos methyl							
Gypsum	7778-18-9						
Total dust						X	
Respirable fraction						X	
Hafnium	7440-58-6					X	
Heptachlor	76-44-8					X	
Heptane (n-Heptane)	142-82-5	X	X	X	X	X	
Hexachlorobutadiene	87-68-3	X	X	X	X	X	
Hexachlorocyclopentadiene	77-47-4	X	X	X	X	X	
Hexachloroethane	67-72-1					X	
Hexachloronaphthalene	1335-87-1					X	
Hexafluoroacetone	684-16-2	X	X	X	X	X	

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
n-Hexane	110-54-3	X	X	X	X	X	
Hexane isomers	(1)	X	X	X	X	X	
2-Hexanone (Methyl n-butyl ketone)	591-78-6	X	X	X	X	X	
Hexone (Methyl isobutyl ketone)	108-10-1	X	X	X	X	X	
sec-Hexyl acetate	108-84-9					X	
Hexylene glycol	107-41-5	X	X	X	X	X	
Hydrazine	302-01-2	X	X	X	X	X	
Hydrogenated terphenyls	61788-32-7	X	X	X	X	X	
Hydrogen bromide	10035-10-6	X	X	X	X	X	
Hydrogen chloride	7647-01-0					X	
Hydrogen cyanide	74-90-8	X	X	X	X	X	
Hydrogen fluoride (as F)	7664-39-3	X	X	X	X	X	
Hydrogen peroxide	7722-84-1					X	
Hydrogen selenide (as Se)	7783-07-5					X	
Hydrogen sulfide	7783-06-4	X	X	X	X	X	
Hydroquinone	123-31-9					X	
2-Hydroxypropyl acrylate	999-61-1	X	X	X	X	X	
Indene	95-13-6			X	X	X	
Indium and compounds (as In)	7440-74-6			X	X	X	
Iodine	7553-56-2					X	
Iodoform	75-47-8	X	X	X	X	X	
Iron oxide fume(as Fe)	1309-37-1					X	
Iron pentacarbonyl (as Fe)	13463-40-6	X	X	X	X	X	
Iron salts (soluble)(as Fe)	(1)			X	X	X	
Isoamyl acetate	123-92-2					X	
Isoamyl alcohol (primary and secondary).	123-51-3	X	X	X	X	X	
Isobutyl acetate	110-19-0					X	
Isobutyl alcohol	78-83-1	X	X	X	X	X	
Isooctyl alcohol	26952-21-6	X	X	X	X	X	
Isophorone	78-59-1	X	X	X	X	X	
Isophorone diisocyanate	4098-71-9	X	X	X	X	X	
2-Isopropoxyethanol	109-59-1	X	X	X	X	X	
Isopropyl acetate	108-21-4	X	X	X	X	X	
Isopropyl alcohol	67-63-0	X	X	X	X	X	
Isopropylamine	75-31-0	X	X	X	X	X	
N-Isopropylaniline	768-52-5	X	X	X	X	X	
Isopropyl ether	108-20-3					X	
Isopropyl glycidyl ether (IGE)	4016-14-2	X	X	X	X	X	
Kaolin							
Total dust		X	X	X	X	X	
Respirable fraction						X	
Ketene	463-51-4	X	X	X	X	X	
Lead, inorganic; see 1910.1025	7439-92-1	X				X	
Limestone	1317-65-3						
Total dust						X	
Respirable fraction						X	
Lindane	58-89-9					X	
Lithium hydride	7580-67-8					X	
L.P.G. (Liquefied petroleum gas)	68476-85-7					X	
Magnesite	546-93-0						
Total dust						X	
Respirable fraction						X	
Magnesium oxide fume	1309-48-4						
Total particulate		X	X	X	X	X	
Malathion	121-75-5						
Total dust		X	X	X	X	X	
Maleic anhydride	108-31-6					X	
Manganese compounds (as Mn)	7439-96-5					X	
Manganese fume (as Mn)	7439-96-5	X	X	X	X	X	
Manganese cyclopentadienyl tricarbonyl (as Mn).	12079-65-1	X	X	X	X	X	
Manganese tetroxide (as Mn)	1317-35-7	X	X	X	X	X	
Marble	1317-65-3						
Total dust						X	
Respirable fraction						X	
Mercury (aryl and inorganic) (as Hg)	7439-97-6					X	
Mercury (organo) alkyl compounds (as Hg).	7439-97-6	X	X	X	X	X	
Mercury (vapor) (as Hg)	7439-97-6	X	X	X	X	X	
Mesityl oxide	141-79-7	X	X	X	X	X	
Methacrylic acid	79-41-4	X	X	X	X	X	
Methanethiol; see Methyl mercaptan							
Methomyl (Lannate)	16752-77-5	X	X	X	X	X	
Methoxychlor Total dust	72-43-5	X	X	X	X	X	

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
4-Methoxyphenol	150-76-5	X	X	X	X	X	
Methyl acetate	79-20-9	X	X	X	X	X	
Methyl acetylene (Propyne)	74-99-7					X	
Methyl acetylene-propadiene mixture (MAPP).		X	X	X	X	X	
Methyl acrylate	96-33-3					X	
Methylacrylonitrile	126-98-7	X	X	X	X	X	
Methylal (Dimethoxy-methane)	109-87-5					X	
Methyl alcohol	67-56-1	X	X	X	X	X	
Methylamine	74-89-5					X	
Methyl amyl alcohol; see Methyl isobutyl carbinol							
Methyl n-amyl ketone	110-43-0					X	
Methyl bromide	74-83-9	X	X	X	X	X	
Methyl butyl ketone; see 2-Hexanone							
Methyl chloride	74-87-3	X	X	X	X	X	
Methyl chloroform (1,1,1-Trichloroethane).	71-55-6	X	X	X	X	X	
Methyl 2-cyanoacrylate	137-05-3	X	X	X	X	X	
Methylcyclohexane	108-87-2	X	X	X	X	X	
Methylcyclohexanol	25639-42-3	X	X	X	X	X	
o-Methylcyclohexanone	583-60-8	X	X	X	X	X	
Methylcyclopentadienyl manganese tricarbonyl (as Mn).	12108-13-3	X	X	X	X	X	
Methyl demeton	8022-00-2	X	X	X	X	X	
4,4'-Methylene bis (2-chloroaniline) (MBOCA).	101-14-4	X	X	X	X	X	
Methylene bis (4-cyclohexylisocyanate).	5124-30-1	X	X	X	X	X	
Methyl ethyl ketone (MEK); see 2-Butanone							
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	X	X	X	X	X	
Methyl formate	107-31-3	X	X	X	X	X	
Methyl hydrazine (Monomethyl hydrazine).	60-34-4					X	
Methyl iodide	74-88-4	X	X	X	X	X	
Methyl isoamyl ketone	110-12-3	X	X	X	X	X	
Methyl isobutyl carbinol	108-11-2	X	X	X	X	X	
Methyl isobutyl ketone; see Hexone							
Methyl isocyanate	624-83-9					X	
Methyl isopropyl ketone	563-80-4	X	X	X	X	X	
Methyl mercaptan	74-93-1			X	X	X	
Methyl methacrylate	80-62-6					X	
Methyl parathion	298-00-0	X	X	X	X	X	
Methyl propyl ketone; see 2-Pentanone							
Methyl silicate	681-84-5	X	X	X	X	X	
Alpha-Methyl styrene	98-83-9	X	X	X	X	X	
Methylene bisphenyl isocyanate (MDI).	101-68-8					X	
Metribuzin	21087-64-9	X	X	X	X	X	
Mica; see Silicates							
Mineral wool		X	X	X	X	X	X
Molybdenum (as Mo)	7439-98-7						
Soluble compounds						X	
Insoluble compounds							
Total dust		X	X	X	X	X	
Monocrotophos (Azodrin)	6923-22-4	X	X	X	X	X	
Monomethyl aniline	100-61-8	X	X	X	X	X	
Morpholine	110-91-8	X	X	X	X	X	
Naphtha (Coal tar)	8030-30-6					X	
Naphthalene	91-20-3	X	X	X	X	X	
Nickel, metal and insoluble compounds (as Ni).	7440-02-0					X	
Nickel, soluble compounds (as Ni)	7440-02-0	X	X	X	X	X	
Nicotine	54-11-5					X	
Nitric acid	7697-37-2	X	X	X	X	X	
Nitric oxide	10102-43-9					X	
p-Nitroaniline	100-01-6	X	X	X	X	X	
Nitrobenzene	98-95-3					X	
p-Nitrochlorobenzene	100-00-5					X	
Nitroethane	79-24-3					X	
Nitrogen dioxide	10102-44-0	X	X	X	X	X	
Nitrogen trifluoride	7783-54-2					X	
Nitroglycerin	55-63-0	X	X	X	X	X	

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELs FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
Nitromethane	75-52-5					X	
1-Nitropropane	108-03-2					X	
2-Nitropropane	79-46-9	X	X	X	X	X	
Nitrotoluene							
m-isomer	99-08-1						
o-isomer	88-72-2						
p-isomer	99-99-0	X	X	X	X	X	
Nitrotrichloromethane; see Chloropicrin							
Nonane	111-84-2	X	X	X	X	X	
Octachloronaphthalene	2234-13-1	X	X	X	X	X	
Octane	111-65-9	X	X	X	X	X	
Oil mist, mineral	8012-95-1					X	
Osmium tetroxide (as Os)	20816-12-0	X	X	X	X	X	
Oxalic acid	144-62-7	X	X	X	X	X	
Oxygen difluoride	7783-41-7	X	X	X	X	X	
Ozone	10028-15-6	X	X	X	X	X	
Paraffin wax fume	8002-74-2	X	X	X	X	X	
Paraquat, respirable dust	4685-14-7 1910-42-5 2074-50-2	X	X	X	X	X	
Parathion	56-38-2					X	
Particulates not otherwise regulated							
Total dust	—	X	X	X	X	X	
Respirable fraction	—	X	X	X	X	X	
Pentaborane	19624-22-7	X	X	X	X	X	
Pentachloronaphthalene	1321-64-8					X	
Pentachlorophenol	87-86-5					X	
Pentaerythritol	115-77-5						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Pentane	109-66-0	X	X	X	X	X	
2-Pentanone (Methyl propyl ketone)	107-87-9	X	X	X	X	X	
Perchloroethylene (Tetrachloroethylene).	127-18-4	X	X	X	X	X	
Perchloromethyl mercaptan	594-42-3					X	
Perchloryl fluoride	7616-94-6	X	X	X	X	X	
Perlite	93763-70-3						
Total dust						X	
Respirable fraction						X	
Petroleum distillates (Naphtha)		X	X	X	X	X	
Phenol	108-95-2					X	
Phenothiazine	92-84-2	X	X	X	X	X	
p-Phenylene diamine	106-50-3					X	
Phenyl ether, vapor	101-84-8					X	
Phenyl ether-biphenyl mixture, vapor						X	
Phenylethylene; see Styrene							
Phenyl glycidyl ether (PGE)	122-60-1	X	X	X	X	X	
Phenylhydrazine	100-63-0	X	X	X	X	X	
Phenyl mercaptan	108-98-5	X	X	X	X	X	
Phenylphosphine	638-21-1	X	X	X	X	X	
Phorate	298-02-2	X	X	X	X	X	
Phosdrin (Mevinphos)	7786-34-7	X	X	X	X	X	
Phosgene (Carbonyl chloride)	75-44-5					X	
Phosphine	7803-51-2	X	X	X	X	X	
Phosphoric acid	7664-38-2	X	X	X	X	X	
Phosphorus (yellow)	7723-14-0					X	
Phosphorus oxychloride	10025-87-3	X	X	X	X	X	
Phosphorus pentachloride	10026-13-8					X	
Phosphorus pentasulfide	1314-80-3	X	X	X	X	X	
Phosphorus trichloride	7719-12-2	X	X	X	X	X	
Phthalic anhydride	85-44-9	X	X	X	X	X	
m-Phthalodinitrile	626-17-5	X	X	X	X	X	
Picloram	1918-02-1						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Picric acid	88-89-1					X	
Piperazine dihydrochloride	142-64-3	X	X	X	X	X	
Pindone (2-Pivalyl-1,3-indandione)	83-26-1					X	
Plaster of Paris	26499-65-0						
Total dust						X	
Respirable fraction						X	
Platinum (as Pt) Metal	7440-06-4	X	X	X	X	X	
Soluble salts						X	
Portland cement	65997-15-1						

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
Total dust		X	X	X	X	X	
Respirable fraction						X	
Potassium hydroxide	1310-58-3	X	X	X	X	X	
Propargyl alcohol	107-19-7			X	X	X	
Propionic acid	79-09-4	X	X	X	X	X	
Propoxur (Baygon)	114-26-1	X	X	X	X	X	
n-Propyl acetate	109-60-4	X	X	X	X	X	
n-Propyl alcohol	71-23-8	X	X	X	X	X	
n-Propyl nitrate	627-13-4	X	X	X	X	X	
Propylene dichloride	78-87-5	X	X	X	X	X	
Propylene glycol dinitrate	6423-43-4	X	X	X	X	X	
Propylene glycol monomethyl ether	107-98-2	X	X	X	X	X	
Propylene imine	75-55-8					X	
Propylene oxide	75-56-9	X	X	X	X	X	
Propyne; see Methyl acetylene							
Pyrethrum	8003-34-7					X	
Pyridine	110-86-1					X	
Quinone	106-51-4					X	
RDX; see Cyclonite							
Resorcinol	108-46-3	X	X	X	X	X	
Rhodium (as Rh), metal fume and insoluble compounds.	7440-16-6					X	
Rhodium (as Rh), soluble compounds	7440-16-6					X	
Ronnel	299-84-3			X	X	X	
Rosin core solder pyrolysis products, as formaldehyde.		X	X	X	X	X	
Rotenone	83-79-4					X	
Rouge							
Total dust		X	X	X	X	X	
Respirable fraction						X	
Selenium compounds (as Se)	7782-49-2					X	
Selenium hexafluoride (as Se)	7783-79-1					X	
Silica, amorphous, precipitated and gel.	112926-00-8	X	X	X	X	X	
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica.	61790-53-2	X	X	X	X	X	
Silica, crystalline cristobalite, respirable dust.	14464-46-1	X	X	X	X	X	
Silica, crystalline quartz, respirable dust.	14808-60-7	X	X	X	X	X	
Silica, crystalline tripoli (as quartz), respirable dust.	1317-95-9	X	X	X	X	X	
Silica, crystalline tridymite, respirable dust.	15468-32-3	X	X	X	X	X	
Silica, fused, respirable dust	60676-86-0	X	X	X	X	X	
Silicates (less than 1% crystalline silica) Mica (respirable dust).	12001-26-2	X	X	X	X	X	
Soapstone, total dust		X	X	X	X	X	
Soapstone, respirable		X	X	X	X	X	
Talc (containing asbestos); use asbestos limit.						X	
Talc (containing no asbestos), Respirable dust.	14807-96-6	X	X	X	X	X	
Tremolite						X	
Silicon	7440-21-3						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Silicon carbide	409-21-2						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Silicon tetrahydride	7803-62-5	X	X	X	X	X	
Silver, metal and soluble compounds (as Ag).	7440-22-4					X	
Soapstone; see Silicates.							
Sodium azide	26628-22-8						
(as HN_3)		X	X	X	X	X	
(as NaN_3)		X	X	X	X	X	
Sodium bisulfite	7631-90-5	X	X	X	X	X	
Sodium fluoroacetate	62-74-8	X	X	X	X	X	
Sodium hydroxide	1310-73-2	X	X	X	X	X	
Sodium metabisulfite	7681-57-4	X	X	X	X	X	
Starch	9005-25-8						
Total dust						X	
Respirable fraction						X	

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
Stibine	7803-52-3					X	
Stoddard solvent	8052-41-3	X	X	X	X	X	
Strychnine	57-24-9					X	
Styrene	100-42-5	X	X	X	X	X	
Subtilisins (Proteolytic enzymes)	9014-01-1	X	X	X	X	X	
Sucrose	57-50-1						
Total dust						X	
Respirable fraction						X	
Sulfur dioxide	7446-09-5	X	X	X	X	X	
Sulfur hexafluoride	2551-62-4					X	
Sulfuric acid	7664-93-9					X	
Sulfur monochloride	10025-67-9	X	X	X	X	X	
Sulfur pentafluoride	5714-22-7	X	X	X	X	X	
Sulfur tetrafluoride	7783-60-0	X	X	X	X	X	
Sulfuryl fluoride	2699-79-8	X	X	X	X	X	
Sulprofos	35400-43-2	X	X	X	X	X	
Systox, see Demeton							
2,4,5-T (Trichlorophenoxyacetic acid)	93-76-5					X	
Talc; see Silicates							
Tantalum, metal and oxide dust	7440-25-7					X	
TEDP (Sulfotep)	3689-24-5					X	
Tellurium and compounds (as Te)	13494-80-9					X	
Tellurium hexafluoride (as Te)	7783-80-4					X	
Temephos (Abate)	3383-96-8						
Total dust		X	X	X	X	X	
Respirable fraction		X	X			X	
TEPP	107-49-3					X	
Terphenyls	26140-60-3	X	X	X	X	X	
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9					X	
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0					X	
1,1,2,2-Tetrachloroethane	79-34-5	X	X	X	X	X	
Tetrachloroethylene; see Perchloroethylene							
Tetrachloromethane; see Carbon tetrachloride							
Tetrachloronaphthalene	1335-88-2					X	
Tetraethyl lead (as Pb)	78-00-2	X	X			X	
Tetrahydrofuran	109-99-9	X	X	X	X	X	
Tetramethyl lead (as Pb)	75-74-1	X	X			X	
Tetramethyl succinonitrile	3333-52-6					X	
Tetranitromethane	509-14-8					X	
Tetrasodium pyrophosphate	7722-88-5	X	X	X	X	X	
Tetryl (2,4,6-Trinitrophenyl-methylnitramine.	479-45-8	X	X	X	X	X	
Thallium, soluble compounds (as Tl)	7440-28-0					X	
4,4'-Thiobis(6-tert, Butyl-m-cresol)	96-69-5						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Thioglycolic acid	68-11-1	X	X	X	X	X	
Thionyl chloride	7719-09-7	X	X	X	X	X	
Thiram	137-26-8					X	
Tin, inorganic compounds (except oxides) (as Sn).	7440-31-5					X	
Tin, organic compounds (as Sn)	7440-31-5	X	X	X	X	X	
Tin oxide (as Sn)	21651-19-4	X	X	X	X	X	
Titanium dioxide	13463-67-7						
Total dust		X	X	X	X	X	
Toluene	108-88-3	X	X	X	X	X	
Toluene-2,4-diisocyanate (TDI)	584-84-9	X	X	X	X	X	
m-Toluidine	108-44-1	X	X	X	X	X	
o-Toluidine	95-53-4					X	
p-Toluidine	106-49-0	X	X	X	X	X	
Toxaphene; see Chlorinated camphene							
Tremolite; see Silicates							
Tributyl phosphate	126-73-8	X	X	X	X	X	
Trichloroacetic acid	76-03-9	X	X	X	X	X	
1,2,4-Trichlorobenzene	120-82-1	X	X	X	X	X	
1,1,1-Trichloroethane; see Methyl chloroform							
1,1,2-Trichloroethane	79-00-5					X	
Trichloroethylene	79-01-6	X	X	X	X	X	
Trichloromethane; see Chloroform							
Trichloronaphthalene	1321-65-9					X	
1,2,3-Trichloropropane	96-18-4	X	X	X	X	X	

TABLE I.F.—SUBSTANCES INCLUDED IN THE UPDATE OF PELS FOR CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

Substance	CAS No.	Substances for which limits are being proposed in construction	Substances for which limits are being proposed in maritime			Substances for which limits are being proposed in agriculture	Substances for which limits are being proposed in general industry
			Ship repairing and ship breaking	Ship building	Marine terminals and longshoring		
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	X	X	X	X	X	
Triethylamine	121-44-8	X	X	X	X	X	
Trifluorobromomethane	75-63-8					X	
Trimellitic anhydride	552-30-7	X	X	X	X	X	
Trimethylamine	75-50-3	X	X	X	X	X	
Trimethyl benzene	25551-13-7			X	X	X	
Trimethyl phosphite	121-45-9	X	X	X	X	X	
2,4,6-Trinitrophenyl; see Picric acid							
2,4,6-Trinitrophenylmethy nitramine; see Tetryl							
2,4,6-Trinitrotoluene (TNT)	118-96-7	X	X	X	X	X	
Triorthocresyl phosphate	78-30-8					X	
Triphenyl amine	603-34-9	X	X	X	X	X	
Triphenyl phosphate	115-86-6					X	
Tungsten (as W)	7440-33-7						
Insoluble compounds		X	X	X	X	X	
Soluble compounds		X	X	X	X	X	
Turpentine	8006-64-2					X	
Uranium (as U)	7440-61-1						
Soluble compounds		X	X	X	X	X	
Insoluble compounds		X	X	X	X	X	
n-Valeraldehyde	110-62-3	X	X	X	X	X	
Vanadium	1314-62-1						
Respirable dust (as V_2O_5)		X	X	X	X	X	
Fume (as V_2O_5)		X	X	X	X	X	
Vegetable oil mist							
Total dust						X	
Respirable fraction						X	
Vinyl acetate	108-05-4	X	X	X	X	X	
Vinyl benzene; see Styrene							
Vinyl bromide	593-60-2	X	X	X	X	X	
Vinyl chloride; see 1910.1017	75-01-4					X	
Vinyl cyanide; see Acrylonitrile							
Vinyl cyclohexene dioxide	106-87-6	X	X	X	X	X	
Vinylidene chloride (1,1-Dichloroethylene).	75-35-4	X	X	X	X	X	
Vinyl toluene	25013-15-4					X	
VM & P Naphtha	8032-32-4	X	X	X	X	X	
Warfarin	81-81-2					X	
Welding fumes (total particulate)		X	X	X	X	X	
Wood dust, all soft and hardwoods, except Western red cedar.		X	X	X	X	X	
Wood dust, Western red cedar		X	X	X	X	X	
Xylenes (o-, m-, p- isomers)	1330-20-7	X	X	X	X	X	
m-Xylene alpha, alpha'-diamine	1477-55-0	X	X	X	X	X	
Xylidine	1300-73-8	X	X	X	X	X	
Yttrium	7440-65-5					X	
Zinc chloride fume	7646-85-7	X	X	X	X	X	
Zinc chromate (as CrO_3)	(1)	X	X	X	X	X	
Zinc oxide fume (as Zn)	1314-13-2	X	X	X	X	X	
Zinc oxide (as Zn)	1314-13-2						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Zinc stearate	557-05-1						
Total dust		X	X	X	X	X	
Respirable fraction						X	
Zirconium compounds (as Zr)	7440-67-7	X	X	X	X	X	

[1] Varies with compounds.

TABLE I.G.—INDEX TO PREAMBLE DISCUSSION OF INDIVIDUAL SUBSTANCES

H.S. No.	Substance name	CAS No.	Primary basis for limits	Preamble section
1001	Acetaldehyde	75-07-0	Sensory irritation	IV.C.3
1002	Acetic acid	64-19-7	Sensory irritation	IV.C.3
1003	Acetic anhydride	108-24-7	Analogy	IV.C.11
1004	Acetone	67-64-1	Sensory irritation	IV.C.3
1005	Acetonitrile	75-05-8	Systemic toxicity	IV.C.8
2001	Acetylene tetrabromide	79-27-6	Liver and kidney effects	IV.C.4
1006	Acetylsalicylic acid (aspirin)	50-78-2	Systemic toxicity	IV.C.8
1007	Acrolein	107-02-8	Sensory irritation	IV.C.3
1008	Acrylamide	79-06-1	Cancer	IV.C.14

TABLE I.G.—INDEX TO PREAMBLE DISCUSSION OF INDIVIDUAL SUBSTANCES—Continued

H.S. No.	Substance name	CAS No.	Primary basis for limits	Preamble section
1009	Acrylic acid	79-10-7	Analogy	IV.C.11
2002	Acrylonitrile	107-13-1	Cancer	IV.C.14
2003	Aldrin	309-00-2	Liver and kidney effects	IV.C.4
1010	Allyl alcohol	107-18-6	Sensory irritation	IV.C.3
1011	Allyl chloride	107-05-1	Liver and kidney effects	IV.C.4
1012	Allyl glycidyl ether (age)	106-92-3	Sensory irritation	IV.C.3
1013	Allyl propyl disulfide	2179-59-1	Sensory irritation	IV.C.3
1014	Alpha-alumina	1344-28-1	Physical irritation	IV.C.10
1015	Aluminum (alkyls)	7429-90-5	Analogy	IV.C.11
1016	Aluminum (metal)	7429-90-5	Physical irritation	IV.C.10
1017	Aluminum (pyro powders)	7429-90-5	Respiratory effects	IV.C.6
1018	Aluminum (soluble salts)	7429-90-5	Analogy	IV.C.11
1019	Aluminum (welding fumes)	7429-90-5	Systemic toxicity	IV.C.8
2004	2-Aminopyridine	504-29-0	Systemic toxicity	IV.C.8
1020	Amitrole (3-amino-1,2,4-triazole)	61-82-5	Cancer	IV.C.14
1021	Ammonia	7664-41-7	Sensory irritation	IV.C.3
1022	Ammonium chloride (fume)	12125-02-9	Sensory irritation	IV.C.3
1024	Ammonium sulfamate (ammate)	7773-06-0	Physical irritation	IV.C.10
2005	N-amyl acetate	628-63-7	Sensory irritation	IV.C.3
2006	Sec-amyl acetate	626-38-0	Analogy	IV.C.11
1025	Aniline	62-53-3	Biochemical/metabolic effects	IV.C.12
2007	Anisidine (O, P-isomers)	29191-52-4	Systemic toxicity	IV.C.8
2008	Antimony and compounds	7440-36-0	Cardiovascular effects	IV.C.7
2009	Antu	86-88-4	Cancer	IV.C.14
2010	Arsine	7784-42-1	Systemic toxicity	IV.C.8
2011	Arsenic, inorganic compounds	7440-38-2	Cancer	IV.C.14
2012	Arsenic, organic compounds	7440-36-0	Systemic toxicity	IV.C.8
2013	Asbestos	Varies	Cancer	IV.C.14
1026	Asphalt fumes	8052-42-4	Respiratory effects	IV.C.6
1029	Atrazine	1912-24-9	Noael	IV.C.9
2014	Azinphos-methyl	86-50-0	Noael	IV.C.9
2015	Barium (soluble compounds)	7440-39-3	Systemic toxicity	IV.C.8
1031	Barium sulfate	7727-43-7	Physical irritation	IV.C.10
1032	Benomyl	17804-35-2	Physical irritation	IV.C.10
2016	Benzene	71-43-2	Cancer	IV.C.14
2017	Benzoyl peroxide	94-36-0	Sensory irritation	IV.C.3
2018	Benzyl chloride	100-44-7	Sensory irritation	IV.C.3
1033	Beryllium & compounds	7440-41-7	Cancer	IV.C.14
2019	Biphenyl (diphenyl)	92-52-4	Neuropathy	IV.C.1
1034	Bismuth telluride (SE-doped)	1304-82-1	Respiratory effects	IV.C.6
1035	Bismuth telluride (undoped)	1304-82-1	Physical irritation	IV.C.10
1036	Borates, tetra, sodium (anhydrous)	1330-43-4	Sensory irritation	IV.C.3
1037	Borates, tetra, sodium (decahydrate)	1303-96-4	Sensory irritation	IV.C.3
1038	Borates, tetra, sodium (pentahydrate)	12179-04-3	Sensory irritation	IV.C.3
1039	Boron oxide	1303-86-2	Physical irritation	IV.C.10
1040	Boron tribromide	10294-33-4	Analogy	IV.C.11
2020	Boron trifluoride	7637-07-2	Sensory irritation	IV.C.3
1041	Bromacil	314-40-9	Noael	IV.C.9
1042	Bromine	7726-95-6	Sensory irritation	IV.C.3
1043	Bromine pentafluoride	7789-30-2	Analogy	IV.C.11
2021	Bromoform	75-25-2	Sensory irritation	IV.C.3
1044	Butane	106-97-8	Narcosis	IV.C.2
1045	2-Butanone (mek)	78-93-3	Sensory irritation	IV.C.3
1046	2-Butoxyethanol	111-76-2	Systemic toxicity	IV.C.8
1047	N-butyl acetate	123-86-4	Sensory irritation	IV.C.3
2022	Sec-butyl acetate	105-46-4	Analogy	IV.C.11
2023	Tert-butyl acetate	540-88-5	Analogy	IV.C.11
1048	Butyl acrylate	141-32-2	Analogy	IV.C.11
1049	Sec-butyl alcohol	78-92-2	Narcosis	IV.C.2
1050	Tert-butyl alcohol	75-65-0	Narcosis	IV.C.2
1051	N-butyl alcohol	71-36-3	Neuropathy	IV.C.1
2025	Butylamine	109-73-9	Sensory irritation	IV.C.3
2024	Tert-butyl chromate	1189-85-1	Systemic toxicity	IV.C.8
1052	N-butyl glycidyl ether (BGE)	2426-08-6	Systemic toxicity	IV.C.8
1053	N-butyl lactate	138-22-7	Sensory irritation	IV.C.3
1054	Butyl mercaptan	109-79-5	Sensory irritation	IV.C.3
1055	O-sec-butyl phenol	89-72-5	Analogy	IV.C.11
1056	P-tert-butyltoluene	98-51-1	Noael	IV.C.9
1057	Calcium carbonate	1317-65-3	Physical irritation	IV.C.10
1058	Calcium cyanamide	156-62-7	Biochemical/metabolic effects	IV.C.12
1059	Calcium hydroxide	1305-62-0	Analogy	IV.C.11
1060	Calcium oxide	1305-78-8	Analogy	IV.C.11
1061	Calcium silicate, total dust	1344-95-2	Physical irritation	IV.C.10
1062	Calcium sulfate	7778-18-9	Physical irritation	IV.C.10
1063	Camphor (synthetic)	76-22-2	Sensory irritation	IV.C.3
1064	Caprolactam (dust)	105-60-2	Sensory irritation	IV.C.3
1065	Caprolactam (vapor)	105-60-2	Sensory irritation	IV.C.3
1066	Captafol (difolatan)	2425-06-1	Sensitization effects	IV.C.13
1067	Captan	133-06-2	Systemic toxicity	IV.C.8

TABLE I.G.—INDEX TO PREAMBLE DISCUSSION OF INDIVIDUAL SUBSTANCES—Continued

H.S. No.	Substance name	CAS No.	Primary basis for limits	Preamble section
2026	Carbaryl (sevin)	63-25-2	Systemic toxicity	IV.C.8
1068	Carbofuran (furadan)	1563-66-2	Biochemical/metabolic effects	IV.C.12
2027	Carbon black	1333-86-4	Respiratory effects	IV.C.6
1069	Carbon dioxide	124-38-9	Biochemical/metabolic effects	IV.C.12
1070	Carbon disulfide	75-15-0	Cardiovascular effects	IV.C.7
1071	Carbon monoxide	630-08-0	Biochemical/metabolic effects	IV.C.12
1072	Carbon tetrabromide	558-13-4	Liver and kidney effects	IV.C.4
1073	Carbon tetrachloride	56-23-5	Cancer	IV.C.14
1074	Carbonyl fluoride	353-50-4	Analogy	IV.C.11
1075	Catechol (pyrocatechol)	120-80-9	Analogy	IV.C.11
1076	Cellulose	9004-34-6	Physical irritation	IV.C.10
1077	Cesium hydroxide	21351-79-1	Sensory irritation	IV.C.3
2028	Chlordane	57-74-9	Liver and kidney effects	IV.C.4
1078	Chlorinated camphene	8001-35-2	Neuropathy	IV.C.1
2029	Chlorinated diphenyl oxide	55720-99-5	Liver and kidney effects	IV.C.4
1079	Chlorine	7782-50-5	Sensory irritation	IV.C.3
1080	Chlorine dioxide	10049-04-4	Respiratory effects	IV.C.6
2030	Chlorine trifluoride	7790-91-2	Sensory irritation	IV.C.3
2031	Chloroacetaldehyde	107-20-0	Sensory irritation	IV.C.3
2032	Alpha-chloroacetophenone	532-27-4	Sensory irritation	IV.C.3
1083	Chloroacetyl chloride	79-04-9	Sensory irritation	IV.C.3
2033	Chlorobenzene	108-90-7	Liver and kidney effects	IV.C.4
1084	O-Chlorobenzylidene malononitrile	2698-41-1	Sensory irritation	IV.C.3
2034	Chlorobromomethane	74-97-5	Narcosis	IV.C.2
1085	Chlorodifluoromethane	75-45-6	Noael	IV.C.9
2035	Chlorodiphenyl 42% (aroclor 1242)	53469-21-9	Liver and kidney effects	IV.C.4
2036	Chlorodiphenyl 54% (aroclor 1254)	11097-69-1	Liver and kidney effects	IV.C.4
1086	Chloroform	67-66-3	Cancer	IV.C.14
1081	1-Chloro-1-nitropropane	600-25-9	Analogy	IV.C.11
1087	Chloropentafluoroethane	76-15-3	Cardiovascular effects	IV.C.7
2037	Chloropicrin	76-06-2	Sensory irritation	IV.C.3
1088	Chloroprene	126-99-8	Systemic toxicity	IV.C.8
1089	O-Chlorostyrene	2039-87-4	Liver and kidney effects	IV.C.4
1090	O-Chlorotoluene	95-49-8	Noael	IV.C.9
1082	2-Chloro-6-trichloromethyl pyridine (nitrapyrin)	1929-82-4	Physical irritation	IV.C.10
1091	Chlorpyrifos	2921-88-2	Biochemical/metabolic effects	IV.C.12
1092	Chromic acid & chromates	Varies	Cancer	IV.C.14
2038	Chromium (II) compounds	7440-47-3	Respiratory effects	IV.C.6
2038A	Chromium (III) compounds	7440-47-3	Respiratory effects	IV.C.6
1093	Chromium, metal	7440-47-3	Respiratory effects	IV.C.6
1094	Chromyl chloride	14977-61-8	Cancer	IV.C.14
1095	Clopidol (coyden)	2971-90-6	Physical irritation	IV.C.10
1096	Coal dust, < 5% quartz	None	Respiratory effects	IV.C.6
1097	Coal dust, > 5% quartz	None	Respiratory effects	IV.C.6
2039	Coal tar pitch volatiles	65966-93-2	Cancer	IV.C.14
1098	Cobalt carbonyl	10210-68-1	Analogy	IV.C.11
1099	Cobalt hydrocarbonyl	16842-03-8	Analogy	IV.C.11
1100	Cobalt metal, fume, dust	7440-48-4	Sensitization effects	IV.C.13
2039A	Coke oven emissions	None	Cancer	IV.C.14
1101	Copper (fume)	7440-50-8	Sensory irritation	IV.C.3
2040	Copper (dusts and mists)	7440-50-8	Sensory irritation	IV.C.3
2041	Cotton dust	None	Respiratory effects	IV.C.6
1102	Crag® herbicide (sesone)	136-78-7	Physical irritation	IV.C.10
2042	Cresol (o, m, p-isomers)	1319-77-3	Analogy	IV.C.11
2043	Crotonaldehyde	123-73-9; 4170-30-3	Analogy	IV.C.11
1103	Crufomate	299-86-5	Biochemical/metabolic effects	IV.C.12
2044	Cumene	98-82-8	Narcosis	IV.C.2
1104	Cyanamide	420-04-2	Biochemical/metabolic effects	IV.C.12
2045	Cyanides	Varies	Systemic toxicity	IV.C.8
1105	Cyanogen	460-19-5	Sensory irritation	IV.C.3
1106	Cyanogen chloride	506-77-4	Sensory irritation	IV.C.3
2046	Cyclohexane	110-82-7	Sensory irritation	IV.C.3
1107	Cyclohexanol	108-93-0	Change in skin designation only	IV.C.16
1108	Cyclohexanone	108-94-1	Liver and kidney effects	IV.C.4
2047	Cyclohexene	110-83-8	Sensory irritation	IV.C.3
1109	Cyclohexylamine	108-91-8	Systemic toxicity	IV.C.8
1110	Cyclonite	121-82-4	Noael	IV.C.9
2048	Cyclopentadiene	542-92-7	Sensory irritation	IV.C.3
1111	Cyclopentane	287-92-3	Narcosis	IV.C.2
1112	Cyhexatin	13121-70-5	Systemic toxicity	IV.C.8
2050	2,4-D (Dichlorophenoxyacetic acid)	94-75-7	Systemic toxicity	IV.C.8
1113	DDT	50-29-3	Systemic toxicity	IV.C.8
2051	DDVP (dichlorvos)	62-73-7	Biochemical/metabolic effects	IV.C.12
1114	Decaborane	17702-41-9	Neuropathy	IV.C.1
2049	Demeton	8065-48-3	Analogy	IV.C.11
2052	Diacetone alcohol	123-42-2	Sensory irritation	IV.C.3
1116	Di-sec-octyl-phthalate	117-81-7	Neuropathy	IV.C.1

TABLE I.G.—INDEX TO PREAMBLE DISCUSSION OF INDIVIDUAL SUBSTANCES—Continued

H.S. No.	Substance name	CAS No.	Primary basis for limits	Preamble section
1117	2,6-Di-tert-butyl-p-cresol	128-37-0	Noael	IV.C.9
1118	Diazinon	333-41-5	Analogy	IV.C.11
2053	Diazomethane	334-88-3	Sensory irritation	IV.C.3
2054	Diborane	19287-45-7	Neuropathy	IV.C.1
2055	1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	Cancer	IV.C.14
1119	Dibutyl phosphate	107-66-4	Sensory irritation	IV.C.3
1120	2-N-Dibutylaminoethanol	102-81-8	Systemic toxicity	IV.C.8
2056	Dibutylphthalate	84-74-2	Noael	IV.C.9
1123	Dichloroacetylene	7572-29-4	Neuropathy	IV.C.1
2057	O-Dichlorobenzene	95-50-1	Sensory irritation	IV.C.3
1125	P-Dichlorobenzene	106-46-7	Analogy	IV.C.11
2058	Dichlorodifluoromethane	75-71-8	Cardiovascular effects	IV.C.7
1126	1,1-Dichloroethane	75-34-3	Liver and kidney effects	IV.C.4
2059	1,2-Dichloroethylene	540-59-0	Noael	IV.C.9
1127	Dichloroethyl ether	111-44-4	Sensory irritation	IV.C.3
1122	1,3-Dichloro-5, 5-Dimethyl-hydantoin	118-52-5	Sensory irritation	IV.C.3
1128	Dichloromonofluoromethane	75-43-4	Analogy	IV.C.11
1121	1,1-Dichloro-1-nitroethane	594-72-9	Analogy	IV.C.11
1129	1,3-Dichloropropene	542-75-6	Liver and kidney effects	IV.C.4
1130	2,2-Dichloropropionic acid	75-99-0	Sensory irritation	IV.C.3
2060	Dichlorotetrafluoroethane	76-14-2	Cardiovascular effects	IV.C.7
1131	Dicrotophos (bidrin)	141-66-2	Biochemical/metabolic effects	IV.C.12
1132	Dicyclopentadiene	77-73-6	Liver and kidney effects	IV.C.4
1133	Dicyclopentadienyl iron	102-54-5	Physical irritation	IV.C.10
2061	Dieldrin	60-57-1	Systemic toxicity	IV.C.8
1134	Diethanolamine	111-42-2	Noael	IV.C.9
2062	Diethlaminoethanol	100-37-8	Sensory irritation	IV.C.3
1135	Diethyl ketone	96-22-0	Analogy	IV.C.11
1136	Diethylphthalate	84-66-2	Noael	IV.C.9
1137	Diethylamine	109-89-7	Sensory irritation	IV.C.3
1138	Diethylene triamine	111-40-0	Analogy	IV.C.11
2063	Difluorodibromomethane	75-61-6	Systemic toxicity	IV.C.8
1139	Diglycidyl ether (DGE)	2238-07-5	Systemic toxicity	IV.C.8
1140	Diisobutyl ketone	108-83-8	Sensory irritation	IV.C.3
2064	Diisopropylamine	108-18-9	Systemic toxicity	IV.C.8
2065	Dimethyl acetamide	127-19-5	Liver and kidney effects	IV.C.4
2066	Dimethylamine	124-40-3	Sensory irritation	IV.C.3
1141	Dimethyl 1,2-dibromo-2, 2-Di-chloro-ethyl phosphate	300-76-5	Change in skin designation only	IV.C.16
2067	Dimethylformamide	68-12-2	Systemic toxicity	IV.C.8
2068	1,1-Dimethylhydrazine	57-14-7	Systemic toxicity	IV.C.8
2069	Dimethyl phthalate	131-11-3	Sensory irritation	IV.C.3
1142	Dimethyl sulfate	77-78-1	Cancer	IV.C.14
1143	Dimethylaniline	121-69-7	Biochemical/metabolic effects	IV.C.12
1144	Dinitolmide (3,5-Dinitro-o-tolu-amide)	148-01-6	Noael	IV.C.9
2071	Dinitrobenzene (Ortho) (meta) (para)	528-29-9; 99-65-0; 100-25-4	Analogy	IV.C.11
2070	Dinitro-o-cresol	534-52-1	Systemic toxicity	IV.C.8
2072	Dinitrotoluene	25321-14-6	Analogy	IV.C.11
1145	Dioxane (diethylene dioxide)	123-91-1	Liver and kidney effects	IV.C.4
1146	Dioxathion (delnav)	78-34-2	Biochemical/metabolic effects	IV.C.12
1147	Diphenylamine	122-39-4	Noael	IV.C.9
1148	Dipropyl ketone	123-19-3	Analogy	IV.C.11
1149	Dipropylene glycol methyl ether	34590-94-8	Neuropathy	IV.C.1
1150	Diquat	85-00-7	Analogy	IV.C.11
1151	Disulfiram	97-77-8	Biochemical/metabolic effects	IV.C.12
1152	Disulfoton	298-04-4	Analogy	IV.C.11
1153	Diuron	330-54-1	Noael	IV.C.9
1154	Divinyl benzene	1321-74-0	Analogy	IV.C.11
1155	Emery	112-62-9	Physical irritation	IV.C.10
1156	Endosulfan	115-29-7	Analogy	IV.C.11
2073	Endrin	72-20-8	Noael	IV.C.9
1158	Epichlorohydrin	106-89-8	Sensory irritation	IV.C.3
2074	EPN	2104-64-5	Analogy	IV.C.11
1159	Ethanolamine	141-43-5	Systemic toxicity	IV.C.8
1160	Ethion (nialate)	563-12-2	Biochemical/metabolic effects	IV.C.12
2075	Ethyl acetate	141-78-6	Sensory irritation	IV.C.3
1161	Ethyl acrylate	140-88-5	Respiratory effects	IV.C.6
2076	Ethyl alcohol	64-17-5	Narcosis	IV.C.2
2081	Ethylamine	75-04-7	Sensory irritation	IV.C.3
2080	Ethyl sec-amyl ketone	541-85-5	Sensory irritation	IV.C.3
2077	Ethyl butyl ketone	106-35-4	Sensory irritation	IV.C.3
1162	Ethyl benzene	100-41-4	Sensory irritation	IV.C.3
1163	Ethyl bromide	74-96-4	Narcosis	IV.C.2
2078	Ethyl chloride	75-00-3	Narcosis	IV.C.2
2082	Ethylenediamine	107-15-3	Systemic toxicity	IV.C.8
2083	Ethylene oxide	75-21-8	Cancer	IV.C.14
1164	Ethyl ether	60-29-7	Sensory irritation	IV.C.3
2079	Ethyl formate	109-94-4	Sensory irritation	IV.C.3

TABLE I.G.—INDEX TO PREAMBLE DISCUSSION OF INDIVIDUAL SUBSTANCES—Continued

H.S. No.	Substance name	CAS No.	Primary basis for limits	Preamble section
1165	Ethyl mercaptan	75-08-1	Sensory irritation	IV.C.3
1166	Ethyl silicate	78-10-4	Liver and kidney effects	IV.C.4
1167	Ethylene chlorohydrin	107-07-3	Systemic toxicity	IV.C.8
1168	Ethylene dichloride (1,2-dichloro-ethane)	107-06-2	Liver and kidney effects	IV.C.4
1169	Ethylene glycol	107-21-1	Sensory irritation	IV.C.3
1170	Ethylene glycol dinitrate	628-96-6	Cardiovascular effects	IV.C.7
1171	Ethylidene norbornene	16219-75-3	Sensory irritation	IV.C.3
1172	N-ethylmorpholine	100-74-3	Ocular effects	IV.C.5
1173	Fenamiphos	22224-92-6	Biochemical/metabolic effects	IV.C.12
1174	Fensulfothion (dasanit)	115-90-2	Biochemical/metabolic effects	IV.C.12
1175	Fenthion	55-38-9	Biochemical/metabolic effects	IV.C.12
1176	Ferbam	14484-64-1	Physical irritation	IV.C.10
1177	Ferrovanadium dust	12604-58-9	Respiratory effects	IV.C.6
1178	Fibrous glass dust	None	Respiratory effects	IV.C.6
2084	Fluoride (as f)	Varies	Systemic toxicity	IV.C.8
1179	Fluorine	7782-41-4	Sensory irritation	IV.C.3
1180	Fluorotrichloromethane	75-69-4	Cardiovascular effects	IV.C.7
1181	Fonofos	944-22-9	Analogy	IV.C.11
2085	Formaldehyde	50-00-0	Cancer	IV.C.14
1182	Formamide	75-12-7	Analogy	IV.C.11
2086	Formic acid	64-18-6	Sensory irritation	IV.C.3
1183	Furfural	98-01-1	Sensory irritation	IV.C.3
1184	Furfuryl alcohol	98-00-0	Sensory irritation	IV.C.3
1185	Gasoline	8006-61-9	Narcosis	IV.C.2
1186	Germanium tetrahydride	7782-65-2	Analogy	IV.C.11
1187	Glutaraldehyde	111-30-8	Sensory irritation	IV.C.3
1188	Glycerin (mist)	56-81-5	Physical irritation	IV.C.10
1189	Glycidol (2,3-epoxy-1-propanol)	556-52-5	Systemic toxicity	IV.C.8
1190	Grain dust	None	Respiratory effects	IV.C.6
1191	Graphite, natural (containing <1% quartz)	7782-42-5	Respiratory effects	IV.C.6
1191A	Graphite, synthetic (containing <1% quartz)	None	Physical irritation	IV.C.10
1192	Gypsum, total dust	13397-24-5	Physical irritation	IV.C.10
2087	Hafnium	7440-58-6	Liver and kidney effects	IV.C.4
2088	Heptachlor	76-44-8	Systemic toxicity	IV.C.8
1194	N-heptane	142-82-5	Narcosis	IV.C.2
1195	Hexachlorobutadiene	87-68-3	Liver and kidney effects	IV.C.4
1196	Hexachlorocyclopentadiene	77-47-4	Sensory irritation	IV.C.3
1197	Hexachloroethane	67-72-1	Sensory irritation	IV.C.3
2089	Hexachloronaphthalene	1335-87-1	Liver and kidney effects	IV.C.4
1198	Hexafluoroacetone	684-16-2	Systemic toxicity	IV.C.8
1200	N-hexane	110-54-3	Neuropathy	IV.C.1
1201	Hexane isomers	Varies	Narcosis	IV.C.2
1202	2-hexanone	591-78-6	Neuropathy	IV.C.1
1203	Hexone (methyl isobutyl ketone)	108-10-1	Liver and kidney effects	IV.C.4
2090	Sec-hexyl acetate	108-84-9	Sensory irritation	IV.C.3
1204	Hexylene glycol	107-41-5	Sensory irritation	IV.C.3
1205	Hydrazine	302-01-2	Liver and kidney effects	IV.C.4
1206	Hydrogen bromide	10035-10-6	Sensory irritation	IV.C.3
2091	Hydrogen chloride	7647-01-0	Sensory irritation	IV.C.3
1207	Hydrogen cyanide	74-90-8	Systemic toxicity	IV.C.8
1208	Hydrogen fluoride	7664-39-3	Sensory irritation	IV.C.3
2092	Hydrogen peroxide (90%)	7722-84-1	Sensory irritation	IV.C.3
2093	Hydrogen selenide (As Se)	7783-07-5	Systemic toxicity	IV.C.8
1209	Hydrogen sulfide	7783-06-4	Ocular effects	IV.C.5
1210	Hydrogenated terphenyls	61788-32-7	Systemic toxicity	IV.C.8
2094	Hydroquinone	123-31-9	Ocular effects	IV.C.5
1211	2-Hydroxypropyl acrylate	999-61-1	Sensory irritation	IV.C.3
1212	Indene	95-13-6	Analogy	IV.C.11
1213	Indium & compounds	7440-74-6	Respiratory effects	IV.C.6
2095	Iodine	7553-56-2	Sensory irritation	IV.C.3
1214	Iodoform	75-47-8	Analogy	IV.C.11
1215	Iron oxide (dust and fume)	1309-37-1	Respiratory effects	IV.C.6
1216	Iron pentacarbonyl	13463-40-6	Neuropathy	IV.C.1
1217	Iron salts (soluble)	Varies	Sensory irritation	IV.C.3
2096	Isoamyl acetate	123-92-2	Sensory irritation	IV.C.3
1218	Isoamyl alcohol	123-51-3	Narcosis	IV.C.2
2097	Isobutyl acetate	110-19-0	Analogy	IV.C.11
1219	Isobutyl alcohol	78-83-1	Analogy	IV.C.11
1220	Isooctyl alcohol	26952-21-6	Analogy	IV.C.11
1221	Isophorone	78-59-1	Narcosis	IV.C.2
1222	Isophorone diisocyanate	4098-71-9	Sensitization effects	IV.C.13
1223	2-Isopropoxyethanol	109-59-1	Systemic toxicity	IV.C.8
1224	Isopropyl acetate	108-21-4	Sensory irritation	IV.C.3
1225	Isopropyl alcohol	67-63-0	Sensory irritation	IV.C.3
1226	Isopropyl ether	108-20-3	Sensory irritation	IV.C.3
1227	Isopropyl glycidyl ether	4016-14-2	Systemic toxicity	IV.C.8
1228	Isopropylamine	75-31-0	Sensory irritation	IV.C.3
1229	N-Isopropylaniline	768-52-5	Analogy	IV.C.11
1230	Kaolin, total dust	1332-58-7	Physical irritation	IV.C.10

TABLE I.G.—INDEX TO PREAMBLE DISCUSSION OF INDIVIDUAL SUBSTANCES—Continued

H.S. No.	Substance name	CAS No.	Primary basis for limits	Preamble section
1231	Ketene	463-51-4	Analogy	IV.C.11
2098	Lead, inorganic	7439-92-1	Systemic toxicity	IV.C.8
1232	Limestone, total dust	1317-65-3	Physical irritation	IV.C.10
2100	Lindane	58-89-9	Neuropathy	IV.C.1
2101	Lithium hydride	7580-67-8	Sensory irritation	IV.C.3
2099	L.P.G. (liquefied petroleum gas)	68476-85-7	Noael	IV.C.9
1233	Magnesite, total dust	546-93-0	Physical irritation	IV.C.10
1234	Magnesium oxide fume*	1309-48-4	Physical irritation	IV.C.10
1235	Malathion*	121-75-5	Physical irritation	IV.C.10
2102	Maleic anhydride	108-31-6	Sensory irritation	IV.C.3
2103	Manganese dust and compounds	7439-96-5	Neuropathy	IV.C.1
1236A	Manganese, fume	7439-96-5	Neuropathy	IV.C.1
1237	Manganese cyclopentadienyl tricarbonyl	12079-65-1	Neuropathy	IV.C.1
1238	Manganese tetroxide	1317-35-7	Neuropathy	IV.C.1
1239	Marble, total dust	1317-65-3	Physical irritation	IV.C.10
1240	Mercury (aryl and inorganic compounds)	Varies	Neuropathy	IV.C.1
1241	Mercury (vapor)	7439-97-6	Neuropathy	IV.C.1
1242	Mercury, (organo) alkyl compounds	Varies	Neuropathy	IV.C.1
1243	Mesityl oxide	141-79-7	Sensory irritation	IV.C.3
1244	Methacrylic acid	79-41-4	Analogy	IV.C.11
1245	Methomyl (lannate)	16752-77-5	Biochemical/metabolic effects	IV.C.12
1246	Methoxychlor*	72-43-5	Physical irritation	IV.C.10
1247	4-Methoxyphenol	150-76-5	Analogy	IV.C.11
1249	Methyl acetate	79-20-9	Noael	IV.C.9
2104	Methyl acetylene (propyne)	74-99-7	Neuropathy	IV.C.1
1250	Methyl acetylene/propadiene mixture	None	Analogy	IV.C.11
2105	Methyl acrylate	96-33-3	Sensory irritation	IV.C.3
1251	Methyl acrylonitrile	126-98-7	Neuropathy	IV.C.1
2108	Methylal (dimethoxymethane)	109-87-5	Analogy	IV.C.11
2110	Methylamine	74-89-5	Analogy	IV.C.11
1252	Methyl alcohol	67-56-1	Ocular effects	IV.C.5
1253	Methyl bromide	74-83-9	Neuropathy	IV.C.1
1254	Methyl chloride	74-87-3	Narcosis	IV.C.2
1255	Methyl chloroform (1,1,1-trichloro-ethane)	71-55-6	Narcosis	IV.C.2
1248	Methyl 2-cyanoacrylate	137-05-3	Sensory irritation	IV.C.3
1256	Methyl demeton	8022-00-2	Analogy	IV.C.11
1257	Methyl ethyl ketone peroxide	1338-23-4	Analogy	IV.C.11
1258	Methyl formate	107-31-3	Analogy	IV.C.11
1259	Methyl iodide	74-88-4	Analogy	IV.C.11
1260	Methyl isoamyl ketone	110-12-3	Analogy	IV.C.11
1261	Methyl isobutyl carbinol	108-11-2	Sensory irritation	IV.C.3
2106	Methyl isocyanate	624-83-9	Sensory irritation	IV.C.3
1262	Methyl isopropyl ketone	563-80-4	Analogy	IV.C.11
1263	Methyl mercaptan	74-93-1	Sensory irritation	IV.C.3
2107	Methyl methacrylate	80-62-6	Sensory irritation	IV.C.3
1264	Methyl N-amyl ketone	110-43-0	Sensory irritation	IV.C.3
1265	Methyl parathion	298-00-0	Analogy	IV.C.11
1266	Methyl silicate	681-84-5	Ocular effects	IV.C.5
1267	Alpha-methyl styrene	98-83-9	Sensory irritation	IV.C.3
2109	Methylene bisphenyl isocyanate (MDI)	101-68-8	Analogy	IV.C.11
1268	Methylcyclohexane	108-87-2	Analogy	IV.C.11
1269	Methylcyclohexanol	25639-42-3	Liver and kidney effects	IV.C.4
1270	O-Methylcyclohexanone	583-60-8	Sensory irritation	IV.C.3
1271	Methylcyclopentadienyl MN tricarbonyl	12108-13-3	Analogy	IV.C.11
1273	4,4'-Methylene bis (2-chloro-aniline) (MBOCA)	101-14-4	Systemic toxicity	IV.C.8
1272	Methylene bis (4-cyclo-hexyli-socyanate)	5124-30-1	Respiratory effects	IV.C.6
1275	Metribuzin	21087-64-9	Noael	IV.C.9
1276	Mica	12001-26-2	Respiratory effects	IV.C.6
1277	Mineral wool fiber	None	Respiratory effects	IV.C.6
2111	Molybdenum (soluble compounds)	7439-98-7	Systemic toxicity	IV.C.8
1278	Molybdenum (insoluble compounds)	7439-98-7	Physical irritation	IV.C.10
1279	Monocrotophos (azodrin)	6923-22-4	Analogy	IV.C.11
1280	Monomethyl aniline	100-61-8	Biochemical/metabolic effects	IV.C.12
2112	Monomethyl hydrazine	60-34-4	Systemic toxicity	IV.C.8
1281	Morpholine	110-91-8	Analogy	IV.C.11
2113	Naphtha (coal tar)	8030-30-6	Narcosis	IV.C.2
1282	Naphthalene	91-20-3	Ocular effects	IV.C.5
2114	Nickel (metal)	7440-02-0	Systemic toxicity	IV.C.8
1283	Nickel (soluble compounds)	Varies	Respiratory effects	IV.C.6
2115	Nicotine	54-11-5	Systemic toxicity	IV.C.8
1286	Nitric acid	7697-37-2	Analogy	IV.C.11
2116	Nitric oxide	10102-43-9	Biochemical/metabolic effects	IV.C.12
1287	P-Nitroaniline	100-01-6	Analogy	IV.C.11
2117	Nitrobenzene	98-95-3	Biochemical/metabolic effects	IV.C.12
1288	P-Nitrochlorobenzene	100-00-5	Biochemical/metabolic effects	IV.C.12
2118	Nitroethane	79-24-3	Liver and kidney effects	IV.C.4
1289	Nitrogen dioxide	10102-44-0	Respiratory effects	IV.C.6
2119	Nitrogen trifluoride	7783-54-2	Liver and kidney effects	IV.C.4
1290	Nitroglycerin	55-63-0	Cardiovascular effects	IV.C.7

TABLE I.G.—INDEX TO PREAMBLE DISCUSSION OF INDIVIDUAL SUBSTANCES—Continued

H.S. No.	Substance name	CAS No.	Primary basis for limits	Preamble section
2120	Nitromethane	75-52-5	Analogy	IV.C.11
2121	1-Nitropropane	108-03-2	Noael	IV.C.9
1291	2-Nitropropane	79-46-9	Cancer	IV.C.14
1292	Nitrotoluene (all isomers)	99-08-1; 99-99-0; 88-72-2	Analogy	IV.C.11
1293	Nonane	111-84-2	Analogy	IV.C.11
1295	Octachloronaphthalene	2234-13-1	Liver and kidney effects	IV.C.4
1296	Octane	111-65-9	Narcosis	IV.C.2
1297	Oil mist (mineral)	8012-95-1	Noael	IV.C.9
1298	Osmium tetroxide	20816-12-0	Sensory irritation	IV.C.3
1299	Oxalic acid	144-62-7	Analogy	IV.C.11
1300	Oxygen difluoride	7783-41-7	Respiratory effects	IV.C.6
1301	Ozone	10028-15-6	Respiratory effects	IV.C.6
1302	Paraffin wax fume	8002-74-2	Sensory irritation	IV.C.3
1303	Paraquat, respirable dust	4685-14-7	Respiratory effects	IV.C.6
2122	Parathion	56-38-2	Biochemical/metabolic effects	IV.C.12
1294	Particulates not otherwise regulated	None	Physical irritation	IV.C.10
1304	Pentaborane	19624-22-7	Neuropathy	IV.C.1
2123	Pentachloronaphthalene	1321-64-8	Liver and kidney effects	IV.C.4
2124	Pentachlorophenol	87-86-5	Cardiovascular effects	IV.C.7
1305	Pentaerythritol, total dust	115-77-5	Physical irritation	IV.C.10
1306	Pentane	109-66-0	Narcosis	IV.C.2
1307	2-pentanone (methyl propyl ketone)	107-87-9	Narcosis	IV.C.2
1308	Perchloroethylene	127-18-4	Cancer	IV.C.14
2125	Perchloromethyl mercaptan	594-42-3	Systemic toxicity	IV.C.8
1309	Perchloryl fluoride	7616-94-6	Analogy	IV.C.11
1310	Perlite	93763-70-3	Physical irritation	IV.C.10
1312	Petroleum distillates (naphtha)	None	Noael	IV.C.9
2126	Phenol	108-95-2	Systemic toxicity	IV.C.8
1313	Phenothiazine	92-84-2	Sensitization effects	IV.C.13
2128	P-phenylene diamine	106-50-3	Sensitization effects	IV.C.13
1314	Phenyl ether (vapor)	101-84-8	Sensory irritation	IV.C.3
2127	Phenyl ether-biphenyl mixture	None	Sensory irritation	IV.C.3
1315	Phenyl glycidyl ether	122-60-1	Sensitization effects	IV.C.13
1316	Phenyl mercaptan	108-98-5	Neuropathy	IV.C.1
1317	Phenylhydrazine	100-63-0	Systemic toxicity	IV.C.8
1318	Phenylphosphine	638-21-1	Systemic toxicity	IV.C.8
1319	Phorate (thimet)	298-02-2	Biochemical/metabolic effects	IV.C.12
2129	Phosgene	75-44-5	Sensory irritation	IV.C.3
1320	Phosdrin (mevinphos)	7786-34-7	Analogy	IV.C.11
1321	Phosphine	7803-51-2	Systemic toxicity	IV.C.8
1322	Phosphoric acid	7664-38-2	Sensory irritation	IV.C.3
2130	Phosphorus (yellow)	7723-14-0	Systemic toxicity	IV.C.8
1323	Phosphorus oxychloride	10025-87-3	Analogy	IV.C.11
2131	Phosphorus pentachloride	10026-13-8	Sensory irritation	IV.C.3
1324	Phosphorus pentasulfide	1314-80-3	Analogy	IV.C.11
1325	Phosphorus trichloride	7719-12-2	Sensory irritation	IV.C.3
1326	Phthalic anhydride	85-44-9	Analogy	IV.C.11
1327	M-phthalodinitrile	626-17-5	Noael	IV.C.9
1328	Picloram (tordom)	1918-02-1	Physical irritation	IV.C.10
1329	Picric acid	88-89-1	Sensitization effects	IV.C.13
1330	Piperazine dihydrochloride	142-64-3	Systemic toxicity	IV.C.8
2132	Pindone	83-26-1	Analogy	IV.C.11
1331	Plaster of paris, total dust	7778-18-9	Physical irritation	IV.C.10
1332	Platinum, metal	7440-06-4	Noael	IV.C.9
2133	Platinum (soluble salts)	7440-06-4	Sensitization effects	IV.C.13
1333	Portland cement	65997-15-1	Physical irritation	IV.C.10
1334	Potassium hydroxide	1310-58-3	Sensory irritation	IV.C.3
2134	Propane	74-98-6	Systemic toxicity	IV.C.8
1335	Propargyl alcohol	107-19-7	Analogy	IV.C.11
1336	Propionic acid	79-09-4	Analogy	IV.C.11
1337	Propoxur (baygon)	114-26-1	Biochemical/metabolic effects	IV.C.12
1338	N-propyl acetate	109-60-4	Analogy	IV.C.11
1339	Propyl alcohol	71-23-8	Analogy	IV.C.11
1340	N-propyl nitrate	627-13-4	Systemic toxicity	IV.C.8
1341	Propylene dichloride	78-87-5	Liver and kidney effects	IV.C.4
1342	1,2-propylene glycol dinitrate	6423-43-4	Neuropathy	IV.C.1
1343	Propylene glycol monomethyl ether	107-98-2	Sensory irritation	IV.C.3
2135	Propyleneimine	75-55-8	Analogy	IV.C.11
1344	Propylene oxide	75-56-9	Analogy	IV.C.11
2136	Pyrethrum	8003-34-7	Systemic toxicity	IV.C.8
2137	Pyridine	110-86-1	Systemic toxicity	IV.C.8
2138	Quinone (P-benzoquinone)	106-51-4	Ocular effects	IV.C.5
1346	Resorcinol	108-46-3	Noael	IV.C.9
1347	Rhodium (metal, fume & insoluble compounds)	7440-16-6	Sensitization effects	IV.C.13
1348	Rhodium (soluble salts)	Varies	Sensitization effects	IV.C.13
1349	Ronnel	299-84-3	Biochemical/metabolic effects	IV.C.12
1350	Rosin core solder pyrolysis product (as hcho)	None	Sensory irritation	IV.C.3

TABLE I.G.—INDEX TO PREAMBLE DISCUSSION OF INDIVIDUAL SUBSTANCES—Continued

H.S. No.	Substance name	CAS No.	Primary basis for limits	Preamble section
2139	Rotenone (commercial)	83-79-4	Nosel	IV.C.9
1351	Rouge, total dust	None	Physical irritation	IV.C.10
2140	Selenium and compounds	7782-49-2	Systemic toxicity	IV.C.8
2141	Selenium hexafluoride	7783-79-1	Analogy	IV.C.11
1352	Silica, amorphous, diatomaceous earth	61790-53-2	Respiratory effects	IV.C.6
1353	Silica, amorphous, precipitated and gel	None	Respiratory effects	IV.C.6
1354	Silica, crystalline-cristobalite	14464-46-1	Respiratory effects	IV.C.6
1355	Silica, crystalline quartz, respirable	14808-60-7	Respiratory effects	IV.C.6
2142	Silica, crystalline quartz, total dust	14808-60-7	Respiratory effects	IV.C.6
1356	Silica, crystalline tridymite	15468-32-3	Respiratory effects	IV.C.6
1357	Silica, crystalline tripoli (as quartz dust)	1317-95-9	Respiratory effects	IV.C.6
1358	Silica, fused	60676-86-0	Respiratory effects	IV.C.6
1359	Silicon	7440-21-3	Physical irritation	IV.C.10
1360	Silicon carbide	409-21-2	Physical irritation	IV.C.10
1361	Silicon tetrahydride	7803-62-5	Analogy	IV.C.11
1362	Silver, metal and soluble compounds	7440-22-4	Systemic toxicity	IV.C.8
1363	Soapstone, total dust	None	Respiratory effects	IV.C.6
1363A	Soapstone, respirable dust	None	Respiratory effects	IV.C.6
1364	Sodium azide (as HN3), (as NaN3)	26628-22-8	Cardiovascular effects	IV.C.7
1365	Sodium bisulfite	7631-90-5	Sensory irritation	IV.C.3
1366	Sodium fluoroacetate	62-74-8	Systemic toxicity	IV.C.8
1367	Sodium hydroxide	1310-73-2	Sensory irritation	IV.C.3
1368	Sodium metabisulfite	7681-57-4	Sensory irritation	IV.C.3
1369	Starch, total dust	9005-25-8	Physical irritation	IV.C.10
2144	Stibine	7803-52-3	Analogy	IV.C.11
1371	Stoddard solvent	8052-41-3	Narcosis	IV.C.2
2145	Strychnine	57-24-9	Systemic toxicity	IV.C.8
1372	Styrene (phenylethylene)	100-42-5	Narcosis	IV.C.2
1373	Subtilisins (proteolytic enzymes)	1395-21-7	Sensitization effects	IV.C.13
1374	Sucrose, total dust	57-50-1	Physical irritation	IV.C.10
1375	Sulfur dioxide	7446-09-5	Respiratory effects	IV.C.6
2146	Sulfur hexafluoride	2551-62-4	Nosel	IV.C.9
2147	Sulfuric acid	7664-93-9	Sensory irritation	IV.C.3
1376	Sulfur monochloride	10025-67-9	Sensory irritation	IV.C.3
1377	Sulfur pentafluoride	5714-22-7	Sensory irritation	IV.C.3
1378	Sulfur tetrafluoride	7783-60-0	Respiratory effects	IV.C.6
1379	Sulfuryl fluoride	2699-79-8	Analogy	IV.C.11
1380	Sulprofos	35400-43-2	Biochemical/metabolic effects	IV.C.12
2148	2,4,5-T	93-76-5	Physical irritation	IV.C.10
1381	Talc (containing no asbestos)	14807-96-6	Respiratory effects	IV.C.6
1382	Tantalum	7440-25-7	Nosel	IV.C.9
2149	TEDP (sulfotep)	3689-24-5	Analogy	IV.C.11
2150	Tellurium	13494-80-9	Systemic toxicity	IV.C.8
2151	Tellurium hexafluoride	7783-80-4	Analogy	IV.C.11
1383	Temephos	3383-96-8	Physical irritation	IV.C.10
2152	TEPP	107-49-3	Analogy	IV.C.11
1384	Terphenyls	26140-60-3	Biochemical/metabolic effects	IV.C.12
2153	1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	Nosel	IV.C.9
2154	1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	Nosel	IV.C.9
1385	1,1,2,2-Tetrachloroethane	79-34-5	Liver and kidney effects	IV.C.4
2155	Tetrachloronaphthalene	1335-88-2	Liver and kidney effects	IV.C.4
1386	Tetraethyl lead	78-00-2	Systemic toxicity	IV.C.8
1387	Tetrahydrofuran	109-99-9	Sensory irritation	IV.C.3
1388	Tetramethyl lead	75-74-1	Systemic toxicity	IV.C.8
2156	Tetramethyl succinonitrile	3333-52-6	Systemic toxicity	IV.C.8
2157	Tetranitromethane	509-14-8	Sensory irritation	IV.C.3
1389	Tetrasodium pyrophosphate	7722-88-5	Sensory irritation	IV.C.3
2158	Tetryl	479-45-8	Systemic toxicity	IV.C.8
2159	Thallium (soluble compounds)	7440-28-0	Analogy	IV.C.11
1391	4,4'-Thiobis (6-tert-butyl-m-cresol)	96-69-5	Physical irritation	IV.C.10
1392	Thioglycolic acid	68-11-1	Sensory irritation	IV.C.3
1393	Thionyl chloride	7719-09-7	Analogy	IV.C.11
2160	Thiram	137-26-8	Systemic toxicity	IV.C.8
2161	Tin (metal and inorganic compounds)	7440-31-5	Systemic toxicity	IV.C.8
1394	Tin (organic compounds)	Varies	Change in skin designation only	IV.C.16
1395	Tin oxide	21651-19-4	Respiratory effects	IV.C.6
1396	Titanium dioxide	13463-67-7	Physical irritation	IV.C.10
1397	Toluene	108-88-3	Narcosis	IV.C.2
1398	Toluene-2,4-diisocyanate	584-84-9	Sensitization effects	IV.C.13
1399	O-Toluidine	95-53-4	Cancer	IV.C.14
1400	P-Toluidine	106-49-0	Cancer	IV.C.14
1401	M-Toluidine	108-44-1	Biochemical/metabolic effects	IV.C.12
1402	Tributyl phosphate	126-73-8	Analogy	IV.C.11
1403	1,1,2-Trichloro-1,2, 2-Trifluoro-ethane	76-13-1	Cardiovascular effects	IV.C.7
1404	Trichloroacetic acid	76-03-9	Analogy	IV.C.11
1405	1,2,4-Trichlorobenzene	120-82-1	Sensory irritation	IV.C.3
2162	1,1,2-Trichloroethane	79-00-5	Analogy	IV.C.11
1406	Trichloroethylene	79-01-6	Narcosis	IV.C.2
2163	Trichloronaphthalene	1321-65-9	Liver and kidney effects	IV.C.4

TABLE I.G.—INDEX TO PREAMBLE DISCUSSION OF INDIVIDUAL SUBSTANCES—Continued

H.S. No.	Substance name	CAS No.	Primary basis for limits	Preamble section
1407	1,2,3-Trichloropropane	96-18-4	Liver and kidney effects	IV.C.4
1408	Triethylamine	121-44-8	Sensory irritation	IV.C.3
2164	Trifluoromonobromomethane	75-63-8	Noael	IV.C.9
1409	Trimellitic anhydride	552-30-7	Respiratory effects	IV.C.6
1410	Trimethyl phosphite	121-45-9	Noael	IV.C.9
1411	Trimethylamine	75-50-3	Analogy	IV.C.11
1412	Trimethylbenzene	25551-13-7	Systemic toxicity	IV.C.8
1413	2,4,6-Trinitrotoluene (TNT)	118-96-7	Biochemical/metabolic effects	IV.C.12
1414	Triorthocresyl phosphate	78-30-8	Change in skin designation only	IV.C.16
1415	Triphenyl amine	603-34-9	Noael	IV.C.9
2165	Triphenyl phosphate	115-86-6	Noael	IV.C.9
1416	Tungsten & compounds (insoluble)	7440-33-7	Systemic toxicity	IV.C.8
1417	Tungsten & compounds (soluble)	7440-33-7	Systemic toxicity	IV.C.8
2166	Turpentine	8006-64-2	Sensory irritation	IV.C.3
1418	Uranium (insoluble compounds)	7440-61-1	Noael	IV.C.9
1419	Uranium (soluble compounds)	7440-61-1	Liver and kidney effects	IV.C.4
1420	N-Valeraldehyde	110-62-3	Analogy	IV.C.11
1421	Vanadium (v205, dust)	1314-62-1	Sensory irritation	IV.C.3
1422	Vanadium (v205, fume)	1314-62-1	Sensory irritation	IV.C.3
1423	Vegetable oil mist	None	Physical irritation	IV.C.10
1424	Vinyl acetate	108-05-4	Sensory irritation	IV.C.3
1425	Vinyl bromide	593-60-2	Cancer	IV.C.14
2167	Vinyl chloride	75-01-4	Cancer	IV.C.14
1426	Vinyl cyclohexene dioxide	106-87-6	Cancer	IV.C.14
1427	Vinyl toluene	25013-15-4	Sensory irritation	IV.C.3
1428	Vinylidene chloride	75-35-4	Systemic toxicity	IV.C.8
1429	VM & P naphtha	8032-32-4	Sensory irritation	IV.C.3
2168	Warfarin	81-81-2	Biochemical/metabolic effects	IV.C.12
1430	Welding fumes (total particulate)	None	Systemic toxicity	IV.C.8
1430a	Wood dust, hard wood	None	Respiratory effects	IV.C.6
1430b	Wood dust, soft wood	None	Respiratory effects	IV.C.6
1430c	Wood dust, western red cedar	None	Respiratory effects	IV.C.6
1431	Xylene (O,M,P-isomers)	1330-20-7	Sensory irritation	IV.C.3
1432	M-xylene-alpha,alpha'-diamine	1477-55-0	Analogy	IV.C.11
1433	Xylidine	1300-73-8	Analogy	IV.C.11
2169	Yttrium	7440-65-5	Respiratory effects	IV.C.6
1434	Zinc stearate	557-05-1	Physical irritation	IV.C.10
1435	Zinc chloride fume	7646-85-7	Sensory irritation	IV.C.3
1436	Zinc chromates (CrVI)	Varies	Cancer	IV.C.14
1437	Zinc oxide (fume)	1314-13-2	Systemic toxicity	IV.C.8
1438	Zinc oxide, total dust	1314-13-2	Physical irritation	IV.C.10
1439	Zirconium compounds	Varies	Systemic toxicity	IV.C.8

H. Mixture Formula

The current OSHA PELs for general industry, construction, and maritime are covered by a mixture or computation formula. It is located at 29 CFR 1910.1000(d) for general industry. In construction it is incorporated by cross reference to the 1970 ACGIH TLVs. Maritime includes the mixture formula by cross reference either to § 1910.1000 or to the 1970 ACGIH TLVs.

The purpose of the mixture formula is to protect the health of workers exposed to two or more toxic substances. If a worker is exposed to two or more toxic substances which affect the same organ or cause the same disease or material health impairment, being exposed at the maximum permissible exposure limit for each substance will often not protect the worker from material health impairment.

Consequently, in these circumstances the mixture formula keeps exposure below the maximum for each of the several substances the workers are exposed to. For example, if a worker is exposed to 50% of the PEL for a substance that causes cardiovascular disease, then that worker can be exposed to no more than 50% of the PEL of a second substance which causes cardiovascular disease. The mixture formula is only applied by OSHA when the substances affect the same organ, or cause the same disease or material health impairment.

OSHA has requested that the White House's Federal Coordination Council for Science, Engineering and Technology (FCCSET) give advice on the use of the mixture formula. The Council will hold a conference in December on the issue. Both EPA and FDA are interested in this issue and will participate. Depending on the Council's advice, OSHA may open the mixture formula for reconsideration in the first update of the PELs for all industry sectors. It would be premature to consider this issue before receiving the Council's advice and inefficient to consider it for one industry sector at a time since the biology, of course, is the same for all workers.

OSHA is proposing to include the mixture formula for agriculture because of the health reasons stated above, its long acceptance in occupational health practice, and for consistency among the sectors. OSHA is not opening the issue of the mixture formula for construction and maritime since it already applies and would be premature prior to the Council's recommendations.

II. Pertinent Legal Authority

The publication of this standard is authorized by sections 6 and 8 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655 and 657. Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents.

It states:

The Secretary in promulgating standards dealing with toxic materials or harmful physical agents under this subsection shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee

will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

Section 3(8) defines an occupational safety and health standard as "a standard which requires conditions, or the adoption or use of one or more practice, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

The Supreme Court has held under the Act that the Secretary, before issuing any new standard, must determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* v. *American Petroleum Institute, (IUD* v. *API).* 488 U.S. 607 (1980). The Court stated that "before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe in the sense that significant risks are present and can be eliminated or lessened by a change in practices" (448 U.S. at 642). The Court also stated "that the Act does limit the Secretary's power to require the elimination of significant risk" (488 U.S. 644, n. 49).

The Court indicated, however that the significant risk determination is "not a mathematical straitjacket," and that "OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty." The Court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and that] * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over protection rather than under protection" (448 U.S. at 655, 655).

The Court also stated that "while the Agency must support its finding that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy consideration." (488 U.S. at 655, n. 62).

After OSHA determines that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set a standard which is technologically and economically feasible. In *American Textile Manufacturers Institute* v. *Donovan,* 542 U.S. 490, 531, n. 32 (1981) the Supreme Court held that "cost-benefit analysis is not required by statue because feasibility analysis is." The aim is to set the lowest feasible level necessary to eliminate significant risk.

Congress intended the OSH Act to be very broad in coverage. Section (2)(b) of the act states:

"The Congress declares it to be its purpose and policy * * * to assure so far as possible every working man and woman in the nation safe and healthful working conditions * * *"

Clearly this indicates that OSHA should cover working men and women in all sections of the economy—general industry, construction, maritime and agriculture, and indeed OSHA has set standards for all those sectors.

When OSHA proposed and issued its updated exposure limits for general industry it stated that it would expand the new limits to cover the construction, maritime and agriculture sectors. See 53 FR 20979; June 7, 1988 and 54 FR 2383; January 19, 1989. The reason that OSHA did not propose to immediately cover those sectors was the time it would take to consult with those sectors and to perform feasibility analyses for these sectors.

Shortly after the completion of the updated PEL's for general industry OSHA commenced those activities. It consulted with the Construction Advisory Committee (CACOSH) and the Shipyard Advisory Committee. It held a series of meetings with the agricultural community. Also feasibility analyses were commenced for these sectors. These activities are discussed above and in the feasibility section of the preamble and the consultations and information have been taken into account in this proposal.

Construction

Federal regulation of construction activities was covered prior to OSHA by the Construction Safety Act (Pub. L. 91–54, August 23, 1969, 33 U.S.C. 941). That Act gives the Secretary of Labor authority to issue and enforce regulation to protect the health and safety of employees who worked for contractors performing construction work for the U.S. government. It also provided for the creation of an advisory committee on such regulations.

The Department of Labor issued regulations under the Construction Safety Act on April 17, 1971 at 36 FR 7340. Those regulations included at 29 CFR 1518.55 requirements that the workers of construction contractors for the U.S. government not be exposed over the Threshold Limit Values for 1970 of the ACGIH. That requirement became an occupational safety and health standard for all construction workers under the OSH Act pursuant to Section 4(b)(2) on April 28, 1971. It was later recodified at 29 CFR 1926.55 on June 24, 1974 at 39 FR 22801. The large majority of exposure limits applicable to construction employers are the 1970 TLV's.

Many of the single substance standards which OSHA has issued have been made applicable to the construction industry. See 29 CFR 1910.19 and the individual standards.

OSHA's procedural rules for issuing standards under the OSH Act state that OSHA shall consult with the Construction Advisory Committee. See 29 CFR 1911.10. OSHA has done so in this case and the Committee has advised OSHA to proceed. See the discussion above under History and need for the Standard in Construction.

Maritime

The Department of Labor has had some authority for many years for the maritime industry under the Longshore and Harbor Workers Compensation Act (33 U.S.C. 901 *et seq.*). Specific authority was granted prior to the OSH Act under Public Law 89–742, August 22, 1958, 33 U.S.C. 941 for the Secretary of Labor to issue regulations to protect the health and safety of longshoremen, marine terminal workers, ship repairers, shipbuilders and ship breakers (See also 33 U.S.C. 902). Pursuant to section 4(b)(2) of the OSH Act, standards issued pursuant to 33 U.S.C. 941 became OSH standards on May 29, 1971 at 36 FR 10466.

At that time the Shipyard standards were in three parts of 29 CFR, part 1915 for ship repairing, part 1916 for shipbuilding and part 1917 for shipbreaking. These were recodified with the same basic organization on October 19, 1977 at 37 FR 22458.

On April 20, 1982 at 47 FR 16984, parts 1915, 1916 and 1917 were consolidated into a new part 1915, Shipyards, covering shipbuilding, ship repairing and shipbreaking. As a consequence of their history, the permissible exposure limits applicable to the new part 1915, Shipyards are complex. The shipbreaking and ship repairing subsectors and the use of toxic solvents

and removers in the shipbuilding and ship repair subsectors are covered by the 1970 TLV's of the ACGIH. See §§ 1915.5, 1915.11, 1915.12, 1915.32 and 1915.33. For shipbuilding operations not involving toxic solvents and removers, the 1971 OSHA PEL's apply. No specific exposure limits are specified for shipbuilding outside those 2 circumstances. When no standard is specified for a subsector, and there is a standard for general industry, then the general industry standard applies to the subsector—See 29 CFR 1910.5(c). The OSHA general industry standards for air contaminants are the Z Tables in 29 CFR 1910.1000. OSHA did not make the updated (1989) PELs applicable to maritime awaiting the completion of this rulemaking. See 29 CFR 1910.1000(f)(3)(ii). In addition a number of OSHA single substance standards (§§ 1910.1001–1048) are applicable to the maritime sectors. See the individual standards and 29 CFR 1910.19.

Clearly it is confusing both to the shipyard industry, its employees and for OSHA enforcement for slightly different standards to apply to different operations in the same work place. The 1970 TLV's and the 1968 PEL's do differ for some substances though usually not by significant amounts. Consequently for shipyards, OSHA feels the existence of different standards for different subsectors should be eliminated as soon as possible. Accordingly OSHA is proposing that the new PELs take effect for all of shipyards, as soon as the effective date of the standard, to be achieved by any reasonable means of compliance. The preference for engineering controls in the transition period will apply to the 1970 TLV's for all subsectors of shipyards.

Pursuant to the Longshoremen and Harbor Worker Compensation Acts 1958 amendments (33 U.S.C. 941), OSHA in 1960 issued regulations protecting longshore employees (25 FR 1569). These regulations also covered marine terminals employees. They were adopted as OSHA standards on May 29, 1971 at 36 FR 10466. They were recodified as 29 CFR part 1918 on May 19, 1977 at 37 FR 22530.

On July 5, 1983 (48 FR 30886), OSHA issued a final standard specifically covering marine terminals separately from longshoring. The Marine Terminals Standard was designated 29 CFR part 1917. (It should be recalled that the earlier part 1917 covering shipbreaking had been recodified as part of part 1915—Shipyards.) The Marine Terminal Standard basically provides that employees not be exposed to air contaminants over the limit set in the 1971 Z tables of CFR 1910.1000. See §§ 1917.2(p), 1917.22, 23, 25.

Longshoring operations continue to be regulated by 29 CFR part 1918. OSHA has consistently interpreted that the air contaminant exposure limits set forth in 1910.1000 are applicable pursuant to § 1910.5(c) to longshoring because no quantitative exposure limits are set forth for most air contaminants. Section 1918.93 only sets forth specific numerical limits for carbon monoxide. It is OSHA's intention to clarify in this rulemaking that all the air contaminant exposure limits in the 1971 Z Tables in § 1910.1000 are applicable and will remain applicable to longshoring during the transition period. Any comments to the contrary should be submitted in this rulemaking.

Agriculture

OSHA issued its first standards for agriculture May 29, 1971 (36 FR 10466, 10699) pursuant to section 6(a) of the OSH Act. The specific requirements were specified in 29 CFR 1910.267. That section stated:

§ 1910.267 Agricultural operations

(a)(1) The standards referenced in the remaining subparagraphs of this paragraph apply to the indicated operations, whether or not they include as a part of, agricultural operations.

(2) Sanitation in temporary labor camps—§ 1910.142.

(3) Storage and handling of anhydrous ammonia—§ 1910.111 (a) and (b).

(4) Pulpwood logging—§ 1910.226.

(5) Slow-moving vehicles—§ 1910.145.

(b) Except to the extent specified in paragraph (a) of this section, the standards contained in subparts B through S of this part do not apply to agricultural operations.

(c) The development of standards having more general application to agricultural operations will be the subject of study under section 6 of the Act.

OSHA issued a standard to protect farm workers from pesticides by specifying field reentry times, protective equipment and sanitation codified at § 1910.267a (1974). That standard was vacated by the Court of Appeals on the basis that pursuant to section 4(b)(1) of the OSH Act, OSHA was preempted from regulating pesticides regulated by EPA under FIFRA where EPA exercised statutory authority to prescribe or enforce standards or regulations enforcing occupational safety or health.

In 1975 OSHA recodified the agriculture standard as a new 29 CFR part 1928. (40 FR 18254, April 25, 1979). OSHA issued various standards applicable to the agriculture sector but because of § 1910.267(b) as amended, the exposure limits in what came to be § 1910.1000 Tables Z–1, Z–2 and Z–3 never became applicable to agriculture. When OSHA issued substance specific standards it also did not make them applicable to agriculture. Consequently none of OSHA's exposure limits are currently applicable to agriculture.

On September 30, 1976 (Pub. L. 94–439, 90 Stat. 1418) Congress included a rider on the Department of Labor appropriations act for fiscal 1977 stating that OSHA should not expend any funds to issue or enforce any standard applicable to any person engaged in a farming operation employing 10 or fewer employees.

That rider has been reenacted each year subsequently. The rider for fiscal 1991 (Pub. L. 101–517, 104 Stat. 2194) states

> That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs ten or fewer employees:

Accordingly OSHA is only proposing to apply the Air Contaminants standard to farming operations which maintain a temporary labor camp or which employ more than 10 employees. For this exemption to apply there can not be more than 10 employees on any day in the year. In addition, employees who technically work for a labor only subcontractor but work under the direction of the farm operation are considered employees of the farm for purposes of determining whether it has more than 10 employees. In practice this rider means that only quite large farms will be covered by this regulation. See the discussion under the History and Need Section.

As discussed above pursuant to section 4(b)(1) of the OSH Act and the above cited cases, use of an EPA labelled pesticide on a farm as a pesticide pursuant to the label where that label includes employee protection provisions is not covered by the proposed air contaminant standard. Approximately 100 of the chemicals that OSHA is proposing in 29 CFR 1928.1000 Table Z may fit that category.

These EPA-labeled pesticides are still listed in Table Z and the exposure limit will be applicable in circumstances when those substances are not used as pesticides pursuant to the FIFRA label. Examples of these situations include when the pesticide is used for a non pesticide use or for a pesticide use not authorized by the EPA label. It should be noted that a number of common chemicals with non pesticide uses are

also labelled pesticides. In addition a farmer may make and use a pesticide which he could have purchased already labelled. In these circumstances there is no requirement for EPA labelling, and OSHA would have jurisdiction. The agricultural employee would then be covered by the OSHA PEL. OSHA has come across situations like this and believes that it is important not to allow loopholes to develop. In addition OSHA believes that publishing exposure limits for pesticides even when not enforceable provides useful information. Employer and employees may find the information useful to assist in protecting themselves from the pesticide's toxic effects.

In addition it should be noted OSHA is applicable only to employment relationships. If the farmer is a sole proprietor the farmer and generally the farmer's immediate family are not covered.

OSHA has concluded that updating the Air Contaminant levels for construction, maritime and agriculture workers to reflect recent information is among the highest priorities for the Agency. This will reduce exposure limits for approximately 212 substances currently regulated and add exposure limits for approximately 164 substances which are currently unregulated for the construction and maritime sectors. These new limits and 220 others which currently protect other employees will protect agriculture employees. The health literature indicates this must be accomplished to improve worker health; it is one of Congress's current goals and will greatly increase occupational health protection for a very large number of workers.

In order to accomplish this high priority task in a reasonable time in the light of limited administrative resources, it is necessary to narrow somewhat the issues to be faced by the Agency in this proceeding and to build on previous efforts of the agency. Consequently, it is necessary to delay other worthwhile goals and concurrent Congressional purposes.

This approach is consistent with the general principles of administrative law. An Agency may set priorities within the framework of its statutory authority. Secondly, an Agency may take substantial steps towards its statutory goals, without having to achieve them completely, when Agency resources are not sufficient to complete all aspects initially.

Congress recognized that the Secretary could not address all occupational safety and health problems simultaneously. It therefore gave the Secretary discretion to set priorities in exercising the Secretary's rulemaking authority. As section 6(g) of the Act, 29 U.S.C. 655(g), states:

> In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

In proposing this addition to the Act, Senator Javits explained that its purpose was "to relieve the Secretary of the necessity for waiting to promulgate whatever standards he wishes to promulgate across the board but rather, allowing him to yield to more urgent demands before he tries to meet others." Leg. Hist 505. Thus, the Act has "built in flexibilities" that the Secretary may use, such as establishing "the priorities between the various occupations that may require standards." *Rational Congress of Hispanic American Citizens* v. *Usery*, 554 F. 2d 1196, 1199 (D.C. Cir. 1977); see also National Congress v. Marshall, 656 F. 2d 882 (D.C. Cir. 1979). The flexibility expressed in the statute and legislative history is consistent with the well-established principle that an administrator may adopt a "rational, 'one step at a time' approach to rulemaking." *National Roofing Contractors Ass'n* v. *Brennan*, 495 F. 2d 1294, 1299 (7th Cir.), cert denied, 419 U.S. 1105 (1974) (OSHA roofing standard); cf., *Industrial Union Dept.* v. *American Petroleum Institute*, 488 U.S. 607, 663, (1980) (Burger, concurring) (OSHA can act in its legislative capacity "to focus on only one aspect of a larger problem"); *United Steelworkers* v. *Auchter*, 763 F. 2d 728, 738 (3rd Cir. 1985) (Although OSHA's decision to exclude workers in some industries from a standard requires explanation, "[s]ection 6(g) clearly permits the Secretary set priorities for the use of the agency's resources and to promulgate standards sequentially."); *IUD* v. *Hodgson*, 499 F. 2d 467, 480 n. 31 (D.C. Cir 1974) ("The [OSHA] statutory scheme is generally calculated to give the Secretary broad responsibility for determining when standards are required and what those standards should be.").

OSHA has concluded that setting exposure limits for the large number of substances involved in this rulemaking for construction, maritime and agriculture employees has priority over exploring the need for accompanying medical surveillance, exposure monitoring and industrial hygiene provisions for a much smaller number of substances at this stage. Section 6(b)(7) of the Act, of course, indicates that "where appropriate" such provisions are to be included. Although regulating these provisions is a concurrent goal of Congress, so was lowering exposure for the many unregulated or inadequately regulated substances where scientific data indicate lower exposures are needed. However, OSHA has inadequate resources to accomplish both goals at this time. Lowering exposures is a higher priority because it is more effective in reducing diseases and material impairments of health.

OSHA has already addressed some of section 6(b)(7)'s goals, as they relate to labels and warnings, in the generic Hazard Communication Standard, 29 CFR 1910.1200. It is working on a standard to improve respirator use for all chemicals (47 FR 20803). It is considering generic regulation for exposure monitoring (53 FR 32591–32595) and medical surveillance (53 FR 32595–32598). OSHA does not have the resources to conclude this rulemaking in any reasonable time, and also consider these issues.

OSHA does have legal authority not to address ancillary provisions in this rulemaking and determinations about the appropriateness of ancillary provisions have not been made. That is a rational use of its priority setting authority in the light of OSHA's limited resources. The language of section 6(b)(7) is not an absolute requirement to include such provisions and this is an "appropriate" circumstance not to include them. The actions already initiated by OSHA indicate it is facing the issue of ancillary provisions in a responsible and reasonable manner.

OSHA, in the air contaminants rulemaking process, has rationally and efficiently used the priority process to maximize employee protection while meeting all legal requirements. OSHA proceeded first with general industry so as not to hold up the general industry rulemaking while it was consulting with the construction, maritime and agriculture sectors and so it would have the resources to carefully study feasibility in the construction, maritime and agriculture sectors.

In the general industry rulemaking OSHA carefully considered what would be the appropriate universe of substances to consider for change. (See 53 FR 20966–87, 20977–79). Then OSHA proposed changing or requested comments on the appropriateness of changing the exposure limits for 428 substances. After reviewing comments and analysis of the studies, OSHA concluded that changes were appropriate for 376 substances.

OSHA believes that reconsidering the universe of substances to be considered

in this rulemaking would substantially delay issuing more protective limits for many substances for maritime, agriculture and construction workers. Similarly, proposing new limits for substances for which OSHA concluded new limits were not necessary or would involve excessively lengthy analysis in the general industry rulemaking, would also result in substantial delay in issuing more protective limits for many substances in construction, maritime and agriculture. In addition it would be a waste of OSHA's resources to reconsider decisions it just recently made based on substantial evidence and public comment on these matters. Resources used for such reconsideration could not be utilized on other necessary improvements in worker health and safety.

Accordingly, based on its priority setting authority, OSHA is proposing to change in this rulemaking only the 376 substances for which it determined change was appropriate for general industry and is opening the record for maritime and construction only for those 376 substances. In addition to proposing these 376 substances for agriculture, OSHA is proposing to adopt for agriculture the PEL's for the approximately 220 substances which currently cover construction and maritime and which OSHA is not reopening for consideration in construction and maritime. These include the approximately 160 Z-table substances OSHA did not consider in the general industry rulemaking, approximately 10 single standard substances and the approximately 50 substances, OSHA considered, but decided not to change for general industry.

Lead is being covered in this rulemaking. The general industry lead standard of 50 ug/m³ plus ancillary provisions in 29 CFR 1910.1029 is applicable to the maritime industry but does not apply to construction. Currently all that is applicable is a 200 ug/m³ exposure limit. Several recent studies have indicated that cases of lead poisoning are occurring in construction workers. The Construction Advisory Committee recommended that OSHA lower the exposure limit for construction workers as soon as possible. OSHA agrees with the recommendation and is accordingly proposing the 50 ug/m³ limit for construction (and agriculture) through the PEL's rulemaking as the most efficient way of setting a more protective exposure limit for lead in these sectors.

OSHA has also commenced consideration of ancillary provisions for lead exposure in construction. However, this process will take longer because of issues like medical removal protection, which require extensive consideration because of the different characteristics of the construction industry.

In the general industry rulemaking for air contaminants OSHA extensively considered the health effects of the substances regulated. The initial analysis was published in the proposal, extensive public comments were received, and OSHA analyzed more than 2000 studies and 1500 comments in reaching its final decisions as discussed in the final preamble. Those final conclusions are based on the science current through 1987. In consequence OSHA has a high degree of confidence in the underlying scientific merit of its final exposure limits. (In a very few cases OSHA did indicate that more extensive analysis would be appropriate.)

The proposed exposure limits for agriculture, construction and maritime are based on the final levels and analysis for general industry. That information is both current and has been based on a recent notice and comment rulemaking. OSHA has incorporated into the analysis the "latest available scientific data in the field" (section 6(b)(5)). OSHA has made an extensive search of the 1987 and later scientific literature which may not have been available in the general industry rulemaking and has incorporated the most recent studies into the health analyses for each substance.

OSHA will issue final standards meeting legal requirements and good science. If the new studies or new comments demonstrate that the proposed limits are not legally or scientifically supportable OSHA will make appropriate changes.

However OSHA's intent is not to make adjustments in the proposed level in this rulemaking because on balance the new studies or comments may suggest but do not compel some minor adjustment in the limit. OSHA's belief is that employees in all of the sectors it regulates should be equally well protected based on the health science information. (There may be some differences based on feasibility). Obviously people are biologically the same no matter what industry they may be employed. In addition a certain unfairness is created if employees in one sector are better protected than employees in another sector (absent compelling feasibility reasons).

If OSHA made minor changes in the proposed exposure limit based on a slight tilting of the weight of the evidence, the result would be that workers in general industry would be covered by a different level than workers in construction, agriculture and maritime. Consequently consistency in approach and protection would be lost. In addition it would seriously waste OSHA's scientific resources to fine tune levels for construction, agriculture and maritime in this rulemaking, and then have to reconsider that same fine tuning for general industry in a subsequent rulemaking.

OSHA believes that adjustments to the new air contaminants levels are best done in the first PEL update, rather than in this rulemaking. OSHA intends to regularly update the Z Table levels based on new scientific data and to add new substances to the Z–Tables. In each such update OSHA intends that the additions and changes will apply to all sectors; general industry, construction, maritime and agriculture. OSHA has publicly announced its intention to carry out these periodic updates. See the Regulatory Agenda at 56 FR 17566 (April 22, 1991). This approach is biologically sound, fairer to workers and is a more efficient use of OSHA's scientific resources. Consequently OSHA believes that this two prong approach, using this rulemaking to expand the new PEL's to construction, maritime and agriculture, and the first update to be the principle rulemaking to change any of the new PEL's across the board, is a sensible and permissible use of OSHA priority setting authority.

OSHA wishes to make it absolutely clear, that it is not reopening exposure limits for general industry in this rulemaking. It will not consider, and will not consider as a part of the rulemaking record, comments or information intended to change the exposure limits for general industry. Any such comments will be considered requests under section 6(b)(1), that OSHA consider such substance for review in the first PEL update rulemaking. That rulemaking is likely to commence in 1993.

There are 3 substances only, which OSHA will be considering for general industry, as well as construction, maritime and agriculture. These are asphalt fumes, mineral wool and fiberglass (which includes refractory ceramic fibers or RCF's). OSHA stated in the general industry final rule that it needed to further study these substances before reaching final conditions. (See 54 FR 2510, 2515, 2679). In this rulemaking, OSHA is reopening the rulemaking record for comment on all issues (health and feasibility) relating to these substances for general industry

and construction, maritime and agriculture.

OSHA through this rulemaking is proposing that the exposure limits for all substances it regulates (basically) will apply to all workers in all sector within OSHA jurisdiction. Consequently exposure limits for some substances will apply to sectors where OSHA is not aware of exposure. OSHA is following this approach because it believes that it represents sound policy and meets OSHA legal requirements.

OSHA has at various times carved out exemptions from its standards based on the belief that there were no exposures or only very low exposures. However in OSHA's experience it often turns out that there are indeed exposures which OSHA is not aware of at the time, or indeed the exemption becomes a loophole where an employer attempts to organize its business operations so as to come within the exempt sector though there are significant exposures.

For example the coke oven standard did not apply to the construction sector. So some employer's designated work on coke ovens, construction work, and hired construction contractors to perform it. It was then argued that though these workers had significant exposures, they were not covered because it was "construction work" they were doing. OSHA also exempted gas station attendants from the benzene standard because studies showed exposures were very low in relation to the PEL because of the low levels of benzene in gasoline. Subsequently oil companies greatly increased the level of benzene in gasoline and employee exposures are now much closer to the PEL. It also was argued that the wording of the exemption covered mechanics, though the exposure patterns are different and could be higher. A wood preserver argued to EPA that since it made the arsenical preservative it used, it was not covered by EPA labeling requirements, and to OSHA that since the chemical it used was an EPA regulated preservative, it was not covered by OSHA regulations. (As stated above, OSHA believes this argument without merit).

OSHA believes that making it easier to create loopholes will tend to reduce worker protection. Secondly the few workers who might be exposed in sectors where OSHA is not aware of exposure are entitled to protection. They are at just as much health risk per unit of exposure as are workers in other sectors.

In addition this policy does not create any unnecessary economic burdens. If there are no workers exposed, there will be no costs. If there are few workers exposed the costs will be low.

In addition the time taken to analyze in depth whether or not there are exposures in a sector where there may be just a few, are a waste of regulatory resources. That information adds nothing to worker protection or for that matter to economic efficiency.

This approach meets OSHA legal requirements. A worker in a sector where there are few workers exposed (some of which OSHA may not know about) is at significant risk of material impairment of health, if over the exposure limit to the same degree as the worker in a sector where many workers are exposed. The cost is going to be insignificant in relation to industry resources and none, if indeed there is no exposure.

As previously noted OSHA is required under its statutory authority to "set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life" under the provisions of section 6(b)(5) of the OSH Act. "Material impairment" is therefore a term which needs to be considered when issuing standards.

In this rulemaking, OSHA is considering establishing new or revised PELs for approximately 370 separate substances for construction and maritime and 600 for agriculture. The health effects for these substances cover a wide spectrum of severity including: life threatening effects; disabling effects; various diseases; irritation to different organs or tissues; and changes in organ functions indicative of future health decrements.

The statutory requirements in sections 3(8) and 6(b)(5) are quoted above. Other statutory criteria are set forth in section (2)(b) which states:

> The Congress declares it to be its purposes and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.

One of the earlier Senate drafts of the OSHA bill did not include the word "material" before the word "impairment." That word was added by an amendment of Senator Dominick. The Senator stated with respect to that amendment:

> What we were trying to do in the bill—unfortunately, we did not have the proper wording or the proper drafting—was to say that when we are dealing with toxic agents or physical agents, we ought to take such steps as are feasible and practical to provide an atmosphere within which a person's health or safety would not be affected. Unfortunately, we had language providing that anyone would be assured that no one would have a hazard, or at least, we would require the Secretary to set standards so stating, and that in the HEW standard there would be a requirement to proceed on that basis so that no one would have any problem for the rest of his working life. It was an unrealistic standard. As modified, we would be approaching the problem by looking at the problem and setting a standard or criterion which would not result in harm (Legislative History p. 502).

The D.C. Circuit Court considered the concept of material impairment and reviewed the Legislative History in the Lead Case.

It stated:

> The essential question under section 6(b)(5) for this case is whether OSHA acted within the limits of this mandate to establish "material" impairment of health when it set a standard designed to protect workers from the subclinical effects of lead. As a statutory matter, after examining precedent and legislative history, we hold that section 6(b)(5) empowers OSHA to set a PEL that prevents the subclinical effects of lead that lie on a continuum shared with covert lead disease. (*United Steelworkers* v. *Marshall*, 647 F. 2d at 1248–49. See also the more extended discussion there).

The legislative history and judicial analysis indicate that OSHA is to take a balanced but protective approach. Some impairments are so slight a discomfort that they are not material and do not provide a basis for regulation. A complaint of minor discomfort, in and of itself, is not material impairment. However, the OSH Act is designed to be protective of workers and is to protect against impairment with less impact than severe impairment.

These health effects are related to two different types of exposure: acute and chronic. Because of the difference between the health effects associated with these two types of exposure, OSHA must consider different types of PELs (TWA, STEL, or ceiling) to protect against material impairment.

OSHA asked for comment on the subject of "material impairment" in the general industry rulemaking, especially with regard to whether sensory irritation should be considered to be material impairment. There was a relatively limited amount of comment. The most complete response was provided by NIOSH (Ex. 8–47) which stated:

The recognition of sensory irritation as potentially being "material impairment of health" is consistent with the current scientific consensus related to health effects of environmental agents.

Mucous membrane irritants can cause increased blink frequency and tearing; nasal discharge, congestion, and discomfort, wheezing, chest tightness, and dyspnea. Work environments often require levels of physical and mental performance considerably greater than encountered in daily living. Even in the absence of any permanent impairment, the symptoms listed can interfere with job performance and safety.

Mucous membrane irritation can result in inflammation, which may lead to increase susceptibility to nonspecific irritants and infectious agents. For example, experimental ozone exposure in humans results in increased airway reactivity. Also, studies of exposure to environmental tobacco smoke have shown irritative symptoms and evidence of increased frequency of respiratory tract illnesses in young children and decreased pulmonary function in adults

* * *

Mucous membrane irritation is associated with respiratory illnesses, depending on the composition of specific exposure and on the dose, duration, and frequency of exposure. No universally applicable conclusion can be drawn at this time regarding the association between irritative symptoms and permanent injury or dysfunction. Where certain individuals show no measurable impairment after an exposure, even when experiencing irritative symptoms, others may develop identifiable dysfunction.

Aside from the effects of irritations, mucous membrane exposure may result in absorption of a substance, with resultant systemic toxicity. An inflamed mucous membrane may be an even more effective route of absorption, either for the irritant or for other substances. Furthermore, injury to bronchopulmonary membranes can impair removal of particulates from the respiratory system.

Thus, according to NIOSH, sensory irritants interfere with job performance and safety, cause inflammation, may increase the victim's susceptibility to other irritants and infectious agents, lead to permanent injury or dysfunction, or permit greater absorption of hazardous substances. In sum, NIOSH and most other respondents, in the general industry rulemaking agreed that sensory irritation caused by occupational exposure to the irritant substances included in this proposal constitutes a material impairment of health.

Of course, irritation also covers a spectrum of effects, some serious and some trivial. Hence, a complaint of minor irritation would not in and of itself constitute material impairment. In addition, OSHA would weight irritation with physical manifestations more heavily than irritation with purely subjective responses. This does not mean that purely subjective responses would not constitute material impairment. That judgment would depend on the magnitude of the irritation.

OSHA also believes that clinical, tissue or organ changes, or properly documented pain, chest tightness, migraine headache or similar reactions reflected in responses by persons, may also represent material impairment of health. Each of these are considered on a case-by-case basis in this Rulemaking. OSHA believes that its approach is consistent with the Act and Congressional intent regarding material impairment of health.

All of the revised or new PELs in this proposal represent in OSHA's views situations involving material impairment of health.

OSHA's analyses regarding material impairment of health, as applied in this proposal, are provided in three separate ways. First, they are included in the introductory discussion for health effects. Second, the discussion of each of the substances contains health effect information for all new or revised PELs. Third, this discussion provides examples, and general guidance regarding the OSHA decision process, and accounts for the severity spectrum of health effects, and the separate cases involving chronic and acute exposures.

As previously indicated, health effects cover a wide range of severity levels. A precise delineation between material impairment and non-material impairment is not possible since a variety of factors must be considered, such as the composite health effect and frequency and duration of the effect, to determine if a substance represents, a material impairment of health. However, a small reduction in nerve conductivity may not constitute material impairment. Moreover, an occupational, transitory, non-progressive and/or non-intensive coughing reaction may represent non-material impairment. Major intensification of some of these factors could result in a health effect which represents material impairment of health. Consequently, general considerations can be stated but they must be applied on a case-by-case basis taking into account the scientific evidence, public comments and agency expertise.

For the substances OSHA is regulating as carcinogens, it has met all requirements of *IUD* v. *API* and has acted consistently with 29 CFR 1990. Specifically, OSHA reviewed all data to determine whether there were studies of sufficient merit to determine that the substance was qualitatively a carcinogen.

Secondly, appropriate risk assessments were performed where the scientific data permitted. For most of the carcinogens, OSHA contracted with Dr. Nathan J. Karch, President of Karch & Associates, Inc., consultant experts in risk assessment, to analyze the available studies for two purposes; first to determine whether there was sufficient evidence to perform a quantitative risk assessment or to state the reasons why there was not; second, to perform a quantitative risk assessment where the studies permitted, using techniques generally accepted by the scientific community. The risk assessments are presented in this preamble.

The risk assessment for asphalt fumes was performed by OSHA scientists. The risk assessment for perchloroethylene was performed by Dr. Dale Hattis. All these assessments are discussed in this preamble.

For other substances, significant risk determinations were made directly from the studies themselves. They indicate the levels where significant risk exists and where it is eliminated. Appropriate safety factors are incorporated.

Accordingly OSHA believes that the type of significant risk analysis undertaken in this rulemaking both for carcinogens and non carcinogens is most consistent with the studies generally available and is a valid scientific approach. OSHA concludes it is fully consistent with the requirements of the Supreme Court in *IUD* v. *API*.

OSHA is utilizing its priority setting authority in another respect. There are a few substances (both carcinogens and non carcinogens) where more detailed analysis of the evidence might in the future lead to the conclusion that there is remaining significant risk. If that were the case in a single substance rulemaking, OSHA would explore that issue in great depth and do much more extended economic analysis of several different exposure levels to determine what the lowest feasible level might be.

Past experience has shown this to be a major undertaking both from a health and economic point of view. OSHA, for example, spends an average of $500,000 and takes one year of study to determine the lowest feasible level for a single substance. OSHA does not have the resources to engage in that kind of analysis for more than a few substances. The attempt to do so in this rulemaking would significantly reduce the chances of it ever being completed and would result in far more workers being exposed to significant risk in exchange

for the incremental risk reduction attained by further lowering the PEL for a small group of substances in this Rulemaking.

In this rulemaking OSHA's priority is to extend coverage of more protective PEL's for hundreds of substances to all workers in construction, maritime and agriculture. That will achieve far greater overall health benefits for workers than fine tuning exposure limits for a few substances. OSHA, where appropriate, will consider such adjustments in the light of legal requirements in the first update of the PEL's as discussed above.

OSHA concludes this is both rational priority setting and a reasonable integration of its priority setting authority and relevant case law. Clearly multi-issue and multi-substances rulemaking require a different balancing than single substance or single issue rulemaking.

OSHA feasibility determinations are based on both the statute and on a consistent and extensive body of case law extending over its entire history. In addition to *ATMI* (supra) see for example: *AFL–CIO* v. *Hodgson*, 499 F. 2d 467 (D.C. Cir., 1974); *Society of Plastics Industries* v. *OSHA* (SOCMA), 509 F. 2d 1301 (2d Cir., 1975); *American Iron and Steel Inst.* v. *OSHA* (AISI), 577 F. 2d 825 (3rd. Cir., 1977); *United Steelworkers* v. *Marshall*, 647 F. 2d 1189 (D.C. Cir., 1980); *ASARCO* v. *OSHA*, 746 F. 2d 483 (9th Cir., 1984) and others.

Standards may be expensive and still be feasible if necessary to protect occupational health.

> Standards may be economically feasible, though from the standpoint of employers, they are financially burdensome and affect profit margins adversely. Nor does the concept of economic feasibility necessarily guarantee the continued existence of individual employers. It would appear to be consistent with the purpose of the Act to envision the economic demise of an employer who has lagged behind the rest of industry in protecting the health and safety of employees * * * (*Hodgson*; 499 F. 2d at p. 478)

An OSHA standard may be technology forcing. OSHA may demonstrate feasibility by showing that only a few plants are now in compliance. Moreover, a standard is still feasible even though some respirator use is needed to achieve compliance.

> [T]he Secretary is not restricted by the status quo. He may set standards which require improvements in existing technologies or the development of new technology * * * (SOCMA, 509 F. 2d at p. 1309).
>
> The experience at (2) batteries provides a sufficient basis for the Secretary's reasoned belief that the 0.15 mg/m³ limit could be met (for the entire industry) (AISI, 577 F. 2d at p. 834; See also SOCMA, p. 1309).
>
> The limited respirator use that the standard requires does not in any way render the standard infeasible * * * (ASARCO, 746 F. 2d at p. 483. See also ATMI generally and SOCMA 509 F. 2d at p. 1310, etc.)

OSHA must show a general presumption of feasibility in most operations in an industry with engineering controls to place the burden of proof in enforcement action on the industry to show that compliance with engineering controls cannot be attained in a particular circumstance. But a showing by a particular industry that compliance requires respirators in certain operations or an admission by OSHA that is the case does not make a standard infeasible. Rather it "will reduce the strength of the presumption a firm will have to overcome on justifying its use of respirators" in an enforcement or variance action. *United Steelworkers*, pp. 1272–73. See also *Building and Construction Trades* (Supra). OSHA has indicated in the feasibility analysis various operations where respirator protection may be the appropriate method of protection in some circumstances. When OSHA has stated that, OSHA would not site for failure to use engineering controls unless in the specific circumstances there was a simple engineering control available which was widely known in the industry.

Finally the standards themselves require the use of engineering controls when feasible. If they are not feasible, the employer may use respirators. Consequently, this standard does not become infeasible simply because engineering controls may not achieve the PEL in a specific operation.

In this rulemaking, OSHA concludes that it has demonstrated feasibility without taking that concept to the full limits of its legal authority. Many of the substances regulated constitute acute hazards with apparent thresholds; the limit set to protect health does not approach the limits that could feasibly be achieved. Since OSHA's feasibility analyses are based on what industry is already achieving or what could be achieved with standard "off-the-shelf" technology, there are few if any cases where OSHA is attempting to force technology.

As discussed in the economic feasibility section below, the cost of this standard is low in relation to the sales and profits of each subsector. Consequently OSHA believes that this standard meets the test for economic feasibility as discussed in much greater length below.

To clarify, OSHA is opening the record for general industry only for asphalt fumes, mineral wool and fiberglass (including RCF's). For construction and maritime OSHA is only opening the record for those substances which it is proposing to change the PEL or add a new PEL for the first time. This is approximately 380 substances. The number varies slightly among the sectors depending upon whether the prior standards were the 1970 TLV's or the 1971 PEL's. It includes those substances for which OSHA changed PEL's in the 1989 final standard for general industry and those single substance standards in §§ 1910.1001–1048 which had not been made applicable to construction or maritime but had PEL's. (The 13 carcinogens (§ 1910.1002–1016) are not included because they do not have exposure limits). For those single substance standards which do not already apply to construction or maritime, only the exposure limit is being made applicable—not ancillary provisions. This rulemaking for reasons stated above, only covers exposure limits—not ancillary provisions. OSHA is not opening the record for the appropriate 200 substance already applicable to construction and maritime where OSHA is not proposing to change limits. This includes not opening the record for substances which OSHA proposed changing for general industry but determined that change was inappropriate during the air contaminants rulemaking.

For agriculture, OSHA is opening the record on every substance since no limits are now applicable. There accordingly are health write-ups for 160 substances which will be made applicable to agriculture for which OSHA did not reopen the record for general industry, and for which OSHA is not opening the record for construction and maritime. There are also write-ups for the substances which were considered and not changed for general industry, and which have not been opened for maritime or construction but which OSHA is proposing to cover for agriculture. Finally there are brief health write-ups for the substances listed in 1910.1001–1048 which are not applicable to agriculture, but for which OSHA is proposing that the PEL's cover agriculture. For each of these, OSHA is putting in the docket the final preamble for those substances which OSHA incorporates by reference as part of its health analysis.

OSHA is proposing in this standard to make the Z table cotton dust limit of 500 $\mu g/m^3$ vertical elutriator or 1 mg/m^3 personal sampler applicable to agriculture and to cotton gins. OSHA's 1978 cotton dust standard for cotton gins

(29 CFR 1910.1046 (1974)) was vacated by the Fifth Circuit in *Texas Ind. Ginners Assoc.* v. *Marshall*, 630 F. 2d 398 (1980). That standard specified work practices and medical surveillance, but did not specify an exposure limit. OSHA never appealed.

The Fifth Circuit's decision was prior to the Supreme Court's decision upholding the cotton dust standard for the textile industry in *ATMI* v. *Donovan* (supra). The *Tex. Ind. Ginners* decision was based in principle part on OSHA's failure to perform a cost benefit analysis and on a finding that acute reductions in lung function were not material impairments of health. The Supreme Court in *ATMI* held that OSHA was not to use cost benefit analysis to determine whether to issue health standards and that the acute effects of cotton dust were material impairments of health. Accordingly OSHA concludes it has authority to propose this cotton dust standard covering agriculture and gins.

The OSHA Air Contaminants standard for general industry is being challenged in the case of *AFL–CIO* v. *OSHA*, Nos. 89–7185 et al, before the Eleventh Circuit Court of Appeals. Currently pending are nine suits by industry challenging as too low the exposure limits for seven chemicals (perchlorothylene, nickel carbonyl, carbon monoxide, sulfur dioxide, welding fumes and nitrogen dioxide). The AFL–CIO in the tenth suit is challenging as too high exposure limits for fifteen chemicals (methyl bromide, methyl chloride, TDI, crystalline silica, mineral oil, chloroform, wood dust, m-butyl glycidal ether, m-hexanone, perchoroethylene, sulfur dioxide, carbon tetrachloride, vinyl bromide, trichloroethylene and gasoline). The petitioners also challenge the standard on several more general aspects. Eighteen other law suits were filed. Fifteen were settled and withdrawn, three were voluntarily withdrawn.

OSHA believes its decisions and approach are correct and has so argued to the Eleventh Circuit. If during the course of this rulemaking, the Eleventh Circuit remands any of the challenged substances to OSHA for further consideration on health issues, OSHA will probably withdraw those substances from this rulemaking and combine their consideration with the remand consideration for general industry. OSHA, if the Eleventh Circuit permits, would prefer that consideration to take place in the first update proceeding discussed above.

OSHA has committed to reconsider the carbon tetrachloride, vinyl bromide, trichloroethylene and gasoline PEL's for general industry in the first update. It will at that time, reconsider them for construction, maritime and agriculture as well. OSHA believes in this rulemaking, its priority is to concentrate on issuing more protective limits for these sectors, and refinements should await the first update. OSHA believes that the AFL–CIO challenges to OSHA's failure to issue final asphalt, fiberglass and mineral wool standards in the general industry rulemaking have been made moot by OSHA's proposing levels for those substances for all sectors in this rulemaking.

III. Glossary

The following terms and acronyms appear in the standard and the preamble supporting it. This glossary is provided as a convenience to the reader.

ACGIH—The American Conference of Governmental Industrial Hygienists is a professional society devoted to the development of administrative and technical aspects of worker health protection. Membership is limited to professional personnel in governmental agencies or educational institutions engaged in occupational safety and health programs. The ACGIH issues guidelines and recommendations in the form of Threshold Limit Values (TLV^{R}s) which are published annually.

CAS—The Chemical Abstracts Service (CAS) Registry Number is a numeric designation assigned by the American Chemical Society's Chemical Abstracts Service which uniquely identifies a specific chemical compound. This entry allows one to conclusively identify a substance regardless of the name or naming system used.

CHRIS—The Chemical Hazards Response Information System was developed by the U.S. Coast Guard in cooperation with the National Academy of Sciences to provide information on the handling and disposal of toxic substances. CHRIS consists primarily of the Hazardous Chemical Data Manual which contains chemical, physical and health hazard data on approximately 600 hazardous chemicals and substances; and a Hazard Assessment Computer System in an extensive data base of the information contained in the Hazardous Chemical Data Manual.

HSDB—The Hazardous Substances Data Bank, a part of the National Library of Medicine System, will soon be available on OSHA's Computerized Information System (OCIS). This data bank, currently available through TOXNET, contains health and safety profiles for over 4100 chemicals. It includes 144 data elements in 10 categories including use information, substance identification, animal and human toxicity, environmental fate, standards, personal protective equipment, fire, physical and chemical properties.

IARC—The International Agency for Research on Cancer (IARC) is a research organization authorized by the World Health Organization in 1965. IARC's mission is to study the causes of cancer in the human environment. IARC has published (and continues to update) a series of monographs on a substantial number of toxic chemicals and substances in which the carcinogenic risk of these chemicals is evaluated.

ILO—The International Labour Organization (ILO) is a specialized agency associated with the United Nations. Established in 1919 as part of the Versailles Peace Treaty, the ILO serves to band together governments, employers, and workers of 145 nations in an international effort to improve overall working conditions and to protect the life and health of workers.

IMIS—The Integrated Management Information System (IMIS) is a data base developed by OSHA in 1979 with sampling information on more than 100,000 individual measurements. The IMIS contains exposure measurements obtained by OSHA compliance officers during thousands of health inspections; it is the most extensive data base of its kind.

Material—The term "material" is used in the original standard whereas "substance" is used in the revision. The meaning is the same.

MSDS—The Material Safety Data Sheet (MSDS) is a compilation of data and information on individual hazardous chemicals produced by the manufacturers and importers of that chemical, as required by OSHA's Hazard Communication Standard, 29 CFR 1910.1200. An MSDS contains data on chemical identification, current exposure limits, chemical reactivity, fire and explosion limits, and information on health hazards and emergency procedures, spill, leak, and disposal procedures, and any needed special protection or precautions.

NIOSH—The National Institute for Occupational Safety and Health (NIOSH) was created by the Occupational Safety and Health Act of 1970. NIOSH is part of the Centers for Disease Control under the Department of Health and Human Services. Its mandate includes conducting research in developing criteria and/or recommendations to be used in setting occupational exposure standards, identifying and evaluating workplace hazards, measurement techniques, and control technologies, and providing

professional education as well as health and safety information.

NOES—The National Occupational Exposure Survey (NOES) is a data base completed in 1982 by NIOSH. NOES is the successor to the first such data base, completed by NIOSH in 1974, and known as the National Occupational Hazard Survey (NOHS). The NOES data base contains a sample of the number of persons exposed by substance and industry from approximately 4500 businesses in 98 geographic areas in the U.S. These surveys provide national estimates of potential exposure to workplace hazards, by industry and occupational group.

OCIS—The OSHA Computerized Information System is a comprehensive data base that contains information and data on standards interpretation, chemical information, hazardous waste activity, 5(a)(1) citations, a health hazard evaluation index, training materials, and other information compiled by OSHA on subjects related to occupational safety and health.

OSHA HS Number—A Health Standard (HS) number is a 4-digit code assigned, for ease in reference, to each of the hazardous substances or chemicals considered for change of PEL in this rulemaking.

PEL—Permissible Exposure Limits (PELs) are limits developed by OSHA to indicate the maximum airborne concentration of a contaminant to which an employee may be exposed over the duration specified by the type of PEL assigned to that contaminant.

REL—Recommended Exposure Limits (RELs) are issued by NIOSH to aid in controlling hazards in the workplace. These limits are generally expressed as 8- or 10-hour TWAs for a 40-hour workweek and/or ceiling levels with time limits ranging from instantaneous to 120 minutes. RELs are published in a variety of NIOSH documents.

RTECS—The Registry of Toxic Effects of Chemical Substances (RTECS) is a data base that lists an identification number, synonyms, Department of Transportation (DOT) hazard label information, EPA Toxic Substances Control Act (TSCA) information, OSHA and Mine Safety and Health Administration (MSHA) air exposure limits, and animal and human toxicologic data.

Substance—The term "substance" is used in the revised standard whereas "material" is used in the original. The meaning is the same.

TLV—The Threshold Limit Value (TLV) is a registered trademark for an exposure limit developed by the American Conference of Governmental Industrial Hygienists (ACGIH). A listing of TLVs may be found in the ACGIH's "Documentation of the Threshold Limit Values and Biological Exposure Indices for 1988–1989." TLVs may be stated as a time-weighted average (TLV^R–TWA), a Short-Term Exposure Limit (TLV^R–STEL), or a Threshold Limit Value Ceiling (TLV^R–C). OSHA utilized the 1987–88 TLVs as a starting point for this rulemaking.

TSCA—The Toxic Substances Control Act (TSCA), administered by the Environmental Protection Agency (EPA), was passed by Congress to protect human health and the environment by requiring testing and necessary use restrictions to regulate the commerce of certain chemical substances.

WHO—The World Health Organization (WHO) is part of the United Nations. WHO's programs in occupational health include development of an occupational health information system, criteria for early detection of health impairment, and the development of internationally recommended health-based permissible exposure limits for occupational exposure to toxic substances.

IV. Health Effects Discussion and Determination of Proposed PELs

A. General Principles of Toxicology and Dose Response Introduction

As long ago as the 16th century, people recognized that there is no such thing as an absolutely safe chemical. The Swiss physician Paracelsus, who lived from 1493 to 1541, said:

> All substances are poisons; there is none which is not a poison. The right dose differentiates a poison and a remedy.

On the other hand, methods have been devised to permit any chemical, no matter how poisonous, to be handled safely; this is done either by limiting the dose or controlling the exposure. However, before the necessary degree of control can be determined for a particular exposure or situation, the toxicity of the substance in question must be known. The paragraphs that follow describe the methods used by scientists to measure the relative toxicity of substances and to select exposure limits that will prevent exposed individuals from suffering adverse effects from such exposures. As this discussion demonstrates, methods of choosing exposure limits must, because of the lack or inadequacy of dose-response information for many chemicals, rely on experience in the use of these substances and on scientific and professional judgment.*

Chemicals range in inherent toxicity from those that are relatively harmless even after large doses have been administered to others that cause death if encountered even in small quantities. Toxicologists rank chemicals by categories that range from practically nontoxic (an adult human would have to consume a quart) to supertoxic (fewer than 7 drops would be lethal for most people).

In the occupational setting, it is the risk associated with a particular use of a chemical rather than its inherent toxicity that is important. Risk can be defined as the probability that a substance will produce harm under certain conditions of use. The converse of risk is safety, which is the probability that no harm will occur under specific circumstances.

The degree of hazard associated with exposure to a specific substance depends on the manner in which it is handled in a particular situation: a supertoxic chemical that is processed in a closed, isolated system may be less hazardous in actual use than a low-toxicity compound handled in an open batch process. Another factor affecting the ability of a chemical to elicit a toxic response is the susceptibility of the biological system or individual. To identify the relative degree of hazard in a particular instance requires knowledge about the chemical agent, the exposure situation, and the exposed subject. In addition, the route of administration and the duration and frequency of exposure must be known.

Route of Exposure

There are four principal routes of exposure by which toxic substances can invade humans or animals. These are inhalation, ingestion, dermal absorption, and parenteral administration (i.e., administration through routes other than the intestinal canal, e.g., by subcutaneous, intramuscular, intravenous, or intratesticular injection). The route of administration of a toxin also affects the relative toxicity of the agent. For example, a chemical that can be detoxified in the liver will be less toxic if it is administered orally than if it is given systemically (i.e., inhaled). Studies that provide information about the relative toxicity of an agent via different routes of exposure can provide a considerable amount of information about the absorbability of the agent. For example, if exposure to a certain dose of a chemical via all routes of administration causes death within the same time period, it can be assumed

*The material in this section derives principally from the following sources: Klaassen, Amdur, and Doull 1986; National Research Council 1986; Cohen 1986a,b; and Tardiff and Rodricks 1987.

that the substance in question is easily and rapidly absorbed. On the other hand, if the dermal dose of a chemical that is required to kill a subject is much higher than the dose required to produce the same effect when the chemical is ingested, one can deduce that the skin provides, to some degree, a barrier against that agent's toxicity. Other, less important, elements affecting the response to a toxic substance include the relative concentration of the substance, the volume of the vehicle used to administer the chemical, the chemical and physical properties of the vehicle, and the dose rate (i.e., the period of time over which the dose is administered).

Duration and Frequency of Exposure

Scientists conduct animal experiments that involve four different types of exposure: acute, subacute, subchronic, and chronic. Acute exposures are limited to periods of less than 24 hours and can involve either single or repeated exposures within that period. Subacute exposures are repeated exposures that last for one month or less, while subchronic exposures have a duration of one to three months. When a research project having a chronic regimen is conducted, the test animals are dosed repeatedly for a period lasting more than three months. Animals exposed acutely can have both immediate and delayed-onset responses. Similarly, chronic exposures can cause immediate reactions as well as long-term effects.

The frequency of dosing also has an important influence on the magnitude of the toxic effect: A large single dose of an acute toxin will usually have more than three times the effect of one-third the dose given at three different times, and the same dose administered in 10 or 15 applications might have no effect whatsoever. The pattern of dosing is important because it is possible for some of the substance to be excreted between successive administrations or because the lesion caused by the toxin has a chance to be partially or completely repaired between applications. Thus a chronic effect is said to occur: (1) If a toxic substance accumulates in the system of an exposed person or animal because the dose absorbed is greater than the body's ability to transform or eliminate the substance; (2) if it produces adverse effects that are not reversible; or (3) if it is administered in a manner that permits inadequate time for repair or recovery.

Variation in Response

Responses to toxic insults vary in a number of ways. For example, some toxicants have immediate effects, while others are associated with delayed symptom onset. The latency period for carcinogenic agents may be as long as 40 years for some types of cancer, and even some acute agents, such as some chemicals that have adverse ocular effects, may not cause overt symptoms until hours after exposure.

Another difference in type of response concerns the reversibility or irreversibility of the effect. Reversibility depends on the site of action as well as the magnitude of the insult. That is, some tissues of the body, such as the liver, have considerable ability to regenerate; others, like the kidney or central nervous system, do not.

The site of action associated with toxic substances also varies widely. Local effects are those lesions caused at the site of first contact between the agent and the organisms. Examples of localized effects are skin burns caused by contact with a caustic substance and site-of-contact tumors that develop at the locus of the injection of the carcinogen.

In contrast to localized effects, systemic effects involve the absorption and distribution of the toxic agent from the point of entry to a distant site; the toxic response is manifested at this distant point. An example of a systemic poison is mercury, which produces its toxic effect on the central nervous system. Often, the site of deposition for a chemical is not the organ system most affected by the toxin. For example, although lead is deposited and concentrated in the bone, it affects the central nervous system. Any sites that are adversely affected by the toxic effects of exposure to a substance, whether they are sites of contact or distal sites, are called the target organs of toxicity.

In cases of systemic poisoning, the system most often affected is the central nervous system (CNS); it is common for the CNS to be involved even when another organ, such as the liver, is the primary target organ of toxicity. In descending order of frequency, the systems or organs most often involved in cases of systemic poisoning are the central nervous system, the circulatory system, the blood and hematopoietic system, the visceral organs (liver, kidneys, lungs), and the skin.

Dose-Response

The relationship that associates the dose of a chemical with the effects it causes is called the dose-response relationship. A single data point relating a dose to a response is sufficient to establish a dose-response relationship. As additional data become available, it is possible to expand our understanding of the dose-response relationship to cover a range of doses or exposures. Dose-response is an important principle in toxicology, and an understanding of dose-response is important in establishing occupational or other exposure limits. Knowing how toxic substances act makes it easier to predict the potential effects of exposure. It is generally true that lowering dose reduces response; however, although data are often available to demonstrate that lower doses reduce responses on the grossly observable level, data showing that more subtle responses (e.g., those at the subcellular level) have been reduced are rarely available.

To apply dose-response relationships, it is helpful if several types of data are available. First, it must be possible to relate a response to a particular chemical. Although basic data pointing toward causality may be available, it is often difficult to refine the dose-response relationship further. For example, epidemiological studies often identify an association between a disease and one or more causative agents. However, since information on the precise identity of the etiologic agent, the actual dose received, and the true site of the response is usually not available, it is often impossible to use data from epidemiological studies to establish a precise dose-response relation between a specific dose of a toxin and an effect.

The second condition to be met before dose-response can be established is that it must be possible to relate the response to the dose. It is relatively easy to determine that a large dose causes an obvious response. Refining the relationship, however, involves three other requirements: (1) That there be a receptor site; (2) that the response and the intensity of the response be related to the concentration of the toxin at the receptor site; and (3) that the concentration of the toxin at the site be related to the dose given.

The third principle underlying the concept of dose-response is that there must be a quantifiable means of measuring the toxicity of a substance and a method of expressing this measured toxicity. Although lethality in test animals is often used to measure toxicity, the best form of measurement would involve quantification of the sequence of molecular events occurring during the toxic response. In the absence of such endpoints, other good methods are available. For example, it is common to measure an effect believed to be related to the substance in question. The level of activity of an enzyme in the blood is often used as a

measure of effect, e.g., serum glutamic-oxaloacetic transaminase (SGOT) levels are used to measure liver damage. Many different endpoints can be used to measure toxic effects, such as changes in muscle tone, heart rate, blood pressure, electrical activity of the brain, motor functioning, and behavior.

The most widely used endpoint, especially when a new substance is involved, is lethality in an animal test system. Lethality studies allow scientists to make comparative assessments of a chemical's toxicity as it relates to that of many other substances. Research of this type also permits the gathering of essential information on dose, duration, route of administration, site of action, and the target organ of toxicity.

Form of the Response

The classic form of dose-response is sigmoidal (Figure 1). This form characterizes the relationship between the amount of a toxin administered and the degree of response to that dose. The response is measured on the ordinate, and the dose is represented on the abscissa.

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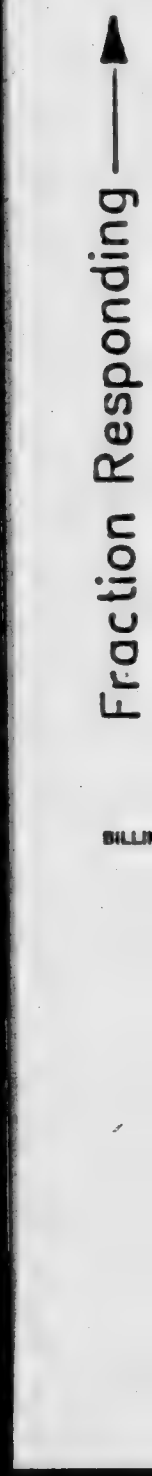

FIGURE 1. DIAGRAM OF THE DOSE-RESPONSE RELATIONSHIP

Figure 1

Diagram of Dose-Response Relationship

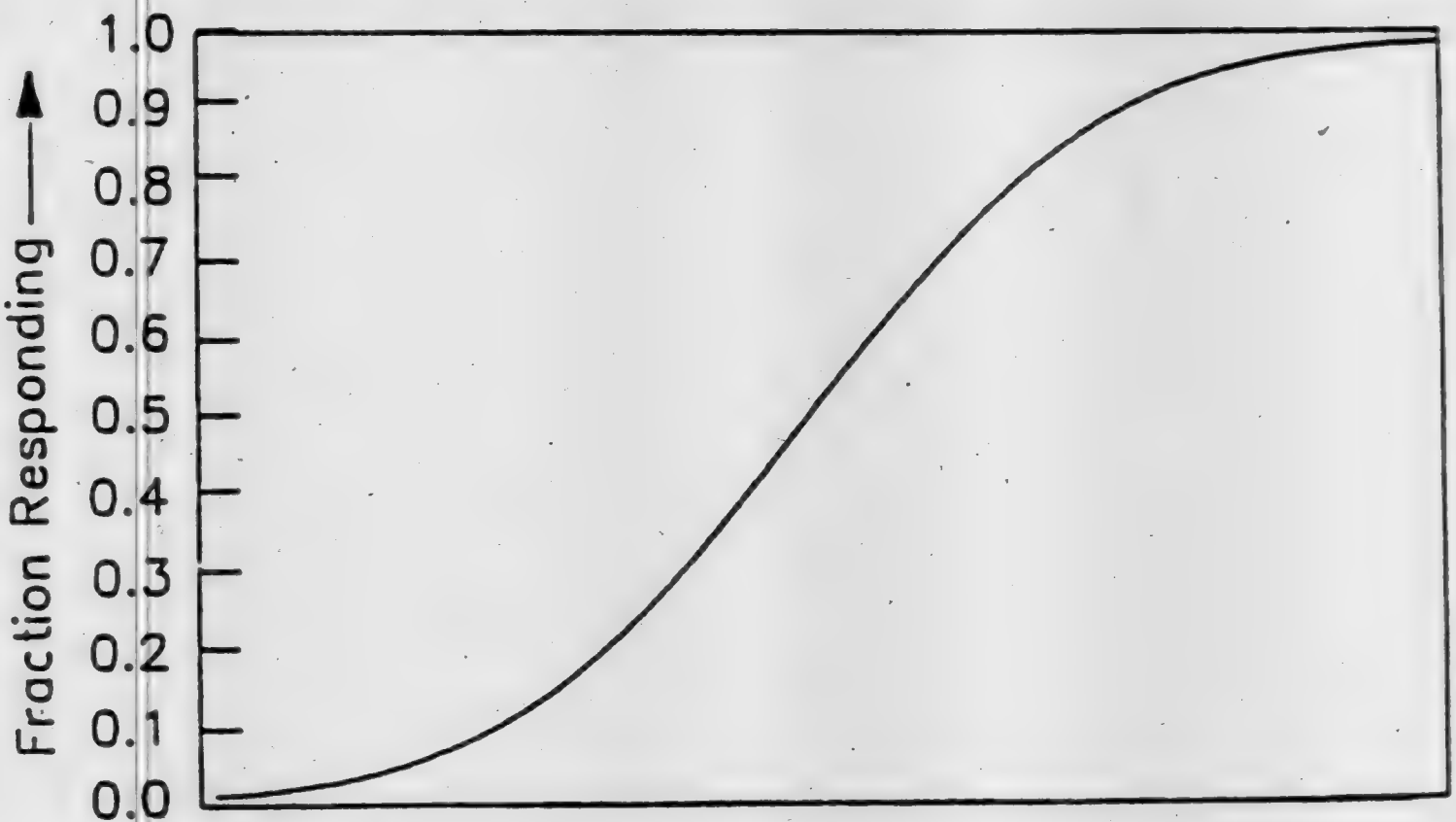

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Dose-response can be thought of in two ways:

- As exposure increases, the proportion of the population that manifests the response increases (quantal response); and
- As exposure increases, the intensity of an individual's response increases (graded response).

A relatively flat dose-response curve means that a large change in dose is required before there is a significant change in response. A steep curve, on the other hand, means that a small change in dose will elicit a large increase in response. Although it is sometimes possible to generate a curve of the type shown in Figure 1, it is not necessary to do so to demonstrate that exposure at a given level is associated with a particular response. That is, it is not necessary to have sufficient data to define, in mathematical terms, the dose-response relationship to know that exposure at a given level is associated with adverse consequences.

In the regulatory context, it is most common to express dose-response relations in terms of the percentage of the population responding. However, before this information can be evaluated, the endpoint being considered must be known. For every substance, there are several dose-response relationships, depending on endpoint: a substance that produces irritation at low doses may cause more severe symptoms or even death at high doses and in other conditions. For example, many substances that are mucosal irritants at low doses will produce pulmonary edema and nervous system effects at high doses.

Plotting the cumulative percentage of individuals responding against dose produces the typical sigmoid curve. Such a curve reflects the fact that at the lowest dose, zero percent of the population responds, while 100 percent of the population will respond at the highest dose. However, if the percentage responding is plotted against incremental rather than total dose, the curve produced is a normal distribution (Figure 2). This curve says that a relatively small percentage of the population will manifest the response at the lowest dose and that a similarly small percentage of the population will exhibit the effect only at the highest dose. What this normal distribution of response reflects is individual and species variation in exposed populations. A wide degree of variation occurs even in inbred, homogeneous laboratory animals, and such variability increases dramatically when a heterogeneous population, such as workers, is involved. Individuals responding at the left end of the curve shown in Figure 2 are sometimes called hypersusceptible, while those at the right end could be termed resistant. Because the relationship between dose and response is sigmoidal, response approaches zero as dose approaches zero. However, because of the mathematical form used to express this relationship, a true zero response can never be achieved. In the strictest sense, therefore, a true threshold dose level (i.e., the dose with which a zero response is associated) can never be established on the basis of experimental research. Instead, scientists attempt to define the minimum dose associated with a specific endpoint, which is customarily termed the "threshold" dose for that particular endpoint. However, unless a specific endpoint (such as respiratory irritation, cholinesterase inhibition, the development of a tumor, or death) is specified, the concept of a threshold is essentially meaningless. In fact, a separate threshold could be said to exist for each of these endpoints.

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FIGURE 2. DIAGRAM OF QUANTAL DOSE-RESPONSE RELATIONSHIP

FIGURE 2

Diagram of Quantal Dose-Response Relationship

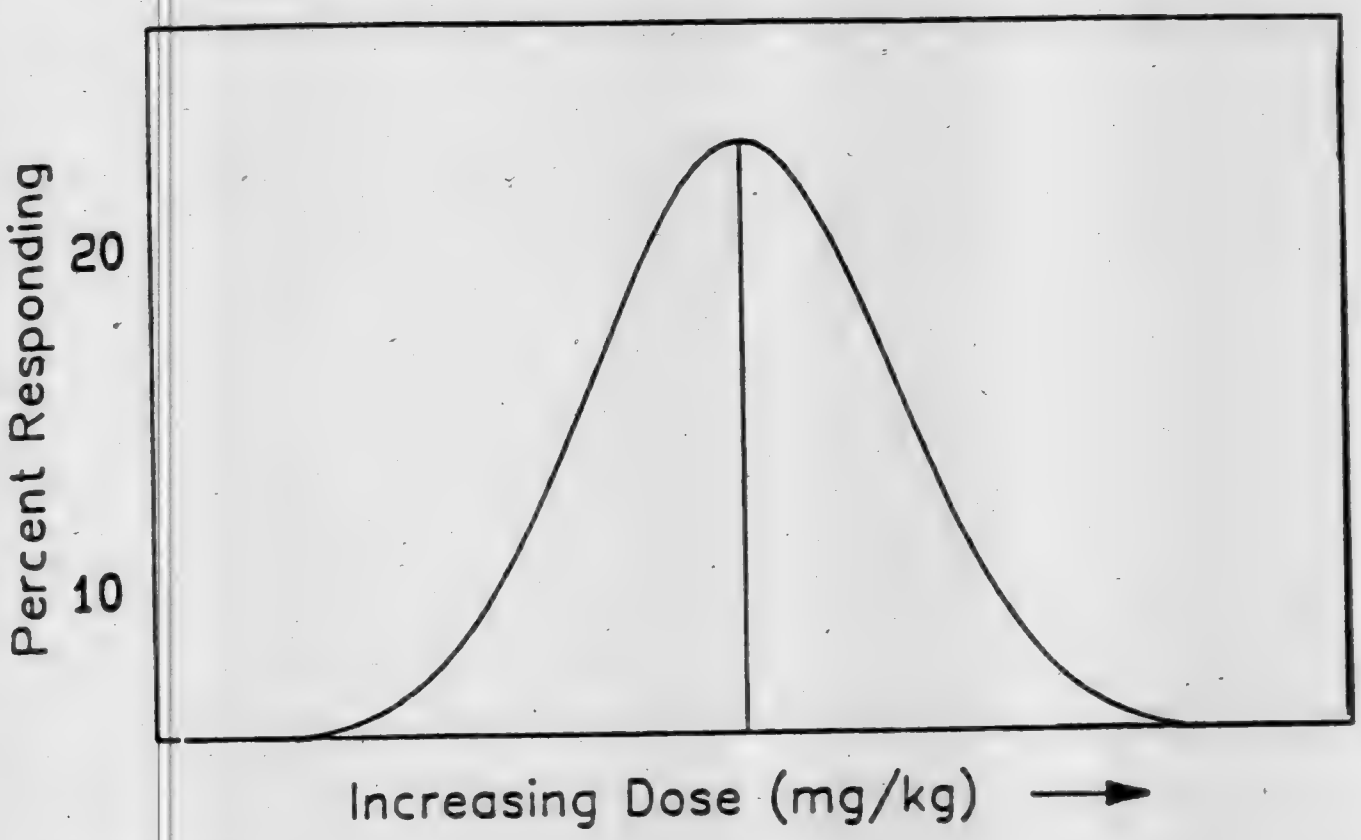

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The extent to which an experimentally derived "threshold" actually reflects the true threshold for a substance (i.e., the level above which a response will occur and below which no response will occur) depends on several factors, such as the number of animals used to determine the experimental threshold, the number of dose levels tested, and the degree of variation represented in the test subjects. For example, to determine an LD_{50} (the lethal dose that will kill 50 percent of the animals tested) with a high degree of precision requires the use of a minimum of 50 test animals and five dose groups (10 animals in each group). Other factors that can influence the magnitude of the median lethal dose include the sources involved, the sex and age of the animals, the environmental conditions prevailing during the test conditions, diet, the health status of the subjects being tested, and the subjects' past exposure to other toxic substances.

In toxicological research, the experimentally observed threshold dose is called the lowest-observed-effect level (LOEL) or the lowest-observed-adverse-effect level (LOAEL). Alternatively, the threshold may be expressed as the highest no-observed-effect level (NOEL), i.e., the highest dose administered and found not to produce a given response. Determination of an accurate NOEL requires both a careful interpretation of the toxicological data and the use of an adequate number of test animals. The National Academy of Sciences (1985) has concluded that the chance of finding a no-adverse-effect level (that is, of missing an adverse effect) at a given dose is statistically greater in experiments having a small number of animals than in studies involving a large number of animals. Thus, the degree of confidence one has that a NOEL actually represents a "safe" dose, rather than a research design artifact, increases with the number of animals tested. The greatest degree of confidence is associated with studies involving a large number of animals that were tested at several doses that were administered at close intervals.

In a recent publication (Tardiff and Rodricks 1987), David W. Gaylor of the National Center for Toxicological Research explained that experimentally derived thresholds represent statistical limitations in study design rather than biological characteristics:

> The existence of dose-response relationships might lead one to assume incorrectly the existence of threshold doses below which no toxic effects could occur. As dosage is decreased, the prevalence of an observable toxic effect * * * diminishes to zero. Eventually, a dosage is reached below which the experiment has essentially no resolving power to distinguish between the spontaneous background rate and small induced toxic effects * * *.
>
> If no toxic effects are detected at a specified dosage, this dosage is called the no-effect, or more correctly the no-observed-effect dosage. Because of the limitations of any given experiment, the no-observed-effect dosage is not a precise estimate of a true no-effect level. Lack of statistical significance is not equivalent to no toxic effect. It may or may not be, and further experimentation would be required to resolve this equivocal issue.* * * The no-observed-effect level is not a biological property, but, rather, a statistical property or operational threshold that is highly dependent on sample size.

The scientific issues surrounding the concept of no-observed-effect levels or experimentally derived thresholds have important implications for their use in establishing protective occupational exposure limits. Because the no-observed-effect level cannot represent the "true" threshold for an adverse effect, given the design of most toxicologic studies, regulators and others have used the concept of safety factors (also known as uncertainty factors) to aid them in setting permissible exposure limits; that is, the exposure limit is established at some interval below the no-observed-effect level to provide additional assurance that populations exposed at the level permitted are not likely to suffer harm.

The size of the interval between the permissible exposure limit and the no-observed-effect level depends on a professional judgment as to whether the no-observed-effect level is likely to represent a level that is not harmful to humans. Thus, if the available data include a NOEL derived from a well-conducted human study, a smaller safety factor might be used to establish an exposure limit than would be used if the data to be used to establish the limit consisted of a NOEL from an animal study; in the latter case, there is greater uncertainty regarding the relationship between the animal NOEL and human NOEL. Safety factors have also been used to recognize the fact that the human population is heterogeneous and that there may be a wide variation in individual responses to toxic substances (the wide range in the odor thresholds reported for some substances is a good illustration of individual variability in response).

The use of NOELs, LOAELs, and safety factors to develop permissible exposure limits is not a recent development:

> For more than half a century, evaluation of the safe use of chemicals has been focused mainly on the development of toxicity data and on the application of professional judgment to the ad hoc interpretation of such data to derive acceptable levels of exposure for humans. Generally, this practice has taken the form of identifying from studies in laboratory animals the no-observed-effect level and dividing it by a safety factor (usually 100 for NOELs derived from chronic studies) reflecting the uncertainties of relating data to humans under their conditions of exposure and the quality and appropriateness of the data base * * *.
>
> Safety factors are usually chosen prospectively to address the uncertainties of interspecies extrapolation. Although safety factors as small as 2 and as large as 2000 have been used * * * the safety factor of 100 is used most commonly, at least for NOELs derived from chronic toxicity studies, and incorporates adjustments for interspecies variability (usually 10) and intra-human variability (usually 10) * * *. The resulting value is equivalent to a NOEL in humans (Tardiff and Rodricks 1987, pp. 391, 421).

Many toxicologists urge that safety factors be used with care and interpreted with caution; they note that these factors "often create the [erroneous] impression that human population thresholds have been identified and that there is virtually no risk below that level of exposure" (Tardiff and Rodricks 1987, p. 421).

Although safety factors have traditionally been used to establish exposure limits for chronic or lifetime exposure situations, they have also been applied to establish limits for acute effects resulting from short-term exposure. For example, the National Academy of Sciences' Committee on Toxicology has been using a safety-factor approach to establish emergency exposure guidance levels (EEGLs), which are exposure levels judged to be acceptable for military personnel operating under emergency conditions. Exposure at an EEGL concentration would not be considered safe for routine or normal operations, but such exposures would be considered acceptable for performing tasks that would prevent even greater risks (e.g., death or injury caused by fires or explosions). When developing EEGLs, safety factors are used to account for uncertainties in the use of animal data and when extrapolating between different dose routes. The NAS also develops short-term public emergency exposure guidance levels (SPEGLs) that estimate acceptable levels of exposure for the general public during airborne chemical releases; SPEGLs are generally set at levels of one-tenth or one-half the EEGL (i.e., at levels incorporating an additional safety factor of from 2 to 10) (Criteria and Methods for Preparing Emergency Exposure Guidance Level (EEGL), Short-Term Public Emergency

Guidance Level (SPEGL), and Continuous Exposure Guidance Level (CEGL) Documents. Washington, DC: National Academy Press, National Academy of Sciences 1986).

In the prior air contaminants rulemaking, the use of the safety factor approach in establishing occupational exposure limits was addressed by many commenters (Exs. 3–744, 3–1095, 8–16, 8–47, 116, and 144; Tr. 1–221, Tr. 2–163 to 2–164). NIOSH (Ex. 8–47) pointed out that, since safety factors cannot be used to estimate human risk, they should not be interpreted as relating to the magnitude or significance of a risk; instead, as NIOSH notes, safety factors are intended only to reflect uncertainty in the available data. This comment echoes the concern expressed above, i.e., that safety factors should not be misinterpreted as identifying a human population threshold. NIOSH (Ex. 8–47) also endorsed OSHA's use of safety factors in generic rulemaking, noting that this approach is a "pragmatic method" of developing standards (except when a nonthreshold process, such as the induction of cancer, is the outcome of concern).

Dr. Marcus Key, Professor of Occupational Medicine at the University of Texas School of Public Health, also testified in the earlier rulemaking on the appropriateness of using safety factors to establish occupational exposure limits:

> We seldom, if ever, know with any precision where a significant risk level begins or ends; hence, the need for safety factors. Safety factors depend on several considerations, * * * mainly on toxicity and the nature of the health effects, but also on the availability of scientific evidence of effects at lower levels.
>
> Professional judgment must be relied on in selecting safety factors, with one to three orders of magnitude being commonly used for serious effects, and 50 percent, or [a] safety factor of 2, [being used] for acute, less harmful effects (Tr. 1–221).

Both Dr. Key (Tr. 1–221) and Dr. Ernest Mastromatteo, Chairman of the ACGIH TLV Committee (Tr. 2–163 to 2–164), testified that safety factors are frequently used by the American Conference of Governmental Industrial Hygienists to develop recommended exposure limits.

Other commenters in the earlier rulemaking (Exs. 8–16, 116, and 144; Tr. 7–121) urged OSHA to adopt a uniform system of assigning safety factors to establish permissible exposure limits. These participants suggested that OSHA apply the Reference Dose approach used by the Agency for Toxic Substances and Disease Registry or by the Environmental Protection Agency to calculate PELs for the Z-table substances. In response to these commenters, OSHA stated (54 FR 2399) that the Agency's approach has involved an evaluation of the efficacy of the proposed rule's limits on a case-by-case basis. OSHA believes that, at this time, this case-by-case assessment is the best way to establish new and revised limits for the numerous substances addressed in this proposed rulemaking.

Types of Toxicological Evidence

The evidence available to scientists who wish to evaluate the toxicity of a substance can be derived from studies in laboratory animals, *in-vitro* studies in cell or tissue systems, reports of clinical observations, studies of exposed human populations, or intervention studies conducted with human volunteers. The preceding paragraphs have described animal studies (or "bioassays"). The following section discusses the two most common types of human evidence: data derived from clinical observations and information from epidemiological studies.

Clinical Observations

Much of the data on the toxic effects associated with human exposures has come from industrial accidents, fatal poisonings, or other such tragedies. This information is generally more useful in delineating broad categories of pathological effects than in refining a specific dose-response relationship, because the exposure levels causing the accident are known to be high but cannot be quantified with precision.

Epidemiological Studies

Studies conducted by epidemiologists are designed to reveal the patterns of disease or mortality prevailing in certain groups of people (usually workers) exposed to a single toxin or to a group of substances. One of the advantages of epidemiological studies is that they involve humans and their responses to actual situations. The interpretation of the results of epidemiological studies is complicated by the inevitable presence of confounding variables that occur whenever human populations are involved. Ideally, the populations being studied (i.e., the study population and the control population) should be fully comparable with regard to every variable except the single characteristic under study. Because it is rarely possible to achieve this degree of comparability, statistical techniques are often used to attempt to adjust for this lack of comparability. In addition, if the measured effect is relatively large, it is unlikely that confounding factors will obscure the true picture.

Broadly speaking, epidemiological studies can have two possible outcomes: They can report an effect or they can report no effect; in the former case, the study is termed a positive study, and in the latter, a negative one. Within each of these categories, it is possible for the study to be correct (that is, to give a true-positive or true-negative result) or to be incorrect (that is, to give a false-positive or a false-negative result). A false-positive result reports that there is an increased risk when in fact there is not, and a false-negative study reports that there is no increased risk when in fact there is.

The probability that a study will detect a statistically significant effect if that effect is actually present is called the power of the study. As the power of a study increases, the likelihood of producing a false-negative error decreases. Power is dependent on two factors: the level of relative risk being evaluated and the number of cases of the effect (i.e., disease) that are expected in the population being studied. The number of expected cases depends both on the sample size and the expected disease frequency in the comparison population. For example, a study involving a small population and a common disease can have the same power as a study of a rare disease in a large population. Consequently, studies of larger samples have sufficient power to detect smaller increases in risk, and studies of smaller samples will be able only to detect large increases in relative risk.

Because epidemiological studies have limitations, it is essential that the power of such studies, particularly of negative studies, be examined to ensure that their sample sizes are adequate to detect the absence of increased risk with validity. When the power of a study is not adequate, negative studies cannot be said either to contradict or to support the conclusion that increased risk exists. Essentially, a negative epidemiologic study identifies a NOAEL, which, as discussed above, reflects the statistical limitations of a study more than the "true" population threshold for an effect. However, a study with a positive result may indicate a relationship if the excess risk is high, even if the study's sample size is small and the effects of some factors are not controlled for.

Quality of Evidence

Dose-response models have often been used in the quantitative assessment of the risks associated with exposures to carcinogenic substances. However, less scientific effort has been devoted to models to be used with non-

carcinogenic substances. Mathematically precise methods to establish the true no-effect level or to define the dose-response curve have not been developed for most of the more than 400 substances involved in this rulemaking.

Most of the scientific work that has been done was designed to identify lowest-observed-effect or no-effect levels for a variety of acute effects. As described above, experts in industrial hygiene and occupational health have developed factors to be used to offset, at least to some extent, the insensitivity of NOELs and LOELs to such factors as subcellular effects, sensitive individuals, and chronic exposure. It is possible to use these data, combined with professional judgment and OSHA's expertise and experience, to determine that significant risk exists at current levels of exposure and that a reduction in these levels will substantially reduce this risk of material impairment of health. OSHA is also confident that it is not attempting in this rulemaking to reduce exposures to insignificant levels. However, additional analysis may well reveal that the levels being proposed can be refined further in the future.

B. Historical Development of Occupational Exposure Limits

Early Limits

Until the development of occupational health standards, the occurrence of adverse health effects resulting from exposures to hazardous substances or conditions in the workplace could only be determined *ex post facto*—after material impairment had already occurred to the health and welfare of exposed employees. For example, in her 1910 studies of lead poisoning, Dr. Alice Hamilton was forced to rely on "personal observations of working conditions and the illness and deaths of workers to demonstrate the existence of harmful exposures" (Paull 1984/Ex. 1–255). The concept of occupational exposure limits thus represents a dramatic breakthrough in the battle against occupational disease, and these limits remain "one of the most useful and indispensable tools yet devised for safeguarding the health and well-being of industrial workers" (Thomas 1979/Ex. 1–96). Occupational exposure limits are air quality values that apply in workplaces, and they are derived by studying the correlation between the amount of a toxic substance absorbed by the body and its effects on health. Within the context of occupational exposure, knowledge of this relationship permits quantification of the etiology "of a large number of occupational health impairments, [evaluation of] the risk of such impairments and, if necessary, [consideration of] the effectiveness of preventive measures" (Parmeggiani 1973/Ex. 1–229). More specifically, an understanding of the levels at which disease or other adverse health effects occur can be used to establish limits for occupational exposure that reflect concentrations below which health hazards are unlikely to occur in most workers.

The historical development of occupational exposure limits began with the published reports of a German scientist whose investigations in 1883 into the effects on experimental animals (and on himself) of exposure to carbon monoxide at known air concentrations caused him to conclude that "the boundary of injurious action of carbon monoxide lies at a concentration in all probability of 500 parts per million, but certainly [not less than] 200 parts per million" (Cook 1987/Ex. 1–187). Shortly after the appearance of this first documented dose-response value, another German researcher, K. N. Lehmann, published a series of reports on a number of chemical substances under the title "Experimental Studies on the Effect of Technically and Hygienically Important Gases and Vapors on the Organism." This series culminated in 1936 in a comprehensive paper on chlorinated hydrocarbons, published as Volume 116 of *Archiv für Hygiene*.

In 1912, Rudolf Kobert published a table of exposure limits, based on animal studies, for 20 compounds. One of the first tables of hazardous air concentrations to originate in the United States was a technical paper published in 1921 by the U.S. Bureau of Mines. The 33 substances included in this table were those frequently encountered in the workplace. In addition to limits based on the avoidance of acute toxic effects, this table provided some information on the least detectable odor concentration and the lowest airborne concentration required to cause irritation (Paull 1984/Ex. 1–255; Cook 1987/Ex. 1–187).

Throughout the 1920s and 1930s, data became available that correlated concentrations of harmful substances with observed effects on worker health for such materials as lead and mercury compounds, benzene, and granite dusts. These early occupational health studies, which were based on animal experiments and on findings in exposed workers, provided the kind of data needed to link human exposures "to concentrations that were capable of producing not only acute, but chronic health effects" (Paull 1984/Ex. 1–255).

After 1935, the emphasis of researchers had shifted, for the most part, from the reporting of a series of values for a range of acute effects to results that yielded a single limit based on studies of repeated exposures. Over the years, a sizable amount of data about the levels of exposure that would not produce injurious effects had been amassed for a considerable number of substances. "By the early 1940s, control of the occupational environment to prevent the harmful absorption of toxic materials was becoming an accepted principle, and the practical problem of defining what was 'harmful' was beginning to be met by employing maximum allowable concentrations" (Paull 1984/Ex. 1–255). In 1943, Sterner (Ex. 1–806) explained the meaning of the term maximum allowable concentrations as "the upper limit of concen-tration of an atmospheric contaminant which will not cause injury to an individual exposed continuously during his working day and for indefinite periods of time" (Paull 1984/Ex. 1–255).

The first lists of maximum allowable concentrations of airborne toxic substances were issued between 1933 and 1938. The Union of Soviet Socialist Republics (U.S.S.R.) was the first country to make occupational exposure limits a statutory obligation; in 1933 the U.S.S.R. published a list that included 14 substances. The first American list was published four years later by the State of Massachusetts, and in 1938 Germany issued occupational health standards for a number of organic solvents (Holmberg and Winell 1977/Ex. 1–141). Additionally, the United States "imposed limited occupational safety and health requirements on certain contractors with the Federal government" when the Walsh-Healey Act was passed in 1936 (Mintz 1984/Ex. 1–840).

Standards Developed by Professional Organizations

During the 1940s, American organizations led in the development of occupational health standards, beginning with the American Standards Association (now the American National Standards Institute, or ANSI) list of "maximum acceptable concentrations" (MACs), which appeared in 1941. This list represented a consensus of opinion by the ASA and a number of industrial hygienists who had formed the American Conference of Governmental Industrial Hygienists (ACGIH) in 1938 (Baetjer 1980/Ex. 1–

223). Originally conceived of as a time-weighted concentration to be maintained as an average over an entire work shift, the MAC was redefined in 1957 to mean an upper level (i.e., a ceiling concentration) that should never be exceeded (Turner 1976/Ex. 1–79).

An important contribution to occupational health standard-setting was made in 1945 by Warren Cook (Ex. 1–726), who published a list of maximum allowable concentrations for 132 industrial atmospheric contaminants. These limits had been developed by six states, the U.S. Public Health Service, and the American Standards Association, and included Cook's own list of "accepted or tentative values" based on industrial experience, animal experimentation, human sensory response, or a combination of these factors. This table was followed by

> Documentation supported by 187 specific references, indicating the basis and reliability of each value. Cook was the first investigator to codify all of the available data on MAC's and present it in one publication. His list of recommended values was incorporated, practically without changes, by the ACGIH in establishing the TLVs. In support of Cook's inferences, it should be noted that 50 of the * * * values that he recommended in 1945 were subsequently adopted as federal standards, and are still in use today (Paull 1984/Ex. 1–255).

The American Conference of Governmental Industrial Hygienists' Subcommittee on Threshold Limits presented its second report at the Eighth Annual Meeting of the ACGIH in 1946. The report included values for 131 gases, vapors, dusts, fumes, mists, and 13 mineral dusts "compiled from the list reported by this subcommittee * * * in 1942, from the list published by Warren Cook in * * * 1945, and from published values of the Z-37 Committee of the American Standards Association" (Cook 1987/Ex. 1–87). The Committee's report noted that:

> Considerable difficulty attends the fixing of satisfactory values for maximal allowable concentrations of chemicals in respirable atmospheres because of the lack of a uniform definition of the maximum allowable concentration concept. One concept is that the M.A.C. value should represent as accurately as possible that concentration at which a worker exposed for a sufficient period of time will just escape physiological or organic injury and occupational disease.
>
> A second concept is that the M.A.C. should represent some fraction of that concentration which will injure the worker in order to allow a margin of safety in the design of protective equipment and guard against possible synergistic effects in the case of multiple exposures. A third concept is that the M.A.C. should perform the functions of the former concepts and in addition provide a work environment free of objectionable but non-injurious concentrations of smokes, dusts, irritants and odors. Obviously all of these concepts cannot be fulfilled with the establishment of a single value. M.A.C. values in use at the present time represent examples of all of these concepts. The committee feels that the establishment of dual lists or a single definition is not possible at the present time (ACGIH 1946).

The report concluded by stressing that the 1946 list of MAC values was presented "with the definite understanding that it be subject to annual revision" (ACGIH 1946).

Papers presented at both the Ninth International Congress on Industrial Medicine in London (1948) and at the Fifteenth International Congress of Occupational Health in Vienna (1966) also dealt with maximum acceptable concentrations. The first of these proposed that zones of toxicity be set up to facilitate an understanding of the relative hazards of substances, "since the boundaries of MAC values were not sharp lines of demarcation" (Cook 1987/Ex. 1–87). At the 1966 meeting, discussion took place on the advantages of the concept of a "peak level" of exposure—an extension of the "ceiling level" notion inherent in the definition of a MAC since 1957. A "peak level" was defined as one "that can be applied to certain substances for brief designated periods and for a strictly limited number of times during the work shift, with a designated time interval between peaks. The 'peak' concept places a limit on the intermittent higher exposures that occur in many industrial operations. The time-weighted average exposure limit is of course to be observed [even when a peak has also been assigned to a substance]" (Cook 1987/Ex. 1–87).

Terminology and definitions throughout this early period were ambiguous and imprecise, reflecting uncertainty as to exactly what needed to be and could be done in the realm of occupational health standard setting. Initially, the ACGIH designated its recommended limits as "maximum allowable concentrations," although this term was often used interchangeably with "threshold limit values." Confusion about the meaning, interpretation, and relative significance of the terms being employed during this embryonic period was common. After 1953, the ACGIH defined the concept of threshold limit value in the preface to its annual published list of occupational health standards as "maximum average atmospheric concentrations * * * for an eight-hour day." Documentation for the 238 substances included in the TLV® list for 1956 was provided by Smyth (Ex. 1–759) in a separate paper in which the author

> Recommended that the TLVs include references to the underlying data, and that the concepts represented by the values be restated in more realistic toxicological terms. In his analysis of the TLVs, he [Smyth] concluded that nine categories of objectionable action were guarded against: chronic toxicity, acute toxicity, narcosis, irritation, asphyxiation, fume fever, eye pigmentation, allergic response, and cancer (Paull 1984/Ex. 1–255).

At about the same time, Stokinger stated that, in his opinion, the Threshold Limits Committee had avoided grappling with the issue of developing a method for establishing limits for industrial carcinogens and noted that, with the exception of nickel carbonyl, limits had not been assigned for potential carcinogens (Paull 1984/Ex. 1–255). In 1962, however, the TLV Committee added three carcinogens to the TLV list, although these were listed separately in an appendix and did not have assigned numerical values.

Despite the fact that the ACGIH had stressed early on that TLVs® were intended as guides and not as rigidly enforceable limits, the American Standards Association's MAC values (or, where none was available, the TLV®) were included as mandatory limits in the Safety and Health Standards for Federal Supply Contracts, which were published in 1960 under the Walsh-Healey Act. Following this action, the ACGIH issued a statement on the definitions and interpretations of TLVs® and MACs (Stokinger 1962/Ex. 1–998). At the same time, the ACGIH announced the production of the first edition of the Documentation for Threshold Limit Values (ACGIH 1962); this was followed by another paper in which the work and intentions of the Threshold Limits Committee were reviewed. Turner states that

> [A]t this time the concept of ceiling values and excursion factors around the time-weighted average values was introduced in order to reduce conflict or confusion with the "maximal" values in the American [ANSI] Standards. A "C" (ceiling value) listing was to be given to those fast-acting substances thought likely to be injurious if the concentration exceeded the limit value by more than a designated factor for a relatively short period (about 15 min.). The factor varied between 3 and 1.25, depending inversely upon the magnitude of the TLV. A corollary was that the factor would also indicate the limit of permissive excursion of the concentration above the TLV for a substance not given a "C" listing, always provided that the time-weighted average concentration did not exceed the TLV. This rule of thumb approach to limiting exposure is no doubt appropriate to certain substances

when they are used routinely throughout the working day. It seems to have little relevance in other instances where exposure is irregular or where the basis for fixing the TLV is on grounds other than toxicity (Turner 1976/Ex. 1–79).

Permissible Exposure Limits in the Era of OSHA

Shortly after the Occupational Safety and Health (OSH) Act became effective, OSHA issued standards that would provide the Agency with a basis for promptly commencing its enforcement program. Congress gave OSHA the authority under section 6(a) of the Act to promulgate certain standards without rulemaking, i.e., without the delays inherent in public comment proceedings. These so-called "start-up" standards derived from national consensus standards and established Federal standards, i.e., ANSI, the National Fire Protection Association (NFPA), the Walsh-Healey Public Contracts Act, the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), and the Contract Work Hours and Safety Standards Act of 1969 (also known as the Construction Safety Act).

The startup standards adopted by OSHA for general industry in this early period derived from the ACGIH 1968 list of TLVs® that had been incorporated into the Walsh-Healey Act, and those adopted for construction derived from the 1970 ACGIH TLVs® that had been incorporated into the Construction Safety Act. (There are thus a few differences in the PELs OSHA applies in general industry and construction, since the ACGIH had updated its TLVs® for a few substances when it issued its 1970 list.) In agriculture, however, OSHA did not adopt startup standards and, in the intervening years, the Agency has not, until now, corrected this deficiency (see the discussion in the History and Need for Revision of the PELs section of this preamble). In the interval since the establishment of OSHA and the adoption of the 1970 ACGIH TLVs® and a few ANSI limits for construction and maritime, the ACGIH has continued to revise, update, and document its annual list of TLVs®; since 1968, this process has been an annual one. During this time, the ACGIH TLVs® have been "accepted on an international basis as the best available guides for providing healthful occupational environments, and at least 18 countries, including the United States, have either adopted them as legal standards or as guides to legal action, thus verifying their efficacy in accomplishing this purpose" (Paull 1984/Ex. 1–255).

In 1989, in the largest rulemaking ever undertaken by the Agency, OSHA updated and supplemented its list of permissible exposure limits by considering new or more protective exposure limits for 428 toxic substances; these new and revised PELs apply in general industry workplaces. The action OSHA takes today initiates the process of extending these new and revised limits to workplaces in the construction, maritime, and agriculture industries. That the limits being proposed for revision and updating are seriously out of date is attested to by the fact that the ACGIH has found it necessary to revise or to add nearly 400 limits to its list of TLVs® in the 20 years since the limits adopted by OSHA in 1971 and still in force in these sectors were initially published. Recognition that OSHA's permissible exposure limits in construction and maritime need updating to reflect recent developments in toxicology and new data on the health effects associated with exposure to these substances is nearly universal and is evidenced by the widespread support for the recent air contaminants rulemaking that updated and revised OSHA's PELs for general industry.

The Agency believes that promulgation of the proposed limits will address a broad range of significant risks now prevalent in the construction, maritime, and agriculture industries. As many industrial hygienists and occupational safety and health professionals have noted, the use of permissible exposure limits continues to be the single most effective way of protecting the health, functional capacity, and well-being of the American worker.

C. Description of the Substances for Which Limits Are Being Proposed

In this rulemaking, OSHA is proposing to revise or to add PELs for approximately 588 toxic substances and to apply these limits to workplaces in the construction, maritime, and agriculture industries. OSHA recently completed this action for general industry (see 54 *FR* 2332 et seq.). This section of the preamble identifies the PELs being proposed for construction, maritime, and agricultural workplaces, describes the available toxicological data, and explains the Agency's rationale for selecting the permissible exposure limits proposed for these substances.

The universe of substances included in this rulemaking is bounded by the substances that OSHA recently considered in the general industry Air Contaminants rulemaking that amended 29 CFR 1910.1000. That is, OSHA is not at this time proposing exposure limits for any hazardous substance that was not considered in that rulemaking, with the exception of a group of approximately 160 substances. For these 160 substances, OSHA's current limits in general industry, construction, and maritime are, with very few exceptions, identical and are believed by the Agency already to be at adequately protective levels. However, since OSHA has never had PELs that applied in agricultural workplaces, the Agency is proposing to apply its PELs for these 160 substances, as well as those for the other substances described above, to agriculture for the first time. In addition, OSHA's interpretation is that the exposure limits included in Tables Z–1, Z–2, and Z–3 apply in longshoring. However, the language at 29 CFR 1918.93 (e) and (f) is somewhat ambiguous. Accordingly, OSHA intends in the present rulemaking to eliminate this ambiguity and to make all such limits applicable to the longshoring sector.

For all of the substances addressed in this rulemaking, OSHA has already evaluated in great detail the studies, public comments, and evidence in the prior rulemaking record for general industry. The levels proposed in this rulemaking are the same as those that OSHA determined to be justified in the general industry rulemaking. Therefore, the limits being proposed today represent, in the Agency's professional judgment, those levels found to be most consistent with the best available toxicological data, OSHA's mandate, and the case law that has subsequently developed to interpret that mandate. (For a discussion of the relevant legislative and judicial principles, see the sections of this preamble entitled Pertinent Legal Authority, History and Need for Revision of the PELs, and Approach).

For ease of analysis and presentation, the substances included in the scope of this rulemaking have been grouped into 16 separate sub-sections. In general, these groupings (sections IV.C.1 through IV.C.14) reflect the primary toxicological basis underlying the ACGIH or NIOSH recommended limits for these substances. In addition, two additional sections (Sections IV.C.15 and 16) cover substances for which OSHA is proposing to add short-term limits and those for which the Agency is proposing to add skin notations.

The following sections are included:

1. Substances for which Proposed Limits Are Based on Avoidance of Neuropathic Effects
2. Substances for which Proposed Limits Are Based on Avoidance of Narcotic Effects

3. Substances for which Proposed Limits Are Based on Avoidance of Sensory Irritation
4. Substances for which Proposed Limits Are Based on Avoidance of Liver or Kidney Effects
5. Substances for which Proposed Limits Are Based on Avoidance of Ocular Effects
6. Substances for which Proposed Limits Are Based on Avoidance of Respiratory Effects
7. Substances for which Proposed Limits Are Based on Avoidance of Cardiovascular Effects
8. Substances for which Proposed Limits Are Based on Avoidance of Systemic Toxicity
9. Substances for which Proposed Limits Are Based on Observed-No-Adverse-Effect Levels
10. Substances for which Proposed Limits Are Based on Avoidance of Physical Irritation and Other Effects
11. Substances for which Proposed Limits Are Based on Analogy to Related Substances
12. Substances for which Proposed Limits Are Based on Avoidance of Biochemical/Metabolic Effects
13. Substances for which Proposed Limits Are Based on Avoidance of Sensitization Effects
14. Substances for which Proposed Limits Are Based on Avoidance of Cancer
15. Substances for Which 1987–1988 ACGIH TLV® Are Less Stringent Than Existing OSHA PELs
16. Substances for Which OSHA Is Proposing Short-Term Exposure Limits
17. Substances for Which OSHA Is Proposing to Add Skin Notations.

A list of the references that OSHA is relying on in evaluating the toxicological evidence pertaining to these chemicals appears in section IV–D.

1. Substances for Which Proposed Limits Are Based on Avoidance of Neuropathic Effects

Introduction. Many industrial chemicals have been shown to cause severe neurological effects in exposed workers, and these effects are often irreversible. The proposed limits for 25 substances have been set at levels established to avoid neuropathic effects in exposed workers. Table C1–1 lists these neuropathic agents, along with their CAS numbers, HS numbers, 1987–1988 ACGIH TLV®s, and NIOSH RELs. In addition, Table C1–1 shows OSHA's current PELs for these substances in construction, shipyards, marine terminals, and longshoring operations. OSHA currently has no PELs for these substances in agriculture. The right-hand column in Table C1–1 shows the current PEL for each substance in general industry; these are the limits being proposed today for these substances in construction, maritime, and agricultural workplaces. Promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

TABLE C1–1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF NEUROPATHIC EFFECTS

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction, shipyards, marine terminals, and longshoring *	1987–1988 ACGIH TLV **	NIOSH REL †	Proposed OSHA PEL in construction, shipyards, marine terminals, longshoring, and agriculture*
2019 Biphenyl (Diphenyl)	92–52–4	0.2 ppm TWA	0.2 ppm TWA		0.2 ppm TWA.
1051 n-Butyl alcohol	71–36–3	100 ppm TWA	50 ppm Ceiling, Skin		50 ppm Ceiling, Skin.
1078 Chlorinated camphene	8001–35–2	0.5 mg/m³ TWA, Skin.	0.5 mg/m³ TWA, 1 mg/m³ STEL, Skin.		0.5 mg/m³ TWA, 1 mg/m³ STEL, Skin.
1114 Decaborane	17702–41–9	0.05 ppm TWA, Skin.	0.05 ppm TWA, 0.15 ppm STEL, Skin.		0.05 ppm TWA, 0.15 ppm STEL, Skin.
2054 Diborane	19287–45–7	0.1 ppm TWA	0.1 ppm TWA		0.1 ppm TWA
1116 Di-sec-octyl-phthalate (Di-ethylhexyl-phthalate).	117–81–7	5 mg/m³ TWA	5 mg/m³ TWA, 10 mg/m³ STEL	(††)	5 mg/m³ TWA, 10 mg/m³ STEL.
1123 Dichloroacetylene	7572–29–4	0.1 ppm Ceiling	0.1 ppm Ceiling		0.1 ppm Ceiling.
1149 Dipropylene glycol methyl ether.	34590–94–8	100 ppm TWA, Skin.	100 ppm TWA, 150 ppm STEL, Skin.		100 ppm TWA, 150 ppm STEL, Skin.
1200 n-Hexane	110–54–3	500 ppm TWA	50 ppm TWA	100 ppm TWA, 510 ppm, (15-min) Ceiling.	50 ppm TWA.
1202 2-Hexanone (Methyl n-butyl ketone).	591–78–6	100 ppm TWA	5 ppm TWA	1 ppm TWA	5 ppm TWA.
1216 Iron pentacarbonyl (as Fe)	13463–40–6		0.1 ppm TWA, 0.2 ppm STEL		0.1 ppm TWA, 0.2 ppm STEL.
2100 Lindane	58–89–9	0.5 mg/m³ TWA, Skin.	0.5 mg/m³ TWA, Skin		0.5 mg/m³ TWA, Skin.
2103 Manganese, dust and compounds.	7439–96–5	5 mg/m³ Ceiling	5 mg/m³ Ceiling		5 mg/m³ Ceiling.
1236A Manganese, fume (as Mn)	7439–96–5	5 mg/m³ Ceiling	1 mg/m³ TWA, 3 mg/m³ STEL		1 mg/m³ TWA, 3 mg/m³ STEL.
1237 Manganese cyclopentadienyl tricarbonyl (as Mn).	12079–65–1		0.1 mg/m³ TWA, Skin		0.1 mg/m³ TWA, Skin.
1238 Manganese tetroxide (as Mn).	1317–35–7		1 mg/m³ TWA		1 mg/m³ TWA.
1240 Mercury (aryl and inorganic compounds) (as Hg).	7439–97–6	0.1 mg/m³ TWA, Skin.	0.1 mg/m³ TWA, Skin*	0.05 mg/m³ TWA	0.1 mg/m³ Ceiling, Skin.
1241 Mercury, vapor (as Hg)	7439–97–6	0.1 mg/m³ TWA, Skin.	0.05 mg/m³ TWA, Skin	0.05 mg/m³ TWA	0.05 mg/m³ TWA, Skin.
1242 Mercury, (organo) alkyl compounds (as Hg).	7439–97–6	0.01 mg/m³ TWA, Skin.	0.01 mg/m³ TWA, 0.03 mg/m³ STEL, Skin.		0.01 mg/m³ TWA, 0.03 mg/m³ STEL, Skin.
2104 Methyl acetylene	74–99–7	1000 ppm TWA	1000 ppm TWA, 1250 ppm STEL		1000 ppm TWA.
1251 Methylacrylonitrile	126–98–7		1 ppm TWA, Skin		1 ppm TWA, Skin.
1253 Methyl bromide	74–83–9	20 ppm Ceiling, skin.	5 ppm TWA, Skin	(††)	5 ppm TWA, Skin.
1304 Pentaborane	19624–22–7	0.005 ppm TWA	0.005 ppm TWA, 0.015 ppm STEL		0.005 ppm TWA, 0.015 ppm STEL.
1316 Phenyl mercaptan	108–98–5		0.5 ppm TWA		0.5 ppm TWA.

TABLE C1-1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF NEUROPATHIC EFFECTS—Continued

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction, shipyards, marine terminals, and longshoring *	1987-1988 ACGIH TLV **	NIOSH REL †	Proposed OSHA PEL in construction, shipyards, marine terminals, longshoring, and agriculture*
1342 1,2-Propylene glycol dinitrate.	6423-43-4	.....	0.05 ppm TWA, Skin.....	.....	0.05 ppm TWA.

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time; OSHA's PELs do not currently apply in Agriculture.

** The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

† NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

‡ NIOSH considers this substance a potential occupational carcinogen and recommends that exposures be reduced to the lowest feasible concentration.

* The OSHA limit for the aryl and inorganic compounds of mercury derived from an American National Standards Institute (ANSI) standard rather than the ACGIH TLV®.

Description of the health effects. The human nervous system comprises the central nervous system (CNS) and the peripheral nervous system (PNS). The CNS is made up of the brain and spinal cord, while the PNS consists of a network throughout the body of nerves that communicate with the CNS via connections to the spinal cord. The brain and spinal cord are bathed in cerebrospinal fluid, which supplies nutrients to the CNS and also acts as a barrier against the entry of some foreign substances. This barrier protects the central nervous system. In general, fat-soluble substances readily diffuse across this barrier and water-soluble substances do not.

Chemicals that affect the central nervous system can manifest their toxic effects peripherally. An example of this is the tremor associated with elemental and organic mercury poisoning. Exposure to some neurotoxic chemicals (for example, to n-hexane) is associated with axonal degeneration of the nerves in both the central and peripheral nervous systems. Baker (1983/Ex. 1–230) refers to this dual-system effect as central-peripheral distal axonopathy.

Nervous system toxicants can affect motor function, sensory function, or integrative processes, and they can also cause changes in the behavior of exposed persons. Substances that cause demyelination or neuronal damage can produce motor dysfunction that is expressed as muscular weakness or unsteadiness of gait, while exposures to chemicals that are associated with loss of sensory function may result in alterations in touch, pain, or temperature sensation or damage to sight or hearing. Other neuropathic chemicals affect the way in which information is processed in the brain and can interfere with learning and memory. OSHA believes that all of the health effects described above constitute material impairments of health within the meaning of the Act.

Although mature neurons cannot divide and be replaced, the nervous system has considerable ability to restore function that is lost as a result of exposure to toxic chemicals. This capability to restore function even after neurons have been killed is achieved by two mechanisms: Plasticity of organization and redundancy of function; that is, when some neurons die, other cells that perform the same function may be able to maintain an adequate level of functioning, or other neurons may be able to "learn" how to perform the lost function. However, even when one of these mechanisms comes into play to compensate for neuronal damage, the overall reserve capacity of the nervous system will have been diminished. The loss of this reserve could be critical in a situation in which additional demands are placed on the nervous system. Thus, even so-called reversible neuropathic effects should be seen as toxic effects causing alterations in and material impairment of the normal functioning of the nervous system.

The neurological effects potentially associated with chemical exposures are numerous, and it is not always easy to identify the precise target site. However, recent medical advances have made tests available that can detect neurological damage that was not detectable several years ago. For example, electrophysiological methods have been developed to measure damage to the visual pathway caused by such exposures. Because of the variation in individual responses to chemical exposures, exposure limits should be set with a view toward this range of susceptibility and the avoidance of any neuropathic effects.

Peripheral nervous system effects. The pathological mechanisms associated with peripheral neuropathies result from segmental demyelination or axonal degeneration. Segmental demyelination destroys the myelin sheath but leaves the axon intact; this causes a slowing in nerve conduction velocity. Muscle weakness is often the first sign of such segmental demyelination, and this effect can progress to loss of motor function or paralysis. Although remyelination may occur within weeks after injury, even a temporary loss in motor or sensory function may place the affected worker (and his or her co-workers) at risk of injury.

Axonal degeneration is a more serious effect because recovery is often slow or incomplete. This type of degeneration causes demyelination secondary to the degeneration of the distal portion of the nerve. This effect occurs when a chemical interferes with the physiologic dynamics of the nerve, e.g., when it decreases the transport of nutrients to the nerve; in such cases, the axon degenerates (dies back) sufficiently to accommodate the cell's capacity to supply it with nutrients. Axonal degeneration can also occur as a result of biochemical or metabolic derangement of the central nervous system. Alkyl mercury and elemental mercury are examples of neurotoxic chemicals causing this type of effect (Cavanaugh 1977/Ex. 1–202).

Central nervous system effects. The mechanism of action of central nervous system toxins is not well understood but is believed to be associated with neurochemical alteration in the brain. Seizures, Parkinsonism, intellectual impairment, narcosis, dementia, cranial neuropathy, and visual disturbances are all examples of effects that can occur after overexposures to neuropathic chemicals. The more serious CNS effects, such as Parkinsonism, dementia, intellectual impairment, and cranial neuropathy, are generally not reversible (Baker 1983/Ex. 1–230). Before these

exposure-related effects are manifested, subtle changes in behavior may occur; if these subtle signs are interpreted correctly, exposure can be stopped before irreversible damage occurs.

Dose-response relationships and neuropathic effects. The development of chemically induced neurological effects is believed to follow a dose-response pattern. At an exposure intensity or duration below the no-effect level, detectable effects are unlikely to be evident. As exposure intensity/duration increases to and beyond this level, the toxin begins to interfere with the normal cellular processes of the neurological system. At this early stage, transient signs and symptoms may appear. Overt effects become more severe as exposure continues and finally progress to serious loss of neurological function and possible permanent damage to neural tissue. Increases in our ability to detect neurological changes at lower levels of exposure have shown that neurobehavioral changes or impairment may occur at levels previously thought to be innocuous. These early effects can be important indicators of potential functional impairment at exposure levels below those that produce either transient or permanent damage. Heavy metals, solvents, and pesticides are examples of substances that can cause symptoms and conditions such as nausea, sensory and motor function impairments, depression, sleep disturbances, cognitive impairment, and sexual dysfunction. The limits being proposed for the substances in this group of neurotoxins are designed to maintain worker exposures below the level associated with such adverse health effects. OSHA believes that this approach will ensure that employees will not be likely to suffer these material impairments of health and will provide a margin of safety against the risk of more severe or permanent neurological impairment.

The following discussions describe OSHA's preliminary findings for all of the substances in this group and illustrate the material impairments of health potentially faced by workers exposed to these toxicants.

BIPHENYL (DIPHENYL)

CAS: 92–52–4; Chemical Formula: $C_6H_5C_6H_5$

H.S. No. 2019

In general industry, construction, and maritime, OSHA's current permissible exposure limit for biphenyl (also called biphenyl) is 0.2 ppm as an 8-hour TWA. There is no current limit for this substance in agriculture. The ACGIH has a TLV®–TWA of 0.2 ppm for biphenyl. NIOSH has no REL but concurs with the PEL being proposed. OSHA is proposing an 8-hour TWA PEL in agriculture of 0.2 ppm for biphenyl. This is the limit recently established for this substance in general industry.

Biphenyl is a solid substance that is crystalline in form and ranges in color from colorless to light yellow (Hawley's 1987, p. 426; AIHA 1964). Biphenyl has a distinct aromatic odor and occurs most commonly in the form of a white, scaly solid (ACGIH 1986, p. 58; AIHA 1964). Biphenyl is used as a fungistat in the packaging of citrus fruits, for plant disease control, in organic synthesis, as a heat-transfer agent, and as a dyeing assistant for polyesters (Hawley's 1987, p. 426; ACGIH 1986, p. 58). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Biphenyl is an irritant of the eyes and mucous membranes in both animals and humans; at high concentrations, this substance causes peripheral and central nervous system damage, liver and kidney damage, and bronchopulmonary lesions. The oral LD_{50} in the rat is 3280 mg/kg (RTECS 1991). Rats who have inhaled diatomaceous earth impregnated with biphenyl at a 300-mg/m^3 concentration for 7 hours/day for 64 days showed signs of irritation of the nasal mucosa and labored breathing; bronchopulmonary lesions and mild toxic effects on the liver and kidneys were seen at autopsy. Rabbits were unaffected by this exposure, but mice exposed at only 5 mg/m^3 for this period of time showed signs of respiratory difficulty (Deichmann, Kitzmiller, Dievker et al. 1947). Among 33 workers in one plant who had had prolonged exposure to biphenyl at concentrations as high as 123 mg/m^3, the most commonly described symptoms were headache, numbness and aching of the limbs, general fatigue, and gastrointestinal symptoms (pain, nausea, and indigestion). Examinations of 22 of these workers for neurophysiological changes found that 19 had alterations representative of central and/or peripheral nervous system damage. In one fatal case in this plant, exposure was estimated to have been high (not further specified) for 11 years. Autopsy showed widespread liver necrosis with some cirrhotic areas, nephrotic changes, heart muscle degeneration, and edematous brain tissue (Hakkinen, Hernberg, Karli, and Vikkula 1973).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the material health impairments potentially associated with exposure to biphenyl; these include central and peripheral nervous system injury, irritation of the eyes and mucous membranes, bronchopulmonary lesions, and liver and kidney damage. The Agency believes that establishing an 8-hour TWA PEL of 0.2 ppm will substantially reduce these significant occupational risks in agricultural establishments. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

n-BUTYL ALCOHOL

CAS: 71–36–3; Chemical Formula: $CH_3CH_2CH_2CH_2OH$

H.S. No. 1051

In construction, shipyards, marine terminals, and longshoring operations, OSHA's current PEL for n-butyl alcohol is a 100-ppm 8-hour TWA; the ACGIH TLV® is a 50-ppm ceiling, with a skin notation. OSHA has no PEL for this substance in agriculture. NIOSH has no REL for n-butyl alcohol but concurs (Ex. 8–47, Table N1) that the 50-ppm ceiling PEL and skin notation OSHA is proposing for this substance in construction, maritime, and agriculture are appropriate. These were the limits recently established for n-butyl alcohol in general industry.

n-Butyl alcohol is a colorless, highly refractive liquid with a mild wine-like odor. n-Butyl alcohol is widely used as a solvent in shellacs, varnishes, resins, waxes, oils, dyes, and surface coatings, and as a chemical intermediate. It is also used in veterinary medicine as a bactericide (HSDB 1985). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

n-Butyl alcohol is a moderate irritant of the eyes, nose, and throat in humans and animals and has caused hearing loss in experimental animals and exposed workers. The oral LD_{50} in rats is 790 mg/kg, and the LC_{50} in the same species is 8000 ppm for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 3400 mg/kg (RTECS 1990). In contact with rabbit eyes, n-butyl alcohol causes moderate but reversible injury (graded 7 on an ascending severity scale of 1 to 10) (Grant 1986, p. 162). Applied to the skin of rabbits, n-butyl alcohol caused mild-to-moderate irritation (RTECS 1990).

In humans, however, n-butyl alcohol is suspected of causing vacuolar keratopathy, i.e., many transparent vacuoles in the epithelial layers of the

cornea (Cogan and Grant 1945, 1948; Jaeger 1953; Kruger 1932). Exposure to butyl alcohol-containing solvents is believed to have caused this effect, which can, in severe cases, result in lacrimation and pain, especially on first arising in the morning (Cogan and Grant 1945). Contact dermatitis of the hands and fingers of exposed workers has also been reported (Clayton and Clayton 1981, p. 4577). Systemic effects in the form of vestibular and auditory nerve injuries have occurred in n-butyl-alcohol-exposed workers in France and Mexico (Seitz 1972; Velasquez 1964; Velasquez, Escobar, and Almaraz 1969/Ex. 1–1174). Based on data describing the rate of n-butyl alcohol uptake through the skin of dogs, DiVincenzo and Hamilton (1979) suggested that direct contact of unprotected human hands with liquid n-butyl alcohol for one hour would result in an absorbed dose that is four times that resulting from the inhalation of 50 ppm for one hour.

The current OSHA 8-hour TWA limit of 100 ppm in construction and maritime is based on the studies of Tabershaw, Fahy, and Skinner (1944) and of Smyth (1956/Ex. 1–759). These studies indicated that workers experienced no narcotic or systemic effects at n-butyl alcohol concentrations below 100 ppm. However, eye, nose, and upper respiratory tract irritation did occur in humans exposed to 24 ppm; this irritation became uncomfortable and was followed by headaches when the concentration reached 50 ppm (Nelson, Enge, Ross et al. 1943/Ex. 1–66; RTECS 1990).

Other data reported by Seitz (1972), Velasquez (1964), and Velasquez, Escobar, and Almaraz (1969/Ex. 1–1174) indicate serious exposure-related hearing loss (hypoacusia) and long-term systemic effects on the auditory nerves of exposed workers; the magnitude of the hearing loss was related to length of exposure to n-butyl alcohol. Nine of 11 workers exposed without hearing protection to an n-butyl alcohol concentration of 80 ppm for periods of from 3 to 11 years displayed impaired hearing, and this phenomenon was particularly evident in younger workers (Velasquez 1964; Velasquez, Escobar, and Almaraz 1969/Ex. 1–1174).

A commenter in the prior Air Contaminants rulemaking (Tr. p. 3–237) questioned whether n-butyl alcohol affects the hearing of exposed individuals. In response to this comment, OSHA noted many studies have shown a relationship between exposure to n-butyl alcohol and damage the auditory nerve (54 FR 2408).

Based on this evidence, OSHA preliminarily finds that the current 8-hour TWA PEL of 100 ppm is not sufficiently protective against the acute effects associated with exposure to n-butyl alcohol; in addition, the possibility that auditory nerve damage may be caused by exposure to concentrations of this substance below the 100-ppm level clearly suggests that the current PEL is inadequate. A skin notation is necessary because data in animals (DiVincenzo and Hamilton 1979) suggest that percutaneous absorption may contribute more to overall exposure than inhalation. OSHA is therefore proposing to establish a permissible exposure limit of 50 ppm as a ceiling, with a skin notation, for n-butyl alcohol. OSHA preliminarily concludes that this limit will protect workers in construction, maritime, and agriculture against the significant risks of potential vestibular and auditory nerve injury as well as of headaches, irritation, and dermatitis, which constitute material impairments of health and are associated with exposure to this substance in the workplace. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CHLORINATED CAMPHENE (60 Percent)
CAS: 8001–35–2; Chemical Formula: $C_{10}H_{10}C_{18}$
H.S. No. 1078

In construction, shipyards, marine terminals, and longshoring operations, OSHA currently has an 8-hour TWA limit of 0.5 mg/m³, with a skin notation, for chlorinated camphene. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA limit of 0.5 mg/m³ and a TLV®–STEL of 1 mg/m³ for chlorinated camphene (60 percent), with a skin notation; NIOSH has no REL for this substance. OSHA is proposing to add a 1-mg/m³ STEL to the 0.5-mg/m³ 8-hour TWA PEL for chlorinated camphene in construction and maritime, to retain the skin notation, and to extend these limits and the skin notation to workplaces in agriculture.

Chlorinated camphene (also called toxaphene) is a waxy amber solid with a pleasant, pine-like odor. This substance was formerly used as an insecticide on cotton and food crops and in agriculture as a sheep and cattle dip against scabies (HSDB 1987). In 1982, all major uses of this substance were banned by the EPA, and current use is consequently believed to be very low (EPA 1987).

Chlorinated camphene is a convulsant, a liver and kidney toxin, and a carcinogen in experimental animals (EPA 1987). The oral LD_{50} in rats is 55 mg/kg, and the dermal LD_{50} in rabbits is 1025 mg/kg (RTECS 1990). Before death, acutely poisoned animals show varied central nervous system effects, including nausea, muscle spasms, confusion, and convulsions (Hayes 1963/Ex. 1–982). Monkeys tolerate daily feeding at 10 ppm but show toxic symptoms after two weeks' feeding at the 60-ppm level (Sosnierz, Szczurek, Knapek, and Kolodziejczyk 1972/Ex. 1–760). Dogs chronically exposed to this substance by gavage convulsed and subsequently died of respiratory failure. At autopsy, kidney damage was seen (EPA 1987). Rats exposed to chlorinated camphene in lifetime feeding studies showed increases in liver weight and, at autopsy, fatty degeneration and/or necrosis of the liver (EPA 1987). In mice fed average doses of 98 or 198 ppm chlorinated camphene in the diet for 80 weeks, there was a dose-related and statistically significant increase in hepatocellular carcinomas (IARC 1979, Vol. 20, p. 339; EPA 1987). In rats fed average doses of 556 or 1112 ppm (males) or 540 or 1080 ppm (females) for 80 weeks, there was a statistically significant increase in thyroid follicular cell adenomas and carcinomas in the high-dose group in both sexes (EPA 1987; IARC 1979, Vol. 20, pp. 335–336). Based on this evidence, both NIOSH (Ex. 8–47, Table N6B) and the International Agency for Research on Cancer (IARC) have concluded that chlorinated camphene is a potential human carcinogen (IARC 1979, Vol. 20, p. 339). (As discussed earlier in this preamble, OSHA has placed this substance into the neurotoxin category based on the ACGIH's rationale for the TLV® for this substance; placement in a category does not mean that a substance does not also have other health effects.)

In humans, the acute lethal dose of chlorinated camphene by ingestion has been estimated at 60 mg/kg (EPA 1987), and a dose of 10 mg/kg has caused nonfatal convulsions in some exposed individuals. The ACGIH (1986/Ex. 1–3, p. 115) concludes that the acute toxicity of chlorinated camphene is equivalent to that of chlordane, for which the fatal human dose is estimated to be around 6 grams; the ACGIH TLV®–TWA for chlordane is 0.5 mg/m³. One study of 25 human volunteers failed to reveal toxic responses to daily 30-minute exposures to a 500 mg/m³ concentration of chlorinated camphene for 10 consecutive days, followed by similar exposures for three consecutive days three weeks later (ACGIH 1986, Ex. 1–3, p. 115). Two cases of acute aplastic anemia have been reported in workers dermally exposed to chlorinated camphene and lindane, and

one of these workers subsequently died (EPA 1987, p. 4).

OSHA is proposing to add a 15-minute STEL of 1.0 mg/m³ to the current 8-hour TWA PEL of 0.5 mg/m³ and the existing skin notation for chlorinated camphene, and to extend these limits to agriculture. OSHA preliminarily concludes that both a TWA limit and a STEL are required to protect exposed workers in construction, maritime, and agriculture against the significant risks of convulsions and other systemic effects associated with exposure to this substance. OSHA believes that these adverse health effects constitute material impairments of health and that the proposed TWA PEL and STEL will ensure that worker exposures are maintained under good industrial hygiene control. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

DECABORANE

CAS: 17702–41–9; Chemical Formula: $B_{10}H_{14}$

H.S. No. 1114

In construction and maritime, OSHA's current limit for decaborane is 0.05 ppm as an 8-hour TWA, with a skin notation. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 0.05 ppm and a TLV®–STEL of 0.15 ppm, also with a skin notation. NIOSH has no REL for decaborane but concurs (Ex. 8–47, Table N1) that the limits OSHA is proposing are appropriate. OSHA is proposing to add a 15-minute STEL of 0.15 ppm to the 8-hour TWA PEL of 0.05 ppm for decaborane, and to retain the skin notation, in the construction and maritime industries and to extend these limits to agriculture. These are the limits recently established for decaborane in general industry.

Decaborane forms colorless crystals that are stable at ordinary temperatures; this substance has a pungent odor. Decaborane is used as a rocket propellant and as a catalyst in olefin polymerization. It is also used to coat metals to impart corrosion resistance, in mothproofing and dye-stripping, and as a reducing and fluxing agent.

The acute toxicity of decaborane is extremely high for laboratory animals. The 4-hour LC_{50}s for rats and mice are 46 and 12 ppm, respectively (Schechter 1958/Ex. 1–963). Both acute and chronic exposure of several species of laboratory animals has consistently resulted in neurologic signs, including restlessness, depressed breathing, incoordination, weakness, and convulsions (Roush 1959). The ability of decaborane to penetrate the skin is particularly notable: the dermal LD_{50}s for rabbits and rats are 71 and 740 mg/kg, respectively (Svirbely 1954a/Ex. 1–385).

Neurotoxic signs and symptoms occurring among exposed humans have also been reported; these have included headache, lethargy, nausea, dizziness, convulsions, and muscle tremors (Lowe and Freeman 1957). Decaborane also produces marked irritation of the skin and mucous membranes; contact with the eyes can result in serious keratoconjunctivitis, with ulceration and necrotic changes (HSDB 1985).

OSHA is retaining its 8-hour TWA PEL of 0.05 ppm and the skin notation for decaborane in construction and maritime, and is proposing to add a 15-minute STEL of 0.15 ppm for this substance in these two sectors; OSHA also is proposing to extend the 8-hour TWA, the 15-minute STEL, and the skin notation to agriculture. The Agency preliminarily concludes that these limits will provide protection against the significant risks of material health impairment in the form of neuropathy and irritation. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

DIBORANE

CAS: 19287–45–7; Chemical Formula: B_2H_6

H.S. No. 2054

In general industry, construction, and maritime, OSHA's current permissible exposure limit for diborane is 0.1 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.1 ppm for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA PEL of 0.1 ppm for diborane in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Diborane is a colorless, flammable gas with a repulsive, sweet odor. Diborane is used in the synthesis of boron compounds and metal borohydrides, as a polymerization catalyst for ethylene, as a fuel for engines and rockets, as a reducing agent, and as a doping agent (NIOSH/OSHA Occupational Health Guideline 1981, p. 1; Hawley's 1987, p. 367).

Diborane causes pulmonary irritation and may also affect the nervous system in humans and animals. In rats and mice, LC_{50} values are 40 ppm and 29 ppm for 4 hours, respectively (RTECS 1990). The lowest lethal concentration in hamsters is 50 ppm for 8 hours; in dogs, this value is 125 ppm for 2 hours (RTECS 1990). Acutely poisoned animals died of pulmonary edema (Merritt 1965). Dogs repeatedly exposed to 5 ppm diborane for 6 hours/day died after 10 to 20 such exposures, but one of two dogs survived repeated exposures to concentrations of 1 to 2 ppm for 6 months (Comstock et al. 1954). Repeated exposure to an unspecified concentration of diborane caused spinal cord lesions in a dog (Jacobson, Murtha, Weir et al. 1960).

The inhalation dose that is lethal to humans is 159 ppm for 15 minutes (Braker and Mossman 1980, p. 219). Acute diborane poisoning via inhalation causes signs and symptoms similar to those of metal fume fever, including tightness, heaviness, and burning in the chest, coughing, shortness of breath, pericardial pain, nausea, and drowsiness. These symptoms may not onset for 24 hours after exposure and may persist for 1 to 3 days or more (Parmeggiani 1983, p. 318). Exposure to high concentrations (not further specified) of diborane causes eye irritation (Proctor, Hughes, and Fischman 1988, p. 181). Prolonged exposure to low levels of diborane causes headache, lightheadedness, vertigo, chills, and fever; fatigue or weakness may also occur and persist for several hours (Cordasco, Cooper, Murphy, and Anderson 1962; Lowe and Freeman 1957). Recurrent diborane exposure caused chronic respiratory distress in two patients (Cordasco et al. 1962).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to diborane causes eye irritation, respiratory injury, and central nervous system effects. The Agency believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse exposure-related effects. OSHA believes that establishing an 8-hour TWA PEL of 0.1 ppm for diborane in agriculture is necessary to substantially reduce the risks of these material health impairments. In addition, promulgation of this limit for diborane will make OSHA's PEL for this substance consistent across all OSHA-regulated sectors.

Di-sec-OCTYL PHTHALATE

CAS: 117–81–7; Chemical Formula: $C_{24}H_{38}O_4$

H.S. No. 1116

OSHA's current limit for di-sec-octyl phthalate in the construction and maritime industries is 5 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 5 mg/m³ and a TLV®–STEL of 10 mg/m³, and these are the limits OSHA is proposing for the construction, agriculture, and maritime industries.

NIOSH (Ex. 8–47, Table N6A) concurred with these limits.

Di-sec-octyl phthalate, also called di-2-ethylhexyl phthalate or DEHP, is a light-colored, viscous, odorless, combustible liquid that is used as a plasticizer for resins and elastomers (ACGIH 1986, p. 86/Ex. 1–3, p. 223). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DEHP is not acutely toxic to small laboratory animals via the oral route of administration. The oral LD_{50} reported for mice is 26.3 g/kg; for rats, it is 33.8 g/kg (Krauskopf et al. 1973/Ex. 1–495). No skin irritation or sensitization potential has been demonstrated in either animals or humans, and the lethal dermal dose in rabbits is about 25 ml/kg (Singh, Lawrence, and Autian 1972/Ex. 1–436). Shaffer, Carpenter, and Smyth (1945/Ex. 1–369) and Lawrence (unpublished data, as cited in ACGIH 1986/Ex. 1–3, p. 223) have reported deaths in rats and chronic diffuse inflammation of the lung in mice exposed to DEHP at unspecified levels.

Long-term dietary toxicity studies in rats, guinea pigs, and dogs have established a no-effect dose level for DEHP of about 60 mg/kg/day, and no carcinogenic or histologic abnormalities were observed at this level (Gesler 1973/Ex. 1–481). Higher doses were associated with growth retardation and increased liver and kidney weights but not with histologic abnormalities. Metabolic studies have demonstrated that laboratory animals do not appreciably metabolize DEHP (Dillingham and Autian 1973/Ex. 1–477).

Di-sec-octyl phthalate has been shown to be carcinogenic to rats and mice fed higher doses; this evidence comes from a National Toxicology Program bioassay in which male and female Fischer 344 rats were fed 0, 6, or 12 g DEHP per kg diet and B6C3F1 mice were fed 0, 3, or 6 g DEHP per kg diet for 103 weeks (IARC 1982, Vol. 29, p. 269, corr. 42:261). There was a statistically significant and dose-related increase in the incidence of hepatocellular carcinomas in both sexes of both species of animals tested. Based on this evidence, IARC (1982) concluded that there was sufficient evidence of DEHP's carcinogenicity in animals, and NIOSH (Ex. 8–47, Table N6A) concurs with this assessment.

Several animal studies have reported fetotoxic, teratogenic, and reproductive effects associated with exposure to di-sec-octyl phthalate. Fetal resorptions, fetal deaths, and gross abnormalities were reported following treatment of pregnant rats with 5 or 10 g/kg DEHP by intraperitoneal injection on days 5, 10, and 15 of gestation (IARC, 1982, Vol. 29, p. 269). Administration of 0.05 to 1 percent DEHP in the diet of mice throughout gestation resulted in an increased frequency of fetal resorptions and fetal malformations, including neural tube defects and delayed ossification (Shiota and Nishimura 1982). Doses of 2 or 4 ml/kg administered intraperitoneally to pregnant rats on days 3, 6, and 9 of gestation prevented implantation and caused excessive bleeding, incomplete expulsion of fetuses, and maternal deaths (Peters and Cook 1973).

A study of workers exposed to a mixture of the vapors of diethyl phthalate, dibutyl phthalate, and di-2-ethylhexyl phthalate reported that exposures to 1 to 6 ppm caused no peripheral polyneuritis (Raleigh, as cited in ACGIH 1986/Ex. 1–3, p. 223). However, Russian investigators examined male and female workers exposed to between 1.7 and 66 mg/m^3 of various combinations of airborne phthalates (including butyl phthalate, higher aryl phthalates, dioctyl phthalate and others) and noted complaints of pain, numbness, and spasms in the upper and lower extremities after six to seven years of exposure. Polyneuritis was observed in 32 percent of the workers studied, and 78 percent of these workers showed depression of vestibular receptors (Milkov, Aldyreva, Popova et al. 1973/Ex. 1–646).

OSHA is retaining the 8-hour TWA PEL of 5 mg/m^3 in construction and maritime, proposing to add a 15-minute STEL of 10 mg/m^3 for di-sec-octyl phthalate in these two industries, and proposing to extend both limits to the agricultural sector. The Agency preliminarily concludes that these limits together will protect workers from the significant risks of neuropathic and other systemic injuries that constitute material health impairments that are associated with exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

DICHLOROACETYLENE

CAS: 7572–29–4; Chemical Formula: ClC≡CCl

H.S. No. 1123

OSHA currently has no limit for dichloroacetylene in the agriculture, construction, or maritime industries. The ACGIH has a TLV®-ceiling of 0.1 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N6A) with the limit being proposed. OSHA is proposing a ceiling limit of 0.1 ppm for dichloroacetylene in construction, maritime, and agriculture. This is the limit recently established for dichloroacetylene in general industry.

Dichloroacetylene is not produced commercially but is formed from the thermal decomposition of trichloroethylene. This substance is a spontaneously combustible liquid.

In preliminary inhalation exposure studies, guinea pigs demonstrated a 4-hour LC_{50} of 20 ppm; death occurred in these animals 2 or 3 days after exposure and was caused by pulmonary edema. In rats, similar exposures to dichloroacetylene in the presence of a 330-ppm concentration of trichloroethylene resulted in an LC_{50} of 55 ppm (Siegel, Jones, Coon, and Lyon 1967). The LC_{50}s for 1- and 4-hour exposures in mice were 124 and 19 ppm, respectively; deaths were caused by kidney injury and, at autopsy, degenerative lesions were found in the brain (Reichert, Ewald, and Henschler 1975). Rats exposed for 6 hours/day, 5 days/week, for 6 weeks to a dichloroacetylene-trichloroethylene mixture exhibited weakness in the hind limbs, respiratory distress, self-inflicted bite wounds, and kidney injury; the concentrations of dichloroacetylene employed in this study were 2, 9, 9.8, and 15.5 ppm (Reichert, Henschler, and Bannasch 1978).

In humans, dichloroacetylene exposure causes headache, loss of appetite, extreme nausea, and vomiting; exposure affects the trigeminal nerve and facial muscles and exacerbates facial herpes. Disabling nausea was experienced by approximately 85 percent of individuals exposed for prolonged periods of time (not further specified) at concentrations ranging from 0.5 to 1 ppm (Saunders 1967/Ex. 1–361). Several occupational fatalities have been attributed to exposure to dichloroacetylene (Humphrey and McClelland 1944/Ex. 1–491; Firth and Stuckey 1945, as cited in ACGIH 1986/Ex. 1–3, p. 177). Humphrey and McClelland (1944/Ex. 1–491) reported 13 cases of cranial nerve palsy, nine of which had labial herpes, following exposure to dichloroacetylene. These patients also had symptoms of nausea, headache, jaw pain, and vomiting. Autopsies of two of these victims revealed edema at the base of the brain (Humphrey and McClelland 1944/Ex. 1–491).

In the prior air contaminants rulemaking, NIOSH indicated that, in its opinion, this substance should be designated as a potential occupational carcinogen (Ex. 8–47, Table N6A) based on findings of an increased incidence of kidney adenocarcinomas in male mice and an increased incidence of

lymphomas and benign liver and kidney tumors in rats administered dichloroacetylene by inhalation. The International Agency for Research on Cancer has concluded that there is limited evidence for the carcinogenicity of dichloroacetylene in animals (IARC 1986, Vol. 39, pp. 369–378). As discussed elsewhere in this preamble, OSHA notes that placement of this substance in the neurotoxin category for the purposes of this rulemaking in no way obviates these findings of dichloroacetylene's carcinogenicity in animals; placement in this category is intended for ease of classification only and simply reflects the rationale underlying the ACGIH limit for this substance.

Based on the neurotoxic effects described above, OSHA is proposing a ceiling limit of 0.1 ppm for dichloroacetylene in the agriculture, construction, and maritime industries. The Agency preliminarily concludes that this limit will substantially reduce the significant risks of disabling nausea and serious systemic effects posed to workers exposed to dichloroacetylene in these sectors at the levels currently permitted by the absence of an OSHA limit. OSHA finds that these health effects constitute material impairments of health. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

DIPROPYLENE GLYCOL METHYL ETHER

CAS: 34590–94–8; Chemical Formula: $CH_3OC_3H_6OC_3H_6OH$

H.S. No. 1149

For the construction and maritime industries, OSHA currently has an 8-hour TWA limit of 100 ppm for dipropylene glycol methyl ether (DPGME), with a skin notation. The ACGIH recommends a TLV®–TWA of 100 ppm and a TLV®–STEL of 150 ppm, with a skin notation. In construction and maritime, OSHA is retaining the 8-hour TWA permissible exposure limit of 100 ppm and the skin notation and is proposing to add a 150-ppm STEL for dipropylene glycol methyl ether; the Agency is also proposing to extend these limits to agriculture. NIOSH has no REL but concurred (Ex. 8–47, Table N1) that these limits are appropriate. These are the limits recently established in general industry.

DPGME is a colorless liquid with a mild, pleasant odor. It is used as a solvent in hard-surface liquid household cleaners and water-based surface coatings and is also a component of hydraulic brake fluid. DPGME is also used in the manufacture of various cosmetics (HSDB 1985).

DPGME is an irritant and central nervous system depressant in humans and animals. The oral LD_{50} in rats is 5.2 g/kg (Rowe et al. 1954/Ex. 1–435). Dogs receiving intravenous injections of DPGME exhibited central nervous system depression and died as a result of respiratory failure (Shideman and Procita 1951/Ex. 1–867). Four animal species, including the monkey, were exposed repeatedly to seven-hour daily inhalation exposures of between 300 and 400 ppm DPGME; the animals exhibited narcosis and, at autopsy, histological changes in the lung and liver (Rowe, McCollister, Spencer et al. 1954/Ex. 1–435).

Humans inhaling DPGME concentrations of 300 to 400 ppm judged this level to be very irritating and disagreeable, but 100 ppm was tolerable and, in the opinion of the authors, was unlikely to produce organic injury (Rowe, McCollister, Spencer et al. 1954/Ex. 1–435). Patch tests on the skin of 250 human subjects produced neither irritation nor sensitization (ACGIH 1986/Ex. 1–3, p. 221). Humans exposed to DPGME vapor concentrations at levels between 50 to 2000 ppm experienced eye, nose, and throat irritation before the onset of CNS impairment, which occurred at 1000 ppm in one of two subjects (Stewart, Baretta, Dodd, and Torkelson 1970/Ex. 1–379).

During the general industry rulemaking, NIOSH (Ex. 150) reported that it is developing a criteria document on the glycol ethers and submitted recent toxicity data on DPGME, including the following: rats and mice inhaling concentrations of 50, 140, or 330 ppm DPGME six hours/day for nine days showed increased liver weights (at 50 and 140 ppm for the rat and at 330 ppm for the mouse), but no effects were observed when rats inhaled 15, 50, or 200 ppm DPGME 6 hours/day, 5 days/week for 13 weeks (Landry and Yano 1984). A 1985 study also indicates that DPGME is metabolized via the same routes and to the same types of metabolites—propylene glycol, and sulfate and glucuronide conjugates of DPGME—as those previously identified for PGME (1-methoxy-2-propanol) (Miller, Hermann, Calhoun et al. 1985). The Landry and Yano study (1984) further indicated that, at the concentrations tested, DPGME exerted no teratogenic or reproductive effects. Even at the highest levels tested (19 g/kg), no single application of DPGME to the skin of rabbits was lethal, although some narcosis and transient weight loss did occur (Rowe et al. 1954/Ex. 1–435). However, a significant number of deaths occurred in a group of rabbits tested with 65 repeated dermal applications of 5 ml/kg (4.8 g/kg) or higher during a 90-day period (Rowe et al. 1954/Ex. 1–435).

In construction and maritime, OSHA is retaining its 8-hour TWA PEL of 100 ppm and the skin notation and is proposing to add a STEL of 150 ppm for dipropylene glycol methyl ether; in addition, OSHA is proposing to extend these limits to agriculture. The Agency preliminarily concludes that these limits will substantially reduce the significant risks of central nervous system effects and irritation, which constitute material health impairments, that exist when workers in construction, maritime, or agriculture are exposed to DPGME even for short periods. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

n-HEXANE

CAS: 110–54–3; Chemical Formula: $CH_3(CH_2)_4CH_3$

H.S. No. 1200

OSHA's current 8-hour PEL for n-hexane (normal hexane) is 500 ppm for the construction and maritime industries; there is no limit in agriculture. The ACGIH has a 50-ppm TLV®–TWA for this substance, and the NIOSH RELs are 100 ppm as a 10-hour TWA and 510 ppm as a 15-minute ceiling. OSHA is proposing an 8-hour TWA limit of 50 ppm for n-hexane for the agricultural, construction, and maritime industries; this was the limit recently established in general industry. NIOSH (Ex. 8–47, Table N1) concurs that an 8-hour TWA PEL of 50 ppm is appropriate for n-hexane.

Normal hexane is a clear, volatile liquid. It is used as a solvent for the extraction of soybean and various seed oils; in the manufacture of polyolefins, elastomers, and pharmaceuticals; and as a denaturant for alcohol.

The acute lethality of n-hexane is low; the lowest reported lethal concentration for mice is 33,330 ppm (Clayton and Clayton 198, p. 3186). However, it has been well established that chronic exposure to n-hexane produces distal axonopathy in both experimental animals and humans; it is metabolized to 2,5-hexanedione (2,5–HD), which is thought to be the causative agent of most of the adverse neurological effects observed after exposure to hexane (Schaumburg, Spencer, and Thomas 1983/Ex. 1–228).

The ACGIH established a TLV® of 50 ppm for this substance, based primarily on studies (Miyagaki 1967/Ex. 1–198; Inoue, Takeuchi, Takeuchi et al. 1970/Ex. 1–75) showing peripheral neuropathies in workers exposed to levels as low as 210 ppm. NIOSH based

its 100-ppm REL on the same studies as those cited by the ACGIH (Miyagaki 1967/Ex. 1–198; Inoue, Takeuchi, Takeuchi et al. 1970/Ex. 1–75). In the rulemaking for general industry, NIOSH reasoned as follows:

> The absence of definitive epidemiologic or toxicologic evidence makes it difficult to determine how much lower the environmental limit should be. Professional judgment suggests [that] a TWA concentration of 350 mg/m³ (100 ppm) offers a sufficient margin of safety to protect against the development of chronic nerve disorders in workers (NIOSH 1977a/Ex. 1–233, p. 74).

The adverse neurological effects of hexane exposure are manifested as both sensory and motor dysfunction. Initially, there is a symmetric sensory numbness of the hands and feet, with loss of pain, touch, and heat sensation. Motor weakness of the toes and fingers is often present; as the neuropathy becomes more severe, weakness of the muscles of the arms and legs may also be observed (Schaumburg, Spencer, and Thomas 1983/Ex. 1–228). Clinical findings may include footdrop, muscle atrophy, and paresthesias (tingling) in the arms and legs. Biopsies of peripheral nerves show swelling of the nerve and thinning of the myelin sheath (Proctor, Hughes, and Fischman 1988, p. 271). There are no known conditions that predispose an individual to hexane neurotoxicity (Schaumburg, Spencer, and Thomas 1983/Ex. 1–228). The onset of neurological symptoms may not be evident for several months to a year after the beginning of exposure. Recovery may be complete but may require 1 to 2 years, and severely exposed individuals often retain some degree of sensorimotor deficit (Proctor, Hughes, and Fischman 1988, p. 271).

The dose-response relationship for n-hexane exposure in humans is not well defined, although it is clear that the severity of the resulting neuropathy increases as the exposure level of n-hexane increases. A number of studies have shown a consistent relationship between exposure levels of 500 ppm (OSHA's current exposure limit in construction and maritime) to 2000 ppm and the development of characteristic peripheral neuropathies (Yamamura 1969, as cited in ACGIH 1986/Ex. 1–3, p. 305; Yamada 1967/Ex. 1–192). Neuropathic effects have also been shown to occur at levels between 210 and 500 ppm (Takeuchi, Maluchi, and Takagi 1975/Ex. 1–217).

Two recent studies (Wang, Chang, Kao et al. 1986; Iida 1982) suggest that an exposure limit of 100 ppm would not sufficiently protect against the neuropathic effects of n-hexane exposure. Iida (1982) found 21 cases of mild neuropathy among workers in a sandal factory where ventilation systems were installed to achieve a 100-ppm concentration of n-hexane. In a cross-sectional study, Wang et al. (1986) found that workers in a press-proofing factory showed a significant decrease in motor nerve conduction velocities, despite the fact that n-hexane exposures were being maintained below 100 ppm.

Chronic exposure studies of n-hexane conducted in animals show effects consistent with those reported in human studies. Peripheral neuropathy has been demonstrated in rats exposed to 400 to 600 ppm n-hexane for 45 days and in mice exposed to 250 ppm for over 7 months. Degeneration of myelin and axis cylinders have been found in rats exposed to 850 ppm for 143 days (Kurita 1974; Ashbury, Nieben, and Telfer 1974; Gonzales and Downey 1972).

Reports of effects occurring at levels ranging from below 100 to 500 ppm indicate that the current OSHA PEL of 500 ppm is not adequate to protect exposed workers in construction and maritime from adverse sensorimotor neuropathic effects, and exposure at this level thus represents a significant risk to workers. The decreased sensitivity to pain, touch, and temperature associated with n-hexane exposure can also make a worker more susceptible to injuries and accidents. Further, the delayed onset of a clinical response, which is typical of hexane exposure, increases the probability that exposure will continue until prolonged or irreversible effects occur.

Both the presence of peripheral neuropathies in workers exposed below 100 ppm and the delay in the onset of neurological symptoms indicate that workers exposed at levels above the proposed 50 ppm limit are at significant risk of developing these symptoms. OSHA therefore proposes to revise the PEL for n-hexane to 50 ppm as an 8-hour TWA for workplaces in construction and maritime and to extend this PEL to agriculture. The Agency preliminarily concludes that this PEL will substantially reduce the significant risk of peripheral neuropathies and other adverse neuropathic effects that constitute material impairments of health and are associated with the exposures to levels above the proposed limit. In addition, promulgation of these limits will make OSHA's PEL for this substance consistent across all regulated sectors.

2–HEXANONE (METHYL n-BUTYL KETONE)

CAS: 591–78–6; Chemical Formula: $CH_3CO—CH_2CH_2CH_2CH_3$

H.S. No. 1202

In construction, marine terminals, shipyards, and longshoring operations, OSHA's current PEL for 2-hexanone is 100 ppm as an 8-hour TWA. The NIOSH REL is a 1 ppm (10-hour) TWA, and the ACGIH recommends a TLV®–TWA of 5 ppm. In OSHA's recent Air Contaminants rulemaking for general industry, the final rule established a permissible exposure limit for this substance of 5 ppm as an 8-hour TWA; this is the limit being proposed for 2-hexanone in construction, maritime, and agriculture.

2–Hexanone (also called methyl butyl ketone) is a colorless, volatile liquid with a characteristic acetone-like odor that is more pungent than that of acetone. 2–Hexanone is used as a solvent for resins, oils, fats, waxes, and lacquers, and in lacquer and varnish removers (HSDB 1984).

2–Hexanone is an irritant and a neurotoxin both in humans and in animals. The oral LD_{50} in rats is 2590 mg/kg, and the LC_{50} in the same species is 8000 ppm for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 4800 mg/kg (RTECS 1990). Animals exposed continuously to 100- or 600-ppm concentrations of 2-hexanone developed neuropathic signs within 4 to 8 weeks of the beginning of exposure; some animals showed axonal swelling and thinning of the myelin sheath at autopsy (Mendell et al. 1974). A metabolite of 2-hexanone, 2,5-hexanedione, appears to be responsible for the neural damage; this same metabolite is formed when n-hexane (discussed above) is metabolized. Animals of several species, including rats, cats, dogs, monkeys, hens, and guinea pigs, have developed 2-hexanone-related peripheral neuropathies (O'Donoghue 1985). Rats intermittently exposed over a period of 4 months to a 2-hexanone concentration of 1300 ppm displayed severe hind-limb weakness.

Vapor exposures of 1000 ppm 2-hexanone caused moderate eye and nose irritation in human volunteers in a few minutes (Clayton and Clayton 1982, pp. 4741–4747). In addition to the textile printing plant episode described below, three cases of peripheral neuropathy have been seen in a group of 26 spray painters involved in construction; 2-hexanone is believed to have been responsible for these cases (Rom 1983, pp. 524–525). Another group of workers exposed for 5 weeks or longer to 9- to 36-ppm concentrations of this substance developed distal polyneuropathy, complete with motor and sensory decrements (Gosselin, Smith, and Hodge 1984, p. II–185).

The NIOSH REL for 2-hexanone of 1 ppm (as a 10-hour TWA) is based on an epidemiologic study describing an outbreak of neurologic disease among workers in a plant that manufactures printed fabrics (Allen, Mendall, Billmaier et al. 1975/Ex. 1–80). This study reported that a screening of 1,157 exposed workers revealed 86 verified cases of distal neuropathy. 2-Hexanone was suspected of being the neurotoxicant because it had only recently been introduced into the process (Allen, Mendall, Billmaier et al. 1975/Ex. 1–80). When recommending its limit, NIOSH relied on an industrial hygiene survey of the plant conducted by Billmaier, Yee, Allen et al. (Ex. 1–76) in 1974, which showed that 2-hexanone concentrations near the textile printing machines ranged from 1 to 156 ppm (10-minute area samples). After reviewing this evidence, NIOSH concluded that 1 ppm could not be ruled out as an effect level for 2-hexanone-induced neuropathy (NIOSH Criteria Document). OSHA is not persuaded by NIOSH's reasoning in this instance, both because the samples taken in the plant were area rather than personal samples and because workers at the plant reportedly washed their hands in 2-hexanone. OSHA believes that the area samples were likely to have reflected higher concentrations than the workers would have experienced and that the outbreak described in the NIOSH Criteria Document resulted, at least in part, from percutaneous absorption of this substance.

Both human and animal studies show the development of neuropathic disease at exposure concentrations well below the current 100-ppm PEL; OSHA preliminarily concludes that a reduction in the PEL is needed to reduce this significant risk. Accordingly, OSHA is proposing a 5-ppm (8-hour TWA) PEL for 2-hexanone in construction, maritime, and agricultural workplaces. In addition, promulgation of these limits will make OSHA's PEL for this substance consistent across all regulated sectors.

IRON PENTACARBONYL

CAS: 13463–40–6; Chemical Formula: $Fe(CO)_5$

H.S. No. 1216

In construction, shipyards, marine terminals, and longshoring operations, OSHA currently has no exposure limit for iron pentacarbonyl. The ACGIH has a TLV®–TWA (measured as iron) of 0.1 ppm and a TLV®–STEL of 0.2 ppm for iron pentacarbonyl. NIOSH has no REL for iron pentacarbonyl but concurs (Ex. 8–47, Table N1) that these limits are appropriate. The Agency is proposing permissible exposure limits of 0.1 ppm (TWA) and 0.2 ppm (STEL) for iron pentacarbonyl in the construction, maritime, and agriculture sectors; this is the limit recently established in general industry.

Iron pentacarbonyl is used in iron production, as an anti-knock fuel additive, and as a catalyst and reagent in chemical synthesis (HSDB 1989). This substance is an oily liquid that is either colorless or yellow (HSDB 1985).

Iron pentacarbonyl is a lung and central nervous system toxin on acute exposure. The oral LD_{50} in rats is 40 mg/kg, and the LC_{50} in the same species is 44 mg/m³ (no duration specified) (RTECS 1989). The dermal LD_{50} in rabbits is 240 mg/kg (RTECS 1989). In 1970, Gage found that a 5.5-hour exposure to a 33-ppm concentration of iron pentacarbonyl caused fatalities in three of eight rats; four of eight animals died after two 5.5-hour exposures at 18 ppm. At 7 ppm, no ill effects were observed in rats exposed 18 times in 5.5 hours (Gage 1970/Ex. 1–318).

Immediate symptoms of acute exposure to high concentrations of iron pentacarbonyl include headache and dizziness, followed in 12 to 36 hours by fever, cyanosis, cough, and shortness of breath. Another clinical effect of overexposure to this substance is lung injury, and degenerative changes in the central nervous system have also been reported. Iron carbonyl is the least toxic of the metal carbonyls (Clayton and Clayton 1982, p. 1797).

Based on these findings in humans and animals, OSHA is proposing permissible exposure limits of 0.1 ppm (TWA) and 0.2 ppm (STEL) for iron pentacarbonyl. The Agency preliminarily concludes that these limits will protect workers in construction, maritime, and agriculture from the significant risks of material health impairment in the form of exposure-related headache, dizziness, fever, dyspnea, cyanosis, pulmonary injury, and central nervous system effects. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

LINDANE

CAS: 58–89–9; Chemical Formula: $C_6H_6Cl_6$

H.S. No. 2100

The current OSHA PEL for lindane in general industry, construction, and maritime is 0.5 mg/m³ as an 8-hour TWA, with a skin notation. There is no PEL for lindane in agriculture. The ACGIH TLV®–TWA for this substance is 0.5 mg/m³, with a skin notation; NIOSH has no REL for lindane but concurs with the limit being proposed (Ex. 8–47, Table N3A). OSHA is proposing a PEL of 0.5 mg/m³ as an 8-hour TWA, with a skin notation, for lindane in agriculture. Promulgation of this limit will make the PEL for lindane consistent across all OSHA-regulated sectors.

Lindane, also called benzene hydrochloride or BHC, is a colorless to white crystalline solid with a faint musty odor (HSDB 1986). Lindane is used as an insecticide for field crops, ornamentals, timber, soil and seed treatment, stored products, and in household use. It is used in human medicine as a scabicide and pediculicide, most often as a 1-percent lotion, cream, or shampoo. Lindane is also used in veterinary medicine (HSDB 1986; Grant 1986, p. 561). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Lindane is a convulsant in both animals and humans; it is an irritant of the eyes, nose, and upper respiratory tract and has been associated with the development of aplastic or hypoplastic anemia and leukemia in humans. This substance also has carcinogenic, reproductive, and embryotoxic effects in experimental animals. The oral LD_{50} in rats is 76 mg/kg, and the dermal LD_{50} in rabbits is 50 mg/kg (RTECS 1990). Following a single dose of lindane, the convulsion threshold in mice decreases; 2 days after administration, however, the threshold increases (Hulth et al. 1978). Lindane also has reproductive and embryotoxic effects in rats (IARC 1974, Vol 5; Petrescu et al. 1974, in Rev. Med. Chin. Soc. Nat. 1951 78(4):831–842). Rats gavaged daily with 32 mg/kg lindane for 6 months developed nervous symptoms and showed fatty degeneration of the liver and renal tubular epithelium and vacuolization of cerebral cells at autopsy (NRC 1977, p. 587). Minor lesions of the liver have been seen in rats dosed with lindane at 2.6 to 5 mg/kg/day and in mice dosed with 6 to 10 mg/kg/day. Rodents exposed orally to high doses developed degenerative changes in the kidney, pancreas, and testes (Hayes 1982, pp. 211–229). Oral administration of lindane has caused thyroid tumors in rats, and mice developed liver tumors, sometimes with lung metastases, when administered lindane orally (IARC 1987, Suppl. 7, p. 221; IARC 1979, Vol. 20, p. 189). Based on this evidence, the International Agency for Research on Cancer has concluded that the evidence of lindane's carcinogenicity in animals is sufficient (IARC 1987, Suppl. 7, p. 221).

Rats fed 1500 ppm in the diet for 90 days developed testicular atrophy, spermatogenic arrest, and apparent inhibition of androgenesis (Shivanandappa and Krishnakumari 1983). Lindane is mutagenic in mammalian test systems (RTECS 1987).

Acute exposure to lindane vapor at unspecified concentrations causes irritation of the eyes, nose, and upper respiratory tract in humans (AIHA 1972). Accidental ingestion of lindane has caused repeated, violent, and fatal convulsions in humans; respiratory difficulty and cyanosis were also seen in these cases. Nonlethal ingestions have been associated with convulsions, tremor, fever, cyanosis, loss of consciousness, dizziness, and nausea (Hayes 1963; Hayes 1982, p. 222). Neurological studies of 37 workers exposed to lindane for 2 years showed that these workers had serious electroencephalographic disturbances and that 14 workers had minor neurological symptoms (Czegledi-Janko and Avar 1970). Four cases of leukemia have been reported in men exposed to lindane with or without other chemical exposures, and agricultural workers exposed to lindane and other pesticides have shown an increase in lung cancer mortality; however, the International Agency for Research on Cancer (IARC) has concluded that the evidence of lindane's carcinogenicity in humans is inadequate (IARC 1987, Suppl. 7, p. 220).

Based on this evidence in humans and animals, OSHA is proposing a 0.5 mg/m³ 8-hour TWA PEL, with a skin notation, to protect workers in agriculture from the significant risk of adverse health effects caused by exposure to lindane. The Agency preliminarily concludes that this limit is necessary to substantially reduce a significant risk of material health impairment in exposed workers. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

MANGANESE compounds

CAS: 7439–96–5; Chemical Formula: Mn

H.S. No. 2103

In general industry, construction, and maritime, OSHA's current limit for manganese and its compounds is 5 mg/m³ (measured as manganese) as a ceiling. There is no limit in agriculture. The ACGIH has a TLV® of 5 mg/m³ as an 8-hour TWA, and NIOSH has a REL of 5 mg/m³ for the metal and its compounds, also as a ceiling. OSHA is proposing a 5-mg/m³ ceiling limit for manganese and its compounds in agriculture; this action will make the PELs for manganese and its compounds consistent across all regulated sectors.

Manganese is a reddish-gray or silvery powder or metal that has no odor. Some of the more important manganese compounds are manganese dioxide, manganese tetroxide, manganous carbonate, manganous chloride, manganous acetate, and potassium permanganate. Manganese is used in steelmaking as a component of ferrous alloys, in other operations to make nonferrous alloys, in the manufacture of dry cell batteries, and in the production of chemicals (Clayton and Clayton 1981, p. 1750).

Manganese is a central nervous system toxin on chronic exposure and causes metal fume fever on acute exposure. The oral LD_{50} in rats is 9 g/kg (RTECS 1990). Instilled into the eyes of rabbits, manganese caused a mild degree of irritation; contact with the skin of rabbits also caused mild irritation (RTECS 1990). Subcutaneous doses of 50 mg/kg manganese chloride caused death in mice, rabbits, and guinea pigs (Cervinka 1929, in Compte Rend. Soc. (France) 102:262). Injected intratracheally into the lungs of rats, both manganese oxide and manganese chloride at doses of 10 mg/kg immediately caused histological changes in the lung tissues; before death, the animals injected with the chloride developed pulmonary edema (Davies and Harding 1949, in Br. J. Ind. Med. 6:82). Rabbits exposed to manganese dust for 4 hours/day for 3 to 6 months at concentrations of 10 to 20 mg/m³ developed fibrotic lung changes but no pneumonitis; a depression in the number of red blood cells and hemoglobin also occurred (Carratala and Carboneschi in ACGIH 1986, p. 354(86)). Monkeys inhaling a manganese aerosol showed agitation, followed by torpor, nervousness, tremor, flexion and extension of the limbs, and cyanosis; these signs disappeared within 3 weeks of the exposure but returned in more severe form 5 months later (van Bogaert and Dallemagne 1945, in Mgsch. Psychiatr. Neurol. 111:60, as cited in Clayton and Clayton 1981, p. 1755).

In humans, chronic exposure to manganese or its compounds causes a form of poisoning known as manganism; the signs and symptoms of this condition strongly resemble those of parkinsonism. Workers with manganism experience languor, sleepiness, limb weakness, and spastic gait and develop a mask-like appearance of the face as well as emotional instability (Fairhall and Neal 1943, in Natl. Inst. Health Bull. No. 182; Flinn, Neal, Reinhart et al. 1940, in U.S. Pub. Hlth. Serv. Bull. No. 247). The onset of manganism occurs between 6 months and 24 years of first exposure to manganese (Clayton and Clayton 1981, p. 1756). Manganese psychosis, characterized by uncontrollable laughter, impulsive behavior, euphoria, and insomnia, also occurs in many cases (Clayton and Clayton 1981, p. 1762). Although disabling, manganism is rarely fatal; in the early stages, the condition is reversible (Rom 1983, p. 494). The exposure concentrations associated with the development of manganism ranged from 6.8 to 42.2 mg/m³ in a group of manganese miners; other evidence suggests that exposures to concentrations of 5 mg/m³ and above are associated with definite signs and symptoms (Emara et al. 1971, in Br. J. Ind. Med. 28:78–82; Tanaka and Lieben 1969/Ex. 1–388).

Acute exposure to manganese dust and fumes causes metal fume fever, with chills, fever, nausea, sweating, and cough (Piscator 1976, in Environ. Res. 11:268–270). Symptoms onset 4 to 24 hours after the acute overexposure and disappear if exposure is not resumed for several days (Piscator 1976). Exposure to manganese dust also causes mild sensory irritation of the eyes, mucous membranes, and skin (Rom 1983, p. 493).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to manganese and its compounds is associated with a significant risk of acute and chronic disease in the form of pneumonitis and manganism, respectively. The Agency considers these adverse health effects material impairments of health and believes that the proposed PEL of 5 mg/m³, as a ceiling, is necessary to reduce a significant risk among workers in the agriculture industry. In addition, promulgation of this limit will make the PEL for manganese and its compounds consistent across all OSHA-regulated sectors.

MANGANESE FUME

CAS: 7439–96–5; Chemical Formula: MnO

H.S. No. 1236a

In construction, marine terminals, shipyards, and longshoring operations, OSHA currently has a ceiling limit of 5 mg/m³ for manganese fume (measured as manganese). There is no limit in agriculture. Because of this substance's potential to cause damage to the lungs and central nervous system, the ACGIH recommends an 8-hour TLV®–TWA of 1 mg/m³ and a 3-mg/m³ TLV®–STEL for manganese fume. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N1) that the limits OSHA is proposing are appropriate for this substance; these limits are 1 mg/m³ as

an 8-hour TWA and 3 mg/m³ as a 15-minute STEL. These are the limits recently established for this substance in general industry.

Manganese fume is the finely divided particulate generated when manganese metal is melted; the fume is gray or black in color. In experimental animals, daily 4-hour inhalation exposure to manganese dust (particle size not specified) caused fibrotic lung changes at concentrations of 10 to 20 mg/m³ for 3 to 6 months (ACGIH 1986, p. 354(86)). Russian studies have shown pulmonary effects in young rats administered intratracheal suspensions of mixed manganese oxides having particle sizes of less than 3 microns (Levina and Robachevsky 1955).

Symptoms of manganese poisoning in humans range from sleepiness and weakness in the legs (Fairhall 1957a) to difficulty in walking and uncontrolled laughter (Fairhall and Neal 1943). Health surveys of employees exposed to manganese fume have demonstrated a high incidence of pneumonia in these workers (Davies 1946). Tanaka and Lieben (1969/Ex. 1–388) found seven cases of pneumonia and 15 cases of borderline pneumonia among 144 workers exposed to manganese dust or fume concentrations greater than 5 mg/m³; three of these cases were associated with fume rather than dust exposure. Those workers exposed to fume levels below 5 mg/m³ exhibited no signs of pneumonia. In a separate study by Smyth, Ruhf, Whitman, and Dugan (1973/Ex. 1–990), three cases of manganese poisoning were detected among 71 employees exposed to 13.3 mg/m³ concentrations of manganese fume.

In the prior rulemaking, OSHA received one comment (Ex. 3–189) supporting the proposed limits for manganese fume and another (Ex. 3–829) objecting to the proposed change in PELs. In response to the latter commenter, OSHA emphasized that exposure to manganese fume has been demonstrated to cause toxic effects in both humans and animals. Workers exposed to manganese fumes have developed pneumonia (Tanaka and Lieben 1969/Ex. 1–388), and Stokinger (1981f, p. 1767) reports that the proposed 1-mg/m³ limit "is supported by the finding in animals that the higher oxides are more toxic, and the report of an occasional case of Mn poisoning in susceptible workers exposed to ferro Mn fumes around the 1-mg/m³ limit."

Based on this evidence, OSHA is proposing a 1-mg/m³ 8-hour TWA PEL and a 3-mg/m³ 15-minute STEL for manganese fume. The Agency preliminarily concludes that both a TWA limit and a STEL are required to protect employees in construction, maritime, and agriculture from the significant risks of manganism, lung damage, and pneumonitis, all of which constitute material health impairments that are associated with exposure to these fumes. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

MANGANESE CYCLOPENTADIENYL TRICARBONYL

CAS: 12079–65–1; Chemical Formula: $C_5H_5—Mn(CO)_3$

H.S. No. 1237

In construction, maritime, and agriculture, OSHA has no limit for manganese cyclopentadienyl tricarbonyl (MCT). The ACGIH has a TLV®–TWA of 0.1 mg/m³ (measured as manganese), with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that the limit OSHA is proposing is appropriate; this limit is an 8–hour TWA of 0.1 mg/m³. A skin notation is also proposed. Both the 0.1 mg/m³ 8–hour TWA PEL and the skin notation were recently established for MCT in general industry.

MCT is used as an antiknock agent in gasoline; no data on its physicochemical properties are available (ACGIH 1986, p. 356).

MCT is a convulsant and neuropathogen in animals. The oral LD_{50} in rats is 80 mg/kg, and the lowest lethal concentration by inhalation is 120 mg/m³ for 2 hours (RTECS 1990). Acutely poisoned animals exhibit the following symptoms regardless of the route of exposure: excitement, hyperactivity, tremors, toxic spasms, weakness, clonic convulsions, difficult breathing, and coma; at autopsy, liver and kidney damage is seen (Stara, Moore, Hysell, et al. 1974).

A Russian study reports that a single two-hour exposure to MCT at 120 mg/m³ was fatal to 80 percent of albino rats, although rabbits, guinea pigs, and rats survived a single 2–hour exposure to 20 to 40 mg/m³. Chronic exposure of rats for 11 months to concentrations averaging 1 mg/m³ for four hours daily caused delayed effects (seven months from onset of exposure) consisting of neuromuscular excitability, evidence of kidney damage, and decreased resistance to infection (Arkhipova, Tolgskaya, and Kochetkova 1965/Ex. 1–1046). The tails of 10 white mice were dipped in a gasoline mixture containing 1 gram MCT per 100 ml; a second group of mice had their tails immersed in gasoline without MCT. An equal number of fatalities were observed in the gasoline plus MCT and gasoline-only groups after four or five 2–hour applications, and all tails exhibited necrosis. The authors concluded that these effects were caused by the gasoline and not by the MCT (Arkhipova, Tolgskaya, and Kochetkova 1965/Ex. 1–1046). Further studies in rabbits showed that MCT applied dermally as an oil emulsion caused irritation of the skin. These authors also investigated the dermal toxicity of MCT solutions in tetrahydrofuran versus solutions of tetrahydrofuran in oil. All animals whose tails had been dipped in the hydrofuran solution of MCT died within an hour, while animals whose tails had been dipped in pure tetrahydrofuran did not (Arkhipova, Tolgskaya, and Kochetkova 1965/Ex. 1–1046). The same authors concluded that MCT is toxic at low concentrations, has cumulative properties, affects the nervous system, is irritating to the skin, and causes early histological changes in the respiratory tract.

More recent reports describe MCT-induced pulmonary edema and convulsions in the rat (Penney, Hogberg, Traiger, and Hanzlik 1985/Ex. 1–431). The ED_{50}s for convulsions were 32 mg/kg orally and 20 mg/kg intraperitoneally; LD_{50}s were 24 mg/kg orally and 14 mg/kg intraperitoneally. Necrosis of the bronchiolar tissue and pulmonary parenchymal damage were seen in mice and rats given intraperitoneal doses (Haschek, Hakkinen, Witschi et al. 1982/Ex. 1–1083).

Based on this evidence, OSHA has preliminarily concluded that occupational exposure to MCT poses a significant risk of neuropathic effects, kidney damage, skin irritation, and pulmonary edema, which together clearly constitute material impairments of health. The Agency is therefore proposing to establish an 8–hour TWA PEL of 0.1 mg/m³ for manganese cyclopentadienyl tricarbonyl, with a skin notation, to protect workers in construction, maritime, and agriculture against the significant risk of these effects. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

MANGANESE TETROXIDE

CAS: 1317–35–7; Chemical Formula: Mn_3O_4

H.S. No. 1238

OSHA has no exposure limit in construction, maritime, or agriculture for manganese tetroxide. The ACGIH recommends a TLV®–TWA of 1 mg/m³ (measured as manganese) for this brownish-black powder and its dust and fume. There is no NIOSH REL for this substance. OSHA is proposing a PEL of

1 mg/m³ TWA for manganese tetroxide (measured as Mn). This is the limit recently established for this substance in general industry.

Manganese tetroxide is a brownish black powder. It is generated during the pouring and casting of molten ferromanganese or the heating of manganese oxides (ACGIH 1986, p. 357).

Manganese tetroxide affects the nervous system and produces manganism in exposed individuals. This substance also damages the lungs. Findings from a Russian study indicate that intratracheal suspensions of manganese oxide, manganese dioxide, and manganese tetroxide particles (particle size less than 3 um) produced pneumonitis and other pulmonary effects in rats (Levina and Robachevskiau 1955/Ex. 1–1041). These investigators also determined that manganese tetroxide has greater toxicity than the lower oxides of manganese and that freshly prepared oxides are more potent than those stored for six months to one year. Two cases of manganese fume poisoning were reported in a plant where concentrations were between 2.7 and 4.7 mg/m³ (Whitlock, Amuso, and Bittenbender 1966/Ex. 1–455), but other investigators have questioned these air sampling results and believe that exposures to manganese tetroxide concentrations of 5 mg/m³ or less cause no harmful effects (Whitman and Brandt 1966/Ex. 1–1103).

In a 7-year study, Smyth and co-workers (1973/Ex. 1–990) investigated chronic manganese poisoning in workers exposed to both ferromanganese fumes and dust. Five of 71 employees suffered from chronic manganism; of these five cases, three resulted from fume exposure and two from dust exposure. Two of the three fume-exposed victims had been exposed over a five-year period to an estimated average ferromanganese concentration of 13.3 mg/m³; however, the third victim worked in an operation where ferromanganese concentrations of manganese were less than 1 mg/m³, which suggests that certain individuals may be hypersusceptible to manganese poisoning. The dust-exposed victims worked in areas where air concentrations were in the range of 30 to 50 mg/m³ throughout the study period (Smyth, Ruhf, Whitman, and Dugan 1973/Ex. 1–990).

Martonik (1976, as cited in ACGIH 1986, p. 357) reported that the fume of manganese has greater toxicity than the dust. During a two-year period, at least one case of acute manganese poisoning was documented at a fume concentration level of 7.5 mg/m³, and another case at the same welding operation may also have involved manganism.

NIOSH (Ex. 8–47; Tr. p. 3–86) commented in the earlier rulemaking that, based on the results of the Smyth and co-workers study (1973/Ex. 1–990), the 1-mg/m³ PEL being proposed by OSHA "may not be protective, especially to the potentially sensitive individual." OSHA is seeking comments on the appropriateness of the proposed limit for workplaces in construction, maritime, and agriculture.

Another commenter in the prior rulemaking (Ex. 3–189) asked OSHA to promulgate separate limits for the dust and fume of manganese tetroxide based on the relative toxicities of these two particulate forms. OSHA recognizes that some information in the literature (including some discussed above) points to the greater toxicity of the fume and that fumes are generally the more toxic form of particulate. However, the Agency notes that intratracheal suspensions of manganese tetroxide dust caused pneumonitis and other pulmonary effects in Russian workers (Levina and Robachevskiau 1955/Ex. 1–1041) and that several cases of manganism have been caused by manganese dust exposure (Smyth, Ruhf, Whitman, and Anger 1973/Ex. 1–990). The Agency thus believes that it would not be prudent at this time to distinguish between the dust and the fume but to propose an 8-hour TWA PEL that will protect against the effects of exposure to both forms of particulate.

In construction, maritime, and agriculture OSHA is proposing to establish a 1-mg/m³ 8-hour TWA PEL for manganese tetroxide. The Agency preliminarily concludes that this limit will provide protection to workers in these sectors from the significant risks of material health impairment in the form of chronic manganese poisoning, pneumonitis, and other respiratory and neurotoxic effects that are associated with exposure to manganese tetroxide at concentrations above 1 mg/m³. In addition, promulgation of these limits will make OSHA's PEL for this substance consistent across all regulated sectors.

MERCURY (ARYL AND INORGANIC COMPOUNDS)

CAS: 7439–97–6; Chemical Formula: Hg

H.S. No. 1240

For the construction and maritime industries, OSHA's current limit for all inorganic forms of mercury (Hg) (which includes aryl Hg) is 0.1 mg/m³ as an 8-hour TWA, with a skin notation; this limit was adopted from the 1970 ACGIH TLV® for inorganic mercury. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³ with a skin notation or these substances. NIOSH (1973b) has recommended a 0.05-mg/m³ limit as an 8-hour TWA for mercury. OSHA is proposing to revise its exposure limit for aryl and inorganic mercury (measured as mercury) to 0.1-mg/m³ as a ceiling limit, together with a skin notation, and to apply this limit to workplaces in construction, maritime, and agriculture. NIOSH (Ex. 8–47, Table N1) concurs with this limit, which is the same PEL that was recently promulgated for these forms of mercury in general industry.

Mercury compounds are used in fungicides and preservatives; in dry cells; as catalysts and pigments; and in medicine. Mercuric nitrate was formerly used to manufacture fur felt hats (ACGIH 1986/Ex. 1–3, p. 359); the expression "mad as a hatter" derives from this use. When used in pesticidal applications and in accordance with the label, these substances are regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The soluble mercuric salts are highly poisonous when ingested; oral LD_{50}s for various animal species range from 1.0 to 18 mg/kg. Acute poisoning by mercury salts is rare in occupational settings; more important in this context are low-level chronic exposures, which are associated with the development of mercurialism. This disorder involves the central nervous system and results in tremors and neuropsychiatric disturbances (NIOSH 1973/Ex. 3–828, p. 18). The neurological effects of mercury poisoning are well known and have been extensively studied in humans for many years (see the discussion of mercury vapor, below). In addition, chronic low-level exposure to mercuric salts has been associated with glomerular disease (NIOSH 1973b/Ex. 3–828, p. 18).

In 1971, shortly after OSHA adopted the 0.1-mg/m³ TWA limit for inorganic mercury in construction and maritime, the ACGIH reduced the TLV®–TWA for all forms of mercury, including the inorganic compounds, to 0.05 mg/m³. ANSI also reduced its standard to 0.05 mg/m³ in 1972, and NIOSH recommended this same limit in 1973. The 0.05-mg/m³ limit was based largely on the study of Smith, Vorwald, Patil, and Mooney (1970/Ex. 1–373) of workers exposed to mercury levels ranging from less than 0.1 to 0.27 mg/m³ in chlor-alkali manufacturing plants. The authors reported a significant dose-related increase in the incidence of weight loss, tremors, abnormal reflexes, nervousness, and insomnia among workers exposed to concentrations of

0.1 mg/m³ or more. There were slight increases in incidences of insomnia and loss of appetite among workers exposed to 0.1 mg/m³ or less. Smith, Vorwald, Patil, and Mooney (1970/Ex. 1–373) concluded that a limit of 0.1 mg/m³ contained little or no margin of safety. Other studies (Bidstrup, Bonnell, Harvey, and Locket 1951/Ex. 1–1014; Turrian, Grandjean, and Turrian 1956) have also reported symptoms of mercury poisoning among workers exposed below 0.1 mg/m³. The 0.05-mg/m³ limit established by the ACGIH, ANSI, and NIOSH also followed the 1968 recommendation of an international committee (Permanent Commission and International Association on Occupational Health 1968).

In 1980, the ACGIH raised its recommended TLV® for aryl and inorganic mercury compounds from 0.05 mg/m³ to 0.1 mg/m³. In revising this limit, the ACGIH cited discrepancies in the literature regarding the ratio of blood and urinary mercury levels to airborne concentrations of mercury (Bell, Lovejoy, and Vizena 1973/Ex. 1–1078; Stopford et al. 1978/Ex. 1–1100). These studies reported that the mercury body burden to airborne concentration ratio was lower when personal sampling, rather than area sampling, was used. According to Bell, Lovejoy, and Vizena (1973/Ex. 1–1078), the lower ratio occurs when personal samples are being collected because contaminated clothing increases the amount of mercury inhaled, thus decreasing the ratio. On this basis, the ACGIH argued that the 0.05-mg/m³ limit may be too stringent when personal monitoring is performed. The ACGIH also believes that, in contrast to the effects of elemental or alkyl mercury, little mercury is deposited in the brain following exposure to aryl or inorganic mercury compounds. This reasoning led the ACGIH to adopt the higher 0.1-mg/m³ TLV®–TWA for aryl and inorganic compounds of mercury. However, the ACGIH (1986/Ex. 1–3, p. 358) also noted that, although central nervous system effects are less likely to occur from exposure to mercury salts than from other forms of mercury, the risk of renal and other effects would "presumably be just as great," and therefore that the higher limit for mercury salts "may be subject to debate" (ACGIH 1986/Ex. 1–3, p. 358).

In the prior rulemaking, Robert G. Smerko, President of the Chlorine Institute (Ex. 3–823; Tr. pp. 10–171 to 10–177), reviewed the pharmacologic evidence on the various forms of mercury and concluded that there is little difference in brain deposition between elemental mercury and mercury compounds:

> The ACGIH differentiated between aryl mercury and inorganic salts of mercury in comparison with elemental mercury vapor * * * While this is true for large doses of mercury, it overlooks the fact that absorbed elemental mercury is rapidly oxidized in the blood as reported by Clarkson et al. (1967) * * *
>
> Only when the rate of absorption exceeds the rate at which the body can oxidize mercury between the point of absorption and the brain does elemental mercury behave differently than aryl mercury and inorganic salts of mercury at the blood-brain barrier (Ex. 3–828, p. 7).

In light of this information, which counters the basis for the 0.1-mg/m³ ACGIH TWA®–TLV, and given the caution expressed by the ACGIH (1986/Ex. 1–3, p. 358) that the 0.1-mg/m³ TWA limit "may be subject to debate," OSHA preliminarily concludes that the PEL for aryl and inorganic mercury in construction, maritime, and agriculture should be 0.1 mg/m³ as a ceiling limit. The health studies cited above indicate that reducing the limit for these forms of mercury will ensure that employees are not at significant risk of adverse neuropathic effects from exposure to these forms of mercury and their compounds. Accordingly, OSHA is proposing to establish a 0.1-mg/m³ ceiling limit with a skin notation for aryl and inorganic mercury and its compounds (measured as mercury) in agriculture, maritime, and construction. OSHA is also proposing to add a skin notation to this limit to alert employers to the fact that mercury readily penetrates the skin to cause systemic poisoning; several cases of poisoning via this route have been reported (NIOSH 1973b; Ex. 3–828). OSHA is proposing to establish a PEL of 0.1 mg/m³ as a ceiling with a skin notation for aryl mercury and the inorganic compounds. OSHA believes that this limit is necessary to protect exposed workers in these sectors from the significant risks of neuropathy and systemic toxicity (both of which constitute material impairments of health) that are associated with exposure to these substances at higher levels. In addition, promulgation of these limits will make OSHA's PEL for these substances consistent across all regulated sectors.

MERCURY (VAPOR)
CAS: 7439–97–6; Chemical Formula: Hg
H.S. No. 1241

OSHA's current limit for mercury (including vapor) in construction and maritime is 0.1 mg/m³ as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH recommends a TLV®–TWA of 0.05 mg/m³ for mercury vapor, measured as mercury, and a skin notation. NIOSH has a REL of 0.05 mg/m³ for this substance as an 8-hour TWA. The Agency is proposing to reduce its limit for mercury vapor in construction and maritime to a PEL of 0.05 mg/m³ TWA, with a skin notation, and to extend this limit to agriculture. NIOSH (Ex. 6–47, Table N1) concurred that this limit is appropriate when it was established recently in general industry.

Elemental mercury is a silvery, odorless, heavy liquid. Elemental mercury is the only heavy metal that exists in a liquid state at ambient temperature. Because of this unique property, elemental mercury is used in many devices such as thermometers, barometers, manometers, electrical instruments, mercury vapor and fluorescent lamps, dental amalgams, and batteries. It is also used as a lubricant and in the production of caustic soda and chlorine (ACGIH 1986/Ex. 1–3, p. 359; HSDB 1986).

Exposure to mercury vapor presents both an acute and chronic health hazard. Inhalation of high concentrations of mercury vapor for relatively brief periods can cause pneumonitis, bronchitis, chest pain, dyspnea, coughing, stomatitis, gingivitis, salivation, and diarrhea (NIOSH 1973b/Ex. 3–828; Ashe, Largent, Dutra et al. 1953/Ex. 1–502). Chronic mercurialism is manifested by central nervous system effects, including tremor, a variety of neuropsychiatric disturbances, and loss of appetite (Kazantzis 1968; Smith, Vorwald, Patil, and Mooney 1970/Ex. 1–373).

Severe organ damage occurred in rabbits exposed for 4 hours to an average mercury vapor concentration of 28.8 mg/m³. Damage was observed in the kidneys, liver, brain, heart, lungs, and colon (Ashe, Largent, Dutra et al. 1953/Ex. 1–502). A study by Smith, Vorwald, Patil, and Mooney (1970/Ex. 1–373) of 567 male workers exposed to a mean exposure level of 0.065 mg/m³ (S.D. ± 0.085) showed a significant dose-related increase in the incidence of weight loss, tremors, abnormal reflexes, nervousness, and insomnia among workers exposed to concentrations of 0.1 mg/m³ or higher. There were slight increases in the incidence of insomnia and loss of appetite among workers exposed to 0.1 mg/m³ or less. Smith, Vorwald, Patil, and Mooney (1970/Ex. 1–373) concluded that a limit of 0.1 mg/m³ contained little or no margin of safety. Six of 75 workers regularly exposed to 0.05 to 0.1 mg/m³ of mercury vapor in a glassware manufacturing plant reported insomnia, and one was

found to have tremors (Danziger and Possick 1973/Ex. 1–504). One of 11 workers employed in a mercury mine or refining plant and exposed at vapor concentrations below 0.1 mg/m³ had sore gums, loose teeth, or excess salivation (Rentos and Seligman 1968/Ex. 1–523).

Two studies report no evidence of mercury vapor poisoning in industrial settings where characteristic exposures ranged between 0.05 and 0.1 mg/m³ (Danziger and Possick 1973/Ex. 1–504; McGill, Ladd, Jacobs, and Goldwater 1964/Ex. 1–520). In workers exposed at levels above 0.1 mg/m³, however, toxic symptoms were seen (Rentos and Seligman 1968/Ex. 1–523). Turrian, Grandjean, and Turrian (1956) found that 33 percent of workers exposed to the vapor at levels above 0.05 mg/m³ exhibited hyperexcitability, while only 8 percent of those exposed below that level manifested this symptom. About 20 percent of workers in both groups exhibited tremor. The ACGIH notes that, after exposure to the vapor, "a relatively high percentage of the absorbed mercury remains in the brain," compared with the amount deposited in the brain after exposure to the aryl and inorganic compounds (ACGIH 1986/Ex. 1–3, p. 359). The ACGIH accordingly recommends a higher TLV®–TWA for aryl and inorganic mercury than for mercury vapor (see, however, the discussion of aryl and inorganic mercury in this preamble).

Despite some of the uncertainties in the studies described above regarding the dose-response relationship between airborne exposure levels and health effects, OSHA believes that the data suggest that the current TWA PEL of 0.1 mg/m³ is not sufficiently protective. Given the severity of the neuropathic effects caused by mercury poisoning, OSHA believes that a reduction in the airborne limit is necessary to ensure that workers in construction, maritime, and agriculture are not at significant risk of mercury-related neuropathic effects. Therefore, OSHA is proposing to revise its PEL for elemental mercury vapor to 0.05 mg/m³ as an 8-hour TWA in agriculture, construction, and maritime. In addition, because skin absorption is a significant route of exposure and leads to systemic poisoning, OSHA is proposing a skin notation. The Agency preliminarily concludes that the 0.05 mg/m³ TWA limit and skin notation will substantially reduce the significant risks of acute and chronic mercury poisoning (which constitute material health impairments) that have been demonstrated to occur at exposure levels above 0.05 mg/m³. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

MERCURY, (ORGANO) ALKYL COMPOUNDS
CAS: 7439–97–6
H.S. No. 1242

OSHA's current limit for organo-mercury compounds in the construction and maritime industries is 0.01 mg/m³ as an 8-hour TWA, with a skin notation. The ACGIH has a TLV®–TWA of 0.01 mg/m³ and a TLV®–STEL of 0.03 mg/m³, with a skin notation, for these compounds, measured as mercury. The Agency is proposing to retain its permissible exposure limits of 0.01 mg/m³ as an 8-hour TWA, with a skin notation, in construction and maritime, to add a 0.03 mg/m³ STEL and to extend these limits to agriculture. In the prior rulemaking for general industry, NIOSH concurred (Ex. 8–47, Table N1) with these limits, which are now established in that sector.

Alkyl mercury compounds include volatile liquids, such as dimethyl and diethyl mercury, as well as many complex salts, which are usually solids. These compounds are used as fungicides in seed dressings, folial sprays, and preservatives for wood, paper pulp, textiles, and leather. When used in pesticidal applications and in accordance with the label, these substances are regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Alkyl mercury compounds pose greater health hazards than do the inorganic compounds of mercury because they can penetrate the blood-brain barrier and the placenta very quickly. The primary toxic effects associated with exposure to the organic compounds of mercury are injuries to the central and peripheral nervous systems and to the kidneys (Casarett and Doull 1975/Ex. 1–1144). In addition, data concerning mouse and rat exposures to alkyl mercury compounds have demonstrated toxicity to the gastrointestinal system, pancreas, liver, gonads, and cardiovascular system. Suppression of the immune system and impairment of the endocrine system have also been observed (Shakbazyan, Shevchenko, Borisenko et al. 1977/Ex. 1–933). Fatalities in mice have been reported following exposures of 10 to 30 mg/m³ for 3 to 5 hours (Trakhtenberg 1950/Ex. 1–447).

Methyl mercury is among the most damaging of the alkyl compounds to humans because it accumulates in the body and causes developmental effects (Wilson 1977/Ex. 1–457). A three-month exposure to approximately 1 mg/m³ diethyl mercury caused death in two individuals (Hill 1943/Ex. 1–786). Another fatal case of alkyl mercury poisoning has also been described (Hook, Lundgren, and Swensson 1954/Ex. 1–333). On the basis of his work with laboratory animals, Trakhtenberg (1950/Ex. 1–447) stated that even a concentration as low as 0.00001 mg/m³ could not be tolerated by humans on a continuing basis. However, a later study reported no consistent, acute effects of mercury poisoning at air concentrations between 0.01 and 0.1 mg/m³, despite the fact that brief excursions considerably above this range occurred (Dinman, Evans, and Linch 1958/Ex. 1–311). Organic mercury compounds can be absorbed through the skin (Sax and Lewis 1989).

There is no sharp distinction between acute and chronic exposures to alkyl mercury compounds. The latency for effects associated with acute exposures may be as long as several weeks, while the latency for chronic effects may be several years. Symptoms associated with exposure to alkyl mercury include numbness and tingling of the lips and extremities, ataxia, hearing impairment, and emotional disturbances (Permanent Commission and International Association on Occupational Health 1969, pp. 897–898). In addition, severe ocular effects, including gross constriction of the visual field and blindness, have been reported among exposed humans (Hunter, Bomford, and Russell 1940). Severe intoxication can result in clonic seizures, incontinence, and periods of spasticity; less severe poisoning is associated with dizziness, excess salivation, lacrimation, and gastrointestinal disturbances. In addition, acute exposure to alkyl mercury causes eye, skin, and mucous membrane irritation, skin burns, and, occasionally, skin sensitization (Dales 1972; Proctor, Hughes, and Fischman 1988, pp. 310–311).

OSHA is retaining its 8-hour TWA PEL of 0.01 mg/m³ and its skin notation in construction and maritime. The Agency is proposing to add a 15-minute STEL of 0.03 mg/m³ for the alkyl compounds of mercury (measured as Hg) in the construction and maritime industries and to extend both of these limits to agriculture. The Agency preliminarily concludes that exposure to the alkyl mercury compounds poses significant risks of severe neuropathic and other systemic injuries, irritation and skin sensitization, all of which constitute material health impairments. OSHA believes that both the short-term and 8-hour limits are necessary to substantially reduce these risks. In

addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

METHYL ACETYLENE

CAS: 74–99–7; Chemical Formula: CH_3CCH

H.S. No. 2104

The current OSHA PEL for methyl acetylene in general industry, construction, and maritime is 1000 ppm as an 8-hour TWA. The Agency has no PEL for methyl acetylene in agriculture. The ACGIH has a TLV®–TWA of 1000 ppm and a TLV®–STEL of 1250 ppm for this substance. NIOSH has no REL for methyl acetylene but concurs with the PEL being proposed (Ex. 8–47, Table N3A). OSHA is proposing a PEL of 1000 ppm as an 8-hour TWA for methyl acetylene in agriculture. Promulgation of this limit will make the PEL for methyl acetylene consistent across all OSHA-regulated sectors.

Methyl acetylene is a colorless, flammable gas with a sweet odor. It is used in organic synthesis, as a rocket propellant, and as a fuel for welding torches (Braker and Mossman 1980, p. 450; ACGIH 1986, p. 368). This gas is shipped in liquefied form and thus presents a cryogenic hazard to those handling it.

In animals, methyl acetylene causes central nervous system effects and anesthesia at high concentrations. Rats exposed to a 42,000-ppm concentration initially became hyperactive and then exhibited lethargy and ataxia. The rats became completely anesthetized after 95 minutes of exposure to this concentration, but all rats survived such exposure for 5 hours and then recovered completely within 40 minutes of cessation of exposure. Examination of the lungs of rats at autopsy showed lung edema, alveolar hemorrhage, bronchiolitis, and pneumonitis (Horn, Weir, and Reese 1957). Dogs and rats exposed to a 28,700-ppm concentration of methyl acetylene became ataxic within minutes; dogs also exhibited staggering, excess salivation, and muscular fasciculations. Exposure to this concentration for 5 hours daily, 5 days per week for 6 months killed 40 percent of the rats (Horn, Weir, and Reese 1957).

There are no reports of adverse acute or chronic effects in humans exposed to methyl acetylene. Based on the effects noted in animals, however, methyl acetylene can be expected to depress the central nervous system and cause narcotic signs and symptoms in humans (Proctor, Hughes, and Fischman 1988, p. 317). Contact of the skin with liquefied methyl acetylene can cause frostbite (Braker and Mossman 1980, p. 451).

Based on this evidence, OSHA is proposing a 1000-ppm 8-hour TWA limit to protect workers in agriculture from the significant risk of central nervous system effects caused by exposure to higher concentrations of methyl acetylene. The Agency preliminarily concludes that this limit is necessary to substantially reduce a significant risk of material health impairment in exposed workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYLACRYLONITRILE

CAS: 126–98–7; Chemical Formula: $CH_2=C(CH_3)C\equiv N$

H.S. No. 1251

In construction, maritime, and agriculture, OSHA has no PEL for methylacrylonitrile. The ACGIH recommends a 1-ppm TLV®–TWA and a skin notation to protect workers who are occupationally exposed to this substance. OSHA is proposing an 8-hour TWA permissible exposure limit of 1 ppm, with a skin notation, for methylacrylonitrile. NIOSH (Ex. 8–47, Table N1) has no REL but concurs that the proposed limit is appropriate. This limit and skin notation were recently established for methacrylonitrile in general industry.

Methylacrylonitrile (which is also called isopropene cyanide) is a colorless liquid that is used in the manufacture of plastic elastomers and coatings. This substance is also a chemical intermediate used to produce acids, amines, esters, nitriles, and amides.

Methylacrylonitrile is a chemical asphyxiant that is extremely toxic in animals, both by inhalation and dermal absorption. The LC_{50} in rats is 328 ppm for 4 hours, and the oral LD_{50} in the same species is 120 mg/kg (RTECS 1990). The dermal LD_{50} in rabbits is 320 mg/kg (RTECS 1990). Acutely poisoned animals convulsed before death (RTECS 1990). Death is believed to be caused by the metabolism of the acrylonitrile to cyanide, which, in turn, reacts with cytochrome oxidase in mitochondria and inhibits cellular respiration (Peter and Bolt 1985). Beagles exposed for 90 days to 13.5 ppm convulsed and lost motor control in their hind limbs; at autopsy, microscopic brain lesions were detected in one of the dogs (ACGIH 1986/Ex. 1–3, p. 370).

Based on this evidence of methylacrylonitrile's acute toxicity, OSHA is proposing a 1-ppm 8-hour TWA PEL and a skin notation for methylacrylonitrile in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit and notation will substantially reduce the significant risk of material health impairment in the form of nervous system damage that is associated with this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL BROMIDE

CAS: 74–83–9; Chemical Formula: CH_3Br

H.S. No. 1253

OSHA's current PEL for methyl bromide in construction, shipyards, marine terminals, and longshoring operations is a 20-ppm ceiling with a skin notation; the ACGIH TLV®–TWA is 5 ppm, with a skin notation. NIOSH recommends that, based on its carcinogenicity, the REL for this substance be set at the lowest feasible level (Ex. 8–47, Table N6B). OSHA is proposing a permissible exposure limit of 5 ppm (8-hour TWA), with a skin notation, for methyl bromide; this is the limit recently established for this substance in general industry.

Methyl bromide is a colorless, nonflammable gas that has no taste and no odor at room temperature. At concentrations above 5 ppm, it has a sweetish odor. Methyl bromide was formerly used as a refrigerant and fire extinguishant, but these uses are now banned. Methyl bromide finds current use in industry in insect and rodent control and in soil fumigation (Farm Chemicals Handbook 1990, p. C192). Methyl bromide also is used as a methylating agent, to extract oils from nuts, seeds, and flowers, and to degrease wool (HSDB 1984). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Methyl bromide has acute neurotoxic effects in both animals and humans and, at high concentrations, this substance causes pulmonary effects. The oral LD_{50} in rats is 214 mg/kg, and the LC_{50} in the same species is 302 ppm for 8 hours (RTECS 1990). Rabbits exposed to a 70-ppm concentration of methyl bromide for 7 hours/day for 15 days showed signs of severe neurotoxicity, and many died (Skiov et al. 1981; Irish et al. 1940). Monkeys repeatedly exposed to a 65-ppm concentration of methyl bromide convulsed, lost their equilibrium, and became paralyzed (Irish et al. 1940). In a 90-day bioassay, methyl bromide was administered to rats by gavage; it caused a statistically significant increase in the incidence of squamous-cell carcinoma of the forestomach in

animals of both sexes (Danse et al. 1984).

Methyl bromide is a gas and thus primarily presents an inhalation hazard in industrial use, although there are suggestions that it can also be absorbed through the skin (Schifferli 1942). It is hypothesized that methyl bromide has a greater potential for toxicity than do other organic bromides because its greater lipophilicity provides increased access to the brain.

Various studies demonstrate methyl bromide's toxicity in humans. Ingram (1951/Ex. 1–175) reported ill effects (symptoms not specified) after exposure to methyl bromide at concentrations of 100 ppm. Similar exposure concentrations were also reported by Hine (1969/Ex. 1–70) in a case study of two date packers in California. Hine (1969/Ex. 1–70) also noted that methyl bromide has been responsible for more deaths among occupationally exposed pesticide workers in California than have the organophosphates. Johnson, Setzer, Lewis, and Anger (1977/Ex. 1–87) indicated that 34 packers became sick when exposed to an average methyl bromide concentration of 50 ppm; however, concentrations in the packing room may have been as high as 100 to 150 ppm during the purging of the fumigation chamber.

Watrous (1942/Ex. 1–275) described nausea, vomiting, and headache in 90 workers who were exposed for two weeks to concentrations "generally below" 35 ppm. Human fatalities caused by overexposure to methyl bromide have been estimated to occur at concentrations of 8000 ppm for a few hours and at concentrations as high as 60,000 ppm for 2 hours (Proctor, Hughes, and Fischman 1988, p. 322; RTECS 1990). Other authorities (Astley Clarke et al. 1945) believe that exposure to a 10,000 ppm concentration for more than a few minutes could be lethal.

In the prior rulemaking, NIOSH noted that methyl bromide is carcinogenic in animals and should be a candidate for a full Section 6(b) rulemaking (Ex. 8–47, Table N6B; Tr. pp. 3–97, 3–98). However, OSHA believes that the data to regulate methyl bromide as a carcinogen are incomplete at this time. Another commenter in the prior rulemaking (Ex. 116) urged OSHA to adopt a ceiling rather than 8-hour TWA limit for methyl bromide. OSHA believes that the proposed 5-ppm TWA will provide a substantial margin of safety against the methyl bromide exposures that have been shown to produce sickness in humans (generally in the 50- to 150-ppm range).

The presence of neurologic symptoms (nausea, headache, and vomiting) on exposure to concentrations of methyl bromide below 35 ppm indicates that the current ceiling limit of 20 ppm is not adequate to protect workers from the effects of methyl bromide poisoning. Accordingly, OSHA is proposing a PEL of 5 ppm as an 8-hour TWA, with a skin notation, to protect construction, maritime, and agricultural workers more adequately against these incapacitating symptoms. The Agency preliminarily concludes that this limit will reduce this significant risk substantially. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PENTABORANE

CAS: 19624–22–7; Chemical Formula: B_5H_9

H.S. No. 1304

In construction, shipyards, marine terminals, and longshoring, OSHA's current limit for pentaborane is 0.005 ppm as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has the same 8-hour TLV®–TWA but also has a 15-minute TLV®–STEL of 0.015 ppm. OSHA is retaining its 8-hour TWA permissible exposure limit of 0.005 ppm in construction and maritime, is proposing to add a 0.015-ppm 15-minute STEL in these sectors, and is also proposing to extend both limits to agriculture. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N1) that these limits are appropriate. These are the limits recently established for pentaborane in general industry.

Pentaborane is a colorless liquid with a strong and penetrating odor. Pentaborane is used as a rocket propellant (ACGIH 1986, p. 459).

In both humans and animals, inhalation of pentaborane vapor causes central nervous system effects (Svirbely 1954a/Ex. 1–385; Rozendaal 1951/Ex. 1–525; Lowe and Freeman 1957/Ex. 1–518; Cordasco, Cooper, Murphy, and Anderson 1962/Ex. 1–545). The 5-minute LC_{50}s for rats and mice are 67 and 40 ppm, respectively; for 60-minute exposures, these values are 10 and 8 ppm, respectively (Weir, Seabaugh, Mershon, Burke, and Weeks 1964). Rats exposed repeatedly to a 3-ppm concentration of pentaborane exhibited tremors, hyperexcitability, belligerence, and weight loss (Svirbely 1954a/Ex. 1–385). Rats, rabbits, monkeys, and dogs exposed repeatedly to pentaborane vapor at concentrations of 1 ppm for four weeks or 0.2 ppm for six months lost weight (Levinskas, Paslian, and Bleckman 1958/Ex. 1–517). In the same experiments, rats and rabbits exposed at 1 ppm showed reduced activity and impaired locomotor ability, respectively, and monkeys and dogs exhibited apathy, loss of appetite, insensitivity to pain, loss of mobility, tremor, and impaired coordination. The ACGIH (1986/Ex. 1–3, p. 459) notes that the 0.2-ppm concentration reported in the Levinskas, Paslian, and Bleckman (1958/Ex. 1–517) study was a calculated rather than measured value and that the actual exposure level in this study was probably closer to 0.01 ppm. Pentaborane is also believed to be rapidly absorbed through the skin in toxic amounts (Parmeggiani 1983, p. 318).

Humans accidentally overexposed to pentaborane have experienced tremors, convulsions, behavioral changes, loss of memory, impaired judgment, and other symptoms of central nervous system intoxication (Svirbely 1954a/Ex. 1–385; Rozendaal 1951/Ex. 1–525; Lowe and Freeman 1957/Ex. 1–518; Cordasco, Cooper, Murphy, and Anderson 1962/Ex. 1–545). The onset of symptoms may be delayed in humans for as long as 24 hours, and severe overexposure may cause death. A fatality occurred when a worker was severely overexposed both by inhalation and percutaneous absorption; the victim in this case convulsed and had severe opisthotonic spasms. Autopsy revealed necrotizing pneumonia in both lungs, fatty changes and centrilobular degeneration in the liver, and widespread degeneration of the brain (Yarbrough, Garrettson, Zolet et al. 1986). A worker in a nearby building at the time of the accident survived but experienced such severe nervous system injury that he had to be institutionalized (Yarbrough et al. 1986). Based on findings in animals, it is estimated that exposure to an 8-ppm concentration of pentaborane for 1 hour would cause slight toxicity in humans, while exposure to 30 ppm for the same interval would cause death (Proctor, Hughes, and Fischman 1988, p. 396).

Based on this evidence of pentaborane's extreme toxicity, OSHA is proposing to retain its 8-hour TWA PEL of 0.005 ppm in construction and maritime, to add a 15-minute STEL of 0.015 ppm for pentaborane in construction and maritime, and to extend both limits to agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors against the significant risk of central nervous system effects, such as tremors and convulsions, behavioral changes, and loss of judgment, potentially associated with exposure to pentaborane. OSHA preliminarily finds that these neuropathic effects constitute material health impairments within the meaning of the Act. In addition, promulgation of these limits will make

OSHA's PELs for this substance consistent across all regulated sectors.

PHENYL MERCAPTAN

CAS: 108–98–5; Chemical Formula: C_6H_5SH

H.S. No. 1316

In construction, maritime, and agriculture, OSHA has no exposure limit for phenyl mercaptan. The ACGIH has a TLV®-TWA of 0.5 ppm, and NIOSH recommends a 15-minute ceiling limit of 0.1 ppm for phenyl mercaptan. OSHA is proposing a permissible exposure limit of 0.5 ppm as an 8-hour TWA for phenyl mercaptan in construction, maritime and agriculture. This is the limit recently established for this substance in general industry.

Phenyl mercaptan, also called benzenethiol, is a colorless liquid with an offensive, garlic-like odor. It is used as a chemical intermediate in the manufacture of pharmaceuticals, insecticides, fungicides, and other chemicals (HSDB 1985). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The primary acute hazards of exposure to phenyl mercaptan are central nervous system stimulation followed by post-convulsive CNS depression, severe eye and skin irritation, systemic toxicity to spleen, kidney, lung, and liver tissues, and narcotic effects (Fairchild and Stokinger 1958). This substance is highly toxic by inhalation, ingestion, and percutaneous absorption (Clayton and Clayton 1981, p. 2080).

Phenyl mercaptan has 4-hour inhalation LC_{50} values of 33 and 28 ppm in rats and mice, respectively (RTECS 1990), and the oral LD_{50} in rats is 46 mg/kg (RTECS 1990; McCord and Witheridge 1949/Ex. 1–882). In rabbits and rats, dermal LD_{50} values are 134 mg/kg and 300 mg/kg, respectively (RTECS 1990). The responses of acutely poisoned animals to phenyl mercaptan exposure were uniform regardless of species, and progressed from CNS stimulation to incoordination, skeletal and muscular paralysis, and respiratory depression, followed at high concentrations by coma and death. High doses (not further specified) administered via inhalation produced lung, liver, and kidney changes in mice (Doull and Plzak 1962; Fairchild and Stokinger 1958/Ex. 1–415); Schafer 1972/Ex. 1–362). In rabbits, phenyl mercaptan is a severe eye and skin irritant (McCord and Witheridge 1949/Ex. 1–882; Robles 1975; Schafer 1972/Ex. 1–362).

In humans, phenyl mercaptan is a moderately severe skin irritant and neurotoxin; it causes headaches and dizziness at unspecified levels (Fairchild and Stokinger 1958/Ex. 1–415; McCord and Witheridge 1949/Ex. 1–882). In the prior rulemaking, NIOSH (Ex. 8–47, Table N7; Tr. p. 3–99) stated that, in its opinion, the limit for phenyl mercaptan should be a ceiling rather than a time-weighted average. In response to NIOSH, OSHA stated that a TWA limit set at 0.5 ppm will ensure that workplace concentrations are consistently maintained at levels low enough to protect against phenyl mercaptan's acute toxic effects.

Based on this evidence of phenyl mercaptan's toxicity, OSHA is proposing an 8-hour TWA limit of 0.5 ppm. The Agency preliminarily concludes that this limit will protect construction, maritime, and agriculture workers from the significant risks of CNS effects, skin irritation, and systemic injury, all material impairments of health that are potentially associated with exposure to phenyl mercaptan at the uncontrolled levels permitted by the absence of an OSHA limit for this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PROPYLENE GLYCOL DINITRATE

CAS: 6423–43–4; Chemical Formula: $C_3H_6N_2O_6$

H.S. No. 1342

In construction, maritime, and agriculture, OSHA has no exposure limit for propylene glycol dinitrate (PGDN). The ACGIH recommends a TLV®–TWA of 0.05 ppm, with a skin notation. NIOSH has no REL for PGDN but concurs (Ex. 8–47, Table N1) with the limit OSHA is proposing, which is an 8-hour TWA PEL of 0.05 ppm. This is the limit recently established for this substance in general industry.

When freshly prepared, propylene glycol dinitrate is a colorless liquid with a disagreeable odor. It is used as a torpedo propellant (ACGIH 1986, p. 502).

Exposure to this substance affects blood pressure, causes methemoglobinemia, methemoglobinuria, and respiratory toxicity, injures liver and kidney tissues, and distorts vision in humans and animals. Propylene glycol dinitrate can also cause headache and incoordination, both indicators of nervous system effects.

The oral LD_{50} value in rats is 250 mg/kg (RTECS 1990). In all species studied, death occurs by anoxia, which is caused by the almost complete conversion of hemoglobin to methemoglobin (Clark and Litchfield 1969/Ex. 1–543). Ocular instillation of the liquid caused transient conjunctival redness (Jones, Strickland, and Siegel 1972/Ex. 1–742). Twenty-day skin exposures in rabbits at a 2-g/kg dose caused weakness and cyanosis; one of five rabbits died, and this animal's hemoglobin and hematocrit values had decreased. When the dose was increased to 4 g/kg, the rabbits' methemoglobin values rose to 34.5 percent by the time of death (Jones, Strickland, and Siegel 1972/Ex. 1–742). Continuous 90-day inhalation exposures to a 10-ppm concentration caused kidney and liver changes in dogs; exposures to 35 ppm caused heavy iron deposits in the liver, spleen, and kidneys. Female (but not male) rats showed a drop in blood pressure within 30 minutes after injection of PGDN doses above 5 mg/kg. Rhesus monkeys displayed mydriasis in 90-day exposures at 35 ppm but no change in avoidance behavior during a visual discrimination and acuity threshold test (Jones, Strickland, and Siegel 1972/Ex. 1–742).

In humans, eight-hour exposures to 0.2 ppm or higher concentrations of propylene glycol dinitrate resulted in visual distortion and headache (Stewart, Peterson, Newton et al. 1974). Although subjects developed a tolerance for the headache response, the visual effects of exposure were cumulative. Impaired balance occurred after 6.5 hours of exposure to a 0.5-ppm concentration, and a 40-minute exposure to 1.5 ppm caused eye irritation. Subjects exposed at 0.5 ppm for 8 hours experienced a consistent elevation in diastolic pressure but no pulmonary irritation. At concentrations of 0.03 to 1.5 ppm, no hematologic effects were observed (Stewart, Peterson, Newton et al. 1974). Studies of human exposures to levels below 0.1 ppm do not report chronic neurotoxicity (Horvath, Ilka, Boyd, and Markhan 1981/Ex. 1–557).

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA limit of 0.05 ppm for propylene glycol dinitrate. The Agency preliminarily concludes that this limit will protect construction, maritime, and agricultural workers against the significant risks of hepatotoxic, hematologic, and central nervous system effects (all of which constitute material health impairments) that exist from workplace exposure at the levels currently permitted by the absence of an OSHA PEL. In addition, promulgation of these limits will make OSHA's PEL for this substance consistent across all regulated sectors.

Preliminary Conclusions. OSHA preliminarily concludes that significant

risks are associated with occupational exposure to the group of neuropathic toxicants shown in Table C1-1. The effects caused by such exposures include brain lesions, nausea, vomiting, general depression of the central nervous system, interference with sensory and motor functions, and alterations in the ability of the brain to process information. Affected workers may experience drowsiness, dizziness, loss of ability to concentrate, mood changes, reduced awareness, learning difficulties, unsteadiness, and auditory and visual disturbances. In addition, employees experiencing these effects are imperiled and are likely to hurt themselves or others in accidents caused by their reduced functional capacities. OSHA believes that promulgation of the proposed exposure limits for these neurotoxins will substantially reduce such risks and afford protection to construction, maritime, and agricultural workers against these material health impairments. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

2. Substances for Which Proposed Limits are Based on Avoidance of Narcotic Effects

Introduction. OSHA is proposing new or revised limits for 24 substances based primarily on evidence showing that occupational exposure to these substances causes narcosis. The narcotic effects of exposure to such substances as the alcohols, aliphatic hydrocarbons, and chlorinated hydrocarbons have been recognized as serious for many years. Table C2-1 lists these chemicals, along with their CAS numbers, HS numbers, 1987-1988 ACGIH TLV®s, and NIOSH RELs. In addition, Table C2-1 shows OSHA's current permissible exposure limits (PELs) for these substances in construction, shipyards, marine terminals, and longshoring. OSHA has no PELs that apply to workers in agricultural workplaces. The right-hand column in Table C2-1 shows OSHA's current PELs for these substances in general industry; these are the limits being proposed today for construction, maritime, and agricultural workplaces.

TABLE C2-1. SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF NARCOSIS

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction, shipyards, marine terminals, and longshoring*	1987-1988 ACGIH TLV ®***	NIOSH REL ***	Proposed OSHA PEL in construction, maritime, and agriculture
1044 Butane	106-97-8		800 ppm TWA		800 ppm TWA.
1049 sec-Butyl alcohol	78-92-2	150 ppm TWA	100 ppm TWA, 150 ppm STEL		100 ppm TWA.
1050 tert-Butyl alcohol	75-65-0	100 ppm TWA	100 ppm TWA, 150 ppm STEL		100 ppm TWA, 150 ppm STEL.
2034 Chlorobromomethane	74-97-5	200 ppm TWA	200 ppm TWA, 250 ppm STEL		200 ppm TWA.
2044 Cumene	98-82-8	50 ppm TWA, Skin.	50 ppm TWA, Skin		50 ppm TWA, Skin.
1111 Cyclopentane	287-92-3		600 ppm TWA		600 ppm TWA.
2076 Ethyl alcohol	64-17-5	1000 ppm TWA	1000 ppm TWA		1000 ppm TWA.
1163 Ethyl bromide	74-96-4	200 ppm TWA	200 ppm TWA, 250 ppm STEL		200 ppm TWA, 250 ppm STEL.
2078 Ethyl chloride	75-00-3	1000 ppm TWA	1000 ppm TWA	Handle with caution in the workplace.	1000 ppm TWA.
1185 Gasoline	8006-61-9		300 ppm TWA, 500 ppm STEL		300 ppm TWA, 500 ppm STEL.
1194 Heptane	142-82-5	500 ppm TWA	400 ppm TWA, 500 ppm STEL	85 ppm TWA, 440 ppm Ceiling, (15-min).	400 ppm TWA, 500 ppm STEL.
1201 Hexane isomers	None		500 ppm TWA, 1000 ppm STEL	100 ppm TWA, 510 ppm Ceiling, (15-min).	500 ppm TWA, 1000 ppm STEL.
1218 Isoamyl alcohol (primary and secondary).	123-51-3	100 ppm TWA	100 ppm TWA, 125 ppm STEL		100 ppm TWA, 125 ppm STEL.
1221 Isophorone	78-59-1	25 ppm TWA	5 ppm Ceiling	4 ppm TWA	4 ppm TWA.
1254 Methyl chloride	74-87-3	100 ppm Ceiling	50 ppm TWA, 100 ppm STEL	(*)	50 ppm TWA, 100 ppm STEL.
1255 Methyl chloroform (1,1,1-Trichloroethane).	71-55-6	350 ppm TWA	350 ppm TWA, 450 ppm STEL	350 ppm Ceiling (15-min).	350 ppm TWA, 450 ppm STEL.
2113 Naphtha (coal tar)	8030-30-6	100 ppm TWA			100 ppm TWA.
1296 Octane	111-65-9	400 ppm TWA	300 ppm TWA, 375 ppm STEL	75 ppm TWA, 385 ppm Ceiling (15-min).	300 ppm TWA, 375 ppm STEL.
1306 Pentane	109-66-0	500 ppm TWA	600 ppm TWA, 750 ppm STEL	120 ppm TWA, 610 ppm Ceiling (15-min).	600 ppm TWA, 750 ppm STEL.
1307 2-Pentanone (Methyl propyl ketone).	107-87-9	200 ppm TWA	200 ppm TWA, 250 ppm STEL	150 ppm TWA	200 ppm TWA, 250 ppm STEL.
1371 Stoddard solvent	8052-41-3	200 ppm TWA	100 ppm TWA	350 mg/m ^{3} TWA, 1800 mg/m ^{3} Ceiling (15-min).	100 ppm TWA.
1372 Styrene	100-42-5	100 ppm Ceiling	50 ppm TWA, 100 ppm STEL	50 ppm TWA, 100 ppm Ceiling (15-min).	50 ppm TWA, 100 ppm STEL.
1397 Toluene	108-88-3	200 ppm TWA	100 ppm TWA, 150 ppm STEL	100 ppm 8-hour TWA, 200 ppm Ceiling (10-min).	100 ppm TWA, 150 ppm STEL.
1486 Trichloroethylene	79-01-6	100 ppm TWA	50 ppm TWA, 200 ppm STEL	25 ppm TWA*	50 ppm TWA, 200 ppm STEL.

* OSHA's PELs do not currently apply in Agriculture; OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times in any working day, with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

* NIOSH considers this substance a potential occupational carcinogen and recommends that exposures be reduced to the lowest feasible concentration.

Description of the Health Effects. Narcosis is caused by a general depression of central nervous system (CNS) function. When the CNS becomes sufficiently depressed, the awareness or consciousness of affected persons is diminished. Initial symptoms of narcosis include drowsiness, difficulty in concentration, and mood changes; these effects may progress to slurred speech, dizziness, loss of coordination, and, in more severe cases, loss of consciousness, coma, and death. Except in more serious cases, CNS depression is reversible if exposure ceases. However, because narcosis adversely affects the concentration and coordination of affected workers, these workers and their co-workers are at increased risk of injuries and accidents caused by slowed reaction times, incoordination, and mistakes and errors in judgment.

The mechanism by which exposure to substances induces narcosis is poorly understood. It is believed that central nervous system depressants may have the same mechanism of action as general anesthetics, which appear to produce a reversible effect on electrically excitable neuronal membranes.

Dose-Response Relationship and Narcotic Effects

The induction of narcosis following exposure to narcotic agents appears to follow the classical S-shaped (sigmoidal) dose-response relationship. As exposure level increases, both the percent of exposed persons affected and the severity of the effect increase. Although it is not known whether a true threshold exists for the occurrence of the molecular events leading to narcosis (i.e., disruption of electrical impulses in neurons), there is usually a level at which most exposed individuals will manifest the onset of symptoms associated with narcosis. The no-effect level for a particular substance is determined largely by individual susceptibility, the extent to which the material is absorbed, and the rate at which it is metabolized and eliminated.

The following discussions describe OSHA's preliminary findings for the substances in this group and illustrate the material health impairments potentially associated with workplace exposure to these central nervous system depressants.

BUTANE

CAS: 106–97–8; Chemical Formula: C_4H_{10}
H.S. No. 1044

In construction, shipyards, marine terminals, longshoring operations, and agriculture, OSHA has no limit for butane. The 1987–1988 ACGIH TLV®–TWA is 800 ppm; there is no NIOSH REL. OSHA is proposing an 8-hour TWA PEL of 800 ppm for butane in construction, maritime, and agriculture, and NIOSH (Ex. 8–47, Table N1) concurs that this limit is appropriate. This is the limit recently established for this substance in general industry.

Butane is used to calibrate pressure and temperature gauges and to fill the thermobulbs on these instruments. It also finds wide use as an intermediate in organic synthesis and in the manufacture of aviation, heating, and motor fuel (Braker and Mossman 1980, p. 89). The odor of butane is not detectable at airborne concentrations below 50,000 ppm (Braker and Mossman 1980, p. 89). Because butane is shipped as a liquefied gas under pressure, contact with the liquid form may cause frostbite.

The primary risk of exposure to butane is narcosis. In rats, the 4-hour LC_{50} is 658 g/m³, or about 280,000 ppm; in mice, this value is 680 g/m³ for 2 hours (NIOSH 1977i/Ex. 1–1182). n-Butane causes anesthesia in mice at airborne concentrations of 130,000 ppm after exposure for 25 minutes. This substance also is a relatively weak cardiac sensitizer in dogs (Reinhardt, Azar, Maxfield et al. 1971; Stoughton and Lamson 1936).

Humans exposed to a 1000-ppm concentration of butane for a single 8-hour day or to a 500-ppm concentration for 2-week periods of 8-hour workdays showed no harmful subjective or abnormal physiological responses but did show a reduced visual evoked response (VER) wave amplitude during the second week (Stewart, Herrman, Baretta et al. 1977/Ex. 1–575). In contact with the eyes or skin, liquefied butane causes burns or frostbite (Clayton and Clayton 1981, p. 3182).

Based on this evidence, OSHA is proposing an 8-hour TWA permissible exposure limit (PEL) of 800 ppm for butane; this limit would apply to workplaces in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risks of drowsiness, narcosis, and other central nervous system effects associated with exposures at the uncontrolled levels permitted by the absence of an OSHA limit. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

sec-BUTYL ALCOHOL

CAS: 78–92–2; Chemical Formula: $CH_3CH_2CHOHCH_3$
H.S. No. 1049

OSHA's current limit for sec-butyl alcohol in construction, shipyards, marine terminals, and longshoring operations is 150 ppm as an 8-hour TWA. There is no PEL in agriculture. NIOSH has no REL for sec-butyl alcohol. The 1987–1988 ACGIH TLV®s for this substance are 100 ppm as an 8-hour TWA and 150 ppm as a 15-minute STEL. However, the ACGIH deleted the STEL for this substance in 1990 because there was no evidence that a STEL was needed; in OSHA's prior air contaminants rulemaking, the American Industrial Hygiene Association commented that no STEL was necessary to protect against sec-butyl alcohol's toxic effects (Ex. 8–16). After reviewing the available toxicologic evidence, OSHA agreed with this position (54 FR 2423), and the final rule for general industry (29 CFR 1910.1000, Table Z–1–A) thus contains only an 8-hour TWA PEL for this substance. Accordingly, OSHA is proposing an 8-hour TWA PEL of 100 ppm for sec-butyl alcohol in construction, maritime, and agriculture, and NIOSH concurs (Ex. 8–47, Table N1) that the proposed limit is appropriate. This is the limit recently established for this substance in general industry.

sec-Butyl alcohol is a colorless liquid with a strong, wine-like odor. It is used as a solvent for natural resins and linseed and cottonseed oils, and as a chemical intermediate. sec-Butyl alcohol is also an ingredient in a wide variety of commercial products, including polishes, flotation agents, flavors, perfumes, dyestuffs, wetting agents, paint removers, brake fluids, and industrial cleaners (HSDB 1985).

sec-Butyl alcohol is a narcotic and irritant both in humans and animals. The oral LD_{50} in rats is 6480 mg/kg, and the lowest lethal concentration in the same species is 16,000 ppm for 4 hours (RTECS 1990). Mice exposed to sec-butyl alcohol concentrations of 3300 to 19,800 ppm showed loss of coordination, prostration, and narcosis (Rowe and McCollister, in Clayton nd Clayton

1982, pp. 4582–4585). Liquid sec-butyl alcohol instilled into the eyes of rabbits caused severe corneal injury (Smyth, Carpenter, Weil, and Pozzani 1954).

Excessive exposure to sec-butyl alcohol is reported to have caused eye, nose, and throat irritation; headaches; nausea; fatigue; and dizziness in exposed humans (Rowe and McCollister, in Clayton and Clayton 1982, p. 4585). Workers exposed repeatedly to sec-butyl alcohol concentrations of 100 ppm, however, reportedly experienced no symptoms at this concentration (ACGIH 1986, p. 77/ Ex. 1–3).

Based on this evidence in humans and animals, OSHA is proposing a PEL for sec-butyl alcohol in construction, maritime, and agriculture of 100 ppm as an 8-hour TWA. The Agency believes that this limit will afford workers in these sectors protection against the significant risks of narcosis and irritation that are associated with exposures to sec-butyl alcohol at concentrations above the proposed PEL. The Agency preliminarily concludes that the proposed limit will substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

tert-BUTYL ALCOHOL
CAS: 75–65–0; Chemical Formula:
$(CH_3)_3COH$
H.S. No. 1050

In construction, marine terminals, shipyards, and long-shoring operations, OSHA currently has a limit of 100 ppm as an 8-hour TWA for tert-butyl alcohol. There is no PEL in agriculture. The 1987–1988 ACGIH TLV®–TWA for this substance is 100 ppm as an 8-hour TWA, with a TLV®–STEL of 150 ppm. NIOSH has no REL for tert-butyl alcohol but concurs (Ex. 8–47, Table N1) with the limits OSHA is proposing. OSHA is retaining the 100 ppm 8-hour TWA PEL in construction and maritime, is proposing 150 ppm as a 15-minute STEL in these two sectors, and is proposing both the PEL and the STEL in agriculture. These are the limits recently established for this substance in general industry.

At room temperature, tert-butyl alcohol is a colorless, crystalline solid with a camphor-like odor (ACGIH 1986/ Ex. 1–3; HSDB 1985). tert-Butyl alcohol is an ingredient of perfumes, flavorings, flotation agents, cleaning compounds, paint removers, fruit essences, plastics, and lacquers. This substance is also used as an octane booster in gasoline, to extract water from substances, and in pharmaceutical production. In addition, tert-butyl alcohol is an intermediate in the production of resins, artificial musk, and other substances (HSDB 1985). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Although similar to the other butyl alcohols in many respects, tert-butyl alcohol is more volatile and has a greater potential for narcotic effects than other butyl alcohols (Weese 1928/ Ex. 1–1073). The oral LD_{50} in rats is 3.5 g/kg (RTECS 1990). Acutely poisoned animals showed loss of coordination and other signs of narcosis (Schaffarzick and Brown 1952/Ex. 1–868). Repeated daily doses of tert-butyl alcohol that produced signs of narcosis were not fatal in experimental animals (Schaffarzick and Brown 1952/Ex. 1–868).

In humans, tert-butyl alcohol is known to cause slight redness and irritation when the liquid is applied to the skin (Oettel 1936). Exposure to concentrations described only as "excessive" is reported to have caused eye, nose, and throat irritation and narcotic symptoms, including headache, nausea, dizziness, and fatigue, in exposed workers (Schwartz and Tulipan, in Clayton and Clayton 1982, p. 4587).

Based on this evidence, OSHA is retaining the 8-hour TWA PEL of 100 ppm in construction and maritime, proposing to add a 15-minute STEL of 150 ppm in construction, maritime, and proposing to extend both PELs to agriculture. The Agency preliminarily concludes that this combination of limits will protect workers in these sectors against the significant risk of narcosis that is potentially associated with occupational exposures to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CHLOROBROMOMETHANE
CAS: 74–97–5; Chemical Formula:
CH_2BrCl
H.S. No. 2034

OSHA's limit for chlorobromomethane in general industry, construction, and maritime is 200 ppm as an 8-hour time-weighted average (TWA). There is no limit in agriculture. The 1987–1988 ACGIH TLV®–TWA for chlorobromomethane is 200 ppm as an 8-hour TWA, and the TLV®–STEL is 250 ppm. There is no NIOSH REL for this substance, but NIOSH concurs (Ex. 8–47, Table N3A) with the limit being proposed. The Agency is retaining the current limit in construction and maritime and is proposing an 8-hour TWA PEL of 200 ppm for chlorobromomethane in agriculture. This is the limit recently established for this substance in general industry.

Chlorobromomethane (also called methylene chlorobromide) is a colorless to pale yellow liquid that has a sweet, chloroform-like odor (ACGIH 1986, p. 125; Sittig 1985, p. 228). It is used as a fire extinguishing agent and as a chemical intermediate in organic synthesis (HSDB 1986; Clayton and Clayton 1982, p. 3455).

In both humans and animals, acute exposure to chlorobromo-methane causes irritation of the eyes, nose, and mucous mem-branes, and central nervous system depression (narcosis); in animals, chronic exposure causes lung, liver, and kidney damage. The oral LD_{50} in rats is 5000 mg/kg (RTECS 1989). The lowest lethal concentration in rats is 28,800 ppm for 15 minutes (RTECS 1989). Acutely poisoned animals showed incoordination and narcosis before death; pulmonary edema and interstitial pneumonitis were also seen in these animals (Comstock, Fogelman, and Oberst 1953). Inhalation studies have shown that rats exposed to 3000 ppm of chlorobromomethane experienced light narcosis (Comstock, Fogelman, and Oberst 1953). In mice, fatty degeneration of the liver and kidneys occurred after a single dose of 3000 mg/kg was administered by stomach tube; however, a dose of 500 mg/kg caused no organ damage (Highman, Suirbely, von Oettingen et al. 1948). Transient corneal epithelial injury and conjunctival edema occurred in rabbit eyes after the eyes had been sprayed with a liquid mixture of chlorobromomethane (75%) and dichlorodifluoromethane (25%) from a fire extinguisher (Grant 1986, p. 210). Dermal testing in rabbits caused moderate irritation, hyperemia, and exfoliation of the skin (Rutstein 1963). Rats, rabbits, and dogs exposed 7 hours/ day, 5 days/week for 14 weeks to a 1000-ppm concentration of chlorobromomethane showed no signs of toxicity (Suirbely, Highman, Alford et al. 1947). Female rats and dogs exposed to a 500-ppm concentration of chlorobromomethane for 7 hours/day, 5 days/week for a period of 6 months showed some liver pathology at autopsy. Elevated blood bromide was the only observed effect in male rats, guinea pigs, and rabbits exposed to the same dose. Histopathological changes in the livers and testes as well as elevated blood bromide were observed in guinea pigs, rats, and rabbits when the concentration of chlorobromo-methane was increased

to 1000 ppm (Suirbely, Highman, Alford et al. 1947).

Three firefighters exposed to very high but unknown vapor concentrations of chlorobromomethane experienced irritation of the eyes and throat, disorientation, headache, and nausea. Two of the victims later became comatose, one suffered convulsive seizures, and another required resuscitation following respiratory arrest; all recovered fully following supportive treatment (Rutstein 1963). An individual who was sprayed in the face by a fire extinguisher containing chlorobromomethane suffered from an immediate and severe burning sensation of the eyes. Medical examination of this individual revealed a partial loss of corneal epithelium and hyperemic and edematous conjunctivae and eyelids, but no permanent eye damage resulted from this exposure (Grant 1986, p. 210).

Based on the evidence presented above, OSHA preliminarily concludes that agricultural workers exposed to chlorobromomethane at the levels permitted by the absence of a limit are at significant risk of experiencing eye irritation and narcosis. The Agency believes that establishing a PEL of 200 ppm as an 8-hour TWA will protect workers in agriculture from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CUMENE

CAS: 98–82–8; Chemical Formula: $C_6H_5C_3H_7$

H.S. No. 2044

OSHA's current permissible exposure limit for cumene in general industry, construction, and maritime is 50 ppm as an 8-hour TWA; this limit also has a skin notation. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 50 ppm, with a skin notation, for cumene. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA PEL of 50 ppm, with a skin notation, for cumene in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Cumene is a colorless liquid with a sharp, aromatic odor. This substance is used as a solvent and in the production of phenol, acetone, and alpha-methylstyrene (ACGIH 1986, p. 151; Genium MSDS 1987, No. 395).

Cumene causes eye, nose, skin, and upper respiratory tract irritation in humans and animals; at high concentrations, it causes central nervous system depression in animals. The oral LD_{50} in rats is 1400 mg/kg, and the LC_{50} in mice is 24,700 mg/m³ for 2 hours (RTECS 1987). The dermal LD_{50} in rabbits is 12,300 mg/kg (ACGIH 1986, p. 151; RTECS 1987). Rabbits showed mild eye irritation when 86 mg of cumene was instilled into their eyes, and a dermal dose of 10 mg caused mild skin irritation in rabbits (RTECS 1987). Fifty percent of mice exposed to 2040 ppm for 7 hours died; the signs and symptoms of acutely poisoned mice included dilation of cutaneous blood vessels, central nervous system depression, and respiratory depression (Werner, Dunn, and von Oettingen 1944). Repeated inhalation exposures to concentrations of 2000 ppm caused ataxia and lethargy in rabbits (Proctor, Hughes, and Fischman 1988, p. 166). At autopsy, rats exposed to 500 ppm cumene daily for 5 months had hyperemia and congestion of the lungs, liver, and kidneys (Fabre et al. 1955, in ACGIH 1986, p. 151).

In humans, exposure to a concentration of 200 ppm cumene caused nasal irritation and central nervous system effects (RTECS 1987). Inhalation of high (not further specified) vapor concentrations may cause dizziness, incoordination, and unconsciousness (Clayton and Clayton 1981, pp. 3309–3310). Liquid cumene can cause erythema and irritation when in contact with the skin, and repeated contact can cause dermatitis (Gerarde 1959; Genium MSDS 1987, No. 395). Of 102 workers exposed to cumene vapors, 48 percent showed increased bilirubin concentrations, alteration of enzymatic activity, changed lipid metabolism, altered liver and hepatobiliary function, and dyskinesia (Putalova 1979).

Based on this evidence in humans and animals, OSHA preliminarily concludes that cumene causes primary irritation and central nervous system depression in exposed workers. The Agency believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects, which constitute material impairments of health. OSHA therefore believes that establishing a 50-ppm 8-hour TWA limit, with a skin notation, is necessary to significantly reduce these risks among agricultural workers. Promulgation of this limit will also make OSHA's PEL for cumene consistent across all OSHA-regulated sectors.

CYCLOPENTANE

CAS: 287–92–3; Chemical Formula: $CH_2CH_2CH_2CH_2CH_2$

H.S. No. 1111

OSHA has no limit for cyclopentane in construction, shipyards, marine terminals, longshoring operations, or agriculture. For workplaces in all of these sectors, OSHA is proposing a PEL of 600 ppm as an 8-hour TWA, which is consistent with the 1987–1988 ACGIH TLV® for this substance. NIOSH has no REL for cyclopentane but concurs with the proposed limit (Ex. 8–47, Table N1). This is the limit recently established for this substance in general industry.

Cyclopentane is a mobile, colorless, and flammable liquid. This substance occurs as an impurity in technical grade hexane, and it finds industrial use in the cracking of aromatics (Clayton and Clayton 1981, p. 3226). Cyclopentane also is an ingredient in a wide variety of commercial products, including analgesics, insecticides, antitumor agents, sedatives, and other pharmaceuticals (Clayton and Clayton 1981, p. 3226). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The existing acute toxicity data in animals indicate that cyclopentane is a potent narcotic agent. Mice exposed to a 38-ppm concentration of cyclopentane exhibited loss of reflexes, and some exposed animals died (von Oettingen 1940). In experimental animals, there is no margin of safety between the minimal narcotic concentration and the lethal dose (von Oettingen 1940). Applied to the skin of guinea pigs, liquid cyclopentane causes slight redness and dryness (Brown and Bax 1971). Almost no data are available concerning the chronic effects of cyclopentane exposure.

Abbritti, Siracusa, Cianchetti, and co-workers (1976/Ex. 1–406) reported that petroleum solvents used in the Italian shoe industry contain up to 18 percent cyclopentane, and that workers exposed to these solvents have developed polyneuropathy. Oettel (1936/Ex. 1–921) reported that skin exposure to such solvents caused burning and skin blistering after 15 minutes of occluded contact. It has not been determined, however, whether the irritation was caused by cyclopentane or by cyclopentane and other substances, such as n-hexane, in the solvent.

Based on this evidence in humans and animals, OSHA is proposing a PEL of 600 ppm as an 8-hour TWA for cyclopentane in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that occupational exposure to cyclopentane in these industries poses a significant risk of irritation and narcosis to exposed workers and that the proposed limit is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this

substance consistent across all regulated sectors.

ETHYL ALCOHOL
CAS: 64–17–5; Chemical Formula:
CH_3CH_2OH
H.S. No. 2076

OSHA's permissible exposure limit for ethyl alcohol in general industry, construction, and maritime is 1000 ppm as an 8-hour TWA; there is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 1000 ppm for ethyl alcohol. NIOSH has no REL for this substance but concurs with the PEL being proposed (Ex. 8–47, Table N3A). OSHA is proposing a PEL of 1000 ppm as an 8-hour TWA for ethyl alcohol in agriculture. Promulgation of this limit will make the PEL for ethyl alcohol consistent across all OSHA-regulated sectors.

Ethyl alcohol is a clear, colorless, flammable liquid. It is a volatile liquid with a wine-like odor that is recognizable at a concentration of approximately 100 ppm (ACGIH 1986, p. 242.2; AIHA 1987, Table 5.1). Ethyl alcohol is used in alcoholic beverages, pharmaceuticals, perfumes, gasolines, antiseptics, synthetic rubber, paints, lacquers, explosives, antifreeze, cosmetics, and food flavorings. It is also used as a solvent, in organic synthesis, and in the manufacture of denatured alcohols. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Industrial ethyl alcohol contains denaturant ingredients to render it unfit or undesirable for human ingestion (HSDB 1989; Gosselin, Smith, and Hodge 1984, p. II–174; ACGIH 1986, p. 242.2).

Ethyl alcohol is an irritant of the eyes and mucous membranes in both animals and humans; exposure to high concentrations causes central nervous system depression. The oral LD_{50} in rats is 7060 mg/kg, the LC_{50} in the same species is 20,000 ppm for 10 hours, and the lowest lethal dose in rabbits by dermal application is 20 g/kg (RTECS 1989). Rats exposed to a 22,800-ppm concentration of ethyl alcohol for 8 hours became deeply anesthetized, and exposure to a 16,000-ppm concentration for 8 hours caused some deaths in these animals. Incoordination was observed in rats exposed to 10,750 ppm for 2 hours; however, exposure to the same level for only 30 minutes caused no observable effects (Smyth 1956; Loewy and von der Heide 1918, in Clayton and Clayton 1982, p. 4545). In studies conducted on rabbits, ethyl alcohol produced mild to moderate irritation when in contact with the eyes or skin of these animals (RTECS 1989). Administered to rats and mice by various routes (oral, inhalation, intraperitoneal, intravenous, intracerebral, intratesticular, intrauterine), ethyl alcohol causes fetotoxic, embryotoxic, teratogenic, and developmental effects in the offspring and reproductive effects in the parents (RTECS 1989).

Humans exposed to a 1000-ppm concentration of ethyl alcohol for an unspecified time exhibited mild signs of poisoning, while exposure to a 5000-ppm concentration for an unspecified time caused stupor and sleepiness (Browning 1956, in ACGIH 1986, p. 242.2). Transient irritation of the eyes, nose, and respiratory tract occurred in individuals exposed for brief periods to 5000 to 10,000 ppm concentrations of ethyl alcohol. Continuous coughing and lacrimation occur when humans are exposed to a 15,000-ppm concentration of ethyl alcohol; exposure to concentrations above 20,000 ppm were described as intolerable (Lester and Greenberg 1951; Rowe and McCollister, in Clayton and Clayton 1982, p. 4551).

Based on this evidence, OSHA is proposing a 1000-ppm 8-hour TWA limit to protect workers in agriculture from the significant risks of irritation and central nervous system depression potentially associated with exposure to ethyl alcohol. OSHA preliminarily concludes that this limit is necessary to substantially reduce a significant risk of material health impairment in exposed workers in this sector. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYL BROMIDE
CAS: 74–96–4; Chemical Formula:
C_2H_5Br
H.S. No. 1163

In construction, shipyards, marine terminals, and long-shoring operations, OSHA currently has an 8-hour TWA limit of 200 ppm for ethyl bromide. There is no PEL in agriculture. The 1987–1988 ACGIH TLV®–TWA was 200 ppm, and the TLV®–STEL was 250 ppm. NIOSH has no REL for ethyl bromide. In construction and maritime, OSHA is retaining the 8-hour TWA PEL for ethyl bromide of 200 ppm and is proposing to add a 15-minute STEL of 250 ppm; the Agency is also proposing to extend both the 8-hour TWA and 15-minute STEL to agriculture. These are the limits recently established for these substances in general industry.

Ethyl bromide is a colorless, highly volatile, flammable liquid with an ether-like odor; it becomes yellow when exposed to light and air. Ethyl bromide was formerly used as an anesthetic agent and is currently used as a grain and fruit fumigant, a chemical intermediate, a refrigerant, and an ethylating agent, particularly for gasoline (HSDB 1986). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In addition to being a narcotic, ethyl bromide is an irritant of the respiratory system and a liver and kidney toxin. The oral LD_{50} in rats is 1350 mg/kg, and the lowest lethal concentration in rats is 26,980 ppm for 1 hour (RTECS 1990). When liquid ethyl bromide is applied to the skin of mice, it causes necrosis; instilled into rabbit eyes, it produces irritation (AIHA 1978). Skin absorption in toxic amounts is apparently possible, but no acute toxicity data exist for this route of exposure (Clayton and Clayton 1981, p. 3484). Prolonged exposure (6 months) to a 540-ppm concentration of ethyl bromide for 4 hours/day caused changes in liver function and liver damage that was visible at autopsy (Karimullina and Gizatullina, in Clayton and Clayton 1982, p. 3484). A National Toxicology Program carcinogenicity bioassay in rats and mice exposed by inhalation to 100 ppm (rats) or 200 ppm (mice) ethyl bromide for 6 hours/day for 2 years showed some evidence of carcinogenicity in rats (brain tumors) and clear evidence of carcinogenicity in female mice (uterine tumors) (NTP 1989).

Volunteers exposed to ethyl bromide concentrations of 6500 ppm for 5 minutes reported experiencing vertigo, headaches, and mild eye irritation (Sayers, Yant, Thomas, Berger 1929). Acute overexposure causes nervous system signs and symptoms that include redness of the face, dilation of the pupils, increased heart rate, cyanosis, and labored breathing. Several human deaths have been reported from the use of ethyl bromide as a general anesthetic (von Oettingen 1955/Ex. 1–876). These deaths were caused either by respiratory or cardiac arrest at the time the anesthetic was administered or by delayed effects on the heart, liver, or kidneys (von Oettingen 1955/Ex. 1–876).

In construction and maritime, OSHA is retaining its PEL of 200 ppm as an 8-hour TWA and is proposing to add a 15-minute STEL of 250 ppm for ethyl bromide; OSHA is also proposing to extend both limits to agriculture. The Agency preliminarily concludes that both limits are necessary to reduce the significant risks of narcosis, kidney and liver damage, and respiratory irritation that are potentially associated with occupational exposure to elevated levels

of ethyl bromide in these sectors. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

ETHYL CHLORIDE
CAS: 75–00–3; Chemical Formula:
CH_3CH_2Cl
H.S. No. 2078

OSHA's PEL for ethyl chloride in general industry, construction, and maritime is 1000 ppm as an 8-hour TWA; there is no PEL in agriculture. The ACGIH has a TLV®–TWA for ethyl chloride of 1000 ppm; NIOSH considers this substance a carcinogen and recommends that it be handled with caution in the workplace. OSHA is proposing an 8-hour TWA PEL of 1000 ppm for ethyl chloride in agriculture. Promulgation of this limit will make the PEL for ethyl chloride consistent across all OSHA-regulated sectors.

Ethyl chloride is a colorless, flammable gas with an ethereal, slightly pungent odor. It is used as an anesthetic, a chemical intermediate, and sometimes as a refrigerant (Clayton and Clayton 1981, p. 3480; Braker and Mossman 1980, p. 306).

Ethyl chloride causes central nervous system depression at high concentrations in both animals and humans; it is also a mucous membrane irritant and a liver and kidney toxin in laboratory animals. Ethyl chloride also can be absorbed through the skin and mucous membranes (Parmeggiani 1983, p. 1078; AIHA 1978). The LC_{50} for rats is 160 g/m³ for 2 hours (RTECS 1987). Exposure to a 23- or 24-percent concentration of ethyl chloride (230,000 or 240,000 ppm) caused guinea pigs to lose consciousness in 5 to 10 minutes; some of the animals died from this exposure. However, all guinea pigs survived a 30-minute exposure to a 9.1-percent (91,000 ppm) concentration of ethyl chloride, although histopathological changes were noted in the lungs, liver, and kidneys of these animals at autopsy (Sayers, Yant, and Thomas 1929). In guinea pigs exposed to a 40,000-ppm concentration of ethyl chloride, incoordination was seen after 3 minutes; after 40 minutes of exposure, these animals showed signs of eye irritation and were unable to stand. Although all animals survived 4.5 hours of exposure to this concentration, death occurred in some animals after 9 hours. At autopsy, pathological changes were seen in the liver, lungs, and kidneys (Sayers, Yant, and Thomas 1929). Animals exposed for prolonged periods to ethyl chloride concentrations that cause narcosis demonstrate a fall in blood pressure, irregularity in breathing, and damage to the liver, heart, and lungs (von Oettingen 1955, 1964). A recent study involving mice exposed continuously for 11 days to 250, 1250, or 5000 ppm ethyl chloride showed that the only treatment-related effects in these animals were an increase in relative liver weight and size and a slight increase in hepatocellular vacuolization (Landry, Johnson, Phillips, Weiss 1989).

In humans, exposure to a 13,600-ppm concentration of ethyl chloride caused signs of mild intoxication after 17 minutes; at a 25,000-ppm concentration, incoordination developed. At a concentration of 33,600 ppm, exposed individuals became intoxicated within 30 seconds of exposure and lost coordination after 5 minutes (Sayers, Yant, Thomas, and Berger 1929). Liquefied ethyl chloride spilled on the skin or splashed into the eyes may cause frostbite (AIHA 1978). Two persons are reported to have developed acute allergic eczematous dermatitis after ethyl chloride was sprayed on their skin in an allergy test (van Ketel 1976).

Based on this evidence, OSHA preliminarily concludes that workers in agriculture who are potentially exposed to ethyl chloride at the levels permitted by the absence of a limit are at significant risk of experiencing narcosis and other exposure-related effects. The Agency believes that establishing an 8-hour TWA PEL of 1000 ppm will substantially reduce the risk of these material impairments of health. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

GASOLINE
CAS: 8006–61–9; Chemical Formula:
None
H.S. No. 1185

In construction, maritime, and agriculture, OSHA has no PEL for gasoline. The 1987–1988 ACGIH TLV®s for this substance are 300 ppm as an 8-hour TWA and 500 ppm as a 15-minute STEL. NIOSH has no REL for gasoline. OSHA is proposing an 8-hour TWA PEL of 300 ppm and a 15-minute STEL of 500 ppm for this substance in these sectors. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

Gasoline is a clear, flammable, volatile liquid with a characteristic odor; it is used as an engine fuel. Gasoline is a complex mixture of at least 250 hydrocarbons (ACGIH 1986, p. 283; Page and Mehlman 1989, p. 869).

In addition to narcosis, exposure to gasoline has been associated with irritation of the eyes and upper respiratory tract, liver and kidney damage, and, in animals, cancer of the liver and kidney (Page and Mehlman 1989). The LC_{50} in rats is 300 g/m³ for 5 minutes (RTECS 1990). Splashed into the eyes of rabbits, gasoline causes transient corneal injury and blepharospasm (Grant 1986, p. 714). A two-year carcinogenicity bioassay (inhalation) in mice and rats revealed that exposure of these animals to concentrations of gasoline vapors caused increased incidences of renal tumors in male rats and of liver tumors in female mice (Page and Mehlman 1989; EPA 1987).

Volunteers exposed to vapor concentrations of 500 to 900 ppm for 1 hour became dizzy and, at 900 ppm, five of six volunteers reported experiencing eye irritation (Drinker, Yaglou, and Warren 1943). At the 160 to 270 ppm level, these volunteers experienced eye and upper respiratory tract irritation after 8 hours of exposure (Drinker, Yaglou, and Warren 1943). A later study by Davis, Schafer, and Bell confirmed the eye irritation effects of exposure to gasoline vapor from three different unleaded gasoline samples (Davis, Schafer, and Bell 1980). Results of epidemiologic studies in humans exposed to gasoline vapors at service stations, refineries, and distribution terminals have generally been inconclusive; most studies have failed to demonstrate an increase in cancer risk in these populations (EPA 1987; Page and Mehlman 1989).

OSHA is proposing an 8-hour TWA PEL of 300 ppm and a 15-minute STEL of 500 ppm for this substance in these sectors. These are the final limits recently established for gasoline in general industry.

However, as OSHA indicated in its brief submitted to the U.S. Court of Appeals for the Eleventh Circuit in the pending case *AFL* v. *OSHA*, Nos. 89–7185, et al., OSHA also notes ACGIH's finding that eye and throat irritation may occur in workers exposed at concentrations of 160 to 270 ppm (54 FR 2424/2).

After the close of the record of the general industry rulemaking, the American Petroleum Institute (API) submitted to OSHA a journal article published by McDermott and Killiany (1978) stating that the vapor that produced eye and throat irritation in the range of 160 to 270 ppm was not of the same hydrocarbon content as the vapor typically encountered in occupational exposure scenarios. However, this same paper recommends a TLV® of 300 ppm based on the use of the mixtures equation to calculate the TLV®. However, if benzene's contribution to the toxicity of gasoline is considered,

McDermott and Killiany (1978), the resulting TLV® would be approximately 100 ppm (using a 1 ppm benzene TLV®).

In its brief, OSHA stated "that, because eye and throat irritation may well constitute a material impairment of health, the evidence of gasoline's irritation effects at levels below 300 ppm warrants further study in the next PEL update." OSHA will consider whether the evidence does or does not support a lower PEL in the next PEL update and that decision will cover all segments of industry. OSHA does not intend to resolve that issue in this rulemaking because the Agency's priority in this rulemaking is to extend the updated general industry PELs to all other industry segments. OSHA believes that attempting to resolve the irritation issue and complex issues in this rulemaking would make this rulemaking difficult to complete in a timely fashion.

HEPTANE

CAS: 142–82–5; Chemical Formula: $CH_3(CH_2)_5CH_3$

H.S. No. 1194

The current OSHA limit for heptane in construction, shipyards, marine terminals, and longshoring operations is 500 ppm as an 8-hour TWA. There is no PEL in agriculture. The 1987–1988 ACGIH TLV®s for heptane are 400 ppm as an 8-hour TWA and 500 ppm as a 15-minute STEL. The NIOSH REL for heptane is 85 ppm as a 10-hour TWA or 440 ppm as a 15-minute limit. OSHA is proposing an 8-hour TWA PEL of 400 ppm and a 15-minute STEL of 500 ppm. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

Heptane is a clear, flammable liquid that is highly volatile. This substance is used as a solvent, a chemical intermediate, a standard for octane rating determinations, and a research chemical (HSDB 1986).

Heptane is a central nervous system depressant in both humans and animals. The intravenous LD_{50} in mice is 222 mg/kg (RTECS 1990). Three of four mice died after a 3-to-4 minute exposure to a 48,000-ppm concentration of n-heptane (Proctor, Hughes, and Fischman 1988, p. 269). Rats were given 1 ml/kg heptane daily for 2 days or daily for 7 days or twice weekly for 45 days, after which their livers were homogenized and assayed. The function of specific liver enzyme systems in the livers of rats exposed for 7 or 45 days was significantly impaired (Goel, Rao, and Pandya 1982).

The American Industrial Hygiene Association (1959) reports that exposure to a 1000-ppm concentration of heptane for 6 minutes caused slight dizziness in human volunteers; exposure to higher concentrations (5000 ppm) caused vertigo, in coordination, inappropriate behavior, loss of appetite, and nausea. When heptane is applied to the skin, it causes immediate irritation; blisters occurred in the affected area 5 hours after contact (NIOSH Criteria Document 1977).

As discussed below in connection with pentane and the hexane isomers, the NIOSH REL is the same for all of the C_5–C_8 alkanes (i.e., 350 mg/m³ (85 ppm) as a 10-hour TWA and 1800 mg/m³ (440 ppm) as a 15-minute ceiling). These RELs are based on NIOSH's belief that all C_5–C_8 alkanes possess a potential neurotoxic capability similar to that of n-hexane. OSHA disagrees with NIOSH on this point, believing instead that the neurotoxicity caused by exposure to n-hexane results from the action of a unique metabolite, 2,5-hexanedione. In the prior rulemaking, the majority of record commenters agreed with OSHA that n-hexane is uniquely neurotoxic (Exs. 3–593, 3–896, and 3–1246). A recent study (Perebelli, Brugnone, Coches, De Rosa, and Bartolucci (1986) confirms that, both in rats and occupationally exposed workers, the principal metabolites are 2-heptanol, 3-heptanol, 2-heptanone, 4-heptanone, and 2,5-heptanedione.

The Agency is aware that heptane is more acutely toxic than hexane and concludes preliminarily that it is appropriate to reduce the limit for heptane to a level below the level being proposed for the hexane isomers (i.e., 500 ppm as an 8-hour TWA and 1000 ppm as a 15-minute STEL). Therefore, in construction, maritime, and agriculture, OSHA is proposing for heptane a 400-ppm PEL as an 8-hour TWA and 500-ppm as a 15-minute STEL. The Agency believes that the proposed TWA and STEL will substantially reduce the significant occupational risks of heptane-related narcosis in construction, maritime, and agricultural workplaces. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

HEXANE ISOMERS (OTHER THAN N-HEXANE)

CAS: None; Chemical Formula: $(CH_3)_3C_2H_5$; $n(CH_3)_4C_2H_2$

H.S. No. 1201

OSHA has no limit in construction, maritime, or agriculture for the hexane isomers. The 1987–1988 ACGIH TLVs® for the hexane isomers are 500 ppm as an 8-hour TWA and 1000 ppm as a 15-minute STEL. NIOSH has a recommended TWA limit for these isomers of 100 ppm, supplemented by a 510-ppm 15-minute ceiling. OSHA is proposing an 8-hour TWA PEL of 500 ppm and a 15-minute STEL of 1000 ppm for the hexane isomers (other than n-hexane) in construction, maritime, and agriculture. These are the limits recently established for these substances in general industry.

The hexanes are clear, highly volatile liquids that have a mild gasoline-like odor. Their principal uses are in solvents for oils, glues, paints, and coatings and as constituents of rubber solvents and petroleum ether. The hexanes also find use as chemical intermediates and as gasoline additives (ACGIH 1986, p. 107).

Mice exposed to a 30,000-ppm concentration of hexane for 30 to 60 minutes became narcotized, and death occurred when the concentration was increased to 35,000 or 40,000 ppm (Flury and Zernik 1931; Swann et al. 1974).

These isomers are known to be irritants of the eyes, skin, and respiratory tract as well as central nervous system depressants. Prolonged or repeated contact of the skin with liquids containing hexane produces redness, swelling, and dermatitis (Genium MSDS 1989). A study by Drinker, Yaglou, and Warren (1943/Ex. 1–730) shows that humans exposed to 1400 to 1500 ppm of hexane experienced nausea and headache. Patty and Yant (1929) found that a 10-minute exposure to a 5000-ppm concentration caused giddiness and dizziness in exposed subjects. A study by Nelson, Enge, Ross et al. (1943/Ex. 1–66) showed no effects in unacclimated subjects exposed to hexane isomers in concentrations of 500 ppm, but narcotic effects have often been seen in subjects exposed at levels above 1000 ppm (Elkins 1959d, as cited in ACGIH 1986, Ex. 1–3, p. 307). The ACGIH based its limit primarily on the Nelson, Enge, Ross et al. (1943/Ex. 1–66) study.

NIOSH recommends limits for the hexane isomers of 100 ppm as a 10-hour TWA and 510 ppm as a 15-minute short-term limit. These recommendations are based on human and animal evidence showing that exposure to n-hexane, one of the hexane isomers, at concentrations below 500 ppm is associated with the development of polyneuropathy (Inoue, Takeuchi, Takeuchi et al. 1970/Ex. 1–75; Miyagaki 1967/Ex. 1–198). Thus, the NIOSH REL does not distinguish between n-hexane and the other hexane isomers; instead, NIOSH (Ex. 1–233) concluded that all of the C_5–C_8 alkanes are potential neuropathic agents and should have the same exposure limit.

In the prior rulemaking, OSHA disagreed with NIOSH's view; OSHA does not believe that all C_6–C_8 alkanes are potential neuropathic agents. Instead, OSHA is persuaded that 2,5-hexanedione, a metabolite of n-hexane (but not of the other hexane isomers) is responsible for the unique neurotoxic properties of n-hexane. OSHA's view thus agrees with that of the ACGIH, which states that "it seems unlikely that all the hexanes would follow the same metabolic route in the body [as n-hexane], in view of the marked variations in structure of the molecule" (ACGIH 1986/Ex. 1–3, p. 307). The majority of commenters in OSHA's prior air contaminants rulemaking supported OSHA's conclusion in that rulemaking that n-hexane is uniquely toxic because of the presence of 2,5-hexanedione and that the other alkanes are not toxic in this way (Exs. 3–593, 3–896, and 3–1246).

Based on the evidence discussed above, OSHA is proposing PELs of 500 ppm (8-hour TWA) and 1000 ppm (15-minute STEL) for the hexane isomers in construction, maritime, and agriculture. OSHA preliminarily finds that workers exposed to the hexane isomers in these sectors are at significant risk of experiencing narcosis and of developing neuropathy at exposure levels above those proposed. The Agency believes that establishing the proposed limits will substantially reduce these occupational risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

ISOAMYL ALCOHOL (PRIMARY AND SECONDARY)

CAS: 123–51–3; Chemical Formula: $(CH_3)_2CHCH_2CH_2OH$—Primary; $(C_2H_5)_2CHOH$—Secondary

H.S. No. 1218

In construction, shipyards, marine terminals, and long-shoring operations, OSHA's limit for the isoamyl alcohols is 100 ppm as an 8-hour TWA. There is no PEL in agriculture. The 1987–1988 ACGIH limits are an 8-hour TLV®–TWA of 100 ppm and a 15-minute TLV®–STEL of 125 ppm for the primary and secondary isoamyl alcohols. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limits. In construction, maritime, and agriculture, OSHA is retaining the Agency's 8-hour TWA limit of 100 ppm, proposing to add a 125-ppm 15-minute STEL, and proposing to extend both limits to agriculture.

Isoamyl alcohol is a flavoring agent, a lubricating and hydraulic oil additive, and a chemical intermediate. This substance also finds wide use as a solvent for fats, oils, and alkaloids (HSDB 1986). Isoamyl alcohols are colorless liquids with alcohol-like odors.

In rats, the oral LD_{50} for the primary isoamyl alcohol is 1300 mg/kg; the dermal LD_{50} in rabbits is 3212 mg/kg (RTECS 1990). Applied to the skin or eyes of rabbits, isoamyl alcohol causes minimal to severe irritation (Rowe and McCollister, in Clayton and Clayton 1982, pp. 4594–4599). Rats exposed to a 2000-ppm concentration for 8 hours survived, and rabbits administered 0.7 g/kg isoamyl alcohol orally developed stupor and lost control of voluntary movement (Munch 1972). By oral and subcutaneous administration, isoamyl alcohol caused malignant tumors of the liver and blood in rats (RTECS 1990; Gibel, Lohs, and Wildner 1975).

Smyth (1956/Ex. 1–759) reported that the principal effect of inhalation exposure to this substance in humans is narcosis. Nelson, Enge, Ross, and co-workers (1943/Ex. 1–66) reported that unacclimatized human volunteers reported upper respiratory tract irritation after brief (3- to 5-minute) exposures to an isoamyl alcohol concentration of 100 ppm and objectionable eye and mucous membrane irritation after short-term exposures to 150 ppm.

Based on this evidence, OSHA is retaining the 8-hour TWA PEL of 100 ppm and proposing to add a 15-minute STEL of 125 ppm for the isoamyl alcohols (primary and secondary) in construction and maritime; the Agency is also proposing to extend both limits to agriculture. OSHA preliminarily concludes that these limits are necessary to reduce the significant risk of eye irritation and narcotic effects associated with exposure to these substances. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

ISOPHORONE

CAS: 78–59–1; Chemical Formula: $C_9H_{14}O$

H.S. No. 1221

In construction, shipyards, marine terminals, and long-shoring, the Agency's current limit for isophorone is 25 ppm as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has established a 5-ppm TLV® as a ceiling limit, and NIOSH recommends a workplace standard of 4 ppm as a 10-hour TWA and concurs (Ex. 8–47, Table N1) with OSHA's proposed limit which is 4 ppm as an 8-hour TWA. This is the limit recently established for this substance in general industry.

Isophorone is a colorless liquid at room temperature, and it has a camphor-like odor. This substance is used as a solvent for lacquers, plastics, oils, fats, gums, resin systems, nitrocellulose, and vinyl-resin copolymers and as a chemical intermediate. It also finds use in the manufacture of pesticides (HSDB 1986).

Studies in animals and with human volunteers indicate that exposures to high concentrations of isophorone cause narcotic, nephrotoxic, and irritant effects. The oral LD_{50} in rats is 2330 mg/kg, and the LC_{50} in the same species is 1840 ppm for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 1500 mg/kg (RTECS 1990). Applied to the skin of rabbits, isophorone causes mild irritation; in the eyes, however, this substance causes severe irritation (RTECS 1990). A paper by Smyth, Seaton, and Fischer (1942/Ex. 1–378) reported that guinea pigs and rats exposed to 550 ppm isophorone for 6 weeks exhibited degenerative changes in the kidneys and liver at autopsy. At an exposure level of 25 ppm, no adverse effects were noted, but at 50 ppm, the liver of one animal and the kidneys of four others were damaged. The entire group of 20 animals exposed to a 50-ppm concentration survived, but two of 16 animals died after this concentration was raised to 100 ppm (Smyth, Seaton, and Fischer 1942/Ex. 1–378). A 2-year bioassay for carcinogenicity involving the administration by gavage of 250 or 500 mg/kg isophorone showed a dose-related and statistically significant increase in kidney and preputial gland tumors in male rats and an increase in the incidence of liver tumors in male mice in the high-dose group (Bucher, Huff, and Kluwe 1986).

Human volunteers exposed for a few minutes to isophorone vapor at concentrations between 40 and 400 ppm experienced eye, nose, and throat irritation; several subjects exposed at the 200-ppm level reported headache, nausea, faintness, dizziness, and a feeling of suffocation (Smyth and Seaton 1940a/Ex. 1–377). Silverman, Schulte, and First (1946/Ex. 1–142) reported that volunteers exposed to a 25-ppm concentration of isophorone, the current OSHA PEL in construction and maritime, complained of irritation of the eyes, nose, and throat. Workers exposed for a 1-month period to levels of 5 to 8 ppm isophorone demonstrated fatigue and malaise; however, when the workplace level was reduced to between 1 and 4 ppm, there were no complaints of adverse effects (NIOSH Criteria Document 1978).

Based on this evidence in humans and animals, OSHA is proposing in construction and maritime to reduce its 8-hour TWA PEL of 25 ppm to an 8-hour

TWA PEL of 4 ppm, and to extend this limit to agriculture, to protect workers in these sectors against the significant risk of fatigue, nausea, and headaches that have been demonstrated to occur at isophorone levels of between 5 and 8 ppm. The Agency preliminarily concludes that the proposed limit will substantially reduce these occupational risks for workers in these sectors. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL CHLORIDE
CAS: 74–87–3; CHEMICAL FORMULA: CH_3Cl
H.S. No. 1254

In construction, marine terminals, shipyards, and long-shoring, OSHA's current limit for methyl chloride is 100 ppm as a ceiling. There is no PEL in agriculture. The ACGIH has a 50-ppm 8-hour TLV®–TWA limit and a 100-ppm TLV®–STEL for this substance, and NIOSH recommends the lowest feasible limit because it considers methyl chloride a potential occupational carcinogen. The PELs being proposed by OSHA for construction, maritime, and agricultural workplaces are 50 ppm as an 8-hour TWA and 100 ppm as a 15-minute STEL. These are the limits recently established for these substances in general industry.

Methyl chloride (also called chloromethane) is a colorless, sweet-smelling gas. This substance is used as a methylating agent in the manufacture of a wide variety of substances and as a blowing agent in polystyrene foam production (ACGIH 1986, p. 380). Formerly, methyl chloride found wide use as a refrigerant (Grant 1986, p. 612). Methyl chloride also is used as an anti-knock fuel additive and an ingredient of fungicides and pesticides (Proctor, Hughes, and Fischman 1988, p. 325). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

There is considerable evidence in animals demonstrating that exposure to methyl chloride produces narcosis and other central nervous system effects and causes kidney and liver damage, and that this substance is a teratogen, reproductive toxin, and carcinogen. The LC_{50} in rats is 5300 mg/m³ for 4 hours (RTECS 1990). Acutely poisoned animals showed the following signs of narcosis: apathy, staggering gait, drowsiness, hind-limb paralysis, spasticity, and convulsions (IARC 1986, Vol. 41, p. 170). At autopsy, kidney damage and hemorrhage of the lung were seen (IARC 1986, Vol. 41, p. 170). Rats exposed to a 3500-ppm concentration for 6 hours/day for as many as 12 days developed diarrhea, forelimb incoordination, hind-limb paralysis, and convulsions (Morgan et al. 1982). Mice exposed continuously or intermittently over the same period to 400 ppm showed brain lesions at autopsy (Landry, Quast, Gushow, and Mattsson 1985). Adverse kidney and blood effects were seen in mice exposed for up to 9 days to a 2400-ppm concentration of methyl chloride (Landry et al. 1985). By inhalation, methyl chloride has caused fetal growth retardation and impaired male reproductive capacity in rats and heart defects in the offspring of exposed mice (IARC 1986, p. 176; RTECS 1990). Male mice repeatedly exposed to a 1000-ppm concentration of methyl chloride over a 2-year period had a statistically significant increase in the incidence of tumors of the kidney (NIOSH CIB 1984).

Methyl chloride has caused death in several cases of human poisoning; these fatalities have occurred both as a result of high acute exposures and of long-term exposures to lower concentrations (Scharnweber, Spears, and Cowles 1974/Ex. 1–664). Victims of methyl chloride poisoning display the following signs of narcosis before death: staggering gait, slurred speech, drowsiness, weakness, and paralysis; convulsions, cyanosis, and coma also occur (Scharnweber, Spears, and Cowles 1974/Ex. 1–664; Spevak, Nadj, and Felle 1976; Hansen, Weaver, and Venable 1953). Survivors of near-lethal exposures may evidence mild neurologic or psychiatric effects for as long as 13 years after the incident (Gudmundsson 1977).

The Dow Chemical Company (as cited in ACGIH 1986/Ex. 1–3, p. 380) studied the methyl chloride exposures of employees in 54 job classifications over a 4-month period. Exposures ranged from 5 to 78 ppm methyl chloride (8-hour TWAs), averaged 30 ppm over the work shift, and occasionally included peaks as high as 440 ppm. Medical examination of these workers revealed no detectable effects of methyl chloride exposure. However, average 8-hour exposures in the range of 195 to 475 ppm caused symptoms of weakness, drowsiness, staggering gait, thickness of the tongue, and memory lapses in some of the exposed employees (Dow Chemical Company, as cited in ACGIH 1986/Ex. 1–3, p. 380). Repko and co-workers (1976/Ex. 1–1165) found that workers exposed to concentrations of methyl chloride ranging from 7.4 to 70 ppm but averaging 33.6 ppm displayed a significant performance decrement, and that exposures below 100 ppm produced significant but transitory changes in functional capacity.

In the prior air contaminants rulemaking, NIOSH stated that it believes that methyl chloride is an appropriate substance for a Section 6(b) rulemaking because, according to NIOSH criteria, methyl chloride is a potential occupational carcinogen (Ex. 8–47; Tr. 3, pp. 97–98). However, OSHA notes the inconclusive nature of the evidence of methyl chloride's carcinogenicity and the fact that the International Agency for Research on Cancer (IARC) has concluded that this evidence is inadequate in both humans and animals (IARC 1986, p. 177). The only study in humans, an assessment of cancer risk in a small group of butyl rubber workers, was, in IARC's words, "uninformative with regard to the carcinogenic hazard of this chemical" (IARC 1986, p. 176).

Results of the two studies evaluating neurological effects are less than definitive as to LOEL for these effects. In the Dow study, medical examination of workers exposed to 5 to 78 ppm TWAs revealed no effects, although some workers exposed to 195 to 475 ppm (8-hour TWAs) complained of symptoms such as weakness, drowsiness, and memory loss. Repko reported significant performance decrement in workers exposed to concentrations between 7 and 70 ppm.

OSHA will continue to monitor the literature and determine whether to reevaluate the level for methyl chloride in the first PEL update. At that time, a level for all industry sectors will be considered at the same time. Currently, OSHA is proposing the same level in construction, maritime, and agriculture that was recently established for general industry.

Accordingly, OSHA is proposing to establish an 8-hour TWA PEL of 50 ppm and a 15-minute STEL of 100 ppm for methyl chloride in construction, maritime, and agriculture. The Agency preliminarily concludes that these limits will substantially reduce the significant risk of narcotic effects, including functional impairment, performance decrements, headaches, dizziness, slurred speech, and staggering gait that have been associated with occupational exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

METHYL CHLOROFORM (1,1,1-TRICHLOROETHANE)
CAS: 71–55–6; Chemical Formula: CH_3CCl_3
H.S. No. 1255

OSHA currently has an 8-hour TWA limit of 350 ppm for methyl chloroform in construction, shipyards, marine terminals, and longshoring operations. There is no PEL in agriculture. The 1987–1988 ACGIH TLV®–TWA was 350 ppm and the TLV®–STEL was 450 ppm for this substance; NIOSH recommends a 15-minute ceiling limit of 350 ppm. In construction and maritime, the Agency is retaining its 8-hour TWA limit and is proposing to add a STEL of 450 ppm; OSHA is also proposing to extend both limits to agriculture. NIOSH concurs that these limits are appropriate but would express them as ceilings rather than as TWAs (Ex. 8–47, Table N7). These are the limits recently established for these substances in general industry.

Methyl chloroform, which is also called trichloroethane, is a clear, nonflammable liquid with a sweetish, chloroform-like odor (Clayton and Clayton 1982, p. 3509; ACGIH 1986, p. 382). This substance is a widely used metal degreaser (HSDB 1987). It is also used as an insecticidal fumigant and as a solvent, dry cleaning agent, and chemical intermediate (Hayes 1982, p. 152; HSDB 1987). Methyl chloroform was formerly used in agriculture to degreen citrus fruits and to fumigate strawberries (HSDB 1987). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The primary health effects associated with exposure to methyl chloroform are narcosis, irritation, and liver damage. The oral LD_{50} values range from 5.6 to 11.2 g/kg for rats, mice, rabbits, and guinea pigs (RTECS 1990). The LC_{50} in rats is 18,000 ppm for 4 hours (RTECS 1990). Skin absorption is apparently not a significant route of exposure: The dermal LD_{50} in rabbits is greater than 16 g/kg (Torkelson, Oyen, McCollister, and Rowe 1958/Ex. 1–768). Applied to the skin or eyes, however, methyl chloroform causes mild-to-moderate irritation (RTECS 1990). Rats exposed for 1 hour to a methyl chloroform concentration of 10,000 ppm lost their coordination and lapsed into semiconsciousness (Hayes 1982, p. 152). Guinea pigs exposed to 1000 ppm for 3 hours/day, 5 days/week for 3 months showed, at autopsy, lung inflammation and fatty infiltration of the liver (Hayes 1982, p. 152). Repeated exposures to 500 ppm of methyl chloroform vapor for 7 hours/day, 5 days/week for 6 months caused no apparent adverse effects in guinea pigs, rabbits, or monkeys (Torkelson, Oyen, McCollister, and Rowe 1958/Ex. 1–768). Tests in rats and mice for teratogenicity and carcinogenicity have demonstrated negative results (Schwetz, Leong, and Gehring 1975/Ex. 1–757; NIOSH 1976m; Weisberger 1977/Ex. 1–694); IARC 1979, Vol. 20, p. 515–531).

In humans, narcotic effects begin to occur at methyl chloroform concentrations of approximately 350 ppm (Mackay et al. 1987). For example, reaction times, manual dexterity, and perceptual speed were adversely affected in volunteers exposed to 350 ppm (Gamberale and Hultengren 1973). Deaths from anesthesia and/or cardiac sensitization have been noted in employees working in confined areas (NIOSH 1976m).

Three recent studies (McLeod et al. 1987, Karlsson et al. 1987, and Mackay et al. 1987) suggest, respectively, that methyl chloroform causes chronic cardiac toxicity on long-term exposure, may have toxic effects on brain cells, and may cause behavioral changes after 3.5-hour exposures to concentrations of approximately 350 ppm. Kramer and co-workers (1978/Ex. 1–515) conducted an epidemiological study of men and women exposed for periods ranging from several months to 6 years to methyl chloroform at levels that occasionally exceeded 200 ppm; when compared with matched-pair controls, no adverse exposure-related effects were found in the exposed individuals (Kramer, Ott, Fulkerson et al. 1978/Ex. 1–515).

Based on this evidence in humans and animals, OSHA is proposing in construction and maritime to retain its PEL of 350 ppm as an 8-hour TWA and to add a STEL of 450 ppm for methyl chloroform; OSHA is also proposing to extend both limits to agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors against the significant risk of narcotic, irritant, and hepatotoxic effects, which together constitute material health impairments that are potentially associated with exposure to methyl chloride. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

NAPHTHA (Coal Tar)

CAS: 8030–30–6; Chemical Formula:

H.S. No. 2113

In general industry, construction, and maritime, OSHA's PEL for coal tar naphtha is 100 ppm. There is no PEL in agriculture. Neither ACGIH nor NIOSH has a limit for this substance. OSHA is proposing an 8-hour TWA PEL of 100 ppm for coal tar naphtha in agriculture. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

Coal tar naphtha is a mixture of inconstant nature prepared from the distillation of coal; this substance contains xylenes, ethyl benzene, cumene, and occasionally, toluene. Coal tar naphtha, also called coal tar distillate, aromatic petroleum naphtha, coal tar light oil, and coal tar oil, is a light oil fraction distilling to 200 °C (Grayson 1985, p. 1154). Coal tar naphtha is used for waterproofing, in paints, pipe coatings, on roads, in sealants, in roofing operations, and in pesticides.

Coal tar naphtha is toxic by inhalation and skin absorption. Exposure causes moderate eye and upper respiratory tract irritation and narcosis (Cralley and Cralley 1985, p. 176). Exposure to 1500 ppm for 8 hours was lethal to rats (Carpenter, Geary, Meyers et al. 1977). If benzene is present in the naphtha mixture in substantial quantities, exposure may lead to bone marrow effects (Clayton and Clayton 1981, p. 3392). Rodents, canines, and primates exposed to high (not further specified) concentrations of coal tar naphtha on subchronic experimental regimens showed decreased weight gain, central nervous system depression, decreased white blood cell counts, and, in some animals, cataracts (Nau, Neal, and Thornton 1966, in Clayton and Clayton 1981, p. 3418; Carpenter, Geary, Meyers et al. 1977). Rats exposed to a 3200-ppm concentration for 2 months survived but showed damage to the liver and kidney at autopsy (NIOSH/OSHA 1981).

Humans can detect the odor of coal tar naphtha at an airborne concentration of 0.07 ppm, and some exposed individuals experience the onset of sensory irritation at 25 ppm (Carpenter, Geary, Meyers et al. 1977). Acute exposure to this substance (concentrations no specified) leads to eye, nose, and throat irritation, and to narcotic signs and symptoms, including vertigo, nausea, dyspnea, and, if benzene is present, neurotoxicity. Chronic exposure also causes central nervous system depression and, depending on the benzene content, hematopoietic system changes (Sundmeyer, in Clayton and Clayton 1981, p. 3392).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 100 ppm for coal tar naphtha in agriculture. The Agency believes that this limit is necessary to reduce the significant risk of irritation, narcosis, and hematopoietic changes associated with exposure to coal tar naphtha. In addition, promulgation of this limit will make

OSHA's PEL for this substance consistent across all regulated sectors.

OCTANE

CAS: 111–65–9; Chemical Formula: $CH_3(CH_2)_6CH_3$

H.S. No. 1296

OSHA's limit for octane in construction, shipyards, marine terminals, and longshoring operations is 400 ppm as an 8-hour TWA. There is no PEL in agriculture. The 1987–1988 ACGIH TLV®s for this substance were 300-ppm as an 8-hour TWA and 375-ppm as a 15-minute STEL; NIOSH (1977a/Ex. 1–233) recommends a 75-ppm 10-hour TWA and a 385-ppm 15-minute ceiling limit. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA PEL of 300 ppm and a 15-minute STEL of 375 ppm for octane. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

Octane is a colorless, flammable liquid that has 17 isomers and an odor like that of gasoline. Octanes occur naturally in natural gas and crude oil and are found industrially in some petroleum solvents and in gasoline. The n-octane isomer is used as a solvent and in organic synthesis, while the iso-octane isomer is a standard used to measure the anti-knock properties of gasolines (ACGIH 1986, p. 448; Proctor, Hughes, and Fischman 1988, p. 384).

Mice exposed to octane concentrations of 6600 to 13,700 ppm developed narcosis within 30 to 90 minutes (Fuhner 1921, as cited in ACGIH 1986/Ex. 1–3, p. 448). Mice exposed to a 16,000-ppm concentration of iso-octane suffered respiratory arrest, and exposure to approximately 7500 ppm of the n-isomer caused loss of the righting reflex in the same species (Swann, Kwon, Hogan, and Snellings 1974).

Flury and Zernik (1931h) believed the narcotic concentration of octane in humans to be 5000 ppm; Patty and Yant (1929) placed the narcotic concentration at 8000 ppm. The signs and symptoms of over-exposure to the vapors of octane include giddiness, vertigo, headache, and stupor; convulsions have also been reported (HSDB 1986). Repeated or prolonged skin contact causes dryness and cracking of the skin (New Jersey Fact Sheet 1987, p. 2).

As discussed above for the other C_5–C_8 alkanes, the limits recommended by NIOSH for octane (1977a/Ex. 1–233) are based on NIOSH's belief that all C_5–C_8 alkanes present a neurotoxic hazard similar to that of n-hexane. OSHA disagrees with this conclusion, finding instead (54 FR 2428) that the neurotoxic properties of n-hexane are unique among these substances and thus that a PEL lower than the one being proposed for octane is not warranted at this time.

Accordingly, OSHA is proposing limits for octane of 300 ppm as an 8-hour TWA and 375 ppm as a 15-minute STEL in the construction, maritime, and agriculture sectors. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of narcosis that is associated with octane exposures. OSHA believes that these limits will substantially reduce these significant risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PENTANE

CAS: 109–66–0; Chemical Formula: C_5H_{12}

H.S. No. 1306

OSHA currently has an 8-hour TWA limit of 500 ppm for pentane in construction, shipyards, and marine terminals, and an 8-hour TWA of 1000 ppm in longshoring operations. There is no PEL in agriculture. The 1987–1988 ACGIH TLV®–TWA was 600 ppm and the TLV®–STEL was 750 ppm. NIOSH (1977a/Ex. 1–233; Ex. 8–47, Table N2) has recommended that workplace exposures to pentane not exceed 120 ppm as a 10-hour TWA and 610 ppm as a 15-minute ceiling limit. The Agency is proposing PELs of 600 ppm as an 8-hour TWA and 750 ppm as a 15-minute STEL in construction, maritime, and agriculture. This action will make OSHA's PELs for pentane consistent across all industry sectors and will provide protection against pentane's effects for workers in all OSHA-regulated sectors. The adoption of a 600 ppm PEL for all affected sectors is important (1) to maintain uniformity when health and feasibility data are equivocal, (2) to simplify enforcement, and (3) to reduce confusion about the limit among the public, employers, and employees.

Pentane, a colorless, flammable liquid with a gasoline-like odor, is usually encountered in volatile petroleum fractions, some of which are used as solvents. Pentane is used as a pesticide and is also an incidental additive in liquid grain fumigants. In addition, it finds use as a fuel, in dry cleaning, and in degreasing operations (HSDB 1986). Pure pentane is used as a blowing agent for plastics, in solvent extraction, and in ice manufacture. When used in accordance with the EPA label and in pesticidal applications, pentane is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act.

Exposure to pentane causes both narcosis and mucous membrane irritation in humans and animals. The lowest lethal concentration in mice is 325 g/m³ for 2 hours; at this concentration, behavioral signs and symptoms were apparent (RTECS 1990). The intravenous LD_{50} in mice is 448 mg/kg (RTECS 1990). Mice exposed to a 128,000 ppm concentration became deeply anesthetized, and one in four of these animals died (Swann, Kwon, Hogan et al. 1974). Respiratory irritation and mild narcosis occurred in animals of the same species at an exposure concentration of 32,000 to 64,000 ppm for 5 minutes (Swann, Kwon, Hogan et al. 1974). The reported lethal concentration in humans is 130,000 ppm (Flury and Zernik 1931j/Ex. 1–994; Swann, Kwon, and Hogan 1974/Ex. 1–124). According to Patty and Yant (1929), humans exposed for 10 minutes to 5000 ppm did not report experiencing any adverse symptoms.

A study by Gaultier, Rancurel, Piva, and Efthymioc (1973/Ex. 1–123) reports that five cases of polyneuropathy occurred among employees exposed to a solvent containing 80 percent pentane, 14 percent heptane, and 5 percent hexane. Based largely on these results, NIOSH (1977a/Ex. 1–233) recommended the same occupational limit for all C_5–C_8 alkanes as for the neuropathic agent n-hexane (350-mg/m³ TWA and 1800-mg/m³ 15-minute short-term limits; these limits approximately equal a 120-ppm 8-hour TWA and a 610-ppm 15-minute STEL for pentane). As discussed above in connection with the entries for heptane and octane, OSHA believes that n-hexane is uniquely neuropathic because it is metabolized to 2,5-hexanedione, and thus that all C_5–C_8 alkanes are not equally toxic. The Agency concluded in the prior rulemaking that a metabolite of n-hexane exhibits unique neurotoxic properties and thus that the Gaultier, Rancurel, Piva, and Efthymioc (1973/Ex. 1–123) study does not provide isomer-specific exposure data supporting limits at the levels of the NIOSH RELs.

Also in the prior rulemaking, one commenter (Ex. 3–896) objected to the proposed STEL for pentane on the grounds that the health evidence did not justify a STEL. OSHA responded to this commenter (54 FR 2428) by pointing out that a STEL is needed to protect workers from the significant neurotoxic effects potentially associated with the high short-term excursions possible in the absence of a STEL.

Based on this evidence and reasoning, the Agency is proposing to establish an 8-hour TWA of 600 ppm and a 15-minute

STEL of 750 ppm as the permissible exposure limits for pentane in construction, maritime, and agriculture. OSHA preliminarily concludes that these limits will protect exposed workers in these sectors from the narcosis associated with pentane exposure. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

2-PENTANONE (METHYL PROPYL KETONE)

CAS: 107-87-9; Chemical Formula: $CH_3COC_3H_7$

H.S. No. 1307

The current OSHA limit for 2-pentanone in construction, shipyards, marine terminals, and longshoring operations is 200 ppm as an 8-hour TWA. There is no PEL in agriculture. The 1987-1988 ACGIH TLV®-TWA was 200 ppm and the TLV®-STEL was 250 ppm; NIOSH (1978k) has recommended a 150-ppm limit as a 10-hour TWA. In construction and maritime, the Agency is proposing to retain the 200-ppm TWA PEL and to establish a 15-minute STEL of 250 ppm for 2-pentanone; in agriculture, OSHA is proposing both the 8-hour TWA and STEL.

2-Pentanone, also called methyl propyl ketone, is a clear, flammable liquid with a strong odor resembling that of acetone or ether. 2-Pentanone is used as a solvent and flavoring agent and in organic synthesis (ACGIH 1986, p. 408; Hawley's 1987, p. 780).

2-Pentanone has an oral LD_{50} in rats of 1600 mg/kg and an LC_{50} in the same species of 2000 ppm for 4 hours (RTECS 1990). The dermal LD_{50} for this substance in rabbits is 6500 mg/kg (RTECS 1990). Acutely poisoned animals display agitation, loss of balance, and staggering (Miller, Valaer, and Sayers 1940). Both the ACGIH- and NIOSH-recommended limits for 2-pentanone are based on the results of a study by Specht, Miller, Valaer, and Sayers (1940/Ex. 1-1179), which found that guinea pigs exhibited irritation and weakness on exposure to 2500 ppm and that exposure to 5000 ppm produced narcosis and coma. Based on this evidence, the authors concluded that 2-pentanone is considerably less toxic than methyl butyl ketone but is more toxic than methyl ethyl ketone, and, in addition, that 2-pentanone is likely to be more irritating than either methyl ethyl ketone or acetone. The ACGIH-recommended limits are thus based on a judgment that the 200-ppm TLV®-TWA and 250-ppm TLV®-STEL are low enough to prevent narcosis and irritation.

NIOSH (1978k) relied on the findings both of the Specht, Miller, Valaer, and Sayers (1940/Ex. 1-1179) study discussed above and of the Nelson, Enge, Ross et al. study (1943/Ex. 1-66); these latter authors reported that volunteers complained of slight irritation on exposure to a 100-ppm concentration of methyl ethyl ketone. NIOSH reasoned that, because 2-pentanone had been found by Specht, Miller, Valaer, and Sayers (1940/Ex. 1-1179) to be at least as irritating as methyl ethyl ketone, a "slight reduction" in the limit was warranted for 2-pentanone (NIOSH 1978k). Therefore, NIOSH recommends a 150-ppm limit for 2-pentanone, and this recommendation was reiterated in the prior air contaminants rulemaking (Ex. 8-47, Table N2; Tr. 3-86).

However, OSHA believes that the combination of a 200-ppm TWA PEL and a 250-ppm STEL will ensure that concentrations of 2-pentanone in construction, maritime, and agricultural workplaces are maintained at levels that will prevent the occurrence of the adverse health effects associated with exposures to this chemical. Accordingly, the Agency is proposing to establish these limits to reduce the significant risk of narcosis that is associated with exposures to 2-pentanone at elevated short-term levels. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

STODDARD SOLVENT

CAS: 8052-41-3; Chemical Formula: C_9H_{20}

H.S. No. 1371

OSHA's current limit for Stoddard solvent in construction, shipyards, marine terminals, and longshoring operations is 200 ppm as an 8-hour TWA. There is no PEL in agriculture. The 1987-1988 ACGIH TLV®-TWA was 100 ppm, and NIOSH concurs that this limit is appropriate (Ex. 8-47, Table N1). OSHA is proposing to reduce the PEL for Stoddard solvent in construction and maritime to 100 ppm as an 8-hour TWA and to extend this limit to agriculture. This is the limit recently established for this substance in general industry.

Stoddard solvent is a refined petroleum solvent that is a mixture of straight- and branched-chain paraffins, naphthenes and aromatic hydrocarbons. This substance is widely used as a solvent and diluent in paints, coatings, and waxes and as a metal degreasing agent. It is also often found as an ingredient of herbicides (ACGIH, 1986, p. 537). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Stoddard solvent is an irritant of the eyes, skin, and mucous membranes and a narcotic in humans and animals. Inhalation of a 1400-ppm concentration of this substance for 8 hours was lethal to some rats and cats (Carpenter et al. 1975). Acutely poisoned animals showed signs of eye irritation, lost their coordination, and had a bloody discharge from the nose (Carpenter et al. 1975). Cats exposed to 1700 ppm for 2.5 to 7.5 hours convulsed before death (Carpenter et al. 1975). Rats exposed to a 330-ppm concentration of Stoddard solvent 6 hours/day for 65 days had tubular degeneration of the kidneys at autopsy (Carpenter et al. 1975).

Humans exposed to a 470-ppm concentration of Stoddard solvent for 15 minutes experienced eye irritation (RTECS 1990). In prolonged or repeated contact with the skin, this substance causes dermatitis (AIHA 1978). Inhalation of large (not further specified) concentrations causes nausea, vomiting, cough, and pulmonary irritation (Cohen and Maier 1974). Several studies suggest that chronic exposure to Stoddard solvent vapors for periods ranging from 3 months to 20 years may cause hepatic involvement, hypoplasia of the bone marrow, and aplastic anemia (Scott et al. 1959; Prager and Peters 1970).

The NIOSH RELs for Stoddard solvent are derived from NIOSH's recommended limits for all of the C_6-C_9 alkanes; NIOSH recommended the same limit for Stoddard solvent as for all C_6-C_9 alkanes both because of the lack of specific scientific data on Stoddard solvent's chronic effects and because of a report of polyneuropathy occurring among workers exposed to jet fuels containing mixtures of kerosene and gasoline. NIOSH reasoned that, although the C_6-C_9 alkanes present in jet fuel may have been implicated, it was possible that the heavier hydrocarbon components may also have been responsible. Thus, the NIOSH RELs for Stoddard solvent reflect a concern that higher-molecular-weight hydrocarbons may be neuropathic. However, OSHA does not believe that there is evidence that the C_{10} and higher-molecular-weight hydrocarbons cause neuropathies, and NIOSH also now agrees, based on a reevaluation of the evidence, that a 100-ppm 8-hour TWA limit is appropriate for this substance (Ex. 8-47, Table N1).

OSHA is proposing to establish an 8-hour TWA PEL of 100 ppm in construction, maritime, and agriculture to reduce the significant risk of eye irritation, narcosis, polyneuropathy, and kidney damage that have been

demonstrated to occur in both humans and animals. The Agency believes that the proposed limit for Stoddard solvent is necessary to substantially reduce these risks to workers in these sectors. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

STYRENE

CAS: 100–42–5; Chemical Formula: $C_6H_5CH=CH_2$

H.S. No. 1372

OSHA's current permissible exposure limit for styrene in construction, shipyards, marine terminals, and longshoring operations is 100 ppm as a ceiling limit. There is no PEL in agriculture. In construction and maritime, OSHA is proposing to revise this limit to 50 ppm as an 8-hour TWA and to add a 15-minute STEL of 100 ppm, based on both the 1987–1988 ACGIH TLV®s and the NIOSH RELs, which are identical. OSHA is also proposing these limits in agriculture. NIOSH (Ex. 150, Table N1) concurs that the proposed limits are appropriate for styrene.

Styrene monomer is a colorless, oily liquid with an aromatic odor. It is used as a solvent for resins and synthetic rubber and as an intermediate in chemical synthesis. Styrene is also used as a flavoring agent and in the manufacture of polymerized synthetics (HSDB 1987; Proctor, Hughes, and Fischman 1988, p. 448).

Styrene is an irritant, a narcotic, and a neuropathic agent; some studies also show that animals exposed to styrene vapor develop tumors. The oral LD_{50} in rats is 5000 mg/kg, and the LC_{50} in the same species is 24 g/m³ for 4 hours (RTECS 1990). Rats and guinea pigs exposed to a 1300-ppm concentration of styrene for 8 hours/day, 5 days/week for 6 months experienced often-lethal pulmonary irritation (guinea pigs) and, at autopsy, showed increased kidney and liver weights (rats) (IARC 1979, Vol. 19, p. 239). Oral exposure to styrene has been shown to cause liver enzyme changes and other hepatic effects in rats and dogs (EPA 1987, pp. 6–7).

There is a considerable body of health-effects information in humans for styrene in the toxicological literature. Human volunteers exposed to an 800-ppm concentration of styrene for 4 hours experienced eye and throat irritation and also reported listlessness, drowsiness, and impaired balance (Carpenter et al. 1944). At a concentration of 376 ppm, five human volunteers experienced eye and respiratory tract irritation within 20 minutes and also demonstrated decrements in motor function (Stewart et al. 1968). Three subjects exposed to a 100-ppm concentration of styrene for 90 minutes had slower reaction times; on repeated exposure, sleepiness, fatigue, headache, difficulty in concentration, malaise, nasal irritation, and nausea occurred in another group of subjects (NIOSH 1983a, p. 150).

Effects attributable to central nervous system depression were seen in a 6-week study involving human subjects exposed to 20, 100, or 125 ppm styrene; the authors of the study reported visual-evoked-response and electroencephalogram changes in these subjects (NIOSH 1983a, p. 150). Other studies have reported irritation of the eyes and throat at concentrations ranging from 1 to 100 ppm (NIOSH 1983a, p. 151).

Workers in reinforced plastics (RP) facilities in many countries have also evidenced narcotic effects as a consequence of styrene exposure. Swedish, Dutch, and Czechoslovakian workers in RP plants complained of headache, fatigue, drowsiness, giddiness, and dizziness at exposure levels in the range of 4 to 195 ppm (NIOSH 1983a, p. 151). Respiratory effects have been observed in United States RP workers exposed to from 9 to 111 ppm styrene; symptoms included wheezing, shortness of breath, and chest tightness. Another study showed a significantly greater number of RP workers with abnormal pulmonary function when compared with workers from a nonstyrene facility (NIOSH 1983a, pp. 153–154).

Several animal and human studies have suggested that styrene may be a carcinogen. A nested case-control study conducted by McMichael, Spirta, Gamble, and Tousey (1976/Ex. 1–206) found significantly increased risks of lymphatic and hematopoietic cancer, lymphatic leukemia, and stomach cancer among workers exposed to both styrene and butadiene. A retrospective cohort mortality study by Meinhardt, Lemen, Crandall, and Young (1982/Ex. 1–199), also among workers exposed concurrently to styrene and butadiene, reported an excess risk of leukemia and aleukemia in these workers. In a study sponsored by the Chemical Manufacturers Association (Dow 1978, as cited in EPA 1987/Ex. 1–836), male and female Sprague-Dawley rats were exposed to styrene vapor at concentrations of 600 to 1200 ppm, 6 hours/day, 5 days/week, for 18 or 20 months. The higher exposure level was reduced to 1000 ppm after the first 2 months of exposure because of excessively reduced weight in the male rats. A statistically significant increased incidence of mammary tumors was reported in low-dose female rats (7 of 87) compared with controls (1 of 85); no increase in mammary tumors was reported among high-dose female rats. The authors questioned the significance of this response, since historical control animals from the same laboratory showed a higher background incidence of mammary tumors than did the controls used in this study.

In a 1979 NCI study (NCI 1979b/Ex. 1–948), male and female B6C3F1 mice and Fischer 344 rats were treated by gavage 5 days/week for 78 weeks (low-dose rat groups were treated for 103 weeks). The study was terminated at 91 weeks for mice and at 104 to 105 weeks for rats. Dose-related increases in alveolar/bronchiolar adenomas and carcinomas were observed only in the low-dose (150 mg/kg) and high-dose (300 mg/kg) male mice; the incidence of tumors for vehicle controls, low-dose, and high-dose male mice was 0/20, 6/44, and 9/43, respectively. Although the historical incidence of tumors among untreated controls was 12 percent (32/271), the historical incidence of vehicle controls was 0/40.

Based on this evidence, OSHA preliminarily finds that workplace exposures to styrene are associated with health effects ranging from narcosis to neuropathies and irritation; in addition, although the evidence is not conclusive, styrene exposure may cause cancer. The Agency believes that an 8-hour TWA PEL of 50 ppm and a STEL of 100 ppm are necessary to protect workers in construction, maritime, and agriculture against these significant occupational risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

TOLUENE

CAS: 108–88–3; Chemical Formula: $C_6H_5CH_3$

H.S. No. 1397

The current OSHA standard for toluene in construction, shipyards, marine terminals, and longshoring operations is 200 ppm as an 8-hour TWA limit. There is no PEL in agriculture. The 1987–1988 ACGIH TLV®–TWA for toluene was 100 ppm and the TLV®–STEL was 150 ppm; NIOSH recommends a 100-ppm 8-hour TWA and a 10-minute ceiling of 200 ppm. The Agency is proposing an 8-hour TWA PEL of 100 ppm and a STEL of 150 ppm for toluene; NIOSH (Ex. 8–47, Table N1) concurs with these limits. These are the limits recently established for these substances in general industry.

Toluene is a flammable, colorless liquid with an aromatic, hydrocarbon

odor. It is used primarily in the manufacture of benzene and other chemicals. Toluene is also a constituent of solvents, cements, inks, spot removers, cosmetics, antifreeze, and gasoline (HSDB 1989; Proctor, Hughes, and Fischman 1988, p. 477).

Toluene is an irritant of the eyes and skin and a central nervous system depressant in humans and animals. The oral LD_{50} in rats is 5000 mg/kg, and the lowest lethal concentration in the same species is 4000 ppm for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 12,124 mg/kg (RTECS 1990). Cats exposed to 7800 ppm showed tremors and prostration within 80 minutes and a mild degree of narcosis within 2 hours (Carpenter et al. 1976). Exposure of cats to near-lethal toluene concentrations for 6 hours resulted in the development of vacuoles in the corneal epithelium (Grant 1986, p. 927). In contact with the skin, toluene causes marked irritation (Wolf et al. 1956). Chronic exposure to concentrations ranging from 100 to 1000 ppm caused behavioral symptoms in rats (Ishikawa and Schmidt 1973).

Von Oettingen, Neal, Donahue et al. (1942/Ex. 1–875) exposed human volunteers to toluene levels ranging from 50 ppm to 800 ppm for 8 hours/day. These authors report that exposures to 50 ppm cause drowsiness and headaches and that exposures at 100 ppm result in sleepiness, moderate fatigue, and headaches. At 200 ppm, effects included impairment of coordination and reaction times. Later studies by Ogata, Tomokuni, and Takatsuka (1970/Ex. 1–352) showed an increase in reaction time, a decrease in pulse rate, and a decrease in systolic blood pressure in humans exposed to 200 ppm toluene for 7 hours.

A study by Greenberg, Mayers, Heinmann, and Moskowitz (1942/Ex. 1–325) reported that painters exposed to toluene levels of 100 to 1100 ppm exhibited enlarged livers, a moderate decrease in red blood cell counts, enlarged red blood cells, and absolute lymphocytosis, but no leukopenia. Wilson (1943/Ex. 1–403) observed 1,000 workers exposed to toluene at levels ranging from 50 ppm to 1500 ppm for periods of 1 to 3 weeks. One hundred of these workers developed symptoms severe enough to require hospitalization. At levels less than 200 ppm, 60 of these employees experienced headache, fatigue, and lack of appetite. Those workers exposed to 200 to 500 ppm toluene experienced headache, nausea, bad taste in the mouth, lassitude, temporary amnesia, impaired coordination, and anorexia. Levels of exposure from 500 to 1500 ppm resulted in nausea, headache, dizziness, anorexia, marked loss of coordination, diminished reaction time, pronounced weakness, and heart palpitations. Red cell counts were also decreased, and two cases of aplastic anemia required lengthy hospital treatment; however, the author noted that he could not rule out the possibility that benzene contamination of the toluene was the cause of these blood effects. Aplastic anemia (including one fatal case) has been noted in six glue sniffers; toluene was the base solvent in the glue (Powars 1965/Ex. 1–433). A man who had inhaled toluene regularly at unspecified levels for 14 years developed permanent encephalopathy (Knox and Nelson 1966/Ex. 1–421).

In the prior air contaminants rulemaking, one commenter (Ex. 3–896) argued that a short-term exposure limit for toluene was not justified. OSHA responded that, as in the cases of octane and pentane, a short-term exposure limit is necessary to ensure that workers are not exposed at the elevated levels possible with a TWA limit alone, particularly in light of the fact that concentrations only slightly above the 8-hour TWA may cause incoordination and amnesia. For example, workers could be exposed to toluene at levels as high as several hundred ppm if the Agency only had an 8-hour TWA PEL for this substance.

OSHA is proposing to establish an 8-hour TWA PEL of 100 ppm and a STEL of 150 ppm for toluene in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that studies clearly indicate that a significant risk of hepatotoxic, behavioral, and nervous system effects exists at toluene levels substantially at or only slightly above the Agency's current PEL. OSHA believes that the proposed limits are necessary to substantially reduce this risk.

TRICHLOROETHYLENE

CAS: 79–01–6; Chemical Formula: CCl_2-CHCl

H.S. NO. 1406

OSHA's current limit for trichloroethylene in construction, shipyards, marine terminals, and longshoring operations is 100 ppm as an 8-hour TWA. There is no PEL in agriculture. The Agency is proposing a TWA PEL of 50 ppm and a STEL of 200 ppm for this substance in construction, maritime, and agriculture. The 1987–1988 ACGIH TLV®-TWA for trichloroethylene was 50 ppm and the TLV®-STEL was 200 ppm. The NIOSH REL is 25 ppm as a 10-hour TWA; however, NIOSH concurs (Ex. 8–47, Table N6A) with the limits being proposed.

Trichloroethylene is a colorless, nonflammable, noncorrosive liquid with the sweet odor characteristic of some chlorinated hydrocarbons. It is used as a carrier solvent for fungicides and insecticides, as a degreasing solvent, as a chemical intermediate, and in dry cleaning and extraction operations. It is also occasionally used as an anesthetic and analgesic (HSDB 1990; Proctor, Hughes, and Fischman 1988, p. 486).

Trichloroethylene is a central nervous system depressant, an irritant of the eyes and skin, and, in experimental animals, a carcinogen. The intraperitoneal LD_{50} in rats is 1282 mg/kg, and the oral LD_{50} and LC_{50} in mice are 2402 mg/kg and 8450 ppm for 4 hours, respectively (RTECS 1990). Acutely poisoned animals die of respiratory failure or cardiac arrest (ACGIH 1986, p. 595). Prolonged or repeated contact with the skin of rabbits caused severe irritation; dropped into the eyes of rabbits, trichloroethylene produced moderate irritation (RTECS 1990). Rats inhaling a trichloroethylene concentration of 3000 ppm for 8 hours did not become anesthetized; however, increasing the concentration to 4800 ppm caused deep anesthesia in these animals (Adams et al. 951). At doses that cause deep anesthesia, trichloroethylene is a cardiac sensitizer in dogs (Reinhardt et al. 1973). Rats, rabbits, and guinea pigs exposed repeatedly (7 hours/day, 5 days/week for 6 months) to trichloroethylene concentrations ranging from 400 to 3000 ppm showed increases in liver and kidney weights at autopsy (Adams et al. 1951).

There is a considerable body of carcinogenicity data on trichloroethylene. In an NCI bioassay (1976b/Ex. 1–168), mice given trichloroethylene by gavage developed hepatocellular carcinomas, but rats did not. The species difference in response was attributed to a difference in the way trichloroethylene is metabolized between the mouse and rat (Stott, Quast, and Watanabe 1982/Ex. 1–833). An inhalation study in mice, rats, and Syrian hamsters (Henschler, Romen, Reichert et al. 1980/Ex. 1–330) found an increase only in the occurrence of malignant lymphomas in mice, which the authors attributed to the strain of mouse used (NMRI).

Several other bioassays on trichloroethylene have recently been published. Fukuda, Takemoto, and Tsuruta (1983/Ex. 1–1109) exposed female rats and mice to 50, 150, or 450 ppm trichloroethylene for 103 weeks and

reported an increased incidence of lung tumors among mice only. Maltoni, Lefemine, and Cotti (1986/Ex. 1–1160) exposed rats and mice to 100, 300, or 600 ppm trichloroethylene and reported a significant increase of renal adenocarcinomas and Leydig cell tumors in rats, as well as a significant increase in hepatomas and lung tumors in mice. In 1986, the NTP reported an increase in the incidence of kidney tumors in rats given trichloroethylene by gavage; however, the NTP considered the tumor response to be weak (3 of 49 animals) and reported that the results were only statistically significant after corrections for high mortality were made.

In humans, trichloroethylene primarily affects the central nervous system and liver; some studies have shown that chronic exposure to concentrations below 100 ppm is associated with a variety of nervous disturbances. Bardodej and Vyskocil (1956/Ex. 1–461) have reported that workers report signs and symptoms of trichloroethylene poisoning, including tremors, giddiness, anxiety, and alcohol intolerance, when they are exposed to concentrations of trichloroethylene above 40 ppm.

Haas (1960) and Grandjean, Muchinger, Turrian et al. (1955/Ex. 1–324) reported nervous symptoms among workers exposed for 5 years or more to trichloroethylene concentrations ranging from 1 to 335 ppm; the frequency of complaints increased when average exposures exceeded 40 ppm.

A number of epidemiologic investigations having cohorts as large as 7688 workers have found no correlation between cancer mortality and exposure to trichloroethylene (Novotna, David, and Malek 1971; Axelson, Andersson, Hogstedt et al. 1978/Ex. 1–713; Tola, Vilhunen, Jarvinen, and Korkala 1980/Ex. 1–391).

Based on this evidence, OSHA preliminarily concludes that the current 100-ppm TWA PEL for trichloroethylene is insufficiently protective against this substance's exposure-related central nervous system (CNS) effects and, further, that exposure to trichloroethylene may present a possible carcinogenic hazard. As stated above, OSHA is proposing an 8-hour 50 ppm TWA and 200 ppm STEL for this substance in these sectors. These are the final limits recently established for general industry. However, as OSHA indicated in the Agency's brief to the U.S. Court of Appeals for the Eleventh Circuit in the pending case *AFL* v. *OSHA*, Nos. 89–7185, et al. " * * * OSHA concludes that the evidence may warrant a lower limit if the next PEL updated establishes the risk of central nervous system effects and carcinogenicity at levels below 50 ppm."OSHA does not intend to resolve that issue in this rulemaking, because its priority in this rulemaking is to extend the updated general industry PELs to all other segments. OSHA believes that attempting to resolve the issues of central nervous system effects and carcinogenicity and similar complex issues in this rulemaking would make this rulemaking difficult to complete in a timely fashion. OSHA will consider for all industry sectors whether a lower PEL is needed in the first PEL update.

Preliminary Conclusions for This Group of Narcotic Agents

OSHA preliminarily concludes that workers exposed to these narcosis-causing substances in construction, maritime, and agriculture workplaces are at significant risk of experiencing a broad range of narcotic effects, including loss of consciousness, incoordination, inability to concentrate, drowsiness, irritability, poor judgment, and inappropriate behavior. These highly undesirable and potentially serious health effects additionally have the potential to cause serious workplace accidents and injuries because they interfere with reaction times, muscle coordination, and the ability to make good decisions and exercise good judgment. The new or revised exposure limits being proposed by OSHA will protect workers in construction, maritime, and agriculture from experiencing these significant risks in their places of work and will contribute to a substantial reduction in these risks. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

3. Substances for Which Proposed Limits Are Based on Avoidance of Sensory Irritation

Introduction. Exposure to many chemical agents is associated with the development of sensory irritation, which is initiated when these substances come into contact with the eyes, the mucous membranes, or the skin. OSHA is proposing to establish limits in agriculture, maritime, and construction for a large group of sensory irritants; the limits being proposed would, if established, provide protection against sensory irritation to workers in all of the sectors covered by OSHA. These substances are shown in Table C3–1, along with their current OSHA limits in construction and maritime and the limits being proposed for workplaces in agriculture, construction, and maritime.

Table C3–1 also shows the HS and CAS numbers for these substances and the 1987–1988 ACGIH TLV®s– and NIOSH REL (if any) for each substance. The right-hand column of Table C3–1 shows the proposed limits, which are identical to those recently promulgated for these substances in general industry (see 54 *FR* 2434).

TABLE C3–1.—LIST OF SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF IRRITANT EFFECTS

H.S. No./Chemical name	CAS No.	Current OSHA PEL in construction and maritime	1987–1988 ACGIH TLV® ***	NIOSH REL ***	Proposed OSHA PEL in construction, maritime, and agriculture
1001 Acetaldehyde	75–07–0	200 ppm TWA	100 ppm TWA, 150 ppm STEL		100 ppm TWA, 150 ppm STEL.
1002 Acetic acid	64–19–7	10 ppm TWA	10 ppm TWA, 15 ppm STEL		10 ppm TWA.
1004 Acetone	67–64–1	1000 ppm TWA	750 ppm TWA, 1000 ppm STEL	250 ppm TWA	750 ppm TWA, 1000 ppm STEL.
1007 Acrolein	107–02–8	0.1 ppm TWA	0.1 ppm TWA, 0.3 ppm STEL		0.1 ppm TWA, 0.3 ppm STEL.
1010 Allyl alcohol	107–18–6	2 ppm TWA, Skin.	2 ppm TWA, 4 ppm STEL, Skin		2 ppm TWA, 4 ppm STEL, Skin.
1012 Allyl glycidyl ether (AGE)	106–92–3	10 ppm Ceiling	5 ppm TWA, 10 ppm STEL, Skin	9.6 ppm Ceiling (15-min).	5 ppm TWA, 10 ppm STEL.
1013 Allyl propyl disulfide	2179–59–1	2 ppm TWA	2 ppm TWA, 3 ppm STEL		2 ppm TWA, 3 ppm STEL.
1021 Ammonia	7664–41–7	50 ppm TWA	25 ppm TWA, 35 ppm STEL	50 ppm Ceiling (5-min).	35 ppm STEL.
1022 Ammonium chloride fume	12125–02–9		10 mg/m³ TWA, 20 mg/m³ STEL.		10 mg/m³ TWA, 20 mg/m³ STEL.
2005 n-Amyl acetate	628–63–7	100 ppm TWA	100 ppm TWA		100 ppm TWA.
2017 Benzoyl peroxide	94–36–0	5 mg/m³ TWA	5 mg/m³ TWA	5 mg/m³ TWA	5 mg/m³ TWA.

TABLE C3–1.—LIST OF SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF IRRITANT EFFECTS—Continued

H.S. No./Chemical name	CAS No.	Current OSHA PEL in construction and maritime	1987–1988 ACGIH TLV® ***	NIOSH REL ***	Proposed OSHA PEL in construction, maritime, and agriculture
2018 Benzyl chloride	100–44–7	1 ppm TWA	1 ppm TWA	1 ppm Ceiling (15-min).	1 ppm TWA.
1036 Borates, tetra, Na (anhydrous).	1330–43–4		1 mg/m³ TWA		10 mg/m³ TWA.
1037 Borates, tetra, Na (decahydrate).	1303–96–4		5 mg/m³ TWA		10 mg/m³ TWA.
1038 Borates, tetra, Na (pentahydrate).	12179–04–3		1 mg/m³ TWA		10 mg/m³ TWA.
2020 Boron trifluoride	7637–07–2	1 ppm Ceiling	1 ppm Ceiling	(++)	1 ppm Ceiling.
1042 Bromine	7726–95–6	0.1 ppm TWA	0.1 ppm TWA, 0.3 ppm STEL		0.1 ppm TWA, 0.3 ppm STEL.
2021 Bromoform	75–25–2	0.5 ppm TWA, Skin.	0.5 ppm TWA, Skin		0.5 ppm TWA, Skin
1045 2-Butanone (MEK)	78–93–3	200 ppm TWA	200 ppm TWA, 300 ppm STEL	200 ppm TWA	200 ppm TWA, 300 ppm STEL.
1047 n-Butyl acetate	123–86–4	150 ppm TWA	150 ppm TWA, 200 ppm STEL		150 ppm TWA, 200 ppm STEL.
1053 n-Butyl lactate	138–22–7		5 ppm TWA		5 ppm TWA.
1054 Butyl mercaptan	109–79–5	0.5 ppm TWA	0.5 ppm TWA	0.5 ppm Ceiling (15-min).	0.5 ppm TWA.
2025 Butylamine	109–73–9	5 ppm Ceiling, Skin.	5 ppm Ceiling, Skin		5 ppm Ceiling, Skin.
1063 Camphor (synthetic)	76–22–2	2 mg/m³ TWA	2 ppm TWA, 3 ppm STEL		2 mg/m³ TWA.
1064 Caprolactam (dust)	105–60–2		1 mg/m³ TWA, 3 mg/m³ STEL		1 mg/m³ TWA, 3 mg/m³ STEL.
1065 Caprolactam (vapor)	105–60–2		5 ppm TWA, 10 ppm STEL		5 ppm TWA, 10 ppm STEL.
1077 Cesium hydroxide	21351–79–1		2 mg/m³ TWA		2 mg/m³ TWA.
1079 Chlorine	7782–50–5	1 ppm TWA	1 ppm TWA, 3 ppm STEL	0.5 ppm Ceiling (15-min).	0.5 ppm TWA, 1 ppm STEL.
2030 Chlorine trifluoride	7790–91–2	0.1 ppm Ceiling	0.1 ppm Ceiling		0.1 ppm Ceiling.
2031 Chloroacetaldehyde	107–20–0	1 ppm Ceiling	1 ppm Ceiling		1 ppm Ceiling.
2032 alpha-Chloroacetophenone	523–27–4	0.05 ppm TWA	0.05 ppm TWA		0.05 ppm TWA.
1083 Chloroacetyl chloride	79–04–9		0.05 ppm TWA		0.05 ppm TWA.
1084 o-Chlorobenzylidene malononitrile.	2698–41–1	0.05 ppm TWA	0.05 ppm Ceiling, Skin		0.05 ppm Ceiling, Skin.
2037 Chloropicrin	76–06–2	0.1 ppm TWA	0.1 ppm TWA		0.1 ppm TWA.
2040 Copper dust and mist (as Cu).	7440–50–8	1 mg/m³ TWA	1 mg/m³ TWA		1 mg/m³ TWA.
1101 Copper fume (as Cu)	7440–50–8	0.1 mg/m³ TWA	0.2 mg/m³ TWA		0.1 mg/m³ TWA.
1105 Cyanogen	460–19–5	10 ppm TWA	10 ppm TWA		10 ppm TWA.
1106 Cyanogen chloride	506–77–4		0.3 ppm Ceiling		0.3 ppm Ceiling.
2046 Cyclohexane	110–82–7	300 ppm TWA	300 ppm TWA		300 ppm TWA.
2047 Cyclohexene	110–83–8	300 ppm TWA	300 ppm TWA		300 ppm TWA.
2048 Cyclopentadiene	542–92–7	75 ppm TWA	75 ppm TWA		75 ppm TWA.
2052 Diacetone alcohol	123–42–2	50 ppm TWA	50 ppm TWA	50 ppm TWA	50 ppm TWA.
2053 Diazomethane	334–88–3	0.2 ppm TWA	0.2 ppm TWA		0.2 ppm TWA.
1119 Dibutyl phosphate	107–66–4	1 ppm TWA	1 ppm TWA, 2 ppm STEL		1 ppm TWA, 2 ppm STEL.
2057 o-Dichlorobenzene	95–50–1	50 ppm Ceiling	50 ppm Ceiling		50 ppm Ceiling.
1122 1,3-Dichloro-5,5-di-methyl hydantoin.	118–52–5	0.2 mg/m³ TWA	0.2 mg/m³ TWA, 0.4 mg/m³ STEL.		0.2 mg/m³ TWA, 0.4 mg/m³ STEL.
1127 Dichloroethyl ether	111–44–4	15 ppm Ceiling, Skin.	5 ppm TWA, 10 ppm STEL, Skin		5 ppm TWA, 10 ppm STEL, Skin.
1130 2,2-Dichloropropionic acid	75–99–0		1 ppm TWA		1 ppm TWA.
1137 Diethylamine	109–89–7	25 ppm TWA	10 ppm TWA, 25 ppm STEL		10 ppm TWA, 25 ppm STEL.
2062 Diethylaminoethanol	100–37–8	10 ppm TWA, Skin.	10 ppm TWA, Skin		10 ppm TWA, Skin.
1140 Diisobutyl ketone	108–83–8	50 ppm TWA	25 ppm TWA	25 ppm TWA	25 ppm TWA.
2066 Dimethylamine	124–40–3	10 ppm TWA	10 ppm TWA		10 ppm TWA.
2069 Dimethylphthalate	131–11–3	5 mg/m³ TWA	5 mg/m³ TWA		5 mg/m³ TWA.
1158 Epichlorohydrin	106–89–8	5 ppm TWA, Skin.	2 ppm TWA, Skin	(+)	2 ppm TWA, Skin.
2075 Ethyl acetate	141–78–6	400 ppm TWA	400 ppm TWA		400 ppm TWA.
2080 Ethyl amyl ketone	541–85–5	25 ppm TWA	25 ppm TWA		25 ppm TWA.
1162 Ethyl benzene	100–41–4	100 ppm TWA	100 ppm TWA, 125 ppm STEL		100 ppm TWA, 125 ppm STEL.
2077 Ethyl butyl ketone	106–35–4	50 ppm TWA	50 ppm TWA		50 ppm TWA.
1164 Ethyl ether	60–29–7	400 ppm TWA	400 ppm TWA, 500 ppm STEL		400 ppm TWA, 500 ppm STEL.
2079 Ethyl formate	109–94–4	100 ppm TWA	100 ppm TWA		100 ppm TWA.
1165 Ethyl mercaptan	75–08–1	0.5 ppm TWA	0.5 ppm TWA	0.5 ppm Ceiling (15-min).	0.5 ppm TWA.
2081 Ethylamine	75–04–7	10 ppm TWA	10 ppm TWA		10 ppm TWA.
1169 Ethylene glycol	107–21–1		50 ppm Ceiling		50 ppm Ceiling.
1171 Ethylidene norbornene	16219–75–3		5 ppm Ceiling		5 ppm Ceiling.
1179 Fluorine	7782–41–4	0.1 ppm TWA	1 ppm TWA, 2 ppm STEL		0.1 ppm TWA.
2086 Formic acid	64–18–6	5 ppm TWA	5 ppm TWA		5 ppm TWA.
1183 Furfural	98–01–1	5 ppm TWA, Skin.	2 ppm TWA, Skin		2 ppm TWA, Skin.
1184 Furfuryl alcohol	98–00–0	50 ppm TWA	10 ppm TWA, 15 ppm STEL, Skin.	50 ppm TWA	10 ppm TWA, 15 ppm STEL, Skin.
1187 Glutaraldehyde	111–30–8		0.2 ppm Ceiling		0.2 ppm Ceiling.
1196 Hexachlorocyclopentadiene.	77–47–4		0.01 ppm TWA		0.01 ppm TWA.

TABLE C3-1.—LIST OF SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF IRRITANT EFFECTS- -Continued

H.S. No./Chemical name	CAS No.	Current OSHA PEL in construction and maritime	1987-1988 ACGIH TLV$_a$ ***	NIOSH REL ***	Proposed OSHA PEL in construction, maritime, and agriculture
1197 Hexachloroethane	67-72-1	1 ppm TWA, Skin.	10 ppm TWA	(+)	1 ppm TWA, Skin.
2090 sec-Hexyl acetate	108-84-9	50 ppm TWA	50 ppm TWA		50 ppm TWA.
1204 Hexylene glycol	107-41-5		25 ppm Ceiling		25 ppm Ceiling.
1206 Hydrogen bromide	10035-10-6	3 ppm TWA	3 ppm Ceiling		3 ppm Ceiling.
2091 Hydrogen chloride	7647-01-0	5 ppm Ceiling	5 ppm Ceiling		5 ppm Ceiling.
1208 Hydrogen fluoride (as F)	7664-39-3	3 ppm TWA	3 ppm Ceiling	3 ppm TWA, 6 ppm Ceiling (15-min).	3 ppm TWA, 6 ppm STEL.
2092 Hydrogen peroxide (90%)	7722-84-1	1 ppm TWA	1 ppm TWA		1 ppm TWA.
1211 2-Hydroxypropyl acrylate	999-61-1		0.5 ppm TWA, Skin		0.5 ppm TWA, Skin.
2095 Iodine	7553-56-2	0.1 ppm Ceiling	0.1 ppm Ceiling		0.1 ppm Ceiling.
1217 Iron salts (soluble) (as Fe)	Varies with compound.		1 mg/m^3 TWA		1 mg/m^3 TWA.
2096 Isoamyl acetate	123-92-2	100 ppm TWA	100 ppm TWA		100 ppm TWA.
1224 Isopropyl acetate	108-21-4	250 ppm TWA	250 ppm TWA, 310 ppm STEL		250 ppm TWA, 310 ppm STEL.
1225 Isopropyl alcohol	67-63-0	400 ppm TWA	400 ppm TWA, 500 ppm STEL	400 ppm TWA, 800 ppm Ceiling (15-min).	400 ppm TWA, 500 ppm STEL.
1228 n-Isopropylamine	75-31-0	5 ppm TWA	5 ppm TWA, 10 ppm STEL		5 ppm TWA, 10 ppm STEL.
1226 Isopropyl ether	108-20-3	500 ppm TWA	200 ppm TWA, 310 ppm STEL		500 ppm TWA.
2101 Lithium hydride	7580-67-8	0.025 mg/m^3 TWA.	0.025 mg/m^3 TWA		0.025 mg/m^3 TWA.
2102 Maleic anhydride	108-31-6	0.25 ppm TWA	0.25 ppm TWA		0.25 ppm TWA.
1243 Mesityl oxide	141-79-7	25 ppm TWA	15 ppm TWA, 25 ppm STEL	10 ppm TWA	15 ppm TWA, 25 ppm STEL.
2105 Methyl acrylate	96-33-3	10 ppm TWA, Skin.	10 ppm TWA, Skin		10 ppm TWA, Skin.
1248 Methyl 2-cyano-acrylate	137-05-3		2 ppm TWA, 4 ppm STEL		2 ppm TWA, 4 ppm STEL.
1261 Methyl isobutyl carbinol	108-11-2	25 ppm TWA, Skin.	25 ppm TWA, 40 ppm STEL, Skin.		25 ppm TWA, 40 ppm STEL, Skin.
2106 Methyl isocyanate	624-83-9	0.02 ppm TWA, Skin.	0.02 ppm TWA, Skin		0.02 ppm TWA, Skin.
1263 Methyl mercaptan	74-93-1	0.5 ppm Ceiling	0.5 ppm TWA	0.5 ppm Ceiling (15-min).	0.5 ppm TWA.
2107 Methyl methacrylate	80-62-6	100 ppm TWA	100 ppm TWA		100 ppm TWA.
1264 Methyl n-amyl ketone	110-43-0	100 ppm TWA	50 ppm TWA	100 ppm TWA	100 ppm TWA.
1267 alpha-Methyl styrene	98-83-9	100 ppm Ceiling	50 ppm TWA, 100 ppm STEL		50 ppm TWA, 100 ppm STEL.
1270 o-Methylcyclo-hexanone	583-60-8	100 ppm TWA, Skin.	50 ppm TWA, 75 ppm STEL, Skin.		50 ppm TWA, 75 ppm STEL, Skin.
1298 Osmium tetroxide (as Os)	20816-12-0	0.002 mg/m^3 TWA.	0.002 mg/m^3 TWA, 0.006 mg/m^3 STEL.		0.002 mg/m^3 TWA, 0.006 mg/m^3 STEL.
1302 Paraffin wax fume	8002-74-2		2 mg/m^3 TWA		2 mg/m^3 TWA.
1314 Phenyl ether (vapor)	101-84-8	1 ppm TWA	1 ppm TWA, 2 ppm STEL		1 ppm TWA.
2127 Phenyl ether-biphenyl mixture.		1 ppm TWA			1 ppm TWA.
2129 Phosgene	75-44-5	0.1 ppm TWA	0.1 ppm TWA	0.1 ppm TWA, 0.2 ppm Ceiling (15-min).	0.1 ppm TWA.
1322 Phosphoric acid	7664-38-2	1 mg/m^3 TWA	1 mg/m^3 TWA, 3 mg/m^3 STEL		1 mg/m^3 TWA, 3 mg/m^3 STEL.
2131 Phosphorus pentachloride	10026-13-8	1 mg/m^3 TWA	0.1 ppm (1 mg/m^3) TWA		1 mg/m^3 TWA.
1325 Phosphorus trichloride	7719-12-2	0.5 ppm TWA	0.2 ppm TWA, 0.5 ppm STEL		0.2 ppm TWA, 0.5 ppm STEL.
1334 Potassium hydroxide	1310-58-3		2 mg/m^3 Ceiling		2 mg/m^3 Ceiling.
1343 Propylene glycol monomethyl ether.	107-98-2		100 ppm TWA, 150 ppm STEL		100 ppm TWA, 150 ppm STEL.
1350 Rosin core solder pyrolysis products, (as formaldehyde).			0.1 mg/m^3 TWA		0.1 mg/m^3 TWA.
1365 Sodium bisulfite	7631-90-5		5 mg/m^3 TWA		5 mg/m^3 TWA.
1367 Sodium hydroxide	1310-73-2	2 mg/m^3 TWA	2 mg/m^3 Ceiling	2 mg/m^3 Ceiling (15-min).	2 mg/m^3 Ceiling.
1368 Sodium metabisulfite	7681-57-4		5 mg/m^3 TWA		5 mg/m^3 TWA.
1376 Sulfur monochloride	10025-67-9	1 ppm TWA	1 ppm Ceiling		1 ppm Ceiling.
1377 Sulfur pentafluoride	5714-22-7	0.025 ppm TWA	0.01 ppm Ceiling		0.01 ppm Ceiling.
2147 Sulfuric acid	7664-93-9	1 mg/m^3 TWA	1 mg/m^3 TWA, 3 mg/m^3 STEL	1 mg/m^3 TWA	1 mg/m^3 TWA.
1387 Tetrahydrofuran	109-99-9	200 ppm TWA	200 ppm TWA, 250 ppm STEL		200 ppm TWA, 250 ppm STEL.
2157 Tetranitromethane	509-14-8	1 ppm TWA	1 ppm TWA		1 ppm TWA.
1389 Tetrasodium pyrophosphate.	7722-88-5		5 mg/m^3 TWA		5 mg/m^3 TWA.
1392 Thioglycolic acid	68-11-1		1 ppm TWA, Skin		1 ppm TWA, Skin.
1405 1,2,4-Trichlorobenzene	120-82-1		5 ppm Ceiling		5 ppm Ceiling.
1408 Triethylamine	121-44-8	25 ppm TWA	10 ppm TWA, 15 ppm STEL		10 ppm TWA, 15 ppm STEL.
2166 Turpentine	8006-64-2	100 ppm TWA	100 ppm TWA		100 ppm TWA.
1421 Vanadium (V_2O_5, respirable dust).	1314-62-1	0.5 mg/m^3 Ceiling.	0.05 mg/m^3 TWA	0.05 mg/m^3 Ceiling (15-min).	0.05 mg/m^3 TWA.

TABLE C3-1.—LIST OF SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF IRRITANT EFFECTS—Continued

H.S. No./Chemical name	CAS No.	Current OSHA PEL in construction and maritime	1987-1988 ACGIH TLVs •••	NIOSH REL •••	Proposed OSHA PEL in construction, maritime, and agriculture
1422 Vanadium (V_2O_5, fume)	1314-62-1	0.1 mg/m³ Ceiling.	0.05 mg/m³ TWA	0.05 mg/m³ Ceiling (15-min).	0.05 mg/m³ TWA.
1424 Vinyl acetate	108-05-4		10 ppm TWA, 20 ppm STEL	4 ppm Ceiling (15-min).	10 ppm TWA, 20 ppm STEL.
1427 Vinyl toluene	25013-15-4	100 ppm TWA	50 ppm TWA, 100 ppm STEL		100 ppm TWA.
1429 VM & P Naphtha	8032-32-4		300 ppm TWA		300 ppm TWA, 400 ppm STEL.
1431 Xylenes (o-, m-, and p-isomers).	1330-20-7	100 ppm TWA	100 ppm TWA, 150 ppm STEL	100 ppm TWA, 200 ppm Ceiling (10-min).	100 ppm TWA, 150 ppm STEL.
1435 Zinc chloride fume	7646-85-7	1 mg/m³ TWA	1 mg/m³ TWA, 2 mg/m³ STEL		1 mg/m³ TWA, 2 mg/m³ STEL.

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time; OSHA's PELs do not currently apply in Agriculture.

** The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ NIOSH considers this substance a potential occupational carcinogen and recommends that exposures be reduced to the lowest feasible concentration.

++ No exposure limit recommended because of the absence of a reliable monitoring method; use appropriate engineering and work practice controls to reduce exposure to lowest feasible concentration.

Description of the Health Effects

Irritant effects are readily perceived by affected individuals. The symptoms of sensory irritation include stinging, itching, and burning of the eyes, tearing (or lacrimation), a burning sensation in the throat or nasal passages, rhinitis (nasal inflammation), cough, sputum production, chest pain, wheezing, and dyspnea (breathing difficulty). In the majority of cases, the onset of symptoms occurs rapidly upon exposure to the irritant; it is therefore easy to associate the causative agent with the irritant effect.

These effects may cause severe discomfort and be seriously disabling, as is the case with dyspnea or wheezing. The tearing, pain, and irritation associated with exposure of the eye to sensory irritants can be severe; in some cases, it is disabling. In addition to these primary effects, workers distracted by irritant effects are more likely than nonexposed workers to have accidents and thus to endanger both themselves and others. (Irritant effects thus also have substantial productivity impacts.)

The eye irritation caused by exposure to irritants is believed to result from stimulation of the sensory nerve endings in the cornea. There is little information available on the relationship between the severity of the effect and the physical or chemical properties of the irritating substance. In addition, the mechanism of action underlying this irritant effect is not well understood. Mechanisms that have been suggested include physical action of the irritant on nerve endings, binding of the irritant to sulfhydryl groups of protein, inhibition of cellular respiration, and cholinesterase inhibition (Grant 1986/Ex. 1-975). The symptoms of eye irritation are usually transient and do not generally persist after cessation of exposure; however, exposure to concentrations of lacrimators that exceed the levels associated with transient eye irritation may produce corneal or conjunctival injury that requires medical treatment (Grant 1986/Ex. 1-975).

Sensory irritation of the respiratory system primarily affects the upper respiratory tract and causes an increase in sputum production; inflammation of the nasal passages, trachea, and upper bronchial tree; and decreased cilial clearance. These effects produce a burning sensation in the nasal passages and throat; coughing; sneezing; and acute bronchitis. The development of bronchitis indicates that the cilial clearance mechanism has been compromised, and the accumulation of mucus that results increases the risk of secondary bacterial infection. Wheezing may also be apparent, particularly if the affected individual has a history of hyperreactive airway disease. If exposure is sufficiently intense, the irritant may reach the lower portion of the bronchial tree, causing a chemical burn of the parenchyma and the sudden collection of fluid in interstitial spaces and alveoli (pulmonary edema). Irritation-induced edema may have a delayed onset (12 hours or more) and can cause hypoxia and difficulty in breathing.

For the great majority of substances in this group, OSHA's current limits in construction and maritime are based on evidence showing that humans exposed to the chemical at a particular airborne concentration will experience sensory irritation. For a few substances in this group, evidence from animal experiments provided the basis for limit setting. Several general types of evidence were used by OSHA in proposing to revise existing limits or to propose limits for substances previously unregulated in construction, maritime, or agriculture:

- Consideration of new human evidence;
- Reinterpretation of the human data that formed the basis for setting the 1970 TLV® in construction and maritime;
- Consideration of evidence from industrial experience showing that employees are not experiencing irritation; and
- Evaluation of new evidence in animals.

The studies that provide the basis for most of the sensory irritant levels being proposed by OSHA today are generally controlled-exposure experiments that involved human volunteers or reports of adverse effects in workers.

Dose-Response Relationships and Sensory Irritation

Sensory irritation is considered a "threshold" phenomenon; that is, for any sensory irritant, there is an exposure concentration below which very few, if any, individuals will experience irritation. As exposure increases above this level, a larger proportion of exposed individuals will notice the effect and the effect will become increasingly severe. At some concentration above this no-observed-effect level (NOEL), all exposed persons will experience

sensory irritation, although the intensity of the response may vary.

The risk of experiencing irritation that is associated with exposures below the NOEL will be minimal (except in the hypersensitive individual), while the risk of experiencing the irritant effect will increase as exposure increases. At some point above the NOE level (i.e., at some dose of the substance) the response will be 100 percent, and all exposed persons will experience irritation. According to general toxicologic principles (see Section IV.A of this preamble), the shape of the curve that describes responses above the NOEL is sigmoidal, and the steepness of the curve is a function of the variability in individual responses to the particular irritant. For example, if nearly all persons exposed to the substance will experience a response at approximately the same concentration (dose), the curve will be steep; if, on the other hand, the percentage of people responding increases only slowly as concentration rises, the curve will be considerably flatter.

In addition to the relationship between increasing dose and increasing proportion of exposed persons being affected, the intensity of the response also increases with increasing exposure level. Slightly above the NOE level, affected individuals will experience itching and burning of the eyes, nose, and throat; this is a transient effect that disappears when exposure ceases. For some substances, workers may become inured to the sensations and higher exposure levels are necessary to elicit a subjective response. As exposure levels increase, the irritant effects become more severe, until they reach a point where objective signs of mucous membrane irritation are apparent (i.e., redness of the eyes, rhinitis, coughing, and lacrimation).

OSHA preliminarily concludes that exposure limits are needed for those substances for which PELs are being proposed in this rulemaking to protect workers in construction, maritime, and agriculture against sensory irritant effects that result in objective signs of irritation, such as coughing, wheezing, conjunctivitis, and tearing. Such levels of mucous membrane irritation may require medical treatment, adversely affect the well-being of employees, and place the affected individual at risk from increased absorption of the substance and decreased resistance to infection. Exposing workers repeatedly to irritants at levels that cause subjective irritant effects may cause workers to become inured to the irritant warning properties of these substances and thus increase the risk of overexposure. In addition, the long-term effects of repeated low-level sensory irritation have not been well studied.

Analyses of human case reports and the toxicologic data for the substances in this group of chemicals are presented below. In addition, OSHA's preliminary findings in each case are discussed in detail.

ACETALDEHYDE
CAS: 75-07-0; Chemical Formula: CH_3CHO
H.S. No. 1001

The current OSHA PEL for acetaldehyde in the construction and maritime industries is 200 ppm as an 8-hour TWA; there is currently no PEL for acetaldehyde in agriculture. The ACGIH TLV®-TWA for acetaldehyde is 100 ppm (180 mg/m^3), with a STEL of 150 ppm (270 mg/m^3); there is no NIOSH REL for this substance. OSHA is proposing an 8-hour TWA PEL of 100 ppm and a STEL of 150 ppm for acetaldehyde in the agriculture, construction, and maritime industries. These are the limits recently established for acetaldehyde in general industry.

Acetaldehyde is a flammable, colorless, fuming liquid with a pungent, fruity odor (Sax and Lewis 1989, p. 6; New Jersey Fact Sheet 1986, p. 1). Acetaldehyde is used in the production of herbicides, fungicides, and pesticides; in the production of rubber, disinfectants, cosmetics and perfumes; in the silvering of mirrors; in photography; in the manufacture of gelatin, glue, and casein products; as an additive in milk products and candies; and as a preservative in food products and leather (Merck 1983, p. 6; IARC 1988, p. 103; Parmeggiani 1983, p. 36; Hawley's 1987, p. 5; HSDB 1987). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Acetaldehyde is an irritant of the eyes, mucous membranes, and upper respiratory tract, a central nervous system depressant at high concentrations, and, in experimental animals, a carcinogen. The oral LD_{50} in rats is 1930 mg/kg, and the LC_{50} in the same species is 37 g/m^3 (20,550 ppm) for 30 minutes (RTECS 1990). Animals acutely poisoned by inhalation die of narcosis or pulmonary edema (Fairhall 1949). Cats exposed at a level of 1520 ppm acetaldehyde for 7 hours showed reversible irritation of the air passages (Iwanoff 1911). Instilled into the eyes of rabbits, acetaldehyde produced severe irritation; in contact with the skin of rabbits, this substance caused mild irritation (RTECS 1990). Rats exposed to acetaldehyde concentrations of 4000 to 5000 ppm 6 hours/day, 5 days/week for 4 weeks showed varying degrees of degradation of the nasal epithelium (Appelman 1982). Hamsters exposed to a 4560-ppm concentration of acetaldehyde for 3 months showed signs of ocular and nasal irritation and had increased numbers of erythrocytes; at autopsy, increased kidney and heart weights and severe histopathological changes in the respiratory tract were seen in these animals (Kruysse 1975). In carcinogenicity bioassays, acetaldehyde was found to produce adenocarcinomas and squamous cell carcinomas of the nasal mucosa in rats and laryngeal carcinomas in hamsters by inhalation; in addition, acetaldehyde is both embryotoxic and teratogenic when administered to rats and mice during pregnancy (IARC 1987, Suppl. 7, p. 77; IARC 1985, Vol. 36, p. 114). The International Agency for Research on Cancer (IARC) has concluded that the evidence for acetaldehyde's carcinogenicity in animals is sufficient (IARC 1987, Suppl. 7, p. 77).

Humans exposed to concentrations of 25 ppm or 50 ppm acetaldehyde for 15 minutes reported experiencing eye irritation, while those exposed to a 200-ppm acetaldehyde concentration for 15 minutes reported transient conjunctivitis; exposure to a 134-ppm concentration of acetaldehyde for 30 minutes produced mild upper respiratory tract irritation in these volunteers (Silverman 1946; EPA 1983). Repeated or prolonged skin contact with acetaldehyde produces erythema, burns, and dermatitis as a result of primary irritation (Proctor, Hughes, and Fischman 1988, p. 47). Chronic exposure to higher concentrations (above 200 ppm) may injure the corneal epithelium and cause persistent lacrimation, photophobia, and the sensation of a foreign body in the eye (Halbertsma 1927; Silverman 1946). Chronic exposure to low levels of acetaldehyde is reported to have a narcotic effect on the central nervous system, producing bronchial secretions and symptoms similar to those of chronic alcoholism (Fairhall 1949). A study of workers at a German chemical plant who were primarily exposed to acetaldehyde but were also exposed to other chemicals reported an excess of bronchial tumors and tumors of the oral cavity in these workers. Because of mixed exposure, the small number of cases, and the poorly defined exposure population, the International Agency for Research on Cancer concluded that the evidence for the carcinogenicity of acetaldehyde in

humans is inadequate (IARC 1987, Suppl. 7, p. 77).

OSHA believes that employees in the construction and maritime industries are at significant risk of experiencing conjunctivitis and irritation at the concentration of acetaldehyde that is permitted by the current 8-hour TWA limit of 200 ppm in force in these sectors, and that workers in agriculture are at risk of these same effects because acetaldehyde concentrations in this sector may currently be uncontrolled. Therefore, OSHA is proposing that the PEL for acetaldehyde in the agriculture, construction, and maritime industries be set at 100 ppm as an 8-hour TWA and 150 ppm as a 15-minute STEL. Promulgation of these limits will also make OSHA's PELs for this substance consistent across all regulated sectors.

ACETIC ACID
CAS: 64–19–7; Chemical Formula:
CH_3COOH
H.S. No. 1002

The current OSHA PEL for acetic acid in the construction and maritime industries is 10 ppm as an 8-hour TWA; there is no PEL for acetic acid in agriculture. The ACGIH TLV®–TWA for acetic acid is 10 ppm (25 mg/m^3) and the STEL is 15 ppm (37 mg/m^3); there is no NIOSH REL for this substance. OSHA is retaining its 8-hour TWA PEL of 10 ppm in the construction and maritime industries and is proposing to establish this PEL in agriculture. The proposed action would make the PEL for acetic acid consistent across all OSHA-regulated industry sectors.

Acetic acid is a clear, colorless, flammable liquid with a pungent odor (Sax and Lewis 1989, p. 16). This substance is used as a fungicide to preserve high-moisture grain and to combat *Aspergillus flavus*, the organism that produces aflatoxin (Grayson 1985, p. 9). Acetic acid is also used in the manufacture of acetic anhydride, cellulose acetate, vinyl acetate monomer, and other chemicals; in the production of insecticides; as a food additive; and for many other purposes (Hawley's 1987, p. 7). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Acetic acid is a strong irritant of the eyes, skin, and upper respiratory tract in both animals and humans. In addition, exposure to high concentrations of this substance causes narcosis in experimental animals. The oral LD_{50} in rats is 3530 mg/kg, and the LC_{50} in mice is 5620 ppm for a 1-hour exposure (RTECS 1990). The dermal LD_{50} in rabbits is 1060 mg/kg (RTECS 1990). Concentrated (glacial) acetic acid caused severe injury when applied to rabbit eyes (Smyth 1951), and contact of the skin with concentrated solutions (50 percent or more) caused moderate to severe burns in guinea pigs (Roudabush 1965). Mice exposed to acetic acid vapors at concentrations greater than 1000 ppm showed signs of irritation of the conjunctiva and upper respiratory tract; at autopsy, these animals exhibited hepatic swelling and visceral congestion (Ghiringhelli 1957). Guinea pigs exhibited minor changes in respiration after exposure to a 5-ppm concentration; exposure to 100 ppm produced a significant increase in pulmonary flow resistance and a decrease in breathing rate and minute volume, which suggests that bronchial constriction is the primary mode of action for acetic acid irritation (Amdur 1961/Ex. 1–601).

Unacclimatized humans have experienced extreme eye and nasal irritation at acetic acid concentrations above 25 ppm and conjunctivitis at concentrations below 10 ppm (Ghiringhelli 1957). A study of 5 workers exposed to acetic acid concentrations ranging from 80 ppm to peaks of 200 ppm for 7 to 12 years found chronic conjunctivitis, blackening and hyperkeratosis of the skin of the hands, chronic bronchitis and pharyngitis, and erosion of exposed teeth in these individuals (Ghiringhelli 1957; Parmeggiani and Sassi 1954).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers in agriculture who are exposed to acetic acid at the levels permitted by the absence of a limit are at significant risk of experiencing eye, mucous membrane, and skin irritation. OSHA is accordingly proposing an 8-hour TWA of 10 ppm for this substance in agriculture; the Agency believes that this limit is necessary to reduce a significant risk of material health impairment. In addition, promulgation of this limit will make the PEL for acetic acid consistent across all regulated sectors.

ACETONE
CAS:
67–64–1; Chemical Formula:
CH_3COCH_3
H.S. No. 1004

OSHA's current PEL for acetone in the construction and maritime industries is 1000 ppm as an 8-hour TWA. There is no PEL for acetone in agriculture. The NIOSH recommended exposure limit (REL) for acetone is 250 ppm as a 10-hour TWA. The ACGIH TLV®–TWA for acetone is 750 ppm (1780 mg/m^3) and 1000 ppm (2380 mg/m^3) as a 15-minute STEL. OSHA is proposing an 8-hour TWA PEL of 750 ppm, and a 15-minute STEL of 1000 ppm for acetone in the agricultural, construction, and maritime industries; these are the PELs recently promulgated for acetone in general industry.

Acetone is a colorless, highly volatile, flammable liquid with an aromatic odor (ACGIH 1986, p. 6). This substance is widely used as a solvent in paints, varnishes, and lacquers and in the leather and rubber industries. It is also used to clean and dry precision parts (ACGIH 1986, p. 6).

Acetone is irritating to the eyes, skin, nose, and throat; at high concentrations, this substance is a central nervous system depressant in both animals and humans. The oral LD_{50} in rats is 5800 mg/kg, the lowest lethal concentration in rats is 1600 ppm for 4 hours, and the dermal LD_{50} in rabbits is 20 g/kg (RTECS 1990). Animals exposed to acetone concentrations above 1000 ppm develop corneal epithelial and conjunctival injury (Grant 1986, p. 41; Carpenter 1946). Exposure of rats to a concentration of 52,200 ppm for 1 hour caused narcosis and, at 126,600 ppm, death (Flury 1934). Rats exposed to acetone at concentrations between 3000 and 16,000 ppm for 4 hours/day for 10 days showed behavioral changes but developed some tolerance when repeatedly exposed (Golberg 1964). Rats exposed to 19,000 ppm acetate for 3 hours/day, 5 days/week for 8 weeks showed no toxic effects (Brucker 1978).

In humans, irritation of the eyes, nose, and throat has been reported at acetone concentrations of 500 ppm (Nelson 1943), and headaches and lightheadedness are experienced at concentrations above 1000 ppm (Raleigh 1972). At a 12,000-ppm concentration of acetone, central nervous system depression severe enough to cause loss of consciousness may occur (Ross 1973). Workers exposed to an acetone concentration of 1000 ppm for 3 hours/day over a 7- to 15-year period complained of respiratory tract irritation, dizziness, and weakness (Vigliani and Zurlo 1955).

In an early controlled-exposure experiment, Nelson, Enge, Ross, et al. (1943/Ex. 1–66) exposed an average of 10 human subjects (both male and female) to a variety of solvents, including acetone, for 3 to 5 minutes. Subjects were asked to judge the level of sensory irritation as absent, slightly irritating, or very irritating. Tests were conducted in a 1200-cubic-foot gas cabinet equipped with an anemostat to distribute the air uniformly. Acetone was reported to produce slight irritation

on exposure to 300 ppm, but exposure to a concentration of 500 ppm produced a degree of eye, nose, and throat irritation that was still described by a majority of the subjects as "tolerable."

Another controlled study on acetone's effects was conducted more recently by Matsushita, Yoshimune, Inoue et al. (1969/Ex. 1–191). In this study, the authors exposed 25 healthy male subjects to 0, 100, 250, 500, or 1000 ppm acetone. Subjects were exposed for 3 hours in the morning and 3 hours in the afternoon, with a 45-minute period between exposures. Irritant responses were scored on a scale from 0 to 12, with a score of 12 representing severe irritation.

Most of the subjects exposed to a 500- or 1000-ppm acetone concentration reported experiencing irritation (graded between 4 and 5 in severity on an ascending severity scale of 1 to 10) during the first 90 minutes of exposure in the morning and the first 60 minutes of exposure in the afternoon. Subjects ceased to report irritation at the 90-minute mark during the afternoon exposure. A lesser degree of irritation was reported to occur among subjects exposed to a 100- or 250-ppm concentration of acetone; however, this irritation subsided after the first 90 minutes of exposure in each of the two exposure periods. Subjects exposed to 250 ppm or a higher concentration reported feeling general weakness and a sense of tension even as long as 24 hours after exposure. Blood and urine samples taken during and after exposure showed increasing blood and urinary acetone levels among subjects exposed to 250 ppm or higher. Following the exposure period, these levels fell to normal values within about 25 to 35 hours after exposure was terminated. The authors also reported an increased leukocyte count in subjects exposed to 500 or 1000 ppm acetone; the increased white cell count persisted for about 24 hours after the cessation of exposure. The authors attributed this increased leukocyte count to acetone's irritant properties (Matsushita, Yoshimune, Inoue, et al. 1969/Ex. 1–191).

In addition to the two controlled-exposure studies discussed above, two industry studies demonstrate acetone's irritant effects. One report by Parmeggiani and Sassi (1954/Ex. 1–759) indicated that six employees exposed to a 307- to 918-ppm concentration of acetone in a rayon acetate plant experienced eye and throat irritation, dizziness, and inebriation. Five of the employees showed objective signs of pharyngeal irritation, four had lung irritation, and three had conjunctivitis. Although the authors attribute the observed CNS effects to excessive concomitant exposure to carbon disulfide, the irritant effects are more likely to have been the result of exposure to acetone, because carbon disulfide is not a primary irritant by vapor inhalation (Proctor, Hughes, and Fischman 1988). The other study, by Vigliani and Zurlo (1955/Ex. 1–164), found that acetone production workers exposed to a 700-ppm concentration of acetone for 3 hours daily for 7 to 15 years experienced inflammation of the respiratory tract, stomach, and duodenum; giddiness; and loss of strength.

To summarize, OSHA believes that the studies discussed above show that acetone is capable of producing sensory irritation at concentrations below 1000 ppm and that long-term exposure to acetone at levels below 1000 ppm can cause CNS disturbances. In addition, the ACGIH (1986/Ex. 1–3, p. 6) reports that chronic exposure to acetone causes respiratory irritation and headaches. Therefore, OSHA concluded in the general-industry air contaminants rulemaking that the findings of these four studies (Nelson, Enge, Ross, et al. 1943/Ex. 1–66; Matsushita, Yoshimune, Inoue, et al. 1969/Ex. 1–191; Parmeggiani and Sassi 1954/Ex. 1–759; Vigliani and Zurlo 1955/Ex. 1–164) were consistent in demonstrating that acute and long-term effects of acetone exposure occur at levels below 1000 ppm. OSHA therefore believes that it is necessary to reduce the limit for acetone to 750 ppm as an 8-hour TWA and 1000 ppm as a STEL to protect workers in construction, maritime, and agriculture from the acute and chronic effects of acetone exposure. These are the limits recently established for acetone in general industry. OSHA preliminarily finds that the chemically induced sensory irritation associated with acute exposures to acetone can occur at levels only slightly above the 750-ppm level being established as an 8-hour TWA. In the absence of a STEL, the 750-ppm limit would permit excursions to levels as high as 12,000 ppm for brief periods. Such levels "depress the central nervous system, causing dizziness, weakness, and loss of consciousness" (Proctor, Hughes, and Fischman 1988). An 8-hour TWA of 750 ppm is necessary to protect workers against the bioaccumulation of acetone, chronic irritation of the respiratory tract, and headaches associated with long-term acetone exposures. In addition, promulgation of these PELs will make OSHA's limits for acetone consistent across all regulated sectors.

ACROLEIN

CAS: 107–02–8; Chemical Formula: $CH_2=CHCHO$

H.S. No. 1007

The current OSHA 8-hour TWA PEL for acrolein in the construction and maritime industries is 0.1 ppm. There is no PEL for acrolein in agriculture. The ACGIH TLV®–TWA for acrolein is 0.1 ppm (0.23 mg/m³) and the TLV®–STEL is 0.3 ppm (0.69 mg/m³). There is no NIOSH REL for acrolein. OSHA is retaining its 0.1 ppm 8-hour TWA limit in construction and maritime, proposing to add a STEL of 0.3 ppm in these sectors, and additionally proposing to extend both limits to agriculture. Adoption of the proposed limits will achieve consistency in the exposure limits for acrolein across all OSHA-regulated industry sectors.

Acrolein is a colorless or yellowish flammable liquid with a disagreeable, choking odor (ACGIH 1986, p. 11). Acrolein is used in the production of poultry feed protein supplements (Sittig 1985, p. 28); to control the growth of algae and aquatic weeds (Grayson 1985, p. 22); and is released during welding, during heat cracking of animal and some vegetable fats, and by the operation of internal combustion engines in confined spaces (Parmeggiani 1983, p. 50).

Acrolein is acutely toxic to both animals and humans and is highly irritating to the eyes, skin, and respiratory tract. The LC_{50} in rats is 300 mg/m³ for 30 minutes, and the dermal LD_{50} in rabbits is 562 mg/kg (RTECS 1990). In early inhalation studies in cats (Iwanoff 1911), exposure to 10 ppm acrolein for 3.5 hours was found to cause only transient effects, including salivation, lacrimation, respiratory irritation, and mild narcosis. However, later studies reported that an exposure to 1 ppm of acrolein produced marked nose and eye irritation in 5 minutes or less (Cook 1945/Ex. 1–726). Over longer periods, studies have demonstrated fatalities in one of six rats exposed for 4 hours to airborne concentrations of acrolein at 8 ppm; at 16 ppm, the mortality was 100 percent (Smyth 1956/Ex. 1–759). Irritation of the upper respiratory tract is the primary symptom of acrolein inhalation, but lung edema can occur after exposure to high concentrations (Henderson and Haggard 1943a/Ex. 1–881). In addition, skin contact with acrolein causes skin burns and severe injury to the cornea in experimental animals (Smyth 1956/Ex. 1–759). Thirty-two of 57 male rats died following exposure to a 4-ppm concentration of acrolein for 6 hours per day for up to 62 days; bronchiolar necrosis and focal pulmonary edema

were noted in these animals at autopsy (Kutzman 1985).

Exposure of humans to high concentrations of acrolein causes tracheobronchitis and pulmonary edema, and the irritation threshold in humans is 0.25 ppm for 5 minutes (Beauchamp 1985). Human fatalities have been reported at acrolein levels as low as 10 ppm, and exposure to a 150-ppm concentration was lethal after 10 minutes (Henderson 1943; Prentiss 1937). In humans, skin contact caused irritation, erythema, and edema; splashed into the eye, acrolein caused blepharoconjunctivitis, lid edema, discharge, and corneal injury (Champeix 1987).

Based on this evidence in humans and animals, OSHA is retaining its current 0.1 ppm TWA limit in construction and maritime, proposing to extend the same 8-hour TWA limit to agriculture, and proposing to add a STEL of 0.3 ppm for acrolein that applies to all OSHA-regulated sectors. OSHA believes that these limits are necessary to protect employees in the agricultural, construction, and maritime industries from the exposure-related effects associated with acrolein, which include eye, nose, and severe pulmonary irritation. OSHA considers these effects material health impairments within the mean of the Act. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

ALLYL ALCOHOL

CAS: 107-18-6; Chemical Formula: $CH_2=CHCH_2OH$

H.S. No. 1010

The current OSHA PEL for allyl alcohol in the construction and maritime industries is 2 ppm as an 8-hour TWA, with a skin notation. There is no PEL for allyl alcohol in agriculture, and there is no NIOSH REL for this substance. The ACGIH TLV®-TWA for allyl alcohol is 2 ppm (4.8 mg/m³), with a STEL of 4 ppm (9.5 mg/m³) and a skin notation. OSHA is proposing to retain the 2-ppm 8-hour TWA PEL for allyl alcohol in the construction and maritime industries, to extend this 8-hour TWA limit to agriculture, and to add a STEL of 4 ppm for all sectors. These are the limits recently established for allyl alcohol in general industry.

Allyl alcohol is a colorless liquid with a pungent, mustard-like odor (Merck 1983, p. 44). Allyl alcohol is used as a fungicide, herbicide, and nematocide (Proctor and Hughes 1978, p. 93), in the refining and dewaxing of mineral oil (NIOSH/OSHA Occupational Health Guideline 1981, p. 3), and in many chemical manufacturing processes (Parmeggiani 1983, p. 128). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Allyl alcohol is highly toxic to both animals and humans; it causes lacrimation and is severely irritating to the eyes, skin, and respiratory tract. Allyl alcohol is readily absorbed through the skin (the dermal LD_{50} in rabbits is 45 mg/kg). The LC_{50} in rats is 76 ppm for an 8-hour exposure (RTECS 1990). Animals exposed to a 500-ppm concentration of allyl alcohol for 1 hour survived, while those exposed to 1000 ppm for 1 hour died (Smyth 1948). Post-mortem examination of rabbits exposed to a 1000-ppm concentration of allyl alcohol for 3 to 4 hours showed hemorrhages of the eyes, histologic changes in retinal ganglion cells, and severe damage and hemorrhage in practically all body tissues (McCord 1932, as cited in ACGIH 1986).

Repeated exposure of 10 rats to a 60-ppm concentration for 7 hours/day caused gasping during the first few exposures, persistent eye irritation, and the death of one rat (Dunlap 1958, as cited in Proctor, Hughes, and Fischman 1988, p. 62). Exposure of dogs, rats, rabbits, and guinea pigs to 7 ppm for 7 hours/day for 6 months resulted in focal necrosis of the liver and necrosis of the convoluted tubules of the kidneys. In mice, administration of allyl alcohol also produced liver necrosis, as well as marked hemolysis and depletion of erythrocyte glutathione (Ferrali et al. 1989). Exposure of animals to airborne concentrations of allyl alcohol produced a sensory irritant effect, and a concentration of 3.9 ppm was sufficient to decrease the respiratory rate in mice by 50 percent (Neilsen et al. 1984).

In humans, the most important adverse effects of occupational exposures to allyl alcohol are upper respiratory tract irritation and burns of the eyes. In a controlled human sensory response study (Dunlap, Kodama, Wellington, et al. 1958/Ex. 1-630), a 5-minute exposure to 25 ppm resulted in severe eye irritation. Milder irritation has been reported to occur at 5 ppm (McCord 1932, as cited in ACGIH 1986/Ex. 1-3, p. 18). Necrosis of the cornea and temporary blindness occurred in one individual exposed to allyl alcohol at a level irritating to the eyes and nose (Smyth 1956/Ex. 1-759). Skin absorption may lead to serious systemic injury (visceral congestion, periportal congestion of the liver, hematuria, and nephritis); in addition, when evaporation from the skin is prevented or reduced, skin contact with allyl alcohol causes burns (ACGIH 1986/Ex. 1-3, p. 18).

In reviewing the evidence for allyl alcohol, OSHA notes that severe eye irritation has been reported to occur in human subjects exposed to 25 ppm for as short an interval as 5 minutes (Dunlap, Kodama, Wellington, et al. 1958/Ex. 1-630); such an exposure would be permitted under the current limit in construction and maritime of 2 ppm as an 8-hour TWA. OSHA also notes that short-term exposure to allyl alcohol produces characteristic effects more severe than those caused by other sensory irritants; these effects include photophobia and blurred vision. The Agency believes that a STEL is necessary to prevent these effects in exposed workers.

To protect workers in maritime, construction, and agriculture from the significant health risks associated with exposure to allyl alcohol, the Agency is retaining the 8-hour TWA PEL of 2 ppm in construction and maritime, proposing a 4-ppm 15-minute STEL in construction and maritime, and proposing both limits in agriculture along with a skin notation. Promulgation of these limits will make the PELs for allyl alcohol consistent across all OSHA-regulated sectors.

ALLYL GLYCIDYL ETHER

CAS: 106-92-3; Chemical Formula: $C_6H_{10}O_2$

H.S. No. 1012

OSHA's current PEL for allyl glycidyl ether (AGE) in the construction and maritime industries is 10 ppm (45 mg/m³) as a ceiling limit. There is no PEL for AGE in agriculture. The ACGIH TLV®-TWA for AGE is 5 ppm (23 mg/m³), with a STEL of 10 ppm (47 mg/m³) and a skin notation. The NIOSH REL for AGE is 9.6 ppm (45 mg/m³) as a 15-minute ceiling. OSHA is proposing to retain the 8-hour TWA PEL of 5 ppm in construction and maritime, to extend this limit to agriculture, and to add a STEL of 10 ppm for AGE in the agricultural, construction, and maritime industries. These are the limits recently established for this substance in general industry.

Allyl glycidyl ether is a colorless liquid of characteristic, but not unpleasant, odor (ACGIH 1986, p. 20). This substance is used as a resin intermediate and as a stabilizer for vinyl resins and rubber (ACGIH 1986, p. 20).

Allyl glycidyl ether is irritating to the eyes, skin, and respiratory tract; it is also a skin sensitizer and may produce systemic toxicity. The LC_{50} in rats is 860 ppm for a 4-hour exposure (RTECS 1990). Rats exposed to a 600-ppm concentration of AGE for 8 hours/day

exhibited irritation of the eyes and respiratory tract, as well as corneal opacities. At necropsy, examination revealed pulmonary inflammation, bronchiectasis, and bronchopneumonia. Rats exposed to 260 ppm showed slight irritation of the eyes and respiratory distress (Hine et al. 1956; Hine and Rowe 1962, as cited in ACGIH 1986). Mice exposed for 4 days to 7.1 ppm AGE developed epithelial necrosis of the nasal turbinates and complete erosion of the olfactory epithelium. Squamous metaplasia of the respiratory epithelium was also observed in mice exposed to 7.1 ppm AGE for 9 days (Gaqnaire et al. 1987, as cited in HSDB). In mice, a 5.7-ppm concentration of AGE was found to decrease the respiratory rate by 50 percent (Gaqnaire et al. 1987).

Exposure of animals to AGE has also been shown to produce a variety of adverse systemic effects. Exposure of rats to a 300 ppm concentration for 7 hours/day for 50 days produced testicular atrophy (Hine et al. 1956; Hine and Rowe 1962). Testicular degeneration, along with cytotoxic effects on bone marrow cells, has also been observed in rats administered 400 mg/kg/day AGE by intramuscular injection (NIOSH 1978). In a recently-completed NTP bioassay, AGE was found to cause olfactory tumors in rats and mice exposed to 10 ppm for 6 hours/day for 2 years (NTP 1990, as cited in RTECS 1990).

In limited human exposure studies, AGE has been demonstrated to cause dermatitis and eye irritation (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). In humans, skin sensitization occurs readily (Hine and Rowe 1963a, as cited in ACGIH 1986/Ex. 1–3, p. 20). In addition to primary irritation and sensitization, the potential exists for cross-sensitization with other epoxy agents (ACGIH 1986/Ex. 1–3, p. 20).

Based on this evidence in humans and animals, OSHA is proposing to make the PELs for allyl glycidyl ether consistent across all industry sectors by extending an 8-hour TWA PEL of 5 ppm to the agriculture sector and by adding a 10-ppm STEL to the limits that apply in all sectors. OSHA preliminarily concludes that these combined limits will reduce the significant risks of sensitization and primary irritation to which workers in these sectors could otherwise be exposed. In addition, promulgation of these PELs will make OSHA's limits consistent across all regulated sectors.

ALLYL PROPYL DISULFIDE

CAS: 2179–59–1; Chemical Formula: $CH_2=CHCH_2S_2C_3H_7$

H.S. No. 1013

The current OSHA PEL for allyl propyl disulfide in the construction and maritime industries is 2 ppm (12 mg/m ^{3}) as an 8-hour TWA. There is no PEL for allyl propyl disulfide in agriculture. The ACGIH TLV®–TWA for this substance is 2 ppm (12 mg/m ^{3}), with a 3 ppm (18 mg/m ^{3}) STEL. There is no NIOSH REL for allyl propyl disulfide. OSHA is retaining its 2-ppm TWA limit for allyl propyl disulfide in construction and maritime, extending this limit to the agricultural sector, and adding a 3-ppm STEL for all sectors. These are the limits recently established for this substance in general industry.

Allyl propyl disulfide is a liquid with a pungent, irritating odor; it is the chief volatile constituent of onion oil (ACGIH 1986, p. 20). Nearly all occupational exposures to allyl propyl disulfide occur in the processing of onions and onion products and in the processing of foods using the substance as a flavoring.

There are no toxicity data in animals for this substance. Allyl propyl disulfide's irritative effects on the human eyes, nose, and upper respiratory tract are well recognized. The most severe irritation effects have occurred when workers were exposed to allyl propyl disulfide in the vicinity of onion slicing machines, where average concentrations of 3.4 ppm have been measured (Feiner, Burke, and Baliff 1946/Ex. 1–604). Administration of allyl propyl disulfide to six normal human volunteers after a 12-hour fast caused a significant fall in blood glucose levels and a significant rise in serum insulin levels during the subsequent 4 hours (Augusti 1975).

OSHA believes that a PEL of 2 ppm is necessary to protect workers in agriculture from this substance's irritant effects and that a STEL of 3 ppm is necessary to prevent employees in agriculture, maritime, and construction from being exposed to short-term concentrations of allyl propyl disulfide of sufficient magnitude to cause severe irritant effects. The Agency preliminarily concludes that the TWA and STEL limits together will protect workers in these sectors from experiencing these significant risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

AMMONIA

CAS: 7664–41–7; Chemical Formula: NH_3

H.S. No. 1021

OSHA's current exposure limit for ammonia in the construction and maritime industries is 50 ppm as an 8-hour TWA. There is no PEL for ammonia in agriculture. The ACGIH TLV®–TWA for ammonia is 25 ppm (17 mg/m^3) with a STEL of 35 ppm (24 mg/m^3). The NIOSH REL for ammonia is 50 ppm (34.8 mg/m^3) as a 5-minute ceiling. OSHA is proposing a limit of 35 ppm as a 15-minute STEL in the agricultural, construction, and maritime industries. This is the limit recently established for ammonia in general industry.

Ammonia is a colorless gas with a strongly penetrating pungent odor (Sittig 1985, p. 71). It may occur as a clear liquid or as a gas, and is often supplied in pressurized cylinders (Genium MSDS 1985, No. 1). Ammonia is used as a fertilizer for direct application to fields in the anhydrous compressed gas form, as a feedstock in the manufacture of fertilizers and other chemical substances, and as a refrigerant (Grayson 1985, p. 94, Parmeggiani 1983, p. 149).

Ammonia is a severe irritant of the eyes, respiratory tract, and skin. The LC_{50} in rats is reported to be 2000 ppm for a 4-hour exposure (RTECS 1990). The toxic effects of ammonia appear to be restricted to its irritant properties. Post-mortem examination of cats and rabbits exposed to 9700 ppm for 1 hour showed severe effects on the upper respiratory tract as well as alveolar congestion, hemorrhage, emphysema, and edema (Boyd et al. 1944, as cited in Clayton and Clayton 1982, p. 3048). Longer-term exposure to lower concentrations produces irritant effects in animals, but no other systemic effects. For example, exposure of several species of animals to 215 or 1100 ppm for 8 hours per day, 5 days per week for six weeks produced no gross or histopathologic changes (Coon 1970, as cited in Clayton and Clayton 1981, p. 3048).

In humans, accidental exposure to high concentrations of ammonia (in the range of 2500 to 6000 ppm) has caused several deaths, with the victims developing chemical pneumonitis; burns of the eyes, face, and mouth; and severe local edema (Proctor, Hughes, and Fischmann 1988, p. 71; NIOSH 1974). At lower concentrations, ammonia gas is severely irritating to the eyes, upper respiratory tract, and moist skin. Exposure to levels in the range of 30 to 50 ppm for 10 minutes causes mild to moderate eye and upper respiratory tract irritation (MacEwen 1970, as cited in Clayton and Clayton 1982, p. 3049).

An unpublished study conducted by the Detroit Department of Health and cited by the ACGIH (1986/Ex. 1–3, p. 27) reports that ammonia concentrations in the range of 20 to 25 ppm elicited complaints of discomfort from workers engaged in blueprinting and copying operations. In addition, a study of pigs

conducted by Stombaugh et al. (1969) appeared to demonstrate that exposure to ammonia also causes systemic effects. The ACGIH established both a full-shift TLV®–TWA of 25 ppm to protect against ammonia's chronic effects and a TLV®–STEL of 35 ppm to protect against ammonia's irritant effects.

OSHA also reviewed NIOSH's recommended 5-minute ceiling limit for ammonia of 50 ppm. When making this recommendation, NIOSH relied on several reports that ammonia concentrations as low as 50 ppm are moderately irritating (Vigliani and Zurlo 1955/Ex. 1–164; Mangold 1971; Industrial Bio-test Laboratories 1973, all as cited in NIOSH 1974a/Ex. 1–238; MacEwen, Theodore, and Vernot 1970/Ex. 1–827; Pagnotto 1973, as cited in ACGIH 1986/Ex. 1–3, p. 27). NIOSH concluded that the "irritating or annoying effects * * * [of exposure to ammonia are] more dependent upon concentration than length of exposure," and that "a standard expressed as a time-weighted average is inappropriate since it would permit fluctuations to concentrations considerably higher than 50 ppm" (NIOSH 1974a/Ex. 1–238, p. 69). In the rulemaking for general industry, OSHA concluded that NIOSH's recommended 50-ppm ceiling limit was above the effect level reported in the Detroit Department of Health studies (1965–1970, as cited in ACGIH 1986/Ex. 1–3, p. 27) for sensory irritation. This view is supported by Proctor, Hughes, and Fischman (1988, p. 71), who report that even 5-minute exposures to 32 ppm caused nasal dryness in 10 percent of exposed volunteers and that 5-minute exposures to 50 ppm ammonia caused nasal irritation and dryness in 20 percent of exposed volunteers.

In the rulemaking for general industry, some rulemaking participants expressed the opinion that OSHA's current 50 ppm TWA PEL was adequate because exposed workers become acclimated to the irritant effects of ammonia. OSHA is concerned with this view of acclimatization because the long-term consequences of a continual assault on the sensory nerves are not known. In addition, acclimatization lessens the ability of workers to discern airborne concentrations of other hazardous materials.

Based on this evidence, OSHA is proposing a 15-minute STEL of 35 ppm in the agricultural, construction, and maritime industries to protect workers against this substance's irritant effects, which have been demonstrated to occur at and below 50 ppm. OSHA preliminarily concludes that the eye and upper respiratory tract irritation associated with ammonia exposure constitute material impairments of health and pose a significant risk to exposed workers in construction, maritime, and agriculture. Promulgation of this limit will also make OSHA's PEL for ammonia consistent across all regulated sectors.

AMMONIUM CHLORIDE (FUME)
CAS: 12125–02–9 Chemical Formula: NH_4C_l
H.S. No. 1022

There is no OSHA PEL for ammonium chloride fume in the agricultural, construction, or maritime industries. The ACGIH TLV®–TWA for this substance is 10 mg/m³ and the TLV®–STEL is 20 mg/m³. There is no NIOSH REL for this substance. OSHA is proposing a PEL of 10 mg/m³ as an 8-hour TWA and a STEL of 20 mg/m³ for ammonium chloride fume in the agricultural, construction, and maritime industries. These are the limits recently established for this substance in general industry.

Ammonium chloride is a white crystalline solid; fumes of this substance are evolved during galvanizing applications (ACGIH 1986, p. 28). Ammonium chloride is used in the manufacture of other ammonia compounds, in fertilizers, as a pickling agent in galvanization, in soldering flux, in melt-retarding snow treatment, and in urea formaldehyde products, (Hawley's 1987, p. 66).

Ammonium chloride fume is an irritant of the eyes, skin, and respiratory tract. The oral LD_{50} in rats is 1650 mg/kg (RTECS 1990). Instilled into rabbit eyes, ammonium chloride causes varying degrees of irritation, ranging from mild to severe (RTECS 1990). In mice, intravenous administration of ammonium chloride caused hyperventilation and clonic movements, followed in some cases by convulsions or coma (Warren and Schenker, 1960; Gosselin, Smith, and Hodge 1984, pp. III–23, 26).

In humans, exposure to ammonium chloride causes irritation of the eyes, nose, and throat. Repeated contact of this substance with the skin may cause dermatitis (Genium MSDS 1991). Welders exposed to ammonium chloride in welding fumes may develop asthma (Genium MSDS 1991).

OSHA believes that, in the absence of any limit on airborne exposure, employees in the maritime, construction, and agriculture industries are at significant risk of experiencing respiratory irritation as a result of exposure to high concentrations of ammonium chloride fume. OSHA preliminarily concludes that the proposed 8-hour TWA limit of 10 mg/m³ and a 15-minute STEL of 20 mg/m³ for ammonium chloride fume in the agricultural, construction, and maritime industries will substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

n-AMYL ACETATE
CAS: 628–63–7; Chemical Formula: $CH_3COOC_5H_{11}$
H.S. No. 2005

In general industry, construction, and maritime, OSHA's current permissible exposure limit for n-amyl acetate is 100 ppm as an 8-hour TWA. There is no current limit in agriculture. The ACGIH has a TLV®–TWA of 100 ppm (532 mg/m³) for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL of 100 ppm for n-amyl acetate in agriculture. This is the limit recently established in general industry.

n-Amyl acetate is a colorless liquid with a pear- or banana-like odor. This substance is used as a solvent for lacquers, paints, artificial leather, cements, and photographic film, and in the manufacture of phosphors in fluorescent lamps. n-Amyl acetate also finds use in printing and finishing fabrics; as a weevil attractant; as a flavoring agent; as an anti-inflammatory agent; as a warning odorant; as a partition solvent in penicillin manufacture, and in research (ACGIH 1986, p. 29; Hawley's 1987, p. 74; AIHA 1978; Clayton and Clayton 1981, p. 2278).

n-Amyl acetate is an irritant of the eyes, skin, and respiratory tract and causes narcosis, anesthesia, and liver damage at high concentrations. The oral LD_{50} in rats is 6500 mg/kg, and the lowest lethal concentration in the same species is 5200 ppm (length of time not specified) (RTECS 1990). The dermal LD_{50} in rabbits is 20 ml/kg (Smyth 1962). Much of the toxicological literature does not distinguish between the isomers of amyl acetate; however, all of the industrially important pentyl acetate isomers (i.e., n-amyl, iso-amyl, and sec-amyl acetate) produce similar toxicological effects (AIHA 1978; Pagnotto 1964). A group of six rats exposed to a 5200-ppm concentration of technical amyl acetate (principally the n-amyl acetate isomer) died after 8 hours of exposure (Smyth 1962). At autopsy, guinea pigs exposed to amyl acetate concentrations of between 9200 and 18,000 ppm for 30 minutes had congestion of the brain, lungs, liver, and kidneys; exposure to 2000 ppm for 30 minutes caused no pathological effects (Clayton and Clayton 1981, p. 2278).

Rabbits exposed to high concentrations of amyl acetate showed signs of liver damage (elevated serum enzymes); at autopsy, histopathological changes were seen in the liver cells (Querci and Mascia 1970). In standardized testing on rabbit eyes, amyl acetate was graded 2 (slightly injurious) on a scale of 1 to 10 (Smyth 1962). Amyl acetate has a defatting action on the skin, and prolonged contact may cause irritation (Smyth 1962). A recent study (Ballantyne, Tyler, and Auletta 1986) suggests that amyl acetate is a skin sensitizer.

Humans exposed to a 1000-ppm concentration of amyl acetate for 30 minutes experienced irritation of the eyes, nose, and throat, as well as headache, fatigue, and excessive salivation (Sax 1975). Exposure to a 200-ppm concentration of isoamyl acetate for 30 minutes is irritating to the human eye (Sandmeyer and Kirwin 1981, p. 2774). Exposure to higher concentrations of amyl acetate caused a burning sensation and hyperemia of the conjunctiva but no corneal damage (Flury and Zernik 1931; Patty 1949). Case reports of workers exposed to amyl acetate indicate that, in addition to irritation, exposure to the solvent causes liver injury, gastrointestinal disturbances, and blood changes (Browning 1953; Lehman and Flury 1943). A plumber using methyl-cellulose paint (containing mixed isomers of amyl acetate) in a small, unventilated room for several hours developed headache, nausea, and vomiting within a few hours, followed a few days later by orthopnea and paroxysmal nocturnal dyspnea, edema, and enlargement of the heart. The patient recovered completely in 6 months (Weissberg and Green 1979). Workers exposed chronically to amyl acetate showed upper respiratory and neurological effects (Zaikov and Babev 1978).

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA PEL of 100 ppm for n-amyl acetate in agriculture; adoption of the proposed limit would establish the same PEL for workplaces in all OSHA-regulated industry sectors. The Agency preliminarily concludes that occupational exposure to n-amyl acetate causes irritation of the eyes, skin, and respiratory tract, and, at high concentrations, narcosis and liver damage. Accordingly, OSHA believes that, in the absence of a permissible exposure limit, workers in agriculture are potentially at significant risk for these exposure-related effects and that the proposed PEL will substantially reduce these risks.

BENZOYL PEROXIDE

CAS: 94–36–0; Chemical Formula: $(C_6H_5CO)_2O_2$

H.S. No. 2017

In general industry, construction, and maritime, OSHA's current permissible exposure limit for benzoyl peroxide is 5 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 5 mg/m³ for this substance; the NIOSH REL for benzoyl peroxide is 5 mg/m³ as a 10-hour TWA. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for benzoyl peroxide in agriculture. This is the limit recently established for this substance in general industry.

Benzoyl peroxide is used as a bleaching agent for flour, fats, oils and waxes; as a drying agent for unsaturated oils; in the production of cheese; as a polymerization catalyst in the plastics industry; as a burnout agent for acetate yarns; for embossing vinyl flooring; and in the pharmaceutical and cosmetic industries (Hawley's 1987, p. 134; ACGIH 1986, p. 54). This substance is a flammable and explosive white, granular, crystalline solid. It is tasteless and has a slight almond-like odor resembling that of benzaldehyde (IARC 1985, p. 267; ACGIH 1986, p. 54).

Benzoyl peroxide is an irritant of the eyes, mucous membranes, and skin in both humans and animals. The oral LD_{50} in rats is 7710 mg/kg (RTECS 1990). Eye squint, difficulty in breathing, salivation, lacrimation, erythema, and an increase followed by a decrease in motor activity were exhibited by rats during a 4-hour exposure to 24.3 mg/L of 78 percent benzoyl peroxide. All rats observed at 24 and 48 hours post-exposure had returned to normal in appearance (Proctor, Hughes, and Fischman 1988, p. 95). Benzoyl peroxide also causes both primary irritation and sensitization dermatitis (Proctor, Hughes, and Fischman 1988, p. 94; Cralley and Cralley 1985, p. 159). Humans exposed to benzoyl peroxide dust at a concentration of 12.2 mg/m³ (for an unspecified time) experienced pronounced irritation of the nose and throat. Similar exposure to concentrations of benzoyl peroxide dust ranging from 1.34 to 5.25 mg/m³ caused no irritation (ACGIH 1986, p. 54). Benzoyl peroxide lotion applied to the face of two people for acne treatment caused both facial erythema and edema, and patch tests with benzoyl peroxide were positive in these individuals (Proctor, Hughes, and Fischman 1988, p. 94).

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to benzoyl peroxide at levels permitted by the absence of a limit are at significant risk of experiencing irritation of the eyes, mucous membranes, and skin as well as sensitization dermatitis. The Agency believes that establishing a PEL of 5 mg/m³ as an 8-hour TWA will protect agricultural workers from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

BENZYL CHLORIDE

CAS: 100–44–7

H.S. No. 2018; Chemical Formula: $C_6H_5CH_2Cl$

In general industry, construction, and maritime, OSHA currently has an 8-hour TWA limit of 1 ppm for benzyl chloride. The Agency has no PEL for this substance in agriculture. The ACGIH TLV®–TWA for benzyl chloride is 1 ppm as an 8-hour TWA; the NIOSH REL is a 15-minute ceiling of 5 mg/m³ (equivalent to a 15-minute STEL of 1 ppm). OSHA is proposing an 8-hour TWA PEL of 1 ppm for benzyl chloride in agriculture. This is the limit recently established for this substance in general industry.

Benzyl chloride is a clear, colorless liquid that has an unpleasant, pungent odor that is detectable at 0.047 ppm (Genium MSDS 1986, No. 583). Benzyl chloride is used in the manufacture of many different products: dyes, plasticizers, gasoline additives, tanning agents, cosmetics, resins, benzyl compounds, pharmaceuticals, and photographic developers (Hawley's 1987, p. 135; ACGIH 1986, p. 55; Parmeggiani 1983, p. 262).

Benzyl chloride is a powerful lacrimator and an irritant of the eyes, mucous membranes, and upper respiratory tract. This substance is also a carcinogen and reproductive toxin in animals (IARC 1987, p. 148; RTECS 1990). The oral LD_{50} in rats is 1231 mg/kg, and the LC_{50} in the same species is 150 ppm for 2 hours (RTECS 1990). Rabbits and cats exposed to a 95-ppm concentration of benzyl chloride for 8 hours/day for 6 days showed signs of eye and respiratory tract irritation (ACGIH 1986, p. 55). This substance is a strong skin sensitizer in guinea pigs (HSDB 1985). Benzyl chloride has been tested for carcinogenicity in mice by skin application and in rats by subcutaneous injection. Injection-site sarcomas were observed in rats, and some mice developed skin carcinomas (IARC 1987, p. 148). Skin painting tests in female mice produced squamous-cell carcinomas of the skin (IARC 1987, p. 148). When this substance was administered to mice and rats by

gavage, mice of both sexes developed statistically significant increases in the incidence of papillomas and carcinomas of the forestomach; in female rats only, the incidence of thyroid C-cell tumors was also increased (IARC 1987, p. 148). Based on this evidence, the International Agency for Research on Cancer concluded that the evidence for the carcinogenicity of benzyl chloride in animals is sufficient (IARC 1987, p. 148). When administered to mice intraperitoneally or subcutaneously, benzyl chloride caused paternal reproductive effects (RTECS 1990). Benzyl chloride is mutagenic, with and without metabolic activation, in bacterial and mammalian test systems (RTECS 1990).

In humans, exposure to benzyl chloride causes immediate lacrimation (Proctor, Hughes, and Fischman 1988, p. 95). Splashed into the eye, the liquid causes corneal damage; in contact with the skin, it produces dermatitis (Proctor, Hughes, and Fischman 1988, pp. 95–96). Workers exposed to a 2-ppm concentration reported feeling irritable and weak and had headaches; a 1-minute exposure to a 16-ppm concentration was described as intolerable (Proctor, Hughes, and Fischman 1988, p. 95). There is an unconfirmed report that some benzyl chloride-exposed workers have experienced disturbances in liver function and mild leukopenia (Proctor, Hughes, and Fischman 1988, p. 95). There are two studies of workers exposed to benzyl chloride and other chlorinated toluenes (in Japan and the United Kingdom) that show excesses in the number of cases of respiratory tract and digestive system cancers in these workers. However, the International Agency for Research on Cancer concluded that these data are too limited to permit any differential risk estimation to be made for benzyl chloride (IARC 1987, p. 148).

The evidence described above shows that benzyl chloride exposure causes immediate and severe irritation of the eyes, mucous membranes, upper respiratory tract, and skin, as well as cancer and reproductive effects in animals. Accordingly, OSHA believes that, in the absence of a limit, workers in agriculture are potentially at significant risk of experiencing these exposure-related effects. The Agency believes that the proposed limit of 1 ppm for benzyl chloride is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

BORATES, TETRA, SODIUM SALTS (ANHYDROUS, PENTAHYDRATE, AND DECAHYDRATE)
CAS: 1303–96–4 (Decahydrate); Chemical Formula: $Na_2B_4O_7\ 10H_2O$
1330–43–4 (Anhydrous); Chemical Formula: $Na_2B_4O_7$
12179–04–3 (Pentahydrate); Chemical Formula: $Na_2B_4O_7\ 5H_2O$
H.S. Nos. 1036, 1038, and 1037

OSHA has no exposure limits for the anhydrous or hydrated (penta- or decahydrate) forms of sodium tetraborate in the agricultural, construction, and maritime industries. The ACGIH TLV®–TWAs for these substances are 1 mg/m³ for the anhydrous and pentahydrate forms of sodium tetraborate and 5 mg/m³ for the decahydrate form. There is no NIOSH REL for these substances. OSHA is proposing a 10 mg/m³ 8-hour TWA limit for all forms of the sodium tetraborates in the agricultural, construction, and maritime industries. This is the limit recently established for this substance in general industry.

Anhydrous sodium tetraborate is a light gray, odorless solid; the pentahydrate and decahydrate forms are white, odorless, and crystalline (ACGIH 1986, p. 60). Borates are used in agriculture as fertilizers and herbicides; in soap and other cleaners; as fire retardants; and for other purposes (Grayson 1985, p. 78). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The sodium salts of the tetraborates (anhydrous, pentahydrate, and decahydrate (Borax)) are irritating to the skin and respiratory tract in humans. The oral LD_{50} in rats is 2660 mg/kg (RTECS 1990). Guinea pigs given three intratracheal injections of 50 mg each of borax dust (particle size below 5 μm) showed no reactions in the lung, the gastrointestinal tract, or any other organ (Clayton and Clayton 1981, p. 2986). Rats fed borax for 2 years at a dose equivalent to 1170 ppm borax (approximately 1 percent borax in the diet) showed growth suppression, gonadal degeneration, skin desquamation on paws and tails, testicular atrophy, and sterility, and dogs exposed to this dose also showed testicular atrophy. At a 350-ppm dose, no adverse effects on fertility, lactation, litter size, weight, or appearance were seen in rats. In 90-day feeding studies in dogs, a dose of 525 ppm in the diet was the no-effect level (Weir 1972).

Workers exposed to airborne concentrations of (borates) high enough to interfere with normal visibility complained of dermatitis, cough, nasal irritation, nose bleeds, and shortness of breath (Birmingham 1963). At a concentration of 31 mg/m³, boric acid dust causes atrophy of the respiratory mucosa (Clayton and Clayton 1981, p. 3959).

In the prior air contaminants rulemaking, commenters discussed two NIOSH health hazard evaluations (HHEs) relevant to occupational exposure to the borates. The first study (HHE 75–059–496, NIOSH 1978o) was conducted at the Kerr-McGee Chemical Corporation plant in Trona, California. NIOSH performed clinical examinations of nine employees exposed to tetraborates and collected total dust samples for each employee. Clinical examination revealed symptoms of eye irritation in five employees, nose irritation with bleeding in three workers, throat irritation in three employees, and chapping of the hands in four workers. Four of the nine dust samples exceeded 10 mg/m³, with the highest reading at 29.9 mg/m³. However, dust exposures at the California plant may have been well above the 10-mg/m³ level because employees at the plant commented that dust from "frequent [borate] windstorms" was the main problem at the plant. The NIOSH HHE did in fact report that dust levels at the plant were excessive and that the visibility of plant employees was impaired by this dust (Ex. 3–744, Attachment I).

The second NIOSH HHE (conducted in 1980) reported on a walk-through survey of the U.S. Borax and Chemical Corporation's Boron, CA operation. This HHE identified health complaints among employees, and its findings led to a larger, more comprehensive health survey in 1981 (HETA 80–109), a report of which was subsequently published in a peer-reviewed journal (Garabrant, Bernstein, Peters et al. 1985). Data on employees' respiratory symptoms were obtained by questionnaire, and total dust measurements were collected from historical data obtained between 1977 and 1981. The authors found no evidence of X-ray abnormalities or declines in pulmonary function among the 629 active employees examined. There was a dose-related and statistically significant increase in the frequency of reported symptoms, which included eye irritation, dry cough, nosebleeds, sore throat, shortness of breath, and chest tightness. Over 10 percent of employees having mean TWA tetraborate exposures of 8.6 mg/m³, measured as total tetraborate dust, reported experiencing nosebleeds, dry cough, eye irritation, and dryness of the

mouth, nose, or throat. At a mean exposure level of 14.6 mg/m³, between 15 and 30 percent of the employees examined reported these symptoms. The authors concluded that borax dust appears to act as a simple respiratory irritant and may cause small changes in pulmonary function among smokers who are also heavily exposed to borate dust.

Commenters (Ex. 3–744) in the earlier rulemaking took exception to the characterization of worker exposures in the Garabrant et al. paper (1985) on the grounds that exposures at the plant were much higher than reported in that paper and thus that the health effects observed were in fact associated with much higher borate concentrations than reported. Commenters (Ex. 3–744; Tr. 9–133) also stated that the available exposure data for the tetraborates were not adequate to define a dose-response relationship for these substances. As a consequence, U.S. Borax has been conducting a large epidemiologic study at its facility. The results of this study have become available since the conclusion of the prior rulemaking. This study examined the irritant response of 115 workers exposed to borate particulate. Detailed measurements of TWA and peak exposures to borates were made concurrent with medical assessments of the degree of irritation experienced by the exposed group of employees. The results indicate that, at TWA exposure levels between 1 and 4 mg/m³, there is less than a 5-percent probability that workers will experience moderate nose or eye irritation. At exposure levels between 5 and 9 mg/m³, there is an 18-percent probability that workers will experience moderate nasal irritation, but the probability of experiencing moderate eye irritation remains below 5 percent. At TWA exposure levels between 10 and 14 mg/m³, the probabilities of experiencing moderate nasal or eye irritation increased dramatically to 30 percent and 10 percent, respectively.

Based on this evidence, OSHA has preliminarily concluded that it is appropriate in the present rulemaking to propose an 8-hour TWA PEL of 10 mg/m³ for all forms of sodium tetraborate in construction, maritime, and agriculture. This PEL will make OSHA's limit for these substances consistent across all regulated sectors, which is the primary goal of this rulemaking. At the first PEL update rulemaking, OSHA will consider the evidence for these substances again to determine whether further action is warranted.

BORON TRIFLUORIDE
CAS: 7637–07–2; Chemical Formula: BF_3
H.S. No. 2020

OSHA's current PEL for boron trifluoride in general industry, construction, and maritime is 1 ppm as a ceiling limit; there is no current PEL in agriculture. The ACGIH TLV® for boron trifluoride is 1 ppm as a ceiling limit; the NIOSH recommendation for this substance is to reduce exposure to lowest feasible concentration. OSHA is proposing a ceiling of 1 ppm for boron trifluoride in agriculture. This is the limit recently established for this substance in general industry.

Boron trifluoride is used as a fumigant, a catalyst in organic synthesis, in soldering fluxes, and for neutron measurement (Proctor, Hughes and Fischman 1988, p. 100; ACGIH 1986, p. 63). It is a colorless gas that forms a dense white fume in moist air and has a persistent, pungent, and suffocating odor (Proctor, Hughes, and Fischman 1988, p. 100; Genium MSDS 1987, No. 91). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Boron trifluoride is a severe irritant to the lungs, eyes, and skin in both animals and humans (Proctor, Hughes, and Fischman 1988, p. 100; ACGIH 1986, p. 63). The gas reacts with moisture to form boron trifluoride dihydrate, which has a 4-hour LC_{50} of 436 ppm for rats; the symptoms exhibited included gasping, excessive oral and nasal discharge, and lacrimation (Proctor, Hughes, and Fischman 1988, p. 101). All animals exposed at 67 ppm, 6 hours/day, during a 14-day study died before the sixth exposure, and histopathology revealed necrosis and pyknosis of the proximal tubular epithelium of the kidneys; animals exposed to boron trifluoride concentrations of 24 ppm and 9 ppm experienced respiratory irritation, decreased body weight, and at autopsy showed increased lung weight as well as decreased liver weight (Proctor, Hughes, and Fischman 1988, p. 101). In humans, exposure for 30 to 60 minutes at a concentration of 50 ppm can cause massive fatal inflammation and congestion of the lungs. Boron trifluoride gas or fume can cause redness, pain, and serious burns to the eyes or skin.

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to this substance are at significant risk of experiencing irritation of the eyes, skin, mucous membranes, and respiratory tract. The Agency believes that establishing a PEL of 1 ppm as a ceiling limit for boron trifluoride is necessary to protect workers in agriculture from these significant risks, which are material impairments of health within the meaning of the Act. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

BROMINE
CAS: 7726–95–6; Chemical Formula: Br_2
H.S. No. 1042

OSHA's current exposure limit for bromine in general industry, construction, and maritime is 0.1 ppm as an 8-hour TWA. There is no PEL for bromine in agriculture. The ACGIH TLV®–TWA for bromine is 0.1 ppm (0.66 mg/m³), and the TLV®–STEL is 0.3 ppm (2.0 mg/m³). NIOSH has no REL for this substance but concurs with the PEL being proposed (Ex. 8–47). OSHA is retaining its 8-hour TWA PEL of 0.1 ppm in construction and maritime and is proposing to add a STEL of 0.3 ppm for bromine in these two sectors; in agriculture, OSHA is proposing both an 8-hour TWA of 0.1 ppm and a STEL of 0.3 ppm. This action will make the PEL for bromine consistent with the limits recently established for this substance in general industry.

Bromine is a dark, reddish-brown, noncombustible, diatomic liquid that has irritating vapors. It is used for shrink proofing wools; as an intermediate for fumigants, e.g. methyl bromide; in flame retardants; in gasoline additives (ethylene dibromide); in hydraulic fluids; for water disinfection; in desizing of cotton; in bleaching of pulp and paper; and in many other uses (Grayson 1985, pp. 185–186; Hawley's 1987, p. 169).

Bromine is a severe irritant of the eyes, skin, mucous membranes, and lungs in both animals and humans. The LC_{50} in mice is 750 ppm for 9 minutes (RTECS 1990); death occurred within 30 days in nearly 50 percent of mice exposed to a 240-ppm concentration of bromine for 2 hours (Bitron and Aharonson 1978). At autopsy, guinea pigs and rabbits exposed to a 300-ppm concentration of bromine for 3 hours showed pulmonary edema, a pseudo-membranous deposit on the trachea and bronchi, and hemorrhages of the gastric mucosa. Autopsy of animals that died several days after exposure revealed foci of bronchopneumonia and evidence of functional disturbances in the central nervous system (Lehmann and Hess 1987). Exposure of rats, mice, and rabbits to bromine concentrations of 0.2 ppm for 4 months resulted in respiratory, nervous, and endocrine system dysfunction; exposure of animals of the same species to a 0.02-ppm concentration for the same period produced no adverse effects (NRC 1981). Rats given 0.01 mg/kg bromine by oral administration daily for 6 months

exhibited changes in conditioned reflexes and in several blood indexes (NRC 1981).

Bromine causes lacrimation in humans at concentrations below 6.5 mg/m³ (approximately 1 ppm) (NRC 1980), and inhalation of high concentrations may cause fatal chemical burns of the lungs, lesions of the mucous membranes of the upper airways, inflammation and swelling of the tongue and palate, spasm of the glottis, and asthmatic bronchitis (Parmeggiani 1983, p. 327). Workers handling bromine may develop pustules and furuncles of the skin in exposed areas; if the liquid is not removed immediately, deep, painful ulcers may develop (Oppenheim 1915). Workers exposed regularly to bromine concentrations of approximately 0.3 to 0.6 ppm for 1 year experienced headache, pain in the joints, chest, and stomach, irritability, and loss of appetite (Parmeggiani 1983, p. 327).

The Agency preliminarily concludes that exposure to bromine poses a significant risk of severe eye, skin, and respiratory irritation and believes that both the TWA and short-term limit are necessary to substantially reduce the risk of experiencing these effects. Accordingly, OSHA is proposing a limit for bromine of 0.1 ppm as an 8-hour TWA (in the agriculture sector) and 0.3 ppm as a 15-minute STEL (in the agriculture, construction, and maritime sectors). These limits are consistent with the general industry limits recently established for bromine and are necessary to substantially reduce a significant risk of material health impairment.

BROMOFORM

CAS: 75–25–2; Chemical Formula: $CHBr_3$

H.S. No. 2021

In general industry, construction, and maritime, OSHA's current permissible exposure limit for bromoform is 0.5 ppm as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.5 ppm, with a skin notation, for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL in agriculture of 0.5 ppm, and a skin notation, for bromoform. This action will make OSHA's limit for bromoform consistent across all industry sectors.

Bromoform is a colorless liquid with an odor like that of chloroform. Bromoform is used as a chemical intermediate, reagent, and solvent, as an ingredient in gauge fluid and fire-resistant chemicals, and in geological assaying. It is also used in the aircraft, aerospace, and shipbuilding industries (HSDB 1984; ACGIH 1986, p. 67).

Bromoform is an irritant of the eyes and respiratory tract and, at high concentrations, a narcotic; chronic exposures of laboratory animals to this substance have resulted in liver and kidney damage. The oral LD_{50} for rats is 1147 mg/kg; the intraperitoneal LD_{50} for the same species is 414 mg/kg (RTECS 1990). Exposure of dogs to a 7000-ppm bromoform concentration caused anesthesia in 8 minutes and death in 60 minutes (Irish 1963). Instilled into the eyes of rabbits, bromoform caused moderate irritation, but healing was complete 2 days later. Moderate irritation resulted from repeated contact of this substance with rabbit skin (Torkelson and Rowe 1981). Exposure of rats to a 25-ppm concentration of bromoform for 4 hours/day for 2 months caused adverse effects on the liver and kidney (Torkelson and Rowe 1981).

Accidental ingestion of small amounts (unspecified doses) of bromoform caused central nervous system depression in humans (von Oettingen 1955), and inhalation of the vapor of this substance caused excessive salivation and irritation of the eyes (with lacrimation), respiratory tract, pharynx, and larynx (von Oettingen 1955). Workers exposed to a mixture of bromoform and bromoethane at approximately 100 mg/m³ experienced central nervous system and digestive disorders, chest pain, kidney dysfunction, and liver disease (Parmeggiani 1983, p. 328).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye and respiratory tract irritation and central nervous system depression associated with exposure to bromoform. The Agency believes that establishing an 8-hour TWA PEL of 0.5 ppm, and a skin notation, will substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

2-BUTANONE (METHYL ETHYL KETONE)

CAS: 78–93–3; Chemical Formula: $CH_3COCH_2CH_3$

H.S. No. 1045

OSHA's current exposure limit for 2-butanone in general industry, construction, and maritime is 200 ppm as an 8-hour TWA. There is no PEL for 2-butanone in agriculture. The ACGIH TLV®–TWA for 2-butanone is 200 ppm, with a STEL of 300 ppm. The NIOSH REL for 2-butanone is 200 ppm (590 mg/m³) as a 10-hour TWA, and NIOSH concurs with the PELs being proposed (Ex. 8–47). OSHA is proposing an 8-hour TWA PEL of 200 ppm and a 300-ppm STEL for 2-butanone in agriculture, construction, and maritime. This action will make the PEL for 2-butanone consistent with the limits recently established for this substance in general industry.

2-Butanone is a colorless, flammable liquid with an acetone-like odor (ACGIH 1986, p. 395). This substance is used as a solvent in resins, paint removers, cements, and coatings, and for many other purposes (ACGIH 1986, p. 395; Hawley's 1987, p. 769).

2-Butanone (also called methyl ethyl ketone) is irritating to the eyes, skin, and respiratory tract in both animals and humans; it is a central nervous system depressant and, in animals, a reproductive toxin. The oral LD_{50} in rats is 2737 mg/kg (RTECS 1990). The lowest lethal concentration in the same species is 2000 ppm for 4 hours, and the dermal LD_{50} in rabbits is 13 g/kg (RTECS 1990). A drop of 2-butanone in the eye of a rabbit caused moderate and reversible injury, graded 5 on an ascending severity scale of 1 to 10 (Smyth 1969). Guinea pigs exposed to a 10,000-ppm concentration of the vapor for 5 hours exhibited signs of narcosis and of severe irritation of the nose and eyes (Clayton and Clayton 1982, p. 4729). Rats exposed to an 800-ppm concentration of 2-butanone for 4 weeks showed increases in liver weights and in liver-to-body weight ratios at autopsy (Scand. J. Work Environ. Hlth 7(1):31, 1981). In a recent study (Takeuchi et al. 1983), rats exposed to a 200-ppm concentration of 2-butanone for 12 hours/day, 7 days/week for 24 weeks showed slight and reversible neurological effects after 4 weeks of exposure. Exposure of pregnant rats to 1000 or 3000 ppm 2-butanone for 7 hours/day on the sixth through fifteenth days of gestation resulted in skeletal abnormalities in the fetuses of rats in the 1000-ppm group and soft-tissue and skeletal abnormalities in the fetuses of rats in the 3000-ppm group (Schwetz, Leong, and Gehring 1974). A follow-up study confirmed 2-butanone's fetotoxicity but did not reveal teratogenic effects (Deacon, Pliny, John et al. 1981).

In humans, 2-butanone causes skin, eye, nose, and upper respiratory tract irritation; exposure to high concentrations may also cause narcosis. Brief exposure to concentrations of 33,000 or 100,000 ppm caused intolerable irritation in volunteers (Patty, Schrenk, and Yant 1935). Volunteers exposed briefly to a 100-ppm concentration reported slight nose and throat irritation; a 15-minute exposure to 200 ppm caused

irritation of the nose and throat; and concentrations greater than 300 ppm caused nausea and eye, nose, and throat irritation (Nelson, Enge, Ross, et al. 1943). Exposure to a 25-ppm concentration of 2-butanone for 5 minutes did not cause irritation (Nelson, Enge, Ross, et al. 1943). Workers exposed to 2-butanone via inhalation and skin contact have also reported experiencing dermatitis and numbness of the extremities (Smith and Mayers 1944). Two young women exposed concurrently to 2-butanone at concentrations of 298 to 560 ppm and to acetone at concentrations of 330 to 495 ppm exhibited signs of severe intoxication, including convulsions and loss of consciousness (Smith 1944).

In the recent air contaminants rulemaking in general industry, OSHA determined that an 8-hour TWA limit of 200 ppm and a 15-minute STEL of 300 ppm were necessary to protect workers in that sector from experiencing the significant irritation and narcotic effects associated with both full-shift and short-term exposures to high concentrations of 2-butanone. Accordingly, OSHA has preliminarily concluded that a 200-ppm 8-hour TWA limit and a 300-ppm 15-minute STEL are necessary to substantially reduce a significant risk of material health impairment among employees in the agricultural, construction, and maritime industries. This action will also make the PELs in these sectors consistent with those in general industry.

n-BUTYL ACETATE

CAS No. 123–86–4; Chemical Formula: $CH_3COO(CH_2)_3CH_3$

H.S. No. 1047

The current OSHA exposure limit for n-butyl acetate in general industry, construction, and maritime is 150 ppm, measured as an 8-hour TWA. There is no PEL for n-butyl acetate in agriculture. The ACGIH TLV®–TWA for n-butyl acetate is 150 ppm, with a STEL of 200 ppm. NIOSH has no REL for this substance but concurs with the PELs being proposed (Ex. 8–47). OSHA is retaining the 8-hour TWA PEL of 150 ppm in construction and maritime, proposing a STEL of 200 ppm in these sectors, and proposing both limits in agriculture. These are the limits recently established for n-butyl acetate in general industry.

n-Butyl acetate is a colorless liquid with a fruity odor. It is used as a larvicide and in the manufacture of lacquers, artificial leather, photographic films, plastics, safety glass, and for many other purposes (Clayton and Clayton 1981, p. 2277; ACGIH 1986, p. 72). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

n-Butyl acetate is an irritant of the eyes, skin, and respiratory system; at high concentrations, it is also a narcotic. The oral LD_{50} in rats is 14 g/kg, and the LC_{50} in the same species is 2000 ppm for 4 hours (RTECS 1987). Cats exposed for 6 hours to a concentration of 6100 ppm showed slight narcotic effects (Flury and Wirth 1933, as cited in ACGIH 1986/Ex. 1–3, p. 72). When the concentration of n-butyl acetate was reduced to 1600 ppm, the cats exhibited signs of mild eye irritation and salivated excessively (Flury and Wirth 1933, as cited in ACGIH 1986/Ex. 1–3, p. 72). A paper by Sayers, Schrenk, and Patty (1936/Ex. 1–802) reported that guinea pigs showed signs of eye irritation at 3300 ppm, became unconscious after 9 hours of exposure to 7000 ppm, and died after 4 hours of exposure to a 14,000-ppm concentration. Cats exposed to a 4200-ppm concentration 6 hours/day for 6 days lost weight, became weak, and showed blood changes; at a 12,000-ppm concentration, cats were anesthetized (Clayton and Clayton 1981, p. 2273). In contact with the skin of rabbits, n-butyl acetate caused moderate irritation (RTECS 1987); instilled into rabbit eyes, this substance produced injury graded 5 on an ascending severity scale of 1 to 10 (Smyth 1954).

Human volunteers complained of eye and throat irritation when exposed to a butyl acetate concentration of 200 ppm (RTECS 1990); these effects became quite severe at 300 ppm (Nelson, Enge, Ross, et al. 1943/Ex. 1–66). Several cases of vacuolar keratitis have been reported in workers exposed concurrently to a mixture of n-butyl acetate and isobutyl alcohol vapors; which compound was responsible for the damage is not known (Grant 1986, p. 163). A pharmaceutical manufacturing worker whose skin came into repeated contact with n-butyl acetate developed dermatitis (Roed-Peterson 1980, in HSDB 1985).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers are at significant risk of experiencing eye, skin, and respiratory irritation, in addition to narcotic effects, when exposed to n-butyl acetate in the workplace. Accordingly, OSHA is proposing the limits recently established in general industry, which are 150 ppm as an 8-hour TWA and 200 ppm as a 15-minute STEL, for workplaces in the construction, maritime, and agriculture industries. OSHA preliminarily concludes that these limits are necessary to substantially reduce a significant risk of material impairment of health among workers in these sectors.

n-BUTYL LACTATE

CAS: 138–22–7; Chemical Formula: $C_7H_{14}O_3$

H.S. No. 1053

OSHA has no limit for n-butyl lactate in the construction, maritime, and agricultural industries; however, the Agency recently established a 5-ppm 8-hour TWA for this substance in general industry. The ACGIH TLV®–TWA for n-butyl lactate is 5 ppm (30 mg/m³). NIOSH has no REL for this substance but concurs with the PEL being proposed (Ex. 8–47). OSHA is proposing a PEL of 5 ppm as an 8-hour TWA for n-butyl lactate in the agricultural, construction, and maritime industries. Promulgation of this limit will make the PEL for n-butyl lactate consistent across all OSHA-regulated sectors.

Butyl lactate is a colorless ester of lactic acid (ACGIH 1986, p. 82). It is used as a solvent for nitrocellulose, ethyl cellulose, oils, dyes, natural gums, synthetic polymers, lacquers, and varnishes, as an antiskinning agent, and as an ingredient in perfumes, dry cleaning fluids, and adhesives. It is also a major component of many paints (Hawley's 1987, p. 188; ACGIH 1986, p. 82).

n-Butyl lactate causes irritation of the skin, eyes, and respiratory tract, as well as central nervous system depression, in both humans and animals. The subcutaneous LD_{50} in rats is 12 g/kg; acutely poisoned mice exhibited somnolence and dyspnea before death (RTECS 1989). Applied to the skin of rabbits for 24 hours, butyl lactate caused moderate irritation (RTECS 1989).

Workers exposed for unspecified but prolonged periods to n-butyl lactate at a concentration of approximately 7 ppm, with brief peak excursions to 11 ppm, experienced headache, irritation of the pharyngeal and laryngeal mucosa, and coughing; some workers reported experiencing nausea, vomiting, and sleepiness at this concentration (Zuidema and Pel 1969, as cited in ACGIH 1986). Headache, coughing, and irritation of the pharynx were sometimes associated with exposure to n-butyl lactate concentrations of 4 ppm; however, no adverse effects were reported by workers when the concentration was reduced to 1.4 ppm (Zuidema and Pel 1969). Studies employing improved sampling and analytic methods have subsequently reported that, although the odor of n-butyl lactate is discernible at the 7-ppm level, this concentration does not produce objectionable or injurious

effects (Turner 1972/as cited in ACGIH 1986).

Based on this evidence, OSHA is proposing a 5-ppm 8-hour TWA limit to protect workers in construction, maritime, and agriculture from the significant risks of irritation, headache, and nausea caused by exposure to higher concentrations of n-butyl lactate. The Agency considers these effects material impairments of health within the meaning of the Act. This is the limit recently established for this substance in general industry, and OSHA preliminarily concludes that this limit is necessary to substantially reduce a significant risk of material health impairment among workers in these sectors.

n-BUTYL MERCAPTAN
CAS: 109–79–5; Chemical Formula: $CH_3CH_2CH_2CH_2SH$
H.S. No. 1054

OSHA's current limit for n-butyl mercaptan in general industry, construction, and maritime is 0.5 ppm as an 8-hour TWA. There is no PEL for this substance in agriculture. The NIOSH REL for n-butyl mercaptan is 0.5 ppm as a 15-minute ceiling, and the ACGIH TLV®–TWA for this substance is 0.5 ppm (1.8 mg/m³). OSHA is retaining the 0.5 ppm PEL in the construction and maritime industries and is proposing this limit for agriculture; this is the limit recently established in general industry. This action will make the PEL for n-butyl mercaptan consistent across all OSHA-regulated sectors.

n-Butyl mercaptan is a colorless, flammable liquid that has a strong, obnoxious, garlic-like odor (ACGIH 1986, p. 83). It is used as a solvent, a chemical intermediate, and an odorant for natural gas (ACGIH 1986, p. 83; Hawley's 1987, p. 178).

n-Butyl mercaptan causes irritation and, at high concentrations, central nervous system depression. The LD_{50} in rats is 4020 ppm for 4 hours, and the oral LD_{50} in rats is 1500 mg/kg (RTECS 1990). Acutely poisoned animals showed signs of mucous membrane irritation, dyspnea, incoordination, staggering gait, weakness, partial muscle paralysis, light to severe cyanosis, and mild to heavy narcosis (Fairchild 1958). Application of a drop of butyl mercaptan to rabbit eyes caused momentary minor irritation and closure of the lids (Grant 1974, p. 208). Guinea pigs showed no dermal injury when 0.2 ml of a 20-percent solution of butyl mercaptan was applied to clipped skin for 10 days (NIOSH 1978 Criteria Document). Animals that survived near-lethal doses of n-butyl mercaptan by intraperitoneal injection or oral administration frequently showed liver and kidney damage when autopsied 20 days after exposure (Fairchild 1958, in Clayton and Clayton 1981, p. 2075).

Gobbato and Terribile (1968/Ex. 1–178) have reported that symptoms of CNS toxicity occurred in humans exposed for 1 hour to concentrations of n-butyl mercaptan believed to lie in the range of 50 to 500 ppm. Three of these workers became confused, and one went into a 20-minute coma (NIOSH 1978 Criteria Document on Thiols). Gobbato and Terribile also reported that mucosal irritation occurred in human volunteers exposed to a 4-ppm concentration of ethyl mercaptan, a closely related substance, and that irritation did not occur at exposures to 0.4 ppm.

Based on this evidence, OSHA is proposing a PEL of 0.5 ppm as an 8-hour TWA for n-butyl mercaptan in the construction, maritime, and agriculture industries; this is the limit recently established in general industry. The Agency believes that this PEL is necessary to substantially reduce the significant risks of irritation and CNS toxicity, which constitute material health impairments and are associated with exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

BUTYLAMINE
CAS: 109–73–9; Chemical Formula: $CH_3(CH_2)_3CH_2NH_2$
H.S. No. 2025

In general industry, maritime, and construction, OSHA's current permissible exposure limit for butylamine is 5 ppm as a ceiling limit, with a skin notation. There is no limit in agriculture. The ACGIH has a TLV® of 5 ppm as a ceiling limit, with a skin notation; NIOSH has no REL. OSHA is proposing a PEL for butylamine in agriculture of 5 ppm as a ceiling limit, with a skin notation. This is the limit recently established for this substance in general industry.

Butylamine is used mainly as an intermediate in the synthesis of insecticides, emulsifying agents, tanning agents, pharmaceuticals, dyestuffs, corrosion inhibitors, petroleum specialties, and rubber chemicals (ACGIH 1986, p. 79; AIHA 1978). It is a volatile, colorless liquid with an odor similar to that of ammonia (ACGIH 1986, p. 79).

Butylamine is irritating to the eyes, skin, mucous membranes, and respiratory tract in both humans and animals. The oral LD_{50} for rats is 500 mg/kg, and the dermal LD_{50} for guinea pigs is 0.5 ml/kg (RTECS 1990). In addition to irritation of the respiratory tract, inhalation of the vapors can also cause pulmonary edema, central nervous system stimulation, depression, convulsions, and narcosis (Proctor, Hughes, and Fischman 1988, p. 108; AIHA 1978). Severe primary irritation and second-degree burns with vesiculation occur when the liquid contacts human skin. Irritation of the eyes, nose, and throat and, occasionally, headaches and facial skin flushing were experienced by workers exposed to butylamine at concentrations of 5 to 10 ppm on a daily basis. Exposure to concentrations above this (in the range of 10 to 25 ppm) were reported to be intolerable after a few minutes by some people, while exposures below 5 ppm resulted in no symptoms (Proctor, Hughes, and Fischman 1988, p. 108). The liquid tested on the eyes of experimental animals was severely damaging (extent of damage equivalent to the damage caused by ammonium hydroxide) (Grant 1986, p. 164; ACGIH 1986, p. 79). Exposure of rats to concentrations of butylamine ranging from 3000 to 5000 ppm for an unspecified time resulted in an immediate irritant response, with labored breathing and pulmonary edema; death occurred within minutes or hours after exposure (Proctor, Hughes, and Fischman 1988, p. 108).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing eye, skin, mucous membrane, and respiratory tract irritation, pulmonary edema, and central nervous system damage. OSHA considers these effects material impairments of health within the meaning of the Act. The Agency believes that establishing a ceiling limit of 5 ppm and a skin notation will substantially reduce these risks.

CAMPHOR (SYNTHETIC)
CAS: 76–22–2; Chemical Formula: $C_{10}H_{16}O$
H.S. No. 1063

OSHA's current limit for synthetic camphor in general industry, construction, and maritime is 2 mg/m³ (0.3 ppm). There is no PEL in agriculture. The ACGIH TLV®s for camphor are a 2 ppm (12 mg/m³) TWA with a 3 ppm (18 mg/m³) STEL. NIOSH has no REL but concurs (Ex. 8–47) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 2 mg/m³ for synthetic camphor in agriculture. This is the limit recently established for this substance in general industry.

Synthetic camphor is a colorless or white crystalline substance with an aromatic odor. This substance is used as a plasticizer in explosives and lacquers,

an ingredient in insecticides, tooth powder, medicines, flavorings, and embalming fluids, and as a chemical intermediate (ACGIH 1986, p. 94).

In humans and animals, camphor is an irritant of the eyes, nose, and respiratory system. The LD_{50} in mice is 1310 mg/kg, and the lowest lethal concentration in the same species is 400 mg/m³ for 3 hours (RTECS 1991). Synthetic camphor is known to cause severe injuries in animals exposed for prolonged periods by inhalation to a level of 6 mg/m³. Exposure may cause convulsions, congestion, changes in the gastrointestinal tract, and damage to the kidneys and brain (Flury and Zernik 1931b/Ex. 1–996). Animal bioassays showed that camphor was not carcinogenic in rats injected subcutaneously; however, when the cancer promoter, croton oil, was concurrently applied to the skin of mice, 2 of 110 treated mice developed carcinomas (Graffi, Vlamynck, Hoffman, and Schultz 1953/Ex. 1–903).

In humans, there are reports of industrial exposure to camphor that resulted in coma, dyspnea, and headache; one fatality from inhalation of the vapor has been noted (Flury and Zernik 1931b/Ex. 1–996). A report by Gronka, Bobkoski, Tomchick, and Rakow (1969/Ex. 1–1043) evaluated airborne exposures and the health status of six employees in a synthetic-camphor-processing plant and reported that exposure for up to 10 months did not produce eye or nasal irritation if concentrations of camphor were maintained at or below 2 ppm. The health status of the six employees was determined before the plant installed local ventilation and improved handling procedures; at that time, camphor concentrations ranged from 24 to 43 mg/m³. Four of the six employees examined showed inflammation of the nose and throat, and one reported having occasional numbness in the fingers. After process improvements were installed, only two of the employees were still working in the camphor-processing area; the remaining four had been away from direct contact with camphor.

Based on this evidence, OSHA preliminarily concludes that the proposed 2 mg/m³ limit is necessary to protect workers in agriculture from the significant risk of headache, difficult breathing, and, if exposure is severe, coma and death. OSHA believes the proposed PEL will substantially reduce these risks. This is the limit recently established for this substance in general industry.

CAPROLACTAM (DUST)

CAS: 105–60–2; Chemical Formula: $C_6H_{11}NO$

H.S. No. 1064

OSHA has no permissible exposure limit for caprolactam dust in the agricultural, construction, or maritime industries. In the recent air contaminants rulemaking, OSHA established a 1-mg/m³ 8-hour TWA and a 3-mg/m³ STEL for this substance in general industry. The ACGIH TLV®–TWA for caprolactam dust is 1 mg/m³ as an 8-hour TWA. NIOSH has no REL for this substance but concurs with the limits being proposed (Ex. 8–47). OSHA is proposing a 1 mg/m³ 8-hour TWA and a 3-mg/m³ STEL for caprolactam dust in the agricultural, construction, and maritime industries; this action will make the PEL for caprolactam dust consistent across all OSHA-regulated sectors.

Caprolactam is a white crystalline solid with an unpleasant odor (ACGIH 1986, p. 95(89)). It is used in the production of Nylon 6 fibers and resins, carpets, clothing, tires, wire insulation, brush bristles, floor polishes, concrete patching cement, and dyes (IARC 1986, p. 250).

In addition to sensory irritation, caprolactam causes central nervous system, respiratory, and cardiovascular effects in experimental animals and humans. The oral LD_{50} in rats is 1210 mg/kg; acutely poisoned animals convulsed and showed signs of eye irritation before death (RTECS 1990). In animals, exposure to caprolactam by any route causes convulsions, tremors, mydriasis, opisthotonus (Elison, Lien, Zinger, et al. 1971/Ex. 1–1050; Lien, Lien, and Tong 1971/Ex. 1–1089), and salivation (Goldblatt, Farquharson, Bennett, and Askew 1954/Ex. 1–1044). Convulsions occurred in rats, rabbits, and cats given intraperitoneal or intravenous injections of caprolactam at doses greater than 100 mg/kg (Goldblatt, Farquharson, Bennett, and Askew 1954/Ex. 1–1044; Hohensee 1951). Cardiovascular and respiratory effects have been reported in rabbits and cats exposed to caprolactam; signs of poisoning included an initial increase, followed by a decrease, in blood pressure and an increase in respiratory rate (Goldblatt, Farquharson, Bennett, and Askew 1954/Ex. 1–1044). Weight loss and initial growth depression occurred in caprolactam-treated rats and mice (Morrison, Ross, and Ruth 1980/Ex. 1–1062). In a 90-day feeding study in dogs, Burdock, Kolwick, Alsakor, and Marshall (1984, as cited in ACGIH 1986/Ex. 1–3, p. 95) reported that animals given dietary doses of 0.1, 0.5, or 1.0 percent caprolactam showed weight losses at both the 0.5-percent and 1.0-percent levels. A 2-year carcinogenicity bioassay of caprolactam in rats and mice was negative (NCI/NTP 1982). The results of studies of caprolactam's teratogenicity in rats and rabbits indicate that it is not teratogenic even at doses as high as 1000 mg/kg/day (Gad, Powers, Robinson et al. 1984). Recent work on the genetic toxicity of caprolactam shows that this substance is not genotoxic in most short-term tests (Brady, Stack, and Waters 1989 (Toxline)). A three-generation study in rats involving dietary administration of caprolactam revealed no caprolactam-related effects on the reproductive performance of rats of either sex or on pup survival (Serota, Hoberman, Friedman, and Grad 1988, in Toxline).

In humans, caprolactam has been shown to be a convulsant, a dermal and respiratory irritant, and a dermal sensitizer. Studies of industrial exposures to caprolactam dust in Germany report severe irritation when workers inhale caprolactam as dust; these workers experienced a bitter taste, nervousness, nose bleeds, upper respiratory tract irritation, and dry and splitting skin on the lips and nose (Hohensee 1951). Direct contact with the solid form of caprolactam produces primary skin irritation (Ferguson 1972; Brief 1972).

Based on this evidence in humans and animals, OSHA preliminarily concludes that, in the absence of a limit for caprolactam dust in the agricultural, construction, and maritime industries, workers are at significant risk of experiencing respiratory irritation and adverse nervous system effects. Accordingly, OSHA is proposing a PEL of 1 mg/m³ (8-hour TWA) and a STEL of 3 mg/m³ for caprolactam dust in the agricultural, construction, and maritime industries. These are the limits recently established for caprolactam dust in general industry. OSHA preliminarily concludes that these limits are necessary to substantially reduce a significant risk of material impairment of health in exposed workers.

CAPROLACTAM (VAPOR)

CAS: 105–60–2; Chemical Formula: $C_6H_{11}NO$

H.S. No. 1065

OSHA currently has no permissible exposure limit for caprolactam vapor in the agriculture, construction, or maritime industries. In the prior air contaminants rulemaking, OSHA established an 8-hour TWA of 5 ppm (20 mg/m³) for caprolactam vapor, supplemented by a STEL of 10 ppm (40 mg/m³), for workplaces in general industry. The

ACGIH TLV®–TWA for this substance is 5 ppm, with a STEL of 10 ppm. There is no NIOSH REL for caprolactam vapor. OSHA is proposing these limits for the agricultural, construction, and maritime industries; this action will make the PEL for caprolactam vapor consistent across all OSHA-regulated sectors.

Caprolactam is a white crystalline solid with a low vapor pressure at room temperature; thus, high vapor concentrations are likely to occur only at elevated temperatures (ACGIH 1986, p. 95(89)). Caprolactam is used to make nylon, carpets, resins, clothing, tires, wire brushes, floor polishers, and many other products.

In addition to sensory irritation, caprolactam vapor can cause neurologic and respiratory effects in experimental animals and humans. The oral LD_{50} in rats is 1210 mg/kg, and the LC_{50} in the same species is 300 mg/m³ for 2 hours (RTECS 1990). Acutely poisoned animals convulsed and showed signs of eye irritation before death (RTECS 1990). A 1984 symposium on caprolactam reported that this substance causes convulsions, tremors, mydriasis, and salivation in experimental animals. Cardiovascular and respiratory effects were also seen in rabbits and cats; in addition, these animals showed an initial increase, followed by a decrease, in blood pressure and an increase in respiratory rate (ACGIH 1986, p. 95(89)). Injected at doses greater than 100 mg/kg, caprolactam caused convulsions in rats, rabbits, and cats (Goldblatt 1954).

The health effects of exposure to caprolactam vapor in humans are identical to those described for caprolactam dust, except that contact with the vapor is reported to be even more irritating (Hohensee 1951, as cited in ACGIH 1986/Ex. 1–3, p. 95). Workers exposed to the vapor at a concentration of approximately 12 ppm complained of a bitter taste in the mouth, nervousness, nose bleeds, upper respiratory tract congestion, and dry and splitting skin; other workers reported experiencing heartburn, flatulence, and a heavy feeling in the stomach (Hohensee 1951, as cited in ACGIH 1986/Ex. 1–3, p. 95). In another report of industrial exposure to the vapor, Ferguson and Wheeler (1973/Ex. 1–1108) reported that workers routinely exposed for 18 years to unspecified levels and occasionally to concentrations as high as 100 ppm reported severe discomfort from burning nose, throat, and eyes. This irritant response was dose-related, with no workers reporting effects at concentrations of 7 ppm or below, some experiencing transient upper respiratory tract irritation at levels above that, and others reporting eye irritation at concentrations of 25 ppm and above (Ferguson and Wheeler 1973/Ex. 1–1108). Ferguson (1972, as cited in ACGIH 1986/Ex. 1–3, p. 96.1) noted that a group of 143 workers, some of whom were exposed for as long as 17 years to vapor concentrations of 5 to 10 ppm, showed no evidence of adverse effects. At higher vapor exposures (13 to 130 ppm), all subjects experienced eye irritation (Ferguson 1972, as cited in ACGIH 1986/Ex. 1–3, p. 96.1). Human volunteers exposed at low relative humidities to concentrations of the vapor in the range of 10 to 100 ppm showed a dose-related response, but at higher relative humidities, no irritation was observed below a concentration of 14 ppm (Ferguson and Wheeler 1973/Ex. 1–1108).

Based on this evidence in humans and animals, OSHA is proposing the limits recently established in general industry—5 ppm as an 8-hour TWA and 10 ppm as a 15-minute STEL—for workplaces in the construction, maritime, and agriculture industries. OSHA believes that these PELs are necessary to substantially reduce the significant risk of eye, upper respiratory tract, and skin irritation associated with exposure to this substance. OSHA considers these exposure-related effects to be material impairments of health. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CESIUM HYDROXIDE

CAS: 21351–79–1; Chemical Formula: CsOH

H.S. No. 1077

OSHA currently has no limit for cesium hydroxide in the agriculture, construction, or maritime industries. The ACGIH has a 2 mg/m³ 8-hour TWA for cesium hydroxide. NIOSH has no REL for this substance but concurs with the proposed limit (Ex. 8–47). The Agency is proposing a 2 mg/m³ 8-hour TWA PEL for cesium hydroxide in the construction, maritime, and agricultural industries; this is the limit recently established for this substance in general industry.

Cesium hydroxide is a colorless or yellowish fused crystalline mass; it is the strongest base known and is highly soluble in both water and alcohol (ACGIH 1986, p. 113). It is used as an electrolyte in alkaline storage batteries at subzero temperatures and as a catalyst in the polymerization of cyclic siloxanes (Hawley's 1987, p. 245; ACGIH 1986, p. 113)

In addition to causing sensory irritation, cesium hydroxide is corrosive to the eyes of humans and experimental animals. The oral LD_{50} in rats is 570 mg/kg (RTECS 1991). Acutely poisoned animals exhibited somnolence, muscle contractions or spasticity, and changes in respiration before death (RTECS 1991). Rabbits experienced severe eye irritation when 5 mg of a 5M solution of cesium hydroxide was instilled into their eyes and then rinsed out (RTECS 1991). In contact with the skin of rabbits, cesium hydroxide caused mild irritation (RTECS 1991). Studies indicate that cesium hydroxide has an acute oral toxicity of about one-third that of potassium hydroxide (Karpov 1971/Ex. 1–1115).

Inhalation of particles of cesium hydroxide or of mist containing cesium hydroxide is irritating to the eyes, nose, and upper respiratory tract in humans (Genium MSDS 1987, No. 201). If not removed promptly from the skin, this substance causes chemical burns (Genium MSDS 1987, No. 201).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 2 mg/m³ for cesium hydroxide in the construction, maritime, and agriculture industries; this is the limit recently established for this substance in general industry. The Agency preliminarily concludes that this PEL is necessary to protect workers from the significant risk of irritation and corrosive burns associated with exposure to this substance. OSHA considers these adverse health effects to be material impairments of health within the meaning of the Act and believes that the proposed PEL will reduce these risks substantially.

CHLORINE

CAS: 7782–50–5; Chemical Formula: Cl_2

H.S. No. 1079

The current OSHA limit for chlorine in the construction and maritime industries is 1 ppm as a ceiling. There is no PEL for chlorine in agriculture. The 1987–1988 ACGIH TLV®–TWA for chlorine was 1 ppm (3 mg/m³), with a 3 ppm (9 mg/m³) STEL. The NIOSH REL for chlorine is 0.5 ppm as a 15-minute ceiling; however, NIOSH concurs with the limits being proposed, which are the same PELs as those recently established for chlorine in general industry. OSHA is proposing a PEL of 0.5 ppm as an 8-hour TWA and a 15-minute STEL of 1 ppm for chlorine in the agricultural, construction, and maritime industries. This action will make OSHA's limit for chlorine consistent across all industry sectors.

Chlorine is a greenish-yellow, noncombustible gas at normal temperatures; it has a suffocating odor. At −35°C, chlorine condenses to an

amber liquid (ACGIH 1986, p. 117.1(87)). Chlorine has a wide range of uses; it is an oxidizing and chlorinating agent, an ingredient in many chlorinated organic compounds, and is used to purify water and to shrink-proof wool. Chlorine also is used in flame retardant compounds, in lithium and zinc batteries, and in the processing of meat, fish, vegetables, and fruit (ACGIH 1986, p. 117.1(87)).

Chlorine is a severe irritant of the eyes, nose, lungs, and skin in humans and animals. The LC_{50} in rats is 293 ppm for 1 hour (RTECS 1991). Animals exposed to sublethal doses of chlorine for 15 to 193 days showed emphysema, bronchiolitis, and pneumonia at autopsy (Clayton and Clayton 1982, p. 2958).

The acute effects of chlorine exposure in humans have been well documented since World War I, when chlorine gas was used as a chemical warfare agent. Other severe exposures have resulted from the accidental rupture of chlorine tanks. These exposures have caused death, lung congestion, and pulmonary edema, pneumonia, pleurisy, and bronchitis. The lowest lethal concentration reported is 430 ppm for 30 minutes (Clayton and Clayton 1982, p. 2957); exposure to 15 ppm causes throat irritation, exposures to 50 ppm are dangerous, and exposures to 1000 ppm can be fatal, even if exposure is brief (Sax and Lewis 1989, p. 768). A study of 332 workers exposed to chlorine for an average of 10.9 years was published in 1970. All but six workers had exposures below 1 ppm; 21 had TWAs above 0.52 ppm. No evidence of permanent lung damage was found, but 9.4 percent of these workers had abnormal EKGs compared to 8.2 percent in the control group. The incidence of fatigue was greater among those exposed to chlorine above 0.5 ppm (ACGIH 1986, p. 117.1[873]). In 1981, a study was published involving 29 subjects exposed to up to 2.0 hours for 4- and 8-hour periods. Exposures of 1.0 ppm for 8 hours produced statistically significant changes in pulmonary function that were not observed at the 0.5 ppm exposure concentration. Six of 14 subjects exposed to 1.0 ppm for 8 hours showed increased mucus secretions from the nose and in the hypopharynx. Responses ranging from sensations of itching or burning of the nose and eyes to general discomfort were not severe but were perceptible, especially at 1.0 ppm exposure level. A 1983 study of pulmonary function in workers exposed to low concentrations of chlorine also found transient decreases in pulmonary function at the 1.0 ppm exposure level, but not at the 0.5 ppm level (ACGIH 1986, p. 117.1[87]-117.2[87]).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers in construction, maritime, and agriculture are at significant risk of experiencing the severe irritation associated even with brief exposure to this substance. OSHA considers these effects material impairments of health and believes that the proposed PELs of 0.5 (8-hour TWA) and 1 ppm (STEL) are necessary to substantially reduce this significant risk. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CHLORINE TRIFLUORIDE

CAS: 7790-91-2

H.S. No. 2030; Chemical Formula: ClF_3

OSHA has no limit for chlorine trifluoride in agriculture; however, the Agency's current PEL for this substance in general industry, construction, and maritime is 0.1 ppm as a ceiling limit. The 1987-1988 ACGIH TLV® for chlorine trifluoride is 0.1 ppm as a ceiling limit; there is no NIOSH REL for this substance. OSHA is proposing a PEL of 0.1 ppm as a ceiling for chlorine trifluoride in agriculture. This is the limit recently established for this substance in general industry.

Chlorine trifluoride is a gas that is nearly colorless and has a sweet but irritating odor. This substance is easily pressurized to a pale green liquid; when frozen, it forms a white solid (ACGIH 1986, p. 119; Braker and Mossman 1980, p. 164). Chlorine trifluoride is used as an incendiary, as a fluorimetry agent, as a pyrolysis inhibitor for fluorocarbon polymers, as an ignitor and propellant for rockets, in cutting oil well tubes, and in the reprocessing of nuclear reactor fuels (Hawley's 1987, p. 280; Proctor, Hughes, and Fischman 1988, p. 131).

In animals, gaseous chlorine trifluoride causes lung damage and severe irritation of the eyes, skin, and respiratory tract; only limited data are available on human exposure to this substance (Proctor, Hughes, and Fischman 1988, p. 131; RTECS 1990). The LC_{50}s in monkeys, mice, and rats are, respectively: 230 ppm for 1 hour, 178 ppm for 1 hour, and 400 ppm for 30 minutes. In humans, the estimated LC_{50} is 50 ppm; no duration is specified (RTECS 1990). In one inhalation study, all rats exposed to 800 ppm for 15 minutes died, but most rats survived exposure to this concentration when the duration was reduced to 13 minutes. Acutely poisoned animals showed severe inflammation of the mucous membranes, lacrimation, ulceration of the cornea, and burns of the skin in exposed areas (Proctor, Hughes, and Fischman 1988, p. 131; ACGIH 1986, p. 119). Two dogs and 20 rats exposed to chlorine trifluoride at a concentration of approximately 1.17 ppm for 6 hours a day, 5 days/week for 6 months experienced severe pulmonary irritation, and some of the animals died (ACGIH 1986, p. 119). Although information on human exposure to chlorine trifluoride is lacking, it is believed that exposure would result in severe irritation or burns of the eyes and skin and that inhalation would cause pulmonary edema (Proctor, Hughes, and Fischman 1988, p. 131).

Based on this evidence, OSHA preliminarily concludes that, in the absence of an exposure limit, agricultural workers are at significant risk of experiencing irritation and burns of the eyes and skin, as well as pulmonary edema, if they are exposed to chlorine trifluoride even for a very brief time. The Agency believes that the proposed PEL of 0.1 ppm as a ceiling limit is necessary to reduce these significant risks among agricultural workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CHLOROACETALDEHYDE

CAS: 107-20-0; Chemical Formula: $ClCH_2CHO$

H.S. No. 2031

OSHA has no limit for chloroacetaldehyde in agriculture; however, the Agency's current PEL for this substance in general industry, construction, and maritime is 1 ppm as a ceiling limit. The 1987-1988 ACGIH TLV® for chloroacetaldehyde is 1 ppm as a ceiling limit; NIOSH has no REL for this substance. OSHA is proposing to establish a ceiling limit of 1 ppm for chloroacetaldehyde in agriculture. This is the limit recently established for this substance in general industry.

Chloroacetaldehyde is used as a fungicide, to help facilitate the removal of bark from trees, and as a chemical intermediate in the manufacture of 2-aminothiazole and other compounds (Hawley's 1987, p. 260; Proctor, Hughes, and Fischman 1988, p. 132). Chloroacetaldehyde is a clear, colorless liquid with a very sharp, irritating odor (Hawley's 1987, p. 260). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Chloroacetaldehyde is corrosive and severely irritating to the eyes, skin, and mucous membranes of both humans and animals (Hawley's 1987, p. 260; ACGIH 1986, p. 120). The oral LD_{50} in rats is 75 mg/kg and the dermal LD_{50} in rabbits is

224 mg/kg (RTECS 1990). A solution of 30 percent chloroacetaldehyde in water produced severe damage when applied to the skin and eyes of rabbits (Proctor, Hughes, and Fischman 1988, p. 132). An inhalation study in rats showed that exposure to a 5-ppm concentration of chloroacetaldehyde (for an unspecified time) caused eye and nasal irritation (ACGIH 1986, p. 120).

In humans, repeated or prolonged exposures to concentrations that cause even slight irritation may result in injury (ACGIH 1986, p. 120). If a strong solution of chloroacetaldehyde contacts the eye, it is likely to cause permanent tissue damage and visual impairment (Proctor, Hughes, and Fischman 1988, p. 132; ACGIH 1986, p. 120). Severe burns may result from a single brief contact of the skin with a 40-percent aqueous solution of chloroacetaldehyde (ACGIH 1986, p. 120).

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to chloroacetaldehyde at the levels permitted by the absence of a limit are at significant risk of experiencing irritation of the eyes, skin, and mucous membranes. The Agency believes that establishing a PEL of 1 ppm as a ceiling limit is necessary to protect workers in agriculture from these significant risks, which represent material impairments of health within the meaning of the Act. This is the limit recently established for this substance in general industry.

alpha-CHLOROACETOPHENONE
CAS: 523–27–4; Chemical Formula: $C_6H_5COCH_2Cl$
H.S. No. 2032

OSHA's PEL for alpha-chloroacetophenone in general industry, construction, and maritime is 0.05 ppm as an 8-hour time-weighted average (TWA); there is no PEL in agriculture. The 1987–1988 ACGIH TLV®–TWA for alpha-chloroacetophenone is 0.05 ppm as an 8-hour TWA; there is no NIOSH REL for this substance. OSHA is proposing an 8-hour TWA PEL of 0.05 ppm for alpha-chloroacetophenone in agriculture. This is the limit recently established for this substance in general industry.

alpha-Chloroacetophenone is a crystalline substance that is colorless to grey in appearance; at very low concentrations, it has a floral (apple blossom-like) odor (ACGIH 1986, p. 121; Gosselin, Smith, and Hodge 1984, p. II–96). It is a chemical warfare agent and is the main ingredient in the chemical mace (used for riot control and personal protection). This substance is also used as an intermediate in the pharmaceutical industry and formerly found use as an alcohol denaturant (Proctor, Hughes, and Fischman 1988, p. 132; HSDB 195; Hawley's 1987, p. 261).

alpha-Chloroacetophenone is a severe irritant and lacrimator in both animals and humans; exposure to high concentrations also can cause pulmonary edema (ACGIH 1986, p. 121). The oral LD_{50} in rats is 50 mg/kg; the lowest lethal concentration reported in the same species is 417 mg/m³ (approximately 70 ppm) for 15 minutes (RTECS 1990). Rabbits exposed dermally to a 12-percent solution of alpha-chloroacetophenone exhibited moderate skin irritation (RTECS 1990). When applied either topically or intradermally, alpha-chloroacetophenone caused contact sensitization in guinea pigs (HSDB 1985). Instilled into rabbit eyes, this substance produced mild to severe irritation, depending on the amount dropped into the eye (RTECS 1990). The eyes of laboratory animals exposed to high (not further specified) concentrations of alpha-chloroacetophenone vapor showed permanent opacification, ulceration with vascularization, and perforations (Gosselin, Smith, and Hodge 1984, p. II–97).

Humans acutely exposed to alpha-chloroacetophenone (200 to 340 mg/m³, or approximately 32 to 54 ppm) for 30 seconds experienced a burning sensation in the eyes, tearing, blurred vision, nasal irritation, runny nose, and a burning sensation in the throat (Proctor, Hughes, and Fischman 1988, p. 132). Contact with the eye can result in permanent partial opacity, reversible corneal haziness, and ocular pain (ACGIH 1986, p. 121; Gosselin, Smith, and Hodge 1984, p. II–96). Contact of this substance with the skin may result in burning and irritation (especially if the skin is moist), allergic contact dermatitis, and skin sensitization (ACGIH 1986, p. 121; Proctor, Hughes, and Fischman 1988, p. 132). Pulmonary edema caused the death of one individual exposed by inhalation to a high concentration (not further specified) of alpha-chloroacetophenone (Proctor, Hughes and Fischman 1988, p. 132). The use of alpha-chloroacetophenone as a riot-control agent has caused several deaths; the estimated lethal concentration in humans is 850 mg/m³ (approximately 134 ppm) for 10 minutes (ACGIH 1986, p. 121; Gosselin, Smith, and Hodge 1984, p. II–96).

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to alpha-chloroacetophenone at the levels permitted by the absence of an exposure limit are at significant risk of experiencing eye, skin, and respiratory tract irritation, dermatitis, and contact sensitization. Workers exposed to high concentrations may also be at risk of experiencing pulmonary edema. The Agency believes that establishing a PEL of 0.05 ppm as an 8-hour TWA will protect workers in agriculture from these significant occupational risks which constitute material health impairments within the meaning of the Act. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CHLOROACETYL CHLORIDE
CAS: 79–04–9; Chemical Formula: $ClCH_2COCl$
H.S. No. 1083

There is no PEL for chloroacetyl chloride in the agriculture, construction, or maritime industries. The 1987–1988 ACGIH TLV®–TWA for this substance was 0.05 ppm (0.23 mg/m³). There is no NIOSH REL for chloroacetyl chloride; however, NIOSH concurs with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 0.5 ppm for chloroacetyl chloride in the agricultural, construction, and maritime industries; this is the limit recently established by OSHA for this substance in general industry.

Chloroacetyl chloride is a colorless liquid with a pungent odor (ACGIH 1986, p. 123(89)). It is used in the production of chloroacetophenone and tear gas (ACGIH 1986, p. 123(89); Hawley's 1987, p. 261).

In addition to sensory irritation, chloroacetyl chloride may cause burns of the eyes and skin. The LD_{50} in rats is 120 mg/kg, and the LC_{50} in the same species is 1000 ppm for 4 hours (RTECS 1989). The dermal LD_{50} in rabbits ranges from 316 to 501 mg/kg (Torkelson 1956). The minimum concentration of chloroacetyl chloride lethal to mice exposed for 2 hours is 2500 ppm. Before death, acutely poisoned animals became agitated and showed signs of severe eye and respiratory tract irritation (Herzog 1959). Inhalation of 4 ppm for 5 to 10 minutes caused respiratory problems in rats; however, no effect was observed in these animals when they inhaled 2.5 ppm for a period of 7 hours (Dow Chemical Company 1977a, as cited in ACGIH 1986/Ex. 1–3, p. 122). Thirty-day inhalation studies with rats, mice, and hamsters showed that these animals developed eye and respiratory irritation at 2.5 ppm but showed no effects at a 0.5-ppm concentration (Dow Chemical Company 1977a, as cited in ACGIH 1986/Ex. 1–3, p. 122).

The acute effects associated with exposure to chloroacetyl chloride in

humans include mild to moderate skin burns and erythema, eye burns and tearing, cough, and dyspnea. Eye and respiratory irritation occurred in an industrial setting characterized by a chloroacetyl chloride concentration of 0.009 to 0.017 ppm, with excursions as high as 0.14 ppm (Dow Chemical Company 1977a, as cited in ACGIH 1986/Ex. 1–3, p. 122). A worker accidentally drenched with a mixture containing chloroacetyl chloride developed extensive first- and second-degree burns and pulmonary edema and experienced three episodes of cardiac arrest, followed by coma and anoxia-induced brain damage (Pagnotto 197, as cited in ACGIH 1986/Ex. 1–3, p. 122). Other ingredients of the mixture involved in the accident included xylidine, benzene, and sodium carbonate. Rescuers of this victim experienced hand blisters, chest tightness, and nausea for two days.

Based on this evidence, OSHA preliminarily concludes that an 8-hour TWA limit of 0.05 ppm for chloroacetyl chloride is necessary to protect employees in the agriculture, construction, and maritime industries from the significant risk of eye, skin, and respiratory irritation and burns of exposed tissue associated with exposure to this substance. OSHA determined in the recent general industry rulemaking that this limit will substantially reduce this risk of material health impairment and believes that the same PEL is necessary to protect workers in agriculture, construction, and maritime. Accordingly, OSHA is proposing a PEL of 0.05 ppm as an 8-hour TWA for chloroacetyl chloride in these sectors. Promulgation of this PEL will make OSHA's limit for this substance consistent across all regulated sectors.

o-CHLOROBENZYLIDENE MALONONITRILE

CAS: 2698–41–1; Chemical Formula: $ClC_6H_4CH=C(CN)_2$

H.S. No. 1084

OSHA's PEL for o-chlorobenzylidene malononitrile (OCBM) in the construction and maritime industries is 0.05 ppm as an 8-hour TWA. There is no PEL for this substance in agriculture. The ACGIH TLV®–TWA for o-chlorobenzylidene malononitrile is 0.05 ppm as a ceiling, with a skin notation. There is no NIOSH REL for this substance. OSHA is proposing a ceiling limit of 0.05 ppm, with a skin notation, for OCBM in the agricultural, construction, and maritime industries. NIOSH concurred with this limit when the Agency recently established it in general industry.

o-Chlorobenzylidene malononitrile is a white, crystalline solid with a pepper-like odor (ACGIH 1986, p. 124). It is used as an incapacitating agent by military and law enforcement personnel (ACGIH 1986, p. 124; Hawley's 1987, p. 283).

In addition to sensory irritation, this substance causes dermatitis and skin sensitization in humans. The oral LD_{50} in rats is 187 mg/kg, and the lowest lethal concentration in the same species is 1806 mg/m³ (225 ppm) for 45 minutes (RTECS 1991). In animals, OCBM is metabolized by the body into cyanide (Frankenberg and Sorbo 1973/Ex. 1–480). Death caused by inhalation exposure is a result of lung damage, with broncho pneumonia and asphyxiation. Twenty rats exposed to a 2700-mg/m³ (337 ppm) concentration of OCBM for 1 hour died (Proctor, Hughes, and Fischman 1988, p. 134). Short-term exposures to high levels of OCBM did not cause carcinogenic, teratogenic, or embryolethal effects in animals (McNamara et al. 1973). Applied to rabbit eyes, OCBM causes severe irritation (RTECS 1991).

In humans, OCBM has extremely irritating properties. It causes intense eye and skin irritation, coughing, difficulty in breathing, chest tightness, rhinorrhea, dizziness, nausea, and vomiting. These effects are evident on exposure to OCBM concentrations between 12 and 20 mg/m³ (1.5 to 2.5 ppm), and they become incapacitating within 20 seconds of the onset of such exposures; the effects persist for approximately 5 to 10 minutes after the exposed individual has been moved to fresh air (Military Chemistry and Chemical Agents 1963, as cited in ACGIH 1986/Ex. 1–3, p. 124). Three of four human volunteers exposed to a 1.5-mg/m³ (0.19-ppm) concentration of OCBM aerosol for 90 minutes developed headaches, and one showed mild eye and nose irritation. Headache persisted for 24 hours in two subjects. At a concentration of 4 to 5 mg/m³ (0.5 to 0.6 ppm), subjects' problem-solving abilities were affected and they developed conjunctivitis, eye tearing, and skin burns (Punte, Owens, and Gutentag 1963/Ex. 1–353). Other researchers observed no persistent clinical abnormalities in seven subjects exposed to OCBM at concentrations ranging from 1 to 13 mg/m³ (0.13 to 1.6 ppm) over a 15-day period. Twenty-five of 28 workers in an OCBM production plant reported having had repeated episodes of dermatitis of the arms and neck, and two of these workers had positive patch tests when challenged with OCBM (Shmunes and Taylor 1973/Ex. 1–370).

Based on this evidence, OSHA is proposing a PEL of 0.05 ppm as a ceiling, with a skin notation, for o-chlorobenzylidene malononitrile; this is the limit recently established for this substance in general industry. The Agency preliminarily concludes that this limit is necessary to substantially reduce a significant risk of severe eye and upper respiratory tract irritation, skin sensitization, and dermatitis among workers in construction, maritime, and agriculture. OSHA considers these exposure-related health effects material impairments of health within the meaning of the Act. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CHLOROPICRIN

CAS: 76–06–2; Chemical Formula: CCl_3NO_2

H.S. No. 2037

OSHA has no limit for chloropicrin in agriculture; however, the Agency's current PEL for this substance in construction, general industry, and maritime is 0.1 ppm as an 8-hour time-weighted average (TWA). The 1987–1988 ACGIH TLV®–TWA is also 0.1 ppm; there is no NIOSH REL for this substance. The Agency is proposing an 8-hour TWA of 0.1 ppm for chloropicrin in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all industry sectors.

Chloropicrin is an oily, colorless to faint-yellow liquid with an intense odor (HSDB 1985). Chloropicrin is used as an insecticide, fungicide, herbicide in soil, and as a stored grain fumigant to control insects and rodents. It is also used as a tear gas, in the synthesis of methyl violet, and as an additive to increase the odor warning properties of other chemicals (HSDB 1985; ACGIH 1986, p. 134; Hawley's 1987, p. 271). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Chloropicrin is a severe irritant of the eyes, mucous membranes, skin, and upper respiratory tract (HSDB 1985; ACGIH 1986, p. 134; Proctor, Hughes, and Fischman 1988, p. 149). The oral LD_{50} in rats is 250 mg/kg; the LC_{50} in mice is 1600 mg/kg (approximately 230 ppm) for 10 minutes (RTECS 1990; ACGIH 1986, p. 134). Acutely poisoned animals showed congestion, hemorrhage, lung edema, and inflammation before death (ACGIH 1986, p. 134). Necrosis of the liver, kidneys, and skeletal muscles was seen in these animals after chronic exposure (ACGIH 1986, p. 134). Exposure to a 9-ppm concentration of chloropicrin

caused a 50-percent decrease in respiratory rate; at autopsy, ulceration and necrosis of the respiratory tract lining, pulmonary edema, and moderate lung damage were seen (Proctor, Hughes, and Fischman 1988, p. 149). A carcinogenicity bioassay of chloropicrin found no significant incidence of tumors in rats or mice (HSDB 1985).

In humans, the lethal dose is estimated to be 119 ppm for 30 minutes; death in these cases is caused by pulmonary edema (Proctor, Hughes, and Fischman 1988, p. 149). Exposure to chloropicrin vapor concentrations ranging from 0.30 to 0.37 ppm causes painful irritation and tearing of the eyes in 3 to 30 seconds, and inhalation of a 7.5-ppm concentration for 10 minutes or of 15 ppm for 1 minute is described by exposed individuals as intolerable (Clayton and Clayton 1981, p. 4165; ACGIH 1986, p. 134). Accidental ingestion of the liquid causes gastroenteritis, severe nausea, vomiting, colic, and diarrhea (HSDB 1985).

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to chloropicrin at the levels permitted by the absence of a limit are at significant risk of experiencing irritation of the eyes, skin, mucous membranes, and lungs. The Agency believes that establishing a PEL for chloropicrin of 0.1 ppm as an 8-hour TWA is necessary to substantially reduce these risks in agricultural workplaces. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

COPPER (DUSTS AND MISTS)
CAS: 7440–50–8; Chemical Formula: Cu
H.S. No. 2041

In general industry, construction, and maritime, OSHA's permissible exposure limit for copper dusts and mists is 1 mg/m^3 as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA for copper dusts and mists of 1 mg/m^3 as an 8-hour limit. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA limit of 1 mg/m^3 for copper dusts and mists in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Copper is an odorless, reddish brown, ductile metal or powder. Copper is widely used as a structural metal in electric wiring, switches, heating, plumbing, roofing, building construcyion, alloys, coins, insecticides, chemical and pharmaceutical machinery, electroplated protective coatings and undercoats, antifouling paints, and as a catalyst (Genium MSDS 1990, No. 162; ACGIH 1986, p. 146).

Exposure to copper dust or mist causes eye, skin, and respiratory tract irritation, as well as liver, kidney, and hematological effects. The lowest toxic oral dose for copper dust in rats is 1210 mg/kg (RTECS 1990). In mice, the intra peritoneal LD_{50} for the dust is 3.5 mg/kg (Clayton and Clayton 1981, p. 1623). Signs of acute copper poisoning in animals include nausea, vomiting, salivation, purgation, tachycardia, convulsions, paralysis, and collapse, followed by death. Autopsy of acutely poisoned animals shows gastroenteritis and congestion of the spleen, liver, and kidneys (Clarke 1981, p. 45, in HSDB 1985). Chronic ingestion of copper by animals leads to a pigmentary cirrhosis of the liver (Mallory and Parker 1931; Wiederanders et al. 1968, in Gosselin 1984, p. III–122). The offspring of rats given copper orally several weeks before mating showed embryotoxic and developmental effects (RTECS 1990).

In humans, exposure to copper dusts and mists is associated with irritation of the eyes and respiratory tract. If the exposure is prolonged or severe, nasal ulceration and perforation of the septum may occur. The lowest toxic oral dose of copper in humans is reported to be 120 μg/kg; at this dose, gastrointestinal effects were seen (RTECS 1990). Acute copper poisoning causes jaundice and tenderness in the area of the liver (Webster 1930; Chuttani et al. 1965, in Gosselin 1984, p. III–121). Greenish discoloration of the skin and hair have been reported in workers exposed to copper dust and mist (Saltzer and Wilson 1968; Stokinger 1963, in Proctor and Hughes 1978, p. 181). Allergic contact dermatitis is rare among copper workers, but this condition has been reported occasionally (Adams, R. M., ed. Occupational Skin Disease 1983). The main effects from industrial exposure to copper dust and mist involve the respiratory tract; symptoms of acute overexposure include chills, fever, aching muscles, dry mouth and throat, and headache (Clayton and Clayton 1981, p. 1628). Three men who were exposed to fine copper dust at concentrations of 0.075 to 0.120 mg/m^3 suffered from apparent metal fume fever (Proctor and Hughes 1978, p. 181). Seven cases of copper fever were reported in workers in a paint factory where copper oxide was being pulverized (Shiötz 1949, in Clayton and Clayton 1981, p. 1628). Copper dust exposure may also cause systemic effects similar to those caused by other heavy metal exposure such as capillary damage, kidney and liver injury, and central nervous system excitation followed by depression (Gosselin 1984, p. III–121). Chronic exposure to copper may cause anemia, widespread damage to the small blood vessels, and injury to the liver and kidney (Gosselin, Smith, and Hodge 1984, p. III–121; ACGIH 1986, p. 146).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to copper dusts and mists causes eye, skin, and respiratory tract irritation, kidney and liver damage, and circulatory system effects in humans and animals. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit for copper dusts and mists of 1 mg/m^3 as an 8-hour TWA in agriculture is necessary to significantly reduce these risks of material health impairment. Promulgation of this limit also will make the PEL for copper dust and mist consistent across all OSHA-regulated sectors.

COPPER (FUME)
CAS: 7440–50–8; Chemical Formula: Cu
H.S. No. 1101

OSHA's limit for copper fume in general industry, construction, and maritime is 0.1 mg/m^3 as an 8-hour TWA. The ACGIH TLV® is 0.2 mg/m^3 as an 8-hour TWA. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that the proposed 0.1-mg/m^3 limit in agriculture is appropriate. Promulgation of this PEL will make OSHA's limit for copper fume consistent across all regulated sectors.

There are few toxicological data available on copper fume's effects in experimental animals. The oral LD_{50} for cupric oxide (finely divided copper dust) is 470 mg/kg (Clayton and Clayton 1981, p. 1624).

In humans, exposure to copper fume causes metal fume fever. The signs and symptoms of this syndrome include fever lasting for as long as 48 hours, chills, aching muscles, and headaches. Welders exposed chronically to copper fumes experienced sneezing, cough, fever, atrophy and ulceration of the nasal mucosa, and a metallic taste (Clayton and Clayton 1981, p. 1628). Workers exposed to copper fume at a concentration of 1 to 3 mg/m^3 experienced an altered taste response (ACGIH 1986, p. 146). When exposures were reduced to between 0.02 and 0.04 mg/m^3, this effect disappeared (ACGIH 1986, p. 146).

Based on this evidence, OSHA preliminarily concludes that exposure to copper fume is associated with metal fume fever; OSHA considers this condition a material impairment of health. The Agency believes that the

proposed PEL of 0.1 mg/m³ will substantially reduce the risk that workers in agriculture will experience metal fume fever. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CYANOGEN
CAS: 460–19–5; Chemical Formula: $(CN)_2$
H.S. No. 1105

OSHA currently has a TWA PEL of 10 ppm for cyanogen in general industry and in the construction and maritime industries. The Agency has no PEL for cyanogen in agriculture. The ACGIH has a TLV®–TWA of 10 ppm for this substance; there is no NIOSH REL, although NIOSH concurs with the limit being proposed in agriculture, which is 10 ppm as an 8-hour TWA. This action will make the PEL for cyanogen consistent across all OSHA-regulated sectors.

Cyanogen is a colorless gas with an almond-like odor. It is used as a fumigant and chemical intermediate, an ingredient in rocket and missile propellants, and in the welding and cutting of heat-resistant metals (Braker and Mossman 1980, p. 1986). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Cyanogen is an irritant of the eyes, mucous membranes, and respiratory tract in both animals and humans; severe exposure may cause pulmonary edema (ACGIH 1986, p. 154). Cyanogen's effects resemble those of other cyanides (Clayton and Clayton 1981, p. 4858). The LC_{50} in rats is 350 ppm for 1 hour; acutely poisoned animals showed eye and pulmonary system effects and behavioral changes (RTECS 1991). The acute toxicity of cyanogen in various animal species is high (Flury and Zernik 1931d). Exposure to a 100-ppm concentration was fatal to cats in 2 to 3 hours, and exposure to 400 ppm was fatal to rabbits in less than 2 hours. Cats exposed to a 50-ppm concentration were severely affected but subsequently recovered (Flury and Zernik 1931d). Experiments in rats suggest that cyanogen is approximately 10 times less acutely toxic than hydrogen cyanide (McNerney and Schrenk 1960/Ex. 1–426). Monkeys and rats exposed to cyanogen at concentrations of 11 or 25 ppm for 6 hours/day, 5 days/week for 6 months showed a reduction in lung moisture content (in both groups of monkeys) and in body weight (rats in the 25-ppm group); the authors concluded that subchronic exposure to 25 ppm is marginally toxic (Lewis, Anger, and TeVault 1984, in J. Environ. Path. Tox. Oncol. 5:151–163).

Human studies showed that volunteers experienced almost immediate eye and nasal irritation on exposure to a cyanogen concentration of 16 ppm for 6 minutes (McNerney and Schrenk 1960/Ex. 1–426). When the concentration was reduced to 8 ppm, no effects were reported (McNerney, Schrenk 1960/Ex. 1–426).

OSHA is proposing an hour TWA limit of 10 ppm for cyanogen in the agriculture industry. The Agency preliminarily concludes that this limit is necessary to protect workers in this sector against the significant risk of irritation and systemic effects associated with exposure to cyanogen. OSHA believes that this limit will protect workers in this sector from experiencing these material impairments of health. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CYANOGEN CHLORIDE
CAS: 506–77–4; Chemical Formula: ClCN
H.S. No. 1106

OSHA has no limit for cyanogen chloride in the construction, agriculture, or maritime industries. The ACGIH has a TLV® of 0.3 ppm as a ceiling; NIOSH has no REL for this substance but concurs (Ex. 8–47) with the limit of 0.3 ppm (ceiling) being proposed for cyanogen chloride in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Cyanogen chloride is a colorless liquid or gas (depending on temperature and pressure) that has a pungent odor. It is used in organic synthesis and has been used by the military as a poison gas (ACGIH 1986, p. 155). Cyanogen chloride is also used as a fumigant, as an ingredient in metal cleaners, in the refining of ore, and in the production of synthetic rubber (Sittig 1985, p. 276). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Cyanogen chloride is an irritant of the eyes, mucous membranes, and respiratory tract in both humans and animals; severe exposure may cause pulmonary edema and central nervous system effects (ACGIH 1986, p. 155). The lethal effects of cyanogen chloride are caused by the formation of hydrocyanic acid (Aldridge and Evans 1946/Ex. 1–708). The LC_{50} in monkeys is 4400 mg/m³ for 1 minute (RTECS 1989). Flury and Zernik (1931d) observed the effects of exposure to cyanogen chloride in five animal species. In mice, exposure to a concentration of approximately 500 ppm was fatal within 3 minutes; in cats, 120 ppm was fatal in 3.5 minutes; 48 ppm was fatal to dogs in 6 hours; in goats, a 1000-ppm exposure for 3 minutes caused death after 70 hours; and 1200 ppm was fatal to the rabbit. Other studies have demonstrated that animals exposed to cyanogen chloride develop pulmonary edema; interference with cellular metabolism is also an effect of exposure (Jandorf and Bodansky 1946/Ex. 1–334; Aldridge and Evans 1946/Ex. 1–708).

Human data indicate that 1 ppm is the lowest irritant concentration of cyanogen chloride that can be tolerated for a 10-minute exposure; exposure to a 2-ppm concentration was intolerable for this time period, and 4 ppm was fatal in 30 minutes (Prentiss 1937/Ex. 1–1164). The Michigan Department of Health (1977, as cited by ACGIH 1986/Ex. 1–3, p. 155) reported that exposure to a cyanogen chloride concentration of about 0.7 ppm caused eye and nasal irritation severe enough to force workers to evacuate the area. Workers in a cyanogen chloride manufacturing facility reported experiencing the following symptoms of acute overexposure: Dizziness, blurred vision, and nausea (Reed 1920). The signs and symptoms of chronic exposure to this substance included weight loss, muscular weakness, lassitude, skin irritation, and lung congestion (Reed 1920).

OSHA is proposing a 0.3-ppm ceiling limit for cyanogen chloride in the construction, agriculture, and maritime industries; this is the limit recently established in general industry. The Agency preliminarily concludes that this limit is necessary to substantially reduce the significant risk of material health impairment (irritation and systemic poisoning) potentially associated with exposure to this substance in agriculture. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CYCLOHEXANE
CAS: 110–82–7; Chemical Formula: C_6H_{12}
H.S. No. 2046

In general industry, construction, and maritime, OSHA currently has an hour time-weighted average (TWA) limit of 300 ppm for cyclohexane. The Agency has no permissible exposure limit (PEL) for this substance in agriculture. The 1987–1988 ACGIH TLV®–TWA is 300 ppm as an 8-hour TWA; NIOSH has no REL. OSHA is proposing an 8-hour TWA of 300 ppm for cyclohexane in agriculture. Promulgation of this limit

will make the PEL for cyclohexane consistent across all regulated sectors.

Cyclohexane is a colorless, mobile liquid at room temperature, and it has a pungent odor that is detectable at a concentration of 300 ppm (Hawley's 1987, p. 335; ACGIH 1986, p. 156). Cyclohexane is used in fungicidal formulations and as a solvent for lacquers, resins, synthetic rubber, fats, and waxes. It is also used as an intermediate in the manufacture of a variety of chemicals and in the industrial recrystallization of steroids (HSDB 1987). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Cyclohexane causes moderate irritation of the eyes and mucous membranes; at high concentrations it causes central nervous system depression (narcosis) in laboratory animals. In animals, the acute toxicity of this substance is low; rabbits exposed to a concentration of 18,500 ppm for 8 hours survived (ACGIH 1986, p. 156). A 1-hour exposure to 26,752 ppm was lethal to all rabbits; acutely poisoned animals showed narcosis, tremor, and, in some animals, tetanic spasm before death (Proctor, Hughes, and Fischman 1988, p. 170). The oral LD_{50} in rats is 12,705 mg/kg (RTECS 1990). At autopsy, generalized vascular damage and severe degenerative changes in the heart, lungs, liver, kidneys, and brain were seen (Proctor, Hughes, and Fischman 1988, p. 170).

Humans exposed to airborne cyclohexane concentrations of 300 ppm report experiencing eye and mucous membrane irritation (ACGIH 1986, p. 156). Repeated contact of the skin with cyclohexane causes defatting (Proctor, Hughes, and Fischman 1988, p. 170). There have been no reports of systemic poisoning in humans as a result of cyclohexane exposure (Gosselin, Smith, and Hodge 1984, p. II–151).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a PEL, workers in agriculture are at significant risk of experiencing eye and mucous membrane irritation and that they may also be at significant risk of experiencing central nervous system depression. The Agency believes that establishing an 8-hour TWA of 300 ppm for cyclohexane in agriculture is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CYCLOHEXENE
CAS: 110–83–8
H.S. No. 2047

In general industry, construction, and maritime, OSHA's permissible exposure limit for cyclohexene is 300 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV–TWA* of 300 ppm for this substance; NIOSH has no REL. OSHA is proposing to apply an 8-hour TWA PEL of 300 ppm for cyclohexene in agricultural workplaces. This is the limit recently established for this substance in general industry.

Cyclohexene is a colorless liquid that is used in organic synthesis, in oil extraction, and as a solvent (ACGIH 1986, p. 160). This substance also finds use as a stabilizer for high-octane gasoline (Clayton and Clayton 1982, p. 3233).

Cyclohexene is an eye, skin, and respiratory tract irritant; at high concentrations, this substance also causes central nervous system depression in laboratory animals (Sittig 1985, p. 281; Proctor, Hughes, and Fischman 1988, p. 172). In direct contact with the skin, liquid cyclohexene is a defatting agent (Sittig 1985, p. 281; Proctor, Hughes, and Fischman 1988, p. 172). Dogs exposed by inhalation to an unspecified concentration of cyclohexene showed muscular quivering and staggering gait (Clayton and Clayton 1982, p. 3233). Mice lost their righting reflex after exposure to a cyclohexene concentration of about 9000 ppm, and a single exposure to 15,000 ppm was lethal (Proctor, Hughes, and Fischman 1988, p. 172). In a 6-month inhalation study of rats, rabbits, and guinea pigs that involved repeated exposures to 75, 150, 300, or 600 ppm cyclohexene, all rats showed an increase in alkaline phosphatase, and the high-dose rats gained weight more slowly than did controls; no other significant exposure-related effects were seen (Clayton and Clayton 1982, p. 3233; Proctor, Hughes, and Fischman 1988, p. 172). Cyclohexene is believed to have relatively low toxicity in mammals because it is rapidly metabolized and eliminated (Clayton and Clayton 1982, p. 3233).

Although no toxic effects have been reported in humans exposed to cyclohexene, this substance is regarded as a mild respiratory irritant and central nervous system depressant based on effects seen in animals (Proctor, Hughes, and Fischman 1988, p. 172; ACGIH 1986, p. 160).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at a significant risk of experiencing the eye, skin, and respiratory irritation associated with exposure to cyclohexene and that they may also be at significant risk of experiencing central nervous system depression. The Agency believes that establishing an 8-hour TWA PEL of 300 ppm will substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CYCLOPENTADIENE
CAS: 542–92–7; Chemical Formula: C_5H_6
H.S. No. 2048

OSHA's current PEL for cyclopentadiene in general industry, construction, and maritime workplaces is 75 ppm as an 8-hour time-weighted average (TWA). OSHA has no PEL for this substance in agriculture. The 1987–1988 ACGIH TLV*—TWA was 75 ppm for this substance; there is no NIOSH REL for cyclopentadiene. OSHA is proposing an 8-hour TWA of 75 ppm for cyclopentadiene in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Cyclopentadiene is a volatile, colorless liquid that polymerizes easily on standing to the dimer dicyclopentadiene. This substance has an irritating odor that is similar to that of terpene (ACGIH 1986, p. 163). Cyclopentadiene is used as a starting material for chlorinated insecticides, synthetic prostaglandin, and the formation of sandwich compounds by chelation. Cyclopentadiene is also used in the manufacture of resins and in organic synthesis (HSDB 1986; Hawley's 1987, p. 338).

Cyclopentadiene causes irritation, dermatitis, and sensitization in humans; in laboratory animals, it has been reported to cause injury to the liver and kidneys as well as irritation and narcosis. The oral LD_{50} for the dimer in rats is 0.82 g/kg, and the LC_{50} in the same species is 39 g/m^3 for the monomer (Clayton and Clayton 1981, p. 3239; RTECS 1990). The dermal LD_{50} in rabbits is 6.7 ml/kg (Clayton and Clayton 1982, p. 3239). Subcutaneous injection of 3.0 ml cyclopentadiene caused narcosis and fatal convulsions in rabbits (Clayton and Clayton 1982, p. 3239). Mild injury of the liver and kidneys was seen at autopsy in rats exposed to a 500-ppm concentration of cyclopentadiene for 7 hours/day for 35 days (over a period of 53 days) (Proctor, Hughes, and Fischman 1988, p. 174). No ill effects were noted by observation, clinical tests, or histologic examination in dogs exposed to a 400-ppm concentration for 6 hours, for 39 episodes, followed by 15 exposures to 00

ppm (Proctor, Hughes, and Fischman 1988, p. 174).

Humans exposed to cyclopentadiene at concentrations of 250 and 500 ppm experienced a sensory response described as distinctly unfavorable (ACGIH 1986, p. 163). Cyclopentadiene has caused contact dermatitis and sensitization in humans (Grant 1974, p. 343).

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to this substance at the levels permitted by the absence of a limit are at significant risk of experiencing irritation and of developing dermatitis and, in some cases, sensitization. The Agency believes that establishing a PEL of 75 ppm as an 8-hour TWA will protect workers in agriculture from these significant risks, which are material impairments of health within the meaning of the Act. In addition, promulgation of this limit with make OSHA's Pel for this substance consistent across all regulated sectors.

DIACETONE ALCOHOL

CAS: 123–42–2; Chemical Formula: $(CH_3)_2C(OH)CH_2COCH_3$

H.S. No. 2052

OSHA's PEL for diacetone alcohol in general industry, construction, and maritime workplaces is 50 ppm as an 8-hour time-weighted average (TWA); there is no PEL in agriculture. The 1987–1988 ACGIH TLV®-TWA was 50 ppm, and this is also the NIOSH REL. OSHA is proposing an 8-hour TWA PEL of 50 ppm for diacetone alcohol in agriculture. Promulgation of this limit will make the PEL for diacetone alcohol consistent across all regulated sectors.

Diacetone alcohol is a colorless liquid with a faint and pleasant odor (HSDB 1990). It is used as a chemical intermediate in organic synthesis and as a solvent for cellulose compounds, fats, oils, waxes, resins, and certain pigments. In addition, it is used in some antifreeze solutions, hydraulic fluids, photographic films, and quick-drying inks and also finds use as a preservative in pharmaceuticals (HSDB 1990).

Diacetone alcohol is primarily an irritant of the eyes, mucous membranes, and respiratory tract; however, at high concentrations, it causes narcosis in laboratory animals. The oral LD_{50} in rats is 4000 mg/kg; the dermal LD_{50} in rabbits is 13,500 mg/kg; other studies indicated that an oral dose of 2 ml/kg produced transient liver damage in rats and that a dose of 4 ml/kg killed the animals (RTECS 1991; Clayton and Clayton 1982, p. 4755). Narcosis was produced in rabbits by single doses ranging from 2.4 to 4.0 ml/kg, and a dose of 5 ml/kg was lethal (Clayton and Clayton 1982, p. 4755). Exposure to 2100 ppm for 1 to 3 hours caused animals to exhibit signs of restlessness, mucous membrane irritation, and drowsiness (Proctor, Hughes, and Fischman 1988, p. 179). Application of pure diacetone alcohol to the skin of rabbits produced mild skin irritation, but moderate to severe eye irritation and transient corneal damage occurred when this substance was dropped into rabbit eyes (RTECS 1991; Clayton and Clayton 1982, p. 4755).

Most human subjects experienced eye, nose, and throat irritation during an exposure to a 100-ppm concentration of diacetone alcohol for 15 minutes. At the 100-ppm concentration, humans also experienced headaches, nausea, and vomiting (RTECS 1990). At a concentration of 400 ppm, these volunteers reported chest discomfort (RTECS 1991; Proctor, Hughes, and Fischman 1988, p. 178). Repeated or prolonged skin contact may cause defatting of the skin and dermatitis, and eye contact will cause moderate to marked irritation and transient corneal damage (Proctor, Hughes, and Fischman 1988, p. 178).

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to this substance at the levels permitted by the absence of a limit are at significant risk of experiencing irritation of the eyes, mucous membranes, and respiratory tract. At high concentrations, they may also be at risk of experiencing narcotic effects. The Agency believes that establishing a PEL of 50 ppm as an 8-hour TWA for diacetone alcohol is necessary to protect workers in agriculture from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIAZOMETHANE

CAS: 334–88–3; Chemical Formula: CH_2N_2

H.S. No. 2053

In general industry, construction, and maritime, OSHA's permissible exposure limit for diazomethane is 0.2 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®-TWA of 0.2 ppm for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL in agriculture of 0.2 ppm for diazomethane. This is the limit recently established for this substance in general industry.

Diazomethane is a yellow gas with a musty odor. Its only use is as a methylating agent in chemical laboratories (HSDB 1984; Clayton and Clayton 1981, p. 2784).

Exposure to diazomethane causes severe eye and respiratory tract irritation and skin and respiratory sensitization in both animals and humans; this substance has also produced cancer and teratogenic effects in animals. Inhalation exposure caused pulmonary edema, hemorrhagic emphysema, and bronchopneumonia in exposed cats, rabbits, and guinea pigs (IARC 1974, p. 226). Cats exposed to a 175-ppm concentration of diazomethane for 10 minutes died within 3 days of pulmonary edema and hemorrhage of the lungs (Clayton and Clayton 1981, p. 2785). In guinea pigs, repeated applications of diazomethane in a cottonseed oil or dioxane vehicle caused skin sensitization (Clayton and Clayton 1981, p. 2785). In skin painting and inhalation bioassays in mice and rats, diazomethane caused an increased incidence of lung tumors (IARC 1974, p. 228). Diazomethane is mutagenic in bacterial test systems (RTECS 1990).

In humans, diazomethane is a severe respiratory tract irritant and allergen that causes, even in very low concentrations, the following effects: coughing, fever, chest pains, cyanosis, fulminating pneumonia, and, occasionally, death. Exposure can lead to hypersensitivity, which is manifested as asthma and fever (Parmeggiani 1983, pp. 620–621). Two persons exposed to unspecified concentrations of diazomethane developed dizziness, headache, chest pain, fever, and severe asthmatic symptoms beginning about 5 hours after exposure. Other exposures to this substance have resulted in cyanosis, pulmonary edema, weakness, chest pain, pneumonia, and death (ACGIH 1986, p. 173). Hepatic enlargement and hemolysis also are reported to result from exposure to diazomethane (Clayton and Clayton 1981, p. 2785). Diazomethane is irritating to the eyes and could cause serious ocular damage, and skin contact with this substance leads to denudation of the skin and mucous membranes (Clayton and Clayton 1981, p. 2785).

Based on this evidence in humans and animals, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the respiratory tract and other irritation associated with exposure to diazomethane. The Agency believes that establishing an 8-hour TWA PEL of 0.2 ppm is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIBUTYL PHOSPHATE

CAS: 107–66–4; Chemical Formula: $(n\text{-}C_4H_9O)_2(OH)PO$
H.S. No. 1119

OSHA currently has an 8-hour TWA PEL of 1 ppm for dibutyl phosphate in the construction and maritime industries. The Agency has no PEL in agriculture for this substance. The ACGIH has a TLV®–TWA of 1 ppm and a TLV®–STEL of 2 ppm for dibutyl phosphate; there is no NIOSH REL, but NIOSH concurs with the PELs being proposed (Ex. 8–47). The Agency is retaining the 8-hour TWA PEL in construction and maritime, is proposing a 2 ppm STEL in these two sectors, and is proposing both limits in agriculture. These are the limits recently established for this substance in general industry.

Dibutyl phosphate is a pale amber liquid that is used as an organic catalyst in the manufacture of phenolic and urea resins and as an antifoaming agent (ACGIH 1986, p. 175; Hawley's 1987, p. 372).

Dibutyl phosphate is an irritant of the eyes, mucous membranes, skin, and upper respiratory tract. The oral LD_{50} in rats is 3.2 g/kg (Proctor, Hughes, and Fischman 1988, p. 183). In a personal communication to the ACGIH, Mastromatteo reported that workers exposed to relatively low concentrations of dibutyl phosphate developed respiratory tract irritation and headache (Mastromatteo 1964a, as cited in ACGIH 1986/Ex. 1–3, p. 236). Workers exposed to an unspecified concentration of dibutyl phosphate also reportedly experienced headaches (ACGIH 1986, p. 175). Repeated contact of dibutyl phosphate with the skin causes dermatitis (Genium MSDS 1987, No. 613).

OSHA preliminarily concludes that both a TWA and a STEL are necessary to protect workers in construction, maritime, and agriculture from the significant risk of eye, skin, and respiratory tract irritation and headaches reported to occur among workers exposed to low concentrations of this substance. The Agency considers these exposure-related effects to be material impairments of health within the meaning of the Act. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

O–DICHLOROBENZENE
CAS: 95–50–1; Chemical Formula: $C_6H_4Cl_2$
H.S. No. 2057

In general industry, construction, and maritime, OSHA's current permissible exposure limit for o-dichlorobenzene is 50 ppm as a ceiling. There is no OSHA limit for o-dichlorobenzene in agriculture. The ACGIH has a ceiling limit for this substance of 50 ppm, with a skin notation; NIOSH has no REL. OSHA is proposing a 50 ppm ceiling limit for o-dichlorobenzene in agriculture; this action will ensure consistency in the exposure limit for this substance across all OSHA-regulated sectors.

o-Dichlorobenzene is a colorless to pale yellow liquid with a pleasant odor (Hazardous Substance Fact Sheet 1985, p. 1). There are many uses for o-dichlorobenzene; it is used as an insecticide against termites and locust borers; a fumigant; a degreasing agent; a heat transfer medium; to remove sulfur from illuminating gas; and in the manufacture of dyes (Merck 1983, p. 444). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In both humans and animals, o-dichlorobenzene is an irritant of the eyes, nose, upper respiratory tract, and skin; at high concentrations, this substance also causes central nervous system depression. In humans, exposure to high concentrations of o-dichlorobenzene has also caused blood dyscrasias. The oral LD_{50} in rats is 500 mg/kg (RTECS 1991). The lowest reported lethal concentration in rats is 4946 mg/m³ (821 ppm) for 7 hours (Hollingsworth et al. 1958, in IARC 1982, Vol. 29, p. 228). Rabbits experienced mild eye irritation after 100 mg of o-dichlorobenzene had been instilled into their eyes and was left for 30 seconds before being rinsed out (RTECS 1991). Repeated application of o-dichlorobenzene to the skin of rats caused death, indicating that this substance can be absorbed through the skin in lethal amounts (U.S. EPA 1985, in Proctor, Hughes, and Fischman 1988, p. 184). Rats exposed to a 977-ppm concentration of o-dichlorobenzene for 2 hours survived; however, exposure to the same concentration for 7 hours was fatal to these animals. No deaths occurred among rats exposed for 3 hours to a 539-ppm concentration of o-dichlorobenzene, but autopsy revealed marked centrilobular necrosis of the liver and cloudy swelling of the tubular epithelium of the kidney (Hollingsworth et al. 1958, in IARC 1982, Vol. 29). Liver damage was also reported in a study involving exposure to o-dichlorobenzene concentrations of 50 to 800 ppm for a few hours (Cameron and Thomas 1937, in ACGIH 1986, p. 178). Several species of experimental animals (rats, rabbits, and guinea pigs) showed no adverse effects from exposure to this substance at a concentration of 93 ppm for 7 hours/day for 6 or 7 months (Hollingsworth et al. 1958).

In humans, exposure to an o-dichlorobenzene concentration of 25 or 30 ppm causes eye irritation (AIHA 1964). After prolonged contact with the skin, o-dichlorobenzene causes blistering, and the skin may subsequently become pigmented; dermal sensitization has also been reported (Hollingsworth et al. 1958). Ten of 26 volunteers accidentally exposed to unspecified concentrations of o-dichlorobenzene for hours/day for 4 days experienced dizziness, severe headache, fatigue, and nausea, in addition to eye, nose, and throat irritation (Zapata-Gayon et al. 1982, in Proctor, Hughes, and Fischman 1988, p. 184). This study also reported significant alterations in the leukocytes of these individuals; these changes were not evident 6 months after exposure ended. A 40-year-old worker exposed for 22 years to o-dichlorobenzene (concentration unspecified) during the preparation of dyestuffs suffered from purpura, anemia, hepatomegaly, and splenic enlargement; death was attributed to o-dichlorobenzene-related proliferating myelosis (Tolot et al. 1969, in Clayton and Clayton 1981, p. 3615). Another 40-year-old worker developed chronic lymphatic leukemia after 10 years of occupational exposure to a solvent containing 80 percent o-, 15 percent p-, and 2 percent m-dichlorobenzene (Clayton and Clayton 1981, p. 3615).

Based on this evidence in humans and animals, OSHA preliminarily concludes that o-dichlorobenzene causes irritation of the eyes, nose, and skin, central nervous system depression, liver and kidney damage, and blood dyscrasias. OSHA therefore believes that, in the absence of a limit for o-dichlorobenzene, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed ceiling limit of 50 ppm is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

1,3-DICHLORO-5,5-DIMETHYL HYDANTOIN
CAS: 118–52–5; Chemical Formula: $C_5H_6Cl_2N_2O_2$
H.S. No. 1122

OSHA currently has a limit of 0.2 mg/m³ as an 8-hour TWA for 1,3-dichloro-5,5-dimethyl hydantoin (DCDMH) in the construction and maritime industries. The Agency has no PEL for DCDMH in agriculture. The ACGIH has a TLV®–

TWA of 0.2 mg/m³ and a TLV®–STEL of 0.4 mg/m³ for this substance; there is no NIOSH REL. The Agency is proposing PELs of 0.2 mg/m³ as an 8-hour TWA and 0.4 mg/m³ as a 15-minute STEL for DCDMH in the construction, agriculture, and maritime industries. OSHA recently established these limits in general industry, and NIOSH (Ex. 8–47) concurs that these limits are appropriate for DCDMH. Promulgation of the PELs will make OSHA's limits for DCDMH consistent across all regulated sectors.

1,3-Dichloro-5,5-dimethyl hydantoin is a white powder with a slight chlorine-like odor. It is used as a chlorinating agent, a chemical intermediate in the production of insecticides, drugs, and amino acids, and as a stabilizer for vinyl chloride polymers (ACGIH 1986, p. 183).

1,3-Dichloro-5,5-dimethyl hydantoin produces systemic toxicity in laboratory animals and irritation of the respiratory tract in humans (Proctor, Hughes, and Fischman 1988, p. 188). The acute oral LD_{50} in rats of both sexes is 542 ±84 mg/kg when a 10-percent aqueous suspension of DCDMH is administered. At autopsy, rats dying within 48 hours of administration showed gastrointestinal hemorrhages (Industrial Bio-Test Laboratories 1961 and 1962, as cited in ACGIH 1986/Ex. 1–3, p. 183). The lowest lethal concentration in rats is 20 g/m³ for 4 hours (RTECS 1990). Applied to the skin of rabbits (100 mg) for 24 hours, DCDMH caused severe injury (RTECS 1990).

Limited exposure data for humans were reported by Baier, who stated that individuals experienced extreme respiratory irritation at an average DCDMH concentration of 1.97 mg/m³, but that some experienced this degree of irritation even at a concentration of 0.7 mg/m³ (Baier 1964, as cited in ACGIH 1986/Ex. 1–3, p. 183). In contact with the eyes, this substance forms hypochlorous acid and therefore causes severe irritation (Proctor, Hughes, and Fischman 1988, p. 188).

The 0.2-mg/m³ 8-hour TWA PEL and 0.4-mg/m³ 15-minute STEL that the Agency is proposing for workplaces in the construction, maritime, and agriculture industries are based on evidence of DCDMH's systemic toxicity in laboratory animals and respiratory irritation at low exposure concentrations in human subjects. The Agency preliminarily concludes that both a TWA and a STEL are necessary to substantially reduce the significant risk of material health impairment that is associated with exposure to this substance. The proposed limits are those recently established for this substance in general industry.

DICHLOROETHYL ETHER
CAS: 111–44–4; Chemical Formula: $(CH_2ClCH_2)_2O$
H.S. No. 1127

OSHA currently has a 15-ppm ceiling limit, with a skin notation, for dichloroethyl-ether in the construction and maritime industries. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA of 5 ppm and a TLV®–STEL of 10 ppm, with a skin notation, for dichloroethyl ether. NIOSH has no REL for this substance but concurs with the limits being proposed. The Agency is proposing a 5 ppm TWA and a 10 ppm STEL for dichloroethyl ether in agriculture, construction, and maritime. These are the limits recently established for dichloroethyl ether in general industry.

Dichloroethyl ether is a colorless, flammable liquid with a nauseating odor. It is used as a soil fumigant, a solvent, a dewaxing agent, a chemical intermediate, a wetting agent, and as a penetrant (ACGIH 1986, p. 186). Dichloroethyl ether also finds use as an ingredient of paints, paint removers, dry-cleaning fluids, lacquers, and varnishes (IARC 1975, Vol. 9, p. 119). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Dichloroethyl ether causes severe irritation of the eyes, mucous membranes, skin, and respiratory tract in both animals and humans; at high concentrations, it causes narcosis. This substance has also been shown to cause cancer in mice. The oral LG_{50} in rats is 75 mg/kg; the dermal LG_{50} in rabbits is 720 mg/kg; and the LC_{50} in rats is 330 mg/m³ for 4 hours (RTECS 1991). Schrenk, Patty, and Yant (1933/Ex. 1–665) reported that guinea pigs exposed to the vapor of dichloroethyl ether at a concentration of 500 ppm experienced immediate and severe eye and nose irritation, respiratory disturbances after 1.5 to 3 hours, and death after 5 to 8 hours; lung, kidney, liver, and brain damage were observed in these animals at autopsy. Exposure to a reduced concentration of 105 ppm caused death after 10 hours of continuous exposure, while a 18-hour exposure to the same concentration caused irritation only (Carpenter, Smyth, and Pozzani 1949/Ex. 1–722). At 35 ppm, for an unspecified duration, irritation but no other adverse effects were observed (Schrenk, Patty, and Yant 1933/Ex. 1–665). Rats responded similarly; 4-hour exposures to a concentration of 250 ppm proved lethal to these animals (Carpenter, Smyth, and Pozzani 1949/Ex. 1–722). Repeated exposures to 69 ppm (7 hours/day, 5 days/week for 130 days) caused no serious injury in rats or guinea pigs; only mild stress-related effects were noted (Kosyan 1967/Ex. 1–914). However, other studies of guinea pigs have shown mild primary irritative effects on the skin, and fatalities occurred when 300 mg/kg was applied dermally as a pure liquid for 24 hours (Smyth and Carpenter 1948/Ex. 1–375). Direct contact of dichloroethyl ether with the eye causes moderate pain, conjunctival irritation, and transient corneal injury (Carpenter and Smyth 1946/Ex. 1–859). In oral carcinogenicity bioassays, dichloroethyl ether has caused an increased incidence of hepatomas in two strains of mice (IARC 1975, Vol. 9, p. 121). By subcutaneous administration, this substance has also caused a low incidence of injection-site tumors in mice (IARC 1975, Vol. 9, p. 121).

Humans exposed briefly to dichloroethyl ether at concentrations above 550 ppm experienced intolerable eye and nasal irritation, with coughing, nausea, and retching. Exposure to concentrations between 100 and 260 ppm were irritating but tolerable; however, the odor of dichloroethyl ether continued to be nauseating even at 35 ppm (Schrenk, Patty, and Yant 1933/Ex. 1–665). Eye irritation has been reported from industrial exposure to a concentration of dichloroethyl ether of 2.5 ppm (Bell and Jones 1958/Ex. 1–714). A single fatality, presumably from inhalation of dichloroethyl ether vapor, has been reported but not documented (Elkins 1959c, as cited in ACGIH 1986/Ex. 1–3, p. 186).

OSHA is proposing a 5 ppm TWA and 10 ppm STEL, with a skin notation, for this substance in construction, maritime, and agriculture. The Agency preliminarily concludes that these limits are necessary to substantially reduce the significant risk of irritation, lung injury, and nausea associated with occupational exposure to elevated levels of dichloroethyl ether. OSHA considers these exposure-related effects material impairments of health. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

2,2-DICHLOROPROPIONIC ACID
CAS: 75–99–0; Chemical Formula: CH_3CCl_2COOH
H.S. No. 1130

OSHA has no limit for 2,2-dichloropropionic acid in the construction, maritime, or agriculture industries. The ACGIH has a TLV®–

TWA of 1 ppm for this substance; there is no NIOSH REL. The Agency is proposing a 1 ppm 8-hour TWA for 2,2-dichloropropionic acid in the construction, agriculture, and maritime industries. This is the limit recently established for this substance in general industry, and NIOSH (Ex. 8–47) concurs that it is appropriate.

2,2-Dichloropropionic acid is a colorless liquid. It is used as a herbicide both in agricultural and non-crop applications (ACGIH 1986, p. 190; Sittig 1985, p. 332). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2,2-Dichloropropionic acid is corrosive to the skin and may cause permanent eye injury (ACGIH 1986, p. 190). The oral LD_{50} in rats is 970 mg/kg (RTECS 1991). Percutaneous absorption for this substance is reported to be negligible (Gosselin, Smith, and Hodge 1984, p. II-341). Application of 100 $\mu g/m^3$ to the skin of rabbits for 24 hours caused irritation (RTECS 1991). Seven-hour exposures to a saturated atmosphere of the acid vapor caused no ill effects in rats, and a 120-day study of dietary exposure in rats showed a no-effect level of 15 mg/kg/day (ACGIH 1986, p. 190).

Acute human exposures to 2,2-dichloropropionic acid have been reported to cause mild to moderate skin, eye, and respiratory irritation. Minimal respiratory irritation was observed in workers exposed to concentrations of between 2 and 7 ppm (ACGIH 1986, p. 190). Repeated or prolonged contact may cause mild skin burns, and eye contact causes transient corneal injury (HSDB 1985). The signs and symptoms of systemic poisoning caused by 2,2-dichloropropionic acid include anorexia, nausea, and sweating (Hazardous Substance Fact Sheet 1986).

The Agency preliminarily concludes that a 1-ppm TWA limit for 2,2-dichloropropionic acid will protect workers in construction, maritime, and agriculture from the significant risk of eye, skin, and respiratory irritation associated with exposure to this substance. The Agency considers these exposure-related effects to be material impairments of health. The proposed PEL is the limit recently established for this substance in general industry.

DIETHYLAMINE
CAS: 109–89–7; Chemical Formula: $(C_2H_5)_2NH$
H.S. No. 1137

OSHA's current limit for diethylamine in the construction and maritime industries is 25 ppm as an hour TWA. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA of 10 ppm and a TLV®–STEL of 25 ppm for diethylamine; there is no NIOSH REL for this substance. OSHA is proposing a PEL of 10 ppm as an 8-hour TWA and a STEL of 25 ppm for diethylamine in the construction, agriculture, and maritime industries. These limits were recently established for this substance in general industry, and NIOSH (Ex. 8–47) concurred that these limits were appropriate for diethylamine.

Diethylamine (DEA) is a colorless liquid with an ammonia-like odor. It is used in pharmaceuticals and dyes, as a flotation agent, and in the rubber and petroleum industries (ACGIH 1986, p. 197). DEA also finds use as a chemical intermediate in the synthesis of rubber processing chemicals and other substances (HSDB 1985).

Diethylamine is a strong irritant of the eyes, skin, and mucous membranes in both animals and humans; multiple exposures of laboratory animals to sublethal concentrations of DEA cause tracheitis, bronchitis, pneumonitis, and pulmonary edema (Proctor, Hughes, and Fischman 1988, p. 199; ACGIH 1986/Ex. 1–3, p. 197). The oral LD_{50} in rats is 540 mg/kg, the dermal LD_{50} in rabbits is 820 mg/kg, and the 48-hour LC_{50} in rats is 4000 ppm (RTECS 1991). Instillation of 1 percent or greater solutions of DEA into the eyes of rabbits causes corneal opacity (injury graded 10 on an ascending severity scale of 1 to 10) (RTECS 1991; Grant 1986, p. 333; Sutton 1963/Ex. 1–1101), and direct contact of the skin with diethylamine causes necrosis (ACGIH 1986, p. 197). Rabbits exposed 7 hours/day, 5 days/week for 6 weeks to a 50- or 100-ppm concentration of diethylamine survived; those exposed to a 50-ppm concentration showed marked lung and corneal irritation, and, occasionally, myocardial degeneration (Brieger and Hodes 1951/Ex. 1–408). In the animals exposed to 100 ppm, these changes were more severe, and degeneration of the heart muscle was marked (Brieger and Hodes 1951/Ex. 1–408).

In humans, inhalation of high concentrations of diethylamine causes severe cough and chest pain; if exposure is repeated or prolonged, pulmonary edema may occur. One individual was splashed in the eye with diethylamine and subsequently experienced intense pain; despite treatment, some permanent visual impairment occurred (Proctor, Hughes, and Fischman 1988, p. 199). Vesiculation and necrosis of the skin occurs if liquid diethylamine contacts the skin (AIHA Hygienic Guide Series 1960).

Based on this evidence in humans and animals, OSHA preliminarily concludes that the limits being proposed in construction, maritime, and agriculture—10 ppm as an 8-hour TWA and 25 ppm as a 15-minute STEL—are necessary to reduce the significant risk of material impairment of health associated with exposure to DEA. These are the limits recently established for this substance in general industry.

DIETHYLAMINOETHANOL
CAS: 100–37–8; Chemical Formula: $(C_2H_5)_2NCH_2CH_2OH$
H.S. No. 2062

In general industry, construction, and maritime, OSHA's current permissible exposure limit for 2-diethylaminoethanol is 10 ppm as an 8-hour TWA, with a skin notation. The ACGIH has a TLV®–TWA of 10 ppm, also with a skin notation, for this substance; there is no NIOSH REL. OSHA is proposing that a 10-ppm 8-hour TWA PEL, and a skin notation, apply in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

2-Diethylaminoethanol is a colorless liquid with a weak odor similar to that of ammonia (Sittig 1985, p. 343). This substance is used as a curing agent for resins, an emulsifying agent, a fabric softener, a chemical intermediate for petroleum and gas- processing chemicals, cosmetics, and surface coatings, and in pharmaceutical manufacture (HSDB 1985; Sittig 1985, p. 343; ACGIH 1986, p. 198).

2-Diethylaminoethanol is an irritant of the eyes, skin, and mucous membranes. The liquid is a severe irritant of the eyes and skin and causes skin sensitization in laboratory animals; however, data on the toxic effects of exposure to this substance are very limited for humans, although nausea and vomiting have been reported. The oral LD_{50} in rats is 1300 mg/kg, and the dermal LD_{50} in rabbits is 1260 mg/kg (RTECS 1990). Instilled into rabbit eyes, 5 milligrams produced severe irritation (RTECS 1990). Marked eye and nasal irritation was exhibited by rats on the first day of exposure to a 500-ppm concentration for 6 hours. Mild tremors of the forelegs and head occurred throughout the 5-day study and, by the third exposure, corneal opacity was noted in several animals. All rats showed weight loss, and four of 20 died by the fifth exposure. Acutely poisoned animals showed purulent bronchitis and bronchopneumonia at autopsy (ACGIH 1986, p. 198; Proctor, Hughes, and Fischman 1988, p. 200). In guinea pigs, the liquid has been shown to be a severe irritant of the skin and to cause skin

sensitization (Proctor, Hughes, and Fischman 1988, p. 200).

A reported human exposure to this substance involved the brief inhalation of a 100-ppm concentration of diethylamino-ethenol and resulted in nausea and vomiting within 5 minutes of the onset of exposure (Proctor, Hughes, and Fischman 1988, p. 200).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing eye, skin, and respiratory irritation and nausea associated with exposure to diethylaminoethanol. The Agency believes that establishing an 8-hour TWA of 10 ppm, with a skin notation, is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIISOBUTYL KETONE

CAS: 108–83–8; Chemical Formula: $[(CH_3)_2CHCH_2]_2CO$

H.S. No. 1140

OSHA currently has an hour TWA limit of 50 ppm for diisobutyl ketone in the construction and maritime industries. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA of 25 ppm for diisobutyl ketone, which is also the NIOSH REL. OSHA is proposing a PEL of 25 ppm as an 8-hour TWA for diisobutyl ketone in the construction, agriculture, and maritime industries. This is the limit recently established for this substance in general industry.

The primary health effects associated with exposure to diisobutyl ketone are eye, nose, and throat irritation, although experimental animals have shown some systemic effects and at high concentrations have shown narcotic effects. The oral LD_{50} in rats is 5750 mg/kg, the lowest lethal concentration in the same species is 2000 ppm for 4 hours, and the dermal LD_{50} in rabbits is 16 g/kg (RTECS 1990). Rats and guinea pigs survived single exposures lasting for 7.5 to 16 hours to essentially saturated vapor (McOmie and Anderson 1949/Ex. 1–918). Smyth, Carpenter, and Weil (1949/Ex. 1–528) reported that five of six rats were narcotized and died after exposure to a concentration of 2000 ppm for hours. At autopsy, acutely poisoned animals showed damage of the lungs, liver, and kidneys (Carpenter, Pozzani, and Weil 1953). Direct application of diisobutyl ketone to rabbit skin caused only mild irritation, and no eye irritation was reported after instillation of this substance into rabbit eyes (Smyth, Carpenter, and Weil 1949/Ex. 1–528). Carpenter and Smyth (1946/Ex. 1–859) reported a no-effect level for diisobutyl ketone of 125 ppm in rats and guinea pigs given 30 7-hour exposures. At a concentration of 250 ppm on the same regimen, the liver and kidney weights of female rats increased and the liver weights of male guinea pigs decreased; at concentrations of 530 and 920 ppm, rats showed increased liver and kidney weights at autopsy, and an increase in mortality was noted when the concentration reached 1650 ppm (Carpenter and Smyth 1946/Ex. 1–859). Daily diisobutyl ketone doses of 4000 mg/kg administered by gavage killed all rats after 2 or 3 days. Severe central nervous system depression, hepatotoxicity, and dehydration were the cause of death in these acutely poisoned animals (Clayton and Clayton 1982, p. 4770).

Silverman, Schulte, and First (1946/Ex. 1–142) reported that volunteers experienced eye irritation and complained of objectionable odor when exposed to concentrations of diisobutyl ketone above 25 ppm. At a 100-ppm concentration for 3 hours, these subjects experienced lacrimation, throat irritation, headaches, and dizziness (Silverman, Schulte, and First (1946/Ex. 1–142).

Based on this evidence, OSHA preliminarily concludes that the proposed 25-ppm limit is necessary to reduce the significant risk of irritation, headaches, and dizziness associated with workplace exposures to diisobutyl ketone. This is the limit recently established for this substance in general industry. The Agency considers these exposure-related effects material impairments of health and believes that the proposed PEL will substantially reduce these risks for workers in construction, maritime, and agriculture.

DIMETHYLAMINE

CAS: 124–40–3; Chemical Formula: $(C_2H_5)_2NH$

H.S. No. 2066

In general industry, construction, and maritime, OSHA's permissible exposure limit for dimethylamine is 10 ppm as an 8-hour time-weighted average (TWA). There is no limit in agriculture for this substance. The 1987–1988 ACGIH TLV®–TWA for this substance is 10 ppm; NIOSH has no REL for dimethylamine. OSHA is proposing an 8-hour TWA PEL of 10 ppm for dimethylamine in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Dimethylamine is a gas at room temperature and has a strong ammonia-like odor (HSDB 1985; Hawley's 1987, p. 409). It is used as a propellant for pesticides, a chemical intermediate, an accelerator in vulcanizing rubber, and as an attractant for boll weevils (to facilitate their extermination). Dimethylamine is also used as an acid gas absorbent, a dehairing agent, a gasoline stabilizer, and an ingredient in missile fuels, rocket propellants, and pharmaceuticals (HSDB 195; Hawley's 1987, p. 410).

Dimethylamine is an irritant of the eyes, mucous membranes, and respiratory tract in both animals and humans (Proctor, Hughes, and Fischman 1988, p. 207; ACGIH 1986, p. 206). The 6-hour LC_{50} in rats is 4540 ppm, and the oral LD_{50}s in mice, rats, and guinea pigs are 316 mg/kg, 698 mg/kg, and 240 mg/kg, respectively (RTECS 1990). Severe irritation of the gastric mucosa, accompanied by hemorrhage in the stomach wall, was noted in animals acutely poisoned by oral administration (ACGIH 1986, p. 206). Signs of eye irritation, gasping, tearing, salivation, and bloody discharge from the nose were noted in rats that died after exposure for 1 hour to a 4540-ppm concentration. Corneal opacity occurred 3 hours after the exposure began, and death was usually preceded by convulsions; at autopsy, severe congestion, ulceration, and necrosis of the nasal turbinates were observed (Steinhagen et al. 1982). At concentrations greater than 2500 ppm, emphysema, bronchopneumonia, liver cell death, and corneal ulceration occurred in acutely poisoned animals (Steinhagen et al. 1982). Animals of several species were repeatedly exposed to concentrations of approximately 100 to 200 ppm of dimethylamine for 18 to 20 weeks and developed marked irritation of the respiratory tract and pulmonary edema and also sustained injury to the liver (McNulty 1983). Among the guinea pigs and rabbits exposed on this regimen, corneal injury was observed after 9 days of exposure; degenerative changes of the testicles occurred in one monkey and one of ten rats in these experiments (ACGIH 1986, p. 206). Continuous exposure to a 5 ppm dimethylamine concentration for 90 days resulted in no overt signs of toxicity in experimental animals of several species, but autopsy showed inflammatory changes in the lungs (Coon et al. 1970). Skin contact with dimethylamine results in necrosis, and eye contact causes severe corneal injury or permanent corneal opacity (Proctor, Hughes, and Fischman 1988, p. 207; Grant 1986, p. 348).

In humans, contact of the eyes with this substance causes intense pain, severe damage, and may cause

permanent corneal opacity (Grant 1986, p. 348). Skin contact with the liquid may cause minor irritation on short contact; on longer contact, necrosis of the skin is possible (Genium MSDS 1986, No. 586). Dermatitis and conjunctivitis have both been reported to occur in chemical workers chronically exposed to this substance (Proctor, Hughes, and Fischman 1988, p. 207). By analogy with effects seen in animals, sublethal doses could result in delayed tracheitis, bronchitis, pulmonary edema, and pneumonitis, and ingestion could lead to gastric irritation and hemorrhage (ACGIH 1986a, p. 207).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye, mucous membrane, and respiratory tract irritation associated with exposure to dimethylamine. The Agency believes that establishing an 8-hour TWA PEL of 10 ppm is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIMETHYLPHTHALATE
CAS: 131–11–3; Chemical Formula: $C_6H_4(COOCH_3)_2$
H.S. No. 1136

OSHA's PEL for dimethylphthalate in general industry, construction, and maritime is 5 mg/m³ as an 8-hour TWA; there is no PEL in agriculture. The ACGIH TLV®–TWA for dimethylphthalate is 5 mg/m³ as an 8-hour TWA; there is no NIOSH REL for this substance. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for dimethylphthalate in agriculture. This action will make the PEL for this substance consistent across all OSHA-regulated sectors.

Dimethylphthalate is a colorless, viscous liquid with a slightly aromatic, ester-like odor (Clayton and Clayton 191, p. 2343; HSDB 1991). It is primarily used as a solvent and plasticizer. Since World War II, dimethylphthalate has been used as an insect repellant; this substance is also an effective leech repellant. Dimethylphthalate also finds use as an ingredient in solid rocket propellants, lacquers, coating agents, safety glass, molding powders, and perfumes (HSDB 1987).

Dimethylphthalate is an irritant of the eyes and mucous membranes in both animals and humans; embryotoxic and fetotoxic effects have been reported in animals. The oral LD_{50}s in rats and mice are 6800 mg/kg (both species); the lowest lethal concentration in cats is 9630 mg/m³ for 6 hours (RTECS 1991). Applied to 10 percent of the body surface of rabbits for 90 days at a dose of 4.0 mg/kg, dimethylphthalate caused death in some animals; at autopsy, pulmonary edema and slight kidney damage were seen in these animals (Draize J. et al. 1948, in ACGIH 1986, p. 211). Cats exposed to dimethylphthalate vapors exhibited signs of intense irritation of the mucous membranes, excessive salivation, and restlessness at a concentration of 250 ppm; exposure to a concentration of 1250 ppm caused the death of one cat and signs of nervous system depression in the surviving animals (LeFaux 1968, p. 136, in ACGIH 1986, p. 211). A chronic feeding study in female rats involving doses of 2 to 8 percent dimethylphthalate in the diet showed growth effects in animals dosed at the 4 and 8 percent levels and nephritic changes in those dosed at the 8 percent level (Clayton and Clayton 1982, p. 2343). Pregnant rats given intraperitoneal injections of dimethylphthalate at various doses on days 5 through 15 or 3 through 9 of gestation had litters with an increased number of skeletal abnormalities or experienced an increase in the number of resorptions (RTECS 1991; Singh, Lawrence, Autian 1972, J. Pharmacol. Sci. 61:51–55; J. Dairy Sci 55, 1972).

In humans, dimethylphthalate is an irritant of the eyes and mucous membranes; this substance is not readily absorbed through the skin (Windholz M and Budavari S, 1976). Ingestion of dimethylphthalate causes gastrointestinal irritation, hypotension, and coma. In one fatal case of a suicidal ingestion of a mixture containing dimethylphthalate and ketone peroxides, the principal toxic symptoms were marked esophagitis and gastritis with hemorrhage (NIOSH/OSHA Guidelines 1981, p. 1). Direct contact of dimethylphthalate with the eyes has caused chemical burns that subsequently healed completely (McLaughlin RS, 1946, in Clayton and Clayton 1981, p. 2343).

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to this substance at the levels permitted by the absence of a limit are at significant risk of experiencing irritation of the eyes and mucous membranes. The Agency considers these effects material health impairments and believes that establishing a PEL of 5 mg/m³ as an 8-hour TWA is necessary to protect workers in agriculture from these significant risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

EPICHLOROHYDRIN
CAS: 106–89–; Chemical Formula: C_3H_5ClO
H.S. No. 1158

OSHA has an 8-hour TWA limit of 5 ppm, with a skin notation, for epichlorohydrin in the construction and maritime industries. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®-TWA of 2 ppm, with a skin notation, for epichlorohydrin. NIOSH considers this substance a potential human carcinogen and recommends that occupational exposure be minimized to the extent possible. OSHA is proposing a 2 ppm TWA, with a skin notation, for epichlorohydrin in the construction, agriculture, and maritime industries. This is the limit recently promulgated for this substance in the air contaminants standard for general industry.

Epichlorohydrin is an unstable liquid with an odor like that of chloroform. It is used as a solvent, as the raw material for the manufacture of epoxy and phenoxy resins and of elastomers, in the synthesis of glycerol, and in the rubber and paper industries (ACGIH 1986, p. 233).

In animals, epichlorohydrin causes irritation and is systemically toxic by all routes of exposure (Shell Chemical Corporation 1958, as cited in ACGIH 1986/Ex. 1–3, p. 233). Chronic exposure causes nephrotoxicity (IARC 1987, Suppl. 7, p. 202). This substance also causes cancer and has reproductive effects in experimental animals. The oral LD_{50} in rats ranges from 90 mg/kg to 260 mg/kg, and the dermal LD_{50} in rabbits ranges from 515 mg/kg to 755 mg/kg (Lawrence, Malik, Turner, and Autian 1972/Ex. 1–1058; RTECS 1987). Acutely poisoned animals show respiratory and nervous system effects before death. In mice, single 30-minute exposures to an 8300-ppm concentration of epichlorohydrin vapor caused muscular paralysis and death from respiratory failure; similar results have been reported in rats after dermal application of a 0.5-ml/kg dose and in mice after repeated oral administration of 0.1 mg/kg doses (Shell Chemical Corporation 195, as cited in ACGIH 1986/Ex. 1–3, p. 233). When exposed to an epichlorohydrin concentration of 32 ppm (7 hours/day, 5 days/week) for 91 days, rats failed to gain weight normally; at a concentration of 16 ppm they developed enlarged kidneys (ACGIH 1986/Ex. 1–3, p. 233). Gage (1959/Ex. 1–1052) confirmed these findings and demonstrated lung, liver, and kidney injury in rats exposed repeatedly for 6 hours to epichlorohydrin concentrations ranging from 17 to 120 ppm; no effects

were observed when the concentration was reduced to 9 ppm. Epichlorohydrin has been tested for carcinogenicity in rats by oral administration and inhalation and in mice by skin application and subcutaneous and intraperitoneal injection. The results of both bioassays in rats were positive (papillomas and carcinomas of the forestomach and nasal cavity, respectively). Results of the skin painting study in mice were negative; however, epichlorohydrin caused injection-site tumors when administered to mice subcutaneously and was active in a mouse-lung tumor bioassay by intraperitoneal injection (IARC 1987, Suppl. 7, p. 202). Based on this evidence, the International Agency for Research on Cancer has concluded that the evidence for the carcinogenicity of epichlorohydrin in animals is sufficient and has assigned this substance to Category 2A (IARC 1987, Suppl. 7, p. 202). Administration of 15 mg/kg/day to rats caused infertility within 7 days; cessation of exposure restored fertility in these animals (IARC 1976, Vol. 11, p. 135). In a recent experiment, fertility in male rats given 50 mg/kg/day for 21 days before mating was totally impaired; dose-dependent trends in all sperm-motion parameters were observed in this study (Toth, Zenick, and Smith 1989, in Silver Platter printout).

In humans, exposure to epichlorohydrin causes moderate-to-severe irritation of the eyes and respiratory tract, skin burns and sensitization, and central nervous system, blood, and kidney effects. Exposure to an epichlorohydrin concentration of 20 ppm for 1 hour caused burning of the eyes and nasal mucosa (NIOSH 1976c/Ex. 1–972). At a concentration of 40 ppm, irritation persisted for 48 hours after exposure (NIOSH 1976c/Ex. 1–972). A worker exposed to high (not further specified) concentrations of epichlorohydrin experienced eye and upper respiratory tract irritation, nausea, vomiting, headache, and difficult breathing; this individual continued to show signs of pulmonary and liver damage and of hypertension 2 years after the incident (NIOSH 1976c/Ex. 1–972). In contact with the skin, epichlorohydrin causes redness and itching, as well as burns that may have a delayed onset (NIOSH 1976c/Ex. 1–972). Six workers in the Netherlands developed skin sensitization reactions to this substance after repeated contact with it in the workplace (van Joost 1988, Contact Derm: 19). NIOSH (1976c/Ex. 1–972) reports that humans exposed to concentrations of epichlorohydrin above 100 ppm for brief periods have subsequently developed lung edema and kidney damage. A group of epichlorohydrin-exposed workers showed blood and cytogenetic effects, including increased incidences in the percentage of lymphocytes with chromatid breaks, damaged blood cells, and abnormal cells (Picciano 1979, Mutat. Res. 66:169–173). A laboratory assistant severely overexposed to epichlorohydrin developed eye and lung irritation, followed by chronic asthmatic bronchitis. Serial biopsies of the liver in this worker established that a substantial amount of fatty infiltration had occurred (Schultz 1964, in Deutsche med. Wochenschrift 89:1342–1344). The results of epidemiological studies of epichlorohydrin-exposed workers have been inconclusive. One study showed a slight excess of lung cancer in two cohorts of U.S. workers (Enterline 1982, in Ann. N.Y. Acad. Sci. 381:344–349); another study in a European cohort yielded inconclusive results (Tassignon, Bos, Craigen, Jacquet, Kueng, Lanouziere-Simon, Pierre 1983, in Int. Arch. Occup. Environ. Hlth. 51:325–336). A recent mortality study in dye and resin workers (Delzell, Macaluso, Cole 1989, in JOM 31) has shown a slight excess of lung cancer, although the number of observed cases was small in this study.

OSHA is proposing an hour TWA limit of 2 ppm, with a skin notation, for epichlorohydrin in the construction, agriculture, and maritime industries. These are the limits recently established for this substance in general industry. The skin notation is proposed because of this substance's capacity to penetrate the skin and cause systemic toxicity. The Agency preliminarily concludes that this limit and the skin notation will protect workers in these sectors from the significant risk of dermal, respiratory, liver, and kidney effects that are potentially associated with exposure to epichlorohydrin at elevated concentrations. OSHA considers these exposure-related effects material impairments of health.

ETHYL ACETATE

CAS: 141–78–6; Chemical Formula: $CH_3COOC_2H_5$

H.S. No. 2075

In general industry, construction, and maritime, OSHA's current permissible exposure limit for ethyl acetate is 400 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 400 ppm for this substance; there is no NIOSH REL. OSHA is proposing to apply an 8-hour TWA PEL of 400 ppm to ethyl acetate in agricultural workplaces. Promulgation of this limit will make the PEL for ethyl acetate consistent across industry sectors.

Ethyl acetate is a colorless liquid with a fruity odor. It is used as a solvent for varnishes, lacquers, and nitrocellulose; and in the manufacture of artificial silk and leather, perfumes, photographic film, and artificial fruit essences (ACGIH 1986, p. 239; Clayton and Clayton 1982, p. 2267).

Ethyl acetate is an irritant of the eyes, mucous membranes, and respiratory tract in both animals and humans; at high concentrations it causes central nervous system depression in laboratory animals (ACGIH 1986, p. 239; Proctor, Hughes, and Fischman 1988, p. 234). The oral LD_{50} in rats is 5620 mg/kg; the subcutaneous LD_{50} in cats is reported to be 3000 mg/kg (RTECS 1990). Cats exhibited irritation and labored breathing following an 8-hour exposure to a 9000-ppm concentration of ethyl acetate; deep narcosis resulted from exposure to 20,000 ppm for 45 minutes, and exposure of these animals to 43,000 ppm for about 15 minutes was fatal. Autopsy revealed pulmonary edema with hemorrhage and hyperemia of the respiratory tract (Proctor, Hughes, and Fischman 1988, p. 234). Rabbits exposed repeatedly to 4450 ppm showed secondary anemia with leukocytosis and hyperemia and, at autopsy, liver damage (Proctor, Hughes, and Fischman 1988, p. 234). A study by Smyth and Smyth (1928) stated that animals could survive 65 exposures lasting 4 hours each at a concentration of 2000 ppm without suffering any ill effects.

Exposure of unacclimated human subjects to a 200-ppm concentration of ethyl acetate resulted in complaints about its strong, objectionable odor, and irritation of the eyes, nose, and throat was experienced at a concentration of 400 ppm (ACGIH 1986, p. 239). However, no adverse effects were noted in workers exposed for several months to ethyl acetate concentrations ranging from 375 to 1500 ppm (Proctor, Hughes, and Fischman 1988, p. 234; ACGIH 1986, p. 239). Exposure to ethyl acetate may, in rare instances, cause skin sensitization and result in inflammation of the mucous membranes and eczematous eruptions (Proctor, Hughes, and Fischman 1988, p. 234). There is one report of a fatality that resulted when a tank painter inhaled very high concentrations (level unspecified) of ethyl acetate (ACGIH 1986, p. 239).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant

risk of experiencing the eye, mucous membrane, and respiratory tract irritation potentially associated with exposure to ethyl acetate and that they may also be at significant risk of experiencing central nervous system depression. The Agency believes that establishing an 8-hour TWA of 400 ppm for ethyl acetate in agriculture is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYL AMYL KETONE

CAS: 541–85–5; Chemical Formula: $CH_3CH_2COCH_2CH_2CHCH_2CH_3$

H.S. No. 2080

In general industry, construction, and maritime, OSHA's permissible exposure limit for ethyl amyl ketone is 25 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 25 ppm for ethyl amyl ketone. NIOSH has no REL but concurs with the PEL being proposed. OSHA is proposing an 8-hour TWA PEL in agriculture of 25 ppm for ethyl amyl ketone. Promulgation of this limit will make the PEL for ethyl amyl ketone consistent across all OSHA-regulated sectors.

Ethyl amyl ketone, which is also called 5-methyl-3-heptanone, is a colorless liquid with a strong, pungent odor that is similar to that of apricots and peaches. Ethyl amyl ketone is used as a solvent for nitrocellulose and vinyl resins and in the manufacture of perfume (Hawley's 1987, p. 478; Clayton and Clayton 1982, p. 4767).

Ethyl amyl ketone is an irritant of the eyes, mucous membranes, and skin in humans and animals. At very high concentrations, it also causes central nervous system depression (Proctor, Hughes, and Fischman 1988, p. 237; Clayton and Clayton 1982, p. 4767). The oral LD_{50}s for rats, mice, and guinea pigs are 3500 mg/kg, 300 mg/kg, and 2500 mg/kg, respectively (RTECS 1991). In contact with the skin of rabbits, a 500-mg dose of ethyl amyl ketone caused mild irritation (RTECS 1991). The lowest lethal concentrations in rats and mice are 3484 ppm over 8 hours and 3484 ppm over 4 hours, respectively (RTECS 1988). Mice and rats rapidly developed signs of eye and respiratory tract irritation when exposed to a single dose of vapor-saturated air (an ethyl amyl ketone concentration of approximately 3000 ppm) for 4 hours. Three of six mice died from this exposure, but there were no deaths among the rats (Clayton and Clayton 1982, p. 4768). Four of the six rats died after exposure to a 6000-ppm concentration of ethyl amyl ketone for 8 hours (Clayton and Clayton 1982, p. 476). Other signs of overexposure, including ataxia, prostration, and respiratory distress, were observed in these animals and were followed by narcosis (Clayton and Clayton 1982, p. 4768; Proctor, Hughes, and Fischman 1988, p. 237).

In humans, eye contact with ethyl amyl ketone causes transient corneal injury, and repeated contact with the skin results in drying and cracking (Proctor, Hughes, and Fischman 1988, p. 237). Individuals exposed to a 25-ppm concentration of ethyl amyl ketone developed irritation of the eyes and respiratory tract; exposure to 100 ppm caused symptoms of mucous membrane irritation, headache, and nausea that were too severe to be tolerated for more than a few minutes (Krasavage 1982, in Proctor, Hughes and Fischman 1988, p. 237).

Based on this evidence, OSHA preliminarily concludes that ethyl amyl ketone causes irritation of the eyes and mucous membranes, dermatitis, and narcosis in exposed workers. OSHA therefore preliminarily finds that, in the absence of a limit for ethyl amyl ketone, workers in agriculture are at significant risk of experiencing these material impairments of health and that the proposed 8-hour TWA PEL of 25 ppm is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYL BENZENE

CAS: 100–41–4; Chemical Formula C_8H_{10}

H.S. No. 1162

OSHA's limit for ethyl benzene in the construction and maritime industries is 100 ppm as an 8-hour TWA. The Agency has no PEL in agriculture for this substance. The ACGIH has a TLV®–TWA of 100 ppm and a TLV®–STEL of 125 ppm for ethyl benzene; there is no NIOSH REL. Based on the irritant properties associated with exposure to ethyl benzene, OSHA is proposing permissible exposure limits for this substance in the construction, agriculture, and maritime industries of 100 ppm as an 8-hour TWA and 125 ppm as a 15-minute STEL. The Agency recently established these limits for ethyl benzene in general industry, and NIOSH (Ex. 8–47) concurred that these limits were appropriate for this substance.

Ethyl benzene is a colorless, flammable liquid with an aromatic odor. It is used as an intermediate in synthetic rubber and styrene production and as a solvent (ACGIH 1986, p. 244). This substance also finds use as a component of fuel (HSDB 1985).

Ethyl benzene is an irritant of the eyes, skin, and mucous membranes in both animals and humans; at high concentrations, this substance causes central nervous system depression (Proctor, Hughes, and Fischman 1988, p. 237). The oral LD_{50} in rats is 3500 mg/kg, and the dermal LD_{50} in rabbits is reported to range from 5000 to 17,800 mg/kg (Clayton and Clayton 1982, p. 3306; RTECS 1991). The lowest lethal concentration in rats is 4000 ppm for 4 hours (RTECS 1991).

A comment submitted by the Arco Chemical Company in OSHA's recent air contaminants rulemaking for general industry summarizes the available information on ethyl benzene's toxicity in animals, as reported in several recent studies (ECETOC 1986; Dynamac Corporation 1986) and in a personal communication from the National Toxicology Program's Chemical Manager for Ethyl Benzene. (Arco's comment summarizing these findings is in the docket as Ex. 3–638.) These investigators found that ethyl benzene causes: (1) Moderate dermal irritation on intact and abraded rabbit skin after a 24-hour application; (2) mild conjunctival irritation (without corneal effects) from direct instillation of undiluted ethyl benzene in rabbit eyes; (3) erythema and edema with superficial necrosis, resulting in exfoliation of large patches of skin, following repeated and prolonged application of the undiluted material to rabbit skin; (4) "a slight, cloudy swelling of hepatocytes" in animals subchronically exposed to the vapor; (5) congestion of the lungs, nasal mucosa, liver, and kidneys in mice and rats exposed 6 hours/day for 4 consecutive days to ethyl benzene concentrations of 2360 ppm and in mice exposed to 1190 ppm; and (6) lacrimation and salivation in rats exposed to 400 or 800 ppm concentrations of ethyl benzene for 6 hours/day, 5 days/week (ECETOC 1986 and Dynamac Corporation 1986, both as cited in Ex. 3–638). Arco (Ex. 3–638) stressed the fact that, except at very high concentrations, significant systemic toxicity does not appear to be a manifestation of ethyl benzene exposure.

Brief exposures of human subjects to a 5000-ppm concentration of ethyl benzene caused intolerable irritation, and exposure to 2000 ppm resulted in lacrimation, nasal irritation, and vertigo; exposure to a 1000-ppm concentration produced eye irritation, although volunteers rapidly developed a tolerance to this concentration. Acute exposure to the vapor at a concentration of 200 ppm causes mild eye irritation

(Wolf et al. AMA Arch. Ind. Hlth. 14:387, 1956). Chronic exposure to ethyl benzene concentrations above 100 ppm has caused fatigue, sleepiness, headache, and eye and respiratory tract irritation (Bardodej and Bardodegova 1970). Redness and inflammation may occur on contact of the skin with this substance (HSDB 1985).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers in construction, maritime, and agriculture who are exposed to concentrations of ethyl benzene above 100 ppm, even briefly, are at significant risk of experiencing eye and upper respiratory tract irritation. The Agency believes that the proposed limits are necessary to substantially reduce this risk of material health impairment. Accordingly, OSHA is proposing in construction, maritime, and agriculture a 15-minute short-term limit of 125 ppm for ethyl benzene to supplement the proposed 100-ppm TWA limit for this substance in these sectors. Promulgation of the proposed STEL will make OSHA's PELs for ethyl benzene consistent across all industry sectors within OSHA's jurisdiction.

ETHYL BUTYL KETONE

CAS: 106–35–4; Chemical Formula: $C_7H_{14}O$

H.S. No. 2077

In general industry, construction, and maritime, OSHA's permissible exposure limit for ethyl butyl ketone is 50 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 50 ppm for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL in agriculture of 50 ppm for ethyl butyl ketone. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Ethyl butyl ketone is a colorless liquid with a strong, fruity odor. It is used primarily as an organic solvent and a chemical intermediate but also finds use as a synthetic flavoring agent (Clayton and Clayton 1982, p. 4761; HSDB 1984).

Ethyl butyl ketone is an irritant of the eyes, mucous membranes, and skin in laboratory animals; at high concentrations, it causes central nervous system depression. The oral LD_{50} in rats is 2760 mg/kg; the dermal LD_{50} for rabbits is greater than 16.4 g/kg (20 ml/kg) (RTECS 1990; ACGIH 1986, p. 246). Rats exposed to a 4000-ppm concentration for 4 hours died, but all rats survived an exposure to 2000 ppm for 4 hours (ACGIH 1986, p. 246). A 68-hour exposure to a 5800-ppm ethyl butyl ketone concentration killed all rats, but exposure to 420 or 3000 ppm for the same period of time was not lethal; however, ataxia, prostration, and narcosis were noted in these animals at the higher exposures (Clayton and Clayton 1982, p. 4762). Rats administered 2 g/kg/day by gavage, 5 days/week for 14 weeks exhibited hind-leg weakness and tail drag. Neuropathology revealed central-peripheral-distal axonopathy characterized by neurofilamentous hyperplasia and giant axonal swelling (O'Donoghue et al. 1984). No signs of systemic toxicity or neurotoxicity were observed in rats exposed to a 700-ppm concentration of ethyl butyl ketone for 72 hours/week for 24 weeks (Clayton and Clayton 1982, p. 4762; Proctor, Hughes, and Fischman 1988, p. 239). Ethyl butyl ketone causes mild-to-moderate irritation when applied to the skin of rabbits. Contact of ethyl butyl ketone with the eyes of rabbits caused slight ocular irritation (Clayton and Clayton 1982, p. 4761).

Information on the effects of human exposure to ethyl butyl ketone is limited. Applied to the skin of volunteers for 48 hours under an occluded patch, a 4-percent solution of ethyl butyl ketone failed to cause skin irritation or skin sensitization (Clayton and Clayton 1982, p. 4762).

Based on this evidence, OSHA preliminarily concludes that in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye, mucous membrane, and skin irritation associated with exposure to ethyl butyl ketone and that they may also be at significant risk of experiencing central nervous system depression. The Agency believes that establishing an 8-hour TWA PEL of 50 ppm is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYL ETHER

CAS: 60–29–7; Chemical Formula: $C_2H_5OC_2H_5$

H.S. No. 1164

OSHA's limit for ethyl ether in the construction and maritime industries is 400 ppm as an 8-hour TWA. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA of 400 ppm and a TLV®–STEL of 500 ppm for ethyl ether; there is no NIOSH REL. OSHA is proposing a 400 ppm 8-hour TWA and a 500 ppm STEL for ethyl ether in the construction, agriculture, and maritime industries. These are the limits recently established in general industry, and their promulgation will make OSHA's PELs for this substance consistent across all OSHA-regulated sectors.

Ethyl ether is a colorless, volatile, mobile liquid with a distinct odor and a burning, sweet taste. It is extremely flammable and is a severe fire and explosion hazard when exposed to heat or flame. Ethyl ether is used as a reagent in organic synthesis and is also used as a solvent for waxes, fats, oils, perfumes, alkaloids, and gums (ACGIH 1986, p. 259). Ethyl ether also finds use as an anesthetic in human and animal medicine and as a refrigerant and motor fuel additive (ITI 1986, p. 178; NIOSH/OSHA Occupational Health Guideline 1981, p. 3).

Ethyl ether is an irritant of the eyes, skin, and respiratory tract in both animals and humans; exposure to high concentrations causes central nervous system depression and anesthesia. The oral LD_{50} in rats is 1215 mg/kg, and the LC_{50} in the same species is 73,000 ppm for 2 hours (RTECS 1991). The lethal concentration for a single exposure in the monkey is reportedly between 71,600 ppm and 192,500 ppm ethyl ether by volume (Clayton and Clayton 1982, pp. 2507–2510). Exposure to a 6.4 percent (64,000 ppm) concentration of ethyl ether caused deep anesthesia in mice, and respiratory arrest occurred at a concentration of 12.8 percent (128,000 ppm) (Clayton and Clayton 1981, p. 2507–2510). Contact of the eyes of rabbits with ethyl ether has produced slight, reversible injury (Grant 1986, p. 411). Chronic exposure of rats to a 2000-ppm concentration of ethyl ether for more than 30 weeks caused no adverse effects on body weight, food consumption, hematology, urinalysis, or histopathology; however, liver enzymes were elevated in these animals despite the fact that no liver damage was identified at autopsy by microscopic examination (Clayton and Clayton 1982, pp. 2507–2510). Mice exposed to ethyl ether during pregnancy have had an increased number of offspring with abnormalities (RTECS 1991; Friedman 1988). Ethyl ether is mutagenic both in bacterial and mammalian test systems (RTECS 1991).

Concentrations of 3.6 to 6.5 percent ethyl ether in air (36,000 to 65,000 ppm) cause anesthesia in humans; exposure to 7- to 10-percent concentrations (70,000 to 100,000 ppm) causes respiratory arrest, and exposure to concentrations greater than 10 percent (100,000 ppm) can be fatal (ACGIH 1986/Ex. 1–3, p. 259). Repeated workplace exposures to ethyl ether can cause narcosis, exhaustion, headache, dizziness, sleepiness, excitation, and other psychic disturbances (Hake and Rowe 1963a/Ex. 1–1152). Albuminuria and polycythemia may be caused by repeated exposure,

and nephritis has occasionally been reported (Clayton and Clayton 1981, p. 2507–2510). Prolonged or repeated contact may cause defatting of the skin; irritation of the mucous membranes and eyes occurs on contact with the liquid or after exposure to high concentrations of the vapor (Hake and Rowe 1963a/Ex. 1–1152). Nelson and co-workers (1943/Ex. 1–66) reported that workers began to experience nasal irritation at a concentration of 200 ppm (Nelson, Enge, Ross et al. 1943/Ex. 1–66). However, Armor (1950, as cited in ACGIH 1986/Ex. 1–3, p. 259) observed that exposure effects occur in humans only at 500 ppm or higher concentrations of ethyl ether.

OSHA recently established in general industry the limits being proposed here for the construction, maritime, and agriculture industries. The Agency preliminarily concludes that both a TWA and a STEL are necessary to protect exposed workers in construction, maritime, and agriculture against the significant risk of irritation and narcosis potentially associated with excursions above the 8-hour TWA level. OSHA believes that the irritation and narcosis caused by excessive exposure to ethyl ether constitute material impairments of health and that the proposed limits are necessary to substantially reduce these risks.

ETHYL FORMATE

CAS: 109–94–4; Chemical Formula: $HCOOC_2H_5$

H.S. No. 2079

In general industry, construction, and maritime, OSHA's permissible exposure limit for ethyl formate is 100 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 100 ppm for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL in agriculture of 100 ppm for ethyl formate. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

Ethyl formate is a colorless, combustible liquid with a pleasant odor. It is used as a fungicide and larvicide for tobacco crops, dried fruits, cereals, and other crops. It is also used as a flavoring agent, a solvent, and in organic synthesis (ACGIH 1986, p. 260; Clayton and Clayton 1982, p. 2263). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Ethyl formate is an irritant of the eyes, skin, and upper respiratory tract; at high concentrations, it causes central nervous system depression in laboratory animals. The oral LD_{50} in rats is 1850 mg/kg, and the dermal LD_{50} in rabbits is 20 g/kg (RTECS 1990; HSDB 1985). Exposure to an 8000-ppm concentration of ethyl formate for 4 hours killed 5 of 6 rats, but exposure to a 4000-ppm concentration for 4 hours was not lethal (Flury and Zernik 1931, p. 375; Proctor, Hughes, and Fischman 1988, p. 254). Deep narcosis resulted when cats were exposed to a 10,000-ppm concentration for 80 minutes, and these animals subsequently died. Exposure to a 10,000-ppm concentration for 4 hours caused pulmonary edema and death in dogs (Flury and Zernik 1931, p. 375; Fasset 1963, p. 1865; Proctor, Hughes, and Fischman 1988, p. 254). Cats exposed for 20 minutes to a 5000-ppm concentration exhibited signs of eye irritation. Applied to the skin of mice, ethyl formate did not cause tumors (Clayton and Clayton 1982, p. 2264; Flury and Zernik, 1931, p. 375; Proctor, Hughes, and Fischman 1988, p. 254).

Slight eye irritation and rapidly increasing nasal irritation were reported in humans exposed to a 330-ppm concentration of ethyl formate (Flury and Zernik 1931, p. 375; Proctor, Hughes, and Fischman 1988, p. 254), but no systemic effects have been reported.

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye, skin, and respiratory tract irritation associated with exposure to ethyl formate and that they may also be at significant risk of experiencing central nervous system depression. The Agency believes that establishing an 8-hour TWA PEL of 100 ppm for this substance will substantially reduce this risk for workers in this sector. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYL MERCAPTAN

CAS: 75–08–1; Chemical Formula: C_2H_5SH

H.S. No. 1165

OSHA has an 8-hour TWA PEL of 0.5 ppm for ethyl mercaptan in general industry and in the construction and maritime industries. The Agency has no PEL for ethyl mercaptan in agriculture. The ACGIH has a TLV®–TWA of 0.5 ppm for this substance, and the NIOSH REL is 0.5 ppm as a 15-minute ceiling. OSHA is proposing an 8-hour TWA limit of 0.5 ppm for ethyl mercaptan in the agriculture industry. Promulgation of this limit will make the PEL for ethyl mercaptan consistent across all OSHA-regulated sectors.

Ethyl mercaptan is a colorless liquid with a very strong, unpleasant odor. It is used in the manufacture of insecticides, defoliants, pharmaceuticals, adhesives, antioxidants, and plastics and as an odorant for natural gas (ACGIH 1986, p. 262; HSDB 1985). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Ethyl mercaptan is an irritant of the mucous membranes; at high concentrations, it causes central nervous system depression in both animals and humans. The oral LD_{50} in rats is 682 mg/kg, and the LC_{50} in the same species is 4420 ppm for 4 hours (RTECS 1989). Acutely poisoned animals showed behavioral and pulmonary effects before death (RTECS 1989). Maximal sublethal intraperitoneal doses have been reported to induce deep sedation, with higher exposures causing restlessness, muscular incoordination, skeletal muscle paralysis, cyanosis, respiratory depression, coma, and death. Although inhalation exposure caused no noticeable pathology in rats, intraperitoneal injection caused lymphatic infiltration of the liver, with occasional necrosis (Fairchild and Stokinger 1958, Ex. 1–415). One drop applied to rabbit eyes caused only slight irritation, but 15 minutes of exposure to high concentrations of the vapor caused closing and rubbing of the eyes, both indications that the animals were experiencing considerable irritation (Fairchild and Stokinger 1958/Ex. 1–415). In chronic inhalation studies in rabbits, rats, and mice, a five-month exposure to a 40-ppm concentration caused minimal cardiovascular and other systemic effects (Blinova 1965/Ex. 1–603).

Human volunteers exposed to a 4-ppm concentration of ethyl mercaptan for three hours daily for 5 to 10 days reported the following adverse effects: altered taste and olfactory reations, periodic nausea, mucous membrane irritation, and fatigue. Exposure of volunteers to a 0.4-ppm concentration of this substance produced no adverse signs or symptoms (ACGIH 1986/Ex. 1–3, p. 262).

Based on this evidence in humans and animals, OSHA preliminarily concludes that the limit recently established in general industry and currently in effect in all OSHA-regulated sectors other than agriculture is necessary to protect workers in the agricultural sector. OSHA considers the exposure-related effects of nausea, fatigue, and irritation to be material impairments of health. The Agency preliminarily concludes that the proposed 8-hour TWA limit of 0.5 ppm is necessary to substantially reduce

these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYLAMINE

CAS: 75-04-7; Chemical Formula: $C_2H_5NH_2$

H.S. No. 2081

In general industry, construction, and maritime, OSHA's permissible exposure limit for ethylamine is 10 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®-TWA of 10 ppm for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL in agriculture of 10 ppm for ethylamine. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Ethylamine is a colorless liquid or gas, depending on the ambient temperature (boiling point: 16.6°C). It has a strong, unpleasant odor similar to that of ammonia (ACGIH 1986, p. 243; Genium MSDS 1985, No. 540). Ethylamine is used as a chemical intermediate for triazine herbicides (such as atrazine), a corrosion inhibitor, in resin chemistry, in organic chemistry, and as a stabilizer for rubber latex (HSDB 1986; ACGIH 1986, p. 243).

Ethylamine is an irritant of the eyes, mucous membranes, and skin; in laboratory animals, it has also been shown to cause systemic toxic effects. The oral LD_{50} in rats is 400 mg/kg (RTECS 1990; Clayton and Clayton 1981, p. 3145). The LC_{50} in rats is 3000 ppm for 4 hours, and the dermal LD_{50} in rabbits is 390 mg/kg (RTECS 1990). Two of six rats exposed to an 8000-ppm concentration of ethylamine for 4 hours died (Smyth et al. 1954, p. 61). Rabbits exposed repeatedly to a 100-ppm concentration developed corneal and pulmonary irritation, and damage to the liver and kidneys was seen at autopsy. Exposure to a 50-ppm concentration of ethylamine vapors for 2 weeks caused corneal injury in rabbits, and myocardial degeneration was seen at post-mortem (Brieger and Hodes 1951, p. 287). One drop of a 70 percent solution of ethylamine instilled into rabbit eyes caused damage rated as severe (Grant 1986, p. 413). Direct contact of the skin of guinea pigs with a 70-percent aqueous solution caused necrosis and deep scarring (ACGIH 1986, p. 243).

Exposure to ethylamine causes eye, skin, and upper respiratory tract irritation in humans. Workers have reported experiencing temporary blue, hazy vision after exposure to ethylamine; this effect is believed to be related to corneal edema (Grant 1986, p. 413). Conjunctivitis and tearing also are associated with exposure to the vapors of ethylamine (Clayton and Clayton 1982, p. 3149). Inhalation causes respiratory irritation, coughing, and difficulty in breathing. Direct contact of the eyes or skin with the liquid may cause permanent eye damage and skin burns. Systemic poisoning may occur and be manifested as headache, nausea, faintness, and anxiety (Clayton and Clayton 1982, p. 3149).

Based on this evidence in humans and animals, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye, skin, and mucous membrane irritation associated with exposure to ethylamine. The Agency believes that establishing an 8-hour TWA PEL of 10 ppm is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYLENE GLYCOL

CAS: 107-21-1; Chemical Formula: CH_2OHCH_2OH

H.S. No. 1169

OSHA has no limit for ethylene glycol in the construction, agriculture, or maritime industries; however, the proposed limit of 50 ppm, as a ceiling, was recently established for this substance in general industry. The ACGIH has a TLV® of 50 ppm for ethylene glycol, as a ceiling limit; there is no NIOSH REL for this substance. The Agency is proposing a ceiling limit of 50 ppm for ethylene glycol in the construction, agriculture, and maritime industries. Promulgation of this limit will make the PEL for ethylene glycol consistent across all OSHA-regulated industries.

Ethylene glycol is used in antifreeze and coolant mixtures for cars and other vehicles; it is also an ingredient of hydraulic fluids and heat exchangers and a chemical intermediate (Clayton and Clayton 1982, p. 3818). Ethylene glycol is a colorless, viscous liquid that has no odor (Clayton and Clayton 1982, p. 3818).

Ethylene glycol causes eye irritation, central nervous system depression, and kidney and liver damage in animals. The oral LD_{50}s for various species range from 4700 mg/kg in rats to 7500 mg/kg in mice; the dermal LD_{50} in rabbits is 9530 mg/kg (RTECS 1990). Rats and rabbits exposed to an ethylene glycol concentration of 12 mg/m³ (approximately 5 ppm) 24 hours/day for 90 days showed signs of moderate to severe eye irritation and corneal damage (Coon, Jones, Jenkins, and Siegel 1970/Ex. 1-84). Another study involving 30-day or 16-week exposures to concentrations as high as 350 to 400 mg/m³ (70 to 0 ppm), however, has shown no adverse effects in rats, guinea pigs, rabbits, dogs, and monkeys (Wiley, Hueper, and von Oettingen 1936, in ACGIH 1986, p. 253). Applied to the eyes of rabbits, ethylene glycol caused pain and reversible conjunctival injury but no corneal damage (Grant 1986, p. 417). In contact with the skin, ethylene glycol caused mild irritation in rabbits (RTECS 1990). Ingestion of ethylene glycol caused depression, ataxia, vomiting, seizures, and coma in cats and dogs; at autopsy, calcium oxalate crystals were found in the renal tubules and blood vessels of the brain (HSDB 1987). Rats fed diets containing 1 or 2 percent ethylene glycol for 2 years had shortened life spans, calcium oxalate stones in the bladder, severe kidney damage, and degeneration of the liver (Clayton and Clayton 1982, p. 3820). Recent studies in rats and mice have shown that inhalation or oral administration of ethylene glycol during pregnancy causes developmental abnormalities and fetotoxic effects (RTECS 1990; NIEHS 1988; Bushy Run Center 1988).

In humans, exposure to ethylene glycol causes eye and upper respiratory tract irritation. Ingestion of ethylene glycol causes narcosis, severe kidney and liver damage, and pulmonary edema (Proctor, Hughes, and Fischman 1988, p. 246). The lowest oral dose reported to be lethal in humans is 786 mg/kg (RTECS 1990). Exposure to an aerosol of ethylene glycol at a concentration of 12 ppm for 20 to 22 hours/day for 4 weeks caused headaches and throat irritation in human volunteers (Wills et al. 1974/Ex. 1-582). When the concentration was increased to 80 ppm, the irritation was intolerable (Wills et al. 1974/Ex. 1-582). Rowe (1963/Ex. 1-865) concluded that daily exposure to a 100-ppm concentration of the vapor did not cause systemic or eye injuries, although Troisi (1949/Ex. 1-598) described nystagmus in overexposed workers (concentrations not reported). In the prior air contaminants rulemaking, one commenter (Ex. 3-830) was of the opinion that the 50-ppm ceiling limit should apply only to those workplaces where ethylene glycol is used at elevated temperatures. In response to this commenter, OSHA reiterated the Agency's long-standing policy, which is to base its permissible exposure limits on scientific evidence that exposure to a substance at a given concentration or dose is associated with a health risk and that promulgating a PEL will reduce that risk. Thus, a relationship between

exposure level and degree of risk is established and is deemed applicable in all workplaces and situations where the substance is present. If the characteristics of a process are such that employee exposure to a substance is nonexistent or is well below the levels associated with a health risk, the promulgation of a limit on employee exposure will have little or no effect on the operation or process and will therefore impose no additional burden on the employer. Therefore, in the specific case of ethylene glycol, OSHA saw no reason to limit application of the 50-ppm ceiling limit to those processes where exposure to airborne ethylene glycol is most likely. Accordingly, the air contaminants rule for general industry established a 50-ppm ceiling limit for ethylene glycol that is in effect in all general industry workplaces.

Based on the toxicity evidence described above in humans and animals, OSHA is proposing a ceiling limit of 50 ppm for ethylene glycol in the construction, agriculture, and maritime industries; this concentration is just below the level at which clinical signs and symptoms have been noted in humans. OSHA considers these signs and symptoms, which include throat and respiratory irritation and headache, to be material impairments of health. The Agency preliminarily concludes that this limit is necessary to substantially reduce these significant risks for workers in the construction, maritime, and agriculture industries. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYLIDENE NORBORNENE

CAS: 16219–75–3; Chemical Formula:

C_9H_{12}

H.S. No. 1171

OSHA has no limit for ethylidene norbornene in the construction, agriculture, and maritime industries. The ACGIH has a TLV® of 5 ppm as a ceiling limit; NIOSH has no REL for this substance but concurs (Ex. 8–47) with the limit being proposed. The Agency is proposing a 5-ppm ceiling limit for ethylidene norbornene in the construction, agriculture, and maritime industries; this is the limit for ethylidene norbornene recently established in general industry.

Ethylidene norbornene is a colorless liquid with a turpentine-like odor. It is used in the manufacture of pesticides and pharmaceuticals (ACGIH 1986, p. 261; HSDB 1987; Hazardous Substance Fact Sheet 1985, p. 1).

Ethylidene norbornene is an irritant of the eyes and nose in humans and causes systemic injury in laboratory animals. The oral LD_{50} in rats is 2527 mg/kg, the 48-hour LC_{50} in the same species is 1246 ppm, and the dermal LD_{50} in rabbits is 8189 mg/kg (RTECS 1989). Applied to the skin of rabbits, ethylidene caused a mild degree of irritation (RTECS 1989). In a range-finding study, five of six rats died following a 4-hour exposure to a 4000-ppm concentration of ethylidene norbornene (Smyth, Carpenter, Weil et al. 1969/Ex. 1–442). Exposure to a 237-ppm concentration of ethylidene norbornene for 7/hours/day, 5 days/week for 88 days was lethal to 21 of 24 rats; at autopsy, liver lesions, testicular atrophy, and hydrothorax were seen (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606). No deaths occurred in rats repeatedly exposed to a concentration of 90 ppm, but renal lesions and enlarged livers were observed in these animals at autopsy (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606). Beagle dogs exposed on the same regimen to a 93-ppm concentration of ethylidene norbornene for 89 days survived but showed such post-mortem effects as testicular atrophy, hepatic lesions, and slight blood changes; less pronounced effects were seen after dogs were exposed to a 61-ppm concentration, and no effects were seen at 22 ppm (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606).

Human volunteers exposed to ethylidene norbornene concentrations of 11 ppm for 30 minutes experienced eye and nose irritation; even at a concentration of 6 ppm, transient eye irritation occurred (ACGIH 1986/Ex. 1–3, p. 261).

Based on this evidence in humans and animals, OSHA is proposing a 5-ppm ceiling limit for this substance in the construction, agriculture, and maritime industries. The Agency preliminarily concludes that this limit is necessary to minimize the risk of material health impairment in the form of irritation that has been documented to occur during occupational exposures to ethylidene norbornene concentrations as low as 6 ppm for 30 minutes. The Agency preliminarily concludes that the promulgation of this limit will reduce this risk substantially and will additionally make OSHA's PEL for this substance consistent across all OSHA-regulated sectors.

FLUORINE

CAS: 7782–41–4; Chemical Formula: F

H.S. No. 1179

OSHA's PEL for fluorine in general industry, construction, and maritime is 0.1 ppm as an 8-hour TWA; NIOSH has no REL for fluorine. There is no PEL in agriculture. The ACGIH TLV®–TWA is 1 ppm and TLV®–STEL is 2 ppm. OSHA is proposing an 8-hour TWA PEL of 0.1 ppm for fluorine in agriculture. Promulgation of this limit will make the PEL for fluorine consistent across all regulated sectors.

Fluorine is a pale yellow gas with a pungent irritating odor.

Fluorine is a severe caustic and irritant of the eyes, nose, upper respiratory tract, and skin in humans and animals. The LC_{50} in rats is 185 ppm for 1 hour; acutely poisoned animals showed signs of severe eye and nose irritation before death and, at autopsy, showed pulmonary congestion and hemorrhage (RTECS 1991; Ricca 1970). On sublethal exposure, mice showed liver and kidney damage at autopsy (Keplinger and Suissa 1968).

In contact with moisture, fluorine reacts to form ozone and hydrofluoric acid. Volunteers exposed to a 50 ppm concentration of fluorine found the exposure intolerable. Subjects could tolerate a brief exposure to 25 ppm, but subsequently developed sore throats and pain in the chest that lasted for 6 hours (AIHA 1956). Pulmonary edema may follow overexposure to fluorine (Parmeggiani 1983, pp. 891–894). A recent study (Nemeth and Zsogon 1989) reports that long-term occupational exposure to fluorine causes osteosclerosis, especially of the spine and pelvic bones, and calcification of the spinal ligaments.

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers in agriculture who are exposed to fluorine are at significant risk of severe irritation of the eyes, nose, and respiratory tract. The Agency considers these effects material impairments of health and believes that the proposed PEL of 0.1 ppm as an 8-hour TWA is necessary to substantially reduce the risk of these effects. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

FORMIC ACID

CAS: 64–18–6; Chemical Formula:

HCOOH

H.S. No. 2086

In general industry, construction, and maritime, OSHA's permissible exposure limit for formic acid is 5 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 5 ppm for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL in agriculture of 200 ppm for formic acid. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Formic acid is a colorless, fuming liquid with a pungent, penetrating odor. It is used as a fumigant, an animal feed additive, a food preservative, a flavor adjunct, and in the manufacture of several substances, including insecticides, refrigerants, solvents, lacquers, and decalcifiers. Formic acid also is used in the textile, paper, and leather industries (HSDB 1986; ACGIH 1986, p. 279). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Formic acid is irritating and corrosive to the skin, eyes, mucous membranes, and respiratory tract; it has caused narcosis in laboratory animals and methemoglobinemia in dogs. The oral LD_{50}s in rats, dogs, and mice are 1100 mg/kg, 4000 mg/kg, and 700 mg/kg, respectively, and the intraperitoneal LD_{50} for mice is 940 mg/kg (RTECS 1990; Clayton and Clayton 1982, p. 4906). Rabbits exposed intravenously to formic acid in doses ranging from 0.46 to 1.25 mg/kg suffered central nervous system depression, vasoconstriction, and diuresis. Increasing the dose to approximately 4 g/kg caused convulsions and death in rabbits, and dogs given this dose showed methemoglobinemia (Clayton and Clayton 1982, p. 4908). Administration of formic acid to monkeys has produced the same type of toxicity to the optic nerves as is seen in systemic methanol poisoning (Grant 1986, pp. 447–448). Instilled into the eyes of rabbits, formic acid caused severe burns (RTECS 1990). Reduction in body weight gain and organ size was seen in young rats that had been given 0.5 to 1.0 percent formic acid in their food or drinking water for 6 weeks. Rats given 360 mg/kg formic acid in their drinking water for 2 to 27 weeks had a reduced rate of body weight gain and a reduced food intake but did not show other adverse effects (Clayton and Clayton 1982, p. 4908).

In an industrial accident that resulted in a fatality, a worker splashed in the face with hot formic acid experienced marked dyspnea with dysphagia; death occurred 6 hours following exposure and was caused by pulmonary edema (Proctor, Hughes, and Fischman 1988, p. 262). Workers exposed to a mixture of formic and acetic acid at 15 ppm concentrations of each acid complained of nausea and considerable irritation (ACGIH 1986, p. 279; Clayton and Clayton 1982, p. 4908). Ingestion of formic acid causes salivation, vomiting, a burning sensation in the mouth and pharynx, and severe pain; circulatory collapse and death may follow (Clayton and Clayton 1982, p. 4908). In contact with the skin, formic acid causes burns with vesiculation, and keloid formation is common (Proctor, Hughes, and Fischman 1988, p. 262).

Based on this evidence in humans and animals, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing irritation and burning of the skin, eyes, mucous membranes, and respiratory tract associated with exposure to formic acid. The Agency believes that establishing an 8-hour TWA PEL of 5 ppm in agriculture is necessary to provide agriculture workers with the same degree of protection being afforded workers in the other sectors covered by OSHA.

FURFURAL

CAS: 98–01–1; Chemical Formula: $C_5H_4O_2$

H.S. No. 1183

OSHA's PEL for furfural in the construction and maritime industries is an -hour TWA limit of 5 ppm, with a skin notation. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA of 2 ppm, with a skin notation, for furfural; there is no NIOSH REL for this substance. OSHA is proposing a TWA PEL of 2 ppm, with a skin notation, for furfural in the construction, agriculture, and maritime industries; this is the limit recently established for this substance in general industry.

Furfural, also called furfuraldehyde, is a colorless, oily liquid that darkens to reddish-brown on exposure to light and air. Furfural is used as an extraction solvent in butadiene and lubricating oil production, as an intermediate in the production of furfuryl alcohol, and as a solvent for synthetic and natural resins (HSDB 1986). It is also used as a laboratory reagent, weed killer, fungicide, and as a flavoring agent in foods (HSDB 1986). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Furfural is a severe irritant of the eyes, mucous membranes, and respiratory tract; in contact with the skin, this substance may cause dermatitis, skin sensitization, and photosensitization (Proctor, Hughes, and Fischman 1988, p. 263). Furfural is also a carcinogen in experimental animals. The oral LD_{50} in rats is 65 mg/kg, the 48-hour LC_{50} in the same species is 153 ppm, and the lowest lethal dermal dose in rabbits is 620 mg/kg (RTECS 1991). Rats acutely poisoned by oral administration of furfural showed weakness, ataxia, and coma before death (Proctor, Hughes, and Fischman 1988, p. 263). Exposure to a 260-ppm concentration of furfural was fatal to rats but not to mice or rabbits (AIHA 1978). Rabbits given subcutaneous injections of furfural developed hypochronic anemia, with leukopenia, and had deficits in liver and kidney function (Gosselin, Smith, and Hodge 1984, p. II–187). A 4-week exposure of dogs to a 130 ppm concentration of furfural for 6 hours/day caused fatty degeneration of the liver, but no adverse effects were observed when dogs were exposed to 63 ppm on the same regimen (AIHA 1978). A 2-year carcinogenicity bioassay showed that furfural is clearly carcinogenic in male mice and suggested that this substance is also carcinogenic in male rats and female mice (NTP 1990; Fifth Annual Report). Furfural also has induced mutations in the somatic cells of hamster ovaries (RTECS 1991).

Bugyi and Lepold (1949/Ex. 1–1077) described numbness of the tongue and oral mucosa, absence of a sense of taste, and labored breathing in workers exposed to furfural (at unspecified levels) in a poorly ventilated facility. Korenman and Resnik (1930, as cited in ACGIH 1986/Ex. 1–3, p. 280) reported that workers inhaling furfural concentrations of from 1.9 to 14 ppm developed headache, scratchy throat, and eye irritation; Kuhn (1944/Ex. 1–3) reported that exposure to furfural also damages the eyesight of some exposed individuals. NIOSH (1975e/Ex. 1–1183) described widespread eye and respiratory tract irritation among workers at a grinding wheel plant who were exposed to furfural vapors at concentrations ranging from 5 to 16 ppm. However, a study by Dunlop and Peters (1953/Ex. 1–1189) reports that 15 years of furfural use in the synthetic resin industry did not cause adverse health consequences in exposed workers if the facility was adequately ventilated; this study also showed that furfural occasionally causes sensitization reactions.

Based on this evidence in humans and animals, OSHA preliminarily concludes that the current 8-hour TWA limit of 5 ppm is not sufficient to protect workers in the construction, maritime, and agriculture industries from eye and respiratory tract irritation; this fact is clearly shown by the NIOSH study (1975e/Ex. 1–1183), in which widespread irritation was reported among workers exposed to furfural concentrations ranging from 5 to 16 ppm. Therefore, to protect workers in these sectors from experiencing eye and respiratory tract

irritation, OSHA is proposing a PEL for furfural of 2 ppm as an -hour TWA in the construction, agriculture, and maritime industries. OSHA is also retaining the skin notation in construction and maritime and proposing it in agriculture because furfural readily penetrates the skin to cause toxic effects. OSHA preliminarily concludes that the proposed limit is necessary to substantially reduce a significant risk of material health impairment in exposed workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

FURFURYL ALCOHOL

CAS: 98–00–0; Chemical Formula: $C_5H_6O_2$

H.S. No. 1184

OSHA's limit for furfuryl alcohol in the construction and maritime industries is 50 ppm as an 8-hour TWA. The Agency has no PEL in agriculture for this substance. The ACGIH has a TLV®-TWA of 10 ppm and a TLV®-STEL of 15 ppm, with a skin notation, for furfuryl alcohol; the NIOSH REL is 50 ppm as a 108-hour TWA. OSHA is proposing a 10 ppm 8-hour TWA and a 15 ppm 15-minute STEL, with a skin notation, for this substance in the construction, agriculture and maritime industries. These are the limits recently established for furfuryl alcohol in general industry.

Furfuryl alcohol is a colorless liquid that turns red or brown on exposure to light and air. It is used as a wetting agent, as a solvent for dyes, gums, and resins, and as an ingredient in flavorings, foundry cores, polymers, sealants, and cements (ACGIH 1986, p. 281). Furfuryl alcohol is also a chemical intermediate and a liquid propellant for missiles (HSDB 1984).

Furfuryl alcohol causes irritation of the eyes and respiratory tract in both animals and humans; exposure to high concentrations also causes central nervous system depression. The oral LD_{50} in rats is 88 mg/kg, the LC_{50} in the same species is 233 ppm for 4 hours, and the dermal LD_{50} in rabbits is 400 mg/kg (RTECS 1991). Rats exposed to a 700-ppm concentration of furfuryl alcohol showed signs of eye irritation and narcosis, and rats exposed daily to a concentration of approximately 19 ppm exhibited signs of moderate respiratory irritation (Comstock 1952). Contact of the liquid with the eyes of rabbits caused corneal injury, with opacity and reversible inflammation (NIOSH 1979). Experiments on laboratory animals indicated that percutaneous absorption of the liquid can cause toxic effects (NIOSH 1979).

Furfuryl alcohol exposure has been shown to cause sensory irritation in exposed workers. Apol (1973/Ex. 1–1180) reported that workers exposed to a 10.8-ppm concentration of furfuryl alcohol experienced no discomfort but that severe lacrimation occurred at a concentration of 15.8 ppm. Formaldehyde was also present at a concentration of 0.33 ppm. Burton and Rivera (1972/Ex. 1–944) found no irritation, headache, or dizziness among workers exposed to -hour TWA furfuryl alcohol concentrations of 5 and 6 ppm, with excursions up to 16 ppm. A recent study by Cockcroft et al. (1980, as cited in Ex. 150) reports that a 50-year-old moldmaker developed asthma after working with a mixture containing furfuryl alcohol, paraformaldehyde, xylene, and a catalyst containing sulfuric acid, phosphoric acid, and butyl alcohol. The patient's bronchial response to inhaled histamines was two to three times more severe following exposure to furfuryl alcohol mixed with butyl alcohol.

In the recent air contaminants rulemaking for general industry, one commenter (Ex. 3–349) stated that, in his opinion, the proposed 10 ppm and 15 ppm TWA/STEL limits for furfuryl alcohol were too low. This commenter believed that the irritation reported in the Apol et al. study was caused not by furfuryl alcohol but by formaldehyde, which was present at a concentration of 0.33 ppm. In response to this commenter, OSHA noted that severe irritation and lacrimation occur in most individuals only when the formaldehyde levels reach 3 ppm or above; at levels between 0.1 and 0.5 ppm, slight eye irritation may occur in some individuals (52 *FR* 46235). In the foundry study by Apol (1973/Ex. 1–1180), formaldehyde was present at a concentration of 0.33 ppm, about 10 times below the level associated with severe eye irritation. Therefore, OSHA concluded in the rulemaking that these workers' exposure to furfuryl alcohol at a concentration of about 16 ppm was most likely to be the cause of the lacrimation reported by Apol (1973/Ex. 1–1180).

Based on this evidence in humans and animals, OSHA preliminarily concludes that severe eye irritation is associated with exposure to concentrations of about 16 ppm furfuryl alcohol, and that furfuryl alcohol is capable of inducing more serious asthmatic responses in at least some workers. OSHA believes that the severe eye irritation and asthma caused by exposure to furfuryl alcohol are material impairments of health and functional capacity, and the Agency is accordingly proposing PELs for this substance in the construction, maritime, and agriculture industries of 10 ppm as an 8-hour TWA and 15 ppm as a 15-minute STEL, with a skin notation, to substantially reduce these significant risks among exposed employees. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

GLUTARALDEHYDE

CAS: 111–30–8; Chemical Formula: $OCH(CH_2)_3CHO$

H.S. No. 1187

OSHA has no limit for glutaraldehyde in the construction, agriculture, and maritime industries. The ACGIH has a TLV® for this substance of 0.2 ppm as a ceiling; there is no NIOSH REL. The Agency is proposing a ceiling limit of 0.2 ppm for glutaraldehyde in the construction, agriculture, and maritime industries. This is the limit recently established for glutaraldehyde in general industry, and NIOSH (Ex. 8–47) concurred that this is an appropriate limit for this substance.

Glutaraldehyde is a colorless aqueous solution with a pungent odor. It is used as a disinfectant in cold sterilization of medical equipment, as an intermediate and fixative for tissues, to crosslink polyhydroxy materials and proteins, as an embalming fluid, and in the tanning industry (ACGIH 1986, p. 285; HSDB 1985). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Glutaraldehyde is strongly irritating to the nose, eyes, and skin and can cause allergic contact dermatitis, dermal sensitization, and asthma from occasional or incidental occupational exposure (Jordan, Dahl, and Albert 1972/Ex. 1–1056). The oral LD_{50} in rats is 134 mg/kg, the LC_{50} in the same species is 5000 ppm for 4 hours, and the dermal LD_{50} in rabbits is 2560 mg/kg (RTECS 1991). Instilled into the eyes of rabbits, a 25 percent solution of glutaraldehyde caused severe injury (graded 9 on an ascending severity scale of 1 to 10) (Grant 1986, p. 462). In contact with the skin of rabbits, glutaraldehyde causes a moderate degree of irritation (Clayton and Clayton 1981, p. 2654). A dose-dependent contact hypersensitivity response to glutaraldehyde has recently been demonstrated in guinea pigs and mice (Stern, Holsapple, McCay, and Munson 1989). Mice exposed to alkalinized glutaraldehyde at concentrations of 8 or 33 ppm for 24 hours have shown marked nervous behavior, with panting and compulsive washing of the face and limbs; those

exposed to 33 ppm exhibited signs of toxic hepatitis at autopsy (Varpela, Otterstrom, and Hackman 1971/Ex. 1–1072).

There is considerable evidence that occupational exposure to glutaraldehyde causes contact dermatitis, allergic skin sensitization, and respiratory sensitization. The groups primarily affected are health care workers and morticians. In a study of a cold-sterilizing operation in which the operator was exposed for 12 minutes to an activated 2-percent aqueous solution of glutaraldehyde, a measurement of 0.38 ppm glutaraldehyde was taken in the operator's breathing zone; the operator and the investigators experienced severe eye, nose, and throat irritation as well as sudden headache at the end of the sterilization procedure (Schneider and Blejer 1973, as cited in ACGIH 1986/Ex. 1–3, p. 285). A series of recent studies (Wiggins, McCurdy, and Zeidenberg 1989; Fowler 1989; Burge 1989; Stern, Holsapple, and Munson 1989; Norback 1988; Nethercott and Holness 19; Nethercott, Holness, and Page 1988) has demonstrated that occupational exposure to glutaraldehyde causes chest tightness, headaches, eye and throat irritation, contact dermatitis, nausea, airway obstruction, and asthma; patch tests confirmed the allergenicity of glutaraldehyde in many of these cases.

Based on this human and animal evidence, OSHA preliminarily concludes that glutaraldehyde clearly presents a significant risk of irritation of the eyes, nose, and throat, respiratory symptoms, nausea, headache, skin sensitization, and asthma to exposed workers. OSHA considers these exposure-related effects to be material impairments of health. Accordingly, OSHA believes that the proposed 0.2-ppm ceiling limit is necessary to reduce these significant risks among workers in construction, maritime, and agriculture. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HEXACHLOROCYCLOPENTADIENE
CAS: 77–47–4; Chemical Formula: C_5Cl_6
H.S. No. 1196

OSHA has no PEL for hexachlorocyclopentadiene in the construction, agriculture, and maritime industries. The ACGIH has a TLV®–TWA of 0.01 ppm for this substance; there is no NIOSH REL. The Agency is proposing a TWA PEL of 0.01 ppm for hexachlorocyclopentadiene in the construction, agriculture, and maritime industries. OSHA recently established this PEL for hexachlorocyclopentadiene in general industry, and NIOSH (Ex. 8–47) concurred that this limit was appropriate for this substance.

Hexachlorocyclopentadiene is a yellow to amber-colored nonflammable liquid with a pungent odor. It is used primarily in the manufacture of chlorinated pesticides and flame retardants (ACGIH 1986, p. 300; HSDB 1985). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Hexachlorocyclopentadiene is an irritant of the eyes, skin, mucous membranes, and respiratory system; in laboratory animals, it has also been shown to cause systemic toxicity. The oral LD_{50} in rats is 113 mg/kg, the LC_{50} in the same species is 1600 ppb for 4 hours, and the dermal LD_{50} in rabbits is 430 mg/kg (RTECS 1991). Applied to the skin of monkeys, 10 mg of hexachlorocyclopentadiene caused severe irritation (RTECS 1991). Rabbits died after inhaling a 1.5-ppm concentration of hexachlorocyclopentadiene for 7 hours, rats died after five 7-hour exposures to a 1-ppm concentration, and guinea pigs died after two 7-hour exposures to 3.2 ppm; however, animals of all species survived 150 7-hour exposures to a hexachlorocyclopentadiene concentration of 0.15 ppm (Treon, Cleveland, and Cappel 1955/Ex. 1–497). Acutely poisoned animals showed tearing, labored breathing, and, at high concentrations, tremors (Treon, Cleveland, and Cappel 1955/Ex. 1–497). Treon and associates (1955/Ex. 1–497) noted degenerative changes in the brain, heart, liver, adrenal glands, and kidneys, and signs of pulmonary damage in these animals at autopsy, even in those animals exposed to the lowest concentration of 0.15 ppm. In animals exposed to higher concentrations, pulmonary edema, hyperemia, necrotizing bronchitis, and bronchiolitis were observed (Treon, Cleveland, and Cappel 1955/Ex. 1–497).

In humans, there are few data concerning hexachlorocyclopentadiene's toxicity. Irritation is known to occur, but the intolerable odor and eye irritation associated with exposure to this substance have discouraged prolonged exposures (McGilvray 1971, as cited in ACGIH 1986/Ex. 1–3, p. 300). In a group of 145 sewage treatment plant workers exposed to hexachlorocyclopentadiene after a large amount of this substance was dumped into the sewage system, 59 percent reported experiencing eye irritation, 45 percent developed headaches, and 27 percent experienced throat irritation (Clayton and Clayton 1981, p. 3751). Clinical examination of these workers 3 days after the incident revealed proteinuria and elevated serum lactic dehydrogenase levels; these effects were no longer present three weeks later (Clayton and Clayton 1981, p. 3751).

The TWA PEL of 0.01 ppm that OSHA is proposing for the construction, maritime, and agriculture industries for this severely toxic substance is about 10 times below the level associated with systemic damage and pulmonary irritation in experimental animals. This is the limit recently established for hexachlorocyclopentadiene in general industry. OSHA preliminarily concludes that employees in construction, maritime, and agriculture are at significant risk of experiencing intense eye and pulmonary irritation, headaches, and potential organ damage and that the proposed PEL is necessary to substantially reduce these risks.

HEXACHLOROETHANE
CAS: 67–72–1; Chemical Formula: CCl_3CCl_3
H.S. No. 1197

OSHA's PEL for hexachloroethane in construction and maritime is a 1-ppm TWA, with a skin notation. The 1987–19 ACGIH TLV®–TWA is 1 ppm. The NIOSH REL for this substance is the lowest feasible level, based on hexachloroethane's potential carcinogenicity. OSHA is proposing an 8-hour TWA PEL of 1 ppm for hexachloroethane in agriculture, with a skin notation. Promulgation of this limit will make OSHA's PEL for this substance consistent across all industry sectors.

Hexachloroethane is a nonflammable white solid. This substance finds limited use in veterinary medicine and as a pesticide and is also used to make pyrotechnics and smoke devices (ACGIH 1986, p. 301(87)). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Hexachloroethane is an eye and upper respiratory tract irritant. The oral LD_{50} in rats is 4460 mg/kg (RTECS 1990). A study by Weeks, Angerhofer, Bishop, et al. (1979/Ex. 1–400) reported no adverse effects among several animal species exposed daily to 15- or 48-ppm concentrations of hexachloroethane for a period of 6 weeks. An NCI study (NCI 1978b/Ex. 1–949) reported that "extremely heavy dosages * * * administered continuously for a long period of time" resulted in the development of hepatocellular tumors in mice but not in rats. In 1978, NIOSH

reviewed the results of the NCI (1978b/Ex. 1–949) bioassay discussed above. Both male and female mice in this study exhibited an excess incidence of hepatocellular carcinoma, but rats did not. NCI concluded that early mortality may have obscured detection of a carcinogenic effect in rats (NCI 1978b/Ex. 1–949). Kidney damage was also found in mice and rats treated with hexachloroethane. Based on this evidence, NIOSH (1978r) recommends that exposure to hexachloroethane be maintained at the lowest detectable level. The International Agency for Research on Cancer (IARC) concluded, after reviewing the available literature on this substance, that the evidence for the carcinogenicity of hexachloroethane in animals was limited (IARC 1979, Vol. 20, p. 473).

Little information is available on human responses to hexachloroethane exposure. Workers exposed to the fumes from heated chloroethane developed blepharospasm, photophobia, tearing of the eyes, and hyperemia; these effects cleared completely after the cessation of exposure (Grant 1986, p. 479). Exposure to high but unspecified concentrations of hexachloroethane dust are irritating (Torkelson and Rowe, in Clayton and Clayton 1981).

OSHA preliminarily concludes that exposure to hexachloroethane poses a significant risk of irritation and perhaps of kidney damage and cancer to workers in agriculture. OSHA therefore proposes an 8-hour TWA PEL of 1 ppm, with a skin notation, for this substance in agriculture. The Agency believes that this limit is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

sec-HEXYL ACETATE
CAS: 108–84–9
H.S. No. 2090

In general industry, construction, and maritime, OSHA's permissible exposure limit for sec-hexyl acetate is 50 ppm as an 8-hour TWA. There is no limit for this substance in agriculture. The ACGIH has a TLV®-TWA of 50 ppm for sec-hexyl acetate; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL of 50 ppm for sec-hexyl acetate in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

sec-Hexyl acetate is a colorless liquid with a mild, fruity odor. The principal use for this substance is as a solvent in the lacquer industry. It is also used as a fragrance in the cosmetic and perfume industry and as a component in housefly insecticides and beetle attractants (HSDB 19; Clayton and Clayton 1982, p. 2278; Proctor, Hughes, and Fischman 1988, p. 272). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

sec-Hexyl acetate is an irritant of the eyes, mucous membranes, and upper respiratory tract in both animals and humans; at high concentrations, it causes narcosis in animals. The oral LD_{50} in rats is 6160 mg/kg; the dermal LD_{50} for rabbits is 20 gm/kg; and the lowest lethal concentration in rats is 2000 ppm for 4 hours (RTECS 1990). All rats exposed to an 8000-ppm concentration of sec-hexyl acetate died after a 48-hour exposure, while four out of six rats exposed to a 4000-ppm concentration for 4 hours survived (Smyth et al. 1954, pp. 61–68). Application of this substance to the skin of rabbits caused moderate irritation; instillation into the eyes of rabbits caused only minor corneal injury (Smyth et al. 1954, pp. 61–68; Carpenter, et al. 1974, pp. 313–319). Exposure to excessive concentrations of acetates causes eye, nose, and throat irritation and the gradual onset of narcosis in both animals and humans; recovery is slow after exposure is terminated (Clayton and Clayton 1982, p. 2268).

Human subjects experienced eye irritation on exposure to a 100-ppm concentration of sec-hexyl acetate for 15 minutes; concentrations higher than 100 ppm also caused nose and throat irritation (Silverman, et al. 1946, pp. 262–266). No chronic effects have been reported in humans (Proctor, Hughes, and Fischman 1988, p. 272).

Based on this evidence in humans and animals, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye, nose, and throat irritation associated with exposure to sec-hexyl acetate and that they may also be at significant risk of experiencing central nervous system depression. The Agency believes that establishing an 8-hour TWA PEL of 50 ppm is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HEXYLENE GLYCOL
CAS: 107–41–5; Chemical Formula: $(CH_3)_2$-$COHCH_2$-$CHOH$–CH_3
H.S. No. 1204

OSHA has no limit for hexylene glycol in the construction, agriculture, and maritime industries. The ACGIH has a TLV® of 25 ppm as a ceiling limit; there is no NIOSH REL. The Agency is proposing a ceiling PEL of 25 ppm for hexylene glycol in the construction, agriculture, and maritime industries. OSHA recently established this PEL in general industry, and NIOSH (Ex. 8–47) concurred that this limit was appropriate for hexylene glycol.

Hexylene glycol is a colorless liquid that has a mild, sweet odor. It is used as an intermediate, a selective solvent in petroleum refining operations, and as a component of inks, hydraulic fluids, cosmetics, and cements (ACGIH 196, p. 309; Sittig 1985, p. 501).

Hexylene glycol is an irritant of the eyes, skin, and upper respiratory tract; in laboratory animals, it has also been shown to cause central nervous system depression and systemic toxicity. In rats, the oral LD_{50} is 3700 mg/kg; a dermal LD_{50} of 8560 mg/kg has been reported for rabbits (RTECS 1991). Undiluted hexylene glycol instilled into the rabbit eye caused irritation and corneal injury (Smyth and Carpenter 1948/Ex. 1–375). In contact with the skin for 24 hours, 500 mg caused moderate irritation in rabbits (RTECS 1991). Narcosis was produced in mice following a single oral dose of 2.0 ml/kg, and higher doses caused profound central nervous system depression (Smyth and Carpenter 1948/Ex. 1–375). Studies have shown that chronic feeding of this substance causes slight liver and kidney damage in experimental animals (Gosselin, Smith, and Hodge 1984, p. II–178).

At high concentrations, hexylene glycol vapors evoke a strong sensory response in humans: a 5-minute exposure to a 1000-ppm concentration produced eye irritation and throat and upper respiratory tract discomfort. At concentrations of 50 ppm for 15 minutes, most individuals experience slight eye irritation (ACGIH 1986/Ex. 1–3, p. 309). Subjects voluntarily ingesting 5 g hexylene glycol daily for 5 days failed to show adverse effects or urinary abnormalities (Gosselin, Hodge, and Smith 1984, p. II–179).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers exposed to this substance are at significant risk of experiencing exposure-related effects. The Agency believes that establishing a 25-ppm ceiling limit for hexylene glycol is necessary to substantially reduce these significant risks for workers in construction, maritime, and agriculture. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HYDROGEN BROMIDE

CAS: 10035–10–6; Chemical Formula: HBr
H.S. No. 1206

The OSHA PEL for hydrogen bromide in the construction and maritime industries is 3 ppm as an 8-hour TWA. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV® of 3 ppm as a ceiling; there is no NIOSH REL for hydrogen bromide. The Agency is proposing a 3-ppm ceiling limit for hydrogen bromide in the construction, agriculture, and maritime industries. OSHA recently established this PEL in general industry, and NIOSH (Ex. –47) concurred that this was the appropriate limit for hydrogen bromide.

Hydrogen bromide is a corrosive, colorless gas with an acrid odor. It is used in the manufacture of bromides, in organic synthesis, to dissolve certain ores, and as an alkylation catalyst (ACGIH 1986, p. 312). Hydrogen bromide also finds use as a laboratory reagent (HSDB 1985).

Hydrogen bromide is a severe eye, nose, and respiratory tract irritant. In contact with moisture, hydrogen bromide forms hydrobromic acid. Animal studies have demonstrated that hydrogen bromide has a considerably higher acute toxicity than hydrogen chloride (HCl) in mice and a somewhat higher acute toxicity than this chemical in rats (NIOSH 1977i/Ex. 1–1182). In mice, the LC_{50} is 814 ppm for 60 minutes; in rats, the LC_{50} is 2858 ppm for 60 minutes (RTECS 1991). In contact with the skin of rabbits, hydrobromic acid caused corrosive burns (HSDB 1985).

The chief toxic effect of hydrogen bromide in humans is severe primary irritation of the eyes, nose, throat, and lungs. Irritation begins within a few minutes on exposure to concen-trations of hydrogen bromide ranging from 3 to 6 ppm (Connecticut State Department of Health 1955, as cited in ACGIH 1986/Ex. 1–3, p. 312). In contact with the eyes, mucous membranes, or skin, hydrogen bromide solutions cause burns (Parmeggiani 1983, p. 327). Hydrogen bromide's mechanism of action is to form hydrobromic acid on contact with moisture; this acid then neutralizes the alkali of tissues and can cause death as a result of lung edema, laryngeal spasms, or upper respiratory tract inflammation (HSDB 1985). Skin contact in humans causes severe tissue irritation and necrosis (Braker and Mossman 1980, p. 373). Exposure to a 1300 to 2000-ppm concentration of hydrogen bromide is lethal within a few minutes (Braker and Mossman 190, p. 373). A laboratory assistant splashed with a mixture of bromine, phosphorus tribromide, and hydrogen bromide developed cough, lightheadedness, throat congestion, shortness of breath, and bibasilar crackles within 2 weeks of the episode. The patient was hospitalized with bilateral lower-lobe chemical pneumonitis. The authors of this case report believe that this worker subsequently developed bronchiolitis obliterans because her symptoms later recurred (Kraut and Lilis 1988; Chest 94(1):208–210).

Based on this evidence, OSHA preliminarily finds that workers are at significant risk of experiencing severe irritant effects on brief exposure to hydrogen bromide. The Agency considers these irritant effects material impairments of health and believes that the proposed ceiling limit of 3 ppm is necessary to protect workers in the construction, agriculture, and maritime industries from these significant risks. Promulgation of this limit will make OSHA's PEL for hydrogen bromide consistent across all OSHA-regulated sectors.

HYDROGEN CHLORIDE
CAS: 7647–01–0; Chemical Formula: HCl
H.S. No. 2091

In general industry, construction, and maritime, OSHA has a PEL of 5 ppm as a ceiling limit for hydrogen chloride. The Agency currently has no PEL for this substance in agriculture. The ACGIH has a TLV® of 5 ppm (7.5 mg/m³) as a ceiling limit for hydrogen chloride; NIOSH has no REL. OSHA is proposing a PEL of 5 ppm as a ceiling limit for hydrogen chloride in agriculture; promulgation of this limit would mean that the PEL for hydrogen chloride in all OSHA-regulated industry sectors is the same.

Hydrogen chloride is a colorless, corrosive, nonflammable gas with a pungent, suffocating odor. Aqueous solutions of various concentrations are available commercially. Hydrogen chloride is used in the separation of cotton from wool; in the de-linting of cotton; as a catalyst for making oils viscous; in the activation of oil wells; in ore reduction, metal-pickling, and metal cleaning; in food processing; and in many other chemical processes (Braker and Mossman 1980, p. 378; ACGIH 1986, p. 313).

Hydrogen chloride is a strong irritant of the eyes, skin, mucous membranes, and respiratory tract; this substance also causes pulmonary sensitization. The LC_{50} in rats is 3141 ppm for 1 hour (RTECS 1990). The oral LD_{50} in rabbits is 900 mg/kg (RTECS 1990). Animals exposed to a hydrogen chloride concentration of 1350 ppm for 1.5 hours developed corneal clouding, and exposure to 300 ppm for 6 hours caused slight erosion of the corneal epithelium (Patty 1949). Rabbits, guinea pigs, and pigeons exposed to a 100-ppm concentration for 6 hours/day for 50 days exhibited excitation and signs of eye and nose irritation (Jones 1972; Faigel 1964). Rats and mice exposed to hydrogen chloride for 6 hours/day, 5 days/week for 90 days at a 50-ppm concentration showed significant decreases in body weight, and rats exposed to 10, 20, or 50 ppm showed inflammation of the nasal passages (Chemical Industry Institute of Toxicology 1984).

In humans, exposure to high concentrations of hydrogen chloride causes necrosis of the tracheal and bronchial epithelium, pulmonary edema, atelectasis, emphysema, damage to the pulmonary blood vessels, and damage to the liver and other organs (Machle 1944). Male volunteers found concentrations of 50 to 100 ppm barely tolerable for 1 hour; exposure to 35 ppm for brief periods caused irritation of the throat, and 10 ppm was considered the maximal acceptable concentration for prolonged exposures (Henderson 1943). Exposure to concentrations of 5 ppm or above resulted in immediate irritation of the nose and throat, while exposure to concentrations below 5 ppm produced no adverse effects (Elkins 1959). Inhalation of high concentrations of hydrogen chloride for less than 1 hour induced cough and dyspnea among subjects with no past history of asthma or atopy; the same exposure caused severe bronchospasm that required mechanical ventilation in the case of an asthmatic subject. All subjects continued to show hyperresponsiveness more than 1 year later (Boulet 1988). Splashed into the eye and washed out immediately, hydrogen chloride causes white coagulation of the cornea and conjunctival epithelium; however, the damaged epithelium is later replaced by new epithelium, leaving the eye normal (Grant 1986, p. 489). Contact of the skin with the liquid causes skin burns, and repeated skin exposure to dilute solutions may cause dermatitis (M.C.A. 1970). Workers exposed chronically to hydrogen chloride experience gastritis and chronic bronchitis (Bransburg 1946). Chronic exposure to low concentrations has also led to erosion of the enamel of exposed teeth (NAS 1976; Ludewig 1942).

Based on this evidence in humans and animals, OSHA proposes to establish a PEL of 5 ppm as a ceiling for hydrogen chloride in agriculture; adoption of this limit would establish the same PEL for workplaces in all OSHA-regulated industry sectors. The Agency

preliminarily concludes that occupational exposure to hydrogen chloride causes severe irritation of the eyes, skin, and upper respiratory tract. Accordingly, OSHA believes that, in the absence of a permissible exposure limit, workers in agriculture are potentially at significant risk for these exposure-related effects and that the proposed PEL is necessary to substantially reduce these risks.

HYDROGEN FLUORIDE
CAS: 7664–39–3; Chemical Formula: HF
H.S. No. 1208

The OSHA PEL for hydrogen fluoride in the construction and maritime industries is 3 ppm as an 8-hour TWA. The Agency has no limit for this substance in agriculture. The ACGIH has a TLV® of 3 ppm as a ceiling, and the NIOSH RELs for hydrogen fluoride are 3 ppm as a 10-hour TWA and 6 ppm as a 15-minute ceiling. The Agency is proposing a 3-ppm TWA PEL and a 6-ppm 15-minute STEL for hydrogen fluoride in the construction, agriculture, and maritime industries. These are the limits recently established for hydrogen fluoride in general industry, and NIOSH (Ex. 8–47) concurred with these limits in that rule-making.

Hydrogen fluoride is a fuming, colorless liquid; at temperatures above 19°C (66°F), it becomes a colorless gas. It is used as a catalyst in chemical synthesis, as a fluorinating agent, in fluorine and aluminum fluoride production, and in uranium refining operations (ACGIH 1986, p. 315). Hydrogen fluoride also finds use in dye chemistry, metal cleaning, crystal polishing, and iron enameling and galvanizing (HSDB 1985).

Hydrogen fluoride causes severe irritation and burns of the eyes, skin, mucous membranes, and respiratory tract; it can also be absorbed through the skin to cause systemic toxicity. Because fluorides accumulate in the bone, long-term exposure to hydrogen fluoride also can cause osteosclerosis (Rom 1983, p. 276). The LC_{50} in rats is 1276 ppm for 1 hour; in monkeys, the LC_{50} is 1774 ppm for 1 hour (RTECS 1990). Application of a 2-percent solution of hydrogen fluoride to the skin of rabbits for 1 hour caused necrosis (AIHA 1988; Emergency Response Planning Guidelines). Guinea pigs and rabbits survived exposure to hydrogen fluoride concentrations of 40 ppm for a total of 41 hours, but exposure to a concentration of 300 ppm for two hours or more was fatal (Machle, Thamann, Kitzmiller, and Cholak 1934/Ex. 1–519). Animals exposed to a 3-ppm concentration of hydrogen fluoride for 30 days showed no adverse effects (Ronzani 1909, as cited in ACGIH 1986/Ex. 1–3, p. 315). Stokinger (1949a, as cited in ACGIH 1986/Ex. 1–3, p. 315) reported that animals repeatedly exposed to a 7-ppm concentration of hydrogen fluoride on a daily basis exhibited mild respiratory tract irritation. A study by Largent (1961/Ex. 1–1158) demonstrated kidney, liver, and lung damage in laboratory animals repeatedly exposed to a 17-ppm concentration of hydrogen fluoride. At a concentration of 8.6 ppm, however, the pathologic changes seen in exposed animals were minor, except for lung damage in one dog (Largent 1961/Ex. 1–1158). Guinea pigs, rabbits, and monkeys exposed to an 18.5-ppm concentration of hydrogen fluoride for 6 to 8 hours/day, 5 days/week for 2 months showed signs of liver and kidney damage at autopsy; a few animals showed signs of lung damage as well (AIHA 1988).

Hydrogen fluoride is a severe irritant of the eyes, mucous membranes, and lungs in humans. Based on the results of studies with volunteers and findings from accidental overexposures, it is believed that a 5-minute exposure to a 50- to 250-ppm concentration of hydrogen fluoride would be fatal (Proctor, Hughes, and Fischman 1988, p. 278). Largent (1960/Ex. 1–516; 1961/Ex. 1–115) reported that volunteers exposed repeatedly to concentrations of hydrogen fluoride as high as 4.7 ppm for 6 hours/day for 10 to 50 days experienced irritation and burning of the eyes and nose, in addition to reddening of the skin, at all hydrogen fluoride concentrations above 3 ppm. Industrial experience has shown that direct contact of the skin with hydrogen fluoride results in severe burns that may have a delayed onset but later develop into ulcers that eventually scar (Stokinger 1981b/Ex. 1–1127). A report by Eagers (1969, as cited in Stokinger 1981b, above) described several industrial accidents in which workers died in a matter of hours after containers of hydrogen fluoride ruptured and caused accidental splashing of nearby workers (the cause of death was respiratory failure and cardiac arrest). Kleinfeld (1965/Ex. 1–514) reported on a similar case of hydrogen fluoride poisoning that resulted in death from pulmonary edema. When splashed on the skin, hydrogen fluoride can be absorbed in quantities sufficient to cause hypocalcemia and hypomagnesemia, followed by life-threatening cardiac arrhythmia (Proctor, Hughes, and Fischman 1988, p. 279). Chronic exposure to hydrogen fluoride can cause increased density of the bones, which is visible radiographically; this condition may lead to crippling osteosclerosis (Proctor, Hughes, and Fischman 1988, p. 279).

Based on this evidence in humans and animals, OSHA preliminarily finds that workers exposed to hydrogen fluoride are at significant risk of experiencing this substance's severe irritant and corrosive effects. The Agency believes that the effects caused by exposure to hydrogen fluoride constitute material impairments of health and that the proposed limits of 3 ppm as an 8-hour TWA and 6 ppm as a 15-minute STEL are necessary to substantially reduce these risks among workers in construction, maritime, and agriculture. These are the limits recently established for hydrogen fluoride in general industry.

HYDROGEN PEROXIDE
CAS: 7722–84–1; Chemical Formula: H_2O_2
H.S. No. 2092

In general industry, construction, and maritime, OSHA's permissible exposure limit for hydrogen peroxide is 1 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 1 ppm for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL of 1 ppm for hydrogen peroxide in agriculture. This is the limit recently established for this substance in general industry.

Pure anhydrous hydrogen peroxide is a colorless, odorless liquid. It is commercially available in 30%, 35%, 50%, 70%, and 90% grades. Hydrogen peroxide is used in water and sewage treatment, as a disinfectant, as an intermediate in chemical synthesis, as a fuel in rockets, and as a bleaching agent and deodorizer for textiles, hair, fur, wood pulp, and foods (AIHA 1978; HSDB 1986; ACGIH 1986, p. 316). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Hydrogen peroxide is an irritant of the eyes, mucous membranes, skin, and respiratory tract in both animals and humans. There is also limited evidence that hydrogen peroxide is carcinogenic in animals (IARC 1985, Vol. 35, p. 303). The oral LD_{50} in mice is 2 g/kg, the dermal LD_{50} in rats is 4060 mg/kg, and the lowest lethal concentration in mice is 227 ppm (RTECS 1991). A 5-minute exposure of mice to approximately 3600 ppm of hydrogen peroxide resulted in pulmonary congestion and minor burns of the nose and jaws; a concentration of approximately 6500 ppm for the same period was lethal to these animals (AIHA 1978; Punte 1956). Sneezing, external body irritation, lacri-mation,

and bleaching of hair occurred in dogs exposed to a 7-ppm concentration of hydrogen peroxide (90-percent solution) for 6 hours/day for 6 months. Thickened skin and lung irritation were seen in these animals at autopsy, but no significant changes were noted in the blood or urine (Oberst et al. 1954). Applied to the eyes of rabbits, hydrogen peroxide causes irritation and corneal damage. The extent of eye damage depends on the concentration of hydrogen peroxide, with stronger concentrations causing greater damage (Grant 1986, p. 493). In oral bioassays, hydrogen peroxide induced adenomas and carcinomas of the duodenum in mice. The International Agency for Research on Cancer has concluded that the evidence for the carcinogenicity of hydrogen peroxide in animals is limited (IARC 1985, Vol. 35, p. 304).

Exposure to high concentrations of hydrogen peroxide vapor or mist causes severe irritation and inflammation of the nose and throat in humans (Proctor, Hughes, and Fischman 1988, p. 282). Dermal application of a 1- to 30-percent solution of hydrogen peroxide results in a characteristic whitening of the skin; if skin contact is prolonged, redness and blistering may occur (Hauschild et al. 1958; Proctor, Hughes, and Fischman 1988, p. 282). Application of a 1- to 3-percent solution of hydrogen peroxide to the eye causes severe pain and reversible injury (Grant 1986, p. 493).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing eye, mucous membrane, skin, and respiratory tract irritation if exposed to hydrogen peroxide at the concentrations permitted by the absence of a limit. The Agency believes that establishing an 8-hour TWA PEL of 1 ppm is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

2–HYDROXYPROPYL ACRYLATE

CAS: 999–61–1; Chemical Formula: $CH_2CHCOOCH_2CHOHCH_3$

H.S. No. 1211

OSHA has no limit for 2-hydroxypropyl acrylate in the construction, agriculture, and maritime industries. The ACGIH has a TLV®–TWA of 0.5 ppm, with a skin notation, for 2-hydroxypropyl acrylate; there is no NIOSH REL for this substance. The Agency is proposing a TWA PEL of 0.5 ppm, with a skin notation, for this substance in the construction, agriculture, and maritime industries. This PEL was recently established for 2-hydroxypropyl acrylate in general industry, and NIOSH (Ex. 8–47) concurred with this limit in that rulemaking.

2-Hydroxypropyl acrylate, also called HPA, is a colorless liquid that is used as a monomer for acrylic resins, a binder in nonwoven fabrics, and in the manufacture of thermosetting resins for surface coatings (Sittig 1985, p. 517; ACGIH 1986, p. 320).

2-Hydroxypropyl acrylate causes irritation, severe burns and corrosion of the eyes and skin, and skin sensitization in animals and humans. In experimental animals, 2-hydroxypropyl acrylate has a high acute toxicity. The oral LD_{50} in rats is 250 mg/kg; the dermal LD_{50} in rabbits is approximately 0.25 mg/kg (RTECS 1990; Dow Chemical Company 1977, as cited in ACGIH 1986/Ex. 1–3, p. 320). In guinea pigs, direct contact with HPA caused severe eye burns and skin corrosion and sensitized some of the animals. Rats exposed to an HPA concentration of 650 ppm for 7 hours survived. Longer-term inhalation studies (2 hours/day, 6 days/week for 30 days) in rats, dogs, rabbits, and mice showed that the animals displayed signs of sensory irritation at concentrations of 2-hydroxypropyl acrylate of 5 ppm and above (Dow Chemical Company 1977c, as cited in ACGIH 1986/Ex. 1–3, p. 320).

In humans, 2-hydroxypropyl acrylate has been shown to cause adverse skin effects. A recent study in individuals with allergic contact dermatitis reports that 3 of 24 exposed persons had become sensitized to HPA (Kanerva, Estlander, Jolanski 1988; Contact Dermatitis 18(1):1–5). Another study reports that a worker in an HPA manufacturing facility developed swelling, blisters, and an erythematous papular eruption on his foot, forearms, thighs, and groin after exposure to HPA. These lesions cleared after several days away from work but reappeared after the man returned to his job. This worker showed positive responses to patch testing with HPA and methacrylates; these results demonstrate that he had become sensitized to HPA and had developed a cross-sensitivity to methacrylates (Lovell, Rycroft, Williams, and Hamlin 1985; Contact Dermatitis 12(2):117–18).

Based on this evidence in humans and animals, OSHA preliminarily finds that the proposed limit is necessary to protect exposed workers in construction, maritime, and agriculture from the significant risks of irritation, skin and eye burns, and skin sensitization associated with exposure to 2-hydroxypropyl acrylate. The Agency considers these effects material impairments of health and preliminarily finds that the proposed TWA limit of 0.5 ppm, with a skin notation, is necessary to substantially reduce these risks. Promulgation of this limit in construction, maritime, and agriculture will make OSHA's limit for 2-hydroxypropyl acrylate consistent across all OSHA-regulated sectors.

IODINE

CAS: 7553–56–2; Chemical Formula: I

H.S. No. 2095

In general industry, construction, and maritime, OSHA's current permissible exposure limit for iodine is 0.1 ppm as a ceiling limit. OSHA has no limit in agriculture. The ACGIH TLV® for iodine is 0.1 ppm as a ceiling limit; NIOSH has no REL. OSHA is proposing a ceiling PEL in agriculture of 0.1 ppm for iodine. This is the limit recently established for this substance in general industry.

Iodine is the heaviest of the halogens used in industry. Elemental iodine is a crystalline solid that occurs in blue-black or grayish-black plates or scales. It sublimes when heated to form a violet-colored vapor in air. Iodine is used as a bactericide, fungicide, amebicide, topical antiseptic and disinfectant, and to decontaminate drinking water. It is also used in antihyperthyroid drugs; in biological, biochemical, and chemical research; in dyes and soaps; and in engraving and lithography procedures (HSDB 1984; Clayton and Clayton 1982, p. 2972; ACGIH 1986, p. 323). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Iodine is irritating and corrosive to the skin, eyes, mucous membranes, and upper respiratory tract in both animals and humans. The oral LD_{50} in rats is 14 g/kg; the lowest lethal concentration in rats is 800 mg/m³ for 1 hour (RTECS 1991). Dogs exposed by intratracheal administration to iodine vapor at a dose of 36 mg/kg for 3 hours died; before death, signs of severe respiratory irritation were present, and autopsy revealed pulmonary edema and subpleural hemorrhage (Lockhardt, Koch, Schroeder, and Weiland 1920). Rats and guinea pigs exposed chronically to iodine vapors (concentration and duration not specified) showed reduced oxygen uptake and disrupted thyroid activity; at autopsy, the lungs of these animals were edematous and hemorrhagic (Begishev et al. 1976).

Industrial exposures to the vapor of iodine have shown this substance to be highly irritating at very low doses.

Exposure of four individuals to a concentration of 0.57 ppm for 5 minutes was without effect, but increasing this concentration to 1.63 ppm was irritating to the eyes within 2 minutes (AIHA 1965). Some workers experience moderate irritation at a concentration of 0.15 to 0.2 ppm and intolerable irritation at a 0.3-ppm concentration (ACGIH 1986, p. 323). The effects of overexposure to iodine include tearing, a feeling of tightness in the chest, sore throat, headache, and, if the overexposure is severe, respiratory symptoms equivalent to those associated with chlorine gassing (Lockhardt, Koch, Schroeder, and Weiland 1920). Chronic exposure to iodine leads to iodism, a condition characterized by tremor, insomnia, weight loss, conjunctivitis, bronchitis, tachycardia, and diarrhea (Seymour 1983; Peterson 1983).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers in agriculture are potentially exposed to a significant risk of eye, mucous membrane, and upper respiratory tract irritation and may also be at risk of developing iodism, a condition that can be life-threatening if untreated. OSHA believes that establishing a limit in agriculture for iodine at the proposed ceiling level of 0.1 ppm is necessary to protect agricultural workers from these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

IRON SALTS (SOLUBLE)
CAS: Varies with compound; Chemical Formula: Varies with compound
H.S. No. 1217

OSHA has no limit for soluble iron salts in the construction, agriculture, and maritime industries. The ACGIH has a TLV®–TWA of 1 mg/m³ for these substances; there are no NIOSH RELs. The Agency is proposing a TWA PEL of 1 mg/m³ for the soluble iron salts in the construction, agriculture, and maritime industries. This PEL was recently established in general industry, and NIOSH (Ex. 8–47) concurred that this PEL was appropriate for the soluble salts of iron.

The soluble salts of iron include ferric chloride, ferric nitrate, ferric sulfate, ferrous chloride, and ferrous sulfate (ACGIH 1986, p. 328). Ferric salts are used as astringents in treating some skin disorders, and both the ferrous and ferric salts are used in the textile industry and the dye industry (ACGIH 1986, p. 328).

The soluble salts of iron are irritants of the skin and respiratory tract; in large doses, they are corrosive and systemically toxic (ACGIH 1986, p. 328; Gosselin, Smith, and Hodge 1984, p. II–139). Iron salts are highly toxic by intravenous injection and moderately toxic by oral administration; their acute toxicity by inhalation has not been established. The oral LD_{50} in rats for ferric chloride is 172 mg/kg; for ferrous sulfate, the oral LD_{50} in rats is 318 mg/kg (Sax and Lewis 1989, p. 2015). By intravenous administration, the LD_{LO} for ferric chloride in rabbits is 7.2 mg/kg (ACGIH 1986, p. 328). Acutely poisoned animals show alkalosis, hypothermia, anorexia, oligodipsia, oliguria, diarrhea, and alternating irritability and depression before death. At autopsy, congestion of the gastrointestinal tract, liver, kidneys, heart, lungs, brain, spleen, adrenals, and thymus is seen (Clayton and Clayton 1981, p. 1665). Dogs administered 0.2 to 0.8 g of ferric chloride daily on a chronic regimen (duration not specified) failed to develop physiological changes (Clayton and Clayton 1982, p. 1667). When inhaled as dusts and mists, the iron salts are irritants of the respiratory tract (ACGIH 1986, p. 328). Stewart and Faulds (1934/Ex. 1–764) identified the ferric salts as skin irritants.

Although the oral toxicity of the iron salts is considered moderate, marked gastrointestinal irritation results from the ingestion of these salts by humans (U.S. Department of Labor 1941, as cited in ACGIH 1986/Ex. 1–3, p. 328). The estimated fatal dose for humans by ingestion is 30 grams (Smyth 1956/Ex. 1–759). Humans poisoned by iron salts develop the following signs and symptoms: Vomiting, hematemesis, diarrhea, lethargy, coma, irritability, seizures, abdominal pain, and increased cardiac and respiratory rates (Clayton and Clayton 1981, p. 1665). Contact of the eye with ferric or ferrous sulfate or ferric or ferrous chloride causes transient irritation and inflammation, and prolonged contact may lead to brown discoloration of the conjunctiva (Grant 1986, p. 532).

The Agency preliminarily concludes that, in the absence of a limit, employees in construction, maritime, and agriculture are at risk of experiencing the skin and mucous membrane irritation associated with inhalation exposure to these soluble salts. OSHA considers these adverse health effects to be material impairments of health and believes that a 1 mg/m³ 8-hour TWA PEL for the soluble iron salts is necessary to substantially reduce these significant occupational risks. Promulgation of this limit will also make the PEL for these substances consistent across all OSHA-regulated sectors.

ISOAMYL ACETATE
CAS: 123–92–2; Chemical Formula: $CH_3COOCH_2CH(CH_3)C_2H_5$
H.S. No. 2096

In general industry, construction, and maritime, OSHA's permissible exposure limit for isoamyl acetate is 100 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 100 ppm for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL in agriculture of 100 ppm for isoamyl acetate. This is the limit recently established for this substance in general industry.

Isoamyl acetate is a colorless liquid with a banana-like odor. It is used widely as a solvent and flavoring agent and as an ingredient in fragrances, polishes, and photographic film. Isoamyl acetate also is used in the extraction of penicillin; as a warning odorant; and in the manufacture of artificial silk, leather, and glass (HSDB 1986; Parmeggiani 1983, p. 783).

In both animals and humans, isoamyl acetate is an irritant of the eyes, mucous membranes, and respiratory tract; at high concentrations, it causes central nervous system depression. Systemic effects also have been shown to occur in laboratory animals exposed to isoamyl acetate. The oral LD_{50} in rats is 16.6 g/kg, and the lowest lethal concentration in cats is 35,000 mg/m³ for an unspecified period (RTECS 1990). A 248-hour exposure to a 7200-ppm concentration of isoamyl acetate was fatal to cats; these animals showed signs of narcosis before death and died of pneumonia (Lehmann and Flury 1943, p. 228; Clayton and Clayton 1982, p. 2274). Changes in the liver, congestion and hypertrophy of the spleen, congestion of the kidney, and degenerative and reparative changes of the tubular epithelium were noted at autopsy in rabbits that had been subacutely poisoned by exposure to isoamyl acetate (Browning 1965, p. 540). In humans, a 30-minute exposure to a 1000-ppm concentration of isoamyl acetate resulted in irritation, difficult breathing, increased pulse rate, and fatigue (ACGIH 1986, p. 329). Severe throat irritation was reported as a result of exposure to 200 ppm, and minor throat discomfort resulted from exposure to a 100-ppm concentration of isoamyl acetate (Amoore 1950, p. 53; Nelson 1943, p. 282). Exposure to a 300-ppm concentration caused noticeable eye irritation, and exposure to higher concentrations caused burning and redness of the eyes (Grant 1986, p. 97). Workers in a hat factory exposed to isoamyl acetate at unspecified concentrations reported experiencing

nervous system disturbances, including headache, drowsiness, palpitation, and excessive fatigue (Browning 1965, p. 541).

Based on this evidence in humans and animals, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye, mucous membrane, and upper respiratory tract irritation associated with exposure to isoamyl acetate and that they may also be at significant risk of experiencing central nervous system depression. The Agency believes that establishing an 8-hour TWA PEL of 100 ppm for this substance is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ISOPROPYL ACETATE

CAS: 108–21–4; Chemical Formula: $CH_3COOCH(CH_3)_2$

H.S. No. 1224

OSHA has a 250 ppm 8-hour TWA limit for isopropyl acetate in the construction and maritime industries. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA of 250 ppm and a TLV®–STEL of 310 ppm for isopropyl acetate; there is no NIOSH REL for this substance. The Agency is retaining its 250 ppm 8-hour TWA in construction and maritime, proposing to add a 310 ppm STEL for isopropyl alcohol in these two sectors, and proposing to extend both limits to agriculture. These are the limits recently established for isopropyl acetate in general industry.

Isopropyl acetate is a colorless liquid with a fruity odor. It is used as a solvent for nitrocellulose lacquers and other resins, fats, oils, waxes, and gums. It is also used in perfumes and as a flavoring agent for foods (Sittig 1985, p. 531; ACGIH 1986, p. 336).

Isopropyl acetate causes irritation of the eyes and mucous membranes; at high concentrations, it causes central nervous system depression in both animals and humans (Clayton and Clayton 1981, p. 2268; Gosselin, Smith, and Hodge 1984, p. II–203). The oral LD_{50} in rats is 3000 mg/kg; five of six rats died after a four-hour exposure to a 32,000-ppm concentration of isopropyl acetate, and one of six rats died after a 4-hour exposure to a 16,000-ppm concentration (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440; RTECS 1991). The corneal burns caused by isopropyl acetate generally heal within 3 to 10 days (Clayton and Clayton 1981, p. 2277). Oral administration of isopropyl acetate to rabbits (dose not specified) caused loss of coordination (Clayton and Clayton 1981, pp. 2268–2269).

The primary problems associated with occupational exposure to isopropyl acetate are eye and mucous membrane irritation. In humans, exposure to a 200-ppm concentration of isopropyl acetate for 15 minutes caused mild eye irritation; nose and throat irritation occurred on exposure to higher concentrations (Silverman, Schulte, and First 1946/Ex. 1–142). In two cases involving splashes of isopropyl acetate in the eye, healing was slow but complete (Grant 1986, p. 539). Workers chronically exposed to isopropyl acetate at unspecified concentrations have reported experiencing conjunctival irritation, cough, and a tight feeling in the chest; skin defatting and cracking have also been reported (Parmeggiani 1983, p. 72).

Based on this evidence, OSHA preliminarily concludes that exposure to isopropyl acetate causes irritant effects. The Agency considers these effects material impairments of health and preliminarily finds that the proposed limits are necessary to reduce these significant risks to workers in construction, maritime, and agriculture. Accordingly, OSHA is retaining the 250-ppm 8-hour TWA limit in construction and maritime, proposing a 310-ppm STEL for this substance in these two sectors, and proposing both limits in agriculture. Promulgation of these limits will make OSHA's PELs for isopropyl acetate consistent across all regulated sectors.

ISOPROPYL ALCOHOL

CAS: 67–63–0; Chemical Formula: $CH_3CHOHCH_3$

H.S. No. 1225

The current PEL for isopropyl alcohol in the construction and maritime industries is 400 ppm as an 8-hour TWA. OSHA has no limit for this substance in agriculture. The ACGIH has a TLV®–TWA of 400 ppm and a TLV®–STEL of 500 ppm for isopropyl alcohol. NIOSH has a REL for isopropyl alcohol of 400 ppm as a 10-hour TWA and 800 ppm as a 15-minute ceiling limit but concurs (Ex. 150) with the limits being proposed by OSHA. The Agency is proposing a 400-ppm TWA and a 500-ppm STEL for isopropyl alcohol in the construction, agriculture, and maritime industries. OSHA recently established these PELs in general industry.

Isopropyl alcohol is a colorless, flammable liquid with the odor of rubbing alcohol. It is used as a starting material in the synthesis of acetone, glycerin, and other substances and is widely used throughout industry as a solvent, component of household products, ingredient in cosmetics and medicinals, as rubbing alcohol, and as a flavoring adjuvant (HSDB 1986; ACGIH 1986, p. 337).

Isopropyl alcohol is an irritant of the eyes and mucous membranes; at high concentrations, it causes narcosis in both humans and animals. The oral LD_{50} in rats is 5045 mg/kg, and the dermal LD_{50} in rabbits is 12,800 mg/kg (RTECS 1991). The lowest lethal concentration in rats is 12,000 ppm for 8 hours. Acutely poisoned animals show central nervous system effects before death (RTECS 1991). Mice exposed for 480 minutes to a 3250-ppm concentration of isopropyl alcohol developed ataxia, prostration, and narcosis (Proctor, Hughes, and Fischman 1988, p. 291). Conjunctivitis, iritis, and corneal opacity developed when the eyes of rabbits were instilled with a 70-percent isopropyl alcohol solution (Clayton and Clayton 1981, p. 4563). Applied once to the skin of rabbits, isopropyl alcohol caused a mild degree of irritation (RTECS 1991); however, prolonged contact of isopropyl alcohol with the skin of rabbits produced slight redness, dryness, and superficial desquamation (Clayton and Clayton 1982, p. 4565). Rats given 0.5 to 10 percent isopropyl alcohol in their drinking water for 27 weeks failed to gain weight at the normal rate but showed no gross or microscopic abnormalities at autopsy (Clayton and Clayton 1982, p. 4565). Inhalation of a 394-ppm concentration of isopropyl alcohol for 24 hours caused damage to the nasal mucosa of guinea pigs, although recovery occurred within 2 weeks if exposure was terminated; however, exposure to a concentration of 4550 ppm for the same period caused damage that took longer to recover (Ohashi, Nakai, Koshimo, Esaki, Ikeoka, Hariguchi, Teramoto, and Nakaseko 1988; Env. Res. 46(1):25–38).

Isopropyl alcohol has caused irritation of the eyes, nose, and throat in humans exposed for brief periods to a concentration of 400 ppm; at 800 ppm, these symptoms were more intense (Nelson, Enge, Ross, et al. 1943/Ex. 1–66). In addition, isopropyl alcohol has narcotic effects at higher concentrations. Prolonged or repeated contact of the skin with this solvent causes drying and dermatitis (HSDB 1990). At least one case of dermal sensitivity to isopropyl alcohol has been confirmed by patch test (HSDB 1990). An excess of paranasal sinus cancers, and perhaps of laryngeal cancers, was observed among workers manufacturing isopropyl alcohol (Weil, Smith, and Nale 1952/Ex. 1–453). However, it has been established that the cancers associated with

isopropyl alcohol manufacture were caused by the strong-acid manufacturing process and not by the isopropyl alcohol itself (Proctor, Hughes, and Fischman 1988, pp. 291–292; IARC 1987, Suppl. 7, p. 229).

Based on this evidence, OSHA preliminarily concludes that workers exposed to isopropyl alcohol are at significant risk of experiencing the narcotic and irritant effects associated with exposure to this substance. The Agency believes that the proposed limits, which were recently established for this substance in general industry, are necessary to substantially reduce these significant risks among workers in construction, maritime, and agriculture. OSHA considers the narcosis and eye and mucous membrane irritation associated with chronic and acute exposures to isopropyl alcohol material impairments of health within the meaning of the Act.

n-ISOPROPYLAMINE
CAS: 75–31–0; Chemical Formula: $(CH_3)_2CHNH_2$
H.S. No. 1228

OSHA's limit for n-isopropylamine in the construction and maritime industries is 5 ppm as an 8-hour TWA. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA of 5 ppm and a TLV®–STEL of 10 ppm for n-isopropylamine; there is no NIOSH REL. OSHA is proposing to retain its 8-hour TWA limit of 5 ppm in construction and maritime, proposing to add a STEL of 10 ppm in these sectors, and proposing to extend both limits to agriculture. The Agency recently established these PELs in general industry, and NIOSH (Ex. 8–47) concurred that these limits were appropriate for n-isopropylamine.

n-Isopropylamine is a flammable, volatile, colorless liquid that has an odor similar to that of ammonia. This substance is used as a chemical intermediate in the synthesis of insecticides, pharmaceuticals, bactericides, dyes, rubber accelerators, and textile specialties. It is also used as a dehairing agent and solvent (HSDB 1986).

n-Isopropylamine causes eye, skin, mucous membrane, and respiratory tract irritation; at high concentrations, exposure may cause pulmonary edema. The oral LD_{50} in rats is 820 mg/kg, the LC_{50} in the same species is 4000 ppm for 4 hours, and the dermal LD_{50} in rabbits is 380 mg/kg (RTECS 1990). Applied to the skin of rabbits, isopropylamine caused severe irritation (RTECS 1990). Instilled into the eyes of rabbits, this substance caused injury rated 10 on an ascending severity scale of 1 to 10 (Grant 1986, p. 1041). The most serious effect of exposure to n-isopropylamine in laboratory animals is respiratory tract irritation, which can be severe enough to cause lung edema (Smyth 1956/Ex. 1–759).

Exposure to isopropylamine causes eye, nose, and upper respiratory tract irritation in humans. Volunteers exposed to isopropylamine concentrations of 10 to 20 ppm experienced nose and upper respiratory tract irritation after brief (not further specified) exposures (Clayton and Clayton 1981, pp. 3154–3155). Workers exposed for 8 hours to isopropylamine vapor at an unspecified concentration developed transient corneal edema, manifested as haloes around lights (Proctor, Hughes, and Fischman 1988, p. 292). Splashed into the eye, isopropylamine can cause burns and permanent visual impairment; skin contact may cause irritation, dermatitis, and burns (Proctor, Hughes, and Fischman 1988, p. 292).

Based on this evidence, the Agency preliminarily concludes that both a TWA and STEL are required to protect exposed workers in construction, maritime, and agriculture from the significant risk of eye, nose, and upper respiratory tract irritation that is known to be associated with exposure to isopropylamine. The Agency considers eye, nose, and upper respiratory tract irritation material impairments of health and preliminarily finds that adding a 10-ppm 15-minute STEL to the limit for isopropylamine is necessary to substantially reduce the risk posed to workers by exposure to this substance. Promulgation of these limits will also make OSHA's PELs for isopropylamine consistent across all regulated sectors.

ISOPROPYL ETHER
CAS: 108–20–3; Chemical Formula: $(CH_3)_2CHOCH(CH_3)_2$
H.S. No. 1226

OSHA's limit in construction and maritime for isopropyl ether is 500 ppm as an 8-hour TWA limit. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 250 ppm and a TLV®–STEL of 310 ppm for isopropyl ether. NIOSH has no REL but concurred (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 500 ppm for workplaces in agriculture. This is the limit recently established for this substance in general industry.

Isopropyl ether is a liquid that smells like ether. It is widely used as a solvent in mineral, vegetable, and animal oils and in waxes, paints, varnish removers, and rubber cements (HSDB 1986).

Isopropyl ether is an irritant of the eyes, nose, and upper respiratory tract both in humans and in animals. When applied to the skin of rabbits, a concentration of 20 g/kg caused death in 50 percent of the animals (RTECS 1991). The oral LD_{50} in rats is 8470 mg/kg, and the LC_{50} in the same species is 162 g/m^3 (RTECS 1991). Instillation of the liquid into the eyes of rabbits caused minor injury, and repeated skin contact caused dermatitis in rabbits (Proctor, Hughes, and Fischman 1988, p. 293). Experimental animals surviving near-lethal exposures showed severe liver damage at autopsy (HSDB 1990). Animal studies have also shown that exposures to high concentrations of isopropyl ether cause narcosis and death (Machle, Scott, and Treon 1939/ Ex. 1–348). Experimental animals (a monkey, a rabbit, and a guinea pig) survived a one-hour exposure to a 30,000-ppm concentration, although they manifested signs of narcosis during the exposure (Proctor, Hughes, and Fischman 1988, p. 293). Twenty exposures to a 1-percent vapor concentration (i.e., to a 10,000-ppm concentration) produced systemic intoxication and central nervous system depression but no significant blood or organ weight changes (Machle, Scott, and Treon 1939/Ex. 1–348).

Human volunteers exposed for 15 minutes to isopropyl ether concentrations of 300 ppm experienced no overt irritation but complained about the objectionable odor of this substance; however, eye and nose irritation did occur during a 5-minute exposure to an 800-ppm concentration; some volunteers also experienced upper respiratory tract irritation at this concentration.

Based on this evidence, OSHA is proposing a 500 ppm 8-hour TWA limit for isopropyl ether in agricultural workplaces. The Agency preliminary concludes that this limit is necessary to substantially reduce a significant risk among agricultural workers of sensory irritation.

LITHIUM HYDRIDE
CAS: 7580–67–8; Chemical Formula: LiH
H.S. No. 2101

OSHA's PEL for lithium hydride in general industry, construction, and maritime is 0.025 mg/m^3 as an 8-hour TWA; there is no PEL in agriculture. The ACGIH TLV®–TWA for lithium hydride is 0.025 mg/m^3; there is no NIOSH REL. OSHA is proposing an 8-hour TWA PEL of 0.025 mg/m^3 for lithium hydride in agriculture. This is the limit recently established for this substance in general industry.

Pure lithium hydride is an odorless, white, crystalline solid that is pyrophoric and darkens on exposure to light. The commercial product is a

bluish-gray solid. Lithium hydride is used as a reducing and condensing agent, a desiccant, and as an intermediate in chemical synthesis. It is also used in hydrogen generators, in nuclear shielding material, in the manufacture of electronic tubes and ceramics, and in space technology (HSDB 1985; ACGIH 1986; Gosselin, Smith, and Hodge 1984, p. II–105).

Lithium hydride is severely irritating and corrosive to the eyes, mucous membranes, skin, and respiratory tract of both animals and humans. The lowest lethal concentration in rats is 10 mg/m³ for 4 hours; acutely poisoned animals showed pulmonary edema at autopsy (RTECS 1991). Rabbits exposed to a 5-mg/m³ concentration showed signs of eye irritation (RTECS 1991). Single acute exposures of animals to lithium hydride concentrations ranging from 5 to 55 mg/m³ caused respiratory tract irritation in all species and at all concentrations (Browning 1969). Exposure to a 10-mg/m³ concentration caused corrosion of body fur and the skin of the legs and severe inflammation of the eyes and nasal septum (Browning 1969). Animals exposed 4 hours/day to a 5-mg/m³ concentration of lithium hydride for a period of 1 week exhibited coughing, sneezing, dyspnea, and signs of emphysema. However, no exposure-related lesions were noted in the lungs, liver, trachea, lymph nodes, or kidneys of these animals at autopsy (Browning 1969).

A technician working in the vicinity of a cylinder of lithium hydride that exploded had eye contact with some of the material and swallowed a small amount of the dust. The exposure resulted in burns that scarred both corneas and in strictures of the larynx, trachea, bronchi, and esophagus; death occurred 10 months later (Cracovaner 1964). A few milliequivalents of the lithium ion in the plasma can cause anorexia, nausea, tremor, muscle twitches, apathy, confusion, visual disturbances, coma, and death (Goodman and Gilman 1955). A lithium hydride concentration of 0.05 mg/m³ is objectionable to some exposed individuals, and exposure to a 0.1-mg/m³ concentration causes eye and nose irritation (AIHA 1964).

Based on this evidence in humans and animals, OSHA preliminarily concludes that agricultural workers exposed to this substance at the levels permitted by the absence of a permissible exposure limit are at significant risk of experiencing severe irritation of the eyes, skin, mucous membranes, and respiratory tract. The Agency believes that establishing a PEL of 0.025 mg/m³ as an 8-hour TWA will protect workers in agriculture from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

MALEIC ANHYDRIDE

CAS: 108–31–6; Chemical Formula: $C_4H_2O_3$

H.S. No. 2102

In general industry, construction, and maritime, OSHA's permissible exposure limit for maleic anhydride is 0.25 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV® of 0.25 ppm as an 8-hour TWA for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL of 0.25 ppm for maleic anhydride in agriculture. This is the limit recently established for this substance in general industry.

Maleic anhydride is a solid at room temperature and is colorless and crystalline in form. It is commercially available as briquettes, white lumps, tablets, and pellets. Maleic anhydride is used as a chemical intermediate, an ingredient in pesticides, a preservative for fats and oils, in paper sizing, in permanent press fabrics, in the manufacture of resins, and as a raw material for organic synthesis (ACGIH 1986, p. 359; AIHA 1978; HSDB 1987). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Maleic anhydride is both an eye, skin, and upper respiratory tract irritant and a skin and pulmonary sensitizer. The oral LD_{50} in rats is 400 mg/kg, and the dermal LD_{50} in rabbits is 2620 mg/kg (RTECS 1990). In contact with the skin or eyes, maleic anhydride causes severe irritation and caustic burns (Grant 1986, p. 574). Rats injected subcutaneously with 1 mg maleic anhydride twice/week for 61 weeks developed fibrosarcomas (Dickens and Jones 1963).

Because maleic anhydride hydrolyzes in contact with moisture to maleic acid, contact of the eyes, mucous membranes, or skin causes severe irritation and burns. Even at a concentration of 0.25 ppm, humans report experiencing irritation (AIHA 1969), but exposure to 0.22 ppm causes no irritation (Grigoreva 1966). Workers exposed to unspecified concentrations of the dust or vapors have developed punctate epithelial keratitis, but the eyes of these individuals have returned to normal within a few days of exposure (Ghezzi and Scotti 1965; Heersink and Dunne 1976; Kowalski and Slusarczyk-Zalobna et al. 1968). Workers exposed to unspecified concentrations of maleic anhydride under conditions described as "uncontrolled" showed acute systemic effects that were manifested as respiratory, nervous, and cardiovascular system disorders (Titiova and Zakivova 1977). Chronic exposure to maleic anhydride may cause chronic conjunctivitis, keratitis, and bronchitis (AIHA 1969; Tanaka 1976). Repeated exposure to a 1.25 to 2.5 ppm concentration of this substance produced ulceration of the nasal septum and, in some workers, asthma (AIHA 1969). Repeated contact of the skin causes allergic dermatitis (AIHA 1969).

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA PEL of 0.25 ppm for maleic anhydride in agriculture; adoption of the proposed level would establish the same PEL for workplaces in all OSHA-regulated industry sectors. The Agency preliminarily concludes that occupational exposure to maleic anhydride causes irritation of the eyes, skin, and upper respiratory tract and pulmonary and skin sensitization. Accordingly, OSHA believes that, in the absence of a permissible exposure limit, workers in agriculture are potentially at significant risk for these exposure-related effects and that the proposed PEL will substantially reduce these risks.

MESITYL OXIDE

CAS: 141–79–7; Chemical Formula: $(CH_3)_2C{=}CHCOCH_3$

H.S. No. 1243

OSHA's limit for mesityl oxide in the construction and maritime industries is 25 ppm as an 8-hour TWA. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA of 15 ppm and a TLV®–STEL of 25 ppm for mesityl oxide; the NIOSH REL is 10 ppm as a 10-hour TWA. OSHA is proposing a 15 ppm 8-hour TWA and a 25 ppm STEL for mesityl oxide in the construction, agriculture, and maritime industries. These are the limits recently established for mesityl oxide in general industry.

Mesityl oxide is an oily, colorless liquid with an odor similar to that of peppermint. It is used as an insect repellant, a paint remover, a solvent, and in ore flotation (ACGIH 1986, p. 361).

Mesityl oxide is an irritant of the eyes and mucous membranes in both animals and humans; at high concentrations, it also causes central nervous system depression. The oral LD_{50} in rats is 1120 mg/kg, the LC_{50} in the same species is 9 g/m³ for 4 hours, and the dermal LD_{50} in rabbits is 5150 mg/kg (RTECS 1990). In contact with the eyes of rabbits, mesityl

oxide caused moderate to severe irritation; in contact with the skin of rabbits, this substance caused mild irritation (RTECS 1990). All guinea pigs exposed to a 2000-ppm concentration of mesityl oxide for up to 422 minutes died. The exposed animals exhibited eye and respiratory tract irritation, gradual loss of corneal and auditory reflexes, and coma before death (Specht, Miller, Valaer et al. 1940). Slight liver, kidney, and lung injury and irritation of the eyes and nose occurred in animals of two species exposed to a 500-ppm concentration for 8 hours a day for 10 days (Specht, Miller, Valaer et al. 1940). Experimental animals exposed to the vapor of mesityl oxide have shown signs of progressive central nervous system depression (Gosselin, Smith, and Hodge 1984, p. II–185). Guinea pigs exposed to mesityl oxide concentrations of 2300, 5000, or 10,000 ppm for as long as 8 hours showed dose-dependent central nervous system effects, as well as signs of respiratory irritation, reduced body temperature, reductions in heart rate and respiratory rate, and loss of reflexes (Clayton and Clayton 1982, p. 4753). Rabbits exposed to a 25-ppm concentration 4 hours/day for 189 days developed anemia and leukopenia (Clayton and Clayton 1982, p. 4753). Smyth, Seaton, and Fischer (1942/Ex. 1–378) reported liver and kidney damage among rats and guinea pigs continuously exposed to a 100-ppm concentration of mesityl oxide for 6 weeks; no adverse effects were reported in animals exposed to 50 ppm.

Silverman, Schulte, and First (1946/Ex. 1–142) found that a majority of test subjects experienced eye irritation on exposure to a 25-ppm concentration of mesityl oxide for 15 minutes and nasal irritation on exposure to 50 ppm. Prolonged or repeated skin contact with this substance causes dermatitis (Proctor, Hughes, and Fischman 1988, p. 312). Exposure to mesityl oxide at high (not further specified) concentrations causes signs of central nervous system depression, such as headache, dizziness, tremors, incoordination, weakness, and decreases in heart and respiratory rate (HSDB 1988).

After reviewing the health evidence for this substance, OSHA preliminarily finds that the proposed 15-ppm TWA and 25-ppm STEL limits are necessary to protect workers in construction, maritime, and agriculture against both the acute and chronic effects associated with exposure to this substance. These effects include possible liver and kidney damage as well as central nervous system depression and eye, mucous membrane, and skin irritation. The Agency considers these exposure-related effects material impairments of health and functional capacity. To reduce these significant occupational risks, OSHA is therefore proposing limits for mesityl oxide of 15 ppm as an 8-hour TWA and 25 ppm as a 15-minute STEL. Promulgation of these limits for workplaces in the construction, maritime, and agriculture sectors will make OSHA's PELs for this substance consistent across all OSHA-regulated sectors.

METHYL ACRYLATE

CAS: 96–33–3; Chemical Formula:

$CH_2=CHCOOCH_3$

H.S. No. 2105

OSHA's PEL for methyl acrylate in general industry, construction, and maritime is 10 ppm as an 8-hour TWA, with a skin notation; there is no PEL in agriculture. The ACGIH has a TLV®–TWA for methyl acrylate of 10 ppm, with a skin notation; there is no NIOSH REL for this substance. OSHA is proposing an 8-hour TWA PEL of 10 ppm, with a skin notation, for methyl acrylate in agriculture. This is the limit recently established for this substance in general industry.

Methyl acrylate is a clear, colorless liquid with an acrid odor (HSDB 1986; ACGIH 1986, p. 369). It is used primarily to produce acrylic and modacrylic fibers. In the dental, medical, and pharmaceutical industries, it is used as a monomer, polymer, and copolymer (IARC 1979, p. 55; Proctor, Hughes, and Fischman 1988, p. 318). Methyl acrylate is also used in paints, coatings, adhesives, plastic panels, and textile finishes (Gosselin, Smith, and Hodge 1984, p. II–409). This substance also finds use as an aid in the timed release and disintegration of pesticides (Clayton and Clayton 1982, p. 2293). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Methyl acrylate causes irritation of the eyes, mucous membranes, respiratory tract, and skin; it has also been shown to cause dermal sensitization and systemic toxicity in both humans and laboratory animals. The oral LD_{50} in rats is 277 mg/kg, and the dermal LD_{50} in rabbits is 1243 mg/kg (RTECS 1991). By inhalation, methyl acrylate causes death in 50 percent of rats exposed to a concentration of 1350 ppm for 4 hours (RTECS 1991). In rabbits, dyspnea, cyanosis, convulsions, and death resulted from a single oral dose of 280 mg/kg (Treon et al. 1949). Rabbits exposed to a 237-ppm concentration of methyl acrylate for 7 hours/day for 11 days exhibited conjunctival and nasal irritation, lacrimation, and labored breathing (Treon et al. 1949). Methyl acrylate causes contact sensitivity in guinea pigs, and contact of this substance with the skin of rabbits causes marked irritation (Treon 1949; Parker and Turk 1983). Methyl acrylate caused moderate irritation when tested on rabbit eyes (RTECS 1991; Grant 1986, p. 1044). In contact with the eye, methyl acrylate causes severe burns of the cornea (HSDB 1986). In laboratory animals, repeated dermal application of small amounts of methyl acrylate caused systemic poisoning in the form of lung, liver, and kidney damage (Gosselin, Smith, and Hodge 1984, p. II–409).

In humans, the lowest concentration of methyl acrylate reported to have irritant effects is 75 ppm (Sandmeyer and Kirwin 1981). Rapid breathing, headache, nausea, lethargy, pulmonary edema, convulsions, and death may result from the inhalation of high (not further specified) concentrations of methyl acrylate (Gosselin, Smith, and Hodge 1984, p. II–409). A fatality resulted from the subcutaneous injection of a 1000 mg/kg dose of methyl acrylate (Clayton and Clayton 1982, p. 2294). An industry study involving 105 workers exposed to methyl acrylate showed positive sensitization reactions in 76.1 percent of the workers; 53.7 percent of these workers showed clinical evidence of having three allergies (dermatitis, eczema, and urticaria) (Khromov 1974). In contact with the skin, 20 parts methyl acrylate per hundred parts of olive oil causes irritation in one-third of individuals and allergic responses in approximately one out of 10 persons (Cavelier et al. 1981).

Based on this evidence in humans and animals, OSHA preliminarily concludes that agricultural workers exposed to this substance at the levels permitted by the absence of a permissible exposure limit are at significant risk of experiencing irritation of the eyes, skin, mucous membranes, and respiratory tract. The Agency believes that establishing a TWA PEL of 10 ppm, with a skin notation, is necessary to protect workers in agriculture from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL 2–CYANOACRYLATE

CAS: 137–05–3; Chemical Formula:

$CH_2=C(C=N)COOCH_3$

H.S. No. 1248

OSHA has no limit for methyl 2-cyanoacrylate in the construction,

agriculture, or maritime industries. The ACGIH has a TLV®–TWA of 2 ppm and a TLV®–STEL of 4 ppm for this substance; there is no NIOSH REL. The Agency is proposing a 2-ppm 8-hour TWA and a 4-ppm STEL for methyl 2-cyanoacrylate in the construction, agriculture, and maritime industries. OSHA recently established these PELs in general industry, and NIOSH (Ex. 8–47) concurred that these limits were appropriate for this substance.

Methyl 2-cyanoacrylate is a colorless, viscous liquid that is used to manufacture adhesives, super-glues, and polymers (ACGIH 1986, p. 383; Gosselin, Smith, and Hodge 1984, p. II–409).

Methyl 2-cyanoacrylate is an irritant of the eyes, nose, and upper respiratory tract. The oral LD_{50} in rats is 1.6 to 3.2 g/kg, and the dermal LD_{50} in guinea pigs is greater than 10 ml/kg (ACGIH 1986, p. 383). The LC_{50} in rats is 101 ppm for 6 hours (ACGIH 1986, p. 383). The adverse effects reported in laboratory animals are slight irritation of the skin and corneal damage. Repeated exposures (6 hours/day for 5 days/week) to a concentration of 31.3 ppm for a total of 12 exposures caused only a slight decrease in the rate of weight gain in rats and no nasal or tracheal lesions or systemic toxicity (ACGIH 1986, p. 383). No changes were observed in rats similarly exposed to a concentration of 3.1 ppm (Eastman Kodak 1985, as cited in ACGIH 1986/Ex. 1–3, p. 383). Administered intratesticularly to monkeys at a dose of 100 mg/kg, methyl 2-cyanoacrylate caused reproductive effects (RTECS 1991).

In a simulated workbench exposure, McGee and co-workers reported nasal irritation in humans when the concentration of methyl 2-cyanoacrylate reached 3 ppm and eye irritation at a concentration of 5 ppm (McGee, Oglesby, Raleigh, and Fassett 1968/Ex. 1–424). In contact with the eyes, this substance causes corneal inflammation; however, recovery is usually complete (Grant 1986, p. 291). In contact with the skin of humans, it causes mild irritation (HSDB 1991).

Based on this evidence in humans and animals, OSHA preliminarily concludes that employees in construction, maritime, and agriculture are at risk of experiencing nasal irritation on exposure to methyl 2-cyanoacrylate concentrations of 3 ppm or above and of eye irritation at concentrations of 5 ppm or above. The Agency believes that these adverse effects are material impairments of health and that the proposed PELs are necessary to substantially reduce these significant risks. Accordingly, OSHA is proposing a 2-ppm 8-hour TWA limit and a 4-ppm STEL for methyl 2-cyanoacrylate in the construction, agriculture, and maritime industries. Promulgation of these limits will make the PELs for methyl 2-cyanoacrylate consistent across all OSHA-regulated sectors.

METHYL ISOBUTYL CARBINOL

CAS: 108–11–2; Chemical Formula: $CH_3CHOHCH_2CH(CH_3)_2$

H.S. No. 1261

OSHA has an 8-hour TWA limit of 25 ppm, with a skin notation, for methyl isobutyl carbinol in the construction and maritime industries. The ACGIH has an 8-hour TLV®–TWA of 25 ppm, a TLV®–STEL of 40 ppm, and a skin notation for methyl isobutyl carbinol. NIOSH has no REL for this substance. OSHA is retaining the 8-hour TWA PEL of 25 ppm in construction and maritime, proposing to add a 15-minute STEL of 40 ppm for methyl isobutyl carbinol in these two sections, and additionally proposing both limits for workplaces in agriculture. NIOSH (Ex. 8–47) concurred that these limits, which were recently established for methyl isobutyl carbinol in general industry, are appropriate for this substance.

Methyl isobutyl carbinol is a colorless, stable liquid. It is used as a solvent for dyestuffs, oil, gums, resins, waxes, and cellulose esters. Methyl isobutyl carbinol is also used in flotation processes and brake fluids and as an intermediate in chemical synthesis (ACGIH 1986, p. 401; Clayton and Clayton 1982, p. 4613).

In addition to sensory irritation, methyl isobutyl carbinol causes central nervous system depression in humans and experimental animals. The oral LD_{50} in rats is 2590 mg/kg, the lowest lethal concentration in the same species is 2000 ppm for 4 hours, and the dermal LD_{50} in rabbits is 3560 mg/kg (RTECS 1990). Anesthesia was observed in two of five mice given 1.0 ml/kg of methyl isobutyl carbinol orally; all exposed mice became anesthetized when the dose was increased to 1.5 or 2.0 ml/kg (McOmie and Anderson 1949). Gastrointestinal irritation and mesenteric congestion were also observed in these animals at autopsy (McOmie and Anderson 1949). Applied to the skin of rabbits, a dose of 10 mg methyl isobutyl carbinol produced mild irritation; instilled into rabbit eyes, methyl isobutyl carbinol caused severe irritation (RTECS 1990).

At a concentration of 50 ppm for 15 minutes, human volunteers experienced eye irritation (Silverman et al. 1946). At concentrations above 50 ppm, nose and upper respiratory tract irritation occurred (Silverman et al. 1946). It is expected that narcosis would also be experienced by humans exposed to high concentrations of methyl isobutyl carbinol.

In view of the finding that exposure to a 50-ppm concentration of methyl isobutyl carbinol can result in eye irritation in humans in as little as 15 minutes, OSHA has preliminarily concluded that a limit on both full-shift and short-term exposure is necessary. The Agency considers the irritant and narcotic effects associated with exposure to this substance to be material impairments of health. To reduce these significant risks, OSHA is proposing a 25-ppm 8-hour TWA, a 15-minute STEL of 40 ppm, and a skin notation for this substance in the construction, maritime, and agricultural industries. Promulgation of these limits will make the PELs for methyl isobutyl carbinol consistent across all OSHA-regulated sectors.

METHYL ISOCYANATE

CAS: 624–83–9; Chemical Formula: CH_3NCO

H.S. No. 2106

OSHA's PEL for methyl isocyanate in general industry, construction, and maritime is 0.02 ppm as an 8-hour TWA, with a skin notation; there is no PEL in agriculture. The ACGIH TLV®–TWA for methyl isocyanate is 0.02 ppm as an 8-hour TWA, with a skin notation; there is no NIOSH REL for this substance. OSHA is proposing to extend the 8-hour TWA PEL of 0.02 ppm, and the skin notation, to agriculture. Promulgation of this PEL will make OSHA's limit for this substance consistent across all regulated sectors.

Methyl isocyanate is the chemical responsible for the disaster in Bhopal, India, in 1984 that killed 2,000 people and affected as many as 100,000 individuals. This substance is used in the manufacture of carbaryl insecticides and in the production of polyurethane plastics and foams (ACGIH 1986, p. 403).

Methyl isocyanate is a severe irritant of the eyes, mucous membranes, and skin and a skin and pulmonary sensitizer in both humans and animals. The oral LD_{50} in rats is 69 mg/kg, and the LC_{50} in the same species is 6.1 ppm for 6 hours (RTECS 1990). The dermal LD_{50} in rabbits is 213 mg/kg (RTECS 1990). Acutely poisoned animals exhibit signs of severe eye and pulmonary irritation before death (ACGIH 1986, p. 403). Application of this substance to the skin of rabbits, followed by occlusion, resulted in bleeding and marked edema of the skin (ACGIH 1986, p. 403). All 16 guinea pigs that were challenged with 0.01 ml of a 0.01 percent solution of methyl isocyanate developed skin

sensitization (ACGIH 1986, p. 403). On a 1 to 10 scale of increasing severity, methyl isocyanate caused corneal damage to rabbit eyes that was rated 10 (Smyth and Carpenter 1969). Rats exposed to a 0.21 ppm concentration of methyl isocyanate for 30 minutes on each of 6 days were followed for 90 days after exposure; although all of the rats survived, their lungs showed damage at autopsy (Sethi, Dayal, and Singh 1989). When administered to rats by inhalation or by intravenous or subcutaneous administration, methyl isocyanate caused a dose-related depression in cardiovascular activity (Kumar, Sachan, Pant, et al. 1989). After a single 2-hour exposure to methyl isocyanate at a concentration of 1, 3, or 10 ppm, male and female rats in the 10-ppm group had a 42 and 36 percent incidence, respectively, of fibrosis of the secondary bronchi (Bucher and Uraih 1989). In all dose groups, male rats (but not females or mice of either sex) showed slight increases in the incidence of pheochromocytomas of the adrenal medulla and adenomas of the pancreas (Bucher and Uraih 1989).

Human volunteers exposed to methyl isocyanate at a concentration of 0.04 ppm for 1 to 5 minutes reported experiencing no effects, but exposure to a 2-ppm concentration caused tearing, and increasing the concentration to 21 ppm caused "unbearable" irritation (Kimmerle and Eben 1964). In another experiment, however, a 10-minute exposure to a 0.05-ppm concentration caused eye irritation in all exposed volunteers (ACGIH 1986, p. 403). Some individuals exposed to methyl isocyanate develop pulmonary sensitization (Proctor, Hughes, and Fischman 1988, p. 337). Exposure causes the following signs and symptoms of severe respiratory irritation: difficult breathing, chest pain, coughing, and increased bronchial secretion (Rye 1973). The victims of the Bhopal disaster died of pulmonary edema, which was often accompanied by destruction of the alveolar walls (Marwick 1985). The victims also experienced severe visual impairment and showed clinical signs of damage to the liver and kidneys (Marwick 1985).

Based on this evidence in humans and animals, OSHA preliminarily concludes that agricultural workers exposed to methyl isocyanate at the concentrations permitted in the absence of a limit are at significant risk of experiencing severe eye and lung irritation as well as pulmonary sensitization. The Agency believes that establishing a PEL of 0.02 ppm as an 8-hour TWA will protect workers in agriculture from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL MERCAPTAN

CAS: 74-93-1; Chemical Formula: CH_3SH

H.S. No. 1263

OSHA has a ceiling limit of 0.5 ppm for methyl mercaptan in the construction and maritime industries. There is no PEL for agriculture. The ACGIH has a TLV®-TWA of 0.5 ppm for methyl mercaptan. NIOSH has a 15-minute ceiling limit of 0.5 ppm for this substance. OSHA is proposing an 8-hour TWA of 0.5 ppm for methyl mercaptan in the construction, maritime, and agriculture industries. This is the limit recently established for this substance in general industry.

Methyl mercaptan is a flammable, water-soluble gas with a disagreeable odor like that of rotten cabbage. Methyl mercaptan is used in the production of pharmaceuticals, pesticides, fumigants, fungicides, jet fuel, dyes, and plastics. It is also used to give odor to natural gas and to synthesize methionine (ACGIH 1986, p. 405; Clayton and Clayton 1981, p. 2066).

In addition to sensory irritation, methyl mercaptan causes narcosis and pulmonary edema in humans and experimental animals. In rats, the LC_{50} is 675 ppm for 4 hours (RTECS 1990). In one study, animals exposed to methyl mercaptan experienced restlessness, muscular weakness, paralysis, convulsions, respiratory depression, and cyanosis (Shults, Fountain, and Lynch 1970). Male rats exposed to concentrations of methyl mercaptan ranging from 1600 to 2200 ppm for an unspecified period lost their righting reflexes, but female rats exposed to 500 ppm for 30 to 35 minutes showed no adverse effects (Clayton and Clayton 1981, p. 2068). Rats exposed continuously for 90 days to a 50-ppm concentration of methyl mercaptan showed hematologic and lung effects, and mice exposed on the same regimen showed both hematologic and hepatic effects (Clayton and Clayton 1981, p. 2068).

A worker found comatose after emptying containers of methyl mercaptan developed elevated blood pressure, wheezing, tachycardia, rigidity of the extremities, and deep coma; death was caused by a pulmonary embolus that developed 28 days after exposure. Before death, this worker, who had a glucose-6-phosphate dehydrogenase deficiency, developed methemoglobinemia and severe hemolytic anemia (Proctor, Hughes, and Fischman 1988, p. 338). In a nonfatal incident involving methyl mercaptan exposure, the exposed worker became cyanotic, experienced convulsions, and subsequently developed a lung abscess (Shults, Fountain, and Lynch 1970). A 1918 report by Pickler (Clayton and Clayton 1981, p. 2068) describes the accidental exposure (for several hours) of 28 students to a concentration of methyl mercaptan estimated to be 4 ppm. These individuals experienced headaches and nausea that lasted for 24 hours, and one student showed signs of liver involvement, demonstrated by the appearance of epithelial cells, protein, and red blood cells in the urine; these effects subsided in 6 weeks (Clayton and Clayton 1981, p. 2068). In another incident involving accidental overexposure to an unknown concentration of methyl mercaptan, the worker reported signs of mucosal and respiratory tract irritation and developed bronchopneumonia 20 hours later; this patient later recovered fully (Clayton and Clayton 1981, p. 2068). Long-term exposure to low concentrations (not further specified) of methyl mercaptan caused dermatitis in exposed individuals (Clayton and Clayton 1981, p. 2068).

Based on this evidence in humans and animals, OSHA preliminarily concludes that methyl mercaptan poses significant risks of mucous membrane and respiratory tract irritation, dermatitis, central nervous system effects, and possible liver damage to workers in the construction, maritime, and agriculture industries. The Agency believes that the proposed 8-hour TWA PEL of 0.5 ppm is necessary to substantially reduce the risk of these exposure-related effects, which constitute material impairments of health. Promulgation of this limit will also make OSHA's PEL for methyl mercaptan consistent across all OSHA-regulated sectors.

METHYL METHACRYLATE

CAS: 80-62-6; Chemical Formula: $CH_2=C(CH_3)COOCH_3$

H.S. No. 2107

OSHA's PEL for methyl methacrylate in general industry, construction, and maritime is 700 ppm as an 8-hour TWA; there is no PEL in agriculture. The ACGIH TLV®-TWA for this substance is 100 ppm as an 8-hour TWA; there is no NIOSH REL. OSHA is proposing an 8-hour TWA of 100 ppm for methyl methacrylate in agriculture. This is the limit recently established for this substance in general industry.

Methyl methacrylate is a colorless liquid that is used captively in the production of acrylic polymers. This substance also finds use in the

manufacture of surface coating resins (latexes, lacquers, and enamels). Latex house paints, interior gloss and semi-gloss paints, and interior flat wall and ceiling paints account for the major portion of methyl methacrylate used in this country (IARC 1979, p. 189). This substance is also an ingredient in many consumer goods, including floor polishes, adhesives, binders, paper coatings, sealants, leather base coatings and finishes, and many other applications (IARC 1979, p. 189).

Methyl methacrylate is an eye, skin, and upper respiratory tract irritant, a central nervous system depressant and neurotoxin, and a skin sensitizer. In animals, it is also embryotoxic and produces developmental effects. The oral LD_{50} in rats is 7872 mg/kg; in mice, the LC_{50} is 18,500 mg/m³ (4500 ppm) for 2 hours (RTECS 1990). Dogs exposed to lethal concentrations (11,000 ppm) of methyl methacrylate showed signs of central nervous system depression and a drop in blood pressure before dying of respiratory arrest; autopsy revealed damage to the liver and kidneys (Speakman et al. 1945). Male rats exposed over a 5-month period to a methyl methacrylate concentration of 116 ppm for 7 hours/day, 5 days/week showed, at autopsy, tracheal mucosa that were denuded of cilia (Tansy et al. 1980). Pregnant rats exposed on gestation days 6 through 15 to a 27,500-ppm concentration of methyl methacrylate for less than 1 hour displayed signs of maternal toxicity, and their offspring had an increased incidence of fetal death, hematomas, and skeletal deformities (Nicholas et al. 1979). In another teratogenicity study, methyl methacrylate caused embryotoxic and developmental effects in the offspring of rats given intraperitoneal injections during pregnancy (RTECS 1990). A 2-year cancer bioassay conducted by the National Toxicology Program reported no evidence of carcinogenicity in male and female rats and mice exposed to methyl methacrylate concentrations ranging from 250 to 1000 ppm (NTP 1986).

Workers exposed to airborne concentrations of methyl methacrylate ranging from 170 to 250 ppm complained of irritation, and some reports place the human irritation level at 125 ppm (ACGIH 1986, p. 406; Seravotsnoe 1976; RTECS 1990). Dental technicians who regularly handle methyl methacrylate cement have developed paresthesias of the fingers, indicating axonal degeneration in those areas of the fingers in contact with the cement (Seppalainen and Rajaniemi 1984). In one group of 200 workers exposed to the vapor at a concentration of 2 to 200 mg/m³ (0.5 to 50 ppm), 119 individuals reported headaches and several others complained of excessive fatigue, sleep disturbances, loss of memory, and irritability (IARC 1979, p. 194). There are reports of skin sensitization in humans 10 days after skin application, and several volunteers reacted when challenged with liquid methyl methacrylate (Lefaux 1968).

Based on this evidence in humans and animals, OSHA preliminarily concludes that agricultural workers exposed to this substance at the levels permitted by the absence of a limit are at significant risk of experiencing sensory irritation, axonal neuropathies, and skin sensitization. OSHA considers these effects material impairments of health. The Agency believes that establishing a PEL of 100 ppm as an 8-hour TWA will substantially reduce these risks for workers in agriculture. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL n-AMYL KETONE

CAS: 110-43-0; Chemical Formula: $CH_3COC_6H_{11}$

H.S. No. 1264

The OSHA limit for methyl n-amyl ketone in the construction and maritime industries is 100 ppm as an 8-hour TWA. There is no PEL for this substance in agriculture. The ACGIH has a TLV®-TWA of 50 ppm, and NIOSH has a REL for this substance of 100 ppm as a 10-hour TWA. OSHA is retaining its current limit of 100 ppm as a TWA for methyl n-amyl ketone in the construction and maritime sectors and is proposing the same limit for agriculture. NIOSH (Ex. 150) agreed that a 100-ppm PEL for methyl n-amyl ketone was appropriate when the Agency recently established this limit in general industry. Extending this PEL to agriculture will thus make OSHA's limit for this substance consistent across all OSHA-regulated sectors.

Methyl n-amyl ketone, also called 2-heptanone, is a water-white liquid with a fruity odor. It is used as a solvent for synthetic resin finishes and nitrocellulose lacquers, as a flavoring agent, and in perfumes (ACGIH 1986, p. 374; Hawley's 1987, p. 758).

In addition to sensory irritation, methyl n-amyl ketone causes narcosis in experimental animals. The oral LD_{50}s in rats and mice are 1670 mg/kg and 730 mg/kg, respectively (RTECS 1990). The lowest lethal concentration in rats is 4000 ppm for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 12,600 mg/kg (RTECS 1990). Exposing guinea pigs to 4800 ppm of methyl n-amyl ketone caused narcosis and death in 4 to 8 hours; exposure to a concentration of 2000 was strongly narcotic (Specht et al. 1940). In contact with the skin of rabbits, methyl n-amyl ketone caused mild irritation (RTECS 1990). Instilled into rabbit eyes, this substance caused injury rated 2 on an ascending severity scale of 1 to 10 (HSDB 1985). Johnson et al. (1978/Ex. 1-335) found no neurologic impairment in rats and monkeys exposed to 131 ppm or 1025 ppm methyl n-amyl ketone 6 hours/day, 5 days/week for 9 months, and no gross or histopathologic changes were found in these animals at autopsy (Johnson, Setzer, Lewis, and Hornung 1978/Ex. 1-335).

There are no case reports of industrial poisonings in exposed workers, and the concentration at which irritation or narcosis would begin in humans is not known. Methyl n-amyl ketone has been tested in volunteers for its potential to cause skin sensitization, and the results of these tests have been negative (Clayton and Clayton 1981, p. 4758).

Based on this evidence, OSHA is retaining its 8-hour TWA PEL of 100 ppm for methyl n-amyl ketone in the construction and maritime industries and is proposing to extend this limit to workplaces in agriculture. The Agency preliminarily finds that, based on effects seen in animals, exposure to this substance is likely to be associated with both irritant and narcotic effects and that these effects constitute material health impairments. To reduce these significant occupational risks, OSHA is therefore proposing an 8-hour TWA PEL of 100 ppm in agriculture for methyl n-amyl ketone. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

alpha-METHYL STYRENE

CAS: 98-83-9; Chemical Formula: $C_6H_5C(CH_3)=CH_2$

H.S. No. 1267

OSHA has a ceiling limit of 100 ppm for alpha-methyl styrene in the construction and maritime industries. There is no limit in agriculture. The ACGIH has a 50 ppm TLV®-TWA and a 100 ppm TLV®-STEL for alpha-methyl styrene. NIOSH has no REL for this substance. The Agency is proposing a 50-ppm 8-hour TWA and a 10-ppm 15-minute STEL for alpha-methyl styrene in the agriculture, construction, and maritime industries. NIOSH (Ex. 8-47) concurred with these limits when the Agency recently established them for alpha-methyl styrene in general industry.

alpha-Methyl styrene is a combustible, colorless liquid that has a sharp, aromatic odor and is used as a polymerization monomer. This substance also finds use as a chemical intermediate (Clayton and Clayton 1981, p. 3324).

In addition to sensory irritation, alpha-methyl styrene causes central nervous system depression in humans and experimental animals. The oral LD_{50} in rats is 4900 mg/kg, and the lowest lethal concentration in the same species is 3000 ppm for an unspecified period of time (RTECS 1990). Applied to the eyes of rabbits, a dose of 91 mg caused a mild degree of irritation; in contact with the skin, alpha-methyl styrene caused moderate irritation (RTECS 1990). Twenty applications of this substance to rabbit skin, however, caused inflammation, hyperemia, edema, and hyperkeratosis (Clayton and Clayton 1981, p. 3324). Guinea pigs and rats exposed to 3000 ppm 7 hours/day for 3 to 4 days died. At autopsy, slight liver and kidney changes were observed in guinea pigs after exposure to 800 ppm for 27 days (Wolf et al. 1956/Ex. 1–404). Rats, guinea pigs, rabbits, mice, and monkeys exposed 7 hours/day, 5 days/week for 6 months to a 200-ppm concentration of alpha-methyl styrene showed no adverse effects either on gross or microscopic examination (Wolf, Rowe, McCollister et al. 1956/Ex. 1–404). A 1981 NIOSH teratogenicity study in pregnant rats injected intraperitoneally with alpha-methyl styrene on days 1 through 15 of gestation showed that, at a dose of 250 mg/kg, alpha-methyl styrene caused a significantly increased number of resorptions (Hardin, Bond, Sikov, Andres, Beliles, and Niemier 1981; Scand. J. Work Environ. Health 7(4):66–75).

In humans, a 2-minute exposure to a 200-ppm concentration of alpha-methyl styrene caused eye irritation and complaints about this substance's unpleasant odor (Wolf et al. 1956/Ex. 1–404). A Russian study in workers exposed for 4 to 5 years to alpha-methyl styrene at concentrations of 3 to 7 mg/m^3 (0.6 to 1.5 ppm) reports that these workers showed signs of occupational poisoning, including asthenia, vasovegatative disorders, reduced arterial pressure, and hematopoietic changes (temporary leukemia, thrombocytopenia, and reticulocytopenia) (Kapkaev and Suhanova 1986). Another Russian study reports a high incidence of sensitization dermatitis in workers in a synthetic rubber plant who were dermally exposed to alpha-methyl styrene and other substances during rubber manufacture (Mirzoyan 1972).

To ensure that workers in construction, maritime, and agriculture are protected against the irritant, sensitization, and narcotic effects of exposure to this substance, OSHA is proposing a 50-ppm 8-hour TWA limit and a 100-ppm 15-minute STEL for alpha-methyl styrene in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that these combined limits are necessary to substantially reduce the risk that workers in these sectors will experience these exposure-related effects, which constitute material impairments of health. Promulgation of these limits will also make OSHA's PELs for this substance consistent across all OSHA-regulated industries.

o-METHYLCYCLOHEXANONE

CAS: 583–60–8; Chemical Formula: $CH_3C_6H_8CO$

H.S. No. 1270

OSHA's limit for o-methylcyclohexanone in construction and maritime is 100 ppm as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has a 50-ppm 8-hour TLV®–TWA, a 75-ppm 15-minute TLV®–STEL, and a skin notation for o-methylcyclohexanone. NIOSH has no REL for this substance. The Agency is proposing PELs of 50 ppm as an 8-hour TWA and 75 ppm as a 15-minute STEL, and a skin notation, for o-methylcyclohexanone in construction, maritime, and agriculture. NIOSH (Ex. 8–47) concurred that these limits were appropriate for o-methylcyclohexanone when the Agency recently established them in general industry.

ortho-Methylcyclohexanone is a somewhat viscous liquid with an acetone-like odor. It is a solvent that is used in the manufacture of lacquers, varnishes, and plastics. ortho-Methylcyclohexanone is also used in the leather industry and as a rust remover (ACGIH 1986, p. 386). The commercial product contains a mixture of isomers; however, toxicity data describe the effects of the ortho isomer only.

In addition to sensory irritation, o-methylcyclohexanone causes narcosis in experimental animals and may also do so in humans. The oral LD_{50} in rats is 2140 mg/kg, and the dermal LD_{50} in rabbits is 1635 mg/kg (RTECS 1991). The LC_{50} in rats is 2890 ppm for 4 hours (Smyth et al. AIHAJ 30:470, 1969). In contact with the eyes of rabbits, o-methylcyclohexanone caused injury graded 5 on an ascending severity scale of 1 to 10 (Grant 1986, p. 1045). At an exposure concentration of 2500 ppm, rabbits and cats experienced drowsiness and difficult and irregular respiration and had a staggering gait (Lehman and Flury 1943a/Ex. 1–962). After 15 minutes of exposure to 3500 ppm, several species of animals lost coordination; after 30 minutes, the animals became prostrate. Rabbits exposed to 1822 ppm for 6 hours/day for 3 weeks showed signs of conjunctival irritation, became lethargic, and salivated excessively (Lehman and Flury 1943a/Ex. 1–962). Repeated application of large doses of o-methylcyclohexanone to the skin of rabbits produced irritation, tremor, narcosis, and death; the minimal lethal dose was reported to be between 4.9 and 7.2 g/kg (Treon, Crutchfield, and Kitzmiller 1943. J. Ind. Hyg. Toxicol. 25:199–214).

There are no reports of chronic or systemic effects in humans exposed to this substance; however, it is expected that severe exposure to o-methylcyclohexanone would produce the same irritant and narcotic effects in humans as in experimental animals (Proctor, Hughes, and Fischman 1988, p. 328). The American Conference of Governmental Industrial Hygienists (ACGIH) reports that exposure to a 100-ppm concentration will not cause narcotic effects but may cause eye and respiratory tract irritation (ACGIH 1986, p. 386).

Based on this evidence, OSHA preliminarily concludes that workers in construction, maritime, and agriculture who are exposed to o-methylcyclohexanone are at significant risk of these exposure-related effects. The Agency considers the irritation potentially caused by exposure to this substance a material impairment of health and believes it necessary to establish PELs for o-methylcyclohexanone of 50 ppm as an 8-hour TWA and 75 ppm as a 15-minute STEL. These limits, and the skin notation, will substantially reduce this significant risk in construction, maritime, and agricultural workplaces. Promulgation of these PELs for o-methylcyclohexanone will also make OSHA's limits for this substance consistent across all OSHA-regulated sectors.

OSMIUM TETROXIDE

CAS: 20816–12–0; Chemical Formula: OsO_4

H.S. No. 1298

In construction and maritime operations, OSHA has an 8-hour TWA limit of 0.002 mg/m^3 for osmium tetroxide. The ACGIH has a TLV®–TWA of 0.002 mg/m^3 and a TLV®–STEL of 0.006 mg/m^3; NIOSH has no REL for this

substance. OSHA is proposing to add a 15-minute STEL of 0.006 mg/m³ to the 8-hour TWA PEL of 0.002 mg/m³ for osmium tetroxide in the construction and maritime industries and to extend these limits to agriculture. NIOSH (Ex. 8–47) concurred that these limits are appropriate for this substance when the Agency recently established them in general industry.

Osmium tetroxide is a noncombustible, colorless to pale yellow solid with a disagreeable, chlorine-like odor. Osmium tetroxide is used as a fat stain in pathological laboratories. It is also used as an oxidizing agent for converting olefins to glycols, in photography, and as a catalyst in organic synthesis. Osmium tetroxide was formerly used in fingerprinting (ACGIH 1986, p. 450; Merck 1983, p. 989; AIHA 1968).

Osmium tetroxide causes severe eye, nose, and respiratory tract irritation in humans and experimental animals. The oral LD_{50}s in rats and mice are 14 mg/kg and 162 mg/kg, respectively (RTECS 1990). The lowest lethal concentration in rats inhaling osmium tetroxide for 4 hours is 40 ppm (approximately 400 mg/m³) (RTECS 1990). In contact with the eyes of rabbits, a 1 percent solution of osmium tetroxide caused severe corneal damage and permanent opacity (Grant 1986, p. 682). Exposure for 30 minutes to osmium tetroxide at a concentration of 130 mg/m³ caused irritation of the mucous membranes, labored breathing, and death in rabbits; at autopsy, pulmonary edema was evident (Brunot 1933/Ex. 1–776). Toxic bone marrow effects have been reported in guinea pigs exposed 8 hours/day for 60 days to an unspecified concentration of osmium tetroxide; these animals developed normochromic anemia, as evidenced by a decrease in the number of erythrocytes, leukocytes, and reticulocytes as well as a decrease in hemoglobin levels (Hamilton and Hardy 1974a/Ex. 1–957; HSDB 1989).

Industrial experience indicates that osmium tetroxide fume concentrations in a precious metal refining plant ranged from 0.1 to 0.6 mg/m³; intermittent exposure to these concentrations produced symptoms (sometimes delayed) of lacrimation, visual disturbance, frontal headache, conjunctivitis, and cough in exposed workers (McLaughlin, Milton, and Perry 1946/Ex. 1–749). Complaints of persistent and severe nose and throat irritation were also reported (Hamilton and Hardy 1974a/Ex. 1–957). One investigator (Brunot 1933/Ex. 1–776) developed lacrimation and corneal edema (manifested as haloes around lights) after a brief exposure to osmium tetroxide at an unspecified concentration. Fairhall (1949d, as cited in ACGIH 1986/Ex. 1–3, p. 450) reported a human fatality resulting from inhalation exposure to osmium tetroxide (the concentration and duration of the exposure are not known). A laboratory worker heating osmium in the laboratory produced sufficient osmium tetroxide to cause blepharospasm, ocular pain, photophobia, and redness of the eyes (Grant 1986, p. 682). In contact with the skin, osmium compounds (including osmium tetroxide) cause eczema and dermatitis (AIHA 1968).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to osmium tetroxide, even for short periods, poses a significant risk of ocular and respiratory effects to exposed workers. The Agency considers these effects material impairments of health and preliminarily finds that the proposed limits are necessary to substantially reduce these significant risks. Accordingly, OSHA is proposing an 8-hour TWA PEL of 0.002 mg/m³ and a 15-minute STEL of 0.006 mg/m³ for osmium tetroxide in the construction, maritime, and agriculture sectors. Promulgation of these limits will make OSHA's PELs for this substance consistent across all OSHA-regulated sectors.

PARAFFIN WAX FUME

CAS: 8002–74–2; Chemical Formula: C_nH_{2n+2}

H.S. No. 1302

OSHA has no limit for paraffin wax fume in the construction, maritime, or agriculture industries. The ACGIH has a TLV®–TWA of 2 mg/m³; NIOSH has no REL for this substance. OSHA is proposing an 8-hour TWA limit of 2 mg/m³ for paraffin wax fume in construction, maritime, and agriculture. NIOSH (Ex. 8–47) concurred that this limit is appropriate for paraffin wax fume when the Agency recently established it in general industry.

Paraffin is a white or slightly yellow, odorless solid that is derived from petroleum. Paraffin is used for making candles, as a sealant or coating for paper and food products, for extracting perfumes from flowers, and as a chewing gum base. It has also been used in crayons, in stoppers for acid bottles, in cosmetics, in photography, as a lubricant, in the packaging of tobacco products, and as an anti-frothing agent in sugar refining (ACGIH 1986, p. 455; Hawley's 1987, p. 873).

In addition to mild eye, nose, and throat irritation (Genium MSDS 1990, No. 712), exposure to paraffin wax fume can cause nausea in humans. Instilled into rabbit eyes, 100 mg of paraffin caused mild irritation; applied to the skin of rabbits, this substance caused a mild degree of irritation (RTECS 1989). Although paraffin is relatively nontoxic in its solid state, the fume generated when it is in the molten state causes discomfort and nausea (Queries and Minor Notes, *JAMA* 1938/Ex. 1–308). In the most recent report of industrial exposure effects, paraffin fume is reported to cause no discomfort in most workers when the concentration is maintained at or below 2 mg/m³, although one instance of mild discomfort was reported at concentrations between 0.6 and 1 mg/m³ (Massachusetts Division of Occupational Hygiene 1970, as cited in ACGIH 1986/Ex. 1–3, p. 455). Chronic exposure of the skin to paraffin wax has caused dermatitis (Genium MSDS 1990, No. 712). There are reports that workers exposed to this substance for 10 years or longer have a higher than normal risk of developing scrotal cancer (Genium MSDS 1990, No. 712).

OSHA preliminarily finds that the adverse effects associated with excessive exposure to paraffin wax fume—sensory irritation and nausea—constitute material impairments of health. OSHA believes that the proposed PEL of 2 mg/m³ will substantially reduce these significant risks for workers in construction, maritime, and agriculture. In addition, promulgation of this limit will make the PEL for paraffin wax fume consistent across all OSHA-regulated sectors.

PHENYL ETHER

CAS: 101–84–8; Chemical Formula: $(C_6H_5)_2O$

H.S. No. 1314

OSHA's permissible exposure limit for phenyl ether in general industry, construction, and maritime is an 8-hour TWA limit of 1 ppm. There is no PEL in agriculture. The ACGIH recommends a TLV®–TWA of 1 ppm and a TLV®–STEL of 2 ppm for phenyl ether. NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL of 1 ppm for phenyl ether in agriculture. This is the limit recently established for this substance in general industry.

Phenyl ether is either a colorless liquid or a solid, depending on temperature; its vapor has a characteristically disagreeable odor. This substance finds use as a chemical intermediate, a heat-transfer medium, and an ingredient in perfumes and soaps (Hawley's 1987, p. 429). It is also used in the manufacture of high-temperature lubricants and surfactants (HSDB 1990).

Phenyl ether is an irritant of the eyes and skin (RTECS 1990; HSDB 1990). The

oral LD_{50} in rats is 3370 mg/kg (RTECS 1990); single oral doses of between 1 and 2 g/kg administered to experimental animals of various species have caused liver, spleen, kidney, thyroid, or gastrointestinal injury in those surviving the exposure (Vogel, Snyder, and Schulman 1964/Ex. 1–681). Repeated inhalation studies in rats, rabbits, and dogs have shown that a total of 20 exposures to a 4.9-ppm concentration of phenyl ether for 5 days/week, 7 hours/day produced no adverse effects. Eye and nasal irritation were observed in rats and rabbits exposed to a 10-ppm concentration (Hefner, Leong, Kociba, and Gehring 1975/Ex. 1–329). Skin and eye irritation have been reported to result only from prolonged or repeated contact with the undiluted liquid.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 1 ppm for the agriculture sector. The Agency preliminarily concludes that this limit will protect workers in agriculture from the odor and irritant effects associated with exposure to phenyl ether. OSHA believes that these effects are material impairments of health within the meaning of the Act. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PHENYL ETHER-BIPHENYL MIXTURE
CAS: 8004–13–5; Chemical Formulas: $(C_6H_5)_2O$ and $C_6H_5C_6H_5$
H.S. No. 2127

In general industry, construction, and maritime, OSHA's permissible exposure limit for phenyl ether-biphenyl mixture is 1 ppm as an 8-hour TWA. There is no limit for this substance in agriculture. The ACGIH has no current TLV® for this substance; there is no NIOSH REL. OSHA is proposing to establish a PEL in agriculture of 1 ppm as an 8-hour TWA for phenyl ether-biphenyl mixture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Phenyl ether-biphenyl mixture, also called Dowtherm A, is a straw-colored liquid that has a disagreeable aromatic odor and that darkens on use. This substance is used as a heat transfer agent, as a dye carrier for printing and textiles, and in the production of acetyl chloride and polyester fibers (NIOSH/OSHA Occupational Health Guideline 1981, p. 3).

Phenyl ether-biphenyl mixture causes irritation of the eyes, mucous membranes, and skin, and liver and kidney damage in humans and animals. The oral LD_{50}s in rats, mice, rabbits, and guinea pigs are 2460 mg/kg, 3210 mg/kg, 4200 mg/kg, and 3000 mg/kg, respectively (RTECS 1991). Rabbits exhibited mild eye and skin irritation when 500 mg was applied to their eyes and skin, respectively, for 24 hours (RTECS 1991). Rabbits developed the following signs of mild skin irritation when undiluted Dowtherm A was applied daily to their ears: Hyperemia, edema, exfoliation, hair loss, and enlargement of the hair follicles (Hake and Rowe 1963, in Clayton and Clayton 1981, p. 2544). Small groups of rats given repeated doses of Dowtherm A by stomach tube (doses of 0.5 to 1.0 g/kg) 5 days/week for a total of 132 doses exhibited slight growth retardation and increased liver and kidney weights (rats in the 0.5 g/kg dose group); those given 1.0 g/kg had moderate growth depression and, at autopsy, showed histopathological changes in the kidneys, liver, and spleen (Hake and Rowe 1963, in Clayton and Clayton 1981, p. 2544). At autopsy, rats fed phenyl ether-biphenyl mixture at doses of 0.25 and 0.5 g/kg/day showed signs of moderate liver and kidney degeneration after 2 months of exposure (Hake and Rowe 1963, in Clayton and Clayton 1981, p. 2544). When subjected to 37 8-hour exposures to a 14-ppm concentration of this substance, rats, guinea pigs, and a monkey showed signs of emaciation, starvation, and a slight increase in liver weight; no significant histopathological changes were observed at autopsy (Hake and Rowe 1963, in Clayton and Clayton 1981, p. 2544). Rats, guinea pigs, rabbits, and monkeys exposed to the vapors of this substance at a concentration of 7 to 10 ppm for 7 hours/day, 5 days/week for 6 months showed no adverse effects (HSDB 1991).

The lowest toxic concentration of phenyl ether-biphenyl mixture reported in humans is 3 ppm; at this concentration, irritation of the eyes, nose, and pulmonary tract were observed (RTECS 1991). Exposure to vapor concentrations of 7 to 10 ppm causes extreme nausea and is painful to the eyes and upper respiratory tract (Proctor and Hughes 1978, p. 412). In one case, a man was sprayed in the eyes with this substance; although there was no immediate discomfort, he felt stinging and burning of the eyes and the surrounding skin within 5 minutes (Grant 1986, p. 373). In four other cases, corneal burns resulted from exposure to diphenyl oxide; recovery was complete within 48 hours (Grant 1986, p. 373). Severe degenerative lesions of the liver and kidneys can result from accidental ingestion (Parmeggiani 1983, p. 643).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to phenyl ether-biphenyl mixture causes eye, mucous membrane, and skin irritation. The Agency believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these exposure-related effects and that the proposed PEL of 1 ppm as an 8-hour TWA will substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PHOSGENE
CAS: 75–44–5; Chemical Formula: $Cl_2C{=}O$
H.S. No. 2129

In general industry, construction, and maritime, OSHA has an 8-hour TWA limit of 0.1 ppm for phosgene. There is no PEL for this substance in agriculture. The ACGIH TLV®-TWA for phosgene is 0.1 ppm (0.40 mg/m³) as an 8-hour TWA. The NIOSH REL for phosgene is 0.1 ppm (0.4 mg/m³) as a 10-hour TWA, with a 15-minute ceiling of 0.2 ppm (0.8 mg/m³). OSHA is proposing an 8-hour TWA PEL of 0.1 ppm for phosgene in agriculture. This is the limit recently established for this substance in general industry.

Phosgene is a poisonous, colorless, nonflammable gas or volatile liquid with a sweet, pungent, or musty odor (AIHA 1990, p. 1). Phosgene is used as an intermediate in the production of polyurethane, isocyanates, polycarbonates, pesticides, herbicides, pharmaceuticals, and dyes and as a chlorinating agent for the separation of uranium ores. This substance was used as a war gas in World War I. Phosgene gas is formed during arc or gas welding in the presence of chlorinated hydrocarbons, such as in locations with degreasing operations, and during the welding of aluminum (Grayson 1985, pp. 868–869; Hawley's 1987, p. 908; Braker and Mossman 1980, p. 596; AIHA 1990, p. 2). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Phosgene is a severe respiratory irritant; exposure to high concentrations causes pulmonary edema, and long-term exposure to low concentrations causes chronic lung disease. The LC_{50} in monkeys is 600 mg/m³ (150 ppm) for 1 minute, and the LC_{50} in rats is 1400 mg/m³ (350 ppm) for 30 minutes (RTECS 1991). Exposure of experimental animals to phosgene has caused extreme congestion, pulmonary edema, lobular and pseudolobular pneumonia, atelectasis, emphysema, and chronic pneumonitis (Chemical Manufacturer's Phosgene Panel 1988). Rats exposed to a 0.5-ppm concentration for 120 minutes developed chronic pneumonitis, with

thickening of the respiratory bronchioles and alveolar damage (Rinehart 1964; Gross 1965). Forty-one percent of all goats, cats, rabbits, guinea pigs, rats, and mice exposed to a 0.8-mg/m³ (0.2-ppm) concentration of phosgene for 5 hours/day for 5 consecutive days developed pulmonary edema and 4 percent of these animals developed extensive lung lesions (Cameron 1942). Cats exposed to high phosgene concentrations (not further specified) developed corneal opacification (Laquer 1921).

The acute hazard posed by exposure of humans to phosgene is pulmonary edema; the edema may not develop for 1 to 24 hours after exposure (Diller 1985). Based on observations made when this substance was used in warfare, the estimated LC_{50} in humans is 3200 mg/m³ (800 ppm) for 1 minute or 400 ppm for 2 minutes (Chemical Warfare Service 1944; Chasis 1944). In humans, the irritation caused by phosgene does not give sufficient warning of hazardous concentrations (Stokinger 1957). Exposure of humans to a 3-ppm concentration can cause immediate irritation of the throat, exposure to 4 ppm causes immediate irritation of the eyes, and exposure to 4.8 ppm causes coughing; brief exposure to 50 ppm can be rapidly fatal (Cucinell 1974). Liquid phosgene splashed into the eyes caused total opacification and perforation of both corneas in one individual (D'Osvaldo 1928). In contact with the skin, liquid phosgene causes skin burns (AIHA 1978). A group of 326 workers exposed to phosgene concentrations ranging from nondetectable to greater than 0.13 ppm showed no signs of chronic lung disease (NIOSH 1976). Six workers exposed chronically to low concentrations of phosgene developed chronic lung disease (Galdston, Luetscher, and Longcope et al. 1947).

The evidence described above shows that phosgene exposure causes severe irritation of the eyes and nose and damage to the lungs; exposure to high concentrations may cause pulmonary edema and death. Accordingly, OSHA preliminarily concludes that, in the absence of a limit, workers in agriculture are potentially at significant risk of experiencing these exposure-related effects. The Agency believes that the proposed limit of 0.1 ppm for phosgene in agriculture will substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PHOSPHORIC ACID

CAS: 7664–38–2; Chemical Formula: H_3PO_4

H.S. No. 1322

OSHA has a limit for phosphoric acid in the construction and maritime sectors of 1 mg/m³ as an 8-hour TWA. The ACGIH has a TLV®–TWA limit of 1 mg/m³ and a TLV®–STEL of 3 mg/m³ for phosphoric acid; NIOSH has no REL. The Agency is retaining an 8-hour TWA of 1 mg/m³ in construction and maritime, proposing a 15-minute STEL of 3-mg/m³ in these two sectors, and proposing both limits in agriculture. NIOSH (Ex. 8–47) concurred that these limits are appropriate for phosphoric acid when the Agency recently established them in general industry.

Phosphoric acid is a colorless, odorless solid at temperatures below 21°C but becomes a viscous, clear liquid at higher temperatures. It is used in fertilizers, pharmaceuticals, animal feed, detergents, foods, and beverages and in water treatment, pickling and rustproofing metals, sugar refining, and electropolishing. Phosphoric acid is also used as a catalyst in ethanol manufacture, as a binder for ceramics, and as a laboratory reagent (ACGIH 1986, p. 483; Hawley's 1987, p. 910).

Exposure to phosphoric acid causes sensory irritation; contact of the tissues with phosphoric acid also causes corrosive burns. The oral LD_{50} in rats is 1530 mg/kg, and the dermal LD_{50} in rabbits is 2740 mg/kg (RTECS 1990). In contact with the skin of rabbits for 24 hours, phosphoric acid caused severe skin irritation; instilled into the eyes of rabbits, this substance caused severe eye irritation (RTECS 1990).

In humans, phosphoric acid mist causes mild irritation of eyes, throat, and skin, and the dust is reported to be especially irritating to the skin when moisture is present. The AIHA Hygienic Guide for phosphoric acid reports that this substance is less hazardous than either nitric or sulfuric acid (AIHA 1957/Ex. 1–709). The lowest lethal dose for humans (route not specified) is estimated to be 220 mg/kg (RTECS 1990). At concentrations ranging from 0.8 to 5.4 mg/m³, fumes of phosphorus pentoxide (the anhydride of phosphorus acid) caused no discomfort, but exposure to concentrations ranging from 3.6 to 11.3 mg/m³ caused coughing in unacclimated workers (Rushing 1957, in ACGIH 1986, p. 483). A dilute solution buffered to a pH of 2.5 caused stinging but no permanent eye injury when dropped into the human eye. A 75-percent solution of this substance, however, caused severe burns when placed on the skin (AIHA Hygienic Guide Series 1957).

To protect workers in construction, maritime, and agriculture from the risk of eye, skin, and respiratory tract irritation associated with exposure to this substance, OSHA is retaining the TWA limit of 1 mg/m³ in construction and maritime, proposing a STEL of 3 mg/m³ in these sectors, and proposing both limits in agriculture. The Agency preliminarily concludes that both 8-hour TWA and STEL limits are necessary to substantially reduce the risk that workers in these sectors will experience these material health impairments. In addition, promulgation of these limits will make OSHA's PELs for phosphoric acid consistent across all OSHA-regulated sectors.

PHOSPHORUS PENTACHLORIDE

CAS: 10026–13–8; Chemical Formula: PCl_5

H.S. No. 2131

OSHA's PEL for phosphorus pentachloride in general industry, construction, and maritime is 1 mg/m³ as an 8-hour TWA; there is no PEL in agriculture. The ACGIH has a TLV®–TWA of 0.1 ppm (1 mg/m³) for phosphorus pentachloride; there is no NIOSH REL. OSHA is proposing an 8-hour TWA PEL of 1 mg/m³ for phosphorus pentachloride in agriculture. This is the limit recently established for this substance in general industry.

Phosphorus pentachloride is a white to pale-yellow crystalline solid that fumes in moist air. It has a pungent, unpleasant odor (ACGIH 1986, p. 485; Proctor, Hughes, and Fischman 1988, p. 413). Phosphorus pentachloride is used in the manufacture of agricultural chemicals, plasticizers, chlorinated compounds, gasoline additives, surfactants, and pharmaceuticals. It is also used as a dehydrating agent and in the manufacture of acetylcellulose (Proctor, Hughes, and Fischman 1988, p. 413; Sittig 1985, p. 722). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In contact with moisture or moist tissues, phosphorus pentachloride decomposes to phosphorus oxychloride, phosphoric acid, and hydrochloric acid (Clayton and Clayton 1982, p. 2126). Phosphorus pentachloride is a severe irritant of the eyes, mucous membranes, and upper respiratory tract. The oral LD_{50} in rats is 660 mg/kg; the LC_{50} for the same species is 205 mg/m³ for 4 hours (RTECS 1990). A concentration of 120 ppm phosphorus pentachloride was fatal to mice in 10 minutes (Proctor, Hughes, and Fischman 1988, p. 413; ACGIH 1986, p. 485).

In humans, exposure to phosphorus pentachloride (at an unspecified concentration) has caused irritation of the eyes and respiratory passages and the development of bronchitis (von Oettingen 1952). Workers exposed to high concentrations of this substance may experience erosion of dental enamel, and chronic exposure may lead to chronic bronchitis (Rom 1983, p. 498). Severe overexposure to phosphorus pentachloride vapor may cause delayed-onset pulmonary edema. Repeated skin contact with this material may cause dermatitis (Proctor, Hughes, and Fischman 1988, p. 413).

Based on this evidence in humans and animals, OSHA preliminarily concludes that agricultural workers exposed to this substance at the levels permitted by the absence of a limit are at significant risk of experiencing eye, mucous membrane, and upper respiratory tract irritation and may also be at risk of developing chronic bronchitis. The Agency believes that establishing a PEL of 1 mg/m^3 as an 8-hour TWA will protect workers in agriculture from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PHOSPHORUS TRICHLORIDE
CAS: 7719–12–2; Chemical Formula: PCl_3
H.S. No. 1325

In the construction and maritime industries, OSHA's limit for phosphorus trichloride is 0.5 ppm as an 8-hour TWA. The ACGIH has a TLV®–TWA of 0.2 ppm and a TLV®–STEL of 0.5 ppm. NIOSH has no REL for phosphorus trichloride but concurs (Ex. 8–47) that the proposed limits are appropriate. OSHA is proposing an 8-hour TWA PEL of 0.2 ppm and a 15-minute STEL of 0.5 ppm for workplaces in construction, maritime, and agriculture.

Phosphorus trichloride is a noncombustible, colorless, fuming liquid. Phosphorus trichloride is used as an intermediate in the preparation of pesticides, surfactants, gasoline additives, plasticizers, and dyestuffs. It is also used as a chlorinating agent and catalyst and as a ingredient of textile finishing agents (ACGIH 1986, p. 486).

In addition to severe sensory irritation, phosphorus trichloride causes corrosive burns in contact with the eyes or skin. The oral LD_{50} in rats is 550 mg/kg, and the lowest lethal concentration in the same species is 104 ppm for 4 hours (RTECS 1990). Acutely poisoned animals showed nephrosis at autopsy (Weeks et al. 1964). Cats and guinea pigs showed signs of mild systemic poisoning after exposure to 0.7 ppm for 6 hours (Butjagin 1904, as cited in ACGIH 1986/Ex. 1–3, p. 486). At a concentration of 2 to 4 ppm, cats developed breathing difficulty and conjunctivitis after 6 hours; when the concentration was increased to between 23 and 90 ppm, the corneas of these animals became cloudy (Grant 1986, p. 736). The primary occupational hazards associated with exposure to phosphorus trichloride are respiratory irritation and poisoning involving cough, bronchitis, pneumonia, and conjunctivitis (Henderson and Haggard 1943e/Ex. 1–1086; International Labour Office 1934b, as cited in ACGIH 1986/Ex. 1–3, p. 486; Sassi 1954/Ex. 1–931). The onset of pulmonary edema, which follows severe overexposures, may be delayed for several hours (Clayton and Clayton 1981, p. 2128). Long-term exposure leads to chronic cough and wheezing, although these effects are nonprogressive and are not associated with fibrotic lung disease, (Proctor, Hughes, and Fischman 1988, p. 414).

Because of the acutely irritating effects of this substance, OSHA preliminarily concludes that both a TWA and a STEL are necessary to substantially reduce the significant risk of respiratory and eye irritation potentially posed to workers exposed to phosphorus trichloride in construction, maritime, and agriculture. The Agency considers these adverse effects to be material impairments of health. Therefore, OSHA is proposing to revise its limit for phosphorus trichloride to 0.2 ppm as an 8-hour TWA and to add a 0.5 ppm 15-minute STEL for this substance in the construction, maritime, and agriculture industries. Promulgation of these limits will make OSHA's PELs for phosphorus trichloride consistent across all regulated sectors.

POTASSIUM HYDROXIDE
CAS: 1310–58–3; Chemical Formula: KOH
H.S. No. 1334

OSHA has no limit for potassium hydroxide in the construction, maritime, and agriculture industries. The ACGIH has a TLV® of 2 mg/m^3 as a ceiling. NIOSH has no REL for this substance but concurs with the limit being proposed (Ex. 8–47). OSHA is proposing a ceiling limit of 2 mg/m^3 for potassium hydroxide in the construction, maritime, and agriculture industries; this is the limit recently established for this substance in general industry.

Potassium hydroxide is a white, deliquescent solid that is available in the form of pellets, sticks, lumps, or flakes. It is used in the manufacture of liquid fertilizers, herbicides, liquid soap, potassium carbonate, and tetra potassium pyrophosphate and as an absorbent for carbon dioxide and hydrogen sulfide. It is also used in dyestuffs, paint removers, food additives, storage batteries, and fuel cells and in electroplating operations (Hawley's 1987, p. 956; Merck 1983, p. 1102).

In addition to sensory irritation, potassium hydroxide causes tissue destruction of the eyes and skin and, if ingested, rapid corrosion of the esophagus and stomach. The oral LD_{50} in rats is 273 mg/kg (RTECS 1990). In rabbits and guinea pigs, contact of the skin with 50 mg potassium hydroxide for 24 hours caused severe skin irritation; instilled into rabbit eyes, 1 mg of this substance caused a moderate degree of eye irritation (RTECS 1990). In a skin painting study in mice, tumors identical to those resulting from repeated coal tar applications developed on the skin after 46 weeks of painting with potassium hydroxide (Clayton and Clayton 1981, p. 3056).

Inhalation of potassium hydroxide causes severe irritation of the respiratory tract and leads to sneezing, coughing, and pain (Clayton and Clayton 1981, p. 3056). Repeated exposure may cause perforation of the nasal septum (ACGIH 1986, p. 495). Accidental ingestion of a solution of potassium hydroxide may produce corrosion and perforation of the esophagus and stomach (Clayton and Clayton 1981, p. 3056). Miners exposed to potassium hydroxide concentrations above 2 mg/m^3 had the following respiratory symptoms: phlegm production, mild shortness of breath, and chronic cough (Markham JW et al. 1981, AIHAJ 42(9):671). Contact of the eye with potassium hydroxide causes disintegration and sloughing of the conjunctival and corneal epithelium, corneal opacification, edema, and ulceration of the eyes (Grant 1986, p. 756).

Based on this evidence, OSHA preliminarily concludes that exposure to potassium hydroxide causes irritation ranging in degree from mild to chemical pneumonitis (Proctor, Hughes, and Fischman 1988, p. 420); in addition, this substance is corrosive, destroying any tissue it comes into contact with. OSHA believes that these exposure-related effects constitute material health impairments. To substantially reduce these significant risks, OSHA is proposing a ceiling limit of 2 mg/m^3 for potassium hydroxide in the construction, maritime, and agriculture industries. Promulgation of this limit will make OSHA's PEL for potassium hydroxide consistent across all OSHA-regulated sectors.

PROPYLENE GLYCOL MONOMETHYL ETHER

CAS: 107–98–2; Chemical Formula: $CH_3OCH_2CHOHCH_3$

H.S. No. 1343

In the construction, maritime, and agriculture industries, OSHA has no limit for propylene glycol monomethyl ether. The ACGIH has a TLV®–TWA of 100 ppm and a TLV®–STEL of 150 ppm for this substance. NIOSH has no REL. OSHA is proposing an 8-hour TWA of 100 ppm and a 15-minute STEL of 150 ppm for propylene glycol monomethyl ether in the construction, maritime, and agriculture sectors. NIOSH (Ex. 8–47) concurred that these limits were appropriate when the Agency recently established them in general industry.

Propylene glycol monomethyl ether is a flammable, colorless liquid with a characteristic ether-like odor. It is used as a solvent for celluloses, acrylics, dyes, inks, and stains. Propylene glycol monomethyl ether also is used in the solvent-sealing of cellophane.

In addition to sensory irritation, exposure to this substance causes central nervous system depression and liver and kidney effects in experimental animals. The oral LD_{50} in rats is 5660 mg/kg, and the lowest lethal concentration in the same species is 7000 ppm for 6 hours (RTECS 1990). The dermal LD_{50} in rabbits lies between 13 and 14 g/kg (Rowe, McCollister, Spencer et al. 1954). Acutely poisoned animals showed central nervous system depression before death (HSDB 1990). Applied to the skin of rabbits, propylene glycol monomethyl ether caused mild irritation, and instillation into rabbit eyes produced the same effect (RTECS 1990). Repeated application of 7 to 10 ml/kg/day propylene glycol monomethyl ether to the skin of rats over a 90-day period caused narcosis and death, while doses of 2 to 4 ml/kg/day caused only mild narcosis (Rowe, McCollister, Spencer et al. 1954, Arch. Ind. Hyg. Occup. Med. 9:509). Rats and monkeys exposed on 132 of 186 days to a propylene glycol mono-methyl ether concentration of 800 ppm showed no adverse effects, and rats and guinea pigs exposed to a 1500-ppm concentration on 130 of 184 days also showed no adverse effects (Rowe, McCollister, Spencer et al. 1954). Rats given twenty-six 3 g/kg doses of this substance over a 35-day period showed minor liver and kidney effects at autopsy; 1 g/kg doses given on the same regimen produced no gross or histopathological changes (Rowe, McCollister, Spencer et al. 1954).

In humans, exposure to propylene glycol monomethyl ether causes tearing of the eyes at concentrations above 100 ppm (specific concentration not specified) (Stewart, Baretta, Dodd, and Torkelson 1970; Arch. Env. Hlth. 20:218). However, narcotic effects are not seen in exposed individuals until the concentration approaches 100 ppm (Stewart et al. 1970).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to this substance in the workplace is potentially associated with irritant and narcotic effects. The Agency considers effects of this nature material impairments of health and believes that the proposed PELs of 100 ppm as an 8-hour TWA and 150 ppm as a 15-minute STEL are necessary to reduce these significant occupational risks. Promulgation of these limits will also make OSHA's PELs for propylene glycol monomethyl ether consistent across all OSHA-regulated sectors.

ROSIN CORE SOLDER PYROLYSIS PRODUCTS

CAS: None; Chemical Formula: None

H.S. No. 1350

OSHA has no limit for rosin core solder pyrolysis products, measured as formaldehyde, in the construction, maritime, and agriculture industries. The ACGIH has a TLV®–TWA of 0.1 mg/m³; NIOSH has no REL for this substance. The Agency is proposing an 8-hour TWA of 0.1 mg/m³ for rosin core pyrolysis products in the construction, maritime, and agriculture industries. This is the limit recently promulgated for this substance in general industry.

Rosin is a pale yellow to amber, translucent solid that consists of about 90 percent resin acids and 10 percent neutral material. Gum rosin is used as a soldering flux, and soldering with this substance or a solder that contains it causes the release of thermal decomposition products (ACGIH 1986, p. 514). The pyrolysis products of rosin core solder include acetone, methyl alcohol, aldehydes, carbon monoxide and dioxide, methane, ethane, abietic acid, and related diterpene acids (ACGIH 1986, p. 514).

Exposure to these products causes marked irritation of the eyes, nose, and throat (Cralley and Cralley 1985, p. 180). A 2-week exposure of guinea pigs and rats to these products at average concentrations of 0.96 mg/m³ caused a reduction in the rate of weight gain in male guinea pigs, abnormal liver-to-body-weight ratios in guinea pigs of both sexes, and abnormal heart-to-body-weight ratios in male rats; at autopsy, the lungs of these animals were hyperemic (Industrial Bio-test Laboratories, Inc. 1967, as cited in ACGIH 1986/Ex. 1–3, p. 514).

In humans, slight bronchial irritation has been reported on exposure to a rosin core pyrolysis product concentration of 1 mg/m³ or below (Industrial Bio-test Laboratories, Inc. 1967, as cited in ACGIH 1986/Ex. 1–3, p. 514). Several workers who were chronically exposed to pyrolysis product levels as high as 0.15 mg/m³ had to be removed from exposure because of intractable upper respiratory tract irritation; when concentrations were kept below 0.10 mg/m³, such irritation was not reported (Christy 1965, as cited in ACGIH 1986/Ex. 1–3, p. 514). In a study designed to quantify dose-response levels for irritation in human volunteers, subjects were exposed for 15 minutes to these products at aldehyde concentrations (measured as formaldehyde, which is the best indirect measure of rosin pyrolysis products) of 0.04 to 0.2 mg/m³ (U.S. Public Health Service 1965, as cited in ACGIH 1986/Ex. 1–3, p. 514). Subjects detected the odor at 0.07 mg/m³, and 80 percent of subjects reported moderate to severe irritation of the eyes, nose, and throat at concentrations of 0.12 mg/m³ or above. At levels below 0.05 mg/m³, fewer than 10 percent of subjects experienced irritation. Mucous membrane irritation occurred in 30 percent of subjects exposed to a concentration of 0.07 mg/m³ (U.S. Public Health Service 1965, as cited in ACGIH 1986/Ex. 1–3, p. 514).

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 0.1 mg/m³, measured as formaldehyde, for rosin core solder pyrolysis products in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit is necessary to protect employees in these sectors from the significant risk of eye, nose, and throat irritation that is associated with exposure to these pyrolysis products. Promulgation of this limit will also make OSHA's PELs for this substance consistent across all OSHA-regulated sectors.

SODIUM BISULFITE

CAS: 7631–90–5; Chemical Formula: $NaHSO_3$

H.S. No. 1365

OSHA has no limit for sodium bisulfite in construction, maritime, and agricultural workplaces. The ACGIH has a TLV®–TWA of 5 mg/m³; NIOSH has no REL for this substance. The Agency is proposing a limit of 5 mg/m³ as an 8-hour TWA in the construction, maritime, and agriculture industries. NIOSH (Ex. 8–47) agreed with the selection of this limit when OSHA recently established it in general industry.

Sodium bisulfite is a white crystalline powder that has an odor like that of sulfur dioxide. It is used as a food preservative (particularly as a lettuce freshener in salad bars) and as a reducing agent, analytical reagent, dietary supplement, and color preservative for pale crepe paper. It is also used in cask sterilization, fermentation, textiles, and copper and brass plating and to bleach groundwood (Hawley's 1987, p. 1054).

In addition to sensory irritation, sodium bisulfite causes central nervous system effects in animals and humans. The oral LD_{50} in rats is 2 g/kg (Dow Chemical Company 1977d, as cited in ACGIH 1986/Ex. 1–3, p. 534), and the intraperitoneal LD_{50} in rats is 475 mg/kg (RTECS 1990). Animals acutely poisoned by intraperitoneal administration convulsed and had altered sleep times (RTECS 1990). In other acute poisonings, death is preceded by irritability, restlessness, convulsions, periods of apnea, terminal respiration, and cardiovascular collapse (Gosselin, Smith, and Hodge 1984, p. II–123).

In humans, sodium bisulfite causes eye and mucous membrane irritation, dermatitis, and sensitization reactions. Industrial exposure to unspecified concentrations of sodium bisulfite has caused irritation of the eyes and respiratory tract that was described as mild (ACGIH 1986, p. 534). A recent study (Howland WC, Simon RA, J. Allergy, Clin. Immunol. 83(6):1079–1082, 1989) has shown that sodium bisulfite-treated lettuce is capable of provoking bronchospasm in sulfite-sensitive individuals who have asthma. Another study has shown that a worker exposed to sodium bisulfite during the preparation of animal feed developed acute dermatitis on the exposed areas of his body (face, neck, hands, and forearms); positive patch tests confirmed that sodium bisulfite was the allergen (Dinis, Brandao, and Faria 1988; Contact Dermatitis 18(3):170–171).

Based on this evidence in humans and animals, OSHA preliminarily finds that exposure to sodium bisulfite presents a significant occupational risk of irritation, dermatitis, and sensitization, and that these effects constitute material impairments of health. To substantially reduce these risks, OSHA believes it necessary to establish a 5-mg/m^3 8-hour TWA for sodium bisulfite in construction, maritime, and agriculture workplaces, and this is the limit being proposed. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

SODIUM HYDROXIDE

CAS: 1310–73–2; Chemical Formula: NaOH

H.S. No. 1367

OSHA has an 8-hour TWA of 2 mg/m^3 for sodium hydroxide in the construction and maritime industries. The ACGIH TLV® is a ceiling limit of 2 mg/m^3, and NIOSH currently has a REL for this substance of 2 mg/m^3 as a 15-minute ceiling short-term limit. OSHA is proposing a 2-mg/m^3 ceiling limit for sodium hydroxide in the construction, maritime, and agriculture industries. NIOSH (Ex. 8–47) concurred with this limit when OSHA recently established it in general industry.

Sodium hydroxide is a white, deliquescent solid used in the manufacture of chemicals, as a neutralizing agent in petroleum refining, and as an ingredient in detergents and soaps. This substance is also widely used in textile processing, vegetable oil refining, and the reclamation of rubber. In addition, sodium hydroxide is used for regenerating ion exchange resins, in organic fusions, as a lab reagent, in etching and electroplating, and as a food additive (ACGIH 1986, p. 535; Hawley's 1987, p. 1062).

Sodium hydroxide is a severe irritant of the eyes, mucous membranes, and skin. In addition to sensory irritation, sodium hydroxide destroys tissue on contact. The lowest lethal oral dose in rabbits is 500 mg/kg (RTECS 1990). A 1-percent solution of sodium hydroxide instilled into the eyes of monkeys caused severe eye irritation, and 500 mg placed on the skin of rabbits caused severe skin irritation (RTECS 1990). Two of 10 rats exposed for 30 minutes twice a week to an aerosol of 40 percent aqueous sodium hydroxide whose particles were less than 1 um in diameter died after 3 weeks. Histopathological examination showed mostly normal lung tissue with foci of enlarged alveolar septae, emphysema, bronchial ulceration, and enlarged lymph adenoidal tissues (Wands 1981b, in Clayton and Clayton 1982, p. 3062).

Although the inhalation of sodium hydroxide is usually of secondary importance in industrial exposures, the effects of inhaling the dust or mist vary from mild irritation of the nose, which occurs on brief exposure to 2 mg/m^3, to severe pneumonitis and ulceration of the nasal septum, which may occur at very high (but not further specified) exposures (Proctor, Hughes, and Fischman 1988, p. 444; ACGIH 1986, p. 535). The greatest industrial hazard is rapid tissue destruction of the eyes or skin upon contact either with the solid or with concentrated solutions (Proctor, Hughes, and Fischman 1988, p. 444). Contact of sodium hydroxide with the eyes causes disintegration and sloughing of the conjunctival and corneal epithelium, corneal opacification, marked edema, and ulceration; after 7 to 13 days, gradual recovery may begin or the lesion may progress to ulceration and corneal opacification. In severe eye burns, symblepharon, with overgrowth of the cornea by a vascularized membrane, progressive or recurrent corneal ulceration, and permanent corneal opacification may occur (Proctor, Hughes, and Fischman 1988, p. 444). Grant (1986/Ex. 1–975) states that sodium hydroxide causes "some of the most severe, blinding injuries of the eye." On the skin, solutions of 25 to 50 percent sodium hydroxide cause a sensation of irritation within about 3 minutes; with solutions of 4 percent, the sensation of burning does not occur until several hours later. If not removed from the skin, sodium hydroxide causes severe burns and deep ulcerations. Exposure to the dust or mist of sodium hydroxide may cause multiple small burns, with temporary loss of hair (Proctor, Hughes, and Fischman 1988, p. 445). Nagao and co-workers (1972) examined skin biopsies from volunteers who had a 1 N solution (equal to a 4-percent solution) of sodium hydroxide applied to their arms for 15 to 180 minutes. Progressive changes, beginning with dissolution of the cells in the horny layer and progressing through edema to total destruction of the epidermis, occurred in these individuals within 60 minutes (Nagao, Stroud, Hamada et al. 1972).

The irritant effect of sodium hydroxide and its markedly corrosive action on all body tissue can result even from brief (one minute or more) exposures to airborne concentrations above the 2-mg/m^3 level; the acute nature of these effects is evident in the studies described above. Based on this evidence, OSHA preliminarily concludes that establishing a ceiling of 2 mg/m^3 in the construction, maritime, and agriculture industries is necessary to reduce the significant risks of eye and skin burns and respiratory irritation that occur even on brief exposure to sodium hydroxide. OSHA considers the irritant effects resulting from exposure to sodium hydroxide material impairments of health and is accordingly proposing a ceiling limit of 2 mg/m^3 for sodium hydroxide in the construction, maritime, and agriculture industries. Promulgation of this PEL will make the limit for sodium hydroxide consistent across all OSHA-regulated sectors.

SODIUM METABISULFITE

CAS: 7681–57–4; Chemical Formula: $Na_2S_2O_5$
H.S. No. 1368

OSHA has no exposure limit for sodium metabisulfite in the construction, maritime, and agriculture industries. The ACGIH has an 8-hour TLV®–TWA of 5 mg/m³; NIOSH has no REL for this substance. The Agency is proposing a 5-mg/m³ TWA for sodium metabisulfite in the construction, maritime, and agriculture industries. NIOSH (Ex. 8–47) concurred with the selection of this limit when OSHA established it in general industry.

Sodium metabisulfite can occur either in the form of a solid block or as white crystals; this substance smells like sulfur dioxide. Sodium metabisulfite is used as a preservative, in the manufacture of pharmaceuticals and foods, and as a lab reagent (HSDB 1989).

A 2-year study conducted by the Dow Chemical Company (1977e, as cited in ACGIH 1986/Ex. 1–3, p. 535), in which rats ingested 0.215 percent sodium metabisulfite, demonstrated that oral administration of sodium metasulfite caused no adverse effects in the rats. The LD_{50} in rats is 115 mg/kg by intravenous administration (RTECS 1990). Oral administration of sodium metabisulfite to rats at doses of 20 mg/kg or 40 mg/kg produced stillbirths or other adverse effects on the offspring (RTECS 1990).

In humans, inhalation of the dust of sodium metasulfite causes mucous membrane and sensitization effects similar to those that caused by sodium bisulfite (ACGIH 1986, p. 535; Nichol, Nix, Chung, and Barnes 1989, in Thorax 44(12):1009–1014). Fifteen of 18 asthmatic and atopic volunteers who were challenged with sodium metabisulfite developed bronchoconstriction of sufficiently severe degree to cause a 20-percent reduction from baseline levels in forced expiratory volume in one second (FEV_1) (Nichol, Nix, Chung, and Barnes 1989). In addition, prolonged or repeated exposure to the dust of this substance causes dermatitis (Hazardous Substance Fact Sheet 1985, p. 2).

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA of 5 mg/m³ for sodium metabisulfite in the construction, maritime, and agriculture industries. The Agency preliminarily finds that establishing this limit is necessary to reduce the risk of eye and skin irritation and pulmonary sensitization associated with exposure to high concentrations of sodium metabisulfite dust. OSHA has preliminarily determined that these effects constitute material impairments of health. Accordingly, OSHA is proposing a 5-mg/m³ limit as an 8-hour TWA for this substance; promulgation of this limit will make the PELs for this substance consistent across all OSHA-regulated sectors.

SULFUR MONOCHLORIDE
CAS: 10025–67–9; Chemical Formula: S_2Cl_2
H.S. No. 1376

OSHA's PEL for sulfur monochloride in the construction and maritime industries is 1 ppm as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has a TLV® of 1 ppm as a ceiling limit, and NIOSH has no REL for this substance. The Agency is proposing to revise its limit for sulfur monochloride in the construction and maritime industries to a 1 ppm ceiling and to extend this limit to agriculture. NIOSH (Ex. 8–47) concurred with this limit when OSHA recently established it for general industry.

Sulfur monochloride is an amber, oily, nonflammable, fuming liquid that has a penetrating odor. It is used in the manufacture of insecticides, to vulcanize rubber, in chemical synthesis, to harden wood, in textile finishing, and in gold extraction. Sulfur monochloride is also used as a polymerization catalyst for vegetable oils (ACGIH 1986, p. 545; Merck 1983, p. 1288).

In addition to sensory irritation, exposure to sulfur monochloride can lead to burns of the eyes and skin. Sulfur monochloride is a primary irritant that affects the upper respiratory tract by releasing hydrochloric acid (HCl) on contact with moisture (Henderson and Haggard 1943g, as cited in ACGIH 1986/Ex. 1–3, p. 545). Animal toxicity studies revealed that mice exposed to a 150-ppm concentration of sulfur monochloride died after 1 minute (Flury and Zernik 1931k/Ex. 1–979). Cats exposed for 15 minutes to 60 ppm sulfur monochloride all died within a few days, but exposure to a concentration of 12 ppm for 15 minutes was tolerated by these animals (Henderson and Haggard 1943g, as cited in ACGIH 1986/Ex. 1–3, p. 545).

In humans, sulfur monochloride causes tearing of the eyes and coughing; if the exposure is severe, pulmonary edema may develop (Proctor, Hughes, and Fischman 1988, p. 454). Splashed into the eyes, this substance causes severe damage and may cause permanent scarring; in contact with the skin, it causes burns (ACGIH 1986, p. 545). A study by Elkins (1959g, as cited in ACGIH 1986/Ex. 1–3, p. 545) of workers in the rubber industry found that exposure to sodium monochloride concentrations of 2 to 9 ppm was mildly irritating; however, because of moisture in the air, the concentrations to which these workers were exposed may have included a high proportion of hydrochloric acid.

Based on this evidence, the Agency preliminarily concludes that workers in the construction, maritime, and agriculture industries are at significant risk from the primary irritation that could occur even on short-term exposure to elevated concentrations of sulfur monochloride. Since 2 ppm is reported to be an effect level for mild irritation, OSHA preliminarily finds that revising its 8-hour TWA limit in construction and maritime to 1 ppm as a ceiling and extending this ceiling limit to agriculture is a reasonable and necessary action to protect workers in these sectors from the significant risk of sensory irritation, which constitutes a material impairment of health. Therefore, OSHA is proposing a ceiling limit for sulfur monochloride of 1 ppm in the construction, maritime, and agricultural sectors. Promulgation of this limit will also make the PEL for this substance consistent across all OSHA-regulated sectors.

SULFUR PENTAFLUORIDE
CAS: 5714–22–7; Chemical Formula: S_2F_{10}
H.S. No. 1377

OSHA's limit for sulfur pentafluoride in construction and maritime workplaces is 0.025 ppm as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has a ceiling limit for sulfur pentafluoride of 0.01 ppm, and NIOSH has no REL for this substance. The Agency is proposing a 0.01 ppm ceiling limit for sulfur pentafluoride in construction, maritime, and agriculture. NIOSH concurred (Ex. 8–47) with this limit when OSHA recently established it for general industry.

Sulfur pentafluoride is a colorless gas or liquid with a sulfur dioxide-like odor. Sulfur pentafluoride is used as a reactant in research applications (Genium MSDS 1989, No. 262).

Sulfur pentafluoride causes severe respiratory tract irritation in animals. The LC_{50} in rats is 0.2 ppm for 10 minutes; in monkeys, the LC_{50} is 0.9 ppm for 10 minutes (RTECS 1990). Saunders, Shoshkes, DeCarlo, and Brown (1953/Ex. 1–610) established that the intravenous LD_{50} for sulfur pentafluoride in rabbits is 5.8 mg/kg, and that death was due to fulminant pulmonary edema. In a study in which rats were exposed to sulfur pentafluoride for 16 to 18 hours, concentrations of 0.1 ppm caused lung irritation, 0.5 ppm resulted in severe pulmonary lesions, and 1 ppm proved fatal (Greenberg and Lester 1950/Ex. 1–590). One-hour exposures to 10 ppm

sulfur pentafluoride caused diffuse hemorrhagic lesions in the lungs of rats, and 1-hour exposures to 1 ppm caused severe congestion of the lungs. Rats exposed for one hour to 0.1 ppm showed no effects. Subsequent examination of rats surviving the 10- and 1-ppm exposures revealed that the lungs had returned to normal after 24 hours (Greenberg and Lester 1950/Ex. 1–590). Dogs exposed intravenously to a 1-mg/kg dose of sulfur pentafluoride experienced vascular shock and died from acute pulmonary edema (RTECS 1989). There are no reports of human exposure to sulfur pentafluoride.

Based on this evidence, OSHA is proposing to revise the sulfur pentafluoride limit in construction and maritime to 0.01 ppm as a ceiling and to extend this limit to agriculture. The 0.01-ppm ceiling is appropriate because of evidence showing that even brief exposures to 1 ppm caused pulmonary effects and prolonged exposures to 0.1 ppm caused lung irritation in animals. OSHA preliminarily concludes that this limit is necessary to substantially reduce the risks of irritation and other pulmonary effects potentially associated with exposure to this substance. The Agency considers these effects material impairments of health. Promulgation of a 0.01 ppm ceiling for sulfur pentafluoride will make OSHA's PEL for this substance consistent across all regulated sectors.

SULFURIC ACID

CAS: 7664–93–9; Chemical Formula: H_2SO_4

H.S. No. 2147

In general industry, construction, and maritime, OSHA's permissible exposure limit for sulfuric acid is 1 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 1 mg/m³ and a TLV®–STEL of 3 mg/m³. NIOSH has a REL of 1 mg/m³ and concurs (Ex. 8–47) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA limit of 1 mg/m³ for sulfuric acid in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Sulfuric acid is a dense, oily, colorless, odorless liquid. This substance is the most widely used of all industrial chemicals, finding use in the manufacture of fertilizers, chemicals, plastics, and explosives, in metal cleaning, petroleum refining, in the pickling of metal, and in electroplating (ACGIH 1986, p. 544(87); Proctor, Hughes, and Fischman 1988, p. 451).

Sulfuric acid is a severe irritant of the eyes, skin, mucous membranes, and respiratory tract in humans and animals; this substance also causes dental erosion. The oral LD_{50} in rats is 2140 mg/kg (RTECS 1990). In rats and mice, the 2-hour LC_{50}s are 510 mg/m³ and 320 mg/m³, respectively (RTECS 1990). Guinea pigs are more sensitive to sulfuric acid effects than rats, mice, or rabbits: exposure to a sulfuric acid concentration of 87 mg/m³ for 2.75 hours killed guinea pigs, but rats, mice, and rabbits survived exposure to 203 mg/m³ for 7 hours (Treon, Dutra, Cappel et al. 1950, in ACGIH 1986, p. 544(87)). Rabbits showed severe eye irritation after 5 mg of sulfuric acid was instilled into their eyes, followed after 30 seconds by rinsing (RTECS 1990). Guinea pigs exposed continuously for 24 hours/day tolerated sulfuric acid concentrations as high as 4 mg/m³ for as long as 140 days; at autopsy, signs of pulmonary pathology were seen (Thomas et al. 1958, in ACGIH 1986, p. 544(87)). Monkeys exposed continuously for 2 years to concentrations of sulfuric acid between 0.1 and 1 mg/m³ developed increasingly severe pulmonary lesions; exposure to a concentration of 2.5 mg/m³ caused impairment of pulmonary ventilation (Alarie et al. 1975, in Proctor, Hughes, and Fischman 1988, p. 453).

The lowest lethal oral dose in humans is estimated to be 135 mg/kg; the lowest reported toxic concentration is 3 mg/m³ for 24 weeks (RTECS 1989). In an experiment designed to determine thresholds for irritant effects, subjects reported throat tickling and scratching at a mean minimum concentration of 0.72 mg/m³, considerable irritation at the base of the esophagus and eye irritation at 1.1 to 2.1 mg/m³, and acute irritation of the eyes and mucous membranes and reflex coughing at concentrations between 2.4 and 6.0 mg/m³. Exposure to a sulfuric acid concentration of 1.0 to 1.1 mg/m³ caused slight changes in respiration, and increasing the concentration to 1.8 to 2.0 mg/m³ produced changes in respiratory amplitude and rhythm in all subjects (NIOSH Criteria Document 1974). A worker sprayed in the face with fuming sulfuric acid suffered skin burns and pulmonary edema (NIOSH Criteria 1974). When splashed in the eye, concentrated sulfuric acid causes severe damage and may cause blindness; a splash of dilute sulfuric acid produces transient effects (Grant 1986, pp. 866–868). Corrosion of the dental enamel has been seen in some sulfuric acid plant workers and in battery plant workers (Premysl 1952; Malcolm and Paul 1961, in ACGIH 1986, p. 544(87)). Exposure to an average concentration of 0.23 mg/m³ sulfuric acid caused a high incidence of teeth etching and erosion; these effects occurred after 4 months of exposure (Gamble et al. 1984, in HSDB 1990). Workers chronically exposed to sulfuric acid may develop signs and symptoms such as skin lesions, tracheobronchitis, stomatitis, conjunctivitis, and gastritis (Raule 1955, in ACGIH 1986, p. 544(87)). A total of 225 lead acid battery plant workers were studied using industrial hygiene measurements (personal samples), a symptom questionnaire, and spirometry. In acclimated workers, there was no evidence of acute symptoms or of declines in pulmonary function when the concentration of sulfuric acid was kept below 1 mg/m³ (Gamble et al. 1984, in Environ. Res. 35(1):11–29). A recent epidemiology study suggests that exposure to higher (not further specified) concentrations of sulfuric acid is associated with an excess risk of upper respiratory tract cancer, and specifically with laryngeal cancer (Soskoline et al. 1984, in Am. J. Epidemiol. 120(3):358–369).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to sulfuric acid causes severe eye, skin, and respiratory irritation, and corrosion of the dental enamel of the teeth. OSHA preliminary concludes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse exposure-related effects. The Agency believes that the proposed 8-hour TWA limit of 1 mg/m³ for sulfuric acid is necessary to substantially reduce the risks of these material health impairments. Extension of this limit to the agricultural sector will make OSHA's PEL for sulfuric acid consistent across all regulated sectors.

TETRAHYDROFURAN

CAS: 109–99–9; Chemical Formula: $(C_2H_4)_2O$

H.S. No. 1387

OSHA's PEL for tetrahydrofuran in construction and maritime workplaces is 200 ppm as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has a 200 ppm TLV®–TWA and a 250 ppm TLV®–STEL for tetrahydrofuran. The Agency is retaining the 8-hour TWA PEL of 200 ppm in the construction and maritime industries and is proposing to extend it to agricultural workplaces; in addition, OSHA is proposing to add a 250-ppm STEL for tetrahydrofuran in the construction, maritime, and agriculture industries. NIOSH (Ex. 8–47) concurred that these limits were appropriate when OSHA recently established them in general industry.

Tetrahydrofuran is a colorless liquid with an odor like that of ether. This substance is used as a solvent for

natural and synthetic resins and in lithium aluminum hydride reduction and polymerization. It is also a chemical intermediate (ACGIH 1986, p. 564).

In addition to sensory irritation, tetrahydrofuran causes central nervous system depression in animals and humans. The oral LD_{50} in rats is 2816 mg/kg, and the LC_{50} in the same species is 21,000 ppm for 3 hours (RTECS 1990). Lehmann and Flury (1943c/Ex. 1–879) reported that animals exposed to concentrations of tetrahydrofuran exceeding 3000 ppm for 8 hours/day for 20 days showed signs of irritation of the upper respiratory tract as well as kidney and liver injury. Applied to the skin of rabbits, aqueous solutions of tetrahydrofuran that exceeded 20 percent caused irritation. One study (Stoughton and Robbins 1936/Ex. 1–597) found that tetrahydrofuran concentrations in excess of 25,000 ppm were needed to anesthetize dogs. The anesthesia process in these animals showed a delayed induction period and poor recovery. In other studies with dogs (Zapp 1971, as cited in ACGIH 1986/Ex. 1–3, p. 564), exposure to a 200-ppm concentration of tetrahydrofuran for 6 hours produced an observable effect on the pulse pressure of these animals within three to 4 weeks; however, despite exposure to this concentration for 9 weeks, followed by exposure for 3 weeks to nearly twice this concentration, no histopathologic changes were observed in the critical organs at autopsy. The work of Jochmann (1961/Ex. 1–1021), in which tetrahydrofuran was given orally and peritoneally to a variety of laboratory animals, showed both liver and kidney damage in these animals at autopsy; however, some of the effects observed by this author may have been caused by peroxide contamination of the tetrahydrofuran. Rats and mice were exposed for 13 weeks to concentrations of 66, 200, 600, 1800, or 5000 ppm. Rats exposed to 5000 ppm became ataxic, and mice exposed to 1800 or 5000 ppm became narcotic. At autopsy, minimal exposure-related effects were seen in the livers of both mice and rats in the high-dose group; however, morphologic changes were seen only in the high-dose mice (Chabra, Elwell, Chou, Miller, and Renne 1990, in Funda. Appl. Toxicol. 14(2):338–345).

In humans, exposure to tetrahydrofuran at a concentration of 25,000 ppm causes anesthesia (RTECS 1990). The symptoms of overexposure that have been reported in humans include headache, nausea, and dizziness, all indicative of central nervous system depression (AIHA 1959). The technicians involved in the experiment described above involving the anesthetization of dogs (Stoughton and Robbins 1936/Ex. 1–597) developed severe occipital headaches as a result of their exposure. Two plumbers exposed to unspecified concentrations of tetrahydrofuran when they were repairing pipes with glue containing this substance developed mucous membrane irritation, mild central nervous system effects, and toxic hepatitis, as evidenced by elevated liver enzymes. The enzymes returned to normal values within 14 days of the exposure (Garnier, Rosenberg, Puissant, Charvet, and Efthymion 1989).

Based on this evidence in humans and animals, OSHA preliminarily concludes that the proposed PELs of 200 ppm as an 8-hour TWA and 250 ppm as a 15-minute STEL are necessary to substantially reduce the significant risk of irritation and central nervous system depression associated with exposure to tetrahydrofuran. The Agency believes that these adverse health effects constitute material impairments of health. Promulgation of these limits for the construction, maritime, and agriculture industries will make OSHA's PELs for tetrahydrofuran consistent across all OSHA-regulated sectors.

TETRANITROMETHANE
CAS: 509–14–8
H.S. No. 2157

OSHA's PEL for tetranitromethane in general industry, construction, and maritime is 1 ppm as an 8-hour TWA; there is no limit in agriculture. The ACGIH TLV®–TWA for tetranitromethane is 1 ppm; there is no NIOSH REL for this substance. OSHA is proposing a TWA PEL of 1 ppm for tetranitromethane in agriculture. This is the limit recently established for this substance in general industry.

Tetranitromethane is a colorless to pale-yellow liquid with an acrid, biting odor. It is used as an oxidizing agent in rocket propellants, in explosives, as a diesel fuel additive, and as a laboratory reagent. It has been proposed for use as an irritant war gas (HSDB 1989; Clayton and Clayton 1981, p. 4157; ACGIH 1986, p. 567).

Tetranitromethane is a severe irritant of the eyes and respiratory tract in both animals and humans; at high concentrations, it causes methemoglobinemia and central nervous system damage. The oral LD_{50} in rats is 130 mg/kg; the 4-hour LC_{50} in the same species is 18 ppm (RTECS 1989). Rats exposed to 1230 ppm for 36 minutes exhibited lacrimation, rhinorrhea, gasping, and cyanosis before death; autopsy revealed pulmonary edema (Horn 1954). Cats exposed to a 0.1 to 0.4 ppm concentration of tetranitromethane showed signs of mild eye irritation, and cats exposed to a 10-ppm concentration of tetranitromethane for 20 minutes exhibited illness and died 10 days after exposure (AIHA 1964; Flury and Zernik 1931). A concentration of 33 ppm killed 65 percent of rats exposed for 6.5 hours, and 58 percent of rats exposed to a 6.35-ppm concentration for 6 hours/day, 5 days/week for 6 months died. Autopsy of the chronically exposed animals revealed lung damage (Horn 1954). Intravenous injection of tetranitromethane resulted in methemoglobinemia, anemia, central nervous system damage, and pulmonary edema in three species of experimental animals (Horn 1954).

In humans, the lowest lethal dose of tetranitromethane by inhalation is estimated to be approximately 500 mg/kg (or about 35 grams); the few deaths and poisonings that have occurred in workers handling heated trinitrotoluene (TNT) have been attributed to tetranitromethane contamination of the TNT (Clayton and Clayton 1982, p. 4157). Laboratory workers manufacturing tetranitromethane have reported experiencing irritation of the eyes, nose, and respiratory passages; dizziness; headache; chest pain; dyspnea; and, rarely, skin irritation (Horn 1954). In contact with the skin, tetranitromethane causes mild burns (AIHA 1964).

Based on this evidence in humans and animals, OSHA preliminarily concludes that agricultural workers exposed to this substance at the levels permitted by the absence of a permissible exposure limit are at significant risk of experiencing irritation of the eyes and respiratory tract. At high concentrations, they may also be at risk of death. The Agency believes that establishing a PEL of 1 ppm as an 8-hour TWA will protect workers in agriculture from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TETRASODIUM PYROPHOSPHATE
CAS: 7722–88–5; Chemical Formula: $Na_4P_2O_7$
H.S. No. 1389

OSHA has no limit for tetrasodium pyrophosphate in the construction, maritime, or agriculture industries. The ACGIH has an 8-hour TLV®–TWA of 5 mg/m³; NIOSH has no REL for this substance but concurs that the proposed limit is appropriate (Ex. 8–47). OSHA is proposing an 8-hour TWA limit of 5 mg/m³ for this substance in the

construction, maritime, and agriculture industries; this is the limit recently established for tetrasodium pyrophosphate in general industry.

Tetrasodium pyrophosphate is a white powder or a crystalline solid. This substance is used as a water softener, in soaps and detergents, as a dispersing and emulsifying agent, as a metal cleaner, and as a nutrition supplement. Tetrasodium pyrophosphate is also used in boiler water treatment, in drilling muds, dyeing, wood scouring, and as a sequestrant (ACGIH 1986, p. 567).

In addition to sensory irritation, tetrasodium pyrophosphate causes kidney damage in experimental animals exposed subchronically by oral administration. The oral LD_{50} in rats is 4000 mg/kg (RTECS 1990). Administered to rats in the diet for 4 to 6 months, all dietary levels exceeding 1 percent tetrasodium pyrophosphate caused kidney damage (HSDB 1989).

In humans, exposure to the alkaline dust of tetrasodium pyrophosphate is associated with irritation of the eyes and respiratory passages (Dow Chemical Co. 1977, in ACGIH 1986, p. 567). Contact of this substance with the skin of humans causes irritation (Hazardous Substance Fact Sheet 1986, p. 2). Ingestion of this substance can cause nausea, vomiting, and diarrhea (Gosselin, Smith, and Hodge 1984, p. II-121).

Based on this evidence, OSHA preliminarily concludes that exposure to this substance poses a significant risk of eye, skin, and respiratory tract irritation to workers in the construction, maritime, and agriculture industries. The Agency believes that these effects represent material impairments of health. Accordingly, OSHA is proposing a 5-mg/m^3 8-hour TWA limit for tetrasodium pyrophosphate in the construction, maritime, and agriculture industries; promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

THIOGLYCOLIC ACID

CAS: 68-11-1; Chemical Formula: $C_2H_4O_2S$

H.S. No. 1392

OSHA has no PEL for thioglycolic acid in the construction, maritime, or agriculture industries. The ACGIH has a TLV®-TWA of 1 ppm, with a skin notation. NIOSH has no REL for this substance. The Agency is proposing a 1 ppm TWA, and a skin notation, for thioglycolic acid in the construction, maritime, and agricultural industries. NIOSH (Ex. 8-47) concurred with this limit when OSHA recently established it in general industry.

Thioglycolic acid is a colorless, combustible liquid with the unpleasant odor characteristic of chemicals in the sulfhydryl group. Thioglycolic acid is used in the manufacture of pharmaceuticals, thioglycolates, permanent wave solutions, and depilatories and as a vinyl stabilizer (ACGIH 1986, p. 571).

In addition to sensory irritation, thioglycolic acid causes central nervous system effects in experimental animals. The oral LD_{50} in rats is 114 mg/kg. The lowest lethal concentration in mice is 7 mg/m^3 (1.9 ppm) for 2 hours (RTECS 1990). The lowest lethal concentration in rabbits by skin absorption is 300 mg/kg (RTECS 1990). The dermal LD_{50} for a 10 percent solution of thioglycolic acid is 848 mg/kg (ACGIH, 1986, p. 571/Ex. 1-3). A 5-ml/kg dermal dose of a 10-percent solution of thioglycolic acid caused weakness, gasping, and convulsions in guinea pigs. After receiving an oral dose of 125 mg/kg, female rats died; autopsy revealed liver effects and signs of gastrointestinal irritation (Dow Chemical Co. 1973b, as cited in ACGIH 1986, p. 571). Rabbits experienced conjunctival inflammation, dense corneal opacity, and iritis after thioglycolic acid was instilled into their eyes. The substance is also a severe skin irritant in animals (HSDB 1989).

In humans, contact of the skin or eyes with thioglycolic acid causes severe burns and blistering (Merck 1983, p. 1337). Hairdressers exposed to thioglycolates in permanent wave solutions have reported developing eczematous rashes on the face, scalp, and hands after contact with these materials (HSDB 1989). One accident has been reported in which a person was splashed in the eyes and on the face, legs, and arms with concentrated thioglycolic acid and subsequently experienced second-degree burns of the skin. The less injured eye returned to normal quickly, but the conjunctiva in the other eye became necrotic and the corneal became clouded. Most of this damage eventually cleared, and the victim was left with only a slight opacity in one eye (Grant 1986, p. 905).

Based on this evidence in humans and animals, OSHA preliminarily concludes that thioglycolic acid poses a significant risk of eye and skin burns and irritation, effects that constitute material impairments of health. OSHA believes that the proposed 1-ppm 8-hour TWA limit for this substance is necessary to reduce these risks for workers in the construction, maritime, and agricultural industries. In addition, because evidence in animals shows that thioglycolic acid solutions readily penetrate the skin, OSHA preliminarily finds that a skin notation is necessary to limit dermal contact. Promulgation of the proposed limit and the skin notation will make OSHA's PEL for this substance consistent across all OSHA-regulated sectors.

1,2,4-TRICHLOROBENZENE

CAS: 120-82-1; Chemical Formula: $C_6H_3Cl_3$

H.S. No. 1405

OSHA has no limit for 1,2,4-trichlorobenzene in the construction, maritime, or agriculture industry. The ACGIH has a TLV® ceiling limit of 5 ppm for 1,2,4-trichlorobenzene; NIOSH has no REL for this substance. OSHA is proposing a 5-ppm ceiling limit for this substance in the construction, maritime, and agricultural industries. NIOSH (Ex. 8-47, Table N1) concurred that the proposed limit was appropriate when the Agency recently established it in general industry.

1,2,4-Trichlorobenzene is a colorless, stable liquid at room temperature; it has an aromatic odor. 1,2,4-Trichlorobenzene is used as an insecticide, as a dielectric fluid, and as a heat transfer medium. It is also used in lubricants and in organic synthesis (ACGIH 1986, p. 593). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In addition to sensory irritation, 1,2,4-trichlorobenzene causes central nervous system effects and liver and kidney damage in experimental animals. The oral LD_{50} in rats is 756 mg/kg (RTECS 1990), and the acute percutaneous LD_{50} in rats is 6139 mg/kg (Brown, Muir, and Thorpe 1969/Ex. 1-537). Sublethal doses administered repeatedly to guinea pigs caused liver damage; acute and short-term exposure (fifteen 6-hour exposures to concentrations between 70 and 200 ppm), however, failed to kill these animals (Gage 1970/Ex. 1-318). The inhalation toxicity of 1,2,4-trichlorobenzene was studied by Treon (1950, as cited in ACGIH 1986/Ex. 1-3, p. 593), who determined that the target organs of exposure in cats, dogs, rats, rabbits, and guinea pigs included the liver, kidneys, ganglion cells at all brain levels, and mucous membranes. Irritation of the lungs and changes in respiration were seen in those animals that later died as a result of exposure. In a separate study conducted by Rowe (1975, as cited in ACGIH 1986/Ex. 1-3, p. 593), 20 male rats, 4 rabbits, and 2 dogs were exposed to 1,2,4-trichlorobenzene at concentrations of 30 or 100 ppm for 7 hours/day, 5 days/week for a total of 30

exposures in 44 days. No adverse exposure-related effects were detected in exposed animals in the 30-ppm group, with the exception of an elevation of urinary porphyrins in the rats on days 15 and 30 of exposure. A second inhalation study involved exposure to 1,2,4-trichlorobenzene 7 hours/day, 5 days/week for 26 consecutive weeks (Coate, Schoenfisch, Busey, and Lewis 1977, as cited in ACGIH 1986/Ex. 1–3, p. 593). Thirty rats, 16 rabbits, and 9 monkeys, all males, were exposed at concentrations of 25, 50, or 100 ppm. Microscopic changes were seen in the parenchymal cells of the livers and kidneys of all rats after weeks 4 and 13 of exposure, but no adverse effects were seen in animals of any other species. In a 90-day gavage study in rats given 1, 10, 100, or 1000 ppm 1,2,4-trichlorobenzene, males in the high-dose groups (100 or 1000 ppm) showed increased liver-to-body weight ratios; at autopsy, significant histopathological changes in the liver, kidney, and thyroid were seen in animals in the highest-dose group (Cote, Chu, Villeneuve, Secous, and Valli 1988, in Drug Chem. Toxicol. 11(1):11–28). 1,2,4-Trichlorobenzene has been shown to have embryotoxic effects in rats by oral administration and reproductive effects in female rats by intraperitoneal administration (RTECS 1990). Another recent study failed to show teratogenicity in the offspring of rats exposed to 150 or 300 ppm 1,2,4-trichlorobenzene on days 6 and 15 of gestation (Black, Valli, Ruddick, and Villeneuve 1988, in Bull. Environ. Contam. Toxicol. 41(5):719–726).

In workers, prolonged or repeated skin contact with 1,2,4-trichlorobenzene causes dermal irritation as a result of the defatting action of this chemical (Powers, Coate, and Lewis 1975/Ex. 1–658). In some cases, exposure to concentrations of 3 to 5 ppm caused eye and throat irritation (Rowe 1975, as cited in ACGIH 1986/Ex. 1–3, p. 593). This substance also has been reported to cause liver injury in humans (Gosselin, Smith, and Hodge 1984, p. II–173). One worker who was massively overexposed to trichlorobenzene experienced hemorrhages of the lungs (NRC 1977, p. 774). Exposure to trichlorobenzene has been reported to cause aplastic anemia, leukopenia, and thrombocytopenia in one non-occupational case, and a man whose job required him to fill drums with mono-, orthodi-, and trichlorobenzene developed anemia after 3 years of such exposure (Girard et al. 1969, in J. Med. Lyon 50:771–773).

Based on this evidence, the Agency preliminarily concludes that the PEL being proposed is necessary to protect workers in the construction, maritime, and agriculture sectors from the risk of eye, throat, and dermal irritation and possible liver damage associated with exposure to this substance. OSHA considers these exposure-related effects material impairments of health. To afford workers in these sectors protection from these effects, OSHA is proposing a ceiling limit of 5 ppm for 1,2,4-trichlorobenzene in the construction, maritime, and agriculture industries. Promulgation of this limit will make the PEL for 1,2,4-trichlorobenzene consistent across all OSHA-regulated sectors.

TRIETHYLAMINE
CAS: 121–44–8; Chemical Formula: $(C_2H_5)_3N$
H.S. No. 1408

OSHA has an 8-hour TWA limit of 25 ppm for triethylamine in the construction and maritime industries. There is no PEL in agriculture. The ACGIH has a 10 ppm TLV®–TWA and a 15 ppm TLV®–STEL for triethylamine. NIOSH has no REL for this substance. OSHA is proposing an 8-hour TWA limit of 10 ppm and a 15-minute STEL of 15 ppm for this substance in the construction, maritime, and agriculture industries. NIOSH (Ex. 8–47) concurred that these limits were appropriate when OSHA recently established them in general industry.

Triethylamine is a flammable, colorless liquid with a strong ammonia-like odor. Triethylamine is used in the preparation of quaternary ammonium compounds. It is also used as a catalytic solvent in chemical synthesis, as an accelerator activator for rubber, in the curing and hardening of polymers, and as a corrosion inhibitor and propellant (Hawley's 1987, p. 1180).

In addition to sensory irritation, triethylamine causes ocular effects in exposed workers. The oral LD_{50} in rats is 460 mg/kg, the LC_{50} in mice is 6 g/m³ for 2 hours, and the dermal LD_{50} in rabbits is 750 mg/kg (RTECS 1990). Guinea pigs exposed for 30 minutes to a triethylamine concentration of 2000 ppm survived, but four of six animals died when exposed to this level for 2 hours; two of six guinea pigs died during a 4-hour exposure to a concentration of 1000 ppm, but all survived similar exposures at the 250- and 500-ppm levels (Carpenter, Smyth, and Shaffer 1948/Ex. 1–892). Applied to the skin of rabbits, triethylamine caused mild irritation; instilled into the eyes of rabbits, it caused severe irritation (RTECS 1990). Rabbits exposed repeatedly to a concentration of 50 ppm exhibited marked irritation of the cornea and of pulmonary tissue (Brieger and Hodes 1951/Ex. 1–408; Carpenter and Smyth 1946/Ex. 1–859).

In humans, the effects of repeated triethylamine exposure correspond to those of ethylamine and diethylamine and include irritation of the eyes and mucous membranes and corneal edema and other ocular effects (Brieger and Hodes 1951/Ex. 1–408). Humans exposed to a 12-mg/m³ concentration of triethylamine experienced changes in their visual fields (RTECS 1989). Triethylamine was also found to inhibit monoamine oxidase activity, resulting in central nervous system stimulation (De Bruin 1976/Ex. 1–895).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers exposed to triethylamine are at significant risk of experiencing sensory irritation and ocular effects, both material impairments of health. Therefore, OSHA is proposing limits for triethylamine of 10 ppm as an 8-hour TWA and 15 ppm as a 15-minute STEL for workplaces in the construction, maritime, and agriculture industries. Promulgation of these PELs will make OSHA's limits for triethylamine consistent across all OSHA-regulated sectors.

TURPENTINE
CAS: 8006–64–2; Chemical Formula: $C_{10}H_8$
H.S. No. 2166

In general industry, construction, and maritime, OSHA's permissible exposure limit for turpentine is 100 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 100 ppm for this substance; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL in agriculture of 100 ppm for turpentine. This is the limit recently established for this substance in general industry.

Turpentine is a volatile mixture of hydrocarbon isomers obtained either from pine gum or pine wood. Gum turpentine is a yellowish, sticky, opaque, combustible material, and the wood distillate (oil of turpentine) is a flammable, colorless liquid with a characteristic odor (Sittig 1985, p. 906; Genium MSDS 1984, No. 375; Hawley's 1987, p. 1200). Turpentine is used as an insecticide, a chemical intermediate, and a flavoring agent. It is also used in the manufacture of cleaning materials, putty, cutting and grinding fluids, and mastics, and as an ingredient in some perfumes, deodorizers, pharmaceuticals, polishes, oils, inks, and stimulating ointments (HSDB 1989). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal

Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Turpentine is an irritant of the eyes, skin, and respiratory tract and causes central nervous system depression in both animals and humans; in humans, exposure also may cause dermal sensitization and gastrointestinal and urinary tract effects. Injection of turpentine into rabbits' eyes produced corneal opacification (Grant 1986, p. 961). The oral LD_{50} in rats is 5760 mg/kg, and the inhalation LC_{50} for the same species is 12 g/m³ for 6 hours (RTECS 1989). Cats exposed to a concentration of turpentine of between 540 and 720 ppm exhibited signs of eye and respiratory tract irritation and had mild convulsions; at 1440 ppm, they developed paralysis within 150 to 180 minutes (HSDB 1989). Dogs exposed to an 818-ppm concentration of turpentine for 3.5 to 4.5 hours developed nausea, incoordination, mild paralysis, and weakness (Grant 1986, p. 961; Clayton and Clayton 1981, p. 3245); however, no effects were seen in dogs exposed to a 180-ppm concentration for 3.5 hours/day for 8 days (Lehmann and Flury 1943). Turpentine has also caused skin tumors in mice and rats (RTECS 1989; Clayton and Clayton 1981, p. 3245).

The lowest reported oral dose of turpentine that is lethal in humans is 441 mg/kg (RTECS 1989). Exposure to a 75-ppm concentration for 3 to 5 minutes irritates the nose and throat, and exposure to 175 ppm irritates the eyes and is considered intolerable (Grant 1986, p. 961; Nelson 1943). Exposure to a turpentine concentration of between 720 and 1100 ppm causes headache, dizziness, nausea, chest pain, and visual disturbances in exposed individuals (Clayton and Clayton 1981, p. 3235). Ingestion of turpentine causes burning pain in the mouth and throat, nausea, vomiting, diarrhea, abdominal pain, excitement, ataxia, confusion, stupor, seizures, fever, and tachycardia and may cause respiratory failure and death (Gosselin, Smith, and Hodge 1984, p. III–394). Repeated or prolonged skin contact causes skin sensitization, with bullous dermatitis and eczema (Clayton and Clayton 1981, p. 3244; Sittig 1985, p. 907). A case-control study of workers demonstrated a statistically significant association between chronic exposure (greater than 5 years) to terpenes (a principal component of turpentine) and the development of respiratory tract cancers (HSDB 1989).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye, skin, mucous membrane, and respiratory tract irritation and central nervous system depression associated with exposure to turpentine. The Agency believes these effects are material impairments of health and that establishing an 8-hour TWA PEL of 100 ppm in agriculture is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

VANADIUM PENTOXIDE DUST, RESPIRABLE

CAS: 1314–62–1; Chemical Formula: V_2O_5

H.S. No. 1421

The OSHA PEL for vanadium pentoxide (V_2O_5) dust in the construction and maritime industries is a ceiling of 0.5 mg/m³. There is no PEL in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.05 mg/m³ for vanadium pentoxide dust, and NIOSH has a 15-minute ceiling of 0.05 mg/m³ for this substance. The Agency is proposing a 0.05 mg/m³ 8-hour TWA limit for vanadium pentoxide dust in the construction, maritime, and agriculture industries. This is the limit recently established for this dust in general industry.

Vanadium pentoxide is a yellow to rust-brown crystalline compound; the powdered material is used as a catalyst in the preparation of vanadium alloys and compounds, as an oxidation catalyst, as a component of ferrovanadium steels, and in the manufacture of pigments and glazes. Vanadium pentoxide dust is also used as a catalyst in the textile industry, in the manufacture of UV filter glass, in photographic developers, and in the cleaning and maintenance of furnaces (NIOSH/OSHA Occupational Health Guideline 1981, p. 3).

In addition to sensory irritation, exposure to vanadium dust causes central nervous system effects in experimental animals. Because the literature often fails to distinguish between the dust and the fume, much of the following material may apply to one or both forms. Exposure to a concentration of 205 mg/m³ for 7 hours was lethal to rabbits; animals exhibited signs of pulmonary edema before death (HSDB 1985). The oral LD_{50} in rats is 10 mg/kg, and the lowest lethal concentration in the same species is 70 mg/m³ for 2 hours (RTECS 1990). Animals acutely poisoned by oral administration developed marked diarrhea, an exudate from the nose, hind limb paralysis, difficult breathing, and convulsions (Gosselin, Smith, and Hodge 1984, p. II–148). Dogs, rats, guinea pigs, and rabbits exposed to V_2O_5 (at a V/m³ concentration of 0.5 mg/m³) 6 hours/day for 6 months showed no exposure-related histopathological effects at autopsy (Clayton and Clayton 1981, p. 2021). Another study that exposed rabbits to unspecified concentrations of vanadium pentoxide dust for 8 months showed no fibrotic changes in the lungs of these animals.

Several studies indicate that OSHA's current exposure limit is not sufficient to protect workers in construction and maritime against vanadium pentoxide dust's respiratory effects, which include bronchitis, emphysema, tracheitis, pulmonary edema, and bronchial pneumonia. Seven cases of upper respiratory tract irritation were reported in boiler cleaners exposed to vanadium pentoxide concentrations ranging from 2 to 85 mg/m³ (Sjöberg 1951/Ex. 1–437). Williams (1952/Ex. 1–456) reported eight cases of vanadium poisoning in workers cleaning boilers in an atmosphere ranging from 30 to 104 mg/m³. Gul'ko (1956, as cited by Hudson 1964/Ex. 1–880) observed eye and bronchial irritation in workers exposed to concentrations between 0.5 and 2.2 mg/m³. A study by Lewis (1959/Ex. 1–345) indicated that workers exposed to vanadium pentoxide levels of 0.2 to 0.5 mg/m³ experienced a higher incidence of respiratory symptoms than did controls. Tebrock and Machle (1968/Ex. 1–446) reported that workers exposed to average concentrations of 1.5 mg/m³ vanadium pentoxide in a mixed dust developed conjunctivitis, tracheobronchitis, and dermatitis. A single 8-hour exposure to an average concentration of 0.2 mg/m³ (respirable vanadium pentoxide dust) caused severe upper respiratory tract irritation in five human volunteers, and two other subjects exposed to a 0.1-mg/m³ concentration also developed delayed cough and an increase in mucus production (Zenz and Berg 1967/Ex. 1–405). Frequent cases of asthma have been reported among workers exposed to vanadium pentoxide dust, which suggests that asthma may be a result of chronic exposure (NIOSH Criteria 1977). A recent study (Huang 1989) reports that 76 Chinese workers exposed to vanadium pentoxide fume at a concentration of 1.2 to 18 mg/m³ and to the dust at concentrations ranging from 1.27 to 27 mg/m³ had lung markings on their chest roentgenograms and reported the following signs and symptoms: Cough (63 workers), cough and expectoration (53 workers), difficult breathing (27 cases), wheezing and rales (31 cases). Fifteen of these workers

showed evidence of pulmonary fibrosis on their roentgenograms.

In the construction, maritime, and agriculture industries, OSHA is proposing a limit of 0.05 mg/m³ as an 8-hour TWA for respirable vanadium dust, measured as vanadium pentoxide. The Agency preliminarily concludes that this limit will prevent or substantially reduce the significant risks of eye and bronchial irritation, respiratory symptoms, conjunctivitis, and coughing seen in workers exposed to this substance at concentrations ranging from 0.1 to 2.2 mg/m³. OSHA considers these exposure-related effects material impairments of health. Promulgation of the new PEL will also make OSHA's limit for this substance consistent across all OSHA-regulated sectors.

VANADIUM PENTOXIDE FUME
CAS: 1314–62–1; Chemical Formula: V_2O_5
H.S. No. 1422

OSHA's PEL for vanadium pentoxide (V_2O_5) fume in the construction and maritime industries is 0.1 mg/m³ as a ceiling limit. There is no PEL in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.05 mg/m³ for vanadium pentoxide fume, and NIOSH has a 0.05 mg/m³ 15-minute ceiling for this substance. OSHA is proposing an 8-hour TWA of 0.05 mg/m³ for vanadium pentoxide fume in the construction, maritime, and agriculture industries. This is the limit recently established for the fume in general industry.

Vanadium pentoxide is a yellow to rust-brown noncombustible crystalline compound; its fume appears as finely divided particulate dispersed in air. Vanadium pentoxide fume may be generated when vanadium pentoxide is used in the production of pellets from electric furnaces, in metallurgical processes in furnaces, in the manufacture of semiconductors fused with sodium oxide, in welding, and in the fabrication of alloys for use as an additive in special steels (NIOSH/OSHA Occupational Health Guideline 1981, p. 3).

In addition to sensory irritation, exposure to vanadium fume causes central nervous system effects in humans and experimental animals. In humans, overexposure to the fume causes metal fume fever. Because the toxicology literature often fails to distinguish between the dust and the fume, much of the following material may apply to one or both forms. There are no acute toxicity data specifically for the fume.

Vanadium pentoxide fume's chief toxic effects in humans are manifested in the respiratory passages: bronchitis, emphysema, tracheitis, pulmonary edema, and bronchial pneumonia can result from exposure. Seven cases of upper respiratory tract irritation were reported in boiler cleaners exposed to vanadium pentoxide concentrations ranging from 2 to 85 mg/m³ (Sjôberg 1951/Ex. 1–437). Williams (1952/Ex. 1–456) reported eight cases of vanadium poisoning in workers cleaning boilers in an atmosphere ranging from 30 to 104 mg/m³. Gul'ko (1956, as cited by Hudson 1964/Ex. 1–880) observed eye and bronchial irritation in workers exposed to concentrations of 0.5 to 2.2 mg/m³. A study by Lewis (1959/Ex. 1–345) indicated that workers exposed to concentrations of 0.2 to 0.5 mg/m³ experienced a higher incidence of respiratory symptoms than did controls. Tebrock and Machle (1968/Ex. 1–446) reported that workers exposed to average concentrations of 1.5 mg/m³ vanadium pentoxide in a mixed dust/fume atmosphere developed conjunctivitis, tracheobronchitis, and dermatitis. A single 8-hour exposure to an average concentration of 0.2 mg/m³ (respirable vanadium dust) caused severe upper respiratory tract irritation in five human volunteers, and two other subjects exposed to a 0.1-mg/m³ concentration also developed delayed cough and an increase in mucus production (Zenz and Berg 1967/Ex. 1–405). Frequent cases of asthma have been reported among workers exposed to vanadium pentoxide, which suggests that asthma may be a result of chronic exposure (NIOSH Criteria 1977). A recent study (Huang 1989) reports that 76 Chinese workers exposed to vanadium pentoxide fume at a concentration of 1.2 to 18 mg/m³ and to the dust at concentrations ranging from 1.27 to 27 mg/m³ had lung markings on their chest roentgenograms and reported the following signs and symptoms: cough (63 workers), cough and expectoration (53 workers), difficult breathing (27 cases), wheezing and rales (31 cases). Fifteen of these workers showed evidence of pulmonary fibrosis on their roentgenograms.

Based on this evidence in humans and animals, the Agency preliminarily concludes that the proposed TWA limit is necessary to protect workers in construction, maritime, and agriculture from the significant risks of eye, skin, and upper respiratory tract irritation; conjunctivitis; pulmonary damage; and systemic poisoning associated with exposure to vanadium pentoxide fume. The Agency considers these exposure-related effects to be material impairments of health. Accordingly, OSHA is proposing a PEL of 0.05 mg/m³ as an 8-hour TWA for this substance in these sectors. Promulgation of this limit will also make the PEL for the fume consistent across all OSHA-regulated sectors.

VINYL ACETATE
CAS: 108–05–4; Chemical Formula: $CH_3COOCH = CH_2$
H.S. No. 1424

There is no OSHA limit for vinyl acetate in the construction, maritime, or agriculture industries. The ACGIH has an 8-hour TLV®–TWA limit of 10 ppm and a 20 ppm TLV®–STEL for vinyl acetate. NIOSH has a 15-minute ceiling limit of 4 ppm for this substance. OSHA is proposing to establish a 10-ppm 8-hour TWA and a 20-ppm 15-minute STEL for this substance in construction, maritime, and agriculture. These are the limits recently established for this substance in general industry.

Vinyl acetate is a volatile liquid that polymerizes in light to a colorless, transparent mass; in industry, this substance usually contains an inhibitor, such as hydroquinone. Vinyl acetate is used for the manufacture of polyvinyl resins and in latex paints, paper coatings, adhesives, textile finishes, and safety glass interlayers (Hawley's 1987, p. 1222).

Vinyl acetate causes irritation of the eyes, nose, and throat. The oral LD_{50} in rats is 2920 mg/kg, the LC_{50} in rabbits is 2500 ppm for 4 hours, and the dermal LD_{50} in rabbits is 2335 mg/kg (RTECS 1990). Instilled into rabbit eyes, vinyl acetate caused mild irritation; in contact with the skin, this substance also caused irritation (RTECS 1990). Some beagle dogs exposed to a 240-ppm concentration of vinyl acetate for 4 hours showed signs of eye irritation (Mellon Institute 1968). Rats exposed repeatedly to a vinyl acetate concentration of 100 ppm showed no adverse effects (Proctor, Hughes, and Fischman 1988, p. 504). Rats and mice inhaling 13.2 or 68 mg/m³ vinyl acetate continuously for 4 months showed a dose-related pulmonary response; findings included emphysema and lung atelectases, as well as effects on the central nervous system, adrenal glands, and hypophysis (HSDB 1989). In mice, vinyl acetate caused a dose-dependent decrease in sperm production and a reduction in testicular weight when the animals were exposed to this substance at a dose of 125 mg/kg/day (Lahdetie 1988). In one oral carcinogenicity bioassay, rats given 100 g/kg vinyl acetate for 2 years developed uterine and thyroid tumors (RTECS 1990); however, another cancer bioassay (Maltoni 1976) was negative (cited in

Proctor, Hughes, and Fischman 1988, p. 505).

The basis for the proposed limits is an epidemiologic report by Deese and Joyner (1969/Ex. 1–412) describing 15 years of industrial experience with vinyl acetate production. These authors reported that vinyl acetate is not a significant irritant at exposure concentrations of 5 to 10 ppm but that it causes cough and hoarseness around 22 ppm. They also found no evidence of adverse chronic effects resulting from exposure to concentrations of 5 to 10 ppm, as determined from medical records and examinations of workers exposed to these levels. While conducting air sampling for the study, the primary author (Deese) experienced hoarseness at vinyl chloride concentrations of 4.2 to 5.7 ppm, and eye irritation at 5.7 to 6.8 ppm. Three chemical operators and one technician involved in this study did not report any subjective responses at these levels. Severe skin irritation or blistering may occur in workers whose skin is in contact with vinyl acetate (NIOSH Criteria Document 1978). One worker whose eye was burned by a splash of vinyl acetate recovered fully within 48 hours (Grant 1986, p. 978). Changes in pulmonary function were observed in persons employed in the production of vinyl acetate (HSDB 1987).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to this substance causes eye, throat, and skin irritation and possible changes in pulmonary function. The Agency considers these effects material impairments of health and believes that the proposed PELs will substantially reduce the risk that workers in construction, maritime, and agriculture will experience these effects. Promulgation of these limits will also make the PELs for vinyl acetate consistent across all OSHA-regulated sectors.

VINYL TOLUENE

CAS: 25013–15–4; Chemical Formula: $CH_3C_6H_4CH=CH_2$

H.S. No. 1427

OSHA's PEL for vinyl toluene in construction and maritime is an 8-hour TWA of 100 ppm. There is no PEL in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. The ACGIH has a TLV®–TWA of 50 ppm and a 100-ppm TLV®–STEL for vinyl toluene. OSHA is proposing an 8-hour TWA PEL for this substance of 100 ppm in agriculture. This is the limit recently established for this substance in general industry.

Vinyl toluene is a colorless liquid with a strong, disagreeable odor that finds use as a solvent, in resin production, in the plastics industry, and as a component of insecticides (ACGIH 1986, p. 630; Clayton and Clayton 1981, p. 3319). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Wolf, Rowe, McCollister et al. (1956/Ex. 1–404) noted fatty degeneration of the liver and an increase in kidney and liver weights in rats, guinea pigs, rabbits, and monkeys subjected to approximately 100 7- to 8-hour exposures to vinyl toluene at a concentration of 1250 ppm. Some deaths occurred among the rats in this group. Animals exposed to vinyl toluene at a 600-ppm concentration appeared normal and showed no blood or urine abnormalities, no gross or microscopic tissue changes, and no changes in growth rate or organ weight (Wolf, Rowe, McCollister et al. 1956/Ex. 1–404). When vinyl toluene was dropped into the eyes of rabbits, it caused conjunctival irritation; in contact with rabbit skin, it caused reversible necrosis and edema (Proctor, Hughes, and Fischman 1988, p. 507). By intraperitoneal administration, vinyl toluene is fetotoxic in rats (RTECS 1989).

Human volunteers reported experiencing eye and nose irritation at a 400-ppm concentration and objectionable odor at a concentration of 300 ppm. At 50 ppm, the odor of vinyl toluene was detectable by volunteers, but these individuals experienced no irritation and did not find the odor intolerable (ACGIH 1986/Ex. 1–3, p. 630).

OSHA is proposing an 8-hour TWA limit of 100 ppm in agriculture. The Agency preliminarily concludes that the proposed limit is necessary to protect workers in this sector against the significant risk of intolerable odor and irritation caused by vinyl toluene exposures in the workplace. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

VM & P NAPHTHA

CAS No. 8032–32–4; Chemical Formula: none

H.S. No. 1429

OSHA has no PEL for VM & P (Varnish Makers' and Printers') naphtha in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 300 ppm for VM & P naphtha, and NIOSH has no REL for this substance. OSHA is proposing a 300-ppm 8-hour TWA and a 400-ppm STEL for VM & P naphtha in the construction, maritime, and agriculture sectors. NIOSH concurred (Ex. 8–47) that these limits were appropriate when the Agency recently established them in general industry.

VM & P naphtha, also known as ligroin, is a colorless, flammable liquid that has an aromatic odor. VM & P naphtha is used as a diluent for paints, coatings, resins, printing inks, and rubber cement and as a solvent (ACGIH 1986, p. 631).

In addition to sensory irritation, VM & P naphtha causes central nervous system depression in humans and animals. The LC_{50} in rats is 3400 ppm for 4 hours (RTECS 1990). Rats lost coordination and convulsed after being exposed for 15 minutes at room temperature to a saturation concentration of this substance (Carpenter 1975). Temporary hematologic effects were observed in rats and dogs exposed to a concentration of 1200 ppm for 40 days (Clayton and Clayton 1981, p. 3389). A study in which rats and beagles received inhalation doses of 500 ppm VM & P naphtha for 30 hours per week for 13 weeks resulted in no chronic or latent effects (Carpenter, Kinkead, Geary et al. 1975a/Ex. 1–302). These authors also noted that the acute toxicity of VM & P naphtha for rats and other species was four times greater than that of rubber solvent naphtha, which has a limit of 400 ppm.

Seven human volunteers exposed to a VM & P naphtha concentration of 880 ppm for 15 minutes reported upper respiratory tract, eye, and nose irritation, in addition to olfactory fatigue (ACGIH 1986/Ex. 1–3, p. 631). Elkins (1959d, as cited in ACGIH 1986/Ex. 1–3, p. 631) noted one case of a worker, exposed to levels of VM & P naphtha averaging 800 ppm, who developed unspecified chronic effects. Elkins also reported that the VM & P naphtha level producing significant irritation in human volunteers was about half as great for this form of naphtha as for rubber solvent naphtha. An accidental exposure of 19 workers to an unspecified concentration of this substance caused dyspnea; two of these workers developed cyanosis and tremor (Wilson 1976).

The Agency preliminarily concludes that a 300-ppm 8-hour TWA PEL and a 400-ppm 15-minute STEL are necessary to protect workers in construction, maritime, and agriculture from irritation and central nervous system effects associated with naphtha exposure. OSHA considers these effects material impairments of health and is therefore proposing both a 300-ppm 8-hour TWA and a 400-ppm 15-minute STEL for VM &

P naphtha in the construction, maritime, and agriculture sectors. Promulgation of these limits will make the PELs for VM & P naphtha consistent across all OSHA-regulated sectors.

XYLENES, (o-, m-, and p-ISOMERS)
CAS: 1330–20–7; Chemical Formula:
$C_6H_4(CH_3)_2$
H.S. No. 1431

The OSHA limit for the xylenes is 100 ppm as an 8-hour TWA in the construction and maritime industries. There is no PEL in agriculture. The ACGIH has an 8-hour TLV®–TWA of 100 ppm and a TLV®–STEL of 150 ppm for xylene. NIOSH has a recommended exposure limit of 100 ppm as a TWA and a 10-minute ceiling limit of 200 ppm for this substance. OSHA is proposing a 100 ppm TWA and 150 ppm STEL for xylene in the construction, maritime, and agriculture industries. NIOSH (Ex. 8–47) concurred with these limits when they were established recently in general industry.

The xylene isomers are clear, flammable liquids that have an aromatic hydrocarbon odor. Xylene is present in gasoline and in many petroleum solvents. Xylene is used to make insecticides, drugs, and dyes, as a solvent in paints and other coatings (especially alkyl resins), and in rubber cements (ACGIH 1986, p. 637).

In addition to sensory irritation, xylene causes narcosis in humans and animals at high concentrations. The 4-hour LC_{50} in rats is 5000 ppm and the oral LD_{50} in the same species is 4300 mg/kg (RTECS 1990). In contact with the skin of rabbits, 500 mg caused moderate skin irritation; instilled into rabbit eyes, this substance caused mild eye irritation. Rats exposed to a concentration of 1600 ppm for 2 or 4 days showed signs of mucous membrane irritation, became incoordinated, lost weight, and had an increased erythrocyte count (NIOSH Criteria Document 1975). Rats were exposed orally to p-xylene at 125, 250, 500, 1000, or 2000 mg/kg or to 800 or 1600 ppm xylene for 4 hours. Rats exposed to doses above 250 mg/kg or to 1600 ppm showed a significant depression in flash evoked potentials (FEPs) (FEP is an index of the functional integrity of the visual system) (Dyer, Bercegeay, and Mayo 1988, Neurotoxicol. Teratol. 10(2):147–153). Leukopenia, kidney congestion, and hyperplasia of the bone and spleen were seen in rats exposed to 980 ppm for 7 days. Some mice died after being exposed to 2010 ppm m-xylene or o-xylene for 24 hours; however, those exposed to 4912 ppm p-xylene survived (NIOSH Criteria Document 1975). Rats and rabbits exposed to a mixture of xylene isomers at a concentration of 690 ppm for eight hours daily, six days per week showed no blood abnormalities, but rabbits exposed on the same regimen at 1150 ppm for 55 days showed a decrease in red and white blood cell counts and an increase in platelet count (Fabre and Truhaut 1954, as cited in ACGIH 1986/Ex. 1–3, p. 637). Sprague-Dawley rats were given 250, 1000, or 2000 mg/kg m-xylene, o-xylene, or p-xylene by gavage for 10 days, or 150, 750, or 1000 mg/kg mixed xylene isomers by gavage for 90 days. Males in the highest dose group of the 10-day study had significantly reduced body weights and significantly increased relative liver weights (all isomers). In the 90-day study, rats of both sexes had dose-related increases in relative liver and kidney weights (Condie, Hill, and Borzelleca 1988, Drug Chem. Toxicol. 11(4):329–354). Teratogenicity studies in rats, hamsters, rabbits, and mice administered xylene by two routes of exposure (inhalation and oral) have shown that this substance causes developmental abnormalities and is fetotoxic (RTECS 1990; HSDB 1989).

Studies of workers exposed to xylene revealed headache, fatigue, lassitude, irritability, and gastrointestinal disturbances as the most common symptoms (Gerarde 1960d/Ex. 1–738a). At unspecified exposure levels, Browning (1965b/Ex. 1–1016) also noted gastrointestinal disturbances, in addition to kidney, heart, liver, and neurological damage; blood dyscrasias, some of which resulted in death, were also reported in these workers. A study by Nelson, Enge, Ross, et al. (1943/Ex. 1–66), in which human volunteers were exposed to 200 ppm xylene, found eye, nose, and throat irritation in the subjects at this level of exposure. Volunteers exposed for 3 hours 40 minutes to m-xylene either at 200 ppm or at 135 ppm combined with two 20-minute 400 ppm peak exposures per day showed changes in their visual evoked potentials during exercise; these changes suggest that exposure to m-xylene activated these subjects' arousal levels (Sappalainen, Laine, Salmi, Riihimaki, and Verkkala 1989, in Int. Arch. Occup. Environ. Health 61(7):443–449). Morley, Eccleston, Douglas, and colleagues (1970/Ex. 1–794) observed liver dysfunction and renal impairment in three workers overexposed to xylene (estimated concentration of 10,000 ppm). One of these workers died, but the others recovered slowly. Furniture polishers were reported by Matthaus (1964/Ex. 1–830) to have suffered corneal damage as a result of exposure to xylene at unknown concentrations. A workman was exposed to nearly pure xylene for 3 years during boat hull repair (estimated exposure = several hundred ppm). He developed the following signs and symptoms of acute organic brain syndrome: dysphasia, fine tremor, agitation, breathlessness, fatigue, impaired concentration and short-term memory, and confusion, hyperreflexia, and unstable gait. The worker recovered over the next 2 years after exposure was terminated (Roberts, Lucas, Marsden, and Traner 1988, in Lancet II (8605):273).

Based on this evidence, OSHA preliminarily concludes that both a TWA and a STEL are necessary to prevent the risks of narcosis, blood effects, and irritant effects among workers exposed to xylene in the construction, maritime, and agriculture industries. The Agency considers these exposure-related effects to be material impairments of health. Therefore, to reduce these occupational risks among workers exposed to xylene, OSHA is proposing a 100-ppm TWA and a 150-ppm STEL for this substance in the construction, maritime, and agricultural industries. Promulgation of these limits will make OSHA's PELs for xylene consistent across all OSHA-regulated sectors.

ZINC CHLORIDE (FUME)
CAS: 7646–85–7; Chemical Formula:
$ZnCl_2$
H.S. No. 1435

OSHA's limit for zinc chloride fume in the construction and maritime industries is 1 mg/m³ as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has an 8-hour TLV®–TWA of 1 mg/m³ and a TLV®–STEL of 2 mg/m³ for zinc chloride fume. NIOSH has no REL for this substance. OSHA is proposing an 8-hour TWA of 1 mg/m³ and a STEL of 2 mg/m³ for zinc chloride fume. NIOSH (Ex. 8–47) concurred that these limits were appropriate when OSHA recently established them in general industry.

Zinc chloride fume is white and has an acrid odor. Zinc chloride is used in soldering fluxes, to galvanize iron, as a wood preservative, in the textile industry, as an ingredient in adhesives, dentifrices, deodorants, and embalming fluids, and in organic synthesis and petroleum refining. It is also the main ingredient of some screening smokes (ACGIH 1986, p. 643).

Zinc chloride fume causes sensory irritation in humans and animals at high concentrations. The oral LD_{50} in rats is 350 mg/kg, and the lowest lethal concentration in the same species is 1960 mg/m³ for 10 minutes (RTECS 1990).

In humans, zinc chloride fume is highly caustic and damages the mucous membranes of the nasopharynx and respiratory tract. Exposure to the fumes of zinc chloride may result in a severe pneumonitis that is caused by irritation of the respiratory tract (Gafafer 1964/Ex. 1–1149). There are two reports of solderers who developed occupational asthma (confirmed by positive bronchial challenge) after soldering with soft corrosive soldering fluxes that contained both zinc chloride and ammonium chloride (Weir, Robertson, Jones, and Burge 1989, in Thorax 44(3):220–223). One instance in which a worker inhaled zinc chloride fumes resulted in advanced pulmonary fibrosis that ended in death (Milliken, Waugh, and Kadish 1963/Ex. 1–751), and 10 deaths and 25 nonfatal cases of pneumonitis occurred in workers caught in a tunnel when 79 smoke generators caught fire and generated zinc chloride fumes (Hunter 1955/Ex. 1–853). A firefighter exposed to a high concentration of zinc chloride fume experienced nausea, sore throat, and chest tightness. After some improvement in health, this worker developed tachypnea, substernal soreness, fever, cyanosis, and coma prior to death 18 days after initial exposure (Melliken, Waugh, and Kadish 1963). A recent NIOSH study (Zey and Richardson 1985) reports that the zinc chloride fumes generated by smoke-generating devices reach concentrations of between 11 to 498 mg/m^3 and that firefighters have experienced severe adverse effects, including death, from such exposures (in NIOSH HETA 85–274–1979, 1985). Five Danish military workers were acutely overexposed to zinc chloride smoke during military training; two of these men breathed zinc chloride at an unspecified concentration for 1 to 2 minutes and subsequently developed severe adult respiratory distress syndrome (ARDS). Both patients died; autopsy revealed microvascular obliteration, widespread occlusion of the pulmonary arteries, and extensive interstitial and intra-alveolar fibrosis (Hjortso, Qvist, Bud, Thomsen, Andersen, et al. 1988, in Inten. Care Med. 14(1):17–24). Other studies have shown that long-term zinc chloride exposures cause skin ulceration (Sax 1957/Ex. 1–1095). It has also been suggested that zinc chloride exposure may have chronic effects (Hamilton and Hardy 1974b/Ex. 1–958). In an investigation of the adverse effects of zinc chloride fume exposures, Ferry (1966, as cited in ACGIH 1986/Ex. 1–3, p. 643) reported that no sensory effects occurred when 30-minute exposures were limited to 0.07 and 0.4 mg/m^3; however, this researcher noted that these levels did corrode metal.

Based on this evidence, OSHA preliminarily concludes that exposure to this substance is associated with a significant risk of damage to the eyes, skin, and respiratory tract and of pneumonitis, all of which are considered by OSHA to be material impairments of health. The Agency believes that the proposed PELs will substantially reduce these risks. Accordingly, OSHA is proposing a 1 mg/m^3 TWA limit and 2 mg/m^3 STEL for this substance in the construction, maritime, and agriculture industries. Promulgation of these limits will make the PELs for zinc chloride fume consistent across all OSHA-regulated sectors.

Preliminary Conclusions for the Group of Sensory Irritants

OSHA preliminarily finds that sensory irritation poses an occupational health risk to workers in the construction, maritime, and agricultural sectors who are exposed to these substances in their places of work. Among the adverse health consequences of exposure to sensory irritants are acute breathing difficulty, lacrimation, conjunctivitis, sensitization, persistent coughing, and upper respiratory tract irritation. OSHA has preliminarily determined that these effects constitute material impairments of health and functional capacity within the meaning of the Act. In addition to the pain and suffering associated with these signs and symptoms, workers experiencing irritant effects find it difficult if not impossible to concentrate on the job at hand; they therefore work less safely and less productively than nonexposed employees. Reducing exposures from levels that have been associated with these effects to levels where such consequences are substantially less likely to occur will substantially reduce the significant risk posed to workers at current levels. Furthermore, many of the substances in this group have been demonstrated to have adverse effects on other organ systems, including the cornea, lungs, kidney, liver, central nervous system, and gastrointestinal tract. In addition, promulgation of the proposed limits in construction, maritime, and agriculture will make the Agency's limits for these contaminants consistent across all OSHA-regulated industries.

4. Substances for Which Proposed Limits Are Based on the Avoidance of Liver or Kidney Effects

Introduction

Two of the target organs most often affected by toxic exposure to industrial chemicals are the liver and the kidney. In recognition of this target organ toxicity, OSHA is establishing new or revised limits for 34 hepato- or nephrotoxic compounds. For these substances, the liver or kidney appears to be the organ most sensitive to the effects of exposure. Thus, establishing permissible exposure limits that are low enough to prevent toxicity to these target organs often also protects other organ systems.

Table C4–1 lists these hepatotoxic substances, along with their CAS numbers, H.S. numbers, 1987–1988 ACGIH TLV®s, and NIOSH RELs. In addition, Table C4–1 shows OSHA's current PELs for these substances in construction and maritime. Table C4–2 provides the same information for the nephrotoxins addressed in this section of the proposal. OSHA has no PELs for these substances in agriculture. Both on Tables C4–1 and C4–2, the right-hand column shows the limits OSHA is proposing today for construction, maritime, and agricultural workplaces. These limits are identical to those recently promulgated in general industry.

TABLE C4–1.—LIST OF SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED PRIMARILY ON AVOIDANCE OF LIVER TOXICITY

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime *	1987–1988 ACGIH TLV®**	NIOSH REL †	Proposed OSHA PEL in construction, maritime, and agriculture *
2001 Acetylene tetrabromide	79–27–6	1 ppm TWA	1 ppm TWA		1 ppm TWA.
2003 Aldrin	309–00–2	0.25 mg/m^3 TWA, Skin.	0.25 mg/m^3 TWA, Skin	Lowest reliably detectable level ††	0.25 mg/m^3 TWA, Skin.

TABLE C4-1.—LIST OF SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED PRIMARILY ON AVOIDANCE OF LIVER TOXICITY—Continued

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime *	1987-1988 ACGIH TLV®**	NIOSH REL†	Proposed OSHA PEL in construction, maritime, and agriculture *
1011 Allyl chloride	107-05-1	1 ppm TWA	1 ppm TWA, 2 ppm STEL	1 ppm TWA, 3 ppm Ceiling (15-min).	1 ppm TWA, 2 ppm STEL.
1072 Carbon tetrabromide	558-13-4		0.1 ppm TWA, 0.3 ppm STEL		0.1 ppm TWA, 0.3 ppm STEL.
2028 Chlordane	57-74-9	0.5 mg/m³ TWA, Skin.	0.5 mg/m³ TWA, 2.0 mg/m³ STEL, Skin.		0.5 mg/m³ TWA, Skin.
2029 Chlorinated diphenyl oxide	55720-99-5	0.5 mg/m³ TWA	0.5 mg/m³ TWA, 2.0 mg/m³ STEL.		0.5 mg/m³ TWA.
2033 Chlorobenzene	108-90-7	75 ppm TWA	75 ppm TWA		75 ppm TWA.
2035 Chlorodiphenyl (42% Chlorine) (PCB).	53469-21-9	1 mg/m³ TWA, Skin.	1 mg/m³ TWA, 2 mg/m³ STEL, Skin.	0.001 mg/m³ TWA ††.	1 mg/m³ TWA, Skin.
2036 Chlorodiphenyl (54% Chlorine) (PCB).	11097-69-1	0.5 mg/m³ TWA, Skin.	0.5 mg/m³ TWA, 1 mg/m3 STEL, Skin.	0.001 mg/m³ TWA ††.	0.5 mg/m³ TWA, Skin.
1089 o-Chlorostyrene	2039-87-4		50 ppm TWA, 75 ppm STEL		50 ppm TWA, 75 ppm STEL.
1108 Cyclohexanone	108-94-1	50 ppm TWA	25 ppm TWA, Skin	25 ppm TWA	25 ppm TWA, Skin.
1126 1,1-Dichloroethane	75-34-3	100 ppm TWA	200 ppm TWA, 250 ppm STEL		100 ppm TWA.
2065 Dimethyl acetamide	127-19-5	10 ppm TWA, Skin.	10 ppm TWA, Skin		10 ppm TWA, Skin.
1145 Dioxane	123-91-1	100 ppm TWA, Skin.	25 ppm TWA, Skin	1 ppm Ceiling (30-min) ††.	25 ppm TWA, Skin.
1168 Ethylene dichloride	107-06-2	50 ppm TWA	10 ppm TWA	1 ppm TWA, 2 ppm Ceiling (15-min) ††.	1 ppm TWA, 2 ppm STEL.
2087 Hafnium	7440-58-6	0.5 mg/m³ TWA	0.5 mg/m³ TWA		0.5 mg/m³ TWA.
2089 Hexachloronaphthalene	1335-87-1	0.2 mg/m³ TWA, Skin.	0.2 mg/m³ TWA, Skin		0.2 mg/m³ TWA, Skin.
1205 Hydrazine	302-01-2	1 ppm TWA, Skin	0.1 ppm TWA, Skin A2	0.03 ppm Ceiling (120-min) ††.	0.1 ppm TWA, Skin.
1269 Methylcyclohexanol	25639-42-3	100 ppm TWA	50 ppm TWA		50 ppm TWA.
2118 Nitroethane	79-24-3	100 ppm TWA	100 ppm TWA		100 ppm TWA.
2119 Nitrogen trifluoride	7783-54-2	10 ppm TWA	10 ppm TWA		10 ppm TWA.
1295 Octachloronaphthalene	2234-13-1	0.1 mg/m³ TWA, Skin.	0.1 mg/m³ TWA, 0.3 mg/m³ STEL, Skin.		0.1 mg/m³ TWA, 0.3 mg/m³ STEL, Skin.
2123 Pentachloronaphthalene	1321-64-8	0.5 mg/m³ TWA, Skin.	0.5 mg/m³ TWA		0.5 mg/m³ TWA, Skin.
1341 Propylene dichloride	78-87-5	75 ppm TWA	75 ppm TWA, 110 ppm STEL		75 ppm TWA, 110 ppm STEL.
1385 1,1,2,2-Tetrachloroethane	79-34-5	5 ppm TWA, Skin	1 ppm TWA, Skin	(††)	1 ppm TWA, Skin.
2155 Tetrachloronaphthalene	1335-88-2	2 mg/m³ TWA, Skin.	2 mg/m³ TWA		2 mg/m³ TWA, Skin.
2163 Trichloronaphthalene	1321-65-9	5 mg/m³ TWA, Skin.	5 mg/m³ TWA, Skin		5 mg/m³ TWA, Skin.
1407 1,2,3-Trichloropropane	96-18-4	50 ppm TWA	10 ppm TWA, Skin		10 ppm TWA.

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes only unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time; OSHA's PELs do not currently apply in Agriculture.

** The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time. An A2 designation means that the ACGIH classifies the substance as a suspected human carcinogen.

† NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

†† NIOSH considers this substance a potential occupational carcinogen and recommends that exposures be reduced to the lowest feasible concentration.

Description of the Health Effects

The precise mechanisms by which toxic substances cause liver damage are not fully understood. In general, however, liver toxicity is a graded response (i.e., the severity of the lesion is directly proportional to the intensity/duration of exposure). Although many of the effects caused by exposure to these substances are reversible, some are not.

Liver damage is not a single entity; the manner in which it is manifested depends on the dose, duration, and particular chemical agent involved. For example, acute exposures may cause lipid accumulation in liver cells, cell death, and hepatobiliary dysfunction. In contrast, chronic overexposure leads to cirrhotic changes and the development of neoplasms. Fatty accumulation and necrosis can be either localized or widespread, and chemically induced lesions resulting from chronic exposures can cause marked changes of the entire liver (Plaa 1986/Ex. 1-183).

Typically, the earliest and most sensitive indicators of liver toxicity are alterations in biochemical liver functions, such as changes in specific enzyme activities. These may be accompanied by changes in the morphology of specific organelles in hepatocytes. For example, relatively low doses of halogenated aliphatic hydrocarbons, such as allyl chloride, carbon tetrabromide, and ethylene dichloride, cause an increase in the activity of microsomal mixed-function oxidase enzymes. This increase is ordinarily accompanied by proliferation of the endoplasmic reticulum.

Many compounds that damage the liver, such as 1,1,2,2-tetrachloroethane, also cause an abnormal accumulation of fat, especially of triglycerides, in liver cells. In experimental animals, this effect is manifested as an accumulation of microscopic vacuoles in liver cells. In humans, however, the only grossly detectable manifestation of this effect is increased liver size, which is an indication of severe fat accumulation in the liver.

At sufficiently high doses, most substances that damage the liver cause cell death that leads to tissue necrosis or

gangrene. This necrosis may initially be localized, but, at higher or more sustained exposure levels, the entire liver may be involved. Moderate to severe liver necrosis is usually accompanied by increased concentrations of marker enzymes such as glutamate-pyruvate transaminase or glutamate-oxaloacetate transaminase in the serum; the detection of these substances in the serum of exposed individuals can thus be a useful diagnostic tool.

Dose-Response Characteristics

The development of liver and other organ damage in humans and animals is progressive; it begins with subcellular changes, progresses to the cellular level, and is finally manifested as whole-organ damage. This progression is related to the intensity/duration of dose (i.e., as dose increases, cellular death becomes widespread and eventually causes liver dysfunction). The extent to which liver damage is reversible follows a similar continuum; since the liver can regenerate, minor cellular damage or transient disease states are usually reversible if exposure ceases. However, if exposure continues, the capacity of the liver to regenerate is exceeded and permanent damage results. As is the case for some chemically induced toxic effects, there appears to be a no-observed-effect level below which hepatotoxic effects do not occur.

The following paragraphs describe OSHA's preliminary findings for all of the substances in this group of hepatotoxins. Each discussion reports on the principal acute and chronic health effects associated with exposure to the substance and describes the physical properties and uses of the substance.

ACETYLENE TETRABROMIDE
CAS: 79-27-6; Chemical Formula: $CHBr_2CHBr_2$
H.S. No. 2001

In general industry, construction, and maritime, OSHA's current permissible exposure limit for acetylene tetrabromide is 1 ppm as an 8-hour TWA; there is no limit in agriculture. The ACGIH TLV®-TWA for acetylene tetrabromide is 1 ppm (14 mg/m³); there is no NIOSH REL for this substance. OSHA is proposing an 8-hour TWA PEL of 1 ppm for acetylene tetrabromide in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Acetylene tetrabromide is a pale yellow, dense, non-combustible liquid with a sweet, chloroform-like odor (ACGIH 1986, p. 9; Genium MSDS 1985, No. 562). This substance is used as a solvent for fats, oils, and waxes; as a gauge fluid; as a catalytic polymer additive in synthetic fibers such as flame-resistant polystyrenes, polyurethanes, and polyolefins; as a refractive index liquid in microscopy; and as an ore flotation agent (Proctor, Hughes, and Fischman 1988, p. 54; Hawley's 1987, p. 11; HSDB 1988).

Acetylene tetrabromide is a sensory irritant, a liver toxin, and a central nervous system depressant. The LC_{50} in rats is 549 mg/m³ for 4 hours, and the oral LD_{50} in the same species is 1100 mg/kg (RTECS 1990). The dermal LD_{50} in rats is 5250 mg/kg (RTECS 1990). Guinea pigs exposed to a concentration of approximately 80 ppm acetylene tetrabromide for 90 minutes initially became comatose, appeared to recover, and then died after several days; rats and rabbits exposed to the same concentration for 3 hours lost consciousness after 2 hours but survived (Gray 1950). In another study, rats exposed to a concentration of approximately 80 ppm for 7 hours showed signs of slight eye and nose irritation (Hollingsworth, Rowe, and Oyen 1963). Rats exposed to aerosols of acetylene tetrabromide at concentrations ranging from 210 to 280 ppm for 2 hours showed mild signs of toxicity, and exposure to concentrations of from 420 to 500 ppm caused excitation followed by sleepiness (Arkhangel-Skaya and Yanushkevich 1956). Liquid acetylene tetrabromide instilled into the eyes of rabbits caused slight-to-moderate pain, conjunctival irritation, and reversible corneal injury (Van Haaften 1969). In prolonged contact with the skin of experimental animals, acetylene tetrabromide causes moderate redness, edema, and blistering (Van Haaften 1969; Clayton and Clayton 1981, p. 3517).

Rats, rabbits, mice, and a monkey exposed to a 14-ppm concentration of acetylene tetrabromide for 7 hours/day for 100 days showed edema of the lungs and slight fatty degeneration of the liver at autopsy; repeated exposure to a 4-ppm concentration for 180 days caused slight histopathological changes in the liver and lungs of some animals. At a 1-ppm concentration, no exposure-related effects were seen (Hollingsworth, Rowe, and Oyen 1969). A skin painting study in mice showed an increased incidence of lung tumors and/or forestomach papillomas in the test animals (Van Duuren et al., 1979).

A chemist exposed to an estimated average acetylene tetrabromide concentration of 2 ppm for 7.5 hours, with a peak exposure of 16 ppm for 10 minutes, complained of headache, anorexia, and nausea within a few hours of exposure. Within 5 days, he developed abdominal pain, bilirubinuria, and monocytosis; he also experienced liver damage that was severe and nearly fatal (Van Haaften 1969).

Based on this evidence in humans and animals, OSHA proposes to establish an 8-hour TWA PEL for acetylene tetrabromide of 1 ppm in agriculture; adoption of the proposed limit would establish the same PEL for workplaces in all OSHA-regulated industry sectors. The Agency preliminarily concludes that occupational exposure to acetylene tetrabromide causes sensory irritation and may cause liver damage and central nervous system depression. OSHA believes that, in the absence of a permissible exposure limit, workers in agriculture are potentially at significant risk for these exposure-related effects and that the proposed PEL will substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ALDRIN
CAS: 309-00-2; Chemical Formula: $C_{12}H_8Cl_6$
H.S. No. 2003

OSHA currently has no PEL for aldrin in agriculture; the limit for this substance in general industry, construction, and maritime is 0.25 mg/m³ as an 8-hour TWA, with a skin notation. The ACGIH TLV® is 0.25 mg/m³ TWA, with a skin notation. NIOSH considers this substance a potential human carcinogen and recommends that exposure be reduced to the lowest reliably detectable level. However, NIOSH concurs (Ex. 8-47, Table N8A) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA limit of 0.25 mg/m³ and a skin notation in agriculture; this limit is consistent with OSHA's current limit for this substance in other sectors.

Aldrin is a nonflammable tan to dark-brown solid with a mild odor; it is a chlorinated naphthalene derivative that has been used extensively as an insecticide (Beselt 1980, p. 15; ACGIH 1986, p. 17). Aldrin is often found in the soil around buildings, where it has been used as a termiticide (Clayton and Clayton 1981, p. 3702). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In animals, aldrin causes convulsions; in mice, it has caused liver tumors (Proctor, Hughes, and Fischman 1988, p. 61). The lethal dose in 50 percent (LD_{50}) of rats given aldrin by oral

administration is 67 mg/kg; acutely poisoned animals had tremors and convulsed before death (Clayton and Clayton 1981, p. 3703). Aldrin can be absorbed through the skin in lethal amounts; the dermal LD_{50} for this substance is 150 mg/kg (Clayton and Clayton 1981, p. 3703). Chronic feeding studies in rats involving dietary aldrin doses of 12.5 ppm parts of diet or 0.02 mg/kg/day showed that degenerative liver changes and increases in liver weight had occurred in these animals (Clayton and Clayton 1981, p. 3703).

Aldrin has been tested for carcinogenicity in mice and rats by the oral route of administration. In mice, the results of these studies were positive; mice developed a statistically significant increase in the incidence of malignant liver neoplasms (NIOSH 1978). Based on this evidence, the International Agency for Research on Cancer has concluded that there is limited evidence in animals that aldrin is a carcinogen (IARC 1987, p. 88).

Workers exposed to aldrin at high concentrations exhibit the signs and symptoms of central nervous system effects: headache, nausea, dizziness, vomiting, myoclonic jerking of the limbs, and clonic-tonic convulsions; coma occurs in cases of severe poisoning (Proctor, Hughes, and Fischman 1988, p. 61). Five workers exposed to an aldrin concentration of 8.5 mg/m^3 convulsed and showed myoclonic movements of the limbs (Proctor, Hughes, and Fischman 1988, p. 61). Workers exposed to an unspecified concentration of aldrin dust reported experiencing headaches, dizziness, nausea, and vomiting, but no clinical signs of liver damage were seen in these individuals (Clayton and Clayton 1981, p. 3707). Aldrin can be absorbed through the skin in toxic amounts, and the skin is believed to be a major route of exposure in occupational situations (Clayton and Clayton 1981, p. 3707).

The evidence described above demonstrates that aldrin produces liver damage as well as central nervous system effects and convulsions among exposed animals and humans; this substance can cause these effects by inhalation of the dust, ingestion of airborne particulates, or absorption through the skin when aldrin is present in liquid vehicles.

OSHA therefore preliminarily finds that the absence of an exposure limit in longshoring and agriculture places workers in these occupational environments at significant risk of experiencing these material health impairments. The Agency believes that the establishment of an 8-hour TWA PEL of 0.25 mg/m^3, and a skin notation, is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ALLYL CHLORIDE

CAS: 107-05-1; Chemical Formula: $CH_2 = CHCH_2Cl$

H.S. No. 1011

In construction and maritime, OSHA's current PEL for allyl chloride is 1 ppm (3 mg/m^3) as an 8-hour TWA; there is no PEL in agriculture. The ACGIH TLV®s for allyl chloride are 1 ppm as an 8-hour TWA and 2 ppm as a 15-minute STEL. NIOSH has recommended exposure limits of 1 ppm as a 10-hour TWA and 3 ppm as a 15-minute ceiling limit. NIOSH also concurs (Ex. 8-47, Table N1) with the proposed limits. OSHA is proposing an 8-hour TWA limit of 1 ppm and a STEL of 2 ppm for this substance in construction, maritime, and agriculture. These are the limits recently established in general industry.

Allyl chloride is a colorless liquid with an unpleasant, pungent odor. This substance is used as a chemical intermediate and as a catalyst and modifier in the production of resins (HSDB 1986).

Allyl chloride is an irritant, a liver, kidney, and pulmonary toxin, and, at high concentrations, a narcotic. This substance also has reproductive, embryotoxic, and developmental effects in experimental animals. The oral LD_{50} in rats is 64 mg/kg, and the lowest lethal concentration in the same species by inhalation is 290 ppm for 8 hours (RTECS 1990). In rabbits, the median lethal dose by percutaneous absorption is 2066 mg/kg (RTECS 1990). Rats exposed to a 16,000-ppm concentration for 2 hours showed signs of eye and nose irritation and became drowsy, weak, and uncoordinated before developing dyspnea and dying (Proctor, Hughes, and Fischman 1988, p. 63). Guinea pigs exposed to the same concentration for 1 hour showed the same exposure-related effects (Proctor, Hughes, and Fischman 1988, p. 63). Acutely poisoned animals showed liver and kidney damage and pulmonary hemorrhage at autopsy (Proctor, Hughes, and Fischman 1988, p. 63).

Single exposures to allyl chloride lasting only a few minutes at concentrations between 332 ppm and 32,000 ppm caused mucous membrane irritation in various laboratory animals; exposure to an 8-ppm concentration for 5 weeks caused kidney and liver damage (Adams, Spencer, and Irish 1940/Ex. 1-584). Other animal studies have confirmed this substance's liver and kidney toxicity in many species (Torkelson, Wolf, Oyen, and Rowe 1959/Ex. 1-691).

In the prior rulemaking, NIOSH (Ex. 150) commented that a recent bioassay (Santodonato et al. 1985) has shown that allyl chloride is also a tumor initiator in mice. This substance is a mutagen in bacterial test systems, both with and without activation (RTECS 1990). Several studies (RTECS 1990) have shown that, when administered to rats or mice during pregnancy, allyl chloride is embryotoxic and has both reproductive and developmental effects (RTECS 1990).

Exposures of 50 to 100 ppm allyl chloride for five minutes in humans caused eye and nose irritation, and five-minute exposures below 25 ppm have been associated with pulmonary irritation (Shell Chemical Corp. 1974, as cited in Ex. 150). If the liquid is absorbed through the skin of humans, it causes pain in the area of contact that is described as deep-seated (Clayton and Clayton 1981, p. 3569). Humans exposed to concentrations of 1 to 113 ppm showed abnormal liver test results (Hausler and Lenich 1988/Ex. 1-1035), and there is a report that workers exposed to a 3-mg/m^3 (1 ppm) concentration showed signs of kidney dysfunction (Clayton and Clayton 1981, p. 3572).

Chinese factory workers exposed to 0.8 to 2100 ppm allyl chloride for periods ranging from 2.5 months to 5 years developed weakness, paresthesia, pain, and numbness and sensory impairment in the extremities (Proctor, Hughes, and Fischman 1988, p. 63). Workers at another factory who were exposed to 0.06 to 8 ppm for 1 to 4.5 years showed lesser signs and symptoms (Proctor, Hughes, and Fischman 1988, p. 63).

Based on this evidence in humans and animals, OSHA is proposing to add a 2-ppm STEL to the current 8-hour TWA limit of 1 ppm in construction and maritime and is also proposing to extend both limits to agriculture. The Agency preliminarily concludes that both TWA and STEL limits are necessary to protect workers in these sectors from the significant risks of kidney and liver damage and neuropathic effects that are potentially associated with exposure to this substance. OSHA considers these effects material impairments of health and believes that the proposed PELs are necessary to reduce this significant risk. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CARBON TETRABROMIDE

CAS: 558-13-4; Chemical Formula: CBr_4

H.S. No. 1072

OSHA has no limit for carbon tetrabromide in construction, maritime, or agriculture. The 1987–1988 ACGIH TLV®s for this substance are 0.1 ppm as an 8-hour TWA and 0.3 ppm as a 15-minute STEL. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the 0.1 ppm 8-hour TWA limit and 0.3 ppm 15-minute STEL OSHA is proposing for construction, maritime, and agriculture. These are the limits recently established for this substance in general industry.

At room temperature, pure carbon tetrabromide is a colorless, nonflammable solid; however, the commercial product is usually yellow-brown in color. This substance finds use as a chemical intermediate.

Carbon tetrabromide is considered a highly toxic material (Clayton and Clayton 1981, p. 3479). In addition to liver toxicity, carbon tetrabromide causes irritation of the eyes and upper respiratory tract, and kidney and lung damage (Clayton and Clayton 1981, p. 3479). Even at low levels, carbon tetrabromide is a powerful lacrimator (Clayton and Clayton 1981, p. 3479). In contact with the eyes, the pure material causes irreversible corneal damage; skin contact causes mild irritation and redness (Clayton and Clayton 1981, p. 3479). The lowest lethal dose in rats by oral administration is 1000 mg/kg, and the intravenous LD_{50} in mice is 56 mg/kg (RTECS 1990). Rats exposed to a 0.07 to 74 ppm concentration for 4 hours daily over a 4-month period developed metabolic changes in the liver (Clayton and Clayton 1981, p. 3479). Carbon tetrabromide's hepatotoxic effects include both fatty infiltration and necrosis. Rats exposed to carbon tetrabromide by inhalation for 7 hours per day, 5 days per week for 6 months showed no effects, while repeated exposures to higher concentrations caused fatty changes and degeneration of the liver discernible at autopsy (Torkelson and Rowe 1981a/Ex. 1–974; Clayton and Clayton 1981, pp. 3479–3480).

OSHA is proposing a 0.1-ppm 8-hour TWA limit and a 0.3-ppm 15-minute STEL for carbon tetrabromide in construction, maritime, and agriculture. OSHA preliminarily concludes that these limits are necessary to protect workers in these sectors against the significant risk of hepatotoxic, irritant, and kidney and lung effects associated with exposure to this substance. OSHA considers such effects material health impairments and believes that the proposed PELs will substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CHLORDANE

CAS: 57–74–9; Chemical Formula: $C_{10}H_6Cl_8$

H.S. No. 2028

OSHA's PEL for chlordane in general industry, construction, and maritime is 0.5 mg/m³ as an 8-hour time-weighted average (TWA), with a skin designation; there is no PEL in agriculture for this substance. The 1987–1988 ACGIH TLV®–TWA for chlordane is 0.5 mg/m³ and the TLV®–STEL is 2 mg/m³, with a skin designation; NIOSH has no REL but concurs (Ex. 8–47, Table N6A) with the limit being proposed. OSHA is proposing both an 8-hour TWA PEL of 0.5 mg/m³ and a skin designation for chlordane in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Chlordane is an odorless, viscous liquid that ranges from colorless to amber in appearance (Hawley's 1987, p. 256; ACGIH 1986; p. 114). This substance is used almost exclusively as an insecticide against termites. It was formerly used as an acaricide and to control grubs, ants, webworms, armyworms, cutworms, chiggers, and leafhoppers (HSDB 1986; Hawley's 1987, p. 256). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide ACT (FIFRA).

Chlordane is a convulsant and liver toxin in humans and animals and a liver carcinogen in mice (Proctor, Hughes, and Fischman 1988, p. 126). The oral LD_{50} in rats is 283 mg/kg; the LC_{50} in cats is 100 mg/m³ for 4 hours; and the dermal LD_{50} in rabbits is 780 mg/kg (RTECS 1990). Acutely poisoned animals convulse before death (Hayes 1982, p. 229). Animals given daily oral doses of 50 mg/kg chlordane for 2 weeks died, while those given 25 mg/kg for the same period did not (ACGIH 1986, p. 114). At autopsy, rats fed 0.008, 0.15, or 0.32 percent chlordane for 407 days showed liver damage; other organs appeared unaffected (ACGIH 1986, p. 114).

During a 2-year study in rats fed chlordane at 5, 10, 30, 150, or 300 ppm, the following effects were reported: the higher doses of 150 and 300 ppm caused notable growth retardation, marked liver and kidney damage, marked lung damage (300 ppm), and mild lung injury (150 ppm). Liver damage was slight at 30 ppm and minimal at 10 ppm; no liver damage was reported in those animals fed at the 5-ppm level (Clayton and Clayton 1981, p. 3721). Chlordane has been tested in bioassays in mice and rats. In mice, oral administration caused hepatocellular carcinomas in mice of both sexes; in rats, the results were inconclusive. Based on this evidence, the International Agency for Research on Cancer (IARC) has concluded that the evidence for the carcinogenity of chlordane in animals is sufficient (IARC 1974, p. 58).

The signs and symptoms associated with acute oral or dermal exposure of humans to chlordane are loss of appetite, irritability, hyperexcitability, vomiting, tremors, and convulsions, and, if overexposure is severe, death (Clayton and Clayton 1981, p. 3718). Skin and mucous membrane irritation have been reported from contact with technical grade chlordane, but this effect may have been due to contamination of the chlordane with hexachlorocyclopentadiene (Proctor, Hughes, and Fishman 1988, p. 126). Chlordane is rapidly absorbed through the skin and has caused at least one fatality by this route (Proctor, Hughes, and Fishman 1988, p. 126). Workers exposed to chlordane and aldrin at a 5-mg/m³ concentration for 1 to 3 years showed no adverse effects (ACGIH 1986, p. 114). After accidental ingestion, individuals convulse and experience nausea and vomiting; confusion, excitability, incoordination, and coma may also occur (Hayes 1982, p. 230). A formulation plant worker who spilled chlordane on her abdomen and thighs died after experiencing convulsions (Hayes 1982, p. 230). IARC reports that case reports in humans suggest a relationship between exposure to chlordane, alone or in combination with other compounds, and the development of blood dyscrasias (IARC 1974, p. 58).

Based on this evidence in humans and animals, OSHA preliminarily concludes that agricultural workers exposed to chlordane at the levels permitted by the absence of a limit are at significant risk of experiencing convulsions and liver damage, and perhaps death. The Agency believes that establishing a PEL of 0.5 mg/m³ as an 8-hour TWA, and a skin designation, is necessary to protect workers in agriculture from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CHLORINATED DIPHENYL OXIDE

CAS: 55720–99–5; Chemical Formula: $C_6H_2Cl_3OC_6H_2Cl_3$ (Approximate)

H.S. No. 2029

OSHA's limit for chlorinated diphenyl oxide in general industry, construction, and maritime workplaces is 0.5 mg/m³

as an 8-hour time-weighted average. There is no limit for this substance in agriculture. In 1987–1988, the ACGIH had a TLV®–TWA of 0.5 mg/m³ and TLV®–STEL 2.0 mg/m³ for chlorinated diphenyl oxide; NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing to establish a permissible exposure limit (PEL) of 0.5 mg/m³ as an 8-hour TWA for chlorinated diphenyl oxide in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all sectors.

The physical form of chlorinated diphenyl oxide varies from a viscous, colorless, oily liquid to a yellowish, waxy semisolid, depending on the chlorine equivalents in the compound's formula. The chlorine equivalents vary from 1 (monochloro-) to 6 (hexachloro-) diphenyl oxide (ACGIH 1986, p. 116; Proctor, Hughes, and Fischman 1988, p. 128). Chlorinated diphenyl oxide is used as a solvent; an intermediate in the organic synthesis of pesticides, wood preservatives, hydraulic fluids, corrosion inhibitors, thermal lubricants, etc.; and as a dielectric fluid in the electrical industry (Proctor, Hughes, and Fischman 1988, p. 128; NIOSH/OSHA Occupational Health Guideline 1981, p. 3).

Exposure to chlorinated diphenyl oxide causes chloracne (acneform dermatitis) and cumulative liver damage in animals (Proctor, Hughes, and Fischman 1988, p. 128). In guinea pigs, the lowest lethal dose by oral administration is 50 mg/kg (RTECS 1989). Application of hexachlorodiphenyl oxide to the skin of rabbits caused marked irritation and epithelial hyperplasia (Clayton and Clayton 1982, p. 2550). Repeated application to the skin of rabbits caused systemic poisoning, manifested at autopsy by liver injury (Clayton and Clayton 1982, p. 2550).

Systemic effects have not been reported in humans exposed to chlorinated diphenyl oxides. However, acneform dermatitis (chloracne) has occurred as a result of industrial exposures (Proctor, Hughes, and Fischman 1988, p. 128). Affected individuals develop comedones and cysts on the face, ears, neck, shoulders, arms, chest, abdomen, and scrotum (Proctor, Hughes, and Fischman 1988, p. 128).

Based on this evidence, OSHA preliminarily concludes that the absence of a limit for chlorinated diphenyl oxide poses a significant risk of chloracne and liver damage to workers in agriculture who are exposed to this substance. The Agency believes that the proposed PEL for chlorinated diphenyl oxide of 0.5 mg/m³ as an 8-hour TWA is necessary to substantially reduce these significant risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CHLOROBENZENE

CAS: 108–90–7; Chemical Formula: C_6H_5Cl

H.S. No. 2033

OSHA's PEL for chlorobenzene in general industry, construction, and maritime is 75 ppm as an 8-hour time-weighted average (TWA); there is no PEL in agriculture. The 1987–1988 ACGIH TLV®–TWA for chlorobenzene is 75 ppm; there is no NIOSH REL for this substance. OSHA is proposing an 8-hour TWA limit of 75 ppm for chlorobenzene in agriculture. Promulgation of this limit will make the PEL for chlorobenzene consistent across all regulated sectors.

Chlorobenzene is a colorless to pale-yellow liquid with an odor similar to that of almonds (ACGIH 1986, p. 123; HSDB 1986). It is used as a chemical intermediate in the manufacture of DDT, aniline, phenol, ortho- and para-chlorobenzene, and dyestuffs, and as a solvent in the manufacture of adhesives, paints, polishes, waxes, diisocyanates, pharmaceuticals, and natural rubber. It is also used as a fiber swelling agent and dye carrier in the textile industry and as a tar and grease remover in cleaning and degreasing operations (HSDB 1986).

Chlorobenzene causes irritation of the eyes and nose and narcosis in both animals and humans; in laboratory animals, chronic exposure causes liver, kidney, and lung damage (ACGIH 1986, p. 123(89); Proctor, Hughes, and Fischman 1988, p.133; Clayton and Clayton 1982, pp. 3605–3610). The oral LD_{50} in rats is 2910 mg/kg (RTECS 1989). The dermal toxicity of chlorobenzene is reported to be low; for guinea pigs, dermal doses of 10 ml/kg were nonlethal (ACGIH 1986, p. 123.3(89)). Subcutaneous injections of 7 to 8 g/kg resulted in the death of injected rats within a few hours of administration; necrosis of the liver and kidneys was observed in these animals at autopsy (Clayton and Clayton 1982, p. 3605). Exposure to an 8000-ppm concentration of chlorobenzene caused eye and nose irritation, followed by severe narcosis in cats after 30 minutes; death occurred within 2 hours of exposure (Proctor, Hughes, and Fischman 1988, p. 133). At a concentration of 1200 ppm for an unspecified time, cats showed narcotic effects; at a concentration of 200 to 660 ppm, exposure caused no significant effects even after several hours (Clayton and Clayton 1982, p. 3605). At autopsy, histopathological changes were seen in the liver, kidneys, and lungs of laboratory animals exposed to a 1000-ppm concentration of chlorobenzene for 7 hours/day, 5 days/week for 44 days (for a total of 32 exposures). When the concentration was reduced to 475 ppm, the changes seen at the higher concentrations occurred but were less severe (Clayton and Clayton 1982, p. 3607). Mice exposed to a 544-ppm concentration of chlorobenzene for 7 hours/day for 3weeks or 22 ppm for 7 hours/day for 3 months suffered from leukopenia and depressed bone marrow activity (Proctor, Hughes, and Fischman 1988, p. 133). Oral toxicity studies in rats that were dosed 5 days/week for 192 days (for a total of 137 doses) showed the following effects: doses of 0.144 g/kg and 0.288 g/kg both caused slight changes in the liver and a significant increase in liver and kidney weights, while a dose of 0.0144 g/kg caused no observable effects (Clayton and Clayton 1982, pp. 3606–3607).

In humans, eye and nose irritation begins on exposure to concentrations of 200 ppm (Proctor, Hughes, and Fischman 1988, p. 133). Contact of the skin with liquid chlorobenzene causes mild skin irritation; prolonged contact may lead to dermatitis (Proctor, Hughes, and Fischman 1988, p. 133). A study of 52 workers exposed to chlorobenzene reported that many of the workers who had been exposed to chlorobenzene (concentration unspecified) for 1 to 2 years experienced headache, dizziness, sleepiness, and dyspeptic disorders. Some of these workers showed spastic muscle contractions and paresthesia of the extremities when tested clinically, and others suffered from vasovegetative instability (Clayton and Clayton 1982, pp. 3610–3611).

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to chlorobenzene at the levels permitted by the absence of a limit are at significant risk of experiencing eye and nose irritation; liver, lung, and kidney damage; and narcosis. The Agency believes that establishing a PEL of 75 ppm as an 8-hour TWA is necessary to protect workers in agriculture from these significant occupational risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CHLORODIPHENYL (42% CHLORINE) (PCB)

CAS: 53469–21–9; Chemical Formula: $C_{12}H_7Cl_5$ (Approximate)

H.S. No. 2035

In general industry, construction, and maritime, OSHA's permissible exposure limit (PEL) for chlorodiphenyl (42% chlorine) is 1 mg/m³ as an 8-hour time-weighted average (TWA), with a skin designation. There is no limit for this substance in agriculture. The 1987–1988 ACGIH TLV®–TWA was 1 mg/m³ and the TLV®–STEL was 2 mg/m³, with a skin designation. NIOSH considers this substance a potential human carcinogen and recommends reducing exposure to the lowest feasible concentration (0.001 mg/m³). OSHA is proposing an 8-hour TWA limit of 1 mg/m³, with a skin designation, for chlorodiphenyl (42% chlorine) in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Chlorodiphenyl (42% chlorine) is a polychlorinated biphenyl (PCB); it is a clear, colorless to straw-colored liquid with a mild hydrocarbon odor. The production and sale of PCBs was discontinued by the EPA in 1977, but this substance is still found in transformers and capacitors that have remained in use (HSDB 1988; Merck 1983, p. 1091; ACGIH 1986, p. 128).

Chlorodiphenyl (42% chlorine) is toxic to the liver, is an irritant of the eyes and mucous membranes, and causes acneform dermatitis (chloracne). It is carcinogenic, embryotoxic, and teratogenic in laboratory animals (ACGIH 1986, p. 128; Proctor, Hughes, and Fischman 1988, p. 136; IARC 1987, p. 324). The oral LD_{50} for chlorodiphenyl (42% chlorine) in rats ranges from 4250 to 8700 mg/kg, and the dermal LD_{50} in rabbits ranges from 800 to 1300 mg/kg (IARC 1978, p. 69; RTECS 1990). Monkeys given 300 ppm of this substance in their diet for 90 days showed hair loss, chloracne, subcutaneous edema, liver hypertrophy, and hyperplasia of the gastric mucosa (Gosselin, Smith, and Hodge 1984, p. II–171). Chlorodiphenyl (42% chlorine) is rapidly absorbed through the skin and accumulates in lipid-rich tissues such as those of the brain. Exposure to chlorodiphenyl (42% chlorine) by any route produces skin changes that may lead to acneform dermatitis and sticky eye discharge in laboratory animals (Proctor, Hughes, and Fischman 1988, p. 137; Grant 1986, p. 750). Skin contact results in depletion of the natural oils of the skin, which leads to local redness and skin cracking (AIHA 1965). This substance is toxic to the liver, causing fatty degeneration, cell death, hypertrophy, and induction of microsomal enzymes (Proctor, Hughes, and Fischman 1988, p. 138; IARC 1978, p. 68; Gosselin, Smith, and Hodge 1984, p. II–171 to II–172). Rabbits fed 30 mg/m³ chlorodiphenyl (42% chlorine) for 14 weeks developed enlarged livers, and rats fed 100 ppm for as long as 10 months showed no clinical liver effects but did have enlarged hepatocytes at autopsy (HSDB 1988). Although cats, rabbits, and rats showed no ill effects when exposed for 7hours/day to an 8.6-mg/m³ concentration over a 24-day period, guinea pigs similarly exposed demonstrated poor growth (AIHA 1965).

Workers exposed to 0.1 mg/m³ chlorodiphenyl (42% chlorine) for several months developed mild-to-moderate skin irritation and chloracne, and exposure to a level of 10 mg/m³ was reported to be intolerably irritating (Proctor, Hughes, and Fischman 1988, p. 137). Workers exposed to chlorodiphenyl (42% chlorine) at concentrations below 0.1 mg/m³ have not been known to develop chloracne. Occupationally exposed individuals have shown clinical evidence of liver injury, and deaths caused by toxic hepatitis have occurred in workers exposed to a mixture of PCBs and chlorinated naphthalenes (Proctor, Hughes, and Fischman 1988, p. 137). The International Agency for Research on Cancer (IARC) has concluded that the evidence for chlorodiphenyl-induced carcinogenicity in humans is limited, although studies in humans do support an association between cancer and exposure to these substances (IARC 1987, p. 324). A study of workers in Italy who had been exposed to a mixture of chlorodiphenyls (54% and 42% chlorine) reported an increase in cancer mortality among these workers; male workers had a significant excess of gastrointestinal tract tumors (including one liver tumor) and female workers had a significant excess of hematological tumors (IARC 1987, Supplement 7, p. 323). Several thousand Japanese and Taiwanese citizens who accidentally ingested chlorodiphenyl (42% chlorine) over several months developed swelling of the upper eyelids, excessive eye discharge, follicular keratosis, gastrointestinal problems, various nervous symptoms, peripheral neuropathy, darkening of the skin, and chronic bronchitis; babies born to women who became pregnant during this period also showed many of these signs (IARC 1978, pp. 80–84).

Based on this evidence in humans and animals, OSHA preliminarily concludes that agricultural workers exposed to chlorodiphenyl (42% chlorine) at the levels permitted by the absence of a limit are at significant risk of irritation, chloracne, liver damage, and, perhaps, of cancer. The Agency believes that establishing a PEL of 1 mg/m³ as an 8-hour TWA, and a skin designation, will substantially reduce significant risk for workers in agriculture. OSHA recognizes that a lower limit may be needed for chlorodiphenyl (42% chlorine). As discussed above, however, the principal purpose of this rulemaking is to extend to all workers the protection given to workers in general industry. The need for a change to the limit for this substance will be considered for all workers in a future update of the Agency's PELs.

CHLORODIPHENYL (54% CHLORINE) (PCB)

CAS: 11097–69–1; Chemical Formula: $C_{12}H_5Cl_5$

H.S. No. 2036

In general industry, construction, and maritime, OSHA's permissible exposure limit (PEL) for chlorodiphenyl (54% chlorine) is 0.5 mg/m³ as an 8-hour time-weighted average (TWA), with a skin designation. There is no limit in agriculture for this substance. The 1987–1988 ACGIH TLV®–TWA was 0.5 mg/m³ and the TLV®–STEL was 1 mg/m³, with a skin designation. NIOSH considers this substance a potential human carcinogen and recommends reducing exposure to the lowest feasible concentration (0.001 mg/m³). OSHA is proposing to establish an 8-hour TWA limit of 0.5 mg/m³, with a skin designation, for chlorodiphenyl (54% chlorine) in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Chlorodiphenyl (54% chlorine) is a polychlorinated biphenyl (PCB); it is a pale yellow, viscous liquid with a mild hydro-carbon odor. The production and sale of PCBs was halted by the EPA in 1977, but this substance is still found in transformers and capacitors that have remained in use (ACGIH 1986, p. 129; Merck 1983, p. 1091).

Exposure to chlorodiphenyl (54% chlorine) causes irritation, chloracne, and liver damage. In laboratory animals, this substance is carcinogenic, embryotoxic, and teratogenic. The oral LD_{50} in rats is 1010 mg/kg, and the intravenous LD_{50} in the same species is 356 mg/kg (RTECS 1990). Acutely poisoned rats develop diarrhea, ataxia, loss of pain response, and narcosis (Gosselin, Smith, and Hodge 1984, p. II–171). The minimum lethal dermal dose in rabbits is 1.5 g/kg (Proctor, Hughes, and Fischman 1988, p. 142). Repeated dermal application caused hyperplasia and hyperkeratosis in the epithelium, liver and kidney damage, and atrophy of the thymus (Gosselin, Smith, and Hodge

1984, p. II–17). Rats exposed to a 5.4-mg/m³ concentration of chlorodiphenyl (54% chlorine) for 7 hours/day for 4 months showed an increase in liver weight and, at autopsy, liver damage (Proctor, Hughes, and Fischman 1988, p. 142). Dietary administration of chlorodiphenyl (54% chlorine) in mice and rats has caused a significant excess of benign and malignant liver tumors in several bioassays. Rats also developed interstitial metaplasia and a low, statistically nonsignificant incidence of stomach adenocarcinomas (IARC 1987, Supplement 7, p. 322). The International Agency for Research on Cancer (IARC) has concluded that the evidence for the carcinogenicity of chlorodiphenyl (54% chlorine) in animals is sufficient (IARC 1987, Supplement 7, p. 322). Chlorodiphenyl (54% chlorine) also has caused fetotoxicity, maternal death, abortion, and stillbirth when administered orally to rabbits at a dose of 12.5 mg/kg (Clayton and Clayton 1981, p. 3667). A dose-related increase in the number of malformed offspring occurred in pigs and rats fed chlorodiphenyl (54% chlorine) at a dose of 1 mg/kg/day (Proctor, Hughes, and Fischman 1988, p. 143). Chlorodiphenyl (54% chlorine) is mutagenic in mammalian test systems (RTECS 1990).

Workers exposed to 0.1 mg/m³ chlorodiphenyl for several months developed mild-to-moderate irritation of the skin and chloracne; however, exposure to chlorodiphenyls at concentrations below 0.1 mg/m³ did not produce chloracne (Proctor, Hughes, and Fischman 1988, p. 140). Exposure to a 10-mg/m³ concentration is reported to be intolerably irritating (Proctor, Hughes, and Fischman 1988, p. 140). Workers who have PCB-induced chloracne also often show clinical evidence of liver disease, and several workers have died of toxic hepatitis after exposure to PCBs and chlorinated naphthalenes (Proctor, Hughes, and Fischman 1988, p. 140). Studies in humans have shown that workers exposed to chlorodiphenyl (54% chlorine) in electrical capacitor filling and sealing operations have experienced a slight increase in the incidence of cancer, particularly in melanomas of the skin; another study showed an excess number of deaths due to cancer of the liver and biliary passages in chlorodiphenyl-exposed workers (IARC 1987, Supplement 7, p. 323). A study of workers in Italy who had been exposed to a mixture of chlorodiphenyls (54% and 42% chlorine) reported a significant increase in cancer mortality among these workers; male workers had a significant excess of gastrointestinal tract tumors (including one liver tumor) and female workers had a significant excess of hematological tumors (IARC 1987, Supplement 7, p. 323). IARC has concluded that the available human studies suggest an association between cancer and exposure to PCBs and notes that the increased risk of hepatobiliary cancer is consistent across different studies (IARC 1987, Supplement 7, p. 324).

Based on this evidence in humans and animals, OSHA preliminarily concludes that agricultural workers exposed to chlorodiphenyl (54% chlorine) at the levels permitted by the absence of a limit are at significant risk of irritation, chloracne, liver damage, and, perhaps, of cancer. The Agency believes that establishing a PEL of 0.5 mg/m³ as an 8-hour TWA, and a skin designation, will substantially reduce significant risk for workers in agriculture. OSHA recognizes that a lower limit may be needed for chlorodiphenyl (54% chlorine). As discussed above, however, the principal purpose of this rulemaking is to extend to all workers the protection given to workers in general industry. The need for a change to the limit for this substance will be considered for all workers in a future update of the Agency's PELs.

o-CHLOROSTYRENE

CAS: 2039–87–4; Chemical Formula: C_8H_7Cl

H.S. No. 1089

In construction, maritime, and agriculture, OSHA has no limit for o-chlorostyrene. The ACGIH TLV®s are an 8-hour TWA of 50 ppm and a STEL of 75 ppm; NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N1) that the proposed limits are appropriate. OSHA is proposing a 50-ppm TWA PEL and a 75-ppm STEL for o-chlorostyrene in construction, maritime, and agriculture. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

o-Chlorostyrene is a colorless liquid at room temperature. This substance is used as a chemical intermediate and in the manufacture of polymers (Sittig 1985, p. 241).

o-Chlorostyrene is an irritant of the eyes and skin on acute exposure, and chronic exposure causes kidney as well as liver damage (New Jersey Fact Sheet 1986, pp. 1, 2). In an unpublished report, the Dow Chemical Company (1973a, as cited in ACGIH 1986/Ex.1–3, p. 136) describes the results of an o-chlorostyrene inhalation study in rats, rabbits, guinea pigs, and dogs. Dow exposed the animals to an average o-chlorostyrene concentration of 101 ppm for 7 hours daily, 5 days per week, for a total of 130 exposures in 180 days. No adverse effects were observed in any species in terms of appearance, growth, behavior, mortality, hematology, BUN, alkaline phosphatase, SGPT, BSP, organ weights, or gross pathology (Dow Chemical Company 1973a, as cited in ACGIH 1986/Ex. 1–3, p. 136). Microscopic examination of animal tissue revealed a somewhat higher incidence of pathological changes in the liver and kidneys (Dow Chemical Company 1973a, as cited in ACGIH 1986, Ex. 1–3, p. 136).

A paper by Coulter, Kehde, and Hiscock (1971) reports that o-chlorostyrene has toxicological properties that are similar to those of styrene; since human volunteers exposed for 1 to 7 hours to the vapor of styrene at concentrations of 100 ppm have shown narcotic effects (Stewart, Dodd, Baretta, and Schaffer 1968, Ex. 1–380), exposure to o-chlorostyrene should be maintained at concentrations below this level at all times.

Based on this evidence, OSHA is proposing PELs for o-chlorostyrene in construction, maritime, and agriculture of 50 ppm as an 8-hour TWA and 75 ppm as a 15-minute STEL. The Agency preliminarily concludes that both of these limits will protect workers in these sectors from the significant risks of liver and kidney damage and narcosis to which they could potentially be exposed in the absence of an OSHA limit. OSHA believes that these health effects constitute material health impairments and that the proposed TWA and STEL limits are necessary to substantially reduce these significant occupational risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CYCLOHEXANONE

CAS: 108–94–1; Chemical Formula: $C_6H_{10}O$

H.S. No. 1108

OSHA's limit for cyclohexanone in construction and maritime is 50 ppm as an 8-hour TWA. The ACGIH 1987–1988 TLV® for this substance is 25 ppm as an 8-hour TWA, with a skin notation. NIOSH has a REL of 25 ppm as a 10-hour TWA for cyclohexanone and also concurs (Ex. 8–47, Table N1) with the limit OSHA is proposing in construction, maritime, and agriculture, which is an 8-hour TWA PEL of 25 ppm, with a skin notation. This is the limit recently established for this substance in general industry.

Cyclohexanone is a white to pale yellow, oily liquid with an odor similar to that of acetone and peppermint. This

substance is used as a solvent in metal degreasing operations and in the production of acetates, resins, rubber, waxes, shellacs, nitrocellulose, and pesticides (ACGIH 1986, p. 159; HSDB 1986). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In addition to liver damage, exposure to cyclohexanone causes eye, nose, and upper respiratory tract irritation and, at high concentrations, narcosis in experimental animals. The oral LD_{50} in rats is 1535 mg/kg, and the LC_{50} in the same species is 8000 ppm for 4 hours (RTECS 1990). The lowest reported dermal LD_{50} in rabbits is 948 mg/kg (RTECS 1990). Cyclohexanone has been studied in several experimental animal species. A concentration of 2000 ppm inhaled for four hours was lethal to one of six rats; at 4000 ppm, all of the exposed animals died (Smyth, Carpenter, Weil et al. 1969/Ex. 1–442). Rabbits showed marked irritation and some corneal injury when undiluted cyclohexanone was instilled into the eye (Carpenter and Smyth 1946/Ex. 1–859); applied to the skin of rabbits, this substance caused mild irritation (RTECS 1990). Guinea pigs exposed to the vapor at a concentration of 4000 ppm for 6 hours showed narcotic symptoms, lacrimation, salivation, depression of body temperature and heart rate, and corneal opacity (Specht, Miller, Valaer, and Sayers 1940/Ex. 1–1179). At autopsy, rabbits exhibited degenerative changes of the liver and kidneys after 50 daily 6-hour inhalation exposures to 190 ppm (Treon, Crutchfield, and Kitzmiller 1943b/Ex. 1–394). Exposures to a 309-ppm concentration of cyclohexanone on the same regimen caused conjunctival congestion, while exposures to a 3000-ppm concentration of cyclohexanone were lethal to some of the exposed rabbits (Treon, Crutchfield, and Kitzmiller 1943b/Ex. 1–394). When the cyclohexanone concentration was increased to approximately 3082 ppm, the rabbits lost coordination, developed difficult breathing, and showed signs of narcosis (Treon, Crutchfield, and Kitzmiller 1943b/Ex. 1–394).

In humans, Nelson and co-workers (1943/Ex. 1–66) reported that irritation caused by exposure to cyclohexanone was intolerable at 50 ppm; however, 25 ppm was not objectionable to most subjects in 3- to 5-minute exposures (Nelson, Enge, Ross et al. 1943/Ex. 1–66). Marked eye and upper respiratory tract irritation occurred at a concentration of 75 ppm (Clayton and Clayton 1981, p. 4782).

OSHA is proposing to add a skin notation for cyclohexanone based on this substance's ability to cause systemic toxicity via absorption through the skin. In the prior Air Contaminants rulemaking, one commenter (Ex. 3–678) stated that, in his opinion, there was no evidence for cyclohexanone's dermal toxicity, and thus that no skin notation was necessary. In response to this commenter, OSHA pointed to the dermal LD_{50} in rabbits of 948 mg/kg (RTECS 1990) and to the Agency's policy of establishing skin notations for substances having dermal LD_{50}s in rabbits of 1000 mg/kg or less.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL for cyclohexanone of 25 ppm, and a skin notation, in construction, maritime, and agriculture. The Agency has preliminarily determined that this limit and notation will protect workers in construction, maritime, and agriculture from the significant risks of liver and kidney damage, skin and respiratory tract irritation, and percutaneous absorption associated with exposure to this substance. OSHA considers these effects material health impairments and believes that the proposed PEL is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

1,1-DICHLOROETHANE

CAS: 75–34–3; Chemical Formula: CH_3CHCl_2

H.S. No. 1126

OSHA's PEL for dichloroethane in general industry, construction, and maritime is 100 ppm as an 8-hour TWA. There is no PEL in agriculture. The ACGIH TLV®s for this substance are 200 ppm as an 8-hour TWA and 250 ppm as a 15-minute STEL, respectively. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. In agriculture, OSHA is proposing an 8-hour TWA PEL of 100 ppm for 1,1-dichloroethane. Promulgation of this limit will make OSHA's PEL for dichloroethane consistent across all regulated sectors.

1,1-Dichloroethane, also called ethylidene chloride, is a colorless, mobile, combustible liquid with an odor like that of chloroform (ACGIH 1986, p. 184; Hawley's 1987, p. 494). This substance is used as a chemical intermediate and also finds limited use as a solvent. It is also used as a fumigant and insecticide (HSDB 1990). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Dichloroethane is a narcotic and liver and kidney toxin; exposure to high concentrations may also cause lung damage. Reproductive effects and tumors have been reported in a few animal studies involving dichloroethane (RTECS 1990). The oral LD_{50} in rats is 725 mg/kg (RTECS 1990). Rats died after exposure to dichloroethane concentrations of 32,000 ppm for 2.5 hours, but reducing the exposure interval to 30 minutes resulted in the survival of all exposed animals (AIHA 1971). Rats, guinea pigs, rabbits, and dogs exposed to 1000 ppm for 7 hours/day for 5 days/week for 6 months showed no gross or microscopic alterations at autopsy; however, a single exposure to concentrations of 8,000 ppm and above for 7 hours caused liver and kidney changes discernible at autopsy (AIHA 1971). Rats inhaling 6000 ppm for 7 hours/day on gestation days 6–15 had litters with an increased incidence of retarded fetal development, including delayed sternabral ossification (Schwetz et al. 1974). An NCI gavage bioassay (NCI 1978) in rats and mice failed to show conclusive evidence of carcinogenicity in these species, although marginal increases in mammary adenocarcinomas and hemangiosarcomas were seen in female rats and female mice developed a statistically significant increase in the incidence of endometrial stromal polyps.

In humans, exposure to very high concentrations of this substance causes deep narcosis, as evidenced by dichloroethane's former use as a human anesthetic (Proctor, Hughes, and Fischman 1988, p. 188). However, no other information on effects in humans is available.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 100 ppm in agriculture. The Agency believes that this PEL is necessary to protect workers in this sector from experiencing the narcotic and hepatotoxic effects potentially associated with exposure to this substance. OSHA considers these effects material impairments of health and believes that the PEL will substantially reduce the significant risk that agricultural workers will experience these effects. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIMETHYL ACETAMIDE

CAS: 127–19–5; Chemical Formula: $CH_3CON(CH_3)_2$

H.S. No. 2065

In general industry, construction, and maritime, OSHA's permissible exposure limit for dimethyl acetamide is 10 ppm as an 8-hour TWA, with a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no OSHA limit for dimethyl acetamide in agriculture, and NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. The ACGIH has an 8-hour TLV®–TWA of 10 ppm, with a skin notation, for dimethyl acetamide. OSHA is proposing to establish a permissible exposure limit of 10 ppm as an 8-hour TWA, and a skin notation, for this substance in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Dimethyl acetamide is a colorless liquid with a faint ammonia-like odor (Genium MSDS 1989, No. 458). Dimethyl acetamide finds use as a solvent for plastics, resins, and gums; as a catalyst; as a paint remover; and as a high-purity solvent for crystallization and purification (Hawley's 1987, p. 409). This substance has also been used in human medicine as a neoplastic agent (HSDB 1985).

Dimethyl acetamide causes skin irritation and liver damage in animals and humans; this substance has also been shown to be a teratogen in animals. The oral LD_{50} in rats is 5000 mg/kg; for mice, it is 4620 mg/kg (RTECS 1987). The dermal LD_{50} in rabbits is 2240 mg/kg (RTECS 1987). Rabbits experienced mild skin irritation after contact of the liquid with the skin for 24 hours. Dermal application of 9600 mg/kg dimethyl acetamide caused behavioral symptoms and pulmonary and liver effects in mice, indicating that this substance can be absorbed through the skin in toxic amounts (RTECS 1987). Dimethyl acetamide caused corneal necrosis when applied to the rabbit eye in undiluted form (Smyth 1962). Rats showed nasal irritation, an increase in blood cholesterol, and liver hypertrophy after being exposed to a 288-ppm concentration for 6 hours/day for 2 weeks; there was also evidence of testicular atrophy 2 weeks after exposure ceased (Kelley et al. 1984). Dogs exposed to repeated dermal applications of 4 mg/kg for 6 weeks exhibited severe fatty infiltration of the liver at autopsy (Kelley et al. 1984). Rats repeatedly exposed to a concentration of 195 ppm for 6 months showed focal necrosis of the liver at post mortem; when the concentration was reduced to 40 ppm for 6 months, no adverse effects were seen (Horn 1961). A reproductive study in male rats involving inhalation exposure to 40, 120, or 400 ppm dimethyl acetamide for 6 hours/day, 5 days/week for 43 exposures failed to find reproductive effects in any of the animals tested; however, significant increases in liver weight and in liver/body weight ratios were seen in animals in the 120- and 400-ppm groups (Wang, Kier, and Pounds 1989). Teratogenic effects (such as encephalocele and diffuse subcutaneous edema) were observed among fetuses of rats that had been dermally exposed on gestation days 10 and 11 to a total dimethyl acetamide dose of 2400 mg/kg (Stula and Krauss 1977). Developmental abnormalities also occurred in the fetuses of rabbits given oral dimethyl acetamide doses of 1839 mg/kg during days 6 to 18 of gestation (RTECS 1987).

The signs and symptoms of oral exposure to this substance in humans include depression, lethargy, hallucinations, and jaundice (Proctor, Hughes, and Fischman 1988, p. 206). Patients given oral doses of 400 mg/kg daily showed depression, lethargy, confusion, and disorientation after 3 days (Weiss et al. 1962). Skin absorption is believed to have contributed substantially to the development of the jaundice seen in workers repeatedly exposed to a 20 to 25 ppm concentration of dimethyl acetamide (Johnson 1961, in ACGIH 1986, p. 205). According to the ACGIH, "the dermal factor is considered in practice to be so significant that no air concentration, however low, will provide protection if skin contact with dimethyl acetamide is permitted" (ACGIH 1986, p. 205).

Based on the evidence presented above, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye and skin irritation and liver damage associated with exposure to dimethyl acetamide. The Agency believes that the proposed 8-hour TWA PEL of 10 ppm, with a skin notation, is necessary to substantially reduce these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIOXANE

CAS: 123–91–1; Chemical Formula: $O(CH_2CH_2)_2O$

H.S. No. 1145

In construction and maritime, OSHA's PEL for dioxane is 100 ppm as an 8-hour TWA, with a skin notation. There is no PEL in agriculture. The ACGIH has an 8-hour TLV®–TWA of 25 ppm for this substance, with a skin notation. NIOSH has a recommended exposure limit of 1 ppm as a 30-minute ceiling for dioxane but concurs (Ex. 8–47, Table N6A) that the PEL being proposed by OSHA is appropriate. OSHA is proposing a 25-ppm 8-hour TWA PEL for dioxane, with a skin notation, in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Dioxane is a colorless liquid with an ethereal odor. It is an ingredient in fumigants, adhesives, cosmetics, deodorants, polishes, and emulsions. It is also used as a wetting and dispersing agent in textile processing, dye-baths, and stain and printing compositions (HSDB 1985). Dioxane also finds use as a solvent and a stabilizer in chlorinated solvents (HSDB 1985; Proctor, Hughes, and Fischman 1988, p. 219). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Dioxane is an irritant of the eyes, skin, and mucous membranes as well as a liver and kidney toxin and carcinogen in experimental animals. The oral LD_{50} in rats is 4200 mg/kg, and the LC_{50} in the same species is 46 g/m³ (approximately 13,000 ppm) for 2 hours (RTECS 1990). In rabbits, the median lethal dose by percutaneous absorption is 7600 mg/kg (RTECS 1990). Before death, acutely poisoned animals showed weakness, depression, incoordination, and coma (Clayton and Clayton 1982, p. 3947). Autopsy revealed histologic changes to the liver and kidneys of experimental animals (Clayton and Clayton 1982, p. 3948). Applied to the eyes of rabbits, dioxane caused mild, transient injury of the cornea, graded 4 on an ascending severity scale of 1 to 10 (Grant 1974, p. 417). The liquid causes irritation on repeated contact with the skin of rabbits; the degree of irritation is described as mild (Clayton and Clayton 1982, p. 3948; RTECS 1990). A 2-year drinking water study conducted by the Dow Chemical Company (1972b, as cited in ACGIH 1986/Ex. 1–3, p. 217), in which male and female rats were given water containing 1.0, 0.1, or 0.01 percent dioxane, showed that animals given the highest dose developed liver and nasal tumors, in addition to pathological changes in the liver and kidney. Rats in the 0.1-percent group showed renal tubular sloughing and hepatocellular degeneration but no significant increase in neoplasms. Because this study demonstrated hepato- and nephrotoxic effects at doses 10 times lower than the dose causing cancer in animals, the proposed permissible exposure limit reflects a level that will prevent dioxane's liver and kidney effects; this

level will also reduce carcinogenic effects. A study by Torkelson et al. (1974/Ex. 1–111) in four species of animals exposed to multiple daily airborne exposures of dioxane at 50 ppm showed no gross or histopathologic organ changes; this study demonstrates that the proposed 25-ppm level should protect against the risk of liver and kidney effects.

There is evidence in humans that dioxane is an irritant and a toxin to the liver and kidney. Human volunteers reported experiencing mild eye, nose, and upper respiratory tract irritation at dioxane vapor concentrations of 300 ppm for 15 minutes; when the concentration was increased to 1600 ppm for 10 minutes, the volunteers reported burning and tearing of the eyes (Proctor, Hughes, and Fischman 1988, p. 219). A 1-minute exposure to a 5500-ppm concentration induced vertigo (Proctor, Hughes, and Fischman 1988, p. 219). Five fatalities occurred when humans were severely overexposed (concentration not specified) for a 5-week period; before death, these individuals experienced stomach pain, vomiting, loss of appetite, scanty urine, anuria, and coma (Proctor, Hughes, and Fischman 1988, p. 220). Autopsy revealed liver and kidney damage and edema of the lungs and liver (Proctor, Hughes, and Fischman 1988, p. 220). Similar signs and symptoms were seen in another case that resulted in death: the individual involved is estimated to have been exposed for 1 week to concentrations ranging from 208 to 605 ppm (and perhaps higher) and to have had concurrent dermal exposure (Proctor, Hughes, and Fischman 1988, p. 220). A mortality study of workers exposed to dioxane at concentrations described as low was inconclusive in terms of dioxane's carcinogenicity in humans (IARC 1982, p. 121).

In the prior rulemaking, several commenters noted dioxane's carcinogenic potential in animals and urged OSHA to designate dioxane as a carcinogen (Exs. 8–47, Tr. 3–96, 3–97; Tr. 9–217, 9–218). OSHA is aware that the International Agency for Research on Cancer (IARC) has classified dioxane as a Group 2B (possible human) carcinogen based on its finding that the evidence of this substance's carcinogenicity in animals is sufficient to warrant this designation. As discussed earlier in this preamble, OSHA's use of a particular target organ classification for a substance is not meant to suggest that the chemical in question is without other adverse health effects. In the case of dioxane, for example, OSHA is aware that exposure causes sensory irritation, liver damage, kidney damage, and the following cancers in experimental animals: liver adenomas and carcinomas in rats, hepatomas in guinea pigs, nasal cavity carcinomas in rats, and gall bladder carcinomas in guinea pigs (IARC 1982, p. 121). The classification of dioxane in the liver toxin section of this preamble is intended only to reflect the fact that the level of the proposed PEL, i.e., 25 ppm, is believed to be a level that will protect against dioxane's hepatotoxic effects.

Thus, OSHA preliminarily concludes that dioxane poses a significant risk of liver and kidney damage, and perhaps of cancer, to exposed workers. The Agency believes that an 8-hour TWA limit of 25 ppm for dioxane, with a skin notation, is necessary to protect workers in construction, maritime, and agriculture against these significant risks of material health impairment and that this limit will substantially reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYLENE DICHLORIDE

CAS: 107–06–2; Chemical Formula: $ClCH_2CH_2Cl$

H.S. No. 1168

The OSHA PEL for ethylene dichloride (EDC) in construction and maritime is 50 ppm as an 8-hour TWA. In 1980, the ACGIH reduced its TLV® for ethylene dichloride to 10 ppm as an 8-hour TWA. NIOSH has a recommended exposure limit (REL) of 1 ppm TWA and 2 ppm as a 15-minute ceiling limit and has designated EDC a potential human carcinogen. NIOSH also concurs (Ex. 8–47, Table N6A) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 1 ppm and a STEL of 2 ppm for ethylene dichloride in construction, maritime, and agriculture. These are the limits recently established for these substances in general industry.

Ethylene dichloride is a colorless liquid with a chloroform-like odor. EDC is registered in the United States for agricultural use as a post-harvest grain fumigant and a fumigant for use in orchards, agricultural premises, and mushroom houses (HSDB 1985). This substance also is used as a cleaner of leather and rubber goods and as a solvent, particularly in the metal cleaning industries (HSDB 1985). Its major uses are in the production of vinyl chloride and as an antiknock additive in gasolines (EPA 1987). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Ethylene dichloride causes narcosis in animals on acute exposure (EPA 1987) and has also been shown to cause mutations in bacterial test systems with microsomal activitation (EPA 1987; RTECS 1990). In contact with the skin of rabbits, liquid EDC causes mild irritation; in contact with the eye, this substance causes severe irritation (RTECS 1990). The oral LD_{50} in rats is 670 mg/kg, and the LC_{50} in the same species is 1000 ppm for 7 hours (RTECS 1990). The dermal LD_{50} in rabbits is 2800 mg/kg (RTECS 1990). Animals acutely poisoned by inhalation showed weakness, incoordination, restlessness, irregular breathing, and coma before death (EPA 1987). Dogs, monkeys, rabbits, rats, mice, and guinea pigs were exposed to varying concentrations of EDC for 7 hours/day, 5 days/week for 8 months; maximal no-effect levels were 400 ppm (dogs), 200 ppm (monkeys and rabbits), and 100 ppm (rats, mice, and guinea pigs) (Hayes 1982, p. 151). Other studies (Spencer et al. 1951; Hoffmann et al. 1971) have shown similar results.

Several studies indicate that the current OSHA PEL is insufficient to protect workers in construction, maritime, and agriculture against the toxic effects of exposure to EDC. A paper by Kozik (1957/Ex. 1–182) reported that workers generally exposed to ethylene dichloride at levels of 10 to 15 ppm but occasionally exposed to levels of 40 ppm experienced increased morbidity, diseases of the liver and bile ducts, and nervous system effects. Kozik investigated the effect of EDC on the speed of visual-motor reaction and on the number of errors made. There was no difference in reaction speed between the 17 gluers (exposed) and 10 machinists (control) before and after work. However, more errors were committed by the gluers (15 out of 17) than by controls (4 out of 10). These errors reflected disturbances of equilibrium and mobility of the nerve processes during a complicated reaction. Kozik also noted that, although the reaction errors had ceased by the beginning of the next working day in the machinists, they persisted in the gluers. The author also compared the muscular strength and endurance of the upper extremities in workers in the two groups. Both were decreased in the gluers, and both strength and endurance decreased with job longevity in these workers. The author attributed these distinct shifts in the functional state of the motor apparatus of the upper extremities to exposure to EDC. Eighty-three gluers were examined for diseases of the motor apparatus of the upper extremities. Neuromyalgia, myofasciculitis,

tendovaginitis, or angioneurosis was found in 67.7 percent of the subjects. Diseases of the liver and bile ducts were found in 19. The author concluded that "prolonged exposure to EDC vapors in concentrations close to the maximum permissible concentration or only slightly exceeding it causes pronounced alterations on the part of the liver and nervous system, which are typical of EDC poisoning." In addition, Brzozowski and associates (1954/Ex. 1–63) reported abnormal changes in the blood of 50 percent of workers (8 of 16) exposed to EDC levels of 10 ppm and above (Brzozowski, Czajka, Dutkiewicz et al. 1954/Ex. 1–63).

In the prior rulemaking, many commenters were of the opinion that a permissible exposure limit of 10 ppm, rather than the proposed 1-ppm limit, would provide adequate protection against EDC's hepatotoxic, central nervous system, and hematopoietic effects (Exs. 3–624, 3–677, 3–678, 3–741, 3–874, and 3–1174). In response to these commenters, OSHA noted (54 *FR* 2484–2485) that many studies report serious EDC-related effects among workers exposed to airborne concentrations in the 10- to 15-ppm range. For example, the aircraft workers in the Kozik (1957/Ex. 1–182) study (average 8-hour TWA exposures of 10 to 15 ppm) experienced increased morbidity and lost more workdays than did non-EDC-exposed workers at the same factory. These workers experienced high rates of gastrointestinal disease and liver and gallbladder diseases; these symptoms and diseases are typical EDC exposure effects. Another study (Cetnarowicz 1959) examined refinery workers exposed to EDC at levels ranging from 10 to 200 ppm and found that these workers experienced many of the same symptoms as those experienced by the aircraft workers. Clinical analyses confirmed that the liver and gastrointestinal tract were the principal target organs affected by EDC exposure. Rosenbaum (1947) also reported that EDC exposures below 25 ppm (not further specified) caused functional nervous system disorders, including headache, insomnia, and fatigue, and also slowed the heartbeat rate in affected workers. In the general industry rulemaking, OSHA concluded that the evidence presented in these studies was consistent, biologically plausible, and convincing and noted that the symptoms and signs of EDC's effects had been confirmed both clinically (palpitation of enlarged livers, X-ray evidence of pyloric spasms) and by laboratory analysis (elevated urobilinogen levels, positive Takata-Ara liver function tests, negative glucose tolerance tests).

In the earlier Air Contaminants rulemaking, there was considerable discussion of EDC's carcinogenicity, with some commenters (Exs. 3–677, 3–741, and 3–874) arguing that inhalation exposures to EDC in animals had not produced a statistically significant increase in tumors in exposed rats or mice. In response to these commenters, OSHA noted that NIOSH, EPA, and the International Agency for Research on Cancer (IARC) have all concluded that EDC is carcinogenic in animals. IARC summarized its findings as follows:

> 1,2-Dichloroethane [EDC] was tested in one experiment in mice and in one in rat by oral administration. In mice, it produced benign and malignant tumors of the lung and malignant lymphomas in animals of both sexes, hepatocellular carcinomas in males and mammary and uterine adenocarcinomas in females. In rats, it produced carcinomas of the forestomach in male animals, benign and malignant mammary tumors in females, and hemangiosarcomas in animals of both sexes (IARC 1979, Vol. 20, p. 442).

These effects are severe, and evidence demonstrates that they occur at concentrations of about 10 ppm. A no-effect level has not been established for EDC. Accordingly, a substantial safety factor is appropriate and the 1 ppm level is necessary based on hepatotoxic effects alone; this limit provides, at most, a safety factor of 10. There is also evidence of EDC's carcinogenicity; however, OSHA is not regulating this substance on the basis of its carcinogenicity at this time. Nevertheless, carcinogenicity is an additional reason for promulgating a limit that is a factor of 10 below the lowest observed hepatotoxic effect level.

Based on this evidence, the Agency preliminarily concludes that an 8-hour TWA limit of 1 ppm and a 15-minute STEL of 2 ppm are necessary to protect workers in construction, maritime, and agriculture against the significant risks of liver damage, gastrointestinal toxicity, and cancer that are potentially associated with exposure to ethylene dichloride. OSHA believes that the proposed limits are necessary to substantially reduce these significant occupational risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

HAFNIUM

CAS: 7440–58–6; Chemical Formula: Hf

H.S. No. 2087

In general industry, construction, and maritime, OSHA's permissible exposure limit for hafnium is 0.5 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.5 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the PEL being proposed. OSHA is proposing an 8-hour TWA PEL in agriculture of 0.5 mg/m³ for hafnium. Promulgation of this limit will make the PEL for hafnium consistent across all OSHA-regulated sectors.

Hafnium is a gray, ductile metal with a brilliant silver-like luster. It is used for control rods in water-cooled nuclear reactors and in light bulb filaments, electrodes, special glasses, and vacuum tubes (ACGIH 1986, p. 293; Hawley's 1987, p. 583).

Hafnium and its compounds are irritants of the eye and skin in humans and animals. Studies also indicate that hafnium and its compounds cause liver damage in animals (Haley 1962). The LD_{50} (route unreported) for hafnium in mice is 76 mg/kg (RTECS 1990). Rabbits showed transient eye irritation when 1 mg of hafnium chloride was placed into their eyes. In contact with unabraded skin, hafnium chloride caused transient edema and erythema in rabbits; application of this substance to abraded skin caused ulceration (Haley 1962). Rats fed hafnium in the diet at a 1 percent level showed slight changes in the liver at autopsy (Chemical Safety Data Sheet 1966, in Proctor, Hughes, and Fischman 1988, p. 267). There are no data on the toxicity of hafnium in humans.

Based on this evidence in animals, OSHA preliminarily concludes that hafnium and its compounds potentially cause eye and skin irritation and liver damage. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these effects. The Agency believes that establishing an 8-hour TWA limit of 0.5 mg/m³ will substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HEXACHLORONAPHTHALENE

CAS: 1335–87–1; Chemical Formula: $C_{10}H_2Cl_6$

H.S. No. 2089

In general industry, construction, and maritime, OSHA currently has an 8-hour TWA limit for hexachloronaphthalene of 0.2 mg/m³, with a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. OSHA has no PEL for hexachloronaphthalene in agriculture. The ACGIH's current TLV®–TWA for this substance is 0.2 mg/m³,

with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the PEL being proposed. OSHA is proposing a TWA PEL of 0.2 mg/m³, with a skin notation, for hexachloronaphthalene in agriculture. Promulgation of this limit will make the PEL for hexachloronaphthalene consistent across all OSHA-regulated sectors.

Hexachloronaphthalene is a light yellow or white waxy solid with an aromatic odor. In commercial use, the chloronaphthalenes occur as mixtures of naphthalenes having varying degrees of chlorination. Hexachloronaphthalene is used in flameproofing and waterproofing; to insulate electrical equipment; and as a lubricant additive (ACGIH 1986, p. 302; Hazardous Substance Fact Sheet 1985, p. 1).

Hexachloronaphthalene causes liver damage and a severe form of dermatitis called chloracne (Proctor, Hughes, and Fischman 1988, p. 270). In rats, repeated exposure to an average concentration of 8.9 mg/m³ of a penta- and hexachloronaphthalene mixture resulted in poor growth, jaundice, and death. There was marked fatty degeneration and centrilobular necrosis of the liver at autopsy. Minor liver injury also occurred at repeated exposures to a concentration of 1.16 mg/m³ (Irish 1963, in Clayton and Clayton 1982, p. 3670–3671). Rabbits intraperitoneally injected with a 15 mg/day dose of a penta- and hexachloronaphthalene mixture for 12 to 26 days developed liver disease (HSDB 1985).

Acute yellow atrophy of the liver has been reported in workers repeatedly exposed to a mixture of penta- and hexachloronaphthalene at concentrations averaging 1 to 2 mg/m³. These workers also experienced symptoms of nausea, indigestion, weight loss, and jaundice (Hygienic Guide Series 1966; Elkins 1959). Long-term skin contact with the fume, dust, or hot vapor of the higher chlorinated naphthalenes causes chloracne, which is slow to develop and may take months to disappear (Irish 1963, in Clayton and Clayton 1982, p. 3672–3673).

Based on this evidence in humans and animals, OSHA preliminary concludes that exposure to hexachloronaphthalene causes chloracne and liver damage and that, in the absence of a limit, workers in agriculture are at risk of experiencing these adverse health effects. The Agency believes that the proposed 8-hour TWA limit of 0.2 mg/m³, and a skin notation, are necessary to substantially reduce these significant risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HYDRAZINE

CAS: 302–01–2; Chemical Formula: $H_2N–NH_2$

H.S. No. 1205

In construction and maritime, OSHA's current limit for hydrazine is 1ppm as an 8-hour TWA, with a skin notation. There is no limit in agriculture. OSHA is retaining the skin notation and proposing an 8-hour TWA PEL of 0.1 ppm for hydrazine in construction, maritime, and agriculture. Because of hydrazine's potential carcinogenic hazard, NIOSH (1978e/Ex. 1–263; Ex. 8–47) recommends that workplace exposures not exceed 0.03 ppm, as measured over 2 hours; this level represents the lowest detectable concentration over this sampling interval. The 1987–88 ACGIH TLV® for hydrazine is 0.1 ppm as an 8-hour TWA, with a skin notation, and the ACGIH also designates this substance a potential human carcinogen. Promulgation of the proposed limit will make the PEL for hydrazine consistent across all regulated sectors.

Hydrazine is an odorless, fuming, oily liquid with an ammonia-like odor. Hydrazine is used as a high-energy rocket fuel, a reducing agent, an oxygen scavenger for boiler waters, and a chemical intermediate (ACGIH 1986, p. 310(89)). It is also used in the preparation of agricultural chemicals and pharmaceuticals (Hawley's 1987, p. 612).

Hydrazine has many toxic effects in humans and experimental animals. Humans exposed to hydrazine vapors experience immediate irritation of the nose and upper respiratory tract as well as nausea and dizziness (Proctor, Hughes, and Fischman 1988, p. 273). Severe overexposure causes a temporary blindness that may persist for 24 hours. In contact with the skin or eyes, liquid hydrazine causes severe burns (Proctor, Hughes, and Fischman 1988, p. 273). Skin sensitization has also been reported in humans (ACGIH 1986, p. 310.1(89)). Hydrazine has been absorbed through the skin in humans to cause systemic effects, manifested as weakness, tremor, and vomiting; in one fatal case of occupational overexposure, nephritis and liver damage were seen at autopsy (Proctor, Hughes, and Fischman 1988, p. 273).

In experimental animals, hydrazine causes moderate to severe irritation of the eyes, skin, and mucous membranes, induces convulsions, produces hemolysis, damages the liver, and causes cancer (ACGIH 1986, pp. 310(89), 310.1(89); RTECS 1990; Proctor, Hughes, and Fischman 1988, p. 272). The oral LD_{50} in rats is 60 mg/kg, and the LC_{50} in the same species is 570 ppm for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 91 mg/kg (RTECS 1990). Animals acutely poisoned by dermal absorption show fatty degeneration of the liver, anemia, destruction of erythrocytes, loss of appetite, weakness, vomiting, convulsions, and weakness (ACGIH 1986, p. 310(89)). Lethal exposures by inhalation cause pathological changes in the liver, kidneys, and lungs that are visible at autopsy (ACGIH 1986, p. 310(89)). A hepatotoxic response in mice, anemia and weight loss in dogs, and a dose-related depression in growth rate in rats occurred after a 6-month exposure to 1 ppm of hydrazine for 6 hours per day, 5 days per week, or to a 0.2-ppm concentration continuously (Haun and Kinkead 1973/Ex. 1–824).

The ACGIH has assigned an A2 designation (suspected human carcinogen) to hydrazine, based on a study by MacEwen, Vernot, and Haun (1979/Ex. 1–193) showing significant increases in nasal tumors in rats exposed to 1 or 5 ppm hydrazine, in thyroid adenocarcinomas in rats exposed to 5 ppm, and in lung adenomas among mice exposed to 1 ppm. NIOSH also considers hydrazine a potential human carcinogen (Ex. 8–47, Table N6B), as does the International Agency for Research on Cancer (IARC 1987, p. 224). The animal studies conducted by Haun and Kinkead (1973/Ex. 1–824) and by MacEwen, Vernot, and Haun (1979/Ex. 1–193) clearly demonstrate that exposure to hydrazine at the current 1-ppm PEL presents a significant risk of liver disease, respiratory cancer, and adverse blood effects; animals exposed to airborne concentrations at this level have exhibited all of these responses.

In the prior rulemaking, some commenters (Exs. 8–16, 194; Tr. 9–218; Tr. 3–309) questioned the classification of hydrazine in the liver target organ section of the preamble, believing that it should be placed in the cancer section instead. However, as discussed elsewhere in this preamble, OSHA does not intend this classification scheme to have regulatory implications and has adopted it only to facilitate generic rulemaking.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 0.1 ppm, with a skin notation, for hydrazine. OSHA preliminarily concludes that this limit will substantially reduce the significant risks of liver disease, cancer, and hematopoietic effects that have been demonstrated to occur in animals at exposures above the proposed PEL.

All of these effects clearly constitute material health impairments, and OSHA believes that the proposed PEL will substantially reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYLCYCLOHEXANOL

CAS: 25639–42–3; Chemical Formula: $CH_3C_6H_{10}OH$

H.S. No. 1269

In construction and maritime, OSHA currently has an 8-hour TWA limit of 100 ppm for methylcyclohexanol. There is no PEL in agriculture. The Agency is proposing an 8-hour TWA of 50 ppm as the PEL for this substance in construction, maritime, and agriculture; this is the 1987–1988 ACGIH TLV® for methylcyclohexanol. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N1) with OSHA's proposed limits for methylcyclohexanol. This is the limit recently established for this substance in general industry.

Methylcyclohexanol is a colorless, viscous liquid with an aromatic odor; in industrial use, it takes the form of a mixture of isomers in which the meta and para forms predominate. Methylcyclohexanol finds use as a degreasing agent, a solvent for esters and ethers, a blending agent for soaps and detergent, and a solvent for gums, oils, resins, and waxes (ACGIH 1986, p. 385; Clayton and Clayton 1982, p. 4650). It is also an ingredient in soap-based spot removers and a chemical intermediate for lubricating oil additives (HSDB 1985).

In addition to liver injury, exposure to methylcyclohexanol causes eye, nose, and mucous membrane irritation and, at high concentrations, narcosis (Proctor, Hughes, and Fischman 1988, p. 338). The oral LD_{50} in rats is 1660 mg/kg (RTECS 1988). The median lethal dose in rabbits by dermal application is 6.8 to 9.4 g/kg (Clayton and Clayton 1982, p. 4651). Animals acutely poisoned via dermal exposure showed tremors, hypothermia, and narcosis (Clayton and Clayton 1982, p. 4651). The vapor causes signs of irritation in rabbits at concentrations of approximately 500 ppm (Grant 1986, p. 614). Repeated inhalation exposures to the vapor caused salivation, eye irritation, and lethargy in rabbits exposed to a 500-ppm concentration, but exposures to 230 ppm caused no observable effects. Fifty 6-hour exposures to a concentration of 120 ppm caused microscopic changes in the liver and kidney tissue of rabbits that were visible at autopsy (Treon, Crutchfield, and Kitzmiller 1943b/Ex. 1–394).

In humans, headaches and eye and respiratory irritation have been reported after prolonged exposures to high (not further specified) concentrations of methylcyclohexanol (Fillipi 1914, as cited in ACGIH 1986/Ex. 1–3, p. 385). Several workers exposed to a solvent that contained methylcyclohexanol at unspecified concentrations had a significantly reduced number of leukocytes and one worker had slight lymphocytosis (Clayton and Clayton 1982, p. 4652).

Based on this evidence of methylcyclohexanol's toxicity in humans and animals, OSHA is proposing an 8-hour TWA limit of 50 ppm for this substance in construction, maritime, and agriculture. OSHA preliminarily concludes that this limit will protect workers in these sectors against the significant risks of hepatic and renal damage and narcosis that are associated with exposures to this substance at concentrations above the proposed PEL. The Agency believes that the proposed limit will substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

NITROETHANE

CAS: 79–24–3; Chemical Formula: $CH_3CH_2NO_2$

H.S. No. 2118

The OSHA PEL for nitroethane in general industry, construction, and maritime is 100 ppm as an 8-hour TWA. There is no limit in agriculture for nitroethane. The ACGIH has a TLV®–TWA of 100 ppm for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. The Agency is proposing an 8-hour TWA limit of 100 ppm for nitroethane in agriculture. Promulgation of this limit will make the PEL for nitroethane consistent across all OSHA-regulated sectors.

Nitroethane is a colorless, oily liquid with a faint chloroform-like, fruity odor (ACGIH 1986, p. 434; HSDB 1985). Nitroethane is used as a solvent, a fuel additive, an intermediate in chemical synthesis, and in propellant research (Hawley's 1987, p. 828; ACGIH 1986, p. 434).

Nitroethane is an irritant of the eyes and mucous membranes in both animals and humans; in animals, it is a hepatotoxin and, at high concentrations, a narcotic. The oral LD_{50} in rats is 1100 mg/kg, and the LC_{50} in mice is 19,500 mg/m³ for 2 hours (RTECS 1987). Death occurred in rabbits exposed to 5000 ppm nitroethane for a period of 3 hours. Rabbits exposed to half of that concentration (2500 ppm) for the same duration survived. Exposure to nitroethane concentrations above 5000 ppm caused irritation of the eyes and mucous membranes, labored breathing, pulmonary rales, and, in some rabbits, pulmonary edema. Some animals also exhibited brief convulsions. Mild to severe liver damage and some kidney damage was observed at autopsy in animals exposed to lethal concentrations of nitroethane (Machle, Scott, and Treon 1940; AIHA 1978). Exposure of monkeys and various laboratory animal species to a 500-ppm concentration of nitroethane caused no observable effects (Mackle, Scott, and Treon 1940).

Toxicity data on humans exposed to nitroethane are limited. Nitroethane is reported to cause irritation of the eyes and mucous membranes (Merck 1983, p. 857). There are no reports of chronic effects in humans but, based on effects seen in animals, exposure to high concentrations may cause liver damage. Prolonged skin contact with nitroethane causes irritation and dermatitis (Proctor, Hughes, and Fischman 1988, p. 372).

Based on this evidence, OSHA is proposing a 100 ppm 8-hour TWA limit to protect workers in agriculture from the significant risks of irritation and liver damage caused by exposure to higher concentrations of nitroethane. The Agency preliminarily concludes that this limit is necessary to substantially reduce a significant risk of material health impairment in exposed workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

NITROGEN TRIFLUORIDE

CAS: 7783–54–2; Chemical Formula: NF_3

H.S. No. 2119

In general industry, construction, and maritime, OSHA's permissible exposure limit for nitrogen trifluoride is 10 ppm as an 8-hour TWA. There is no limit for this substance in agriculture. The ACGIH has an 8-hour TLV®–TWA of 10 ppm for nitrogen trifluoride; NIOSH has no REL but concurs with the limit being proposed (Ex. 8–47, Table N3A). OSHA proposes to establish an 8-hour TWA limit of 10 ppm for this substance in agriculture. Promulgation of this limit will make the PEL for nitrogen trifluoride consistent across all OSHA-regulated sectors.

Nitrogen trifluoride is a colorless gas with a moldy odor. This substance is used as an oxidizer for high energy fuels, in the preparation of tetrafluorohydrazine, and in the fluorination of fluorocarbon olefins

(ACGIH 1986, p. 437; Braker and Mossman 1980, p. 538).

Acute exposure to nitrogen trifluoride causes methemoglobinemia, and chronic exposure causes kidney and liver injury. The 1-hour LC_{50}s in rats and monkeys are 6700 ppm and 7500 ppm, respectively (RTECS 1987). Rats exposed to a 10,000-ppm concentration of nitrogen trifluoride for 60 to 70 minutes died; methemoglobin levels had reached 60 to 70 percent (Dost, Reed, and Wang 1970). Acutely poisoned animals showed the following signs and symptoms: severe respiratory distress, cyanosis, incoordination, collapse, and convulsions (Torkelson et al. 1962). Dogs exposed to a 9600-ppm concentration of nitrogen trifluoride for 60 minutes showed Heinz body anemia; reduced hematocrit, hemoglobin, and red blood cell counts; and signs of anoxia (Vernot, Haun, MacEwen, and Egan 1973). Rabbits given nine intraperitoneal injections of nitrogen trifluoride showed grossly enlarged spleens, liver damage, and myocardial degeneration at autopsy (ACGIH 1986, p. 437). Autopsy showed mild to moderate liver and kidney changes in rats exposed to a 100-ppm concentration of nitrogen trifluoride for 7 hours/day for 4.5 months; no hematologic changes were seen in these subchronically exposed animals (Torkelson et al. 1962).

There are no reported cases of industrial poisoning with nitrogen trifluoride.

Based on this evidence, OSHA preliminarily concludes that nitrogen trifluoride causes methemoglobinemia and may cause liver and kidney injury in exposed workers. The Agency believes that the proposed limit is necessary to reduce the significant risk posed to agriculture workers exposed to this substance. OSHA believes that establishing an 8-hour TWA limit of 10 ppm is necessary to substantially reduce the risk that agricultural workers will experience these material health impairments. Promulgation of the proposed limit will make the PEL for nitrogen trifluoride consistent across all OSHA-regulated sectors.

OCTACHLORONAPHTHALENE
CAS: 2234–13–1; Chemical Formula: $C_{10}Cl_8$
H.S. No. 1295

In construction and maritime, OSHA currently has an 8-hour TWA limit of 0.1 mg/m³, with a skin notation, for octachloronaphthalene. There is no PEL in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that these limits are appropriate. The 1987–1988 ACGIH TLV®s for octachloronaphthalene are 0.1 mg/m³ and 0.3 mg/m³ as 8-hour TWA and 15-minute STEL limits, respectively. In construction and maritime, the Agency is retaining the 8-hour TWA limit and the skin notation and is proposing to add a STEL of 0.3 mg/m³ for this substance. OSHA is also proposing to extend both limits to agriculture. Promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

Octachloronaphthalene is a nonflammable, pale yellow, waxy solid that contains 70 percent chlorine. The chlorinated naphthalenes are highly toxic to the liver by several routes of administration: ingestion, inhalation, and percutaneous absorption (Clayton and Clayton 1982, p. 3670). The liver damage caused by these substances is termed acute yellow atrophy, and there is general agreement that the toxicity of the naphthalenes increases with the compound's degree of chlorination (Sikes, Wise, and Bridges 1952, Ex. 1–804; Clayton and Clayton 1982, p. 3671). In animals, exposure to the chloronaphthalenes causes acne-like lesions that itch severely (Patty 1963g/Ex. 1–845), and human volunteers exposed dermally to the penta- and hexachloronaphthalenes also showed this response (Proctor, Hughes, and Fischman 1988, p. 384). However, human volunteers exposed dermally to octachloronaphthalene failed to develop acne (Proctor, Hughes, and Fischman 1988, p. 384). Several deaths and many nonfatal cases of liver disease have been reported in workers occupationally exposed to the heated vapors of chlorinated naphthalene (specific chloronaphthalene compound not identified) (AIHA 1966).

Based on this evidence, OSHA is retaining the 8-hour TWA PEL of 0.1 mg/m³ and the skin notation and is proposing to add a STEL of 0.3 mg/m³ for octachloronaphthalene in construction and maritime; the Agency is also proposing to extend both limits to agriculture. The Agency preliminarily concludes that the TWA and STEL limits are necessary to protect workers in construction, maritime, and agriculture against the significant risks of serious liver damage associated with exposure to this substance. OSHA considers liver damage a material health impairment. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PENTACHLORONAPHTHALENE
CAS: 1321–64–8; Chemical Formula: $C_{10}H_3Cl_5$
H.S. No. 2123

OSHA's permissible exposure limit for pentachloronaphthalene in general industry, construction, and maritime is 0.5 mg/m³ as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has a TLV®-TWA limit of 0.5 mg/m³ for pentachloronaphthalene. NIOSH has no REL but concurs with the limit being proposed (Ex. 8–47, Table N3A). OSHA is proposing to establish a TWA PEL of 0.5 mg/m³, with a skin notation, for pentachloronaphthalene in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Pentachloronaphthalene is a pale yellow solid with an aromatic odor similar to that of mothballs. Pentachloronaphthalene is used in synthetic waxes and electrical insulating materials, as a lubricant, and as a coating for wood, paper, and textiles (Hazardous Substance Fact Sheet 1986, p. 1; HSDB 1984). The chloronaphthalenes are used in commercial products as mixtures of naphthalenes of varying degrees of chlorination; the penta-, hexa-, hepta-, and octachloronaphthalenes are considered more toxic than the mono- or trichloronaphthalenes.

Pentachloronaphthalene causes chloracne and liver damage in humans and animals. When this substance was applied to rabbit skin, the skin underwent epithelial hyperplasia, inflammatory and degenerative changes, and, finally, regenerative processes (Adams et al. 1941, in Clayton and Clayton 1981, p. 3671). Rats fed a mixture of penta- and hexachloronaphthalene at a rate of 3 g/day for 1 month showed weight loss, severe liver injury, and were sick; nine out of 10 of the animals died (Drinker et al. 1937, in Clayton and Clayton 1981, p. 3670). Exposure to the vapors of a penta- and hexachloronaphthalene mixture at an average concentration of 1.16 mg/m³ caused liver injury in rats; at 8.88 mg/m³, there was poor growth, severe liver injury, and death (Irish 1963).

In humans, exposure to chlorinated naphthalenes containing pentachloronaphthalene as the major constituent has caused numerous cases of chloracne and many cases of liver damage; several of these cases have been fatal (ACGIH 1986, p. 460). Nine reports of toxic hepatitis as a result of exposure to chlorinated naphthalenes were reported by von Oettingen (von Oettingen 1955). Pentachlorinated naphthalenes were also reported to be

the cause of seven cases of toxic hepatitis, two of them fatal (Cotter 1944, in ACGIH 1986, p. 460). Workers handling chlorinated naphthalenes have developed chloracne; both long-term contact with the material or short-term contact with its hot vapors can cause chloracne (Irish 1963). Chloracne is characterized by papules, large comedones and pustules, mainly on the face, neck, arms, and legs. Symptoms, including headache, vertigo, anorexia, and systemic effects, often accompany the chloracne-related skin lesions (Kleinfeld et al. 1972; Greenberg et al. 1939).

Based on this evidence in humans and animals, OSHA preliminarily concludes that pentachloronaphthalene causes skin and liver damage in exposed individuals. In the absence of a limit for this substance, OSHA believes that workers in agriculture are at significant risk of experiencing these adverse effects. OSHA believes that establishing a PEL of 0.5 mg/m³ as an 8-hour TWA, and a skin notation, for pentachloronaphthalene is necessary to substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PROPYLENE DICHLORIDE

CAS: 78–87–5; Chemical Formula: $CH_3CHClCH_2Cl$

H.S. No. 1341

OSHA's limit for propylene dichloride in construction and maritime is 75 ppm as an 8-hour TWA. The 1987–1988 ACGIH TLV®s for propylene dichloride are 75 ppm (8-hour TWA) and 110 ppm (15-minute STEL). NIOSH has no REL for this substance. In construction and maritime, OSHA is retaining an 8-hour TWA of 75 ppm and proposing to add a STEL of 110 ppm. The Agency is also proposing to extend both limits to agriculture. These are the limits recently established for this substance in general industry.

Propylene dichloride is a colorless, flammable, mobile liquid with an odor like that of chloroform. Propylene dichloride (also called 1,2-dichloropropane) is an ingredient of soil fumigants, and a solvent for oils, fats, drycleaning, and metal degreasing (EPA 1987). It is also a chemical intermediate, a scavenging agent for gasoline, and an insecticide for fruits, grains, and livestock (ACGIH 1986, p. 501). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The primary hazards associated with exposure to propylene dichloride are inhalation-induced toxicity to liver tissue, central nervous system depression, and skin and eye irritation. The oral LD_{50} in rats is 1947 mg/kg, and the LC_{50} in the same species is 14 g/m³ for 8 hours (RTECS 1990). The dermal LD_{50} in rabbits is 8750 mg/kg (RTECS 1990). Repeated inhalation exposures to 1000 ppm have been reported to kill dogs (after 24 exposures), guinea pigs (after 22 exposures), and rats (in some cases after only seven exposures); however, some animals survived more than 100 seven-hour exposures. Necropsy showed severe liver damage; the hepatotoxicity of propylene dichloride appears to be greater than that of carbon tetrachloride and less than that of ethylene dichloride (Heppel, Neal, Highman, and Porterfield 1946/Ex. 1–510). Animals of these same species (rats, dogs, and guinea pigs) survived 128 to 140 7-hour exposures to 400 ppm propylene dichloride for 5 days/week without histologic effects, while mice died from similar exposures; surviving mice displayed hepatomas (Heppel, Highman, and Peake 1948/Ex. 1–605). The National Toxicology Program recently completed a carcinogenicity bioassay in mice and rats (NTP 1986c). In male and female mice, a statistically significant and dose-related increase in hepatocellular tumors was seen (IARC 1986, p. 140). The results were inconclusive in female rats and negative in male rats (IARC 1986, p. 140). Based on this evidence, the International Agency for Research on Cancer concluded that there was limited evidence that propylene dichloride is carcinogenic in animals (IARC 1986, p. 140).

Workers inhaling high levels (not further specified) of propylene dichloride showed signs of severe liver damage, hemolytic anemia, and developed acute kidney failure; in these three cases, the onset of symptoms was delayed for more than 24 hours (Proctor, Hughes, and Fischman 1988, p. 424). Short-term exposures to 400- or 500-ppm concentrations caused no apparent effects in workers (Proctor, Hughes, and Fischman 1988, p. 424). In repeated or prolonged contact with the skin, propylene dichloride causes defatting and may lead to dermatitis (Proctor, Hughes, and Fischman 1988, p. 424). Propylene dichloride accidentally sprayed into the eye of a worker caused transient corneal damage (Grant 1986, p. 328).

Because of propylene dichloride's toxicity in humans and animals, OSHA is retaining the 8-hour TWA PEL of 75 ppm, proposing to add a 15-minute STEL of 110 ppm in construction and maritime, and proposing to extend both limits to agriculture. The Agency preliminarily concludes that this combined limit will protect workers in construction, maritime, and agriculture against the significant risks of sensory irritation, hepatotoxic effects, central nervous system depression, and cancer potentially associated with exposures to this substance. OSHA believes that the TWA and STEL will reduce this risk substantially. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

1,1,2,2-TETRACHLOROETHANE

CAS: 79–34–5; Chemical Formula: $CHCl_2CHCl_2$

H.S. No. 1385

In construction and maritime, OSHA's PEL for 1,1,2,2-tetrachloroethane is 5 ppm as an 8-hour TWA, with a skin notation. The 1987–1988 ACGIH TLV® for this substance is 1 ppm as an 8-hour TWA, with a skin notation. NIOSH considers 1,1,2,2-tetrachloroethane a potential human carcinogen but concurs (Ex. 8–47, Table N6A) with the limit being proposed. OSHA is proposing a PEL of 1 ppm as an 8-hour TWA limit, with a skin notation, for tetrachloroethane in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

1,1,2,2-Tetrachloroethane (also called acetylene tetrachloride) is a colorless, nonflammable, heavy, mobile liquid with a sweet, chloroform-like odor. This substance is used as a chemical intermediate, a solvent, and an insecticide (IARC 1979, p. 479). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

1,1,2,2-Tetrachloroethane is toxic both by inhalation and skin absorption (Proctor, Hughes, and Fischman 1988, p. 460). In addition to liver damage, exposure to this substance causes kidney damage and central nervous system depression (Clayton and Clayton 1981, p. 3514). The oral LD_{50} in rats is 800 mg/kg, and the lowest lethal concentration in the same species is 1000 ppm for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 6.4 g/kg (Clayton and Clayton 1981, p. 3514). Rats survived a 4-hour exposure to a 500-ppm concentration but died when the concentration was increased to 1000 ppm for the same interval (Clayton and Clayton 1981, p. 3514). Rabbits exposed to a 14.6-ppm concentration for 3 to 4

hours daily for 7 to 11 months showed mild liver damage (Clayton and Clayton 1981, p. 3515). In monkeys exposed to 1000 or 4000 ppm for 2 hours/day for 190 days, marked vacuolation of the liver was seen at autopsy (HSDB 1989). 1,1,2,2-Tetrachloroethane has been tested in carcinogenicity bioassays in mice and rats. In mice of both sexes, this substance caused a significant increase in the incidence of hepatocellular carcinomas; in rats, however, no significant increase was seen (IARC 1987, p. 354).

Workers acutely overexposed to 1,1,2,2-tetrachloroethane on the job have died after experiencing nausea, vomiting, abdominal pain, jaundice, tenderness in the area of the liver, delirium, convulsions, and coma (Proctor, Hughes, and Fischman 1988, p. 460). Two men exposed to 116 ppm for 20 minutes reported dizziness and vomited; when the concentration was increased to 146 ppm, they became dizzy after 10 minutes, experienced mucous membrane irritation after 12 minutes, and reported fatigue after 20 minutes (Proctor, Hughes, and Fischman 1988, p. 460). Occupational exposures to 1,1,2,2-tetrachloroethane at concentrations ranging from 20 to 65 ppm caused nausea, vomiting, abdominal pain, and tremor (Proctor, Hughes, and Fischman 1988, p. 460).

Based on this evidence, OSHA preliminarily concludes that the exposed workers in construction, maritime, and agriculture are at risk of experiencing the hepatotoxic effects of exposure to 1,1,2,2-tetrachloroethane. OSHA preliminarily finds that the proposed 1 ppm 8-hour TWA limit and skin notation are necessary to substantially reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TETRACHLORONAPHTHALENE

CAS: 1335–88–2; Chemical Formula: $C_{10}H_4Cl_4$

H.S. No.: 2155

OSHA's limit for tetrachloronaphthalene in general industry, construction, and maritime is an 8-hour TWA of 2 mg/m³, with a skin notation. There is no limit for this substance in agriculture. The ACGIH TLV®–TWA for tetrachloronaphthalene is 2 mg/m³; NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 2 mg/m³, and a skin notation, for tetrachloronaphthalene in agriculture; adoption of this limit would make the PEL for this substance consistent across all OSHA-regulated industries.

Tetrachloronaphthalene is a colorless to pale yellow solid with an aromatic odor (ACGIH 1986, p. 562). The chloronaphthalenes in commercial use are synthetic waxes and lubricants that are composed of varying mixtures of the tri-, tetra-, penta-, or hexa-chloronaphthalenes. Chloronaphthalenes are used as electrical insulators, condenser dielectrics, and separators in batteries. They also find use in flame- and waterproof coatings for wood, paper, and textiles and were formerly used in pesticides (HSDB 1989). In agriculture, chloronaphthalenes have been used as lubricants for feed pelleting and other farm machinery (Clayton and Clayton 1981, p. 3671).

Tetrachloronaphthalene causes liver damage in humans and animals. There are no acute toxicity data for tetrachloronaphthalene alone. Some animals in a group of rats fed 0.5 mg/kg/day of a mixture of tetra- and pentachloronaphthalene for 2 months became sick and others died; at autopsy, signs of liver injury were apparent (Drinker et al., in Clayton and Clayton 1981, p. 3670). Rats exposed for 16 hours/day by inhalation to a 1.3-mg/m³ concentration of tri- and tetrachloronaphthalene for up to 4.5 months showed no adverse effects other than possible liver enlargement; at a concentration of 19.97 mg/m³, however, liver damage was seen in these animals at autopsy (Drinker et al., in Clayton and Clayton 1981, p. 3670). Thousands of farm animals have been killed by hyperkeratosis, a disease caused by the ingestion of chloronaphthalene-containing lubricants that have contaminated pelleted feed (Gosselin, Smith, and Hodge 1984, p. II–172).

Workers exposed to chloronaphthalenes by inhalation of the vapor or dust have developed toxic hepatitis and necrosis of the liver; several deaths have been attributed to the industrial use of the chloronaphthalenes (Drinker et al. 1937; Greenburg, Mayers, and Smith 1937; Mayers and Smith 1942). Workers exposed for 4 months to an unknown concentration of tetra- and penta-chloronaphthalene developed headaches, fatigue, anorexia, and vertigo; the dermatitis and chloracne developed by these workers, however, appears to have been caused by penta-, rather than tetra-, chloronaphthalene (Kleinfeld, Messite, and Swencicki 1972). Tests involving human volunteers have shown that the tri- and tetrachloronaphthalenes do not cause chloracne when in contact with the skin (Shelley and Kligman 1957).

Based on this evidence in humans and animals, OSHA preliminarily concludes that tetrachloronaphthalene is a liver toxin that poses a potentially significant risk to workers in agriculture. Accordingly, OSHA is proposing to extend the Agency's 2-mg/m³ 8-hour TWA PEL and a skin notation to workplaces in this sector; this action will provide agricultural workers with the same protection afforded workers in other OSHA-regulated sectors.

TRICHLORONAPHTHALENE

CAS: 1321–65–9; Chemical Formula: $C_{10}H_5Cl_3$

H.S. No. 2163

OSHA's limit for trichloronaphthalene in general industry, construction, and maritime is 5 mg/m³ as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH TLV®–TWA for this substance is 5 mg/m³, with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³, and a skin notation, for trichloronaphthalene in agriculture; this action would make OSHA's limit for this substance consistent across all OSHA-regulated sectors.

Trichloronaphthalene is a colorless, white, or pale yellow solid with an aromatic odor (ACGIH 1986, p. 600). The chloronaphthalenes in commercial use are synthetic waxes and lubricants that are composed of varying mixtures of the tri- and tetra-, or penta- and hexa-, chloronaphthalenes. Chloronaphthalenes are used in insulation for electric wires, as additives for lubricants, as supports for storage batteries, and in coatings for foundry use. These substances are also used in solvents and as immersion liquids in microscopy (HSDB 1989).

Trichloronaphthalene is a liver toxin in humans and animals. There are no acute toxicity data for trichloronaphthalene alone. Some of a group of rats fed a mixture of tetra- and trichloronaphthalene at a dose of 0.5 mg/kg/day for 2 months died, while others became sick; at autopsy, all animals showed signs of liver damage (Drinker et al. 1957). Daily exposure of rats to the vapors of a mixture of tetra- and trichloronaphthalene at a concentration of 1.3 mg/m³ for as long as 4.5 months produced only slight enlargement of the liver; increasing the concentration to 10.97 mg/m³, however, resulted in liver damage visible at autopsy (Drinker et al. 1957). Thousands of farm animals died after ingesting chloronaphthalene-contaminated feed; the feed was contaminated by the

lubricants used to oil the feed-pelleting machinery (Gosselin, Smith, and Hodge 1984, p. II–172).

A worker exposed to a 3-mg/m³ concentration of trichloronaphthalene (mixed with tetrachloronaphthalene) developed toxic hepatitis but subsequently recovered (Mayers and Smith 1942, in ACGIH 1986, p. 600). No industrial fatalities have been attributed to trichloronaphthalene exposure (ACGIH 1986, p. 600). Although the specific threshold for trichloronaphthalene-induced eye irritation is not known, this substance is regarded as an eye irritant (Parmeggiani 1983, p. 466). Tests in human volunteers have shown trichloronaphthalene not to be acnegenic, although some of the chloronaphthalenes do cause chloracne (Shelley and Kligman 1957).

Based on this evidence in humans and animals, OSHA preliminarily concludes that trichloronaphthalene is a liver toxin that poses a potentially significant risk to workers in agriculture. Accordingly, OSHA is proposing to extend the Agency's 5 mg/m³ 8-hour TWA PEL, and a skin notation, to workplaces in this sector; this action will provide agricultural workers with the same protection provided to workers in other OSHA-regulated sectors.

1,2,3-TRICHLOROPROPANE
CAS: 96–18–4; Chemical Formula: $CH_2ClCHClCH_2Cl$
H.S. No. 1407

In construction and maritime, OSHA's PEL for 1,2,3-trichloropropane is 50 ppm as an 8-hour TWA. There is no PEL in agriculture. The 1987–1988 ACGIH TLV® is 10-ppm TWA, with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N6A) with the limit OSHA is proposing for construction, maritime, and agriculture, which is a 10-ppm 8-hour TWA. This is the limit recently established for this substance in general industry.

1,2,3-Trichloropropane is a colorless to straw-colored, combustible liquid with an odor similar to that of chloroform. This substance finds use as a degreasing agent, a paint and varnish remover, and a solvent. It is also used in chemical synthesis (HSDB 1988).

In addition to liver toxicity, 1,2,3-trichloropropane causes irritation of the eyes, skin, and mucous membranes and narcosis in experimental animals. The oral LD_{50} in rats is 320 mg/kg; in mice, the LC_{50} is 3400 mg/m³ for 2 hours (RTECS 1990). The dermal LD_{50} in rabbits is 1770 mg/kg (RTECS 1990). Acutely poisoned animals surviving for 1 week to 10 days after exposure died of liver damage (Proctor, Hughes, and Fischman 1988, p. 491). Instilled into the eyes of rabbits, 1,2,3-trichloropropane caused severe irritation (RTECS 1990; Proctor, Hughes, and Fischman 1988, p. 491). Applied to the skin of rabbits, the liquid caused defatting and irritation described by the investigators as "intense" (McOmie and Barnes 1949). Five of six rats exposed to a 1000-ppm concentration of 1,2,3-trichloropropane died after four-hour exposures. Rats and guinea pigs exposed at 800, 2100, or 5000 ppm for 30 minutes showed central nervous system depression, which progressed, at the higher exposure levels, to narcosis and convulsions (Lewis 1979). Daily 10-minute exposures at 2500 ppm for 10 days killed 7 of 10 mice (McOmie and Barnes 1949). Animals exposed once for four hours to 1,2,3-trichloropropane at concentrations of 125, 340, 700, or 2150 ppm showed dose-related signs of irritation, which included, at 700 or 2150 ppm, labored respiration, inactivity, and eye and nose irritation; at autopsy, however, no organ or other damage was apparent (McOmie and Barnes 1949).

Drew, Patel, and Lin (1978/Ex. 1–313) noted changes in rat liver enzymes after a single four-hour exposure to 500 ppm, and Russian studies indicate that morphologic changes and metabolic lesions of the liver, kidney, and lungs occurred in mice exposed continuously to 1,2,3-trichloropropane concentrations of 0.007 to 0.3 ppm (Sidorenko, Tsulaya, Bonashevskaya, and Shaipak 1979/Ex. 1–669; Sidorenko, Tsulaya, Koreneveskaya, and Bonashevskaya 1976/Ex. 1–668; Tsulaya, Bonashevskaya, Zykova et al. 1977/Ex. 1–450).

A National Toxicology Program (NTP) prechronic study, in which rats were gavaged daily with 1,2,3-trichloropropane at 8, 16, 32, 63, 125, or 250 mg/kg body weight for 120 days, showed good survival in all but the highest dose group (NTP 1983a). Statistically significant changes in the liver and kidneys, as well as necrosis and irritation of the nasal passages, occurred in the 63- and 125-mg/kg dose groups. Decreases in red blood cell counts and hematocrits were also seen, even in the 16-mg/kg dose group. 1,2,3-Trichloropropane did not affect testicular weight, sperm count, or morphology. The NTP found this substance to be genetically active in three bioassays. Hardin, Bond, Sikov et al. (1981/Ex. 1–699) did not find 1,2,3-trichloropropane to be fetotoxic or teratogenic.

Human volunteers found exposure to 1,2,3-trichloropropane objectionable because of eye and upper respiratory tract irritation, and many found 50 ppm an unacceptable level for a full-shift exposure (Silverman, Schulte, and First 1946/Ex. 1–142). At a 100-ppm concentration, all of the volunteers noted eye and nose irritation and reported that the odor was unpleasant (Silverman, Schulte, and First 1946/Ex. 1–142).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 10 ppm for 1,2,3-trichloropropane. The Agency preliminarily concludes that a 10-ppm 8-hour TWA limit is necessary to protect workers in construction, maritime, and agriculture against the significant risks of liver and kidney damage and eye and throat irritation that are potentially associated with exposures to this substance at levels above the proposed PEL. OSHA is aware that a lower PEL may be appropriate for trichloropropane. However, as discussed above, the primary purpose of the current rulemaking is to extend the protection afforded to workers in some sectors to those in all sectors. In a future PEL update rulemaking, OSHA will carefully consider the need for a lower PEL for this substance.

Introduction

Kidney damage is the basis for proposing to establish or revise the PELs for six of the substances in this group. These chemicals, their CAS and HS numbers, and their current PELs in construction and maritime are shown in Table C4–2. Their 1987–1988 ACGIH TLV®s and NIOSH RELs are also shown. The PELs OSHA is proposing for these kidney toxins in construction, maritime, and agriculture appear in the last column of Table C4–2. Promulgation of the proposed PELs will make their limits consistent across general industry.

TABLE C4-2.—LIST OF SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED PRIMARILY ON AVOIDANCE OF KIDNEY TOXICITY

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime *	1987-1988 ACGIH TLV® **	NIOSH REL*	Proposed OSHA PEL in construction, maritime, and agriculture *
1129 1,3-Dichloropropene	542-75-6		1 ppm TWA, Skin		1 ppm TWA, Skin.
1132 Dicyclopentadiene	77-73-6		5 ppm TWA		5 ppm TWA.
1166 Ethyl silicate	78-10-4	100 ppm TWA	10 ppm TWA		10 ppm TWA.
1195 Hexachlorobutadiene	87-68-3		0.02 ppm TWA, Skin A2		0.02 ppm TWA.
1203 Hexone (Methyl isobutyl ketone).	108-10-1	100 ppm TWA	50 ppm TWA, 75 ppm STEL	50 ppm TWA	50 ppm TWA, 75 ppm STEL.
1419 Uranium, soluble compounds.	7440-61-1	0.2 mg/m³ TWA	0.2 mg/m³ TWA, 0.6 mg/m³ STEL.		0.05 mg/m³ TWA.

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes only unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time; OSHA's PELs do not currently apply in Agriculture.

** The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time. An A2 designation means that the ACGIH classifies the substance as a suspected human carcinogen.

* NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

Description of the Health Effects

The precise mechanism by which these chemicals damage the kidneys is unknown. Typically, these substances are selectively toxic to cells in the renal tubules, perhaps because impaired transport causes the chemical to collect in these cells. In addition to its function in the excretion of wastes, the kidney plays an important role in the regulation of total body homeostasis. This organ regulates extracellular volume, controls electrolyte and acid-base balance, and forms several hormones that control systemic metabolism. Depending on their particular site of action, nephrotoxicants can interfere with hydration, the proper excretion of the body's wastes, electrolytic balance, metabolism, or the maintenance of correct acid-base balances. Like the hepatotoxic effects previously described, the least severe lesions caused by nephrotoxic compounds are graded and reversible. The earliest changes are usually alterations in the activities of specific enzymes in the tubular cells. These changes may be accompanied by minor morphological alterations of the cells that are visible only with an electron microscope. Higher doses or more sustained exposures are required to cause cellular necrosis that is visible with light microscopy. Because of the reserve capacity of the kidneys, a significant degree of tubular cell necrosis must occur before it is reflected by measurable alterations in kidney function. Thus, indicators of impaired renal function that can be measured in humans, such as proteinuria, glucosuria, and increased BUN, are relatively insensitive indicators of early kidney damage. Other indicators of significant kidney damage include increased kidney weight, swelling of the tubular epithelium, fatty degeneration of tubular epithelium, and the presence of tubular casts in the urine.

Dose-Response Characteristics

Kidney damage, like liver damage, is progressive; only at the earlier stages are nephrotoxic effects reversible. With continued exposure, the damage becomes more extensive, until it reaches the point at which it cannot be repaired. The toxicity of the kidney-damaging chemicals included in this group also increases as dose increases. For most nephrotoxins, there appears to be a no-observed-effect level. Workplace exposures to concentrations of these substances at levels at or below the proposed limits are unlikely to cause observable kidney effects in most workers. OSHA has preliminarily determined that the nephrotoxic risks being protected against are significant at the current PELs or in the absence of a PEL and believes that kidney damage constitutes a material health impairment within the meaning of the Act. The PELs being proposed are those already established in general industry or other sectors, and promulgation will thus make the PELs for these substances consistent across all regulated sectors.

1,3-DICHLOROPROPENE

CAS: 542-75-6; Chemical Formula: $CHCl{=}CH{-}CH_2Cl$

H.S. No. 1129

In construction, maritime, and agriculture, OSHA has no PEL for 1,3-dichloropropene. NIOSH has no REL but concurs (Ex. 8-47, Table N6A) with the proposed limit. The 1987-1988 ACGIH TLV® for this substance is 1 ppm as an 8-hour TWA, with a skin notation. The Agency is proposing an 8-hour TWA limit of 1 ppm, with a skin notation, for this dichloropropene in construction, maritime, and agriculture. Promulgation of this PEL will make the limit for this substance consistent across all regulated sectors.

This compound occurs in two forms: as the cis- and the trans-isomer. It is a colorless to straw-colored liquid that is used in organic synthesis, as a soil fumigant, and as a pesticide on a variety of crops (HSDB 1989). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In male and female rats, the acute oral LD_{50}s for a 92-percent mixture of the cis- and trans-isomers of 1,3-dichloropropene were 713 and 470 mg/kg, respectively; post-mortem examination showed liver and kidney damage and evidence of possible lung injury (Torkelson and Oyen 1977/Ex. 1-532). The dermal LD_{50} in rabbits for a 92-percent undiluted mixture was 504 mg/kg, but a 10-percent solution administered by gavage at a dose of 125 or 250 mg/kg was lethal to some of the animals (Torkelson and Oyen 1977/Ex. 1-532). Contact with the liquid was irritating to the eyes and skin of rabbits (Torkelson and Oyen 1977/Ex. 1-532).

Inhalation exposures to 1,3-dichloropropene vapor concentrations above 2700 ppm produced eye and nasal irritation and severe lung, nasal, kidney, and liver damage in rats (Torkelson and Oyen 1977/Ex. 1-532). Exposure to 1000 ppm caused eye and nasal irritation, lacrimation, and, if prolonged, unconsciousness; rats exposed to 1000 ppm for two hours died, but those exposed for one hour survived (Torkelson and Oyen 1977/Ex. 1-532). Guinea pigs exposed to 400 ppm for a single 7-hour period died, while rats exposed similarly survived but had obvious lung congestion (Torkelson and Oyen 1977/Ex. 1-532). Rats, rabbits, guinea pigs, and dogs were exposed 7

hours/day, 5 days/week for 6 months to 1-ppm or 3-ppm concentrations of 1,3-dichloropropene (Torkelson and Oyen 1977/Ex. 1–532). No adverse effects were observed in any of the animals exposed at 1 ppm. Of the animals exposed at 3 ppm, only male rats showed adverse effects; these animals had reversible cloudy swelling of the renal tubular epithelium (Torkelson and Oyen 1977/Ex. 1–532).

In humans, acute exposures to 1,3-dichloropropene cause skin, eye, and respiratory irritation (Torkelson and Oyen 1977/Ex. 1–532). There are no data on the effects in humans of chronic exposure to this substance.

OSHA is proposing an 8-hour TWA limit of 1 ppm, with a skin notation, for 1,3-dichloropropene in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in construction, agriculture, and maritime against the significant risks of eye and mucous membrane irritation and lung, kidney, and liver damage that are associated with exposure to this substance. A skin notation is proposed to protect against 1,3-dichloropropene's ability to cause systemic toxicity when absorbed through the skin. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DICYCLOPENTADIENE

CAS: 77–73–6; Chemical Formula: $C_{10}H_{12}$
H.S. No. 1132

OSHA has no limit for dicyclopentadiene (DCPD) in construction, maritime, or agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limit. The 1987–1988 ACGIH TLV® for dicyclopentadiene is 5-ppm as an 8-hour TWA. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA PEL of 5 ppm. This is the limit recently established for this substance in general industry.

At room temperature, DCPD is a solid that has a disagreeable odor. This substance is used in the production of chlorinated hydrocarbon pesticides, to stabilize organophosphorus pesticides, and to produce elastomers, paints, varnishes, and flame retardants (Clayton and Clayton 1981, p. 3242; ACGIH 1986, p. 194). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The health effects associated with exposure to DCPD include severe eye and moderate skin irritation (RTECS 1990), as well as renal damage and possible pulmonary damage. By the oral and intraperitoneal routes, DCPD is extremely toxic, with an oral LD_{50} value of 353 mg/kg and an intraperitoneal LD_{50} value of 200 mg/kg in rats (RTECS 1990); fatalities occurred among rats within 60 minutes of exposure to the saturated vapor (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606). The LC_{50} in rats is 359 ppm for 4 hours, and the dermal LD_{50} in rabbits is 5080 mg/kg (RTECS 1990). Kinkead and associates (1971/Ex. 1–606) report that rats exposed repeatedly for 10 days survived concentrations of 72 or 146 ppm but had convulsions and succumbed at the 332-ppm level; autopsy revealed lung hemorrhage and blood in the intestines; in the females, hemorrhage of the thymus also occurred (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606). Chronic exposures of 7 hours/day for 89 days produced kidney damage and some pulmonary effects in rats exposed to concentrations of 35 or 74 ppm; the no-effect level for these endpoints in rats was determined to be below 19.7 ppm. Dogs exposed to dicyclopentadiene concentrations of 9, 23, or 32 ppm on the same regimen exhibited only minimal effects (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606).

Human sensory response tests resulted in findings of mild eye and throat irritation within 7 minutes' exposure to DCPD vapor at a concentration of 1 ppm and of olfactory fatigue within 24 minutes; a 30-minute exposure to a 5.5-ppm concentration produced no olfactory fatigue (ACGIH 1986/Ex. 1–3, p. 194). Subjective complaints of headache during the first two months of occupational exposure disappeared during the following 3 months of exposure, suggesting that humans develop a tolerance for this substance (ACGIH 1986/Ex. 1–3, p. 194).

Based on this evidence in animals and humans, OSHA is proposing an 8-hour TWA PEL of 5 ppm for dicyclopentadiene. The Agency preliminarily concludes that this limit will protect workers in construction, maritime, and agriculture against the significant risks of kidney injury, pulmonary effects, and irritation that are associated with occupational exposure to DCPD at the levels permitted in the absence of an OSHA limit in these sectors. OSHA believes that the proposed PEL is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYL SILICATE

CAS: 78–10–4; Chemical Formula: $Si(OC_2H_5)_4$
H.S. No. 1166

OSHA's permissible exposure limit for ethyl silicate in construction and maritime is 100 ppm as an 8-hour TWA. There is no PEL in agriculture. NIOSH has no REL for ethyl silicate but concurs (Ex. 8–47, Table N1) with the selection of the proposed limit. The 1987–1988 ACGIH TLV® for this substance was an 8-hour TWA of 10 ppm. OSHA is proposing a 10 ppm 8-hour TWA PEL for ethyl silicate in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Ethyl silicate is a colorless liquid with a faint odor. It is used as an adherent in controlled-release pesticides, as a weatherproofing agent on mortar and cement and in paints and other coatings. It is also used as a chemical intermediate (ACGIH 1986, p. 264; HSDB 1986). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In addition to kidney damage, ethyl silicate causes both irritation and systemic toxicity. The oral LD_{50} in rats is 6270 mg/kg, and the lowest lethal concentration in rats is 1000 ppm for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 5878 mg/kg (RTECS 1990). In guinea pigs and rats, a 60-minute exposure of 2000 ppm was reported as the maximal duration/concentration that did not cause serious disturbances; 500 ppm was the maximal no-effect exposure level for an exposure of several hours' duration (Smyth and Seaton 1940b/Ex. 1–376). Thirty-day exposures to 400 ppm ethyl silicate for 7 hours/day caused significant mortality in rats and damage to the lungs, liver, and kidney in the surviving animals. Exposures of rats, guinea pigs, and mice to 88, 50, or 23 ppm for 90 days (7 hours/day, 5 days/week) resulted only in decreased kidney weights in mice exposed at the 88-ppm level (Pozzani and Carpenter 1951/Ex. 1–166). In another study, Kasper, McCord, and Fredrick (1937/Ex. 1–1155) showed that animals exposed to 164 ppm ethyl silicate for 17 8-hour days showed less weight gain than did controls. Rowe and associates (1948/Ex. 1–359) reported that three 7-hour exposures to a 1000-ppm concentration were fatal to 4 of 10 rats; similar exposures to 500 ppm caused pronounced kidney changes and slight lung irritation. Four to 10 similar exposures at 250 ppm caused slow weight loss and some lung and renal changes; at 125 ppm, slight to moderate kidney damage was observed (Rowe, Spencer, and Bass 1948/Ex. 1–359).

Smyth and Seaton (1940b/Ex. 1–376) reported that exposure to a concentration of 1200 ppm causes lacrimation in humans and that 250 ppm causes eye and nose irritation. Very brief exposures to high concentrations of ethyl silicate cause severe irritation in humans. At a 3000-ppm concentration, the irritation caused even by brief exposures is reported to be intolerable. At a 1200-ppm concentration, exposure causes a stinging sensation and tearing; at 700 ppm, mild stinging of the eyes occurred. Even at a concentration of 250 ppm, slight irritation of the eyes was reported (Proctor, Hughes, and Fischman 1988, p. 256).

In construction, maritime, and agriculture, OSHA is proposing a PEL for ethyl silicate of 10 ppm as an 8-hour TWA. The Agency preliminarily concludes that this limit is necessary to protect workers in construction, maritime, and agriculture from the significant risk of renal damage that is associated with exposures to this substance at concentrations above the proposed PEL. OSHA considers these effects material impairments of health and believes that the proposed PEL will reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HEXACHLOROBUTADIENE

CAS: 87–68–3; Chemical Formula: $CCl_2=CCl—CCl=CCl_2$

H.S. No. 1195

In construction, maritime, and agriculture, OSHA has no exposure limit for hexachlorobutadiene (HCBD). NIOSH has no REL for hexachlorobutadiene but concurs (Ex. 8–47, Table N6A) with the limit being proposed. The ACGIH has a TLV®–TWA of 0.02 ppm, and a skin notation, for this substance, which it also classifies as a suspected human carcinogen (A2). OSHA is proposing an 8-hour TWA PEL of 0.02 ppm for HCBD in construction, maritime, and agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

Hexachlorobutadiene is a heavy, clear liquid. This substance is used as a chemical intermediate in the production of lubricants and of rubber compounds. It also finds use in the recovery of chlorine-containing gas in chlorine plants and as a gyroscope fluid (IARC 1979, p. 180).

In addition to kidney injury, exposure to hexachlorobutadiene causes respiratory and other irritation, as well as cancer. The LD_{50}s reported for mice, rats, and guinea pigs are 110, 90, and 90 mg/kg, respectively (RTECS 1990), and the dermal LD_{50} in rabbits is 1211 mg/kg (RTECS 1990). Rats survived exposures to a 161-ppm concentration for 0.88 hour or to 34 ppm for 3.3 hours; most guinea pigs and cats similarly exposed died (Kociba, Schwetz, Keyes et al. 1977/Ex. 1–494). Another inhalation study in rats showed eye and nose irritation, respiratory difficulty, and damage to kidney tissue and the adrenal cortex after two 4-hour exposures at 250 ppm; twelve 6-hour exposures to 100 ppm caused eye and nose irritation, respiratory difficulty, weight loss, anemia in the female animals, and kidney and adrenal damage; fifteen 6-hour exposures to 25 ppm caused retarded weight gain in females, respiratory difficulty, and kidney damage; fifteen 6-hour exposures to a 10-ppm concentration caused retarded weight gain in females but no systemic injury; and fifteen 6-hour exposures at 5 ppm resulted in no adverse effects (Gage 1970/Ex. 1–318).

Reproductive studies in male and female rats demonstrated multiple toxicological effects, including kidney damage in both sexes and increased liver weight in males, at the high-dose level of 20 mg/kg/day. Dietary administration of 20, 2, or 0.2 mg/kg daily had no effect on conception percentages, gestational survival, neonatal survival, neonatal sex ratios, neonatal morphology, or neonatal body weights (except for the high-dose neonates) (Schwetz, Smith, Humiston et al. 1977/Ex. 1–368). Results of lifetime dietary studies suggest that the no-effect level for hexachlorobutadiene in rats is 0.2 mg/kg/day, that a clear dose-response relationship exists for HCBD-induced toxicity affecting primarily the kidney, and that carcinogenic effects (i.e., renal neoplasms) result from ingestion of 20 mg/kg/day (Kociba, Schwetz, Keyes et al. 1977/Ex. 1–494). These authors also reported that HCBD-induced neoplasms occurred in these animals only at HCBD doses higher than those causing discernible renal injury. The International Agency for Research on Cancer (IARC) has concluded that there is limited evidence that hexachlorobutadiene is carcinogenic in animals (IARC 1979, p. 189). NIOSH also (Ex. 8–47, Table N6A) considers hexachlorobutadiene a potential human carcinogen.

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 0.02 ppm for hexachlorobutadiene in construction, maritime, and agriculture. Assuming a 10-m^3 per day breathing volume per 8-hour workshift and a 70-kg body weight for humans, the proposed limit would correspond to a daily hexachlorobutadiene intake of approximately 0.03 mg/kg, which is about 10 times below the observed no-effect level in rats fed hexachlorobutadiene. The Agency preliminarily concludes that this 0.02-ppm limit will protect workers in construction, maritime, and agriculture from the significant risks of kidney damage; eye, skin, and pulmonary irritation; and renal neoplasms that are potentially associated with exposure to HCBD at levels above the proposed limit. OSHA considers these effects material impairments of health and believes that the proposed PEL is necessary to substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HEXONE (METHYL ISOBUTYL KETONE)

CAS: 108–10–1; Chemical Formula: $CH_3COCH_2CH(CH_3)_2$

H.S. No. 1203

In construction and maritime, OSHA's 8-hour TWA limit for hexone (methyl isobutyl ketone, or MIBK) is 100 ppm. The ACGIH has established a TLV®–TWA of 50 ppm and a TLV®–STEL of 75 ppm for this substance. NIOSH has a TWA REL of 50 ppm for MIBK but concurs (Ex. 8–47, Table N1) that the limits OSHA is proposing are appropriate. OSHA is proposing a 50-ppm 8-hour TWA limit and a 75-ppm STEL for hexone in construction, maritime, and agriculture. These are the limits recently established for this substance in general industry.

Hexone is a clear liquid with a characteristic ketone odor. This substance is used as a nitrocellulose and cellulose ether solvent and a solvent for paints, varnishes, protective coatings, fats, waxes, oils, gums, and resins (ACGIH 1986, p. 402; HSDB 1986). It also finds use in drycleaning preparations and in the synthesis of methyl isobutyl carbinol (HSDB 1986).

In addition to renal toxicity, hexone causes irritation of the eyes, mucous membranes, and skin and, at high concentrations, is a narcotic in animals (Proctor, Hughes, and Fischman 1988, p. 337). The oral LD_{50} in rats is 2080 mg/kg, and the LC_{50} in the same species is 8000 ppm for 4 hours (RTECS 1990). A 4-hour exposure to 4000 ppm MIBK killed all exposed rats, but a similar exposure to 2000 ppm was not fatal to these animals (Smyth, Carpenter, and Weil 1951/Ex. 1–439). Guinea pigs exposed to a MIBK concentration of 10,000 ppm immediately showed signs of irritation (Specht, Miller, Valaer, and Sayers 1940/Ex. 1–1179).

MacEwen, Vernot, and Haun (1971/Ex. 1–194) exposed rats, mice, dogs, and monkeys to 100 or 200 ppm MIBK for two weeks and noted no signs of intoxication; however, rats exposed to 100 ppm had heavier kidneys and higher kidney-to-body-weight ratios at autopsy, and, at 200 ppm, the livers of exposed animals were heavier as well. Postmortem examination revealed nephrosis of the proximal tubules. The same authors (MacEwen, Vernot, and Haun 1971/Ex. 1–194), exposed rhesus monkeys, dogs, and rats continuously for 90 days to MIBK concentrations of 100 ppm. These authors observed no significant changes in clinical chemistry or blood test results, although the rats had heavier kidneys and livers, reversible hyaline droplet degeneration of the proximal tubules of the kidneys, and some necrosis of the tubules at autopsy.

Silverman, Schulte, and First (1946/Ex. 1–142) determined that the maximum dose of MIBK tolerable to human volunteers for eight hours was 100 ppm; at 200 ppm, these subjects found the odor of MIBK objectionable and the vapor irritating. Linari and co-workers (1964/Ex. 1–1159) reported that more than half of all workers exposed to 500 ppm of MIBK for 20 to 30 minutes daily, and perhaps to 80 ppm for the remainder of the shift, experienced weakness, loss of appetite, headache, burning eyes, nausea, vomiting, and sore throat; several of these workers also reported insomnia, somnolence, heartburn, and intestinal pain. Some workers had enlarged livers and others had colitis. Clinical test results on these workers were normal (Linari, Perrelli, and Varese 1964/Ex. 1–1159).

In a follow-up study on this same group of centrifuge operation workers, Armeli and co-workers (1968/Ex. 1–1028) determined that reduction of MIBK levels (during the 15 to 30 minutes of centrifuge operation) to 100 to 105 ppm, and (for the remainder of the shift) to 50 ppm had also significantly reduced the symptomatology reported earlier by these workers. However, liver enlargement persisted in two workers, and a few workers continued to report gastrointestinal and nervous system effects (Armeli, Linari, and Martorano 1968/Ex. 1–1028).

Elkins (1959f/Ex. 1–734) noted that exposure to 100 ppm during boot-waterproofing operations caused workers to develop headache and nausea; another similarly exposed group experienced only irritation at 100 ppm. Human volunteers developed headaches, eye irritation, sore throat, and nausea and experienced weakness when they were exposed for an unspecified time to a hexone concentration of 80 to 500 ppm (Proctor, Hughes, and Fischman 1988, p. 337). Hexone causes defatting of the skin on repeated or prolonged contact (AIHA 1966).

OSHA is proposing an 8-hour TWA limit of 50 ppm and a 15-minute STEL of 75 ppm for hexone in construction, maritime, and agriculture. The Agency preliminarily concludes that these limits will protect workers in construction, maritime, and agriculture from the significant risks of headache, nausea, and irritation, as well as the potential kidney and liver effects that are associated with exposures to hexone. OSHA considers these effects material impairments of health and believes that the proposed PELs are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

URANIUM (SOLUBLE COMPOUNDS)
CAS: Varies; Chemical Formula: Varies

In construction and maritime, OSHA's PEL for the soluble compounds of uranium is an 8-hour TWA of 0.2 mg/m^3, measured as uranium. There is no PEL in agriculture. The ACGIH TLV$^®$s for the soluble uranium compounds are 0.2 mg/m^3 as an 8-hour TWA and 0.6 mg/m^3 as a 15-minute STEL. NIOSH has no REL but concurred (Ex. 8–47, Table N1) with the proposed limit when it was established recently in general industry. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA of 0.05 mg/m^3.

The soluble compounds of uranium most common in industrial use are uranium hexafluoride, uranyl acetate, uranyl chloride, uranyl fluoride, uranyl nitrate, and uranyl sulfate. The physical and chemical properties and uses of these compounds vary with the particular substance.

Exposure of animals to the soluble compounds of uranium may cause both chemical poisoning and radiation injury (Clayton and Clayton 1981, p. 1996). The soluble uranium compounds are chemically more toxic than the insoluble compounds, but both the soluble and insoluble compounds have the same potential to cause radiation injury (Clayton and Clayton 1981, p. 2000; Klaassen, Amdur, and Doull 1986, p. 695). The most significant damage occurs to the kidneys and lungs, but the eyes and central nervous system also may be adversely affected. Data suggest that exposure to uranium also causes carcinogenic and mutagenic effects. The intraperitoneal LD_{50} for uranyl nitrate is 400 mg/kg in mice (Sax and Lewis 1989, p. 3446). Exposure to the dusts and mists of the soluble uranium compounds is fatal to almost all animals exposed by inhalation to 20 mg/m^3 daily for 1 month; death is caused by acute renal failure and pulmonary insufficiency. Exposure levels of 0.2 mg/m^3 are occasionally fatal, while levels of 0.05 mg/m^3 produce no detectable effects (Clayton and Clayton 1981, p. 2001; Proctor, Hughes, and Fischman 1988, p. 501). Rats, monkeys, and dogs exposed to an airborne concentration of 5 mg/m^3 soluble uranium compounds for 6 hours/day, 5 days/week for 5 years showed no evidence of acute uranium toxicity, although autopsy 6.5 years after cessation of exposure revealed an increase in the incidence of pulmonary neoplasms in the dogs and monkeys (AIHA 1978). Dogs fed 0.2 mg/kg uranyl nitrate for 1 year tolerated the exposure but exhibited growth deficits and abnormal urinary protein and glucose levels indicative of renal damage (Clayton and Clayton 1981, p. 2001). Male rats fed 0.1 percent uranyl nitrate and female rats fed 0.5 percent uranyl nitrate for 2 years showed no adverse growth effects; exposure to 0.05 percent for 2 years caused no effects (Clayton and Clayton 1981, p. 2001). Rabbits exposed to soluble uranium salts developed neurological symptoms and pathological changes in the cerebral and cerebellar cortices; exposed dogs developed epithelial degeneration of the choroid plexi (HSDB 1986). All soluble uranium compounds are lethal when applied in a single dose to rabbits' skin; some are also lethal when placed in the conjunctival sac (Clayton and Clayton 1981, p. 2000). Most soluble uranium compounds also damage the eye itself on contact (Grant 1986, p. 965). Exposure to 0.18 mg/ml uranyl nitrate produced chromatid and chromosomal damage in Chinese hamster cells in vitro (HSDB 1986).

As in animals, exposure of humans to the soluble compounds of uranium may cause both chemical poisoning and radiation injury. Acute exposure to the dusts of the soluble compounds irritates the mucous membranes, eyes, and respiratory tract, and acute overexposure via any route of administration causes kidney damage (Proctor, Hughes, and Fischman 1988, p. 502). Several acute exposures have been documented. Two deaths occurred after exposure to gaseous uranium hexafluoride: One worker died 10 minutes after a 5-minute exposure, and the other died 70 minutes after a brief exposure. Both cases were complicated by exposure to steam, which caused

third-degree burns and liberated hydrofluoric acid (Clayton and Clayton 1981, pp. 2008–2009). In another incident, exposure to gaseous uranium hexafluoride (and its hydrolysis products, including hydrofluoric acid) caused chemical conjunctivitis with corneal necrosis, cough, and shortness of breath, accompanied by increased density of bronchovascular markings and hilar shadows on chest X-ray, laryngeal hemorrhages, and albuminuria, microhematuria, an elevated blood urea nitrogen level, and increased urinary solids (which are indicative of kidney injury and renal insufficiency). With treatment, recovery was complete (Clayton and Clayton 1981, p. 2009). Uranium miners in the United States, Czechoslovakia, and Canada have an excess incidence of deaths from respiratory cancer and pulmonary insufficiency, which are presumed to be caused by radiation injury from radon gas, a byproduct of uranium decay (Rom 1983, p. 688). A study of the risk of respiratory deaths among uranium miners in the U.S. showed the following dose-response: miners exposed for 5 to 9.9 years had a 2-fold increase in risk; miners exposed for 10 to 24.9 years had a 3.6-fold increase in risk; and those exposed for greater than 24.9 years had a 3.75-fold increase in risk. Smoking was shown both to increase the risk of death from respiratory disease and to shorten the neoplastic latency period (Clayton and Clayton 1981, pp. 2010–2011). In contact with the skin, uranyl nitrate causes burns (Klaassen, Amdur, and Doull 1986, p. 628). Uranium miners have elevations of all types of chromosome aberrations; an increase in chromosomal aberrations in cultured lymphocytes is correlated with exposure to radon daughters (Rom 1983, p. 689). Uranyl nitrate is mutagenic to lymphocytes at 100 μg/l (RTECS 1989).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to the soluble compounds of uranium is associated with kidney and liver damage and, perhaps, of cancer. The Agency believes that the proposed PEL of 0.05 mg/m³ is necessary to protect workers in construction, maritime, and agriculture from the significant risk of incurring these exposure-related effects, which OSHA considers material impairments of health within the meaning of the Act. In addition, promulgation of this limit will make OSHA's PEL for these substances consistent across all regulated sectors.

Preliminary Conclusion for Both Liver and Kidney Toxins

The health effects associated with occupational exposures to the hepato- and nephrotoxins shown in Tables C4–1 and C4–2 can be acute or chronic, reversible or irreversible, temporarily disabling or threatening to life. Workers in construction, maritime, and agriculture who experience chemically induced hepatotoxic or nephrotoxic effects may have enlarged livers, high blood pressure, hormonal imbalances, and/or organ necrosis. In addition, exposure to these substances is associated with a host of other adverse health effects, ranging from pulmonary irritation to cancer, and OSHA preliminarily concludes that the proposed limits are necessary to substantially reduce the risk of these effects as well. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

5. Substances for Which Proposed Limits are Based on Avoidance of Ocular Effects

Introduction. Seven of the chemicals for which OSHA is proposing limits have the potential to cause serious ocular effects among workers in a variety of occupational settings. Some of the chemicals in this group are also sensory irritants and have other target organ effects; these substances have been placed in this section of the proposal because their limits are based primarily on their ability to cause permanent damage to the cornea, lens, or optic nerve of the eyes of exposed workers.

Table C5–1 lists these ocular toxins, along with their CAS numbers, an OSHA-assigned HS number that is used to facilitate indexing of the rulemaking docket, their 1987–1988 ACGIH TLV®s, and their NIOSH RELs (if any). In addition, Table C5–1 shows OSHA's current PELs for these substances in construction and maritime. (OSHA currently has no PELs in agriculture.) The right-hand column in Table C5–1 shows the PEL recently promulgated for each substance in the Agency's final Air Contaminants standard for general industry; these are the limits being proposed for these substances today in construction, maritime, and agricultural workplaces.

TABLE C5–1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF OCULAR EFFECTS

H.S. No./chemical name	CAS No.-	Current OSHA PEL in construction and maritime	1987–1988 ACGIH TLV ®***	NIOSH REL /*/	Proposed OSHA PEL in construction, maritime, and agriculture
1172 N-Ethylmorpholine	100–74–3	20 ppm TWA, Skin.	5 ppm TWA, Skin		5 ppm TWA, Skin.
1209 Hydrogen sulfide	7783–06–4	10 ppm TWA	10 ppm TWA, 15 ppm STEL	10 ppm Ceiling (10 min).	10 ppm TWA, 15 ppm STEL.
2094 Hydroquinone	123–31–9	2 mg/m³ TWA	2 mg/m³ TWA	2 mg/m³ Ceiling (15 min).	2 mg/m³ TWA.
1252 Methyl alcohol	67–56–1	200 ppm TWA-	200 ppm TWA, 250 ppm STEL, Skin.	200 ppm TWA, 800 ppm Ceiling (15 min).	200 ppm TWA, 250 ppm STEL, Skin.
1266 Methyl silicate	681–84–5	5 ppm Ceiling	1 ppm TWA-		1 ppm TWA.
1282 Naphthalene	91–20–3	10 ppm TWA	10 ppm TWA, 15 ppm STEL		10 ppm TWA, 15 ppm STEL.
2138 Quinone (p-Benzoquinone)	106–51–4	0.5 ppm TWA	0.1 ppm TWA		0.1 ppm TWA.

*OSHA's TWA limits are for 8-hour exposures, its STELs are for 15 minutes unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time.

**OSHA's PELs do not currently apply in Agriculture [or in longshoring except in circumstances where the General Duty clause (Sec. 5(a)(1) of the Act) is cited].

***The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

+ NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

For N-ethylmorpholine, OSHA's current PEL in construction, shipyards, and marine terminals is 20 ppm, with a skin notation; the Agency is proposing to reduce the 8-hour TWA PEL to 5 ppm and to retain the skin designation for this substance. For three of these substances—hydrogen sulfide, methyl alcohol, and naphthalene—OSHA is proposing to add short-term exposure limits to existing 8-hour TWA PELs, and for another substance, methyl silicate, OSHA is proposing to revise the current 5 ppm ceiling limit to a 1 ppm 8-hour TWA PEL. For hydroquinone, OSHA is retaining the PEL that currently exists in construction and maritime and proposing to extend it to agriculture, and for guinone, the Agency is proposing to reduce the limit to 0.1 ppm.

Description of the health effects. Damage to the eye caused by exposure to the chemicals in this group can occur in the form of corneal, lens, retinal, ganglion cell layer, or optic nerve effects. Depending on the severity of the exposure, individual susceptibility, and the particular chemical and circumstances involved, this damage may be transient, temporarily disabling, or permanently blinding.

Corneal effects. The cornea and conjunctiva are the outer surfaces of the eye and are thus directly exposed to external insults. Since the cornea must maintain transparency to remain functional, scar formation after injury to the cornea can destroy visual function completely. Recent evidence suggests that the transparency of the cornea is maintained by thin inner and outer boundary layers and that the death of these layers leads to loss of transparency (Potts 1986/Ex. 1–174). The corneal epithelium (outer layer) sometimes regenerates, depending on the depth of the burn or insult and the nature of the toxicant.

The vapors of some chemicals, including methyl silicate, produce painful corneal epithelial injuries that are associated with a delay in the onset of symptoms. These substances can continue to cause pain and loss of corneal epithelial cells for several hours after exposure. Typically, there is no discomfort during the actual exposure to the vapor, but several hours later, the eyes begin to burn, vision blurs, and conjunctival hyperemia, tearing, photophobia, and squinting occur (Grant 1986/Ex. 1–975). Possible mechanisms of action are enzyme inhibition, denaturing of other proteins, alteration of the DNA, and interference with the mitotic process; after a period of exposure, the affected cells die. Although the damaged epithelium sometimes regenerates after this type of injury, the damage can also involve the corneal stroma and endothelium, leading to scarring, vascularization, opacity, and loss of vision. The poor warning properties characteristic of these substances (i.e., their failure to cause immediate irritation and pain) make the establishment of protective exposure limits particularly important.

Exposure to the vapors of some of the substances in this group produces painless edema of the corneal epithelium, which can be accompanied by the delayed onset of visual haloes. A chemical that produces these effects is N-ethylmorpholine, a catalyst used to manufacture urethane foam. Painless edema generally occurs in workers who have been exposed for several hours to airborne concentrations that do not produce discomfort during the exposure itself. The visual effect produced by such exposures consists of the appearance of colored haloes around lights, an effect that is caused by the diffraction of light through the swollen epithelial cells of the eye. Visual haloes are severely distracting and restrict activity substantially, and the mechanism underlying this effect is not well understood (Grant 1986/Ex. 1–975).

Lens effects. The lens is a transparent, avascular tissue surrounded by a thin, collagenous capsule. The major portion of the lens is composed of long, thin fibers that form closely packed, onion-like layers. Transparency is dependent on several factors: a highly ordered cellular arrangement; fiber size, shape, and uniformity; molecular structure; and regularity of fiber packing (Potts 1986/Ex. 1–174). Interference with lens metabolism, with transport across cell boundaries, or with the integrity of the lens capsule itself can cause a loss of lens transparency and lead to decreased visual acuity (Potts 1986/Ex. 1–174). All such changes in lens transparency are referred to as cataracts.

Retinal effects. The retina is a compact neural structure that is responsible for converting the ocular light image to neural impulses. Because the retina is an internal structure, it is not generally affected by exposure to dust, splashes of liquids, or vapors. However, exposure to certain internally absorbed substances, such as methyl alcohol, may cause changes or lesions in the retina, including retinal edema or hemorrhage. Exposure to a few of the substances in this group can cause acute narrowing of the retinal arteries themselves, which can lead, in turn, to damage of the optic nerve and loss of vision.

Effects on ganglion cell layer and optic nerve. Below the retinal surface layer lies the ganglion cell layer, which is composed of the cell bodies of neurons that extend to the midbrain via the optic nerve. Ganglion cells may be damaged directly when a chemical acts on the cell bodies themselves or secondarily when a toxin destroys the optic nerve. Depending on the severity of the exposure, loss of visual acuity or vision may ensue.

Dose-Response Relationships and Ocular Effects

For most of the chemicals shown in Table C5–1, limits have been proposed on the basis of research in animals, health surveys, and case reports of injuries occurring in occupationally exposed populations. These studies indicate that exposures to concentrations of these substances at levels above the no-observed-effect level cause pain and may damage the eyes of exposed workers. For some of these substances, the available human data are limited, and evidence from animal studies or knowledge of a chemical's structural analogy to another chemical known to have ocular effects provides the basis for the proposed exposure limit. Animal models are generally good predictors of ocular effects in humans because the eyes of rodents, especially those of guinea pigs and rabbits, closely resemble human eyes. Thus, animal studies on the effects of chemical exposure on the eye can be relied on to predict accurately how the chemicals that produce these effects in animals will behave in workers exposed in industrial situations. For the seven chemicals in this group of ocular toxins, the available toxicologic data and OSHA's preliminary findings are described below.

N-ETHYLMORPHOLINE

CAS: 100–74–3; Chemical Formula: $C_6H_{13}NO$

H.S. No. 1172

In construction, shipyards, marine terminals, and long-shoring, the current OSHA PEL for N-ethylmorpholine is 20 ppm as an 8-hour TWA, with a skin notation. OSHA has no PEL for this substance in agriculture, and NIOSH has no REL. OSHA is retaining the skin notation and proposing an 8-hour TWA PEL of 5 ppm for this substance in construction, maritime, and agriculture. The proposed PEL and skin notation are consistent with the current ACGIH TLV® for N-ethylmorpholine; in the prior rulemaking, NIOSH concurred (Ex. 8–47, Table N1) that this limit and notation were appropriate. Promulgation of this PEL for N-ethylmorpholine would make

the PEL for this substance consistent across all OSHA-regulated sectors.

N-Ethylmorpholine is a colorless, flammable liquid with an ammonia-like odor; it is used as a catalyst in urethane manufacture, an intermediate in the production of dyestuffs, pharmaceuticals, rubber accelerators, and emulsifiers, and as a solvent in many applications (HSDB 1990).

N-Ethylmorpholine's acute toxicity in animals is relatively low; the oral LD_{50} in rats is 1780 mg/kg, and the LC_{50} in mice is 18,000 mg/m ^{3} for 2 hours (RTECS 1990). However, the vapors of this substance have high toxicity for the eye (Smyth, Carpenter, Weil, and Pozzani 1954). When N-ethylmorpholine was instilled into rabbit eyes, it caused the cornea to become hazy within 5 minutes and the epithelium covering the eye to slough off (Smyth, Carpenter, Weil, and Pozzani 1954). The injury to rabbits' eyes caused by N-ethylmorpholine was graded 7 on an ascending severity scale of 1 to 10 (Smyth, Carpenter, Weil, and Pozzani 1954).

Overexposure to fairly low concentrations of the vapors from this substance causes corneal edema, blue-gray vision, and colored haloes, as well as irritation of the eyes, skin, mucous membranes, and upper respiratory tract. Typically, vision becomes misty and haloes appear a few hours after workers have been exposed to N-ethylmorpholine vapors for a period of hours. Distortion of vision can occur even at levels considerably lower than those that cause irritation (Mastromatteo 1965/Ex. 1–146).

Reversible corneal edema has been observed in workers exposed to 40 ppm or more of N-ethylmorpholine for several hours (Dernehl 1966). Workers routinely exposed to 3- to 4-ppm concentrations but never to concentrations above 11 ppm complained of haloes and foggy vision as well as drowsiness (ACGIH 1986/Ex. 1–3, p. 263). The irritant effects of N-ethylmorpholine were also seen in a controlled-exposure experiment involving volunteer subjects. Ten volunteers exposed for 2.5 minutes to a concentration of 100 ppm experienced irritation of the eyes, nose, and throat; those exposed for 2.5 minutes to a 50-ppm concentration experienced slight irritation; and no irritation was reported after exposure for 2.5 minutes to 25 ppm (ACGIH 1986/Ex. 1–3, p. 263).

OSHA's current 20-ppm PEL for N-ethylmorpholine in construction and maritime is not adequate to protect exposed workers against the occurrence of corneal edema and other adverse visual effects. Because corneal edema is both painless as it is developing and does not manifest symptoms for several hours after exposure, workers are likely to be unaware of the danger of exposure. This lack of warning properties is particularly hazardous because the effects on visual function of repeated exposure of the eyes to substances that cause corneal edema are not known.

Based on this evidence, OSHA preliminarily finds that the proposed PEL of 5 ppm as an 8-hour TWA is necessary to protect workers in construction, maritime, and agriculture from N-ethylmorpholine's injurious effects on the eyes. In addition, the Agency is retaining the skin notation because this substance can be absorbed through the skin in systemically toxic amounts (Genium MSDS 1986, No. 589). OSHA believes that the proposed PEL is necessary to reduce the significant risk of material health impairments, which are manifested as corneal edema, visual distortion, and other adverse visual effects, that are associated with occupational exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HYDROGEN SULFIDE

CAS: 7783–06–4; Chemical Formula: H_2S
H.S. No. 1209

OSHA's current limit for hydrogen sulfide in construction and maritime is 10 ppm as an 8-hour TWA; there is no PEL for this substance in agriculture. The ACGIH TLV®s for hydrogen sulfide are 10 ppm as an 8-hour TWA and 15 ppm as a 15 minute STEL; NIOSH has a 10-ppm, 10-minute REL for this substance. OSHA is retaining the 8-hour TWA of 10 ppm in construction and maritime and proposing to add a STEL of 15 ppm in these two sectors; the Agency is also proposing to extend both the 8-hour TWA and the STEL to agriculture. Promulgation of these PELs will make OSHA's limits for hydrogen sulfide consistent across all regulated sectors.

Hydrogen sulfide is a colorless, flammable gas with the odor of rotten eggs. It is widely used as a chemical intermediate, an analytical reagent, and in the manufacture of heavy water in the utilities sector. In agriculture, it is used as a disinfectant (HSDB 1985). It is also generated inadvertently by the fermentation of animal manure. Many farm workers have been exposed to this substance while working in the vicinity of liquid manure storage pits and have been asphyxiated as a consequence (Osbern and Crapo 1981). Hydrogen sulfide also is encountered in natural oil and gas deposits and in sewers, caissons, tunnels, and other construction sites (Grant 1986, p. 495). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Hydrogen sulfide's effects on experimental animals are similar to those seen in exposed workers: conjunctivitis, pulmonary irritation, acute poisoning, and death by chemical asphyxiation (Klaassen, Amdur, and Doull 1986, p. 242; Grant 1986, p. 496). The LC_{50} in mice is 673 ppm for 1 hour (RTECS 1990). A number of experiments have demonstrated that exposure to hydrogen sulfide concentrations of 50 to 100 ppm for several hours (or sometimes longer) causes damage to the corneal epithelium of dogs, cats, rabbits, and guinea pigs; animals are believed to be somewhat less sensitive than humans to hydrogen sulfide's ocular effects but may be more sensitive to its pulmonary effects (Grant 1986, p. 496).

When inhaled at concentrations exceeding 500 ppm, exposure to hydrogen sulfide has caused respiratory paralysis and death. Acutely poisoned individuals who recover may experience headaches, fatigue, dizziness, and nystagmus; eventually, however, recovery is usually complete (Milby 1962; NRC 1979). The 1986 ACGIH Documentation (Ex. 1–3, p. 318) cites several reports (Brieger 1964; Kranenburg and Kessener 1935; Masure 1950, in Carson 1963; Elkins 1950a/Ex. 1–953) of the occurrence of adverse ocular effects, including conjunctivitis, caused by exposure to 20 ppm or less of hydrogen sulfide. A study by Poda and Aiken (1966/Ex. 1–115) reports that the adoption of a voluntary limit of 10 ppm in two heavy-water plants eliminated exposure problems at those facilities. An early study by Flury and Zernik (1931f) reports that the conjunctivitis caused by the exposure of volunteers to 10 to 15 ppm of hydrogen sulfide for six hours endured for several days; however, this substance is not known to have caused irreversible eye damage.

In the earlier Air Contaminants rulemaking, OSHA received several comments related to the health effects and proposed limits for hydrogen sulfide (Exs. 3–1163, 3–216, 8–37, 8–47, 129; Tr. XI, pp. 114, 225). One commenter, the Edison Electric Institute (EEI) (Tr. XI, p. 225), described the exposures of utility workers to hydrogen sulfide, and another, the Montana Sulphur and Chemical Corporation (Ex. 3–216), stated that, in its opinion, the evidence for the proposed limits was not "compelling."

Because Montana Sulphur and Chemical itself had never, in its long experience of manufacturing and handling this "notoriously toxic" substance, had a case of eye irritation that required medical treatment, it urged OSHA (Ex. 3–216) to promulgate a STEL for hydrogen sulfide in the range of 25 to 30 ppm rather than at the proposed level of 15 ppm.

In response to this commenter, OSHA noted (54 *FR* 2494) that the proposed STEL of 15 ppm was based on the best available evidence (i.e., a report that workers exposed to this substance at this level had not experienced eye irritation, while workers exposed to higher levels had experienced such effects), as well as reports in the industrial hygiene literature that levels below 20 ppm cause eye irritation (Brieger 1964; Kranenburg and Kessener 1935; Masure 1950, in Carson 1963; Elkins 1950a/ Ex.1–953). For example, the author of the best-known general source on the toxicology of the eye (Grant 1986) states that "where the concentration [of hydrogen sulfide] is regularly kept below 10 ppm in air, it is rare to have any irritation of the eyes" (p. 496). OSHA believes that the proposed STEL will ensure that concentrations are maintained close to the 8-hour TWA and that excursions above irritant levels are thus minimized.

Based on this evidence, OSHA preliminarily finds that the current 10-ppm 8-hour TWA limit alone does not adequately protect workers in construction and maritime against the adverse ocular effects associated with exposure to concentrations of hydrogen sulfide above 10 ppm. Furthermore, agricultural workers are not presently protected by any limit. OSHA believes that the eye irritation and conjunctivitis associated with such exposures represent a significant risk of material health impairment to workers in construction, maritime, and agriculture because these workers may experience pain and other ocular effects and be forced to seek medical treatment after such exposures. OSHA is accordingly retaining the 8-hour TWA limit of 10 ppm for hydrogen sulfide in construction and maritime and is proposing to establish a short-term limit of 15 ppm in these two sectors. The Agency is also proposing to extend both limits to agriculture. The Agency preliminarily finds that these limits are necessary to provide protection from the significant risk of exposure-related ocular effects, including conjunctivitis, corneal edema, and distortion of vision, associated with occupational exposure to hydrogen sulfide. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

HYDROQUINONE

CAS: 123–31–9; Chemical Formula: $C_6H_4(OH)_2$

H.S. No. 2094

OSHA's current limit for hydroquinone in general industry, construction, and maritime is 2 mg/m³ as an 8-hour TWA. The Agency has no PEL for hydroquinone in agriculture. The ACGIH TLV®–TWA for this substance is 2 mg/m³, and the NIOSH REL is 2 mg/m³ as a 15-minute ceiling. OSHA is proposing a PEL for hydroquinone of 2 mg/m³ as an 8-hour TWA in agriculture. Promulgation of this limit will make the PEL for hydroquinone consistent across all OSHA-regulated sectors.

Hydroquinone is a white, crystalline solid that is used primarily in photographic developers. It is also used as an antioxidant or stabilizer in polymers, oils, fuels, and paints, and as a dye intermediate. Hydroquinone derivatives are reported to be effective antimitotic and tumor-inhibiting agents (ACGIH 1986, p. 319; Clayton and Clayton 1981, p. 2589).

Exposure to hydroquinone causes skin and eye irritation, skin depigmentation, respiratory symptoms, and ocular damage. The oral LD_{50} in rats is 320 mg/kg; the dermal LD_{50} in an unspecified species of mammal is 5970 mg/kg (RTECS 1990). Before death, acutely poisoned animals exhibit an increase in motor activity, an increase in the formation of methemoglobin, hypersensitivity to external stimuli, labored breathing, hyperactive reflexes, and cyanosis. These initial signs of poisoning are followed by clonic convulsions, exhaustion, loss of reflexes, lowered body temperature, paralysis, coma, and death (Clayton and Clayton 1981, p. 2590). Pigment accumulation in the conjunctiva and cornea has been induced in rabbit eyes after 2 to 4 months of daily application of powdered hydroquinone to the eyes. Scarring and gray opacification were also noted in this study (Grant 1986, p. 499).

Industrial exposure to hydroquinone occurs during the manufacture and use of this substance and involves not only the dust of hydroquinone but its vapor. Acute exposure both to quinone and hydroquinone causes conjunctival irritation. In a study of workers manufacturing hydroquinone, eye injuries developed gradually over a period of years in workers exposed for fewer than 5 years. Although quinone was probably the main cause of these injuries, hydroquinone was considered a contributory cause. No systemic effects were associated with these exposures (Anderson and Oglesby 1958; Sterner, Oglesby, and Anderson 1947). Skin irritation, allergic sensitization, depigmentation, and dermatitis have reportedly occurred following repeated skin contact with creams containing 5 percent or more hydroquinone (NIOSH 1978).

A group of 24 workers in a Swedish movie film laboratory who used hydroquinone-containing and other color film developing agents developed occupational dermatitis. Patch testing confirmed that hydroquinone was the allergenic agent in one of these workers (Liden, Brehmer-Andersson 1988). Another photography laboratory worker developed vitiligo (depigmentation of the skin) caused by hydroquinone. This worker had been dipping x-ray films into hydroquinone with his bare hands for 10 years before he developed this condition (Das and Tandon 1988).

Chronic exposure to quinone vapor and hydroquinone dust causes a brownish discoloration of the conjunctiva and cornea, small opacities of the cornea, and structural changes of the cornea that result in the loss of visual acuity. The structural corneal damage consisted of changes in the curvature of the lens; such curvature can lead to progressive loss of visual acuity and blindness (Anderson and Oglesby 1958; Sterner, Oglesby, and Anderson 1947). Exposure to hydroquinone dust concentrations as high as 20 to 30 mg/m³ produced no systemic effects, and volunteers showed no signs of toxicity after ingesting 300 to 500 mg hydroquinone daily for up to 5 months (Carlson and Brewer 1953; Sterner, Oglesby, and Anderson 1947). In addition to ocular and skin effects, exposure to hydroquinone causes respiratory symptoms. Thirty-three workers exposed to hydroquinone, trimethyl hydroquinone, and retinene-hydroquinone, in a chemical plant showed a higher prevalence of respiratory symptoms than unexposed workers from the same plant, and the exposed group also showed significantly lower pulmonary function values. Because these workers had significantly higher levels of immunoglobulin G and elevated levels of immunoglobulin E compared to in-plant controls, the authors concluded that exposure to hydroquinone causes ventilatory impairment, perhaps by an immunological mechanism (Choudat, Neukirch, Brochard, Barrat, Marsac, Conso, and Philbert 1988).

Based on this evidence, OSHA is proposing a 2 mg/m³ 8-hour TWA limit to protect workers in agriculture from

the significant risk of skin and respiratory irritation, skin depigmentation, and ocular damage associated with exposure to hydroquinone. OSHA considers these effects material impairments of health and preliminarily concludes that this limit is necessary to substantially reduce the significant risk of these impairments in exposed agricultural workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL ALCOHOL
CAS: 67–56–1; Chemical Formula: CH_3OH
H.S. No. 1252

OSHA's current 8-hour TWA limit for methyl alcohol in construction and maritime is 200 ppm as an 8-hour TWA. There is no PEL for this substance in agriculture. The ACGIH TLVs® for methyl alcohol are an 8-hour TWA of 200 ppm, a STEL of 250 ppm, and a skin notation. The NIOSH REL for methyl alcohol is 200 ppm as a TWA and 800 ppm as a STEL; however, after reviewing the health evidence for methyl alcohol, NIOSH concurred (Ex. 8–47, Table N1) with the PEL OSHA is proposing. OSHA is retaining the 8-hour TWA PEL of 200 ppm in construction and maritime, proposing to add a STEL of 250 ppm for this substance in these two sectors, and additionally proposing both limits in agriculture. In addition, OSHA is proposing to add a skin notation to the limit for methyl alcohol.

Methyl alcohol is a mobile, highly polar, flammable liquid that is widely used as an industrial solvent in enamels, paints, stains, varnish removers, cleaners, and antifreezes (Clayton and Clayton 1982, p. 4529).

Methyl alcohol has severe ocular effects in animals, both when in contact with the eye itself and when ingested. The oral LD_{50} in rats is 5628 mg/kg, and the LD_{50} in the same species is 64,000 ppm for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 15,800 mg/kg (RTECS 1990). Three of six rabbits developed a moderate degree of corneal opacity when undiluted methyl alcohol was instilled into their eyes, and all six animals developed conjunctivitis as a result of eye contact with the liquid (Clayton and Clayton 1982, p. 4531). Dogs killed by the inhalation of acute doses of methyl alcohol (37,000 ppm for 8 hours) showed, at autopsy, hyperemia of the choroid and edema of the ocular tissue, as well as early signs of retinal degeneration (Tyson and Schoenberg 1914). Methyl alcohol has also been shown to have embryotoxic, developmental, and reproductive effects in animals of several species. In monkeys, the lowest lethal concentration by inhalation is 1000 ppm and the lowest lethal dermal dose is 393 mg/kg (RTECS 1990).

Workers exposed to methyl alcohol at concentrations between 200 and 375 ppm experience severe recurrent headaches and, at higher levels, the visual capacity of exposed individuals is diminished. The lowest reported lethal concentration in humans is 868 mg/kg (RTECS 1990). The metabolites believed to be chiefly responsible for methyl alcohol's toxic effects are formic acid and formaldehyde, which cause acidosis (Rom 1983, p. 523). If the poisoning is severe, impairment of vision and death may occur; these effects have occurred after severe ingestion, inhalation, and dermal absorption (NIOSH 1976; Henson 1960). Chronic exposure to airborne concentrations of methyl alcohol of 1200 to 8300 ppm can cause impaired vision (NIOSH 1976). Splashed into the eyes, methyl alcohol causes reversible corneal injury; in prolonged contact with the skin, it causes defatting, scaling, and dermatitis (NIOSH 1976).

In the prior rulemaking, several commenters submitted information to the record on methyl alcohol (Exs. 150, 194, 3–661, 3–902, and 3–896). Both the Eastman Kodak Company (Ex. 3–661) and the Chevron Corporation (Ex. 3–896) objected to the STEL of 250 ppm because they believe that no STEL is warranted for methyl alcohol. However, OSHA rejected the reasoning of these commenters (see 54 FR 2495), noting that, in addition to those studies specifically cited in the preamble, many other studies report that exposure to methyl alcohol at levels that cause headaches is possible even when the 8-hour limit of 200 ppm is being observed.

Based on this evidence, OSHA preliminarily finds that the proposed 250-ppm STEL is necessary because the current 8-hour PEL of 200 ppm alone cannot protect workers in construction, maritime, and agriculture from exposure to short-term peaks at levels that cause eye irritation and severe, recurrent headaches. OSHA is proposing to add a skin notation to the PEL for methyl alcohol because a dermal dose of only 393 mg/kg has caused death in monkeys; this dose is well below the dermal LD_{50} of 1000 mg/kg adopted by OSHA as the cutoff for skin designations (see Section C.15 of this preamble) (RTECS 1990). The Agency preliminarily concludes that the proposed 8-hour TWA and 15-minute STEL will together reduce the significant risk of headaches and blurred vision presented by short-term occupational exposures to methyl alcohol at concentrations above these levels. In addition, the proposed skin notation will reduce the likelihood that exposed workers in construction, maritime, and agriculture will experience the systemic toxicity caused by absorption of this substance through the skin that has been demonstrated to occur in experimental animals. The Agency preliminarily finds that the headaches, blurred vision, other ocular effects, and systemic toxicity associated with exposure to methyl alcohol constitute material impairments of health. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

METHYL SILICATE
CAS: 681–84–5; Chemical Formula: $(CH_3O)_4Si$
H.S. No. 1266

OSHA currently has a ceiling limit of 5 ppm for methyl silicate in construction and maritime; there is no PEL for this substance in agriculture. The ACGIH TLV® for this substance is 1 ppm as an 8-hour TWA. OSHA is proposing an 8-hour TWA PEL of 1ppm for workplaces in construction, maritime, and agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that this limit, which was recently established in general industry, is appropriate.

Methyl silicate is a colorless liquid or a crystalline solid. It is used as an intermediate and to coat television tubes.

The toxic action of methyl silicate has been compared to that of mustard gas, both in terms of severity and the delayed onset of signs and symptoms (Grant 1986, p. 627). When a single drop of methyl silicate was placed into the eye of a rabbit, the resulting injury was graded 9 out of a possible 10 on an ascending scale of severity (Grant 1986, p. 627). The corneal epithelium of the eye of the rabbit became permanently opacified (Grant 1986, p. 627). –Rabbits exposed to 1000 ppm of methyl silicate in dry air experienced delayed eye burns (ACGIH 1986/Ex. 1–3, p. 409). Exposure of these animals to a methyl silicate concentration of approximately 15,000 ppm for five minutes caused eye burns, but exposure to this level for four minutes caused no appreciable effect. Guinea pigs showed maximum no-effect levels of 135 ppm for 15 minutes, 90 ppm for one hour, and 20 ppm for 8 one-hour periods. The latency period for ocular changes was 16 hours for serious effects and up to three days for mild involvement (ACGIH 1986/Ex. 1–3, p. 409).

It is estimated that exposing humans to methyl silicate at concentrations of

200 to 300 ppm for 15 minutes will produce ocular lesions and that exposure to 1000 ppm for this period will produce injury requiring hospitalization (ACGIH 1986/Ex. 1–3, p. 409). There is one report of blindness caused by a splash of this substance into the eyes (Grant 1986, p. 628).

Based on this evidence, OSHA preliminarily concludes that the proposed 8-hour TWA limit of 1 ppm is necessary to protect workers in construction, maritime, and agriculture from the ocular effects associated with exposure to this substance. The basis for OSHA's reasoning is that evidence has shown that (1) exposures of 200–300 ppm for 15 minutes produce only mild eye effects in humans (ACGIH 1986/Ex. 1–3, p. 409) and (2) that exposure to a concentration of 90 ppm for 1 hour, or to 20 ppm for 8 one-hour periods, produces no damage to the eyes of guinea pigs. The proposed 8-hour TWA PEL of 1 ppm, which is more than a factor of 20 below the lowest-observed-effect level, will ensure that workers in construction, maritime, and agriculture are protected from the significant risks of such material health impairments. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

NAPHTHALENE

CAS: 91–20–3; Chemical Formula: $C_{10}H_8$
H.S. No. 1282

OSHA's current exposure limit for naphthalene in construction and maritime is 10 ppm as an 8-hour TWA. The proposal retains this TWA, proposes to add a short-term limit of 15 ppm, and additionally proposes to extend both the TWA and the STEL to agriculture. These limits agree with the ACGIH's TLV®s. There is no limit in agriculture. NIOSH has no REL; however, in the prior rulemaking, NIOSH (Ex. 8–47, Table N1) concurred with the PELs selected by OSHA for this substance, which are those recently established in general industry.

Naphthalene is a white, crystalline substance that imparts the characteristic "moth-ball" odor to commercial mothball products (HSDB 1985). Naphthalene is an important chemical intermediate that is also used in dyes, explosives, lubricants, tanning agents, and pesticides (HSDB 1985).

In animals, naphthalene causes hemolysis (destruction of the red blood cells), tumors of the blood, and developmental effects (RTECS 1990), as well as ocular toxicity (Grant 1986). Cataracts and severe eye irritation have been induced in experimental animals by administration of this substance (Grant 1986). The oral LD_{50} in rats is 490 mg/kg (RTECS 1990).

In humans, the inhalation of naphthalene vapor causes eye irritation, headache and nausea (Proctor, Hughes, and Fischman 1988, p. 358). The lethal dose in humans has been reported as 50 mg/kg (NIOSH 1977i/Ex. 1–1182). In contact with the eye, naphthalene causes conjunctivitis, corneal injury, chorio-retinitis, scotoma, and decreased visual acuity (Proctor, Hughes, and Fischman 1988, p. 358). Eight of 21 workers exposed to unspecified levels of naphthalene for 5 years developed opacities of the lens of the eye (Grant 1986). Ingestion of large amounts of naphthalene causes severe hemolytic anemia and hemoglobinuria (Stokinger and Mountain 1963/Ex. 1–765). Exposure to a 15-ppm concentration of the vapor is reported to cause marked eye irritation (Grant 1986).

In the prior rulemaking, the American Iron and Steel Institute commented that, in its opinion, no STEL was warranted for naphthalene. OSHA responded (54 FR 2496) to this comment by pointing to the study by Robbins (1951/Ex. 1–799), which clearly shows that excursions as high as 15 ppm cause severe eye irritation and concluded that the proposed STEL was thus both necessary and appropriate.

Accordingly, OSHA is retaining the 8-hour TWA of 10 ppm in construction and maritime, proposing to add a 15-minute STEL of 15 ppm in these sectors, and proposing to extend both PELs to agriculture. The Agency preliminarily concludes that these limits will protect workers in construction, maritime, and agriculture from the significant risks of eye irritation and cataracts, which constitute material health impairments that are potentially associated with exposure to levels above the current limit. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

QUINONE

CAS: 106–51–4; Chemical Formula: $C_6H_4O_2$
H.S. No. 2138

In general industry, construction, and maritime, OSHA's permissible exposure limit for quinone is 0.5 ppm as an 8-hour TWA. There is no limit for this substance in agriculture. The ACGIH has a current TLV®–TWA limit of 0.1 ppm for this substance. NIOSH has no REL but concurs (EX. 8–47, Table N3A) with the limit being proposed. OSHA is proposing to establish a PEL of 0.1 ppm for quinone in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Quinone is a yellow crystalline solid with a penetrating, chlorine-like odor. This substance is used as an intermediate in the manufacture of fungicides, hydroquinone, and dyes, in photography, and as an oxidizing agent and analytical reagent (ACGIH 1986, p. 509; Hawley's 1987, p. 991).

Quinone causes severe eye and skin irritation in humans; in animals it causes lung and kidney damage and convulsions. The oral LD_{50} in rats is 130 mg/kg (RTECS 1990). Large oral or subcutaneous doses of quinone cause local irritation, convulsions, respiratory difficulty, a decrease in blood pressure, and death due to paralysis of the medullary centers (Clayton and Clayton 1981, p. 2593). A major cause of death in acutely poisoned animals is asphyxia due to pulmonary damage and quinone's effects on hemoglobin (Deichman and Keplinger 1963, in Clayton and Clayton 1981, p. 2593). Signs of kidney injury have also been observed in severely poisoned animals (Deichman and Keplinger 1963, Clayton and Clayton 1981, p. 2593). Quinone has been tested for carcinogenicity in mice by skin application and inhalation and in rats by subcutaneous injection. The International Agency for Research on Cancer (IARC) has concluded, however, that the evidence in animals is insufficient to evaluate quinone's carcinogenicity (IARC 1977, Vol. 15, p. 260).

Quinone causes ocular and cutaneous lesions in humans; however, no cases of systemic poisoning have been reported. In contact with the skin, quinone causes discoloration, severe irritation, erythema, swelling, and papules and vesicles; prolonged contact can cause necrosis of the skin (Clayton and Clayton 1981, p. 2594). Eye irritation becomes noticeable on exposure to concentrations above 0.1 ppm; acute exposures cause conjunctival irritation, corneal edema, ulceration, and scarring (AIHA Hygienic Guide Series 1978). Exposure to quinone vapor produced characteristic chronic injuries in workers in a hydroquinone manufacturing facility. The effects of exposure developed gradually; no serious effects occurred in individuals exposed to the vapor for less than 5 years. Signs and symptoms in those exposed for longer than 5 years included pigmentary changes of the conjunctiva and cornea, corneal opacities, and loss of visual acuity (Sterner, Oglesby, and Anderson 1947). Although the pigmentary changes induced by quinone are reversible, the other ocular effects

caused by exposure to this substance sometimes progress even after exposure has ceased (Proctor, Hughes, and Fischman 1988, p. 431).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to quinone causes severe skin and eye injury, as well as pulmonary damage. The Agency believes that, in the absence of a limit, workers in agriculture are at risk of experiencing quinone's adverse effects and that establishing an 8-hour TWA of 0.1 ppm for quinone in agriculture is necessary to reduce these risks of material health impairment. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Preliminary Conclusions. OSHA believes that adoption of the limits being proposed for this group of chemicals, which have the potential to cause adverse ocular effects ranging from transient discomfort to permanent blindness, will substantially reduce the risk of visual impairment associated with exposure to these substances. The toxicological bases for the proposed limits include evidence derived from occupationally exposed workers and results obtained in animal models that have been shown to be excellent predictors of human responses. The risks being protected against have serious consequences, both in terms of the health and functional capacity of the exposed workers themselves and the safety and well-being of these workers and their co-workers.

The available health evidence for the substances described in this section forms a reasonable basis for proposing the revision or addition of these limits. At the time of the final rule, OSHA will promulgate new or revised limits for these substances if the Agency determines that these limits will reduce significant risk. Promulgation of the proposed limits will also make OSHA's limits for these substances consistent across all regulated sectors.

6. Substances for Which Proposed Limits Are Based on Avoidance of Respiratory Effects

Introduction. For workplaces in construction, maritime, and agriculture, limits are being proposed for a total of 44 substances or materials for which exposure has been shown to cause adverse respiratory effects. The substances in this group cause acute pulmonary edema, alveolar damage, or chronic respiratory damage through the general mechanisms of cellular damage or fibrosis. At sufficient doses, these effects can be permanent, disabling, and life-threatening.

Some of the materials in this group are composites of naturally occurring minerals; for these substances, the Agency is proposing limits based on the most hazardous component. For several materials (coal dust, crystalline tripoli, silica, and graphite), OSHA is proposing that the TWA be measured as the respirable quartz fraction of the dust, because it is exposure to this fraction that presents the greatest risk to exposed workers in these sectors.

Table C6–1 lists the substances in this group, along with their current PELs in construction and maritime and their CAS and HS numbers. The 1987–1988 TLV®s, NIOSH RELs, and limits being proposed for these substances in construction, maritime, and agriculture are also shown on Table C6–1. With the exception of limits for asphalt fumes, fibrous glass, and mineral wool, the limits being proposed are those in effect in general industry. For these three substances, OSHA is proposing PELs in general industry as well as in construction, maritime, and agriculture.

TABLE C6–1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF RESPIRATORY EFFECTS

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime*	1987–1988 ACGIH TLV®**	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
1017 Aluminum (pyro powders)	7429–90–5		5 mg/m³ TWA		57774 mg/m³ TWA.
1026 Asphalt fumes	8052–42–4		5 mg/m³ TWA	5 mg/m³ Ceiling (15-min) (Total particulate).	5 mg/m³ TWA.
1034 Bismuth telluride (Se-doped).	1304–82–1		5 mg/m³ TWA		5 mg/m³ TWA.
2027 Carbon black	1333–86–4	3.5 mg/m³ TWA	3.5 mg/m³ TWA	3.5 mg/m³ TWA; if PAHs are present, 0.1 mg/m³ TWA.	3.5 mg/m³ TWA.
1080 Chlorine dioxide	10049–04–4	0.1 ppm TWA	0.1 ppm TWA, 0.3 ppm STEL		0.1 ppm TWA, 0.3 ppm STEL
2038 Chromium (II) compounds (as Cr).	7440–47–3	0.5 mg/m³ TWA	0.5 mg/m³ TWA		0.5 mg/m³ TWA.
2038A Chromium (III) compounds (as Cr).	7440–47–3	0.5 mg/m³ TWA	0.5 mg/m³ TWA		0.5 mg/m³ TWA.
1093 Chromium metal (as Cr)	7440–47–3	1 mg/m³ TWA	0.5 mg/m³ TWA		1 mg/m³ TWA.
1096 Coal dust, < 5% quartz	None	2.4 mg/m³ TWA	2 mg/m³ TWA		2 mg/m³ TWA.
1097 Coal dust, > 5% quartz	None	10 mg/m³/% SiO_2+2.	0.1 mg/m³ TWA		0.1 mg/m³ TWA.
2041 Cotton dust	None	1 mg/m³ TWA	0.2 mg/m³ TWA	200 µg/m³ TWA lint-free cotton dust.	0.5 mg/m³ TWA.
1161 Ethyl acrylate	140–88–5	25 ppm TWA, Skin.	5 ppm TWA, 25 ppm STEL, Skin		5 ppm TWA 25 TWA.
1177 Ferrovanadium dust	12604–58–9	1 mg/m³ TWA, 3 mg/m³ STEL.	1 mg/m³ TWA	1 mg/m³ TWA, 3 mg/m³ STEL.	1 mg/m³ TWA.
1178 Fibrous glass	None		10 mg/m³ TWA	5 mg/m³ TWA total fibrous glass.	1 f/cc TWA.
1190 Grain dust (oat, wheat, barley).	None		10 mg/m³ TWA		10 mg/m³ TWA.
1191 Graphite, natural, respirable <1% quartz.	7782–42–5	15 mppcf TWA	2.5 mg/m³ TWA		2.5 mg/m³ TWA.
1213 Indium & compounds	7440–74–6	0.1 mg/m³ TWA	0.1 mg/m³ TWA		0.1 mg/m³ TWA.
1215 Iron oxide (dust and fumes)	1309–37–1	10 mg/m³ TWA	5 mg/m³ TWA		10 mg/m³ TWA.

TABLE C6-1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF RESPIRATORY EFFECTS—Continued

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime*	1987-1988 ACGIH TLV®**	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
1272 Methylene bis(4-Cyclohexylisocyanate).	5124-30-1		0.01 ppm Ceiling		0.01 ppm Ceiling.
1276 Mica, respirable dust containing < 1% quartz.	12001-26-2	20 mppcf TWA	3 mg/m³ TWA		3 mg/m³ TWA.
1277 Mineral wool fiber	None		10 mg/m³ TWA		1 f/cc TWA.
1283 Nickel (soluble compounds)	7440-02-0	1 mg/m³ TWA	0.1 mg/m³ TWA	0.015 mg/m³ TWA+ (inorganic compounds).	0.1 mg/m³ TWA.
1289 Nitrogen dioxide	10102-44-0	5 ppm Ceiling	3 ppm TWA, 5 ppm STEL	1 ppm Ceiling (15-min).	1 ppm STEL.
1300 Oxygen difluoride	7783-41-7	0.05 ppm TWA	0.05 ppm Ceiling		0.05 ppm Ceiling.
1301 Ozone	10028-15-6	0.1 ppm TWA	0.1 ppm TWA, 0.3 ppm STEL		0.1 ppm TWA, 0.3 ppm STEL.
1303 Paraquat, respirable dust	4685-14-7	0.5 mg/m³ TWA, Skin.	0.1 mg/m³ TWA		0.1 mg/m³ TWA, Skin.
1352 Silica, amorphous, diatomaceous earth.	61790-53-2	20 mppcf	10 mg/m³ TWA		6 mg/m³ TWA.
1353 Silica, amorphous, precipitate and gel.	112926-00-8		10 mg/m³ TWA		6 mg/m³ TWA.
1354 Silica, crystalline cristobalite	14464-46-1	250/% SiO_2+5 (as mppcf).	0.05 mg/m³ TWA	50 µg/m³ TWA	0.05 mg/m³ TWA.
2142 Silica, crystalline quartz (total dust).	14808-60-7		0.3 mg/m³ TWA	50 µg/m³TWA (respirable free silica).	0.3 mg/m³ TWA.
1355 Silica, crystalline quartz, respirable.	14808-60-7	250/% SiO_2+5 (as mppcf).	0.1 mg/m³ TWA	50 µg/m³ TWA	0.1 mg/m³ TWA.
1356 Silica, crystalline tridymite (as respirable quartz dust).	15468-32-3	250/% SiO_2+5 (as mppcf).	0.05 mg/m³ TWA	50 µg/m³ TWA	0.05 mg/m³ TWA.
1357 Silica, crystalline tripoli (as respirable quartz dust).	1317-95-9	250/% SiO_2+5 (as mppcf).	0.1 mg/m³ TWA	50 µg/m³ TWA	0.1 mg/m³ TWA.
1358 Silica, fused	60676-86-0	250/% SiO_2+5 (as mppcf).	0.1 mg/m³ TWA (respirable dust)		0.1 mg/m³ TWA.
1363 Soapstone, total dust	None	20 mppcf TWA	6 mg/m³ TWA		6 mg/m³ TWA.
1363A Soapstone, respirable dust	None		3 mg/m³ TWA		3 mg/m³ TWA.
1375 Sulfur dioxide	7446-09-5	5 ppm TWA	2 ppm TWA, 5 ppm STEL	0.5 ppm TWA	2 ppm TWA, 5 ppm STEL.
1378 Sulfur tetrafluoride	7783-60-0		0.1 ppm Ceiling		0.1 ppm Ceiling.
1381 Talc (containing no asbestos).	14807-96-6	20 mppcf TWA	2 mg/m³ TWA (respirable dust)		2 mg/m³ TWA.
1395 Tin oxide	21651-19-4		2 mg/m³ TWA		2 mg/m³ TWA.
1409 Trimellitic anhydride	552-30-7		0.005 ppm TWA		0.005 ppm TWA.
1430A Wood dust, hard	None		1 mg/m³ TWA		5 mg/m³ TWA, 10 mg/m³ STEL.
1403B Wood dust, soft	None		5 mg/m³ TWA, 10 mg/m³ STEL		5 mg/m³ TWA, 10 mg/m³ STEL.
1430C Wood dust (Western Red Cedar).	None				2.5 mg/m³ TWA.
2169 Yttrium	7440-65-5	1 mg/m³ TWA	1 mg/m³ TWA, 3 mg/m³ STEL		1 mg/m³ TWA.

* OSHA's PELs do not currently apply in agriculture; OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times in any working day, with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

+ NIOSH considers this substance a potential occupational carcinogen.

Description of the Health Effects. The respiratory system is a major route of occupational exposure for toxic substances. Because of the vital nature of pulmonary function, respiratory toxicants present a serious health hazard both from acute and chronic exposures. Acute respiratory disease can be life threatening.

Chronic pulmonary disease can result from long-term exposure to respiratory toxicants and is potentially crippling because it greatly reduces the quality of life and the productivity of its victims. In addition, the onset of respiratory disease can be insidious, because it may be indicated only by the gradual development of a few nonspecific signs (Petersdorf et al. 1983).

The difficulties of detecting irreversible respiratory effects complicate the prevention of pulmonary disease. Pulmonary function can be evaluated with a variety of tests, including measurements of the vital capacity and of resting and forced expiratory volumes. However, certain conditions, including emphysema and fibrosis, are difficult to diagnose even with such tests. In addition, these same diseases often continue to progress even after the affected individual has recognized the problem and obtained medical assistance; also, respiratory effects may worsen even after exposure has ceased, which makes prevention even more vital. In addition to the threat posed to the general occupational population by respiratory toxins, certain subpopulations, such as persons with impaired lung function caused by asthma, bronchitis, emphysema, or pulmonary fibrosis, are at special risk from the adverse effects of exposure to these substances. Tobacco smoking can cause or aggravate all of the respiratory conditions discussed above and can interact additively or synergistically with respiratory toxins to increase their adverse effects on the pulmonary system. For example, tobacco smoking acts additively with coal dust to diminish pulmonary function. Because

tobacco smoke contains nitrogen oxides, cadmium, and ammonia, occupationally exposed workers who smoke have an additional source of exposure to these respiratory toxins.

Two general categories of lung injuries are relevant to the group of substances under consideration:

- Damage to cells lining the airways, which results in necrosis (localized areas of dead cells), increased permeability, and edema.
- Production of fibrosis, which may become massive and greatly reduce lung capacity.

Cellular damage resulting in edema and emphysema. A number of substances cause damage to cells lining the airways. This can result in increased permeability of cell membranes and subsequent edema, hemorrhage, and localized necrosis (areas of dead cells). Chronic inhalation of certain chemicals causes destruction of the alveolar septa and results in emphysema. Cellular damage may be either localized or diffuse, depending on the distribution of the toxicant in the lung.

Edema is the release of fluid into the lumen (open spaces of the airways) or alveoli. Serious edema can take several hours to develop so that, in some cases, life-threatening or even fatal exposures can take place without the individual's being aware at the time of exposure of the extent of the damage. Ozone, nitrogen dioxide, and paraquat all cause localized cellular damage leading to edema (Klaassen, Amdur, Doull et al. 1986/Ex. 1–99).

Fatalities from pulmonary edema have resulted from exposures to concentrations of nitrogen dioxide of about 200 ppm (Sax 1984). Paraquat is unusual in that it can cause delayed pulmonary damage following exposure, even when exposure occurs via routes other than inhalation (Klaassen, Amdur, Doull et al. 1986/Ex. 1–99).

Necrotic changes can reduce the functional surface area of the lung. One type of lesion often noted in persons exposed to respiratory toxins is benign granulomas, which are localized masses formed when the immune system attempts to sequester a foreign object. Depending on the extent of the damage, these masses may reduce the functional capacity of the lung. Exposure to selenium-doped bismuth telluride has been associated with the production of benign granulomas without fibrosis (Wagner, Madden, Zimber, and Stokinger 1974, as cited in ACGIH 1986/ Ex. 1–3, p. 59).

Emphysema is caused by a gradual destruction of the cells of the alveolar septa, which causes a loss of elasticity in the lung. A slight degree of emphysema is present in much of the adult population and does not cause any functional impairment. As the disease progresses, however, serious and life-threatening reductions in functional capacity can occur. Once the disease has advanced to the point of serious functional impairment, it is, for the most part, irreversible (Petersdorf et al. 1983). There is evidence that a number of the substances in this group cause emphysema, including sulfur tetrafluoride (ACGIH 1986/ Ex. 1–3), ozone, and nitrogen dioxide (Klaassen, Amdur, Doull et al. 1986/Ex. 1–99).

Fibrotic changes. Pulmonary fibrosis was one of the earliest recognized forms of occupational disease. Fibrosis should be distinguished from pneumoconiosis, although these terms are often used interchangeably. Pneumoconiosis is a more general term indicating the presence of a foreign substance in the lungs, as determined by radiographic (X-ray) analysis. This definition encompasses a variety of conditions and does not by itself necessarily indicate functional damage (Petersdorf et al. 1983). In contrast, fibrosis is a seriously debilitating disease. One type of fibrosis is interstitial fibrosis, which is a kind of pneumoconiosis characterized by deposition of fibrous tissue in the interstitial spaces between the alveolar membrane and the pulmonary capillary membrane. Interstitial fibrosis greatly reduces the diffusing capacity of the lung and thus causes oxygen deprivation in the body (Guyton 1981/Ex. 1–1002). Like emphysema, fibrosis is largely irreversible; it sometimes progresses even in the absence of further exposure (Petersdorf et al. 1983).

Silicosis is a form of interstitial fibrosis that is caused by exposure to respirable silica particles (Klaassen, Amdur, Doull et al. 1986/Ex. 1–99). Exposure to coal dust causes a pneumoconiosis with fibrosis that can be severely debilitating (Petersdorf et al. 1983). In addition, exposure to graphite, mica, and grain dust have all been associated with fibrosis in workers (ACGIH 1986/Ex. 1–3).

Dose-Response Relationships and Respiratory Effects. For most of the substances in this group, the proposed permissible exposure limits have been based on health surveys and case reports of occupationally exposed populations. In some cases, animal studies have provided the evidence of a substance's toxicity. As is the case for most of the substances for which OSHA is proposing new, reduced, or revised limits, the dose-response curve for respiratory irritants tends to be S-shaped. Table C6–2 presents dose-response data on the adverse pulmonary effects of representative chemicals in this group, the populations exposed, and the endpoints observed. The substances on Table C6–1, and describe the nature of the risks faced by worers exposed to them in construction, maritime, and agricultural workplaces.

TABLE C6–2.—SUMMARY OF DOSE-RESPONSE EVIDENCE FOR ADVERSE RESPIRATORY EFFECTS CAUSED BY SELECTED RESPIRATORY TOXINS

H.S. No./chemical name	CAS No.	Current PEL in construction and maritime	Dose-response data			
			Proposed PEL in construction, maritime, and agriculture	Dose/duration associated with observed effect	Species	Comments
1034 Bismuth telluride (Se-Doped).	1304–82–1		5 mg/m³ TWA	15 mg/m³ 1 year	Dogs, Rats, Rabbits	Granulomatous lesions in lungs seen after 6 months of exposure.
1096 Coal Dust, < 5% quartz.	None	2.4 mg/m³ TWA	2 mg/m³ TWA	4 mg/m³ 35 years	Humans	Calculated estimate of 10 percent probability of developing pneumoconiosis with fibrosis after 35 years of exposure to coal dust.
1097 Coal Dust, > 5% quartz.	None	10 mg/m³ % SiO_2+2	0.1 mg/m³ TWA			(Quartz content not identified.)
1190 Grain Dust (oat, wheat, barley) symptoms..	None		10 mg/m³ TWA	> 10 mg/m³	Humans	Chronic bronchitis, shortness of breath, reduced pulmonary function, increased incidence of respiratory symptoms.

TABLE C6-2.—SUMMARY OF DOSE-RESPONSE EVIDENCE FOR ADVERSE RESPIRATORY EFFECTS CAUSED BY SELECTED RESPIRATORY TOXINS—Continued

H.S. No./chemical name	CAS No.	Current PEL in construction and maritime	Dose-response data			
			Proposed PEL in construction, maritime, and agriculture	Dose/duration associated with observed effect	Species	Comments
				< 10 mg/m³	Humans	Increased incidence of respiratory symptoms.
					Humans	Fibrosis and mottling; pneumoconiosis.
1191 Graphite, natural, respirable.	7782-42-5	15 mppcf TWA	2.5 mg/m³ TWA	N/A	Humans	Anthracosilicosis, similar to that seen in coal miners.
1213 Indium & compounds	7440-74-6	0.1 mg/m³ TWA	0.1 mg/m³ TWA	24-97 mg/m³	Rats	Widespread alveolar edema following exposure to In_2O_3.
1276 Mica	12001-26-2	20 mppcf TWA	3 mg/m³ TWA	N/A	Humans	Signs and symptoms resembling silicosis and pneumoconiosis in 8 of 57 workers.
1289 Nitrogen dioxide	10102-44-0	5 ppm Ceiling	1 ppm STEL	N/A	Humans	Fatal pulmonary edema.
				0.4-2.7 ppm chronic	Humans	Change in pulmonary vital capacity.
1300 Oxygen difluoride	7783-41-7	0.05 ppm TWA	0.05 ppm Ceiling	0.5 ppm two 7-hr exposures	Laboratory Animals	Lethal to a wide variety of laboratory species, causing pulmonary edema and hemorrhage after several hours of exposure.
1301 Ozone	10028-15-6	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	1.5 ppm 3 hrs/day	Humans	Significant reduction in pulmonary vital capacity.
				1 ppm 1 day	Mice	Damage to alveolar tissue.
1303 Paraquat, respirable dust.	4685-14-7	0.5 mg/m³ TWA, Skin	0.1 mg/m³ TWA Skin	N/A	Humans	69 accidental deaths from pulmonary injury reported through 1972.
1354 Silica, crystalline cristobalite.	14464-46-1	½ value for quartz	0.05 mg/m³ TWA	0.5 mg/m³ (as total dust) 2.5 years	Dogs	Cellular infiltration of lung and fibrotic nodules in pulmonary lymph nodes.
1355 Silica, crystalline quartz, respirable.	14808-60-7	10 mg/m³ % SiO_2+2	0.1 mg/m³ TWA	0.1 mg/m³-chronic	Humans	Accelerated loss of pulmonary function beyond effects of aging alone.
1356 Silica, crystalline tridymite.	15468-32-3	½ value for quartz	0.05 mg/m³ TWA	N/A	Rats	Most active form of free silica when administered by intratracheal injection.
1357 Silica, crystalline tripoli.	1317-95-9	10 mg/m³ % SiO_2+2	0.1 mg/m³-TWA	N/A	Lab. Animals	Progressive nodular fibrosis.
1375 Sulfur dioxide	7446-09-5	5 ppm TWA	2 ppm TWA 5 ppm STEL	1 ppm	Humans	Accelerated loss of pulmonary function.
1378 Sulfur tetrafluoride	7783-60-0		0.1 ppm Ceiling	4 ppm	Rats 4 hrs/day/ 10 days	Emphysema, marked clinical signs of respiratory impairment.
1409 Trimellitic anhydride	552-30-7		0.005 ppm TWA		Rats	Intra-alveolar hemorrhage. (No exposure duration indicated.)

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.
N/A = Not available.

ALUMINUM (PYRO POWDERS)
CAS: 7429-90-5; Chemical Formula: A1
H.S. No. 1017

OSHA has no permissible exposure limit for aluminum pyro powders in the construction, maritime, and agriculture industries. The ACGIH has an 8-hour TLV®-TWA of 5 mg/m³; NIOSH has no REL for these powders. The Agency is proposing an 8-hour TWA PEL of 5 mg/m³ for aluminum pyro powders in the construction, maritime, and agriculture industries; NIOSH (Ex. 8-47, Table N1) concurred with this limit when the Agency recently established it in general industry. Promulgation of this limit will make OSHA's PEL for these substances consistent across all OSHA-regulated sectors.

Aluminum in its elemental form is a white, malleable, ductile metal. Powder and flake aluminum are flammable and can form explosive mixtures in air. Aluminum pyro powders are used in fireworks and aluminum paint (Proctor, Hughes, and Fischman 1988, p. 66).

In addition to respiratory effects, aluminum pyro powders can cause gastrointestinal effects and eye irritation. Exposure to aluminum compounds can also affect the absorption of other substances such as calcium and iron compounds (Spencer et al. 1969, 1977). Particles of aluminum can cause necrosis of the cornea when deposited in the eye; in both rabbit and human eyes, aluminum particles have been shown to cause some local necrotic imprints in the fundus at the site of the absorbed particles (Fontana 1938; Jess 1924; Sanin 1947; Knave 1969). Aluminum pyro powders are more acutely toxic than the metal dusts of aluminum (Stokinger 1981a/Ex. 1-1133). Several British studies have examined the effects of exposure to this finely flaked aluminum on workers employed in paint and pyrotechnics plants. Their findings revealed that pulmonary fibrosis may result from exposure to pyro powders, although epidemiologic evidence indicates that additives used to prevent oxidation and agglomeration may have contributed to the incidence and nature of the disease (Edling 1961/Ex. 1-733; Jordan 1961/Ex. 1-559; Mitchell, Manning, Molyneux, and Lane 1961/Ex. 1-564).

OSHA believes that an 8-hour TWA permissible exposure limit of 5 mg/m³ for aluminum pyro powders will prevent the significant risk of lung changes in workers exposed to such powders in construction, maritime, or agricultural operations. In the recent general-industry rulemaking, the Agency determined that these lung changes constitute material impairments of health. Accordingly, OSHA believes that the proposed PEL is necessary to reduce the risk of these health impairments in workers in these sectors. In addition, promulgation of this limit will make OSHA's PEL for aluminum pyro powders consistent across all regulated sectors.

ASPHALT FUMES
CAS: 8052-42-4; Chemical formula:
None

H.S. No. 1028

There is no current OSHA PEL for asphalt fumes. In the Air Contaminants rulemaking, a PEL of 5 mg/m³ (8 hour TWA) for asphalt fumes measured as total particulate was proposed. Many comments were received by the Agency and the complexity of the issues at that time caused OSHA to delay rulemaking on this substance. The AFL/CIO, in the case of AFL/CIO vs. OSHA #89–7185 (11th Cir.) challenged OSHA's failure to issue an asphalt standard. OSHA stated to the Court that it intended to set an exposure limit for asphalt fumes for all sectors as part of the construction rulemaking.

In this rulemaking OSHA is also proposing a PEL of 5 mg/m³ total particulate for general industry, maritime, construction and agriculture. However, subsequent to the 1988 proposal, an extensive body of new scientific data has become available. This data and criticisms of it are presented and extensively analyzed below. Consequently, commenters should respond to the various studies and the regulatory alternatives which would be appropriate based on final conclusions as to these studies. The economic aspects of the various alternatives are presented in the Regulatory Impact Analysis.

Asphalt, also called bitumen, is a mixture of hydrocarbons that is produced by the evaporation of the lighter hydrocarbons from petroleum distillation and subsequent partial oxidation of the residue. Occupational exposure to asphalt fumes can occur during its manufacture or as a result of the secondary heating of asphalt in processes such as road building and repair, roofing and the coating of construction materials (Thayer et al, 1981).

OSHA is addressing the risk to those who are exposed to asphalt fumes in the course of their employment (e.g., roofers and pavers). OSHA has not studied the issue and does not have current information that exposures to the general population are sufficiently high to warrant concern. It is the fume released from the asphalt which is of concern, and it is the physical proximity of the workers to these fumes that makes occupational exposure hazardous. OSHA has requested submission of any additional exposure monitoring data including environmental data for airborne asphalt fume levels that occur some distance from the worksite. Further, OSHA is maintaining dialogue with the Environmental Protection Agency on this issue.

Among the issues raised in the earlier rulemaking regarding asphalt fumes were:

1. Whether asphalt fumes are similar to coal tar fumes;
2. Which is the appropriate method of measurement of asphalt fumes, the benzene-soluble fraction or total particulate;
3. Irritant and other respirator effects of asphalt fumes;
4. Whether asphalt fumes are carcinogenic;
5. What is the proper PEL for asphalt fumes; and,
6. Whether the PEL determined on the basis of the health data is technologically and economically feasible.

OSHA requests comment on all these issues and all other issues which may be relevant to occupational regulation of asphalt fume. In the following discussion, OSHA discusses the studies and presents the views of various organizations. Final decisions will be reached only after consideration of all comments.

On the first issue, OSHA's preliminary view is that there are significant differences between petroleum-derived asphalt fumes and coal tar pitch volatile; in 1983, the Agency published a **Federal Register** notice making clear that the term "coal tar pitch volatile" (CTPV) and OSHA's CTPV standard do not apply to petroleum asphalt. It should be noted here that in the 1983 rulemaking in which asphalt fume was specifically excluded from the standard for coal tar pitch volatile, 48 FR 2768 January 21, 1983, NIOSH supported the continued inclusion of asphalt in the regulation of CTPV, noting the differences between the two substances but recognizing the need for worker protection against high concentrations of PAHs. OSHA notes that coal tar pitch volatile is more irritating than asphalt fume, however the two substances look the same, have the same consistency, contain some common components such as polycyclic aromatic hydrocarbons (PAHs), and have often been used in the same applications. OSHA requests comment on all aspects of this issue.

As for the second point, OSHA's proposed PEL is measured as "total particulate." Another view is that the benzene-soluble fraction is the more specific and thus more appropriate means of measuring asphalt fume and includes this method of determining exposure in the current proposed PEL. The Asphalt Institute (AI) has pointed to several studies which indicate anomalies in measurements using that technique. It has been suggested that the anomalies are the result of the use of plastic filters and that use of glass fiber filters will solve this problem. OSHA requests comment on all aspects this issue.

It should be noted that there are a number of different types or fractions of asphalt. Some commenters have suggested that the type or fraction may be relevant in analyzing these studies.

Respiratory Effects. A very recent study (Norseth, Waage and Dale, 1991, Am J Ind Med, Vol. 20, No. 6, Acute Effects and Exposure to Organic Compounds in Road Maintenance Workers Exposed to Asphalt) attempted to quantify the levels at which a variety of types of irritant and other acute effects were reported as a result of exposure to asphalt fumes. The authors attempt to correlate the reporting of acute symptoms and exposure to organic compounds in a cohort of road maintenance workers. Subjective symptoms and exposure to organic compounds and asphalt fumes were recorded for 254 workers using warm asphalt for road repair and construction, and for a comparison group of 247 maintenance workers who did not work with asphalt. Mean exposure to asphalt fume was 0.358 mg/m³ (carbon disulfide-soluble fraction). No correlation between symptoms and total amount of volatile compounds was found; however, a significant positive correlation was demonstrated with both increasing concentration of asphalt fumes and increasing asphalt temperature. Abnormal fatigue, reduced appetite, laryngeal/ pharyngeal irritation and cough, and eye irritation were found more often in asphalt workers than in the reference group without asphalt exposure. No differences were found for headache, dizziness, nausea, abdominal pain, disturbed sleep, skin reactions, or a smell of sweetness. The authors conclude that asphalt temperature should be kept below 150 degrees C (302 degrees F), fume concentration below 0.4 mg/m³, and the use of harder asphalt types which also require higher temperatures should be avoided.

As this study is very recent it has not yet been subjected to extensive review and comment. But on its face, an argument could be made that an exposure limit of lower than 0.5 mg/m³ may be necessary to prevent acute health effects, OSHA requests comments on all aspects of the study and the appropriate regulatory response.

A few older reports of respiratory effects of asphalt fumes exist in the literature, although information on exposure levels and the possibility of

concomitant exposure with coal tar pitch volatiles is sketchy. Zeglio (1950, as cited in NIOSH, Criteria for a Recommended Standard * * * Occupational Exposure to Asphalt Fumes, 1977) published observations on 22 workers who insulated electrical cables and telegraph and telephone lines. The workers were exposed to fumes from tanks containing bitumen heated to 120 degrees (presumed to be Celsius). Although the concentration of the fumes was not measured, Zeglio stated that the atmosphere had an acrid odor that was irritating to the nose and throat and that stimulated coughing.

Workers exposed in the plant complained of coughing with expectoration, a burning sensation in the throat and chest, and frequent hoarseness. Headache and nasal mucous discharge were also frequently mentioned by the workers. Physical examination of these 22 workers revealed 10 cases of rhinitis, 13 cases of otopharyngitis, 4 cases of laryngitis, and 19 cases of bronchitis. Roentgenographic examination revealed an increased vascularization in the larger bronchial areas, particularly evident in the mediobasal zones in all the workers with bronchitis.

Baylor and Weaver (1968) conducted a health survey of asphalt workers from 7 asphalt companies (462 workers) and a control group from 25 oil refineries (379 workers). Physical examinations emphasized the skin and respiratory tract and included chest roentgenograms. Prevalence of respiratory disease other than cancer were reported in 31 of 360 asphalt workers (8.6%) and in 24 of 379 controls (6.3%). Comparison of these rates with National Center for Health Statistics data yields relative risks which are not significantly different. Baylor and Weaver concluded that "* * * petroleum asphalt cannot rationally be considered a hazardous substance." They did, however, point out that individual predisposition might cause some workers to be subject to health problems with contact with asphalt.

There are a number of studies which consider the issue of the carcinogenicity of asphalt in animals and which consider the prevalence of cancer or the cancer mortality among road paving workers. The following discusses those studies.

Carcinogenicity Data: Animal Studies. The following discusses the toxicological literature, both negative and positive studies, which consider the carcinogenic potential of asphalt fume in animals as evidenced by its ability to induce tumors in mice in skin painting assays. These studies include the following: Hueper and Payne (1960); Simmers (1965, 1966); Wallcove et al, (1972); Bingham et al (1980); Thayer et al, (1981); Emmett et al, (1981); Malaiyandi et al, (1982); IARC (1985); Belinky et al, (1986); Niemeier et al (1989); and Sivak et al, (1989).

Several studies have reported findings on the carcinogenicity of asphalt by skin painting. A number of studies have sought to correlate the ability of a complex mixture to produce skin cancer in rodents with its ability to initiate lung tumors in humans. For example, Nesnow (1989) found very high correlation between the human lung cancer risk estimates and mouse skin tumor initiation activity of three known carcinogens: coke oven emission, roofing tar emission, and cigarette smoke condensate.

In a preliminary study sponsored by NIOSH, Thayer et al (1981) reported positive tumorigenic activity when condensate from two different types of roofing asphalt volatile and condensate from two types of coal tar pitch fumes generated at both 232 °C and 316 °C were tested for tumorigenicity. In this study, groups of CD–1 and C3H/HeJ mice were treated with one of the four types of asphalt condensates or one of the four types of coal tar pitch condensates. Results indicated that both mouse strains developed skin tumors (papillomas and carcinomas) with the CD–1 mouse being less sensitive to the tumorigenic activity of asphalt fumes than the C3H/HeJ strain. When comparing the tumorigenic response to fumes generated at the two temperatures, the asphalt volatile generated at the higher temperature produced a greater tumorigenic response. Although Thayer et al. (1981) reported a statistically significant increase in the incidence of skin tumors, it is difficult to estimate quantitatively the cancer risk from these data because of the lower reliability of the estimate of q_1 (the slope of the dose-response curve) determined from data providing one dose level and a 100% tumorigenic response.

In a paper more fully describing the results of the NIOSH-sponsored study, Niemeier et al. (1988) noted that the carcinogenicity of the asphalt volatile observed in the mouse skin painting experiments previously mentioned in Thayer et al. (1981), could not be entirely accounted for by the concentration of known carcinogens, such as polycyclic aromatic hydrocarbons (PAH) or benzo(a)pyrene (BaP), which is the case for CTPV. Approximately ten-fold more asphalt fume was required to obtain the same biological effect as CTPV. The amounts of total PAH or benzo(a)pyrene (BaP) found in asphalt fume are 30- to 40-fold less than those amounts found to be effective in eliciting the same response with condensed coal tar pitch fumes. This observation led Niemeier et al. (1988) to hypothesize that the asphalt preparation contained other components which might augment the activity of the very low concentrations of measured PAH found in the asphalt study.

In an attempt to further characterize the components of the asphalt fumes responsible for the carcinogenic activity, Sivak et al. (1989) heated roofing asphalt to 316° C. The fumes generated were fractionated by preparative high performance liquid chromatography (HPLC) and analyzed by gas chromatography/mass spectroscopy (GC/MS). The five fractions collected (labeled A through E) were used in skin application bioassay in male C3H/HeJ and Sencar mice (30 animals per test group). Fractions were applied in proportion to their amount in neat asphalt fume.

Fraction C which contained alkylated phenylethanones and alkylated dihydrofuranones had the greatest tumor incidence. Fraction C produced tumors in 17 of 30 C3H mice while fraction B which contained olefins, alkylated aryl thiophenes and alkylated phenanthrenes produced tumors in 10 of 30 C3H mice. The other fractions exhibited no tumorigenic activity. Neither synergism, co-carcinogenicity, nor tumor-promoting activities was observed among the fractions at the concentrations tested.

In a 1988 submission to the Air Contaminants rulemaking docket H020, Exxon reviewed the literature and concluded: "To date, skin painting studies in mice have proven to be the most reliable predictors of the potential carcinogenicity of petroleum-derived materials since these tests reflect the integrated biological response to the presence of tumor initiators, promoters and co-carcinogens" (Exhibit 3–681).

The position of the Asphalt Institute, as stated in their "Report to OSHA and NIOSH, Status of Asphalt Industry Steering Committee Research Program On the Health Effects of Asphalt Fumes and Recommendation for a Worker Health Standard" (1990) is as follows: "The bioassay studies do confirm that some asphalts contain small amounts of carcinogenic species which, if volatilized or otherwise made bioavailable to test animals, may cause skin cancers. But the bioassays do not identify the active species. Nor do they

demonstrate that, under conditions of real world use of all, most, or even any asphalt products, those known constituents are present in fumes in sufficient quantities to yield tumorigenicity in a skin-painting bioassay".

Short-term Tests

The fractions generated in the NIOSH study were used in a modified Ames test of mutagenicity (in which the ability of a test substance to induce revertant in a gene of the TA98 strain of *Salmonella typhymurium* is determined). This measure of mutagenicity correlated well with the observed mouse skin carcinogenicity (r = 0.94). (Asphalt Institute submission.)

In a recent study, NIOSH reported that fractionated asphalt fume condensate inhibited inter-cellular communication. Most inhibitors of intracellular communication have been observed to have tumor promoting activity. It is hypothesized that the promoting agent serves to isolate an initiated cell from the growth-regulating signals (communications) of surrounding cells leading to the development of tumors.

In this study NIOSH researchers tested the same fume fractions used in the skin painting study (Sivak) in a metabolic cooperation assay. When wild type Chinese hamster lung fibroblasts are grown in the presence of 6-thioguanine (6-TG), they are killed by its phosphorylated metabolite. Resistant cells do not produce the toxic metabolite and therefore survive exposure to 6-TG. However, in a mixed cell culture containing both sensitive and resistant cell type, there is transfer of the 6-TG metabolite via gap functions from the sensitive to the resistant cells and both types are killed. In the V79 metabolic cooperation assay, co-cultivated 6-TG sensitive and 6-TG resistant cells were exposed to condensate of asphalt fume fractions prior to the addition of 6-TG to the medium. If the test substance inhibited intracellular communication, only those resistant cells which did not receive the toxic 6-TG metabolite from the sensitive cells via gap junctions would survive. The parent mixture of asphalt fume condensate fractions and all of the fractions, except fraction A, inhibited intercellular communication in a concentration dependent fashion (dose-response). Fraction A inhibited metabolic cooperation only at the maximum concentration tested. Fractions D and E, which contained alkylated ketones, alkylated napthols and phenols, were most potent fractions in this assay. The authors hypothesized that "If the similarity between cigarette smoke and asphalt fume condensates goes beyond inhibition of metabolic cooperation in V79 cells, the carcinogenicity of the asphalt fume condensate may be due in part to the presence of tumor promoters acting through inhibition of intracellular communication."

In a study by Monarca et al. (1987), extracts of bitumen fume demonstrated no mutagenic activity in the Ames test, although the benzo(a)pyrene [B(a)P] concentration predicted that the samples would be positive. This observation led these workers to hypothesize that there was inhibition of mutagenicity due to other sample components. This research group further reported results of biological monitoring of the workers exposed to the asphalt fumes analyzed in their earlier work (Pasquini et al., 1989). The worker exposures were between 0.6 and 0.8 mg/m^3 (total particulate) and were approximately 0.2 mg/m^3 measured as benzene soluble fraction. Urine samples from asphalt fume-exposed and non-exposed workers were collected and tested for mutagenicity in the Ames assay.

Microsomal enzyme activation was required for all observed mutagenic activity and was detected only with the TA 98 bacterial strain. Neither of the two additional potential indicators measured, thioether and D-glucaric acid, was significantly different in the exposed and non-exposed groups.

Nine of 11 (82%) non-smokers exposed to asphalt fume had mutagenic urine, while 5 of 18 (28%) of asphalt non-exposed, non-smokers were positive. The urine of all smokers, whether or not exposed to asphalt fume, was positive.

These researchers noted an apparent inconsistency in that environmental samples of asphalt fume were non-mutagenic in their assay, while many of those exposed to asphalt produced mutagenic urine. They offered several explanations: Escape of active components from the fume samples, difficulties inherent to Ames testing of complex mixtures, and, as mentioned earlier, the potential for inhibition of mutagenic activity by other components. They further stated:

> * * * urinary mutagenicity is considered more meaningful for evaluating human exposure to unknown complex mixtures than ambient monitoring, because it is a nonspecific indicator and can estimate the uptake of the mutagens in the body.

In other words, some metabolism that takes place in the body and converts the exposure to a mutagen is not duplicated in bacterial systems used for the Ames test. Therefore, a mutagenic effect will not be observed in the latter test system, particularly if the toxic chemical requires a multi-step metabolic process for it to become an active mutagen.

Several classes of carcinogens, including polycyclic aromatic hydrocarbons (PAH), are hypothesized to mediate their activity through their metabolic activation to reactive species that subsequently covalently bind to DNA of the cells of the target organ. Shocket et al. (1988a) studied the covalent binding of aromatic compounds to DNA in mouse skin following topical application of coal-tar, creosote or bitumen. The level of adducts (covalently linked species) observed in mouse skin 24 hours after treatment are as follows:

Agent	Dose/mouse (skin)	fmol adduct/μg DNA
Coal tar	30 mg	0.38
Coal tar	6 mg	0.14
Creosote	25 μl	0.40
Creosote	5 μl	0.19
Bitumen	15 mg	0.09
Bitumen	3 mg	0.00

Adducts were also detected in lung DNA of treated animals. As with coal-tar and creosote, higher levels of accumulation of DNA adducts were observed in skin than in lung following multiple applications.

Schocket et al. (1988b) also looked at the formation of DNA-adducts in human fetal and adult skin cell cultures following treatment with coal-tar, creosote, and bitumen (as a paint formulation containing tetrahydrofuran). These results are as follows:

Treatment	fmol adduct/μg DNA	
	Human adult skin	Human fetal skin
Control	0.097	0.063
Coal tar (30 μg)	0.354	0.355
Creosote (25 μl)	0.313	0.197
Bitumen (3 μg)	0.000	0.156
Bitumen (15 μg)	0.216	0.185

All fetal adduct levels, including those of the bitumen treated, contained statistically significant amounts of adducts. The adult cell cultures treated with 3 μg of bitumen paint solutions failed to produce any adducts. This leads to the point presented by the authors of the possible implications of the ability of fetal tissue to activate the carcinogenic activity of PAHs *in utero*. These data indicate that bitumen is a less potent inducer of DNA adducts in mouse skin cells, (the site of induction in the *in vivo* skin painting studies) than it

is in the human skin cells, relative to coal tar and creosote. Another point that Schocket et al. (1988b) mentions is that bitumens have low levels of activity when compared to the coal-tar and creosote, but that there appears to be potential to produce malignant tumors. The authors concluded that bitumen was similar to coal-tar and creosote in forming DNA adducts in the target cells and recommended that "it would seem prudent to regard preparations of bitumen as representing a hazard to man comparable to that of the other two agents" (Schocket et al. 1988b).

The ACGIH TLV for asphalt fume is a TWA of 5 mg/m³ measured as total particulate to reduce the possible risk of carcinogenicity (ACGIH, 1986). However, ACGIH did not specifically designate asphalt fumes a carcinogen. In 1977, NIOSH recommended a 15-minute ceiling value of 5 mg/m³ measured as total particulate based upon the prevention of irritation to the eyes and respiratory tract of workers, and to minimize the possibility of a carcinogenic response from occupational exposure to asphalt fumes (NIOSH, 1977).

In a 1987 publication, IARC concluded that there is sufficient evidence for the carcinogenicity of extracts of steam-refined bitumens and air-refined bitumens in experimental animals; that there is limited evidence for the carcinogenicity of undiluted steam-refined bitumens and for cracking-residue bitumens in experimental animals; that there is inadequate evidence for the carcinogenicity of undiluted air-refined bitumens in experimental animals; and that there is inadequate evidence the bitumens alone are carcinogenic to humans. (IARC 1987) IARC's assessment of asphalt, however, was made prior to the publication of the above mentioned epidemiologic and DNA-adduct studies.

In its Report to OSHA and NIOSH (1990), the AI states: "Quite apart from the unresolved questions about the representativeness of the fume condensates tested by NIOSH, asphalt fumes have been shown to be tumorigenic only in skin-painting studies. Inhalation bioassays have not shown similar effects. By their very nature, skin-painting studies do not generate the dose-response data needed to estimate carcinogenic potency. And still further biological uncertainties are introduced by extrapolating the results of dermal exposures in mice to inhalation exposures in workers". The AI concludes: "The data support a PEL of 5 mg/m³ for asphalt fumes to protect workers against eye and respiratory tract irritation, but do not support a finding of significant cancer risk".

Epidemiologic Studies

In a recent epidemiologic study of asphalt exposed workers, Hansen (1989) compared the mortality experience between a cohort of 679 mastic asphalt workers with that of all Danish men. These workers' jobs require them to fill buckets with asphalt (at approximately 250 °C), carry the bucket to the area of application where they tip out the asphalt and level it by drawing out the mixture with long wooden trowels. Much of this work is done by the worker while kneeling. The process is used both in flooring and paving operations with the flooring operations having the higher exposure levels.

The 679 male mastic asphalt workers were identified from several sources as having performed mastic asphalt work between 1959 and 1980. Subjects were followed through January 1985. Information on death and emigration was obtained through the Danish National Register. By the end of follow-up, 149 had died, 6 emigrated resulting in a total of 6,692 person-years of follow-up. Incident cancer cases were ascertained through the Danish Cancer Registry. Data on individual exposure history was generally not available. Age grouping was taken as proxy for time from first exposure, allowing an estimation of latency.

The SMR for all malignant neoplasms was 195 (CI, 153–244). Other cancer sites having significantly elevated mortality rates are as follows:

Site	SMR	95% confidence interval
Mouth	1,111	(135–4,014)
Esophagus	698	(144–2,039)
Rectum	318	(128–656)
Lung	344	(227–501)

Two samples taken to measure exposure levels to asphalt fume during road paving, in which approximately ²/₃ of the cohort was engaged, were 4.3 and 3.4 mg/m³ with a mean of 4 mg/m³. Thirty five samples taken during flooring operations, in which the remaining ¹/₃ of the cohort worked, had an average exposure of 20 mg/m³. These estimates of exposure are based on 1976 measurements by the Danish National Institute of Health, and the author of this study has informed OSHA that it is likely an overestimate of exposure since the amount of mastic applied per worker increased during the study period, prior to the 1976 sampling. Dr. Hansen further informed OSHA that the workers receive approximately 90% compensation during the period of the year in which they cannot perform mastic asphalt work. After adjustment for the seasonal nature of the work, Hansen estimated that the average exposure of mastic workers in the cohort was equivalent to a continuous exposure of 5 mg/m³, the current Danish PEL.

Because coal tar pitch was added to the mastic asphalt mixture during World War II due to shortages of asphalt, it was necessary to determine the number of workers who were potentially exposed to both asphalt fumes and coal-tar. In order to do this, the cohort was further divided into three subcohorts. The three subcohorts divided the workers according to the time of birth as follows: Group I (N=194), born 1893–1919; Group II (N=129), born 1920–1929; and, Group III (N=356), born 1930–1960. Group I was the most likely to have exposure to coal-tar during World War II; Group II may have had some coal-tar exposure in World War II, and Group III could not have had wartime exposure. The lung cancer SMRs for all three groups (302, 392, and 857 respectively) were significantly elevated, further supporting the role of asphalt in this tumor excess. The results also suggested that the increased lung cancer risk manifested itself earlier (at younger ages) in the subsequent birth cohorts, but numbers of cancers in this youngest group were too small to reach statistical significance. Hansen also adjusted the respiratory and digestive cancer SMRs for estimated confounding effects of urbanization and smoking habit. This adjustment resulted in somewhat lower SMRs of 214 and 206 for respiratory and digestive cancers respectively, but still demonstrated statistically significant excess risk.

In this incidence study, urinary system cancer, which includes bladder cancer, known to be smoking-related, showed no statistically significant increase (SMR=133). In a subsequent mortality study of this cohort, Hansen (1990) reported that an SMR of 100 for cardiovascular disease deaths-a cause of death also known to be associated with smoking. Thus, two major causes of death related to cigarette smoking were not elevated among the cohort members. These observations suggest that cigarette smoking is unlikely to have accounted for the excess lung cancer observed in the study.

In a subsequent mortality study of this cohort, Hansen (1990) reported that a 1976 survey of mastic workers (110 members of the study cohort) indicated that 22% were non-smokers, 36%

consumed less than 14 grams of tobacco per day, and 43% consumed 15 or more grams per day, while a 1982 Danish population-based survey gave these percentages as 39, 24 and 30% respectively. She used the lung cancer death rates among non-smokers, medium smokers, and heavy smokers from the Doll and Peto study (1976) to estimate that these differences in smoking would bring about an 18% excess of lung cancer deaths and 21% excess of the bronchitis deaths in her cohort of workers. This adjustment of the SMR for lung cancer lowered the estimate from 290 to 246.

Similarly, because most of the cohort was from urban areas of Denmark and the comparison population contained both urban and rural groups, adjustment for urbanization was also undertaken. The correction which was based on Danish census data, lowered the estimate of the SMR for lung cancer from 290 to 264. Independent adjustment for both, a procedures which over-adjusts because smoking and urbanization are related, still resulted in a statistically significant SMR of 224.

Hansen (1989a) also undertook a separate epidemiologic study comparing mortality between 1,320 workers employed in the Danish asphalt industry with that of 43,024 workers from service trades, agriculture, forestry and specific light industries. She found a significantly increased mortality for all malignant neoplasms among asphalt workers aged 45 or more when 5 years of latency was taken into account (SMR 159, 95% confidence interval, 106–228) compared with other unskilled workers. There were increases for respiratory, bladder and digestive cancers, but these increases were not statistically significant. No attempt was made to assess exposure levels—the only criteria for a subject to be in either exposure category were his occupation and being employed on the date of the census, which is likely to have diluted any differences. For instance, the comparison group might have included asphalt-exposed workers who were not employed in asphalt work on that date. Similarly, the "exposed" group might have included workers with low cumulative asphalt exposures.

Epidemiologic studies by Hammond et al, (1976) Menck and Henderson (1976), and Milham (1982) reported increased standardized mortality ratios or proportionate mortality ratios for lung cancer among roofers and slaters. It is difficult to establish a clear association between asphalt exposure and lung cancer in these studies because most workers had combined exposures to asphalt and coal tar, and smoking histories of the workers were not known.

A study by Baylor and Weaver (1968) reported no significant differences in a cross-sectional survey on the health of 462 asphalt workers compared with the health of 379 refinery workers. These workers had asphalt exposures for at least 5 years and were then given a physical examination, which included a medical and occupational history. No significant differences were noted between the 2 groups of workers regarding: respiratory diseases, skin cancer, non-carcinogenic skin disease, hypertension, ulcer, heart disease, or other cancers. This is not an appropriate study for demonstrating whether or not there is an excess risk of cancer for a number of reasons. Without mortality data and longer follow-up, few conclusions regarding the risk of asphalt exposure can be drawn from these studies. Since refinery workers are also exposed to PAHs, etc., they are therefore not a true control group for asphalt fume exposures.

Based on preliminary reports of excess leukemia among highway maintenance workers in a small Minnesota community, Bender et al (1989) assembled a cohort of Minnesota highway maintenance workers and determined their cause-specific mortality and compared this rate with that of the entire Minnesota population. This study had a large number of subjects (4,849) and deaths (1,530), and lengthy and nearly complete follow-up (99.6%). The authors did not, however, present any exposure information. The results indicated a statistically significant SMR of 425 for leukemia mortality among those with 30 to 39 years of work and, as mentioned earlier, a significant SMR of 292 for urologic cancer among those having 40 to 49 years of latency. Lung cancer SMRs and other cancer SMRs were not significantly elevated.

In its "Briefing Paper On the Regulation of Asphalt Fumes" the Asphalt Institute described this study by Bender as "(T)he best study of U.S. asphalt workers," and stated that it found no increased mortality at any relevant cancer site. In a letter to OSHA staff Dr. Parker, a secondary author of the Minnesota Highway Maintenance Worker Study, stated that this study "does not support a contention, either pro or con, with regard to the potential carcinogenicity of asphalts. Although the primary workers we evaluated performed highway maintenance work, these workers were not primarily involved in road construction" (where they would be most likely to be exposed to asphalt fumes).

Parker et al (1989) reported the results of a study on the same cohort in which non-cancer causes of death were analyzed. The SMR for renal failure among long-term rural workers was significantly elevated (SMR=676) as was the SMR for transportation-related injuries (SMR=280). The lack of information on the exposures of this cohort render it of little value in determining the level of risk from exposure to asphalt and does not allow the determination of risk levels among more highly exposed subgroups.

Quantitative Risk Assessment

The best available human data for quantifying the lung cancer risk associated with paving workers is found in the Hansen study of Danish mastic asphalt workers (Hansen 1989b). This study has the best exposure data along with estimates of relative risk of cancer in humans to evaluate a dose-response relationship. If some cohorts of workers in this study did not have substantial exposure to coal tar pitch volatiles, (CTPV) a known carcinogen, then this study provides quantitative evidence of cancer risk from asphalt. The issue of CTPV exposure is controversial and discussed below.

Hansen derived the mean exposure level of asphalt fume in her study cohort, 5.4 mg/m^3, as follows: two thirds of the cohort was engaged in road paving operations, having a mean exposure level of 4 mg/m^3; one third was involved in flooring operations, having a mean exposure to asphalt fume of 20 mg/m^3; and, that exposure occurred only during seven months of the year. This leads to:

$$[(^1/_3 \times 20\ mg/m^3) + (^2/_3 \times 4\ mg/m^3)] \times {}^7/_{12} = 5.4\ mg/m^3.$$

OSHA assumed that exposure began at 22.5 years of age and continued at a constant level for 45 years. These assumptions are reasonable because Hansen stated in the report of this study that new mastic workers are always young, typically in their early twenties, and that the turnover in this job is moderate. Dose was estimated in units of milligrams per cubic meter-years (mg/m^3-yr) and the expected cancer incidence was calculated from age-, period-, and site-specific incidence rates for Danish men during the period 1958–1982.

A relative risk model was used to quantify the risk from occupational exposure to asphalt fume. The relative risk model is based on the assumption that the increase in the relative risk of

lung cancer death due to asphalt fume exposure is the product of an individual's background risk at time t, $h_o(t)$, and the risk attributable to asphalt fume exposure, $h_e(t)$. The risk attributed to asphalt fume exposure is given by

$$h_e(t) = \beta X,$$

where X represents cumulative dose up to time t. An individual's total risk of lung cancer death at time t, h(t), is given by

$$h(t) = h_o(t) + (h_o(t)h_e(t)]$$
$$= h_o(t) + (h_o(t)\beta X).$$

This model can also be written as a linear model where

$$\frac{h(t)}{h_o(t)} = 1 + \beta X.$$

Here, 1 is the intercept (i.e. the relative risk assuming no exposure), and β is the slope of the dose-response line representing the change in relative risk per unit dose.

If we consider each individual to be an independent Bernoulli trial and sum over all individuals in the jth exposure group, we obtain the expected number of lung cancer deaths for the period of observation, $E(O_j)$, which is given by

$$E(O_j) = E_j + (E_j\beta X_j).$$

where E_j is the expected number of cases assuming no asphalt exposure, (i.e. background), and X_j is the median dose for exposure group j. Assuming that the observed number of deaths is distributed as a Poisson random variable with expectation given above, we obtain the likelihood of observed results

$$LIK = \prod_{j=1} [\exp -(E_j + (E_j \beta X_j))]$$
$$[E_j + (E_j \beta X_j)] / O_j$$

The maximum likelihood estimate of the unknown parameter β is obtained by maximizing the log likelihood with respect to β. The variance of β is given by the inverse of the observed information. We solve for the parameter β using a Newton-Raphson algorithm. Estimates of β and its variance derived from the Hansen data using the relative risk model are given in Table 1.

The relative risk model rests on the assumption that the ratio of the risk of lung cancer death for asphalt-exposed individuals to the risk of lung cancer death for individuals with no asphalt exposure depends only on dose and is constant across age groups. In other words, for any given cumulative dose, the risk of death for a twenty-five year old exposed individual relative to a non-exposed twenty-five year old individual is the same as the risk of death for a fifty year old exposed individual relative to a non-exposed individual of the same age.

OSHA recognizes the importance of this assumption in estimating true occupational risk. Thus, OSHA specifically requests comments concerning the significance of assumptions and their applicability for estimating risks from exposure to inhaled asphalt fume.

After fitting the model to the data, it is reasonable to ask whether or not the fit is good. The standard approach for measuring goodness-of-fit is to perform a Chi-Square test, in this case calculating the deviation of the number of lung cancers predicted for each exposure group from the number of lung cancers observed in each group. The number of lung cancers predicted for the jth exposure group, O_j, is given by

$$O_j = E_j + (E_j\beta X_j),$$

where E_j is the expected number of lung cancers for the jth exposure group, X_j is the median continuous dose expressed in mg/m^3-years for the jth exposure group , and β is the estimated parameter for the relative risk model (given in Table 1). The numbers of lung cancers predicted by the model for each exposure group are presented in Table 3. The goodness-of-fit Chi-Square is 14.0 on 18 degrees of freedom, therefore, OSHA concludes that the model provides a reasonable fit to the observed data.

Gail describes an approach for estimating the excess risk of cancer death due to constant exposure to environmental carcinogens in the presence of competing risks (From Cadmium docket #, Ex. 8–651). This method is easily adapted to estimate the excess risk of lung cancer death due to occupational exposure to asphalt.

Occupational dose was first converted to continuous dose on the assumption that exposure occurs 8 hours per day, 5 days per week and 48 weeks per year. The lung cancer death rates, which were given for five-year age intervals, were assumed to be constant throughout each interval.

Let d_i = the cumulative dose received at the midpoint of the ith age interval. Thus, for example, if an individual is exposed at a constant level X from age 20 on, then at age 24, d_{24} would equal 4.5X. From age 65 on, cumulative exposure would be 45X. Let $q_x(i)$ = the probability of death from all causes at age i, and let $q_L(i)$ = the probability of lung cancer death at age i.

Using the relative risk model and the MLE of β derived from this model above, the lifetime excess risk of lung cancer due to 45 years of occupational exposure to asphalt fume is given by

$$7 \sum_{i=20}^{j} \beta d_i q_L(i) \exp\left[-\sum_{j=20}^{j} \beta d_j q_L(j) + q_x(j)\right].$$

Table 3 presents estimates of excess deaths derived from the Hansen data using the method described here. In addition, 95% upper confidence limits and 5% lower confidence limits were constructed for each of the MLEs. This was done by replacing β by $\beta \pm 1.645$ SE(β) and using the formulas above.

Using data for the entire cohort, and assuming no substantial contribution to the lung cancer risk from CTPV, exposure to 0.2 mg/m^3 of asphalt fume for the occupational lifetime is associated with an estimated excess cancer death rate of one per 1,000 workers. This rate is based on the maximum likelihood estimate. The 95-percent upper bound estimate or risk corresponding to this dose is about one and a half excess lung cancer deaths per 1,000 workers. By comparison, the maximum likelihood estimate of risk for lifetime exposure to 0.5 mg/m^3 or 1.0 mg/m^3 are 2.5 and 5 excess deaths per 1,000 workers respectively. The estimate at a lifetime exposure of 5 mg/m^3 is 25 deaths per 1,000 workers.

A similar assessment of risk was performed using data representing only that portion of the cohort which was born between 1930 and 1960. Dr. Hansen believes that these workers did not have any exposure to CTPV, and the Asphalt Institute believes they had some

exposure. The resulting risk estimates were higher than those of the entire cohort of mastic workers. However, the numbers of deaths in this cohort were quite small and accordingly, the risk estimates have wide confidence intervals. Therefore the combined cohort may be more useful for estimates of risk.

In extensive submissions to OSHA, the Asphalt Institute (AI) presented its research program and the results of research to date. Included was a report by A. Kriech and J. Kurek in which they described the chemical analyses of core samples of Copenhagen roadways, purported to have been paved with mastic asphalt by the cohort of workers studied by Dr. Hansen. AI requested that the Danish Road Laboratory locate pavements and take core samples from roadways applied approximately every five years. In this report, core samples were identified by year of application and street name. AI concluded from the quantification of polynuclear aromatic hydrocarbons present in the core samples, that "* * * this study has produced persuasive evidence that the workers studied by Dr. Hansen were exposed to significant concentrations of coal tar fumes * * *"

Dr. Hansen, who performed the study, has informed OSHA that in interviews with mastic asphalt workers and other plant personnel, she was told that following World War II, coal tar use was avoided. For example, an engineer who formulated asphalt at one of the studied facilities related to Dr. Hansen that coal tar was not used at his company in either the lower (Pulver) layer or the mastic layer after 1949. He further stated that migration of coal tar from lower layer(s) into mastic asphalt would make the mastic asphalt less suitable by altering its properties making it soft when warm and brittle when cold.

Further, Dr. Hansen has informed OSHA that the core sampling and analyses will be repeated under controlled circumstances by an independent institution. OSHA anticipates that these data will become available to the Agency during this rulemaking. The evidence presented by Dr. Hansen is not certain because some of it relies heavily on human recollection.

The evidence for concomitant exposure presented by AI is also not certain. The accuracy of the records is undetermined. Information regarding the nature of any repairs of the sampled roadways subsequent to application of the mastic asphalt, which might have included coal tar, was not included in the report. The potential migration of the measured chemical components of the core samples was not discussed. In addition, it is unclear to what degree the PAH measurements made by AI discriminate between asphalt and coal tar. Moreover, it is not clear that the AI core samples were taken from the roads which were paved by the studies workers, who paved specifically with mastic asphalt.

If AI's suppositions are accurate and part of the increased risk of lung cancer in the Danish mastic asphalt worker cohort was due to concomitant exposure to coal tar pitch volatile (CTPV), the risk estimates due to asphalt exposure would be less certain. If Dr. Hansen's views are the better supported, then more confidence is given to the risk estimates.

OSHA is proposing a PEL for asphalt fumes of 5 mg/m³ total particulate as an 8-hr. TWA for general industry, construction, maritime and agriculture. That was the level which OSHA proposed for general industry in 1986, and is the ACGIH recommendation. NIOSH's original recommendation was 5 mg/m³ as a 15-min. STEL. One of OSHA's procedures for the Air Contaminants rulemaking was to make use of ACGIH and NIOSH recommendations for its proposals, but base its final decisions, of course, on all evidence, comments, and views.

Subsequent to OSHA's original proposal and the recommendations of NIOSH and ACGIH, new studies have become available. However, at this time only one commenter, the Asphalt Institute, has provided comment on these new studies (Docket office, Docket #H-020A). The Norseth study is so recent that OSHA has not received a single comment on it as yet.

In light of the number of significant new studies and the varying conclusions that can be drawn from them, arguments can be made to support PELs of 5 mg/m³, 1 mg/m³, 0.5 mg/m³ and 0.2 mg/m³. The selection of a PEL depends on one's conclusions as to the level at which irritation and other respiratory effects occur, the relevance and persuasiveness of the carcinogenicity evidence, and the relevance of the risk assessment. The Regulatory Impact Analysis presents exposure data and other information as to feasibility of all of these levels.

OSHA requests comments on all the evidence, studies and analyses, its proposal of 5 mg/m³ total particulate as an 8-hr. TWA, the other exposure limits mentioned, the appropriate method of measurement and all other relevant issues. Comment is also requested on whether different fractions of asphalt may have different health effects, and whether it may be appropriate to take this into consideration in final regulatory decisions.

TABLE C6-3.—OBSERVED AND EXPECTED CASES OF LUNG CANCER BY AGE AND SUBCOHORT AMONG DANISH MASTIC ASPHALT WORKER COHORT

Age (years)	X[1] Dose (mg/m³-yr)	Subcohort I		Subcohort II		Subcohort III	
		O_i	E_i	O_i	E_i	O_i	E_i
30–34	54			0	0.00	0	0.01
–39	81			0	0.00	0	0.03
–44	108	0	0.00	0	0.02	1	0.08
–49	135	0	0.02	1	0.07	1	0.17
–54	162	0	0.14	2	0.35	1	0.11
–59	189	2	0.44	2	0.72		
–64	216	4	1.29	1	0.37		
–69	243	5	1.77				
–74	243	4	1.42				
–79	243	3	0.61				
–84	243	0	0.24				
–89	243	0	0.03				

E_i—expected lung cancer cases, assuming no asphalt exposure.
O_i—observed lung cancer cases.

TABLE C6–4.—ESTIMATES OF EXCESS LUNG CANCER DEATHS PER 1,000 WORKERS WITH 45 YEARS OCCUPATIONAL EXPOSURE TO ASPHALT FUME

Dose (mg/m^3)	Continuous dose (mg/m^3)	Number lung cancer deaths	5% lower and 95% upper confidence limit
0.1	0.02	0.5	(0.3, 0.7)
0.2	0.04	1.0	(0.1, 1.5)
0.5	0.11	2.5	(1.4, 3.7)
1.0	0.22	5.0	(2.7, 7.3)
2.0	0.44	10.0	(5.4, 14.6)
4.0	0.88	19.9	(10.8, 28.9)
5.0	1.10	24.8	(13.5, 35.9)
10.0	2.19	48.7	(26.7, 70.0)

TABLE C6–5.—PARAMETER ESTIMATES FROM THE RELATIVE RISK MODEL USING THE HANSEN DATA

Parameter	Subcohort I born 1893–1919	Subcohort II born 1920–1929	Subcohort III born 1930–1960	Combined cohort born 1893–1960
MLE	8.7056E–03	1.5313E–02	4.9689E–02	1.0807E–02
var β	0.9500E–05	0.7410E–04	0.1093E–02	0.9155E–05

Variance is estimated by the observed information.

TABLE C6–6.—ESTIMATES OF EXCESS LUNG CANCER DEATHS PER 1,000 WORKERS WITH 45 YEARS OF OCCUPATIONAL EXPOSURE TO ASPHALT FUME

Dose (mg/m^3)	Continuous dose (mg/m^3)	No. of lung cancer deaths	5% Lower and 95% upper confidence limits
0.1	0.02	0.5	(0.3, 0.7)
0.2	0.04	1.0	(0.1, 1.5)
0.5	0.11	2.5	(1.4, 3.7)
1.0	0.22	5.0	(2.7, 7.3)
2.0	0.44	10.0	(5.4, 14.6)
4.0	0.88	19.9	(10.8, 28.9)
5.0	1.10	24.8	(13.5, 35.9)
10.0	2.19	48.7	(26.7, 70.0)

BISMUTH TELLURIDE (Se-DOPED)
CAS: 1304–82–1; Chemical Formula: Bi_2Te_3
H.S. No. 1034

OSHA has no limit for doped bismuth telluride in the construction, maritime, or agriculture industry. The ACGIH has a TLV®–TWA of 5 mg/m^3 for bismuth telluride that has been doped with selenium sulfide. NIOSH has no REL for this substance. The Agency is proposing a PEL of 5 mg/m^3 as an 8-hour TWA in construction, maritime, and agricultural operations. NIOSH (Ex. 8–47, Table N1) concurred with this limit when the Agency recently established it in general industry.

Bismuth telluride takes the form of gray, hexagonal platelets; it is also available as ingots or single crystals. Bismuth telluride is used for semiconductors and in thermoelectric cooling and power generation applications (ACGIH 1986, p. 59).

Wagner, Madden, Zimber, and Stokinger (1974) conducted a one-year study in which rabbits, dogs, and rats were exposed for 6 hours/day, 5 days/week to doped bismuth telluride dust (containing 80.04 mol % Bi_2Te_3 and 0.20 mol % SnTe, plus a small stoichiometric excess of Te) of 1.04 um particle diameter at a mean concentration of 15 mg/m^3. Small, granulomatous lesions without fibrosis appeared in the lungs of dogs at 6 months. In dogs that were sacrificed four months after an 8-month exposure, the lesions had regressed, and the affected lymph nodes were without cellular reaction. Rabbits exhibited similar histologic effects, but with decreased numbers of pulmonary macrophages, no fibrous tissue proliferation, and no cellular or fibrous tissue reaction around the dust deposits in the lymph nodes. The rats showed fewer granulomas but some areas of epithelialization of the alveolar walls. As was true for the other species, the rats showed neither fibrosis nor cellular reaction in the lymph nodes, despite accumulation of the intermetallic dust (Wagner, Madden, Zimber, and Stokinger 1974).

In humans, exposure to bismuth telluride (whether doped or not is not specified) is reported to lead to eye, nose, and throat irritation (Hazardous Substance Fact Sheet 1985). Exposure to the doped telluride is known to cause garlic breath, a sign of exposure both to tellurium and selenium (Clayton and Clayton 1981, p. 1561).

OSHA is proposing an 8-hour PEL of 5 mg/m^3 TWA for Se-doped bismuth telluride in the construction, maritime, and agriculture industries to prevent the occurrence of pulmonary lesions in exposed workers. OSHA preliminarily concludes that this limit will substantially reduce the significant risk of these pulmonary effects, which constitute material impairments of health. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CARBON BLACK
CAS: 1333–86–4; Chemical Formula: C
H.S. No. 2027

Currently, OSHA has an 8-hour TWA limit of 3.5 mg/m^3 for carbon black in general industry and in the construction and maritime industries. There is no limit in agriculture. The ACGIH TLV®–TWA and NIOSH REL are both 3.5 mg/m^3; however, NIOSH also recommends that carbon black containing more than 0.1 percent polyaromatic hydrocarbons be handled as a potential human carcinogen. OSHA is proposing to extend its 3.5 mg/m^3 8-hour TWA PEL to agricultural workplaces; this action will make the PEL for carbon black consistent across all regulated sectors.

Commercial carbon black is a finely divided form of carbon that contains trace amounts of organic and inorganic impurities adsorbed on the surfaces of the particles. Oil furnace black, which typically contains less than 0.1 percent solvent-extractable impurities, is the most widely used of the carbon blacks in the United States.

Data on humans and animals suggest that exposure to carbon black at high levels is associated with declines in pulmonary function and cardiovascular stress. Oleru et al. (1983) reported a significant loss of pulmonary function among a group of 125 Nigerian carbon

black workers exposed to airborne concentrations as high as 34 mg/m³; radiograms taken on members of this population were normal. Another study, reported in an abstract (Crosbie et al. 1979), found significant annual declines in pulmonary function, as well as radiologic changes, in a group of 35 workers exposed to carbon black concentrations below 10 mg/m³. Nau et al. (1962) exposed hamsters, mice, guinea pigs, rabbits, and monkeys to 56.6 mg/m³ furnace black (carbon black) for prolonged periods of time. Electrocardiographic changes were noted in monkeys after 2500 hours of exposure, and marked right atrial and right ventricular strain were noted in these animals after 10,000 hours of exposure. The authors attributed these effects to the excessive accumulation of carbon black dust in the lung.

More recent studies conducted in U.S. carbon black plants, where OSHA's 3.5 mg/m³ PEL is in force, report no association between exposure and excess morbidity. In a cross-sectional study of pulmonary function in 913 U.S. carbon black workers, Robertson et al. (1988) found no significant declines in pulmonary function after correcting the data for age and smoking habits. Robertson and Ingalls (1989) also conducted a case-control study of all male carbon black production workers in the United States. In this study, a case was defined as a member of the study population who had filed a health insurance claim for a physician's diagnosis of malignant neoplasm, circulatory disease, or pulmonary disease. No associations were found in this study between cumulative exposure level of carbon black and diagnoses of these disorders.

OSHA is proposing an 8-hour TWA PEL of 3.5 mg/m³ for agricultural workplaces. The Agency preliminarily concludes that this limit is necessary to protect workers in this sector against the significant risk of pulmonary and cardiovascular disorders that have been associated with exposure to high concentrations of carbon black. OSHA considers these effects material impairments of health and believes that the proposed limit will substantially reduce this risk. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

CHLORINE DIOXIDE

CAS: 10049–04–4; Chemical Formula: ClO_2

H.S. No. 1080

Currently, OSHA has an 8-hour TWA limit of 0.1 ppm for chlorine dioxide in the construction and maritime industries. There is no limit in agriculture. The ACGIH has the same time-weighted average TLV®, plus a 15-minute TLV®–STEL of 0.3 ppm. NIOSH has no REL for this substance. The Agency proposes to add a 15-minute STEL of 0.3 ppm to its current limit in construction and maritime and to extend both the 8-hour TWA and 15-minute PELs to agriculture. NIOSH concurred (Ex. 8–47, Table N1) with these limits when OSHA recently established them in general industry.

Chlorine dioxide is a red-yellow gas at ordinary temperatures. It is used as a biocide, to bleach textiles, paper pulp, flour, cellulose, leather, fats and oils, and in beeswax. Chlorine dioxide is also employed in purification, taste and odor control of water, as an oxidizing agent, and in the manufacture of chlorite salts (ACGIH 1986, p. 118; Hawley's 1987, p. 260). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In addition to respiratory effects, chlorine dioxide can cause eye irritation, gastrointestinal irritation, and reproductive effects in experimental animals. The oral LD_{50} in rats is 292 mg/kg. Exposure causes pulmonary effects and skin irritation in rabbits. Instilled into rabbit eyes, 100 mg of chlorine dioxide caused mild irritation (RTECS 1991). Rats exposed to 0.1-ppm concentrations of chlorine dioxide for 5 hours/day for 10 weeks showed no adverse effects from exposures (Dalhamn 1957/ Ex.1–307). Chlorine dioxide also has reproductive effects in rats and embryotoxic effects in their offspring (RTECS 1991).

Data on human exposures indicate that marked irritation occurs on inhalation of 5 ppm (no time specified), and that one death occurred after exposure to 19 ppm (Elkins 1959). Repeated exposures in humans have been linked to bronchitis and pronounced emphysema (Petry 1954/ Ex.1–1163). Clinical studies conducted by Gloemme and Lundgren (1957/Ex.1–323) revealed that the majority of workers who had been exposed for five years to average concentrations of chlorine dioxide below 0.1 ppm, in combination with about 1.0 ppm chlorine, experienced eye and respiratory tract irritation and slight bronchitis. Some gastrointestinal irritation was also observed in these workers. Gloemme and Lundgren (1957/ Ex.1–323) attributed all of these effects to elevated short-term exposures involving excursions above the 0.1 ppm level. Ferris, Burgess, and Worcester (1967/Ex.1–316) have shown that concentrations occasionally ranging as high as 0.25 ppm were associated with respiratory effects in workers concomitantly exposed to chlorine.

OSHA is retaining the 0.1-ppm 8-hour TWA PEL and is proposing to add a 15-minute STEL of 0.3 ppm for chlorine dioxide in construction and maritime; the Agency also is proposing to extend both limits to agricultural operations. OSHA preliminarily concludes that both of these limits are necessary to protect workers in these sectors from the significant risk of respiratory, skin, and eye irritation known to occur as a result of exposure to this substance. OSHA considers these adverse effects material impairments of health and believes that promulgation of these limits is necessary both to reduce these significant risks and to make OSHA's PELs for this substance consistent across all regulated sectors.

CHROMIUM (II) COMPOUNDS

CAS: 7440–47–3; Chemical Formula: Cr

H.S. No. 2083

OSHA has no limit for the chromium II (divalent) compounds in construction, maritime, or agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. The ACGIH has a TLV®–TWA of 0.5 mg/m³ for the divalent chromium compounds, and OSHA is proposing the same limit for these substances in workplaces in construction, maritime, and agriculture. This action will make OSHA's limit for the chromium II compounds consistent across all industry sectors.

Chromium is a metallic element that can have a valence of 2, 3, or 6; the divalent, or chromium II, compounds include such substances as chromous bromide, chromous carbonate, chromous chloride, chromous fluoride, and chromous sulfate. These compounds are used as reducing agents, catalysts, reagents, and oxygen scavengers, and as components of electroplating solutions (Hawley's 1987, p. 282).

The chromium compounds vary greatly in toxicity, but the chromium II compounds in general are believed to have a relatively low order of toxicity (ACGIH 1986, p. 139). The available toxicological literature often does not distinguish between the various compounds, and information on the divalent form is rare. There are no acute toxicity studies in animals for the divalent forms. These compounds, however, do appear to have sensitization potential when in contact with the skin. Some workers have demonstrated positive patch tests after exposure to divalent chromium

compounds in the workplace (Burrows 1984).

OSHA is proposing an 8-hour TWA limit of 0.5 mg/m³ for the chromium II compounds in construction, maritime, and agriculture. This is the PEL currently in effect in general industry, and the Agency believes this limit is necessary both to reduce a significant risk of sensitization among construction, maritime, and agricultural workers and to make the Agency's limit for these substances consistent across all regulated sectors. OSHA considers dermal sensitization a material health impairment and believes that the proposed PEL is necessary to substantially reduce this significant risk.

CHROMIUM III COMPOUNDS
CAS: 7440–47–3; Chemical Formula: Cr
H.S. No. 2039A

OSHA has no limit for the chromium III (trivalent) compounds in construction, maritime, or agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. The ACGIH has a TLV®–TWA of 0.5 mg/m³ for the trivalent chromium compounds, and OSHA is proposing the same limit for these substances in construction, maritime, and agriculture. This action will make OSHA's PEL for the chromium III compounds consistent across all industry sectors.

Chromium is a metallic element that can have a valence of 2, 3, or 6; the trivalent, or chromium III, compounds include such substances as chromic oxide, chromic sulfate, chromic chloride, chromic potassium sulfate, chromic carbide, and chromite ore (ACGIH 1986, p. 139; Clayton and Clayton 1981, p. 1591). Chromic compounds are used as textile mordants, paint pigments, and catalysts, in refractory bricks, and in gauge blocks, hot extrusion dyes, and as a spray-coating material (Clayton and Clayton 1981, pp. 1590–1591).

The oral LD_{50}'s for various chromic salts range from 600 to 2800 mg/kg (Smyth, Carpenter, Weil, Pozzani, Striegel, and Nycum 1969). Guinea pigs repeatedly exposed to chromic salts developed allergic contact dermatitis (National Research Council Canada 1976). Mice pretreated with a 12 mg/kg dose of chromium III compounds experienced a 250 percent increase in mortality when subsequently challenged with a 120 mg/kg dose of chromium III (Yoshikawa 1970). In-vitro studies show that exposure to chromic compounds reduced the viability of rabbit alveolar macrophages and increased cell lysis (Walters et al. 1975). Rats exposed for one year via their drinking water to 0 to 25 mg/liter chromium III showed no significant differences from controls in body weight gain, appearance, or blood or tissue pathology (MacKenzie, Byerrum, Decker, Hoppert, and Langham 1958). Rats exposed to chromium oxide pigments in the diet for 2 years showed no increase over controls in tumor rates (Ivankovic and Preussman 1975).

In humans, exposure to the dust of chromite ore has caused "exaggerated" lung markings on chest roentgenograms, and other groups of ore workers have developed pneumoconiotic changes consistent with histologic fibrosis (ACGIH 1986, p. 139; Mancuso and Hueper 1951). One case of asthma caused by exposure to a chromic compound (chromic sulfate) has been reported and confirmed in a plating worker (Novey et al. 1983). Eighteen percent of 85 chrome factory workers exposed to 4.5 to 9.2 mg/m³ Cr III compounds developed chronic bronchitis after 5 years of exposure, and almost 6 percent of these factory workers developed pneumoconiosis after 9 years of exposure (Mikov 1967, in HSDB 1990).

Based on these effects in humans and animals, OSHA is proposing an 8-hour TWA PEL of 0.5 mg/m³ for the chromic (Cr III) compounds of chromium; this limit would apply in construction, maritime, and agricultural workplaces. OSHA believes the proposed PEL is necessary to reduce the significant risk of chronic respiratory effects in workers in these sectors who are exposed to these compounds. The Agency considers chronic respiratory effects such as pneumoconiosis and chronic bronchitis material impairments of health. Promulgation of this PEL will also make OSHA's limit for the Cr III compounds consistent across all regulated sectors.

CHROMIUM, METAL
CAS: 7440–47–3; Chemical Formula: Cr
H.S. No. 1093

OSHA currently has an 8-hour TWA PEL of 1 mg/m³ for chromium metal in general industry, construction, and maritime. There is no limit in agriculture. NIOSH has no REL for this substance, and the ACGIH has established an 8-hour TLV®–TWA of 0.5 mg/m³ for chromium. The Agency is proposing a 1 mg/m³ 8-hour TWA limit for chromium in agricultural operations. NIOSH concurs (Ex. 8–47, Table N1) that this limit is appropriate. Promulgation of this limit will make OSHA's PEL for chromium consistent across all regulated sectors.

Chromium is a hard, brittle, semi-gray metal. Chromium is used for corrosion resistance and as an alloying and plating element on metal and plastic substrates. It is also used as a protective coating for automotive and equipment accessories, in nuclear and high-temperature research, and in inorganic pigments (Hawley's 1987, p. 280).

Chromium metal is relatively nontoxic. Some studies in experimental animals have shown that a few animals develop tumors after intravenous injection; however, the relevance of these results for occupational exposure is not clear. In the general industry rulemaking, OSHA found that the preliminary markings reported in the Mancuso and Hueper (1951/Ex.1–215) study did not present a risk of material impairment of health in exposed workers because these markings did not presage any decrement in pulmonary function or interfere with the functional capacity of exposed workers. A study by Princi et al. (1962) reflects the problem of confounding exposures in the case of chromium. In this study, ferrochrome alloy workers were exposed to several toxic contaminants simultaneously, including chromium salts, silica, iron oxide, and chromium metal. OSHA believes it likely that exposure to the other contaminants present, which included a high percentage of silica, accounts for the development of pulmonary disease in these workers. The ACGIH (1986/Ex.1–3, p. 139) stated, after reviewing the Mancuso and Hueper (1951/Ex.1–215) and the Princi et al. (1962, as cited in ACGIH 1986/Ex.1–3, p. 139) studies, that "[e]xposure to chromium metal does not give rise to pulmonary fibrosis or pneumoconiosis." Other authors (Proctor, Hughes, and Fischman 1988) concur in this assessment of the relative lack of toxicity of the metallic form of chromium.

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 1.0 mg/m³ for chromium metal in the agriculture industry. The Agency believes that this limit is adequate to protect workers in agriculture from the significant risk of pulmonary effects potentially associated with exposure to the metallic form of chromium. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

COAL DUST, < 5% QUARTZ
COAL DUST, > 5% QUARTZ
CAS: None; Chemical Formula: None
H.S. Nos. 1096 and 1097

In the construction and maritime industries, OSHA's current limits for coal dust are expressed as a formula limit of $10mg/m^3/\%SiO_2+2$ (8-hour TWA) for coal dust containing a respirable quartz fraction greater than 5 percent and a 2.4-mg/m³ 8-hour TWA

limit for coal dust containing a respirable quartz fraction of less than 5 percent. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³ for the respirable quartz fraction of coal dust containing more than 5 percent quartz and of 2 mg/m³ for the respirable dust fraction of coal dust containing less than 5 percent quartz. NIOSH has no RELs for this substance. In agriculture, OSHA is proposing an 8-hour TWA limit of 0.1 mg/m³ for the respirable quartz fraction of coal dust containing more than 5 percent quartz and an 8-hour TWA limit of 2 mg/m³ for the respirable dust fraction of coal dust containing less than 5 percent quartz. The Agency is also proposing that the current limit for coal dust containing more than 5 percent respirable quartz in construction and maritime be expressed as mg/m³, which reflects the current approach to airborne particulate measurement; this action would establish a PEL of 0.1 mg/m³ for coal dust containing more than 5 percent respirable quartz. OSHA's proposed limit in these two sectors thus does not represent an actual change in the value of the limits for coal dust containing more than 5 percent respirable quartz; instead, it would do away with the Agency's cumbersome formula limit. In all sectors—construction, maritime, and agriculture—OSHA is proposing a PEL for coal dust containing less than 5 percent quartz of 2 mg/m³.

Coal is a dark brown to black solid formed from fossilized plant material. Coal is used as a fuel and in the manufacture of fertilizers, insecticides, disinfectants, synthetic rubber, and in the production of coke, coal gas, water gas, and coal tar compounds (ACGIH, 1986, p. 142.1 (87)).

The literature on occupational exposure to coal dust does not generally distinguish between dusts containing less than 5% respirable quartz and dusts containing a higher percentage of respirable quartz. The discussion below also does not make this distinction.

Animal data on coal dust effects are sparse. Rats inhaling 6600 μg/m³ coal dust for 86 weeks (6 hours daily). developed lymphomas, and those inhaling 14,900 μg/m³ on the same regimen developed tumors of the adrenal cortex (AIHA] 1981).

Exposure to coal dust can cause respiratory effects such as pneumoconiosis, bronchitis, emphysema, and progressive massive fibrosis (PMF) in humans. Coal worker's pneumoconiosis (CWP) often occurs concomitantly with chronic bronchitis and emphysema. The small opacities associated with CWP are most frequently located in the upper lung zones. CWP is also a precursor to progressive massive fibrosis, which is associated with reduced ventilatory capacity, low arterial oxygen tension, pulmonary hypertension, and premature death (Morgan 1984). A study conducted from 1969 to 1971 showed that, in 9,076 U.S. miners, there was an overall 30 percent prevalence of CWP, with 2.5 percent experiencing progressive massive fibrosis (Morgan 1973). In some workers reporting symptoms of chronic bronchitis, even moderately low exposure to coal mine dust was associated with severe lung function impairment (Hurley and Soutar 1986). A recent study in Welsh and English miners demonstrates that lifetime exposure to coal mine dust is related to increased mortality due to pneumoconiosis, bronchitis, or emphysema (Miller and Jacobsen 1985).

NIOSH (Ex. 8–47, Table N2; Tr. p. 3–86) believes that the limit for quartz-bearing coal dust should be reduced to 0.05 mg/m³ as an 8-hour TWA on the basis of the potential carcinogenicity of respirable crystalline silica. OSHA is aware of some recent studies (NIOSH 1986b; Hurley and MacLaren 1987; IARC 1987) on the health effects of exposure to coal dust, and the Agency is monitoring this literature to assess the need for a reevaluation of this limit in the first PEL Update. However, OSHA's primary objective in the present rulemaking is to achieve consistency of limits across all sectors, and the adoption of the proposed coal dust limit in agriculture will achieve that goal. In addition, expressing these limits in terms of mg/m³ rather than the formula will simplify measurement in workplaces in construction and maritime.

Accordingly, OSHA is proposing an 8-hour TWA PEL of 0.1 mg/m³, measured as the respirable dust fraction, for coal dust having a respirable quartz fraction of more than 5 percent quartz, and an 8-hour TWA PEL of 2 mg/m³, measured as the respirable dust fraction, for coal dust having a respirable quartz fraction of less than 5 percent quartz; these limits are being proposed for workplaces in the construction, maritime, and agriculture industries. The Agency's previous formula limit for silica containing more than 5 percent quartz (respirable fraction) is equivalent to the 0.1-mg/m³ limit in terms of airborne concentration, and the proposed limit in construction and maritime is thus intended merely to simplify the units used to measure and express the limit. OSHA believes that this revision will simplify employee exposure monitoring. For coal dust having a respirable quartz fraction of less than 5 percent, OSHA is proposing to lower the 8-hour TWA limit from 2.4 mg/m³ to 2 mg/m³ in construction and maritime and to extend this limit to agriculture. Promulgation of these limits will make OSHA's PELs for coal dust consistent across all regulated sectors.

COTTON DUST

CAS: N.A.; Chemical Formula: Not applicable

H.S. No. 2041

In general industry, OSHA's permissible exposure limits (PELs) for cotton dust are: 200 μg/m³ in yarn manufacturing and cotton washing operations; 500 μg/m³ in textile mill waste house operations or in yarn manufacturing using "lower grade washed cotton;" and 750 μg/m³ in slashing and weaving operations. There is also a PEL of 1 mg/m³ that applies to cotton waste processing operations (see 29 CFR 1910.1000, Table Z–1–A). These exposure concentrations are averaged over an 8-hour period, as measured by a vertical elutriator or an equivalent instrument. Currently, the construction, agriculture, and maritime sectors have no PELs for cotton dust. The ACGIH TLV®–TWA for cotton dust is 0.2 mg/m³ for lint-free cotton dust with fibers less than 15 microns in length. The NIOSH REL is less than 200 μg/m³ (lint-free, cotton dust). OSHA is proposing to establish an 8-hour TWA PEL of 500 μg/m³ for cotton dust in the construction, agriculture, and maritime industries. Promulgation of this limit will make the PEL for cotton dust in construction, maritime, and agriculture consistent with the PEL for "all other operations" specified in OSHA's cotton dust standard. Also, the Advisory Committee on Construction Safety and Health recommended a 500 μg/m³ PEL for cotton dust in construction.

Cotton is commercially grown in at least 19 States and is a major crop in 14. Most of the crop is harvested and ginned in the fall and early winter; it is processed by domestic and foreign mills on a year-round basis. Hence, storage and transportation are major operations in the cotton industry. The cotton industry of the United States can be divided into several processes: harvesting; ginning; warehousing and compressing of cotton lint; classing and marketing of cotton lint; fabric manufacturing using cotton yarn; reclaiming and marketing of textile manufacturing waste; delintering of cottonseed; marketing and converting of linters; reclaiming and marketing of ginmotes; and batting, yarn, and felt manufacturing using waste cotton fibers and byproducts.

There are no data on the toxicity of cotton dust in animals. In humans, exposure to cotton dust causes byssinosis, a specific respiratory disease whose signs and symptoms are attributable to the action of cotton dust on the respiratory passages. The effects of byssinosis can be temporary or permanent, depending on the exposure and the individual, and can lead in time to chronic obstructive lung disease, primarily chronic bronchitis (Harris et al. 1972; Daum et al. 1974). Initially, the individual notices a tightness in the chest occurring on the first day of the work week. The tightness may be accompanied by a measurable decrease in breathing capacity, as shown by pulmonary function tests. Usually, the condition is mild and temporary at first, tending in time to progress to the stage of bronchitis by the end of the work week. This progression, which is characterized by constriction of the bronchial tubes of the lung, leads to a permanent narrowing of these airways. The individual develops a chronic cough with the production of phlegm and increasing shortness of breath. At this stage, the condition is readily detectable by pulmonary function measurements. Total disability and even death may follow. The description of these detailed symptoms appeared as early as 1908 in the work of Collis (1932).

As a result of the obviously subjective quality of the early symptoms of byssinosis, investigators have, in the past few years, subdivided byssinosis into different categories for purposes of diagnosis and treatment, namely: (a) the reversible symptomatic or physiological condition (sometimes referred to as a reactor state), and (b) the chronic irreversible lung disease.

Schilling (1955, 1963) distinguished the reversible symptoms of Grade one-half, Grade one, and Grade two byssinosis from permanent incapacity, which he labeled Grade three byssinosis. According to Schilling's classification, byssinosis is graded as follows:

(a) Grade one-half—occasional chest tightness on the first day of the work week.

(b) Grade one—chest tightness and/or breathlessness on Mondays only.

(c) Grade two—chest tightness and/or breathlessness on Mondays and other days.

(d) Grade three—grade two symptoms accompanied by evidence of permanent incapacity from diminished effort tolerance and/or reduced ventilatory capacity.

In their studies of textile mills in the United States, Merchant et al. (1973) reached the conclusion that exposure to 500 $\mu g/m^3$ cotton dust would result in a 25 percent prevalence of all grades of byssinosis. These investigators, using the vertical elutriator, found a strong linear association between the prevalence of byssinosis and the airborne concentration of lint-free dust (less than an aerodynamic equivalent diameter of 15 microns). In cotton preparation and yarn areas, exposure to untreated cotton was shown to produce a 3 percent prevalence of byssinosis (all grades) at 50 ug/m^3, a 7 percent prevalence at 100 ug/m^3, and a 13 percent prevalence at 200 ug/m^3. However, OSHA's experience under the cotton dust standard has demonstrated that the prevalence of byssinosis has been reduced substantially more by the cotton dust standard (see 50 FR 51120, Dec. 13, 1985) than these figures would suggest.

Byssinosis is the respiratory disease most commonly associated with exposure to cotton dust, but other diseases such as chronic bronchitis, mill fever, weavers' cough, and mattress makers' fever have also been associated with cotton dust exposure. These diseases and additional studies on byssinosis have been described and their association with cotton dust exposure has been documented extensively in previous **Federal Register** publications (41 FR 56500–56502; 42 FR 27352–27354; 48 FR 26964–26968; 50 FR 51120).

OSHA's cotton dust standard was based on data demonstrating significant excess risk of byssinosis and other respiratory symptoms in workers exposed to cotton dust in the early 1970s and before. Those data also showed that reductions in exposure substantially reduced risk. Both the Court of Appeals and Supreme Court upheld OSHA's analysis of the studies and OSHA's conclusion that a standard was needed to substantially reduce a significant risk of disease. Cotton dust is, of course, present in agriculture (cotton ginning) and marine transportation operations.

OSHA therefore believes that, in the absence of PELs, workers in agriculture, construction, and maritime are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit of 500 $\mu g/m^3$ as an 8-hour TWA is necessary to significantly reduce these risks of material health impairment among workers in the construction, maritime, and agriculture sectors. Promulgation of these limits will establish PELs for cotton dust in all OSHA-regulated sectors.

The vertical elutriator, though a better measuring device for correlating exposure with health effects, is not practical where area samples cannot be taken retrospectively, and these devices are also bulky. OSHA will permit employers to substitute a respirable dust personal sampler where it is not feasible to use a vertical elutriator. OSHA proposes that in those circumstances where a personal sampler is used, the exposure limit be 1 mg/m^3 respirable dust, personal sampler. Evidence in the 1978 rulemaking indicated that such a limit is roughly equivalent to 500 $\mu g/m^3$ as measured by a vertical elutriator.

ETHYL ACRYLATE

CAS: 140–88–5; Chemical Formula: $CH_2 = CHCOOC_2H_5$

H.S. No. 1161

OSHA currently has an 8-hour TWA limit of 25 ppm for ethyl acrylate, with a skin notation, in the construction and maritime industries. There is no limit in agriculture. NIOSH has no REL for this substance. The ACGIH has a TLV®–TWA of 5 ppm, a TLV®–STEL of 25 ppm, and a skin notation for ethyl acrylate. The Agency is proposing an 8-hour TWA PEL of 5 ppm and a 15-minute STEL of 25 ppm, with a skin notation, for ethyl acrylate in the construction, maritime, and agriculture industries. Promulgation of these limits will make the PELs for this substance consistent across all OSHA-regulated sectors.

Ethyl acrylate is a colorless liquid with an acrid odor. This substance is used in the manufacture of acrylic resins and in emulsions and solution polymers for the surface coating of textiles, paper, and leather. It is also used to produce acrylic fibers, adhesives, and binders and as a fragrance and flavoring agent (ACGIH 1986, p. 240).

Ethyl acrylate produces irritation of the skin, eyes, mucous membranes, and respiratory system (Dreisbach 1974/Ex. 1–896). The oral LD_{50} in rats is 800 mg/kg, and the 4-hour LC_{50} in the same species is 2180 ppm (RTECS 1991). In rabbits, the dermal LD_{50} is 1834 mg/kg (RTECS 1991). In contact with the eyes or skin of rabbits, ethyl acrylate produces mild irritation (RTECS 1991). Animal studies indicate that severe chronic effects may result from exposure to this substance. Rats exposed to levels of 70, 300, or 540 ppm of ethyl acrylate for up to 30 days showed accelerated mortality and pathologic changes in the lungs, liver, and kidneys. In those animals that developed pneumonia, renal and hepatic lesions were also seen. In a parallel study, rats, rabbits, and guinea pigs who were subjected to ethyl acrylate concentrations in excess of 75 ppm for 50 seven-hour inhalation periods exhibited pulmonary edema before death and had degenerative changes in the heart, liver, and kidneys

at autopsy (Treon, Sigmon, Wright, and Kitzmiller 1949/Ex. 1–789). Miller et al. (1980, as cited in ACGIH 1986/Ex. 1–3, p. 240) reported that rats and mice exposed to 75 or 225 ppm for 6 hours per day for 30 days developed nasal lesions and other degenerative inflammatory changes in the nasal structure. In other studies, rats and mice administered 100 or 200 mg/kg ethyl acrylate by gavage five times per week for 103 weeks developed inflammation and hyperplasia of the forestomach in addition to squamous cell carcinomas and papillomas in the same area (NTP 1983b). A recent study (Moore, Amtower, Doerr, Brock, and Dearfield 1988) has shown that ethyl acrylate is genotoxic in mammalian test systems.

In a study by Nemec and Bauer (1978, as cited in ACGIH 1986/Ex. 1–3, p. 240), human volunteers experienced drowsiness, headache, and nausea after prolonged inhalation exposures to this substance at 50 to 75 ppm. Opdyke (1975/Ex. 1–922) reported that the application of a 4-percent concentration of ethyl acrylate produced skin-sensitization reactions in 10 out of 24 volunteers. A recent study (Condesalazar, Guimaraens, and Romero 1988) has shown that occupational exposure to ethyl acrylate is associated with the development of allergic contact dermatitis in as many as 12 percent of exposed workers. Another recent study in chemical plant workers (Schwartz, Doty, Monroe, Frye, and Barker 1989) showed that exposure to ethyl acrylate in the work environment is associated with a decrement in olfactory ability, although the clinical significance of this finding is unclear.

In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA PEL of 5 ppm, a 15-minute STEL of 25 ppm, and a skin notation for ethyl acrylate. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of respiratory tract irritation, skin sensitization, and nausea and drowsiness associated with exposure to this substance. The Agency considers these adverse effects material impairments of health and believes that the proposed PELs are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

FERROVANADIUM DUST
CAS: 12604–58–9; Chemical Formula: FeV
H.S. No. 1177

OSHA currently has a limit of 1 mg/m³ as an 8-hour TWA for ferrovanadium dust in the construction and maritime industries. There is no limit in agriculture. The ACGIH has a TLV®–TWA limit of 1 mg/m³ with a TLV®–STEL of 3 mg/m³, and NIOSH has a 10-hour REL for this substance (measured as vanadium). The Agency is retaining its 8-hour TWA PEL of 1 mg/m³ in construction and maritime, proposing to add a STEL of 3 mg/m³ in these sectors, and proposing to extend both limits to agriculture. NIOSH concurred (Ex. 8–47, Table N1) with these limits when the Agency recently established them in general industry.

Ferrovanadium dust takes the form of dark, odorless, solid particles. It is generated in the preparation of steel that contains vanadium (ACGIH 1986, p. 269).

In addition to respiratory effects, ferrovanadium dust causes mild eye and nose irritation. Roshchin (1952/Ex. 1–1166) reported that no acute intoxication occurred in animals exposed to ferrovanadium dust at concentrations as high as 10,000 mg/m³; however, serious chronic pulmonary changes were observed after short-term exposures (one hour) on alternate days for two months to concentrations in the 1000- to 2000-mg/m³ range. These pulmonary changes consisted of chronic bronchitis and chronic lung inflammation (Roshchin 1952/Ex. 1–1166).

Workers exposed to unspecified concentrations of this dust developed mild irritation of the eyes and respiratory tract (Roberts 1965). –OSHA is retaining its 8-hour TWA PEL of 1 mg/m³ in construction and maritime, proposing to add a 3 mg/m³ STEL in these two sectors, and proposing to extend both limits to agriculture. The Agency preliminarily concludes that the combined TWA limit and STEL will substantially reduce the significant risk of eye and upper respiratory tract irritation and of chronic pulmonary damage shown to be associated with exposures to this substance. OSHA considers these adverse health effects to be material impairments of health and believes that the proposed PELs are necessary to substantially reduce this risk. In addition, promulgation of these limits will make OSHA's PELs for ferrovanadium dust consistent across all OSHA-regulated sectors.

FIBROUS GLASS, INCLUDING REFRACTORY CERAMIC FIBERS
CAS: None; Chemical Formula: None
H.S. No. 1178

Fibrous glass is used primarily for thermal and acoustical insulation of residential and commercial buildings. Refractory ceramic fibers (RCF) are primarily used for high temperature insulation applications, including blanket linings for industrial furnaces and vacuum-formed parts for specialty products with high-temperature tolerances. There are currently no specific OSHA limits governing occupational exposure to fibrous glass or RCF, although these substances are covered by the Agency's 15 mg/m³ (5 mg/m³ respirable) 8-hour TWA limit for all inert dusts and particulates. The ACGIH (1986/Ex. 1–3) has a 10 mg/m³ TLV®–TWA for fibrous glass. NIOSH (1977/Doc. H–043) recommended a 5 mg/m³ 8-hour TWA limit for total dust and a 3 fibers/cc limit for airborne fibers less than 3.5 μm in diameter and longer than 10 μm in length. OSHA is proposing an 8-hour TWA PEL of 1 f/cc for fibrous glass, including RCF, in general industry and in the construction, maritime, and agricultural industries.

Fibrous glass is used primarily for thermal and acoustical insulation of residential and commercial buildings. Fibrous glass is produced either as glass wool or glass filament (IARC 1988, Vol. 43). Glasswool is produced by drawing, centrifuging, or blowing molten glass and compromises cylindrical fibers of relatively short length (compared to filaments) (Boyd and Thomason 1980; McCrone 1980). Glass filaments are continuously drawn or extruded from molten glass. This class of materials includes longer, large-diameter filaments for textile and reinforcing applications as well as fine-diameter filaments (Mohr and Rowe 1978).

In the production of glass fibers, finely powdered sand is used as the major source of silica, and kaolin clay and synthetic aluminum oxides are the most common sources of aluminum. Boric oxide is introduced primarily from colemanite (a natural calcium borate), boric acid, and boric acid anhydride. Powdered dolomite [$CaMg(CO_3)_2$] or burnt dolomite ($MgO \cdot CaO$) is used to introduce magnesium oxide (magnesia) and calcium oxide. Uncalcined and calcined limestone are used as magnesia-free sources of calcium oxide. Fluorspar (CaF_2) is used to introduce fluoride. Sodium sulfate is added to the glass mixture as a firing agent and to assist in dissolving residual grains of sand. Iron oxide (Fe_2O_3) may be added to assist the fiber-drawing process (Loewenstein 1983; Harben and Bates 1984).

Ceramic fibers comprise a wide range of amorphous or crystalline synthetic mineral fibers characterized by their refractory properties (i.e., stability at high temperatures) (IARC 1988, Vol. 43). Ceramic fibers are typically made of alumina, silica, and other metal oxides

or, less commonly, of nonoxide materials, such as silicon carbide (Arledter and Knowles 1964). Most ceramic fibers are composed of alumina and silica in an approximate 50/50 mixture. Monoxide ceramics, such as alumina and zirconia, are composed of at least 80 percent of one oxide, by definition; usually, they contain 90 percent or more of the base oxide, and specialty products may contain virtually 100 percent. Other ceramic fibers prepared for special applications may incorporate thoria, magnesia, beryllia, titania, hafnia, yttria, or potassium titinate. Nonoxide specialty ceramic fibers, such as silicon carbide, silicon nitride, and boron nitride, have also been produced (Arledter and Knowles 1964; Miller 1982; U.S. Environmental Protection Agency 1986).

Non-RCF Fibrous Glass Nonmalignant Respiratory Disease

Human Studies–

A number of epidemiological studies and case reports of workers exposed to fibrous glass have shown that these workers have an excess risk of nonmalignant respiratory disease (NMRD). A review of 691 physicians' reports of adverse effects caused by exposure to fibrous glass identified 66 reports of upper respiratory tract symptoms including rhinitis, sinusitis, pharyngitis, and laryngitis in workers exposed for only one or 1.5 years (Milby and Wolf 1969, as cited in NIOSH 1977/ Doc. H–043, p. 23). Irritation and inflammation of the nasopharyngeal region and upper respiratory tract have also been reported in a number of early studies (Champeix 1945, as cited in IARC 1988/Doc. H–043, p. 136; Trumper and Honigsberg 1946, as cited in NIOSH, 1977/ Doc. H–043, p. 29; Roche 1947, as cited in IARC 1988/Doc. H–043, p.136; Cirla 1948, as cited in IARC 1988/Doc. H–043, p. 136; Mungo 1960, as cited in IARC 1988/Doc. H–043, p. 136). Later reports of nasopharyngeal irritation include those of Müller et al. (1980, as cited in IARC 1988/Doc. H–043, p. 136) and Maggioni et al. (1980 as cited in IARC 1988/Doc.H–043, p. 136).

NIOSH (1990/Doc. H–043) conducted a Health Hazard Evaluation of a factory which manufactures fibrous glass for thermal and acoustical insulation. The evaluation was instigated by a request which stated that employees were experiencing nose bleeds, skin rashes, and respiratory problems. Potential exposures identified in the request were fibrous glass and formaldehyde. The full-shift personal exposure levels of formaldehyde ranged from 0.07 to 0.41 ppm, with a mean exposure of 0.11 ppm. Only two of the personal samples were greater than 0.1 ppm (0.14 and 0.41). The authors stated, however, that the validity of the 0.4 result was questionable when compared to all other personal and area samples collected for this worker. Respirable fibrous glass concentrations ranged from less than 0.01 to 0.07 f/cc. The workers were not following proper work practices to reduce or prevent skin irritation as described in the appropriate Material Safety Data Sheets. They were also not wearing appropriate work clothes (long-sleeve shirts, goggles, and gloves).

Approximately 50 percent of the workers completed a medical questionnaire. The following effects were reported: chronic cough (cough on most days for a period of 3 months or more), 61 percent; phlegm, 53 percent; some degree of shortness of breath, 61 percent; highest level of severity for shortness of breath (having to stop for breath when walking at own pace on level ground), 10 percent; chest tightness, 61 percent (many on all workdays); wheezing, 49 percent. Additional signs and symptoms reported to be present at work two or more times per week included eye irritation, 51 percent; nose irritation, 50 percent; cough, 42 percent; sneezing, 22 percent; sore throat, 10 percent; and nose bleeds, 4 percent.

Several studies report effects on the bronchi. Murphy (1961, as cited in NIOSH 1977/Doc. H–043, p. 28) reported bronchiectasis and multiple focal abscesses in the terminal bronchioles and peribronchial parenchyma, as well as slight pulmonary fibrosis in an electrical worker who dismantled fibrous glass-insulated appliances. Bayliss et al. (1976, as cited in NIOSH 1977/ Doc. H–043, Ex. 1–3, p. 37) studied a group of 1,448 fibrous glass production, packing, and maintenance workers who had been initially employed during the period January 1, 1940 through December 31, 1949 and who had been employed for at least 5 years by June 1, 1972 in the one major fibrous glass construction products manufacturing plant studied. The current mean fiber concentration was 0.08 f/cc. The range was 0.01 to 0.83. Although only limited historical dust measurements were available, it did appear that respirable fiber concentrations were also low about 10 years prior to the present industrial hygiene survey. A statistically significant excess risk of NMRD was found among these workers. In addition, bronchiectasis was found at autopsy in 6 of the 19 fatal cases (Bayliss, written report, 1977, as cited in NIOSH 1977/ Doc. H–043, p. 38).

Enterline and Henderson (1975/Doc. H–043) studied 416 retirees who had worked in six plants that manufactured fibrous glass insulation. A slight, non-statistically significant increase in deaths from NMRD was observed. Out of 35 workers who had retired early due to disability, chronic bronchitis was observed in three workers and expected in 0.5. The authors felt that the latter finding might be important but they pointed out that the numbers were small and that chronic bronchitis is not a well-defined disease entity in many instances.

An increased frequency of bronchitis that was directly related to duration of exposure to synthetic mineral fibers (SMF) has been observed in a group of 135,000 construction workers (Engholm and von Schmalensee 1982/Doc. H–043). The calculated standard ratios for workers in each smoking history category indicated a positive association between bronchitis and exposure to SMF. Among nonsmokers, 77 percent of all cases of bronchitis in workers with long exposure to SMF were attributable to the exposure. The corresponding percentage in present smokers was 28 percent. The authors concluded that there is a clear association between bronchitis and SMF exposure in the construction industry.

Tomasini et al. (1986, as cited in IARC 1988/Doc. H–043, p. 136) have reported on the occurrence of parenchymal involvement of lung tissue in four of seven workers with long-term exposure to fibrous glass in manufacturing. Three of these workers had pulmonary fibrosis and one had both fibrosis and parenchymal involvement. Three workers exposed to fibrous glass during manufacture for 9 to 17 years had respiratory distress and one showed slight pleural thickening on x-ray examination (Chiappini et al. 1981, as cited in IARC 1988/Doc. H–043, p. 136).

Enterline and co-workers (Enterline et al. 1983, Doc. H–043, Ex. 1–17; Enterline et al. 1986, as cited in Vu 1988/Doc. H–043, p. 76; Enterline et al. 1987/Doc. H–043; Enterline 1987/Doc. H–043) studied 16,661 white male workers employed in 17 synthetic mineral fibers plants and who had 1 or more years of experience in production or maintenance during the period 1945–1963. This cohort consisted of 14,815 workers in 11 fibrous glass plants (6, glass wool only; 3, glass filament only; 2, glass wool and glass filament) and 1,846 workers in 6 mineral wool plants. The SMR for nonmalignant respiratory disease (excluding influenza and pneumonia) for all synthetic mineral

fiber workers was statistically significant. In epidemiological studies, the SMR results from the comparison of the number of observed deaths in the study population with the number of expected deaths in a larger population with stable rates. Thus the SMR is equal to the number of observed divided by the number of expected deaths. By convention, this ratio is then multiplied by 100 to get the reported ratio. If this ratio is greater than 100, it means that more deaths are observed in the smaller population than would be expected based on rates in the larger (standard) population. If the ratio is less than 100, fewer deaths are observed than expected. The SMR was 132.3 ($p<0.01$) when U.S. rates were used for comparison and 134.1 ($p<0.01$) when local rates were used. When a difference that is observed between two groups is judged to be statistically significant (e.g., $p<0.01$), this means that differences as large as, or larger than, that observed would occur by chance alone less than (for this example) 1 percent of the time. For workers with greater than 20 years since first exposure in plants which manufactured both fibrous glass wool and filament, there was a statistically significant increase in NMRD (excluding influenza and pneumonia) (SMR 141.8, $p<0.01$, U.S. comparison). For workers in one of these plants, in which the cohort size was 5,651, the SMR was 137.5 ($p<0.01$, U.S. comparison). The mean average exposure concentration for all the fibrous glass plants was 0.039 f/cc and the maximum was 1.5 f/cc. In the plant just cited, the mean exposure concentration was 0.067 f/cc and the maximum was 1.5 f/cc. Among workers in this group who were "ever exposed" to small-diameter fibers, there was a slight nonsignificant increase in NMRD with time since first exposure.

Marsh et al. (1990/Doc. H–043) completed a follow-up to 1985 of the Enterline et al. cohort. The SMR for nonmalignant respiratory disease (excluding influenza and pneumonia) for all MMMF workers was 129.4 ($p<0.01$) when U.S. rates were used for comparison. A breakdown of NMRD rates by process showed no increase for fibrous glass workers when rates were compared to local rates. National rates were not used for comparison. Several studies have observed the occurrence on x-ray examination of opacities in the lungs of a limited number of workers in the fibrous glass manufacturing industry (Nasr et al. 1971, as cited in NIOSH 1977/Doc. H–043, p. 35; Valentin et al. 1977, as cited in IARC 1988/Doc. H–043, p. 135; Weill et al. 1983, 1984, as cited in IARC 1988/Doc. H–043, p. 135; Hill et al. 1973, 1984, as cited in IARC 1988/Doc. H–043, p. 135).

Animal Studies

In animal studies, exposure to non-RCF fibrous glass by several routes has been shown to cause respiratory effects. Schepers and Delahant (1955 as cited in NIOSH 1977/Doc. H–043, p. 41) continuously exposed guinea pigs and rats to glass wool (nominal diameter 6μm; concentration 5.0 to 5.2 mg/m³) by the inhalation route for 20 months and subsequently to "glass cotton" (maximum diameter 3μm; concentration 1.1 to 2.5 mg/m³) for 20 and 4 months, respectively. After 4 months of exposure, the guinea pigs had considerable epithelial hyperplasia (abnormally increased cell number) and cellular desquamation (cells sloughed off) in the smaller bronchioles and cellular infiltration of alveolar walls, with hyperplasia of parenchymal pulmonary lymph nodes (which indicates a reaction of the immune system). Atelectatic (areas of collapsed alveoli) were also present. At the 40th week of exposure, dust-reaction foci were detected that were related to the atelectatic areas. Lung abscesses were found in 10 percent of the rats. These effects indicate a toxic effect on the respiratory tract.

Botham and Holt (1971, as cited in NIOSH 1977/Doc. H–043, p. 43) reported the production of ferruginous bodies in guinea pigs within 2–5 days after inhalation for one 24-hour period of a "high" (not further specified) concentration of glass fibers (<20 μm length; <1 μm diameter). Ferruginous bodies are protein-coated inclusions which form around fibrous mineral particles. When these bodies form around asbestos fibers they are often called "asbestos bodies." Ferruginous bodies are observed in humans exposed to asbestos. Alveolar lipoproteinosis, another indictor of lung toxicity, developed in rats and hamsters treated by inhalation for 90 days with 400 mg/m³ glass fibers <2 μm in length (Lee et al. 1979, as cited in IARC 1988/Doc. H–043, p. 130; Lee et al. 1981, as cited in Vu 1988/Doc. H–043, p. 52; Lee and Reinhardt 1984, as cited in IARC 1988/Doc. H–043, p. 130). The fibers had small aspect ratios (3:1) and only 7 percent were considered fibrous in shape. Very slight alveolar interstitial fibrosis occurred in a few old animals. Pulmonary inflammation has been reported in rats exposed by inhalation to fibrous glass (diameter 0.1–0.6 μm) for 6 months (Miller 1980, as cited in IARC 1988/Doc. H–043, p. 129).

Fibrosis is seen in experimental animals exposed to mineral fibers. For example, fibrosis is seen in response to asbestos exposure. In humans exposed to asbestos, diffuse interstitial fibrosis and fibrosis of the pleura are observed as components of the disease known as asbestosis. When it becomes massive, fibrosis causes the obliteration of the respiratory capacity of lung. A few of the oldest rats in a group exposed for 24 months to 100 mg/m³ of fibrous glass with an average diameter of 0.5 μm and an average length of 10 μm developed some foci of septal collagenous fibrosis, although most developed only a normal 'dust reaction' (Gross et al. 1970a, as cited in IARC 1988/Doc. H–043, p. 130). Johnson and Wagner (1980, as cited in Vu 1988/Doc. H–043, p. 53) treated rats by inhalation exposure with 10 mg/m³ of glass microfibers, resin-coated glass wool, or uncoated glass wool for 50 weeks. Focal fibrosis was observed. Very low levels of fibrosis were seen in rats and hamsters exposed by nose-only inhalation to fibrous glass ranging in diameter from 0.45 μm to 6.1 μm in concentrations up to 3000 f/cc for 2 years (Smith et al. 1984, 1987, as cited in IARC 1988/Doc. H–043, p. 131). Slight septal fibrosis was observed in rats exposed to both glass microfibers (diameter <1 μm) and thicker fibrous glass (diameter <1–3 μm) at concentrations of 5 mg/m³ for up to 2 years (Le Bouffant et al. 1987, as cited in IARC 1988/Doc. H–043, p. 131).

Baboons developed focal peribronchiolar fibrosis after inhalation exposure to fibrous glass with a median diameter of 0.5–1.0 μm and a length of 6 μm in a concentration of 1,122 f/cc (7.5 mg/m³) for up to 30 months (Goldstein et al., 1983, 1984, as cited in IARC 1988/Doc. H–043, p. 131 and Vu 1988/Doc. H–043, p.54). The lesions were similar to those produced by crocidolite asbestos. Cynomolgus monkeys and Fischer 344 rats exposed to fibrous glass dust for 18 and 21 months, respectively, at concentrations of 5 or 15 mg/m³ showed no fibrosis but did have pulmonary macrophage aggregates and granulomas (indicative of a foreign body reaction) containing fibrous glass. In addition, the rats had pleural plaques (Mitchell et al., 1986, as cited in Vu 1988/Doc. H–043, p. 53). Animals exposed to fibrous glass by intratracheal instillation or intrapleural or intraperitoneal injection have also exhibited fibrotic and other responses.

The intratracheal instillation of fibrous glass has been shown to produce an inflammatory response in rats and hamsters (Gross et al., 1970 a, b, as cited in I ARC 1988/Doc. H–043, p.131; Sykes et al., 1983, as cited in IARC 1988/Doc.

H–043, p. 129) and focal areas of pneumonitis (Vorwald et al. 1951, as cited in IARC 1988/Doc. H–043, p. 131) or focal atelectasis (Schepers and Delahant 1955, as cited in IARC 1988 Doc. H–043, p. 131) in guinea pigs. Wenzel et al. (1969, as cited in IARC 1988/Doc. H–043, p. 131) demonstrated the production of pulmonary fibrosis by the intratracheal instillation of fibrous glass in rats. Kuschner and Wright (1976, as cited in NIOSH 1977/Doc. H–043, p. 48; Wright and Kuschner 1977, as cited in IARC 1988/ Doc. H–043, p. 131) treated guinea pigs with glass fibers of various dimensions by intratracheal instillation. The diameters of the fibers varied from <0.3 μm to 1.0 μm. Lengths were either short (<10 μm) or long (>10 μm). All long fibers produced interstitial fibrosis, while short fibers did not. Syrian hamsters treated by intratracheal instillation with fibrous glass of various diameters or crocidolite asbestos had developed increased collagen deposition and pulmonary fibrosis when observed at 11 months after instillation. The degree of the effect was as follows: asbestos (0.24 μm diameter) > glass microfibers (0.2 μm diameter) > commercial glass fibers (2.3 μm). No fibrosis was seen in hamsters treated with fibers having diameters of 3–4 μm (Pickrell et al, 1983, as cited in Vu 1988/ Doc. H–043, p. 55).

Smith et al. (1986) treated rats by intratracheal instillation with glass fibers (mean diameter 0.45 μm), crocidolite asbestos, or saline once a week for five weeks. The incidence of marked lung fibrosis was 32 percent for those rats treated with glass fibers, 96 percent for those treated with asbestos, and 0 percent for the saline controls. Massive fibrosis, comparable to that seen in asbestos controls, has also been produced by glass fibers given to mice by intrapleural injection (Davis 1976, as cited in Vu 1988/Doc. H–043, p. 56). Mice were treated with fibers which were either 3.5 μm or 0.05 μm in diameter and either <20 μm or 100 μm in length. Fibers of either diameter that were >100 μm in length produced massive fibrosis. Fibers of either diameter that were <20 μm in length produced discrete granulomas with minimal fibrosis. Intraperitoneal injection of long glass fibers with mean diameters of 0.05 to 0.1 μm or 2.5 to 4 μm has also been shown to cause fibrosis in mice (Davis 1972, as cited in IARC 1988/Doc. H–043, p. 132). Peritoneal fibrosis was also produced in a dose-related manner in rats treated by intraperitoneal injection with glass fibers with an average diameter of 0.5 μm with 72 percent being <5 μm in length (Pott et al. 1974, as cited in Vu 1988/Doc. H–043, p. 56). Rats injected with glass fibers with a mean diameter of 0.45 μm also demonstrated a peritoneal fibrotic response (Smith et al. 1986, as cited in Vu 1988/Doc. H–043, p. 56).

Carcinogenicity

Human Studies

A number of epidemiological studies conducted on workers exposed to fibrous glass have shown that these workers have an excess risk of lung and other respiratory tract cancers. In some cases the excess risk has been small and the studies are subject to conflicting interpretations.

Morgan et al. (1984, as cited in IARC 1988/Doc. H–043, p. 138) studied 4,399 men who had worked for at least 10 years and were employed at some time during 1968–1977 at one or more fibrous glass plants owned by a single U.S. company. The SMR for respiratory cancer for the total cohort was 136. For men with 20 years or more of employment and who were first exposed 30 years or more ago, the SMR was 177. For lung cancer, the job categories of textile forming/wool forming and fabrication had SMRs of 181 and 132, respectively.

Moulin et al. (1986, as cited in IARC 1988/Doc. H–043, p. 141) studied 1,374 men who had worked in a French fibrous glass factory for at least 1 year and who were employed there at any time during 1975–1984. The Standardized Incidence Ratio for upper respiratory and alimentary tract cancers was 218. There was a nonsignificant increasing trend in incidence ratio with increasing duration of employment. Another study (Shannon et al. 1987, as cited in IARC 1988/Doc. H–043, p. 141) examined the mortality experience of 2,557 men who had worked 90 days or more and had been employed in 1955–1977 in a Canadian glass wool plant. The SMR for lung cancer was 199 ($p<0.05$). For those workers with 5 or more years of exposure and with 10 or more years since first exposure, the SMR for lung cancer was 182. Although historical exposure data were not available, samples taken since 1978 suggested that fiber concentrations were rarely greater than 0.2 fiber/cm^3, with mean levels in most areas less than 0.1 fiber/cm^3.

Two studies, one in the United States and one in Europe, have examined the mortality experience of very large groups of workers in fibrous glass plants. Enterline et al. (1987/Doc. H–043) studied 16,661 white male workers from 17 synthetic mineral fibers plants who had 1 or more years of experience in production or maintenance during the period 1945–1963. This cohort consisted of 14,815 workers in 11 fibrous glass plants (6, glass wool only; 3, glass filament only; 2, glass wool and glass filament) and 1,846 workers in 6 mineral wool plants. The SMR for all synthetic mineral fiber workers for respiratory system cancers was 115.6 ($p<0.01$) when U.S. rates were used for comparison and 109.1 when local rates were used. For deaths that occurred during the period 1978–1982, the SMRs were 129.7 (U.S.) ($p<0.01$) and 112.7 (local). For workers with fewer than 20 years since first exposure, the SMRs for respiratory system cancer were 93.8 (U.S.) and 99.6 (local). For workers with greater than 20 years since first exposure, the SMRs were 124.3 (U.S.) ($p<0.01$) and 112.3 (local). More specifically, for workers with more than 20 years since first exposure, SMRs for the category that included bronchus, trachea, and lung cancer were 125.4 (U.S.) ($p<0.01$) and 112.7 (local) ($p<0.05$).

A significant increase in respiratory cancer compared with U.S. rates (SMR 129.5, $p<0.01$) but not compared with local rates (SMR 110.6) was also observed in workers employed for more than 20 years in the two fibrous glass plants that manufactured both glass wool and glass filament. No increase was seen in workers employed for fewer than 20 years. The increase appeared to be accounted for primarily by the increased rate (SMR 128.3, U.S., $p<0.1$) seen in one plant that employed 5,651 workers. In fact, the experience of this plant drives the results of the overall study to some extent since, of the 301 deaths from respiratory cancer 20 years or more since first exposure, 147 occurred in workers from this plant. The authors of this study believe that the use of local rates for comparison is more appropriate because they tend to adjust for social, economic, ethnic, and cultural factors. Thus they concluded that respiratory cancer rates were not significantly increased in this cohort. However, other scientists believe that the use of national rates is more appropriate because local rates are affected by local conditions, including other employment in the area. The use of local rates, therefore, requires the demonstration that some area factor and not an employment factor is influencing local rates.

A further subdivision of "time since first exposure" revealed that SMRs for fibrous glass wool workers increased with time since first exposure. Also, respiratory cancer SMRs were significantly increased overall for workers in plants that manufactured

both glass wool and glass filament (SMR 121.1, $p<0.05$, U.S.; SMR 109.7, local) For workers in these plants who had 30 years of exposure since first exposure, SMRs were 137.8 (U.S.) ($p<0.01$) and 110.8 (local). Although stating that support for the notion that exposure to synthetic mineral fibers is related to respiratory cancer comes from patterns in mortality excess as they relate to probable fiber exposure, the authors point out that several features of the data are not consistent with a causal relationship between respiratory cancer and SMF exposure. These included a lack of relationship with duration of exposure and inconsistent relationships with time since first exposure. The authors also suggest that some other contaminant in the workplace may have caused the excess respiratory cancer. However, these studies lacked data on exposure to workplace contaminants other than fibers.

In the glass wool plants, fiber concentrations to which workers were exposed were estimated to range from 0.005 fiber/cm^3 in one plant to 0.293 fiber/cm^3 in a plant that produced small-diameter fibers. The mean exposure concentration was 0.039 f/cc. The highest individual average fiber exposure level estimated for any member of this cohort was 1.5 fiber/cm^3. For the plant with the large cohort (5,651) mentioned above, the mean exposure concentration was 0.067 f/cc. The maximum concentration in that plant was 1.5 f/cc.

In an attempt to adjust for cigarette smoking, a 'case-control within a cohort' study of glass wool workers was also included. Cumulative exposure to glass wool was not a significant variable, while age at exit, year of birth, and smoking were statistically significant ($p<.05$). However, the IARC Working Group believes that the results of this case-control study may have been affected by differences in the methods of information collection used to obtain information on smoking, since smoking histories for most cases were obtained from surrogate respondents, whereas those for the majority of the controls were obtained from the respondents themselves, an approach that introduces the possibility of bias (IARC, 1988/ Doc. H–043, p. 140)

These authors also made a separate analysis of 7,586 workers in four plants that produced small-diameter fibers (<3 μm). SMRs for respiratory cancer were 132.9 (U.S.) and 123.7 (local) for those exposed and 114.7 (U.S.) and 104.8 (local) for those never exposed. Although these overall increases were not statistically significant, the SMRs were significant for deaths occurring during the period 1978–1982, with 219.4 (U.S.) ($p<0.05$) and 197.7 (local) ($p<0.05$). SMRs also increased with time since first exposure. The authors concluded that these data were consistent with the notion that work in departments that produced small diameter fibers was associated with respiratory cancer.

Marsh et al. (1990/Doc. H–043) completed a follow-up (to the year 1985) of the Enterline et al. cohort. The SMR for respiratory system cancers for all SMF workers was 120.5 ($p<0.01$) when U.S. rates were used for comparison and 112.1 ($p<0.05$) when local rates were used. The SMRs for cancers of the bronchus, lung, and trachea were 121.5 (U.S.; $p<0.01$) and 112.5 (local; $p<0.05$). For workers exposed to fibrous glass only in the two plants that manufactured both glass wool and glass filament, the SMR was 115.6 ($p<0.05$) for those with more than 20 years since first employment, as compared with local rates. (The SMRs as compared with national rates were not provided.) A further subdivision of cases by time since first exposure suggested a trend for those workers exposed to fibrous glass in "both" and combined wool and "both" plants. Also, respiratory cancer SMRs were significantly increased overall for workers in plants that manufactured both glass wool and glass filament (SMR 114.0, $p<0.05$, local) and in combined wool and "both" plants (SMR 111.8, $p<0.05$, local). For workers in "both" plants who had 30 years since first exposure, the SMR was 119.9 ($p<0.05$, local).

Simonato et al. (1987/Doc. H–043, pp. 603–623) studied 24,609 workers producing rock wool/slag wool, glass wool, or glass filament in 13 European factories in seven countries. Four of these factories produced glass wool. Among glass wool workers, the SMRs for lung cancer were 127 ($p<0.05$) (compared with national rates) and 103 (local). Workers whose time since first exposure was greater than 30 years had an SMR of 173 ($p<0.05$). There was an increasing trend in SMRs for lung cancer with time since first exposure, but this trend was not statistically significant.

The average fiber concentration in these plants, on the basis of measurements taken in 1977–1980, was <0.1 fiber/ml (range, 0.01 to 1.00 fiber/ml). The highest concentrations were associated with the manufacture of special fine fiber earplugs. In the main production and secondary production groups, the concentrations ranged from 0.01 to 0.16 f/cc (Cherrie et al., 1986/Doc. H–043, Ex. 1–4, pp. 18–25). Although no historical exposure data exist, Cherrie et al. estimated that early technological phase production techniques probably produced airborne fiber levels similar to those in the late phase measured. The average plant median for fiber length ranged from 8 to 15 μm, and the corresponding median diameters ranged from 0.7 to 1 μm.

Animal Studies

Numerous studies have been done using several species of animals and with fibrous glass administered by several routes. The inhalation route of exposure has been used in five experiments with rats and one experiment each with hamsters and baboons. In all of these studies there was no statistically significant increase in the incidence of lung or pleural tumors. In most experiments with rats, however, a few respiratory tract tumors occurred. In all of these inhalation experiments, one of the intended positive controls, crocidolite asbestos, also produced no statistically significant increased incidence of lung tumors. It is thought that rodent inhalation tests may be less sensitive than tests by other routes for evaluating the carcinogenicity of fibers because the qualitative and quantitative aspects of fiber deposition and retention are substantially different from those in humans. Fibers relevant for human disease may never reach the target organ in sufficient quantities. Other routes of exposure, such as intratracheal instillation and intrapleural and intraperitoneal administration, bring fibers into direct contact with the same target tissues as would occur in humans (IARC 1989/Doc. H–043, p. 34).

In two experiments with rats and one experiment with hamsters, animals were treated with glass wool (mean fiber diameter <0.3 μm) by repeated intratracheal instillation. In one rat experiment, a statistically significant increase in the incidence of lung tumors was observed (Pott et al. 1987, as cited in IARC 1988/Doc. H–043, p. 91). In the other rat experiment, no respiratory tract tumors were observed; however, the tumor response to the positive control, crocidolite, was also low in this study (Smith et al. 1987, as cited in IARC 1988/Doc. H–043, p. 91). In the experiment with hamsters, however, both lung tumors and mesotheliomas were observed (Pott et al. 1984a, as cited in IARC 1988/Doc. H–043, p. 91).

There have been five studies with rats and one study with mice in which the route of administration was intrapleural implantation or injection. Pleural tumors were found in four of the rat studies.

The tumor incidence varied with the fiber size (Wagner et al. 1973, 1976, 1984, as cited in IARC 1988/Doc. H–043, p. 93; Monchaux et al. 1981, as cited in IARC 1988/Doc. H–043, p. 93; Stanton et al. 1977, 1981, as cited in IARC 1988/Doc. H–043, p.93). No tumors were observed in mice, but there was a relatively short observation time and a low response in positive controls (Davis 1976, as cited in IARC 1988/Doc. H–043, p. 92). Stanton et al. (1977, 1981, as cited in IARC 1988/Doc. H–043, p. 93) treated rats with a single implantation of one of 72 different types of synthetic and natural fibers (including asbestos). Nineteen of the fibers were fibrous glass. The investigators found that incidences of pleural mesothelioma ranged from 0/28 to 20/29 and correlated with fiber size rather than physicochemical properties. They observed that the most carcinogenic fibers were those <1.5 μm in diameter and >8 μm in length. Thus, these studies demonstrated that glass fibers with length and diameter distributions comparable to those of asbestos were as carcinogenic as asbestos by intrapleural implantation.

Injection of glass wool into the peritoneal cavity of rats produced mesotheliomas or sarcomas in all eight studies with rats (Pott et al. 1976, 1984b, 1987, as cited in IARC 1988/Doc. H–043, pp. 95–96; Muhle et al. 1987, as cited in IARC 1988/Doc. H–043, p. 96; Smith et al. 1987, as cited in IARC 1988/Doc. H–043, p. 97).

Refractory Ceramic Fibers

Nonmalignant Respiratory Disease

Human Studies

RCF production workers are the subject of an ongoing epidemiological study being conducted by the University of Cincinnati. In this longitudinal morbidity study, workers at five RCF manufacturing facilities are being evaluated. Interim results of this study (TIMA, 1990a/Doc. H–043) showed RCF exposure TWAs that ranged from <0.01 to 1.57 f/cc. Approximately 30 percent of the RCF exposed workers had between 10 and 20 years of exposure, and 4 percent had greater than 20 years of exposure. With regard to morbidity, the prevalence of respiratory symptoms was increased in production workers, but this increase was not statistically significant. The duration of RCF exposure was related to pleuritic chest pain. Pulmonary function was decreased, and this decrease was significantly associated with duration of exposure. Chest radiographs revealed that the prevalence of pleural plaques overall in RCF production workers was 2.4 percent, while the prevalence in non-production workers was 0 percent. Pleural plaques were seen in 18.2 percent of the workers with greater than 20 years' of RCF exposure in a production job. A recent study of asbestos workers demonstrated that those with pleural plaques had significantly higher death rates from lung cancer, mesothelioma, and asbestosis than those without pleural plaques. It did not appear, however, that the plaques became pleural mesothelioma, nor did lung cancer occur preferentially in the regions of the plaques (Selikoff et al., 1990, Doc. H–033e, Ex. 7–34).

Exposure data provided by the Thermal Insulation Manufacturers Association (TIMA) (1990, as cited in EPA, 1990/Doc. H–043) show airborne concentrations that range from 0.01 to 6.4 f/cc (average 0.62 f/cc) for manufacture, 0.02 to 56 f/cc (average <1 f/cc for most operations; 4–8 f/cc for vacuum-formed shapes manufacture and fabrication), and 0.01 to 24.72 f/cc (average 1.24 f/cc) for end use. Recent results of a study in progress at Johns Hopkins University directed by Morton Corn (Corn et al., 1990/Doc. H–043) show that workers in blanket fabrication are exposed to RCF concentrations in the range of 0.11 to 1.91 f/cc (mean 0.61 f/cc, maximum individual sample 8.38 f/cc) and in blanket installation in the range of 0.08 to 8.91 f/cc (mean 1.84 f/cc, maximum individual sample 22.9 f/cc). Those in bulk fiber fabrication are exposed to concentrations in the range of 0.05 to 1.83 f/cc (mean 0.57 f/cc, maximum individual sample 1.87 f/cc) and in bulk installation in the range 1.50 to 7.72 f/cc (mean 4.61 f/cc, maximum individual sample 12.14 f/cc). Those in vacuum-formed products fabrication are exposed to concentrations in the range of 0.08 to 34.0 f/cc (mean 3.58 f/cc, maximum individual sample 143 f/cc) and in installation to concentrations in the range 2.03 to 8.58 f/cc (mean 5.31 f/cc, maximum individual sample 11.8 f/cc).

Animal Studies

In animal studies, exposure to RCF by several routes has been shown to cause nonmalignant respiratory effects. Alveolar lipoproteinosis and significant levels of pulmonary fibrosis developed in rats exposed for one year to 10 mg/m^3 respirable ceramic fiber dust with 90 percent of the fibers having a diameter of <3 μm (Davis et al. 1984, as cited in IARC 1988/Doc. H–043, pp. 130 and 131). In another study, rats and hamsters exposed by inhalation to 0.5–10 mg/m^3 RCF developed low levels of pulmonary fibrosis (Smith et al. 1987, as cited in IARC 1988/Doc. H–043, p. 131). Hamsters, guinea pigs, and especially rats developed pulmonary fibrosis after a 3-month inhalation exposure to between 3000 and 40,000 f/cc of potassium octatintanate RCF, 3–15 μm in length (Lee et al. 1981; Lee and Reinhardt 1984, as cited in IARC 1988/Doc. H–043, p. 131). Gross et al. (1970b, as cited in IARC 1988/Doc. H–043, p. 131) found that intratracheal instillation of RCF in rats at a dose of 10.5 mg produced dust deposits that were surrounded by inflammatory cells.

Carcinogenicity

Human Studies

No epidemiological studies have been done to examine the risk of respiratory tract cancer or mesothelioma in workers exposed to RCF. However, as stated above, a very small percentage of RCF workers has a 20-year or longer time period since first exposure. Studies of asbestos workers have demonstrated that the latency period (the time between exposure to a substance and the onset of disease) for mesotheliomas can be as long as 45 years and is routinely between 20 and 40 years (Maltoni et al., 1991/Doc. H–033e, Ex. 124). Thus, it may be too early to be able to detect chronic diseases such as respiratory tract cancer and mesothelioma in RCF workers.

Animal Studies

Refractory ceramic fibers have also been shown to produce cancer in experimental animals treated by several routes of administration. Inhalation exposure to RCF has been shown to cause tumors in several studies. Lee et al. (1981, as cited in IARC 1988/Doc. H–043, p. 101) exposed rats and hamsters to 2900 f/cc potassium octatintanate fibers (19.1 percent <3 μm diameter) or 3100 f/cc amosite asbestos for 6 hours per day/5 days per week for 3 months. The animals were then observed for 21 months. At the end of the study, bronchoalveolar tumors were observed in 1/14 rats treated with potassium octatintanate, 3/11 treated with amosite asbestos, and 0/13 in untreated controls. One of the four potassium octatintanate-treated hamsters sacrificed at 18 months had a pleural mesothelioma. No other animals in any hamster treatment group had tumors.

Davis et al. (1984, as cited in IARC 1988/Doc. H–043, p. 101) exposed rats by inhalation to 10 mg/m^3 respirable dust from fibrous ceramic aluminum silicate glass (90 percent of fibers <3 μm length, <0.3 μm diameter, aspect ratio >3:1) for 7 hours per day/5 days per week for 12 months. Malignant pulmonary

neoplasms were observed in 7/48 animals. There was also one benign adenoma. No pulmonary tumors were observed in 39 untreated controls. In another study, hamsters were exposed by nose-only inhalation to RCF dust at a concentration of 10.8 mg/m³ (35 percent respirable, geometric mean diameter 0.9 μm, geometric mean length 25 μm) for 6 hours per day/5 days per week for 2 years and observed for life. The exposure concentration was 200 f/cc, with 88 f/cc >10 μm in length and <1.0 μm in diameter. A spindle cell mesothelioma of the lung developed in one of the 58 treated hamsters (Smith et al. 1987, as cited in IARC 1988/Doc. H–043, p. 102).

The Thermal Insulation Manufacturers Association (TIMA; 1990/Doc. H–043) has reported the results of a 2-year study in which hamsters and rats were exposed to RCF by nose-only inhalation at a concentration of 250 f/cc (>15 μm in length) for 6 hours per day, 5 days per week. A unique aerosol generation procedure was used in which large concentrations of unbroken fibers with little fiber dust could be produced. This procedure allowed for much greater respirability of fibers than had been achieved in previous fiber inhalation studies. Rats were treated with four types of RCF: Kaolin, zirconia, high purity, and "after service." Hamsters were treated with kaolin only. The study also included positive control groups treated with chrysotile asbestos (approximately 5000 f/cc, <5 μm in length) and negative controls treated with filtered air. At the 18-month final sacrifice, 35 percent (36/102) of the hamsters had pleural mesotheliomas. Fibrosis was also present. In contrast, the positive control chrysotile asbestos-exposed hamsters had only fibrosis, with one hamster showing a non-malignant pleural mesothelial growth. No lesions were seen in negative controls. By the 24-month interim sacrifice for the rats, pathological studies had shown two benign lung tumors, seven lung carcinomas, and three mesotheliomas in RCF-exposed animals. Chrysotile asbestos controls had a thymic adenoma and one lung carcinoma.

Mesotheliomas have also been produced by the intrapleural administration of RCF to rats. In one study, mesotheliomas developed in 3 of 31 rats that received a single intrapleural injection of 20 mg ceramic aluminum silicate fibers (0.5–1.0 μm in diameter). One mesothelioma developed in a similar number of rats treated with nonfibrous aluminum oxide. Rats treated with chrysotile asbestos had tumor incidences of 23/36 and 21/32 (Wagner et al. 1973, as cited in IARC 1988/Doc. H–043, p. 103). Stanton et al. (1981, as cited in IARC 1988/Doc. H–043, p. 104) treated rats with a single intrathoracic implantation of one of 13 different types of ceramic fibers. The incidences of pleural sarcomas were correlated with the number of fibers <0.25 μm in diameter and >8 μm in length and ranged from 1/45 to 21/29 in exposed animals.

The intraperitoneal (i.p.) administration of RCF has been shown to produce tumors in three studies with rats and one study with hamsters. In one study, 9 percent of rats injected with 25 mg fibrous ceramic aluminum silicate glass (90 percent fibers <3 μm in length and <0.3 μm in diameter) developed peritoneal tumors (one mesothelioma and two tumors similar to fibrosarcomas). Five percent of a group of untreated controls used for an inhalation study developed malignant tumors of the peritoneum or digestive system (Davis et al. 1984, as cited in IARC 1988/Doc. H–043, p. 105). In another study, tumors of the abdominal cavity were found in 32/47 and 12/54 rats that had received five i.p injections of two types of ceramic wool (median length, 8.3 μm; diameter 0.91 μm and median length 6.9 μm; diameter 1.1 μm). Injections of titanium dioxide caused tumors in 5/53 rats, and saline controls had a tumor incidence of 2/102. Positive control groups receiving actinolite or chrysotile had tumor incidences of 20/36 and 31/36 rats, respectively (Pott et al. 1987, as cited in IARC 1988/Doc. H–043, p. 105). Smith et al. (1987, as cited in IARC 1988/Doc. H–043, p. 105) treated rats and hamsters with a single i.p. injection of 25 mg RCF (geometric mean length, 25 μm; geometric mean diameter 0.9 μm; 83 percent fibers >10 μm length and 86 percent <2.0 μm diameter. Mesotheliomas were found in 19/23 of the treated rat group, in 2/15 and 5/21 of the treated hamster groups, and in none of the saline-treated or untreated controls.

Discussion

Based on what it viewed as the lack of reported adverse health effects in epidemiologic studies, the ACGIH (1986/Doc. H–020, Ex. 1–3) considered fibrous glass dust to be essentially a nuisance dust and applied a 10 mg/m³ TLV®–TWA.

In contrast, NIOSH (in 1977/Doc. H–043) concluded that "available data are sufficient to demonstrate that fibrous glass does not act like an inert or nuisance dust because it can produce fibrosis in animals and respiratory tract irritation in humans." Relying on several investigations that showed a lack of adverse effects among workers exposed to mean respirable fiber concentrations that were generally less than 5 to 6 f/cc, NIOSH recommended that exposures be limited to 3 f/cc for fibers >3.5 μm and >10 μm in length.

Recently, however, citing animal and epidemiological studies published since the NIOSH 1977 Criteria Document, NIOSH (1988, Doc. H–020, Ex. 8–47) has commented that these studies indicate the potential carcinogenicity of fibrous glass. NIOSH (1988/Doc. H–020, Ex. 8–47) commented, "It is likely * * * that even the 3 f/cc standard will not provide the degree of protection that OSHA believes is necessary for worker health and that reduction of the PEL to 0.2 f/cc * * * will be necessary to protect workers from the development of lung cancer." NIOSH (1988/Doc. H–020, Ex. 8–47, Table N6B) also believes that a full 6(b) rulemaking is needed for fibrous glass. NIOSH based its comments on the conclusion reached by Doll (1987/Doc. H–043, Ex. 1–11) to the effect that "* * * it is likely that man-made mineral fiber may have about the same carcinogenic potential as asbestos fibers of the same dimension, and that levels of 0.2 f/cc or less in industry are unlikely to produce a measurable risk after 20 years of exposure."

The Thermal Insulation Manufacturers Association (TIMA (1990b/Doc. H–043) has commented that it supports the application of NIOSH's REL of 3 f/cc for fibrous glass to all synthetic mineral fibers but does not believe that fibrous glass poses a human cancer hazard. Recently, however, TIMA (1991) has recommended that OSHA establish a PEL of 1 f/cc (8-hour TWA, NIOSH 7400B method) for fiber glass. According to TIMA, this recommendation is based on grounds of prudence and not significant risk. TIMA additionally recommended that fiber glass be classified as an irritant. Manville (1990/Doc. H–043), referring to fibrous glass, has stated that "Where industrial hygiene measurement is available on a continuous basis, a Manville workplace exposure guideline of 1 f/cc is suggested as a point above which respiratory protection should be used." Manville also believes that fibrous glass does not pose a human cancer hazard. The Carborundum Company (Doc. H–043) has a Recommended Exposure Guideline of 2.0 f/cc for worker exposure to RCF. Respiratory protection is recommended at and above this level. The refractory ceramic fiber subcommittee of TIMA has recently recommended an exposure

guideline of 1 f/cc, with workplace controls as appropriate (Given 1991/ Doc. H–043). E.I. du Pont de Nemours and Company has an Acceptable Exposure Level of 0.5 f/cc for RCF and 2.0 for fibrous glass (personal communication from Frieda Fisher-Tyler, 1991).

The Building and Construction Trades Department of the American Federation of Labor-Congress of Industrial Organizations (A.F.L.-C.I.O., 1991) has recommended that OSHA establish a PEL of 1.0 f/cc as a TWA for the respirable fibers of fiber glass. The authors stated that the recommendation was consistent with the current state of their understanding of health risks, including the suggestive but not conclusive indication that these fibers may possess the ability to produce respiratory system cancer in exposed workers. A PEL of 0.1 f/cc was recommended for respirable refractory ceramic fibers based on the fact that inhalation studies with experimental animals have demonstrated that the carcinogenic potential of these fibers is similar to that of asbestos.

The International Agency for Research on Cancer (IARC 1988/Doc. H–043), in evaluating the carcinogenicity of fibrous glass and RCF, has concluded that glass wool and RCF are "possibly carcinogenic to humans (Group 2B)."

Current exposure limits (8-hour TWA) for all synthetic mineral fibers (unless specified) in several other countries that have recently studied the issue are as follows: Australia, 0.5 f/cc; Denmark, 2.0 f/cc; Great Britain, 1.0 f/cc; The Netherlands, 5.0 f/cc for glass wool and glass microfibers and 1.0 f/cc for refractory ceramic fibers; New Zealand, 1.0 f/cc; Norway, 1.0 f/cc; Poland, 2.0 f/cc, Sweden, 1.0 f/cc.

OSHA believes that a fiber-based standard is necessary. Industry representatives (Doc. H–020, Exs. 3–743, 8–56, 132, 175; Doc H–043) have argued strongly for a fiber-based standard, and NIOSH has recommended fiber-based counting procedures since 1977. TIMA points out that, for example, a 5 mg/m^3 PEL for fibrous glass dust would permit a concentration of 4,000 f/cc for fibers 10 microns long and 0.25 microns in diameter (Doc. H–020, Ex. 3–743, p. 8).

In summary, OSHA has evaluated the available evidence on the health effects of fibrous glass, including refractory ceramic fibers. It has presented the strengths and weaknesses of the studies and discussed the possibility of confounding factors. Some of the human studies do not have contemporaneous exposure data; this means that, although current exposures are often quite low, it may be the case that earlier exposures were higher. OSHA's discussion also presents the views of other organizations.

A statistically significant increase in mortality from nonmalignant respiratory disease has been observed in several studies of fibrous glass workers, including Bayliss et al. (1976) and Enterline et al. (1986, 1987). An ongoing morbidity study of RCF workers has demonstrated an increase in the prevalence of respiratory symptoms, pleuritic chest pain, and pleural plaques and a decrease in pulmonary function that was significantly associated with duration of exposures. In each of these studies, workers were exposed to fiber concentrations in the range of OSHA's proposed PEL.

OSHA believes, on the basis both of animal and human evidence, that a link between respiratory disease and exposure to fibrous glass exists. These respiratory effects constitute a material impairment of health. Based on this evidence, OSHA is proposing a 1 f/cc 8-hour TWA limit for the respirable fibers of fibrous glass, including refractory ceramic fibers. OSHA preliminarily concludes that this limit will substantially reduce the significant risk of nonmalignant respiratory disease that exists in the absence of a limit for workers in all sectors.

OSHA has presented the evidence of possible carcinogenicity of fibrous glass, including refractory ceramic fibers. There is also a substantial body of ongoing research. At this time OSHA believes it is premature for the Agency to reach a final decision on an exposure limit based on carcinogenicity. However, the proposed limit will also clearly increase the protection of workers from this effect as well.

OSHA is proposing the use of NIOSH counting method number 7400B and soliciting information on alternative counting methods.

OSHA believes this proposal is appropriate based on its review of the studies and their strengths and weaknesses, the recommendations of expert organizations, and the various ongoing studies that may provide important new data.

GRAIN DUST (OATS, WHEAT, AND BARLEY)

CAS: None; Chemical Formula: None
H.S. No.: 1190

A decision by the Occupational Safety and Health Review Commission (*Secretary of Labor* v. *Krause Milling Company*, OSHRC Docket No. 78–2307, April 22, 1986) has held that there currently is no OSHA PEL for grain dust in the construction and maritime industries. There is also no limit in agriculture. The ACGIH has a 10 mg/m^3 TLV®–TWA for this substance. There is no NIOSH REL; however, NIOSH concurs (Ex 8–47, Table N1) with the limit OSHA is proposing in construction, maritime, and agriculture, which is a 10 mg/m^3 8-hour TWA PEL for grain dust generated from wheat, oats, and barley. Promulgation of this limit will make the PEL for grain dust consistent across all OSHA-regulated sectors.

Grain dust is a complex mixture of husk particles, cellulose hairs and spikes, starch granules, spores of fungi, insect debris, pollens, rat hair, and approximately 5 percent mineral particles. The mean particle size of the airborne dusts may be less than 5 μm. Grain is exported, milled into flour, malted by the brewing industry, distributed as a feedstuff for animals or returned to the land as seed (Rom 1983, p. 221).

The acute grain dust toxicity data in animals are sparse. However, in-vitro studies have demonstrated that grain dust can stimulate lymphocyte proliferation and the production of interleukin-1 by rat alveolar macrophages (Ye, Lewis, Sorenson, and Olenchock 1988). Another study (Alam, Lewis, and Olenchock 1988) has shown that grain dust can stimulate lymphocytes, mast cells, and basophils, i.e., those cells involved in producing inflammatory responses, in cultured guinea pig spleen and lung tissue.

In humans, exposure to grain dust causes both acute and chronic effects. The adverse effects of inhaling grain dust have been known for at least two-and-one-half centuries, dating back to Rammazini who, in 1713, described the respiratory hazards associated with exposure to cereal grain dust. More recently, several epidemiological studies conducted over the past few decades have demonstrated that exposure to grain dust causes "grain fever," wheezing, chest tightness, productive cough, eye and nasal irritation, and symptoms of chronic respiratory disease. Grain dust may also induce asthmatic reactions via an allergic mechanism, particularly in individuals who are predisposed to developing allergies (i.e., atopic individuals).

Epidemiological studies have shown that as many as 25 percent of grain elevator workers experience grain fever (Broder et al. 1979; Chan-Yeung et al. 1980; doPico et al. 1980; Tse et al. 1973). Increased rates of cough, shortness of breath, and wheezing were reported in 23 percent of English grain farmers (N=65) (Darke et al. 1976). Seventy-six percent of dock workers handling grain

were found to have chest tightness or grain fever (Lockcroft et al. 1983).

The basis for OSHA's proposed 10-mg/m³ limit in the construction, maritime, and agriculture sectors is a NIOSH-sponsored study of grain workers by Rankin et al. (*Study of the Prevalence of Chronic, Non-Specific Lung Disease and Related Health Problems in the Grain Handling Industry*, DHHS (NIOSH) Pub. No. 86–117, 1986). This study evaluated the health status of 310 grain handlers in Wisconsin and Minnesota. The grain handlers were selected from employees at eight elevator companies, from state grain inspection agencies, and from longshoring companies. Health status was determined by questionnaire and by physical examination, which included an assessment of pulmonary function, immunologic evaluation, blood and urine chemistries, and chest roentgenograms. The comparison group that served as controls consisted of 239 city workers who spent the majority of their workdays outside.

From the questionnaires, Rankin et al. (1986) found that the grain handlers had a higher prevalence of respiratory symptoms than did the city workers. The prevalence of respiratory symptoms was highly significant (Rankin et al. 1986, Table 13), and was independent of smoking status. The symptoms reported by grain handlers represented both acute and chronic airways reactions (occupational asthma and chronic bronchitis). Wheezing and/or chest tightness generally started within two hours of beginning the work shift. Episodes of grain fever occurred infrequently; this was attributed by the workers to improved working conditions over the previous three years. However, acute recurrent conjunctivitis and rhinitis were reported to occur among most grain workers.

Lung function tests showed that exposure to grain dust had a highly significant adverse effect on pulmonary function (Rankin et al. 1986, Table 30). There was, however, no correlation between reduced pulmonary function and job category, length of employment, or place of work. The lung function decrement observed among grain handlers was not related to smoking history alone; grain handlers who were smokers or ex-smokers showed significant declines in pulmonary function when compared to city workers who were smokers or ex-smokers.

Grain workers who reported symptoms had lower values of ventilatory function than did workers without symptoms. The prevalence of chronic bronchitis symptoms with measured airway obstruction was higher in grain workers than in controls, regardless of smoking history. Chronic bronchitis with airway obstruction was also related to length of employment. Rankin et al. (1986) concluded that these findings "suggest that chronic grain dust exposure may result in chronic obstructive pulmonary disease" (p. 28).

Rankin et al.'s (1986) study also included a work-shift study in which 248 grain workers and 192 city workers were sampled for grain dust exposure during a work shift. Symptoms occurring during the shift were recorded and pulmonary function readings were taken before and after the shift. Only 14 percent of grain workers were exposed to an 8-hour TWA level exceeding 5 mg/m³ total grain dust; 7 percent were exposed above 10 mg/m³. Rankin et al. (1986) reported that grain workers showed a significant excess of cough and expectoration during work shifts in which dust concentrations were below 5 mg/m³. At dust levels between 10 and 15 mg/m³, there was a significantly increased prevalence of wheezing and dyspnea during the shift among grain workers as compared with controls (Rankin et al. 1986, Table II–156). Workers with pre-existing airway obstruction experienced significant pre- to post-shift declines in ventilatory function at dust levels below 10-mg/m³. However, the changes observed in pre- to post-shift pulmonary function did not correlate with the presence of symptoms during the shift.

Rankin et al. (1986) also conducted a short-term (three-year) follow-up study of lung function among grain workers. Their results showed no greater declines in FEV or FVC over the three-year period than could be accounted for by age alone. However, there was a significant decline in other measures of lung function (MMF, V_{max50}, V_{max75}) among both smoking and nonsmoking grain workers. The authors concluded that, although a grain-dust-related decline in these measures was observed, the long-term effects of smoking on lung function were probably greater than those caused by grain dust.

The findings of the Rankin et al. (1986) study are consistent with those of other recent published studies (NIOSH 1988; Tse 1990; Hurst and Dosman 1990; Richerson 1990; Revsbeck and Andersen 1989) of grain workers employed in establishments in various sectors. For example, Dr. Roy Buchan, Chief of the Occupational Health and Safety Section, College of Veterinary Medicine and Biomedical Sciences at Colorado State University, performed a study of the general health of 31 grain handlers (submitted as part of Ex. 3–751). A total of 204 personal TWA dust samples were taken, of which only six exceeded 10 mg/m³. Dr. Buchan found that neither age of facility, smoking history, nor past exposure to grain dust had any significant effect on symptom responses. There was a statistically significant association between grain dust exposure levels and symptom responses. The reported symptoms included nasal and throat irritation, chest discomfort, and phlegm production. Dr. Buchan concluded that, "although the association was mathematically weak but statistically significant, it would rationally be expected that symptom severity would become more pronounced as dust concentrations increase, since dust exposures in this investigation were surprisingly low (mean=0.7 mg/m³ TWA)." In a larger study of 390 Canadian grain workers, Cotton, Graham, Li et al. (1983, submitted as part of Ex. 3–751) also reported a significant excess incidence of respiratory symptoms among grain workers despite total dust concentrations generally below 10 mg/m³.

Although these studies show a pattern of increased prevalence of respiratory symptoms among grain handlers exposed below 10 mg/m³, the association between low-level exposure to grain dust and the development of chronic pulmonary disease remains open to interpretation. Several studies, including those of Rankin et al. (1986), Chan-Yeung, Giclas, and Henson (1980/Ex. 1–474), and Broder, Corey, Davies et al. (1985, as cited in Ex. 3–751) have generally not found decrements in pulmonary function associated with long-term exposure to grain dust. In addition, chest roentgenograms have found no evidence of lung scarring or fibrosis (Rankin et al. 1986) among grain handlers. However, symptoms of chronic bronchitis have frequently been noted among grain handlers, including those who have never smoked (Rankin et al. 1986; Cotton, Graham, Li et al. 1983). According to Cotton et al. (1983, as cited in Ex. 3–751, p. 139), "The significance of the increase in chronic bronchitis and cough in workers and wheezing in nonsmoking workers in terms of eventual respiratory disability remains uncertain but the nuisance and discomfort of these symptoms for workers must also be considered."

In the prior rulemaking in general industry, some commenters (Exs. 6–55, 180, and 185) took the position that grain dust is a nuisance dust. OSHA does not concur with this view. In the studies described above, as well as in others in the record, grain workers in all regulated sectors have consistently reported an

excess prevalence of respiratory symptoms, including chronic bronchitis, at low levels of exposure to grain dust. OSHA believes that these symptoms, even in the absence of definitive evidence of irreversible lung damage, constitute material impairment of health and interfere with the well-being of workers. In the prior rulemaking, this was attested to at the informal hearing by Deborah Berkowitz, Director of Safety and Health for the Food and Allied Trades Department, AFL–CIO:

> I want to make it clear that study after study documents a very real acute hazard to grain workers. Living with chronic bronchitis is not a hazard that should go unchecked. In fact, study after study point to the possibility of very real long-term damage from chronic cumulative effects of exposure to grain dust. But even without the possibility of long-term disability, acute hazards clearly pose significant risk[s] to workers (Tr. pp. 6–306 to 6–307).

Thus OSHA preliminarily concludes that employees in construction, maritime, and agriculture are at significant risk of developing respiratory symptoms, including chronic bronchitis, as a result of their exposure to grain dust. It is clear that such symptoms occur at grain dust levels exceeding OSHA's current limit in construction and maritime for dusts and particulates (15 mg/m³ TWA). Increases in respiratory symptoms have also been reported to occur among grain workers exposed generally to concentrations of less than 10 mg/m³, although symptoms are diminished in intensity at these lower levels. At this time, it is difficult to identify the precise threshold at which adverse respiratory effects are likely to occur.

Based on this evidence in workers, OSHA is proposing an 8-hour TWA limit of 10 mg/m³ in construction, maritime, and agricultural operations for grain dust, measured as total dust. Grain dusts other than oats, wheat, and barley will continue to be covered under OSHA's generic "particulates not otherwise regulated" PEL of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction). Promulgation of this limit for grain dust will make OSHA's PEL for this substance consistent across all regulated sectors.

GRAPHITE, NATURAL
CAS: 7782–42–5; Chemical Formula: None
H.S. No. 1191

The current OSHA limit for natural graphite (total dust) in the construction and maritime industries is 15 million particles per cubic foot (mppcf), which is equivalent to 2.5 mg/m³ as respirable dust (assuming that respirable mass is one-half total particle mass). There is no limit for natural graphite in agriculture. The ACGIH has an 8-hour TLV®–TWA of 2.5 mg/m³ for graphite (respirable dust). NIOSH has no REL for this substance. In construction and maritime, OSHA is retaining the 8-hour TWA PEL of 2.5 mg/m³ for respirable natural graphite dust containing less than 1 percent quartz but changing the units in which the limit is expressed from mppcf to mg/m³. OSHA is also proposing an 8-hour TWA PEL of 2.5 mg/m³ in agriculture. NIOSH concurred (Ex. 8–47, Table N1) with this limit when OSHA recently established it in general industry.

Natural graphite, also called plumbago and mineral carbon, is a relatively soft, greasy-feeling, steel gray to black solid with a metallic sheen. In nature, graphite is usually associated with impurities, such as silica, mica, granite, etc. Graphite is used in "lead" pencils, refractory crucibles, foundry facings, stove polishes, pigments, lubricants, cements, matches, and explosives (Hawley's 1987, p. 576; Merck 1983, p. 652; ACGIH 1986, p. 290(89)).

There are few data on the toxicity of graphite in experimental animals. Administered to rats by intratracheal injection, graphite with a "low ash content" caused fibrosis of the lung; however, the amount of silica or other impurities in the graphite was not determined (Ray, King, and Harrison 1951/Ex. 1–46). A recent study (Thomson, Bergmann, Burnett, Carpin, and Crouse 1988) shows that exposure to natural graphite, which contains silicate minerals, and to synthetic graphite, which contains less than 1 percent silica, both elicit physiologic changes in the lungs of rats exposed to 100 mg/m³ of each substance for 4 hours/day for 4 days.

Early reports established that graphite deposited in the lungs of occupationally exposed workers caused pneumoconiosis (Koopman 1924/Ex. 1–131). Subsequent research described the condition produced by exposure to graphite as anthracosilicosis, a pulmonary condition similar to that seen in coal miners, based on radiographic and histologic examinations in exposed individuals (Harding and Oliver 1949/Ex. 1–71). Radiologic changes were also observed among graphite mine and production workers exposed to graphite containing from 3.6 to 10 percent silica (Pendergrass, Vorwald, Mishkin et al. 1967/Ex. 1–77). A recent study of the incidence of graphite-induced pneumoconiosis in Sri Lankan graphite miners shows that the incidence was substantially lower in workers from a mine equipped with dust controls (3.4 percent) compared with that in workers from a mine without such controls (18.3 percent) (Uragoda 1989). A 1983 review article (Hanoa 1983) concludes that, because information reported in the literature is often unclear both about the composition of the natural graphite and the extent of occupational exposure, it is difficult to distinguish the extent of pure graphite's contribution to the development of graphite pneumoconiosis. The author concluded, on the basis of a review of 18 epidemiologic studies of graphite-exposed workers, that the possibility that pure graphite causes pneumoconiosis cannot be ruled out, although most of these studies suggest that pneumoconiosis is a mixed-dust reaction (Hanoa 1983).

OSHA is proposing to revise its former limit of 15 mppcf to the equivalent limit of 2.5 mg/m³ for the respirable fraction of graphite containing less than 1 percent quartz for the construction and maritime industries and to extend this limit to agriculture. In construction and maritime, this change represents a change only in the units used to express or measure the limit, not a change in the value of the limit. OSHA is revising its limit to simplify the monitoring of employee exposures because the use of impingers and microscopic analyses are not required to measure exposures that are expressed in mg/m³ rather than in mppcf. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

INDIUM AND COMPOUNDS
CAS: 7440–74–6; Chemical Formula: In
H.S. No. 1213

OSHA's exposure limit for indium and compounds in the construction and maritime industries is 0.1 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³ for these substances; NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. The Agency is retaining its limit for construction and maritime operations and is proposing to extend this 0.1 mg/m³ 8-hour TWA limit to agricultural operations. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Indium metal is silver-white, shiny, and ductile. Indium is used in bearings for automobiles and aircraft, in electronic devices, low melting alloys, and reactor control rods. Indium compounds are not widely used; however, indium antimonide, indium arsenide, and indium phosphide are used in semiconductor devices.

There are few acute toxicity data for indium and its compounds. The lowest lethal dose of indium in mice by subcutaneous injection is 10 mg/kg (RTECS 1990). The oral LD_{50} for indium in rats is 4200 mg/kg (ITI 1986, p. 620). Rats inhaling the sesquioxide form of indium at airborne concentrations ranging from 24 to 97 mg/m³ daily for a total of 224 hours developed widespread alveolar edema; these histologic lesions did not change over a 12-week post-exposure period (Leach, Scott, Armstrong et al. 1961). Animals exposed to indium show reduced alveolar clearance and may develop chronic respiratory insufficiency and recurrent acute pneumonitis before death (Jones 1960). Animals chronically poisoned with indium show weight loss, blood changes, signs of pulmonary edema, and, at autopsy, damage to the liver and kidneys (McCord, Meeks, Harrold, and Henssner 1942). Several studies have shown indium to be teratogenic in experimental animals (Farm 1972; Cralley and Cralley 1985).

In humans, exposure to indium and its compounds causes eye, mucous membrane, and skin irritation (Hazardous Substance Fact Sheet 1986). No other information on indium's toxicity in humans is available.

Based on this evidence in humans and animals, OSHA believes that exposed workers in construction, maritime, and agriculture are at significant risk of developing sensory irritation and chronic lung function impairment, both adverse health effects associated with exposure to indium. To substantially reduce the risk of these material health impairments, the Agency is retaining its 8-hour TWA limit of 0.1 mg/m³ for indium and its compounds in the construction and maritime industries and is proposing to extend this limit to agriculture. Promulgation of this limit will make OSHA's PEL for this substance consistent across all OSHA-regulated sectors.

IRON OXIDE (DUST AND FUME)
CAS: 1309–37–1; Chemical Formula: Fe_2O_3
H.S. No. 1215

In the construction and maritime industries, OSHA has an 8-hour TWA limit of 10 mg/m³ for iron oxide fume. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 5 mg/m³, measured as iron, total particulate. NIOSH has no REL for this substance. OSHA is retaining its 8-hour TWA PEL of 10 mg/m³ for the construction and maritime industries and is proposing to extend this limit to agriculture. NIOSH concurred (Ex. 8–47, Table N1) that this limit was appropriate when OSHA recently established it in general industry.

The fume of iron oxide is red-brown in color. Iron oxide is used as a pigment for rubber, paints, paper, linoleum, ceramics, and glass; in paint for iron work and ship hulls; as a polishing agent for glass, precious metals, and diamonds; as a catalyst; in colloidal solutions; and as a stain for polysaccharides (Merck 1983, p. 579).

The intraperitoneal LD_{50}s in rats and mice are 5500 mg/kg and 5400 mg/kg, respectively (RTECS 1990). Animals exposed to iron oxide or to iron oxide mixed with less than 5 percent silica by inhalation or by intratracheal injection did not develop pulmonary fibrosis (Naeslund 1940/Ex. 1–650; Harding, Grout, Durkan et al. 1950, as cited in ACGIH 1986/Ex. 1–3, p. 325). A recent study (Wright, Harrison, Wiggs, and Churg 1988) confirms these findings; iron oxide (10 mg) administered to rats by intratracheal injection had not caused any morphological or pulmonary function changes in these animals 30 days later. Hamsters injected once per week for 15 weeks by the intratracheal route of administration with 3 mg ferric oxide dust survived for 1 to 2 years and did not develop tumors (Saffiotti et al. 1968). In an evaluation of iron oxide's carcinogenic potential, the International Agency for Research on Cancer concluded that the evidence for the carcinogenicity of ferric oxide suggested that this substance was not carcinogenic in animals (IARC 1987, Suppl. 7, p. 217).

The evidence of iron oxide's respiratory toxicity in humans is conflicting. Drinker, Warren, and Page (1935/Ex. 1–315) concluded that exposures to iron oxide fume should be maintained below 10 mg/m³, and a U.S. Department of Labor study (1941, as cited in ACGIH 1986/Ex. 1–3, p. 325) found that exposures below 30 mg/m³ were without adverse effect. There are several studies, on the other hand, that report chest X-ray abnormalities in iron oxide-exposed miners, welders, silver polishers, electrolytic iron oxide workers, foundry workers, and boiler scalers (Doig and McLaughlin 1936/Ex. 1–626; Stewart and Faulds 1934/Ex. 1–764; Doig and McLaughlin 1948/Ex. 1–627; McLaughlin, Grout, Barrie, and Harding 1945/Ex. 1–642; Davidson 1951, as cited in McLaughlin 1951/Ex. 1–727; Pendergrass and Leopold 1945/Ex. 1–653; Dunner and Hermon 1944/Ex. 1–731). Some of these workers developed disabling pneumoconiosis; however, the exposures of many of these workers were mixed and in some cases included exposure to varying amounts of silica.

McLaughlin (1951/Ex. 1–727), whose opinion on the subject is widely accepted, believes that the presence of iron oxide dust or fume in the lung causes a pigmentation (termed siderosis) that is responsible for the changes seen in exposed individuals' chest X-rays. Siderosis is believed not to progress to fibrosis, and 6 to 10 years of exposure to about 15 mg/m³ iron oxide dust is required before this condition develops (Fawcett 1943/Ex. 1–736; Fleischer, Nelson, and Drinker 1945/Ex. 1–1051; Hamlin and Weber 1950/Ex. 1–698). In a group of 25 welders exposed primarily to iron oxide fume at 0.65 to 47 mg/m³ concentrations for 3 to 32 years, eight had shadows on their X-rays typical of siderosis, but none of these workers had pulmonary function deficits (Kleinfeld, Messite, Kooyman, and Shapiro 1969).

Dr. Stuart M. Brooks (NIOSH 1986b, p. 425) notes that "[m]ore sophisticated physiologic testing, including measurement of the lung's mechanical properties, is required to better document lung function changes that may occur following inhalation of iron-containing dusts. *In vitro* studies or animal experimentation might be helpful in determining dose-response relationships, understanding lung clearance mechanisms for iron, and elucidating any fibrogenic properties of various ferrous compounds."

Some studies have shown that workers with exposures to iron oxide and such other substances as silica, radon gas, diesel exhaust, corn oils, and the thermal decomposition products of synthetic resins (Faulds 1957/Ex. 1–635; Dreyfus 1936/Ex. 1–897; Bidstrup 1959/Ex. 1–1030; Boyd, Doll, Faulds, and Leiper 1970/Ex. 1–716; Braun, Guillerm, Pierson, and Sadoul 1960/Ex. 1–1141; Monlibert and Roubille 1960/Ex. 1–647; Jorgensen 1973/Ex. 1–1023; Muller and Erhardt 1956/Ex. 1–648; Koskela, Hernberg, Karava et al. 1976/Ex. 1–744; Gibson, Martin, and Lockington 1977/Ex. 1–1053) have a greater risk of developing lung cancer. However, OSHA agrees with the International Agency for Research on Cancer that "Some studies of metal workers exposed to ferric oxide dusts have shown an increased incidence of lung cancer, but the influence of factors in the workplace other than ferric oxide, i.e., soots, silica, and asbestos in foundry work, cannot be discounted. In other studies of metal and chemical workers exposed to ferric oxide, the incidence of lung cancer has generally not been increased" (IARC 1987, Suppl. 7, p. 217). A recent review of the epidemiological and experimental evidence for the carcinogenicity of iron oxide reaches the same conclusion (Lauwerys 1989) but notes that iron-

containing dust may act as a cocarcinogen.

Based on this evidence, OSHA is retaining the Agency's PEL for iron oxide dust and fume of 10 mg/m³, measured as total particulate, in construction and maritime, and is proposing this limit in agriculture. The Agency preliminarily concludes, based on the evidence currently available, that this limit will protect workers in these sectors from developing siderosis, a benign pneumoconiosis that occurs after many years of exposure to iron oxide dust or fume. OSHA considers this condition a material health impairment and believes that this PEL is necessary to reduce the risk of this effect. In addition, promulgation of this limit will make OSHA's PEL for iron oxide consistent across all regulated sectors.

METHYLENE BIS-(4-CYCLOHEXYLISOCYANATE)

CAS: 5124–30–1; Chemical Formula: $C_{15}H_{22}N_2O_2$

H.S. No. 1272

OSHA has no limit for methylene bis (4-cyclohexylisocyanate) in the construction, maritime, or agriculture industries. The ACGIH has a TLV® ceiling limit of 0.01 ppm for this alicyclic diisocyanate compound. NIOSH has no REL for this substance. OSHA is proposing a ceiling limit of 0.01 ppm for this substance in construction, maritime, and agricultural operations. NIOSH (Ex. 8–47, Table N1) concurred with this limit when the Agency recently established it in general industry.

Methylene bis (4-cyclohexylisocyanate) is a liquid belonging to the family of alicyclic diisocyanates. It is used primarily to produce urethane products (ACGIH 1986, p. 392.5(86)).

Methylene bis (4-cyclohexylisocyanate) is a skin, eye, and lung irritant. The oral LD_{50} in rats is 9.9 g/kg (RTECS 1990). By inhalation, exposure to a 20 ppm concentration for 5 hours caused death to 50 percent of exposed rats (RTECS 1990). A 5-percent solution applied to the skin of guinea pigs produced strong erythema and edema, and rabbits treated with 0.1 mg showed severe skin reactions (Younger Laboratories 1965, as cited in ACGIH 1986/Ex. 1–3, p. 392). Rats inhaling a lethal concentration of 20 ppm for five hours exhibited marked respiratory irritation, tremors, and convulsions during exposure, and their lungs revealed severe congestion and edema after death (E.I. du Pont de Nemours and Co. Inc. 1976, as cited in ACGIH 1986/Ex. 1–3, p. 392). Repeated inhalation exposure to 0.4 ppm produced initial weight loss in rats; exposure to 1.2 ppm caused respiratory irritation and decreased growth (E.I. du Pont de Nemours and Co. Inc. 1978, as cited in ACGIH 1986/Ex. 1–3, p. 392). Guinea pigs exposed to 0.12 ppm and mice exposed to 0.65 ppm did not exhibit dermal sensitivity (Stadler and Karol 1984/Ex. 1–612). Unlike toluene diisocyanate, which is a sensory irritant, methylene bis (4-cyclohexylisocyanate) depresses respiration by producing pulmonary irritation; for example, an exposed mouse showed a 50-percent decrease in respiration rate, along with lung irritation, when exposed to 3.7 ppm of this substance (Weyel and Schaffer 1985/Ex. 1–581).

Methylene bis (4-cyclohexylisocyanate) causes sensory irritation of the eyes, nose, and throat, and contact with the eyes can lead to permanent damage (Hazardous Substance Fact Sheet 1986). Workers exposed to this compound have developed skin sensitization, but pulmonary sensitization is less common (Emmett 1976/Ex. 1–552; Israeli, Smirnov, and Sculsky et al. 1981/Ex. 1–701).

OSHA is proposing a ceiling limit of 0.01 ppm for methylene bis (4-cyclohexylisocyanate) in the construction, maritime, and agriculture industries. The Agency believes that this limit will protect workers in these sectors against the significant risk of eye, skin, and pulmonary irritation potentially associated with occupational exposures to this substance at the levels permitted by the absence of an OSHA limit. The Agency considers these irritant effects caused by exposure to methylene bis (4-cyclohexylisocyanate) to be material impairments of health and believes that the proposed limit will substantially reduce the risk of these impairments. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

MICA

CAS: 12001–26–2; Chemical Formula: $K_2Al_4(Al_2Si_6O_{20})(OH)_4$

H.S. No. 1276

In the construction and maritime industries, OSHA has an 8-hour TWA PEL of 20 mppcf for mica containing less than 1 percent crystalline silica; this limit is equivalent to a PEL of 3 mg/m³ when expressed in mg/m³. There is no PEL in agriculture. The ACGIH has a TLV®-TWA of 3 mg/m³ for the respirable dust of mica containing less than 1 percent quartz. NIOSH has no REL for this substance. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA limit of 3 mg/m³ for the respirable dust of mica containing less than 1 percent quartz. NIOSH concurred (Ex. 8–47, Table N1) with this limit when the Agency recently established it in general industry.

Mica is a colorless, odorless, nonflammable, nonfibrous, water-insoluble silicate occurring in plate form and containing less than 1 percent quartz; it includes nine different species. Mica is used in electrical equipment, vacuum tubes, incandescent lamps, dusting agents, lubricants, in windows of high-temperature equipment, exterior paints, cosmetics, roofing, rubber, wallpaper and wall board joint cement, and in oil-well drilling muds (Hawley's 1987, p. 785).

Early animal experiments in guinea pigs involving the intraperitoneal injection of mica showed that this substance was inert by this route of administration (Miller and Sayres 1941). Two workers exposed to muscovite (mica) dust at unspecified concentrations developed hepatic and pulmonary granulomas (Pimenthel and Menezes 1978). Five of six workers exposed to mica dust at concentrations greater than 25 mppcf (about 4 mg/m³) for more than 10 years developed pneumoconiosis (Dreessen et al. 1940). The symptoms most frequently reported by these workers were chronic cough, dyspnea, weakness, and weight loss (Dreessen et al. 1940). Some authors (Parkes 1974) question whether mica alone (without silica) can cause pneumoconiosis. However, Vestal et al. (1943) determined that more than 10 percent of workers exposed to pure mica had developed this condition.

OSHA believes that the evidence strongly suggests that mica is a pneumoconiotic agent and therefore that workers exposed to this substance in their work are at significant risk of experiencing this material health impairment. Accordingly, OSHA is proposing an 8-hour TWA limit of 3 mg/m³ for respirable mica dust containing less than 1 percent quartz in the agriculture industry and is retaining this limit in construction and maritime. This limit corresponds to the existing 20-mppcf PEL and is in keeping with the Agency's decision to delete mppcf values in favor of respirable dust values expressed in mg/m³. The Agency has decided to express this and other similar limits as mg/m³ to facilitate employee exposure monitoring. Promulgation of this limit also will make OSHA's PEL for this substance consistent across all regulated sectors.

MINERAL WOOL FIBER

CAS: None. Chemical Formula: None

H.S. No. 1277

OSHA currently has no limit in any industry sector specifically for mineral wool fiber, but this substance is covered by the Agency's 15-mg/m³ 8-hour TWA limit for all inert dusts and particulates. The ACGIH (1986/Doc. H–020, Ex. 1–3, p. 414) recommends an 8-hour TWA limit of 10 mg/m³ for mineral wool fiber as total dust containing less than 1 percent quartz. OSHA is proposing an 8-hour TWA PEL of 1 fiber per cubic centimeter (f/cc) of air for the respirable fibers of mineral wool in general industry, construction, maritime, and agriculture.

There are two types of mineral wool, known as rockwool and slagwool. These fibers are produced by blowing, centrifuging, or drawing molten rock or slag. Rockwool is typically made from igneous rocks such as diabase, basalt, and olivine, and carbonate rocks containing 40–60% calcium and magnesium carbonates. Slagwool is made from the fused agglomerate by-products of certain metal smelting processes.

In animal studies, exposure to mineral wool fibers by the inhalation route has been shown to cause respiratory effects. Focal fibrosis was observed at 4 months post-exposure in rats exposed to 10 mg/m³ of rockwool or chrysotile asbestos for 50 weeks (Johnson and Wagner 1980, as cited in Vu 1988/Doc. H–043, p. 86). The asbestos-exposed rats were affected to a greater degree. Unexposed rats did not develop fibrosis. Rats and hamsters exposed by inhalation to rockwool (Wagner et al. 1984, as cited in Vu 1988/Doc. H–043, p.86; Le Bouffant et al. 1987, as cited in IARC 1988/Doc. H–043, p. 131) or slagwool (Smith et al. 1987, as cited in IARC 1988/Doc. H–043, p. 131) at concentrations of 0.5–10 mg/m³ developed low levels of pulmonary fibrosis.

Several epidemiological studies of workers exposed to mineral wool have shown that these workers have an excess risk of nonmalignant respiratory disease (NMRD). Weill et al. (1983, as cited in IARC 1988/Doc. H–043, p. 135; 1984, as cited in IARC 1988/Doc. H–043, p. 135) and Hill et al. (1984, as cited in IARC 1988/Doc. H–043, p. 135) have reported the occurrence of lung opacities in a limited number of workers in the mineral wool or synthetic mineral fibers (SMF) manufacturing industry. An increased frequency of bronchitis that was directly related to duration of exposure to SMF has been observed in a group of 135,000 construction workers (Engholm and von Schmalensee 1982/Doc. H–043). The calculated standard rate ratios in each smoking category indicated a positive association between bronchitis and exposure to SMF. Among nonsmokers, 77 percent of cases of bronchitis in workers with long exposure were attributable to the exposure. The corresponding fraction in present smokers was 28 percent. The authors concluded that there is a clear association between bronchitis and handling of SMF in the construction industry. Enterline and co-workers (Enterline et al. 1983/Doc. H–043, Ex.1–17; 1986/Doc. H–043, Ex. 1–1; 1987, Doc. H–043; Enterline 1987, as cited in Vu 1988/Doc. H–043, p. 93) studied 16,661 white male workers in 17 synthetic mineral fibers plants, with 1 or more years of experience in production or maintenance during the period 1945–1963. This cohort consisted of 14,815 workers in 11 fibrous glass plants and 1846 workers in 6 mineral wool plants. The SMR for all synthetic mineral fiber workers for NMRD (excluding influenza and pneumonia) was statistically significantly increased. The SMR was 132.3 ($p < 0.01$) when U.S. rates were used for comparison and 134.1 ($p < 0.01$) when local rates were used. The authors found a nonstatistically significant excess mortality from NMRD among mineral wool workers in the 6 plants studied when their rates were compared with local or national rates. In one plant, however, there was a statistically significant excess risk of NMRD for those workers who had first been exposed 20 or more years ago (SMR 219.9, $p < 0.05$) and for plant workers overall (SMR 221.0, $p < 0.05$) but not for those who had first been exposed less than 20 years ago. The average exposure concentration was 0.353 f/cc for all plants and 0.427 f/cc for the plant with the significant excess risk. Marsh et al. (1990/Doc. H–043) completed a follow-up to 1985 of the Enterline et al. cohort. The SMR for NMRD (excluding influenza and pneumonia) for all SMF workers was 129.4 ($p < 0.01$) when local rates were used for comparison; U.S. rates were not used for comparison. In one mineral wool plant (a different plant than that observed to have increased risk in the earlier study), there was a significantly increased risk of NMRD for those workers who had been exposed 20 or more years ago (SMR 189.0, $p < 0.05$).

Two major epidemiological studies conducted in workers exposed to mineral wool have shown that these workers have an excess risk of lung and other respiratory tract cancers. Enterline et al. (1987/Doc. H–043) examined the 1946–1982 mortality experience of 16,661 SMF workers employed one year or more during 1945–1963 at one or more of 17 U.S. manufacturing plants. Compared with local death rates, there was a statistically significant excess in all malignant neoplasms and in the incidence of lung cancer 20 years or more after first employment. For respiratory cancer, this excess was greatest for mineral wool workers and small-diameter-fiber workers. In the subcohort of 1846 white male workers from six U.S. slagwool or rock-/slagwool plants, the SMRs for respiratory cancer were 148 (based on national comparison) and 134 (local) ($p < 0.01$ and $p < 0.05$). The SMRs for workers with fewer than 20 years since first exposure were 156 (national) and 143 (local) and 146 (national) ($p < 0.05$) and 131 (local) for those with 20 years or more since first exposure. Workers employed most recently had the highest SMRs. For example, in workers who started work during 1950–1959, the SMRs were 216 (national) and 198 (local) (both $p < 0.01$). A smoking survey showed that SMF workers have cigarette-smoking habits similar to those of all U.S. white males. When the effects of smoking were controlled for, the relationship between fiber exposure and respiratory cancer continued to be statistically significant for mineral wool workers. Mean fiber exposure levels in the mineral wool plants were estimated to range from 0.195 to 0.427 f/cc. The highest individual average fiber exposure level was estimated to be 1.4 f/cc. When the study was updated to include a follow-up to 1985, a statistically significant increase in mortality for respiratory cancer was still evident (Marsh et al. 1990/Doc. H–043). Simonato et al. (1987/Doc. H–043) studied 24,609 workers producing rock/slagwool, glasswool, or glass filament in 13 European factories in seven countries. Mineral wool workers numbered 10,115 and worked in seven factories in four countries. The study had an observation period of 30 years from first employment. A slight excess of mortality was seen in these workers overall, and this increase was primarily due to an overall excess rate of cancer. The excess mortality due to lung cancer was significant, particularly in rock/slag wool workers employed during the early production years. The highest SMRs (250 national; 303 local) were seen in the group that had been followed for more than 20 years. For all seven of the mineral wool workers, lung cancer risk increased with time since first exposure. In addition, there was a statistically significant excess in the incidence of cancers of the buccal cavity and pharynx (SIR, 181) (Simonato et al. 1986/Doc. H–043, Ex. 1–4) and a statistically significant increasing trend in bladder cancer mortality with time since first

exposure (Simonato et al. 1987/Doc. H–043). The combined occupational group mean fiber concentrations in these plants, on the basis of measurements taken in 1977–1980, ranged from 0.01 to 0.67 f/cc. The highest concentrations were observed in certain specialist secondary production groups. The mean fiber concentrations in the main production and secondary production groups ranged from 0.05 to 0.12. The average plant median for fiber length ranged from 10–20 μm. The median diameters ranged from 1.2 to 2 μm (Cherrie et al. 1986/Doc. H–043, Ex. 1–4). Robinson and co-workers (1982, as cited in IARC 1988/Doc. H–043, p. 145) reported an increase in mortality from cancer of the digestive tract in a U.S. mineral wool plant. SMRs increased with time since first exposure and with duration of exposure. An increase in stomach cancer mortality with time since first exposure to mineral wool in a plant in Germany was reported by Claude and Frentzel-Beyme (1986, as cited in IARC 1988/Doc. H–043, p. 145).

Mineral wool has also been shown to cause cancer in rats treated by several routes. In a group of 48 rats exposed by inhalation to 10 mg/m³ rockwool (71 percent of fibers between >5 μm and <20 μm in length, 58 percent <1 μm in diameter) for 7 hours per day for 5 days/week for 12 months, two developed lung adenomas (one tending toward malignant) in the 500–1000 days after the start of exposure. In a group of 48 positive control rats treated with chrysotile (16 percent >20 μm in length, 29 percent >0.5 μm in diameter), 11 developed adenocarcinomas and 1 an adenoma (also tending toward malignant). There were no tumors in untreated controls (Wagner et al. 1984, as cited in IARC 1988/Doc. H–043, p. 99). Three of 48 rats treated by intrapleural injection with rockwool coated with resin (70 percent <5 μm in length, 52 percent <0.6 μm in diameter) developed mesotheliomas. Two of 48 rats treated with rockwool from which the resin had been removed (70 percent <5 μm in length, 58 percent <0.6 μm in diameter) developed mesotheliomas, and 6 of 48 animals treated with chrysotile developed mesotheliomas. There were no tumors in slagwool- or saline-treated rats (Wagner et al. 1984, as cited in IARC 1988/Doc. H–043, p. 100). Pott et al. (1987, as cited in IARC 1988/Doc. H–043, p. 100) treated rats with either fine (median length 14 μm, median diameter 1.5 μm) or coarse (median length 26 μm, median diameter 2.8 μm) slagwool by intraperitoneal (i.p.) injection. With the finer fibers, 2/99 rats developed sarcomas, mesotheliomas, or carcinomas. Six of 99 animals treated with the coarser fibers developed tumors. There were no tumors in controls.

In rats treated by the i.p. (intraperitoneal) route with rockwool (median length 20 μm, median diameter 1.8 μm), tumors of the abdominal cavity developed in 32/53 animals. Saline-treated controls developed tumors in 2/102 rats. Injection of actinolite or chrysotile induced tumors in 20/36 and 31/36 animals, respectively (Pott et al. 1987, as cited in IARC 1988/Doc. H–043, p. 100). Rats injected three times with 75 mg of rockwool (median length 23 μm, median diameter 1.9 μm) or once with 10 mg of a fine fraction (median length 4.1 μm, median diameter 0.64 μm) rockwool developed tumors of the abdominal cavity in 45/63 and 6/45 cases, respectively. The incidence in the saline-treated control group was 3/54 (Pott et al. 1987, as cited in IARC 1988/Doc. H–043, p. 100).

Based on the lack of reported adverse health effects in epidemiologic studies, the ACGIH (1986/Doc. H–020, Ex. 1–3, p. 414) considered mineral wool to be essentially a nuisance dust and applied a 10 mg/m³ TLV®-TWA. NIOSH does not have a REL for mineral wool; however, NIOSH (Doc. H–020, Ex. 8–47) cited recent animal and epidemiological studies indicating the possible carcinogenicity of mineral wool and pointed to statements by Doll (1987/Doc. H–043, Ex. 1–11) that "* * * it is likely that man-made mineral fiber may have about the same carcinogenic potential as asbestos fibers of the same dimension, and that levels of 0.2 f/cc or less in industry are unlikely to produce a measurable risk after 20 years of exposure." NIOSH (Doc. H–020, Ex. 8–47) concluded (citing Doll) that to provide the degree of protection that OSHA believes is necessary for worker health, the PEL should be 0.2 f/cc. NIOSH (Doc. H–020, Ex. 8–47, Table N6B) also believes that a full 6(b) rulemaking is needed for mineral wool. The Thermal Insulation Manufacturers Association (Doc. H–020, Ex. 3–743, p. 9) commented in the earlier rulemaking that OSHA should adopt NIOSH's fibrous glass REL of 3 f/cc for mineral wool. Manville (Doc. H–020, Ex. 8–56) stated that "in March, 1988, Manville recommended to its customers a Workplace Exposure Guideline of 1.0 f/cc for mineral wool" as part of its "commitment to strive for, and realize the lowest achievable exposure to any given substance * * *." E.I. du Pont de Nemours & Company has an Acceptable Exposure Level of 1.0 f/cc for mineral wool fibers (personal communication from Freida Fisher-Tyler, 1991).

The International Agency for Research on Cancer (IARC 1988/Doc. H–043), in evaluating the carcinogenicity of mineral wool, has concluded that mineral wool is "possibly carcinogenic to humans (Group 2B)."

OSHA believes, on the basis both of animal and human evidence, that a link between respiratory disease and exposure to mineral wool exists. Therefore, OSHA is proposing that a 1 f/cc 8-hour TWA for the respirable fibers of mineral wool (fibers less than 3.5 micrometers in diameter and greater than 10 micrometers in length) be established as the PEL for mineral wool to protect workers in general industry, construction, maritime, and agriculture from the significant risk of nonmalignant (and possibly malignant) respiratory disease. Since NIOSH has no counting method for mineral wool, OSHA is soliciting comments on potential counting methods. OSHA will continue to evaluate the scientific evidence regarding the risk of mineral wool-induced nonmalignant and malignant respiratory disease and will, at the time of the final rule, establish a new limit for this substance if the Agency determines that this limit will substantially reduce significant risk. If future information and priorities indicate the need for a more restrictive standard for mineral wool, OSHA will initiate individual-substance rulemaking for this substance.

NICKEL (SOLUBLE COMPOUNDS)
CAS: 7440–02–0; Chemical Formula: Varies
H.S. No. 1283

OSHA's PEL in the construction and maritime industries for soluble nickel compounds (measured as Ni) is 1 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³ for these substances. NIOSH recommends that exposure to any form of inorganic nickel be maintained at or below 0.015 mg/m³. OSHA is proposing to revise its PEL in construction and maritime to 0.1 mg/m³ as an 8-hour TWA and to extend this limit to agriculture. This is the limit recently established for the soluble nickel compounds in general industry.

A variety of toxic effects results from exposure to soluble nickel compounds. Soluble nickel salts cause contact dermatitis in sensitized individuals and eye irritation (ACGIH 1986/Ex. 1–3, p. 422). Cases of asthmatic lung disease have been reported among nickel-plating workers (EPA 1986a/Ex. 1–1132). OSHA's proposal to lower the PEL for soluble nickel compounds to 0.1 mg/m³

is based primarily on evidence that exposure to soluble nickel at low levels and for relatively short durations causes pathological changes in the lungs of experimental animals. In addition, OSHA has reviewed several animal and human studies designed to investigate the carcinogenic potential of soluble nickel compounds. Three soluble nickel compounds have been tested for their carcinogenic potential: nickel chloride, nickel sulfate, and nickel acetate. Some sparingly soluble compounds, nickel carbonate and nickel hydroxide, have also been studied. The results of these animal studies suggest that some soluble nickel compounds are potentially carcinogenic; however, the data are derived predominantly from injection studies, and the results are often conflicting. Results from occupational studies on soluble nickel compounds are also conflicting and are confounded by the presence of several types of nickel compounds in the facilities studied. OSHA's preliminary findings on the toxicological evidence for the soluble nickel compounds are presented below.

Bingham and Zerwas et al. (1972/Ex. 1–204) exposed rats by inhalation to 0.1 mg/m^3 nickel chloride for 12 hours per day for two weeks. Animals showed evidence of pulmonary irritation and damage in the form of marked mucus secretion, hyperplasia, and accumulations of alveolar macrophages. Fluid obtained by lung lavage appeared very cloudy and viscous due to the presence of free alveolar cells. Rats and guinea pigs exposed daily to 1.0 mg/m^3 nickel chloride (measured as Ni) for six months showed increased lung weight, which is an indication of pulmonary damage and hyperplasia (Clary 1977, as cited in ACGIH 1986/Ex. 1–3, p. 422); exposed rats also developed signs of interstitial fibrotic lesions. Rabbits inhaling 0.3 mg/m^3 nickel chloride (measured as Ni) aerosol for 30 days showed a doubling in alveolar cell number and in the volume of alveolar epithelial cells, as well as nodular accumulation of macrophages and laminated structures (Johansson, Curstedt, Robertson, and Camner 1983/Ex. 1–273). These studies clearly show that exposure at or below 1.0 mg/m^3, even for durations considerably less than a working lifetime, is associated with increased cell turnover and pathological changes in the lung. These pathological changes, in particular the appearance of the fibrotic lesions observed in animals exposed to low levels of soluble nickel salts, indicate that lung damage has occurred and suggest that significant decrements in lung function may result from prolonged exposure to these low levels. Furthermore, the appearance of hyperplasia is indicative of abnormal cell growth and suggests the presence of pre-cancerous lesions.

Nickel chloride has been reported to be mutagenic in *Salmonella typhimurium* and *Cornebacterium* but negative in *E. coli* [EPA 1986a/Ex. 1–1132). The positive studies are not considered conclusive, however, because the *S. typhimurium* report is an abstract lacking detailed data and *Cornebacterium* is not the usual species used in these tests. Amacher and Paillet (1980/Ex. 1–288) reported that nickel chloride was mutagenic in mouse lymphoma cells and demonstrated a dose-response relationship for this endpoint.

Some *in vitro* studies using soluble nickel compounds report finding chromosomal aberrations (EPA 1986a/Ex. 1–1132). These studies do not, however, demonstrate a dose-response relationship or statistical significance, which weakens their findings. Several *in vivo* studies have failed to detect chromosomal aberrations (EPA 1986a/Ex. 1–1132). However, several *in vitro* studies on nickel sulfate and nickel chloride have reported findings of sister chromatid exchanges (EPA1986a/Ex. 1–1132).

Some animal studies involving soluble nickel compounds suggest that these compounds are carcinogenic in animals. Strain A mice receiving intraperitoneal injections of nickel acetate had an increased rate of lung adenomas and adenocarcinomas that was statistically significant in the high-dose group (Stoner, Shimkin, Troxell et al. 1976/Ex. 1–203). The animals were injected three times per week for eight weeks at doses of 72, 180, or 360 mg/kg.

EPA (1986a/Ex. 1–1132) reported a study in which rats were given monthly intramuscular injections of 35 mg/kg nickel acetate for four to six months (Haro, Furst, and Falk 1968/Ex. 1–1022). Twenty-two percent of the treated rats developed sarcomas. Payne (1964/Ex. 1–200) observed tumor responses in rats after intramuscular implantation of 7 mg nickel acetate, nickel sulfate, nickel chloride, or nickel carbonate. Implant-site sarcomas developed in one of 35 rats exposed to nickel acetate, one of 35 rats exposed to nickel sulfate, none of 35 rats exposed to nickel chloride, and four of 35 rats exposed to nickel carbonate.

Results of other studies on nickel sulfate have been negative. Three studies used intramuscular injection in rats and reported that no tumors developed in the treated group (Gilman 1962/Ex. 1–205; Gilman 1966, as cited in EPA 1986/Ex. 1–1132; Kasprzak, Gabryel, and Jaraczewska 1983/Ex. 1–201). An ingestion study also reported no tumors among treated rats or dogs (Ambrose, Larson, Borzelleca et al. 1976/Ex. 1–211).

Gilman (1966, as cited in EPA 1986a/Ex. 1–1132) administered 5 mg nickel hydroxide to rats by intramuscular injection in each thigh. Sarcomas developed at 19 out of 40 injection sites. Kasprzak, Gabryel, and Jaraczewska (1983/Ex. 1–201) gave rats intramuscular injections of nickel hydroxide in gel, crystalline, or colloidal form. Five out of 19 animals receiving the gel developed sarcomas (two with metastasis to the lung), three out of 20 receiving the crystalline form developed sarcomas (one with metastasis to the lung), and none of 13 rats receiving the colloid developed tumors.

In the prior rulemaking, some commenters (Exs. 3–915, 167, 3–668) discussed the limitations of the animal data. These commenters noted that soluble nickel compounds have produced tumors in animals only by injection and that the results among studies are conflicting. OSHA recognizes many of these limitations of the data. Although the animal data are "too limited to support any definitive judgment regarding * * * [the] carcinogenic potential [of soluble nickel compounds]," EPA noted:

> the observation of pulmonary tumors in strain A mice from the administration of nickel acetate by intra-peritoneal injections and the ability of nickel acetate to transform mammalian cells in culture and to inhibit RNA and DNA synthesis provides limited evidence for the carcinogenicity of nickel acetate and supports a concern for the carcinogenic potential of other soluble nickel compounds (EPA 1986a/Ex. 1–1132, p. 8–229).

OSHA agrees with EPA's assessment that, although some studies are suggestive of a carcinogenic effect and an ability of soluble nickel to transform cells, overall the animal data are too equivocal at this time to support any firm conclusions that soluble nickel compounds do or do not cause cancer in experimental animals.

In addition to the animal evidence described above, OSHA reviewed studies conducted on workers exposed to soluble nickel compounds. Electrolysis workers at a refinery in Kristiansand, Norway, experienced a higher lung cancer risk than employees from the same facility who worked in three other job categories, including roasting and smelting workers (Magnus, Andersen, and Hogetveit 1982/Ex. 1–241). Electrolysis workers were exposed to an aerosol composed predominantly

of nickel sulfate, which was estimated to contain soluble nickel at a concentration of 0.2 mg/m³ (EPA 1986a/Ex. 1–1132); these workers also had higher plasma and urine levels of nickel than did roasting and smelting workers, who were predominantly exposed to insoluble nickel subsulfides and oxides. However, exposure to nickel subsulfide and oxides may have occurred in the electrolysis building, and the electrolysis workers may also have worked in other process departments (Grandjean, Andersen, and Nielsen 1988/Ex. 1–207). Roasting and smelting workers were exposed to an estimated average of 0.5 mg/m³ (as Ni) of roasting dust.

The standardized mortality ratios (SMRs) for lung cancer were 550 for electrolysis workers, 390 for other process workers, and 360 for roasting and smelting workers. The pattern of SMRs for nasal cancer, which is a rare form of cancer in humans, was different among these groups: 2600 for electrolysis workers, 2000 for other process workers, and 4000 for roasting and smelting workers. The results seem consistent with studies that show that roasting and smelting workers have the highest concentrations of nickel in the nasal mucosa, presumably because of the relatively larger particles resulting from roasting. Conversely, electrolysis workers, who showed a larger lung cancer risk than roasting and smelting workers, have higher plasma and urine levels of nickel, suggesting that nickel aerosolized by this process penetrates to the deep lung (EPA 1986a/Ex. 1–1132).

The primary impetus to revise the PEL for soluble nickel is to protect workers in construction and maritime, and in agriculture, from soluble nickel's respiratory effects; the other objective is to make the limit for these compounds consistent across all sectors. OSHA preliminarily concludes that the available studies clearly demonstrate that exposure to soluble nickel compounds at the current construction and maritime PEL of 1 mg/m³ presents a significant risk of lung irritation accompanied by pathological changes that may presage cancer. OSHA has preliminarily determined that these effects constitute material impairments of health and functional capacity. OSHA also preliminarily concludes that the proposed rule's reduction in the PEL will substantially reduce these significant risks. Accordingly, OSHA is proposing an 8-hour TWA PEL of 0.1 mg/m³ (measured as Ni) for soluble nickel compounds in the construction, maritime, and agriculture industries. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

NITROGEN DIOXIDE

CAS: 10102–44–0; Chemical Formula: NO_2

H.S. No. 1289

The limit for nitrogen dioxide in the construction and maritime industries is a 5 ppm ceiling. There is no limit in agriculture. The ACGIH has a 3 ppm 8-hour TLV®–TWA and a 5 ppm TLV®–STEL for this substance. NIOSH has a REL of 1 ppm as a 15-minute ceiling. The Agency is proposing a 1 ppm STEL for nitrogen dioxide in the construction, maritime, and agriculture industries. NIOSH (Ex. 8–47, Table N1) agreed with the selection of this PEL when the Agency recently established it for general industry.

Nitrogen dioxide is a reddish-brown gas at room temperature that condenses to a brown liquid and freezes to a colorless solid. Nitrogen dioxide has found use as a catalyst in oxidation reactions, an inhibitor to prevent polymerization of acrylates during distillation, a nitrating agent, an oxidizing agent, a rocket fuel and a flour bleaching agent and in the manufacture of liquid explosives (Braker and Mossman 1980, p. 531). Nitrogen dioxide also occurs as a component of diesel exhaust.

OSHA's current 5-ppm ceiling limit in construction and maritime is based primarily on the animal studies of Gray, MacNamee, and Goldberg (1952/Ex. 1–154), Gray, Goldberg, and Patton (1954/Ex. 1–165), and Wagner, Duncan, Wright, and Stokinger (1965/Ex. 1–102). Gray, MacNamee, and Goldberg (1952/Ex. 1–154), and Gray, Goldberg and Patton (1954/Ex. 1–165) demonstrated lung injury among rats exposed for 8 or more weeks to an 8-ppm concentration of a mixture of NO_2 and nitric acid, but these authors did not see such lesions in rats exposed for six months to 4-ppm concentrations of this mixture. Wagner, Duncan, Wright, and Stokinger (1965/Ex. 1–102) reported transient and mild acute effects but no adverse chronic effects in rats exposed to 1 ppm, 5 ppm, or 25 ppm pure NO_2 for 18 months. The ACGIH's recommendation (from which OSHA's limit in construction and maritime derives) that the 5-ppm TLV® be defined as a ceiling rather than as an 8-hour TWA was based on reports that NO_2 accelerated lung tumor development among lung-tumor-susceptible mice; in the late 1960s, the ACGIH believed that a TLV®–ceiling value would minimize the risk of accelerating lung tumor development.

The current ACGIH TLV®s for NO_2 are a 3-ppm 8-hour TWA and a 5-ppm 15-minute STEL, and these limits are based on human studies that indicate that normal respiratory function may be compromised at exposures below the current OSHA limit of 5 ppm NO_2. In particular, Kosmider, Ludyga, Misiewicz et al. (1972/Ex. 1–224) reported a slight reduction in vital capacity and maximum respiratory volume in 70 men exposed to 0.4- to 2.7-ppm concentrations of the oxides of nitrogen 6 to 8 hours daily for 4 to 6 years. These authors also reported an unspecified number of cases of chronic bronchitis among men in this group. Another study by Vigdortschik, Ancheeva, Matussevistch et al. (1937/Ex. 1–49) reported possible cases of chronic bronchitis and emphysema among 127 workers generally exposed below 2.8 ppm NO_2; these workers were also believed to be exposed to sulfuric acid mist at levels sufficient to cause dental erosion.

The NIOSH REL for NO_2 of 1 ppm as a 15-minute STEL is based on the two human studies discussed above, as well as some human studies involving short-term exposure. Abe (1967/Ex. 1–98) found a 40-percent decrease in effective lung capacity among healthy adult males 30 minutes after a 10-minute exposure to 4- to 5-ppm NO_2. Expiratory and inspiratory maximum viscous resistance also increased by 92 percent after exposure. NIOSH (1976j/Ex. 1–265) concluded that Abe's results "document a definite and undesirable effect" at exposures approaching or below the current OSHA limit.

A series of major studies by von Nieding also indicates the need for a 1 ppm STEL. A significant decrease in carbon monoxide diffusing capacity was observed by von Nieding, Krekeler, Fuchs et al. (1973/Ex. 1–770) in healthy adults exposed to 5 ppm for 15 minutes. Two studies (von Nieding, Wagner, Krekeler et al. (1971/Ex. 1–1204) and von Nieding and Krekeler (1971/Ex. 1–1175)) report significant increases in airway resistance among 88 chronic bronchitis patients after a 15-minute exposure to a concentration of NO_2 as low as 1.5 ppm.

NIOSH (1976j/Ex. 1–265) concluded that the specific concentration of NO_2 required to produce pulmonary changes in normal, healthy adults is unknown, but "is likely to be about the same or perhaps a slightly higher concentration than the one inducing pulmonary changes in humans with existing chronic bronchitis" (1.5 ppm). Therefore, NIOSH recommended a 1-ppm 15-minute short-term limit for nitrogen dioxide. To provide additional support for a short-term rather than a TWA limit, NIOSH cited several animal studies that

indicate that the toxic effects associated with exposure are primarily determined by peak, and not average, NO_2 concentrations. NIOSH (Ex. 150) also notes that, in 1984, the World Health Organization, after an independent review of cross-sectional occupational health surveys, recommended a short-term occupational exposure limit of 1.8 mg/m^3 (0.9 ppm) for NO_2 and 8-hour TWA limit of 0.9 mg/m^3 (0.45 ppm).

The EPA limit for NO_2 is 0.053 ppm averaged over 1 year. EPA considers 2 ppm for 1 hour to be a significant harm level that requires an emergency response. EPA's 1982 staff paper concludes that the 1971 von Nieding et al. (Ex. 1-1204) study "provides convincing evidence that chronic bronchitics exposed to NO_2 concentrations of 1.6 ppm or greater for approximately 3 minutes experience increases in airway resistance" (Ex. 3-2e, p. 18). A number of other studies were also cited by EPA (Ex. 3-2f) in which healthy adults were exposed to NO_2 concentrations in the range of 0.5 to 2.5 ppm. Folinsbee, Horvath, Bedi, and Delehunt (1978, as cited in Ex. 3-2e) reported no significant physiological changes in healthy adults exercising for up to one hour during a two-hour exposure to 0.6 ppm NO_2. Suzuki and Ishikawa (1965, as cited in Ex. 3-2e) reported a 50-percent increase in inspiratory flow resistance in healthy adults 10 minutes after a 10-minute exposure to an NO_2 concentration between 0.7 and 2 ppm. Small changes in pulmonary function and a slight increase in the prevalence of respiratory symptoms occurred among healthy adults exposed to 1 ppm NO_2 for 2 hours (Hackney, Thiede, Linn et al. 1978, as cited in Ex. 3-2e). Beil and Ulmer (1976, as cited in Ex. 3-2e) reported a statistically significant increase in airway resistance among healthy adults following exposure to 2.5 ppm NO_2 for two hours, but not following exposure to 1 ppm. Based on their review of these data, EPA concluded:

> [T]he lowest level of NO_2 exposure that credible studies have associated with measurable impairment of pulmonary function appears to be in the range of 1.0–1.6 ppm * * * (Ex. 3-2e, p. 18).

OSHA has also reviewed the most recent analysis of NO_2 toxicity conducted by the National Academy of Science's (NAS) Committee on Toxicology for the Department of Defense (Emergency and Continuous Exposure Guidance Levels for Selected Airborne Contaminants, Vol. 4, pp. 83–96, National Academy Press 1985). In this review, the NAS concluded that exposures to NO_2 at levels between 0.5 and 1.5 ppm have demonstrated "little or no persistent change in pulmonary function" (NAS 1985, p. 89). The NAS Committee on Toxicology recommended short-term public emergency guidance levels (SPEGLs) for NO_2 of 1 ppm, averaged over a 60-minute period, and 0.12 ppm as an 8-hour average.

In the prior rulemaking, several industry commenters objected to OSHA's proposal to establish a PEL at the level of NIOSH's REL for NO_2; these commenters believed that the ACGIH TLV®s of 3 ppm TWA and 5 ppm STEL are sufficiently protective. These commenters pointed to the Linn and Hackney (1984, 1985) papers (subsequently published), which indicated that healthy adults and asthmatics studied did not have pulmonary effects while exercising and being exposed to 4 ppm NO_2.

The AFL-CIO supported OSHA's proposed limits (Ex. 64) in the earlier rulemaking. The AFL-CIO believes that the same studies demonstrate the need for a 1 ppm STEL.

OSHA preliminarily concludes that a 1 ppm STEL is necessary to prevent significant risk of material health impairment. Many of the cohort studies indicate substantial reductions in lung function, a material impairment of health, as well as exacerbation of other health effects, at levels only slightly above 2 ppm. The von Nieding study indicates substantial reductions in lung function in chronic bronchitics exposed for 15 minutes to 1.5 ppm. A substantial percentage of the work force suffers from chronic bronchitis. Beil and Ulmer show reductions in lung function in healthy adults at exposures of 2.5 ppm. Suzuki and Ishikawa (1965) and Rokaw et al. (1968) also show pulmonary function declines at concentrations below 5 ppm. There are also studies showing more minor reductions in lung function in healthy adults at lower levels.

The Linn and Hackney studies present results that conflict to some extent with the findings of the studies described above, i.e., Linn and Hackney show no decline in pulmonary function on exposure to 4 ppm NO_2. However, because so many studies of high quality demonstrate substantial lung function declines at low NO_2 exposure levels, OSHA preliminarily concludes that the weight of the evidence already suggests that substantial declines occur on exposure to NO_2 levels as low as 1.5 ppm. In consequence, the Agency believes that the 1 ppm STEL is necessary to prevent significant risk of material health impairment. As discussed above, this view is clearly supported by NIOSH and the World Health Organization. OSHA's preliminary finding is also consistent with the conclusions reached by EPA and the National Academy of Science.

Thus, OSHA preliminarily concludes that the former 5-ppm ceiling limit for NO_2 in construction and maritime is not sufficient to protect employees from experiencing increased airway resistance. OSHA also preliminarily concludes that the risk of increased airway resistance in construction, maritime, and agriculture will be substantially reduced by promulgation of the proposed 1-ppm short-term limit for NO_2; a short-term limit is clearly indicated for NO_2 because all of the studies cited above demonstrate that increased airway resistance is associated with exposure to NO_2 for durations of between 3 minutes and 2 hours. OSHA considers the increased airway resistance caused by exposure to NO_2 to be a material impairment of health. Therefore, to reduce the significant risk associated with short-term exposure to NO_2, the Agency is proposing a 1-ppm limit, averaged over a 15-minute period, for nitrogen dioxide in the construction, maritime, and agricultural industries. Promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

OXYGEN DIFLUORIDE

CAS: 7783-41-7; Chemical Formula: OF_2

H.S. No. 1300

The PEL for oxygen difluoride in the construction and maritime industries is 0.05 ppm as an 8-hour TWA. The ACGIH has established a limit of 0.05 ppm as a ceiling value. OSHA is proposing a permissible exposure limit of 0.05 ppm as a ceiling for oxygen difluoride in the construction, maritime, and agricultural industries. NIOSH has no REL but concurred (Ex. 8-47, Table N1) with the selection of this limit when the Agency recently established it in general industry.

Oxygen difluoride is an unstable, colorless gas with a foul odor. Oxygen difluoride is used as an oxidizer for rocket propellants (Genium MSDS 1988, No. 228).

Oxygen difluoride is a substance having extremely high acute toxicity; it is an acute irritant and causes fatal pulmonary edema and hemorrhage in animals exposed to 0.5 ppm for a few hours (ACGIH 1986/Ex. 1-3). A single exposure to 0.1 ppm also had an effect on the lungs; animals acutely exposed to oxygen difluoride have also exhibited gross changes in the kidneys and internal genitalia (LaBelle, Metcalf,

Suter, and Smith 1945, as cited in ACGIH 1986/Ex. 1–3, p. 452; Lester and Adams 1965/Ex. 1–963).

Because of the extreme acute toxicity of this compound and the effects seen at 0.1 ppm, OSHA believes that the current 8-hour TWA PEL of 0.05 ppm in construction and maritime is not sufficiently protective of workers; this limit would permit brief periods of high exposure that have been associated with severe lung damage in animals. Furthermore, workers in agriculture are currently unprotected from oxygen difluoride's effects. The Agency has preliminarily determined that these respiratory effects constitute material impairments of health. Therefore, to reduce the significant risk of acute lung damage associated with brief excursion exposures to oxygen difluoride, OSHA is proposing a ceiling limit of 0.05 ppm for this substance in the construction, maritime, and agricultural industries. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

OZONE

CAS: 10028–15–6; Chemical Formula: O_3
H.S. No. 1301

The current OSHA PEL for ozone in construction and maritime operations is 0.1 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.1 ppm and a 0.3 ppm TLV®–STEL for ozone. NIOSH has no REL. In construction and maritime, OSHA is retaining its permissible exposure limit of 0.1 ppm TWA and proposing to add a 0.3 ppm STEL; the Agency is also proposing to extend these limits to agriculture. Promulgation of these limits will make the PELs for ozone consistent across all OSHA-regulated sectors.

Ozone is a liquid or an explosive gas. Ozone is used as a disinfectant for air and water because of its oxidizing power. It is also used for bleaching waxes, textiles, oils, and in organic syntheses (Merck 1983, p. 6850).

OSHA is retaining the 8-hour TWA limit of 0.1 ppm in construction and maritime, proposing a 15-minute STEL of 0.3 ppm in these two sectors, and is also proposing to extend both limits to agriculture, based on observations that significant declines in pulmonary function can result from repeated intermittent exposures or even from a single short-term exposure (Bils 1970/ Ex. 1–58; Jaffe 1967/Ex. 1–101; Griswold, Chambers, and Motley 1957/Ex. 1–128). OSHA believes that, in the absence of a STEL, employees in these sectors will continue to be at significant risk of material impairment in pulmonary functional capacity associated with short-term exposures that could occur if exposures are controlled only by an 8-hour TWA. Thus the Agency believes that it is necessary to supplement an 8-hour TWA PEL of 0.1 ppm with a 15-minute STEL of 0.3 ppm to substantially reduce this risk. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PARAQUAT

CAS: 4685–14–7; Chemical Formula:
H.S. No. 1303

OSHA's current limit for paraquat (respirable fraction) in the construction and maritime industries is 0.5 mg/m³ as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has established a TLV® of 0.1 mg/m³ as an 8-hour TWA. NIOSH has no REL for paraquat. In construction, maritime, and agriculture, the Agency is proposing an 8-hour TWA permissible exposure limit of 0.1 mg/m³ for this substance, with a skin notation. NIOSH concurred (Ex. 8–47, Table N1) with this limit when the Agency recently established it in general industry.

Paraquat refers to a group of compounds that are odorless, yellow solids. The principal compounds are: 1,1′-dimethyl-4,4′-bipyridinium; 1,1′-dimethyl-4,4′-bipyridinium bis (methyl sulfate); and 1,1′-dimethyl-4,4′-bipyridinium dichloride. Paraquat is used as an insecticide, either alone or in combination with long-acting herbicides in no-till farming. Paraquat also finds use in industrial and noncrop weed control; in deciduous orchards; and on cotton, soybeans, potatoes, and seed crops (ACGIH 1986, p. 456; Clayton and Clayton 1981, p. 2751). When used in pesticidal applications, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The toxicity of paraquat depends on the compound's cationic moiety. Acute oral toxicity is reported as 30 mg/kg ion (as cation) for guinea pigs and 127 mg/kg ion for female rats, while the dermal LD_{50} in rabbits is 240 mg/kg ion (Clark 1964, as cited in ACGIH 1986/Ex. 1–3, p. 456; Clark, McElligott, and Hurst 1966/ Ex. 1–503; McElligott 1965, as cited in ACGIH 1986/Ex. 1–3, p. 456). The oral LD_{50} in monkeys is 50 mg/kg (Clayton and Clayton 1981, p. 2754). Paraquat can penetrate broken skin after it has broken down the skin's usual barriers (Swan 1969/ Ex. 1–576; Clark, McElligott, and Hurst 1966/Ex. 1–503). By inhalation or intratracheal injection, paraquat is very toxic because of its irritant properties (Gage 1968/Ex. 1–508). Rats exposed once for six hours to a concentration of 1 mg/m³ died if the aerosol contained particles with diameters of 3 to 5 microns (Gage 1968/ Ex. 1–508). Rats exposed 6 hours/day for 3 weeks to the same aerosol at 0.4 mg/m³ exhibited signs of pulmonary irritation; no effects were observed on the same exposure regimen when the concentration was reduced to 0.1 mg/m³ (Gage 1968/ Ex. 1–508).

When particles in the aerosol are not of respirable size, paraquat's toxicity is greatly reduced. The 4-hour LC_{50} for rats is 6400 mg/kg, and dogs, rats, and guinea pigs tolerated 3 weeks of daily exposures to 100 mg/m³ without apparent pulmonary effect (although nosebleeds were observed) (Palazzolo 1965, as cited in ACGIH 1986/Ex. 1–3, p. 456).

Dietary administration of paraquat doses ranging from 300 to 700 ppm for 90 days caused dose-related effects ranging from pulmonary edema to intra-alveolar hemorrhage and death in experimental animals (Kimbrough and Gaines 1970/ Ex. 1–560). Paraquat's teratogenic potency in mice is low (Bus and Gibson 1975/ Ex. 1–539), although 100 ppm administered in the drinking water of pregnant rats increased postnatal mortality significantly (Bus and Gibson 1975/Ex. 1–539).

In humans, 69 accidental deaths and 81 suicides were attributed to the effects of paraquat exposure in the period before 1972 (Chipman Chemicals 1972, as cited in ACGIH 1986/Ex. 1–3, p. 456). Bouletreau, Ducluzeau, Bui-Xuan et al. (1977/Ex. 1–538) reported 31 cases of renal insufficiency, and a spray applicator was killed when he absorbed a lethal dose of inadequately diluted paraquat through the skin (Jaros 1978/ Ex. 1–513). Workers using a 0.05- to 1-percent solution of paraquat developed skin and mucous membrane irritation but experienced no symptoms of systemic poisoning (Howard 1978/Ex. 1–512). Fugita, Suzuki, and Ochiai (1976, as cited in ACGIH 1986/Ex. 1–3, p. 456) reported five cases of reversible keratoconjunctivitis, with corneal injury, after one month of exposure to paraquat.

OSHA is proposing an 8-hour TWA limit of 0.1 mg/m³ for paraquat, with a skin notation, for the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of skin, eye, and pulmonary irritation observed in animals exposed to paraquat aerosols of respirable size. The Agency considers the irritant effects of paraquat to be material impairments of health. The skin notation for this substance is necessary because of paraquat's capacity to

penetrate the skin. Promulgation of this limit will also make the PEL for paraquat consistent across all OSHA-regulated sectors.

SILICA, AMORPHOUS-
DIATOMACEOUS EARTH
CAS: 68855-54-9; Chemical Formula: SiO_2
H.S. No. 1352

OSHA's permissible exposure limit for amorphous silica, diatomaceous earth in construction and maritime is 20 million particles per cubic foot (mppcf). There is no PEL in agriculture. The ACGIH has a TLV®-TWA of 10 mg/m³ for this substance as an 8-hour limit, measured as total dust; NIOSH has no REL. OSHA is retaining the 8-hour TWA limit of 6 mg/m³ (which is equivalent to 20 mppcf) for amorphous silica, diatomaceous earth in construction and maritime and is proposing this limit in agriculture. This is the limit recently established for this substance in general industry.

Amorphous silica is a non-crystalline, colorless to gray, odorless powder composed of the skeletons of prehistoric plants known as diatoms. Amorphous silica is used in the manufacture of glass, in refractories, abrasives, ceramics and enamels, for decolorizing and purifying oils, and in scouring and grinding compounds (Merck 1983, p. 122; NIOSH/OSHA Occupational Health Guideline 1981, p. 1).

The amorphous forms of silica are believed to be fibrogenic under some circumstances but are generally considered less fibrogenic than the crystalline forms (IARC 1987, Vol. 42, p. 39). The literature contains some reports demonstrating the fibrogenicity of the amorphous forms of silica and others showing no fibrotic effects. For example, the intratracheal instillation of diatomaceous earth dust in animals of several species has caused fibrosis (Gardner 1942, as cited in ACGIH 1986/Ex. 1-3, p. 520) and silicosis (Kovalevich 1957, as cited in ACGIH 1986/Ex. 1-3, p. 520). Another study (Tebbens and Beard 1957/Ex. 1-531) exposed guinea pigs to diatomaceous earth at an average concentration of 60 mg/m³ for 37 to 50 weeks and found both accumulations of dust-laden macrophages and alveolar epithelialization but no fibrosis at autopsy. Rabbits inhaling 40 mg/ml amorphous silica dust for 1100 days showed a diffuse tissue reaction without fibrosis, but intratracheal instillation of amorphous silica particles caused pulmonary lesions in rats within 6 months of the beginning of exposure (IARC 1987, Vol. 42, p. 39).

Cooper and Cralley (1958/Ex. 1-1145) reported linear-nodular changes in the lungs of workers exposed only to amorphous (noncrystalline) silica at unspecified concentrations for 5 years or more. Several other studies (Vigliani and Mottura 1948/Ex. 1-534; Gardner 1942, as cited in ACGIH 1986/Ex. 1-3, p. 520) have reported that diatomite workers develop mild silicosis after such exposure or, in some cases, show no signs of serious lung pathology. For example, Kovalevich (1957, as cited in ACGIH 1986/Ex. 1-3, p. 520) reported silicosis in diatomite workers, while Gardner (1942, as cited in ACGIH 1986/Ex. 1-3, p. 520) found no evidence of lung pathology in exposed workers.

OSHA preliminarily concludes that the evidence suggests that amorphous silica (diatomaceous earth) is a potential respiratory toxin in many exposed workers. OSHA therefore believes that workers in agriculture are at significant risk of experiencing these adverse health effects, and that establishing the proposed 8-hour TWA limit of 6 mg/m³ for amorphous silica is necessary to reduce the significant risk that agricultural workers will experience this material health impairment. OSHA is also changing the units used to express the PEL (but not the value of the PEL) in construction and maritime. In the previous rulemaking, NIOSH (Ex. 8-47, Table 1) concurred that this limit was appropriate for this substance and that expressing the limit in mg/m³ than in mppcf would facilitate sampling and analysis. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

SILICA, AMORPHOUS, PRECIPITATED OR GEL
CAS: None; Chemical Formula: SiO_2
H.S. No. 1353

OSHA has no limit in the construction, maritime, or agriculture industries for amorphous silica in precipitated or gel form. The ACGIH's TLV®-TWA for this substance is 10 mg/m³ as an 8-hour TWA limit, measured as total dust. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ (total dust) for amorphous silica in precipitated or gel form in construction, maritime, and agriculture; this limit is identical to the one recently established for these forms of silica in general industry.

Both the precipitated and gel forms of amorphous silica are non-crystalline, colorless or white, finely divided powders that are odorless. Precipitated silica is precipitated from aqueous solution, and silica gel is a coherent network of particles of colloidal silica. These forms of silica are used as fillers in paint, rubber, and paper, as grease thickeners, as diluents for insecticides, and as carrying agents for catalysts (ACGIH 1986, p. 521; NIOSH/OSHA Occupational Health Guidelines 1985, p. 1).

Studies in laboratory animals have shown no fibrosis after intratracheal or intraperitoneal injection of precipitated silica or silica gel (Klosterkotter 1954/Ex. 1-1156; Klosterkotter 1958/Ex. 1-1039). Schepers and colleagues reported in 1957 that rats exposed for one year and guinea pigs and rabbits exposed for two years to a concentration of 126 mg/m³ of amorphous silica in precipitated form displayed no pulmonary fibrosis; the effects of exposure were limited to macrophage accumulation and mild proliferation of reticulin fibers (Schepers, Durkan, Delahant et al. 1957/Ex. 1-755). An unpublished NIOSH study (Groth, Kommineni, Stettler et al. 1979) showed that rats, guinea pigs, and monkeys developed accumulations of macrophages in the lungs after exposure to precipitated silica; in addition, the presence of collagen was seen in a "very few" monkeys. By comparison, collagen was not seen in any animal exposed to silica gel but was seen in significant amounts in monkeys exposed to fumed silica (a crystalline variety of silica).

In a study of human exposures to amorphous silica in precipitated form, no ill effects were reported in 165 workers exposed to an unspecified concentration of this substance for an average of 8.6 years (Wilson, Stevens, Lovejoy et al. 1981/Ex. 1-1177). However, the literature suggests that exposure to all forms of silica dust may produce fibrosis, although exposure to the amorphous forms (such as precipitated or gel) is likely to be less fibrogenic than exposure to the crystalline forms (IARC 1987, Vol. 42, p. 85).

Based on this evidence, OSHA preliminarily concludes that exposure to amorphous silica (in precipitated or gel form) has the potential to cause respiratory effects in exposed workers. OSHA therefore believes that, in the absence of a limit, workers in construction, maritime, and agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that a limit of 10 mg/m³ for amorphous silica in precipitated or gel form is necessary in construction, maritime, and agriculture to substantially reduce this risk of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for these substances consistent across all regulated sectors.

SILICA, CRYSTALLINE—CRISTOBALITE

CAS: 14464–46–1; Chemical Formula: SiO_2

H.S. No. 1354

The OSHA PEL for cristobalite in the construction and maritime industries is based on the formula $250/\%SiO_2+5$ and is measured as millions of particles per cubic foot (mppcf). There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.05 mg/m³, measured as respirable silica dust, and the NIOSH REL for this substance is 50 μg/m³ as a 10-hour TWA. OSHA is proposing an 8-hour TWA permissible exposure limit of 0.05 mg/m³ for cristobalite, measured as respirable silica dust, for the construction, maritime, and agriculture industries. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Cristobalite, one of the three major crystalline polymorphs of silicon dioxide, is transparent, tasteless, and stable at high temperatures. It occurs naturally in volcanic rock and is used as a filtering and insulating medium and in silicaceous refractory materials for furnace linings and silica bricks (Clayton and Clayton 1981, p. 3020). Cristobalite is also used in the manufacture of water glass, abrasives, ceramics, and enamels (ACGIH 1986, p. 522).

There is widespread agreement in the literature that silica in crystalline form is highly fibrogenic in exposed animals and humans (Merchant 1986, p. 217). The fibrotic disease caused by the inhalation and deposition of silica is called silicosis; silicosis occurs both in acute and chronic form and is often associated with tuberculosis (Merchant 1985, p. 217). Although the human and toxicological literature often fails to distinguish among the three primary crystalline forms of silica (cristobalite, tridymite, and tripoli), a study by Gardner (1938, as cited in ACGIH 1986/Ex. 1–3, p. 522) that was subsequently confirmed by King, Mohanty, Harrison, and Nagelschmidt (1953/Ex. 1–85) showed that experimental animals injected with cristobalite showed a more severe response than that produced by pure quartz and that the resulting fibrosis that followed was diffuse rather than nodular. OSHA's toxicological writeup for the crystalline forms of silica appears under the entry for "Silica, Crystalline Quartz, Respirable." below; readers are referred to that section for additional details on the toxicology of crystalline silica.

OSHA is proposing to express the limit for cristobalite in mg/m³ rather than as a formula to simplify employee exposure monitoring in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that, in the absence of a limit, exposure to cristobalite presents a significant risk of silicosis and possible carcinogenicity to agricultural workers. OSHA believes that the promulgation of this proposed limit will substantially reduce this risk. In addition, promulgation of 0.05 mg/m³ for cristobalite will make the PEL for this substance consistent across all regulated sectors.

SILICA, CRYSTALLINE QUARTZ, RESPIRABLE

CAS: 14808–60–7; Chemical Formula: None

H.S. No. 1355

The current OSHA limit for silica-containing dusts in construction and maritime (there is no limit in agriculture) is a limit expressed in millions of particles per cubic foot (mppcf) and derived from the following formula:

$$\frac{250^*}{\%SiO_2+5}$$

* The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those cases in which other methods have been shown to be applicable.

At one time, the ACGIH also expressed its quartz limit in terms of this formula. However, the current ACGIH TLV®–TWA is 0.1 mg/m³, measured as respirable quartz dust. NIOSH has a REL for this substance of 0.05 mg/m³ as a 10-hour TWA. OSHA is proposing an 8-hour TWA permissible exposure limit of 0.1 mg/m³, measured as respirable quartz, for workplaces in the construction, maritime, and agriculture industries. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Quartz is a colorless, odorless, noncombustible solid. It is used in electronic components; radio and television components; wave filters; as a barrel-finishing abrasive; a piezoelectric control in filters; and in oscillators. Exposure can occur in sand blasting, pottery manufacture, hard rock mining, and in the spraying of vitreous enamels (Genium MSDS 1990, No. 71), as well as in any operation involving the handling, cutting, or shaping of stone. Silica exposures often occur in dusty out-of-doors environments, and workers in construction and agriculture are exposed to silica in areas where the soil is silicaceous.

Occupational exposure to respirable silica has been known for many years to produce silicosis, a fibrotic disease of the lungs characterized by the formation of silica-containing nodules (Merchant 1986). Silicosis may occur in both acute and chronic forms (Merchant 1986). The acute form usually occurs after "very high" (not further characterized) exposures lasting for 1 to 3 years; in this form of the disease, intraalveolar deposits, similar to those seen in alveolar proteinosis, develop in exposed individuals (Merchant 1986). The chronic forms of silicosis are more common and are usually seen after 20 to 45 years of exposure to dusts containing 30 percent or less silica. The lesions of chronic silicosis are nodular in form and are generally concentrated in the upper lobes of the lungs. In simple silicosis, nodules are 5 mm or less in diameter and tend not to cause substantial pulmonary deficits (Merchant 1986). As the disease progresses, however, these lesions coalesce to form progressive massive fibrosis; at this stage, the disease is called complicated silicosis, and the pulmonary function of the victim is seriously compromised (Merchant 1986).

In the prior rulemaking, several commenters on the PEL for silica focused on two issues: (1) The adequacy of the proposed 0.1-mg/m³ respirable quartz limit in reducing the risk of silicosis; and (2) recent evidence describing the potential carcinogenicity of silica dust.

With regard to the first issue, available data do not appear to be adequate to determine a no-effect level for crystalline quartz. For example, Dr. John Peters, the author of the chapter on silica in the 1986 NIOSH reference on respiratory diseases, concluded as follows:

> All of the studies described in this section provide evidence for adverse pulmonary effects at levels of exposure above 10 mppcf or 0.1 mg/m³. Some showed that foundry workers exposed to the equivalent of 0.05 mg/m³ of quartz developed silicosis while those with less exposure did not * * *. All the Vermont findings were seen with an average exposure of around 0.05 mg/m³ of quartz. It is possible, however, that since this was the average exposure, individuals whose exposure exceeded this level accounted for the noted effects. (The "no effect" level was probably below 0.05 mg/m³, but the available data did not allow accurate determinations.) (Peters, J.M., "Silicosis." In: Occupational Respiratory Diseases, p. 229, J.S. Merchant, ed. DHHS (NIOSH) Pub. No. 86–102, NIOSH 1986b).

OSHA agrees with Dr. Peters that the available data are not adequate for the purpose of establishing a NOEL for this substance and is therefore proposing at this time a 0.1 mg/m³ PEL that will ensure consistency in the limit across all

OSHA-regulated sectors. As discussed below, OSHA expects to consider silica's potential toxicity in detail in the first update proceeding, and the appropriateness of the PEL will be evaluated at that time.

The second major issue raised by participants in the prior air contaminants rulemaking concerned silica's carcinogenicity. There is considerable evidence that silica is carcinogenic both in animals and humans. For example, silica has caused tumors of many kinds at various sites (site-of-contact tumors and tumors of the lungs, liver, gastrointestinal tract, kidneys, and bronchi) in three species of animal (rats, mice, and hamsters) and by six routes of exposure (inhalation, intraperitoneal, intrapleural, intravenous, intratracheal, and implanted under the skin) (RTECS 1991; IARC 1987, Vol. 42; IARC 1987, Suppl. 7).

The International Agency for Research on Cancer characterizes the evidence for the carcinogenicity of silica in animals as sufficient and summarizes its findings as follows:

> Various forms and preparations of crystalline silica produced adenocarcinomas and squamous-cell carcinomas of the lung in rats after inhalation or repeated intratracheal instillation. Thoracic and abdominal malignant lymphomas developed in rats after single intrapleural and intraperitoneal injections of suspensions of several types of quartz. Malignant lymphomas developed after intrapleural injection of cristobalite and tridymite. No tumorigenic response was observed in hamsters after repeated intratracheal instillation of quartz dusts or in a mouse-lung adenoma assay with one sample of quartz.

In addition to these findings in animals, IARC summarized the epidemiologic studies of workers exposed silica in a variety of occupational settings as follows:

> A number of studies have shown that persons diagnosed as having silicosis after occupational exposure to dust containing crystalline silica have an increased risk for dying from lung cancer. This increase has been seen among miners, quarry workers, foundry workers, ceramic workers, granite workers and stone cutters.
>
> Workers in the granite industry have shown increased risks for lung cancer in some studies; the excesses were of the order of 10–30% and were not usually statistically significant. An extended follow-up of Finnish granite workers showed 22 lung cancer cases, with 17.1 expected. When allowing for a latency of 15 years, 21 cases were observed, whereas nine were expected ($p<0.01$; Poisson distribution). Smoking habits were similar to those of the active Finnish male population, and exposures to radon and asbestos were considered unlikely to have occurred. A recent joint Nordic register linkage study, combining lung cancer mortality and incidence data from the cancer registries with census-based records on previous occupation of 20–64-year-old males, showed an elevated risk of lung cancer among stone cutters in Finland and Denmark, but not in Sweden or Norway. Excess risk was also seen for Finnish males in excavation work, whereas no such risk was evident in the other countries.
>
> Three epidemiological studies of workers in the ceramics, glass and refractory brick industries, using different designs, have shown a roughly two-fold increase in mortality from lung cancer. Only one case-referent study took smoking into account. The Nordic register study also found an excess of lung cancer for Danish glass-workers, but workers in the ceramics industry did not have an elevated risk in any of the other countries. A U.S. cohort study of pottery workers exposed to silica and talc showed a nonsignificant standardized mortality ratio of 137 for workers exposed to high levels of silica dust with no talc exposure.
>
> Several studies of metal miners have shown mortality rates from lung cancer some 20–50% higher than expected. In the Nordic register study, relative risks from 1.0 (Norwegian metal miners) to 5.0 (Finnish nonferrous ore miners) were seen. The largest group was Swedish iron ore miners; their relative risk was 3.2 (95% confidence interval, 2.9–3.5), based on 124 observed cases. However, in repeated cohort studies of workers in a gold mine, no excess lung cancer risk was seen. The contribution of radon has not in general been assessed.
>
> Coal miners appear not to be at increased risk of lung cancer.
>
> Epidemiological studies of both exposed populations and silicotics give indications of the carcinogenicity of a working environment contaminated with crystalline silica, particularly in combination with other exposures. In most industries studied, such an effect cannot be separated from those of other concomitant carcinogenic exposures, but in the granite and stone industry the exposure to silica is fairly pure. Few studies provide data on smoking. It is not clear whether the mechanisms of a possible carcinogenic effect of crystalline silica requires a fibrotic process.

Based on a review of the human and animal evidence for the carcinogenicity of crystalline silica, the International Agency for Research on Cancer has assigned this substance a Group 2A (probably carcinogenic to humans) classification. (OSHA notes that IARC's findings apply to all of the crystalline forms of silica, including quartz, cristobalite, tridymite, tripoli, and fused silica.)

Because OSHA believes that the primary objective of the present rulemaking in construction, maritime, and agriculture should be the promulgation of consistent PELs in all OSHA-regulated sectors, the Agency is not at this time initiating a full 6(b) rulemaking on crystalline silica but is postponing a comprehensive review of silica's cancer-causing potential until the first PEL update. At present, OSHA believes that it is appropriate to propose an 8-hour TWA PEL of 0.1 mg/m^3 for quartz, measured as the respirable silica fraction, in construction, maritime, and agriculture. This limit represents no substantial change in value from OSHA's current formula limit for this substance in construction and maritime, but will simplify employee sampling procedures in these sectors. With regard to the agricultural sector, OSHA preliminarily concludes that, in the absence of a limit, exposure to respirable quartz dust presents a significant risk of silicosis, and perhaps of cancer, to workers. As OSHA's Preliminary Regulatory Impact Analysis for the agricultural sector shows, many agricultural workers are potentially exposed to silica in the course of their work. OSHA believes that promulgation of the 0.1 mg/m^3 limit will substantially reduce this risk for these workers. In addition, promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

SILICA, CRYSTALLINE QUARTZ (TOTAL DUST)

CAS: 14808–60–7; Chemical Formula: SiO_2

H.S. No. 2142

The current OSHA limit for silica-containing dusts (measured as total dust) in construction and maritime is expressed as mppcf and derives from the following formula: 250/%SiO_2+5. There is no PEL in agriculture. NIOSH has no REL for silica measured as total dust; the ACGIH TLV®–TWA is 0.3 mg/m^3. OSHA is proposing an 8-hour TWA PEL of 0.3 mg/m^3 for crystalline quartz (total dust) in agriculture and is additionally expressing the PEL for this substance in mg/m^3 rather than as a formula to simplify exposure monitoring. This action would make OSHA's PEL for crystalline quartz (total dust) consistent across all regulated sectors.

Crystalline quartz occurs naturally in certain types of soil (e.g., in sandy soil) and can also be produced by heating amorphous or other types of silica to high temperatures. Crystalline silica consists of colorless crystals and is used or liberated in the manufacture of glass, porcelain, and pottery, in metal casting, sandblasting, and granite cutting, and in the production of refractory, grinding, and scouring compounds (Clayton and Clayton 1981, p. 3020; Proctor, Hughes, and Fischman 1988, p. 440). Agricultural workers are often exposed to silica when they till silicaceous soil.

Silica exposure causes a chronic and disabling pulmonary disease, called

silicosis, and may cause cancer in exposed workers. The animal and human studies describing silica's toxicity do not generally differentiate between total dust and the respirable fraction (i.e., do not identify the particle size of the particulate causing the effect). It is therefore difficult to determine which studies relate to total dust and which involve the respirable particulate. However, there is general agreement that particle size is the principal factor affecting silica's toxic potential (Merchant 1986). Accordingly, OSHA is proposing a less stringent limit for crystalline quartz (total dust) than for crystalline quartz (respirable fraction); the proposed PELs for these substances are 0.1 mg/m³ and 0.3 mg/m³, respectively. The toxicology writeup for crystalline silica appears in this preamble under the entry for "Crystalline silica—quartz (respirable)" and the reader is referred to that section for the details of silica's toxicity in animals and humans.

Based on the voluminous evidence of crystalline silica's toxicity, OSHA preliminarily concludes that the proposed 8-hour TWA PEL of 0.3 mg/m³ is necessary in agriculture to protect workers in this sector from the significant risk of silicosis and other diseases, including cancer, potentially associated with exposure to crystalline quartz (total dust). The Agency considers these diseases to be material impairments of health and preliminarily concludes that the proposed PEL will substantially reduce these risks. Furthermore, OSHA believes it appropriate to propose an 8-hour TWA PEL of 0.3 mg/m³ for quartz, measured as total dust, for construction and maritime. This limit represents no substantial change from OSHA's current formula limit for these sectors, but will simplify employee sampling procedures. Promulgation of this limit will also make the PEL for crystalline silica, quartz (total dust) consistent across all OSHA-regulated sectors.

SILICA, CRYSTALLINE—TRIDYMITE
CAS: 15468–32–3; Chemical Formula: SiO_2
H.S. No. 1356

OSHA's PEL for tridymite in the construction and maritime industries is expressed as the formula $250/\%SiO_2+5$. There is no limit in agriculture. The ACGIH recommends an 8-hour TWA limit of 0.05 mg/m³, measured as silica dust. The ACGIH limit is based on a study conducted by King, Mohanty, Harrison, and Nagelschmidt (1953/Ex. 1–85) that found tridymite to be the most active of the free silica forms when injected intratracheally into rats. NIOSH has a REL for this substance of 0.05 mg/m³ as a 10-hour TWA. The Agency is retaining its PEL for tridymite in construction and maritime but is now expressing this limit in mg/m³ rather than as the formula; the proposed limit is 0.05 mg/m³, and OSHA is also proposing to extend this limit to agriculture. An 8-hour TWA limit of 0.05 mg/m³ was recently established for tridymite in general industry; promulgation of the proposed 0.05 mg/m³ limit in construction, maritime, and agriculture will thus make OSHA's PEL for tridymite consistent across all regulated sectors.

Tridymite is a transparent, tasteless form of free silica. Tridymite is used as a filtering and insulating medium and as a silicaceous refractory material for furnace linings and silica bricks (Clayton and Clayton 1981, p. 3020). Tridymite is one of the crystalline polymorphs of silica; accordingly, the toxicology writeup that appears in this preamble under the heading for "Crystalline silica quartz (respirable)" also applies to tridymite, and the reader is referred to that section for the details of silica's toxicity in humans and animals.

Although expressed in different units, OSHA's current and proposed limits for tridymite in construction and maritime are comparable. The mg/m³ limit is being proposed merely to simplify the monitoring of tridymite dust concentrations. OSHA is proposing to replace its current formula limit for tridymite in construction and maritime with a numerically equivalent 8-hour TWA limit of 0.05 mg/m³, measured as respirable silica dust, and to extend this limit to agriculture. OSHA is proposing this change to simplify employee exposure monitoring in the construction and maritime industries, and to substantially reduce the significant risk of tridymite-induced silicosis and possible cancer that exists in the agricultural sector in the absence of a limit for this substance.

SILICA, CRYSTALLINE—TRIPOLI
CAS: 1317–95–9; Chemical Formula: SiO_2
H.S. No. 1357

Although OSHA's Table Z-2, which is presently in effect in construction and maritime, does not specifically indicate a limit for tripoli, OSHA's current limit for crystalline quartz (which applies to tripoli) is expressed as mppcf and derives from the formula:

$$\frac{250^*}{\%SiO2+5}$$

*The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those cases in which other methods have been shown to be applicable.

The 8-hour TLV®–TWA ACGIH limit for tripoli is 0.1 mg/m³, measured as respirable silica dust. NIOSH has a REL of 50 μg/m³ as a TWA for tripoli. OSHA is proposing an 8-hour TWA PEL of 0.1 mg/m³ for tripoli in the construction, maritime, and agriculture sectors. This is the limit recently established for tripoli in general industry.

Tripoli is a colorless, microcrystalline polymorph of silica. It is used in buffing compounds, on buffing wheels, in scouring soaps, powders, and polishes, and for polishing optical lenses (Clayton and Clayton 1981, p. 3020). Because tripoli is a crystalline form of silica, the toxicology writeup that appears in this preamble under the heading for "Crystalline silica quartz (respirable)" also pertains to tripoli.

In construction and maritime, OSHA is proposing to replace its limit for tripoli, which is expressed as the formula presented above, with a comparable 8-hour TWA limit of 0.1 mg/m³, measured as respirable silica dust; the Agency is also proposing to extend this limit to agriculture to reduce the significant risk of tripoli-induced silicosis and possible cancer among workers in this sector. Promulgation of this limit will make the PEL for tripoli consistent across all OSHA-regulated sectors.

SILICA, FUSED
CAS: 60676–86–0; Chemical Formula: SiO_2
H.S. No. 1358

Fused silica is a crystalline form of quartz. As such, it is currently covered in construction and maritime by OSHA's PEL for quartz. OSHA's current limit for quartz dust in construction and maritime operations is the formula $250/\%SiO2+5$, measured as mppcf; there is no PEL in agriculture, and NIOSH has no REL. The ACGIH has an 8-hour TLV®–TWA limit of 0.1 mg/m³, measured as free silica; the ACGIH adopted this limit in 1985 to simplify the monitoring of quartz dust concentrations. OSHA is proposing a 0.1 mg/m³ 8-hour TWA PEL for fused silica in construction, maritime, and agricultural operations. The limit being proposed for construction, maritime, and agriculture was recently established for fused silica in general industry.

Fused silica is a colorless, odorless, noncombustible solid that is employed in the aerospace industry as an ablative material in rockets and spacecraft. Fused silica can also be used in making camera lenses and finds use in fiber form as a reinforcer of plastics (ACGIH 1986, p. 521).

In construction and maritime, OSHA is replacing its current limit for fused silica, which is expressed as the formula presented above, with a comparable 8-hour TWA PEL of 0.1 mg/m³, measured as respirable silica dust; the Agency is also proposing to extend this limit to agriculture to reduce the significant risk of silicosis and possible cancer that exists in the absence of a limit for fused silica in this sector. OSHA believes that this limit will also simplify employee exposure monitoring in construction and maritime. In addition, promulgation of this limit will make OSHA's PEL for fused silica consistent across all regulated sectors. Because fused silica is a crystalline form of silica, the toxicology writeup that appears in this preamble under the heading for "Crystalline silica quartz (respirable)" also applies to fused silica.

SOAPSTONE, TOTAL DUST
SOAPSTONE, RESPIRABLE DUST
CAS: None; Chemical Formula: 3 MgO–4 SiO_2–H_2O
H.S. No. 1363 (total dust)
H.S. No. 1363A (respirable dust)

OSHA's current exposure limit for soapstone, total dust, in construction and maritime operations is 20 mppcf (6 mg/m³); the Agency has no separate limit for the respirable fraction. There is no limit in agriculture. The ACGIH has established individual TLV®–TWAs for two forms of soapstone: 6 mg/m³ for total dust and 3 mg/m³ for the respirable fraction, both measured as total dust or respirable dust containing less then 1 percent quartz. Because the ratio of total dust mass to the mass of the respirable fraction is 2:1 (ACGIH 1984, p. 480), the 6 mg/m³ total dust limit automatically implies a 3 mg/m³ limit for the respirable fraction. NIOSH has no REL for soapstone. OSHA is proposing permissible exposure limits of 6 mg/m³ as an 8-hour TWA (total dust) and 3 mg/m³ as an 8-hour TWA (respirable dust) for soapstone in construction, maritime, and agriculture. NIOSH (Ex. 8–47, Table N1) concurred with these limits when the Agency recently established them in general industry.

A study by Dreessen and DallaValle (1935/Ex. 1–588) of mill workers exposed to soapstone showed lung changes in these workers, but it is believed that the dusts involved in these exposures were actually composed of steatite talc, which had a tremolite content of 10 percent. Experiments by Miller and Sayers (1941/Ex. 1–595) showed no measurable toxic effects in guinea pigs injected intraperitoneally with various samples of soapstone.

In construction and maritime, OSHA is proposing to express its limit for soapstone (total dust) in mg/m³, rather than mppcf, to simplify employee sampling and analysis. The total dust limit being proposed for the construction and maritime industries is an 8-hour TWA of 6 mg/m³, which is equivalent to the current limit of 20 mppcf, and the new limit of 3 mg/m³ for respirable dust has been implicit in the existing total dust limit. In agriculture, OSHA is proposing both limits to reduce the risk of tremolite-induced pulmonary effects in exposed workers. Promulgation of these limits will also make OSHA's PELs for this substance consistent across all regulated sectors.

SULFUR DIOXIDE
CAS: 7446–09–5; Chemical formula: SO_2
H.S. No. 1375

OSHA's current limit for sulfur dioxide (SO_2) in the construction and maritime industries is 5 ppm as an 8-hour TWA. There is no limit in agriculture. The Agency is proposing to revise this limit to 2 ppm as an 8-hour TWA, to add a 5 ppm STEL, and to extend these limits to agriculture. Although NIOSH recommends a limit of 0.5 ppm for sulfur dioxide, NIOSH did concur (Ex. 8–47, Table N1) with OSHA's proposed limits when the Agency established them recently in general industry. The ACGIH has a TLV®–TWA of 2 ppm and a TLV®–STEL of 5 ppm for sulfur dioxide. Promulgation of the proposed limits will make the PELs for this substance consistent across all OSHA-regulated sectors.

Sulfur dioxide is a colorless, nonflammable gas or liquid with a suffocating odor. It is used in treating wood pulp for paper manufacturing, in ore and metal refining, and in the extraction of lubricating oils; as a bleaching, disinfecting, and fumigating agent; as a food additive and preservative; and as a reducing agent (ACGIH 1986, p. 542 (87)). Sulfur dioxide is generated as an unwanted byproduct of combustion, and especially during the burning of coal or heavy oil. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Workplace exposure to sulfur dioxide causes both acute and chronic effects. The chronic effects of exposure include permanent pulmonary impairment, which is caused by repeated episodes of bronchoconstriction. A number of human and animal studies demonstrate this effect (Skalpe 1964/Ex. 1–438; Smith, Peters, Reading, and Castle 1977/Ex. 1–805; Archer and Gillam 1978/Ex. 1–711; Ministry of Health (Canada) 1976/Ex. 1–1208; Lewis, Campbell, and Vaughan 1969, as cited in ACGIH 1986/Ex. 1–3, p. 542).

In a study of Norwegian paper pulp mill workers, Skalpe (1964/Ex. 1–438) reported that average SO_2 concentrations were believed to range from 2 to 36 ppm. Results showed a significantly higher frequency of respiratory disease symptoms, including coughing, expectoration, and dyspnea, among workers less than 50 years of age (i.e., those with the shortest exposure). Workers older than 50, however, did not display symptomatology different from that of controls.

More recently, Smith, Peters, Reading, and Castle (1977/Ex. 1–805) studied a group of smelter workers exposed, on average, to less than 2 ppm SO_2 but concurrently exposed to respirable particulate at levels generally less than 2 mg/m³. These workers showed a decrement in forced vital capacity (FVC) and forced expiratory volume (FEV_1) of 4.8 percent when compared with controls. These authors concluded that workers exposed to SO_2 levels above 1 ppm had an accelerated loss of pulmonary function. This study has been criticized on the grounds that the control population itself may have been exposed to respiratory toxins and that other contaminants, such as iron sulfites, may have contributed to the pulmonary decrement seen in these smelter workers. (OSHA notes that the first criticism would lead to an underestimate of the severity of the health effects.) On average, 60 percent more of the workers exposed to concentrations of SO_2 greater than 1 ppm reported symptoms of chronic cough than did workers who were exposed to SO_2 at a concentration below 1 ppm. The prevalence of chronic sputum production was elevated for workers who had never smoked and who were exposed above 1 ppm.

Archer and Gillam (1978/Ex. 1–711) studied workers at the same smelter facility and obtained results similar to those of Smith, Peters, Reading, and Castle (1977/Ex. 1–805). Significant reductions in FVC and FEV_1 were found to be associated with chronic exposures to 0.4 to 3 ppm SO_2 (TWA) with concomitant exposure to particulate. These authors also found a corresponding increase in some symptoms of respiratory disease (chronic bronchitis) that was not attributable to smoking. Tomono and coworkers (1961, as cited in ACGIH 1986/Ex. 1–3, p. 542) found that 1.6 ppm was the lowest concentration that

produced bronchoconstriction in 46 healthy male subjects.

NIOSH recommends a 0.5-ppm 8-hour TWA limit for SO_2. In addition to the studies by Archer and Gillam (1977/Ex. 1–711) and Smith, Peters, Reading, and Castle (1977/Ex. 1–805) described above, NIOSH relied on a third study (Ministry of Health (Canada) 1976/Ex. 1–1208) of smelter workers exposed to SO_2 levels of 2.5 ppm for 10 or more years, which showed an increased incidence of respiratory disease in these workers. A fourth study cited by NIOSH (NIOSH 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 542) reported that 10,000 workers exposed to SO_2 at levels of 0.35 ppm showed no adverse exposure-related effects.

Alarie and co-workers (1970 and 1972, as cited in ACGIH 1986/Ex. 1–3, p. 542) found that guinea pigs exposed to SO_2 by inhalation showed no decrement in pulmonary function at SO_2 levels of 5 ppm; monkeys exposed to 1.3 ppm for 78 weeks also showed no deficit (Alarie, Ulrich, Busey et al. 1970 and 1972, both as cited in ACGIH 1986/Ex. 1–3, p. 542). However, in another study, dogs exposed continuously to 5 ppm for 225 days showed increased pulmonary flow resistance and a decrease in lung compliance (Lewis, Campbell, and Vaughan 1969, as cited in ACGIH 1986/Ex. 1–3, p. 542). In addition, rats exposed to 10 ppm SO_2 daily for six weeks developed a thickening of the mucous layer that interfered with effective particle clearance (Dalhamn 1956, as cited in ACGIH 1986/Ex. 1–3, p. 542).

The acute effects of SO_2 exposure have been recognized for years in industrial settings; symptoms of acute overexposure include upper respiratory tract irritation, rhinorrhea, choking, and coughing. These symptoms are so disagreeable that most persons will not tolerate exposure for longer than 15-minutes. Within 5 to 15 minutes of the onset of exposure, workers develop temporary reflex bronchoconstriction and increased airway resistance. Short-term exposure causes measurable bronchoconstriction (Frank, Amdur, Worcester, and Whittenburger 1962, as cited in ACGIH 1986/Ex. 1–3, p. 542; Weir, Stevens, and Bromberg 1972/Ex. 1–401); the ACGIH (1986/Ex. 1–3, p. 542) reports that this bronchoconstriction is dose-related and is manifested as an increase in pulmonary flow resistance.

These acute effects, which may be severe, indicate the need for the 5 ppm STEL. (The Immediately Dangerous to Life or Health (IDLH) level for SO_2 is 100 ppm.) With a 2 ppm 8-hour TWA alone, a worker could be exposed to 100 ppm for 10 minutes or to 30 ppm (the concentration that produces severe respiratory symptoms (Kehoe Ex. 1–339; Skalpes Ex. 1–438)) for 20 minutes. The 15-minute 5 ppm STEL is thus necessary to prevent these effects as well as the bronchoconstriction that can develop in sensitive individuals from brief exposure to relatively low levels of SO_2. Acute bronchoconstrictive effects are precisely the kinds of effect STELs were designed to protect against.

Efforts have been made to quantify the acute no-adverse-effect level for SO_2-induced increased airway resistance. Frank, Amdur, Worcester, and Whittenberger (1962, as cited in ACGIH 1986/Ex. 1–3, p. 542) reported that, at SO_2 concentrations of 1 ppm, 1 in 11 healthy subjects developed pulmonary flow resistance; at concentrations of 5 or 13 ppm, there was a 39- and 72-percent increase, respectively, in such resistance. Weir, Stevens, and Bromberg (1972/Ex. 1–401) noted a statistically significant but reversible increase in small-airway resistance and a decrease in lung compliance at a concentration of 3 ppm; however, Burton et al. (1969) reported no effects, even among smokers, at a level of 2.1 ppm.

N.R. Frank, Professor of Medicine at the University of Washington State, commented during the 1977 hearing (NIOSH 1977m) that sulfur dioxide may not by itself be hazardous to the lungs but that an aerosol of sulfur dioxide and water or SO_2 oxidized to sulfate particulate may increase the toxic potential of SO_2 (Ex. 40, Docket H–039). Dr. Frank also presented evidence showing that a single short-term exposure to very high SO_2 levels (200 to 1000 ppm) can produce lung damage (Ex. 40, Docket H–039).

The lack of chronic effects observed in animals at levels below 5 ppm (Alarie, Ulrich, Busey et al. 1970 and 1972, as cited in ACGIH 1986/Ex. 1–3, p. 542) caused commenters to question whether chronic lung disease results from long-term exposure to SO_2 below the current 5 ppm PEL. Dr. Alarie appeared at the 1977 hearing and testified on animal studies conducted by him and others on sulfur dioxide (NIOSH 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 542). He testified that, in his opinion, the long-term studies in animals support the establishment of a ceiling value for SO_2 but do not indicate that benefits would be gained by reducing the time-weighted average from 5 to 2 ppm. OSHA agrees with Dr. Alarie that a STEL is necessary to minimize high short-term exposures to SO_2; however, OSHA does not agree that no effects have been seen in animals at levels at or below 5 ppm. For example, Lewis, Campbell, and Vaughan (1969, as cited in ACGIH 1986/Ex. 1–3, p. 542) showed that beagles exposed to 5 ppm SO_2 exhibited decreased dynamic compliance and increased flow resistance. In addition, NIOSH (1974b/Ex. 1–235) has reported:

> [M]an is considered to be more sensitive than other mammals to the effects of sulfur dioxide in ranges commonly employed experimentally * * * (Ex. 1–235).

It is therefore not surprising that humans have also been shown to develop respiratory effects, including bronchoconstriction, coughing, and sputum production, at levels below 5 ppm (Smith, Peters, Reading, and Castle 1977/Ex. 1–805; Archer and Gillam 1978/Ex. 1–711; Frank, Amdur, Worcester, and Whittenburger 1962, as cited in ACGIH 1986/Ex. 1–3, p. 542; Weir, Stevens, and Bromburg 1972/Ex. 1–401).

In the prior rulemaking for general industry, several commenters (Exs. 3–1123, 8–57, 86, 86A, 117, 177, and 188) argued that the Ferris et al. study demonstrated a lack of chronic effects caused by exposure to pure SO_2. OSHA disagrees. First, the Ferris et al. study shows deleterious health effects at SO_2 levels down to 3 ppm that become progressively worse at 5 ppm. Second, other studies show adverse health effects in animals exposed to pure SO_2 at levels of 5 ppm. Third, SO_2 causes bronchoconstriction. OSHA therefore believes that a 2 ppm TWA is necessary to protect workers in construction, maritime, and agriculture from these significant risks, which are associated either with exposure to pure SO_2 or to SO_2 and particulates.

Commenters cited Rom et al. (1983) to the effect that pulmonary function does not decline as a result of exposure to SO_2. In 1983, Rom et al. conducted a follow-up study of Smith et al.'s cohort (which was studied originally in 1974). Rom et al. reported a statistically significant improvement in pulmonary function in workers in two of the groups expected to show the greatest decline. For the period 1980 to 1983, the mean annual changes across both groups were negative.

The investigator's explanation for the apparent increase in FVC in the 1973–1980 period is that the pulmonary function tests given by Smith et al. in 1973 were inadequate. However, they also suggest that the use of a more reliable dual-cartridge respirator in the new smelter may have reduced exposure to SO_2, leading to improved pulmonary function. Furthermore, the size of the study is quite small, especially once the cohort is stratified into smokers, ex-smokers, and

nonsmokers. Thus, the small size of this study may have made it difficult to observe any significant SO_2-related declines in pulmonary function.

A study by Holness et al. (1985) examined the change in pulmonary function in a group of nickel refinery workers both before and after shutdown of the smelter. Average SO_2 concentration in the smelter was 0.47 ppm. Pulmonary function was assessed twice during a workweek and again following a 6-month shutdown period during which no exposures to SO_2 or particulate occurred. Pulmonary function exams conducted on Monday showed that, after adjusting lung function values for the effects of smoking, smelter workers had significantly lower FVC and FEV values than office workers. On Thursday, smelter workers exhibited further declines in FVC and FEV_1, although the magnitude of the change in FEV_1 was not statistically significant. Area sampling for SO_2 and particulate suggested a direct relationship between the change in FVC and FEV_1 and exposure to SO_2 and particulate. In addition, the prevalence of respiratory symptoms (adjusted for smoking) was significantly higher among these smelter workers than office workers both prior to and after the shutdown period.

Taken together, the evidence from all of the studies described in this subsection clearly shows that exposure to SO_2 below 5 ppm (both in the pure state and together with particulates) does cause respiratory symptoms, including repeated episodes of bronchoconstriction. The studies by Smith, Peters, Reading, and Castle (1977/Ex. 1–373), Archer and Gillam (1978/Ex. 1–711), and Frank, Amdur, Worcester, and Whittenberger (1962, as cited in ACGIH 1986/Ex. 1–3, p. 542) consistently demonstrate that persons exposed to concentrations of SO_2 below 5 ppm have an accelerated loss of pulmonary function and exhibit adverse pulmonary symptoms, both acute and chronic. OSHA believes that these effects constitute material impairments of health and are significant.

The second point raised by commenters concerned the formation of other toxic and irritating products from the interaction between SO_2 and water or between SO_2 and particles. Some of the participants in the earlier rulemaking, such as Dr. Colucci of the Corn Refiners Association, testified that it would be more protective to identify and limit exposure to each of these by-products, rather than to regulate SO_2 alone. OSHA disagrees with this approach; since these products are all formed from sulfur dioxide, limiting exposure to SO_2 will concurrently limit exposure to these SO_2 by-products. This approach is more straightforward and easier to implement than attempting to identify the myriad decay products that may be formed in different industrial settings. Furthermore, the studies discussed above clearly establish a relationship between airborne SO_2 levels and adverse effects; no quantitative relationship on which to base a PEL has been established for the decay products of SO_2 reactions. Therefore, to reduce the significant risk of respiratory symptoms among exposed workers, OSHA finds that limiting exposure to SO_2 will be effective.

After considering all of the relevant evidence from both the 1977 and the present dockets, OSHA preliminarily concludes that an 8-hour TWA PEL of 2 ppm and a STEL of 5 ppm are necessary to reduce the significant risk of adverse respiratory effects that have been demonstrated to occur in workers exposed to SO_2 above these levels. The Agency believes that the coughing, increase in sputum production, bronchoconstriction, and significant declines in pulmonary function observed in workers exposed to SO_2 at the levels permitted by the current limit constitute material impairments of health and functional capacity, and must be protected against. Accordingly, OSHA is proposing these PELs for workers in construction, maritime, and agricultural workplaces. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

SULFUR TETRAFLUORIDE

CAS: 7783–60–0; Chemical Formula: SF_4

H.S. No. 1378

OSHA has no exposure limit for sulfur tetrafluoride in the construction, maritime, or agriculture industry. The ACGIH has a limit of 0.1 ppm as a ceiling; NIOSH has no REL for this substance. OSHA is proposing a PEL of 0.1 ppm as a ceiling; NIOSH (Ex. 8–47, Table N1) concurred with this limit when the Agency recently established it in general industry. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Sulfur tetrafluoride is a colorless, noncombustible gas. It is used as a fluorinating agent in the production of water and oil repellents and lubricity improvers. Sulfur tetrafluoride is also used in making pesticides (Hawley's 1987, p. 1109; New Jersey Fact Sheet 1986, p. 1).

On contact with moisture, sulfur tetrafluoride produces sulfur dioxide and hydrogen fluoride (HF) (Lester 1971, as cited in ACGIH 1986/Ex. 1–3, p. 546), and it is the release of HF that is primarily responsible for sulfur tetrafluoride's toxic effects (Zapp 1971, as cited in ACGIH 1986/Ex. 1–3, p. 546). A du Pont study (1961, as cited in ACGIH 1986/Ex. 1–3, p. 546) of rats exposed for four hours to 4 ppm sulfur tetrafluoride over a period of 10-days reported that the animals demonstrated nasal discharge, difficulty in breathing, and weakness. Autopsies of these animals revealed evidence of emphysema, but those rats surviving exposure and given a two-week rest period after exposure showed no significant pathological changes. In the same study by du Pont (1961, as cited in ACGIH 1986/Ex. 1–3, p. 546), a four-hour exposure to 20 ppm sulfur tetrafluoride proved lethal to one of two rats. In a study by Clayton (1962/Ex. 1–409), irregular breathing and signs of irritation were observed following exposures to concentrations of 20 ppm and lower; animals receiving lethal amounts of sulfur tetrafluoride showed pulmonary edema on autopsy, and those with sublethal exposures demonstrated no pathologic changes 14 days later.

OSHA is proposing a 0.1-ppm ceiling limit for this highly toxic gas in the construction, maritime, and agriculture industries. The Agency believes that establishing this limit for this previously unregulated chemical will reduce the significant risk of chronic respiratory effects potentially associated with exposure to sulfur tetrafluoride at the levels permitted in these sectors by the absence of any OSHA limit. OSHA considers the chronic respiratory effects caused by exposure to sulfur tetrafluoride to be material impairments of health. In addition, promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

TALC (Containing no asbestos)

CAS: 14807–96–6; Chemical Formula: $Mg_3Si_4O_{10}(OH)_2$

H.S. No. 1381

The current OSHA PEL for nonasbestiform talc (containing less than 1 percent crystalline silica) in the construction and maritime industries is 20 million particles per cubic foot of air (mppcf) as an 8-hour TWA; when expressed as mg/m^3, this is comparable to 3 mg/m^3. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 2 mg/m^3 (15 mppcf) for talc, measured as respirable dust, and this is the limit being proposed by OSHA for construction, maritime, and agriculture operations. NIOSH has no REL for this

substance, but concurred (Ex. 8–47, Table N1) that this limit was appropriate when the Agency established it in general industry.

Talc is a fine powder that is white to gray-white in color; it is found as a mineral, and the main component is a crystalline hydrated silicate of magnesium that is usually in the form of plates but occasionally may be in the form of fibers. Talc is used in industrial products and cosmetics. Talc is also used in insecticides, ceramics, paints, paper, plastics, rubber, and roofing (ACGIH 1986, p. 550).

The health-effects evidence for talc is complicated by the fact that talcs contain amphiboles and other minerals, in addition to platiform talc crystals; adverse health effects appear to be related to the nonplatiform content (that is, to the fiber content) of the talc in question (ACGIH 1986/Ex. 1–3, p. 550). There are conflicting views regarding the extent to which the fibrous constituents are asbestos; however, no health effects information is available that is specifically related to fibrous talc (ACGIH 1986/Ex. 1–3, p. 550).

Numerous epidemiological studies have documented the effects on workers of long-term exposures to talc. In 1942, Porro et al. (1942, as cited in Stokinger 1981b/Ex. 1–1127) published a report in which 15 cases of talc pneumoconiosis, including five postmortem examinations, showed that asbestotic bodies were almost always present in fibrotic areas of the lungs of those workers with talcosis. Siegal and colleagues (1943, as cited in Stokinger 1981b/Ex. 1–1127) noted that the incidence of advanced fibrosis in a group of 221 talc miners and millers was 14.5 percent. These workers were primarily exposed to fibrous talc, which was believed to be responsible for the pathology of the asbestos-like lung lesions. A study by McLaughlin et al. (1949, as cited in Stokinger 1981b/Ex. 1–1127) revealed that talc-induced pneumoconiosis was caused by the fibrous varieties of talc; in animal studies by Schepers and Durkan (1955, as cited in Stokinger 1981b/Ex. 1–1127), the degree of fibrosis in the lung tissue was found to be a function of the length of the talc fibers, rather than of the composition of the talc itself. A paper by Kleinfeld, Giel, Majeranowski, and Messite (1963, as cited in Stokinger 1981b/Ex. 1–1127) reported that postmortem examinations on six talc industry workers showed that the asbestotic bodies found in the lung bronchioles or embedded in fibrous tissue were indistinguishable from the asbestos bodies seen in cases of asbestosis.

Kleinfeld, Messite, Kooyman, and Zaki (1967/Ex. 1–704) later conducted a cohort study of 220 workers who had been employed in a mine that produced talc that had a tremolite and anthophyllite content. Of the 91 deaths in this group, 10 resulted from respiratory cancer and 28 were attributed to pneumoconiosis. The proportional mortality rate from respiratory cancer was four times the expected rate. In 1974, when Kleinfeld, Messite, and Zaki (Ex. 1–705) performed a follow-up study of this group (which at that time consisted of 260 workers [108 deaths]), they found significant differences between the expected and observed mortality in the period 1950 to 1954, but not during 1960 to 1969. These investigators attributed this finding to the reduction in talc dust counts from averages of 25 to 73 mppcf (approximately 4 to 12 mg/m^3) in the years between 1948 and 1965 to averages of 9 to 43 mppcf (approximately 1.5 to 6.5 mg/m^3) in the period 1966 to 1969. This study also showed a decrease of greater than 50 percent in deaths due to pneumoconiosis in the 1965-to-1969 time period.

Studies by NIOSH (Dement and Zumwald 1978, as cited in ACGIH 1986/Ex. 1–3, p. 552) of 398 white male workers employed between 1947 and 1959 in the talc industries found that 74 of these men had died, and that bronchogenic cancer was the cause of death in nine men; only 3.3 deaths from this cause would have been expected. Nonmalignant respiratory disease (NMRD) exclusive of influenza, pneumonia, and tuberculosis accounted for three deaths; 1.5 would have been expected. From these data, NIOSH concluded that a significant increase in mortality due to bronchogenic cancer and NMRD had occurred as a result of occupational exposure to talc dust. NIOSH's report also included a morbidity study of 12 talc industry workers, currently employed, in which chest x-rays, lung function tests, and questionnaires were used. This study concluded that a higher prevalence of cough, phlegm, dyspnea, and irregular opacities in chest x-rays existed in these workers than in potash miners; instances of pleural thickening and calcification were greater than in coal and potash miners; and the pulmonary function of talc workers overall was reduced in comparison with that of coal and potash miners employed for the same length of time. The reductions in pulmonary function among the talc workers were dose- and duration-related.

The ACGIH (1986/Ex. 1–3, p. 552) concluded that serious health effects have been associated in the past (i.e., prior to 1945) with exposures to amphibole-containing talc. However, the ACGIH believes that the introduction of mining improvements has all but eliminated "the excess of death rates from pneumoconiosis and lung cancer" (ACGIH 1986/Ex. 1–3, p. 552).

Two recent studies of the health effects associated with talc exposures (Rubino, Scansetti, Piolatto, and Romano 1976/Ex. 1–801; Selevan, Dement, Wagoner, and Froines 1979/Ex. 1–989) are available. The Rubino, Scansetti, Piolatto, and Romano (1976/Ex. 1–801) study found that miners and millers exposed to an average of 849 to 8470 mppcf-years (miners) or 76 to 651 mppcf-years (millers) showed no increase in the number of observed (compared to expected) deaths from causes other than silicosis. These authors concluded that the disease-causing factor in these workers was silica rather than talc (Rubino, Scansetti, Piolatto, and Romano 1976/Ex. 1–801).

The Selevan, Dement, Wagoner, and Froines (1979/Ex. 1–989) study of 392 workers exposed to talc in five mines found nonmalignant respiratory deaths for millers to be almost eight times the expected rate, while miners experienced more than three times the expected mortality rate for NMRD. The ACGIH (1986/Ex. 1–3, p. 552) believed that the Selevan et al. (1979/Ex. 1–989) study is incomplete because confounding factors were not adequately identified and controlled for.

With regard to NIOSH's findings (Dement and Zumwald 1978), of excess cancer deaths among talc workers, OSHA is currently reviewing the scientific and toxicological data describing the effects of exposure to the nonasbestiform varieties of mineral fibers that are found in talc deposits. OSHA is considering a separate rulemaking to address this issue.

OSHA is proposing an 8-hour TWA limit of 2 mg/m^3 for the respirable dust of talc containing no asbestos fibers and less than 1 percent crystalline silica in the construction, maritime, and agriculture industries. The Agency believes that this limit will protect workers in these sectors from the significant risk of nonmalignant respiratory effects associated with exposure to talc dust; OSHA considers these effects material impairments of health. In addition, promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors. According to the ACGIH (1986/Ex. 1–3), talc may, at

times, occur in a fibrous form. At this time, OSHA has not made any preliminary determinations with regard to the possible health consequences resulting from exposure to talc fibers.

TIN OXIDE
CAS: 7440–31–5; Chemical Formula: SnO
H.S. No. 1395

OSHA has no exposure limit for tin oxide in the construction, maritime, or agriculture industry. The ACGIH has a TLV® of 2 mg/m³ as an 8-hour TWA. NIOSH has no REL for tin oxide. The Agency is proposing a PEL of 2 mg/m³ as an 8-hour TWA for tin oxide in construction, maritime, and agriculture; NIOSH concurred (Ex. 8–47, Table N1) with this limit when the Agency recently established it in general industry. Promulgation of this limit will make the PEL for tin oxide consistent across all OSHA-regulated sectors.

Tin oxide may be a white or yellow-brown powder. It is used as a reducing agent, an intermediate in the preparation of stannous salts used in the plating and glass industries, and as an ingredient in pharmaceuticals and soft abrasives (Hawley's 1987, p. 1089).

Injection of tin dust intraperitoneally into guinea pigs resulted in a nonspecific, well-vascularized chronic granulomatous reaction (Oyanguren, Haddad, and Maass 1958/Ex. 1–652). Chronic exposure to tin oxide fume and dust results in stannosis, a form of pneumoconiosis. The fume of tin oxide is considered to be a more important source of stannosis than the dust (Dundon and Hughes 1950/Ex. 1–732), but other authorities consider the quality of the dust and the duration of exposure equally important (Robertson and Whittaker 1955/Ex. 1–987). The onset of the symptoms of stannosis may be delayed for years; the appearance of the condition is signalled by difficulty in breathing. One worker who had been exposed to unspecified tin oxide levels for 22 years was tested for stannosis and registered a vital breathing capacity 70 percent of normal and a maximal breathing capacity 61 percent of the predicted value (Spencer and Wycoff 1954/Ex. 1–611). More than 150 cases of stannosis have been reported in the world literature (Robertson and Whittaker 1955/Ex. 1–987), and five cases were reported in the United States before 1954. No cases of massive fibrosis caused by exposure to tin oxide dust or fume have been reported (ACGIH 1986/Ex. 1–3, p. 574).

OSHA is proposing an 8-hour TWA PEL of 2 mg/m³ for tin oxide dust and fume in the construction, maritime, and agriculture industries. The Agency believes that this limit will protect workers in these sectors, from the significant risks of reduced pulmonary capacity and other signs and symptoms of stannosis, which are considered material impairments of health that are associated with exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TRIMELLITIC ANHYDRIDE
CAS: 552–30–7; Chemical Formula: $C_9H_4O_5$
H.S. No. 1409

OSHA has no exposure limit for trimellitic anhydride in the construction, maritime, or agriculture industry. In 1981, the ACGIH set 0.005 ppm (0.04 mg/m³) as the 8-hour TLV®–TWA limit for this substance. NIOSH has no REL for trimellitic anhydride. The Agency is proposing a 0.005 ppm 8-hour TWA limit for this substance in the construction, maritime, and agriculture industries. NIOSH concurred (Ex. 8–47, Table N1) with this limit when the Agency recently established it in general industry. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Trimellitic anhydride is a colorless solid. It is used in agricultural chemicals, dyes and pigments, paints and coatings, pharmaceuticals, and surface active agents. Trimellitic anhydride is also employed as a curing agent for epoxy and other resins and as an ingredient in vinyl chloride plasticizers and various polymers and polyesters (ACGIH 1986, p. 606).

Exposure to trimellitic anhydride (TMAN) causes irritation of the eyes, nose, skin, and pulmonary tract. NIOSH (1978n, as cited in ACGIH 1986/Ex. 1–3, p. 606) reported in a current intelligence bulletin that trimellitic anhydride should be considered an extremely toxic workplace hazard, because exposure to it can cause noncardiac pulmonary edema and immunological sensitization, as well as upper respiratory tract irritation.

Pulmonary edema has occurred in workers exposed to TMAN at unreported air concentrations; the development of pulmonary edema in these workers without upper respiratory tract irritation suggests that TMAN is a sensitizer (Rice, Jenkins, Gray, and Greenburg 1977/Ex. 1–358). Zeiss, Patterson, Pruzansky, and colleagues (1977/Ex. 1–501) described TMAN-related illnesses among a group of workers synthesizing this substance. These authors believe that there are three separate syndromes associated with TMAN exposure: rhinitis/asthma; a flu-like condition; and irritation of the upper respiratory tract. Another case of TMAN-related occupational sensitization occurred in a worker exposed during the application of an epoxy resin coating (Fawcett, Taylor, and Pepys 1977/Ex. 1–636).

At TMAN concentrations averaging 1.5 and 2.8 mg/m³ in two processes, NIOSH reported that employees reported eye and nose irritation, shortness of breath, coughing, nausea, headache, skin irritation, and throat irritation (NIOSH 1974c/Ex. 1–1181). Pulmonary hemorrhage and hemolytic anemia have been reported in workers exposed to TMAN at unspecified levels (Ahmad, Morgan, Patterson et al. 1979/Ex. 1–460).

Rats have shown intraalveolar hemorrhage after TMAN exposures to concentrations of 0.01 ppm (Amoco Chemical Corporation 1978, as cited in ACGIH 1986/Ex. 1–3, p. 606).

Based on this study, OSHA is proposing to set the PEL in construction, maritime, and agriculture at an 8-hour TWA level of 0.005 ppm. The Agency believes that this limit will protect workers from the severe pulmonary effects, sensitization, and skin and upper respiratory tract irritation observed in workers exposed to this extremely toxic substance. The Agency believes that these effects clearly constitute material impairments of health and functional capacity within the meaning of the Act. OSHA preliminarily concludes that this limit is necessary to substantially reduce these significant risks, which were formerly uncontrolled among workers in these sectors. In addition, promulgation of this limit will make the PEL for trimellitic anhydride consistent across all OSHA-regulated sectors.

WOOD DUST
CAS: None; Chemical Formula: None
H.S. No. 1430A (Hard Wood)
H.S. No. 1430B (Soft Wood)
H.S. No. 1430C (Western Red Cedar)

Before 1980, OSHA regulated wood dust under its nuisance dust standard of 15 mg/m³ (29 CFR 1910.1000, Table Z–3). However, in a 1985 enforcement proceeding before the Occupational Safety and Health Review Commission, wood dust was held not to be covered by the nuisance dust standard, and the Agency did not regulate this substance after this decision (12 OSHC 1785). Consequently, OSHA has no current PELs for wood dust in the construction, maritime, and agriculture industries, although the prior air contaminants standard did establish PELs for wood dust in general industry. The ACGIH has a TLV®–TWA of 1 mg/m³ for hard

wood dust, and a TLV®-TWA of 5 mg/m³ and STEL of 10 mg/m³ for soft wood dust. The ACGIH has no limit for Western Red Cedar. NIOSH has no RELs for soft- and hardwood dusts or Western Red Cedar dust in construction, maritime, and agriculture. OSHA is proposing a single 8-hour TWA of 5 mg/m³ and a STEL of 10 mg/m³ for all hard wood and soft wood dusts except Western red cedar. For Western red cedar, a highly allergenic species of soft wood, the Agency is proposing an 8-hour TWA limit of 2.5 mg/m³. These are the limits recently established for these substances in general industry. Promulgation of these limits will make the PELs for these substances consistent across all OSHA-regulated sectors.

Wood dust is defined as any wood particles arising from the processing or handling of woods. Hard woods derive from the deciduous broad-leaved flowering species of trees, and soft woods include the coniferous species that do not shed their leaves in the winter. Wood dust is produced during sawmill operations and in wood sawing and sanding procedures in furniture manufacture. Wood dust may be used as an industrial wood flour product, as an absorbent for nitroglycerin in the manufacture of dynamite, and as a filler in plastics, linoleum, paperboard, fur cleaning, and polishing agents (Sittig 1985, p. 930; Hawley's 1987, p. 1238).

Exposure to wood dust has long been associated with a variety of adverse health effects, including dermatitis, allergic respiratory effects, mucosal and nonallergic respiratory effects, and cancer. The toxicity data in animals are limited, particularly with regard to exposure to wood dust alone; there are, however, a large number of studies in humans. The discussion below first describes some of the relevant toxicological studies and then presents the record evidence on wood dust.

Animal Studies

Groups of male guinea pigs were injected intratracheally with suspensions containing 75 mg of sheesham or mango wood dust or of hemp or bagasse fibers, or 20 mg of jute fiber (Bhattacharjee, Dogra, Lal, and Zaidi 1979/Ex. 1–463; Bhattacharjee and Zaidi 1982/Ex. 1–464). Animals were sacrificed serially at intervals up to 90 days after injection. Lung examination revealed that, at 90 days, Grade I fibrosis of the lungs had occurred in the guinea pigs injected with mango or jute, while those treated with sheesham or hemp had developed Grade II pulmonary fibrosis.

In another experiment involving guinea pigs, animals were exposed by inhalation to average respirable dust concentrations of 1143 mg/m³ for 30 minutes/day, 5 days/week for 24 weeks (McMichael, DiPalma, Blumenstein et al. 1983, Ex. 1–644). Histopathological examination showed lung changes, described by the authors as moderate to severe, in all exposed guinea pigs. The changes seen included an increase in septal connective tissue components and aggregation of lymphocytes; however, no pulmonary fibrosis or extensive destruction of the parenchymal tissue occurred. The authors of this study concluded that exposure to fir bark dust may cause inflammatory changes in the lung.

Two studies examined the effect of exposing Syrian golden hamsters to beech wood dust by inhalation, with or without concurrent administration of the known carcinogen diethylnitrosamine (DEN) (Wilhelmsson, Hellquist, Olofsson, and Klintenberg 1985/Ex. 1–402; Wilhelmsson, Jernudd, Ripe, and Holmberg 1985/Ex. 1–1042; Drettner, Wilhelmsson and Lundh 1985/Ex. 1–312). In each study, the animals were divided into four separate groups. In Study I, there were 12 animals per group. Two groups were exposed to fresh beech wood dust (a hard wood dust) at a mean total dust concentration of 15 mg/m³ for six hours/day, five days/week for 36 weeks, and one of these groups was also given 1.5 mg of DEN once a week for the first 12 weeks. The third group in Study I was given the DEN doses only (positive control), and the fourth group was given no exposure at all (negative control).

In Study II, there were 24 animals in each of four groups. Two groups of animals were exposed to fresh beech wood dust at a mean total dust concentration of 30 mg/m³ for six hours/day, five days/week for 40 weeks. The positive and negative control groups were treated as in Study I.

In Study I, none of the hamsters had lung or nasal tumors or metaplasia. Four hamsters exposed to wood dust and DEN exhibited squamous cell papillomas of the trachea, as did three animals in the positive control group and one in the negative control group. No differences in organs other than the respiratory organs were seen between the treated and control groups in Study I.

In Study II, all DEN-exposed hamsters had nasal lesions ranging from hyperplasias and dysplasias to papillomas. In addition, half of all DEN-exposed hamsters developed nasal adenocarcinomas, whether or not they had also been exposed to wood dust. Half of the DEN-exposed animals also had papillomas of the larynx and trachea. In the wood-dust-exposure-only group, two of the animals had nasal lesions, one of which was an unclassifiable malignant nasal tumor and the other of which consisted of focal metaplasia with mild dysplasia. The authors concluded that exposure to wood dust did not increase the tumor incidence in DEN-exposed animals but did affect the respiratory tract of all exposed animals.

Human Studies

Dermatitis

There are a large number of case reports, epidemiological studies, and other data on the health effects of wood dust exposure in humans. Dermatitis caused by exposure to wood dusts is common, and can be caused either by chemical irritation, sensitization (allergic reaction), or both of these together. As many as 300 species of trees have been implicated in wood-caused dermatitis.

The chemicals associated with allergic reactions are generally found in the inner parts of a tree, e.g., the heartwood, and the workers most prone to these reactions are those involved in secondary wood processing (e.g., carpenters, joiners, and finishers).

The symptoms of sensitization are redness, scaling, and itching, which may progress to vesicular dermatitis and, after repeated exposures, to chronic dermatitis. The parts of the body most often affected are the hands, forearms, eyelids, face, neck, and genitals. This form of dermatitis generally appears after a few days or weeks of contact.

Allergic Respiratory Effects

Allergic respiratory responses are mediated by the immune system, as is also the case with allergic dermatitis. Many authors have reported cases of allergic reactions in workers exposed to wood dust (Sosman, Schlueter, Fink, and Barboriak 1969/Ex. 1–444; Greenberg 1972/Ex. 1–482; Pickering, Batten, and Pepys 1972/Ex. 1–655; Eaton 1973/Ex. 1–478; Booth, LeFoldt, and Moffitt 1976/Ex. 1–466; Chan-Yeung, Ashley, Corey et al. 1978/Ex. 1–622; Edwards, Brooks, Henderson, and Apol 1978/Ex. 1–950; Innocenti and Angotzi 1980/Ex. 1–1036; Bush and Clayton 1983/Ex. 1–469; Cartier, Chan, Malo et al. 1986/Ex. 1–472). Asthma is the most common response to wood dust exposure, and the allergic nature of such reactions has been demonstrated by the presence of IgE antibodies and positive skin reactions on patch testing. The best-studied of the allergic reactions to wood dust is Western red cedar (WRC)

asthma; it is estimated that 5 percent of the workers handling this species are allergic to it. However, only one study is available that relates exposure level to ventilatory function. In that study, exposure to concentrations of 2 mg/m³ of WRC dust caused significant decreases in forced vital capacity and forced expiratory volume (Vedal, Chan-Yeung, Enarson et al. 1986/Ex. 1–397). These authors also found that exposures to concentrations above 3 mg/m³ produced eye irritation.

Mucosal and Nonallergic Respiratory Effects

This section discusses changes in the structure and function of the nasal mucosa and respiratory tract that are caused by exposure to wood dust. These changes include nasal dryness, irritation, bleeding, and obstruction; coughing, wheezing, and sneezing; sinusitis; and prolonged colds. These symptoms have been observed even at wood dust concentrations below 4 mg/m³.

Bellion, Mattei, and Treves (1964, as cited in NIOSH 1987a/Ex. 1–1005) found that 97 of 225 workers (carpenters, sawmill workers, woodworkers) exposed from 3 to 24 years to the dust of several different hard woods showed radiologic evidence of pulmonary abnormalities. Black, Evans, Hadfield et al. (1974/Ex. 1–299) studied nine woodworkers from a woodworking factory in England. In all of these workers, mucociliary movement was markedly depressed, leading these authors to conclude that exposure to wood dust in the furniture industry for 10 years or more can impair mucociliary clearance. These findings were confirmed in a Danish study involving furniture makers (Solgaard and Andersen 1975/Ex. 1–443; Andersen, Solgaard, and Andersen 1976/Ex. 1–297; Andersen, Andersen, and Solgaard 1977/Ex. 1–296); compared with controls, the mucociliary transport rate was also significantly impaired in these woodworkers, and dose-response effects were noted.

A respiratory survey conducted by Chan-Yeung, Giclas, and Henson (1980/Ex. 1–474) in pulp and paper mill workers in British Columbia showed that workers exposed to wood dust at a mean total dust concentration of 0.5 mg/m³ had a slight but statistically significant decrease in pulmonary function values compared with controls. The authors concluded that the chemical preservatives used to treat the wood could also have been responsible for these adverse effects.

In a cross-sectional survey of 1,157 American woodworkers (both hard and soft wood), Whitehead, Ashikaga, and Vacek (1981/Ex. 1–454) found that exposure to higher (10+ mg-years/m³), as compared with lower (0 to 2 mg-years/m³), dust concentrations was associated with a statistically significant and higher incidence of decreased pulmonary function. However, dose-response effects were observed only for soft wood (i.e., pine) dusts. A later study by Beckman, Ashikaga, and Whitehead (1980, as cited in NIOSH 1987a/Ex. 1–1005) examined subgroups of the workers studied by Whitehead and found no correlation between years of exposure to pine wood dust and pulmonary function.

In a pilot study of 55 workers in a North Carolina hardwood furniture plant, Goldsmith (1983, as cited in NIOSH 1987a/Ex. 1–1005) found that, at mean area wood dust concentrations of 2 mg/m³ or below, peak ventilatory flow correlated significantly with cumulative person-years of exposure. Goldsmith interpreted this finding to mean that inhalation of wood dust may impair large-airway function.

A study of Italian woodworkers showed that the number of wood-dust-exposed workers who had developed anosmia (loss of smell) was significantly higher than in a control group of nonexposed workers (Innocenti, Valiani, Vessio et al. 1985/Ex. 1–1037). Amoore (1986/Ex. 1–1029) confirmed this finding in other workers exposed to hardwood dusts.

Summary of mucosal and nonallergic respiratory effects. A large number of studies have demonstrated that occupational exposure to wood dust causes both statistically significant and nonsignificant increases in respiratory symptoms at exposure levels as low as 2 mg/m³. These symptoms range from irritation to bleeding, wheezing, sinusitis, and prolonged colds. In addition, chronic wood dust exposure causes mucociliary stasis (i.e., the absence of effective clearance) in the nose and, in some workers, also causes changes in the nasal mucosa. Several studies have demonstrated decreased pulmonary function among wood-dust-exposed workers, although other studies have not confirmed these findings.

Carcinogenicity

The association between occupational exposure to wood dust and various forms of cancer has been explored in many studies and in many countries. In 1987, the International Agency for Research on Cancer (IARC) classified furniture manufacturing in Category I (confirmed human carcinogen) and carpentry in Category 2B (suspected human carcinogen). NIOSH (Ex. 8–47) considers both hard and soft wood dust to be potentially carcinogenic in humans; for soft wood dust, NIOSH recommends a separate 6(b) rulemaking (Ex. 8–47, Table N6B). NIOSH concurred, however, with the proposed PEL of 1 mg/m³ TWA for hard wood dust (Ex. 8–47, Table N6A).

The discussion below focuses on selected U.S. studies.

Nasal and sinus cavity cancer. The earliest U.S. study of wood dust exposure and nasal cancer was conducted by Brinton, Stone, Blot, and Fraumeni (Ex. 1–468) in 1976. These authors analyzed cancer death rates between 1950 and 1969 in 132 U.S. counties having at least 1 percent of their population employed in furniture and wood-fixture manufacturing. This study revealed that the age-adjusted mortality rate for cancer of the nasal cavity and sinuses among white males in the "furniture" counties was significantly higher than in nonfurniture counties.

In a later case-control study, these authors (Brinton, Blot, Becker et al. 1984/Ex. 1–467) analyzed cases of nasal and sinus cancers occurring in North Carolina and Virginia between 1970 and 1980. This study identified a significantly elevated risk of adenocarcinomas in males working in the furniture manufacturing industry, but no increased risk among lumber, carpentry, or construction workers. There was no significant increase in the risk of squamous cell carcinoma in workers from any other wood-related industry.

In a study sponsored by the Inter-Industry Wood Dust Task Force, Viren, Vogt, and Dixon (1982, as cited in NIOSH 1987a/Ex. 1–1005) described a death certificate case-control study of nasal cancer deaths for 1963 to 1977 in North Carolina, Mississippi, Washington, and Oregon. Findings of this study included a relative nasal cancer risk of 1.95 for industries involving lumber and wood products; however, no significant relative risk of nasal cancer was seen for workers in the furniture-manufacturing industry.

Imbus and Dyson conducted a study of nasal cancer and North Carolina furniture workers (1985, as cited in NIOSH 1987a/Ex. 1–1005). This study found: (1) That there was a statistically significant increase of nasal cancer among furniture workers; (2) that the nasal cancer rates among North Carolina furniture workers were much lower than those reported for English furniture workers; (3) that the number of nasal cancer deaths among North Carolina furniture workers decreased

between 1956 and 1977; and (4) that a slight excess in nasal cancer may have existed among North Carolina furniture workers but is currently either declining or nonexistent.

At present, the National Cancer Institute is conducting a cohort mortality study of 36,622 workers employed in the wood, metal, and plastic furniture manufacturing industries (Miller et al. 1988, as cited in NIOSH 1987a/Ex. 1–1005). Results are too preliminary to be described at this time.

Summary of evidence for nasal and sinus cavity cancers. NIOSH (1987a/Ex. 1–1005) concluded that the literature clearly demonstrates an association between occupational wood dust exposure and nasal cancer. English studies first identified this link by showing a 10- to 20-times-greater incidence of nasal adenocarcinoma among woodworkers in the furniture industry than among other woodworkers and 100 times greater than in the general population. In the United States, three studies have reported a fourfold risk of nasal cancer or adenocarcinoma in furniture workers, and another study noted a similar relationship between nasal cancer and wood dust exposure. One other study failed to find such an association for furniture workers, but did find an increase among logging and timber industry workers.

Pulmonary cancer. A number of studies investigating the association between wood dust exposure and the development of lung cancer have been conducted. Milham (1974/Ex. 1–943) found a significant excess of malignant tumors of the bronchus and lung in workers who had belonged to the AFL–CIO United Brotherhood of Carpenters and Joiners of America. Only construction workers showed a statistically significant increase in lung cancer rate.

In a study of lung cancer in Florida residents, Blot, Davies, Brown et al. (1982/Ex. 1–465) found that an elevated risk of lung cancer that was statistically significant existed among workers in the lumber and wood industry and in construction; however, smoking may have been a confounding factor in these results.

Summary of evidence for pulmonary cancer. The association between lung cancer and occupational wood dust exposure is inconclusive, although several epidemiological studies have reported increases in lung cancer among wood-dust-exposed workers.

Hodgkin's disease. The data on the relationship between exposure to wood dust and the development of Hodgkin's disease are conflicting. Milham (1967/Ex. 1–750) and Milham and Hesser (1967/Ex. 1–645) concluded, on the basis of a case-cohort study of 1,549 white males dying of this disease between 1940–1953 and 1957–1964, that there was an association between Hodgkin's disease and exposure to wood dust.

Another study (Spiers 1969/Ex. 1–445) concluded that men working in the wood industries in the eastern United States were at special risk for Hodgkin's disease, and suggested that pine pollen exposure might be responsible for the increase.

A Washington State epidemiological study (Petersen and Milham 1974/Ex. 1–654) also found that woodworkers had an increased risk of Hodgkin's disease, and the work of these authors was supported by the results of another study (Grufferman, Duong, and Cole 1976/Ex. 1–484), which showed a nonsignificant increase in the relative risk for Hodgkin's disease among woodworkers.

Summary of evidence for Hodgkin's disease. Although the data are conflicting, several epidemiological studies of U.S. workers do report increases in the incidence of Hodgkin's disease among woodworkers. This excess is particularly apparent among carpenters.

Other cancers. NIOSH (1987a/Ex. 1–1005) concluded that the data on the relationship between occupational exposure to wood dust and the development of cancers other than nasal, Hodgkin's disease, or lung cancers are insufficient and inconclusive.

After a review of the record in the prior rulemaking, OSHA has determined that the health evidence for the toxicity of wood dust cannot be separately distinguished for soft wood and hard wood. In addition, the Agency was convinced in that rulemaking that most operations involve both kinds of wood and are performed on the same machines and equipment and in the same facility. Thus, any controls installed to reduce exposures would of necessity need to be sufficient to reduce airborne dust levels to the lower of the two limits (i.e., to the proposed wood dust limit of 1 mg/m^3).

Some commenters involved in the earlier rulemaking found fault with several of these studies on the grounds that they involved British or other non-U.S. woodworkers (see, for example, Exs. 8–34, 191, 3–826, and 3–917), involved only a small number of subjects (see, for example, Exs. 8–34, 168, and 191), had inconsistent results (see, for example, Ex. 8–34), or failed to demonstrate a dose-response relationship between wood dust exposure and the health effect of concern (see, for example, Exs. 8–34, 3–628, 3–917, and 191). The Inter-Industry Wood Dust Coordinating Committee (IWDCC) stated:

> [T]he observations in the European studies are not representative of conditions in U.S. workplaces, especially under modern conditions * * *.
>
> The English and other European experience does not provide an accurate predictive model for the incidence of nasal cancer. * * * The excesses of nasal cancer observed in the European studies simply have not been observed in the United States at any time * * * (Ex. 3–748, pp. 2, 52).

OSHA agrees with the IWDCC that the incidence of nasal cancer seen in the United States is substantially lower than that seen in other countries, particularly in Great Britain. However, the Agency does not agree that excesses in nasal cancers, and particularly of nasal adenocarcinomas, have not been observed in American woodworkers. Several U.S. studies have reported excesses in nasal cancer risks among employees in the wood industries (Brinton, Stone, Blot, and Fraumeni 1976/Ex. 1–468; Brinton, Blot, Becker et al. 1984/Ex. 1–467; Viren, Vogt, and Dixon 1982, and Imbus and Dyson 1985, both as cited in NIOSH 1987a/Ex. 1–1005).

In response to those commenters who argued that none of the studies described by OSHA presented sufficient dose-response data to be used as a basis for establishing a limit, the Agency emphasized that it was not relying on any single study to determine that wood dust presents a significant risk of material health impairment. Instead, OSHA made this determination on the basis of the findings in the dozens of studies reporting on the respiratory, irritant, allergic, and carcinogenic properties of wood dust. The Agency preliminarily finds the results of these studies biologically plausible and their findings reproducible and consistent. It is true that some of these studies, like all human studies, have limitations of sample size, involve confounding exposures, have exposure measurement problems, and often do not produce the kind of dose-response data that can be obtained when experimental animals are subjected to controlled laboratory conditions. What the large group of studies being relied upon by OSHA to establish the significance of the risk associated with exposure to wood dust do show is that the overall weight of evidence that such exposures are harmful and cause loss of functional capacity and material impairment of health is convincing beyond a reasonable doubt.

The Agency preliminarily finds that the health evidence clearly indicates that occupational exposure to wood dust poses a significant risk of material health impairment at the 10-mg/m³ (or particulate PEL) level. OSHA therefore believes that establishing an 8-hour PEL of 5 mg/m³ and a 15-minute STEL of 10 mg/m³ in construction, maritime, and agriculture for all wood dusts (except Western red cedar) will substantially reduce this significant risk. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

For construction, maritime, and agriculture, OSHA proposes an 8-hour TWA PEL of 2.5 mg/m³ for Western red cedar wood dust, based on its widely recognized ability to cause immune-system-mediated allergic sensitization. A study by Brooks, Edwards, Apol, and Edwards (1980) that was submitted by the United Petitioners (Ex. 82D) reports that

> a high prevalence of occupational asthma was observed among workers exposed to WRC wood dust (Ex. 82D, p. 315).

At the hearing, Dr. Brooks described occupational asthma as follows:

> [T]here are spasms of the bronchial tubes, there is reduced air flow on expiration * * * [the extent of which depends] on the extent of the exposure, and also * * * on the duration of the exposure * * * as a consequence of this sensitization and airway injury from the sensitization and the, asthmatic reaction and the various biochemical and cellular changes that occur, there develops an associated process * * * the airways develop an increased sensitivity and an increased broncho-spastic responsiveness to many different non-specific stimuli. So such things as cold air, dust, fumes, gases that are non-specific and wouldn't normally * * * [affect] most individuals [will affect] the individual with occupational asthma. And it's [such] hyper-reactive airways that cause individuals to continue to have disability and to continue to have symptoms once they leave the work place * * *. They develop this nonspecific bronchial hyper-reactivity which may last the rest of their life (Tr. pp. 12–339 to 12–343).

The 1980 study by Brooks, Edwards, Apol, and Edwards found a dose-related relationship between total WRC dust level and prevalence of asthma in employees in jobs with the greatest dust exposures. The Brooks et al. study found asthma in zero percent of WRC workers exposed at 0.5 mg/m³; however, at 3.56 mg/m³, this percentage rose to 5 percent.

In the prior rulemaking, the United Petitioners submitted a 1988 paper by Goldsmith and Shy that found that there is a clearly defined asthma syndrome produced by WRC (Ex. 3–362). OSHA preliminarily finds these studies convincing evidence of WRC's allergenic potential; in addition, the Agency believes that a threshold for occupational asthma exists and lies between 2 and 3.4 mg/m³. Based on this evidence, OSHA preliminarily concludes that an 8-hour PEL of 2.5 mg/m³ is necessary to protect workers from the significant and often permanent effects of immune-mediated occupational asthma associated with exposure to WRC dust at levels above this limit.

In construction, maritime, and agriculture, OSHA is proposing a PEL of 5 mg/m³ as an 8-hour TWA and 10 mg/m³ as a 15-minute STEL for hard and soft wood dust, with the exception of Western red cedar, for which a PEL of 2.5 mg/m³ (8-hour TWA) is being proposed. OSHA preliminarily concludes that promulgation of these exposure limits will substantially reduce the significant risk of material impairment in the form of pulmonary dysfunction (including changes in peak flow, interference with mucociliary clearance, respiratory symptoms, and chronic effects) that is associated with exposure to wood dust at the higher levels that would be permitted in the absence of any limit. In addition, promulgation of these limits will make the PELs for these substances consistent across all OSHA-regulated sectors.

YTTRIUM AND COMPOUNDS
CAS No: 7440–65–6 (Yttrium); Chemical Formula: Varies with Compound
H.S. No. 2169

In general industry, construction, and maritime, OSHA's current PEL for yttrium and compounds (measured as yttrium) is 1 mg/m³ as an 8-hour TWA; NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. The ACGIH TLV®–TWA for yttrium and its compounds is 1 mg/m³ as an 8-hour TWA. OSHA is retaining its current limit of 1 mg/m³ as a 8-hour TWA in construction and maritime and is proposing to extend this limit to agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Yttrium is a metallic element that is odorless, lustrous, and dark gray (ACGIH 1986, p. 641(86)). Examples of yttrium compounds of commercial interest are yttrium oxide, yttrium acetate, yttrium bromide, yttrium chloride, yttrium phosphide, yttrium sulfate, yttrium vanadate, and yttrium nitrate hexahydrate. Yttrium is used to make alloys, in the manufacture of lasers, and in nuclear technology (ACGIH 1986, p. 641(86); Hawley's 1987, p. 1246). Yttrium compounds are used as reagents in analytical chemistry, as ingredients in electronic components, in phosphors for color television tubes, as mantles in gas and acetylene lights, and in many other applications (ACGIH 1986, p. 641(86); Hawley's 1987, p. 1246).

Yttrium and its compounds cause liver and lung damage in experimental animals. In general, yttrium's oral toxicity is low, although this substance is highly toxic when administered parenterally (Clayton and Clayton 1981, p. 1678). Acute toxicity varies with the compound and species. The intraperitoneal LD_{50}s in rats for yttrium chloride, yttrium nitrate, and yttrium oxide, respectively, are 45 mg/kg, 362 mg/kg, and 230 mg/kg (RTECS 1989, "Yttrium chloride"; RTECS 1990, "Yttrium oxide"; Sax and Lewis 1989, p. 3508). Rats injected intraperitoneally with 60 mg/kg of elemental yttrium every other day for 5 months survived, and autopsy failed to reveal accumulation of yttrium in the bones of these animals (MacDonald, Nusbaum, and Alexander et al. 1952, in ACGIH 1986). Rats exposed to yttrium oxide in the form of a single 50-mg intratracheal dose developed emphysema and diffuse granulomatous nodules within 8 months of the exposure (Clayton and Clayton 1981, p. 1682). Rats exposed to an unspecified concentration of yttrium chloride developed liver edema (with portal congestion), pleural effusions, and pulmonary hyperemia (Stokinger 1963, in Clayton and Clayton 1981, p. 1682).

There are no reports of yttrium-related exposure effects in humans; however, based on effects seen in animals, exposure to yttrium or its compounds is likely to cause lung and liver damage in overexposed individuals.

Based on this evidence, OSHA preliminarily concludes that workers in agriculture are at risk of experiencing lung and liver effects at the exposures permitted by the absence of an OSHA PEL. Accordingly, OSHA is proposing an 8-hour TWA PEL of 1 mg/m³ for yttrium and its compounds in agriculture. In addition, promulgation of this limit will make the PEL for yttrium consistent across all OSHA-regulated sectors.

Preliminary Conclusions For All Respiratory Toxicants

As Table C8–2 and the discussions above show, limits for the respiratory toxins have been established to control employee exposures to or below the airborne concentrations of these substances that have been associated with the development of acute or chronic respiratory effects. For most of these substances, the evidence is sufficient to identify the NOE or low-

effect levels that are related to these effects in humans or animals. Accordingly, OSHA preliminarily concludes that maintaining employee exposures at or below these limits will greatly decrease the likelihood that employees will be at significant risk of respiratory effects when they are exposed to these substances in the workplace. Because the chronic pulmonary disease caused by exposure to toxic dusts is often incapacitating, such exposures can effectively end the working life of severely affected individuals. Less-serious pulmonary disease can result in lost workdays, both as a result of the associated symptoms themselves and as a consequence of increased susceptibility to respiratory infections. The effects of exposure to acute pulmonary toxins, such as ozone or trimellitic anhydride, range from reduced lung function to life-threatening pulmonary edema. OSHA has preliminarily determined that these adverse pulmonary effects constitute material impairments of health. The Agency believes that the proposed limits will substantially reduce these significant occupational risks. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

7. Substances for Which Proposed Limits Are Based on Avoidance of Cardiovascular Effects

Introduction. OSHA is proposing to revise or establish limits for eleven chemicals on the basis of their adverse effects on the cardiovascular system. Table C7–1 lists these cardiovascular toxins, along with their CAS numbers, HS numbers, 1987–1988 ACGIH TLV®s, and NIOSH RELs (if any). In addition, Table C7–1 shows OSHA's current PELs for these substances in construction and maritime. OSHA has no PELs for these substances in agricultural workplaces. The right-hand column in Table C7–1 shows the PELs that were recently established for these cardiovascular toxins in general industry; these are the limits being proposed today for construction, maritime, and agricultural workplaces. Promulgation of these limits will thus make OSHA's PELs for these 11 substances consistent across all regulated sectors.

Description of the Health Effects. Although the cardiovascular system can be adversely affected in many different ways by exposure to toxic substances, the adverse effects caused by exposure to the eleven chemicals shown in Table C7–1 are limited to three categories: (1) Cardiac sensitization; (2) vasodilation; and (3) atherosclerosis.

TABLE C7–1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF CARDIOVASCULAR EFFECTS

H.S. Number/Chemical Name	CAS No.	Current OSHA PEL in Construction, and Maritime [1]	1987–1988 ACGIH TLV [2]	NIOSH REL [3]	Proposed OSHA PEL in Construction Maritime, and Agriculture [1]
2008 Antimony and compounds	7440–36–0	0.5 mg/m³ TWA	0.5 mg/m³ TWA	0.5 mg/m³ TWA	0.5 mg/m³ TWA.
1070 Carbon disulfide	75–15–0	20 ppm TWA, Skin	10 ppm TWA, Skin	1 ppm TWA, 10 ppm Ceiling (15-min).	4 ppm TWA, 12 ppm STEL, Skin.
1087 Chloropentafluoroethane	76–15–3		1000 ppm TWA		1000 ppm TWA.
2058 Dichlorodifluoromethane	75–71–8	1000 ppm TWA	1000 ppm TWA		1000 ppm TWA.
2060 Dichlorotetrafluoroethane	76–14–2	1000 ppm TWA	1000 ppm TWA		1000 ppm TWA.
1170 Ethylene glycol dinitrate	628–96–6	1 mg/m³ Ceiling, Skin	0.3 mg/m³ TWA, Skin	0.1 mg/m³ Ceiling (20-min) *	0.1 mg/m³ STEL, Skin.
1180 Fluorotrichloromethane	75–69–4	1000 ppm TWA	1000 ppm Ceiling		1000 ppm Ceiling.
1290 Nitroglycerin	55–63–0	2 mg/m³ TWA, Skin	0.5 mg/m³ TWA, Skin	0.1 mg/m³ Ceiling (20-min) *	0.1 mg/m³ STEL, Skin.
2124 Pentachlorophenol	87–86–5	0.5 mg/m³ TWA, Skin	0.5 mg/m³ TWA, Skin		0.5 mg/m³ TWA, Skin.
1364 Sodium azide	26628–22–8		0.1 ppm Ceiling		0.1 ppm Ceiling, Skin (as HN_3); 0.3 mg/m³ Ceiling, Skin (as NaN_3).
1403 1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	1000 ppm TWA	1000 ppm TWA, 1250 ppm STEL		1000 ppm TWA, 1250 ppm STEL.

[1] OSHA's PELs do not currently apply in Agriculture; OSHA's TWA limits are for 8-hour exposures, its STELs are for 15 minutes unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time.

[2] The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times in any working day, with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

[3] NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

* This is the limit recommended by NIOSH for ethylene glycol dinitrate or nitroglycerin alone or for a mixture of the two.

Because these effects can have potentially disabling or life-threatening outcomes, OSHA has preliminarily concluded that these effects clearly constitute material impairments of health and functional capacity.

Cardiac sensitization is a form of sensitization that is not mediated by the immune system; instead, chemicals that are cardiac sensitizers make the heart sensitive to the effects of a class of biological compounds called sympathomimetic amines. The physiological action of sympathomimetic amines is to stimulate the heart to beat faster; the hormone adrenaline (also called epinephrine) is an example of a sympathomimetic amine. Adrenaline is normally secreted into the bloodstream when the body anticipates an increase in physical exertion, such as occurs when someone is frightened. To increase the heartbeat rate, individuals must be exposed to a concentration (dose) of epinephrine that is equal to or higher than the no-effect level for this substance. The effect of a cardiac sensitizer is to lower the no-effect level so that the heartbeat rate is stimulated by exposure to a lower concentration (or dose) of adrenaline. The region of the heart that becomes sensitized is the pacemaking and conduction system, which determines the rhythm and rate of the heartbeat. Unregulated or unnecessary interference with this region of the heart can result in arrhythmia, an abnormality in the rhythm or rate of the heartbeat (Levy 1985/Ex. 1–210). The clinical consequences of arrhythmia vary among individuals, e.g., a young person with a healthy heart may not be adversely or seriously affected by an arrhythmia. However, fatal arrhythmias have occurred in healthy young people, and arrhythmias can result in cerebral or myocardial ischemia, shock, or

congestive heart failure in older people or in individuals whose cardiovascular systems have already been compromised.

Vasodilators are compounds that cause blood vessels to expand, resulting in a decrease in blood pressure (hypotension) and a decrease in the amount of blood reaching the organs. Acute hypotension is a common cause of shock ("Harrison's Principles of Internal Medicine," 10th ed., Petersdorf et al. 1983). Chronic hypotension may result in a number of symptoms, including lethargy, weakness, easy fatigability, and dizziness or faintness.

Atherosclerosis is a serious disease produced by a degenerative process in the arteries. Plaques containing lipids, complex carbohydrates, blood products, and calcium form on the inside walls of arteries, usually on the major blood vessels. These plaques are also called atheromas; their presence makes arteries narrower. Depending on which arteries in the body contain atheromas, different clinical consequences may result; these include renal hypertension, stroke, and myocardial ischemia (inadequate circulation of blood to the myocardium) (Balazs, Hanig, and Herman 1986/Ex. 1–176). Some chemicals can enhance or accelerate the formation of atheromas and thereby encourage the development of atherosclerosis, a major cause of coronary heart disease.

Dose-Response Relationships and Cardiac Effects

For several of the chemicals shown in Table C7–1, the proposed limits are based primarily on epidemiological studies, health surveys, and case reports indicating that occupationally exposed workers subjected to concentrations above a no-adverse-effect level experience these cardiovascular effects. However, human data for several other of these chemicals are scarce. For these chemicals, the proposed limits are based on the results of studies in laboratory animals.

Chemically induced cardiovascular disease occurs in a pattern that corresponds to a typical effect-level dose-response relationship; that is, an exposure level and exposure duration exist below which the substance appears unlikely to exert an adverse effect. Thus, the limits proposed for substances in this group are designed to maintain exposures below this apparent no-adverse-effect level. For the eleven substances in this group of cardiovascular toxins, the available toxicologic data and OSHA's preliminary findings are described below.

ANTIMONY AND COMPOUNDS
CAS: 7440–36–0; Chemical Formula: Varies
H.S. No. 2008

OSHA's current PEL for antimony and its compounds (measured as antimony, or Sb) in general industry, construction, and maritime is 0.5 mg/m³ as an 8-hour time-weighted average. There is no PEL in agriculture. Both NIOSH and the ACGIH also have an 8-hour TWA limit of 0.5 mg/m³ for this substance and its compounds. OSHA is proposing to establish an 8-hour TWA PEL of 0.5 mg/m³ for antimony and its compounds in agriculture. This is the limit recently established for these substances in general industry.

Antimony is a shiny, silvery or gray metal or a yellow crystalline solid (New Jersey Department of Health 1986). Some of the compounds of antimony in industrial use include antimony lactate, antimony pentachloride, antimony pentafluoride, antimony potassium tartrate, antimony tribromide, antimony trichloride, antimony trifluoride, and antimony trioxide. These compounds find use in various applications: fabric dyeing; metal-coloring; catalytic reactions; insecticidal applications; the production of porcelain, pottery, and pigments; and in decolorizing glass. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Antimony and its compounds pose hazards to exposed individuals by several routes of exposure: inhalation, ingestion, and eye or skin contact. Experimental animals exposed to antimony and its compounds by inhalation develop pulmonary irritation; autopsy of acutely poisoned animals reveals enlargement of splenic follicles and fatty degeneration of the liver (NIOSH/OSHA 1988). The oral LD_{50} in rats for elemental antimony is 100 mg/kg (Genium 1989). For antimony trifluoride, the oral LD_{50} in mice is 804 mg/kg (Genium 1989); for antimony trichloride, the oral LD_{50} in rats is 525 mg/kg (RTECS 1990). For antimony pentachloride, the LC_{50} in rats is 720 mg/m³ for 2 hours (RTECS 1990).

Guinea pigs exposed chronically (duration not specified) to 45 mg/m³ of antimony trioxide developed extensive pneumonitis; at autopsy, they also exhibited fatty degeneration of the liver (Dernehl, Nau and Sweets 1945). Rabbits and rats exposed for 100 hours/month for 10 or 14.5 months to 100 to 125 mg/m³ concentrations of antimony (rats) or to 89 mg/m³ concentrations of antimony (rabbits) developed lipoid pneumonia (Gross 1955). Female rats exposed to antimony trioxide at a concentration of 3.2 or 4.2 mg/m³ for 6 hours/day, 5 days/week for 1 year developed lung tumors (EPA 1983). Rats, rabbits, and dogs exposed 7 hours/day to antimony sulfide (at an antimony concentration of 3.07 to 5.6 mg/m³) for 6 weeks developed functional disorders of the heart and parenchymatous degeneration of the myocardium (Brieger, Semisch, Stasney, and Piatner 1954).

In humans, exposure to antimony compounds causes, depending on the specific compound, irritation of the eyes, mucous membranes, and skin, pneumoconiosis, chronic cough, gastrointestinal symptoms, and cardiac effects (Potkonjak and Pavlovich 1983; Taylor 1966). Workers exposed to antimony trisulfide, antimony trioxide, or antimony trichloride have developed pulmonary fibrosis, electrocardiogram changes, heart muscle changes, and sudden death from heart attack (NIOSH/OSHA 1988). In a group of abrasive industry workers examined after exposure to mean antimony levels of 3 to 5 mg/m³ for 6 months to 2 years, 37 of 75 were found to have changes in their electrocardiograms, 14 of 75 had elevated blood pressure readings, and 7 of 111 had ulcers; six sudden heart-related deaths and two other deaths from chronic heart disease had occurred among these workers (Brieger, Semish, Stasney, and Piatner 1954). Dermal effects, known as "antimony spots" have been recognized in antimony workers for years, but the pneumoconiotic potential of these compounds has only been recognized in the last 20 years or so (McCallum 1963). Antimony spots take the form of papules and pustules around the sweat and sebaceous glands (McCallum 1963). Exposure to antimony halides or oxides causes irritation of the eyes, nose, and upper respiratory tract in exposed workers (Taylor 1966; Cordasco 1974). Increased rates of spontaneous abortions and premature births have been reported in metallurgical workers in the Soviet Union (Belyaeya 1967); there is also some evidence that exposure to antimony may cause an increased risk of lung cancer (Proctor, Hughes, and Fischman 1988, p. 79).

Based on the evidence discussed above, OSHA preliminarily concludes that, in the absence of a limit, agricultural workers who are exposed to antimony or its compounds are at increased risk of irritation of the eyes, nose, and upper respiratory tract; pneumoconiosis; skin rashes and pustules; spontaneous abortion and premature birth of offspring; and,

perhaps, of lung cancer. The Agency believes that the proposed permissible exposure limit of 0.5 mg/m³ (measured as antimony) will reduce these significant risks among agricultural workers. In addition, promulgation of this limit will make OSHA's PEL for these substances consistent across all regulated sectors.

CARBON DISULFIDE

CAS: 75–15–0; Chemical Formula: CS_2
H.S. No. 1070

In construction and maritime, OSHA's current limit for carbon disulfide is 20 ppm as an 8-hour TWA, with a skin notation. OSHA has no PEL for this substance in agriculture. The 1987–1988 ACGIH TLV®-TWA for this substance is 10 ppm, with a skin notation. NIOSH has recommended exposure limits of 1 ppm as a 10-hour TWA and 10 ppm as a 15-minute ceiling. NIOSH also concurs (Ex. 8–47, Table N1) with the limits being proposed. OSHA is proposing an 8-hour TWA PEL of 4 ppm and with a 12-ppm 15-minute STEL for carbon disulfide, with a skin notation. These are the limits recently established for carbon disulfide in general industry.

Carbon disulfide is a clear, colorless, or faintly yellow liquid with a strong, disagreeable odor. This substance is used in the manufacture of soil disinfectants; as a veterinary anthelmintic; as a solvent and corrosion inhibitor; as a space and commodity fumigant; as a catalyst; and as a chemical intermediate in rayon and other manufacturing processes (HSDB 1985).

Carbon disulfide is a narcotic and a central nervous system toxin in animals. The oral LD_{50} in rats is 3188 mg/kg, and the lowest lethal inhalation dose in the same species is 25 g/m³ for 2 hours (RTECS 1989). Animals acutely poisoned by exposure to carbon disulfide show excitement followed by muscular weakness, collapse, coma, and death by respiratory failure (HSDB 1985); at autopsy, animals showed degenerative changes in the ganglion cells of the retina and optic nerve (Grant 1986). Carbon disulfide has shown embryotoxic and fetotoxic effects in rats, mice, and rabbits by the oral and inhalation routes of administration (RTECS 1990); it also has reproductive effects in animals of several species (RTECS 1990). In humans, carbon disulfide causes adverse cardiovascular effects and damages the central and peripheral nervous systems (Proctor, Hughes, and Fischman 1988, p. 120). Occupational exposure to carbon disulfide has caused mental disturbances, including confusion, irritability, insomnia, and overt psychosis (Rom 1983, p. 318).

OSHA is proposing to reduce the exposure limits for carbon disulfide on the basis of the results of several studies of British and Finnish workers (Tiller, Schilling, and Morris 1968/Ex. 1–92; Seppalanin and Tolonen 1974/Ex. 1–100; Tolonen et al. 1975/Ex. 1–392; Tolonen, Nurminen, and Hernberg 1979/Ex. 1–158; Sweetnam, Taylor, and Elwood 1987; and Nurminen and Hernberg 1985). These studies, taken as a whole, indicate that long-term exposure to carbon disulfide concentrations at levels between 10 and 40 ppm is associated with an excess risk of adverse neurological effects and with excess mortality for coronary heart disease.

The study by Tiller et al. (1968/Ex. 1–92) of British rayon workers was the first to relate exposure to carbon disulfide with the development of coronary heart disease. These authors found that, among men employed for more than 10 years in the rayon industry and followed from 1950 to 1964, those exposed to carbon disulfide had death rates from coronary heart disease that were more than twice the rate in other rayon workers. Thus, the Tiller et al. (1968/Ex. 1–92) study demonstrated that 10 years or more of exposure to carbon disulfide was associated with a significantly elevated risk of coronary disease.

The United Kingdom's threshold limit value for carbon disulfide, which had been 20 ppm in the 1960s, was reduced to 10 ppm in the 1970s. To examine the effect of this reduced limit on occupational risk, Sweetnam et al. (1987) conducted a follow-up study on the cohort first described by Tiller et al. (1968/Ex. 1–92). The health status and cause of death for 2,848 members of this cohort were ascertained up to the end of 1982. Exposure scores representing cumulative exposure to carbon disulfide were developed for each cohort member, based on an analysis of personal and area sampling results, job category, and time spent in each job category. Sweetnam et al. (1987) found the pattern of mortality similar to that found by Tiller, Schilling, and Morris (1968/Ex. 1–92): among spinner operators, who had the highest CS_2 exposures of any job category, 73 deaths from ischemic heart disease (IHD) were identified, compared with 42.5 expected deaths (SMR=172), a finding that was statistically significant. A statistically significant trend was found between cumulative exposure since first exposure and incidence of IHD mortality, which indicates a dose-related effect. A second (and perhaps more important) finding of this study was that recent (or current) exposure to carbon disulfide, as well as total cumulative exposure, were both risk factors for IHD. The authors established this association by examining the relationship between IHD mortality risk and each worker's total CS_2 exposure in the two years preceding death or the two years before the end of the study. The third result of this study was that workers with current CS_2 exposure also had significantly higher risk than workers whose exposure had ceased. The dose-related relationship between increased IHD mortality risk and recent exposure to carbon disulfide suggested to the authors of this study that the effect of carbon disulfide on the cardiovascular system was direct and reversible.

Thus, the Sweetnam et al. (1987) follow-up study determined that there is a relationship between the risk of IHD mortality and increased cumulative exposure to CS_2. Among workers who terminated exposure, this risk declined to non-statistically significant levels after one year of no exposure. However, risk continued to be elevated among workers who continued to be exposed or who had not been exposure-free for a full year. OSHA believes that the findings of this study indicate that cumulative CS_2 dose from time of first exposure is a risk factor for IHD, and that this elevated risk continues unless exposure is terminated. That is, OSHA believes that workers who have been exposed to CS_2 in the past continue to be at increased risk as long as they are exposed to CS_2, even when their recent exposure is to lower levels (approximately 10 ppm, the current limit in the United Kingdom).

This interpretation appears to have been confirmed by Nurminen and Hernberg (1985) in their follow-up study of 343 Finnish rayon workers who had been exposed to carbon disulfide for at least five years. Health status data were obtained for these workers for the period 1967 to 1982. In 1972, a preventive program had been instituted that included the establishment of a 10-ppm exposure limit and the removal of workers at high risk of coronary disease from continued exposure to carbon disulfide. Median exposure levels (calculated largely from area samples) for the period 1975 to 1980 did not exceed 5 to 6 ppm, and third-quartile exposure levels did not exceed 10 ppm. These levels were about half those reported for the period 1967 to 1975.

Nurminen and Hernberg (1985) reported a 4.7-fold increase in IHD mortality incidence for the period 1967 to 1972, i.e., for the period prior to the

establishment of the protective measures described above. Five years after these measures were instituted, only 19 percent of the cohort continued to be exposed to carbon disulfide (compared to 53 percent of the cohort exposed in 1972). The relative risk for the first seven years of follow-up (1967 to 1974) was 3.2, compared with a relative risk of 1.0 for the last eight years (1974 to 1982). The excess risk of IHD mortality thus declined steadily throughout the follow-up period; this trend was statistically significant. The authors concluded that "* * * the cardiotoxic effects of CS_2 are reversible in the sense that the cessation of, or a radical decrease in, exposure reduces the risk of cardiovascular mortality to background levels" (Nurminen and Hernberg 1985, p. 34). Thus, the Nurminen and Hernberg (1985) study shows that reducing exposure levels below 10 ppm (combined, in their case, with a rigorous medical removal program to terminate exposure for employees who had developed signs or symptoms of coronary heart disease) can reduce the significant risk of IHD mortality to baseline levels.

It should be noted, however, that this study should not be interpreted to mean that 10 ppm is sufficiently protective. The average exposure of this group was to concentrations of about 5 ppm. In addition, this workforce was highly selective, because workers having a risk factor for cardiovascular disease had been removed. As many as 50 percent of all middle-aged men have some risk factors for cardiovascular disease; however, a medical screening program as rigorous as the one in place for the workers in this study would undoubtedly screen out perhaps as many as half the workforce. Furthermore, a workforce this selective would be expected to have a below-average rate of cardiovascular disease; instead, it should be noted that they actually had an average cardiovascular disease risk.

In the earlier PEL rulemaking, OSHA proposed a 1-ppm 8-hour TWA for carbon disulfide, and many commenters, including NIOSH (Exs. 8–47 and 193), the AFL–CIO (Ex. 194), and Dr. James Melius, Director of the Division of Occupational Health and Environmental Epidemiology of the New York Department of Health (Ex. 152), supported this proposed limit. Some participants (Exs. 3–747, 3–1158, 8–19, 8–45, 31, 125, and 174; Tr. pp. 4–74 to 4–107) in the prior rulemaking argued that the evidence in the studies described above did not support a limit of 1 ppm; these commenters argued that the cohorts in which excess deaths from cardiovascular disease had been seen included workers who had been exposed for many years to levels of carbon disulfide much higher than the 10- to 40-ppm levels generally reported in these studies.

OSHA responded to these commenters in the preamble to the final rule for air contaminants in general industry (54 FR 2537) by stating that, in the Agency's opinion, both cumulative exposure and current exposure are risk factors for IHD among CS_2-exposed workers. Further, OSHA stated that the Agency believes that this excess risk continues for as long as exposure continues.

A recent epidemiologic study by MacMahon and Monson (1988/Ex. 125) also supports carbon disulfide's cardiotoxicity in the workplace setting. The cohort in this study consisted of 10,418 men employed between 1957 and 1979 in the four principal viscose rayon plants in the United States, and the mortality status of the cohort was ascertained up to mid-1983. Cohort members were placed into general exposure categories according to job title; these categories were highest, intermediate, variable, least, and none. The authors found no significant increase in overall mortality in the 4,448 employees with the highest potential for CS_2 exposure compared with the mortality among 3,311 employees with no CS_2 exposure. However, there was a statistically significant excess of arteriosclerotic heart disease (ASHD) among the most heavily exposed workers (242 deaths versus 195.6 expected). No clear relationship was observed between exposure duration or latency and excess ASHD mortality; however, the data suggest that the risk was higher among employees exposed to CS_2 for 15 or more years and among employees hired prior to 1960.

In addition, MacMahon and Monson (1988/Ex. 125) found a statistically significant increase in the SMR (SMR=150) for ASHD among members of the cohort who had been exposed to CS_2 in the year immediately preceding death or in the year immediately preceding the termination date of the study (Ex. 125, Attachment B, Table 7, p. 702); however, there was no general pattern of increased SMRs among cohort members whose time since last exposure exceeded one year. This finding is consistent with the results of the British studies, which also found an increased risk of heart disease among recently exposed employees but not among employees who had left their jobs.

In the prior rulemaking, one commenter (1988/Ex. 125) interpreted the MacMahon and Monson study as meaning that U.S. workers employed since 1960 were not at risk of ASHD (Tr. 4–96). However, OSHA disagrees with this view and believes that the results of the MacMahon and Monson (1988/Ex. 125) study are supportive of and consistent with those of the British and Finnish studies discussed above, for the following reasons. First, all of the studies clearly demonstrate a positive association between exposure to carbon disulfide and an increased risk of mortality from heart disease. Second, studies from all three countries link the excess risk to cumulative CS_2 exposure. Third, studies from all three countries demonstrate that this significant risk can be substantially reduced or eliminated by reducing or stopping exposure, even after a considerable CS_2 dose has accumulated; both the U.S. and British studies report a significantly increased risk of death from heart disease among workers who were recently exposed but no increased risk among workers whose exposures had ended one year or longer prior to death or prior to the end of the study. Moreover, the Finnish study reported steady declines in heart disease mortality among workers after exposure levels were reduced to below 10 ppm and a rigorous medical screening and removal program was instituted. These findings would appear to demonstrate that current or continued exposure to carbon disulfide at the levels presently encountered in these facilities is as important a risk factor for heart disease mortality as cumulative exposure. Therefore, reducing exposures to below 10 ppm does not by itself appear to eliminate risk.

In addition to evidence that carbon disulfide is a cardiovascular toxin, there is a substantial body of evidence that exposure to carbon disulfide presents a fetotoxic hazard and that this substance may also be a teratogen. Some of the early (pre-1977) animal data on reproductive effects were reviewed in the NIOSH criteria document (1977b/Ex. 1–260) on carbon disulfide. There are also two more recent and relevant reports (Cai and Bao 1981 and Hemminki and Niemi 1982). Cai and Bao (1981) reported increased incidences of menstrual disturbances and of pregnancy toxemia, a potentially lethal condition, among rayon workers and also presented evidence that CS_2 can cross the placental barrier and be secreted into mothers' milk. The Hemminki and Niemi (1982) study found a significantly elevated incidence of

spontaneous abortions among women employed in viscose rayon facilities in Finland; however, data on the specific CS_2 exposure levels were generally lacking.

The Rohm and Haas Company submitted a summary (Ex. 10–5) of the evidence on the reproductive toxicity of carbon disulfide to the docket in the prior rulemaking; this information shows that carbon disulfide has caused fetal deaths and malformations in CS_2-exposed laboratory animals. Rohm and Haas described studies in which oral administration of CS_2 to female rats during gestation produced both teratogenic and fetotoxic effects. These effects were magnified in the F_2 offspring of the prenatally exposed F_1 generation, which suggests that CS_2 has a multi-generational effect that continues to cause malformations in successive generations.

Jones-Price et al. (1984) found both maternal and fetal toxicity in CD rats exposed orally to 200, 400, or 600 mg/kg/day CS_2 during days 6 through 15 of gestation. No dose-related increases in the incidence of teratogenicity were observed. In another report, these authors found significant dose-related increases in percent resorptions/litter, percent non-live (dead or resorbed)/litter, and percent of fetuses affected (non-live and malformed)/litter among New Zealand White rabbits exposed orally to 25, 75, or 150 mg/kg/day during days 6 through 19 of gestation. The percentage of malformed fetuses per litter increased with dose and was statistically significant at the highest dose tested.

In an inhalation study, Hardin, Bond, Sikov et al. (1981/Ex. 1–699) exposed rats and rabbits to 20 or 40 ppm CS_2 for 6.5 hours per day during days 1 through 19 (rats) or 1 through 24 (rabbits) of gestation. No embryotoxic or fetotoxic effects were noted, indicating that 40 ppm is a no-effect level for these effects in rats and rabbits. It would thus appear that the lowest-reported-effect level (25 mg/kg/day) documented by Jones-Price et al. (1984) for embryotoxicity/fetotoxicity in rabbits corresponds to an equivalent airborne exposure of 58 ppm; this lowest-reported-effect level is in close agreement with the no-effect level reported by Hardin et al. (1981/Ex. 1–699) for the same species.

OSHA believes that this evidence, which shows that fetotoxic and teratogenic effects are associated with exposure to carbon disulfide, warrants concern, particularly in light of the fact that CS_2 has been shown to cause multigenerational effects in rats. Based on the significant risks of reproductive effects and cardiovascular disease, OSHA has preliminarily concluded that a substantial reduction in the PEL for carbon disulfide is justified for workers in the construction, maritime, and agriculture industries. The 4 ppm level proposed thus provides a 10-fold "safety factor" for fetotoxic effects in animals. Secondly, 10 ppm does not appear to be sufficiently protective to eliminate significant risk of cardiovascular disease. The additional protection of 4 ppm is needed for these effects. The Agency preliminarily finds that the proposed limits of 4 ppm as an 8-hour TWA and 12 ppm as a STEL, with a skin notation, will protect workers in these sectors from these significant risks, which constitute material health impairments that are potentially associated with exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CHLOROPENTAFLUOROETHANE

CAS: 76–15–3; Chemical Formula: $ClCF_2CF_3$

H.S. No. 1087

OSHA has no limit for chloropentafluoroethane (FC–115) in construction, maritime, or agriculture. The ACGIH TLV® for this substance is 1000 ppm as an 8-hour TWA; NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL for chloropentafluoroethane of 1000 ppm in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Chloropentafluoroethane is a colorless, nonflammable gas that has a mild, ether-like odor. Chloropentafluoroethane is used primarily as a refrigerant; a dielectric gas; an aerosol propellant; and in food preparation (HSDB 1989).

At high concentrations, this substance is an asphyxiant and a cardiac sensitizer. At lower concentrations and in liquid (pressurized) form, contact of FC–115 with the skin causes frostbite and burns (Braker and Mossman 1980, p. 176). Rats, mice, rabbits, and dogs have tolerated six-hour daily exposures to 100,000 ppm FC–115 for 90 days without adverse effects (Clayton, Hood, Nick, and Waritz 1966/Ex. 1–952), and laboratory animals have tolerated exposure to 200,000 ppm for 3.5 hours daily, five days per week, for four weeks (Weigand 1971/Ex. 1–1102). However, dogs exposed to a 10- or 20-percent concentration of FC–115 (approximately 100,000 to 200,000 ppm) showed central nervous system depression (Aviado and Belej 1975), and rats exposed to 190,000 ppm for between 4 and 26 minutes developed apnea (cessation of breathing) (HSDB 1989). FC–115's potential for cardiac sensitization caused one of 13 unanesthetized dogs to develop cardiac sensitization after exposure to 150,000 ppm intravenously (Trochimowicz, Azar, Terrill, and Mullin 1974/Ex. 1–448; Reinhardt, Azar, Maxfield, et al. 1971). Several other studies indicate that unanesthetized dogs, rats, and monkeys exposed to concentrations between 100,000 ppm and 200,000 ppm may show increased blood pressure, accelerated heart rate, myocardial depression, or altered pulmonary effects under certain conditions (Belej and Aviado 1975/Ex. 1–462; Friedman, Cammarato, and Aviado 1973/Ex. 1–416; Aviado and Belej 1975/Ex. 1–616).

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA permissible exposure limit of 1000 ppm for chloropentafluoroethane to protect workers in construction, maritime, and agriculture from the significant risk of FC–115-related cardiac effects. This limit includes a reasonable safety factor in light of the seriousness of the effect and the need to account for interspecies variation. The Agency believes that these health effects constitute material impairments of health and functional capacity and that the PEL is necessary to reduce these risks. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

DICHLORODIFLUOROMETHANE

CAS: 75–71–8; Chemical Formula: CCl_2F_2

H.S. No. 2058

OSHA's current PEL for dichlorodifluoromethane in general industry, construction, and maritime is 1000 ppm as an 8-hour TWA; there is no PEL in agriculture. The ACGIH TLV®–TWA for dichlorodifluoromethane is 1000 ppm; NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA of 1000 ppm for dichlorodifluoromethane in agriculture. This action will make the PEL for this substance consistent across all OSHA-regulated sectors.

Dichlorodifluoromethane, also called Fluorocarbon 12, is a colorless, nonflammable gas. It is odorless in concentrations below 20 percent by volume; at higher concentrations, it has a mild ether-like odor similar to that of carbon tetrachloride (Braker and Mossman 1980, p. 231). Dichlorodifluoromethane is used as a refrigerant, a blowing agent for polymeric foams, and a fixative for

frozen tissue sections; formerly, it was widely used as an aerosol propellant (ACGIH 1986, p. 181; HSDB 1990).

Dichlorodifluoromethane is an irritant and a narcotic in humans and animals; at very high concentrations, inhalation of this substance causes asphyxiation. Dichlorodifluoromethane also causes cardiac sensitization in animals. The LC_{50} in rats is 800,000 ppm for 30 minutes (RTECS 1990). Dogs, monkeys, and guinea pigs exposed to a 200,000-ppm concentration of dichlorodifluoromethane for several hours daily for several days exhibited the following signs: Tremors, ataxia, salivation, and lacrimation (Grant 1986, p. 322). Rats exposed to a 10,000-ppm concentration of this substance for 6 hours/day for 90 days and dogs exposed to a 5,000-ppm concentration on the same regimen showed no adverse effects (Leuschner, Neumann and Hubscher 1983). Cardiac arrhythmias were observed in five of 12 dogs exposed both to a 50,000-ppm concentration of dichlorofluoromethane and to intravenous epinephrine (Reinhardt, Azar, Maxfield et al. 1971). Carcinogenicity and teratogenicity studies involving this substance have been negative (Maltoni, Lefemine, Tovoli, and Perino 1988; Brar, Jackson, Traitor et al. 1976).

In humans, dichlorodifluoromethane causes eye and upper respiratory tract irritation as well as central nervous system depression. Volunteers exposed to a 200,000-ppm concentration of dichlorodifluoromethane for a brief (not further specified) time reported experiencing eye irritation and central nervous system effects; all effects reversed after termination of exposure (Proctor, Hughes, and Fischman 1988, p. 187). When the concentration was reduced to 110,000 ppm and the duration was increased to 11 minutes, volunteers experienced amnesia, cardiac arrhythmias, and a decrease in their level of consciousness (Proctor, Hughes, and Fischman 1988, p. 187). At an exposure level of 40,000 ppm for 80 minutes, subjects experienced ringing in the ears, a feeling of apprehension, and generalized paresthesia; their speech was also slurred (Proctor, Hughes, and Fischman 1988, p. 187). Two volunteers exposed to 10,000 ppm for 2.5 hours showed psychomotor impairment on testing (Azar, Reinhart, Maxfield, et al. 1972). Exposing volunteers to a 1000-ppm concentration of dichlorodifluoromethane for 8 hours/day for 17 days, however, caused no exposure-related effects (Stewart, Newton, Baretta, et al. 1978). A man who accidentally punctured a refrigerator coil containing dichlorodifluoromethane subsequently developed bronchopneumonia and died; he is believed to have aspirated the freezing liquid or vapor (Laurain 1964). A man chronically exposed to dichlorodifluoromethane at work (concentrations unknown) developed chronic pharyngolaryngeal edema, with the following signs and symptoms: dysphagia, dysphonia, and inspiratory dyspnea; these effects disappeared after the man moved to another job (Tanturri, Pia, and Benzi 1988).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers in agriculture are at significant risk of experiencing these exposure-related effects and that implementation of the proposed 8-hour TWA PEL of 1000 ppm will substantially reduce these risks. Adoption of the proposed limit will also ensure consistency in OSHA's limit for this substance in all regulated sectors.

DICHLOROTETRAFLUOROETHANE
CAS: 76–14–2; Chemical Formula:
$CClF_2CClF_2$
H.S. No. 2060

The current OSHA limit for dichlorotetrafluoroethane in general industry, construction, and maritime is an 8-hour TWA PEL of 1000 ppm. OSHA does not currently have a limit for this substance in agriculture. The ACGIH has a TLV®–TWA of 1000 ppm for dichlorotetrafluoroethane; NIOSH has no REL but concurs (Ex. 8–47, Table N3A). OSHA is proposing an 8-hour TWA PEL of 1000 ppm for this substance in agriculture; this action will ensure consistency in the limit for dichlorotetrafluoroethane in all OSHA-regulated sectors.

Dichlorotetrafluoroethane is a colorless, nonflammable gas with a faint ether-like odor at high concentrations (Merck 1983, pp. 373–374). It is shipped as a liquefied gas. This substance is used as a solvent; in fire extinguishers; as a refrigerant, blowing agent, and dielectric fluid; and in air conditioning systems (Hawley's 1987, p. 382; Hazardous Substance Fact Sheet 1986, p. 1).

At extremely high concentrations, dichlorotetrafluoroethane can cause asphyxia. It also causes cardiac sensitization, central nervous system depression, and respiratory and eye irritation in humans and experimental animals (Proctor Hughes and Fischman 1988, p. 193; Gosselin 1984, P. II–160). The LC_{50} values for rats, mice, and rabbits are 720,000, 700,000, and 750,000 ppm, respectively, for 30-minute exposures (RTECS 1987). Local inflammation of the skin and eyes was caused by repeated spraying of the skin or eyes of rats or rabbits with dichlorotetrafluoroethane (Quevauviller 1965; Quevauviller et al. 1964, in ACGIH 1986, p. 191). Exposures to concentrations of 300,000 to 400,000 ppm disturbed the equilibrium of rats and guinea pigs exposed to these concentrations for 2 hours (Scholz 1962, in ACGIH 1986, p. 191). Guinea pigs exposed for 2 hours to concentrations ranging from 8000 to 47,000 ppm developed irregular breathing patterns but showed no other signs of toxicity (Nuckolls 1933, in ACGIH 1986, p. 191). Although dogs survived single 8-hour exposures to a concentration of 200,000 ppm, a single 16-hour exposure or repeated 8-hour exposures to the same concentration proved to be lethal. After twenty-one 8-hour exposures to concentrations ranging from 142,000 to 150,000 ppm, dogs were alive but showed blood changes, incoordination, and convulsions (Yant 1933). One of 12 dogs experienced serious cardiac arrhythmia after exposure to a 25,000 ppm concentration of dichlorotetrafluoroethane and an injection of epinephrine (Reinhardt, Azar, Maxfield 1971). Another study reported that exposure to a dichlorotetrafluoroethane concentration of 50,000 to 800,000 induced cardiac sensitization in dogs (Reinhardt, Azar, Maxfield et al. 1971; Mullin, Azar, Reinhardt et al. 1972). Chronic exposure of rats to 10,000 ppm and dogs to 5,000 ppm for 6 hours/day for 90 days caused no clinical, biochemical, or histologic changes visible at autopsy (Leuschner et al. 1983, in Proctor, Hughes, and Fischman 1988, p. 193).

In humans, exposure to dichlorotetrafluoroethane vapor causes mild and transient central nervous system damage (Gosselin, Smith, and Hodge 1984, p. II–160). Contact with the cryogenic liquid can cause frostbite or burns of the skin or eyes (Proctor, Hughes, and Fischman 1988, p. 193).

Based on this evidence in humans and animals, OSHA primarily concludes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing eye and respiratory irritation and central nervous system depression. OSHA believes that an 8-hour TWA PEL of 1000 ppm will substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYLENE GLYCOL DINITRATE
CAS: 628–96–6; Chemical Formula:
$CH_2NO_3CH_2NO_3$
H.S. No. 1170

NITROGLYCERIN
CAS: 55–63–0; Chemical Formula:
$CH_2NO_3CHNO_3CH_2NO_3$
H.S. No. 1290

OSHA's current exposure limits for ethylene glycol dinitrate (EGDN) and nitroglycerin (NG) in construction and maritime are both 0.2 ppm (1.0 mg/m³) as ceiling concentrations. These limits also bear skin notations. There are no PELs for these substances in agriculture. The ACGIH TLV®s for EDGN and NG are 0.05 ppm (0.3 mg/m³) as 8-hour TWAs, with skin notations. OSHA is proposing limits for EDGN and NG in construction, maritime, and agriculture of 0.1 mg/m³ as 15-minute STELs and is retaining the skin notations; these limits are based on NIOSH's recommended limits. These are the limits recently established for these substances in general industry.

EDGN is an oily, yellowish, explosive liquid, and NG is a pale yellow, viscous liquid. EDGN and NG are frequently encountered together in dynamite and other high explosives. EDGN is used exclusively as an anti-freezing agent in such explosives. NG is also used in rocket propellant (HSDB 1989), as a medication for cardiovascular disease, and in veterinary medicine to treat asthma in dogs (Merck 1983).

Both NG and EDGN have moderate acute toxicity when administered orally to rats or mice; the oral LD_{50}s for NG in rats and mice are 105 and 115 mg/kg, respectively, and the oral LD_{50} for EDGN in rats is 616 mg/kg (RTECS 1990). Animals given NG or EDGN orally exhibit marked cardiovascular and other symptoms, including decreased blood pressure, tremors, ataxia, lethargy, altered respiration, cyanosis, prostration, convulsions, and death from either respiratory or cardiac arrest. In addition, both NG and EDGN produce methemoglobinemia in animals following acute exposure. Chronic exposure (2 ppm, 8 hours/day, for 1000 days) of cats to EDGN caused anemia; fatty changes in the heart, liver, and kidney; and hyperplasia of the bone marrow (HSDB 1989). Reproductive and developmental effects have been noted in rats exposed to NG by skin painting (2400 mg/kg for 30 days) and intraperitoneal injection (11 or 220 mg/kg during days 7–17 of pregnancy) (RTECS 1990).

The cardiovascular effects seen in animals have also occurred in humans; low-level exposure to NG or EDGN causes headache (due to vasodilation), dizziness, nausea, skin rash, and methemoglobinemia. More severe exposure results in hypotension, flushing, palpitations, delirium, and central nervous system depression. Consumption of alcohol can aggravate these effects. Exposure to NG or EGDN can also result in persistent tachycardia and reduced pulse pressure (Carmichael and Lieben 1963).

Workers exposed to NG or EDGN for a period of time (i.e., 6 to 10 years) may develop organic nitrate dependence, which causes severe and life-threatening symptoms to appear after periods of non-exposure (such as after a weekend). In such cases, affected individuals complain of sudden chest pains that resemble angina pectoris and then die suddenly, often before treatment can be administered (Carmichael and Lieben 1963; Proctor, Hughes, and Fischman 1988, p. 247, 376).

A number of investigations provide information on the exposure levels that result in adverse effects in humans. Trainor and Jones (1966/Ex. 1–107) reported that exposure to EGDN:NG at a level of 0.7 mg/m³ for 25 minutes was sufficient to produce decreased blood pressure and a slight headache in humans. These authors also reported that workers at a munitions plant developed headaches when exposed to EGDN:NG concentrations between 0.1 and 0.53 mg/m³ (0.36 mg/m³ average). Morikawa, Muraki, Ikoma et al. (1967/Ex. 1–55) found that workers in an explosives plant exposed to low concentrations of EGDN:NG (0.066 ppm (approximately 0.5 mg/m³) was the highest average level) had a much higher incidence of abnormal pulse waves than did controls (143 out of 1,271 versus 0 out of 175). Abnormal pulse waves often indicate a clinically significant defect in the functioning of the heart and/or circulatory system (Braunwald 1978/Ex. 1–1001).

In its criteria document for NG and EGDN, NIOSH (1978h/Ex. 1–234) refers to a report of a dynamite worker who died when exposed to EGDN:NG concentrations between 0.3 and 1.4 mg/m³, as well as to another report of two workers who died suddenly following exposure to EGDN:NG at concentrations ranging from 1.7 to 2.7 mg/m³. NIOSH (1978h/Ex. 1–234) observed that skin absorption may have contributed significantly to the exposures causing these deaths.

During the rulemaking for general industry, OSHA received several comments (Exs. 3–661, 8–66, 121, 190, and 154) on the strength of the evidence and significance of the adverse effects associated with exposure to EGDN and NG. Specifically, these commenters questioned the relevance of the toxicologic data discussed above in light of the improved working conditions prevailing today in NG/EDGN manufacturing plants. In addition, the Institute of Makers of Explosives (IME) asserted that "headaches are transitory phenomena which pose no significant health risk" (Ex. 190, p. 5).

OSHA does not share the IME's view of the significance of chemically induced headaches. The Agency believes that such headaches impair performance, cause pain and suffering, affect the safety of the victim and his or her co-workers, and contribute to absenteeism. In the case of EGDN:NG-induced headaches, however, headaches have a greater meaning: They are an early warning of vasodilation, an indicator of systemic toxicity. OSHA also believes that the report of an EGDN:NG-induced death in an explosives manufacturing facility is both convincing and troubling. The Trainor and Jones (1966/Ex. 1–107) study, the NIOSH criteria document (1978h/Ex. 1–234), and the Morikawa, Muraki, Ikoma et al. (1967/Ex. 1–55) study indicate that the health effects associated with exposure to very low levels of EGDN:NG (i.e., in the range of 0.1 to 1.4 mg/m³) are acute, may occur after brief exposures, and have been shown to be lethal.

According to NIOSH (Ex. 150), the 15-minute 0.1-mg/m³ limits being proposed for these substances will protect against "angina pectoris, other signs and symptoms of cardiac ischemia or heart damage, and against sudden death * * * since all of these * * * seem to be related to compensatory vasoconstriction induced by repeated exposure to NG or EGDN" (Ex. 150). NIOSH also reports that a preliminary study of mortality resulting from heart disease and other causes among NG workers by Reeve, Bloom, Rinsky, and Smith (1983a and 1983b) suggests an association between NG exposure and cardiovascular disease mortality; at the facilities where this increase in cardiovascular disease occurred, exposures were being maintained near or below 0.02 ppm (0.2 mg/m³) (Ex. 150).

Hypotension and headache have been observed in populations exposed to EGDN:NG at levels below 0.5 mg/m³ for brief periods (25 minutes), and fatalities have occurred after EGDN:NG exposures at concentrations between 0.3 and 1.4 mg/m³, in one instance, and between 1.7 and 2.7 mg/m³, in another.

These substances present severe explosive hazards as well. Methods to reduce exposures to EGDN:NG must take this factor into account. OSHA has considered the explosion factor in various actions it has taken in regard to general industry, such as extending compliance periods. OSHA is not aware

of these problems in construction, maritime, or agriculture; therefore, the Agency requests comment on whether such problems exist in these sectors.

OSHA's current standard for these substances in construction and maritime is 0.2 ppm (1.2 mg/m³ for EGDN and 2.0 mg/m³ for NG); since worker deaths have occurred at or near this level, OSHA is proposing short-term limits for EGDN and NG of 0.1 mg/m³, with skin notations, for these substances in these two sectors and in agriculture. OSHA preliminarily concludes that these limits are necessary to prevent fatalities and to protect workers in these sectors against the significant risks of vasodilation and cardiac effects, which are considered material impairments of health. Because EGDN:NG is readily absorbed through the skin and can produce systemic effects by this exposure route, OSHA is retaining the skin notations for both substances in construction and maritime and is proposing one in agriculture. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

FLUOROTRICHLOROMETHANE
(TRICHLOROFLUOROMETHANE)
CAS: 75–69–4; Chemical Formula: CCl_3F
H.S. No. 1180

Fluorotrichloromethane (trichlorofluoromethane), also known as FC–11, is a member of a large family of chemicals, the chlorofluorocarbons. OSHA has no PEL for this substance in construction, maritime, or agriculture. The ACGIH TLV® for FC–11 is 1000 ppm as an instantaneous ceiling. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a ceiling PEL of 1000 ppm for fluorotrichloromethane in construction, maritime, and agriculture. This is the limit recently established in general industry.

FC–11 is a colorless, nonflammable, low-boiling liquid or gas (depending on temperature). Its primary uses are as an aerosol propellant, a refrigerant, a fire extinguisher, a solvent and degreasing agent, and a blowing agent in the production of polyurethane foam (HSDB 1985).

The lowest lethal inhalation dose of FC–11 in 50 percent of mice (LC_{50}) is 100,000 ppm for 30 minutes (RTECS 1990). Before death, these mice developed cardiac arrhythmias, and dogs inhaling 25,000 ppm had decreased myocardial function (Aviado and Belej 1975). Monkeys were the most sensitive of the species tested to FC–11's cardiotoxic effects (Clayton and Clayton 1981, p. 3085); Drinking Water and Health, National Research Council 1977). Exposure to 5000 ppm FC–11 has induced cardiac sensitization and arrhythmia in dogs that were intravenously injected with epinephrine (Reinhardt, Azar, Maxfield, Smith, and Mullin 1971/Ex. 1–78).

Acute overexposure to FC–11 by inhalation has caused cardiac sensitization (arrhythmia) or bronchial constriction and death in exposed humans (Drinking Water and Health, National Research Council 1977). Volunteers exposed to 1000 ppm for 6 hours/day, 5 days/week for 18 exposure episodes evidenced no changes in their electrocardiograms or pulmonary function tests (Clayton and Clayton 1981, p. 3081). Slowed heart rate is the usual response in humans inhaling low (not further specified) concentrations of FC–11 (Clayton and Clayton 1981, p. 3085).

The cardiac sensitization exhibited by FC–11-exposed individuals is an acute effect. OSHA believes that, in the absence of a limit, workers in construction, maritime, and agriculture could be exposed to sufficiently high concentrations of FC–11 to sensitize the heart to sympathomimetic amines; OSHA considers this effect to be a material impairment of health. Accordingly, OSHA preliminarily concludes that workers in these sectors are at significant risk of experiencing arrhythmia and the other exposure-related effects of FC–11 and that the proposed 1000-ppm ceiling limit will substantially reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PENTACHLOROPHENOL
CAS: 87–86–5; Chemical Formula: C_6HCl_5O
H.S. No. 2124

In general industry, construction, and maritime, OSHA's permissible exposure limit for pentachlorophenol is 0.5 mg/m³ as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.5 mg/m³, with a skin notation, for pentachlorophenol. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA PEL of 0.5 mg/m³, and a skin notation, for pentachlorophenol in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Pentachlorophenol is a colorless to light brown solid with a phenol-like odor and a pungent taste. It is used as a chemical intermediate, and as a herbicide, fungicide, molluscicide, and wood preservative (ACGIH 1986, p. 461; Hawley's 1987, p. 881). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Pentachlorophenol causes eye, skin, and respiratory tract irritation, hyperpyrexia, increased metabolic rate, and circulatory effects in humans and animals; in animals it is also fetotoxic. The oral LD_{50}s in various species are 27 mg/kg in rats, 117 mg/kg in mice, and 168 mg/kg in hamsters, respectively (RTECS 1990). In rats, the dermal LD_{50} is 95 mg/kg; the lowest lethal dermal dose in rabbits is 40 mg/kg (RTECS 1990). The LC_{50} in mice is 225 mg/m³; in rats, it is 355 mg/m³ (RTECS 1990). When 10 mg of this substance was placed on the skin of rabbits, it caused mild irritation (RTECS 1990). Acutely poisoned animals showed accelerated respiration, elevated body temperature, tachycardia, and neuromuscular weakness before dying of cardiac failure; rigor mortis is instantaneous (Deichmann et al. 1942, in IARC 1979, Vol. 20, p. 314). Animal studies have shown that the immune system is sensitive to pentachlorophenol exposure (Kerkvliet, Baecher-Steppan and Schmitz et al. 1982). Mice given 50 to 500 ppm technical grade pentachlorophenol in their diets showed signs of greatly reduced immunocompetence, expressed as an increased susceptibility to the growth of transplanted tumors (Kerkvliet, Baecher-Steppan and Schmitz et al. 1982). Thirty male rats given 20 mg/l of pentachlorophenol showed neurochemical effects after 3 to 14 weeks of exposure (National Research Council 1986, in HSDB 1989). In a 2-year study, rats were given oral doses of 10 and 30 mg/kg/day of pentachlorophenol; the animals in the high-dose group showed decreased body weights, increased serum glutamic-pyruvate transaminase activity, and increased urinary specific gravity (Schwetz et al. 1978, in Clayton and Clayton 1981, p. 2807). Hamsters given daily oral doses of 1.25 mg/kg pentachlorophenol from days 5 to 10 of gestation had an increase in fetal deaths and resorptions; the no-effect level was 2.5 mg/kg/day (National Research Council 1986, in HSDB 1989). Pentachlorophenol caused signs of fetotoxicity, including resorptions, subcutaneous edema, dilated ureters, and anomalies of the skull, ribs, and vertebrae, in the offspring of rats dosed orally at a level of 5 to 50 mg/kg per day

(Schwetz, Keeler and Gehring et al. 1974). In an NTP (1989) bioassay, two pentachlorophenol mixtures (technical grade and Dowicide EC–7) were tested for carcinogenicity in male and female B6C3F1 mice. Groups of 50 male and 50 female mice were fed diets containing 100 or 200 ppm technical grade pentachlorophenol, or 100, 200, or 600 ppm Dowicide EC–7, for 2 years. The study found clear evidence of carcinogenicity among male mice fed either mixture, as shown by increased incidences of adrenal medullary and hepatocellular neoplasms, and among female mice fed Dowicide EC–7, as shown by increased incidences of adrenal medullary and hepatocellular neoplasms and hemangiosarcomas. The study found some evidence of carcinogenicity among female mice fed technical grade pentachlorophenol, as evidenced by increased incidences of hemangiosarcomas and hepatocellular neoplasms.

In humans, exposure to pentachlorophenol dust and mist concentrations in excess of 1 mg/m^3 causes pain and irritation of the nose and throat and violent sneezing and coughing (Deichmann and Keplinger 1981; Demidenko 1969, in ACGIH 1986, p. 461). The signs and symptoms of pentachlorophenol poisoning may include profuse diaphoresis, hyperpyrexia, tachycardia, tachypnea, weakness, nausea, vomiting, abdominal pain, headache, anorexia, progressive coma, and death (Wood, Rom, White, and Logan 1983). Acute poisoning also can affect renal and hepatic function (Wood, Rom, White, and Logan et al. 1983). The lowest lethal oral dose reported in humans is 29 mg/kg (RTECS 1990). A worker experienced exfoliation of the epidermal layer of the hands 1 to 2 days after handling a 20 percent sodium pentachlorophenate solution; recovery occurred within 5 days (Nomura 1953, in Hayes 1982, p. 475). After washing a paint brush in a solvent containing 0.4 percent pentachlorophenol, a worker's hands became painful and red; the pain lasted for about 2 hours (Hayes 1982, p. 475). A 32-year-old white male exposed to lumber pretreated with pentachlorophenol suffered from chloracne characterized by many small yellow/white papules over most of his body; the condition improved after 6 weeks of treatment (Cole, Stone, Gates, and Culver 1986). Five incidents of poisoning, including two fatalities, have been reported in workers from two small wood preservative plants; symptoms included fever, severe hyperpyrexia, increased anion gap, and renal insufficiency (Wood, Rom, White, and Logan 1983). Chronic exposure to this substance is associated with an increase in conjunctivitis, chronic sinusitis, bronchitis, polyneuritis, and dermatitis (Proctor, Hughes, and Fischman 1988, p. 398). Repeated exposure to commercial pentachlorophenol caused aplastic anemia in four individuals, pure red cell aplasia in two people, and subsequent Hodgkin's disease and acute leukemia in two of these individuals (Roberts 1983).

Based on this evidence in humans and animals, OSHA preliminarily concludes that pentachlorophenol causes sensory irritation and systemic toxicity. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that establishing a TWA limit of 0.5 mg/m^3, and a skin notation, is necessary to significantly reduce these risks of material health impairment. In addition, promulgation of this PEL and the skin notation will make OSHA's limit for this substance consistent across all regulated sectors.

SODIUM AZIDE

CAS: 26628–22–8; Chemical Formula: NaN_3

H.S. No. 1364

There is no current OSHA PEL for sodium azide in construction, maritime, or agriculture. The current ACGIH TLV® for this substance is 0.1 ppm as an instantaneous ceiling. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. OSHA is proposing a ceiling limit of 0.1 for sodium azide as HN_3 and 0.3 mg/m^3 as a ceiling limit for sodium azide NAN_3, both with skin notations. These are the limits recently established in general industry.

Sodium azide is a colorless, crystalline solid. It is used as a chemical intermediate; an herbicide, fungicide, nematocide, and soil fumigant; in automobile air bags; and to decompose nitrites (HSDB 1989).

Sodium azide is a material of high acute toxicity that acts by direct vasodilation. The oral LD_{50}s for rats and mice have been reported to be 27 mg/kg and 19–27 mg/kg, respectively (RTECS 1989). There have been several reported cases of accidental human poisonings involving ingestion of mg quantities of sodium azide; symptoms reported from these cases have included nausea, headaches, sweating, faintness, tachycardia, hypotension, and hyperventilation. Sodium azide is known to produce hypotension in laboratory animals as well as humans. An intravenous dose of 1 mg/kg was reported to lower blood pressure in cats (Graham 1949/Ex. 1–109). In the 1950s, the medicinal usefulness of sodium azide as a hypotensive agent was tested in 30 hypertensive patients. Their hypertension was reduced, but observed side effects included headaches; in addition, 20 of 30 patients developed increased sensitivity to sodium azide, necessitating a reduction in the dose (Black, Zweifach, and Speer 1954/Ex. 1–163). Hicks (1950) reported that repeated intraperitoneal injections of 5 to 10 mg/kg in rats caused demyelination of the nerve fibers of the central nervous system. Alben and Fager (1972) showed that sodium azide formed strong complexes with hemoglobin and blocked oxygen transport in the blood.

In addition to these effects, sodium azide has been reported to cause testicular damage in rats given intraperitoneal injection of doses sufficient to cause intoxication. Reported doses given to monkeys have caused damage to the central nervous system, resulting in blindness and attacks of rigidity.

Acute inhalation by humans of hydrazoic acid vapor (which forms when sodium azide contacts water) results in lowered blood pressure, eye irritation, bronchitis, headache, weakness, and collapse (Fairhall et al. 1943/Ex. 1–130; Graham 1949/Ex. 1–109). The exposure levels that produce these effects were not reported by these authors. Haas and Marsh (1970/Ex. 1–121) reported that exposure to concentrations of hydrazoic acid vapor as low as 0.5 ppm "cause[d] some discomfort to laboratory personnel."

Because of its hypotensive effect in humans, OSHA preliminarily concludes that ceiling limits of 0.1 ppm (measured as HN_3) and 0.3 mg/m^3 (measured as NaN_3) should be established for sodium azide to reduce the significant risk of cardiovascular and irritation effects potentially posed to construction, maritime, and agriculture workers at the levels permitted by the absence of an OSHA limit. To reduce this significant risk substantially, OSHA is proposing to establish these ceiling limits for sodium azide, as well as a skin notation. OSHA believes that the skin notation will alert employers to the fact that sodium azide readily penetrates intact skin and that dermal exposure can contribute significantly to overall worker exposure. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE

CAS: 76–13–1; Chemical Formula: CCl_2FCClF_2
H.S. No. 1403

1,1,2-Trichloro-1,2,2-trifluoroethane (FC–113) is a member of the chlorofluorocarbon family. The current OSHA PEL for this substance in construction and maritime is an 8-hour TWA of 1000 ppm. The ACGIH has an 8-hour TLV®–TWA of 1000 ppm and a 15-minute STEL of 1250 ppm for FC–113. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. The Agency proposes to retain the TWA limit and to add a 1250 ppm STEL in construction and maritime. OSHA has no PEL for this substance in agriculture, and proposes adding a 1000 ppm 8-hour TWA PEL and a 1250 ppm STEL for FC–113 in agricultural workplaces. These are the limits recently established for this substance in general industry.

FC–113 is a colorless, noncombustible liquid. It is used as a chemical intermediate in the production of polychlorotrifluoro-ethylene resins and polychlorotrifluoro-ethylene-vinylidine, as a fire extinguishant and as a foam blowing agent, a drying agent, a degreasing solvent, and a dry cleaning solvent. FC–113 is also used as a refrigerant.

FC–113 has a low potential for acute lethality; the 4-hour LC_{50} in rats has been reported to range from 52,000 to 68,000 ppm (ACGIH 1986). In experimental animals, the principal effects of exposure to FC–113 include tachycardia, myocardial depression, hypotension, and cardiac sensitization. These effects have been seen in monkeys and dogs exposed to 25,000–50,000 ppm (HSDB 1989). Exposure of animals to high concentrations (i.e., 12,000 ppm) has also been found to cause central nervous system depression, respiratory irritation, and mild liver changes (ACGIH 1986).

Cardiac sensitization has been found to result from lower, short-term exposures. Reinhardt, Mullin, and Maxfield (1973/Ex. 1–114) observed that 10 out of 29 dogs exposed to 5000 ppm FC–113 for 5 minutes and simultaneously injected with epinephrine developed serious arrhythmias. Similar experiments, in which the dogs were exposed to 2000 to 2500 ppm of this substance for longer periods of time (from 30 minutes to 6 hours) and simultaneously administered epinephrine, resulted occasionally in arrhythmia (Aviado 1975). However, when the experiment was repeated using four 8-hour exposures to 1000 ppm in conjunction with an injection of epinephrine, no arrhythmias were observed. Cardiac sensitization has also been reported in monkeys exposed to 2000 ppm FC–113 for 6 hours (EPA 1983).

A study by Stopps and McLaughlin (1967/Ex. 1–122) of human volunteers revealed that exposure to 2500 ppm FC–113 for 1.5 hours resulted in impairment of psychomotor performance (described as lethargy and inability to concentrate). This effect was not observed at concentrations below 2500 ppm. Within the first one-half to one hour of exposure to 2500 ppm or more, subjects reported subjective sensations including loss of concentration, a tendency to somnolence, and a feeling of "heaviness" in the head. OSHA believes that the results of the Stopps and McLaughlin (1967/Ex. 1–122) study described above demonstrate that FC–113 can induce subjective effects in humans on short-term exposure. Thus, OSHA preliminarily concludes that a STEL is necessary to prevent these effects among construction, maritime, and agriculture workers. The proposed STEL includes a small safety factor below the human NOEL to account for variabilities in toxic responses.

The evidence described above indicates that FC–113 can exert toxic effects at levels of exposure comparable to the levels that are permitted by excursions above the current OSHA TWA limit of 1000 ppm; OSHA believes that such levels pose a significant risk of cardiac sensitization to exposed workers. The Agency considers the cardiac sensitization induced by FC–113 a material impairment of health and functional capacity. OSHA therefore preliminarily concludes that a STEL of 1250 ppm will provide a wider margin of safety against cardiac sensitization and will reduce the risk of impaired psychomotor performance by limiting the potentially high, short-term exposures permitted by the 1000 ppm 8-hour TWA limit alone. Thus, OSHA proposes limits of 1000 ppm TWA and 1250 ppm STEL for 1,1,2-trichloro-1,2,2-trifluoroethane in construction, maritime, and agriculture to substantially reduce the significant risks associated with exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

Preliminary Conclusions. Of all the physiological systems, the cardiovascular system is especially vulnerable to occupational hazards because cardiovascular diseases are already so prevalent in our society. According to Levy (1985/Ex. 1–210), "an estimated 40 million Americans have some form of cardiovascular disease." The major risk factors, as revealed by epidemiology, are age, male sex, hypertension, cigarette smoking, the existence of low-density and high-density plasma lipoproteins, cholesterol, and diabetes (Levy 1985/Ex. 1–210). Many American workers exposed to the chemicals grouped on the basis of their cardiovascular effects have one or more of these risk factors and are therefore particularly susceptible to exposure to cardiovascular toxicants. Although the precise interactions among these risk factors and exposures to cardiovascular toxins are difficult to demonstrate with accuracy, few would argue that they do not occur.

OSHA preliminarily concludes that the potential for cardiovascular system damage associated with exposure to these cardiac sensitizers, vasodilators, and atherosclerosis-causing substances poses a significant risk to employees in a broad range of workplaces. The effects experienced by exposed workers include arrhythmia, low blood pressure, stroke, and blockage of the flow of blood to the myocardium. Reducing the exposure limits for these cardiovascular toxins from levels where such effects could occur to concentrations where their occurrence is unlikely will substantially reduce these risks. OSHA believes that the health evidence for these cardiovascular toxins forms a reasonable basis for proposing new or revised limits. At the time of the final rule, OSHA will establish new or revised limits for these substances if the Agency determines that such limits will substantially reduce significant risk.

8. Substances for Which Proposed Limits Are Based on Avoidance of Systemic Toxicity

Introduction. For a number of substances, OSHA's proposed limits are based primarily on evidence that exposure is associated with general systemic toxicity. This group of substances is unique among the groupings discussed in this preamble in that no single organ system can be identified as the target of low-dose exposure to these chemicals. Instead, these substances have been shown either to affect several organ systems simultaneously or to cause a variety of nonspecific adverse signs and symptoms that are indicative of general toxicity.

The 73 substances belonging to this group and their CAS numbers, HS numbers, 1987–1988 ACGIH TLV®s and NIOSH RELs are shown in Table C8–1. The current PELs for these substances in construction and maritime are shown in the second column of Table C8–1, and the limits being proposed in construction, maritime, and agriculture

are shown in the right-hand column of the table. Promulgation of the proposed limits in construction, maritime, and agriculture will make the PELs for these substances consistent across all OSHA-regulated sectors.

TABLE C8-1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF SYSTEMIC TOXICITY

H.S. number/chemical name	CAS No.	Current OSHA PEL in construction and maritime *	1987-1988 ACGIH TLV® **	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
1005 Acetonitrile	75-05-8	40 ppm TWA	40 ppm TWA,	20 ppm TWA; 60 ppm STEL, Skin.	40 ppm TWA; 60 ppm STEL
1006 Acetylsalicylic acid (Aspirin)	50-78-2		5 mg/m³ TWA		5 mg/m³ TWA
1019 Aluminum (Welding fumes) (as Al)	7429-90-5		5 mg/m³ TWA		5 mg/m³ TWA
2004 2-Aminopyridine	504-29-0	0.5 ppm TWA	0.5 ppm TWA		0.5 ppm TWA
2007 Anisidine (o,p isomers)	29191-52-4	0.5 mg/m³ TWA, Skin	0.5 mg/m³ TWA, Skin		0.5 mg/m³ TWA, Skin
2010 Arsine	7784-42-1	0.05 ppm TWA	0.05 ppm TWA	2 μg/m³ Ceiling	0.05 ppm TWA (15-min)+
2012 Arsenic, organic compounds (as As)	7440-38-0	0.5 mg/m³ TWA	0.2 mg/m³ TWA		0.5 mg/m³ TWA
2015 Barium, soluble compounds (as Ba)	7440-39-3-	0.5 mg/m³ TWA	0.5 mg/m³ TWA		0.5 mg/m³ TWA
1046 2-Butoxyethanol	111-76-2	50 ppm TWA, Skin	25 ppm TWA, Skin		25 ppm TWA, Skin
2024 tert-Butyl chromate (as CrO_3)	1188-85-1	0.1 mg/m³ Ceiling, Skin.	0.1 mg/m³ Ceiling, Skin.	1 μg/m³ TWA (as Cr VI)	0.1 mg/m³ Ceiling, Skin
1052 n-Butyl glycidyl ether (BGE)	2426-08-6	50 ppm TWA	25 ppm TWA	5.6 ppm Ceiling (15-min)	25 ppm TWA
1067 Captan	133-06-2		5 mg/m³ TWA		5 mg/m³ TWA
2026 Carbaryl (Sevin) ®	63-25-2	5 mg/m³ TWA	5 mg/m³ TWA-	5 mg/m³ TWA	5 mg/m³ TWA
1088 beta-Chloroprene	126-99-8	25 ppm TWA, Skin	10 ppm TWA, Skin	1 ppm Ceiling (15-min)+	10 ppm TWA, Skin
2045 Cyanides (as CN)	Varies	5 mg/m³ TWA, Skin	5 mg/m³ TWA, Skin	5 mg/m³ Ceiling (10-min)	5 mg/m³ TWA, Skin
1109 Cyclohexylamine	108-91-8		10 ppm TWA		10 ppm TWA
1112 Cyhexatin	13121-70-5		5 mg/m³ TWA		5 mg/m³ TWA
2050 2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	10 mg/m³ TWA	10 mg/m³ TWA		10 mg/m³ TWA
1113 Dichlorodiphenyltrichloroethane (DDT)	50-29-3	1 mg/m³ TWA, Skin	1 mg/m³ TWA	Reduce exposure to lowest reliably detectable concentration+.	1 mg/m³ TWA, Skin
1120 2-N-Dibutylaminoethanol	102-81-8	2 ppm TWA, Skin	2 ppm TWA, Skin		2 ppm TWA
2061 Dieldrin	60-57-1	0.25 mg/m³ TWA, Skin	0.25 mg/m³ TWA, Skin-.	Reduce exposure to lowest reliably detectable concentration+	0.25 mg/m³ TWA, Skin
2063 Difluorodibromomethane-	75-61-6	100 ppm TWA-	100 ppm TWA		100 ppm TWA
1139 Diglycidyl ether	2238-07-5	0.5 ppm Ceiling	0.1 ppm TWA	0.2 ppm Ceiling+ (15-min)	0.1 ppm TWA
2064 Diisopropylamine	108-18-9	5 ppm TWA, Skin	5 ppm TWA, Skin		5 ppm TWA, Skin
2067 Dimethylformamide	68-12-2	10 ppm TWA, Skin	10 ppm TWA, Skin		10 ppm TWA, Skin
2068 1,1-Dimethylhydrazine	57-14-7	0.5 ppm TWA, Skin	0.5 ppm TWA, Skin, A2.	0.06 ppm Ceilng+ (2-hour).	0.5 ppm TWA, Skin
2070 Dinitro-o-cresol	534-52-1	0.2 mg/m³ TWA, Skin	0.2 mg/m³ TWA, Skin	0.2 mg/m³ TWA	0.2 mg/m³ TWA, Skin
1159 Ethanolamine-	141-43-5	3 ppm TWA	3 ppm TWA; 6 ppm STEL.		3 ppm TWA; 6 ppm STEL
1167 Ethylene chlorohydrin	107-07-3	5 ppm TWA, Skin	1 ppm Ceiling, Skin		1 ppm Ceiling, Skin
2082 Ethylenediamine	107-15-3	10 ppm TWA	10 ppm TWA		10 ppm TWA
2084 Fluorides (as F)	Varies	2.5 mg/m³ TWA	2.5 mg/m³ TWA	2.5 mg/m³ TWA	2.5 mg/m³ TWA
1189 Glycidol	556-52-5	50 ppm TWA	25 ppm TWA		25 ppm TWA
2088 Heptachlor	76-44-8	0.5 mg/m³ TWA, Skin	0.5 mg/m³ TWA, Skin		0.5 mg/m³ TWA, Skin
1198 Hexafluoroacetone	684-16-2		0.1 ppm TWA, Skin		0.1 ppm TWA, Skin
1207 Hydrogen cyanide	74-90-8	10 ppm TWA, Skin	10 ppm Ceiling, Skin-	4.7 ppm Ceiling (10-min)	4.7 ppm STEL, Skin
2093 Hydrogen selenide (as Se)	7783-07-5	0.05 ppm TWA	0.05 ppm TWA-		0.05 ppm TWA
1210 Hydrogenated terphenyls	61788-32-7		0.5 ppm TWA		0.5 ppm TWA
1223 2-Isopropoxyethanol	109-59-1		25 ppm TWA-		25 ppm TWA
1227 Isopropyl glycidyl ether (IGE)	4016-14-2	50 ppm TWA	50 ppm TWA; 75 ppm STEL.	50 ppm Ceiling (15-min)	50 ppm TWA; 75 ppm STEL
2098 Lead, inorganic	7439-92-1	0.2 mg/m³ TWA	0.15 mg/m³ TWA	<100 μg/m³ TWA	50 μg/m³ TWA
1273 4,4'-Methylene bis (2-chloroaniline)	101-14-4		0.02 ppm TWA, Skin, A2.	3 μg/m³ TWA+ (lowest detectable concentration).	0.02 ppm TWA, Skin
2111 Molybdenum, soluble compounds (as Mo)	7439-98-7	5 mg/m³ TWA	5 mg/m³ TWA		5 mg/m³ TWA
2112 Monomethyl hydrazine	60-34-4-	0.2 ppm Ceiling, Skin	0.2 ppm Ceiling, Skin, A2.	0.04 ppm Ceiling+ (2-hour)	0.2 ppm Ceiling, Skin

TABLE C8-1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF SYSTEMIC TOXICITY—Continued

H.S. number/chemical name	CAS No.	Current OSHA PEL in construction and maritime *	1987-1988 ACGIH TLV® **	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
2114 Nickel, metal and insoluble compounds (as Ni)	7440-02-0	1 mg/m³ TWA	1 mg/m³ TWA	15 µg/m³ TWA*	1 mg/m³ TWA
2115 Nicotine	54-11-5	0.5 mg/m³ TWA, Skin	0.5 mg/m³ TWA, Skin		0.5 mg/m³ TWA, Skin
2125 Perchloromethyl mercaptan	594-42-3	0.1 ppm TWA	0.1 ppm TWA		0.1 ppm TWA
2126 Phenol	108-95-2	5 ppm TWA, Skin	5 ppm TWA, Skin	5.2 ppm TWA; 15.6 ppm Ceiling (15-min).	5 ppm TWA, Skin
1317 Phenylhydrazine	100-63-0	5 ppm TWA, Skin	5 ppm TWA, 10 ppm STEL, Skin, A2.	0.14 ppm Ceiling* (2-hour)	5 ppm TWA; 10 ppm STEL, Skin
1318 Phenylphosphine	638-21-1		0.05 ppm Ceiling		0.05 ppm Ceiling
1321 Phosphine	7803-51-2	0.3 ppm TWA	0.3 ppm TWA, 1 ppm STEL.		0.3 ppm TWA; 1 ppm STEL
2130 Phosphorus (yellow)	7723-14-0	0.1 mg/m³ TWA	0.1 mg/m³ TWA		0.1 mg/m³ TWA
1330 Piperazine dihydrochloride	142-64-3		5 mg/m³ TWA		5 mg/m³ TWA
1340 n-Propyl nitrate	627-13-4	25 ppm TWA	25 ppm TWA; 40 ppm STEL.		25 ppm TWA; 40 ppm STEL
2136 Pyrethrum	8003-34-7	5 mg/m³ TWA	5 mg/m³ TWA		5 mg/m³ TWA
2137 Pyridine	110-86-1	5 ppm TWA	5 ppm TWA		5 ppm TWA
2140 Selenium and compounds (as Se)	7782-49-2	0.2 mg/m³ TWA	0.2 mg/m³ TWA		0.2 mg/m³ TWA
2143 Silver, metal and soluble compounds (as Ag)	7440-22-4	0.01 mg/m³ TWA	0.1 mg/m³ TWA (metal); 0.01 mg/m³ TWA (soluble compounds).		0.01 mg/m³ TWA
1366 Sodium fluoroacetate	62-74-8-	0.05 mg/m³ TWA, Skin	0.05 mg/m³ TWA; 0.15 mg/m³ STEL, Skin.		0.05 mg/m³ TWA; 0.15 mg/m³ STEL, Skin
2145 Strychnine	57-24-9	0.15 mg/m³ TWA	0.15 mg/m³ TWA		0.15 mg/m³ TWA
2150 Tellurium and compounds (as Te)	13494-80-9	0.1 mg/m³ TWA	0.1 mg/m³ TWA		0.1 mg/m³ TWA
1386 Tetraethyl lead (as Pb)	78-00-2	0.1 mg/m³ TWA, Skin	0.1 mg/m³ TWA, Skin		0.075 mg/m³ TWA, Skin
1388 Tetramethyl lead (as Pb)	75-74-1	0.15 mg/m³ TWA, Skin	0.15 mg/m³ TWA, Skin		0.075 mg/m³ TWA, Skin
2156 Tetramethyl succinonitrile	3333-52-6-	0.5 ppm TWA, Skin	0.5 ppm TWA, Skin	1 ppm Ceiling (15-min)	0.5 ppm TWA, Skin
2158 Tetryl (2,4,6-Trinitrophenyl-methyl-nitramine)	479-45-8	1.5 mg/m³ TWA, Skin	1.5 mg/m³ TWA, Skin		1.5 mg/m³ TWA, Skin
2160 Thiram-	137-26-8	5 mg/m³ TWA	5 mg/m³ TWA		5 mg/m³ TWA
2161 Tin (metal and inorganic compounds) (as Sn)	7440-31-5	2 mg/m³ TWA	2 mg/m³ TWA		2 mg/m³ TWA
1412 Trimethyl benzene	25551-13-7-	25 ppm TWA	25 ppm TWA		25 ppm TWA
1416 Tungsten insoluble compounds (as W)	7440-33-7	5 mg/m³ TWA	5 mg/m³ TWA; 10 mg/m³ STEL.	5 mg/m³ TWA	5 mg/m³ TWA; 10 mg/m³ STEL
1417 Tungsten soluble compounds (as W)	7440-33-7	1 mg/m³ TWA	1 mg/m³ TWA; 3 mg/m³ STEL.	1 mg/m³ TWA	1 mg/m³ TWA; 3 mg/m³ STEL
1428 Vinylidene chloride (1,1-Dichloroethylene)	75-35-4		5 ppm TWA; 20 ppm STEL.	Controlled as specified for vinyl chloride in 29 CFR 1910.1017, with eventual goal of zero exposure†.	1 ppm TWA
1430 Welding fumes (Total particulate)			5 mg/m³ TWA		5 mg/m³ TWA
1437 Zinc oxide (Fume)	1314-13-2	5 mg/m³ TWA	5 mg/m³ TWA; 10 mg/m³ STEL.	5 mg/m³ TWA; 15 mg/m³ Ceiling (15-min).	5 mg/m³ TWA; 10 mg/m³ STEL
1439 Zirconium compounds (as Zr)	7440-67-7	5 mg/m³ TWA	5 mg/m³ TWA; 10 mg/m³ STEL.		5 mg/m³ TWA; 10 mg/m³ STEL

* OSHA's PELs do not currently apply in agriculture; OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any eriod of time.

** The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minutes limits not to be exceeded more than 4 times in any working day, with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time. An A2 designation means that the ACGIH classifies the substance as a suspected human carcinogen.

*** NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

†NIOSH considers this substance a potential occupational carcinogen and recommends that exposures be reduced to the lowest feasible concentration.

Description of the Health Effects. For each substance included in this grouping, limits have been proposed to protect workers in construction, maritime, and agriculture against a variety of adverse exposure-related effects that are manifested at multiple target organ sites. In some instances, the nature of the toxic effects associated with exposure is well-defined and clearly understood (for example, CNS depression, histological organ changes, embryotoxicity, methemoglobinemia, conjunctivitis, liver and kidney damage, testicular damage). The effects of exposure to other substances in this group, however, have been demonstrated only by such nonspecific indicators as dizziness, respiratory irritation, hematuria, chest tightness, weight loss or decreased rate of weight gain, lethargy, loss of appetite, nervousness, or gastrointestinal disturbances. Although the specificity of the systemic effect caused by exposure to the substances in this group may vary, all of these substances have been shown to be biologically active in mammalian species, to interfere significantly with biological processes, and to impair normal organ function.

Table C8–2 summarizes the toxic exposure-related effects reported for these substances in humans and experimental animals; this evidence supports the limits being proposed for these substances. This table shows the variety of adverse health effects that adoption of the proposed rule's limits will minimize or prevent. The table also shows that, for the vast majority of substances in this group, the risks of exposure have been defined in studies of humans or animals and are known to include respiratory effects, neurological effects, adverse effects on the reproductive system, organ damage, hematopoietic effects, sensitization, and mucosal irritation. All of these effects are indicative of generalized systemic effects rather than localized effects occurring at the site of chemical contact, and all of them are considered material impairments of health within the meaning of the Act.

Dose-Response Relationships and Systemic Effects. As Table C8–2 shows, adverse toxic reactions have been reported to occur in humans for more than half of the substances in this group; for these substances, it has thus been established conclusively that exposure is associated with adverse health effects in humans. Experimental animal data comprise the principal evidence for the toxicologic action of the remaining substances. As is the case for many substances for which limits are being proposed in this rulemaking, apparent no-observed-effect levels, supplemented by the use of appropriate margins of protection, provide the basis for setting the limits. The systemic effects caused by exposure to substances in this group appear to follow a no-observed-effect (NOE) dose-response pattern. That is, as intensity and/or duration of exposure decreases, the severity of the effect on organ systems also decreases until a point is reached (the NOE level) where there is no detectable effect, at least at observable levels, on organ systems. No-effect exposure levels have been identified in humans and animals for several of the substances in this group; where no-effect levels have been identified (i.e., for diglycidyl ether and phenylphosphine), they have provided the primary basis for the proposed limits. In instances where no-effect levels have not been reported (e.g., for n-butyl glycidyl ether, trimethylbenzene, and acetylsalicylic acid), OSHA has used safety factors and expert judgment to derive an NOE value.

TABLE C8–2.—SUMMARY OF ADVERSE HEALTH EFFECTS REPORTED FOR SUBSTANCES PRODUCING GENERAL SYSTEMIC TOXICITY

H.S. number/chemical name	Effects reported in humans	Effects reported in animals
1005 Acetonitrile	Tightness in chest; flushing of face	Embryotoxicity; teratogenicity at maternally toxic doses; liver, blood changes.
1006 Acetylsalicylic acid	Mucosal irritation; respiratory sensitization; internal bleeding.	Teratogenicity at high doses.
1019 Aluminum welding fumes–	No data	Respiratory effects.
2004 2-Aminopyridine	Headache, nausea; increased blood pressure	Convulsions; respiratory distress.
2007 Anisidine	Methemoglobinemia; sensitization	Methemoglobinemia, cancer.
2010 Arsine–	Hemolysis; renal failure	Blood changes.
2012 Arsenic, organic compounds	Optic neuritis; encephalitis	Hepatitis.
2015 Barium, soluble compounds	Baritosis; irritation	Irritation; central nervous system effects.
1046 2–Butoxyethanol	Mild sensory irritation	Severe hemoglobinuria; lung, kidney, liver changes; hemolytic anemia; increased osmotic fragility in erythrocytes.
2024 tert-Butyl chromate	Lung, sinus cancer; narcosis; skin necrosis	Central nervous system effects; skin necrosis.
1052 n-Butyl glycidyl ether–	Dermatitis; skin sensitization	Delirium; depression.
1067 Captan–	Recurrent urticaria	Decreased fertility index in males; polyploid carcinoma of duodenum.
2026 Carbaryl	Cholinesterase inhibition	Irritation; reproductive effects; nervous system effects.
1088 beta-Chloroprene	CNS depression; lung, liver, kidney injury; conjunctivitis; necrosis of cornea; lowering of blood pressure.	Minimal systemic effects.
2045 Cyanides	Headache; central nervous system effects; skin corrosion.	Ocular effects, respiratory irritation.
1109 Cyclohexylamine	Acute toxicity; sensitization	Mutagenic and reproductive effects.
1112 Cyhexatin	No data	Microscopic changes in liver, kidneys, adrenal glands.
2050 2,4-D (2,4-Dichlorophenoxy-acetic acid)	Coma; eczema; muscular weakness; peripheral neuropathy.	Central nervous system effects; liver and kidney damage; reproductive and teratogenic effects.
1113 Dichlorodiphenyl-trichloro-ethane (DDT)	Mild systemic poisoning	Cancer of liver, lungs, lymph system.
1120 2-N-Dibutylamino-ethanol	No data	Weight loss; elevated liver- and kidney-to-body-weight ratios.
2061 Dieldrin	Convulsions; headache; nausea	Convulsions; fetotoxicity; cancer.
2063 Difluorodibromomethane–	No data	Respiratory irritation; central nervous system and liver effects.
1139 Diglycidyl ether	Mucosal irritation	CNS depression; clouding of cornea; respiratory irritation; hematopoietic effects.

TABLE C8-2.—SUMMARY OF ADVERSE HEALTH EFFECTS REPORTED FOR SUBSTANCES PRODUCING GENERAL SYSTEMIC TOXICITY—Continued

H.S. number/chemical name	Effects reported in humans	Effects reported in animals
2064 Diisopropylamine	Irritation; corneal edema; dermatitis	Irritation.
2067 Dimethylformamide	Liver, kidney, lung, cardiovascular damage; cancer.	Irritation; lung, liver, kidney damage; reproductive effects.
2068 1,1-Dimethylhydrazine	Dyspnea; nausea; liver damage	Central nervous system and blood effects; cancer.
2070 Dinitro-o-cresol	Hyperpyrexia; nausea; tachycardia	Coma; metabolic stimulation; liver and kidney damage.
1159 Ethanolamine	No data	Pulmonary, hepatic, and renal lesions; decreased alertness; temporary weight loss.
1167 Ethylene chlorohydrin	Liver and brain damage; mucosal irritation; gastrointestinal disturbances.	Respiratory depression; liver and kidney damage.
2082 Ethylenediamine	Sensory irritation; skin, pulmonary sensitization.	Irritation; liver and kidney damage.
2084 Fluorides	Sensory irritation; central nervous system effects; fluorosis.	Irritation; convulsions; teeth mottling.
1189 Glycidol	No data	Pneumonitis; emphysema.
2088 Heptachlor	Convulsions; blood dyscrasias; aplastic anemia.	Liver toxicity; cancer.
1198 Hexafluoroacetone	No data	Renal dysfunction; increased lung weight; testicular damage; hematopoietic effects; fetotoxicity.
1207 Hydrogen cyanide	Cyanide poisoning; weakness; mucosal irritation; colic; nervousness; enlargement of thyroid.	None reported.
2093 Hydrogen selenide	Severe irritation; nausea; fatigue	Severe respiratory irritation.
1210 Hydrogenated terphenyls	No data	Decreased weight gain; liver, kidney damage; lung changes, bronchopneumonia.
1223 2-Isopropoxyethanol	No data	Anemia; hemoglobinuria; lung congestion.
1227 Isopropyl glycidyl ether	Mucosal irritation	Reduced weight gain; hemoglobin increase; emphysematous changes in lungs; CNS depression.
2098 Lead (inorganic)	Central nervous system damage, reproductive effects, urinary tract damage, blood effects.	Nervous system effects; reproductive effects.
1273 4,4'-Methylene-bis (2-chloroaniline)	Bladder cancer; hematuria	Cyanosis; methemoglobinemia; liver, lung tumors.
2111 Molybdenum, soluble compounds	Irritation; anemia, liver damage; pneumoconiosis.	Irritation; central nervous system effects; liver and kidney damage.
2112 Monomethyl hydrazine	Convulsions; blood effects; liver damage	Central nervous system effects; liver damage.
2114 Nickel, metal and insoluble compounds	Dermal sensitization; cancer; kidney damage	Pulmonary damage; lung cancer.
2115 Nicotine	Convulsions; prostration; tachycardia	Central nervous system stimulation and depression; convulsions; teratogenicity.
2125 Perchloromethyl mercaptan	Severe respiratory irritation; liver and kidney damage.	Severe respiratory irritation.
2126 Phenol	Irritation; central nervous system effects	Irritation; central nervous system effects.
1317 Phenylhydrazine	Skin sensitization	Anemia; irregular growth; general weakness; blood vessel tumors.
1318 Phenylphosphine	No data	Mild hemolytic anemia; testicular degeneration; hind leg tremor; nausea; loss of appetite; hypersensitivity to sound and touch.
1321 Phosphine	Pulmonary edema; gastrointestinal disturbances; dizziness.	Respiratory irritation.
2130 Phosphorous (yellow)	Severe respiratory irritation; liver damage; anemia; "phossy jaw" (bone necrosis).	Eye, skin burns; liver, kidney damage; severe respiratory irritation.
1330 Piperazine dihydrochloride	Skin burns; sensitization; asthma	No data.
1340 n-Propyl nitrate	No data	Cyanosis; methemoglobinemia; hypotension; respiratory depression.
2136 Pyrethrum	Dermatitis; irritation; skin sensitization	Central nervous system effects; irritation.
2137 Pyridine	Irritation; central nervous system effects; liver and kidney damage.	Irritation; narcosis; liver and kidney damage.
2140 Selenium and compounds	Irritation; chills; fever; garlic breath	Central nervous system effects; irritation; hair loss; liver damage.
2143 Silver, metal and soluble compounds	Localized or generalized argyria; irritation; kidney and liver damage.	Argyria; kidney damage.
1366 Sodium fluoroacetate	No data	Fluctuation in growth rate; tissue changes.
2145 Strychnine	Convulsions; respiratory paralysis	Convulsions; paralysis.
2150 Tellurium and compounds	Neurotoxicity; garlic breath; liver and kidney damage.	Central nervous system effects; teratogenicity.
1386 Tetraethyl lead		
1388 Tetramethyl lead		
2156 Tetramethyl succinonitrile	Headaches; convulsions; coma	Convulsions; respiratory paralysis.
2158 Tetryl	Irritation; dermal sensitization; pulmonary sensitization; liver damage.	Kidney damage.
2160 Thiram	Irritation; skin sensitization; metabolic stimulation.	Demyelination; dermal sensitization; teratogenicity.
2161 Tin (metal and inorganic compounds)	Irritation; anemia; gastrointestinal symptoms	Granulomas; internal bleeding; anemia; liver damage.
1412 Trimethylbenzene	Nervousness, tension, anxiety; asthmatic bronchitis; hypochromic anemia.	CNS depression; Lymphopenia; neutrophilia.

TABLE C8–2.—SUMMARY OF ADVERSE HEALTH EFFECTS REPORTED FOR SUBSTANCES PRODUCING GENERAL SYSTEMIC TOXICITY—Continued

H.S. number/chemical name	Effects reported in humans	Effects reported in animals
1416 Tungsten insoluble compounds	No data	Gross changes in liver and spleen; lung tissue changes.
1417 Tungsten soluble compounds	No data	Generalized cellular asphyxiation; colic; incoordination; dyspnea.
1428 Vinylidene chloride	No data	Nasal irritation; liver cell degeneration; retarded weight gain; embryotoxicity; kidney adenocarcinoma.
1430 Welding fumes (total particulate)	Pulmonary irritation	Pulmonary irritation.
1437 Zinc oxide (fume)	Metal fume fever; gastritis	No data.
1439 Zirconium compounds	No data	Toxic effects from zirconium tetrachloride due to liberation of hydrochloric acid.

The following discussions describe OSHA's preliminary findings for these systemic toxicants and present a summary of the material impairments of health potentially associated with exposure to these substances.

ACETONITRILE

CAS: 75–05–8; Chemical Formula: CH_3CN

H.S. No. 1005

OSHA's occupational exposure limit for acetonitrile in construction and maritime is 40 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a 40 ppm TLV®–TWA and a 60-ppm TLV®–STEL, in addition to a skin notation. NIOSH has a TWA-REL of 20 ppm for acetonitrile. OSHA is proposing to retain the 40-ppm 8-hour TWA in construction and maritime, to add a STEL of 60 ppm for 15 minutes in these two sectors, and to extend both limits to agriculture. These are the limits recently established for acetonitrile in general industry.

Acetonitrile is a colorless liquid with an aromatic odor. It is most widely used in industry as a specialty solvent and chemical intermediate.

In animal studies, acetonitrile has been found to be embryotoxic and teratogenic in rodents exposed to levels sufficiently high to cause maternal toxicity (Berteau, Levinskas, and Rodwell 1982/Ex. 1–179; Willhite 1983/Ex. 1–43). A 13-week inhalation study conducted by the National Toxicology Program (Hazelton Laboratories, Inc. 1983, as cited in ACGIH 1986/Ex. 1–3, p. 8) found pathological changes in the liver and some blood changes in mice and rats exposed to concentrations of 400 ppm acetonitrile.

The human evidence describing the toxic effects associated with exposure to acetonitrile consists of a report by Pozzani, Carpenter, Palm et al. (1959/Ex. 1–106), who exposed human subjects to acetonitrile vapor, and a case report by Amdur (1959/Ex. 1–143), who described a poisoning incident involving acetonitrile. None of three subjects exposed to 40 ppm for 4 hours reported any adverse responses during the exposure period, but one subject experienced tightness of the chest a few hours after termination of exposure, as well as a cooling sensation in the lungs the following day. None of the subjects had elevated blood cyanide levels; one subject showed a slightly elevated urinary thiocyanate level. Pozzani et al. (1959/Ex. 1–106) also exposed two subjects to 80 ppm and 160 ppm of acetonitrile for 4 hours. When exposed to 80 ppm, subjects reported no adverse response; however, at 160 ppm, one subject experienced slight flushing of the face and chest tightness a few hours after exposure (Pozzani, Carpenter, Palm et al. 1959/Ex. 1–106).

In addition to the Pozzani et al. (1959/Ex. 1–106) study, NIOSH (1978g/Ex. 1–262) cites a report by Amdur (1959/Ex. 1–143), who investigated an incident in which 16 painters became ill (with one death) after using an acetonitrile-containing material in a confined space. Amdur (1959/Ex. 1–143) reported no further incidents after adequate ventilation was installed and acetonitrile levels were maintained at about 17 ppm. NIOSH concluded that exposure to 40 ppm produced only minimal effects and that no observable effects were produced at 17 ppm (NIOSH 1978g/Ex. 1–262, p. 97).

Based on this evidence, OSHA preliminarily concludes that long-term exposure to 40 ppm causes no or only minimal effects and that a short-term limit of 60 ppm will provide protection against the facial flushing and chest tightness experienced by workers exposed for several hours to levels above this concentration. In construction and maritime, OSHA is therefore proposing to retain the 8-hour TWA of 40 ppm for acetonitrile and to add a STEL of 60 ppm; OSHA is also proposing to extend both limits to agriculture. The Agency preliminarily concludes that the proposed limits will prevent the significant risk of acute illness (and, in one case, death) observed in workers exposed to excessive short-term levels of acetonitrile; the Agency believes that these health effects clearly constitute material impairments of health. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

ACETYLSALICYLIC ACID (ASPIRIN)

CAS: 50–78–2; Chemical Formula: $CH_3COOC_6H_4COOH$

H.S. No. 1006

In construction, maritime, and agriculture, there is no PEL for acetylsalicylic acid. The ACGIH has a TLV® of 5 mg/m³ for this substance as an 8-hour TWA. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a 5 mg/m³ 8-hour TWA PEL for acetylsalicylic acid in construction, maritime, and agriculture. This is the limit recently established in general industry.

Acetylsalicylic acid is a white crystal or powder that is essentially odorless and has a slightly bitter taste. It is used in medicine as an anti-inflammatory drug, an anti-pyretic, and as an analgesic (Hawley's 1987, p. 103).

The work of O'Brien (1968/Ex. 1–47) reports that a normal therapeutic dose of 600 mg aspirin will interfere with platelet aggregation in subjects exposed for a period of 5 days or more. Hart (1947/Ex. 1–137) also reported that 150 mg is the smallest oral dose of acetylsalicylic acid that will produce this effect. Unpublished data from the Dow Chemical Company (cited in ACGIH 1986/Ex. 1–3, p. 10) indicate that exposure to aspirin concentrations exceeding 100 mg/m³ are tolerated except for occasional skin irritation. However, no data are available on the long-term effects on organ systems of inhalation exposure to aspirin. Secondary sources report that aspirin is

an acute irritant to the gastric mucosa and respiratory tract.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for acetylsalicylic acid in the construction, maritime, and agriculture sectors. The Agency preliminarily concludes that this limit will protect workers in these sectors from experiencing adverse blood effects and gastric and respiratory irritation, which are potentially associated with exposure to this substance in the workplace. OSHA believes that these effects constitute material health impairments and that the proposed limit is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ALUMINUM (WELDING FUMES)
CAS: 7429–90–5; Chemical Formula: Al
H.S. No. 1019

OSHA has no permissible exposure limit for aluminum welding fumes in the construction, maritime, or agriculture industry. The ACGIH TLV®–TWA for these fumes is 5 mg/m³. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a TWA–PEL for aluminum welding fumes of 5 mg/m³, measured as aluminum. This is the limit recently established for these fumes in general industry.

The proposed PEL addresses the aluminum fume that is released in the welding process; this limit is being proposed to keep total aluminum particulate concentrations low enough to prevent aluminum particle accumulation in the lungs of exposed workers. However, to the extent either that other toxic substances or materials are released in the welding process or that conditions are conducive to the formation of toxic gases, employers are required to pay attention to the permissible exposure limits for these substances as well. For example, in appendix B of the 1987–88 Threshold Limit Values and Biological Exposure Indices (ACGIH 1987/Ex. 1–16), the ACGIH states that "reactive metals and alloys such as aluminum and titanium are arc-welded in a protective, inert atmosphere such as argon. These arcs create relatively little fume, but an intense radiation which can produce ozone" (ACGIH 1987/Ex. 1–16, appendix B, p. 42). In such an instance, employers would be required to meet any ozone limits in effect (PELs of 0.1 ppm TWA and 0.3 ppm STEL are being proposed for ozone) as well as the PEL for aluminum welding fumes.

The ACGIH states that "most welding, even with primitive ventilation, does not produce exposures inside the welding helmet above 5 mg/m³. That which does * * * should be controlled" (ACGIH 1987/Ex. 1–16, appendix B, p. 43). In those rare instances where internal helmet exposures do exceed 5 mg/m³, employees are at risk from the irritant effects of hot metal fumes, which are deposited in the lung deeply and accumulate there.

Because workers in construction, maritime, and agriculture who are exposed to arc welding fumes have previously not been protected by a permissible exposure limit, OSHA is proposing a PEL of 5 mg/m³ TWA for these fumes (measured in the breathing zone of the welder); the details of the appropriate positioning of the sampler should be determined on the basis of guidance in the Field Operations Manual (OSHA 1984). The Agency preliminarily concludes that the proposed limit will protect welders and other workers in the vicinity of the welding from experiencing the significant irritation potentially associated with inhalation of these fumes. OSHA believes that the respiratory irritation caused by exposure to these fumes constitutes a material health impairment and that the proposed PEL is necessary to substantially reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

2–AMINOPYRIDINE
CAS: 504–29–0; Chemical Formula: $C_5H_6N_2$
H.S. No. 2004

In general industry, construction, and maritime, OSHA's current permissible exposure limit for 2-aminopyridine is 0.5 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV® of 0.5 ppm as an 8-hour TWA for this substance; NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 0.5 ppm for 2-aminopyridine in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all regulated sectors.

2-Aminopyridine is a moderately flammable solid that occurs as white leaflets, colorless crystals, or as a white powder; it has a characteristic, intense odor. 2-Aminopyridine is used in the synthesis of antihistamines and other pharmaceuticals; as an intermediate in the synthesis of herbicides; and in tire manufacture (ACGIH 1986, p. 24; Merck 1983, p. 71; Hawley's 1987, p. 62; Grayson 1985, pp. 979–980). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2-Aminopyridine is a systemic poison that causes headache, respiratory distress, intoxication, convulsions, and death. The LD_{50} in mice by intraperitoneal injection is 28 mg/kg; the LD_{50} in the same species by intravenous administration is 23 mg/kg (RTECS 1990). Acutely poisoned animals showed excitement, tremors, and convulsions before death (Clayton and Clayton 1981, p. 2731). Cats injected intravenously with a 1-mg/kg dose of 2-aminopyridine showed increased blood pressure and respiratory rate, with central nervous system stimulation and muscle twitching. 2-Aminopyridine is readily absorbed through the skin and may cause convulsions by this route (Clayton and Clayton 1981, p. 2732). Application of a 0.02 M solution of 2-aminopyridine to rabbit eyes from which the corneal epithelium had been removed caused slight or no injury (Grant 1986, p. 383).

A worker in a chemical plant who was acutely overexposed to aminopyridine by inhalation and skin absorption died (Spolyar 1951). In another case, a worker exposed to a 5-ppm concentration of 2-aminopyridine for 5 hours complained of headache and nausea, developed increased blood pressure, but subsequently recovered (Clayton and Clayton 1981, p. 2732).

Based on this evidence in humans and animals, OSHA proposes to establish an 8-hour TWA PEL for 2-aminopyridine of 0.5 ppm in agriculture; adoption of this proposed limit would establish the same PEL for workplaces in all OSHA-regulated industry sectors. The Agency preliminarily concludes that occupational exposure to 2-aminopyridine causes systemic poisoning in the form of central nervous system effects and convulsions. Accordingly, OSHA believes that, in the absence of a permissible exposure limit, workers in agriculture are potentially at significant risk for these exposure-related effects and that the proposed PEL will substantially reduce these risks.

ANISIDINE (o-, p-isomers)
CAS: 29191–52–4; Chemical Formula: $NH_2C_6H_4OCH_3$
H.S. No. 2007

OSHA's current limit for the ortho- and para-isomers of anisidine in general industry, construction, and maritime workplaces is 0.5 mg/m³ as an 8-hour time-weighted average; this limit also has a skin notation, which indicates that percutaneous absorption is a significant

route of exposure for this substance. OSHA has no PEL for anisidine in agriculture. The ACGIH's current TLV®–TWA for this substance is 0.5 mg/m³, with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N6A) with the limit being proposed. OSHA is proposing to establish a TWA PEL of 0.5 mg/m³, and a skin notation, for anisidine in agriculture. Promulgation of this limit will make OSHA's PEL for anisidine consistent across all regulated sectors.

Anisidine has two isomers that find use in industry: the ortho-isomer, which is a reddish-brown or yellowish oil, is used in the chemical synthesis of guaiacol and various dyes, while the para-isomer, which is a fused crystalline mass, is used to produce azo dyes (ACGIH 1986, p. 31). Both isomers have the fishy odor that is characteristic of amines (Sittig 1985, p. 80).

Acute exposure to anisidine causes methemoglobinemia in animals; chronic exposure causes cancer (Proctor, Hughes, and Fischman 1988, p. 76). The oral LD_{50}s in rats are 2 and 1.4 g/kg, respectively, for the o- and p-isomer (RTECS 1990). The dermal LD_{50} in rats for para-anisidine is 3200 mg/kg (RTECS 1990). Subacutely poisoned animals showed hematological changes, anemia, and kidney damage (Proctor, Hughes, and Fischman 1988, p. 77). When fed to mice or rats for 7 weeks, o-anisidine hydrochloride caused enlargement of the spleen, reductions in weight gain, an increased incidence of bladder hyperplasia (mice) and non-neoplastic lesions of the thyroid gland and kidney (rats) (IARC 1982, pp. 74–75). Oral administration of p-anisidine to mice and rats in a subchronic study also caused weight gain reductions and darkened spleens in animals of both species (IARC 1982, p. 75). In cancer bioassays in mice and rats, the oral administration of o-anisidine hydrochloride, but not p-anisidine hydrochloride, caused statistically significant increases in the incidence of transitional-cell carcinomas of the urinary bladder (IARC 1982, p. 76). Based on this evidence, the International Agency for Research on Cancer (IARC) has concluded that the evidence for the carcinogenicity of ortho-anisidine in animals is sufficient (IARC 1982, p. 77).

Workers exposed to a 1.9-mg/m³ concentration of anisidine for 3.5 hours per day for 6 months complained of headaches and dizziness and had an increase in sulfhemoglobin, methemoglobin, and Heinz bodies in their red blood cells (ACGIH 1986, p. 31). Anisidine is also an irritant and sensitizer of the skin in humans (HSDB 1986). Based on effects seen in animals, IARC believes that o-anisidine should be regarded "* * * as if it presented a carcinogenic risk to humans" (IARC 1982, p. 77).

The evidence described above demonstrates that anisidine is a chemical asphyxiant that produces anoxia by binding to hemoglobin and that it is also an irritant and sensitizer of the skin and a probable human carcinogen. OSHA therefore preliminarily concludes that the absence of a limit for anisidine poses a significant risk of skin effects, methemoglobinemia, and potential carcinogenicity in exposed workers in agriculture. The Agency believes that the proposed TWA PEL of 0.5 mg/m³, with a skin notation, is necessary to substantially reduce these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ARSENIC and organic compounds
CAS: 7440–38–2; Chemical Formula:
Varies with compound
H.S. No. 2012

OSHA's limit for arsenic and the organic compounds of arsenic in general industry, construction, and maritime is 0.5 mg/m³ (measured as arsenic) as an 8-hour TWA. There is no PEL in agriculture. The ACGIH TLV®–TWA is 0.2 mg/m³; NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL of 0.5 mg/m³ for arsenic and the organic compounds of arsenic in agriculture. This action would make OSHA's limit for these substances consistent across all regulated sectors.

Arsenic is a nonmetallic element that is silver-gray and crystalline in appearance; examples of its organic compounds are arsenic diethyl, arsenic dimethyl, 1-(p-arsenosophenyl)urea, arsine-tri-1-piperidinium chloride, (3-(p-arsonophenyl)ureido)dithiobenzoic acid, and arsphenoxide (Sax and Lewis 1989, pp. 298–307). Arsenic is an ingredient in rodenticides, insecticides, herbicides, and other products, and the organic compounds are used in both human and animal medicine (Gosselin, Smith, and Hodge 1984, p. III–42). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Arsenic and its organic compounds are considerably less toxic than the oxides and other inorganic compounds, and most of the literature therefore deals with the inorganic compounds. The LD_{50} in rats for arsenic is 763 mg/kg (RTECS 1990), and the LC_{50} for arsenic dimethyl in the same species is 3900 mg/m³ (Stevens, DiPasquale, and Farmer 1979). Four of five cows given a single 10-mg/kg oral dose of the monosodium salt of methanarsenic acid died (Dickinson 1972, in Am. J. Vet. Res. 33:1889–1892), and chronic feeding of 50 mg/kg of the same substance caused toxic hepatitis in rabbits (Exon, Harr, and Claeys 1974, in Nutr. Rep. Int. 9:351–357). Carcinogenicity assays that have involved the oral administration of dimethylarsenic acid in mice or the subcutaneous injection of dimethylarsenic acid in the same species have been negative (IARC 1980, Vol. 23, p. 112).

Human toxicity data for pure arsenic or the organic compounds are rare. Some of the drugs used to combat syphilis in the early part of the century contained organic arsenic compounds, and therapeutic administration of these drugs often caused optic neuritis, which sometimes progressed to loss of central vision and optic atrophy (Grant 1986, p. 118). The administration of one such drug, arsphenamine, is known to have caused encephalitis, with headache, loss of consciousness, convulsions, and paralysis of some of the cranial nerves (Grant 1986, p. 119).

In agriculture, OSHA is proposing an 8-hour TWA PEL of 0.5 mg/m³ for arsenic and its organic compounds (measured as As). The Agency preliminarily concludes that this limit is necessary to reduce the significant risk of arsenic toxicity potentially associated with exposure to these substances. OSHA considers arsenic intoxication a material impairment of health and believes that the new limit is necessary to substantially reduce this risk among workers in agriculture. In addition, promulgation of this limit will make the PEL for arsenic and its organic compounds consistent across all OSHA-regulated sectors.

ARSINE
CAS: 7784–42–1; Chemical Formula:
AsH_3
H.S. No. 2010

OSHA's permissible exposure limit for arsine in general industry, construction, and maritime workplaces is 0.05 ppm as an 8-hour TWA. The Agency has no limit for this substance in agriculture. The ACGIH TLV®–TWA for arsine is also 0.05 ppm. NIOSH has a REL for arsine of 2μg/m³ as a 15-minute ceiling. OSHA is proposing a TWA PEL for arsine of 0.05 ppm in agricultural workplaces. This action will make OSHA's PEL for arsine consistent across all regulated sectors.

Arsine is a colorless gas that has a garlic-like odor (ACGIH 1986, p. 39). Arsine is evolved when nascent hydrogen is liberated in a solution that contains inorganic arsenic; for example, arsine is liberated when arsenic-containing metals are pickled or treated with reducing acids (Clayton and Clayton 1981, p. 1518). Another source of potential exposures to arsine occurs in sulfuric acid production; if arsenic is not completely removed from the feed gases, arsine is liberated when iron comes into contact with the arsenic-containing acids (Clayton and Clayton 1981, p. 495). Arsine could also be liberated if a metal dropped into a container of arsenical pesticide or if such a pesticide were mixed in a metal vat. Arsine finds industrial use in the laboratory analysis of arsenic and as a doping agent in the semiconductor industry (Proctor, Hughes, and Fischman 1988, p. 83; Clayton and Clayton 1981, p. 1519).

Arsine is a highly toxic gas that causes nearly instantaneous death, acute renal failure, and severe intramuscular hemolysis. When inhaled, arsine is oxidized to form elemental trivalent arsenic and arsenous oxide, both recognized human carcinogens (Proctor, Hughes, and Fischman 1988, p. 831). The extent of the red blood cell breakdown caused by the inhalation of this gas is sufficient to cause the sclera of the eye and the skin to turn an intense orange color (jaundice) (Grant 1986, p. 119; Proctor, Hughes, and Fischman 1988, p. 83). Short-term inhalation of a 250-ppm concentration of this gas may cause death within 30 minutes, and inhalation even of a 10- or 50-ppm concentration for a longer period can be fatal (Proctor, Hughes, and Fischman 1988, p. 83). Symptom onset may be delayed for 2 to 24 hours; the signs and symptoms of arsine poisoning include headache, abdominal pain, weakness, dizziness, vomiting, and dark red or brown urine (hematuria) (Proctor, Hughes, and Fischman 1988, p. 83). Workers exposed for 8 months to arsine at concentrations described as "very small" had substantially reduced hemoglobin levels. Some workers had levels as low as 3.2 g/100 ml blood); these workers were involved in gold extraction operations involving cyanide leaching (Proctor, Hughes, and Fischman 1988, p. 83).

Animals exposed to arsine concentrations between 0.5 and 2 ppm for 3 hours/day for several weeks developed blood changes (ACGIH 1986, p. 39). Arsine has been responsible for several hundred fatal poisonings in humans (ACGIH 1986, p. 39).

Based on this evidence, OSHA preliminarily concludes that workers in agriculture are at significant risk of experiencing hemolysis as a result of exposure to arsine at the levels permitted by the absence of a limit for this substance. Accordingly, OSHA is proposing to substantially reduce this risk by establishing an 8-hour TWA PEL for arsine of 0.05 ppm. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

BARIUM, SOLUBLE COMPOUNDS (as Ba)

CAS: 7440–39–3; Chemical Formula: Ba
H.S. No. 2015

In general industry, construction, and maritime, OSHA's permissible exposure limit for soluble barium compounds (measured as barium) is 0.5 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.5 mg/m³ for barium's soluble compounds. NIOSH has no REL for these substances but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA PEL of 0.5 mg/m³ for the soluble barium compounds in agriculture. Promulgation of this limit will make the PEL for these compounds consistent across all OSHA-regulated sectors.

Commonly used soluble barium compounds include barium nitrate, barium oxide, barium carbonate, and barium chloride, all of which are odorless, white solids. These compounds are used as rodenticides, pesticides, disinfectants, and additives; in the manufacture of photographic papers, dyes, chemicals, explosives, matches, and pyrotechnics; in water treatment; as catalysts; and in fire-proofing (NIOSH/OSHA Occupational Health Guideline 1981, pp. 1, 4; Hawley's 1987, pp. 118, 120). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Exposure to the soluble barium compounds causes eye, skin, and mucous membrane irritation, central nervous system and gastrointestinal effects, and respiratory disease in humans and animals. Barium compounds can also cause reproductive effects in animals. Barium carbonate has oral LD_{50} values of 418 mg/kg and 200 mg/kg in rats and mice, respectively (RTECS 1990). The oral LD_{50} for barium chloride in rats is 118 mg/kg (RTECS 1990). In contact with the skin of rabbits, 500 mg of barium nitrate caused mild irritation; 100 mg of this substance instilled into the eyes of rabbits caused moderate irritation (RTECS 1990). For barium oxide, the subcutaneous LD_{50} in mice is 50 mg/kg (RTECS 1990). Subcutaneous injection of 5 mg/kg of barium chloride caused acute toxicity and death in rabbits after 2 to 2.5 hours (Fasekas et al. 1953, in Clayton and Clayton 1981, p. 1534). The signs and symptoms of barium salt toxicity in experimental animals include salivation, vomiting, colic, diarrhea, convulsive tremors, slow, hard pulse, and elevated blood pressure. Hemorrhages in the stomach, intestines, and kidneys, followed by muscle paralysis and death, may occur a few hours or days after the exposure (Clayton and Clayton 1981, p. 1534). A recent study in guinea pigs (Hicks, Caldas, Dare, and Hewitt 1988, in Arch. Toxicol. Suppl. 9:416–420) showed that exposure to welding fumes generated in metal arc welding using barium as a flux component caused cardiotoxic and bronchoconstrictive effects. Rats given 1, 10, or 100 ppm barium in their drinking water for 1 to 16 months showed increased systolic blood pressure after exposure for 1 month at the 100-ppm level or 8 months at the 10-ppm level; in the high-dose group, depressed cardiac contraction and electrical hyperexcitability were also seen (Perry, Koop, Perry, and Erlanger 1989, J. Toxicol. Environ. Health 28(3):375–388). Male rats inhaling 1150 mg/m³ of barium carbonate for 24 hours showed evidence of reproductive effects (RTECS 1990). Inhalation of barium carbonate at a concentration of 3130 μg/m³ for 24 hours during the 16th week of pregnancy caused effects on the ovaries and fallopian tubes in female rats (RTECS 1990).

In humans, an oral dose of 800 mg/kg barium carbonate was lethal; convulsions and cardiac effects occurred before death (RTECS 1990). Barium hydroxide and barium oxide are strongly alkaline in aqueous solutions and cause severe eye burns and skin irritation on contact (Grant 1986, p. 134). Symptoms of barium intoxication in humans include nausea, vomiting, colic, and diarrhea; myocardial and general muscular stimulation and tingling of the extremities soon follow (Reeves 1979, in Proctor, Hughes, and Fischman 1988, p. 89). Inhalation of the dust of soluble barium compounds can cause a benign pneumoconiosis called baritosis; radiologic examination shows circumscribed nodules that are evenly distributed throughout both lung fields (Proctor, Hughes, and Fischman 1988, p. 1535). In a factory where bomb casings were heated in barium carbonate, bronchial irritation was reported among

the workers (Elkins 1950, in Clayton and Clayton 1981, p. 1535). In a report of an accidental case of barium carbonate ingestion, symptoms of gastroenteritis, slow pulse rate, and paralysis were seen (Morton 1945, in Clayton and Clayton 1981, p. 1535). Other reports of exposure to barium compounds describe pulmonary nodulation with or without a decrease in lung function (Wende 1956; Gombos 1957, in ACGIH 1986, p. 47).

Based on this evidence, OSHA preliminarily concludes that exposure to the soluble compounds of barium causes eye, skin, and mucous membrane irritation and respiratory, gastrointestinal, and central nervous system effects. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit of 0.5 mg/m³ as an 8-hour TWA is necessary to significantly reduce the risk of these material health impairments. In addition, promulgation of the proposed PEL will make OSHA's limit for the soluble compounds of barium consistent across all OSHA-regulated sectors.

2-BUTOXYETHANOL

CAS: 111–76–2; Chemical Formula: $C_4H_9OCH_2CH_2OH$

H.S. No. 1046

OSHA's current permissible exposure limit in construction and maritime for 2-butoxyethanol, one of the family of substances known as the glycol ethers, is 50 ppm as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 25 ppm, also with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a TWA–PEL of 25 ppm, with a skin notation, for this substance in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

2-Butoxyethanol is a colorless liquid with a mild ethereal odor. It is used as a solvent for resins, spray lacquers, varnishes, enamels, and textiles. It is also used in the dry cleaning industry (ACGIH 1986, p. 71; Hawley's 1987, p. 488).

2-Butoxyethanol has long been known to be toxic, with early studies indicating that a single 7-hour exposure to 700 ppm was lethal to laboratory animals (Werner, Mitchell, Miller, and von Oettingen 1943a, as cited in ACGIH 1986/Ex. 1–3, p. 71). Exposures near the lethal level caused systemic toxicity in the form of hemoglobinuria and lung, kidney, and liver changes. Carpenter, Pozzani, Weil, and associates (1956/Ex. 1–303) reported hemolytic anemia and increased fragility of the red blood cells in rats repeatedly exposed to 2-butoxyethanol at 320 ppm for 5 weeks. However, repeated exposure for 12 weeks at 400 ppm was only slightly injurious to dogs (Werner, Mitchell, Miller, and von Oettingen 1943b, as cited in ACGIH 1986/Ex. 1–3, p. 71).

Humans appear to be less susceptible to butoxyethanol poisoning than experimental animals. In humans, several single 8-hour exposures at levels of 200 ppm and 100 ppm caused urinary excretion of butoxyacetic acid; these subjects experienced irritation and discomfort after these exposures (Carpenter, Pozzani, Weil et al. 1956/Ex. 1–303). A recent study has confirmed that the increased erythrocyte osmotic fragility observed in rats exposed to many of the glycol ethers is a very sensitive indicator of toxicity and correlates with the development of hemoglobinuria at higher exposure levels (Moffett, Linnett, and Blair 1976, as cited in ACGIH 1986/Ex. 1–3, p. 71). These findings indicate that the no-effect level in animals is approximately 25 ppm. The ACGIH suggests that 2-butoxyethanol's toxicity may be more likely to occur as a result of skin absorption than as a consequence of inhalation (ACGIH 1986/Ex. 1–3, p. 71).

OSHA preliminary concludes that the current PEL of 50 ppm in construction and maritime is insufficiently protective against the risk of 2-butoxyethanol's irritant, hematological, and other potential systemic effects, which OSHA considers material health impairments. Accordingly, OSHA is proposing to lower the PEL in these two sectors to 25 ppm, to retain the skin notation, and to extend the PEL and the skin notation to agriculture. The proposed limit will reduce the significant risk associated with exposure to 2-butoxyethanol to a level below that at which these toxic effects have been observed in animals and humans. This lower limit will also prevent the discomfort experienced by workers at exposure levels of 40 ppm. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

tert-BUTYL CHROMATE (as CrO_3)

CAS: 1189–85–1; Chemical Formula: $[(CH_3)_3CO]_2CrO_2$

H.S. No. 2024

In general industry, construction, and maritime, OSHA's current permissible exposure limit for tert-butyl chromate (measured as CrO_3) is 0.1 mg/m³ as a ceiling limit; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit for tert-butyl chromate in agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³ as a ceiling limit, with a skin notation, for tert-butyl chromate. NIOSH has a REL of 1 μg/m³ (measured as hexavalent chromium) as a 10-hour TWA for this substance. OSHA is proposing to establish a PEL of 0.1 mg/m³ as a ceiling, with a skin notation, for tert-butyl chromate in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

tert-Butyl chromate is a liquid that is used as an organic source of chromium in specialty reactions, in the oxidation of steroids, and in the manufacture of catalysts for the polymerization of olefins (Sittig 1985, pp. 162–163; NIOSH/OSHA 1981). tert-Butyl chromate is a hexavalent chromium compound.

tert-Butyl chromate causes marked eye, skin, and respiratory tract irritation and central nervous system effects in animals. Because tert-butyl chromate is a hexavalent chromium compound, it is likely to cause lung and sinus cancer in humans (Sittig 1985, p. 163). There are no acute toxicity data specific to tert-butyl chromate. Rats exposed repeatedly for 30 to 60 minutes to daily lethal concentrations (dose unspecified) of a mixture of tert-butyl chromate and butyl alcohol showed signs of lacrimation, drowsiness, ataxia, prostration, muscular weakness, twitching, weight loss, rapid and superficial respiration, and necrosis of the skin and subcutaneous tissues (NIOSH/OSHA 1981). At autopsy, extensive epithelial exudation was seen in the liver of these animals (NIOSH/OSHA 1981). In other inhalation studies (species and doses unspecified), tert-butyl chromate caused mild narcosis and rapid respiration (NIOSH/OSHA 1981).

Based on effects seen in animals, workers exposed to tert-butyl chromate are expected to develop pulmonary changes, to experience narcosis, and to develop necrotic lesions of the skin if their skin comes into contact with this substance (Roubal and Krivucova 1960, in ACGIH 1986, p. 80). tert-Butyl chromate can also be absorbed through the skin in toxic amounts, and eye contact with this substance causes severe damage (Hazardous Substance Fact Sheet 1986, p. 1). Contact of the skin with tert-butyl chromate causes deep ulcers and may cause dermal sensitization (Hazardous Substance Fact Sheet 1986, p. 1). Inhalation of tert-butyl chromate vapors may cause ulceration of the nasal septum, with bleeding, discharge, and crusting (Hazardous Substance Fact Sheet 1986, p. 1) Chronic

exposure to low concentrations of tert-butyl chromate also can cause liver and kidney damage (Hazardous Substance Fact Sheet 1986, p. 1).

Based on this evidence, OSHA preliminarily concludes that tert-butyl chromate causes skin, mucous membrane, and respiratory irritation and may cause cancer in exposed workers. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed ceiling PEL of 0.1 mg/m³, with a skin notation, is necessary to significantly reduce the risk of material health impairment among agricultural workers. In addition, promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

n-BUTYL GLYCIDYL ETHER (BGE)
CAS: 2426–08–6; Chemical Formula:
$C_4H_9OCH_2CH_2OH$
H.S. No. 1052

The OSHA limit for n-butyl glycidyl ether in construction and maritime is 50 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH TLV®–TWA is 25 ppm; NIOSH has recommended that occupational exposure to n-butyl glycidyl ether not exceed 5.6 ppm over a 15-minute short-term period. The Agency is proposing a PEL of 25 ppm as an 8-hour TWA for n-butyl glycidyl ether in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

n-Butyl glycidyl ether is a clear, colorless liquid. It is used as a reducing agent and acid receptor, to stabilize chlorinated solvents, and as a chemical intermediate (ACGIH 1986, p. 81; Clayton and Clayton 1981, p. 2201).

OSHA's current PEL of 50 ppm in construction and maritime was adopted from the ACGIH's 1968 TLV® list. The basis for the ACGIH limit was that repeated applications of n-butyl glycidyl ether to the skin of humans caused irritation and sensitization. The NIOSH limit of 5.6 ppm is based, in large part, on mutagenic studies conducted in microbial and mammalian test systems, as well as on some evidence for other members of the glycidyl ether family showing that exposure is associated with testicular atrophy and hematopoietic abnormalities in laboratory animals. After publication of its criteria document, NIOSH received a confidential report prepared for the Shell Development Company by Anderson et al. (1957, as cited in ACGIH 1986/Ex. 1–3, p. 81), who had conducted a rat inhalation study. In this research, rats were exposed to 38 ppm, 75 ppm, 150 ppm, or 300 ppm n-butyl glycidyl ether for 7 hours daily, 5 days per week for 10 weeks. Atrophic testes were found in 5 of 10 rats exposed to 300 ppm, very small testes were found in 1 of 10 rats exposed to 150 ppm, and patchy atrophy was found in the testes of 1 of 10 rats exposed to 75 ppm. No effects were observed in rats exposed at 38 ppm. Based on this additional evidence, NIOSH reaffirmed its REL for n-butyl glycidyl ether in a Current Intelligence Bulletin (NIOSH 1978p). n-Butyl glycidyl ether also causes mild to moderate irritation in contact with the skin of rabbits; instilled into the eyes of animals of the same species, this substance caused severe irritation (RTECS 1990). The oral LD_{50} in rats is 2050 mg/kg, and the dermal LD_{50} in rabbits is 2520 mg/kg (RTECS 1990). The lowest lethal concentration in rats is 670 ppm (RTECS 1990). Animals given intragastric or intraperitoneal injections of n-butyl glycidyl ether developed incoordination and ataxia before death (Hine et al. 1956, in AMA Arch Ind Hlth 14:250–264). Intracutaneous injection of this substance in guinea pigs led to sensitization in 16 of 17 of these animals (Hine et al. 1956).

OSHA believes that this proposal has taken reasonable account of the limited data for this substance; accordingly, OSHA preliminarily concludes that reducing the PEL from 50 ppm to 25 ppm will substantially reduce the significant risk of reproductive effects and will also protect workers in construction, maritime, and agriculture from BGE's irritant and sensitization effects, all of which constitute material health impairments. The Agency therefore proposes a permissible exposure limit of 25 ppm TWA for n-butyl glycidyl ether in construction, maritime, and agriculture. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CAPTAN
CAS: 133–06–2; Chemical Formula:
$C_9H_8Cl_3NO_2S$
H.S. No. 1067

OSHA has no PEL for captan in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 5 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N6A) with the limit being proposed. The Agency is proposing a PEL of 5 mg/m³ as an 8-hour TWA for captan in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Captan is a white, crystalline, odorless solid. Captan is used for seed treatment, as a fungicide in paints, in plastics, leather, fabrics, fruit preservation, and as a bacteriostat. When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Skin applications of 900 mg/kg captan produce skin irritation in experimental animals. Long-term feeding studies did not reveal adverse effects in dogs fed captan in the diet at levels of 100 mg/kg/day for 66 weeks or in rats fed 1000 mg/kg/day for 2 years (Martin 1971/Ex. 1–1161; Spencer 1968, as cited in ACGIH 1986/Ex. 1–3, p. 98). Male mice showed decreased fertility at captan levels of 50 or 100 mg/kg/day for 5 days (Collins 1972/Ex. 1–893). Studies on the mutagenicity of captan indicate that the substance acts as an alkylating agent and induces chromosome rearrangements in rats and point mutations in *Neurospora crassa* (Epstein and Legator, as cited in ACGIH 1986/Ex. 1–3, p. 98). Legator and colleagues (1969, as cited in ACGIH 1986/Ex. 1–3, p. 98) reported that captan concentrations of 10 ug/ml inhibited DNA in human embryo cells, and concentrations of 1.5 ug/ml produced chromosomal aberrations in the somatic and germ cells of kangaroo rats. Animal evidence concerning the carcinogenicity of captan is contradictory, although high doses caused significant incidences of polyploid carcinoma of the duodenum and adenomatous polyps in mice (NCI 1977a, as cited in ACGIH 1986/Ex. 1–3, p. 98).

Some captan-exposed individuals experience skin irritation (Spencer 1968, as cited in ACGIH 1986/Ex. 1–3, p. 98). A case of recurrent urticaria caused by captan exposure has been reported and confirmed (Croy 1973/Ex. 1–894), and captan caused high reactivity when administered in a battery of patch tests (Rudner 1977/Ex. 1–967).

OSHA is proposing a PEL of 5 mg/m³ as a TWA to protect workers exposed to captan in the construction, maritime, and agriculture industries from the significant risk of exposure-related skin irritation, reproductive effects, mutagenicity, and, perhaps, carcinogenicity, all of which constitute material health impairments. The Agency preliminarily concludes that this limit will substantially reduce these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CARBARYL (SEVIN®)
CAS: 63–25–2; Chemical Formula
$C_{12}H_{11}NO_2$

H.S. No. 2026

OSHA's current limit for carbaryl in general industry, construction, and maritime workplaces is 5 mg/m³ as an 8-hour TWA. OSHA has no PEL for carbaryl in agriculture. The 1987–1988 ACGIH TLV®-TWA for carbaryl is 5 mg/m³; the NIOSH recommended exposure limit (REL) for this substance is 5 mg/m³ as a 10-hour time-weighted average. OSHA is proposing to establish a PEL of 5 mg/m³ as an 8-hour TWA for carbaryl in agriculture. This is the limit recently established for carbaryl in general industry.

Carbaryl is an odorless solid that is crystalline and white or grayish in color (Proctor, Hughes, and Fischman 1988, p. 115; ACGIH 1986, p. 99). Carbaryl is widely used in agriculture as an insecticide for corn, vegetables, soybeans, cotton, deciduous fruits, nuts, alfalfa, wheat, and many other crops. It is also used as an insecticide for gardens, turf, ornamentals, forests, livestock, and poultry. In addition, carbaryl is an effective acaricide and molluscicide (HSDB 1985). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Carbaryl is a carbamate pesticide; like other carbamates, this substance causes reversible cholinesterase inhibition in humans and animals. In animals, carbaryl also causes irritation of the eyes and skin when in contact with these organs [RTECS 1920). There is some evidence in experimental animals that carbaryl causes reproductive effects in female animals and developmental effects in the offspring of exposed animals (RTECS 1990; EPA 1987). The oral LD_{50} in rats is 250 mg/kg, and the dermal LD_{50} in rabbits is 2000 mg/kg (RTECS 1990). Dogs exposed by inhalation to a carbaryl dust concentration of approximately 75 mg/m³ showed evidence of cholinesterase inhibition, but rats exposed to the dust at a concentration of 10 mg/m³ for 7 hours/day for 90 days showed no such effects (ACGIH 1986, p. 99).

Dogs fed single oral doses of carbaryl ranging from 250 to 500 mg/kg showed signs of overstimulation of the parasympathetic nervous system (increased respiratory rate, salivation, muscular twitching, incoordination), at the two highest doses; however, red blood cell cholinesterase activity declined by 24 to 33 percent in the 375-mg/kg dose group (EPA 1987). Decreases in red blood cell cholinesterase activity have also been seen after the administration of single oral doses of carbaryl to rats (Carpenter et al. 1961; Weil et al. 1968).

Reproductive effects (reduced fertility, increase in number of resorptions, decrease in number of live fetuses/litter) have been seen in female rats, rabbits, mice, and gerbils (Weil et al. 1972; Murray et al. 1979; Collins et al. 1970), and some studies have shown developmental effects (omphalocele, conjoined nostrils, delayed ossification) among the offspring of pregnant rabbits and mice given carbaryl during gestation (Murray et al. 1979).

In humans, exposure to carbaryl causes a depression in cholinesterase activity that is reversible on cessation of exposure. After a large-scale carbaryl spraying operation in Nigeria, eight applicators had 15-percent reductions in their plasma cholinesterase activity levels (Vanderkar 1965). Male volunteers who ingested doses of carbaryl of up to 0.13 mg/kg/day for 6 weeks showed no signs and reported no symptoms of cholinesterase poisoning (Gosselin, Smith, and Hodge 1984, p. III–87). A human suffered from moderate poisoning after ingesting 250 mg of carbaryl; after a short period (20 minutes) with no symptoms, abdominal pain, profuse sweating, lassitude, and vomiting developed in this individual (Proctor, Hughes, and Fischman 1988, p. 115). Workers exposed for 19 months to carbaryl at concentrations ranging from 0.23 to 0.31 mg/m³ showed no signs or symptoms of cholinesterase inhibition (Proctor, Hughes, and Fischman 1988, p. 115).

The evidence described above shows that carbaryl exposure causes irritation and inhibition of cholinesterase activity in both humans and animals, and that it has reproductive and teratogenic effects in animals. Accordingly, OSHA preliminarily concludes that, in the absence of a limit, workers in agriculture are potentially at significant risk of experiencing these exposure-related effects. The Agency believes that the proposed 8-hour TWA limit of 5 mg/m³ for carbaryl will substantially reduce these risks for workers in this sector. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

beta-CHLOROPRENE

CAS: 126–99–8; Chemical Formula: CH_2:CClCH:CH_2

H.S. No. 1088

The current OSHA limit for beta-chloroprene in construction and maritime is an 8-hour TWA of 25 ppm, with a skin notation. There is no limit in agriculture. The ACGIH has a 10-ppm TLV®-TWA, with a skin notation; and NIOSH (1977c/Ex. 1–277) recommended a ceiling limit of 1 ppm, measured over a 15-minute period. In construction, maritime, and agriculture, the Agency is proposing an 8-hour TWA PEL of 10 ppm; the skin notation is retained in construction and maritime and proposed in agriculture. NIOSH (Ex. 8–47, Table N1) concurs with this limit, which was recently established for this substance in general industry.

beta-Chloroprene is a colorless, highly flammable liquid. It is used in the production of neoprene (ACGIH 1986, p. 135; Hawley's 1987, p. 271).

The ACGIH recommended a reduction in the TLV® for beta-chloroprene from 25 ppm to 10 ppm in 1981, based on a review of the world literature by Trochimowicz, who prepared the 1980 ACGIH documentation, and by Reinhardt (1980, as cited in ACGIH 1986/Ex. 1–3, p. 135). Reinhardt concluded that there was no evidence indicating that the former 25-ppm PEL was not protective, but OSHA believes the systemic effects (in the form of growth retardation) seen in rats and hamsters exposed to 39 ppm beta-chloroprene for 4 weeks or to 50 ppm for a lifetime suggest that the 25-ppm PEL is not sufficiently protective.

When NIOSH established a REL of 1 ppm for beta-chloroprene, NIOSH (1977c/Ex. 1–277) cited three reports on beta-chloroprene-using facilities in the Soviet Union. Katsova (1973, as cited in ACGIH 1986/Ex. 1–3, p. 135) reported finding a significant excess of chromosomal abnormalities in the blood of workers exposed to approximately 5 ppm beta-chloroprene. Volkova, Fomenko, Bagdinov et al. (1976/Ex. 1–1025) reported similar findings in a plant where beta-chloroprene levels ranged from 0.8 to 1.95 ppm. In the third study, Sanotskii (1976/Ex. 1–662) reported abnormal sperm morphology among workers exposed at levels of from 0.28 to 1.94 ppm; a threefold increase in the rate of spontaneous abortion among wives of these workers was also found. In addition, NIOSH (1977c/Ex. 1–277) cited a study by Davtiani, Fomenko, and Andreyeva (1973/Ex. 1–1032) that reported a significant excess of embryonic mortality in female rats that were mated to male rats exposed to 1 ppm beta-chloroprene. These investigators also found chromosomal aberrations in the bone marrow cells of exposed male rats. NIOSH (1977c/Ex. 1–277) also cited a number of reports showing beta-chloroprene to be mutagenic in a variety of test systems. NIOSH concluded that it was prudent to reduce exposure to 1 ppm over a 15-minute period, to reduce the risk of genetic abnormalities being transmitted

to subsequent generations. This exposure represents the lowest concentration that can be measured reliably over a 15-minute period.

However, OSHA notes that sizeable discrepancies exist between the findings from the Russian studies and results from other studies that were undertaken to confirm the Soviet claims. Torkelson and Rowe (1981c, in "Patty's Industrial Hygiene and Toxicology," 3rd rev. ed., Vol. 2B, Clayton and Clayton 1981) offer two possible explanations for these discrepancies:

> beta-Chloroprene is a very unstable compound, which, unless handled with extreme care, * * * [epoxidizes] and polymerizes to toxic compounds. This might explain the alleged effects in animals. Alleged effects in humans may be due to this same cause or to the use of different chemical processes which produce different types of impurities. Many other causes can be postulated, but in our opinion more credence must be given to animal studies in which the sample is known to have been handled with extreme care and to the results of experience in U.S. industry where the method of handling has been reported (Torkelson and Rowe 1981c, p. 3578).

These authors report that when the purity of the sample was carefully controlled, repeated exposures to 25 ppm or less of the vapor have caused no reproductive, teratological, or embryotoxic effects in rats: "Despite frank clinical toxicity in exposed pregnant rats, fetuses showed no teratogenic effects at beta-chloroprene levels as high as 175 ppm" (Torkelson and Rowe 1981c, pp. 3579–80).

The 1-ppm (15-minute STEL) value recommended for this substance by NIOSH is based on studies reported in the Soviet literature; in addition, the REL is set at the analytical limit of detection. OSHA's 10-ppm PEL is based on a 1981 critical review of the world literature (Trochimowicz 1980, as cited in ACGIH 1986/Ex. 1–3, p. 135) and on the observation that only mild systemic effects are observed after exposure to this substance at 38 ppm. OSHA is proposing an 8-hour TWA PEL of 10 ppm, with a skin notation, for beta-chloroprene in the construction, maritime, and agricultural sectors, to substantially reduce the significant risk of reproductive and systemic effects, which constitute material health impairments that are potentially associated with exposure to beta-chloroprene. The Agency preliminarily concludes that the proposed limit will substantially reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CYANIDES (as CN)
CAS: Varies with compound; Chemical Formula: Varies with compound
H.S. No. 2045

In general industry, construction, and maritime, OSHA's permissible exposure limit for cyanides is 5 mg/m³ as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for cyanides. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 5 mg/m³, with a skin notation. NIOSH has a REL of 5 mg/m³ as a 10-minute ceiling for the cyanide salts. OSHA proposes to establish a TWA PEL of 5 mg/m³, with a skin notation, for the cyanides in agriculture. Promulgation of this limit will make the PEL for the cyanides consistent across all OSHA-regulated sectors.

The principal cyanides in industrial use are potassium and sodium cyanide and calcium cyanide (Proctor, Hughes, and Fischman 1988, p. 166). Potassium cyanide and sodium cyanide are white deliquescent solids that have a faint, bitter, almond-like odor. Cyanides find use as insecticides and fumigants, in the extraction of gold and silver ores, in electroplating and metal cleaning, in the manufacture of dyes, pigments, nylon, and chelating agents, in the heat treatment of metals, in photography, and as reagents in analytical chemistry (ACGIH 1986, p. 153; Hawley's 1987, pp. 954, 1057). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Cyanides cause systemic effects and eye, skin, and respiratory tract irritation in humans and animals. Sodium cyanide has an oral LD_{50} of 6440 μg/kg in rats (RTECS 1990). The oral LD_{50}s for potassium cyanide in rats, mice, and rabbits are 10 mg/kg, 8.5 mg/kg, and 5 mg/kg, respectively (RTECS 1990). The ocular LD_{50} in rabbits for sodium cyanide is 5 mg/kg; in rabbits, the ocular LD_{50} for potassium cyanide is 7.8 mg/kg (RTECS 1990). Various species (monkeys, cats, dogs, and rats) given daily subcutaneous injections of potassium cyanide at lethal levels showed signs of nystagmus, periods of blindness, and degeneration of the optic nerve, chiasm, and optic tract (Grant 1986, p. 287). A recent study in mice showed that subcutaneous injection of 10 mg/kg potassium cyanide increased the levels of blood ammonia to 2.5 times those of controls; all animals subsequently lapsed into unconsciousness (Yamamoto 1989, in Toxicol. Appl. Pharmacol. 99(3):415–420). The author suggests that hyperammonemia and increased neutral and aromatic amino acids may be important in the loss of consciousness associated with cyanide exposure. An oral dose of 65 g/kg potassium cyanide caused effects on the reproduction and fertility of female rats when administered 14 days before and on days 1 through 22 of pregnancy (RTECS 1990 "Potassium Cyanide").

In humans, the cyanide ion has essentially the same toxicity whatever the route of absorption (Hayes 1982, p. 127). The estimated LC_{50} in humans is 3404 ppm for a 1-minute exposure (NIOSH Criteria Document 1976). After 6 to 8 minutes, exposure to 270 ppm is fatal; 181 ppm is lethal after 10 minutes, and 135 ppm is fatal after a 30-minute exposure (NIOSH Criteria Document 1976). The signs and symptoms of less severe exposure to any of the cyanides include weakness, headache, confusion, nausea, and vomiting (NIOSH Criteria Document 1976). In humid atmospheres, cyanide solutions cause skin and respiratory tract irritation and may cause an allergic contact dermatitis (NIOSH Criteria Document 1976). Cyanide salt solutions cause itching and discoloration or corrosion of the skin due to the alkalinity of these solutions; exposure to solutions as dilute as 0.5 percent potassium cyanide has caused skin irritation and symptoms such as headaches and dizziness (NIOSH Criteria Document 1976). In one case, an individual who ingested 600 mg of potassium cyanide experienced acute pulmonary edema and lactic acidosis (Graham, Laman, Theodore, and Robin 1977, in Proctor, Hughes, and Fischman 1988, p.167). The signs and symptoms of chronic exposure to cyanides include weakness, nausea, headache, and vertigo (NIOSH Criteria Document 1976). Thirty-six silver-reclaiming facility workers repeatedly exposed to cyanide (concentrations not specified) continued to experience symptoms as long as 7 months or more after exposure ended; at least 30 percent of these workers reported experiencing headache, eye irritation, easy fatigue, loss of appetite, and nose bleeds (Blanc et al. 1985, in Proctor, Hughes, and Fischman 1988, p.167). A 39-year old worker suffered from loss of appetite, nervousness, dizziness, headache, nausea, vomiting, and weight loss caused by repeated exposure to cyanide when he put very hot iron into a hardening bath (Wuthrich 1954, in Hayes 1982, p.127). The illness disappeared during the patient's 2- or 3-week absence from work; however, his symptoms returned within 1 month after

return to work (Wuthrich 1954, in Hayes 1982, p. 127).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to any of the cyanides causes eye, skin, and respiratory tract irritation and systemic effects in humans and animals. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit of 5 mg/m³ as an 8-hour TWA, and a skin notation, is necessary to significantly reduce these risks of material health impairment among these workers. Promulgation of this limit will also make the PEL for these substances consistent across all OSHA-regulated sectors.

CYCLOHEXYLAMINE
CAS: 108–91–8; Chemical Formula:
$C_6H_{13}N$
H.S. No. 1109

OSHA has no limit for cyclohexylamine in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 10 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limit. OSHA is proposing a PEL of 10 ppm as an 8-hour TWA for cyclohexylamine in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Cyclohexylamine is a liquid with a strong, fishy, amine odor. It is used in the manufacture of insecticides, plasticizers, and dry cleaning soaps, as a corrosion inhibitor, and as a chemical intermediate (ACGIH 1986, p. 161; Merck 1983, p. 392). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Data concerning the acute toxicity of cyclohexylamine were reported by Eastman Kodak in 1958 (ACGIH 1986/Ex. 1–3, p. 161). In rats, the oral LD_{50} of a 5-percent solution in water was between 400 and 800 mg/kg; mice fed a diet of the 1-percent aqueous solution or the undiluted amine had LD_{50}s of between 200 and 400 mg/kg. Injection of the 5-percent aqueous solution in rats produced LD_{50}s of between 5 and 25 mg/kg, while mice injected intraperitoneally with the 1-percent solution had LD_{50}s of between 5 and 10 mg/kg. In guinea pigs, the dermal LD_{50} of undiluted cyclohexylamine is reported to be between 1 and 5 ml/kg. Edema, necrosis, and eschars were reported as a consequence of these dermal exposures. In rabbits, one drop of a 50-percent solution caused complete destruction of the eye. Six-hour inhalation exposures at a vapor concentration of 12,000 ppm caused deaths in rats, but exposure to 1000 ppm caused neither toxic effects nor deaths.

Legator, Palmer, Green, and Petersen (1969/Ex. 1–406) considered cyclohexylamine to be a potential carcinogen, mutagen, or teratogen on the basis of dose-dependent chromosomal abnormalities observed in rats injected intraperitoneally with cyclohexylamine. Khera, Stolz, Gunner et al. (1971/Ex. 1–343) noted adverse effects on rat fertility, and Becker and Gibson (1970/Ex. 1–298) reported embryotoxic effects in mice intraperitoneally injected with cyclohexylamine. In contrast, Kennedy, Sanders, Weinberg et al. (1969, as cited in ACGIH 1986/Ex. 1–3, p. 161) reported no effects of exposure to cyclohexylamine on rabbit and rat fertility, reproduction, embryogenesis, or perinatal and postnatal development.

In general, there is agreement concerning the moderate to severe toxicity of cyclohexylamine and its potential for intense skin irritation and moderate skin sensitization (Sax 1968b, as cited in ACGIH 1986/Ex. 1–3, p. 161). The chemical is well known to be pharmacologically active, having sympathomimetic activity (Barger and Dale 1910/Ex. 1–1104). However, Litchfield and Swan (1971/Ex. 1–346) report that human dietary levels of 5 g/day for 7 to 8 days produced no pharmacologically active levels in the tissues; furthermore, no changes were detected in blood pressure, heart rate, or electrocardiograms of exposed subjects. Chronic experimental toxicity data are lacking, but Watrous and Schulz (1950/Ex. 1–940) have reported that exposure to 4 to 10 ppm of cyclohexylamine caused no symptoms of any kind in acutely exposed employees.

OSHA is proposing an 8-hour TWA PEL of 10 ppm for cyclohexylamine in construction, maritime, and agriculture. The Agency preliminarily concludes that limiting workplace exposures to this substance to the 10-ppm level will protect workers in these sectors from the significant risks of severe skin and eye irritation and sensitization, all material health impairments that are associated with exposure to cyclohexylamine. OSHA believes that this limit is necessary to substantially reduce these significant occupational risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CYHEXATIN
CAS: 13121–70–5; Chemical Formula:
$(C_6H_{11})_3SnOH$
H.S. No. 1112

OSHA has no limit for cyhexatin in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 5 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limit. The Agency is proposing a 5 mg/m³ TWA–PEL for cyhexatin in construction, maritime, and agriculture. This is the limit recently established for cyhexatin in general industry.

At room temperature, cyhexatin exists in the form of white crystals. Cyhexatin is used as a biocide and it is also an effective miticide (ACGIH 1986, p. 165). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Cyhexatin has oral LD_{50}s of 500, 700, and 190 mg/kg for rabbits, guinea pigs, and rats, respectively (NIOSH 1977i/Ex. 1–1182). Skin exposure to a 1- to 2-percent solution of cyhexatin in goats and cattle caused mild effects; sheep showed mild effects after application of a 0.5-percent solution. One of five sheep died from multiple skin applications of a 1-percent suspension (Johnson, Younger, Witzel, and Radeleff 1975/Ex. 1–336).

The toxicity of cyhexatin is considered to be moderate, although it is greater than the toxicity of most other organic tin compounds. Long-term feeding in rats produced no behavioral changes, mortality, tissue changes, or hematologic or biochemical alterations in response to 2 years of dosing at 12 mg/kg per day; however, dosed animals were smaller than controls. After daily doses by gavage of 24 mg/kg per day for 2 weeks, rats showed microscopic changes in the liver, kidneys, and adrenal glands at autopsy. Six mg/kg is considered to be the no-effect level in rats, and in dogs, the no-effect feeding level is reported to be 3 mg/kg. Rats fed 4 to 6 mg/kg, and rabbits fed 3 mg/kg, showed no ill effects on indices for fertility, gestation, viability, or lactation (Dow Chemical Company 1973d, as cited in ACGIH 1986/Ex. 1–3, p. 165). No inhalation data on animals are available, and there are no human data.

OSHA is proposing an 8-hour TWA limit of 5 mg/m³ for cyhexatin in construction, maritime, and agriculture. OSHA preliminarily concludes that a PEL of 5 mg/m³ will protect workers in these sectors against the significant risk of skin and respiratory irritation, as well as other possible adverse effects associated with exposure in the absence of a limit. The Agency considers these adverse health effects to be material health impairments within the meaning of the Act. Promulgation of this limit will

make OSHA's PEL for this substance consistent across all regulated sectors.

2,4-D (2,4-DICHLOROPHENOXYACETIC ACID)
CAS: 94-75-7; Chemical Formula: $C_8H_6Cl_2O_3$
H.S. No. 2050

In general industry, construction, and maritime, OSHA's permissible exposure limit for 2,4-D is 10 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®-TWA of 10 mg/m³ for 2,4-D. NIOSH has no REL but concurs (Ex. 8-47, Table N3A) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA PEL of 10 mg/m³ for 2,4-D in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

2,4-D, also called 2,4,dichlorophenoxyacetic acid, is a white to yellow powder with a light phenol-like odor. It is a selective herbicide used to control broadleaf weeds (Hayes 1982, p. 521; ACGIH 1986, p. 167). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2,4-D causes skin irritation, central nervous system effects, and liver and kidney damage in humans and animals; it also causes reproductive and teratogenic effects in animals. The oral LD_{50}s for rats, mice, guinea pigs, and hamsters are 370 mg/kg, 368 mg/kg, 469 mg/kg, and 500 mg/kg, respectively (RTECS 1990). The dermal LD_{50} in rats is 1500 mg/kg; in rabbits it is 1400 mg/kg (RTECS 1990). Monkeys showed no serious ill effects from a 2,4-D dose of 214 mg/kg (Hill and Carlisle 1947, in Hayes 1982, p. 521). Acute toxicity causes virtually the same effects in all species; death usually occurs as a result of ventricular fibrillation (ACGIH 1986, p. 167). Acutely poisoned animals show stiffness, incoordination, lethargy, stupor, and coma before death (ACGIH 1986, p. 167). Dogs administered a 100-mg/kg dose of 2,4-D developed irritation of the gastrointestinal mucosa, hepatic necrosis, and mild renal tubular degeneration (Drill and Hirtzaka 1953, in EPA Health Advisory 1987, p. 4). Repeated doses of 2,4-D can lead to loss of appetite, weight loss, vomiting, depression, roughness of coat, tenseness, and muscular weakness (Hayes 1982, p. 521). Female rats given 300 mg/kg of 2,4-D orally five times a week for 4 weeks showed depressed growth rates, liver pathology, and gastrointestinal irritation (National Research Council 1977, in HSDB 1985). A single intraperitoneal dose of 240 mg/kg or daily oral doses of 40 mg/kg for 30 days caused an alteration in brain mitochondrial oxidative phosphorylation manifested by an increase in body temperature, increased mitochondrial ATPase activity, and increased oxygen consumption in male rats (Podolak 1981, in Dangerous Properties of Industrial Materials Report 1987, Vol. 7, p. 17). Rats fed doses of 5, 15, or 45 mg/kg/day for 90 days had significant reductions in blood indices at all doses and reduced liver enzyme activities at higher doses; there was also evidence of kidney toxicity at the higher dose (Hazelton Laboratories 1983, in EPA Health Advisory 1987, p. 4). Male and female rats ingesting 2,4-D had increased incidences of malignant neoplasms and lymphosarcomas; female rats developed neoplasms of the mammary gland, while males had carcinomas of the endocrine organs (Reuber 1983, in HSDB 1985). At a dose of 110 mg/kg/day, 2,4-D is teratogenic and embryotoxic in mice (Baage et al. 1973, in Hayes 1982, p. 523). A sow receiving 500 mg/kg of 2,4-D in her diet throughout pregnancy had underdeveloped and apathetic piglets; 10 of 15 died within 24 hours of birth (Bjorklund and Erne 1966, in IARC 1977, Vol. 15, p. 123). Continued 2,4-D feeding of surviving piglets for 8 months caused marked growth depression, persistent anemia, and degenerative changes of the liver and kidneys (Bjorklund and Erne 1966, in IARC 1977, Vol. 15, p. 123).

In humans, the lowest lethal oral 2,4-D dose is 80 mg/kg; before death, gastrointestinal effects, behavioral symptoms, and coma occurred (RTECS 1990). An oral 2,4-D dose of 93 mg/kg caused convulsions (RTECS 1990). Contact of 2,4-D with the skin can cause dermatitis (Seabury 1963; Hayes 1963, in Proctor, Hughes, and Fischman 1988, p. 192). Five female forestry workers who applied a 2,4,5-T and 2,4-D mixture with brushes experienced severe toxic contact eczema on the exposed areas of their skin (Jung and Wolf 1977, in Hayes 1982, p. 524). An intravenous dose of 3.6 g of 2,4-D for medicinal treatment caused stupor, hyporeflexia, fibrillary twitching of some muscles, and urinary incontinence; 24 hours later, the patient still showed muscular weakness, but this ended after another 24 hours (Seabury 1963; Hayes 1963, in Proctor, Hughes, and Fischman 1988, p. 192). The American Medical Association received reports of several cases of illness involving workers engaged in the field application of 2,4-D; symptoms included a burning sensation in the throat and chest, weakness, loss of appetite and weight, and slight albuminuria; these symptoms were a result of inhaling 2,4-D (Queries and Minor Notes 1956; in ACGIH 1986, p. 167). A male student ingested 6 g of a commercial herbicide preparation of the dimethylamine salt of 2,4-D and experienced vomiting and convulsions prior to death; autopsy showed degenerative ganglion cell changes in the brain (Neilson et al. 1965, in EPA Health Advisory 1987, p. 4).

Three cases of peripheral neuropathy resulting from the spraying of 2,4-D have been reported. In one case, paresthesia of the extremities, pain in the legs, and muscle twitching appeared within 4 to 5 days; however, no neurological or electromyographical changes were seen in this case (Goldstein et al. 1959, in IARC 1977, Vol. 15, p. 127). In the second case, numbness and aching occurred in the fingers and toes 1 week after a second exposure; 6 weeks later, the patient had a well-developed neuropathy (Goldstein et al. 1959, in IARC 1977, Vol. 15, p. 127). In the third case reported, a second exposure to 2,4-D caused severe leg pain and swelling of the metacarpal joints of both hands; 5 months later, flaccid paraparesis was seen (Goldstein et al. 1959, in IARC 1977, Vol. 15, p. 127). In similar cases of workers exposed to 2,4-D during spraying operations, signs and symptoms of muscular weakness, vomiting, diarrhea, fever, hyperthermia, tachycardia, and neurological effects (which continued to occur for 40 days to 2 years after exposure) were reported (Monarca and DiVito 1961; Paggiaro et al. 1974; Todd 1962, in IARC 1977, Vol. 15, p. 128). Of 292 workers involved in the manufacture of 2,4-D compounds for periods ranging from less than 5 years to 6 to 10 years, 63 percent reported experiencing symptoms of weakness, rapid fatigue, headache, and vertigo, while about 20 percent had cardiovascular effects such as hypotension and bradycardia and digestive disturbances such as dyspeptic symptoms and gastritis (Bashirov 1969, in IARC 1977, Vol. 15, p. 128). Workers with longer exposures to 2,4-D compounds showed more pronounced liver dysfunction than workers exposed for shorter periods (Bashirov 1969, in IARC 1977, Vol. 15, p. 128).

Based on this evidence in humans and animals, OSHA preliminarily concludes that 2,4-D causes skin irritation and central nervous system, liver, and kidney effects in humans and animals. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. OSHA believes that the proposed 8-hour TWA PEL of 10 mg/m³ for 2,4-D in agriculture is necessary to

significantly reduce the risks of these material health impairments. In addition, promulgation of the proposed PEL will make OSHA's limit for 2,4-D consistent across all OSHA-regulated sectors.

DICHLORODIPHENYL-TRICHLOROETHANE (DDT)
CAS: 50–29–3; Chemical Formula: $C_{14}H_9Cl_5$
H.S. No. 1113

OSHA's existing limit for dichlorodiphenyltrichloroethane (DDT) in general industry, construction, and maritime is 1 mg/m³ as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has the same 8-hour TWA limit for DDT, without a skin notation. NIOSH considers DDT a potential occupational carcinogen and recommends reducing exposure to the lowest feasible concentration, which is the lowest reliably detectable concentration (currently 0.5 mg/m³ TWA). The Agency is proposing an 8-hour TWA limit of 1 mg/m³, and a skin notation, for DDT in agricultural operations.

Although DDT is banned in the United States, this substance is still widely used in other countries (Hayes 1982, p. 182). OSHA is proposing to extend the same limit currently in effect in other sectors to agriculture to achieve the primary goal of this rulemaking, which is consistency in permissible exposure limits across sectors. Workers in this sector would thus be protected in the unlikely event that DDT use is permitted at some time in the future.

DDT is a noncombustible, colorless to white powder with a slightly aromatic odor. Before being banned, DDT was a widely used insecticide.

DDT affects the nervous system, causing convulsions, tremors, and numbness. This substance also has reproductive and teratogenic effects. The oral LD_{50} in rats is 87 mg/kg, and the dermal LD_{50} in rabbits is 300 mg/kg (RTECS 1990), indicating a significant degree of percutaneous absorption. Acutely poisoned animals show incoordination, excitement, muscular weakness, and convulsions before death (Clayton and Clayton 1981, p. 3668). Rats fed large oral doses of DDT show focal and centrilobular necrosis of the liver at autopsy (Hayes 1982, pp. 180–205). The liver damage associated with chronic feeding of DDT is dose-related; rats fed 100 ppm show mild liver damage at autopsy, while those fed at higher levels showed increasingly severe damage (Clayton and Clayton 1981, p. 3669). Some authors (Treon and Cleveland, 1955) have reported liver effects in rats fed 12.5 ppm DDT in the diet for 18 to 24 months. DDT has been tested for reproductive and/or embryotoxic, teratogenic, or developmental effects in rats, mice, dogs, and rabbits using oral, intraperitoneal, or subcutaneous route of administrations; the results of these studies show that DDT has both male and female reproductive effects as well as embryotoxic and developmental effects (RTECS 1990). DDT has been tested for carcinogenicity in rats, mice, hamsters, dogs, and monkeys. In mice and rats, the results of these studies were positive. The principal tumors produced by DDT were benign and malignant liver neoplasms, lymphomas, and lung neoplasms. Based on this evidence, the International Agency for Research on Cancer has concluded that the evidence for the carcinogenicity of DDT in animals is sufficient (IARC 1987, Suppl. 7, p. 187).

In humans, incidents of acute poisoning have generally occurred as a result of accidental ingestion (Hayes 1982, pp. 180–205). If the dose is sufficiently large (i.e., greater than 16 mg/kg), convulsions may occur, followed by respiratory failure and death (Hayes 1982, pp. 180–205). Involvement of the liver, as evidenced by jaundice, has been seen in some cases of accidental ingestion (Hayes 1982, pp. 180–205). After a single dose or small repeated doses, DDT accumulates in adipose tissue, where it remains for long periods of time (Gosselin, Smith, and Hodge 1984, p. III–135). The significance to health of the fat storage of DDT is not known.

Concern that DDT may be carcinogenic in humans has been widespread, but the results of many studies in farmers, forestry workers, pesticide applicators, and other occupationally exposed workers have been inclusive, and interpretation even of the few positive studies are complicated by the concomitant exposure of these workers to other pesticides (IARC 1987, Suppl. 7, p. 186). Based on an evaluation of the available data in humans, IARC has concluded that the evidence for the carcinogenicity of DDT in humans is inadequate (IARC 1987, Suppl. 7, p. 186). A recent prospective follow-up study of cancer mortality in relation to serum DDT levels (Austin, Keil, and Cole 1989) concluded that there is "weak" evidence of a positive relation between respiratory cancer mortality and serum DDT levels.

Based on a review of the evidence of the health effects of exposure to DDT, OSHA preliminarily concludes that the existing PEL of 1.0 mg/m³ is adequately protective in the unlikely event of exposure to this banned substance. The Agency finds that the existing limit, with its skin notation, provides appropriate protection against DDT's systemic effects and proposes to extend this limit to agriculture to make OSHA's PEL for this substance consistent across all regulated sectors.

2-N-DIBUTYLAMINOETHANOL
CAS: 102–81–8; Chemical Formula: $(C_4H_9)_2NCH_2CH_2OH$
H.S. No. 1120

OSHA's current limit for 2-N-dibutylaminoethanol (DBAE) in construction and maritime is 2 ppm as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 2 ppm for DBAE, with a skin notation. The Agency is proposing to retain its PEL of 2 ppm as an 8-hour TWA in construction and maritime, to delete the skin notation, and to extend the 2 ppm 8-hour TWA PEL to agriculture. NIOSH concurred (Ex. 8–47, Table N–1) with this limit when it was recently established in general industry.

2-N-Dibutylaminoethanol is a colorless, combustible liquid with a faint amine-like odor. It is used in organic synthesis (ACGIH 1986, p. 390; Hawley's 1987, p. 175).

In rats, 2-N-dibutylaminoethanol has a single-dose oral LD_{50} of 1.7 g/kg and an intraperitoneal LD_{50} of 0.14 g/kg; these values are approximately analogous to the oral and intraperitoneal LD_{50}s for diethanolamine (Hartung and Cornish 1968/Ex. 1–328). The dermal LD_{50} for DBAE in rabbits is 1.68 g/kg (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). In male rats, the lowest 5-week drinking water dose tolerated without weight loss was 0.13 g/kg/day. Rats that ingested a dose of 0.43 g/kg/day showed elevated kidney-to-body-weight ratios but no histologic changes at autopsy (Cornish, Dambrauskas, and Beatty 1969/Ex. 1–411). In inhalation studies of rats, 6-hour exposures at 70 ppm for 5 days killed one rat; the surviving rats showed a 57-percent average body weight loss, as well as a doubling of kidney-to-body-weight ratios, a tenfold increase in serum bilirubin, a slight increase in clotting time, and an elevated hematocrit. Inhalation of 33 ppm for 1 week caused a 3-percent body weight loss and a slight increase in clotting time, but no significant changes in the other variables observed. Twenty-seven weeks of exposure to 22 ppm resulted in no differences between exposed rats and controls in the variables measured (Cornish, Dambrauskas, and Beatty 1969/Ex. 1–411). 2-N-Dibutylaminoethanol is a more potent inhibitor of acetylcholinesterase

in vitro than is diethylamine (DEA) (Hartung and Cornish 1968/Ex. 1–328).

OSHA is retaining its 8-hour TWA PEL of 2 ppm for 2-N-dibutylaminoethanol in construction and maritime, and deleting the skin notation; in agriculture, OSHA is proposing an 8-hour TWA PEL of 2 ppm for DBAE. The Agency preliminarily concludes that this limit will protect workers in agriculture from the significant risk of metabolic effects associated with inhalation exposure at the levels permitted in the absence of an OSHA limit. OSHA believes that this substance does not present a significant risk of systemic toxicity via percutaneous absorption, and the skin notation is therefore not being retained in construction and maritime. Promulgation of the 8-hour TWA limit in agriculture will make OSHA's PEL for this substance consistent across all regulated sectors.

DIELDRIN

CAS: 60–57–1; Chemical Formula: $C_{12}H_8Cl_6O$

H.S. No. 2061

In general industry, construction, and maritime, OSHA's current TWA–PEL for dieldrin is 0.25 mg/m^3, with a skin notation. The NIOSH REL for this substance is the lowest detectable limit; the REL is based on dieldrin's carcinogenicity in animals. The ACGIH TLV®–TWA is 0.25 mg/m^3, with a skin notation. OSHA is proposing an 8-hour TWA PEL of 0.25 mg/m^3, and a skin notation, for dieldrin in agricultural workplaces. This action will make the PEL consistent across all OSHA-regulated sectors.

Dieldrin, also called HEOD, Octalox®, Panoram®, and Quintox®, is a light brown, nonflammable solid. It is a cyclodiene insecticide that was formerly used extensively in the soil treatment of agricultural fields; it also found widespread use in malaria control (Hayes 1982, pp. 237–238). Dieldrin is stable and highly persistent in the environment (EPA 1987, ODW Health Advisory). All uses of dieldrin have been canceled or suspended in the United States (Farm Chemicals Handbook 1990). OSHA thus anticipates that exposure to this substance will be minimal; the PEL is being proposed to achieve the primary objective of this rulemaking: consistency in limits across all OSHA-regulated sectors.

Dieldrin is a convulsant in humans and animals; it also causes cancer and fetotoxicity in animals. The oral LD_{50}s in rats and monkeys are 38 mg/kg and 3 mg/kg, respectively (EPA 1987, p. 4). The dermal LD_{50} in rabbits is reported to range from 150 to 450 mg/kg (Hayes 1982, p. 238). Acutely poisoned animals convulsed before death (Hayes 1982, pp. 238–240). Rats fed dieldrin over a 2-year period developed hemorrhagic or distended urinary bladders (often associated with nephritis) or increases in liver to body weight ratios and pathological changes in the liver (Fitzhugh et al. 1964; Lehman 1959; in EPA 1987, p. 4). Dogs given dieldrin at dietary doses of between 0.2 and 10 mg/kg 6 days/week for as long as 25 months lost weight and had convulsions (Fitzhugh et al. 1964); other dogs given dieldrin by capsule for 2 years at doses of 0.005 or 0.05 mg/kg/day had increases in liver weights and in liver to body weight ratios (Walker et al. 1969, in EPA 1987, p. 5). Dietary administration of dieldrin to mice at doses between 1.25 and 20 ppm for 128 weeks caused a high rate of mortality in the high-dose group and palpable intra-abdominal masses in animals from the 10, 5, and 2.5-ppm groups (Walker et al. 1972, in EPA 1987, p. 5). No liver enlargement occurred in the 1.25-ppm group (Walker et al. 1972). Two carcinogenicity bioassays in mice were positive; dieldrin-exposed animals in both studies developed hepatocellular carcinomas and other liver tumors (Walker et al. 1972; Lehman 1959, in EPA 1987). Several studies in hamsters and mice have shown dieldrin to be teratogenic and embryocidal when administered to pregnant animals (Ottolenghi et al. 1974; Chernoff et al. 1975, in EPA 1987, pp. 5–6).

There have been several fatal accidental poisonings involving dieldrin in humans; the oral dose estimated to be lethal is 5 grams (Hayes 1982, p. 243; Hodge, Boyce, Deichmann, and Kraybill 1967, in ACGIH 1986, p. 196). Occupational poisonings have been reported in applicators and farmers and among workers manufacturing and formulating this substance (Hayes 1982, p. 243). Many of the reported poisoning episodes (between 47 and 100 percent) involved convulsions (Hayes 1982, p. 244). Other signs and symptoms of dieldrin poisoning are headache, nausea, vomiting, a feeling of malaise, dizziness, and muscle jerking (Hayes 1982, p. 244). Most workers who were poisoned recovered completely after treatment (Hayes 1982, p. 244).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to dieldrin poses a significant occupational risk and that establishment of the proposed PEL is necessary to ensure consistency in the PEL for dieldrin across all OSHA-regulated sectors. Because dieldrin has been banned for use in the United States, OSHA believes that exposure to this substance will be minimal.

DIFLUORODIBROMOMETHANE

CAS: 75–61–6; Chemical Formula: CBr_2F_2

H.S. No. 2063

In general industry, construction, and maritime, OSHA's PEL for difluorodibromomethane is 100 ppm as an 8-hour TWA. The ACGIH TLV®–TWA for this substance is also 100 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 100 ppm for difluorodibromomethane in agriculture. This action will make the PEL for this substance consistent across all OSHA-regulated sectors.

Difluorodibromomethane (also called Freon 12B2) is a colorless, nonflammable liquid that is used primarily as a fire extinguishant (ACGIH 1986, p. 210). It is also used in the synthesis of dyes, pharmaceuticals, and ammonium compounds (Hawley's 1987, p. 368).

Difluorodibromomethane is a respiratory irritant on acute exposure and a central nervous system and liver toxin on chronic exposure (Cralley and Cralley 1985, p. 166). The 15-minute LC_{50} in rats is 55,000 ppm (ACGIH 1986, p. 201). Rats exposed to a 4000-ppm concentration of difluorodibromomethane for 15 minutes showed signs of pulmonary irritation and developed pulmonary edema (ACGIH 1986, p. 201). Dogs and rats exposed for 6 weeks to a difluorodibromomethane concentration of 2300 ppm showed the following exposure-related effects: mortality in 50 percent of the rats and weakness, incoordination, and signs of increasing intoxication in the dogs after a few days of exposure. At autopsy, neurological and hepatic damage was evident (ACGIH 1986, p. 201).

There are no reports of difluorodibromomethane-induced toxicity from industrial use. The thermal decomposition products generated during the use of difluorodibromomethane as a fire extinguishant, however, have caused tinnitus, paresthesia, anxiety reactions, electroencephalographic changes, slurred speech, and decreased psychological test performance in firefighters and other exposed individuals (Clayton and Clayton 1981, p. 3107).

Based on this evidence, OSHA preliminarily concludes that an 8-hour PEL of 100 ppm is necessary in agriculture both to protect exposed agricultural workers from difluorodibromomethane's irritant and systemic effects and to make OSHA's limit for this substance consistent across

all OSHA-regulated sectors. Accordingly, OSHA is proposing an 8-hour TWA of 100 ppm for difluorodibromomethane in agriculture. The Agency believes that this limit will reduce the significant risk of these material health impairments substantially.

DIGLYCIDYL ETHER (DGE)
CAS: 2238–07–5; Chemical Formula: $C_6H_{10}O_3$
H.S. No. 1139

The current OSHA limit for diglycidyl ether (DGE) in construction and maritime is 0.5 ppm as a ceiling concentration. There is no limit in agriculture. The ACGIH-recommended TLV ® for this substance is 0.1 ppm as an 8-hour TWA. NIOSH considers this substance a potential occupational carcinogen and recommends a limit of 0.2 ppm for DGE as a 15-minute ceiling; however, NIOSH concurred (Exs. 8–47, Table N6A) with the limit being proposed when it was recently established for DGE in general industry. OSHA is proposing an 8-hour TWA PEL of 0.1 ppm for DGE in the construction, maritime, and agriculture industries.

Diglycidyl ether is a colorless liquid with a strong, irritating odor. It is used primarily as a chemical intermediate (ACGIH 1986, p. 202; Hawley's 1987, p. 398).

Both the previous ACGIH 0.5-ppm TLVT4 ® and that organization's current TLVT4 ® are based on the results of an animal study reported by Hine and Rowe (1963b, as cited in ACGIH 1986/Ex. 1–3, p. 202) in which rats were administered repeated 4-hour exposures of 20, 3, or 0.3 ppm DGE. Rats exposed to 20 ppm of DGE showed respiratory irritation, loss of body weight, decreased leukocyte count, involution of the spleen and thymus, and hemorrhagic bone marrow. Residual hematopoietic effects were observed among rats exposed to 3 ppm, and no observed effects were noted among rats exposed to 0.3 ppm, even after as many as 60 exposures. The ACGIH's previous TLVT4 ® of 0.5 ppm as a ceiling value was based on the no-observed-effect level of 0.3 ppm reported in the Hine and Rowe (1963b, as cited in ACGIH 1986/Ex. 1–3, p. 202) study and on industrial experience. In 1979, the ACGIH reconsidered its limit for DGE, noting that, "in view of the seriousness of some of the effects produced [in the rat study], a TLVT4 ® below the no-ill-effect level [of 0.3 ppm] would normally be adopted" (ACGIH 1986/Ex. 1–3). The ACGIH consequently revised the TLVT4 ® to 0.1 ppm as an 8-hour TWA. NIOSH agrees that a PEL of 0.1 ppm is appropriate for DGE but notes that this substance meets the criteria for a potential occupational carcinogen (Ex. 8–47, Table N6A).

OSHA preliminarily concludes that the proposed 8-hour TWA limit of 0.1 ppm will protect workers in construction, maritime, and agriculture from the significant risk of DGE-induced hematopoietic and irritant effects, which constitute material health impairments within the meaning of the Act. The risks of DGE exposure range from respiratory irritation to bone marrow effects, and OSHA believes that the proposed limit for DGE will reduce these risks substantially. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIISOPROPYLAMINE
CAS: 108–18–9; Chemical Formula: $(CH_3)_2CH\text{-}NH\text{-}(CH_3)_2$
H.S. No. 2064

OSHA's current limit for diisopropylamine in construction, maritime, and general industry is 5 ppm as an 8-hour TWA, with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA PEL of 5 ppm, and a skin notation, for this substance in agriculture. This action will make OSHA's PEL for diisopropylamine consistent across all OSHA-regulated sectors.

Diisopropylamine is a colorless, volatile liquid with a fishy, amine-like odor (ACGIH 1986, p. 204). This substance is used as an intermediate in the production of pesticides, pharmaceuticals, and other chemicals, as a catalyst, and as an experimental hypertensive drug (HSDB 1986). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Diisopropylamine is an irritant of the eyes and upper respiratory tract in humans and animals. The oral LD_{50} in rats is 770 mg/kg, and the LC_{50} in the same species is 4800 mg/m³ (800 ppm) for 2 hours (RTECS 1990). Instilled into rabbit eyes, this substance caused severe irritation (RTECS 1990). Experimental animals (guinea pigs, rabbits, cats, and rats) exposed to a 2207-ppm concentration of diisopropylamine for 3 hours died; before death, these animals exhibited corneal clouding, tearing of the eyes, and signs of severe respiratory irritation. At autopsy, pulmonary edema and hemorrhage were evident (Proctor, Hughes, and Fischman 1988, p. 205). Exposure of animals of the same species to a 777-ppm concentration of diisopropylamine, however, was not fatal (ACGIH 1986, p. 204).

Workers exposed to concentrations of diisopropylamine of 25 to 50 ppm reported experiencing hazy vision, a symptom indicating corneal edema (Treon, Sigmon, Kitzmiller, and Heyroth 1949, in Proctor, Hughes, and Fischman 1988, p. 205). In addition, some workers experienced nausea and headache (Treon et al. 1949). Because diisopropylamine is highly alkaline, prolonged skin contact with this substance is likely to cause dermatitis (Clayton and Clayton 1981, p. 3155).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to diisopropylamine at the concentrations possible in the absence of an exposure limit poses a significant risk of primary irritation to agricultural workers. The Agency considers this effect a material impairment of health and believes that the proposed limit will substantially reduce this risk. Accordingly, OSHA is proposing an 8-hour TWA of 5 ppm, and a skin notation, for diisopropylamine in agriculture. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIMETHYLFORMAMIDE
CAS: 68–12–2; Chemical Formula: $HCON(CH_3)_2$
H.S. No. 2067

In general industry, construction, and maritime, OSHA's current limit for dimethylformamide is 10 ppm (30 mg/m³) as an 8-hour TWA; there is also a skin notation for this substance. There is no PEL in agriculture. The ACGIH has a TLV®–TWA for dimethylformamide of 10 ppm, with a skin notation. NIOSH has no REL for this substance. OSHA is proposing an 8-hour TWA PEL of 10 ppm, and a skin notation, for dimethylformamide in agriculture. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

Dimethylformamide is a colorless to light yellow flammable liquid that has a faint ammonia-like odor. It is used primarily as a solvent for polar polymers. It is commonly found in paint removers and is used in selective gas absorption and solvent extraction operations. Dimethylformamide is also used as a co-solvent or booster in protective coatings, adhesives, films, and printing inks (Merck 1983, p. 473; ACGIH 1986, p. 209).

Dimethylformamide is a liver, kidney, lung, and cardiovascular toxin in humans and animals. Exposure to this substance also has been associated with

testicular cancer in humans and reproductive effects in animals. The oral LD_{50} in rats is 2900 mg/kg, and the LC_{50} in mice is 9400 mg/m³ for 2 hours (RTECS 1990). The dermal LD_{50} in rabbits is 4720 mg/kg (RTECS 1990). Instilled into the eyes of rabbits, dimethylformamide caused a moderate degree of irritation; in contact with the skin, this substance caused mild irritation (Grant 1986, p. 348; RTECS 1990). A single 6-hour exposure to 5000 ppm dimethylformamide, or five 6-hour exposures to 2500 ppm, killed all exposed rats; at autopsy, damage to the liver, kidneys, and lungs was evident (E.I. du Pont de Nemours and Co., Inc. 1976, in ACGIH 1986, p. 289). Repeated oral dosing of rats with dimethylformamide (at doses of 450 mg/kg) caused reversible decreases in the rate of body weight gain and liver injury (Kennedy et al. 1986, in Drug Chem. Toxicol. 9(2):147–170). In a 90-day feeding study in rats, a dietary level of 1000 ppm caused slight anemia and an increase in white blood cell counts, while a dietary level of 200 ppm caused no observable effects. Carcinogenicity bioassays in rats by the oral or subcutaneous routes of administration were negative (Druckry, H. et al. 1967, in ACGIH 1986, p. 289). Although dimethylformamide appears not to be teratogenic, inhalation exposure of pregnant rats caused a substantial decrease in fertility, an increase in intrauterine deaths, and a decrease in embryo weight (Gofonckler 1974, in Gigiena i Sanit. 9:7–10). Injected intratesticularly, 0.1 ml of dimethylformamide had arrested spermatogenesis 2 and 7 days after exposure; the testicular epithelium had also become disorganized and white cell infiltration had occurred (Saxena et al. 1985, in J. Toxicol. Environ. Hlth. 15(3–4):583–587). Dimethylformamide is generally not mutagenic in bacterial assays (Kennedy 1986, in CRC Critical Reviews in Toxicol. 17(2):129–182).

In humans, exposure to dimethylformamide causes mild skin irritation, headaches, gastrointestinal symptoms, and cardiovascular effects, as well as kidney and liver damage; exposure has also been associated with testicular and other cancers. This substance also interacts with alcohol to cause an Antabuse®-like reaction. Symptoms of exposure in a worker splashed with liquid dimethylformamide over 28 percent of his body surface area included skin irritation, abdominal pain and vomiting, and elevated blood pressure, all of which resolved completely within 7 days of exposure (Proctor, Hughes, and Fischman 1988, p. 210). Other workers exposed to dimethylformamide have reported abdominal pain, nausea, and vomiting (ACGIH 1986, p. 209). Ingestion of alcohol up to 4 days following inhalation exposure to dimethylformamide may cause facial flushing and palpitations (Genium MSDS 1982, No. 424). A case-control study of 100 workers exposed to a mean concentration of dimethylformamide of 22 mg/m³ matched with 100 controls showed that reports of headache and dyspepsia and an elevated liver injury enzyme (gamma-glutaryl transferase) were associated specifically with chronic dimethylformamide exposure (Cirla, AM et al. 1984, G. Ital. Med. Lav. 6:149–156). Chronic skin contact with this substance also may cause dermatitis (Proctor, Hughes, and Fischman 1988, p. 210). After a case of symptomatic hepatitis developed in a clothing factory worker, further investigation revealed that 36 of 58 workers tested had elevated liver enzymes. Serologic tests excluded infectious causes in 34 of these 36 workers. The results of liver biopsies in four of these workers demonstrated histological changes characteristic of toxic liver damage. Modification of work hygiene practices was associated with decreased liver enzyme levels (Redlich CA et al. 1988, Annals of Internal Medicine 108:680–686). Three cases of testicular cancer were reported in leather tanners exposed to dimethylformamide; the onset occurred after latency periods of 8 to 14 years (Levin et al. 1987, Lancet 11(8568):1154). A cluster of three cases of testicular cancer among 153 white male aircraft repair employees exposed to dimethylformamide led to the identification of four additional cases among 680 employees at a second, occupationally identical site, a statistically significant increase over national testicular cancer incidence rates. The additional finding that the average age of the identified cases was the average age of all employees and not the peak age for testicular cancer suggests an occupational etiology (Ducatman AM et al. 1986, Journal of Urology 136(4):834–836). Among workers followed from 1954 to 1984 for cancer incidence, dimethylformamide exposure was also associated with excess mouth cancers and malignant melanomas. Combined dimethylformamide and acrylonitrile exposure was associated with increased rates of prostate cancer; no dose-response effects were noted for these cancers, however (Chen JL et al. 1988, Journal of Occupational Medicine 30(10):813–818). Another study showed an excess of several cancers, but not testicular cancer, associated with dimethylformamide exposure. The authors suggested that, as a readily absorbed solvent, dimethylformamide may act to increase the absorption of other potentially carcinogenic compounds such as chromium- and cadmium-based dyes (Ducatman AM 1989, Lancet 1(8643):911).

Based on this evidence in humans and animals, OSHA is proposing a 10-ppm 8-hour TWA PEL, and a skin notation, for dimethylformamide in agriculture. The Agency preliminarily concludes that this limit is necessary to substantially reduce the significant risks of kidney, liver, lung, and cardiovascular damage, as well as cancer, associated with exposure to this substance. OSHA believes that each of these effects constitutes a material impairment of health and that the proposed PEL is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for dimethylformamide consistent across all regulated sectors.

1,1-DIMETHYLHYDRAZINE

CAS: 57–14–7; Chemical Formula: $(CH_3)_2NNH_2$

H.S. No. 2068

In construction, maritime, and general industry, OSHA's TWA PEL for 1,1-dimethylhydrazine is 0.5 ppm; there is also a skin notation for this substance. There is no PEL in agriculture. The 1987–1988 ACGIH TLV®–TWA for this substance was 0.5 ppm, with a skin notation. The ACGIH also assigns this substance an A2 designation (suspected human carcinogen). The NIOSH REL for 1,1-dimethylhydrazine is 0.06 ppm as a 2-hour ceiling; this represents the lowest concentration that can be detected analytically. OSHA is proposing to establish a PEL of 0.5 ppm as an 8-hour TWA, with a skin notation, for 1,1-dimethylhydrazine in agriculture. This action will make the PEL for this substance consistent across all OSHA-regulated sectors.

1,1-Dimethylhydrazine, also called asym- or unsymmetrical dimethylhydrazine, is used as an intermediate in chemical synthesis, an ingredient in photographic chemicals, a stabilizer for fuel additives, a plant growth regulator, and a component of jet and rocket fuels (ACGIH 1986, p. 210.1(89); Clayton and Clayton 1981, p. 2792). 1,1-Dimethylhydrazine is a flammable, colorless liquid with an ammonia-like odor; it fumes in air and gradually turns yellow (ACGIH 1986, p. 210.1(89)).

1,1-Dimethylhydrazine causes systemic toxicity in the form of central

nervous system effects, hematological effects, and, in animals, cancer. The 4-hour LC_{50} in rats is 250 ppm, and the occluded dermal LD_{50} in rabbits is 156 mg/kg (ACGIH 1986, p. 210.1(89); RTECS 1990). In monkeys, inhalation of a 162-ppm concentration proved lethal within 1 hour (Clayton and Clayton 1981, p. 2802). Acutely poisoned animals convulsed and vomited before death; autopsy revealed pulmonary edema and hemorrhage (NIOSH Criteria Document (Hydrazines) 1978). Dogs exposed repeatedly to a 25-ppm concentration developed ataxia, diarrhea, vomiting, excessive salivation, depression, convulsions, and hemolytic anemia (Clayton and Clayton 1981, p. 2802). Thirty seconds after application to the skin of dogs, 1,1-dimethylhydrazine was detectable in the blood, and exposure by this route also led to corneal opacities (Smith and Clark 1971; Smith and Castaneda 1970, in ACGIH 1986, p. 210.1(89)). This substance causes embryotoxicity when administered intraperitoneally to rats during pregnancy (Keller et al. 1984, in Proctor, Hughes, and Fischman 1988, p. 212). Administered to mice, rats, and hamsters in the drinking water, 1,1-dimethylhydrazine caused a high incidence of angiosarcomas and tumors of the lung, kidney, and liver in mice, liver carcinomas in rats, and vascular and cecal tumors in hamsters. Inhalation bioassays in mice and rats exposed to 0.5 or 5 ppm 1,1-dimethylhydrazine also were positive (ACGIH 1986, p. 210.1(89); IARC 1974, Vol. 4, pp. 137–143). Based on its tumorigenicity in animals, this substance is considered an animal carcinogen by the International Agency for Research on Cancer, NIOSH, the National Toxicology Program, and the American Conference of Governmental Industrial Hygienists.

In humans, accidental exposure to 1,1-dimethylhydrazine at unknown concentrations has caused eye and skin irritation, nausea, chest pain, difficult breathing, a choking sensation, and lethargy (Shook and Cowart 1957, in Proctor, Hughes, and Fischman 1988, p. 212). Eleven workers accidentally overexposed to 1,1-dimethylhydrazine showed signs of liver involvement in laboratory tests but did not develop clinical signs or symptoms (Shook and Cowart 1957). In another group of 28 workers engaged in the production of rocket fuels (and thus exposed to unspecified concentrations of 1,1-dimethylhydrazine), six cases of fatty liver, evidenced by a rise in SGPT levels, occurred (IARC 1974, Vol. 4, p. 141).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers in agriculture are at significant risk of experiencing the serious and potentially life threatening effects of exposure to 1,1-dimethylhydrazine. OSHA believes that these effects, which include sensory irritation and liver damage, constitute material health impairments. Accordingly, OSHA is proposing an 8-hour TWA PEL of 0.5 ppm, with a skin notation, for this substance in agriculture. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DINITRO-O-CRESOL

CAS: 534–52–1; Chemical Formula: $CH_3C_6H_2OH(NO_2)_2$

H.S. No. 2070

In general industry, construction, and maritime, OSHA's permissible exposure limit for dinitro-o-cresol is 0.2 mg/m³ as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.2 mg/m³ as an 8-hour TWA, and a skin notation, for dinitro-o-cresol, and NIOSH has a REL of 0.2 mg/m³ as a 10-hour TWA. OSHA is proposing an 8-hour TWA PEL of 0.2 mg/m³, and a skin notation, for dinitro-o-cresol in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Dinitro-o-cresol (DNOC) is an odorless, yellow, crystalline solid. It is used as a selective herbicide and plant growth regulator (Hazardous Substance Fact Sheet 1988, p. 1; Gosselin, Smith, and Hodge 1984, p. II–196). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Exposure to dinitro-o-cresol causes metabolic stimulation and yellow pigmentation of the skin, eyes, and hair, and severe exposure can cause coma and death in humans and animals. In rats, the oral LD_{50} is 31 mg/kg, and in rabbits, it is 23.5 mg/kg (ACGIH 1986, p. 215; RTECS 1990). In rats, the dermal LD_{50} is 200 mg/kg (RTECS 1990). Cats survived one 4-hour exposure to the vapors of dinitro-o-cresol at a concentration of 1.4 mg/m³; however, one of three cats died from a single exposure to a concentration of 40 mg/m³ (Burkatskaya 1965, in ACGIH 1986, p. 215). The signs and symptoms of dinitro-o-cresol intoxication are similar in all species and include listlessness, loss of appetite and activity, deep, rapid respiration, sweating, thirst, oliguria, muscular weakness, prostration, dyspnea, and death with terminal hyperpyrexia; signs may be delayed for several hours (Clarke 1981, in HSDB 1990). When about 70 mg/kg of dinitro-o-cresol was given orally to sheep, toxic effects were observed in the liver and kidneys; moderate methemoglobinemia and hemoconcentration were also seen. Of the nine sheep dosed, three survived; all suffered extensive hemolysis followed by anemia (Nehez et al. 1981, in HSDB 1990). Cats subjected to daily 4-hour exposures of 0.2 mg/m³ DNOC for 3 months suffered from sluggishness, loss of muscle tone, dyspnea, a decrease in hemoglobin and red blood cell counts, and an increase in white blood cell counts and blood sugar levels; three cats died (Burkatskaya 1965, in ACGIH 1986, p. 215).

Dinitro-o-cresol exerts its effects by stimulating the metabolic rate and causing hyperpyrexia; if heat production exceeds heat loss, fatal hyperthermia may occur. In humans, the signs and symptoms of acute exposure to dinitro-o-cresol are nausea, gastric upset, restlessness, a sensation of heat, flushed skin, sweating, rapid respiration, tachycardia, fever, cyanosis, and coma (Klaassen, Amdur, and Doull 1986, p. 556). The lowest toxic oral dose in humans is 7500 μg/kg for 7 days; at this level, the exposed individual experienced somnolence and headache (RTECS 1990). The lowest toxic concentration in humans is 1 mg/m³ (RTECS 1990). A single oral dose of 75 mg caused no adverse effects in five volunteers, but two volunteers who received this dose for 5 or more days experienced headaches, lassitude, and malaise; these symptoms occurred when the volunteers' dinitro-o-cresol blood levels reached 20 μg/g or peaks of 40 and 48 μg/g (Harvey, Bidstrup, and Bonnell 1951, in Proctor, Hughes, and Fischman 1988, p. 217). Application of 50 g of an ointment containing 25 percent dinitro-o-cresol to the skin of a 4-year-old boy produced symptoms of vomiting, headache, yellow stained skin and sclera, elevated pulse and respiratory rate, unconsciousness, and death within 3.5 hours (Buchinskiy 1974, in Hayes 1982, p. 469; NIOSH Dinitro-o-cresol Criteria Document 1978). Acute poisoning from dinitro-o-cresol is usually quick; almost complete recovery or death occurs within 24 to 48 hours (Bidstrup and Payne 1951, in Hayes 1982, p. 469). Eight fatalities have been reported in British agricultural workers spraying this substance; death occurred within 48 hours and was caused by

hyperthermia (Bidstrup and Payne 1951). In fatal cases, autopsy shows yellow staining of the organs, tissues, and fluids, congestion of the lungs, edema and a few petechial hemorrhages, and hemorrhagic changes in the brain and gastric mucosa (Bidstrup and Payne 1951, in Hayes 1982, p. 470). Repeated ingestion of dinitro-o-cresol for therapeutic purposes has caused bilateral cataracts, but workers exposed to this substance in agricultural or industrial applications have not shown this effect (NIOSH Dinitro-o-cresol Criteria Document 1978).

Based on this evidence in humans and animals, OSHA preliminarily concludes that dinitro-o-cresol causes yellow pigmentation, hyperpyrexia, and central nervous system effects in humans and animals. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that establishing a permissible exposure limit of 0.2 mg/m^3 as an 8-hour TWA, with a skin notation, for dinitro-o-cresol in agriculture is necessary to substantially reduce the risk of these material health impairments. In addition, establishing the proposed limit in agriculture will make OSHA's PEL for dinitro-o-cresol consistent across all OSHA-regulated sectors.

ETHANOLAMINE

CAS: 141-43-5; Chemical Formula:
$NH_2CH_2CH_2OH$
H.S. No. 1159

OSHA currently has an 8-hour TWA limit of 3 ppm for ethanolamine in construction and maritime. There is no limit in agriculture. The ACGIH has the same TLV®-TWA limit of 3 ppm, along with a 15-minute STEL of 6 ppm. In construction and maritime, OSHA is retaining the 8-hour TWA PEL of 3 ppm and proposing to supplement this limit with a 6-ppm STEL. OSHA is also proposing to extend both limits to agriculture. NIOSH has no REL but concurred (Ex. 8-47, Table N1) with the proposed limits when they were recently established for ethanolamine in general industry.

Ethanolamine is a colorless liquid with a mild smell like that of ammonia. Ethanolamine is used in agriculture as a chemical (pesticide) dispersing agent and is also used in the manufacture of antibodies. This substance is also used in chemical synthesis and as an ingredient in emulsifiers, polishes, and waving solutions for hair (ACGIH 1986, p. 235; Hawley's 1987, p. 474). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The health hazards associated with exposures to ethanolamine include irritation and necrosis of the skin and central nervous system depression. The oral LD_{50} in rats is 3.32 g/kg, and the intraperitoneal LD_{50} in rats is 981 mg/kg (Hartung and Cornish 1966/Ex. 1-328). The dermal toxicity of ethanolamine is considerably higher, with an LD_{50} of 1 mg/kg reported in the rabbit. Dermal application of the undiluted liquid also caused redness, swelling, and burns comparable to mild first-degree burns (Union Carbide Corporation, as cited in ACGIH 1986/Ex. 1-3, p. 235). The eye injury potential of ethanolamine is just slightly less than that of undiluted ammonia (Carpenter and Smyth 1946/Ex. 1-859). Rats fed 0.5 percent (320 mg/kg/day) ethanolamine in their food for 90 days (Smyth, Carpenter, and Weil 1951/Ex. 1-439) showed no adverse effects, but at 1.28 g/kg/day, fatalities occurred. Treon, Cleveland, Stemmer, and associates (1957/Ex. 1-1172) reported lung, liver, and kidney damage in various species exposed to high concentrations of the vapor and mist. In tests of various species, Weeks and co-workers (1960/Ex. 1-941) reported marked dermal effects from continuous exposures (24 hours/day, 7 days/week, for from 24 to 90 days) at various concentrations of the vapor; at 12 to 26 ppm, dermal effects were less severe, but at 5 ppm, skin irritation was still evident. After 90 days of exposure to 5 ppm, dogs experienced a slight and temporary weight loss as well as decreased activity and alertness (Weeks, Downing, Musselman et al. 1960/Ex. 1-941). In studies of anesthetized dogs, Priddle (1954, as cited in ACGIH 1986/Ex. 1-3, p. 235) reported that sublethal doses of ethanolamine cause central nervous system stimulation, while lethal doses cause CNS depression.

OSHA is retaining its PEL of 3 ppm as an 8-hour TWA in construction and maritime, is proposing to add a 15-minute STEL of 6 ppm for ethanolamine in these industries, and is also proposing to extend both PELs to agriculture. The Agency preliminarily concludes that both of these limits are required to protect workers against the significant risk of irritation and central nervous system effects, which constitute material health impairments that are potentially associated with exposure to ethanolamine. The Agency believes that these limits will substantially reduce these significant risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

ETHYLENE CHLOROHYDRIN

CAS: 107-07-3; Chemical Formula:
$ClCH_2CH_2OH$
H.S. No. 1167

OSHA currently has an 8-hour TWA limit of 5 ppm, with a skin notation, for ethylene chlorohydrin in construction and maritime. There is no limit in agriculture. The ACGIH has a TLV®-ceiling of 1 ppm, also with a skin notation. The Agency is proposing a PEL of 1 ppm as a ceiling, with a skin notation, for this substance in construction, maritime, and agriculture. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the proposed limit, which is the PEL recently established for ethylene chlorohydrin in general industry.

Ethylene chlorohydrin is a colorless liquid with a faint, ethereal odor. It is used in the manufacture of insecticides, as a solvent in organic synthesis, and to activate sprouting of dormant potatoes (Hawley's 1987, p. 485, ACGIH 1986, p. 248). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

A broad range of serious health hazards are associated with exposure to this substance; these include central nervous system effects, cardiovascular effects, liver damage, kidney damage, gastrointestinal effects, skin irritation, eye irritation, and mutagenic effects. The oral LD_{50} for rats is 72 mg/kg, and the intraperitoneal LD_{50} in the same species is 56 mg/kg (Goldblatt and Chiesman 1944/Ex. 1-980). In guinea pigs, the intraperitoneal LD_{50} is 98 mg/kg, and the percutaneous LD_{50} is 205 mg/kg (Wahlberg and Boman 1978/Ex. 1-938).

The inhalation toxicity of ethylene chlorohydrin is also high. Ambrose (1950/Ex. 1-888) reported that a single 1-hour exposure to 7.5 ppm and repeated 1-hour exposures to 2 ppm can be fatal to rats. Exposures of 15 minutes daily at concentrations of from 900 to 1000 ppm were fatal to rats within a few days (Goldblatt and Chiesman 1944/Ex. 1-980).

In subacute and chronic studies, rats have died from a daily dietary dose of 67.5 mg/kg (Oser, Morgareidge, Cox, and Carson 1975/Ex. 1-923). Semenova and associates (1980, as cited in ACGIH 1986/Ex. 1-3, p. 248) reported a 4-month no-effect inhalation level of 0.0033 ppm; at 0.017 ppm, slight CNS changes and alterations in the urinary excretion of nitrogen were observed after 4 months. These investigators also observed increased chromosomal aberrations in the bone marrow in rats exposed at the

0.22-ppm level for 4 months (Semenova, Kazanina, Fedyanina et al. 1980, as cited in ACGIH 1986/Ex. 1–3, p. 248).

Voogt and Vet (1969/Ex. 1–1205) tested ethylene chlorohydrin in *Klebsiella pneumoniae* and found it strongly mutagenic. This finding was confirmed by the Ames test in *Salmonella typhimurium*; ethylene chlorohydrin reacts with DNA, since it inhibits the growth of DNA-deficient bacteria (Rosenkranz and Wlodkowski 1974/Ex. 1–1201). A dose-related increase of liver protein and depletion in glutathione were observed in rats after a single dose of ethylene chlorohydrin ranging from 10 to 50 mg/kg (Friedman, Scalera, Balazs et al. 1977/Ex. 1–1198).

One fatal and several nonfatal cases of poisoning in industrial workers have been reported from exposure (for unspecified periods of time) to ethylene chlorohydrin at levels of between 300 and 500 ppm. An autopsy of the worker who died revealed severe damage to the liver and brain, as well as effects on other organs. The survivors of this incident experienced nausea, vomiting, and irritation of the eyes, nose, and lungs (Bush, Abrams, and Brown 1949/Ex. 1–1196). Dierker and Brown (1944/Ex. 1–1197) reported that a 2-hour inhalation exposure to 300 ppm was fatal in one accidental exposure.

OSHA is proposing a ceiling limit of 1 ppm for ethylene chlorohydrin in construction, maritime, and agriculture, with a skin notation. The Agency preliminarily concludes that this limit and notation will substantially reduce the significant risks of central nervous system and other systemic effects associated with workplace exposures to ethylene chlorohydrin. The skin notation is necessary because ethylene chlorohydrin is readily absorbed through the skin. Promulgation of this limit also will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYLENEDIAMINE

CAS: 107–15–3; Chemical Formula: $NH_2CH_2CH_2NH_2$

H.S. No. 2082

In general industry, construction, and maritime, OSHA's permissible exposure limit for ethylenediamine is 10 ppm as an 8-hour TWA. There is no limit for this substance in agriculture. The ACGIH has a TLV®–TWA of 10 ppm for ethylenediamine. NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL of 10 ppm for ethylenediamine in agriculture. Promulgation of this limit will make the PEL for ethylenediamine consistent across all OSHA-regulated sectors.

Ethylenediamine is a thick, colorless, alkaline liquid with an ammonia-like odor. It is used as a fungicide; in the manufacture of chelating agents such as EDTA; as a chemical intermediate, solvent, emulsifying agent, and antifreeze inhibitor; and in textile lubricants (ACGIH 1986, p. 249; Hawley's 1987, p. 486). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Ethylenediamine is an irritant of the eyes, mucous membranes, and respiratory tract and, in humans, a skin and pulmonary sensitizer. Repeated exposure causes kidney and liver damage in animals (Proctor, Hughes, and Fischman 1988, p. 241; NIOSH/OSHA Occupational Health Guideline 1981). The oral LD_{50} in rats is 500 mg/kg; in guinea pigs it is 470 mg/kg (RTECS 1990). The lowest lethal concentration in rats is 4000 ppm for 8 hours (RTECS 1990). The dermal LD_{50} in rabbits is 730 mg/kg (Gosselin, Smith, and Hodge 1984, p. II–206). Rabbits experienced severe irritation when 10 mg of ethylenediamine was kept in contact with their skin for 24 hours (RTECS 1990). Instilled into the eye of a rabbit, ethylenediamine caused extreme irritation and corneal damage; a 5-percent solution caused partial corneal opacity (Smyth et al. 1951, in Proctor, Hughes, and Fischman 1988, p. 242). Ethylenediamine has been shown to be a potent sensitizer in guinea pigs; 10 of 10 albino guinea pigs exposed to ethylenediamine became sensitized (HSDB 1988). Rats exposed to a 4000-ppm concentration of ethylenediamine for 8 hours died; however, at 2000 ppm, no deaths occurred (Smyth et al. 1951, in Proctor, Hughes, and Fischman 1988, p. 242). Daily exposure to a 484-ppm concentration of this substance for 30 days was fatal to rats; at a 132-ppm concentration on the same regimen, lung, liver, and kidney damage were seen in these animals at autopsy, although all animals survived the exposures (Pozzani 1954, in Proctor, Hughes, and Fischman 1988, p. 242). In rats exposed to 0.50 g/kg of ethylenediamine daily for two generations, a reduction in body weight and changes in liver and kidney weights were seen in the F_0 and F_1 parents. Microscopic liver lesions occurred with greater prevalence in the F_1 female rats (Yang et al. 1984, in Proctor, Hughes, and Fischman 1988, p. 242).

In humans, exposure to a 400-ppm concentration for 5 to 10 seconds caused intolerable irritation of the nose; 200 ppm caused tingling of the face and nasal irritation, while 100 ppm had no effect (Pozzani 1954, in Proctor, Hughes, and Fischman 1988, p. 242). The lowest toxic concentration of ethylenediamine in humans is estimated to be 200 ppm (RTECS 1990). The use of ethylenediamine in pharmaceutical preparations such as Mycolog cream has caused many cases of skin sensitization (Fisher 1973; Baer et al. 1973, in Proctor, Hughes, and Fischman 1988, p. 242). Skin patch tests conducted between 1972 and 1974 revealed that 6 percent of 3,216 patients were sensitive to a 1-percent ethylenediamine-HCl solution (North American Contact Dermatitis Group 1975, in Proctor, Hughes, and Fischman 1988, p. 242). A 30-year-old man developed asthma as a result of ethylenediamine exposure in the workplace. Two and one-half years after employment, symptoms of sneezing, nasal discharge, and cough began; these progressed over the next 5 months. Inhalation provocation tests on the worker produced chest tightness, cough, wheezing, and a 26-percent drop in FEV_1 4 hours following exposure to ethylenediamine on two different days (Lam 180, in Proctor, Hughes, and Fischman 1988, p. 242).

Based on this evidence in humans and animals, OSHA preliminarily concludes that ethylenediamine causes irritation of the eyes, mucous membranes, and respiratory tract as well as skin and pulmonary sensitization. The Agency believes that, in the absence of a limit for ethylenediamine, workers in agriculture are at significant risk of experiencing these adverse health effects. OSHA believes that the proposed TWA PEL of 10 ppm will substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

FLUORIDES (as F)

CAS: Varies with compound; Chemical Formula: Varies with compound

H.S. No. 2084

In general industry, construction, and maritime, OSHA's permissible exposure limit for fluorides (measured as F) is 2.5 mg/m^3 as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a 2.5 mg/m^3 8-hour TLV®–TWA for these substances. NIOSH also has a REL of 2.5 mg/m^3 for the fluorides as a 10-hour TWA. OSHA is proposing an 8-hour TWA PEL of 2.5 mg/m^3 for the fluorides (measured as F) in agriculture. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

The physical properties of the fluorides vary for specific compounds; for example, sodium fluoride is a colorless or blue odorless solid, and cryolite (sodium hexafluoraluminate) is a colorless to dark, odorless solid. Fluorides are used as pesticides and rodenticides, as electrolytes in aluminum manufacture, as fluxes in the smelting of nickel, copper, gold, and silver, as catalysts for organic reactions, as wood preservatives, as fluoridation agents for drinking water, and to clean graphite, metals, windows, and glassware. Exposure to fluorides can also occur during the preparation of fertilizer from phosphate rock (Sittig 1985, p. 456; NIOSH/OSHA Occupational Health Guideline 1981, pp. 1, 3–4). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Fluoride compounds cause eye, skin, and respiratory tract irritation, and skeletal, gastrointestinal, circulatory, and nervous system effects in humans and animals. The oral LD_{50} in rats is 180 mg/kg for sodium fluoride (Lehman 1951–1952; Smyth et al. 1969, Muehlberger 1930, in Hayes 1982, p. 58). The LD_{50} for sodium fluoroacetate in rats is 2.5 mg/kg (Kalmbach 1945, in Hayes 1982, p. 495). A 2 percent aqueous solution of sodium fluoride instilled into rabbit eyes caused corneal epithelial defects and necrotic areas in the conjunctiva (Grant 1986, p. 435). If fluoride is absorbed in sufficient amounts, the fluoride ion increases capillary permeability and causes a coagulation effect; this can lead to hemorrhagic gastroenteritis, congestion, and edema in various organs, including the brain (Booth and McDonald 1982, in HSDB 1986 "Cryolite"). The signs and symptoms of excess fluoride absorption include excitability, muscle tremors, weakness, urination, defecation, salivation, emesis, sudden collapse, clonic convulsions, coma, and death due to respiratory and cardiac failure (Booth and McDonald 1982, in HSDB 1986, "Cryolite"). Fluoroacetate acts on the central nervous system and heart to cause convulsions in dogs, cardiac effects in rabbits, and fits, severe depression, and death due to ventricular fibrillation or cardiac arrest in rhesus monkeys. All species experience a 0.5 to 2-hour delay between ingestion and onset of illness (Hayes 1982, p. 495). Rats fed sodium fluoride at levels of 7 to 14 ppm for 6 weeks developed dental fluorosis manifested as fine lines of impaired calcification; at a dietary level of 226 ppm, the incisors became chalky and pitted. Dietary levels of 904 ppm caused marked weight loss and death within a few weeks (Smith and Leverton 1934, in Hayes 1982, p. 58). Chronic administration of fluoride in oral doses greater than 3.8 mg/kg caused changes in the teeth, liver, and kidneys of rats (IARC 1982, Vol. 27, p. 272). Intraperitoneal doses of stannous fluoride greater than 10 mg/kg of caused embryolethality and teratogenicity in mice (IARC 1982, Vol. 27, p. 272). A recent study in rats and rabbits (Eisenbrandt and Nitschke 1980, in Fund. Appl. Toxicol. 12(3):540–547) exposed by inhalation to various concentrations of sulfuryl fluoride for periods ranging from 2 weeks to 13 weeks reports the following findings. Nine of ten rats exposed to 600 ppm sulfuryl fluoride 6 hours/day, 5 days/week died between the second and sixth exposures; at autopsy, extensive kidney damage was seen in all rats exposed at this level. Rabbits exposed to 600 ppm on the same regimen were hyperactive and one rabbit convulsed. All rabbits exposed either to 300 or 600 ppm for 2 weeks showed vacuolization and/or malacia of the cerebrum at autopsy. In a 13-week study in rats and rabbits, exposure to 30 ppm sulfuryl fluoride caused no effects. Exposure to 100 ppm for this period caused cerebral vacuolization and/or malacia and inflammation of the nasal tissues in some of the rabbits, and exposure to 300 ppm for 13 weeks caused mottling of the teeth, renal effects, pulmonary histiocytosis, nasal-tissue inflammation, and cerebral vacuolization in rats. Some rats exposed to 100 ppm had dental fluorosis. Various species of animals (mice, rats, cattle) have shown signs of impaired reproductive performance after ingesting large amounts (100 mg/l) of fluoride in their drinking water (IARC 1982, Vol. 27, p. 274; Maurer, Cheng, Boysen, Anderson 1990, in J. Nat. Cancer Institute 82(13):1118–1126). Rats fed 4, 10, or 25 mg/kg/day sodium fluoride for up to 99 weeks showed dose-related effects on the teeth, bones, and stomach; animals in the high-dose groups showed a 30 percent decline in weight gain. No increase in the incidence of preneoplastic or neoplastic lesions was seen at any site in rats of either sex. The International Agency for Research on Cancer has concluded that there is insufficient evidence to evaluate the carcinogenicity of sodium fluoride in animals (IARC 1982, Vol. 27, p. 292).

In humans, the lowest toxic dose of fluoride is reported to be 3 mg/kg; this dose produced pulmonary system, liver, and central nervous system effects (RTECS 1990, "Fluoride"). The acute effects associated with ingestion of a toxic dose of a soluble inorganic fluoride compound are vomiting, abdominal pain, and diarrhea (IARC 1982, Vol. 27, p. 276). Absorption of an estimated 0.2 to 27.5 g of fluoride after ingestion has resulted in convulsions; repeated ventricular fibrillation was observed after the ingestion of 120 g of sodium fluoride (IARC 1982, Vol. 27, p. 276). Death is usually due to respiratory paralysis (IARC 1982, Vol. 27, p. 276). In fatal cases of fluoride poisoning, autopsy reveals acute congestion of the abdominal viscera, swelling of the liver and kidneys, tubular necrosis, hemorrhage of the lungs, and dilation of the right chambers of the heart (IARC 1982, Vol. 27, p. 276). Workers exposed to fumes containing fluoride in concentrations above 10 mg/m^3 fluoride reported experiencing irritation and nosebleeds (Williams 1942, in ACGIH 1986, p. 272). Eye and respiratory irritation and nausea occur in workers exposed to concentrations above 5 mg/m^3 (Elkins 1959, in ACGIH 1986, p. 272). Cryolite workers reported experiencing gastric, intestinal, circulatory, respiratory, and nervous system symptoms, as well as skin rashes and problems with their bones, joints, and muscles. The average workroom air concentrations in the cryolite plant ranged from 22 to 48 mg/m^3 (which corresponds to a fluorine level of between 11 and 24 mg/m^3) (Roholm 1937, in ACGIH 1986, p. 272). A recent study in Danish cryolite workers (Grandjean, Horder, and Thomassen 1990, in J. Occ. Med. 32(1):58–63) showed that exposure to cryolite dust at concentrations ranging from 0.16 to 21.2 mg/m^3 for 4 days caused evidence of skeletal fluorosis. Workers in a Yugoslav aluminum processing plant had a significantly increased incidence of telangiectases (enlarged blood vessels); the authors attribute this to exposure to hydrogen fluoride and other fluorides (Balic and Kansky 1988, in Derma. Beruf. Umwelt 36(1):20–22). Repeated contact of the skin with fluoride dust results in dermatitis; several cryolite workers exposed to fluoride concentrations of 15 to 20 mg/m^3 developed an intermittent skin rash (AIHA Hygienic Guide Series 1978). Chronic exposure to fluoride can lead to effects on the teeth, bones, kidneys, and the reproductive and circulatory systems (IARC 1982, Vol. 27, p. 276). Aluminum workers, who are exposed to inorganic fluorides during the production process, showed evidence of bone and joint pathology believed to be attributable to the fluoride exposure (Czerwinski, Nowak, Dabrowska,

Kolarczyk, and Ksiezyk 1988, in Arch. Environ. Hlth. 43(5):340–343). A group of 2258 aluminum workers with an average exposure to fluoride of 17.6 years showed the following prevalence of joint and bone pathology on radiological examination: In those exposed up to 15 years, 135 cases; from 6 to 32 years, 1,463 cases, and in retired workers, 660 cases. A study of potroom workers exposed to fluorides during aluminum smelting showed that the majority had developed fluorosis after 10 years of exposure; after 15 years, moderate to severe osteosclerosis, causing limited mobility of the dorsal spine, developed in many workers (Kaltreider et al. 1972, in ACGIH 1986, pp. 272–273). A recent study (Tokar, Voroshinin, Zhovtak, and Shcherbakov 1989, in Gig. Sanit. 12:85–86) suggests an association between chronic occupational exposure to inorganic fluorides and adverse effects on the parathyroid gland and on the C-cells of the thyroid. The International Agency for Research on Cancer found no evidence of an association between fluoride ingestion and mortality from cancer in humans (IARC 1982, Vol. 27, p. 292).

Based on this evidence in humans and animals, OSHA preliminarily concludes that fluoride causes eye, skin, and respiratory irritation, and skeletal, gastrointestinal, circulatory, and nervous system effects in exposed individuals. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that extending the proposed limit of 2.5 mg/m³ as an 8-hour TWA to agriculture is necessary to significantly reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for fluorides consistent across all regulated sectors.

GLYCIDOL (2,3–EPOXY–1–PROPANOL)
CAS: 556–52–5; Chemical Formula:
$C_3H_6O_2$
H.S. No. 1189

Currently, OSHA has an 8-hour TWA limit for glycidol of 50 ppm in construction and maritime. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 25 ppm for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 25 ppm for glycidol in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Glycidol is a colorless, combustible liquid. It is used as a stabilizer, a dye-leveling agent, and a demulsifier (Hawley's 1987, p. 569; ACGIH 1986, p. 287).

Glycidol causes eye, respiratory, and pulmonary irritation. Hine and associates (1956/Ex. 1–331) conducted a study of animal toxicity caused by glycidol exposure and reported that glycidol is irritating to the lungs: mice and rats both exhibited pneumonitis and emphysema as a result of vapor inhalation. The LC_{50} in mice is 450 ppm for a 4-hour exposure; the 8-hour LC_{50} in rats is 580 ppm (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). A single dermal application was only mildly irritating (Draize score 4.5); however, repeated daily skin applications were severely irritating after 4 days. One drop of pure glycidol in the rabbit eye caused severe but reversible corneal injury (Hine, Kodama, Wellington et al. 1956/Ex.1–331). In rats, chronic exposures to 400 ppm (7 hours/day for 50 days) did not cause systemic toxicity, but eye irritation and respiratory distress were observed after the first few exposures (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). A study to determine glycidol's tumorigenic potential on the skin of mice showed negative results (Van Duuren, Langseth, Goldschmidt, and Orris 1967/Ex. 1–1203).

OSHA is proposing to establish an 8-hour TWA limit of 25 ppm for glycidol in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of eye, respiratory, and pulmonary irritation potentially associated with exposure to this substance. The Agency believes that this limit will substantially reduce these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HEPTACHLOR
CAS: 76–44–8; Chemical Formula:
$C_{10}H_5Cl_7$
H.S. No. 2088

In general industry, construction, and maritime, OSHA's current permissible exposure limit for heptachlor is 0.5 mg/m³ as an 8-hour TWA, with a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit for heptachlor in agriculture. The ACGIH's current TLV®–TWA for this substance is 0.5 mg/m³, with a skin notation. NIOSH has no REL for heptachlor but concurs (Ex. 8–47, Table N3A) with the limit being proposed. The Agency is proposing to establish an 8-hour TWA PEL of 0.5 mg/m³, and a skin notation, for heptachlor in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Heptachlor is a white to light tan waxy solid with a mild camphor-like odor. Heptachlor has been used as an insecticide, although its use has been restricted by the U.S. Environmental Protection Agency to subsurface soil treatment for termite control and the dipping of non-food plants (Hayes 1982, p. 233; ACGIH 1986, p. 296). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Heptachlor is a convulsant in humans and animals and a liver toxin and carcinogen in animals. In humans, exposure to heptachlor has also caused blood dyscrasias (EPA 1987 (ODW Health Advisory)). The oral LD_{50} in rats is 40 mg/kg; in mice, it is 68 mg/kg (RTECS 1990). The dermal LD_{50} in rabbits is 2000 mg/kg; rabbits dermally exposed convulsed before death (RTECS 1990). Rats given a single oral 90-mg/kg dose of heptachlor exhibited tremors and convulsions within 30 to 60 minutes of administration; liver necrosis was observed in these animals at autopsy (von Oettingen 1955, in Proctor, Hughes, and Fischman 1988, p. 268). Rats fed 7 to 12 mg/kg heptachlor per day for as long as 14 days showed evidence of severe liver damage and changes in liver function (Krampl 1971); these effects were also seen at a dietary level of 10 mg/kg for 5 to 7 days (Enan et al. 1982, both cites in ODW Health Advisory). In oral carcinogenicity bioassays involving heptachlor (contaminated with 20 percent chlordane), mice of both sexes developed liver carcinomas and female rats exhibited signs suggestive of a carcinogenic effect on the thyroid (IARC 1979, Vol. 20, p. 146). The International Agency for Research on Cancer has concluded that the evidence of heptachlor's carcinogenicity in animals is limited (IARC 1982, Suppl. 4, p. 81).

Humans exposed to chlordane that contained up to 20 percent heptachlor exhibited the same nervous system effects as those seen in heptachlor-poisoned animals: dyspnea, tremors, excessive salivation, irritability, and convulsions (EPA 1987, p. 5). These effects occurred regardless of the route of exposure: Dermal, ingestion, or inhalation. There are several reports of blood dyscrasias and aplastic anemia in workers exposed to heptachlor and chlordane (IARC 1982, Suppl. 4, p. 81). Epidemiological studies in chlordane and heptachlor applicators and of cyclodiene pesticide formulators have

yielded inconclusive results (IARC 1982, Suppl. 4, p. 81). Other studies suggest a relationship between heptachlor or chlordane exposure (alone or with other compounds) and blood dyscrasias, acute leukemia, and the development of neuroblastomas in children (IARC 1979, Vol. 20, p. 146).

Based on this evidence in humans and animals, OSHA preliminarily concludes that heptachlor is a convulsant, liver toxin, and, based on effects seen in animals, a potential occupational carcinogen. OSHA therefore preliminarily concludes that, in the absence of a limit for heptachlor, workers in agriculture are at significant risk of experiencing these exposure-related health effects. The Agency believes that the proposed TWA PEL of 0.5 mg/m^3, with a skin notation, is necessary to substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HEXAFLUOROACETONE

CAS: 684–16–2; Chemical Formula: C_3F_6O

H.S. No. 1198

Currently, OSHA has no limit for hexafluoroacetone in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.1 ppm, with a skin notation, for this substance. OSHA is proposing a PEL of 0.1 ppm as an 8-hour TWA, with a skin notation, for this substance in construction, maritime, and agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limit, which was recently established for this substance in general industry.

Hexafluoroacetone is a colorless, nonflammable, highly reactive gas. It is used primarily in organic synthesis (ACGIH 1986, p. 303).

Inhalation studies of hexafluoroacetone in animals have shown varied systemic toxicities, including injury to the liver, kidney, testes, thymus, and bone marrow. In rats and dogs exposed 6 hours/day, 5 days/week for 13 weeks at concentrations of about 0.1, 1.0, or 12 ppm, no effects (other than increased lung weights in dogs) were observed in either species at 0.1 ppm. However, the 12-ppm exposures produced severe effects in both species, including marked but reversible testicular damage and slight hypoplasia of the spleen, thymus, and lymph nodes (E.I. du Pont de Nemours & Company, Inc. 1971, as cited in ACGIH 1986/Ex. 1–3, p. 303). Reversible kidney damage in rats and increased lung weights in dogs occurred during the 1.0-ppm exposures. An earlier 4-hour acute exposure of rats demonstrated that 300 ppm was a lethal concentration (E.I. du Pont de Nemours & Co., Inc. 1971, as cited in ACGIH 1986/Ex. 1–3, p. 303).

In rats, 2-week dermal exposures of 65, 130, or 250 mg/kg resulted in numerous adverse effects, including testicular damage and corresponding changes in lipid metabolism (Kennedy, Henry, Chen, and Dashiell 1982/Ex. 1–1038). A dermal dose of 13 mg/kg produced no adverse effects in rats (Lee and Gillies 1984/Ex. 1–561). An injected dose of radiolabeled hexafluoroacetone was, for the most part, rapidly excreted in the urine in unmetabolized form; this material also did not accumulate in rat testes (Gillies and Rickard 1984/Ex. 1–322). Brittelli and co-workers (1979/Ex. 1–300) reported that hexafluoroacetone was fetotoxic in rats. Dermal application of 90 mg/kg/day to pregnant rats resulted in maternal toxicity. Fetal toxicity occurred at maternal doses of 25 mg/kg, and fetal size was reduced at maternal doses of 5 and 25 mg/kg; however, 1 mg/kg produced no fetal effect. Although soft-tissue damage and external abnormalities were observed, teratogenicity could not be demonstrated definitively (Brittelli, Culik, Dashiell, and Fayerweather 1979/Ex. 1–300).

OSHA is proposing an 8-hour TWA PEL of 0.1 ppm TWA and a skin notation for hexafluoroacetone in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of systemic injuries, reproductive effects, kidney damage, and fetotoxic effects, all of which constitute material health impairments that are associated with exposure to hexafluoroacetone at levels above the proposed PEL. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HYDROGEN CYANIDE

CAS: 74–90–8; Chemical Formula: HCN

H.S. No. 1207

The OSHA limit for hydrogen cyanide in construction and maritime is a 10-ppm 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has a 10-ppm ceiling limit, also with a skin notation. NIOSH (1976e/Ex. 1–240) has recommended that workplace exposures to hydrogen cyanide not exceed 4.7 ppm (5mg/m^3) as a 10-minute ceiling; however, NIOSH concurs (Ex. 8–47, Table N1) with the selection of the proposed PEL. OSHA is proposing a 15-minute STEL of 4.7 ppm, and a skin notation, for hydrogen cyanide in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Hydrogen cyanide is a colorless gas at room temperature; it has a faint odor of bitter almonds. If contaminated with impurities or not adequately stabilized, hydrogen cyanide will polymerize spontaneously and violently. The commercially available product is usually 96 to 99 percent pure and contains a stabilizer. It is used in the manufacture of pesticides, rodenticides, chelates, dyes, and other substances including acrylonitrile, acrylates, adiponitrile, and cyanide salts (Hawley's 1987, p. 615). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The ACGIH (1986/Ex. 1–3) has summarized the extensive body of human evidence on the adverse effects resulting from exposure to hydrogen cyanide. The Documentation notes that exposure to levels of 45 to 54 ppm hydrogen cyanide can be tolerated for 1 hour with no immediate or delayed effects, but that 18 to 36 ppm produces "slight" symptoms after several hours of exposure. The ACGIH also cites Grabois (1954/Ex. 1–1150), who reported that workers in apricot kernel processing plants experienced no ill effects when exposed to hydrogen cyanide at a concentration of approximately 10 ppm.

The NIOSH recommendation of 4.7 ppm as a 10-minute ceiling limit is based largely on an epidemiologic study by El Ghawabi et al. (1975/Ex. 1–632) that showed an increase in symptoms of headache, weakness, throat irritation, vomiting, dyspnea, lacrimation, colic, and nervousness among workers exposed to cyanide for an average of 7.5 years. The 36 male workers who were studied were employed in three electroplating factories. Breathing zone samples (15 minutes in duration) were collected, and results ranged from 4.2 to 12.4 ppm. Cyanide levels at two of the three plants did not exceed 9.6 ppm. El Ghawabi et al. (1975/Ex. 1–632) also reported that two workers in one plant suffered from psychotic episodes; these conditions were reported to be similar to cases that occurred during the therapeutic use of thiocyanate. Mean values of urinary thiocyanate in the 36 workers correlated well with air concentrations of cyanide (El Ghawabi, Gaafar, El-Saharti et al. 1975/Ex. 1–632).

Symptoms resulting from chronic exposure to cyanide were also reported by Radojicic (1973, as cited in NIOSH 1976e/Ex. 1–240) among workers exposed to HCN levels between 5.4 and

12.3 ppm, and by Saia, DeRosa, and Galzigna (1970, as cited in NIOSH 1976e/Ex. 1–240). NIOSH (1976e/Ex. 1–240) interpreted the significance of these studies as follows:

Colle (1972) * * * advanced the belief that these symptoms of headache, dyspnea, epigastric burning, vertigo, tinnitus, nausea, vomiting, tremor, and precordial pain represent a true clinical entity and that they are sufficiently documented and characteristic of chronic cyanide exposure to be grouped into a true syndrome. * * *

Chaumont (1960) * * * also stated that there is no clinical evidence to deny that cyanides can cause this type of occupational intoxication. He apparently found the debate on whether this intoxication is truly chronic or whether it involves repeated subacute symptoms to be semantic in nature and opted for the admission that chronic intoxication caused by HCN and the cyanide salts is a true occupational disease. * * *

Thus, one might describe chronic cyanide poisoning as a slow deterioration of resistance, and, therefore, an intensified sensitivity, due to inadequate time between exposures for replacement of damaged tissues, enzyme systems and metabolic stores, the elimination of detoxication products, and the regeneration of homeostatic mechanisms (NIOSH 1976e/Ex. 1–240, pp. 90–91).

Based on this evidence, OSHA preliminarily concludes that a variety of symptoms are associated with exposure to hydrogen cyanide at concentrations below 10 ppm. OSHA is therefore proposing a 4.7-ppm 15-minute STEL, and a skin notation, for hydrogen cyanide in construction, maritime, and agriculture. The Agency believes that the short-term limit will protect workers in these sectors from the significant risk of headache, weakness, colic, and nervousness, which constitute material impairments of health; these effects have been observed in individuals exposed at the 10-ppm level over a full working shift. OSHA preliminarily concludes that this limit will substantially reduce these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HYDROGEN SELENIDE (as Se)
CAS: 7783–07–5; Chemical Formula:
H_2Se
H.S. No. 2093

In general industry, construction, and maritime, OSHA's current permissible exposure limit for hydrogen selenide (measured as selenium) is 0.05 ppm. There is no limit in agriculture. The ACGIH's TLV®–TWA for this substance is 0.05 ppm as an 8-hour TWA. NIOSH has no REL for this substance. The Agency is proposing to establish an 8-hour TWA PEL of 0.05 ppm for hydrogen selenide in agriculture. Promulgation of this limit will make the PEL for hydrogen selenide consistent across all OSHA-regulated sectors.

Hydrogen selenide is a colorless gas with a disagreeable odor like that of decaying horseradish. Hydrogen selenide is used to prepare metallic selenides and organoselenium compounds and in doping gas mixtures to prepare semiconductor materials (ACGIH 1986, p. 317; Braker and Mossman 1980, p. 404).

Hydrogen selenide is an irritant of the eyes, mucous membranes, and respiratory tract in humans and animals. The lowest lethal concentration in rats is 20 mg/m³ for 1 hour (RTECS 1990). The LC_{50} in guinea pigs is 0.3 ppm (RTECS 1990). Signs of mucous membrane irritation, pulmonary edema, bronchitis, and bronchial pneumonia were seen in rats exposed to hydrogen selenide concentrations of 1 to 1.2 ppm (Buchan 1947, in Clayton and Clayton 1982, p. 2133). At a concentration of 10 ppm for 2 hours, guinea pigs exhibited signs of eye and nose irritation, and many of these animals died from pneumonitis (AIHA Hygienic Guide Series 1959, pp. 514–515).

The lowest toxic concentration of hydrogen selenide in humans is estimated to be 0.2 ppm (HSDB 1985). Exposure to a hydrogen selenide concentration of 1.5 ppm was judged intolerable by human subjects because of eye and nasal irritation. Exposure for a few minutes to a 0.3 ppm-concentration caused no irritation (Grant 1974, p. 560). Five workers exposed to hydrogen selenide at concentrations of less than 0.2 ppm for 1 month experienced nausea, vomiting, diarrhea, a metallic taste in the mouth, garlic odor of the breath, dizziness, lassitude, and fatigability; these symptoms gradually subsided during the months following exposure (Buchan 1974, in Proctor, Hughes, and Fischman 1988, p. 283). Other signs and symptoms caused by exposure to hydrogen selenide include runny nose and eyes, cough, sneeze, tightness of the chest, and pulmonary edema (Glover 1970, in ACGIH 1986, p. 317).

Based on this evidence in humans and animals, OSHA preliminarily concludes that hydrogen selenide's irritant effects pose a significant risk to workers in agriculture. The Agency believes that the proposed 8-hour TWA limit of 0.05 ppm is necessary to reduce the significant risk of material health impairment potentially associated with exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

HYDROGENATED TERPHENYLS
CAS: 61788–32–7; Chemical Formula:
None
H.S. No. 1210

Currently, OSHA does not regulate the hydrogenated terphenyls in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.5 ppm (approximately 5 mg/m³) for these complex mixtures of ortho-, meta-, and para-terphenyls in various stages of hydrogenation. OSHA is proposing a PEL of 0.5 ppm as an 8-hour TWA for hydrogenated terphenyls in construction, maritime, and agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limit, which was the PEL recently established for these substances in general industry.

The hydrogenated terphenyls are mixtures of ortho-, meta-, and para-terphenyls in various stages of hydrogenation. Hydrogenated terphenyls are used as heat-transfer media and as plasticizers (ACGIH 1986, p. 311).

Acute exposure to the hydrogenated terphenyls poses a risk of potential lung, eye, and skin damage. Chronic exposure presents a risk of systemic toxicity involving injury to the liver, kidneys, and blood-forming organs, as well as possible metabolic disturbances and cancer (ACGIH 1986/Ex. 1–3, p. 311).

Early studies of unhydrogenated terphenyl isomers determined that the LD_{50} in rats is low, i.e., 1900 mg/kg for the ortho isomer, 2400 mg/kg for the meta isomer, and 10,000 mg/kg for the para isomer (Cornish, Bahor, and Ryan 1962/Ex. 1–410). Thirty-day oral administration of 500 mg/kg/day in the diet of rats indicated possible liver and kidney damage, which was suggested by increases in the liver- and kidney-to-body-weight ratios and decreases in the rate of weight gain (Cornish, Bahor, and Ryan 1962/Ex. 1–410). Other studies have demonstrated nephrotoxicity and liver damage in rats fed 33 mg/kg or more of unirradiated terphenyl isomers (Petkau and Hoogstraaten 1965/Ex. 1–432; Young, Petkau, and Hoogstraaten 1969/Ex. 1–459). Inhalation studies showed that bronchopneumonia is associated with exposure to 88 to 356 ppm of the ortho and meta isomers, but not to the para isomer at 103 ppm (Haley, Detrick, Komesu et al. 1959/Ex. 1–326). The work of Cornish, Bahor, and Ryan (1962/Ex. 1–410) showed that none of the isomers caused skin irritation in rabbits following a 24-hour dermal application. For terphenyls that are approximately 40-percent hydrogenated, the acute oral LD_{50} in rats is reported as 17,500 mg/kg; in mice, it is 12,500 mg/kg (Adamson and Weeks 1973/Ex. 1–295).

This study also demonstrated that an irradiated hydrogenated terphenyl mixture is three times more acutely toxic by ingestion than is a nonirradiated mixture. This finding was confirmed in 16-week chronic ingestion studies (Adamson, Bowden, and Wyatt 1969/Ex. 1–293); these authors found that 1200 mg/kg of an irradiated mixture was lethal to mice, while the same dose in nonirradiated form produced only an irreversible interstitial nephritis. In the same study, no effects were observed for either mixture at a dose level of 250 mg/kg.

Eight-day inhalation studies in mice showed some pathologic changes in lung tissue after 500 mg/m³ (50 ppm) exposures to nonirradiated hydrogenated terphenyls; 8-week exposures at 2000 mg/m³ (200 ppm) resulted in the same lung damage, as well as in some proliferation of the smooth endoplastic reticulum in the liver (Adamson, Bowden, and Wyatt 1969/Ex. 1–293; Adamson and Weeks 1973/Ex. 1–295). Carcinogenesis in mice has been reported from 8-week skin exposures to the irradiated mixture (Henderson and Weeks 1973/Ex. 1–784). The significance of the changes observed by Adamson and Furlong (1974/Ex. 1–294) in the mouse lung after 8 weeks of inhalation exposure to the irradiated mixture is difficult to interpret in terms of the potential of the hydrogenated terphenyls to cause pulmonary cancer; particles were found to clear the lungs rapidly but to accumulate and clear more slowly in the intestine, kidney, and liver.

OSHA is proposing a 0.5-ppm 8-hour TWA PEL in construction, maritime, and agriculture for the complex mixtures of ortho-, meta-, and para-terphenyls (either irradiated or nonirradiated) in various stages of hydrogenation. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risks of eye, skin, and lung damage and of systemic toxicity to the liver, kidneys, and blood-forming organs, all material health impairments that are potentially associated with exposure to these substances at levels above the proposed PEL. In addition, promulgation of this limit will make OSHA's PEL for these substances consistent across all regulated sectors.

2-ISOPROPOXYETHANOL
CAS: 109–59–1; Chemical Formula: $(CH_3)_2CHOCH_2CH_2OH$
H.S. No. 1223

OSHA has no limit for 2-isopropoxyethanol in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 25 ppm for this substance. NIOSH has no REL. OSHA is proposing a PEL of 25 ppm as an 8-hour TWA for this substance in construction, maritime, and agriculture. This is the limit recently established for 2-isopropoxyethanol in general industry.

2-Isopropoxyethanol is a mobile, combustible liquid. It is used as a solvent for resins, a dye for textiles, and as a component of lacquers and other coatings (ACGIH 1986, p. 335; Hawley's 1987, p. 660).

2-Isopropoxyethanol has been demonstrated to produce systemic toxicity in laboratory animals. In studies of rats, 15 6-hour exposures to 1000 ppm caused hemoglobinuria, anemia, and lung congestion, but no fatalities (Gage 1970/Ex. 1–318). At 300 ppm, Gage reported blood changes and lung congestion after 15 exposures. Exposure at the 100-ppm level produced no effect (Gage 1970/Ex. 1–318). Another study reported a significant increase in the osmotic fragility of erythrocytes in female rats after a 4-hour inhalation exposure to 62 ppm, but no effect was observed at 32 ppm (Carpenter, Pozzani, Weil et al. 1956/ Ex. 1–303). Studies of four species of experimental animals exposed at concentrations of 200, 50, or 25 ppm for 6 hours/day for 26 weeks reported hematologic changes only in rats; increased osmotic fragility of erythrocytes was marked at 200 ppm, slight at 50 ppm, and minimal at 25 ppm (Moffett, Linnett, and Blair 1976, as cited in ACGIH 1986/Ex. 1–3, p. 235).

In the prior rulemaking, NIOSH (Ex. 8–47) did not concur with OSHA's proposed limit of 25 ppm, noting that 25 ppm represented an effect level. Although "slight" increases in osmotic fragility were reported in animals subchronically exposed (Moffett, Linnett, and Blair 1976, as cited in ACGIH 1986/Ex. 1–3, p. 235), OSHA notes that a marked reaction did not occur until exposure was increased eightfold. Therefore, at this time, OSHA judges the 25-ppm PEL to be sufficiently protective.

OSHA is proposing to establish an 8-hour TWA PEL of 25 ppm for 2-isopropoxyethanol in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will substantially reduce the significant risk of hemolytic effects, which are material health impairments, that are associated with exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ISOPROPYL GLYCIDYL ETHER (IGE)
CAS: 4016–14–2; Chemical Formula: $C_6H_{12}O_2$
H.S. No. 1227

OSHA's current limit for isopropyl glycidyl ether (IGE) in construction and maritime is 50 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 50 ppm and a 15-minute TLV®–STEL of 75 ppm for IGE. NIOSH recommends a limit of 50 ppm as a 15-minute ceiling. OSHA is retaining the 8-hour TWA of 50 ppm and proposing to add a 15-minute STEL of 75 ppm for IGE in construction and maritime; the Agency is also proposing to extend both limits to agriculture. These are the limits recently established for this substance in general industry.

IGE is a colorless, volatile liquid. It is used as a stabilizer for chlorinated solvents and as a viscosity reducer for epoxy resins (Hawley's 1987, p. 662).

The 4-hour LC_{50} for IGE in mice is 1500 ppm, and the 8-hour LC_{50} in rats is 1100 ppm (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). The intragastric LD_{50}s in mice and rats are 1.30 and 4.2 g/kg, respectively; in rabbits, the dermal LD_{50} is 9.65 g/kg (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). Fifty daily 7-hour exposures of rats to 400 ppm caused a reduced rate of weight gain, an increase in hemoglobin, a decrease in peritoneal fat, and, in some animals, emphysematous lungs and mottling of the liver (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). Animals in this study also exhibited signs of ocular irritation and respiratory distress.

In humans, eye, nose, and upper respiratory tract irritation occurred in the technicians handling the animals in the Hine and co-workers' study (1956/Ex. 1–331); exposure levels were not specified. Dermatitis has also been reported in workers exposed to other glycidyl ethers during manufacture, and one such case involved IGE exposure (ACGIH 1986/Ex. 1–3, p. 340).

In construction and maritime, OSHA is retaining the 8-hour TWA of 50 ppm and proposing to add a 15-minute STEL of 75 ppm for IGE; the Agency is also proposing to extend both limits to agriculture. The Agency preliminarily concludes that both the TWA and STEL are necessary to reduce the risk to these workers of chronic organ effects, such as those demonstrated to occur in animals (Hine, Kodama, Wellington et al. 1956/Ex. 1–331), and the significant risk of eye, skin, and upper respiratory tract irritation associated with short-term IGE exposures at the levels permitted in the absence of a STEL. OSHA considers sensory irritation, dermatitis, and chronic organ effects to be material impairments of health. In addition, promulgation of these limits

will make OSHA's PELs for this substance consistent across all regulated sectors.

LEAD, INORGANIC (as Pb)
CAS: 7439–92–1; Chemical Formula: Pb
H.S. No. 2098

The current OSHA limit for inorganic lead in the construction and maritime sectors is 0.2 mg/m³ (200 μg/m³), and in general industry it is 50 μg/m³. There is no PEL for lead in agriculture. The ACGIH has a TLV®–TWA of 0.15 mg/m³ for lead. NIOSH has a REL of <100 μg/m³ as a 10-hour TWA. OSHA is proposing an 8-hour TWA PEL of 50 μg/m³ for lead in the construction, maritime, and agriculture sectors. This is the limit established by OSHA in 1978 for lead in general industry workplaces (see 29 CFR 1910.1025).

Lead is a ductile, soft, heavy, gray, metallic element. It is used in batteries, radiation shielding, ammunition, solder, and in cable coverings. It has many other industrial uses (Hawley's 1987, p. 687).

Lead has profound and adverse effects on the health of exposed workers. Inhalation, the most important source of lead intake, and ingestion result in damage to the nervous, urinary, and reproductive systems and additionally inhibit synthesis of the heme molecule, which is responsible for oxygen transport in living systems. The adverse health effects associated with exposure to lead range from acute and perhaps reversible effects such as inhibition of enzyme activity, reduction in motor nerve conduction velocity, behavioral changes, and mild central nervous system (CNS) symptoms, to chronic disease and death.

The signs and symptoms of severe lead intoxication associated with blood lead levels of 80 μg/100 g and above are well documented. In recent years, however, there have been numerous research findings indicating that adverse health effects are associated with lead concentrations previously thought to be inconsequential. The following subsections will address the health effects of low level lead exposure in each system: heme synthesis inhibition and damage to the nervous, urinary, and reproductive systems. Prior to this, however, the air to blood lead relationship will be addressed.

Air to blood relationship. OSHA believes that a relationship between air lead levels and population-average blood lead levels unquestionably exists. In order to accurately predict the effects on blood lead levels that are produced over time by changes in air lead levels, it was necessary to construct a model that takes into account the important factors that affect blood lead levels. The adaptation of the physiological model originally developed by S.R. Bernard by the Center for Policy Alternatives (CPA) (Doc. H–004, Ex. 439) combines experimentally observed properties of mammalian lead transport and metabolism, including considerations of the dynamics of blood lead response to long-term exposure with observed physical properties of airborne particulates encountered in the workplace to produce a complete and accurate picture of the response of blood lead levels to particulate lead exposure. The Bernard model is an example of one of the most common types of models used to describe the transport and metabolism of drugs or foreign substances in the body; models of this type are known as multicompartment mammalian models. OSHA believes that the CPA's application of the Bernard model accurately predicts the effects on blood lead levels that are produced over time by changes in air lead levels.

Based on calculations using the CPA adaptation of the Bernard model, OSHA predicts that, assuming compliance with the proposed PEL of 50 μg/m³, 0.5 percent of all blood lead levels (PbB) collected from exposed workers will exceed 60 μg/100 g; 5.5 percent of workers will have a PbB between 50 and 60 μg/100 g; 23.3 percent will have levels between 40 and 50 μg/100 g; and overall, 29.3 percent will have PbBs above 40 μg/100 g at any one time. These blood lead levels would represent a substantial improvement in the blood lead levels for workers in these sectors under current conditions. The current blood lead level distribution, assuming compliance with a 200 μg PEL, is approximately (1) 22.4 percent of workers with PbBs greater than 60 μg/100 g; (2) 32.6 percent with PbBs between 50 and 60 μg/100 g; (3) 28.7 percent of workers with PbBs between 40 and 50 μg/100 g; and (4) overall, 83.3 percent with PbBs above 40 μg/100 g.

Heme Synthesis Inhibition. The earliest demonstrated effect of lead involves its ability to inhibit the formation of heme. Scientific evidence has established that lead inhibits at least two enzymes of the heme synthesis pathway at very low blood lead (PbB) levels. Inhibition of delta aminolevulinic acid dehydrogenase (ALAD), an enzyme responsible for the synthesis of a precursor to heme, is observed at PbB levels below 20 μg/100 g (Hernberg et al., Doc. H–004, Ex. 6–20). At a PbB level of 40 μg/100 g, more than 20 percent of the population would have a 70 percent inhibition of ALAD. Another product of impairment that builds up and that indicates inhibition of another enzyme, ferrochelatase, also occurs at low PbB levels. At a PbB level of 50 μg/100 g, a larger proportion of the population would suffer a more extreme version of these effects. At a PbB level of 50 μg/100 g, 70 percent of the population would have a 70 percent inhibition of ALAD and 80 percent of men and 100 percent of women would have increased free erythrocyte protoporphyrin, which is the product of inhibition of ferrochelatase (Zeilhuis, Doc. H–004, Ex. 294E).

The depression of heme synthesis in all cells of the body is a potentially far-reaching effect, and the prevention of enzyme effects is thus the key to the prevention of more serious clinical effects of lead toxicity, which become more obvious as the exposure continues. These measurable effects are a direct result of lead exposure and are considered by the Agency to indicate the occurrence of disruptions of a fundamental and vital subcellular process, heme synthesis.

OSHA believes that the toxicological evidence indicates a progression of health effects caused by lead exposure that starts with the inhibition of enzymes, continues through effects demonstrating a measurable disruption of subcellular processes (such as the buildup of the products of impaired heme synthesis), and eventually develops into overt signs and symptoms of lead poisoning that are manifested as disorders of the nervous, renal, and blood-forming systems. Given this understanding of the progressive stages of lead toxicity, OSHA has preliminarily concluded that enzyme effects indicative of the disruption of heme synthesis are early stages of a disease process that eventually results in the clinical symptoms of lead poisoning. Whether or not the effects have proceeded to the later stages of clinical disease, disruption of these processes over a working lifetime must be considered a material impairment of health. As was previously discussed, at a PbB level of 40 μg/100 g and above, a significant proportion of the population would manifest extensive inhibition of ALAD as well as elevations of protoporphyrin levels. The Agency believes that PbB levels should ideally be kept below 40 μg/100 g to minimize these effects.

Neurological effects. Lead exposure may adversely affect both the central and peripheral nervous systems. In particular, Lilis et al. (Doc. H–004, Ex. 24–10) have demonstrated central nervous system symptoms in 56 percent of workers with blood lead levels below 80 μg/100 ml. The mean blood level was approximately 60 μg/100 ml. This same

study reported symptoms of muscle and joint pain and/or soreness in 39 percent of the workers, many of whom had been exposed for less than a year. The authors cautioned that blood lead levels should not be allowed to exceed 60 μg/100 ml and should be maintained around 40 μg/100 ml. OSHA is of the opinion that the earliest stages of lead-induced central nervous system disease first manifest themselves in the form of behavioral disorders and CNS symptoms. OSHA preliminarily concludes that a blood lead level of 40 μg/100 g must be considered a threshold level for behavioral changes and mild CNS symptoms in adults and that, to protect against long-term neurological effects, blood lead levels should never exceed 50 μg/100 g.

The earliest sign of neurological disease of the peripheral nerves is a slowing of motor nerve conduction velocity (NCV). Slowing of NCV is seen in workers with no obvious clinical signs of lead poisoning. OSHA believes that prevention of this stage is necessary to prevent further development of the disease and its associated forms, which are likely to be irreversible. The work of Catton et al. (Doc. H–004, Ex. 5–15, Ref. 2), Feldman (Doc. H–004, Ex. 24–19, pp. 15), Behse (Doc. H–004, Ex. 24–19, pp. 15), Gerard (Doc. H–004, Ex. 24–19, pp. 15), Guardriglia (Doc. H–004, Ex. 51–B), Araki and Honma (Doc. H–004, Ex. 51–B), Repko et al. (Doc. H–004, Ex. 5–14), and Seppalainen et al. (Doc. H–004, Ex.5–12) all demonstrates statistically significant loss of motor NCV in lead-exposed workers. Seppalainen and his co-workers were able to determine a dose-response relationship between blood lead levels and the slowing of NCV. It is apparent that slowing occurs in workers whose PbB levels are 50 μg/100 g and above. Therefore, a necessary goal of a standard for occupational lead exposure must be to ensure that blood lead levels are maintained below 50 μg/100 g.

Renal system. The research of Wedeen and co-workers, the Health Hazard Evaluation done by NIOSH at Eagle Picher Industries, Inc. (Doc. H–004, Ex. 38C), and the research in secondary smelters done by Lilis, Fishbein, et al. (Doc. H–004, Ex. 23) all demonstrate that lead exposure is a key etiologic agent in the development of kidney disease among occupationally exposed workers. Wedeen et al. (Doc. H–004, Tr. 1765–1766) found that very few workers in a group of lead workers with kidney disease had blood lead levels over 60 μg/100 g. The authors concluded, therefore, that 40 μg/100 g was the upper acceptable PbB limit (Doc. H–004, Tr. 1771). OSHA believes that maintenance of PbB levels at or below 40 μg/100 g will reduce the overall lead dose to the worker, decrease the body burden of lead, and prevent sufficient buildup of lead in the kidney to produce renal damage.

Reproductive effects. Exposure to lead has been associated with adverse reproductive effects in both males and females. In male workers exposed to lead, there is evidence of decreased sexual drive, impotence, decreased ability to produce healthy sperm, and sterility. Lancranjan and co-workers (Doc. H–004, Tr. 577) have demonstrated that the reproductive ability of men occupationally exposed to lead is altered. These authors reported a significant increase in malformed sperm (teratospermia) among workers with mean PbB levels of 74.5 μg/100 ml or 52.8 μg/100 ml. A decreased number of sperm (hypospermia) and decreased sperm motility (athenospermia) were observed not only in the preceding groups but also in those with only slightly increased absorption, i.e., in those with a mean PbB level of 41 μg/100 ml. The authors concluded that these alterations were produced by a direct toxic effect on the male gonads, and that a dose response relationship exists with respect to teratospermia. In OSHA's view, altered spermatogenesis, which reflects impaired reproductive capacity in the male, is a material impairment of health.

Lead may cause genetic damage in the egg or sperm cells before conception, and this damage may be passed on to the developing fetus. The record (Doc. H–004) indicates that genetic damage from lead may occur prior to conception in either males or females. The result of genetic damage could be failure to implant, miscarriage, stillbirth, or birth defects.

There is conclusive evidence that lead passes through the placental barrier. The lead levels in the mother's blood are comparable to concentrations of lead in the umbilical cord blood at birth. The record (Doc. H–004) indicates that, as a result, the exposure of women to lead is associated with abnormal ovarian cycles, premature birth, menstrual disorders, sterility, miscarriage, and stillbirth. Maternal lead poisoning may also result in a short gestational period, low birth weight, postnatal growth retardation, impeded neurobehavioral development, and infant mortality.

There is little direct data on damage to the fetus from exposure to lead but there are extensive studies that demonstrate neurobehavioral effects at blood leads of about 30 μg/100 ml and above in children. OSHA believes that the fetus and newborn are likely to be at least as susceptible to neurological damage as older children and therefore that data on children are also relevant to the fetus. Exposure to lead would be expected to adversely affect heme biosynthesis and the nervous system earliest and most profoundly in the fetus. Damage to the fetus reflects impairment of the reproductive capacity of the parent and is considered by OSHA to constitute a material impairment of functional capacity within the meaning of the Act.

In children, behavioral disturbances such as hyperactivity have been associated with blood lead levels of between 25 and 55 μg/100 ml. Beattie (1975, Doc. H–004, Ex. 6–6) demonstrated an increased probability of mental retardation in children exposed to lead via maternal ingestion of lead in water. Elevated blood lead levels were found in the retarded children when their blood leads were compared with those of children in the control group. There appeared to be a significant relationship between blood lead concentration and mental retardation. The mean blood lead level for the retarded children was 25.5 μg/100 ml.

Motor nerve conduction velocity (NCV) decrements indicating early peripheral neuropathy have also been reported in children. Early studies showed NCV decrements in children whose blood lead levels were 40 μg/100 g and above.

Given the available data, OSHA preliminarily concludes that, to protect the fetus and newborn from the effects of lead on the nervous system, airborne lead levels in workplaces where their maternal parents are employed must be kept below 50 $\mu g/m^3$. OSHA believes that this evidence overwhelmingly indicates that the lead exposure levels for workers who may wish to have children should be maintained below 50 $\mu g/m^3$ in order to minimize adverse effects from lead on the worker's reproductive abilities. To minimize the risk of genetic damage, menstrual disorders, interference with sexual function, lowered fertility, difficulties in conception, damage to the fetus during pregnancy, miscarriage, stillbirth, toxic effects on the newborn, and problems with the healthy development of the newborn or developing child, lead exposure levels should be kept below 50 $\mu g/m^3$ for both male and female workers who are exposed to lead and who may wish to have children. Although there is no evidence for a "no effect" level for lead, OSHA believes

that the risk of reproductive effects would be minimized at this concentration.

OSHA believes that this evidence preliminarily shows that workers exposed to lead suffer material impairments of health at blood lead levels far below those previously considered hazardous. Inhibition of the heme biosynthesis pathway, early stages of peripheral and central nervous system disease, reduced renal function, and adverse reproductive effects are all evidence of adverse health effects from occupational exposure to lead in workers whose blood lead levels are at 40 μg/100 g and above. OSHA has preliminarily concluded that blood lead levels should be maintained at or below 40 μg/100 g and even lower for workers who wish to have children. Therefore, OSHA is proposing an 8-hour TWA PEL for lead of 50 $\mu g/m^3$ to protect workers in the construction, maritime, and agriculture sectors from the significant risk of these adverse health effects. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL HYDRAZINE

CAS: 60–34–4; Chemical Formula: CH_3NHNH_2

H.S. No. 2112

OSHA's current permissible exposure limit for methyl hydrazine in general industry, construction, and maritime workplaces is 0.2 ppm as a ceiling; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. OSHA has no PEL for methyl hydrazine in agriculture. The ACGIH's current TLV® for this substance is 0.2 ppm as a ceiling, with a skin notation. The ACGIH considers this substance a potential human carcinogen and assigns it an A2 classification, and NIOSH also designates methyl hydrazine a potential occupational carcinogen; the REL for methyl hydrazine of 0.04 ppm as a 2-hour ceiling. OSHA is proposing a PEL of 0.2 ppm as a ceiling, with a skin notation, for methyl hydrazine in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Methyl hydrazine, also called monomethyl hydrazine, is a clear, colorless liquid with an ammonia-like odor. This substance is used in missile propellants and as a solvent and chemical intermediate (ACGIH 1986, p. 398(89)).

Methyl hydrazine causes central nervous system depression, liver damage, and blood dyscrasias in humans and animals. This substance is a carcinogen and teratogen in experimental animals and is also a suspected human carcinogen (ACGIH 1986, p. 398(89); Proctor, Hughes, and Fischman 1988, p. 334). The oral LD_{50}s in rats, mice, and hamsters are 32 mg/kg, 29 mg/kg, and 22 mg/kg, respectively (RTECS 1990). The LC_{50} for rats is 34 ppm for 4 hours, and for monkeys the LC_{50} is 82 ppm for 1 hour; before death, monkeys showed signs of conjunctival irritation and nausea and then convulsed (RTECS 1990). The dermal LD_{50} in rabbits is 95 mg/kg (RTECS 1990). Acute toxicity in animals poisoned by methyl hydrazine is characterized by convulsions, neurological effects, hypoglycemia, anemia, vomiting, and irritation of the nose and eyes (NIOSH Criteria Document 1978). Undiluted methyl hydrazine that has been applied to the skin of dogs at doses ranging from 14.7 to 264.5 mg/kg was detected in the bloodstream of these animals within 30 seconds (Smith and Clark 1969, in ACGIH 1986, p. 398(89)). Methyl hydrazine caused corneal edema in dogs after it was applied to their skin and carried to the eyes by the bloodstream (Takahashi and Dasher 1969, in ACGIH 1986, p. 398(89)). Dogs exposed to a 21-ppm concentration of dimethyl hydrazine for 4 hours convulsed and died; autopsy revealed pulmonary hemorrhage and edema in these animals. At a 15-ppm concentration, however, the dogs convulsed but survived (Jacobson et al. 1970, in Proctor, Hughes, and Fischman 1988, p. 334). Hemolysis and Heinz bodies in the erythrocytes were seen in monkeys exposed to a 5-ppm concentration of methyl hydrazine for 6 hours/day for 6 months; no effects were observed at lower doses (MacEwen and Haun 1971; Kroe 1971, in ACGIH 1986, p. 398(89)). Pregnant female rats receiving intraperitoneal injections of 2.5, 5.0, or 10 mg/kg of methyl hydrazine on days 6 through 15 of gestation showed a reduction in body weight; embryotoxic effects and an equivocal increase in eye abnormalities were observed in the offspring (Keller et al. 1984, in ACGIH 1986, p. 398(89)). The offspring of rats given intraperitoneal doses of 50 mg/kg methyl hydrazine during days 6 through 15 of pregnancy had an increased incidence of developmental abnormalities of the eyes and ears (RTECS 1990). Mice developed lung tumors and hamsters developed malignant histiocytomas of the liver and cecal tumors when methyl hydrazine was administered to these animals in the drinking water at concentrations of 0.01 percent (Toth 1972, Toth and Shimizu 1972, in ACGIH 1986, p. 398.1(89)). The potential carcinogenicity of methyl hydrazine vapor has also been investigated in several species; studies involving exposures to methyl hydrazine at concentrations ranging from 0.02 ppm to 5 ppm were conducted for 6 hours/day, 5 days/week for 1 year (Kinkeah et al. 1985, in ACGIH 1986, p. 398.1(89)). Rats exposed to methyl hydrazine concentrations of 0.02 ppm and higher had a decrease in their rate of growth, and mice exposed to a 2-ppm concentration developed lung tumors, nasal adenomas, nasal polyps, nasal osteomas, hemangiomas, and liver adenomas and carcinomas (Kinkeah et al. 1985, in ACGIH 1986, p. 398.1(89)). Dogs exposed on this regimen to concentrations of 0.2 ppm and above showed a reversible decrease in red blood cell count, hematocrit, and hemoglobin; at 2 ppm, they exhibited a reversible increase in methemoglobin and signs of liver pathology (Kinkeah et al. 1985, in ACGIH 1986, p. 398(89)). Hamsters in these studies showed lower body weights and an increased incidence of nasal adenomas when exposed to a 5-ppm concentration of methyl hydrazine (Kinkeah 1985, in ACGIH 1986, p. 398.1(89)).

Methyl hydrazine is the strongest convulsant of the methyl-substituted hydrazines (Clayton and Clayton 1981, p. 2292). In high doses, this substance also can cause extensive kidney damage. Liver changes are primarily of the fatty degeneration type and seldom progress to necrosis (Parmeggiani 1983, p. 1069). Methyl hydrazine poisoning can result in tremors, increased central nervous system excitability at high doses, and convulsions that can be fatal (HSDB 1985). Methyl hydrazine causes oxidative damage to human erythrocytes in vitro; effects include Heinz body formation and methemoglobin production (NIOSH Criteria Document 1978). Human volunteers exposed to a 90-ppm concentration of methyl hydrazine for 10 minutes developed eye redness and a tickling sensation in the nose; Heinz body formation in 3 to 5 percent of the volunteers' erythrocytes became apparent on the seventh day after exposure (NIOSH Criteria Document 1978).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the serious exposure-related effects associated with methyl hydrazine. The Agency believes that establishing a 0.2 ppm ceiling limit, with a skin notation, is necessary to substantially reduce these risks of

material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

4,4'-METHYLENE BIS(2-CHLOROANILINE)
CAS: 101–14–4; Chemical Formula: $CH_2(C_6H_4ClNH_2)_2$
H.S. No. 1273

OSHA has no limit in construction, maritime, or agriculture for 4,4'-methylene bis(2-chloroaniline), or MBOCA, although in 1974, OSHA did issue a standard for MBOCA as part of the Agency's "14 Carcinogens" rulemaking; however, the reviewing court set the MBOCA standard aside on procedural grounds. The ACGIH has a TLV®–TWA of 0.02 ppm (0.22 mg/m³), with a skin notation, and classifies MBOCA as a suspected human carcinogen (A2). NIOSH recommends a TWA limit of 3 μg/m³ for MBOCA, which NIOSH considers a potential occupational carcinogen. OSHA is proposing an 8-hour TWA PEL of 0.02 ppm (0.22 mg/m³) TWA for MBOCA, with a skin notation, in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

MBOCA is a tan-colored solid. It is used as a curing agent for polyurethanes and epoxy resins (Hawley's 1987, p. 767).

MBOCA is highly toxic, causing cyanosis, kidney irritation, methemoglobinemia, and cancer. It is similar in many of its effects to the other aromatic amines (Hosein and van Roosmalen 1978/Ex. 1–1054; Mastromatteo 1965/Ex. 1–146). Steinhoff and Grundmann (1969/Ex. 1–762) demonstrated that feeding MBOCA at unspecified levels to rats on a protein-deficient diet caused a high incidence of liver cancer. Russfield, Homburger, Boger and associates (1975/Ex. 1–929) reported liver and lung tumors in rats fed MBOCA while on a standard diet. Dogs fed MBOCA at a dose of 100 mg/day, 5 days/week showed no hepatic cancer, but malignant nodules in the bladder occurred in a dog fed MBOCA for 9 years (Stula et al. 1977, as cited in ACGIH 1986/Ex. 1–3, p. 392.4).

In industry, reversible hematuria has been reported among MBOCA-exposed workers, but data on the associated exposure levels are lacking (Mastromatteo 1965/Ex. 1–146). An early study of workers exposed for as long as 18 years to MBOCA showed no adverse effects, although the substance and its metabolites were detected in the urine of these subjects (Linch, O'Connor, Barnes et al. 1971/Ex. 1–791). Hosein and van Roosmalen (1978/ Ex. 1–1054) reported an industrial accident in which molten MBOCA was splashed in a worker's face; urinary levels of 3.6 mg/L MBOCA, as well as protein, were detected in the urine, and the subject experienced nausea. However, this worker recovered quickly.

A recent NIOSH retrospective study involving 370 workers employed in a MBOCA-manufacturing plant evaluated the carcinogenicity of this substance, which is structurally similar to benzidine. This study found two cases of bladder cancer in very young workers (less than 30 years of age), both of whom were nonsmokers.

In the prior rulemaking, the Polyurethane Manufacturers Association (PMA) expressed its support for establishing a 0.02-ppm TWA PEL for MBOCA, stating that the proposal "will significantly assist in assuring that any exposure to the chemical is appropriately controlled while imposing a regulation which can be feasibly complied with by employers" (Ex. 3–683, p. 4). The PMA also supported the addition of a skin notation for MBOCA, identifying dermal contact as a "principal potential route for employee exposure" (Ex. 3–683, p. 7).

Other commenters in the earlier rulemaking (Ex. 8–47, 194) urged OSHA to undertake a separate 6(b) rulemaking for MBOCA. OSHA shares these commenters' concerns about MBOCA's toxicity; however, the primary goal of this rulemaking is to achieve consistency in OSHA's PELs across sectors. In the first PEL update, OSHA will evaluate the toxicologic evidence on MBOCA to determine whether the evidence warrants a further reduction in the exposure limit.

Based on this evidence in humans and animals, OSHA is proposing to establish an 8-hour TWA limit of 0.02 ppm, with a skin notation, for MBOCA in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risks of cyanosis, methemoglobinemia, kidney irritation, and bladder cancer, all material health impairments potentially associated with exposure to this substance. A skin notation is being proposed to protect workers against the percutaneous absorption and systemic toxicity demonstrated to occur with this substance in industrial accidents. Promulgation of the proposed limit of 0.02 ppm will also make OSHA's PEL for this substance consistent across all regulated sectors.

MOLYBDENUM, SOLUBLE COMPOUNDS (as Mo)
CAS: 7439–98–7; Chemical Formula: Mo
H.S. No. 2111

OSHA's current permissible exposure limit for the soluble molybdenum compounds in construction and maritime is 5 mg/m³ (measured as molybdenum) as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA limit of 5 mg/m³ for these substances. There is no NIOSH REL. OSHA is proposing an 8-hour TWA of 5 mg/m³ for the soluble compounds of molybdenum in agriculture. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

The soluble compounds of molybdenum include molybdenum trioxide, ammonium molybdate, ammonium paramolybdate, and calcium molybdate, all of which are yellow to white, odorless solids. These substances are used as electrodes, chemical reagents, intermediates in the manufacture of corrosion inhibitors, coloring agents, agricultural chemicals, pigments for paints, lacquers, dyes, and catalysts, and in electroplating and enameling (NIOSH/OSHA Occupational Health Guideline 1981, p. 4; Hawley's 1987, pp. 68, 205–206, 795, and 1065–1066).

Molybdenum's soluble compounds cause eye, nose, and respiratory irritation, central nervous system effects, anemia, and liver and kidney damage in humans and animals. The oral LD_{50} for molybdenum trioxide in rats is 125 mg/kg; the lowest lethal concentration in the same species is 1? g/m³ for 1 hour (RTECS 1990). Ammonium molybdate has an oral LD_{50} of 333 mg/kg in rats (RTECS 1990). There is a subcutaneous LD_{50} of 570 mg/kg for sodium molybdate in mice (RTECS 1990). Guinea pigs and rats fed 1200 to 6000 mg/kg doses of molybdenum trioxide, calcium molybdate, or ammonium molybdate died; there were fewer fatalities among animals fed 120 to 600 mg/kg doses (ACGIH 1986, p. 415). In rats, the? inhalation of estimated 100 mg/kg/day doses of molybdenum trioxide by inhalation irritated the eyes and mucous membranes and was lethal (Klaassen, Amdur, and Doull 1986, p. 615). Molybdenum trioxide was extremely irritating to guinea pigs after repeated 1-hour exposures to 250 mg/m³; symptoms included appetite and weight loss, diarrhea, muscular incoordination, and hair loss. Twenty-six of the 51 animals exposed died after the tenth exposure (Fairhall, Dunn, Sharpless, and Pritchard 1951, in Clayton and Clayton 1981, p. 1813). Cattle, rabbits, and chicks fed high levels (dose not specified) of

molybdenum displayed deformities of the joints of the extremities (Ferguson et al. 1943; Maltoni 1973, in Clayton and Clayton 1981, p. 1814). In rats and guinea pigs, ammonium molybdate at oral doses of 1.2 g/kg caused anorexia, colic, trembling, incoordination, and dyspnea; rabbits showed signs of anemia and deformity of the forelegs (Browning 1969, in Proctor, Hughes, and Fischman 1978, p. 359). Repeated oral doses (amount unspecified) induced fatty degeneration of the liver and kidney in rats (Klaassen, Amdur, and Doull 1986, p. 615).

In humans, the lowest toxic concentration of molybdenum trioxide is estimated to be 6 mg/m³ over 4 years; coughing and signs of focal fibrosis were observed in the individual involved in this incident (RTECS 1990). Exposure to molybdenum trioxide causes irritation of the eyes, nose, and throat (HSDB 1990). Anemia, a characteristic symptom of molybdenum intoxication, is manifested by low hemoglobin concentrations and reduced red-cell counts (HSDB 1989). In workers at a Soviet molybdenum-copper plant, chronic exposure led to liver dysfunction and hyperbilirubinemia (Avakyau 1968, in Clayton and Clayton 1981, p. 1814). Gout, with signs and symptoms that included joint pain, articular deformities, erythema, and edema of the joints, has been seen among factory workers and inhabitants of the molybdenum-rich areas of Armenia (Kovalskii 1961; Akopyan 1966, in Clayton and Clayton 1981, p. 1818). Three of 19 workers exposed to molybdenum and molybdenum trioxide at concentrations ranging from 1 to 19 mg/m³ for 4 to 7 years showed evidence of pneumoconiosis (HSDB 1990).

Based on this evidence, OSHA preliminarily concludes that exposure to soluble molybdenum compounds causes eye, nose, and respiratory tract irritation, anemia, and joint pain. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed PEL of 5 mg/m³ as an 8-hour TWA limit for soluble molybdenum compounds in agriculture is necessary to significantly reduce the risks of these material health impairments. Promulgation of this limit will also make the PEL for these substances consistent across all OSHA-regulated sectors.

NICKEL, METAL AND INSOLUBLE COMPOUNDS (as Ni)

CAS: 7440-02-0; Chemical Formula: Varies with compound

H.S. No. 2114

In general industry, construction, and maritime, OSHA's current PEL for nickel and its insoluble compounds (measured as nickel) is 1 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 1 mg/m³; NIOSH has a REL of 0.015 mg/m³ (measured as nickel) as a 10-hour TWA; this limit is based on nickel's carcinogenicity. OSHA is proposing an 8-hour TWA PEL of 1 mg/m³ in the agricultural sector for nickel and its insoluble compounds (measured as nickel). This action will make the PEL for these substances consistent across all regulated sectors.

Nickel is a hard, silver-white, magnetic metal. The principal insoluble compounds of nickel in industrial use are nickel oxides, nickel-containing alloys, nickel hydroxide, nickel sulfide, nickel carbonate, and nickel phosphate (ACGIH 1986, p. 422; AIHA 1978). Metallic nickel is used in the manufacture of stainless steel, various other alloys, and in electroplating.

Contact of the skin with metallic nickel and some of its compounds causes dermal sensitization, and exposure to nickel subsulfides or nickel oxide has been determined by the International Agency for Research on Cancer to cause cancer in humans (IARC 1982, Suppl. 4, pp. 167–170). Nickel is also carcinogenic in experimental animals. The lowest lethal dose of nickel in rats is 5 g/kg (RTECS 1990). Rats exposed to a 1 mg/m³ concentration of nickel sulfide for 14 months developed a significant excess of lung cancer (Hueper 1958, in AMA Arch. Pathol. 65:600). Exposing hamsters to nickel oxide at a concentration of 53 mg/m³ caused pneumoconiosis described by the authors of the study as "massive" (Wehner, Busch, Olson, and Craig 1975, in Am. Ind. Hyg. Assoc. J. 36:801). Rats and mice were exposed to nickel subsulfide 6 hours/day for 12 days at concentrations ranging from 0.7 to 13.5 mg/m³ (measured as nickel); mice and rats developed degeneration of the epithelium of the respiratory tract at the 0.9 mg/m³ Ni exposure, and the rats additionally developed pulmonary inflammation (National Academy of Sciences 1975, in ACGIH 1986, p. 422(89)). Nickel oxide exposure (at a nickel concentration of 0.112 mg/m³) for 12 hours/day, 6 days/week for 2 weeks caused increases in alveolar macrophages and thickened alveolar walls (Bingham, Barkley, Zerwas, et al. 1972, in Arch. Environ. Hlth. 25:406). Nickel subsulfide exposure at a concentration of 0.97 mg/m³ nickel for 78 weeks caused lung cancers in 14 of 208 rats (Ottolenghi, Haseman, Payne, et al. 1958, in J. National Cancer Inst. 54(5):1165). A recent in-vitro study of the morphological and neoplastic transformation induced by insoluble nickel compounds in mouse embryo cells showed that these substances induced type II foci, some of which were tumorigenic, in these cells (Miura, Patierno, Sakuramoto, and Landolph 1984, in Environ. Mol. Mutagen. 14(2):65–78). Reproductive effects in the form of testicular degeneration were seen in mice and rats exposed to the subsulfide by inhalation at a nickel concentration of 0.9 mg/m³ (Benson, Carpenter, Hahn et al. 1987, in Fund. Appl. Toxicol. 9(2):251).

Many nickel compounds cause dermal sensitivity; the prevalence of nickel sensitivity in the general population is estimated at 2.5 to 5.0 percent (Peltonen 1979, in Contact Dermatitis 5:27). A recent review (Christensen 1990, in Dermatol. Clin. 8(1):37–40), however, reports that the prevalence of nickel sensitivity among women in the general population may range as high as 10 percent. The symptoms of "nickel itch" begin with itching and may progress to skin lesions, discrete ulcers, and eczema (Fisher 1973, Contact Dermatitis; Phila: Lea & Febiger). Several reports of asthma among nickel-exposed workers also appear in the literature (Tolot, Bordeur, Neulat in Arch. Mal. Prof. Med. Travail. Secur. Soc. 1956:18, p. 291; McConnell, Fink, Schlueter, Schmidt et al. 1973, Ann. Intern. Med 78:888). A recent review of the toxicity of nickel compounds in humans (Coogan, Lalta, Snow, and Costa 1989, in Crit. Rev. Toxicol. 19(4):341–384) addresses the systemic and molecular toxicology, as well as the carcinogenicity, of these substances. This paper notes that the major target organs of systemic toxicity are the kidney and the immune system. Nickel subsulfide roasting in nickel refining is generally accepted as being a carcinogenic process on the basis of studies in refinery workers (Grandjean et al. 1988; Agency for Toxic Substances and Disease Registry 1987). Nickel-exposed workers in many other industries (electroplating, alloy manufacture) have also shown a statistically significant increase among these workers (Grandjean et al. 1988, ATSDR 1987). Based on this evidence in humans, the International Agency for Research on Cancer, NIOSH, and the ACGIH have all concluded that nickel is a probable or confirmed human carcinogen. The mechanisms of nickel carcinogenesis are reviewed in a 1989 article by Sunderman (Scand. J. Work. Environ. 15(1):1–12); this author hypothesizes that differences in the carcinogenic activities of nickel

compounds may reflect variations in their capacities to provide nickel ions at critical sites within target cells.

Based on this evidence, OSHA is proposing a limit of 1 mg/m³ as an 8-hour TWA for nickel and its insoluble compounds (measured as nickel) in agricultural operations. The Agency preliminarily concludes that this limit is necessary to protect workers in agriculture from the significant risk of material health impairments in the form of nickel-induced cancer and skin and pulmonary sensitization. In addition, promulgation of this PEL will make OSHA's limit for these substances consistent across all regulated sectors.

NICOTINE

CAS: 54–11–5; Chemical Formula: $C_{10}H_{14}N_2$

H.S. No. 2115

OSHA's current permissible exposure limit for nicotine in general industry, construction, and maritime workplaces is an 8-hour TWA of 0.5 mg/m³; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. OSHA has no PEL for nicotine in agriculture. The ACGIH's current TLV®-TWA for this substance is 0.5 mg/m³, with a skin notation. NIOSH has no REL for nicotine but concurs (Ex. 8–47) with the limit being proposed. OSHA is proposing a TWA PEL of 0.5 mg/m³, with a skin notation, for nicotine in agriculture. Promulgation of this limit will make the PEL for nicotine consistent across all OSHA-regulated sectors.

Nicotine is a thick, colorless, pale yellow oil that turns brown on exposure to air and has a slight fishy odor when warm. Nicotine is used as an insecticide and fumigant. It is also used in human medicine and in tanning (ACGIH 1986, p. 427). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Nicotine causes stimulation, followed by depression, of the central and autonomic nervous systems in humans and animals. Nicotine also causes fetotoxic, developmental, and reproductive effects (NIOSH/OSHA Occupational Health Guideline 1981, p. 4; Proctor, Hughes, and Fischman 1988, p. 363). The oral LD_{50} in rats is 50 mg/kg; in mice it is 3.34 mg/kg (RTECS 1990). The dermal LD_{50} in rabbits is 50 mg/kg (RTECS 1990). Nicotine exerts its effect by transiently stimulating, and then severely depressing, the central nervous system; death is due to respiratory paralysis (HSDB 1988). Dogs showed signs of restlessness, apnea followed by hyperpnea, and a rapid decrease in the strength of respiration terminating in apnea (Franke and Thomas 1933, in Hayes 1982, p. 86). The effects of nicotine poisoning in dogs include fluctuations in blood pressure, convulsions, respiratory failure, and increase in heart rate; these symptoms can result in death (Franke and Thomas 1933, in Hayes 1982, p. 86). Nicotine was teratogenic in mice receiving injections of 25 mg/kg on days 9 through 11 of gestation; skeletal malformations and cleft palates were observed (National Research Council 1977, in HSDB 1988). Deformities were also found in the fetuses of rabbits administered 20 mg/kg of nicotine five times during pregnancy (Crowe 1972, in HSDB 1988). Administered to inbred Fischer and Buffalo rats, nicotine resulted in greatly reduced fertility (Riesenfeld and Oliva 1987, in HSDB 1988).

In small doses, nicotine causes symptoms of vomiting, dizziness, tachycardia, hypertension, sweating, and salivation in humans (Baselt 1980, p. 201). Symptoms of toxicity have been observed in workers harvesting tobacco, probably as a result of dermal absorption of nicotine (Gehlbach et al. 1975, in Baselt 1980, p. 201). Nicotine poisoning in humans is similar to that in animals; signs of poisoning include respiratory failure and circulatory collapse (Beeman and Hunter 1937, in Hayes 1982, p. 90). The estimated minimal lethal dose of nicotine in humans is 40 to 60 mg; this dose causes prostration, convulsions, respiratory paralysis, and death after ingestion (Baselt and Cravey 1977, in Baselt 1980, p. 201). Nicotine splashed in a patient's eye caused severe pain, conjunctival irritation, and corneal infiltration (Villard 1927, in Grant 1974, p. 747). Intravenous injection of 1.0 mg of nicotine alkaloid caused approximately the same increase in blood pressure and heart rate and decrease in skin temperature of the fingers and toes as did smoking a cigarette (Moddock and Collier 1933, in Hayes 1982, p. 90). Nicotine crosses the placental barrier and has been found in the amniotic fluid of smokers (Mosier and Jansons 1972; Van Vunakis et al. 1974, in Clayton and Clayton 1981, p. 2813).

Based on this evidence in humans and animals, OSHA preliminarily concludes that nicotine causes central and autonomic nervous system effects and affects reproduction and fertility. In the absence of a limit, OSHA therefore preliminarily finds that workers in agriculture are at significant risk of experiencing these effects. The Agency believes that establishing an 8-hour TWA PEL of 0.5 mg/m³, with a skin notation, will substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PERCHLOROMETHYL MERCAPTAN

CAS: 594–42–3; Chemical Formula: CCl_3SCl

H.S. No. 2125

In general industry, construction, and maritime, OSHA's current permissible exposure limit for perchloromethyl mercaptan is 0.1 ppm as an 8-hour TWA. There is no limit for this substance in agriculture. The ACGIH has a TLV®–TWA of 0.1 ppm. NIOSH has no REL for this substance but concurs (Ex. 8–47) with the limit being proposed. OSHA is proposing a PEL of 0.1 ppm as an 8-hour TWA for perchloromethyl mercaptan in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Perchloromethyl mercaptan is a pale yellow, oily liquid with a disagreeable odor. This substance is used in the production of fungicides, as a fumigant, as a dye intermediate, and in organic synthesis (ACGIH 1986, p. 466; Proctor, Hughes, and Fischman 1988, p. 401). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Perchloromethyl mercaptan is a severe eye, mucous membrane, and pulmonary irritant in humans and animals; accidental overexposure has caused liver and kidney damage and death in humans. The oral LD_{50} in rats is 83 mg/kg (RTECS 1990). In mice, the LC_{50} is 296 mg/m³ (37 ppm) for 2 hours (RTECS 1990), and the dermal LD_{50} in rabbits is 1410 mg/kg (Vernot et al. 1977, in ACGIH 1986, p. 466.1(88)). Rabbits showed signs of severe eye irritation after application of 0.05 mg; applied to the skin, 560 mg also caused severe irritation in these animals (RTECS 1990). Cats and mice exposed to perchloromethyl mercaptan for 15 minutes at a concentration of 45 ppm developed pulmonary edema and died within 1 to 2 days (Althoff 1973, in Proctor, Hughes, and Fischman 1988, p. 401; ACGIH 1986, p. 466). Rats exposed to the vapors of perchloromethyl mercaptan for 6 hours/day, 5 days/week for 2 weeks at concentrations of 0.13, 1.0, or 8.7 mg/m³ (0.01, 0.1, or 1.1 ppm) had labored breathing, tremors, nasal irritation, and pulmonary edema at the highest concentration; no symptoms or effects were observed in rats exposed to lower concentrations (Knapp et al. (no

date), in ACGIH 1986, p. 466.2(88)). Male rats exposed to perchloromethyl mercaptan vapors at a concentration of 2 ppm for 6 hours/day, 5 days/week for 4 weeks exhibited signs of respiratory distress; at autopsy, lung congestion was observed. Exposure to a 0.5-ppm concentration on the same regimen caused no adverse effects (Gage 1970, in ACGIH 1986, p. 466.1(88)).

Exposure to 10 mg/m^3 (1.3 ppm) perchloromethyl mercaptan causes eye irritation in humans (Althoff 1973, in Proctor, Hughes, and Fischman 1988, p. 401). Acute exposures cause the following signs and symptoms: coughing, dyspnea, lacrimation, pallor, vomiting, tachycardia, convulsions, and cyanosis; death due to lung edema also may occur (Althoff 1973; Ruth 1986; Spacilova 1971, in ACGIH 1986, p. 466.1(88)). Three chemical workers were accidentally overexposed to an unspecified concentration of perchloromethyl mercaptan vapors; two survived subsequent episodes of pulmonary edema, but the third died 36 hours later. At autopsy, necrotizing tracheitis, massive hemorrhagic pulmonary edema, toxic nephrosis, and vacuolization of centrilobular hepatic cells were seen (Althoff 1973, in Proctor, Hughes, and Fischman 1988, p. 401).

Based on this evidence in humans and animals, OSHA preliminarily concludes that perchloromethyl mercaptan causes severe eye and pulmonary irritation and liver and kidney damage. In the absence of a limit, OSHA believes that workers in agriculture are at significant risk of experiencing these effects, which are material health impairments. The Agency preliminarily finds that the proposed PEL of 0.1 ppm as an 8-hour TWA is necessary to substantially reduce these significant risks. This action would also make the PEL for perchloromethyl mercaptan the same for workplaces in all OSHA-regulated sectors.

PHENOL

CAS: 108–95–2; Chemical Formula: C_6H_5OH

H.S. No. 2126

OSHA's current permissible exposure limit for phenol in general industry, construction, and maritime is 5 ppm as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has a TLV®–TWA limit of 5 ppm, with a skin notation, for phenol. NIOSH has RELs for phenol of 5.2 ppm as a 10-hour TWA and 15.6 ppm as a 15-minute ceiling. OSHA is proposing an 8-hour TWA PEL of 5 ppm, with a skin notation, for phenol in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Phenol consists of white or clear crystals that turn pinkish or reddish in color on exposure to air or light. This substance is used as a disinfectant, in germicidal paints and slimicides, and in the manufacture of phenolic resins, bis-phenol-A, caprolactam, and a variety of other chemicals and drugs (ACGIH 1986, p. 469; Hawley's 1987, p. 897). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Phenol causes irritation of the eyes, mucous membranes, and skin and central nervous system effects in humans and animals. Phenol is also corrosive in contact with the skin or eyes. In rats and mice, oral LD_{50} values are 317 mg/kg and 270 mg/kg, respectively, and the LC_{50}s in rats and mice are 316 mg/kg and 177 mg/kg, respectively (RTECS 1990). The dermal LD_{50} in rabbits is 850 mg/kg; in rats it is 669 mg/kg (RTECS 1990). In contact with the skin of rabbits, 500 mg of phenol caused severe irritation; instilled into the eyes of rabbits, 5 mg also caused a severe degree of irritation (RTECS 1990). In a study by Pullin et al. (1978, in ACGIH 1986, p. 469), swine were given skin applications of 500 mg/kg over 35 to 40 percent of the body area for 1.0 and 2.5 minute periods to study the percutaneous absorption effects of phenol. The phenol was absorbed rapidly through the skin and caused twitching and tremors within 3 to 5 minutes. After 5 minutes, signs of excessive salivation, nasal discharge, and respiratory distress were observed; 1.75 hours after exposure, animals were found to have a peak plasma phenol concentration of 52.6 ppm (Pullin et al. 1978, in ACGIH 1986, p. 469). Guinea pigs exposed to phenol concentrations of 25 to 50 ppm for 20 days died; autopsy revealed severe injury of the heart, lungs, liver, and kidneys (Deichmann 1944, in ACGIH 1986, p. 469). Mice treated weekly for 42 weeks by application of one drop of phenol in benzene to shaved skin developed papillomas (5 of 14 mice) after 52 weeks (NIOSH Criteria Document 1976). Although phenol is considered noncarcinogenic in rats or mice, increased incidences of leukemia and lymphoma were detected in male rats given 2500 or 5000 ppm in their drinking water for 103 weeks (National Cancer Institute 1980, in Proctor, Hughes, and Fischman 1988, p. 404).

The lowest lethal oral dose in adult humans is 14 mg/kg (RTECS 1990). Brief industrial exposures to phenol concentrations of 46 ppm (in combination with 8 ppm formaldehyde) caused marked eye, nose, and throat irritation (NIOSH Criteria Document 1976). The signs and symptoms of human overexposure to phenol include loss of appetite, darkened urine, muscle pain, rapid and weak pulse, difficult breathing, cyanosis, convulsions, and coma; death may occur if the overexposure is severe (Merliss 1972; Stajduhar-Caric 1968, in Rom 1983, p. 528). Phenol is highly corrosive to the skin and causes a whitening of the contacted area (Key, Henschel, Butler et al. 1977, in Rom 1983, p. 528). A recent NIOSH study (O'Malley, Mathias, Priddy, Molina, Grote, and Halperin 1988, J. Occup. Med. 30(6):512–516) reports that workers handling rubber that contained phenol developed chemically induced vitiligo (skin depigmentation). In contact with the eyes, phenol causes severe damage and may lead to permanent loss of vision (Grant 1986, p. 720). Ingestion of as little as 10 g causes severe mouth and throat burns, tremor, convulsions, and muscle twitching (NIOSH Criteria Document 1976; U.S. EPA Summary 1986; in Proctor, Hughes, and Fischman 1988, p. 404). A laboratory technician exposed to vapors and to liquid phenol spilled on the skin experienced symptoms of anorexia, weight loss, weakness, muscle pain, and dark urine; after brief improvement, the patient suffered a worsening of symptoms, including tenderness and enlargement of the liver (Merliss 1972, in Proctor, Hughes, and Fischman 1988, p. 404). A 32-year old male who spilled a strong solution of phenol over his upper body died 10 minutes later; the victim suffered coagulation necrosis of the skin and left eye, acute dermatitis veneta, acute passive congestion of the lungs, liver, spleen, and kidneys, and "acute phenol toxicosis" (Gottlieb and Storey 1936, in ACGIH 1986, p. 470).

Based on this evidence in humans and animals, OSHA preliminarily concludes that phenol causes eye, skin, and mucous membrane irritation and central nervous system effects in exposed workers. This substance is also corrosive on contact with the skin or eyes and is rapidly absorbed through the skin. The Agency preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. OSHA believes that establishing a PEL of 5 ppm as an 8-hour TWA, and a skin notation, is necessary to

substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PHENYLHYDRAZINE

CAS: 100–63–0; Chemical Formula: $C_6H_5NHNH_2$

H.S. No. 1317

OSHA's current limit for phenylhydrazine in construction and maritime is 5 ppm as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 5 ppm and a TLV®–STEL of 10 ppm, and a skin notation, for this substance. The ACGIH considers this substance a potential human carcinogen and assigns it an A2 classification. NIOSH considers this substance a potential occupational carcinogen and (1978e/Ex. 1–263) recommends that workplace exposures not exceed 0.14 ppm, measured over a 2-hour period. In construction and maritime, OSHA is proposing to retain the 8-hour TWA PEL of 5 ppm and the skin notation and to add a STEL of 10 ppm; OSHA is also proposing to extend these limits to agriculture. These are the limits recently established for phenylhydrazine in general industry.

Phenylhydrazine may take the form either of yellow crystals or an oily liquid that darkens on exposure to air and light. It is used as a reagent in analytical chemistry and in organic synthesis. The hydrochloride is a strong reducing agent (Hawley's 1987, p. 903).

No data are available on the effects of phenylhydrazine resulting from inhalation. OSHA's limits are based on the high acute toxicity of the compound when administered orally or subcutaneously to animals; single doses on the order of 20 mg/kg have resulted in the death of dogs within 22 days (Hesse, Franke, and Hering 1935/Ex. 1–785) and produced a marked decrease in erythrocyte count in rodents (von Oettingen and Deichmann-Greubler 1938/Ex. 1–771). Anemia and hemolysis are the characteristic responses seen in animals fed or injected with phenylhydrazine.

In its criteria document on the hydrazines, NIOSH (1978e/Ex. 1–263) reviewed four studies on the carcinogenicity of phenylhydrazine in mice. One study (Toth and Shimizu 1976/Ex. 1–675) found significant increases in blood vessel tumors. Another study (Clayson, Biancifiori, Milia, and Santilli 1966, as cited in ACGIH 1986/Ex. 1–3, p. 477) reported increased incidences of lung adenomas and adenocarcinomas. Two other studies (Roe, Grant, and Millican 1967/Ex. 1–659; Kelly, O'Gara, Yancy et al. 1969/Ex. 1–703) were negative. NIOSH concluded that phenylhydrazine should be considered a potential human carcinogen and recommended that exposures not exceed 0.14 ppm over a 2-hour sampling period, which represents the lowest level that can be detected reliably. The ACGIH (1986/Ex. 1–3) has placed phenylhydrazine on its A2 (suspected human carcinogens) list.

In the prior rulemaking, several commenters (Exs. 8–47; Tr. 3–97 to 3–98, 116, 195, Tr. 9–218, 8–16) were of the opinion that a lower PEL was warranted for phenylhydrazine. OSHA is aware of the developing literature on phenylhydrazine. However, the primary objective of the present rulemaking is to ensure consistency in OSHA's limits across sectors. At the time of the first PEL update, OSHA will evaluate the toxicologic literature on phenylhydrazine to determine whether there is a need at that time for a further reduction in the occupational exposure limit.

However, at the present time, OSHA is retaining the 5-ppm 8-hour TWA limit and skin notation and is proposing to add a 10-ppm STEL for phenylhydrazine in construction and maritime; OSHA is also proposing to extend these limits to agriculture. The Agency preliminarily concludes that these limits will reduce the significant health risks associated with exposure to this substance among workers in these sectors. These risks include acute blood-related toxicity and may also include cancer; these effects clearly constitute material impairments of health. Promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PHENYLPHOSPHINE

CAS: 638–21–1; Chemical Formula: $C_6H_5PH_2$

H.S. No. 1318

OSHA has no PEL for phenylphosphine in construction, maritime, or agriculture; NIOSH also has no REL for this substance. The ACGIH has a TLV®-ceiling of 0.05 ppm for phenylphosphine. The proposed PEL is a ceiling of 0.05 ppm; NIOSH concurred (Ex. 8–47, Table N1) with this limit when it was recently established in general industry.

Phenylphosphine is a crystalline solid that is used in catalysts and antioxidants (Sittig 1985, p. 712).

A 90-day inhalation study conducted by the du Pont Company, in which rats and beagle dogs were exposed to average concentrations of 0.6 ppm or 2.2 ppm phenylphosphine for 6 hours per day, 5 days per week, showed that rats exposed to 2.2 ppm had significant hematologic changes and testicular degeneration (E.I. du Pont de Nemours & Co., Inc. 1970, as cited in ACGIH 1986/Ex. 1–3, p. 479). These effects were not noted among rats exposed to 0.6 ppm, but rats exposed at the lower level did show hypersensitivity to sound and touch and mild hyperemia. The dogs tolerated the higher exposure level better than the rats in that some regeneration of testicular damage occurred in dogs during a 1-month recovery period. Dogs exposed to 0.6 ppm exhibited intermittent nausea, diarrhea, lacrimation, and hind leg tremor (ACGIH 1986/Ex. 1–3). The ACGIH considered 0.6 ppm to be an NOE level for severe effects in animals and recommended a 0.05-ppm ceiling TLV® to provide a tenfold safety margin to protect workers against the changes exhibited by the test animals at the 0.6-ppm level.

OSHA preliminarily concludes that workers in construction, maritime, and agriculture who are exposed to uncontrolled levels of phenylphosphine are at significant risk of experiencing the nausea, irritation, and CNS effects found to be associated with such exposures. OSHA preliminarily finds that these effects constitute material health impairments. The Agency believes that the proposed ceiling of 0.05 ppm for phenylphosphine in construction, maritime, and agriculture will reduce these significant risks substantially. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PHOSPHINE

CAS: 7803–51–2; Chemical Formula: PH_3

H.S. No. 1321

OSHA currently has a PEL of 0.3 ppm TWA for phosphine in construction and maritime. There is no limit in agriculture. The ACGIH recommends a TLV®–TWA of 0.3 ppm and a TLV®–STEL of 1 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. OSHA is retaining the 8-hour TWA limit of 0.3 ppm and proposing to add a 1 ppm STEL for phosphine in construction and maritime; the Agency is also proposing to extend these limits to agriculture. These are the limits recently established for this substance in general industry.

Phosphine is a colorless gas with a disagreeable, garlic-like odor. Phosphine is used primarily as a fumigant. It is also used in chemical synthesis and as a doping agent for electrical components (ACGIH 1986, p. 482). When used in pesticidal applications and in

accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Early studies reported that laboratory animals could tolerate phosphine in 4-hour daily exposures of 5 ppm for 2 months, but fatalities were observed from seven similar exposures at 10 ppm (Muller 1940/Ex. 1–919). In 1975, Waritz and Brown (Ex. 1–451) reported a 4-hour LC_{50} of 11 ppm in rats; these lethal exposures caused effects typical of respiratory irritation.

Prior to 1958, numerous cases of phosphine-related occupational poisonings and deaths were reported, including a fatality caused by pulmonary edema that was attributed to an exposure of 8 ppm for 2 hours daily (Harger and Spolyar 1958/Ex. 1–327). Sublethal symptoms (without chronic effects) occurred at phosphine exposures averaging 10 ppm or less, with excursions of up to 35 ppm; recorded symptoms included diarrhea, nausea, vomiting, respiratory distress, and dizziness (Jones, Jones, and Longley 1964/Ex. 1–420). The literature contains no documented reports of chronic poisoning caused by prolonged exposure to phosphine, although several authorities have asserted that this is a possibility (Henderson and Haggard 1943e/Ex. 1–1086; Fairhall 1957h, as cited in ACGIH 1986/Ex. 1–3, p. 883; Johnstone and Miller 1960/Ex. 1–1114; Patty 1963f, as cited in ACGIH 1986/Ex. 1–3, p. 883; American Industrial Hygiene Association (AIHA) 1964/Ex. 1–407).

In the earlier rulemaking, Joel Carr, Health and Safety Research Director for the American Federation of Grain Millers Union, testified on the toxicology of and employee exposures to phosphine in grain elevators and flour mills (Ex. 8–1; Tr. pp. 7–240 to 7–259). Mr. Carr described a report of a group of industrial hygiene studies published by NIOSH (Zaebst 1986; Zaebst, Blade, Morelli-Schroth et al. 1987; Zaebst, Blade, Burroughs et al. 1988), in which applicators of phosphine were found to be exposed above the proposed TWA PEL and STEL; nonapplicator workers also become exposed while working near fumigated grain, while loading or transferring fumigated grain, or while working in elevators and mills. OSHA believes that workers handling treated grain in agricultural settings and in marine terminal and longshoring operations would be likely to have exposures similar to those described by Mr. Carr.

Based on this evidence, OSHA is retaining its 8-hour TWA PEL of 0.3 ppm and proposing to add a 15-minute STEL of 1 ppm for phosphine in the construction and maritime sectors and is additionally proposing to extend these limits to agriculture. The Agency preliminarily concludes that both of the proposed limits are necessary to substantially reduce the significant risk of lung damage, diarrhea, and nausea, all material health impairments associated with elevated short-term and long-term exposure to this toxic gas. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PHOSPHORUS, YELLOW
CAS: 7723–14–0; Chemical Formula: P_4
H.S. No. 2130

OSHA's permissible exposure limit for yellow phosphorus in general industry, construction, and maritime is 0.1 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.1 mg/m³ for yellow phosphorus. NIOSH has no REL for this substance. OSHA is proposing an 8-hour TWA limit of 0.1 mg/m³ for yellow phosphorus in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Yellow phosphorus is a yellow, soft, waxy, crystalline solid that darkens on exposure to light and has a distinct garlic-like odor. It is used in the manufacture of rat poisons, fertilizers, and fireworks, in gas analysis, and to produce smoke screens (ACGIH 1986, p. 484; Gosselin, Smith, and Hodge 1984, p. III–348; Proctor, Hughes, and Fischman 1988, p. 412). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Yellow phosphorus causes eye, skin, and respiratory tract irritation and burns, bone changes, and kidney and liver injury in humans and animals. The oral LD_{50} in rats is 3030 mg/kg, and in mice it is 4820 mg/kg (RTECS 1991). Inhalation of phosphorus vapors at concentrations of greater than 20 ppm for 7 hours/day, 5 days/week caused severe respiratory irritation and a high mortality rate in rats as a result of lung edema and bronchopneumonia (ACGIH 1986, p. 484). Subcutaneous injection of rats with 0.05 mg/kg of yellow phosphorus per day caused the development of bone changes; 0.8 mg/kg/day resulted in an increased death rate (Fleming et al. 1942, in J. Ind. Hyg. Tox. 24:154). Dogs subcutaneously injected with 0.2 to 0.4 mg/kg/day yellow phosphorus died within a few days (Buchanan et al. 1954, in Arch. Ind. Hyg. Occup. Med. 9:1). Experimental animals exposed to 13 to 16 ppm of phosphorus for 7 hours a day, 5 days a week for 4 months showed no difference in growth patterns as compared with controls (unpublished TVA Report 1947, cited in ACGIH 1986, p. 484). Repeated doses of 0.1 mg/kg/day of yellow phosphorus caused chronic poisoning and liver damage in dogs (Buchanan et al. 1954, in Arch. Ind. Hyg. Occup. Med. 9:1).

In humans, yellow phosphorus has caused death from a single 1-mg/kg dose (Smyth 1956, Am. Ind. Hyg. Assoc. Q. 17:129), and as little as 0.2 mg/kg can produce adverse effects (Diaz-Rivera et al. 1950, in Medicine 29:269, as cited in Clayton and Clayton 1981, p. 2122). Yellow phosphorus fumes are irritating to the respiratory tract and eyes; exposure causes severe irritation, with blepharospasm, photophobia, and lacrimation (Scherling and Blondi's 1945, in Mil. Surg. 96:70–78, as cited in Grant 1986, p. 735). Yellow phosphorus causes deep, painful burns of the skin, producing a firm eschar surrounded by vesiculation (Summerlin et al. 1967, in J. Trauma 7:476–484, as cited in Proctor, Hughes, and Fischman 1988, p. 412). Signs and symptoms of yellow phosphorus intoxication include abdominal pain, jaundice, and a garlic odor of the breath (Proctor, Hughes, and Fischman 1988, p. 412). Severe acute yellow atrophy of the liver is a delayed symptom of yellow phosphorus poisoning that may prove fatal (Klaassen, Amdur, and Doull 1986, p. 567). A Russian study (Beloskurskaia, Aitbembetov, Balmakhaeva, Korolćhuk 1989, in Vrach Delo 7:104–106) of 600 yellow phosphorus production workers showed that the liver toxicity associated with chronic phosphorus poisoning was a result of impaired fat metabolism. Chronic poisoning from yellow phosphorus can cause anemia, cachexia, and necrosis of the bone, and particularly of facial bones, including the maxilla and mandible (Proctor, Hughes, and Fischman 1988, p. 412). Phosphorus necrosis of the jaw ("phossy jaw") was common among match workers early in this century and has more recently been reported among chemical and fireworks industry workers (Heimann 1946, in J. Ind. Hyg. Tox. 28:142; Hughes et al. 1962, in Brit. J. Ind. Med. 19:83; Nomura 1956, in J. Sci. Labour (Japan) p. 109). Phossy jaw is the result of the oral absorption of small quantities of phosphorus over a long period of time. A recent Japanese study (Horiguchi, Endo, Nakano, Shinagawa, and Harima 1988, in Sumitomo Bull. Ind. Hlth. 24:27–32) reports several cases of phosphorus necrosis among workers exposed before 1974 to phosphorus in

phosphoric acid, phosphoric acid fertilizer, and yellow phosphorus production plants.

Based on this evidence in humans and animals, OSHA preliminarily concludes that yellow phosphorus causes eye, skin, and respiratory tract irritation, bone degeneration, and kidney and liver injury in exposed workers. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency preliminarily finds that a limit of 0.1 mg/m³ as an 8-hour TWA is necessary to significantly reduce these risks of material health impairment. In addition, promulgation of this limit will make the PEL for yellow phosphorus consistent across all OSHA-regulated sectors.

PIPERAZINE DIHYDROCHLORIDE
CAS: 142–64–3; Chemical Formula:
$C_4H_{10}N_2 \cdot 2HCl$
H.S. No. 1330

OSHA has no limit for piperazine dihydrochloride in construction, maritime, or agriculture. The ACGIH recommends a TLV®–TWA limit of 5 mg/m³. There is no NIOSH REL; however, NIOSH concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a 5 mg/m³ 8-hour TWA limit for this substance in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Piperazine dihydrochloride is a white, water-soluble solid in the form of needles. This substance is used in the manufacture of insecticides, pharmaceuticals, and fibers (Hawley's 1987, p. 921). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

This substance has low systemic toxicity and mild irritant properties; the compound is biologically active. The oral LD_{50} for rats has been reported as 4.9 g/kg (NIOSH 1984, as cited in ACGIH 1986/Ex. 1–3, p. 491). Eye and skin irritation have been reported as a result of human exposures to high (not further specified) levels of piperazine dihydrochloride; subjects experienced mild to moderate skin burns and sensitization. Inhalation of the dust has been associated with asthmatic reactions (Dow Chemical Company 1977h, as cited in ACGIH 1986/Ex. 1–3, p. 491).

OSHA is proposing to establish a limit of 5 mg/m³ as an 8-hour TWA for piperazine dihydrochloride in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit is necessary to reduce the significant risks of sensitization and eye and skin irritation, material health impairments that are potentially associated with exposure to this substance at levels above the proposed limit. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

N-PROPYL NITRATE
CAS: 627–13–4; Chemical Formula:
$CH_3CH_2CH_2ONO_2$
H.S. No. 1340

OSHA currently has an 8-hour TWA limit of 25 ppm for n-propyl nitrate in the construction and maritime industries. There is no limit in agriculture. The ACGIH has a 25-ppm TLV®–TWA and a 15-minute TLV®–STEL of 40 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. OSHA is retaining the 25 ppm 8-hour TWA limit and proposing to add a 40 ppm STEL for this substance in construction and maritime; the Agency is also proposing to extend these limits to agriculture. These are the limits recently established for this substance in general industry.

N-Propyl nitrate is a pale yellow liquid with a sickly sweet odor. It is used as an intermediate in chemical synthesis and as a fuel ignition promoter (ACGIH 1986, p. 505).

Rats inhaling propyl nitrate vapor for 4 hours at a concentration of 10,000 ppm exhibited cyanosis and methemoglobinemia before they died (Hood 1953, as cited in ACGIH 1986/Ex. 1–3, p. 505). The intravenous LD_{50} in unanesthetized rabbits has been reported to be between 200 and 250 mg/kg; in anesthetized dogs and cats, intravenous doses of between 100 and 200 mg/kg were usually fatal (Murtha, Stabile, and Wills 1956/Ex. 1–649). The authors of these studies (1956/Ex. 1–649) concluded that n-propyl nitrate exerts a direct action on the vascular smooth muscle and that the ensuing cardiac effects and respiratory depression contribute to the compound's hypotensive action (Murtha, Stabile, and Wills 1956/Ex. 1–649). Inhalation trials in mice, rats, hamsters, guinea pigs, and dogs have established 4-hour LC_{50} values ranging from 9000 to 10,000 ppm for rats, 6000 to 7000 ppm for mice, and 2000 to 2500 ppm for dogs. Dogs survived repeated exposures (6 hours/day, 5 days/week) at 260 ppm for 6 months, although slight clinical signs were observed during the first 2 weeks of exposure (Rinehart, Garbers, Greene, and Stoufer 1958/Ex. 1–524). The percutaneous toxicity of n-propyl nitrate is low, but this substance may cause inflammation and thickening of the skin after repeated exposures; these effects are sometimes transient (ACGIH 1986/Ex. 1–3, p. 505).

In construction and maritime, OSHA is retaining the PEL of 25 ppm as an 8-hour TWA and proposing to add a STEL of 40 ppm for n-propyl nitrate; the Agency is also proposing to extend these limits to agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors against the significant risk of cyanosis, methemoglobinemia, and hypotension, all material health impairments that are potentially associated with exposure to n-propyl nitrate. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PYRETHRUM
CAS: 8003–34–7; Chemical Formula:
$C_{21}H_{28}O_3$ or $C_{22}H_{28}O_5$
H.S. No. 2136

In general industry, construction, and maritime, OSHA's current permissible exposure limit for pyrethrum is 5 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 5 mg/m³ for pyrethrum. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 5 mg/m³ for pyrethrum in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Pyrethrum is an insecticide extracted from chrysanthemums; it is a viscous brown resin or solid composed of six active principles: Pyrethrins I and II, cinerins I and II, and jasmolin I and II. Pyrethrum is used as a botanical insecticide (ACGIH 1986, p. 506; New Jersey Fact Sheet 1986, p. 1). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Pyrethrum causes dermatitis, sensitization, and central nervous system effects in humans and animals. The oral LD_{50}s in rats and mice are 200 mg/kg and 370 mg/kg, respectively (RTECS 1990). The dermal LD_{50} in rats is greater than 1800 mg/kg (ACGIH 1986, p. 506). An intravenous pyrethrum dose of 5 mg/kg caused behavioral symptoms and convulsions in rats (RTECS 1990). The acute effects of pyrethrum poisoning in animals include excitation, convulsions, tetanic paralysis, and muscular fibrillation (Chevalier and Ripert 1927, in Hayes 1982, p. 76). Death is usually due to respiratory failure (Chevalier 1930, Shimkin and Anderson

1936, Leonard 1942, Chevalier and Ripert 1927, in Hayes 1982, p. 76). Rats exposed once to 6000 mg/m³ of pyrethrum in peanut oil for 30 minutes showed moderate lung congestion at autopsy (Carpenter, Weil, Pozzani, and Smyth 1950, in ACGIH 1986, p. 506). A pyrethrum concentration of 16 mg/m³ inhaled by rats and dogs for 30-minute periods over 31 days caused only slight lung irritation (Carpenter, Weil, Pozzani, and Smyth 1950, in ACGIH 1986, p. 506). Dogs showed signs of tremor, ataxia, labored respiration, and excess salivation when fed pyrethrins at a dietary level of 5000 ppm for 90 days (Griffin 1973, in Hayes 1982, p. 77). The only significant effects seen in male and female rats fed dietary levels of pyrethrin (equivalent to 10, 50, or 250 mg/kg) for 2 years was slight but definite liver damage in animals exposed at the higher dose levels (Lehman 1965, in Hayes 1982, p. 77). Rats given daily gavage doses of 50, 100, or 150 mg/kg on days 6 to 15 of pregnancy had a higher incidence of resorptions compared with controls, and rats fed a dietary pyrethrum level of 5000 ppm beginning 3 weeks before first mating had weanlings whose weights were significantly lower than those of controls (Khera et al. 1982, in Proctor, Hughes, and Fischman 1988, p. 430; Griffin 1973, in Hayes 1982, p. 78).

The most common effect of exposure to pyrethrum in humans is dermatitis, which is usually manifested as a mild erythematous dermatitis with vesicles, papules in moist areas, and intense pruritus; a bullous dermatitis may also develop (Hayes 1963, in Proctor, Hughes, and Fischman 1988, p. 430). The lowest lethal oral dose of pyrethrum in humans is 1 g/kg (RTECS 1990). In pure form, pyrethrum constituents pyrethrin I and II are reported to be irritating to the eyes and mucous membranes (Grant 1986, p. 774). In a study of workers processing pyrethrum powder, 30 percent were found to have erythema, skin roughening, and pruritus; these effects cleared after cessation of exposure (Casida 1973, in Proctor, Hughes, and Fischman 1988, p. 430). A sensitization reaction has been reported in a worker exposed to pyrethrum dust; the signs and symptoms associated with this episode included reddening, burning, itching, and swelling of the cheeks, eyes, and face and severe pruritus. These effects disappeared within 2 days after the cessation of exposure (Casida 1973, in Proctor, Hughes, and Fischman 1988, p. 430). The symptoms of sensitivity to pyrethrum may resemble those seen in pollinosis: sneezing, nasal discharge, and nasal stuffiness (Feinberg 1934; Ramirez 1930, in Hayes 1982, p. 79).

Based on this evidence, OSHA preliminarily concludes that pyrethrum causes dermatitis, skin sensitization, and eye and nose irritation in exposed workers. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that establishing a PEL of 5 mg/m³ as an 8-hour TWA for pyrethrum in agriculture is necessary to significantly reduce these risks of material health impairment. In addition, promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

PYRIDINE
CAS: 110–86–1; Chemical Formula: C_5H_5N
H.S. No. 2137

In general industry, construction, and maritime, OSHA's current permissible exposure limit for pyridine is 5 ppm as an 8-hour TWA. There is no limit for this substance in agriculture. The ACGIH has a TLV®-TWA of 5 ppm for pyridine. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 5 ppm for pyridine in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Pyridine is a flammable, colorless to yellow liquid with a strong and disagreeable odor. Pyridine is used as a fungicide, in the synthesis of vitamins and drugs, as a solvent, an alcohol and antifreeze denaturant, and a dyeing assist (ACGIH 1986, p. 507; Hawley's 1987, p. 982). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Pyridine causes eye, skin, and mucous membrane irritation, central nervous system effects, bone marrow changes, and liver and kidney damage in humans and animals. The oral LD_{50}s in rats and mice are 891 mg/kg and 1500 mg/kg, respectively (RTECS 1990). The dermal LD_{50} in rabbits is 1121 mg/kg (RTECS 1990). The mean lethal concentration in rats is 4000 ppm for 4 hours (RTECS 1990). Severe eye irritation (graded 7 on an ascending severity scale of 1 to 10) developed in rabbits when 2 mg of pyridine was put into their eyes; in contact with the skin for 24 hours, pyridine caused mild irritation in rabbits (RTECS 1990). In animals, the major effects from exposure to large doses of pyridine by any route include irritation and narcosis; liver and kidney damage occur after repeated feedings (Clayton and Clayton 1981, p. 2728).

The vapor of pyridine causes eye and nasal irritation, and prolonged or repeated contact of pyridine with the skin results in skin irritation (ACGIH 1986, p. 507; Proctor, Hughes, and Fischman 1988, p. 431). Exposure to 10 ppm pyridine caused a mild degree of irritation in some volunteers (Smyth 1956). A 29-year-old woman developed symptoms of nervous system inhibition, speech disorders, and diffuse cortical affliction after breathing pyridine vapors at an unspecified concentration for 15 to 20 minutes; symptoms were not detected until 10 hours after exposure (Kuzelova et al. 1975, in HSDB 1988). Symptoms of nausea, headache, insomnia, nervousness, low back pain, and frequent urination have occurred in workers exposed to concentrations of pyridine averaging 125 ppm for 4 hours/day for 1 to 2 weeks (Reinhardt 1981, in ACGIH 1986, p. 507). An epileptic patient being treated with 1.8 to 2.5 ml pyridine daily for 2 months developed serious liver and kidney damage (Pollack et al. 1943, in Proctor, Hughes, and Fischman 1988, pp. 430–431). The most important effects of chronic pyridine inhalation are on the liver, kidneys, and bone marrow (Smyth 1956, in ACGIH 1986, p. 507). Chronic exposure of chemical plant workers to pyridine concentrations ranging from 6 to 12 ppm caused symptoms of central nervous system depression such as headache, vertigo, nausea, and vomiting (Teisinger 1948, in Proctor, Hughes, and Fischman 1988, p. 430).

Based on this evidence in humans and animals, OSHA preliminarily concludes that pyridine causes irritation, central nervous system effects, and liver and kidney damage. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these exposure-related effects. The Agency preliminarily concludes that establishing a PEL of 5 ppm as an 8-hour TWA for pyridine in agriculture is necessary to substantially reduce the risk of these material health impairments. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

SELENIUM AND COMPOUNDS (as Se)
CAS: 7782–49–2; Chemical Formula: Se
H.S. No. 2140

In construction and maritime, OSHA's permissible exposure limit for selenium and its compounds (measured as selenium) is 0.2 mg/m³ as an 8-hour TWA. There is no limit in agriculture.

The ACGIH has a TLV®–TWA of 0.2 mg/m³ for selenium and compounds. NIOSH has no REL. OSHA is proposing an 8-hour TWA PEL of 0.2 mg/m³ for selenium and its compounds in agriculture. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

Selenium is a non-metallic dark red to blush black solid; it may also take the form of dark red, gray, or black crystals. Selenium and its compounds are used as insecticides and in the manufacture of glass, pigments, xerography, rectifiers, steel, photography, catalysts, and rubber; selenium compounds are also used to treat various human and animal diseases (ACGIH 1986, p. 517; Clayton and Clayton 1981, p. 2130). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Selenium and its compounds cause eye, skin, and mucous membrane irritation, central nervous system effects, gastrointestinal disturbances, and loss of hair and fingernails. The oral LD_{50} in rats is 6700 mg/m³; rats given this dose showed somnolence, dyspnea, and nutritional and metabolic changes (RTECS 1990). The lowest lethal inhalation dose in rats is 33 mg/m³ for 8 hours, at which level hemorrhage, emphysema, and acute pulmonary edema were seen (RTECS 1990). Of the selenium compounds, sodium selenate has the lowest oral LD_{50}, which is 2.3 mg/kg in rabbits (ACGIH 1986, p. 517). Selenium sulfide has an oral LD_{50} of 370 mg/kg in mice (ACGIH 1986, p. 517). Animals exposed to selenium anhydride at a concentration of 150 mg/m³ for 4 hours showed signs of conjunctivitis, pulmonary edema, and convulsions prior to death; degenerative changes in the liver, kidneys, spleen, and heart were seen at autopsy (NIOSH/OSHA Occupational Health Guideline 1981, p. 2). Animals fed diets containing 5 to 15 ppm of selenium developed hepatic necrosis, hemorrhage, and cirrhosis; some species also developed marked progressive anemia (National Research Council 1980, in Proctor, Hughes, and Fischman 1988, p. 439). Chronic exposure can cause a condition called "alkali disease," which is characterized by emaciation, lack of vitality, loss of hair, and deformities of the bones that cause pain and lameness; animals may also be anemic, have congestive heart failure, cirrhosis of the liver, scarring of the kidneys, and joint erosion of the long bones (Radeleff 1964, in Hayes 1982, p. 54). Eleven of 53 rats developed liver-cell adenomas or low-grade carcinomas; 43 of 53 rats developed cirrhotic livers, and four rats developed advanced adenomatoid hyperplasia after surviving on diets of 5, 7, or 10 mg selenium per kg of diet for 18 to 24 months (Nelson et al. 1943, in IARC 1975, Vol. 9, p. 251). Rats fed selenium at concentrations of 4, 6, 8, or 16 mg/kg of diet died of toxic hepatitis within 100 days (Harr et al. 1967, in IARC 1975, Vol. 9, p. 252). Selenium also causes reproductive effects in mice and premature death in young mice and rats (Schroeder and Mitchener 1971b, in IARC 1975, Vol. 9, p. 253).

The lowest toxic dermal dose for a selenium compound in humans is 2 mg/kg for selenium oxychloride (RTECS 1990). Acute industrial exposure to selenium causes symptoms of mucous membrane irritation, sneezing, coughing, eye redness, difficult breathing, frontal headache, and dyspnea in exposed workers (Clinton 1947, in Clayton and Clayton 1981, p. 2131). Garlic breath is a classic symptom of selenium exposure (Rom 1983, p. 499). Selenium dioxide splashed into the eye can cause the development of a pink allergic-type reaction of the eyelids; there may also be conjunctivitis of the palpebral conjunctiva (Glover 1970, in Clayton and Clayton 1981, p. 2131). After being accidentally sprayed in the eyes with selenium dioxide, a chemist experienced burns of the skin, eye irritation, blurred vision, and dulling of the cornea; the eyes had returned to normal 16 days later (Middleton 1947, in Proctor, Hughes, and Fischman 1988, p. 438). Symptoms of mucous membrane irritation, pulmonary edema, bronchitis, and bronchial pneumonia occurred after an accidental poisoning from hydrogen selenate (Olson 1986, in Proctor, Hughes, and Fischman 1988, p. 437). Workers exposed to unspecified concentrations of selenium oxide developed bronchospasm and dyspnea; after 12 hours, they developed metal fume fever, with symptoms such as chills, fever, and headache. A few of these workers developed bronchitis and pneumonitis, but all of the workers were asymptomatic within a week (Wilson 1962, in Proctor, Hughes, and Fischman 1988, p. 438). In China, a disease that was characterized by symptoms of hair and nail loss, skin lesions, nervous system abnormalities, paralysis, and hemiplegia was attributed to chronic selenium poisoning (Yang et al. 1983, in PH&F 1988, p. 438). Unaffected people had an average daily selenium intake of 0.1 mg, while six sick individuals had an average daily intake of 5.0 mg; there were no reports of disabling chronic disease or death from these exposures (Yang 1983, in Proctor, Hughes, and Fischman 1988, p. 438). In a plant producing selenium rectifiers, 35 of 62 workers reported experiencing various symptoms including headache; nine workers were found to have conjunctivitis and slight tracheobronchitis (Kinningkeit 1962, in ACGIH 1986, p. 517). A group of 200 to 300 workers in a similar plant experienced symptoms of garlic odor of breath, skin rashes, indigestion, metallic taste, and socio-psychological effects; urinary selenium concentrations among these workers ranged from 0.25 mg/ml to 0.43 mg/ml, and air concentrations ranged from 0.2 mg/m³ to as high as 3.6 mg/m³ (Glover 1970; Glover 1967, in ACGIH 1986, p. 517). According to the International Agency for Research on Cancer, there is inadequate evidence to evaluate the carcinogenicity of selenium and its compounds in humans and animals (IARC 1975, Vol. 9).

Based on this evidence, OSHA preliminarily concludes that exposure to selenium and its compounds causes irritation of the eyes, skin, and mucous membranes, central nervous system effects, gastrointestinal disturbances, and liver and kidney effects. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit for selenium and compounds of 0.2 mg/m³ as an 8-hour TWA is necessary to significantly reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for these substances consistent across all regulated sectors.

SILVER, METAL AND SOLUBLE COMPOUNDS (as Ag)

CAS: 7440–22–4; Chemical Formula: Ag (metal); varies (compounds)

H.S. No. 2143

In general industry, construction, and maritime, OSHA's permissible exposure limit for silver metal and the soluble silver compounds (measured as silver), is 0.01 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.01 mg/m³ for these substances. NIOSH has no REL for these substances but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA limit of 0.01 mg/m³ for silver metal and the soluble silver compounds in agriculture. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

Silver is a hard, brilliant white, lustrous, ductile metal. Silver nitrate is a colorless, odorless solid that may turn gray, and silver fluoride takes the form of a yellow to white, odorless solid. The principal soluble compounds of silver are silver nitrate, silver chloride, silver fluoride, and silver sulfide. Soluble silver compounds are used in photographic films, indelible inks, silver salts, medicines, and hair dyes and are also used to silver mirrors, plate silver, and catalyze ethylene oxide. These compounds are also used as pesticides, laboratory reagents, and as substitutes in organic compounds (Hawley's 1987, p. 1043; ACGIH 1986, p. 529). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In humans, industrial exposure to the dust or fume of metallic silver or to the mists of soluble silver compounds is associated with the development of argyria, a bluish-grey discoloration of the eyes, mucous membranes, or skin; argyria is caused by the impregnation of the tissues with silver. In addition, several of the soluble silver compounds, such as silver nitrate, cause eye, nose, and upper respiratory tract irritation on acute exposure and kidney, liver, and lung damage on chronic exposure (Klaassen, Amdur, and Doull 1986, p. 625). The acute toxicity of all of the soluble silver compounds is high, regardless of the route of administration (Clayton and Clayton 1981, p. 1886). The oral LD_{50} for silver nitrate in mice is 50 mg/kg; in guinea pigs, the oral LD_{50} for silver fluoride is 300 mg/kg (Clayton and Clayton 1981, p. 1886). Administered orally to experimental animals in repeated doses, metallic silver caused pigmentation of the eyes (Grant 1986, p. 815). Instilled into the eyes of rabbits, a 6-percent solution of silver nitrate caused scarring and a 12-percent solution caused blindness (HSDB 1989). Oral dosing with silver nitrate caused vascular hypertension in experimental animals; at autopsy, kidney changes were seen in these animals (HSDB 1989). Intravenous administration of silver nitrate caused hemolysis and death in animals of several species (HSDB 1989).

In humans, overexposure to the dust or fume of silver metal or to the soluble compounds of silver causes argyria, evidenced as a bluish-gray discoloration of the eyes, mucous membranes, or skin. Argyria may be either localized or systemic. Localized argyria is caused by the embedding of silver particles in the skin or by the absorption of silver salts through the sweat glands (Clayton and Clayton 1981, p. 1887). If the dust, fume, or mist of the soluble compounds of silver is inhaled in sufficient quantities, argyria of the upper respiratory tract may occur. Two workers engaged in the manufacture of silver nitrate developed argyria of the respiratory tract, which was associated with mild chronic bronchitis (Browning 1969, pp. 296–301, in Proctor, Hughes, and Fischman 1988, p. 442). Generalized argyria is manifested as widespread pigmentation of the skin, eyes, and nails (Clayton and Clayton 1981, p. 1887–1888). A worker "massively" overexposed to the heated vapor of metallic silver for 4 hours subsequently developed pulmonary edema and lung damage (Forycki et al., Bull. Inst. Maritime Tropical Medicine in Gydnia 34:199–202, 1963). Twelve cases of argyria were reported in silver workers exposed to concentrations of 1 to 2 mg/m^3 of silver during varnish spraying (Jindrichova 1963, in ACGIH 1986, p. 529). Eleven of these workers had upper respiratory tract argyrosis and nine showed argyria of the conjunctiva or cornea (Jindrichova 1963, in ACGIH 1986, p. 529). Four cases of eye and skin argyrosis also were reported in silver polishers (Perrone et al. 1977, in ACGIH 1986, p. 529).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to silver metal and the soluble silver compounds causes eye, skin, and mucous membrane irritation, as well as respiratory, gastrointestinal, central nervous system, liver, and kidney effects. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse exposure-related effects. The Agency believes that the proposed TWA limit of 0.01 mg/m^3 for silver and its soluble compounds (measured as silver) is necessary to substantially reduce the significant risk that workers in agriculture will experience these material health impairments. Promulgation of this limit will also make the PEL for silver and its soluble compounds consistent across all regulated sectors.

SODIUM FLUOROACETATE
CAS: 62–74–8; Chemical Formula: $CH_2FCOONa$
H.S. No. 1366

In construction and maritime, the current OSHA standard for sodium fluoroacetate is 0.05 mg/m^3 as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has exposure limits of 0.05 mg/m^3 TLV®–TWA and 0.15 mg/m^3 TLV®–STEL, with a skin notation. In construction and maritime, OSHA is retaining its 8-hour TWA PEL and skin notation and is proposing to add a STEL of 0.15 mg/m^3; the Agency is also proposing to extend these limits to agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed, which were recently established for this substance in general industry.

Sodium fluoroacetate is a fine white powder, which is sometimes dyed black for commercial use. It is used as a rodenticide (ACGIH 1986, p. 534). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Sodium fluoroacetate causes vomiting, convulsions, and ventricular fibrillation. It is highly toxic by inhalation, ingestion, or via absorption through the skin (NIOSH/OSHA 1981). The ACGIH calculated and set the threshold limit of 0.05 mg/m^3 based on studies of rats indicating an oral LD_{50} of 1.7 mg/kg (Lehman 1951/Ex. 1–790). Tissue changes in rats were noted in a later study by the same author in which the animals were fed 0.25 mg sodium fluoroacetate/kg/day (Lehman 1952, as cited in ACGIH 1986/Ex. 1–3, p. 534); the equivalent level in humans would be 17 mg/person/day. A further study by Miller and Phillips (1955, as cited in ACGIH 1986/Ex. 1–3, p. 534) examined growth rates in rats fed various dosages of sodium fluoroacetate. Rats who received 10 ppm in their diet experienced a transient fluctuation in growth rate. At 20 ppm (approximately 2 mg/kg in young rats), the growth rate declined markedly the first week; the rats survived and resumed growth at the normal rate in 3 to 4 weeks. Tolerance for the chemical lasted less than 2 weeks, and those rats who had adjusted to sodium fluoroacetate showed a second retardation of growth when returned to a dietary level of 20 ppm after a 2-week interval of eating a normal diet. Miller and Phillips (1955, as cited in ACGIH 1986/Ex. 1–3, p. 534) noted that rats conditioned to a dietary level of 20 ppm were then able to adjust to a level of 40 ppm (a dose that is greater than the single LD_{50} dose per day).

Based on this evidence, OSHA is retaining the 8-hour TWA limit of 0.05 mg/m^3 and the skin notation and is proposing a STEL of 0.15 mg/m^3 for sodium fluoroacetate in construction and maritime; the Agency is also proposing these limits in agriculture. OSHA preliminarily concludes that the 8-hour TWA and short-term exposure limits, with a skin notation, will reduce the risk of systemic effects posed to workers in these sectors who are

exposed to sodium fluoroacetate. OSHA considers these effects material health impairments. Promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

STRYCHNINE

CAS: 57–24–9; Chemical Formula: $C_{21}H_{22}N_2O_2$

H.S. No. 2145

OSHA's PEL for strychnine in general industry, construction, and maritime is 0.15 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The 1987–1988 ACGIH TLV®–TWA is also 0.15 mg/m³. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed for strychnine. OSHA is proposing an 8-hour TWA of 0.15 mg/m³ for strychnine in agriculture. Promulgation of this limit would make OSHA's PEL for this substance consistent across all industry sectors.

Strychnine is an odorless, colorless or white crystalline solid (HSDB 1989). This substance is used to control rodents in agriculture and also finds limited use in medicine (ACGIH 1986, p. 538). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Strychnine is a powerful convulsant in both humans and animals. The oral LD_{50} in rats is 2350 μg/kg, and the oral LD_{50} in dogs is 500 μg/kg (RTECS 1990). Acutely poisoned animals develop severe convulsions and paralysis before death (RTECS 1990). Strychnine's stimulant properties act principally on the spinal cord, but the medullary centers of the brain are also involved (Hayes 1982, p. 98).

Strychnine's effects on humans are similar to those in animals. The mean lethal dose in humans is estimated to lie between 100 and 120 mg (or 1.5 to 2 mg/kg body weight). However, a total dose as small as 16 mg has killed an adult (Gosselin, Smith, and Hodge 1984, p. III–375). Doses of 5 to 7 mg cause muscle tightening and twitching; the neck, jaws, and little fingers are particularly affected (Hayes 1982, pp. 96–101). After ingestion, any stimulus (light, sound, touch) is likely to set off a violent convulsion (Franz 1985). As many as 10 to 15 convulsions may occur before death, although cardiac or respiratory arrest may occur between the second and third convulsions (Hayes 1982, pp. 96–101).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers in agriculture are at significant risk of experiencing strychnine's convulsant effects in the absence of an OSHA PEL. Accordingly, OSHA is proposing a PEL of 0.15 mg/m³ as an 8-hour TWA for strychnine in agriculture. The Agency believes that this limit is necessary to substantially reduce the significant risk of these adverse health effects, which constitute material health impairments. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TELLURIUM AND COMPOUNDS (as Te)

CAS: 13494–80–9; Chemical Formula: Te

H.S. No. 2150

In general industry, construction, and maritime, OSHA's permissible exposure limit for tellurium and its compounds (measured as tellurium) is 0.1 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.1 mg/m³ for tellurium and its compounds. NIOSH has no REL for these substances but concurs (Ex. 8–47) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 0.1 mg/m³ for tellurium and compounds (measured as tellurium) in agriculture. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

Tellurium is a non-metallic silvery-white lustrous solid. This substance is used as an additive for copper, iron, and steel, in the vulcanization of rubber, as a coloring agent in ceramics, and as an ingredient in thermoelectric devices and in storage batteries. Some telluride compounds are used as semiconductors (ACGIH 1986, p. 555; Hawley's 1987, p. 1124). Examples of tellurium compounds are hydrogen telluride, potassium tellurite, and sodium tellurate. (Tellurium hexafluoride has a separate PEL.)

Tellurium causes garlic odor of the breath, central nervous system effects, and kidney and liver damage in humans; in animals, this substance causes neurotoxic and teratogenic effects. The oral LD_{50}s for tellurium in rats, mice, rabbits, and guinea pigs are 83 mg/kg, 20 mg/kg, 67 mg/kg, and 45 mg/kg, respectively (RTECS 1990). Acute exposure to tellurium can cause restlessness, tremor, diminished reflexes, paralysis, convulsions, somnolence, coma, and death (Cooper 1971, in Proctor, Hughes, and Fischman 1988, p. 458). Inhalation of hydrogen telluride has produced pulmonary irritation and hemolysis of red blood cells in animals (AIHA Hygienic Guide Series 1964; Cerwenka and Cooper 1961, in Proctor, Hughes, and Fischman 1988, p. 458). A dietary concentration of 1500 ppm had only a slight effect on the growth in rats (DeMeio 1946, in ACGIH 1986, p. 555). Chronic tellurium poisoning (by subcutaneous or intramuscular injection) caused degenerative changes in the retinal ganglion cells and brain of cats after 3 months (Pentschew 1958, in HSDB 1989). Tellurium poisoning (route, dose, and duration not specified) caused encephalopathy and changes in the retinal ganglion cells, optic nerves, and optic tract (Grant 1986, p. 887). Given 3300 ppm in the diet for 5 months, rats showed a markedly impaired ability to learn sequential behavioral tasks (Dru et al. 1972, in HSDB 1989). Rats chronically exposed to high doses of tellurium dioxide had decreased growth and developed necrosis of the liver and kidney (Cerwenka and Cooper 1961; Browning 1969, in Klaassen, Amdur, and Doull 1986, p. 625). Pregnant rats fed 300 to 500 ppm tellurium had a high incidence of hydroencephalic offspring (Duckett 1970, in Proctor, Hughes, and Fischman 1988, p. 458). Pregnant rats and rabbits fed a diet containing 3000 or 15,000 ppm (rats) or 5250 ppm (rabbits) tellurium during pregnancy give birth to offspring with skeletal and soft-tissue malformations (Johnson, Christian, Hoberman, DeMurco, Kilpper, and Mermelstein 1989, in Fund. Appl. Toxicol. 11(4):691–702). Weanling rats fed 10,000 ppm tellurium developed segmental demyelination; however, remyelination occurred even after continued exposure to tellurium (Lampert, Garro, and Pentschew 1970, in Proctor, Hughes, and Fischman 1988, p. 458). Neonatal rats exposed to tellurium in mothers' milk from birth until sacrifice at 7, 14, 21, or 28 days of age showed Schwann cell and myelin degeneration in the sciatic nerves and hypomyelination of the optic nerves at autopsy (Jackson, Hammurg, Worth, and Duncan 1989, in Acta. Neuropathol. Berlin 78(3):301–309).

No serious cases of industrial poisoning caused by tellurium have been reported in humans. A garlic odor of the breath and sweat, dryness of the mouth, a metallic taste in the mouth, somnolence, anorexia, and nausea were reported among iron foundry workers exposed to tellurium concentrations between 0.01 and 0.1 mg/m³ for 22 months; somnolence and metallic taste did not occur until these workers' urinary tellurium levels were at least 0.01 mg/l (Steinberg, Massari, Miner, and Rink 1942; Cerwenka and Cooper 1961, in AIHA Hygienic Guide Series 1964). Mild neurologic effects have occurred in workers exposed to tellurium salts during industrial manufacturing processes (Klaassen, Amdur, and Doull 1986, p. 374). In workers in an electrolytic lead refinery,

exposure to tellurium dioxide resulted in skin lesions in the form of scaly, itching patches, and loss of sweat function (Browning 1969, in Proctor, Hughes, and Fischman 1988, p. 458). Accidental administration of about 2 gm of sodium tellurite caused death in two adults within 6 hours. The signs of toxicity were vomiting, renal pain, stupor, loss of consciousness, irregular breathing, and cyanosis; autopsy revealed fatty degeneration of the liver (Gosselin 1984, p. II–129).

Based on this evidence in humans and animals, OSHA preliminarily concludes that tellurium and its compounds impart a garlic odor to the breath and sweat and cause central nervous system effects, cardiac effects, and kidney and liver changes. OSHA preliminary finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. Accordingly, the Agency proposes to establish an 8-hour TWA limit of 0.1 mg/m³ for tellurium and its compounds in agriculture. OSHA believes that the proposed limit is necessary to substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for these substances consistent across all regulated sectors.

TETRAETHYL LEAD (as Pb)
CAS: 78–00–2; Chemical Formula: $(C_2H_5)_4Pb$
H.S. No. 1386

OSHA's 8-hour TWA limit for tetraethyl lead (TEL) in construction and maritime is 0.1 mg/m³, measured as lead, with a skin notation. There is no limit in agriculture. The ACGIH recommends that worker exposures to TEL not exceed 0.1 mg/m³ TWA; the ACGIH also recommends a skin notation. NIOSH has no REL, but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 0.075 mg/m³, and a skin notation, for tetraethyl lead in construction, maritime, and agriculture. This is the limit recently established for TEL in general industry.

Tetraethyl lead is a colorless liquid that may be dyed red, orange, or blue and that has a slightly musty odor. It is used as an anti-knock additive in gasoline (AGGIH 1986, p. 562).

Tetraethyl lead is a central nervous system toxin in humans and animals. The oral LD_{50} in rats is 12.3 mg/kg, and the LC_{50} in the same species is 850 mg/m³ for 1 hour (RTECS 1990). The lowest lethal dermal dose in rabbits is 830 mg/kg (RTECS 1990). Instilled into the eyes of rabbits, TEL caused redness, blepharospasm, and discharge, but these effects were reversible (Grant 1986, pp. 890–893). Acutely poisoned animals showed tremors, irritability, and spasticity after a single dose of approximately 17 mg/kg; repeated doses at one-tenth this level, however, caused behavioral changes, peripheral hyperemia, cardiac hypertrophy, brain edema, and changes in the liver, pancreas, thyroid, lung, and thymus (IARC 1973, Vol. 2, p. 156). Administered to rhesus monkeys orally (at a dose of 6 mg/kg/day) for 6 months, TEL caused no clinical manifestations of toxicity, although elevated blood and tissue levels of lead were seen in these animals (Heywood, R. et al. 1979, Toxicol Letter 4(2): 119–125). Carcinogenicity bioassays have been negative.

In humans, TEL poisoning causes psychosis, convulsions, and if the exposure is sufficiently severe, death. More than 150 deaths have been attributed to TEL poisoning, although many of these have involved accidental or suicidal ingestion rather than occupational exposure. However, several workers have died while cleaning leaded gasoline storage tanks without proper personal protective equipment (Proctor, Hughes, and Fischman 1988, p. 461). TEL poisoning can occur after a single one-hour exposure to 100 mg/m³ or after repeated exposures to lower levels, and the signs and symptoms may be so subtle as to go undetected (Kehoe, in Parmeggiani 1983, pp. 1197–1199). The signs and symptoms of TEL poisoning include headache, fatigue, weakness, nausea, vomiting, diarrhea, and anorexia and may progress to ataxia, tremor, bradycardia, and hypothermia (Grandjean 1984). Chronic exposure to TEL causes cumulative liver, kidney, and central nervous system damage (Cralley and Cralley 1985, p. 182).

Based on this evidence in humans and animals, OSHA preliminarily concludes that workers in construction, maritime, and agriculture exposed to this substance are at significant risk of experiencing central nervous system damage as well as liver and kidney damage. The Agency believes that the proposed PEL of 0.075 mg/m³ is necessary to substantially reduce this significant risk. OSHA is therefore proposing a PEL of 0.075 mg/m³ as an 8-hour TWA (measured as Pb), and a skin notation, for tetraethyl lead in construction, maritime, and agriculture. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TETRAMETHYL LEAD (as Pb)
CAS: 75–74–1; Chemical Formula: $(CH_3)_4Pb$
H.S. No. 1388

The OSHA limit for tetramethyl lead (TML) in construction and maritime is 0.15 mg/m³ (measured as lead) as an 8-hour TWA, with a skin notation. The ACGIH has a TLV®–TWA of 0.15 mg/m³, with a skin notation, for this substance. There is no limit in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA of 0.075 mg/m³, with a skin notation, for this substance in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Tetramethyl lead is a colorless liquid, which may be dyed blue, orange, or red in commercial use; it has a slight musty odor. It is used as an anti-knock additive in gasoline (ACGIH 1986, p. 565).

Tetramethyl lead is toxic to the central nervous system of humans and animals. The oral LD_{50} in rats is 90 mg/kg, the LC_{50} in mice is 8500 mg/m³ for 30 minutes, and the lowest lethal dermal dose in rabbits is 3391 mg/kg (RTECS 1990). Acutely poisoned animals develop tremors, hyperexcitability, and convulsions before death (Schepers 1964). If inhaled, TML has only one-tenth the toxicity of tetraethyl lead in rats; however, in dogs and mice, TML is more toxic than TEL (Cremer and Calloway 1961). Rats exposed repeatedly to 10.8 mg/kg developed behavioral changes and peripheral hyperemia; at autopsy, cardiac hypertrophy, hyperemia, and edema of the brain and lungs were seen (IARC 1973, Vol. 2, p. 157). Monkeys given 6 mg/kg/day intravenous doses of TML showed gastrointestinal disturbances, tremor, abnormal reflexes, and depressed brain cholinesterase levels (Heywood et al. 1978). Carcinogenicity bioassays with TML have been negative. No teratogenic effects were seen in the offspring of rats given 40, 80, 112, or 160 mg/kg TML by oral administration (McClain and Becker 1972, in IARC 1980, Vol. 23, p. 370).

In humans, several cases of acute toxicity have been reported; the signs and symptoms were indicative of encephalopathy (IARC 1973, Vol. 2, p. 158). In humans, TEL is believed to be three times as toxic as TML (IARC 1973, Vol. 2, p. 158). However, there are few data on the toxicity of TML in humans.

OSHA preliminarily concludes, based on this evidence in humans and animals, that workers in construction, maritime, and agriculture are at significant risk of experiencing lead poisoning in the form of encephalopathy. The Agency believes that the proposed PEL of 0.075 mg/m³ is

necessary to substantially reduce this risk among these workers. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

TETRAMETHYL SUCCINONITRILE
CAS: 3333–52–6; Chemical Formula: $C_8H_{12}N_2$
H.S. No.: 2156

The OSHA limit for tetramethyl succinonitrile in general industry, construction, and maritime is 0.5 ppm as an 8-hour TWA, with a skin notation. The ACGIH TLV®–TWA is also 0.5 ppm as an 8-hour TWA, with a skin notation. NIOSH has a REL of 1 ppm as a 15-minute ceiling but concurs with the limit being proposed (Ex. 8–47, Table N3A). OSHA is proposing a PEL of 0.5 ppm as an 8-hour TWA, with a skin notation, in agriculture, an action that would make the PEL for this substance consistent across all OSHA-regulated workplaces.

Tetramethyl succinonitrile is a colorless and odorless solid. This substance is a decomposition product that is released when azobisisobutyronitrile, a foam blowing agent, is heated (ACGIH 1986, p. 466).

Tetramethyl succinonitrile is a systemic toxin that produces convulsions in exposed humans and animals. The oral LD_{50} is 60 mg/kg (Sax and Lewis 1989, p. 3228). Rats exposed to a 60-ppm concentration of this substance for 2 or 3 hours died, as did rats exposed for 30 hours to a 6-ppm concentration (Oetel 1958, in ACGIH 1986, p. 566). Ingestion of a 25-mg/kg dose of tetramethyl succinonitrile also caused 100 percent mortality in rats (Oetel 1958). Rats, guinea pigs, rabbits, and dogs dosed with this substance by various routes of administration developed convulsions and subsequently died of asphyxiation (NIOSH Criteria Document (Nitriles) 1978, p. 155).

In a personal communication to the ACGIH's TLV® committee, Dr. Ernest Mastromatteo reported that several workers at a vinyl foam plant in Ontario, Canada, reported experiencing headaches and nausea after exposure to tetramethyl succinonitrile (ACGIH 1986, p. 566). There are reports of similar symptoms, and of convulsions and comas, in European workers exposed to unspecified concentrations of tetramethyl succinonitrile (Reinl 1957; Quoss 1959, both cited in ACGIH 1986, p. 566). No other toxicity information has been reported for this substance.

Based on this evidence in humans and animals, OSHA preliminarily concludes that tetramethyl succinonitrile is a systemic poison that potentially causes headache, nausea, and convulsions in exposed workers. Accordingly, the Agency is proposing a PEL of 0.5 ppm as an 8-hour TWA, with a skin notation, for this substance in agriculture. OSHA believes that this action will substantially reduce these risks of material health impairment among agricultural workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TETRYL (2,4,6-Trinitrophenylmethylnitramine)
CAS: 479–45–8; Chemical Formula: $C_7H_5N_5O_8$
H.S. No. 2158

OSHA's current limit for tetryl in construction, maritime, and general industry is 1.5 mg/m³ as an 8-hour TWA, with a skin notation. There is no limit in agriculture, and NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N3A) with the limit being proposed. The ACGIH TLV®–TWA is 1.5 mg/m³, with a skin notation, for this substance. OSHA is proposing an 8-hour TWA PEL of 1.5 mg/m³, with a skin notation, for tetryl in agriculture; adoption of this limit would make OSHA's PEL for this substance consistent across all OSHA-regulated industry sectors.

Tetryl (2,4,6-trinitrophenylmethylnitramine) is used as a booster explosive, a component in binary explosives, a primer for other explosives, and as a chemical indicator in the laboratory (HSDB 1988). Tetryl is a colorless to yellow crystalline solid with a bitter taste and no odor (ACGIH 1986, p. 568.1(88)).

Tetryl is an irritant and sensitizer of the skin and respiratory tract; exposure to tetryl has also been associated with systemic poisoning in the form of blood changes and liver toxicity. Little acute toxicity information is available. The lowest lethal dose of tetryl in dogs by subcutaneous administration is 5000 mg/kg (RTECS 1990). Rabbits given 1-g/kg doses of tetryl by stomach tube died after no more than three doses; at autopsy, degeneration of the kidneys was seen in these animals (Wells, Lewis, Sansum et al. 1920, in ACGIH 1986, p. 568.3(88)).

In humans, exposure to tetryl dust has caused eye, skin, and respiratory irritation; skin and pulmonary sensitization; liver damage; and anemia. Tetryl dust also stains the hair and skin of exposed workers yellow. Workers exposed to concentrations of tetryl below 1.5 mg/m³ for 10 years did not show signs of systemic toxicity but did report gastrointestinal and respiratory symptoms and skin sensitization (Bergman 1952). The dermal sensitization effects in these workers progressed from itching of the skin and eyes to erythema and edema (Bergman 1952). Eleven workers accidentally overexposed to tetryl developed yellow pigmentation of the skin, dermatitis, sensitization, respiratory tract irritation, and clinical signs of liver damage; two of these workers died and one became disabled (Hardy and Maloof 1950). Several of the surviving workers were subsequently forced to leave employment because of respiratory sensitization (Hardy and Maloof 1950). A study of a group of 1,258 tetryl-exposed workers revealed dermatitis and clinical evidence of secondary anemia in many of these workers. The symptoms of systemic illness reported by workers in this group include headache, lassitude, sleeplessness, and irritability (Hardy and Maloof 1950). In workers severely overexposed, irreversible liver damage has also occurred (Hardy and Maloof 1950).

Based on this evidence in humans and animals, OSHA preliminarily concludes that an 8-hour TWA limit of 1.5 mg/m³, and a skin notation, is necessary to protect agricultural workers from the skin and respiratory tract irritation and sensitization, blood effects, and liver damage potentially associated with exposure to tetryl. The Agency believes that the proposed limit will substantially reduce these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

THIRAM
CAS: 137–26–8; Chemical Formula: $C_6H_{12}N_2S_4$
H.S. No. 2160

OSHA's limit for thiram in general industry, construction, and maritime is 5 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH TLV®–TWA for this substance is 5 mg/m³ as an 8-hour TWA. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for thiram in agriculture, which would make OSHA's PEL for this substance consistent across all industry sectors.

Thiram is a white or pale yellow powder with a characteristic odor. Thiram is used in many products and processes, including the compounding of natural and synthetic rubbers, the production of fungicides, in animal repellents, as a bacteriostat in soaps, and as an ingredient in antiseptic sprays (IARC 1976, Vol. 12, p. 228). Thiram is the methyl analog of Antabuse® (disulfiram), the drug used to control

alcoholism by interfering with the metabolism of alcohol (Clayton and Clayton 1981, p. 2104). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Thiram is an irritant of the eyes, mucous membranes, and skin; a skin sensitizer; and a metabolic poison. This substance is also a teratogen in experimental animals. The oral LD_{50} in rats is 560 mg/kg, and the lowest lethal dermal dose in rabbits is 1 g/kg (RTECS 1990). Acutely poisoned animals show hyperemia and focal ulceration of the gastrointestinal tract, necrosis of the liver and kidney, and demyelinization of the cerebellum and medulla (Child and Cramp 1952, in Gosselin, Smith, and Hodge 1984, p. III–383). Before death, acutely poisoned animals lose coordination, develop tremors and difficult breathing, and convulse (Ben-Dyke, Sunderson, and Ninakes 1970, in ACGIH 1986, p. 573.3(87)). In contact with the skin or eyes of rabbits, thiram causes irritation, and repeated contact of this substance with the skin of rabbits and guinea pigs has caused dermal sensitization (RTECS 1990; Griepentrop 1960; Brusilovsky and Fialikovsky 1973, in ACGIH 1986, p. 573.3(87)). Rats fed 100, 300, or 500 mg/kg thiram for 2 years showed reductions in growth rate; at the highest dose, the rats convulsed and, at autopsy, had thyroid hyperplasia and calcification of the brain (IARC 1976, Vol. 12, p. 231). Administered to rats, mice, and hamsters by the oral and/or subcutaneous route, thiram caused teratogenic effects in the offspring (RTECS 1990).

Ingestion of alcohol and concomitant exposure to thiram causes the signs and symptoms of systemic Antabuse®-alcohol syndrome: Flushing of the skin, palpitations, headache, nausea, vomiting, and difficult breathing (Hayes 1982, pp. 603–606). One worker died after treating seeds with thiram over a 10-hour period; it is not known whether this worker also ingested alcohol (Hayes 1982, pp. 603–606). Workers chronically exposed to low levels of thiram may develop facial flushing after they ingest alcohol, and thiram can produce dermatitis and sensitization in some workers even in the absence of alcohol ingestion (Shelley 1964). A study of 223 workers exposed to thiram for more than 3 years revealed an increased incidence of eye irritation, chest pain, tachycardia, nose bleeds, skin lesions, liver dysfunction, myocardiodystrophia, and asthenia in these workers compared with the incidence for a group of non-thiram-exposed workers. The thiram-exposed group also showed an excess incidence of enlarged thyroid and other thyroid abnormalities, as well as one case of thyroid adenocarcinoma (Cherpak et al. 1971; Kaskevich and Bezugly 1973, in IARC 1976, Vol. 12, p. 232).

Based on this evidence in humans and animals, OSHA preliminarily concludes that thiram poses a potentially significant risk of systemic toxicity to agricultural workers. The Agency believes that the proposed 5 mg/m^3 8-hour TWA PEL is necessary to substantially reduce this risk of material health impairment among these workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TIN, METAL AND INORGANIC COMPOUNDS (as Sn)

CAS: 7440–31–5; Chemical Formula: Sn

H.S. No. 2161

OSHA's permissible exposure limit for tin and its inorganic compounds (measured as tin) in general industry, construction, and maritime is 2 mg/m^3 as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 2 mg/m^3 for these substances, and NIOSH has no REL. OSHA is proposing an 8-hour TWA limit of 2 mg/m^3 for tin and inorganic tin compounds (measured as tin) in agriculture. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

Tin is an odorless, soft, white, silvery metal. Among its inorganic compounds are stannous chloride, an odorless, colorless to brown solid; stannic chloride, which is a colorless to yellow fuming liquid with an acrid odor; and stannous sulfate, a colorless to brown, odorless solid. Tin and its inorganic compounds are used in tin plating, solder and alloy production, and in the manufacture of toothpaste, ceramics, drill-glass, porcelain, enamels, textiles, and ink (Rom 1983, p. 501; NIOSH/OSHA Occupational Health Guideline 1981, p. 1).

Exposure to metallic tin dust or to inorganic tin compounds causes eye, nose, skin, and respiratory tract irritation, gastrointestinal effects, and anemia in humans and animals. The oral LD_{50} values for tin sulfate in rats and mice are 2207 mg/kg and 2152 mg/kg, respectively (RTECS 1990). In rats, mice, and rabbits, the oral LD_{50}s for stannous chloride are 700 mg/kg, 250 mg/kg, and 10 g/kg, respectively (RTECS 1990). Tin tetrachloride has an LC_{50} in rats of 2300 mg/m^3 for 10 minutes (RTECS 1990). The intraperitoneal injection of tin dust resulted in a non-specific, vascularized chronic granulomatous reaction in guinea pigs (Oyanguren, Haddad, and Maass 1958, in ACGIH 1986, p. 574). The soluble acid salts of tin produce dermal effects in rabbits, including intraepidermal polymorphonuclear leukocyte pustules when large amounts are held in contact with the skin for 18 hours; the application of lower concentrations causes polymorphonuclear infiltrates (Stone and Willis; Connie et al. 1975 and 1976; Yum et al. 1976, in Clayton and Clayton 1981, p. 1946). The signs and symptoms of low-level subacute tin toxicity are diarrhea, paralysis, twitching, hyperemia, and vascular changes, which in turn cause internal bleeding and death (Barnes and Stoner 1959, in Clayton and Clayton 1981, p. 1946). Rats fed tin oxides and various tin salts for 4 or 13 weeks at levels of 0.03, 0.1, 0.3, or 1.0 percent showed signs of growth retardation, decreased food efficiency, slight anemia, and liver changes at the 0.3 percent level or higher; the no-effect level was estimated to be 0.1 percent or 22 to 23 mg/day (deGroot et al. 1973, in Clayton and Clayton 1981, p. 1946). Paralysis was produced in dogs after daily administration of stannous chloride in milk at a level of 500 mg/kg for 14 months (Stauden 1972, in Proctor, Hughes, and Fischman 1988, p. 475).

In humans, some inorganic tin compounds cause skin and eye irritation because of an acid or alkaline reaction produced when the compound reacts with water (Stauden 1972, in Proctor, Hughes, and Fischman 1988, p. 475). Stannic chloride is highly irritating to the eyes and mucous membranes (Grant 1986, p. 846). Workers involved in glass bottle production who were exposed to a stannic chloride mist in concentrations of 0.10 to 0.18 mg/m^3 and to hydrogen chloride at a concentration of 5 ppm experienced an excess of respiratory irritation when compared to workers exposed predominantly to hydrogen chloride (Levy, Davis, and Johnson 1985, in Proctor, Hughes, and Fischman 1988, p. 475). Because of low absorption and rapid tissue turnover, the ingestion of inorganic tin causes only moderate toxicity. The ingestion of food contaminated with tin compounds at levels greater than 1400 ppm causes symptoms of gastrointestinal irritation such as nausea, abdominal cramps, vomiting, and diarrhea (Schafer and Femfurt 1984, in Proctor, Hughes, and Fischman 1988, p. 475). Chronic absorption of low levels of tin has caused abdominal pain, nausea, constipation, weight loss, sore throat,

mild fever, a sensation of being chilled, myalgias, arthralgias, and moderate anemia (HSDB 1986).

Based on this evidence, OSHA preliminarily concludes that tin and its inorganic compounds cause primary irritation, gastrointestinal effects, and anemia. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit of 2 mg/m³ as an 8-hour TWA is necessary to substantially reduce the risks of these material health impairments. Promulgation of this limit also will make the PEL for tin and its inorganic compounds consistent across all OSHA-regulated sectors.

TRIMETHYLBENZENE
CAS: 25551–13–7; Chemical Formula: $(CH_3)_3C_6H_3$
H.S. No. 1412

OSHA currently has an exposure limit of 25 ppm as an 8-hour TWA for trimethylbenzene in general industry, construction, and maritime. There is no limit in agriculture. The ACGIH TLV• for all isomers of trimethylbenzene is 25 ppm as an 8-hour TWA. OSHA proposes a PEL of 25 ppm as an 8-hour TWA in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the 25-ppm TWA limit being proposed. This action would make OSHA's PEL for trimethylbenzene consistent across all regulated sectors.

Trimethylbenzene is a liquid mixture of three isomers. The isomers are used as raw materials for chemical synthesis and in ultra-violet stabilizers (ACGIH 1986, p. 508). Trimethylbenzene also is used in solvents.

A study by Battig, Grandjean, and Turrian (1957/Ex. 1–104) provides the basis for the proposed limit; this work reports symptoms among 27 workers exposed to a solvent containing 30 percent 1,3,5-trimethylbenzene and 50 percent 1,2,3-trimethylbenzene. A "significant number" of these workers were reported to have experienced symptoms of nervousness, tension and anxiety, and asthmatic bronchitis. The peripheral blood of these workers "showed a tendency to hypochromic anemia" and a somewhat abnormal clotting ability. This group of workers had been occupationally exposed to total hydrocarbon concentrations ranging from 10 to 60 ppm for several years. The authors of the study recommended maintaining employee exposures below 35 ppm (Battig, Grandjean, and Turrian 1957/Ex. 1–104).

Based on this evidence, OSHA is proposing a 25-ppm 8-hour TWA PEL for trimethylbenzene in agriculture to reduce the significant risks of bronchitis and blood effects reported to occur in exposed workers. The Agency considers these effects material health impairments and believes that the proposed PEL is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TUNGSTEN, INSOLUBLE COMPOUNDS (as W)
CAS: 7440–33–7; Chemical Formula: W
H.S. No. 1416

OSHA's PEL for tungsten and its insoluble compounds is an 8-hour TWA of 5 mg/m³ (measured as tungsten) in construction and maritime. There is no limit in agriculture. The ACGIH has established 5 mg/m³ as an 8-hour TLV•–TWA and 10 mg/m³ as a 15-minute TLV•–STEL for these substances. NIOSH recommends a limit of 5 mg/m³ as a 10-hour TWA. In construction and maritime, OSHA is retaining the PEL of 5 mg/m³ as an 8-hour TWA and is proposing a 15-minute STEL of 10 mg/m³; the Agency is also proposing to extend these limits in agriculture. NIOSH concurs (Ex. 8–47, Table N1) with OSHA's proposed limits, which are the limits recently established for these substances in general industry.

Tungsten is a gray, hard metal. Metallic tungsten is used in ferrous and non-ferrous alloys, incandescent lamps, heating elements, welding electrodes, rocket nozzles, and in solar energy equipment. Tungsten compounds are used in cemented carbide tools, dies and wear-resistant parts, textiles, ceramics, and plastics. Tungsten compounds are also used as solid lubricants and as abrasives (ACGIH 1986, p. 614).

Rats fed a diet containing 0.5 percent insoluble tungsten compounds died, and another group of rats fed 0.1 percent of these compounds suffered noticeable weight loss (Kinard and Van de Erve 1941/Ex. 1–492). Studies in rats fed tungsten at 2, 5, or 10 percent of their diet showed that females in all dose groups had a 15-percent reduction in weight gain (Kinard and Van de Erve 1943/Ex. 1–493). The intraperitoneal LD_{50} for tungsten metal powder in rats was 5 g/kg body weight; survivors showed minor liver and spleen changes at necropsy (Fredrick and Bradley 1946, as cited in ACGIH 1986/Ex. 1–3, p. 614). Studies of the tissues of guinea pigs intratracheally injected with tungsten metal or with tungsten carbide revealed moderate interstitial cellular proliferation (tungsten metal) and no changes (tungsten carbide). However, Soviet studies involving similar intratracheal injections showed proliferation of the intra-alveolar septa (Kaplun and Mezentseva 1960, as cited in ACGIH 1986/Ex. 1–3, p. 614).

The NIOSH criteria document for tungsten (1977h) reports that Russian investigators found a 9- to 11-percent incidence of pulmonary fibrosis in workers exposed to tungsten (Kaplun and Mezentseva 1959/Ex. 1–961; and Mezentseva 1967, as cited in ACGIH 1986/Ex. 1–3, p. 614). NIOSH (1977h) recommended that the standard for tungsten and its insoluble compounds be set at 5 mg/m³ to protect against pulmonary effects. Stokinger (Clayton and Clayton 1981) reported on several epidemiological studies of workers in the "hard metal industry," in which tungsten carbide is machined. These studies describe a condition known as hard metal disease, which may be accompanied by pulmonary fibrosis. The disease is characterized by a moderate incidence of cough, dyspnea, and wheezing, a high incidence of minor radiological abnormalities with a few instances of marked abnormalities, and development of hypersensitivity asthma in some workers (which may be due to exposure to the cobalt that is used as a binding agent). The disease is progressive and potentially lethal. This author (Clayton and Clayton 1981, p. 1992) reported that, unlike other lung diseases produced by inorganic dust, there is no correlation between onset of symptoms, length of exposure, and the development of interstitial fibrosis. Analysis of the lung of one worker who had clinical signs and radiological changes showed the presence of large amounts of tungsten with much smaller amounts of other metals.

In construction and maritime, OSHA is retaining the 8-hour TWA limit of 5 mg/m³ and proposing to add a STEL of 10 mg/m³ for tungsten and its insoluble compounds, measured as tungsten; the Agency is also proposing to extend these limits to agriculture. OSHA preliminarily concludes that these limits are necessary to substantially reduce the significant risk of pulmonary fibrosis and other lung effects, which OSHA considers material impairments of health. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

TUNGSTEN, SOLUBLE COMPOUNDS (as W)
CAS: 7440–33–7; Chemical Formula: W
H.S. No. 1417

Currently, OSHA has a limit for tungsten and its soluble compounds in construction and maritime of 1 mg/m³ (measured as tungsten) as an 8-hour

TWA. There is no limit in agriculture. The ACGIH TLV®–TWA is 1 mg/m³, with a TLV®–STEL of 3 mg/m³, measured as tungsten. NIOSH recommends a 1-mg/m³ 10-hour TWA for tungsten and its soluble compounds. OSHA is retaining the 8-hour TWA PEL of 1 mg/m³ and proposing to add a 15-minute STEL of 3 mg/m³ for tungsten and its soluble compounds in construction and maritime; the Agency also proposes these limits in agriculture. NIOSH concurs (Ex. 8–47, Table N1) with the addition of a STEL to the 1-mg/m³ TWA limit. These are the limits recently established for these substances in general industry.

Tungsten is a gray, hard metal. Metallic tungsten is used in ferrous and non-ferrous alloys, incandescent lamps, heating elements, welding electrodes, rocket nozzles, and in solar energy equipment. Tungsten compounds are used in cemented carbide tools, dies and wear-resistant parts, textiles, ceramics, and plastics. Tungsten compounds are also used as solid lubricants and as abrasives (ACGIH 1986, p. 614).

Animal studies have shown that the LD_{50} for soluble sodium tungstate when injected subcutaneously in rats ranges from 140 to 160 mg/kg (Kinard and Van de Erve 1940/Ex. 1–788). Soluble tungsten's lethal effects are the result of systemic poisoning that occurs as the compound is absorbed by multiple organs; this is followed by cellular asphyxiation (International Labour Office [ILO] 1934c, as cited in ACGIH 1986/Ex. 1–3, p. 614). Karantassis (1924, as cited in ACGIH 1986/Ex. 1–3, p. 614) also observed a systemic response in guinea pigs given soluble sodium tungstate or pure soluble tungsten either orally or intravenously; the animals developed anorexia, colic, trembling, and difficulty in breathing prior to death. Rats fed a diet containing 0.5 percent tungsten as soluble sodium tungstate or tungsten oxide died from this dose. Dietary doses of 0.1 percent tungsten oxide and the sodium salt caused weight loss in rats, but no deaths (Kinard and Van de Erve 1941/Ex. 1–492). Tungsten is believed to act by antagonizing the action of molybdenum (Higgins, Richert, and Westerfield 1956/Ex. 1–487). In its criteria document for tungsten, NIOSH (1977h) states that information on the effects of exposure to soluble tungsten compounds in the working population is not available.

OSHA is retaining the 8-hour TWA limit of 1 mg/m³ and proposing to add a STEL of 3 mg/m³ for tungsten and its soluble compounds, measured as tungsten, in construction and maritime; the Agency is also proposing to extend these limits to agriculture. OSHA preliminarily concludes that these limits will protect workers in these sectors against the significant risks of systemic toxicity, anorexia, colic, incoordination, trembling, and dyspnea, all of which constitute material health impairments that are associated with exposure to these compounds. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

VINYLIDENE CHLORIDE (1,1-DICHLOROETHYLENE)

CAS: 75–35–4; Chemical Formula: $CH_2 = CCl_2$

H.S. No. 1428

OSHA has no limit for vinylidene chloride (VDC) in construction, maritime, or agriculture. The ACGIH has established a 5 ppm TLV®–TWA and a 20 ppm 15-minute TLV®–STEL. In 1978, NIOSH recommended that employee exposure to VDC be reduced to the lowest feasible level on the basis of VDC's carcinogenicity (Ex. 1–1119). OSHA is proposing a PEL of 1 ppm (8-hour TWA) for VDC in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Vinylidene chloride, also called 1,1-dichloroethylene, is a colorless liquid that polymerizes readily. It is used primarily for production of vinylidene copolymers such as Saran® and Velon®. It is also used in films and coatings (ACGIH 1986, p. 628).

In animals, exposure to vinylidene chloride causes irritation, kidney and liver damage, and cancer. The oral LD_{50} in male rats is 2500 mg/kg (Jenkins, Trabulus, and Murphy 1972/Ex. 1–960). The LC_{50} for rats exposed to a single 4-hour exposure of VDC vapor was reported as 6350 ppm in one study (Siegel, Jones, Coon, and Lyon 1971/Ex. 1–371) and 32,000 ppm in an earlier study (Carpenter, Smyth, and Pozzani 1949/Ex. 1–722). Liquid VDC causes transient irritation of the eyes in rats but has little effect on exposed skin if the VDC is allowed to evaporate (Torkelson and Rowe 1981b, as cited in ACGIH 1986/Ex. 1–3, p. 628). Prendergast and co-workers (1967/Ex. 1–926) exposed rats, rabbits, guinea pigs, and monkeys 8 hours/day, 5 days/week for 6 weeks to 395 mg/m³ (100 ppm); these authors saw no visible signs of toxicity while the exposure was in process, but rabbits and monkeys lost weight. Animals of these same species were exposed continuously to VDC concentrations of 5, 15, 25, or 47 ppm for 90 days; only the animals exposed to 5 ppm showed no increases in mortality (Prendergast, Jones, Jenkins, and Siegel 1967/Ex. 1–926).

Nasal irritation, liver cell degeneration, and retarded weight gain were reported in rats following 20 6-hour exposures to 500 ppm VDC (Gage 1970/Ex. 1–318); at 200 ppm, only nasal irritation occurred. Studies by Torkelson and Rowe (1981b, as cited in ACGIH 1986/Ex. 1–3, p. 628) in which rats, rabbits, guinea pigs, and dogs were exposed to 25, 50, or 100 ppm VDC for 8 hours per day, 5 days per week for 6 months revealed injury of the kidneys and liver in all animals at all levels of exposure. Maltoni (1977/Ex. 1–985) and Maltoni, Cotti, Morisi, and Chieco (1977/Ex. 1–1090) conducted an evaluation of VCD's carcinogenicity in which mice, rats, and hamsters were exposed to levels from 10 to 150 ppm for 4 hours per day, 5 days per week for 52 weeks, with results reported through week 98 of the study. In those mice exposed to 25 ppm VCD, 21 percent of the males and 1.5 percent of the females developed kidney adenocarcinomas; these tumors were not seen in rats exposed to amounts of VDC up to 150 ppm. Exposures of 100 or 150 ppm in rats did produce a significant increase in mammary adenocarcinomas, and this response was dose-related (Maltoni 1977/Ex. 1–985; Maltoni, Cotti, Morisi, and Chieco 1977/Ex. 1–1090). Overt toxicity and mortality occurred early in the studies after 4-hour exposures at levels of 50 ppm in mice and 200 ppm in rats; hamsters exposed to 20 ppm VDC showed no increase in tumor incidence (Maltoni 1977/Ex. 1–985; Maltoni, Cotti, Morisi, and Chieco 1977/Ex. 1–1090).

Two strains of rats exposed to 75 or 100 ppm VDC for 5 days/week, 6 hours/day for 12 months did not show a significant increase in tumors (Viola and Caputo 1977/Ex. 1–937). Other investigators exposed rats to 25 or 75 ppm by inhalation for 6 hours/day, 5 days/week for 18 months, or to 60, 100, or 200 ppm VDC in their drinking water for 2 years, and found no increase in tumor incidence in these animals (Rampy, Quast, Humiston et al. 1977, as cited in ACGIH 1986/Ex. 1–3, p. 628). In mice, VDC was not active either as a whole mouse skin carcinogen or by subcutaneous injection.

In an NTP gavage study of VDC in mice and rats (NTP 1982/Ex. 134B), the only observed significant increase in tumor incidence occurred in low-dose female mice; this increase was not considered to be related to VDC administration because similar effects were not observed in high-dose female mice, male mice, or rats. The NTP (1982/Ex. 134B) concluded that VDC was not

carcinogenic in mice or rats exposed by gavage, but cautioned that a maximum tolerated dose had not been demonstrated and that previously reported studies had shown that carcinogenicity is associated with VDC inhalation by animals.

In other studies, VDC proved mutagenic in both *E. coli* and *S. typhimurium* strains (Greim, Bonse, Radwan et al. 1975/Ex. 1–904; Bartsch, Malaveille, Montesano, and Tomatis 1975/Ex. 1–889). VDC has been implicated as a tumor initiator in a carcinogenesis bioassay by Van Duuren, Goldschmidt, Loewengart et al. (1979/Ex. 1–936). Studies by Reitz, Watanabe, McKenna et al. (1980/Ex. 1–927) suggest that VCD's tumorigenicity is a result of its ability to initiate cell injury, rather than of its ability to alter the genetic material of an injured cell. However, VDC has been shown to alkylate DNA *in situ* and to increase the rate of DNA repair to a small extent in mice (Norris and Reitz 1984/Ex. 134B). The actual cell injury is caused by VDC metabolites, which are highly reactive and cytotoxic (Maltoni 1977/Ex. 1–985; Hathway 1977/Ex. 1–906; Henschler and Bonse 1977/Ex. 1–908).

A study by Murray, Nitschke, Rampy, and Schwetz (1979/Ex. 1–920) investigated the embryotoxic, fetotoxic, and teratogenic effects of inhaled and ingested VDC (in rats) and inhaled VDC (in rabbits). In the inhalation studies, rats were exposed to 20, 80, or 160 ppm VDC for 7 hours per day. VDC was toxic to both the adults and their embryos at levels of 80 and 160 ppm among the rats, and at 160 ppm in rabbits. At exposure levels of 20 ppm in rats and 80 ppm in rabbits, neither maternal toxicity nor effects on embryonic or fetal development were noted. In the ingestion study with rats, drinking water containing 200 ppm VDC caused no toxic effects in either the rats or their offspring.

A cohort study of 138 VCD-exposed workers did not identify any VCD-related health effects in these workers (Ott, Fishbeck, Townsend, and Schneider 1976/Ex. 1–924). The cohort was too small to provide any evidence that VDC is not likely to be carcinogenic.

OSHA believes that these studies clearly demonstrate that VDC can cause adverse liver and kidney damage in animals at airborne concentrations as low as 25 to 50 ppm and suggest that VDC is a potential occupational carcinogen. Liver and kidney damage and cancer clearly constitute material health impairments within the meaning of the Act. Therefore, OSHA preliminarily concludes that a 1-ppm 8-hour TWA limit for vinylidene chloride is necessary to protect workers in construction, maritime, and agriculture from these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

WELDING FUMES (TOTAL PARTICULATE)

CAS: None; Chemical Formula: Varies
H.S. No. 1430

In construction, maritime, and agriculture, OSHA has no limit for welding fumes, which are defined as fumes that are generated by the manual metal arc or oxy-acetylene welding of iron, mild steel, or aluminum. NIOSH has no REL for welding fumes. The ACGIH has set an 8-hour TLV®–TWA of 5 mg/m³ for these welding fumes, measured as total particulate in the welder's breathing zone. OSHA is proposing an 8-hour TWA limit of 5 mg/m³ for these fumes in construction, maritime, and agriculture. This is the limit recently established for these fumes in general industry. This limit applies to the total fume concentration generated during the welding of iron, mild steel, or aluminum; the fumes generated by the welding of stainless steel, cadmium, or lead-coated steel, or other metals such as copper, nickel, or chrome are considerably more toxic and should be kept at or below the levels required by their respective PELs. Welding fumes consist of metallic oxides generated by the heating of metal being welded, the welding rod, or its coatings.

Although these types of welding generally produce fumes consisting of aluminum, iron, or zinc oxides, other toxic gases may also be produced in large amounts (Ferry and Ginther 1952/Ex. 1–900; Ferry 1954/Ex. 1–782; Silverman 1956/Ex. 1–1169; Homer and Mohr 1957/Ex. 1–787). The welding of iron metals may give off fumes of manganese, silicate, and various organic binders. Aluminum welding may generate fumes consisting of fluorine, arsenic, copper, silicon, and beryllium (NIOSH 1975h and American Welding Society 1974, both as cited in ACGIH 1986/Ex. 1–3, p. 634). Eighteen different substances, including fluoride, manganese, silicon, titanium, and sodium and potassium silicates, have been measured in the fumes resulting from the welding of mild steel (ACGIH 1986/Ex. 1–3, p. 634). Moreover, there are numerous and undefined additional compounds present in welding fumes whose health effects have not been fully assessed. These include naphthalene, phenol, cresol, dioxane, benzene, pyridine, and aromatic hydrocarbons. Because these unregulated compounds may present additional, unidentified risks, OSHA reasonably determined that exposure to welding fumes is likely to cause adverse health effects at concentrations above 5 mg/m³.

Excessive exposure to welding fumes can cause a variety of disorders, most notably metal fume fever. It has been estimated that 30 to 40 percent of all welders have experienced metal fume fever at some time (Ross 1974, *J. Occup. Med.* 24:125, 127). This disorder, which results from exposure to freshly formed metal fume, results in the appearance of delayed, flu-like symptoms, including dyspnea, coughing, pains in muscles and joints, fever, and chills. Recovery usually requires 1 or 2 days of time away from work. In addition to fume fever, exposure to welding fumes may damage the small airways, causing interstitial pneumonia (Ross 1974). The recent NIOSH Criteria Document (1988) on welding fumes reviews the literature on the health effects of exposure to these fumes. Studies such as those by Ross (1974) and Antti-Poika demonstrate that workers exposed to these fumes at approximately 5 mg/m³ develop welding fume fever, chronic bronchitis, and other respiratory diseases. NIOSH (1988) reported that welders experience excess morbidity and mortality even when they are exposed to welding fumes at concentrations below the limits for many of the individual constituents of the welding emissions (Ex. 8–47, p. iii).

In the prior rulemaking, several commenters asked OSHA to clarify whether the limit applied to exposure samples taken inside or outside of the welding helmet. OSHA responded that it is current Agency policy that welding fumes are to be measured in the breathing zone (inside the welding hood) of the welder as stated in the 1990 Field Operations Manual.

In the earlier rulemaking, NIOSH (Ex. 8–47) stated that welding fumes should be designated as a carcinogen; this view was shared by Dr. James Melius, of the New York State Department of Health (Tr. p. 11–104). In response to these commenters, OSHA states that more information and analysis are needed before this issue can be resolved. Accordingly, OSHA believes that it would be premature to identify these fumes as carcinogens.

OSHA intends that the proposed limit apply to all welding operations where the worker stands at or near the point where the welding takes place. This would include manual, some automatic welding where the rod is fed automatically, and other types of welding where the worker is located at

or near the point of the welding. The reason for OSHA's position is that coverage is needed where there is worker exposure—no matter what the name given to the welding. Fully automatic welding, in which the worker is located away from the welding operation and would have no exposure, is not covered by this limit. For several reaons, this limit is needed in addition to the limits for specific constituents of the welding fume. First, significant risk of material health impairment is associated with this type of welding. Second, individual substance limits have not proven sufficiently protective. Third, so many types of fumes are given off that an overall limit is necessary to help reduce possible synergistic effects. Fourth, for small-business employers and OHSA inspectors, measuring for overall welding fumes is easier and will thus encourage compliance. (However, OSHA PELs for the individual constituents of the fume—e.g., cadmium, lead, other metals—do remain in effect as applicable.)

OSHA preliminarily concludes that a PEL for welding fumes is needed to protect workers in construction, maritime, and agriculture who are involved in the welding of aluminum, iron, or mild steel from the significant risk of metal fume fever and respiratory irritation associated with the generation of welding fumes.

Accordingly, OSHA is proposing an 8-hour TWA limit of 5 mg/m³ for these particular types of welding fumes, measured as total particulate inside the welder's breathing zone. The Agency believes that this limit will substantially reduce the significant risk of material health impairment to which manual metal arc or oxy-acetylene welders of iron, mild steel, or aluminum are exposed in the absence of an OSHA limit in construction, maritime, and agriculture. In addition, promulgation of this limit will make OSHA's PEL for these fumes consistent across all regulated sectors.

ZINC OXIDE (FUME)
CAS: 1314–13–2; Chemical Formula: ZnO
H.S. No. 1437

In construction and maritime, OSHA's permissible exposure limit for zinc oxide fume is 5 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH recommends a 5 mg/m³ TLV®–TWA and also has a TLV®–STEL of 10 mg/m³. NIOSH recommends a 5-mg/m³ 10-hour TWA limit with a 15-minute ceiling of 15 mg/m³. In construction and maritime, OSHA is retaining the 5-mg/m³ 8-hour TWA limit and proposing to add a STEL of 10 mg/m³ for zinc oxide; the Agency is also proposing these limits in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed, which are the limits recently established for this substance in general industry.

Zinc oxide exposures of guinea pigs that lasted only an hour caused a drop in body temperature, followed 6 to 18 hours later by an increase above normal levels (Turner and Thompson 1926/Ex. 1–1124). The animals in the high-exposure group (2500 mg/m³ for 3 to 4 hours) died after exposure.

When heated, zinc oxide produces a white fume. The most prevalent toxic effect of zinc oxide fume is a condition known as "metal fume fever," whose symptoms include chills, fever, muscular pain, nausea, and vomiting (Turner and Thompson 1926/Ex. 1–1124). Studies in the workplace have shown that welders exposed to zinc oxide fume at concentrations of 320 to 580 mg/m³ reported nausea, with the development of chills, shortness of breath, and severe chest pains 2 to 12 hours later. Most workers took approximately 4 days to recover, and some eventually developed pneumonia (Hammond 1944/Ex. 1–981). Other studies have reported the frequent occurrence of chills in workers exposed to zinc oxide at levels as low as 5 mg/m³ (Hickish 1963 and Wall 1970, both as cited in ACGIH 1986/Ex. 1–3, p. 645). Hammond (1944/Ex. 1–981) reported that workers exposed to 8 to 12 mg/m³ of zinc oxide fume did not suffer from metal fume fever. However, subsequent experience has shown that exposures even to a concentration of 5 mg/m³ can cause this syndrome (Hickish 1963 and Wall 1970, both as cited in ACGIH 1986/Ex. 1–3, p. 646). NIOSH's criteria document (1975d) reported that exposures to the fume at the 5 mg/m³ level could cause chronic respiratory effects.

Based on this evidence in humans and animals, OSHA is retaining its 5-mg/m³ 8-hour TWA limit and proposing to add a STEL of 10 mg/m³ for zinc oxide in construction and maritime; the Agency is also proposing these limits in agriculture. OSHA preliminarily concludes that these limits will protect workers in these sectors from the significant risks of metal fume fever and chronic respiratory damage associated with exposure to zinc oxide fumes. These effects constitute material health impairments and are associated both with acute and chronic exposure to zinc oxide fumes. Promulgation of these limits will also make OSHA's PELs for this substance consistent across all regulated sectors.

ZIRCONIUM COMPOUNDS (as Zr)
CAS: 7440–67–7; Chemical Formula: Zr
H.S. No. 1439

The OSHA PEL for zirconium compounds in construction and maritime is an 8-hour TWA of 5 mg/m³, measured as zirconium. There is no limit in agriculture. The ACGIH has established a TLV®–TWA of 5 mg/m³, supplemented by a 10-mg/m³ STEL, for these substances. There is no NIOSH REL. OSHA is retaining the 8-hour TWA and proposing to add a STEL of 10 mg/m³ for these substances in construction and maritime and is also proposing to extend these limits to agriculture. This action would make OSHA's PEL for the compounds of zirconium consistent across all sectors.

Zirconium compounds may be either bluish-black powders or grayish-white lustrous metals. Zirconium metal is used in nuclear technology, photo flash bulbs, vacuum tubes, and in steel manufacture. Compounds of zirconium are used in ceramics, enamels, porcelain, abrasives, and in making refractories. The compounds are also used in high-temperature batteries and as textile water-repellant and tanning agents (ACGIH 1986, p .647). Some of these substances also found use in pesticides. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The toxic effects of inhalation exposures to zirconium compounds include the formation of granulomas, both in the lungs and on the skin. Sax (1984) reports cases of pulmonary granulomas in workers exposed to zirconium aerosols. In laboratory animals, oral toxicity is low (NIOSH 1972b), and inhalation studies conducted in experimental animals for 1 year at levels of 3.5 mg zirconium/m³ dust and mist resulted in limited toxicity (Stokinger 1981c/Ex. 1–1134).

In the earlier rulemaking, NIOSH (Ex. 8–47) recommended that zirconium tetrachloride not be included in this group of zirconium compounds because an animal study by Spiegl et al. (1956, as cited in ACGIH 1986/Ex. 1–3, p. 647) showed effects in animals at 6 mg/m³. NIOSH (Ex. 8–47) recommended that OSHA establish a separate PEL for zirconium tetrachloride. However, because one of the program goals of this rulemaking is to make OSHA's limits consistent across all industry sectors, OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ and a 15-minute STEL of 10 mg/m³ for all zirconium compounds, including zirconium tetrachloride. OSHA preliminarily concludes that the 5 mg/m³ TWA and 10 mg/m³ STEL limits for the zirconium compounds, measured

as zirconium, will protect workers in construction, maritime, and agriculture from the significant risk of pulmonary effects potentially associated with exposure to these substances. The Agency believes that these effects constitute material health impairments and that the proposed PELs are necessary to substantially reduce the risks of these health effects. Promulgation of these limits also will make OSHA's PELs for these compounds consistent across all regulated sectors.

Preliminary Conclusions for This Group of Systemic Toxicants

For the group of systemic toxicants shown in Table C8–1, OSHA preliminarily concludes that the risks associated with occupational exposures are significant. As Table C8–2 shows, the systemic effects caused by such exposures include cancer, liver and kidney damage, testicular damage, fetal poisoning, central nervous system depression, and asthma, each of which constitutes material impairment of health within the meaning of the Act. Affected employees in construction, maritime, and agriculture may experience dizziness, nausea, generalized weakness, respiratory irritation, blood in the urine, chest tightness, hives, and necrosis of the cornea. These effects represent significant impairments of health and functional capacity, and reducing the limits for these systemic toxins will substantially reduce these significant risks. In addition, promulgation of the proposed limits will make OSHA's PELs for these systemic toxins consistent across all regulated sectors.

9. Substances for Which Proposed Limits Are Based on No-Observed-Adverse-Effect Levels

Introduction

For a group of 35 toxic substances, OSHA is proposing limits for the construction, maritime, and agriculture industries based on evidence that these substances cause toxic responses at higher levels but have been shown not to produce adverse effects in animals or exposed populations at the limits being proposed. The proposed PELs for this group of substances have thus been set in reference to no-observed-adverse-effect levels, or NOAELS. These substances are shown in Table C9–1, along with their CAS numbers and H.S. numbers. The 1987–88 ACGIH TLV®, the NIOSH REL (if any), the current OSHA PEL in construction and maritime, and the proposed OSHA PEL in construction, maritime, and agriculture are also shown in Table C9–1. Promulgation of the limits being proposed will make OSHA's PELs for these substances consistent across all regulated sectors.

TABLE C9–1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON A NO-OBSERVED-ADVERSE-EFFECT LEVEL

H.S. number/ chemical name	CAS no.	Current OSHA PEL in construction and maritime[1]	1987–1988 ACGIH TLV® [2]	NIOSH REL[3]	Proposed OSHA PEL in construction, maritime, and agriculture[4]
1029 Atrazine	1912–24–9		5 mg/m³ TWA.		5 mg/m3 TWA.
2014 Azinphos Methyl.	86–50–0	0.2 mg/m³ TWA; skin	0.2 mg/m³ TWA; skin.		0.2 mg/m³ TWA; skin.
1041 Bromacil	314–40–9	–	1 ppm TWA.		1 ppm TWA.
1056 p-tert-Butyltoluene.	98–51–1	10 ppm TWA	10 ppm TWA; 20 ppm STEL.		10 ppm TWA; 20 ppm STEL.
1085 Chlorodifluoro-methane.	75–45–6		1000 ppm TWA; 1250 ppm STEL.		1000 ppm TWA.
1090 o-Chlorotoluene.	95–49–8		50 ppm TWA; 75 ppm STEL.		50 ppm TWA.
1110 Cyclonite	121–82–4		1.5 mg/m³ TWA; 3 mg/m³ STEL skin.		1.5 mg/m³ TWA; skin.
2056 Dibutylphthalate.	84–74–2	5 mg/m³ TWA	5 mg/m³ TWA.		5 mg/m³ TWA.
2059 1,2-Dichloroethylene.	540–59–0	200 ppm TWA	200 ppm TWA.		200 ppm TWA.
1117 2,6-di-tert-butyl-p-cresol.	128–37–0	–	10 mg/m³ TWA.		10 mg/m³ TWA.
1134 Diethanolamine.	111–42–2		3 ppm TWA		3 ppm TWA.
1136 Diethyl phthalate.	84–66–2		5 mg/m³ TWA.		5 mg/m³ TWA.
1144 Dinitolmide	148–01–6		5 mg/m³ TWA.		5 mg/m³ TWA.
1147 Diphenylamine.	122–39–4	10 mg/m³ TWA	10 mg/m³ TWA.		10 mg/m³ TWA.
1153 Diuron	330–54–1		10 mg/m³ TWA.		10 mg/m³ TWA.
2073 Endrin	72–20–8	0.1 mg/m³ TWA	0.1 mg/m³ TWA; skin.		0.1 mg/m³ TWA; skin.
2099 LPG	68476–85–7	1000 ppm TWA	1000 ppm TWA.		1000 ppm TWA.
1249 Methyl acetate.	79–20–9	200 ppm TWA	200 ppm TWA; 250 ppm STEL.		200 ppm TWA; 250 ppm STEL.
1275 Metribuzin	21087–64–9		5 mg/m³ TWA.		5 mg/m³ TWA.

TABLE C9–1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON A NO-OBSERVED-ADVERSE-EFFECT LEVEL—Continued

H.S. number/ chemical name	CAS no.	Current OSHA PEL in construction and maritime[1]	1987–1988 ACGIH TLV® [2]	NIOSH REL[3]	Proposed OSHA PEL in construction, maritime, and agriculture[4]
2121 1-Nitropropane.	108–03–2	25 ppm TWA	25 ppm TWA		25 ppm TWA.
1297 Oil mist (mineral).	8012–95–1	5 mg/m³ TWA	5 mg/m³ TWA; 10 mg/m³ STEL.		5 mg/m³ TWA.
1312 Petroleum distillates (naphtha).	8002–05–9	[4]	400 ppm TWA.	350 mg/m³ TWA; 1800 mg/m³ ceiling (15–min).	400 ppm TWA.
1327 m-Phthalodinitrile.	626–17–5		5 mg/m³ TWA.		5 mg/m³ TWA.
1332 Platinum, metal.	7440–06–4		1 mg/m³ TWA.		1 mg/m³ TWA.
1346 Resorcinol	108–46–3		10 ppm TWA; 20 ppm STEL.	—	10 ppm TWA; 20 ppm STEL.
2139 Rotenone (commercial).	83–79–4	5 mg/m³ TWA	5 mg/m³ TWA.		5 mg/m³ TWA.
2146 Sulfur hexafluoride.	2551–62–4	1000 ppm TWA	1000 ppm TWA.		1000 ppm TWA.
1382 Tantalum, metal dust and oxide.	7440–25–7	5 mg/m³ TWA	5 mg/m³ TWA; 10 mg/m³ STEL.		5 mg/m³ TWA.
2153 1,1,2,2-Tetrachloro-1,2,-difluoroethane.	76–12–0	500 ppm TWA	500 ppm TWA.		500 ppm TWA.
2154 1,1,1,2–Tetrachloro-2,2-difluoroethane.	76–11–9	500 ppm TWA	500 ppm TWA.		500 ppm TWA.
2164 Trifluoromonobromomethane.	75–63–8	1000 ppm TWA	1000 ppm TWA.		1000 ppm TWA.
1410 Trimethyl phosphite.	121–45–9		2 ppm TWA		2 ppm TWA.
1415 Triphenyl amine.	603–34–9		5 mg/m³ TWA.		5 mg/m³ TWA.
2165 Triphenyl phosphate.	115–86–6	3 mg/m³ TWA	3 mg/m³ TWA.		3 mg/m³ TWA.
1418 Uranium (insoluble compounds).	7440–61–1	0.2 mg/m³ TWA	0.2 mg/m³ TWA; 0.6 mg/m³ STEL.		0.2 mg/m³ TWA; 0.6 mg/m³ STEL.

[1] OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time; OSHA's PELs do not currently apply in Agriculture.

[2] The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minutes limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

[3] NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

[4] Because the composition of this material varies greatly, the ACGIH recommends that the content of benzene, other aromatics, and additives should be determined to arrive at the appropriate TLV®.

Description of the Health Effects

The substances included in this group cause a wide range of adverse health effects in both animals and humans. Unlike most of the other groupings described in this preamble, these toxicants do not affect the same target organ or system: Some are central nervous system depressants, several are upper respiratory tract irritants, and still others have their primary effect on the heart, liver, or kidney. The commonality among these otherwise diverse substances is that apparent no-observed-adverse-effect levels (NOAELs) have been defined for all of them; that is, there are data demonstrating that overt toxic effects caused by exposure to these substances at higher levels do not occur below a certain "no-observed-adverse-effect" level. Permissible exposure limits have been developed for these chemicals on the basis of these no-observed-adverse-effect levels. Table C9–2 shows the health effects that have been observed in humans or animals that are believed likely to occur in humans who are exposed to these substances.

TABLE C9–2.—HEALTH EFFECTS ASSOCIATED WITH SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON NO-OBSERVED-ADVERSE-EFFECT LEVELS

H.S. number/chemical name	CAS No.	Health effects observed in animals	Health effects observed/projected in humans
1029 Atrazine	1912–24–9	Irritation, ataxia, dyspnea, convulsions, liver damage, cancer.	Irritation, systemic effects, contact dermatitis.
2014 Azinphos methyl	8650–0	Cholinesterase inhibition	Cholinesterase inhibition.
1041 Bromacil	314–40–9	Irritation, thyroid damage	Thyroid effects, irritation.

TABLE C9-2.—HEALTH EFFECTS ASSOCIATED WITH SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON NO-OBSERVED-ADVERSE-EFFECT LEVELS—Continued

H.S. number/chemical name		CAS No.	Health effects observed in animals	Health effects observed/projected in humans
1056	p-tert-Butyl-toluene	98-51-1	Central nervous system depression, irritation, liver and kidney changes.	Nasal irritation, nausea, headache, weakness.
1085	Chlorodifluoromethane	75-45-6	Central nervous system effects, cardiac sensitization, possible carcinogenicity.	Central nervous system effects, cardiac sensitization.
1090	o-Chlorotoluene	95-49-8	Weakness, vasodilation, incoordination, convulsions, irritation.	Neuropathic effects, irritation.
1110	Cyclonite	121-82-4	Convulsions, death	Central nervous system effects, convulsions, unconsciousness, death.
2056	Dibutylphthalate	84-74-2	Irritation, central nervous system effects, reproductive effects-.	Irritation, central nervous system effects, reproductive effects.
1117	2,6-Di-tert-butyl-p-cresol	128-37-0	Irritation, lung and liver damage, cancer promotion.	Irritation, skin sensitization.
2059	1,2-Dichloroethylene	540-59-0	Lung, liver, blood effects	Narcosis, irritation.
1134	Diethanolamine	111-42-2	Irritation, liver and kidney damage	Irritation.
1136	Diethyl phthalate	84-66-2	Irritation, central nervous system effects, liver damage.	Central nervous system effects, polyneuritis,-vestibular dysfunction.
1144	Dinitolmide	148-01-6	Liver changes	Hepatic effects.
1147	Diphenylamine	122-39-4	Liver, kidney, spleen changes, developmental effects.	Tachycardia, bladder symptoms, hypertension, eczema, eye and mucous -membrane irritation.
1153	Diuron	330-54-1	Anemia, methemoglobinemia, spleen and liver effects, teratogenic effects.	Anemia, methemoglobinemia, eye, skin, and respiratory irritation.
2073	Endrin	72-20-8	Reproductive, developmental effects	Convulsions, brain damage.
2099	LPG	68476-85-7	Central nervous system depression	Drowsiness, headache,-vomiting.
1249	Methyl acetate	79-20-9	Eye and skin irritation, CNS depression	Eye, mucous membrane irritation, chest tightness, narcosis, destruction of optic nerve.
1275	Metribuzin	21087-64-9	CNS depression, thyroid and liver changes	Narcosis, thyroid and liver damage.
2121	1-Nitropropane	108-03-2	Reproductive, developmental effects	Convulsions.
1297	Oil mist (mineral)	8012-95-1	Eye, skin, and respiratory irritation	Lung irritation, pneumonitis, photosensitization, dermatitis.
1312	Petroleum distillates (naphtha)	8030-30-6	Motor incoordination, convulsions	Eye and throat irritation, CNS depression.
1327	m-Phthalodinitrile	626-17-5	Skin irritation	Skin irritation.
1332	Platinum, metal	7440-06-4	Tumorigen by implantation	
1346	Resorcinol	108-46-3	Eye, skin irritation	Irritation, systemic effects (methemoglobinemia, cyanosis) pigmentary dermatosis.
2139	Rotenone (commercial)	83-79-4	Irritation, central nervous system effects, liver and kidney damage, cancer.	Irritation, nausea, vomiting, gastro-intestinal effects.
2146	Sulphur hexafluoride	2551-64-4	Central nervous system effects, asphyxiation	Central nervous system effects, asphyxiation.
1382	Tantalum, metal dust and oxide	7440-25-7	Bronchitis, pneumonitis, hyperemia, tumorigen by implantation -.	Pulmonary effects.
2153	1,1,2,2-Tetrachloro-2,2-difluoroethane	76-12-0	Central nervous system depression; blood and liver changes.	Dermatitis.
2154	1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	Irritation, narcosis	
2164	Trifluoromonobromomethane	75-63-8	Cardiac irregularities, seizures	Cardiac irregularities.
1410	Trimethyl phosphite	121-45-9	Teratogenicity, eye and skin irritation, lung damage.	Lung, skin, eye irritation.
1415	Triphenyl amine	603-34-9	Skin irritation	Skin irritation.
2165	Triphenyl phosphate	115-86-6	Cholinesterase inhibition	Cholinesterase inhibition.
1418	Uranium (insoluble compounds)	7440-61-1	Kidney damage, blood disorders	Kidney damage, blood effects.

Dose-Response Relationships and No-Observed-Adverse-Effect Levels

The concept of setting limits based on a NOAE level assumes that there is a concentration at which repeated and prolonged exposure to a toxic substance causes no observable adverse effect in the majority of workers. A similar concept is widely used by Federal agencies, such as the Food and Drug Administration and the Environmental Protection Agency, to set contaminant tolerances, acceptable daily intake values, and other limits.

All of the proposed limits for this group of substances have been set at or below a no-observed-adverse-effect or minimal effect level, regardless of the specific health endpoint against which protection is sought. At least in part, the exposure limits for the 35 substances listed in Table C9-1 are based on data indicating that these limits are already being maintained in work environments and that these levels are both feasible and unlikely to be associated with adverse health effects or signs and symptoms in exposed employees. The proposed limits will also protect against any effects these substances would cause through exposure to higher concentrations. Even at relatively low exposure concentrations, many of the substances in this group cause effects that can be severe and irreversible.

The following discussions describe OSHA's preliminary findings for the substances in this group and illustrate the material impairments of health potentially faced by workers exposed to these toxicants in the construction, maritime, and agriculture industries.

ATRAZINE

CAS: 1912-24-9; Chemical Formula: $C_8H_{14}ClN_5$

H.S. No. 1029

In construction, maritime, and agriculture, OSHA has no limit for atrazine. The ACGIH has a TLV®-TWA of 5 mg/m³; NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the limit being proposed for atrazine in these sectors. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for atrazine in the construction, maritime, and agriculture industries. This is the limit recently established for atrazine in general industry.

Atrazine is a white, crystalline compound. This substance is a herbicide for grasses, broadleaf weeds, corn, sorghum, and sugarcane and is also used in industrial and commercial

herbicidal applications (HSDB 1990). Atrazine is the best known of the s-triazine herbicides. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Atrazine is a mild irritant of the eyes and skin in humans and animals; at acutely toxic doses, this substance causes ataxia, dyspnea, and convulsions in animals (Hayes 1982, p. 562). The LC_{50} in rats is 5200 mg/m³ for 4 hours, the oral LD_{50} in the same species is 672 mg/kg, and the dermal LD_{50} in rabbits is 7500 mg/kg (RTECS 1990). Applied to the skin of rats, atrazine caused marked erythema but no systemic toxicity (Hayes 1982, p. 562). Instilled into the eyes of rabbits, this substance caused severe irritation (RTECS 1990). In a subacute experiment in rats given atrazine by gavage at doses of 100, 200, or 400 mg/kg/day for 14 days or at 600 mg/kg/day for 7 days, a significant and dose-dependent increase in liver weight was seen in all groups; at autopsy, histopathological changes were seen in the livers of all but the 100-mg/kg group (Santa Maria, Moreno, and Lopez-Campos 1987, in J. Appl. Toxicol. 7(6):373–378). Atrazine was embryotoxic when administered to rats in high doses (800–2000 mg/kg) on days 3, 6, and 9 of gestation; no effects were seen at lower concentrations (Clayton and Clayton 1981, p. 2775). A recent study in rats and rabbits (Infurna, Levy, Meng et al. 1988, in J. Toxicol. Environ. Hlth. 24(3):307–320) indicates that atrazine is not teratogenic in these species at doses below those causing maternal toxicity. Atrazine has been tested for carcinogenicity in mice and rats. In mice, 21.5 mg/kg/day was administered by gavage from days 7 to 28 of life, and no increase in the incidence of tumors was seen (Innes et al. 1969, in EPA Health Advisory 1987). A recent study (Pinter, Torok, Surjan et al. 1989, in Magy. Onkol. [Hungarian Oncology] 33(4):211–221), however, found dose-dependent increases in all malignancies in rats of both sexes, benign breast tumors in males, and uterine carcinomas in females, confirming atrazine's carcinogenicity in animals.

In humans, there is one report of severe contact dermatitis in a farmer who sprayed atrazine; patch testing confirmed atrazine's involvement in this episode (Schlichter and Bent 1972, in J. Iowa Med. Soc. 62:419–420). Atrazine has also been found to induce unscheduled DNA synthesis in human cells, which suggests a potential genetic hazard in humans (Loprieno et al. 1980, Mutat. Res. 74(3):2500). The possible role of triazine herbicides in the etiology of ovarian cancer in women was evaluated in a recent case-referent study (Donna, Crosignani, Robutti et al. 1989, Scand. J. Work Environ. Hlth. 15(1):47–53). These authors concluded that previous exposure to triazines was associated with a significant relative risk of 2.7 for ovarian neoplasms.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for atrazine in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect employees in these sectors from the significant risk of neuropathic and metabolic effects associated with exposure to atrazine. OSHA considers these effects material health impairments and believes that the proposed PEL is necessary to substantially reduce these significant risks. In addition, promulgation of this PEL will make OSHA's limit for atrazine consistent across all regulated sectors.

AZINPHOS–METHYL

CAS: 86–50–0; Chemical Formula: $C_{10}H_{12}N_3O_3PS_2$

H.S. No. 2014

OSHA's PEL for azinphos methyl in general industry, construction, and maritime workplaces is 0.2 mg/m³ as an 8-hour TWA. OSHA also has a skin notation for this substance. There is no REL in agriculture. The ACGIH TLV®–TWA is 0.2 mg/m³, with a skin notation; NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed for azinphos methyl. OSHA is proposing an 8-hour TWA PEL of 0.2 mg/m³, and a skin notation, for this substance in agriculture. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

In pure form, azinphos methyl is a colorless or white crystalline substance, although the technical grade is a brown, waxy solid (Hayes 1982, p. 358). This substance is a widely used nonsystemic insecticide and acaricide (Hayes 1982, p. 358). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Azinphos methyl belongs to the organophosphate class of pesticides. It is an anticholinesterase agent which inhibits cholinesterase, causing acetylcholine to accumulate at synapses in the nervous system, skeletal muscle, and secretory glands. Azinphos methyl exerts this effect by inhalation, percutaneous absorption, or ingestion. The oral LD_{50} in rats is 7 mg/kg, and the LC_{50} in the same species is 69 mg/m³ for 1 hour (RTECS 1990). The dermal LD_{50} in rats is 220 mg/kg (RTECS 1990). Rats fed 20 ppm azinphos methyl in their diets for 60 days showed inhibition of brain and red blood cell cholinesterase (ACGIH 1986, p. 46). Rats inhaling this substance at a concentration of 4.7 mg/m³ for 6 hours/day, 5 days/week for 12 weeks showed both red blood cell and plasma cholinesterase inhibition; inhalation of a 1.24-mg/m³ concentration on the same regimen was without effect (Hayes 1982, pp. 358–359). Azinphos methyl has caused developmental and reproductive effects when administered orally to pregnant rats and mice (RTECS 1990). This substance also is mutagenic in mammalian test systems (RTECS 1990).

Overexposure to azinphos-methyl causes respiratory and ocular effects (including wheezing, a feeling of tightness in the chest, laryngeal spasms, excessive salivation, cyanosis, blurring of vision, lacrimation, runny nose, and frontal headache) (Proctor, Hughes, and Fischman 1988, p. 86). If this substance is accidentally ingested, gastrointestinal symptoms, including nausea, vomiting, cramps, and diarrhea occur within 2 hours of ingestion. Absorption of azinphos methyl through the skin causes localized sweating and muscular fasciculation, indicating localized poisoning (Proctor, Hughes, and Fischman 1988, p. 86).

Regardless of the route of exposure, azinphos methyl produces muscular weakness, twitching, convulsions, coma, loss of reflexes, and paralysis of the respiratory muscles. If the victim does not die during the acute episode, complete recovery may occur within a week, although the individual is likely to remain hypersensitive to anticholinesterase agents for some period of time thereafter (Proctor and Hughes 1978, p. 114). Long-term exposure to concentrations of azinphos methyl that are too small to cause acute symptoms may eventually lead to systemic poisoning (Proctor and Hughes 1978, p. 114).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL for azinphos methyl of 0.2 mg/m³, with a skin notation for those agricultural uses of this substance that are not covered by FIFRA. The Agency believes that, in the absence of a PEL, workers in agricultural establishments may be subject to the significant risk of cholinesterase inhibition posed by exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

BROMACIL
CAS: 314–40–9; Chemical Formula:
$C_8H_{13}BrN_2O_2$
H.S. No. 1041

In construction, maritime, and agriculture, OSHA has no permissible exposure limit for bromacil. The ACGIH's TLV®-TWA for bromacil is 1 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. The Agency is proposing an 8-hour TWA PEL of 1 ppm for this substance, which is consistent with the PEL recently established for bromacil in general industry.

Bromacil is a white crystalline solid that is used as a herbicide in commercial, industrial, and agricultural applications (HSDB 1989). This substance is odorless (HSDB 1989). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Bromacil is an irritant of the eyes, mucous membranes, and upper respiratory tract. The oral LD_{50} in rats is 641 mg/kg (RTECS 1990). All rats survived inhalation of a bromacil concentration of 4800 mg/m³ for 4 hours (ACGIH 1986, p. 64). The dermal LD_{50} in rabbits is reported to be greater than 5000 mg/kg (Clayton and Clayton 1981, p. 2749). Applied to the skin of guinea pigs, bromacil caused mild to moderate skin irritation (Clayton and Clayton 1981, p. 2749). Instilled into rabbit eyes, this substance caused reversible conjunctival irritation but no corneal damage (Grant 1986, p. 536). Male rats were given bromacil 5 days/week for 2 weeks at oral doses of 650, 1035, or 1500 mg/kg; five of six rats died after five doses at the highest level, one died after 10 doses at 1035 mg/kg, and none died at the lowest dose. At autopsy, focal cell hypertrophy and hyperplasia of the liver were seen (NRC 1977, Drinking Water and Health, p. 540). Rats were fed bromacil at 50, 500, 2500, 5000, 6000, or 7000 ppm for 90 days. Rats in the 5000 ppm or higher groups developed hyperthyroidism (NRC 1977, p. 540). In another study in rats fed bromacil at 50, 250, or 1250 ppm for 2 years, rats in the 1250-ppm group developed hyperplasia of the thyroid; one female rat in the 1250-ppm group developed a follicular adenoma (NRC 1977, p. 541).

In 2-year feeding studies in rats and dogs, no-observed-adverse-effect dietary concentrations were determined to be 12.55 mg/kg/day (1.25 ppm) for rats and 1250 for dogs (Sherman and Kaplan 1975/Ex. 1–572).

Bromacil is known to cause eye, nose, and throat irritation in workers handling formulations containing this substance. Skin irritation has also been reported (HSDB 1990; Hazardous Substance Fact Sheet 1985). No reports of systemic toxicity caused by exposure to bromacil appear in the literature.

Based on this evidence, OSHA is proposing an 8-hour TWA permissible exposure limit of 1 ppm for bromacil in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect employees against the significant risk of thyroid damage and irritation, both material health impairments that occur with exposure to this substance. OSHA believes that the proposed limit is necessary to substantially reduce this risk among workers in these sectors. In addition, promulgation of this PEL will make OSHA's limit for bromacil consistent across all regulated sectors.

p-tert-BUTYLTOLUENE
CAS: 98–51–1; Chemical Formula:
$(CH_3)_3C–C_6H_4CH_3$
H.S. No. 1056

OSHA's PEL for p-tert-butyltoluene in construction and maritime is an 8-hour TWA PEL of 10 ppm; the Agency is proposing to retain this limit in these industries, to supplement it with a 20-ppm STEL, and to extend both the 8-hour TWA and the STEL to workplaces in agriculture. The ACGIH has a TLV®-TWA of 10 ppm and a TLV®-STEL of 20 ppm for p-tert-butyltoluene. NIOSH has no REL, but concurs (Ex. 8–47, Table N1) with the limit being proposed. These are the limits recently established for p-tert-butyltoluene in general industry.

p-tert-Butyltoluene is a colorless liquid with an aromatic, gasoline-like odor. This substance is used as a solvent for resins, in the manufacture of pharmaceuticals, and as a chemical intermediate (HSDB 1989).

p-tert-Butyltoluene is an irritant of the eyes, mucous membranes, and upper respiratory tract with acute exposure and a liver and kidney toxin with chronic exposure. The oral LD_{50} in rats is 1800 mg/kg, the LC_{50} in the same species is 165 ppm for 8 hours, and the dermal LD_{50} in rabbits is 19,600 mg/kg (RTECS 1990). In contact with the eyes or skin of rabbits, p-tert-butyltoluene caused mild irritation (RTECS 1990; Grant 1974, p. 212). Acutely poisoned animals showed staggering, difficult breathing, and paralysis before death; some animals showed signs of eye and upper respiratory tract irritation and others convulsed (Proctor, Hughes, and Fischman 1988, p. 110; RTECS 1990). Rats repeatedly exposed to a 50-ppm concentration of p-tert-butyltoluene showed liver and kidney changes and damage to the spinal cord at autopsy (Hine, Ungar, Anderson, et al. 1954/Ex. 1–983). The no-effect level in rats exposed daily for 26 weeks was 25 ppm (Gerarde 1960a, in ACGIH 1986, p. 85/Ex. 1–3).

In humans, nasal irritation, nausea, malaise, headache, and weakness have been seen with exposure to p-tert-butyltoluene at concentrations between 5 and 160 ppm (Hine, Ungar, Anderson et al. 1954/Ex. 1–983). At a concentration of 80 ppm, a moderate degree of eye irritation was reported by these volunteers. These authors also noted cardiovascular effects, as well as effects on the central nervous system, the skin, and the respiratory tract. Half of the subjects exposed to p-tert-butyltoluene developed tremor and anxiety, and 25 percent of exposed individuals showed evidence of chemical contact irritation of the respiratory tract (Hine, Ungar, Anderson et al. 1954/Ex. 1–983).

Based on this evidence, OSHA is proposing to retain its 8-hour TWA of 10 ppm for p-tert-butyltoluene in the construction and maritime industries, to add a STEL of 20 ppm, and to extend both the TWA and STEL to agricultural workplaces. The Agency preliminarily concludes that the STEL and TWA will protect workers in these sectors against the significant risks of irritation and central nervous system effects associated with exposure to this substance. The Agency believes that these adverse health effects constitute material impairments of health and that the proposed limits are necessary to reduce these significant occupational risks substantially. In addition, promulgation of the proposed limits will make OSHA's PELs for p-tert-butyltoluene consistent across all regulated sectors.

CHLORODIFLUOROMETHANE
CAS: 75–45–6; Chemical Formula:
$CHClF_2$
H.S. No. 1085

OSHA currently has no limit for chlorodifluoromethane (Freon 22) in the construction, maritime, or agriculture industries. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed by OSHA. The ACGIH has a TLV® of 1000 ppm as a TWA and 1250 ppm as a STEL. The Agency is proposing an 8-hour TWA PEL of 1000 ppm for this substance; this is the limit recently established for chlorodifluoromethane in general industry.

Chlorodifluoromethane is a colorless, nearly odorless, nonflammable gas. This substance is used as an aerosol propellant, a refrigerant, a foam-blowing agent, and a solvent (HSDB 1990).

Exposure to very high atmospheric levels of Freon 22 causes stimulation and then depression of the central nervous system, followed by asphyxiation. The LC_{50} in rats is 350,000 ppm for 15 minutes (RTECS 1990). Rats and guinea pigs exposed to concentrations of 75,000 to 100,000 ppm over a 2-hour period exhibited excitation and disequilibrium; narcosis was observed at 200,000 ppm and mortality at 300,000 and 400,000 ppm (Weigand 1971/Ex. 1–1102). In rabbits, the minimum concentration altering reflex responses was 11,000 to 20,000 ppm (Karpov 1963, as cited in ACGIH 1986/Ex. 1–3, p. 127). Studies in guinea pigs reported that no animals died as a result of exposure for 2 hours to a concentration of 200,000 ppm, but mild clinical changes were observed at 50,000 ppm and minimal effects were seen at 25,000 ppm (Underwriters' Laboratories, Inc. 1940, as cited in ACGIH 1986/Ex. 1–3, p. 127). Karpov (1963, as cited in ACGIH 1986/Ex. 1–3, p. 127) reported the results of a 10-month study on the effects of exposure by inhalation of chlorodifluoromethane in rats, guinea pigs, dogs, and cats who were exposed 6 hours/day, 5 days/week to 2,000 or 14,000 ppm; alterations in weight, endurance, and blood chemistry, and pathology of the lungs, central nervous system, heart, liver, kidney, and spleen were seen in rats, mice, and rabbits exposed to 14,000 ppm. At a concentration of 2000 ppm, rats and mice showed no effects (Karpov 1963, as cited in ACGIH 1986/Ex. 1–3, p. 127). In dogs, cardiac sensitization was not observed at the 25,000-ppm level but did occur at the 50,000-ppm level (Reinhardt, et al. 1971/ Ex. 1–78). Rats and mice were exposed to chlorodifluoromethane at concentrations of 1000 or 5000 ppm for 4 hours/day, 5 days/ week for 104 weeks (rats) or 78 weeks (mice). No carcinogenic responses were seen in animals of either sex or species (Maltoni, Lefemine, Tovoli, et al. 1988, in Annals NY Acad. Sci. 534:261–282). In a study in rats given chlorodifluoromethane orally, however, an increase in tumor incidence was seen, and a marginal increase in the incidence of subcutaneous fibrosarcomas and Zymbal-gland tumors occurred in male rats exposed to a high concentration of chlorodifluoromethane. The International Agency for Research on Cancer concluded in 1987 that the evidence for the carcinogenicity of chlorodifluro-methane in animals was limited (IARC 1987, Suppl. 7, p. 149).

In humans, exposure to chlorodifluoromethane causes central nervous system effects, including dizziness, disorientation, incoordination, nausea, vomiting, and narcosis (Braker and Mossman 1980, p. 170). In contact with the skin, liquid chlorodifluoromethane causes skin irritation and frostbite (Braker and Mossman 1980, p. 170). A study of pathology laboratory workers exposed to high short-term concentrations (300 ppm) of this substance while preparing frozen sections showed an association between episodes of heart palpitations and exposure and also noted that several of these young male workers had chronic arrhythmias (Rom 1983, p. 361). A study of 539 refrigeration workers occupationally exposed to a number of chlorofluorocarbons, including chlorodifluoromethane, for periods ranging from 6 months to 20 years was inconclusive (IARC 1987, Suppl. 7, p. 149).

Based on this evidence, the Agency is proposing an 8-hour TWA limit of 1000 ppm for chlorodifluoromethane in the construction, maritime, and agriculture industries. OSHA preliminarily concludes that this limit will provide protection for workers in these sectors against the central nervous system effects asphyxiant effects, and cardiac sensitization effects, that are associated with exposure to this substance. The Agency believes that this limit is necessary to reduce substantially these significant risks of material health impairment. In addition, promulgation of this PEL will make OSHA's limit for chlorodifluoromethane consistent across all regulated sectors.

O-CHLOROTOLUENE

CAS: 95–49–8; Chemical Formula: C_7H_7Cl

H.S. No. 1090

OSHA has no limit for o-chlorotoluene in the construction, maritime, and agriculture industries. The ACGIH has a TLV®–TWA of 50-ppm and a 75-ppm TLV®–STEL for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a 50-ppm 8-hour TWA for o-chlorotoluene. This is the limit recently established for this substance in general industry.

O-Chlorotoluene is a colorless liquid. It is used as a solvent and an ingredient in pharmaceuticals, dyes, and rubber formulations (Hazardous Substance Fact Sheet 1985).

O-Chlorotoluene is an irritant of the eyes, mucous membranes, and upper respiratory tract. The oral LD_{50} in rats is greater than 1600 mg/kg (Ely 1971, in EPA 1989). The oral LD_{50} in mice and rats are 4400 and 5700 mg/kg, respectively; acutely poisoned animals showed incoordination, convulsions, and rapid breathing before death (Pis'ko et al. 1981, in EPA 1989). When the undiluted material was administered orally in doses ranging from 50 to 100 mg/kg, rats experienced weakness and vasodilation at the higher dose levels, but all survived and were gaining weight 2 weeks later (ACGIH 1986/Ex. 1–3, p. 137). When the undiluted liquid was applied to the skin of guinea pigs in doses of 1 ml/kg or 10 ml/kg for 24 hours, moderately severe skin irritation occurred at both dose levels. The guinea pigs lost weight over the 2-week period following application, indicating percutaneous absorption of this substance; however, no dermal LD_{50} has been established for o-chlorotoluene. One drop of undiluted material in the eyes of rabbits produced a delayed erythema of the conjunctiva, although this effect cleared after 14 days (Ely 1971, as cited in ACGIH 1986/Ex. 1–3, p. 137). Rats exposed to an atmosphere of 21 mg/L (or about 4000 ppm) for 6 hours exhibited loss of coordination within 1.5 hours, prostration at 1.75 hours, and tremors at 2 hours. At 14,000 ppm, rats showed loss of coordination, vasodilation, labored respiration, narcosis, and eye tearing: however, rats exposed to 4000 or 14,000 ppm survived. At 175,000 ppm, one of three rats died (Ely 1971, as cited in ACGIH 1986/Ex. 1–3, p. 137). Rats given 114 or 570 mg/kg/day o-chlorotoluene by gavage for 2 months showed dose-dependent effects on hemopoiesis, liver, kidneys, and the central nervous system (Pis'ko 1981, in EPA 1989). Sub-chronic studies in animals given oral doses (5, 20, or 80 mg/kg/day in dogs; 20, 80, or 320 mg/kg in rats) of o-chlorotoluene for 97 days (dogs) or 104 days (rats) reported no treatment-related changes in dogs; rats showed decreases in body weight and increases in adrenal weight (two high-dose groups) and in heart and testes weight (in the highest dose group only) (Gibson et al. 1974a and b, in EPA 1989).

Although no poisonings caused by o-chlorotoluene have been reported in humans, this substance is expected to cause irritation and central nervous system effects in exposed individuals on the basis of effects seen in animals.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 50 ppm for o-chlorotoluene in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risks of eye and skin irritation and systemic poisoning associated with exposure to o-chlorotoluene. OSHA considers these adverse effects material impairments of health and believes that the proposed

PEL is necessary to reduce substantially these risks. In addition, promulgation of the proposed PEL will make OSHA's limit for o-chlorotoluene consistent across all regulated sectors.

CYCLONITE (RDX)
CAS: 121–82–4; Chemical Formula:
$C_3H_6N_6O_6$
H.S. No. 1110

OSHA's permissible exposure limit for cyclonite (RDX) in the construction and maritime industries is 10 mg/m³ as an 8-hour TWA and 20 mg/m³ as a STEL. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limit. The 1987–1988 ACGIH assigned an 8-hour TLV®–TWA limit of 1.5 mg/m³ and a TLV®–STEL of 3 mg/m³, with a skin notation, to this substance. OSHA is proposing a 1.5-mg/m³ 8-hour TWA PEL for cyclonite, and a skin notation; this is the limit recently established for cyclonite in general industry.

Cyclonite is a white, crystalline powder. This substance is used as an explosive and a rat poison. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Cyclonite is toxic to the central nervous system in humans and animals. The oral LD_{50} in rats is 100 mg/kg (RTECS 1990). Acutely poisoned animals showed labored breathing and convulsions before death (Cholakis, Wong, Van Goethen et al. 1980, in Midwest Research Institute report; Burdette, Cook, and Dyer 1988, Toxicol. Appl. Pharmacol. 92(3):436–444). Rats given oral doses of cyclonite ranging from 0 to 60 mg/kg were monitored for 8 hours after dosing. An increase in the incidence of spontaneous and audiogenic seizures was observed at doses as low as 10 to 12.5 mg/kg, and significant seizure activity was induced by doses of 25 mg/kg and above. The authors of this study concluded that cyclonite is a potent convulsant. Rats fed 40 mg/kg/day for 90 days showed decreased weight gain but no other signs of toxicity, while 17 of 35 rats fed 50 mg/kg/day died (Cholakis et al. 1980; Clayton and Clayton 1981, p. 4197).

In industry, reports of poisonings as a result of occupational exposures to cyclonite were widespread as late as 1962 (Kaplan, Berghout, and Peczenik 1965/Ex. 1–338). Occupational overexposure causes central nervous system effects, including nausea, vomiting, convulsions, and unconsciousness. These clinical signs result from oral and inhalation exposures, and from skin absorption (Kaplan, Berghout, and Peczenik 1965; Sunderman et al. 1944, as cited in ACGIH 1986/Ex. 1–3, p. 162; von Oettingen, Donahue, Yagoda et al. 1949/Ex. 1–398). Convulsions have occurred in cyclonite workers without warning or, in some cases, after 1 or 2 days of insomnia and restlessness. Seizures were followed by amnesia, fatigue, weakness, and malaise, but complete recovery followed (Clayton and Clayton 1981, p. 4197). In an epidemiological study, Hathaway and Buck (1977/Ex. 1–418) reported that 8-hour TWA exposures to cyclonite at concentrations ranging up to 1.57 mg/m³ and averaging 0.28 mg/m³ caused no identifiable exposure-related abnormalities.

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 1.5 mg/m³ TWA and a skin notation for cyclonite in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that these limits are necessary to protect workers in these sectors from the significant risk of these exposure-related central nervous system effects, which constitute material health impairments. In addition, promulgation of the limit will make OSHA's PEL for cyclonite consistent across all regulated sectors.

DIBUTYL PHTHALATE
CAS: 84–74–2; Chemical Formula:
$C_6H_4(CO_2C_4H_9)_2$
H.S. No. 2056

In general industry, construction, and maritime, OSHA's permissible exposure limit for dibutyl phthalate is 5 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 5 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 5 mg/m³ for dibutyl phthalate in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Dibutyl phthalate is a colorless, oily liquid with a weak aromatic odor. It is used as an insect repellant in clothing and as a plasticizer, elastomer, solvent, textile lubricating agent, and perfume fixative and in paper coatings and explosives (NIOSH/OSHA Occupational Health Guideline 1981, p. 1; Hawley's 1987, p. 372). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Dibutyl phthalate causes primary irritation and central nervous system effects in humans and animals; it also causes reproductive effects in animals. The oral LD_{50} in various species are 8000 mg/kg in rats, 5289 mg/kg in mice, and 10,000 mg/kg in guinea pigs (RTECS 1990). The LC_{50} in mice is 25,000 mg/m³ for 2 hours (RTECS 1990). Mice exposed to a concentration of 250 mg/m³ dibutyl phthalate for 2 hours showed signs of eye and upper respiratory tract irritation; exposure to higher (not further specified) concentrations caused difficult breathing, ataxia, paresis, convulsions, and death due to respiratory paralysis (Varonin 1973, in ACGIH 1986, p. 176). Rats exposed to 0.5 mg/m³ concentrations of dibutyl phthalate mist 6 hours/day for 6 months gained weight more slowly and had greater lung and brain weights at autopsy than controls (Kawano 1980, in Proctor, Hughes, and Fischman 1988, p. 183). Rats given biweekly doses of dibutyl phthalate in oil at 1ml/kg of body weight for 6 weeks showed no adverse effects at autopsy, and a second group of rats maintained on this regimen for 1.5 years also displayed no adverse effects (Bornmann et al. 1956, in ACGIH 1986, p. 176). In female rats given 2520 mg/kg or 12,600 mg/kg dibutyl phthalate on days 1 through 21 of pregnancy, reproductive and embryotoxic effects were seen (RTECS 1990). Several species of animals were fed 2 g/kg of dibutyl phthalate for 10 days; there was evidence of testicular injury in mice and guinea pigs but not in hamsters (Gangolli 1982, in Proctor, Hughes, and Fischman 1988, p. 184). Oral or intraperitoneal administration of dibutyl phthalate to pregnant rats caused increased resorptions, fetal deaths, neural tube defects, and skeletal abnormalities (Peters and Cook 1973; Singh et al. 1972; and Shista and Nishimura 1982, in Proctor, Hughes and Fischman 1988, p. 183).

The lowest oral dose of dibutyl phthalate reported to be toxic in humans is 140 mg/kg (RTECS 1990). Contact of this substance with the eyes causes severe stinging and pain but no permanent injury (Grant 1986, p. 317). A chemical operator who accidentally swallowed 10 grams of dibutyl phthalate experienced nausea, dizziness, photophobia, lacrimation, and conjunctivitis, but promptly recovered (Cagianot 1954, in ACGIH 1986, p. 176). Women working with phthalates in the synthetic leather industry had a higher than normal incidence of miscarriages and menstrual disorders (Aldyreva et al. 1974, in HSDB 1985). Soviet investigators, who studied 147 workers employed in the artificial leather industry (where several phthalates are used) for 0.5 to 19 years reported that these workers complained of pain, numbness, and spasms in the

extremities; these effects were reported by workers employed for more than 6 years. Forty-seven of these workers had developed polyneuritis (Milkov et al. 1973).

Based on this evidence in humans and animals, OSHA preliminarily concludes that dibutyl phthalate causes primary irritation, central nervous system effects, and possible reproductive effects. OSHA believes that, in the absence of a limit for dibutyl phthalate, workers in agriculture are at significant risk of experiencing these exposure-related adverse health effects. The Agency believes that establishing an 8-hour TWA PEL of 5 mg/m³ for dibutyl phthalate is necessary to reduce significantly these risks of material health impairment. Promulgation of this limit for dibutyl phthalate in agriculture will make OSHA's PEL for this substance consistent across all OSHA-regulated sectors.

1,2-DICHLOROETHYLENE
CAS: 540–59–0; Chemical Formula: $C_2H_2Cl_2$
H.S. No. 2059

In general industry, construction, and maritime, OSHA currently has an 8-hour TWA limit of 200 ppm for 1,2-dichloroethylene; there is no PEL for this substance in agriculture. The ACGIH TLV®–TWA for 1,2-dichloroethylene is 200 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 200 ppm for 1,2-dichloroethylene in agriculture. This action will make the PEL for this substance consistent across all regulated sectors.

1,2–Dichloroethylene, which is available commercially as a 60:40 mixture of the cis- and trans-isomers, is a colorless liquid with a slightly acrid, ether-like odor (ACGIH 1986, p. 185; Merck 1983, p. 14). It is used as a general solvent for organic materials, for dye extraction, and in perfumes, lacquers, and thermoplastics; it is also used in organic synthesis (Hawley's 1987, p. 378).

1,2-Dichloroethylene causes eye irritation and central nervous system depression in humans and animals. The oral LD_{50} in rats is 770 mg/kg (RTECS 1990). After 8 minutes of exposure to a 16,000-ppm concentration of the cis-isomer, rats became anesthetized; 4 hours of exposure at the same concentration resulted in death. The trans-isomer proved to be twice as potent (Smyth 1956, in Proctor, Hughes, and Fischman 1988, p. 189). Dogs developed reversible superficial corneal opacities when exposed to high vapor concentrations (not further specified) (Grant 1986, pp. 325–326). Animals of four species (rats, rabbits, guinea pigs, and dogs) exposed to 1,2-dichloroethylene for 7 hours/day, 5 days/week for 6 months at 500 or 1000 ppm showed no significant changes in growth, mortality, clinical chemistry, or gross or microscopic examination (Torkelsen 1965, in ACGIH 1986, p. 185). Another study, however, did report effects in rats exposed chronically to a 200-ppm concentration of dichloroethylene (trans-isomer); the liver, lungs, and leukocyte counts of these animals were affected (Clayton and Clayton 1981, p. 3552).

In humans, 1,2-dichloroethylene formerly found use as a general anesthetic (Proctor, Hughes, and Fischman 1988, p. 189). Symptoms of vertigo, nausea, and burning of the eyes were caused in subjects exposed to the trans-isomer at a concentration of 2200 ppm. Prolonged or repeated contact of the skin with dichloroethylene causes defatting and dermatitis (HSDB 1990). Von Oettingen also reported a fatality caused by exposure to very high vapor concentrations (not further specified) in the workplace (von Oettingen 1955, in Proctor, Hughes, and Fischman 1988, p. 189).

Based on this evidence in humans and animals, OSHA preliminarily concludes that 1,2-dichloroethylene causes eye irritation and central nervous system depression in exposed workers and that, in the absence of a PEL, agricultural workers are at significant risk of experiencing these effects. The Agency believes that establishing an 8-hour TWA limit of 200 ppm will substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

2,6-di-tert-BUTYL-p-CRESOL
CAS: 128–37–0; Chemical Formula: $C_{15}H_{24}O$
H.S. No. 1117

OSHA has no limit for 2,6-di-tert-butyl-p-cresol (DBPD) in the construction, maritime, or agriculture industries. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed by OSHA. The ACGIH has a TLV®–TWA of 10 mg/m³ for DBPD. OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ for this substance in construction, maritime, and agriculture. This is the limit recently established for DBPD in general industry.

DBPD is a white crystalline compound that is prepared from p-cresol and isobutylene. DBPD is widely used as a food preservative, a gasoline additive, and an ingredient in lubricating oils, waxes, rubbers, paints, plastics, and elastomers (ACGIH 1986, p. 227).

DBPD is an irritant of the eyes and mucous membranes; in animals, exposure to this substance has also caused lung and liver injury. The oral LD_{50} ranges from 0.89 g/kg in rats to 10.7 g/kg in guinea pigs (RTECS 1990). Applied to the skin of rabbits, DBPD caused moderate skin irritation, and instillation into the eyes of these animals also caused a moderate degree of eye irritation (RTECS 1990). One year of daily oral administration of 0.17 to 0.9 g/kg produced no effects in dogs, and 2 years of daily oral administration of 0.2, 0.5, or 0.8 percent DBPD also had no effects in rats (Deichmann, Clemmer, Rakoczy, Bianchine et al. 1955/Ex. 1–505). Some growth rate decreases and liver weight increases were demonstrated in rats fed 0.01 to 0.5 percent DBPD (total daily diet) for periods ranging from 12 days to 80 weeks (Brown, Johnson, and O'Halloran 1959/Ex. 1–621; Creaven, Davies, and Williams 1966/Ex. 1–547). These animals also exhibited reversible activation of microsomal liver enzymes. One study in pregnant rats fed DBPD showed teratogenic effects in the offspring, but other research has failed to confirm these results (Grant 1986, p. 164). Some carcinogenicity studies have suggested that DBPD may have a promoting effect; other bioassays have shown no carcinogenic effects. Rats and mice fed DBPD at doses of 3000 or 6000 ppm for 105 to 108 weeks did not show an increased tumor incidence compared with controls (NCI 1979, in HSDB 1989). Administration of DBPD following dosing with a known carcinogen (acetylaminofluorene or urethane) caused an increased incidence of tumors (hepatomas and pulmonary adenomas) (Klaassen, Amdur, and Doull 1986, p. 134). Another study in rats given DBDP after acetylaminofluorene reports that these animals developed bladder cancer (Klaassen, Amdur, and Doull 1986, p. 1118). The no-effect dietary level for DBPD in rats is 25 mg/kg (Gilbert and Golberg 1965/Ex. 1–902).

In humans, exposure to di-tert-butyl-p-cresol causes skin irritation and may cause dermal sensitization (Klaassen, Amdur, and Doull 1986, p. 65). A 48-hour test in human subjects showed that the irritant ocular dose for this period was 500 mg of DBDP (RTECS) 1990). No other information on DBDP's effects in humans is available.

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 10 mg/m³ for 2,6-di-tert-butyl-p-cresol. The Agency preliminarily concludes that this limit will protect workers in

construction, maritime, and agriculture against a significant risk of sensory irritation, which is a material health impairment. OSHA believes that the proposed limit is necessary to reduce this significant risk substantially. In addition, promulgation of the proposed limit will make the PEL for DBPD consistent across all regulated sectors.

DIETHANOLAMINE

CAS: 111–42–2; Chemical Formula: $HO(CH_2)_2NH(CH_2)_2OH$

H.S. No. 1134

OSHA has no limit for diethanolamine in the construction, maritime, or agriculture industries. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. The ACGIH has an 8-hour TLV®–TWA of 3 ppm for this substance. OSHA is proposing an 8-hour TWA PEL of 3 ppm for diethanolamine; this is the limit recently established in general industry.

Diethanolamine is a solid or a liquid, depending on temperature; it has an ammonia-like odor. Diethanolamine is used to make cosmetics, cleaners, detergents, emulsifiers, dispensing agents, and alkalizing agents (Proctor, Hughes, and Fischman 1988, p. 198).

Diethanolamine is an irritant on acute exposure and a liver and kidney toxin on chronic exposure. The oral LD_{50} in rats is 710 mg/kg, and the dermal LD_{50} in rabbits is 12,200 mg/kg (RTECS 1990). Instilled into rabbit eyes, diethanolamine caused severe irritation, although skin contact caused only mild irritation in the same species (RTECS 1990). Rats given 100 or 500 mg/kg by interperitoneal injection showed cytoplasmic vacuolization of the liver and kidneys and, at the high dose, tubular degeneration of the kidneys (Grice et al. 1971, in Food Cosmet. Toxicol. 9:847). Rats fed diethanolamine at a dose of 0.17 g/kg for 90 days showed cloudy swelling and degeneration of the kidney tubules and fatty degeneration of the liver (Proctor, Hughes, and Fischman 1988, p. 198; Smyth, Carpenter, and Weil 1951/Ex. 1–439). Dietary studies in rats showed no ill effects after 90 days of feeding at 20 mg/kg/day (Smyth, Carpenter, and Weil 1951/Ex. 1–439).

In humans, diethanolamine has caused mild eye and nose irritation (HSDB 1989). Splashed into the eye, this substance may cause severe pain, irritation, and corneal damage (Rumack Poisindex). In contact with the skin, moderate irritation may develop (Rumack Poisindex).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 3 ppm for diethanolamine. The Agency preliminarily concludes that this limit will protect workers in construction, maritime, and agriculture from the significant risks of eye damage and skin irritation associated with exposure to this substance. OSHA considers these effects material health impairments and believes that the proposed limit is necessary to reduce these risks substantially. In addition, promulgation of this limit will make the PEL for diethanolamine consistent across all regulated sectors.

DIETHYL PHTHALATE

CAS: 84–66–2; Chemical Formula: $C_6H_4(COOC_2H_5)_2$

H.S. No. 1136

OSHA has no limit for diethyl phthalate in the construction, maritime, or agriculture industries. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limit. The ACGIH has a TLV®–TWA of 5 mg/m³ for this substance, and OSHA is proposing 5 mg/m³ as an 8-hour TWA. This is the limit recently established for diethyl phthalate in general industry.

Diethyl phthalate is an oily colorless liquid with no odor. It is used in insecticidal sprays, as a mosquito repellant, a solvent, a plasticizer, a wetting agent, a camphor substitute, and as an alcohol denaturant (ACGIH 1986, p. 200; Genium MSDS 1987, No. 435; Hawley's 1987, p. 394). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Diethyl phthalate causes irritation of the eyes, skin, and mucous membranes and central nervous system effects. The oral LD_{50} in rats is 8600 mg/kg (RTECS 1990). Diethyl phthalate is readily absorbed through the skin; about one-fourth of a 30 to 40 mg/kg dose of radiolabelled diethyl phthalate applied to the skin of rats appeared in the urine of exposed rats 24 hours after application of the dose (Elsis et al. 1989). Guinea pigs exposed to diethyl phthalate at a concentration of 511 ppm for 6 hours showed signs of mild skin irritation (Clayton and Clayton 1982, p. 2347). Cats exposed to 10 mg/m³ for 5 hours showed signs of nasal irritation (Clayton and Clayton 1982, p. 2347). Rats fed diethyl phthalate showed decreases in testosterone concentrations and testicular atrophy (Oishi and Hiraga 1980, in Toxicol. Appl. Pharmacol. 53(1):35–41). In several species of experimental animals, central nervous system depression is a common effect of intraperitoneal and intravenous administration of diethyl phthalate (Cralley 1966, in J. Pharmaceut. Sci. 55:158–162). The results of reproductive studies conducted on diethyl phthalate have been inconclusive. In one study, pregnant Sprague-Dawley rats were given intraperitoneal injections of diethyl phthalate on days 5, 10, and 15 of gestation at doses of 0.506, 1.012 or 1.686 ml/kg. Some fetal resorptions occurred among rats given the low or high dose, but not among rats given the middle dose. All three dose levels produced skeletal malformations in offspring; no other abnormalities were noted (Singh et al., J. Pharmaceut. Sci. 61:51–55, as cited in HSDB 1986). Another study found no adverse effects on fetal growth, viability, or development among CD rats fed 198, 1909, or 3214 mg/kg per day during days 6 through 15 of gestation (Price et al. 1989); however an increased incidence of extra ribs occurred among offspring of rats given maternally toxic doses of diethyl phthalate.

In humans, exposure to diethyl phthalate causes sensory irritation and central nervous system effects. The lowest toxic inhalation concentration in humans is 1000 mg/m³ (RTECS 1990). A study of workers exposed to a mixture of diethyl phthalate, dibutyl phthalate, and di-2-ethyl hexyl phthalate vapors in air at concentrations of 8 to 53 mg/m³ resulted in findings of no phthalates in the blood (before or after the exposure) and no peripheral polyneuritis (Raleigh, personal communication, as cited in ACGIH 1986/Ex. 1–3, p. 200). Fassett (1963a, as cited in ACGIH 1986/Ex. 1–3 p. 200) reported transient nasal and throat irritation produced by exposure to the heated vapors of diethyl phthalate, but no cumulative effects have been noted. A Soviet study of workers (employed between 0.5 to 19 years) who were exposed to several phthalate plasticizers (e.g., butyl phthalate, the higher aryl phthalates, dioctyl phthalate, and benzyl butyl phthalate), as well as to sebacates, adipates, and tri-o-cresyl phosphate at concentrations ranging from 1.7 to 66 mg/m³, reported that there were complaints of pain, numbness, and spasms in the upper and lower extremities. These complaints were related to the duration of exposure and usually began after the sixth or seventh year of employment (Milkov, Aldyreva, Popova et al. 1973/Ex. 1–646). These investigators reported polyneuritis in 32 percent of the 47 persons examined for this health effect; of 81 persons evaluated for vestibular dysfunction, 78 percent showed depression of vestibular receptors (Milkov, Aldyreva, Popova et al. 1973/Ex. 1–646).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for diethyl phthalate. The Agency

preliminarily concludes that this limit will protect workers in construction, maritime, and agriculture against the significant risks of polyneuritis and vestibular dysfunction that are potentially associated with occupational exposure to this substance. Promulgation of this limit will substantially reduce these significant risks and make OSHA's PEL for this substance consistent across all regulated sectors.

DINITOLMIDE (3,5-DINITRO-O-TOLUAMIDE)
CAS: 148-01-6; Chemical Formula: $C_8H_7N_3O_5$
H.S. No. 1144

OSHA has no limit for dinitolmide in construction, maritime, or agriculture. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the selection of this PEL. The ACGIH has a TLV®-TWA of 5 mg/m³ for this substance, and OSHA is proposing 5 mg/m³ as an 8-hour TWA PEL. This is the limit recently established for this substance in general industry.

Dinitolmide, which is also called 3,5-dinitro-o-toluamide, is a yellowish solid. This substance is used as a coccidiostat and a food additive (ACGIH 1986, p. 218; Hawley's 1986, p. 1262). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Dinitolmide causes liver and blood effects in animals. The oral LD_{50} in rats is 600 mg/kg (RTECS 1990). In rats fed 6 mg/kg/day dinitolmide for 2 years, increases in liver weight occurred in females, and fatty changes were observed in the livers of both males and females at autopsy (Dow Chemical Company 1973e, as cited in ACGIH 1986, Ex. 1-3, p. 213). No adverse effects were seen either in rats fed 3 mg/kg/day for 2 years or in dogs fed on the same regimen at a dose of 10 mg/kg/day (Dow Chemical Company 1973e, in ACGIH 1986/Ex. 1-3, p. 213). Rats exposed to 150 mg/kg developed methemoglobinemia (Gosselin, Smith, and Hodge 1984, p. II-389). Dinitolmide is mutagenic in bacterial test systems (RTECS 1990).

No systemic effects of dinitolmide exposure have been reported in humans. Allergic contact dermatitis has been reported in workers handling animal feed that contained dinitolmide (Fischer 1975, in Cutis 2:701-702).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for dinitolmide. The Agency preliminarily concludes that this limit will protect workers in construction, maritime, and agriculture industries from the significant risk of dermatitis and systemic changes that are potentially associated with exposure to this substance. OSHA considers these effects material health impairments and believes that the proposed limit is necessary to reduce these risks substantially. In addition, promulgation of this limit will make the PEL for dinitolmide consistent across all OSHA-regulated sectors.

DIPHENYLAMINE
CAS: 122-39-4; Chemical Formula: $(C_6H_5)_2NH$
H.S. No. 1147

OSHA's limit for diphenylamine in construction, maritime, and general industry is 10 mg/m³ as an 8-hour TWA. There is no limit for this substance in agriculture. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the proposed limit. The ACGIH recommends a TLV®-TWA of 10 mg/m³ for this substance, and OSHA is proposing 10 mg/m³ as an 8-hour TWA for diphenylamine in agriculture. Promulgation of this PEL will make OSHA's limit for this substance consistent across all regulated sectors.

Diphenylamine is a colorless solid that takes the form of monoclinic leaflets that discolor when exposed to light; it has a floral-like odor. Diphenylamine is used as a stabilizer for plastics, nitrocellulose explosives, and celluloids, and in the manufacture of pesticides, pharmaceuticals, and dyes. It is also used in antioxidants (ACGIH 1986, p. 220; Sittig 1985, p. 1885). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Diphenylamine is a liver and kidney toxin and has caused adverse developmental effects in animals. The oral LD_{50} in guinea pigs is 300 mg/kg (RTECS 1990). This substance is known to be absorbed through the skin, but no dermal toxicity data are available. Animals acutely poisoned by oral administration develop anorexia, diarrhea, excitability, hypothermia, emaciation, and generalized weakness before death, which may be delayed for 2 to 3 weeks (Gosselin, Smith, and Hodge 1984, p. II-209). In cats, acute poisoning is associated with methemoglobinemia. Animals exposed to diphenylamine dust at unspecified concentrations showed changes in the liver, spleen, and kidneys at autopsy (Robert et al. 1937, in ACGIH 1986, p. 220). Dietary studies of rats fed 0.025, 0.1, 0.5, 1.0, or 1.5 percent diphenylamine for 226 days demonstrated nonmalignant renal cysts in animals fed at the three highest doses (Thomas, Cox, and Deeds 1957/Ex. 1-873). Rats fed diphenylamine crystals encapsulated in collodion developed bladder papillomas within 125 days (Yoshida, Shimauchi, and Kin 1941, as cited in ACGIH 1986/Ex. 1-3, p. 220). Mice gavaged with diphenylamine showed kidney damage involving the tubules and glomeruli; liver effects were also seen (Kronevi and Holmberg 1979, in Exp. Pathol. (Jena) 17(2):77-81). Fed to pregnant rats at a dose of 7500 mg/kg on days 17 through 22 of pregnancy, diphenylamine caused urogenital system abnormalities (polycystic kidneys) in the offspring (Klaassen, Amdur, and Doull 1986, p. 326).

In humans, exposure to diphenylamine may cause eye and mucous membrane irritation, dermatitis, bladder symptoms, and an increase in heart rate (Hazardous Substance Fact Sheet 1985). Acute overexposure may also cause methemoglobinemia (Genium MSDS 1989). A report of industrial diphenylamine poisoning in France described bladder symptoms, tachycardia, hypertension, and eczema in overexposed workers (Fairhall 1957g, as cited in ACGIH 1986/Ex. 1-3, p. 220). Diphenylamine has been linked in epidemiological studies (Orjelick 1975; in Intl. Occ. Hlth. Safety 44(5):46-47; Parkes and Evans 1984, in C.E. Searle, ed. Chemical Carcinogens, 2nd ed.) to the development of bladder cancer in exposed workers, although contamination by 2-naphthylamine, a recognized human carcinogen, may have been the cause of these tumors.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ for diphenylamine in agriculture. The Agency preliminarily concludes that this limit will protect workers in this sector against the significant risks of liver, kidney, cardiovascular, and other systemic effects, all of which constitute material health impairments that are potentially associated with exposures to this substance. Because the proposed limit is identical to the PEL recently established for diphenylamine in general industry and currently in effect in construction and maritime, promulgation of the proposed PEL in agriculture will make OSHA's limit for diphenylamine consistent across all regulated sectors.

DIURON
CAS: 330-54-1; Chemical Formula: $C_9H_{10}Cl_2N_2O$
H.S. No. 1153

OSHA has no limit for diuron in construction, maritime, or agriculture. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the limit being

proposed. The ACGIH has a TLV®–TWA of 10 mg/m³ for diuron. OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ for diuron; this is the limit recently established for this substance in general industry.

Diuron is a white, crystalline, odorless substance. Diuron is a pre-emergence herbicide that is widely used as an industrial area weed control agent, an herbicide for railroad rights of way, and an agricultural herbicide (HSDB 1990). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Diuron is an irritant of the skin and mucous membranes. In animals, chronic exposure may cause growth retardation, anemia, and enlargement of the spleen and liver. This substance may also be teratogenic in animals. The oral LD_{50} in rats is 1017 mg/kg (RTECS 1990). The dermal LD_{50} in rabbits is greater than 2500 mg/kg (Taylor 1976b, in EPA 1987). Acutely poisoned animals showed signs of central nervous system depression before death (EPA 1987: Health Advisory). Applied to the abraded skin of guinea pigs, diuron caused moderate irritation (DuPont n.d., in ACGIH 1986, p. 228). Instilled into the eyes of rabbits, however, diuron caused no irritation (Larson and Schaefer 1976, in EPA 1987). Rats fed 50 to 5000 ppm diuron for 90 days showed the following effects: no changes at 50 ppm, reduced weight gain in females only at 500 ppm, and reduced body weight, enlarged spleens, and chronic methemoglobinemia in rats of both sexes (Hodge et al. 1967). Rats fed 25 to 2500 ppm diuron for 2 years showed the following effects: no effects at 25 ppm, abnormal blood pigment in some animals at 125 ppm, and hematological changes, growth depression, hemosiderosis of the spleen, and increased mortality at 2500 ppm (Hodge et al. 1946b, 1967). Administered to pregnant rats on days 6 through 15 of gestation, diuron caused a statistically significant increase in the incidence of wavy ribs and delayed ossification in the offspring at doses of 250 mg/kg or greater (Khera et al. 1979). In another experiment, administration of diuron to pregnant rats on days 15 and 22 of pregnancy caused reductions in maternal body weight and in mean fetal weights and an increase in the number of anomalous fetuses (Khera et al. 1979). In 2-year feeding studies in rats and dogs, the no-effect levels were reported to be 250 and 125 ppm, respectively. A diuron concentration of 125 ppm in the diet did not cause reproductive or carcinogenic effects in a three-generational study of rats (Hodge, Downs, Panner et al. 1967/Ex. 1–911; Hodge, Downs, Smith et al. 1968/Ex. 1–912); a dietary level of 1400 ppm did not have carcinogenic effects in mice (Innes, Ulland, Valerio et al. 1969/Ex. 1–270).

In humans, exposure to diuron causes irritation of the eyes, nose, and skin (Hayes 1982, p. 541). A woman who intentionally ingested an herbicidal formulation that contained 48 percent diuron and 30% amitrole survived and had no sequelae (Hayes 1982, p. 154).

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA limit of 10 mg/m³ for diuron. OSHA preliminarily concludes that this limit will protect workers in construction, maritime, and agriculture from the significant risks potentially associated with occupational exposure to this substance at the levels permitted by the absence of an OSHA PEL. These risks include both skin and respiratory tract irritation, which constitute material impairments of health. The Agency believes that the proposed limit is necessary to reduce these risks substantially. In addition, promulgation of the proposed PEL will make OSHA's limit for diuron consistent across all OSHA-regulated sectors.

ENDRIN

CAS: 72–20–8; Chemical Formula: $C_{12}H_8Cl_6O$

H.S. No. 2073

In general industry, construction, and maritime, OSHA's current permissible exposure limit for endrin is an 8-hour TWA of 0.1 mg/m³, with a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. OSHA has no PEL for endrin in agriculture. The 1987–1988 ACGIH TLV®–TWA for this substance is 0.1 mg/m³, with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the PEL being proposed. OSHA is proposing a PEL of 0.1 mg/m³, and a skin notation, for endrin in agriculture. Promulgation of this limit will make the PEL for endrin consistent across all OSHA-regulated sectors.

Endrin, which is the stereoisomer of dieldrin, is a white, non-flammable, crystalline powder. Endrin was formerly used as an insecticide, avicide, and rodenticide. Its manufacture and use has been discontinued in the United States (ACGIH 1986, p. 231; Proctor, Hughes, and Fischman 1988, p. 222). OSHA is proposing a limit for endrin in agriculture both to ensure consistency in PELs across sectors and to provide protection for workers in agriculture in the unlikely event that this substance is once again permitted for use as a pesticide.

Endrin causes convulsions in humans and reproductive and developmental effects in animals. The oral LD_{50}s in rats, mice, and monkeys are 3 mg/kg, 1.37 mg/kg, and 3 mg/kg, respectively (RTECS 1990). The dermal LD_{50} in rabbits is 60 mg/kg (RTECS 1990). Following a 1-hour inhalation exposure to approximately 2000 mg/m³ of endrin, 3 of 10 rats died (Anderson et al. 1953; Hine, Ungar, Anderson et al. 1954, in ACGIH 1986, p. 231). Rats and mice inhaling sublimed endrin at a concentration of 0.36 ppm (15 mg/m³) for 7 hours/day, 5 days/week for 26 weeks exhibited no signs of intoxication or growth retardation; however, two of four rabbits died under these exposure conditions (Treon et al. 1955, in ACGIH 1986, p. 231). Rats given oral doses of 2.32 mg/kg of endrin on the fourth day of pregnancy showed signs of reproductive effects, and the offspring had developmental abnormalities (RTECS 1990). Chernoff et al. reported an increased incidence of fused ribs and meningoencephaloceles among the young of hamsters given a single dose of up to 10 mg/kg endrin on day 8 of pregnancy; no deaths were reported in dams or young (Chernoff 1979, in Hayes 1982, p. 248). An oral dose of 7 mg/kg endrin on day 8 of pregnancy caused reproductive effects in the dams and embryotoxic and developmental effects in the offspring (RTECS 1990).

In humans, endrin intoxication often causes an epileptiform convulsion that occurs from 30 minutes to 10 hours after exposure, lasts for several minutes, and is followed by stupor (Jager 1970; Coble et al. 1967, in Proctor, Hughes, and Fischman 1988, p. 222). The signs and symptoms of endrin intoxication in humans include headache, dizziness, leg weakness, nausea, insomnia, and, occasionally, slight mental confusion (Jager 1970, in Proctor, Hughes, and Fischman 1988, p. 222; Hayes 1982, pp. 247–251). An oral dose in the range of 0.2 to 0.25 mg/kg produces convulsions in humans (Diechmann 1973, in ACGIH 1986, p. 231). In cases of severe endrin poisoning, repeated violent convulsions can occur (Hayes 1982, p. 249). Recovery is rapid in most cases, but symptoms such as headache, dizziness, lethargy, weakness, and anorexia may persist for 2 to 4 weeks (Coble et al. 1967, in Proctor, Hughes, and Fischman 1988, p. 222). Brain stem injury was evident in the encephalograms of 20 percent of endrin manufacturing and formulating workers; 3.3 percent of these workers had experienced epileptiform seizures (NRC 1977, in HSDB 1985). In England,

endrin poisoning occurred in more than 100 people who had eaten bread made from flour contaminated with this substance. One to 3 hours after ingestion, the most affected patients lost consciousness; other victims experienced convulsions, violent muscular contractions, and periods of unconsciousness. All patients were ill for several days but subsequently recovered (Gosselin, Smith, and Hodge 1984, p. 285).

Based on this evidence in humans and animals, OSHA preliminarily concludes that endrin causes convulsions and central nervous system effects in exposed individuals. OSHA preliminarily finds that, in the absence of a limit for endrin, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit of 0.1 mg/m³ as an 8-hour TWA, and the skin notation, will substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

L.P.G. (Liquefied Petroleum Gas)
CAS: 68476–85–7; Chemical Formula:
Mixture of C_3H_8 and C_4H_{10}
H.S. No. 2099

The OSHA PEL for liquefied petroleum gas (L.P.G.) in general industry, construction, and maritime is 1000 ppm as an 8-hour TWA. The Agency has no PEL for L.P.G. in agriculture. The ACGIH TLV®–TWA for this substance is 1000 ppm. NIOSH has no REL for L.P.G. but concurs with the PEL being proposed (Ex. 8–47, Table N3A). OSHA is proposing a PEL of 1000 ppm as an 8-hour TWA for L.P.G. in agriculture. Promulgation of this limit will make the PEL for L.P.G. consistent across all OSHA-regulated sectors.

L.P.G. is a mixture of propane and butane and is a flammable, explosive, colorless gas (or liquid under pressure). L.P.G. is a byproduct of petroleum refining. It may contain isomers and often has a foul-smelling odorant added to it to increase its odor warning properties. It is used primarily as a fuel, refrigerant, and propellant and in organic synthesis. L.P.G. is also used in the flame control of weeds and in metal cutting (ACGIH 1986, p. 350; Hazardous Substance Fact Sheet 1986, p. 6; HSDB 1986, "Butane;" HSDB 1988, "Propane").

L.P.G. is non-toxic at low concentrations; at very high concentrations, it causes central nervous system depression and, if exposures are high enough, asphyxiation. Cats exposed to L.P.G. at an 89-percent concentration (890,000 ppm) experienced a depression in blood pressure (HSDB 1988, "Propane"). Guinea pigs exposed to a 2.4 to 5.5 percent (24,000 to 55,000 ppm) concentration of propane (the major component of L.P.G.) showed dyspnea at the lower concentrations and tremor, nausea, retching, and stupefaction at the higher concentration (HSDB 1988, "Propane"). L.P.G. does not cause eye irritation or damage, even when injected into the anterior chamber of the rabbit eye (Grant 1986, p. 207). Pregnant mice exposed to L.P.G. at a concentration of 5 to 8 percent (50,000 to 80,000 ppm) for 1 hour on the eighth day of gestation delivered hydrocephalic offspring (HSDB 1988, "Propane").

In humans, the inhalation of a 10,000-ppm concentration of butane (a major component of L.P.G.) for 10 minutes may cause drowsiness (Patty and Yant 1929, in Clayton and Clayton 1981, p. 3182). Five workers exposed to propane, another major component of L.P.G., experienced headache, numbness, vomiting, and a feeling of being chilled (HSDB 1988, "Propane"). Acute exposure to propane at a 250-, 500-, or 1000-ppm concentration for 1 minute to 8 hours caused no effects in volunteers (HSDB 1988, "Propane"). Contact of the skin with pressurized (liquefied) L.P.G. may cause frostbite and skin burns (Clayton and Clayton 1981, p. 3182).

Based on this evidence, OSHA is proposing a 1000-ppm 8-hour TWA limit to protect workers in agriculture from the significant risk of central nervous system depression potentially caused by exposure to L.P.G. at the concentrations possible in the absence of an OSHA PEL. The Agency preliminarily concludes that this limit is necessary to reduce substantially a significant risk of material health impairment in exposed agricultural workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL ACETATE
CAS: 79–20–9; Chemical Formula:
CH_3COOCH_3
H.S. No. 1249

OSHA's current 8-hour TWA limit for methyl acetate in construction and maritime is 200 ppm; there is no PEL in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. The ACGIH has an 8-hour TLV®–TWA of 200 ppm and a TLV®–STEL of 250 ppm for methyl acetate. OSHA is retaining the 8-hour TWA PEL of 200 ppm and proposing to add a 15-minute STEL of 250 ppm in construction and maritime and is also proposing to extend these limits to agriculture. These are the limits recently established for methyl acetate in general industry.

Methyl acetate is a highly volatile, colorless liquid with a pleasant, fruity odor. This substance is used as a solvent in lacquers and paint removers and as an ingredient in pharmaceuticals. Methyl acetate is also used in agriculture to destroy cocklebur seeds (Clayton and Clayton 1981, p. 2271).

Methyl acetate is an irritant of the eyes, mucous membranes, and respiratory tract; at high concentrations, it is a narcotic. The oral LD_{50} in rats is 5450 mg/kg, and the lowest lethal concentration in the same species is 32,000 ppm for 4 hours (RTECS 1990). Applied to the skin or eyes of rabbits, methyl acetate caused a moderate degree of irritation (RTECS 1990). Cats exposed to a 5000-ppm concentration of methyl acetate for 20 minutes showed signs of eye irritation; exposure to 10,000 ppm for 10 hours caused narcotic effects, and exposure to 18,480 ppm for 4 to 4.5 hours caused dyspnea, convulsions, vomiting, and narcosis (Clayton and Clayton 1981, p. 2272). Cats exposed for 6 hours/day for 8 days to a methyl acetate concentration of 6600 ppm lost weight, became weak, and recovered from the exposure slowly (Clayton and Clayton 1981, p. 2272).

In humans, exposure to methyl acetate at a concentration of 15,000 mg/m³ (approximately 5000 ppm) causes eye and upper respiratory tract irritation; when the concentration is increased to 10,000 ppm, the irritation persists after exposure ceases (Clayton and Clayton 1981, p. 2272). A worker who inhaled an unspecified concentration of methyl acetate developed dizziness, headache, and other signs of central nervous system depression, as well as blindness caused by atrophy of the optic nerve (Lund 1944, in J. Ind. Hyg. Toxicol. 28:35). The atrophy may have been caused by hydrolysis of the methyl acetate to methanol (AIHA 1964). Long-term contact of this substance with the skin causes defatting and dermatitis (Proctor, Hughes, and Fischman 1988, p. 317.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 200 ppm TWA and a 15-minute STEL of 250 ppm for methyl acetate in the construction, maritime, and agriculture industries. OSHA believes that the proposed limits are necessary to reduce substantially the significant risk of eye, skin, and respiratory tract irritation, and of narcosis, that is associated with exposure to methyl acetate. The Agency considers these adverse effects material impairments of health. Promulgation of these limits will also make OSHA's

PELs for methyl acetate consistent across all regulated sectors.

METRIBUZIN

CAS: 21087–64–9; Chemical Formula: $C_8H_{14}N_4OS$

H.S. No. 1275

OSHA has no limit for metribuzin in the construction, maritime, and agriculture industries. The ACGIH has a TLV®–TWA of 5 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for metribuzin. This is the limit recently established for this substance in general industry.

Metribuzin is a mild irritant of the eyes and skin in experimental animals. The oral LD_{50} in rats is 1100 mg/kg, and the dermal LD_{50} in the same species is 2 g/kg (RTECS 1990). The LC_{50} in rats for a wettable granular formulation of metribuzin (concentration not specified) is greater than 20 mg/liter for 1 hour (Mobay MSDS 1985). In contact with the eyes or skin of rabbits, metribuzin caused a mild degree of irritation (Mobay MSDS 1985; EPA 1987, ODW Health Advisory). Rats were fed metribuzin for 3 months at doses of 2.5, 7.5, 25, or 75 mg/kg/day; enlarged thyroid glands were seen in the two high-dose groups, and females in the three highest dose groups also had enlarged livers (Loser et al. 1989, in EPA 1987). Female mice were fed metribuzin for 24 months at doses of 30, 120, or 480 mg/kg/day; those in the high-dose group developed increased liver and kidney weights (Hayes et al. 1981, in EPA 1987). No sensitizing effects were seen in skin tests of guinea pigs, and a skin application of the 70-percent wettable powder of 1000 mg/kg per day for three weeks produced no effects in rats (*Deutsche Forschungsgemeinschaft* 1981, as cited in ACGIH 1986/Ex. 1–3, p. 411). A no-effect level of 100 ppm was observed in a two-year dietary study of rats and dogs (*Deutsche Forschungsgemeinschaft* 1981, as cited in ACGIH 1986/Ex. 1–3, p. 411); these same investigators observed no teratogenic, embryotoxic, or reproductive effects in rats or rabbits. In a subacute inhalation study in rats, exposure to a concentration of 31 mg/m³ caused no observed effects (ACGIH 1986, p. 411, Ex. 1–3). In Chinese hamsters and mice, no mutagenic activity was observed (Siebert and Lemperle 1974/Ex. 1–689).

No human poisonings have been linked to metribuzin. In long-term oral studies in volunteers, the highest no-observed-effect levels (NOELs) were 2.5 to 5 mg/kg per day (ACGIH 1986/Ex. 1–3, p. 411). Single and repeated patch tests in humans did not show sensitization (*Deutsche Forschungsgemeinschaft* 1981, as cited in ACGIH 1986/Ex. 1–3, p. 411).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for metribuzin in the construction, maritime, and agriculture sectors. The Agency preliminarily concludes that this limit is necessary to protect workers in these sectors against the significant risks of metabolic and central nervous system effects that are potentially associated with occupational exposure to metribuzin. The Agency considers these adverse effects material impairments of health and believes that the proposed limit will substantially reduce these risks. Promulgation of this PEL will also make OSHA's limit for metribuzin consistent across all regulated sectors.

1–NITROPROPANE

CAS: 108–03–2; Chemical Formula: $CH_3CH_2CH_2NO_2$

H.S. No. 2121

OSHA's permissible exposure limit for 1-nitropropane in general industry, construction, and maritime is 25 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 25 ppm for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 25 ppm for 1-nitropropane in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

1-Nitropropane is a colorless liquid with a mild, fruity odor. This substance is used as a solvent, chemical intermediate, rocket propellant, and gasoline additive (Hawley's 1987, p. 832; NIOSH/OSHA Occupational Health Guideline 1981, p. 1).

1-Nitropropane causes primary irritation in humans and animals; in animals, exposure to this substance also causes damage to the liver and kidneys. The oral LD_{50}s in rats and mice are 455 mg/kg and 800 mg/kg, respectively (RTECS 1987). The LC_{50} in rats is 3100 ppm for 8 hours (RTECS 1987). Rabbits survived a 1-hour exposure to a 1-nitropropane concentration of 10,000 ppm but died from exposure to a 5000-ppm concentration for 3 hours (Machle, Scott, and Treon 1940, in ACGIH 1986, p. 377). Acutely poisoned animals showed the following signs and symptoms: conjunctival irritation, lacrimation, slow respiration with some rales, incoordination, ataxia, and weakness. Autopsy of acutely poisoned rabbits revealed severe fatty infiltration of the liver and moderate kidney damage (Machle, Scott and Treon 1940, in Proctor, Hughes, and Fischman 1988, p. 377). In rats exposed to a 100-ppm concentration of 1-nitropropane 7 hours/day, 5 days/week for up to 21 months, no systemic effects were observed (Griffin, Stein, and Coulston 1980, in ACGIH 1986, p. 440).

Human volunteers reported that exposure to concentrations above 100 ppm caused irritation after brief but not further specified periods of exposure (Silverman, Schulte, and First 1946, in Clayton and Clayton 1982, p. 4161), and exposure to a 150-ppm concentration of 1-nitropropane for 15 minutes caused eye irritation (RTECS 1987). The symptoms of chronic overexposure to 1-nitropropane include headache and nausea (Clayton and Clayton 1982, p. 4161).

Based on this evidence in humans and animals, OSHA preliminarily concludes that 1-nitropropane is a sensory irritant and also causes possible liver and kidney injury. OSHA believes that, in the absence of a limit for this substance, workers in agriculture are at significant risk of experiencing these effects. Establishing an 8-hour TWA PEL of 25 ppm is thus necessary to reduce substantially the risk of these material health impairments. Promulgation of this limit will also make the PEL for 1-nitropropane consistent across all OSHA-regulated sectors.

OIL MIST (MINERAL)

CAS: 8012–95–1; Chemical Formula: None

H.S. No. 1297

OSHA's limit for oil mist is 5 mg/m³ as an 8-hour TWA in construction, maritime, and general industry. There is no limit in agriculture. The ACGIH has a 5-mg/m³ TLV®–TWA and a 10 mg/m³ TLV®–STEL for oil mist (mineral). NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for oil mist. This is the limit recently established for this substance in general industry.

Oil mist is the airborne mist of petroleum-based cutting oils or of white petroleum oil. The odor of oil mist is described as similar to that of burned lubrication oil, and this substance is a flammable, oily, colorless liquid

(Clayton and Clayton 1981, p. 3396). Mineral oils are used as lubricants and cutting oils.

Oil mist causes eye, skin, and respiratory tract irritation in animals and dermatitis and respiratory effects in exposed workers. If inhaled in sufficient quantities, oil mist can cause lipid pneumonitis (Cralley and Cralley 1985, p. 177). The oral LD_{50} in mice is 22 g/kg (RTECS 1990). In prolonged contact with the eyes or skin of rabbits, mineral oil causes mild irritation (RTECS 1990). Studies in animals have shown that repeated six-hour daily exposures to 5 mg/m³ caused no adverse effects (Wagner, Wright, and Stokinger 1964, as cited in ACGIH 1986/Ex. 1–3, p. 449). At 100 mg/m³, slight changes, including lung effects, were observed in exposed animals (Lushbaugh, Green, and Redemann 1950/Ex. 1–792). Dogs, rabbits, mice, and gerbils were exposed to 5 or 100 mg/m³ mineral oil mist 6 hours/day, 5 days/week for 2 years; microgranulomas developed only in the dogs and rats (Stula and Kwon 1978, in AJIHA 39(5):393–399).

In humans, exposure to oil mist in the industrial setting has been associated with dermatitis and respiratory effects. A single case of lipid pneumonitis has been reported in a worker exposed to high (not further specified) concentrations of oil mist for 17 years (Proudfit, Van Orstrand, and Miller 1950, in AMA Arch. Ind. Hyg. Occup. Med. 1:105). A metal-polishing mechanic whose skin was repeatedly exposed to mineral oil developed chronic eczema on his hands, forearms, and neck that lasted for 2 years (Sakakibara, Kawabe, Mizuno 1989, in Contact Dermatitis 20(4):291–294). Results of photopatch testing in this worker were positive, indicating that the mineral oil had caused photosensitization dermatitis. Two epidemiological studies in similar populations suggested an association between some mineral oils and cancers of the skin and scrotum (Ex. 426, Ex. 207X, pp. 7–50). A number of scientists believe that these carcinogenic effects were likely to have been caused by contaminants in the oil, such as polycyclic aromatic hydrocarbons and certain additives. Moreover, modern refining techniques have generally eliminated these hazardous substances from mineral oils. OSHA believes that it may be premature to make a judgment on oil mist's carcinogenicity.

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for mineral oil mist in the construction, maritime, and agriculture industries. The Agency believes that this limit is necessary to reduce substantially the significant risk of eye, skin, and respiratory tract irritation, pneumonitis, and dermatitis potentially associated with exposure to this substance. OSHA considers all of these adverse effects material health impairments. Promulgation of the proposed limit will also make the PEL for oil mist consistent across all OSHA-regulated sectors.

Note: The 1970 TLV®s listed an entry for "oil mist, vapor"; this entry was deleted at some time prior to the publication of the 1987–88 TLV®s. No entry for "oil mist, vapor" has ever been included on OSHA's Z-tables. Because the term for this substance used by OSHA—oil mist (mineral)—by definition includes the vapor of oil mist, OSHA has determined that keeping the word "vapor" would be redundant and is therefore unnecessary. Accordingly, OSHA's designation of this substance on the new Z-tables for construction, maritime, and agriculture is simply "oil mist (mineral)." This decision is consistent with the evaluations undertaken as part of the PEL update process.

PETROLEUM DISTILLATES (NAPHTHA) (RUBBER SOLVENT)
CAS: 8002–05–9; Chemical Formula: None
H.S. No. 1312

OSHA has no limit in construction, maritime, or agriculture for petroleum distillates (naphtha), also called rubber solvent. The ACGIH has a TLV®–TWA of 400 ppm for petroleum distillates, and NIOSH has a REL of 87 ppm and a 15-minute ceiling of 450 ppm for these substances. OSHA has recently established an 8-hour TWA PEL of 400 ppm in general industry for petroleum distillates, and this is the limit being proposed in construction, maritime, and agriculture. These are the limits recently established for this substance in general industry.

Petroleum distillates (naphtha) are a mixture of hydrocarbons. They are flammable liquids that have a characteristic gasoline-like odor (HSDB 1986). Petroleum distillates are used as solvents and thinners, as a carrier solvent for pesticides, and in gasoline, adhesives, coatings, naphtha soaps, cleaning agents, and in organic synthesis (Hawley's 1987, p. 806; ACGIH 1986, p. 516). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

A study performed by Carpenter, Kinkead, Geary et al. (1975b/Ex. 1–53) exposed rats to concentrations of naphtha between 2800 and 24,200 ppm. Motor incoordination occurred at 5300 ppm, and convulsions and death occurred in all animals at 24,200 ppm. Animals exposed to 480 ppm for 63 days showed no signs of toxicity (Carpenter, Kinkead, Geary et al. 1975b/Ex. 1–53).

NIOSH (1977g, as cited in ACGIH 1986/Ex. 1–3, p. 516) noted that rubber solvent (naphtha) is composed primarily of C_6–C_9 alkanes and, thus, that the limit of 350 mg/m³ (85 ppm) recommended for C_6–C_9 alkanes should also apply to naphtha. This recommendation presumes that all C_6–C_9 alkanes possess equivalent neurotoxicity; however, OSHA has preliminarily concluded that not all of the C_6–C_9 alkanes are neuropathic agents. Accordingly, OSHA is proposing an 8-hour TWA PEL of 400 ppm for petroleum distillates in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of irritation that is associated with exposure to these substances. OSHA considers such irritation to be a material health impairment. Because the proposed limit is identical to the PEL recently established for petroleum distillates in general industry, promulgation of this limit in construction, agriculture, and maritime will make OSHA's limit for petroleum distillates consistent across all regulated sectors.

m-PHTHALODINITRILE
CAS: 626–17–5; Chemical Formula: $C_8H_4N_2$
H.S. No. 1327

OSHA has no limit for m-phthalodinitrile in construction, maritime, or agriculture. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N1) with the limit being proposed. The ACGIH has a TLV®–TWA of 5 mg/m³ for m-phthalodinitrile. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for m-phthalodinitrile; this is the limit recently established for this substance in general industry.

m-Phthalodinitrile is a white, odorless solid that occurs in the form of needles or powder. It is used as a chemical intermediate for amines, phthalocyanine pigments and dyes, and for high-temperature lubricants and coatings. It is also used to produce phthalate esters (HSDB 1989, Sittig 1985, p. 727).

m-Phthalodinitrile is an irritant of the eyes, mucous membranes, and skin. The oral LD_{50} in rats is 1860 mg/kg (RTECS 1990). Intraperitoneal administration of lethal doses of this substance caused mice to convulse before death (RTECS 1990). Instilled into the eyes of rabbits, m-phthalodinitrile caused mild irritation (RTECS 1990). In rabbits, slight skin reactions have been reported from dermal applications of m-phthalodinitrile to the intact or abraded

skin for 6 hours/day, 5 days/week over a 3-week period. The doses applied were 0.5, 1.0, or 2.0 g/kg; at the two higher dose levels, some changes in organ (unspecified) size, without histopathologic changes, were observed at autopsy. Female rabbits exposed at the highest dose also lost weight (Owen 1972, as cited in ACGIH 1986/Ex. 1–3, p. 488).

A 15-year review of industrial experience revealed no reports of adverse effects from exposure to m-phthalodinitrile (Zeller, Hofmann, Thiess, and Hey 1963, as cited in ACGIH 1986/Ex. 1–3, p. 488). Williams (1959/Ex. 1–1176) attributes this absence of exposure effects to the fact that the aromatic nitriles, of which m-pthalodinitrile is one, do not liberate cyanide in the body, as is the case with the aliphatic nitriles.

Based on this evidence, OSHA is proposing an 8-hour TWA limit for m-phthalodinitrile of 5 mg/m³ in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers from the significant risk of skin irritation, a material health impairment associated with exposure to m-phthalodinitrile. OSHA believes that the proposed limit is necessary to reduce this risk substantially. In addition, promulgation of the proposed PEL will make OSHA's limit for m-phthalodinitrile consistent across all OSHA-regulated sectors.

PLATINUM (METAL)
CAS: 7440–06–4; Chemical Formula: Pt
H.S. No. 1332

OSHA has no limit for platinum metal in construction, maritime, or agriculture. NIOSH has no REL for platinum but concurs (Ex. 8–47, Table N1) with the limit being proposed. The ACGIH has a TLV®–TWA of 1.0 mg/m³ for platinum metal (dust). OSHA is proposing an 8-hour TWA PEL of 1 mg/m³ for platinum; this is the limit recently established for this substance in general industry.

Platinum is a silver-gray, lustrous, malleable, ductile precious metal. It is used in jewelrymaking, electroplating, photography, and dentistry and in the chemical and electrical industries; it is also used in windings for high-temperature furnaces (ACGIH 1986, p. 492; Proctor, Hughes, and Fischman 1988, p. 417).

Unlike the platinum salts, which cause sensitization in exposed workers, platinum metal is of low toxicity. There are no acute toxicity data for platinum metal. In mice and rats receiving platinum metal implants, local-site tumorigenic responses were seen (RTECS 1990). The limit being proposed by OSHA reflects good industrial hygiene practice and acknowledges that heavy metal dusts are more toxic than particulates not elsewhere classified (for which the PELs are 8-hour TWAs of 10 mg/m³).

OSHA is proposing an 8-hour TWA limit of 1.0 mg/m³ for platinum metal. The Agency believes that this limit is necessary to protect workers in construction, maritime, and agriculture against the adverse health effects potentially associated with workplace exposures to this substance. In addition, promulgation of the proposed PEL will make the limit for platinum consistent across all OSHA-regulated sectors.

RESORCINOL
CAS: 108–46–3; Chemical Formula: $C_6H_4(OH)_2$
H.S. No. 1346

OSHA has no limit for resorcinol in construction, maritime, or agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. The ACGIH has an 8-hour TLV®–TWA limit of 10 ppm and a TLV®–STEL of 20 ppm for this substance. OSHA is proposing an 8-hour TWA of 10 ppm and a 15-minute STEL of 20 ppm for resorcinol. These are the limits recently established for this substance in general industry.

Resorcinol occurs in the form of sweet-tasting white crystals that, because of impurities, may turn pink on exposure to air and light or on contact with iron. Resorcinol is used to manufacture formaldehyde-resorcinol resins, cosmetics, styphnic acid, pharmaceuticals, dyes, and adhesives, as a crosslinking agent for neoprene, and as a rubber tackifier (ACGIH 1986, p. 511; Hawley's 1987, p. 1006).

Resorcinol is an irritant of the eyes and mucous membranes on acute exposure; chronic exposure causes systemic poisoning. The oral LD_{50} in rats is 301 mg/kg, and the dermal LD_{50} in rabbits is 3360 mg/kg (RTECS 1990). Acutely poisoned animals convulse before death (Gosselin, Smith, and Hodge 1984, p. II–191). Applied to the skin of rabbits, resorcinol caused moderate irritation; instillation into the eyes of rabbits caused pain, conjunctival inflammation, and corneal vascularization (Grant 1986, p. 792; RTECS 1990). Daily 6-hour exposures to a resorcinol concentration of 8 ppm for 2 weeks produced no ill effects in rats, guinea pigs, or rabbits. Acute inhalation exposures to a resorcinol-water aerosol at concentrations as high as 7800 mg/m³ for one hour and 2800 mg/m³ for eight hours caused no toxic effects in laboratory animals (Koppers Company 1974, as cited in ACGIH 1986/Ex. 1–3, p. 511). In skin painting studies in mice, resorcinol was not carcinogenic (IARC 1977, Vol. 15, p. 171). This substance is not mutagenic in microbial or tissue culture assays (HSDB 1990).

In humans, the cutaneous application of solutions or salves containing from 3 to 25 percent resorcinol may result in local hyperemia, itching, dermatitis, edema, corrosion, and the loss of the superficial layers of the skin. If this damage is severe, the following effects may be seen: enlargement of regional lymph glands, restlessness, methemoglobinemia, cyanosis, convulsions, tachycardia, dyspnea, and death (Clayton and Clayton 1981, p. 2588). An epidemiologic study of rubber workers exposed to a hexamethylene-tetramine-resorcinol rubber system revealed no specific symptoms caused by resorcinol; resorcinol concentrations at this plant were less than 0.3 mg/m³. In another study, workers reported no irritation or discomfort when concentrations of resorcinol were maintained at 10 ppm or less and exposure lasted for periods of at least 30 minutes (Clayton and Clayton 1981, p. 2588). A recent study reports that 42 workers in an Italian tire factory developed pigmentary dermatosis, characterized by a rusty red pigmentation of the surfaces of the hand; percutaneous absorption of resorcinol was identified as the cause of the condition, which resolved within 1 week of removal from exposure (Abbate, Polito, Puglisi et al. 1989, in Br. J. Ind. Med. 46(3):212–214).

Based on this evidence in humans and animals, OSHA is proposing a PEL of 10 ppm TWA and a STEL of 20 ppm for resorcinol. OSHA preliminarily concludes that these limits together will protect workers in construction, maritime, and agriculture from the significant risks of irritation and systemic toxicity, which are material impairments of health that are associated with occupational exposure to resorcinol. The Agency believes that the proposed limits are necessary to reduce these risks substantially. In addition, promulgation of the proposed PELs will make OSHA's limits for resorcinol consistent across all OSHA-regulated sectors.

ROTENONE
CAS: 83–79–4; Chemical Formula: $C_{23}H_{22}O_6$
H.S. No. 2139

In general industry, construction, and maritime, OSHA's permissible exposure limit for rotenone is 5 mg/m³ as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has an 8-hour TLV®–TWA of 5 mg/m³ for this

substance. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for rotenone in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Rotenone is a white, crystalline, odorless material. This substance is a selective contact herbicide or insecticide and is used in flea powders, fly sprays, and moth-proofing agents (ACGIH 1986, p. 515; Hayes 1982, p. 81). Rotenone is used in dairy barns, milk rooms, and animal shelters and on many vegetables and fruits (Hayes 1982, p. 82). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Rotenone causes irritation of the eyes and skin and central nervous system effects in humans and animals. There is also evidence in animals that rotenone causes liver and kidney damage, developmental abnormalities, and cancer. The lowest reported oral LD_{50}s in rats and mice are 60 mg/kg and 350 mg/kg, respectively (RTECS 1990). Acutely poisoned animals show signs of respiratory stimulation, followed by respiratory depression, incoordination, convulsions, and tremors before death (Hayes 1982, p. 82). Applied to the eyes of rabbits, rotenone causes intense irritation and pus formation (Hayes 1982, p. 82). An oral dose of 1600 mg/kg caused gastrointestinal effects in rabbits, including ulceration, hypermotility, and diarrhea (RTECS 1990). Intravenous administration of rotenone to experimental animals causes vomiting, incoordination, muscle tremors, clonic convulsions, and respiratory failure (Shepard 1949; Shimkin and Anderson 1936, in Gosselin, Smith, and Hodge 1984, p. III–366). Dogs fed 5 mg/kg/day rotenone for 1 month showed fatty changes of the liver and kidneys at autopsy (Hayes 1982, p. 83). Oral doses of 10 mg/kg given to pregnant rats on days 6 to 15 of pregnancy were fatal to 12 of 20 dams and caused a decrease in the number of live fetuses per surviving dam and an increase in the number of resorptions (Khera et al. 1982, in Proctor, Hughes, and Fischman 1988, p. 437). Musculoskeletal abnormalities were seen in the fetuses of rats given 5 mg/kg oral doses of rotenone on days 6 through 15 of pregnancy (RTECS 1990; Proctor, Hughes, and Fischman 1988, p. 437). Intraperitoneally injecting 40 female rats with 1.7 mg/kg of rotenone in sunflower oil for 42 days produced mammary tumors in 60 percent of the rats within 6 to 11 months of the end of treatment; none of the controls developed tumors after treatment (Gosalvez and Merchant 1973, in Proctor, Hughes, and Fischman 1988, p. 437). There was a slight increase in the incidence of parathyroid gland adenomas among rats given 75 ppm rotenone in their diets for 2 years; female rats given 38 ppm rotenone in the diet for 2 years showed an increased incidence of subcutaneous tissue tumors (Proctor, Hughes, and Fischman 1988, p. 437).

In humans, local effects of rotenone exposure include conjunctivitis, dermatitis, pharyngitis, and rhinitis; oral ingestion causes gastrointestinal irritation, nausea, and vomiting (Klaassen 1986, p. 552; Proctor, Hughes, and Fischman 1988, p. 436). The lowest lethal oral dose in humans is estimated to be 143 mg/kg; at this level, individuals experienced gastrointestinal effects (RTECS 1988). Inhalation of rotenone dust produces respiratory stimulation followed by depression and convulsions (Klaassen, Amdur, and Doull 1986, p. 552).

Based on this evidence in humans and animals, OSHA preliminarily concludes that rotenone causes severe eye and skin irritation and central nervous system effects in exposed individuals. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. OSHA believes that establishing a PEL for rotenone of 5 mg/m³ as an 8-hour TWA is necessary to reduce these risks of material health impairment. Promulgation of this limit will also make the PEL for rotenone consistent across all OSHA-regulated sectors.

SULFUR HEXAFLUORIDE

CAS: 2551–62–4; Chemical Formula: SF_6

H.S. No. 2146

OSHA's permissible exposure limit for sulfur hexafluoride in general industry, construction, and maritime is 1000 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA limit of 1000 ppm for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing a PEL of 1000 ppm as an 8-hour TWA for sulfur hexafluoride in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Sulfur hexafluoride is a colorless, odorless gas. It is used as a gaseous insulator for electrical equipment and as a tracer gas for ventilation measurements in occupied spaces (ACGIH 1986, p. 543(87); Braker and Mossman 1980, p. 649).

Exposure to sulfur hexafluoride can cause nervous system effects and asphyxiation in humans and animals. The intravenous LD_{50} in rabbits is 5790 mg/kg (RTECS 1989). Rats exposed to an atmosphere containing 80 percent (800,000 ppm) sulfur hexafluoride and 20 percent (200,000 ppm) oxygen for 16 to 24 hours showed no observable effects from the exposure (ACGIH 1986, p. 543(87)). Acute exposure to a sulfur hexafluoride concentration of 300 g/m³ produced effects on the nervous system and behavior of rats (Melnikova and Rozova 1981, in HSDB 1986). Under chronic conditions, guinea pigs and rats also showed signs of nervous system effects; changes in the livers and kidneys of these animals were seen at autopsy (Melnikova and Rozova 1981, in HSDB 1986).

Inhaling an 80:20 sulfur hexafluoride-oxygen mixture for 5 minutes caused peripheral tingling, excitement, and some alterations in hearing in humans (Glauser and Glauser 1986, in Proctor, Hughes, and Fischman 1988, p. 451). In a recent incident involving two workers exposed to sulfur hexafluoride (and its electrically induced breakdown products), both workers collapsed; the sulfur hexafluoride concentration was estimated to be 1500 ppm (Pilling and Jones 1988). Both men were disoriented and only semi-conscious, and both had headaches. One of these workers developed pulmonary edema within 90 minutes of rescue; signs and symptoms included cyanosis, dyspnea, and bloody sputum (Pilling and Jones 1988).

Based on this evidence in humans and animals, OSHA preliminarily concludes that sulfur hexafluoride causes asphyxia and affects the nervous system in exposed individuals. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these effects. The Agency believes that establishing an 8-hour TWA limit of 1000 ppm for sulfur hexafluoride in agriculture is necessary to reduce substantially the risks of these material health impairments. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all OSHA-regulated sectors.

TANTALUM (METAL DUST AND OXIDE)

CAS: 7440–25–7; Chemical Formulas: (Tantalum metal) Ta; (Tantalum oxide) Ta_2O_5

H.S. No. 1382

OSHA's PEL for tantalum dust and oxide in construction, maritime, and

general industry is 5 mg/m³ as an 8-hour TWA. There is no limit for these substances in agriculture. NIOSH has no REL for tantalum dust or its oxide but concurs (Ex. 8–47, Table N1) with the limit being proposed. The ACGIH has a TLV®–TWA of 5 mg/m³ and a TLV®–STEL of 10 mg/m³ for these substances. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for tantalum metal dust and oxide in agriculture. Promulgation of this PEL will make the limit for these substances consistent across all OSHA-regulated sectors.

Tantalum dust is a black powder, and tantalum oxide is a white, microcrystalline powder. These substances are odorless. Tantalum metal is used in chemical equipment, rectifiers, furnace parts, tools, body implants, and electronic equipment. The oxide is used in optical glass and in piezoelectric, maser, and laser applications (ACGIH 1986, p. 544 (88); Hawley's 1987, p. 1120).

There are no acute toxicity data for the metal; however, the oral LD_{50} in the rat for tantalum oxide is 8000 mg/kg (RTECS 1990). Intratracheal administration of 100 mg tantalum oxide to guinea pigs produced "soft white circumscribed pigmented dust lesions" in their lungs; no fibrosis was seen (ACGIH 1986/Ex. 1–3, p. 554 (88)). Additionally, this study demonstrated transient bronchitis, interstitial pneumonitis, and hyperemia in these animals after administration of the oxide. Implanted into rats, 3760 mg/kg tantalum metal caused injection-site tumors (RTECS 1990).

In humans, tantalum oxide has been used as a dressing for burns (Olsen 1944/Ex. 1–651), and the use of tantalum gauze in surgical repair produced no long-term adverse effects (Dales and Kyle 1958/Ex. 1–587). No adverse health effects have been associated with industrial exposures to tantalum or tantalum oxide (Cochran, Doull, Mazur, and DuBois 1950/Ex. 1–586).

Based on this evidence, OSHA is proposing a 5-mg/m³ 8-hour TWA PEL for tantalum and tantalum oxide. OSHA preliminarily concludes that this limit will protect workers in agriculture from the significant risk of respiratory effects potentially associated with occupational exposure to these substances. These respiratory effects constitute a material impairment of health, and the Agency believes that the proposed limit is necessary to reduce this risk substantially. In addition, promulgation of the proposed limit will make OSHA's limit for tantalum metal dust and oxide consistent across all OSHA-regulated sectors.

1,1,2,2-TETRACHLORO-1,2-DIFLUOROETHANE

CAS: 76–12–0; Chemical Formula: $CFCl_2CFCl_2$

H.S. No. 2154

OSHA's limit for 1,1,2,2-tetrachloro-1,2-difluoroethane in general industry, construction, and maritime is 500 ppm as an 8-hour TWA. There is no PEL for this substance in agriculture. The ACGIH TLV®–TWA for this substance is 500 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing a 500- ppm 8-hour TWA PEL for 1,1,2,2-tetrachloro-1,2-difluoroethane in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

1,1,2,2-tetrachloro-1,2-difluoroethane, also called Freon 12, is a noncombustible, colorless liquid or solid with a faint, ether-like odor (ACGIH 1986, p. 560; HSDB 1989). This substance is used as a refrigerant. It is also used as a solvent, a blowing and foaming agent, and a corrosion inhibitor in the dry cleaning, polymer and plastics, and electrical industries. In addition, it is used in veterinary medicine as a flukicide and antihelminthic (HSDB 1989; ACGIH 1986, p. 560).

In animals, 1,1,2,2-tetrachloro-1,2-difluoroethane is a mild irritant of the skin and eyes; at high concentrations, it causes central nervous system depression. The oral LD_{50} in mice is 800 mg/kg, and the LC_{50} in rats is 2 parts per hundred (20,000 pph) for 15 minutes (RTECS 1989). Applied to the skin and eyes of guinea pigs, 1,1,2,2-tetrachloro-1,2-difluoroethane caused mild irritation (RTECS 1989). This substance also caused mild irritation in contact with the eyes of rabbits (Proctor, Hughes, and Fischman 1988, p. 460). All rats exposed to 1,1,2,2-tetrachloro-1,2-difluoroethane concentrations of 20,000 to 30,000 ppm for 1 to 2.5 hours died, and the lungs of these animals were severely hemorrhagic at autopsy (Greenberg and Lester 1950, in ACGIH 1986, p. 560). Exposure to 15,000 ppm for 4 hours was fatal to rats; before death, the animals exhibited excitability, incoordination, coma, rapid respiration, tremor, and convulsions, and autopsy showed pulmonary edema and congestion of the lungs and liver (Clayton, Sherman, and Morrison 1966, in ACGIH 1986, p. 560; Proctor, Hughes, and Fischman 1988, pp. 459–460). Rats exposed to 5000 ppm for 18 hours became comatose and died; autopsy revealed pulmonary damage (Greenberg and Lester 1966, in Proctor, Hughes, and Fischman 1988, p. 460). Rats exposed to a concentration of 3000 ppm developed difficult breathing, mild incoordination, and hyperresponsiveness, but these signs subsided after cessation of exposure (Clayton, Sherman, and Morrison 1966, in Proctor, Hughes, and Fischman 1988, p. 460). Rats given 2 g/kg 1,1,2,2-tetrachloro-1,2-difluoroethane daily for 23 to 33 days showed no pathologic changes at autopsy (Greenberg and Lester 1950, in ACGIH 1986, p. 560). Female rats exposed to a concentration of 1000 ppm for 6 hours/day for a total of 31 days had a decreased leucocyte count (Clayton, Sherman, and Morrison 1966, in Proctor, Hughes, and Fischman 1988, p. 460).

Based on effects seen in animals, 1,1,2,2-tetrachloro-1,2-difluoroethane is expected to cause central nervous system depression and pulmonary damage in humans exposed to high concentrations. Early industrial experience with fluorocarbon refrigerants showed that humans exposed to vapor concentrations of approximately 200,000 ppm experienced pulmonary irritation and tremors and became disoriented and comatose; removal from exposure reversed these effects, and there were no sequelae (Gosselin, Smith, and Hodge 1984, p. II–159). Prolonged skin contact with liquid fluorocarbons such as freon 12 causes defatting and may lead to dermatitis (Parmeggiani 1983, p. 897).

Based on this evidence, OSHA is proposing a PEL of 500 ppm as an 8-hour TWA for 1,1,2,2-tetrachloro-1,2-difluoroethane in agriculture. The Agency believes that this PEL is necessary to reduce substantially the significant risk of irritation and central nervous system depression, which OSHA considers material health impairments. Promulgation of the proposed limit will also make OSHA's PEL for 1,1,2,2-tetrachloro-1,2-difluoroethane consistent across all OSHA-regulated sectors.

1,1,1,2-TETRACHLORO-2,2-DIFLUOROETHANE

CAS: 76–11–9; Chemical Formula: CCl_3CF_2Cl

H.S. No. 2153

OSHA's limit for 1,1,1,2-tetrachloro-2,2-difluoroethane in general industry, construction, and maritime is 500 ppm as an 8-hour TWA. There is no PEL for this substance in agriculture. The ACGIH TLV®–TWA is 500 ppm. There is no NIOSH REL; however, NIOSH concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing a PEL of 500 ppm for 1,1,1,2-tetrachloro-2,2-difluoroethane in agriculture. Promulgation of this limit

will make the PEL for this substance consistent across all OSHA-regulated sectors.

1,1,1,2-Tetrachloro-2,2-difluoroethane is a noncombustible, colorless solid with a faint, ether-like odor. This substance is used as a refrigerant, a solvent, a blowing and foaming agent, and a corrosion inhibitor. It is also used in the dry cleaning, polymer and plastics, and electrical industries (HSDB 1989, ACGIH 1986, p. 560). Because of their adverse effects on stratospheric ozone, the use of chlorofluorocarbons as aerosol spray propellants was banned in 1979 (HSDB 1989).

In animals, 1,1,1,2-tetrachloro-2,2-difluoroethane is a central nervous system depressant at very high concentrations, and repeated exposure to lower levels has caused blood and liver changes. The lowest lethal concentration in rats is 20,000 ppm for 30 minutes (RTECS 1989). Rats exposed to a 10,000-ppm concentration for 90 to 120 minutes showed signs of mild central nervous system depression but no ataxia. Exposure to higher concentrations (20,000 to 30,000 ppm), however, was fatal to rats within 1 to 2.5 hours. Repeated exposure to a 1000-ppm concentration for 18 hours/day for 17 days caused no post-mortem lung, liver, or spleen changes in rats (Greenberg and Carter 1950, in ACGIH 1986, p. 560). However, rats exposed to a 1000-ppm concentration for 31 six-hour exposures showed leukopenia and liver changes at autopsy (Clayton, Sherman, Morrison et al. 1966, in ACGIH 1986, p. 560). Rats given 1,1,1,2-tetrachloro-2,2-difluoroethane at an oral dose of 2 mg/kg/day for 23 to 33 days showed no organ pathology at autopsy.

No information is available on industrial exposure to 1,1,1,2-tetrachloro-2,2-difluoroethane. Based on the effects seen in animals, exposure to high concentrations may cause central nervous system depression. In contact with the skin, this substance, like all solvents, is expected to cause defatting and dermatitis.

Based on this evidence, OSHA is proposing a PEL of 500 ppm for 1,1,1,2-tetrachloro-2,2-difluoroethane in agriculture. The Agency believes that this PEL is necessary to reduce substantially a significant risk of potential central nervous system depression, which is a material health impairment. Promulgation of the proposed limit would make OSHA's PEL for 1,1,1,2-tetrachloro-2,2-difluoroethane consistent across all OSHA-regulated sectors.

TRIFLUOROBROMOMETHANE
CAS: 75–63–8; Chemical Formula: $CBrF_3$
H.S. No. 2164

OSHA's limit for trifluorobromomethane in general industry, construction, and maritime is 1000 ppm as an 8-hour TWA. There is no PEL for this substance in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. The ACGIH TLV®–TWA for trifluorobromomethane is 1000 ppm as an 8-hour TWA, and this is the limit being proposed by OSHA for agricultural workplaces. This is the limit recently established for this substance in general industry.

Trifluorobromomethane (also called Freon-13B1® and Freon 1301) is a colorless gas with a slight, ether-like odor (Braker and Mossman 1980, p. 70). This substance is used as a fire extinguishant and foam-blowing agent, a chemical intermediate, an erosion inhibitor in hydraulic fluids, a refrigerant in food processing and storage, and a metal hardener (HSDB 1987).

At very high concentrations, trifluorobromomethane causes cardiac irregularities in humans and animals. The LC_{50} in rats is 416 g/m³ for an unspecified duration (RTECS 1990). Dogs exposed to a 200,000-ppm concentration of trifluorobromomethane for 3 minutes became agitated and developed tremors; when the concentration was increased to between 500,000 and 800,000 ppm, half of the exposed dogs had epileptiform seizures (Van Stee and Back 1969, in Proctor, Hughes, and Fischman 1988, p. 495). Injection of epinephrine caused arrhythmias in all animals exposed to a 400,000-ppm concentration of trifluorobromomethane (Van Stee and Back 1969). After a 5- to 10-μg/m³ dose of epinephrine, dogs experienced ventricular fibrillation and cardiac arrest at 400,000 ppm trifluorobromomethane and monkeys experienced spontaneous defibrillation (Van Stee and Back 1969). No clinical signs of adverse effects were seen in dogs and cats exposed daily to trifluorobromomethane concentrations of 23,000 ppm for 18 weeks, and autopsy revealed no pathological changes in these animals (Comstock et al. 1953, in ACGIH 1986, p. 605).

Humans exposed to very high concentrations of trifluorobromomethane develop cardiac irregularities; volunteers exposed to a concentration of 169,000 ppm developed atrial-ventricular dissociation and premature ventricular beats (Hine et al. 1968, in ACGIH 1986, p. 605). Volunteers exposed for 3 minutes to a concentration of trifluorobromomethane of between 40,000 and 70,000 ppm showed increased reaction times (Call 1973, in ACGIH 1986, p. 605). In contact with the skin or eyes, liquid pressurized trifluorobromomethane causes frostbite (Clayton and Clayton 1981, p. 3102).

Based on this evidence in humans and animals, OSHA preliminarily concludes that, in the absence of a PEL, workers in agriculture are at significant risk of experiencing cardiac irregularities. Accordingly, OSHA is proposing an 8-hour TWA PEL of 1000 ppm for trifluorobromomethane in agriculture. In addition, promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

TRIMETHYL PHOSPHITE
CAS: 121–45–9; Chemical Formula: $(CH_3O)_3P$
H.S. No. 1410

OSHA has no limit for trimethyl phosphite in construction, maritime, and agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. The ACGIH TLV® for this substance is 2 ppm as an 8-hour TWA. OSHA is proposing an 8-hour TWA PEL of 2 ppm for trimethyl phosphite; this is the limit recently established for this substance in general industry.

Trimethyl phosphite is a colorless liquid with a pungent odor. This substance is used as an intermediate in the manufacture of pesticides, fire retardants, and organic phosphorus additives (ACGIH 1986, p. 609; HSDB 1989).

Trimethyl phosphite's toxic effects include eye, mucous membrane, skin, and pulmonary irritation. The oral LD_{50} in rats is 1600 mg/kg, and the lowest lethal dermal concentration in rabbits is 2200 mg/kg (RTECS 1990). Applied to the skin of rabbits, trimethyl phosphite caused severe irritation; instilled into the eyes of rabbits, it produced only mild irritation (RTECS 1990). Rats exposed to concentrations ranging from 100 to 600 ppm showed dose-dependent effects, including labored breathing, lacrimation, salivation, reduced activity, cold feet, and corneal opacities; at the highest concentration, mature and irreversible cataracts were formed (EPA 1982, in Dialog NIOSHTIC off-prints). Rats inhaling 500 ppm for 8 weeks showed premalignant changes in the lungs at autopsy (EPA 1982). In a sub-chronic inhalation study of rats, Levin and Gabriel (1973/Ex. 1–746) found that exposure to trimethyl phosphite at concentrations of 500±75 ppm for 7.5 hours/day, 5 days/week for 8 weeks caused an adverse effect on body

weight; necropsy revealed evidence of severe pulmonary and cutaneous pathology. At doses of 164 mg/kg during gestation days 8 to 15, trimethyl phosphite caused gross abnormalities in the offspring of treated rats (Mehlman, Craig, and Gallo 1984, in Toxicol. Appl. Pharmacol. 72(1):119–123).

In humans, exposure to trimethyl phosphite causes eye, skin, and upper respiratory tract irritation (Levin and Gabriel 1973/Ex. 1–746). In a group of 179 workers exposed to average concentrations of trimethyl phosphite of between 0.3 and 4 ppm, no ocular changes were observed (Mobil Chemical Company 1980, as cited in ACGIH 1986/Ex. 1–3, p. 609).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 2 ppm for trimethyl phosphite. The Agency preliminarily concludes that this limit will protect workers in construction, maritime, and agriculture from the significant risk of eye damage, skin irritation, and upper respiratory tract irritation, all material impairments of health that are potentially associated with exposures to this substance at levels permitted in the absence of a limit. In addition, promulgation of the proposed PEL will make the limit for trimethyl phosphite consistent across all OSHA-regulated sectors.

TRIPHENYL AMINE

CAS: 603–34–9; Chemical Formula: $(C_6H_5)_3N$

H.S. No. 1415

OSHA has no exposure limit for triphenyl amine in construction, maritime, or agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. The ACGIH has a 5-mg/m³ TLV®–TWA limit for this substance. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for triphenyl amine; this is the limit recently established for this substance in general industry.

Triphenyl amine is a colorless solid that takes the form of monoclinic prisms. It is used as a primary photoconductor to coat film bases (ACGIH 1986, p. 612; HSDB 1989).

Animal studies conducted by the Eastman Kodak Company (Roudabush 1973, as cited in ACGIH 1986/Ex. 1–3, p. 612) showed an oral LD_{50} in rats of 3200 to 6400 mg/kg and an oral LD_{50} in mice of 1600 to 3200 mg/kg. The LD_{50} by intraperitoneal administration for both rodent species exceeded 6400 mg/kg. Skin and eye sensitivity tests in both rabbits and guinea pigs were essentially negative, except that application to the skin of 5 to 20 ml/kg occlusively for four hours produced slight dermal erythema (Roudabush 1973, as cited in ACGIH 1986/Ex. 1–3, p. 612).

Based on this animal evidence, OSHA is proposing a 5-mg/m³ TWA limit for triphenyl amine. OSHA preliminarily concludes that this limit is necessary to protect workers in construction, maritime, and agriculture from the significant risk of skin irritation, a material health impairment that is potentially associated with occupational exposure to this substance at levels permitted by the absence of an OSHA PEL. In addition, promulgation of the proposed PEL will make OSHA's limit for triphenyl amine consistent across all OSHA-regulated sectors.

TRIPHENYL PHOSPHATE

CAS: 115–86–6; Chemical Formula $(C_6H_5O)_3PO_4$

H.S. No. 2165

In general industry, construction, and maritime, OSHA has an 8-hour TWA PEL of 3 mg/m³ for triphenyl phosphate. The Agency has no PEL for this substance in agriculture. The ACGIH has a TLV®–TWA of 3 mg/m³ for this substance; NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL in agriculture of 3 mg/m³ for triphenyl phosphate. This is the limit recently established for this substance in general industry.

The principal use for triphenyl phosphate is as a noncombustible plasticizer for cellulosics; however, this substance is also used in impregnating roofing paper and upholstery, as a plasticizer in lacquers and varnishes, and in rendering acetyl cellulose, nitrocellulose, and airplane "dope" stable and fireproof (HSDB 1985). Triphenyl phosphate is a colorless to white crystalline solid with a phenol-like odor. It may also take the form of white platelets (HSDB 1985).

Triphenyl phosphate causes cholinesterase inhibition in both animals and humans; in laboratory animals, this substance also causes neurotoxic effects. The oral LD_{50} in rats is 3500 mg/kg, and the lowest lethal dose by subcutaneous injection in the monkey is 500 mg/kg (RTECS 1989; Clayton and Clayton 1981, p. 2367). Acutely poisoned rats developed tremors and lost motor coordination before death (RTECS 1989). Mice given triphenyl phosphate orally or intraperitoneally at a dose of 0.2 g/kg showed a 50 percent decrease in plasma cholinesterase levels, and exposure to triphenyl phosphate at a concentration of 757 mg/m³ for 2 hours produced a slight but statistically significant decrease in whole blood cholinesterase activity (Sutton, Terhaar, Miller, Scherberger, Riley, Roudabush, and Passet 1960). Recent work suggests that triphenyl phosphate may not have been responsible for the delayed neurotoxicity seen in earlier studies but that an impurity in the triphenyl phosphate may have been responsible (Wills et al. 1979, cited in HSDB 1985). Applied to the skin of rats and mice, triphenyl phosphate caused no irritation and no inhibition of cholinesterase activity (Antonyuk 1974; Sutton et al. 1960). Slightly depressed growth rates and increased liver weights were seen in rats fed 0.5 percent triphenyl phosphate for 35 days; these effects were not observed in rats fed 0.1 percent triphenyl phosphate for this period (Sutton et al. 1960).

No adverse clinical effects were observed in 16 workers who were exposed for 8 to 10 years to the vapor, mist, and dust forms of triphenyl phosphate at an average concentration of 3.5 mg/m³ (with brief exposures to peaks of 40 mg/m³). However, a slight but statistically significant reduction in red blood cell cholinesterase activity was noted in these workers (Sutton et al. 1960). A study of workers manufacturing aryl phosphates (including triphenyl and tricresyl phosphate) failed to show a correlation between airborne concentration (0.2 to 3.4 mg/m³ aryl phosphate) or duration of exposure to these substances and the gastrointestinal or neuromuscular symptoms reported by these workers (Tabershaw, Kleinfeld, and Feiner 1957a, b). One apparent case of skin sensitization caused by exposure to triphenyl phosphate has been recorded (Clayton and Clayton 1981, p. 2381).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the cholinesterase inhibition associated with exposure to triphenyl phosphate. The Agency believes that establishing an 8-hour TWA PEL of 3.0 mg/m³ will substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

URANIUM (INSOLUBLE COMPOUNDS)

CAS: 7440–61–1; Chemical Formula: U

H.S. No. 1418

OSHA's PEL for insoluble uranium compounds in the construction and maritime industries is 0.25 mg/m³ as an 8-hour TWA. There is no limit for these substances in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. The

ACGIH has a TLV®–TWA of 0.2 mg/m³ and a TLV®–STEL of 0.6 mg/m³ for these substances. OSHA is proposing an 8-hour TWA of 0.2 mg/m³ and a STEL of 0.6 mg/m³ for the insoluble uranium compounds; these are the limits recently established for these compounds in general industry.

Uranium is a silver-white radioactive metal that has no odor. Uranium is used in nuclear fuels and weapons, in research, as a catalyst in gas manufacture, and as a source of radium salts and fissionable isotopes (ACGIH 1986, p. 617; HSDB 1986). The proposed PEL would apply to metallic uranium and such compounds as triuranium octaoxide, uranium dioxide, uranium hydride, uranium tetrafluoride, and uranium trioxide.

Exposure to uranium and the insoluble uranium compounds may produce both chemical poisoning and radiation injury to the kidneys and lungs of exposed animals. The insoluble uranium compounds are less toxic chemically than the soluble compounds, but uranium and all uranium compounds have the potential to cause radiation damage. Acute inhalation of 20 mg/m³ concentrations of uranium tetrafluoride, uranium dioxide, or high-grade uranium ore is occasionally fatal to some laboratory animals; exposure to 2.5 mg/m³ concentrations of these substances, however, caused no fatalities and evidence of mild kidney damage only in a few animals (Clayton and Clayton 1981, p. 2002).

Chronic exposure to uranium or its compounds causes radiation injury in animals. Dogs and monkeys exposed to 5 mg/m³ uranium dioxide 6 hours/day, 5 days/week for up to 5 years developed fibrotic changes (suggestive of radiation injury) in their tracheobronchial lymph nodes (both species) and, in monkeys, in the lungs (Clayton and Clayton 1981, p. 2002). Dogs tolerated exposure to a 10 mg/m³ concentration of uranium dioxide for 1 year and to a 10 g/kg/day dietary dose of the same substance for 1 year. Rats injected with metallic uranium in the femoral bone marrow and chest wall developed site-of-contact tumors (sarcomas); the effects of chemical injury and radiation damage could not be distinguished in these lesions (Clayton and Clayton 1981, p. 2003).

In humans, over-exposure to uranium dust or an insoluble uranium compound causes respiratory irritation, difficult breathing, and coughing. A recent review of uranium's nephrotoxicity suggests that it causes damage to the human kidney at renal uranium concentrations substantially below those previously believed to cause harm (Leggett 1989). Uranium workers are at increased risk of death due to pulmonary insufficiency and respiratory, lymphatic, and hematopoietic cancers; these effects are believed to be caused by the decay products of uranium rather than by the uranium itself (Parmeggiani 1983, p. 2238). A study of the risk of respiratory deaths among uranium miners in the United States showed the following dose response: Miners exposed for 5 to 9.9 years had a twofold increase in risk; miners exposed for 10 to 24.9 years increase their risk by 3.6; and those exposed for longer than 24.9 years increased their risk by 3.75. Smoking was shown both to increase the risk of death from respiratory disease and to shorten the neoplastic latency period (Clayton and Clayton 1981, pp. 2010–2011).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 0.2 mg/m³ and a STEL of 0.6 mg/m³ in construction, maritime, and agriculture for uranium and the insoluble compounds of uranium. The Agency preliminarily concludes that these limits are required to protect workers in these sectors from the significant risks of kidney or blood disorders and radiological damage potentially associated with both long-term and excursion exposures to these compounds. The Agency considers these adverse effects to be material impairments of health and believes that these limits will substantially reduce these risks. In addition, promulgation of the proposed limits will make the PELs for the insoluble uranium compounds consistent across all OSHA-regulated sectors.

Preliminary Conclusions for this Group of Substances

For the group of substances shown in Table C9–1, OSHA preliminarily concludes that occupational exposure causes a broad range of adverse health consequences in exposed workers in construction, maritime, and agriculture; these effects include, among others, central nervous system depression, respiratory irritation, liver and kidney damage, cardiac sensitization, and hepatocellular cancer; OSHA considers all of these effects material impairments of health. The Agency believes, based on a thorough review of the available toxicological evidence, that the proposed limits are necessary to reduce the significant risk of material health impairment associated with occupational exposures to these systemic toxins. Promulgation of these proposed limits will also make OSHA's PELs for these substances consistent across all OSHA-regulated sectors, including general industry, construction, maritime, and agriculture.

10. Substances for Which Proposed Limits Are Based on Avoidance of Physical Irritation and Other Effects

Introduction

In construction, maritime, and agriculture, OSHA is proposing to establish permissible exposure limits for a large group of substances that cause a variety of irritant and other adverse effects. These substances are called "particulates not otherwise regulated" because they are dusts and particulates* that have not been classified in any of the target organ categories addressed in this preamble.

OSHA previously had no substance-specific limits for these individual physical irritants in construction, maritime, or agriculture; the Agency's current generic limit for particulates is 15 mg/m³ as total particulate and 5 mg/m³ as respirable particulate (see Table Z–3 of 29 CFR 1910.1000). OSHA is listing these substances individually in the proposed rule and is proposing either the 15 mg/m³ total particulate limit and the respirable fraction limit of 5 mg/m³ or a 10 mg/m³ 8-hour TWA limit (total particulate) and a 5 mg/m³ (respirable fraction limit).

The health effects information available for these substances has led OSHA to separate them into two groups and to propose different limits for the substances in each group. For one group, which contains substances for which few data are available and which are believed to be of relatively low toxicity, OSHA is retaining the Agency's 8-hour TWA generic particulate limit of 15 mg/m³ (measured as total particulate) in construction and maritime; in addition, where the Agency previously had a 5 mg/m³ 8-hour TWA respirable fraction limit for a substance in this group, this limit is being retained in construction and maritime. For all of the substances in this first group, OSHA is proposing 8-hour TWA PELs of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) in agriculture; OSHA does not currently regulate particulates in agriculture.

For the second group of particulates not otherwise regulated, additional toxicological information is available that indicates that exposure leads both to physical irritation and to other health effects. For the substances in this group, OSHA is proposing 8-hour TWA PELs of

* Because the term particulate applies to dusts, aerosols, and mists, OSHA uses this term generically in this section to apply to all of these states of matter.

10 mg/m³ (measured as total particulate) and, where applicable, 5 mg/m³ (measured as the respirable fraction) for workplaces in all three of the sectors of interest in this rulemaking. Table C10–1 shows all of the particulates included in this section; those whose principal health effects are physical irritations have proposed PELs of 15 mg/m³ (total particulate and 5 mg/m³ (respirable fraction).

TABLE C10–1.—SUBSTANCES FOR WHICH THE PROPOSED EXPOSURE LIMIT IS BASED ON THE AVOIDANCE OF PHYSICAL IRRITATION AND OTHER EFFECTS

H.S. Number/chemical name	CAS Number	Current generic particulate in construction and maritime[1]	1987–1988 ACGIH TLV®[2]	Proposed OSHA PEL in construction, maritime, and agriculture[1]
1014 alpha-Alumina	1344–28–1	15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA; 5 mg/m³ TWA.
1016 Aluminum metal dust	7429–90–5	15 mg/m³ TWA	10 mg/m³ TWA –	15 mg/m³ TWA; 5 mg/m³ TWA.
1024 Ammonium sulfamate	7773–06–0	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.
1031 Barium sulfate–	7727–43–7	15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA; 5 mg/m³ TWA.
1032 Benomyl	17804–35–2	15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA; 5 mg/m³ TWA.
1035 Bismuth telluride (undoped)	1304–82–1	15 mg/m³ TWA	10 mg/m³ TWA	15 mg/m³ TWA; 5 mg/m³ TWA.
1039 Boron oxide	1303–86–2	15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA.
1057 Calcium carbonate	1317–65–3	15 mg/m³ TWA	10 mg/m³ TWA–	15 mg/m³ TWA; 5 mg/m³ TWA.
1061 Calcium silicate	1344–95–2	15 mg/m³ TWA	10 mg/m³ TWA–	15 mg/m³ TWA; 5 mg/m³ TWA.
1062 Calcium sulfate	7778–18–9	15 mg/m³ TWA	10 mg/m³ TWA–	15 mg/m³ TWA; 5 mg/m³ TWA.
1076 Cellulose	9004–34–6	15 mg/m³ TWA	10 mg/m³ TWA–	15 mg/m³ TWA; 5 mg/m³ TWA.
1082 2-Chloro-6-trichloromethyl pyridine	1929–82–4	15 mg/m³ TWA–	10 mg/m³ TWA	15 mg/m³ TWA; 5 mg/m³ TWA.
1095 Clopidol	2971–90–6	15 mg/m³ TWA	10 mg/m³ TWA–	15 mg/m³ TWA; 5 mg/m³ TWA.
1102 Crag herbicide (sesone)	136–78–7	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.
1133 Dicyclopentadienyl iron	102–54–5	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.
1155 Emery	112–62–9	15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA; 5 mg/m³ TWA.
1176 Ferbam–	14484–64–1	15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA.
1188 Glycerin (mist)	56–81–5	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.
1191A Graphite, synthetic		15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.
1192 Gypsum–	13397–24–5	15 mg/m³ TWA	10 mg/m³ TWA	15 mg/m³ TWA; 5 mg/m³ TWA.
1230 Kaolin–	1332–58–7	15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA; 5 mg/m³ TWA.
1232 Limestone	1317–65–3	15 mg/m³ TWA	10 mg/m³ TWA–	15 mg/m³ TWA; 5 mg/m³ TWA.
1233 Magnesite	546–93–0	15 mg/m³ TWA	10 mg/m³ TWA–	15 mg/m³ TWA; 5 mg/m³ TWA.
1234 Magnesium oxide (fume)–	1309–48–4	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA.
1235 Malathion	121–75–5	15 mg/m³ TWA	10 mg/m³ TWA, skin	10 mg/m³ TWA skin.
1239 Marble–	1317–65–3	15 mg/m³ TWA	10 mg/m³ TWA	15 mg/m³ TWA; 5 mg/m³ TWA.
1246 Methoxychlor	72–43–5	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA.
1278 Molybdenum (insoluble compounds)	7439–98–7	15 mg/m³ TWA–	10 mg/m³ TWA	10 mg/m³ TWA.
1294 Particulates (not otherwise regulated)		15 mg/m³ TWA–	10 mg/m³ TWA	15 mg/m³ TWA; 5 mg/m³ TWA.
1305 Pentaerythritol	115–77–5	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.
1310 Perlite	93763–70–3	15 mg/m³ TWA	10 mg/m³ TWA	15 mg/m³ TWA; 5 mg/m³ TWA.
1328 Picloram	1918–02–1	15 mg/m³ TWA	10 mg/m³ TWA; 20 mg/m³ STEL	10 mg/m³ TWA; 5 mg/m³ TWA.
1331 Plaster of Paris	26499–65–0	15 mg/m³ TWA	10 mg/m³ TWA–	15 mg/m³ TWA; 5 mg/m³ TWA.
1333 Portland cement	65997–15–1	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.
1351 Rouge		15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA; 5 mg/m³ TWA.
1359 Silicon	7440–21–3	15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA; 5 mg/m³ TWA.
1360 Silicon carbide	409–21–2	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.
1369 Starch	9005–25–8	15 mg/m³ TWA	10 mg/m³ TWA	15 mg/m³ TWA; 5 mg/m³ TWA.
1374 Sucrose	57–50–1	15 mg/m³ TWA	10 mg/m³ TWA	15 mg/m³ TWA; 5 mg/m³ TWA.
2148 2,4,5-T (Trichlorophenoxyacetic acid)	93–76–5	15 mg/m³ TWA–	10 mg/m³ TWA	10 mg/m³ TWA.
1383 Temephos	3383–96–8	15 mg/m³ TWA	10 mg/m³ TWA	10 mg/m³ TWA; 5 mg/m³ TWA.
1391 4,4'-Thiobis (6-tert-butyl-m-cresol)	96–69–5	15 mg/m³ TWA–	10 mg/m³ TWA	10 mg/m³ TWA; 5 mg/m³ TWA.
1396 Titanium dioxide	13463–67–7	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA.
1423 Vegetable oil mist		15 mg/m³ TWA	10 mg/m³ TWA	15 mg/m³ TWA; 5 mg/m³ TWA.
1434 Zinc stearate	557–05–1	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.
1438 Zinc oxide	1314–13–2	15 mg/m³ TWA	10 mg/m³ TWA–	10 mg/m³ TWA; 5 mg/m³ TWA.

[1] OSHA is proposing to retain the Agency's generic 5-mg/m³ respirable-fraction PEL for particulates where it currently applies in construction and maritime. OSHA's TWA PELs are for 8-hour exposures.
[2] The ACGIH TLV®–TWA is for an 8-hour exposure.

For the second group of substances in this category, however, OSHA has reviewed the available toxicological literature and has preliminarily determined that the current generic total particulate limit of 15 mg/m³ is not sufficiently protective. For these substances, the adverse health effects associated with exposure include, in addition to physical irritation, chronic pulmonary disease, cancer, and mutagenic, reproductive, and teratogenic effects. In the past, many of these substances were designated as "nuisance" dusts or particulates; however, recent toxicologic studies or evidence in humans has increasingly shown that exposure leads to serious health effects. Thus, as applied to these substances, the term nuisance dust is a misnomer, because the hazards these substances pose in the workplace are real, well-documented, and potentially serious. NIOSH shares OSHA's concern about this trend in the toxicology of particulates and has already either designated several of these substances, which were formerly considered "inert," as potential occupational carcinogens or labeled them as causing other target-organ effects. Examples of substances in this category that the recent toxicological literature has suggested may cause more serious effects are: benomyl (reproductive effects); kaolin (pulmonary fibrosis); methoxychlor (cancer); picloram (liver and kidney damage); synthetic graphite (pneumoconiosis); and titanium dioxide (cancer).

In addition to these diseases, toxicologists have recently expressed

concern over the identification of a condition known as pulmonary alveolar proteinosis. This condition, which is apparently caused by the physical effects of particulate exposure, can be fatal if not properly diagnosed, although treatment with lung lavage is sometimes effective (NIOSH–ILO 1988). Pulmonary alveolar proteinosis has occurred in workers exposed to several different particulates, including the so-called inert dusts. The onset of this condition may not occur until months after first exposure to the dust.

For the group of physical irritants identified by OSHA as having other adverse health effects, the proposed rule would establish an 8-hour TWA total particulate limit of 10 mg/m³ and a respirable fraction limit of 5 mg/m³ in construction, maritime, and agriculture. The 10 mg/m³ limit is consistent with the limits established for these substances in the recent general industry rulemaking. That is, the limits being proposed today are those recently established for these substances in general industry. Promulgation of these limits will thus make OSHA's PELs for them consistent across all regulated sectors.

Description of the Health Effects

The adverse exposure effects caused by the substances in this group for which the Agency's current 15-mg/m³ limit is being retained in construction and maritime and proposed in agriculture include: interference with vision; deposition of these substances in the eyes, ears, nasal passages, and upper respiratory tract; and skin and corneal irritation. For the group of substances for which a limit of 10 mg/m³ is being proposed in construction, maritime, and agriculture, the additional adverse exposure effects include pulmonary alveolar proteinosis, reproductive effects, irreversible pulmonary effects, liver and kidney effects, systemic poisoning, and cancer. As discussed above, these latter effects are increasingly being linked to exposure to these substances, many of which were formerly considered biologically inert.

Thus, workers exposed to excessive airborne concentrations of any of these physical irritants may have difficulty seeing, may cough uncontrollably, may develop conjunctivitis or dermatitis, or may develop disabling or even life-threatening disease. In addition to these primary effects, workers distracted by physical-irritant effects may be more likely than nonexposed workers to have accidents and thus to endanger both themselves and others. (These adverse health effects also clearly have substantial productivity impacts.)

In the prior rulemaking, many commenters opposed any reduction in the PELs for these substances on the grounds that the evidence that exposure leads to material impairment of health was inadequate (Exs. 3–1123, 3–726, 3–755, 3–887, 3–898, 3–939, 3–1012, 3–1016, and 8–22). In that rulemaking, OSHA was not persuaded by these arguments and cited the International Labour Organization to the effect that:

> [T]he biological effects of these inert dusts are of a long-term nature and are neither fibrogenic nor carcinogenic, toxic or allergenic. In excessive quantities they will overcharge the protective and scavenging mechanisms, thereby leading to respiratory disease. The extent to which any type of dust represents a health risk thus depends on exposure, which includes the nature of the dust, its concentration and the duration of exposure, as well as upon individual factors such as the general constitution and state of health of the person concerned, including the functional state of the upper respiratory tract, the lung function and its structure, the general immunological status and specific immunological reactivity, and the biochemical reactivity. All these factors will play a part in the onset of disease (Parmeggiani 1983).

OSHA also noted in the earlier rulemaking that a particulate standard of 10 mg/m³ or less (measured as total particulate) is the official standard in a great many countries, including Finland, Denmark, Norway, Sweden, the United Kingdom, Japan, Poland, Czechoslovakia, and the Republic of China (Cook 1987/Ex. 1–187, pp. 234–241).

In addition, OSHA notes with concern the trend in the toxicology of these substances, which is to find increasingly that substances formerly believed to be inert are in fact associated with serious and sometimes life-threatening effects. When exposures to the substances shown in Table C10–1 are kept under good industrial hygiene control in the workplace, as represented by the proposed PELs, OSHA believes that exposures are not likely to result in significant organic disease or irreversible toxic effects among workers exposed to them in construction, maritime, and agriculture.

The following discussions describe OSHA's preliminary findings for this group of physical irritants. In all cases, the limits being proposed for construction, maritime, and agriculture are those that were recently established for these substances in general industry.

ALPHA-ALUMINA

CAS: 1344–28–1; Chemical Formula: Al_2O_3

H.S. No. 1014

OSHA has no specific limit for alpha-alumina in the agriculture, construction, or maritime industries, although OSHA's generic total particulate limit of 15 mg/m³ (5 mg/m³ for the respirable fraction) applies to this substance in construction and maritime. The ACGIH has an 8-hour TWA of 10 mg/m³, measured as total dust, for alpha-alumina. NIOSH has no REL for alpha-alumina. OSHA is proposing an 8-hour TWA of 10 mg/m³ (total particulate) for this substance in the construction, maritime, and agriculture industries. The 5-mg/m³ respirable-fraction limit that applies to alpha-alumina is being retained.

Alpha-alumina, also called aluminum oxide, is a white powder that is widely used as an abrasive grinding material. Alpha-alumina is also used in the production of aluminum, in refractories, ceramics, electrical insulation, paper, spark plugs, crucibles, and laboratory wares, in chromatographic analysis, and in fluxes, artificial gems, and light bulbs (Hawley's 1987, p. 48).

A study by Miller and Sayers (1941/Ex. 1–595) determined that alumina particles with diameters of less than 40 microns produced no reaction in laboratory animals. The results of a study by Stacy, King, Harrison et al. (1959/Ex. 1–761) confirmed the findings of Miller and Sayers; these authors found a-alumina to be nearly inert when injected into the lungs of rats (Stacy, King, Harrison et al. 1959/Ex. 1–761). Inhalation of fine aluminum powders at unspecified levels did not cause fibrosis in rats, guinea pigs, or hamsters (Gross, Harley, and deTreville 1973/Ex. 1–696).

In 1923, shortly after a-alumina replaced sandstone as the industrial abrasive of choice, Macklin and Middleton (1923, as cited in ACGIH 1986/Ex. 1–3, p. 21) reported that workers exposed to aluminum oxide dust using the new, synthetic abrasive had much less pulmonary disease than had workers using sandstone abrasives. Other studies (Sutherland, Meiklejohn, and Price 1937/Ex. 1–674; Meiklejohn and Posner 1957/Ex. 1–1060; Meiklejohn and Jones 1948/Ex. 1–964) reported that workers exposed to aluminum oxide dust in the chinaware industry and in aluminum production showed no evidence of pneumoconiosis. However, some early studies (Clark and Simmons 1925/Ex. 1–725; Clark 1929/Ex. 1–1048) reported that workers engaged in aluminum oxide production and exposed to dust levels generally between 50 and 100 mppcf showed X ray evidence of pulmonary fibrosis; these workers are likely also to have been exposed to silica. Workers

exposed during World War II to bauxite fumes containing both alumina and silica developed pulmonary fibrosis and emphysema; the authors believe that silica fume was involved in the development of these diseases (Shaver and Riddell 1947/Ex. 1–666). NIOSH (Ex. 8–47, Table N4) reports that two studies in animals (Stacy, King, Harrison et al. 1959/Ex. 1–761; Stanton, Laynard, Tegeris et al. 1981) have found that exposure to alpha-alumina is associated with the development of respiratory effects.

OSHA is proposing 8-hour TWA limits of 10 mg/m³ total particulate and 5 mg/m³ respirable particulate for alpha-alumina in construction, maritime, and agriculture; these limits are being proposed for all physical irritants having identified health effects. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk potentially associated with exposures to alpha-alumina dust in the workplace. OSHA believes that skin, eye, and upper respiratory tract irritation and other possible respiratory effects constitute material health impairments, and that the proposed PELs are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

ALUMINUM METAL DUST

CAS: 7429–90–5; Chemical Formula: Al

H.S. No. 1016

OSHA has no specific permissible exposure limit for aluminum metal dust in the agriculture, construction, or maritime industries, although the Agency's generic 15 mg/m³ TWA limit for total particulate applies. The ACGIH has an 8-hour TLV®–TWA limit of 10 mg/m³ as total dust for this substance. NIOSH has no REL for aluminum metal dust. OSHA is proposing a PEL of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for aluminum metal dust in the construction, maritime, and agriculture industries. These are the limits recently established in general industry.

In its elemental form, aluminum is a white, malleable, ductile metal. Aluminum is used in building and construction, in the electrical industry, and in auto parts, photoengraving plates, and toothpaste; it also finds use as a powder in paints, as foil in packaging, in decorative stamping, and as flakes for the insulation of liquid fuels (Hawley's 1987, p. 44; Merck 1983, p. 48).

Aluminum metal dust has been shown to present a minimal health hazard, according to results from the McIntyre Foundation's 27-year study of aluminum oxide dust (discussed in Stokinger 1981a, pp. 1500–1503). No deleterious lung or systemic effects were observed as a result of exposure to aluminum metal dust having a particle size of 1.2 μm at calculated concentrations equivalent to 2 mg/m³ over an 8-hour workshift. Even much higher concentrations (not further specified) over 10- or 20-minute periods produced no adverse effects (ACGIH 1986/Ex. 1–3, p. 22). A comment submitted to the docket in the earlier rulemaking by the Reynolds Aluminum Company endorses OSHA's classification of aluminum metal dust under the general dust and particulate heading (Ex. 3–135).

OSHA has preliminarily concluded that aluminum metal dusts are appropriately controlled by retaining the Agency's PELs of 15 mg/m³ TWA (total particulate) and 5 mg/m³ (respirable fraction) in the construction and maritime industries and by proposing to extend these limits to agriculture. OSHA has preliminarily determined that these limits will provide protection against the significant risk of physical irritation posed by exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

AMMONIUM SULFAMATE

CAS: 7773–06–0; Chemical Formula: $NH_4SO_3NH_2$

H.S. No. 1024

In the construction and maritime industries, OSHA currently regulates ammonium sulfamate under its generic total particulate limit of 15 mg/m³. There is no PEL in agriculture. The ACGIH has established a TLV® of 10 mg/m³ for this substance as an 8-hour TWA. There is no NIOSH REL for ammonium sulfamate. A limit of 10 mg/m³ (and 5 mg/m³ for the respirable fraction) is the limit being proposed by the Agency for construction, maritime, and agricultural operations. NIOSH (Ex. 8–47, Table N4) concurred with this limit when the Agency recently established it in general industry.

Ammonium sulfamate is a combustible, hygroscopic, white, crystalline substance. It is used to manufacture contact and translocated herbicides, such as the weed killer Ammate. Ammonium sulfamate is also used to make fire-retardant materials, to generate nitrous oxide gas, and in electroplating (ACGIH 1986, p. 28). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Lehman (1951/Ex. 1–790) identified oral LD_{50}s of 3900 and 5700 mg/kg in rats and mice, respectively. He also reported that no effects were noted in rats administered 10,000 ppm ammonium sulfamate in the diet for 105 days. The intraperitoneal injection of 0.8 g/kg of ammonium sulfamate caused stimulation of respiration, followed by prostration, in rats. Six of 10 rats so exposed died (Ambrose 1943). The hazards associated with exposure to ammonium sulfamate include eye and nose irritation, interference with vision, and the danger of accidents caused by the distraction and avoidance reactions typical of workers overexposed to dusts in the workplace.

In construction and maritime, OSHA is proposing a PEL of 10 mg/m³ TWA, total particulate, and is retaining the 5-mg/m³ TWA PEL for respirable particulate for ammonium sulfamate; the Agency is also proposing to extend these limits to agriculture. OSHA preliminarily concludes that these limits will protect workers in the construction, maritime, and agriculture industries against the significant risk of material health impairment in the form of physical and other irritation that is associated with exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

BARIUM SULFATE

CAS: 7727–43–7; Chemical Formula: $BaSO_4$

H.S. No. 1031

OSHA has no specific limit for barium sulfate in the agriculture, construction, and maritime industries, although OSHA's generic 15-mg/m³ total particulate limit applies in construction and maritime. The ACGIH has a TLV®–TWA of 10 mg/m³, total dust, for this substance. There is no NIOSH REL for barium sulfate. The Agency is proposing 10 mg/m³ as an 8-hour TWA PEL for barium sulfate (total particulate) in construction, maritime, and agriculture. OSHA is retaining the 5-mg/m³ PEL for the respirable fraction in construction and maritime and is proposing to extend this limit to agriculture. These are the limits recently established in general industry for barium sulfate.

Barium sulfate is a white or yellowish, odorless, tasteless powder. It is used as an opaque medium in X-ray examinations, for weighting mud in oil-drilling, in paper coatings, paints, rubber, plastics, and lithograph inks, in battery plate expanders, and as a filler

and delustrant for textiles (Hawley's 1987, p. 121).

Einbrodt, Wobker, and Klippel (1972/Ex. 1–1020) exposed rats to a concentration of 40 mg/m³ for two months and concluded that barium sulfate is not toxic. As an inert dust of the noncollagenous type, however, barium sulfate has the potential to cause pneumoconiosis through tissue reactions to accumulated dust in the lung (Anonymous, British Medical Journal 1972). Barium sulfate has not been known to cause adverse effects in industrial workers exposed over periods of several years (Doig 1976/Ex. 1–551).

In construction and maritime, OSHA is proposing an 8-hour TWA PEL for barium sulfate of 10 mg/m³ (total particulate) and is retaining the 5-mg/m³ 8-hour TWA (respirable particulate). The Agency also is proposing to extend both limits to agriculture. OSHA preliminarily concludes that these limits will protect workers in the construction, maritime, and agriculture industries against the significant risks of eye, nose, and upper-respiratory-tract irritation and, perhaps, of pneumoconiosis that are potentially associated with exposure to barium sulfate. The Agency believes these adverse health effects to be material impairments of health and preliminarily finds that the proposed limits are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

BENOMYL

CAS: 17804–35–2; Chemical Formula:

$C_{14}H_{18}N_4O_3$

H.S. No. 1032

OSHA has no specific permissible exposure limit for benomyl in the agriculture, construction, or maritime industries. OSHA currently covers benomyl in construction and maritime under the generic total particulate limit of 15 mg/m³. The ACGIH has established a total dust TLV®–TWA of 10 mg/m³ for benomyl. NIOSH has no REL for this substance. OSHA is proposing a PEL of 10 mg/m³ as total particulate for benomyl in the construction and maritime industries, retaining the 5-mg/m³ respirable fraction limit in these sectors, and proposing to extend both limits to agriculture. These are the limits recently established for this substance in general industry.

Benomyl is a white crystalline solid; exposures to this substance occur in its particulate form. Benomyl is used as an ascaricide and a post-harvest fungicide for peaches, apples, etc. It is also used as an oxidizer in sewage treatment (ACGIH 1986, p. 49; Hawley's 1987, p. 127). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Studies of rats and rabbits indicate that the oral and skin absorption LD_{50}s are greater than 10,000 mg/kg, and studies of guinea pigs show a very low risk of skin irritation. Application to the shaved intact skin (as aqueous suspensions containing 5, 12.5, and 25 percent benomyl) of ten male guinea pigs resulted in slight irritation; one of ten guinea pigs had mild erythema two days after application of the high concentration (E.I. du Pont de Nemours and Co., Inc. 1974, as cited in ACGIH 1986/Ex. 1–3, p. 49). In another study, instillation of 10 mg of dry 50-percent powder or of 0.1 ml of a 10-percent suspension in mineral oil caused only temporary mild conjunctival irritation (E.I. du Pont de Nemours and Co., Inc., unpublished data, as cited in ACGIH 1986/Ex. 1–3, p. 49). NIOSH notes that benomyl exposure may cause adverse reproductive effects (Ex. 8–47, p. 12). Mice given an oral dose of 500 mg/kg on the 13th day of pregnancy had offspring with developmental abnormalities of the central nervous and musculoskeletal systems. Rats given oral doses of 156 mg/kg benomyl on days 7 through 16 of pregnancy also had offspring with musculoskeletal abnormalities. Other reproductive effects from exposure to benomyl in mice and rats include adverse effects on spermatogenesis (RTECS 1991).

In humans, skin exposures to a 0.1 percent solution of benomyl caused mild irritation (RTECS 1991). Contact dermatitis occurred among a group of Japanese women who worked in warm moist greenhouses where benomyl was sprayed; this effect occurred after a second spraying of benomyl (Hayes 1982, p. 612).

OSHA is proposing 8-hour TWA PELs in construction, maritime, and agriculture of 10 mg/m³ (total particulate), retaining the 5-mg/m³ respirable particulate limit in construction and maritime, and proposing to extend the respirable fraction limit to agriculture. The Agency preliminarily concludes that these limits will protect workers in the construction, maritime, and agriculture industries from the significant risks of benomyl's effects, which include irritation, erythema, and possible reproductive effects. OSHA believes that these health effects constitute material impairments of health and that the proposed PELs are necessary to reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

BISMUTH TELLURIDE (UNDOPED)

CAS: 1304–82–1; Chemical Formula:

Bi_2Te_3

H.S. No. 1035

OSHA has no specific limit for undoped bismuth telluride in the construction, maritime, or agriculture industry, although OSHA's generic total particulate limit of 15 mg/m³ currently applies in construction and maritime. The ACGIH has a total dust TLV®–TWA of 10 mg/m³ for the undoped form of this substance. NIOSH has no REL for undoped bismuth telluride. OSHA is proposing to retain the 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) 8-hour TWA PELs for this substance in construction and maritime and is proposing to extend these limits to agriculture. These are the limits recently established in general industry.

Bismuth telluride appears as gray, hexagonal platelets; it is also available as ingots or single crystals. It is used for semi-conductors and in thermoelectric cooling and power generation applications (ACGIH 1986, p. 59).

An 11-month inhalation study of dogs, rabbits, and rats exposed to pure undoped bismuth telluride dust at 15 mg/m³ showed the pulmonary responses typical of exposures to inert dusts (Wagner, Madden, Zimber, and Stokinger 1974).

OSHA is retaining its permissible exposure limits of 15 mg/m³ TWA, as total particulate, and 5 mg/m³, as the respirable fraction, for pure undoped bismuth telluride in the construction and maritime industries and is proposing to extend these limits to agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risks associated with workplace exposures to bismuth telluride. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

BORON OXIDE

CAS: 1303–86–2; Chemical Formula:

B_2O_3

H.S. No. 1039

In construction and maritime, OSHA currently regulates boron oxide under its generic total particulate limit of 15 mg/m³ (5 mg/m³ for the respirable fraction). There is no PEL in agriculture. The ACGIH recommends a total dust TLV®–TWA of 10 mg/m³. OSHA is proposing a total particulate PEL for boron oxide of 10 mg/m³ in construction and maritime, retaining the 5-mg/m³ PEL for the respirable fraction in these two sectors,

and proposing to extend both limits to agriculture. NIOSH (Ex. 8–47, Table N4) concurred with these limits when the Agency recently established them for boron oxide in general industry.

Boron oxide occurs as either a white powder or a granular solid, and it has a bitter taste. It is used as an herbicide, in the production of boron, in heat-resistant glassware, as a fire-resistant additive for paints, in electronics, and in liquid encapsulation techniques (Hawley's 1987, p. 162). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Animal studies indicate that eye and skin irritation were caused by the ocular instillation and the topical application, respectively, of boron oxide to the skin and eyes of rabbits. Aerosol administration at various exposure levels for varying time periods caused mild nasal irritation and an increase in urine acidity and the creatinine coefficient in dogs and rats (Wilding, Smith, Yevich et al. 1959/Ex. 1–599). Young rats that were force-fed a 10-percent slurry of boron oxide in water for three weeks showed no growth retardation or other effects (Wilding, Smith, Yevich et al. 1959/Ex. 1–599).

Garabrant and co-workers (1984/Ex. 1–555) determined the prevalence of eye and respiratory irritation among boron oxide-exposed workers; the signs and symptoms of those exposed to boron oxide concentrations ranging from 1.2 to 8.5 mg/m^3 were then compared with those of controls. Workers exposed to an average boron oxide concentration of 4.1 mg/m^3 reported significant increases in productive cough; eye, nose, and throat irritation; dryness of the mouth; and sore throat (Garabrant, Bernstein, Peters, and Smith 1984/Ex. 1–555).

OSHA is proposing permissible exposure limits of 10 mg/m^3 TWA, as total particulate, for boron oxide in the construction, maritime, and agriculture industries, retaining the 5 mg/m^3 respirable fraction TWA in construction and maritume, and proposing the respirable fraction limit in agriculture. The Agency preliminarily concludes that these limits will protect workers in the construction, maritime, and agriculture industries from the significant risk of upper-respiratory-tract and eye irritation associated with exposure to this substance. OSHA believes that these health effects constitute material impairments of health and that the proposed PELs are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CALCIUM CARBONATE
CAS: 1317–65–3; Chemical Formula: $CaCO_3$
H.S. No. 1057

OSHA currently covers calcium carbonate in the construction and maritime industries under the Agency's generic 15-mg/m^3 total particulate limit. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m^3 for this substance, measured as total dust. In construction, maritime, and agriculture, OSHA is proposing a total particulate PEL of 15 mg/m^3 as an 8-hour TWA; OSHA is also retaining its 8-hour 5-mg/m^3 PEL for the respirable fraction in construction and maritime and proposing to extend this limit to agriculture. These are the limits recently established for calcium carbonate in general industry.

Calcium carbonate is an odorless, tasteless powder or crystalline solid that is found in limestone, chalk, marble, plant ashes, bones, and shells. This substance is used in human and animal medicine, as an ingredient in paint, rubber, plastics, dentifrices, ceramics, polishes, cosmetics, and many other products.

Calcium carbonate is a moderate skin irritant and a severe eye irritant (Sax and Lewis 1989, p. 677). The oral LD_{50} in rats is 6450 mg/kg (Sax and Lewis 1989, p. 677). Rabbits exposed dermally for 24 hours or ocularly for the same period developed moderate and severe irritation, respectively.

OSHA is proposing an 8-hour TWA PEL of 15 mg/m^3 for calcium carbonate (total particulate) in the construction, maritime, and agriculture industries, is retaining the 5-mg/m^3 respirable particulate limit in construction and maritime, and is proposing it in agriculture. OSHA believes that these limits are necessary to protect workers in construction, maritime, and agriculture from the significant risk of physical irritation associated with exposures to calcium carbonate in the workplace. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CALCIUM SILICATE
CAS: 1344–95–2; Chemical Formula: None
H.S. No. 1061

In construction, maritime, and agriculture, OSHA has no specific limit for calcium silicate; the Agency regulates this substance in construction and maritime under its generic 8-hour TWA limit for particulates of 15 mg/m^3 (measured as total particulate). The ACGIH classifies calcium silicate as a nuisance dust and has an 8-hour TLV®–TWA of 10 mg/m^3. For construction, maritime, and agriculture, the proposed total particulate PEL is 15 mg/m^3, and the 5-mg/m^3 limit for the respirable fraction is retained in construction and maritime and proposed in agriculture. These are the limits recently established in general industry.

Calcium silicate is a white powder. Calcium silicate is used as an anticaking agent in table salt, foods, pharmaceuticals, and agricultural pesticides. It is also widely used as a replacement for asbestos in thermal insulation (ACGIH 1986, p. 92.1(89); Hawley's 1987, p. 205).

No health effects other than physical irritation have been reported in humans or animals as a result of exposure to calcium silicate. Calcium silicate is thus without long-term adverse health effects if exposures are kept under reasonable control.

OSHA is retaining the 8-hour TWA PEL of 15 mg/m^3, total particulate, and 5 mg/m^3, respirable fraction, for calcium silicate in construction and maritime and is proposing these limits in agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of physical irritation in the workplace. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CALCIUM SULFATE
CAS: 7778–18–9; Chemical Formula: $CaSO_4$
H.S. No. 1062

OSHA currently regulates calcium sulfate in the construction and maritime industries under its generic total particulate limit of 15 mg/m^3. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m^3 (total dust) for this substance. OSHA is proposing 8-hour TWA PELs of 15 mg/m^3 (total particulate) and 5 mg/m^3 (respirable fraction) for calcium sulfate in construction, maritime, and agriculture. These are the limits recently established for this substance in general industry.

Calcium sulfate occurs in the form of a white odorless powder or white crystals. It is used as a soil conditioner, Portland cement retarder, in quick-setting cements, molds, and surgical casts, and as a food additive (ACGIH 1986, p. 93; Hawley's 1987, p. 209). Calcium sulfate dust is reported not to have been associated with lung disease in miners (Hunter 1975). Calcium sulfate thus appears to produce no adverse effects

beyond those associated with general physical irritation.

OSHA is proposing to retain its 8-hour TWA permissible exposure limits for calcium sulfate of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) in construction and maritime and to extend these limits to agriculture. The Agency preliminarily concludes that these limits are sufficient to prevent the significant risk of eye, skin, and other physical irritation in workers in these sectors and believes that these limits are necessary to reduce a significant risk. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CELLULOSE
CAS: 9004–34–6; Chemical Formula: $(C_6H_{10}O_5)n$
H.S. No. 1076

OSHA currently regulates cellulose in construction and maritime under the Agency's generic 8-hour TWA total particulate limit of 15 mg/m³. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³ (total dust) for this substance when it contains less than 1 percent quartz. The Agency is retaining the total particulate PEL of 15 mg/m³ as an 8-hour TWA and 5-mg/m³ limit for the respirable fraction of cellulose containing less than 1 percent quartz in construction and maritime and is proposing to extend both PELs to the agriculture sector. These are the limits recently established for cellulose in general industry.

Technical cellulose refers to that portion of the plant cell wall derived exclusively from glucose; it resembles cotton cellulose in its physical and chemical properties (ACGIH 1986/Ex. 1–3, p.113). Cellulose is used in paper, cotton products, packaging, as a source of ethanol, in medical equipment, insulation and soundproofing, and as a fuel (ACGIH 1986, p. 113; Hawley's 1987, p. 236).

Inhalation of cellulose dust is not irritating or toxic in exposed humans if exposures are properly controlled (Schreiber 1974/Ex. 1–1096). In industry, cellulose dust occurs in combination with other substances, such as quartz dust, wood, cotton, flax, jute, and hemp fibers, and these substances have demonstrated toxicities that are unrelated to their cellulose content (ACGIH 1986/Ex. 1–3, p.113).

In construction, maritime, and agriculture, OSHA is proposing 8-hour TWA PELs for this substance of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for cellulose dust containing less than 1 percent quartz. The Agency preliminarily concludes that these limits are necessary to protect exposed workers in these sectors from the significant risks of eye, skin, and other physical irritation. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

2–CHLORO–6–TRICHLOROMETHYL PYRIDINE (NITRAPYRIN)
CAS: 1929–82–4; Chemical Formula: $C_6H_3Cl_4N$
H.S. No. 1082

OSHA has no specific limit for 2-chloro-6-trichloromethyl pyridine (nitrapyrin) in the construction or maritime industries, although the Agency's generic total particulate limit of 15 mg/m³ as an 8-hour TWA applies. There is no PEL in agriculture. The 1987–1988 ACGIH TLV®–TWA for nitrapyrin is 10 mg/m³ and the TLV®–STEL is 20 mg/m³. There is no NIOSH REL for this substance, but NIOSH concurs (Ex. 8–47, Table N1) with the limits being proposed. OSHA is proposing a total particulate limit of 15 mg/m³ and a respirable particulate limit of 5 mg/m³ for nitrapyrin in the construction, maritime, and agriculture industries. These are the limits recently established for this substance in general industry.

Nitrapyrin is a crystalline substance. It is used as an additive in fertilizer to control nitrification and to prevent loss of nitrogen in soil (ACGIH 1986, p. 428). Agricultural workers are thus exposed to nitrapyrin.

Nitrapyrin's very low vapor pressure makes hazardous inhalation exposures unlikely in the workplace. The oral LD_{50} in rats is 940 mg/kg, and the dermal LD_{50} in rabbits is 850 mg/kg (RTECS 1991). Torkelson (as cited in ACGIH 1986/Ex. 1–3, p. 428) has reported feeding dogs and rats 15 mg/kg nitrapyrin daily for 93 days. He observed no adverse effects in appearance, behavior, growth, food consumption, body and organ weight, mortality, or blood chemistry, and no tissue or organ changes.

OSHA is proposing 8-hour TWA PELs of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for this dust in the construction, maritime, and agriculture industries; OSHA preliminarily finds that these limits will be protective against the significant risk of nitrapyrin's physical irritant effects. The Agency believes physical irritation is a material health impairment. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CLOPIDOL (COYDEN)
CAS: 2971–90–6; Chemical Formula: $C_7H_7Cl_2NO$
H.S. No. 1095

OSHA has no specific limit for clopidol in the construction, maritime, and agriculture industries; however, OSHA's generic total particulate limit of 15 mg/m³ TWA applies in construction and maritime. The ACGIH has a TLV®–TWA of 10 mg/m³ and a TLV®–STEL of 20 mg/m³ for clopidol. NIOSH has no REL for this substance. OSHA is proposing a 15-mg/m³ limit (total particulate) and 5-mg/m³ limit (respirable fraction), both as 8-hour TWAs, for clopidol in the construction, maritime, and agriculture industries. These are the limits recently established for this substance in general industry.

Clopidol is a white to light brown powder used as an anticoccidiostat in poultry (Hazardous Substance Fact Sheet 1986, p. 1; ACGIH 1986, p. 141). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The oral LD_{50} for clopidol in rats, rabbits, and guinea pigs is greater than 8 g/kg (Dow Chemical Company 1973c, as cited in ACGIH 1986/Ex. 1–3, p. 141). Long-term (two-year) studies of rats and dogs fed at levels of 15 mg/kg and 5 mg/kg per day, respectively, showed no adverse effects. Similarly, there were no adverse effects on fertility, gestation, viability, or lactation in rats and rabbits, and no increase in teratogenicity (Dow Chemical Company 1973c, as cited in ACGIH 1986/Ex. 1–3, p. 141). The chronic toxicity of clopidol is reported to be low (ACGIH 1986/Ex. 1–3, p. 141).

OSHA is proposing 8-hour TWA PELs of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for clopidol in construction, maritime, and agriculture. OSHA preliminarily concludes that these limits will protect workers in the construction, maritime, and agriculture industries from the significant risk of eye, skin, and other physical irritation associated with exposure to clopidol. OSHA considers physical irritation a material health impairment. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CRAG HERBICIDE (SESONE)
CAS: 136–78–7; Chemical Formula: $C_8H_7Cl_2NaO_5S$
H.S. No. 1102

In construction and maritime, OSHA currently applies an 8-hour TWA limit of 15 mg/m³ for the total particulate of crag herbicide; this is the Agency's generic total particulate limit for all particulates. There is no limit in agriculture. The ACGIH has a total-dust TLV®–TWA of 10 mg/m³ for this colorless, odorless,

noncombustible solid. The proposed PELs for crag herbicide are 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) in the construction, maritime, and agriculture industries. NIOSH concurred (Ex. 8–47, Table N4) with OSHA in the selection of these limits when the Agency recently established them in general industry.

Crag herbicide is a colorless, odorless, noncombustible solid used commercially as an herbicide (ACGIH 1986, p. 519). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

An early study reported an oral LD_{50} in rats of 1500 mg/kg for this herbicide (Smyth 1956/Ex. 1–759). At high concentrations, crag herbicide is a gastrointestinal irritant (NIOSH 1984, as cited in ACGIH 1986/Ex. 1–3, p. 519). Rats fed a diet containing 60 mg sesone/100 gm of diet experienced minor liver damage; when fed 20 mg sesone/100 gm of diet for two years, rats showed no adverse effects (ACGIH 1986/Ex. 1–3, p. 519). In 1984, NIOSH reported the oral LD_{50} in rats to be 730 mg/kg (NIOSH 1984, as cited in ACGIH 1986/Ex. 1–3, p. 519). In addition to physical irritation, crag herbicide can affect the central nervous system and cause convulsions in experimental animals. Acutely poisoned animals showed muscular tremor, nystagmus, and convulsions before death. Autopsy of these animals showed evidence of pulmonary hemorrhage and mild liver and kidney damage. A 5 percent solution of crag herbicide dropped into rabbits' eyes caused corneal necrosis, and 0.01 ml of a 5 percent suspension in acetone caused edema and necrosis of the skin in rabbits (Carpenter et al. 1961).

There are no reported incidents of human poisoning associated with the use of sesone.

For construction, maritime, and agriculture, OSHA is proposing 8-hour TWA PELs for crag herbicide (total particulate) of 10 mg/m³ and 5 mg/m³ (respirable particulate). OSHA preliminarily concludes that these limits will protect workers in the construction, maritime, and agriculture industries from eye, skin, gastrointestinal, and other forms of irritation caused by exposure to crag herbicide. The Agency believes that these effects constitute material health impairments. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

DICYCLOPENTADIENYL IRON (FERROCENE)

CAS: 102–54–5; Chemical Formula: $C_{10}H_{10}Fe$

H.S. No. 1133

In construction and maritime operations, OSHA currently covers dicyclopentadienyl iron (ferrocene) under its generic 8-hour TWA total particulate limit of 15 mg/m³. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³ for this substance. There is no NIOSH REL. OSHA proposes a PEL for dicyclopentadienyl iron of 10 mg/m³ (total particulate) as an 8-hour TWA in the construction, maritime, and agriculture industries and a PEL of 5 mg/m³ (respirable fraction) as an 8-hour TWA. NIOSH (Ex. 8–47, Table N4) supports the selection of these PELs, which were recently established for dicyclopentadienyl iron in general industry.

Dicyclopentadienyl iron is a bright orange crystalline solid that smells like camphor. It is used as a combustion catalyst, as an antiknock additive for gasoline, and in polymers (Hazardous Substance Fact Sheet 1986, p. 1; ACGIH 1986, p. 195).

Available evidence in animals suggests that dicyclopentadienyl iron has a moderate order of oral toxicity but a high order of intravenous and intraperitoneal toxicity. In rats, the oral LD_{50} is 1320 mg/kg (RTECS 1991). In rats, 500 mg/kg is the LD_{50} by the intraperitoneal route of administration (RTECS 1991), but subacute oral toxicity tests have shown no fatalities when 10 feedings of 200 mg/kg were given to rats over a two-week period (E.I. du Pont de Nemours and Co., Inc. 1955, as cited in ACGIH 1986/Ex. 1–3, p. 195). Daily oral administration of this substance at unspecified doses caused hemosidenosis; at a dose of 300 mg/kg for one week, dogs showed decreased hemoglobin, decreased packed cell volume, and decreased erythrocyte count (HSDB 1991). Ferrocene is mutagenic in mammalian test systems (RTECS 1991).

OSHA is proposing 8-hour TWA limits of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for dicyclopentadienyl iron in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that these limits will substantially reduce the significant risk of material health impairments, in the form of mutagenic and other effects, that are potentially associated with occupational exposure to this substance. The Agency considers these effects material health impairments and believes that these PELs are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

EMERY

CAS: 112–62–9; Chemical Formula: Al_2O_3

H.S. No. 1155

OSHA currently covers emery in construction and maritime under the Agency's generic 15-mg/m³ total particulate limit for all particulates. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³, total dust, for emery containing less than 1 percent quartz. OSHA is proposing a total particulate PEL of 10 mg/m³ as an 8-hour TWA and a respirable fraction PEL of 5 mg/m³ for emery containing less than 1 percent quartz in the construction, maritime, and agriculture sectors. These are the limits recently established in general industry.

Emery is impure corundum (aluminum oxide) and is found in certain mineralogical deposits. Natural crystalline deposits of emery are used as abrasives; fine emery is used in lens grinding and in lapidary work (ACGIH 1986, p. 229; Hawley's 1987, p. 316).

Emery dust inhalation is believed to have contributed to a case of pneumoconiosis in France, although it is questionable whether this incident was caused by emery dust alone or by the silica impurities in the dust (Archives des Maladies Professionelles de Medecin du Travail et de Securité Sociale 1970, as cited in ACGIH 1986/Ex. 1–3, p. 229). Exposure to emery dust containing less than 1 percent silica produces little, if any, effect on the health of exposed workers; it does not affect the lungs or produce organic disease at commonly encountered levels (ACGIH 1986/Ex. 1–3, p. 229).

Rats exposed to aluminum oxide (emery is impure aluminum oxide) developed lipoid pneumonia (Stacy, King, Harrison et al. 1959/Ex. 1–761), and humans so exposed have reported skin and respiratory tract irritation.

OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ TWA, total particulate, and an 8-hour TWA PEL of 5 mg/m³, respirable particulate, for emery in construction, maritime, and agriculture. OSHA preliminarily concludes that these limits will prevent the significant risk associated with exposures to emery in the workplace; these risks include skin and upper respiratory tract irritation and, perhaps, other respiratory effects, all of which constitute material health impairments. Promulgation of these limits will also make OSHA's

PELs for this substance consistent across all regulated sectors.

FERBAM

CAS: 14484–64–1; Chemical Formula: $[(CH_3)_2NCS_2]_3Fe$

H.S. No. 1176

In construction and maritime, OSHA currently applies its generic particulate limit of 15 mg/m³ as an 8-hour TWA (total particulate) to ferbam. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³ for this substance. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA total particulate PEL of 10 mg/m³ for ferbam as well as an 8-hour TWA respirable fraction PEL of 5 mg/m³. NIOSH concurred (Ex. 8–47, Table N1) with these limits when the Agency recently established them for ferbam in general industry.

Ferbam is an odorless, black solid used as a fungicide on fruits, nuts, vegetables, ornamental crops, and in household applications (ACGIH 1986, p. 269; HSDB 1991). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Ferbam has been reported to have an oral LD_{50} of more than 17 mg/kg in rats, but rabbits and guinea pigs demonstrated less sensitivity to this substance (Hodge, Maynard, Downs, and Blanchet 1952/Ex. 1–861). Dogs showed no adverse effects when fed 25 mg/kg of ferbam daily for six months.

In addition to physical irritation, ferbam can cause skin sensitization, gastrointestinal effects, and reproductive effects in experimental animals. The offspring of pregnant rats exposed to high but sublethal doses of ferbam showed evidence of embryo/fetotoxicity (IARC 1982, Vol. 12, pp. 121–129). Ten of 20 rats died after ingesting a diet containing 0.5 percent ferbam for 30 days; autopsies revealed minor lung, liver, kidney, and bone marrow abnormalities in a few of these animals (Hodge et al. 1952).

Inhalation of ferbam affects the upper respiratory tract in humans in the manner typical of airborne exposures to workplace dusts (Hodge, Maynard, Downs, and Blanchet 1952/Ex. 1–861). The dust of ferbam is irritating to the eyes, nose, throat, and skin (Grant 1986, p. 431). Large oral doses of ferbam can cause gastrointestinal disturbances in humans (AMA Council on Pharmacy and Chemistry 1955, from Proctor, Hughes, and Fischman 1988, p. 257). Ferbam dust can be irritating to the skin and mucous membranes and may cause skin sensitization (Gosselin, Smith, and Hodge 1984, p. II–311).

OSHA is proposing a total particulate PEL for ferbam of 10 mg/m³ as an 8-hour TWA and a respirable fraction PEL of 5 mg/m³ as an 8-hour TWA. The Agency preliminarily concludes that these limits are necessary to prevent the significant health and safety risks associated with exposures to ferbam in the construction, maritime, and agriculture industries. These risks include skin, eye, and upper respiratory tract irritation, which OSHA considers material health impairments. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

GLYCERIN (MIST)

CAS: 56–81–5; Chemical Formula: $CH_2OHCHOHCH_2OH$

H.S. No. 1188

In construction, maritime, and agriculture, OSHA has no specific limit for glycerin mist, although this substance has been regulated in construction and maritime under the Agency's generic total particulate limit. The ACGIH has a TLV®–TWA of 10 mg/m³ (total particulate) for glycerin. OSHA is proposing a total particulate PEL of 10 mg/m³ and a respirable fraction PEL of 5 mg/m³ for glycerin mist in construction, maritime, and agriculture. These are the limits recently established for glycerin in general industry.

Glycerin is an oily, hygroscopic liquid with a warm, sweet taste. Glycerin is widely used to manufacture plastics, cosmetics, foodstuffs, confectioneries, explosives, pharmaceuticals, perfumes, inks, lubricants and softeners, and antifreeze mixtures (ACGIH 1986, p. 286; Hawley's 1987, p. 568).

Glycerin was long considered to be nontoxic; however, there are indications that the mist may be injurious to the kidneys at very high exposure levels (Campanacci 1965/Ex. 1–1047). In addition to physical irritation and kidney effects, glycerin can affect the central nervous system, reproductive system, and gastrointestinal tract in experimental animals. Mice exposed to 8800 mg/kg glycerin experienced convulsions and skin effects (RTECS 1991). Male rats given 2-day intratesticular doses of 280 mg/kg and a 1-day dose of 1600 mg/kg showed changes in fertility (Wiebe and Barr 1984). Rabbits suffered mild skin irritation at a dermal dose of 500 mg glycerin for 24 hours and experienced mild eye irritation after 126 mg of glycerin was put into their eyes (RTECS 1991).

An oral dose of 1428 mg/kg glycerin caused headaches and gastrointestinal effects in humans (RTECS 1991). Although glycerin's toxicity is generally considered to be low, large doses can cause hemolysis, hemoglobinuria, renal failure, convulsions, and paralysis in humans (Ex. 8–47). Oral doses of glycerin administered for therapeutic purposes can cause side effects such as headache, dizziness, vomiting, diarrhea, and fever (Gosselin, Smith, and Hodge 1984, p. II–226).

OSHA is proposing 8-hour TWA limits of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for glycerin mist in construction, maritime, and agriculture. The Agency preliminarily concludes that these limits will provide protection for workers in these sectors against the significant risks of glycerin exposure, which include possible kidney damage and blood effects. OSHA believes that these effects constitute material health impairments and that the proposed limits are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

GRAPHITE, SYNTHETIC

CAS: None; Chemical Formula: None

H.S. No. 1191A

OSHA currently has no specific limit for synthetic graphite in construction and maritime, although this substance is covered under the Agency's generic total particulate limit. There is no PEL in agriculture, and NIOSH has no REL. The ACGIH has a TLV®–TWA of 10 mg/m³ for graphite as total dust. OSHA is proposing PELs of 10 mg/m³ and 5 mg/m³ for the total and respirable particulate, respectively; these are the limits recently established for synthetic graphite in general industry.

Synthetic graphite is a crystalline form of carbon made from the high-temperature treatment of coal or petroleum products; it has the same properties as natural graphite. Synthetic graphite is used in place of natural graphite in refractories and in electrical uses (ACGIH 1986, p. 291).

Meiklejohn reported in 1958 that synthetic graphite injected intraperitoneally in mice produced effects characteristic of those of the inert dusts (Meiklejohn 1958).

In humans, exposure to natural graphite has long been associated with the development of pneumoconiosis (Koopman 1924/Ex. 1–131; Ruttner, Bovet, and Aufdermauer 1952/Ex. 1–661; Pendergrass, Vorwald, Mishkin et al. 1967/Ex. 1–77). Lister (1961/Ex. 1–422) and Lister and Wimborne (1972/Ex. 1–423) reported fibrotic changes in the

lungs of a worker who had been engaged for 17 years in the production and milling of synthetic graphite. Other reports of lung injury caused by exposure to graphite have not distinguished between the form of the graphite (i.e., natural or synthetic) causing the injury; in addition, exposures to impurities, such as quartz silica, were involved in many of the reported cases (ACGIH 1986/Ex. 1–3, p. 291). In the prior rulemaking, NIOSH (Ex. 8–47) commented that, in its opinion, it is not appropriate to distinguish between the natural and synthetic forms of graphite and noted that the Lister and Wimborne (1972/Ex. 1–423) study described above suggests that synthetic graphite dust exposure "is capable of producing pneumoconiosis." NIOSH believes that a 2-mg/m³ 8-hour TWA PEL is appropriate for synthetic graphite because this is the limit set for coal dust (respirable) to protect against pneumoconiosis (Ex. 8–47). However, because the primary objective of this proposed rule is to make OSHA's limits consistent across all industry sectors, OSHA intends as a first step to propose in construction, maritime, and agriculture the limits recently established for graphite in general industry. At the time of the first PEL update, OSHA will consider the recent toxicological literature on graphite to evaluate whether a lower limit should be considered.

At present, however, OSHA is proposing an 8-hour TWA total particulate limit for synthetic graphite of 10 mg/m³ and an 8-hour TWA respirable fraction limit of 5 mg/m³ to protect workers in construction, maritime, and agriculture against the significant health risks associated with graphite exposures in the workplace. OSHA preliminarily concludes that these limits are necessary to substantially reduce the risks of graphite-induced respiratory disease, which constitutes a material impairment of health. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

GYPSUM

CAS: 7778–18–9; Chemical Formula: $CaSO_4 H_2O$

H.S. No. 1192

The current OSHA limit for gypsum in general industry, construction, and maritime is an 8-hour TWA of 15 mg/m³. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³, measured as total particulate. OSHA is proposing to extend the 8-hour TWA PELs for gypsum of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) to workplaces in agriculture. These are the limits recently established for gypsum in general industry.

Gypsum is found either as colorless or white crystals. Gypsum finds use in soil treatment, the manufacture of Plaster of Paris and Portland cement, in the production of heavy chemicals, in water clarification, and in animal feed. There is also a food and pharmaceutical-grade gypsum that is used as a source of calcium (ACGIH 1986, p. 93).

The ACGIH (1986/Ex. 1–3) states that gypsum does not "produce significant organic disease or toxic effect when exposures are kept under reasonable control." Exposures in excess of the proposed limit may result in reduced visibility, deposits of gypsum dust in the eyes, ears, and nasal passages, and skin irritation.

In agriculture, OSHA is proposing 8-hour TWA PELs for gypsum of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction). The Agency preliminarily concludes that these limits will protect workers in this sector from the significant risk of eye, skin, and other forms of physical irritation caused by gypsum exposure. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

KAOLIN

CAS: None; Chemical Formula: $H_2Al_2Si_2O_8O \cdot H_2O$

H.S. No. 1230

OSHA's current limit for kaolin in construction and maritime is 15 mg/m³, measured as total particulate; this is the Agency's generic total particulate limit for all dusts and particulates. There is no PEL for agriculture. The ACGIH has a TLV®–TWA for kaolin of 10 mg/m³, measured as total dust. OSHA is proposing 8-hour TWA PELs for kaolin of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) in construction, maritime, and agriculture. These are the limits recently established for kaolin in general industry.

Kaolin takes the form either of a white powder or a white or yellow-white earthy mass. Kaolin is used for filler and coatings for paper and rubber; in refractories, ceramics, cements, fertilizers, chemicals, anticaking preparations, cosmetics, insecticides, and electrical insulators. It is also used as a catalyst carrier, a source of alumina, and an adsorbent for the clarification of liquids (Hawley's 1987, p. 669).

Exposure to excess amounts of kaolin dust may cause injury to the skin and mucous membranes (ACGIH 1986/Ex. 1–3). NIOSH (Ex. 8–47, Table N4) also notes that exposure to kaolin dust has been associated with respiratory effects (Lapenas and Gale 1983).

In construction, maritime, and agriculture, OSHA is proposing 8-hour TWA PELs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for kaolin. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant health risks associated with exposure to this substance. These risks include skin and mucous membrane injury, and, perhaps, irreversible respiratory effects, all of which constitute material health impairments. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

LIMESTONE

CAS: 1317–65–3; Chemical Formula: $CaCO_3$

H.S. No. 1232

In construction and maritime, the current generic particulate PEL for limestone is an 8-hour TWA of 15 mg/m³, measured as total particulate. There is no PEL in agriculture. The ACGIH has a 10-mg/m³ TWA for limestone (total particulate). OSHA is proposing 15 mg/m³ as the 8-hour TWA PEL for total limestone particulate and 5 mg/m³ as the 8-hour TWA for the respirable fraction in construction, maritime, and agriculture; these are the limits recently established for limestone in general industry.

Limestone is rock formed by the accumulation of organic remains that consist of calcium carbonate and, less often, magnesium carbonate. Limestone finds use in metallurgy, building stone, agriculture, as a source of carbon dioxide, in cement, alkali manufacture, and in the removal of sulfur dioxide from stock gases and sulfur from coal (Hawley's 1987, p. 701).

Direct contact with limestone dust at unspecified levels has been associated with the development of severe eye irritation and moderate skin irritation (Sax and Lewis 1989). The application of 500 mg limestone to the skin of rabbits for 24 hours produced moderate irritation, and 750 mg instilled into the eyes of rabbits caused severe irritation (RTECS 1990). The oral LD_{50} in rats is 6450 mg/kg (RTECS 1990). In the earlier rulemaking, the American Iron and Steel Institute (Exs. 3–1123 and 8–22) argued that limestone dust produces effects that are "short-term and immaterial" (Ex. 8–22, pp. 29–30); however, OSHA does not agree that the physical irritant effects caused by exposure to dusts and particulates are not material impairments; such irritation affects the

skin, eyes, nose, upper respiratory tract, and mucous membranes adversely.

In construction and maritime, OSHA is retaining 8-hour TWA limits of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for limestone; the Agency is also proposing to extend these limits to agriculture. OSHA preliminarily concludes that these limits will protect workers in these sectors from the significant risk of eye and skin irritation that may be experienced by employees exposed to limestone in the workplace. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

MAGNESITE

CAS: 546–93–0; Formula: $(MgCO_3)_4 \cdot Mg(OH)_2\ 5H_2O$ (approx.)

H.S. No. 1233

In construction and maritime, OSHA's current PEL for magnesite is 15 mg/m³, measured as total particulate; this is the Agency's generic limit for all dusts and particulates. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³, also measured as total particulate. The proposed PELs for magnesite are 8-hour TWAs of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction); these limits would apply in construction, maritime, and agriculture. These are the limits recently established for this substance in general industry.

Magnesite occurs as a white powder. It is used to produce various grades of magnesium oxide, to make carbon dioxide, and as an ingredient in refractories (Hawley's 1987, p. 718).

Magnesite is considered by both OSHA and the ACGIH to be one of the dusts that "do not produce significant organic disease or toxic effect when exposures are kept under reasonable control" (ACGIH 1986/Ex. 1–3). Exposure to excess levels of magnesite in the workplace causes skin or mucous membrane irritation resulting either from contact with the magnesite itself or from the rigorous cleansing procedures necessary for removing the dust.

In construction and maritime, OSHA is retaining its 8-hour TWA PEL of 15 mg/m³ TWA for magnesite, measured as total particulate, and its 8-hour TWA PEL of 5 mg/m³ measured as the respirable fraction; the Agency is proposing to extend these limits to agriculture. OSHA preliminarily concludes that these limits will protect workers in these sectors from the significant risk of skin, mucous membrane, and other physical irritation. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

MAGNESIUM OXIDE (FUME)

CAS: 1309–48–4; Chemical Formula: MgO

H.S. No. 1234

In construction and maritime, OSHA's current limit for magnesium oxide (as fume) is 15 mg/m³ as an 8-hour TWA, the Agency's generic limit for particulates. There is no PEL in agriculture. The ACGIH has a TLV®–TWA limit of 10 mg/m³ for magnesium oxide fume. OSHA is proposing 8-hour TWA PELs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for magnesium oxide fume in construction, maritime, and agriculture. These are the limits recently established for this substance in general industry.

Magnesium oxide is a very fine white, odorless powder. Magnesium oxide fume is produced during the burning of magnesium. Magnesium oxide in powder form is used in ceramics, pharmaceuticals, as an acid neutralizing agent, as a food additive, and in fertilizers (ACGIH 1986, p. 351; Hawley's 1987, p. 721).

Slight reactions (not further specified) have been reported in human subjects after exposures of less than 10 minutes to freshly generated MgO fume at concentrations of from 400 to 600 mg/m³ (Drinker, Thomson, and Finn 1927/Ex. 1–356). Animal and human studies of magnesium oxide fume exposure have shown toxicities less marked than but similar to those attributable to zinc oxide fume (Drinker and Drinker 1928/Ex. 1–314). The symptoms of exposure include those of metal fume fever (fever, chills, muscular pain, nausea, and vomiting) and leukocytosis, symptoms analogous to those caused by exposure to zinc oxide fume. NIOSH notes that exposure to magnesium oxide may also cause chronic respiratory disease (Ex. 8–47, p. 12).

In construction, maritime, and agriculture, OSHA is proposing PELs of 10 mg/m³ TWA (total particulate) and 5 mg/m³ TWA (respirable fraction) for magnesium oxide fume. OSHA preliminarily concludes that these limits will substantially reduce the significant risks of metal fume fever, leukocytosis, and, perhaps, chronic respiratory disease associated with exposure to magnesium oxide fume in the workplace. OSHA believes that these health effects constitute material health impairments and that the proposed PELs will substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

MALATHION

CAS: 121–75–5; Chemical Formula: $C_{10}H_{19}O_6PS_2$

H.S. No. 1235

In construction and maritime, OSHA currently has a 15-mg/m³ total particulate limit (8-hour TWA) for malathion, with a skin notation. OSHA has no PEL in agriculture. The ACGIH TLV®–TWA for this substance is 10 mg/m³, also with a skin notation, and the NIOSH REL is 15 mg/m³. OSHA has no PEL in agriculture. OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) in the construction, maritime, and agriculture sectors. These are the limits recently established for malathion in general industry. NIOSH (Ex. 8–47, Table N4) concurs with the selection of these limits.

Malathion is a noncombustible, yellow to deep brown liquid with a skunk-like odor. Malathion finds use as an insecticide for fruits, vegetables, and ornamental plants (Clayton and Clayton 1981, p. 4825). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In addition to physical irritation, malathion causes effects related to cholinesterase inhibition, including headaches, labored breathing, vomiting, tremors, and cardiovascular effects. The oral LD_{50}s for mice and rats are 507 mg/kg and 370 mg/kg, respectively (RTECS 1991). Malathion is a widely used organophosphorus insecticide having a relatively low level of toxicity; some authors have determined that malathion is approximately 1/100th as toxic as parathion (Johnson, Fletcher, Nolan, and Cassaday 1952/Ex. 1–149). Rats fed malathion at a concentration of 100 ppm for two years exhibited no toxic effects (Hazleton and Holland 1953/Ex. 1–126). Several occupational and research studies involving human volunteers have shown that malathion exposure produced no changes in blood cholinesterase or other effects (Rider, Mueller, Swader et al. 1959/Ex. 1–189; Hayes, Mattson, Short, and Witter 1960/Ex. 1–90; Culver, Caplan, and Batchelor 1956/Ex. 1–177). Fatalities have been reported in the Japanese and Indian literature, but these deaths have always involved extremely high doses of malathion (Chabra 1970/Ex. 1–151; Horiguchi 1973/Ex. 1–221).

In the prior rulemaking, one commenter (Ex. 3–678) questioned the need for a skin notation for a substance

with a dermal LD_{50} of 200 mg/kg or less in animal tests when there was no evidence of systemic effects in humans as a result of skin contact (Ex. 3–678, p. 3). OSHA explained to this commenter that its policy is to use a dermal LD_{50} in rabbits of 1000 mg/kg as an indicator of dermal toxicity; this is the Hazard Communication standard's upper cutoff for a toxic, rather than highly toxic, substance administered by the dermal route (see Section VI.C.16 of this preamble for a discussion of OSHA's reasoning on this issue). In addition, OSHA believes that evidence that a substance has caused systemic toxicity in humans exposed via the dermal route is sufficient reason to retain a skin notation; in the case of malathion, OSHA has received reports of exposed workers whose blood cholinesterase levels were reduced after dermal exposure to this substance. OSHA is therefore retaining the skin notation for malathion in the proposed rule.

In construction, maritime, and agriculture, OSHA is proposing PELs of 10 mg/m³ TWA (total particulate) and 5 mg/m³ TWA (respirable particulate) for malathion, with a skin notation. The Agency preliminarily finds that exposure to malathion poses a significant risk of material health impairment in the form of cholinesterase inhibition. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

MARBLE

CAS: 1317–65–3; Chemical Formula:
None

H.S. No. 1239

In construction and maritime, OSHA currently has no specific limit for marble dust, although this substance is currently covered under the generic total particulate limit of 15 mg/m³. There is no PEL in agriculture. The ACGIH has established an 8-hour TLV®–TWA of 10 mg/m³ for marble dust containing less than 1 percent quartz (measured as total dust). OSHA is proposing to retain its 8-hour TWA limits for marble dust of 15 mg/m³ as total particulate containing less than 1 percent quartz and 5 mg/m³ as the respirable fraction in construction and maritime, and to extend both limits to agriculture. These are the limits recently established for marble in general industry.

Marble dust, a metamorphic form of calcium carbonate dust, is an odorless and tasteless powder or crystal. Marble is used as a source of carbon dioxide in laboratory experiments and as building stone, monumental stone, ashlar, veneer panelling, wainscotting, and tiling (Hawley's 1987, p. 732, Parmeggiani 1983, p. 1284).

There are no toxicity data in animals for marble dust. Exposure to this substance causes physical irritation of the eyes, nose, mucous membranes, and skin (Genium MSDS 1977).

In the proposed rule, OSHA is retaining its former total particulate limit for marble of 15 mg/m³, as well as the respirable particulate limit of 5 mg/m³ in construction and maritime and is proposing to extend these limits to agriculture. OSHA preliminarily finds that these limits will protect exposed workers in these sectors against the significant risk posed by the physical irritant properties of marble. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

METHOXYCHLOR

CAS: 72–43–5; Chemical Formula:
$C_{16}H_{15}C1_3O_2$

H.S. No. 1246

In construction and maritime, OSHA currently applies its generic 15-mg/m³ TWA limit for particulates to methoxychlor. There is no limit in agriculture. The ACGIH recommends a limit of 10 mg/m³ TWA for methoxychlor. OSHA is proposing a 10 mg/m³ limit for the total particulate of methoxychlor and a 5 mg/m³ limit for the respirable fraction in construction, maritime, and agriculture. NIOSH (Ex. 8–47, Table N4) concurs with the selection of these limits, which are identical to those recently established in general industry.

Methoxychlor is a white crystalline solid used as an insecticide on fruit and shade trees, vegetables, dairy and beef cattle, home gardens, and farm buildings (except poultry houses) (Farm Chemicals Handbook 1990, p.C191; ACGIH 1986, p. 364). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The reported oral LD_{50} for methoxychlor in rats is 6000 mg/kg (Lehman 1954, as cited in ACGIH 1986/ Ex. 1–3, p.364). Lehman also determined that 100 ppm for two years is the lowest dietary level producing no effect in rats; this corresponds to a level of 350 mg/man/day (Lehman 1954, as cited in ACGIH, 1986/Ex. 1–3, p. 364). Results of another dietary study indicated that rats fed 200 ppm methoxychlor for two years were not affected in terms of growth or survival (Hodge, Maynard, and Blanchet 1952/ Ex. 1–488). Tegeris and co-workers (1966/Ex. 1–389) reported that dogs fed 1 g/kg daily for 6 months showed weight loss; most animals died within nine weeks when the dietary level was increased to 2 g/kg daily (Tegeris, Earl, Smalley, and Curtis 1966/Ex. 1–389). Morgan and Hickenbottom (1978/Ex. 1–351) reported that male Holtzman rats fed 10, 40, 160, or 640 mg/kg for 24 hours showed no liver abnormalities. Extrapolating from animal data, Lehman (1954) estimated the dose levels that would produce toxic effects in humans as follows: the fatal oral dose would be 450 grams; adverse health effects would occur at 6430 mg/kg orally; and 2414 mg/kg is the level at which dermal effects would be predicted to occur (Lehman 1954). Methoxychlor has been tested in carcinogenicity bioassays and the results have not provided sufficient evidence to determine the carcinogenicity of methoxychlor in animals (Sax and Lewis 1989).

In construction, maritime, and agriculture, OSHA is proposing 8-hour TWA limits for methoxychlor of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction). The Agency believes that these limits are necessary to reduce the significant health risks of systemic toxicity, which constitutes a material impairment of health within the meaning of the Act. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

MOLYBDENUM (INSOLUBLE COMPOUNDS)

CAS: 7439–98–7; Chemical Formula:
Insoluble compounds

H.S. No. 1278

In construction and maritime, OSHA currently has a limit of 15 mg/m³ TWA for the insoluble compounds of molybdenum, which include molybdenum metal dust and the dioxide; this is the Agency's generic limit for all particulates. There is no limit in agriculture. The ACGIH recommends a TLV®–TWA of 10 mg/m³, measured as molybdenum, for these substances. NIOSH has no REL. OSHA is proposing PELs of 10 mg/m³ TWA (total particulate) and 5 mg/m³ (respirable particulate) for the insoluble compounds of molybdenum, measured as molybdenum, in construction, maritime, and agriculture. These are the limits recently established for these compounds in general industry.

Molybdenum is a silver-white metal or a dark gray or black powder. The soluble molybdenum compounds include molybdenum trioxide, ammonium molybdate, the hexammonium salt of molybdic acid, and dihydrated sodium molybdate. Molybdenum trioxide is used as a source of molybdenum

compounds, in agriculture, pigments, ceramic glazes, and as a catalyst. Ammonium molybdate is used in pigments, as an analytical reagent, and in coal technology. The hexammonium salt of molybdic acid is used as an intermediate in the manufacture of pigments, as a component of fertilizers, and as a reagent in chemistry. Sodium molybdate finds use in the manufacture of pigments, as a bath additive for metal finishing, and as a micronutrient for plants and animals (Merck 1983, p. 79, 1238; Hawley's 1987, p. 68, 795).

Mogilvskaya (1950, as cited in ACGIH 1986/Ex. 1–3, p. 415) reported that the dust of molybdenum metal and molybdenum dioxide caused irritation of the mucosal surfaces in white mice after an intensive dusting for one hour; in a similar 30-day exposure, the metal and the dioxide proved only minimally poisonous. Molybdenum trioxide at 100 mg/kg/day was lethal to rats, and exposure to this substance by inhalation caused eye and nose irritation in these animals and was subsequently lethal (HSDB 1991). Molybdenum trioxide was also weakly tumorigenic (lung tumors) in Strain A mice after injection (Shimkiu et al. 1978). Rats given 1.2 g/kg ammonium molybdate orally showed trembling, signs of colic, incoordination, and dyspnea (Browning 1969).

The insoluble compounds of molybdenum are generally acknowledged to have a low order of toxicity; however, there is some evidence that respiratory effects have been caused by exposure to these compounds (Browning 1961b, Friberg and Lener 1986, Stokinger 1981d). Exposure to molybdenum trioxide is known to cause severe irritation of the eyes and mucous membranes (Parmeggiani 1983). Three of 19 workers exposed to molybdenum and molybdenum trioxide developed pneumoconiosis after 4 to 7 years of exposure to concentrations ranging from 1 to 19 mg/m^3 (Parmeggiani 1983).

In construction, maritime, and agriculture, OSHA is proposing PELs for the insoluble compounds of molybdenum, measured as molybdenum, of 10 mg/m^3 TWA (total particulate) and 5 mg/m^3 TWA (respirable particulate). The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant health risks of exposure to the insoluble compounds of molybdenum, which include eye, nose, and skin irritation, and may include chronic respiratory effects. OSHA believes that these effects constitute material health impairments and that the proposed limits are necessary to substantially reduce the risk of these effects. In addition, promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

PARTICULATES (NOT OTHERWISE REGULATED)

CAS: None; Chemical Formula: None
H.S. No. 1294

In construction and maritime, OSHA currently covers all otherwise unregulated particulates under a single 8-hour TWA PEL of 15 mg/m^3 (measured as total particulate) and a single 8-hour TWA PEL of 5 mg/m^3 (measured as the respirable fraction). The ACGIH has a TLV®–TWA of 10 mg/m^3 (as total dust) for all not-otherwise-classified particulates having a quartz content of less than 1 percent.

OSHA is proposing to extend the permissible exposure limits (PELs) for Particulates Not Otherwise Regulated (PNORs) that were recently retained in general industry, which are 8-hour TWAs of 15 mg/m^3 (total particulate) and 5 mg/m^3 (respirable fraction) to workplaces in the agricultural sector. OSHA is retaining these limits for workplaces in construction and maritime but changing the name given to this group of substances from "nuisance dusts" to particulates not otherwise regulated and making it clear that these limits apply to organic as well as inorganic dusts. OSHA has established PELs for particulates not otherwise regulated based on their ability to cause physical irritation of the eyes, skin, mucous membranes, and upper respiratory tract. In the earlier rulemaking, OSHA did not consider or discuss other adverse health effects caused by exposure to the PNORs. The following discussion summarizes more recent information and studies on adverse health effects that result from exposure to the so-called "nuisance," or inert dusts. This information demonstrates that these dusts have health effects and that the term "nuisance" is indeed inappropriately applied to them.

The term "lung overload" denotes a series of general responses of the pulmonary system to the presence of large quantities of respirable, insoluble, and relatively benign dusts that are retained for extended periods of time in the lungs (Muhle et al. 1989). The mechanism thought to be responsible for this phenomenon is impaired clearance. Morrow (Fundamental and Applied Tox, 1988, Possible Mechanisms to Explain Dust Overloading of the Lungs, p. 389) hypothesizes that dust overloading reflects a breakdown in alveolar macrophage (AM)-mediated dust removal caused by the loss of AM mobility. The inability of dust-laden AMs to translocate to the mucociliary escalator correlates with the average composite particle volume per alveolar macrophage in the lung; when the distributed particulate volume exceeds a specific volume, the evidence suggests that AM-mediated particle clearance virtually ceases, causing particle-laden macrophages to remain in the alveolar region. A number of theories have been advanced to explain how these particle-laden cells become immobilized.

Even dusts thought to be benign can cause lung overload, which appears to be dependent on the amount of dust in the lung rather than the particular type of dust. Dust overload occurs when the amount of dust present overwhelms the ability of the macrophages (a type of white blood cell) to engulf and digest or move the dust particles. A well-functioning phagocyte engulfs dust and other foreign particles, and either digests them or moves them toward the bronchus and up the trachea so that they can be spit out or swallowed. When dust overload occurs, clearance of these particle-laden macrophages is reduced, and they remain deep in the lung. These retained particles then further reduce the ability of the lung to function normally.

To investigate lung response to high molecular weight polymers (considered biologically inert), Muhle et al. 1989 (H. Muhle, R. Mermelstein, C. Dasenbrock, S. Takenaka, U. Mohr, R. Klipper, J. MacKenzie and P. Morrow, Lung response to test toner upon 2-year inhalation in rats, *Exp. Pathol.* 1989; 37:239–242) exposed rats to a special test toner (35% respirable) at 0, 1, 4, or 16 mg/m^3, to titanium dioxide (TiO_2) at 5 mg/m^3, or to silica (SiO_2) at 1 mg/m^3 for 6 hours/day, 5 days/week for up to 24 months. No changes in any pulmonary parameter were observed in the rats exposed to the toner at the low exposure level. In the toner mid-exposure group, a very slight to slight degree of fibrosis was detected in 20% of the rats at the termination of the study. In the toner high-exposure group, fibrosis of slight degree was observed in 65% of the animals and a moderate degree of fibrosis was seen in 18% of the rats. In the TiO_2-exposed rats, a 5% prevalence of lung fibrosis was observed. Based on the volume of TiO_2 retained in the lungs in this study and on comparison with published values, the fibrogenic potency of the test toner and TiO_2 were calculated to be comparable.

In the SiO_2 (positive control) group, a moderate degree of lung fibrosis was detected in 85% of the animals and a

slight degree of fibrosis was observed in 14% of these rats at the termination of the study. Lipoproteinaceous material in the alveoli was detected in the alveoli in many of the animals at final sacrifice, predominantly in the toner high-exposure and silica exposure groups. The authors concluded that the various lung changes observed in the toner high-exposure rats and to a lesser extent in the toner mid-exposure animals (including the proteinosis) are identical to the characteristic signs of lung overloading. The authors also stated that, since the observed pulmonary changes are not uniquely associated with a specific test toner, their findings are likely to be applicable to other toners and to other relatively non-toxic respirable dusts as well.

In a subsequent study, Muhle et al. (H. Muhle, B. Bellman, O. R. Klipper, J. MacKenzie, R. Mermelstein, Subchronic Inhalation Study of Toner in Rats, Inhalation Toxicology, 2:341–360, 1990, p. 341–359) exposed rats to special (35% respirable) test toner at 0, 1, 4, 16, or 64 mg/m³ for 6 hours/day, 5 days/week for 13 weeks. No exposure-related effects were seen in the test animals in terms of survival or causes of death, clinical chemistry or hematology parameters, or systemic or upper respiratory system effects. Exposure also caused no alteration in tumor frequency.

Significant pulmonary responses were seen in the rats exposed at the middle and high dose levels. At 16 mg/m³, some indications of retarded lung clearance were noted and, at 64 mg/m³, no appreciable clearance of toner was detected. Seventy-five days after the 90-day exposure interval, test toner was retained in the lungs of the rats in the 4, 16, or 64 mg/m³ groups in the ratio of 1: 10.3: 77, compared with the theoretical toner input ratio of 1: 4: 16.

The authors attributed the pulmonary changes observed at the two highest exposure levels to "lung overload." Based on the results of this study, the authors stated that both the maximum tolerated dose (MTD) and the maximum functionally tolerated dose (MFTD) of test toner were exceeded at the 64 mg/m³ exposure level.

At a symposium organized by the International Society of Aerosols in Medicine (ISAM) and Environmental Health Sciences Center (EHSC) of the University of Rochester and held in Rochester, New York (May 17 and 18, 1990), Mermelstein and Klipper, scientists from the Xerox Corporation, presented a poster session, entitled "Particle-Lung Interactions: 'Overload' Related Phenomena." These authors also presented a paper entitled, "Xerox exposure limit for respirable dust" (N.O.S.) (Paper 406) at the 1990 American Industrial Hygiene Conference (AIHC), May 21–25, in Orlando, FL. Mermelstein and Klipper conducted a chronic inhalation study of toner in rats (discussed above) and then performed a recovery study to determine the reversibility of the pulmonary changes observed in rats after both acute (8 days) and subchronic (13 weeks) exposure.

To simulate an acute overexposure situation, the rats were exposed to 40 mg/m³ (high level) of the test toner for 8 days. In the main recovery study, female rats were exposed either to 0 mg/m³ (control), 10 mg/m³ (low), or 40 mg/m³ (high) concentrations of toner for 13 weeks, followed by four 13 week observation intervals.

The general results of the recovery study paralleled those of the subchronic study. In the high-dose 8-day exposure group, a slight inflammatory response was seen at the end of exposure, but the lungs returned to normal within 90 days post-exposure. In the low dose 13-week exposure group, the slight inflammatory response observed returned to normal within 180 days but the slight decrease in clearance persisted through the 15 month post-exposure period. In the high dose 13-week exposure group, a moderate inflammatory response and a decrease in clearance, both symptoms of overloading, were observed. At the end of the 15-month post-exposure period, animals in this group continued to show a decrease in clearance; the authors described these effects as "extensive symptoms of overloading." In addition, very slight fibrosis was present in the lungs of 2 of the 5 animals in the high-dose subchronic group.

Researchers have attempted to correlate published accounts in the toxicologic literature that document "lung overload" in animals with the human experience. Cotes and Steel described the progressive nature of lung overload in coal miners (1987, Work-Related Lung Disorders, Blackwell Scientific Publications, Oxford, p. 178, as reported in Mermelstein and Klipper, Paper #406: 1990 AIHC):

> Coal miners and others who breathe air contaminated with coal dust retain some dust in their lungs. The dust accumulates in small foci or macules which constitute simple pneumoconiosis of coal workers * * *. Simple pneumoconiosis is not associated with respiratory symptoms, does not shorten life and in the absence of chest radiograph may not even be suspected. However, with passage of time, following heavy dust exposure one or more macules enlarge or a number coalesce to form progressive massive fibrosis (PMF); the lesions progressively disrupt the normal function of the lung, give rise to respiratory symptoms and reduce life expectancy. This sequence constitutes classical pneumoconiosis of coal workers.

Morrow et al. (Morrow, Muhle, Mermelstein, 1991, Chronic Inhalation Study Findings as a Basis for Proposing a New Occupational Dust Limit, Journal of the American College of Toxicology) assumes that there may be a human counterpart to the dust overloading seen in animals that occurs at the same milligram dust per gram lung concentration. Applying extrapolation modeling to determine a likely correlate value for humans, these authors conclude that an exposure limit of 1 mg/m³, measured as respirable dust, would be appropriate in industrial settings. Based on these considerations, Xerox Corporation has established an internal respirable dust limit of 0.4 mg/m³.

Pulmonary Alveolar Proteinosis

Pulmonary alveolar proteinosis (PAP), also referred to as phospholipidosis, is a syndrome that occurs as a result of the abnormal accumulation of surfactant phospholipids and proteins in the alveolar spaces of the lung. This condition was first described by Rosen et al. in 1958. Since then, numerous case reports have appeared in the literature. The symptoms of PAP are similar to those of other progressive restrictive lung diseases: nonproductive cough, progressive dyspnea on exertion, and fatigue. Depending on the severity of the disorder, weight loss, hemoptysis, chest pain, and fevers may be experienced. No single etiologic agent has been identified. In fact, the broad spectrum of etiologic agents and disease progression found in alveolar proteinosis suggest that it represents one mechanism by which the lung responds to a variety of insults (Rosen, et al., 1958; Fishman, Pulmonary Diseases and Disorders, 2nd Edition, 1988, p. 893).

The material that fills the alveolar spaces in PAP is granular, protein-lipid in nature, and stains positive with the PAS stain. In most respects, the material in the alveoli is qualitatively similar to normal surfactant. Because of the excess of this material in the alveolar spaces, however, profound alterations occur in gas exchange and exercise tolerance, and it is also likely that its presence contributes to a marked decline in alveolar antimicrobial defenses. Surfactant is a substance formed in the lungs that helps to keep the small air sacs expanded by virtue of its ability to reduce the surface tension. Most evidence suggests that PAP is due to decreased removal of alveolar surfactant rather than to an increase in its production (Fishman, Pulmonary Diseases and Disorders, 1988).

There are several steps in the intra-alveolar and intra-cellular regulation of the quantity of surfactant in the alveolar spaces. Interference with the cycle, particularly in the return phase, by diverse stimuli ranging from inorganic particulates, fibrogenic dusts, and wood products to viral infections could lead to a decrease in the uptake of the surfactant phospholipid from the alveolar spaces at the level of the surfactant apoproteins or the apoprotein-phospholipid product.

PAP has been associated with exposure to various occupational substances. Case reports have implicated coal, tin, and uranium, as well as cement, silica, bentonite, and alumina (Rosen Samuel H; Benjamin Castleman and Averill A. Liebow, "Pulmonary Alveolar Proteinosis," N Eng J Med, 258, 23;1123–1142, June, 1958; Rubin, Ava Gordon, L. Weisbrod and Douglas E. Sanders, "Pulmonary Alveolar Proteinosis: Relationship to Silicosis and Pulmonary Infection," Radiology, 135:35–41, April 1980; Gough, J., "Correspondence concerning silicosis and alveolar proteinosis, Brit Med J, 1:629, March 1967; Davidson, Jean M. and W.M. Macleod, "Pulmonary Alveolar Proteinosis," Brit J Dis Chest, 63:13–28, 1969; Miller, Roberta R., Andrew M. Churg, Marion Hutcheon and Stephen Lam, "Pulmonary Alveolar Proteinosis and Aluminum Dust Exposure," Am Rev Resp Dis, 130:312–315, 1984). Most case reports characterize the dust exposures involved in these cases only as "heavy." However, one case study involving alumina (aluminum oxide dust) did characterize the dust obtained by lung biopsy as consisting of spheres less than 1 micron in diameter.

Rubin et al., 1980, report on the clinical course and treatment of 13 cases of pulmonary proteinosis seen at Toronto General Hospital from 1974 to 1978. The authors report that PAP appears to be a disorder of the alveolar lining cells that is characterized by an increase in the number of cells resembling granular Type II pneumocytes and inadequate clearance of pulmonary lipoproteins, and particularly of palmitoyl lecithin (surfactant). Treatment for the disease is palliative and consists of pulmonary lavage.

Davidson and Macleod reviewed the literature on PAP in 1969; these authors substantiate Rosen's original claim that PAP is primarily a disease of males (Davidson and Macleod, 1969, Pulmonary Alveolar Proteinosis, Brit J Dis Chest, 63, 13). The male-to-female ratio among reported cases is 3 to 1. This ratio is most likely to be due to the fact that men rather than women generally work in dusty jobs. The authors also report that an analysis of the reported cases shows that nearly half of the affected individuals had been exposed to dusty environments or solvents.

Animal studies have demonstrated that PAP develops after exposure to a variety of mineral dusts and fumes. The condition has often been described in rats that have inhaled silica dust (Gross and de Treville, 1968; Heppleston et al., 1970, 1974; Heppleston, 1975).

Corrin and King (1970, Pathogenesis of experimental pulmonary alveolar proteinosis) exposed rats to pyro aluminum powder, pure quartz, quartz of 60% and 5% cristobalite content, or a non-fibrogenic feldspar. Alveolar proteinosis developed, in these animals and could be traced to the earliest stages of dust exposure. There was an increase in alveolar macrophages in all dust-exposed animals, especially in those who later developed proteinosis.

In the Muhle et al. study discussed earlier, lipoproteinaceous material was detected in the alveoli at the final sacrifice, predominantly in animals from the high toner and quartz exposure groups. A very slight to slight degree of lipoproteinosis was also seen in the high toner group animals, while lipoproteinosis of slight to moderate degree was observed in the quartz-exposed rats.

Researchers have concluded that there is an association between alveolar proteinosis and the development of fibrosis, although the nature of that relationship remains unclear. Hudson et al. (1974) suggest that the typical histological picture of PAP is an early stage of a disease in which the end stage is fibrosis (Hudson et al., Pulmonary Interstitial Fibrosis Following Alveolar Proteinosis, *Chest*, 65: June 6, 1974).

OSHA preliminarily concludes that there is ample evidence of dust overloading of the lung and pulmonary alveolar proteinosis to provide additional support for a total particulate PEL of 15 mg/m³ as an 8-hour TWA and a respirable dust PEL of 5 mg/m³, also as an 8-hour TWA, for all Particulates Not Otherwise Regulated. These limits are necessary to reduce the significant risk of dust overloading and PAP, as well as other dust-related effects such as physical irritation, reduced vision, etc. Consequently, OSHA is proposing to retain these limits in workplaces in construction and maritime and to propose them in agriculture. These limits cover both organic and inorganic PNORs. OSHA will continue to monitor the research in these areas and may elect to revisit these issues in the future to determine whether these limits are adequately protective.

OSHA believes that good industrial hygiene practice requires that exposures to particulates be controlled in the workplace to or below the 15-mg/m³ level as an 8-hour TWA to protect workers in construction, maritime, and agriculture from the broad range of adverse effects associated with exposure to these substances. In the past, these particulates were often called "nuisance" or "inert" substances. These terms are misleading, however, because exposures to these substances in the workplace may cause serious and sometimes disabling effects. Further, good industrial hygiene and public health practice require that workplace exposures to particulates be maintained below the level associated with physical irritation, accidents, and respiratory effects.

PENTAERYTHRITOL

CAS: 115–77–5; Chemical Formula: $C(CH_2OH)_4$

H.S. No. 1305

In construction and maritime, OSHA currently has no separate limit for pentaerythritol, although this substance is covered by an 8-hour TWA PEL of 15 mg/m³ TWA, the Agency's generic total particulate limit in these sectors. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³ for pentaerythritol (total dust) containing less than 1 percent quartz. For construction, maritime, and agriculture, OSHA is proposing PELs of 10 mg/m³ TWA (total particulate) and 5 mg/m³ (respirable particulate) for this substance. These are the limits recently established for pentaerythritol in general industry.

Pentaerythritol is an odorless, white crystalline solid. It is used in making insecticides, lubricants, alkyd resins, explosives, tall oil esters, pharmaceuticals, and paint swelling agents (ACGIH 1986, p. 462). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Rats exposed to pentaerythritol at 11,000 mg/m³ for 6 hours showed no ill effects from a single exposure, and rats, dogs, and guinea pigs exposed 6 hours daily for 90 days also showed no effects (Keplinger and Kay 1964/Ex. 1–743). The oral LD_{50}s in guinea pigs and mice were 11.3 and 22.5 g/kg, respectively; rats survived oral doses as high as 16 g/kg. At higher doses, animals displayed

diarrhea, tremors, ataxia, and loss of righting reflex (Keplinger and Kay 1964/Ex. 1–743). Daily applications of a saturated aqueous solution of technical pentaerythritol to rabbit skin produced no significant irritation; a single application of 10 g/kg aqueous paste on intact or abraded rabbit skin produced no evidence of percutaneous absorption (Keplinger and Kay 1964/Ex. 1–743; Hercules, Inc., as cited in ACGIH 1986/Ex. 1–3, p. 462). Instillation of a 50-percent aqueous suspension into the conjunctival sac of rabbits' eyes resulted in slight transient irritation (Hercules, Inc., as cited in ACGIH 1986/Ex. 1–3, p. 462).

Human volunteers are reported to have eliminated 85 percent of dietary pentaerythritol unchanged in the urine within 30 hours. A slight and transient increase in apparent blood sugar that was proportional to the ingested dose appeared in these subjects soon after administration (Berlow, Barth, and Snow 1958, as cited in ACGIH 1986/Ex. 1–3, p. 462).

In construction, maritime, and agriculture, OSHA is proposing 8-hour TWA PELs of 10 mg/m³ (total particulate) for pentaerythritol and 5 mg/m³ (respirable fraction). The Agency believes that these limits will protect employees in these sectors from the significant risks of physical irritation potentially associated with exposure to pentaerythritol at higher levels. OSHA believes that physical irritation constitutes a material impairment of health within the meaning of the Act. Promulgation of these limits will also make OSHA's PELs for this substance consistent across all regulated sectors.

PERLITE

CAS: None; Chemical Formula: None

H.S. No. 1310

In construction, maritime, and general industry, OSHA covers perlite under its generic total particulate limit of 15 mg/m³. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³ for perlite as total dust containing less than 1 percent quartz. OSHA is proposing TWA PELs of 15 mg/m³ for perlite as total particulate containing less than 1 percent quartz and 5 mg/m³ for perlite as the respirable fraction. These are the limits recently established for perlite in general industry.

Perlite is a natural volcanic glass; it is essentially an amorphous mineral consisting of fused sodium-potassium-aluminum silicate. Perlite has a wide variety of uses, which include use as an abrasive; in plaster and tile; in fertilizer; in concrete construction aggregates; as a filter aid, pipe insulator, soil conditioner, cleaner base, and insulation board filler; in refractory products; and as tile mortar aggregate (Clayton and Clayton 1981, p. 3027; ACGIH 1986, p. 467).

Perlite is reported to have a free-silica content varying from zero to 3 percent (Anderson, Selvig, Baur et al. 1956 and the Perlite Institute, both as cited in ACGIH 1986/Ex. 1–3, p. 467). In its processed crude and expanded forms, perlite is reported to have a measurable quartz content of 0.4 percent quartz and 0.2 percent cristobalite (Sheckler 1977, as cited in ACGIH 1986/Ex. 1–3, p. 467). There are no published reports of adverse physiologic effects from exposure to perlite dust.

In construction, maritime, and agriculture, OSHA preliminarily finds that perlite is nontoxic when airborne total particulate concentrations are maintained at levels of 15 mg/m³ or below (as an 8-hour TWA) and when its quartz content is limited to a level below 1 percent crystalline silica. For these reasons, OSHA is proposing an 8-hour TWA PEL of 15 mg/m³ for total perlite dust containing less than 1 percent quartz and a 8-hour TWA PEL of 5 mg/m³ for the respirable fraction in these sectors. OSHA preliminarily concludes that these limits will protect workers from the significant risk of eye, skin, and other forms of physical irritation associated with exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PICLORAM

CAS: 1918–02–1; Chemical Formula: $C_6H_3Cl_3N_2O_2$

H.S. No. 1328

In construction and maritime, OSHA currently has no specific limit for picloram, although this substance has been covered by the Agency's generic total particulate limit of 15 mg/m³ (8-hour TWA). There is no PEL in agriculture. The 1987–1988 ACGIH TLV®s for this substance are 10 mg/m³ as an 8-hour TWA and 20 mg as a 15-minute STEL (both for total dust). In construction, maritime, and agriculture, OSHA is proposing a 10-mg/m³ 8-hour TWA PEL for picloram (total dust) and a 5-mg/m³ 8-hour TWA for the respirable fraction. These are the limits recently established in general industry.

Picloram is a white powder with an odor like that of chlorine. This substance is used as an herbicide and defoliant. It is used as a growth regulator on apricots, figs, and cherries and is used to control various weeds in the western states (ACGIH 1986, p. 489; HSDB 1986). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Picloram has low acute oral toxicity, with LD_{50} values of 3.75 g/kg for rats, 1.5 g/kg for mice, and 2.0 g/kg for rabbits (NIOSH 1979b, as cited in ACGIH 1986/Ex. 1–3, p. 489). Two-year feeding studies revealed no ill effects in albino rats and beagle dogs from ingestion of doses up to and including 150 mg/kg/day (McCollister and Leng 1969, as cited in ACGIH 1986/Ex. 1–3, p. 489). At 225 mg/kg/day, rats displayed moderate liver and kidney changes and, in females, slight body weight loss after 90 days. These authors (McCollister and Leng 1969, as cited in ACGIH 1986/Ex. 1–3, p. 489) also reported no fertility, reproduction, or lactation effects in albino rats fed at levels of up to 3000 ppm (0.3 percent) in a three-generational study. Although maternal toxicity in rats was reported at picloram dietary levels of 750 or 1000 mg/kg administered during days 6 through 15 of gestation, neither teratogenic nor neonatal effects were observed when subtoxic or maternally toxic doses of picloram were administered during organogenesis (Thomson et al. 1972, as cited in ACGIH 1986/Ex. 1–3, p. 489). The National Cancer Institute (NCI) (1977d) found a dose-related increase in benign liver tumors in female rats only and concluded that "under the conditions of the bioassay, the findings are suggestive of the ability of the compound to induce benign tumors in the livers of female Osborne-Mendel rats." Based on these results, NIOSH (Ex. 8–47, Table N4) concluded that "picloram is not a nuisance particulate and is not without toxic effects." OSHA notes that picloram must therefore be added to the list of substances formerly believed to be inert but subsequently shown to be toxic.

Based on this evidence, OSHA is proposing 8-hour TWA limits of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for picloram in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that these total and respirable particulate limits will minimize the significant risk of material health impairment in the form of systemic effects, such as liver and kidney damage, that are potentially associated with exposure to this substance at higher levels. OSHA believes that these effects constitute material health impairments and that the proposed limits are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PLASTER OF PARIS
CAS: 7778–18–9; Chemical Formula: $CaSO_4$
H.S. No. 1331

In construction and maritime, OSHA's current 8-hour TWA exposure limit for Plaster of Paris is 15 mg/m³ (total particulate). The ACGIH has a 10-mg/m³ TLV®–TWA for Plaster of Paris, measured as total dust. OSHA is retaining its current limit in construction and maritime and is proposing to extend this limit to agriculture, as well as the 5-mg/m³ limit for the respirable fraction. These are the limits recently established for this substance in general industry.

Plaster of Paris is a fine, white powder used in wall plasters and wallboard, in the building industry for tiles and blocks, in moldings and statuary, and in the paper industry (Merck 1983, p. 234).

Where occupational exposures to Plaster of Paris have been limited, no toxic effects or organic diseases of the lungs have occurred. Exposure to excessive levels of dust in the work-place may result in reduced visibility or injury to the skin or mucous membranes from the dust itself, or in damage to the skin from the rigorous skin-cleansing procedures required to remove the dust (ACGIH 1986/Ex. 1–3).

In construction and maritime, OSHA is retaining both the 8-hour TWA of 15 mg/m³ (total particulate) and the 8-hour TWA PEL of 5 mg/m³ (respirable particulate) for Plaster of Paris and is proposing to extend these limits to agriculture. The Agency preliminarily concludes that these limits will protect workers in these industries from the significant risks of skin, eye, and other forms of physical irritation associated with exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PORTLAND CEMENT
CAS: 65997–15–1; Chemical Formula: None
H.S. No. 1333

In construction and maritime, OSHA currently has a limit of 50 mppcf (approximately 15 mg/m³) for Portland cement containing less than 1 percent crystalline silica. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³ for Portland cement as total dust containing less than 1 percent quartz. OSHA is proposing PELs of 10 mg/m³, measured as total particulate, for Portland cement in the construction, maritime, and agriculture industries and of 5 mg/m³, measured as the respirable fraction. These are the limits recently established in general industry.

Portland cement refers to a class of cements that consist of odorless gray powders containing less than 1 percent crystalline silica. Portland cement is insoluble in water and contains tri-and dicalcium silicate, in addition to varying amounts of alumina, tricalcium aluminate, and iron oxide. Portland cement is used to manufacture mortar for building blocks, stone and pre-cast items and as a moisture sealant for the exterior of concrete blocks (NIOSH/OSHA Occupational Health Guideline 1981, p. 3).

Intraperitoneal injection of Portland cement in guinea pigs produced an absorptive reaction, which is an effect typical of inert particulates. Portland cement is eventually eliminated from the tissue and is generally not considered harmful when ingested (Miller and Sayers 1941/Ex. 1–595).

In a study of industrial exposures, Gardner and associates (1939/Ex. 1–589) found no evidence of Portland-cement-related pneumoconiosis in 2,278 workers who had been heavily exposed to this substance for prolonged periods of time (Gardner, Durkan, Brumfiel, and Sampson 1939/Ex. 1–589). Conflicting reports of pneumoconiosis (Parmeggiani 1951, as cited in ACGIH 1986/Ex. 1–3, p. 494; Prosperi and Barsi 1957/Ex. 1–1093) are attributed to the presence of silica in the inhaled dust rather than to exposure to Portland cement itself (ACGIH 1986/Ex. 1–3, p. 494). Cement dermatitis does occur among exposed workers, however, as a consequence of the alkaline, abrasive, and hygroscopic properties of the wet cement, which cause irritation of the skin (Schwartz, Tulipan, and Birmingham 1957a/Ex. 1–1168).

In the construction, maritime, and agriculture industries, OSHA is proposing 8-hour TWA PELs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for Portland cement containing less than 1 percent quartz. The Agency preliminarily concludes that these limits will protect workers in these sectors against the significant risks associated with on-the-job exposures to Portland cement dust. These risks include eye, skin, and mucous membrane irritation, and may include more severe respiratory effects, all of which constitute material health impairments. Revising the total particulate limit to 10 mg/m³ as an 8-hour TWA will also simplify employee exposure monitoring for Portland cement, since gravimetric rather than impinger methods can then be used. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

ROUGE
CAS: None; Chemical Formula: None
H.S. No. 1351

In construction and maritime, OSHA currently has no specific limit for rouge, although rouge is covered under the Agency's generic total particulate standard of 15 mg/m³ as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has an 8-hour TLV®–TWA limit of 10 mg/m³ for rouge as total dust containing less than 1 percent quartz. OSHA is proposing 10 mg/m³ as the 8-hour TWA PEL for the total particulate of rouge and 5 mg/m³ as the 8-hour TWA for the respirable fraction of rouge in construction, maritime, and agriculture. These are the limits recently established for these substances in general industry.

Rouge is a high-grade red pigment, composed mainly of ferric oxide, that is used as a polishing agent for glass, jewelry, etc., as an ingredient in pigments and magnetic tapes, and in metallurgy (ACGIH 1986, p. 325; Hawley's 1987, p. 1016).

There is evidence showing that exposure to hematite dust (ferric oxide) increases the risk of lung cancer in hematite miners, and this human evidence is consistent with the results of two recent animal studies: Warshawsky, Bingham, and Niemeier (1984), which showed that intratracheal administration of ferric oxide and exposure to benzo(a)pyrene (BaP) "enhances the metabolic activation of BaP"; and Niemeier, Mulligan, and Rowland (1986), which also found that ferric oxide has co-carcinogenic potential. In this rulemaking, OSHA's principal concern is to make the Agency's limits consistent across all regulated sectors; OSHA will consider rouge's carcinogenicity in the future in connection with the first PEL update rulemaking.

Accordingly, OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ for the total particulate of rouge and an 8-hour TWA PEL of 5 mg/m³ for the respirable fraction in the construction, maritime, and agriculture industries. OSHA preliminarily concludes that these limits will protect workers in these sectors from the significant risks of physical irritation associated with workplace exposure to higher levels of rouge. These effects include eye, nose, and upper respiratory irritation and, perhaps, other more serious chronic diseases, all of which constitute material health impairments within the meaning of the Act. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

SILICON
CAS: 7440–21–3; Chemical Formula: Si
H.S. No. 1359

In construction and maritime, OSHA currently has no specific limit for silicon; however, silicon is covered under OSHA's generic particulate limits of 15 mg/m³ TWA (total particulate) and 5 mg/m³ (respirable fraction). There is no limit in agriculture. The ACGIH has a 10-mg/m³ 8-hour TLV®–TWA for silicon, measured as total dust. In construction, maritime, and agriculture, OSHA is proposing a particulate PEL for silicon of 10 mg/m³ as an 8-hour TWA, as well as the 5-mg/m³ respirable fraction limit. These are the limits recently established for this substance in general industry.

Silicon is a black to gray, lustrous, needle-like crystal that is used in the manufacture of semiconductors, transistors, for making alloys such as ferrosilicon and silicon copper, and as a reducing agent in high-temperature reactions (ACGIH 1986, p. 526(86)).

The evidence of silicon's toxicity in animals is conflicting. An early study by McCord, Fredrick, and Stolz (1937/Ex. 1–640) reported no response in guinea pigs and rats injected intraperitoneally with silicon. A more recent study (Schepers 1971/Ex. 1–570) demonstrated pulmonary lesions in rabbits administered an intratracheal dose of 25 mg silicon dust.

OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ (total particulate) and an 8-hour TWA PEL of 5 mg/m³ (respirable fraction) for silicon in the construction, maritime, and agriculture sectors. The Agency preliminarily concludes that these limits will reduce the significant health risks potentially associated with exposure to this substance at higher levels. These risks include eye, skin, mucous membrane and other forms of physical irritation and may include chronic respiratory effects. OSHA believes that these effects constitute material health impairments and that the proposed PELs will substantially reduce the risk of these health effects. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

SILICON CARBIDE
CAS: 409–21–2; Chemical Formula: SiC
H.S. No. 1360

In construction and maritime, OSHA currently covers silicon carbide under its generic 15-mg/m³ total particulate limit. There is no limit in agriculture. The ACGIH TLV®–TWA is 10 mg/m³ over 8 hours, measured as total dust. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA total particulate PEL for silicon carbide of 10 mg/m³ and an 8-hour TWA respirable fraction limit of 5 mg/m³. These are the limits recently established for this substance in general industry.

Silicon carbide is a green to blue-black iridescent crystal. It is used for polishing glass and granite, smoothing bisque ware, sharpening stones, and as an abrasive; it also finds use in the manufacture of porcelain, shoe soles, furnace linings, and antiskid pavements, and in semiconductor technology (Merck 1983, p. 1220).

An animal study (Gardner 1923/Ex. 1–737) showed that, although exposure to silicon carbide alone produced no fibrosis of the lungs, exposure of guinea pigs infected with tuberculosis to silicon carbide (six hours/day, five days/week for one year) aggravated pulmonary tuberculosis to the extent that extensive fibrosis occurred. Guinea pigs exposed to silicon carbide dust and infected with the tubercle bacteria developed tuberculopneumoconiotic lesions (Gross, Westrick, and McNerney 1959/Ex. 1–697). Miller and Sayers (1941/Ex. 1–595) observed that silicon carbide dust administered by intraperitoneal injection to guinea pigs produced no reaction.

Bruusgaard (1949/Ex. 1–1143) found that X-rays of 10 out of 32 workers exposed to average levels of 34 mppcf of silicon carbide for 15 years or more demonstrated pulmonary changes; these 10 workers were also tuberculin-positive. Miller, Davis, Goldman, and Wyatts (1953/Ex. 1–40) described three cases of pulmonary reactions and hyperglobinemia in tungsten carbide industry workers; these authors concluded that exposure to silicon carbide was not a hazard unless the exposed workers already had pulmonary tuberculosis. However, a recent case study (Hayashi and Kajita 1988) reports the case of a 36-year-old abrasives plant worker who developed cough and sputum and showed apical lesions on x-ray; the lesions were excised and were found to consist primarily of silicon carbide. The authors concluded that silicon carbide was responsible for this worker's pneumoconiosis. Another study (Osterman, Greaves, Smith, Hammond, Robins, and Theriault 1989) has shown that workers in a silicon carbide factory with long-term exposure develop parenchymal changes leading to fibrosis.

In construction, maritime, and agriculture, OSHA is proposing a 10-mg/m³ TWA total particulate limit for silicon carbide and a 5-mg/m³ TWA respirable fraction limit. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of material health impairment in the form of physical irritation and, perhaps, of respiratory effects, that are associated with exposure to this particulate. These are the limits recently established for silicon carbide in general industry.

STARCH
CAS: 9005–25–8; Chemical Formula: $(C_6H_{10}O_5)_n$
H.S. No. 1369

In construction and maritime, OSHA's limit for starch is 15 mg/m³ as an 8-hour TWA, the Agency's generic limit for all particulates. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³ for starch as total dust that contains no asbestos and less than 1 percent crystalline silica. OSHA is retaining its current total dust and respirable fraction limits for starch in construction and maritime and is proposing to extend them to agriculture. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

Starch is a white, odorless powder. Starch has many uses, including use as an adhesive, textile filler and sizing agent, gelling agent, food product thickener, baking powder filler, fabric stiffener, indicator in analytical chemistry, anticaking agent, polymer base, and in face powders (Hawley's 1987, p. 1090).

Exposure to high concentrations of starch dust may result in impaired vision or may cause injury to the mucous membranes or skin. Injury may also result from the vigorous skin-cleansing procedures necessary for the complete removal of starch (ACGIH 1986/Ex. 1–3).

OSHA is retaining both the 8-hour TWA total particulate PEL of 15 mg/m³ and the 5-mg/m³ respirable particulate limit for starch in construction and maritime and is proposing these limits in agriculture. The Agency preliminarily concludes that these limits will reduce the significant risk of eye, skin, and other physical irritation that may result from exposure to high levels of starch in the workplace. In addition, promulgation of these limits will make OSHA's PELs for starch consistent across all regulated sectors.

SUCROSE
CAS: 57–50–1; Chemical Formula: $C_{12}H_{22}O_{11}$
H.S. No. 1374

In construction and maritime, OSHA's 8-hour TWA limit for sucrose is 15 mg/m³ as total particulate, the Agency's generic limit for all particulates. There is no limit in agriculture. The ACGIH includes sucrose among the group of

particulates that "do not produce significant organic disease or toxic effect when exposures are kept under reasonable control" (ACGIH 1986/Ex. 1–3) and has a TLV®–TWA limit of 10 mg/m³ for sucrose as total particulate containing no asbestos and less than 1 percent quartz. OSHA is retaining the 8-hour TWA PEL of 15 mg/m³ total particulate and the 8-hour TWA PEL 5 mg/m³ respirable fraction for sucrose in construction and maritime and is proposing these limits in agriculture. These are the limits recently established for sucrose in general industry.

Sucrose is found in the form of white crystals. It is used as a sweetening agent and food, as a starting material in fermentation, as a pharmaceutical preservative, and as an antioxidant, a demulcent, a glycerol substitute, a granulation agent, and an excipient for tablets (Merck 1983, p. 1273).

Exposure to excess levels of sucrose dust can cause skin and eye irritation, interference with vision, and distraction from the task at hand. The LD_{50} in rats is 29, 700 mg/kg (RTECS 1991). Acutely poisoned animals showed prostration, diarrhea, cyanosis, convulsions, and stupor before death (HSDB 1991).

OSHA is retaining its 8-hour total particulate TWA of 15 mg/m³ and its 8-hour TWA respirable fraction limit of 5 mg/m³ for sucrose in construction and maritime and is proposing to extend these limits to agriculture. The Agency preliminarily concludes that these limits will protect exposed workers in these sectors from the significant risk of physical irritation associated with sucrose exposure. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

2,4,5-T (TRICHLOROPHENOXYACETIC ACID)

CAS: 93–76–5; Chemical Formula: $C_8H_5C_{l3}O$

H.S. No. 2148

In general industry, construction, and maritime, OSHA's permissible exposure limit for 2,4,5-T is 10 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 10 mg/m³ for 2,4,5-T. NIOSH has no REL for this substance but concurs (Ex. 8–47) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 10 mg/m³ for 2,4,5-T in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

2,4,5-T, which is 2,4,5-trichlorophenoxyacetic acid, is an odorless, colorless to tan solid. This substance is a phenoxy acid herbicide that is used to control woody plants (ACGIH 1986, p. 549; NIOSH/OSHA Occupational Health Guideline 1981, p. 1). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2,4,5-T causes irritation, chloracne, and systemic effects in humans and central nervous system and teratogenic effects in animals. In early studies of 2,4,5-T, dioxin was a common contaminant; the role of dioxin must therefore always be considered in evaluating early reports of 2,4,5-T's toxicity (Proctor, Hughes, and Fischman 1988, p. 490). The oral LD_{50} values in rats, mice, dogs, guinea pigs, and hamsters are 300 mg/kg, 242 mg/kg, 100 mg/kg, 381 mg/kg, and 425 mg/kg, respectively (RTECS 1991). The dermal LD_{50} in rats is 1535 mg/kg (RTECS 1991). A single oral 2,4,5-T dose of 100 mg/kg given to pigs caused signs of anorexia, vomiting, diarrhea, and ataxia; at autopsy, hemorrhagic enteritis and congestion of the liver and kidney were seen Björklund and Erne 1966, in IARC 1977, Vol. 15, p. 280). In groups of rats maintained on diets containing 2,4,5-T, changes were observed in male and female animals receiving 100 mg/kg; these changes included a reduction in weight gain, a decrease in food intake, elevated serum alkaline phosphatase levels, and, in males, increased serum glutamic-pyruvic transaminase levels (IARC 1977, Vol. 15, p. 281). Dogs fed daily doses of 20 mg/kg 2,4,5-T died 11 to 75 days after dosing began (Drill and Hiratzka 1953, in IARC 1977, Vol. 15, p. 282). A dose of 100 mg/kg given subcutaneously to pregnant mice on the 6th through the 15th days of gestation produced an increased incidence of cleft palate in the offspring (Moore and Courtney 1971, in Proctor, Hughes, and Fischman 1988, p. 490). In hamsters administered oral doses of 100 mg/kg/day 2,4,5-T on days 6 to 10 of gestation, this substance caused signs of feticidal and teratogenic effects (Collins and Williams 1971, in Proctor, Hughes, and Fischman 1988, p. 490). A significant increase in the occurrence of cleft palate and embryotoxic effects was seen in mice after the oral administration of 35 to 130 mg/kg 2,4,5-T during days 6 to 15 of gestation (Roll 1971, in IARC 1977, Vol. 15, p. 285). Rats, rabbits, and monkeys appear to be relatively resistant to 2,4,5-T's teratogenic effects (Proctor, Hughes, and Fischman 1988, p. 490).

The effects most frequently reported in workers exposed to 2,4,5-T include chloracne, liver disorders, neurological and behavioral changes, fat metabolism disorders, and porphyria cutanea tarda (IARC 1977, Vol. 15, p. 288). However, the role of dioxin in the etiology of these disorders should not be overlooked. In 1964, an outbreak of chloracne affected 60 workers at a 2,4,5,-T factory of the Dow Chemical Company in Michigan (Firestone 1977, in IARC 1977, Vol. 15, p. 289). In 1969, employees of the same Michigan factory were reexamined and of 73 workers, 13 were found to have chloracne. Several of these workers had hyperpigmentation or facial hypertrichosis and one worker showed mild porphyrinuria. About 30 percent of these workers suffered from gastrointestinal symptoms such as nausea, vomiting, diarrhea, abdominal pain, and bloody stools; approximately 10 percent had symptoms including lower extremity weakness, headache, and decreased auditory acuity (Poland et al. 1971, in IARC 1977, Vol. 15, p. 289). In a factory in the USSR where 2,4,5-T was produced, 128 workers had skin lesions, and 69 of those examined had acne; many with severe lesions also suffered liver impairment. In 18 of these workers, a neurasthenic syndrome was observed (Telegina and Bikbulotova 1970, in IARC 1977, Vol. 15, p. 290). Among 228 people affected in an accident at a 2,4,5-T-producing factory in West Virginia, symptoms included chloracne, melanosis, muscular aches and pain, fatigue, nervousness, and cold intolerance (Firestone 1977, in IARC 1977, Vol. 15, p. 290). Eleven male volunteers showed no clinical effects after ingesting 5 mg/kg of 2,4,5-T; however, most did report having a metallic taste in the mouth which lasted 1 to 2 hours after ingestion (Gehring et al. 1973; Kohli et al. 1974a, in Hayes 1982, p. 530). A study of chemical application workers using 2,4,5-T in New Zealand revealed no significant differences in the rates of congenital defects, stillbirths, or miscarriages when compared with controls (Smith et al. 1981, in Proctor, Hughes, and Fischman 1988, p. 490). The International Agency for Research on Cancer has determined that the evidence for the carcinogenicity of 2,4,5-T in humans and animals is inadequate (IARC 1982, Suppl. 4, pp. 235–238).

Based on this evidence in humans and animals, OSHA preliminarily concludes that 2,4,5-T potentially causes irritation, neurological effects, and liver damage in exposed individuals. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit of 10 mg/m³ for 2,4,5-T in agriculture is necessary to significantly reduce these

risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for 2,4,5-T consistent across all regulated sectors.

TEMEPHOS

CAS: 3383–96–8; Chemical Formula: $C_{16}H_{20}O_6P_2S_3$

H.S. No. 1383

There is no specific limit for temephos in construction or maritime, although this substance is covered under OSHA's generic particulate limit of 15 mg/m³. There is no PEL in agriculture. The ACGIH limit is 10 mg/m³ (total dust) as an 8-hour TWA. In construction and maritime, OSHA is proposing an 8-hour TWA of 10 mg/m³ (total particulate) and is retaining the 5-mg/m³ limit for the respirable fraction of temephos dust; the Agency also proposes to extend both limits to agriculture. NIOSH (Ex. 8–47, Table N4) concurs with the selection of these PELs, which were recently established in general industry.

Temephos may be a white crystalline solid or a viscous brown liquid. Temephos is used as an insecticide for the control of mosquito larvae, flies, and midges (Clayton and Clayton 1981, p. 4807; ACGIH 1986, p. 557). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In rats and mice, temephos has an acute oral LD_{50} of 400 mg/kg or greater. Various animal species tolerated doses of 10 mg/kg without clinical effect and 1 mg/kg without effect on cholinesterase activity (Gaines, Kimbrough, and Laws 1967/Ex. 1–553). Laws, Morales, Hayes, and Joseph (1967/Ex. 1–562) revealed that human volunteers consuming oral doses of temephos at levels of either 256 mg/person/day for five days or 64 mg/person/day for four weeks evidenced no detectable effects on erythrocyte or plasma cholinesterase levels. Murphy and Cheever (1972/Ex. 1–567) reported that 1 mg of temephos per liter of drinking water produces no effect. These authors found that rat liver carboxylesterases were at least 30 times more sensitive to inhibition from temephos than were rat cholinesterases. Assuming that human liver carboxylesterases are proportionately more sensitive than cholinesterases, it is estimated that significant inhibition of these carboxylesterases could occur as a result of consuming 2 liters of drinking water containing 1 mg/L of temephos. Although nonspecific liver carboxylesterase is not critical for normal physiologic function, adverse effects on this enzyme could increase the susceptibility of exposed individuals to chemicals and drugs that contain carboxylesterase linkages (ACGIH 1986/Ex. 1–3, p. 557).

OSHA is proposing an 8-hour TWA limit of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for temephos in construction, maritime, and agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of cholinesterase inhibition and reduction in carboxylesterase activity, which together constitute material health impairments within the meaning of the Act and are potentially associated with exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for temephos consistent across all regulated sectors.

4,4'-THIOBIS (6-TERT-BUTYL-n-CRESOL)

CAS: 96–69–5; Chemical Formula: $C_{22}H_{30}O_2S$

H.S. No. 1391

In construction and maritime, OSHA is currently covering 4,4'-thiobis under the Agency's generic total particulate limit of 15 mg/m³ TWA. There is no PEL in agriculture. The ACGIH limit is 10 mg/m³ as an 8-hour TWA, the limit established by the ACGIH for all of the nuisance dusts. OSHA proposes a 10-mg/m³ total particulate TWA limit and a 5-mg/m³ respirable fraction TWA PEL for 4,4'-thiobis in the construction, maritime, and agriculture industries, and NIOSH concurs (Ex. 8–47, Table N4) with the selection of these limits. These are the limits recently established for this substance in general industry.

4,4'-Thiobis is a light gray to tan powder with a slightly aromatic odor. This substance is an antioxidant for polyolefins, polyethylenes, and polypropylenes (ACGIH 1986, p. 570).

The intraperitoneal LD_{50} in mice is 50 mg/kg (RTECS 1991). The lethal oral dose in rats is approximately 5 g/kg (RTECS 1991). In a 30-day study, rats fed diets of 500 ppm 4,4'-thiobis exhibited normal weight gain; those rats fed five times this amount developed enlarged livers and had a reduced rate of weight gain (Lefaux 1968/Ex. 1–614). In a 90-day study reported by the same author, rats fed 50 ppm showed no toxic effects, but male rats fed 500 ppm ate and grew at a slightly lower rate. No pathologic changes were observed in the 500-ppm group. A dose of 5 g/kg of 4,4'-thiobis proved lethal to rats, with the predominant symptom being gastroenteritis.

In construction, maritime, and agriculture, OSHA is proposing exposure limits of 10 mg/m³ TWA (total particulate) and 5 mg/m³ TWA (respirable fraction) for 4,4'-thiobis. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of material health impairment, in the form of eye, skin, and other physical irritation, which is associated with exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

TITANIUM DIOXIDE

CAS: 13463–67–7; Chemical Formula: TiO_2

H.S. No. 1396

In construction and maritime, OSHA's current PEL for titanium dioxide is 15 mg/m³ as an 8-hour TWA; this is the Agency's generic exposure limit for particulates. There is no PEL in agriculture. A 10-mg/m³ 8-hour TWA, measured as total dust, has been established by the ACGIH. The Agency is proposing 8-hour TWA PELs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for titanium dioxide in construction, maritime, and agriculture; these are the limits recently established in general industry.

Titanium dioxide is a white crystalline solid. Titanium dioxide is used in paints, paper, rubber, plastics, cosmetics, floor coverings, glassware and ceramics, printing inks, and welding rods (ACGIH 1986, p. 576; Hawley's 1987, p. 1159).

Miller and Sayers (1941/Ex. 1–595) reported that titanium dioxide injected intraperitoneally in guinea pigs remained in the tissues at the injection site but did not produce a proliferative response. A study by Grandjean, Turrian, and Nicod (1956/Ex. 1–638) in which rats were administered 50 mg of titanium dioxide intratracheally showed pigmented dust deposits in the lungs. In addition, evidence of infection appeared in the alveoli of one rat and diffuse fibrosis was found in the lungs of another test animal. No nodule formation was observed (Grandjean, Turrian, and Nicod 1956/Ex. 1–638). Another study by Dale (1973/Ex. 1–624) revealed thickening of the walls of the alveoli in the lungs of rabbits injected with titanium dioxide dust; however, the lungs of these animals had returned to normal by three months post-treatment. Feeding studies of rats and mice at doses of 2.5 percent or 5 percent titanium dioxide for 103 weeks revealed no signs of carcinogenicity in either species (National Cancer Institute 1979d/Ex. 1–647).

In the prior rulemaking, NIOSH (Tr. p. 3–95) testified that exposure to this substance is associated with "a risk of cancer. . . . The incidence of tumors in

animals exposed to titanium dioxide (Lee, Trochimowicz, and Reinhardt 1985) meets the ". . . criteria for . . . [a] potential occupational carcinogen." Because OSHA's primary objective in the proposed rulemaking is to make the Agency's PELs for individual substances consistent across all regulated sectors, OSHA is proposing for construction, maritime, and agriculture the same limits as those recently established for titanium dioxide in general industry. In the first PEL update project, however, OSHA will evaluate the toxicologic literature on this substance to determine whether further reduction in the PEL is warranted in all sectors.

Accordingly, OSHA is proposing at this time 8-hour TWA PELs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for titanium dioxide in the construction, maritime, and agriculture industries. OSHA preliminarily concludes that these limits will protect workers in these sectors from the significant health risks associated with exposure to titanium dioxide at higher levels. These risks include material impairments of health in the form of eye, skin, and other physical irritation, and, perhaps, of carcinogenicity. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

VEGETABLE OIL MIST (EXCEPT CASTOR OIL, CASHEW NUT, OR SIMILAR IRRITANT OILS)
CAS: None; Formula: None
H.S. No. 1423

OSHA has no limit for vegetable oil mist in construction, maritime, or agriculture. The ACGIH has established a 10-mg/m³ 8-hour TLV®–TWA for all nuisance particulates. OSHA is proposing a 10 mg/m³ 8-hour TWA PEL for total particulate and a 5 mg/m³ 8-hour TWA PEL for the respirable fraction in the construction, maritime, and agriculture sectors. NIOSH concurs (Ex. 8–47, Table N4) with the proposed limits. These are also the limits recently established in general industry.

Vegetable oil is a pale yellow, oily liquid. Vegetable oils are used in paints, shortenings, food products, rubber softeners, dietary supplements, and as pesticide carriers (Hawley's 1987, p. 1219).

Oil mist presents the same safety and health hazards as all of the physical irritants. Occupational exposure to vegetable oil mist is associated with interference with vision, eye tearing, and skin and other forms of physical irritation.

In construction, maritime, and agriculture, OSHA is proposing 8-hour TWA limits of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for vegetable oil mist (except castor oil, cashew nut, or similar irritant oils). The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risks of physical irritation described above. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

ZINC STEARATE
CAS: 557–05–1; Chemical Formula: $Zn(C_{18}H_{35}O_2)_2$
H.S. No. 1434

In construction and maritime, OSHA currently covers zinc stearate under its generic total particulate limit of 15 mg/m³ TWA. There is no PEL in agriculture. The ACGIH has established an 8-hour TWA of 10 mg/m³ for zinc stearate, measured as total dust. OSHA is proposing 8-hour TWA PELs of 10 mg/m³ (total dust) and 5 mg/m³ (respirable fraction) for zinc stearate in the construction, maritime, and agriculture industries. NIOSH concurred (Ex. 8–47, Table N4) that these PELs were appropriate when OSHA established them recently in general industry.

Zinc stearate is a white hydrophobic powder. Zinc stearate is used in cosmetics, lacquers, and ointments. It is also used as a dusting powder, lubricant, mold-release agent, filler, heat and light stabilizer, in the manufacture of tablets and dietary supplements (Hawley's 1987, p. 1257; ACGIH 1986, p. 646).

A single intratracheal administration of 50 mg zinc stearate killed 50% of all exposed rats (Ueda et al. 1984). A report in *Folia Medica* (Volita and Noro 1957, as cited in ACGIH 1986/Ex. 1–3, p. 646) documented the case of a worker exposed to zinc stearate dust for 30 years who died from extensive fibrosis of the lungs. More recent studies have revealed incidences of pulmonary fibrosis associated with encephalopathy that stemmed directly from exposure to aluminum dust, which is frequently coated with stearic acid (British Journal of Industrial Medicine 1962, as cited in ACGIH 1986/Ex. 1–3, p. 646). Observations of long-term worker exposures to this dust in the rubber industry revealed no adverse effects of exposure (B.F. Goodrich Rubber Company, private communication, as cited in the ACGIH 1986/Ex. 1–3, p. 646).

In construction, maritime, and agriculture, OSHA is proposing a 10-mg/m³ TWA limit for zinc stearate (measured as total particulate) and a 5-mg/m³ TWA limit (measured as the respirable fraction). The Agency preliminarily concludes that these limits will prevent the significant health risks associated with workplace exposures to zinc stearate dust at higher levels. OSHA believes that the pulmonary effects potentially associated with exposure to zinc stearate constitute material impairments of health within the meaning of the Act and that the proposed limits are necessary to reduce this risk. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

ZINC OXIDE DUST
CAS: 1314–13–2; Chemical Formula: ZnO
H.S. No. 1438

In construction, maritime, and agriculture, OSHA has no exposure limit specifically for zinc oxide dust. The ACGIH has a TLV®–TWA of 10 mg/m³ for zinc oxide, measured as total dust. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA of 10 mg/m³ (measured as total particulate) and an 8-hour TWA of 5 mg/m³ (measured as the respirable fraction). These are the limits recently established in general industry.

Zinc oxide dust is a white or pale yellow powder. Zinc oxide is used as a pigment and reinforcing agent in rubber, and ointments, in plastics, ceramics, floor tile, glass, as a food additive, dietary supplement, and in seed treatment, cosmetics, copier machines, photography and paints (Hawley's 1987, p. 1255; Merck 1983, p. 1457).

In contact with the skin of rabbits, zinc oxide causes mild irritation; in the eyes, it also causes a mild reaction (RTECS 1991). The LD_{50} in mice is 7950 mg/kg (RTECS 1991). According to Turner and Thompson (1926/Ex. 1–1124), exposure to finely divided zinc oxide dust can produce symptoms similar to those of metal fume fever. Beeckmans and Brown (1963/Ex. 1–775) reported that catalytically active zinc oxide dust is more toxic when treated with ultraviolet light. Metal fume fever, the principal health effect of zinc oxide exposure, causes chills, fever, dry cough, and substernal pain (Rohrs 1957). Leukocytosis occurs in severe attacks (McCord 1960). Several recent studies suggest that exposure to zinc oxide dust causes respiratory effects (Gupta, Pandey, Misra, and Viswanathan 1986; Lam, Conner, Rogers et al. 1985; and NIOSH 1975d). The PEL for zinc oxide may have to be reduced further if toxicological review at the time of OSHA's first PEL update indicates that further reduction is warranted.

In construction, maritime, and agriculture, OSHA is proposing limits of

10 mg/m³ TWA (total particulate) and 5 mg/m³ TWA (respirable particulate) for zinc oxide. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of material health impairment in the form of physical irritation and, perhaps, of respiratory effects. The Agency believes that the proposed PELs are necessary to reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for zinc oxide consistent across all regulated sectors.

Preliminary Conclusions

OSHA's current generic 8-hour TWA particulate standard (29 CFR 1910.1000, Table Z–3) in construction and maritime was adopted from the 1970 ACGIH TLV®–TWA of 15 mg/m³ for total dust and 5 mg/m³ for respirable dust. At the time, the ACGIH considered the 15-mg/m³ value to be "an acceptable limit of good hygienic practice," based on the then-prevailing "lack of knowledge" of any adverse exposure-related effects at levels below this value (Documentation of the Threshold Limit Values and Biological Exposure Indices, ACGIH 1986/Ex. 1–13). Shortly after OSHA adopted the ACGIH's 1970 limit, the ACGIH revised its limit downward to 10 mg/m³ for total dust and 5 mg/m³ for respirable dust. In justifying this reduction, the ACGIH noted that the lower levels would "result in appreciable improvement of working conditions in plants where the old limit of 15 mg/m³ formerly prevailed" (Documentation of the Threshold Limit Values for Substances in Workroom Air, 3rd ed., p. 190, ACGIH 1971).

In this proposed rule, OSHA has preliminarily determined that it is appropriate to set a 10-mg/m³ total particulate limit and to retain the 5-mg/m³ respirable fraction limit for those particulates demonstrated to have, in addition to physical-irritant properties, specific adverse health effects. This is the policy OSHA followed in the recent air contaminants rulemaking for general industry. These substances will also be identified separately in Tables Z, Construction; Z, Shipyards; Z, Longshoring & Marine Terminals; and Z, Agriculture. For the substances in this section that are physical irritants but for which other health effects have not specifically been identified, OSHA is retaining the 8-hour TWA total particulate limit of 15 mg/m³ and the 8-hour TWA respirable fraction limit of 5 mg/m³ in construction and maritime and is proposing to extend these limits to agriculture. For those particulates not otherwise regulated, which includes all workplace particulates, both organic and inorganic that are not separately identified on Tables Z, Construction; Z, Shipyards; Z, Longshoring & Marine Terminals; and Z, Agriculture, OSHA is proposing a generic total particulate limit of 15 mg/m³. For all particulates, OSHA is retaining the 5-mg/m³ TWA limit for the respirable fraction in construction and maritime and is proposing this limit in agriculture. Promulgation of these limits will make OSHA's PELs for these substances consistent across all regulated sectors.

11. Substances for Which Proposed Limits Are Based on Analogy to Related Substances

Introduction

OSHA is proposing limits for 96 substances on the basis of their toxicologic and structural similarities to other chemical substances that create significant risks of systemic toxicity, ocular effects, kidney or liver damage, and other similarly adverse health effects. For many of these substances, OSHA has not previously had permissible exposure limits (PELs) in construction and maritime; for others, limits are currently in place in these sectors. The Agency has no PELs for any of these substances in agriculture. OSHA is proposing to establish PELs in construction, maritime, and agriculture that are identical to their limits in general industry. Promulgation of these PELs would thus make OSHA's limits for these substances consistent across all OSHA-regulated sectors.

Table C11–1 shows these substances, their CAS and HS numbers, and their 1987–1988 ACGIH TLV®s and NIOSH RELs. The table also shows the current limits for these substances in construction and maritime and the limits OSHA is proposing for them in construction, maritime, and agriculture.

TABLE C–11–1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON ANALOGY TO RELATED SUBSTANCES

H.S. number/chemical name	CAS No.	Current OSHA PEL in construction and maritime *	1987–1988 ACGIH TLV®**	NIOSH REL ***	Proposed OSHA PEL in construction, maritime, and agriculture *
1003 Acetic anhydride	108–24–7	5 ppm TWA	5 ppm Ceiling		5 ppm Ceiling
1009 Acrylic acid	79–10–7		10 ppm TWA		10 ppm TWA, Skin
1015 Aluminum (alkyls)	7429–90–5		2 mg/m³ TWA		2 mg/m³ TWA
1018 Aluminum (soluble salts)	7429–90–5		2 mg/m³ TWA		2 mg/m³ TWA
2006 sec-Amyl acetate	626–38–0	125 ppm TWA	125 ppm TWA		125 ppm TWA
1040 Boron tribromide	10294–33–4	1 ppm TWA	1 ppm Ceiling		1 ppm Ceiling
1043 Bromine pentafluoride	7789–30–2	0.1 ppm TWA	0.1 ppm TWA		0.1 ppm TWA
2022 sec-Butyl acetate	105–46–4	200 ppm TWA	200 ppm TWA		200 ppm TWA
2023 tert-Butyl acetate	540–88–5	200 ppm TWA	200 ppm TWA		200 ppm TWA
1048 Butyl acrylate	141–32–2		10 ppm TWA		10 ppm TWA
1055 o-sec-Butylphenol	89–72–5		5 ppm TWA, Skin		5 ppm TWA, Skin
1059 Calcium hydroxide	1305–62–0		5 mg/m³ TWA		5 mg/m³ TWA
1060 Calcium oxide	1305–78–8	5 mg/m³ TWA	2 mg/m³ TWA		5 mg/m³ TWA
1074 Carbonyl fluoride	353–50–4		2 ppm TWA 5 ppm STEL		2 ppm TWA 5 ppm STEL
1075 Catechol (pyrocatechol)	120–80–9		5 ppm TWA		5 ppm TWA, Skin
1081 1-Chloro-1-nitropropane	600–25–9	20 ppm TWA	2 ppm TWA		2 ppm TWA
1096 Cobalt carbonyl (as Co)	10210–68–1		0.1 mg/m³ TWA		0.1 mg/m³ TWA
1099 Cobalt hydrocarbonyl (as Co)	16842–03–8		0.1 mg/m³ TWA		0.1 mg/m³ TWA
2042 Cresol (all isomers)	1319–77–3	5 ppm TWA, Skin	5 ppm TWA, Skin	2.3 ppm TWA	5 ppm TWA, Skin
2043 Crotonaldehyde	123–73–9; 4170–30–3	2 ppm TWA	2 ppm TWA		2 ppm TWA
2049 Demeton (Systox)	8065–48–3	0.1 mg/m³ TWA, Skin.	0.1 mg/m³ TWA, Skin.		0.1 mg/m³ TWA, Skin
1118 Diazinon	333–41–5		0.1 mg/m³ TWA, Skin.		0.1 mg/m³ TWA, Skin
1121 1,1-Dichloro-1-nitroethane	594–72–9	10 ppm Ceiling	2 ppm TWA		2 ppm TWA

TABLE C-11-1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON ANALOGY TO RELATED SUBSTANCES—Continued

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime [*]	1987-1988 ACGIH TLV[***]	NIOSH REL [**]	Proposed OSHA PEL in construction, maritime, and agriculture [*]
1125 p-Dichlorobenzene	106-46-7	75 ppm TWA	75 ppm TWA; 110 ppm STEL		75 ppm TWA; 110 ppm STEL
1128 Dichloromonofluoromethane	75-43-4	1000 ppm TWA	10 ppm TWA		10 ppm TWA
1135 Diethyl ketone	96-22-0		200 ppm TWA		200 ppm TWA
1138 Diethylene triamine	111-40-0		1 ppm TWA, Skin		1 ppm TWA
2071 Dinitrobenzene (all isomers)	528-29-0; 99-65-0; 100-25-4	1 mg/m³ TWA, Skin	1 mg/m³ TWA, Skin		1 mg/m³ TWA, Skin
2072 Dinitrotoluene	25321-14-6	1.5 mg/m³ TWA, Skin.	1.5 mg/m³ TWA, Skin.	(*)	1.5 mg/m³ TWA, Skin
1148 Dipropyl ketone	123-19-3		50 ppm TWA		50 ppm TWA
1150 Diquat	85-00-7		0.5 mg/m³ TWA		0.5 mg/m³ TWA
1152 Disulfoton	298-04-4		0.1 mg/m³ TWA		0.1 mg/m³ TWA, Skin
1154 Divinyl benzene	1321-74-0		10 ppm TWA		10 ppm TWA
1156 Endosulfan	115-29-7		0.1 mg/m³ TWA, Skin.		0.1 mg/m³ TWA, Skin
2074 EPN	2104-64-5	0.5 mg/m³ TWA, Skin.	0.5 mg/m³ TWA, Skin.		0.5 mg/m³ TWA, Skin
1181 Fonofos	944-22-9		0.1 mg/m³ TWA, Skin.		0.1 mg/m³ TWA, Skin
1182 Formamide	75-12-7	20 ppm TWA	20 ppm TWA 30 ppm STEL		20 ppm TWA; 30 ppm STEL
1186 Germanium tetrahydride	7782-65-2		0.2 ppm TWA		0.2 ppm TWA
1212 Indene	95-13-6	10 ppm TWA	10 ppm TWA		10 ppm TWA
1214 Iodoform	75-47-8		0.6 ppm TWA		0.6 ppm TWA
2097 Isobutyl acetate	110-19-0	150 ppm TWA	150 ppm TWA 187 ppm STEL		150 ppm TWA
1219 Isobutyl alcohol	78-83-1	100 ppm TWA	50 ppm TWA		50 ppm TWA
1220 Isooctyl alcohol	26952-21-6		50 ppm TWA, Skin		50 ppm TWA, Skin
1229 n-Isopropylaniline	768-52-5		2 ppm TWA, Skin		2 ppm TWA, Skin
1231 Ketene	463-51-4	0.5 ppm TWA	0.5 ppm TWA 1.5 ppm STEL		0.5 ppm TWA 1.5 ppm STEL
1244 Methacrylic acid	79-41-4		20 ppm TWA		20 ppm TWA, Skin
1247 4-Methoxyphenol	150-76-5		5 mg/m³ TWA		5 mg/m³ TWA
1250 Methyl acetylene-propadiene mixture (MAPP)		1000 ppm TWA	1000 ppm TWA 1250 ppm STEL		1000 ppm TWA 1250 ppm STEL
2108 Methylal (dimethoxymethane)	109-87-5	1000 ppm TWA	1000 ppm TWA		1000 ppm TWA
2110 Methylamine	74-89-5	10 ppm TWA	10 ppm TWA		10 ppm TWA
1256 Methyl demeton	8022-00-2		0.5 mg/m³ TWA, Skin.		0.5 mg/m³ TWA, Skin
2109 Methylene bisphenyl isocyanate (MDI)	101-68-8	0.02 ppm Ceiling	0.02 ppm Ceiling	0.005 ppm TWA 0.02 ppm Ceiling (10-min).	0.02 ppm Ceiling
1257 Methyl ethyl ketone peroxide (MEKP)	1338-23-4		0.2 ppm Ceiling		0.7 ppm Ceiling
1258 Methyl formate	107-31-3	100 ppm TWA	100 ppm TWA 150 ppm STEL		100 ppm TWA 150 ppm STEL
1259 Methyl iodide	74-88-4	5 ppm TWA, Skin	2 ppm TWA, Skin, A2.	(*)	2 ppm TWA, Skin
1260 Methyl isoamyl ketone	110-12-3	100 ppm TWA	50 ppm TWA	50 ppm TWA	50 ppm TWA
1262 Methyl isopropyl ketone	563-80-4		200 ppm TWA		200 ppm TWA
1265 Methyl parathion	298-00-0		0.2 mg/m³ TWA, Skin.	0.2 mg/m³ TWA	0.2 mg/m³ TWA, Skin
1268 Methylcyclohexane	108-87-2	500 ppm TWA	400 ppm TWA		400 ppm TWA
1271 2-Methylcyclopentadienyl manganse tricarbonyl Skin (as Mn).	12108-13-3		0.2 mg/m³ TWA, Skin.		0.2 mg/m³ TWA, Skin
1279 Monocrotophos (Azodrin)	6923-22-4		0.25 mg/m³ TWA		0.25 mg/m³ TWA
1281 Morpholine	110-91-8	20 ppm TWA, Skin	20 ppm TWA 30 ppm STEL, Skin		20 ppm TWA 30 ppm STEL, Skin
1286 Nitric acid	7697-37-2	2 ppm TWA	2 ppm TWA 4 ppm STEL	2 ppm TWA	2 ppm TWA 4 ppm STEL
1287 p-Nitroaniline	100-01-6	6 mg/m³ TWA, Skin	3 mg/m³ TWA, Skin		3 mg/m³ TWA, Skin
2120 Nitromethane	75-52-5	100 ppm TWA	100 ppm TWA		100 ppm TWA
1292 Nitrotoluene; o-isomer, m-isomer, p-isomer	88-72-2, 99-08-1, 99-99-0	5ppm TWA, Skin	2 ppm TWA, Skin		2 ppm TWA, Skin
1293 Nonane	111-84-2		200 ppm TWA		200 ppm TWA
1299 Oxalic acid	144-62-7	1 mg/m³ TWA	1 mg/m³ TWA 2 mg/m³ STEL		1 mg/m³ TWA 2 mg/m³ STEL
1309 Perchloryl fluoride	7616-94-6	3 ppm TWA	3 ppm TWA 6 ppm STEL		3 ppm TWA 6 ppm STEL
1320 Phosdrin (Mevinphos)	7786-34-7	0.1 mg/m³ TWA, Skin.	0.01 ppm TWA 0.03 ppm STEL, Skin.		0.01 ppm TWA 0.03 ppm STEL, Skin
1323 Phosphorus oxychloride	10025-87-3		0.1 ppm TWA 0.5 ppm STEL		0.1 ppm TWA
1324 Phosphorus pentasulfide	1314-80-3	1 mg/m³ TWA	1 mg/m³ TWA 3 mg/m³ STEL		1 mg/m³ TWA 3 mg/m³ STEL

TABLE C-11-1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON ANALOGY TO RELATED SUBSTANCES—Continued

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime *	1987-1988 ACGIH TLV®**	NIOSH REL ***	Proposed OSHA PEL in construction, maritime, and agriculture *
1326 Phthalic anhydride	85-44-9	2 ppm TWA	1 ppm TWA		1 ppm TWA
2132 Pindone (2-pivalyl-1,3-indandione)	83-26-1	0.1 mg/m³ TWA	0.1 mg/m³ TWA		0.1 mg/m³ TWA
1335 Propargyl alcohol	107-19-7	1 ppm TWA, Skin	1 ppm TWA, Skin		1 ppm TWA, Skin
1336 Propionic acid	79-09-4		10 ppm TWA		10 ppm TWA
			15 ppm STEL		
1338 n-Propyl acetate	109-60-4	200 ppm TWA	200 ppm TWA		200 ppm TWA
			250 ppm STEL		250 ppm STEL
1339 n-Propyl alcohol	71-23-8	200 ppm TWA	200 ppm TWA		200 ppm TWA
			250 ppm STEL, Skin		250 ppm STEL
2135 Propyleneimine	75-55-8	2 ppm TWA, Skin	2 ppm TWA, Skin, A2.		2 ppm TWA, Skin
1344 Propylene oxide	75-56-9	100 ppm TWA	20 ppm TWA		20 ppm TWA
2141 Selenium hexafluoride (as Se)	7783-79-1	0.05 ppm TWA	0.05 ppm TWA		0.05 ppm TWA
1361 Silicon tetrahydride	7803-62-5		5 ppm TWA		5 ppm TWA
2144 Stibine	7803-52-3	0.1 ppm TWA	0.1 ppm TWA		0.1 ppm TWA
1379 Sulfuryl fluoride	2699-79-8	5 ppm TWA	5 ppm TWA		5 ppm TWA
			10 ppm STEL		10 ppm STEL
2149 TEDP (Sulfotep)	3689-24-5	0.2 mg/m³ TWA, Skin.	0.2 mg/m³ TWA, Skin.		0.2 mg/m³ TWA, Skin
2151 Tellurium hexafluoride (as Te)	7783-80-4	0.02 ppm TWA	0.02 ppm TWA		0.02 ppm TWA
2152 TEPP	107-49-3	0.05 mg/m³ TWA, Skin.	0.05 mg/m³ TWA, Skin.		0.05 mg/m³ TWA, Skin
2159 Thallium soluble compounds (as Tl)	7440-28-0	0.1 mg/m³ TWA, Skin.	0.1 mg/m³ TWA, Skin.		0.1 mg/m³ TWA, Skin
1393 Thionyl chloride	7719-09-7		1 ppm Ceiling		1 ppm Ceiling
1402 Tributyl phosphate	126-73-8	5 mg/m³ TWA	2.5 mg/m³ TWA		2.5 mg/m³ TWA
1404 Trichloroacetic acid	76-03-9		1 ppm TWA		1 ppm TWA
2162 1,1,2-Trichloroethane	79-00-5	10 ppm TWA, Skin	10 ppm TWA, Skin	(†)	10 ppm TWA, Skin
1411 Trimethylamine	75-50-3		10 ppm TWA		10 ppm TWA
			15 ppm STEL		15 ppm STEL
1420 n-Valeraldehyde	110-62-3		50 ppm TWA		50 ppm TWA
1432 m-Xylene-alpha, alpha'-diamine	1477-55-0		0.1 mg/m³ Ceiling, Skin.		0.1 mg/m³ Ceiling, Skin
1433 Xylidine	1300-73-8	5 ppm TWA, Skin	2 ppm TWA, Skin		2 ppm TWA, Skin

* OSHA's PELs do not currently apply in Agriculture; OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time. An A2 designation means that the ACGIH has designated the substance a suspected human carcinogen.

*** NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

† 1988 NIOSH considers this substance a potential occupational carcinogen and recommends that exposures be reduced to the lowest feasible concentration.

Description of the Health Effects

The health effects associated with occupational exposures to the diverse group of substances shown in Table C11-1 vary widely, ranging from sensory irritation, systemic toxicity, ocular effects, and neuropathy to renal and liver damage. This variation in target organs reflects the fact that the substances in this group have not been grouped on the basis of similarity in toxic effects, target organs, or mechanism of action; instead, they are considered together because the specific limits being proposed for them have been set on the basis of toxic effects observed after exposure to analogous chemicals. Table C11-2 shows these substances, along with their adverse health effects and the substances with which they share structural and toxicological similarities.

TABLE C11-2.—SUMMARY OF RATIONALE FOR PROPOSED LIMITS BASED ON ANALOGY TO RELATED SUBSTANCES

H.S. No./chemical name	Substance with analogous structure or activity	Associated health effects
1003 Acetic anhydride	Acetic acid	Sensory irritation.
1009 Acrylic acid	Acetic acid	Sensory irritation.
1015 Aluminum (alkyls)	Welding fumes	Pulmonary irritation.
1018 Aluminum (soluble salts)	Hydrogen chloride	Sensory irritation.
2006 sec-Amyl acetate	Amyl acetates	Sensory irritation.
1040 Boron tribromide	Hydrogen bromide	Sensory irritation.
1043 Bromine pentafluoride	Chlorine trifluoride	Systemic injury.
2022 sec-Butyl acetate	Acetates	Sensory irritation.
2023 tert-Butyl acetate	Acetates	Sensory irritation.
1048 Butyl acrylate	Methyl acrylate	Sensory irritation.
1055 o-sec-Butylphenol	Phenol and cresol	Respiratory, liver, and kidney effects
1059 Calcium hydroxide	Sodium hydroxide	Sensory irritation.
1060 Calcium oxide	Sodium hydroxide	Sensory irritation.
1074 Carbonyl fluoride	Hydrolysis to hydrogen fluoride	Sensory irritation.
1075 Catechol	Phenol	Peripheral vaso-constriction, renal tubule degeneration.

TABLE C11-2.—SUMMARY OF RATIONALE FOR PROPOSED LIMITS BASED ON ANALOGY TO RELATED SUBSTANCES—Continued

H.S. No.	Chemical name	Substance with analogous structure or activity	Associated health effects
1081	1-Chloro-1-nitropropane	Nitropropane	Damage to heart muscle, liver, and kidneys.
1098	Cobalt carbonyl	Nickel carbonyl	Systemic toxicity.
1099	Cobalt hydrocarbonyl	Nickel carbonyl	Systemic toxicity.
2042	Cresol (all isomers)	Phenol	Central nervous system effects.
2043	Crotonaldehyde	Acrolein	Sensory irritation, sensitization.
2049	Demeton	Parathion	Cholinesterase inhibition.
1118	Diazinon	Parathion	Cholinesterase inhibition.
1121	1,1-Dichloro-1-nitroethane	Related compounds	Systemic toxicity.
1125	p-Dichlorobenzene	o-Dichlorobenzene	Neurological effects, cataract formation.
1128	Dichloromonofluoromethane	Chloroform	Hepatotoxicity, cardiac sensitization.
1135	Diethyl ketone	Methyl propyl ketone	Narcosis.
1138	Diethylene triamine	Ethylamine	Irritation, sensitization.
2071	Dinitrobenzene (all isomers)	Nitro- and Dinitrobenzenes	Aniline Cyanosis.
2072	Dinitrotoluene	Methyl isobutyl ketone	Methemoglobinemia.
1148	Dipropyl ketone	Paraquat	Narcosis.
1150	Diquat	Parathion	Ocular effects.
1152	Disulfoton	Styrene	Cholinesterase inhibition.
1154	Divinyl benzene	Aldrin, Dieldrin	Sensory irritation.
1156	Endosulfan	Parathion	Neurological effects.
2074	EPN	Ethyl parathion	Cholinesterase inhibition.
1181	Fonofos	Dimethyl formamide	Cholinesterase inhibition.
1182	Formamide	Stibine	Testicular toxicity, teratogenicity.
1186	Germanium tetrahydride	Naphthalene	Hemolytic effects.
1212	Indene	Methyl iodide	Sensory irritation.
1214	Iodoform	n-Butyl acetate	Irritation, hepatotoxicity.
2097	Isobutylacetate	n-Butyl alcohol	Sensory irritation.
1219	Isobutyl alcohol	Isoamyl alcohol	Irritation, narcosis.
1220	Isooctyl alcohol	Aniline, N,N-dimethylaniline	Sensory irritation.
1229	n-Isopropylaniline	Phosgene	Hemolytic effects.
1231	Ketene	Acrylic acid	Sensory irritation.
1244	Methacrylic acid	Hydroquinone	Sensory irritation.
1247	4-Methoxyphenol	Methyl acetylene	Ocular effects.
1250	Methyl acetylene-propadiene mixture		Pulmonary effects.
2108	Methylal	Ethylamine	Systemic toxicity.
2110	Methylamine	Demeton	Sensory irritation.
1256	Methyl demeton		Ocular effects, respiratory effects, inner ear irritation.
2019	Methylene bisphenyl isocyanate (MDI)	Toluene diisocyanate	Sensitization.
1257	Methyl ethyl ketone peroxide (MEKP)	Benzoyl peroxide, hydrogen peroxide	Sensory irritation.
1258	Methyl formate	Methyl acetate	Sensory irritation.
1259	Methyl iodide	Methyl bromide	Central nervous system effects.
1260	Methyl isoamyl ketone	Methyl isobutyl ketone	Neuropathy.
1262	Methyl isopropyl ketone	Diethyl ketone, methyl propyl ketone	Narcosis, sensory irritation.
1265	Methyl parathion	Parathion	Cholinesterase inhibition.
1268	Methylcyclohexane	Heptane	Irritation.
1271	Methylcyclopentadienyl manganese tricarbonyl	Tetraethyl lead	Central nervous system effects, chronic lung effects.
1279	Monocrotophos (Azodrin)	Parathion	Cholinesterase inhibition.
1281	Morpholine	Ammonia	Kidney and liver degeneration, sensory irritation.
1286	Nitric acid	Hydrogen chloride, sulfuric acid	Sensory irritation.
1287	p-Nitroaniline	Aniline	Methemoglobin formation.
2120	Nitromethane	Nitroethane	Sensory irritation.
1292	Nitrotoluene (all isomers)	Aniline	Methemoglobin formation.
1293	Nonane	Octane	Narcosis.
1299	Oxalic acid	Sulfuric acid, phosphoric acid	Irritation, burns.
1309	Perchloryl fluoride	Fluoride	Fluorosis.
1320	Phosdrin (Mevinphos)	Parathion	Cholinesterase inhibition.
1323	Phosphorus oxychloride	Phosphorous trichloride	Sensory irritation, respiratory effects.
1234	Phosphorus pentasulfide	Phosphoric acid	Sensory irritation.
1326	Phthalic anhydride	Tetrachlorophthalic anhydride, maleic anhydride	Sensory irritation.
2132	Pindone	Warfarin	Inhibition of blood clotting.
1335	Propargyl alcohol	Allyl alcohol	Sensory irritation.
1336	Propionic acid	Acetic acid	Sensory irritation.
1338	n-Propyl acetate	Isopropyl acetate, n-butyl acetate	Sensory irritation.
1339	n-Propyl alcohol	Isopropyl alcohol	Sensory irritation.
2135	Propyleneimine	Ethyleneimine	Carcinogenicity.
1344	Propylene oxide	Ethylene oxide	Central nervous system depression, sensory irritation.
2141	Selenium hexafluoride	Ozone	Respiratory irritation.
1361	Silicon tetrahydride	Germane, stannane	Sensory irritation.
2144	Stibine	Arsine	Hemolysis.
1379	Sulfuryl fluoride	Hydrogen fluoride	Fluorosis.
2149	TEDP (Sulfotep)	Parathion	Cholinesterase inhibition.
2151	Tellurium hexafluoride	Ozone	Respiratory irritation.
2152	TEPP	Parathion	Cholinesterase inhibition.
2159	Thallium, soluble compounds	Other metals	Neurological effects.
1393	Thionyl chloride	Hydrogen chloride	Sensory irritation.
1402	Tributyl phosphate	Triphenyl phosphate	Narcosis, cholinesterase inhibition.
1404	Trichloroacetic acid	2,2-Dichloropropionic acid	Sensory irritation.
2162	1,1,2-Trichloroethane	Chloroform	Liver damage.

TABLE C11-2.—SUMMARY OF RATIONALE FOR PROPOSED LIMITS BASED ON ANALOGY TO RELATED SUBSTANCES—Continued

H.S. No./chemical name	Substance with analogous structure or activity	Associated health effects
1411 Trimethylamine	Dimethylamine	Sensory irritation.
1420 n-Valeraldehyde	Saturated aliphatic aldehydes	Sensory irritation.
1432 m-Xylene-alpha,alpha', diamine	Phenylenediamine	Allergic respiratory sensitization
1433 Xylidine	Aniline	Methemoglobin formation.

The use of structural analogy is a reasonable methodology for limit-setting because of the similarities in structure and activity between each substance in this group and at least one other toxic substance. Industrial hygienists and toxicologists frequently use this approach when dealing with lesser known substances either in the workplace or the laboratory. The limits for the substances in this group are being proposed based on dose-response information for other compounds that have a similar chemical structure or are known to have a similar mechanism of action. For example, limits are being proposed for a number of substances that are known cholinesterase inhibitors (including diazinon, disulfoton, and monocrotophos); however, since direct dose-response data are not available for these substances specifically, OSHA has proposed limits that are similar to the proposed limit for parathion, another cholinesterase inhibitor for which adequate dose-response data are available.

It is important to note that the setting of a limit on the basis of analogy to other substances does not mean that no information is available to demonstrate that the substance is toxic; acute animal data are available to demonstrate the toxicity of all of the substances for which limits are being proposed in this category, and, for several substances, there are case reports of human poisonings caused by exposure. Thus, the limits being proposed for these substances reflect much more than a theoretical consideration of chemical structure and physiologic reaction: the hazardous nature of exposure to every substance in this category has been demonstrated beyond doubt, although the precise level at which these effects will occur has not been established with certainty.

The following sections describe OSHA's preliminary findings for the substances in this group. They also discuss the material health impairments likely to occur among workers in construction, maritime, and agriculture as a consequence of occupational exposure to these substances.

ACETIC ANHYDRIDE
CAS: 108-24-7; Chemical Formula: $(CH_3CO)_2O$
H.S. No. 1003

The OSHA PEL for acetic anhydride in construction and maritime operations is 5 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV® of 5 ppm as a ceiling, based on analogy with acetic acid's (TLV=5 ppm ceiling) irritant potential. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the limit being proposed. In construction, maritime, and agriculture, OSHA is proposing a 5 ppm ceiling for acetic anhydride. This is the limit recently established for this substance in general industry.

Acetic anhydride is a colorless, mobile, strongly refractive liquid with a strong odor. Acetic anhydride is used in the manufacture of plastics and cellulose acetate fibers, in the synthesis of vinyl acetate, and as a dehydrating and acetylating agent in the production of insecticides, pharmaceuticals, dyes, explosives, perfumes, and aspirin (ACGIH 1986, p. 5).

In one study, rats inhaling 1000 ppm of acetic anhydride for 4 hours survived, but 2000 ppm was fatal (Smyth 1956/Ex. 1-759). In human studies, eye, nose, and throat irritation has been observed, and it has been suggested that bronchial and lung injury may occur as a consequence of exposure (Henderson and Haggard 1943j, as cited in ACGIH 1986/Ex. 1-3, p. 5). Skin burns and serious corneal injury have been reported in industrial settings when workers came into contact with the liquid (McLaughlin 1946/Ex. 1-641), and acetic anhydride is a marked lacrimator (Fairhall 1949b, as cited in ACGIH 1986/Ex. 1-3, p. 5).

In light of acetic anhydride's potential for acute toxicity, OSHA is proposing a 5-ppm ceiling limit in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of ocular and respiratory effects associated with high, short-term exposures to acetic anhydride. OSHA believes that ocular and respiratory effects constitute material impairments of health. The proposed limit will substantially reduce these risks among workers exposed to this substance in these sectors. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ACRYLIC ACID
CAS: 79-10-7; Chemical Formula: $CH_2{=}CHCO_2H$
H.S. No. 1009

OSHA has no permissible exposure limit for acrylic acid in construction, maritime, or agriculture operations. The ACGIH has an 8-hour TLV®-TWA of 10 ppm. NIOSH has no REL. OSHA is proposing an 8-hour TWA of 10 ppm, with a skin notation, for acrylic acid in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Acrylic acid is a colorless, corrosive liquid with a distinctive acrid odor. Acrylic acid is known to polymerize explosively with amines, ammonia, oleum, and chlorosulfonic acid, and it is incompatible with strong alkalis and pure nitrogen. Occupational exposure to acrylic acid usually occurs when the chemical is used in the form of methyl, ethyl, or butyl esters in the manufacture of acrylic resins. It is also used in coatings, paints, adhesives, polishes, general finishes, and in binders (ACGIH 1986, p. 14.1(87)).

Data indicate that the oral LD_{50} in rats is between 0.25 and 0.5 mg/kg (Dow Chemical Company 1977f, as cited in ACGIH 1986/Ex. 1-3, p. 14), and the skin absorption LD_{50} in rabbits is 0.95 ml/kg (Smyth, Carpenter, Weil et al. 1962/Ex. 1-441). Another study indicates that rabbits given acrylic acid orally showed no ill effects at a level of 0.025 mg/kg (Klimkina et al. 1969, as cited in ACGIH 1986/Ex. 1-3, p. 14), and Gage (1970/Ex. 1-318) reports that rats exposed to 80 ppm for 6 hours daily for 20 days showed no adverse effects.

Case reports indicate that acute exposures to acrylic acid in workers have caused skin burns, eye burns, and upper respiratory tract effects (ACGIH 1986/Ex. 1-3, p. 14). NIOSH (Ex. 8-47, Table N2) believes that the PEL for acrylic acid should be lower than the limit being proposed, based on recent studies demonstrating degeneration of the nasal mucosa, changes in pulmonary function, and skin absorption in animals exposed to this substance (Miller, Ayres, Jersey, and Mckenna 1981 and Silver,

Leith, and Murphy 1981, both as cited in ACGIH 1986/Ex. 1–3, p 14.1). OSHA is aware of the recent literature on acrylic acid; however, the primary objective of this rulemaking is to make the Agency's limits consistent across sectors. In a future PEL update rulemaking, OSHA will evaluate the evidence for acrylic acid to determine whether a reduction in the PEL is warranted.

At the present time, however, OSHA preliminarily concludes that an 8-hour TWA PEL of 10 ppm and a skin notation are necessary to protect workers in construction, maritime, and agriculture from the significant risk of nasal and eye irritation, both material health impairments that are potentially associated with exposure to acrylic acid. The Agency believes that this limit will substantially reduce this risk and prevent recurrences of the burns and irritation previously associated with occupational exposures to acrylic acid. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ALUMINUM (ALKYLS)
CAS: 7429–90–5
Chemical Formula: Al
H.S. No. 1015

ALUMINUM (SOLUBLE SALTS)
CAS: 7429–90–5
Chemical Formula: Al
H.S. No. 1018

OSHA has no permissible exposure limits in construction, maritime, or agriculture for either the soluble salts of aluminum or the aluminum alkyls. The ACGIH has an 8-hour TLV®–TWA limit of 2 mg/m³ for aluminum (soluble salts) and of 2 mg/m³ for the aluminum alkyls. There is no NIOSH REL, but NIOSH concurs (Ex. 8–47, Table N1) that the limits being proposed are appropriate. OSHA is proposing a 2 mg/m³ 8-hour TWA PEL for the aluminum alkyls and the soluble salts of aluminum in construction, maritime, and agricultural operations. This is the limit recently established for these substances in general industry.

Aluminum in its elemental form is a white, malleable, ductile metal (ACGIH 1986, p. 22). Aluminum alkyls are organic compounds containing aluminum; the decomposition products of the alkyls (such as aluminum trioxide) are mucous membrane and pulmonary irritants. The soluble salts (e.g., aluminum sulfate, aluminum trichloride) form hydrolyzed acid in contact with moisture.

OSHA's limits for the aluminum soluble salts were set for general industry workplaces on the basis of the amount of hydrolyzed acid, such as hydrochloric acid or sulphuric acid, in their acid compounds. For example, three mols of hydrogen chloride (HCl) hydrolize from one mol of aluminum chloride; since HCl has a PEL of 5 ppm, a PEL of 2 mg/m³ for aluminum chloride (which is a soluble salt of aluminum) would provide the same degree of protection from irritation as that provided by OSHA's limit for HCl. The acute toxicity of aluminum chloride is generally representative of the toxicity of all of the soluble salts of aluminum. For the aluminum alkyls, toxicity data are sparse. However, all of the nonhalogenated alkyls decompose into aluminum oxide fume, and the halogenated alkyls are even more irritating because of acid hydrolysis.

OSHA is proposing an 8-hour TWA limit of 2 mg/m³, for both the soluble salts of aluminum and the aluminum alkyls, in construction, maritime, and agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors against the significant risk of irritation and skin burns, which constitute material health impairments that are associated with exposure to these substances. In addition, promulgation of these limits will make OSHA's PEL for these substances consistent across all regulated sectors.

sec-AMYL ACETATE
CAS: 626–63–7; Chemical Formula: $CH_3COOCH(CH_3)C_2H_7$
H.S. No. 2006

In general industry, construction, and maritime, OSHA's permissible exposure limit for sec-amyl acetate is 125 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV® of 125 ppm (665 mg/m³) as an 8-hour TWA for this substance; NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 125 ppm for sec-amyl acetate in agriculture. This is the limit recently established for this substance in general industry.

sec-Amyl acetate is a colorless, volatile liquid with a mild, non-residual, fruity odor. This substance is used as a solvent for nitrocellulose and ethyl cellulose cements, coated papers, lacquers, leather finishes, nail enamels, plastic wood, textile sizing, printing compounds, washable wallpaper, and chlorinated rubber. sec-Amyl acetate also finds use in metallic paints, perfumes, and pearlescent coatings for artificial pearls (ACGIH 1986, p. 29; Hawley's 1987, p. 75; HSDB 1989).

sec-Amyl acetate is an irritant of the eyes, skin, and respiratory tract; at high concentrations, it causes narcosis. The lowest lethal concentration in guinea pigs is 10,000 ppm for 5 hours (RTECS 1990). Much of the toxicological literature does not distinguish between the isomers of amyl acetate; however, all of the industrially important amyl acetate isomers have similar toxicological effects (AIHA 1978; Pagnotto 1984). Guinea pigs exposed to a 10,000-ppm concentration of sec-amyl acetate for 5 hours showed signs of eye and nose irritation, became narcotized, and died (Clayton and Clayton 1981, p. 2274). When the concentration was lowered to 5000 ppm for 13 hours, guinea pigs developed the same signs and symptoms but subsequently recovered (Clayton and Clayton 1981, p. 2274).

Humans exposed to a 5000- to 10,000-ppm concentration of sec-amyl acetate for short periods of time (not further specified) experienced irritation of the eyes and nasal passages (van Oettingen, 1960); however, exposure to a 1000-ppm concentration for 1 hour caused toxic effects described as "serious" (Amor 1950). A 200-ppm concentration of sec-amyl acetate is reported to have caused eye, nose, and upper respiratory tract irritation in one individual exposed for an unspecified amount of time (RTECS 1990).

Based on this evidence in humans and animals, and by analogy to effects caused by exposure to n-amyl acetate, OSHA is proposing to establish an 8-hour TWA PEL for sec-amyl acetate of 125 ppm in agriculture; adoption of this limit would establish the same PEL for workplaces in all OSHA-regulated industry sectors. The Agency preliminarily concludes that occupational exposure to sec-amyl acetate causes irritation of the eyes and respiratory tract, and, at high concentrations, narcosis. Accordingly, OSHA believes that, in the absence of a permissible exposure limit, workers in agriculture are potentially at significant risk of these exposure-related effects and that the proposed PEL will substantially reduce these risks.

BORON TRIBROMIDE
CAS: 10294–33–4; Chemical Formula: BBr_3
H.S. No. 1040

In construction and maritime, OSHA has a limit of 1 ppm as an 8-hour TWA for boron tribromide. There is no limit in agriculture. The ACGIH has a 1-ppm TLV®-ceiling limit for boron tribromide. NIOSH has no REL for this substance. The proposed PEL in construction, maritime, and agriculture, with which NIOSH concurs (Ex. 8–47, Table N1), is a ceiling of 1 ppm. This is the limit recently established for boron tribromide in general industry.

Boron tribromide is a colorless, fuming liquid used primarily in the manufacture of diborane and high-purity boron (ACGIH 1986, p. 62).

Boron tribromide has a high potential for acute local irritation, and its potential for systemic toxicity is analogous with that of hydrogen bromide (HBr). On decomposition, one molecule of boron tribromide would be expected to produce three molecules of HBr (ACGIH 1986/Ex. 1–3, p. 62). Animals repeatedly exposed to boron tribromide develop pneumonia, and exposure to 100 ppm caused a uniformly high mortality rate in animals of six laboratory species (Stokinger, Spiegel et al. 1953, as cited in ACGIH 1986/Ex. 1–3, p. 63). Rats, rabbits, and mice exposed to 1.5, 3.4, or 12.8 ppm boron trifluoride developed pneumonitis and dental fluorosis, although the evidence of pneumonitis was described as "marginal" at the lowest level tested (Torkelson, Sadek, and Rowe 1961, as cited in ACGIH 1986/Ex. 1–3, p. 63).

Based on this evidence of boron tribromide's severe pulmonary toxicity at exposure levels of 3.4 ppm, OSHA is proposing a ceiling limit of 1 ppm for this substance in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of serious pulmonary damage, a material health impairment that is associated with exposure to this substance at levels above the proposed PEL. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

BROMINE PENTAFLUORIDE

CAS: 7789–30–2; Chemical Formula: BrF_5

H.S. No. 1043

In construction and maritime, OSHA's limit for bromine pentafluoride is 0.1 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.1 ppm for this substance. NIOSH has no REL, but concurs (Ex. 8–47, Table N1) with the proposed limit. OSHA is proposing an 8-hour TWA of 0.1 ppm for this substance in agriculture. This is the limit recently established for this substance in general industry.

Bromine pentafluoride is a highly reactive pale yellow liquid at temperatures below 40.3 °C; above this temperature, it is a colorless, pungent, corrosive gas. It is used in organic synthesis and as an oxidizer in liquid rocket propellants (Hawley's 1987, p. 170).

Bromine pentafluoride has been shown to be acutely toxic in animals. Animals exposed to bromine pentafluoride vapor at 500 ppm exhibited immediate symptoms of gasping, swollen eyelids, clouded corneas, tearing, salivation, and acute distress; these symptoms appeared after exposure for a period as short as three minutes. Exposures to 50 ppm were fatal after 30 minutes, and chronic exposures above 3 ppm resulted in severe nephrosis (in some animals), as well as marked hepatosis and severe respiratory involvement (The Matheson Co., Inc., as cited in ACGIH 1986/Ex. 1–3, p. 66). Bromine pentafluoride is toxicologically more active than free, elemental fluorine, and its toxicity appears to be closely related to that of chlorine trifluoride (Horn and Weir 1955/Ex. 1–592; Horn and Weir 1956, as cited in ACGIH 1986/Ex. 1–3, p. 66). Chlorine trifluoride has caused severe toxicity and some fatalities in dogs and rats exposed over a period of 6 months to an average concentration of 1.17 ppm for 6 hours daily (Horn and Weir 1955/Ex. 1–592).

OSHA is proposing a PEL of 0.1 ppm as an 8-hour TWA for bromine pentafluoride in agriculture to prevent the significant risk of serious systemic injury potentially associated with exposure to this substance at levels above the proposed limit. The Agency preliminarily concludes that this limit will substantially reduce this risk of systemic toxicity, which constitutes a material impairment of health, among agricultural workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

sec-BUTYL ACETATE

CAS: 105–46–4; Chemical Formula: $CH_3COOCH(CH_3)CH_2CH_3$

H.S. No. 2022

OSHA's PEL for sec-butyl acetate in general industry, construction, and maritime is 200 ppm as an 8-hour TWA; there is no PEL in agriculture. The ACGIH TLV®–TWA for sec-butyl acetate is 200 ppm as an 8-hour TWA. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 200 ppm for sec-butyl acetate in agriculture. This is the limit recently established for this substance in general industry.

sec-Butyl acetate is a colorless liquid with the fruity odor that is characteristic of acetates (ACGIH 1986, p. 73). sec-Butyl acetate is widely used as a solvent; some materials that contain this substance are thinners, nitrocellulose lacquers, nail enamels, and leather finishes (HSDB 1990).

In both humans and animals, sec-butyl acetate causes irritation of the eyes, mucous membranes, and respiratory tract; at high concentrations, it is believed to cause narcosis (ACGIH 1986, p. 73; Proctor, Hughes, and Fischman 1988, p. 105). By analogy with the effects of exposure to other acetates, overexposure to sec-butyl acetate causes the gradual onset of narcosis; the oral administration of acetates (form and dose not specified) caused a progressive loss of coordination in rabbits (Clayton and Clayton 1981, pp. 2268–2269). The vapor of sec-butyl acetate is reported to be less irritating to humans than the vapor of n-butyl acetate (ACGIH 1986, p. 73). Repeated contact of the skin with this substance causes irritation and dermatitis; possible allergic reactions have also been reported (Genium MSDS 1983, No. 519; New Jersey Fact Sheet 1985, p. 2).

Based on this evidence, OSHA preliminarily concludes that agricultural workers exposed to this substance at the levels permitted by the absence of a limit are at significant risk of experiencing irritation of the eyes, skin, mucous membranes, and upper respiratory tract. At very high concentrations, they may also be at risk of experiencing narcotic effects. The Agency believes that establishing a PEL of 200 ppm as an 8-hour TWA will protect workers in agriculture from these significant risks, which OSHA considers material health impairments. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

tert-BUTYL ACETATE

CAS: 540–88–5; Chemical Formula: $CH_3COOC(CH_3)_3$

H.S. No. 2023

In general industry, construction, and maritime, OSHA's permissible exposure limit for tert-butyl acetate is 200 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 200 ppm for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL in agriculture of 200 ppm for tert-butyl acetate. This is the limit recently established for this substance in general industry.

The principal use for tert-butyl acetate is as a gasoline additive; however, this substance is also used as a solvent (HSDB 1986). tert-Butyl acetate is a colorless liquid with a fruity, acetate-like odor (ACGIH 1986, p. 74).

tert-Butyl acetate is an irritant of the eyes, mucous membranes, and upper respiratory tract in both animals and humans; at high concentrations, this substance is believed to be a depressant

of the central nervous system (Proctor, Hughes, and Fischman 1988, p. 105; ACGIH 1986, p. 74). The vapors of tert-butyl acetate are reported to be less irritating to the throat than those of n-butyl acetate (ACGIH 1986, p. 74). The administration of excessive (dose not further specified) quantities of acetates initially causes eye, throat, and nose irritation, followed by the gradual onset of narcosis; these effects reverse when exposure ceases (Clayton and Clayton 1981, p. 2268). Human subjects exposed for 2 to 3 hours to butyl acetate concentrations (isomer not specified) of 400 to 600 ppm did not experience symptoms of narcosis, although eye irritation was experienced at a 200- to 300-ppm concentration (Clayton and Clayton 1981, p. 2271).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye, nose, and throat irritation associated with exposure to tert-butyl acetate and that they may also be at significant risk of experiencing central nervous system depression. The Agency believes that establishing an 8-hour TWA PEL of 200 ppm will substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

BUTYL ACRYLATE

CAS: 141–32–2; Chemical Formula: $H_2C{=}CHCO_2(CH_2)_3CH_3$

H.S. No. 1048

In construction, maritime, and agriculture, OSHA has no limit for butyl acrylate. The ACGIH's TLV®–TWA is 10-ppm. NIOSH has no REL. The proposed PEL, with which NIOSH concurs (Ex. 8–47, Table N1), is 10 ppm as an 8-hour TWA; this limit would apply in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Butyl acrylate is a colorless, flammable liquid. Butyl acrylate is used in the manufacture of polymers and resins and is also used in paint formulations (ACGIH 1986, p. 75).

Butyl acrylate is a skin and eye irritant and is toxic to animals. The LC_{50} for a 4-hour exposure is 1000 ppm (Carpenter, Weil, and Smith 1974/Ex. 1–304). In rabbits, the dermal LD_{50} for butyl acrylate is approximately 1800 mg/kg, compared with 1235 mg/kg for methyl acrylate (Smyth, Carpenter, and Weil 1951/Ex. 1–439). Butyl acrylate has also been found to be mildly irritating to the skin and to produce corneal necrosis in the unwashed eyes of rabbits (Holland 1974, as cited in ACGIH 1986/Ex. 1–3, p. 75).

OSHA is proposing an 8-hour TWA PEL of 10 ppm for butyl acrylate, based on the similarity of the toxicological response of butyl acrylate to methyl acrylate, for which OSHA also has a 10-ppm TWA limit. The Agency preliminarily concludes that this limit is necessary to reduce the significant risk of skin irritation and corneal necrosis, which constitute material health impairments that are associated with exposure to butyl acrylate. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

o-sec-BUTYLPHENOL

CAS No. 89–72–5; Chemical Formula: $C_2H_5(CH_3)CHC_6H_4OH$

H.S. No. 1055

In construction, maritime, and agriculture, OSHA has no limit for o-sec-butylphenol. The ACGIH has a 5-ppm 8-hour TLV®–TWA, with a skin notation. NIOSH has no REL, but concurs (Ex. 8–47, Table N1) with the proposed limit. The proposed PEL for o-sec-butylphenol in the construction, maritime, and agriculture industries is an 8-hour TWA of 5 ppm, with a skin notation. This is the limit recently established for this substance in general industry.

o-sec-Butylphenol is a colorless liquid. It is used as a chemical intermediate for preparing resins, plasticizers, surface active agents, and other products (ACGIH 1986, p. 84).

Animal studies indicate that contact with o-sec-butylphenol causes irritation of the skin, eyes, and respiratory tract and may result in skin burns. A Dow Chemical Company study (1977i, as cited in ACGIH 1986/Ex. 1–3, p. 84) showed that the oral and skin absorption LD_{50}s for guinea pigs ranged between 0.8 and 2.4g/kg. Prolonged contact of o-sec-butylphenol with the skin of these animals resulted in burns, whereas direct application to the eyes did not cause corneal injury. The oral LD_{50} for rats is 2700 mg/kg (RTECS 1990), and rats exposed to saturated air levels of this chemical survived for seven hours (Dow Chemical Company 1977i, as cited in ACGIH 1986/Ex. 1–3, p. 84). The intravenous LD_{50} for mice is 6 mg/kg (RTECS 1990). Acute workplace exposures to o-sec-butylphenol have resulted in mild respiratory irritation and skin burns (ACGIH 1986/Ex. 1–3, p. 84).

OSHA is proposing an 8-hour TWA limit of 5 ppm for o-sec-butylphenol, with a skin notation, in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit is necessary to protect workers in construction, maritime, and agriculture from the significant risks of eye and respiratory tract irritation and skin burns potentially associated with exposure to this substance. OSHA believes that eye and mucous membrane irritation and skin burns constitute material health impairments within the meaning of the Act. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

CALCIUM HYDROXIDE

CAS: 1305–62–0; Chemical Formula: $Ca(OH)_2$

H.S. No. 1059

In construction, maritime, and agriculture, OSHA has no limit for calcium hydroxide; the ACGIH has a TLV®–TWA of 5 mg/m³. There is no NIOSH REL, but NIOSH concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a PEL of 5 mg/m³ as an 8-hour TWA for calcium hydroxide in the construction, maritime, and agriculture industries. This is the limit recently established for this substance in general industry.

Calcium hydroxide is a soft, white, odorless, crystalline powder with an alkaline, bitter taste. It is used in building and paving materials, in lubricants, in drilling fluids, in pesticides, and in the manufacture of paper. There are many other industrial uses for this substance (ACGIH 1986, p. 91).

Calcium hydroxide is a moderate to severe caustic and irritant when it comes into contact with the skin, eyes, or mucous membranes of the upper respiratory tract (ACGIH 1986/ Ex. 1–3, p. 92; Sax and Lewis 1989, p. 682). The oral LD_{50} in rats is reported to be 7.34 g/kg (Smyth, Carpenter, Weil et al. 1969/ Ex. 1–442). Industrial experience with this substance has not shown a high incidence of adverse health effects, although Sax (1984) reports that it is known to cause dermatitis (p. 621). Calcium hydroxide is also mutagenic (Sax 1984).

In the prior rulemaking, one commenter argued that calcium hydroxide should be regulated as a nuisance dust, i.e., should have a PEL of 10 mg/m³. In response, OSHA stated that the Agency does not agree that calcium hydroxide is a biologically inert substance. Instead, OSHA agrees with Sax (1984), who reports that, "in the form of dust, it [calcium hydroxide] is considered to be an important industrial hazard." OSHA believes that a PEL of 5 mg/m³, half that of the inert particulate limit, is appropriate for this well-known eye, skin, and upper respiratory tract

irritant. OSHA is proposing an 8-hour TWA limit for calcium hydroxide of 5 mg/m³ to protect workers in construction, maritime, and agriculture from the significant risk of skin, eye, and mucous membrane irritation, which OSHA considers material impairments of health. The Agency preliminarily concludes that this limit will reduce these risks substantially. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CALCIUM OXIDE
CAS: 1305–78–8; Chemical Formula: CaO
H.S. No. 1060

In general industry, construction, and maritime, OSHA's 8-hour TWA permissible exposure limit for calcium oxide is 5 mg/m³. There is no limit in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. The ACGIH TLV® for calcium oxide, which was set on the basis of analogy with sodium hydroxide, a widely recognized sensory irritant, is 2 mg/m³ as an 8-hour TWA. OSHA is proposing a 5-mg/m³ 8-hour TWA PEL for calcium oxide in agriculture. This action will make OSHA's PEL for calcium oxide consistent across all regulated sectors.

Calcium oxide (lime) is a white or grayish-white powder. It is produced when limestone is calcined to drive off carbon dioxide. Calcium oxide is used as a refractory material; as a flux in steelmaking; as a binding agent in building, pulp and paper manufacture, sugar refining, and leather tanning; as the raw material for chlorinated lime bleaching powder, and as a soil treatment in agriculture (Parmeggiani 1983).

The amount of information that has been published specifically about calcium oxide's toxicological effects in animals or humans is limited. In direct contact with tissues, calcium oxide can result in burns and severe irritation because of its high reactivity and alkalinity. The major complaints of workers exposed to lime consist of irritation of the skin and eyes, although inflammation of the respiratory passages, ulceration and perforation of the nasal septum, and even pneumonia have been attributed to inhalation of the dust (ACGIH 1986/Ex. 1–3, p. 92). The Pennsylvania Department of Health reported that strong nasal irritation occurred as a consequence of exposure to a mixture of calcium-oxide-containing dusts at a concentration of approximately 25 mg/m³, but that exposure to concentrations of 9 to 10 mg/m³ produced no observable irritation (Wands 1981a, in Clayton and Clayton 1981, p. 3054). By comparison, exposure to airborne sodium hydroxide at a concentration of between 0.005 and 0.7 mg/m³ produced burning/redness of the nose, throat, or eyes in workers engaged in cleaning operations (Hervin and Cohen 1973/Ex. 1–945, as cited in NIOSH 1976k/Ex. 1–965). Thus, the demonstrated effect level for sensory irritation caused by exposure to sodium hydroxide is below 1 mg/m³, while that for calcium oxide is above 9 mg/m³.

Based on evidence that exposure to calcium oxide at levels above 9 mg/m³ may cause tearing of the eyes and mucous membrane irritation, OSHA preliminarily concludes that the proposed 8-hour TWA limit of 5 mg/m³ is appropriate for agricultural workplaces. The Agency believes that this limit will protect exposed workers in agriculture from the significant risk of sensory irritation known to occur at concentrations of 9 to 10 mg/m³. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CARBONYL FLUORIDE
CAS: 353–50–4; Chemical Formula: COF_2
H.S. No. 1074

In construction, maritime, and agriculture, OSHA has no limit for carbonyl fluoride. The ACGIH has an 8-hour TLV®–TWA of 2 ppm and a 15-minute TLV®–STEL of 5 ppm for this substance. There is no NIOSH REL. The PELs OSHA is proposing for construction, maritime, and agriculture are an 8-hour TWA of 2 ppm and a 15-minute STEL of 5 ppm. NIOSH concurs (Ex. 8–47, Table N1) with these limits, which are identical to those recently established for this substance in general industry.

Carbonyl fluoride is a colorless gas. This substance is used in organic synthesis (Hawley's 1987, p. 223).

The 1-hour LC_{50} for carbonyl fluoride in rats is 360 ppm, and the 4-hour LC_{50} for the same species is 90 ppm (ACGIH 1986/Ex. 1–3, p. 111). Carbonyl fluoride hydrolyzes instantly on contact with moisture. The ACGIH (1986/Ex. 1–3, p. 14) reports that carbonyl fluoride is "about as toxic as hydrogen fluoride as a respiratory irritant gas."

Repeated exposure of animals to carbonyl fluoride is known to have metabolic effects; this substance inhibits the fluoride-sensitive enzyme succinic dehydrogenase via hydrolysis of carbonyl fluoride to hydrogen fluoride (Scheel, McMillan, and Phipps 1968/Ex. 1–364). Carbonyl fluoride is described as a "potent" irritant (Sax and Lewis 1989, p. 717).

OSHA is proposing an 8-hour TWA limit of 2 ppm and a 15-minute STEL of 5 ppm for carbonyl fluoride in construction, maritime, and agriculture. The Agency preliminarily concludes that both a TWA and a STEL are necessary to provide workers in these sectors with protection against the significant risks of marked irritation and metabolic effects. OSHA considers these effects material health impairments. In addition, promulgation of these limits will make OSHA's PELs for carbonyl fluoride consistent across all regulated sectors.

CATECHOL (PYROCATECHOL)
CAS: 120–80–9; Chemical Formula: $C_6H_4(OH)_2$
H.S. No. 1075

In construction, maritime, and agriculture, OSHA has no limit for catechol. The ACGIH has a TLV®–TWA of 5 ppm. There is no NIOSH REL but NIOSH concurs (Ex. 8–47, Table N1) with the limit being proposed. The proposed PEL for this substance in construction, maritime, and agriculture is 5 ppm as an 8-hour TWA. In addition, the Agency is proposing to add a skin notation to the PEL, in accordance with its policy on skin designations, discussed in Section IV.C.16.

Catechol is a colorless crystalline solid that sublimes readily and thus occurs in the vapor state at room temperature. This substance finds use as an antiseptic and in organic synthesis. It is also used in electroplating and photography, and as an ingredient in dyestuffs, specialty inks, antioxidants, and light stabilizers (Hawley's 1987, p. 984).

Catechol is approximately 1.1 to 2.2 times more toxic than phenol, depending on the route of exposure (Industrial Bio-Test Laboratories 1974, as cited in ACGIH 1986/Ex. 1–3, p. 112). The oral LD_{50} in rats is 300 mg/kg, or approximately half that of phenol. Percutaneous toxicity for catechol in rabbits is 800 mg/kg; catechol's dermal LD_{50} in rabbits of 0.8 g/kg places this substance in the category of "toxic" by the percutaneous route of administration, as discussed in Section VI.C.16. In addition, the Agency is concerned by reports of catechol-induced central nervous system effects (i.e., convulsions) in humans; this effect is said to occur as a result of skin absorption and to be "more marked" than the CNS effects produced by phenol (Deichmann and Keplinger 1981, in Clayton and Clayton 1981, p. 2586). OSHA is therefore proposing a skin notation for catechol to protect workers in these sectors from the serious CNS effects that may potentially occur from percutaneous absorption of this substance. Eye and nose irritation, as

well as muscular spasms and tremor, have been observed in rats at a concentration of 2800 mg/m³ catechol, indicating that the acute respiratory toxicity of catechol is approximately one-third that of phenol (Industrial Bio-Test Laboratories 1974, as cited in ACGIH 1986/Ex. 1–3, p. 112). In mice, catechol is easily absorbed through the skin and gastrointestinal tract (Forsyth and Quesnel 1957/Ex. 1–978). Additional data document a variety of dermal, respiratory, and systemic toxicities that are closely analogous to those of phenol in their metabolic actions (Harold, Nierenstein, and Roaf 1910/Ex. 1–1111; Dietering 1938/Ex. 1–1019; Cushny et al. 1940, as cited in ACGIH 1986/Ex. 1–3, p. 112). Exposure to catechol causes an increase in blood pressure, and, at high doses, kidney damage, eczematous dermatitis, and systemic illness (Harold, Nierenstein, and Roaf 1910/Ex. 1–1111; Dietering 1938/Ex. 1–1019; Cushny et al. 1940, as cited in ACGIH 1986/Ex. 1–3, p. 112).

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA permissible exposure limit of 5 ppm for catechol, with a skin notation, in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risks of dermal and upper respiratory tract irritation, convulsions, and other central nervous system effects, all of which constitute material impairments of health that are potentially associated with exposure to catechol. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

1-CHLORO-1-NITROPROPANE
CAS: 600–25–9; Chemical Formula: $CH_3CH_2CHClNO_2$
H.S. No. 1081

In construction and maritime, OSHA's time-weighted average permissible exposure limit for 1-chloro-1-nitropropane is 20 ppm. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 2 ppm for this substance (ACGIH 1986/Ex. 1–3). There is no NIOSH REL. For construction, maritime, and agriculture, OSHA is proposing a PEL of 2 ppm as an 8-hour TWA, and NIOSH concurs (Ex. 8–47, Table N1) with this limit, which was recently established for this substance in general industry.

1-Chloro-1-nitropropane is a flammable liquid (ACGIH 1986, p. 132.2). This substance finds use as a fungicide (Hawley's 1987, p. 676). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

1-Chloro-1-nitropropane is the most acutely toxic of the fungicides known as the chloronitropropanes. In an inhalation experiment, two rabbits were exposed for 6 hours to a concentration of 393 ppm, after which one rabbit died; at an average concentration of 2574 ppm, both rabbits died. Guinea pigs tested under the same conditions survived these exposures. The oral LD_{50} in rabbits is between 50 and 100 mg/kg (Machle, Scott, Treon et al. 1945/Ex. 1–349). Other members of this family of fungicides cause a lesser degree of skin and lung irritation but have higher ingestion toxicities (Patty 1963i, as cited in ACGIH 1986/Ex. 1–3, p. 132). Exposure to high concentrations (not further specified) of 1-chloro-1-nitropropane can cause heart muscle, liver, and kidney damage (Patty 1963i, as cited in ACGIH 1986/Ex. 1–3, p. 132).

OSHA is proposing an 8-hour TWA PEL of 2 ppm for 1-chloro-1-nitropropane in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect employees in these sectors from the significant risk of skin and upper respiratory tract irritation and of systemic toxicity, which constitute material health impairments within the meaning of the Act. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

COBALT CARBONYL (as Co)
CAS: 10210–68–1; Chemical Formula: $Co_2(CO)_8$
H.S. No. 1098

In construction, maritime, and agriculture, OSHA has no limit for cobalt carbonyl. The ACGIH has a TLV®–TWA of 0.1 mg/m³ (measured as cobalt) for this substance. There is no NIOSH REL. In construction, maritime, and agriculture, OSHA is proposing a PEL of 0.1 mg/m³ as an 8-hour TWA (measured as cobalt), and NIOSH concurs (Ex. 8–47, Table N1) with this limit. This is the limit recently established for this substance in general industry.

Cobalt carbonyl takes the form of orange or brown crystals (Weast 1984, p. B–89). It is formed by vacuum sublimation.

Sax and Lewis (1989, p. 938) report that the LC_{50} in mice is 27 mg/m³ for 2 hours. The oral LD_{50} in mice is 377.7 mg/kg; in rats, it is 753.8 mg/kg (Spiridonova and Shabalina 1973/Ex. 1–1098). Exposure to cobalt carbonyl causes chemical pneumonitis (Stokinger 1981e). The hazards of exposure to the metal carbonyls range from relatively low (for iron pentacarbonyl) to extremely serious (for nickel carbonyl) (Stokinger 1981e, in Clayton and Clayton 1981, pp. 1797–1806); the greater the toxicity of the metal and the more stable and volatile the carbonyl, the more hazardous the compound. Exposure to any of the metal carbonyls causes the same symptoms of nausea, dizziness, headache, substernal pain, coughing, and dyspnea (Stokinger 1981e). Evidence concerning any chronic effects of long-term exposure is lacking (ACGIH 1986/Ex. 1–3, p. 145).

OSHA is proposing an 8-hour TWA PEL of 0.1 mg/m³ for cobalt carbonyl in construction, maritime, and agriculture to protect against the significant risk of headache, nausea, and pulmonary effects, all of which are material impairments of health that are associated with occupational exposure to this substance. The Agency preliminarily concludes that this limit is necessary to substantially reduce these significant risks among workers in these sectors. In addition, promulgation of this limit will make OSHA's PEL for cobalt carbonyl consistent across all regulated sectors.

COBALT HYDROCARBONYL (as Co)
CAS: 16842–03–8; Chemical Formula: $HCo(CO)_4$
H.S. No. 1099

In construction, maritime, and agriculture, OSHA has no limit for cobalt hydrocarbonyl. The ACGIH has a TLV®–TWA of 0.1 mg/m³ (measured as cobalt) for this substance. There is no NIOSH REL. OSHA is proposing an 8-hour TWA PEL of 0.1 mg/m³ for cobalt hydrocarbonyl (measured as cobalt) in construction, maritime, and agriculture; NIOSH concurs (Ex. 8–47, Table N1) with this limit, which was recently established for cobalt hydrocarbonyl in general industry.

Cobalt hydrocarbonyl is a gas that behaves like a strong acid and decomposes rapidly in air (Clayton and Clayton 1981, pp. 1793–1796). Cobalt hydrocarbonyl is the catalyst for the OXO process that converts olefins to oxidized products (Clayton and Clayto 1981, p. 1795).

Cobalt hydrocarbonyl is approximately half as toxic as nickel carbonyl in terms of acute effects; in animals, it produces clinical signs and symptoms very similar to those produced by nickel carbonyl (OSHA PEL of 0.007 mg/m³) and iron pentacarbonyl (OSHA PEL of 0.8 mg/m³) (ACGIH 1986/Ex. 1–3, p. 145). These include headache, dizziness, and, after a delay in onset, liver, brain, and lung damage. The 30-minute LC_{50} in rats is

46.2 mg/m³ (RTECS 1990). There is no evidence of chronic toxicity or of carcinogenicity.

OSHA is proposing an 8-hour TWA limit of 0.1 mg/m³ for cobalt hydrocarbonyl in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect exposed employees in these sectors from the significant risk of pulmonary, brain, and liver damage, as well as acute effects such as headaches and dizziness, all of which constitute material health impairments. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

CRESOL (all isomers)

CAS: 1319–77–3; Chemical Formula: $CH_3C_6H_4OH$

H.S. No. 2042

In general industry, construction, and maritime, OSHA's permissible exposure limit for all cresol isomers is 5 ppm (22 mg/m³) as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 5 ppm, and a skin notation, for cresol. NIOSH has a REL for this substance of 10 mg/m³ (2.3 ppm) as a 10-hour TWA. OSHA is retaining its PEL and skin notation for cresol in construction and maritime and is proposing to extend the PEL and notation to agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Cresol is a colorless, yellowish, or pinkish liquid with a phenol-like odor. The commercially available substance is a mixture of the ortho-, meta-, and para-isomers, which derive from coal tar or petroleum. Cresol is used in the manufacture of herbicides and synthetic resins; as a disinfectant and fumigant; in photographic developers and explosives; as a textile scouring agent, surfactant, organic intermediate, and metal degreaser; and in synthetic food flavoring (ACGIH 1986, p. 148; Hawley's 1987, p. 320; HSDB 1991). The cresols have wide application in the agricultural industries (Clayton and Clayton 1981, p. 2597). When used in pesticidal applications and in accordance with directions on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Cresol causes eye, nose, and skin irritation, central nervous system effects, cardiovascular effects, and liver and kidney injury in humans and animals. In rats, the oral LD_{50} for ortho-cresol is 121 mg/kg; in mice, the oral LD_{50} is 344 mg/kg (RTECS 1990). The dermal LD_{50} in rabbits is 890 mg/kg for the ortho-isomer (RTECS 1990 "o-Cresol"). For meta-cresol, the oral LD_{50} values are 242 mg/kg and 828 mg/kg for rats and mice, respectively, and the dermal LD_{50} in rabbits is 517 mg (RTECS 1990 "m-Cresol"). The oral LD_{50} values for para-cresol in rats and mice are 207 mg/kg and 344 mg/kg, respectively, and the dermal LD_{50} in rabbits is 301 mg/kg (RTECS 1990 "p-Cresol"). Instilled into the eyes of rabbits, doses of cresol ranging from 103 to 105 mg in the eyes or of 517 to 524 mg placed in contact with the skin of rabbits for 24 hours caused severe irritation (RTECS 1990). Rats dermally exposed to cresol at a dose of 1.0 to 1.7 ml/kg for 1 to 2 hours developed skin discoloration and died (Campbell 1941, in Soap Sanit. Chem. 17:103–111, in NIOSH Criteria Document 1978, p. 59). Exposure to saturated airborne concentrations of cresol for 1 hour per day for 10 days caused eye and nose irritation and some deaths in mice (Campbell 1941, as above). A single oral dose of 1300 to 2700 mg/kg of p-cresol caused twitching, comas, and death in rats (Deichmann, Witherup 1944, in J. Pharmacol. Exp. Ther. 80:233–240). A group of rats exposed to concentrations of 0.05 or 0.0052 mg/m³ of tricresol (a mixture of the three isomers) for 3 months showed decreased weight gain, increased central nervous system excitability and oxygen consumption, histologic changes in the lungs and liver, and decreases in the gamma-globulin content of the serum in the high-dose group; no significant changes were seen in the low-dose group (Kurlyandskiy et al. 1975, in Gig. Sanit. 5:85–87). Guinea pigs inhaling 9.0 mg/m³ of o-cresol over a 4-month period showed changes in their ECGs, and rats exposed to the same concentration on this regimen developed both hematological and central nervous system changes (NIOSH Criteria Document 1978, p. 60).

In humans, acute exposure to cresol by any route can cause muscular weakness, gastroenteric disturbances, severe depression, collapse, lung edema, and injury to the pancreas and spleen. Fatal poisoning may occur by skin absorption if a large body area is involved (Windholz 1983, p. 369). Oral exposure to 8 g or more of cresol produces rapid circulatory collapse and is followed by death (Windholz 1983, p. 369). Eight of 10 workers exposed to 1.4 ppm o-cresol experienced upper respiratory tract irritation (NIOSH Criteria Document 1978, p. 57). Cresol is a severe skin irritant and a frequent cause of skin discoloration and dermatitis among exposed workers (Sittig 1985, pp. 263–264). Chronic effects from cresol exposure include skin problems, central nervous system changes, and possible liver and kidney damage (Rom 1983, p. 528). Seven workers exposed to cresol for 1.5 to 3 years at unspecified concentrations had headaches and frequent nausea and vomiting. Four of the workers experienced elevated blood pressure, impaired kidney function, a blood calcium imbalance, and marked tremors (NIOSH Criteria Document 1978, p. 117).

Based on this evidence in humans and animals, OSHA preliminarily concludes that cresol causes primary irritation, central nervous system effects, cardiovascular effects, and liver and kidney injury. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit for cresol of 5 ppm as an 8-hour TWA, with a skin notation, is necessary to substantially reduce the risks of material health impairment among agricultural workers. In addition, promulgation of this limit will make the PEL for cresols consistent across all OSHA-regulated sectors.

CROTONALDEHYDE

CAS: 4170–30–3; 123–73–9 (trans-isomer); Chemical Formula: $CH_3CH{=}CHCHO$

H.S. No. 2043

In general industry, construction, and maritime, OSHA's permissible exposure limit for crotonaldehyde is 2 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 2 ppm for this substance; NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 2 ppm for crotonaldehyde in agriculture. This is the limit recently established for this substance in general industry.

Crotonaldehyde is a colorless, flammable liquid with a strong, pungent odor. It turns a pale yellow color in contact with air or light. The commercially available product consists more than 95 percent of the trans-isomer. Crotonaldehyde is primarily used as an intermediate in the manufacture of n-butanol; this substance is also used in pesticide compounds, in chemotherapeutic agents, as a warning agent in fuel gases, as a solvent, and to locate breaks and leaks in pipes (HSDB 1988; ACGIH 1986, p. 149; AIHA 1988). When used in pesticidal applications and in accordance with directions on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Crotonaldehyde is an irritant of the eyes, mucous membranes, respiratory system, and skin in both animals and humans. Central nervous system effects have been observed in exposed animals, and sensitization may occur in humans. The oral LD_{50} in rats is 206 mg/kg, the 2-hour LC_{50} in rats is 200 mg/m³, and the dermal LD_{50} in rabbits is 380 mg/kg (RTECS 1990; AIHA 1988). Death occurred in rats exposed to a 1650-ppm concentration of crotonaldehyde for 10 minutes; acutely poisoned animals developed respiratory distress, excitation, and terminal convulsions, and autopsy revealed bronchiolar damage (Rinehart 1967). A single exposure to a 10-ppm concentration of crotonaldehyde for 20 minutes produced a measurable change in pulmonary performance in rats (Rinehart 1967). In contact with the skin of rabbits, crotonaldehyde caused mild irritation (RTECS 1990). The damage caused to the eyes of rabbits by liquid crotonaldehyde is severe (Grant 1986, p. 284). The mortality observed among rats in a 13-week gavage study was attributed to the corrosive action of crotonaldehyde; stomach lesions included hyperplasia of the forestomach epithelium, forestomach hyperkeratosis, ulcers, moderate necrosis, and acute inflammation (Wolfe, Rodwin, French et al. 1987).

Volunteers exposed for 15 minutes to a 4.1-ppm concentration of crotonaldehyde reported irritation of the nose and upper respiratory tract, and lacrimation was experienced after 30 seconds of exposure to this concentration (Sim and Pattle 1957). In eight cases of corneal injury in workers handling crotonaldehyde, complete healing occurred within 48 hours of the incident (Grant 1986, p. 284). A laboratory worker who handled small amounts of crotonaldehyde reportedly developed a sensitization reaction to this substance (ACGIH 1986, p. 149), and patch testing of a textile worker confirmed sensitization to crotonaldehyde (Shmunes and Kempton 1980).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing the eye, mucous membrane, respiratory system, and skin irritation associated with exposure to crotonaldehyde. The Agency believes that establishing an 8-hour TWA PEL of 2 ppm is necessary to substantially reduce this risk among agricultural workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DEMETON (Systox)

CAS: 8065-48-3; Chemical Formula: $C_8H_{19}O_3PS_2$

H.S. No. 2049

In general industry, construction, and maritime, OSHA's permissible exposure limit for demeton (also called Systox) is 0.1 mg/m³ as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has an 8-hour TLV®-TWA of 0.1 mg/m³, with a skin notation, for this substance; this limit was established by analogy with parathion. NIOSH has no REL for demeton but concurs (Ex. 8-47, Table N3A) with the limit being proposed. OSHA is proposing a PEL of 0.1 mg/m³ as an 8-hour TWA, and a skin notation, for demeton in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Demeton is a light brown to pale yellow oil with a sulfur-like odor; it is a mixture of two isomers. Demeton is a systemic insecticide and acaricide used against sap-feeding insects and mites (ACGIH 1986, p. 170; Hayes 1982, p. 389). When used in pesticidal applications and in accordance with directions on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Demeton causes cholinesterase inhibition, including respiratory and ocular effects, cyanosis, and central nervous system effects. The oral LD_{50} values in rats and mice are 1700 μg/kg and 7850 μg/kg, respectively (RTECS 1990). The dermal LD_{50} in rabbits is 24 mg/kg (RTECS 1990). Rats fed 50 ppm demeton in the diet became sick but recovered after 3 to 4 weeks despite continued feeding of demeton (Barnes and Denz 1954, in Hayes 1982, p. 389). A dietary level of 5 ppm (0.149 mg/kg/day) caused erythrocyte cholinesterase inhibition in dogs; plasma cholinesterase inhibition was marked at 5 ppm and slight at 2 ppm (Frawley and Fuyat 1957, in Hayes 1982, p. 389). A single exposure to a concentration of 18 mg/m³ demeton was fatal to all of six rats exposed; the deaths occurred from 50 to 90 minutes after the exposure (Deichmann and Rakoczy 1955, in ACGIH 1986, p. 170). Seventeen rats exposed to a 3 mg/m³ concentration of demeton showed no signs of illness after the first exposure; following the second exposure, however, tremors were observed, and the fourth exposure caused death in 10 of the 17 rats (Deichmann and Rakoczy 1955, in ACGIH 1986, p. 170). Doses of 7 to 10 mg/kg administered to pregnant mice during days 7 to 11 of pregnancy produced reproductive, developmental, and embryonic effects in mice (RTECS 1990).

In humans, several cases of demeton intoxication have been reported. The lowest lethal oral dose reported for humans is 171 μg/kg (RTECS 1990). The first signs and symptoms of demeton intoxication are respiratory and ocular effects, which may include a feeling of tightness in the chest, wheezing, laryngeal spasm, excessive salivation, miosis, blurred distant vision, tearing, rhinorrhea, and frontal headache (Proctor, Hughes, and Fischman 1988, p. 176). Ingestion of demeton causes symptoms, such as anorexia, nausea, vomiting, abdominal cramps, and diarrhea, which usually appear within 15 minutes to 2 hours (Proctor, Hughes, and Fischman 1988, p. 176). Absorption of demeton through the skin results in localized sweating and muscular fasciculations within 15 minutes to 4 hours after exposure (Proctor, Hughes, and Fischman 1988, p. 176). Five volunteers given oral doses of 7.125 mg/day (about 0.1 mg/kg/day) for 25 days showed a depression of plasma and erythrocyte cholinesterase activity of 39.8 and 15.9 percent, respectively (Moeller and Rider 1965; Rider et al. 1969, in Hayes 1982, p. 389). A 16-year-old boy exposed to demeton while spraying hops was unconscious for 6 hours; 5 weeks after treatment with atropine he continued to complain about difficulty in breathing, general weakness, and lack of coordination in walking. After 3 months, the boy still had autonomic nervous system disturbances (Klimkova-Deutschova 1959, in Hayes 1982, p. 390). Twelve of 14 workers exposed to demeton in the air during aerial spraying of cotton and wheat had decreased cholinesterase levels but no signs of poisoning; demeton levels in the air breathed by these workers approached a concentration of 1 mg/m³ (Kagan 1956, in Hayes 1982, p. 390). Levels ranging from 4.3 to 6 mg/m³ were reported to have caused a reduction in the serum cholinesterase activity of workers applying demeton to trees, but no other signs or symptoms of intoxication were reported (Kagan et al. 1958, in Hayes 1982, p. 390).

Based on this evidence in humans and animals, OSHA preliminarily concludes that demeton causes cholinesterase inhibition and concomitant poisoning. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk o[f]

experiencing these adverse health effects. The Agency believes that establishing an 8-hour TWA PEL of 0.1 mg/m³, and a skin notation, for demeton in agriculture is necessary to significantly reduce this risk of material health impairment. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

DIAZINON

CAS: 333–41–5; Chemical Formula: $C_{12}H_{21}N_2O_3PS$

H.S. No. 1118

OSHA has no limit for diazinon in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³, with a skin notation. There is no NIOSH REL. OSHA is proposing a PEL for diazinon in construction, maritime, and agriculture of 0.1 mg/m³ as an 8-hour TWA, with a skin notation; NIOSH concurs (Ex. 8–47, Table N1) that this limit is appropriate. This is the limit recently established for this substance in general industry.

Pure diazinon is a colorless liquid, but the technical grade is pale yellow to dark brown in color and has a faint odor. Diazinon is an insecticide that is used against fire ants (Hawley's 1987, p. 364). When used in pesticidal applications and in accordance with directions on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Gaines (1960/Ex. 1–319) reports the acute oral LD_{50} for male and female rats to be 108 and 76 mg/kg, respectively. Other reports set the acute oral LD_{50}s in rats, guinea pigs, and rabbits at 76 to 150, 240 to 320, and 130 mg/kg, respectively (Association of American Pesticide Control Officials, Inc. 1969, as cited in ACGIH 1986/Ex. 1–3, p. 172). The dermal LD_{50} in rabbits is 400 mg/kg (RTECS 1990). Susceptibility to repeated doses is relatively consistent among species, with dogs showing signs of poisoning at 9.3 mg/kg per day and rats showing complete inhibition of red blood cell cholinesterase and marked inhibition of brain cholinesterase at 50 mg/kg/day (Bruce, Howard, and Elsea 1955/Ex. 1–585). Monkeys were poisoned at diazinon doses of 5 mg/kg/day (Woodard, Woodard, and Cronin 1968/Ex. 1–458). Feeding studies in rats have shown no chronic toxicity at 10, 100, or 1000 ppm. For many mammals, diazinon is less toxic than parathion (ACGIH TLV®–TWA of 0.1 mg/m³), although this is not true under some circumstances (ACGIH 1986/Ex. 1–3, p. 172).

In humans, Hayes (1963/Ex. 1–982) reports that two patients were poisoned by a dermal diazinon dosage of about 1.1 mg/kg; however, Gassman (1957/Ex. 1–901) reports no ill effects from an accidental ingestion of 30 mg/kg. One man received a dose of 250 mg/kg and recovered after treatment, which included gastric lavage (Bockel 1967, as cited in ACGIH 1986/Ex. 1–3, p. 172). In tests, Geigy (1966, as cited in ACGIH 1986/Ex. 1–3, p. 172) found that a series of doses of 0.05 mg/kg/day for 28 days produced plasma cholinesterase inhibition, and it has been suggested that the no-effect level for cholinesterase inhibition in humans is 0.02 mg/kg/day. Skin absorption of diazinon occurs readily, and overexposures are associated with weakness, headache, blurred vision, salivation, sweating, nausea, vomiting, diarrhea, abdominal cramps, slurred speech, and moist rales in the lungs (ACGIH 1986/Ex. 1–3, p. 172).

The Agency is proposing an 8-hour TWA PEL of 0.1 mg/m³, with a skin notation, for diazinon in construction, maritime, and agriculture. OSHA preliminarily concludes that these limits will protect exposed workers in these sectors from the significant risk of cholinesterase inhibition, weakness, headache, nausea, vomiting, as well as the other symptoms and signs of diazinon poisoning, which together constitute material health impairments that are associated with exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

1,1–DICHLORO–1–NITROETHANE

CAS: 594–72–9; Chemical Formula: $CH_3CCl_2NO_2$

H.S. No. 1121

In construction and maritime, OSHA currently has a ceiling limit of 10 ppm for 1,1-dichloro-1-nitroethane. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 2 ppm for this substance. There is no NIOSH REL, but NIOSH concurs (Ex. 8–47, Table N1) with the proposed limit. OSHA is proposing an 8-hour TWA PEL of 2 ppm for 1,1-dichloro-1-nitroethane in the construction, maritime, and agriculture industries. This is the limit recently established for 1,1-dichloro-1-nitroethane in general industry.

1,1–Dichloro-1-nitroethane is a colorless liquid. It is used in organic synthesis and as a fumigant for produce. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Toxicity data on 1,1-dichloro-1-nitroethane are largely derived from the 1945 studies conducted by Machle and co-workers (Ex. 1–349). These scientists reported that both rabbits and guinea pigs died from inhaling vapors at 100 ppm for 6 hours; at a concentration of 60 ppm, the animals survived a 2-hour exposure. Four-hour inhalation exposures at 34 ppm and 6-hour daily exposures at 25 ppm for a total of 204 hours also did not kill rabbits or guinea pigs. Skin and mucous membrane irritation were not produced at the 25-ppm exposure level. At survival concentrations, the primary targets of toxicity were the lungs, which showed edema, congestion, hemorrhage, and acute bronchitis. At lethal exposures, these investigators observed acute myocardial degeneration with interstitial edema, cloudy swelling of the liver with cellular degeneration, and tubular degeneration and interstitial edema of the kidney, as well as edema of the tufts of the glomeruli and kidney necrosis. The compound was also found to be a severe skin irritant when two applications were applied on two successive days (Machle, Scott, Treon et al. 1945/Ex. 1–349). The ACGIH (1986/Ex. 1–3, p. 188) states that dichloronitroethane is more toxic than the nonchlorinated nitroalkanes.

OSHA is proposing a PEL of 2 ppm TWA for 1,1-dichloro-1-nitroethane in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of irritation, lung injury, and liver and kidney damage, all material health impairments that are associated with exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for 1,1-dichloro-1-nitroethane consistent across all regulated sectors.

p-DICHLOROBENZENE

CAS: 106–46–7; Chemical Formula: $C_6H_4Cl_2$

H.S. No. 1125

In construction and maritime, OSHA has an 8-hour TWA limit of 75 ppm for p-dichlorobenzene. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 75 ppm and a TLV®–STEL of 110 ppm for this substance. NIOSH has no REL for p-dichlorobenzene. In construction and maritime, OSHA is retaining the 75-ppm TWA limit and proposing to add a STEL of 110 ppm for p-dichlorobenzene; the Agency is also proposing to extend these limits to agriculture. These are the limits recently established for p-dichlorobenzene in general industry.

p-Dichlorobenzene is a white, crystalline solid with a camphor-like

odor. It is used as a fumigant to control mildew and molds (ACGIH 1986, p. 187). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In animal studies, an injection of 0.005 gram of p-dichlorobenzene in rats caused slight liver necrosis (Cameron, Thomas, Ashmore et al. 1937/Ex. 1–471). The intraperitoneal LD_{50} for rats is 2562 mg/kg (Zupko and Edwards 1949/Ex. 1–878). The oral LD_{50} in mice is 2950 mg/kg (Domenjoz 1946, as cited in ACGIH 1986/Ex. 1–3, p. 179); in rats, the oral LD_{50} is 2512 mg/kg (Varshavskaya 1970, as cited in ACGIH 1986/Ex. 1–3, p. 179). Rabbits fed a daily dietary dose of 5 grams developed opacity of the lens in 3 weeks (Berliner 1939/Ex. 1–715); this finding was not confirmed, however, in repeated studies (Pike 1944/Ex. 1–856).

Reports of a human inhalation exposure to unspecified levels of p-dichlorobenzene describe swelling of the feet, ankles, and hands after day-long use of a mothproofing agent consisting of this substance (Clayton 1935/Ex. 1–306). Other reports describe cataracts caused by exposure to unspecified concentrations of the vapor of p-dichlorobenzene (Berliner 1939/Ex. 1–715). Petit and Champaix (1948, as cited in ACGIH 1986/Ex. 1–3, p. 179) report the case of a woman who experienced tingling of the hands, vertigo, and loss of weight from working for 18 months with a mixture of 90 parts p-dichlorobenzene and 10 parts hexachloroethane (airborne concentration not specified).

Based on this evidence, OSHA is retaining the 8-hour TWA PEL of 75 ppm TWA in construction and maritime and is proposing to add a STEL of 110 ppm for p-dichlorobenzene in these sectors; the Agency is also proposing to extend these limits to agriculture. OSHA preliminarily concludes that both a TWA and a STEL are necessary to protect workers in these sectors from the significant risk of eye damage, vertigo, and neuropathic effects, which constitute material impairments of health within the meaning of the Act. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

DICHLOROMONOFLUOROMETHANE
CAS: 75–43–4; Chemical Formula: $CHCl_2F$
H.S. No. 1128

In construction and maritime, OSHA has a limit of 1000 ppm as an 8-hour TWA for dichloromonofluoromethane (FC–21). There is no limit in agriculture. The ACGIH has a TLV®–TWA of 10 ppm for this substance; this limit is based on FC–21's similarity to chloroform in terms of hepatotoxic effects. There is no NIOSH REL. In construction, maritime, and agriculture, OSHA is proposing a TWA PEL for FC–21 of 10 ppm, and NIOSH concurs (Ex. 8–47, Table N1) with this limit. This is the limit recently established for FC–21 in general industry.

Dichloromonofluoromethane is a colorless gas. It is used as a solvent and refrigerant (Hawley's 1987, p. 379).

FC–21 is considered more toxic than the related difluorinated methanes. The major health hazards associated with exposure to this substance are liver damage, cardiac sensitization, and narcosis. Freon-21 has a 4-hour LC_{50} of 49,900 ppm in rats (Tappan and Waritz 1964, as cited in ACGIH 1986/Ex. 1–3, p. 187). Within an hour, exposure to 100,000 ppm killed rats and guinea pigs (Weigand 1971/Ex. 1–1102); other tests with guinea pigs and mice demonstrated that concentrations of 50,000 ppm and higher cause unconsciousness or death (Nuckolls 1935, as cited in ACGIH 1986/Ex. 1–3, p. 187; Booth and Bixby 1932/Ex. 1–1079). The clinical signs of overexposure include loss of coordination, tremors, narcosis, and prostration, as well as possible lung and liver changes (Tappan and Waritz 1964, as cited in ACGIH 1986/Ex. 1–3, p. 187).

Two-week exposures of rats to 10,000 ppm for 6 hours daily caused hepatic failure or marked liver damage (Trochimowicz, Moore, and Chiu 1977/Ex. 1–34). A series of 90-day exposures of rats and dogs to concentrations of 1000 or 5000 ppm dichloromonofluoromethane resulted in bilateral hair loss, cirrhosis, and excessive mortality in rats at both exposure levels; dogs exhibited weight loss at both levels, but mild liver changes were observed only at the 5000-ppm level (Trochimowicz, Lyon, Kelly, and Chiu 1977, as cited in ACGIH 1986/Ex. 1–3, p. 187). Another uncompleted study reported liver pathology in rats repeatedly exposed for 90 days at 500 ppm, and probable liver pathology from similar exposures to 200 ppm; no hepatic effects were observed after exposure to 50 ppm (Allied Chemical Company 1978, as cited in ACGIH 1986/Ex. 1–3, p. 187).

Two of 12 dogs exposed to 10,000 ppm FC–21 plus intravenous epinephrine developed serious arrhythmias (Mullin, as cited in ACGIH 1986/Ex. 1–3, p. 187). Dogs and monkeys (anesthetized) demonstrated tachycardia and hypotension after exposure to FC–21 at levels between 50,000 and 100,000 ppm; bronchoconstriction was observed at 25,000 ppm (Aviado and Smith 1975/Ex. 1–82; Belej and Aviado 1975/Ex. 1–462). Anesthetized mice exposed to a concentration of 100,000 ppm FC–21 showed arrhythmia and cardiac sensitization to epinephrine (Aviado and Belej 1974/Ex. 1–615). Pre-implantation loss has been reported in pregnant rats exposed to FC–21 at 10,000 ppm on days 6 through 15 of gestation (Belej and Aviado 1975/Ex.1–462).

OSHA is proposing a TWA limit of 10 ppm for dichloromonofluoromethane in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risks of hepatotoxic effects, cardiac sensitization, and narcosis associated with exposure to this substance. OSHA believes that these exposure-related effects constitute material impairments of health within the meaning of the Act. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIETHYL KETONE
CAS: 96–22–0; Chemical Formula: $C_2H_5COC_2H_5$
H.S. No. 1135

OSHA has no limit for diethyl ketone in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 200 ppm for this substance. There is no NIOSH REL. The proposed PEL in construction, maritime, and agriculture is 200 ppm as an 8-hour TWA, and NIOSH concurs (Ex. 8–47, Table N1) with this limit. This is the limit recently established for diethyl ketone in general industry.

Diethyl ketone is a colorless liquid with an acetone-like odor. This substance is used in medicine and in organic synthesis (Hawley's 1987, p. 394).

The oral LD_{50} for diethyl ketone in rats is reported to be 2.14 g/kg. Four of six rats died when exposed to diethyl ketone for four hours at 8000 ppm (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). In general, the toxicities of the methyl ketones increase with increasing molecular weight; diethyl ketone is somewhat less toxic than is methyl propyl ketone (TLV®–TWA of 200 ppm) (NIOSH 1978f, as cited in ACGIH 1986/Ex. 1–3, p. 199). Like all of the ketones, exposure to diethyl ketone causes mucous membrane and eye and skin irritation.

In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA PEL of 200 ppm for diethyl ketone, the same limit being proposed for methyl propyl ketone. The Agency preliminarily concludes that this limit is

necessary to reduce the significant risk of eye and skin irritation, which are material health impairments that are associated with exposure to diethyl ketone. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIETHYLENE TRIAMINE
CAS: 111-40-0; Chemical Formula: $(NH_2CH_2CH_2)_2$ NH
H.S. No. 1138

OSHA has no limit for diethylene triamine (DETA) in construction, maritime, or agriculture. The ACGIH has a TLV®-TWA of 1 ppm, with a skin notation, for this substance. There is no NIOSH REL. OSHA is proposing a PEL of 1 ppm as an 8-hour TWA for diethylene triamine in construction, maritime, and agriculture; and NIOSH concurs (Ex. 8-47, Table N1) with this limit. This is the limit recently established for this substance in general industry.

Diethylene triamine is a yellow liquid that has an ammonia-like odor. This substance is used as a solvent, fuel component, and saponification agent (Hawley's 1987, p. 391).

The acute intraperitoneal LD_{50} values for DETA are reported to be 71 and 74 mg/kg for the mouse and rat, respectively (Hine, Kodama, Anderson et al. 1958/Ex. 1-511). In the rat, the reported oral and percutaneous LD_{50} values are the same (1080 mg/kg); the dermal LD_{50} for the rabbit is 1090 mg/kg (Smyth, Carpenter, and Weil 1949/Ex. 1-528). Exposure to 300 ppm of diethylene triamine vapor for 8 hours failed to kill any of a group of exposed rats (Savitt 1955/Ex.1-663).

Sutton (1963/Ex. 1-1101) has reported that DETA causes severe corneal injury; solutions of 15 to 100 percent caused lasting corneal damage. If improperly controlled, the vapor and liquid cause sensitization of the respiratory tract and skin (American Industrial Hygiene Association 1960, as cited in ACGIH 1986/Ex. 1-3, p. 197). Dernehl (Ex. 1-728) demonstrated such sensitization in a study reported in 1951.

OSHA is proposing an 8-hour TWA limit of 1 ppm for diethylene triamine in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of skin and respiratory tract irritation and sensitization, all of which constitute material health impairments that are associated with occupational exposure to diethylene triamine. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DINITROBENZENE (ALL ISOMERS)
CAS: 528-29-0; 99-65-0; 100-25-4;
Chemical Formula: $C_6H_4(NO_2)_2$
H.S. No. 2071

In general industry, construction, and maritime, OSHA's permissible exposure limit for all isomers of dinitrobenzene is 1mg/m3 as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has an 8-hour TLV®-TWA of 1 mg/m³, with a skin notation, for the dinitrobenzene isomers. NIOSH has no REL for dinitrobenzene but concurs (Ex. 8-47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 1 mg/m³ for dinitrobenzene (all isomers) in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

The ortho- and para-isomers of dinitrobenzene are white crystals; the meta isomer takes the form of pale yellow crystals. Dinitrobenzene is used as a camphor substitute in the production of celluloids, in the manufacture of dyes, and in organic synthesis (ACGIH 1986, p. 214; Merck 1983, p. 477). The industrial product is usually a mixture of the three isomers (Clayton and Clayton 1981, p. 2455).

Dinitrobenzene causes eye and respiratory tract irritation, cyanosis, aplastic anemia, and liver damage in humans and animals and, in animals, testicular damage (NIOSH 1989, in J. Appl. Toxicol. 9(3):199-202). The oral LD_{50} for m-dinitrobenzene is 83 mg/kg in rats, and the lowest lethal oral dose of p-nitrobenzene in cats is 29 mg/kg (RTECS 1990). There are no acute toxicity data for the ortho-isomer. Dinitrobenzene is known to be readily absorbed through the skin, although specific toxicity data are not available. Rats were given a single oral dose of the m-isomer (20 mg/kg) showed cyanosis and methemoglobinemia (NIOSH 1989). Four or five 20 mg/kg doses caused ataxia (NIOSH 1989). m-Dinitrobenzene given orally to rats as a 1 percent suspension in corn oil caused signs and symptoms such as a reduction in ambulatory motion, ataxia, weakness, dyspnea, rapid heartbeat, cyanosis, coma, and respiratory failure (Cody et al. 1981, in HSDB 1985). The effects on male and female rats of oral dosing with 200 mg/l m-dinitrobenzene included reduced growth rates, weight loss, reductions in hematocrit and hemoglobin values, enlarged spleens, testicular atrophy in males, and yellow pigmentation of liver cells (Cody et al. 1981, in HSDB 1985). Rats were given single oral doses (50 mg/kg) of each of the dinitrobenzene isomers; only the m- and p-isomers caused visible cyanosis within 2 hours and enlarged spleens observable at autopsy, and only the m-isomer caused a statistically significant decrease in testis weight (Blackburn, Gray, Lloyd, Sheard, & Foster 1988, in Toxicol. Appl. Pharmacol. 92(1):54-64). In another experiment, rats were given single oral 48 mg/kg doses of dinitrobenzene and their testes were examined histologically at intervals of 1 to 175 days thereafter. The authors concluded that acute exposure to dinitrobenzene causes rapid and extensive disruption of spermatogenesis as well as lesions and occlusion of the seminiferous tubules (Hess, Linder, Struder, & Perrcault 1986, in J. Androl. 9(5):327-342).

Most signs and symptoms of overexposure to dinitrobenzene in humans are attributable to the loss of the blood's oxygen-carrying capacity (Proctor, Hughes, and Fischman 1988, p. 215). The onset of symptoms may be delayed for up to 4 hours, and the first effect may be an increasingly intense headache (Hamblin 1963, in Proctor, Hughes, and Fischman 1988, p. 215). Symptoms of weakness and dizziness occur at methemoglobin concentrations of 40 percent; methemoglobin concentrations of 70 percent cause ataxia, dyspnea, tachycardia, nausea, vomiting, and drowsiness (Hamblin 1963, in Proctor, Hughes, and Fischman 1988, p. 215). Coma occurs at levels above 70 percent; the lethal level is in the range of 85 to 90 percent methemoglobin (Chemical Safety Data Sheet SD-21 1987, in Proctor, Hughes, and Fischman 1988, p. 215). Alcohol ingestion increases the toxic effects of dinitrobenzene (Proctor, Hughes, and Fischman 1988, p. 215). The principal clinical sign of dinitrobenzene intoxication is cyanosis, which occurs at a methemoglobin concentration of 15 percent or more (Gosselin, Smith, and Hodge 1984, p. II-213; Hamblin 1963, in Proctor, Hughes, and Fischman 1988, p. 215). Workers exposed to dinitrobenzene have reported symptoms including a burning sensation in the mouth, dry throat, thirst, and, with more intense exposure, somnolence, staggering gait, and coma (von Oettingen 1941, in Proctor, Hughes, and Fischman 1988, p. 215). In munitions factories, exposure to dinitrobenzene has been associated with toxic hepatitis and aplastic anemia; other symptoms reported in these cases included headache, burning pain and parethesias in the feet, ankles, hands, and forearms,

and visual effects (Grant 1986, p. 356; Ellenhorn and Barceloux 1988, in HSDB 1989). Workers exposed to m-dinitrobenzene dust in 1969 developed cyanosis and experienced slight to moderate anemia; 10 years later in a follow-up on the same workers, no long-term adverse effects were seen (Okubo and Shigeta 1982, in HSDB 1985). In chronically exposed workers, vision impairment appears to be common; symptoms included contracted visual fields and reduced visual acuity with central scotomas (Hubner 1918; Lewin and Guillery 1913, in Grant 1986, p. 356).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to dinitrobenzene potentially causes eye and respiratory tract irritation, anoxia, anemia, and liver damage. The Agency preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. OSHA believes that establishing an 8-hour TWA PEL of 1 mg/m³, and a skin notation, for dinitrobenzene in agriculture is necessary to significantly reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DINITROTOLUENE (ALL ISOMERS)

CAS: 25321-14-6; Chemical Formula: $CH_3C_6H_3(NO_2)_2$

H.S. No. 2072

In general industry, construction, and maritime, OSHA's permissible exposure limit for dinitrotoluene is 1.5 mg/m³ as an 8-hour TWA, with a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has an 8-hour TLV®-TWA of 1.5 mg/m³, and a skin notation, for dinitrotoluene. The NIOSH REL for this substance is the lowest feasible level; however, NIOSH concurs (Ex. 8-47, Table N6A) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 1.5 mg/m³, and a skin notation, for dinitrotoluene in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

The commercial grade of dinitrotoluene is a mixture of the ortho-, meta- and para-isomers and is an oily liquid; the pure isomers are yellow crystals. Dinitrotoluene is used in the manufacture of explosives and dyes and in organic synthesis (ACGIH 1986, p. 216; Hawley's 1987, p. 422).

Dinitrotoluene causes methemoglobinemia, anemia, and liver damage in humans and animals. In animals, dinitrotoluene has also caused liver tumors and reproductive effects. The oral LD_{50}s in rats, mice, and guinea pigs are 268 mg/kg, 790 mg/kg, and 1300 mg/kg, respectively (RTECS 1990). Cats tolerated repeated doses of 2 or 4 ml of 1 percent dinitrotoluene in cod liver oil up to a total of 24 ml and showed no signs of toxic effects (Kuhls 1905, in ACGIH 1986, p. 216). When administered cutaneously at a dose of 0.3 g/kg, cats showed no signs of toxic effects, but cats given two doses of 5 g died in 8 hours (Zieger 1913, in ACGIH 1986, p. 216). After oral treatment at unspecified doses for 5 days, male rats showed significantly elevated cytochrome P-450-dependent enzyme activities (Dent and Graichen 1982, in HSDB 1988). Hepatotoxic effects have also been observed in dogs, mice, and rats orally exposed to dinitrotoluene (NIOSH CIB 44 1985). In rats (130/sex/group) administered dietary doses of 3.5 or 14 mg/kg/day, a decrease in mean body weight and a high incidence of hepatic neoplasms and hepatotoxicity were observed, in addition to an increased incidence of mammary fibroadenomas and subcutaneous sarcomas (Chemical Industry Institute of Toxicology Report 1982, in HSDB 1988). Oral administration of dinitrotoluene caused reproductive effects, such as testicular and ovarian atrophy, decreased fertility, and decreased sperm count among rats, mice, and dogs (NIOSH CIB 44 1985). Block et al. (1988) evaluated the effects of 2,4-dinitrotoluene on the rat testis. Adult Sprague-Dawley rats were fed diets containing 0.1 or 0.2 percent dinitrotoluene for 3 weeks. Among rats fed the higher dose, the authors reported finding marked changes in sertoli cell morphology, including swollen mitochondria and distended endoplasmic reticulum. In addition, reduced weights of the epididymides and decreased sperm reserves were observed. These results indicate that dinitrotoluene can induce testicular injury and interfere with late-stage spermatogenesis.

In humans, exposure to dinitrotoluene causes anemia, methemoglobinemia, and liver damage. The effects of methemoglobinemia may include headache, fatigue, nausea, vomiting, chest pain, and weight loss (Proctor, Hughes, and Fischman 1988, p. 218). At a methemoglobin concentration of 15 percent, cyanosis occurs, with blueness of the lips, nose, and earlobes as the first signs of overexposure to dinitrotoluene; at a methemoglobin level of 40 percent, there is weakness and dizziness; and at a 70-percent concentration, methemoglobinemia causes ataxia, dyspnea, tachycardia, nausea, vomiting, and drowsiness (Hamblin 1963, in Proctor, Hughes, and Fischman 1988, p. 218). Ingestion of alcohol and high ambient temperatures can increase the toxic effects of dinitrotoluene exposure (von Oettingen 1941; Linch 1974, in Proctor, Hughes, and Fischman 1988, p. 218). Severe burns of the skin and eyes, with permanent scarring, were caused by hot fumes of dinitrotoluene (Smejkal 1949, in Grant 1986, p. 416). A workman employed in a dinitrotoluene production facility for a year developed tingling and numbness in the toes and legs; after 2 years, the symptoms became worse and vision decreased, but these disorders improved within a year after the cessation of exposure (Hamilton and Nixon 1918, in Grant 1986, p. 416). Chronic exposure to dinitrotoluene has been reported to cause jaundice and anemia (Clayton and Clayton 1982, p. 2463). A medical survey conducted in Kentucky where workers were exposed to dinitrotoluene and toluenediamine revealed a significant reduction in sperm count among males, suggesting that these substances may adversely affect the male reproductive system (Ahrenholz 1980, in HSDB 1988).

Based on this evidence in humans and animals, OSHA preliminarily concludes that dinitrotoluene causes methemoglobinemia, anemia, and liver injury. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that establishing a permissible exposure limit of 1.5 mg/m³ as an 8-hour TWA for dinitrotoluene is necessary to significantly reduce the risks of these material health impairments. In addition, promulgation of this PEL for dinitrotoluene will make the PEL for this substance consistent across all OSHA-regulated sectors.

DIPROPYL KETONE

CAS: 123-19-3; Chemical Formula: $(CH_3CH_2CH_2)_2CO$

H.S. No. 1148

OSHA has no limit for dipropyl ketone in construction, maritime, or agriculture. The ACGIH has a TLV® of 50 ppm TWA for this substance. NIOSH has no REL. In construction, maritime, and agriculture, OSHA is proposing a PEL of 50 ppm as an 8-hour TWA, and NIOSH concurs (Ex. 8-47, Table N1) with this limit. This is the limit recently established for this substance in general industry.

Dipropyl ketone is a colorless liquid with a pleasant odor. It finds use as a solvent for nitrocellulose, raw and blown oils, resins, and polymers. It is

also used in lacquers and flavorings (Hawley's 1987, p. 431).

Dipropyl ketone has a moderate oral and inhalation toxicity. In rats, the oral LD_{50} is 3.35 g/kg, and the dermal LD_{50} in rabbits is 9.5 g/kg. Tests have indicated that rats inhaling 2000 ppm for 4 hours survived, but at 4000 ppm all animals died (Carpenter, Weil, and Smyth 1974/Ex. 1–304). Methyl isobutyl ketone (MIBK) has a similar acute toxicity (ACGIH 1986/Ex. 1–3, p. 221); OSHA is establishing a 50 ppm 8-hour TWA and a 75 ppm STEL for MIBK.

OSHA is proposing to establish an 8-hour TWA PEL of 50 ppm TWA for dipropyl ketone in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit is necessary to protect workers in these sectors from the significant risk of narcosis and irritation, both material health impairments that are associated with exposure to dipropyl ketone. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIQUAT

CAS: 85–00–7; Chemical Formula: $C_{12}H_{12}Br_2N_2$

H.S. No. 1150

OSHA has no PEL for diquat in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.5 mg/m³ for this substance. The proposed PEL is 0.5 mg/m³ as an 8-hour TWA, and NIOSH concurs (Ex. 8–47, Table N1) with this limit. OSHA is proposing this limit for diquat in the construction, maritime, and agriculture industries. This is the limit recently established for this substance in general industry.

Diquat is a yellow crystalline solid that is used as a herbicide and as a plant growth regulator (Hawley's 1987, p. 431). When used in pesticidal applications and in accordance with directions on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In most species, the acute oral toxicity of diquat is similar to that of paraquat; the LD_{50} for diquat ranges from 100 to 400 mg/kg in rats, mice, rabbits, and dogs. The 24-hour percutaneous LD_{50} in rabbits is greater than 400 mg/kg; no skin irritation or other ill effects were demonstrated at this level (Clark and Hurst 1970/Ex. 1–135; Rowe and Wright 1965, as cited in ACGIH 1986/Ex. 1–3, p. 222). Rats fed 1000 ppm of diquat daily (about 50 mg/kg/day) for two years survived; reduced food intake and growth were the only consequences observed. At 500 ppm (about 25 mg/kg/day), the only ill effect observed was a pathologic change in the eye. A dietary level of 10 ppm (about 0.5 mg/kg/day) for 2 years did not induce cataract formation, but cataracts do occur at higher levels, with pathology observed at 500 ppm; one in four animals demonstrated complete corneal opacity in one or both lenses after 6 months at the 1000-ppm level. Cataract formation requires prolonged exposure and is not induced by single high-level exposures (ACGIH 1986/Ex. 1–3, p. 222).

Unlike paraquat, diquat does not produce lung damage in exposed humans or animals. Acute poisoning may produce nonspecific respiratory distress as well as other nonspecific signs of poisoning. In humans, accidental ingestion has produced less toxic reactions than those associated with paraquat ingestion (Orepoulos and McEvoy 1969/Ex. 1–429).

In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA PEL of 0.5 mg/m³ TWA for diquat. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of ocular damage, which constitutes a material health impairment that is associated with chronic exposure to diquat. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DISULFOTON

CAS: 298–04–4; Chemical Formula: $C_8H_{19}O_2PS_3$

H.S. No. 1152

OSHA has no exposure limit for disulfoton in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³ for this substance. There is no NIOSH REL. The proposed PEL for disulfoton in construction, maritime, and agriculture is 0.1 mg/m³ as an 8-hour TWA, with a skin notation. This is the limit recently established for this substance in general industry.

Pure disulfoton is an oily, colorless liquid; the technical grade is a brown liquid. This substance is a systemic insecticide and acaricide (Hawley's 1987, p. 435). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The acute toxicity of disulfoton is very high by all laboratory-tested routes of administration. For weanling rats, the intraperitoneal LD_{50} is reported to be 5.4 mg/kg; for adult rats, it is 9.4 mg/kg (Brodeur and Dubois 1963/Ex. 1–718). The acute dermal LD_{50} is 6 mg/kg for adult female rats and 25 mg/kg for adult male rats (Gaines 1969/Ex. 1–320). The acute oral LD_{50}s for male and female rats are reported as 6.8 mg/kg and 2.3 mg/kg, respectively (Brodeur and Dubois 1964/Ex. 1–1015). Rats have demonstrated an acquired tolerance for disulfoton (Brodeur and Dubois 1964/Ex. 1–1015).

Metabolically, disulfoton is highly fat-soluble, and the compound apparently interferes with mixed-function oxidase activity in the same manner shown to be the case for parathion; with respect to median lethal doses, parathion and disulfoton are similar (Stevens et al. 1973, as cited in ACGIH 1986/Ex. 1–3, p. 226).

OSHA is proposing an 8-hour TWA PEL for disulfoton of 0.1 mg/m³, with a skin notation, in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will prevent the significant risk of acute toxicity and metabolic injury, which are material impairments of health that are associated with exposure to this substance. The skin notation is included to protect workers in these sectors against the dermal toxicity that has been demonstrated in animal tests. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

DIVINYL BENZENE

CAS: 108–57–6; Chemical Formula: $C_6H_4(CHCH_2)_2$

H.S. No. 1154

OSHA has no limit for divinyl benzene in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 10 ppm, based on this substance's similarity to styrene. There is no NIOSH REL. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA PEL of 10 ppm. NIOSH concurs (Ex. 8–47, Table N1) with this limit, which was recently established for this substance in general industry.

The commercial grade of divinyl benzene is a pale-straw-colored liquid; it contains all three isomers, but the meta isomer predominates. This substance is used as a polymerization monomer for various materials (Hawley's 1987, p. 437).

The oral LD_{50} in rats is reported to be 4.1 g/kg, and an acute inhalation study showed no ill effects from a single 7-hour exposure at 351 ppm. However, repeated or prolonged contact with the liquid may cause skin burns (Dow Chemical Company 1977j, as cited in ACGIH 1986/Ex. 1–3, p. 228).

Industrial experience indicates that irritation of the respiratory system, skin, and eyes can result from inhalation exposures to divinyl benzene, but there are no data concerning chronic exposures in humans.

OSHA is proposing a PEL of 10 ppm (8-hour TWA) for divinyl benzene in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of irritation to the respiratory tract, eyes, and skin; such irritation constitutes a material impairment of health within the meaning of the Act. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ENDOSULFAN

CAS: 115–29–7; Chemical Formula: $C_9H_6Cl_6O_3S$

H.S. No. 1156

OSHA has no permissible exposure limit for endosulfan in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³, with a skin notation. There is no NIOSH REL. The proposed PEL is 0.1 mg/m³ as an 8-hour TWA, with a skin notation; NIOSH concurs (Ex. 8–47, Table N1) with this limit. This is the limit recently established for this substance in general industry.

Technical endosulfan is a tan, semi-waxy solid mixture; it may have a slight odor similar to that of sulfur dioxide. This substance is used as an insecticide (Hawley's 1987, p. 462). When used in pesticidal applications and in accordance with directions on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Endosulfan is similar in its acute oral toxicity to the related insecticides aldrin and dieldrin (TLV®–TWAs of 0.25 mg/m³), except that it is slightly more toxic than these substances in female laboratory animals. In rats, the oral LD_{50} for endosulfan is 43 mg/kg for males and 18 mg/kg for females (*Farm Chemicals Handbook* 1974/Ex. 1–1147a). The dermal LD_{50}s in male and female rats are 130 mg/kg and 74 mg/kg, respectively (*Farm Chemicals Handbook* 1974/Ex. 1147a). The respiratory LC_{50} for male rats is 50 mg/kg for 4 hours of exposure (Association of American Pesticide Control Officials, Inc. 1969, as cited in ACGIH 1986/Ex. 1–3, p. 230).

In laboratory tests of chronic exposure, rats tolerated oral doses of up to 3.2 mg/kg/day for 3 months without injury (Gaines 1975, as cited in ACGIH 1986/Ex. 1–3, p. 230), and dogs tolerated doses up to 0.75 mg/kg for 1 year (Ely, MacFarlane, Galen, and Hines 1967/Ex. 1–414). A 2-year dietary level at 10 ppm (approximately 0.5 mg/kg/day) in rats was associated with a statistically insignificant decline in female survival rates and a reduction in testis weights in males. At 5.0 mg/kg/day, histopathologic findings showed renal tubular damage and some hydropic changes in rat livers (Czech 1958, as cited in ACGIH 1986/Ex. 1–3, p. 230).

Inhalation of endosulfan dust by humans has been associated with slight nausea, confusion, excitement, flushing, and dry mouth (State of California, Department of Industrial Relations/Ex. 1–8). Nine employees who had been working with 50-percent water-wettable endosulfan powder for only a few days had convulsions (Association of American Pesticide Control Officials, Inc. 1969, as cited in ACGIH 1986/Ex. 1–3, p. 230).

OSHA preliminarily concludes that exposure to endosulfan poses a significant risk of systemic poisoning and renal and testicular damage, and the Agency therefore is proposing a PEL of 0.1 mg/m³ TWA for endosulfan in construction, maritime, and agriculture, with a skin notation; these effects constitute material impairments of health within the meaning of the Act. OSHA preliminarily finds that this limit will substantially reduce the significant risk associated with exposure to this substance at the levels permitted by the absence of a limit. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

EPN (Ethyl-p-nitrophenylthionobenzenephosphate)

CAS: 2104–64–5; Chemical Formula: $C_{14}H_{14}NO_4PS$

H.S. No. 2074

In general industry, construction, and maritime, OSHA's permissible exposure limit for EPN is 0.5 mg/m³ as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.5 mg/m³, with a skin notation, for EPN. The limit for EPN was set based on analogy with parathion, which appears to be about five times more toxic than EPN but causes similar effects (ACGIH 1986, p. 234). NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA PEL of 0.5 mg/m³, with a skin notation, for EPN in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

EPN is a light yellow solid or brown crystalline substance. It is used as an acaricide and as an insecticide in cotton insect pest control (ACGIH 1986, p. 234; Hawley's 1987, p. 466). When used in pesticidal applications and in accordance with directions on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

EPN is an anticholinesterase agent and neurotoxin in humans and animals. The oral LD_{50} in rats is 7 mg/kg; in dogs, it is 20 mg/kg (RTECS 1990). Dermal LD_{50}s in rats and rabbits are 25 mg/kg and 30 mg/kg, respectively (RTECS 1990). Administration of a single dermal dose of 22.5 to 225 mg/kg or of 0.5 to 2.0 mg/kg/day for 90 days caused delayed neurotoxicity in cats; these animals developed leg weakness and ataxia. At autopsy, histological changes were seen in the central and peripheral nervous systems of subchronically exposed animals (Abou-Donia 1983). Although a dietary level of 50 ppm for 1 year (equivalent to 210 mg/person/day) caused no observable effects in rats, 180 ppm (equivalent to 630 mg/person/day) caused damage to the adrenal cortex tissue within 52 weeks (Lehman 1952, in ACGIH 1986, p. 234). In a study in which rats were maintained on a dietary EPN level of 25 ppm for 13 weeks, some cholinesterase inhibition was observed; the same results were seen in rats given 5 ppm (0.24 mg/kg/day) or more for 13 weeks (DuBois et al. 1986; Suzuki 1973, in Hayes 1982, p. 410).

In humans, ingestion, inhalation, or dermal absorption of EPN produces signs and symptoms of anorexia, nausea, vomiting, abdominal cramps, diarrhea, chest tightness, wheezing, bronchial secretions, excessive salivation, cyanosis, slurred speech, confusion, convulsions, and coma (Proctor, Hughes, and Fischman 1988, p. 226). A 73-year-old man who ingested a dose of EPN estimated to be about 1429 mg/kg showed typical signs of anticholinesterase poisoning, including muscle spasms and coma; the patient died after 14 days (Hosaka and Yamaura 1976, in Hayes 1982, pp. 410–411). In studies with volunteers who ingested EPN doses beginning at 3 mg/person/day, the toxicity threshold appeared to be 9 mg/person/day (≈0.13 mg/kg/day) (Rider et al. 1959; Moeller and Rider 1959, 1962a, in Hayes 1982, p. 410). Ten volunteers ingested 6 mg/person/day of EPN for 47 days without observable effects on their cholinesterase activity (Rider et al. 1959; Moeller and Rider 1959, 1962a, in Hayes 1982, p. 410). An accidental release of EPN at a manufacturing facility caused muscle weakness and cerebellar effects in exposed workers (Froines 1979, in NIOSH Testimony on Neurotoxic Chemicals).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to EPN causes cholinesterase inhibition. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that establishing a PEL of 0.5 mg/m³ as an 8-hour TWA, and a skin notation, for EPN in agriculture is necessary to substantially reduce these risks of material health impairment. In addition, establishing this limit for EPN in agriculture will make OSHA's PEL for this substance consistent across all OSHA-regulated sectors.

FONOFOS

CAS: 944–22–9; Chemical Formula: $C_{10}H_{15}OPS_2$

H.S. No. 1181

OSHA has no limit for fonofos in the construction, maritime, or agriculture industry. The ACGIH has a TLV®–TWA of 0.1 mg/m³, with a skin notation, for this substance. There is no NIOSH REL. The proposed PEL is an 8-hour TWA of 0.1 mg/m³, with a skin notation; NIOSH concurs (Ex. 8–47, Table N1) with this limit. This is the limit recently established for this substance in general industry.

Fonofos is a light-yellow liquid (ACGIH 1986, p. 275). This substance is used as a soil insecticide (Hawley's 1987, p. 449). When used in pesticidal applications and in accordance with directions on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In male rats, the average acute oral LD_{50} of technical fonofos has been reported to be 13.2 mg/kg (Stauffer Chemical Co. 1974, as cited in ACGIH 1986/Ex. 1–3, p. 275). For female rats, an average oral LD_{50} of 3 mg/kg has been reported (NIOSH 1974d). The acute dermal LD_{50}s reported for rats and guinea pigs are 147 and 278 mg/kg, respectively (Weir and Hazleton 1981/Ex. 1–1135). Weir and Hazleton reported that no localized eye irritation occurred when 0.1 ml of technical fonofos was instilled into rabbit eyes; however, death resulted in these animals within 24 hours after the instillation (1981/Ex.1–1135). Dietary studies in rats lasting 105 weeks have shown 10 ppm (about 0.2 mg/kg) to be a no-effect level. Dogs fed fonofos for 14 weeks showed no-effect dietary levels of 8 ppm; no carcinogenic effects were observed. Rats showed reproductive effects at dietary levels of 10 ppm and 31.6 ppm (about 0.7 mg/kg) (Stauffer Chemical Co. 1974, as cited in ACGIH 1986/Ex. 1–3, p. 275).

There are no reports of human poisonings caused by fonofos, although it is known to be a cholinesterase inhibitor (ACGIH 1986/Ex. 1–3, p. 275).

OSHA is proposing an 8-hour PEL of 0.1 mg/m³ TWA for fonofos to protect exposed workers in construction, maritime, and agriculture from the significant risk of cholinesterase inhibition that is characteristic of exposure to this and other organophosphate pesticides. OSHA considers cholinesterase inhibition a material impairment of health. A skin notation is also proposed, based on evidence in animals that fonofos can readily penetrate the skin and cause death. The Agency preliminarily concludes that this limit will substantially reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

FORMAMIDE

CAS: 75–12–7; Chemical Formula: CH_3NO

H.S. No. 1182

OSHA's limit for formamide in the construction and maritime industries is 20 ppm as an 8-hour TWA. The ACGIH has a TLV®–TWA of 20 ppm and a TLV®–STEL of 30 ppm for this substance. There is no NIOSH REL. OSHA is proposing PELs of 20 ppm as an 8-hour TWA and 30 ppm as a 15-minute STEL for formamide in construction, maritime, and agriculture. These are the limits recently established for this substance in general industry.

Formamide is a colorless, oily liquid that is odorless (ACGIH 1986, p. 278.5). This substance is used as a solvent, a softener, and a chemical intermediate (Hawley's 1987, p. 537).

Formamide has an LD_{50} of approximately 6 g/kg for rats (Thiersh 1962/Ex. 1–690; Zaeva, Vinogradova, Savina, and Osipenko 1969/Ex. 1–1026). Dietary administration at 1.5 g/kg for 2 weeks resulted in fatalities in rats; pathologic examination revealed cumulative changes characteristic of gastritis and malnutrition (E.I. du Pont de Nemours and Company, Inc., as cited in ACGIH 1986/Ex. 1–3, p. 278). Czajkowska (1981, as cited in ACGIH 1986/Ex. 1–3, p. 278) reports the dermal LD_{50} for skin absorption in rabbits as 6 g/kg. Eye, mucous membrane, and skin irritation occur on exposure to this substance (Sax and Lewis 1989, p. 1766). Eye irritation tests in rabbits showed only slight, temporary irritation (Carpenter and Smyth 1946/Ex. 1–303). No signs of toxicity were detected in rats in single 6-hour exposures at 3900 ppm formamide dispensed as a mist, or in 6-hour daily exposures for 10 days at approximately 1500 ppm formamide vapor (equivalent to air saturated with formamide at room temperature); no indications of organ damage were seen in these animals on pathologic examination (E.I. du Pont de Nemours and Company, Inc., as cited in ACGIH 1986/Ex. 1–3, p. 278).

Gross fetal malformations were not noted following dermal applications of formamide to the skin of pregnant rats; the effects that were observed were weak and were produced at overwhelming concentrations (Stula and Krauss 1977/Ex. 1–1068). The no-observed-effect level in a rabbit developmental toxicity study was 22 mg/kg orally (Merkle and Zeller 1980/Ex. 1–683).

According to the ACGIH, there are no reports of industrial poisoning by formamide (E.I. du Pont de Nemours and Company, Inc., as cited in ACGIH 1986/Ex. 1–3, p. 278).

In the prior rulemaking, NIOSH pointed out (Ex. 8–47, Table N2) that formamide is a testicular toxin and has been identified as a teratogen in mice. OSHA is aware of the developing literature on both formamide and dimethyl formamide; however, the primary objective of the present rulemaking is to make OSHA's limits consistent across all regulated sectors. At the present time, OSHA is proposing a PEL of 20 ppm TWA and a STEL of 30 ppm for formamide in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risks of eye and skin irritation as well as other health effects associated with occupational exposure to formamide at levels above the proposed PELs. OSHA considers sensory irritation, testicular toxicity, and terafogenicity material impairments of health within the meaning of the Act. Promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors. At the time of the first PEL update, OSHA will review the literature on the toxicity of formamide to determine whether a further reduction in the PEL is necessary.

GERMANIUM TETRAHYDRIDE

CAS: 7782–65–2; Chemical Formula: GeH_4

H.S. No. 1186

OSHA has no limit for germanium tetrahydride in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.2 ppm for this substance. There is no NIOSH REL. The proposed PEL is an 8-hour TWA of 0.2 ppm, with which NIOSH concurs (Ex. 8–47, Table

N1). OSHA is proposing this limit for germanium tetrahydride in the construction, maritime, and agriculture industries. This is the limit recently established for this substance in general industry.

Germanium tetrahydride is a colorless gas. This substance is used in the electronics industry (ACGIH 1986, p. 284).

An early study indicated that germanium tetrahydride has a toxicity between that of tin hydride and arsine (Flury and Zernik 1931e/Ex. 1–993). In this study, a rabbit survived exposure to 100 ppm for one hour. One-hour exposures at 150 and 185 ppm caused fatalities in mice, and similar exposures involving guinea pigs resulted in sickness at the 150-ppm level and death at 185 ppm (Flury and Zernik 1931e/Ex. 1–993). On the other hand, Webster (1946/Ex. 1–399) reported that germanium tetrahydride is less toxic than both tin hydride and arsine. The effect of exposure to germanium tetrahydride is hemolysis. Data concerning chronic or subacute toxicities are not available. Based on germanium's acute toxicity, which is approximately half that of stibine, the ACGIH recommends an 8-hour TLV® of 0.2 ppm TWA.

In construction, maritime, and agriculture, OSHA is proposing a PEL of 0.2 ppm as an 8-hour TWA for germanium tetrahydride to reduce the significant risk of hemolytic effects, which constitute material impairments of health that are associated with occupational exposure to this substance. The Agency preliminarily concludes that implementation of this limit will substantially reduce this significant risk for workers in these sectors. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

INDENE

CAS: 95–13–6; Chemical Formula: C_9H_8

H.S. No. 1212

OSHA's current limit for indene in the construction and maritime industries is 10 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 10 ppm for this substance. The proposed PEL for indene in construction, maritime, and agriculture is 10 ppm as an 8-hour TWA, a limit with which NIOSH concurs (Ex. 8–47, Table N1). This is the limit recently established for indene in general industry.

Indene is a colorless liquid. This substance is used as a chemical intermediate (Hawley's 1987, p. 634).

Early inhalation studies of indene reported injury to the spleen, liver, and kidneys of rats exposed to indene vapor concentrations of 800 to 900 ppm for six 7-hour periods (Cameron and Doniger 1939/Ex. 1–470). Some animals were found at necropsy to have severe necrosis of the liver with hemorrhage; kidney necrosis was also observed. No other organ damage was found and no deaths occurred as a result of these exposures (Cameron and Doniger 1939/Ex. 1–470). By analogy with the effects of exposure to other monoaromatic hydrocarbons, exposure to indene is likely to irritate the mucous membranes. In laboratory animals, chemical pneumonitis, pulmonary edema, and hemorrhage have resulted from the aspiration of indene liquid into the lung, and repeated skin contact has caused dermatitis as a result of the defatting properties of indene (Gerarde 1960b/Ex. 1–738b). In dermal studies of rats, one to eight applications of 0.1 ml to the shaved skin were reported to have no effect; three applications of 0.5 ml to guinea pig skin also produced no effect (Cameron and Doniger 1939/Ex. 1–470). The oral toxicity of indene appears to be moderate, with adult rabbits tolerating a single dose of 1 gram without signs of systemic toxicity (Gerarde 1960b/Ex. 1–738b). Subcutaneous injection of 1 gram, however, caused liver pathology and fatalities; high oral doses (2.5 ml of a 1:1 v/v mixture in olive oil) were uniformly fatal, with characteristic liver, lung, and gastrointestinal changes. Chronic administration of 3 mg/m³ indene for 105 days caused catalase inhibition and stimulation of blood cholinesterase in rats, but no effects were observed in rats exposed at 0.6 mg/m³ (Dyshinevich 1976/Ex. 1–631).

OSHA is proposing to establish an 8-hour TWA PEL of 10 ppm for indene in construction, maritime, and agriculture. OSHA preliminarily concludes that this limit will reduce the significant risks of irritation, pulmonary effects, and systemic toxicity, which constitute material impairments of health that are associated with occupational exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

IODOFORM

CAS: 75–47–8; Chemical Formula: CHI_3

H.S. No. 1214

OSHA has no limit for iodoform in construction, maritime, or agriculture. The ACGIH has an 8-hour TLV®–TWA limit of 0.6 ppm for this substance. The proposed PEL for iodoform in construction, maritime, and agriculture is 0.6 ppm as an 8-hour TWA; NIOSH concurs (Ex. 8–47, Table N1) with this limit, which is identical to the PEL recently established for this substance in general industry.

Iodoform is a yellow-green solid with a penetrating odor. It is used in medicine as an external antiseptic (Hawley's 1987, p. 643).

The subcutaneous LD_{50} for rabbits is 50 mg/kg, and the oral LD_{Lo} for iodoform in dogs is 1000 mg/kg (Kutob and Plaa 1962/Ex. 1–61). These authors also report that, on a molar basis, iodoform has an acute toxicity in mice similar to that of methyl iodide; this conclusion is based on parameters of lethality, barbiturate sleeping time, and bromsulphalein (BSP) retention time. An NCI bioassay (1978c/Ex. 1–1117) of iodoform indicates that the substance is not carcinogenic nor of high systemic toxicity, although histopathological examination of laboratory animals in this bioassay was judged by NCI to be inadequate.

No human data are available for this compound.

OSHA is proposing an 8-hour TWA limit of 0.6 ppm for iodoform; OSHA preliminarily concludes that this limit will protect workers in construction, maritime, and agriculture from the significant risks of irritation and hepatotoxicity, both material impairments of health that are associated with exposure to iodoform. The Agency has preliminarily determined that this limit will substantially reduce these significant risks for workers in these sectors. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ISOBUTYL ACETATE

CAS: 110–19–0; Chemical Formula: $CH_3COOCH_2CH(CH_3)_2$

H.S. No. 2097

In general industry, construction, and maritime, OSHA currently has an 8-hour TWA limit of 150 ppm for isobutyl acetate. The Agency has no PEL for this substance in agriculture. The 1987–1988 ACGIH TLV®–TWA for isobutyl acetate was 150 ppm as an 8-hour TWA and 187 ppm as a STEL. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the PEL being proposed for this substance. OSHA is proposing an 8-hour TWA PEL of 150 ppm for isobutyl acetate in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Isobutyl acetate is a colorless liquid with a fruity odor similar to that of the acetate esters. Isobutyl acetate is used in thinners, sealants, and topcoat lacquers. It is also used as a solvent for nitrocellulose, as a flavoring agent in

beverages, and in the manufacture of perfume (ACGIH 1986, p. 330; Genium MSDS 1990, No. 396).

Isobutyl acetate causes skin, eye, and mucous membrane irritation and, at high concentrations, this substance causes central nervous system depression in humans and animals (Proctor, Hughes, and Fischman 1988, p. 289; NIOSH/OSHA Occupational Health Guideline 1981, p. 1). This substance appears to be more acutely toxic than n-butyl acetate but less irritating to the eyes, mucous membranes, and skin than the n-isomer (ACGIH 1986, p. 330). The oral LD_{50}s in rats and rabbits are 13,400 mg/kg and 4763 mg/kg, respectively (RTECS 1990). The lowest lethal concentration in rats is 8000 ppm for 4 hours; no deaths occurred in rats exposed to 4000 ppm (Smyth et al. 1962, in Proctor, Hughes, and Fischman 1988, p. 289; RTECS 1990). Rabbits showed moderate skin irritation when 500 mg of isobutyl acetate was left on their skin for 24 hours; moderate eye irritation was observed when the same dose was instilled into rabbit eyes (RTECS 1990). Exposure to 21,000 ppm of isobutyl acetate for 150 minutes caused narcosis and death in six of six rats exposed; no symptoms were observed at a concentration of 3000 ppm for 6 hours (Clayton and Clayton 1981, p. 2273).

In humans, exposure to isobutyl acetate causes mild irritation of the eyes and mucous membranes; at high but unspecified concentrations, this substance causes central nervous system depression (HSDB 1985). The acute symptoms of central nervous system depression include headache, muscle weakness, confusion, giddiness, and delirium (Genium MSDS 1990, No. 396). The onset of isobutyl acetate-induced narcosis is gradual, and recovery after the cessation of exposure is likely to be slow (Clayton and Clayton 1982, p. 2268). Liquid isobutyl acetate defats the skin, and repeated contact causes irritation and may lead to dermatitis (Genium MSDS 19890, No. 396).

Based on this evidence in humans and animals, OSHA preliminarily concludes that isobutyl acetate is a skin, eye, and mucous membrane irritant and, at high concentrations, a narcotic. The Agency concludes that, in the absence of a limit for this substance, workers in agriculture are at significant risk of experiencing these effects, which constitute material impairments of health. OSHA believes that the proposed 8-hour TWA PEL of 150 ppm will substantially reduce these significant risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ISOBUTYL ALCOHOL
CAS: 78–83–1; Chemical Formula: $(CH_3)_2CHCH_2OH$
H.S. No. 1219

In construction and maritime, OSHA currently has a limit of 100 ppm as an 8-hour TWA for isobutyl alcohol. There is no limit in agriculture. The ACGIH has a limit of 50 ppm TLV®–TWA for this substance. In construction, maritime, and agriculture, OSHA is proposing 50 ppm as an 8-hour TWA; NIOSH concurs (Ex. 8–47, Table N1) with this limit. This is the limit recently established for this substance in general industry.

Isobutyl alcohol is a colorless liquid that is used as a solvent, in organic synthesis, and as an ingredient in a wide variety of consumer products (Hawley's 1987, p. 653).

Limited inhalation studies have reported a somewhat higher acute toxicity for isobutyl alcohol than for n-butyl alcohol (which has a ceiling of 50 ppm) (Smyth, Carpenter, and Weil 1951/Ex. 1–439; Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). A 4-hour LC_{50} of 8000 ppm has been reported for isobutyl alcohol in rats. Ingestion studies in rabbits have reported an acute oral toxicity of 3.75 g/kg for isobutyl alcohol (Smyth, Carpenter, and Weil 1951/Ex. 1–439; Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). The dermal LD_{50} is 4.2 g/kg (Stokinger 1976, as cited in ACGIH 1986/Ex. 1–3, p. 331). Weese (1928/Ex. 1–1073) reported that the narcotic inhalation dose over a total of 136 hours is 6400 ppm in mice. Slight changes in the liver and kidneys were reported at autopsy, but no fatalities occurred after repeated narcotizing doses (Weese 1928/Ex. 1–1073).

The effects of liquid isobutyl alcohol on the human eye appear to be comparable to those of n-butanol; no data are available on ocular exposure to the isobutyl alcohol vapor. Dermal application of isobutyl alcohol has caused slight erythema and hyperemia in humans (Schwartz and Tulipan 1939/Ex. 1–1167; Oettel 1936/Ex. 1–921).

OSHA is proposing to reduce the 8-hour TWA PEL for isobutyl alcohol of 100 ppm to 50 ppm in construction and maritime and also proposes a 50-ppm limit in agriculture. The Agency preliminarily concludes that a 50-ppm limit will reduce the significant risk of skin irritation, which is a material impairment of health that is associated with exposure to concentrations at levels above the revised PEL. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

ISOOCTYL ALCOHOL
CAS: 26952–21–6; Chemical Formula: $CH_3(CH_2)_3CH(C_2H_5)CH_2OH$
H.S. No. 1220

OSHA has no PEL for isooctyl alcohol in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 50 ppm, with a skin notation, for this substance. The proposed PEL is 50 ppm as an 8-hour TWA, with a skin notation, for isooctyl alcohol in construction, maritime, and agriculture. NIOSH concurs (Ex. 8–47, Table N1) with this limit, which was recently established for this substance in general industry.

Isooctyl alcohol is a clear, combustible liquid. It finds use as an ingredient in plasticizers, an intermediate for nonionic detergents and surfactants, and as an ingredient in a variety of oils and fluids (Hawley's 1987, p. 658).

The single-dose oral LD_{50}s for isooctyl alcohol reported for rats and mice are between 3.2 and 6.4 g/kg; intraperitoneal injection LD_{50}s for these species range from less than 0.4 g/kg to 1.6 g/kg (Hodge 1943/Ex. 1–700; Fassett 1951, as cited in ACGIH 1986/Ex. 1–3, p. 332). The dermal LD_{50} for the guinea pig is greater than 10 ml/kg (Fassett 1951, as cited in ACGIH 1986/Ex. 1–3, p. 332); in the rabbit, the dermal LD_{50} is 2.38 ml/kg (Smyth, Carpenter, Weil et al. 1969/Ex. 1–442). Moderate skin irritation from exposure to isooctyl alcohol has also been reported. Rats and rabbits have shown skin irritation at exposure levels ranging from 1.7 to 3.34 ml/kg (Smyth, Carpenter, Weil, et al. 1969/Ex. 1–442). Fassett (1951, as cited in ACGIH 1986/Ex. 1–3, p. 332) also reported no fatalities in rats after an 8-hour inhalation test at 235 ppm.

OSHA is proposing to establish an 8-hour TWA PEL of 50 ppm, with a skin notation, for isooctyl alcohol in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will reduce the significant risks of skin irritation, a material impairment of health that is associated with exposure to this substance at levels above the new PEL. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

N–ISOPROPYLANILINE
CAS: 768–52–5; Chemical Formula: $C_6H_5NHCH(CH_3)_2$
H.S. No. 1229

OSHA has no limit for N-isopropylaniline in construction, maritime, or agriculture. The ACGIH recommends a TLV®–TWA of 2 ppm, with a skin notation, for this substance. There is no NIOSH REL for this

substance. OSHA is proposing an 8-hour TWA PEL of 2 ppm, with a skin notation, for this substance in construction, maritime, and agriculture; NIOSH concurs (Ex. 8–47, Table N1) with the proposed limit. This is the limit recently established for this substance in general industry.

N–Isopropylaniline is a yellowish, combustible liquid that is used as an intermediate and fiber dye (Hawley's 1987, p. 661).

The oral LD_{50} for rats exposed to N-isopropylaniline is between 0.25 and 0.5 g/kg. Slight irritation of the skin and eyes has been reported in animals as a result of direct contact with this chemical (Dow Chemical Company 1977k, as cited in ACGIH 1986/Ex. 1–3, p. 338). No other data concerning chronic toxicity or human exposure are available (ACGIH 1986/Ex. 1–3, p. 338).

Chemical analysis shows N-isopropylaniline to have toxicologic properties similar to those of its parent compound, aniline. The oral LD_{50}s for the two chemicals are approximately equal. OSHA has established a 2-ppm 8-hour TWA PEL for N-isopropylaniline on the basis of its structural analogy with aniline (which has the same PEL) and N,N-dimethylaniline (which has a 5-ppm 8-hour TWA PEL and a 10-ppm 15-minute STEL); exposure to these substances has been shown to cause hemolytic and central nervous system effects in animals and humans. These substances are also toxic when absorbed through the skin.

OSHA is proposing an 8-hour PEL of 2 ppm for N-isopropylaniline, with a skin notation, in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of irritation and systemic and hemolytic effects, all material health impairments that are caused by inhalation, ingestion, or dermal absorption of N-isopropylaniline. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

KETENE

CAS: 463–51–4; Chemical Formula:

$CH_2=C=O$

H.S. No. 1231

OSHA's 8-hour TWA limit for ketene in construction and maritime is 0.5 ppm. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.5 ppm and a TLV®–STEL of 1.5 ppm for this substance. There is no NIOSH REL. In construction and maritime, OSHA is retaining the 8-hour TWA and proposing to add a 15-minute STEL of 1.5 ppm; the Agency is also proposing to extend both limits to agriculture. NIOSH concurs (Ex. 8–47, Table N–1) with the proposed limits, which are those recently established for this substance in general industry.

Ketene is a colorless gas with a sharp, penetrating odor. Ketene is used as an acetylating agent and as a starting point in the production of products such as acetic anhydride and acetate esters (ACGIH 1986, p. 341; Hawley's 1987, p. 672).

Ketene is highly irritating to the respiratory tract (Mendenhall and Stokinger 1959/Ex. 1–428), and the effects of its action are delayed (Treon, Sigmon, Kitzmiller 1949/Ex. 1–769). Mendenhall and Stokinger (1959/Ex. 1–428) have reported a 10-minute LC_{50} for mice of 17 ppm. Chronic exposure to 1 ppm for six months on a schedule of 6 hours/day, 5 days/week, was tolerated by animals of several species (Mendenhall and Stokinger 1960, as cited in ACGIH 1986/Ex. 1–3, p. 341). Similar results have been reported in monkeys exposed repeatedly (55 exposures) for seven hours at each exposure (Treon, Sigmon, and Kitzmiller 1949/Ex. 1–769). Evidence strongly suggests that the development of emphysema and fibrosis may occur in individuals who have developed a tolerance to the acute effects of ketene exposure (Stokinger, Wagner, and Dobrogarski 1957/Ex. 1–139).

In construction and maritime, OSHA is retaining the 8-hour TWA PEL of 0.5 ppm and proposing to add a 15-minute STEL of 1.5 ppm for ketene; OSHA is also proposing to extend both limits to agriculture. The Agency preliminarily concludes that workers exposed to this highly irritating and toxic gas are at significant risk of developing respiratory irritation, pulmonary edema, and other severe pulmonary effects that constitute material health impairments. OSHA preliminarily finds that both a TWA and STEL are required to protect workers in construction, maritime, and agriculture from ketene's acute and chronic health effects. The proposed limits are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

METHACRYLIC ACID

CAS: 79–41–4; Chemical Formula:

$CH_2=C(CH_3)COOH$

H.S. No. 1244

OSHA has no limit for methacrylic acid in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 20 ppm for this substance. There is no NIOSH REL. OSHA is proposing an 8-hour TWA PEL of 20 ppm for methacrylic acid in construction, maritime, and agriculture, and NIOSH concurs (Ex. 8–47, Table N1) that this limit is appropriate. This is the limit recently established for this substance in general industry.

Methacrylic acid is a liquid with an acrid, disagreeable odor. Metacrylic acid is used as a monomer for large volume resins and polymers and in organic synthesis (ACGIH 1986, p. 362; Hawley's 1987, p. 751).

The primary toxic hazard associated with exposure to methacrylic acid is irritation, although the degree of irritation from exposure to this substance is significantly less than that from exposure to acrylic acid (ACGIH 1986/Ex. 1–3, p. 362). Direct contact of methacrylic acid with the skin or eye can cause corrosion of the skin or blindness. In rabbits, the skin absorption LD_{50} for methacrylic acid is 0.5 to 1g/kg (Dow Chemical Company 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 362). Rats exposed by inhalation to approximately 1000 ppm of methacrylic acid exhibited eye irritation (Dow Chemical Company 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 362). Rats exposed to a 300 ppm concentration of this substance for 6 hours daily for 20 days showed slight congestion of the kidneys at autopsy (Gage 1970/ Ex. 1–318).

Medical reports of workers exposed acutely to concentrations of up to 113 ppm methacrylic acid in an industrial setting revealed that these workers experienced no respiratory symptoms; however, skin responses and a severe corneal burn were reported (Dow Chemical Company 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 362).

OSHA is proposing a PEL of 20 ppm as an 8-hour TWA for methacrylic acid, with a skin notation, in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of severe eye and skin irritation, which are material health impairments that are associated with occupational exposure to methacrylic acid. The skin notation is necessary to prevent dermal absorption and systemic toxicity. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

4-METHOXYPHENOL

CAS: 150–76–5; Chemical Formula:

$CH_3OC_6H_4OH$

H.S. No. 1247

OSHA has no limit for 4-methoxyphenol in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 5 mg/m³ for this

substance. There is no NIOSH REL, but NIOSH concurs with the proposed limit (Ex. 8–47, Table N1). In construction, maritime, and agriculture, OSHA is proposing a PEL of 5mg/m³; this is the limit recently established for this substance in general industry.

4-methoxyphenol is a white, waxy solid used in the manufacture of antioxidants, pharmaceuticals, plasticizers, and dyestuffs. 4-methoxyphenol is also used as a stabilizer for chlorinated hydrocarbons, as an inhibitor for acrylic monomers and acrylonitriles, and as a UV inhibitor (ACGIH 1986, p. 367; Hawley's 1987, p. 620).

In rats, the oral LD_{50} for 4-methoxyphenol is between 1 and 2 g/kg; the skin absorption LD_{50} in rabbits is greater than 1 g/kg. Results of a two-month dietary study demonstrated no ill effects at 0.1 ppm (approximately 50 mg/kg/day). Direct contact of 4-methoxyphenol with the skin or eyes causes burns or moderate corneal damage (Hodge, Sterner, Maynard, and Thomas 1949/ Ex. 1–41; Dow Chemical Company 1977n, as cited in ACGIH 1986/ Ex. 1–3, p. 367).

To reduce the risk of dermal and ocular effects resulting from exposure to 4-methoxyphenol, a compound similar in chemical structure and toxicity to hydroquinone, OSHA is proposing to establish a permissible exposure limit in construction, maritime, and agriculture of 5 mg/m³ as an 8-hour TWA. The Agency preliminarily concludes that this limit is necessary to protect workers in these sectors against the significant risk of dermal and skin effects potentially associated with exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL ACETYLENE-PROPADIENE MIXTURE (MAPP)

CAS: None; Chemical Formula: C_3H_4 isomers

H.S. No. 1250

OSHA has a PEL of 1000 ppm as an 8-hour TWA for MAPP in construction and maritime. There is no limit in agriculture. The ACGIH also has an 8-hour TLV®–TWA limit of 1000 ppm and a TLV®–STEL of 1250 ppm for this substance. There is no NIOSH REL. OSHA is retaining the 8-hour PEL of 1000 ppm, proposing to add a STEL of 1250 ppm for this substance in construction and maritime, and proposing to extend both limits to agriculture. NIOSH concurs (Ex. 8–47, Table N1) with the limits being proposed, which were recently established for MAPP in general industry.

MAPP contains 58 percent of a mixture of propadiene (a colorless, unstable gas with a strong, unpleasant odor) and methyl acetylene (a colorless gas with a sweet odor); the balance of the mixture consists of paraffinic and olefinic C_3 and C_4 hydrocarbons. Methyl acetylene-propadiene mixture is used as an industrial fuel for cutting, welding, brazing, heat treating, and metallizing (Hawley's 1987, p. 756).

Rabbits, dogs, and guinea pigs exposed to an average MAPP concentration of 5000 ppm for 7 hours/day, 5 days/week for 4 months showed no exposure-related effects except decreased lung weights at autopsy. No changes were observed in animals exposed to 1000 ppm on this regimen for four months (Dow Chemical Company 1964, as cited in ACGIH 1986/Ex. 1–3, p. 368).

On the basis of these data, which show MAPP to be a chemical mixture of low toxicity in experimental animals, the Agency is retaining its 8-hour TWA PEL of 1000 ppm and proposing to add a STEL of 1250 ppm in construction and maritime, and is also proposing to extend both limits to agriculture. The Agency preliminarily concludes that both of these limits are necessary to ensure that workers in these sectors are protected and that good industrial hygiene practice is maintained. In addition, promulgation of these limits will make OSHA's PELs for MAPP consistent across all regulated sectors.

METHYLAL (Dimethoxymethane)

CAS: 109–87–5; Chemical Formula: $CH_3OCH_2PC]_2$

H.S. No. 2108

The OSHA PEL for methylal in general industry, construction, and maritime is 1000 ppm as an 8-hour TWA. There is no limit for methylal in agriculture. The ACGIH has a TLV®–TWA of 1000 ppm for this substance. NIOSH has no REL for methylal, but concurs (Ex. 8–47, Table N1) with the PEL being proposed. OSHA is proposing a PEL of 1000 ppm as an 8-hour TWA for methylal in agriculture. Promulgation of this limit will make the PEL for methylal consistent across all OSHA-regulated sectors.

Methylal is a colorless, volatile, flammable liquid with a chloroform-like odor (Hawley's 1987, p. 756). Methylal is used as a specialized fuel, as a solvent in perfumes, adhesives, and coatings, and as a reaction medium for the Grignard and Reppe reactions in organic synthesis (Merck 1983, p. 864; ACGIH 1986, p. 371).

Methylal is an irritant of the eyes and mucous membranes and, at high concentrations, a central nervous system depressant in both humans and animals. The oral LD_{50} in rabbits is 5708 mg/kg; the LC_{50} in rats is 15,000 ppm for an unspecified period (RTECS 1987; Weaver et al. 1951, in Clayton and Clayton 1982, p. 2657). Exposure to a concentration of approximately 154,000 ppm methylal caused tearing of the eyes, sneezing, nasal discharge, coughing, and vomiting in guinea pigs; these animals became comatose in 20 minutes and died within 2.5 hours (Weaver et al. 1951, in Proctor, Hughes, and Fischman 1988, p. 319). In mice exposed to 15 daily 7-hour inhalation exposures to 11,000 ppm, minor irritation of the eyes and nose occurred and incoordination developed after 3 or 4 hours of exposure. Mice exposed to a 14,000-ppm concentration of methylal exhibited a greater degree of irritation and anesthesia (Weaver et al. 1951, in Clayton and Clayton 1982, p. 2657). Autopsy of guinea pigs exposed to very high but unspecified concentrations of methylal revealed moderate to severe fatty degeneration of the liver and kidneys, as well as extensive bronchopneumonia; however, no significant histopathological changes were noted in guinea pigs exposed for five daily 7-hour exposures to a 45,000-ppm concentration of methylal. Although methylal vapor is irritating to the eyes of experimental animals, no histological abnormalities of the optic nerve or retina have been reported (Weaver et al. 1951, in Clayton and Clayton 1982, p. 2657; Grant 1986, p. 606). In humans, methylal causes eye, mucous membrane, skin, and upper respiratory tract irritation; at high concentrations, central nervous system depression is observed. Methylal was formerly used as an anesthetic in human medicine; however, this use has been discontinued because the anesthetic effect of methylal is slower and more transitory than that of ether (Weaver et al. 1951, in Proctor, Hughes, and Fischman 1988, p. 319). Methylal has a defatting effect on the skin, and frequent or prolonged contact causes dermatitis (Proctor, Hughes, and Fischman 1988, p. 320).

Based on this evidence, OSHA is proposing a 1000 ppm 8-hour TWA limit to protect workers in agriculture from the significant risk of central nervous system depression caused by exposure to higher concentrations of methylal. The Agency preliminarily concludes that this limit is necessary to substantially reduce a significant risk of material health impairment. In addition, promulgation of this limit will make

OSHA's PEL for this substance consistent across all regulated sectors

METHYLAMINE

CAS: 74–89–5; Chemical Formula: CH_3NH_2

H.S. No. 2110

OSHA's PEL for methylamine in general industry, construction, and maritime is 10 ppm as an 8-hour TWA. There is no PEL for methylamine in agriculture. The ACGIH has a TLV®–TWA of 10 ppm for this substance. NIOSH has no REL for methylamine but concurs with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 10 ppm for methylamine in agriculture. Promulgation of this limit will make the PEL for methylamine consistent across all OSHA-regulated sectors.

Methylamine is a colorless, flammable gas with a fishy odor at low concentrations and an ammonia-like odor at high concentrations (Braker and Mossman 1980, p. 498). Methylamine is used as a chemical intermediate for accelerators, dyes, insecticides, fungicides, pharmaceuticals, and surface-active agents. It is also used as a fuel additive, a polymerization inhibitor, a solvent, a rocket propellant, a photographic developer, and a component of some paint removers (HSDB 1988).

Methylamine is an irritant of the eyes, mucous membranes, and respiratory tract in both humans and animals. Administered orally as the base in a 40 percent aqueous solution, the LD_{50} for rats is 0.1 to 0.2 g/k g; the LC_{50} in mice is 2400 mg/m³ for 2 hours (Clayton and Clayton 1982, p. 3148; RTECS 1987). Ocular damage, including hemorrhages of the conjunctiva, shallow corneal opacities, and edema have resulted from the administration of a single drop of 5 percent methylamine in water into the eyes of experimental animals (Grant 1986, p. 606). Corneal damage occurred in rabbit eyes after contact with a 40-percent methylamine solution, and necrosis of the skin developed in rabbits whose skin had been wetted with 0.1 milliliter of the same solution (Smyth and Carpenter 1944. In contact with liquefied methylamine, guinea pig skin swelled and turned purple after a few minutes. The skin turned gray and necrotic after 48 hours; fresh granulation tissue covered by flat epidermis, with no hair follicles, appeared 12 days after the exposure (Goffman and Maguire 1980, in HSDB 1988).

Human toxicity data for methylamine are limited. A chemical worker exposed to methylamine at concentrations ranging from 2 to 60 ppm for an unspecified period of time developed allergic or chemical bronchitis (ACGIH 1986, p. 373). Transient eye, nose, and throat irritation occurs when humans are exposed for brief periods to concentrations ranging from 20 to 100 ppm, although exposures to methylamine concentrations below 10 ppm do not cause irritation. Severe exposure to methylamine would be expected to cause pulmonary edema. Prolonged or repeated exposure of the skin or eyes causes dermatitis or inflammation of the conjunctiva, respectively (Proctor, Hughes, and Fischman 1988, p. 321).

Based on this evidence, OSHA is proposing a 10 ppm 8-hour TWA PEL to protect workers in agriculture from the significant risk of eye, nose, and respiratory tract irritation caused by exposure to methylamine. The Agency preliminarily concludes that this limit is necessary to substantially reduce a significant risk of material health impairment in exposed workers. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL DEMETON

CAS: 8022–00–2; Chemical Formula: $(CH_3O)_2PSO(CH_2)_2SC_2H5$

H.S. No. 1256

OSHA has no limit for methyl demeton in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.5 mg/m³, with a skin notation. There is no NIOSH REL, but NIOSH concurs (Ex. 8–47, Table N1) with the proposed limit. OSHA is proposing an 8-hour TWA of 0.5 mg/m³, and a skin notation, for methyl demeton in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Methyl demeton is an oily, colorless to pale-yellow liquid with an unpleasant odor. Methyl demeton is used as a systemic insecticide and acaricide (ACGIH 1986, p. 388; Hawley's 1987, p. 766). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Methyl demeton has an oral LD_{50} of 40 to 65 mg/kg for the thiolo-isomer and 150 to 250 mg/kg for the thiono-isomer. Both isomers form sulfoxide or sulfone, with an oral LD_{50} similar to that of the parent compounds (Dubois and Pizak 1962/Ex. 1–629; Heath and Vandekar 1965, Klimmer and Plaff 1955, both as cited in ACGIH 1986/Ex. 1–3, p. 388). In solution or storage, methyl demeton may form alkyl sulfonium compounds that have very high intravenous toxicity and oral LD_{50}s of 10 to 20 mg/kg. Dermal toxicity is reported to be moderate, with an LD_{50} of approximately 400 mg/kg (Heath and Vandekar 1965, as cited in ACGIH 1986/Ex. 1–3, p. 388).

In humans, methyl demeton causes changes in intraocular pressure, and acute poisonings produce nausea, headache, dizziness, vomiting, and hyperemia of the nasal mucosa. Chronic exposure causes hyperemia of the respiratory organs and irritation of the inner ear (Dugel'nyy 1970; Rasuleva 1970, both as cited in ACGIH 1986/Ex. 1–3, p. 388).

OSHA is proposing an 8-hour TWA PEL for methyl demeton of 0.5 mg/m³, with a skin notation, in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in this sectors from the significant risk of ocular and nasal irritation, pulmonary effects, and cholinesterase inhibition, all of which constitute material impairments of health that are associated with occupational exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYLENE BISPHENYL ISOCYANATE (MDI)

CAS: 101–68–8; Chemical Formula: $CH_2(C_6H_4NCO)_2$

H.S. No. 2109

OSHA's permissible exposure limit (PEL) for methylene bisphenyl isocyanate in general industry, construction, and maritime is 0.02 ppm (0.2 mg/m³) as a ceiling limit. There is no limit for this substance in agriculture. The ACGIH has assigned methylene bisphenyl isocyanate a TLV®–TWA of 0.005 ppm (0.050 mg/m³) (ACGIH 1989, p. 30). NIOSH has recommended exposure limits of 50 μg/m³ (0.005 ppm) as a 10-hour TWA and 200 μg/m³ (0.02 ppm) as a 10-minute ceiling limit for methylene bisphenyl isocyanate (NIOSH Recommendations 1988); however, NIOSH concurs with the limit being proposed by OSHA (Ex. 8–47, Table N1). OSHA is proposing a PEL of 0.02 ppm (0.2 mg/m³) as a ceiling limit for methylene bisphenyl isocyanate in agriculture. Promulgation of the proposed limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Methylene bisphenyl isocyanate is an odorless white to light-yellow solid (ACGIH 1986, p. 389(88)). Methylene bisphenyl isocyanate is used in the production of polyurethane foams and plastics. It is also used in coating systems for aircraft, tank trucks, automobiles, and truck trailers (Proctor,

Hughes, and Fischman 1988, p. 330; IARC 1979, Vol. 19, p. 317).

In both humans and animals, methylene bisphenyl isocyanate is an irritant of the skin, eyes, and mucous membranes; it is also a respiratory and skin sensitizer. The 4-hour LC_{50}s in rats are 36.2 ppm (males) and 37.3 ppm (females) (NIOSH 1978). By oral administration, methylene bisphenyl isocyanate is of low toxicity: the oral LD_{50} in rats is greater than 10 g/kg, and rats given oral doses of 5 g/kg/day methylene bisphenyl isocyanate for 5 days survived (Woolrich 1982). Undiluted methylene bisphenyl isocyanate applied to the skin of rabbits caused mild irritation that cleared within 5 days, and the application of 1 mg of a 10-percent methylene bisphenyl isocyanate solution to rabbit eyes produced mild inflammation and tearing but no permanent injury (Woolrich 1982). Administered to guinea pigs by intradermal injection, to mice by skin painting, or to dogs by intrabronchial instillation, methylene bisphenyl isocyanate elicits an immune sensitization response that is characterized by the development of antibodies specific to methylene bisphenyl isocyanate-serum albumin conjugate (Chang and Karol 1984; Thorne, Yeske, and Karol 1987).

Acute exposure to a concentration of 0.001 to 0.026 ppm methylene bisphenyl isocyanate caused eye, nose, and throat irritation in 34 of 35 exposed individuals and shortness of breath in 17 members of the exposed group (NIOSH 1978). Humans exposed to the vapors of methylene bisphenyl isocyanate may develop pulmonary irritation (characterized by increased lung and respiratory tract secretions, coughing, pain on breathing, and, if overexposure is severe, a reduction in breathing rate) and/or allergic sensitization (characterized by cold- or hayfever-like symptoms and asthma, hives, atopic eczema, and allergic reactions) (Woolrich 1982). Estimates of the percentage of occupationally exposed individuals likely to develop sensitization reactions to this substance range from 2 to 20 percent. Workers sensitized to methylene bisphenyl isocyanate are also likely to develop cross-reactivities to other isocyanates, such as toluene diisocyanate or hexamethylene diisocyanate (Woolrich 1982). For example, 12 of 25 individuals sensitized to toluene diisocyanate showed marked declines in lung function when exposed to a methylene bisphenyl isocyanate concentration of 0.009 to 0.02 ppm for 15 to 60 minutes (Innocenti et al. 1988). Exposure to airborne methylene bisphenyl isocyanate concentrations below 0.1 ppm may cause sensitization in susceptible workers, while exposure to concentrations between 0.1 and 1.0 ppm may cause respiratory tract and mucous membrane irritation in all exposed individuals (Woolrich 1982). Workers exposed to both methylene bisphenyl isocyanate and toluene diisocyanate for at least 1 year at concentrations that occasionally exceeded 0.8 ppm had decrements in pulmonary function and an increased frequency of bronchitis compared with non-exposed workers; however, workers exposed to average methylene bisphenyl isocyanate and toluene diisocyanate concentrations of less than 0.003 ppm for 5 years showed no decrement in pulmonary function (Banks, Butcher, and Salvaggio 1986; Musk et al. 1982). Workers who have become sensitized to methylene bisphenyl isocyanate develop either an acute asthma-like response or sensitization pneumonitis when subsequently exposed to this substance; the asthmatic attacks may occur immediately or have a delayed onset, and the pneumonitis is characterized by fever, an increased white blood cell count, an increase in the number of neutrophils observed in bronchoalveolar lavage fluid, and an increase in breathing resistance (Genium MSDS 1980, No. 1105). Workers whose skin has been exposed repeatedly to methylene bisphenyl isocyanate may develop contact eczema (Rothe 1976, in ACGIH 1986, p. 390(86)).

Based on this evidence in humans and animals, OSHA preliminarily concludes that methylene bisphenyl isocyanate causes irritation and both skin and pulmonary sensitization. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these effects. OSHA believes that establishing a PEL of 0.02 ppm (0.2 mg/m^3) as a ceiling limit is necessary to substantially reduce these risks of material health impairments. Promulgation of this limit will also make the PEL for methylene bisphenyl isocyanate consistent across all regulated sectors.

METHYL ETHYL KETONE PEROXIDE
CAS: 1338–23–4; Chemical Formula: $C_8H_{18}O_6$
H.S. No. 1257

OSHA has no limit in construction, maritime, or agriculture for methyl ethyl ketone peroxide (MEKP). The ACGIH has a TLV®-ceiling of 0.2 ppm for this substance. There is no NIOSH REL. OSHA is proposing a ceiling limit of 0.7 ppm for this substance in construction, maritime, and agriculture. NIOSH concurs (Ex. 8–47, Table N1) with this limit, which was recently established for this substance in general industry.

MEKP is sold commercially as a colorless liquid mixture consisting of approximately 60 percent MEKP and 40 percent diluent; the diluent is added to reduce MEKP's sensitivity to shock. Methyl ethyl ketone peroxide is used in the manufacture of acrylic resins and as a hardening agent for fiber glass reinforced plastics (Hawley's 1987, p. 769). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The health effects data for MEKP in animals rely primarily on a study conducted in 1958 by Floyd and Stokinger (Ex. 1–783). In a series of experiments conducted in rats, mice, and rabbits to determine the toxicity of MEKP by various routes of exposure, these investigators found that inhalation exposure for 4 hours to a concentration of 200 ppm was fatal to 50 percent of rats, and a 4-hour exposure to 170 ppm was fatal to 50 percent of mice. Inhalation of MEKP vapors produced petechial and gross hemorrhages of the lungs in rats after four-hour exposures; liver and kidney damage was also observed (Floyd and Stokinger 1958/Ex. 1–783). Two drops of a 40-percent solution of MEKP in dimethyl phthalate caused severe damage when instilled in rabbits' eyes, but at 3 percent, a moderate, transient reaction was produced. The direct application of MEKP to closely shaved rabbit skin caused no immediate discomfort but did cause a severe delayed reaction, consisting of erythema, edema, and vesiculation within 2 or 3 days; of the four organic peroxides tested (di-t-butyl peroxide, t-butyl hydroperoxide, cumene hydroperoxide, and methyl ethyl ketone peroxide), MEKP exhibited the greatest toxicity. The maximal nonirritating strength of MEKP applied dermally was 0.6 percent. In addition, rats died or showed marked evidence of cumulative systemic effects after either oral or intraperitoneal administration of MEKP at 20 percent of the LD_{50} level for 3 days/week for 7 weeks (Floyd and Stokinger 1958/Ex. 1–783). The study of MEKP's toxicity performed by Floyd and Stokinger (1958/Ex. 1–783) was a thorough and comprehensive bioassay involving three species (mice, rats, and rabbits) and five routes of exposure (inhalation, intraperitoneal, oral, dermal, and eye contact). This study demonstrated that MEKP was 20- to 50-fold more acutely toxic than di-t-butyl peroxide by all routes tested. The

consequences of exposure to this substance ranged from skin and eye irritation to gross hemorrhage of the lung and liver and kidney damage; OSHA notes that these effects were observed even after short-term exposures. The Floyd and Stokinger study (1958/Ex. 1–783) demonstrated that MEKP is significantly more toxic than benzoyl peroxide (PEL of 5 mg/m^3) and resembles hydrogen peroxide (PEL of 1.4 mg/m^3) in terms of its potential to cause irritation on an acute basis. A study by Moskowitz and Grabois (1950, as cited in ACGIH 1986/Ex. 1–3, p. 54) showed that exposure to 12.2 mg/m^3 benzoyl peroxide caused "pronounced irritation of the nose and throat" in workers; because MEKP is significantly more irritant than benzoyl peroxide, MEKP concentrations considerably below the 12 mg/m^3 level can be expected to cause irritation as well.

OSHA has preliminarily concluded that the available data support the proposed ceiling PEL for MEKP 0.7 ppm. Because MEKP is more irritating than benzoyl peroxide and irritation can result from even very brief exposures to excessive concentrations of MEKP, OSHA also preliminarily concludes that a ceiling limit for MEKP is necessary and appropriate. Therefore, to reduce the significant risk of irritation to workers in construction, maritime, and agriculture who are exposed to MEKP, OSHA is proposing a 0.7 ppm ceiling PEL for MEKP in these sectors. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL FORMATE

CAS: 107–31–3; Chemical Formula: $HCOOCH_3$

H.S. No. 1258

OSHA has a limit of 100 ppm TWA as an 8-hour for methyl formate in construction and maritime. There is no limit in agriculture. The ACGIH also has an 8-hour TLV®–TWA of 100 ppm, with a TLV®–STEL of 150 ppm. OSHA is retaining the 8-hour TWA of 100 ppm for methyl formate and proposing to add a STEL of 150 ppm for this substance in construction and maritime; OSHA is also proposing both limits in agriculture. NIOSH concurs (Ex. 8–47, Table N1) that these limits, which were recently established for methyl formate in general industry, are appropriate.

Methyl formate is a flammable, colorless liquid with an agreeable odor. Methyl formate is used as a fumigant and larvicide. It is also used in organic synthesis and as a cellulose acetate solvent (ACGIH 1986, p. 397; Hawley's 1987, p. 770). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Methyl formate causes nose and eye irritation, vomiting, incoordination, narcosis, and death in guinea pigs exposed to high concentrations (Schrenk, Yant, Chornyak, and Patty 1936/Ex. 1–756). Exposure to a 5-percent concentration of methyl formate was fatal in 20 to 30 minutes, a 1.5- to 2.5-percent concentration was dangerous in 30 to 60 minutes, and a 0.5 percent concentration (5000 ppm) was considered the maximum concentration tolerable for a 60-minute period without serious consequences. Lehmann and Flury (1943b/Ex. 1–963) observed that inhalation of a 1.02 percent concentration of methyl formate for two to three hours caused pulmonary edema and death in cats; a concentration of 1600 ppm resulted in lung inflammation after one hour. Guinea pigs died when exposed by inhalation to a 2.5 percent concentration of methyl formate (Lehmann and Flury 1943b/Ex. 1–963).

In studies of methyl formate exposure in humans, von Oettingen (1959/Ex. 1–499) reported that workers exposed to unspecified concentrations showed temporary blindness, narcosis, mucous membrane irritation, and dyspnea. Fairhall (1957c/ Ex. 1–1107) has reported that methyl formate is more irritating than either methyl or ethyl acetate.

OSHA is retaining the 8-hour PEL of 100 ppm TWA and proposing to add a STEL of 150 ppm for methyl formate in construction and maritime; the Agency is also proposing to extend both limits to agriculture. OSHA believes that these PELs will prevent the significant risks of irritation, narcotic effects, and pulmonary damage, all of which constitute material health impairments, confronting workers in these sectors who are exposed to methyl formate. The Agency preliminarily concludes that these limits will substantially reduce these significant risks. In addition, promulgation of these limits will make OSHA's PELs for methyl formate consistent across all regulated sectors.

METHYL IODIDE

CAS: 74–88–4; Chemical Formula: CH_3I

H.S. No. 1259

OSHA has an 8-hour TWA limit of 5 ppm, and a skin notation, for methyl iodide in construction and maritime operations. The ACGIH has a TLV®–TWA of 2 ppm, with a skin notation, for methyl iodide and classifies it as a suspected human carcinogen (A2). NIOSH recommends reducing exposure to this substance to the lowest feasible limit and also considers this chemical a potential human carcinogen. OSHA is proposing an 8-hour TWA PEL of 2 ppm, with a skin notation, for methyl iodide in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Methyl iodide is a colorless, sweet-smelling liquid that turns yellow, red, or brown when exposed to light and moisture. Methyl iodide is used in microscopy, organic synthesis, and in testing for pyridine (ACGIH 1986, p. 399(86); Hawley's 1987, p. 772).

Methyl iodide has an LD_{50} in rats of 150 to 200 mg/kg; liver damage was evident after these lethal exposures (Kutob and Plaa 1962/Ex. 1–61). A 15-minute exposure to a concentration of 3800 ppm was fatal to rats (Chambers et al. 1950, as cited in ACGIH 1986/Ex. 1–3, p. 399), and Bachem (1927/Ex. 1–1013) has reported that methyl iodide is six times as toxic in mice as methyl bromide. Inhalation studies have shown eye irritation and depressed body weight in rats as a result of 14-week exposures to 30 and 60 ppm (Blank, Nair, Roloff, and Ribelin 1984/Ex. 1–619). The same authors observed fatalities in rats within four weeks of exposure to 143 ppm; 10 ppm was reported to be a no-effect level.

In industry, fatalities have occurred in chemical workers exposed to methyl iodide poisoning (Garland and Camps 1945/Ex. 1–1190; Appel, Galen, O'Brien, and Schoenfeldt 1975/Ex. 1–1076). However, the exposure levels associated with these fatal overexposures are not known (ACGIH 1986/Ex. 1–3, p. 399).

In tests of carcinogenicity, methyl iodide produced local sarcomas in rats injected subcutaneously and lung tumors in mice given intraperitoneal injections (Druckrey, Kruse, Preussman et al. 1970/Ex. 1–246; Poirier, Stoner, and Shimkin 1975/Ex. 1–686). These carcinogenic effects occurred at a dosage approximately equivalent to a daily 8-hour exposure to 20 or 25 ppm for an adult human (ACGIH 1986/Ex. 1–3, p. 399).

OSHA is proposing an 8-hour TWA limit of 2 ppm, and a skin notation, for methyl iodide in construction, maritime, and agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of irritation and liver and kidney damage, which are material impairments of health associated with occupational exposure to methyl iodide. The skin notation is needed to prevent dermal absorption of toxic amounts of methyl iodide. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL ISOAMYL KETONE
CAS: 110-12-3; Chemical Formula: $CH_3COCH(C_2H_5)_2$
H.S. No. 1260

OSHA has a TWA-PEL of 100 ppm for methyl isoamyl ketone (MIAK) in construction and maritime. There is no limit in agriculture. The ACGIH has established an 8-hour TLV®-TWA of 50 ppm for MIAK, and this is also the REL recommended by NIOSH. OSHA is proposing a PEL of 50 ppm as an 8-hour TWA for this substance in construction, maritime, and agriculture, and NIOSH concurs with this limit (Ex. 8-47, Table N1). This is the PEL recently established for this substance in general industry.

Methyl isoamyl ketone is a colorless, clear liquid with a pleasant odor. Methyl isoamyl ketone is used as a solvent for cellulose esters, acrylics, and copolymers (ACGIH 1986, p. 400).

The oral LD_{50} for methyl isoamyl ketone in rats is 3.2 g/kg (RTECS 1991). The lowest lethal concentration in rats is 4000 ppm for 4 hours (RTECS 1991). Instilled into the eyes of rabbits, MIAK caused corneal damage rated 2 on an ascending severity of 1 to 10 (Grant 1974, p. 1166). Experimental animals exposed to high (not further specified) concentrations of ketones including MIAK show emphysematous changes to the lungs and damage to the liver, kidneys, and brain at autopsy (HSDB 1991). The dermal LD_{50} in rabbits is 10 g/kg (RTECS 1991).

No data relating exposure levels to specific effects in humans have been reported. However, the ACGIH (1986/Ex. 1-3, p. 400) believes that MIAK is likely to be more irritating and a more potent narcotic than is the case for methyl isobutyl ketone.

The NIOSH criteria document on the ketones (1978f) states that "because methyl isoamyl ketone contains one more carbon atom than does methyl isobutyl ketone, methyl (isoamyl) ketone might produce irritation and narcosis at concentrations at least as low as those at which methyl isobutyl ketone produces these effects" (NIOSH 1978f).

OSHA is proposing an 8-hour TWA limit of 50 ppm for methyl isoamyl ketone in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of narcotic and irritant effects, which constitute material health impairments that are associated with occupational exposure to MIAK. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL ISOPROPYL KETONE
CAS: 563-80-4; Chemical Formula: $(CH_3)_2CHCOCH_3$
H.S. No. 1262

OSHA has no limit for methyl isopropyl ketone (MIPK) in construction, maritime, or agriculture. The ACGIH has a TLV®-TWA of 200 ppm. NIOSH has no REL. In construction, maritime, and agriculture, OSHA is proposing a PEL of 200 ppm as an 8-hour TWA; NIOSH concurs (Ex. 8-47, Table N1) with this limit. This is the PEL recently established for MIPK in general industry.

Methyl isopropyl ketone (also called 3-methyl-2-butanone) is a colorless, flammable liquid. This substance is used as a solvent for nitrocellulose lacquers (ACGIH 1986, p. 405).

Animal studies have shown that MIPK has an acute toxicity somewhat greater than that of diethyl ketone and somewhat less than that of di-n-propyl ketone or methyl-n-propyl ketone (ACGIH 1986/Ex. 1-3, p. 405). The oral LD_{50} in rats is 149 mg/kg, and the dermal LD_{50} in rabbits is 6350 mg/kg (RTECS 1991). Rats exposed for four hours at a concentration of 5700 ppm died (NIOSH 1977i, Ex. 1-1182). In contact with the skin of rabbits, this substance caused a moderate degree of irritation (RTECS 1991). Instilled into rabbit eyes, it caused mild irritation (RTECS 1991). Humans exposed to unspecified concentrations of MIPK develop slight eye irritation and skin irritation that ranges from mild to moderate (Clayton and Clayton 1981, p. 4738).

OSHA is proposing a PEL of 200 ppm (8-hour TWA) for methyl isopropyl ketone in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of irritation, a material health impairment that is associated with exposure to this ketone at the uncontrolled levels possible in the absence of a PEL. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

METHYL PARATHION
CAS: 298-00-0; Chemical Formula: $C_8H_{10}NO_5PS$
H.S. No. 1265

OSHA has no limit for methyl parathion in construction, maritime, or agriculture. The ACGIH has a TLV®-TWA of 0.2 mg/m³, with a skin notation, for methyl parathion, and NIOSH also recommends a TWA of 0.2 mg/m³. In construction, maritime, and agriculture, the proposed PEL is an 8-hour TWA limit of 0.2 mg/m³, with a skin notation; NIOSH concurs (Ex. 8-47, Table N1) with this limit, which is identical to the PEL recently established for this substance in general industry.

Methyl parathion is a tan to brown liquid with a pungent odor like that of garlic. This substance is used as a nonsystemic insecticide, especially for Cotton (Hawley's 1987, p. 777; Hayes 1982, p. 339). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Methyl parathion is an acetylcholinesterase inhibitor, and excessive exposure can cause sweating, salivation, diarrhea, bradycardia, bronchoconstriction, muscle fasciculations, and coma. Methyl parathion's acute oral LD_{50} in male rats is almost identical to that of parathion (i.e., 10 to 25 mg/kg); in female rats, the LD_{50} is 24 mg/kg, or approximately one-sixth that of parathion. By the dermal route, methyl parathion is much less toxic than parathion, with an LD_{50} of 67 mg/kg in rats of both sexes (Hayes 1963/Ex. 1-982). Erythrocyte cholinesterase activity was inhibited in dogs fed methyl parathion for 12 weeks at a rate corresponding to approximately 24 mg/day; inhibition of both plasma and erythrocyte cholinesterase activity occurred at doses of 70 mg/day, without accompanying illness (Williams, Fuyat, and Fitzhugh 1959/Ex. 1-810). Dogs fed 6 mg/day methyl parathion for 12 weeks showed no effects from such exposures (Williams, Fuyat, and Fitzhugh 1959/Ex. 1-810). Lifetime feeding studies of rats and mice fed diets containing methyl parathion concentrations of up to 40 ppm and up to 125 ppm, respectively, produced no evidence of cancer (NCI 1979a/Ex. 1-1116).

Plasma and erythrocyte cholinesterase levels did not differ by more than 20 percent in subjects exposed at 7, 7.5, 8, or 9 mg/man/day, compared with controls (Moeller and Rider 1963/Ex. 1-565). Tiess, Wegener, and Tamme (1982/Ex. 1-774) have reported a case of protracted methyl parathion poisoning resulting from both percutaneous and inhalation exposures; Dille and Smith (1964/Ex. 1-549) attribute the long-term neuropsychiatric illness of two pilots to exposure to methyl parathion and other cholinesterase-inhibiting agents. Chronic exposure to small doses of methyl parathion have not caused chromosomal effects (de Cassia Stocco, Becak, Gaeta, and Rabello-Gay 1982/Ex. 1-540).

In construction, maritime, and agriculture, OSHA is proposing a limit of 0.2 mg/m³ TWA for methyl parathion, with a skin notation. The Agency

preliminarily concludes that this limit will protect workers in these sectors against the significant risk of acetylcholinesterase inhibition, which constitutes a material impairment of health that is associated with workplace exposures to this substance. The skin notation will protect workers from the significant risk of systemic toxicity associated with percutaneous absorption of this substance. In addition, promulgation of this limit will make OSHA's PEL for methyl parathion consistent across all regulated sectors.

METHYLCYCLOHEXANE

CAS: 108–87–2; Chemical Formula: C_7H_{14}

H.S. 1268

OSHA has an 8-hour TWA limit of 500 ppm for methylcyclohexane in construction and maritime, and the ACGIH has a TLV®–TWA of 400 ppm for this substance. There is no OSHA limit in agriculture. NIOSH has no REL, but concurs (Ex. 8–47, Table N1) with the limit being proposed. The proposed PEL for this substance in construction, maritime, and agriculture is 400 ppm. This is the limit recently established for methylcyclohexane in general industry.

Methylcyclohexane is a colorless liquid that is used as a solvent for cellulose esters and in organic synthesis (ACGIH 1986, p. 384).

Lehmann and Flury (1943e, as cited in ACGIH 1986/Ex. 1–3, p. 384) indicate that the acute toxicity of methylcyclohexane is greater than that of heptane but less than that of octane. Lazarew (1929/Ex. 1–1059) found that a 2-hour exposure to a concentration of 7500 to 10,000 ppm caused prostration in mice, and exposure to 10,000 to 12,500 ppm caused death. Treon, Crutchfield, and Kitzmiller (1943b/Ex. 1–394) reported that exposure to 1200 ppm had no effect in rabbits and that prolonged exposures to 370 ppm had no effect in monkeys. Methylcyclohexane's histologic effects in animals resemble those of cyclohexane; the liver and kidney are the sites affected (ACGIH 1986/Ex. 1–3, p. 384).

OSHA is proposing to establish an 8-hour TWA limit of 400 ppm for methylcyclohexane in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of irritation, a material health impairment that is associated with exposure to methylcyclohexane. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

2-METHYLCYCLOPENTADIENYL MANGANESE TRICARBONYL (as Mn)

CAS: 12108–13–3; Chemical Formula: $(CH_3)C_5H_4-Mn(CO)_3$

H.S. No. 1271

OSHA has no limit for 2-methylcyclopentadienyl manganese tricarbonyl (MCT) in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.2 mg/m³, measured as manganese, with a skin notation. There is no NIOSH REL. The proposed PEL for this substance in construction, maritime, and agriculture is 0.2 mg/m³ as an 8-hour TWA, with a skin notation. NIOSH concurs (Ex. 8–47, Table N1) with the proposed limit, which is identical to the PEL recently established for this substance in general industry.

MCT, also called Cl-2, is a dark orange liquid with a faintly pleasant odor; it is a complex organic compound containing about 25 percent manganese by weight. MCT is used as a gasoline additive.

MCT is highly toxic in its concentrated form, causing adverse effects primarily on the central nervous system. It is somewhat irritating to the eyes, but skin contact does not produce irritation or sensitization; however, MCT is readily absorbed through the skin (ACGIH 1986/Ex. 1–3, p. 387). Animal studies indicate that MCT has a toxicity similar to that of tetraethyl lead and is highly toxic by all routes of exposure (U.S. Navy Smoke Abatement Additive, as cited in ACGIH 1986/Ex. 1–3, p. 387).

The single-dose oral LD_{50} for rats is 23 or 39 mg/kg, depending on sex. The skin LD_{50} for rabbits is 1692±145 mg/kg, and the 1-hour inhalation LC_{50} for rats is about 350 mg/m³ (the Ethyl Corporation, as cited in ACGIH 1986/Ex. 1–3, p. 387). Toxic exposures by all routes produce rapidly appearing symptoms of mild excitement, hyperactivity, tremors, severe clonic spasms, weakness, respiratory distress, and occasional clonic convulsions, followed by terminal coma (U.S. Navy Smoke Abatement Additive, as cited in ACGIH 1986/Ex. 1–3, p. 387).

Acute exposure causes damage to the liver, kidneys, and cerebral cortex, as well as changes in lung tissue (ACGIH 1986/Ex. 1–3, p. 387). Browning (1966/Ex. 1–1018) observed chronic bronchitis, peribronchitis, interstitial pneumonia, and lung abscesses in animals that subsequently died from long-term inhalation exposure to MCT; exposure to MCT concentrations of approximately 12 mg/m³ for 100 days produced no deviation in weight gain patterns and no gross or microscopic changes in two dogs (Browning 1966/Ex. 1–1018). The liver and kidneys are the principal target organs associated with acute overexposures; at autopsy, the lungs of overexposed animals were hemorrhagic (Browning 1966/Ex. 1–1018).

In humans, skin contact with MCT should be entirely avoided. A 5- to 15-ml spill on one worker's hand and wrist was reported to have caused "thick tongue," nausea, giddiness, and headache within 3 to 5 minutes (U.S. Navy Smoke Abatement Additive, as cited in ACGIH 1986/Ex. 1–3, p. 387).

OSHA is proposing a PEL of 0.2 mg/m³ TWA, measured as manganese, and a skin notation for 2-methylcyclopentadienyl manganese tricarbonyl in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of CNS effects and systemic damage, which constitute material health impairments that are associated with occupational exposure to MCT. A skin notation is necessary because of MCT's demonstrated ability to penetrate human skin rapidly and to cause systemic effects. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

MONOCROTOPHOS (AZODRIN)

CAS: 6923–22–4; Chemical Formula: $C_7H_{14}NO_5P$

H.S. No. 1279

OSHA has no limit for monocrotophos (also called Azodrin) in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.25 mg/m³ for this substance. There is no NIOSH REL. The proposed PEL is 0.25 mg/m³ as an 8-hour TWA for monocrotophos in construction, maritime, and agriculture. NIOSH concurs (Ex. 8–47, Table N1) with this limit, which was also recently established for this substance in general industry.

Monocrotophos is a reddish brown liquid with a mild ester odor. It is used as a systemic insecticide to control certain insects on cotton plants (ACGIH 1986, p. 416; Hawley's 1987, p. 110). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Monocrotophos is a highly toxic, direct acting cholinesterase inhibitor that penetrates the intact skin (ACGIH 1986/Ex. 1–3, p. 416). The acute oral LD_{50} values in rats and mice range from 5.7 to 17 mg/kg in a water formulation (Brown et al. 1970, Shellenberger and Newell, both as cited in ACGIH 1986/Ex. 1–3, p. 416) and from 10 to 23 mg/kg in an oil formulation (Shellenberger and Newell,

as cited in ACGIH 1986/Ex. 1–3, p. 416). These authors also report a percutaneous LD_{50} in the rabbit that ranges from 112 to 709 mg/kg, depending on the vehicle used. A two-year dietary study of rats ingesting 0, 1, 10, or 100 ppm monocrotophoe revealed that both sexes in the 100 ppm group failed to gain as much weight as the controls, but autopsy showed no significant findings; plasma, erythrocyte, and brain cholinesterase decreased at the two highest dose levels but were unaffected at 1 ppm (Johnston 1966–67, as cited in ACGIH 1986/Ex. 1–3, p. 416). Another two-year feeding study in dogs administered doses of up to 16 ppm monocrotophos revealed no adverse effects at levels of 0.16 and 1.6 ppm, but serious cholinesterase reduction was observed at the 16-ppm level (Johnston 1966–67, as cited in ACGIH 1986/Ex. 1–3, p. 416). Metabolism studies in rats and goats indicate that monocrotophos is excreted rapidly in the rat and does not accumulate in the body (Bull and Lindquist 1966/Ex 1–719); goats given labeled monocrotophos by mouth showed only traces of the material in their milk (Menzer and Casida 1965/Ex. 1–986; Potter, as cited in ACGIH 1986/Ex. 1–3, p. 416). Inhalation exposure of rats to an unknown concentration of 75 percent monocrotophos in air for one hour was not lethal; a four-hour exposure to an unknown concentration of the aerosol (0.4 and 0.75 percent) was fatal to two out of six (0.4 percent aerosol) and five out of eight rats (0.75 percent aerosol). Head-only exposure to the 0.4-percent aerosol resulted in the death of one of eight animals (Wilson, as cited in ACGIH 1986/Ex. 1–3, p. 416).

Intravenous injection of radiolabeled monocrotophos in human volunteers showed maximum excretion at 4 to 8 hours, with 67±5 percent of the material in the urine; absorption of 14±7 percent occurred when the radiolabeled material was applied to the forearm; 33±9 percent of the applied dose was absorbed when it was covered with a vapor-proof film for 72 hours (Maibach 1970, as cited in ACGIH 1986/Ex. 1–3, p. 416). Although gauze patches attached to the clothing and skin of field workers attested to the presence of monocrotophos, no cholinesterase inhibition was observed in post-exposure examinations at 3 hours and at three and seven days (Maibach, as cited in ACGIH 1986/Ex. 1–3, p. 416).

OSHA is proposing a PEL of 0.25 mg/m^3 (8-hour TWA) for monocrotophos in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of cholinesterase inhibition, a material impairment of health that is associated with exposure to this substance in the workplace. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

MORPHOLINE

CAS: 110–91–8; Chemical Formula: C_4H_9NO

H.S. No. 1281

In construction and maritime, OSHA has a limit of 20 ppm, with a skin notation, for morpholine. There is no limit in agriculture. The ACGIH has a 20-ppm TLV®–TWA limit and a TLV®–STEL of 30 ppm, as well as a skin notation. There is no NIOSH REL. OSHA is retaining the 8-hour TWA PEL of 20 ppm, and the skin notation, in construction and maritime, is proposing to add a STEL of 30 ppm in these two sectors, and is also proposing both limits and the skin notation in agriculture. NIOSH concurs (Ex. 8–47, Table N1) that these limits are appropriate. These are the limits recently established for morpholine in general industry.

Morpholine is a colorless liquid with an amine-like odor. Morpholine is used as a rubber accelerator, a solvent, an additive to boiler water, a corrosion inhibitor, a preservative in book paper, and an organic intermediate (ACGIH 1986, p. 417(89); Hawley's 1987, p. 799).

Exposure to morpholine produces nasal and bronchial irritation and liver and kidney impairment in animals (Shea 1939/Ex. 1–758); the substance readily penetrates the skin and is highly irritating to the eyes (Jefferson Chemical Company, Inc. 1961, as cited in ACGIH 1986/Ex. 1–3, p. 417). The single oral LD_{50} in rats is 1.05 g/kg (range: 0.95 to 1.16 g/kg), and the single skin LD_{50} for 24-hour contact is 0.5 ml/kg (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). Neither a one-hour exposure to concentrated vapor nor an 8-hour exposure to 8000 ppm was fatal in rats (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). Rats were exposed for 8 hours daily to a concentration of 16,000 ppm for a total of 5 days; after the first day, all animals showed severely reddened thoracic walls, and one fatality (from kidney and liver congestion) occurred. A similar fatality occurred on the third day; on day 4, a third rat died, and postmortem examination revealed degeneration of the epithelial lining of the kidney tubules. Three additional deaths occurred after the exposures had ended; autopsy revealed thickened alveoli, emphysema, and liver and kidney effects (Shea 1939/Ex. 1–758).

Reporting on his own reactions to morpholine exposure at a concentration of 12,000 ppm, Shea (1939/Ex. 1–758) complained of nose irritation (after 1 minute) and coughing (after 90 seconds); in addition, when he transferred morpholine by pipette, he experienced sore throat and mucosal irritation. All symptoms disappeared after the experiment stopped (Shea 1939/Ex. 1–758). Skin contact poses a moderately high degree of hazard, which diminishes as the product is diluted with water to less than 25 percent (Jefferson Chemical Company, Inc. 1961, as cited in ACGIH 1986/Ex. 1–3, p. 417). Respiratory irritation but no chronic effects have been reported as a result of industrial exposure (Patty 1963e/Ex. 1–858). In comparison with ammonia, morpholine has a greater potential for systemic toxicity (ACGIH 1986/Ex. 1–3, p. 417).

OSHA is retaining the 8-hour TWA limit of 20 ppm TWA and the skin notation for morpholine and is proposing to add a 15-minute STEL of 30 ppm in construction and maritime; OSHA is also proposing both limits and the skin notation in agriculture. The Agency preliminarily concludes that these limits will work together to protect workers in these sectors against the significant risk of eye and respiratory tract irritation, which are material impairments of health that are associated with occupational exposures to this substance. The skin notation for morpholine is necessary because of this substance's ability to be absorbed through the skin in toxic amounts. Promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

NITRIC ACID

CAS: 7697–37–2; Chemical Formula: HNO_3

H.S. No. 1286

OSHA has an 8-hour TWA limit of 2 ppm for nitric acid in construction and maritime. There is no limit in agriculture. The ACGIH has the same TLV®–TWA and a 15-minute TLV®–STEL of 4 ppm, and NIOSH recommends a TWA limit of 2 ppm. OSHA's proposal retains the 8-hour TWA PEL of 2 ppm and adds a STEL of 4 ppm for nitric acid in construction and maritime; the Agency also proposes both limits in agriculture. NIOSH concurs (Ex. 8–47, Table N1) with these limits, which are identical to those recently established for this substance in general industry.

Nitric acid is a fuming colorless or yellowish liquid. Nitric acid is used to destroy residues of organic matter, to dissolve noble metals, for etching and cleaning metals, and in the manufacture of ammonium nitrate for fertilizer (ACGIH 1986, p. 428; Hawley's 1987, p. 824).

Rats receiving a single exposure to nitric acid mist at a concentration of 63 mg/m³ exhibited no apparent adverse effects (Diggle and Gage 1954/Ex. 1–729). Chronic exposure to airborne nitric acid vapor or mist at unspecified levels was reported to cause chronic bronchitis, pneumonitis (Fairhall 1957i, as cited in ACGIH 1986/Ex. 1–3, p. 428), and tooth erosion (Lynch and Bell 1947/Ex. 1–793). Nitric acid's irritant potential is considered similar to that of other strong acids; it typically exists in conjunction with nitrogen dioxide, which is regarded as being more hazardous (ACGIH 1986/Ex.1–3, p. 428).

OSHA is retaining the 8-hour TWA PEL of 2 ppm and proposing to add a STEL of 4 ppm for nitric acid in construction and maritime; the Agency is also proposing both limits in agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors against the significant risk of irritation, chronic pulmonary disease, and dental erosion, which constitute material impairments of health. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

p-NITROANILINE
CAS: 100–01–6; Chemical Formula:
$NO_2C_6H_4NH_2$
H.S. No. 1287

OSHA has a limit of 1 ppm TWA (6 mg/m³) for p-nitroaniline (PNA), and a skin notation, in construction and maritime. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 3 mg/m³, with a skin notation. There is no NIOSH REL. OSHA is proposing an 8-hour TWA of 3 mg/m³ and a skin notation for p-nitroaniline in construction, maritime, and agriculture. NIOSH concurs (Ex. 8–47, Table N1) that this limit is appropriate for this substance. This is the limit recently established for PNA in general industry.

para-Nitroaniline usually exists in the form of yellow needles. p-Nitroaniline is used in medicinals for poultry, as an intermediate for dyes and antioxidants, and as a gasoline gum inhibitor and corrosion inhibitor (ACGIH 1986, p. 430; Hawley's 1987, p. 826).

Exposure to p-nitroaniline causes convulsions in experimental animals (RTECS 1991). The oral LD_{50} in rats is 750 mg/kg (RTECS 1991). Dogs administered a single intravenous injection of 15 mg/kg p-nitroaniline developed methemoglobinemia (Clayton and Clayton 1981, p. 2416). Administered to mice on days 6 to 13 of pregnancy at a dose of 1200 mg/kg/day, p-nitroaniline caused maternal death or systemic toxicity (reduced weight gain and a reduction in the number of litters and in pup survival (Hardin et al. 1987, in Teratog. Carcinog. Mutag. 7:29–48).

p-Nitroaniline is readily absorbed through the skin and is a strong methemoglobin-forming agent; prolonged exposure can cause liver damage (ACGIH 1986/Ex. 1–3, p. 430). Anderson (1946/Ex. 1–1049) reported several cases of PNA-poisoning among shipboard workers assigned to clean up a p-nitroaniline spill; one man with a history of liver disease became jaundiced and died, and the other exposed workers became cyanotic and complained of headache, sleepiness, weakness, and respiratory distress (Anderson 1946/Ex. 1–1049). It has also been reported that children who ingested p-nitroaniline that was contained in wax crayons subsequently became ill (Rieders and Brieger 1953/Ex. 1–798).

Several investigators (Anderson 1946/Ex. 1–1049; Gupta 1953, Fairhall 1957j, both as cited in ACGIH 1986/Ex. 1–3, p. 430; Linch 1974/Ex. 1–747) have concluded that the nitroanilines are more hazardous than aniline, and, on this basis, OSHA established a PEL for PNA in general industry that is lower than the PEL for aniline.

OSHA is proposing a PEL of 3 mg/m³ as an 8-hour TWA for p-nitroaniline, and a skin notation, in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of methemoglobinemia and liver damage, both of which constitute material health impairments that are associated with exposure to PNA. A skin notation is necessary because this substance is readily absorbed through the skin in toxic amounts. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

NITROMETHANE
CAS: 75–52–5; Chemical Formula:
CH_3NO_2
H.S. No. 2120

OSHA's permissible exposure limit for nitromethane in general industry, construction, and maritime is an 8-hour TWA of 100 ppm. There is no limit in agriculture. The ACGIH has a limit for nitromethane of 100 ppm as an 8-hour TLV®–TWA. The ACGIH TLV® for nitromethane was set on the basis of analogy with nitroethane. NIOSH has no REL. OSHA is proposing to establish an 8-hour TWA of 100 ppm for nitromethane in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Nitromethane is a colorless, oily liquid with a mild fruity odor. This substance is used as a solvent for cellulosic compounds, polymers, waxes, and fats; in chemical synthesis; as a rocket fuel; and as a gasoline additive (ACGIH 1986, p. 439; Merck 1983, p. 949).

Nitromethane causes eye and mucous membrane irritation and central nervous system effects in humans; in animals, it causes irritation, central nervous system depression, and kidney and liver damage. In rats and mice, the oral LD_{50}s are 940 mg/kg and 960 mg/kg, respectively, for an unspecified period of time (RTECS 1990). The lowest lethal inhalation dose in monkeys is 1000 ppm for an unspecified time (RTECS 1990). Severe eye irritation occurs in animals (species unspecified) exposed to a 500-ppm concentration of nitromethane (AIHA 1978). Rabbits exposed to a 10,000-ppm concentration of this substance for 6 hours showed signs of weakness, ataxia, muscular incoordination, and convulsions before death; exposure to the same concentration for a period of 3 hours was not fatal to rabbits (Clayton and Clayton 1982, pp. 4153–4155; Machle et al. 1940, in Proctor, Hughes, and Fischman 1988, p. 377). Both liver and kidney damage were seen in acutely poisoned animals at autopsy (Stokinger 1982; Machle et al. 1940, in Proctor, Hughes, and Fischman 1988, p. 377). Eight 6-hour exposures to a 1000-ppm concentration of nitromethane was fatal to an exposed monkey (Stokinger 1982; Machle et al. 1940, in Proctor, Hughes, and Fischman 1988, p. 377). Rats and rabbits exposed to 98 or 745 ppm of nitromethane 5 days/week for 24 weeks showed reductions in weight gain (rats in the high-dose group) and effects on the thyroid (rabbits in both dose groups) (Lewis et al., 1979, J. Environ. Pathol. Toxicol. 2(5):233). At autopsy, rabbits from both treatment groups had signs of pulmonary edema and other pulmonary effects (Lewis et al. 1979).

In humans, nitromethane causes central nervous system depression, and exposure to this substance also causes irritation of the skin and mucous membranes (Gosselin, Smith, and Hodge 1984, p. II–143). The signs and symptoms of overexposure in humans include anorexia, nausea, vomiting, and diarrhea (AIHA 1978).

Based on this evidence in humans and animals, OSHA preliminarily concludes that, in the absence of a limit for nitromethane, workers in agriculture are at significant risk of experiencing its exposure-related effects. OSHA believes that establishing a limit of 100 ppm as an 8-hour TWA will significantly reduce

these risks of material health impairment. Promulgation of this limit will also make OSHA's PEL for nitromethane consistent across all OSHA-regulated sectors.

NITROTOLUENE

CAS: 88–72–2 (o-isomer); 99–08–1 (m-isomer); 99–99–0 (p-isomer); Chemical Formula: $CH_3C_6H_4NO_2$

H.S. No. 1292

OSHA has an 8-hour TWA limit of 5 ppm, with a skin notation, for nitrotoluene in construction and maritime. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 2 ppm, also with a skin notation. NIOSH has no REL. OSHA is proposing a PEL of 2 ppm as an 8-hour TWA, and a skin notation, in construction, maritime, and agriculture, and NIOSH concurred with this limit (Ex. 8–47, Table N1) when it was recently established for nitrotoluene in general industry.

The ortho- and meta-isomers of nitrotoluene are yellow liquids; the para-isomer is also yellow, but exists in crystalline form. All isomers of nitrotoluene are used in organic synthesis in the production of toluidine, tolidine, fuchsia, and various synthetic dyes (ACGIH 1986, p. 444; Hawley's 1987, pp. 833–834).

Nitrotoluene is one of the aromatic nitrogen compounds that may cause methemoglobin formation. The oral LD_{50} in rats is 1072 mg/kg for the m-isomer (RTECS 1991). For the o-isomer, the oral LD_{50} in rats is 891 mg/kg (RTECS 1991). In rats, the oral LD_{50} is 1960 mg/kg (RTECS 1991). Administered to rats orally for 30 days at doses that were 10 to 20 percent of the LD_{50} doses, m-nitrotoluene caused methemoglobinemia (Vasilenko et al. 1972). A mixture of the three isomers administered to rats in their diet increased the number of leukocytes in their blood, as well as their methemoglobin level (Kasochevskaya 1967).

Linch (1974/Ex. 1–747) has studied the nitrotoluene isomers and reported that they have relatively low hemotoxic potential; he considered nitrotoluene comparable to aniline in its toxic effects (Linch 1974/Ex. 1–747). Chronic exposure is believed to cause anemia (Clayton and Clayton 1981, p. 2473).

In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA limit of 2 ppm, and a skin notation, for nitrotoluene. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of methemoglobinemia, a material health impairment that is associated with exposure to this substance. The skin notation is necessary because of nitrotoluene's capacity to penetrate the skin in toxic amounts. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

NONANE

CAS: 111–84–2; Chemical Formula: $CH_3(CH_2)_7CH_3$

H.S. No. 1293

OSHA has no limit for nonane in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 200 ppm for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that the proposed limit is appropriate. OSHA is proposing an 8-hour TWA PEL for nonane of 200 ppm in construction, maritime, and agriculture. This is the limit recently established for nonane in general industry.

Nonane is a colorless liquid used in biodegradable detergents, as a distillation chaser, and in organic synthesis (ACGIH 1986, p. 445; Hawley's 1987, p. 836).

The toxicity of nonane is approximately equal to that of VM&P naphtha. Naphtha has a 4-hour inhalation LC_{50} in rats of 3400 ppm, while nonane has an LC_{50} of 3200 ppm (Carpenter, Kinkead, Geary et al. 1975a/Ex. 1–302; Carpenter, Geary, Myers et al. 1978/Ex. 1–301). These investigators found a no-effect level of 590 ppm for rats exposed to nonane 6 hours/day, 5 days/week for a 65-day period; under the same exposure conditions, a no-effect level of 560 ppm was reported for rats exposed to VM&P naphtha (Carpenter, Kinkead, Geary et al. 1975a/Ex. 1–302; Carpenter, Geary, Myers et al. 1978/Ex. 1–301). Earlier studies of octane and heptane have shown much higher LC_{50} values in mice, i.e., 13,500 ppm and 16,000 ppm, respectively, for 30- to 60-minute exposures (Flury and Zernik 1931j/Ex. 1–994). Swann and associates (1974/Ex.1–124) have reported similarly high LD_{50} values in mice for octane and hexane; mice died from respiratory arrest after 3 to 5 minutes of exposure to 16,000 ppm of octane or to 48,000 ppm of hexane (Swann, Kwon, and Hogan 1974/Ex. 1–124).

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 200 ppm for nonane in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of narcosis, a material impairment of health that is associated with occupational exposure to nonane. The Agency believes that the proposed PEL will substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

OXALIC ACID

CAS: 144–62–7; Chemical Formula: $H_2C_2O_4$

H.S. No. 1299

In construction and maritime, OSHA currently has a limit of 1 mg/m³ for oxalic acid. There is no limit in agriculture. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. The ACGIH has a TLV®–TWA of 1 mg/m³ and a TLV®–STEL of 2 mg/m³. OSHA is retaining the 8-hour TWA limit of 1 mg/m³ for oxalic acid and proposing to add a STEL of 2 mg/m³ in construction and maritime; the Agency is also proposing these limits in agriculture. These are the limits recently established for oxalic acid in general industry.

Anhydrous oxalic acid usually occurs in the form of a white powder; the dihydrate form is a colorless, odorless, crystalline substance. Oxalic acid is used as an automobile radiator cleanser, a purifying agent and chemical intermediate, in leather tanning, in textile bleaching, and in printing and dyeing (Hawley's 1987, p. 862).

Oxalic acid is known to produce severe burns of the eyes, mucous membranes, and skin (Windholz 1983d/Ex. 1–835, p. 991). There have been human fatalities from ingesting as little as 5 grams of oxalic acid. It appears that these deaths were caused by oxalic acid's ability to disturb the calcium-potassium balance in critical tissues (Klauder, Shelanski, and Gabriel 1955/Ex. 1–1057). Solutions of 5- to 10-percent oxalic acid have also been reported to irritate the skin on prolonged exposure.

Because of oxalic acid's severe acute toxicity, OSHA is retaining the 8-hour TWA limit of 1 mg/m³ PEL and proposing to add a STEL of 2 mg/m³ in construction and maritime; the Agency is also proposing both limits in agriculture. OSHA preliminarily concludes that both of these limits are required to protect exposed workers in these sectors from the significant risk of severe eye and skin burns and respiratory tract irritation, which are material health impairments associated with occupational exposures to this substance. OSHA believes that the proposed PELs are necessary to substantially reduce these risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PERCHLORYL FLUORIDE

CAS: 7616–94–6; Chemical Formula: ClO_3F

H.S. No. 1309

In construction and maritime, OSHA's 8-hour TWA limit for perchloryl fluoride is 3 ppm. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 3 ppm and a TLV®–STEL of 6 ppm for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limits. OSHA is retaining the 8-hour TWA PEL of 3 ppm and proposing to add a STEL of 6 ppm for perchloryl fluoride in construction and maritime. The Agency is also proposing these limits, which were recently established for perchloryl fluoride in general industry, in agriculture.

Perchloryl fluoride is a colorless noncorrosive gas or liquid with a sweet odor. It is used as an antioxidant in rocket fuels, and as an oxidizing and fluorinating agent in chemical synthesis (Hawley's 1987, p. 887; ACGIH 1986, p. 466.3).

Perchloryl fluoride is an irritant of the eyes, mucous membranes, and upper respiratory tract. The 4-hour LC_{50}s in rats and mice are 385 and 630 ppm, respectively. Dogs exposed for 4 hours to 220- to 450-ppm concentrations of the vapor, followed by exposure to 620 ppm for 2.5 hours, became hyperpneic and cyanotic and showed increased methemoglobin. Dogs succumbing to these exposures had pigment deposition in the liver, spleen, and bone marrow; alveolar hemorrhage and collapse; and emphysema (Greene, Colbourn, Donati, and Weeks 1960, as cited in ACGIH 1986/Ex. 1–3, p. 466).

Exposure to 185 ppm for 6 hours/day, 5 days/week for 7 weeks killed 18 of 20 rats, 20 of 39 mice, and all exposed guinea pigs (Greene, Colbourn, Donati, and Weeks 1960, as cited in ACGIH 1986/Ex. 1–3, p. 466). These animals had difficulty breathing, became cyanotic, and developed alveolar edema and methemoglobinemia; at autopsy, they showed fluorosis, patchy lungs, enlarged spleens, and hemosiderosis of the kidneys, spleen, and liver. When animals were exposed on a similar regimen but to a concentration of 104 ppm for six weeks, all guinea pigs but only one of 20 rats died (Greene, Colbourn, Donati, and Weeks 1960, as cited in ACGIH 1986/Ex. 1–3, p. 466). After a 6-month exposure to 24 ppm, bone fluoride levels increased fourfold in guinea pigs, threefold in rats, and about 50 percent in dogs. Animals exposed at 24 ppm showed no signs of irritation (Greene, Colbourn, Donati, and Weeks 1960, as cited in ACGIH 1986/Ex. 1–3, p. 466).

Workers exposed to an unspecified concentration of perchloryl fluoride reported experiencing upper respiratory tract irritation even after brief exposures (ACGIH 1986, p. 202). Based on effects seen in animals, severe exposure is expected to cause methemoglobinemia (Proctor, Hughes, and Fischman 1988, p. 402).

In construction and maritime, OSHA is retaining the 8-hour TWA of 3 ppm and proposing to add a STEL of 6 ppm for perchloryl fluoride; OSHA is also proposing both PELs in agriculture. These limits are based on the fluoride content of this compound. The Agency preliminarily concludes that both limits are necessary to protect workers in these sectors from the significant risk of fluorosis and hematologic effects, which constitute material impairments of health that are associated with occupational exposures to perchloryl fluoride. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PHOSDRIN (MEVINPHOS)

CAS: 7786–34–7; Chemical Formula: $C_7H_{13}O_6P$

H.S. No. 1320

In construction and maritime, OSHA's PEL for phosdrin is an 8-hour TWA limit of 0.1 mg/m³, with a skin notation. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.01 ppm (0.1 mg/m³) and a TLV®–STEL of 0.03 ppm (0.3 mg/m³), also with a skin notation. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA of 0.01 ppm and a STEL of 0.03 ppm; the skin notation is retained in construction and maritime and proposed in agriculture. NIOSH concurred (Ex. 8–47, Table N1) with these limits when they were recently established in general industry.

Phosdrin is a colorless liquid. The commercial product is a mixture of cis- and trans-isomers that have a yellow color. Phosdrin is used as a contact and systemic insecticide and acaricide (ACGIH 1986, p. 412; Hawley's 1987, p. 784). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The acute oral LD_{50} of phosdrin is 4 to 8 mg/kg for male mice and 6 to 8 mg/kg for female rats (Shell Chemical Corporation 1956, as cited in ACGIH 1986/Ex. 1–3, p. 412). Phosdrin is a cholinesterase inhibitor and has been reported to cause slight plasma cholinesterase depression but no decrease in brain cholinesterase activity in rats fed 2 to 5 ppm. The compound may be absorbed dermally and by inhalation or ingestion; the action of the compound is direct and immediate (Cleveland and Treon 1961/Ex. 1–476). The dermal LD_{50} in rats is 4.5 mg/kg (Gaines 1969/Ex. 1–320). Chronic feeding of rats demonstrated a minimal lethal dose of between 100 and 200 ppm. Cholinesterase activity decreased continually when sublethal doses were administered until a maximum reduction in RBC cholinesterase activity of 25 percent was achieved on the 27th day of the administration of 1.5 to 20 mg doses (Huelse and Federspil 1975/Ex. 1–959).

In industry, the primary hazards associated with exposure to phosdrin are absorption of phosdrin through the skin, lung, and mucous membranes, which causes liver damage (Natoff 1970/Ex. 1–966). Phosdrin intoxication is reported to occur in humans, with accompanying symptoms of headache, visual distortion, weakness, cramps, diarrhea, pain, and respiratory distress. Severe exposure may cause convulsions; in one reported case, some symptoms (anxiety, depression, vertigo, and nystagmus) persisted for as long as four months (Zavon, as cited in ACGIH 1986/Ex. 1–3, p. 412).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 0.01 ppm, a STEL of 0.03 ppm, and a skin notation for phosdrin in construction, maritime, and agriculture. The Agency preliminarily concludes that these limits are necessary to protect workers in these sectors against the significant risk of cholinesterase inhibition and hepatic injury, which are material health impairments associated with exposure to this substance. OSHA believes that the proposed limits will substantially reduce these significant risks. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

PHOSPHORUS OXYCHLORIDE

CAS: 10025–87–3; Chemical Formula: $POCl_3$

H.S. No. 1323

In construction, maritime, and agriculture, OSHA has no limit for phosphorus oxychloride. The ACGIH has a TLV®–TWA of 0.1 ppm and a TLV®–STEL of 0.5 ppm for this substance. NIOSH has no REL but concurred (Ex. 8–47, Table N1) with the proposed limit when it was recently established in general industry. OSHA is proposing an 8-hour TWA PEL of 0.1 ppm for phosphorus oxychloride in construction, maritime, and agriculture.

Phosphorus oxychloride is a colorless, fuming liquid with a pungent odor. It is used in the manufacture of plasticizers, hydraulic fluids, gasoline additives, and fire retarding agents, and as a

chlorinating agent and catalyst (ACGIH 1986, p. 485).

The primary hazards associated with inhalation of phosphorus oxychloride vapor are irritation of the eyes and respiratory tract, as well as narcotic effects, gastric irritation, pulmonary edema, and nephritis (International Technical Information Institute 1978/Ex. 1–837). Weeks and associates (1964, as cited in ACGIH 1986/Ex. 1–3, p. 485) reported 4-hour LC_{50} values for phosphorus oxychloride of 48 ppm and 52 ppm for rats and guinea pigs, respectively. They also observed that ammonia vapor mediates the irritant effects of exposure to phosphorus oxychloride without significantly altering this LC_{50} value (Weeks, Downing, Musselman et al. 1964, as cited in ACGIH 1986/Ex. 1–3, p. 485).

Both chronic and acute occupational intoxication have been reported to occur among workers exposed to phosphorus oxychloride (Sassi 1954/Ex. 1–931). Acute exposure to the vapor causes burns, redness and tearing of the eyes, cough, and pain in the chest (HSDB 1991). In contact with the eyes, the vapor may cause slow-healing burns (Grant 1974, p. 829).

Based on this evidence, OSHA is proposing a PEL of 0.1 ppm (8-hour TWA) for phosphorus oxychloride in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will reduce the significant risk of narcosis and systemic poisoning among workers in these sectors. OSHA considers these adverse health effects and believes that the proposed PEL is necessary to reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PHOSPHORUS PENTASULFIDE
CAS: 1314–80–3; Chemical Formula: P_2S_5
H.S. No. 1324

In construction and maritime, OSHA has a limit of 1 mg/m³ as an 8-hour TWA for phosphorus pentasulfide. There is no PEL in agriculture. The ACGIH also has a TLV®–TWA of 1 mg/m³ but adds a 15-minute TLV®–STEL of 3 mg/m³. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limits. OSHA is proposing an 8-hour TWA PEL of 1 mg/m³ and a 15-minute STEL of 3 mg/m³ for phosphorus pentasulfide in construction, maritime, and agriculture. These are the limits recently established for this substance in general industry.

Phosphorus pentasulfide is a greenish-yellow crystalline mass with an odor like that of rotten eggs. Phosphorus pentasulfide is used in the manufacture of insecticides such as parathion and malathion, as an intermediate for lubricant additives, and in flotation agents, safety matches, and ignition compounds (ACGIH 1986, p. 486; Hawley's 1987, p. 912).

In contact with the skin or eyes of rabbits, this substance caused moderate irritation (RTECS 1991). The oral LD_{50} in rats is 389 mg/kg (RTECS 1991).

The primary hazard associated with exposure to phosphorus pentasulfide is respiratory irritation (Smyth 1956/Ex. 1–759). In the presence of moisture, phosphorus pentasulfide is rapidly hydrolyzed to phosphoric acid and hydrogen sulfide. The ACGIH (1986/Ex. 1–3, p. 485) considers phosphorus pentasulfide to be as toxic as phosphoric acid.

Based on this evidence, OSHA is retaining the 8-hour TWA PEL of 1 mg/m³ and proposing to add a 15-minute STEL of 3 mg/m³ for phosphorus pentasulfide in construction and maritime. OSHA is also proposing both limits in agriculture. The Agency preliminarily concludes that these limits are necessary to reduce the significant risk of respiratory irritation, a material health impairment. These are the limits recently established for phosphorus pentasulfide in general industry.

PHTHALIC ANHYDRIDE
CAS: 85–44–9; Chemical Formula: $C_6H_4(CO)_2O$
H.S. No. 1326

In construction and maritime, OSHA has an 8-hour TWA limit of 2 ppm for phthalic anhydride. There is no limit in agriculture. The ACGIH has a limit of 1 ppm TWA for phthalic anhydride. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that the proposed limit is appropriate. OSHA is proposing an 8-hour TWA PEL of 1 ppm for phthalic anhydride in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Phthalic anhydride takes the form of white crystalline needles and has a mild odor. It is used in the manufacture of insecticides, pharmaceuticals, resins, polyesters, dyes, and plasticizers (ACGIH 1986, p. 487; Hawley's 1987, p. 915).

The primary exposure hazards associated with phthalic anhydride are severe skin, eye, and respiratory irritation. The substance can also produce skin and, perhaps, pulmonary sensitization. The oral LD_{50} in rats is 4020 mg/kg (RTECS 1991). In contact with the skin of rabbits, phthalic anhydride caused mild irritation; instillation in the eye led to severe irritation (RTECS 1991). Exposure to the heated vapor of phthalic anhydride at unidentified concentrations caused pulmonary injury; in contact with the skin of guinea pigs, this substance caused sensitization (NRC 1977, p. 756). Baader (1955/Ex. 1–1139) has reported irritant effects in experimental animals exposed to 30 mg/m³ (approximately 5 ppm) phthalic anhydride in air.

Workers exposed to phthalic anhydride concentrations of about 4 ppm reported experiencing mucous membrane irritation, and at 5 ppm, conjunctivitis developed in these workers (AIHA 1967).

In studies of workers exposed to unspecified concentrations of phthalic acid vapors and phthalic anhydride, symptoms of respiratory tract injury as well as bronchitis, eye irritation, cough, bloody sputum, and nasal bleeding have been reported (Proctor, Hughes and Fischman 1988, p. 415). Several of these workers also developed bronchial asthma and skin sensitization (Proctor, Hughes, and Fischman 1988, p. 415). Respiratory sensitization has been confirmed by patch testing in at least one case (Maccia, Bernstein, Emmett, Brooks 1976).

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 1 ppm for phthalic anhydride in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will reduce the significant risk among workers in these sectors of respiratory irritation and skin and pulmonary sensitization, which constitute material impairments of health. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PINDONE
CAS: 83–26–1; Chemical Formula: $C_{14}H_{14}O_3$
H.S. No. 2132

In general industry, construction, and maritime, OSHA's permissible exposure limit for pindone is 0.1 mg/m³ as an 8-hour TWA. There is no limit for this substance in agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³ for pindone; NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing to establish a PEL of 0.1 mg/m³ as an 8-hour TWA for pindone in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Pindone (also called Pival) is an odorless substance that takes the form of bright yellow crystals. Pindone is used primarily as a rodenticide and insecticide. It is also used as a pharmaceutical intermediate (ACGIH

1986, p. 491; Hawley's 1987, p. 923). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Pindone causes disturbances in blood coagulation in humans and animals; the mechanism of pindone's action is vitamin K antagonism, which, in turn, inhibits prothrombin formation (Proctor, Hughes, and Fischman 1988, p. 417). The oral LD_{50}s in rats, dogs, and rabbits are 280 mg/kg, 75 mg/kg, and 150 mg/kg, respectively (RTECS 1988). Ingestion of a single large dose of pindone caused death in rats as a result of pulmonary and visceral congestion (U.S. Public Health Service 1956, in Proctor, Hughes, and Fischman 1988, p. 417). Although the single-dose LD_{50} in dogs is 75 mg/kg, daily doses of as little as 2.5 mg/kg are fatal in dogs after a few days (Worthing 1983, in HSDB 1988). Rabbits given oral doses of 1 mg/kg/day survived for an average of 8 to 10 days; acutely poisoned animals had evidence of hemorrhage throughout the muscles and organs at autopsy (HSDB 1988). The offspring of pregnant dogs given pindone were stillborn or died shortly after birth; autopsy of the pups revealed severe hemorrhage in most organs (Fitzek and Gembardt 1977, in HSDB 1988). Chronic exposure to low doses of pindone causes death in experimental animals; the cause of death in these cases is multiple internal hemorrhage (Proctor, Hughes, and Fischman 1988, p. 417).

In humans, pindone reduces blood coagulation and occasionally produces symptoms similar to those caused by warfarin, such as anorexia, nausea, vomiting, and diarrhea (Goodman 1975, in HSDB 1988; Merck 1983, p. 1073). Swallowing repeated small doses of pindone may cause generalized bleeding, such as nose bleeds or excessive bleeding from minor cuts. Individuals may experience stomach and back pain for several days after pindone exposure (NIOSH/OSHA Occupational Health Guideline 1981, p. 1).

Based on this evidence in humans and animals, OSHA preliminarily concludes that pindone is an anticoagulant causing internal hemorrhaging. In the absence of a limit for pindone, OSHA believes that workers in agriculture are at significant risk of experiencing this adverse health effect; the Agency believes that establishing a PEL of 0.1 mg/m^3 for pindone will substantially reduce the risk of this material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PROPARGYL ALCOHOL

CAS: 107-19-7; Chemical Formula: $HC{\equiv}CCH_2OH$

H.S. No. 1335

In construction, maritime, and agriculture, OSHA has no limit for propargyl alcohol. The ACGIH has a TLV®-TWA of 1 ppm, with a skin notation, for this substance. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the proposed limit. OSHA is proposing an 8-hour TWA PEL of 1 ppm for propargyl alcohol in construction, maritime, and agriculture. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

Propargyl alcohol is a colorless liquid with a mild, geranium-like odor (HSDB 1991). This substance is used as a solvent stabilizer, corrosion inhibitor, chemical intermediate, and soil fumigant (ACGIH 1986, p. 496).

In rats, guinea pigs, and mice, the oral LD_{50}s are 70, 60, and 50 mg/kg, respectively; the 2-hour inhalation LC_{50} in both the rat and mouse is about 850 ppm (NIOSH 1977i/ Ex. 1-1182). The dermal LD_{50} in rabbits is 88 mg/kg (RTECS 1990).

Propargyl alcohol is a primary skin irritant, but it is not a skin sensitizer (Antara Chemicals 1952, as cited in ACGIH 1986/Ex. 1-3, p. 496). The toxicity of propargyl alcohol is estimated to be equal to that of allyl alcohol (oral LD_{50} in rats of 64 mg/kg) (NIOSH 1977i/Ex. 1182). The ACGIH limit is based on the structural and toxicological similarity of propargyl alcohol to allyl alcohol (ACGIH 1986/ Ex. 1-3, p. 496). Propargyl alcohol also causes degenerative changes in liver and kidneys in an 80-day rat study (Rowe and McCollister (1982) in *Patty's Industrial Hygiene and Toxicology* 1982, Vol. 2C, p. 4673).

Based on this evidence, OSHA is proposing an 8-hour TWA for propargyl alcohol of 1 ppm, with a skin notation, in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that these limits are necessary to protect workers in these sectors against the significant risk of skin and mucous membrane irritation, CNS depression, and liver and kidney damage associated with exposure to this substance. OSHA believes that these health effects constitute material impairments of health. In addition, promulgation of the proposed PEL will make OSHA's limit for propargyl alcohol consistent across all regulated sectors.

PROPIONIC ACID

CAS: 79-09-4; Chemical Formula: CH_3CH_2COOH

H.S. No. 1336

OSHA has no limit for propionic acid in construction, maritime, and agriculture. The ACGIH has a TLV®-TWA of 10 ppm for this substance; the TLV® was set on the basis of analogy with acetic acid (10 ppm 8-hour TLV®). NIOSH has no REL but concurred (Ex. 8-47, Table N1) that this limit when it was recently established is appropriate in general industry. OSHA is proposing an 8-hour TWA PEL of 10 ppm for propionic acid in construction, maritime, and agriculture.

Propionic acid is a colorless, oily liquid with a pungent odor. Propionic acid and propionates are used as herbicides, fungicides, mold inhibitors, grain and wood chip preservatives, emulsifying agents, in pharmaceuticals, and in artificial fruit flavors (ACGIH 1986, p. 498; Hawley's 1987, p. 971).

The primary health effects associated with exposure to propionic acid are skin burns and irritation of the eyes and respiratory system. Smyth, Carpenter, Weil, and co-workers (1962/Ex. 1-441) reported that the oral LD_{50} in rats is 4.3g/kg; NIOSH (1977i/Ex. 1-1182) stated that the intravenous LD_{50} in mice is 625 mg/kg and the skin absorption LD_{50} in rabbits is 500 mg/kg. Inhalation of the saturated vapor for eight hours caused no fatalities in rats (ACGIH 1986/Ex. 1-3, p. 498).

Acute industrial exposures to propionic acid have been reported to cause mild to moderate skin burns, eye irritation, and, in a single incident, asthmatic cough. No irritation was observed when human volunteers were exposed to concentrations of propionic acid averaging below 0.25 ppm, with excursions to 2.1 ppm, over an eight-hour period (Dow Chemical Company 1977o, as cited in ACGIH 1986/Ex. 1-3, p. 498).

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 10 ppm for propionic acid in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit is necessary to protect workers in these sectors against the significant risk of eye and respiratory tract irritation, which are material impairments of health. This is the limit recently established for this substance in general industry.

n-PROPYL ACETATE

CAS: 109-60-4; Chemical Formula: $CH_3COOCH_2CH_2CH_3$

H.S. No. 1338

In construction and maritime, OSHA has an 8-hour TWA limit of 200 ppm for n-propyl acetate. There is no PEL in

agriculture. The ACGIH also has a 200-ppm TLV®–TWA but adds a TLV®–STEL of 250ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that these limits are appropriate; these are the limits established recently in general industry. OSHA is proposing limits for n-propyl acetate of 200 ppm as an 8-hour TWA and 250 ppm as a 15-minute STEL; these limits would apply in construction, maritime, and agriculture.

n-Propyl acetate is a pleasant-smelling liquid. This substance is used in flavoring agents, perfumes, natural and synthetic resins, lacquers, plastics and organic synthesis, and as a solvent for nitrocellulose and other cellulose derivatives (ACGIH 1986, p. 500; Hawley's 1987, p. 972).

The primary health effects associated with exposure to n-Propyl acetate are narcosis and eye and respiratory irritation. The oral LD_{50} in rats is 9370 mg/kg, and the lowest lethal concentration in the same species is 6000 ppm for 4 hours (RTECS 1991). In contact with the skin of rabbits, this substance caused mild irritation (RTECS 1991). n-Propyl acetate's narcotic action is 1.3 times that of ethyl acetate; salivation and irritation of cats' eyes occurred at a concentration of 2600 ppm (Flury and Wirth 1933, as cited in ACGIH 1986/Ex. 1–3, p. 500).

n-Propyl acetate appears to be more toxic than isopropyl acetate or ethyl acetate but less so than n-butyl acetate (ACGIH 1986, p. 500). Exposure to a concentration of 200 ppm causes eye irritation in humans, and exposure to higher concentrations causes nasal and upper respiratory tract irritation (Parmezziani 1983, p. 782). Repeated or prolonged contact of the skin may cause defatting and dermatitis (Parmezziani 1983, p. 782).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 200 ppm and a 15-minute STEL of 250 ppm for n-propyl acetate in construction, maritime, and agriculture. The Agency preliminarily concludes that these limits are necessary to prevent a significant risk of narcosis and eye and respiratory tract irritation among workers in these sectors. OSHA considers these effects material impairments of health. These are the limits recently established for this substance in general industry.

PROPYL ALCOHOL

CAS: 71–23–8; Chemical Formula: $CH_3CH_2CH_2OH$

H.S. No. 1339

In construction and maritime, OSHA has a limit of 200 ppm (8-hour TWA) for n-propyl alcohol. There is no limit in agriculture. The ACGIH has the same TWA limit but adds a 250-ppm 15-minute STEL and a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that these limits are appropriate; these are the limits recently established in general industry. OSHA is proposing limits for propyl alcohol in construction, maritime, and agriculture of 200 ppm as an 8-hour TWA and 250 ppm as a 15-minute STEL.

Propyl alcohol is a colorless liquid with an alcohol-like odor. Propyl alcohol is used in brake fluids and polishing compounds, as a solvent for waxes, vegetable oils and resins, as a degreasing agent and antiseptic, and as a chemical intermediate (ACGIH 1986, p. 500; Hawley's 1987, p. 972).

The primary health effects associated with exposure to propyl alcohol are irritation and narcosis. The oral LD_{50} for propyl alcohol in rats is 1.9 g/kg (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). The dermal LD_{50} in rabbits is 5040 mg/kg, and the LC_{50} in mice is 48 g/m³ (RTECS 1991). Starrek reported deep narcosis in mice inhaling the vapor at a concentration of 4100 ppm for 240 minutes and of 24,500 ppm for 60 minutes; ataxia appeared in 90 to 120 minutes on exposure to 3250 ppm (Starrek 1938/Ex. 1–872). These effects are almost twice as intense as those reported for exposure to the vapor of isopropyl alcohol. Rats intubated or given subcutaneous injections of propyl alcohol in carcinogenicity bioassays developed tumors (both benign and malignant) at multiple sites; animals also showed severe liver injury and hematopoietic effects (Gibel, Lohs, and Wildner 1975).

Nelson, Enge, Ross, and associates (1943/Ex. 1–66) reported mild eye, nose, and throat irritation in humans exposed at 400 ppm to the vapor of isopropyl alcohol, but no data exist on human sensory response to propyl alcohol vapor. The ACGIH (1986/Ex. 1–3, p. 500) reports that many industrial hygienists consider the vapor of propyl alcohol to be more irritating to the throat than the vapor of the isomer.

Based on this evidence, OSHA is retaining the 8-hour TWA PEL of 200 ppm in construction and maritime, proposing to add a STEL of 250 ppm, and proposing to extend both limits to agriculture. The Agency preliminarily concludes that these limits are necessary to protect workers in these sectors against the significant risk of narcosis and irritation, both material impairments of health, that are associated with exposure to this substance. These are the limits recently established for this substance in general industry.

PROPYLENEIMINE

CAS: 75–55–8; Chemical Formula: C_3H_7N

H.S. No. 2135

In general industry, construction, and maritime, OSHA's permissible exposure limit for propyleneimine is 2 ppm as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit for propyleneimine in agriculture. The ACGIH has a TLV®–TWA of 2 ppm, with a skin notation, for propyleneimine. The ACGIH TLV® for propyleneimine was set by analogy with ethyleneimine, a potential human carcinogen (ACGIH 1986, p. 504). NIOSH has no REL for this substance but concurs with the limit being proposed (Ex. 8–47). OSHA is proposing an 8-hour TWA limit of 2 ppm, with a skin notation, for propyleneimine in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Propyleneimine, also called 2-methyl aziridine, is a clear, fuming liquid with a strong ammonia-like odor. This substance is used as a chemical intermediate in the production of paper, textile, and rubber and pharmaceutical chemicals and as an ingredient in latex surface coatings (ACGIH 1986, p. 504; Hawley's 1987, p. 974).

Propyleneimine causes severe eye, mucous membrane, and skin irritation in humans and animals and is carcinogenic in animals. The oral LD_{50} in rats is 19 mg/kg (RTECS 1991). The lowest lethal concentrations in rats and guinea pigs are 500 ppm over 4 hours and 500 ppm for 1 hour, respectively (RTECS 1991). The dermal LD_{50} in guinea pigs is 43 mg/kg (RTECS 1991). Rabbits exhibited signs of severe eye irritation when 0.025 mg of propyleneimine was instilled into their eyes (RTECS 1989); injury was graded 9 on an ascending severity scale of 1 to 10 (Grant 1986, p. 770). Rats given 20 mg/kg propyleneimine in water by gavage twice weekly for 28 weeks developed gliomas, ear-duct squamous cell carcinomas, intestinal adenocarcinomas, leukemias, and breast tumors (Ulland et al. 1971, in IARC 1975, Vol. 9, p. 63). In another study, rats given 10 mg/kg propyleneimine by gavage for 60 weeks developed leukemias, gliomas, ear-duct squamous-cell carcinomas, intestinal adenocarcinomas, and breast tumors (Ulland et al. 1971, in IARC 1975, Vol. 9, p. 63). Based on these findings, the International Agency for Research on Cancer has concluded that the evidence for the carcinogenicity of propyleneimine in animals is sufficient (IARC 1975, Vol. 9, p. 64).

Propyleneimine is mutagenic in bacterial

test systems without metabolic activation (RTECS 1991; HSDB 1985).

The toxicity of propyleneimine is believed to be from ¼ to ⅛ that of ethyleneimine (Carpenter et al. 1948, in ACGIH 1986, p. 504). According to the ACGIH, propyleneimine should be classified as a carcinogen of "intermediate * * * potency" (ACGIH 1986, p. 504). There are no reports of systemic effects in workers exposed to this substance.

Based on this evidence and by analogy with ethyleneimine, OSHA preliminarily concludes that propyleneimine is an irritant and potential occupational carcinogen. OSHA believes that, in the absence of a limit for this substance, workers in agriculture are at significant risk of experiencing these exposure-related effects. The Agency believes that establishing a PEL of 2 ppm as an 8-hour TWA for propyleneimine will substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PROPYLENE OXIDE

CAS: 75–56–9; Chemical Formula: CH_3CHOCH_2

H.S. No. 1344

In construction and maritime, OSHA has an 8-hour TWA limit of 100 ppm for propylene oxide. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 20 ppm for this substance. OSHA is proposing an 8-hour TWA of 20 ppm for propylene oxide in construction, maritime, and agriculture; this is the limit recently established in general industry.

Propylene oxide is a colorless, highly flammable, volatile, and ethereal liquid. Propylene oxide is used as a fumigant and as an intermediate in the production of polyols for detergents, surfactants, propylene glycols, and synthetic lubricants (ACGIH 1986, p. 504; Hawley's 1987, p. 974).

The health hazards associated with exposure to this substance are primary skin, eye, and respiratory irritation, as well as central nervous system depression. The oral LD_{50} values in rats and guinea pigs are 930 mg/kg and 690 mg/kg, respectively. In mice, the LC_{50} is 1740 ppm for 4 hours. Dogs and guinea pigs exposed for 4 hours at 2000 and 4000 ppm, respectively, died (NIOSH 1977i/Ex. 1–1182). Although only some species tolerate daily exposures to 200 ppm, all species tested tolerated 100 ppm without ill effects (Rowe, Hollingsworth, Oyen et al. 1956/Ex. 1–609). Jacobson and associates (1956/Ex. 1–702) considered the toxic effects of propylene oxide to be one-half to one-third as intense as those of ethylene oxide (Jacobson, Hackley, and Feinsilver 1956/Ex. 1–702).

Corneal burns and skin necrosis, as well as respiratory and pulmonary irritation, have been reported in humans as a result of direct contact with the liquid or vapor of propylene oxide (Patty 1963h/Ex. 1–857); Central nervous system effects, including ataxia, incoordination, and general depression, also occur as a result of exposure to unspecified concentrations.

In the prior rulemaking, OSHA received several comments on propylene oxide. These commenters (Exs. 3–746, 8–47, Table N6B) noted that propylene oxide is a potential occupational carcinogen, based on an NTP bioassay in rats and mice that demonstrates "some evidence" of carcinogenicity in rats and "clear evidence" of carcinogenicity in mice (Ex. 8–47). In response to these commenters, OSHA stated that the Agency is aware of propylene oxide's serious health effects; however, because the primary purpose of the present rulemaking is to ensure consistency in PELs across OSHA-regulated sectors, OSHA is not at this time considering a further reduction in the PEL. The first PEL update, however, will review the literature on propylene oxide.

In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA limit of 20 ppm for propylene oxide to protect workers in these sectors against the significant risk of primary irritation and CNS depression, which constitute material health impairments that are associated with exposure to propylene oxide. The Agency believes that this limit is necessary to substantially reduce this significant risk. This is the limit recently established for this substance in general industry.

SELENIUM HEXAFLUORIDE

CAS: 7783–79–1; Chemical Formula: SeF_6

H.S. No. 2141

OSHA's permissible exposure limit for selenium hexafluoride in general industry, construction, and maritime is 0.05 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.05 ppm for selenium hexafluoride; this limit was established on the basis of selenium hexafluoride's similarity in physiological effect to ozone (ACGIH 1986, p. 518). NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing to establish an 8-hour TWA limit of 0.05 ppm for selenium hexafluoride in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Selenium hexafluoride is a colorless gas. It is used as a gaseous electric insulator (ACGIH 1986, p. 518; Merck 1983, p. 1213).

Selenium hexafluoride causes severe pulmonary irritation in animals; its acute toxicity is about one-half that of ozone (ACGIH 1986, p. 518). Acute toxicity studies in rats, mice, rabbits, and guinea pigs showed that exposure to selenium hexafluoride concentrations of 10 ppm for 4 hours is fatal (Kimmerle 1960, in ACGIH 1986, p. 518). Exposure of animals of these species to a concentration of 5 ppm selenium hexafluoride caused pulmonary edema; exposure to a 1-ppm concentration produced no grossly observable effects (Kimmerle 1960, in ACGIH 1986, p. 518). Exposing rats, mice, rabbits, and guinea pigs to a 5-ppm concentration of selenium hexafluoride for 1 hour/day for 5 days caused signs of pulmonary injury; exposure to a 1-ppm concentration on the same regimen caused no effects (Kimmerle 1960, in ACGIH 1986, p. 518).

Based on effects seen in animals, selenium hexafluoride is expected to cause severe respiratory irritation in exposed humans; exposure is also likely to cause selenium poisoning (HSDB 1985; Proctor, Hughes, and Fischman 1988, p. 439). The signs and symptoms of acute selenium poisoning include nausea, vomiting, indigestion, headache, irritability, unstable blood pressure, and yellowish skin (Freiberg 1979, in HSDB 1985). Inhalation exposure can impart a garlic-like odor to the breath (Freiberg 1979, in HSDB 1985).

Based on this evidence, OSHA preliminarily concludes that exposure to selenium hexafluoride may cause severe respiratory irritation and selenium poisoning. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these material health impairments and that establishing an 8-hour TWA limit of 0.05 ppm is necessary to reduce this significant risk. Promulgation of this limit also will make the PEL for selenium hexafluoride consistent across all OSHA-regulated sectors.

SILICON TETRAHYDRIDE

CAS: 7803–62–5; Chemical Formula: SiH_4

H.S. No. 1361

In construction, maritime, and agriculture, OSHA has no limit for silicon tetrahydride. The ACGIH TLV®–TWA is 5 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. In construction, maritime, and agriculture, OSHA is

proposing an 8-hour TWA PEL for silicon tetrahydride of 5 ppm. This is the limit recently established for this substance in general industry.

Silicon tetrahydride, a colorless gas, is used in the manufacture of semiconductors. Silicone in a commonly used synonym for silicon tetrahydride.

Silicon tetrahydride is a mild irritant of the eyes and mucous membranes. The LC_{50} in rats is 9600 ppm for 4 hours (RTECS 1991). Studies of rats exposed to silicon tetrahydride at levels of 126 ppm for one hour (Matheson Gas Products 1971, as cited in ACGIH 1986/Ex. 1–3, p. 528) and at 1400 ppm for six hours (Union Carbide Corporation 1980, as cited in ACGIH 1986/Ex. 1–3, p. 528) have failed to identify any systemic effects associated with exposure to this chemical.

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 5 ppm for silicon tetrahydride in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of exposure-related eye, skin, and upper respiratory tract irritation, which are material health impairments. This is the limit recently established for this substance in general industry.

STIBINE

CAS: 7803–52–3; Chemical Formula: SbH_3

H.S. No. 2144

In general industry, construction, and maritime, OSHA's current permissible exposure limit for stibine is 0.1 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA limit of 0.1 ppm for this substance; this limit was established on the basis of stibine's similarity in physiological effect to arsine, a gas generally found with stibine. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a PEL of 0.1 ppm for stibine in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Stibine is a colorless gas with a disagreeable, hydrogen sulfide-like odor; it is usually produced inadvertently when acid solutions of antimony are treated with zinc or other reducing agents (ACGIH 1986, p. 586.3). It was formerly used as a fumigating agent and in chemical synthesis (ACGIH 1986, p. 536.3; NIOSH/OSHA Occupational Health Guideline 1981, p. 2).

Stibine is an irritant and a hemolytic agent in both humans and animals. This substance also causes liver and kidney injury in animals. The lowest lethal concentration (LC_{LO}) in mice is 10 ppm for an unspecified period; in guinea pigs, the LC_{LO} is 92 ppm for 1 hour (RTECS 1991). Cats and dogs exposed to a stibine concentration of 40 to 45 ppm for 1 hour developed pulmonary congestion and edema; death occurred within 24 hours of exposure (Webster 1946, in ACGIH 1986, p. 536.3). Guinea pigs developed hemoglobinuria followed by anemia after being exposed to a 65-ppm concentration of stibine for 1 hour (Webster 1946, in Proctor, Hughes, and Fischman 1988, p. 445).

One of the early signs of overexposure to stibine in humans is hemoglobinuria (Dernehl, Stead, and Nau 1943, in Clayton and Clayton 1981, p. 1511). Other signs and symptoms of acute overexposure to stibine include eye irritation, headache, nausea, weakness, slow breathing, and a weak, irregular pulse (Dernehl, Stead, and Nau 1943, in Clayton and Clayton 1981, p. 1511). No clear-cut case of fatal stibine poisoning in humans has been reported because stibine usually occurs in combination with arsine, another hemolytic agent (Clayton and Clayton 1981, p. 1511). Workers concurrently exposed to several gases (arsine, stibine, and hydrogen sulfide) at unmeasured concentrations developed headache, weakness, nausea, abdominal and lumbar pain, hemoglobinuria, hematuria, and anemia (Dernehl, Stead, and Nau 1944, in Proctor, Hughes, and Fischman 1988, p. 445).

Based on this evidence, OSHA preliminarily concludes that exposure to stibine is associated with hemolysis, respiratory irritation, and possible liver and kidney injury. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse effects and that establishing a limit of 0.1 ppm as an 8-hour TWA is necessary to reduce these risks of material health impairment. Promulgation of this limit will also make the PEL for stibine consistent across all OSHA-regulated sectors.

SULFURYL FLUORIDE

CAS: 2699–79–8; Chemical Formula: SO_2F_2

H.S. No. 1379

In construction and maritime, OSHA's limit for sulfuryl fluoride is 5 ppm as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has a TLV®–TWA of 5 ppm and a TLV®–STEL of 10 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that the proposed limits are appropriate. OSHA is proposing an 8-hour TWA PEL of 5 ppm and a 15-minute STEL of 10 ppm for sulfuryl fluoride in construction, maritime, agriculture. These are the limits recently established for this substance in general industry.

Sulfuryl fluoride is a colorless gas with a sulfide odor. Sulfuryl fluoride is primarily used as an insecticide and fumigant. It is also used in the organic synthesis of drugs and dyes (ACGIH 1986, p. 546; Sittig 1985, p. 820). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In extensive animal studies conducted by the Dow Chemical Company (1962 and 1970, as cited in ACGIH 1986/Ex. 1–3, p. 546), sulfuryl fluoride was determined to exhibit one-half to one-third the acute inhalation toxicity of methyl bromide. Acute exposures of animals resulted in tremors that later developed into severe convulsions. Pulmonary edema was seen in laboratory animals after a single severe exposure. Repeated exposures of rats, guinea pigs, and mice to 20 ppm sulfuryl fluoride for seven hours per day produced both kidney and lung injury after six months. Some evidence of fluorosis was observed in the incisors of mice, but not in the teeth of the rats or guinea pigs (Dow Chemical Company 1962 and 1970, as cited in ACGIH 1986/Ex. 1–3, p. 546).

A report by Taxay (1966/Ex. 1–577) that examined an incident of acute workplace overexposure to sulfuryl fluoride noted that abdominal pain, nausea, vomiting, and itching were the major symptoms. On the day after exposure, the serum of the affected worker tested positive for fluoride.

Based on this evidence, OSHA is retaining the 8-hour TWA limit of 5 ppm and proposing to add a STEL of 10 ppm for sulfuryl fluoride in construction and maritime; the Agency is also proposing both limits in agriculture. The Agency preliminarily concludes that these limits will protect workers in these sectors against the significant risks of kidney and lung injury and of fluorosis, which constitute exposure-related material health impairments. These are the limits recently established for this substance in general industry.

TEDP (SULFOTEP)

CAS: 3689–24–5; Chemical Formula: $(C_2H_5)_4P_2S_2O_5$

H.S. No. 2149

OSHA's current permissible exposur limit (PEL) for TEDP (tetraethyldithiopyrophosphate) in construction, maritime, and general industry is 0.2 mg/m³ as an 8-hour

TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.2 mg/m³, with a skin notation, for TEDP. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 0.2 mg/m³, with a skin notation, for TEDP in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

TEDP, also called Sulfotep, is a yellow, noncombustible liquid with a garlic-like odor. TEDP is an organophosphate pesticide that is used as an insecticide and miticide (ACGIH 1986, p. 541; Merck 1983, p. 1287). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

TEDP causes cholinesterase inhibition in humans and animals; the inactivation of cholinesterase causes acetylcholine to accumulate at synapses in the nervous system, skeletal and smooth muscles, and secretory glands (Proctor, Hughes, and Fischman 1988, p. 465). Oral LD_{50}s in rats, mice, and rabbits are 5 mg/kg, 22 mg/kg, and 25 mg/kg, respectively (RTECS 1991). Rats have an LC_{50} of 38 mg/m³ for 4 hours; in mice, the LC_{50} is 40 mg/m³ for 4 hours (RTECS 1991). In rats and rabbits, the dermal LD_{50}s are 65 mg/kg and 20 mg/kg, respectively (RTECS 1991). TEDP affects the autonomic nervous system in rats, mice, dogs, cats, and rabbits by all routes of exposure (RTECS 1991). The signs and symptoms of TEDP poisoning include hypersalivation, lacrimation, sweating, nasal discharge, vomiting, dyspnea, muscle fasciculation, weakness, and paralysis. Effects on the central nervous system consist of nervousness, ataxia, convulsions, coma, and death due to respiratory failure or cardiac arrest (Clarke 1981, p. 153, in HSDB 1988). Fed at a dietary concentration of 60 ppm for 12 weeks, TEDP produced no symptoms in rats; however, feeding at a dose of 180 ppm caused illness and tissue change (Lehman 1952, in ACGIH 1986, p. 541). TEDP is estimated to be about ½ as toxic as parathion (Lehman 1951, in ACGIH 1986, p. 541).

In humans, severe TEDP poisoning can occur by any route of exposure. After inhalation of toxic amounts, respiratory and ocular effects (including a feeling of tightness in the chest, wheezing, laryngeal spasms, cyanosis, blurred vision, miosis, and tearing) occur within a few minutes of exposure (Proctor, Hughes, and Fischman 1988, p. 465). Gastrointestinal signs and symptoms, such as anorexia, nausea, vomiting, cramps, and diarrhea, appear 15 minutes to 2 hours following the ingestion of TEDP (Proctor, Hughes, and Fischman 1988, p. 465). The accumulation of acetylcholine in the central nervous system, which is caused by TEDP-induced cholinesterase inhibition, can cause tension, anxiety, restlessness, insomnia, neurosis, headache, apathy, and confusion (Klaassen 1986, p. 528). An excess of acetylcholine at the neuromuscular junctions of skeletal muscle causes weakness, involuntary twitching, fasciculations, and paralysis. Recovery usually occurs within one week after the cessation of exposure (Proctor, Hughes, and Fischman 1988, p. 465). Chronic exposure to TEDP concentrations that are too small to cause symptoms immediately can eventually cause poisoning, indicating that TEDP accumulates in the system (Proctor, Hughes, and Fischman 1988, p. 465).

Based on this evidence in humans and animals and by analogy with parathion, OSHA preliminarily concludes that TEDP causes the signs and symptoms associated with cholinesterase inhibition. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these effects. OSHA believes that establishing a PEL of 0.2 mg/m³ as an 8-hour TWA, with a skin notation, is necessary to reduce this risk of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TELLURIUM HEXAFLUORIDE

CAS: 7783–80–4; Chemical Formula: TeF_6

H.S. No. 2151

In general industry, construction, and maritime, OSHA's current permissible exposure limit for tellurium hexafluoride is 0.02 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.02 ppm for this substance; the ACGIH limit was established by analogy with the effects of exposure to ozone. NIOSH has no REL but concurs (Ex. 8–47) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 0.02 ppm for tellurium hexafluoride in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Tellurium hexafluoride is a colorless, noncombustible gas with an unpleasant odor. This substance is used as an analytical reagent in research laboratories (ACGIH 1986, p. 556; Genium MSDS 1988, No. 250).

Tellurium hexafluoride causes pulmonary irritation in animals; signs and symptoms of exposure in humans include headache and dyspnea. The lowest lethal concentrations in various animal species are 5 ppm for 4 hours in rats, rabbits, and guinea pigs, and 5 ppm for 1 hour in mice (RTECS 1991). Exposed to a concentration of 1 ppm for 4 hours, animals of four species (rats, mice, rabbits, and guinea pigs) showed evidence of pulmonary edema; exposures to concentrations of between 5 and 100 ppm tellurium hexafluoride were fatal to all animals of all experimental species (Kimmerle 1960, in ACGIH 1986, p. 556). A one-hour exposure to a 1-ppm concentration of tellurium hexafluoride for 5 days caused no effects in animals of these four species; the author of this study attributed this finding to the development of tolerance to tellurium hexafluoride's acute effects (Kimmerle 1960, in ACGIH 1986, p. 556).

In humans, exposure to tellurium hexafluoride causes headache and difficult breathing (Cooper 1971; Cerwenka and Cooper 1961, in Proctor, Hughes, and Fischman 1988, p. 458). Two workers exposed to an unknown concentration of tellurium hexafluoride generated by a 50-g leak of this substance in a laboratory developed garlic breath, a bluish-black discoloration of the webs of the fingers, and streaks on the neck and face; these individuals also reported fatigue. Both workers subsequently recovered (Blackadder and Manderson 1975, in Proctor, Hughes, and Fischman 1988, p. 458).

Based on this evidence in humans and animals and by analogy with selenium hexafluoride, OSHA preliminarily concludes that tellurium hexafluoride causes pulmonary irritation, headaches, and dyspnea in exposed individuals. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these effects and that establishing a PEL for tellurium hexafluoride of 0.02 ppm as an 8-hour TWA is necessary to substantially reduce this risk of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TEPP

CAS: 107–49–3; Chemical Formula: $(C_2H_5)_4P_2O_7$

H.S. No. 2152

OSHA's current limit for tetraethyl pyrophosphate (TEPP) in general

industry, construction, and maritime is 0.05 mg/m³ as an 8-hour TWA, with a skin notation. There is no PEL for this substance in agriculture. The ACGIH TLV®–TWA for TEPP, which was set by analogy to parathion, is 0.05 mg/m³ (0.004 ppm), with a skin notation. NIOSH has no REL for this substance but concurs (Ex. 8–47) with the PEL being proposed by OSHA. The Agency is proposing a PEL of 0.05 mg/m³ as an 8-hour TWA, and a skin notation, for TEPP in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

TEPP is a colorless to amber-colored liquid with a mild fruity odor. TEPP was one of the first organophosphate pesticides used in the United States. It is used as an insecticide and acaricide against aphids, spider mites, mealybugs, leaf hoppers, and thrips. TEPP has been replaced by other products in many of its applications. It was formerly used in the treatment of glaucoma, pediculosis of the eyelashes, and myasthenia gravis (HSDB 1989; Grant 1986, p. 893). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

TEPP is a cholinesterase inhibitor that is very toxic to warm-blooded animals by all routes of exposure. The oral LD_{50} in rats is 500 μg/kg, and the dermal LD_{50} in the same species is 2400 μg/kg (RTECS 1989). Acutely poisoned animals exhibit hypersalivation, lacrimation, excessive perspiration, nasal discharge, miosis, breathing difficulties, nausea, diarrhea, and central nervous system effects including nervousness, ataxia, convulsions, and coma. Death is caused by respiratory failure or cardiac arrest (HSDB 1991).

In humans, TEPP is a powerful inhibitor of cholinesterase activity. The lowest concentration reported to be lethal in humans by ingestion is 309 μg/kg (RTECS 1989). TEPP causes its toxic effects by inhibiting the activity of the enzyme cholinesterase, which causes, in turn, a buildup of acetylcholine at the synapses in the nervous and skeletal systems, smooth muscles, and secretory glands (Koelle 1963, Taylor 1985, and Hayes 1963, in Proctor, Hughes, and Fischman 1988, p. 464). TEPP causes ocular effects, including miosis, aching of the eyes, and blurring of distant vision, when it is applied to the eyelashes (as was formerly done to treat pediculosis of the eyelashes) or when it is absorbed in systemically toxic amounts (Grant 1986, p. 893). Volunteers given oral TEPP doses of 4 mg exhibited a decrease in plasma cholinesterase activity to zero percent and in red blood cell cholinesterase activity to 60 percent of their pre-exposure values (Grob and Harvey 1949, in ACGIH 1986, p. 558). The onset of the signs and symptoms of TEPP poisoning may be delayed for as long as 12 hours, and the kinds of symptoms developed depend on the route of exposure. After inhalation, respiratory and ocular effects (wheezing, laryngeal spasms, blurred vision, miosis, and tearing) are first to occur. Cyanosis may also result from inhalation exposure to TEPP. Gastrointestinal effects occur after ingestion; these include anorexia, vomiting, diarrhea, and cramps. Skin absorption leads to localized sweating and muscular twitching (Koella 1963, Taylor 1985, in Proctor, Hughes, and Fischman 1988, p. 464). Severe TEPP poisoning by any route may lead to paralysis of the respiratory muscles and death. If the dose is not lethal, complete recovery may occur, although individuals may remain sensitive to organophosphorus poisoning for some time after recovery (Taylor 1985, in Proctor, Hughes, and Fischman 1988, p. 464). Repeated exposure to small doses of TEPP may have cumulative effects and lead to the signs and symptoms described above.

Based on this evidence in humans and animals, OSHA preliminarily concludes that TEPP causes cholinesterase inhibition, which is a material impairment of health. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these exposure-related effects. The Agency believes that establishing a PEL of 0.05 mg/m³ as an 8-hour TWA, with a skin notation, is necessary to reduce the risk that agricultural workers will experience this material health impairment. Promulgation of this limit will make the PEL for TEPP consistent across all OSHA-regulated sectors.

THALLIUM (soluble compounds)
CAS: Varies with compound; Chemical Formula: Varies with compound
H.S. No. 2159

OSHA's permissible exposure limit for soluble thallium compounds (measured as thallium) in general industry, construction, and maritime is 0.1 mg/m³; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for these substances. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.1 mg/m³, with a skin notation, for the soluble thallium compounds. The ACGIH TLV® is based on analogy with other highly toxic metals (ACGIH 1986, p. 569). There is no NIOSH REL, but NIOSH concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a limit of 0.1 mg/m³ as an 8-hour TWA for soluble thallium compounds in agriculture. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

Soluble thallium compounds include thallium sulfate, thallium acetate, and thallium nitrate, which are all colorless, odorless solids. Thallium sulfate is used as a poison for rodents, in semiconductor research, as a component of mineralogical solutions, in optical systems and photoelectric cells, and in low-range glass thermometers. Thallium nitrate is used as a reagent in analytical chemistry and to make green fire for signaling at sea. Thallium acetate is used in high specific gravity solutions to separate ore constituents by flotation (ACGIH 1986, p. 569; Merck 1983, p. 1325; Hawley's 1987, p. 1142).

Soluble thallium salts can cause hair loss and effects on the gastrointestinal, nervous, and circulatory systems of humans and animals. For thallium acetate, the oral LD_{50} in rats is 41 mg/kg; in mice, it is 35 mg/kg (RTECS 1991). For thallium nitrate, the oral LD_{50} in mice is 15 mg/kg (RTECS 1991). Thallium sulfate has oral LD_{50}s in rats and mice of 16 and 15 mg/kg, respectively (RTECS 1991). Animals acutely poisoned by thallium sulfate show signs and symptoms that include restlessness, ataxia, and convulsive movements followed by paresis, tremor, dyspnea, loss of weight, hemorrhagic diarrhea, and death due to respiratory failure (Hayes 1982, p. 25). The primary functional disturbances to the nervous system caused by exposure to these compounds are hypotonia and ataxia; there are also pathological changes of the central and peripheral axons of the primary neurons (Kennedy and Cavanagh 1977, in Acta Neuropathol 39(1):81–88, as cited in HSDSB 1988). Rats fed thallium acetate at dietary levels of 30 ppm showed a marked depression in growth after 30 days; at this level, the animals lost all of their hair and displayed such histological changes as atrophy of the hair follicles and sebaceous glands (Clayton and Clayton 1981, p. 1921). Young rats given oral doses of 0.1 mg thallium acetate developed bone lesions, eye lesions, keratitis, cataracts, retrobulbar neuropathy, partial optic atrophy, and hormone dysfunction (Browning 1969, p. 319). Rats died suddenly at the end of 4 months after being administered daily oral doses of 0.45 mg/kg thallium acetate; the rats showed typical hair loss at the end of 6

weeks, in addition to loss of weight and appetite (Browning, Toxic Industrial Metals 2nd Ed. 1969, p. 319). Post-mortem examination of rats receiving subacute doses of 10 to 15 mg/kg thallium acetate revealed significant changes in the kidneys, liver, and intestines (Herman and Bensch 1967, in Toxicology and Applied Pharmacology 10:199–222, as cited in Klaassen, Amdur, and Doull 1986, p. 491). Unspecified doses of orally or intravenously administered thallium sulfate caused depression of the cardiovascular and respiratory systems of dogs, cats, rats, rabbits, goats, and pigeons (Marmo et al. 1983, in Acta. Pharmacol. Sin. 4(2):119–122, in HSDB 1989 "Thallium Sulfate"). Administered to pregnant rats on days 12 to 14 of pregnancy, thallium sulfate caused fetotoxic and teratogenic effects at doses as low as 7.5 mg/kg (Toxicol. Appl. Pharmacol. 16:120, 1979). Rats exposed perinatally and postnatally to thallium sulfate in their drinking water showed modified vascular autonomic nervous system development (Rossi, Marrazzo, Berrino, DeSantis, Lisa, Susanna, Montanaro, Fici, and Marmo 1988, in Teratogenesis Carcin. Mutagen. 8(1):13–23).

In humans, exposure to the soluble thallium salts causes signs and symptoms such as nausea, vomiting, diarrhea, abdominal pain, and gastrointestinal hemorrhage (Paulson, Vergara et al. 1972, in Archives of Internal Medicine 129:100–103, as cited in Proctor, Hughes, and Fischman 1988, p. 473). These symptoms are often accompanied by peripheral neuritis, pain, weakness, paresthesias in the legs, tremor, and chest pain (Proctor, Hughes, and Fischman 1988, p. 471–472). The lowest lethal oral dose of thallium acetate in humans is estimated to be 12 mg/kg (Browning 1969, p. 317–322, as cited in Proctor, Hughes, and Fischman 1988, p. 471). The lowest toxic oral dose of thallium nitrate in humans is estimated to be 73 mg/kg, and the lowest lethal oral dose of thallium sulfate is believed to be 7 mg/kg (RTECS 1991, "Thallium nitrate," "Thallium sulfate"). A recent study (Dumitru and Kalantri 1990, in Muscle-Nerve 13(5):433–437) documents the serial conduction and electromyographic findings in a thallium-poisoned worker over a 24-month period. In this case, the plantar nerves of the foot demonstrated severe axonal loss first, and these nerves had not recovered 2 years later. Axonal loss subsequently occurred in the sural and perineal nerves as well, but they recovered within the 2-year follow-up period. A laboratory worker who had worked with thallium for 2 weeks developed acute thallium poisoning. His initial signs and symptoms included loss of consciousness, paresthesia of the finger tips and lips, malaise, and polyuria; later he developed respiratory paralysis, peripheral neuropathy, cerebellar ataxia, intellectual impairment, and cardiovascular abnormalities (Wainwright, Kox, House, Henry, Heaton, and Seed 1988, in Quarterly J. Med. 69(258):939–944). Chronic exposure to thallium salts can cause stomatitis, tremor, cachexia, polyneuropathy, alopecia, and emotional disturbance (Paulson et al. 1972, in Archives of Internal Medicine 129:100–103, as cited in Proctor, Hughes, and Fischman 1988, p. 472). Twelve of 15 workers using organic thallium salts over a period of 7½ years experienced abdominal pain, fatigue, irritability, weight loss, and leg pain; 4 of these workers experienced loss of hair (Richerson 1958, in Ind. Med. Surg. 27:607). Three of these workers had albuminuria, and one had hematuria (Richerson 1958). In cases of mild chronic thallium intoxication, lymphocytosis and eosinophilia have been observed (J.C. Munch 1934, in American Medical Association J. 102:1929, as cited in Clayton and Clayton 1981, p. 1928).

Based on this evidence in humans and animals, OSHA preliminarily concludes that soluble thallium compounds cause alopecia and effects on the nervous, gastrointestinal, and circulatory systems. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these effects. OSHA believes that the proposed limit of 0.1 mg/m³, with a skin notation, for the soluble thallium compounds is necessary to significantly reduce these risks of material health impairment among agricultural workers. Promulgation of this limit will also make the PEL for these substances consistent across all OSHA-regulated sectors.

THIONYL CHLORIDE

CAS: 7719–09–7; Chemical Formula: Cl_2OS

H.S. No. 1393

OSHA has no limit for thionyl chloride in construction, maritime, or agriculture. The ACGIH has a TLV®-ceiling of 1 ppm for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the PEL being proposed. OSHA is proposing a 1-ppm ceiling PEL for thionyl chloride in construction, maritime, and agriculture. This is the limit recently established in general industry.

Thionyl chloride is a colorless to pale yellow liquid with a suffocating odor. Thionyl chloride is used in the manufacture of pesticides, dyes, pharmaceuticals, and engineering plastics, as a chlorinating agent, and as a solvent in high energy density lithium batteries (ACGIH 1986, p. 572, HSDB 1989).

Thionyl chloride vapors are skin, eye, and mucous membrane irritants, probably because they form sulfur dioxide and hydrogen chloride on contact with moisture (ACGIH 1986/Ex. 1–3, p. 572). An inhalation exposure of 17.5 ppm proved lethal to cats within 20 minutes (Sax 1979/Ex.1–866).

OSHA's exposure limit for thionyl chloride in general industry is based on the exposure limits for the decomposition products (hydrogen chloride and sulfur dioxide) of thionyl chloride when this substance is mixed with water. The reaction of one mole of thionyl chloride with water produces two moles of hydrogen chloride and one of sulfur dioxide, so that 1 ppm of thionyl chloride can be shown to produce a total irritant gas concentration of 3 ppm. The exposure limit for hydrogen chloride is 5 ppm as a ceiling limit; for sulfur dioxide, the limit is an 8-hour TWA of 2 ppm. Thus, OSHA believes that the proposed ceiling limit for thionyl chloride will prevent the irritant effects of its reaction products.

In construction, maritime, and agriculture, the Agency is proposing a ceiling limit of 1 ppm for thionyl chloride on the basis of analogy to the irritation potential of hydrogen chloride and sulfur dioxide and to achieve consistency in OSHA limits in all regulated sectors. OSHA preliminarily concludes that this limit will protect workers in these sectors from the significant risk of eye, skin, and mucous membranes irritation, which constitutes a material health impairment that is associated with exposure to this substance.

TRIBUTYL PHOSPHATE

CAS: 126–73–8; Chemical Formula: $(C_4H_9)_3PO_4$

H.S. No. 1402

In construction and maritime, OSHA's current PEL for tributyl phosphate is 5 mg/m³ as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has a 2.5-mg/m³ TLV®–TWA for tributyl phosphate. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 2.5 mg/m³ for tributyl phosphate in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Tributyl phosphate is a colorless liquid. It is used as an anti-foaming agent, a plasticizer, a hydraulic fluid, a heat-exchange medium, and in the solvent extraction of metals (RTECS 1991).

Tributyl phosphate's toxicity affects the skin, mucous membranes, lungs, and central nervous system, and this substance is also a cholinesterase inhibitor. The oral LD_{50} in rats is 3000 mg/kg, and the LC_{00} in mice is 1300 mg/m^3 for an unspecified time (RTECS 1991). A paper by Smyth and Carpenter (1944/ Ex. 1–374) reported that contact with liquid tributyl phosphate caused severe eye injury and skin irritation when tested in rabbits. Chambers and Casida (1967/Ex. 1–305) found that mice injected with 1 g/kg tributyl phosphate intraperitoneally became paralyzed. A study by Vandekar (1957/Ex. 1–498) in which mice were given tributyl phosphate by gavage revealed that a dose of 80 mg/kg resulted in a one-hour period of anesthesia, and a dose of 100 mg/kg resulted in 8 to 10 minutes of anesthesia, followed by respiratory failure and death. Administered intraperitoneally to rats, tributyl phosphate inhibited cholinesterase activity and stimulated plasma beta-glucuronidase activity (Suzuki, Kikuchi, Kato et al. 1977/Ex. 1–1170). This substance did not exhibit mutagenic activity in bacterial or fruit fly assays (Hanna and Dyer 1975/Ex. 1–485).

Nausea and headache were reported by workers exposed to levels of 15 mg/m^3 of tributyl phosphate (Mastromatteo 1964b, as cited in ACGIH 1986/Ex. 1–3, p. 591). In contact with the skin, tributyl phosphate causes irritation (HSDB 1991).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 2.5 mg/m^3 for tributyl phosphate in construction, maritime, and agriculture. OSHA preliminarily concludes that this limit will protect workers in these sectors against the significant risk of paralysis, anesthetic effects, and skin or eye irritation, all of which constitute material impairments of health that are associated with occupational exposure to tributyl phosphate. The Agency believes the proposed PEL is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

TRICHLOROACETIC ACID
CAS: 76–03–9; Chemical Formula: CCl_3COOH
H.S. No. 1404

In construction, maritime, and agriculture, OSHA has no PEL for trichloroacetic acid. The ACGIH has an 8-hour TLV®–TWA of 1 ppm for this substance. There is no NIOSH REL. In construction, maritime, and agriculture, OSHA is proposing a PEL of 1 ppm as an 8-hour TWA, and NIOSH concurs (Ex. 8–47, Table N1) that this limit is appropriate. This is the limit recently established for trichloroacetic acid in general industry.

Trichloroacetic acid is used in medicine, as a decalcifier and fixative in microscopy, and as a chemical intermediate (HSDB 1991). The oral LD_{50} for trichloroacetic acid in rats is 5 g/kg (RTECS 1991). Studies on mice conducted by NIOSH (1984, as cited in ACGIH 1986/Ex. 1–3, p. 592) established that the oral LD_{50} for this species is 4.97 g/kg, and that a 500-mg/kg dose was fatal when administered intraperitoneally. In contact with the skin of rabbits, trichloroacetic acid caused mild irritation; instilled into the eyes, it caused severe irritation (RTECS 1991).

Although corrosive, trichloroacetic acid is not readily absorbed through the skin (ACGIH 1986/Ex. 1–3, p. 592). Contact of the skin with this substance for 1 hour or more causes burns; splashed into the eye, it causes severe pain and may cause permanent injury (HSDB 1991).

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 1 ppm for trichloroacetic acid in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of skin and eye irritation, which are material impairments of health that are associated with occupational exposure to this substance. OSHA believes that the proposed limit will substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

1,1,2-TRICHLOROETHANE
CAS: 79–00–5; Chemical Formula: $CHCl_2CH_2Cl$
H.S. No. 2162

In general industry, construction, and maritime, OSHA has an 8-hour TWA of 10 ppm, and a skin notation, for 1,1,2-trichloroethane. The Agency has no PEL for this substance in agriculture. The ACGIH TLV®–TWA for 1,1,2-trichloroethane, which was set by analogy to chloroform, is 10 ppm, with a skin notation. Although NIOSH considers this substance a potential human carcinogen, NIOSH concurs (Ex. 8–47) with the limit being proposed by OSHA for this substance. The Agency is proposing an 8-hour TWA PEL of 10 ppm, and a skin notation, for 1,1,2-trichloroethane in agriculture. Promulgation of this limit will make the PEL for 1,1,2-trichloroethane consistent across all OSHA-regulated sectors.

1,1,2-Trichloroethane is a colorless, nonflammable liquid with a pleasant, sweet odor. It is used as a chemical intermediate in the production of 1,1-dichloroethylene (vinylidene chloride) and as a solvent for fats, resins, adhesives, chlorinated rubbers, polyesters, and waxes (ACGIH 1986, p. 596; HSDB 1989).

In animals, exposure to 1,1,2-trichloroethane causes central nervous system depression and damage to the liver and kidneys. This substance is also a mild irritant of the eyes, mucous membranes, and skin; in mice, it is a liver carcinogen. The oral LD_{50} in rats is 830 mg/kg, and the lowest lethal concentration in the same species is 2000 ppm for 4 hours; the dermal LD_{50} in rabbits is 5377 mg/kg (RTECS 1989). Although 1,1,2-trichloroethane is not a severe skin irritant, it causes defatting of the skin on repeated contact. Absorption through the skin has been shown to cause toxic effects, including liver and kidney injury, in both rabbits and guinea pigs (Jakobson, Holmberg, and Wahlberg 1977, in Clayton and Clayton 1981, p. 3511). Instilled into the eyes of rabbits, this substance caused a mild degree of irritation (RTECS 1989). Half of the female rats exposed to a 250-ppm concentration of 1,1,2-trichloroethane for 7 hours died and showed marked liver and kidney damage at autopsy; when the exposure period was shortened to 4 hours, the animals survived the exposure but still showed liver and kidney necrosis at autopsy. Rats exposed to 250 ppm for 2 hours, however, did not exhibit liver or kidney damage at autopsy (Clayton and Clayton 1981, p. 3511). Animals dosed orally also demonstrated liver and kidney damage at autopsy (Gehring 1968; Watrous and Plaa 1972, in Clayton and Clayton 1981, p. 3511). A significant increase in hepatocellular carcinomas occurred in mice given 195 or 390 mg/kg/day 1,1,2-trichloroethane by gavage for 78 weeks. The incidence of adrenal pheochromocytomas was also increased in the high-dose female mice. No statistically significant increase in the incidence of tumors was seen in rats given up to 92 mg/kg/day 1,1,2-trichloroethane (National Cancer Institute 1978, in Proctor, Hughes, and Fischman 1988, p. 486). The International Agency for Research on Cancer has concluded that the evidence for the carcinogenicity of 1,1,2-trichloroethane in animals is limited (IARC 1987, Suppl. 7, p. 73).

In humans, exposure to low (not further specified) concentrations of 1,1,2-trichloroethane has narcotic effects and causes eye and mucous membrane irritation (IARC 1979, Vol. 20, p. 540). Chronic exposure causes fat deposition in the kidney and lung damage (IARC 1979, Vol. 20, p. 540). Based on animal data, the probable lethal oral dose of 1,1,2-trichloroethane in humans is estimated to be 50 to 500 mg/kg (Parmeggiani 1983, p. 2214). Prolonged or repeated contact of the skin with this substance causes defatting and may cause dermatitis (Clayton and Clayton 1981, pp. 3510–3513).

Based on this evidence, OSHA preliminarily concludes that exposure to 1,1,2-trichloroethane potentially causes central nervous system depression and liver and kidney damage. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these effects. OSHA believes that establishing a PEL of 10 ppm as an 8-hour TWA, with a skin notation, is necessary to reduce the risk of these material health impairments. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all OSHA-regulated sectors.

TRIMETHYLAMINE

CAS: 75–50–3; Chemical Formula: $(CH_3)_3N$

H.S. No. 1411

In construction, maritime, and agriculture, OSHA has no PEL for trimethylamine. The ACGIH has a 10-ppm TLV®–TWA and a 15–ppm TLV®–STEL. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. OSHA is proposing PELs of 10 ppm as an 8-hour TWA and 15 ppm as a 15-minute STEL in construction, maritime, and agriculture. These are the limits recently established for trimethylamine in general industry.

Trimethylamine has a pungent, fishy odor and is a gas at room temperature. Trimethylamine is used as an insect attractant, a warning agent for natural gas, a flotation agent, in organic synthesis, and in the manufacture of quaternary ammonium compounds (ACGIH 1986, p. 607; Merck 1983, p. 1388).

Trimethylamines are irritants of the eyes, mucous membranes, and respiratory tract. The lowest lethal concentration in rats is 3500 ppm for 4 hours (RTECS 1991). The damage done to the eyes of animals when trimethylamine is instilled into the conjunctival sac ranges from severe irritation to permanent damage, depending on the strength of the solution (Grant 1986, p. 952). Contact of the skin or eyes with this substance also causes burns and irritation in humans (Sittig 1985, p. 896). A student splashed in the eye with trimethylamine showed loss of the corneal epithelium; however, 4 weeks later, recovery was complete (Grant 1986, p. 952).

In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA limit of 10 ppm and a 15-minute STEL of 15 ppm for trimethylamine. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of eye, mucous membrane, and upper respiratory tract irritation, which constitute material impairments of health that are caused by occupational exposure to this substance. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

n-VALERALDEHYDE

CAS: 110–62–3; Chemical Formula: $CH_3(CH_2)_3CHO$

H.S. No. 1420

In construction, maritime, and agriculture, OSHA has no limit for n-valeraldehyde. The ACGIH TLV®–TWA is 50 ppm. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed PEL. OSHA is proposing a PEL of 50 ppm as an 8-hour TWA for n-valeraldehyde in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

Valeraldehyde is a colorless liquid that is used as a flavoring agent and rubber accelerator, and in resin chemistry (ACGIH 1986, p. 619).

n-Valeraldehyde's toxic effects include both skin and eye irritation. Animal studies showed n-valeraldehyde to be severely irritating when applied to guinea pig skin and to rabbits' eyes (Fassett, as cited in ACGIH 1986/Ex. 1–3, p. 619). The dermal LD_{50} in guinea pigs exceeds 20ml/kg (Fassett, as cited in ACGIH 1986/Ex. 1–3, p. 619). A series of studies of the relative acute inhalation toxicity of 13 aliphatic saturated and unsaturated aldehydes in mice, guinea pigs, and rabbits showed that valeraldehyde was relatively nontoxic systemically (Salem and Cullumbine 1960/Ex. 1–360).

In construction, maritime, and agriculture, OSHA is proposing a 50-ppm 8-hour TWA limit for n-valeraldehyde. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of severe eye and skin irritation associated with occupational exposure to this substance. OSHA believes that this limit will substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for valeraldehyde consistent across all regulated sectors.

m-XYLENE ALPHA, ALPHA'-DIAMINE

CAS: 1477–55–0; Chemical Formula: $C_6H_4(CH_2NH_2)_2$

H.S. No. 1432

In construction, maritime, and agriculture, OSHA has no exposure limit for this substance. The ACGIH has a TLV®-ceiling of 0.1 mg/m³ and has added a skin notation to indicate that substantial percutaneous absorption can occur through the eyes, mucous membranes, and skin. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the proposed limit. OSHA is proposing a PEL of 0.1mg/m³ as a ceiling for m-xylene alpha, alpha'-diamine in construction, maritime, and agriculture. This is the limit recently established for this substance in general industry.

m-Xylene alpha, alpha'-diamine (MXDA) is a colorless liquid. This substance is used as a curing agent for epoxy resins, as a source of m-Xylene diisocyanate, and in the manufacture of plastics, textiles, and rubber (ACGIH 1986, p. 638; Hazardous Substance Fact Sheet 1986, p. 1).

Animal studies have demonstrated that MXDA is strongly irritating to the skin. When applied to the skin of rabbits, MXDA caused severe irritation; 50 mg applied to the eyes of rabbits also caused severe injury (RTECS 1991). The oral LD_{50} in rats is 930 mg/kg, and the LC_{50} in the same species is 700 ppm for 1 hour (RTECS 1991). The dermal LD_{50} in rabbits is 2 g/kg (RTECS 1991). Rats exposed to concentrations of MXDA ranging from 1.74 to 6.04 mg/liter even for one hour sustained liver, kidney, and lung damage, as determined at necropsy. One study showed mild sensitization when MXDA was applied to guinea pig skin, but this effect was not observed in a second study (Sherwin-Williams Company 1978, as cited in ACGIH 1986/Ex. 1–3, p. 638).

Based on this evidence, OSHA preliminarily concludes that a ceiling limit of 0.1 mg/m³ and a skin notation are necessary to protect workers in construction, maritime, and agriculture from the significant risk of skin irritation, percutaneous absorption, and the potential systemic effects associated with exposure to MXDA. The Agency considers these effects material impairments of health. OSHA believes that the proposed limit will substantially reduce this significant risk. In addition, promulgation of this limit will make OSHA's PEL for MXDA consistent across all regulated sectors.

XYLIDINE
CAS: 1300-73-8; Chemical Formula: $(CH_3)_2C_6H_3NH_2$
H.S. No. 1433

In construction and maritime, OSHA's limit for xylidine is 5 ppm as an 8-hour TWA, with a skin notation. There is no PEL in agriculture. The ACGIH has a TLV®-TWA of 2 ppm, also with a skin notation. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the limit being proposed. In construction, maritime, and agriculture, OSHA is proposing an 8-hour TWA PEL of 2 ppm, and a skin notation, for xylidine. This is the limit recently established for this substance in general industry.

Xylidine is a pale yellow to brown liquid. Commercial xylidine is a mixture of isomers. Xylidine is primarily used in the manufacture of dyes. It is also used in organic synthesis and pharmaceuticals (Merck 1983, p. 1448; ACGIH 1986, p. 639 (88)).

Several studies indicate that the current PEL for xylidine in construction and maritime is insufficient to protect workers against hepatotoxic and other adverse effects, and agricultural workers are currently without any protection against exposure. A paper by von Oettingen, Neal, Sievers et al. (1947, as cited in ACGIH 1986/Ex. 1-3, p. 639) reported liver damage in dogs, rats, cats, and mice repeatedly exposed to 45 ppm xylidine for seven hours per day for a period of 20 to 40 weeks; these exposures also caused death in dogs, cats, and mice. Treon, Sigmon, Wright et al. (1950/Ex. 1-533) noted cardiac, liver, and kidney damage in autopsies of animals fatally exposed at the following doses: cats, 17 ppm; guinea pigs, 50 ppm; and rabbits, 60 ppm; cyanosis was also observed in these animals.

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 2 ppm, and a skin notation, for xylidene in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of exposure-related cardiac, kidney, and liver damage, all of which constitute material health impairments. OSHA believes the proposed PEL is necessary to substantially reduce these risks. In addition, promulgation of this limit will make OSHA's PEL for xylidine consistent across all regulated sectors.

Preliminary Conclusions for This Group of Substances

Based on the evidence described above, OSHA preliminarily concludes that exposure to any of the substances included in this category places workers in construction, maritime, and agriculture at significant risk of material health impairment and functional incapacity. The adverse health consequences of exposure to these chemicals include neuropathies, skin and respiratory tract irritation, kidney and liver damage, and gastrointestinal disorders, all of which constitute material health impairments within the meaning of the Act. OSHA preliminarily concludes, based on the toxicological evidence, that the new or revised limits being proposed for these hazardous substances will substantially reduce these significant occupational risks for workers in these sectors. In addition, promulgation of the proposed limits will make OSHA's PELs for these substances consistent across all regulated sectors.

12. Substances for Which Proposed Limits Are Based on Avoidance of Biochemical/Metabolic Effects

Introduction

One basis for establishing exposure limits is to prevent toxic substances from interfering with the normal metabolism or biochemistry of the body. A total of 31 substances in this rulemaking belong in the category of biochemical or metabolic toxins. Table C12-1 shows these substances and their CAS and HS numbers. Table C12-1 also shows the current PELs for these substances in construction and maritime, the ACGIH TLV®s (1987-1988), the NIOSH RELs (where these apply), and the limits OSHA is proposing to establish in construction, maritime, and agriculture. Promulgation of these PELs will make OSHA's limits for these biochemical/metabolic toxins consistent across all OSHA-regulated sectors.

Description of the Health Effects

The compounds shown in Table C12-1 are further divided into the following sub-classes, based on their mechanism of action:

- Substances that are cholinesterase inhibitors;
- Substances that interfere with the oxygen-carrying capacity of the blood;
- Substances with Antabuse-like effects.

TABLE C12-1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED PRIMARILY ON AVOIDANCE OF METABOLIC EFFECTS

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime*	1978-1988 ACGIH TLV®*	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
1025 Aniline and homologs	62-53-3	5 ppm TWA, Skin	2 ppm TWA, Skin		2 ppm TWA, Skin
1058 Calcium cyanamide	156-62-7		0.5 mg/m³ TWA		0.5 mg/m³ TWA
1068 Carbofuran	1563-66-2		0.1 mg/m³ TWA		0.1 mg/m³ TWA
1069 Carbon dioxide	124-38-9	5,000 ppm TWA	5,000 ppm TWA	10,000 ppm TWA	10,000 ppm TWA
			30,000 ppm STEL	30,000 ppm Ceiling (10-min)	30,000 ppm STEL
1071 Carbon monoxide	630-08-0	50 ppm TWA	50 ppm TWA	35 ppm TWA (8-hour).	35 ppm TWA
			400 ppm STEL	200 ppm Ceiling	200 ppm Ceiling
1091 Chlorpyrifos	2921-88-2		0.2 mg/m³ TWA		0.2 mg/m³ TWA, Skin
			0.6 mg/m³ STEL, Skin.		
1103 Crufomate	299-86-5		5 mg/m³ TWA		5 mg/m³ TWA
			20 mg/m³ STEL		
1104 Cyanamide	420-04-2		2 mg/m³ TWA		2 mg/m³ TWA
2051 Dichlorvos (DDVP)	62-73-7	1 mg/m³ TWA, Skin	0.1 ppm (1 mg/m³) TWA, Skin.		1 mg/m³ TWA, Skin
1131 Dicrotophos	141-66-2		0.25 mg/m³ TWA, Skin.		0.25 mg/m³ TWA, Skin
1143 Dimethylaniline	121-69-7	5 ppm TWA, Skin	5 ppm TWA		5 ppm TWA
			10 ppm STEL, Skin		10 ppm STEL, Skin
1146 Dioxathion	78-34-2		0.2 mg/m³ TWA, Skin.		0.2 mg/m³ TWA, Skin
1151 Disulfiram (Antabuse)	97-77-8		2 mg/m³ TWA		2 mg/m³ TWA

TABLE C12-1.—SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED PRIMARILY ON AVOIDANCE OF METABOLIC EFFECTS—Continued

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime*	1978-1988 ACGIH TLV®**	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
1160 Ethion	563-12-2		0.4 mg/m³ TWA, Skin.		0.4 mg/m³ TWA, Skin
1173 Fenamiphos	22224-92-6		0.1 mg/m³ TWA, Skin.		0.1 mg/m³ TWA, Skin
1174 Fensulfothion	115-90-2		0.1 mg/m³ TWA		0.1 mg/m³ TWA
1175 Fenthion	55-38-9		0.2 mg/m³ TWA, Skin.		0.2 mg/m³ TWA, Skin
1245 Methomyl	16752-77-5		2.5 mg/m³ TWA		2.5 mg/m³ TWA
1280 Monomethylaniline	100-61-8	2 ppm TWA, Skin	0.5 ppm TWA, Skin		0.5 ppm TWA, Skin
2116 Nitric oxide	10102-43-9	25 ppm TWA	25 ppm TWA	25 ppm TWA	25 ppm TWA
2117 Nitrobenzene	98-95-3	1 ppm TWA, Skin	1 ppm TWA, Skin		1 ppm TWA, Skin
1288 p-Nitrochlorobenzene	100-00-5	1 mg/m³ TWA, Skin	0.5 mg/m³ TWA, Skin.		1 mg/m³ TWA, Skin
2122 Parathion	56-38-2	0.1 mg/m³ TWA, Skin.	0.1 mg/m³ TWA, Skin.	0.05 mg/m³ TWA	0.1 mg/m³ TWA, Skin
1319 Phorate	298-02-2		0.05 mg/m³ TWA		0.05 mg/m³ TWA
			0.2 mg/m³ STEL, Skin.		0.2 mg/m³ STEL, Skin
2134 Propane	74-98-6				See text
1337 Propoxur	114-26-1		0.5 mg/m³ TWA		0.5 mg/m³ TWA
1349 Ronnel	299-84-3	15 mg/m³ TWA	10 mg/m³ TWA		10 mg/m³ TWA
1380 Sulprofos	35400-43-2		1 mg/m³ TWA		1 mg/m³ TWA
1384 Terphenyls	26140-60-3	1 ppm Ceiling	0.5 ppm Ceiling		0.5 ppm Ceiling
1401 m-Toluidine	108-44-1		2 ppm TWA, Skin		2 ppm TWA, Skin
1413 2,4,6-Trinitrotoluene	118-96-7	1.5 mg/m³ TWA, Skin.	0.5 mg/m³ TWA, Skin.		0.5 mg/m³ TWA, Skin
2168 Warfarin	81-81-2	0.1 mg/m³ TWA	0.1 mg/m³ TWA		0.1 mg/m³ TWA

* OSHA's PELs do not currently apply in Agriculture; OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TLV®-TWA is for an 8-hour exposures; its STELs are 15-minutes limits not to be exceeded more than 4 times in any working day, with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

*** NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

The disruption of metabolic processes by toxic substances, if severe enough, results in potentially dangerous effects on the neurological, cardiovascular, and respiratory systems. The adverse health consequences caused by exposure to chemicals having cholinesterase inhibition effects range from wheezing, nausea, vomiting, and confusion to respiratory failure, coma, and death. Table C12-2 shows the primary biochemical/metabolic effects associated with occupational exposure to the substances in this group of toxins.

If exposure has localized rather than systemic effects, the signs and symptoms of cholinesterase inhibition can include sweating, blurred vision, and constriction of the bronchial tubes. Substances that interfere with the ability of the blood to carry oxygen cause a broad range of symptoms, including fainting, loss of consciousness, rapid heartbeat, headache, nausea, coma, and death. Carbon monoxide (CO) is the best-known substance in this category of chemicals, and exposure to CO is common throughout the construction, maritime, and agriculture industries.

The Antabuse-like effects associated with exposure to three of the chemicals in this group—disulfiram, cyanamide, and calcium cyanamide—include facial flushing, nausea, and a racing heartbeat. However, these effects are manifested only if the exposed individual has ingested alcohol. The three chemicals in this subgroup cause this effect by inhibiting aldehyde dehydrogenase activity, which is involved in the biotransformation of alcohol.

TABLE C12—2. BIOCHEMICAL/METABOLIC EFFECTS ASSOCIATED WITH EXPOSURE TO THESE SUBSTANCES

H.S. No./chemical name	CAS No.	Biochemical/metabolic effect
1025 Aniline & homologs	62-53-3	Methemoglobinemia.
1058 Calcium cyanamide	156-62-7	Antabuse-like effect.
1068 Carbofuran	1563-66-2	Cholinesterase inhibition.
1069 Carbon dioxide	124-38-9	Hyperventilation.
1071 Carbon monoxide	630-08-0	Carboxyhemoglobinemia.
1091 Chlorpyrifos	2921-88-2	Cholinesterase inhibition.
1103 Cruformate	299-86-5	Cholinesterase inhibition.
1104 Cyanamide	420-04-2	Antabuse-like effect.
2051 Dichlorvos (DDVP)	62-73-7	Cholinesterase inhibition.
1131 Dicrotophos	141-66-2	Cholinesterase inhibition.
1143 Dimethylaniline	121-69-7	Methemoglobinemia.
1146 Dioxathion	78-34-2	Cholinesterase inhibition.
1151 Disulfiram (Antabuse)	97-77-8	Antabuse effect.
1160 Ethion	563-12-2	Cholinesterase inhibition.
1173 Fenamiphos	22224-92-6	Cholinesterase inhibition.
1174 Fensulfothion	115-90-2	Cholinesterase inhibition.

TABLE C12—2. BIOCHEMICAL/METABOLIC EFFECTS ASSOCIATED WITH EXPOSURE TO THESE SUBSTANCES—Continued

H.S. No./chemical name	CAS No.	Biochemical/metabolic effect
1175 Fenthion	55-38-9	Cholinesterase inhibition.
1245 Methomyl	16752-77-5	Cholinesterase inhibition.
1280 Monomethylaniline	100-61-8	Methemoglobinemia.
2116 Nitric oxide	10102-43-9	Methemoglobinemia.
2117 Nitrobenzene	98-95-3	Methemoglobinemia.
1288 p-Nitrochloro-benzene	100-00-5	Methemoglobinemia.
2122 Parathion	56-38-2	Cholinesterase inhibition.
1319 Phorate	298-02-2	Cholinesterase inhibition.
1337 Propoxur	114-26-1	Cholinesterase inhibition.
1349 Ronnel	299-84-3	Cholinesterase inhibition.
1380 Sulprofos	35400-43-2	Cholinesterase inhibition.
1384 Terphenyls	26140-60-3	Mitochondrial changes.
1401 m-Toluidine	108-44-1	Methemoglobinemia.
1413 2,4,6-Tri-nitrotoluene	118-96-7	Methemoglobinemia.
2168 Warfarin	81-81-2	Capillary fragility.

For chemicals that cause systemic toxicity in animals and/or humans, the grossly observable signs and symptoms of intoxication are usually secondary to the interaction of the chemical with a molecular target. In other words, the chemical interacts with (binds with or modifies) an endogenous molecular constituent (protein, nucleic acid, lipid, etc.) in the target tissue. The result of the interaction is ordinarily a modification or elimination of the normal function of the specific molecular constituent which, if sufficiently severe, may lead to secondary effects within the affected cells and/or tissues. It is possible for a number of molecules to be affected by the toxic chemical without there being any overt manifestation of toxicity. In other words, there is an apparent no-effect level governing the overt manifestation of toxicity, although there are usually metabolic effects at levels below those that cause overt effects.

For chemicals for which the molecular target is known and for which methods are available to detect the altered molecular target, it is possible to use the measure of altered biochemical function as a sensitive indicator of exposure to the chemicals at levels below those that cause grossly observable signs and symptoms of poisoning. For other classes of chemicals, studies in animals and/or humans have shed light on the biochemical basis of their toxicity. For some of these classes of chemicals, it is possible to base limits for human exposure on biochemical, metabolic, or pharmacologic indicators of their interaction with molecular targets rather than on grossly visible signs and symptoms of adverse systemic effects.

Substances that are cholinesterase inhibitors. A number of organophosphate and carbamate insecticides produce acute toxicity in humans through inhibition of acetylcholinesterase at cholinergic synapses in the central and peripheral nervous systems. Many of the substances in this group have this effect. This inhibition causes an accumulation of acetylcholine at the effector sites and elicits signs and symptoms consistent with excessive cholinergic activity. These include bronchoconstriction; increased bronchial secretions, salivation, and lacrimation; nausea; vomiting; cramps; constriction of the pupils; muscular weakness; and cardiac irregularities. If sufficiently severe, acetylcholinesterase inhibition may cause coma, irreversible CNS damage, and death.

The mechanisms by which carbamates and organophosphates inhibit acetyl-cholinesterase differ. In general, carbamates form a noncovalently bound complex with the enzyme, while most organophosphates bind covalently with the enzyme. The net result, inactivation of the enzyme, is similar for both groups. In either case, the inhibition is usually reversible. The carbamate-cholinesterase complex dissociates to regenerate the active enzyme, while cholinesterase inactivated by organophosphates is replaced by the *de novo* synthesis of active enzyme. Therefore, unless the inhibition is sufficiently severe to cause brain damage or death, the manifestations of acute toxicity are reversible, and poisoned individuals recover without sequelae. A significant proportion of endogenous cholinesterase activity may be inhibited before the overt manifestations of intoxication appear. The fraction of total cholinesterase activity that can be inhibited without the development of signs and symptoms of toxicity varies from individual to individual and also appears to depend on the intensity and duration of exposure. The lack of warning signs at low levels of exposure increases the need to set exposure limits at levels that will protect those individuals who do not readily manifest the symptoms and signs of toxicity from experiencing the subclinical effects of exposure.

Substances that interfere with the oxygen-carrying capacity of the blood. Several compounds in this section produce their immediate toxicity in humans by altering the ability of hemoglobin in the red blood cells to bind, transport, and release oxygen. Perhaps the best studied of these is carbon monoxide. Carbon monoxide binds to hemoglobin with a greater affinity than does oxygen. It also alters the dissociation characteristics for the oxygen-hemoglobin complex. The overall effect is to reduce the oxygen-carrying capacity of the blood. Also included in this overall category of compounds is a group of aromatic amines and nitro compounds that react with hemoglobin in the blood to reduce it to methemoglobin. Methemoglobin will not bind with oxygen and therefore is not an effective carrier of oxygen.

Because these compounds reduce the ability of the blood to transport oxygen, the overt signs and symptoms of acute toxicity are those of tissue anoxia, i.e., neurobehavioral disturbances, dizziness, cardiac irregularities, cyanosis, unconsciousness, and death. The severity of the symptoms is a function of the degree to which the oxygen-carrying capacity of the blood has been depleted and of the state of the exposed individual's health. In the case of carbon monoxide, individuals with pre-existing cardiovascular disease or healthy individuals engaged in physical labor may be placed at increased risk when more than 5 percent of their hemoglobin is bound to carbon monoxide.

In the cases of both carbon monoxide and the methemoglobin-forming compounds, the primary effect (i.e., formation of carboxyhemoglobin or methemoglobin) is reversible. In the absence of additional carbon monoxide

exposure, carboxyhemoglobin dissociates to carbon monoxide and fully functional hemoglobin. Methemoglobin can be reoxidized to hemoglobin by endogenous mechanisms, but the major recovery mechanism is via the synthesis of new hemoglobin.

Substances with Antabuse-like effects. The ingestion of alcoholic beverages following exposure to disulfiram, cyanamide, or calcium cyanamide results in a characteristic syndrome consisting of flushing of the face, nausea, vomiting, hypotension, and increased heart rate. If exposure is particularly severe, the reaction may trigger convulsions, cardiac arrhythmias, or heart attacks; in some cases, such exposures have caused death. In the vast majority of less severe cases, the reaction is fully reversible, although the symptoms are temporarily completely disabling. Disulfiram (Antabuse) is used therapeutically in the treatment of chronic alcoholism; employees who are currently being treated with disulfiram for alcoholism are therefore at particularly high risk if they are also occupationally exposed to these substances that cause Antabuse-like effects. These compounds do not cause any signs or symptoms of toxicity in the absence of alcohol ingestion unless exposure levels are far above those that trigger the alcohol-induced response.

Dose-Response Relationships and Biochemical/Metabolic Effects

Substances that are cholinesterase inhibitors. Typically, the cholinesterase inhibition potential of a compound is assessed by measuring plasma cholinesterase activity in the treated organism. Data from experiments in animals and limited data from human clinical trials indicate that the percentage of basal plasma cholinesterase activity decreases with increasing dose and that the dose-response curve is S-shaped. Because there is interindividual variation in this relationship, the dose-response curve for a population exposed to a cholinesterase inhibitor would be expected to be much shallower in slope and to have longer tails than the dose-response curve for any single individual.

The relationship between the dose-response curve for plasma cholinesterase inhibition and the dose-response curves for more direct indicators of clinical intoxication, such as acetyl cholinesterase activity in the CNS or the actual appearance of signs of intoxication, is not known. Evidence suggests that there is considerable interindividual variability in these relationships. Some individuals may be free of the symptoms and signs of intoxication when their plasma cholinesterase levels have been inhibited by as much as 90 percent, while others may experience symptoms after only a small decrease in plasma cholinesterase activity. Because of this wide variation in response, any exposure limit should be set with individual variability in mind.

Substances that interfere with oxygen transport. Both carboxyhemoglobin and methemoglobin formation exhibit a classical sigmoidal dose-response relationship in relation to exposure to carbon monoxide or methemoglobin-forming compounds. The loss in the oxygen-carrying capacity of the blood is a function of the intensity and duration of exposure. As stated above, the majority of healthy individuals can tolerate some reduction in the oxygen-carrying capacity of their blood without experiencing symptoms of overt toxicity. However, there is great interindividual variability in the degree of decreased oxygen-carrying capacity that can be tolerated without apparent ill effect. Individuals with pre-existing anemia or with high carboxyhemoglobin levels as a result of other environmental exposures (e.g., smoking) may already be at or above the level at which they will display the signs or experience the symptoms of tissue anoxia. For these individuals, even a small incremental decrease in the oxygen-carrying capacity of the blood can have serious consequences.

Substances causing Antabuse-like effects. The dose-response characteristics of disulfiram, cyanamide, and calcium cyanamide follow the usual S-shaped curve. The proposed rule's limits for the substances in this group have been set at levels below those associated with the Antabuse effect in workers ingesting alcohol either during or after work.

The following paragraphs describe the Agency's preliminary findings with respect to these substances that cause biochemical/ metabolic disturbances. The discussions below also illustrate the risk of material health impairment associated with exposure to these substances.

ANILINE (AND HOMOLOGS)
CAS: 62–53–3; Chemical Formula: $C_6H_5NH_2$
H.S. No. 1025

OSHA's 8-hour TWA permissible exposure limit for aniline in construction and maritime is 5 ppm, with a skin notation. There is no limit in agriculture. The ACGIH-recommended 8-hour TLV®-TWA is 2 ppm, with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N6A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 2 ppm, and a skin notation, for aniline in construction, maritime, and agriculture; this is the limit recently established in general industry.

When first distilled, aniline is an oily, colorless liquid that darkens on exposure to air; it has a characteristic odor. Aniline and its homologs are used in the manufacture of resins, varnishes, perfumes, shoe blacks, solvents, vulcanizing agents, inks, paint removers, explosives, herbicides, dyes, lacquers, wood stains, corrosion inhibitors, and photographic chemicals. Aniline also finds use as a chemical intermediate and laboratory reagent (HSDB 1990; ACGIH 1986, p. 30). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Aniline causes methemoglobinemia on acute exposure and anemia, weight loss, and cutaneous lesions on chronic exposure. Aniline also causes cancer in animals. The LC_{50} in mice is 175 ppm for 7 hours, and the lowest toxic concentration in rats is 250 ppm for 4 hours (1990). The dermal LD_{50} in rabbits is 820 mg/kg (RTECS 1990). Rats were given single oral doses of aniline (500, 622.9, 775.9, 866.0, 966.6, 1204.1, or 1500.0 mg/kg) in a recent acute toxicity study (EPA 1986, Doc. #86–870001696, OTS). Within 14 days of dosing, 1 rat in the 622.9 mg/kg group, 6 rats in the 775.9 mg/kg group, 7 rats in the 866.0 mg/kg group, 9 rats in the 1204.1 mg/kg group, and all rats in the 1500 mg/kg group had died. Oral LD_{50}s of 930 mg/kg for males and 780 mg/kg for females were established in this study. Acutely poisoned animals showed cyanosis, tremors, tachypnea, lacrimation, and coma before death. Rats exposed to 5 ppm of aniline for 6 months showed a slight increase in methemoglobinemia (Oberst, Hackley, and Comstock 1956/ Ex. 1–685). Guinea pigs, dogs, and mice exposed to aniline on the same regimen showed no effects (Oberst, Hackley, and Comstock 1956/Ex. 685). Rats exposed chronically to aniline hydrochloride developed spleen hemangiosarcomas; dietary levels were 10, 30, or 100 mg/kg. Treated rats showed splenic tumors and fibrosarcomas and sarcomas of multiple body organs (NCI1 1987a/Ex. 1–1118).

Occupational aniline poisoning was a relatively common occurrence in earlier years (ACGIH 1986/Ex. 1–3, p. 30). The early limits for aniline were set to guard against acute toxicity manifested as cyanosis (Henderson and Haggard 1943i, as cited in ACGIH 1986/Ex. 1–3, p. 30).

Cirrhosis and chronic CNS effects were also reported in early studies (Holstein 1955/Ex. 1–813; von Oettingen 1941/Ex. 1–874). Skin absorption occurs when aniline vapor contacts the skin (Dutkiewicz 1962, as cited in ACGIH 1986/Ex. 1–3, p. 30). Early studies suggested that less than full-shift exposure to concentrations of aniline vapor ranging from 7 to 53 ppm caused mild symptoms, while one-hour inhalation exposures to concentrations in the range of 100 to 160 ppm caused severe effects (Henderson and Haggard 1943i, as cited in ACGIH 1986/Ex. 1–3, p. 30). A NIOSH-sponsored study conducted in 1986 reports that altering the workshift from five 8-hour days to four 12-hour days increased the toxicity associated with exposure to aniline at 50 or 150 ppm (Kim, YC and Carlson GP 1986, in Fund. Appl. Toxicol. 7(1):144–152). Aniline-induced methemoglobinemia was cumulative in both 8-hour and 12-hour workers exposed to 50 ppm, but this effect was more severe in those working the longer shift. Methemoglobin levels in the blood returned to normal after overnight recovery in the 8-hour group but did not recover in the workers working the 12-hour shift. Two poisoning incidents attributable to aniline absorption through the skin have been reported; in both cases, the onset of symptoms was delayed for 2 to 4 hours. Both victims became weak, developed headaches, became deeply cyanotic, and collapsed; after treatment, recovery was complete (Gosselin, Smith, and Hodge 1984, p. III–32).

Based on this evidence, OSHA preliminarily concludes that aniline causes methemoglobinemia in humans by inhalation and skin absorption. Accordingly, OSHA is proposing an 8-hour TWA of 2 ppm for aniline, and a skin notation, in construction, maritime, and agriculture. The Agency believes that this limit will protect workers in these sectors from the significant occupational risk of methemoglobinemia, which constitutes a material impairment of health. Promulgation of this limit will also make OSHA's PEL for aniline consistent across all regulated sectors.

CALCIUM CYANAMIDE

CAS: 156–62–7; Chemical Formula:

$CaNC{=}N$

H.S. No. 1058

OSHA has no limit for calcium cyanamide in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.5 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed, which is 0.5 mg/m³ as an 8-hour TWA. This is the limit recently established for calcium cyanamide in general industry.

Calcium cyanamide is a white-to-gray, crystalline solid. Calcium cyanamide is used as a fertilizer, an herbicide, and a defoliant for cotton plants; it also finds use as a chemical intermediate (Clayton and Clayton 1981, p. 4856). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Calcium cyanamide causes parasympathetic overactivity in overexposed humans and animals; in humans, exposure may cause intense cutaneous and mucosal flushing, headache, vertigo, tachypnea, hypotension, and profound shock (Gosselin, Smith, and Hodge 1984, p. II–351). In rats, the oral LD_{50} is 158 mg/kg (RTECS 1990). Skin and eye irritation have been reported in rats and rabbits, with significant irritation occurring when 100 mg of calcium cyanamide is placed directly into the eyes of rabbits (Martin 1975, as cited in ACGIH 1986/Ex. 1–3, p. 91). Severe skin irritation developed in rabbits when a paste of this substance was applied to the shaved abdominal skin for 24 hours (Martin 1975, as cited in ACGIH 1986/Ex. 1–3, p. 91). Two of five animals died when the dose was 10 g/kg, but all survived a dose of 5 g/kg.

Most cases of industrial calcium cyanamide poisoning involve primary skin irritation or sensitizing dermatitis. Skin irritation develops in the form of an erythematous rash over the surfaces of the body that are exposed to the substance or those body surfaces irritated by clothing or perspiration. Some individuals develop a macular rash on exposure, and this may progress to the weeping stage. In addition, exposed workers may develop temporary vasomotor disturbances of the upper body, with susceptibility increasing with alcohol intake (Fassett 1963d, as cited in ACGIH 1986/Ex. 1–3, p. 91).

The fatal dose in humans is estimated to be 40 to 50 grams. Calcium cyanamide is used medically for its Antabuse-like effect, and the maintenance dose in adults is between 50 and 100 mg/day (Hald, Jacobsen, and Larson 1952/Ex. 1–905). One death has been caused by the ingestion of alcohol when the patient was on calcium cyanamide alcohol aversion therapy (Gosselin, Smith, and Hodge 1984, p. II–351).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL of 0.5 mg/m³ for calcium cyanamide. The Agency believes that this limit is necessary to substantially reduce the significant risks of material health impairment in the form of eye and skin irritation, sensitizing dermatitis, and the occurrence of Antabuse-like effects in workers in construction, maritime, and agriculture. Promulgation of this limit will also make the PEL for calcium cyanamide consistent across all OSHA-regulated sectors.

CARBOFURAN

CAS: 1563–66–2; Chemical Formula:

$C_{12}H_{15}NO_3$

H.S. No. 1068

OSHA has no limit for carbofuran in the construction, maritime, or agriculture industries. The ACGIH has a TLV®–TWA of 0.1 mg/m³ for this substance. The PEL OSHA is proposing for carbofuran is 0.1 mg/m³ as an 8-hour TWA, and NIOSH concurs (Ex. 8–47, Table N1) that this limit is appropriate. This is the limit recently established for carbofuran in general industry.

Carbofuran, also called furadan, is a white, crystalline, odorless solid (HSDB 1990). Carbofuran is used as a miticide, a nematocide, and an insecticide on corn, alfalfa, tobacco, and other field groups. Carbofuran belongs to the methyl carbamate group of pesticides (HSDB 1990). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Carbofuran is a cholinesterase inhibitor in animals and humans. The oral LD_{50} in rats is 5.3 mg/kg, and the LC_{50} in the same species is 85 mg/m³ for an unspecified time (RTECS 1990). The dermal LD_{50} in rabbits is 885 mg/kg (RTECS 1990). The N-methyl carbamate insecticides produce their effects by carbamylation of acetylcholinesterase enzyme, which allows the accumulation of acetylcholine at synapses in the nervous system. Rats fed carbofuran at a dietary level of 10 or 25 ppm for 180 days showed no significant histopathological effects at autopsy (Rotaur et al. 1981, Med. del Lavoro 72(5):399–403). Repeated intraperitoneal doses of 0.25 mg/kg carbofuran in mice caused a significant decrease in hemoglobin, number of erythrocytes and platelets, and hematocrits. Bone marrow depression and splenic hyperplasia were also seen (Gupta et al. 1981, in Toxicology 25(2–3):255–260). Rhesus monkeys did not display cholinesterase depression after exposure to concentrations equivalent to 0.56 mg/m³ of a 75-percent wettable carbofuran powder (Tobin 1970/Ex. 1–935). Inhibition of plasma, erythrocyte, and brain cholinesterase levels was evident

in rats at carbofuran levels of 50 ppm in the diet (Tobin 1970/Ex. 1–935). Six-hour exposures to concentrations of 0.86 mg/m³ caused significant cholinesterase inhibition in experimental animals (Tobin 1970/Ex. 1–935).

In humans, overexposure to carbofuran causes the onset of the signs and symptoms of cholinesterase inhibition soon after exposure; however, recovery generally occurs rapidly after the cessation of exposure. Formulators and applicators of carbofuran who have been poisoned displayed the following signs and symptoms: blurred vision, nausea, weakness, and excessive perspiration (Hayes 1982, p. 454). If the exposure is severe, death caused by pulmonary edema and paralysis of the respiratory center may occur (Morgan 1989, in Recognition and Mgmt. of Pesticide Poisonings, p. 13).

Based on this evidence, OSHA is proposing a permissible exposure limit of 0.1 mg/m³ as an 8-hour TWA for this substance to protect employees in construction, maritime, and agriculture from the significant risk of cholinesterase inhibition potentially associated with exposure to this substance. The Agency preliminarily concludes that this limit is necessary to substantially reduce the significant occupational risk of material impairment of health posed by exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for carbofuran consistent across all regulated sectors.

CARBON DIOXIDE

CAS: 124–38–9; Chemical Formula: CO_2
H.S. No. 1069

OSHA's current limit for carbon dioxide in construction and maritime is 5000 ppm as an 8-hour TWA. There is no PEL in agriculture. The ACGIH has a 5000-ppm TLV®–TWA for this substance with a 30,000-ppm TLV®–STEL, and NIOSH has a TWA REL of 10,000 ppm with a 10-minute 30,000-ppm ceiling limit; OSHA is proposing PELs of 10,000 ppm (8-hour TWA) and 30,000 ppm (15-minute STEL) for carbon dioxide in construction, maritime, and agriculture. These are the limits recently established in general industry.

Carbon dioxide is a colorless, odorless, noncombustible gas. This substance finds use as a refrigerant; in the production of urea, carbonates, methanol, hydrocarbons, and sodium salicylate; in the carbonation of beverages; as a propellant in aerosols; in livestock slaughtering; in food processing and preserving; in oil well stimulation; to inert flammable materials; in welding; in municipal water treatment; in cloud seeding; as a pesticide and fertilizer; and in many other applications (HSDB 1990). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Exposure to high concentrations of carbon dioxide (CO_2) causes metabolic effects (increases in respiratory rate; decreases in serum calcium and urinary phosphorus output (both indicators of mild metabolic stress) and central nervous system depression and excitation. In experimental animals, exposure to a 30,000-ppm concentration of CO_2 caused elevated blood pressure and pulse, exposure to 50,000 ppm for 30 minutes caused signs of intoxication, and exposure to concentrations between 70,000 and 100,000 ppm causes unconsciousness within a few minutes (Hamilton 1974, Indus. Tox. 3rd ed., p. 237). The offspring of rats exposed to a mixture of CO_2 (6%), oxygen (20%), and nitrogen (74%) on a single gestation day showed a significantly higher percentage of cardiac malformations than controls; administration of CO_2 to pregnant rabbits on gestation days 7 to 12 caused 16 of 67 fetuses to have defects of the vertebral column (Shepard 1980, Cat. Teratogenic Agents 3rd ed., p. 52).

Both the ACGIH (1986/Ex. 1–3) and NIOSH (1976 Criteria Document) cite studies indicating that continuous exposure to between 1.5 and 3 percent carbon dioxide (15,000 to 30,000 ppm) results in few, if any, adverse effects in exposed individuals. However, electrolyte imbalances and other metabolic changes have been associated with prolonged exposure to 10,000 to 20,000 ppm CO_2 (Schulte 1964/Ex. 1–306; Gray 1950, as cited in ACGIH 1986/Ex. 1–3, p. 102). Increases in the rate of respiration have been observed among resting subjects exposed to carbon dioxide at a concentration of 39,500 ppm for periods shorter than a day and among exercising subjects exposed to airborne CO_2 concentrations below 30,000 for the same period (Sinclair et al. 1969, as cited in ACGIH 1986/Ex. 1–3, p. 102). Many occupational fatalities have occurred as a result of workers entering CO_2-contaminated wells and silos (Groves and Ellwood 1969, in Ann. Occup. Hyg. 33(4):519–535; Proctor, Hughes, and Fischman 1988, p. 119). The signs and symptoms of acute CO2 poisoning include psychomotor agitation, myoclonic twitching, eye flickering, dyspnea, dizziness, sweating, paresthesias, and restlessness (NIOSH 1976 Criteria Document; Williams 1958, Br. Med. J. 2:1012–1014; Smith, J.C. et al. 1985, in Gilman et al. Goodman and Gilman's Pharm. Basis of Therapeutics 7th ed., p. 333–335).

Based on this evidence, OSHA is proposing a 10,000-ppm PEL as an 8-hour TWA and a 30,000-ppm STEL over 15 minutes to protect employees in the construction, maritime, and agriculture sectors from experiencing the metabolic and central nervous system changes that are associated with exposure to elevated short-term concentrations of CO_2. The Agency believes that these limits are necessary to substantially reduce these risks of material health impairment. Promulgation of these PELs also will make OSHA's limits for carbon dioxide consistent across all regulated sectors.

CARBON MONOXIDE

CAS: 630–08–0; Chemical Formula: CO
H.S. No. 1071

OSHA's limit for carbon monoxide in construction and maritime is 50 ppm as an 8-hour TWA. The limits in marine terminals and longshoring are a 50 ppm and, in confined spaces, a 100 ppm ceiling. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 50 ppm and a TLV®–STEL of 400 ppm for carbon monoxide. NIOSH (1973d/Ex. 1–237) recommends an 8-hour TWA limit of 35 ppm and a 200-ppm ceiling. For all sectors, OSHA is proposing PELs of 35 ppm (8-hour TWA) and 200 ppm (ceiling, measured over 5 minutes), respectively. OSHA is retaining the 100 ppm ceiling for CO in confined spaces in marine terminals and longshoring. NIOSH concurs (Ex. 8–47, Table N1) that the proposed limits are appropriate. These are the limits recently established for carbon monoxide in general industry.

Carbon monoxide is a flammable, colorless, practically odorless gas. This substance is used as a reducing agent in metallurgical operations, in the manufacture of metal carbonyls and zinc-based white pigments, and as a chemical intermediate. Most occupational exposures to this ubiquitous substance are the result of the incomplete combustion of organic material (HSDB 1990; Gosselin, Smith, and Hodge 1984, p. III–94).

Carbon monoxide has caused a large number of industrial fatalities as a result of its tendency to combine readily with hemoglobin to form carboxyhemoglobin (COHb). The Immediately Dangerous to Life and Health (IDLH) level for carbon monoxide is 1500 ppm (NIOSH 1987). At levels above this, workers quickly lose consciousness; if exposure is not terminated immediately, death by asphyxiation follows quickly.

In experimental animals, asphyxiation occurs when the airborne concentration

of CO exceeds 3 percent (30,000 ppm) (HSDB 1990). CO also causes reproductive and developmental effects in animals. The LC_{50} in rats is 1807 ppm for 4 hours (RTECS 1990). Rats were exposed (nose only) to 527, 1091, or 1800 ppm CO for 1 hour/day for 14 days; no treatment-related clinical effects were seen in animals of any dose group, although blood carboxy-hemoglobin levels increased in a dose-dependent manner. In controls, blood COHb levels averaged 2 percent and rose to 60 to 62 percent in the 1800-ppm group. Respiration rate and hemoglobin decreased in all groups in a dose-dependent manner (Ayres, Mosberg, Burger, Hayes, Sagartz, and Coggins 1989, in Inhal. Toxicol. 1(4):349–363). Exposure of pregnant animals to concentrations of CO that are not maternally toxic causes destructive changes to the nervous systems of the fetuses; pregnant rats exposed to 150 ppm CO had fetuses that showed evidence of persistent central nervous system damage (Mactutus and Fletcher 1984, 1985, in Science 223:409–411 and Teratology 31:1–12). The offspring of mice and rabbits exposed during pregnancy also showed embryotoxic or developmental effects (RTECS 1990). Neonatal rats were exposed to 500 ppm CO for up to 32 days after birth; the CO exposure caused cardiomegaly, evidenced by a 47 percent increase in ventricular weight to body weight ratio in rats exposed for 28 days (Clubb, Penney, and Bishop 1989, in J. Mol. Cell. Cardiol. 21(9):945–955).

Excessive accumulations of COHb cause hypoxic stress in healthy individuals as a result of the reduced oxygen-carrying capacity of the blood. In patients with cardiovascular disease, such stress can further impair cardiovascular function. A number of studies show that 8-hour TWA exposures to 50 ppm carbon monoxide generally results in COHb levels of 8 to 10 percent. Such levels are not generally associated with overt signs or symptoms of health impairment in healthy individuals with strong cardiovascular systems who are working under nonstressful conditions. However, the ACGIH believes that a TLV®-TWA of 25 ppm, which results in COHb levels of 4 percent or less, may be necessary to protect workers with cardiovascular disease, because this condition places workers at higher risk of serious cardiovascular injury (ACGIH 1986/Ex. 1–3, p. 106). The NIOSH REL of 35 ppm TWA is also aimed at protecting workers with chronic heart disease (CHD); NIOSH believes that such workers should not be allowed to have carboxyhemoglobin levels that approach 5 percent. In the prior rulemaking, several commenters questioned the need to lower the 8-hour TWA and to add a STEL. In response to these commenters, OSHA quoted the ACGIH (1986/Ex. 1–3):

> Each molecule of CO combining with hemoglobin reduces the oxygen carrying capacity of the blood and exerts a finite stress on man. Thus, it may be reasoned that there is *no dose of CO* that is not without an effect on the body. Whether that effect is physiologic or harmful *depends upon the dose of CO and the state of health of the exposed individual.* The body compensates for this hypoxic stress by increasing cardiac output and blood flow to specific organs, such as the brain or the heart. When this ability to compensate is overpowered or is limited by disease, tissue injury results [emphasis added].
>
> Exposure to CO sufficient to produce COHb saturations in the 3–5% range impairs cardiovascular function in patients with cardiovascular disease and in normal subjects * * *. The primary effect of exposure to low concentrations of CO on workmen results from the hypoxic stress secondary to the reduction in the oxygen-carrying capacity of blood * * *. Workmen with significant disease, both detected and undetected, may not be able to compensate adequately and are at risk of serious injury. For such workers, a TLV of 25 ppm * * * might be necessary. Even such a concentration might be detrimental to the health of some workers who might have far advanced cardiovascular disease * * *. It would appear to the Committee that the time-weighted TLV of 50 ppm for carbon monoxide might also be too high under conditions of heavy labor, high temperatures, or at high elevations (ACGIH 1986/Ex. 1–3, p. 106).

Thus, the ACGIH also regards a lower limit for CO as necessary to protect workers with cardiovascular or pulmonary disease or those working under stressful conditions.

OSHA believes that it is clearly necessary to set a CO level that protects workers who have CHD because (1) a large percentage of employees have it, (2) it is often not diagnosed or diagnosable, and (3) it is frequently fatal. The 35 ppm 8-hour TWA is designed to protect employees with asymptomatic CHD. The term CHD is generally used to refer to the process of atherosclerosis of the coronary arteries, which leads to disturbances in the myocardial blood supply.

Each year, more persons in the United States die from CHD than from any other disease. Coronary atherosclerotic heart disease is the most common form of cardiac disease in adults in the United States (Eros, WF, RH Holmes, and J Beyer. Coronary Disease Among United States Soldiers Killed in Action in Korea, J. Am. Med. Assoc. 152:1090–1093, 1953). During the Korean War, autopsies performed on young soldiers, with an average age of 22 years, revealed that 77.3 percent had a gross pathologic evidence of CHD. A study (Spiekerman, RE, JT Brandenberg, RWP Anchor, and JE Edwards 1962. The Spectrum of Coronary Heart Disease in a Community of 30,000. A Clinicopathologic Study, Circulation 25:57–65) of autopsies in a stabilized population of 30,000 revealed that CHD was the cause of death in 40 percent of the males. In most cases, the first clinical manifestation of CHD is expressed either as the angina pectoris syndrome or as frank myocardial infarction. According to the Framingham, Massachusetts, study conducted by the U.S. Public Health Service, CHD is first manifested as myocardial infarction in one-sixth of all cases of CHD (NIOSH, Criteria for a Recommended Standard: Occupational Exposure to Carbon Monoxide, 1972).

It is clearly evident from these statements that the general worker population in the United States is composed of a very significant number of persons with CHD. Since the identification of such persons in the absence of overt clinical symptoms is virtually impossible, it is necessary to assume that the average worker has asymptomatic CHD, especially when his/her first clinical symptom may be sudden death (NIOSH, Criteria for a Recommended Standard: Occupational Exposure to Carbon Monoxide, 1972). Several studies demonstrate the significant risk associated with CO exposure, particularly with respect to coronary heart disease. A study of firefighters in Los Angeles (Barnard and Weber 1979) suggests that CO exposure during firefighting may be responsible for the high incidence of heart disease in firefighters. In some fires, peak exposures were occasionally as high as 3000 ppm CO, with 40 percent of peak values in the 100- to 500-ppm CO range. However, in some fires, the peak CO exposure was below 100 ppm. Although these peak exposures in firefighters were high, firefighters are likely to be exposed overall for fewer hours than the workers of concern in this rulemaking.

A prevalence study was recently performed on angina pectoris, ECG changes, and blood pressure that involved 1,000 workers from 20 foundries (Hernberg, Karava, Koskela, and Luoma. 1976. Angina pectoris, ECG findings and blood pressure of foundry workers in relation to carbon monoxide exposure. Scand. J. Work Environ. & Health 2). On the basis of actual measurements of air concentrations of

CO, the workers were divided into three exposure groups. The workers' smoking habits, both present and past, were factored into the analysis. No association between CO exposure and blood pressure or ECG changes was found. However, a clear dose-response was found with regard to the prevalence of angina (as obtained by history on a World Health Organization-recommended questionnaire) and CO exposure in workers (both smokers and nonsmokers).

In order to obtain some quantitative estimate of the process of selection for healthy workers in the foundries studied, the authors contacted workers who had left this type of work. Fourteen percent of those who had left foundry work after less than 1year of employment and 7 percent of those who had left it after more than 5years of foundry employment reported health impairment or disability as the reason for quitting foundry work. The authors conclude that this evidence indicates that less healthy workers left employment early on. This selection process, which is apparent in this study and also in the American foundry study by Redmond, results in an over-representation of fit and healthy workers in physically heavy work, such as foundry work.

NIOSH conducted a prospective cohort mortality study among 1,558 white male motor vehicle examiners who were employed in New Jersey for a minimum of 6 months between 1944 and 1973 (Stern, Lemen, and Curtis 1981). Industrial hygiene surveys indicated that the examiners were exposed to carbon monoxide at a time-weighted-average (TWA) of 10 to 24 ppm. Using a modified life table technique, the expected deaths were compared to the expected deaths through August 1973. The overall deficit of mortality observed (SMR 80) in this occupational cohort during the first 10-year period was to be expected as a result of the widely accepted "healthy worker effect." However, the component SMR for cardiovascular disease deaths (134) was unexpected, since the "healthy worker effect" had been most significantly associated with decreased cardiovascular disease mortality (McMichael 1976, in Standardized Mortality Ratios and the "Healthy Worker Effect": Scratching Beneath the Surface, J. Occup. Med. 18:165–168). The authors refer to the excess of cardiovascular disease mortality found within the first 10 years following employment as "non-statistically significant, but highly unusual." OSHA believes that this evidence suggests that slightly elevated COHb may contribute to excess cardiovascular disease rates in a healthy population that is of average fitness (since the work is not physically hard).

A recent study (Kristensen 1989, in Scand. J. Work Environ. Hlth. 15(4): 245–264) reviewed the epidemiological evidence for an association between carbon monoxide and heart disease and concluded that carbon monoxide exerts acute and possibly reversible short-term effects that can increase the risk of cardiovascular disease. Twenty-four male volunteers with stable angina pectoris exercised after breathing air or low levels (not further specified) of CO; subjects' blood COHb levels increased to 3 percent after CO exposure, and oxygen uptake was also significantly reduced (Kleinman, Davidson, Vandagroff, Caiozzo, and Whittenberg 1989, in Arch. Environ. Hlth. 44(6): 361–369).

In another recent study, male volunteers aged 35 to 75 with stable exertional angina pectoris and positive exercise treadmill tests were exposed to CO concentrations designed to cause 2.2 to 4.4 percent COHb levels after exercise. The subjects performed a symptom-limited exercise test on a treadmill, followed by exposure for 1 hour to CO, and then performed a second treadmill test. All subjects who completed the study (N=63) showed significant decreases in time to onset of ischemic ST-segment changes; in the 2 percent COHb group, this change equalled 5.1 percent, and in the 4 percent COHb group it averaged a 12.1 percent decrease (Allred, Bleecher, Chaitman, Dahms, Gottlieb, Hackney et al. 1989, in Res. Rep. Hlth. Effect. Inst. 25:79).

In addition, a number of recent studies point to CO's reproductive and neurotoxic/behavioral effects. For example, episodes of acute CO poisoning have been known to lead to late-onset fatal demyelination in the exposed worker (Winter and Miller 1976, in JAMA 236: 1502–1504), mental damage manifested as gross neuropsychiatric change, or personality deterioration (Smith and Brandon 1973, in Br. Med. J. 1: 318–321). Carbon monoxide is also known to cross the placental barrier in humans (Gosselin, Smith, and Hodge 1984, p. III–97). The infants of mothers who were acutely poisoned by CO during pregnancy often show evidence of neurological damage and may have gross brain damage (Goodman 1980, Pharm. Basis Therap. 6th ed., p. 1643).

Another study, Mortality of Steelworkers Employed in Hot Jobs (Redmond 1977) is a well-designed investigation of the possible relationships between heat stress (both environmental and metabolic heat load) and cause-specific mortality patterns in a cohort of 69,414 steelworkers. Two main sets of data were analyzed: (1) Field data, and (2) mortality data. The field data were divided into four computer files: (1) indoor environmental measurements, (2) outside plant environmental measurements, (3) National Weather Service Data, and (4) activity data. From these data, estimations of heat exposure and work loads were made. Workers were then divided into four categories based on heat and energy expenditures, and the mortality experience of workers in each category was compared to mortality in the control group. The investigators made no attempt to characterize exposures to carbon monoxide.

For mortality from cardiovascular-renal disease (CVR), relative risks were significantly low for those workers in the two higher environmental heat categories, indicating a possible relationship between decreased mortality and environmental heat stress. When the mortality experience was examined by length of exposure, a higher than expected risk was noted among workers with less than 6 months of exposure in all exposure groups. This was less than the expected risk of mortality due to cardiovascular-renal disease once the initial 6 month employment period has been exceeded. The authors state that "(t)hese higher risks may be indicative of a relationship between inability to work in jobs involving heat stress and health. This selection for health may at least partially explain the results for mortality from cardiovascular disease. Workers who are less fit leave the job after varying lengths of exposure, thus resulting in a downward trend in mortality for workers who remain on the job."

When mortality from arteriosclerotic heart disease was separated out from the CVR heading, the risks of dying were significantly low for workers in the two highest exposure categories. When the mortality patterns were examined by length of exposure, higher risks were noted among those with short exposure times. These trends are consistent with those seen for cardiovascular mortality.

The American Iron and Steel Institute (AISI) pointed out in the general industry hearing (Ex. 129) that the high heat stress workers would also have had higher exposure to CO. AISI argued that it was therefore not necessary to lower the exposure limit for CO. OSHA

believes that the more likely explanation of this result, as seen in several of the other studies discussed, is the healthy worker effect. Only persons with substantially above-average cardiovascular fitness can perform these physically demanding jobs. Persons with average or below-average cardiovascular fitness either do not take such jobs in the first place or leave them after a few months. Furthermore, the level of exertion the jobs require keeps cardiovascular fitness high. Consequently, the low CHD rates seen are caused by the high proportion of cardiovascularly fit workers in these jobs. The study cannot therefore be said to contradict the need to reduce COHb levels to prevent excess CHD risk in workers with average or below-average levels of cardiovascular fitness. In addition, the study did not attempt to correlate CO levels and cardiovascular disease, and no CO measurements were taken.

As pointed out above, cardiovascular disease (detected or undetected) and pulmonary impairment are widespread in the general population in this country, in workers as well as other sub-populations. In addition, OSHA is particularly concerned about the adverse effects of CO because workers regularly encounter complex and stressful situations at work, including heat stress, jobs demanding heavy exertion, and tasks requiring both judgment and motor coordination. OSHA standards are intended to protect workers of average and below-average fitness and those who engage only intermittently in heavy physical labor and who do not therefore receive the benefit of physical conditioning.

OSHA thus preliminarily finds that, in construction, maritime, and agriculture, the proposed 8-hour TWA of 35 ppm for carbon monoxide is needed to reduce the significantly increased risk of cardiovascular disease that is associated with overexposure to CO. The Agency believes that a ceiling of 200 ppm is necessary to ensure that peak CO exposures are kept below the 1500 ppm IDLH level by a reasonable safety factor. The ceiling limit will also assist in keeping COHb levels below 5 percent; the ceiling will be measured over 5 minutes to permit the use of simpler monitoring techniques.

Based on this evidence, OSHA is proposing an 8-hour TWA of 35 ppm and a ceiling of 200 ppm as the PELs for carbon monoxide in the construction, maritime, and agriculture industries. In the construction and marine terminal industries, employees regularly enter and work in confined spaces. In these sectors, CO therefore presents an especially great danger of death from IDLH levels of CO. Consequently, OSHA is retaining the 100 ppm ceiling for CO in confined spaces in these sectors, as well as the provision requiring monitoring of these spaces.

The Agency preliminarily concludes that these limits will ensure that the COHb levels of exposed workers (especially of non-smokers) in these sectors are maintained at or below 5 percent, which will protect those workers at greater risk because of cardiovascular or pulmonary impairment. In addition, these revised limits will protect healthy workers in the affected sectors who must work in environments involving intermittent exertion, heat stress, or other strenuous conditions. OSHA believes that these limits are necessary to substantially reduce the significant occupational risk associated with both chronic and peak exposures to carbon monoxide in the workplace. OSHA preliminarily finds that the hypoxic stress associated with overexposures to carbon monoxide clearly constitutes a material impairment of health and functional capacity. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

CHLORPYRIFOS

CAS: 2921-88-2; Chemical Formula: $C_9H_{11}Cl_3NO_3PS$

H.S. 1091

OSHA has no limit for chlorpyrifos in the construction, maritime, or agriculture sectors. The ACGIH has a TLV®-TWA of 0.2 mg/m³ and a TLV®-STEL of 0.6 mg/m³, with a skin notation, for chlorpyrifos. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the PEL being proposed. OSHA is proposing a 0.2-mg/m³ 8-hour TWA and a skin notation for chlorpyrifos; this is the limit recently established in general industry.

Chlorpyrifos is a white, crystalline solid with a mild, mercaptan-like odor (EPA Fact Sheet 1985). Chlorpyrifos is an organophosphate pesticide that is used on grain crops (EPA Fact Sheet 1985). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Exposure to chlorpyrifos causes cholinesterase inhibition in humans and animals. The oral LD_{50} in rats is 82 mg/kg, and the dermal LD_{50} in rabbits is 2000mg/kg (RTECS 1990). Chlorpyrifos is an active inhibitor of plasma cholinesterase but has only moderate capacity to reduce red blood cell cholinesterase or to cause cholinergic symptoms and systemic injury (ACGIH 1986/Ex. 1-3, p. 138). Particle inhalation has been shown to cause mild plasma cholinesterase depression in dogs exposed for 4 hours at the upper end of a 140- to 280-mg/m³ range (Spencer 1966, as cited in ACGIH 1986/Ex. 1-3, p. 138). A recent study (Corley, Calhoun, Dittenber, Lomax, and Landry 1989, in Fund. Appl. Toxicol. 13(3):616-618) examined the subchronic inhalation toxicity of chlorpyrifos in rats. Rats were exposed (nose-only) to 5.2, 10.3, or 20.6 ppb chlorpyrifos vapor for 6 hours/day, 5 days/weeks, for 13 weeks. No significant treatment-related histopathological, hematological, serum chemistry, or cholinesterase activity changes were seen in these animals, leading the authors to conclude that chlorpyrifos has low subchronic inhalation toxicity in rats. Cats were given a single sublethal oral dose of chlorpyrifos; doses ranged from 10 mg/kg to 40 mg/kg. No signs of poisoning were seen at the lowest dose, but the high-dose group developed clinical signs of toxicity (Hooser, Beasley, Sundberg, Harlin 1988, in Am. J. Vet. Res. 49(8):1371-1375). Dogs and rats fed 3.0 mg/kg chlorpyrifos daily for 2 years showed no adverse effects (FAO/WHO (Food and Agriculture Organization/World Health Organization) 1972, as cited in ACGIH 1986/Ex. 1-3, p. 138). Male and female rats showed no teratogenic or reproductive effects when fed 1.0 mg/kg per day (Dow Chemical Company 1972a, as cited in ACGIH 1986/Ex. 1-3, p. 138).

Workers applying chlorpyrifos as a spray were exposed to 0.5 percent chlorpyrifos emulsion and exhibited a marked decrease in plasma and red cell cholinesterase levels (Eliason, Cranmer, von Windeguth et al. 1969/Ex. 1-633). In five of seven exposed sprayers, this reduction was greater than 50 percent. However, another study showed no ill effects on cholinesterase metabolism when human volunteers were exposed to an ultra-low-volume spray (0.8 um/m3 for 3 to 8 minutes) (Ludwig, Kilian, Dishburger, and Edwards 1970/Ex. 1-563). Human cholinesterase levels appear to be less affected by dermal exposure than do those of rabbits (ACGIH 1986/Ex. 1-3, p. 138). However, when chlorpyrifos was administered in four repeated dermal doses of 25 mg/kg, each applied for 12 hours, human volunteers did exhibit depressed plasma cholinesterase levels. Human volunteers ingesting 0.03mg/kg chlorpyrifos for 3 weeks showed no cholinesterase effects, but subjects ingesting 0.1 mg/kg demonstrated plasma cholinesterase depression (Dow Chemical Company

1973f, as cited in ACGIH 1986/Ex. 1–3, p. 138). A recent Dow study (Brenner, Bond, McLaren, Greene, and Cook 1989, Br. J. Ind. Med. 46(2):133–137) showed that the prevalence of illness and of symptoms was not elevated over that of controls in a group of 175 workers exposed between 1977 and 1985 to chlorpyrifos during its manufacture or formulation.

Based on this evidence in humans and animals, OSHA is proposing a PEL of 0.2 mg/m³ as an 8-hour TWA, and a skin notation, for chlorpyrifos in the construction, maritime, and agriculture sectors. The Agency believes that these limits for chlorpyrifos will protect workers in these industries from the significant risk of cholinesterase inhibition caused by exposure to this substance. OSHA believes that the skin notation is necessary to prevent the systemic effects that have been demonstrated to occur in humans dermally exposed to chlorpyrifos. OSHA preliminary finds that the cholinesterase inhibition and systemic effects associated with exposure to chlorpyrifos constitute material impairments of health and that the proposed PEL is necessary to substantially reduce these risks. In addition, promulgation of the proposed limit will make OSHA's PEL for chlorpyrifos consistent across all regulated sectors.

CRUFOMATE

CAS: 299–86–5; Chemical Formula: $C_{12}H_{19}ClNO_3P$

H.S. No. 1103

OSHA has no limit for crufomate in the construction, maritime, or agriculture industries. The ACGIH has a TLV®–TWA of 5 mg/m³ and a TLV®-STEL of 20 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 5 mg/m³ for crufomate in the construction, maritime, and agriculture industries. This is the limit recently established in general industry.

Pure crufomate exists as a colorless crystalline solid, and commercial crufomate, also called Ruelene, is a yellow oil. Crufomate is an antihelmintic that is used on cattle, sheep, and goats to control grubs, lice, and horn flies (Clayton and Clayton 1981, p. 4833). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Crufomate actively inhibits both plasma and erythrocyte cholinesterase. The oral LD_{50} in rats is 460 mg/kg, the lowest lethal concentration in the same species is 12 mg/m³ for 4 hours, and the dermal LD_{50} in rabbits is 2000 mg/kg (RTECS 1990). Applied to the eyes of rabbits, crufomate (undiluted or as a 10 percent solution) caused corneal cloudiness, conjunctival irritation, and signs that the animals were experiencing pain (Clayton and Clayton 1981, p. 4834). In contact with the intact or abraded skin of rabbits, this substance caused slight redness (Clayton and Clayton 1981, p. 4834).

A study showed that ingestion of 200 mg of crufomate daily for seven days caused no apparent cholinesterase inhibition in the human subjects of this controlled study; however, rats and dogs receiving higher doses (5 mg/kg/day) for 2 years did show this effect (McCollister, Olson, Rowe et al. 1968/Ex. 1–350). Rats fed 1000 ppm crufomate for 2 years showed marked cholinesterase inhibition, growth retardation, testicular degeneration, atrophy of the hind quarters, and slight degeneration of the sciatic nerve (McCollister, Olson, Rowe et al. 1968/Ex. 1–350).

Because cholinesterase inhibition is a very sensitive indicator of exposure, OSHA preliminarily concludes that the proposed 8-hour TWA limit of 5 mg/m³ is needed to provide an appropriate margin of safety below the ingestion NOEL of 200 mg/day for humans, which corresponds approximately to an 8-hour inhalation exposure of 20 mg/m³. The Agency believes that this PEL is necessary to protect workers in construction, maritime, and agriculture from a significant risk of material health impairment in the form of cholinesterase inhibition. In addition, promulgation of the proposed PEL will make OSHA's limit for crufomate consistent across all regulated sectors.

CYANAMIDE

CAS: 420–04–2; Chemical Formula: $H_2NC{\equiv}N$

H.S. No. 1104

OSHA has no limit for cyanamide in the construction, maritime, and agriculture industries. The ACGIH has a TLV®–TWA of 2 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that the proposed limit is appropriate. OSHA is proposing an 8-hour PEL of 2 mg/m³ for cyanamide in construction, maritime, and agriculture; this is the limit recently established in general industry.

Cyanamide, which is also called hydrogen cyanamide, is a deliquescent, crystalline solid; no information is available on its odor. Cyanamide is used as a chemical intermediate and as a crease- and fire-proofing agent in textiles.

Cyanamide is a severe irritant and caustic of the eyes, mucous membranes, and respiratory tract. In addition, this substance produces Antabuse-like effects when exposed individuals also ingest alcohol. The oral LD_{50} in rats is 125 mg/kg, and the dermal LD_{50} in rabbits is 590 mg/kg (RTECS 1990). In contact with the eye, cyanamide causes severe irritation; this substance is a caustic that destroys any tissue it comes into contact with, especially when moisture is present (Grant 1986, p. 286). Cyanamide dust is irritating to the respiratory tract (Grant 1986, p. 286). Acutely poisoned rats exhibited signs of parasympathetic overactivity, including miosis, excessive salivation, lacrimation, and twitching (Grant 1986, p. 286).

When cyanamide is ingested or inhaled by a person who has also consumed an alcoholic beverage, the person experiences vasodilation of the face and neck, tachycardia, tachypnea, nausea, vomiting, and hypotension. This syndrome is referred to as the Antabuse syndrome. Studies of cyanamide's Antabuse-like effects indicate that the effect is about one-half that of an equivalent dose of tetraethylthiuram disulfide (Antabuse) and one-sixth that of tetramethyl thiuram disulfide (Hald, Jacobsen, and Larsen 1952/Ex. 1–905). Workers whose skin is in contact with cyanamide can develop a severe and persistent dermatitis (Gerrin 1989).

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA limit of 2 mg/m³ TWA for cyanamide. The Agency preliminarily concludes that this limit will protect workers in construction, maritime, and agriculture from the significant risks of sensory irritation and of the Antabuse syndrome in workers who have ingested alcohol. The Agency believes that this limit will substantially reduce these significant risks, which constitute material health impairments. In addition, promulgation of the proposed PEL will make OSHA's limit for cyanamide consistent across all regulated sectors.

DICHLORVOS (DDVP)

CAS: 62–73–7; Chemical Formula: $(CH_3O)_2POOCH{=}CCl_2$

H.S. No. 2051

OSHA's permissible exposure limit for dichlorvos in general industry, construction, and maritime is an 8-hour TWA of 1 mg/m³; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has a limit of 0.1 ppm (≈1 mg/

m^3) as an 8 hour TLV®–TWA, with a skin notation, for dichlorvos. NIOSH has no REL but concurs (Ex. 48–7, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 1 mg/m^3, and a skin notation, for dichlorvos in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Dichlorvos is a colorless to amber liquid that has a mild chemical odor. It is used as an insecticide and fumigant and is a primary ingredient in pest strips (Proctor, Hughes, and Fischman 1988, p. 194; Hayes 1982, p. 343). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Dichlorvos causes cholinesterase inhibition in humans and animals, as well as reproductive effects in animals. In rats, the oral LD_{50} is 25 mg/m^3 and the LC_{50} is 15 mg/m^3 for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 107 mg/kg (RTECS 1987). No illness occurred in monkeys exposed to dichlorvos concentrations greater than 7 mg/m^3 for 2 hours/day for 4 days; however, miosis and a rapid drop in blood cholinesterase were observed in these animals (Witter et al. 1961, in Hayes 1982, p. 344). Monkeys exposed continuously for 1 week to dichlorvos concentrations between 1.4 to 2.0 mg/m^3 developed severe cholinesterase inhibition (Durham et al. 1959). Continuous exposure of monkeys and rats to a dichlorvos concentration of 0.27 mg/m^3 for 4 days had no effect on cholinesterase levels (Durham et al. 1959, in Hayes 1982, p. 344). Dichlorvos given to pregnant rats by intraperitoneal injection at a dose of 15 mg/m^3 on the 11th day of pregnancy caused malformations in three of 41 fetuses (Kimbrough and Gaines 1968, in IARC 1979, Vol. 20, p. 108). Mice exposed to a single oral dose of 40 mg/kg showed extensive injury to the seminal epithelium; similar but less extensive changes were seen in the reproductive tissue of animals given doses of 10 mg/kg/day for 18 days (Krause and Homola 1972, in Hayes 1982, p. 347). Several carcinogenicity bioassays have failed to show a statistically significant increase in the incidence of tumors, and the International Agency for Research on Cancer has concluded that the data in animals are inadequate to evaluate the carcinogenicity of this substance (IARC 1979, Vol. 20, pp. 97–123).

Human exposure to dichlorvos can occur by inhalation, ingestion, or skin absorption, and the signs and symptoms associated with exposure include chest tightness, bronchial secretion, laryngeal spasms, cyanosis, blurred vision, rhinorrhea, headache, anorexia, nausea, abdominal cramps, and diarrhea (Proctor, Hughes, and Fischman 1988, p. 194). Signs and symptoms usually onset soon after exposure but may be delayed for as long as 12 hours (Proctor, Hughes, and Fischman 1988, p. 194). Effects on the central nervous system include giddiness, confusion, ataxia, slurred speech, Cheyne-Stokes respiration, convulsions, coma, and loss of reflexes (Proctor, Hughes, and Fischman 1988, p. 194). Complete recovery from exposure-related symptoms usually occurs within 1 week (Proctor, Hughes, and Fischman 1988, p. 194). Dichlorvos also causes a persistent contact dermatitis of allergic origin (Mathias 1983; Matsushita et al. 1985, in Proctor, Hughes, and Fischman 1988, p. 195). Of 28 volunteers exposed to a concentration of 1 mg/m^3 dichlorvos for 7.5 to 8.5 hours (single exposures), 20 to 25 percent experienced plasma cholinesterase depression (ACGIH 1986, p. 192). Studies on pesticide workers handling dichlorvos have shown significant reductions in blood cholinesterase and in the number of lymphocytes and monocytes, as well as leukocytosis and neutrophilia; levels returned to normal within 2 weeks after the cessation of exposure (Pukach et al. 1974, in ACGIH 1986, p. 192). Symptoms of dichlorvos intoxication seen in these workers included weakness, headache, nausea, abdominal cramps, blurred vision, non-reactive pupils, chest tightness, salivation, sweating, convulsions, and coma (Pukach et al. 1974). In a study in which 13 workers were exposed to an average concentration of 0.7 mg/m^3 dichlorvos for 12 months, erythrocyte cholinesterase activity was reduced by 35 percent and serum cholinesterase activity showed a 60 percent reduction (Menz, Luetkemeir, and Sachsse 1971, in Proctor, Hughes, and Fischman 1988, p. 194).

Based on this evidence in humans and animals, OSHA preliminarily concludes that dichlorvos causes cholinesterase inhibition. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. OSHA believes that the proposed PEL of 1 mg/m^3 as an 8-hour TWA, and a skin notation, are necessary to substantially reduce the risk of this material health impairment. In addition, establishing this limit for dichlorvos in agriculture will make OSHA's PEL for this substance consistent across all OSHA-regulated sectors.

DICROTOPHOS

CAS: 141–66–2; Chemical Formula: $C_8H_{16}NO_5P$

H.S. No. 1131

OSHA has no limit for dicrotophos in the construction, maritime, or agriculture industries; the ACGIH has a TLV®–TWA of 0.25 mg/m^3, with a skin notation, for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) that the proposed limit is appropriate. OSHA is proposing an 8-hour TWA of 0.25 mg/m^3, and a skin notation, for dicrotophos in construction, maritime, and agriculture. This is the limit recently established for dicrotophos in general industry.

Dicrotophos is a yellow-brown liquid with a mild, ester-like odor (Sittig 1985, p. 335). This substance is an organophosphate insecticide that is used on apples, cotton, and other crops (HSDB 1990). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Dicrotophos is a cholinesterase inhibitor in humans and animals. The oral LD_{50} in rats is 13 mg/kg, and the LC_{50} in the same species is 90 mg/m^3 for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 168 mg/kg (RTECS 1990). Male rats exposed by inhalation to dicrotophos at a concentration of 910 mg/m^3 for 1 hour rapidly became ill but recovered quickly after exposure was discontinued (ACGIH 1986, p. 193). Two-year feeding studies in rats given 0, 1, 10, or 100 ppm dicrotophos showed no detectable effects at the 1-ppm concentration. At the higher concentrations, decreased body weights (as compared with those of controls) and cholinesterase inhibition were observed (Woodard Research Corporation 1967, as cited in ACGIH 1986/Ex. 1–3, p. 193). Dietary studies in dogs showed both plasma and erythrocyte cholinesterase inhibition after exposure to a 16-ppm concentration of dicrotophos, but no significant ill effects were seen at concentrations of 0, 0.16, or 1.6 ppm (Woodard Research Corporation 196 , as cited in ACGIH 1986/Ex. 1–3, p. 193).

At least two cases of accidental poisoning by dicrotophos have been reported. The first case involved a tractor driver who had been applying dicrotophos to crops and who had additionally sprayed the inside of his house with this substance. He developed abdominal cramps, nausea, vomiting, diarrhea, increased sweating, salivation,

dyspnea, tremor, generalized weakness, and reduced plasma and blood cholinesterase activities (Hayes 1982, p. 362). After appearing to recover over a 5-day period, this patient suffered respiratory arrest and required respiratory ventilation for several days. He subsequently recovered completely (Hayes 1982, p. 362). In the other case, a man accidentally ingested dicrotophos and lost consciousness. On admission to the hospital, he was without respiration or pulse. Aggressive treatment with atropine and pralidoxime, and assisted ventilation, led to his subsequent recovery (Hayes 1982, p. 362).

Based on this evidence, OSHA is proposing an 8-hour TWA permissible exposure limit of 0.25 mg/m^3, with a skin notation, for dicrotophos in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit is necessary to protect workers in these sectors from the material impairments of health, such as cholinesterase inhibition, potentially associated with inhalation, ingestion, or dermal exposure to this substance in the workplace. OSHA believes that this limit will substantially reduce this significant risk; in addition, promulgation of this limit will make the PEL for dicrotophos consistent across all regulated sectors.

DIMETHYLANILINE (N-Dimethylaniline)

CAS: 121-69-7; Chemical Formula: $C_6H_5N(CH_3)_2$

H.S. No. 1143

OSHA's permissible exposure limit for dimethylaniline in construction and maritime is 5 ppm as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has an 8-hour TLV®-TWA of 5 ppm and a 15-minute TLV®-STEL of 10 ppm, with a skin notation, for dimethylaniline. OSHA is proposing to retain its 8-hour TWA PEL of 5 ppm, and the skin notation, and to add a STEL of 10 ppm for this substance in construction and maritime. OSHA is also proposing to apply these limits in agriculture. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the limits being proposed, which are identical to those recently established for dimethylaniline in general industry.

Dimethylaniline is a yellow to brown, oily liquid. This substance finds use as an analytical reagent and a dye precursor (HSDB 1990).

Dimethylaniline induces tissue hypoxia by causing the formation of methemoglobin in the blood. This substance is also a mild irritant of the eyes and skin (RTECS 1990). The oral LD_{50} in rats is 1410 mg/kg, and the lowest lethal concentration in the same species is 250 mg/m^3 for 4 hours (RTECS 1990). Instilled into the eyes of rabbits, dimethylaniline caused a moderate degree of injury (graded 5 on an ascending severity scale of 1 to 10) (Grant 1974, p. 401). Hamblin (1963a/Ex. 1-1084) reported that dimethylaniline is quantitatively less toxic than aniline. Dogs administered a single oral dose of 50 mg/kg exhibited methemoglobinemia, and absorption of dimethylaniline through the skin can increase the overall exposure (Hamblin 1963b/Ex. 1-1085). Rats survived an 8-hour exposure to the concentrated vapor (Smyth, HF et al. 1941, in Proctor, Hughes, and Fischman 1988, p. 210). Rats continuously exposed to dimethylaniline for 100 days at a concentration of 0.3 mg/m^3 showed significant changes in the central nervous system, liver, and blood (Markosyan 1969, in Gigiena Sanit 34(3):7).

The literature on industrial experience with dimethylaniline is limited. Hamilton (1919/Ex. 1-741) reported collapse, prolonged unconsciousness, visual disturbances, and intense abdominal pain following the severe overexposure of two workers. The signs and symptoms of acute overexposure include headache, cyanosis of the lips, nose, and earlobes, and anemia (Proctor, Hughes, and Fischman 1988, p. 209). Exposure to dimethylaniline depresses the central nervous system and both cardiac and smooth muscle function; increased pulse and respiration may be followed by convulsions and death due to respiratory arrest (HSDB 1990).

Based on this evidence, the Agency is proposing to retain the 8-hour TWA PEL of 5 ppm and a skin notation for dimethylaniline in construction and maritime and to add a STEL of 10 ppm to this limit; OSHA is also proposing to apply the TWA and STEL and the skin notation in agriculture. OSHA believes that the STEL is necessary to afford protection from the central nervous system depression that follows acute exposures. OSHA preliminarily concludes that these limits, taken together, will provide workers in construction, maritime, and agriculture with protection from the significant risks of skin absorption, methemoglobinemia, and neuropathic effects associated with exposure to this substance; the Agency believes that these effects clearly constitute material health impairments. In addition, promulgation of the proposed limits will make OSHA's PELs for dimethylaniline consistent across all regulated sectors.

DIOXATHION (DELNAV)

CAS: 78-34-2; Chemical Formula: $C_{12}H_{26}O_6P_2S_4$

H.S. No. 1146

OSHA has no permissible exposure limit for dioxathion in the construction, maritime, or agriculture industries. The ACGIH has a TLV®-TWA of 0.2 mg/m^3, with a skin notation. NIOSH has no REL but concurs (Ex. 8-47, Table N1) with the limit being proposed in construction, maritime, and agriculture, which is 0.2 mg/m^3 as an 8-hour TWA, with a skin notation. This is the limit recently established for dioxathion in general industry.

Dioxathion, also called Delnav, is an organophosphate pesticide that is used against external livestock pests, including ticks and citrus mites (Hayes 1982, p. 401). This substance is a nonvolatile, very stable, dark amber liquid. When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Dioxathion is a cholinesterase inhibitor in humans and animals. The commercial product contains both the cis- and trans-isomers of 2,3-p-dioxanedithiol; the cis-isomer is approximately four times as acutely toxic as the trans-isomer (ACGIH 1986/Ex. 1-3, p. 219). The oral LD_{50} in rats is 20 mg/kg, and the LC_{50} in the same species is 1398 mg/m^3 for 1 hour (RTECS 1990). The dermal LD_{50} in rabbits is 85 mg/kg (RTECS 1990). Acutely poisoned animals show decreases in cholinesterase activity as well as dyspnea, nausea, vomiting, diarrhea, tremor, and ataxia (Hayes 1982, p. 401). Instillation of 0.1 ml dioxathion into the rabbit eye produces mild, transient conjunctivitis but no corneal damage (ACGIH 1986/Ex. 1-3, p. 219). Rats fed 10 mg/kg dioxathion for 14 days and dogs given 10 doses of 0.8 mg/kg dioxathion over a 14-day period showed cholinesterase inhibition (HSDB 1990). Rats fed dioxathion (100 ppm of the diet) for 90 days displayed tremor and excitability (Gosselin, Smith, and Hodge 1984, p. II-298). When dioxathion was administered to three successive generations of albino rats at a dietary level of from 3 to 10 ppm, no abnormalities were observed in rats of any generation (Kennedy, Frawley, and Calandra 1973/Ex. 1-340). A 2-year carcinogenicity bioassay involving rats and mice fed dioxathion had negative results (National Cancer Institute 1978, Technical Report Series 125:43).

Human volunteers who ingested 0.075 mg/kg/day of dioxathion for as long as 60 days had no symptoms related to plasma or blood cholinesterase activity, while those ingesting 0.15 mg/kg/day exhibited a slight decrease in plasma

cholinesterase activity (Frawley, Weir, Tusing et al. 1963/Ex. 1–317). The World Health Organization has estimated an acceptable daily intake for humans of 0.0015 mg dioxathion/kg (WHO 1967, as cited in ACGIH 1986/Ex. 1–3, p. 219).

Based on this evidence in humans and animals, OSHA is proposing an 8-hour TWA PEL of 0.2 mg/m³ for dioxathion in construction, maritime, and agriculture. The Agency is also proposing a skin notation for this substance. OSHA preliminarily concludes that these limits are necessary to protect workers in these sectors from the significant risk of metabolic effects associated with inhalation and oral exposure and with dermal penetration of this substance. The Agency believes that these limits will substantially reduce these significant risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for dioxathion consistent across all regulated sectors.

DISULFIRAM

CAS: 97–77–8; Chemical Formula: $C_{10}H_{20}N_2S_4$

H.S. No. 1151

OSHA has no limit for disulfiram in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 2 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 2 mg/m³ for disulfiram in the construction, maritime, and agriculture sectors. This is the limit recently established for this substance in general industry.

Disulfiram is a white, crystalline powder that has a slight odor (HSDB 1990). This substance is used as a rubber accelerator and vulcanizer, a seed disinfectant, a fungicide, and as an alcohol deterrent in alcohol aversion therapy (HSDB 1990). When used to treat alcoholics, disulfiram is marketed under many trade names, including Antabuse and Antalcol (RTECS 1990). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Disulfiram causes vasodilation of the vessels of the face and neck, increased heart and respiratory rates, decreased blood pressure, and nausea and vomiting. The LD_{50} in rats is 500 mg/kg (RTECS 1990). This compound is highly toxic when injected intraperitoneally, with an LD_{50} of 75 mg/kg for mice (RTECS 1990). Acutely poisoned animals show ataxia, hypothermia, and flaccid paralysis (IARC 1976, Vol. 12, p. 89). The effects of high-dose ingestion include degenerative changes in the liver and kidneys; very high doses of disulfiram can cause leukopenia and marked hypoplasia or aplasia of the bone marrow (Brieger 1947/Ex. 1–717). In the most seriously afflicted animals, the blood urea nitrogen sometimes increased and the thymol turbidity test was positive (Brieger 1947/Ex. 1–717). Rats given chronic doses of disulfiram (1000 to 2000 mg/kg) in the diet had reduced growth rates, decreased longevity, and reduced reproductive capabilities (Holck et al. 1970, in IARC 1976, Vol. 12, p. 89). Oral, parenteral, or subcutaneous administration of disulfiram to rats or mice during pregnancy leads to embryotoxic and/or developmental effects in the offspring (RTECS 1990; Shepard 1980, Catalog of Teratogenic Agents, 3rd ed., p. 395).

Adverse health effects occur in humans who consume alcohol and are simultaneously exposed to disulfiram. For individuals who drink alcohol and are exposed to disulfiram, the symptoms of exposure are facial vasodilation, tachycardia, tachypnea, nausea, vomiting, pallor, and hypotension. High doses of disulfiram can induce convulsions, cardiac arrhythmias, and myocardial infarction, and the compound has also been associated with polyneuropathy, peripheral neuritis, and skin eruptions (Grant 1986, p. 367; Bouldin et al. 1980, in Neuropathol. Appl. Neurobiol. 6(2):155–160). Disulfiram also causes acneform eruptions, urticaria, lassitude, fatigue, tremor, reduced sexual potency, a garlic-like odor of the breath, and fatal hepatotoxicity (Goodman 1980, Pharm. Basic Therapeutics, 6th ed. p. 388; Berlin 1989, in Alcohol 24(3):241–246). A recent study (Rudzki, Rebarrdel, and Grzywa 1989, in Contact Dermatitis 21(2):121–122) described four cases of skin sensitization caused by disulfiram among pharmaceutical workers in Poland. Disulfiram has induced severe and acute hepatotoxicity in many alcoholic patients on alcohol aversion therapy. If the drug is not withdrawn at the earliest signs of liver toxicity, death caused by massive hepatic necrosis occurs (Berlin 1989, in Alcohol 24(3):241–246). A recent review (Dalvi 1988, in Vet. Human Toxicol. 30(5):480–482) of disulfiram's toxicity reports that workers exposed to this substance in the agriculture, rubber, plastics, and lubricating oils industries develop dermatitis, irritation of the mucous membranes, and gastrointestinal and central nervous system disturbances. In animals, liver and renal tubule necrosis and central nervous system demyelination were also reported. This review also reported disulfiram-induced diseases of the thyroid and gastrointestinal, ocular, and cardiovascular system in workers exposed to disulfiram.

Based on this evidence, OSHA is proposing a PEL of 2 mg/m³ as an 8-hour TWA for disulfiram. The Agency preliminarily concludes that this limit will protect workers in the construction, maritime, and agriculture industries from the significant risk of adverse effects, including dermatitis, liver toxicity, and nervous system effects, that are associated with exposure to disulfiram. OSHA believes that this limit will substantially reduce this significant risk for workers in these sectors and that these effects clearly constitute material impairments of health. In addition, promulgation of this limit will make the PEL for disulfiram consistent across all OSHA-regulated sectors.

ETHION

CAS: 563–12–2; Chemical Formula: $C_9H_{22}O_4P_2S_4$

H.S. No. 1160

OSHA has no permissible exposure limit for ethion in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.4 mg/m³, with a skin notation, for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 0.4 mg/m³, and a skin notation, for ethion in the construction, maritime, and agriculture industries. This is the limit recently established for ethion in general industry.

Pure ethion is an odorless and colorless liquid; however, technical-grade ethion has a very disagreeable odor. Ethion is an insecticide and miticide that is sold in a variety of forms, including 25-percent wettable powder, 2-, 3-, and 4-percent dusts, 5-percent granules, in several oil solutions, and in combination with other chemicals (ACGIH 1986, p. 236; Gosselin, Smith, and Hodge 1984, p. II–297). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Like all organophosphorus insecticides, ethion causes cholinesterase inhibition in humans and animals. The oral LD_{50} in rats is 13 mg/kg, and the dermal LD_{50} in rabbits is 890 mg/kg (RTECS 1990). Inhalation studies report LC_{50} values of 710 mg/m³ for female rats exposed to 25-percent wettable powder dust for 1 hour and 7200 mg/m³ for male rats similarly exposed (Niagara Chemical Division, FMC Corp., as cited in ACGIH 1986/Ex. 1–3, p. 236). Instillation of 0.05 ml ethion

in the rabbit eye is immediately irritating but does not cause corneal scarring (ACGIH 1986, p. 236). Dietary studies in rats fed 600, 1000, or 1500 ppm reported complete cholinesterase inhibition; 300 ppm in the diet produced marked cholinesterase inhibition (Association of American Pesticide Control Officials, Inc. 1969, as cited in ACGIH 1986/Ex. 1–3, p. 236). Goats were injected intravenously with 2, 5, or 10 mg/kg doses of ethion. At the 2-mg/kg dose, no signs of toxicity were observed, although blood cholinesterase activity fell to 65 percent of baseline. At higher doses, however, signs of severe toxicity were evident and cholinesterase activity decreased to 10 percent of baseline (in the 5-mg/kg group) or 5 percent (in the 10-mg/kg group) (Mosha and Gyrd-Hansen 1990, in Vet. Hum. Toxicol. 32(1):6–8).

The lowest toxic oral dose of ethion in humans is 100 μg/kg; this exposure caused cholinesterase inhibition (RTECS 1990). Ethion poisonings have been reported in farm workers harvesting grapes and peaches (State of California Department of Industrial Relations, as cited in ACGIH 1986/Ex. 1–3, p. 236).

Based on this evidence, OSHA is proposing a PEL of 0.4 mg/m³ as an 8-hour TWA, and a skin notation, for ethion in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that these limits are necessary to protect exposed workers from the significant risks of organophosphate poisoning and cholinesterase inhibition associated with exposure to this substance. The Agency notes this substance's potential for dermal absorption and is proposing a skin notation to protect against the risk of systemic toxicity by this route of exposure. OSHA believes that the systemic poisoning and cholinesterase inhibition caused by overexposure to ethion constitute material health impairments. In addition, promulgation of this limit will make the PEL for ethion consistent across all OSHA-regulated sectors.

FENAMIPHOS

CAS: 22224–92–6; Chemical Formula: $C_{13}H_{22}NO_3PS$

H.S. No. 1173

OSHA has no limit for fenamiphos in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³ for this substance, with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 0.1 mg/m³, with a skin notation, for fenamiphos in the construction, maritime, and agriculture industries. This is the limit recently established in general industry.

Fenamiphos, also called Nemacur®, is a tan-colored, waxy solid. It is used as a nematocide and insecticide (ACGIH 1986, p. 265; Farm Chemicals Handbook 1990, p. C207). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Fenamiphos is a cholinesterase inhibitor that produces both central and peripheral cholinergic reactions. The oral LD_{50} in rats is 8 mg/kg, and the LC_{50} in the same species is 91 mg/m³ for 4 hours (RTECS 1990). The dermal LD_{50} in rabbits is 178 mg/kg (RTECS 1990). Rats exposed to fenamiphos aerosol at concentrations of 0.03, 0.25, or 3.5 mg/m³ of air for 3 weeks exhibited no signs of toxicity. At 3.5 mg/m³, however, rats showed significant depression of plasma cholinesterase; 0.25 mg/m³ was the highest no-effect concentration observed (Kimmerle 1982c, as cited in ACGIH 1986/Ex. 1–3, p. 265). Rats fed fenamiphos in the diet at dose levels of 4, 8, 16, or 32 ppm for 90 days showed no effects other than cholinesterase inhibition. Decreases in cholinesterase activity decreased in a dose-dependent manner (Loser and Kimmerle 1988, as cited in EPA 1987 Health Advisory, ODW). Rats were fed fenamiphos at 3, 10, or 30 ppm for 2 years; in the high-dose group, statistically significant increases in the weights of the thyroid gland, lungs, and hearts were seen. Cholinesterase activity in the high-dose group was decreased by 28 to 60 percent (Loser and Kimmerle 1988, in EPA 1987). Pregnant rabbits were gavaged with 0.1, 0.3, or 1.0 mg/kg/day fenamiphos on days 6 to 18 of gestation. In the high-dose group, fetal death and resorptions were reported, and there was a significant increase in the incidence of skeletal abnormalities in the offspring (MacKenzie et al. 1982, in EPA 1987). Carcinogenicity bioassays in mice and rats were negative.

There are no reports of human poisonings caused by exposure to fenamiphos, and no quantitative data are available relating adverse health effects to measurable airborne concentrations of this substance.

OSHA is proposing a PEL for fenamiphos of 0.1 mg/m³ as an 8-hour TWA in construction, maritime, and agriculture; the Agency believes that this limit is necessary to protect against the significant risk of anticholinesterase effects presented by exposure to this substance. A skin notation is also proposed based on the evidence of fenamiphos's systemic toxicity via percutaneous absorption. The Agency believes that these limits are necessary to substantially reduce the risk of cholinesterase inhibition, which constitutes a material impairment of health. In addition, promulgation of this limit will make the PEL for fenamiphos consistent across all OSHA-regulated sectors

FENSULFOTHION (DASANIT)

CAS: 115–90–2; Chemical Formula: $C_{11}H_{17}O_4PS_2$

H.S. No. 1174

OSHA has no limit for fensulfothion in construction, maritime, or agriculture. The ACGIH has a TLV®–TWA of 0.1mg/m³ for this substance. There is no NIOSH REL, but NIOSH concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 0.1 mg/m³ for fensulfothion in the construction, maritime, and agriculture sectors. This is the limit recently established for this substance in general industry.

Fensulfothion, also called Dasanit, is a brown liquid at room temperature. It is used as an insecticide and nematocide (ACGIH 1986, p. 266; Hawley's 1987, p. 510). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Fensulfothion is an organophosphorus insecticide that causes cholinesterase inhibition in humans and animals. The oral LD_{50} in rats is 2 mg/kg, and the dermal LD_{50} in the same species is 3 mg/kg (RTECS 1990). Rats fed 5 or 20 ppm fensulfothion for 17 months showed increased mortality, and animals in the high-dose group showed reduced growth rates; even at a dietary level of 1 ppm, blood, plasma, and brain cholinesterase activity was inhibited (Hayes 1982, p. 402). Tests in mice and rabbits have shown no embryotoxic, reproductive, or mutagenic effects.

Fensulfothion has been responsible for a number of fatalities in adults and children. A farmer applying fensulfothion developed diarrhea and vomiting and subsequently died; at autopsy, decreased cholinesterase levels and pulmonary edema were seen (Hayes 1982, p. 403). A family of five was poisoned by fensulfothion after it was used as a household pesticide; one of the family members died (Hayes 1982, p. 403). Dermal studies have shown irritation without cholinesterase effects from 2-hour, twice-daily applications of a 5-percent granular formulation to the forearms of three subjects. Systemic absorption through the lungs has been demonstrated after inhalation of

fensulfothion aerosols (ACGIH 1986/Ex. 1–3, p. 266).

Based on this evidence, OSHA is proposing a PEL of 0.1 mg/m³ TWA for fensulfothion in construction, maritime, and agricultural operations to reduce the significant risks of metabolic effects and skin irritation potentially associated with exposure to this substance. The Agency believes that this limit will substantially reduce these risks among workers in these sectors and that skin irritation and cholinesterase inhibition are material impairments of health. In addition, promulgation of this limit will make the PEL for fensulfothion consistent across all OSHA-regulated sectors.

FENTHION

CAS: 55–38–9; Chemical Formula: $C_{10}H_{15}O_3PS_2$

H.S. No. 1175

OSHA has no limit for fenthion in the construction, maritime, or agriculture industries. The ACGIH has a TLV®–TWA of 0.2 mg/m³, with a skin notation, for this substance. NIOSH has no REL. OSHA is proposing a limit of 0.2 mg/m³ as an 8-hour TWA, and a skin notation, for fenthion. This is the limit recently established for this substance in general industry.

Fenthion is an oily, yellow- to tan-colored liquid that smells slightly like garlic. It is used extensively as a structural control insecticide (ACGIH 1986, p. 267; Hayes 1982, p. 367). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The primary health effect associated with exposure to fenthion is plasma cholinesterase inhibition. The oral LD_{50} in rats is 180 mg/kg, and the lowest lethal concentration in the same species is 1 g/m³ for 2 hours (RTECS 1990). The dermal LD_{50} in rats is 330 mg/kg (Farm Chemicals Handbook 1976/Ex. 1–1147b). Rats given single intramuscular injections of 5, 25, or 50 mg/kg fenthion exhibited both enduring electroretinogram changes (ERG) and changes in cholinesterase activity; pseudocholinesterase activity in the plasma dropped to 50 percent of normal on the fourth day after injection. The retinal effects of fenthion persisted for as long as 50 days (Imai 1975/Ex. 1–910). Groups of Donryn rats fed 300 ppm fenthion daily showed symptoms of organophosphate intoxication, including nervousness, general spasms, diarrhea, salivation, and ophthalmologic effects (Kawai, Tojo, Miyazawa et al. 1976/Ex. 1–1157). The no-effect inhalation level for rats is 1 mg/m³ for exposures to the aerosol of 6 hours/day, 5 days/week for 3 weeks; at a concentration of 3 mg/m³, cholinesterase inhibition was found (Thyssen 1979, as cited in ACGIH 1986/Ex. 1–3, p. 267). Single and repeated applications of the compound produced no delayed neurotoxic effects in chickens (WHO 1972, as cited in ACGIH 1986/Ex. 1–3, p. 268). Two-year feeding studies of rhesus monkeys showed plasma cholinesterase inhibition at the highest oral dose given, i.e., 0.2 mg/kg/daily (Rosenblum 1980, as cited in ACGIH 1986/Ex. 1–3, p. 268). Fenthion has caused skin tumors in mice (RTECS 1990).

The lowest lethal dose in humans is reported to be 50 mg/kg (RTECS 1990). Four out of six Nigerian agricultural workers who sprayed fenthion 6 hours/day for 5 days showed no reduction in cholinesterase activity; however, the other two workers showed cholinesterase activity decreases of 37.5 and 12.5 percent, respectively. Eight of nine U.S. workers spraying fenthion to control mosquitoes showed progressive declines in plasma cholinesterase activity but not in blood cholinesterase activity (Hayes 1982, p. 369).

Based on this evidence, OSHA is proposing an 8-hour TWA limit of 0.2 mg/m³, with a skin notation, for fenthion in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that these limits are necessary to protect workers in these sectors against the significant risk of cholinergic effects associated with exposure to this substance. A skin notation is proposed because of evidence that fenthion is toxic when absorbed through the skin. OSHA believes that cholinesterase inhibition constitutes a material impairment of health. Promulgation of this limit will also make the PEL for fenthion consistent across all OSHA-regulated sectors.

METHOMYL

CAS: 16752–77–5; Chemical Formula: $C_5H_{10}N_2O_2S$

H.S. No. 1245

OSHA has no limit for methomyl in the construction, maritime, or agriculture industries. The ACGIH has a TLV®–TWA of 2.5 mg/m³ for this substance. There is no NIOSH REL, but NIOSH concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a PEL of 2.5 mg/m³ as an 8-hour TWA for methomyl in the construction, maritime, and agriculture industries. This is the limit recently established for methomyl in general industry.

Methomyl, also called Lannate, is a white, crystalline solid with a slightly sulfurous odor. This substance is used as an insecticide on vegetables, fruits, and ornamentals (ACGIH 1986, p. 363; Farm Chemicals Handbook 1990, p. C190). When used in pesticidal applications and in accordance with directions on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Methomyl is a cholinesterase-inhibiting carbamate insecticide. The acute oral approximate lethal dose (ALD) for methomyl in rats is 26 mg/kg (Kennedy, Ferenzi, and Burgess 1986, in J. Appl Toxicol. 6(3):145–148). The LC_{50} in rats is 77 ppm, and the dermal LD_{50} in rabbits is 5880 mg/kg (RTECS 1990). Applied to the skin of guinea pigs, methomyl caused no appreciable irritation or sensitization. Instillation of a 10-percent solution of methomyl in propylene glycol or of the dry material into rabbit eyes caused mild conjunctivitis without corneal injury. However, marked pupillary constriction, a health effect produced commonly by cholinesterase inhibitors, was observed (E.I. du Pont de Nemours and Co., Inc., as cited in ACGIH 1986/Ex. 1–3, p. 363). Rats fed methomyl at dietary levels of 200 or 400 ppm for 22 months showed decreased hemoglobin levels and, in the high-dose animals, a statistically significant increase in testis to body weight ratios and histopathological changes to the kidneys and spleens (NRC 1983, Vol. 5, p. 58). No depression of cholinesterase activity could be detected in rats fed at levels of 0, 200, 400, or 800 ppm methomyl for 79 days. In dogs, 90-day and two-year feeding studies showed no effects at 0, 50, 100, or 400 ppm; however, animals fed at 1000 ppm did demonstrate toxicity. Similar studies of rats have shown kidney, liver, and spleen damage at higher feeding levels, but the no-effect level for both rats and dogs has been reported to be 100 ppm (Kaplan and Sherman 1977/Ex. 1–337).

In humans, methomyl causes mild conjunctivitis when the dust contacts the eyes (HSDB 1990), and inhalation of powdered methomyl has caused numerous cases of poisoning in workers in several countries (Hayes 1982, p. 456). Eleven of 102 workers in a pesticide plant had been hospitalized for pesticide poisoning, and most of these cases were attributed to methomyl poisoning (Morse et al. 1979, in Hayes 1982, p. 456).

Based on this evidence, OSHA is proposing a PEL of 2.5 mg/m³ (8-hour TWA) for methomyl in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect exposed workers in

these sectors from the risk of cholinesterase inhibition associated with exposure to this substance. The Agency believes that this limit will substantially reduce the significant risk of cholinergic effects, which constitute material impairments of health. In addition, promulgation of this limit will make the PEL for methomyl consistent across all OSHA-regulated sectors.

MONOMETHYL ANILINE
CAS: 100–61–8; Chemical Formula: $C_6H_5NHCH_3$
H.S. No. 1280

OSHA's PEL for monomethyl aniline (N-methyl aniline) in the construction and maritime industries is 2 ppm, measured as an 8-hour TWA; this limit has a skin notation, indicating that it can readily penetrate the skin. There is no limit for monomethyl aniline in agriculture. The ACGIH has a TLV®–TWA of 0.5 ppm TWA for monomethyl aniline, also with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing to reduce the limit for this substance to 0.5 ppm in the construction and maritime industries, to retain the skin notation, and to extend the limit and notation to agriculture. These are the limits recently established for monomethyl aniline in general industry.

Monomethyl aniline is a colorless liquid that turns reddish-brown after standing. It is used as an acid acceptor, a solvent, and in organic synthesis (ACGIH 1986, p. 375; Hawley's 1987, p. 758).

Monomethyl aniline causes methemoglobinemia in humans and animals. The lowest lethal oral dose in rabbits is 280 mg/kg (RTECS 1990). Treon, Deichmann, Sigmon, and Associates (1949/Ex. 1–676) found that monomethyl aniline applied to the skin of laboratory animals resulted in systemic poisoning. A later study by Treon and Associates (1950/Ex. 1–533) showed that guinea pigs, rabbits, and rats died from 130 or fewer 7-hour exposures to a 7.6-ppm concentration of monomethyl aniline. Before death, these animals showed prostration, labored breathing, and cyanosis, and the rabbits and cats developed methemoglobinemia. In the same study, a monkey survived the same number and length of exposures at 2.4 ppm, and a dog survived 50 exposures to 86 ppm. Autopsy revealed pulmonary effects and liver and kidney damage in these animals (Treon, Sigmon, Wright et al. 1950/Ex. 1–533).

Data on human exposures to monomethyl aniline are scarce. A recent study (Kaminskaia, Soboleva, Kolpakov, Datsishina, and Zhilko 1989, in Vrach-Delo 8:112–113) reports that Russian workers engaged in the production of this substance had a higher than normal incidence of methemoglobinemia, disorders of the pulmonary system, and cardiovascular changes.

Based on this evidence, OSHA is proposing a 0.5-ppm TWA limit, with a skin notation, for this substance in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that these limits will protect workers in these sectors from the significant risk of metabolic and blood effects, such as methemoglobinemia, that are potentially associated with exposure to monomethyl aniline. The proposed skin notation will protect workers from the risk of systemic poisoning posed by the skin absorption of this substance. OSHA believes that methemoglobinemia constitutes a material health impairment and that the proposed limit will reduce this risk substantially. In addition, promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

NITRIC OXIDE
CAS: 10102–43–9; Chemical Formula: NO
H.S. No. 2116

In general industry, construction, and maritime, OSHA's permissible exposure limit for nitric oxide is 25 ppm as an 8-hour TWA. There is no limit in agriculture. The ACGIH's TLV®–TWA for nitric oxide is 25 ppm as an 8-hour TWA; NIOSH has a REL of 25 ppm as a 10-hour TWA, and concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 25 ppm for nitric oxide in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Nitric oxide is a colorless nonflammable gas used to make nitric acid. It is also used in rayon bleaching and as a stabilizer (ACGIH 1986, p. 429; Merck 1983, p. 944).

Exposure to nitric oxide causes central nervous system effects, lung damage, and methemoglobin formation. The LC_{50} in rats is 1068 mg/m^3 (870 ppm) for an unspecified time (RTECS 1990). In rabbits exposed for 15 minutes, the LC_{50} is 315 ppm (RTECS 1990). Guinea pigs survived exposure to a 175-ppm concentration of nitric oxide for 120 to 150 minutes; no exposure-related effects were seen (NIOSH Criteria Document 1976). Mice exposed to a 2500-ppm concentration of nitric oxide for 6 or 7 minutes showed signs of narcosis; death occurred within 12 minutes (NIOSH/OSHA Occupational Health Guideline 1981, p. 4). Studies in experimental animals (species unspecified) showed that 6 hours of exposure to a 322-ppm concentration produces a 60 percent methemoglobin level (Paribok and Grokholskaya 1962, in ACGIH 1986, p. 429). Mice exposed to a 10-ppm concentration of nitric oxide for 2 hours/day, 5 days/week for various periods up to 30 weeks showed pronounced emphysematous changes (Holt et al. 1979, in Clayton and Clayton 1981, p. 4101). Nitric oxide is mutagenic both in bacterial and mammalian test systems (RTECS 1987).

In humans, exposure to a 25-ppm concentration of nitrogen oxides can cause pulmonary signs and symptoms after 8 hours; signs and symptoms may not be manifest for as long as 5 to 48 hours after exposure (Braker and Mossman 1980, p. 514). Exposure to a 100- to 150-ppm concentration for 30 to 60 minutes causes delayed-onset pulmonary edema, and at concentrations of 200 to 700 ppm, the pulmonary damage may be severe enough to cause death 5 to 8 hours after exposure (Braker and Mossman 1980, p. 514). Two cases of human poisoning have been reported in which the victims were anesthetized with nitrous oxide contaminated with 1.5 percent nitric oxide. The two individuals developed cyanosis and methemoglobinemia, both of which were attributed to the nitric oxide; one patient died 18 hours after exposure and the other subsequently recovered (NIOSH 1976, pp. 35–36). Methemoglobin levels ranging from 2 to 3 percent have been detected in arc welders exposed to nitric oxide during welding, and levels as high as 44 percent have been seen in silo fillers and other agricultural workers. The normal methemoglobin level is less than 1 percent (Rom 1983, p. 227). Chronic exposure to concentrations of nitrogen oxides (including nitric oxide) too low to cause edema may cause chronic respiratory irritation, corrosion of the teeth, and weakness (Braker and Mossman 1980, p. 515).

Based on this evidence in humans and animals, OSHA preliminarily concludes that nitric oxide causes lung damage and methemoglobinemia in exposed individuals. The Agency believes that, in the absence of a limit for nitric oxide, workers in agriculture are at significant risk of experiencing these effects. OSHA preliminarily finds that the proposed limit of 25 ppm as an 8-hour TWA is necessary to reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

NITROBENZENE
CAS: 98–95–3; Chemical Formula:
$C_6H_5NO_2$
H.S. No. 2117

In general industry, construction, and maritime, OSHA's permissible exposure limit for nitrobenzene is 1 ppm (5 mg/m³) as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit for nitrobenzene in agriculture. The ACGIH has a TLV®–TWA of 1 ppm as an 8-hour TWA, also with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the PEL being proposed. OSHA is proposing to establish an 8-hour TWA PEL of 1 ppm, with a skin notation, for nitrobenzene in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Nitrobenzene is an oily, colorless to pale yellow liquid with a strong odor similar to that of bitter almonds. Nitrobenzene is used in the manufacture of aniline; as a solvent for cellulose esters; in the esterification of cellulose acetate; as an ingredient of soaps, metal polishes, and shoe polishes; in the manufacture of benzidine, quinoline, and azobenzene; as a substitute for almond essence; as a preservative in spray paints; and as an ingredient in perfume (Grayson 1985, p. 790; Hawley's 1987, p. 826; HSDB 1988).

Nitrobenzene causes eye and skin irritation, cyanosis, and blood changes in humans and animals. This substance can also cause kidney and liver effects and central nervous system depression. In addition, testicular damage has been reported in animals. The oral LD_{50}s in rats and mice are 489 mg/kg and 590 mg/kg, respectively (RTECS 1987). The dermal LD_{50} in rats is 2100 mg/kg, and the lowest lethal dermal dose in rabbits is 600 mg/kg (RTECS 1987). Applied to the eyes or skin of rabbits for 24 hours, nitrobenzene caused only mild irritation (RTECS 1987). The leading toxic effect of nitrobenzene exposure is the formation of methemoglobin, with concomitant cyanosis and the risk of death from respiratory failure (Browning 1965, in HSDB 1988). Rabbits given subcutaneous injections of 0.75 g of nitrobenzene showed marked decreases in hematocrit and hemoglobin levels; a tendency toward spherocytosis was seen, and Heinz bodies were observed in 17 out of 27 of these animals. Other organ changes observed at autopsy included fatty infiltration of the kidneys and liver and nutmeg-sized nodules in the liver (Browning 1965, in HSDB 1988). Rats given intraperitoneal injections of 0.18 g/kg nitrobenzene showed signs of central nervous system depression (Browning 1965, in HSDB 1988). At an oral dose of 200 mg/kg, one rabbit died; 30 hours later, fat deposits were seen in the tissues and gastrointestinal tract (Browning 1965, in HSDB 1988). Degenerative testicular lesions were observed in rats given single oral doses of 50 to 450 mg/kg of nitrobenzene; hepatic centrilobular necrosis was also seen in these animals at autopsy (Beauchamp 1983, in Proctor, Hughes, and Fischman 1988, p. 368; Bond et al. 1981 in HSDB 1988). Chronic exposure to low concentrations of nitrobenzene caused an increase in the number of erythrocytes, methemoglobinemia or hemoglobinemia, albuminuria, and bile in the urine (Browning 1965, p. 300, in HSDB 1988). Rats and mice exposed to nitrobenzene concentrations of 5, 16, or 50 ppm for 6 hours/day, 5 days/week for 90 days showed a dose-related increase in methemoglobinemia and splenic changes; in the high-dose group of rats, degeneration of the seminiferous epithelia was seen (Hamm, Phelps, Raynur, and Irons. Toxicol. 4:181, 1984). Rats given a single oral dose of 300 mg/kg nitrobenzene showed complete cessation of sperm production 32 to 48 days later; 100 days after the administration of nitrobenzene, more than 90 percent of the seminiferous epithelium had regenerated (Levin, Bosakowski, Earle, and Butterworth 1988, in Toxicol. 53:219–230). Administered subcutaneously to pregnant rats during preimplantation and placentation, nitrobenzene caused a delay in embryogenesis, abnormal placentation, and gross abnormalities in the offspring (National Research Council 1981, Vol. 4, p. 227).

In humans, nitrobenzene causes cyanosis, liver damage, and blood changes. The lowest oral dose reported to be toxic in women is 200 mg/kg; this dose produced behavioral symptoms and affected the cardiovascular and pulmonary systems (RTECS 1987). Nitrobenzene can be absorbed through the skin in lethal amounts (Gosselin, Smith, and Hodge 1984, p. II–214). Ocular effects caused by nitrobenzene exposure include methemoglobinemia-induced brown discoloration of the vessels of the fundus and conjunctiva (Grant 1986, p. 663). Hepatotoxicity, as evidenced by changes in liver function (including hyperbilirubinemia and decreased prothrombin activity), has been seen in humans exposed to nitrobenzene (Beauchamp 1983, in Proctor, Hughes, and Fischman 1988, p. 368). The signs and symptoms of inhalation exposure to nitrobenzene include cyanosis, headache, vertigo, nausea, visual disturbance, stupor, coma, and death from respiratory failure (Arena 1974, in HSDB 1988). Workers in a chemical plant that had an average nitrobenzene concentration of 6 ppm did not experience signs or symptoms of nitrobenzene poisoning, although one or two cases of headache or vertigo were reported among the 39 workers (Pascéri et al. 1958, in ACGIH 1986, p. 431). Tests of the blood of these workers showed a low level of methemoglobinemia and sulfhemoglobinemia and the presence of some Heinz bodies (Pascéri et al. 1958, in ACGIH 1986, p. 431). When these workers were exposed to nitrobenzene concentrations of close to 40 ppm, however, they did experience toxic episodes (Pascéri et al. 1958, in ACGIH 1986, p. 431). Two cases of occupational overexposure to nitrobenzene have resulted in the development of mild anemia, believed to be of the hemolytic type (Browning 1965, p. 301, in HSDB 1988).

Based on this evidence in humans and animals, OSHA preliminarily concludes that nitrobenzene causes eye and skin irritation, cyanosis, blood dyscrasias, central nervous system depression, and splenic and hepatic effects. Accordingly, the Agency believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these effects. OSHA preliminarily finds that the proposed 8-hour TWA PEL of 1 ppm, and a skin notation, are necessary to substantially reduce these significant risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for nitrobenzene consistent across all regulated sectors.

p-NITROCHLOROBENZENE
CAS: 100–00–5; Chemical Formula:
$NO_2C_6H_4Cl$
H.S. No. 1288

In the construction and maritime industries, OSHA currently has an 8-hour TWA limit of 1 mg/m³, and a skin notation, for p-nitrochlorobenzene (PNCB). There is no limit for this substance in agriculture. The ACGIH has a TLV®–TWA of 0.5 mg/m³ (3 mg/m³), with a skin notation for this substance. NIOSH has no REL for nitrochlorobenzene. The Agency is proposing a 1 mg/m³ 8-hour TWA limit, and a skin notation, for PNCB in agriculture.

Para-Nitrochlorobenzene is a yellow crystalline solid that has a sweet odor. It is used in the manufacture of agricultural chemicals, dyes, and rubber and as a chemical intermediate (ACGIH 1986, p. 321.1(86); Hawley's 1987, p. 269).

The primary hazard associated with exposure to PNCB is

methemoglobinemia. The oral LD_{50} in rats is 420 mg/kg, and the dermal LD_{50} in the same species is 16 g/kg (RTECS 1990). PNCB was absorbed through rabbit skin in sufficient quantity to produce methemoglobinemia (Kubota 1960, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). Rusakov, Korotkova, and Bikbulatov (1973/Ex. 1–660) described the development of sensitization in guinea pigs after dermal application of PNCB. A 4-hour inhalation exposure of rats (heads only) showed that the lethal concentration of PNCB is approximately 16.1 mg/L (E.I. du Pont de Nemours & Co., Inc. 1981, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). Head-only exposures to 0.05, 0.29, or 0.64 mg/L PNCB for 6 hours/day, 5 days/week for 2 weeks resulted in spleen-weight increases and blood effects in all groups. In addition, there were dose-related effects in blood methemoglobin levels (i.e., decreased hemoglobin, hematocrit, and red blood cell count values). Microscopic changes in the spleen, bone marrow, and kidneys were seen in the two higher-dose groups, and both pathological degeneration of the seminiferous tubules and abnormal epididymal sperm contents were also observed in these groups (E.I. du Pont de Nemours & Co., Inc. 1984, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). The Monsanto Company (1981, as cited in ACGIH 1986/Ex. 1–3, p. 432.2) reported that gavage administration of PNCB for 90 days at daily doses of 0.3, 10, or 30 mg/kg to male and female rats produced hemolytic effects and spleen changes at all levels, kidney and liver effects at mid- to high-level doses, and hyperplasia of bone marrow and testicular atrophy at the highest dose (30 mg/kg/day). In 1985, Monsanto reported the results of another gavage study in rats. After 2 years of PNCB feeding at 0.1, 0.7, or 5.0 mg/kg/day, animals in the mid-and high-dose groups exhibited hemolytic effects; in addition, mid- and high-dose groups showed microscopic spleen, kidney, and liver changes and, at the highest dose, bone marrow hyperplasia and testicular atrophy (Monsanto Company 1985, as cited in ACGIH 1986/Ex. 1–3, p. 432.2).

Rats fed PNCB at doses of 0, 0.1, 0.7, or 5 mg/kg/day for up to 2 years showed methemoglobinemia at the two highest levels, and animals in the 5-mg/kg/day group had indications of anemia and pigment accumulation in spleen cells. No treatment-related increase in tumors was observed (Monsanto Company 1985, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). In a dietary cancer bioassay, rats and mice were given PNCB at unspecified levels for 2 years (Weisberger, Russfield, Homburger et al. 1978/Ex. 1–535). Only mice were affected, with mice of both sexes showing an increase in vascular tumors at the highest dose and male mice showing an increase in liver tumors at the lowest dose (Weisberger, Russfield, Homburger et al. 1978/Ex. 1–535).

Maternal toxicity was seen in rats given PNCB by gavage at doses of 15 or 45 mg/kg/day on days 9 through 16 of gestation; at the 45-mg/kg level, fetotoxicity and teratogenicity were also observed (Nair, Johannsen, and Schroeder 1985/Ex. 1–752). At 15 mg/kg, maternal toxicity but no fetotoxicity or teratogenic effects occurred; at the lowest dose, the only effect was a small increase in maternal spleen weight. A two-generation reproductive study resulted in a reduced mating index in rats given 0.7 or 5.0 mg/kg/day (Monsanto Company 1984, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). Positive responses were observed in a mutation assay of L5178Y TK mouse lymphoma cells (both with and without metabolic activation) and in a microbial assay of *Salmonella* strain TA 1535 (in the absence of metabolic activation); however, no evidence of mutagenicity was noted in assays of three other *Salmonella* strains or in assays of Chinese hamster ovary cells, rat hepatocyte primary culture/DNA repair, or rat bone marrow cell clastogenesis (Monsanto Company 1980–1984, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). PNCB produced DNA damage in the liver, kidney, and brain cells of rats after a single intraperitoneal dose of 30 to 1000 mg/kg (Cesarone, Bolognesi, and Santi 1983/Ex. 1–542) and in cultured hepatocytes at 1.5 hours after a 3-hour treatment (Cesarone, Fugassa, Galle et al. 1984/Ex. 1–541).

p-Nitrochlorobenzene may be absorbed through the lungs and skin in humans to produce methemoglobinemia. Reports of industrial exposures indicate that overexposure causes cyanosis, weakness, and headache (Saita and Moreo 1958/Ex. 1–930; Renshaw and Ashcroft 1926/Ex. 1–522). In a study of workers exposed to average concentrations of PNCB of 55, 125, or 143 ppm and to a 23-ppm concentration of a PNCB-nitrophenol mixture, the authors concluded that the mixed exposure did not produce chronic intoxication but did cause increased methemoglobin, the appearance of Heinz bodies, headache, vertigo, and occasional eczema; these effects could not be attributed definitely either to skin absorption or to the level of PNCB in the mixture (Pascéri, Magos, and Batskor 1958/Ex. 1–521). No data were reported for the p-nitrochlorobenzene exposures only (Pascéri, Magos, and Batskor 1958/Ex. 1–521). Severe allergic dermatitis is reported to be frequent in workers handling PNCB (Gosselin, Smith, and Hodge 1984, p. II–214).

Based on this evidence, OSHA is proposing to extend an 8-hour TWA limit of 1 mg/m³ for p-nitrochlorobenzene, and a skin notation, to agricultural workplaces. The Agency preliminarily concludes that these limits are necessary to protect workers in agriculture from the significant risks of methemoglobinemia and changes in the spleen, liver, and kidney possible at higher exposure levels. OSHA is also proposing a skin notation in agriculture because dermal absorption of PNCB has been shown to cause systemic effects in humans and animals. The Agency preliminarily finds that methemoglobinemia and spleen, kidney, and liver damage constitute material impairments of health. In addition, promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

PARATHION

CAS: 56–38–2; Chemical Formula: $C_{10}H_{14}NO_5PS$

H.S. No. 2122

In general industry, construction, and maritime, OSHA's permissible exposure limit for parathion is an 8-hour TWA of 0.1 mg/m³; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³, with a skin notation. NIOSH has a 10-hour TWA REL of 0.05 mg/m³ for parathion. OSHA is proposing a limit of 0.1 mg/m³ as an 8-hour TWA, and a skin notation, for parathion in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Parathion is a yellow to deep brown liquid with a faint, garlic-like odor. It is an organophosphorus pesticide that is used as an insecticide and acaricide (Hawley's 1987, p. 874; ACGIH 1986, p. 458). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Parathion causes cholinesterase inhibition in humans and animals. The oral LD_{50} in rats is 2 mg/kg, and the dermal LD_{50} in rabbits is 15 mg/kg (RTECS 1990). In rats, the LC_{50} is 84 mg/m³ for 4 hours (RTECS 1990). Signs and symptoms of acute exposure in animals include lacrimation, tachypnea,

dyspnea, asynergy, convulsions, diarrhea, depression, paresis, tremors, and prostration (HSDB 1990). The highest dietary concentration that produced no symptoms in rats was 10 ppm for 2 years; a dietary level of 25 ppm caused illness (Lehman 1952, in ACGIH 1986, p. 458). Edson observed that rats given a dose equivalent to 0.42 mg/person/day for 84 days showed no effects but that a 46 percent drop in red blood cell cholinesterase levels occurred when these animals were administered a dose equivalent to 4.2 mg/person/day (Edson et al. 1964, in ACGIH 1986, p. 458). Dogs were given dietary doses of 1, 2, or 5 ppm parathion for 24 weeks; 1 ppm produced a minimal but significant reduction in plasma cholinesterase, and a dose of 2 or 5 ppm reduced plasma cholinesterase levels by 60 to 70 percent (NRC 1977, (Drinking Water and Health 1977)).

In humans, the lowest lethal oral parathion dose is 171 μg/kg; the lowest lethal dose by dermal absorption is 7143 μg/kg (RTECS 1990). Fatal human poisonings have occurred through ingestion, skin exposure, and inhalation (Proctor, Hughes, and Fischman 1988, p. 391). The signs and symptoms of parathion overexposure include miosis, blurred vision, tearing, chest tightness, wheezing, laryngeal spasms, and excessive salivation (Proctor, Hughes, and Fischman 1988, p. 392). Gastrointestinal effects such as anorexia, vomiting, abdominal cramps, and diarrhea occur within 15 minutes to 2 hours after ingestion of parathion (Koelle 1963, in Proctor, Hughes, and Fischman 1988, p. 392). The most serious effect of exposure is muscle paralysis; central nervous system effects include giddiness, confusion, ataxia, slurred speech, convulsions, and coma (Taylor 1985, in Proctor, Hughes, and Fischman 1988, p. 392). Four volunteers given oral doses of 1 or 2 mg/person/day did not show signs of cholinesterase inhibition but did show distinctly different rates of excretion (Morgan et al. 1977, in Hayes 1982, p. 381). A 12-year old boy exposed to bed sheets contaminated with parathion suffered an elevated blood pressure and respiratory failure and became comatose; the pupils of his eyes were characteristically contracted (Waldbott 1973, in HSDB 1985). In Colombia, 600 people were poisoned by eating bread baked with flour contaminated with parathion; approximately 25 percent of the victims suffered mild poisoning and experienced symptoms such as abdominal pain, headache, blurred vision, tremor, dizziness, and weakness. Others showed profuse sweating, constricted pupils, and irritability; a few experienced acute pulmonary edema, severe diarrhea, cyanosis, and salivation (Waldbott 1973, in HSDB 1985). Absorption of parathion by inhalation caused a greater depression of cholinesterase activity than absorption by the percutaneous route (Hartwell et al. 1964, in ACGIH 1986, p. 458).

Based on this evidence in humans and animals, OSHA preliminarily concludes that parathion inhibits cholinesterase activity and causes nervous system effects. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that establishing a permissible exposure limit of 0.1 mg/m³ as an 8-hour TWA, and a skin notation, is necessary to significantly reduce the risk of these material health impairments. In addition, promulgation of this limit will make the PEL for parathion consistent across all OSHA-regulated sectors.

PHORATE

CAS: 298–02–2; Chemical Formula: $C_7H_{17}O_2PS_3$

H.S. No. 1319

OSHA has no limit for phorate in the construction, maritime, or agriculture industry. The ACGIH has limits of 0.05 mg/m³ as an 8-hour TWA and 0.2 mg/m³ as a STEL for phorate, with a skin notation. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour PEL of 0.05 mg/m³ and a 15-minute STEL of 0.2 mg/m³, and a skin notation. for phorate in these industries. These limits are the same as those recently promulgated for phorate in general industry.

Phorate is an organophosphate that takes the form of a clear liquid and is used as an insecticide. When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Phorate is a highly toxic cholinesterase inhibitor in animals. The oral LD_{50} in rats ranges from 1.1 to 2.0 mg/kg (Hayes 1982, p. 391) and is 6.6 mg/kg in mice (RTECS 1990). The dermal LD_{50} in rabbits is 99 mg/kg (RTECS 1990). Rats exposed to daily doses of phorate showed cholinesterase inhibition effects above 0.15 mg/kg/day but no effects below this level. The no-effect level in dogs is between 0.01 and 0.05 mg/ kg/day (Gaines 1969/ Ex. 1–320). In humans, phorate causes classical symptoms of cholinesterase inhibition, including anxiety, restlessness, headache, emotional and behavioral changes, excessive dreaming, and confusion. In severe cases, exposure to phorate causes loss of muscle coordination, difficulty in breathing, pulmonary rales and rhonchi, convulsions, coma, and death. Several cases of human phorate poisoning have been reported (Hayes 1982, p. 391).

The proposed rule's limits of 0.05 mg/m³ as an 8-hour TWA, supplemented by a STEL of 0.2 mg/m³ and a skin notation, are based on calculations that the no-effect level in humans would lie in the range between 0.21 and 0.7 mg/day, and that use of an appropriate safety factor would suggest an 8-hour limit of 0.05 mg/m³, with a STEL of 0.2 mg/m³, to ensure against excursions greatly in excess of the TWA limit.

OSHA preliminarily finds that limits of 0.05 mg/m³ as an 8-hour TWA and 0.2 mg/m³ as a STEL, and a skin notation, will protect workers exposed to phorate in construction, maritime, and agriculture against cholinesterase inhibition and its associated effects, which include respiratory symptoms, nausea, confusion, and vomiting. The Agency preliminarily concludes that, in the absence of an OSHA limit, phorate-exposed employees are at significant risk of experiencing such effects and that establishing a PEL, STEL, and skin notation will substantially reduce these risks. OSHA believes that cholinesterase inhibition and its symptoms clearly constitute material impairments of health. Promulgation of this limit will also make the PEL for this substance consistent across all OSHA-regulated sectors.

PROPANE

CAS: 74–98–6; Chemical Formula: C_3H_8

H.S. No. 2134

OSHA is not proposing to extend the limit that currently exists for propane in general industry—1000 ppm—to the construction and agriculture sectors. The only known health effect associated with exposure to this substance is asphyxiation, which occurs at levels that far exceed 1000 ppm.

In 1968, the ACGIH TLV® (and thus OSHA's PEL for general industry) was 1000 ppm as an 8-hour TWA. By 1970, however, the ACGIH had deleted its TLV®–TWA for propane in favor of a listing in Appendix E, "Some Simple Asphyxiants." Since 29 CFR 1926, the construction standards, reference the 1970 TLVs, no numerical limit for propane is currently in effect in construction.

The stated goal of this rulemaking is to achieve consistency across all OSHA-regulated sectors; however, there

appears to be no health basis for adopting the general industry limit for propane in other sectors. This case is thus the only exception to this stated objective.

The real hazard with propane is its explosivity, and 29 CFR 1910.110 effectively sets a PEL for propane of approximately 5500 ppm, which is 25% of the LEL (lowest explosive limit) of 22,000 ppm. It is the opinion of the Agency that 1910.110 sufficiently regulates propane, and that a PEL established under 29 CFR 1910.1000 would not therefore reduce a significant health risk.

Because propane is only one of the simple asphyxiants in use in general industry (others are acetylene, argon, helium, hydrogen, propylene, ethanol, etc.), OSHA solicits comment on the policy enunciated here, which is to regulate the simple asphyxiants as explosive substances, i.e., in accordance with their physical, rather than chemical, hazards. Specifically, OSHA seeks comments on whether PELs based on health effects are also needed for these substances to reduce a significant risk to exposed workers.

PROPOXUR (Baygon)

CAS: 114–26–1; Chemical Formula:

$C_{11}H_{15}NO_3$

H.S. No. 1337

OSHA has no limit for propoxur in the construction, maritime, and agriculture industries. The ACGIH has established an 8-hour TLV®–TWA of 0.5 mg/m³ for this substance. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA limit of 0.5 mg/m³ for propoxur in the construction, maritime, and agriculture industries. This limit is the same as the limit recently promulgated for general industry.

Propoxur is a white, odorless, crystalline carbamate. It is used as an insecticide, particularly for flea and tick control on animals, and as a molluscicide (ACGIH 1986, p. 499; Hawley's 1987, p. 660). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Like all carbamate insecticides, propoxur causes reversible cholinesterase inhibition. The oral LD_{50}s in male and female rats are 83 and 86 mg/kg, respectively; for both sexes, the dermal LD_{50} is greater than 2400 mg/kg (Gaines 1969/Ex. 1–320). Dietary studies in rats at levels of 7.5 mg/kg/day for 28 days or at 800 ppm for 3 months found no adverse effects (Association of American Pesticide Control Officials, Inc. 1966/Ex. 1–1011). Rats were exposed to propoxur concentrations of 5, 7, 18.7, or 31.7 mg/m³ 6 hours/day, 5 days/week for 12 weeks; animals in the high-dose group showed depressed red blood cell and brain cholinesterase levels, and plasma cholinesterase was depressed by as much as 20 to 30 percent (Association of American Pesticide Control Officials, Inc. 1966/Ex. 1–1011).

In humans, a few cases of mild propoxur poisoning have been reported among sprayers of this insecticide and among residents of propoxur-treated homes (Vandekar, Hedayat, Plestina, and Ahmady 1968/Ex. 1–679). Based on a survey of 696 pet care facility workers, Hines et al. (American Industrial Hygiene Association Journal 50:466–472, 1989) reported an association between exposure to propoxur and an increased frequency of convulsions, muscle twitches, fatigue, and headaches. In a study of human volunteers, a single oral dose of 1.5 mg/kg propoxur caused a depression in red blood cell cholinesterase and gastrointestinal symptoms that disappeared 2 hours after ingestion. Oral doses of 0.75 to 1.0 mg/kg produced no symptoms but did depress erythrocyte cholinesterase (Vandekar, Plestina, and Wilhelm 1971/Ex. 1–680).

OSHA is proposing an 8-hour TWA of 0.5 mg/m³ for propoxur in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of cholinesterase inhibition associated with exposure to this substance. OSHA believes that cholinesterase inhibition is a material health impairment. Promulgation of this limit will also make the PEL for this substance consistent across all OSHA-regulated sectors.

RONNEL

CAS: 299–84–3; Chemical Formula:

$(CH_3O)_2PSOC_6H_2Cl_3$

H.S. No. 1349

OSHA has a limit of 15 mg/m³ TWA for ronnel in construction and maritime operations. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 10 mg/m³ for this substance. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA of 10 mg/m³ for ronnel in agriculture, construction, and maritime. This limit is the same as the PEL recently promulgated for ronnel in general industry.

Ronnel is a white powder. It is used as an insecticide (ACGIH 1986, p. 513; Farm Chemicals Handbook 1990, p. C252). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Ronnel is an indirect cholinesterase inhibitor that affects the blood plasma rather than red cell acetylcholinesterase (Plapp and Casida 1958a/Ex. 1–657). The acute oral LD_{50} in rats is reported as 1250 and 2630 mg/kg for males and females, respectively. The oral LD_{50} in dogs is greater than 500 mg/kg (McCollister, Oyen, and Rowe 1959/Ex. 1–594). Two-year dietary studies of rats fed up to 50 mg/kg/day showed no effect on growth rate, food consumption, survival, or hematopoiesis (McCollister, Oyen, and Rowe 1959/Ex. 1–594). In a study by Gladenko and Stuk (1972, as cited in ACGIH 1986/Ex. 1–3, p. 513), albino rats developed clinical symptoms of motor irritation, tremor, increased auditory and tactile sensitivity, lacrimation, and salivation within 2 weeks of exposure to ronnel concentrations of between 164 and 328 mg/kg; some animals died during the latter part of the study. At exposures below 16.4 mg/kg, no ill effects were observed (Gladenko and Stuk 1972, as cited in ACGIH 1986/Ex. 1–3, p. 513). A 2-year feeding study in dogs exposed to daily doses of 10 mg/kg showed no ill effects except cholinesterase depletion (Worden, Noel, and Mawdesley-Thomas 1972/Ex. 1–583). Oral administration of ronnel to pregnant rats and rabbits has been associated with adverse reproductive and developmental effects (RTECS 1990).

Patch tests of 50 human subjects showed that ronnel has no skin-sensitizing potential (McCollister, Oyen, and Rowe 1959/Ex. 1–594).

OSHA is proposing an 8-hour TWA PEL of 10 mg/m³ for ronnel in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of cholinergic effects associated with exposure to this substance. OSHA believes that this limit will substantially reduce this significant risk and that cholinesterase inhibition constitutes a material health impairment. Promulgation of this limit will also make the PEL for ronnel consistent across all OSHA-regulated sectors.

SULPROFOS

CAS: 35400–43–2; Chemical Formula:

$C_{12}H_{19}O_2PS_3$

H.S. No. 1380

OSHA has no limit for sulprofos in the construction, maritime, or agriculture industry. The ACGIH has an exposure

limit of 1 mg/m³ as an 8-hour TWA. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing an 8-hour TWA of 1 mg/m³ for sulprofos in agriculture, construction, and maritime. This limit is the same as that recently promulgated for general industry.

Sulprofos, also known as the insecticide Bolstar, is a tan liquid (ACGIH 1986, p. 547). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Like all organophosphate pesticides, sulprofos inhibits the enzyme cholinesterase. Kimmerle (1982b, as cited in ACGIH 1986/Ex. 1–3, p. 547) conducted an extensive animal study on the effects of sulprofos. He reported that the acute toxicity of sulprofos is species-dependent: rats have an oral LD_{50} of 100 to 300 mg/kg and mice have an oral LD_{50} of 1600 to 1800 mg/kg. The reported dermal LD_{50}s are greater than 1000 mg/kg in rats and 800 to 1000 mg/kg in rabbits. In rabbits, sulprofos did not irritate the skin or eyes, and it had no dermal sensitization effects in guinea pigs. Inhalation studies showed no fatalities in rats exposed to sulprofos aerosol concentrations of up to 4130 mg/m³ over a period of 4 hours. In a 3-week inhalation study in which rats were exposed to aerosol concentrations of 6, 14, or 74 mg/m³, the two highest concentrations produced cholinergic symptoms; no observable effects were seen at the lowest concentration. Two-year feeding studies by Kimmerle (1982b, as cited in ACGIH 1986/Ex. 1–3, p. 547) in dogs, rats, and mice showed that sulprofos concentrations of 150 ppm, 250 ppm, or 400 ppm were tolerated by all species, with no sulprofos-related tissue changes, signs of toxicity, or oncogenic effects. The overall NOELs were 10 ppm in dogs, 6 ppm in rats, and 2.5 ppm in mice. Kimmerle's ingestion studies in rats and rabbits dosed at levels of 3, 10, or 30 mg/kg/day of sulprofos showed no embryotoxic or teratogenic effects among the offspring of these animals, and a three-generation diet study in rats also produced no adverse reproductive effects. Mutagenic studies reported by the same author in mice were negative. Separate subacute inhalation studies also showed no effects on blood cholinesterase levels in rats exposed to 6 mg/m³ (Zielhuis and van der Kreek 1979/Ex. 1–613). There are no reported cases of poisoning in humans (ACGIH 1986/Ex. 1–3, p. 547).

OSHA is proposing an 8-hour TWA limit of 1 mg/m³ for sulprofos in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect workers in these sectors from the significant risk of cholinesterase inhibition, the most sensitive indicator of exposure to this substance. The Agency believes that this limit will substantially reduce this significant risk, and that cholinesterase inhibition constitutes a material impairment of health. Promulgation of this limit will also make the PEL for this substance consistent across all OSHA-regulated sectors.

TERPHENYLS

CAS: 26140–60–3; Chemical Formula: $C_{18}H_{14}$

H.S. No. 1384

OSHA's PEL in construction and maritime for the terphenyls is 1.0 ppm as a ceiling limit. There is no limit in agriculture. The ACGIH has a 0.5-ppm ceiling limit for these substances. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limit being proposed. OSHA is proposing a PEL in construction, maritime, and agriculture of 0.5 ppm as a ceiling limit for terphenyls. This limit is the same as that recently promulgated for general industry.

Terphenyls are colorless or light yellow solids; commercial preparations contain mixtures of ortho-, meta-, and paraterphenyls. Terphenyls are used as heat transfer fluids and reactor coolants (ACGIH 1986, p. 559).

The terphenyls are primary irritants that cause eye, skin, and respiratory tract irritation. Haley, Detrick, Komesu et al. (1959/Ex. 1–326) reported that mixtures of terphenyls caused conjunctival irritation when instilled into the eyes of rabbits and damaged guinea pig skin following intracutaneous injection. Cornish, Bahor, and Ryan (1962/Ex. 1–410) determined LD_{50} values of 1900, 2400, and greater than 10,000 mg/kg for the ortho-, meta-, and para-terphenyls, respectively. These authors also conducted 30-day feeding studies of rats involving doses of 250 or 500 mg/kg/day of the individual terphenyl isomers. Rats fed ortho-terphenyl showed elevated liver and kidney weight ratios; rats fed meta-terphenyl displayed elevated kidney weight ratios only; and rats fed para-terphenyl showed no elevation in liver or kidney weight ratios. Two studies by Petkau and Hoogstraaten (1965/Ex. 1–432) and Young, Petkau, and Hoogstraaten (1969/Ex.1–459) have shown that the terphenyls have nephrotoxic effects and cause hepatic damage in rats fed 33 mg/kg/day.

Inhalation by rats of high concentrations (66 to 339 ppm) of mixed or individual isomers for periods ranging from 1 hour to 14 days resulted in tracheobronchitis, pulmonary edema, and death at higher doses (Proctor, Hughes, and Fischman 1988, p. 459). Adamson, Bowden, and Wyatt (1969/Ex. 1–293) published a study in which rats exposed to terphenyl aerosols for 7 hours per day at a concentration of 50 mg/m³ (approximately 5 ppm), for a period of 8 days developed morphological changes in their pulmonary cell mitochondria; the number of vacuolated mitochondria was directly related to duration of exposure.

Weeks (1971/Ex. 1–580) and Weeks and Lentle (1970/Ex. 1–682) conducted a clinical survey of 47 workers with ongoing exposure to terphenyl coolant in a nuclear facility. The study represented 122 person-years of occupational exposure, with durations of exposure ranging from 6 months to 7 years. The airborne concentrations of terphenyl varied, measuring 0.094 mg/m³ in general working areas and up to 0.89 mg/m³ in areas with organic piping equipment. The terphenyl coolant was determined to be a primary irritant, even in those workers wearing protective clothing, because skin moistness increased dermal sensitivity to the terphenyls (Weeks 1971/Ex. 1–580; Weeks and Lentle 1970/Ex. 1–682). Testa and Masi (1964/Ex. 1–578) reported that, at concentrations above 10 mg/m³ (approximately 1 ppm, the current OSHA ceiling limit in construction and maritime), workers reported both eye and respiratory irritation.

OSHA is proposing a ceiling limit of 0.5 ppm for the terphenyls in construction, maritime, and agriculture. The Agency preliminarily concludes that this limit will protect workers in these sectors against the significant risk of primary irritation of the eyes, skin, and upper respiratory tract potentially associated with exposure to very low airborne levels of the terphenyls. The Agency believes that this limit will substantially reduce these significant risks and that primary irritation and metabolic effects constitute material health impairments. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

m-TOLUIDINE

CAS: 108–44–1; Chemical Formula: C_7H_9N

H.S. No. 1401

OSHA has no PEL for m-toluidine in the construction, maritime, and agriculture industries. The ACGIH has a 2-ppm 8-hour TLV®–TWA, with a skin notation. NIOSH has no REL for this substance. OSHA is proposing a PEL of 2 ppm as an 8-hour TWA, and a skin notation, for this substance in the construction, maritime, and agriculture industries. This is the limit recently promulgated for m-toluidine in general industry.

m-Toluidine is a light yellow liquid. It is used as an intermediate in the manufacture of dyes and other chemicals (ACGIH 1986, p. 589).

Like other aniline derivatives, m-toluidine produces methemoglobinemia in humans and experimental animals. The oral LD_{50}s in rats and mice are 450 and 740 mg/kg, respectively (RTECS 1990). When m-toluidine was tested on the eyes and skin of rabbits, moderate to strong irritation resulted (NIOSH 1979b, as cited in ACGIH 1986/Ex. 1–3, p. 589). A mean maximal methemoglobinemia of 60.2 percent was reported to occur following the intravenous administration of 27 mg/kg m-toluidine in cats (McLean, Starmer, and Thomas 1969/Ex. 1–425). Rodent carcinogenicity studies cited by the ACGIH (1986/Ex. 1–3, p. 589) were either inconclusive or negative; however, NIOSH (Ex. 8–47, Table N–2) pointed out in the prior rulemaking that this substance is an aromatic amine like o- and p-toluidine, both of which are carcinogenic.

The effects in humans of exposure to m-toluidine, when it is either absorbed through the skin or delivered via inhalation, are hematuria and methemoglobinemia. Exposure to 40 ppm for 60 minutes causes severe poisoning (Goldblatt 1955/Ex. 1–417). There are no epidemiological studies of workers exposed only to m-toluidine (ACGIH 1986/Ex. 1–3, p. 589).

OSHA is proposing a 2-ppm 8-hour TWA and a skin notation for m-toluidine in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit will protect workers from the significant risk of metabolic effects, such as hematuria and methemoglobinemia, associated with exposure to m-toluidine. OSHA believes that hematuria, methemoglobinemia, and the other metabolic effects associated with exposure to m-toluidine constitute material impairments of health. Promulgation of this limit will also make the PEL for this substance consistent across all OSHA-regulated sectors.

2,4,6–TRINITROTOLUENE (TNT)
CAS: 118–96–7; Chemical Formula: $C_7H_5N_3O_6$
H.S. No. 1413

OSHA's PEL for 2,4,6-trinitrotoluene (TNT) in construction and maritime is 1.5 mg/m³ as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.5 mg/m³, also with a skin notation, for this chemical. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N–1) with the limit being proposed. OSHA is proposing an 8-hour TWA of 0.5 mg/m³, and a skin notation, for this substance in construction, maritime, and agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

TNT occurs as yellow, needle-like crystals. It is used as a high explosive (ACGIH 1986, p. 610).

TNT causes destruction of the red blood cells and methemoglobinemia in experimental animals. The oral LD_{50}s in rats and mice are 795 and 660 mg/kg, respectively. Rats given 50 mg/kg per day in the diet showed anemia, lesions of the spleen, liver and kidney damage, and bladder carcinoma (Proctor, Hughes, Fischmann 1988, p. 497). In a study by Dilley et al. (cited in HSDB 1990), rats were given 0, 0.002, 0.01, 0.05, or 0.25 percent TNT in the diet for 13 weeks. Rats receiving the highest dose exhibited anemia with reduced erythrocytes, hemoglobin, and hematocrit, as well as reduced testicular size; all effects except the testicular atrophy were reversible after the exposure period.

The ACGIH's limit was selected on the basis of health surveys conducted among occupationally exposed workers. Fairhall (1957e, as cited in ACGIH 1986/Ex. 1–3, p. 610) describes dermatitis, cyanosis, gastritis, acute yellow atrophy of the liver, and aplastic anemia as possible effects of exposure to TNT. According to Sollman (1957/Ex. 1–991), blood cell destruction, leucocytosis or leucopenia, and varying degrees of central nervous system change (probably resulting from anoxia), peripheral neuritis and muscular pain, cardiac muscular and menstrual irregularities, and urinary and renal irritation can also occur as a consequence of TNT exposure. TNT has irritant properties and may cause sneezing, sore throat, or skin irritation (von Oettingen 1941/Ex. 1–874).

A study by Goodwin (1972/Ex. 1–556) revealed 36 cases of liver damage in a munitions plant where workers were exposed to a mean air level of 2.38 mg/m³ TNT over a period of 20 years.

Another study (Morton, Ranadive, and Hathaway 1976/Ex. 1–566) found elevated levels of liver enzymes in 43 TNT shell-packers and loaders who worked where TNT exposures ranged from 0.3 to 0.8 mg/m³ over a period of 5 months. In 1975, Djerassi and Vitany (Ex. 1–550) published a paper describing hemolytic episodes in three TNT workers with glucose-6-phosphate dehydrogenase deficiency; although these workers were from Iraq, where G–6–PDase deficiency has a high (25 percent) frequency of occurrence, the study is also of concern for other workers having a high frequency of G–6–PDase deficiency. TNT has been reported to cause cataracts among workers exposed above 1 mg/m³ for 5 years or more (Proctor, Hughes and Fischmann 1988, p. 496). The cataracts induced by TNT may not regress after the cessation of exposure.

OSHA is proposing an 8-hour TWA of 0.5 mg/m³ for 2,4,6-trinitrotoluene, and a skin notation, in the construction, maritime, and agriculture industries. The Agency preliminarily concludes that this limit is necessary to protect workers in these sectors against the significant risk of liver damage, hemolytic effects, and cataract formation potentially associated with exposure to TNT. OSHA believes that this limit will substantially reduce these significant risks and that liver damage and hemolysis constitute material health impairments. Promulgation of this limit will also make the PEL for this substance consistent across all OSHA-regulated sectors.

WARFARIN
CAS: 81–81–2; Chemical Formula: $C_{19}H_{16}O_4$
H.S. No. 2168

In general industry, construction, and maritime, OSHA's permissible exposure limit for warfarin is 0.1 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.1 mg/m³ for this substance; NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL in agriculture of 0.1 mg/m³ for warfarin. This is the limit recently established for warfarin in general industry.

Warfarin is an odorless, colorless to white, crystalline powder. It is available commercially as a dust or liquid concentrate and in various formulations with other pesticides (HSDB 1987; Hayes 1982, p. 508). Warfarin is primarily used as a rodenticide; it is also used in medicine as an anticoagulant (HSDB 1987). When used in pesticidal applications and in accordance with the label, this substance is regulated by the

EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In both animals and humans, warfarin acts on the liver to inhibit prothrombin formation, which interferes with blood clotting; warfarin also damages the blood vessels directly. The lowest reported oral LD_{50} in rats is 1500 μg/kg, and the LC_{50} in the same species is 320 mg/m³ (RTECS 1990). The dermal LD_{50} in rats is 1400 mg/kg (RTECS 1990). Although a large single dose of warfarin can cause poisoning, this substance is most toxic when ingested daily in small amounts over a 5- to 7-day period. Rats and mice die after ingesting 1 mg/kg/day for 6 days (Booth 1982, in HSDB 1987). The clinical signs of lethal warfarin poisoning include massive hemorrhage, visible hematomas under the skin and around the joints, and bloody discharges from body orifices. Shock, weakness, and labored breathing may also occur (Booth 1982, p. 955). Intramuscular exposure to 10 mg/kg on days 8 through 28 of pregnancy caused stillbirths and developmental abnormalities in the offspring of dosed rabbits (RTECS 1990).

In humans, the lowest reported lethal dose is 6667 μg/kg (RTECS 1989). Several days of warfarin administration are usually required to deplete the body's stores of clotting factor and to produce an anticoagulant effect. A single large dose can cause the anticoagulant effect after a latency period of several days (Wisconsin Alumni Research Foundation 1951; Back et al. 1978). Toxic doses of warfarin also produce dilation and engorgement of blood vessels and increased capillary fragility, which may further increase the risk of hemorrhage (Hayes and Gaines 1950; Hayes 1963; Heisey et al. 1956). Except for abnormal bleeding, warfarin has few toxic effects, although anorexia, nausea, vomiting, diarrhea, and skin lesions may occur in some individuals (Goodman 1975, p. 1359). As in animals, warfarin is most toxic when ingested in small doses over a period of 5 to 6 days; 1 to 2 mg/kg/day for 6 days is estimated to be lethal (Klaassen, Amdur, and Doull 1986, p. 564). Warfarin can be absorbed through the skin in toxic amounts. A 23-year old farmer was exposed to a 0.5-percent warfarin sodium salt by skin contact for several hours on ten occasions during a 24-day period. On day 26, he developed gross hematuria. On day 27, hematomas appeared on his arms and legs and he complained of dull pain in both sides of his groin area. On day 30, the hematuria resolved and he developed nosebleeds. The patient recovered fully following administration of vitamin-K (Fristedt and Sterner 1965, p. 205). Warfarin causes fetotoxic and teratogenic effects in the offspring of women taking this substance as an anticoagulant during pregnancy; many cases of stillbirths and deformities have been attributed to the therapeutic use of warfarin (Hall et al. 1980).

Based on this evidence, OSHA preliminarily concludes that, in the absence of a permissible exposure limit, workers in agriculture are at significant risk of experiencing capillary fragility and hemorrhage, the principal effects of warfarin exposure. The Agency believes that establishing an 8-hour TWA PEL of 0.1 mg/m³ will substantially reduce this risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

Preliminary Conclusions for the Group of Biochemical/Metabolic Toxins. For the class of toxic substances having biochemical/ metabolic effects, OSHA preliminarily concludes that occupational exposure presents significant risks to health. The effects associated with exposure to these substances (which inhibit cholinesterase activity, interfere with the blood's ability to carry oxygen, or produce Antabuse-like symptoms and signs) range from nausea, bronchoconstriction, cardiac irregularities, neurobehavioral effects, and unconsciousness to coma and death, depending on the severity of the exposure. OSHA believes that all of these symptoms and signs constitute material health impairments. Accordingly, the Agency believes that establishing the proposed limits for this group of toxicants is necessary to substantially reduce these significant occupational risks among workers in construction, maritime, and agriculture.

13. Substances for Which Proposed Limits Are Based on Avoidance of Sensitization Effects

Introduction. OSHA is proposing limits for 12 substances on the basis of their ability to cause pulmonary or skin sensitization. Table C13–1 lists OSHA's current permissible exposure limits (PELs) for these substances in construction and maritime; there are no PELs in agriculture for this group of sensitizers. Table C13–1 also shows the 1987–1988 ACGIH TLV® and the NIOSH recommended exposure limit (REL) for these substances. The last column on this table shows the limits for these substances recently established by OSHA in general industry; these are the limits being proposed for these substances in construction, maritime, and agricultural workplaces. The CAS and HS numbers for these substances are also shown in Table C13–1.

Description of the Health Effects. A sensitization reaction, also known as an allergic reaction, is defined as an adverse response to a chemical following a previous exposure to that substance or to a structurally similar one (Klaassen, Amdur, and Doull 1986/ Ex. 1–99). A person who suffers an allergic reaction to a chemical is said to have become sensitized to that substance.

TABLE C13–1. SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF SENSITIZATION

H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime*	1987–1988 ACGIH TLV®**	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
1066 Captafol (Difolatan)	2425–06–1		0.1 mg/m³ TWA, Skin.		0.1 mg/m³ TWA.
1100 Cobalt metal, dust and fume (as Co)	7440–48–4	0.1 mg/m³ TWA	0.05 mg/m³ TWA		0.05 mg/m³ TWA.
1222 Isophorone diisocyanate	4098–71–9		0.01 ppm TWA, Skin	0.005 ppm TWA 0.02 ppm Ceiling (10-min).	0.005 ppm TWA. 0.02 ppm STEL, Skin.
1313 Phenothiazine	92–84–2		5 mg/m³ TWA, Skin		5 mg/m³ TWA, Skin.
2128 p-Phenylene diamine	106–50–3	0.1 mg/m³ TWA, Skin.	0.1 mg/m³ TWA, Skin.		0.1 mg/m³ TWA, Skin.
1315 Phenyl glycidyl ether (PGE)	122–60–1	10 ppm TWA	1 ppm TWA	1 ppm Ceiling (15-min).	1 ppm TWA.

TABLE C13-1. SUBSTANCES FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF SENSITIZATION—Continued

	H.S. No./chemical name	CAS No.	Current OSHA PEL in construction and maritime*	1987-1988 ACGIH TLV®**	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
1329	Picric acid	88-89-1	0.1 mg/m³ TWA, Skin.	0.1 mg/m³ TWA 0.3 mg/m³ STEL, Skin.		0.1 mg/m³ TWA, Skin.
2133	Platinum soluble salts (as Pt)	7440-06-4	0.002 mg/m³ TWA	0.002 mg/m³ TWA		0.002 mg/m³ TWA.
1347	Rhodium, metal, fume and insoluble compounds (as Rh).	7440-16-6	0.1 mg/m³ TWA	1 mg/m³ TWA		0.1 mg/m³ TWA.
1348	Rhodium, soluble compounds (as Rh)	7440-16-6	0.001 mg/m³ TWA	0.01 mg/m³ TWA		0.001 mg/m³ TWA.
1373	Subtilisins (Proteolytic enzymes)	1395-21-7		0.06 µg/m³ STEL (60-min)†.		0.06 g/m³ STEL (60-min) †.
1398	Toluene-2,4-diisocyanate (TDI)	584-84-9	0.02 ppm Ceiling	0.005 ppm TWA 0.02 ppm STEL	0.005 ppm TWA 0.02 ppm Ceiling (10-min).	0.005 ppm TWA. 0.02 ppm STEL.

*OSHA's PELs do not currently apply in Agriculture; OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

**The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times in any working day, with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

***NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

† Compliance with the subtilisins PEL is assessed by sampling with a high volume sampler (600–800 liters per minute) for at least 60 minutes.

Sensitization is the result of an immune system reaction to a substance; although the initial exposure does not generate an immediate response, the immune system "remembers" the substance and reacts strongly at the next encounter. A related phenomenon is cross-sensitization. Cross-sensitization occurs when exposure to one substance elicits a sensitization reaction not only on subsequent exposure to the same substance but also on exposure to a different substance (usually one with a similar chemical structure).

The toxic manifestations of sensitization reactions vary in both location and severity. In humans, common target organs are the skin and the eyes; typical allergic conditions in these organ systems are allergic contact dermatitis and conjunctivitis, respectively. The respiratory system can also be sensitized; the resulting pathologies include bronchitis and asthma (Dean, Murray, and Ward 1986/Ex. 1–195). These allergic reactions are mediated by the two immunoglobulins IgD or IgE. The involvement of IgD results in delayed contact dermatitis. In contrast, IgE-mediated reactions cause very severe and potentially fatal effects, such as acute asthmatic attacks, urticaria, and anaphylactic shock. The unpredictability and potential seriousness of sensitization reactions demand that exposures to sensitizing substances be carefully controlled.

Sensitivity to a chemical frequently persists throughout the lifetime of an individual; in some cases, however, sensitization disappears over time. Sensitization symptoms are not observed after exposure to the sensitizing agent (or to a structurally similar chemical) has been discontinued. Although it is possible to treat some allergies, avoidance is considered the best way—and is sometimes the only way—to regain good health.

An additional cause for concern about exposure to sensitizing chemicals is recent evidence that residual respiratory symptoms may continue even after exposure is discontinued. For example, in the case of toluene-2,4-diisocyanate (TDI), studies by Weill, Butcher, Dharmarajan et al. (1981/Ex. 1–1188) and Innocenti, Franzinelli, Sartorelli et al. (1981/Ex. 1–180) found that sensitized workers may exhibit decreased pulmonary function or chronic bronchitis for as long as three and one-half years after cessation of exposure.

Dose-Response Relationships and Sensitization Effects. Like other toxic effects, allergic reactions are dose-related; that is, in response to larger doses of the substance, increasing numbers of subjects become sensitized and the subsequent reactions become more severe. The time course of sensitization for any one individual is unpredictable. Some individuals are sensitized after only one exposure; others remain resistant to sensitization after a lifetime of exposure. Different people are generally sensitive to different substances, although some substances are more universally reactive than others, such as the active agent in poison ivy. Various parameters influence the likelihood of sensitization by a particular chemical; these include such factors as "the nature of the chemical, concentration, type of exposure, genetic susceptibility and nongenetic idiosyncrasies" (Emmett 1986/Ex. 1–226). The sensitization reactions observed in occupational settings are often the result of dermal or inhalation exposure.

For most of the substances in this group, OSHA is proposing limits in construction, maritime, and agriculture on the basis of health surveys and reports of occupationally exposed populations; the proposed limits are those recently established by OSHA for workplaces in general industry. The studies available indicate that exposures to airborne concentrations of these substances that are below a certain no-effect level generally do not cause sensitization in individuals. Where human data were absent or sparse, OSHA relied on animal evidence to determine where the proposed limit should be set. Sensitization reactions in animals are generally good predictors of immune system reactions in humans because chemically induced immunological sensitization in laboratory animals involves the same mechanism as in humans (that is, immune reactions in animals can be mediated by either IgD or IgE immunoglobulins).

The discussions below describe the evidence and explain OSHA's rationale for proposing these limits for these substances. These discussions illustrate the nature of the risk confronting exposed employees in construction, maritime, and agriculture and indicate the extent to which the risk of developing immune sensitization will be reduced among workers in these sectors by the promulgation of the proposed limits.

CAPTAFOL (DIFOLATAN)

CAS: 2425-06-1; Chemical Formula: $C_{10}H_9Cl_4NO_2S$

H.S. No. 1066

OSHA has no permissible exposure limit for captafol in the construction, agriculture, and maritime industries. The ACGIH has a TLV®–TWA of 0.1 mg/m³, with a skin notation, for captafol; there is no NIOSH REL. The Agency is proposing a TWA PEL of 0.1 mg/m³ for captafol in the construction, agriculture, and maritime industries. In the prior rulemaking, NIOSH (Ex. 8–47, Table N6A) concurred that this limit was appropriate. The 0.1 mg/m³ 8-hour TWA PEL was recently established in general industry.

Captafol is a colorless to white, crystalline solid with a faint and characteristically pungent odor. This substance was formerly used as a fungicide in agriculture; however, EPA canceled the registration for this substance in 1987 on the basis of captafol's carcinogenicity in laboratory animals (HSDB 1990; ACGIH 1986, p. 97). Although OSHA is not aware of any current use of captafol in those sectors being covered by this rule, OSHA includes this substance for the sake of completeness and to ensure that any occupational exposure to captafol of which OSHA may not be aware is covered by this rule.

Captafol is a skin sensitizer in guinea pigs and a teratogen in several species of animals (Clayton and Clayton 1981, p. 2705). The oral LD_{50} in rats is 2500 mg/kg (RTECS 1990). Rats fed captafol at dietary levels of 1500 or 5000 ppm had enlarged livers and, at the higher dose, an increase in mortality (Hayes 1982, p. 583). At autopsy, both liver and kidney damage were seen (Hayes 1982, p. 583). Dogs fed 100 or 300 mg/kg/day vomited and had diarrhea for the first 4 weeks and subsequently became slightly anemic and developed enlarged kidneys and livers. At 10 mg/kg/day, no effects were seen (Hayes 1982, p. 583). Tested in rats, rabbits, and hamsters by the oral or intraperitoneal routes of administration, captafol caused embryotoxic, developmental, or reproductive effects (RTECS 1990). Captafol is mutagenic in bacterial and mammalian test systems (RTECS 1990).

In humans, captafol is a known skin and respiratory sensitizer (Clayton and Clayton 1981, p. 2705). Both agricultural and non-agricultural workers have developed captafol-induced dermatitis: the rash produced in these cases resembles that of poison oak (Clayton and Clayton 1981, p. 2710). In one case, a welder brushed up against bags of captafol at a pesticide distribution plant for a period of 1.5 years with no reaction but then developed skin and respiratory sensitization, complete with facial edema, swelling of the hands, wheezing, and marked vesiculation (Clayton and Clayton 1981, p. 2710). Several cases of photosensitization dermatitis have been reported among farm workers (ACGIH 1986, p. 97). A recent study in florist shop workers (Thiboutot, Hamory, and Marks 1990, in J. Am. Acad. Dermatol. 22(1):54–58) showed that at least one case of allergic dermatitis in these workers was due to captafol; this finding was confirmed by patch test.

The Agency is proposing a permissible exposure limit for captafol of 0.1 mg/m³ as an 8-hour TWA. This limit will protect workers construction, maritime, and agriculture from the significant risks of contact dermatitis, respiratory and skin irritation, and sensitization that are associated with exposure to captafol at the levels currently permitted by the absence of an OSHA limit. The Agency preliminary concludes that the proposed 8-hour TWA PEL will substantially reduce these significant risks. In addition, promulgation of these limits will make OSHA's PEL for this substance consistent across all regulated sectors.

COBALT METAL, DUST, AND FUME
(measured as Co)
CAS: 7440–48–4; Chemical Formula: Co
H.S. No. 1100

OSHA currently has an 8-hour TWA limit of 0.1 mg/m³ for cobalt metal, dust, and fume (measured as cobalt) in the construction and maritime. There is no PEL in agriculture for these substances. The ACGIH has a TLV®–TWA of 0.05 mg/m³ for cobalt and its dust and fume; there is no NIOSH REL. The Agency is proposing a TWA PEL of 0.05 mg/m³ for cobalt metal, dust, and fume in the construction, maritime, and agriculture industries. The Agency recently established this limit for these substances in general industry, and NIOSH (Ex. 8–47, Table N1) concurred that this limit was appropriate for these sensitizers.

Cobalt is a hard, gray, magnetic, and somewhat malleable metal. It is used in steel alloys, jet engines, and in cemented carbide abrasives and tools (ACGIH 1986, p. 144).

In addition to sensitization, exposure to cobalt fume and dust causes lung disease in animals and humans. The oral LD_{50} in rats is 6170 mg/kg, and the lowest lethal dose in rabbits by oral administration is 750 mg/kg (RTECS 1990). Instilled into the eyes of rabbits, finely divided cobalt metal caused severe irritation and abscesses of the lens, ciliary body, and retina (Grant 1986, p. 247). Animals acutely poisoned by inhalation develop pulmonary effusions, hemorrhage, and edema (HSDB 1990). Chronic inhalation of a cobalt-metal blend at a concentration of 20 mg cobalt/m³ for 3 years caused focal fibrosis, bronchial hyperplasia, and granulomas (Clayton and Clayton 1982, p. 1612). Exposure to a 1-mg/m³ concentration of this blend for 2 years had no adverse effects (Clayton and Clayton 1982, p. 1612).

Administration of intratracheal doses (10, 25, or 50 mg) of cobalt metal dust causes obliterative bronchiolitis adenomatosis in guinea pigs (Schepers 1955/Ex. 1–365). Additional studies in animals have shown that exposure to cobalt dust or fume causes hypersensitivity reactions. Increases in serum A–2 globulin and neuraminic acid occurred in dogs and rabbits exposed by inhalation to cobalt metal, metal fume, or carbide blend; injections of cobalt chloride produced similar reactions (Stokinger and Wagner 1958/Ex. 1–381). Studies conducted in miniswine have shown that inhalation of 0.1 mg/m³ cobalt metal dust (50 percent alpha and 50 percent beta variety, with a size range of from 0.4 um to 3.6 um) has caused early (onset within 3 months) pulmonary disease. Wheezing, which indicates hypersensitivity, occurred in these animals during the fourth week of exposure to 0.1 or 1.0 mg/m³ for 6 hours/day, 5 days/week, for 3 months following a 1-week sensitizing dose (Kerfoot, Fredrick, and Domeier 1975/Ex. 1–145).

Workers exposed to cobalt dust developed allergic sensitization dermatitis, with the most serious eruptions occurring in skin areas in contact with the dust (Clayton and Clayton 1982, p. 1616). Pulmonary disease has been reported frequently in workers exposed to cobalt in the manufacture of cemented tungsten carbide (Miller, Davis, Goldman, and Wyatts 1953/Ex. 1–40; Lundgren and Ohman 1954; Lundgren and Swenson 1953/Ex. 1–816). Chronic exposure generally causes interstitial pneumonitis, but fatalities have occasionally been reported after exposures to cobalt at concentrations of 1 to 2 mg/m³ or less (Fairhall, Castberg, Carrozzo, and Brinton 1947/Ex. 1–954; Fairhall, Keenan, and Brinton 1949/Ex. 1–479). Cobalt-cemented tungsten carbide workers exposed chronically to the dust of this substance develop pneumoconiosis, with pulmonary insufficiency (Clayton and Clayton 1982, p. 1616). An increase in serum A–2 globulin fraction was reported in the case of a welder exposed to fumes containing cobalt; the welder had a history of exertional dyspnea and an abnormal chest x-ray (Siegesmund, Funahashi, and Pintar 1974/Ex. 1–372).

Two epidemiological studies in cobalt-exposed workers have recently been published. A cohort mortality study by Mur et al. (1987) found a statistically significant increase in lung cancer mortality in cobalt and sodium workers in an electrochemical plant, and a study of hard metal workers in Great Britain (Kusaka et al. 1986) reports that occupationally-induced asthma occurred in some cobalt-exposed workers who had average exposure levels below 0.05 mg/m^3. In the prior rulemaking, several commenters (Ex. 150; Tr. 7–44/7–46; Tr. 11–108) stated that pulmonary disease and ischemic heart disease may be associated with exposures to cobalt at levels of 0.06 mg/m^3 and, perhaps, to levels somewhat below this concentration. In that rulemaking, OSHA expressed concern over these recent findings and stated the Agency's intention to monitor the literature on cobalt carefully to determine whether it should be included in a future PEL update project. OSHA is continuing to monitor the developing literature on cobalt; however, the primary objective of the present rulemaking is to achieve consistency in the Agency's PELs across all sectors.

Accordingly, the Agency is proposing an 8-hour TWA limit for cobalt metal, dust, and fume (measured as cobalt) of 0.05 mg/m^3 in the construction, agriculture, and maritime industries. The Agency preliminarily concludes that this limit will reduce the significant risk of respiratory disease, pulmonary sensitization, and allergic dermatitis that have been demonstrated to occur at higher levels of exposure. OSHA preliminarily finds that the proposed limit is necessary to substantially reduce the risk of these material health impairments. In addition, promulgation of these limits will make OSHA's PEL for these substances consistent across all regulated sectors.

ISOPHORONE DIISOCYANATE

CAS: 4098–71–9; Chemical Formula: $C_{12}H_{18}N_2O_2$

H.S. No. 1222

OSHA has no limit for isophorone diisocyanate (IPDI) in the construction, agriculture, and maritime industries. The 1987–1988 ACGIH TLV®-TWA for IPDI was 0.01 ppm, with a skin notation. The NIOSH REL for all diisocyanates is 0.005 ppm as a 10-hour TWA and 0.02 ppm as a 10-minute ceiling limit. The Agency is proposing PELs of 0.005 ppm as a TWA and 0.02 ppm as a STEL, and a skin notation, for IPDI. These limits were recently established by the Agency for IPDI in general industry, and NIOSH concurs (Ex. 8–47, Table N1) that these limits are appropriate.

To date, there is little direct information on the acute toxicity or health effects associated with exposure to this particular isocyanate. However, diisocyanates, in general, cause irritation of the respiratory tract, decreases in pulmonary function, and sensitization. The LC_{50} in rats is 123 mg/m^3 for 4 hours, and the dermal LD_{50} in the same species is 1060 mg/kg (RTECS 1990). There are two reports of workers exposed to isophorone diisocyanate or other diisocyanates who developed asthma or dyspnea, although the airborne concentration of IPDI associated with these effects was not specified (Clarke and Aldons 1981/Ex. 1–475; Tyrer 1979/Ex. 1–396). In one case, a 50-year-old spray painter developed a severe case of asthma shortly after beginning to use an IPDI-containing paint (Clark and Aldons 1981). This worker subsequently responded positively to a bronchial challenge (Clarke and Aldons 1981). In the other incident, painters using two-pack paints, i.e., those involving a reaction between diisocyanates and polyhydroxy compounds, are reported to develop asthma from inhaling the resulting vapors (Tyrer 1979).

OSHA is proposing a 0.005-ppm 8-hour TWA limit, a 0.02-ppm 15-minute short-term exposure limit, and a skin notation for IPDI in the construction, agriculture, and maritime industries. The proposed STEL of 0.02 ppm is designed to prevent the severe irritation effects associated with exposure to the diisocyanates even in nonsensitized workers, and the proposed skin notation will prevent dermal absorption of this substance. These are the limits recently established for workplaces in general industry. OSHA preliminarily concludes that these proposed limits will reduce the significant risk of immune-system-mediated pulmonary sensitization, which is associated with isocyanate exposure, among workers in construction, maritime, and agriculture.

PHENOTHIAZINE

CAS: 92–84–2; Chemical Formula: $S(C_6H_4)_2NH$

H.S. No. 1313

OSHA currently has no occupational exposure limit for phenothiazine in the construction, agriculture, and maritime industries. The ACGIH has a TLV®–TWA of 5 mg/m^3, with a skin notation; there is no NIOSH REL for this substance. The Agency is proposing a TWA PEL of 5 mg/m^3, and a skin notation, for phenothiazine in the construction, agriculture, and maritime industries. OSHA recently established this limit for general industry, and NIOSH (Ex. 8–47, Table N1) concurred with this limit in the prior rulemaking.

Phenothiazine ranges in color from grayish-green to greenish-yellow and can take the form of powder, granules, or flakes. This substance is tasteless but has a slight odor. Phenothiazine is used as an insecticide, antioxidant, polymerization inhibitor, antihelminthic agent, and as a base in the manufacture of pharmaceuticals (HSDB 1984; ACGIH 1986, p. 472). When used in pesticidal applications and in accordance with the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Exposure to phenothiazine causes moderate irritation of the skin (Cralley and Cralley 1985, p. 178). The LD_{50} in mice is 5000 mg/kg; acutely poisoned animals showed behavioral signs (RTECS 1990). Rats given oral doses of 1250 mg/kg during days 1 through 22 of pregnancy showed adverse effects on reproduction (RTECS 1990). After pigs and cattle have been given anti-helminthic doses of phenothiazine, they develop a photosensitization dermatitis with corneal edema (Grant 1986, p. 812).

A study by Mawhinney and Rakow (1968) showed that humans exposed to 15 to 48 mg/m^3 of phenothiazine developed skin sensitization; symptoms of sensitization in workers included burning and itching of the skin. Accompanying these sensitization reactions were pinkish-red-colored hair and brown fingernails. Phenothiazine has also been reported to cause photosensitization of the skin, and intense irritation and itching of the skin have been associated with inhalation of phenothiazine spray (ACGIH 1986/Ex. 1–3, p. 472). Workers handling phenothiazine are reported to have developed keratitis, although whether photosensitization or physical irritation was responsible for this effect is now known (Grant 1986, p. 812). Accidental exposures to high but unspecified concentrations of phenothiazine have caused hemolytic anemia, toxic hepatitis, skin photosensitization, and pruritus (Gosselin, Smith, and Hodge 1984, p. II–238).

OSHA is proposing an 8-hour TWA PEL of 5 mg/m^3, with a skin notation, for phenothiazine; this limit is below the exposure range that has been shown to cause sensitization reactions in workers. OSHA preliminarily concludes that the uncontrolled exposures that are possible in the construction, agriculture, and maritime industries in the absence of an OSHA limit potentially pose a significant risk of sensitization to workers in these sectors. The Agency believes that the proposed limit is

necessary to reduce this risk among workers in these sectors. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

p-PHENYLENE DIAMINE

CAS: 106–50–3; Chemical Formula: $C_6H_4(NH_2)_2$

H.S. No. 2128

In general industry, construction, and maritime, OSHA's current permissible exposure limit for p-phenylene diamine is 0.1 mg/m³ as an 8-hour TWA; this limit also has a skin notation, which indicates that percutaneous absorption is a significant route of exposure for this substance. There is no limit in agriculture. The ACGIH has an 8-hour TLV®–TWA of 0.1 mg/m³ for p-phenylene diamine, with a skin notation. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA PEL of 0.1 mg/m³, and a skin notation, for p-phenylene diamine in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

p-Phenylene diamine occurs in the form of white to light purple crystals that oxidize to purple or black on exposure to air. This substance is used as a hair dye, a photographic developer, an intermediate in the manufacture of dyes, an ingredient of antioxidants and rubber accelerators, and in photochemical measurements (ACGIH 1986, p. 474.8(89); Hawley's 1987, p. 902).

p-Phenylene diamine causes sensitization of the skin and respiratory tract in exposed workers. The oral LD_{50} in rats is 80mg/kg, and the lowest lethal dose in rabbits by dermal absorption is 5000mg/kg (RTECS 1990). A dose of 5000mg/kg p-phenylene diamine applied to the shaved skin of rabbits was fatal (Burnett, Loehr, and Corbett 1977, in ACGIH 1986, p. 474.8(89)). A dose of 250mg placed on the skin caused moderate irritation in rabbits and mild irritation in guinea pigs (RTECS 1990). In various species (dogs, rabbits, cats, and frogs), p-phenylene diamine was itself only slightly irritating in acute studies; however, the products of its oxidation were found to be strong skin sensitizers (Hanzlik 1923, in ACGIH 1986, p. 474). Groups of male and female rabbits were given topical treatments of 1g/kg of 1.2 percent p-phenylene diamine five times/week for 65 applications, or 10 g per application once every 2 weeks, for a total of seven exposures. The effects observed among the animals were fissures, scab formation, desquamation, acanthosis, and moderate dermal fibroplasia (Cosmetic, Toiletry, and Fragrance Assoc. 1969, in ACGIH 1986, p. 474.9(89)). In chronic studies in which mice, rabbits, and rats were given p-phenylene diamine in various doses by various routes, there were no clinical signs or symptoms and no significant exposure-related changes as compared with controls (ACGIH 1986, p. 474.10(89)). p-Phenylene diamine has been tested for carcinogenicity in mice and rats; however, the International Agency for Research on Cancer has concluded that the evidence in animals is inadequate to evaluate p-phenylene diamine's carcinogenicity (IARC 1978, Vol. 16, p. 136). A recent study (Burnett and Goldenthal 1988, in Food Chem. Toxicol. 26(5):467–474) involving weanling rats given twice weekly skin applications of oxidative hair-coloring formulations that included p-phenylene diamine, however, has shown significant increases in mammary tumors and pituitary adenomas in treated compared with control animals.

In humans, p-phenylene diamine-induced sensitization dermatitis has been reported in workers in the fur-dyeing, photography, and cosmetics industries. Workers exposed to p-phenylene diamine also report experiencing frequent bouts of inflammation of the pharynx and larynx and allergic asthma (Ritter 1921, in ACGIH 1986, p. 474). In reports describing the effects of accidental ingestion of hair dyes containing p-phenylene diamine, symptoms reported included acute renal failure, methemoglobinemia, hemolysis, dyspnea, swelling of the lips, tongue, and neck, and muscular rhabdomyolysis (ACGIH 1986, p. 474.12(89)). Jaundice and subacute atrophy of the liver leading to death were observed in a female hairdresser who had been in contact with hair dyes for over 5 years (Israels and Susman 1934, in ACGIH 1986, p. 474.12(89)). Occupational dermatoses of allergic origin have been confirmed by patch testing in workers exposed to color-developing agents in photographic laboratories; p-phenylene diamine patch tests were positive in several of these workers (Liden, Brehmes, and Andersson 1988, in Acta Dermato-Venerologica 68(6):514–522). Twelve of 13 beauticians who developed occupational allergic contact dermatitis tested positive to patch tests with p-phenylene diamine (Matsunaga, Hosokawa, Suzuki, Arima, and Hayakawa 1988, in Contact Dermatitis 18(2):94–96). Another study has confirmed the cataractogenic effects of hair dyes containing this substance (Jain et al. 1979, in ACGIH 1986, p. 474.12(89)).

Based on this evidence in humans and animals, OSHA preliminarily concludes that p-phenylene diamine causes skin and pulmonary sensitization in exposed individuals. OSHA preliminarily finds that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that establishing the proposed 8-hour TWA limit of 0.1 mg/m³, and a skin notation, for p-phenylene diamine in agriculture is necessary to substantially reduce these risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PHENYL GLYCIDYL ETHER

CAS: 122–60–1; Chemical Formula: $C_6H_5OCH_2CHOCH_2$

H.S. No. 1315

OSHA's current 8-hour TWA limit for phenyl glycidyl ether (PGE) in the construction and maritime industries is 10 ppm. There is no PEL for PGE in agriculture. The ACGIH has a TLV®–TWA of 1 ppm for this substance; the NIOSH REL for PGE is 1 ppm as a 15-minute ceiling limit. The Agency is proposing an 8-hour TWA PEL of 1 ppm for PGE in the construction, agriculture, and maritime industries. This is the limit recently established for PGE in general industry.

Phenyl glycidyl ether is a colorless liquid that is used as a chemical intermediate, a diluent in uncured epoxy resins, and a stabilizer of halogenated compounds (ACGIH 1986, p. 476; HSDB 1986).

Exposure to PGE causes irritation of the skin and respiratory tract and sensitization of the skin in humans and animals. The oral LD_{50} in rats is 2150 mg/kg, and the dermal LD_{50} in rabbits is 1500 mg/kg (RTECS 1990). Acutely poisoned animals showed signs of central nervous system depression and died of respiratory paralysis (Smyth, Carpenter, Weil, and Pozzarin 1954/Ex. 1–440). Applied to the skin of rabbits, PGE caused moderate-to-severe irritation, and irritant effects on the eye of rabbits ranged from mild to severe (RTECS 1990). Studies by Hine, Kodama, Wellington, and colleagues (1956/Ex. 1–331) showed pulmonary inflammation and liver changes in some of the rats exposed to a 100-ppm concentration for 7 hours daily for 50 days; respiratory distress and signs of minimal eye irritation were also observed in the exposed animals. Terrill and Lee (1977/Ex. 1–390) reported kidney, liver, spleen, thymus, and testicular changes in rats exposed to phenyl glycidyl ether at 29 ppm for 4 hours/day, 5 days/week for 2 weeks. At concentrations of 12 or 5 ppm, these authors observed no effects other

than hair loss after exposures of 6 hours/day, 5 days/week for 9 weeks; however, after 18 weeks, 10 percent of male and 25 percent of female rats exhibited alopecia (hair loss). These health effects were believed by the authors to reflect direct irritation of the skin rather than systemic absorption (Terrill and Lee 1977/Ex. 1–390).

Reports of workers using or handling phenyl glycidyl ether have described moderate skin irritation on prolonged or repeated contact. Dermatitis is common in industrially exposed workers. In a group of 20 PGE-exposed workers, 13 had serious signs of contact dermatitis: Rash with papules, second-degree burns, and edema (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). In a second group of PGE-exposed workers with similar signs, eight of 15 tested positive on patch testing (NIOSH Criteria Document 1978). NIOSH (1978d/Ex. 1–232) notes that the glycidyl ethers are biologically reactive compounds because of the presence of the epoxide group; these compounds have also been shown to cause cytotoxic effects and to be mutagenic in short-term bioassays (RTECS 1990).

The Agency is proposing an 8-hour TWA PEL of 1 ppm for phenyl glycidyl ether in the construction, agriculture, and maritime industries. OSHA preliminarily concludes that this limit will protect workers in these sectors from the significant risk of skin sensitization and skin and respiratory tract irritation that is potentially associated with exposure to PGE. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PICRIC ACID

CAS: 88–89–1; Chemical Formula: $HOC_6H_2(NO_2)_3$

H.S. No. 1329

OSHA's current limit for picric acid in the construction and maritime industries is 0.1 mg/m³ as an 8-hour TWA, with a skin notation. There is no PEL for picric acid in agriculture. The 1987–1988 ACGIH TLV®s for this substance were 0.1 mg/m³ as a TWA and 0.3 mg/m³ as a STEL, with a skin notation. NIOSH has no REL for picric acid but concurs (Ex. 8–47, Table N1) with the limit being proposed. The Agency is retaining its 8-hour TWA PEL of 0.1 mg/m³, with a skin notation, in construction and maritime, and is proposing the same PEL for agricultural workplaces. This action will make OSHA's PEL for picric acid consistent across all industry sectors.

Picric acid occurs in the form of colorless to pale yellow, odorless, intensely bitter crystals. It is used in medicine, explosives, rocket fuels, and matches. Picric acid also is used in the leather and glass industries and to etch copper (ACGIH 1986, p. 490).

Picric acid and its salts are toxic by ingestion, skin contact, or inhalation, and these substances also are skin sensitizers (Schwartz 1944/Ex. 1–367). The acute toxicity data for picric acid in animals are sparse. In cats, the lowest lethal oral dose is 250 mg/kg, and in rabbits this value is 120 mg/kg (RTECS 1990). Injected into the corneal stroma of the eyes of rabbits, picric acid caused injury even when the solution had been neutralized (Grant 1986, p. 737). Animals given sublethal doses of picric acid (less than or equal to 50 mg/kg) showed changes to the kidney at autopsy (NRC 1982, Vol. 4, p. 240).

Available reports concerning human exposures describe edema, papules, vesicles, and desquamations of the face, mouth, and nose caused by contact with the dust of this substance (Sunderman, Weidman, and Batson 1945/Ex. 1–383). The symptoms of systemic poisoning following skin absorption include headache, vertigo, vomiting, nausea, diarrhea, and skin and conjunctival discoloration, as well as discoloration of urine and albuminuria; high-dose exposures caused destruction of erythrocytes and produced gastroenteritis, hemorrhagic nephritis, and acute hepatitis (Sunderman, Weidman, and Batson 1945/Ex. 1–383). One worker lapsed into a coma after inhaling a high (not further specified) concentration of picric acid dust (von Oettingen 1941). Picric acid dust causes eye irritation, and sensitization dermatitis may follow dust exposure (Grant 1986, p. 737).

OSHA is retaining its 8-hour TWA PEL of 0.1 mg/m³ and the skin notation for picric acid in the construction and maritime industries and is proposing the same limit and skin notation in agriculture. The Agency preliminarily concludes that this limit is necessary to protect agricultural workers against the dermatitis and sensitization associated with occupational exposures to picric acid. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PLATINUM (soluble salts)

CAS: 7440–06–4; Chemical Formula: Pt

H.S. No. 2133

In general industry, construction, and maritime, OSHA's current permissible exposure limit for the soluble platinum salts (measured as platinum) is 0.002 mg/m³ as an 8-hour TWA. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.002 mg/m³ for the soluble platinum salts. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing an 8-hour TWA limit in agriculture of 0.002 mg/m³ (measured as platinum) for the soluble platinum salts. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

Soluble platinum salts include substances such as sodium chloroplatinate, a yellow-orange, odorless solid; ammonium chloroplatinate, a yellow-orange solid; and platinum tetrachloride, which takes the form of brown to red crystals. Platinum's soluble salts are used as catalysts in the production of high-octane gasoline, acids, petrochemicals, pharmaceuticals, and vinyl esters, in the reclamation of platinum ore, in electroplating, and in photographic paper sensitization (NIOSH/OSHA Occupational Health Guideline 1981, p. 3; Merck 1983, pp. 80, 1235).

The soluble salts of platinum are powerful skin and respiratory allergens in humans (Klaassen, Amdur, and Doull 1986, p. 622). Exposure to the soluble platinum salts causes eye irritation and skin and pulmonary sensitization in humans. Ammonium chloroplatinate has an oral LD_{50} in rats of 195 mg/kg, and platinum tetrachloride has an oral LD_{50} in the same species of 276 mg/kg (RTECS 1989). In contact with the skin of rabbits, 100 mg of platinum tetrachloride caused severe irritation (RTECS 1989). Platinum tetrachloride caused slight, reversible irritation when the eyes of rabbits were flooded with 2 to 5 percent solutions of this substance (Grant 1986, p. 748). Acute exposure to ammonium chloroplatinate causes central nervous system effects, including convulsions and coma, before death (Clayton and Clayton 1981, p. 1861). Small non-lethal doses of this salt cause hyperirritability, restlessness, and motor excitement in experimental animals (Clayton and Clayton 1981, p. 1861). Intratesticular or subcutaneous administration of a single 26,951-μg/m³ dose of platinum tetrachloride to rats and mice caused paternal reproductive effects (RTECS 1989).

In humans, the lowest concentrations of ammonium chloroplatinate or sodium chloroplatinate reported to be toxic in humans is 900 ng/m³; at this level, coughing and cyanosis were observed (RTECS 1989). In contact with the eyes, the dusts of soluble platinum salts cause burning, lacrimation, and conjunctival hyperemia associated with photophobia (Grant 1986, p. 748). Severe contact dermatitis due to an allergic reaction may occur after repeated exposure to some platinum salts, such as ammonium

or sodium chloroplatinate or platinic chloride (Grant 1986, p. 748). Of 306 platinum refinery workers, 38 tested positive when challenged with the platinum halide salts (Murdoch et al. 1986, in Proctor, Hughes, and Fischman 1988, p. 417). Exposure to these salts is associated with a syndrome variously referred to as platinum allergy, platinum asthma, or platinosis; the signs and symptoms of platinosis include runny nose, sneezing, tightness of the chest, shortness of breath, cyanosis, wheezing, and coughing (Hunter et al. 1945; Parrot, Herbert, Saindelle, and Ruff 1969, in Proctor, Hughes, and Fischman 1988, p. 417). If exposure to the salts of platinum continues, the symptoms become progressively worse (Parmeggiani 1983, p. 1724). The earliest reported cases of platinosis occurred in 1911, when eight workers handling platinum salts experienced symptoms of throat and respiratory irritation (Karasek and Karasek 1911, in ACGIH 1986, p. 492).

Based on this evidence in humans and animals, OSHA preliminarily concludes that exposure to soluble platinum compounds causes eye irritation, skin sensitization, and asthma in exposed workers. OSHA believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse exposure-related effects. The Agency believes that the proposed 8-hour TWA limit of 0.002 mg/m^3 for the soluble salts of platinum is necessary to substantially reduce these risks of material health impairment. Promulgation of this limit will also make the PEL for these substances consistent across all OSHA-regulated sectors.

RHODIUM METAL, FUME, AND INSOLUBLE COMPOUNDS

CAS: 7440–16–6; Chemical Formula: Rh

H.S. No. 1347

The current OSHA PEL for rhodium metal, fume, and insoluble compounds (measured as Rh) in general industry, construction, and maritime is 0.1 mg/m^3 as an 8-hour TWA. There is no limit in agriculture. The ACGIH recommends a TLV®–TWA of 1 mg/m^3 for rhodium metal and insoluble compounds. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. OSHA is proposing an 8-hour TWA limit of 0.1 mg/m^3 for rhodium metal, fume, and insoluble compounds (measured as Rh) in agriculture. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

Rhodium metal is silvery white, hard, ductile, malleable, and odorless. It is available in metal, powder, and spongy forms. Rhodium fume is gray. Insoluble rhodium compounds include rhodium trichloride, rhodium trioxide, and rhodium (II) acetate. Rhodium is used as an alloy with platinum, in furnace windings, laboratory crucibles, spinnerets in the rayon industry, electrical contacts, jewelry, a catalyst, and coatings (Hawley's 1987, p. 1009; ACGIH 1986, p. 512).

Rhodium is a dermal sensitizer. There are no toxicity data for rhodium metal or fume. Instilled into the eye of rabbits, rhodium trichloride caused delayed injury, with opacification and vascularization (Grant 1986, p. 887). In rhodium trichloride, the intravenous LD_{50} in rats and rabbits are 198 and 215 mg/kg, respectively (Landolt, Beck, and Russell 1972). Surviving rats showed no histological lesions at autopsy 100 days later (Landolt, Beck, and Russell 1972). Intravenous injection of a 60 mg/kg dose of rhodium trichloride in rats and rabbits caused no signs of systemic toxicity (Plant 1936). In a carcinogenicity bioassay in mice, rhodium trichloride was administered to mice in drinking water (5 ppm) from weaning until death (Schroeder and Mitchener 1971). The rhodium-treated mice developed a significantly increased number of malignant tumors at multiple sites (Schroeder and Mitchener 1971).

There are no reports of rhodium-related systemic toxicity in humans. Direct contact of the eyes with the insoluble compounds is reported to have caused a mild degree of irritation (Proctor, Hughes, and Fischman 1988, p. 433). Dermal sensitization reactions to rhodium metal have been reported in jewelry workers (Bedello, Goitre, Roncarolo, Bundino, and Cane 1987, in Contact Dermatitis 17(2):111–112) and in precious metal refinery workers (Jirasek et al. 1975, in Ceskoslovenska Dermatologie 50(6):361–368, as reported in NIOSHTIC).

Based on this evidence in humans and animals, OSHA preliminarily concludes that rhodium metal, fume, and insoluble compounds cause sensitization. OSHA therefore preliminarily concludes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing this adverse health effect. The Agency believes that an 8-hour TWA limit of 0.1 mg/m^3 in agriculture is necessary to significantly reduce this risk of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for these substances consistent across all regulated sectors.

RHODIUM, SOLUBLE COMPOUNDS (as Rh)

CAS: 7440–16–6; Chemical Formula: Rh

H.S. No. 1348

OSHA's current permissible exposure limit for the soluble rhodium compounds (measured as Rh) in general industry, construction, and maritime is an 8-hour TWA of 0.001 mg/m^3. There is no limit in agriculture. The ACGIH has a TLV®–TWA of 0.01 mg/m^3 for soluble rhodium compounds. NIOSH has no REL but concurs (Ex. 8–47, Table N1) with the limits being proposed. OSHA is proposing an 8-hour TWA limit of 0.001 mg/m^3 for the soluble rhodium compounds in agriculture. Promulgation of this limit will make the PEL for these substances consistent across all OSHA-regulated sectors.

Soluble rhodium compounds include rhodium nitrate, rhodium sulfate, rhodium carbonyl acetylacetonate, and rhodium sulfite. Soluble rhodium compounds find uses in electroplating, camera fittings, radio equipment, and jewelry, and in laboratory research (NIOSH/OSHA Occupational Health Guideline 1981, pp. 1, 3).

Rhodium is a dermal sensitizer. One of the soluble rhodium compounds, rhodium carbonyl acetylacetonate, is an eye irritant and, in contact with the skin, a sensitizer that produces delayed Type IV sensitization (Johnson, Matthey, and Co., Ltd., 1981, as cited in ACGIH 1986, p. 512). Several rhodium compounds have been found to be potent mutagens in bacterial test systems (Kanematsu, Horn, and Kada 1980, in Mutat. Res. 77(2):109–116).

Based on this evidence in humans and animals, OSHA preliminarily concludes that soluble rhodium compounds cause sensitization. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing this adverse health effect. The Agency believes that a limit of 0.001 mg/m^3 for the soluble rhodium compounds (measured as Rh) in agriculture is necessary to significantly reduce the risk of this material health impairment. In addition, promulgation of this limit will make OSHA's PEL for these substances consistent across all regulated sectors.

SUBTILISINS

CAS: 9014–01–1 (Proteolytic enzymes); Chemical Formula: None

H.S. No. 1373

OSHA has no occupational exposure limit for the subtilisins in the construction, agriculture, and maritime industries. The 1987–1988 ACGIH TLV® is a ceiling limit of 0.06 $\mu g/m^3$. NIOSH has no REL for subtilisins but concurs (Ex. 8–47, Table N1) with the limit being proposed. The Agency is proposing a PEL for the construction, agriculture, and maritime industries of 0.06 μ g/m^3

as a 60-minute STEL (measured by a high-volume sampler) for the subtilisins, which is the same PEL recently established by OSHA for the subtilisins in general industry.

The subtilisins are proteolytic bacterial enzymes (produced by various *Bacillus* species) that are used primarily in laundry detergents but also in contact lens cleaners, film processing, and the food industry. They are considered a threat to occupational health because they cause immune-system-mediated bronchoconstriction and respiratory symptoms in addition to primary irritation of the skin and respiratory tract (ACGIH 1986/Ex. 1–3, p. 540; Pepys, Hargreave, Longbottom, and Faux 1969/Ex. 1–568). There are almost no acute toxicity data for subtilisins. The intravenous LD_{50} in mice is 75 mg/kg (RTECS 1990). Instilled into the eyes of rabbits, subtilisins caused severe injury (RTECS 1990).

A study in monkeys (Coate, Busey, Schoenfisch, and Newmann 1978) reports the effects of exposing animals 6 hours/day, 5 days/week for 6 months to atmospheres containing synthetic detergent dust at 1, 10, or 100 mg/m³ together with enzyme (substilisins) dust at 0.001, 0.01, 0.1, or 1 mg/m³. Exposures to 10 or 100 mg/m³ detergent dust together with 0.01 or 1 mg/m³ enzyme dust produced gross signs of respiratory distress, pulmonary histopathological effects, and pulmonary function impairment in these animals (Coate et al. 1978).

Another study (Thorne, Hillebrand, Magreni et al. 1986) reports that, in guinea pigs, the no-observed-effect level for pulmonary sensitization induced by exposure to the subtilisins for 15 minutes/day for 5 consecutive days was between 0.0083 and 0.041 mg/m³. Animals exposed on the same regimen at higher levels developed enzyme asthma (Thorne, Hillebrand, Magreni et al. 1986).

In humans, exposure to these proteolytic enzymes causes a feeling of tightness of the chest and breathlessness (Cralley and Cralley 1985, p. 469). There are several documented cases of occupational asthma in workers exposed to subtilisins (Rom 1983, p. 238). That the asthma caused by these substances is immune-system mediated is demonstrated by scratch and intradermal tests that are positive to enzyme extracts of this substance and the presence of IgE antibodies (Rom 1983, p. 239). As many as 40 to 50 percent of workers may become sensitized to subtilisins under conditions of high exposure (Rom 1983, p. 239).

Based on this evidence in humans and animals and available sampling and analytical techniques, OSHA is proposing a 60-minute STEL of 0.06 μg/m³ for the subtilisins in the construction, agriculture, and maritime industries (using a high-volume sampler). The evidence described above indicates that a short-term limit of 0.06 μg/m³ for the subtilisins is necessary to reduce the significant risks of respiratory sensitization, skin irritation, and respiratory effects among members of the exposed worker population. OSHA preliminarily concludes that this limit will substantially reduce these significant risks. In addition, promulgation of this limit will make OSHA's PEL for the subtilisins consistent across all regulated sectors.

TOLUENE-2,4-DIISOCYANATE
CAS: 584–84–9; Chemical Formula: $CH_3C_6H_3(NCO)_2$
H.S. No. 1398

The current OSHA limit for toluene-2,4-diisocyanate (TDI) in the construction and maritime industries is a ceiling of 0.02 ppm. The Agency has no PEL for TDI in agriculture. The ACGIH has established TLV®s of 0.005 ppm as a TWA and 0.02 ppm as a STEL; NIOSH has RELs of 0.005 ppm as a 10-hour TWA and 0.02 ppm as a 10-minute ceiling for TDI. The Agency is proposing a PEL for TDI in the construction, agriculture, and maritime industries of 0.005 ppm as an 8-hour TWA and 0.02 ppm as a 15-minute STEL. These are the limits recently established for TDI in general industry.

Toluene-2,4-diisocyanate is a clear, colorless liquid that darkens on exposure to sunlight. It has a sharp, irritating, pungent odor. TDI is used in the manufacture of polyurethane foams, elastomers, and coatings (ACGIH 1986, p. 580; Genium MSDS 1989, No. 331).

TDI is one of the most frequently encountered occupational sensitizers, and it is also a known cross-sensitizer. In animals, TDI is a moderate to severe irritant of the skin and eyes (RTECS 1990). The oral LD_{50} in rats is 5800 mg/kg, and the LC_{50} in the same species is 14 ppm for 4 hours (RTECS 1990). In one study, guinea pigs were exposed to TDI concentrations ranging from 0.12 to 10 ppm for 3 hours/day for 5 consecutive days (Karol 1983). No animals in the low-dose group developed antibodies, but 55 percent of the animals exposed to TDI at a concentration greater than 0.36 ppm did develop specific TDI antibodies (Karol 1983). A recent National Toxicology Program lifetime bioassay involving oral gavage of rats with TDI in corn oil showed that this substance produces a statistically significant increase in the incidence of tumors in rats of both sexes and in female mice (NTP 1986). The tumors produced included subcutaneous fibromas and fibrosarcomas, pancreatic adenomas, neoplastic nodules of the liver, and mammary gland fibroadenomas, hemangiomas, hemangiosarcomas, and hepatocellular adenomas (NTP 1986).

The proposed limit, which was recently promulgated by OSHA in general industry, is based on human data showing that some workers can develop sensitization reactions when exposed to TDI at levels below 0.02 ppm. Elkins and colleagues (1962/Ex. 1–138) reviewed the incidence of TDI intoxication in 14 plants in Massachusetts between 1957 and 1962. In eleven instances of TDI intoxication, the average concentration of TDI was 0.015 ppm, and in nine cases the average concentration was below 0.01 ppm. In all plants where the average levels were above 0.01 ppm, TDI had caused respiratory problems. TDI-related respiratory problems were not observed when the average concentration of TDI was maintained below 0.007 ppm (Elkins, McCarl, Brugsch, and Fahy 1962/Ex. 1–138).

Williamson conducted two TDI studies (1964 and 1965) that revealed a 5-percent sensitization rate in 99 workers exposed for 18 months to average TDI concentrations of below 0.02 ppm. The author believed that accidental spills accounted for the high sensitization rate seen in these workers. Williamson also found that six sensitized workers out of 18 exposed to concentrations of TDI below 0.02 ppm for 14 months showed marked decreases in lung function (Williamson 1964 and 1965).

A NOEL (no-observed-effect level) for TDI has been documented. In 1975, Roper and Cromer (Ex. 1–147) failed to observe any symptoms of respiratory illness or changes in pulmonary function in nine employees working in a plant where breathing zone samples showed TDI concentrations of 0.001 to 0.002 ppm. Wegman and colleagues (1974/Ex. 1–112; 1977/Ex. 1–171; 1982/Ex. 1–133) observed a dose-response relationship between exposure and long-term decline in lung function, and this relationship was documented by test results among TDI-exposed employees. Only for those workers exposed to less than 0.002 ppm TDI were the results of lung function tests normal (Wegman, Pagnotto, Fine, and Peters 1974/Ex. 1–112; Wegman, Peters, Pagnotto, and Fine 1977/Ex. 1–171; Wegman, Musk, Main, and Pagnotto 1982/Ex. 1–133).

In the prior rulemaking, the AFL–CIO contended that OSHA had not reduced the PEL for TDI far enough, based on the results of the Wegman et al. study. OSHA responded to the AFL–CIO by noting that other studies in the record suggested that no effects had been seen at this level (Roper and Cromer 1975/Ex. 1–147; Elkins, McCarl, Brugsch, and Fahy 1962/Ex. 1–138). OSHA also noted that the Wegman et al. study (Ex. 1–171, p. 196) described the changes in lung function seen in workers exposed to TDI in the range of 0.002 to 0.005 ppm as "borderline."

The Agency preliminarily concludes that this evidence in humans and animals clearly demonstrates that workers in agriculture, maritime, and construction are at significant risk of pulmonary sensitization reactions, as evidenced by declines in pulmonary function observed among workers exposed to TDI concentrations below this level. OSHA believes that most of the available studies show that a 0.005 TWA PEL and 0.02 ppm STEL will protect these workers against this significant risk; only one of these studies suggests risk at levels below those being proposed. Accordingly, OSHA believes that establishing a 0.005-ppm TWA with a 0.02-ppm STEL is necessary to substantially reduce this significant risk of material health impairment. In addition, promulgation of these limits will make OSHA's PELs for this substance consistent across all regulated sectors.

Preliminary Conclusions for This Group of Sensitizing Toxicants. For the twelve sensitizing agents included in this category of substances, OSHA preliminarily concludes that there are significant occupational risks associated with exposure. The effects caused by such exposures are mediated by the immune system and include skin sensitization, substantial decrements in lung function, bronchoconstriction, asthma, and severe skin irritation, all of which constitute material impairments of health and functional capacity. The reduced or new exposure limits being proposed for these toxic substances will substantially reduce these significant risks in workplaces in construction, maritime, and agriculture and will bring the limits for these sectors into alignment with those recently established in general industry.

14. Substances for Which Proposed Limits Are Based on Avoidance of Cancer

Introduction. For this group of substances, OSHA is proposing limits in construction, maritime, and agriculture on the basis of their potential occupational carcinogenicity. Table C14–1 lists the current OSHA permissible exposure levels (PELs) for these substances in construction and maritime and the PELs being proposed for construction, maritime, and agricultural workplaces. The PELs being proposed are those that are currently in effect in general industry; adoption of the limits being proposed would thus make OSHA's PELs for these substances consistent across all regulated sectors. Table C14–1 also shows the 1987–1988 ACGIH TLV*s, NIOSH RELs, and CAS and HS numbers for these substances.

The following discussion addresses some general aspects of carcinogenicity, together with the methodology used by OSHA in the prior air contaminants and other rulemakings to assess carcinogenic hazards. In this section, quantitative risk models that are widely accepted by the scientific community are used as a means of estimating cancer risks. The multistage model, which is the model primarily used by OSHA, is preferred by most scientists over other models because it is based on a mechanism of cancer that is believed to be biologically more plausible than is the case for the other models.

TABLE C14–1. SUBSTANCE FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF CANCER

H.S. No./chemical name	Cas No.	Current OSHA PEL in construction and maritime*	1987–1988 ACGIH TLV®**	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
1008 Acrylamide	79–06–1	0.3 mg/m³ TWA, Skin	0.03 mg/m³ TWA, Skin, A2.	0.3 mg/m³ TWA	0.03 mg/m³ TWA, Skin
2002 Acrylonitrile	107–13–1	2 ppm TWA, 10 ppm STEL	2 ppm TWA, Skin, A2	1 ppm TWA (8-hour) 10 ppm Ceiling (15-min), Skin†.	2 ppm TWA 10 ppm STEL
1020 Amitrole (3-Amino-1,2,4-triazole).	61–82–5		0.2 mg/m³ TWA		0.2 mg/m³ TWA
2009 ANTU	86–88–4	0.3 mg/m³ TWA	0.3 mg/m³ TWA		0.3 mg/m³ TWA
2011 Arsenic, inorganic (measured as As).	7440–37–1	10 µg/m³ TWA	0.2 mg/m³ TWA (Arsenic and soluble compounds).	2 µg/m³ Ceiling (15-min)†.	10 µg/m³ TWA
2013 Asbestos	Varies	0.2 Fiber/cm³ TWA 1 Fiber/cm³ STEL (30-min)	TLV varies with specific form, A1.	100,000 Fibers/m³, (fibers > 5 µm long), 8-hour TWA (400 Liter sample)†.	0.2 Fiber/cm³ TWA 1 Fiber/cm³ STEL (30-min)
2016 Benzene	71–43–2	1 ppm TWA 5 ppm STEL	10 ppm TWA, A2	0.1 ppm (8-hour) 1ppm ceiling (15-min)†	1 ppm TWA 5 ppm STEL
1033 Beryllium & compounds (measured as Be)****.	7440–41–7	0.002 mg/m³ TWA	0.002 mg/m³ TWA, A2	Do not exceed 0.5 µg/m³†.	2 µg/m³ TWA 5 µg/m³ STEL (30-min) 25 µg/m³ Peak
1073 Carbon tetrachloride	56–23–5	10 ppm TWA, Skin	5 ppm TWA, Skin, A2	2 ppm Ceiling† (60 min, 45-liter sample).	2 ppm TWA
1086 Chloroform Trichloromethane	67–66–3	50 ppm Ceiling	10 ppm TWA, A2	2 ppm Ceiling † (60-min, 45 liter sample).	2 ppm TWA

TABLE C14-1. SUBSTANCE FOR WHICH PROPOSED LIMITS ARE BASED ON AVOIDANCE OF CANCER—Continued

H.S. No./chemical name	Cas No.	Current OSHA PEL in construction and maritime*	1987-1988 ACGIH TLV***	NIOSH REL***	Proposed OSHA PEL in construction, maritime, and agriculture*
1092 Chromic acid & chromates (measured as CrO_3).	Varies with compound	0.1 mg/m³ TWA	0.05 mg/m³ TWA (measured as Cr).	1 µg/m³ TWA (for carcinogenic hexavalent chromium compounds)†; 25 µg/m³ TWA 50 µg/m³ Ceiling (15-min) (for non-carcinogenic hexavalent chromium compounds, which include chromic acid).	0.1 mg/m³ Ceiling
2039 Coal tar pitch volatiles	65996-93-2	0.2 mg/m³ TWA	0.2 mg/m³ TWA, A1	0.1 mg/m³ TWA (cyclohexane extractable fraction)†.	0.2 mg/m³ TWA
2055 1,2-Dibromo-3-chloropropane (DBCP).	96-12-8	0.001 ppm TWA, Skin		0.01 ppm TWA	0.001 ppm TWA, Skin
1142 Dimethyl sulfate	77-78-1	1 ppm TWA, Skin	0.1 ppm TWA, Skin A2		0.1 ppm TWA, Skin
2083 Ethylene oxide	75-21-8	1 ppm TWA 5ppm Excursion Limit	1 ppm TWA, A2	< 0.1 ppm TWA (8-hour). 5 ppm Ceiling (10-min/day)†.	1 ppm TWA 5 ppm Excursion Limit
2085 Formaldehyde	50-00-0	1 ppm TWA 2 ppm STEL	1 ppm TWA 2 ppm STEL, A2	0.016 ppm TWA (8-hour) 0.1 ppm Ceiling (15-min)†.	1 ppm TWA 2 ppm STEL
1291 2-Nitropropane	79-46-9	25 ppm TWA	10 ppm TWA, A2	*	10 ppm TWA
1308 Perchloroethylene (Tetrachloroethylene).	127-18-4	100 ppm TWA	50 ppm TWA 200 ppm STEL	*	25 ppm TWA
1399 o-Toluidine	95-53-4	5 ppm TWA	2 ppm TWA, Skin, A2		5 ppm TWA, Skin
1400 p-Toluidine	106-49-0		2 ppm TWA, Skin, A2		2 ppm TWA, Skin
1425 Vinyl bromide	593-60-2		5 ppm TWA, A2	*	5 ppm TWA
2167 Vinyl chloride	75-01-4	1 ppm TWA 5 ppm STEL	5 ppm TWA, A1	Lowest reliable detectable concentration†.	1 ppm TWA 5 ppm STEL
1426 Vinyl cyclohexene dioxide	106-87-6		10 ppm TWA, Skin, A2		10 ppm TWA, Skin
1436 Zinc chromates (measured as CrO_3).	Varies with compound		0.05 mg/m³ TWA, A2 (measured as Cr).	1 µg/m³ TWA†	0.1 mg/m³ Ceiling

*OSHA's PELs do not currently apply in agriculture; OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

**The ACGIH TLV®-TWA is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time. An A1 designation means that the ACGIH has designated this substance a confirmed human carcinogen; an A2 designation means that the substance is classified as a suspected human carcinogen.

***NIOSH TWA limits are for 10 hour/day, 40 hour/week exposures unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time unless a duration is specified in parentheses.

****The standard for beryllium is based on respiratory effects. In this rulemaking, OSHA has not evaluated its carcinogenicity.

†NIOSH considers this substance a potential human carcinogen and recommends that exposures be reduced to the lowest feasible concentration

Description of the Health Effects. Cancer is an insidious and life-threatening disease that is brought about by the invasion of organ systems by abnormal tissue growth. The abnormal tissue is comprised of cells that have been altered in such a way as to cause unrestricted cell growth. As this unrestricted growth progresses, the abnormal tissue begins to interfere with the vital functions of normal organ systems. In the absence of medical intervention, most forms of cancer are ultimately lethal. In some instances (e.g., colon cancer, breast cancer), life can be prolonged through chemotherapy, radiation treatment, surgery, or some combination of these; however, the quality of life of the victims of cancer is usually severely affected. In other instances, such as lung cancer, there is little hope of survival, even when the tumor is aggressively treated. In past rulemakings on occupational carcinogens (see, for example, Benzene, Ethylene Oxide, Asbestos, and Formaldehyde), OSHA has held that malignant disease clearly constitutes material impairment of health and functional capacity.

An increased risk of developing cancer has been associated with occupational or environmental exposure to a number of chemical substances. The development of chemically induced cancer in humans and animals is a complex and multistep process that is not completely understood. It is currently believed that the mechanism by which cancer develops requires at least two stages: initiation and promotion. Initiation occurs when chemicals interact either directly or indirectly with DNA to cause a heritable mutation. Alterations in DNA structure may cause an incorrect reading of the DNA sequence during replication and result in more altered cells, which may eventually be expressed as a tumor. There is a correlation between substances that are mutagenic in *in vitro* test systems and carcinogenic in *in vivo* situations. Although genotoxic assays are not capable of predicting carcinogenic potential with certainty, these assays are useful for the preliminary identification of substances that may have the potential to cause cancer.

The second stage in the carcinogenic process is promotion. Promotion is considered to be the likely mechanism of action when there is no evidence that a substance interacts with genetic material (e.g., when *in vitro* mutagenicity assays are negative). Peroxisome proliferation, immunosuppression, and hormonal alterations are examples of promotional events; these events facilitate the unrestricted multiplication of initiated cells, leading to the development of cancer. When a substance or its metabolite possesses both initiation and promotion capabilities, it is considered to be a complete carcinogen (i.e., exposure to the substance alone is

sufficient to cause cancer). Examples of such substances recently regulated by OSHA include asbestos, benzene, ethylene oxide, and formaldehyde.

In all of OSHA's past rulemakings for carcinogens, the Agency has used a weight-of-evidence approach to assess the carcinogenic potential of chemical substances. This approach involves examining all available human epidemiologic studies, clinical and case studies, animal studies, mutagenicity studies, and metabolic studies, and then performing a quantitative assessment of the cancer risk to determine the potential of the substance to cause cancer as a result of occupational exposure. OSHA relies heavily on epidemiologic studies of worker populations and on well-conducted animal bioassays to make these determinations. This approach to the promulgation of regulations for carcinogens has been upheld in a number of court decisions. The following discussion summarizes how human and animal studies are used to assess cancer risk.

Epidemiology studies. Epidemiological studies that include detailed exposure data provide the best basis for establishing a causal relationship between exposure to a substance and the onset of cancer in humans. OSHA has relied heavily on epidemiologic evidence in its decisions to promulgate standards for the occupational carcinogens benzene, asbestos, and arsenic. At a minimum, positive epidemiologic studies provide qualitative proof of a causal relationship between exposure to a substance and the development of cancer in humans. A general lack of quantitative exposure data and the long latencies between onset of exposure and appearance of disease may make it difficult to derive quantitative dose-response relationships from epidemiological studies. However, the ability of such studies to link exposures to carcinogens to cancer in humans outweighs these limitations.

Because of the long latency periods associated with chemically induced cancer in humans, these studies cannot be used to detect disease until after irreparable harm has been done. To protect workers or other human populations, it is therefore necessary to assess the risks of such effects before they occur. The data used for this purpose derive from animal bioassays; these data are used to predict human responses and to infer a causal relationship between exposure to a substance and the onset of disease.

Animal data. Animal studies frequently provide the best dose-response data for chemically induced cancer. To use these studies to predict human risk, however, researchers must make certain assumptions; the most important of these assumptions is that physiologic, pharmacokinetic, and biochemical parameters are similar among mammalian species. When data on the metabolic processes of the species of interest (e.g., rats and humans) are available, they may be used to refine the estimates of risk made by extrapolating from animals to humans. Although assumptions must be made before it is possible to use animal data to predict risk in humans, the practice of using animals as surrogates for humans in risk estimation is widely accepted throughout the scientific world. The acceptance of this methodology derives from the observation, after years of conducting thousands of bioassays, that there is a reasonable concordance between carcinogenic effects in animals and carcinogenicity in humans.

Dose-Response and Quantitative Assessment of Risk. A large amount of scientific evidence has accumulated regarding the mechanisms by which carcinogens act and the quantitative relationship between dose and biological response. As a result of these investigations, several mathematical approaches have been developed that permit estimates to be made of the cancer risk that is associated with exposure to low doses of carcinogenic substances.

Since the dominant view of the carcinogenic process holds that most cancer initiators cause irreversible damage to DNA, there is reason to assume that the dose-response of most carcinogens will follow a linear, non-threshold relationship. The Office of Science and Technology Policy (OSTP 1985/Ex. 1–1128) recommends the use of models that incorporate low-dose linearity when the data are limited and there is uncertainty regarding the mechanisms of carcinogenic action. OSHA has observed this practice when conducting risk assessments in prior rulemakings, when the Agency generally relied on the linearized multistage model.

The multistage model used to assess cancer risks associated with exposure to substances in this group is GLOBAL83, a model developed by K.S. Crump and colleagues. If P(d) represents the lifetime risk of cancer at dose d, and A(d) is the extra risk over the background rate at dose d, then the multistage model has the following form:

$$P(d) = 1 - \exp[-(q_1 d + q_2 d^2 + \ldots + q_k d^k)]$$

where

$$q_i \geq 0$$
$$i = 1, 2, 3, \ldots k$$

and $A(d) = [P(d) - P(0)]/[1 - P(0)]$

For a unique set of q_i, this function will adequately describe (or fit) the experimentally derived data. How well the model describes the data may be mathematically determined by what are termed goodness-of-fit tests. Once the model has been fitted to the data, the maximum likelihood estimate (MLE) and the 95-percent upper-confidence limit (UCL) of A(d) are calculated using the 95-percent upper-confidence limit on parameter $q_i(q_i^*)$. The MLE is the point estimate of A(d) and is therefore considered the best estimate of extra risk at dose d.

In the prior air contaminants rulemaking, Dr. Nathan J. Karch, President of Karch Associates and an expert in risk assessment, testified on the appropriateness of using the linearized multistage model to estimate occupational cancer risk:

> The multistage model and the program upon which it is based [GLOBAL83] involves a number of assumptions that are considered unlikely to underestimate risk. At lower doses, the risk is assumed to be linear in dose, and no threshold is assumed to exist. * * * The risk was assumed to be independent of background rates of cancer * * *.
>
> I recognize with growing knowledge of the complexity of various possible mechanisms for cancer induction, that several aspects of the model have come under increasing investigation * * *. Despite what may appear to be conservative assumptions in the use of animal data with the multistage model * * * the multistage model is not likely to be overly conservative at most of the exposures contemplated by this rulemaking. Since the proposed PELs are similar to experimental doses in animals in many cases, the risk estimates from the multistage model tend to be less conservative unless [the PELs] are very high in relation to experimental doses. Moreover, at high doses the risk estimates produced by GLOBAL are similar to those generated by the other commonly used models (Tr. p. 13–50).
>
> An analysis that we perform[ed on] extrapolations from animal data using the multistage model in previous OSHA rulemakings on benzene, ethylene oxide and formaldehyde disclosed that the best, meaning maximum likelihood estimates, from the multistage model were similar and not above the range of estimates from epidemiologic data available * * * [on] workers (Tr. pp. 13–52 to 13–53).

In the prior rulemaking, OSHA asked Dr. Karch to evaluate the scientific literature on the substances in this group to determine whether the data available were suitable for use with the multistage model estimate of the quantitative cancer risk of exposure to these substances. Dr. Karch found the data suitable for the following substances:

acrylamide, amitrole, carbon tetrachloride, chloroform, styrene, o-toluidine, p-toluidine, and vinyl bromide (Ex. 85; Tr. p. 13–50). For the remaining substances examined by Dr. Karch in the earlier rulemaking, the data were judged not to be suitable for risk assessment purposes, and it was therefore not possible to estimate the quantitative cancer risk associated with occupational exposure to these other substances.

For those substances for which suitable data were available, OSHA quantitatively estimated the risk associated with exposure and then relied on these estimates, in part, to make significant risk findings for the air contaminants studied in general industry. OSHA has discussed its approach for making significant risk determinations for cancer-causing substances in a number of rulemakings dealing with carcinogens, and several courts of appeal have upheld OSHA's methodology. For this rulemaking, whose primary purpose is to extend the protection afforded by OSHA's general-industry PELs to workers in construction, maritime, and agriculture, OSHA followed the same methodology as that followed in the prior air contaminants rulemaking and in other rulemakings for carcinogens. [See Arsenic, 48 FR 1816, 1901–1902 (Jan. 14, 1983), upheld *ASARCO* v. *OSHA*, 746 F.2d 483 (9th Cir., 1984); Benzene, 52 FR 34507 (September 11, 1987); Ethylene Oxide, 49 FR 25763 (June 22, 1984), *Public Citizen* v. *Tyson*, 796 F.2d 1479 (D.C. Cir., 1986); Asbestos, 51 FR 22646 (June 20, 1986), *Building and Construction Trades* v. *Brock*, 838 F.2d 1258 (D.C. Cir., 1988).]

The Supreme Court, in the Benzene decision, indicated when a reasonable person might consider a risk significant and take steps to decrease it. The Court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (*I.U.D.* v. *A.P.I.*, 448 U.S. at 655).

The Court also stated that "while the Agency must support its findings that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations." The Court added that the significant risk determination required by the OSH Act is "not a mathematical straitjacket," and that "OSHA is not required to support its findings with anything approaching scientific certainty." The Court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and that * * *] the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than under protection" (448 U.S. at 655, 656).

In this proposed rule, OSHA has used the general approach and guidance described above to make the preliminary significant risk determinations for the carcinogens included in this section of the proposal.

The following sections discuss the carcinogenicity evidence for the substances listed in Table C14–1. A brief discussion of the data and a quantitative risk assessment (where appropriate) are included to demonstrate the reduction in cancer risk that could result from lowering OSHA's current PELs or establishing new limits for these potential occupational carcinogens in workplaces in the construction, maritime, and agriculture industries.

ACRYLAMIDE

CAS: 79–06–1; Chemical Formula: $CH_2{=}CHCONH_2$

H.S. No. 1008

OSHA's limit for acrylamide in the construction and maritime industries is 0.3 mg/m³ as an 8-hour TWA, with a skin notation. There is no limit for this substance in agriculture. The ACGIH considers acrylamide a suspected human carcinogen (A2) and has assigned it a TLV®–TWA of 0.03 mg/m³, with a skin notation. NIOSH has a REL of 0.3 mg/m³ as a 10-hour TWA and concurs (Ex. 8–47, Table N6A) with the limit being proposed. The Agency is proposing a TWA limit of 0.03 mg/m³, with a skin notation, for acrylamide in the construction, agriculture, and maritime industries; this is the limit recently established for this substance in general industry.

Acrylamide is a white solid that is widely used as a reactive monomer or intermediate in organic synthesis, and polyacrylamide is a polymer that is used in the manufacture of a host of products, including adhesives, mining chemicals, fibers, pharmaceuticals, animal feed, paper sizing, molded parts, textiles, and coagulant aids (American Cyanamid Company, Ex. 94; ACGIH 1986/Ex. 1–3, p. 12). Acrylamide also is used as a soil stabilizer and conditioner and in sewage and waste treatment (Grant 1986, p. 50; Hawley's 1987, p. 18).

In addition to cancer, acrylamide has caused eye and skin irritation, convulsions and other neurotoxic effects, and reproductive effects in experimental animals. The oral LD_{50} in rats is 124 mg/kg, and the dermal LD_{50} in the same species is 400 mg/kg (RTECS 1990). In rabbits, the lowest lethal dermal dose is 1000 mg/kg (RTECS 1990). Applied to the eyes or skin of rabbits, acrylamide causes mild irritation (RTECS 1990). Neuropathic effects caused by exposure to acrylamide are dose-related and have been seen in rats, cats, and monkeys. Dietary dosing of cats (20 mg/kg/day) for 2 or 3 weeks caused hind-limb weakness and generalized unsteadiness (EPA 1987). Monkeys given 7.1 mg/kg/day orally showed signs of ataxia and motor impairment after 1.5 or 2 months of exposure (EPA 1987). Acrylamide is a cumulative neurotoxin that causes peripheral neuropathy in most experimental animals when the cumulative dose reaches 10 to 50 mg/kg/day; this substance has neuropathic effects regardless of the route of administration: oral, inhalation, intraperitoneal, or dermal (IARC 1986, p. 55). In male mice, oral administration of 35 mg/kg acrylamide twice weekly for 8 weeks caused testicular atrophy and degeneration of the germinal epithelium (IARC 1986, p. 55). A recent study (Zenick, Hope, and Smith 1986) demonstrates that acrylamide has adverse reproductive effects in both male and female rats after oral dosing. This substance also had a significant and adverse effect on the birth weight and the postpartum rate of weight gain in the offspring of treated rats (Zenick, Hope, and Smith 1986).

Two studies are available that demonstrate the carcinogenicity of acrylamide: Johnson, Gorzinsky, Bodner et al. (1986/Ex. 1–825) and Bull, Robinson, Laurie et al. (1984/Ex. 1–252). In the Bull et al. (1984/Ex. 1–252) study, acrylamide was tested as a skin tumor initiator in female Sencar mice; 12-O-tetradecanoylphorbol 3-acetate (TPA) was used as a promoter.

The authors administered six doses of acrylamide that ranged from 0 to 50 mg/kg body weight over a two-week period. A significant dose-related increase in skin tumor incidence was observed for all routes of exposure tested, including topical, gastric intubation, and intraperitoneal injection. The same authors (Bull, Robinson, Laurie et al. 1984/Ex. 1–252) noted a significant dose-related increase in lung adenomas in A/J mice administered acrylamide either by gastric intubation or intraperitoneal injection.

The second study was performed by Johnson et al. (1986/Ex. 1–825) on male and female Fischer 344 rats given 0 to 2.0 mg/kg/day acrylamide in their drinking water for a period of 2 years. During the last 4 months of this study, mortality from cancer was observed at a statistically significant rate in rats exposed at the highest dose level; in addition, tumor incidence increased in animals of both sexes in the highest dose group. In females, tumors of the mammary gland, central nervous system, thyroid gland, oral tissues, uterus, and clitoral gland were seen, while males developed tumors of the central nervous system, thyroid, adrenal gland, and scrotum (Johnson, Gorzinsky, Bodner et al. 1986/Ex. 1–825). Peripheral nerve degeneration was also seen in female rats exposed at the 2-mg/kg/day level (ACGIH 1986/Ex. 1–3, p. 13).

In humans, acrylamide is a demonstrated neuropathogen. Clinical cases involving acrylamide poisoning show that the principal effects of such poisoning include: redness or peeling of the skin of the hands; excessive sweating; loss of weight; limb weakness; sensory loss in the limbs; and urinary incontinence (Le Quesne 1985). In moderate to severe cases, confusion, hallucinations, ataxia, inability to concentrate, and drowsiness occur (Le Quesne 1985). Acute exposure is likely to involve the central nervous system, while cumulative exposure to low doses of acrylamide affects the peripheral nervous system (Proctor, Hughes, and Fischman 1988, p. 56).

A mortality study of 371 acrylamide workers found no statistically significant excesses in cancers of the types hypothesized as likely on the basis of results in animals; however, the number of observed deaths for all cancers was somewhat higher than expected in this cohort (Sobel, Bond, Parsons, and Brenner 1986). A larger cohort study of acrylamide workers (Collins, Swaen, Marsh et al. 1987) found no statistically significant excess in all-cause or cause-specific mortality in these workers.

Risk estimate for acrylamide. For the EPA, Crump et al. (1987) performed a risk assessment for acrylamide, derived in part from the results of the Johnson et al. study (1986/Ex. 1–825). For the purposes of risk assessment, the data for several tumors in female rats were pooled: tumors of the mammary gland, brain and spinal cord, thyroid gland, uterus, and oral cavity. The Maximum Likelihood Estimates (MLEs) and Upper Confidence Limits (UCLs) for the current and proposed exposure limits are presented in Table C14–2. GLOBAL83, a multistage model developed by K.S.Crump, was used to predict these risks. The risk estimate shows that, at OSHA's current PEL in construction and maritime of 0.3 mg/m³, the excess risk of death from cancer for workers exposed over their working lifetimes is 10 per 1,000 workers. At the proposed PEL of 0.03 mg/m³, this number would be reduced to 1 per 1,000 exposed workers.

TABLE C14–2.—MULTISTAGE MODEL ESTIMATES OF CANCER RISK ASSOCIATED WITH WORKING LIFETIME EXPOSURE TO ACRYLAMIDE

Exposure level	Excess cancer deaths per 1,000 workers	
	MLE	UCL
0.3 mg/m³ [a]	10	45
0.03 mg/m³ [b]	1	5

[a] Current OSHA PEL in construction and maritime.
[b] Proposed PEL and current limit in general industry.
MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on maximum likelihood estimate of risk.

In the prior rulemaking, a commenter representing the American Cyanamid Company, a major supplier of acrylamide, questioned OSHA's reliance on the Johnson et al. (1986/Ex. 1–825) study and the Bull et al. (1984/Ex. 1–252) study. In response to this commenter, OSHA stated (54 FR 2674, 2675) that (1) it is prudent public health policy to regulate all occupational carcinogens, and not just "complete" carcinogens, to levels that will provide worker protection; (2) the authors of the Bull et al. (1984/Ex. 1–252) study consider acrylamide to be as potent a tumor initiator as ethyl carbamate, a widely recognized tumorigen (Klaassen, Amdur, and Doull 1986/Ex. 1–99, p. 123); and (3) the Bull et al. (1984/Ex. 1–252) study is convincing evidence of acrylamide's carcinogenicity because it shows a dose-related increase in skin tumors in one strain of mouse by three different routes of exposure and the development of lung tumors in another strain of mouse by two routes of administration. OSHA notes further that the International Agency for Research on Cancer (IARC) was also convinced by the evidence presented in these studies; IARC judges the evidence for the carcinogenicity of acrylamide in animals to be sufficient (IARC 1986).

Accordingly, the Agency is proposing an 8-hour TWA PEL of 0.03 mg/m³ for acrylamide in the construction, agriculture, and maritime industries. Because acrylamide is readily absorbed through the skin and can produce systemic effects by this exposure route, OSHA is retaining its skin notation in construction and maritime and proposing it in agriculture. The proposed PEL is based on the significant risk of cancer posed to workers occupationally exposed to this substance. The Agency preliminarily concludes that a 0.03- mg/m³ PEL, and a skin notation, will substantially reduce this significant occupational risk. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ACRYLONITRILE

CAS: 107–13–1; Chemical Formula: $CH_2=CHCN$

H.S. No. 2002

In general industry, construction, and maritime, OSHA's permissible exposure limits for acrylonitrile (AN) are: 2 ppm as an 8-hour TWA and 10 ppm as a 15-minute short-term limit. Also, the employer shall assure that no employee is exposed to skin contact or eye contact with liquid AN. There are no limits for acrylonitrile in agriculture. A comprehensive OSHA standard for AN was promulgated on October 3, 1978 (43 FR 192). OSHA is proposing limits for AN of 2 ppm as an 8-hour TWA and 10 ppm as a 15-minute STEL in agriculture. Promulgation of these limits will make the PELs for AN consistent across all regulated sectors.

AN is a clear, colorless (when pure), or yellowish liquid with a characteristic odor. Synonyms for AN include acrylon carbaryl, cyanoethylene, fumigrain, 2-propenentrile, VCN, ventox, and vinyl cyanide. The major use of AN is in the production of acrylic and modacrylic fibers by copolymerization with other monomers such as methyl acrylate, methyl methacrylate, styrene, vinyl acetate, vinyl bromide, vinyl chloride, or vinylidene chloride, individually or in combination.

Information regarding the acute toxic effects of acrylonitrile (AN) in both humans and animals is extensive and was discussed at length in the preamble to OSHA's Emergency Temporary Standard (ETS) for AN (42 FR 2586). Based on a careful review of the evidence contained in the 1978 record, OSHA concluded at the time of that rulemaking that acrylonitrile poses a carcinogenic risk to workers. This conclusion was based on the results of experimental studies that showed an increased incidence of tumors in AN-exposed animals and was supplemented by indications of an excess risk of cancer among workers exposed to AN. Moreover, AN has been shown to be capable of inducing mutations, an effect

that has also been observed for many other cancer-causing chemicals.

OSHA's determination that AN is carcinogenic is supported by the findings of other governmental agencies and scientific organizations. Based of the results of industry-sponsored animal studies, the National Cancer Institute's carcinogenicity testing program has "recognized acrylonitrile as carcinogenic to experimental animals" (Ex. 21, Docket H–108). The International Agency for Research on Cancer (IARC) of the World Health Organization stated in a draft report: "* * * the data indicated that acrylonitrile is carcinogenic to rats, producing tumors of the forestomach, brain, and Zymbal gland. Acrylonitrile is also embryotoxic and teratogenic" (Ex. 23, Docket H–108).

In testimony prepared for the 1978 rulemaking, the National Institute for Occupational Safety and Health (NIOSH) concluded: "AN has been shown to be a chemical carcinogen on the basis of animal experiments. The interim results which we have reviewed are significant" (Ex. 42, Docket H–108). Additional information on AN's carcinogenicity is presented in the preamble to OSHA's 1978 AN standard (43 FR 192).

Based on this evidence in humans and animals, OSHA has concluded that exposure to AN can cause cancer in humans and animals. OSHA therefore believes that, in the absence of limits, workers in agriculture are at significant risk of experiencing AN's adverse health effects. The Agency believes that the proposed limits of 2 ppm as an 8-hour TWA and 10 ppm as a 15-minute STEL are necessary to substantially reduce this significant risk of material health impairment among these workers. Promulgation of these limits will also make the PELs for this substance consistent across all OSHA-regulated sectors.

AMITROLE

CAS: 61–82–5; Chemical Formula: $C_2H_4N_4$

H.S. No. 1020

OSHA has no PEL for amitrole in the construction, maritime, or agriculture industries. The level recommended by the ACGIH is a TLV®–TWA of 0.2 mg/m³. There is no NIOSH REL; however, NIOSH concurs (Ex. 8–47, Table N8A) with the PEL OSHA is proposing for this substance. The Agency is proposing an 8-hour TWA limit of 0.2 mg/m³ for amitrole in construction, maritime, and agriculture, which is the limit established by OSHA in the prior rulemaking for general industry.

Amitrole is a white, crystalline powder that is odorless when pure (HSDB 1985). It is used as an herbicide, a plant growth regulator, a cotton defoliant, and a reagent in photography. Amitrole's registered use as an herbicide on food crops was canceled by the EPA in 1971, and it is no longer produced in the United States (HSDB 1985; IARC 1987, p. 295; ACGIH 1986, p. 25); however, this substance is still imported into the United States for use as a specialty herbicide (brush killer) (IARC 1987, p. 295). Amitrole also continues to be used as a post-harvest herbicide around apple and pear trees and as a pre-planting herbicide for kale, maize, potatoes, wheat, and other crops (IARC 1987, p. 295). In addition, this substance is used as a roadside herbicide (IARC 1987, p. 295). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Amitrole is a potent antithyroid agent and has been shown to cause tumors, particularly of the thyroid and pituitary glands, in experimental animals (ACGIH 1986/Ex. 1–3, p. 25). Its tumor-producing activity is thought to be related to its goitrogenic effects, which cause an increase in thyroid-stimulating hormone (TSH). Other antithyroid agents that cause TSH stimulation, such as propylthiouracil, have also been shown to produce thyroid tumors (Guyton 1981/Ex. 1–1002).

The acute toxicity of amitrole is low: The oral LD_{50} in rats is 1100 mg/kg; in mice, this value is 14,700 mg/kg (RTECS 1990). The dermal LD_{50} in rabbits is 10 g/kg (Clayton and Clayton 1981, p. 2702). Repeated exposure of rats to amitrole by intraperitoneal administration at doses of 1 g/kg caused inhibition of liver and kidney catalase; much lower doses (5 mg/kg) sharply reduced iodine uptake by the thyroid gland in the same species (Clayton and Clayton 1981, p. 2703).

Amitrole has been found to be carcinogenic in laboratory animals following dietary exposure to relatively high doses. Attempts to induce tumors by dermal application and subcutaneous injection have been unsuccessful. Studies investigating the carcinogenic potential of amitrole in laboratory animals are reviewed below.

The effects of lifetime exposure to amitrole were investigated in rats, mice, and hamsters fed diets containing 1, 10, or 100 ppm amitrole (Steinhoff, Weber, Mohr, and Boehme 1983/Ex. 1–208). There was a significant increase in the incidence of thyroid tumors in male and female rats and in the incidence of pituitary tumors in female rats exposed to 100 ppm. An excess incidence of tumors was not found in male or female rats exposed to 1 or 10 ppm. The results of this experiment are presented in Table C14–3. Tumor induction was not observed in male or female mice or hamsters. Another study reported negative results for rats fed diets containing 10, 50, or 100 ppm amitrole (Jukes and Schaffer 1960/Ex. 1–213).

TABLE C14–3.—INCIDENCE OF RAT THYROID AND PITUITARY TUMORS ASSOCIATED WITH INGESTION OF AMITROLE

Tumor site	Concentration in diet (ppm)			
	0	1	10	100
Thyroid (Male)				
—Benign	5/75	9/75	4/75	[1] 45/75
—Malignant	3/75	0/75	3/75	[1] 18/75
Thyroid (Female)				
—Benign	7/75	12/75	8/75	[1] 44/75
—Malignant	0/75	1/75	4/75	[1] 28/75
Pituitary (Female)				
—Benign	14/75	20/75	15/75	[1] 36/75
—Malignant	1/75	2/75	4/75	5/75

[1] $p < 0.001$, Fisher's Exact Test.

In contrast to the negative results obtained in mice following lifetime dietary exposure to 1, 10, or 100 ppm amitrole, positive results were observed in male and female mice following dietary exposure to higher levels (2192 ppm) of amitrole for 1 year (Innes, Ulland, Valerio et al. 1969/Ex. 1–270). Carcinomas of the thyroid were observed in 89 percent (64/72) of the exposed animals (tumor incidence in the controls was not reported).

Positive results were also observed in mice exposed to 1 percent amitrole in the diet in a lifetime study (alternating exposure for 4 weeks followed by no exposure for 1 week over the lifetime) (Feinstein, Fry, and Staffeld 1978a/Ex. 1–281). Liver tumors developed in 100 percent of the exposed mice; however, the incidence of tumors in unexposed controls was not reported. A small number of thyroid tumors was also seen in these animals. The authors hypothesized that the reason more thyroid tumors were not seen was because the animals died of the high toxic doses before such tumors could be expressed.

The Swedish National Board of Occupational Safety and Health ordered an epidemiological evaluation to assess the incidence of cancer among railroad workers exposed to herbicides (Axelson and Sundell 1974/Ex. 1–812). Amitrole was among the pesticides utilized by these workers. Cohorts were separated into groups according to whether they were exposed to amitrole and

combinations of other herbicides, phenoxy acids and combinations of other herbicides, or other herbicides alone. A statistically significant increase in the incidence of total tumors and lung tumors was found among workers exposed both to amitrole and combinations of other herbicides. Smoking frequency among members of this group was reported to be similar to the frequency of smoking in the general Swedish population.

In a 1980 follow-up to the Axelson and Sundell (1974/Ex. 1–812) study, Axelson and co-workers (Ex. 1–242) combined data from the earlier study with data on workers exposed from 1972 to 1978. Cohorts were divided into the following exposure groups: amitrole alone, phenoxy acids alone, and amitrole and phenoxy acids combined. The reanalyzed data did not show a statistically significant increase in cancer incidence among the workers exposed to amitrole alone; however, the incidence of tumors among workers exposed to amitrole and phenoxy acids together was significantly increased (Axelson, Sundell, Anderson et al. 1980/Ex. 1–242).

Risk estimate for amitrole. The study by Steinhoff et al. (1983/Ex. 1–208) provides sufficient information to use as the basis for the quantitative estimation of the excess cancer risk associated with exposure to amitrole in the workplace. The linearized multistage model was chosen to estimate risk. The incidence of malignant thyroid tumors in female rats was used because these tumors demonstrate a clear monotonic response. Female rats were assumed to weigh 250 g and to consume 25 g of food per day. Human risks were estimated at exposure levels corresponding to the proposed PEL of 0.2 mg/m³, as well as for exposure levels of 0.4 mg/m³ and 1.0 mg/m³. The excess estimated cancer risk, in terms of excess deaths per 1,000 employees, is shown in Table C14–4.

Exposure to 0.2 mg/m³ of amitrole (the limit being proposed) over an occupational lifetime (45 years) is associated with approximately 3 excess cancer deaths per 1,000 employees (0.3 percent) if the MLE is used, and the risk at this level that corresponds to the 95-percent upper-bound estimate is about 4 excess cancer deaths per 1,000 workers. By comparison, the MLEs of risk for lifetime exposure to 0.4 mg/m³ or 1.0 mg/m³ are 5 or 13 excess deaths per 1,000 employees, respectively.

TABLE C14–4.—MULTISTAGE MODEL ESTIMATES OF CANCER RISK ASSOCIATED WITH WORKING LIFETIME EXPOSURE TO AMITROLE

Exposure level	Excess cancer deaths per 1,000 workers	
	MLE	UCL
0.2 mg/m³[a]	2.7	3.5
0.4 mg/m³	5.3	7.0
1.0 mg/m³	13.0	17.0

[a] Proposed PEL and current limit in general industry

MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on maximum likelihood estimate of risk.

Some commenters in the prior rulemaking urged OSHA to use a different model, i.e., one that incorporates a threshold effect, to estimate the risk of cancer associated with exposure to amitrole (Exs. 3–894; Tr. 3–13, 3–14). Although OSHA recognizes that a threshold-effect level may exist for substances that cause cancer by acting on endocrine-sensitive tissues, the Agency points out that amitrole also has produced liver tumors in mice (Innes, Ulland, Valerio et al. 1969/Ex. 1–270; Feinstein, Fry, and Staffeld 1978a/Ex. 1–281) and, in one instance (Feinstein, Fry, and Staffeld 1978a/Ex. 1–281), the liver tumors appeared at an earlier age and at a higher incidence than did the thyroid tumors. It is not clear from the present data that the mechanism for the development of these amitrole-induced liver tumors is the same as that for amitrole-induced thyroid tumors. OSHA also notes that the proposed 0.2-mg/m³ PEL is, according to the ACGIH's calculations, only a factor of 10 lower than the demonstrated effect level for amitrole-induced effects on thyroid function. OSHA believes that the use of a tenfold uncertainty margin is reasonable when the disease in question is as serious as cancer, whether or not amitrole-induced carcinogenesis follows a dose-threshold pattern. In addition, although the human studies have not been conclusive, they do provide suggestive supporting evidence that exposure to amitrole may increase the risk of cancer among workers.

Accordingly, OSHA preliminarily concludes that the adverse effects resulting from exposure to amitrole potentially include both damage to the thyroid gland and the induction of cancer. OSHA's risk assessment, which is based on animal data, shows that this significant excess cancer risk can be substantially reduced for employees in construction, maritime, or agriculture who may currently be exposed to amitrole at concentrations well above the proposed 0.2-mg/m³ TWA limit. Therefore, OSHA is proposing a 0.2-mg/m³ TWA exposure limit for amitrole in the construction, agriculture, and maritime industries. Promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

alpha-NAPHTHYLTHIOUREA (ANTU)
CAS: 86–88–4; Chemical Formula: $C_{11}H_{10}N_2S$
H.S. No. 2009

The OSHA PEL for alpha-naphthylthiourea (ANTU) in general industry, construction, and maritime is 0.3 mg/m³ as an 8-hour TWA. The Agency has no PEL for ANTU in agriculture. The ACGIH TLV®-TWA for this substance is 0.3 mg/m³. NIOSH has no REL but concurs (Ex. 8–47, Table N3A) with the limit being proposed. OSHA is proposing a 0.3-mg/m³ 8-hour TWA PEL for ANTU in agriculture. This is the same limit as the general industry PEL for ANTU.

ANTU is a colorless to gray crystalline substance that is odorless; it is used as a rodenticide, although it has not been produced in the United States for several years (HSDB 1989). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

ANTU is more toxic to Norway rats than to animals of other species (Hayes 1982). The lowest reported oral LD_{50} in rats is 6 mg/kg; in monkeys, the oral LD_{50} is 4250 mg/kg (RTECS 1989). ANTU causes pleural effusions and pulmonary edema; before death, acutely poisoned animals had difficulty breathing and developed muscular weakness (Proctor, Hughes, and Fischman 1988, p. 79). Rats fed diets containing 50 to 800 mg/kg ANTU for 2 years showed dose-related hyperplasia of the thyroid (IARC 1983, p. 350). ANTU was tested for carcinogenicity in mice and rats, but these studies were considered inadequate for the purposes of carcinogenicity evaluation (IARC 1983, p. 353).

In humans, exposure to ANTU has been associated with contact dermatitis, destructive changes in the thyroid and adrenal glands, and bladder cancer in exposed workers (ACGIH 1986, p. 36). An impurity in the ANTU, beta-naphthylamine, which is a known human carcinogen, is believed to have been responsible for these cancers. In all, a total of 14 cases of urothelial tumors have been seen since 1982

among rodent exterminators who used ANTU (Orjelick 1975; Davies 1982).

There are no reported cases of accidental ANTU poisoning that have involved ANTU alone, but several poisoning incidents have been attributed to a combination of ANTU and another toxic substance. In one case, a man ingested 80 grams of a rat poison containing 30 percent ANTU and also consumed a large amount of alcohol. This individual subsequently vomited, became cyanotic, and developed fluid in his lungs; he later recovered (Hayes 1982, p. 506). Several poisoning incidents in France involved ANTU and chloralose, another pesticide; all of the poisoned individuals survived but showed tracheobronchial hypersecretions and other ANTU-related signs (Hayes 1982, p. 506).

The evidence described above shows that ANTU causes dose-related pulmonary and endocrine effects in exposed individuals and may cause bladder cancers, although a contaminant in the ANTU, rather than ANTU itself, may have been responsible for these tumors. ANTU can cause these effects when it is ingested, inhaled, and/or absorbed through the skin.

OSHA therefore preliminarily finds that the absence of a PEL for ANTU in agriculture places workers in this sector at significant risk of pulmonary and endocrine damage and perhaps of cancer of the urogenital tract. The Agency believes that the establishment of an 8-hour TWA PEL of 0.3 mg/m^3 will substantially reduce these significant risks of material health impairment. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ARSENIC, INORGANIC COMPOUNDS (as As)

CAS: 7440–38–2; Chemical Formula: Varies with Compound

H.S. No. 2011

In general industry, construction, and maritime, OSHA's permissible exposure limit for inorganic arsenic is 10 μg/m^3 averaged over an 8-hour period. There is no limit in agriculture. The ACGIH has assigned arsenic and soluble compounds a TLV^a–TWA of 0.2 mg/m^3. NIOSH considers these substances potential occupational carcinogens and has issued a REL of 2 μg/m^3 as a 15-minute ceiling. OSHA proposes to establish a PEL of 10 μg/m^3 TWA for inorganic arsenic in agriculture. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

Arsenic (As) is commonly present in amounts ranging from less than 0.001 percent to 6 percent of the sulfide ores mined for their copper, lead, zinc, gold, and silver content. Arsenic is also widely distributed naturally in small amounts (2–5 ppm) throughout the earth's crust. For example, it is found in iron ore and coal. Further, trace amounts of organic arsenic (less than 1 ppm) are naturally present in most living organisms, including those used for food.

Approximately 97 percent of arsenic enters end-product manufacture in the form of arsenic trioxide (As_2O_3 or "white arsenic"). This compound, which is used in the synthesis of many other arsenic compounds, is released by and obtained as a by-product of the smelting of sulfide ores of copper, lead, and zinc. Arsenic is generally regarded, however, as a troublesome impurity in these metals which is eliminated through the smelting process.

Arsenic and its compounds have a variety of applications. The major use (comprising approximately 69 percent of U.S. consumption) is for insecticides and herbicides. Approximately 11 percent of the total U.S. arsenic trioxide consumption is used in glass production as a clarifying and reducing agent. Arsenic is also used as a defoliant in cotton harvesting. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

OSHA believes that exposure to trivalent arsenic causes respiratory cancer. Studies in the copper smelting industry (Lee and Fraumeni 1969, Pinto and Enterline 1978, Rencher and Carter 1977) have shown a statistically significant increase in lung cancer mortality among workers exposed to arsenic trioxide, sulfur dioxide, and other co-contaminants released during the smelting of copper ores. As Lee and Fraumeni stated, it is impossible to differentiate in these cases between the effects of exposure to arsenic and these other co-contaminants. However, the finding that lung cancer mortality increased consistently with degree and duration of exposure to arsenic trioxide provides substantial evidence that exposure to trivalent arsenic is a cause of respiratory cancer. These data, and particularly those of Lee and Fraumeni and Pinto and Enterline, were discussed in detail in the preamble to the arsenic standard (43 FR 19584, May 5, 1978 and 48 FR 1864, January 14, 1983) and accordingly will not be repeated here. Many experts testified during the hearing for that rulemaking. Both Dr. Fraumeni (Tr. 168, Docket H–037) and Dr. Kraybill (Tr. 151, Docket H–037) stated that inorganic arsenic is strongly incriminated as an occupational carcinogen, and NIOSH recognized that, although each epidemiological study alone has limitations, ". . . when all reports of occupational exposure to inorganic arsenic are considered together,. . . it [is] undeniable that there have been carcinogenic effects which must be attributed to inorganic arsenic" (Tr. 54–5, Docket H–037). Thus, the National Cancer Institute and NIOSH both recommended that pentavalent arsenic be treated as a carcinogen.

On the other hand, the American Wood Preservers Institute (AWPI) argued in that rulemaking that the evidence was not sufficiently persuasive for OSHA to make such a determination. The AWPI suggested that pentavalent arsenic should not be implicated as a causal factor because the studies suggesting its involvement also involved exposure to trivalent arsenic. However, after a thorough review of the record as a whole, OSHA determined that the weight of the evidence clearly pointed to the carcinogenicity of pentavalent arsenic.

Based on this evidence in humans, OSHA concluded in the earlier 6(b) rulemaking that exposure to inorganic arsenic causes cancer in humans. OSHA therefore believes that, in the absence of a limit, workers in agriculture who are exposed to inorganic arsenic are at significant risk of developing cancer. The Agency believes that the proposed 8-hour TWA limit of 10 μg/m^3 is necessary to substantially reduce these risks of material health impairment among this group of workers. Promulgation of this limit will also make the PEL for this substance consistent across all OSHA-regulated sectors.

ASBESTOS

CAS: varies; Chemical Formula: varies

H.S. No. 2013

In general industry, construction, and maritime, OSHA's permissible exposure limits for asbestos are 0.2 fiber per cubic centimeter of air (f/cc) as an 8-hour time weighted average airborne concentration and 1 f/cc as a 30-minute excursion limit. OSHA's most recent comprehensive standard for asbestos in these industries was promulgated in 1986. OSHA has no PEL for asbestos in agriculture. Therefore, OSHA is proposing to establish an 8-hour TWA PEL of 0.2 f/cc and a 30-minute excursion limit of 1 f/cc for asbestos in agriculture. Promulgation of these limits will make the PELs for asbestos consistent across all OSHA-regulated sectors.

Asbestos is the name given to a class of magnesium silicate minerals that occur in fibrous form. Minerals that are included in this group are chrysotile, crocidolite, amosite, anthophyllite asbestos, tremolite asbestos, and actinolite asbestos.

Asbestos, tremolite, anthophyllite, and actinolite have been used in the manufacture of heat-resistant clothing, automobile brake and clutch linings, and a variety of building materials (including floor tiles, roofing felts, ceiling tiles, asbestos-cement pipe and sheet, and fire-resistant drywall). Asbestos, tremolite, anthophyllite, and actinolite are also present in pipe and boiler insulation materials and in sprayed-on materials located in beams, in crawl spaces, and between walls.

OSHA is aware of no instance in which exposure to a toxic substance has more clearly demonstrated detrimental health effects on humans than asbestos exposure. The diseases caused by asbestos exposure are life-threatening or disabling; among these diseases are lung cancer, cancer of the mesothelial lining of the pleura and peritoneum, asbestosis, and gastrointestinal cancer. Of all the diseases caused by asbestos, lung cancer constitutes the greatest health risk for American asbestos workers. Lung cancer has been responsible for more than half of the excess mortality from asbestos exposure in some occupational cohorts.

The relationship between lung cancer and asbestos exposure has been established in numerous epidemiological studies of diverse groups. Asbestos-induced lung cancer usually has a latency period in excess of 20 years, and this cancer may be manifested at a younger age than is true for lung cancer victims who are not exposed to asbestos (Craighead et al., Ex. 84–033, Docket H–033). Few cases of lung cancer are curable, despite advances in medical and surgical oncology. Only 9 percent of lung cancer patients survive for 5 or more years after diagnosis (American Cancer Society, Ex. 84–160, Docket H–033). Asbestos exposure acts synergistically with cigarette smoking to multiply the risk of developing lung cancer.

Many studies also have shown conclusively that mesothelioma is associated with asbestos exposure. In some asbestos-exposed occupational groups, 10 to 18 percent of deaths have been attributable to malignant mesotheliomas of the pleura and peritoneum, a condition that is extremely rare in persons not exposed to asbestos. Generally, a latency period of at least 25 to 30 years is required before mesotheliomas are observed in an occupational cohort, although some victims of mesothelioma have had latency periods exceeding 40 years (Craighead et al., Ex. 84–033, Docket H–033). This form of cancer is usually fatal within a year of diagnosis.

Some epidemiological studies of asbestos-exposed persons have shown increases in esophageal, stomach, colo-rectal, kidney, laryngeal, pharyngeal, and buccal cavity cancers. Although the increased risk of cancers at these sites is nct as great as the increased risk of lung cancer and mesothelioma, the increase is of considerable importance because of the high background rates, and therefore the large number of victims, associated with some of these tumors in the general population. For example, a 50 percent increase in a common cancer such as colo-rectal cancer results in many more deaths than a 50 percent increase in a rare cancer.

Asbestosis is pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs. The adverse effects of asbestosis range from shortness of breath during exertion to cyanosis, effusions of serous fluid, respiratory failure, cardiac hypertrophy, and death. Asbestosis is often a progressive disease, even in the absence of continued exposure. The symptoms of the disease are shortness of breath, cough, fatigue, and vague feelings of sickness. When the fibrosis worsens, shortness of breath occurs even at rest. One clinical feature of early asbestosis as well as other lung diseases is end-respiratory crackles (rales).

Diagnosis of asbestosis is based on the presence of characteristic radiological changes, symptoms, rales, other clinical features of fibrosing lung diseases, and a history of exposure to asbestos.

Asbestos exposure can cause pleural and/or other pulmonary disease. Pleural plaques are a marker of asbestos exposure and may develop within 10 to 20 years after the initial exposure. Plaques are opaque patches visible on chest x-rays that consist of dense strands of collagen (connective tissue protein) lined by mesothelial cells. All commercially used types of asbestos induce pleural plaques. These conclusions about asbestos' health effects are widely accepted both in the U.S. and abroad, and are discussed extensively in the preamble to OSHA's 1986 standard for asbestos, which describes the evidence linking asbestos exposure to lung cancer, mesothelioma, gastrointestinal cancer, and non-malignant respiratory diseases such as asbestosis.

Based on this evidence, OSHA concluded in the earlier asbestos rulemakings that exposure to asbestos can cause cancer in humans. OSHA therefore believes that, in the absence of a PEL, workers in agriculture are at significant risk of experiencing these adverse and often life-threatening health effects. The Agency believes that the proposed limits of 0.2 f/cc as an 8-hour TWA and 1 f/cc as a 30-minute short term limit are necessary to substantially reduce these risks of material health impairment among this group of workers. Promulgation of these limits will make the PELs for asbestos consistent across all OSHA-regulated sectors. Although the current PELs for asbestos are 0.2 f/cc (TWA) and 1 f/cc (30-minute limit), OSHA is currently engaged in rulemaking on asbestos. If a final decision is made to lower one or both of these PELs prior to the issuance of this Air Contaminants standard, OSHA will consider adopting the new limit(s) in agriculture. OSHA requests comments on this issue from interested parties.

BENZENE

CAS No.: 71–43–2; Chemical Formula: C_6H_6

H.S. No. 2016

In general industry, construction, and maritime, OSHA's permissible exposure limits for benzene are 1 ppm as an 8-hour TWA and 5 ppm as a 15-minute STEL. OSHA's comprehensive standard for benzene was promulgated on September 11, 1987 (52 FR 176). There are no PELs for benzene in agriculture, and OSHA is therefore proposing to establish limits in that sector. Promulgation of these limits will make the PELs for benzene consistent across all OSHA-regulated sectors.

Benzene is a clear, colorless, non-corrosive, highly flammable liquid with a strong rather pleasant odor. The low boiling point and high vapor pressure of benzene causes rapid evaporation under ordinary atmospheric conditions and generates vapors that are nearly three times heavier than air.

Benzene is produced primarily by the petrochemical and petroleum refining industries by a process called catalytic reformation, which converts certain lower octane hydrocarbons into higher octane aromatics. These two industries are responsible for 98 percent of the total U.S. production of benzene. Recovery through catalytic reformation and thermal cracking of petroleum hydrocarbons, including the benzene formed from the dealkylation of toluene, accounts for approximately 75percent of the total quantity of benzene produced.

The first major industrial use of benzene was as a solvent in the rubber

industry just before World War I. Large quantities of benzene are used to manufacture other organic compounds such as ethylbenzene, styrene, cumene, and cyclohexanol. This situation led to greatly increased uses of benzene as a solvent in the artificial leather, rubber goods, and rotogravure industries.

Many products contain benzene exclusively as the result of contamination. Benzene is a naturally occurring compound in crude oil and natural gas. Unreacted benzene may also be present in major benzene derivatives (e.g., methylbenzene) or in other specialty chemicals that use benzene as a feedstock (e.g., dicyclopentadiene). The presence of unreacted benzene in major derivatives or other specialty chemicals is undesirable from the producer's point of view and is not generally useful to product users.

Industries and processes currently using benzene or liquids containing benzene include the chemical, printing, lithograph, rubber cement, rubber fabricating, paint, varnish, stain remover, adhesive, and petroleum industries. Benzene is also used extensively in chemical laboratories as a solvent and as a reactant in numerous chemical applications. Where benzene is produced, used, or stored in large amounts, it is generally contained in enclosed systems, although exposures can occur during liquid transfer operations, from equipment leakage and carryover losses, and in maintenance operations.

The scientific literature has documented hundreds of cases of leukemia, aplastic anemia, and other blood abnormalities that have been associated with benzene exposure. Epidemiologic studies of workers exposed to benzene have demonstrated significant excesses of leukemia, multiple myeloma, and lymphatic cancers as well as chromosomal aberrations in these workers. Several of these studies provide a reasonable basis for quantitative cancer risk assessment. More recently, experimental animal studies have demonstrated the induction of cancer, chromosomal damage, and bone marrow toxicity as a result of specific exposures to benzene. All of this information has been used to the extent feasible in OSHA's evaluation of the risk associated with various benzene exposure levels. Information regarding the health effects of benzene on both humans and animals was discussed at length in the preamble to OSHA's Final Rule on Occupational Exposure to Benzene (52 FR 176, September 11, 1987).

Although benzene exposure has been associated with leukemia, aplastic anemia, multiple myeloma, various forms of lymphoma, myelofibrosis, pancytopenia, and depression of singular blood cell lines, OSHA's risk assessments were based preferentially on experimental studies involving the induction of solid tumors in mice and rats. OSHA did not include in its quantitative risk assessments risks of the other conditions mentioned above because they were for the most part identified in case reports and may have underestimated the relative risks associated with benzene exposure.

Based on the evidence in humans and animals described by OSHA in the preamble to the final 6(b) rule for benzene, OSHA concluded that exposure to benzene causes numerous adverse and potentially life-threatening health effects. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limits of 1 ppm as an 8-hour TWA and 5 ppm as a 15-minute STEL are necessary to substantially reduce these risks of material health impairment among these workers. Promulgation of these limits will also make the PEL for benzene consistent across all OSHA-regulated sectors.

BERYLLIUM AND COMPOUNDS (As Be)

CAS No.: 7440-41-7; Chemical Formula: Varies with Compound

H.S. No. 1033

OSHA's current limit for beryllium and its compounds (measured as Be) in the construction and maritime industries is 0.002 mg/m³ (2 μg/m³) as an 8-hour TWA. There is no limit in agriculture for these substances. The ACGIH considers beryllium a suspect human carcinogen (A2) and has assigned a TLV®-TWA for beryllium and compounds of 0.002 mg/m³ (2 μg/m³). NIOSH considers beryllium a potential human carcinogen and recommends that exposure to beryllium and compounds not exceed 0.5 μg/m³. OSHA is proposing to extend its TWA PEL of 0.002 mg/m³ (2 μg/m³) to agriculture and to add a 0.005 mg/m³ (5 μg/m³) 30-minute STEL and a 0.025 mg/m³ (25 μg/m³) peak for beryllium and compounds in the construction, agriculture, and maritime industries. These are the limits for beryllium and its compounds currently in effect in general industry.

Beryllium is a metallic element that is hard, brittle, and grayish-white in color. It is used as a hardening agent in alloys and in non-sparking tools, drill bits, watch balance wheels, airplane brakes, electrical equipment, springs, valves, computers, gyroscopes, and in ceramics manufacturing (Clayton and Clayton 1981, p. 1537). It also has uses in space and nuclear technologies (HSDB 1986; ACGIH 1986, p. 56).

Occupational exposure to beryllium has long been associated with the development of two distinct diseases: Acute chemical pneumonitis and chronic beryllium disease, which is a progressive and debilitating lung disease. Exposure to soluble beryllium salts and to finely divided beryllium oxide adversely affects the skin, mucous membranes, and respiratory tract and leads to chemical pneumonitis; the airborne concentrations of beryllium believed to be associated with acute pulmonary effects are on the order of 100 μg/m³ (Eisenbud et al. 1948). This form of beryllium disease has not occurred in the United States since the 1960s, in large part due to the establishment of a 25 μg/m³ 30-minute short-term limit by the Atomic Energy Commission in 1949 and OSHA's adoption of this limit, through the Section 6(a) process, in 1971.

Chronic beryllium disease is a systemic, granulomatous disease caused by low-level exposure to beryllium over periods ranging from several months to many years. The principal signs and symptoms of chronic beryllium disease are dyspnea, weight loss, chest pain, cough, arthralgia, and fatigue, and clinical manifestations may include interstitial crackles, liver and spleen enlargement, and, in severe cases, clubbing of the fingers. Severe cases may lead to cor pulmonole and right heart failure. Workers with chronic beryllium disease may show one or more of the following ventilatory defects: restrictive lung disease; mixed restrictive and obstructive lung disease; or diminished carbon monoxide diffusing capacity. Three stages of the disease have been identified by lung x-ray: A fine, diffuse granularity; a diffuse reticular pattern; and, finally, distinct nodules (Parkes 1985).

Chronic beryllium disease results from a cell-mediated immune response of the lung to beryllium exposure. Although it had been suggested in the early 1950s that some workers appeared to be allergic to beryllium (Sterner and Eisenbud 1951), the correlation between chronic disease and sensitization to beryllium was not established until 20 years later (Deodhar et al. 1973). Advances in scientists' understanding of immunology and in techniques for the isolation and culture of lymphocytes have led to improvements in the reliability, sensitivity, and specificity of *in vitro* tests for beryllium sensitization. These tests involve analysis of T-cells

recovered either from the blood (Kreiss et al. 1989) or bronchoalveolar lavage fluid (Rossman et al. 1988) of individuals suspected of being sensitized.

At the time NIOSH's criteria document on beryllium was published (NIOSH 1972a), NIOSH judged the evidence that beryllium caused cancer to be equivocal. In testimony at OSHA's 1977 hearing on a standard for beryllium, however, NIOSH presented additional epidemiologic and animal evidence indicating that beryllium is carcinogenic. In particular, NIOSH (1977o; Baier 1977b/Ex. 1–831) cited the studies of Bayliss and Wagoner (1977) and Mancuso (1977), which showed significant increases in bronchogenic cancer among beryllium-exposed workers. NIOSH therefore recommended at the 1977 hearing that exposure to beryllium not exceed the reliable limit of detection of 0.5 $\mu g/m^3$ (NIOSH 1977o; Baier 1977b/Ex. 1–831).

In the recent air contaminants rulemaking for general industry, OSHA determined that, because of the extensive record developed for beryllium following OSHA's 1975 proposed rule for beryllium, the issues to be resolved were too complex to address during the Air Contaminants rulemaking. Accordingly, OSHA retained the Agency's general industry PELs of 0.002 mg/m^3 TWA, 0.005 mg/m^3 as a 30-minute STEL, and 0.025 mg/m^3 as a ceiling to provide workers with continued protection against beryllium-related chronic lung disease. OSHA believes that, in the absence of a limit in agriculture, exposed workers are at significant risk of developing chronic beryllium disease. OSHA preliminarily concludes that extending the 0.002 mg/m^3 TWA PEL, 0.005 mg/m^3 STEL, and 0.025 mg/m^3 peak to construction, maritime, and agriculture will substantially reduce this risk. OSHA believes that the STEL and ceiling are necessary to aid in protecting against initial sensitization to beryllium. By analogy with the effects seen with other inorganic sensitizers such as cobalt, nickel, and chromium (Nemery 1990), short-term high exposure to antigens is believed to be associated with the development of sensitization, and OSHA believes that the STEL and ceiling will ensure that exposures are kept under strict control at all times. Promulgation of these limits in construction, maritime, and agriculture will also make the TWA, STEL, and ceiling for beryllium and its compounds consistent across all regulated sectors.

CARBON TETRACHLORIDE
CAS: 56–23–5; Chemical Formula: CCl_4
H.S. No. 1073

The OSHA PEL for carbon tetrachloride in the construction and maritime industries is 10 ppm as an 8-hour TWA, with a skin notation. There is no limit in agriculture. The ACGIH has established a 5-ppm TLV®–TWA limit, with a skin notation, for this substance. NIOSH considers carbon tetrachloride a potential human carcinogen and has issued a REL of 2 ppm as a ceiling limit (45 liter, 60-minute sample). However, NIOSH concurs (Ex. 8–47, Table N6A) with the limit the Agency is proposing. OSHA is proposing to delete the skin notation and to establish a PEL for carbon tetrachloride of 2 ppm as an 8-hour TWA for workplaces in the construction, agriculture, and maritime industries. This is the limit recently established for carbon tetrachloride in general industry.

Carbon tetrachloride is a heavy, mobile liquid with a sweet odor. Although carbon tetrachloride was once widely used as a dry-cleaning agent and solvent, it has now largely been replaced by less toxic substances in these uses. It is currently used in the manufacture of fluorocarbon propellants, many organic compounds, and in refrigerants and propellants (HSDB 1985).

In addition to cancer, exposure to carbon tetrachloride causes liver, kidney, and lung damage in humans and animals. The oral LD_{50} in rats is 2350 mg/kg, and the LC_{50} in the same species is 8000 ppm for 4 hours (RTECS 1990). A number of studies in experimental animals have shown that single oral doses of carbon tetrachloride ranging from about 100 to 4000 mg/kg produce fatty infiltration of the liver, loss of cytochrome P–450 and other enzymes, and histological changes in the liver (EPA 1985). Hepatocellular necrosis also may occur (EPA 1985). Rats given single oral doses of 4000 mg/kg of carbon tetrachloride showed damage to the proximal tubules of the kidney, clara cells of the lung, and endothelial lining of the lung at autopsy (EPA 1987).

In a subchronic inhalation study, guinea pigs, rats, monkeys, rabbits, and dogs exposed continuously for 90 days to a 61-mg/m^3 concentration of carbon tetrachloride showed signs of liver toxicity, while animals exposed to a 6.1-mg/m^3 concentration on the same regimen showed no adverse effects (Prendergast et al. 1967).

In chronic studies, rats gavaged with carbon tetrachloride at a 1 mg/kg-dose 5 days/week for 12 weeks failed to show adverse effects at autopsy, while those exposed to 10 or 33 mg/kg doses on the same regimen showed centrilobular vacuolization and necrosis of hepatocytes at post mortem (Bruchner et al. 1986).

Human fatalities have occurred in adults who ingested as little as 1.5 ml of carbon tetrachloride, and inhalation exposure to 1500 mg/m^3 has been associated with systemic poisoning and death (EPA 1985). Acute carbon tetrachloride poisoning in humans takes the following course: hepatic and renal failure, followed by pulmonary edema and cardiac failure (Rom 1983, p. 399). The following paragraphs describe the available data on carbon tetrachloride's carcinogenicity in humans and animals.

There have been three case reports in humans of liver tumors developing after carbon tetrachloride exposure (Tracy and Sherlock 1968/Ex. 1–152; Johnstone 1948/Ex. 1–817; Simler, Maurer, and Mandard 1964/Ex. 1–225). In each case, the patient had been acutely overexposed to carbon tetrachloride and had thereafter developed nausea, stomach pains, and signs of severe liver damage.

Blair, Decoufle, and Grauman (1979/Ex. 1–150) studied causes of death in 330 laundry and dry cleaning workers potentially exposed to carbon tetrachloride, as well as to trichloroethylene and tetrachloroethylene. Causes of death based on death certificates were compared to the age, sex, race, and cause-specific distribution of U.S. deaths for the same time period. The proportionate mortality ratio (PMR) for the cohort being studied for all malignant neoplasms was 128, which was statistically significant, indicating that the study group had a 28-percent higher proportion of total deaths due to cancer than the proportion in the U.S. general population. The excess cancer deaths were due to liver, lung, and cervical cancer and leukemia. Although the excess lung and cervical cancer deaths may reflect socioeconomic differences among these workers, the excess liver cancer seen in this study is consistent with findings in animal studies involving carbon tetrachloride.

In animals, carbon tetrachloride has produced hepatocellular carcinomas in all species evaluated (rats, mice, and hamsters). Male rats were given 47 or 94 mg/kg carbon tetrachloride and females were given 80 or 159 mg/kg by gavage for 78 weeks (NCI 1976a/Ex. 1–119; NCI 1976b/Ex. 1–168; NCI 1977b/Ex. 1–169). The incidence of hepatocellular carcinomas was increased in animals exposed to carbon tetrachloride as compared with pooled colony controls but was statistically significant only for low-dose females. The lower incidence of carcinomas in female rats at the high

dose (1/49) compared with that at the low dose (4/49) was attributed by the authors to the increased lethality that occurred among these rats before tumors could be expressed.

In this same study, mice of both sexes received 1250 or 2500 mg/kg carbon tetrachloride by gavage. Hepatocellular carcinomas were found in 49/49 low-dose and 47/48 high-dose males (compared with 5/77 in the control males) and in 40/40 low-dose and 43/45 high-dose females (compared with 1/80 in the control females) (NCI 1976a/Ex. 1–119; NCI 1976b/Ex. 1–168; NCI 1977b/Ex. 1–169).

Edwards, Heston, and Dalton (1942/Ex. 1–68) administered carbon tetrachloride by gavage (64 mg/mouse administered 46 times over four months) to a mouse strain known to have a low incidence of spontaneous hepatomas. The resulting incidence of hepatomas in these animals was 52 percent (28/54) for males and 32 percent (6/19) for females. Previous hepatoma incidence data for untreated mice of this strain were 2/71 for males and 0/81 for females. Carbon tetrachloride administered by gavage has also been shown to produce neoplastic changes in the livers of four additional strains of mice (Andervont 1958/Ex. 1–81; Edwards 1941/Ex. 1–86; Eschenbrenner and Miller 1943/Ex. 1–113).

Della Porta, Terracini, and Shubik (1961/Ex. 1–136) gave weekly gavage treatments of 10 to 20 μg carbon tetrachloride to hamsters for 30 weeks, and the animals were observed for an additional 25 weeks. All 10 hamsters dying or killed between weeks 43 and 55 had liver cell carcinomas, compared with 0/254 among the historical controls.

Risk estimate for carbon tetrachloride. Three animal data sets have sufficient dose-response information to allow quantitative risk estimation: The rat and mouse bioassay data (NCI 1976a/Ex. 1–119; NCI 1976b/Ex. 1–168; NCI 1977b/Ex. 1–169) and the Edwards, Heston, and Dalton (1942/Ex. 1–68) mouse data. To increase sample sizes, the data were pooled for male and female animals in each of the three studies. The estimated risks shown in Table C14–7 are the geometric means of the risk calculated from each of the three data sets.

Inhalation risk in humans was calculated assuming an air intake of 20 m^3 per 24-hour day and a 40-percent absorption rate (EPA 1984a/Ex. 1–1130). All three studies suggest that a common biological mechanism, cell death and regeneration, occurs and leads to the development of the same tumor type.

TABLE C14–7.—MULTISTAGE MODEL ESTIMATES OF CANCER RISK ASSOCIATED WITH WORKING LIFETIME EXPOSURE TO CARBON TETRACHLORIDE

Exposure level	Excess cancer deaths per 1,000 workers	
	MLE	UCL
2 ppm[a]	3.7	5.2
5 ppm[b]	9.2	13.0
10 ppm[c]	17.9	26.0

[a] Proposed OSHA PEL in construction, maritime, and agriculture.
[b] ACGIH TLV®.
[c] OSHA TWA PEL in construction and maritime.
MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on the maximum likelihood estimate of risk.

Table C14–7 presents the estimates of lifetime human risk from carbon tetrachloride exposure, calculated by the linearized multistage model (GLOBAL83) at the proposed 2-ppm limit, the ACGIH limit of 5 ppm, and the current 10-ppm OSHA PEL in construction and maritime. Both the maximum likelihood estimates (MLE) and the 95-percent upper-confidence limits of human risk are given, as well as the corresponding expected number of excess cancer deaths per 1,000 workers exposed over a working lifetime. Based on this risk estimate, the MLE at the current OSHA limit of 10 ppm is 17.9 excess deaths per 1,000 exposed workers, an estimate that clearly demonstrates a significant cancer risk at the current PEL in construction and maritime.

Risk at the current ACGIH limit of 5 ppm is estimated to be 9.2 excess deaths per 1,000 workers exposed over their working lifetimes. At the proposed limit of 2 ppm, residual risk continues to be significant, according to the Supreme Court's guidance in the Benzene decision and the analysis presented in the introduction to this section; the risk predicted at 2 ppm is 3.7 excess deaths per 1,000 workers exposed over their working lifetimes. However, risk at the 2 ppm limit is substantially reduced compared with risk at the current OSHA PEL of 10 ppm. Because of the time and resource constraints imposed by the effort to issue a generic air contaminants standard of this magnitude, OSHA did not determine further what alternative lower limit would eliminate or substantially reduce the remaining significant risk and still be feasible. OSHA will reconsider carbon tetrachloride in the next round of PEL updates. In the interim, the risk remaining at the 2 ppm limit is substantially reduced compared to the risk associated with exposure at the current OSHA PEL of 10 ppm.

Based on the evidence presented above and the quantitative estimates of carbon tetrachloride-related cancer risk, OSHA preliminarily concludes that occupational exposure to carbon tetrachloride at the former 10-ppm PEL presents a significant risk of cancer to workers in the construction and maritime industry sectors; because there is no current PEL for carbon tetrachloride in agriculture, OSHA also believes that there is a significant risk of cancer to exposed workers in that sector. OSHA's risk assessment shows the proposed limit of 2 ppm will substantially reduce this risk. Accordingly, OSHA is proposing a PEL of 2 ppm as an 8-hour TWA in construction, maritime, and agriculture. If promulgated as proposed, the permissible exposure limit for carbon tetrachloride would then be the same in all industry sectors. Because the level of residual risk at 2 ppm may be significant, OSHA is committed to reconsidering this PEL in the first update of the Air Contaminants standard. In that rulemaking, OSHA will consider a lesser PEL for all sectors. As discussed in the Legal Authorities section above, OSHA believes that this approach is necessary to provide worker protection in construction, maritime, and agriculture within a reasonable time frame and that this is an appropriate use of the Agency's authority to establish rulemaking priorities.

CHLOROFORM

CAS: 67–66–3; Chemical Formula: $CHCl_3$
H.S. No. 1086

The current OSHA PEL for chloroform in construction and maritime is 50 ppm as a ceiling limit. The Agency has no PEL for this substance in agriculture. The ACGIH has established a TLV®–TWA of 10 ppm and assigned chloroform an A2 (suspect human occupational carcinogen) designation. NIOSH considers chloroform a potential human carcinogen and has issued a REL for this substance of 2 ppm as a ceiling limit (45 liter, 60-minute sample); however, NIOSH concurs (Ex. 8–47, Table N6A) with the limit the Agency is proposing. OSHA is proposing a PEL for chloroform in construction, maritime, and agriculture of 2 ppm as an 8-hour TWA. This is the limit recently established for chloroform in general industry.

Chloroform is a clear, colorless, nonflammable, volatile liquid with a pleasant odor. Chloroform was one of the first inhalation anesthetics used, but its use in anesthesiology has been discontinued; the FDA has banned its use in drugs, cosmetics, and food

packaging. Chloroform is now primarily used in the synthesis of fluorocarbon 22 and other chemicals (Merck 1983, p. 301; Parmeggiani 1983, p. 463).

In addition to cancer, exposure to chloroform causes eye irritation, central nervous system depression, liver and kidney damage, and cardiac effects in humans and animals. The oral LD_{50} in rats is 908 mg/kg, and the LC_{50} in the same species is 75 g/m^3 for 60 minutes (RTECS 1990). Acutely poisoned animals show signs of central nervous system depression, including somnolence and dyspnea; at autopsy, both liver and kidney damage are seen (Gerber and Warner 1983). Rats, rabbits, guinea pigs, and dogs exposed to 25-, 50-, or 80-ppm concentrations of chloroform for 7 hours/day, 5 days/week for 6 months showed, at autopsy, damage to the kidneys and liver (Clayton and Clayton 1982, p. 3484). In contact with the skin of rabbits for 24 hours, chloroform caused redness and a moderate degree of necrosis; the authors of this study reported that chloroform vapor also irritated the eyes of exposed animals (Torkelson, Oyen, and Rowe 1976). In addition, chloroform can be absorbed through the skin in amounts sufficient to cause systemic toxicity (weight loss, degenerative changes in the kidneys, etc.) (Torkelson, Oyen, and Rowe 1976).

In humans, exposure to a chloroform concentration of 10,000 ppm causes clinical anesthesia (Morris 1963). At higher concentrations, cardiovascular depression and ventricular defibrillation follow lethal doses in humans (Morris 1963). Workers exposed to chloroform concentrations of between 80 and 240 ppm during use of this substance as a solvent reported experiencing lassitude, gastrointestinal upsets, and mental dullness; even at a 20- to 70-ppm concentration, these workers reported similar, although milder, reactions (Challen, Hickish, and Bedfor 1958). One-quarter of the workers handling chloroform in a German chemical plant had enlarged livers in clinical examinations; these workers had been occupationally exposed to unspecified concentrations for between 1 and 4 years (Bornski, Sobolewska, and Strakowski 1967).

In the following discussion, the evidence on chloroform's carcinogenicity in humans and animals is described. It is currently believed that the carcinogenicity of chloroform results from the formation of reactive metabolites, such as phosgene, that bind to cellular macromolecules. Although there is some evidence to suggest that chloroform is weakly mutagenic, the results of most mutagenicity tests of this substance are negative.

In humans, there are no epidemiological studies that evaluate populations exposed only to chloroform, although there are several studies that examine populations exposed to chloroform in chlorinated drinking water. However, because chloroform is not the only potential carcinogen present in chlorinated water, OSHA considers the epidemiological data inadequate to use as the basis for a quantitative risk assessment. Thus, a causal relationship between cancer and chloroform exposure cannot be determined based on epidemiological studies alone, although these studies can be used to provide general support for findings in animal studies.

A case-controlled study indicated a significant association between colon cancer and exposure to chlorinated drinking water contaminated with organic material (Young, Kanarek, and Tsiatis 1981/Ex. 1–118). Significant positive associations were also found for chloroform levels in drinking water and the incidence of mortality due to cancer of the bladder, rectum, and large intestine (Hogan, Chi, Hoel, and Mitchell 1979/Ex. 1–159). In addition, similar results have been found by others (Cantor, Hoover, Mason, and McCabe 1978/Ex. 1–50; and Gottlieb, Carr, and Morris 1981/Ex. 1–72). However, although these studies suggest an association between exposure to chloroform and an increased risk of cancer, a definite causal relationship between the development of colon and bladder cancer and exposure to chloroform cannot be determined solely from these studies.

In animals, several long-term studies provide strong evidence for the carcinogenic activity of chloroform. Chloroform has been shown to produce statistically significant increases in renal epithelial tumors in male rats and hepatocellular carcinomas in several strains of mice. The carcinogenic activity of chloroform in these studies is specific to the kidney and liver.

The carcinogenic activity of chloroform was investigated in rats exposed to chloroform by gavage for 78 weeks (NCI 1976a/Ex. 1–119). Male rats were administered doses of 90 or 180 mg/kg/day, and female rats were administered doses of 100 or 200 mg/kg/day. A statistically significant dose-related increase in renal epithelial tumors was observed in treated male rats compared with untreated, matched controls; these tumors were described as carcinomas and adenomas. No increase in the incidence of tumors was observed in chloroform-treated female rats.

In this same study, the carcinogenicity of chloroform was evaluated in mice exposed chronically to chloroform by gavage (NCI 1976a/Ex. 1–119). Male mice were exposed to doses of 138 or 277 mg/kg/day and females to 238 or 477 mg/kg/day for 78 weeks. There were significant dose-related increases in the incidence of hepatocellular carcinomas in chloroform-treated male and female mice. The increase of tumors in male mice for low and high doses was 36 percent and 98 percent, respectively. For female mice, the increases were 80 percent for the low dose and 95 percent for the high dose of chloroform.

The carcinogenic potential of chloroform in mice was further investigated in two other studies (Roe, Palmer, and Worden 1979/Ex. 1–108; Jorgenson, Meierhenry, Rushbrook et al. 1985/Ex. 1–117). Doses of 17, 60, or 100 mg/kg/day were administered to four different strains of male and female mice (C57BL, CBA, CF/1, and ICI) by gavage for 80 weeks (Roe, Palmer, and Worden 1979/Ex. 1–108). The incidence of kidney tumors, described as hypernephromas, was significantly elevated in the ICI strain. Moderate to severe renal changes were observed in the male mice of the other strains, but no significant increase in renal tumors was reported. Tumors were not observed in female mice.

The carcinogenicity of chloroform administered in drinking water was investigated in male rats and female mice (Jorgenson, Meierhenry, Rushbrook et al. 1985/Ex. 1–117). Animals were treated with drinking water containing chloroform concentrations of 200, 400, 900, or 1800 mg/L for 104 weeks. There was a marked increase in the number of kidney tumors (described as tubular cell adenomas and adenocarcinomas) in rats. However, the incidence of tumors in female mice was not significantly increased.

Risk estimate for chloroform. The Jorgenson et al. (1985/Ex. 1–117) rat study, which demonstrated a statistically significant increase in the incidence of renal tumors in male rats, was the data set used as the basis for the quantitative risk estimation. The linearized multistage, one hit, and Weibull models were used. The maximum likelihood estimates of excess cancers over an occupational lifetime for a population of 1,000 workers and the 95-percent upper-bound estimates of these risks are summarized in Table C14–8. The results obtained with the Weibull model are similar to those achieved by using the logit or probit

model. OSHA believes that the estimates based on the use of the multistage model represent the best estimates of risk. OSHA has regularly used this model in previous rulemakings because the model is considered by many to reflect a biologically plausible mechanism of carcinogenesis.

The results of the data analysis presented here are similar to the results of other models described by the EPA (1984f/Ex. 1–216) for chloroform. These three models clearly demonstrate, based on the MLE estimates, that a significant cancer risk exists at the current PEL of 50 ppm. The risks estimated to exist at the current PEL are of the same order of magnitude as the risks associated with exposure to other carcinogens that OSHA has regulated (e.g., benzene, ethylene oxide). Following the approach it has used in other rulemakings, OSHA believes that the MLE estimate derived from the multistage model is the best single estimate of risk.

TABLE C14–8.—MULTISTAGE MODEL ESTIMATES OF CANCER RISK ASSOCIATED WITH WORKING LIFETIME EXPOSURE TO CHLOROFORM

Exposure level	Excess cancer deaths per 1,000 workers	
	MLE	UCL
Multistage:		
2 ppm[a]	0.27	1.80
10 ppm[b]	1.90	9.00
50 ppm[c]	22.40	46.10
One Hit:		
2 ppm[a]	1.40	2.20
10 ppm[b]	7.00	11.10
50 ppm[c]	34.50	54.20
Weibull:		
2 ppm[a]	0.11	0.60
10 ppm[b]	1.60	6.30
50 ppm[c]	24.50	51.30

[a] Proposed PEL in construction, maritime, and agriculture.
[b] ACGIH TLV®.
[c] Current OSHA PEL in construction and maritime.
MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on the maximum likelihood estimate of risk.

Based on the evidence presented above, OSHA preliminarily concludes that a significant risk of cancer exists at the current ceiling PEL of 50 ppm, with estimated risks ranging from 22 to 34 excess deaths per 1,000 workers. OSHA also believes that reducing the PEL to 2 ppm will substantially reduce this risk by from 96 to 99 percent, to a residual lifetime risk level of 0.27 to 1.40 deaths per 1,000 exposed workers. Therefore, OSHA is proposing a 2 ppm TWA PEL for chloroform in construction, maritime, and agriculture. Promulgation of this limit will also make OSHA's PEL for this substance consistent across all regulated sectors.

CHROMIC ACID, CHROMATES; ZINC CHROMATES

CAS: Varies with compound; Chemical Formula: Varies with Compound

H.S. No. 1092; 1436

The current OSHA limit for chromic acid and chromates (measured as CrO_3) in the construction and maritime industries is 0.1 mg/m³ as an 8-hour TWA. The Agency has no PEL in agriculture for these substances. The ACGIH has established a TLV®–TWA of 0.05 mg/m³, measured as Cr(VI), for both the soluble and insoluble forms of chromate (except zinc chromate), and has designated insoluble chromates as confirmed human carcinogens (A1). (Note that the 0.05-mg/m³ limit, expressed as Cr(VI), approximates 0.1 mg/m³ expressed as CrO_3.) NIOSH has recommended that exposure to the noncarcinogenic forms of chromium (VI) (which include chromic acid) be limited to 0.025 mg/m³ (measured as CrVI) as a 10-hour TWA and to 0.05 mg/m³ (measured as CrVI) as a 15-minute ceiling. For the carcinogenic (i.e., insoluble) forms of chromium (VI) (which include zinc chromates), NIOSH recommends a 10-hour TWA limit of 0.001 mg/m³ (measured as CrVI). OSHA is proposing a ceiling limit of 0.1 mg/m³ (measured as CrO_3) for chromic acid and chromates, as well as for zinc chromates, in the construction, agriculture, and maritime industries. This is the same PEL as the limit currently in force in general industry.

True chromic acid, H_2CrO_4, exists only in solution form. The chromates are normally crystalline in form, and the majority of these substances are yellowish in color. They have a wide variety of industrial uses, including metal finishing and corrosion control; production of pigments and allied products; use in leather tanning and textiles, wood preservation, and drilling muds; and in chemical synthesis (Grayson 1985, p. 279; Hawley's 1987, pp. 278, 953, 1057, and 1252).

Exposure to chromic acid mists and chromate dust may cause severe irritation of the nose, throat, bronchial tubes, and lungs. Hexavalent chromium compounds have been associated with the development of ulcerated nasal mucosa, perforated nasal septa, rhinitis, nose bleeds, perforated eardrums, pulmonary edema, asthma, kidney damage, erosion and discoloration of the teeth, and skin ulceration. Chromium compounds are known to be allergens, and exposure has been associated with the development of skin sensitization.

Evaluation of workers in the electroplating industry indicates that the current TWA PEL of 0.1 mg/m³ in construction and maritime may not be sufficiently protective against the corrosive and irritating effects of chromates. Franchini et al. (1983, cited in Proctor, Hughes, and Fischman 1988, p. 157) found that workers exposed to chromate concentrations between 0.11 and 0.15 mg/m³ developed ulcers of the nasal septum, asthmatic bronchitis, and mucous membrane irritation. Other studies (Bloomfield and Blum 1928 and U.S. Public Health Service 1953, as cited in ACGIH 1986, p. 139/Ex. 1–3) indicate that concentrations as low as 0.06 mg/m³ are irritating to mucous membranes. The ACGIH TLV® of 0.05 mg/m³ as an 8-hour TWA is based on protecting workers against the corrosive and irritating effects of chromates.

In the rulemaking for general industry, OSHA reviewed some of the data suggesting that exposure to certain insoluble chromate salts is associated with an elevated risk of lung cancer. OSHA determined at that time that the complex issues surrounding this evidence would be more appropriately addressed in a separate comprehensive rulemaking and is considering placing the chromates on its agenda for future rulemaking. Both the AFL–CIO (Ex. 194) and the UAW (Tr. pp. 7–65 to 7–67) agreed that this would be appropriate.

OSHA preliminarily concludes, based on the evidence presented above, that the current 0.1 mg/m³ TWA PEL in construction and maritime, and the absence of any limit for chromates in agriculture, places exposed workers at significant risk of experiencing the corrosive and irritant effects of chromates. OSHA believes that promulgation of a 0.1 mg/m³ ceiling limit will substantially reduce this risk; therefore, the Agency is proposing to apply this limit in construction, maritime, and agriculture. In addition, promulgation of this limit will make OSHA's PEL for these substances consistent across all regulated sectors.

COAL TAR PITCH VOLATILES

CAS No. 65996–32–2

H.S. No. 2039

In 1967, the ACGIH adopted a TLV® of 0.2 mg/m³ for coal tar pitch volatiles (CTPV), measured as the "benzene-soluble" fraction, and listed certain of the carcinogenic components of CTPV. The TLV® was established to assist employers to minimize employee exposures to these listed carcinogenic substances—anthracene, benzo(a)pyrene (BaP), phenanthracene, acridene, chrysene, and pyrene (ACGIH 1986, p. 143). In 1970, when OSHA adopted the ACGIH limits under the Walsh-Healey Act through the OSH

Act's Section 6(a) mechanism, the TLV® for CTPV became the OSHA PEL. This PEL has been in effect in general industry and in the construction and maritime sectors since that time; however, there is no PEL for CTPV in agriculture. At this time, OSHA is proposing an 8-hour time-weighted average PEL of 0.2 mg/m³ for this substance in agricultural workplaces. Promulgation of this limit will make OSHA's PEL for CTPV consistent across all OSHA-regulated sectors.

The principal industrial sources of coal tar are coke-oven plants. The hot gases and vapors produced during the conversion of coal to coke are collected by means of a scrubber, which condenses the effluent into ammonia, water, crude tar, and other byproducts. Crude tar is separated from the remainder of the condensate for further refining and may undergo further processing.

In a study (Aluminum Association, Inc. 1977) of aluminum industry workers, an increase in lung cancer mortality was found in potroom workers using the horizontal Soderberg process. The presence of relatively high amounts of tarry substances and BaP levels in the air of aluminum reduction plants has also been associated with increased lung cancer mortality. Doll et al. (1972) reported high respiratory cancer mortality in coke-oven workers, and Redmond et al. (1976) found that coke-oven workers employed for 5 years or more had a high risk of dying from lung and kidney cancer; non-oven workers had a high risk of developing cancers of the colon, pancreas, buccal cavity, and pharynx, while byproducts workers had no increased risk of dying from any form of cancer (Doll, Vessey, et al. 1972; Reid and Buck 1956). Based on these epidemiologic studies, OSHA preliminarily concludes that occupational exposure to crude coal tar, coal tar pitch, or mixtures containing these substances can cause lung cancer and possibly cancer at a variety of other sites, such as the colon, pancreas, buccal cavity, and pharynx.

Long-term exposure (1–43 years) to coal tar pitch has been reported to cause malignant tumors on the hands, face, and neck of briquette-factory workers (Robillard and Mouchel 1965). However, these investigators did not specify the source or chemical nature of the pitch to which the workers had been exposed. Skin tumors have been reported in many studies (Lane 1937) that involved many different samples of coal tar pitch, leading to the conclusion that coal tar pitch derived from any source should be considered a potent skin tumorigen.

OSHA's preliminary conclusion that exposure to coal tar causes lung cancer is supported by a wealth of animal data, which is discussed in detail by NIOSH (1977).

OSHA preliminarily concludes, based on the epidemiology studies briefly summarized above and on the available animal data, that the absence of any limit for coal tar pitch volatiles in agriculture places exposed workers in this sector at significant risk of developing cancer. In addition, other adverse health effects (photosensitization, respiratory effects, decreased visual acuity) have also been linked to exposure to this substance. OSHA believes that promulgation of a 0.2 mg/m³ 8-hour TWA PEL will substantially reduce this risk, and the Agency is therefore proposing to apply this limit in agriculture. In addition, promulgation of this limit will make OSHA's PEL for CTPV consistent across all regulated sectors.

1,2-DIBROMO-3-CHLOROPROPANE (DBCP)

CAS: 96–12–8; Chemical Formula: $C_3H_5Br_2Cl$

H.S. No. 2055

In general industry, construction, and maritime, OSHA's permissible exposure limit for 1,2-dibromo-3-chloropropane (DBCP) is 1 ppb (0.001 ppm) as an 8-hour TWA; this limit also has skin notation, which indicates that percutaneous absorption is a significant route of exposure for DBCP. There is no limit in agriculture. NIOSH has a REL for DBCP of 10 ppb as a 10-hour TWA. OSHA is proposing an 8-hour TWA PEL of 1 ppb (0.001 ppm), and a skin notation, for DBCP in agriculture. Promulgation of this limit will make the PEL for DBCP consistent across all OSHA-regulated sectors.

DBCP, a halogenated hydrocarbon, is produced primarily by the bromination of allyl chloride at room temperature, usually in a vigorous reaction that requires cooling. DBCP is a dense yellow or amber liquid with a pungent odor at high temperatures. It has a low vapor pressure (0.8 mm Hg at 20°C) and is slightly soluble in water (1,000 ppm).

DBCP has been used as an agricultural nematocide since 1955. DBCP is produced in the United States by Dow Chemical Company and Shell Oil company. Mexico, Japan, and Israel also manufacture DBCP and export DBCP to this country. About 12 million pounds of DBCP were consumed in 1972. Following manufacture, DBCP is shipped to formulators who reprocess the chemical into products for consumer emulsifiable concentrates, liquid concentrates, powder, granules, and solid material. Formulating granular DBCP involves spraying liquid DBCP onto inert granules. The formulation of liquid and emulsified DBCP products usually involves the blending of technical grade DBCP with an emulsifier or solvent. The formulators may also distribute the technical grade product.

The complete distribution chain generally includes the manufacture of technical grade DBCP, transportation to the formulator, formulation of DBCP-containing pesticides, distribution of DBCP-containing pesticides, and the agricultural consumption of DBCP pesticides. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

OSHA has concluded from the evidence in the record (March 17, 1978 final rule on DBCP) that DBCP presents a hazard of cancer and sterility to exposed workers. The results of well-designed animal studies indicate DBCP to be a potent carcinogen in two sexes of two mammalian species at two dose levels. Furthermore, DBCP has been found to cause positive results in microbial assays designed to detect chemicals capable of mutagenesis. This evidence, which was not seriously challenged by any of the participants in the Agency's 1978 proceeding, leads to the conclusion that DBCP must be regulated as a human carcinogen.

Animal studies have also demonstrated that oral doses of DBCP induce degeneration of testicular tissue, accompanied by a reduction of sperm count and abnormal sperm cell development. These testicular effects were confirmed in humans with the discovery of sterility and infertility in a large number of male employees exposed to low levels of DBCP in the manufacture and formulation of pesticides. This evidence was also uncontroverted by hearing participants in the earlier 6(b) rulemaking.

Accordingly, OSHA has concluded that the proven carcinogenic and sterilant potential of DBCP warrants limiting exposure to the lowest level feasible. OSHA has therefore established an eight-hour time-weighted average permissible exposure limit of 1 part per billion (ppb) for this substance. OSHA has concluded, based on evidence presented in the record, that this limit represents the lowest exposure level achievable using present technology.

Based on this evidence, OSHA concluded in 1978 that exposure to DBCP causes cancer and sterility in humans and animals. OSHA therefore

believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limit of 1 ppb (0.001 ppm) as an 8-hour TWA, and a skin notation, is necessary to significantly reduce these risks of material health impairment among these workers. Promulgation of this limit will make the PEL for this substance consistent across all OSHA-regulated sectors.

DIMETHYL SULFATE

CAS: 77–78–1; Chemical Formula: $(CH_3)_2SO_4$

H.S. No. 1142

OSHA's limit for dimethyl sulfate in the construction and maritime industries is 1 ppm as an 8-hour TWA, with a skin notation. The Agency has no PEL for this substance in agriculture. The ACGIH considers dimethyl sulfate a suspected human carcinogen and has given it an A2 classification. The ACGIH's TLV®–TWA for this substance is 0.1 ppm, with a skin notation. There is no REL for dimethyl sulfate; however, NIOSH (Ex. 8–47, Table N6A) concurred with the selection of this limit. OSHA is proposing a PEL of 0.1 ppm, with a skin notation, as an 8-hour TWA for dimethyl sulfate in the construction, agriculture, and maritime industries. This is the limit recently established in general industry.

Dimethyl sulfate is an oily, colorless liquid with a faint onion-like odor. It is commonly used as a methylating agent in the manufacture of many organic chemicals (ACGIH 1986, p. 212).

In addition to cancer, exposure to dimethyl sulfate causes severe irritation and burns of the eyes, skin, mucous membranes, and lungs in animals and humans. The oral LD_{50} in rats is 205 mg/kg, and the LC_{50} in the same species is 45 mg/m³ for 4 hours RTECS 1990). Mice, rats, and guinea pigs exposed to a 75 ppm concentration of dimethyl sulfate for 17- to 26-minute periods developed pulmonary edema, emphysema, and peribronchitis; autopsy revealed necrosis and fatty infiltration of the liver in these animals (HSDB 1985). Instilled into rabbit eyes and rinsed out almost immediately, dimethyl sulfate nonetheless caused severe irritation; skin contact with the liquid is also severely damaging (RTECS 1990).

Several human fatalities have resulted from industrial accidents involving this substance (Fairhall 1957). Death is caused in these cases by circulatory failure and follows a lengthy interval in which the victim experiences difficult breathing, vomiting, diarrhea, dysuria, and edema of the larynx (Bartalini et al. 1957, Nebelung 1957, Roche et al. 1962). In near-lethal cases, residual effects may persist for years after the incident.

If dimethyl sulfate is splashed into the eye, it causes both acid-type burns and severe, delayed-onset denaturation and necrosis (Grant 1986, p. 350). Contact of the liquid with the skin similarly causes severe necrosis and blistering (HSDB 1985). Dimethyl sulfate is such a severely corrosive substance that it was used as a poison gas during World War I.

The following paragraphs describe dimethyl sulfate's carcinogenicity in animals. The carcinogenic activity of dimethyl sulfate was investigated in male rats chronically exposed to subcutaneous injections of 8 or 16 mg/kg per week (Druckrey, Preussman, Nashed, and Ivanovic 1966/Ex. 1–245). Local sarcomas with metastases to the lung and regional lymph nodes were observed at both dose levels. A single subcutaneous injection of dimethyl sulfate (50 mg/kg) also produced local sarcomas with metastases to the lung (Druckrey, Kruse, Preussman et al. 1970/Ex. 1–246). However, tumors did not develop following chronic weekly intravenous injections of dimethyl sulfate (2 or 4 mg/kg) (Druckrey, Kruse, Preussman et al. 1970/Ex. 1–246). Control data were not reported for either of these studies.

The carcinogenic potential of dimethyl sulfate exposure by inhalation was also evaluated in a bioassay involving male rats (Druckrey, Kruse, Preussman et al. 1970/Ex. 1–246). Animals were exposed to approximately 3 or 10 ppm dimethyl sulfate for 1 hour per day, five times weekly, for 130 days. Malignant tumors developed in 15 percent (3/20) of the rats exposed at 3 ppm and in 18 percent (5/27) of the rats exposed at 10 ppm.

Pregnant rats were exposed to a single intravenous injection of dimethyl sulfate (20 mg/kg body weight) on day 15 of gestation, and the incidence of malignant tumors in the offspring was investigated in litters produced for one year following this exposure; tumors were reported in 7/59 of the offspring. The results of this study are difficult to interpret because several rats in the study died (number of deaths not specified) from the acute toxic effects of dimethyl sulfate, and the incidence of tumors in the control group was not reported.

There is little information available regarding the carcinogenicity of dimethyl sulfate in humans. A case study of workers exposed to dimethyl sulfate reported that three of these workers developed bronchial cancer (Druckrey, Preussman, Nashed, and Ivanovic 1966/Ex. 1–245). However, an epidemiological study by the E.I. du Pont de Nemours Company (1975, as cited in ACGIH 1986/Ex. 1–3, p. 213) demonstrated no increase in the incidence of respiratory cancer among workers exposed to dimethyl sulfate.

In the prior air contaminants rulemaking, OSHA considered the possibility of performing a quantitative risk assessment for dimethyl sulfate and concluded that the studies described above did not have sufficient dose-response data to provide an adequate basis for such a risk assessment (Ex. 85). Dimethyl sulfate induces malignant tumors in animals both by inhalation and ingestion, and there is thus sufficient evidence in animals to predict that workers exposed to dimethyl sulfate are at significant risk of developing cancer; exposures at levels only three times the current PEL (1 ppm) resulted in a significant number of tumors. OSHA also notes that the International Agency for Research on Cancer concluded, on the basis of the evidence described above, that dimethyl sulfate should be considered a carcinogen in animals (IARC 1987, p. 200). Accordingly, OSHA preliminarily concludes that the proposed 0.1-ppm 8-hour TWA PEL, with a skin notation, will substantially reduce the significant risk of cancer mortality associated with exposure to dimethyl sulfate in the construction, agriculture, and maritime industries. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

ETHYLENE OXIDE

CAS: 75–21–8; Chemical Formula: C_2H_4O

H.S. No. 2083

In general industry, construction, and maritime, OSHA's permissible exposure limit for ethylene oxide (EtO) is 1 ppm as an 8-hour TWA and 5 ppm as a 15-minute excursion limit. There is no limit in agriculture. The ACGIH designates EtO as an A2 carcinogen and assigns it an 8-hour TLV®–TWA of 1 ppm. NIOSH considers this substance a potential occupational carcinogen and has a REL of less than 0.1 ppm as an 8-hour TWA and 5 ppm as a 10-minute ceiling. OSHA is proposing an 8-hour TWA of 1 ppm and a 15-minute excursion limit of 5 ppm for EtO in agriculture. Promulgation of these limits will make the PELs for ethylene oxide consistent across all OSHA-regulated sectors.

Ethylene oxide (EtO), also known as 1,2-epoxyethane, oxirane, and dimethylene oxide, is a colorless gas with a characteristic ether-like odor. Although several processes exist for the production of EtO, all United States producers currently manufacture EtO

through the catalytic oxidation of ethylene in the presence of a silver catalyst. EtO is completely miscible with water, alcohol, acetone, benzene, ether, carbon tetrachloride and most organic solvents. It is also highly reactive. In order to reduce explosion hazards when EtO is used as a fumigant or sterilant, it is often used in gaseous mixtures (such as 10% EtO and 90% CO_2 or 12% EtO and 88% halocarbon). Since its first domestic production in 1925, EtO has become a major industrial chemical and is presently one of the 25 highest production volume chemicals in the United States. During the period from 1967 to 1978, for example, the average rate of growth in the EtO industry was 6.7 percent. In 1990, over 5.2 billion pounds of EtO were produced domestically.

The primary use of EtO is as an intermediate in the manufacture of other products. Over 99% of total EtO production is used in the manufacture of other products, and almost 90% is consumed by the EtO manufacturers themselves. On a volume basis, the largest use of EtO is as an intermediate in the production of ethylene glycol, a major component of automotive and other anti-freeze products. Approximately 70 percent of all domestically produced EtO goes into the manufacture of ethylene glycol.

EtO is also widely employed in the production of non-ionic surface-active agents which are used in household detergents and as industrial sufactants. Other products manufactured from EtO include: (1) Ethanolamine, used in sweetening natural gas and in the production of specialty chemicals, detergents and cosmetics; (2) glycol ethers, utilized as a jet fuel additive and in the formulation of coatings, cleaners, automotive brake fluids and inks; (3) diethylene and triethylene glycol, used in drying natural gas and in the manufacture of polyester resins, emulsifiers, lubricants and plasticizer; (4) tetraethylene glycol, utilized to extract aromatic hydrocarbons from nonaromatic hydrocarbons; (5) polyethylene glycol, from which cosmetics, plasticizer, lubricants and dispersants are produced; (6) polyethylene glycol, used for water soluble packaging and for warp sizing, and (7) crown ethers, used for extraction of liquids.

A small fraction of EtO production (less than 0.5 percent) is consumed by sterilant or fumigant users. EtO is utilized as a sterilizing agent by various facets of the health care industry for the sterilization of delicate instruments and heat- or moisture-sensitive devices, and is employed as a fumigant for a number of miscellaneous items, such as spices, black walnut meats, books, furniture, textiles, empty bin equipment, empty cargo holds, cosmetics, and dairy packaging. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

OSHA has found that EtO can cause several serious adverse health effects. Studies in experimental animals supported by epidemiological studies of working populations indicate that EtO is a potential occupational carcinogen. The evidence suggests that EtO may cause cancers of the blood (leukemia), as well as other organs in humans. In addition, EtO exposure cause mutations, increases the rate of chromosomal aberration and sister chromatid exchange, and causes other undesirable changes in the DNA of mammalian cells. These effects support OSHA's conclusion regarding the carcinogenicity of EtO. EtO exposure has also been associated with an increased risk of spontaneous abortion among pregnant women and is capable of causing other adverse reproductive effects in both men and women. Exposure to high concentrations of EtO causes central nervous system depression and other neurological effects that are thought to be reversible with cessation of exposure. In addition, exposure to EtO gas causes sensitization and irritation of human tissues, including the eyes and respiratory tract.

Three epidemiological studies indicate an association between worker exposure to EtO and a significant increase in the risk of death from cancer. Hogstedt et al. (Ex. 208) found an increased risk of death from leukemia among employees exposed to EtO when this substance was used as a sterilant. In a second study, these investigators confirmed an increased leukemia risk and also observed a significant excess of stomach cancer deaths and total cancer deaths among production workers (Ex. 2–22). Morgan et al. (Ex. 6–5) found an increased risk of mortality from Hodgkin's disease and pancreatic cancer among EtO production workers.

Studies in experimental animals have provided definitive evidence that EtO is carcinogenic in multiple species and by several routes of administration. Leukemia, brain cancer, and mesothelioma have been induced in animals exposed to EtO by inhalation. Cancers of the forestomach have been induced as a result of EtO administration by oral gavage. Injection site sarcomas and skin cancers have been observed in animals exposed to EtO by injection.

Additional evidence regarding the adverse health effects of EtO on both humans and animals was presented in the preamble to OSHA's Final Rule on Occupational Exposure to Ethylene Oxide (FR June 22, 1984).

In the absence of a limit for EtO in agriculture, OSHA preliminarily concludes that exposed workers are at significant risk of developing leukemia and other cancers, as well as neurologic effects. OSHA believes that promulgation of the 1 ppm 8-hour TWA PEL and the 5 ppm 15-minute excursion limit is necessary to reduce this risk. Therefore, OSHA is proposing to apply these limits to agriculture. In addition, promulgation of these limits will make OSHA's PELs for EtO consistent across all regulated sectors.

FORMALDEHYDE

CAS: 30–00–0; Chemical Formula: CH_2O

H.S. No. 2085

In general industry, construction, and maritime, OSHA's permissible exposure limits for formaldehyde are 1 ppm as an 8-hour TWA and 2 ppm as a 15-minute STEL. There is no limit in agriculture. The ACGIH designates this substance an A2 carcinogen and assigns it an 8-hour TLV®–TWA of 1 ppm and a 15-minute STEL of 2 ppm. NIOSH considers formaldehyde a potential occupational carcinogen and has a REL for formaldehyde of 0.016 ppm as an 8-hour TWA and 0.1ppm as a 15-minute ceiling. OSHA is proposing a PEL of 1 ppm as an 8-hour TWA and 2 ppm as a 15-minute STEL for formaldehyde in agriculture. Promulgation of these limits will make the PELs for formaldehyde consistent across all OSHA-regulated sectors.

The chemical called "formaldehyde" is a colorless, pungent gas at room temperature that has an approximate odor threshold of about 1 ppm. The simplest member of the aldehyde class of chemicals, formaldehyde has a molecular weight of 30. Although the term "formaldehyde" is also used to describe various mixtures of formaldehyde, water, and alcohol, the term "formalin" more precisely describes aqueous solutions, particularly those containing 37 to 50 percent formaldehyde and 6 to 15 percent alcohol stabilizer. Most formaldehyde enters commerce as formalin. Alcoholic solutions of formaldehyde are available for processes that require low water content (Ex. 753–53). Para-formaldehyde, a solid, also serves as a source of formaldehyde

gas. Formaldehyde gas, per se, is not available commercially.

Formaldehyde is a major industrial chemical, ranked 24th in production volume in the United States (Ex. 138–F). In 1985, 5.7 billion pounds of 37 percent formaldehyde (by weight) was produced. Formaldehyde is produced in 49 plants in the U.S. by one of two processes: the mixed oxide catalyst process or the silver oxide catalyst process. Both processes use methanol as the product precursor and they differ in catalyst type, operating temperature, and methanol/air ratios.

About two-thirds of annual production is used on-site or at nearby locations. For example, a major use of formaldehyde is in the preparation of adhesive resins for use in the wood products industry. These resin-producing facilities tend to be located in lumber producing areas of the South and West.

Formaldehyde has a high degree of chemical reactivity because of its unique chemical structure, i.e., a carbonyl group attached to hydrogen atoms. As a result it undergoes a wide variety of chemical reactions in three distinct classes: oxidation-reduction reactions, addition or condensation reactions, and self-polymerization.

Formaldehyde has four basic uses: as an intermediate in the production of resins; as an intermediate in the production of industrial chemicals; as a bactericide or fungicide; and as a component in the formulation of end-use consumer items. The manufacture of three types of resins: Urea-formaldehyde, phenol-formaldehyde and melamine formaldehyde, accounts for about 59 percent of total consumption. An additional seven percent is consumed in the production of thermoplastic acetal resins. About one-third is used in the synthesis of high-volume chemical derivatives, including pentaerythritol, hexamethylenetetramine, and butane. Two percent is used in textile treating and amounts of formaldehyde are present as preservatives or bactericides in consumer and industrial products, such as cosmetics, shampoos, and glues. When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Workers have developed various health effects from inhalation of airborne formaldehyde and from dermal contact with formaldehyde solutions or products containing formaldehyde. At airborne concentrations as low as 0.1 ppm, formaldehyde causes irritation of the eyes, nose, and throat. As airborne concentrations increase, the severity of the irritation increases, and irritation spreads from the nasal passages and throat into the lower respiratory system. Very severe conditions, e.g., exposures above 50 ppm, have caused severe lacrimation (tearing of the eyes) and pulmonary reactions, including pneumonia, bronchial inflammation, and pulmonary edema. Massive inhalation of formaldehyde has caused accidental death in humans. A concentration of 100 ppm is "immediately dangerous to life and health" (IDLH) and is believed to be a potentially fatal level if exposure continues for 30 minutes or more.

Long-term inhalation of formaldehyde gas is associated with nasal cancer in experimental animals. Some studies in humans exposed to formaldehyde have demonstrated increased nasal and nasophrygeal cancer. Thus, formaldehyde should be regarded as an occupational carcinogen.

Skin irritation is a well-known consequence of dermal contact with formaldehyde. Formaldehyde reacts with skin, resulting in a response not unlike the effects seen in the tanning of leather. Employees such as pathologists or undertakers, who handle embalming fluids or other concentrated solutions of formalin, frequently show evidence of skin disease. Dermal contact with formaldehyde-bearing resins has also caused skin disorders (see the NIOSH Health Hazard Evaluations, in Exs.78 and 85, for example).

Dermal sensitization to formaldehyde is a well-known phenomenon. Among atopic individuals seeking assistance at allergy clinics, formaldehyde is among the top 10 sensitizers found in patch testing results. A person sensitized to formaldehyde would have serious difficulties working in industries, such as garment manufacturing or textile finishing, where there is repeated dermal contact with sensitizing materials. Sensitization is not readily reversed, which means that a worker who is sensitized may be unable to continue his or her line of work.

OSHA estimated in the 6(b) rulemaking for formaldehyde that the maximum likelihood estimate (MLE) cancer risk for employees exposed for a lifetime to formaldehyde is 0.6 deaths per 1,000 workers at 1 ppm. This risk estimate and estimates of this risk at other levels were based on the rat study conducted by the CIIT. Information regarding the risk assessment and the health effects of formaldehyde is extensive, and was discussed at length in the preamble to OSHA's Final Rule on Occupational Exposure to Formaldehyde (F.R. publication, December 4, 1987). References cited in this discussion can be found in that preamble.

Based on this evidence in humans and animals, OSHA concluded in that rule that exposure to formaldehyde causes cancer sensitization, respiratory tract irritation, and other systemic effects in humans and animals. OSHA therefore believes that; in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limits of 1 ppm as an 8-hour TWA and 2 ppm as a 15-minute STEL are necessary to significantly reduce these risks of material health impairment among these workers. Promulgation of these limits will also make the PELs for formaldehyde consistent across all OSHA-regulated sectors.

2–NITROPROPANE

CAS: 79–46–9; Chemical Formula: $CH_3CH(NO_2)CH_3$

H.S. No. 1291

OSHA's limit for 2-nitropropane (2–NP) in the construction and maritime industries is 25 ppm as an 8-hour TWA. The Agency has no PEL for this substance in agriculture. The ACGIH classifies 2-nitropropane as a suspected human carcinogen (A2) and has assigned it a TLV®–TWA of 10 ppm. NIOSH considers 2-nitropropane a potential human carcinogen and recommends that exposure be reduced to the lowest feasible limit. OSHA is proposing a 10 ppm 8-hour TWA PEL for 2-nitropropane in the construction, agriculture, and maritime industries. This is the limit recently established for this substance in general industry.

2-Nitropropane is a colorless liquid. It is used as a chemical intermediate, a solvent, and a component in paint, ink, and varnishes (Fiala, Czenniak, Castonguay et al. 1987/Ex. 1–248).

In addition to cancer, exposure to 2–NP causes pulmonary irritation and, in animals, liver damage. The oral LD_{50} in rats is 720 mg/kg, and the LC_{50} in the same species is 400 ppm for 4 hours (RTECS 1990). Acutely poisoned animals developed cyanosis, convulsed, and became comatose before death (Clayton and Clayton 1982, p. 4159). Pulmonary edema and hemorrhage and damage to the liver were seen in these animals at autopsy (Clayton and Clayton 1982, p. 4159). Cats, rabbits, guinea pigs, and monkeys were exposed to 83 or 328 ppm for 7 hours/day; cats succumbed after a few days of such exposure, but the other animals survived 130 (guinea pigs, rats, and rabbits) or 100 (monkeys) of these exposures (Clayton and Clayton 1982, p. 4159).

Acute effects have been reported in workers exposed either to 2–NP alone or in combination with other substances. A concentration of 20 to 45 ppm xylene and 2–NP caused gastrointestinal symptoms, headache, and anorexia in exposed workers (Skinner 1947). Irritation of the respiratory tract was reported by workers exposed to 2–NP at concentrations ranging from 30 to 300 ppm (AIHA 1978). The following paragraphs describe the carcinogenicity of 2-nitropropane in experimental animals.

The mechanisms of carcinogenicity of 2–NP are thought to involve the release of nitrite and the formation of a reactive azoxy intermediate that can react with cellular macromolecules (Williams and Weisburger 1986/Ex. 1–65). In mutagenicity tests, 2–NP increased the frequency of mutations in all strains of *Salmonella typhimurium* with and without metabolic activation. Positive mutagenicity results were reported in *Salmonella typhimurium* strains TA100, TA1535, and TA98 by Lofroth, Nilsson, and Anderson (1981) and by Speck, Meyer, Zeiger, and Rosenkranz (1982/Ex. 1–290).

The available epidemiology data on the chronic health effects of occupational exposure to 2–NP do not contain sufficient dose-response data to use as a basis for quantitative risk estimation. An unpublished retrospective mortality study of 1,481 potentially exposed workers from a nitropropane production plant found no increase in liver cancer or liver disease mortality. However, lack of exposure data, the small number of workers with long exposures (greater than 15 years), and a short latency period make interpretation of the results of this study difficult (Miller and Temple 1979; Bolender 1983).

There are two studies that report high incidences of liver tumors in male rats exposed to 2–NP by gavage and inhalation. Fiala et al. (1987/Ex. 1–248) administered, by gavage, 1mmol/kg body weight (approximately 27 mg per treatment per 300-gram rat) of 2–NP in a 10-percent aqueous Emulphor EL–620 vehicle to male Sprague-Dawley rats three times weekly for 16 weeks. Dosing was discontinued after 16 weeks because of excessive mortality in the treated rats. Seventy-seven weeks from the first treatment, the surviving rats were sacrificed and subjected to necropsy. All (100 percent) of the treated rats examined had developed hepatocarcinomas (Fiala, Czenniak, Castonguay et al. 1987/Ex. 1–248).

The results of the Fiala et al. (1987/Ex. 1–248) study support the earlier positive results reported by Lewis, Ulrich, and Busey (1979/Ex. 1–826). In the Lewis et al. (1979/Ex. 1–826) study, male Sprague-Dawley rats and male New Zealand White rabbits were exposed via inhalation to 27 ppm or 207 ppm of 2–NP for 7 hours/day, 5 days/week for 6 months. At the end of 6 months, all 10 rats in the high-dose group exhibited hepatocellular carcinomas and neoplastic nodules. No exposure-related lesions were seen in the rats exposed to 27 ppm, and no exposure-related lesions were observed in any of the rabbits.

One high-dose and two low-dose studies reported negative results for rats exposed to 2–NP vapors. Griffin, Benitz, Coulston, and Rosenblum (1978/Ex. 1–243) reported no hepatic carcinomas in male and female rats exposed to 200 ppm of 2–NP by inhalation using a protocol similar to that described by Lewis et al. (1979/Ex. 1–826). Although no hepatic carcinomas were observed, the following effects (generally occurring more extensively in males) were seen: Increased liver weights (both sexes); hepatic nodules; hepatocellular necrosis; and peripheral compression.

Two low-dose studies (Griffin, Coulston, and Stein 1980/Ex. 1–268; Griffin, Stein, and Coulston 1981/Ex. 1–279) also produced negative results. Male and female Sprague-Dawley rats were exposed by inhalation to 25 ppm of 2–NP for seven hours/day, five days/week for 22 months. No pathological changes associated with exposure to 2–NP were seen.

Although the results of both the Lewis et al. (1979/Ex. 1–826) and the Fiala et al. (1987/Ex. 1–248) studies show statistically significant increases in liver carcinomas, neither study provides sufficient dose-response information to use as a basis to quantify the excess cancer risk to humans exposed to 2–NP. Both studies were terminated before the natural lifetime expectancy of the controls, so it is not possible to determine a background incidence of cancer risk. No historical information is provided on tumor incidence for these animals.

2-Nitropropane produced a high incidence of liver tumors in male rats by two routes of administration: inhalation and ingestion. Its ability to cause mutations in *Salmonella typhimurium* further supports the premise that 2–NP is a potential human carcinogen. In the prior rulemaking, OSHA considered whether to perform a quantitative risk assessment on 2–NP and concluded that the studies described above do not contain sufficient dose-response data to use as the basis for quantitative risk estimation using standardized risk assessment models. However, two studies (Fiala, Czenniak, Castonguay et al. 1987/Ex. 1–248; Lewis, Ulrich, and Busey 1979/Ex. 1–826) demonstrate that exposure to 2–NP, either by gavage or inhalation, produced hepatocarcinomas in rats. In addition, this substance produced positive results in two mutagenic assays (Lofroth, Nilsson, and Andersson 1981; Speck, Meyer, Zeiger, and Rosenkranz 1982/Ex. 1–290).

Based on this evidence, OSHA is proposing an 8-hour TWA PEL for 2–NP of 10 ppm in the construction, agriculture, and maritime industries. The Agency preliminarily concludes that a reduction in the PEL is necessary to protect exposed workers in these sectors from the significant risk of cancer potentially associated with exposure to 2–NP at the former PEL. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

PERCHLOROETHYLENE (TETRACHLOROETHYLENE)

CAS: 127–18–4; Chemical Formula: $CCl_2{=}CCl_2$

H.S. No. 1308

OSHA's permissible exposure limit for perchloroethylene (tetrachloroethylene) in the construction and maritime industries is 100 ppm as an 8-hour TWA. The Agency has no PEL in agriculture for this substance. The ACGIH TLV®s are 50 ppm as a TWA and 200 ppm as a STEL. NIOSH considers perchloroethylene a potential human carcinogen and recommends minimizing workplace exposure concentrations to the lowest levels feasible. After reviewing extensive comments in the rulemaking for general industry, OSHA concluded that perchloroethylene is a potential human carcinogen and established a 25 ppm PEL as the lowest level for which the Agency had evidence of feasibility. OSHA is proposing this PEL of 25 ppm as an 8-hour TWA for perchloroethylene in the construction, agriculture, and maritime industries. This is the limit recently established in general industry.

Perchloroethylene is a clear, colorless, nonflammable liquid with an ethereal odor. It is widely used as a solvent in the dry cleaning industry and in industrial degreasing operations.

The oral LD_{50}s of perchloroethylene in rats and mice are 8850 and 8100 mg/kg, respectively. The narcotic effects associated with acute exposure to perchloroethylene are well documented. Four human subjects exposed to a 5000-ppm concentration for 8 minutes experienced vertigo, nausea, and mental confusion for 10 minutes. Mild central nervous system depression results from exposure to 2000 ppm for 5 minutes, and

exposure to 600 ppm for 10 minutes is associated with dizziness, numbness around the mouth, and incoordination. Exposure to 100 ppm for 7 hours has resulted in mild irritation of the nasal passages, eyes, and throat; headache; facial flushing; and slurred speech (Proctor, Hughes, and Fischman, 1988, pp. 399–400). The most comprehensive studies of the effects of prolonged exposure to perchloroethylene vapors on human volunteers were conducted by Stewart and colleagues (Stewart, Hake, LeBrun et al. 1974/Ex. 1–970; Stewart, Hake, Wu et al. 1977/Ex. 1–971); these investigators concluded that prolonged exposure to 200 ppm results in early signs of CNS depression, while no response was elicited in men or women exposed repeatedly to 100 ppm for seven hours/day, except that performance on the Flanagan coordination test was significantly decreased in some exposed subjects (Stewart, Hake, Wu et al. 1977/Ex. 1–971, p. 28).

Chronic exposure to perchloroethylene has been associated with neurological abnormalities, including impaired memory, numbness of the extremities, peripheral neuropathy, and impaired vision. Twenty-one of 40 dry-cleaning workers exposed to perchloroethylene concentrations up to 300 ppm showed abnormalities of the autonomic nervous system. Twenty dry-cleaning workers exposed for an average of 7.5 years to concentrations ranging from 1 to 40 ppm had altered electrodiagnostic and neural rating scores (Proctor, Hughes, and Fischman, 1988, pp. 399–400). In addition to examining the evidence for the chemical's narcotic effects, OSHA reviewed a number of studies on the carcinogenicity of perchloroethylene. These investigations are summarized below.

In a 1977 gavage bioassay for carcinogenicity, perchloroethylene was shown to be a liver carcinogen in mice but not in rats (NCI 1977c, as cited in ACGIH 1986/Ex. 1–3, p. 464). In 1986, the NTP conducted an inhalation bioassay of perchloroethylene (NTP 1986b/Ex. 8–31, Appendix 4), in which groups of 50 male and 50 female F344/N rats and B6C3F1 mice were exposed to perchloroethylene for 6 hours/day, 5 days/week, for 2 years. The exposure concentrations were 0, 200, or 400 ppm for rats and 0, 100, or 200 ppm for mice. Male and female rats exposed to either 200 or 400 ppm developed statistically significant increases in mononuclear cell leukemias. According to the NTP report (NTP 1986b/Ex. 8–31, Appendix 4), the increased incidences of leukemias were responsible for the early deaths observed in male and female rats exposed to perchloroethylene. At autopsy, most of the leukemias were determined to be in an advanced and probably fatal stage. Because of the effect of the leukemias on the early mortality of the exposed rats, a life-table analysis was used to test for the statistical significance of the findings; this analysis revealed that the increased incidence of leukemia was statistically significant in both low- and high-dose male rats and in low-dose female rats, and was marginally significant ($p = 0.053$) in high-dose female rats.

Male rats also developed a significant increase in renal tubular cell adenomas and carcinomas. Perchloroethylene induced a significantly increased incidence of hepatocellular carcinomas at both dose levels in mice of both sexes. The NTP Peer Review Panel concluded that there was "clear evidence of carcinogenicity of tetrachloroethylene" (perchloroethylene) in male rats and in male and female mice, and "some evidence" in female rats (Ex. 8–31, Appendix 4).

In addition, a number of human studies were submitted to the general industry rulemaking record that implicate perchloroethylene as a potential carcinogen (Ex. 8–31). Among these was a study by Brown and Kaplan (1987/Ex. 8–31, Appendix 6), which reported a statistically significant elevation in urinary tract cancer deaths among 1,690 dry cleaning workers exposed to perchloroethylene and other petroleum solvents. However, a subcohort of workers who used perchloroethylene as the primary solvent showed no increase in bladder cancer mortality. Brown and Kaplan concluded that "confounding exposure to petroleum solvents complicates any conclusions regarding the association between * * * [perchloroethylene] and cancer of the urinary tract" (Brown and Kaplan 1987/Ex. 8–31, Appendix 6, p. 540).

Katz and Jowett (1981/Ex. 8–31, Appendix 9) studied the mortality pattern of 671 female dry cleaning workers for the period 1963 through 1977. Elevated incidences of cancers of the kidney and genitals were reported, along with a smaller excess of bladder and skin cancers and lymphosarcomas. The authors concluded that, although results obtained with the methodology used (proportionate mortality ratios) require careful interpretation, "this study raises the possibility that exposure to dry cleaning fluids may increase the risk of certain cancers" (Katz and Jowett 1981/Ex. 8–31, Appendix 9, p. 510). The dry cleaning fluids used by members of the cohort included carbon tetrachloride, trichloroethylene, and perchloroethylene.

Steinhagen et al. (1983/Ex. 8–31, Appendix 8) reported a significant excess of liver cancer among male workers in the laundry and dry cleaning industry in New Jersey. This study was a retrospective case-control study. The liver cancer cases were concentrated among individuals who processed clothes and were exposed to chemicals. The report did not identify the solvents in use (Steinhagen, Slade, Altman, and Bill 1983/Ex. 8–31, Appendix 8).

Duh and Asal (1984/Ex. 8–31, Appendix 7) examined the mortality experience of 440 dry cleaning workers in Oklahoma for the period 1975 through 1981. Elevated standardized mortality odds ratios (SMORs) were found for both lung cancer (SMOR=1.7) and kidney cancer (SMOR=3.8) (Duh and Asal 1984/Ex. 8–31, Appendix 7).

During the general industry rulemaking, the Amalgamated Clothing and Textile Workers Union (ACTWU) submitted a quantitative risk assessment conducted by Dale Hattis of the Center for Technology Policy and Industrial Development at the Massachusetts Institute of Technology (Hattis 1986/Ex. 8–31, Appendix 11–A). This work was conducted in 1986 for the National Institute for Environmental Health Sciences. Hattis used a pharmacokinetic model that incorporated species-specific rates of formation for the metabolites of perchloroethylene. Using the rat leukemia and mouse liver tumor data from the NTP (1986b/Ex. 8–31, Appendix 4) bioassay, Hattis obtained a "best estimate" of the lifetime cancer risk (for workers exposed at the former 100-ppm OSHA limit for 45 years to perchloroethylene) of 45 deaths per 1,000 workers. The best-estimate lifetime risks associated with 45 years of exposure to 50 and 10 ppm of perchloroethylene were 27 and 6.4 deaths per 1,000 workers, respectively.

In its posthearing comments to the general industry rulemaking record, the Halogenated Solvents Industry Alliance (HSIA) (Ex. 186) discussed several aspects of the available data to support its contention that perchloroethylene should not be considered a probable human carcinogen. Specifically, the HSIA raised questions concerning the interpretation of epidemiologic data and the NCI gavage and inhalation studies. OSHA addressed each of these points in the preamble to the final general industry rule (54 FR 2686–2689) and concluded that the evidence for the

carcinogenicity of perchloroethylene "is convincing." Based predominantly on the animal data, NIOSH has also concluded that perchloroethylene is a potential human carcinogen; NIOSH judged the evidence for perchloroethylene's carcinogenicity sufficient to warrant a separate 6(b) rulemaking (Ex. 8–47, Table N6B). In 1987, the International Agency for Research on Cancer (IARC) also classified perchloroethylene as a Category 2B carcinogen (i.e., a substance for which the evidence in animals is sufficient). The EPA's SAB has determined that perchloro-ethylene is a Category C carcinogen (i.e., a possible human carcinogen, and a carcinogen in animals). In addition, a number of human studies suggest elevated cancer risks, particularly of the kidney and bladder, among workers exposed to perchloroethylene and other solvents in dry cleaning facilities.

Based on a review of all of the available evidence on perchloroethylene, including the testimony and briefs submitted by the parties during the rulemaking for general industry, OSHA concluded that perchloroethylene is a potential human carcinogen that presents a significant risk of material health impairment to workers exposed to it in their places of work. The Agency consequently set 25 ppm as the lowest limit for which there was evidence for feasibility. That standard is now in effect for general industry. The IFI and HSIA have challenged the 25 ppm PEL in court as being too low, and the AFL–CIO has challenged on the grounds that it is too high. The matter is now pending before the Eleventh Circuit Court of Appeals.

The risk assessment conducted by Hattis (1986/Ex. 8–31, Appendix 11–A) estimates that there is an excess lifetime cancer mortality risk of 45 deaths per 1,000 workers exposed for 45 years to the current 100-ppm TWA PEL. At the level of 50 ppm, Dr. Hattis estimated the excess lifetime risk to be 27 deaths per 1,000 workers. OSHA preliminarily concludes that this assessment and the underlying evidence indicate that a further reduction in the PEL is necessary. In the general industry rulemaking OSHA concluded that 25 ppm was the lowest level demonstrated by the available evidence to be feasible.

OSHA is proposing an 8-hour TWA PEL of 25 ppm for perchloroethylene in the construction, agriculture, and maritime industries. OSHA preliminarily concludes that this PEL will substantially reduce the significant risk of material impairment of health presented by exposure to this substance. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

o-TOLUIDINE

CAS: 95–53–4; Chemical Formula: $CH_3C_6H_4NH_2$

H.S. No. 1399

OSHA's 8-hour TWA limit for o-toluidine in general industry and in the construction and maritime industries is 5 ppm. The Agency has no PEL in agriculture for this substance. The ACGIH identifies o-toluidine as a suspected human carcinogen (A2) and has assigned it a TLV®–TWA of 2 ppm, with a skin notation. NIOSH has no REL for o-toluidine but concurs (Ex. 8–47, Table N6A) with the limit being proposed. The International Agency for Research on Cancer (IARC 1982b, as cited in ACGIH 1986/Ex. 1–3, p. 586) classifies o-toluidine as a probable carcinogen (category 2A) based on sufficient evidence of its carcinogenicity in rats and mice following oral administration (IARC 1982b, as cited in ACGIH 1986/Ex. 1–3, p. 586). IARC judged the evidence inadequate to establish o-toluidine's carcinogenicity in humans. The Agency is proposing that its current PEL of 5 ppm as a TWA now be applied to the agriculture industry in addition to the construction and maritime industries and that a skin notation be added. This limit, and the skin notation, were recently reaffirmed for general industry.

o-Toluidine is a light yellow liquid that rapidly darkens on exposure to air and light. It is used in textile printing dyes, as a vulcanization accelerator, and in organic synthesis (Hawley's 1987, p. 1165).

o-Toluidine is of moderate acute toxicity; the oral LD_{50}s in rats and mice are 670 mg/kg and 520 mg/kg, respectively. The dermal LD_{50} in rabbits is 3250 mg/kg (RTECS 1990). Acute exposure to o-toluidine causes methemoglobinemia and transient hematuria. The earliest manifestations of exposure are headache and cyanosis of the lips, mucous membranes, fingernail beds, and tongue; with continued exposure, symptoms include weakness and dizziness leading to stupor, unconsciousness, and death. Exposure to a 10-ppm concentration of o-toluidine for a short period of time may lead to symptoms of illness, and exposure to 40 ppm for an hour or more can cause severe toxic effects. Methemoglobinemia has been produced in experimental animals exposed to 6 to 23 ppm for several hours (Proctor, Hughes, and Fischman 1988, pp. 481–482).

o-Toluidine is mutagenic in short-term tests, inducing sister chromatid exchanges and unscheduled DNA synthesis in mammalian cells *in vitro* and chromosomal anomalies in yeast. o-Toluidine was negative in the micronucleus test in mice *in vivo*, but induced cell transformations in the BHK (baby hamster kidney) assay. IARC considers these data to be sufficient evidence of o-toluidine's activity in short-term tests (IARC 1982b).

There are a number of studies that report an excess of bladder tumors in dyestuff workers exposed to o-toluidine and other chemicals; however, there are no studies that examine a population of workers exposed to o-toluidine alone. Workers exposed to toluene, o-nitrotoluene, o-toluidine, and 4,4-methylene bis (2-methylaniline) in manufacturing were observed to have an excess of bladder tumors. However, the concurrent exposures of these workers to these other potential carcinogens make these data inappropriate for use in the quantitative assessment of o-toluidine's carcinogenic risk in human populations. A few reports of bladder tumors in persons exposed primarily to o-toluidine have been reported, but insufficient follow-up time and incomplete data have prevented the establishment of a clear quantitative association between o-toluidine exposure and cancer in humans. For this reason, IARC considers the data from human studies inadequate to establish an association between exposure to o-toluidine and cancer (IARC 1982b).

Several studies have been conducted that implicate o-toluidine as a potential carcinogen. In rats, statistically significant increases in subcutaneous fibromas, fibrosarcomas, and cancers of the urinary bladder have been reported. Studies in mice have resulted in statistically significant increases in hemangiosarcomas and hepatocellular carcinomas. For example, the National Cancer Institute (NCI 1979c, as cited in ACGIH 1986/Ex. 1–3, p. 586) conducted long-term carcinogenicity studies with o-toluidine in rats and mice. Both of these studies were positive for carcinogenicity. The mouse study used groups of 50 female and 50 male B6C3F1 mice fed o-toluidine hydrochloride in the diet at levels of 1000 ppm or 3000 ppm for 102 to 103 weeks. There was no excess mortality in the tested animals. At the 3000-ppm dose level, there was a statistically significant increase in hemangiosarcomas at all sites in males and a statistically significant increase in hepatocellular carcinomas and adenomas in females.

The National Cancer Institute also conducted a 2-year feeding study with 50 male and 50 female Fischer 344 rats. There was a dose-related trend in mortality (which was not caused by cancer); all the males in the high-dose group died by week 100. However, the females at both dose levels were observed to have significant increases in transitional-cell carcinomas or papillomas of the urinary bladder, and the high-dose females developed fibroadenomas of the mammary gland. The males at both dose levels showed significant increases in fibromas of the subcutaneous tissue and mesotheliomas in multiple organs (NCI 1979c, as cited in ACGIH 1986/Ex. 1–3, p. 586). The high mortality in the males complicates the interpretation of these latter findings.

Weisburger, Russfield, Homburger et al. (1978/Ex. 1–535) reported positive findings for o-toluidine in long-term feeding studies in rats and mice. The study in rats was conducted with two groups of 25 male CD rats fed o-toluidine in the diet on one of two regimens: 8000 ppm for three months and then 4000 ppm for an additional 15 months, or 16,000 ppm for three months and then 8000 ppm for an additional 15 months. Statistically significant increases in the incidence of subcutaneous fibromas and fibrosarcomas were observed in both dose groups. In addition, there was a nonstatistically significant increase in the incidence of transitional-cell carcinomas of the urinary bladder in these animals.

Weisburger, Russfield, Homburger et al. (1978/Ex. 1–535) also reported the results of a long-term study in mice. Groups of 25 male and 25 female CD–1 mice were fed diets containing o-toluidine at two dose levels: 16,000 ppm for three months and then 8000 ppm for an additional 15 months, or 32,000 ppm for three months and then 8000 ppm for an additional 15 months. There was a statistically significant, dose-related increase in the incidences of vascular tumors (hemangiosarcomas and hemangiomas of the abdominal viscera) in both sexes of treated mice, compared with results in control mice.

Risk estimate for o-toluidine. Four of these carcinogenicity studies of o-toluidine have yielded sufficient and adequate data for quantitative risk estimation: The two NCI studies (NCI 1979c, as cited in ACGIH 1986/Ex. 1–3, p. 586) and the two Weisburger et al. (1978/Ex. 1–535) studies. OSHA used the NCI (1979c) study in rats as the basis for its quantitative risk assessment because it provides the most appropriate data. Table C14–9 presents the Maximum Likelihood Estimates (MLEs) of excess deaths per 1,000 employees predicted to result from exposure to o-toluidine at the OSHA PEL of 5 ppm and at higher levels to illustrate the potential impact on risk of extending the 5 ppm PEL to agriculture. These data were calculated using a multistage model, GLOBAL83.

TABLE C14–9.—MULTISTAGE MODEL ESTIMATES OF CANCER RISK ASSOCIATED WITH WORKING LIFETIME EXPOSURE TO O-TOLUIDINE

Exposure Level	Excess cancer deaths per 1,000 workers	
	MLE	UCL
50 ppm	1.48	16.0
25 ppm	0.69	8.0
5 ppm	0.14	1.60

MLE = Maximum likelihood estimate of risk.
UCL = Upper-bound (95-percent) confidence limit on maximum likelihood estimate of risk.

Table C14–9 shows an excess MLE estimate of risk of 0.14 per 1,000 workers exposed over their working lifetimes at a PEL of 5 ppm; in contrast, lifetime exposure to 50 ppm is associated with estimated mortality risk levels exceeding 1 in 1,000 workers. Accordingly, OSHA has preliminarily concluded that it is appropriate to retain the existing 5-ppm TWA PEL and to add the skin notation for o-toluidine in the construction and maritime industries and to propose the PEL and skin notation for the agriculture industry as well; adoption of a 5 ppm limit in agriculture is necessary to substantially reduce the significant risk of material impairment of health that would exist in the absence of a limit. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

p-TOLUIDINE

CAS: 106–49–0; Chemical Formula: $CH_3C_6H_4NH_2$

H.S. No. 1400

OSHA has no PEL for p-toluidine in the construction, agriculture, and maritime industries. The ACGIH considers this substance a suspected human carcinogen (A2) and has assigned a TLV®–TWA of 2 ppm, and a skin notation, to p-toluidine. There is no NIOSH REL for this substance. OSHA is proposing a PEL of 2 ppm as an 8-hour TWA, with a skin notation, for p-toluidine in the construction, agriculture, and maritime industries. This is the limit recently established for this substance in general industry.

p-Toluidine is a white solid that is primarily used as an intermediate in the manufacture of dyes (ACGIH 1986, p. 590).

p-Toluidine is somewhat more acutely toxic than the ortho isomer; the oral LD_{50}s in rats and mice are 656 and 330 mg/kg, respectively (RTECS 1984). p-Toluidine is a powerful methemoglobin former, causing anoxia with symptoms of headache, vertigo, and mental confusion. Acute exposures also cause microscopic or macroscopic hematuria, which clears upon cessation of exposure.

One study is available that investigates the carcinogenic potential of lifetime exposure to p-toluidine in experimental animals (Weisburger, Russfield, Homburger et al. 1978/Ex. 1–535). Male and female mice were exposed to p-toluidine in the diet for a total of 18 months. During the first six months of the experiment, mice were exposed to 1000 or 2000 mg p-toluidine/kg diet. As a result of the weight loss that occurred in mice exposed to the 2000 mg/kg diet dose, the concentrations of p-toluidine were reduced to 500 and 1000 mg/kg diet during the last 12 months of exposure. The rate of food consumption by the animals was not reported but was assumed to be 3 g/day. Thus, the average doses of p-toluidine received during the 18-month exposure were calculated to be 80 and 160 mg/kg body weight per day (Weisburger, Russfield, Homburger et al. 1978/Ex. 1–535).

For both the low and high dietary doses of p-toluidine, a significant increase in the incidence of hepatomas was observed. The incidence of tumors in the control, 80, and 160 mg/kg/day groups were 3/38, 10/38, and 12/35, respectively. The same study (Weisburger, Russfield, Homburger et al. 1978/Ex. 1–535) showed negative results in male rats exposed to two doses of p-toluidine in the diet for 18 months (1000- and 2000-mg/kg diet).

Risk estimate for p-toluidine. To assess the quantitative risk of p-toluidine's carcinogenicity, OSHA used the Weisburger et al. (1978/Ex. 1–535) data which, despite some limitations (e.g., changes in dose levels during the experiment and the absence of data concerning the amount of food animals consumed during the exposure period), were considered adequate for risk assessment purposes.

The maximum likelihood estimates (MLE) of excess cancers per 1,000 workers over an occupational lifetime and the 95-percent upper-bound estimates were obtained by using a linearized multistage model (GLOBAL83). These values are summarized in Table C14–10. This table shows the number of cancer deaths potentially associated with working

lifetime exposure to 20, 5, or 2 ppm p-toluidine.

TABLE C14-10.—MULTISTAGE MODEL ESTIMATES OF CANCER RISK ASSOCIATED WITH WORKING LIFETIME EXPOSURE TO P-TOLUIDINE

Exposure Level	Excess cancer deaths per 1,000 workers	
	MLE	UCL
2 ppm*	12	19
5 ppm	29	46
20 ppm	112	172

* Proposed OSHA PEL in construction, maritime, and agriculture.
MLE = Maximum likelihood estimate of risk.
UCL = Upper-bound (95-percent) confidence limit on maximum likelihood estimate of risk.

OSHA preliminarily concludes, as Table C14-10 shows, that workers in construction, maritime, and agriculture who are exposed to p-toluidine are at significant risk of developing hepatomas, an effect that the Agency considers material impairment of health. For example, the MLE at 20 ppm is 112 excess cancer deaths per 1,000 workers exposed over a working lifetime. Promulgating a PEL of 2 ppm will substantially reduce this significant risk of excess cancer deaths by 90 percent. During the general industry rulemaking, NIOSH (Ex. 8-47, Table N6B) judged the evidence on p-toluidine sufficient to warrant a separate 6(b) rulemaking. Additional data may support a further reduction in the PEL. OSHA is proposing an 8-hour TWA limit of 2 ppm for p-toluidine in the construction, agriculture, and maritime industries; a skin notation is included to protect against percutaneous absorption of this substance. The Agency believes this limit will significantly reduce the cancer risks associated with exposures to this substance at the levels permitted by the absence of a limit. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

VINYL BROMIDE

CAS: 593-60-2; Chemical Formula: C_2H_3Br

H.S. 1425

OSHA has no PEL for vinyl bromide in the construction, agriculture, or maritime industries. NIOSH considers vinyl bromide a potential human carcinogen and recommends that all vinyl halides be controlled as specified for vinyl chloride, with an eventual goal of zero exposure. The ACGIH places vinyl bromide on its A2 list of industrial substances suspected of having carcinogenic potential in humans and has assigned it a TLV®-TWA of 5 ppm. The Agency is proposing a PEL of 5 ppm as a TWA for vinyl bromide in the construction, agriculture, and maritime industries. This is the limit recently established for this substance in general industry.

Vinyl bromide is a colorless gas with a characteristic odor and is used as an intermediate in organic synthesis and in the manufacture of polymers, copolymers, and flame retardants. Its principal use is as a flame retardant.

The oral LD_{50} of a vinyl bromide/corn oil solution was found to be 500 mg/kg in rats. Inhalation by rats of a 100,000-ppm concentration of vinyl bromide produced deep anesthesia and death in 15 minutes; however, when exposure was terminated prior to death, the animals recovered and survived. Exposure of rats to a 50,000-ppm concentration caused unconsciousness in 25 minutes and death in 7 hours; minor liver and kidney injury was observed in these animals. No histopathological changes were observed in rats exposed to a 25,000-ppm concentration for 7 hours. In a subchronic study, no changes in food consumption, histopathology, or hematology were noted in rats, rabbits, and monkeys exposed to 250 or 500 ppm for 6 hours/day, 5 days/week, for 6 months (IARC 1979, Vol. 19, pp. 370-371; IARC 1986, Vol. 39, pp. 138-139).

Henschler and Hoos (1982/Ex. 1-818) believe that vinyl bromide undergoes the same mechanism of biotransformation as its structural analog, vinyl chloride, a recognized human carcinogen that has been regulated by OSHA in a Section 6(b) rulemaking. The microsomal oxidation of vinyl bromide leads to epoxide formation, which results, in turn, in the formation of a reactive intermediate. This intermediate has the potential to form covalent bonds with DNA to produce a mutagenic response. Vinyl bromide has been reported to be mutagenic in *Salmonella typhimurium* and *tradescantia* (IARC 1979a/Ex. 1-1125; NIOSH/OSHA 1978/Ex. 1-1119).

No epidemiological studies have been conducted on populations exposed to vinyl bromide. Benya, Busey, Dorato, and Berteau (1982/Ex. 1-244) reported a positive carcinogenic response in an inhalation study of rats exposed to vinyl bromide vapor; this study is important because inhalation is a major mode of occupational exposure. The results of the Van Duuren (1977/Ex. 1-284) study were equivocal (described below), in that female Swiss albino mice were exposed dermally or by subcutaneous injection either to vinyl bromide in acetone or to polymerized vinyl bromide in an aqueous latex solution.

Benya et al. (1982/Ex. 1-244) exposed male and female Sprague-Dawley rats to 0, 9.7, 52, 247, or 1235 ppm vinyl bromide by inhalation for six hours daily, five days per week, for two years. The incidence of angiosarcomas, primarily of the liver, was found to be statistically significant in all dose groups tested except controls. It should be noted that a closely related chemical analog, vinyl chloride, also causes liver angiosarcomas in humans and animals. The combined incidences of hepatic angiosarcomas in the treated male and female rats were 1/288, 17/240, 86/240, 122/240, and 84/240 for these respective dose levels. One female rat in the control group developed an hepatic angiosarcoma. Table C14-11 summarizes the incidence of angiosarcoma in control and treated rats.

Van Duuren (1977/Ex. 1-284) injected a group of female ICR/Ha Swiss mice once weekly for 48 weeks with 0.05 ml of commercial polymerized vinyl bromide aqueous latex suspension; the animals were observed for 420 days. Nineteen of the 30 mice developed sarcomas at the site of injection. Animals in a positive control group that had been injected with b-propriolactone (0.3 mg/.05 ml trioctanoin) developed 18 sarcomas and three squamous cell carcinomas (in 30 mice). No tumors developed in untreated controls or in controls injected with trioctanoin, an organic solvent, alone (Van Duuren 1977/Ex. 1-284).

In another injection study by the same author, a group of female IRC/Ha Swiss mice were treated with 25 mg vinyl bromide per animal in 0.05 ml trioctanoin once weekly for 48 weeks. The mice were observed for 420 days. One control group was given a weekly injection of trioctanoin alone and the other control group was untreated. No local tumors were seen in any of the test groups, although pathological examination of the animals appears to have been incomplete (Van Duuren 1977/Ex. 1-284).

Application of vinyl bromide to the skin of female ICR/Ha Swiss mice at a dose of 15 mg per animal administered in 0.1 ml of acetone three times weekly for 420 days resulted in no tumors. When this solution was applied once and was followed by an application of phorbol myristyl acetate (PMA) three times weekly, one of 30 mice developed a skin papilloma at 412 days, one control treated with PMA developed a tumor after 44 days, and no untreated controls

developed tumors (Van Duuren 1977/Ex. 1–284).

TABLE C14–11.—INCIDENCE OF ANGIOSARCOMAS IN CONTROL AND VINYL-BROMIDE-EXPOSED RATS

Group	Exposure level (ppm)	Males			Females		
		No. of animals	No. with angiosarcoma	p	No. of animals	No. with angiosarcoma	p
1	Control	144	0		144	1	
2	10	120	7	<0.025	120	10	<0.01
3	50	120	36	<0.001	120	50	<0.001
4	250	120	61	<0.001	120	61	<0.001
5	1250	120	43	<0.001	120	41	<0.001

Source: Benya, Busey, Dorato, and Berteau (1982/Ex. 1–244).

In another dermal study, a dose of 0.1 ml of polymerized vinyl bromide in an aqueous latex suspension was applied three times weekly to the skin of female ICR/Ha Swiss mice for 420 days. No skin tumors developed. When this solution was applied once, followed by an application of PMA three times weekly, one of 30 mice developed a skin tumor at 175 days. No untreated controls developed skin tumors (Van Duuren 1977/Ex. 1–284).

Based on the studies cited above, IARC (1986, Vol. 39, pp. 137–142) concluded that there was sufficient evidence for the carcinogenicity of vinyl bromide in experimental animals, and classified vinyl bromide as a 2A carcinogen.

Risk estimate for vinyl bromide. The Benya et al. (1982/Ex. 1–244) study was a well-designed and -conducted study that yielded sufficient information for quantitative risk estimation. The route of administration used in the study, inhalation, is directly applicable to occupational exposure, and the incidence of hepatic angiosarcoma was significant. Angiosarcoma is a rare and malignant neoplasm that has a very low background incidence in animals and humans. Therefore, its appearance in the exposed rats supports the premise that vinyl bromide is potentially carcinogenic in humans. Also, it is the same tumor that is associated with the exposure of workers and animals to vinyl chloride, a recognized human carcinogen and a compound whose structure is similar to that of vinyl bromide.

To estimate excess cancer risk over background incidence for a chemical, OSHA relied on the rat inhalation study by Benya et al. (1982/Ex. 1–244). Since both male and female rats responded equally to vinyl bromide treatment, data from the two groups were combined by calculating the geometric means of the risk estimates derived from the male and female response data (Anderson 1983/Ex. 1–1009). The high-dose data for each test group were dropped, since their inclusion makes the dose-response curve nonmonotonic and precludes proper fitting of the linearized multistage risk model (EPA 1984d).

Since cancer risk modeling assumes lifetime exposure, adjustments were made to fit the animal data to this criterion. The adjustments made for the data in the Benya et al. (1982/Ex. 1–244) study were: Multiplying dose by 5/7 to adjust for days of exposure per week and by 6/24 to adjust for hours of exposure per day. These adjusted doses were then changed to human equivalent doses.

Three hypothetical occupational exposure limits, 5 ppm, 20 ppm, and 250 ppm, were used to calculate the maximum likelihood estimates of risk of developing angiosarcoma of the liver. Five ppm is OSHA's limit in general industry. Twenty ppm was chosen as an intermediate exposure level, and 250 ppm was the ACGIH TLV® before the ACGIH reduced it in 1978. These occupational dose levels were also adjusted for lifetime exposure. The adjustments made were: multiplying dose by 5/7 to adjust for days worked per week, by 50/52 to adjust for vacation time, by 8/24 to adjust for hours of exposure per day, and by 45/70 to adjust for work years per lifetime.

Because inhalation is the primary route of exposure to vinyl bromide in occupational settings, the occupational dose was calculated assuming that air intake in humans is 20 m^3 per 24-hour day (Anderson 1983/Ex. 1–1009). The fraction of vinyl bromide absorbed was assumed to be 100 percent, because no absorption rate data were available for vinyl bromide. Because the log p (lipid solubility) value for vinyl bromide (1.52) is similar to that for vinyl chloride (1.38), OSHA assumed that the absorption rates of these two compounds would also be similar. The absorption rate for vinyl chloride used in risk estimations is assumed to be 100 percent (IRIS 1988).

The MLE shown in Table C14–12 for an occupational exposure to 250 ppm of vinyl bromide is 870 excess deaths per 1,000 workers. According to the linearized multistage risk model, 870 of 1,000 workers exposed over their working lifetimes to vinyl bromide at 250 ppm are at risk of developing angiosarcoma. The MLE for an occupational exposure to 5 ppm of vinyl bromide is 0.04; this indicates that, at the proposed PEL, 40 workers per 1,000 exposed to this substance over their occupational lifetimes are at risk of developing angiosarcoma.

TABLE C14–12—MULTISTAGE MODEL ESTIMATES OF CANCER RISK ASSOCIATED WITH LIFETIME EXPOSURE TO VINYL BROMIDE

Exposure level	Excess cancer deaths per 1,000 workers	
	MLE[a]	UCL[a]
5 ppm[b]	40	48
20 ppm[c]	155	180
250 ppm[d]	870	930

[a] Geometric mean of male and female rats.
[b] Proposed PEL in construction, maritime, and agriculture.
[c] Intermediate exposure level.
[d] ACGIH limit before 1978.
MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on maximum likelihood estimate on risk.

Table C14–12 indicates that workers exposed to this substance, which was formerly not regulated by OSHA in construction, maritime, or agriculture, are clearly at significant risk of developing hepatic angiosarcomas, the same rare type of tumor associated with exposure to vinyl chloride, a structurally similar substance. OSHA determined in its prior rulemaking on vinyl chloride that this disease constitutes a material impairment of health and functional capacity. At the present time, OSHA preliminarily concludes that establishing a PEL of 5 ppm TWA will substantially

reduce the significant risk of cancer potentially associated with exposure at higher levels formerly permitted in the absence of an OSHA limit for this substance in the construction, agriculture, and maritime industries. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

OSHA also concluded in the general industry rulemaking that there is a significant residual risk at vinyl bromide levels of 5 ppm. The AFL–CIO has challenged the 5 ppm limit as being too high in its petition to the Eleventh Circuit. OSHA has stated to the court that it will reevaluate the PEL for vinyl bromide in its first update of the Air Contaminants Standard. OSHA also preliminarily concludes that there is a residual significant risk associated with the proposed 5 ppm PEL for construction, maritime, and agriculture. However, the 5 ppm PEL provides substantially greater protection to workers than do the levels that could exist in the absence of a limit. OSHA believes that this rulemaking, whose principal purpose is to extend to all workers the increased protection that now exists in general industry, could not be completed in a reasonable period if extensive additional information had to be obtained and analyzed to determine what lower level was feasible and necessary to further reduce the risk. Accordingly, in the first Air Contaminants update, OSHA will also consider for construction, maritime, and agriculture whether a lower limit is appropriate for vinyl bromide.

VINYL CHLORIDE

CAS: 75–01–4; Chemical Formula: $CH_2=CHCL$

H.S. No. 2167

In general industry, construction, and maritime, OSHA's permissible exposure limit for vinyl chloride (VC) is 1 ppm as an 8-hour TWA and 5 ppm as a 15-minute STEL. In addition, no employee may be exposed to vinyl chloride by direct contact with this substance in liquid form. There is no limit in agriculture. The ACGIH designates vinyl chloride an A1 carcinogen and assigns it a TLV®–TWA of 5 ppm. NIOSH considers VC a potential human carcinogen and recommends that exposure be reduced to the lowest feasible level. OSHA is proposing an 8-hour TWA PEL of 1 ppm and a 15-minute STEL of 5 ppm in agriculture. Promulgation of these limits will make the PELs for VC consistent across all OSHA-regulated sectors.

Vinyl chloride (chlorethene) is a synthetic organic chemical made from ethylene or acetylene and chloride by any one of several processes. It is the parent compound of a series of thermoplastic resin polymers and copolymers which are widely used for containers, wrapping film, electrical insulation, pipe, conduit, and a variety of other industrial and consumer products. Vinyl chloride is used primarily in the production of polyvinyl chloride (PVC), a resin which is produced through batch processing. The conversion of the VC monomer into a polymer or copolymer is an incomplete process, i.e., not all of the monomer is reacted.

The carcinogenicity of vinyl chloride for three animal species (rat, mouse, hamster) has been documented by Maltoni. Moreover, Maltoni's investigations have demonstrated a dose-dependent relationship for the induction of tumors (i.e., more tumors occur at higher exposure levels), including angiosarcoma of the liver, in rats. Of 200 mice (100 males, 100 females) exposed to 50 ppm of vinyl chloride by inhalation for eleven months, 100 died. Sixty-four animals died without gross postmortem pathologic examination being performed. Of the 36 remaining animals for which a gross postmortem pathologic examination was performed, 13 (36 percent) were found to have liver tumors (including angiosarcomas), 21 (58 percent) lung tumors, 9 (25 percent) skin tumors, and one had a kidney tumor. A similar relationship has been demonstrated in both rats and mice. These investigators have induced angiosarcoma of the liver in rats and mice at exposure concentrations of 50 ppm, and in hamsters at higher concentrations of exposure. Additional tumors involving other organs, including the kidneys, lungs, and skin of exposed animals, were also observed in frequencies much in excess of these in control animals.

According to the 1970 report by the Surgeon General's Ad-Hoc Committee on the Evaluation of Low Levels of Environmental Chemical Carcinogens, the finding of cancer in two or more animal species may be extrapolated to indicate a carcinogenic hazard to humans. Here, such a finding was made in three species that were exposed to VC by inhalation, a route comparable to employee exposure. In addition, there were at least 13 confirmed cases of angiosarcoma of the liver among employees exposed to VC, a particularly significant number in view of the extreme rarity of this cancer in the U.S. adult male population (testimony of Dr. Marcus Key, Director of NIOSH, at the 1974 rulemaking hearing).

The findings of angiosarcoma of the liver in both experimental animals and exposed employees is compelling evidence that exposure of humans to vinyl chloride induces this tumor. Industry spokesmen, at the Agency's 1974 hearing, conceded that VC is carcinogenic in humans (e.g., testimony of Dr. McBurney, VC rulemaking hearing, Tr. 1041). Accordingly, it is concluded that VC must be regarded as a human carcinogen and the probable causal agent of angiosarcoma of the liver, and that exposure of employees to VC must be controlled.

Additional evidence of tumor induction in a variety of other organs, including lung, kidney, brain, and skin, as well as non-malignant alterations, such as fibrosis and connective tissue deterioration, indicates additional oncogenic and toxicologic properties of vinyl chloride.

Based on this evidence in humans and animals, OSHA concluded in the VC rulemaking that exposure to VC causes cancer in humans and animals. OSHA therefore believes that, in the absence of a limit, workers in agriculture are at significant risk of experiencing these adverse health effects. The Agency believes that the proposed limits of 1 ppm as an 8-hour TWA and 5 ppm as a 15-minute STEL are necessary to substantially reduce these risks of material health impairment among these workers. Promulgation of these limits will make the PELs for VC consistent all OSHA-regulated sectors.

VINYL CYCLOHEXENE DIOXIDE

CAS: 106–87–6; Chemical Formula: $C_8H_{12}O_2$

H.S. No. 1426

OSHA has no PEL for vinyl cyclohexene dioxide (VCD) in the construction, agriculture, and maritime industries. The ACGIH classifies VCD as a suspected human carcinogen (A2) and has assigned it a TLV®–TWA of 10 ppm, with a skin notation. NIOSH has no REL for this substance but concurs (Ex. 8–47, Table N6A) with the limit being proposed. OSHA is proposing a 10 ppm TWA PEL, with a skin notation, for this substance in the construction, agriculture, and maritime industries. This is the limit recently established in general industry.

Vinyl cyclohexene dioxide is a colorless liquid used as a chemical intermediate and as a monomer in the manufacture of polyglycols containing unreacted epoxy groups (Hine, Rowe, White, Darmer, and Youngblood 1981/ Ex. 1–976). It is also used as a reactive diluent for other diepoxides and certain epoxy resins (IARC 1976).

Vinyl cyclohexene dioxide is a mild acute toxin when ingested; the oral LD_{50} in rats has been reported to be 2.8 g/kg (ACGIH 1986, p. 627) and the LC_{50} in rats for a 4-hour inhalation period is 800 ppm (RTECS 1990). Dermal exposure to this substance has caused mild-to-moderate skin irritation in workers, with occasional instances of marked skin irritation. Vinyl cyclohexene dioxide can be absorbed through the skin in significant amounts; the dermal LD_{50} in rabbits is 0.62 mg/kg (ACGIH 1986, p. 627).

Turchi, Bonatti, Citti et al. (1981/Ex. 1–282) assayed the mutagenicity of VCD and several other epoxides using the TA100 strain of *S. typhimurium* and V79 Chinese hamster cells; these authors also investigated the alkylating properties of these chemicals. VCD tested positive in both the *S. typhimurium* test (point mutation) and the V79 Chinese hamster cell test (both point mutation and chromosome aberration), and had an intermediate alkylating capacity relative to other epoxide compounds tested.

There are no data concerning the adverse health effects of VCD in humans. There are no reports as a result of industrial experience that reveal carcinogenic effects in workers caused by VCD exposure (ACGIH 1986/Ex. 1–3).

Four studies have reported the development of skin tumors in mice exposed dermally to VCD (Hendry, Homer, and Rose 1951/Ex. 1–250; Kotin and Falk 1963/Ex. 1–287; Weil, Condra, Haun, and Streigel 1963/Ex. 1–257; and Van Duuren, Nelson, Orris, Palmes, and Schmitt 1963/Ex. 1–288). The study of Van Duuren et al. (1963/Ex. 1–288) included controls and is thus particularly well suited for an evaluation of VCD's carcinogenic potential.

These authors painted 30 male Swiss ICR/Ha mice with 0.1 ml of a 10-percent solution of VCD in benzene three times per week (approximately 100 mg of solution per application). Two negative controls were used; one set of 150 mice was treated with benzene alone and another set of 207 mice was not treated with anything. Fourteen of the 30 VCD-treated mice developed skin tumors after an undefined length of time (mean survival time was 328 days). The incidences of skin tumors in the controls were 11/150 and 13/207 for the benzene-treated and untreated mice, respectively. The incidence of skin tumors in the VCD-treated mice was significantly greater (reported in terms of a total tumor index rather than number of tumors) than the incidence observed in either of the controls (Van Duuren, Nelson, Orris, Palmes, and Schmitt 1963/Ex. 1–288).

A recent study by the NTP reported that skin tumors developed in rats exposed to 31.5 g/kg applied to the skin for 2 years. In addition, this same study reported that vinyl cyclohexene dioxide induced mutations in mouse lymphocyte cells and sister chromatid exchanges in hamster ovary cells when administered *in situ* (RTECS 1990).

The studies of Van Duuren et al. (1963/Ex. 1–288) and the NTP (RTECS 1990) demonstrate the carcinogenicity of VCD in experimental animals. OSHA considered the possibility of conducting a quantitative risk assessment for VCD, but the Agency preliminarily concluded that the dose-response data in this study are unsuitable for quantitative risk assessment purposes because the VCD was administered in a solution of benzene, which is itself regulated as a carcinogen and classified as such by several authorities (IARC, NTP, NIOSH, and ACGIH). Even though the Van Duuren et al. (1963/Ex. 1–288) study included a control for the independent carcinogenic effects of benzene, the possibility of a synergistic or additive effect of benzene on VCD cannot be completely ruled out.

Vinyl cyclohexene dioxide has been shown to be carcinogenic by dermal application in mice, and four studies have confirmed these effects. Based on these animal studies showing VCD's carcinogenicity, OSHA preliminarily concludes that exposed employees in agriculture, construction, and maritime are at significant risk of cancer from exposure to VCD at the levels permitted by the absence of an OSHA limit. The Agency considers this effect a material impairment of health and preliminarily concludes that a 10 ppm 8-hour-TWA PEL, with a skin notation, is necessary to substantially reduce the significant occupational risk confronting VCD-exposed employees in these sectors. In addition, promulgation of this limit will make OSHA's PEL for this substance consistent across all regulated sectors.

Preliminary Conclusions for this Group of Substances. The Supreme Court in *I.U.D.* v. *A.P.I.* (*supra*, the *Benzene* decision) gave OSHA directions as to its decisional process; that case involved a carcinogen. OSHA is using the Supreme Court's guidance within the context of this present broader rulemaking. OSHA is also using the approach it has taken in the regulation of arsenic, benzene, EtO, asbestos, and formaldehyde; this approach has been upheld in the Courts of Appeals (see the introduction to this section). For the substances in this section, OSHA has either (1) already conducted (in the case of substance-specific Section 6(b) standards), or (2) considered conducting quantitative risk assessments for each chemical discussed in this section. When adequate dose-response data were available, OSHA performed quantitative appraisals of the significance of the risk, either in the substance-specific rulemakings, the general-industry Air Contaminants rulemaking, or the present rulemaking. These risk assessments follow the approach OSHA has used in prior rulemakings for carcinogens, a process that has repeatedly been upheld by the courts.

OSHA conducted its significant risk analyses using the principles suggested by the Supreme Court and adopted in its carcinogen rulemakings subsequent to *I.U.D.* v. *A.P.I.* OSHA has proposed to establish new or revised exposure limits based on these analyses when they demonstrated that significant risk existed at the former PEL (if any) and that the new limit would substantially reduce significant risk and represent a feasible limit.

In some cases, the available data were not sufficient to conduct quantitative estimates of cancer risk at the same level of detail as in other cases. In these cases, OSHA believes that the analyses performed demonstrate that the new limits are necessary to reduce a significant risk of cancer mortality among workers in construction, maritime, and agriculture.

Overall, OSHA believes its analyses of the proposed new or revised limits for carcinogenic chemicals meet the Agency's legal requirements. OSHA preliminarily concludes that these limits will lead to substantial reductions in the significant risk of material impairment of health among workers in these sectors and are additionally feasible to attain.

15. Substances for Which 1987–1988 ACGIH TLV®s are Less Stringent Than Existing OSHA PELs

OSHA is eliminating this category, which appeared both in the proposed (53 *FR* 20961 et seq.) and final (54 *FR* 2332 et seq.) rules for Air Contaminants in general industry. In re-evaluating this category of substances, which included those for which the TLV®s were less stringent than the corresponding OSHA PELs, the Agency has made a determination that these substances should be reassigned to other categories based on the health effects that provide the basis for establishing their respective limits. These substances have accordingly been reassigned to the following categories:

Substance	New category
Camphor (synthetic)	Sensory Irritation.
Copper fumes (measured as Cu).	Sensory Irritation.
1,1-Dichloroethane	Liver Toxicity.
Fluorine	Sensory Irritation.
Hexachloroethane	Sensory Irritation.
Nickel carbonyl	Cancer.
Rhodium, metal fume & insoluble salts (measured as Rh).	Sensitization.
Silica, amorphous, diatomaceous earth.	Respiratory Effects.
Silica, amorphous, precipitate & gel.	Respiratory Effects.
Silver, metal dust & fume (measured as Ag).	Systemic Effects.
Tetraethyl lead	Systemic Effects.
Tetramethyl lead-	Systemic Effects.
Uranium, soluble compounds (measured as U).	Kidney Effects.

16. Substances for Which OSHA is Proposing to Establish Short-Term Exposure Limits

Introduction. OSHA is proposing to establish a short-term exposure limit (STEL) for a total of 116 substances; these substances are listed in Table C15-1. OSHA is proposing these PELs for the construction, maritime, and agriculture industries. These STELs were recently adoped in general industry and thus promulgation in the construction, maritime, and agriculture sectors will make these STELs consistent across all OSHA-regulated sectors.

When OSHA adopted the 1970 ACGIH TLV®s for the construction and maritime industries, the ACGIH had not established the short-term TLV® category; as a consequence, none of the limits currently in effect in these industries have STELs. (However, some of the substances on OSHA's previous Z-2 table, whose limits derive from standards established by the American National Standards Institute rather than the ACGIH, have "acceptable ceiling concentrations" that act, in effect, as short-term exposure limits.)

The ACGIH defines a STEL as: a 15-minute time-weighted average exposure which should not be exceeded at any time during a work day even if the eight-hour time-weighted average is within the TLV®. Exposures at the STEL should not be longer than 15 minutes and should not be repeated more than four times per day. There should be at least 60 minutes between successive exposures at the STEL. An averaging period other than 15 minutes may be recommended when this is warranted by observed biological effects (ACGIH 1991).

TABLE C16-1.—SUBSTANCES FOR WHICH OSHA IS PROPOSING TO ESTABLISH STELS TO SUPPLEMENT TWA LIMITS IN CONSTRUCTION, MARITIME, AND AGRICULTURE

H.S. number/chemical name		CAS No.	Proposed STEL
1001	Acetaldehyde	75-07-0	150 ppm.
1004	Acetone	67-64-1	1000 ppm.
1005	Acetonitrile	75-05-8	60 ppm.
1007	Acrolein	107-02-8	0.3 ppm.
1010	Allyl alcohol	107-18-6	4 ppm.
1011	Allyl chloride	107-05-1	2 ppm.
1012	Allyl glycidyl ether (AGE)	106-92-3	10 ppm.
1013	Allyl propyl disulfide	2179-59-1	3 ppm.
1022	Ammonium chloride fume	12125-02-9	20 mg/m³.
1042	Bromine	7726-95-6	0.3 ppm.
1045	2-Butanone (MEK)	78-93-3	300 ppm.
1047	n-Butyl acetate	123-86-4	200 ppm.
1050	tert-Butyl alcohol	75-65-0	150 ppm.
1056	p-tert-Butyltoluene	98-51-1	20 ppm.
1064	Caprolactam Dust	105-60-2	3 mg/m³.
1065	Caprolactam Vapor	105-60-2	40 mg/m³.
1069	Carbon dioxide	124-38-9	30,000 ppm.
1070	Carbon disulfide	75-15-0	12 ppm.
1072	Carbon tetrabromide	558-13-4	0.3 ppm.
1074	Carbonyl fluoride	353-50-4	5 ppm.
1078	Chlorinated camphene	8001-35-2	1 mg/m³.
1079	Chlorine	7782-50-5	1 ppm.
1080	Chlorine dioxide	10049-04-4	0.3 ppm.
1089	o-Chlorostyrene	2039-87-4	75 ppm.
1114	Decaborane	17702-41-9	0.15 ppm.
1116	Di-sec-octyl-phthalate	117-81-7	10 mg/m³.
1119	Dibutyl phosphate	107-66-4	2 ppm.
1122	1,3-Dichloro-5,5-dimethylhydantoin	118-52-5	0.4 mg/m³.
1125	p-Dichlorobenzene	106-46-7	110 ppm.
1127	Dichloroethyl ether	111-44-4	10 ppm.
1137	Diethylamine	109-89-7	25 ppm.
1143	Dimethylaniline	121-69-7	10 ppm.
1149	Dipropylene glycol methyl ether	34590-94-8	150 ppm.
1159	Ethanolamine	141-43-5	6 ppm.
1161	Ethyl acrylate	140-88-5	25 ppm.
1162	Ethyl benzene	100-41-4	125 ppm.
1163	Ethyl bromide	74-96-4	250 ppm.
1164	Ethyl ether	60-29-7	500 ppm.
1168	Ethylene dichloride	107-06-2	2 ppm.
1177	Ferrovanadium dust	12604-58-9	3 mg/m³.
1182	Formamide	75-12-7	30 ppm.
1184	Furfuryl alcohol	98-00-0	15 ppm.
1185	Gasoline	8006-61-9	500 ppm.
1194	n-Heptane	142-82-5	500 ppm.
1201	Hexane isomers	Varies	1000 ppm.
1203	Hexone (Methyl isobutyl ketone)	108-10-1	75 ppm.
1208	Hydrogen fluoride	7664-39-3	6 ppm.
1209	Hydrogen sulfide	7783-06-4	15 ppm.
1216	Iron pentacarbonyl	13463-40-6	0.2 ppm.

TABLE C16–1.—SUBSTANCES FOR WHICH OSHA IS PROPOSING TO ESTABLISH STELS TO SUPPLEMENT TWA LIMITS IN CONSTRUCTION, MARITIME, AND AGRICULTURE—Continued

	H.S. number/chemical name	CAS No.	Proposed STEL
1218	Isoamyl alcohol	123-51-3	125 ppm.
1222	Isophorone diisocyanate	4098-71-9	0.02 ppm.
1224	Isopropyl acetate	108-21-4	310 ppm.
1225	Isopropyl alcohol	67-63-0	500 ppm.
1227	Isopropyl glycidyl ether	4016-14-2	75 ppm.
1228	Isopropylamine	75-31-0	10 ppm.
1231	Ketene	463-51-4	1.5 ppm.
1236A	Manganese fume	7439-96-5	3 mg/m³.
1242	Mercury (organo), alkyl compounds	7439-97-6	0.03mg/m³.
1243	Mesityl oxide	141-79-7	25 ppm.
1248	Methyl 2-cyanoacrylate	137-05-3	4 ppm.
1249	Methyl acetate	79-20-9	250 ppm.
1250	Methyl acetylene/propadiene mixture	None	1250 ppm.
1252	Methyl alcohol	67-56-1	250 ppm.
1254	Methyl chloride	74-87-3	100 ppm.
1255	Methyl chloroform (1,1,1-trichloroethane)	71-55-6	450 ppm.
1258	Methyl formate	107-31-3	150 ppm.
1261	Methyl isobutyl carbinol	108-11-2	40 ppm.
1267	alpha-Methyl styrene	98-83-9	100 ppm.
1270	o-Methylcyclohexanone	583-60-8	75 ppm.
1281	Morpholine	110-91-8	30 ppm.
1282	Naphthalene	91-20-3	15 ppm.
1286	Nitric acid	7697-37-2	4 ppm.
1295	Octachloronaphthalene	2234-13-1	0.3 mg/m³.
1296	Octane	111-65-9	375 ppm.
1298	Osmium tetroxide	20816-12-0	0.006 mg/m³.
1299	Oxalic acid	144-62-7	2 mg/m³.
1301	Ozone	10028-15-6	0.3 ppm.
1304	Pentaborane	19624-22-7	0.015 ppm.
1306	Pentane	109-66-0	750 ppm.
1307	2-Pentanone (Methyl propyl ketone)	107-87-9	250 ppm.
1309	Perchloryl fluoride	7616-94-6	6 ppm.
1317	Phenylhydrazine	100-63-0	10 ppm.
1319	Phorate (Thimet)	298-02-2	0.2 mg/m³.
1320	Phosdrin (Mevinphos)	7786-34-7	0.3 mg/m³.
1321	Phosphine	7803-51-2	1 ppm.
1322	Phosphoric acid	7664-38-2	3 mg/m³.
1324	Phosphorus pentasulfide	1314-80-3	3 mg/m³.
1325	Phosphorus trichloride	7719-12-2	0.5 ppm.
1338	n-Propyl acetate	109-60-4	250 ppm.
1339	Propyl alcohol	71-23-8	250 ppm.
1340	n-Propyl nitrate	627-13-4	40 ppm.
1341	Propylene dichloride	78-87-5	110 ppm.
1343	Propylene glycol monomethyl ether	107-98-2	150 ppm.
1346	Resorcinol	108-46-3	20 ppm.
1368	Sodium fluoroacetate	62-74-8	0.15 mg/m³.
1372	Styrene (Phenylethylene)	100-42-5	100 ppm.
1375	Sulfur dioxide	7446-09-5	5 ppm.
1379	Sulfuryl fluoride	2699-79-8	10 ppm.
1387	Tetrahydrofuran	109-99-9	250 ppm.
1397	Toluene	108-88-3	150 ppm.
1398	Toluene-2,4-diisocyanate	584-84-9	0.02 ppm.
1403	1,1,2-Trichloro 1,2,2-trifluoroethane	76-13-1	1250 ppm.
1406	Trichloroethylene	79-01-6	200 ppm.
1408	Triethylamine	121-44-8	15 ppm.
1411	Trimethylamine	75-50-3	15 ppm.
1416	Tungsten & compounds(insoluble)	7440-33-7	10 mg/m³.
1417	Tungsten & compounds(soluble)	7440-33-7	3 mg/m³.
1418	Uranium (insoluble compounds)	7440-61-1	0.6 mg/m³.
1424	Vinyl acetate	108-05-4	20 ppm.
1429	VM&P Naphtha	8032-32-4	400 ppm.
1430a, 1430b	Wood dust all soft and hardwoods except Western red cedar	None	10 mg/m³.
1431	Xylene (o,m,p-isomers)	1330-20-7	150 ppm.
1435	Zinc chloride fume	7646-85-7	2 mg/m³.
1437	Zinc oxide fume	1314-13-2	10 mg/m³.
1435	Zirconium compounds	7440-67-7	10 mg/m³.

Reasons for ACGIH STELs. The ACGIH establishes STELs for substances that cause a wide variety of acute effects; these effects include irritation, narcosis, lung damage, systemic effects, and organic poisoning. The ACGIH first considered adding STELs to the TLV®–TWAs for some substances in 1971, when it appointed a subcommittee to study the appropriateness of adding such exposure limits to the TLV® list.

In 1973, this subcommittee recommended that the ACGIH establish STELs as a third category (along with TLV®–TWAs and TLV® ceilings) of exposure limits. The STEL was defined as the maximum concentration to which workers can be exposed continuously *for a period of up to 15 minutes* without suffering from

1. Intolerable irritation,
2. Chronic or irreversible tissue change, or
3. Narcosis of sufficient degree to increase accident proneness, impair self-rescue, or materially reduce work efficiency (Supplemental Documentation to the Fourth Edition of the Documentation of the Threshold Limit Values, ACGIH 1984).

The ACGIH stipulated that no more than four such excursions per day were permissible, with at least 60 minutes between exposure periods, and, that these excursions could not cause the daily TLV®–TWA to be exceeded.

In 1974, the ACGIH agreed by consensus that 425 of the 520 compounds in its 1973 list should have STELs assigned to them, but these were not in fact published until 1976, when "Tentative Values" for STELs were listed in the organization's annual booklet. The 1987–1988 ACGIH TLV® booklet states that the TLV®–STEL is "the concentration to which workers can be exposed continuously for a short period of time without suffering from (1) Irritation, (2) chronic or irreversible tissue damage, or (3) narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency . . . provided that the daily TLV®–TWA is not exceeded."

In 1982, the ACGIH limited the conditions calling for STELs to "[those situations] where toxic effects have been reported from high short-term exposures in either humans or animals." Since that time, the ACGIH has re-examined the toxicological data and subsequently deleted the STELs for several hundred substances because, in the opinion of the ACGIH, there was insufficient evidence that acute exposures to elevated levels of these substances caused adverse effects. The ACGIH has stressed that STELs should be set on physiological grounds rather than in response to sampling and analytical limitations (ACGIH 1984).

In addition to the STEL category, the ACGIH in the 1970s established a fourth limit, a general "excursion factor" that should always be observed implicitly but is not specifically assigned to each chemical. The "excursion limit" recommended by the ACGIH:

> should exceed three times the TLV–TWA for no more than a total of 30 minutes during a work day and under no circumstances should they exceed five times the TLV–TWA, provided that the TLV–TWA is not exceeded (ACGIH 1987).

The basis for this excursion limit is good industrial hygiene practice: any process that has emissions that exceed the concentrations permitted by this excursion factor is not under good industrial hygiene control, and the ACGIH believes that, in such cases, efforts should be made to restore control (ACGIH 1991). Where a specific STEL exists for a substance, the specific STEL takes precedence over the general excursion limit (ACGIH 1987). Thus *all* ACGIH TLV®–TWAs have implicit excursion limits, but only a few substances (i.e., those for which specific toxicological evidence indicates that a STEL is necessary) have explicit STELs.

Basis for Short-Term Limits Being Proposed by OSHA. The STELs being proposed by OSHA in this rulemaking, which parallel those STELs remaining in the ACGIH's most recent list (ACGIH 1990–1991) are thus limits for substances for which there is toxicological evidence that short-term high exposures cause recognized acute effects. The health effects associated with short-term exposures to some of these substances are shown in Table C15–2.

TABLE C16-2.—HEALTH EFFECTS SUPPORTING PROPOSED STELS

H.S. number/chemical name	Proposed STEL	Health effects
1001 Acetaldehyde	150 ppm	Eye irritation; narcosis; potential injury to respiratory tract.
1004 Acetone	1000 ppm	Eye, nose, and throat irritation; narcosis.
1005 Acetonitrile	60 ppm	Nausea; headache; convulsions.
1007 Acrolein	0.3 ppm	Irritation; lung edema.
1010 Allyl alcohol	4 ppm	Irritation.
1011 Allyl chloride	2 ppm	Mucous membrane irritation.
1012 Allyl glycidyl ether (AGE)	10 ppm	Irritation.
1013 Allyl propyl disulfide	3 ppm	Irritation; lacrimation.
1022 Ammonium chloride fume	20mg/m³	Irritation.
1042 Bromine	0.3 ppm	Respiratory tract irritation.
1045 2-Butanone (MEK)	300 ppm	Eye and nose irritation.
1047 n-Butyl acetate	200 ppm	Throat irritation.
1050 tert-Butyl alcohol	150 ppm	Narcosis.
1056 p-tert-Butyltoluene	20 ppm	Eye, nose, and throat irritation.
1064 Caprolactam dust	3 mg/m³	Irritation.
1065 Caprolactam vapor	40 mg/m³	Irritation.
1069 Carbon dioxide	30,000 ppm	Central nervous system effects; asphyxiation.
1072 Carbon tetrabromide	0.3 ppm	Upper respiratory tract irritation; injury to lungs, liver, and kidney.
1074 Carbonyl fluoride	5 ppm	Respiratory irritation.
1079 Chlorine	1 ppm	Eye, mucous membrane, skin, and pulmonary irritation.
1080 Chlorine dioxide	0.3 ppm	Irritation.
1089 o-Chlorostyrene	75 ppm	Dizziness; nausea; headache.
1114 Decaborane	0.15 ppm	Hyperexcitability; narcosis.
1119 Dibutyl phosphate	2 ppm	Irritation to respiratory tract; headaches.
1122 1,3-Dichloro5,5-dimethylhydantoin	0.4mg/m³	Respiratory irritation.
1125 p-Dichlorobenzene	110 ppm	Acute poisoning.
1127 Dichloroethyl ether	10 ppm	Upper respiratory tract and eye irritation.
1137 Diethylamine	25 ppm	Acute toxicity characterized by strong local irritation.
1143 Dimethylaniline	10 ppm	Methemoglobinemia; CNS depression.
1149 Dipropylene glycol methyl ether	150 ppm	Eye, nose, and throat irritation; central nervous system impairment.
1159 Ethanolamine	6 ppm	Pulmonary irritation.
1161 Ethyl acrylate	25 ppm	Irritation.
1162 Ethyl benzene	125 ppm	Skin and eye irritation.
1163 Ethyl bromide	250 ppm	Narcosis.
1164 Ethyl ether	500 ppm	Narcosis; nasal irritation.
1168 Ethylene dichloride	2 ppm	Central nervous system effects.
1177 Ferrovanadium dust	3 mg/m³	Eye and respiratory irritation.

TABLE C16-2.—HEALTH EFFECTS SUPPORTING PROPOSED STELS—Continued

H.S. number/chemical name	Proposed STEL	Health effects
1184 Furfuryl alcohol	15 ppm	Eye irritation.
1185 Gasoline	500 ppm	Narcosis; irritation.
1194 n-Heptane	500 ppm	Narcosis; respiratory irritation.
1201 Hexane isomers	1000 ppm	Narcotic symptoms; eye and throat irritation; slight nausea, headache.
1203 Hexone (MIBK)	75 ppm	Irritant effects.
1206 Hydrogen fluoride	6 ppm	Eye and respiratory irritation.
1209 Hydrogen sulfide	15 ppm	Eye irritation.
1216 Iron pentacarbonyl	0.2 ppm	Headaches; dizziness.
1218 Isoamyl alcohol	125 ppm	Respiratory and eye irritation.
1222 Isophorone diisocyanate	0.02 ppm	Respiratory effects and sensitization; pulmonary irritation.
1224 Isopropyl acetate	310 ppm	Eye and respiratory irritation.
1225 Isopropyl alcohol	500 ppm	Narcotic effects and irritation.
1227 Isopropyl glycidyl ether	75 ppm	Respiratory tract and eye irritation.
1228 Isopropylamine	10 ppm	Respiratory irritation.
1231 Ketene	1.5 ppm	Respiratory irritation.
1236A Manganese fume	3 mg/m³	Central nervous system effects.
1242 Mercury, (organo) alkyl compounds	0.03 mg/m³	Central nervous system effects; irritation.
1243 Mesityl oxide	25 ppm	Eye and mucous membrane irritation, breathing difficulty, headache and vertigo.
1248 Methyl 2-cyanoacrylate	4 ppm	Nasal and eye irritation.
1249 Methyl acetate	250 ppm	Ocular and nervous disturbances; eye, mucous membrane, upper and lower respiratory tract irritation.
1252 Methyl alcohol	250 ppm	Recurrent headaches; diminution of vision.
1254 Methyl chloride	100 ppm	Narcosis.
1255 Methyl chloroform (1,1,1-trichloroethane)	450 ppm	Anesthesia.
1258 Methyl formate	150 ppm	Visual disturbances (temporary blindness); narcotic symptoms, mucous membrane irritation; dyspnea.
1261 Methyl isobutyl carbinol	40 ppm	Eye irritation.
1267 alpha-Methyl styrene	100 ppm	Eye irritation.
1270 o-Methylcyclohexanone	75 ppm	Eye and respiratory irritation.
1281 Morpholine	30 ppm	Irritation and harmful effects to eyes and vision.
1282 Naphthalene	15 ppm	Ocular effects.
1286 Nitric acid	4 ppm	Respiratory irritation.
1296 Octane	375 ppm	Acute effects on nervous system.
1298 Osmium tetroxide	0.006 mg/m³	Irritation; conjunctivitis.
1299 Oxalic acid	2mg/m³	Severe local burns to eyes, mucous membranes, and skin.
1301 Ozone	0.3 ppm	Pulmonary congestion; eye, nose, and throat irritation.
1304 Pentaborane	0.015 ppm	Central nervous system effects.
1306 Pentane	750 ppm	Narcotic and irritative effects.
1307 2-Pentanone (MPK)	250 ppm	Narcotic effects; irritation.
1309 Perchloryl fluoride	6 ppm	Respiratory irritation; fluorosis.
1317 Phenylhydrazine	10 ppm	Sensitization effects.
1319 Phorate (Thimet)	0.2 mg/m³	Cholinesterase inhibition.
1320 Phosdrin (Mevinphos)	0.3 mg/m³	Cholinesterase inhibition.
1321 Phosphine	1 ppm	Pulmonary irritation.
1322 Phosphoric acid	3 mg/m³	Respiratory irritation.
1324 Phosphorus pentasulfide	3mg/m³	Respiratory irritation.
1325 Phosphorus trichloride	0.5 ppm	Respiratory irritation.
1338 n-Propyl acetate	250 ppm	Irritation; narcosis.
1339 Propyl alcohol	250 ppm	Possible deep narcosis.
1340 n-Propyl nitrate	40 ppm	Irritation; headache, nausea.
1341 Propylene dichloride	110 ppm	Eye irritation; central nervous system effects.
1343 Propylene glycol monomethyl ether	150 ppm	Eye irritation.
1346 Resorcinol	20 ppm	Eye and skin irritation.
1366 Sodium Fluoroacetate	0.15 mg/m³	Metabolic inhibition.
1372 Styrene, monomer	100 ppm	Tremors with subsequent severe convulsions; pulmonary edema may follow severe single exposure.
1375 Sulfur dioxide	5 ppm	Respiratory effects.
1379 Sulfuryl fluoride	10 ppm	Central nervous system effects; pulmonary irritation.
1387 Tetrahydrofuran	250 ppm	Narcotic and irritative effects.
1397 Toluene	150 ppm	Impairment of coordination, momentary memory loss, anorexia.
1398 Toluene-2,4-diisocyanate	0.02 ppm	Sensitization effects.
1403 1,1,2-Trichloro-1,2,2-tri-fluoroethane	1250 ppm	Impairment of psychomotor performance.
1406 Trichloroethylene	200 ppm	Narcosis.
1408 Triethylamine	15 ppm	Acute irritation of eyes, mucous membranes, and lungs.
1411 Trimethylamine	15 ppm	Irritation.
1424 Vinyl acetate	20 ppm	Irritation.
1428 Vinylidene chloride	20 ppm	Overt toxicity.
1430a, 1430b Wood dust, all soft and hardwoods, except Western red cedar	10 mg/m³	Respiratory effects.
1431 Xylene (o,m,p-isomers)	150 ppm	Narcosis, irritant effects.
1435 Zinc chloride (fume)	2mg/m³	Respiratory irritation.
1437 Zinc oxide fume	10 mg/m³	Metal fume fever.

OSHA believes that the STELs and ceilings being proposed reflect the concerns expressed by many in the previous rulemaking that short-term limits be promulgated when a toxicologic basis exists for the short-

term limit. In general, OSHA is proposing STELs or ceiling limits when the toxicologic evidence for a particular substance indicates that the 8-hour TWA PEL alone would be insufficient to protect employees from experiencing adverse effects related to short-term exposure to elevated concentrations of that substance.

OSHA has not proposed establishing a general excursion limit, such as that recommended by the ACGIH, that applies to all regulated substances. However, there are workplace situations where OSHA believes that worker protection requires the implementation of a STEL. For example, OSHA believes that the severity of the health effect caused by exposure and the pattern of exposure prevalent in operations involving a given substance are both factors that should be considered when determining whether a short-term limit is appropriate. OSHA preliminarily concludes that, in these instances, promulgating a STEL is a necessary and appropriate measure for ensuring that workplace conditions will be maintained under a sufficient degree of control to ensure that workers are protected from experiencing serious exposure-related health effects.

17. Substances for Which OSHA Is Proposing to Add Skin Designations

For many of the substances included in this rulemaking, OSHA is proposing either to retain or to add skin designations in recognition of the capacity of these substances to be absorbed through the skin in sufficient quantities to cause toxic effects. Ninety-eight of these substances already have skin designations that apply in the maritime and construction sectors, and OSHA is proposing to add skin designations for an additional 42 substances in these sectors. In agriculture, where OSHA has previously not had limits, skin designations for all 140 substances are being proposed. Table C17-1 shows all of the substances for which the Agency is proposing to establish skin designations; those substances with asterisks already have skin designations in construction and maritime.

The ACGIH began to include skin designations for the chemicals in its list for the first time in 1961 (Stokinger 1962/Ex. 1-998). At that time, the organization stated that:

> This notation is to be interpreted simply as an indicator that skin absorption may contribute to the overall intake from exposure in addition to that from inhalation. It refers mainly to absorption from liquid contamination (Stokinger 1962/Ex. 1-998).

The ACGIH has expanded on its reasoning since the 1960s, and the preface to the most recent Threshold Limit Values and Biological Exposure Indices for 1987-1988 (ACGIH 1990) explains that the skin designation is designed to call attention to the need for "appropriate measures for the prevention of cutaneous absorption so that the threshold limit is not invalidated." Thus, a skin notation warns that exposure via the cutaneous route, including absorption through the eyes or mucous membranes, may contribute substantially to an employee's overall exposure and cause systemic toxicity.

TABLE C17-1.—LIST OF SUBSTANCES FOR WHICH OSHA IS PROPOSING TO ADD SKIN DESIGNATIONS

H.S. number/chemical name		CAS No.
1008	Acrylamide	79-06-1
1009	Acrylic acid	79-10-7
2003	Aldrin*	309-00-2
1010	Allyl alcohol*	107-18-6
1025	Aniline and homologs*	62-53-3
2007	Anisidine*	29191-52-4
2014	Azinphos-methyl*	86-50-0
2021	Bromoform*	75-25-2
1046	2-Butoxyethanol*	111-76-2
1051	n-Butyl alcohol	71-36-3
2024	tert-Butyl chromate (as CrO_3)*	1189-85-1
1055	o-sec-Butylphenol	89-72-5
1070	Carbon disulfide*	75-15-0
1075	Catechol	120-80-9
2028	Chlordane*	57-74-9
1078	Chlorinated camphene*	8001-35-2
1084	o-Chlorobenzylidene malononitrile	2698-41-1
2035	Chlorodiphenyl (42% chlorine) (PCB)*	53469-21-9
2036	Chlorodiphenyl (54% chlorine) (PCB)*	11097-69-1
1088	beta-Chloroprene*	126-99-8
1091	Chlorpyrifos	2921-88-2
2042	Cresol, all isomers*	1319-77-3
2044	Cumene*	98-82-8
1107	Cyclohexanol	108-93-0
1108	Cyclohexanone	108-94-1
1110	Cyclonite	121-82-4
1113	DDT*	50-29-3
1114	Decaborane*	17702-41-9
2049	Demeton (Systox®)*	8065-48-3
1118	Diazinonn	333-41-5
1127	Dichloroethyl ether*	111-44-4
1129	1,3-Dichloropropene	542-75-6
2051	Dichlorvos (DDVP)*	62-73-7
1131	Dicrotophos (Bidrin)	141-66-2
2061	Dieldrin*	60-57-1
2062	2-Diethylaminoethanol*	100-37-8
2064	Diisopropylamine*	108-18-9
2064	Dimethyl acetamide*	127-19-5
1143	Dimethyl aniline (N-Dimethylaniline)*	121-69-7
1141	Dimethyl 1,2-dibromo-2,2-dichloroethyl phosphate	300-76-5
2067	Dimethyl formamide*	68-12-2
2068	1,1-Dimethylhydrazine*	57-14-7
1142	Dimethyl sulfate*	77-78-1
2071	Dinitrobenzene (all isomers)*	528-29-0
		99-65-0
		100-25-4
2070	Dinitro-o-cresol*	534-52-1
2072	Dinitrotoluene*	25321-14-6
1145	Dioxane (Diethylene dioxide)*	123-91-1
1146	Dioxathion (Delnav)	78-34-2

TABLE C17-1.—LIST OF SUBSTANCES FOR WHICH OSHA IS PROPOSING TO ADD SKIN DESIGNATIONS—Continued

H.S. number/chemical name		CAS No.
1149	Dipropylene glycol methyl ether*	34590-94-8
1152	Disulfoton	298-04-4
1156	Endosulfan	115-29-7
2073	Endrin*	72-20-8
1158	Epichlorohydrin*	106-89-8
2074	EPN*	2104-64-5
1160	Ethion (Nialate)	563-12-2
	2-Ethoxyethanol*	110-80-5
	2-Ethoxyethanol acetate (cellosolve acetate)*	111-15-9
1161	Ethyl acrylate*	140-88-5
1167	Ethylene chlorohydrin*	107-07-3
1170	Ethylene glycol dinitrate*	628-96-6
1172	N-Ethylmorpholine*	100-74-3
1173	Fenamiphos	22224-92-6
1175	Fenthion	55-38-9
1181	Fonofos	944-22-9
1183	Furfural*	98-01-1
1184	Furfuryl alcohol	98-00-0
2088	Heptachlor*	76-44-8
1197	Hexachloroethane*	67-72-1
2089	Hexachloronaphthalene*	1335-87-1
1198	Hexafluoroacetone	684-16-2
1205	Hydrazine*	302-01-2
1207	Hydrogen cyanide*	74-90-8
1211	2-Hydroxypropyl acrylate	999-61-1
1220	Isooctyl alcohol	26952-21-6
1222	Isophorone diisocyanate	4098-71-9
1229	N-Isopropylaniline	768-52-5
2100	Lindane*	58-89-9
1235	Malathion*	121-75-5
1237	Manganese cyclopentadienyl tricarbonyl	12079-65-1
1240	Mercury (aryl and inorganic compounds)*	7439-97-6
1241	Mercury (vapor)*	7439-97-6
1242	Mercury (organic), alkyl compounds*	7439-97-6
1244	Methacrylic acid	79-41-4
2105	Methyl acrylate*	96-33-3
1251	Methylacrylonitrile	126-98-7
1252	Methyl alcohol*	67-56-1
1253	Methyl bromide*	74-83-9
	Methyl cellosolve (2-Methoxyethanol)*	109-86-4
	Methyl cellosolve acetate (2-Methoxyethyl acetate)*	110-49-6
1270	o-Methylcyclohexanone*	583-60-8
1271	Methylcyclopentadienyl manganese tricarbonyl	12108-13-3
1256	Methyl demeton	8022-00-2
1273	4,4'-Methylene bis(2-chloroaniline)	101-14-4
2112	Methyl hydrazine (monomethyl hydrazine)*	60-34-4
1259	Methyl iodide*	74-88-4
1261	Methyl isobutyl carbinol*	108-11-2
2106	Methyl isocyanate*	624-83-9
1280	Monomethyl aniline*	100-61-8
1281	Morpholine*	110-91-8
2115	Nicotine*	54-11-5
1287	p-Nitroaniline*	100-01-6
2117	Nitrobenzene*	98-95-3
1288	p-Nitrochlorobenzene*	100-00-5
1290	Nitroglycerin*	55-63-0
1292	Nitrotoluene (all isomers)*	88-72-2
		99-08-1
		99-99-0
1295	Octachloronaphthalene*	2234-13-1
1303	Paraquat*	4685-14-7
2122	Parathion*	56-38-2
2123	Pentachlorophenol*	87-86-5
2126	Phenol*	108-95-2
1313	Phenothiazine	92-84-2
1317	Phenylhydrazine*	100-63-0
1319	Phorate (Thimet)	298-02-2

TABLE C17-1.—LIST OF SUBSTANCES FOR WHICH OSHA IS PROPOSING TO ADD SKIN DESIGNATIONS—Continued

H.S. number	Chemical name	CAS No.
1320	Phosdrin (Mevinphos®)*	7786-34-7
1322	Picric acid*	88-89-1
1335	Propargyl alcohol	107-19-7
2135	Propyleneimine*	75-55-8
1364	Sodium azide	26628-22-8
1366	Sodium fluoroacetate*	62-74-8
2149	TEDP (Sulfotep)*	3689-24-5
2152	TEPP*	107-49-3
1253	1,1,2,2-Tetrachloroethane*	79-34-5
1255	Tetrachloronaphthalene	1335-88-2
1386	Tetraethyl lead (as Pb)*	78-00-2
1388	Tetramethyl lead (as Pb)*	75-74-1
2156	Tetramethylsuccinonitrile	3333-52-6
2158	Tetryl (2,4,6-Trinitro-phenylmethyl-nitramine)*	479-45-8
2159	Thallium, soluble compounds (as Tl)*	7440-28-0
1392	Thioglycolic acid	68-11-1
1394	Tin (organic compounds)	7440-31-5
1399	o-Toluidine*	95-53-4
1400	p-Toluidine	106-49-0
1401	m-Toluidine	108-44-1
2162	1,1,2-Trichloroethane*	79-00-5
2163	Trichloronaphthalene*	1321-65-9
1413	2,4,6-Trinitrotoluene (TNT)*	118-96-7
1414	Tnorthocresyl phosphate	78-30-8
1426	Vinyl cyclohexene dioxide	106-87-6
1432	m-Xylene-alpha,alpha'-diamine	1477-55-0
1433	Xylidine*	1300-73-8

* Skin designations for these substances already apply in the construction and maritime industry sectors. In these cases, OSHA is proposing to apply skin designations for these substances in the agricultural industry sector as well.

Biological Exposure Indices for 1987–1988 (ACGIH 1990) explains that the skin designation is designed to call attention to the need for "appropriate measures for the prevention of cutaneous absorption so that the threshold limit is not invalidated." Thus, a skin notation warns that exposure via the cutaneous route, including absorption through the eyes or mucous membranes, may contribute substantially to an employee's overall exposure and cause systemic toxicity.

The ACGIH has a policy of using a dermal LD_{50} of 2 g/kg as a general cutoff for determining when to classify a substance as sufficiently absorbable to present a hazard via the percutaneous route; that is, substances having a single-dose dermal LD_{50} of less than 2 g/kg receive a skin notation, while those with dermal LD_{50}s above this cutoff do not (ACGIH 1986/Ex. 1–3, p. 332). The Documentation (ACGIH 1986/Ex. 1–3) contains no cutoff value for chronic dermal exposures (i.e., for toxicity resulting from repeated applications of substances to the skin).

OSHA is proposing to include as paragraph 3[2] of the standard the following language regarding the use of skin notations:

An employee's skin exposure to substances listed in Table Z–1–A with the designation "Skin" following the substance name shall be prevented or reduced to the extent possible through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls or work practices.

OSHA is not proposing to require that engineering controls be used preferentially to protect against skin absorption; the Agency notes that this policy is consistent with 29 CFR 1910.132 and 1910.134, which require the use of engineering controls and work practices in preference to personal protective equipment only when inhalation is the route of entry. The proposed regulatory language that appears here is the same as that adopted in the 1989 Air Contaminants rulemaking for general industry.

As explained in the previous rule, OSHA believes that dermal irritation alone should not warrant a skin designation; instead, OSHA believes that skin designations should be used only in instances where a substance can be percutaneously absorbed in quantities sufficient to cause systemic poisoning. OSHA's decision logic for establishing skin notations derives from the Agency's Hazard Communication Standard (29 CFR 1910.1200). Appendix A of that regulation defines, in measurable terms, the possible health effects that may occur in the workplace as a result of chemical exposures. These definitions set forth quantitative guidelines for determining if chemicals are "highly toxic" or merely "toxic" by the dermal route of exposure. A chemical is considered *highly toxic* via skin absorption if

* * * [it] has a median lethal dose (LD_{50}) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

It is considered *toxic* via skin absorption if

* * * [it] has a median lethal dose (LD_{50}) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

Accordingly, OSHA has preliminarily determined that a skin notation is necessary for substances that have median lethal dose (LD_{50}) values in rabbits on single-dose applications of less than 1000 mg/kg. In addition, in very rare cases where available data (for any species) indicate that dermal contact results in a systemic dose that is equivalent to or greater than the dose that would be permitted by the PEL via inhalation, OSHA believes that a skin designation is warranted. In addition to this animal evidence, OSHA believes that the availability of human data demonstrating that systemic injury has occurred as a result of skin absorption is sufficient evidence that a skin notation is warranted. OSHA followed these guidelines in establishing skin designations in the recent rulemaking for general industry and has continued to observe them in the present rulemaking. Promulgation of these skin designations will thus make OSHA's skin designations consistent across all OSHA-regulated sectors.

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V. Preliminary Regulatory Impact Analyses

A. Executive Summary

Affected Industries

The proposed standard addresses employee exposures to airborne substances in the construction, agriculture, and maritime industries. It should be noted that the use of EPA

labelled pesticides pursuant to the label is regulated by the Environmental Protection Agency and therefore is not covered by this standard. Proposed PELs for asphalt fume, fibrous glass, and mineral wool would cover exposures to these substances in all industry sectors.

Activities with potential exposures are common in the construction industry; most firms in SICs 15, 16, and 17 would be affected to some degree. In the maritime industry, the proposed standard would affect establishments involved in shipbuilding and repair and in cargo handling operations. In the agriculture industry, firms likely to be affected include those engaged in silo operations, cotton ginning, and grape harvesting. Potentially affected firms in general industry would include those producing and using fibrous glass and mineral wool, asphalt, paving mixtures, and asphalt roofing products.

Employee Exposures and Benefits

In the construction industry, activities involving potential exposures above the proposed PELs include painting; concrete sealing and coating; abrasive blasting; sanding; batch mixing of concrete, mortar or cement; and burning, cutting, grinding and welding on metal or painted surfaces. Compliance with the proposed standards would protect construction employees from excess exposure to many substances, including lead, petroleum distillates, ethylene glycol, xylene, toluene, butoxyethanol, hexylene glycol, mercury compounds, titanium dioxide, cement dust, and silica.

In the maritime industry lower exposure levels should benefit employees engaged in welding, painting, and bulk cargo handling exposed to metal fumes, solvents, and various dusts. Tank cleaning operations also involve potential exposures to many of the chemicals in the proposed regulation.

In the agriculture industry, employee exposures above the proposed PELs occur during silo operations, grain handling, cotton ginning, and grape harvesting. These operations can involve exposures to grain dust, cotton dust, nuisance dust, or silica.

In general industry, compliance with the proposed regulation would result in lower occupational exposures to asphalt, fibrous glass, RCF, and mineral wool. Employees are exposed to these substances during the production of asphalt and vitreous fibers and during the use or manufacture of products containing these substances.

OSHA estimates that full compliance with the proposed standard across all affected industries would potentially prevent about 8 to 13 fatalities and about 31,000 illnesses (including about 12,000 illnesses involving lost workdays) annually. The primary impact would be in the construction industry, with approximately 7 to 11 fatalities and 21,600 illnesses (including 10,200 illnesses involving lost workdays) potentially prevented each year. In the maritime industry, an estimated 1 to 2 fatalities and 200 illnesses would be avoided each year (including 60 illnesses involving lost workdays); in agriculture full compliance may prevent about 9,000 illnesses annually (including 2,000 illnesses involving lost workdays); and in general industry less than one fatality and about 500 illnesses (including 100 illnesses involving lost workdays) would be avoided annually.

Technological Feasibility and Costs of Compliance

The proposed standard requires employees to be protected against overexposure to regulated substances. The estimated costs of compliance for the proposed rule reflect the incremental costs necessary to reduce exposure levels below the proposed PELs for all employees.

The activity-based approach used to determine exposures and the need for additional controls in construction allowed for explicit consideration of mixed exposures. Exposures to multiple substances were evaluated according to the formula in the proposed regulation; combined exposures exceeding unity were considered to be exposures above the proposed PELs. As a result, the costing methodology included allowances for meeting the mixed exposure limit (MEL) as well as individual PELs.

In many activities engineering controls and work practices will effectively reduce airborne concentrations of hazardous substances. These may include fans, fresh air supply blowers, portable exhaust hoods, enclosures, equipment-mounted dust catchers, vacuum cleaning, and water spraying. In activities for which feasible engineering controls are unavailable or insufficient, respiratory protection would be required. An evaluation of the activities potentially affected by this rulemaking has established that compliance with the proposed regulation can be achieved in all industries through an appropriate combination of engineering controls, work practices, and respiratory protection.

The total estimated annual costs of achieving full compliance with the proposed standard in all industries with the proposed PEL of 5 mg/m^3 for asphalt fume is approximately $103 million. The annual cost for the construction industry would be about $94 million, the annual cost for the maritime industry would be about $5.7 million, the annual cost for the agriculture industry would be about $2.7 million, and the annual cost for general industry would be about $0.6 million.

With a PEL for asphalt fume of 0.2 mg/m^3 the total cost would be approximately $163 million. Compliance costs for the construction industry would be about $51 million higher, and compliance costs in general industry would be about $9 million higher.

In the construction industry, the highest costs are associated with painting, welding, and paint removal, which are concentrated in SIC 1721 (Painting and Paper Hanging), and 1799 (Special Trade Contractors, Not Elsewhere Classified). Respiratory protection accounts for the largest share of compliance costs at $54 million with an asphalt PEL of 5 mg/m^3.

In the maritime industry, most of the compliance costs are associated with painting and welding activities in the shipbuilding and repair industry. In the agriculture industry, the estimated costs of compliance are concentrated in the cotton ginning sector. In general industry the compliance costs are primarily attributable to the proposed PELs for fibers.

Economic Impacts

The costs associated with compliance with the proposed standard would represent less than 0.1 percent of the revenues of the affected industries. The proposed PELs generally would not require drastic or widespread changes. Many employers who currently utilize sound industrial hygiene practices in activities with potential exposures would already be in compliance with the proposed standard.

The overall impact of compliance with the proposed requirements would be an increase in efforts to control employee exposures during activities with recognized potential hazards. The costs would generally be incurred on a per employee basis and on average would represent an increase of less than 0.1 percent of labor costs. These costs should be bearable for all firms and would not create any significant competitive disadvantage for small establishments.

Economic impacts in the maritime and agriculture industries are expected to be minimal. The extent of exposures and necessary control measures would be limited, and the costs of compliance would not represent a substantial burden. In general industry some

additional costs for employee protection would have to be incurred during the production and use of vitreous fibers. The proposed PELs for fibers and for asphalt fume are not expected to produce any significant negative impacts.

B. Preliminary Regulatory Impact Analysis for Construction

1. Summary

This section examines the technological feasibility, costs, benefits, and economic impacts associated with this rulemaking for the construction industry. In addition, an industry profile and an evaluation of nonregulatory alternatives is provided. This chapter is divided into seven parts. Part 1, this summary, briefly introduces the other six parts.

Part 2 provides descriptive statistics about the construction industry and each of its subindustries. The industry employs 5 million workers who construct a wide variety of projects including housing, industrial buildings, roads, and power plants. Each project may employ a combination of contractors and subcontractors that specialize in tasks such as carpentry, painting, or roofing.

Part 3 describes the extent of worker exposures to the substances considered in this rulemaking. Exposures to solvents used in paints and adhesives occur during painting activities, floor work operations, and during the application of single-ply membrane roofing systems. Exposures to lead and other metals can occur when working on painted surfaces, and when welding or soldering. Silica and other particulates may be present during any dusty operation such as abrasive blasting, cement mixing, or earthmoving. Paving and roofing work involve exposures to asphalt fumes. Dozens of other activities, causing significant exposures to over 80 different substances, have been identified.

Virtually all 5 million workers in the construction industry are potentially exposed to one or more of the substances in this proposed rule. Exposures may be intermittent, infrequent, and below the proposed limits, but potential overexposures are not uncommon. OSHA estimates that eliminating all worker exposures above the proposed PELs would result in the prevention of an estimated 7–11 fatalities, 10,200 illnesses involving 214,000 lost workdays, and 11,400 non-lost workday illnesses annually.

Part 4 discusses alternatives to this rulemaking and provides the basis for the conclusion that this proposed regulation is necessary and cost-effective.

Part 5 describes specific activities involving exposures and determines the technological feasibility of meeting the proposed PELs. Engineering controls are available to reduce some exposures but these are not always applicable for all activities. As currently practiced in the construction industry, respiratory protection may be needed to achieve compliance in some high exposure situations. Compliance with the proposed PELs would require an increase in respirator usage but the overall utilization rate would remain relatively low. With an alternative PEL of 0.2 mg/m^3 for asphalt fume, a significant increase in respirator use would be necessary for asphalt roofing and paving operations.

Part 6 presents the estimated costs of compliance. Total annualized compliance costs would be about $94 million with a PEL for asphalt of 5 mg/m^3. The highest costs are associated with painting and welding, which are concentrated in SIC 1721 (Painting and Paper Hanging) and SIC 1799 (Special Trade Contractors, Not Elsewhere Classified). The majority of the compliance costs by type of control is for respiratory protection at $54 million. A PEL of 0.2 mg/m^3 for asphalt would increase total estimated compliance costs by about $51 million, primarily for respiratory protection during asphalt roofing and paving work.

Part 7 assesses the economic impacts of the proposed rule. Costs of compliance are small compared to average revenues for all SIC groups. Overall demand for construction is not expected to be affected because the increased cost of projects would be minimal. Slight cost increases may result for some painting and other activities as the added cost of worker protection is included in the cost of completing the work. The rule would apply to all work done within the United States, and thus international competitiveness would not be directly affected.

2. Industry Profile

Overview. The construction industry is covered by three two-digit Standard Industrial Classification (SIC) codes: SIC 15, Building Construction, General Contractors; SIC 16, Heavy Construction Except Buildings, General Contractors; and SIC 17, Special Trade Contractors. The term construction includes new work, additions, alterations, reconstruction, installations, and repairs.

Special trade contractors are primarily engaged in specialized construction activities, such as plumbing, painting, and electrical work, and work for general contractors under subcontract or directly for property owners. General contractors usually assume responsibility for an entire construction project, but may subcontract to others all of the actual construction work or those portions of the project that require special skills or equipment. General contractors thus may or may not have construction workers on their payroll.

The most recent detailed data on the construction industry are found in the 1987 Census of Construction Industries, issued by the U.S. Department of Commerce in March, 1990. During 1987, establishments with paid employees accounted for $500 billion in total value of construction business. Their payments for construction work subcontracted to others amounted to $132 billion, leaving a net value of construction work of $368 billion. In addition, these establishments paid out $138 billion for the cost of materials, fuels, power, rental of equipment and buildings, and other purchased services. Value added for the construction industry in 1987 was estimated to be $230 billion.

In 1987 there were approximately 540,000 establishments in the construction industry employing a total of over 5 million people. According to the Census of Construction, the total payroll for the construction industry in 1987 was $111 billion. The total hours worked by construction workers during the year were estimated to be 6.7 billion hours.

Residential Building Construction. Residential building construction accounts for over 30 percent of the total value of construction [1]. This category includes SIC 1521, General Building Contractors—Single-Family Houses; SIC 1522, General Building Contractors—Other Than Single-Family; and SIC 1531, Operative Builders. Operative builders are primarily engaged in the construction of single-family houses and other buildings for sale on their own account rather than as contractors.

The residential building construction industry has experienced tremendous growth over the past decade. This is partly due to the substantial decline in mortgage rates since the early 1980s, from a high of 15.14% in 1982 to a low of 9.29% in 1988 [2]. Because of high real interest rates from 1979 to 1982, there was substantial pent-up demand for housing when interest rates began to fall (making the cost of housing more affordable).

The increase in the nominal price of housing due to high inflation rates at the

beginning of the 1980s helped many second-time home buyers, who were able to take advantage of increased equity available in their homes. The Department of Commerce estimates that the cost of construction index (1982 = 100) rose from 63.6 in 1977 to 102.6 in 1983. The first-time home buyer was helped by the decline in interest rates, but hurt by the increase in home prices over this same period. The average sale prices of new homes sold in the United States increased from $89,800 in 1983 to $138,200 in 1988, an increase of 53.9 percent [2]. The improved performance of the economy during this time period led to an increase in residential building activity, due to the increase in real personal income that occurred over this time period, from $9,725 per capita in 1982 to $11,012 per capita in 1987 [3].

However, in 1989, private residential construction decreased by about one percent in constant dollar value. Housing starts fell six percent, from 1.49 million units in 1988 to 1.40 million units in 1989, with declines both in single- and multi-unit structures. While interest rates increased during the first part of 1989, continuing a trend established in 1988, by mid-year of 1989, mortgage rates declined to near 10 percent during the third quarter where they remained through the end of 1989. Mortgage interest rates averaged 10.3 percent during 1989.

Rising interest rates in early 1989 kept new home sales 6.4 percent below 1988 levels, although the sales volume of existing homes increased slightly. Between 1982 and 1989, median new home prices rose 61 percent, while disposable income per capita (in current dollars) increased by about 50 percent. While the decline in interest rates offset rising home prices between 1983 and 1987, both housing prices and interest rates rose in 1988 and early 1989 [4]. As of August 1990, home sales were 10 percent below their level of the previous year.

An area that is likely to grow within the residential building industry is the residential remodeling market. Most home builders that have added remodeling to their line of services have done so because remodeling is less cyclical than new building construction. Last year the top five remodeling markets were Los Angeles/Long Beach, followed by Washington, D.C., New York, Chicago, and San Francisco. From 1984 to 1987, total residential improvements increased by 37.1 percent [5]. However, in 1989, home owners only spent 1.3 percent more than the previous year for upkeep and improvement of residential properties compared to the 7.7 percent increase in 1988. The slower growth in 1989 reflected the country's slower economic growth, higher interest rates, and weaker consumer confidence levels [4].

Residential construction also includes spending for hotels and motels, which represented about $9 billion of the total value of construction in 1987 [1]. It is generally believed that the hotel market has become somewhat overbuilt in the 1980s, and that further construction will occur at a slower pace until some of the excess capacity is absorbed [6]. A new trend in the hotel construction market is a move toward specialization in order to capture a certain market sector, such as business travelers. This may provide for some new hotel construction in certain geographic locations [7].

In 1989, construction of hotels and motels increased substantially over prior years, reflecting an international hotel-building boom. That boom has probably peaked in the United States and a 10 percent decline is likely in 1990 and continuing in 1991 [4].

According to the Census of Construction [1], there were almost 120,000 establishments classified as general contractors or operative builders in residential building construction in 1987. They employed over 600,000 workers and accounted for over $100 billion of the total value of construction work. These figures do not include residential construction work done by special trade contractors. Statistics for each of the 4-digit residential construction SIC codes are presented in Table V–B1.

TABLE V–B1.—RESIDENTIAL CONSTRUCTION

[General Contractors and Operative Builders]

	SIC 1521 [1]	SIC 1522 [2]	SIC 1531 [3]
Number of Establishments	90,378	8,143	20,766
Total Employees	398,291	81,708	168,940
Construction Workers	307,305	61,245	76,105
Construction Workers Hours (Thousands)	470,499	98,455	135,927
Net Value of Construction Work (Thousands of Dollars) [4]	27,319,239	6,257,443	26,837,792
Total Value of Construction Work (Thousands of Dollars)	39,098,146	13,315,544	48,959,809
Single-Family Houses	31,833,307	793,645	42,401,837
Apartment Buildings	638,197	6,337,325	3,174,606
Other Residential	345,309	3,498,516	152,609
Other Construction	6,281,333	2,685,858	3,230,755

[1] General Contractors—Single Family Houses
[2] General Contractors—Residential Buildings Other Than Single-Family.
[3] Operative Builders.
[4] Excludes value of work subcontracted.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor, based on 1987 Census of Construction, U.S. Department of Commerce, March 1990.

Non-Residential Building Construction. The non-residential building industry is divided into two sectors: Industrial buildings and warehouses (SIC 1541) and non-residential buildings, other than industrial buildings and warehouses (SIC 1542). SIC 1541 is primarily made up of manufacturing facilities and warehouses. SIC 1542 consists primarily of commercial, recreational, hospital, religious, and office buildings.

The non-residential building construction industry is dependent upon the economic environment in which it operates. Factors such as interest rates, manufacturing productivity, currency exchange rates, capital expenditures, labor costs, and the stock market all influence the market for non-residential building construction.

The demand for manufacturing facilities in the future will depend upon the trading position of the United States in manufactured goods. If the manufacturing sector in the United States continues to expand, the demand

for new manufacturing facilities (by both domestic and foreign producers) should increase significantly. This increased demand could occur because of one or all of the following reasons: High levels of capacity utilization, increased exports due to the fall in the value of the dollar relative to Japanese and European currencies, and relatively high labor costs overseas. Capacity utilization figures for the manufacturing industry have increased dramatically since 1982, from 70.3 percent in 1982 to 81.1 percent in 1987 [3]; industry experts generally consider 85 to 90 percent to be the viable maximum.

Value of industrial construction increased more than five percent in 1989 in constant dollar value. Further increases in industrial construction are expected because many of the manufacturing industries are operating at a high capacity-utilization rate.

International competition has been constraining the need for United States industries to construct new plants in the past but if the trade deficit continues to be reduced by strong United States exports, industrial construction would benefit from the increased demand. Although the long-term outlook for industrial construction is subject to many uncertainties, it is likely to be one of the stronger construction markets during the next five years [4].

New spending for office building construction has declined every year since 1985, when it reached a high of $31.6 billion. In 1988, office building construction spending was $27.4 billion. Construction of office space is heavily dependent upon the growth and structure of employment. Recently, there has been a decline in employment growth for large corporations (greater than 500 employees) but an increase in employment growth for small firms (less than 100 employees). This change in the structure of employment is likely to have a slight positive effect on spending for office buildings, especially in suburban areas [6].

Overall, new office construction continued to decline in 1989 and 1990 and further declines are expected over the next years due to higher vacancy rates and the elimination of many of the tax benefits of commercial buildings. Demand for office construction in the future will be heavily influenced by the need to absorb vacant office space and the need to raise rents to profitable levels. Other important demand factors will be long-run investment in real estate by pension funds and foreign interests [4].

The commercial building sector primarily includes retail shopping, restaurants, and other retail ventures. During the 1980s, retail construction spending increased by 4.0 percent annually. This rate of growth (much lower than spending growth for offices or hotels) permitted modest expansion without overbuilding in the retail sector. Retail construction is dependent on the housing market which was strong in the 1980s, increasing demand for retail space. Generally, the demand for retail space will lag a change in the housing market by six months to two years.

The relative value of commercial buildings such as shopping centers, warehouses, parking garages, banks, and restaurants declined in 1989 and 1990. The primary causes for the decline are, as in other sectors, overcapacity and the effects of a general decline in the growth rate of the economy. However, the overbuilding problem is not as serious for stores and shopping centers as it is for office buildings and hotels [4].

The commercial building renovation market is expanding as commercial owners face an oversupply of new buildings and industrial owners rein in outlays for new plants. Governments are also renovating an abundance of deteriorating facilities. There has been a steady rise in renovation work over the past two decades. In 1970, contracts for additions and renovations made up only about 16 percent of the non-residential building market but had climbed to 22 percent by 1980 and to 28 percent by 1988. Also, the trend by industrial owners to put the largest share of their capital spending into renovation has intensified in recent years. Today, some of the largest renovation projects can be found in industrial processes and in petroleum refinery markets [8].

General contractors in non-residential building construction (SIC 1541 and SIC 1542) included over 38,000 establishments in 1987. These establishments employed over 600,000 workers. Non-residential construction work done by special trade contractors is not included in these figures. Mean establishment size in SIC 1541 was 20 employees per firm and 16 employees per firm in SIC 1542. Table V–B2 provides a summary of statistics for each nonresidential building construction SIC code.

Total value of non-residential building business done in 1987 was $111 billion, an increase of 56 percent from the 1982 figure of $71 billion. Ownership of these projects was divided between the federal government ($7 billion), state and local governments ($15 billion), and private owners ($89 billion). The five largest sectors within non-residential building construction were the following: office buildings—$28 billion; industrial buildings—$23 billion; other commercial buildings—$22 billion; hospital buildings—$10 billion; and educational buildings—$8 billion. Net value of construction work for SIC 1541 and SIC 1542 combined was over $50 billion in 1987.

TABLE V–B2.—NONRESIDENTIAL BUILDING CONSTRUCTION

[General Contractors]

	SIC 1541 [1]	SIC 1542 [2]
Number of Establishments	7,014	31,337
Total Employees	143,001	488,480
Construction Workers	110,785	342,442
Construction Worker Hours (thousands)	195,425	633,554
Net Value of Construction Work (thosands of dollars) [3]	11,094,502	39,510,241
Total Value of Construction Work (Thousands of Dollars)	21,461,568	89,793,431
Office Buildings	1,688,344	26,436,662
Other Commercial Buildings	1,098,192	20,503,267
Industrial Buildings	15,777,425	7,243,757
Religious Buildings	0	1,975,064
Educational Buildings	358,045	8,048,930
Hospitals	440,284	9,935,109
Other Construction	2,099,278	15,648,642

[1] General Contractors—Industrial Buildings and Warehouses.

[2] General Contractors—Nonresidential Buildings, Other Than SIC 1541.

[3] Excludes value of work subcontracted.

Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor, based on 1987 Census of Construction, U.S. Department of Commerce, March 1990.

Highway and street construction, except elevated highways. Highway and street construction (SIC 1611) has been a large, steady component of public construction expenditures in the 1980s. While state and local government spending on transportation systems has increased steadily throughout this decade, federal government spending has decreased slightly. Because the majority of public spending expenditures on highway and street construction come from state and local governments, the outlook for this industry sector is dependent upon the budgetary future of state and local governments.

Several states that previously have had large resources to commit to new highway projects are no longer able to sustain this level of spending because of budgetary difficulties. The state of Florida, which has spent large amounts on such infrastructure development in the past, is facing severe cash shortages in the Department of Transportation [6]. This has led to a substantial decline in highway and street construction spending. Other states, such as Texas and Massachusetts, are facing similar

situations due to a decline in tax revenues and high debt payments. The decline in highway and street spending by these states has been offset by increased spending by several states such as North Carolina, Kansas, and California [9].

Table V–B3 shows a summary of statistics for highway and street construction in the United States. In 1987, there were approximately 11,000 establishments in the highway and street construction business (excluding special trade contractors in SIC 17) with 284,000 employees, of whom approximately 239,000 were construction workers. Mean establishment size was 26 workers per firm that year. The value of construction business done in this industry was over $34 billion in 1987, an increase of over $14 billion from 1982.

TABLE V–B3.—HIGHWAY AND STREET CONSTRUCTION, EXCEPT ELEVATED HIGHWAYS

	SIC 1611[1]
Number of Establishments	10,986
Total Employees	284,380
Construction Workers	239,111
Construction Worker Hours (Thousands)	439,016
Net Value of Construction Work (Thousands of Dollars)[2]	27,983,839
Total Value of Construction Work (Thousands of Dollars)	34,161,427
Highways, Streets	28,123,431
Parking Areas	607,665
Recreational Facilities	183,363
Bridges and Tunnels	1,152,276
Dams and Reservoirs	185,273
Marine Construction	88,785
Sewers and Water Mains	1,112,314
Power Plants	177,092
Other Construction	2,531,228

[1] Highway and Street Construction, Except Elevated Highways.
[2] Excludes value of work subcontracted.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor, based on 1987 Census of Construction, U.S. Department of Commerce, March 1992.

Heavy Construction, Except Highway and Street Construction. This industry category consists of three subcategories: Bridge, Tunnel and Elevated Highway Construction (SIC 1622); Water, Sewer, Pipeline, Communications and Power Line Construction (SIC 1623); and Heavy Construction, Not Elsewhere Classified (SIC 1629).

New construction of bridges, tunnels and elevated highways is highly dependent upon the amount of funding available from state and local government sources. A large percentage of spending on roads and bridges is for maintenance of current infrastructure, an area in which there may be less freedom to decrease spending due to safety concerns. For the first nine months of 1989, total contract awards for bridges and tunnels were $4.5 billion, an increase of 11.0 percent over the first nine months of 1988 [6].

In 1989, 25 percent of value of highway construction consisted of work completed on bridges, overpasses, and tunnels; the other 75 percent consisted of flat work. Bridge work is expected to grow faster than flat work during the next several years because of the need to replace obsolete or unsafe bridges. According to the Federal Highway Administration, 23 percent of the highway bridges in the U.S. in 1989 were structurally deficient and an additional 21 percent were functionally or structurally obsolete.

In 1989, the cost for maintenance and repair work was $22 billion versus $29 billion for new highway construction. While some of the maintenance costs were for routine maintenance such as mowing grass, the largest fraction was spent on repaving roads and repainting bridges [6]. In 1983, there were 259,950 bridges in the Federal-aided highway system and 313,700 in the non-Federal-aided system.

In early 1990, Democratic and Republican leaders of the House of Representatives' Public Works and Transportation Committee began a review of U.S. infrastructure needs in order to develop legislation "to rebuild America." As the country plans for and pursues the huge job of upgrading the infrastructure, an increasing percent of expenditures dedicated to reconstruction, repair and maintenance, especially of bridges, can be expected.

Construction of water, sewer, and power lines (SIC 1623) reflects the expansion of the population and of residential areas. As residential construction increased in the 1980s, construction of these basic services accompanied the new developments. Work in this industry is also dependent on the regulatory atmosphere regarding communication, power, and gas lines. New projects continue to be initiated as demands for water, energy and communications links continues to grow.

SIC 1629 (Heavy Construction, Not Elsewhere Classified) includes activities such as athletic field construction, brush clearing or cutting, dam construction, flood control project construction, land reclamation, marine construction, railroad construction, subway construction, and waste disposal plant construction. Because of the varied nature of these activities, it is difficult to predict the outlook for this industry sector. The overall performance should continue to reflect the general level of activity in the economy as a whole.

Table V–B4 presents summary data about heavy construction, except highway and street construction (SICs 1622, 1623, and 1629). As of 1987, there were approximately 26,000 establishments in these industries, an increase of 8,000 establishments since 1982. The establishments employed approximately 543,000 workers, of whom 444,000 were construction workers. Mean establishment size was 21 employees per firm.

Total value of construction business done in this category in 1987 was over $48 billion. The five largest categories in the heavy construction industry are the following: sewers and water mains—$9.6 billion; bridges and tunnels—$5 billion; blast furnaces—$4.1 billion; sewage treatment plants—$3.5 billion; and power and communication lines—$3.7 billion. The net value of construction work for SIC 1622, SIC 1623, and SIC 1629 was over $40 billion in 1987.

TABLE V–B4.—HEAVY CONSTRUCTION, EXCEPT HIGHWAY AND STREET CONSTRUCTION

	SIC 1622 [1]	SIC 1623 [2]	SIC 1629 [3]
Number of Establishments	1,159	9,919	14,532
Total Employees	47,494	197,632	297,618
Construction Workers	40,092	165,879	238,204
Construction Worker Hours (Thousands)	76,210	309,168	420,660
Net Value of Construction Work (Thousands of Dollars)[4]	4,186,846	15,055,297	21,209,274
Total Value of Construction Work (Thousands of Dollars)	5,480,936	17,010,019	25,632,969
Bridges and Tunnels	4,476,501	127,899	532,104
Marine Construction	29,291	0	1,379,611

TABLE V–B4.—HEAVY CONSTRUCTION, EXCEPT HIGHWAY AND STREET CONSTRUCTION—Continued

	SIC 1622 [1]	SIC 1623 [2]	SIC 1629 [3]
Power and Communication Lines	0	3,473,127	274,727
Sewers and Water Mains	93,450	8,571,756	980,373
Pipelines	0	2,596,967	249,066
Sewage Treatment Plants	113,394	329,366	3,138,903
Other Construction	768,300	1,908,864	19,076,165

[1] Bridge, Tunnel and Elevated Highway Construction.
[2] Water, Sewer, Pipeline, Communications and Power Line Construction.
[3] Heavy Construction, Not Elsewhere Classified.
[4] Excludes value of work subcontracted.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor, based on 1987 Census of Construction, U.S. Department of Commerce, March 1990.

Special Trade Contractors.

Establishments in SIC 17 usually specialize in a specific type of construction work, often based on a specific trade. Special trade contractors may work directly for an owner of a project or may work under subcontract to a general contractor, depending on the type of contracting system used. Work is generally performed at the site of construction, but some special trade contractors may also have shops where they perform work incidental to the job site.

The traditional and most common project delivery system in the construction industry is the general contracting system. Under this system the owner of a construction project, who might be an individual, a private corporation, or a government agency, awards the contract to build the project to a general contractor, also commonly called a prime contractor.

The general contractor's prime function is to assemble the specialty contractors and suppliers needed to construct the project according to the plans and specifications. While a general contractor often performs some of the work on the project with his own employees, much of the work may be performed by subcontractors because the prime contractor might not have the expertise, equipment or the trained work force to perform the work. Some of the work may also be subcontracted in order to reduce the general contractor's risk.

Regardless of how much or how little of the construction work is subcontracted, the prime contractor has the responsibility for coordinating, scheduling, and monitoring all of the work done on the construction site. Thus, the subcontractors are dependent both on the general contractor and the owner of the project for the approval of their work.

Tables V–B5 through V–B7 provide summary statistics on each of the special trade contractor categories. General divisions of special trade contractor activities include: Plumbing, heating and air conditioning work (SIC 1711); painting and paper hanging (SIC 1721); electrical work (SIC 1731); masonry, stone setting, and other stone work (SIC 1741); plastering, drywall, acoustical, and insulation work (SIC 1742); terrazzo, tile, marble, and mosaic work (SIC 1743); carpentry work (SIC 1751); floor laying and other floor work, not elsewhere classified (SIC 1752); roofing, siding, and sheet metal work (SIC 1761); concrete work (SIC 1771); water well drilling (SIC 1781); structural steel erection (SIC 1791); glass and glazing work (SIC 1793); excavation work (SIC 1794); wrecking and demolition work (SIC 1795); installation or erection of building equipment, not elsewhere classified (SIC 1796); and special trade contractors, not elsewhere classified (SIC 1799).

TABLE V–B5.—SPECIAL TRADE CONTRACTORS, SIC GROUPS 1711–1743

	SIC 1711 [1]	SIC 1721 [2]	SIC 1731 [3]	SIC 1741 [4]	SIC 1742 [5]	SIC 1743 [6]
Number of Establishments	69,566	29,867	49,436	23,264	17,809	5,089
Total Employees	617,333	169,968	509,309	168,976	253,563	34,420
Construction Workers	470,793	145,385	405,961	150,308	217,392	27,908
Construction Worker Hours (Thousands)	844,750	223,559	732,100	221,510	350,749	44,916
Net Value of Construction Work (Thousands of Dollars) [7]	44,517,739	7,445,552	34,657,765	8,269,188	15,137,323	2,181,972
Total Value of Construction Work (Thousands of Dollars)	49,503,323	7,953,323	35,838,226	8,714,161	16,426,850	2,271,593
Single-Family Houses	11,394,480	1,929,573	4,164,610	2,736,184	4,486,565	852,862
Office Buildings	6,541,994	1,105,840	7,127,066	1,100,895	3,783,203	325,723
Industrial Buildings	7,117,202	988,816	6,548,566	1,063,764	1,294,473	113,849
Other Building Construction	20,805,493	2,952,507	12,873,331	3,432,954	6,302,394	935,079
Nonbuilding Construction	3,644,154	976,587	5,124,653	378,364	560,215	44,080

[1] Plumbing, Heating and Air Conditioning.
[2] Painting and Paper Hanging.
[3] Electrical Work.
[4] Masonry, Stone Setting, and Other Stone Work.
[5] Plastering, Drywall, Acoustical, and Insulation Work.
[6] Terrazzo, Tile, Marble, and Mosaic Work.
[7] Excludes value of work subcontracted.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

TABLE V–B6.—SPECIAL TRADE CONTRACTORS SIC GROUPS 1751–1781

	SIC 1751 [7]	SIC 1752 [8]	SIC 1761 [9]	SIC 1771 [10]	SIC 1781 [11]
Number of Establishments	36,009	8,174	25,673	23,422	3,414
Total Employees	190,431	44,579	231,137	218,194	17,598
Construction Workers	164,191	34,666	186,916	186,840	13,628
Construction Worker Hours (Thousands)	252,984	55,208	293,990	297,487	25,724
Net Value of Construction Work (Thousands of Dollars)*	10,038,947	3,371,200	14,182,802	13,853,510	1,299,288
Total Value of Construction Work (Thousands of Dollars)	11,243,863	3,651,435	15,027,806	15,055,670	1,330,056
Single-Family Houses	6,024,429	1,327,792	4,000,304	3,402,452	428,005
Office Buildings	815,411	702,996	1,644,814	1,340,326	11,425
Industrial Buildings	603,072	149,642	3,370,775	1,458,714	26,704
Other Building Construction	3,672,316	1,441,540	5,794,467	3,766,921	253,331
Nonbuilding Construction	128,635	29,465	217,446	5,087,257	610,591

[7] Carpentry Work.
[8] Floor Laying and Other Floor Work, not Elswhere Classified.
[9] Roofing, Siding, and Sheet Metal Work.
[10] Concrete Work.
[11] Water Well Drilling.
*Excludes value of work subcontracted.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

TABLE V–B7.—SPECIAL TRADE CONTRACTORS SIC GROUPS 1791–1799

	SIC 1791 [12]	SIC 1793 [13]	SIC 1794 [14]	SIC 1795 [15]	SIC 1796 [16]	SIC 1799 [17]
Number of Establishments	4,017	4,636	13,422	1,240	3,777	23,198
Total Employees	65,348	40,511	95,329	14,109	62,151	176,084
Construction Workers	54,729	28,730	79,198	11,686	50,244	141,615
Construction Worker Hours (Thousands)	89,851	49,500	137,093	17,545	91,269	221,784
New Value of Construction Work (Thousands of Dollars) *	4,510,231	3,142,354	7,490,988	844,714	5,009,764	9,832,759
Total Value of Construction Work (Thousands of Dollars)	4,862,655	3,222,472	8,244,398	912,484	5,359,826	10,814,313
Single-Family Houses	68,448	396,351	2,112,521	60,203	45,557	767,914
Office Buildings	930,225	927,580	658,168	92,140	1,356,025	937,438
Industrial Buildings	1,173,121	206,157	611,783	155,531	1,565,427	834,379
Other Building Construction	1,664,693	1,650,389	3,171,494	401,178	1,937,399	4,110,221
Nonbuilding Construction	1,026,168	41,995	1,690,432	203,432	455,418	4,164,361

[12] Structural Steel Erection.
[13] Glass and Glazing Work.
[14] Excavation Work.
[15] Wrecking and Demolition Work.
[16] Installation or Erection of Building Equipment, Not Elsewhere Classified.
[17] Special Trade Contractors, Not Elsewhere Classified.
* Excludes value of work subcontracted.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

According to the U.S. Department of Commerce's most recent census of the construction industry, there were approximately 342,000 establishments of special trade contractors (SIC 17) which employed 2.9 million workers in 1987, of whom more than 2.3 million were construction workers. Overall, special trade contractors did over $200 billion in total business volume and net value of construction work was over $185 billion. A discussion of special trade contractors by individual four-digit SIC follows.

Plumbing, Heating, and Air Conditioning. Table V–B5 summarizes market structure and trends of SIC 171 through SIC 174. Industry sector SIC 1711 consists of plumbing, heating, and air conditioning contractors.

The optimistic contracting picture many mechanical contractors in SIC 1711 enjoyed in 1989 changed rapidly because of the major slowdown in commercial building. However, jobs like retooling old plants and building efficient ones to help manufacturers lower costs and compete better have shown modest gains. For the 179 firms responding to a 1990 survey of mechanical contractors by Engineering News Record (ENR), 39 percent of new contracts were for the commercial building market, 30 percent for industrial or power markets, 19 percent for the institutional market, and 16 percent for the renovation market. The remainder of revenues came from the water and sewer markets (7 percent), transportation and residential markets (each 2 percent), and other markets (1 percent). Energy-related mechanical work has good prospects because of the crisis in the Middle East, with much of the new work involving alternative sources of energy [10].

The latest economic census conducted by the U.S. Department of Commerce, Bureau of the Census, indicates that in 1987 there were approximately 70,000 establishments in plumbing, heating and air conditioning contracting (SIC 1711), which is an increase of over 15,000 firms since 1982. These firms employed more than 600,000 workers of whom 470,000 were construction workers. This industry segment did over $49 billion in construction business in 1987, up from $33.5 billion in 1982. Net value of construction work was close to $45 billion in 1987, $15 billion more than in 1982 [1].

Painting and Paperhanging. Competition among painting contractors increased during 1989 as a downturn in commercial construction forced some firms to cut prices in order to stay in business. Dun & Bradstreet reported that industry failures were up in 1988, climbing from 303 failed firms in 1987 to 327 in 1988. Most of the larger painting contractors performed commercial (41.9

percent), industrial (28 percent), and institutional (10.8 percent) work in 1989, while many of the small firms performed residential painting [11].

The painting contractor industry has become increasingly sophisticated and capital costs of equipping each worker for industrial painting can be as high as $500. Much of these costs go into sandblasting equipment, blast material recovery systems, and equipment needed to create a negative air pressure environment to protect workers or production lines from contamination [6].

As the downturn in the commercial building market continued in 1989, competition increased. Jobs that used to have four or five bidders attracted eight or nine; owners began putting off maintenance painting to save money [10].

According to the U.S. Department of Commerce industry census, there were close to 30,000 establishments in painting and paperhanging (SIC 1721) in 1987, up from 25,000 in 1982. These firms employed 170,000 workers in 1987, of whom over 145,000 were construction workers. This is an increase of 35,000 workers since 1982. Dollar value of business done in 1987 almost $8 billion compared to $4.7 billion in 1982. Net value of construction work was $7.4 billion in 1987, an increase of $3 billion since 1982 [1].

Electrical Work. In recent years, mergers and acquisitions have contributed to drastic changes in the electrical industry (SIC 1731). In 1988, 590 electrical contractors dropped from the industry's ranks, up nine percent from 1987 according to Dun & Bradstreet [11]. On the other hand, the most recent industry census shows that the actual number of electrical contracting firms operating in the United States has increased by 25 percent between 1982 and 1987 [1].

In ENR's specialty contractors survey, 179 firms who reported at least some electrical work indicated that only eight percent of their 1989 revenues came from transportation jobs and that the commercial (37 percent) and industrial (32 percent) markets dominated their business. The era of giant electrical contractors may be fading because of legal troubles and declining revenues for some of the market's largest contractors. This has opened the market for new contenders.

The outlook for the early 1990s is a cause for caution however. Slowdowns in military construction, automobile plants, and office buildings are depressing the market; bright spots include transportation and renovation which represented 15 percent of revenues in 1989 [10].

The industry census estimates that in 1987 there were over 49,000 electrical contractors performing electrical work (SIC 1731), up from 39,500 firms in 1982. These contractors employed more than 500,000 workers in 1987, of whom 405,000 were construction workers. Total business done was $36 billion, up 33 percent from 1982. Net value of construction work was $34.7 billion in 1987 [1].

Masonry, Stone Setting and Other Stone Work. Of the respondents to the 1990 *ENR* survey of masonry contractors, 23 firms reported revenues substantial enough to place them on the "Top 600 specialty contractors" list. The downturn in commercial building work may be helping masonry contractors that are specializing in restoration work. The reason is that owners are holding onto what they have. Other leading masonry contractors are side-stepping the downturn in commercial building by tapping markets that tend to favor brick and block building materials, such as hospitals, educational and religious buildings, and other institutional buildings.

The U.S. Department of Commerce industry census estimates that there were over 23,000 establishments engaged in masonry work, stone setting, and other stone work (SIC 1741) in 1987, up from 20,000 in 1982. These establishments employed 169,000 workers in 1987, a 40 percent increase over 1982. More than 150,000 of these workers were construction workers in 1987. Total dollar value of construction business done that year was $8.7 billion, almost twice as much as in 1982. Net value of construction work in 1987 was $8.3 billion, approximately $4 billion more than in 1982 [6].

Plastering, Drywall, Acoustical, and Insulation Work. This industry (SIC 1742) consists primarily of wall and ceiling contractors. Competition is intense in this market because of the relative ease of entry related to low capital requirements. In 1989, business failures among wall and ceiling contractors climbed seven percent with 266 firms going out of business.

In 1989 there was $697.1 million worth of work performed by the top 20 wall and ceiling contractors. This was a 34 percent increase over 1988 work according to *ENR's* 1990 survey. In 1989, the commercial building market accounted for 70 percent of the revenues, followed by the institutional market at 14 percent and the residential market at 7 percent. Only 11 percent of the top 20 firms' business came from renovation work. However, most wall and ceiling contractors expect repair and remodeling work to surpass new construction contracts in the near future [10].

According to the U.S. Department of Commerce's Bureau of the Census, there were about 18,000 wall/ceiling contractors (SIC 1742) in 1987, up from 16,000 in 1982. These establishments employed over 250,000 workers in 1987 (an increase of 50,000 over 1982), of whom 217,000 were construction workers. Total dollar value of business done that year was over $16 billion, $6 billion more than in 1982. Net value of construction work increased by $6 billion, from $9 billion in 1982 to $15 billion in 1989 [1].

Terrazzo, Tile, Marble, and Mosaic Work. The U.S. Department of Commerce census estimates that there were 5,000 establishments engaged in terrazzo, tile, marble and mosaic work (SIC 1743) in 1987, an increase of more than one thousand firms since 1982. These establishments employed 34,000 workers in 1987, of whom 28,000 were construction workers. Total dollar value of business done exceeded $2 billion, up from $1 billion in 1982. Net value of construction work in 1987 was also approximately $2 billion [1].

Carpentry Work. Table V–B6 summarizes market structure of special trade contractors in SICs 1751 through 1781. The most recent census by the U.S. Department of Commerce estimates that there were 36,000 firms engaged in carpentry work (SIC 1751), an increase of more than 5,000 over 1982. These establishments employed 190,000 workers in 1987, of whom 164,000 were construction workers. Dollar value of business done in 1987 was $11 billion, approximately twice as much as in 1982. Total net value of construction work was $10 billion in 1987, up from $4.8 billion in 1982.

Carpentry is one of the major specialty trades in construction. Wood is a preferred and common building material with many applications and its use almost always requires the skill of a carpenter. Over 60 percent of the total value of construction work by carpenters is in residential building construction, reflecting the predominant use of wood in these buildings. About 45 percent of carpentry work is for detached single-family houses, where carpenters are often responsible for completing the whole structure. Carpentry is essential in other construction projects as well; for example, carpenters may construct concrete forms and build platforms and guardrails.

Many workers in the carpentry trade act as independent contractors and may only work part of the year. Thus, the

number of full-time equivalent carpenters employed by establishments (as reported by the Department of Commerce) may significantly underestimate the number of people classifying themselves as carpenters. Based on household data from the Bureau of Labor Statistics Employment and Earnings series, there were an estimated 1.3 million carpenters in the United States in 1989.

Floor Laying and Other Floor Work, NEC. In 1987, there were over 8,000 establishments engaged in floor laying and other floor work (SIC 1752) according to the U.S. Department of Commerce census estimates. This was an increase of approximately 2,000 firms over 1982. These firms employed close to 45,000 workers in 1987, of which more than 34,000 were construction workers. Dollar value of business done rose to $3.7 billion that year, up from $1.9 billion in 1982. Net value of construction work increased by $2 billion during that same period to $3.4 billion.

Roofing, Siding and Sheet Metal Work. Roofing contractors (SIC 1761) are not likely to suffer from construction cyclicality as much as other trades because a substantial part of their market consists of repair and renovation work. Renovation work for five of the top roofing firms represented 75 percent of their business. The National Roofing Contractors Association conducted a survey of roofers which showed that commercial work, particularly renovation, has grown substantially in recent years [11].

The 39 largest roofing firms had $608 million in revenues in 1989, seven percent below 1988. Declines in revenues will have the greatest impact among smaller contractors where competition is the most pronounced. In the single ply roofing market, profit margins are about one percent according to industry sources [6]. In contrast, business for sheet metal firms actually improved in 1989 because rising backlogs from the year before were translated into revenues.

According to the U.S. Department of Commerce, Bureau of the Census, there were an estimated 26,000 establishments in roofing, siding and sheet metal work (SIC 1761) in 1987 which employed 230,000 workers, of whom approximately 187,000 were construction workers. Total dollar value of business done in 1987 was $15 billion and net value of construction work was $14 billion.

Concrete work. Concrete contracting (SIC 1771) is a very competitive business consisting of over 23,000 establishments according to the U.S. Department of Commerce. In such a market, a firm with $3 million per year in revenues is considered big. The two top ranking concrete contractors have revenues of over $100 million each. There has been a growing demand for super-flat industrial floors and much of the revenues of the larger firms come from commercial and industrial work; the remainder consists of residential construction and nonbuilding construction. Also, many of the larger firms offer a "turnkey" service that provides for all the concrete needs of a project.

In 1989, some of the big concrete contractors posted gains in revenues, but market prospects softened in 1990 with the hardest hit firms specializing in commercial building. In other subsectors, high rise and automotive markets were down but food processing and retail work were relatively strong as were prospects for paving work [6].

The Bureau of the Census estimates that the concrete contractor industry (SIC 1711) employed 218,000 workers in 1987, of whom 187,000 were construction workers compared to 157,000 and 138,000 respectively in 1982. In 1987, the industry's total dollar value of business done was $15 billion, up from $8 billion in 1982. Net value of construction work in 1987 was estimated at $14 billion compared to $7 billion in 1982.

Water Well Drilling. There has been little change in the water well drilling industry (SIC 1781) over the past five years. According to U.S. Department of Commerce census estimates, there were 3,400 firms engaged in water well drilling in 1987, 100 establishments fewer than in 1982. These firms employed 18,000 workers in 1987, just one thousand more than in 1982. Of these, 14,000 workers were estimated to be construction workers in 1987. Dollar value of business done in 1987 was $1.3 billion, only a marginal increase over 1982. Net value of construction work rose from $1 billion in 1982 to $1.3 billion in 1987.

Structural Steel Erection. Table V–B7 summarizes market structure and trends of special trade contractors in SIC 179. There have been a number of changes in the steel erection industry (SIC 1791) with a shake out that forced some big companies like Bethlehem Steel Corporation to cease field operations in recent years[6].

To offset revenue losses from the weakening commercial market, the nation's largest steel erection contractors have sought infrastructure work. Just a few years ago the largest firms in the sector found about half their work in the commercial market, with the other half evenly split between the industrial and the bridge and highway markets. By 1990, bridge and highway jobs accounted for half of total revenue with industrial and commercial jobs splitting the remainder. It is believed that the infrastructure market is strong enough to offset the downturn in the commercial market for most large steel erection contractors. However, erectors that cannot get into the infrastructure market will probably experience economic hardship [6].

The U.S. Department of Commerce estimates that there were 4,000 establishments in the steel erection industry (SIC 1791) in 1987, an increase of 300 firms over 1982. The industry employed 65,000 workers in 1987, up from 62,000 workers in 1982. Of these, 55,000 were construction workers in 1987 and the dollar value of business done that year was $5 billion, up from $3.7 billion in 1982. Net value of construction work was $4.5 billion in 1987, an increase of approximately $1 billion from 1982.

Glass and Glazing. The United States market for glazing and curtain wall contractors has weakened as the pace of new construction has slowed. In recent years, more than 80 percent of the work of the 25 largest glazing and curtain wall contractors came from the commercial market. According to Dun and Bradstreet, 66 glazing firms failed in 1989 [6]. Many banks have tightened lending to commercial developers. According to industry sources, some banks now expect projects to be 30–50 percent pre-leased before they will consider financing construction [10].

Overall, the U.S. Department of Commerce's 1987 industry census estimates that there were about 5,000 establishments in the glass and glazing contracting industry in 1987 compared to 4,000 in 1982. These establishments employed 41,000 workers in 1987, of whom 29,000 were construction workers. In 1987, total dollar value of construction business done by SIC 1793 was estimated to be $3.2 billion and net value of construction work was $3.1 billion compared to $2.6 billion and $2.4 billion respectively in 1982.

Excavation Work

There were 6,000 fewer excavation/foundation contractors (SIC 1794) in 1987 than in 1982. This sector has had a particularly large number of failures; even large excavation contractors are having a difficult time maintaining a steady flow of work. There seems to be no particular region of the country that is doing significantly better than the others [6].

Although some of the large general contractors do their own excavation and foundation work, excavation contractors

still dominate the market. Of the $7.4 billion worth of excavation and foundation work performed in 1987 by specialty contractors, 22.1 percent was for residential construction.

According to the U.S. Department of Commerce industry census, there were 13,400 establishments in 1987 in SIC 1794 compared to 19,600 in 1982. These establishments employed 95,000 workers in 1987, down from 136,000 in 1982. Total dollar value of business done in 1987 ($8.2 billion) was approximately the same as in 1982. Net value of construction work in 1987 was estimated at $7.4 billion.

Wrecking and Demolition. Regulation of environmental pollutants, particularly asbestos, has redefined the demolition industry. Those companies who are not gaining experience in asbestos and other hazardous materials are losing market share because developers are looking for demolition firms that can perform the dual function of demolition and abatement.

In 1990, wrecking and demolition firms were squeezed by rising capital requirements, higher insurance costs and stricter environmental regulations. Some smaller demolition contractors were having a difficult time adjusting. However, environmental concerns are creating more work for firms that have the equipment and crews to deal with the more complex environmental clean-up jobs.

In the South, for example, new work is coming from the dismantling of industrial facilities such as petrochemical plants that are environmentally unsound. In the West, infrastructure improvement including freeway work and bridge removal is a major source of work for wrecking contractors. The rest of the country also has a growing need for bridge work over the next several years. Over 40 percent of the country's bridges are in need of rehabilitation or repair. Some of these will be replaced by demolition contractors. High public concern about occupational lead exposure and increased environmental concerns over lead paint abatement should translate into more contracts for firms specializing in removing or working with this heavy metal.

The most recent U.S. Department of Commerce industry census estimates that there were 1,200 firms engaged in wrecking and demolition work (SIC 1795) in 1987, up from 900 firms in 1982. These firms employed over 14,000 workers in 1987, of whom almost 12,000 were construction workers. Dollar value of business done more than doubled from 1982 to 1987, rising from $400 million to approximately $910 million, while net value of construction work changed from $300 million in 1982 to $845 million in 1987.

Installation or Erection of Building Equipment, NEC. These special trade contractors (SIC 1796) primarily engage in the installation or erection of building equipment such as elevators, pneumatic tube systems, and dust collecting equipment. Contractors in this industry also install or dismantle machinery or other industrial equipment.

For example, U.S. elevator contractors are part of SIC 1796. United States elevator contractors are coping with fluctuations in the demand for new facilities by capitalizing on a recent trend toward modernization to fend off the effects of a national slowdown in new multi-story construction. The popular trend in upgrading elevators is to replace the conventional relay-lodging systems of the 1950s and 1960s with today's state-of-the-art, electronic microprocessor systems, which are easier to install, operate, and maintain. However, in order to install and service such sophisticated equipment, the industry will have to undergo a transformation which will affect its workforce. To improve the workforce, the National Association of Elevator Contractors is spearheading a campaign to better educate field personnel among its existing 400 member companies and to recruit more college and trade school graduates with computer backgrounds into elevator contracting [6].

According to the U.S. Department of Commerce industry census, there were close to 4,000 establishments in SIC 1796, a number which has changed little since 1982. These establishments employed 62,000 workers in 1987, of whom 50,000 were construction workers. Dollar value of business done was estimated at $5.4 billion, approximately $1 billion more than in 1982. Net value of construction work was $5 billion in 1987, up $1 billion from 1982.

Miscellaneous Special Trade Contractors, NEC. This industry group consists of special trade contractors who are primarily engaged in construction work and who are not classified under any of the other construction industry categories in SIC 1799. This group includes such diverse firms as swimming pool and fence construction, erection and installation of ornamental metal work, house moving, shoring work, waterproofing, damp-proofing, fireproofing, sandblasting, and steam cleaning of building exteriors.

This group represents almost half (47 percent) of all establishments included in the miscellaneous contractor industry (SIC 179). According to the U.S. Department of Commerce most recent census figures, there were an estimated 23,000 establishments in SIC 1799 in 1987, 3,000 more firms than in 1982. These establishments employed 176,000 workers in 1987, of whom 140,000 were construction workers. Total dollar value of business done by these firms was $11 billion in 1987, up from $6 billion in 1982. Net value of construction work in 1987 was estimated at $10 billion.

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3. Employee Exposures and Benefits

Introduction. Employee exposures to the substances included in the scope of this rulemaking are associated with a wide variety of acute and chronic conditions and illnesses. These include sensory irritation, narcosis, systemic toxicity, respiratory disease, neuropathy, and cancer.

Since the adoption of the existing limits twenty years ago, toxicological evidence has become available that shows that adverse health effects can occur as a consequence of exposure to the substances regulated, and that such health effects occur even when exposures are maintained at the current limits. In addition, many substances that have come into widespread use or been introduced since 1970 have been shown to be potentially hazardous in workplace environments. OSHA thus believes that reducing worker exposures

to such substances by lowering existing exposure limits or by adding limits for previously unregulated substances will result in a significantly reduced risk of illness.

This chapter describes both the methodology used to identify construction workers potentially exposed to hazardous substances included in this proposed rulemaking and the expected benefits to those workers resulting from lowering permissible exposure limits.

Data sources and methodology. The extent of exposures to the substances included in this proposed rulemaking for the construction industry was evaluated by first identifying specific activities with potential exposures.

For each activity, the extent of exposures to the various substances present was determined. Activities involving substances for which OSHA is adding a skin designation were assessed for dermal exposure.

OSHA used exposure monitoring data from several sources to determine worker exposure levels during construction activities. One source for monitoring data is OSHA's Integrated Management Information System (IMIS) data base. This data base contains exposure measurements obtained by OSHA compliance officers during inspections of worksites. For each site inspected, the IMIS file includes information on the number of employees involved, results of employee air monitoring, and the number of employees potentially exposed to each substance monitored.

Another valuable source of information was the National Institute for Occupational Safety and Health (NIOSH). NIOSH regularly conducts studies on potential occupational health hazards throughout the United States, including the construction industry. NIOSH's health hazard evaluation reports give detailed descriptions of working conditions and activities at a particular site. The chemicals present are identified, recommended controls and work practices are discussed, and exposure monitoring results are analyzed. Although the conclusions in the report concerning possible health hazards are related to a particular site, the data provide a link between a certain set of circumstances and the resulting exposure levels, and can be effectively applied to similar situations for the relevant activity throughout the industry.

OSHA collected additional exposure monitoring data specifically for this rulemaking. A series of site visits was conducted by industrial hygienists working for a contractor hired by OSHA. Establishments were assured of confidentiality, allowed their employees to be monitored, and provided various information such as the duration and frequency of activities, the numbers of employees involved, and the value of the construction work at the project. In return, the establishments received the consulting services of the health professionals for the duration of the visit. Data gathered from this effort served to confirm data from other sources and provided definitive information for principal activities and activities that otherwise would not be as well documented.

OSHA also conducted a major computer-assisted telephone interview (CATI) survey to develop a comprehensive profile of employee exposures in the construction industry. Over 1,100 establishments provided complete responses. The firms were selected at random within 48 survey cells. The survey cells were defined by a combination of SIC code and establishment size. Establishments with fewer than twenty employees were considered small and establishments with twenty or more employees were considered large.

Each respondent supplied specific information on the demographic characteristics of the firm, the type of construction project covered, and the role of the firm and its employees in the project. Respondents were asked to identify all activities with potential exposures. For each category of construction work, an initial list of activities and associated substances and products served as prompts. The substances and products involved in each of the respondent's activities were then determined and confirmed. In cases where the presence of specific products is easier to identify than the presence of individual chemicals, the names of the products and the manufacturers were solicited and material safety data sheets (MSDSs) were used to identify the relevant chemicals.

The survey requested details about each activity to determine the nature of potential exposures, including information on the work environment, the controls used, the scale of the activity, and the number of workers involved. The data from each respondent were evaluated in combination with documented exposure monitoring results and other research concerning the chemicals present, such as the concentration and quantity involved, the likelihood of becoming airborne, and the stringency of the proposed PEL. The number of workers likely to be exposed and overexposed to various chemicals during each activity was determined with computer algorithms developed by experienced industrial hygienists using all available data associated with the activity.

The estimates generated from the survey data were derived from the responses of a representative sample of construction establishments within each survey cell. These data were scaled up to national levels through the use of published statistics on total employment by firm size and SIC code. The 1987 Census of Construction Industries, published by the U.S. Department of Commerce in 1990, provides these and other detailed statistics on the construction industry.

Number of Exposed Employees. Table V–B8 presents the total estimated full-time equivalent number of employees exposed to substances found in the construction industry and considered in this proposed rulemaking. A full-time equivalent exposed employee is comparable to a person-year of exposure, which represents one shift each working day for one year. Due to the nature of some construction activities, the actual number of people who may experience an exposure over the course of a year would be larger. For example, if 100,000 workers were exposed to a chemical for an average of two hours per week, their combined exposure would equal that of 5,000 full-time equivalent employees.

TABLE V–B8.—EMPLOYEE EXPOSURES TO CHEMICALS IN CONSTRUCTION ADDRESSED BY THE PROPOSED RULE

Chemical		Full-time equivalent employees	
Code	Name	Exposed	Exposed above proposed PEL and unprotected
0040	Acetone	94130	670
0160	Alpha-Alumina	1	0
0170	Ammonia	66969	316
0290	Asphalt fumes	300786	1643
0420	Butane	37	0
0430	2-Butanone (MEK)	35204	285
0435	Butoxyethanol	64368	1299
0440	n-Butyl acetate	17651	200
0460	n-Butyl alcohol	1022	23
0477	n-Butyl glycidyl ether	1485	0
0515	Calcium hydroxide	2759	0
0560	Carbon monoxide	143708	0
0577	Portland cement	409291	3905
0640	Chlorine	6601	54
0645	Epichlorohydrin	326	0
0686	Chromic acid and chromates	7764	591
0830	Cyclohexanone	48687	0
0910	Diethylamine	2181	0
0921	Diethylene triamine	67797	0
1030	Ethanolamine	1207	0
1050	Ethyl acrylate	753	0
1060	Ethyl benzene	79996	844

TABLE V-B8.—EMPLOYEE EXPOSURES TO CHEMICALS IN CONSTRUCTION ADDRESSED BY THE PROPOSED RULE—Continued

Chemical		Full-time equivalent employees	
Code	Name	Exposed	Exposed above proposed PEL and unprotected
1285	Fluorotrichloromethane	4692	0
1300	Fibrous glass	180484	498
1340	Gasoline	46234	0
1371	n-Heptane	34926	85
1380	n-Hexane	63986	2397
1385	Hexone (methyl isobutyl ketone)	24830	200
1389	Hexylene glycol	77681	1549
1480	Hydrogen sulfide	5801	54
1560	Isopropyl alcohol	137103	200
1591	Lead	105050	6266
1630	Mercury, organo alkyl compounds	46236	0
1631	Mercury, aryl and inorganic compounds	93184	1471
1660	Methyl alcohol	64716	68
1720	Methyl chloroform (1,1,1-trichloroethane)	112119	1431
1781	Mineral wool fiber	4456	0
1782	Alpha-methyl styrene	99591	0
1790	Molybdenum	4974	1696
1840	Nickel, soluble compounds	20137	2139
1903	Nitrogen dioxide	138823	10
1910	Ethylene glycol dinitrate	310	0
1912	Nitroglycerine	310	0
1913	Ethylene glycol vapor and mist	314657	7950
1941	2-nitropropane	1022	23
1960	Ozone	130123	0
2037	Petroleum distillates (naphtha)	473443	16387
2085	Phosphoric acid	1265	0
2180	n-Propyl acetate	3906	0
2210	Propylene glycol monomethyl ether	55369	1103
2227	Rosin core solder pyrolysis (as HCHO)	27621	0
2260	Sodium hydroxide	7	0
2270	Stoddard solvent	12522	0
2280	Styrene	721	0
2390	Tetrahydrofuran	31323	0
2431	Tin organic compounds	47344	0
2440	Titanium dioxide	222499	5355
2460	Toluene	314940	2291
2470	Toluene-2,4-diisocyanate	20563	401
2480	Triethylamine	2556	591
2490	Trichloroethylene	67359	68
2530	2,4,6-Trinitrotoluene (TNT)	3	0
2584	VM & P naphtha	24221	473
2587	Welding fume	106735	11088
2590	Xylene (o-, m-, p-isomers)	376742	4357
2610	Zinc oxide fume	15322	235
2611	Zinc chloride fume	3190	0
2612	Zinc chromate, as CR	594	0
9010	Silica quartz (crystalline), respirable	852083	30583
9015	Silica cristobalite, respirable dust	88938	11783
9050	Silica, amorphous (diatomaceous earth)	1962	0
9075	Mica	65500	591
9210	Wood dust, hard wood	152322	304
9211	Wood dust, soft wood	395217	189
A102	Aluminum: Welding fumes	17822	0
H146	Hexane isomers	1000	0
W102	Wood dust, western red cedar	9363	0
W103	Wood dust, soft & hard woods exc W. red	43625	30
Z102	Zinc oxide dust	18537	0

Source: Office of Regulatory Analysis, OSHA; based on CONSAD [1].

The total number of employees potentially exposed to one or more substances annually would be over 4 million, the total number of construction workers in the industry. This is due to several factors. Workers in every occupational group in the construction industry engage in one or more of the activities identified as involving exposures to the substances associated with this proposed rule. The workforce in the construction industry is relatively transient and mobile within the industry and workers have a greater likelihood of being assigned to a variety of different tasks over the course of a year. Each firm in the industry may work on several projects with varying activities and exposures. A construction worker engaged in one activity faces potential exposures from other activities occurring in the vicinity.

Substances for which exposures above the proposed PELs are likely to occur most frequently include acetone, butoxyethanol, n-heptane, lead, methyl chloroform, nickel, ethylene glycol, petroleum distillates, portland cement, titanium dioxide, toluene, welding fume, xylene, crystalline silica quartz, and silica cristobalite. Specific chemicals and activities with overexposures are discussed below.

Acetone is a solvent and may be a component in paints and varnishes, rubber adhesives, and vinyl cements. Although this chemical will be present in many construction activities, most of the overexposures to acetone are expected to occur during the application of single ply membrane roofing systems. Overexposures have also been found during the application of floor coatings and while laying floors, as well as during steel painting and bonding and gluing operations.

N-heptane is a solvent that can be present in many construction applications. Overexposures to n-heptane can occur during the application of single ply membrane roofing systems and during the exterior painting of steel. Through the use of adequate ventilation, exposures can be kept below the PEL and the short-term exposure limit during floor work (patching and resurfacing) and other gluing operations.

Lead exposure is a serious health hazard faced by many construction employees. The risks are compounded because employers may not always be aware of the presence of lead or may underestimate the potential for overexposure. Old lead-based paints may have a lead content of over 30 percent. Severe overexposures can occur when the paint is grinded, burned, or otherwise dispersed into the air. Soldering, brazing, and welding may also involve lead exposures. The proposed PEL for total welding fumes is 100 times the proposed PEL for lead, making specific precautions for lead exposure a necessary consideration when it is present.

Activities where overexposures to lead are most common include abrasive blasting; burning, cutting, or welding on painted steel, welding or cutting galvanized steel; grinding, drilling, chipping, or cutting on any painted surfaces; and soldering or brazing. Over 500,000 construction employees are estimated to be engaged in these activities on a regular basis, which may often be done by inexperienced laborers and helpers.

Potential exposures to lead are expected to become more widespread in the construction industry in the near future. The Department of Housing and Urban Development (HUD) is requiring public housing agencies to inspect housing projects for lead paints by 1994. Abatement is required if lead is present above specified concentrations. The lead abatement industry is expected to grow significantly as the awareness of potential lead hazards increases among all building owners.

A second source of increased exposures to lead will result from increases in infrastructure development efforts. Tens of thousands of bridges, neglected in the past, are in need of

rebuilding, repair, or repainting, and major rehabilitation projects are being initiated or planned throughout the country. The removal of old lead paints and other activities associated with bridge work involve potentially severe exposures even in outdoor settings. Compliance with Environmental Protection Agency (EPA) regulations, which are designed to protect the environment by requiring such operations to be enclosed, further concentrates exposures for workers within the enclosures.

Methyl chloroform is a solvent used in construction activities such as laying floors, surface cleaning and stripping, insulation installation, and other bonding and gluing operations. Overexposures can be avoided by providing adequate ventilation, but have been found to occur in situations with extended exposures in relatively confined spaces. Surface cleaning and stripping operations are especially prone to result in worker overexposures due to the proximity of the chemical to the breathing zone.

Exposures to airborne concentrations of soluble compounds of nickel are possible during burning, cutting, or welding on painted steel and also during welding or cutting stainless steel.

Ethylene glycol is a component of many latex paints. It can become airborne as either a vapor or a mist during painting operations. When painting is done indoors and concentrations are allowed to build up, overexposures may occur. Workers engaged in interior spray painting for extended periods of time are most likely to experience overexposures.

The presence of petroleum distillates is widespread in the construction industry. It can be a component of such products as laquers, paints, polyester coatings, asphalt products, çaulks, sealants, and rubber cements. Often the presence of petroleum distillates will not be a significant hazard, but several activities have been identified where the potential for overexposure exists. These include exterior painting of wood finishes, exterior painting of steel, concrete sealing and coating operations, interior application of floor coatings, interior painting, surface stripping, and preparing concrete forms.

Toluene and xylene are common solvents found in many paints, coatings, caulks, epoxies, adhesives, sealants, and curing agent mixtures. Although most of the construction workforce may be regularly exposed to these agents to some degree, overexposures are relatively limited. Activities with potential for overexposure include the application of single ply membrane roofing systems, concrete sealing and coating operations, interior application of floor coatings, interior painting, preparing and installing concrete forms, and traffic line painting.

Welding and cutting are common activities that are the main sources of exposure to welding fumes. Overexposures can occur if appropriate controls are not employed. Based on the CONSAD survey of construction establishments, approximately 10 percent of workers exposed to welding fumes are potentially overexposed.

Exposures to various forms of silica are among the most common exposures to airborne contaminants in the construction industry. Incidences of overexposure are likely to be limited to circumstances involving extended periods of work in dusty environments. These are most likely to occur during earthmoving, trench excavation, abrasive blasting, batch mixing of concrete or mortar, grinding or cutting on concrete and other surfaces, and tunnel blasting and excavation.

Estimated reductions in fatalities and illnesses. The reduction of employee exposures to hazardous substances to a level below that associated with adverse health effects will result in a decrease in the number of fatalities and illness cases among affected construction workers. This section provides estimates of the numbers of fatalities and illnesses that can be expected to be avoided in the construction industry through compliance with the proposed rule.

As presented in Table V–B8, OSHA has estimated the extent of exposures in the construction industry as the number of full-time equivalent employees exposed. Construction workers performing activities contributing to these exposures are currently at risk of experiencing a variety of adverse health effects brought about by overexposures to the substances included in this rulemaking. Many of these adverse effects, in particular cancer, systemic toxicity, chronic respiratory disease, neuropathy, and chronic liver and kidney damage, can result in lethal outcomes. Employees who are excessively exposed to substances causing organ damage, neurological impairment, or metabolic effects may also be at excess risk of incurring a fatal condition. A description of the risks associated with overexposures to specific chemicals can be found in the health effects section of this preamble.

Table V–B9 presents the extent of exposures above the proposed PELs in construction by substance and type of health effect. Substances for which compliance with the proposed PEL would be equivalent to compliance with existing requirements are not included in this table, and the benefits of compliance with these limits are not attributed to the proposed rule. Such substances include nuisance particulates, limestone, plaster, gypsum, and calcium silicate.

The major health effects category includes respiratory effects, which are primarily due to exposures to silica, soluble nickel compounds, asphalt fume, mica, fibrous glass, and wood dust. Petroleum distillates, lead, n-hexane, and mercury cause neuropathy effects among exposed workers; welding fume, butoxyethanol, and zinc oxide fume are major contributors to systemic toxicity effects; and toluene, methyl chloroform, and n-heptane exposures are associated with narcosis effects. Substances with exposures above the proposed PELs causing increased cancer risk to construction workers include chromic acid and chromates. Sensory irritation results from exposure to ethylene, xylene, hexylene, and propylene; and physical irritation results from exposure to titanium dioxide, portland cement, and molybdenum.

TABLE V–B9.—EXPOSURES IN CONSTRUCTION ABOVE PROPOSED LIMITS BY TYPE OF HEALTH EFFECT

Type of health effect and substance	Exposures above proposed limits (person-years)
Sensory irritation:	
Ethylene Glycol	7,950
Xylene	4,357
Hexylene Glycol	1,549
Propylene G.M.E.	1,103
Ethyl Benzene	844
Acetone	670
Triethylamine	591
VM & P Naphtha	473
Ammonia	316
2–Butanone	285
N–Butyl Acetate	200
Isopropyl Alcohol	200
Chlorine	54
Subtotal	18,592
Physical irritation:	
Titanium Dioxide	5,355
Portland Cement	3,905
Molybdenum	1,696
Toluene-2,4-Diisocyanate	401
Subtotal	11,357
Respiratory:	
Silica Quartz (Crystalline)	30,583
Silica Cristobalite	11,783
Nickel, Soluble Compounds	2,139
Asphalt Fume	1,643
Mica	591
Fibrous Glass	498
Wood Dust, Hard Wood	304
Wood Dust, Soft Wood	189
Wood Dust, general	30

TABLE V–B9.—EXPOSURES IN CONSTRUCTION ABOVE PROPOSED LIMITS BY TYPE OF HEALTH EFFECT—Continued

Type of health effect and substance	Exposures above proposed limits (person-years)
Nitrogen Dioxide	10
Subtotal	47,770
Narcosis:	
Toluene	2,291
Methyl Chloroform	1,431
N–Heptane	85
Trichloroethylene	68
Subtotal	3,875
Neuropathy:	
Petroleum Distillates	16,387
Lead	6,266
N–Hexane	2,397
Mercury, Aryl and Inorganic	1,471
N–Butyl Alcohol	23
Subtotal	26,544
Cancer:	
Chromic Acid/Chromates	591
2–Nitropropane	23
Subtotal	614
Systemic toxicity:	
Welding Fume	11,088
Butoxyethanol	1,299
Zinc Oxide Fume	235
Subtotal	12,622
Ocular:	
Methyl Alcohol	68
Hydrogen Sulfide	54
Subtotal	122
Liver/Kidney: Hexone	200
All	121,696

NOTE: Summation of exposures to different substances may include double counting of employees simultaneously exposed to more than one substance.

Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

OSHA has estimated the expected reductions in illnesses and fatalities resulting from this rulemaking based on full-time equivalent exposures. The PELs are established based on the ability to protect workers from all potential exposure over a full working lifetime, and the risks associated with excess exposure are based on daily full-time exposure for 45 years. Actual total excess risk to construction workers also depends on the overall dose.

As a best estimate of excess risk, it is assumed that the aggregate amount of overexposure will determine the aggregate amount of excess risk, and that this will be a linear (proportional) relationship. There are two offsetting arguments which indicate that the actual total risk for the construction work force could be higher or lower. If the total risk depends positively on the total number of people exposed as well as on the total amount of exposure, then the actual total risks could be considerably higher. On the other hand, if less frequent exposures result in lower than proportional risk, then the actual risk would be lower than that estimated.

Based on the assumption of proportional risk, and a full-time equivalent population exposed above the proposed PELs continuously over a working lifetime, OSHA estimates that an excess mortality rate in the range of 0.5 to 2 percent (with a best estimate of 1 percent) would result. Fatalities would result from continuous occupational exposure above the proposed PELs for substances associated with cancer and adverse respiratory, narcosis, neuropathy, systemic toxicity, liver, and kidney effects. Substances causing these health effects may also cause other life-threatening conditions and indirectly contribute to an increased risk of premature death by increasing susceptibility to diseases, weakening immune systems, or through interactions with other chemicals.

Estimates of the extent of exposures above the proposed PELs are classified by type of health effect and presented in Table V–B9. If exposure to each chemical is counted independently, then the estimated total number of person-years of exposure above the relevant proposed PELs is about 90,000 annually. However, total person-years of overexposure may be greater than the number of total full-time equivalent overexposed employees if exposure to more than one substance occurs simultaneously. Since the estimated mortality rate applies to numbers of workers, the number of person-years of overexposure was adjusted downward by 10 percent to account for this possibility. As a result, approximately 81,000 full-time equivalent workers are estimated to be exposed above the proposed PELs with an increased risk of premature death.

Based on the assumption of a 1 percent excess mortality rate among this cohort, an average of 18 fatalities per year would be addressed by this rulemaking. OSHA assumes that reductions in exposures resulting from full compliance with the proposed rule could be expected to prevent about half (7–11) of these fatalities.

OSHA's estimated excess mortality rate is conservative compared with other mortality studies and epidemiological research in the construction industry. An occupational mortality study conducted by the California Department of Health Services revealed that laborers and other construction workers experience significantly higher mortality rates than the general population [6]. Mortality rates were an average of over 50 percent higher for lung cancer, other cancers, circulatory system diseases, cerebrovascular disease, chronic obstructive pulmonary disease, cirrhosis and other liver disease, and diseases of the urinary system. These data indicate that the excess mortality due to overexposures among construction workers may be far greater than estimated above. However, a portion of this excess mortality may be related to causes other than exposures to substances in this proposed rulemaking (e.g. cigarette smoking).

On the basis of exposure data delineated further in Section V–B–6 (Costs of Compliance), OSHA estimates that about 84,000 full time equivalent construction employees may be exposed to an average of 0.5 mg/m^3 asphalt fume. The quantitative risk assessment for asphalt fume presented in this preamble indicates that this exposure may produce approximately 4 to 5 excess fatalities due to lung cancer annually. Although exposures may be reduced for some employees by using applicable engineering controls and work practices (such as insulating pipes and keeping asphalt temperatures low), OSHA expects that 80,000 FTE employees would need respiratory protection in addition to such controls to comply with a PEL of 0.2 mg/m^3. According to the results of the quantitative risk assessment, about 3 to 4 fatalities per year may thus be avoided by reducing the average exposure to 0.05 mg/m^3.

The number of illnesses associated with overexposures in construction that are potentially preventable by this proposed rulemaking is difficult to assess. The Bureau of Labor Statistics (BLS), in its annual survey of occupational injuries and illnesses in the United States, found that 7,700 illnesses were documented and recorded in the construction industry in 1989 [7]. It is widely recognized that these data significantly underestimate the prevalence of occupational illness because only cases recorded and reported by employers are counted.

In the construction industry it is likely that many occupationally related illnesses are never documented as such. One reason may be that neither the employer nor the employee may be aware that an illness is occupationally related. In addition, chronic and disabling illnesses may only become

apparent after the exposure has ceased, and none of these cases are likely to be included in employer records. Relatively high rates of worker turnover experienced in construction make tracking of exposures more problematical; subsequent employers would probably not be aware of exposures with previous employers. Underreporting of illnesses with latency periods would be greater than the underreporting of illnesses with toxic or acute effects.

In order to compensate for the underreporting of occupationally related illnesses, the BLS estimates were multiplied by a factor of 5. With this adjustment the estimated annual number of illnesses in construction is 38,500.

Some of these illnesses would not be addressed by the proposed standard. Illnesses in construction may include effects associated with exposures to hazardous agents or physical stress, such as radiation, noise, and ergonomic stress. However, illnesses which are covered include skin disorders; the proposed standard adds skin designations for specific substances as appropriate, and costs of providing dermal protection are included in the estimated compliance costs. Although the PELs set by this standard address airborne concentrations, a general reduction in exposure through absorption and ingestion can be expected through increased awareness and improved work and hygiene practices.

The data from the BLS survey indicate that about 30 percent of reported illnesses in construction are due to repeated trauma, physical agents, and poisonings [7]. Overall, 70 percent of the total illnesses in construction, or approximately 27,000 cases, are considered potentially preventable by the proposed standard.

As compliance with the proposed rule would offer protection from excessive dermal and airborne exposures to hazardous chemicals encountered by construction workers in a comprehensive manner, an 80 percent reduction in the incidence of occupationally related illnesses is projected, with a range of 70 to 90 percent. Thus, OSHA estimates that compliance with the proposed rule would potentially prevent about 21,600 illnesses annually.

BLS reported that about 47 percent of the recorded illnesses involved lost workdays, and that an average of 21 lost workdays resulted from lost workday cases [7]. OSHA assumes these same rates apply to unrecorded illnesses. Compliance with the proposed rule is thus estimated to prevent about 10,200 illnesses involving lost workdays, and reduce the number of lost workdays in construction by about 214,000 workdays.

Based on research by Kip Viscusi, the implicit average value of avoiding each lost workday case would be about $40,000 [11]. This value is based on a willingness-to-pay methodology and takes existing compensation programs into account. The total potential benefit associated with the prevention of lost workday illnesses alone would be $408 million.

In addition, excess exposures to some substances in the proposed rule cause material impairments of health that may not always be considered illnesses. Cases of physical and sensory irritation are likely to occur regularly among hundreds of thousands of construction workers. Eliminating these material impairments of health should further reduce the prevalence of illnesses among these workers. Compliance with the proposed PELs would also produce benefits that cannot be quantified, such as the increased comfort and productivity of employees.

OSHA requests comments and data on the prevalence of illnesses and health-related fatalities in construction, as well as on the potential effectiveness of the proposed standard in reducing the incidence of these cases.

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4. Nonregulatory Alternatives

Introduction. The declared purpose of the Occupational Safety and Health (OSH) Act of 1970 is "* * * to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. * * *" Thus, the Act requires the Secretary of Labor, when promulgating occupational safety and health standards for toxic materials or harmful physical agents, to set the standard "* * * that most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity. * * *" It is on the basis of this congressional directive that OSHA has initiated regulatory actions to reduce the adverse health effects associated with occupational exposure to hazardous substances in the construction industry.

Market imperfections. Economic theory suggests that the need for government regulation is greatly reduced where private markets work efficiently and effectively to allocate health and safety resources. The theory typically assumes perfectly competitive labor markets where workers, having perfect knowledge of job risks and being perfectly mobile among jobs, command wage premiums that fully compensate for any risk of future harm. Thus, theoretically, the costs of occupational injury and illness are borne initially by the firms responsible for the hazardous workplace conditions and ultimately by the consumers who pay for the final goods and services produced by these firms. With all costs internalized, private employers have an incentive to reduce hazards wherever the cost of hazard abatement is less than the total cost to the firm, the workforce, and society of the expected injury or illness. The resultant level of safety and health is considered efficient in the sense that it minimizes the sum of the costs (and foregone benefits) of hazard prevention and of injury or illness.

The conditions of perfect competition do not need to be completely satisfied in order for the forces of the market to approximate an efficient outcome. However, some market imperfections can produce sub-optimal results that can be improved upon with regulatory action. In the case of this rulemaking, employees face a significant risk of material impairment of health which is not adequately addressed by current nonregulatory alternatives. OSHA therefore believes that it must take appropriate actions to provide greater health protection for construction workers exposed to toxic substances.

Evidence indicates that market forces in the construction industry have not been effective in reducing excessive occupational exposure to hazardous substances, thereby contributing to the consequent development of occupational diseases. In spite of the danger associated with the inhalation or other exposure to hazardous substances, the social costs of production have not been internalized, in part because of market imperfections and the existence of externalities. Consequently, the amount of protection that the private market will offer to construction workers differs from the socially desired level.

First, evidence on occupational health hazards in general suggests that in the absence of immediate or clear-cut danger, employees and employers have little incentive to seek or provide information on the potential long-term effects of exposure. Employers faced with potentially high compensatory payments may in fact have a disincentive to provide information to employees. When relevant information is provided, however, employers and employees might still find informed decisionmaking a difficult task, especially where long latency periods precede the development of chronic disabling disease. Moreover, if signs and symptoms are nonspecific—that is, if an illness could be job-related or could have other causes—employees and employers may not link disease with such occupational exposure.

Second, even if workers were fully informed of the health risks associated with exposure to hazardous substances, many face limited employment options. Nontransferability of occupational skills and high national unemployment rates sharply reduce a worker's expectation of obtaining alternative employment quickly or easily.

In many regions of the country, the practical choice for workers is not between a safe job and a better paying but more hazardous position, but simply between employment and unemployment at the prevailing rates of pay and risk. In addition to the fear of substantial income loss from prolonged periods of unemployment, the high costs of relocation, the reluctance to break family and community ties, and the growth of institutional factors such as pension plans and seniority rights serve to elevate the cost of job transfer. Thus, especially where wages are more responsive to the demands of more mobile workers who tend to be younger and perhaps less aware of job risks, hazard premiums for the average worker will not fully compensate. Where this is the case, labor market negotiations are unlikely to reflect accurately the value that workers place on health.

In addition to these market imperfections, externalities occur if employers and employees settle for an inefficiently low level of protection from hazardous substances. For the competitive market to function efficiently, only workers and their employers should be affected by the level of safety and health provided in market transactions. In the case of occupational safety and health, however, society shares part of the financial burden of occupationally induced diseases, including the costs of premature death, chronic illness, and disability. Those individuals who suffer from occupationally related illnesses are cared for and compensated by society through taxpayer support of social programs, including welfare, Social Security, and Medicare. These combined factors of labor market imperfections and the existence of externalities contribute to the failure of the market to supply sufficiently healthful working conditions where hazardous substances exist in the construction industry.

Tort Liability. The use of liability under tort law is one nonregulatory alternative that has been increasingly used in litigation concerning occupationally related illnesses. Prosser [1] describes a tort, in part, as a "civil wrong, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages," although he says that "a really satisfactory definition has yet to be found."

If the tort system applies, it would allow a worker whose health has been adversely affected by occupational exposure to a hazardous substance to sue and recover damages from the employer. Thus, if the tort system is effectively applied, it might shift the liability of direct costs of occupational disease from the worker to the firm under certain specific circumstances.

With very limited exceptions, however, the tort system is not a viable alternative in dealings between employees and employers. All states have legislation providing that Workers' Compensation is either the exclusive or principal remedy available to employees against their employers. Thus, under tort law, workers with an occupational disease caused by exposure to a hazardous substance can only file a product liability suit against a third party manufacturer, processor, distributor, sales firm, or contractor. It is often difficult, however, to demonstrate a direct link between an exposure to a hazardous substance and the illness.

In order to pursue litigation successfully, there must be specific knowledge of the magnitude and duration of a worker's exposure to a hazardous substance, as well as the causal link between the disease and the occupational exposure. Usually, it is extremely difficult to isolate the role of occupational exposures in causing the disease, especially if workers are exposed to many toxic substances. This difficulty is further compounded by the long latency periods that are frequently involved. In addition, the liable party must be identifiable, but workers may have several employers over a working lifetime. The burden of proof that an occupational exposure to a hazardous substance occurred, that a specific employer is the liable party, and that the exposure level was significant may prohibit the individual from initiating the suit.

The costs associated with producing information and with litigation itself may be quite substantial. First, information is a public good, which means that once it is produced, it is available for all. As a result, public goods are typically underproduced relative to what is considered economically efficient. This general undersupply of information adversely affects workers' awareness of the cause of their illnesses and thus reduces the likelihood that they will pursue tort liability suits.

Second, information is not a costless commodity. The time and money required to obtain, research, and distribute information can be substantial. Since the outcomes of liability cases are frequently uncertain, additional information is almost always preferable. The complexity of the subject matter, for health standards in particular, requires a large amount of information as a starting point for a lawsuit. These costs would have to be borne by potential plaintiffs before the lawsuit is initiated.

Third, legal proceedings impose costs on both plaintiffs and defendants. In

deciding whether to sue, the tort victim must be sure that the size of the claim will be large enough to cover legal expenses. In effect, the plaintiff is likely to face substantial transaction costs in the form of a contingency fee, commonly 33 percent, plus additional legal expenses. The accused firm must also pay for its defense.

The majority of occupational disease tort activities has involved workers exposed to asbestos. To date, over 100,000 individual plaintiffs have filed asbestos lawsuits in the country. These employees avoided the exclusive remedy of Workers' Compensation by suing suppliers of asbestos instead of employers. A report prepared by the Research Triangle Institute [2] contains some data pertaining to legal costs and the size of awards associated with tort law. One investigator, for example, found that an average ratio of legal costs to proceeds was 37 percent for a sample of cases. The high costs and uncertainties associated with tort law make it an inefficient mechanism for ensuring adequate protection of workers' health.

Insurance and liability costs are not borne in full by the specific employer responsible for the risk involved. For firms that are insured, the premium determination process is such that premiums only partially reflect changes in risk associated with changes in exposure to hazardous substances. This lack of complete adjustment is the so-called "moral hazard" problem, which is the risk that arises from the possible imprudence of the insured. As the insured firm has paid an insurance company to assume some of the risks, that firm has less reason to exercise the diligence necessary to avoid losses. Transfer of risk is a fundamental source of imperfection in markets.

Workers' Compensation. The Workers' Compensation system is a result of the perceived inadequacies in liability or insurance systems to compel employers to prevent occupational disease or compensate workers fully for their losses. The system was designed to internalize some of the social costs of production, but in reality it has fallen short of compensating workers adequately for occupationally related disease. Thus, society shares the burden of occupationally related health effects, premature mortality, excess morbidity, and disability through taxpayer support of social programs such as welfare, Social Security disability payments, and Medicare.

Compensation tends to be inadequate especially in permanent disability cases, in view of the expiration of benefit entitlements and the failure to adjust benefits for changes in a worker's expected earnings over time. As of January 1987, eight states restricted permanent disability benefits either by specifying a maximum number of weeks for which benefits could be paid or by imposing a ceiling on dollar payments [3].

At present, time and dollar restrictions on benefit payments are even more prevalent in the area of survivor benefits. The duration of survivor benefits is often restricted to 10 years, and dollar maximums on survivor payments range from $7,000 to $80,000. In addition, it should be noted that if the employee dies quickly from the occupational illness and has no dependents, the employer need pay only nominal damages under Workers' Compensation (i.e., a $1,000 death benefit).

Finally, in spite of current statutory protection, disability from occupational diseases represents a continuing, complex problem for Workers' Compensation programs. Occupational diseases may take years to develop, and more than one causal agent may be involved in their onset. Consequently, disabilities resulting from occupationally induced illness often are less clearly defined than those from occupationally induced injury. As a result, Workers' Compensation is often a weak remedy in the case of occupational disease. For example, as recently as April 1983, the U.S. Supreme Court refused to hear an occupational disease case (Richard D. Bunker v. National Gypsum Co.) involving a worker who was diagnosed as having asbestosis 23 years after the expiration of the 3 year time limit allowed by Indiana law for filing a compensation claim [4]. Indeed, there is some evidence indicating that the great majority of occupationally induced illnesses are never reported or compensated [5].

The insurance premiums paid by a firm under the Workers' Compensation system are generally not experience rated; that is, they do not reflect the individual firm's job safety and health record. About 80 percent of all firms are ineligible for experience rating because of their small size. Such firms are class rated, and rate reductions are granted only if the experience of the entire class improves. Even when firms have an experience rating, the premiums paid may not accurately reflect the true economic losses. Segregation of loss experience into classes is somewhat arbitrary, and an individual firm may be classified with other firms that have substantially different normal accident rates. An experience rating is generally based on the benefits paid to workers, not on the firm's safety record. Thus, employers may have a greater incentive to reduce premiums by contesting claims than by initiating safety measures.

In summary, the Workers' Compensation system suffers from several shortcomings that seriously reduce its effectiveness in providing incentives for firms to create safe and healthful workplaces. The scheduled benefits are significantly less than the actual losses to the injured workers, and recovery is often very difficult in the case of occupational diseases. Thus, the existence of a Workers' Compensation system limits an employer's liability significantly below the actual costs of the injury. In addition, premiums for individual firms are unlikely to be specifically related to that firm's risk environment. The firm, therefore, does not receive the proper economic signals and consequently fails to invest sufficient resources in reducing workplace injuries and illnesses. The economic costs not borne by the employer are borne by the employee or, as is often the case, by society through public insurance and welfare programs; in addition, the numbers of injuries and illnesses and the associated costs are greater than they could be.

Conclusion. OSHA believes that there are no nonregulatory alternatives that adequately protect construction workers from the adverse health effects associated with exposure to the chemicals regulated in this rulemaking. Tort liability laws and Workers' Compensation provide some protection, but due to market imperfections they have not been sufficient. Some employers have not complied voluntarily with standards recommended by professional organizations. The deleterious health effects resulting from continued high levels of exposure to hazardous substances require a regulatory solution.

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5. Technological Feasibility

Introduction. This section presents supporting data on the technological feasibility of complying with proposed permissible exposure limits (PELs) for the construction industry. Activities with potential airborne or dermal exposure to the substances to be regulated were identified across all categories of construction establishments and for different types of construction projects. Almost one hundred specific activities were evaluated for potential exposures and the appropriate means of protection. The activities and applicable control methods are described below.

Consistent with OSHA's methods of compliance hierarchy, engineering controls are recommended whenever they are feasible. In construction these include portable exhaust hoods, fans, fresh air blowers, enclosure of the worker or operation, equipment-mounted dust catchers, vacuum cleaning, and water spraying for dust suppression. For most activities, the proposed PELs can be met through a combination of engineering controls and appropriate work practices. Where engineering controls and work practices are infeasible or insufficient, respiratory protection may be used.

Many activities occur outdoors with natural ventilation. This helps to keep exposures low but does not ensure that exposures will be below the proposed PELs. For example, high exposures to lead result from the outdoor grinding, blasting, burning, or cutting of surfaces coated with lead-based paints.

Activities with Exposures—Abrasive Blasting. Abrasive blasting involves the removal of paint, dirt and other substances from surfaces that require cleaning prior to the application of a protective coating. Workers are exposed to the particulate matter generated by the blasting agent and from the surface material.

Four different types of abrasive blasting activities were identified based on the type of blasting agent. Abrasive blasting can be done with sand, aluminum oxide, steel shot, or slag, depending on the application.

In abrasive blasting operations using sand the operator would be exposed to silica (crystalline quartz and respirable dust) as well as concentrations of nuisance particulates. Abrasive blasting with aluminum oxide can cause exposures to aluminum metal dust in addition to silica and inert dust exposures. Abrasive blasting with steel shot or slag may involve exposures to iron oxide dust.

The use of blasting agents will generate additional exposures to substances contained in the surface material and in surface coatings, such as paint, that may be present. These may include lead, iron oxide dust, chromium metal, wood dust, and other particulates.

In the open-air type blasting which occurs commonly in construction, contamination of the general work area can occur if the blasting work is not contained. The blasting crew, including the operator and cleanup personnel, may be exposed to high dust concentrations depending on existing wind conditions. Open-air work makes it difficult to control worker exposures to airborne particulates, especially to the blasting operator. In order to control the exposures, vacublast units which incorporate local exhaust ventilation at the point of operation can be added as an integral part of the sandblast equipment, and a sandblast hood with corresponding supplied air system can be used. In addition, screens and partitions and the use of dust suppressants during dry sweeping of used blasting agents are work practices that reduce the operators' exposure and limit exposure to workers in adjacent areas of operations.

A NIOSH Health Hazard Evaluation reported the workday exposure results obtained by a private industrial hygiene consulting firm during the sandblasting of the Golden Gate Bridge in San Francisco, California in 1981 [1]. Two air samples for lead and one air sample for crystalline silica were collected. The lead concentrations of the two samples collected outside the worker's supplied-air hood were 5.54 mg/m^3 and 8.42 mg/m^3. The exposure to crystalline silica inside the hood was 0.218 mg/m^3. The total dust obtained from the sample inside the hood was 2.74 mg/m^3.

The exposure to the worker occurred because the facepiece seal became ineffective and the lens of the helmet had to be replaced. NIOSH stated that "in analyzing the data, it seemed evident that excess exposures to lead and silica could occur, but that proper work practices which included the use of the two lens hood should take care of the potential health hazard."

CONSAD evaluated worker exposures to lead and silica quartz dust during the sandblasting of interior metal walls made of corrugated sheet metal at a coal preparation plant near Waynesburg, Pennsylvania in July, 1990 [2; Firm 32]. A crew of ten people was involved in the work and seven of these did sand blasting.

The results of the personal samples for lead indicated that the concentrations inside the hood were less than 18 μg/m^3 for each worker. The 8-hour TWA exposures were less than 8 μg/m^3.

The sampling results for the exposures to respirable silica quartz dust indicated airborne concentrations outside the hoods that ranged from 0.09 mg/m^3 to 1.2 mg/m^3. The resultant 8-hour TWA exposures for the workers ranged from 0.08 mg/m^3 to 0.44 mg/m^3. The controls in use provided workers with sufficient protection from the levels of airborne respirable silica quartz dust present.

All seven of the sand blasters wore supplied-air helmets and capes. The air supply was provided from an on-site compressor. All employees were wearing safety glasses, hard hats, and hearing protection. No other exposure control measures were utilized. It can be concluded that all of these workers were within the proposed permissible exposure limits and that exposures during abrasive blasting with sand can be adequately controlled with available technologies.

The use of aluminum oxide as an abrasive agent during compressed air blasting provides certain surface preparation characteristics that cannot be achieved with other materials. Workers using aluminum oxide must be protected to the same degree as in other blasting operations with a focus on the airborne exposure to the metal dust generated and to the contaminants contained on the work surface. The exposure potentials and capabilities for control are similar to those for sandblasting. Controls include enclosure of the activity, equipment with built-in exhaust ventilation, dust suppressants, and supplied-air hoods. These methods of protection can ensure that exposures are kept below the proposed PELs.

The use of steel shot blasting is common for the cleaning of concrete surfaces. The shot blasting activity is enclosed within the area of the blasting machine. Machines are commercially available that operate continuously with recycling of the shot pellets. Due to the dusty nature of the operation, workers may be exposed to silica and other

substances present in the surface to be blasted. In addition to dust-controlling machinery and temporary enclosures, exposures can be controlled through the use of dust suppressants and supplied-air hoods.

Worker exposure to total silica dust was evaluated by CONSAD during the preparation of a concrete floor prior to coating. This activity was observed during a site visit near Harrisburg, Pennsylvania in July, 1990 [2; Firm 29]. The assessment consisted of sampling of workers while operating a Blastrac portable shotblast system to clean a concrete surface of approximately 1,600 square feet. The shotblast unit contained a vacuum system for collecting generated debris.

Samples were collected on the shotblast operator and two other workers in the area and were analyzed for quartz. It was reported that the samples contained an average of 30 percent quartz. The total dust samples for the shotblast operator resulted in 8-hour time weighted averages of 10.0 mg/m^3 and a 12.0 mg/m^3 exposure during sampling. On the basis of the average percentage of silica quartz determined from the samples, exposures to the shotblast operator exceeded the proposed 8-hour TWA standard for total silica quartz dust. The shotblast operator wore personal protective equipment that included a disposable dust respirator, safety glasses/goggles, and safety shoes. The disposable dust respirator was adequate for protection from nuisance dust but was inappropriate for this particular application. General ventilation was provided from a small wall fan that was in constant operation. No other control measures were observed. Adequate protection from the silica quartz dust could have been achieved through the use of appropriate respiratory protection.

Abrasive blasting activity may also involve use of a slag (also commonly known under the trade name "Black Beauty") as the abrasive material. The slag consists of iron oxide and silica (quartz). Workers performing this activity have the potential for exposure to the surface coating, surface components and the abrasive. The engineering and work practice controls discussed above are also applicable to this activity and have been successful in keeping worker exposures below the relevant proposed PELs.

Worker exposures to lead dust and other particulates were evaluated by CONSAD during the abrasive blasting of a bridge near Scranton, Pennsylvania in April, 1990 [2; Firm 15]. The operation involved compressed air blasting of a bridge containing a lead-based paint. The abrasive agent used was "Black Beauty."

Two abrasive blasting workers were evaluated for their exposure to lead dust during the actual blasting activity. Three individuals characterized as blaster, flagman, and clean-up laborer were also evaluated for nuisance particulates.

The airborne lead dust exposures of the blasters were evaluated as 0.040 mg/m^3 for a 346 minute sample and 0.250 mg/m^3 for a 328 minute sample. The determination of the exposure to nuisance particulates revealed that one of the blasters and the flagman were exposed to airborne total dust concentrations of 2.53 mg/m^3 and 1.89 mg/m^3 on an 8-hour TWA basis, respectively. The clean-up worker was exposed to an 8-hour TWA total dust concentration of 42.75 mg/m^3.

The abrasive blasters used personal protective equipment that included air-supplied helmets, full body covering, gloves, and safety shoes. The flagman and clean-up laborer wore a dust mask and a half-mask cartridge respirator, hard hats, and safety shoes. In this project, use of appropriate protective equipment kept worker exposures below the PELs.

Worker exposure to lead dust and particulates not otherwise regulated (PNORS) were evaluated by CONSAD during a bridge renovation project in Pittsburgh, Pennsylvania in June, 1990 [2; Firm 31]. A work crew of six people was engaged in the bridge work. Of the six workers, two of the workers were engaged specifically in the abrasive blasting aspect of the work. Again, the abrasive agent "Black Beauty" was used.

The two blasters were assessed during a two-day period for exposures. Samples were collected from both inside and outside the blasters' protective hoods. The results of the samples indicated that inside the hood, airborne lead concentrations ranged from less than 0.011 mg/m^3 to under 0.015 mg/m^3. The translation of sampling period exposures to 8-hour TWAs resulted in full shift concentrations of less than 0.008 mg/m^3. The samples taken outside of the hood indicated potential lead exposures that ranged from 0.036 mg/m^3 to 1.10 mg/m^3. The equivalent 8-hour TWA concentrations were evaluated as being up to 0.264 mg/m^3. On the basis of the determination derived from inside the hood measurements, both of the abrasive blasters were within the proposed standard for lead.

These same two workers were also evaluated for their exposure to total dust. The analytical results indicated concentrations inside the hood of 0.70 mg/m^3 and 4.49 mg/m^3 for each of the blasters on an 8-hour TWA basis. The proposed PEL for PNORS is 15 mg/m^3. It can be concluded that the blasters were within the proposed total and respirable dust standards for PNORS.

Specific measures were taken to minimize exposure to the dust generated during the blasting operation. Prior to the commencement of work, a dust curtain was built around the blasting operational area. In addition, personal protective equipment was used by the work crew that included: respiratory equipment (supplied-air helmets with capes or disposable dust respirators), work gloves, hard hats, and hearing protection. The air supplied for the blaster helmets was provided by a compressor on site.

Roofing and waterproofing operations. Several specific activities involved in these operations were evaluated individually based on the types of substances present and the potential for exposures. These activities include: application of an asphalt roofing system, application of single ply membrane systems, application of polyurethane roofing systems, application of modified bitumen roofing systems, application of asphalt waterproofing, and tear-off operations.

An asphalt built-up roof system involves the use of hot asphalt as the cement and sealer for the roofing system. In a built-up system, roofing paper is rolled out over the roof's surface in sufficient layers to meet the specifications of the contract (e.g., 4, 5, or 6 ply roof). Hot asphalt is pumped from the asphalt heating kettle and mopped on the adjacent seams to cement the layers. This is followed with the mopping of asphalt over the entire roof surface. Exposures to asphalt (and its benzene soluble components) are likely during the mopping process and also to any workers at the kettle during the heating of the asphalt.

Worker exposures are not likely to exceed the proposed PEL of 5 mg/m^3 at the mopman and kettleman operations. Engineering controls to reduce the mopman's exposure do not appear to be practical and therefore a respirator would be required in potential overexposure situations. A half-mask respirator equipped with organic vapor cartridges would provide adequate protection. Insulating the pipes from the kettle or tank truck to the roof or reducing kettle temperatures will likely reduce the kettleman's exposure. Keeping the temperature of the kettle as low as possible can help keep worker exposures below the PEL.

A study sponsored by the National Roofing Contractors Association and the Roofing Contractors Association of Southern California evaluated both hot asphalt and hot coal tar pitch exposures to roofing workers in 1981 [4].

The study consisted of the collection of 211 personal samples (98 percent from hot emissions) from 16 work sites. Analyses of the pitch and asphalt samples indicated that the majority for both types of materials was below a total particulate concentration of 5 mg/m³. Other findings from the sample analyses regarding benzene solubles were that (1) 74 percent of the kettlemen samples exceeded 0.2 mg/m³, (2) 49 percent of the total pitch samples and 37 percent of the asphalt samples were below 0.2 mg/m³, and (3) 20 percent of the samples exceeded 1.0 mg/m³.

It was concluded based on observations during the sampling that the roofing industry could take steps to insure that 80 percent of the workers would be below a benzene soluble limit of 0.2 mg/m³. The recommendations to accomplish this included: (1) maintaining the prescribed hot material temperature, (2) selecting appropriately sized equipment and repairing broken equipment, and (3) training workers to incorporate work practices to minimize exposure potential (e.g., working upwind).

The study also concluded that reducing all exposures to below 0.2 mg/m³ without the use of respirators would be a difficult task. The factors cited for this were: (1) uncontrollable site ventilation—some workers could not avoid exposure because of wind direction and work pattern, and (2) some tasks involve a high exposure potential. The data indicated that exposures for virtually all workers would be below the proposed PEL of 5 mg/m³. A remedial action sufficient to control overexposures is the use of a filter mask for workers known to be exposed to excessive hot emissions.

NIOSH conducted an environmental survey during the application of a petroleum asphalt roof at a site in Houston, Texas in 1983 [3]. The survey was conducted during a two day period. Petroleum asphalt plugs were melted in a heated metal container. The liquified asphalt was transferred to a hot application vessel and mopped on to the prepared roofing surface.

Eleven samples were obtained during the two day period and evaluated for benzene solubles. The airborne concentrations ranged from 0.110 mg/m³ to 1.440 mg/m³. The highest airborne concentration reported was incurred by the kettleman.

A number of measures recommended by NIOSH to minimize contact with pitch would apply to asphalt as well. These included: (1) roofers should stay upwind of the pitch fume as much as possible, (2) showers should be taken after work each day and workers should have a change of clothes after showering, (3) workers should wear clean clothes each day, (4) workers should use waterless cleansers, and (5) personal protective equipment should consist of long-sleeved shirts that are tight-fitted at the wrists, full-length pants that extend to the shoes, goggles, gloves, and respirators. Respirators should be approved for protection from organic vapors. The application of these control methods would provide adequate protection to workers and enable compliance with the proposed PEL.

NIOSH conducted an environmental survey for the U.S. Corps of Engineers, Kansas City Supply Depot, in 1983, to evaluate working conditions during a re-roofing job [5]. ASTM Type III asphalt was used as the roof cement material. The survey was conducted over a three day period. The asphalt was received in metal containers and placed in a 300 gallon propane-fired kettle for melting. The material was heated to about 450 degrees Fahrenheit and mechanically pumped to the roof. The hot asphalt material was stored in a hot lugger until needed. The lugger was wheeled to the point of application where the asphalt was dispensed into mopping buckets. The asphalt was mopped onto the plies of roofing felt that were previously laid over the roof deck structure. A final flood coat of asphalt was then mopped over the entire surface. This was followed by the application of a layer of gravel that completed the finishing of the roofing surface.

The full shift average exposures to asphalt fume for the kettleman and the crew were 0.83 mg/m³ and 0.31 mg/m³, respectively. Recommendations to reduce exposures included: the scheduling of work to reduce the number of employees exposed, locating the kettle and work areas to reduce exposure to fumes, and keeping the temperature of the kettle at an absolute minimum necessary to meet material specifications.

CONSAD conducted a site visit to assess the exposure to asphalt fume during the heating and application of petroleum asphalt for a 4-ply built-up roof system in Washington, D.C. in January, 1990 [2; Firm 01]. Four workers were monitored during the heating and hot asphalt application. Specifically, these workers can be characterized as kettleman, material handler, paper setter, and mop man. The sampling results showed worker exposures ranging from 0.06 mg/m³ to 0.85 mg/m³ on an 8-hour TWA basis. None of the four workers had exposures which exceeded the proposed PEL of 5 mg/m³.

The installation of a single ply membrane rubber-based roofing system involves the use of sprayed, rolled, and brushed-on adhesives. These adhesives are applied following the mounting of the insulation to the roof decking and the layout of the rubber roof membrane. The adhesive is sprayed on the back of the membrane and rolled by workers that follow the sprayer. The seams of the membrane are brush coated with a lap seam adhesive and hand rolled. The workers are exposed to the solvents contained in the adhesives, including acetone, n-heptane, n-hexane, toluene, and xylene.

With the natural ventilation present when working outdoors, the likelihood of overexposure to any of the described organic solvents is considered to be minimal. Engineering controls on an open roofing application project do not appear to be practical or feasible and therefore controls would be limited to respiratory protective equipment if necessary. For exposures that are relatively high, disposable organic vapor masks would be appropriate.

NIOSH conducted a field survey to evaluate the potential of worker exposures in the application of a single ply rubber roofing system in Dayton, Ohio in 1983 [6]. Thirteen personal breathing zone samples were taken on two to six workers performing the application as described above over a four day period. The samples were analyzed for the solvents contained in the roofing adhesives: xylene, toluene, acetone, ethyl benzene, and hexane.

The analytical results for the thirteen personal samples were compared to OSHA's proposed standards. It was determined that the combined exposure to each worker was below that allowed by the proposed PELs. This indicates that the exposures to the workers were within OSHA's proposed limits for each chemical and below the relevant mixed exposure limit, and that compliance with the proposed PELs is feasible for this activity.

Other studies by NIOSH as well as data gathered by CONSAD during site visits confirm that exposures to airborne contaminants during the application of single-ply membrane systems are generally well below the proposed PELs [7; pp. 3.18–3.24]. If necessary, workers can be protected from exposures with respirators.

The application of a modified bitumen single ply roof involves possible exposures to solvents, asphalt, and other airborne substances. The modified bitumen roofing membrane is comprised of several layers; a rubberized or plasticized asphalt sheet, a glass fiber or plastic support and a protective film. These membranes are applied by torch fusing, by setting in hot asphalt or by cold setting on a primed surface.

The likelihood of overexposure to airborne contaminants such as asphalt fumes, nuisance particulates, or organic solvents is considered remote in this activity due to the method of application and the outdoor nature of the work. Control options such as local exhaust ventilation on an open roofing application project are not believed to be practical or feasible and therefore controls would be limited to improved work practices and respiratory protective equipment. For moderate exposures, disposable organic vapor masks would be appropriate with potential upgrade to half or full-face organic vapor respirators for elevated exposures.

CONSAD observed the installation of a modified bitumen roof system during a re-roofing project in Washington, D.C. in March, 1990 [2; Firm 08]. The installation procedure was conducted on two consecutive days. During the first day, workers applied a cold-set adhesive to the roof deck and then covered the deck with a layer of roofing paper. This was followed by the setting of a layer of perlite insulation on top of the roofing paper. On the second day of work, the modified bitumen roof membrane was laid out over the insulation and heat set into place. To heat set the roofing membrane, workers used a propane torch heater.

Five workers were sampled for their exposure to the solvents (stoddard solvent, styrene and toluene) used during the application of the cold-set adhesive during the first day of work. On the following day, three workers were sampled for their exposure to asphalt fumes during the installation of the roofing membrane. Sampling duration associated with the tasks of each day's work was approximately four hours.

For the workers engaged in the application of the adhesive, the airborne concentrations of the solvents contained in the adhesive were non-detectable. The three workers engaged in the heat setting of the roofing membrane incurred 8-hour TWA exposures to asphalt fume that ranged from 0.04 to 0.26 mg/m^3 on a total particulate basis. It is unlikely that worker exposures during the two days of this operation exceeded any of the proposed PELs.

The application of polyurethane roofing is similar to that of polyurethane foam insulation applications. Polyurethane systems are generally comprised of two part mixtures that are stored separately in 55 gallon drums. One component may consist of polymeric and monomeric forms of an isocyanate or diisocyanate and the other component consists of a mixture containing the curing agent, catalyst, solvent, and foaming agent. The mixtures are pumped from the drums to the mixing chamber of the spray gun and atomized onto the roof surface to a thickness of several inches.

The spray operator and helper(s) engaged in the foam application are exposed to airborne concentrations of the components of the specific product used. The important components may include: methylene bisphenyl isocyanate (MDI), toluene diisocyanate (TDI), alpha-methyl styrene, and fluorotrichloromethane. CONSAD found no evidence indicating that significant exposures occur during this application.

Roof tear off operations involve the removal of the old roofing materials that may contain petroleum asphalt, fiber board insulation, and asbestos flashing. The removal of the old roof is a manual operation. However, power saws are used to cut the roof into manageable pieces for removal.

Based on the data available for roof tear-off operations, exposure to airborne particulates generated during this activity can be controlled below the PEL if the roof is thoroughly wetted. Dust exposures can be controlled in most situations with the use of water, water spray, and wet sweeping work practices. If exposures exceed the PEL for particulates other than asbestos, then the use of a NIOSH approved disposable particulate respirator would be necessary. These respirators should provide adequate protection during this activity. If the roof consists of asbestos-containing materials then half-mask respirators with HEPA filters should be worn.

NIOSH conducted a survey to evaluate worker exposures to total dust and benzene solubles during a roof tear-off in Hamilton, Ohio in 1983 [8]. The tear-off work commenced with the breaking up of the old roof down to the insulation. This was done using a power cutter. This was followed by the separation and removal of the old roofing material. In this step, workers pry the old roofing material from the support structure while using shovels and other hand held prying tools. The material was then carted to the edge of the roof where it was discarded through a plastic chute.

Six breathing samples were collected during the tear-off operation from a crew of thirteen workers. The sampling time ranged from about 3½ hours to about five hours. The total particulate concentrations that were reported ranged from 2.1 mg/m^3 to 13.1 mg/m^3. The analytical results also showed concentrations of benzene solubles ranging from 0.6 mg/m^3 to 5.3 mg/m^3. All six of the workers were exposed to total particulate concentrations less than the proposed limit of 15 mg/m^3, and one of the workers exceeded the proposed OSHA standard of 5 mg/m^3 for benzene solubles during the tear-off operation. Although the roofing material contained coal tar pitch, the exposure levels are indicative of potential exposures to the benzene-soluble fraction of asphalt fume during similar activities.

NIOSH recommended a number of improvements that could be instituted to alleviate worker exposure to dust during the removal of roofing. It was advised that water should be used to thoroughly wet the surface of the roof prior to and during tear-off. The use of a vacuum system was recommended in comparison to power brooms and power blowers to remove small debris. Roofers should also stay upwind of the dust during tear-off if possible. OSHA believes that these work practice controls would be sufficient to keep exposures during this activity below the proposed PELs. For highly exposed workers, respiratory protection should be worn.

CONSAD conducted a site visit to assess exposures to fibers during roof tear-off operations in Washington, D.C. in January, 1990 [2; Firm 01]. Two employees were engaged in the tear-off operation for the entire shift; both employees were sampled. The roof tear-off activity consisted of using a power cutter to break up the roof into manageable pieces and then prying the material from the deck using hand tools. The waste material was loaded onto a wheelbarrow and transported to the edge of the roof where it was removed from the roof by crane lift.

The sampling was conducted to assess the worker's exposure to fibrous glass dust. The fibrous glass dust was generated from the loosening of the insulation material that was in place below the roofing.

The results of the personal sampling showed that both workers were exposed to total dust at less 0.1 mg/m^3 as an 8-hour TWA. Because the roofing was

thoroughly wetted by heavy rain that had fallen the night prior to the sampling, it is assumed that neither of the workers would have exceeded the proposed PEL of 1 f/cc.

Worker exposure to particulates was evaluated during the tear-off operation of an asphalt roof observed by CONSAD [2; Firm 14]. The roof removal included the use of pry bars and a plow-like device to lift off the old roofing and then the transportation of the waste material to a hoist bucket for disposal. The removal of the old roofing was completed in less than four hours.

Personal samples were collected from two tear-off laborers and evaluated for total dust. The sample analyses indicated airborne concentrations of 1.95 mg/m^3 and 1.77 mg/m^3 for each sampling period of 215 minutes. These individuals were well within the existing and proposed total dust standards.

The application of asphalt waterproofing involves the use of asphalt-based waterproofing products. Workers engaged in this operation are in contact with the waterproofing material and in close proximity to the area of application. The exposure concerns associated with this activity are the asphalt fumes which may become significant in poorly ventilated areas. Exposures may also occur due to the presence of solvents contained in the waterproofing product. These may include: Benzene, ethyl benzene, petroleum distillates (mineral spirits), toluene, and xylene.

Since the worker is in close proximity to the area of application, there is a potential for overexposure to asphalt fume. Engineering controls to reduce worker exposures do not appear practical and therefore a disposable mask with NIOSH approval for organic vapors should be used when overexposures are a possibility. Maintaining the temperature of the waterproofing agent to the minimum required will help to decrease the airborne concentration of fumes produced. Exposures during this activity can be kept below the proposed PEL through the use of appropriate work practices and, if necessary, respiratory protection.

Insulation Installation and Removal. Applying and installing insulation can cause potential exposures to airborne concentrations of the material involved. Typical insulation materials include: Fiberglass, mineral wool, and foam. Insulating foams may be some type of polyurethane or a urea-formaldehyde product. The manner of applying or installing the insulation can be either a manual or mechanically assisted type operation. In the manual operation, the worker installs the insulation by hand (e.g., the installation of fiberglass batts, the wrapping of pipe, etc.). One mechanically assisted process involves fiberglass or mineral wool blown into place by a pneumatic blower. In another process, an insulating foam is produced and sprayed into place.

Exposures to the solvents, fiberglass, minerals and other particulate matter in installing insulation will be highly variable dependent upon the nature of the job site. Exposures will vary depending on whether or not workers are in a relatively confined area, such as an attic, or in a well ventilated area, such as an open bay structure. When work is conducted in a relatively confined area, a fresh air supply would be likely to eliminate any overexposure to the solvent portions of the various application methods. In confined areas where insulation is being blown in place, it is possible that respiratory protective devices will be required to control the particulate and/or fiber exposures.

There is a greater potential for significant worker exposure to fiberglass and mineral wool dust generated by the blown-in process than in the manual process. There may also be exposures to the substances contained in the mechanically assisted spraying application. There may be additional exposures encountered in the manual process if any adhesives are used to fasten the insulation to equipment, pipes or ducts. These exposures generally consist of the solvents contained in the adhesive.

A study prepared for NIOSH was conducted on polyurethane foam application activities [9]. Personal samples were collected from two workers to determine their exposure to MDI (methylene bisphenyl isocyanate), fluorotrichloro-methane, alpha-methyl styrene, dimethylcyclohexylamine, and total particulates during the foam application. The application of the foam was made to the interior walls of a refrigeration room of a food warehouse that was under construction. A personal sample was also taken on both workers to determine their exposure to 2-ethoxyethanol. The 2-ethoxyethanol is reported as not being extensively used during application but was used during a repair period.

The results of this study showed that both of the workers exceeded OSHA's proposed MDI ceiling level of 0.02 ppm during foam application. None of the other chemical substances exceeded OSHA's proposed exposure limit. NIOSH concluded that engineering controls to reduce MDI levels during indoor foam application would be desirable but because of the highly mobile nature of the spraying operation, engineering controls could not be effectively applied [7; p. 3.27]. NIOSH also stated that the use of conventional fans and ducting would be impractical because of the tendency of foam particles to adhere to surfaces. As a result of these difficulties, NIOSH recommended the use of a Type C supplied air respirator with full facepiece, operated in the positive pressure mode during the indoor foam spraying of MDI.

Another report that was prepared for NIOSH discusses the exposures associated with the application of mineral wool blankets to an effluent combustion gas duct [10]. Two workers were monitored for mineral wool fibers, total suspended particulate matter, and respirable particulate matter. The average airborne concentrations during the work shift for all personal samples were 0.076 f/cc for fiber concentrations, 2.271 mg/m^3 for total particulates, and 0.871 mg/m^3 for respirable particulates. The exposure concentrations to mineral wool fiber were within OSHA's proposed PEL of 1 f/cc. Approved disposable respirators were supplied to the workers and their continued availability was recommended.

This report also discusses the exposures associated with "blown-in" mineral wool insulation [10]. In the report, two workers were monitored for their exposures to mineral wool fibers and total airborne particulate matter.

The installers used their truck that contained a gasoline-powered blower into which the bagged insulation was emptied. The hopper was tended by one of the workers during the blowing process. The insulation was loosened within the hopper and blown by a centrifugal fan through a hose to a house attic where it was applied. The second worker was stationed in the attic and directed the depth of the insulation applied.

The personal sampling results of the worker in the truck showed the following exposures: Mineral wool fibers, 0.087–0.238 f/cc; particulate matter, 0.910 mg/m^3. The monitored results of the worker stationed in the attic were 0.856–1.359 f/cc for mineral wool and 7.76 mg/m^3 for total particulate matter. It can be concluded that without the use of disposable respirators the workers' exposure to mineral wool in this study would have exceeded OSHA's proposed fiber standard of 1 f/cc (fiber count based on aspect ratio of 3 to 1). The workers' exposures to the metals contained in the

dust were within the respective proposed limits.

In another report prepared for NIOSH on the same insulation application process [10], the sampling results were reported as 0.035 f/cc mineral wool and 0.01 mg/m³ total particulate for the truck worker, and as 0.552 f/cc mineral wool and 41 mg/m³ total particulates for the applicator. The use of appropriate respiratory protection would enable worker exposures to be kept below the proposed PELs in such conditions.

CONSAD conducted air sampling of a worker involved in the installation of fiberglass batts during the renovation of an institutional facility in Aspen, Colorado in June, 1990 [2; Firm 24B]. The insulation worker placed the batts between the studs and up against one side of a dry wall panel. The fiberglass installer was sampled for 285 minutes.

The results of the breathing zone sampling showed that the insulator had been exposed to an 8-hour TWA concentration of 7.21 mg/m³ total particulate. The airborne concentration during the sampling period was 12.14 mg/m³. This worker's exposure to total dust would be considered in compliance with the proposed PELs. A fiber count exposure estimate was attempted but was not determined because most of the particulates were not fibrous. The fiberglass installer wore a disposable dust mask, hard hat, and safety shoes during the application. This equipment was considered sufficient for protection from exposures above the proposed PELs.

CONSAD conducted personal air sampling during the installation of fiberglass wool insulation in two residential structures in Panama City, Florida in June, 1990 [2; Firm 26A]. Two workers were involved. One of the workers was stationed in a truck and fed the fiberglass insulation into a Volumatic II pneumatic blower. The other worker controlled the application of the insulation within the attic spaces of the residences.

The workers were evaluated for exposure to airborne fiber concentrations at one of the residences and total particulate exposures at the other. The length of the sampling period was 90 minutes for fiber determinations and 106 minutes for total particulates.

Under the NIOSH "B" counting rules, it was determined that the sprayer operator was exposed to airborne concentrations of 1.7 f/cc and 0.3 f/cc during two individual sampling periods. Based on these airborne concentrations, the equivalent 8-hour TWA was determined to be 0.6 f/cc. It was further determined that this worker was exposed to a total particulate concentration of 11.5 mg/m³ at the second residence. The equivalent of an 8-hour TWA of 10.1 mg/m³ was estimated based on the spraying of four attics per day of equivalent size to the one observed.

Under NIOSH "B" and OSHA counting rules, it was determined that the insulation feeder operator was exposed to 0.4 f/cc and 0.2 f/cc in the two sampling periods. These values were also determined as being equivalent to 8-hour TWA exposure concentrations. The airborne exposure to total particulates was determined to be 0.85 mg/m³ which resulted in an equivalent 8-hour TWA of 0.74 mg/m³. Exposures for both of the workers were below proposed PELs.

The application of fireproofing material is similar to that of insulation. Fireproofing material is applied to steel structural members and the metal deckings of buildings. Fireproofing material that is similar to a mortar or plaster is prepared by filling a mixer with the bagged dry material and adding water. The material is then pumped to the point of application and is sprayed on using compressed air. Workers who are engaged in the mixing process are exposed to particulates such as gypsum, plaster of Paris, and calcium carbonate during the dumping of the bags into the mixer. Fireproofing applicators are potentially exposed to particulates from the spray and dispersion of the fireproofing material.

Mixer areas can be enclosed in wood or plastic on wood studding and placed under negative pressure using a portable exhaust system. By doing so, dust generated during the dumping of dry bagged ingredients would be contained within the enclosure and safely exhausted to areas remote from the operations. If any bulk raw materials are used they should be kept wet prior to adding them to the mixer. Water sprays or wet sweeping should be used to clean up any spilled materials to reduce ambient concentrations of dust. Where these controls are not effective to reduce exposures below the PEL, respiratory protection in the form of disposable dust mask would be required.

While selective solvents may be added to the batches as curing agents, the quantities of such materials are small in proportion to the overall mix. In conjunction with the wet method of application, the likelihood of worker exposures in excess of corresponding PELs is remote.

CONSAD conducted a site visit to evaluate exposures to workers engaged in the application of fireproofing material in Indianapolis, Indiana in March, 1990 [2; Firm 07]. At this particular site, a fireproofing material consisting of gypsum, cellulose, fibrous glass, and less than 3 percent quartz was sprayed on to structural members and exposed steel floor decking. Three crews consisting of four workers were involved in the activity. Each crew consisted of one mixer operator, one spray applicator, and two workers who transported the spray applicator on a portable scaffold. Two mixer operators and two sprayers were sampled for exposures to total silica dust.

The sample results showed that the percentage silica in the dust was less than one percent. The personal samples of the mixer operators were 30.7 mg/m³ and 87.2 mg/m³ on an 8-hour TWA basis. These exposures exceeded both the existing and proposed total dust standards. However, the sample results of the spray applicators were evaluated at 8-hour TWAs of 1.8 mg/m³ and 3.34 mg/m³.

Mixer operators doing this activity have a greater potential for overexposure than do the spray applicators. Mixer operators handle and dump dry material from bags; this activity is the primary source of airborne exposure. However, once the material is wetted in the mixing process, the potential for overexposure is reduced significantly. As discussed above, standard controls and work practices for handling dusty materials should be employed. The use of appropriate engineering controls, work practices, and if necessary, respiratory protection, can reduce worker exposures during this activity to levels below the proposed PELs.

Insulation removal activities can be divided into those involving asbestos and those where asbestos is not present. In addition to asbestos exposure, workers may experience exposures to plaster based materials such as gypsum, calcium sulfate, calcium carbonate and particulates not otherwise regulated. Further, the use of organic solvents and strippers to facilitate removal may involve potential exposures.

Specific regulations exist concerning the removal of asbestos-containing insulation. These regulations outline strict controls when handling asbestos-containing material. The controls include: total enclosure with exhaust (negative pressure) of the work area, wetting of the insulation prior to removal, and use of respiratory protection to help prevent inhalation of fibers. The control of asbestos fibers should ensure compliance with the proposed PELs for other substances.

In the removal of insulation not containing asbestos, the relevant materials involved are generally fiberglass or mineral wool compositions. The manual removal of such materials will generate particulate matter comprised of these materials. Workers engaged in this activity will have the potential for exposure to these substances and other substances that may have to be removed so that the insulation can be accessed, such as gypsum, calcium sulfate and calcium carbonate. Further exposures may be incurred if the insulation is secured by adhesives and organic solvents or strippers are needed to facilitate the removal.

Exposure to airborne particulates during this activity can most likely be controlled through a combination of engineering and good work practice controls. The engineering controls consist of constructing a total enclosure of the work area. Air should be removed from the enclosure by attaching an exhaust unit. Prior to removing the insulation, it should be thoroughly wetted with a water spray to suppress dust generated during the activity. Debris on the floor should be cleaned by wet sweeping work practices. If these or similar controls can be implemented, the use of respirators would most likely not be required.

Painting and Other Exposures to Surface Coatings. Different activities causing exposures to paints were evaluated separately based on differences in work conditions, control potentials, and substances present. The activities identified include exterior painting of masonry finishes, exterior painting of wood finishes, exterior painting on steel, grinding/drilling/cutting of painted surfaces, interior application of floor coatings, interior painting of metal substrates, interior painting of walls and ceilings, and surface cleaning and stripping.

The painting of exterior masonry can be performed by the usual methods of application: brush, roller, and spray. The paint is the source of exposure to workers engaged in this activity and the type employed will determine the specific chemical exposure. Alkyd and epoxy type coatings are generally used for this application. The solvents contained in these coatings constitute the primary exposure hazard but unreacted epoxy monomer, e.g., epichlorohydrin, may also be present.

Exterior painting applications (spray, roller, brush) result in at least some exposure to solvent vapors. The degree to which painters may be exposed to solvent vapors is dependent upon several factors: The method of application, nature of the work area (enclosed space or open area), and employee work practices. In most situations with adequate ventilation, exposures are likely to be below the relevant proposed PELs. When conditions are such that exposures become concentrated, reducing employee exposures will most likely involve the use of respiratory protection because engineering controls are often difficult to implement. For solvent vapors, a half-mask organic vapor cartridge respirator would be sufficient to protect workers from overexposure. Some paints contain chemical substances (epichlorohydrin, methyl alcohol) for which these types of respirators will not provide adequate protection. In this situation, an air-supplied respirator may be necessary.

Some paints also contain substances for which OSHA is proposing a "skin" designation. Two such substances include methyl alcohol and mercury (aryl and inorganic mercury compounds). Natural rubber or neoprene gloves provide adequate skin protection against these substances in most instances.

The exterior painting of wood is assumed to be applied either by brush or roller methods. The coatings used for wood finishes consist of stains, varnishes, lacquers, paints, and primers. The hazardous exposure potential from coating material is likely to be the solvent(s) contained in the product.

In most applications, exposures are expected to remain below the proposed PELs. As discussed above, implementation of engineering controls are often difficult with exterior painting operations. In the event of concentrated exposures, respirators would offer protection from potential overexposures.

The exterior painting of steel can be performed either by brush or spray methods. The type of paint used will be dependent upon the corrosiveness of the environment. Workers engaged in the activity are likely to experience some exposure to the solvent(s) of the product that is applied. The use of epoxy and urethane coatings may also present additional exposure risks to unreacted monomer residues, e.g., epichlorohydrin, methylene bisphenyl isocyanate (MDI), and toluene diisocyanate (TDI).

In construction, most painting of steel is done with conventional air spray equipment. Particulate and solvent vapor exposures in excess of allowable limits are possible due to overspray and rebound if adequate controls are not used. As with other exterior painting activities, implementation of engineering control measures is difficult. Most exterior painting on steel is conducted with employees wearing respiratory protection. For protection against inhalation of solvent vapors, a half-mask organic vapor cartridge respirator would be required. In the application of two component urethane and epoxy paint systems, operators may be required to wear air-supplied respirators.

Dermatitis and other skin conditions resulting from contact with solvents or thinners and sensitization from epoxy mixtures are potential health problems if skin contact is not minimized. Substances commonly found in paint for which OSHA is proposing a "skin" designation include: mercury, aryl and inorganic mercury compounds, n-butyl alcohol, and methyl alcohol. Natural rubber or neoprene gloves will provide adequate skin protection against these substances in most instances.

CONSAD conducted air sampling to evaluate the exposures with the use of a two-part epoxy-polyamide paint during a bridge renovation project near Scranton, Pennsylvania in April, 1990 [2; Firm 25]. Three painters were sampled for petroleum distillates (mineral spirits) and xylene while spray painting the structural members of the bridge.

Exposures to petroleum distillates of 0.83 mg/m³ TWA8 were observed for the three painters. The 8-hour TWA exposures to xylene ranged from 0.313 ppm to 1.875 ppm. The maximum level of exposure obtained during sampling was 9 ppm. Worker exposure to these substances was considered to be adequately controlled because airborne concentrations were less than 10 percent of the proposed PELs. The painters utilized personal protective equipment that included air-supplied helmets, coveralls, gloves, and safety shoes.

CONSAD also observed the exterior painting of a steel bridge during new construction of a commuter rail transit line in Chicago, Illinois in May, 1990 [2; Firm 20]. The work consisted of the application of a base coat and top coat by the conventional compressed air spraying method. The painting operation was surveyed over a two day period. The base coat was a two-part epoxy that contained aluminum metal pigment and solvents (xylene and toluene). The top coat product, a two-part polyurethane, contained xylene, n-butyl acetate, cyclohexanone, hexone (MIBK), toluene, and hexamethylene diisocyanate.

One personal air sample was obtained for each of the three components during the base application. The analytical determination for the airborne presence of aluminum indicated an exposure of 0.42 mg/m³ as an 8-hour TWA. The

proposed PEL for aluminum metal dust is 15 mg/m³ on a TWA8 basis.

The exposure to xylene during the base coat application was calculated at 45 ppm TWA8. The airborne concentration of toluene indicated a breathing zone exposure 5.8 ppm TWA8. It was concluded that no exposures above the proposed PELs occurred during this activity.

During the application of the top coat, two of the painters were sampled for each of the substances identified above except for hexamethylene diisocyanate (HDI), for which there is no proposed PEL. The sampling results in parts per million as eight hour time weighted averages are as follows:

Substance	Painter #1	Painter #2	Proposed PEL
N-butyl acetate	6.0	5.3	150
Cyclohexanone	0.1	0.1	26
Hexone (MIBK)	8.0	7.5	50
Toluene	0.7	0.6	100
Xylene	20	18	100

It can be concluded that all of the painters sampled during the base and top coat applications were within the proposed individual limits. It can also be concluded that the combined equivalent exposure based on the proposed standards was less than unity and therefore acceptable.

All of the painters under consideration employed respiratory devices. The base coat applicator wore a supplied-air helmet, while the top coat painters used half-mask organic vapor cartridges. The base coater also wore a cape, work gloves, and safety glasses. Both of the top coat painters used work gloves and wore long-sleeved shirts. Only one of the top coat painters utilized eye protection.

Three painters and a flagman were evaluated by CONSAD on April 24, 1990 for their exposure to zinc dust during a bridge renovation project near Scranton, Pennsylvania in which a zinc-based primer was applied [2; Firm 15]. The primer was applied by the conventional compressed air spray method.

The three painters were exposed to airborne concentrations of zinc dust ranging from 3.64 mg/m³ to 11.20 mg/m³. However, since the work was only performed for about an hour, the equivalent 8-hour TWA exposures ranged from 0.33 to 1.17 mg/m³. The flagman was exposed to an airborne concentration of zinc dust of 0.38 mg/m³ during the work period. The proposed PEL for zinc oxide total dust is 10 mg/m³. Although none of the sampled workers had exposures which exceeded the proposed PEL on an 8-hour TWA basis, if painting operations last longer the potential for overexposure may be possible.

Personal protective equipment needed to protect the painters includes respirators, full body covering, gloves, and safety shoes. This equipment is considered sufficient for protection from overexposures.

Workers that grind, drill or cut painted surfaces are susceptible to exposures generated by the action of the tools on these surfaces. Workers engaged in this activity will be exposed to the dispersed particulate matter of the surface material (e.g., iron oxide, chromium, zinc dust, etc.) and constituents of the paint, (e.g., lead, chromium, and zinc).

The principal dust control technique for grinding operations is ventilation. Portable grinding tools can be effectively exhausted by equipment that is retrofitted directly onto the tool. One such technique that has been successful in controlling dust from grinding is a low-volume high velocity exhaust system. In addition to ventilation, the use of water on grinding, drilling, or cutting operations can also help reduce the airborne particulate generated during these operations. If engineering controls cannot adequately reduce airborne dust concentrations, then disposable dust mask respirators can be used to reduce exposure levels to below those required by the proposed rule.

Investigations of grinding, drilling, and cutting activities by NIOSH indicate that the potential for overexposure to several substances exists. One study of exposures during the power brushing of painted metal surfaces at a Connecticut nuclear power station in 1981 shows that 8-hour TWA exposures exceeded the proposed standards for lead, iron, and total particulates [11].

A 1983 technical evaluation conducted by NIOSH and the Massachusetts Division of Occupational Hygiene assessed lead exposures to workers on the Tobin-Mystic River Bridge project near Charlestown, Massachusetts [12]. Workers were evaluated while scraping lead-based paint with pneumatic and hand tools; airborne concentrations of lead at levels far above the proposed PEL of 50 μg/m³ were common. The use of appropriate respiratory protection, including positive-pressure air-supplied respirators, was recommended to adequately control worker exposures.

In addition to engineering and work practice controls, appropriate respiratory protection should be utilized to ensure that worker exposures do not exceed the proposed PELs for any of the regulated substances that may be present. The potential for airborne levels of lead to reach hazardous levels is often underestimated when dealing with painted surfaces.

During the interior application of floor coatings workers use a number of different coating materials specific to a given application. Flooring coatings include ordinary paint (such as an alkyd), and polyurethane coatings. Whichever coating is selected, worker exposures arise primarily from the epoxy and isocyanate monomers and the organic solvents contained in the coating products.

Floor coating operations that occur indoors may result in excessive organic vapor exposures in worker breathing zones when provisions are not made to supply adequate ventilation. Fresh air should be blown into the work area to dilute solvent vapors. For most of the common solvents found in floor coatings, half-mask organic vapor cartridge respirators provide sufficient protection. Although overexposure to any of the monomeric isocyanates or diisocyanates is unlikely, a supplied-air respirator would be the appropriate form of protection due to poor warning properties (odor threshold) associated with these substances.

Personal air samples were collected by CONSAD from a three man work crew over a three shift, two day period during the applications of epoxy and polyurethane coatings to a concrete floor near Harrisburg, Pennsylvania in July, 1990 [2; Firm 29]. Three individual applications that consisted of one epoxy primer coat, one epoxy levelling coat, and a finish coat of polyurethane were made. Each coating material was a two-part mixture that was prepared in five-gallon containers at the site. The application process requires that each coat of material be allowed to dry for approximately 6–8 hours before the next coat is applied. The workers used long-handled rollers and brushes (for trim work at the baseboards) during application.

During the applications of the epoxy coatings, the workers were evaluated for their exposure to xylene, hexone (MIBK), epichlorohydrin, and propylene glycol monomethyl ether. The airborne concentrations of these contaminants were within the proposed concentration limits during the sampling periods and well under the proposed TWA8 PELs.

This same work crew was also evaluated for their exposure to xylene, n-butyl acetate, and methyl n-amyl ketone during the application of the polyurethane finish coat. The sampling results showed that all of the solvent vapors evaluated were within the

proposed PELs during the sampling period. Xylene was the major contaminant and an airborne concentration of 22 percent of the proposed PEL was measured. Two of the workers were also evaluated for exposure to hexamethylene diisocyanate (HDI), an unregulated substance with no proposed PEL. The airborne exposure to this substance was below the level of detection of 0.00054 ppm.

During the application of the coating system, the workers used personal protective equipment that included respirators (MSA half-mask or full face with NIOSH approved cartridges) and rubber gloves. General ventilation was provided by a wall fan that was operated during the entire application time.

The interior painting of metal substrates can involve a number of different interior paints. The normal means of coating are applicable to this activity (e.g., brush, roller, and spray). The selection of the particular type of paint and application method will depend on the environmental conditions to which the metal will be subjected. Workers involved in this activity will be exposed to a number of organic solvents.

Interior painting of metal substrates is usually conducted with conventional air spray equipment. As data from two NIOSH studies indicates [11, 13], exposures to paint mist or total particulates can potentially exceed the relevant proposed permissible exposure limits. Ventilation techniques such as fresh air supply systems or blowers to direct airborne contaminants away from workers can be applied to reduce worker exposures. The use of respiratory protection may also be applied by some painting crew members. For protection against inhalation of the particulate portion of the paint (fillers, binders, pigments, etc.), a disposable respirator will provide adequate protection in most situations. For overexposures to the solvent portion of these coatings, a half-mask organic vapor cartridge respirator would be required. Painters often use a combination half-mask organic vapor cartridge respirator with a mist removing pre-filter. Some paints contain chemical substances (2-Nitropropane, methyl chloroform, trichloroethylene) for which these types of respirators will not provide adequate protection. In these instances, a supplied-air respirator would be necessary.

Painters that are engaged in the use of compressed air spray painting as an application method have a greater exposure potential to the product solvents and other substances than when using either a brush or roller. Data from NIOSH industrial hygiene surveys [11, 13] and findings by CONSAD from site visits [2; Firms 15, 20, 22, 23, 25, 30] indicate that worker exposures during each of these activities can be controlled to levels below the proposed PELs. The combined equivalent exposures to the organic substances identified were also evaluated as capable of being controlled within the proposed limits.

Workers involved in interior painting of walls and ceilings generally use either a brush or a roller technique, although spray painting is also possible. A house paint commonly used is water based latex, although oil based (alkyd) and epoxy paints may also be employed. There is the potential for workers to be exposed to a number of organic substances and solvents contained in these paint products.

If there is an overexposure problem when conducting this activity, it most likely would occur during spray application methods. Inhalation hazards are increased due to overspray and rebound. In work situations involving considerable spraying in areas with poor natural ventilation, fresh air should be circulated into the workroom area to dilute solvent vapors. If adequate ventilation cannot be provided, workers may need to wear respiratory protection. A disposable particulate respirator would be sufficient for protection against the paint mist. If there are organic solvents in the coating, then a half-mask organic vapor cartridge respirator would be necessary.

Some paints also contain substances for which OSHA is proposing a skin designation. Three such substances include methyl alcohol, n-butyl alcohol, and mercury (aryl and inorganic mercury compounds). Natural rubber or neoprene gloves will provide adequate skin protection against these substances. CONSAD assessed the exposures with the use of an epoxy type paint from a site visit at the construction of an industrial facility in Indianapolis, Indiana in March, 1990 [2; Firm 12]. Two painters were sampled for petroleum distillates while roller-applying an epoxy ester-silica block filler to an interior concrete block wall. Three of the painters were also sampled for exposures to propylene glycol monomethyl ether and xylene while roller applying an epoxy finish coat to the same interior concrete block walls.

The 8-hour TWA results obtained from the sampling for petroleum distillates were 53 mg/m^3 and 26 mg/m^3. The proposed PEL for this substance is 1600 mg/m^3. The 8-hour TWA sampling results for exposure to propylene glycol monomethyl ether ranged from 0.42 ppm to 2.36 ppm. The proposed PEL for this substance is 100 ppm. The 8-hour TWA exposures to xylene ranged from 1.0 ppm to 7.3 ppm. The proposed PEL for xylene is 100 ppm.

Worker exposures to solvent vapors were evaluated by CONSAD in May, 1990 during the interior spray painting of structural steel and masonry associated with the new construction of an industrial facility in Indianapolis, Indiana [2; Firm 30]. Eight painters were involved in the activity and three were sampled for Propylene Glycol Monomethyl Ether (PGME) and xylene that were contained in the epoxy-polyamide product. Both compressed air and airless spray painting methods were employed.

The 8-hour TWA exposures to PGME ranged from 7 ppm to 8 ppm. The proposed PEL for PGME is 100 ppm. The breathing zone exposures to xylene resulted in 8-hour TWAs that ranged from 20 ppm to 30 ppm. The maximum average airborne exposure received by any of the painters during a sampling period was 41 ppm over a three hour period. The proposed PEL for Xylene is 100 ppm. It can be concluded that worker exposures to these substances were within the proposed standards.

All of the painters wore negative pressure half-mask respirators. The respirators contained pre-filters and organic vapor cartridges. Painters were also equipped with rubber gloves, protective clothing, and safety glasses. General ventilation was provided through the use of large fans which supplied fresh air to the rooms being painted. These fans were placed in the entrance and directed air toward the ceiling.

CONSAD obtained personal samples from five painters of two independent contractors during the painting of the inner surface of a large open air atrium in Milwaukee, Wisconsin in March, 1990 [2; Firms 13A and 13B]. Three of the workers applied a base and/or a finish coat. The other two painters were responsible for the final trim work and decorative painting in which only a finish enamel was used. Brush and rollers were the primary paint applicators, however, one of the painters used a paint sprayer but for less than one hour of application time.

Workers were monitored for airborne exposure to petroleum distillates. The TWA 8-hour equivalent exposures for the three workers involved in the base and/or finish coat application were all below 60 mg/m^3. The 8-hour TWAs of the remaining two workers solely

involved in the finish coat application were below 50 mg/m³. The proposed PEL for petroleum distillates is 1600 mg/m³. The painters used protective clothing (overalls, gloves) to avoid direct skin contact with the materials used.

Breathing zone samples were obtained by CONSAD from two painters while engaged in the coating of interior masonry walls of the shower and locker room areas of a building reconstruction project in South Park, Pennsylvania in April, 1990 [2; Firm 16]. The painters used a long-handled roller and a brush to apply an epoxy paint to the masonry block walls. The painting was conducted in relatively confined spaces with very little natural ventilation. Worker exposures to xylene, ethyl benzene, 2-butoxyethanol and petroleum distillates (naphtha) were evaluated.

The results of the laboratory analysis showed that the exposure levels for both painters exceeded the proposed PEL for xylene of 100 ppm on an 8-hour TWA basis. The xylene exposure for one of the painters was as high as 200 ppm during a two hour sampling period. The airborne concentrations and TWA exposures for the other substances sampled were 50 percent or less of the respective proposed PELs. Each of the painters wore a NIOSH approved half-mask organic vapor cartridge respirator which should have provided adequate inhalation protection.

CONSAD also conducted an evaluation of exposures to workers in contact with interior wood coating materials in a small town near Indianapolis, Indiana in May, 1990 [2; Firm 23]. The painting work under consideration was part of a renovation project of an institutional building. Two painters were observed: one applying a lacquer with an airless sprayer and the other applying the same material with a brush. Only the sprayer was sampled.

The breathing zone samples obtained were analyzed for 2-butoxyethanol, the primary solvent in the lacquer. The airborne concentrations surrounding the sprayer during a one hour sampling period ranged from 2.0 ppm to 7.8 ppm. The painting occurred during one-half of the shift and the 8-hour TWA concentration was estimated to be 2.0 ppm. The proposed PEL for butoxyethanol is 25 ppm and the sampled painter was clearly within the proposed limits. The painter wore a half-mask negative pressure respirator with pre-mist filter and organic vapor cartridge.

On another site visit in May, 1990, CONSAD evaluated airborne exposures associated with the interior painting of drywall during the construction of a multi-use commercial building in Chicago, Illinois [2; Firm 22]. Samples were obtained from two painters while applying latex flat wall paint by the conventional compressed air spray method. The work was conducted in a large basement area with little natural ventilation. Worker exposures to titanium dioxide, silica quartz and total dust were evaluated.

Both of the painters were sampled for titanium dioxide for a period of approximately 155 minutes. The analysis of the samples indicated breathing zone concentrations of 0.047 mg/m³ and 0.057 mg/m³. The proposed PEL for titanium dioxide is 10 mg/m³ on a TWA8 basis.

The analysis of the total dust samples determined that they contained 1.2 percent and 2.4 percent silica quartz. The determination of the airborne concentration of total dust indicated that the painters were exposed to dust levels of 12.0 mg/m³ and 23.4 mg/m³. The 8-hour TWA concentrations were calculated as 10.5 mg/m³ and 20.5 mg/m³. Exposures to both of these workers were considered to have exceeded the existing and proposed standards for total silica quartz dust and total dust.

One of the painters employed the use of a half-mask cartridge respirator and the other wore a disposable respirator that was not NIOSH approved for spray paint mists. The painters also wore work gloves and safety shoes. The use of appropriate respiratory protection can ensure that workers' exposures remain below the proposed PELs.

The application of a solvent or organic compounds to concrete, metal, or wood surfaces is a preliminary cleaning step for many other activities. The application of solvents or organic compounds will generally be some form of direct contact method to allow the solvent to clean or work on the surface. The solvent or organic compounds may be used for general cleaning and specific applications.

Control of organic vapors and gases which may be generated from this type of work can be achieved with fresh air supply blowers. Blowers should be located outside the immediate work room area to supply fresh air for dilution of contaminated air. If dilution becomes inadequate to control vapor concentrations at or above the PEL, then respiratory protection should be used. Supplied-air or self-contained breathing units are required for exposure to chlorinated solvents because these solvents have poor warning properties (odor threshold) and organic vapor cartridges have a short service life. Use of disposable half mask organic vapor cartridge respirators would be sufficient for exposures in excess of the PEL for other common organic solvents which may be encountered (VM&P Naphtha, xylene, toluene).

CONSAD conducted a site visit in January, 1990 to evaluate worker exposure to 1,1,1 trichloroethane during the cleaning of electrical transformer vault (concrete) pads in Arlington, Virginia [2; Firm 02]. Three workers were directly involved with the cleaning, handling and vacuum pick-up of the solvent during the shift. Two alternating washes of solvent and water were performed on each of the three vault pads worked on during the shift.

The activity consisted of pouring the solvent from a five gallon container onto the floor and broom brushing the surface. Two of the three workers were engaged in this task. This was followed by the vacuum pick-up of the solvent which was accomplished by the third worker. Water was then sprayed on to the floor surface from a hand pump sprayer and also broom brushed. This again was followed by vacuum pick-up. Two solvent and water washes were performed on each pad.

The total time that the workers were actually involved with the cleaning activity was 280 minutes. The 8-hour TWA exposures to 1,1,1 trichloroethane obtained from the personal sampling ranged from 63 to 80 ppm. These exposures include the total time of the work shift and zero exposures for the time that the workers were not involved in the cleaning. The average exposures for the time that the workers were involved in the cleaning ranged from 107 to 138 ppm. In any event, the exposures to workers were within the proposed PEL of 350 ppm.

The exposures associated with the use of a paint stripper were surveyed by CONSAD during the painting of a large open-air atrium in Milwaukee, Wisconsin in March, 1990 [2; Firms 13A and 13B]. Two of the painters were involved periodically with the process of paint stripping. These two painters were sampled for their exposure to petroleum distillates from the paint product and were sampled for exposure to methylene chloride (not included in this rulemaking). The 8-hour TWA exposures to methylene chloride were 4.75 ppm and 6.28 ppm. The maximum average level of airborne exposure found was 9.0 ppm during a five hour sampling period. It is believed that similar exposure results would have been obtained if other chlorinated solvents such as methyl chloroform, trichloroethane, or trichloroethylene had been used. If this assumption is correct the equivalent exposure levels would be below proposed PELs for these solvents.

Welding and metal fumes. Many activities in construction produce welding and metal fumes; OSHA has evaluated each type of activity to determine the nature of exposures and the feasibility of controls. The activities include welding or cutting of aluminum, carbon steel, galvanized steel, and stainless steel; burning, cutting or welding on materials with painted surfaces; soldering and brazing; and lead caulking.

Aluminum is typically used for architectural applications but also has industrial applications. The welding of aluminum is generally achieved using an electric arc and shielded with an inert gas such as helium. The cutting of aluminum stock can be accomplished with an oxy-acetylene torch.

During aluminum welding, the contaminants reaching the breathing zone of the welder may include ozone, nitrogen dioxide, aluminum metal fume plus other metallic oxides (zinc, magnesium, iron, copper). Of these contaminants, one of primary concern is ozone [7; p. 3.115]. Ozone is produced by ultraviolet light from the welding arc. Ventilation and work practices should be used to control exposure to welding fumes and gases. Good work practices involve using a properly fitted welding helmet and keeping the welding plume away from the breathing zone whenever possible. The most effective means of controlling worker exposure to airborne contaminants is through the use of portable exhaust ventilation. A properly designed exhaust system and hood will capture welding contaminants at the source before the fumes enter the worker's breathing zone. If exposures to metal fumes and ozone cannot be controlled through the use of ventilation, then respiratory protection may be needed. The minimum level of respiratory protection is a half-mask air purifying unit approved for metal fumes and ozone.

Carbon steel is a common construction material that has many applications. Structural members, masonry and stone supporting brackets, process tanks, and piping are its most common uses. The joining of carbon steel components is achieved using an electric arc with a shielding gas such as carbon dioxide or nitrogen. The application of an oxy-acetylene torch to carbon steel will achieve any cutting demands.

The major component of carbon steel is iron. Therefore, the primary airborne contaminant to which welders are exposed when welding on carbon steel is iron oxide fume. Gases are also produced in this welding process. Ozone, nitrogen dioxide, and carbon monoxide are the most common gases formed. These gases usually do not create an overexposure problem unless the work is conducted in a confined area. As with welding on aluminum, ventilation and work practices should be used to control exposures to welding fumes and gases. The most effective means of control is the use of portable exhaust ventilation. Some manufacturers also produce MIG welding units with an exhaust system directly built into the unit. In this unit, the exhaust hose is mounted close to the electrode. If engineering controls (portable exhaust ventilation or tip-exhausted welding gun units) do not provide sufficient protection, then respiratory protection should be used to supplement them. The minimum level of respiratory protection would be a half-mask air purifying unit for metal fumes and ozone.

In December 1981, Maryland Occupational Safety and Health (MOSH) conducted an investigation of construction workers that were exposed to lead [14]. In one case, employees were involved in the removal of blast furnace stoves from a steel mill. After the stoves were removed with the use of explosives, the workers used oxy-acetylene torches to cut each stove's outer steel jacket into pieces that could be transported from the site.

Air sampling of these workers showed that their exposure to airborne concentrations of lead ranged from approximately 200 $\mu g/m^3$ to 500 $\mu g/m^3$. In this process lead was a by-product in the blast furnace operation and only existed as a surface contaminant. When cutting, the workers used torches four feet long that placed them farther away from the point of fume generation.

CONSAD conducted site visits to evaluate worker exposure to welding fume and metals. The observations at one firm in Indianapolis, Indiana in March, 1990 consisted of the welding (fabricating) of limestone wall support brackets for an office building. Only one welder was observed and sampled while joining (stick welding) short lengths of carbon steel angles [2; Firm 06].

At another site in March, 1990, six crews each consisting of one welder and one grinder were involved in the welding of carbon steel piping for an industrial facility in Indianapolis, Indiana [2; Firm 11]. Shielded metal arc (stick welding) was employed by the workers observed. Two welders were sampled to assess their exposure to iron oxide fume.

The results of the samples obtained at the first site showed that exposure to iron oxide was 1.2 mg/m^3 TWA8 and well within the proposed PEL of 10 mg/m^3. The samples obtained at the second site indicated 8-hour TWA iron oxide exposures of 0.14 mg/m^3 and 0.28 mg/m^3. These results also were within the proposed PEL of 10 mg/m^3. Further, the workers' exposures were considered to be in compliance with the new PEL for welding fume of 5 mg/m^3 and with requirements for additive exposures.

Galvanized steel has applications in situations that demand corrosion protection. The welding and cutting of this type of material would be the same as that of carbon steel (i.e., arc welding, and oxy-acetylene torch).

The primary metal oxide of concern when cutting or welding on galvanized steel is zinc oxide fume. The same gases (ozone, nitrogen dioxide and carbon monoxide) discussed in previous welding activities are also produced when welding on galvanized steel. The primary method of controlling worker exposures to these airborne contaminants is local exhaust ventilation. This is most commonly achieved with portable exhaust units which capture contaminants at the source. Where adequate ventilation and good work practices are not sufficient to control employee exposures below the PEL, respiratory protection can be used to keep worker exposures below the proposed PELs.

Stainless steel is most often used in applications that demand high resistance and protection to corrosive and contaminating substances (e.g., food and drug processing equipment and piping, nuclear applications, etc.). The welding of the material is accomplished with an arc welder and an inert shielding gas such as argon or helium.

Chromium and nickel are important constituents of stainless steel. The welding and cutting processes typically associated with work on stainless steel do not appear to generate significant amounts of airborne contaminants. However, whether a visible plume is observed or not, significant concentrations of nickel and chromium metal fume may be produced. Therefore, local exhaust ventilation as discussed above should be utilized.

NIOSH conducted an industrial hygiene survey of airborne exposures generated during the welding, grinding and arc gouging of stainless steel at a nuclear power plant in Perry, Ohio [13]. Three personal breathing zone samples were obtained from three workers and analyzed for zinc, iron, lead, nickel, and chromium. The sampling durations were approximately five hours in length. In addition, a consultant of the construction contractor also conducted

a survey of the same processes which NIOSH reviewed. The consultant's survey consisted of obtaining eleven breathing zone samples and measuring for iron oxide, zinc, nickel and chromium. Six personal samples were collected for lead and twenty-two personal samples were also obtained specifically for the determination of the presence of chromium VI.

The reported concentrations of all of the personal samples were as follows: Zinc, 0.02 mg/m^3–0.57 mg/m^3; iron, 0.04 mg/m^3–9.9 mg/m^3; lead, not detected–0.017 mg/m^3; nickel, 0.005 mg/m^3–0.85 mg/m^3; and chromium, 0.005 mg/m^3–1.1 mg/m^3. The results indicate that although a potential for overexposure exists, adequate ventilation and good work practices can be effective in keeping exposures below the proposed PELs. NIOSH cited vacuuming and housekeeping as important means of reducing dust levels. If necessary, respiratory protection can be used to keep worker exposures below the proposed PELs.

CONSAD conducted a site visit to assess the exposures to chromium and nickel metal fume during the heli-arc welding of stainless steel piping during the construction of an industrial facility in Indianapolis, Indiana in March, 1990 [2; Firm 11]. Three welders were sampled.

The 8-hour TWA exposure results obtained revealed that exposures to chromium ranged from 0.0015 to 0.0052 mg/m^3 and that exposures to nickel ranged from 0.0011 to 0.0036 mg/m^3. The average exposure for these workers was relatively low because the inspection requirements of the project reduced the actual arc time. The proposed PELs for chromium and nickel are the same at 1.0 mg/m^3.

Burning, cutting, or welding on steel with painted surfaces can potentially produce many hazardous airborne substances. Exposures can be generated in the process of heating a coated steel by using an oxy-acetylene torch or an arc welder. The exposures that are produced consist of the base metal components (e.g., iron oxide, chromium, etc.), the volatized components of the coating (e.g., lead, zinc, chromium, etc.), and the resultant gases that are generated (e.g., ozone and carbon monoxide).

Workers can be adequately protected from lead exposures by engineering controls and respirators that are approved for that purpose. Lead is one of the primary health hazards associated with burning, welding, and cutting activities and is often present in relatively large quantities. The lack of adequate protection for workers is often due to a lack of awareness of the presence of lead or the erroneous assumption that the amount of lead fumes generated would not create a hazard.

Control of worker exposures to the metal fume and gaseous compounds created during the burning processes can be accomplished by equipment-mounted exhausts on the torches and by portable exhausts used as local ventilation at the point of operation. Screens or partitions between burning operations help reduce exposures to any workers in adjacent areas. Where engineering controls can not adequately reduce exposures below PELs, supplementary respiratory protective equipment can be used. This respiratory protection could range from half-mask respirators to air-supplied systems depending upon the nature of the contaminant and the level of exposure.

Maryland Occupational Safety and Health (MOSH) conducted an investigation after bridge workers were hospitalized for acute lead poisoning [14]. The workers were engaged in the resurfacing of a four-lane highway bridge that was located over a major river. In the course of the normal workday, torch cutting, arc welding, and grinding were performed. Lead overexposures were not expected since the work was performed outdoors and it was believed that normal air currents would disperse the contaminants.

Personal air sampling was conducted on employees that continued to work on the bridge. Airborne exposures of up to 4900 $\mu g/m^3$ were observed. Precautionary measures to protect the workers from the potential of this health hazard were absent.

An article in Welding Journal illustrated several cases which demonstrated the potential hazards of lead in these types of activities [15]. In one case, workers were engaged in the cutting and welding of I-beams in a conversion project of an old power generating station. The work was being done indoors in a wide open area that was thought to be adequately ventilated.

The state of Maryland was notified that the workers involved had been hospitalized for lead poisoning. State health investigators arrived shortly after notification and conducted personal air sampling on workers who had replaced the hospitalized workers. Most of the samples reflected airborne concentrations of lead in excess of 1,000 $\mu g/m^3$, 20 times the proposed permissible level (50 $\mu g/m^3$), with one sample exceeding 1,400 $\mu g/m^3$. There was no indication that any measures were taken to protect the workers from lead exposure.

The Occupational Health Service (OHS) of the New Jersey Health Department initiated industrial hygiene follow-up evaluations subsequent to elevated blood lead levels received from workers involved in construction activities. OHS conducted one such industrial hygiene evaluation at a bridge construction site [7; p. 3.42]. The project involved the rehabilitation of a span bridge, which was fabricated from steel coated with lead chromate paint.

A crew of five ironworkers was engaged in the process of removing and replacing the rivets in the bridge structure. The ironworkers would torch cut the old rivet heads and punch out the remaining part with a pneumatic hammer. The replacement nut and bolt was installed with an impact wrench. Within two weeks of work, all five workers became ill. Two of the workers were hospitalized and treated for lead poisoning. The OHS determined that the source of the lead exposure was the paint coating of the steel and not the rivets which were suspected initially. OHS conducted short-term breathing zone sampling of a burner and a hammer operator. The exposures to lead were 5.956 $\mu g/m^3$ and 0.363 mg/m^3 for the burner and hammer operator, respectively. The hammer operator's exposure to lead originated from dust generated from the hammering out of the rivets. Several recommendations were made as a result of the evaluation. These included: a lead awareness program for all workers with lead exposure, the use of powered air purifying respirators with HEPA filters, and medical surveillance.

In March, 1988 five of nine workers employed to demolish a bridge in western Massachusetts were diagnosed for lead poisoning [16]. These workers used oxy-acetylene torches to cut apart sections of the bridge. OSHA investigators determined that the bridge coating contained 30 percent lead by weight and that the available respirators were not always equipped with the proper cartridges to protect the workers from lead fume.

CONSAD conducted a site visit in Chicago, Illinois in March, 1990 to evaluate worker exposures to coating materials and fumes generated during the burning/cutting of painted steel [2; Firm 09]. The project consisted of the installation of a new HVAC and sprinkler system as part of the renovation of an office building. The primary interest in this project was the torch cutting enlargement of girder holes and the emissions generated from the paint coating on the girders. Following

the hole enlargement, support plates were stick-welded around the holes.

Two employees were involved in the process. One was responsible for the torch cutting and the other for the welding. Both workers were sampled for iron oxide and lead fume. The 8-hour TWA exposures to iron oxide fume were determined to be 0.16 mg/m³ and 0.30 mg/m³ for the torch cutter and the welder, respectively. The proposed PEL for iron oxide fume is 10 mg/m³. Both of the workers experienced overexposures to lead, based on a proposed PEL of 0.05 mg/m³. The TWA 8-hour determinations were 2.13 mg/m³ and 4.98 mg/m³ for the torch cutter and the welder, respectively. Personal protective equipment consisted of cotton gloves, long sleeved shirts, safety shoes, and welding helmets and shields. The torch cutter had a 12" portable fan situated behind him to blow fumes away from his breathing zone. There also were two air filtration/exhaust units located in the work area.

Soldering and brazing are techniques that are used to join metal pieces or parts. These techniques use heat in the form of a propane, MAPP gas or oxy-acetylene flame and a filler metal (tin/lead compositions, rosin core, and brazing rods) to join materials. Fluxes are used in soldering to remove metal oxides and surface contaminants from the metal surfaces before the filler metal is applied. Potential exposure sources are the heated metal (e.g., copper, iron oxide), the filler metal (e.g., lead, tin oxide and rosin core pyrolysis products) and the flux (e.g., zinc chloride, ammonium chloride, methyl alcohol and ethyl alcohol).

Brazing operations present potentially greater exposure hazards because of heat intensity. Most soldering operations occur at temperatures that are less than 800 °F. The melting point of the filler metals is relatively low (less than 600 °F) and the activity usually does not generate significant concentrations of metal fume. Brazing operations usually occur at temperatures in excess of 800 °F. The temperature of the operation is of major importance since it determines the vapor pressure of the metals that are heated and therefore the potential concentration of metal fumes to which the employee may be exposed. Because most field soldering and brazing work is conducted with a torch, it is difficult to regulate operating temperatures to within recommended limits to reduce the amount of metal fumes generated. In confined areas, portable exhaust ventilation is recommended to remove metal fumes and gases associated with this type of work. However, worker time weighted average exposures to metal fumes are usually not exceeded due to the limited durations of exposure encountered with soldering/brazing work.

Fluxes are also used to clean the metal surfaces to be bonded. The flux, which may be a solid, liquid, paste, or gas, is designed to remove surface contamination and keep the area clean until the solder metals can be applied. The flux is commonly applied by brushing or rolling directly onto the metals to be bonded. Most of the fluxing compounds do not present a significant airborne hazard but are corrosive to the skin. Therefore, skin contact should be minimized by specific work practices and good housekeeping. Volatile compounds such as alcohols (isopropyl, ethyl or methyl alcohol) are added to fluxes for viscosity purposes. Should a potential overexposure to methyl alcohol exist, an airline or supplied-air respirator is recommended as well as the use of special protective gloves. Methyl alcohol is one substance for which OSHA is proposing a skin designation. A natural rubber or neoprene glove would provide adequate skin protection.

CONSAD evaluated worker exposures to copper, silver, tin oxide and zinc chloride during the soldering of copper pipe joints in a water heater, kitchen sink and bathroom area of a single family house in Panama City, Florida in June, 1990 [2; Firm 26C]. A plumber completed 40 joints in approximately three hours. Tin-silver-copper solder wire (lead free) was used during this application. The soldering flux consisted of zinc chloride. The airborne concentrations of the contaminants obtained in the sample were all well below the proposed limits.

CONSAD conducted another site visit to evaluate exposures to plumbers during the renovation/remodeling of a school building in Bethel Park, Pennsylvania in July, 1990 [2; Firm 27]. One plumber was sampled for exposure to aluminum, copper, lead, silver, and tin while soldering copper pipe joints. When the plumber was not soldering, he was drilling holes for the piping installation. All of the exposures were below the proposed PELs for the individual substances. These exposure determinations were considered to be representative of the soldering activity for an average day.

The use of lead pots for lead caulking activities produces potential exposures to lead fumes. Lead caulking is used in some commercial construction building applications including the sealing of iron waste pipe joints. The use of lead for this purpose requires that it be liquified. The process of heating the lead and its application as a liquid presents possible exposure to lead oxide fume.

Since a lead pot remains stationary during heating, a portable exhaust system mounted near the pot can control lead fume. Appropriate thermostatic control devices can also be installed on the pot to prevent overheating, thus reducing the amount of metal fume. Also, the handling of lead requires that employees follow good personal hygiene and proper work practices to reduce the exposure potential. If respiratory protection is required, a half-mask respirator with NIOSH approved filters would be adequate [7; p. 3.136].

Concrete work. Workers are potentially exposed to a variety of substances when doing concrete, brick, and masonry work. Work activities include patching and resurfacing, sealing and coating, grinding/drilling/cutting, handling mortar or cement, handling and pouring concrete, preparing floors with a chemical stripper, installing concrete forms, and batch mixing of concrete, mortar, and cement.

Concrete patching and resurfacing work can range from the patching of small holes and cracks to a complete resurfacing. Various patching products are available depending on the application, e.g., epoxy resin patching compounds and plastic mortars.

Many patching and resurfacing products contain organic solvents. Epoxy compounds, used extensively in this activity, contain amine compounds (hardening agents) and organic ether compounds which can cause both skin sensitization/irritation and respiratory tract irritation. For this reason, adequate ventilation and good work practice controls need to be implemented to prevent worker overexposures. Blowers, located outside the immediate work room area to supply fresh air, dilute organic vapors and help to reduce exposure levels. There is no indication from the available data that exposures above the proposed PELs occur during this activity. If dilution ventilation should prove inadequate to control vapor concentrations, then respiratory protection would be necessary.

Sealing and coating operations involve the application of products that impart a durable finish to concrete or that seal it from water penetration. The products used for these purposes can be applied by brush, roller, and spray. Workers engaged in the use of these products may be potentially exposed to a range of organic solvents and active

reagents that these products may contain.

Sealing and coating operations that occur indoors may result in excessive organic vapor exposures when provisions are not made to supply adequate ventilation. Fresh air should be blown into the work room area to dilute solvent vapors. If adequate ventilation cannot be provided to the work area, respiratory protection may be necessary. For most of the solvents found in floor sealants, half-mask organic vapor cartridge respirators provide sufficient protection.

NIOSH conducted a health hazard evaluation to assess the health effects of isocyanates during floor waterproofing operations at a Philadelphia hospital in 1984 [17]. The floor waterproofing activities consisted of the following: (1) The caulking of the risers, baseboards, uprights, floors, and walls with a moisture-cured polyurethane sealant, (2) the filling of cracks in the flooring—the aliphatic urethane material used was troweled into place, (3) the application of the deck waterproofing material—one part liquid polyurethane was poured onto the floor, squeegied, and rolled out with a long-handled paint roller, and (4) application of the finish coat—two part liquid polyurethane materials were mixed for about six minutes and applied to the flooring with a long-handled paint roller and/or brush. The waterproofing contained one or more of the isocyanates: methylene bisphenyl (MDI), polymethylene polyphenyl (PAPI), and toluene diisocyanate (TDI).

Five personal samples were taken. No detectable concentrations of the monomeric isocyanates and ethylene glycol were found in any of the samples. NIOSH recommends the use of supplied-air full-face respirators for protection from overexposures to diisocyanates.

CONSAD observed the application of a waterproofing membrane to a concrete floor during the construction of a new building in Pittsburgh, Pennsylvania in February, 1990 [2; Firm 03]. Two employees were involved in the process of troweling the waterproofing membrane onto the floor. Xylene was a primary component and therefore exposures to the substance were evaluated. The analytical determinations for the exposures to xylene were 7.5 ppm and 3.8 ppm on an 8-hour TWA basis. The proposed PEL for xylene is 100 ppm as an 8-hour TWA. The two employees involved in the application process wore rubber gloves to prevent skin contact.

Workers that engage in grinding, drilling, chipping, or cutting on concrete, brick, or masonry can use a variety of tools to perform these tasks (e.g., sawing equipment, hammer drills, chippers, core drills, and jack hammers). Exposures result from the generation of particulate matter and dust. Workers can be exposed to some form of calcium silicate, silica (quartz), and other particulate respirable dusts.

The principal control techniques to reduce worker exposures to dust are ventilation and enclosure. However, airborne dust concentrations can be quite high during this activity; the use of disposable dust masks is very common. In most situations, this type of mask should provide adequate protection.

Worker exposure to silica quartz was evaluated by CONSAD during the construction of an industrial facility in Indianapolis, Indiana in March, 1990 [2; Firm 10]. The activity involved a worker engaged in the cutting of concrete blocks with a 14-inch diamond blade cut-off saw. The saw cutter was exposed to airborne dust containing 8 percent quartz at concentrations of 12.5 mg/m^3 and 57.1 mg/m^3 during the sampling periods. On an 8-hour TWA basis, this worker's exposure was estimated to be 37.8 mg/m^3. Thus, the worker was overexposed to total particulates and exposure to silica quartz respirable dust exceeded the proposed standard.

Personal protective equipment including safety glasses, goggles, cotton work gloves, and respirators should be provided to the employees doing this work. The proper use of this equipment would provide adequate protection from potential overexposures.

Worker exposure to total silica dust was evaluated during the preparation of a concrete floor prior to coating near Harrisburg, Pennsylvania in July, 1990 [2; Firm 29]. Two workers were sampled while using scarifying tools to clean the concrete floor surface in areas that could not be shotblasted. Samples were collected from two workers and from a shotblast operator. It was determined that the average quartz concentration of the dust samples was 30 percent. The two scarifying workers were exposed to airborne dust concentrations of 73.6 mg/m^3 and 20.1 mg/m^3 during the sampling periods. Their exposures were 62.3 mg/m^3 and 5.0 mg/m^3 respectively, on an 8-hour TWA basis reflecting minimal exposure while not engaged in the activity. On the basis of the percentage silica determined from the samples, the airborne concentrations exceeded the proposed standard for total silica quartz dust.

The workers wore personal protective equipment including disposable dust respirators and safety glasses. The disposable respirators were considered adequate for nuisance dust and silica. A small wall fan provided general ventilation to remove contaminants during the work period.

Mortar and cement are common products in the work of bricklayers and masons. Workers apply mortar when working with concrete block, brick, and stone. The primary components of mortar consist of portland cement and sand. The potential for overexposure to dust is present at mixing work stations. The potential for dust exposures in excess of corresponding PELs is unlikely after mixing with water. If curing compounds are added to the mix, workers may be exposed to organic solvents. However, the potential for overexposure to solvent vapors during this activity is remote.

Handling or pouring concrete and troweling and leveling concrete do not create significant airborne exposures. Concrete is normally delivered to the pouring site pre-mixed. As a result, workers are not exposed during the pouring, leveling, and finishing of concrete. Workers that are engaged in the application of curing compounds to the poured concrete may experience exposures to organic solvents contained in such products. The potential for overexposure to solvent vapors during this activity is remote.

Worker exposure to solvent vapors were evaluated by CONSAD during the spray application of a concrete curing compound in Chicago, Illinois in May, 1990 [2; Firm 19]. Air samples were collected from one laborer during the application of a concrete curing product with a hand-held sprayer. The primary solvent was mineral spirits. The exposure determination from the personal sampling resulted in an 8-hour TWA of 10.6 mg/m^3. Air concentrations of the mineral spirits for three time intervals of less than two hours each ranged from 31 mg/m^3 to 45 mg/m^3. The proposed PEL for petroleum distillates (mineral spirits) is 1,600 mg/m^3 TWA8. Personal protective equipment worn by the employee included a half-mask organic vapor cartridge respirator, rubber gloves, and eye protection.

At the construction of a hotel in Denver, Colorado in June, 1990, CONSAD was present during the pouring of concrete and the application of a curing material to a concrete surface [2; Firm 24A]. As the pouring progressed and the concrete started to set and harden, it was worked with power floats. A short time before the pouring was completed, one worker used a hand pump sprayer to coat the concrete with a curing agent. Air samples were collected and analyzed for n-hexane. Two workers were sampled. One worker was the curing

material applicator and the other was a floater working in the area of the applied material. The airborne concentrations of n-hexane obtained during sampling periods of one to three hours (representing the highest potential exposures) were less than 2 mg/m³ for each of the workers. The proposed 8-hour TWA PEL for n-hexane is 180 mg/m³.

Preparation work on concrete floors using chemical strippers is generally done to remove surface impurities or prior coatings. Application of the chemical strippers is done manually in a number of ways, e.g., direct pouring of stripper onto the surface followed by brushing or rolling. Concrete cleaners and strippers may contain mineral acids, organic acids or organic solvents.

Airborne contaminants generated from most activities involving preparation work on concrete floors can be controlled by implementing engineering controls. To prevent exposures to organic vapors and acid mists associated with this work, the use of fans to supply fresh air and to blow contaminants away from workers appears practical. Where exposures cannot be controlled within allowable limits by engineering controls, respiratory protection must be provided. For potential overexposures to the most common stripping agents (phosphoric acid, MEK, toluene, MIBK) the use of a disposable half-mask organic vapor cartridge/acid gas respirator is necessary.

The preparation and installation of concrete forms can cause exposures to several substances. Concrete forms are casings that hold and shape poured concrete. These forms are generally made of wood but can be metal as well. To prevent the concrete from adhering to the forms and to facilitate removal, the forms may be coated with oils. These oils generally consist of petroleum distillates, naphtha, xylene or some combination of organic solvents. Workers that engage in this activity are potentially exposed to these substances.

Since the majority of this work occurs outdoors and is of limited duration, exposures can be controlled by implementing good work practices (working upwind and not overspraying). If exposures still exceed the PEL, a half-mask organic vapor cartridge respirator should be used.

Batch mixing of concrete is normally accomplished by adding the ingredients (portland cement, sand and gravel) to water in a mixer. Significant airborne dust concentrations can be produced during this activity. The primary source of exposure occurs during the handling of bagged material. Most batch mixing operations require the operator to manually dump dry portland cement into the mixer after opening bags with a utility knife. Sand is usually stored in bulk form near the mixing area and is added to the batch by shovel. It is not uncommon to find the mixer operator covered with dust from the manual handling of raw materials. Mixer operators may be required to wear a single use or disposable dust mask to ensure that exposures are kept below the proposed PELs. Airborne dust concentrations can be reduced with isolation, by using a water spray on the bulk sand pile, and through the implementation of wet sweeping practices in the mixing area.

CONSAD observed the batch preparation of concrete and mortar during the construction of an industrial facility in Indianapolis, Indiana in March, 1990 [2; Firm 10]. Two workers were sampled for their exposures to silica and total dust while engaged in the mixing process. The prime activity of these workers was adding portland cement, sand, gravel and water to the two- and four-bag capacity mixers. The portland cement was contained in bags while the sand and gravel were piled on the ground near the mixers.

The sample determinations revealed that the workers were exposed to airborne concentrations of 12.4 mg/m³ and 13.2 mg/m³ of total dust containing less than one percent silica quartz on an 8-hour TWA basis. The primary component of the dust generated was portland cement and the proposed PEL for this substance is 10 mg/m³.

The employees were provided with personal protective equipment that included glasses/goggles, cotton work gloves, and respirators. This equipment provided adequate employee protection.

CONSAD observed the installation procedure of a terrazzo marble floor during the construction of a large multi-use commercial building in Chicago, Illinois in May, 1990 [2; Firm 21]. Primary tasks included the preparation of the flooring material and the grout. The components of the flooring material consisted of marble chips, white portland cement and sand. The components of the grout consisted of portland cement and color pigment. These materials and water were added to a two-bag mixer. CONSAD evaluated the exposures to silica quartz and to total dust for the individual responsible for the mixing operation.

During the sampling period of approximately four hours, the mixer operator was exposed to a total dust concentrations of 5.25 mg/m³. Exposures to total dust and silica were within the proposed limits. CONSAD observed that the bulk storage piles of marble chips and sand were periodically wetted to suppress the dispersion of dust in the work area.

The preparation of mortar is analogous to that of concrete. The preparer fills a mixer with portland cement and sand. The exposures occur from filling the mixer with cement from bags. There is also the potential of exposure to silica (quartz) during the sand addition. The control measures discussed above also apply to batch mixing of mortar and cement. These controls include enclosure of the mixing area, ventilation, use of a water spray on bulk sand piles, and implementation of wet sweeping work practices. Where these controls fail to reduce worker exposures to within acceptable limits, an air-purifying dust respirator would provide adequate protection.

Carpentry and Glazing. Activities during carpentry and glazing operations with potential exposures to airborne contaminants include the application of caulking compounds and sealants, bonding and gluing activities, cutting wood, applying wall and floor materials, and sanding.

Caulking involves the use of various caulks and sealants to fill cracks or spaces left by joints from general construction activities such as the installation of windows, or caused by the movement of material, such as asphalt pavement cracks. Generally, the caulking or sealant is applied manually with a spring-loaded caulking gun.

Workers using caulks and sealants are potentially exposed to solvents contained in these joint-filling materials but it is unlikely that overexposures to solvents will occur during normal use. Several commercially available products contain tin and mercury compounds. These substances may be present in small concentrations, and workers should protect skin areas where contact may occur.

While caulking compounds contain many solvents as ingredients, carriers, or drying agents, it is unlikely that workers would be overexposed to corresponding PELs during the normal application of these materials. The method of application is slow by nature and therefore a large volume of materials can not be used over a normal work day. In addition, the composition of the solvent portion of the caulking compound is such that it does not represent a significant source of exposure.

Bonding and gluing activities are common in the carpentry trade. There is a potential for exposure primarily to the solvent(s) contained in the adhesive.

Typical applications would include: counter top lamination, parelling installation or the joining of work pieces.

As with the application of sealants and caulking, the likelihood of worker exposure in excess of corresponding PELs for the organic solvent components of glues and adhesives is believed to be remote. The relatively small percentage of the solvents in the adhesives, the normal mechanical methods of application, and the small total volume of materials utilized in a given work day would normally maintain worker exposures below proposed limits. However, in situations where single applicators spend the majority of their day applying adhesives, especially in relatively confined areas, exposures in excess of PELs may occur. In these instances, fresh air supply blowers can be used to dilute the airborne concentrations to within acceptable limits. In circumstances where this can not be achieved, organic vapor respirators would be required. In addition, some of the materials which might be present in a given adhesive, such as cyclohexanone, would require special gloves such as neoprene, to reduce the skin absorption hazard.

The potential for exposure to soft and hard wood dusts exists during the cutting of wood. The exposure may become significant when workers using power saws are dedicated to this activity for an extended period of time. This is not believed to be a situation commonly found in construction work.

When equipment is dedicated to full time operation local exhaust ventilation should be supplied in order to control the operator's exposure. Work practices such as using dust suppressant compounds prior to dry sweeping will reduce exposures during clean-up. In rare instances where these practices do not substantially control exposures, respiratory protective equipment such as a disposable dust mask would be required.

CONSAD conducted personal air sampling to evaluate the wood dust exposures associated with the framing of a 1,200 square foot single family residence in Panama City, Florida in June, 1990 [2; Firm 26B]. Two carpenters sampled used a hand-held radial saw to cut pine boards and planking throughout the day.

Airborne concentrations of 0.93 mg/m^3 and 0.30 mg/m^3 were determined for each of the samples obtained. The equivalent 8-hour TWA concentrations were slightly lower at 0.87 mg/m^3 and 0.28 mg/m^3, respectively. These workers were exposed to less than 20 percent of the permissible exposure level allowed by the proposed standard.

Applying floor and wall coverings is a manual activity in which the worker is directly in contact with the floor/wall materials and any primers, adhesives and grouts used. Flooring materials may be ceramic, hardwood, linoleum, or carpeting. To help prevent worker exposures to organic solvent vapors, ventilation is the method of control believed to be most practical for this activity. Blowers can be located outside the immediate work room area to supply fresh air for dilution of contaminated air. If dilution becomes inadequate to control vapor concentrations within the PEL, then half-mask air-purifying (organic vapor) respirators are recommended.

Some adhesives contain organic solvents for which OSHA is proposing a skin designation. One substance commonly encountered with this designation is cyclohexanone. A butyl rubber glove can provide good protection when handling this substance.

In the laying of a ceramic floor, an adhesive is mixed and troweled on to the floor surface. The tiles are placed and the adhesive is allowed to set. This is followed by the filling of the tile joints with grout. Linoleum flooring is generally sold with a self-adhesive backing that is protected with a thin film of plastic or cellophane. The removal of the protective film exposes the adhesive and allows the direct application of the flooring.

However, the installation of ceramic tile still requires the manual application of an adhesive. The primary exposures to workers in these activities arise from the contact and use of flooring adhesives and any specialty grouts. The products used for these applications generally contain one or more organic solvents.

CONSAD conducted a site visit in May, 1990 to observe a commercial carpeting installation near Chicago, Illinois and to perform personal air sampling of the workers [2; Firm 17]. The installation involved the application of an adhesive to the flooring prior to laying the carpet. VM&P naphtha was the primary solvent component of the product. Two workers were sampled during the application. Neither of the employees was equipped with personal protective equipment and no engineering or administrative controls were observed.

The 8-hour TWA equivalent exposure determinations were the same for both employees at 3.3 ppm. The airborne concentrations were also approximately the same for the individual sample times. The maximum exposure level determined was 4.0 ppm. The proposed PEL for VM&P Naphtha is 300 ppm.

CONSAD also conducted air sampling during the installation of ceramic wall tile to evaluate the associated exposures in Pittsburgh, Pennsylvania in February, 1990 [2; Firm 03]. On this project, a tile setter troweled on an adhesive to a concrete block wall prior to the setting of the ceramic tile. Two finishers worked after the tile was set and applied the grout. All three of the workers were sampled for their exposure to VM&P Naphtha. The 8-hour TWA exposures for each were less than 1.0 ppm.

Worker exposure to carpeting adhesive solvents was evaluated by CONSAD during carpeting installation at a college dormitory in Pittsburgh, Pennsylvania in February, 1990 [2; Firm 04]. The primary solvent component of the adhesive was VM&P naphtha. One worker was sampled during an application period of approximately two hours. The airborne concentration of VM&P naphtha during the period was determined to be 3.7 ppm.

Sanding of wood surfaces may be accomplished either by hand or by the use of electrically driven reciprocal and belt sanding equipment. The potential exposure to wood dust exists with either method but may be more severe when power equipment is used and the activity duration is long.

When using electrically driven or pneumatic sanding equipment, worker exposures to dust can be controlled by exhausting air at the point of operation. Mechanical sanding equipment is commercially available with built-in exhausts in the design of the unit. This captures dust before it enters the worker's breathing zone. To clean the work area of material which has reached the floor, either dust suppressant compounds or wet sweeping practices should be implemented.

Hand sanding operations may be quite dusty but are usually of limited duration throughout a work day. Time weighted average exposures would most likely be below the proposed PELs for the corresponding dusts generated. If the potential for an overexposure exists, the use of a NIOSH approved disposable mask would provide adequate protection.

Sanding of drywall surfaces is generally done by hand. Workers that engage in drywall installation are likely to be exposed to the plaster material (gypsum-calcium sulfate) when sanding the dried joint compound.

A significant amount of dust can be generated during this activity; the degree of worker exposure depends on several factors. If the installation process is done by one worker then the time spent sanding may be intermittent and represent only part of the work shift; the resulting TWA exposure is likely to be within proposed limits. When several workers are sanding in close proximity to one another in an area without adequate ventilation and the sanding is done continuously for most of the work shift, then the potential for overexposure is increased.

Power sanding tools can be equipped with dust collection devices to reduce worker exposures. During power sanding and hand sanding, ventilation can reduce airborne concentrations through general dilution. Appropriate work practices can play a critical role in preventing excess exposures. The work area should be kept clean; the use of dust suppressants and vacuuming are effective means for keeping particulates out of the air. Exposures during clean-up operations may exceed those during actual sanding work if proper housekeeping measures are not taken. If engineering controls and work practices are not able control exposures adequately then respiratory protection would be required.

Worker exposure to hardwood dust was evaluated by CONSAD during the sanding of a maple gymnasium floor in Bethel Park, Pennsylvania in July, 1990 [2; Firm 27]. The floor sanding was a one-man operation and was conducted for a full 8-hour day. The sanding machine was equipped with a dust collector to capture dust which appeared to be effective. The sander used personal protective equipment that included a dust mask (NIOSH approved), ear plugs, and safety shoes. It was observed that the main source of exposure occurred while emptying the capture bags.

The sample collected from the worker's breathing zone (outside the worker's dust mask) was evaluated at an exposure level of 5.38 mg/m^3 of wood dust on an 8-hour TWA basis. The proposed PEL for wood dust (hard and soft wood) is 5 mg/m^3 TWA8. This worker was potentially overexposed to wood dust concentrations above those specified by the proposed standard, but the dust mask provided protection from the inhalation of the wood dust and was considered sufficient for compliance with the proposed standard.

Roadwork and Pipelines. Construction workers face many potential exposures during activities associated with roadwork and pipelines. These include asphalt laying, blasting and excavation, pipe wrapping, rock crushing, water well drilling, traffic line painting, and cable laying.

Asphalt laying involves the application of asphalt mixtures to traffic bearing surfaces such as roads and parking lots. The asphalt is normally dispensed from pavers at temperatures ranging from 200°F to 350°F. Some paver models can lay pavement that is more than 20 feet wide. The number of workers may vary from four to seven per paver. After the asphalt is placed, it is smoothed by a rolling machine. If the edges along curbs cannot be rolled, then they must be tamped manually. Associated with the laying of asphalt is the application of the tack coat. This asphalt emulsion must be sprayed on all the edges where an asphalt joint occurs. On those jobs where only a new layer of asphalt will be applied, an asphalt tank truck can be used to apply the tack coat. For joints and curbs, a worker can apply the tack coat from an oil pot equipped with a sprayer. Workers engaged in all of the functions associated with asphalt traffic surface construction are likely to incur exposure to asphalt fume.

Operators of paving equipment have the potential to be exposed to asphalt fumes. Enclosure in a plexiglass cab with a supplied air system that filters out asphalt fumes would control the operator's exposure. Workers immediately adjacent to the paving operation would have the greatest likelihood of exposure after the paving machine operator. If exposures are above the proposed PELs, these workers would be required to use a NIOSH approved air purifying respirator to control exposures.

CONSAD evaluated worker exposure to asphalt fumes during the paving of an airport runway near Pittsburgh, Pennsylvania in August, 1990 [2; Firm 33]. The paving operation crew consisted of nine people. An asphalt paver and vibrating roller were used to settle and roll the asphalt surface. The asphalt was delivered to the site by trucks and fed into the paver. Inside the paver, the asphalt is heated to about 300°F. The asphalt was dispensed from the paving machine onto the work area. The paver was operated by one worker, while two others made leveling adjustments to the machine. The remainder of the crew followed behind the paver to level, roll, and finish the paved material. The paving work was done in a large open area, and a variable breeze was present throughout the shift.

Four workers were evaluated for their exposure to asphalt fume (benzene soluble portions) during the sample period of six hours. These four workers consisted of the paver operator, the two paver adjusters, and a follow-up worker. The lab results of the samples obtained showed that all of the airborne concentrations of asphalt fume (benzene soluble) for the sampling period were less than 0.09 mg/m^3.

Workers engaged in blasting and the excavation of tunnels are assumed to have a potential for exposure to particulate matter (total dust) following the blast and also to the off-gases generated by the explosives. Excavation done by earth movers will also be a source of exposure to total dust for the workers in the area. Additionally, the exhaust from excavation equipment in tunnel areas may expose workers to elevated levels of carbon monoxide, carbon dioxide, and nitrogen dioxide.

Exposures to total dust above the proposed PEL can be controlled with disposable dust masks. While the off-gases generated by explosives and the particulate matter generated during excavation or blasting processes may result in worker exposures, it is likely that these exposures are within corresponding PEL's due to the distance that workers would be located away from the immediate point of operation. However, the use of earth moving equipment in confined areas could result in overexposures to carbon monoxide. Portable exhaust and fresh air supply systems should be used to provide fresh air into the work zone. In addition, constant monitoring for carbon monoxide should be conducted anytime gas or diesel powered heavy equipment is used in a confined area.

Workers engaged in the handling and preparation of charges for blasting may be exposed to the components of the explosive. However, it is believed that these exposures are not significant due to their short duration.

Workers engaged in earthmoving and trench excavation operate large-scale earthmoving equipment. The sources of exposure to these workers include particulate matter during the movement of dirt and natural gas containing hydrogen sulfide that may be present beneath and around trenches. Water spraying can be used to reduce exposures in some applications, but workers will generally need to rely on respiratory protection if potential exposures exceed the proposed PELs.

Wrapping pipes with asphalt wrapping material is done in underground piping installation. Asphalt is used as a pipe wrapping joint sealant and adhesive. Exposures to asphalt fume arise in both the heating process that liquifies the material and in the

application of the material to the pipe wrapping.

Because this work activity may occur over vast areas (several miles of pipeline), exhaust ventilation may not be feasible to prevent exposure to asphalt fume. Therefore, respirators may be relied upon to prevent inhalation of airborne contaminants when concentrations exceed the PEL. A disposable respirator with NIOSH approval for organic vapors would provide adequate protection in most work situations involving this activity.

Rock drilling and water well drilling activities present potential exposures to airborne substances. A NIOSH Health Hazard Evaluation of water well drillers [18] was conducted to assess exposures to PVC cement used in the installation of well casing and water well pipe. (There was no indication in the report that there were any potential exposure problems from the drilling activity itself.) All of the firms involved in the study used a cement which contained tetrahydrofuran, cyclohexanone, and PVC resin.

The well drillers' exposure to tetrahydrofuran and cyclohexanone was determined from four breathing zone samples. The tetrahydrofuran exposure from one 20 minute sample was at a level of 20 ppm. Given that there was no other exposure during the rest of the shift, this was considered as a full day's exposure of less than an 8-hour TWA of 1 ppm. Tetrahydrofuran was not detected in any of the remaining samples. Cyclohexanone was not detected in any of the samples.

Workers may be exposed to various dusts during drilling activities. The nature of the dust is dependent upon the geologic structure where the work is conducted. The airborne concentration of dust is affected by the moisture content of the soil, weather conditions, and work practices. Where potentially high airborne dust concentrations exist, worker exposures can be reduced through the use of a water spray. The water spray can act to suppress dust in worker breathing zones. Where the exposure cannot be adequately controlled through the use of a water spray, a single use or disposable particulate respirator could provide adequate protection to prevent inhalation of dust.

Exposures may be a concern during the spray painting of traffic lines for both large and small projects. For large projects, such as roadways, a tank truck is generally employed with the sprayer mounted at the rear. For smaller projects, such as parking lots, a hand held compressed air sprayer or a manual compressed air liner may be used.

On roadway projects, workers who follow the spray truck placing barriers to protect the freshly painted lines may be exposed to paint solvents, lead, or chromates. For manual operations, exposures may take place at any time during the application process.

The potential for overexposure to solvent vapors and metal pigments in the paint is unlikely. Most of this work occurs outdoors with natural ventilation. If an overexposure potential exists, it would be controllable through the use of an approved half-mask air-purifying respirator.

The installation or service of water pumps or pipelines and the handling and manipulation of water service piping does not present any apparent chemical exposures. However, there may be a potential for exposure to chlorine during the preparation and treatment of the water prior to service activation.

If an exposure to chlorine occurs, it would most likely be of short duration; OSHA is proposing a short-term exposure limit for such situations. To prevent overexposure to brief high concentrations of chlorine, a full-face respirator would be required. This is necessary because chlorine is a potent irritant of the eyes and respiratory tract. Implementation of engineering controls does not seem practical due to the unpredictability of the frequency of exposure, duration of exposure, or airborne concentration which may be encountered.

Cable plowing involves the formation of a trench for the laying of cable broadcast and telephone cable lines. The trench is created by mechanical means and the cable is unrolled into it from a spool. Workers associated with the process of digging the trench have the potential for exposure to particulates generated.

The likelihood of overexposure to dust generated during formation of cable trenches is considered remote. Engineering controls do not appear practical and therefore controls would be limited to respiratory protective equipment. For moderate exposures, disposable dust masks would be appropriate with potential up-grade to half-mask respirators should exposures become severely elevated.

Asphalt or concrete road milling is done during road reconstruction projects. During the process, mechanical equipment is used to remove several inches of road surface while maintaining the road base. The mechanical action of the road milling machine on the road surface generates and disperses particulate matter. The machine operator and nearby workers are exposed to the dust produced.

The machine operator, facing the highest exposure, can be enclosed in a ventilated cab and isolated from the dust. A continuous water spray and wetting operation can also be maintained. If the wet spray does not achieve adequate suppression, then the use of disposable dust respirators would provide additional protection for members of the work crew.

Rock crushing activities are typically set-up as stationary units in close proximity to the area that the rock removal is taking place. The rocky material is collected and unloaded into the crusher. The rock crushing operation is an inherently dust-generating operation that affects equipment operators and ground workers. Exposures to respirable silica quartz and other respirable dusts occur.

Water sprays that are applied at the point of dust generation provide an inexpensive means of reducing employee exposure to airborne dust. Engineering controls consisting of an air ventilation system can be used to protect equipment operators; plexiglass enclosures with supplied-air ventilation are recommended. In addition to wetting operations, appropriate disposable dust respirators are recommended to protect ground workers.

The practice of spraying oil on gravel road surfaces is conducted to minimize dust generation. The operators of these spray trucks have the potential for airborne exposure to oil mist (mineral oil) that is generated during the atomization process. The likelihood of an overexposure to oil mist is considered remote due to the fact that the area with the highest elevated concentration of oil mist is near the rear of the vehicle, and the operator is typically driving away from the point of application. Furthermore, the vehicles typically have enclosed cabs which effectively isolate the operators.

Spreading gravel for roadbeds and other purposes may also cause some exposures. Road building requires the use of a substantial amount of gravel. The gravel is used as a base for the road surface. As a consequence of the amount of material involved, the gravel is normally delivered to the work site in 20 ton dump trucks. In the process of unloading the gravel, workers that are in close proximity to the operation are potentially affected by the dust generated.

Keeping workers a reasonable distance away from the dumping operation is likely to control most worker exposures during this activity.

However, gravel with a high small-particle content could be sprayed with water prior to dumping and spreading to control dust generation. Since most of the delivery vehicles (dump trucks) are equipped with enclosed cabs, the drivers' exposures are likely to be within acceptable limits. Enclosure of the equipment operators spreading the gravel, in plexiglass-enclosed cabs with supplied-air ventilation systems which filter out particulate matter, could be used where water spray techniques fail to adequately control extremely high dust levels.

Miscellaneous Activities. Workers that are engaged in the fueling of construction service vehicles and equipment that operate on gasoline, diesel fuel or propane are likely to be exposed to these fuels. There may also be additional exposure to the combustion products associated with these fuels. It is believed, however, that these exposures will generally be insignificant.

The primary hazard posed by fuels is fire and explosion. Because of this potentially catastrophic danger, fuels should be handled with care. Proper storage, handling and transport of fuel is extremely important. If workers follow proper fuel handling practices, only minor exposures to fuel vapors and gases should occur. Also, this activity typically occurs outdoors where natural dilution ventilation occurs.

Joining pipes with joint compounds is a manual activity that occurs with the use of plastic pipe. The activity is normally carried out by applying the joint sealing compound with a fibrous applicator or brush to the joints to be mated. Worker exposure occurs from a number of organic solvents that may be contained in the sealant.

This activity usually occurs in situations in which it is difficult to implement engineering control measures. The activity is usually intermittent and involves crews of one or two employees who are mobile throughout the day. If a potential overexposure to a solvent vapor or metal fume would occur, the use of a respirator would be the required protection measure.

Some joint compounds contain organic solvents for which OSHA is proposing a skin designation. Two such substances include cyclohexanone and methyl alcohol. A natural rubber glove would provide adequate protection against skin contact from both substances while conducting this activity.

A field survey of exposure to organic solvents during the installation of plastic pipe was conducted by NIOSH in the San Francisco, California area in 1983 [19]. Six of the breathing zone samples taken were at least five hours in duration. These samples were tested for methyl ethyl ketone (MEK), tetrahydrofuran (THF), dimethylformamide (DMF) and cyclohexanone solvents of plastic pipe adhesives and cleaners. The work performed by the plumbers and pipefitters included installing plating line pipe, laying 3", 4" and 6" PVC pipe in a ditch, installing PVC pipe in a sewage treatment building, and setting bathroom, kitchen and bar sink traps in a residence. All exposures were below the corresponding proposed PELs.

NIOSH also conducted a health hazard evaluation of plumbers in the Boston area in 1981 to assess the health effects from working with PVC pipe cements and cleaners [20]. Personal samples were taken from one plumber at one housing development and from seven plumbers at another housing project. The samples were analyzed for MEK (methyl ethyl ketone), THF (tetrahydrofuran) and Cyclohexanone. The results reported showed TWA exposures below proposed limits. Combined equivalent exposure for one of the eight plumbers exceeded unity. NIOSH recommended that air concentrations of PVC cements and cleaners be reduced by increasing natural room ventilation in open spaces and by providing local exhaust ventilation in closed or semi-confined spaces. NIOSH also stated that wearing a well fitted, well maintained respirator should provide a sufficient factor of protection.

The joining of plastic electrical conduits is a manual activity similar to the joining of plastic pipes. The ends of the conduit to be joined are coated with an adhesive by brush or lid applicator and mated. The organic solvents contained in the adhesive create the exposure hazard. For the solvents encountered during this activity, organic vapor cartridge half-mask respirators would provide adequate protection. Two commonly used solvents in this activity also appear on the list of substances for which OSHA is proposing a skin designation. These substances are n-butyl alcohol and cyclohexanone. A natural rubber glove would provide adequate protection when handling compounds containing these substances.

The demolition of plaster walls is usually performed by applying a sledge hammer or similar tool to the wall with force. The break-up of the wall will generate particulate matter that will be dispersed into the immediate environment. Exposures encountered will consist of plaster of paris (calcium sulfate) and total dust (particulates not otherwise regulated).

Demolition work is inherently a very dusty operation. Because the structure is being removed, exhaust units may not be practical. In most situations, a portion of the work crew would be expected to wear respiratory protection. A single use or disposable dust mask would generally be adequate. To reduce the total number of workers requiring respiratory protection, partitions or screens could be set-up to isolate the demolition area. Also, a water spray and wet sweeping practices would help to suppress dust in worker breathing zones.

CONSAD surveyed the environmental exposures associated with a kitchen demolition project in Pittsburgh, Pennsylvania in June, 1990 [2; Firm 28]. Two workers were involved in a tear-down of the wall under observation. These men used a crowbar and a reciprocating saw to remove bricks, ceramic tile, plaster, tar paper and wood materials. The workers were monitored for their exposure to total dust. The TWA exposures to total dust during the sampling period of about five hours were determined to be 1.87 mg/m^3 and 3.89 mg/m^3. Exposures during the remainder of the shift were minimal. Personal protective equipment was employed that included cartridge respirators, safety glasses, steel-toed shoes and cotton gloves.

Torquing galvanized bolts is done by ironworkers during the erection of structural steel. The use of impact wrenches to torque galvanized bolts causes zinc oxide dust to be generated and dispersed into the worker's breathing zone. The likelihood of exposures above the proposed PEL is considered remote. This activity usually occurs outdoors, involving small mobile crews in situations where it is difficult to implement engineering control measures. If an overexposure problem to zinc oxide dust exists, a disposable particulate respirator with appropriate NIOSH approval would provide adequate protection.

Airborne exposures to carbon monoxide, carbon dioxide and nitrogen dioxide fumes generated by gasoline and diesel fuel powered machinery may become problematical when the equipment is operated indoors. Mobile cranes (cherry pickers), man lifts, and portable cutting tools are examples of the kinds of powered equipment that could be used for indoor construction work. Therefore, precautions should be taken to assure that fresh air is provided and that the entire area is ventilated.

To control the build-up of carbon monoxide, carbon dioxide and nitrogen dioxide generated by portable machinery operated indoors, blowers should be used to provide fresh air to the work area to dilute the combustion gas by-products. In most situations, worker exposures can be controlled with fresh air controls. Where space heaters are used in work areas, attempts should be made to vent the emissions directly outside. This will prevent the release of gaseous by-products in the work area. If this cannot be done, then provisions should be established to supply fresh air.

The heat fusion of plastic pipes and conduits is a technique used for joining purposes. In this method, a device similar to a curling iron is used to heat the plastic material to 180–200 degrees fahrenheit. At these temperatures, the pipe joint can be fused. This method is believed to only be used in polyethylene pipe installations and it is reported that no measurable quantities of gases or vapors are emitted during the process.

Repair and cleaning activities in sewer systems may involve the physical removal of material from occluded sewer lines and also the possible repair of damaged pipes. Material removal and/or repair may require that employees enter the sewer system. Employees engaged in this work may have the potential for exposure to ammonia, carbon dioxide, methane, and hydrogen sulfide.

Worker exposures to the chemicals used in cleaning sewer systems are often exacerbated by the fact that the work is being done in a confined space. Additional hazards of confined spaces include oxygen deficient atmospheres and/or atmospheres with hazardous levels of methane or hydrogen sulfide. Exposure monitoring should be conducted prior to and during all work activities involving a confined space. Fresh air should be supplied to the confined area at all times to reduce the health and explosion hazards, and workers should wear supplied-air respirators if exposures are potentially in excess of allowable limits.

Conclusion. OSHA has preliminarily concluded that compliance with the proposed PELs is feasible in the construction industry. Respirator use may be necessary in some high-exposure situations, but the overall need for respiratory protection in the industry should remain relatively low. Standard engineering controls and work practices designed for dust suppression and the dilution of fumes can be applied effectively to many activities. An important factor in providing workers with adequate health protection is the awareness of the presence of potentially hazardous substances.

Notes

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6. Costs of Compliance

The total annual cost of compliance with the proposed regulation of airborne contaminants in the construction industry (with a PEL of 5 mg/m^3 for asphalt fume) is estimated to be approximately $94 million for all firms affected by the rule. With alternative PELs for asphalt fume of 0.5 mg/m^3 or 0.2 mg/m^3, the annual cost would increase by an estimated $25 million or $51 million, respectively.

Methodology. The costs of compliance were estimated for individual activities in each SIC group. For each activity, the potential for hazard exposure was estimated based on data from a variety of sources. CONSAD Research Corporation conducted a survey of the construction industry for this purpose. Survey responses by construction establishments described the circumstances in which the activities took place, how the work was done, and the nature and extent of existing hazard abatement controls in place. Establishments identified hazardous substances used and the products where they were found. The chemical components of specific products were identified by referencing material safety data sheets (MSDSs). The survey responses also provided information on the numbers of employees involved in activities, the frequency and length of exposures during the activities, and the number of days the activities took place In addition, the survey supplied data on the use of specific engineering controls, work practices, and personal protective equipment by work activity, currently in

place across a representative sample survey of all job sites nationwide.

Survey data was supplemented with detailed descriptions of activities in NIOSH studies. Further information on construction activities was collected by CONSAD through a series of site visits. Exposure monitoring data were collected during site visits, from NIOSH studies, from investigations by state health departments, and from OSHA's IMIS database. Monitoring results from the IMIS database were linked to specific circumstances and activities by reviewing information from the inspection reports (form 91a) in OSHA area offices.

The activity-based approach used to determine exposures and the need for additional controls allowed for explicit consideration of mixed exposures. Exposures to multiple substances were evaluated according to the formula in the proposed regulation; combined exposures exceeding unity were considered to be exposures above the proposed PELs. As a result, the costing methodology included allowances for meeting the mixed exposure limit (MEL) as well as individual PELs.

Once the nature and extent of potential substance exposure was determined for a specific activity and SIC group, the costs of the controls necessary for compliance with the proposed PELs was assessed. The control hierarchy prescribed by OSHA requires that engineering and work practice controls be implemented when feasible. Engineering controls are widely available and effective for controlling exposures during many construction activities.

The most common type of engineering control involves increased ventilation. Depending on the application, this can be accomplished with a fan, a fresh air supply blower, or a portable exhaust hood. Unit costs for this equipment range from under $300 for a fan to over $1,500 for a portable exhaust ventilation unit.

Physical isolation of workers from the exposure source is another method of engineering control. Screens and partitions could cost an estimated $240 on affected projects; total enclosure of a worker in a plexiglass cab would have a cost of up to $4,000.

Equipment mounted dust catchers, vacuum cleaning, and water spraying devices are relatively inexpensive control methods that are applicable in many situations. The insulation of pipes (to keep asphalt kettles at lower temperatures) and the use of vapor control nozzles are additional examples of adapting engineering controls to construction activities. A description of the applicable controls for each activity is presented in the section on technological feasibility.

The annualized cost of engineering controls was derived by spreading the unit cost over the average useful life of the equipment and including an annual cost of capital of 10 percent. Annual and recurring costs associated with the use of controls were added to the annualized cost of controls to obtain the total annual cost to establishments of providing the controls.

Substances for which OSHA is adding a skin designation to the PEL should be controlled for dermal exposure. Different types of gloves are available to adequately prevent skin contact with different types of substances. Costs for gloves range from $1.80 per pair for cotton gloves to over $4.00 per pair for butyl rubber gloves. Barrier skin cream is also effective in some applications and is estimated to cost less than $10 per worker per project.

In the event that feasible engineering controls and work practices are insufficient for reducing exposures below the proposed levels, respiratory protection is necessary. Disposable dust masks are available for about $1.60 each while a powered air purifying respirator may cost as much as $570. Various respirators with intermediate levels of protection range in cost from $8.00 for a disposable metal fume mask to $165 for a full mask respirator. The replacement of cartridges for full-and half-mask respirators is estimated to cost $8.00.

The costs of compliance for specific activities in the affected SIC groups were aggregated to national estimates by using a computer model with standard statistical extrapolation techniques for representative sampling. The survey responses provided information on the value of work done, the value of the whole project, the duration of the project, the percent of time devoted to a particular activity, the total number of workers involved, and the total worker-hours of exposure. Within each survey cell, these numbers were compared to aggregate figures published by the Department of Commerce, such as total numbers of employees by size of establishment and SIC code, and total values for categories of projects and types of contruction work done. Sample data were then multiplied by appropriate weighting factors to project the sample up to nationwide "universe" estimates of the variables being measured. For a detailed explanation of this methodology, see CONSAD Report "Economic Analysis of Proposed Changes to Airborne Contaminant Standards for the Construction Industry" with Appendices, April 1, 1991 [1].

Breakdown of Costs. The total estimated annual costs of compliance, $93.9 million, are presented in three different ways. Table V–B10 presents the costs for construction establishments in each SIC group; Table V–B11 presents the costs of compliance for specific types of activities; and Table V–B12 presents the estimated costs by the type of control methods and protective equipment necessary for compliance.

TABLE V–B10.—ESTIMATED ANNUAL COSTS OF COMPLIANCE BY SIC CODE

SIC code	SIC description	Estimated annual costs ($ thousands)
1521/22/31	General Contractors—Residential Buildings	3,562
1541	General Contractors—Industrial Buildings	1,154
1542	General Contractors—Other Buildings	10,399
1611	Highway and Street Construction	5,104
1622	Bridges, Tunnels, and Elevated Highways	316
1623	Water, Sewer, Communication and Power Lines	1,594
1629	Heavy Construction, Not Elsewhere Classified	77
1711	Plumbing, Heating, and Air Conditioning	936
1721	Painting and Paper Hanging	21,166
1731	Electrical Work	399
1741	Masonry, Stone Setting, and Other Stone Work	5,776
1742	Plastering, Drywall, and Insulation Work	5,651
1743	Terrazzo, Tile, Marble, and Mosaic Work	2,409

TABLE V-B10.—ESTIMATED ANNUAL COSTS OF COMPLIANCE BY SIC CODE—Continued

SIC code	SIC description	Estimated annual costs ($ thousands)
1751	Carpentry Work	572
1752	Floor Laying and Other Floor Work	942
1761	Roofing, Siding, and Sheet Metal Work	2,224
1771	Concrete Work	3,746
1781	Water Well Drilling	328
1791	Structural Steel Erection	5,074
1793	Glass and Glazing Work	2,296
1794	Excavation Work	1,474
1795	Wrecking and Demolition Work	467
1796	Installation or Erection of Building Equipment	589
1799	Special Trades, Not Elsewhere Classified	17,615
Total		93,870

Source: Office of Regulatory Analysis, OSHA, Dept. of Labor; based on CONSAD Research [1].

TABLE V-B11.—ANNUAL COSTS OF COMPLIANCE BY ACTIVITY

[In thousands of dollars]

Activity	Costs of compliance
Abrasive Blasting-Sand	4,425
Application of Asphalt Roofing	852
Application of Fireproofing	3,662
Applying Caulking Compounds and Sealants	997
Applying/Installing Insulation	671
Asphalt Laying or Black Topping	156
Blasting/Excavation of Tunnels	8
Bonding (Gluing) Operations	2,826
Burning/Cutting/Welding Painted Metal	19,597
Cutting of Wood	569
Earthmoving Trench Excavation	3,333
Exterior Painting of Masonry	2,488
Exterior Painting of Wood	12,418
Exterior Painting of Steel	240
Patching and Resurfacing Concrete	566
Sealing and Coating (Concrete)	10,088
Grind/Drill/Chip on Painted Surfaces	3,712
Interior Application of Floor Coatings	1,760
Interior Painting of Metal Substrates	553
Interior Painting—Walls, Ceilings	4,156
Joining Pipes With Joint Compounds	1,001
Joining Plastic Electrical Conduits	490
Laying Floors	836
Prepare/Install Concrete Forms	74
Batch Mixing of Concrete	1,557
Batch Mixing of Mortar/Cement	8,272
Repair Work, Restoration of Brick	1
Soldering/Brazing	56
Surface Preparation—Sanding	2,580
Surface Cleaning (Stripping)	96
Welding/Cutting Steel	3,386
Abrasive Blasting—Black Beauty	217
Lath and Plaster Walls—Demolition	11
Application of Single Ply Roofing	35
Application of Waterproofing	1,362
Asphalt/Concrete Road Milling	742
Rock Crushing	75
Sealing/Joining Pipes With Mastics	2
Total	93,870

Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor; based on CONSAD Research [1].

TABLE V-B12.—ESTIMATED COSTS OF COMPLIANCE BY TYPE OF PROTECTION

[In thousands of dollars]

Type of protection	Cost
Engineering controls	29,534
Blowers to direct fumes or dusts away	2,999
Portable exhaust hoods and fans	6,135
Fresh air supply blowers	3,824
Total enclosure of the worker	75
Total enclosure to Confine the Emission	2,101
Equipment mounted dust catchers	12,376
Water spray (truck)	734
Equipment mounted water sprayers	594
Insulated Pipes	696
Work practices	3,808
Water spray (manual hosing)	2,500
Dry sweeping with dust suppressant	1,308
Personal protective equipment	6,403
Gloves (cotton)	3,415
Gloves (leather)	972
Gloves (of special material)	130
Welding helmet/mask	1,886
Respiratory Protection	64,000
Disposable Dust Masks	14,784
Disposable Metal fume or Chemical Mask	19,313
Half Mask canister and/or cartridge	4,314
Powered Air Purifying Respirator (PAPR)	404
Air Line (Full or Half Mask)	12,305
Sand blast hood with airline	2,880
Administrative controls	125
Exposure monitoring (personal constant)	125
Total	93,870

Source: Office of Regulatory Analysis, OSHA, Department of Labor; based on CONSAD Research [1].

Establishments in SIC 1721, Painting and Paper Hanging, would have estimated total annual compliance costs of $21.2 million. Over half of these costs are expected to be for exterior painting of wood and masonry finishes. These activities may involve potential exposures above the proposed PELs for petroleum distillates and silica. A variety of other chemicals would also be present, including ethylene glycol, propylene glycol, ethyl benzene, xylene, titanium dioxide, and others. Interior painting of walls, ceilings, and metal substrates would account for an estimated $4.2 million in compliance costs. The relatively low estimated compliance costs associated with these activities reflect the current widespread use of protective measures already provided for workers involved in these activities. Employees may encounter potential exposures to a long list of chemicals. In addition to those specified above, airborne contaminants may include ammonia, butoxyethanol, organic and inorganic mercury compounds, methyl alcohol, 2-butanone, lead, chromates, toluene, and others.

The estimated annual compliance costs for SIC 1799 are $17.6 million. This SIC group includes miscellaneous special trade contractors not elsewhere classified. Establishments in this group may be involved in antenna installation, caulking, preparing forms for poured concrete, ornamental metal work, waterproofing, epoxy application, grave excavation, lead burning, paint stripping, sandblasting, swimming pool construction, welding, fence construction, and other specialized services. Over half of the estimated compliance costs are attributable to activities that entail burning, cutting, or welding on painted surfaces resulting in potential exposures above the proposed PELs for lead, nickel, and zinc oxide fume. Additional protection for employees would also be necessary for grinding, drilling or cutting painted surfaces, application of waterproofing, batch mixing of concrete, earthmoving, abrasive blasting, and several other activities. Employees in SIC 1799 may be exposed to dozens of substances. Substances for which potential exposures above the proposed PELs are most prevalent include silica, portland cement, lead, welding fume, butoxyethanol, ethyl benzene, methyl

chloroform, ethylene glycol, petroleum distillates, titanium dioxide, and xylene.

SIC 1542 is comprised of general contractors for buildings other than residential or industrial buildings. Total estimated annual compliance costs for these establishments are $10.4 million. Employees of these general contractors are engaged in a wide variety of activities which may involve potential exposures above the proposed PELs. Protection of employees during sealing and coating operations accounts for an estimated $8.8 million of the total costs for this SIC group. The primary hazards identified during this activity are exposures to petroleum distillates, toluene, and xylene.

Establishments in SIC 1741, masonry and stone work, would have estimated annual compliance costs of $5.8 million. These costs are primarily attributable to providing additional protection to employees from exposure to portland cement and silica during batch mixing of mortar and cement.

Firms engaged in plastering, drywall, and insulation work (SIC 1742) would have estimated total annual compliance costs of $5.7 million. Activities for which additional protection would be necessary include application of fireproofing, insulation installation, burning, cutting and welding on painted surfaces, interior painting, and batch mixing of mortar and cement. Workers may experience potential overexposures to lead, mercury, and ethylene glycol.

Annual compliance costs for structural steel erection (SIC 1791) are estimated at $5.1 million. Activities of concern include welding, cutting, grinding and drilling, especially when conducted on painted surfaces. Substances for which overexposures may occur include lead and welding fume.

The estimated annual cost of compliance for SIC 1611, Highway and Street Construction, would be $5.1 million. Most of these costs are attributable to abrasive blasting activities. Employees would primarily be provided with additional protection from silica exposures as necessary.

The proposed PEL for asphalt fume of 5 mg/m³ is not expected to involve significant additional costs for establishments involved in highway and street construction. However, establishments in this SIC group would face significantly larger compliance costs under alternative PELs for asphalt fume of 0.5 mg/m³ or 0.2 mg/m³, and OSHA estimated the potential costs associated with the lower PELs for these establishments.

The primary activities of concern would be paving and black topping. About 240,000 employees are involved in this type of work, representing about 160,000 full-time equivalent (FTE) workers. This figure was adjusted downward by 40 percent to account for days or shifts of work without direct and prolonged exposure to hot asphalt. For example, workers involved in site preparation and breakdown, traffic control, truck driving, and other activities would not experience the levels of exposure typically attributed to paving work. Thus, about 144,000 employees or 96,000 FTE workers are considered to have exposure to asphalt fume during paving operations.

Exposure monitoring data for these activities was submitted to NIOSH in response to a request for information published in July, 1990. The National Asphalt Pavement Association (NAPA) found that full-shift time-weighted average (TWA8) exposures for paving workers ranged from 0.10 mg/m³ to 0.76 mg/m³ with a mean of 0.21 mg/m³ (benzene-soluble fraction) [2]. The Asphalt Institute cited data in their submission indicating that the mean TWA8 exposures for paving workers was 0.33 mg/m³, and also included summary data from dozens of studies published by NIOSH and other authors. For example, Virtamo et al (1984) reported to have found mean exposure levels of 1.2 mg/m³, with a range of 0.1 mg/m³ to 2.7 mg/m³, among one group of paving workers [3]. The Minnesota Department of Transportation reported that worker exposures during asphalt crack filling in 1990 averaged 0.89 mg/m³, with a range of 0.30 mg/m³ to 1.29 mg/m³ [4]. CONSAD reported that during a site visit to an asphalt runway paving operation worker exposures averaged less than 0.1 mg/m³ [1]. A report prepared for the Asphalt Institute by Radian Corporation found exposures during paving ranging from less than 0.1 mg/m³ to 5 mg/m³, with a geometric mean of 0.29 mg/m³ and an arithmetic mean of 0.57 mg/m³ [6]. All monitoring results represent the benzene-soluble fraction of asphalt fume.

Appropriate work practices and control of the temperature of the asphalt can help minimize employee exposures. Engineering controls should be used to reduce exposures before resorting to respiratory protection. Due to the nature of paving operations, the prospects for achieving significant reductions in exposures by these means appear to be limited. OSHA estimates that 50,000 FTE workers (about half of the exposed workforce) would be exposed above the proposed PEL of 0.2 mg/m³ and would be required to wear respiratory protection (such as a half-mask respirator with organic vapor cartridges). With a PEL of 0.5 mg/m³ this number would be about 10,000 FTF workers. Depending on the extent of rotation among jobs, these figures represent from 100,000 to 200,000 employees wearing respirators for some time each year.

For purposes of estimating the cost of complying with the proposed PEL of 0.2 mg/m³, it is assumed that 100,000 respirators would be purchased for $22 each. With an average life span of five years, the annualized cost would be about $580,000. In addition, the respirator cartridges would need to be replaced on average for 50,000 workers every four days at a cost of $8 per set. This would amount to an annual cost of $26 million (260 work days per year divided by 4, multiplied by $8 and by 50,000 workers). Providing protection from asphalt exposure with a PEL of 0.2 mg/m³ thus would account for about $26.6 million in compliance costs for establishments in SIC 1611.

With a PEL of 0.5 mg/m³, it is assumed that 50,000 respirators would be purchased, and that cartridges would be replaced on average for 10,000 workers every four days. Protection from asphalt exposure would thus account for $5.5 million in total compliance costs for SIC 1611.

Total annual compliance costs for establishments in SIC 1761, Roofing, Siding, and Sheet Metal Work, are estimated to be $2.2 million with a PEL for asphalt fume of 5 mg/m³. Most of these costs would be incurred for activities involving grinding, drilling, or cutting painted surfaces and for the application of roofing systems. Employees may potentially be exposed to lead, fibrous glass, and asphalt fumes.

Estimated compliance costs for establishments in SIC 1761 would be significantly higher under alternative PELs for asphalt fume. OSHA estimated the compliance costs that would be associated with PELs for asphalt fume of 0.5 mg/m³ and 0.2 mg/m³.

The Asphalt Institute cited data in their submission to NIOSH indicating that the mean TWA8 exposures for asphalt roofing workers was 0.80 mg/m³, and also included summary data from dozens of studies published by NIOSH and other authors. For example, Brandt et al (1985) is reported to have found mean exposure levels of 3.30 mg/m³, with a range of 1.40 mg/m³ to 7.80 mg/m³, among one group of roofers [3]. Exposure monitoring data from four NIOSH studies show mean exposure levels (and ranges of exposures) among roofers of 0.54 mg/m³ (0.11 mg/m³–1.69 mg/m³), 1.07 mg/m³ (0.90 mg/m³–1.20 mg/m³), 0.83 mg/m³ (0.35 mg/m³–2.10

mg/m³), and 0.71 mg/m³ (0.30 mg/m³–1.30 mg/m³) [3]. Radian Corporation found exposures during asphalt roofing ranging from less than 0.1 mg/m³ to 2.5 mg/m³, with a geometric mean of 0.28 mg/m³ and an arithmetic mean of 0.52 mg/m³ [6].

The Bureau of Labor Statistics reports that there are over 210,000 roofers in the United States [5]; these employees represent about 140,000 full-time equivalent workers. According to the 1990/1991 market survey conducted by the National Roofing Contractors Association, asphalt roofing comprises about 35 percent of roofing work, which would represent about 49,000 FTE workers. Some employees in these operations may not need respiratory protection; employers may have to make a determination of need before each shift.

For purposes of estimating the costs associated with this proposed rulemaking, the number of workers engaged in asphalt roofing was adjusted downward by 30 percent to account for days and shifts that do not involve significant exposure to asphalt fume. For example, roofing jobs typically include time for removing old roofs, transporting and setting up equipment, and other activities without direct exposure to asphalt fume. Thus, about 34,000 FTE workers are estimated to be working with hot asphalt in roofing jobs.

Asphalt exposures during roofing can be minimized through the use of appropriate work practices and by carefully controlling the temperature of the asphalt. The asphalt in the kettle can be kept at lower temperatures if the pipes transporting the asphalt to the point of use are insulated. Improvements in these areas and the use of other engineering controls should be made prior to reliance on respiratory protection and may help keep some exposures below the proposed PEL. However, the available monitoring data indicate that exposures for most roofers working with asphalt are likely to be above 0.2 mg/m³ even after engineering control and work practice modifications are made. OSHA estimates that 30,000 FTE workers, representing 50,000 to 80,000 employees, would be required to wear respirators with a PEL of 0.2 mg/m³.

With a PEL of 0.5 mg/m³ about 25,000 FTE workers would be exposed above the PEL during asphalt roofing, and about 20,000 FTE workers would be required to wear respirators.

Based on the results of the construction survey, approximately 1,000 establishments would need to insulate their asphalt-carrying pipes. The unit cost would be about $150 with a life span of one year. The total cost to the industry of installing additional insulation on pipes would be $150,000.

A half-mask respirator with organic vapor cartridges would provide adequate protection from asphalt fumes. The cost of each respirator would be about $22 and a set of replacement cartridges would cost about $8 [1]. Cartridges would need to be replaced every 4 days on average. With a life expectancy of five years, respirators purchased for 60,000 employees would have an annualized cost of about $350,000. The replacement of cartridges every four days for an average of 30,000 employees would have an annual cost of about $15.6 million. Providing protection from asphalt exposure during asphalt roofing with a PEL of 0.2 mg/m³ would thus account for an estimated $16.1 million in compliance costs for establishments in this SIC code.

With a PEL of 0.5 mg/m³, costs for insulating pipes and purchasing respirators would be about the same, and replacement of cartridges would have an annual cost of $10.4 million. Protection from asphalt exposure during asphalt roofing with a PEL of 0.5 mg/m³ would thus account for an estimated $10.9 million in compliance costs for establishments in SIC 1761.

Other SIC groups each have estimated compliance costs of less than $4 million each. These costs are spread over various activities for which the potential need for employee protection is already recognized to some degree. The estimated compliance costs for many activities may include costs that would have to be incurred to meet existing PELs.

Based on the survey results, activities with the highest total compliance costs across all SIC groups would be burning, cutting, or welding on painted surfaces ($19.6 million), exterior painting ($15.1 million), concrete sealing and coating ($10.1 million), and batch mixing of mortar and cement ($8.3 million). Other activities with significant compliance costs include abrasive blasting, trench excavation, grinding and drilling on painted surfaces, interior painting, sanding, and welding and cutting steel.

Almost $30 million of the total compliance costs would be used to provide engineering controls such as equipment-mounted dust catchers, portable exhaust hoods, fresh air supply blowers, enclosures, and water sprayers. The largest portion of costs, when examined by the type of control used, is for respiratory protection at an estimated annual cost of $54 million. Work practices (e.g. the use of dust suppressants), personal protective equipment such as gloves and welding masks, and administrative controls that include personal constant exposure monitoring, are additional measures that reduce potential risks to employees.

References

1. CONSAD Research Corporation. Economic Analysis of Proposed Changes to Airborne Contaminant Standards for the Construction Industry. Final Report and Appendices. Prepared for the Office of Regulatory Analysis, OSHA, U.S. Department of Labor. April 1, 1991.
2. Comments to the National Institute for Occupational Safety and Health, Submitted by National Asphalt Pavement Association. November 9, 1990.
3. Comments submitted to the National Institute for Occupational Safety and Health by the Asphalt Institute. December 21, 1990.
4. Comments submitted to the National Institute for Occupational Safety and Health by the Minnesota Department of Transportation. Industrial Hygiene Sampling Reports 1989–1990.
5. Bureau of Labor Statistics, Employment and Earnings, January 1991.
6. Radian Corporation, Asphalt Industry Cross Sectional Exposure Assessment Study, Final Report, July 12, 1991, bound with supplemental technical memorandum to Bernie McCarthy, Asphalt Institute, from Jeff Hicks, Radian Corporation, of July 31, 1991.

7. Economic Impacts

This section examines the economic impacts associated with OSHA's proposed revisions to the PELs in the construction industry. The overall impact of compliance with the proposed rule is not expected to be a substantial burden for the industry and is considered economically feasible for each sector.

The economic impacts were evaluated by comparing the cost estimates presented in the previous chapter with economic and financial statistics available for the construction industry. These data were combined with an economic analysis of the structure of the industry and the affected markets to determine the likely effects. The economic impacts were assessed for each 4-digit SIC group by type of construction project.

Table V–B13 shows the estimated costs of compliance as a percent of the net value of construction for each SIC group. For the industry as a whole, total costs of compliance are estimated to be less than one thirtieth of one percent of the total net value of construction. For each of the SIC groups, compliance costs would represent less than 0.3 percent of the respective value of construction.

Table V–B14 presents data for each of the SIC groups on the number of

employees, the number of establishments, the total annual payroll, the average annual payroll per establishment, the average cost of compliance per firm, and the average cost of compliance per employee. The average annual payroll per establishment in the construction industry is about $150,000. The average estimated cost of compliance per firm would be approximately $175, and the average cost of compliance per employee would be less than $24.

TABLE V-B13.—COMPLIANCE COSTS AS A PERCENT OF NET VALUE OF CONSTRUCTION

SIC code	SIC description	Net value of construction (millions)	Estimated costs of compliance (thousands)	Compliance costs as a percent of net value of construction
1521/22/31	General Contractors, Residential Buildings	$60,414	$3,562	0.0059
1541	General Contractors, Industrial Buildings	11,095	1,154	0.0104
1542	General Contractors, Other Buildings	39,510	10,399	0.0263
1611	Highway and Street Construction	27,984	5,104	0.0182
1622	Bridges, Tunnels, and Elevated Highways	4,187	316	0.0075
1623	Water, Sewer, Communication and Power Lines	15,055	1,594	0.0106
1629	Heavy Construction, NEC	21,209	77	0.0004
1711	Plumbing, Heating, and Air Conditioning	44,518	936	0.0021
1721	Painting and Paper Hanging	7,446	21,166	0.2843
1731	Electrical Work	34,658	399	0.0012
1741	Masonry and Stone Work	8,269	5,776	0.0699
1742	Plastering, Drywall, and Insulation Work	15,137	5,651	0.0373
1743	Terrazzo, Tile, Marble, and Mosaic Work	2,182	2,409	0.1104
1751	Carpentry Work	10,039	572	0.0057
1752	Floor Laying and Other Floor Work	3,371	942	0.0279
1761	Roofing, Siding, and Sheet Metal Work	14,183	2,224	0.0157
1771	Concrete Work	13,854	3,746	0.0270
1781	Water Well Drilling	1,299	328	0.0253
1791	Structural Steel Erection	4,510	5,074	0.1125
1793	Glass and Glazing Work	3,142	2,296	0.0731
1794	Excavation Work	7,491	1,474	0.0197
1795	Wrecking and Demolition Work	845	467	0.0553
1796	Installation of Building Equipment	5,010	589	0.0118
1799	Special Trades, NEC	9,833	17,615	0.1791
Total		365,241	93,870	0.0257

Source: Office of Regulatory Analysis, OSHA, Dept. of Labor.

TABLE V-B14.—COSTS OF COMPLIANCE PER FIRM AND PER EMPLOYEE

SIC code	Number of establishments	Number of employees	Total annual payroll (millions)	Average annual payroll per establishment	Estimated average cost of compliance per firm	Estimated average cost of compliance per employee
1521/22/31	119,287	448,052	$8,952	$58,276	$30	$7.95
1541	7,014	110,785	2,497	355,993	165	10.42
1542	31,337	366,871	7,756	247,501	332	28.35
1611	10,986	239,111	5,397	491,276	465	21.35
1622	1,159	40,092	910	785,090	273	7.88
1623	9,919	165,879	3,428	345,571	161	9.61
1629	14,532	238,204	5,726	39,349	5	0.32
1711	69,566	470,793	10,311	148,214	13	1.99
1721	29,867	145,385	2,386	79,893	709	145.59
1731	49,436	405,961	9,622	194,635	8	0.98
1741	23,284	150,308	2,462	105,722	248	38.43
1742	17,809	217,392	4,348	244,142	317	25.99
1743	5,089	27,908	554	108,892	473	86.32
1751	36,009	164,191	2,610	72,480	16	3.48
1752	8,174	34,666	645	78,968	115	27.17
1761	25,673	186,916	3,111	121,178	87	11.90
1771	23,422	186,840	3,278	139,956	160	20.05
1781	3,414	13,628	249	72,791	96	24.07
1791	4,017	54,729	1,232	306,608	1,263	92.71
1793	4,636	28,730	607	130,855	495	79.92
1794	13,422	79,196	1,598	119,022	110	18.61
1795	1,240	11,686	195	157,609	377	39.96
1796	3,777	50,244	1,447	383,236	156	11.72
1799	23,198	141,615	2,269	97,799	759	124.39
Total	536,267	3,979,184	79,590	148,412	175	23.59

Source: Office of Regulatory Analysis, OSHA, Dept. of Labor, based on Department of Commerce 1987 Census of Construction.

The estimated costs of compliance are compared to the value of construction by the type of construction project in Table V–B15. For each type of construction project the compliance cost would represent less than one tenth of one percent of the total value of such construction. Compliance costs for both building and nonbuilding construction on average would represent less than 0.03 percent of the total value of such construction.

The SIC group with the highest ratio of estimated compliance costs to net value of construction is SIC 1721, Painting and Paper Hanging. The need for and use of respirators and other methods of exposure control is already relatively widespread in this industry sector. Establishments in this SIC group are regularly engaged in activities involving airborne and dermal exposures to the substances in this proposed rulemaking. Activities include interior and exterior painting (including bridge painting), abrasive blasting and other methods of surface preparation, and occasional soldering, brazing, grinding, and cutting. These activities expose workers to several hazardous substances, including ethylene glycol, toluene, xylene, petroleum distillates, mercury, and silica.

TABLE V–B15.—COMPLIANCE COSTS BY TYPE OF CONSTRUCTION

Type of construction	Value of construction (thousands)	Cost of compliance (thousands)	Cost as a percent of value
Building Construction	$368,029,969	$ 83,620	0.023
Single family houses	122,202,213	21,962	0.018
Apartment buildings	21,057,191	445	0.002
Other residential	14,302,766	1,383	0.010
Office buildings	60,570,245	12,975	0.021
Other commercial buildings	46,268,032	22,251	0.048
Industrial buildings	52,477,389	12,559	0.024
Religious buildings	4,535,939	751	0.017
Educational buildings	16,282,387	8,925	0.055
Hospital buildings	19,305,021	901	0.005
Farm buildings	1,560,486	36	0.002
Amusement, social buildings	3,046,690	2	0.000
Other buildings	3,946,021	944	0.024
Land development	2,475,609	486	0.020
Nonbuilding Construction	105,411,564	10,250	0.010
Highways, streets	33,692,504	525	0.002
Parking areas, fencing	4,665,769	73	0.002
Recreational facilities	3,387,728	1,745	0.052
Bridges, tunnels	7,261,700	5,089	0.070
Dam and reservoir	990,275	58	0.006
Marine construction	1,595,977	24	0.002
Harbor & port facilities	619,269	0	0.000
Conservation/development	1,520,673	13	0.001
Power & communication lines	6,232,816	775	0.012
Sewers, water mains, etc	13,506,798	880	0.007
Pipe line construction	3,259,867	0	0.000
Mass transit	1,416,178	0	0.000
Blast furnaces	6,776,004	0	0.000
Power plants	6,915,723	696	0.010
Sewage treatment plants	6,057,721	281	0.005
Oilfields	506,820	0	0.000
Earthmoving, nonbuilding	2,677,903	12	0.000
Other nonbuilding nec	4,327,839	79	0.002
Total	494,346,548	93,870	0.019

Source: Office of Regulatory Analysis, OSHA; based on U.S. Department of Commerce, *1987 Census of Construction*, and CONSAD survey [1].

The compliance costs in this sector are primarily attributable to a minority of firms that do not implement the sound industrial hygiene practices followed by most firms. Many circumstances involving exposures above the proposed PEL also involve exposures above the existing PELs. The proposed rule codifies current consensus standards which have already been adopted by responsible employers.

The estimated average cost of compliance per establishment in SIC 1721 would be less than 1 percent of the average annual payroll per establishment or about $150 per employee annually. Given the extent of protection currently provided in this industry, the incremental costs necessary to achieve compliance with the proposed rule are relatively small. The rule would not require widespread changes in accepted practices; many firms with appropriate industrial hygiene practices would remain unaffected.

Estimated compliance costs for SIC 1799, Special Trade Contractors, Not Elsewhere Classified, are less than 0.18 percent of the value of construction for this sector. The group includes establishments engaged in paint removal, waterproofing, and miscellaneous construction work, resulting in worker exposures to lead and other chemicals. Many of these workers are not adequately protected from exposures to hazardous substances. A lack of awareness of the presence and nature of potential health hazards may contribute to the problem.

The cost of providing protection would not be a significant burden for employers; the requirements associated with the proposed PELs are equivalent to those for the existing PELs in many activities. Responsible employers already provide the necessary protection for their employees. The average cost of compliance per firm represents less than 0.8 percent of the average payroll per firm.

With a PEL of 5 ug/m^3 for asphalt fume, activities with potential asphalt

exposure would largely be unaffected, and the impact of the proposed rule on paving and roofing establishments would be negligible. With a PEL of 0.2 mg/m³ for asphalt fume, employees engaged in asphalt roofing and paving work would probably be required to wear respirators routinely, and the resulting costs of compliance for establishments in SIC 1761 (roofing) and SIC 1611 (paving) would be significantly higher. As outlined below, the impacts of a standard with a PEL of 0.2 mg/m³ for asphalt fume would be nonnegligible but economically feasible for each of these industries.

With a PEL of 0.2 mg/m³ for asphalt fume, the estimated compliance costs for firms in SIC 1761, Roofing, Siding, and Sheet Metal Work, would represent about 0.15 percent of revenues. Increases in the cost of construction for these establishments primarily would result from the need to protect employees from exposure to asphalt fume. Most employees working with hot asphalt would be required to wear a respirator.

The additional costs of providing employees with respiratory protection during asphalt roofing work would result in higher costs for completing this type of work. In addition to the costs of the respirators, some loss of productivity could be expected as employees wearing respirators are less able to perform strenuous work. The costs of supplying employees with respirators during a typical asphalt roofing job would represent about 1 percent of the revenues. The average productivity loss associated with wearing respirators may increase labor costs by 10 percent which would represent about 2 percent of revenues. The total estimated compliance costs to employers would thus be about 3 percent of revenues for asphalt roofing.

Routine use of respirators may potentially involve effects on productivity, safety, and health. In response to OSHA's recent Methods of Compliance proposal, several commenters expressed concern about such effects and the associated burdens for workers. Many statements generally supported the conclusion that "men often cannot sustain respiratory wear for the full shift." [Testimony of Morton Corn, May 30, 1990. See also statements by the United Steelworkers of America, July 10, 1990, by the AFL–CIO, October 3, 1989, and other comments in docket number H–160].

The impact of the increased costs would produce a combination of effects. Employers could attempt to raise prices by about 3 percent to offset the compliance costs. The ability of employers to raise prices sufficiently to cover all compliance costs would be limited, but a substantial part of the costs could be recouped. Employers engaged in asphalt roofing would probably experience a partial reduction in profits in conjunction with limited increases in prices to avoid losing business. Without any increase in prices, the estimated compliance costs would absorb about 60 percent of the average profits. Some marginal employers may decide to discontinue asphalt roofing operations.

The total demand for asphalt roofing work would not be expected to change drastically as a result of a proposed standard for a PEL of 0.2 mg/m³ for asphalt fume. Adequate substitutes may not be available, and the increase in costs to building owners would not be unbearable. All employers in the country would be subject to the same requirements, and work in foreign countries cannot be substituted for projects in the United States. The inherent inelasticity of demand for asphalt roofing would ensure continued demand for such work. Total revenues and hours worked should not decline; establishments unable to continue asphalt roofing profitably would be replaced by more efficient firms. The proposed standard would be economically feasible for the industry as a whole.

With a PEL of 0.2 mg/m³ for asphalt fume, establishments in SIC 1611, Highway and Street Construction, would have the highest estimated cost of compliance per firm. This would partly be due to the relatively large number of employees per firm (22), and would partly be due to the extensive nature of the impacts in this sector. Over 80 percent of the estimated compliance costs would be associated with providing respiratory protection for employees working with hot asphalt. Apart from other potential effects of wearing respirators, the costs of providing protection as required by the proposed rule should be economically feasible for employers. The total costs would represent about one tenth of one percent of the revenues for this sector; the costs per establishment would be about 0.06 percent of the average payroll per establishment.

Other sectors and activities in the construction industry would be less affected by the proposed rule and the potential alternatives for the PEL for asphalt fume. The proposed changes in the PELs generally would not require drastic or widespread alterations in the nature of the work. The protection required by the standard would basically involve circumstances in which potential health hazards are already recognized by many employers. To a significant extent the estimated costs of compliance reflect a lack of awareness by some employers or an insufficient application of all feasible controls in some activities. The incremental compliance cost for the proposed rule represents the increase in protection necessary to achieve more comprehensive protection for all employees. The feasibility of the proposed standard is evident since many employers conduct the relevant activities in compliance with the proposed requirements.

This proposed regulation would apply to all construction work done in the United States. While competition among domestic firms in the industry may be strong, the industry as a whole does not face significant competition from foreign contractors. Foreign contractors would also be subject to the requirements of the proposed rule for work done in this country. As a result, the costs of compliance are likely to be passed on in the form of higher prices for completed construction work. The expected increases for each type of construction project are small and are not expected to influence total demand for construction work. For example, the average costs of increased worker protection would add about $40 to the cost of a new $200,000 single-family house.

Reduced worker exposures to hazardous chemicals is likely to generally increase worker productivity and reduce the number of lost workdays due to illnesses. The lower costs associated with illnesses should result in an improvement in the overall efficiency of the construction industry.

Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980 [Pub.L. 96–353, 94 Stat. 1164 (5 U.S.C. 60 et seq.)], OSHA has assessed the impact of the proposed standard on small businesses, defined as establishments with fewer than 20 employees. The impacts were evaluated for potential adverse impacts on small firms and their relative consequence compared with large firms.

In general, the costs of compliance for any firm will depend on the extent of worker exposures involved in the activities engaged in and on the extent to which workers are currently protected. The extent of worker exposure is directly related to the number of workers involved and the amount of work being done. For any given activity, work is likely to be done in a similar manner by both large and small firms, with costs proportional to

the scale of the project. Thus, it is estimated that the annual costs of compliance for any firm would also be proportional to the amount of work done over the course of a year.

Most of the compliance costs associated with this rulemaking would be incurred on a per employee basis. For example, costs for disposable dust masks can be estimated per employee for each project and purchased as needed. There is no evidence that small firms would be put at a competitive disadvantage as a result. Small firms compete effectively with large firms for all types of construction work and outnumber large firms by a factor of nine to one.

The size of the estimated compliance costs in relation to both payroll costs and revenues suggests that any potential negative impacts would be negligible for both large and small size firms. OSHA concludes that the proposed regulation will not have an adverse impact on a substantial number of small entities.

Table V–B16 shows the number of small establishments and the average cost for small establishments. The average cost for small firms is approximately half of the average cost for all firms. Approximately 90 percent of all firms are small, and about 44 percent of the total costs of compliance would be borne by these establishments. The proposed standard would not create any differential between small and large firms in the cost of completing work, and thus no competitive disadvantage would be imposed on small firms.

Environmental Impacts. This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Guidelines of the Council on Environmental Quality (40 CFR Parts 1500–1517), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, OSHA has determined that the promulgation of this rule would have no significant environmental impact. Any changes that would result from compliance with this proposed rule would tend to reduce emissions of airborne contaminants from construction worksites.

TABLE V–B16.—ESTIMATED COSTS OF COMPLIANCE FOR SMALL AND LARGE FIRMS BY SIC CODE

SIC code	SIC description	Total number of establishments	Number of small establishments	Average cost for all establishments	Average cost for small establishments
1521/22/31	General Contractors, Residential Buildings	119,287	110,406	$30	$12
1541	General Contractors, Industrial Buildings	7,014	6,492	165	139
1542	General Contractors, Other Buildings	31,337	29,004	332	276
1611	Highway and Street Construction	10,986	8,525	465	129
1622	Bridges, Tunnels, and Elevated Highways	1,159	899	273	57
1623	Water, Sewer, Communication and Power Lines	9,919	7,697	161	33
1629	Heavy Construction, NEC	14,532	11,277	5	2
1711	Plumbing, Heating and Air Conditioning	69,566	63,500	13	7
1721	Painting and Paper Hanging	29,867	27,263	709	447
1731	Electrical Work	49,436	45,125	8	3
1741	Masonry and Stone Work	23,284	21,254	248	148
1742	Plastering, Drywall, and Insulation Work	17,809	16,256	317	109
1743	Terrazzo, Tile, Marble, and Mosaic Work	5,089	4,645	473	282
1751	Carpentry Work	36,009	32,869	16	10
1752	Floor Laying and Other Floor Work	8,174	7,461	115	73
1761	Roofing, Siding, and Sheet Metal Work	25,673	23,434	87	46
1771	Concrete Work	23,422	21,380	160	79
1781	Water Well Drilling	3,414	3,116	96	73
1793	Glass and Glazing Work	4,636	4,232	495	294
1794	Excavation Work	13,422	12,252	110	58
1795	Wrecking and Demolition Work	1,240	1,132	377	152
1796	Installation of Building Equipment	3,777	3,448	156	57
1799	Special Trades, NEC	23,198	21,175	759	374
Total		536,267	486,508	175	85

Note: Small Establishments are Defined as Firms with 1 to 19 employees.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

C. Preliminary Regulatory Impact Analysis for Maritime

1. Introduction and Executive Summary

The proposed standard, extending the new Z-table PELs for general industry to the maritime industry, is examined in this report to estimate the costs, benefits, and economic impacts associated with the proposed rulemaking. In addition, a profile of the industry affected by the proposed standard is provided, along with a discussion of the regulatory and nonregulatory environment.

Industry Profile. An estimated 1,681 establishments will be affected by the proposed standard, 590 of which are in SIC 3731 (Shipbuilding and Repairing) and 1,091 of which are in SIC 4491 (Marine Cargo Handling). Of a total employment of about 183,537 workers, 68 percent are employed in shipyards and 32 percent are in marine cargo handling.

Within shipyards, the proposed standard is expected to primarily affect welders and painters. In marine cargo handling, stevedores involved in RO–RO and forklift operations, as well as workers involved in various dry bulk operations, are expected to be primarily affected.

Employee Exposures and Benefits. Based on data obtained from OSHA's Integrated Management Information System (IMIS), a survey conducted for the general industry air contaminants rule, shipyard, marine terminal and longshoring studies, U.S. waterborne commerce data, and expert opinions, OSHA estimated that about 40,530 full-time equivalent workers are potentially exposed to substances affected by the proposed rule. Of these 40,530 potentially exposed workers, approximately 3,615 are estimated to oe overexposed.

The overexposures in the shipbuilding and repairing industry result from welding and painting. In marine cargo handling, overexposures are likely to occur during RO–RO and break bulk forklift operations, as well as during the

loading and unloading of dry bulk cement.

OSHA estimates that an average of 245 total illnesses, of which 77 are lost workday cases, result from overexposures to substances affected by the proposed regulation. Of these illnesses, 196 total are expected to be avoided as a result of the proposed rulemaking, 62 of which are lost workday cases.

The proposed rule is also expected to reduce fatalities. Since long latency periods associated with occupationally related illnesses cause difficulty in diagnosing illnesses as being work related, fatalities resulting from such illnesses are difficult to determine. However, some substances covered by the proposed rulemaking to which workers are exposed are known to cause fatalities at levels above the proposed PELs. OSHA therefore believes, that by reducing current PELs, an average of 1 to 2 fatalities per year will be avoided.

Nonregulatory Alternatives. OSHA believes that there are no nonregulatory alternatives that adequately protect most workers from the adverse health effects associated with exposure to the chemicals under consideration. OSHA believes that the tort liability laws and Workers' Compensation do not provide adequate worker protection due to market imperfections. Some employers have not complied with the standards recommended by professional organizations. The deleterious health effects resulting from continued high levels of exposure to hazardous substances require a regulatory solution, and the OSH Act requires the Agency to protect workers' health.

Technological Feasibility and Costs of Compliance. OSHA has determined that the standard is technologically feasible, as all of the provisions can be met by using currently available engineering controls and personal protective equipment.

The proposed rule will require firms to incur costs for engineering controls necessary to bring overexposed workers to levels below the proposed PELs. The total annualized cost for firms to come into compliance with the proposed rule is estimated to be $5,682,245. Of this amount, $5,416,098 will be incurred by shipbuilding and repairing facilities to reduce welding and painting exposures. An estimated $266,147 will be incurred annually by stevedoring establishments to reduce exposures to carbon monoxide and portland cement.

Economic Impacts and Regulatory Flexibility. The potential impact of compliance on the industry was evaluated using estimated revenues and profits for each SIC group. The analysis revealed that even if compliance costs were fully absorbed by the industry (i.e., no pass through of costs to the consumer), neither profitability nor revenues will be significantly reduced. Costs as a percentage of revenues would not exceed 0.07; costs as a percentage of profits would not exceed 1.13 for either industry subsector.

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 STAT. 1164 [5 U.S.C. 60 et seq.]), OSHA has assessed the impact of the proposed rule on small entities and concludes that there will be no significant effects on a substantial number of small firms. This act requires that in proposing new rules, federal regulatory agencies must examine their potential for imposing disproportionately heavier burdens on small businesses. Nearly 50 percent of the firms covered by the standard employ fewer than 20 employees and are defined as small. For the vast majority of these firms, it is anticipated that the economic impact of the standard will not be significant given the small magnitude of per worker compliance costs.

Other Effects. The proposed rule is not expected to have any significant effect on international trade because of the small magnitude of the costs.

The proposed rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and OSHA's DOL NEPA Procedures (29 CFR part 11). As a result of this review, OSHA has determined that the proposed standard will have no significant effect on air, water or soil quality, plant or animal life, use of land, or other aspects of the environment.

2. Industry Profile

This section will provide an overview of the industry subsectors covered under the proposed rule. The discussion will include a description of the basic duties performed, the number of employees and establishments, and the financial situations for each SIC group. The proposed standard will cover two four digit SICs: 3731 (Shipbuilding and Repairing) and 4491 (Marine Cargo Handling). SIC 3732 (Boat Building and Repairing) is a separate industry which was covered under the General Industry PEL update.

SIC 3731: Shipbuilding and repairing. The shipbuilding and repairing industry (SIC 3731) includes establishments which engage in the construction, repair, alteration, conversion, and maintenance of ships, barges and lighters, whether self-propelled or towed by other craft [3]. Ship repair work may range from one-time, emergency corrections of particular problems to overhauls involving scheduled maintenance projects lasting from six months to one year, during which ships are completely refurbished and retrofitted in order to upgrade their equipment to the current state of the art. Shipbreaking, which involves disassembling ships for scrap and components, is also included in SIC 3731, although this activity is seldom performed in the U.S. In addition, many shipyards have been actively soliciting non-marine industrial work involving the same operations typically performed in shipbuilding and repair work, such as steel fabrication, welding, boiler repairs and engine overhauls.

The establishments which comprise the U.S. shipbuilding and repair industry range from very large facilities, employing over 25,000 workers, to firms with as few as 2 workers. Of the shipbuilding and repair facilities in the U.S., the largest 3 percent employ over 70 percent of the total workforce. The Census of Manufactures reported that SIC 3731 contained 605 shipyards operated by 542 companies in 1977. This decreased to 590 shipyards operated by 547 companies in 1987. The Census of Manufactures data are collected every 5 years, and 1987 is the last year data are available from that source. Most major facilities are located in the Gulf/Mississippi Region, followed by the East Coast, Great Lakes, and West Coast regions [11].

The U.S. Active Shipbuilding Base (ASB) includes those shipyards which are "open and currently engaged in or seeking contracts for the construction of major oceangoing or Great Lakes ships 1,000 gross tons or over" [11]. During 1989 alone, the U.S. ASB decreased from 19 to 16 shipyards. U.S. ASB shipyards account for about 75 percent of total SIC 3731 employment.

Shipbuilding and repairing is a large scale heavy manufacturing activity which requires both skilled and unskilled labor. Table V-C1 shows the employment trend for SIC 3731 since 1987.

Potential exposures are most likely to result from activities such as welding, painting, abrasive blasting, tank cleaning and grinding. The breakdown of the shipbuilding and repairing industry's workforce by occupational group is shown in Table V-C2.

TABLE V-C1.—TREND IN U.S. SHIPYARD EMPLOYMENT 1980-1989

Year	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Average Annual Employment	177,000	184,600	182,400	152,600	151,900	141,000	136,300	126,500	127,100	125,625
Percent Change from Previous Year		4.3	−1.2	−16.3	−0.5	−7.2	−3.3	−7.2	−0.5	−1.2

Source: (1) The years 1980 through 1984 are based on CONSAD Research Group Corp., Data to Support a Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing, Final Report. Prepared for the U.S. Dept. of Labor, Occupational Safety and Health Administration, under Contract No. J-9-F-4-0024. Nov. 1985.
(2) U.S. Department of Labor, Bureau of Labor Statistics "Employment and Earnings", 1985-1989.

TABLE V-C2.—OCCUPATIONAL BREAKDOWN OF SIC 3731 WORKFORCE

Occupational group	Percent of workforce	Number of workers
Outfitters	23.6	29,648
Welders	14.7	18,467
Other Steel Trades	14.0	17,588
Painters/Blasters	6.5	8,166
Tank Cleaners	0.7	879
Maintenance Workers	2.2	2,764
Supervisors	5.7	7,161
Office and Administrative	23.4	29,396
Others	9.0	11,306
Total	100	125,625

Source: CONSAD Research Corp., Data to Support a Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing: Subpart B, Prepared for the U.S. Department of Labor, OSHA under Contract No. J-9-F-4-0024.
U.S. Department of Labor, Bureau of Labor Statistics, "Employment and Earnings", 1989.

The primary occupational groups affected by the proposed regulation are welders and painters. Welders fuse metal objects by means of an exyacetylene torch or arc-welding apparatus in the fabrication of metal shapes and in repairing broken or cracked metal objects aboard ships. In addition to performing hand welding or brazing operations, the welder may also lay out guide lines or marks on metal parts and may cut metal with a cutting torch. Depending on the task, welders may be actively engaged in welding for up to eight hours per day. Other groups of employees may work in either the same environment or in adjacent compartments. Among these groups are the outfitting trades, carpenters, electricians, outside machinists and others involved in erecting steel such as riggers and grinders.

Market structure. The domestic market for commercial shipbuilding has decreased dramatically over the past twelve years. Nearly all sales have been lost to foreign producers, especially Japan and South Korea, where most ships can be built for less than the U.S. price. Foreign competitors usually have lower labor costs and often receive generous subsidies from their governments, while labor and material costs are relatively high in the U.S. The U.S. ranked thirty-first in worldwide merchant shipbuilding with only 0.1 percent of the gross tonnage on order [9].

The workload of U.S. shipyards is dominated by U.S. Navy ship construction projects. As of October 1, 1989, 91 military combatant and auxiliary ships were under construction or on order by the Navy, and 2 medium endurance cutters were under construction for the U.S. Coast Guard. Among the 91 Navy ships ordered were 21 T-ships, i.e. auxiliary crane ships, hospital ships, fleet oilers, and ocean surveillance ships. However, Navy ships tend to require large-scale, highly technical production which has benefited the larger shipyards more than smaller shipyards. In 1988, the total value of the work completed by U.S. shipyards was $8.7 billion in current dollars, down 2 percent from 1987 when adjusted for inflation [9]. Total revenues in 1989 were $9.1 billion [3].

Despite a declining market for commercial ship construction, shipbuilding and repair facilities in the U.S. continue to invest millions of dollars to improve, expand and modernize their facilities. Over $195 million was invested in the 1989 fiscal year, and industries planned to invest at least $250 million in the year ending June 30, 1990 [9]. Such large investments have dramatically increased the capability of U.S. shipyards, although facilities remain substantially underused.

SIC 4491: Marine cargo handling. The Marine Cargo Handling industry includes those facilities which are responsible for the handling of marine cargo from the time of arrival at shipside, dock, pier, terminal, staging area, or in-transit area to the completion of cargo loading or unloading. SIC 4491 also includes establishments which engage in the transfer of cargo between ships and barges, trains, trucks, pipelines and wharves. The maintenance and operation of piers and docks, including related facilities, are also included in this SIC.

Marine terminals are defined as "wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or contiguous areas and structures associated with the primary movements of cargo or materials from vessel to shore or shore to vessel including structures which are devoted to receiving, handling, holding, consolidation and loading or delivery of waterborne shipments and passengers, including areas devoted to the maintenance of the terminal or equipment. The term does not include production or manufacturing areas having their own docking facilities and located at a marine terminal nor does the term include storage facilities directly associated with those production or manufacturing areas."

For several years, there has been a trend toward public ownership of marine terminals, though most are still privately owned. Because they tend to be operated by or for the exclusive use of a single firm, most privately-owned terminals are directly competitive neither with one another nor with publicly-owned terminals. Privately owned terminals traditionally specialize in bulk cargoes, since large investments are often required in bulk terminal facilities.

Many terminals are publicly owned and leased by private tenants. Stevedoring establishments are firms which contract with a ship's owner, agent, charter operator, or the owner of the cargo to load or unload vessels in ports. The stevedoring firm typically hires longshoremen, usually on a daily basis, from a hiring hall or labor pool of union or nonunion members. The stevedoring labor force size varies directly with the amount of work the stevedoring establishment contracts to perform, which is a function of port activity. At any given time, a stevedoring firm may be working several vessels or none at all. Thus, longshoremen are hired as needed by the stevedoring establishment and discharged upon completion of an individual job. However, some longshoremen, such as equipment room managers or foremen, receive long-term employment commitments from an individual firm and work a standard work week plus required overtime.

There are approximately 57,912 total employees and 1,091 establishments in SIC 4491 [10]. The nature of marine cargo handling work is such that full-

time employees rarely work the typical 2,000 hour work-year. Full-time longshoremen work an average of 1,565 hours per year [5].

Vessels and commodities. Potential exposures to the substances affected by the proposed rulemaking occur during the loading and unloading of a wide variety of commodities. For example, the unloading of vehicles from RO–RO vessels creates a potential for exposure to substances such as carbon monoxide and carbon dioxide. Similarly, the loading of grain into a barge or bulk carrier creates potential exposures to grain dust as well as to any fumigants or pesticides, such as phosphine and methyl bromide, which may have been applied to the grain.

Table V–C3 shows the foreign and domestic waterborne commerce of the United States for 1988 [6]. Vessel types are relevant for addressing potential exposures associated with the shipment of these commodities.

Self-propelled vessels—Bulk Carriers are self-propelled vessels designed to carry bulk commodities such as heavy ores and minerals, pallets and wood chips, coal, and general dry bulk commodities such as grains. Loading a bulk commodity, such as grain, involves a system of conveyors and chutes or spouts. Grain is taken by conveyor from a grain silo to a chute positioned over the open hatch of a ship's hold into which the cargo is loaded. Once the cargo is loaded, one or two longshoremen may be called upon to level the grain in the hold. These vessels may also be used to carry bulky general freight such as logs or steel.

General tankers are vessels arranged for the carriage of liquic cargoes in tanks integral to the hull. The majority of these vessels carry crude oil, petroleum, and petroleum products. Chemical tankers are vessels structurally arranged for particular services or cargoes, such as asphalt, asphalt bitumen, phosphorus, solvents and various specialty chemicals.

Special tankers are tankers which were designed for a specific type of cargo. The characteristics of these vessels effectively limit their applicability to specialty products. Included in this category are molasses, liquid latex, sulphur, and wine tankers.

TABLE V–C3.—WATERBORNE COMMERCE OF THE UNITED STATES 1988

Code	Commodity	Imports	Exports	Total foreign	Domestic	Total
	Farm Products					
0101	Cotton, raw	1,240	1,484,722	1,485,962	2,684	1,488,646
0102	Barley and rye	81,677	2,383,295	2,464,972	704,101	3,169,073
0103	Corn	41,506	49,540,037	49,581,543	32,067,630	81,649,173
0104	Oats	510,626	5,988	516,614	375,979	892,593
0105	Rice	136,678	2,461,712	2,598,390	1,088,610	3,687,000
0106	Sorghum grains	0	6,264,659	6,264,659	2,209,648	8,474,307
0107	Wheat	107,244	44,562,575	44,669,819	14,445,004	59,114,823
0111	Soybeans	80	19,438,538	19,438,618	16,180,935	35,619,553
0112	Flaxseed	0	0	0	29	29
0119	Oilseeds, NEC	27,823	246,802	274,625	35,540	310,165
0121	Tobacco, leaf	177,745	267,259	445,004	1,708	446,712
0122	Hay and fodder	0	0	0	53,259	53,259
0129	Field crops, NEC	77,780	92,159	169,939	27,006	196,945
0131	Fresh fruits	151,035	1,434,284	1,585,319	333,979	1,919,298
0132	Bananas and plantains	3,465,265	9,090	3,474,355	16,233	3,490,588
0133	Coffee, green and roasted	990,126	103,886	1,094,012	31,477	1,125,489
0134	Cocoa beans	265,173	1,771	266,944	3,629	270,573
0141	Fresh and frozen vegetables	197,630	914,868	1,112,498	241,838	1,354,336
0151	Live animals (livestock)	679	13,566	14,245	79,069	93,314
0161	Animals and animal products, NEC	118,801	156,932	275,733	14,007	289,740
0191	Miscellaneous farm products	45,011	29,994	75,005	38,234	113,239
	Forest products					
0841	Crude rubber and allied gums	1,232,760	33,212	1,265,972	2,211	1,268,183
0861	Forest products, NEC	142,512	39,866	182,378	110,554	292,932
	Fresh Fish and Other Marine Products					
0911	Fresh fish, except shellfish	470,760	365,788	836,548	747,566	1,584,114
0912	Shellfish, except prepared	266,691	74,387	341,078	501,791	842,869
0931	Marine shells, unmanufactured	3,187	9,980	13,167	3,079,625	3,092,792
	Metallic Ores					
1011	Iron ore and concentrates	20,894,501	5,536,061	26,430,562	60,825,332	87,255,894
1021	Coppers ore and concentrates	2,173	734,359	736,532	73,479	810,011
1051	Aluminum ores, concentrates	16,559,007	1,062,127	17,621,134	433,593	18,054,727
1061	Manganese ores, concentrates	505,649	5,966	511,615	478,074	989,689
1091	Nonferrous ores, content, NEC	2,053,173	696,015	2,749,188	606,138	3,355,325
	Coal					
1121	Coal and lignite	826,000	94,631,696	95,457,696	196,781,253	292,238,949
	Crude Petroleum					
1311	Crude petroleum	252,524,052	160,558	252,684,610	199,233,326	451,917,936

TABLE V-C3.—WATERBORNE COMMERCE OF THE UNITED STATES 1988—Continued

Code	Commodity	Imports	Exports	Total foreign	Domestic	Total
	Nonmetallic Minerals, Except Fuel					
1411	Limestone	660,379	3,275,977	3,936,356	33,137,372	37,073,728
1412	Building stone, unworked	0	63,653	63,653	4,945	68,598
1442	Sand, gravel, crushed rock	4,840,047	1,458,051	6,298,098	62,595,854	68,893,952
1451	Clay	2,122,119	2,901,500	5,023,619	1,078,282	6,101,901
1471	Phosphate rock	743,919	9,721,886	10,465,805	5,735,058	16,200,863
1479	Natural fertilizer mats, NEC	39,356	0	39,356	4,295	43,651
1491	Salt	5,118,521	706,052	5,824,573	0	5,824,573
1492	Sulphur, dry	0	1,248,552	1,248,552	19,067	1,267,619
1493	Sulphur, liquid	0	0	0	6,960,050	6,960,050
1494	Gypsum, crude and plasters	9,235,781	140,557	9,376,338	1,319,630	10,695,968
1499	Nonmetallic minerals, NEC	2,105,447	631,806	2,737,253	5,335,735	8,072,988
	Ordnance and Accessories					
1911	Ordnance and accessories	22,387	5,769	28,156	569	28,725
	Food and Kindred Products					
2011	Meat, fresh, chilled, frozen	844,833	899,514	1,744,347	318,933	2,063,280
2012	Meat and products, NEC	296,846	32,835	329,681	69,295	398,976
2014	Tallow, animal fats and oils	0	1,334,619	1,334,619	155,044	1,489,663
2015	Animal by-products, NEC	11,654	687,555	699,209	15,180	714,389
2021	Dairy products, NEC	156,676	41,886	198,362	49,761	248,123
2022	Dried milk and cream	31,941	251,121	283,062	16,860	299,922
2031	Fish and shellfish, prepared	347,024	89,569	436,593	374,904	811,497
2034	Vegetables and pre, NEC	749,735	241,658	991,393	246,413	1,237,806
2039	Prep fruit and vegetable juice, NEC	2,149,234	522,755	2,671,989	434,253	3,106,242
2041	Wheat flour and semolina	0	1,215,496	1,215,496	30,807	1,246,303
2042	Animal feeds	369,756	11,988,869	12,358,625	10,118,955	22,477,580
2049	Grain mill products, NEC	289,385	6,632,376	6,921,761	4,631,607	11,553,368
2061	Sugar	1,310,656	213,117	1,523,773	1,939,313	3,463,086
2062	Molasses	1,142,803	284,055	1,426,858	722,762	2,149,620
2081	Alcoholic beverages	2,236,102	309,747	2,545,849	349,317	2,895,166
2091	Vegetable oils, margarine, shortening	1,519,000	1,759,359	3,278,359	1,842,905	5,121,264
2092	Animal oils and fats, NEC	12,528	73,912	86,440	21,977	108,417
2094	Groceries	0	0	0	488,388	488,388
2095	Ice	282,300	1,003	283,303	99,944	383,247
2099	Miscellaneous food products	1,004,158	1,416,398	2,420,556	1,573,968	3,994,524
	Tobacco Products					
2111	Tobacco manufactures	6,384	234,168	240,552	20,302	260,854
	Basic Textiles					
2211	Basic textile products	1,180,050	624,561	1,804,611	66,466	1,871,077
2212	Textile fibers, NEC	43,198	45,708	88,906	10,379	99,285
	Apparel and Other Finished Textile Products, Including Knit					
2311	Apparel	1,082,532	81,409	1,163,941	382,907	1,546,848
	Lumber and Wood Products, Excluding Including Knit					
2411	Logs	223,332	21,087,131	21,310,463	652,227	21,962,690
2412	Rafted logs	0	0	0	9,905,656	9,905,656
2413	Fuel wood, charcoal, wastes	274,024	29,476	303,500	193,902	497,402
2414	Timber, posts, poles, piling	6,821	30,095	36,916	42,039	78,955
2415	Pulpwood, log	86,417	504	86,921	3,945,378	4,032,299
2416	Wood chips, staves, moldings	749,463	6,917,238	7,666,701	3,932,850	11,599,551
2421	Lumber	2,176,776	3,868,877	6,045,653	1,258,148	7,303,801
2431	Veneer, plywood, worked wood	1,093,348	704,344	1,797,692	123,895	1,921,587
2491	Wood manufactures, NEC	352,921	439,571	792,492	230,635	1,023,127
	Furniture and Fixtures					
2511	Furniture and fixtures	900,772	80,631	981,403	201,084	1,182,487
	Pulp, Paper and Allied Products					
2611	Pulp	805,711	5,033,852	5,839,563	477,104	6,316,667
2621	Standard newsprint paper	2,029,093	568,990	2,598,083	128,748	2,726,831
2631	Paper and paperboard	2,032,319	3,684,438	5,716,757	533,108	6,249,865
2691	Pulp and paper products, NEC	176,262	194,398	370,660	1,411,671	1,782,331

TABLE V-C3.—WATERBORNE COMMERCE OF THE UNITED STATES 1988—Continued

Code	Commodity	Imports	Exports	Total foreign	Domestic	Total
	Printed Matter					
2711	Printed matter	199,123	87,082	286,205	21,065	307,270
	Chemicals and Allied Products					
2810	Sodium hydroxide	0	0	0	5,978,436	5,978,436
2811	Crude tar, oil, gas products	630,033	543,638	1,173,671	1,766,155	2,939,826
2812	Dyes, pigment, tanning mats	0	28,614	28,614	805	29,419
2813	Alcohols	2,524,744	914,059	3,438,803	5,923,416	9,362,219
2816	Radioactive materials, wastes	14,831	5,368	20,199	2,558	22,757
2817	Benzene and toluene	653,176	436,714	1,089,890	6,658,253	7,748,143
2818	Sulphuric acid	0	0	0	2,070,239	2,070,239
2819	Basic chemicals and prod, NEC	17,953,775	15,398,090	33,351,865	27,645,535	60,997,400
2821	Plastic materials	763,009	3,503,941	4,266,950	104,905	4,371,855
2822	Synthetic rubber	15,459	530,701	546,160	54,398	600,558
2823	Synthetic (man-made) fibers	78,787	300,547	379,334	2,544	381,878
2831	Drugs	113,033	80,387	193,420	55,340	248,760
2841	Soap	158,884	410,668	569,552	156,272	725,824
2851	Paints	453,424	80,262	533,686	32,490	566,176
2861	Gum and wood chemicals	27,397	212,277	239,674	608,446	848,120
2871	Nitrogenous chem fertilizers	1,928,020	2,719,895	4,647,915	5,794,600	10,442,515
2872	Potassic chem fertilizers	2,470,497	2,700,295	5,170,792	1,412,427	6,583,219
2873	Phosphatic chem fertilizers	116,468	1,356,882	1,473,350	694,587	2,167,937
2876	Insecticides, disinfectants	102,093	187,343	289,436	8,021	297,457
2879	Fertilizer and materials, NEC	121,999	7,107,591	7,229,590	6,675,067	13,904,657
2891	Miscellaneous chemical products	630,654	1,136,175	1,766,829	711,413	2,478,242
	Petroleum and Coal Products					
2911	Gasoline	22,247,104	1,067,194	23,334,298	85,012,138	108,346,436
2912	Jet fuel	3,736,588	1,451,404	5,187,992	13,013,893	18,201,885
2913	Kerosene	102,778	67,669	170,447	1,851,482	2,021,929
2914	Distillate fuel oil	17,882,631	3,870,283	21,752,914	56,442,391	78,195,305
2915	Residual fuel oil	47,966,059	12,661,453	60,627,512	91,896,700	152,524,212
2916	Lubricating oils and greases	185,513	2,152,159	2,337,672	5,885,189	8,222,861
2917	Naptha, petroleum solvents	5,626,425	293,866	5,920,291	9,216,056	15,136,347
2918	Asphalt, tar, and pitches	2,314,747	176,942	2,491,689	10,781,849	13,273,538
2920	Coke, petroleum coke	3,685,966	17,368,726	21,054,692	6,764,238	27,818,930
2921	Liquefied gases	3,483,044	1,343,760	4,826,824	1,772,065	6,598,889
2951	Asphalt building materials	0	29,182	29,182	23,783	52,965
2991	Petroleum and coal prod, NEC	63,298	107,100	170,398	5,281,045	5,451,443
	Rubber and Miscellaneous Plastic Products					
3011	Rubber and misc. plastic products	1,955,781	430,465	2,386,246	190,802	2,577,048
	Leather and Leather Products					
3111	Leather and leather products	872,728	89,183	961,911	31,761	993,672
	Stone, Clay, Glass and Concrete					
3211	Glass and clay, glass and concrete	385,203	311,079	696,282	41,950	738,232
3241	Building cement	13,681,485	125,049	13,806,534	10,391,259	24,197,793
3251	Structural clay products	852,649	131,875	984,424	49,072	1,033,596
3271	Lime	6,043	3,355	9,398	1,523,256	1,532,654
3281	Cut stone and stone products	563,398	11,428	574,826	14,289	589,115
3291	Misc. nonmetallic mineral products	722,563	333,505	1,056,068	284,143	1,340,211
	Primary Metal Products					
3311	Pig iron	678,651	57,652	736,303	595,535	1,331,838
3312	Slag	123,414	79	123,493	1,823,062	1,946,555
3313	Coke, petrol pitches, asphalts, S	0	0	0	3,063	3,063
3314	Iron and steel primary forms	2,140,423	26,771	2,167,194	2,628,244	4,795,438
3315	Iron, steel shapes, exc sheets	11,824,284	52,323	11,876,607	1,352,805	13,229,412
3316	Iron and steel plates, sheets	99,377	970,872	1,070,249	671,512	1,741,761
3317	Iron and steel pipe and tube	2,765,960	219,627	2,985,587	1,232,255	4,217,842
3318	Ferroalloys	1,496,619	35,306	1,531,925	1,078,523	2,610,448
3319	Iron and steel products, NEC	407,920	101,219	509,139	638,408	1,147,547
3321	Nonferrous metals, NEC	191,517	95,926	287,443	28,201	315,644
3322	Copper alloys, unworked	525,005	267,333	792,338	45,040	837,378
3323	Lead and zinc, unworked	320,794	43,363	364,157	26,221	390,378
3324	Aluminum and alloys, unworked	557,610	531,585	1,089,195	22,030	1,111,225
	Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment					
3411	Fabricated metal products	3,329,711	480,568	3,810,279	1,801,520	5,611,799

TABLE V–C3.—WATERBORNE COMMERCE OF THE UNITED STATES 1988—Continued

Code	Commodity	Imports	Exports	Total foreign	Domestic	Total
	Machinery Except Electrical					
3511	Machinery, except electrical	4,045,518	1,699,143	5,744,661	1,080,242	6,824,903
	Electrical Machinery, Equipment and Supplies					
3611	Electrical machinery and equipment	2,941,854	851,471	3,793,325	142,261	3,935,586
	Transportation Equipment					
3711	Motor vehicles, parts, equipment	6,506,754	1,222,392	7,729,146	856,977	8,586,123
3721	Aircraft and parts	11,935	19,967	31,902	1,060	32,962
3731	Ships and boats	50,269	73,141	123,410	24,992	148,402
3791	Misc. transportation equipment	28,293	48,245	76,538	136,194	212,732
	Instruments, Photographic and Optical Goods, Watches and Clocks					
3811	Instruments, time, photo, optical goods	273,431	153,199	426,630	39,642	466,272
	Miscellaneous Products of Manufacturing					
3911	Misc. manufactured products	1,469,020	99,011	1,568,031	1,753,983	3,322,014
	Waste and Scrap Materials					
4011	Iron and steel scrap	235,367	8,758,209	8,993,576	3,252,161	12,245,737
4012	Nonferrous metal scrap	769,193	1,036,363	1,805,556	81,087	1,886,643
4022	Textile waste, scrap, sweep	8,097	278,171	286,268	7,618	293,886
4024	Paper waste and scrap	11,412	4,284,777	4,296,189	1,672	4,297,861
4029	Waste and scrap, NEC	0	0	0	24,948,936	24,948,936
	Special Items					
4111	Water	0	0	0	2,576,239	2,576,239
4112	Commodities, NEC	594,006	491,874	1,085,880	3,927,648	5,013,528
4119	Empty containers	0	0	0	119,552	119,552
9999	Department of Defense	462,674	102,071	564,745	0	564,745
	Total	549,897,111	426,323,874	976,220,985	1,111,772,499	2,087,993,484

Source: Department of the Army, Corps of Engineers, Waterborne Commerce of the United States: Part 5: National Summaries, 1988.

LNG/LPG tankers are vessels designed for the carriage of liquified natural gas, liquified petroleum gas, and other manufactured gases and natural gas products.

Break bulk vessels include carriers of refrigerated and unrefrigerated general cargo. Among the break bulk cargoes are fruits and vegetables, lumber, glass, and machinery. Break bulk vessels may be used to transport standardized containers but they are not designed to specialize in containerized cargo.

Roll-On/Roll-Off (RO–RO) vessels are those that are specially designed to carry automobiles, other vehicles, wheeled containers or trailers. RO–RO ships only use the RO–RO method for loading and unloading, in which vehicles are actually driven on or off the ship. Containerized cargo may be transported on the upper deck of a RO–RO vessel.

Containerships are vessels designed exclusively for the carriage of standardized containerized cargo. These vessels are equipped with permanent container cells and have little or no space for other types of cargoes. Containers are loaded and unloaded usually by cranes and toploaders.

Break bulk, RO–RO vessels and containerships are often grouped together in a broad class as freighters. Both break bulk and RO–RO vessels may be partial containerships, in which one or more, but not all, compartments are fitted with permanent container cells; the remaining compartments are used for other types of cargo. In break bulk and RO–RO vessels, containers are often transported on the upper deck and other cargo is carried in lower decks.

Non-self-propelled vessels—Bulk barges are large double hulled cargo holds without an internal means of propulsion. Virtually all barges used on the inland river system are 195 feet long by 35 feet wide. Most bulk barges have a total draft of 12 feet and are typically loaded so that they draw 9 feet of water. Barges can carry virtually any dry cargo and have an average capacity of 1,500 tons or about 52,500 bushels. Also classified as barges are scows and ocean-going barges. These barges tend to be much larger, have a higher freeboard and carry most of their cargo on deck.

Tanker barges are double hulled barges designed exclusively to haul liquid cargos. Tanker barges lack an internal means of propulsion but do contain pumping systems and equipment for unloading their cargoes. Tanker barges are not of standardized size but are on the order of 240 feet long by 75 feet wide. Tanker barges do have a standard draft of 12 feet.

Gang size. Table V–C4 summarizes average stevedoring gang size by type of operation. Separate crew sizes are itemized for various ship and barge operations. Crew sizes vary dramatically by type of operation and type of vessel. Crew size may range from 2 for tanker barge loading to 64 for RO–RO operations. Also in Table V–C4 are average cargo handling rates per stevedore work-hour.

Market structure. Table V–C5 shows the annual revenues and profits related to longshoring operations by region. Most economic activity occurs in the Gulf/Mississippi region. This region accounts for about 51 percent of total

industry revenues and profits. Annual revenues and profits related to longshoring activities total $6.6 billion and $0.3 billion, respectively.

TABLE V-C4.—SUMMARY OF AVERAGE STEVEDORING GANG SIZE AND CARGO HANDLING RATES

Type of operation	Average total on-site stevedores	Average handling rate per stevedore work-hour (tons/hour)
Ship:		
Break bulk operation	16	5.0
Container operation	18	12.9
Bulk carrier/conveyor loading	13	96.2
Clamshell unloading operation	6	41.7
Tanker operation	6	300.0
Special tanker operation	6	75.0
Fruit and hand loaded cargo	64	1.0
RO-RO car carrier	22	4.1
Barge:		
Barge break bulk operation	8	14.1
Barge bulk unloading with clamshell	3	50.0
Barge conveyor loading	3	56.3
Barge tanker operation	2	180.0

Source: Centaur Associates, Inc., Field Visits.

TABLE V-C5.—ESTIMATED ECONOMIC ACTIVITY RELATED TO LONGSHORING ACTIVITIES

[Millions of dollars]

Region	Annual revenues	Estimated profits
Atlantic	$1,456	$62.6
Gulf/Mississippi	3,317	142.6
Great Lakes	370	15.9
Pacific	1,411	60.7
Totals	6,554	281.8

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur.

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3. Employee Exposures and Benefits

Introduction. Employee exposures to the substances included in the scope of this rulemaking are associated with a wide variety of acute and chronic conditions and illnesses. These include sensory irritation, narcosis, organ system dysfunction, chronic respiratory disease, neurological impairment, allergic sensitization, and cancer. Since OSHA's adoption of existing Federal and consensus standard limits in 1971, toxicologic evidence has become available that shows that adverse health effects can occur as a consequence of exposure to many of the substances listed in OSHA's Z tables, and that such health effects occur even when exposures are maintained at the current Z-table limits. In addition, many substances that have come into widespread use or been introduced since 1971 have been shown to be potentially hazardous in the workplace environment. OSHA thus believes that reducing worker exposure to such substances by lowering existing exposure limits or by adding limits for previously unregulated substances will result in a significantly reduced risk of illness to workers.

This section describes both the methodology used to identify maritime workers potentially exposed to the hazardous substances included in this rulemaking and the expected benefits to those workers resulting from lowering permissible exposure levels. An important existing data base for identifying employees potentially exposed to hazardous substances was OSHA's Integrated Management Information System (IMIS). The IMIS data were used to project expected benefits resulting from lowering permissible exposure levels of the substances being regulated.

Exposure Profile

Methodology. SIC 3731: Shipbuilding and repairing. For each facility inspected, the IMIS files contained information on the number of employees at the facility, the occupation of each employee sampled at the facility, and the number of employees observed to be potentially exposed to each substance for which personal air samples were collected at the facility.

For each substance sampled within each four-digit SIC, the estimated number of employees potentially exposed to that substance in that SIC was determined by the following formula:

$$\frac{\Sigma P_f}{\Sigma E_f} \times W = P$$

where

P_f = number of employees observed to be potentially exposed to the substance at a facility;

E_f = number of employees at each facility inspected by IMIS;

W = number of workers in the industry in 1989; and

P = estimated number of employees potentially exposed to the substance in the industry.

The estimated number of employees currently exposed above the limits for each substance was calculated using the following formula:

$$\frac{\Sigma S_f}{\Sigma T_f} \times P = Z$$

where

S_f = number of samples that exceeded the limit for the substance at all facilities inspected by IMIS in the industry sector;

T_f = total number of personal samples taken for the substance at all facilities inspected by IMIS in the industry sector;

P = estimated number of employees potentially exposed to the substance in the industry sector; and

Z = estimated number of workers in the industry sector currently exposed above the limits for the substance.

Some data for shipyards were collected during the survey conducted for the general industry PEL update. The following information was provided:

- The total number of production employees at the facility;
- The number of employees involved in each process used at the facility;

- The substances used or present in each process;
- The exposure limits used as internal targets or goals at the facility (i.e., OSHA's current limits, ACGIH limits, NIOSH limits, or "Other" limits such as those from material safety data sheets or insurance carriers); and
- Whether employee exposures exceeded the targeted limits for each process/chemical combination present at the facility.

To estimate the number of employees potentially exposed to a given substance, OSHA assumed that all employees who are involved with processes in which the substance is used or present are potentially exposed. Thus, the formula for estimating the number of employees potentially exposed to a substance in the shipbuilding and repairing industry is:

$$\frac{\Sigma X_f}{\Sigma T_f} \times W = P$$

where

X_f = number of employees at the facility who are involved in processes using a given substance;
T_f = total production workforce at the facility;
W = the number of production workers in the industry sector; and
P = estimated number of employees potentially exposed to the substance in the industry sector.

To estimate the number of employees currently exposed above the final limits, OSHA relied on survey responses that indicated whether exposure measurements associated with a process exceeded the facility's internal exposure limits. OSHA interpreted the survey responses as follows:

(1) OSHA assumed that none of the potentially exposed employees are currently exposed above the limit for any substance associated with a process if:

(a) the revised limit is an ACGIH TLV and respondents indicated that exposure measurements did not exceed ACGIH, NIOSH, or some "other" set of limits; or

(b) the revised limit is a NIOSH REL and respondents indicated that exposure measurements did not exceed NIOSH limits.

(2) OSHA also assumed that all of the potentially exposed employees are currently exposed above the limits for all substances associated with a process if:

(a) the revised limit is an ACGIH TLV and respondents indicated that exposure measurements did exceed OSHA, ACGIH, or some "other" set of limits, or

(b) The revised limit is a NIOSH REL and respondents indicated that exposure measurements did exceed OSHA, ACGIH, NIOSH, or some "other" set of limits.

The number of overexposed workers were then summed for each substance across all facilities that responded to the survey in SIC 3731. In instances where the survey data yielded no information on whether or not employees are exposed above the proposed limit for a substance, and no exposure data were available from IMIS on that substance, OSHA assumed that no workers are overexposed to that substance. It is likely, however, that in some of these cases there are employees exposed above the proposed limits, OSHA believes that it has not necessarily accounted for all employees who are exposed above the proposed PELs for the substances included in this analysis. OSHA, thus, believes that the number of overexposed employees may be understated.

A separate analysis of existing IMIS data was done to determine the effect of proposed limits on MEL (mixture exposure limit) overexposures. To estimate the number of workers over the MEL, *employees* rather than incidents with either PEL or MEL overexposures were identified. Each sample in the IMIS database listed the occupation of the employee sampled, all substances and levels at which the worker was exposed, and the number of workers similarly exposed. Potential exposures were calculated by adding the total number of full-time equivalent workers in each occupational group potentially exposed to any combination of substances affected by the proposed rulemaking.

The estimated number of employees currently exposed above the MEL for any combination of substances, which includes one or more substances affected by the proposed rule, was calculated using the following formula:

$$\frac{\Sigma S_f}{\Sigma T_f} \times P = Z$$

where

S_f = number of samples that exceeded the MEL at all facilities identified by IMIS for the industry sector. (Note: This number includes any worker exposed above the PEL for any substance, since, by definition, any worker over a PEL would be overexposed to the MEL);
T_f = total number of personal samples involving substances affected by the proposed rulemaking taken at all facilities identified by IMIS for the industry sector;
P = estimated number of potentially exposed employees in the industry sector; and
Z = estimated number of workers in the industry sector currently exposed above the limits.

SIC 4491: Marine cargo handling. Data from IMIS, a study conducted by Kearney/Centaur, commodity and tonnage data from the U.S. Army Corps of Engineers, and expert judgements were used to estimate worker exposures in SIC 4491. The intermittent work schedules of stevedores caused difficulty in making typical 8-hour TWA measurements. To determine the exposures to hazardous substances in the marine cargo handling industry, OSHA looked at each commodity shipped by water and the number of full-time equivalent workers involved in the processes. Every imported and/or exported, as well as each domestically shipped commodity, was examined for potential exposures.

OSHA looked at the form in which each commodity is shipped, whether in containerized, break bulk, liquid bulk or dry bulk cargo form. OSHA also analyzed commodities requiring the RO–RO method for loading and unloading.

Procedures for loading and unloading the various commodities, potential exposures, and the percentage of stevedores likely to be overexposed were determined.

Once the areas of potential exposure were determined, OSHA estimated the number of full-time equivalent employees involved in the processes and potential exposures.

Estimates of the Number of Potentially Exposed Employees

SIC 3731

The IMIS data base and the survey provided information on the substances posing potential hazards to specific occupational groups in SIC 3731. Table V–C6 shows the occupational groups identified in IMIS, the hazardous substances to which each group is potentially exposed, and the adverse health effects related to exposure.

One of the most widely recognized hazards associated with exposures to airborne substances in the maritime industry involves tank cleaning. Tank cleaners may be potentially exposed to any substance carried in bulk liquid form. Table V–C7 lists liquid substances transported in bulk which are affected by the proposed rulemaking. OSHA estimates that all 843 tank cleaners may be potentially exposed to the substances listed in Table V–C7. Due to the potentially serious nature of the hazards involved and the requirements imposed

by relevant existing standards, employers are generally aware of the need to protect employees during this activity. OSHA believes that the requirements imposed by this proposed rulemaking would not require significant changes in current practices. OSHA requests public comments on this preliminary conclusion.

To obtain an overall estimate of the extent of employee exposures to substances used in SIC 3731, OSHA combined the estimates derived separately from the IMIS and survey data. Where estimates for a given substance could be derived from one data set but not the other, the assessment uses the available estimates without adjustment. Where estimates could be derived from both data sets for the same substance, the combined assessment is based on the average of the available estimates; this approach has the effect of giving equal weight to estimates derived from either the IMIS or survey data. The results are shown in Table V–C8.

TABLE V–C6.—RELEVANT SUBSTANCES AND EFFECTS BY OCCUPATION SIC 3731

Occupation	Substance	Primary basis for limit
Blaster	2-Butoxyethanol	Systemic Toxicity.
	N-Butyl Alcohol	Neuropathy.
	Cobalt, Metal, Fume & Dust	Sensitization.
	Epichlorohydrin	Sensory Irritation.
	Hexone	Liver and kidney Effects.
	Molybdenum, Insoluble	Physical Irritation.
	Nickel (Soluble Compounds)	Respiratory Effects.
	Petroleum Distillates	Miscellaneous Effects.
	Toluene	Narcosis.
	Trimethyl Benzene	Systemic Toxicity.
	Vanadium (V205) fume	Sensory Irritation.
Boilermaker	Cobalt, Metal, Fume & Dust	Sensitization.
	Nickel (Soluble Compounds)	Respiratory Effects.
	Vanadium (V205) Fume	Sensory Irritation.
	Welding Fumes	Systemic Toxicity.
	Zinc Oxide Fume	Systemic Toxicity.
Burner	Cobalt, Metal, Fume & Dust	Sensitization.
	Nickel (Soluble Compounds)	Respiratory Effects.
	Vanadium (V205) Dust	Sensory Irritation.
Carpenter	Cobalt, Metal, Fume & Dust	Sensitization.
	Nickel (Soluble Compounds)	Respiratory Effects.
	Vanadium (V205) Dust	Sensory Irritation.
Electrician	N-Butyl Alcohol	Neuropathy.
	Cobalt, Metal, Fume & Dust	Sensitization.
Fitter	Nickel (Soluble Compounds)	Respiratory effects.
	Styrene	Narcosis.
Grinder	Cobalt, Metal, Fume & Dust	Sensitization.
	Molybdenum, Insoluble	Physical Irritation.
	Nickel (Soluble Compounds)	Respiratory Effects.
	Zinc Oxide Fume	Systemic Toxicity.
Handyman	Cobalt, Metal, Fume & Dust	Sensitization.
	Nickel (Soluble Compounds)	Respiratory Effects.
	Vanadium (V205) Dust	Sensory Irritation.
Laborer	Acetone	Sensory Irritation.
	Carbon Monoxide	Biochemical/Metabolic Effects.
	Styrene	Narcosis.
Mechanic/tool operator	Nickel (Soluble Compounds)	Respiratory Effects.
Painter	2-Butoxyethanol	Systemic Toxicity.
	N-Butyl Alcohol	Neuropathy.
	N-Butyl Glycidyl Ether	Systemic Toxicity.
	Cobalt, Metal, Fume & Dust	Sensitization.
	Cyclohexanone	Liver and Kidney Effects.
	Epichlorohydrin	Sensory Irritation.
	Hexone	Liver and Kidney Effects.
	Methyl Isoamyl Ketone	Analogy.
	Molybdenum, Insoluble	Physical Irritation.
	Naphthalene	Ocular Effects.
	Nickel (Soluble Compounds)	Respiratory Effects.
	Petroleum Distillates	Miscellaneous Effects.
	Stoddard Solvent	Narcosis.
	Toluene	Narcosis.
	Vanadium (V205) Fume	Sensory Irritation.
	Xylene (o-, m- and p- isomers)	Sensory Irritation.
Plastics fabricator	N-Butyl Alcohol	Neuropathy.
	Epichlorohydrin	Sensory Irritation.
	Trimellitic Anhydride	Respiratory Effects.
	Sensory Irritation	
Steel worker	Cobalt, Metal, Fume & Dust	Neuropathy.
	Nickel (Soluble Compounds)	Sensory Irritation
	Molybdenum, Insoluble	Respiratory Effects.
	Vanadium (V205) Fume	
Sensitization	Respiratory Effects.	Sensitization.
	Physical Irritation.	Respiratory Effects
	Sensory Irritation.	Physical Irritation
		Sensory Irritation.
Tank cleaner	(See Table V–C7)	

TABLE V-06.—RELEVANT SUBSTANCES AND EFFECTS BY OCCUPATION SIC 3731—Continued

Occupation	Substance	Primary basis for limit
Welder	Cobalt, Metal, Fume & Dust	Sensitization.
	Molybdenum, Insoluble	Physical Irritation.
	Nickel (Soluble Compounds)	Respiratory Effects.
	Styrene	Narcosis.
	Vanadium (V205) Fume	Sensory Irritation.
	Welding Fumes	Systemic Toxicity.
	Zinc Oxide Fume	Systemic Toxicity.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on IMIS data.

TABLE V-C7.—BULK LIQUID CARGOES COVERED BY THE PROPOSED RULE

Substance	Primary basis for limit
Acetaldehyde	Sensory Irritation.
Acetic Anhydride	Analogy.
Acetone	Sensory Irritation.
Acetonitrile	Systemic Toxicity.
Acrylamide	Cancer.
Acrylic acid	Analogy.
Allyl alcohol	Sensory Irritation.
Allyl chloride	Liver and Kidney Effects.
Ammonia	Sensory Irritation.
Aniline	Biochemical/Metabolic Effects.
Asphalt	Respiratory/Effects.
Butane	Narcosis.
N-Butyl acetate	Sensory Irritation.
Butyl acrylate	Analogy.
sec-Butyl alcohol	Narcosis.
tert-Butyl alcohol	Narcosis.
n-Butyl alcohol	Neuropathy.
p-tert-Butyl toluene	Miscellaneous Effects.
Caprolactum	Sensory Irritation.
Carbon disulfide	Cardiovascular Effects.
Carbon tetrachloride	Cancer.
Chlorine	Sensory Irritation.
Chloroform	Cancer.
beta-Chloroprene	Systemic Toxicity.
o-Chlorotoluene	Miscellaneous Effects.
Cyclohexanone	Liver and Kidney Effects.
Cyclohexylamine	Systemic Toxicity.
p-Dichlorobenzene	Analogy.
Dichloroethyl ether	Sensory Irritation.
Dichloromonofluoromethane.	Analogy.
1,3-Dichloropropene	Liver and Kidney Effects.
Dichloropropionic acid	Sensory Irritation.
Dicyclopentadiene	Liver and Kidney Effects.
Diethanolamine	Miscellaneous Effects.
Diethyl phthalate	Miscellaneous Effects.
Diethylamine	Sensory Irritation.
Diethylene triamine	Analogy.
Diglycidyl ether	System Toxicity.
Diisobutyl ketone	Sensory Irritation.
Dioxane	Liver and Kidney Effects.
Epichlorohydrin	Sensory Irritation.
Ethanolamine	Systemic Toxicity.
Ethyl acrylate	Respiratory Effects.
Ethyl benzene	Sensory Irritation.
Ethyl ether	Sensory Irritation.
Ethylene chlorohydrin	Systemic Toxicity.
Ethylene dichloride	Liver and Kidney Effects.
Ethylene glycol	Sensory Irritation.
Ethylene norbornene	Sensory Irritation.
Formamide	Analogy.
Furfural	Sensory Irritation.
Furfuryl alcohol	Sensory Irritation.
Gasoline	Narcosis.

TABLE V-C7.—BULK LIQUID CARGOES COVERED BY THE PROPOSED RULE—Continued

Substance	Primary basis for limit
Glutaraldehyde	Sensory Irritation.
Glycerin	Physical Irritation.
Heptane	Narcosis.
Hexane	Neuropathy.
Hexone	Liver and Kidney Effects.
Hexylene glycol	Sensory Irritation.
Hydrogen fluoride	Sensory Irritation.
Isoamyl alcohol	Narcosis.
Isobutyl alcohol	Analogy.
Isophorone	Narcosis.
Isophorone diisocyanate	Sensitization.
Isopropyl acetate	Sensory Irritation.
Isopropyl alcohol	Sensory Irritation.
Isopropylamine	Sensory Irritation.
Mesityl oxide	Sensory Irritation.
Methacrylic acid	Analogy.
Methyl acetate	Miscellaneous Effects.
Methyl acetylene	Analogy.
Methyl alcohol	Ocular Effects.
Methyl bromide	Neuropathy.
Methyl chloride	Narcosis.
Methyl ethyl ketone	Sensory Irritation.
Methyl formate	Analogy.
Methyl isobutyl carbinol	Sensory Irritation.
alpha-Methyl styrene	Sensory Irritation.
Morpholine	Analogy.
Naphthalene	Ocular Effects.
Nitric acid	Analogy.
2-Nitropropane	Cancer.
Nitrotoluene	Analogy.
Nonane	Analogy.
Octane	Narcosis.
n-Pentane	Narcosis.
Perchloroethylene	Cancer.
Phosphoric acid	Sensory Irritation.
Phthalic anhydride	Analogy.
Propionic acid	Analogy.
n-Propyl acetate	Analogy.
n-Propyl alcohol	Analogy.
Propylene dichloride	Liver and Kidney Effects.
Propylene glycol monomethyl ether.	Sensory Irritation.
Propylene oxide	Analogy.
Styrene	Narcosis.
Sulfur dioxide	Respiratory Effects.
1,1,2,2-Tetrachloroethane.	Liver and Kidney Effects.
Tetrahydrofuran	Sensory Irritation.
Toluene	Narcosis.
Toluene 2,4-Diisocyanate	Sensitization.
1,2,4-Trichlorobenzene	Sensory Irritation.
Trichloroethylene	Narcosis.
1,2,3-Trichloropropane	Liver and Kidney Effects.

TABLE V-C7.—BULK LIQUID CARGOES COVERED BY THE PROPOSED RULE—Continued

Substance	Primary basis for limit
Triethylamine	Sensory Irritation.
Trimethyl phosphite	Miscellaneous Effects.
n-Valeraldehyde	Analogy.
Vinyl acetate	Sensory Irritation.
Vinylidene chloride	Systemic Toxicity.
Xylene (o-, m-, p-isomers).	Sensory Irritation.

Because an employee may be exposed to more than one substance in a given industry, aggregate estimates of the size of the exposed population are presented as an average of minimum and maximum estimates of potential and overexposures. Maximum estimates of the size of the exposed population assume that no employee is exposed to more than one substance; minimum estimates assume the greatest possible extent of multiple chemical exposure. When minimum and maximum estimates are averaged, the result is OSHA's best estimates of actual exposures. For the shipbuilding and repairing industry, the minimum and maximum estimates of potentially exposed workers are 5,856 and 49,040, respectively. The minimum and maximum estimates of the number of workers overexposed are 1,245 and 4,315. OSHA's best estimates of the actual number of potentially exposed and overexposed workers are 27,448 and 2,780, respectively.

The majority of overexposures are to welding fumes and methyl isoamyl ketone. The activities for which these exposures occur are welding and painting. OSHA believes that overexposures may occur during grinding operations. IMIS data, however, do not provide documentation to support this. OSHA requests information on this subject.

TABLE V-C8.—POTENTIAL AND OVER EXPOSURES SIC 3731

Substance	Assessment from IMIS		Assessment from survey		Combined Assessment	
	Workers potentially exposed	Workers above limits	Workers potentially exposed	Workers above limits	Workers potentially exposed	Workers above limits
Acetone	785	0			785	0
2-Butanone (MEK)	1,132	0			1,132	0
2-Butoxyethanol	270	0			270	0
N-Butyl Alcohol	286	38			286	38
N-Butyl Glycidyl Ether	74	0			74	0
Carbon Monoxide	654	0			654	0
Cobalt, Metal, Fume & Dust	5,856	325			5,856	325
Cyclohexanone	366	366			366	366
Epichlorohydrin	225	0			225	0
Hexone	88	0			88	0
Methyl Isoamyl Ketone	1,719	1,031			1,719	1,031
Molybdenum, Insoluble	5,621	0			5,621	0
Naphthalene	75	0			75	0
Nickel (Soluble Compounds)	3,153	104			3,153	104
Petroleum Distillates	1,935	0			1,935	0
Stoddard Solvent	1,875	625	1,012	144	1,444	385
Styrene	4,040	735			4,040	735
Toluene	244	0			244	0
Trimellitic Anhydride	20	10			20	10
Trimethyl Benzene	966	0			966	0
Vanadium (V205) Dust	5,570	0			5,570	0
Vanadium (V205) Fume	5,583	0			5,583	0
Welding Fumes	2,822	1,162	3,036	1,328	2,929	1,245
Xylene (o-, m- and p-isomers	619	0	7,084	0	3,852	0
Zinc Oxide Fume	1,610	153	1,012	0	1,311	77
Bulk Liquid Cargoes*	843	0			843	0

*The 843 workers in this category represent tank cleaners which may be potentially exposed to bulk liquid cargoes listed in Table V-C7.
Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

When the MEL methodology was used (instead of single or specific substance exposure incident data described above) 22,267 workers were estimated to be potentially exposed to one or more substances affected by the proposed rule, and 2,717 workers had exposures which exceeded proposed PELs or MELs. About 734 of these overexposures exceeded the MEL without exceeding individual PELs. The MEL approach resulted in slightly less control technology and cost than controls needed for specific substance incidents. The reason for electing the more conservative substance specific cost methodology was influenced by the need to develop substance specific benefits.

Since overexposure results from the application of a mathematical formula, the attribution of health effects (and consequently benefits) becomes a problem. There is very little health science data on the combination effects of chemicals acting synergistically (formaldehyde and wood dust, asbestos and tobacco smoke are notable exceptions). Traditionally the health effects related to individual substances have provided the basis with which to develop potential benefits of proposed OSHA rules. The potential benefits of avoiding MEL overexposure are very difficult to quantify since individual substances within a mixture often produce different health effects. There is a practical problem of correctly apportioning risk reduction factors across all chemicals in a mixture. While mathematically possible, it is unclear that health science can provide guidance as to what risk reduction factors can be assigned to the individual components in a mixture. Absent this guidance, OSHA focused on risks posed by individual substances and has made benefit projections on this basis. This focus on individual substances influenced the cost methodology and insured consistency on the separate sides of the cost to benefit equation (i.e., costs related to individual substance control and benefits unique to individual substance exposures).

On balance, this approach probably has the effect of slightly exaggerating estimated costs of the proposed PELs. Benefits may also be exaggerated to the extent that multiple overexposures are concentrated on a few workers (the methodology adopted assumes they are not). As health science advances, and the true risk of mixture exposures becomes better defined, future analysis may find higher risk and, as a result, potential benefits in reducing MEL overexposures.

SIC 4491

Exposure potentials exist from the loading and unloading of a wide variety of commodities.

Risks of exposure during the loading and unloading of containerized cargoes exist only if there is a breakage. Leaks in containerized cargoes are rare. If a leak does occur, all longshoremen are removed from the site and specialists are called in to clean up the spills.

There is also little risk of worker exposure to hazardous substances during the loading and unloading of bulk liquid cargoes. The loading or unloading of liquid cargoes involves connecting pipes from the valve of the tank holding the cargo to the valve of the tank to which the cargo is to be loaded. The valves are opened and the cargo is pumped only after hook-up is complete. The operation of the pumps is done from a console located away from the deck. Stevedores are involved only in the hook-up and disconnection of the pipelines and are not required to be present during the actual transfer of cargo. Any potential exposures would be negligible and of short durations.

The loading and unloading of dry bulk cargoes creates a potential for exposure to various dusts, fumigants and pesticides. The loading and unloading of grain, for example, creates a potential for exposure to grain dust, as well as to any pesticide or fumigant applied to the grain. Generally, grain handling poses little hazard to stevedores. Grain is usually loaded using a system of conveyors and chutes or spouts. Grain is

moved by electric conveyor from dock to ship and dropped through the spout into the hold of the ship [2]. This procedure may take several days, depending on the size of the cargo. Besides someone to observe the grain loading, no other workers are involved during this procedure. Workers may be called upon to level the grain in the hold of a vessel only after the grain is loaded. Any exposures to grain dust would be of short duration. A potential does exist for overexposures to occur during the breakdown of conveyors or other equipment necessary in this loading procedure. However, OSHA has no evidence of any overexposures and requests additional information.

There has been concern about worker exposures to fumigants, such as ethylene dibromide (EDB), which are known carcinogens or known to cause serious illnesses such as permanent liver and kidney diseases [3]. However, risks of exposures have declined dramatically since the move away from liquid applications of pesticides and fumigants and the banning of EDB use in the United States. Phosphine and methyl bromide are the fumigants commonly used in grain handling which are affected by the proposed rulemaking. These substances are in the form of pellets which are dropped through tubes into the grain in the hold of a vessel. The pellets dissipate while the cargo is in transit. This procedure for pesticide/fumigant application greatly reduces the risk of exposure to fumigants and pesticides.

Roughly 79 million tons of grain are handled by stevedores each year. The average handling rate per stevedore work hour for conveyor loading is 96.2 tons. Applying this rate to the total tonnage handled and assuming a 2,000 hour work-year yields 411 full-time equivalent workers potentially exposed to grain dust, phosphine and methyl bromide each year. No stevedores are likely to be overexposed to these substances.

Significant exposures exist during RO–RO and forklift operations. Of the substances affected by the proposed rulemaking, the most significant exposures in the marine cargo handling industry are to carbon monoxide and portland cement.

The RO–RO method of loading and unloading creates a risk of exposure to substances such as carbon monoxide and carbon dioxide. Carbon monoxide exposures are the most significant. According to Kearney/Centaur approximately 1,847 full-time equivalent employees are involved in RO–RO operations. Most RO–RO ships have good ventilation systems which reduce carbon monoxide levels.

The loading and unloading of break bulk cargoes involving the use of forklifts also create a potential for exposure to carbon monoxide. Although most break bulk ships are well ventilated, some older break bulk ships lack sufficient ventilation. There has, however, been a move towards the use of electric and diesel powered forklifts. There are roughly 2,000 full-time equivalent workers involved in forklift operations.

OSHA estimates that, under existing conditions, approximately 20 percent of RO–RO and forklift operators would not be in compliance with the proposed PEL for carbon monoxide. IMIS data support this estimate. Applying this percentage to the 3,847 full-time equivalent workers potentially exposed to carbon monoxide yields 769 overexposed workers.

Overexposures to portland cement are likely to occur during the unloading of dry bulk cement. Approximately 24.1 million tons of building cement are unloaded each year. Of this amount, roughly 90 percent (21.7 million tons) is shipped in dry bulk cargo form. Dry bulk cement is unloaded either by pneumatic means (vacuums) or by clamshell buckets. Roughly 98 percent of the tonnage (21.3 million tons) is vacuumed and 2 percent (0.4 million tons) is unloaded by clamshell.

The average handling rate per stevedore work-hour is 96.2 tons per hour for dry bulk operations and 45.9 for clamshell operations. Applying these rates to their respective tonnages and assuming a 2,000 hour work-year yields 115 full-time equivalent workers potentially exposed to portland cement each year. OSHA believes that roughly 50 percent of these workers would be under the proposed PEL for portland cement, leaving 58 full-time equivalent workers overexposed.

Potential exposures also exist during the loading of dry bulk cement. Approximately 10.5 million tons of building cement are loaded each year. Of this amount, roughly 9.5 million tons are in dry bulk cargo form. Applying the 96.2 tons/hour handling rate yields about 49 full-time equivalent workers potentially exposed to portland cement annually. None of these workers are likely to be overexposed.

Once the cargo is loaded or unloaded, the hold is usually either cleaned in preparation for new cargo, or trimmed to level the cargo in the hold. Approximately 31.2 million tons of bulk cement were loaded or unloaded in 1989. The average barge or bulk cargo ship has four holds and carries 30,000 tons. Assuming that it takes three workers and 2.5 hours/worker to clean or trim a hold, 16 full-time equivalent workers are potentially exposed to portland cement. Roughly 8 of these workers are estimated to be overexposed.

TABLE V–C9.—POTENTIAL AND OVER EXPOSURES SIC 4491

Substance	Process	Primary basis for limit	Potential exposures (FTE workers)	Over exposures
Carbon Monoxide	RO—RO Operations	Biochemical/Metabolic Effects	3,847	769
	Forklift Operations			
Coal Dust	Sweeping/Trimming	Respiratory Effects	2,673	0
Cobalt, Metal, Fume and Dust	Longshoring	Sensitization	2,735	0
Grain Dust	Grain Handling	Respiratory Effects	411	0
Hydrogen Fluoride	Longshoring	Sensory Irritation	2,317	0
Methyl Bromide	Grain Handling	Neuropathy	411	0
Phosphine	Grain Handling	Systemic Toxicity	411	0
Portland Cement	Dry Bulk Cement Handling	Physical Irritation	160	66
Vanadium (V205) Dust	Longshoring	Sensory Irritation	97	0
Total			13,062	835

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Based on IMIS data, consultation with industry experts and data compiled by consultants under contract with OSHA, other exposures are likely to exist in addition to those mentioned above. These include exposures during various other bulk cargo handling activities; these estimates are shown in Table V–C9, along with the exposures discussed earlier.

Summary

As shown in Table V–C10, there are an estimated 40,530 workers potentially exposed and 3,615 workers overexposed to substances affected by the proposed rulemaking.

TABLE V–C10.—SUMMARY OF POTENTIAL AND OVER EXPOSURES MARITIME INDUSTRY

Industry sector	Potential exposures	Over exposures
Shipbuilding and Repairing SIC 3731	27,448	2,780
Marine Cargo Handling SIC 4491	13,082	835
Total	40,530	3,615

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

BENEFITS

Illnesses

Illness rates are derived from the 1989 BLS Occupational Injuries and Illnesses data base. These rates are expressed as the annual number of illnesses per 100 full-time equivalent employees. Reducing employee exposures to hazardous substances to levels below those associated with adverse health effects will result in a decrease in the number of illnesses.

OSHA estimated the number of annual illnesses that would be averted by applying current rates to the estimated number of overexposed workers in each SIC.

Based on the Bureau of Labor Statistics 1989 publication of Occupational Injuries and Illnesses in the United States, the occupational illness rate for the shipbuilding and repairing industry is 5.8 per 100 full-time workers (total cases) and 1.8 per 100 full-time workers (lost workday cases). Approximately 30 percent of the illnesses represented by these illness rates (1.74 total and 0.54 lost workday) are addressed by the proposed rule, while 70 percent of the illnesses are the result of physical agents, repetitive motion, etc. The illness rates published by BLS only include cases documented and recorded by employers. In addition, a large number of chronic illnesses resulting from exposures in the workplace may never be reported, since long latency periods make it difficult for employers and physicians to diagnose illnesses as being work related. Illness rates, therefore, tend to understate the actual number of occupationally related illnesses. OSHA's best estimate is that these illness rates may understate the actual number of occupationally related illnesses by a factor of 5.

Applying these illness rates to the average number of overexposed workers in SIC 3731 yields 242 total illnesses, of which 75 are lost workday cases. OSHA's best estimate is that 80 percent (194 total and 60 lost workday) of these illnesses would be avoided annually as a result of the proposed rule.

The occupational illness rate for the marine cargo handling industry is reported to be 0.2 per 100 full-time workers (total cases) and 0.1 per 100 full-time workers (lost workday cases). Approximately 40 percent of the illnesses accounted for are addressed by the proposed standard. A factor of 5 was applied to these illness rates to account for the understatement.

Applying the illness incidence rates to the number of overexposed workers in SIC 4491 yields 3 total illnesses, 2 of which are lost workday cases. Assuming an 80 percent effectiveness rate, the proposed rule should prevent 2 lost workday illnesses.

The estimated number of annual illnesses prevented by the proposed rule for both industry subsectors are presented in Table V–C11. In addition to OSHA's best estimate of an 80 percent effectiveness level, a sensitivity analysis using 70 percent and 90 percent effectiveness rates is also presented.

Fatalities

TABLE V–C11.—REDUCTION IN ILLNESSES

Industry subsector SIC code	Number of illnesses resulting from exposures		Illnesses prevented by effectiveness					
			70%		80%		90%	
	Total	LWD	TL	LWD	TL	LWD	TL	LWD
Shipbuilding and Repairing SIC 3731	242	75	169	53	194	60	218	68
Marine Cargo Handling SIC 4491	3	2	2	1	2	2	3	2
Total	245	77	171	54	196	62	221	69

Sources: U.S. Department of Labor, Bureau of Labor Statistics, 1989 Occupational Injuries and Illnesses in the United States.
U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

There are no statistical data on fatalities from work related illnesses in the maritime industry. However, there are studies which show that fatalities do result from exposures to substances included in OSHA's Z-Table. For example, a study of silicosis in sandblasters conducted in the early seventies showed that deaths did result from silica exposures in New Orleans shipyards [9]. Although the actual level for silica remains unchanged, OSHA believes the new formula, which is easier to understand and allows for more accurate monitoring, will increase compliance.

There are an estimated 1,245 workers overexposed to welding fumes, for which there is currently no PEL. Welding fumes often cause metal fume fever and sometimes damage the small airways, causing interstitial pneumonia at levels above the proposed PEL.

Carbon monoxide, is known to cause fatalities at exposures above the proposed PEL.

Because some substances are known to cause fatalities at high exposure levels, OSHA believes that the proposed rule will prevent fatalities. OSHA estimates that annual fatalities avoided could average 1–2 annually.

Summary

OSHA estimates that 196 total illnesses and 62 lost workday illnesses would be avoided annually as a result of the proposed rule. OSHA also believes that fatalities will be prevented as a result of the proposed rule, probably 1–2 on average, annually.

SOURCES

1. CONSAD Research Corporation. Final Report—Data to Support a Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration. Under Contract No. J–9–F–4–0024.

2. Finlay, William. Work on the Waterfront: Work Power and Technological Change in a West Coast Port. Philadelphia: Temple University Press, 1988.

3. Kearney/Centaur. Economic Assessment of Draft Revisions to OSHA Longshoring Standard. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration. Under Contract No. J–9–F–8–0032. March 1990.

4. Mahaney, Francis X. Jr. "Pesticide Exposure in Grain Industry Raises Cancer Risks." Journal of the National Cancer Institute. Vol. 82, No. 10. May 16, 1990.

5. U.S. Department of the Army. Corps of Engineers. Waterborne Commerce of the United States. 1988.

6. U.S. Department of Commerce. Bureau of the Census. County Business Patterns. 1988.

7. U.S. Department of Labor. Bureau of Labor Statistics. Employment and Earnings, 1989.

8. U.S. Department of Labor. Bureau of Labor Statistics. Occupational Injuries and Illnesses in the United States by Industry, 1988.

9. Ziskind, Morton et al., "Silicosis in Shipyard Sandblasters". International Shipyard Conference, University of Southern California School of Medicine, Dec. 13–15, 1973.

4. Assessment of Nonregulatory Alternatives

For a full discussion on the need for and the appropriateness of a regulatory solution to address occupational exposures to air contaminants, see section V.B.4. of this preamble.

5. TECHNOLOGICAL FEASIBILITY

Introduction. This section presents a technological feasibility analysis of the maritime industry's ability to meet OSHA's proposed permissible exposure limits (PELs).

The control of workplace exposures to toxic chemicals involves combining a variety of standard techniques to solve problems unique to each situation. OSHA believes that proposed levels can be met using currently available controls and equipment and work practices. Consistent with OSHA regulations and policy, this section examines the feasibility of engineering controls and work practices to control employee exposures, in preference to personal protective equipment. However, under certain circumstances, respiratory protection may be necessary.

Engineering controls. Engineering controls involve the use of local exhaust ventilation, general ventilation, isolation of the worker and enclosure of the source of emissions process modifications, equipment modifications, and substitution of non-hazardous chemicals. These methods may be used alone or in combination of any two or more controls depending upon the needs of the specific situation.

Perhaps the most widely used technique for controlling chemical exposures is the use of ventilation. General ventilation uses the movement of air within the general work space to displace or dilute the contaminant with fresh outside air. General ventilation is not typically the preferred control method in most operations due to the large volumes of air movement required. Local exhaust ventilation is concentrated on moving smaller volumes of air, exhausted from the point at which contaminants are generated thereby removing contaminants at the source.

Personal protective equipment. Where it is impractical to apply engineering or work practice controls, or where their application will not consistently reduce employee exposures below the proposed PELs, personal protective equipment such as respirators or dust masks may be used to prevent or reduce exposures.

SIC 3731: Shipbuilding and repairing. The major air contaminants in the shipbuilding and repairing industry result from welding and painting.

Welding. OSHA has determined that welding activities cause overexposures to the following substances (shown with proposed PELs):

- Cobalt, Metal, Fume & Dust (0.05 mg/m^3)
- Nickel (Soluble Compounds) (0.1 mg/m^3)
- Styrene (50 ppm or 215 mg/m^3)
- Welding Fumes (5 mg/m^3)
- Zinc Oxide Fume (10 mg/m^3 STEL)

OSHA believes that all of the proposed PELs for these substances can be achieved using portable, local exhaust systems comprised of a vane-axial suction fan, flexible duct, and portable capture hood.

Painting. OSHA determined that overexposures during painting activities exist for the substances shown below (with their proposed PELs):

- N–Butyl Alcohol (50 ppm (C) or 150 mg/m^3(C) SKIN)
- Cyclohexanone (25 ppm or 100 mg/m^3 SKIN)
- Methyl Isoamyl Ketone (50 ppm or 240 mg/m^3)
- Stoddard Solvent (100 ppm or 525 mg/m^3)

OSHA believes that the proposed PELs for painters can be met by using a portable exhaust system consisting of a vane-axial suction fan, flexible duct, and portable capture hood. In cases where ventilation cannot maintain the chemical concentration below the PEL, painters would require respirators. Gloves should be worn to reduce dermal exposure to substances for which OSHA has a skin notation.

Other exposures. OSHA also estimated that a very small number of plastics fabricators are overexposed to trimellitic anhydride which has a PEL of 0.005 ppm or 0.04 mg/m^3. This PEL could be achieved using engineering controls similar to those identified for welding and painting.

SIC 4491: Marine cargo handling—RO–RO operations and break bulk forklift operations. Carbon monoxide overexposures result from RO–RO and break bulk forklift operations. The new PEL for carbon monoxide is 35 ppm or 40 mg/m^3 TWA and a ceiling level of 200 ppm or 229 mg/m^3. This PEL can be achieved using a vane-axial fan and flexible duct.

Clamshell operations. Clamshell operations have been determined to cause overexposures to portland cement. Sealed lips and dust covers are available to seal the openings in the clamshell buckets through which particles are likely to escape and reach the clamshell operator. These controls should be sufficient to reduce exposures below the proposed 10 mg/m^3 total dust and 5 mg/m^3 respirable fraction levels.

Trimming/hold cleaning. All overexposures which result from trimming (leveling dry bulk cargoes in hold) and cleaning holds can be brought below the proposed PELs using personal protective equipment. The use of engineering controls in these cases is believed to be impractical.

Summary. Since all proposed PELs can be achieved using currently available engineering controls and personal protective equipment, OSHA has determined that the proposed standard is technologically feasible.

6. Costs of Compliance

Introduction. Costs are related to engineering controls and personal protective equipment needed for specific processes which involve the use of hazardous substances. These costs are presented in this section. Costs of compliance result from the purchase, installation, operation and maintenance of equipment to maintain workers' exposures at or below the levels specified in the proposed standard.

Costs of Compliance. The following operations have the potential for worker overexposure and will incur costs:

SIC 3731

- Welding
- Painting/coating

SIC 4491

- Loading and Unloading of Bulk Cement

—Clamshell Operations
—Trimming/Cleaning

- Non-Electric Forklift Operations within vessels
- RO–RO operations

This section summarizes for each process: (1) The extent of current worker exposure, (2) the additional controls that will be needed to reduce worker overexposures, and (3) the costs that facilities in the maritime industry will incur to come into compliance with the proposed PELs.

SIC 3731—Welding. Welding is an integral part of the shipbuilding and repairing industry. Fumes and gases from welding and cutting cannot be easily classified. In welding procedures, the composition of the fumes is determined by the electrode or consumables themselves, coatings on the work (e.g., paint, galvanizing, or plating), contaminants in the atmosphere (e.g., halogenated hydrocarbon vapors from cleaning and degreasing activities), etc. Thus, fumes include those originating from volatilization, reaction, or oxidation of consumables, base metals and coatings, and the atmospheric contaminants. In Section 3, it was determined that welders are currently overexposed to cobalt, nickel, styrene, welding fumes and zinc oxide fume.

It is assumed that exposures are a result of welding in semi-enclosed environments (i.e. the hull of a ship). An estimated 1,612 workers or 58 percent of all overexposed workers in SIC 3731 are welders. To control these exposures, OSHA believes it will be necessary to install portable, local exhaust systems comprised of a vane-axial suction fan, flexible duct, and portable capture hood. Costs for these systems are broken down as follows: $1,850 for a vane-axial suction fan which pulls 2000 cfm and uses a 0.5 hp electric motor (including purchase, installation/hookup); $262 for the 100 feet of duct made of a flexible fiberglass coated fabric with a corrosion resistent metal helix and a 5" diameter (including purchase, installation/hookup) @ $2.62 per foot; and $150 for a portable hood with a 5"×10" outlet and a 5" diameter inlet (including purchase, installation/hookup). This results in a total investment cost of $2,262. Assuming a useful life of 5 years, and a 10 percent discount rate, the annualized cost for a portable local exhaust system is $597.

Annual costs consist of labor to move the system and manipulate the hood during welding, electricity to power the fan, and annual maintenance costs. Labor required to move a portable system into position and manipulate the hood during welding is estimated to be $780 per year, per system. This is derived by assuming that it takes 10 minutes to set up the system. If the system is set up daily throughout the year, this is equivalent to 43.33 hours a year [(10 mins./day)/(60 mins./hour)]×(5 days/week)×(52 weeks/year). Assuming the labor rate for a nonsupervisory worker in SIC 3731 with 30% benefits is $18 per/hour, the labor cost to set up the system is estimated to be $780 per year (43.33 hrs./year×$18 per/hr.). Maintenance costs are estimated to be 10% of the capital cost. In the case of this system, it is equivalent to $226 per year (0.1×$2,262).

The cost of electricity for operating the system is estimated to be approximately $39 per year. Since one horse power (hp) is equivalent to 0.746 kilowatts, the 0.5 hp generated by fan uses 0.373 kilowatts per hour. Applying the average national electricity rate of $0.05/kwh, for five days a week for the entire year, the cost is equivalent to $39 per year (0.373 kw/hr.×8 hrs./day×5 days/wk.×52 wks/yr.×$.05/kwh). The total annual operating and maintenance cost for the portable local exhaust system is calculated to be $1,045 per year ($780+$39+$226).

The total annualized investment cost plus the annual operating and maintenance cost is $1,642 per year ($597+$1,045). It was assumed that one portable local exhaust system will be needed for each of the 1,612 overexposed welders. The total annualized cost of preventing welding overexposures to substances for which new or updated PELs are proposed is estimated to be $2,646,904 (1,612 workers overexposed × $1,642 per year).

Painting and plasticizing. Painting is also an integral part of the shipbuilding and repairing industry. Chemicals present in paints or coatings are a potential source of overexposure. In Section 3, it was determined that painters are currently overexposed to several different chemicals for which new or updated PELs are being proposed. These chemicals are n-butyl alcohol, cobalt, cyclohexanone, methyl isoamyl ketone, nickel, and stoddard solvent.

(There is minimal exposure in plastics fabrication. A small number of plastics fabricators (10) in the shipbuilding industry were estimated to be over exposed to trimellitic anhydride, a colorless solid used in preparation of resins, adhesives, and polymers. The data obtained for plastics fabricators and painters are combined in this analysis since the controls required per exposed worker are roughly the same.)

Overexposures result from inadequate engineering controls or the non-use of full protection respirators. Of the workers in SIC 3731 who are overexposed to a combination of chemicals affected by the proposed rulemaking, roughly 42 percent (1,168 workers) are painters. OSHA believes that exposures can be reduced to the proposed levels using portable, local exhaust systems comprised of a vane-axial suction fan, flexible duct, and a portable capture hood. In cases where ventilation cannot maintain the chemical concentration below the proposed PEL, the painter (or plasticizer) must be provided with the proper respiratory equipment. Gloves will be necessary to reduce dermal exposure where skin notations are present. Costs for putting together a system to control exposure are broken down as follows: $1,975 for a 4,000 cfm vane-axial fan which uses a 1 hp electric motor (including purchase, installation/hookup), $262 for 100 feet of duct made of a flexible fiberglass coated fabric with a corrosion resistent metal helix and a 5" diameter (including purchase, installation/hookup) @ $2.62 per foot, and $150 for a portable hood with a 5"x10" outlet and a 5" diameter inlet (including purchase, installation/hookup). Engineering controls may not be capable of maintaining chemical concentrations below the proposed PELs in all operations. For some maintenance and repair work and work in confined spaces, full-face powered air purifying respirators will be needed to supplement engineering controls. OSHA estimates that of the 1,168 overexposed workers in this activity, roughly 30 percent will need such respiratory protection. Respirator costs are estimated to be $495 each. Engineering controls and PPE result in a total investment cost of $2,882 ($1,975+$282+$150+$495). Assuming a useful life of 5 years, and a 10 percent interest rate, the annualized cost for the system is $780.

Annual costs include labor time to move the system and manipulate the hood during painting, electricity to power the fan, and annual maintenance costs. Labor required to move the portable system for work and to manipulate the hood during painting is estimated to be $1,170 per year, per system. This is derived by assuming that 15 minutes is required to set up the system. If set up daily throughout the

year, total time is equivalent to 65 hours a year [(15 mins./day)/(60 mins./hour)]×(5 days/week)×(52 weeks/year). Assuming the labor rate for a nonsupervisory worker in SIC 3731 with 30% benefits is $18 per hour, the labor cost to set up the system is estimated to be $1,170 per year (65 hrs./year×$18 per/hr.). Maintenance costs are estimated to be 10% of the capital cost. In the case of this system, it is equivalent to $288 per year (0.1×$2,882).

The cost of electricity for operating the system is estimated to be approximately $78 per year. The 1 hp fan uses 0.746 killowatts per hour. Applying the $0.05 electricity rate and assuming that the system is operated eight hours each day for five days a week for the entire year, the cost is equivalent to $78 per year (0.746 kw/hr.×8 hrs./day×5 days/wk.×52 wks/yr.×$.05/kwh).

The total annual operating and maintenance cost for the portable local exhaust system is calculated to be $1,536 per year ($1,170+$78+$288). The total annualized investment cost plus the annual operating and maintenance cost is $2,296 per year ($760+$1,536). It is assumed that each overexposed worker will also require one full-face powered air purifying respirator. Overexposures to n-butyl alcohol and cyclohexanone will require the use of gloves to prevent dermal exposures. The unit cost for a pair of gloves is $4.33; each pair is assumed to last 5 days. Applying these rates to the 404 overexposed workers results in an annual cost of $87,466. Thus, the total annual cost of preventing painting overexposures to substances affected by the proposed rulemaking is estimated to be $2,769,194 [(1,168 workers overexposed × $2,296 per year)+$87,466].

Summary. Table V–C12 shows the compliance costs for SIC 3731. Total annualized costs are $2,646,904 for welding operations and $2,769,194 for painting. Overall cost of compliance for SIC 3731 is $5,416,098.

SIC 4491.—RO–RO and Break Bulk Forklift Operations. Carbon monoxide exposures occur during RO–RO and forklift operations which are conducted within the confines of ships lacking adequate ventilation. An estimated 769 workers are overexposed to carbon monoxide.

The control system for carbon monoxide exposures consists of a vane-axial fan, tripod, transport cart, duct storage cannister and wired supported flexible duct. The average cost of this control system is a $2,590 per unit investment cost. Amortizing this cost at 10 percent over 5 years results in an annualized investment cost of $683.

TABLE V–C12.—COMPLIANCE COSTS FOR SIC 3731 BY OPERATION

Cost	Welding	Painting		
		Respiratory protection	Skin protection	Total
One-time investment cost per unit	$2,262	$2,882	[1]	
Annualized investment cost per unit	597	760		
Annual operating and maintenance costs/unit	1,045	1,536		
Total annualized cost per unit	1,642	2,296	4.33	
Number of units required	1,612	1,168	20,200	
Total cost	$2,646,904	$2,681,728	$87,466	$5,416,098

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

The labor required to move each unit is $1,625 per year. The cost was determined assuming an average wage rate of $25, including benefits and assuming that 15 minutes is required to set up the unit [(15 mins./day)/(60 mins./hr.)×(5 days/wk.)×(52 wks./yr.)×$25/hr].

The electricity required to run each unit is $78. This cost was determined by applying the $0.05 per kwh rate to the electricity required to power the 1 hp motor of the unit [(1 hp)×(0.746 kw/hp)×(8 hrs./day)×(5 days/wk.)×(52 wks./yr.)×(0.05/kwh)]. The operating costs, estimated to be 10 percent of the investment costs, equal $259 per unit.

The annual recurring costs of compliance per unit total $1,962 ($1,625+$78+$259).

The annualized cost, per unit, to reduce exposures to carbon monoxide is $2,645 ($683+$1,962).

The average gang size for RO–RO operations and break bulk forklift operations is 12 workers, which yields approximately 64 gangs. Assuming that one control is required per gang, the total annualized cost for reducing exposures to carbon monoxide is $169,280.

Portland cement exposures. Exposures to portland cement in marine cargo handling (SIC 4491) occur during the loading and unloading of dry bulk cement. Overexposures occur during clamshell operations. An estimated 66 workers are overexposed to portland cement (58 during clamshell operations and 8 during trimming and cleaning).

Sealed lips and dust covers can be used to reduce portland cement exposures for clamshell operators. The average cost of a sealed lip and dust cover is $3,650. Amortizing this investment cost at 10 percent over 5 years yields a $963 annualized cost.

Annual maintenance and operation costs for each unit are estimated to be 10 percent of the investment cost or $365.

The annualized cost for clamshell operations, therefore, is $1,328 per unit. Assuming that 58 units will be required, the total annualized cost to reduce portland cement exposures during clamshell operations is $77,024.

Overexposures to portland cement during trimming and cleaning operations will require the use of disposable dust masks to reduce exposures. Approximately 34.6 million tons of portland cement are loaded and unloaded per year. Of this amount, about 90 percent or 31.2 million tons are transported in dry bulk cargo form. Assuming that the average barge has 4 holds and carries 30,000 tons, holds are trimmed or cleaned approximately 4,160 times per year. The average cost of a dust mask is $1.59 and an average of 3 workers are required to trim or clean each hold. This indicates that 12,480 disposable dust masks and $19,843 will be required annually to reduce exposures to portland cement.

Summary. Table V–C13 shows compliance costs for SIC 4491. Total costs are $169,280 for RO–RO and forklift operations, $77,024 for clamshell operations and $19,843 for trimming and cleaning operations. Total annualized cost for SIC 4491 is $266,147.

TABLE V–C13.—COMPLIANCE COSTS FOR SIC 4491 BY OPERATION

Cost	RO–RO/ forklift operations	Clamshell operations	Trimming/ cleaning	Total
One-time investment cost per unit	$2,590	$3,650	$0	
Annualized investment cost per unit	683	969	0	
Annual cost per unit	1,962	365	1.59	
Total annualized cost per unit	2,645	1,328	1.59	
Number of unit required	64	58	12,480	12,602
Total cost	169,280	$77,024	$19,843	$266,147

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Summary. Total costs resulting from the proposed rule are presented in Table V–C14. A total of $5,682,245 would be required annually for firms to come into compliance with the proposed PELs.

TABLE V–C14.—MARITIME INDUSTRY COSTS OF COMPLIANCE (1989 DOLLARS)

SIC group operation	Costs
SIC 3731:	
Welding	$2,646,904
Painting	2,769,194
Subtotal	5,416,098
SIC 4491:	
RO–Ro/forklift operations	169,280
Clamshell operations	77,024
Trimming/ cleaning	19,843
Subtotal	266,147
Total costs	$5,682,245

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Sources

1. CONSAD Research Corporation. Final Report—Data to Support a Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration. Under Contract No. J–9–F–4–0024.

2. Kearney/Centaur. Economic Assessment of Draft Revisions to OSHA Longshoring Standard. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration. Under Contract No. J–9–F–8–0032. March 1990.

3. Means Facility Cost Data, 1990.

4. U.S. Department of the Army. Corps of Engineers. Waterborne Commerce of the United States. 1988.

5. U.S. Department of Commerce. Bureau of the Census. County Business Patterns. 1988.

6. U.S. Department of Labor. Bureau of Labor Statistics. Employment and Earnings. 1989.

7. U.S. Department of Labor. Bureau of Labor Statistics. Occupational Injuries and Illnesses in the United States by Industry. 1988.

8. U.S. Department of Labor. "Shipboard Ventilation for Hazardous Atmospheres." Safety In Industry: Maritime Safety Data.

7. Economic Impacts

Introduction. This section will assess the economic impact of the proposed standard on firms involved in maritime operations.

Economic impact—Compliance costs. As shown in Table V–C15, compliance costs total $5,682,245, with 96% borne by shipbuilding and repairing facilities and 4% borne by longshoring facilities. The greatest portion of this dollar amount will be incurred by shipbuilding and repairing facilities to reduce welding and painting exposures to levels below the proposed PELs.

The costs per affected employee at risk for SIC 3731 and SIC 4491 are shown in Table V–C16.

Costs as a percent of revenue and profit. Revenue and profit estimates, as well as estimates of costs as percentages of revenues and profits, for the maritime industries are shown in Table V–C17. Estimates of costs as percentages of revenues are less than 0.07 percent for both industry subsectors. Compliance costs as percentages of profits for both SIC groups range from 0.09 percent and 1.13 percent, with an average of 0.75 percent.

TABLE V–C15—COMPLIANCE COSTS FOR MARITIME INDUSTRY

Industry sector	Compliance costs
SIC 3731:	
Welding	$2,646,904
Painting	2,769,194
Total SIC 3731	5,416,098
SIC 4491:	
RO–RO and forklift operations	169,280
Dry bulk cement operations	96,867
Total SIC 4491	266,147
Total	$5,682,245

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE V–C16.—UNIT COSTS PER AFFECTED EMPLOYEE AT RISK

Industry subsector	Annualized costs	Number of workers	Average cost per worker
Shipbuilding and Repairing SIC 3731	$5,416,098	125,625	$43
Marine Cargo Handling SIC 4491	266,147	57,912	5
Maritime Industry	5,682,245	183,537	31

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE V–C17.—ESTIMATED IMPACT OF COMPLIANCE COSTS ON MARITIME INDUSTRY PROFITS AND REVENUES

Maritime industry subsector	Estimated annual revenues (millions)	Estimated annual profits (millions)	Cost as percent of revenues	Cost as a percent of profits
SIC 3731	$9,053	$480	0.06	1.13
SIC 4491	6,554	282	0.00	0.09
Total	$15,607	$762	0.04	0.75

Source: 1989 Dun & Bradstreet Financial Data.
U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

These costs are clearly feasible. Most shipbuilding costs are born by the U.S. government for the purchase of warships. Federal contracts require compliance with OSHA regulations, so shipbuilding costs will be passed forward. In any event, costs are tiny in relation to sales and small in relation to profits. The ship repair costs for the civilian sector will be tiny and clearly feasible if absorbed, but are likely to be passed forward because repairs are done in the U.S. when the place of the breakdown or scheduling makes it necessary to be done here. The costs for longshoring, being so tiny as to be inconsequential, are clearly feasible.

Regulatory flexibility. Pursuant to the Regulatory Flexibility Act (Pub. L. 96–353, 94 Stat. 1164 [5 U.S.C. 60 et seq.]), the Assistant Secretary has made an assessment of the standard and has concluded that it will not have a significant impact upon a substantial number of small entities. If a small firm is defined as one that employs fewer than 20 workers, then nearly 50 percent of the firms in maritime would be classified as "small".

The important criterion of a regulatory flexibility analysis is whether the standard will impose significant costs upon small entities, whether it will have relatively greater negative impact on small entities than on large ones, and whether it will benefit large firms, thereby putting small firms at a competitive disadvantage.

If the costs of compliance for small firms are relatively minor and proportional to the size of the firm, then there is no significant differential effect. The standard does not require any significant capital expenditures, and the compliance costs will tend to be proportional to the level of employment. The analysis showed that declines in profitability expected to result from the rule are not expected to be significant.

Any differential impact on small firms is expected to be insignificant in view of the very small magnitude of compliance costs relative to the overall operating costs for all firms. The significance of the differential impact on profits is further reduced by the likelihood that all firms in the industry should be able to pass a substantial portion of their compliance costs on to consumers. For these reasons, OSHA concludes that small entities will not be significantly affected by the standard.

Other Effects

International trade. The standard is not likely to have any effect on international trade because of the extremely small magnitude of any price increase that will be required for passing forward compliance costs.

Environmental. The rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and OSHA's DOL NEPA Procedures (29 CFR part 11).

The OSHA standard contains provisions for reducing exposures to hazardous substances, and is not expected to have any significant environmental effects.

Sources

1. Dun and Bradstreet Financial Data. 1989.
2. Kearney/Centaur. *Economic Assessment of Draft Revisions to OSHA Longshoring Standard.* Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration. Under Contract No. J–9–F–8–0032. March 1990.
3. U.S. Department of Commerce. Bureau of the Census. *County Business Patterns.* 1988.
4. U.S. Department of Labor. Bureau of Labor Statistic. *Employment and Earnings.* 1989.

D. Preliminary Regulatory Analysis for Agriculture

1. Industry Profile

Introduction. This chapter examines sectors affected by the proposed permissible exposure limit (PEL) update for Agriculture. Based upon a review of several sources, it has been determined that over 782,000 workers, employed at approximately 74,000 establishments, within SICs 01–09, are at risk of potential exposure to substances found on OSHA's Z tables. This chapter summarizes the affected sectors and presents an industry profile detailing the number of establishments, employment and financial characteristics of establishments potentially affected by OSHA's proposed rule. Specifically considered in this industry profile are establishments categorized within SIC 01, agricultural crop production; 02, agricultural livestock production; and 07, agricultural services. Forestry, 08 and fishing, hunting and trapping, 09 are also covered in this report.

Introducing permissible exposure limits in agriculture will not only bring the United States into line with such countries as the United Kingdom and the Federal Republic of Germany regarding the protection of agricultural workers from airborne contaminants, but it will provide consistency in coverage and protection to all U.S. workers from airborne contaminants.

Profile. Industries involved SICs 01 through 09 in the United States are composed of a large group of diverse establishments, all of which are engaged in various aspects of production and service. The establishments range in physical size from a few acres to thousands of acres, and their purpose and organization can be vastly different (ranging from a small dairy farm in Maine to a huge wheat farm in Kansas).

Concerning the agricultural sector, a continuing trend has been a reduction in the number of employees necessary for operations through increased reliance on automation. Although this trend has leveled off in the past few years, the net result has been that a few large producers with many employees account for a very large share of total production.

Summary of affected establishments and population at risk. Estimates of the number of establishments potentially affected by the proposed standard were developed by Meridian Research Inc.[1], based on the *Census of Agriculture*[2], Farm Labor[3], and the *Agricultural Work Force of 1987*[4]. Due to the seasonality of agricultural production and the inability to obtain data which precisely identified the number of agricultural establishments employing more than 10 workers at any one time during the year, SIC groups affected by the proposal were separated into two sections, (1) agricultural production and (2) agricultural services, forestry, fishing, hunting and trapping.

Agricultural Production

Cash Grains. For the grain sector (SIC 011), the number of workers on large farms was derived by relying on information describing labor requirements for grain production and a size breakout of the industry by acreage. Between 1981 and 1985, 3 hours of labor were required to produce and harvest 1 acre of grain[5]. Knowing that employees at grain facilities work an average of 10 hours per day and 90 days per year[2], it is estimated that a workforce of 11 employees can be expected to produce and harvest 3,300 acres of grain. Applying this figure to statistics from the 1987 Census of Agriculture[2] it is estimated that there were 576 grain farms with over 3,000 acres or more in 1987, representing .1 percent of all grain farm establishments. Because estimates of employment on large farms are not available from any

published sources, it is assumed that each of the large grain farms employed slightly more than 11 employees in 1987, this equates to approximately 6,350 workers.

Crops Other Than Grain. To calculate the estimated number of potentially exposed workers and establishments in crops other than grain (SICs 013 through 018), estimates developed in support of OSHA's Field Sanitation standard were used[6]. Table V–D1 shows the estimated number of workers and establishments presented for SIC codes 013 through 018 in the Regulatory Impact Analysis for the Field Sanitation standard. It is estimated that 492,000 employees work on the estimated 58,000 farms that employ 11 or more workers in these sectors.

For the livestock-producing sectors (SICs 021 through 029), the same methodology used to estimate worker population and establishment numbers in the grain sector was relied on. Meridian based its estimates on the amount of labor required per unit of production.

Beef Cattle. It is estimated there are 34,200 employees working on 1,710 cow-calf production establishments which employ more than 10 workers. This figure is based on the estimate that it requires 7.16 hours of hired labor to produce each calf or feeder cow[7]; farmhands work an average of 157 days per year and 10 hours per day[7]; and according to the 1987 Census of Agriculture[2], there are an estimated 1,710 calf establishments that sold 2,500 or more cows each in 1987. Based on these figures, Meridian estimated that a farm employing roughly 11 employees would be capable of producing approximately 2,400 cows each year (2,400=11 employees×157 days/year×10 hours/day×1 cow/7.16 hours). Because this is roughly equivalent to the base production capacity of the 1,710 farms identified by the Bureau of the Census, it is estimated there are 1,710 farms in cow-calf production establishments employing more than 10 workers.

Based on the labor required to operate large commercial feedlots it is estimated that 9,000 workers are employed on the estimated 300 feedlots likely to employ 11 or more workers. Approximately 1 employee is necessary for every 1,000 head of cattle in inventory, (based on Meridian's personal communication with a livestock commodities specialist, USDA Economic Research Service 1991). Hence, a feedlot which employs 11 or more workers is likely to have the feedlot capacity to accommodate over 11,000 cattle. Based on data from Schertz[9], 422 feedlots had a capacity of 8,000 or more head, of these, 140 had a capacity from 16,000 to 31,999 head and 61 had a capacity over 32,000 head. From this data, it is reasonable to assume 300 feedlots have a capacity of 11,000 head or more and thus are likely to employ 11 or more workers. Because it is believed that an average of 30 workers are employed on large feedlots (representing an average feedlot capacity of 30,000 head), it is estimated that a total of 9,000 workers are employed on the 300 establishments likely to employ more than 10 workers.

Dairy Farms. Dairy farm employment and establishment estimates were derived from data reported in the 1987 Census of Agriculture[2], Agricultural Statistics 1986[5] and information from site visits by OSHA's contractor Meridian. Using a methodology based on sales, it is estimated that there are 700 dairy farms employing 10,500 workers. Meridian estimated that an average dairy farm which has more than 10 employees has sales greater than $2 million[1]. Because the 1987 Census of Agriculture[2] does not estimate the number of dairy farms with annual sales of $2 million or more, Meridian used data on the number of farms with sales between $.5 and $1 million (2,940) and the number of farms with sales in excess of $1 million (1,457). Based on a straight line basis, it was estimated that in 1987 there were 700 farms with sales over $2 million (1,457/2) (farms in excess of $1 million are roughly half the farms with sales between $.5 and $1 million; therefore, it is assumed that farms with sales over $2 million are roughly half the number of farms with sales in excess of $1 million). Assuming each farm employs an average of 15 employees[1] it is estimated there are 10,500 workers employed at the 700 dairy farms which employ more than 10 persons.

Hog Farms. It was estimated by Meridian that there are currently only 10 hog farms in the United States which employ 11 or more workers each. This is based on data by Schertz[9] who estimated that there were 10 exceptional U.S. hog producing facilities (those which produce more than 30,000 head per year). It is believed that since 1979, this number has not changed because the number of farms in the 1987 Census of Agriculture[2] found in the 5,000 head plus category has not substantially increased. Based on site visit data, it is assumed that an average of 39 workers are employed at each of the large facilities. Hence, the total number of workers employed at these 10 large farms is estimated to be 390.

Poultry and Egg Producing Facilities. Because only one person-year of labor is required to produce approximately 150,000 to 200,000 broiler chickens or 50,000 to 60,000 turkeys each year[9] it is believed a poultry farm employing 11 or more workers would be capable of producing 2 million broilers annually. Data on chicken and turkey producing facilities indicate that no facilities exist in the United States which are of this size. It was determined, however, that 11 or more workers are occasionally engaged in bird catching operations at poultry farms, but that the bird catchers actually work for poultry processors (e.g., for firms such as Perdue or Holly Farms, which are classified in general industry rather than agriculture).

It is estimated that there are 15 chicken egg farms employing a total of 450 workers that fall into the scope of this study. These estimations are based on information that an egg farm employing 11 or more workers would be capable of housing half a million to several million chickens a year and would employ an average of 30 workers[9] (personal communication with poultry specialist from the North Carolina Agricultural Extension Service). Currently, there are approximately 15 such facilities in the United States. Therefore, it is believed these establishments employ roughly 450 workers (15 x 30).

From Table V–D1 the estimated number of farms and the number of workers employed in the agricultural production sector that would be affected by the proposal are shown to be 63,792 and 570,890 respectively. In addition, Table V–D1 shows the types of establishments, the number of employees and the number of establishments expected to fall under the scope of the proposed rule by primary SIC (determined by the commodity which accounts for at least 50 percent of the value of the farm's sales). In reviewing Table V–D1, it is interesting to note that the total number of farms is roughly equivalent to the total number of workers. One explanation for this is many of the small farms are operated by individuals whose major source of income is derived from non-farm activities, in which case their establishment may be classified as a farm, but they may not be classified as a farm worker. Also, non-paid workers on farms, eg. family members, are not counted by the sources from which the estimates were derived. Affected establishments are not divided into small or large sizes because when concerned with agriculture, the proposed rule is restricted to farms with more than 10 employees. Farms with more than 10 employees are considered large farms.

TABLE V-D1.—ESTIMATED NUMBER OF FARM WORKERS EMPLOYED ON ESTABLISHMENTS WITH MORE THAN 10 WORKERS, BY TYPE OF FARM

Principal product [1] and corresponding SIC [2]	Total number of farms [1]	Number of workers	Estimated number of farms likely to employ more than 10 workers	Estimated number of farmworkers employed on farms with more than 10 employees
Grain:				
011 Cash Grains	458,396	558,000	576	6,350
0111 Wheat	65,126			
0112 Rice	7,396			
0115 Corn	125,557			
0116 Soybeans	125,533			
0119 Cash Grains NEC	134,784			
Cotton:				
0131 Cotton	27,674	105,000	650	[3] 9,000
Tobacco:				
0132 Tobacco	87,776	136,000	19,225	[3] 98,000
Other Crops:				
013 Other Field Crops	128,178	317,000	1,600	[3] 33,000
0133 Sugarcane	4,625			
0134 Irish Potatoes	5,168			
0139 Field Crops NEC	116,385			
Vegetables and Melons:				
016 Vegetables & Melons	28,801	178,000	8,165	[3] 137,000
Fruits and Tree Nuts:				
017 Fruits & Tree Nuts	88,323	240,000	22,267	[3] 175,000
0171 Berry Crops	7,905			
0172 Grapes	11,375			
0173 Tree Nuts	14,364			
0174 Citrus Fruits	14,163			
0175 Deciduous Tree Fruits	21,547			
0179 Fruits & Nuts NEC	18,969			
Horticultural Specialty:				
018 Horticultural Specialty	31,469	99,000	5,954	[3] 40,000
0181 Ornamental Floriculture and Nursery Products	30,573			
0182 Food Crops Grown Under Cover	896			
Livestock except dairy, poultry, and animal specialties				
021 Beef Cattle	892,267	407,000		
0211 Beef Cattle, feedlot	72,515		[4] 300	[4] 9,000
0212 Beef Cattle, except feedlot	643,831		[4] 1,710	[4] 34,200
0213 Hogs	107,929		[4] 10	[4] 390
0214 Sheep & Goats	32,385			
0219 General Livestock	35,607			
Dairy Farms:				
024 Dairy Farms	138,311	259,000	[4] 700	[4] 10,500
Poultry and Eggs:				
025 Poultry & Eggs	38,494		[4] 0	
0251 Broiler Fryer	19,264		[4] 15	[4] 450
0242 Chicken Eggs	13,343			
0253 Turkey & Turkey Eggs	3,239			
0254 Poultry Hatcheries	385			
0259 Poultry & Eggs NEC	2,263			
Animal Specialties:				
027 Animal Specialties	87,855			
0271 Fur-bearing & Rabbits	2,652			
0272 Horses and Other Equine	75,393			
0273 Animal Aquaculture	2,089			
0279 Animal Specialties NEC	7,721			
Other Crops and Livestock:				
019 and 029 General Farms	80,215	162,000	2,600	18,000
0191 General Farms, Primarily Crops	57,888			
0291 General Farms, Primarily Livestock	22,327			
Total	2,087,759	2,461,000	63,792	570,890

[1] Source: USDA Farm Labor Survey [2]. Numbers may not compute due to rounding.
[2] Source: *1987 Census of Agriculture* [3].
[3] Based on RIA for Field Sanitation Standard [6].
[4] Based on *1987 Census of Agriculture, Economic Indicators of the Farm Sector, 1985, Agricultural Statistics, 1988*, site visit reports, and telephone interviews with USDA experts. Source of Table: Meridian Research Inc., [1].

Financial Profile. Financial data are not broken out for farms with more than 10 employees; however, Meridian used data profiling the largest farms as a proxy for those farms employing more than 10. Table V–D2 shows aggregate net farm income and the relative share of total income earned by each sales class. Farms with sales in excess of $250,000 per year, the farm category most likely to have more than 10 employees at any time during the year, accounted for 63.2 percent of net farm income in 1988.

Table V–D3 depicts average farm balance sheet data by farm sales size. In general, while debt/asset ratios are highest for the largest farms, which may indicate a weaker financial position, their return on assets is much higher than smaller farms.

TABLE V–D2.—AGGREGATE AND AVERAGE PER FARM NET INCOME BY SALES CATEGORY, 1988

Sales category (annual sales/farm)	Aggregate net farm income		Number of farms (in 000s)	Average per farm, 000s		
	Billions of dollars	Percent of total		Gross income	Production costs	Net income
$500,000 and up	21.6	43.3	30	1,907.6	1,195.2	712.4
$250,000 to $499,999	9.9	19.8	76	409.1	279.2	129.9
$100,000 to $249,999	10.8	21.6	216	184.4	134.5	49.9
$40,000 to $99,999	5.6	11.2	320	82.8	63.4	19.4
<$39,999	2.0	4.0	1,554	16.9	15.7	1.2
Total	49.9	100.0	2,196			

TABLE V–D3.—AVERAGE FARM BALANCE SHEETS (IN 000S) AND DEBT/ASSET RATIOS, BY FARM SALES CLASS, 1988

Item	Farm Sales Class				
	>$500,000	$250,000 to $499,999	$100,000 to $249,999	$40,000 to $99,999	<$39,999
Assets:					
Real Estate	2,452.5	1,079.5	589.1	325.6	101.4
Livestock, Crops	501.5	182.1	100.2	57.5	14.6
Machinery	219.1	128.6	85.8	51.5	14.9
Liquid Assets	22.3	18.6	6.1	4.8	3.5
Other	275.3	58.9	26.5	11.8	2.0
Total	3,470.7	1,467.7	807.7	451.2	136.4
Debt:					
Real Estate	472.2	167.6	87.7	44.4	10.6
Other	580.0	134.4	64.1	30.8	6.5
Total	1,052.2	302.0	151.8	75.2	17.1
Equity	2,418.5	1,165.7	655.9	376.0	119.3
Debt/Asset Ratio	0.303	0.205	0.188	0.166	0.125
Return on Assets	0.205	0.088	0.062	0.043	0.010

Source (Table V–D2) Meridian Research Inc., Exhibit 2–7[1]
Source (fTable V–D34 Meridian Research Inc., Exhibit 2–8[1].
Numbers may not compute due to rounding.

Agricultural Services, Forestry, Fishing, Hunting and Trapping. Agricultural Services include establishments in SIC 07 primarily engaged in performing soil preparation services, crop services such as cotton ginning, other animal services, farm labor and management services, and landscape and horticultural services for others on a contract or fee basis.

Forestry includes establishments in SIC 08 primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation services and the gathering of gums, barks, balsam needles, maple sap, moss, and other forest products.

Fishing, hunting and trapping includes establishments in SIC 09 primarily engaged in the catching or taking of finfish, the catching or taking of shellfish, the operation of fish hatcheries or preserves, commercial hunting and trapping, and the operation of game preserves.

For most operations in SIC 07 through 09, OSHA's proposed rule would not have an adverse impact. Many of these operations do not involve PEL chemicals, do not give rise to potentially hazardous exposures, or are covered by EPA regulations.

A summary of the number of establishments in SICs 07 through 09, taken from County Business Patterns[7], is presented in Table V–D4. Forestry, fishing, hunting and trapping are considered by OSHA to be exclusive of agriculture and hence not restricted by the congressional rider restricting OSHA's jurisdiction to agricultural establishments with more than 10 persons. For this reason, the number of establishments and employees for SICs 08 and 09 under the establishments with 10 or more employees heading does not reflect the subtraction of establishments with 10 or fewer employees. Within sectors SICs 07–09, the dominant subsector is landscape and horticultural services (SIC 0781, 0782, and 0783). Estimates of the number of establishments and employees potentially affected by the proposed rule are presented in Table V–D5. As indicated on Table V–D5, approximately 10,000 establishments and 218,172 employees are likely to be affected by the proposed rule. Total annual payroll for these establishments is nearly $2.7 billion, or an average of $270,000 per establishment. Financial information on agricultural services and forestry was compiled by Meridian from Dun and Bradstreet's Industry Norms and Key Business Ratios[10] to give a general overview of the entire industry (data on 0831, Forest Nurseries and Gathering of Forest Products, were not available). Financial data for fishing, hunting and trapping was gathered from Dun and Bradstreet's Industry Statistics and Financial Analysis[11]. These 1989 data do not include all establishments within the industry, but instead represent only a sample. Table V–D6 presents totals for reporting firms within each four-digit-subgroup. Fishing, hunting and trapping has the largest return on assets (16.5%), followed by cotton ginning (11%) and lawn and garden services (10.7%).

TABLE V-D4.—NUMBER OF AGRICULTURAL SERVICE AND FORESTRY ESTABLISHMENTS IN 1987, BY SIC

Type of establishment (SIC)	No. of establishments	Percent of all establishments
Agricultural Services:		
Soil Preparation Services (071)	581	1
Crop Services (072)	3,309	6
Animal Services, except veterinary (075)	6,886	13
Farm Management Services (0762)	506	1
Landscape and Horticultural Services (078)	40,543	76
Forestry (08):	1,796	3
Fishing, Hunting and Trapping (09)	1,826	4
Total	55,447	106

Source: Meridian Research Inc., Table 2-10[1].

TABLE V-D5.—NUMBER OF ESTABLISHMENTS, EMPLOYMENT, AND PAYROLL FOR AGRICULTURAL SERVICES AND FORESTRY, 1987

Industry (SIC)	Total industry		Establishments employing 10 or more [1]		
	No. of establishments	No. of employees	No. of establishments	No. of employees	Annual payroll ($ mil.)
Soil Preparation Services (0711):	581	4,498	104	3,212	50.7
Crop Services (0721, 0722, 0723, 0724)	3,309	33,271	664	26,516	346.5
Animal Services (0751, 0752)	6,886	31,510	663	16,049	217.3
Farm Management Services (0762)	506	4,059	93	3,110	46.3
Landscape and Horticultural Services (0781, 0782, 0783)	40,543	216,965	4,813	143,169	2,098.2
Forestry (0811, 0831, 0851):	1,796	17,692	[2] 1,796	[2] 17,696	234.6
Fishing, Hunting and Trapping (0912, 0913, 0919, 0921, 0971)	1,826	8,420	[2] 1,826	[2] 8,420	171.9
Subtotal	55,447	316,415	9,959	218,172	3,165.5
Agricultural Production (01, 02)	2,087,759	2,461,000	63,792	570,890	NR
Total	2,143,206	2,777,415	73,751	789,062	NR

NR—Not reported.
Source: Meridian Research Inc. Table 2-11[1].
[1] USDC, *1990 County Business Patterns*, specifies its employment category as 10 or more rather than more than 10. No adjustment was made for this anomaly; thus the estimated number of establishments employing more than 10 may be slightly inflated.
[2] Establishments and employees in SICs 08 and 09 have traditionally been considered by OSHA to be outside of the agricultural sector. Establishments and employees in these SICs fall completely within OSHA's jurisdiction and are not subject to the congressional rider on OSHA's appropriations.

Summary

Combining agricultural production, agricultural services, forestry, fishing, hunting and trapping estimates, OSHA calculates that a total of 73,751 establishments are potentially affected by the proposed standard (Table V-D5). This total is strictly for large establishments (farms employing more than 10 workers) [1] which make up roughly 3.4% of all U.S. farm operations in SICs 01-09. The total population at risk is an estimated 789,062 employees (Table V-D5) which constitute 28% of all workers in SICs 01-09. Three major groups could be affected by the proposed rule. These groups are SIC 01—agricultural crop production; 02—agricultural livestock production; 07—agricultural services. Forestry, fishing, hunting and trapping may also be affected. Industry segment SIC 01, Agricultural Crop Production, is the largest affected sector; over 58,457 establishments and 498,350 employees. This seems reasonable in light of the fact that this segment is the most labor intensive segment of all the SICs.

TABLE V-D6.—SELECTED FINANCIAL DATA FOR VARIOUS GROUPS WITHIN THE AGRICULTURAL SERVICES INDUSTRY (SIC 07) AND FORESTRY (SIC 08), 1989

Name of industry group	SIC No.	No. of reporting firms	Average per firm, in $000s					Ratios for median firm		
			Total assets	Total liabilities	Net worth	Net sales	Net profit after tax	Current ratio	Return on sales	Return on assets
Soil Preparation Services	0711	176	289.6	131.5	158.1	637.4	48.6	1.9	6.6	9.7
Crop planting, cultivating, and protecting	0721	295	300.6	17.8	282.8	455.0	39.6	2.3	7.6	9.0
Crop harvesting	0722	56	491.8	206.1	285.7	1,1150.0	61.0	2.2	3.8	5.4
Crop preparation	0723	863	1,308.5	671.2	637.3	2,312.0	78.6	1.6	2.7	4.3
Cotton ginning	0724	339	1,062.2	397.3	664.9	1,651.4	153.6	2.0	6.7	11.3
Livestock services	0751	153	256.7	111.7	145.0	700.0	42.7	2.3	4.6	9.3
Animal specialty services	0752	180	195.7	75.3	120.4	347.0	30.5	2.7	5.5	7.5
Farm management services	0762	97	569.9	281.5	288.4	984.8	52.1	1.6	4.9	6.8
Landscape counseling	0781	889	194.8	100.5	94.3	524.4	35.1	1.8	5.2	10.6
Lawn and garden services	0782	1,528	163.1	84.2	78.9	500.0	33.5	1.7	5.3	10.7
Ornamental shrub and tree services	0783	415	191.2	93.1	98.1	486.1	29.7	1.7	4.9	9.3

[1] Excluding fishing, hunting and trapping.

TABLE V–D6.—SELECTED FINANCIAL DATA FOR VARIOUS GROUPS WITHIN THE AGRICULTURAL SERVICES INDUSTRY (SIC 07) AND FORESTRY (SIC 08), 1989—Continued

Name of industry group	SIC No.	No. of reporting firms	Average per firm, in $000s					Ratios for median firm		
			Total assets	Total liabilities	Net worth	Net sales	Net profit after tax	Current ratio	Return on sales	Return on assets
Timber tracts	0811	123	1,410.4	561.3	849.1	1,063.0	96.7	2.6	12.4	3.9
Forestry services	0851	127	246.8	112.2	136.6	680.0	40.6	1.7	6.6	7.3
Fishing, hunting and trapping [1]	0900	60	606.8	115.0	493.8	1,093.0	18.0	5.6	12.7	16.5

[1] Derived from Dun and Bradstreet, [10], [11]
Source: Meridian Research Inc., Table 2-12[1].

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2. Employee Exposure and Benefits

Introduction. Employee exposures to the substances included in the scope of this rule making are associated with a wide variety of acute and chronic conditions and illnesses. These include sensory irritation, narcosis, organ system dysfunction, chronic respiratory disease, neurological impairment, allergic sensitization, and cancer. OSHA believes that reducing worker exposures to such substances by applying limits where none existed previously will result in significantly reduced levels of exposure and disease. Section I–F of this preamble provides additional discussion of exposures in agriculture.

This chapter describes both the methodology used to identify workers potentially exposed to the hazardous substances included in this rule making and the expected benefits to those workers resulting from the application of permissible exposure limits to the agricultural sector.

Methodology. The diversity of agricultural work places, the large number of substances included in the proposed rule making, and the variety of operations and processes in the agricultural sector required Meridian, OSHA's contractor, to develop a methodology to permit the identification of (1) non-pesticidal hazards [2] regulated by OSHA that are of concern in the agricultural environment, (2) the number of workers employed on large farms exposed to these hazards, and (3) the magnitude of their exposures to the substances of concern.

Meridian, OSHA's contractor for this project, relied on the professional judgment of experts in the agricultural field to identify specific processes and operations widely recognized as presenting non-pesticidal toxic-substance exposure hazards to agricultural workers. Hazardous processes in the following industries were identified:

- Silo Operations
- Cotton Ginning
- Grain Handling (Post-Harvest)
- Grape Harvesting

For some operations, preliminary investigation revealed that the exposures of concern fell outside the scope of this project, either because the problem was the result of a pesticidal use of a toxic substance (as was the case with the mushroom industry), because it was related largely to a confined-space problem (as was the case with silo gases) or due to the fact that problematic exposures primarily occur on farms with fewer than 11 employees (as was the case with swine confinement and poultry operations [3] and many other agricultural operations). OSHA requests that any information on exposures not identified by this methodology be submitted to the public record of this standard for review.

Description of Data Sources Used. To derive a baseline of current exposures and to assess the quantitative benefits associated with reducing those exposures, the following data sources were used:

- OSHA compliance case files
- NIOSH Health Hazard Evaluations
- Agriculture extension agents in 10 of the major agricultural states.
- The Institute of Agricultural Medicine at the University of Iowa
- Agricultural economists at DPRA, Meridian's subcontractor
- The USDA library in Beltsville, MD
- OSHA's Integrated Management System (IMIS)
- Discussions with industrial hygienists at the Department of Labor and Industries, Washington State
- Discussions, observations, and exposure measurements from Meridian's site visits
- Discussions with experts at USDA's Research Unit and with individuals at the California Department of Food and Agriculture

[2] Currently the Environmental Protection Agency has jurisdiction over the application and use of pesticides pursuant to an EPA label. However, OSHA has authority over the non-pesticidal use of pesticide chemicals, use not permitted by the label or when farmers make their own pesticides. Benefits from these activities are not covered in this analysis.

[3] In a study by Morris, Lenhart and Service published in the February 1991 *American Journal of Industrial Medicine*, it was determined that 86 percent of chicken catchers reported at least one acute respirator symptom associated with work in poultry houses. Although these chicken catchers do not fall into the scope of the proposed standard, they are employed by general industry firms and are already subject to PELs, their exposures give an indication of respiratory problems occurring on all farms in the poultry confinement industry; an industry which is not analyzed in this study because no poultry confinement establishment is large enough to employ 11 or more workers.

Estimates of the Number of Potentially Exposed Employees

Silo Operations (SICs 0212, 0214, 0219, 024)

Exposure. Agricultural workers who work in and around silos are exposed to the dust that is generated by the movement of the silage during the loading and unloading of silos. In a study conducted by May[1], employee breathing zone samples for total and respirable dust were collected during five silo operations. The respirable dust exposures of employees working at three of the five silos ranged from 0.3 to 1.4 mg/m³, significantly less than the 5 mg/m³ PEL. In the fourth silo, two personal breathing zone samples showed respirable dust exposures of 10.1 and 10.5 mg/m³, both greater than the 5 mg/m³ PEL. At the fifth silo, the respirable dust exposures of two employees were measured as 24.6 and 40.3 mg/m³, respectively. Total dust measurements taken inside the chute using area sampling were less than 15 mg/m³ in three silos. In the fourth silo, total dust concentrations ranged from 13.5 to 25.2 mg/m³. Seven area samples for total dust were collected at the fifth silo, all of which exceeded the 15 mg/m³ PEL; these samples ranged from 86.8 to 154 mg/m³. These data indicate that some silo workers are exposed to respirable dust in excess of OSHA's 5 mg/m³ PEL for respirable dust and the 15 mg/m³ PEL for total dust; two fifths of the silo operations studied had respirable dust levels resulting in overexposure to all of their employees. Therefore, it is assumed that 40% of all persons employed at silo operations are overexposed to total and respirable dust. (Only two employees at any one time are needed for the silo operation; however, because hired farm hands participate in all aspects of a farm's activities, it was assumed that each farmhand will be involved in silo operations during their employment.)

Population at Risk. To estimate the number of silo workers potentially exposed to dust during silo unloading operations, sectors using silage as winter feed were identified. Based on observations and discussions during site visits, Meridian assumed that silos are present in both of the following industries: SIC 0212, Beef cattle, except feedlots and SIC 024, Dairy cattle. It was believed that silos are not likely to exist at cattle feedlots, poultry operations and hog farms because both use a high-calorie mixture of grains and other ingredients to achieve rapid weight gain in animals.

Exposures to Dust at Cattle Establishments. Data presented in chapter II indicate that there are roughly 1,700 beef cattle, except feedlot, establishments (SIC 0212) employing more than 10 workers and that these establishments have a total employment of 34,200 employees. No data are available to determine how many of these workers are actually exposed to dusts; it was assumed that all of these workers are potentially exposed to dusts during their employment.

Exposures to Dust at Dairy Farms. Meridian estimated that there are 700 large dairy farms employing 10,500 workers in the United States (see Table V–D1, chapter II). Although no data exist to indicate how many of these farms actually have silos, it is assumed that all of the establishments are likely to have silos and that all of the 10,500 employees at these establishments are potentially exposed to the hazards associated with silo operations.

Summation of Exposures for Silo Operations. Based on the estimates above, it is believed a total of 44,700 workers are exposed to silo-related hazards in 2,400 establishments that employ more than 10 workers. Due to personal exposure data reported by May[1] Meridian estimated that two fifths or 40 percent of these facilities and workers (960 and 17,800 respectively) are currently exposed above OSHA's 5 mg/m³ PEL for respirable dusts. It is likely that these workers are also exposed above OSHA's 15 mg/m³ PEL for total dust since it is unlikely that the respirable mass fraction of this dust represents a substantial fraction of the total dust mass.

Cotton Ginning (SIC 0724)

Exposure. Cotton ginning is seasonal and operations potentially expose workers to cotton dust, pesticide residue [4] and particles not otherwise classified (PNORs), i.e. nuisance dust. Two NIOSH publications describe employee exposures to these substances. One of these studies is a Health Hazard Evaluation describing three cotton gins in Arizona[2] in which cotton dust measurements and personal samples for total airborne particulates were taken. The study concluded that employees working at the gin stand and bale press were exposed above 1 mg/m³ for cotton dust (this is roughly equivalent to the 500 μg/m³ vertical elutriator [VE] PEL OSHA is proposing). In contrast, these data do not suggest that cotton gin employees are exposed above OSHA's 15 mg/m³ PEL for total dust (PNORs). In addition, NIOSH analyzed bulb cotton samples taken from various process locations for pesticide residues, including residues of the Table Z–1–A substances monocrotophos and methyl parathion. The analysis of bulb samples revealed detectable levels of monocrotophos and methyl parathion residues on the bulk samples; however, the data as reported do not permit an assessment of the levels of employee exposure to these substances.

The second publication concerned with cotton dust exposure is an extensive study of worker exposure to cotton dust during ginning operations. It was conducted by NIOSH[2] and included cotton dust measurements taken at 35 gins located in five different regions of the country. For each cotton gin, NIOSH reported the geometric mean and geometric standard deviation of cotton dust levels. These exposure profiles were analyzed by Meridian along with exposure distributions reported by Zey[3]. The latter studies findings suggest there is a 10-percent average probability that a cotton dust measurement will be found to exceed the 1 mg/m³ (500 μg/m³ VE) PEL for cotton dust.

Population at Risk. During the 1986–87 season there were 1,162 cotton gins in active operation[4]. According to Zey[3], a typical cotton gin has three or four gin stands and roughly 11 production workers. Meridian estimated that 12,782 workers (1162 gins x 11 estimated workers per gin) are potentially exposed to cotton dust, pesticide residues, and total dust (PNORs). In the study conducted by Zey, a 10-percent average probability that a cotton dust will be found to exceed the 1 mg/m³ PEL was estimated. Therefore, OSHA estimates that 10 percent of the estimated 12,782 cotton gin workers, or 1,278 employees are currently exposed above OSHA's proposed limit for cotton dust. Based on the exposure data reported in the NIOSH HHEs, it is believed that none of these employees are currently exposed above OSHA's 15 mg/m³ PEL for total dust(PNORs). As explained above, the data contained in these HHEs describing levels of pesticide residues is not suitable for estimating the pesticide levels to which employees are exposed. Hence, no estimate can be derived for pesticide residue exposure.

Post-harvest Grain Handling Operations

(SICs 011, 0711, 0721, 0722, 0723 [5]).

[4] The residues of pesticides listed on Table Z–1–A is not a situation covered under EPA's FIFRA and is therefore considered to fall within the scope of this study.

[5] It should be noted that SIC 0723 (crop preparations for market except for cotton ginning) is

Continued

Exposure. Most of the data describing employee exposures to dust during grain handling operations are relevant only when looking at large grain elevator operations, which are not within the scope of OSHA's present rule making (these elevators are classified in SICs 4221 and 5253 and were addressed by the 1989 Air Contaminants standard for general industry). There are no data that adequately describe the dust exposures of workers during grain handling operations at agricultural facilities classified in SIC 011 (Cash Grains). However, it is believed that these exposures can be approximated on the basis of data that describe the dust exposures of workers during the loading of trucks at small grain elevator facilities. Burg[5] studied such an operation and reported that the dust concentrations (as determined from personal air samples) were 15.3, 145, and 2,346 [6] mg/m³ during the loading of trucks with corn; because corn is not as dusty as wheat, oats and other grains it is believed that the exposure potential represented by corn dust somewhat underestimates dust exposures typically encountered by workers during operations that involve the transport and handling of wheat, oats and other grains usually found in storage bins located at agricultural facilities. It is estimated that grain handling often causes dust exposures that exceed OSHA's 10 mg/m³ PEL for grain dust (applicable to the handling of oats, wheat, and barley) and the 15 mg/m³ PEL for total dust (applicable to dust arising from all other types of grain).

Population at Risk. The loading and unloading of grain from storage bins is not generally a labor-intensive operation. Therefore, it is assumed that no more than one or two employees at each grain farm are involved in these operations and are thus exposed above the OSHA PELs for grain dust or total dust(PNORs); this would mean approximately 864 farm workers (average # of persons x 576 establishments) at the 576 grain farms estimated to have more than 10 employees (see Table V–D1). According to the 1986 Agricultural Statistics[6], the production of wheat, oats, and barley constituted 25 percent of total 1985 U.S. grain production; it is therefore believed that 216 or 25 percent of the estimated 864 workers engaged in grain handling operations are currently exposed above OSHA's 10 mg/m³ PEL for grain dust and that the remaining 75 percent (or 648) are currently exposed above OSHA's 15 mg/m³ PEL for total dust.

Grape Harvesting (SIC 0172)

Exposure. There is a potential for exposure to inorganic dusts, including free silica, which are released when foliage on the vine is disturbed during harvesting of grapes. After the spring rains, soil dust that is generated during the cultivation of the crop accumulates on the leaves of the plant; this accumulation continues throughout the drier summer until harvest time, when the dislodgeable portion of the dust is released into the air by the harvesting operation. The amount of dust released at harvest time depends on the specific crop and the local weather conditions prevailing at the time of harvest. Because grape crops require extensive cultivation regardless of where they are grown, workers harvesting grapes anywhere in the country are potentially exposed to airborne dust. In addition, because grapes are typically grown in areas having sillicacious soil (i.e., rocky or sandy soil), grape workers are potentially exposed to free silica.

In a California study by Popendorf and Spear[7], average personal total dust exposures of 13.5 mg/m³ for grape pickers were reported. Another study by Popendorf[8] indicated that a substantial fraction of the grape picker population is exposed to dust levels that exceed both OSHA's 15 mg/m³ PEL for total dust (PNORs) and its .1 mg/m³ PEL for respirable crystalline silica. Data from these studies can be seen in Tables V–D7 and V–D8.

Table V–D7.—Summary of Worker Exposures to Total Dust and Respirable Silica During Grape Harvesting

Crop	Number of total dust samples taken	Number of facilities surveyed for total dust	Percent of total dust samples exceeding 15 mg/m³	Percent of respirable dust samples exceeding .1 mg/m³ of free silica [a]
Grapes (SIC 0172)	30	10	75	60

[a] Based on the collection of 50 respirable dust samples at 19 facilities.
Source: Meridian Research Inc., Table 3–5[10].

Table V–D8.—Estimates of the Number of Workers Currently Exposed Above OSHA's PELs for Respirable Silica and Total Dust During Grape Harvesting

Crop	Estimated number of potentially exposed employees	Percent of workers exposed above total dust PEL [b]	Number of workers exposed above total dust PEL	Percent of workers exposed above respirable silica PEL	Number of workers exposed above respirable silica PEL
Grapes (SIC 0172)	8,873 [a]	75	6,655 (8873×.75)	60	5,324 (8873×.60)

[a] Total for the United States (excluding California).
[b] Data from Popendorf et al. (1982).
Source: Meridian Research Inc., Table 3–6[10].

covered by a settlement agreement between OSHA, the National Food and Grain Association (NFGA) and the AFL–CIO which retains the 10 mg/m³ limit but permits use of respirators in certain operations.

[6] Out of 74 observations, 2.346 was the highest recorded exposure, 813.1 and 176.1 were the next highest exposures.

Population at Risk. To estimate the size of the potentially exposed population, it was assumed that all grape pickers in the U.S. are conceivably exposed to total dust (PNORs), as well as to respirable free silica. According to the 1987 Census of Agriculture[9], grape farms (SIC 0172) constitute approximately 13 percent of all fruit and tree nut facilities in the United States. Assuming that the proportion of large fruit and tree nut establishments producing grapes is the same as that for all fruit and tree nut establishments, it is estimated that there are 1,495 large grape producing establishments (11,375×13 percent) employing 11,830 workers (91,000×13 percent).[7] No data on the proportion of the work force actually engaged in the harvesting of grapes were available; however, because most of these workers are likely to be involved in grape harvesting, it was assumed that 75 percent of the work force, or 8,873 workers, are potentially exposed to total dust and respirable silica during grape harvesting.

Estimates of the number of grape workers who are currently exposed above OSHA's PELs for respirable silica and total dust were derived from the employment estimates presented above and from the exposure data reported by Popendorf[8]. The derivation of these estimates is presented in Table V–D8 which shows that 6,665 workers (8,873×.75) are currently exposed above OSHA's PEL for total dust of 15 mg/m³ and 5,324 (8,873×.60) are exposed above the .1 mg/m³ PEL for respirable silica during the harvesting of grapes (Table V–D8).

Summary. Table V–D9 presents a summary of employees at risk of overexposure. There are an estimated 32,000 employees (some workers may be double counted) on 5,643 farms who are at risk of exposure to substances included in this rule making.

TABLE V–D9.—SUMMARY OF EMPLOYEES AT RISK OF OVEREXPOSURE

Activity	Industry	Substances	No. of establishments	Estimated population at risk
Silo Operations	SIC 0212: Beef cattle, except feedlots	Respirable dust (5 mg/m³)	2,410	17,880
	SIC 024: Dairy cattle	Total particulate (15 mg/m³)		
Ginning	SIC 0724: Cotton ginning	Cotton dust (500 μ/m³	1,162	1,278
Loading/Unloading Grain	SIC 011: Cash grains	Grain dust (10 mg/m³)	576	216
		Total particulate (15 mg/m³)		648
Harvesting Grapes	SIC 0172: Grape harvesting	Total particulate (15 mg/m³)	1,495	6,655
		Respirable silica (1 mg/m³)		5,324
Total	5,643	32,001		

Employee Benefits. In addition to estimating the number of employees exposed to the substances in this analysis, OSHA also estimated the number of employees who are at risk of experiencing particular types of adverse health effects. To conduct this analysis, each substance in which overexposure was determined, was assigned to a health hazard category; these assignments were based on the primary health effects expected from reducing a previous limit or establishing a new limit for a particular substance. In the benefit analysis described below, substances were classified according to their primary health effect and the operations in which they were present. When direct health effects evidence was not available, analogous chemicals were used to develop benefit estimates. OSHA believes that farm workers may be exposed to other air contaminants, such as CO_2, solvents and fertilizers, which were not identified in this analysis due to the limited data available concerning agricultural exposures. As a result, benefits for the reduction of these exposures were not quantified even though OSHA believes some unspecifiable benefits will result.

OSHA's contractor, Meridian Research Inc., developed an approach that relied on substance-specific toxicologic information that quantitatively related exposure to prevalence of disease for the specific substances of interest. It did not rely on general statistical data describing the illness mortality and morbidity experience of agricultural workers for two principal reasons. First, general illness mortality and morbidity rates reflect disease risks that are associated with exposure to a number of substances that are not generally covered by this rule making action, notably pesticides, herbicides, insecticides, fungicides, defoliants and disinfectants. (It should be noted however, that activities where a pesticide was misused according to its EPA label or where farmers make their own pesticides are instances covered by OSHA. OSHA has not been able to quantify benefits from the regulation of these instances but believes benefits will result in the form of some reduction in illnesses.) Second, such statistics reflect the health experience of farmers who work on small farms (i.e. those with 10 or fewer employees), which together employ most of the agricultural workers in the United States. In order to avoid the problem of using under-representative data, a substance-specific approach using toxicologic information relating quantitative exposure to prevalence was adopted. Substances, and the agricultural operations in which occupational exposures have been documented, include exposure to: silage dust during silo unloading operations; respirable silica during grape harvesting; grain dust during grain handling operations; and cotton dust during cotton ginning operations.

Silage Dust

The principal health hazard associated with excessive exposure to silage dust is a condition known as organic toxic dust syndrome, an illness in which the affected individual suffers fever, malaise, headaches, and chest tightness[3]. In a study conducted by May[3], exposures to silage dust generated by unloading operations in five vertical silos were analyzed and found to exceed OSHA's 5 mg/m³ PEL at one of the five silos. Assuming the survey is representative of current industry conditions, such exposures may be expected to occur among roughly 20

[7] These calculations exclude California. Currently, CAL–OSHA enforces PELs in agriculture which are stricter than OSHA's proposed PELS. For this reason, Californian establishments and employees were excluded from the population-at-risk estimate.

percent [8] of the workers engaged in silo unloading operation with sufficient magnitude (more than 5 times the PEL) to cause symptoms of organic toxic dust syndrome at least once during the silo unloading season.

There is no evidence that organic toxic dust syndrome is likely to occur when exposures to respirable dust conditions are maintained at or below the 5 mg/m³ PEL[3]. Therefore, it is estimated that compliance with OSHA's 5 mg/m³ will result in the prevention of at least 8,940 cases of organic toxic dust syndrome (44,700 silo workers × 20 percent) per year. Based on the severity of symptoms caused by organic toxic dust syndrome (OTDS), OSHA estimates that 25% of all OTDS cases (roughly 2,235 cases) will result in lost workdays.

Respirable Silica

Exposure to respirable dusts is known to cause silicosis, a fibrotic lung disease that can severely compromise pulmonary function. In a study conducted by Popendorf in 1982[8], it was determined that respirable silica exposure frequently exceeds OSHA's 0.1 mg/m³ PEL, usually averaging 0.15 mg/m³ during grape harvesting. Calculating the lifetime cumulative-silica exposure of the worker populations, Meridian estimated that about two percent of grape harvesters who are overexposed to respirable silica are likely to develop reduced pulmonary function as a consequence of exposure. This corresponds to a population of 106 grape harvesters (2% of the 5,324 workers estimated to be overexposed to respirable silica) at risk of acquiring silicosis. Meridian states in its report that through the use of approved dust masks having a protection factor of 5 (see Chapter VI), the risk of acquiring silicosis will be reduced to less than one percent. (Meridian used a methodology where average silica exposures were translated into the number of dust years exposed in order to define the current incidence level. Using the formula:

$$\text{Number of dust-years exposed}^{9} = \frac{\text{Average Silica Exposure}}{0.05\ \text{mg/mg}^3} \times \frac{\text{No. days/year exposed}}{365}$$

And assuming grape harvesters work an average of about 20 years and that these workers are exposed to respirable silica over an average of 40 days per year during grape harvest, Meridian calculated that grape harvesters who are currently exposed above OSHA's PEL for respirable silica accumulate approximately 6.6 dust-years of exposure to silica over their working lifetime. Applying this information to a dose response curve[11] between granite dust and quartz [both silicacious substances] versus pulmonary forced vital capacity, Meridian was able to determine that two percent or 106 harvesters over a 20 year working life were at risk of acquiring silicosis in grape harvesting.) Therefore, it is estimated that compliance with the 0.1 mg/m³ PEL will prevent pulmonary function reduction in approximately 106 grape harvesters over a 20-year working life (an average of 6 cases avoided per year). Based on the severity of symptoms caused by silicosis (silicosis can result in death), OSHA estimates that all of the cases will result in lost workdays.

Grain Dust

The respiratory and other effects of exposure to grain dust are varied and include both acute and chronic abnormalities. Workers exposed to grain dust frequently experience symptoms of cough, expectoration, wheezing and chest tightness; these symptoms may result from either an acute exposure or may reflect the development of chronic bronchitis from prolonged exposure. In addition, grain workers experience episodes of "grain fever", which occurs during or several hours after exposure.

As a result of a study conducted by Rankin[12], Meridian determined that workers exposed in excess of OSHA's 10 mg/m³ PEL for grain dust during the unloading of storage bins containing oats, wheat and barley are likely to experience adverse respiratory symptoms (Table V–D10). Because the workers are generally exposed to levels exceeding 15 mg/m³, it was assumed that the prevalence of respiratory symptoms in this group parallels that of the highest group studied by Rankin where prevalence for cough, expectoration, dyspnea and eye irritation was 89, 67, 44 and 44 percent, respectively. Assuming the prevalence for cough, expectoration, dyspnea and eye irritation in grain workers is the same as the group studied by Rankin it is believed that as a result of complying with OSHA's 10 mg/m³ PEL for grain dust and 15 mg/m³ for total dust, the prevalence of respiratory symptoms among these workers would fall to the same levels experienced by Rankin's 5–10 mg/m³ and 10–15 mg/m³ exposure group.[10] Hence, the anticipated reduction for cough, expectoration, dyspnea and eye irritation is expected to be 49; 14; 3; and 11 percent for those over exposed to grain dust and 22; 0; 0 and 0 percent for those over exposed to total dust. After applying these reductions in symptoms to the estimated 216 farm workers (Chapter 3) who are currently overexposed to grain dust and the 648 over exposed to total dust, it is estimated that coughing, expectoration, difficulties in breathing, and eye irritation will be avoided in 236, 30, 80, and 24 workers respectively. Based on the mild severity of the symptoms caused from over exposure to grain dust, it is estimated that none of these cases will result in lost workdays.

[8] While 40 percent or two fifths of all employees at silo operations are overexposed, 20 percent of all employees are exposed at a level (roughly 5 times the PEL) high enough to cause organic toxic dust syndrome.

[9] This formula relies on the concept of dust-years of exposure defined by Theriault, Burese, DiBernardini, et al. in their 1974 study and by Peters in his 1986 paper.

[10] The 5–10 mg/m³ group had roughly the same prevalence rates as the 0–5 mg/m³ group which is not presented in table V–D10. Thus, although it is probable that exposures will be lowered below 5 mg/m³ due to the use of respirators, there will be no further decline in prevalence.

TABLE V-D10.—SUMMARY OF THE PREVALENCE OF RESPIRATORY SYMPTOMS EXPERIENCED BY GRAIN DUST WORKERS, BY EXPOSURE LEVEL

Range of exposure level (mg/m³)	Prevalence of respiratory symptoms (percent of workers studied)[a]			
	Cough	Expectoration	Dyspnea	Eye irritation
5–10	40	53	7	33
10–15	67	67	50	50
>15	89	67	44	44

[a] Data reported only for those symptoms for which the prevalence in the high exposure group was significantly different from that in an unexposed control group.

Source: Meridian Research Inc. Table 5-3[10].

Cotton Dust

Byssinosis is the general term applied to acute and chronic respiratory disease caused by excessive exposure to textile vegetable dusts, which include cotton, flax and hemp fibers. As the disease worsens, affected individuals experience chest tightness and/or breathlessness both on return to work and on subsequent days and show decrements in pulmonary flow that become progressively more pronounced; at this stage, a clear picture of chronic obstructive lung disease can be seen. In a study conducted by Zey among 521 non-smoking cotton gin workers employed in 37 gins [3], an exposure-related increase in the prevalence of chronic bronchitis symptoms and textile vegetable dust disorders was discovered. Using regression analysis, Meridian constructed a mathematical expression relating exposure to prevalence of these disorders.

To estimate the potential benefits associated with promulgation of the 500 $\mu g/m^3$ VE cotton dust PEL in cotton gins, Meridian assumed that the 1,278 workers who are overexposed to cotton dust are exposed to an average TWA concentration of 1.5 mg/m^3 (overexposures generally occur in the range of 1.1 to 2.0). Meridian also assumed that cotton gin workers work an average of 20 years in gins. Using the exposure-response relationships, (Exhibit 5-4 [10]) Meridian estimated that the current prevalences of chronic bronchitis and textile vegetable dust disorders among the 1,278 workers estimated to be overexposed are 28 and 43 percent respectively. By reducing these workers exposures to the 500 $\mu g/m^3$ VE PEL, OSHA estimates prevalence will be reduced to 17 percent for chronic bronchitis (i.e. a reduction of 11 percent) and 24 percent for textile vegetable dust disorders (i.e. a reduction of 19 percent).[11] This analysis suggests that the promulgation of the 500 $\mu g/m^3$ PEL for cotton dust in cotton ginning operations will prevent symptoms of chronic bronchitis from developing in 141 workers (1,278×11 percent) and symptoms of textile vegetable dust disorders in 243 workers (1,278×19 percent) over a 20 year working life. Hence, promulgation of the final rule will prevent chronic bronchitis from developing in approximately 7 workers (141/20), and textile vegetable dust disorders in roughly 12 workers (243/20) each year. Chronic bronchitis is a potentially crippling disease, greatly reducing the quality of life and the productivity of its victims, OSHA estimates that all cases of chronic bronchitis will result in lost workdays. No cases of textile vegetable dust disorders are expected to result in lost workdays.

Summary of Benefits and Exposure. As is evident, agricultural workers are exposed to a variety of air contaminants in a number of different operations. It is estimated that over 17,800 workers are overexposed to total dust as well as respirable dust in silo operations; 1,278 employees are currently overexposed to cotton dust in cotton gins; 216 workers are exposed above OSHA's PEL for grain dust and 648 are exposed above OSHA's PEL for total dust during post-harvest grain operations; 5,324 grape harvesters are overexposed to respirable silica; and 6,655 workers are overexposed to total dust during grape harvesting.

The benefits presented in this chapter show that the proposed rule is necessary and that it will provide quantifiable benefits to the agricultural community. As a result of the promulgation of this rule, 8,940 annual occurrences of febrile organic toxic dust syndrome will be prevented; 5 silica-induced pulmonary function declines will be eliminated each year; acute respiratory symptoms occurring in 24 to 106 workers will be avoided annually; and 7 cases of chronic bronchitis as well as 12 cases of textile vegetable dust disorders will be prevented annually. OSHA estimates that 2,248 (24%) of these cases will result in lost workdays while 7,090 (76%) will be non-lost workday cases.

[11] This reduction is based on data from the American Textile Manufactures Institute (ATMI) which showed that after dust control and medical surveillance were initiated, the prevalence rate for byssinosis dropped to less than 1.0% and the prevalence rate for bronchitis ranged from 6–7%. OSHA believes that through the use of the controls outlined, reductions approximate to half of these can be achieved since a medical surveillance program will not be required. [13]

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3. Assessment of Nonregulatory Alternatives

For a full discussion on the need for and the appropriateness of a regulatory solution to address occupational exposures to air contaminants, see section V.B.4. of this preamble.

4. Technological Feasibility

Introduction. This chapter presents a technological feasibility analysis of the agricultural sector's ability to meet OSHA's proposed permissible exposure limits (PELs) for a wide range of occupational health hazards. These PELs include limits on airborne concentrations of substances, and in some cases, direct contact on the skin with the substance.

The control of workplace exposures to toxic chemicals involves combining a variety of standard techniques to solve a situation-specific problem. For a variety of situations where air contaminants are encountered by workers in agriculture, compliance can be achieved by applying known engineering control methods. In addition, work practice improvements and personnel protective equipment usage may also be required.

This chapter examines the feasibility of engineering controls, work practices and personal protective equipment needed to reduce workers' exposure levels to total dust, respirable dust, cotton dust and respirable silica.

Types of Controls

Engineering Controls. Engineering controls involve the use of local exhaust ventilation, general ventilation, isolation of the worker, enclosure of the source of emissions, process modifications, equipment modifications, and substitution of non-hazardous chemicals. These methods may be used alone or in combination of any two or more controls depending upon the needs of a specific situation. Variations in situations usually result from the type of process being used and the number of chemicals in the air. However, these controls are considered standard techniques which will effectively control these variables either by themselves, or coupled with changes in work practices.

Ventilation. Perhaps the most widely used technique for controlling chemical exposures is the use of ventilation. General ventilation uses the movement of air within the general work space to displace or dilute the contaminant with fresh outside air. General ventilation is not typically the preferred control method in most operations due to the large volumes of air movement required. Local exhaust ventilation uses much smaller volumes of air, exhausted from the point at which contaminants are generated to remove the contaminant at the source.

Work Practices. Work practice controls include housekeeping procedures, material handling procedures, training and personal hygiene. In many cases, it is possible to bring about substantial reductions in employee exposures by applying work practice controls. A work practice control could be as simple as keeping a distance from a source of emission.

Personal Protective Equipment. Where it is impractical to apply engineering or work practice controls, or where their application will not consistently reduce employee exposures below the proposed PELs, personal protective equipment such as respirators, may be required in order to prevent or reduce exposures.

Feasibility. This chapter presents examples of feasible methods for controlling exposures to hazardous substances encountered in processes used in the SICs for which costs (Chapter VI) and benefits (Chapter 3) have been identified. Unit costs for these controls are used as the basis for the cost projections in Chapter 5.

Feasibility determination is made for the following operations which have been identified as having activities which result in overexposure to certain hazardous substances:

- Silo operations
- Cotton ginning
- Post-harvest grain handling operations
- Grape harvesting

Silo Operations. Employee exposures to silo dust occur when workers unload silage to feed animals during the winter months. These exposures result from dust generated by silage falling down the silo chute into a truck or onto a conveyor for subsequent transport to the animal feed area. Dust exposure may also occur when employees climb up the chute and enter the silo to maintain or repair the silo's automatic loading device.

The exposure data presented by May[1] and described in Chapter III indicate that employee exposures to dust exceed the 5 mg/m^3 PEL for respirable dust about 40 percent of the time during silo operations. It is believed, by OSHA's contractor, that the 15 mg/m^3 PEL for total dust is also exceeded at these times.

Feasibility Assessment. At present, no controls are in place in silos to reduce worker exposures to dust. The implementation of a simple work practice, such as training workers to stand upwind during unloading, would reduce dust exposures to some extent, although the percentage of reduction achievable by this approach is not known. Wetting, a commonly employed dust suppression technique, cannot be used with silage because wetting would interfere with the flow of silage during unloading and would also promote spoilage. Ventilation, another common technique for controlling airborne particles, and the only engineering control applicable to this situation, cannot be configured for such a large area and could even create more of an exposure problem in this particular environment. Reliance on disposable dust respirators is seen as a practical approach to achieve compliance with the PELs for respirable and total dust during silo operations.

Cotton Ginning

Feasibility Assessment. Based on NIOSH's extensive 35-gin survey[2], 86 percent of all gins are already achieving mean employee cotton dust exposures at or below the 500 μg/m^3 level most of the time. These data demonstrate that compliance with the 500 μg/m^3 cotton dust PEL is technologically feasible for the cotton ginning industry and is already being achieved by most ginning operations at the present time. Nevertheless, it was estimated in Chapter III that 10 percent of the ginning workforce, or 1,278 employees, continue to be exposed above the PEL. The exposures of most of these workers are within a factor of 2 of the PEL; in a few rare cases, however, overexposures may exceed the PEL by a factor of 6[3].

Based on these data, there is no issue of technological feasibility for facilities in this sector, since the overwhelming majority of ginning operations are already well below the cotton dust PEL. For those few facilities still above the PEL, OSHA's contractor, Meridian, concluded the implementation of simple housekeeping measures will achieve the 1 mg/m^3 PEL. Meridian's reasoning was based on the following: The exposure data presented by Zey[4] and described in Chapter III strongly suggest that employee exposures to cotton dust can

be maintained below 1 mg/m³ by applying consistent work practices[4]. The authors report that "The accumulated thrash inside the plant[s] [is] inevitably a secondary source of airborne dust"[4]. Second, NIOSH reports that the dust raised during the dry sweeping of facilities is responsible for the dustiest conditions in these gins[2]. And lastly, the Zey[2] data show that at least one of the readings taken in half of the 35 gins examined were above 1 mg/m³; however, these high readings were infrequent, occurring only in about 10 percent of the cases overall. It is Meridian's opinion that this pattern of infrequent high particulate exposures is consistent with the failure of work practice controls rather than with inadequate engineering controls (which would be reflected in plant-wide high readings). In other words, NIOSH's finding that employee exposures to cotton dust exceed 1 mg/m³ on an infrequent basis in many cotton gins suggests that work practices, such as the regular cleaning of work areas and equipment, are being applied in an inconsistent manner or are being performed improperly by those facilities having high readings.

Post-Harvest Grain Handling Operations. Employee exposures to grain dust during post-harvest grain handling occur during the transfer of grain from storage bins to trucks[5], and the exposure data presented in Chapter III show that these exposures range from 15.3 to 2,346 [12] mg/m³. These data were derived from personal samples taken on the operator, who was standing on top of a truck directing the flow of grain from a chute that dropped grain into the truck from a distance of several feet. The actual 8-hour TWA exposure of the employee sampled by Burg[5] is difficult to gauge because the duration of the sampling and the employee's pattern of exposure were not described in the Berg article. Because this employee was not reported to be wearing respiratory equipment during the unloading operation, it is believed that the employee's exposure did not exceed a few hundred mg/m³ as an 8-hour TWA; exposures higher than approximately 200 mg/m³, if sustained over a full workday, would cause considerable discomfort in the absence of respiratory protection. Therefore, it is believed the 8-hour TWA dust exposures of workers during bin unloading operations are unlikely to exceed about 200 mg/m³.

Feasibility Assessment. Meridian's final report states that compliance with OSHA's 15 mg/m³ 8-hour TWA PEL for total dust and with OSHA's 10mg/m3 PEL for grain dust (in those instances where oats, wheat, or barley are being handled) can be achieved by the use of full-facepiece respirators equipped with high-efficiency particulate (HEPA) filters. The use of such respiratory equipment, which affords a protection factor of 50[6], will provide sufficient protection where 8-hour TWA exposures to grain dust or to total dust do not exceed 500 mg/m³ or 750 mg/m³, respectively. In those rare instances where exposures exceed these values, it is believed that the observance of some simple work practices, such as lowering the loading chute to reduce the drop distance or having the operator stand away from the truck during the initial loading period, will reduce operator exposures to within a factor of 50 of the respective total dust and grain dust PELs.

Grape Harvesting

Feasibility Assessment. Unlike the harvesting of grain and other crops, the harvesting of grapes is primarily a manual activity. Workers are potentially exposed to total dust and respirable silica in these operations at levels in excess of OSHA's PELs for these substances (see Chapter III). Some reduction in dust exposures could be achieved in instances where it is possible to wet the fields and vines prior to picking; however, this procedure is not feasible in the majority of cases because crop spoilage increases if the fruit is picked and packed wet. Therefore, it is believed that the owners of these farms will rely on respiratory protection (NIOSH approved dust masks) to reduce their employees' exposures to total dust to the 15 mg/m³ PEL and to respirable silica to the 1.0 mg/m³ PEL.

Engineering controls such as ventilation, oil conveyors and pneumatic dust control mechanisms have proven effective in controlling grain dust in other sectors involving grain handling. It is possible that these controls could be used for post-harvest grain handling. However, OSHA's contractor, Meridian, has reviewed some dust control systems and found that they may not be effective in the open areas post-harvest grain handling takes place in and may even cause additional problems by increasing the level of grain dust in the air. As a result, Meridian has recommended to OSHA that some workers may be required to wear respirators some of the time as part of their duties.

Summary. Based upon the analysis in this chapter and the supporting documentation, OSHA believes that controlling exposures on large agricultural establishments to substances found on the Z–Table is technologically feasible through the use of engineering controls, work practices and personal protective equipment. OSHA believes that these controls will be effective in reducing routine exposure to the substances posing a threat to worker health on these agricultural establishments.

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5. Costs of Compliance

Introduction. Costs are related to recommended engineering controls, work practices and personal protective equipment needed for specific processes in order to maintain workers' exposures at or below the levels specified in the proposed standard. Given the large number of substances being regulated, an assessment was required that would examine a large number of operations over the entire agricultural sector.

Work practice requirements were identified by industrial hygienists based on their experience and research on operations and exposure situations in each operation. Also, included in the cost calculations are costs for all equipment required for exposure control. These latter costs were developed on a per person basis. Capital costs for HEPA vacuums and full facepiece respirators were annualized over 5 years using a 10 percent cost of capital and adding annual operating and maintenance costs estimated at 10 percent of the capital cost.

An annual cost was developed for each operation. These costs are

[12] Out of 74 observations, 2,346 was the highest recorded exposure, 813.1 and 178.1 were the next highest exposures.

presented in Table V–D11. As shown, annual compliance costs are estimated to total $2.7 million. These costs represent an estimate of compliance costs for large operations affected by the PEL extension. Operations (identified in chapter III) which have the potential for worker overexposure and will incur costs include:

- Silo operations;
- Cotton ginning;
- Post-harvest grain handling operations; and
- Grape harvesting

This chapter summarizes for each process: (1) The extent of current worker exposure and the current baseline level of controls, (2) the additional controls that will be needed to reduce worker overexposures, and (3) the costs that facilities in the agricultural sector will incur to achieve compliance with the PELs for the airborne contaminants of concern.

TABLE V–D11.—ANNUALIZED COSTS OF COMPLIANCE

Operation	SIC	Cost per facility	No. of facilities	Annual cost
Silo operations	0212, 024, 0214, 0219	$270	964	$260,280
Cotton ginning	0274	3,334	581	1,937,054
Post-harvest grain handling	011, 0711, 0721, 0722, 0723	155	576	88,992
Grape harvesting	0172	267	1,495	399,300
Total			3,616	2,685,626

Numbers may not compute due to rounding.

Costs—Silo Operations (SICs 0212, 024, 0214, 0219). The exposure data described by May[1] indicate that the dust exposures of employees involved in silo unloading exceed the 5 mg/m³ PEL for respirable dust in two of five (or 40 percent) of the facilities having silos. In Chapter III, it is estimated that silo unloading operations are conducted at approximately 2,400 agricultural facilities that employ more than 10 workers. Therefore, employee overexposures to dust during silo unloading currently occur in an estimated 964 (2,410×0.4) agricultural facilities. It is believed that, at most, two employees per facility are engaged in silo unloading operations on any given day during the approximately 90-workday winter feeding season.

Current Baseline Controls. Meridian derived its data for baseline controls from observations made during site visits and discussions with representatives of agricultural extension services and the University of Iowa Institute of Agricultural Medicine and Occupational Health. Currently, no controls are used to reduce exposure to respirable dust in this process.

Estimated Costs of Controls. Assuming that each such facility will purchase 180 disposable respirators (2 employees×90 workdays), at a unit cost of $1.59[2], the estimated annual cost per facility to achieve the respirable and total dust PELs for silo unloading operations is $270. Meridian estimates that the total annual cost for all affected facilities will be $260,280 ($270 per facility×964 facilities).

Cotton Ginning (0724). Based on NIOSH's survey of 35-gin operations[3], 86 percent of all gins are already achieving mean employee cotton dust exposures at or below the 500 μg/m³ level most of the time. However, Meridian estimated (Chapter III of its final report) that 10 percent of the ginning workforce, or 1,278 employees, continue to be exposed above the PEL. The exposures of most of these workers are within a factor of 2 of the PEL; in a few rare cases overexposures may exceed the PEL by a factor of 6.

Current Baseline Controls. An industrial hygiene/medical evaluation conducted by NIOSH from October 1980 through February 1981 dealt with three cotton gins on the Colorado River Reservation in Arizona[3]. The three gins studied in this investigation had moderately effective to no engineering controls for reducing airborne concentrations of cotton dust. One gin was processing first- and second-picked cotton at the time of the evaluation and had some local exhaust ventilation equipment to help control dust. Another gin was processing only first-picked cotton and had no exhaust ventilation equipment. The third gin was processing rood or last-picked cotton and also had no exhaust ventilation equipment.

Reduction of worker exposure to dust that results from the processing of cotton is being achieved in some facilities by the use of engineering controls[4]. These include the isolation of open processes and specific dust generation points with shutters to prevent contamination of other areas; use of conveyers and material transfer points; location of exhaust systems and air cleaner discharge points downwind and at a distance from building air inlets; and hooding.

Work practices are also used to reduce cotton dust levels. Examples of such practices include routine maintenance of local exhaust hoods, ductwork, dust collection equipment, and fans so that such equipment works at maximum efficiency and effectiveness; good housekeeping activities that are performed systematically and on a regular basis (e.g., vacuum cleaning rather than dry sweeping); and common-sense procedures, such as regular laundering of work clothes and keeping cotton away from the face.

Respiratory protection is also used during dusty activities (e.g. the use of compressed air cleaning in "blow down" operations). During NIOSH's multi-plant survey, personal protective equipment in evidence were hard hats and disposable paper respirators, which were (not NIOSH-approved) worn by about 10 percent of the employees in the survey.

Estimated Costs of Compliance. The exposure data presented in Chapter III from the Zey report[4] suggest that 50 percent of the estimated 1,162 cotton gins in the United States (or 581 facilities) must implement additional exposure control procedures to achieve the 500 μg/m³ PEL for cotton dust. As described in Chapter V, it is believed that the 500 μg/m³ PEL can be achieved in these facilities by improving housekeeping practices, and in

particular, by cleaning the ginning work area and equipment at the end of each shift. In facilities currently performing end-of-shift cleanup, all employees spend 30 minutes performing this activity before going off-shift[4]. Meridian believes that effective cleanup will require the use of HEPA-filtered vacuums rather than the dry sweeping or use of compressed air that is likely to be the method of choice in these plants at present. This recommendation is consistent with NIOSH's recommendation[4].

According to NIOSH[4], cotton gins employ 10 to 18 workers (or an average of 14 workers), and these workers work on two 12-hour shifts. It is therefore assumed that, on average, seven employees will be available per shift to perform cleanup activities. Assuming that a typical cotton gin operates 7 days per week over an 8-week season[4], it is estimated that a total of 392 hours per facility per year will be required to perform post-shift cleanup activities (7 employees/shift × 0.5 hour/shift × 2 shifts/day × 56 days). At an average labor cost of $6/hour[5], the estimated annual per-facility labor cost for end-of-shift cleanup is $2,352.

In addition, it is assumed that each of the 581 cotton gins estimated to need this kind of routine cleanup will purchase three HEPA-filtered vacuums at an estimated capital cost of $2,700[2] to use for post-shift cleanup. Assuming a useful life of 5 years, a 10-percent interest rate, and an annual maintenance cost of 10 percent of capital cost, an annualized cost for HEPA-filtered vacuum equipment is estimated to be $982 for each affected facility. Thus, the total annualized cost, including labor costs for cleanup, estimated to be incurred by each affected facility to achieve compliance with the 500 $\mu g/m^3$ cotton dust PEL is $3,334 ($982 + $2,352). The total annualized cost of compliance for this sector as a whole is estimated to be $1,937,054 ($3,334 × 581 facilities).

Post-Harvest Grain Handling Operations (SICs 011, 0721, 0722, 0723)

Current Baseline Controls. Employee exposures to grain dust during post-harvest grain handling occur when grain is transferred from storage bins to trucks[6]. The exposure data presented in Chapter III show that these exposures range from 15.3 to 2,346 mg/m^3. Currently, it is believed that no baseline controls are used to reduce employee exposures to OSHA's 10 mg/m^3 PEL for grain dust.

Estimated Costs of Compliance. In Meridian's final report, it is estimated that 864 employees on 576 grain farms employing more than 10 workers are overexposed to either grain dust (i.e., oats, wheat, or barley) or total dust as a result of unloading grain from storage bins (see Chapter III). The unloading of storage bins does not occur year-round; instead, bins are unloaded when the demand and price of grain are sufficiently high to warrant the shipment of grain to market. Consequently, the number of days on which workers are exposed to dust during this operation varies from facility to facility and from year to year. For costing purposes, it is assumed that employees are overexposed an average of 30 days per year and that every employee will be provided with a NIOSH/MSHA-approved full-facepiece respirator at an estimated cost of $165 apiece[2]. Assuming a 5-year life expectancy for these masks and a 10-percent interest rate, the annualized cost for each respirator is estimated to be $43. In addition, every employee will have to be furnished with a new pair of HEPA filters, at a cost of $8.00 per pair[2], every 4 days that unloading is performed. Assuming that employees perform this task on 30 days per year, the annual cost for HEPA filters is estimated to be $60 per employee ([30 days/4] × $8.00 pair). The total annualized per-employee cost of compliance is therefore estimated to be $103 ($43 and $60). The industry wide annualized cost to provide this equipment to all 864 employees believed to be overexposed during grain unloading operations is estimated to be $88,962.

Grape Harvesting (SIC 0172)

Estimated Exposure. For the grape industry sector, data presented in Chapter III suggest that 8,873 workers are potentially exposed to respirable silica and total dust during the manual harvesting of grapes. Of these, 5,324 workers are estimated to be overexposed at present to both respirable silica and total dust. In addition, 6,655 employees are estimated to be overexposed above the 15 mg/m^3 PEL for total dust alone; this yields a maximum total of 6,655 overexposed workers in this sector (see Table V–D9).

Current Baseline Controls. Meridian found no controls being used to control exposure to respirable silica and total dust during the manual harvesting of grapes.

Estimated Costs of Compliance. Based upon available exposure data[7], no grape harvest worker is currently exposed to a concentration of respirable silica or of total dust that is greater than five times the respective PEL; therefore, employers will be able to achieve compliance both with the respirable silica and total dust PELs by ensuring that their employees wear disposable respirators, which have a protection factor of five[8]. Disposable respirators that are NIOSH/MSHA-approved for use against silica and total dust are available at a cost of $1.50 apiece[2–p. 99].

The grape harvest occurs in September and early October[7] and therefore, it is estimated that grape harvesters will need respirators over a period of about 40 work-days. The resulting cost per worker is estimated to be about $60 per year (40 days × $1.50/day). OSHA estimates that the total annualized costs that employers will incur to comply with the PELs for respirable silica and total dust in grape and harvesting operations is $399,300 ($60 per year per worker × 6,655 workers exposed to silica and/or total dust).

Summary. Table V–D11 presents the estimated average cost of compliance per farm. Annual costs range from $155 for post harvest grain handling, up to $3,334 for cotton ginning operations. Total annual costs approach two million dollars for cotton ginning. The total annual cost for all affected farm operations is $2.7 million.

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6. Economic Impact, Regulatory Flexibility Analysis, and Environmental Impact Assessment

Introduction. This chapter investigates the potential economic impact on affected establishments as a result of the proposed standard. OSHA analyzed two alternative scenarios of the potential impacts of the proposed rulemaking. In the first, a total cost absorption or no cost passthrough scenario was assumed (all costs are borne entirely by affected establishments). In the second scenario, total cost passthrough was assumed (all compliance costs are passed on in the form of price increases). In this scenario, estimates of the maximum inflationary impact were calculated. These impacts were estimated using compliance costs developed in Chapter VI.

Economic Impact. In the first scenario, perfectly elastic demand or zero cost-passthrough was assumed. The estimated economic impact of the rule for firms potentially affected is summarized in Table V–D12. These estimates represent the maximum industry impact within a market scenario where none of the costs can be passed on to consumers and where there is no productivity offset to costs.

Table V–D12 shows that costs as a percentage of profits average .33%, with the highest impact in cotton ginning where costs as a percentage of profits is 1.4%. These results, however, represent a worst case, with the magnitude of the standard on profitability somewhat exaggerated because full absorption of the costs are not likely to occur. It should be noted that costs of this magnitude cannot affect the viability of even the smallest gins in this segment.

TABLE V–D12.—ECONOMIC EFFECTS: NO COST PASSTHROUGH SCENARIO

SIC	Industry	Annual cost per establishment	Average profit per [1] establishment	Costs as a percent of profit
011	Cash Grains	$155	$84,144	.18
0172	Grapes	267	270,301	.10
0212	Beef Cattle Except Feedlots	270	49,078	.55
0241	Dairy Farms	270	172,390	.16
0721	Crop Planting, Cultivating, Protecting	155	267,742	.06
0722	Crop Harvesting, Primarily by Machine	155	95,704	.16
0723	Crop Preparation Services for Market Except Cotton Ginning	155	325,580	.05
0724	Cotton Ginning	3,334	232,367	1.43

[1] Average profit before tax, Dun and Bradstreet, Dun's Insight Database, 1989.

TABLE V–D13.—ECONOMIC EFFECTS: NO COST PASSTHROUGH SCENARIO

SIC	Industry	Annual cost per establishment	Average sales per [1] establishment	Costs as a percent of sales
011	Cash Grains	$155	$1,083,682	0.01
0172	Grapes	267	3,329,803	0.01
0212	Beef Cattle Except Feedlots	270	604,599	0.04
0241	Dairy Farms	270	1,765,466	0.02
0721	Crop Planting, Cultivating, Protecting	155	3,298,281	0.00
0722	Crop Harvesting, Primarily by Machine	155	1,402,565	0.01
0723	Crop Preparation Services for Market Except Cotton Ginning	155	2,555,783	0.01
0724	Cotton Ginning	3,334	1,779,363	0.19

[1] Dun and Bradstreet, Dun's Insight Database.

In the second scenario, total cost pass-through was assumed. As demonstrated by the estimates summarized in Table V–D13, the impacts on market prices will not be significant. No price increase would exceed the .19% percent experienced by SIC 0724, cotton ginning. Price changes of this magnitude are not likely to result in market disruption or present an economic burden to consumers.

Based upon the data presented in Tables V–D12 and V–D13, OSHA has determined that the impact on the affected establishments is not significant to impair their economic viability and OSHA has made a preliminary determination that the proposed standard is economically feasible.

Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act (Pub. L. 96–353, 94 Stat. 1164 [5 U.S.C 601 et. seq.]), OSHA has assessed the impact of the rulemaking on small establishments. OSHA has determined that there will be no adverse economic impact on small agricultural establishments as a result of this rulemaking. This rulemaking is limited to agricultural establishments with 11 or more hired workers because of Congress's rider on OSHA appropriations which prohibits OSHA from using funds to proscribe, enforce or enact any standard that will affect farms with fewer than 11 employees. In Chapter II, it was determined that only 3.6 percent of all farm establishments have more than 10 employees; however, they produce more than 40% of all agricultural goods. Therefore, the proposed standard would only affect larger farms in the agricultural community. Small farms, which make up the remaining 96.4 percent of U.S. farms, may be indirectly affected by becoming more aware of the chemical hazards in agriculture, but because these farms employ fewer than 11 persons they will not be directly affected by this rulemaking. Hence, OSHA has assessed the possible impact on small farms and determined that no small farm will be adversely affected.

Environmental Impact Assessment. This assessment has been prepared in accordance with provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4325 *et seq.*) as well as the regulations on the Council on Environmental Quality (40 CFR part 1500), and DOL–NEPA Compliance Procedures (29 CFR part 11).

OSHA has reviewed the standard and the information submitted by its contractor. As a result, OSHA has concluded that no significant adverse

environmental impacts are likely to occur as a result of this proposed standard. In fact, it is possible, that as a result of this rulemaking, persons using hazardous chemicals will be more aware of the possible consequences of exposure to these chemical. This could result in better controls and practices during the application of these substances. This in turn could have a beneficial environmental impact and OSHA invites public comment on this potential benefit.

International Trade Impact. Currently, some European countries have PELs which cover all aspects of the private sector, including agriculture. The United Kingdom has over 200 such PELs, one of which is a PEL of 10 mg/m³ for grain dust. The Federal Republic of Germany has a cotton dust PEL of 1.5 mg/m³. In addition, a committee empowered by the European Economic Community (EEC) is compiling list of PELs which members may someday be required to follow. Although their work is in its preliminary stages, once the list is completed it could be used as a market barrier by the EEC against U.S. agricultural products which were not produced by workers afforded protection from airborne contaminants. Currently, there is no trade barrier as such, however, one could develop if the United States does not afford its agricultural workers protection from air contaminants.

Summary. Based on the data summarized in Tables V–D12 and D–V13, OSHA has concluded that the economic impacts of the standard are clearly feasible for the agricultural sector and that the proposed rule is not expected to have an adverse affect on small establishments and the environment.

E. Preliminary Regulatory Impact Analysis for General Industry

1. Introduction

The Occupational Safety and Health Administration (OSHA) currently does not have specific permissible exposure limits (PELs) for mineral wool, fibrous glass, and asphalt fume. These substances are covered under the PEL for particulates not otherwise regulated (PNORs), which limits employee exposures to 15 mg/m³ total dust and 5 mg/m³ respirable dust. OSHA proposes to establish new PELs for these substances to protect the health of workers.

This section examines the potential effects associated with this proposed rulemaking. The nature and extent of occupational exposures are identified and the affected industries are profiled. The technological feasibility, the estimated costs and benefits, and the economic impacts of compliance with the proposed rule are presented.

2. Industry Profiles

Mineral wool and fibrous glass. An important consideration in discussing industries involved in the production and use of vitreous fibers is the use of appropriate definitions. For purposes of this analysis, the term man-made vitreous fiber (MMVF) is used as a generic term for a variety of fibers, including fibers made of rock, slag, minerals and glass. This analysis will consider mineral wool as a subset of MMVF, consisting of slag and rock wool. Fibrous glass is considered a separate subset of MMVF, distinct from mineral wool. OSHA intends that the proposed PEL for fibrous glass also applies to refractory ceramic fiber (RCF), and the exposures and potential impacts are analyzed for this substance as well. This preliminary analysis is based on research conducted by CONSAD Research Corporation [1], and on data supplied by the industry trade association, TIMA [2].

Standard industrial classification (SIC) codes 3296, 3297, and 3299 include over 70 establishments producing mineral wool, fibrous glass, RCF, and related products such as insulation and acoustical tile. In 1988, the latest year for which data are available, these plants employed over 28,000 workers and shipped over $3.2 billion worth of fiber products. Most of the shipments were fibrous glass products, including ordinary glass wool, insulation material, and continuous filament. Approximately 15 percent of the shipments were mineral wool products. The remainder was made up of special fine fiber and other vitreous fibers.

Mineral wool, fibrous glass, and RCF are available in a variety of different forms, reflecting a range of applications for these products. Blankets, batts, modules, textiles, boards, and vacuum-formed plastics are primarily fabricated in the bulk material manufacturing plants and can be made to customer specifications. Some bulk material is also sold to independent fabricators for making refractories.

Fiber-containing products are commonly used for insulation and fire protection applications. Fibrous glass is more prevalent in residential applications, and RCF tends to be used more in industrial and commercial applications. In addition to structural insulation, these products provide effective insulation for heating and cooling equipment, furnaces, tanks and storage facilities, pipes and ducts, and components of automobiles, ships, and airplanes. Fibrous products can also be used in reinforced plastics with applications in aerospace, appliances, construction, consumer goods, electrical equipment, protective gear, farming, and other areas.

Table V–E1 provides a summary of the industries associated with mineral wool, fibrous glass, and RCF products that involve employee exposures to airborne fibers. Most of the occupational exposure of concern in general industry occurs in the fiber manufacturing plants, which includes much of the fabrication of fiber-containing products. The potential for employee exposures may also exist for independent fabricators in the production of refractories and reinforced plastics where loose bulk fiber is used in the manufacturing process. The installation and removal of furnace linings and other insulation may involve employee exposures if fibers become airborne. The use of products made from or containing fibrous glass, RCF, or mineral wool generally does not result in significant occupational exposures during secondary manufacturing applications. For example, exposure to airborne fibers during the installation of preformed insulation in appliances or catalytic converters would be minimal.

TABLE V–E1.—ESTIMATED NUMBER AND REVENUES OF ESTABLISHMENTS PRODUCING OR USING MINERAL WOOL, FIBROUS GLASS, AND RCF

Industry revenues	Estimated number of establishments [1]	Estimated (millions)
Mineral Wool Production:		
Wool and Insulation Material	20	$303.5
Ceiling and Acoustical Tile	13	185.5
Fibrous Glass Production:		
Wool and Insulation Material	29	1,989.1
Continuous Filament	11	754.5
Special Fine Fiber	2	27.0
RCF and Other Fibers	12	75.0
User Industries: [2]		
Fabricators; Plastic and Refractory Manufacturers	20	50.0
Industrial Insulation Contractors	70	30.0

TABLE V–E1.—ESTIMATED NUMBER AND REVENUES OF ESTABLISHMENTS PRODUCING OR USING MINERAL WOOL, FIBROUS GLASS, AND RCF—Continued

Industry revenues	Estimated number of establishments [1]	Estimated (millions)
In-House Insulation Work	1,800	NA

[1] Plants may be included under more than one product with revenues divided proportionally.
[2] Products made from or containing fibers are used throughout industry in many applications with minimal potential for exposure to airborne fibers.
Source: Office of Regulatory Analysis, OSHA; based on CONSAD Research, 1991 [1].

Asphalt fumes. Asphalt is a constituent of most crude petroleum and is produced as part of the petroleum refining process. The total number of companies in the petroleum refining industry (SIC 2911) with the capacity to produce asphalt as a main product or byproduct in 1989 was estimated to be 72 [1]. According to statistics published by the U.S. Department of Commerce, the 309 establishments in SIC 2911 employed more than 50,000 production workers, and their total value of shipments in 1987 was $118.2 billion of which asphalt manufacturing represented a minor fraction [3].

Asphalt is used in the manufacture of a wide variety of products. The two main categories of products are paving mixtures (SIC 2951) and roofing products (SIC 2952). Asphalt may also be an ingredient for some paints and varnishes, but this minor application has not been found to be associated with any significant exposures [1].

Asphalt paving mixtures are produced at an estimated 4,000 establishments with total estimated sales of over $4.3 billion. Many different mixtures are available depending on the application and the specific properties desired. Asphalt paving mixtures are primarily used to pave streets, highways, and airfields.

Approximately 102 establishments produce an estimated $3.4 billion worth of roofing products annually. The products include asphalt saturated sheathing, boards, felts, and fabrics, asphalt roof cements and coatings, and asphalt shingles. Most of these products are used by roofing contractors, which are part of the construction industry.

Table V–E2 provides a summary of industries involved in the production of asphalt and asphalt products.

TABLE V–E2.—ESTIMATED NUMBER AND REVENUES OF PLANTS PRODUCING ASPHALT AND ASPHALT PRODUCTS

Industry	Estimated number of plants	Estimated revenues (millions)
Petroleum Refining (Asphalt Production)	72	$27,186.0
Paving Mixtures	4,000	4,346.2
Roofing Products	102	3,402.9

Source: Office of Regulatory Analysis, OSHA; based on CONSAD Research, 1991 [1].

3. Employee Exposures and Benefits

Mineral wool, fibrous glass, and RCF. Data on occupational exposures to these fibers are available from several NIOSH studies, from OSHA inspection experience, and from industry sources. Estimates of the numbers of exposed employees are based on figures reported by CONSAD and are derived from Department of Commerce data and industry sources [1].

An estimated 3,400 workers are potentially exposed to mineral wool (rock or slag wool) fibers in general industry. About 2,110 of these workers are involved in the production of mineral wool and mineral wool insulation materials. The use of mineral wool in the production of acoustical tile involves potential exposures to about 1,290 workers.

A NIOSH study of five mineral wool producers showed that worker exposures to respirable dusts and fibers were relatively low. Personal breathing zone sample results taken of production workers indicated that all exposures were below 1 f/cc. Mean fiber concentrations were reported to be 0.125 f/cc across all job categories, with the highest exposures occurring for laboratory and quality control workers at 0.196 f/cc. The mean of the total airborne particulate material concentrations for all facilities was 0.621 mg/m^3.

NIOSH also surveyed workers in two plants that used mineral wool in their products. One of the manufacturers produced industrial insulation and the other produced ceiling tiles. In the industrial insulation plant the mean fiber concentration for all exposed production workers was 0.208 f/cc as an 8-hour time-weighted average (TWA8). In the tile plant, occupational exposures ranged from 0.72 f/cc to 3.12 f/cc; these averages correspond to activities for which the sampling time may have been less than two hours. The highest exposures occurred during the mixing of raw materials.

These data are considered to represent upper bounds of current occupational exposures for two reasons. First, the NIOSH survey of the manufacturing facilities was done in 1980 and significant improvements in controls have been implemented since then. Second, the data reflect samples taken during activities that were considered to have the highest potential exposures and that may occur intermittently. The eight-hour time-weighted average (TWA8) exposures would be considerably lower.

More recent exposure data was collected by TIMA, the industry trade association. TIMA submitted a report to NIOSH in 1990 which included up-to-date industrial hygiene data of occupational exposures to vitreous fibers in five mineral wool manufacturing plants [2]. One of the plants also produced acoustical tile from mineral wool. The data were collected over a 17 month period from 1988 to 1989. None of the job categories had mean exposures above 0.6 f/cc TWA8. Area samples in tile manufacturing operations ranged from 0.31 f/cc to 0.64 f/cc.

Exposure monitoring data submitted by three different companies and covering 17 plants manufacturing mineral wool and/or acoustical tile show that most exposures are below 0.4 f/cc. Only two plants reported fiber concentrations above 0.5 f/cc.

In plants where employees are exposed to airborne mineral wool fibers, the use of personal protective equipment is widespread. Disposable respirators are the most common form of protection from the inhalation of fibers; in addition, some employees use face shields, earmuffs, and protective clothing.

Data on occupational exposures to fibrous glass and special purpose glassy fibers have been documented by NIOSH studies, collected from OSHA compliance inspections, and reported by TIMA in their July 10, 1990 document submitted to NIOSH.

An estimated 26,220 workers are potentially exposed to fibrous glass or RCF in primary manufacturing facilities. The majority of these workers (16,758) are involved in the production of ordinary fibrous glass wool and insulation material. Another 8,437 workers are estimated to be exposed during the production of continuous filament fibrous glass, and about 1,025 workers produce special fine fibers and other vitreous fiber products such as RCF.

The TIMA report summarizes a comprehensive database consisting of 1,570 samples of occupational exposure measurements taken between 1985 and 1989 in various types of manufacturing

facilities producing and using fibrous glass.

The mean occupational exposure during the production of glass wool was 0.11 f/cc. The production of continuous filament for use in fiberglass textiles resulted in mean occupational exposures of 0.03 f/cc. Samples taken during the production and use of very fine diameter glass fiber for special filtration products averaged 1.42 f/cc with over 77 percent of the samples falling below 1 f/cc. Occupational exposures during the production of RCF, a ceramic fiber, averaged 0.65 f/cc, and almost 80 percent of the samples collected were below 1 f/cc. As in mineral wool production, respiratory protection and other personal protective equipment is widely used in the production of fibrous glass and RCF.

Workers may be also exposed to fibers during a variety of secondary manufacturing applications. The TIMA database contains over 440 exposure samples taken in a variety of fibrous glass user industries. The mean fiber concentration found in the end use applications was 0.25 f/cc.

In general industry, the primary end use applications of concern include the installation and removal of insulation products with industrial applications, and the addition of fiber products in the production of refractories and plastics by independent fabricators. Based on the available data and on knowledge about the nature of the activities and materials involved, CONSAD concluded that uses of fibrous glass products in other secondary manufacturing applications in general industry would very rarely involve significant airborne fiber exposure.

The available NIOSH and OSHA data on occupational exposures to fibrous glass are primarily concentrated in the user industries. NIOSH conducted a study of a shingle manufacturing plant which produces shingles with fibrous glass cores. The results from the personal samples were reported by the laboratory as not detectable. The lower limit of detection was determined to be 0.01 f/cc. In a review of OSHA sampling results, the only job category in general industry found with mean exposures above 1f/cc was the saw operator in refractories production.

An estimated 200 employees are potentially exposed to fibers during the production of refractories and plastics in 20 facilities other than the primary manufacturing plants. Exposures for these workers average about 0.7 f/cc TWA8; the highest average exposure, 1.8 f/cc, was recorded for the saw operator [1].

The installation and removal of insulation in industrial applications is performed by maintenance employees and by independent contractors. Substantial insulation work for furnaces, pipes, process equipment, and fire protection occurs at about 1,800 facilities annually. In addition to over 10,000 employees at the facilities involved in this work regularly, jobs are also handled by about 70 independent contractors. A total of about 11,000 employees are engaged in this type of work, which generally entails potential exposure to RCF.

Exposure levels can vary significantly depending on the specific circumstances of a job and the type of product used. Health and safe handling information and outreach programs have been developed by RCF producers to assist users in adequately protecting employees. Monitoring results indicate that exposures are usually less than 1f/cc. Respirators are recommended when fiber levels are unknown.

Table V–E3 summarizes occupational exposure to fibrous glass, RCF, and mineral wool fibers in general industry. For each industry, the number of exposed employees and their typical exposure levels are presented. Exposure levels reflect ambient air concentrations in the employees' breathing zones and do not take the use of respiratory protection into account. Potential overexposures are most likely to occur during the production of acoustical tile, special fine fibers, and RCF; in the fabrication of refractories; and in the installation and removal of insulation.

The number of employees exposed above the proposed PELs is derived by estimating the probability of an overexposure among the workforce in each industry sector. Even in industries with mean exposures less than 1 f/cc the exposure data indicate that some employees may occasionally be exposed at levels greater than 1 f/cc or at levels exceeding the mixed exposure limit. Although detailed data on the specific distributions of exposures by job category are not available, the number of employees exposed above the proposed PELs can be estimated from information on the frequency distribution of sampling results.

TABLE V–E3.—SUMMARY OF OCCUPATIONAL EXPOSURES TO MINERAL WOOL, FIBROUS GLASS, AND RCF IN GENERAL INDUSTRY

Industry	Number of exposed workers	Mean exposure levels (f/cc)
Mineral wool production:		
Wool and insulation	2,110	[2] 0.4
Acoustical tile	1,290	.5
Fibrous glass production:		
Wool and insulation	16,758	[2] .2
Continuous filament	8,437	[2] .2
Special fine fiber	425	1.4
Other, including RCF	600	.7
User industries: [1]		
Fabricators: Plastics and refractories	200	.7
Insulation work	11,000	.6

[1] Products made from or containing fibers are used throughout industry in many applications with minimal potential for exposure to airborne fibers.
[2] Less than.

Source: Office of Regulatory Analysis, OSHA; based on CONSAD Research, 1991 [1].

OSHA estimates that compliance with the proposed PEL of 1 f/cc would result in lower exposures for about 2,000 employees working with fibers in general industry. This number represents about 1,500 workers in insulation work and about 100 workers each in the production of acoustical tile, special fine fiber, RCF, refractories, and plastics that would be overexposed at some time during the year without adequate respiratory protection. The full-time equivalent number would be 1,400 workers, including 1,000 insulation workers.

The benefits of establishing a lower PEL for mineral wool and fibrous glass include a reduction in cases of respiratory disease. Several epidemiological studies have shown significant excess mortality from such disease for workers that have been exposed to these fibers. More detailed information on the specific health effects associated with exposure to mineral wool and fibrous glass can be found in the health effects section of this preamble.

The epidemiological studies demonstrating significant excess mortality among cohorts with exposure to fibers typically show increases in incidence rates of 30 percent or more. The elevated incidence rates usually correspond to relatively high exposure levels, but the available evidence indicates that workers face a significant risk of disease at exposure levels above 1 f/cc. On average, the rate of occupationally induced respiratory disease should decline among the affected workers. If it is assumed that

the excess risk over a working lifetime would be reduced to less than one in one thousand, from two to four cases could be expected to be prevented over 45 years among the workers exposed above the proposed PEL.

Several studies link exposure to these fibers with illnesses such as chronic rhinitis, chronic coughs, bronchitis, fibrosis, and other conditions. A recent health hazard evaluation conducted by NIOSH at a fibrous glass manufacturer (RDHETA 90–145–2086, November, 1990) found that fifty to sixty percent of the workers participating complained of chronic cough, shortness of breath, and irritation of the eyes, skin, and upper respiratory tract (some of these symptoms may have been associated with smoking). Based on exposure monitoring data collected by NIOSH, exposure levels at the plant are representative of those in the industry.

Reductions in exposures as a result of achieving compliance with the proposed rule are estimated to prevent about 500 illnesses each year associated with exposures to fibers. Most of these illnesses are not expected to involve lost workdays; the annual number of lost workday illnesses potentially prevented by the proposed rule is estimated to be about 100. OSHA requests comments on the prevalence of health effects among workers exposed to fibrous glass and mineral wool, and on the effectiveness of compliance with the proposed rule in preventing such effects.

Based on research by Kip Viscusi, the implicit average value of avoiding each lost workday case would be about $40,000. This value is based on a willingness-to-pay methodology and takes existing compensation programs into account. The total potential benefit associated with the prevention of lost workday illnesses due to exposures to fibrous glass and mineral wool in general industry would be $4 million.

Asphalt fumes. Workers with occupational exposure to asphalt fume can be found in three industry categories within general industry. Approximately 144 workers may be exposed to asphalt fume during asphalt production; the production of paving mixtures involves approximately 12,000 production workers; and the manufacture of roofing products involves an estimated 7,100 production workers.

The production of asphalt in petroleum refineries is a highly automated process. In a typical plant, only two workers are required to operate the equipment. The production system is sealed and thus emissions of asphalt fume are minimal. Personal breathing zone samples were taken of workers during a site visit to an asphalt manufacturing refinery by CONSAD. The analysis of the samples revealed that the workers were exposed to the benzene soluble fraction of asphalt fumes at levels below 0.08 mg/m³.

Asphalt paving mixture manufacturing facilities are also generally automated, limiting the potential for employee exposures. OSHA inspection data for these facilities indicate that exposures range from 0.197 mg/m³ to 0.350 mg/m³. The National Asphalt Paving Association found that the mean exposure to the benzene soluble fraction of asphalt fume in two asphalt cement manufacturing plants was 0.297 mg/m³.

During the production of roofing products, employee exposures to asphalt fumes may be slightly higher. OSHA inspection data collected in five different plants manufacturing asphalt felts and coatings revealed exposures to the benzene soluble fraction of asphalt fume as high as 0.887 mg/m³. Exposures for most employees were below 0.4 mg/m³. Occupational exposures in plants manufacturing other roofing products, including shingles, are expected to be similar.

Table V–E4 summarizes the data on occupational exposures to asphalt fumes in general industry. The estimated number of exposed employees and the corresponding mean exposure levels are presented for each industry category. OSHA preliminarily concludes that employees involved in the production of asphalt, paving mixtures and roofing products are generally exposed below the proposed PEL of 5 mg/m³. However, most employees involved in the production of paving mixtures and roofing products may be potentially exposed above an alternative PEL of 0.2 mg/m³.

The potential benefits associated with compliance with the proposed standard of 5 mg/m³ or the alternative standard of 0.2 mg/m³ can be calculated by applying a quantitative risk assessment (QRA) developed for asphalt fume, which is discussed in detail in another section of this preamble. The QRA establishes a linear (proportional) relationship between lifetime cumulative exposure and risk of lung cancer, without threshold effects.

TABLE V–E4.—SUMMARY OF OCCUPATIONAL EXPOSURES TO ASPHALT FUMES IN GENERAL INDUSTRY

Exposure industry	Number of exposed workers	Mean levels (mg/m³)
Asphalt production	144	[1] 0.1
Asphalt paving mixtures	12,000	.3
Roofing products	7,100	.5

[1] Less than.

Source: Office of Regulatory Analysis, OSHA; based on CONSAD Research, 1991 [1].

In order to derive the potential benefit of the alternative PEL of 0.2 mg/m³, the QRA is applied to exposures that would be lowered to comply with the standard. OSHA estimates that 12,000 full-time equivalent workers are exposed at an average of 0.3 mg/m³ in the production of paving mixtures, and that 7,100 workers are exposed at an average of 0.5 mg/m³ in the production of roofing products. If the QRA for asphalt fume is used to predict the excess cancer risk among these workers, the number of lung cancer cases expected to be attributable to these exposures over 45 years would be 36.

The exposures are likely to be reduced through the use of half-mask respirators with organic vapor cartridges and other controls which have an estimated protection factor of at least ten. Assuming full compliance with the standard would reduce average exposures to the benzene soluble fraction of asphalt for these workers to 0.05 mg/m³ over a working lifetime, the number of excess cancers expected to be prevented over 45 years would be 31.

With a PEL of 0.5 mg/m³, an estimated full-time equivalent of 2,000 workers producing paving mixtures and 3,000 workers producing roofing products would be exposed above the PEL. About 2,000 FTE workers in each industry would need respiratory protection. The number of excess cancers prevented over 45 years with full compliance would probably be fewer than 10.

With the proposed PEL of 5 mg/m³, it is unlikely that routine exposures would need to be reduced for any employees. Corresponding benefits would probably be close to zero.

4. Nonregulatory Alternatives

The new PELs for asphalt fume, mineral wool, and fibrous glass are proposed for general industry in conjunction with the accompanying proposed rulemaking for the construction industry.

The proposed construction industry regulation would add or revise PELs for over 400 substances, including asphalt fume, mineral wool, and fibrous glass. OSHA has determined that the proposed rule for the construction industry is necessary to ensure adequate protection of the health of construction workers. The analysis of nonregulatory and other alternative approaches for achieving this goal is included in the preamble of the proposed rule for construction.

New PELs are being proposed in the construction industry for asphalt fume, mineral wool, and fibrous glass; this proposed rule for general industry would ensure that the PELs are consistent for all workers. The alternative to this approach would be to establish different PELs for employees depending upon the industrial classification of the employer. OSHA has rejected this approach and has adopted a regulatory approach which recognizes the inherent hazardous nature of the substances being regulated and the desirability of affording equal protection to all workers exposed to the substances.

E. Technological Feasibility

OSHA has preliminarily determined that compliance with the proposed PELs for asphalt fume, fibrous glass, and mineral wool can be achieved with technology that is currently available and utilized in general industry. In operations where airborne concentrations cannot be reduced below the proposed PEL through the implementation of feasible controls, employees would be required to wear respirators. With a PEL of 0.2 mg/m^3, OSHA anticipates that such situations may occur in most facilities involved in the production of asphalt paving mixtures or roofing products. Additional respirator use would probably not be necessary to comply with a PEL of 5 mg/m^3 in any of the affected industries.

Data on occupational exposure to asphalt fume indicate that current occupational exposures are generally below 0.2 mg/m^3 during the production of asphalt. Employees control the highly automated process from air conditioned control booths with computerized equipment.

Recent technological advances have made the production of asphalt paving mixtures a relatively automated process at most plants. The facility operator can generally make most of the adjustments during a normal working day without leaving the control room. The ticket dispatcher usually coordinates and monitors the flow of trucks and loads of materials and may work in the control room or in a separate building. A front-end loader operator loads the feed bins with aggregates; such equipment can be outfitted with air conditioned cabs. Other employees work throughout the facility making necessary adjustments, performing preventative maintenance, and carrying out other responsibilities. Employees for whom airborne concentrations exceed the PEL could be adequately protected with an appropriate respirator.

Employees currently manufacturing asphalt roofing products may be exposed above a PEL of 0.2 mg/m^3 for asphalt. Most of these facilities already utilize feasible controls to reduce employee exposures, such as local exhaust ventilation at emissions sources. Although some increase in the effectiveness of controls or the application of additional controls may be possible, OSHA expects that many employees would be required to wear respirators. At the airborne concentrations found in this industry, respirators would be capable of providing sufficient protection from asphalt exposure.

The available data indicate that the production and use of mineral wool and mineral wool insulation in general industry usually does not involve exposures above 1 f/cc. During the manufacture of acoustical tile with mineral wool, some occupational exposures above 1 f/cc have been recorded, but these may not occur in all plants. Monitoring results from seven plants manufacturing and using mineral wool products showed no employee exposures above 0.3f/cc [2].

Occupational exposures during the production of fibrous glass wool, insulation, and continuous filament are generally below 0.2f/cc. Less than 2 percent of the workforce exposed to fibrous glass is involved in the production of special fine diameter fibers. Monitoring results during this process have averaged 1.42 f/cc, and over 77 percent of the observed fiber concentrations for employees exposed in these operations were less than 1 f/cc.

CONSAD Research has analyzed the circumstances of exposure in the production of fine diameter fibers and has concluded that the installation of additional engineering controls at work stations with exposures above 1 f/cc would enable exposures to be controlled below the proposed PEL [1]. The engineering controls could include improved general and local exhaust ventilation systems, portable vacuum systems, and enclosures. Improved work practices may also be able to reduce exposures in some cases. Respirators may be used to achieve compliance with the PEL if additional engineering controls are infeasible.

The available data on the production of RCF and the use of vitreous fibers in secondary manufacturing applications indicate that exposures are generally below 1 f/cc. In some exceptional circumstances exposures may be higher; the application of standard engineering controls alone or in combination with some supplemental respirator use would ensure compliance with the proposed PEL.

6. Costs of Compliance

Achieving full compliance with the proposed exposure levels for asphalt fumes, mineral wool, and fibrous glass would require additional expenditures on controls by some firms in general industry. Facilities with airborne concentrations above the proposed PELs would incur costs to reduce those levels.

The estimation of costs associated with the controls necessary to reduce exposures is consistent with the hierarchy of controls specified by OSHA. Respirators are to be used as a last resort if feasible engineering controls and work practices are insufficient.

The exposure profile and the feasibility of additional controls was evaluated by CONSAD Research Corporation under contract with OSHA. CONSAD identified the work stations and industries where additional controls would be needed, determined the effectiveness of the controls, and estimated the unit costs associated with the controls. The annualized incremental costs per plant and for each industry sector were calculated. OSHA supplemented the data in the CONSAD report with additional information submitted to NIOSH in response to the request for public comments on occupational asphalt exposure [F.R. Vol. 55, July 17, 1990].

Exposure monitoring data for employees involved in the production of asphalt indicate that the eight-hour time-weighted average exposures are sufficiently low to enable firms to be in compliance with the proposed PEL of 5 mg/m^3 and with the alternative PEL of 0.2 mg/m^3 without incurring costs for additional controls.

Mean exposure levels during the production of asphalt paving mixtures may exceed the alternative PEL of 0.2 mg/m^3, and additional controls would need to be implemented to ensure compliance in these establishments. Front-end loader operators could be protected by an enclosed cab with a filtered air supply which is estimated to cost $4,000. Assuming such a cab would

be necessary for an average of one loader at half of all affected asphalt pavement facilities, the resulting total estimated capital cost would be $8 million. Based on an expected life span of 10 years and an annual cost of capital of 10 percent, the corresponding annualized cost would be $1.30 million.

Additional engineering controls and improved work practices should be used to reduce exposures before relying on respiratory protection. Due to the current extent of automation and the mobile nature of the work at asphalt pavement facilities, the implementation of significant additional controls does not appear to be feasible. Employees outside of the control rooms for prolonged periods would probably have to wear half-mask respirators with organic vapor cartridges to comply with the alternative PEL of 0.2 mg/m³. An average of three employees per facility (a total of 12,000 employees) may be affected by this requirement on an average of two out of three work days. This would represent 8,000 FTE workers.

For purposes of estimating the cost of complying with the alternative PEL of 0.2 mg/m³, it is assumed that 12,000 respirators would be purchased for $22 each. With an average life span of five years, the annualized cost would be about $70,000. In addition, the respirator cartridges would need to be replaced on average for 8,000 workers every four days at a cost of $8 per set. This would amount to an annual cost of $4.16 million (260 work days per year divided by four, multiplied by $8 and by 8,000 workers). Total annualized costs of compliance for this industry are estimated to be $5.53 million.

With a PEL of 0.5 mg/m³, exposures for front end loaders may not need to be reduced, and the number of employees requiring respiratory protection is estimated to be a full-time equivalent of 2,000 workers. The purchase of 4,000 respirators would have an annualized cost of about $23,000, the replacement of cartridges for the equivalent of 2,000 workers every four days would cost $1.04 million, and the total annualized cost for this industry would be approximately $1.06 million.

Compliance with the proposed PEL of 5 mg/m³ is not expected to result in additional costs for the production of paving mixtures or for the manufacture of roofing products.

Manufacturers of roofing products would be required to provide additional exposure controls for most employees to achieve compliance with the alternative PELs of 0.2 mg/m³ and 0.5 mg/m³. Plants in this industry already use local exhaust ventilation systems at emission sources to some extent. New or improved 300 ventilation systems, other engineering controls, and changes in work practices would have to be implemented to the extent feasible in each plant to reduce exposures. Feasible controls generally include all practical and reasonable efforts to reduce exposures without resorting to building new plants or making drastic changes in the manufacturing process.

For purposes of estimating the costs of compliance that may be associated with the proposed standard, OSHA assumes that an average of $100,000 per plant could be spent on additional engineering controls, including new or improved ventilation systems, clean air islands, and enclosures. This amount represents potential incremental changes that may produce substantial reductions in exposures. For example, a study conducted by PACE, Incorporated for several other industries demonstrates that significant improvements in control technology can be achieved with such expenditures (Attachment to Exhibit 19–43 in OSHA docket H–057a). Annual costs associated with power and maintenance of these systems and with other elements of an exposure control program are estimated to be about $10,000 per plant. The estimated annualized cost of additional engineering controls for the industry would be $2.68 million.

The costs for additional engineering controls primarily represent an allowance for the costs of complying with the requirement to implement controls "whenever feasible." OSHA expects that plants in this industry have already implemented most feasible engineering controls and that further reductions in exposures through the implementation of additional controls would be marginal. OSHA invites comments on this preliminary assessment.

Although the implementation of additional controls would reduce exposure levels, it is likely that supplemental respiratory protection would be necessary for some employees. The data compiled by CONSAD indicate that two of seven job categories (the coater and the head saturator) have the highest average exposures and that engineering controls alone may not be able to achieve levels below 0.2 mg/m³ or 0.5 mg/m³ consistently in these operations. OSHA estimates that respiratory protection would have to be provided for about 2,030 employees on a full-time basis.

These employees would have to wear half-mask respirators with organic vapor cartridges. The respirators would cost about $22 each and have an estimated life span of five years; the annualized cost for these would thus be $11,781. The cartridges would need to be replaced once every four days on average for about $8 per set, for an annual cost of $1.06 million (260 work days per year, divided by 4, multiplied by $8 and by 2,030 workers). The annual cost for the industry for respiratory protection would be about $1.07 million. The total annualized cost of compliance for the manufacturers of roofing products with an alternative PEL of 0.2 mg/m³ would be an estimated $3.75 million.

During the production of acoustical tile from mineral wool, additional controls would be necessary in some plants to ensure compliance with the proposed PEL. CONSAD estimated that 13 plants would need to install additional controls at 3 work stations. The controls would primarily consist of local exhaust ventilation and would have an estimated annualized unit cost of about $3,000. In addition, three of these plants would need to supplement the engineering controls with respiratory protection for approximately 23 employees each. The total annualized costs of compliance for ceiling tile manufacturing would be about $131,000.

Two of the plants involved in fibrous glass production produce specialty fine fibers. Occupational exposures during this process may exceed the proposed PEL. An estimated six work stations in each plant would be affected. The installation of improved ventilation systems is the recommended method of control, and it is believed that these controls would be sufficient to ensure compliance with the proposed PEL. Improved housekeeping and changes in work practices may also reduce exposure levels. The total annualized costs for the two plants are estimated to be $18,660.

About 20 plants in secondary manufacturing applications may also need additional controls to meet the proposed PEL for fibrous glass. Plants most likely to be affected are associated with the production of refractories (including textiles and boards) and plastics. CONSAD estimated that each plant would have one affected work station that could be adequately controlled with standard ventilation systems. Annualized costs per plant are estimated to be about $3,000 and the estimated total annualized cost of compliance for these plants is $60,000.

The production of RCF involves potential exposures to airborne fibers. These plants have generally implemented feasible controls and respirator programs that adequately protect most workers from exposures above the proposed PELs. Additional

compliance costs as a result of this rulemaking would include providing respiratory protection for those employees intermittently exposed above 1 f/cc who currently do not wear respirators. Providing such protection for the equivalent of 60 full-time employees is estimated to cost $23,000 annually. Some plants may be able to implement additional engineering controls or improved housekeeping programs to reduce exposures below 1 f/cc; such alternatives would probably have comparable costs on an annual basis.

Workers may be exposed to RCF during the installation or removal of insulation products. The manufacturers of these products provide extensive information about the safe use of the products, including recommended work practices, potential health effects, and literature and videos on providing training and protecting the health of workers. Most employees involved in this type of work appear to be adequately protected with the appropriate combination of controls, work practices, and respirators. Additional costs for complying with the proposed PEL would be incurred for those employees who are exposed above 1 f/cc and not already protected. OSHA estimates that supplemental respiratory protection may be necessary for about 1,000 full-time equivalent employees at an annual cost of about $375,000.

Tables V–E5, V–E6, and V–E7 summarize the estimated costs of compliance with this rule with a proposed PEL for asphalt of 5 mg/m^3 and with alternative PELs for asphalt of 0.2 mg/m^3 and 0.5 mg/m^3, respectively. OSHA requests that any comments regarding these preliminary estimates, including supporting or contradictory evidence, be submitted to the record to ensure that the potential regulatory impacts are accurately evaluated for the final rule.

The total annualized estimated cost of compliance for this rule with the proposed PEL for asphalt fume of 5 mg/m^3 is $0.6 million, all of which would be attributable to the new PELs for fibers.

The total annualized estimated cost of compliance for this rule with an alternative PEL for asphalt fume of 0.2 mg/m^3 in general industry would be $9.89 million. Most of these costs are attributable to compliance with the PEL for asphalt fume for which the primary exposure control measure would be the use of respirators. With an alternative PEL for asphalt fume of 0.5 mg/m^3, the estimated total cost would be $5.42 million.

TABLE V–E5.—ESTIMATED COSTS OF COMPLIANCE FOR AFFECTED INDUSTRIES WITH A PEL FOR FIBERS OF 1 F/CC AND WITH A PEL FOR ASPHALT FUME OF 5 MG/M^3

Affected industry	Number of affected plants	Total annualized cost of controls	Total annual cost of respirators	Annualized industry cost
Acoustical Tile	13	$117,000	$13,800	$130,800
Fine Diameter Fibers	2	18,660	0	18,660
Independent Fabricators	20	60,000	0	60,000
RCF Production	12	0	23,000	23,000
Insulation Work	1,500	0	375,000	375,000
Asphalt Pavement	4,000	0	0	0
Roofing Products	102	0	0	0
Total	5,649	195,660	411,800	607,460

Source: Office of Regulatory Analysis, OSHA; based on CONSAD Research, 1991 [1].

TABLE V–E6.—ESTIMATED COSTS OF COMPLIANCE FOR AFFECTED INDUSTRIES WITH A PEL FOR FIBERS OF 1 F/CC AND WITH A PEL FOR ASPHALT FUME OF 0.2 MG/M^3

Affected industry	Number of affected plants	Total annualized cost of controls	Total annual cost of respirators	Annualized industry cost
Acoustical Tile	13	$117,000	$13,800	$130,800
Fine Diameter Fibers	2	18,660	0	18,660
Independent Fabricators	20	60,000	0	60,000
RCF Production	12	0	23,000	23,000
Insulation Work	1,500	0	375,000	375,000
Asphalt Pavement	4,000	1,300,000	4,230,000	5,530,000
Roofing Products	102	2,680,000	1,070,000	3,750,000
Total	5,649	4,175,660	5,711,800	9,887,460

Source: Office of Regulatory Analysis, OSHA; based on CONSAD Research, 1991 [1].

TABLE V–E7.—ESTIMATED COSTS OF COMPLIANCE FOR AFFECTED INDUSTRIES WITH A PEL FOR FIBERS OF 1 F/CC AND WITH A PEL FOR ASPHALT FUME OF 0.5 MG/M^3

Affected industry	Number of affected plants	Total annualized cost of controls	Total annual cost of respirators	Annualized industry cost
Acoustical Tile	13	$117,000	$13,800	$130,800
Fine Diameter Fibers	2	18,660	0	18,660
Independent Fabricators	20	60,000	0	60,000
RCF Production	12	0	23,000	23,000

TABLE V–E7.—ESTIMATED COSTS OF COMPLIANCE FOR AFFECTED INDUSTRIES WITH A PEL FOR FIBERS OF 1 F/CC AND WITH A PEL FOR ASPHALT FUME OF 0.5 MG/M³—Continued

Affected industry	Number of affected plants	Total annualized cost of controls	Total annual cost of respirators	Annualized industry cost
Insulation Work	1,500	0	375,000	375,000
Asphalt Pavement	4,000	0	1,060,000	1,060,000
Roofing Products	102	2,680,000	1,070,000	3,750,000
Total	5,649	2,875,660	2,541,800	5,417,460

Source: Office of Regulatory Analysis, OSHA; based on CONSAD Research, 1991 [1].

7. Economic Impacts

The costs of compliance presented in the previous section were evaluated for their likely economic impacts in each of the affected industries. OSHA compared the estimated costs of compliance with data on annual revenues and profits for each sector.

The estimated costs necessary to achieve compliance with the proposed regulation are generally small in relation to revenues and profits. Table V–E8 shows the costs of compliance as a percentage of revenues and profits for each affected industry sector with an alternative PEL for asphalt fume of 0.2 mg/m³. The economic feasibility of a PEL for asphalt fume of 0.5 mg/m³ or 5 mg/m³ is established by demonstrating the economic feasibility of a PEL of 0.2 mg/m³.

The industry sectors affected by the proposed regulation would be the production of acoustical tile from mineral wool, the production of special application fine diameter glass fibers, the production of RCF, secondary manufacturing with vitreous fibers for refractories and plastics, insulation work in general industry, the production of asphalt pavement, and the manufacture of asphalt roofing products. The estimated compliance costs represent less than 0.15 percent of the revenues in each sector. The affected firms should be able to recoup the compliance costs with minimal price increases that would appear insignificant in comparison to other factors influencing production costs and pricing.

In the worst-case scenario where firms would not be able to bear any increase in prices without significant reductions in sales volumes, the estimated compliance costs would represent less than 4.5 percent of the pre-tax profits in each of the affected sectors. The resulting reductions in profitability would not be likely to cause significant impacts on the structure or viability of the affected sectors.

The compliance costs would probably be absorbed through some combination of slight price increases and reductions in profits. Most of the plants already have established safety and health programs to monitor the conditions of the work environment and control worker exposures to the extent necessary. This regulation would make it necessary for some plants to increase these efforts by targeting lower exposure levels corresponding to the proposed PELs.

In the mineral wool, fibrous glass, and RCF industries most employee exposures are already less than the proposed PEL of 1 f/cc; the compliance costs represent a marginal increase in the substantial efforts currently made to control exposures in these industries.

Compliance with the proposed PEL of 5 mg/m³ for asphalt would not require additional expenditures and thus is considered economically feasible.

Compliance with the alternative PEL of 0.2 mg/m³ for the benzene soluble portion of asphalt fume would probably require widespread use of respiratory protection in the asphalt pavement and roofing products industries. The estimated costs of controls reflect an approach of installing engineering controls to the extent feasible. Feasible controls would include reasonable, practical measures and exclude excessively costly or extravagant measures. The total estimated costs of compliance would be economically feasible.

The overall demand for asphalt products should not be significantly affected. Substitutes, when available, are likely to be of poorer quality or more expensive. The usefulness of and need for asphalt products makes the demand relatively inelastic. Ultimately, the costs of the increased protection of the health of employees working with asphalt would result in slight increases in the costs of roofing and paving work.

Regulatory flexibility analysis. OSHA has preliminarily concluded that this proposed regulation would not have a significant adverse impact on a substantial number of small establishments.

The proposed rule is not expected to have a significant adverse impact on the affected establishments because the costs of compliance would be small in comparison to both revenues and profits. There are no indications that small establishments would be disproportionately burdened by the proposed requirements. The controls necessary to reduce employee exposures are not associated with significant economies of scale, and the need for additional controls is primarily determined by the extent of current efforts to control exposures in the plants rather than by plant size. The proposed regulation would tend to equalize competitiveness among plants by eliminating any economic advantage associated with inadequate engineering controls in some plants.

TABLE V–E8.—COSTS OF COMPLIANCE AS PERCENTAGES OF REVENUES AND PROFITS FOR AFFECTED INDUSTRIES BASED ON A 0.2 MG/M³ PEL FOR ASPHALT FUME

Affected industry	Estimated revenues	Estimated pre-tax profits	Compliance costs as a percent of	
			Revenues	Pre-tax profits
Acoustical Tile	$185,500,000	$6,676,000	0.07	1.96
Special Fine Diameter Fiber	27,000,000	972,000	0.07	1.92

TABLE V-E8.—COSTS OF COMPLIANCE AS PERCENTAGES OF REVENUES AND PROFITS FOR AFFECTED INDUSTRIES BASED ON A 0.2 MG/M ^{3} PEL FOR ASPHALT FUME—Continued

Affected industry	Estimated revenues	Estimated pre-tax profits	Compliance costs as a percent of	
			Revenues	Pre-tax profits
Independent Fabricators	50,000,000	1,750,000	0.12	3.43
RCF Production	75,000,000	2,700,000	0.03	0.85
Insulation Work	NA	NA	<0.01	<0.01
Asphalt Pavement	4,346,200,000	204,271,400	0.13	2.71
Roofing Products	3,402,900,000	85,072,500	0.11	4.41

NA: Not Applicable.
Source: Office of Regulatory Analysis, OSHA; based on CONSAD, 1991 [1].

References

1. CONSAD Research Corporation, Regulatory Analysis of OSHA's Proposed PELs for Occupational Exposures to Mineral (Slag/Rock) Wool and Fibrous Glass Fibers and Petroleum Asphalt Fumes. Prepared for the Office of Regulatory Analysis, OSHA, under contract number J9–F8–0033. January 30, 1991.
2. TIMA Inc., Health and Safety Aspects of Man-Made Vitreous Fibers: Information, Data, Comments, and Recommendations Regarding Occupational Exposure to Man-Made Vitreous Fibers. Stamford, Connecticut, July 10, 1990.
3. U.S. Department of Commerce, Bureau of the Census, Industry Series, Washington, DC, June 1990.

VI. Clearance of Information Collection Requirements

On March 31, 1983, the Office of Management and Budget (OMB) published a new 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 *et. seq.* (48 FR 13666). Part 1320, which became effective on April 30, 1983, sets forth obtaining OMB clearance not later than the date of publication of the proposal in the **Federal Register** for collection of information requirements contained in proposed rules. It also requires agencies to include a statement in the notice of proposed rulemaking indicating that such information requirements have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act.

In addition to the above requirements, applicable federal regulations also provide, 5 CFR 1320 4(a), 1320.5(a), and 1320.5(d), respectively, as follows:

An agency shall not engage in a collection of information without obtaining OMB approval of the collection of information and displaying a currently valid control number and, unless OMB determines it to be inappropriate, an expiration date.

Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any information collection request if the request does not display a currently valid OMB control number, or, in the case of an information collection request which is submitted to nine or fewer persons, the request fails to state that for this reason it is not subject to OMB review under the Act.

Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency through judicial process, or by any other person through judicial or administrative process.

The proposed PELs update standard for Construction, Maritime, and Agriculture will create no additional recordkeeping requirements.

VII. Summary and Explanation of the Proposed Standard

Part 1926—Construction

Table Z, Construction in the standard includes proposed new permissible exposure limits for approximately 370 substances. Approximately 160 of the 370 are new PELs for substances which were not previously regulated. OSHA is proposing that the Z–Table in construction be identified as Table Z, Construction to indicate both its relation to and difference from Table Z–1–A for general industry. The substances listed on Tables Z–2 and Z–3 of 29 CFR part 1910 will be incorporated into the construction table, resulting in only one table for construction, Table Z, Construction.

Table Z, Construction is divided into two parts. On the left-hand side are the current (or transitional) limits, and on the right-hand side are the proposed limits for construction.

For construction, CFR part 1926.55 regulates exposure to gases, vapors, fumes, dusts, and mists, and references the "Threshold Limit Values of Airborne Contaminants for 1970" of the American Conference of Governmental Industrial Hygienists. These are the limits that currently exist and are enforced in construction.

The scope of many of the substance-specific OSHA health standards found in 29 CFR part 1910 includes coverage of the construction sector. Lead, § 1910.1025, and coke oven emissions, § 1910.1029, are the only substance-specific health standards specifying exposure limits that do not cover construction.

However, lead is covered in construction to the degree that the 1970 TLV for lead is 200 μg/m ^{3} TWA. And while the standard for coke oven emissions does not currently apply to construction, the coal tar pitch volatile TLV of 200 μg/m ^{3} TWA does apply.

OSHA is proposing, as part of this current rulemaking, a PEL of 50 μg/m ^{3} TWA for lead as an 8-hour TWA for construction. This is the level that has existed in general industry since 1978; this is also the level effective in the maritime sector. The ancillary provisions (e.g., medical surveillance, exposure monitoring) are outside the scope of this rulemaking. However, OSHA is currently developing a proposal to address all of the issues in a comprehensive standard covering workplace exposure to lead in the construction industry. OSHA is also proposing that the coke oven limit of 0.15 mg/m ^{3} (as found in § 1910.1029) apply to construction.

The policy reasons for this proposal are explained in part I of the preamble. The health bases for the new exposure limits are explained in part IV. The feasibility analysis for the proposal is summarized in part V. OSHA's preliminary findings that the proposed limits substantially reduce significant risk and are feasible, are based on these analyses.

In addition to Table Z, Construction, OSHA is proposing to both adopt some new language and to carry over some existing language from § 1926.55. Also, in some cases OSHA is proposing to

directly incorporate by technical amendment language currently applicable to construction by cross reference to the 1970 ACGIH TLVs.

The new language is in ¶ (a)(3), (a)(4), and (a)(5), which refer to compliance with the Final Rule Limits columns and to skin absorption. The language used is consistent with the language used in the General Industry standard. Also new is the language in ¶ (d) on start-up dates and transitional provisions. Comments are requested on all these provisions.

Substantially unchanged from prior provisions are ¶ (b) on Methods of Compliance and ¶ (c) on the Computation Formula. Paragraph (b) is a direct carryover from the existing § 1926.55(b). The Computation Formula is an existing provision already applicable to construction by cross reference to the 1970 ACGIH TLVs. Also ¶ (a)(1) and (a)(2), covering Transitional Limits, are existing requirements applicable to construction by cross reference to the 1970 ACGIH TLVs. Substantive comments are not requested on ¶ (a)(1), (a)(2), (b), and (c), as these changes are technical amendments being made for the convenience of the public. The record is not being opened to consider substantive changes to these provisions. OSHA will consider comments suggestive of style change for the purpose of clarity.

The language in the proposed § 1926.55 (a) sets forth the obligation to protect employees from airborne and skin exposure. Airborne limits may be Time-Weighted Averages (TWA), Short Term Exposure Limits (STEL) and Ceilings (C). These are defined in ¶ (a)(5).

The standard states in § (a)(5):

(3) The following definitions apply to paragraph (a) of this section and Table Z, Construction;

(i) Time-weighted average (TWA) is the average airborne exposure of an employee in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) Short term exposure limit (STEL) is the employee's 15-minute time-weighted average exposure which shall not be exceeded at any time during a work day. This applies even if the eight hour time-weighted average is within the TWA.

(iii) Ceiling is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed by sampling over a 15-minute period as would be done for a STEL, unless a different time period is specifically indicated.

In the current 29 CFR 1926.55(a), OSHA specifies that the exposure levels used in the "Threshold Limit Values of Airborne Contaminants for 1970" shall apply to construction. The 1970 TLVs include the computation formula for mixtures. Therefore, the reference to the 1970 TLVs has applied to construction the same Computation Formula that has applied to general industry as set forth in ¶ (d) of the General Industry Air Contaminants Final Rule. (See section I–H for further discussion.)

The standard provides an explanation of skin notation. In ¶ (a)(4) the standard states:

An employee's skin exposure to materials listed in Table Z, Construction with an "S" notation shall be limited through the use of gloves, coveralls, goggles or other appropriate personal protective equipment or method necessary to prevent possible skin absorption.

Skin notations are used where the substance may be absorbed through the skin in sufficient amounts to cause systemic toxicity. As the standard's language indicates, appropriate personal protective equipment, engineering controls or work practices may also be used to minimize or eliminate skin contact in these situations. No specific hierarchy of controls is mandated for the prevention of skin contact. (See also discussion under VI. Health Effects Discussion, C. 17, Substances for Which OSHA is Adding Skin Notations.)

It should be noted that upon the effective date for the proposed new standard, OSHA is proposing that the Skin Designation in the Final Rule Limits columns becomes applicable. Consequently the Skin designation in the Transitional Limits Columns will no longer have effect after the effective date unless a stay is issued.

OSHA recognizes that it takes time for employers to evaluate exposures and purchase, install and make operable equipment to control such exposures. OSHA believes that 3 months from the date of publication is a reasonable time to evaluate exposures and come into compliance with any reasonable combination of controls. OSHA is proposing 4 years as the time to come into compliance with a preference for engineering controls. Comment on these start-up dates is requested.

The purpose of the Transitional Limits is to state the limits to be achieved by primary reliance on engineering controls, if feasible, during the 4 year transitional period. During the transitional period the new limits may be achieved by any reasonable combination of engineering, work practice and respiratory controls. This priority on compliance with engineering controls as set forth in § 1926.55 (b) for the exposure limits in the Transitional Limit Columns is the existing requirement. The exposure limits in the Transitional Limits columns also would remain in place if any of the new limits are stayed.

OSHA is not proposing to change limits in this rulemaking for 9 substances for which comprehensive rulemakings are in progress, or NPRMs have been published. These substances are cadmium (dust and fume), butadiene, ethylene dibromide, methylene chloride and two glycol ethers and their acetates. As OSHA has made substantial progress towards developing a comprehensive standard for these substances, it would be wasteful of resources to consider these substances in the current proceeding.

Complete and published proposed rules are available for cadmium (dust and fume), butadiene, ethylene dibromide and methylene chloride. For those substances for which a proposal has been published, the proposed PEL is located in the Proposed Final Rule columns in each Z–table. If a proposal has not been published for a specific substance, then the existing limit is reflected in the table. OSHA intends to carry over the PELs established in these separate substance-specific rulemakings to the Z-tables. OSHA wishes to make clear that it is not opening the record on any substance for which separate rulemaking is in progress.

In reference to ethylene dibromide, an NPRM was published in 1983, and a final rule has not been published. As EDB is no longer produced in the U.S., OSHA has given the substance low priority. Therefore, the present limits are listed in the Z-tables.

The language of this proposal follows the format shown to and approved by the Construction Advisory Committee. The style of this proposal differs from that of general industry and maritime. This difference is reflected primarily in the introductions to ¶ 1926.55(a), 1915.1000(a), and 1910.1000. OSHA believes there are advantages in following the same style across all sectors as much as is possible. OSHA is considering changing the format in construction to more closely follow the format in other sectors. OSHA requests comment on this.

Part 1915—Shipyards

OSHA consulted with the Shipyards Advisory Committee on the Air Contaminants Standard for Shipyards at its May and August 1991 meetings. The content and format of the regulatory language in part reflects the result of these consultations. The committee is generally supportive of the proposal.

The Committee believes that the Shipyard regulations in general should become more self-contained with less need for cross-reference to General Industry standards. They also suggested that placing health regulations in their own Subpart Z for shipyards and maintaining consistency of definitions and regulatory language with the 1989 PELs would make these regulations easier to understand. OSHA agrees with these suggestions.

Accordingly, OSHA is proposing that there be a new Subpart Z for Part 1915 Shipyards which contains a § 1915.1000 Air Contaminants. That section includes a Table Z, Shipyards which lists all of the permissible exposure limits (PELs) applicable to Shipyards.

Table Z, Shipyards incorporates PELs from 4 sources. Approximately 370 PELs that are either new or more protective than the old limits are being proposed in Shipyards. Approximately 210 PELs will remain unchanged. Approximately 15 substances are currently covered in Shipyards through cross-reference to single substance standards in 29 CFR 1910.1001–1048. They are listed in the table with the exposure limit and a cross- reference to the ancillary provisions of the single substance standard. Finally, there are two substances (coke oven emissions and cotton dust) that have been applied to general industry but have not been specifically applied to Shipyards. OSHA is proposing that the exposure limits for cotton dust be made applicable to Shipyards. Table I–F lists the substances which OSHA is either newly proposing for shipyards or is proposing more protective limits. OSHA is only opening the record for these substances.

Table Z, Shipyards lists all the substances for which OSHA has either existing or proposed PELs. Table Z, Shipyards is divided into Transitional Limit columns on the left and Proposed Final Rule Limit columns on the right. The Proposed Final Rule Limit columns include all the proposed exposure limits applicable to shipyards and all the existing exposure limits which are not being included in this rulemaking. The Proposed Final Rule Limit has columns which set forth the 8-hour TWA limit, the STEL limit, and the Ceiling limit, if applicable. The last column indicates whether there is skin designation. These terms are defined in § 1915.1000(a).

The Transitional Limit columns state the existing exposure limits which are applicable to ship repairing and shipbreaking based on the 1970 TLVs. As explained in the Legal Authority section, the existing exposure limits for shipbuilding are slightly different since they are based on the 1971 PELs. Since the anomaly is confusing and has no health basis, OSHA is proposing that on the effective date of this standard, the Transitional Limits for shipbuilding be identical with those for ship repairing and shipbreaking. To facilitate this transition, Table Z, Shipyards has already been organized to incorporate this change.

The purpose of the Transitional Limits is to state the limits to be achieved by primary reliance on engineering controls, if feasible, during the 4 year transitional period. During the transitional period the new limits may be achieved by any reasonable combination of engineering, work practice and respiratory controls. This priority on compliance for engineering controls as set forth in § 1915.1000(c) for the exposure limits in the Transitional Limit Columns is the existing requirement. The exposure limits in the Transitional Limits columns also would remain in place if any of the new limits are stayed.

It should be noted that upon the effective date for the proposed new standard, OSHA is proposing that the Skin Designation in the Final Rule Limits columns becomes applicable. Consequently the Skin designation in the Transitional Limits Columns will no longer have effect after the effective date unless there is a stay.

The substantive paragraphs of the proposed § 1915.1000 include the same concepts as the 1989 PELs for General Industry, and the same concepts as proposed for Construction, Longshoring and Marine Terminals. Pursuant to ¶ (a), an employee's exposure to substances listed in Table Z, Shipyards shall be kept below the limits specified in Table Z. It is the employer's responsibility to take steps to keep employee exposure below the limits.

The airborne limits for employee exposure may be an 8 hour Time Weighted Average (TWA), a Short Term Exposure Limit (STEL) or a Ceiling Limit, or in some cases a TWA and a STEL or a Ceiling. Those terms are defined in ¶ (a)(3) as follows:

(i) Time weighted average (TWA) is the employee's average airborne exposure in any 8-hour shift of a 40-hour work week which shall not be exceeded.

(ii) Short term exposure limit (STEL) is the employee's 15-minute time weighted average exposure which shall not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time period shall not be exceeded at any time during the working day.

(iii) Ceiling is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure which shall not be exceeded at any time over a working day.

When there is an "X" in the Skin designation column, then skin exposure shall be prevented or reduced to prevent skin absorption. Skin notations are used where the substance may be absorbed through the skin in sufficient amounts to cause systemic toxicity. As the standard's language indicates, appropriate personal protective equipment, engineering controls or work practices may also be used to minimize or eliminate skin contact in these situations. No specific hierarchy of controls is mandated for the prevention of skin contact. (See also discussion under VI. Health Effects Discussion, C. 17, Substances for Which OSHA is Adding Skin Notations.)

Paragraph (b) provides the computation formula if an employee is exposed to more than 1 toxic substance at one time. It is applicable if the employee is exposed to toxic substances affecting the same organ or causing the same disease. It permits the computation of maximum exposures in such circumstances when there are simultaneous exposures to several toxic substances. The computation formula is already applicable to ship repair and shipbreaking by their incorporation of the 1970 TLVs and to shipbuilding through the 1971 TLVs. OSHA is not opening the computation formulae for comment. (See Section I–H for further discussion.)

Paragraph (c) sets forth methods of compliance with a preference for feasible engineering and work practice controls. This paragraph states an existing requirement which already applies to Shipyards through the 1970 TLVs or the 1971 PELs. OSHA is not opening methods of compliance for comment in this proceeding as OSHA is in the process of completing a separate rulemaking on methods of compliance.

Paragraph (d) sets forth proposed effective and start-up dates. The proposed effective date is 90 days after publication in the **Federal Register** of the final rule pursuant to statute (section 6(b)4)). The Shipyard Advisory Committee indicated that they were familiar with the new exposure limits and it would save confusion if they were made applicable without delay. Accordingly OSHA is proposing that the new PELs take effect on the effective date with compliance with any reasonable combination of work practices, engineering controls or respirators. OSHA is also proposing, pursuant to the Committee's recommendation that the start-up date to come into compliance with a preference for feasible engineering

controls pursuant to ¶ (c) be 4 years after publication of the final rule in the **Federal Register**. OSHA requests comments on these start-up dates.

Paragraphs (d)(3) covers the Transitional Limits which are discussed above. Paragraph (d)(4) covers stays, if any, issued after the final rule is published. It provides that if a new limit is stayed, the prior (Transitional Limit) remain in effect.

A number of amendments to part 1915 are necessary to maintain consistency with other sectors. It is not OSHA's intention, by these proposed consequential amendments, to change other concepts in the Shipyards standards except to make clear that the Air Contaminants exposure limits are applicable to all employees and operations in the Shipyard industry.

OSHA is accordingly proposing to delete all references to the 1970 TLVs and replace them where necessary with reference to the proposed 29 CFR part 1915, subpart Z. These proposed amendments are made to §§ 1915.5, 1915.12(a)(3), 1915.12(b)(3) and 1915.32(b). However OSHA is not proposing changes to the provisions of § 1915.12 which require in certain circumstances pre-entry inspection prior to entry into holds, compartments and various areas where a build up of toxic substances may occur and various precautions must be taken.

There are nine substances for which OSHA has either published an NPRM or is otherwise engaged in rulemaking. The disposition of the PELs for those substances in regard to this rulemaking is discussed at greater length at the end of the discussion on the Summary and Explanation of the proposed Construction standard. (See VII. Summary and Explanation of the Proposed Standard, part 1926—Construction.) OSHA wishes to make it clear that it is not opening the record for any substance for which comprehensive rulemaking is in progress.

Parts 1917—Marine Terminals, and Part 1918—Longshoring

Table Z, Longshoring and Marine Terminals includes proposed permissible exposure limits (PELs) for approximately 370 new or more protective PELs in the Maritime subsectors of Marine Terminals and Longshoring. OSHA is proposing today a 1917 subpart Z for Marine Terminals (§ 1917.1000) and a 1918 subpart Z for Longshoring (§ 1918.1000).

As both sectors have identical Transitional and Final Rule exposure limits, OSHA is proposing to publish only one Z Table for both subsectors. Table Z, Longshoring & Marine Terminals. OSHA is proposing that the table be printed only once and that it be located in part 1917 after § 1917.1000. It will be cross-referenced in § 1918.1000. OSHA believes that this will not create an inconvenience or confusion to the public or as parts 1917 and 1918 are invariably published together. There is some saving of space and cost to the government by following this approach. Comments are requested on it.

The proposed new Table Z, Longshoring & Marine Terminals, and § 1917.1000 and § 1918.1000 are conceptually similar to the parallel provisions of part 1915. Accordingly, the discussions of those part 1915 provisions are applicable here and will not be repeated. Instead the differences and the different consequential provisions are discussed. See also the Legal Authority section of the preamble for the historical background of these distinctions.

The Final Rule limit columns of Table Z, Marine Terminals and Longshoring are identical to the same columns on Table Z, Shipyards. The Transitional Limits columns are different for approximately 30 substances. This is because the existing limits for Longshoring and Marine Terminals are based on the 1971 OSHA PELs whereas the existing limits for Shipyards are based on the 1970 TLVs. (See the above discussion of Shipyards for a further explanation.)

Some of the provisions of parts 1917 and 1918 are unique due to the nature of the original provisions in these two parts and to the special concern for confined spaces in holds, compartments, vehicles, warehouses etc. Also these sectors often handle intact sealed containers. OSHA's proposed intention is to make the Air Contaminant limits generally applicable to all operations in Marine Terminals and Longshoring with exceptions for intact sealed, containers and carbon monoxide while retaining the existing unique provisions of parts 1917 and 1918 to the extent they are not inconsistent with the air contaminants provisions.

Intact, sealed containers of toxic substances which are often handled in marine terminals and longshore operations, by definition, do not present the hazard of airborne exposure or skin contact with toxic substances. Part 1917 in § 1917.1(a)(2)(ii) currently provides that the air contaminant limits do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements. OSHA is proposing to retain this provision and formally incorporate it into part 1918. As long as toxic substances are properly contained there will not be exposure.

However, containers can be damaged in the course of cargo handling, resulting in the possibility of leakage and employee exposure. Consequently, OSHA is proposing language that specifies that should cargo containers become damaged to the extent that the possibility for leakage exists, then the Air Contaminant exposure limits apply. However, as these circumstances will be in the nature of accidents or emergencies, any reasonable combination of engineering controls, work practice and personal protective equipment is permitted as the method of compliance. The proposed language for these provisions is located in § 1917.1000(d) and § 1918.1000(d).

Because of the dangers of death from carbon monoxide poisoning in the confined spaces of holds, vehicles, rail cars and poorly ventilated warehouse spaces where workers in marine terminals and longshoring frequently work, parts 1917 and 1918 have detailed protective provisions located in § 1917.24 and § 1918.93(a). These sections have testing provisions and a requirement that employees be removed when carbon monoxide exposure exceeds 100 ppm in a confined space. Because of the difficulty of observing employees in confined spaces, the difficulty of escaping from them and the unfortunate occurrence of death to persons attempting to rescue persons disabled in confined spaces, these protective provisions are appropriate. OSHA is retaining those provisions but is proposing to lower the 8 hour TWA for carbon monoxide for these sectors from 50 ppm to 35 ppm and apply a 200 ppm ceiling measured over 5 minutes to open spaces. These limits are consistent with OSHA's final determination for general industry. See the health write-up for carbon monoxide.

Paragraph (b) provides the computation formula if an employee is exposed to more than 1 toxic substance at one time. It is applicable if the employee is exposed to toxic substances affecting the same organ or causing the same disease. It permits the computation of maximum exposures in such circumstances when there are simultaneous exposures to several toxic substances. The computation formula is already applicable to longshoring and marine terminals by reference to 1910.1000. OSHA is not opening the computation formulae for comment. (See Section I–H for further discussion.)

Part 1917 has certain unique provisions on hazardous cargo—

§ 1917.22, pesticides—§ 1917.25, menhaden (a species of fish) terminals—1917.73, welding and hot work—1917.152 and spray painting § 1917.153. These are being retained. However, § 1917.23(a) is proposed to be amended to clearly indicate that the air contaminant exposure levels are always applicable.

There are nine substances for which OSHA has either published an NPRM or is otherwise engaged in rulemaking. The disposition of the PELs for those substances in regard to this rulemaking is discussed at greater length at the end of the discussion on the Summary and Explanation of the proposed Construction standard. (See VII. Summary and Explanation of the Proposed Standard, part 1926—Construction.)

OSHA is proposing that the new air contaminant exposure limits take effect 90 days after the publication of the final rule with any reasonable combination of controls and 4 years after publication with a preference for engineering controls for Marine Terminals and Longshoring. OSHA requests comment on these dates.

Part 1928—Agriculture

Table Z, Agriculture includes proposed permissible exposure limits (PELs) for approximately 600 substances that have not previously been regulated in agriculture. OSHA is proposing that the Z–Table in agriculture be identified as Table Z, Agriculture to indicate both its relation to and difference from Table Z–1–A for General Industry. All of the limits that would apply in agriculture are shown in this single table, i.e., in Table Z, Agriculture. There is no transitional limit column in Table Z, Agriculture because OSHA PELs have not previously applied in agriculture.

When OSHA published its Air Contaminants Final Rule for general industry on January 19, 1989 (54 FR 2332 et seq.), the Agency stated:

> OSHA has also determined that it is appropriate to limit this rulemaking to the General Industry sector. Application to the Construction, Maritime & Agriculture segments may require some modifications to this proposed rule because of differences in exposures and work situations in the established PELs for these segments, and differences regarding feasibility for these sectors. OSHA will pursue this as part of second stage rulemaking • • •

The limits being proposed in agriculture today constitute part of that second stage of rulemaking. In the prior rulemaking for general industry, OSHA reduced the PELs for 212 substances and set new PELs for 164 substances previously not regulated by OSHA. The PELs being proposed today in Table Z, Agriculture include the 376 new limits that were promulgated in this earlier rulemaking. In addition, Table Z, Agriculture, proposes PELs for approximately 180 substances which were previously regulated by OSHA in general industry since 1970 but whose limits were not changed in the 1989 rulemaking. These 180 substances are being regulated in agriculture for the first time, and are included in Table 1–F.

There are another 52 or so substances for which OSHA had considered a change in the PEL in the proposal for general industry, but for which none was made in the final rule. Regulation of these 52 substances is also being proposed in agriculture.

To ensure consistency in the protection afforded to workers across sectors, OSHA is also proposing PELs in agriculture for 10 of the 24 substances the Agency has regulated in comprehensive 6(b) rulemaking proceedings (see §§ 1910.1000 to 1910.1047) which have numerical exposure limits as part of the standard. These limits have previously been issued in section 6(b) rulemakings. The health effects and feasibility of OSHA's PELs have been fully considered. These findings are summarized in Section IV.C of this preamble. These ten substances are asbestos, vinyl chloride, inorganic arsenic, lead, benzene, cotton dust, DBCP, acrylonitrile, ethylene oxide and formaldehyde.

OSHA is not proposing to change limits for 9 substances for which the Agency is currently conducting comprehensive section 6(b) rulemakings are in progress because the appropriate PELs for these substances will not be determined until their respective final rules are published. OSHA is not opening the record in the present air contaminants rulemaking for construction, maritime, or agriculture for any substance that is currently undergoing separate rulemaking. Once these rulemakings are completed, OSHA will add the respective PELs to all of the Z tables.

The policy reasons for this proposal are explained in part I of the preamble. The health basis of the new exposure limits are explained in part IV and feasibility analysis for the proposal is summarized in part V. OSHA's preliminary conclusion that the proposed limits noted in Table Z, Agriculture, substantially reduce significant risk among workers in agriculture and are feasible in this sector are based on the analyses summarized in those sections of the preamble.

In addition to the Table Z, Agriculture, OSHA is also proposing to adopt language similar to that in ¶ (a) of § 1910.1000 and include it in part 1928. That language sets forth the obligation of agricultural employers to protect employees from overexposures to airborne contaminants and toxic substances that cause systemic toxicity when absorbed through the skin. Airborne limits may be expressed as Time-Weighted Averages (TWAs), Short Term Exposure Limits (STELs) and Ceilings (Cs). These are defined as follows in paragraph (a)(3) of the standard:

(i) Time Weighted Average (TWA) is the average airborne exposure of an employee in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) Short term exposure limit (STEL) is the employee's 15-minute time-weighted average exposure which shall not be exceeded at any time during a work day. This applies even if the eight hour time-weighted average is within the TWA.

(iii) Ceiling is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed by sampling over a 15-minute period as would be done for a STEL, unless a different time period is specifically indicated.

The standard provides an explanation of skin notation. In ¶ (a)(2) the standard states:

> An employee's skin exposure to materials listed in Table Z, Agriculture, with an "S" Notation shall be limited through the use of gloves, coveralls, goggles or other appropriate personal protective equipment or method necessary to prevent possible skin absorption.

Skin notations are used where the substance may be absorbed through the skin in sufficient amounts to cause systemic toxicity. As the standard's language indicates, appropriate personal protective equipment, engineering controls or work practices may also be used to minimize or eliminate skin contact in these situations. No specific hierarchy of controls is mandated for the prevention of skin contact. (See also discussion under VI. Health Effects Discussion, C. 17, Substances for Which OSHA is Adding Skin Notations.)

OSHA is proposing, in paragraph (b), to apply the Computation (or Mixture) Formula to agriculture. See section I–H for further discussion.

OSHA recognizes that it takes time for employers to evaluate exposures and to purchase, install and make operable equipment to control such exposures. OSHA believes that 1 year from the date of publication is a reasonable time to evaluate exposures and come into

compliance with any combination of respirators, work practices and engineering controls for agriculture. This is longer than OSHA normally provides, but as no exposure limits previously applied in agriculture, more time may be necessary for agricultural employers to become familiar with the regulations, determine employee exposures, and institute controls. Four years are provided for coming into compliance with a preference for engineering controls. Comment on these start-up dates is requested.

With regard to proposed § 1910.1000(c), methods of compliance. OSHA recognizes that engineering controls that are typically used in industrial applications have not been regularly adapted to the agricultural setting. However, simple controls, such as placing lids on containers, have been used in agriculture. Although OSHA recognizes that agriculture may lag behind other sectors with regard to the use of engineering controls, industrial hygiene sampling, etc., the Agency expects that experience with this regulation will parallel OSHA's experience in the past and that use of technology and industrial hygiene approaches will occur over a reasonable period of time.

The four-year period of time before compliance with engineering controls will permit knowledge of appropriate technology to become known to the farming community. OSHA and NIOSH intend to engage in extensive outreach to inform agricultural employers of appropriate technology to control exposures on farms.

The purpose of this approach is to allow OSHA to assure safe and healthy work sites for workers in agriculture, while maintaining a role which includes education as well as enforcement. This approach is consistent with OSHA's activity and goals in agriculture. As literature and training become more widely available, the agricultural employer will be expected to have access to that knowledge.

VIII. Public Participation-Public Hearings

Interested persons are invited to submit written data, views, and arguments with respect to OSHA'S proposed rule. These comments must be postmarked on or before September 25, 1992, and submitted in quadruplicate to the Docket Officer, Docket H–020A, room N–2625, U.S. Department of Labor, Washington, DC 20210, Tel. (202) 523–7894.

This rulemaking covers a large number of substances and industries. Therefore, to permit the public and OSHA to efficiently review the comments, it is necessary to specify the format of the comments in greater detail than normally required for OSHA rulemaking.

Comments on the general concept of the proposal shall be first and shall begin on a new page with the heading "General Comments", the name of the commenter, and the commenter's SIC code or codes if a business.

Comments on individual substances shall follow. The comment on each substance shall start on a new page with a heading identifying the substance with the name and code number used in Table I–G (the HS code number) of the preamble; (not the CAS number) and a second line identifying the comment as on "Health Issues" or on "Feasibility Issues." If there are comments on both they shall begin on separate pages with headings that identify the substances, and its code number and area of the comment. For feasibility comments, the heading should contain a third line identifying the SIC codes (preferably 4 digit) that the comment covers.

In addition the first or second page of each comment is to have a table of contents indicating the page number that the general comments begin and the page number that Health and Feasibility comments for each chemical individually discussed begin. Finally, one of the four sets of each comment received should not be stapled or bound, so that it can be easily copied. Written submissions must clearly identify the specific provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding. The exhibits cited in this document will be available for public inspection and copying at the above address.

In addition, the record and the record of the General Industry rulemaking Docket No. H–020 currently contains many data bases of economic and health information. That information is also available for inspection and copying at the Docket Office. (Much of the information is on computer tape. OSHA will supply duplicate tapes for the copying charge.)

Notice of Intention To Appear at the Informal Hearing

Pursuant to section 6(b)(3) of the OSHA Act, informal public hearings will be held on this proposal in Washington, DC from Tuesday, October 20, 1992 through Friday, October 30, 1992; in San Diego from Tuesday, November 17, 1992 through Friday, November 20, 1992; and in Des Moines from Tuesday, December 8, 1992 through Friday, December 11, 1992. In each city if testimony is less extensive the hearing may terminate earlier and if more extensive it may be extended.

The Washington hearing will commence at 9:30 a.m. in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 3d Street and Constitution Avenue NW., Washington, DC 20210.

The hearing in San Diego will be at the Holiday Inn on the Bay, 1355 North Harbor Drive, San Diego, California, 92101, Tel: (619) 232–3861.

The hearing in Des Moines will be at the Holiday Inn Des Moines, 1050 Sixth Ave., Des Moines, Iowa, 50314, Tel: (515) 283–0151.

Persons desiring to participate at the informal public hearing must file a notice of intention to appear by September 11, 1992. The notice of intention to appear must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues and substances that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue and substance addressed; and
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.
7. The city or cities where the participant wishes to testify. Repetitive testimony in different cities is not permitted.

The Notice of Intention to Appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket No. H–020, U.S. Department of Labor, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–8615, and shall be postmarked no later than September 11, 1992.

A notice of intention to appear also may be transmitted by facsimile to (202) 523–5986 or (for FTS) to 8–523–5986, by the same date provided the original and 3 copies are sent to the same address and postmarked no later than 3 days later.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than ten (10) minutes for presentation at the informal public hearing, or who intends

to submit documentary evidence, must provide in quadruplicate the testimony and evidence to be presented at the informal public hearing. The documentary evidence and testimony shall follow the format and include the headings and index required for comments. One copy shall not be stapled or bound and be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and be postmarked no later than September 25, 1992.

Each submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal public hearing.

Any party who has not substantially complied with the above requirement may be limited to a ten-minute presentation and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notice of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

Conduct and Nature of Hearings

The hearings will commence at 9:30 a.m. on the first day in each city. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the OSH Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding is informal and legislative in type. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentations which can proceed expeditiously in the absence of procedural restraints which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than an adjudicative one. The technical rules of evidence, for example do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. It should be noted that § 1911.4 specifies the Assistant Secretary may upon reasonable notice issue alternatives procedures to expedite proceedings or for other good cause. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentations to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable, stated time (known as the post hearing comment period) to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

State Plan Applicability

The 25 states with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These States include: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

List of Subjects

29 CFR Part 1910

Air contaminants, Occupational safety and health. Permissible exposure limits, Health, Risk assessment, Construction, Maritime, Shipyards, Longshoring, Marine terminals, Agriculture.

29 CFR Part 1915

Air contaminants, Hazardous substances, Longshore and harbor workers, Occupational safety and health, Permissible exposure limits, Vessels.

29 CFR Part 1917

Air contaminants, Hazardous substances, Longshore and harbor workers, Occupational safety and health, Permissible exposure limits.

29 CFR Part 1918

Air contaminants, Freight, Hazardous substances, Longshore and harbor workers, Occupational safety and health, Permissible exposure limits, Vessels.

29 CFR Part 1926

Air contaminants, Construction industry, Hazardous substances, Occupational safety and health, Permissible exposure limits.

29 CFR Part 1928

Air contaminants, Agriculture, Occupational safety and health, Permissible exposure limits.

IX. Authority

This document has been prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedures Act (5 U.S.C. 551), 29 CFR part 1911 and Secretary of Labor's Order No. 1–90 (55 FR 9033), it is proposed to amend 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928 as set forth below.

Signed at Washington, DC., this 29 day of May, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

X. Standard

OSHA proposes to amend 29 CFR part 1910, subpart Z as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart Z continues to read in part as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 also issued under 5 U.S.C. 553. § 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

* * * * *

2. It is proposed to amend § 1910.1000 by adding a new paragraph (f)(5) to read as follows:

§ 1910.1000 Air contaminants.

* * * * *

(f) Effective dates, start-up dates and transitional provisions

* * * * *

(5) For the exposure limits for asphalt, fiberglass and mineral wool the effective date shall be [90 days after the date of publication of final rule in the **Federal Register**], the start-up date for compliance through any reasonable combination of engineering controls work practices and personal protective equipment shall be (6 months after the date of publication of the final rule in the **Federal Register**) and the start-up date for compliance using the methods of compliance specified in paragraph (e) of this section shall be (2 years after the date of publication in the **Federal Register**).

3. It is proposed to amend § 1910.1000, Table Z–1–A by inserting new entries as follows:

(a) After the entry for Asbestos insert into the Substance column the entry "Asphalt fumes (total particulate)", insert in the CAS No. column "8052–42–4" and insert in the Final rule limits, TWA, mg/m^3 column the entry "5".

(b) After the entry for Ferrovanadium dust, insert into the Substance column the entry "Fibrous glass" and insert into the Final rule limits, TWA, columns the entry "1 f/cc".

(c) After the entry for Mica, insert into the Substance column the entry "Mineral wool" and insert into the Final rule limits, TWA, columns the entry "1 f/cc".

OSHA proposes to amend 29 CFR parts 1915, 1917, 1918, 1926 and 1928 as follows:

I. OSHA proposes to amend 29 CFR part 1915 as follows:

PART 1915—SHIPYARDS

1. It is proposed to revise the authority citation for part 1915 to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR Part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

§ 1915.5 [Amended]

2. It is proposed to amend § 1915.5 by removing the paragraph which reads:

Threshold Limit Values, 1970, American Conference of Governmental Industrial Hygienists, 1014 Broadway, Cincinnati, Ohio 45202, Subpart B, § 1915.12 (a)(3) and (b)(3); Subpart C, § 1915.32(b).

3. It is proposed to amend § 1915.12 by revising paragraphs (a)(3) and (b)(3) to read as follows:

§ 1915.12 Precautions before entering.

(a) Flammable atmospheres and residues.

* * * * *

(3) If the atmosphere in the space to be entered is found to contain a concentration of flammable vapor or gas below the level immediately dangerous to life as defined in § 1915.152(b)(1), but above the permissible exposure limits specified in 29 CFR 1915, subpart Z, employees shall be protected in accordance with the requirements of 29 CFR 1915, subpart Z.

(b) Toxic atmospheres and residues.

* * * * *

(3) If the atmosphere in the space to be entered is found to contain a concentration of toxic contaminants below the level immediately dangerous to life as defined in § 1915.152(b)(1), but above the permissible exposure limits specified in 29 CFR 1915, subpart Z, employees shall be protected in accordance with the requirements of 29 CFR 1915, subpart Z.

* * * * *

4. It is proposed to amend § 1915.32 by revising paragraph (b) to read as follows:

§ 1915.32 Toxic cleaning solvents.

* * * * *

(b) The requirements of 29 CFR 1915, subpart Z shall be followed.

* * * * *

Subparts M–Y—[Reserved]

5. It is proposed to reserve subparts M–Y and to add a new subpart Z consisting of § 1915.1000 to read as follows:

Subpart Z—Toxic and Hazardous Substances

§ 1915.1000 Air contaminants.

(a) *Exposure limits.* An employee's exposure to any substance listed in Table Z, Shipyards shall be limited in accordance with the requirements of the following paragraphs of this section:

(1) Final Rule Limits Columns. An employee's exposure to any substance listed in Table Z, Shipyards shall not exceed the Time Weighted Average (TWA), Short Term Exposure Limit (STEL) and Ceiling Limit specified for that substance in Table Z under the Final Limits columns.

(2) Skin Designation. To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Table Z, Shipyards with an "X" in one or both of the Skin Designation columns following the substance name shall be prevented or reduced to the extent necessary in the circumstances through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls or work practices.

(3) Definitions. The following definitions are applicable to Table Z, Shipyards:

(i) *Time weighted average (TWA)* is the employee's average airborne exposure in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) *Short term exposure limit (STEL)* is the employee's 15-minute time weighted average exposure which shall not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time period shall not be exceeded at any time during the working day.

(iii) *Ceiling* is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average

exposure which shall not be exceeded at any time over a working day.

(b) *Computation formulae.* The computation formula which shall apply to employee exposure to more than one substance for which 8-hour time weighted averages are listed in subpart Z of 29 CFR Part 1915 in order to determine whether an employee is exposed over the regulatory limit is as follows:

(1)(i) The cumulative exposure for an 8-hour work shift shall be computed as follows:

$$E=(C_aT_a+C_bT_b+\ldots C_nT_n)\div 8$$

Where:

E is the equivalent exposure for the working shift.

C is the concentration during any period of time T where the concentration remains constant.

T is the duration in hours of the exposure at the concentration C.

The value of E shall not exceed the 8-hour time weighted average specified in subpart Z or 29 CFR part 1915 for the material involved.

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z. Assume that an employee is subject to the following exposure:

Two hours exposure at 150 ppm
Two hours exposure at 75 ppm
Four hours exposure at 50 ppm

Substituting this information in the formula, we have

$$(2\times 150+2\times 75+4\times 50)\div 8=81.25 \text{ ppm}$$

Since 81.25 ppm is less than 100 ppm, the 8-hour time weighted average limit, the exposure is acceptable.

(2)(i) In case of a mixture of air contaminants an employer shall compute the equivalent exposure as follows:

$$E_m=(C_1\div L_1+C_2\div L_2)+\ldots(C_n\div L_n)$$

Where:

E_m is the equivalent exposure for the mixture.

C is the concentration of a particular contaminant.

L is the exposure limit for that substance specified in subpart Z of 29 CFR part 1915.

The value of E_m shall not exceed unity (1).

(ii) To illustrate the formula prescribed in paragraph (d)(2)(i) of this section, consider the following exposures:

Substance	Actual concentration of 8 hr. exposure (ppm)	8 hr. TWA PEL (ppm)
B	500	1000
C	45	200
D	40	200

Substituting in the formula we have:

$Em=500\div 1.000+45\div 200+40\div 200$
$Em=0.500+0.225+0.200$
$Em=0.925$

Since Em is less than unity (1), the exposure combination is within acceptable limits.

(c) *Methods of compliance.* To achieve compliance with paragraphs (a) and (b) of this section administrative or engineering controls must first be implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and technical measures used for this purpose must first be approved for each particular use by a competent industrial hygienist or other technically qualified person.

(d) *Effective and start-up dates*—(1) Effective date. The effective date for the permissible exposure limits specified in the Final Rule Limits columns of Table Z, Shipyards is [90 days after date of publication in the **Federal Register**].

(2) Start-up dates. (i) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Shipyards shall be achieved by any reasonable combination of engineering controls, work practices and personal protective equipment from the effective date through [4 years after date of publication in the **Federal Register**].

(ii) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Shipyards shall be achieved by the method of compliance specified in paragraph (c) of this section commencing [4 years after date of publication in the **Federal Register**].

(iii) The skin designation in the Final Rule Limits columns shall be complied with commencing on the effective date.

(3) Transitional provision. The permissible exposure limits specified in the Transitional Limits columns of Table Z, Shipyards (which are a Time Weighted Average unless proceeded by a "C" in which case they are a ceiling) shall be achieved by the methods of compliance specified in paragraph (c) of this section from the effective date through [4 years after date of publication in the **Federal Register**].

(4) Stays. If any new or amended provisions or new or revised limits for any substance or substances are either administratively stayed or judicially stayed or vacated, then the existing provisions or limits for those substances specified in the Transitional Limits columns of Table Z, Shipyards shall remain in effect until such stay is lifted, or indefinitely if the limit is vacated.

TABLE Z.—Shipyards

Substance	Transitional Limits[a] (1970 TLVs)				Proposed Final Rule Limits						
				Skin Desig-nation	TWA		STEL[c]		CEILING		Skin Desig-nation
	CAS No.[d]	ppm[a]	mg/m³[b]		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
Abate; see Temephos											
Acetaldehyde	75-07-0	200	360	—	100	180	150	270	—	—	—
Acetic acid	64-19-7	10	25	—	10	25	—	—	—	—	—
Acetic anhydride	108-24-7	5	20	—	—	—	—	—	5	20	—
Acetone	67-64-1	1000	2400	—	750	1800	1000	2400	—	—	—
Acetonitrile	75-05-8	40	70	—	40	70	60	105	—	—	—
2-Acetylaminofluorine; see 1910.1014	53-96-3										
Acetylene	74-86-2	E									—
Acetylene dichloride; see 1,2-Dichloroethylene											
Acetylene tetrabromide	79-27-6	1	14	—	1	14	—	—	—	—	—
Acetylsalicylic acid (Aspirin)	50-78-2	—	—	—	—	5	—	—	—	—	—
Acrolein	107-02-8	0.1	0.25	—	0.1	0.25	0.3	0.8	—	—	—
Acrylamide	79-06-1	—	0.3	X	—	0.03	—	—	—	—	X
Acrylic acid	79-10-7	—	—	—	10	30	—	—	—	—	X
Acrylonitrile[f]; see 1910.1045	107-13-1	([1])	([1])	([1])	2	—	10	—	—	—	X
Aldrin	309-00-2	—	0.25	X	—	0.25	—	—	—	—	X
Allyl alcohol	107-18-6	2	5	X	2	5	4	10	—	—	X
Allyl chloride	107-05-1	1	3	—	1	3	2	6	—	—	—
Allyl glycidyl ether (AGE)	106-92-3	(C)10	(C)45	—	5	22	10	44	—	—	—
Allyl propyl disulfide	2179-59-1	2	12	—	2	12	3	18	—	—	—
alpha-Alumina	1344-28-1										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Aluminum (as Al)	7429-90-5										
Metal											
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Pyro powders		—	—	—	—	5	—	—	—	—	—
Welding fumes[e]		—	—	—	—	5	—	—	—	—	—
Soluble salts		—	—	—	—	2	—	—	—	—	—
Alkyls		—	—	—	—	2	—	—	—	—	—
Alundum; see alpha-Alumina											
4-Aminodiphenyl; see 1910.1011	92-67-1										
2-Aminoethanol; see Ethanolamine											
2-Aminopyridine	504-29-0	0.5	2	—	0.5	2	—	—	—	—	—
Amitrole	61-82-5	—	—	—	—	0.2	—	—	—	—	—
Ammonia	7664-41-7	50	35	—	—	—	35	27	—	—	—
Ammonium chloride fume	12125-02-9	—	—	—	—	10	—	20	—	—	—
Ammonium sulfamate	7773-06-0										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
n-Amyl acetate	628-63-7	100	525	—	100	525	—	—	—	—	—
sec-Amyl acetate	626-38-0	125	650	—	125	650	—	—	—	—	—
Aniline and homologs	62-53-3	5	19	X	2	8	—	—	—	—	X
Anisidine (o-, p- isomers)	29191-52-4	—	0.5	X	—	0.5	—	—	—	—	X
Antimony and compounds (as Sb)	7440-36-0	—	0.5	—	—	0.5	—	—	—	—	—
ANTU (alpha Naphthylthiourea)	86-88-4	—	0.3	—	—	0.3	—	—	—	—	—
Argon	7440-37-1	E									
Arsenic, inorganic compounds (as As)[f]; see 1910.1018	7440-38-2	—	0.01	—	—	0.01	—	—	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	—	0.5	—	—	0.5	—	—	—	—	—
Arsine	7784-42-1	0.05	0.2	—	0.05	0.2	—	—	—	—	—
Asbestos[f]; see 1926.58	Varies	([1])	([1])	([1])	—	0.2 f/cc	—	1 f/cc (30 min)	—	—	—
Asphalt (Petroleum) fumes	8052-42-4	—	—	—	—	5	—	—	—	—	—
Atrazine	1912-24-9	—	—	—	—	5	—	—	—	—	—
Azinphos-methyl	86-50-0	—	0.2	X	—	0.2	—	—	—	—	X

TABLE Z.—Shipyards—Continued

Substance	Transitional Limits[a] (1970 TLVs)			Proposed Final Rule Limits						
					TWA	STEL[c]		CEILING		
	CAS No.[d]	ppm[a]	mg/m³[b]	Skin Designation	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	Skin Designation
Barium, soluble compounds (as Ba)	7440-39-3	—	0.5	—	—	0.5	—	—	—	—	—
Barium sulfate	7727-43-7										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Benomyl	17804-35-2										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Benzene[f,g]; see 1910.1028	71-43-2	(1)	(1)	(1)	1	—	5	—	—	—	—
Benzidine; see 1910.1010	92-87-5		A[1]								
p-Benzoquinone; see Quinone											
Benzo(a)pyrene; see Coal tar pitch volatiles											
Benzoyl peroxide	94-36-0	—	5	—	—	5	—	—	—	—	—
Benzyl chloride	100-44-7	1	5	—	1	5	—	—	—	—	—
Beryllium and beryllium compounds (as Be)	7440-41-7	—	0.002	—	—	0.002	—	0.025 (30 min.)	—	—	—
Biphenyl; see Diphenyl											
Bismuth telluride, Undoped	1304-82-1										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Bismuth telluride, Se-doped	1304-82-1	—	—	—	—	5	—	—	—	—	—
Bisphenol A; see Diglycidyl ether											
Borates, tetra, sodium salts											
Anhydrous	1330-43-4	—	—	—	—	10	—	—	—	—	—
Decahydrate	1303-96-4	—	—	—	—	10	—	—	—	—	—
Pentahydrate	12179-04-3	—	—	—	—	10	—	—	—	—	—
Boron oxide	1303-86-2										
Total dust		—	15	—	—	10	—	—	—	—	—
Boron tribromide	10294-33-4	1	10	—	—	—	—	—	1	10	—
Boron trifluoride	7637-07-2	(C)1	(C)3	—	—	—	—	—	1	3	—
Bromacil	314-40-9	—	—	—	1	10	—	—	—	—	—
Bromine	7726-95-6	0.1	0.7	—	0.1	0.7	0.3	2	—	—	—
Bromine pentafluoride	7789-30-2	0.1	0.7	—	0.1	0.7	—	—	—	—	—
Bromoform	75-25-2	0.5	5	X	0.5	5	—	—	—	—	X
Butadiene (1,3-Butadiene)[h]; see 55 FR 32736	106-99-0	1000	2200	—	2	—	10	—	—	—	—
Butane	106-97-8	—	—	—	800	1900	—	—	—	—	—
Butanethiol; see Butyl mercaptan											
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	—	200	590	300	886	—	—	—
2-Butoxyethanol	111-76-2	50	240	X	25	120	—	—	—	—	X
n-Butyl acetate	123-86-4	150	710	—	150	710	200	950	—	—	—
sec-Butyl acetate	105-46-4	200	950	—	200	950	—	—	—	—	—
tert-Butyl acetate	540-88-5	200	950	—	200	950	—	—	—	—	—
Butyl acrylate	141-32-2	—	—	—	10	55	—	—	—	—	—
n-Butyl alcohol	71-36-3	100	300	—	—	—	—	—	50	150	X
sec-Butyl alcohol	78-92-2	150	450	—	100	305	—	—	—	—	—
tert-Butyl alcohol	75-65-0	100	300	—	100	300	150	450	—	—	—
Butylamine	109-73-9	(C)5	(C)15	X	—	—	—	—	5	15	X
tert-Butyl chromate (as CrO_3)	1189-85-1	—	(C)0.1	X	—	—	—	—	—	0.1	X
n-Butyl glycidyl ether (BGE)	2426-08-6	50	270	—	25	135	—	—	—	—	—
n-Butyl lactate	138-22-7	—	—	—	5	25	—	—	—	—	—
Butyl mercaptan	109-79-5	0.5	1.5	—	0.5	1.5	—	—	—	—	—
o-sec-Butylphenol	89-72-5	—	—	—	5	30	—	—	—	—	X
p-tert-Butyltoluene	98-51-1	10	60	—	10	60	20	120	—	—	—
Cadmium fume (as Cd)[h]; see 55 FR 4052	7440-43-9	—	(C)0.1	—	—	0.001 or 0.005	—	0.005 or 0.025	—	—	—

Cadmium dust (as Cd) [b]; see 55 FR 4052	7440-43-9	—	0.2	—	—	0.001 or 0.005	—	0.005 or 0.025	—	—	—	—	—
Calcium carbonate	1317-65-3	—		—	—		—		—	—	—	—	—
Total dust		—	15	—	—	15	—	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—	—
Calcium cyanamide	156-62-7	—	—	—	—	0.5	—	—	—	—	—	—	—
Calcium hydroxide	1305-62-0												
Total dust		—	15	—	—	15	—	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—	—
Calcium oxide	1305-78-8	—	5	—	—	5	—	—	—	—	—	—	—
Calcium silicate	1344-95-2												
Total dust		—	15	—	—	15	—	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—	—
Calcium sulfate	7778-18-9												
Total dust		—	15	—	—	15	—	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—	—
Camphor, synthetic	76-22-2	—	2	—	—	2	—	—	—	—	—	—	—
Caprolactam	105-60-2												
Dust		—	—	—	—	1	—	3	—	—	—	—	—
Vapor		—	—	—	5	20	10	40	—	—	—	—	—
Captafol (Difolatan)	2425-06-1	—	—	—	—	0.1	—	—	—	—	—	—	—
Captan	133-06-2	—	—	—	—	5	—	—	—	—	—	—	—
Carbaryl (Sevin)	63-25-2	—	5	—	—	5	—	—	—	—	—	—	—
Carbofuran (Furadan)	1563-66-2	—	—	—	—	0.1	—	—	—	—	—	—	—
Carbon black	1333-86-4	—	3.5	—	—	3.5	—	—	—	—	—	—	—
Carbon dioxide	124-38-9	5000	9000	—	10,000	18,000	30,000	54,000	—	—	—	—	—
Carbon disulfide	75-15-0	20	60	X	4	12	12	36	—	—	—	—	×
Carbon monoxide	630-08-0	50	55	—	35	40	—	—	200	229	—	—	—
Carbon tetrabromide	558-13-4	—	—	—	0.1	1.4	0.3	4	—	—	—	—	—
Carbon tetrachloride	56-23-5	10	65	X	2	12.6	—	—	—	—	—	—	—
Carbonyl fluoride	353-50-4	—	—	—	2	5	5	15	—	—	—	—	—
Catechol (Pyrocatechol)	120-80-9	—	—	—	5	20	—	—	—	—	—	—	×
Cellulose	9004-34-6												
Total dust		—	15	—	—	15	—	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—	—
Cesium hydroxide	21351-79-1	—	—	—	—	2	—	—	—	—	—	—	—
Chlordane	57-74-9	—	0.5	X	—	0.5	—	—	—	—	—	—	×
Chlorinated camphene	8001-35-2	—	0.5	X	—	0.5	—	1	—	—	—	—	—
Chlorinated diphenyl oxide	55720-99-5	—	0.5	—	—	0.5	—	—	—	—	—	—	—
Chlorine	7782-50-5	1	3	—	0.5	1.5	1	3	—	—	—	—	—
Chlorine dioxide	10049-04-4	0.1	0.3	—	0.1	0.3	0.3	0.9	—	—	—	—	—
Chlorine trifluoride	7790-91-2	(C)0.1	(C)0.4	—	—	—	—	—	0.1	0.4	—	—	—
Chloroacetaldehyde	107-20-0	(C)1	(C)3	—	—	—	—	—	1	3	—	—	—
a-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	—	0.05	0.3	—	—	—	—	—	—	—
Chloroacetyl chloride	79-04-9	—	—	—	0.05	0.2	—	—	—	—	—	—	—
Chlorobenzene	108-90-7	75	350	—	75	350	—	—	—	—	—	—	—
o-Chlorobenzylidene malononitrile	2698-41-1	0.05	0.4	—	—	—	—	—	0.05	0.4	—	—	×
Chlorobromomethane	74-97-5	200	1050	—	200	1050	—	—	—	—	—	—	—
2-Chloro-1,3-butadiene; see beta-Chloroprene													
Chlorodifluoromethane	75-45-6	—	—	—	1000	3500	—	—	—	—	—	—	—
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9	—	1	X	—	1	—	—	—	—	—	—	×
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1	—	0.5	X	—	0.5	—	—	—	—	—	—	×
1-Chloro,2,3-epoxypropane; see Epichlorohydrin													
2-Chloroethanol; see Ethylene chlorohydrin													
Chloroethylene; see Vinyl chloride													
Chloroform (Trichloromethane)	67-66-3	50	240	—	2	9.78	—	—	—	—	—	—	—
bis(Chloromethyl) ether; see 1910.1008	542-88-1												
Chloromethyl methyl ether; see 1910.1006	107-30-2												
1-Chloro-1-nitropropane	600-25-9	20	100	—	2	10	—	—	—	—	—	—	—
Chloropentafluoroethane	76-15-3	—	—	—	1000	6320	—	—	—	—	—	—	—
Chloropicrin	76-06-2	0.1	0.7	—	0.1	0.7	—	—	—	—	—	—	×
beta-Chloroprene	126-99-8	25	90	X	10	35	—	—	—	—	—	—	—
o-Chlorostyrene	2039-87-4	—	—	—	50	285	75	428	—	—	—	—	—
o-Chlorotoluene	95-49-8	—	—	—	50	250	—	—	—	—	—	—	—

TABLE Z.—Shipyards—Continued

Substance	CAS No.[d]	Transitional Limits[a] (1970 TLVs) ppm[a]	Transitional Limits[a] (1970 TLVs) mg/m³[b]	Skin Designation	Proposed Final Rule Limits TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
2-Chloro-6-(trichloromethyl) pyridine	1929-82-4										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Chlorpyrifos	2921-88-2	—	—	—	—	0.2	—	—	—	—	X
Chromic acid and chromates (as CrO_3)	Varies with compound	—	0.1	—	—	—	—	—	—	0.1	—
Chromium (II) compounds (as Cr)	7440-47-3	—	0.5	—	—	0.5	—	—	—	—	—
Chromium (III) compounds (as Cr)	7440-47-3	—	0.5	—	—	0.5	—	—	—	—	—
Chromium metal and insol. salts (as Cr)	7440-47-3	—	1	—	—	1	—	—	—	—	—
Chrysene; see Coal tar pitch volatiles											
Clopidol	2971-90-6										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Coal dust (less than 5% SiO_2), Respirable fraction		—	—	—	—	2	—	—	—	—	—
Coal dust (greater than or equal to 5% SiO_2), Respirable quartz fraction		—	—	—	—	0.1	—	—	—	—	—
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	65966-93-2	—	0.2	—	—	0.2	—	—	—	—	—
Cobalt metal, dust, and fume (as Co)	7440-48-4	—	0.1	—	—	0.05	—	—	—	—	—
Cobalt carbonyl (as Co)	10210-68-1	—	—	—	—	0.1	—	—	—	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	—	—	—	—	0.1	—	—	—	—	—
Coke oven emissions; see 1910.1029											
Copper	7440-50-8										
Fume (as Cu)		—	0.1	—	—	0.1	—	—	—	—	—
Dusts and mists (as Cu)		—	1	—	—	1	—	—	—	—	—
Corundum; see Emery											
Cotton dust[f]; see 1910.1043		—	1	—	—	0.5	—	—	—	—	—
Crag herbicide (Sesone)	136-78-7										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Cresol, all isomers	1319-77-3	5	22	X	5	22	—	—	—	—	X
Crotonaldehyde	123-73-9; 4170-30-3	2	6	—	2	6	—	—	—	—	—
Crufomate	299-86-5	—	—	—	—	5	—	—	—	—	—
Cumene	98-82-8	50	245	X	50	245	—	—	—	—	X
Cyanamide	420-04-2	—	—	—	—	2	—	—	—	—	—
Cyanides (as CN)	Varies with compound	—	5	—	—	5	—	—	—	—	—
Cyanogen	460-19-5	10	—	—	10	20	—	—	—	—	—
Cyanogen chloride	506-77-4	—	—	—	—	—	—	—	0.3	0.6	—
Cyclohexane	110-82-7	300	1050	—	300	1050	—	—	—	—	—
Cyclohexanol	108-93-0	50	200	—	50	200	—	—	—	—	X
Cyclohexanone	108-94-1	50	200	—	25	100	—	—	—	—	X
Cyclohexene	110-83-8	300	1015	—	300	1015	—	—	—	—	—
Cyclohexylamine	108-91-8	—	—	—	10	40	—	—	—	—	—
Cyclonite	121-82-4	—	1.5	X	—	1.5	—	—	—	—	X
Cyclopentadiene	542-92-7	75	200	—	75	200	—	—	—	—	—
Cyclopentane	287-92-3	—	—	—	600	1720	—	—	—	—	—
Cyhexatin	13121-70-5	—	—	—	—	5	—	—	—	—	—
2,4-D-(Dichlorophenoxyacetic acid)	94-75-7	—	10	—	—	10	—	—	—	—	—
Decaborane	17702-41-9	0.05	0.3	X	0.05	0.3	0.15	0.9	—	—	X
Demeton (Systox)	8065-48-3	—	0.1	X	—	0.1	—	—	—	—	X

[f] This 8-hour TWA applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. For the Transitional Limit and where it is not feasible to use a vertical elutriator, a respirable dust personal sampler may be used. In these circumstances the exposure limit is 1 mg/m³ respirable dust, personal sampler.

Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2	50	240	—	50	240	—	—	—	—	—	—
1,2-Diaminoethane; see Ethylenediamine												
Diazinon	333-41-5	—	—	—	—	0.1	—	—	—	—	X	—
Diazomethane	334-88-3	0.2	0.4	—	0.2	0.4	—	—	—	—	—	—
Diborane	19287-45-7	0.1	0.1	—	0.1	0.1	—	—	—	—	—	—
1,2-Dibromo-3-chloropropane (DBCP) [6]; see 1910.1044	96-12-8	0.001	—	X	0.001	—	—	—	—	—	X	—
1,2-Dibromoethane; see Ethylene dibromide												
2-N-Dibutylaminoethanol	102-81-8	—	—	—	2	14	—	—	—	—	—	—
Dibutyl phosphate	107-66-4	1	5	—	1	5	2	10	—	—	—	—
Dibutyl phthalate	84-74-2	—	5	—	—	5	—	—	—	—	—	—
Dichloroacetylene	7572-29-4	(C)0.1	(C)0.4	—	—	—	—	—	0.1	0.4	—	—
o-Dichlorobenzene	95-50-1	(C)50	(C)300	—	—	—	—	—	50	300	—	—
p-Dichlorobenzene	106-46-7	75	450	—	75	450	110	675	—	—	—	—
3,3'-Dichlorobenzidine; see 1910.1007	91-94-1											
Dichlorodifluoromethane	75-71-8	1000	4950	—	1000	4950	—	—	—	—	—	—
1,3-Dichloro-5,5-dimethyl hydantoin	118-52-5	—	0.2	—	—	0.2	—	0.4	—	—	—	—
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	—	1	X	—	1	—	—	—	—	X	—
1,1-Dichloroethane	75-34-3	100	400	—	100	400	—	—	—	—	—	—
1,2-Dichloroethane; see Ethylene dichloride												
1,2-Dichloroethylene	540-59-0	200	790	—	200	790	—	—	—	—	—	—
Dichloroethyl ether	111-44-4	(C)15	(C)90	X	5	30	10	60	—	—	X	—
Dichloromethane; see Methylene chloride												
Dichloromonofluoromethane	75-43-4	1000	4200	—	10	40	—	—	—	—	—	—
1,1-Dichloro-1-nitroethane	594-72-9	(C)10	(C)60	—	2	10	—	—	—	—	—	—
1,2-Dichloropropane; see Propylene dichloride												
1,3-Dichloropropene	542-75-6	—	—	—	1	5	—	—	—	—	X	—
2,2-Dichloropropionic acid	75-99-0	—	—	—	1	6	—	—	—	—	—	—
Dichlorotetrafluoroethane	76-14-2	1000	7000	—	1000	7000	—	—	—	—	—	—
Dichlorvos (DDVP)	62-73-7	—	1	X	—	1	—	—	—	—	X	—
Dicrotophos	141-66-2	—	—	—	—	0.25	—	—	—	—	X	—
Dicyclopentadiene	77-73-6	—	—	—	5	30	—	—	—	—	—	—
Dicyclopentadienyl iron	102-54-5											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Dieldrin	60-57-1	—	0.25	X	—	0.25	—	—	—	—	X	—
Diethanolamine	111-42-2	—	—	—	3	15	—	—	—	—	—	—
Diethylamine	109-89-7	25	75	—	10	30	25	75	—	—	—	—
2-Diethylaminoethanol	100-37-8	10	50	X	10	50	—	—	—	—	X	—
Diethylene triamine	111-40-0	(C)10	(C)42	X	1	4	—	—	—	—	—	—
Diethyl ether; see Ethyl ether												
Diethyl ketone	96-22-0	—	—	—	200	705	—	—	—	—	—	—
Diethyl phthalate	84-66-2	—	—	—	—	5	—	—	—	—	—	—
Difluorodibromomethane	75-61-6	100	860	—	100	860	—	—	—	—	—	—
Diglycidyl ether (DGE)	2238-07-5	(C)0.5	(C)2.8	—	0.1	0.5	—	—	—	—	—	—
Dihydroxybenzene; see Hydroquinone												
Diisobutyl ketone	108-83-8	50	290	—	25	150	—	—	—	—	—	—
Diisopropylamine	108-18-9	5	20	X	5	20	—	—	—	—	X	—
4-Dimethylaminoazobenzene; see 1910.1015	60-11-7											
Dimethoxymethane; see Methylal												
Dimethyl acetamide	127-19-5	10	35	X	10	35	—	—	—	—	X	—
Dimethylamine	124-40-3	10	18	—	10	18	—	—	—	—	—	—
Dimethylaminobenzene; see Xylidine												
Dimethylaniline (N,N-Dimethylaniline)	121-69-7	5	25	X	5	25	10	50	—	X	—	—
Dimethylbenzene; see Xylene												
Dimethyl-1,2-dibromo- 2,2-dichloroethyl phosphate	300-76-5	—	3	—	—	3	—	—	—	—	X	—
Dimethylformamide	68-12-2	10	30	X	10	30	—	—	—	—	X	—
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone												
1,1-Dimethylhydrazine	57-14-7	0.5	1	X	0.5	1	—	—	—	—	X	—
Dimethylphthalate	131-11-3	—	5	—	—	5	—	—	—	—	—	—
Dimethyl sulfate	77-78-1	1	5	X	0.1	0.5	—	—	—	—	X	—
Dinitolmide (3,5-Dinitro-o-toluamide)	148-01-6	—	—	—	—	5	—	—	—	—	—	—
Dinitrobenzene (all isomers)			1	X	—	1	—	—	—	—	X	—
(ortho)	528-29-0											
(meta)	99-65-0											

TABLE Z.—Shipyards—Continued

Substance	Transitional Limits[a] (1970 TLVs)			Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL[c]		CEILING		
	CAS No.[d]	ppm[e]	mg/m³[b]		ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	
(para)	100-25-4										
Dinitro-o-cresol	534-52-1	—	0.2	X	—	0.2	—	—	—	—	X
Dinitrotoluene	25321-14-6	—	1.5	X	—	1.5	—	—	—	—	X
Dioxane (Diethylene dioxide)	123-91-1	100	360	X	25	90	—	—	—	—	X
Dioxathion (Delnav)	78-34-2	—	—	—	—	0.2	—	—	—	—	X
Diphenyl (Biphenyl)	92-52-4	0.2	1	—	0.2	1	—	—	—	—	—
Diphenylamine	122-39-4	—	10	—	—	10	—	—	—	—	—
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate											
Dipropylene glycol methyl ether	34590-94-8	100	600	X	100	600	150	900	—	—	X
Dipropyl ketone	123-19-3	—	—	—	50	235	—	—	—	—	—
Diquat	85-00-7	—	—	—	—	0.5	—	—	—	—	—
Di-sec octyl phthalate (Di-(2-ethylhexyl) phthalate)	117-81-7	—	5	—	—	5	—	10	—	—	—
Disulfiram	97-77-8	—	—	—	—	2	—	—	—	—	—
Disulfoton	298-04-4	—	—	—	—	0.1	—	—	—	—	X
2,6-Di-tert-butyl-p-cresol	128-37-0	—	—	—	—	10	—	—	—	—	—
Diuron	330-54-1	—	—	—	—	10	—	—	—	—	—
Divinyl benzene	1321-74-0	—	—	—	10	50	—	—	—	—	—
Emery	12415-34-8	—									
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Endosulfan	115-29-7	—	0.1	X	—	0.1	—	—	—	—	X
Endrin	72-20-8	—	0.1	X	—	0.1	—	—	—	—	X
Epichlorohydrin	106-89-8	5	19	X	2	8	—	—	—	—	X
EPN	2104-64-5	—	0.5	X	—	0.5	—	—	—	—	X
1,2-Epoxypropane; see Propylene oxide											
2,3-Epoxy-1-propanol; see Glycidol											
Ethane	74-84-0	E									
Ethanethiol; see Ethyl mercaptan											
Ethanolamine	141-43-5	3	6	—	3	8	6	15	—	—	—
Ethion	563-12-2	—	—	—	—	0.4	—	—	—	—	—
2-Ethoxyethanol (Cellosolve)	110-80-5	200	740	X	200	740	—	—	—	—	—
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	100	540	X	100	540	—	—	—	—	—
Ethyl acetate	141-78-6	400	1400	—	400	1400	—	—	—	—	—
Ethyl acrylate	140-88-5	25	100	X	5	20	25	100	—	—	—
Ethyl alcohol (Ethanol)	64-17-5	1000	1900	—	1000	1900	—	—	—	—	—
Ethylamine	75-04-7	10	18	—	10	18	—	—	—	—	—
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	—	25	130	—	—	—	—	—
Ethyl benzene	100-41-4	100	435	—	100	435	125	545	—	—	—
Ethyl bromide	74-96-4	200	890	—	200	890	250	1110	—	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	—	50	230	—	—	—	—	—
Ethyl chloride	75-00-3	1000	2600	—	1000	2600	—	—	—	—	—
Ethyl ether	60-29-7	400	1200	—	400	1200	500	1500	—	—	—
Ethyl formate	109-94-4	100	300	—	100	300	—	—	—	—	—
Ethyl mercaptan	75-08-1	0.5	1	—	0.5	1	—	—	—	—	—
Ethyl silicate	78-10-4	100	850	—	10	85	—	—	—	—	—
Ethylene	74-85-1	E									
Ethylene chlorohydrin	107-07-3	5	16	X	—	—	—	—	1	3	X
Ethylenediamine	107-15-3	10	25	—	10	25	—	—	—	—	—
Ethylene dibromide	106-93-4	(C)25	(C)190	X	—	—	—	—	25	190	X
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	50	200	—	1	4	2	8	—	—	—
Ethylene glycol	107-21-1	—	—	—	—	—	—	—	50	125	—
Ethylene glycol dinitrate	628-96-6	(C)0.2	(C)1	X	—	—	—	0.1	—	—	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate											
Ethyleneimine; see 1910.1012	151-56-4	0.5	1	X							
Ethylene oxide[f]; see 1910.1047	75-21-8	(1)	(1)	(1)	1	—	5	—	—	—	—

Ethylidene chloride; see 1,1-Dichloroethane												
Ethylidene norbornene	16219-75-3	—	—		—	—	—	—	5	25		X
N-Ethylmorpholine	100-74-3	20	94	X	5	23	—	—	—	—		X
Fenamiphos	22224-92-6	—	—		—	0.1	—	—	—	—		X
Fensulfothion (Dasanit)	115-90-2	—	—		—	0.1	—	—	—	—		X
Fenthion	55-38-9	—	—		—	0.2	—	—	—	—		X
Ferbam	14484-64-1											
Total dust		—	15		—	10	—	—	—	—		
Ferrovanadium dust	12604-58-9	—	1		—	1	—	3	—	—		
Fibrous Glass												
Total dust			15		—	1 f/cc	—	—	—	—		
Respirable fraction			5		—	—	—	—	—	—		
Fluorides (as F)	Varies with compound	—	2.5		—	2.5	—	—	—	—		
Fluorine	7782-41-4	0.1	0.2		0.1	0.2	—	—	—	—		
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	1000	5600		—	—	—	—	1000	5600		
Fonofos	944-22-9	—	—		—	0.1	—	—	—	—		X
Formaldehyde [4,b]; see 1910.1048; and 56 FR 32302	50-00-0	1	(2 ppm STEL)		0.75	—	2	—	—	—		X
Formamide	75-12-7	—	—		20	30	30	45	—	—		
Formic acid	64-18-6	5	9		5	9	—	—	—	—		
Furfural	98-01-1	5	20	X	2	8	—	—	—	—		X
Furfuryl alcohol	98-00-0	50	200		10	40	15	60	—	—		X
Gasoline	8006-61-9		A[a]		300	900	500	1500	—	—		
Germanium tetrahydride	7782-65-2	—	—		0.2	0.6	—	—	—	—		
Glutaraldehyde	111-30-8	—	—		—	—	—	—	0.2	0.8		
Glycerin (mist)	56-81-5											
Total dust		—	15		—	10	—	—	—	—		
Respirable fraction		—	5		—	5	—	—	—	—		
Glycidol	556-52-5	50	150		25	75	—	—	—	—		
Glycol monoethyl ether; see 2-Ethoxyethanol												
Grain dust (oat, wheat, barley)		—	—		—	10	—	—	—	—		
Graphite, natural, respirable dust	7782-42-5	(f)	(f)	(f)		2.5	—	—	—	—		
Graphite, synthetic												
Total dust		—	15		—	10	—	—	—	—		
Respirable fraction		—	5		—	5	—	—	—	—		
Guthion; see Azinphos methyl												
Gypsum	13397-24-5											
Total dust		—	15		—	15	—	—	—	—		
Respirable fraction		—	5		—	5	—	—	—	—		
Hafnium	7440-58-6	—	0.5		—	0.5	—	—	—	—		
Helium	7440-59-7	E										
Heptachlor	76-44-8	—	0.5	X	—	0.5	—	—	—	—		X
Heptane (n-Heptane)	142-82-5	500	2000		400	1600	500	2000	—	—		
Hexachlorobutadiene	87-68-3	—	—		0.02	0.24	—	—	—	—		
Hexachlorocyclopentadiene	77-47-4	—	—		0.01	0.1	—	—	—	—		
Hexachloroethane	67-72-1	1	10	X	1	10	—	—	—	—		X
Hexachloronaphthalene	1335-87-1	—	0.2	X	—	0.2	—	—	—	—		X
Hexafluoroacetone	684-16-2	—	—		0.1	0.7	—	—	—	—		
n-Hexane	110-54-3	500	1800		50	180	—	—	—	—		X
Hexane isomers	Varies with compound	—	—		500	1800	1000	3600	—	—		
2-Hexanone (Methyl n-butyl ketone)	591-78-6	100	410		5	20	—	—	—	—		
Hexone (Methyl isobutyl ketone)	108-10-1	100	410		50	205	75	300	—	—		
sec-Hexyl acetate	108-84-9	50	300		50	300	—	—	—	—		
Hexylene glycol	107-41-5	—	—		—	—	—	—	25	125		
Hydrazine	302-01-2	1	1.3	X	0.1	0.1	—	—	—	—		X
Hydrogen	1333-74-0	E										
Hydrogenated terphenyls	61788-32-7	—	—		0.5	5	—	—	—	—		
Hydrogen bromide	10035-10-6	3	10		—	—	—	—	3	10		
Hydrogen chloride	7647-01-0	(C)5	(C)7		—	—	—	—	5	7		
Hydrogen cyanide	74-90-8	10	11	X	—	—	4.7	5	X			
Hydrogen fluoride (as F)	7664-39-3	3	2		3	—	6	—	—	—		
Hydrogen peroxide	7722-84-1	1	1.4		1	1.4	—	—	—	—		
Hydrogen selenide (as Se)	7783-07-5	0.05	0.2		0.05	0.2	—	—	—	—		

TABLE Z.—Shipyards—Continued

Substance	Transitional Limits[a] (1970 TLVs)			Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL[c]		CEILING		
	CAS No.[d]	ppm[e]	mg/m³[b]		ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	
Hydrogen sulfide	7783-06-4	10	15	—	10	14	15	21	—	—	—
Hydroquinone	123-31-9	—	2	—	—	2	—	—	—	—	—
2-Hydroxypropyl acrylate	999-61-1	—	—	—	0.5	3	—	—	—	—	X
Indene	95-13-6	10	45	—	10	45	—	—	—	—	—
Indium and compounds (as In)	7440-74-6	—	0.1	—	—	0.1	—	—	—	—	—
Iodine	7553-56-2	(C)0.1	(C)1	—	—	—	—	—	0.1	1	—
Iodoform	75-47-8	—	—	—	0.6	10	—	—	—	—	—
Iron oxide fume	1309-37-1	—	10	—	—	10	—	—	—	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	—	—	—	0.1	0.8	0.2	1.6	—	—	—
Iron salts (soluble) (as Fe)	Varies with compound	—	1	—	—	1	—	—	—	—	—
Isoamyl acetate	123-92-2	100	525	—	100	525	—	—	—	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100	360	—	100	360	125	450	—	—	—
Isobutyl acetate	110-19-0	150	700	—	150	700	—	—	—	—	—
Isobutyl alcohol	78-83-1	100	300	—	50	150	—	—	—	—	—
Isooctyl alcohol	26952-21-6	—	—	—	50	270	—	—	—	—	X
Isophorone	78-59-1	25	140	—	4	23	—	—	—	—	—
Isophorone diisocyanate	4098-71-9	—	—	—	0.005	—	0.02	—	—	—	X
2-Isopropoxyethanol	109-59-1	—	—	—	25	105	—	—	—	—	—
Isopropyl acetate	108-21-4	250	950	—	250	950	310	1185	—	—	—
Isopropyl alcohol	67-63-0	400	980	—	400	980	500	1225	—	—	—
Isopropylamine	75-31-0	5	12	—	5	12	10	24	—	—	—
N-Isopropylaniline	768-52-5	—	—	—	2	10	—	—	—	—	X
Isopropyl ether	108-20-3	500	2100	—	500	2100	—	—	—	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	—	50	240	75	360	—	—	—
Kaolin	1332-58-7										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Ketene	463-51-4	0.5	0.9	—	0.5	0.9	1.5	3	—	—	—
Lead, inorganic (as Pb)[f]; see 1910.1025	7439-92-1	—	0.05	—	—	0.05	—	—	—	—	—
Limestone	1317-65-3	—									
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Lindane	58-89-9	—	0.5	X	—	0.5	—	—	—	—	X
Lithium hydride	7580-67-8	—	0.025	—	—	0.025	—	—	—	—	—
L.P.G. (Liquefied petroleum gas)	68476-85-7	1000	1800	—	1000	1800	—	—	—	—	—
Magnesite	546-93-0										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Magnesium oxide fume	1309-48-4										
Total particulate			15	—	—	10	—	—	—	—	—
Malathion	121-75-5										
Total dust		—	15	X	—	10	—	—	—	—	X
Maleic anhydride	108-31-6	0.25	1	—	0.25	1	—	—	—	—	—
Manganese compounds (as Mn)	7439-96-5	—	(C)5	—	—	—	—	—	—	5	—
Manganese fume (as Mn)	7439-96-5	—	(C)5	—	—	1	—	3	—	—	—
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	—	—	—	—	0.1	—	—	—	—	X
Manganese tetroxide (as Mn)	1317-35-7	—	—	—	—	1	—	—	—	—	—
Marble	1317-65-3	—									
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Mercury (aryl and inorganic)(as Hg)	7439-97-6	—	0.1	X	—	—	—	—	—	0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439-97-6	—	0.01	X	—	0.01	—	0.03	—	—	X
Mercury (vapor) (as Hg)	7439-97-6	—	0.1	X	—	0.05	—	—	—	—	X
Mesityl oxide	141-79-7	25	100	—	15	60	25	100	—	—	—
Methacrylic acid	79-41-4	—	—	—	20	70	—	—	—	—	X
Methane	74-82-8	E									

Methanethiol; see Methyl mercaptan												
Methomyl (Lannate)	16752-77-5	—	—		—	2.5	—	—	—	—	—	
Methoxychlor	72-43-5											
Total dust		—	15		—	10	—	—	—	—	—	
2-Methoxyethanol (Methyl cellosolve)	109-86-4	25	80	X	25	80	—	—	—	—	X	
2-Methoxyethanol acetate (Methyl cellosolve acetate)	110-49-6	25	120	X	25	120	—	—	—	—	X	
4-Methoxyphenol	150-76-5	—	—		—	5	—	—	—	—	—	
Methyl acetate	79-20-9	200	610	—	200	610	250	760	—	—	—	
Methyl acetylene (Propyne)	74-99-7	1000	1650	—	1000	1650	—	—	—	—	—	
Methyl acetylene-propadiene mixture (MAPP)		1000	1800	—	1000	1800	1250	2250	—	—	—	
Methyl acrylate	96-33-3	10	35	X	10	35	—	—	—	—	X	
Methylacrylonitrile	126-98-7	—	—	—	1	3	—	—	—	—	X	
Methylal (Dimethoxy-methane)	109-87-5	1000	3100	—	1000	3100	—	—	—	—	—	
Methyl alcohol	67-56-1	200	260	—	200	260	250	325	—	—	X	
Methylamine	74-89-5	10	12	—	10	12	—	—	—	—	—	
Methyl amyl alcohol; see Methyl isobutyl carbinol												
Methyl n-amyl ketone	110-43-0	100	465	—	100	465	—	—	—	—	—	
Methyl bromide	74-83-9	(C)20	(C)80	X	5	20	—	—	—	—	X	
Methyl butyl ketone; see 2-Hexanone												
Methyl cellosolve; see 2-Methoxyethanol											X	
Methyl cellosolve acetate; see 2-Methoxyethyl acetate											X	
Methyl chloride	74-87-3	100	210	—	50	105	100	210	—	—	—	
Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350	1900	—	350	1900	450	2450	—	—	—	
Methyl 2-cyanoacrylate	137-05-3	—	—	—	2	8	4	16	—	—	—	
Methylcyclohexane	108-87-2	500	2000	—	400	1600	—	—	—	—	—	
Methylcyclohexanol	25639-42-3	100	470	—	50	235	—	—	—	—	—	
o-Methylcyclohexanone	583-60-8	100	460	X	50	230	75	345	—	—	X	
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	—	—	—	—	0.2	—	—	—	—	X	
Methyl demeton	8022-00-2	—	—	—	—	0.5	—	—	—	—	X	
4,4'-Methylene bis (2-chloroaniline) (MBOCA)	101-14-4	—	—	—	0.02	0.22	—	—	—	—	X	
Methylene bis(4-cyclohexylisocyanate)	5124-30-1	—	—	—	—	—	—	—	0.01	0.11	—	
Methylene chloride [b]; see 56 FR 57036	75-09-2	500	1740	—	25	—	125	—	—	—	—	
Methyl ethyl ketone (MEK); see 2-Butanone												
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	—	—	—	—	—	0.7	5	—	
Methyl formate	107-31-3	100	250	—	100	250	150	375	—	—	—	
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	(C)0.2	(C)0.35	X	—	—	—	—	0.2	0.35	X	
Methyl iodide	74-88-4	5	28	X	2	10	—	—	—	—	X	
Methyl isoamyl ketone	110-12-3	100	475	—	50	240	—	—	—	—	—	
Methyl isobutyl carbinol	108-11-2	25	100	X	25	100	40	165	—	—	X	
Methyl isobutyl ketone; see Hexone												
Methyl isocyanate	624-83-9	0.02	0.05	X	0.02	0.05	—	—	—	—	X	
Methyl isopropyl ketone	563-80-4	—	—	—	200	705	—	—	—	—	—	
Methyl mercaptan	74-93-1	0.5	1	—	0.5	1	—	—	—	—	—	
Methyl methacrylate	80-62-6	100	410	100	410	—	—	—	—	—	—	
Methyl parathion	298-00-0	—	—	—	—	0.2	—	—	—	—	X	
Methyl propyl ketone; see 2-Pentanone												
Methyl silicate	681-84-5	5	30	—	1	6	—	—	—	—	—	
alpha-Methyl styrene	98-83-9	(C)100	(C)480	—	50	240	100	485	—	—	—	
Methylene bisphenyl isocyanate (MDI)	101-68-8	(C)0.02	(C)0.2	—	—	—	—	—	0.02	0.2	—	
Metribuzin	21087-64-9	—	—	—	—	5	—	—	—	—	—	
Mica; see Silicates												
Mineral wool												
Total dust		—	15	—	—	1 f/cc	—	—	—	—	—	
Respirable dust		—	5	—	—	—	—	—	—	—	—	
Molybdenum (as Mo)	7439-98-7											
Soluble compounds		—	5	—	—	5	—	—	—	—	—	
Insoluble compounds												
Total dust		—	15	—	—	10	—	—	—	—	—	
Monocrotophos (Azodrin)	6923-22-4	—	—	—	—	0.25	—	—	—	—	—	
Monomethyl aniline	100-61-8	2	9	X	0.5	2	—	—	—	—	X	
Monomethyl hydrazine; see Methyl hydrazine												
Morpholine	110-91-8	20	70	X	20	70	30	105	—	—	X	
Naphtha (Coal tar)	8030-30-6	100	400	—	100	400	—	—	—	—	—	

TABLE Z.—Shipyards—Continued

Substance	Transitional Limits[a] (1970 TLVs)			Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL[c]		CEILING		
	CAS No.[d]	ppm[e]	mg/m³[b]		ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	
Naphthalene	91-20-3	10	50	—	10	50	15	75	—	—	—
alpha-Naphthylamine; see 1910.1004	134-32-7										
beta-Naphthylamine; see 1910.1009	91-59-8		A[1]								
Neon	7440-01-9	E									
Nickel carbonyl (as Ni)	13463-39-3	0.001	0.007	—	0.001	0.007	—	—	—	—	—
Nickel, metal and insoluble compounds (as Ni)	7440-02-0	—	1	—	—	1	—	—	—	—	—
Nickel, soluble compounds (as Ni)	7440-02-0	—	1	—	—	0.1	—	—	—	—	—
Nicotine	54-11-5	—	0.5	X	—	0.5	—	—	—	—	X
Nitric acid	7697-37-2	2	5	—	2	5	4	10	—	—	—
Nitric oxide	10102-43-9	25	30	—	25	30	—	—	—	—	—
p-Nitroaniline	100-01-6	1	6	X	—	3	—	—	—	—	X
Nitrobenzene	98-95-3	1	5	X	1	5	—	—	—	—	X
p-Nitrochlorobenzene	100-00-5	—	1	X	—	1	—	—	—	—	X
4-Nitrodiphenyl; see 1910.1003	92-93-3										
Nitroethane	79-24-3	100	310	—	100	310	—	—	—	—	—
Nitrogen	7727-37-9	E									
Nitrogen dioxide	10102-44-0	(C)5	(C)9	—	—	—	1	1.8	—	—	—
Nitrogen trifluoride	7783-54-2	10	29	—	10	29	—	—	—	—	—
Nitroglycerin	55-63-0	(C)0.2	(C)2	X	—	—	—	0.1	—	—	X
Nitromethane	75-52-5	100	250	—	100	250	—	—	—	—	—
1-Nitropropane	108-03-2	25	90	—	25	90	—	—	—	—	—
2-Nitropropane	79-46-9	25	90	—	10	35	—	—	—	—	—
N-Nitrosodimethylamine; see 1910.1016	62-79-9	A1									
Nitrotoluene (all isomers)		5	30	X	2	11	—	—	—	—	X
o-isomer	88-72-2;										
m-isomer	99-08-1;										
p-isomer	99-99-0										
Nitrotrichloromethane; see Chloropicrin											
Nitrous oxide	10024-97-2	E									
Nonane	111-84-2	—	—	—	200	1050	—	—	—	—	—
Octachloronaphthalene	2234-13-1	—	0.1	X	—	0.1	—	0.3	—	—	X
Octane	111-65-9	400	1900	—	300	1450	375	1800	—	—	—
Oil mist, mineral	8012-95-1	—	5	—	—	5	—	—	—	—	—
Osmium tetroxide (as Os)	20816-12-0	—	0.002	—	0.0002	0.002	0.0006	0.006	—	—	—
Oxalic acid	144-62-7	—	1	—	—	1	—	2	—	—	—
Oxygen difluoride	7783-41-7	0.05	0.1	—	—	—	—	—	0.05	0.1	—
Ozone	10028-15-6	0.1	0.2	—	0.1	0.2	0.3	0.6	—	—	—
Paraffin wax fume	8002-74-2	—	—	—	—	2	—	—	—	—	—
Paraquat, respirable dust	4685-14-7; 1910-42-5; 2074-50-2	—	0.5	X	—	0.1	—	—	—	—	X
Parathion	56-38-2	—	0.1	X	—	0.1	—	—	—	—	X
Particulates not otherwise regulated											
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
PCB; See chlorodiphenyl (42% and 54% chlorine)											
Pentaborane	19624-22-7	0.005	0.01	—	0.005	0.01	0.015	0.03	—	—	—
Pentachloronaphthalene	1321-64-8	—	0.5	X	—	0.5	—	—	—	—	X
Pentachlorophenol	87-86-5	—	0.5	X	—	0.5	—	—	—	—	X
Pentaerythritol	115-77-5	—									
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Pentane	109-66-0	500	1500	—	600	1800	750	2250	—	—	—
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	—	200	700	250	875	—	—	—
Perchloroethylene (Tetrachloroethylene)	127-18-4	100	670	—	25	170	—	—	—	—	—
Perchloromethyl mercaptan	594-42-3	0.1	0.8	—	0.1	0.8	—	—	—	—	—
Perchloryl fluoride	7616-94-6	3	13.5	—	3	14	6	28	—	—	—

Perlite	93763-70-3										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Petroleum distillates (Naphtha)(Rubber Solvent)			A[4]		400	1600	—	—	—	—	—
Phenol	108-95-2	5	19	X	5	19	—	—	—	—	X
Phenothiazine	92-84-2	—	—	—	—	5	—	—	—	—	X
p-Phenylene diamine	106-50-3	—	0.1	X	—	0.1	—	—	—	—	X
Phenyl ether, vapor	101-84-8	1	7	—	1	7	—	—	—	—	—
Phenyl ether-biphenyl mixture, vapor		1	7	—	1	7	—	—	—	—	—
Phenylethylene; see Styrene											
Phenyl glycidyl ether (PGE)	122-60-1	10	60	—	1	6	—	—	—	—	—
Phenylhydrazine	100-63-0	5	22	X	5	20	10	45	—	—	X
Phenyl mercaptan	108-98-5	—	—	—	0.5	2	—	—	—	—	—
Phenylphosphine	638-21-1	—	—	—	—	—	—	—	0.05	0.25	—
Phorate	298-02-2	—	—	—	—	0.05	—	0.2	—	—	X
Phosdrin (Mevinphos)	7786-34-7	—	0.1	X	0.01	0.1	0.03	0.3	—	—	X
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	—	0.1	0.4	—	—	—	—	—
Phosphine	7803-51-2	0.3	0.4	—	0.3	0.4	1	1	—	—	—
Phosphoric acid	7664-38-2	—	1	—	—	1	—	3	—	—	—
Phosphorus (yellow)	7723-14-0	—	0.1	—	—	0.1	—	—	—	—	—
Phosphorus oxychloride	10025-87-3	—	—	—	0.1	0.6	—	—	—	—	—
Phosphorus pentachloride	10026-13-8	—	1	—	—	1	—	—	—	—	—
Phosphorus pentasulfide	1314-80-3	—	1	—	—	1	—	3	—	—	—
Phosphorus trichloride	7719-12-2	0.5	3	—	0.2	1.5	0.5	3	—	—	—
Phthalic anhydride	85-44-9	2	12	—	1	6	—	—	—	—	—
m-Phthalodinitrile	626-17-5	—	—	—	—	5	—	—	—	—	—
Picloram	1918-02-1										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Picric acid	88-89-1	—	0.1	X	—	0.1	—	—	—	—	X
Piperazine dihydrochloride	142-64-3	—	—	—	—	5	—	—	—	—	—
Pindone (2-Pivalyl-1,3-indandione)	83-26-1	—	0.1	—	—	0.1	—	—	—	—	—
Plaster of Paris	26499-65-0										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Platinum (as Pt)	7440-06-4										
Metal		—	—	—	—	1	—	—	—	—	—
Soluble salts		—	0.002	—	—	0.002	—	—	—	—	—
Polytetrafluoroethylene decomposition products			A[3]								
Portland cement	65997-15-1										
Total dust		15	—	10	—	—	—	—	—	—	—
Respirable fraction		5	—	—	5	—	—	—	—	—	—
Potassium hydroxide	1310-58-3	—	—	—	—	—	—	—	—	2	—
Propargyl alcohol	107-19-7	1	—	X	1	2	1	—	—	—	X
beta-Propriolactone; see 1910.1013	57-57-8		A[1]								
Propionic acid	79-09-4	—	—	—	10	30	—	—	—	—	—
Propoxur (Baygon)	114-26-1	—	—	—	—	0.5	—	—	—	—	—
n-Propyl acetate	109-60-4	200	840	—	200	840	250	1050	—	—	—
n-Propyl alcohol	71-23-8	200	500	—	200	500	250	625	—	—	—
n-Propyl nitrate	627-13-4	25	110	—	25	105	40	170	—	—	—
Propylene dichloride	78-87-5	75	350	—	75	350	110	510	—	—	—
Propylene glycol dinitrate	6423-43-4	—	—	—	0.05	0.3	—	—	—	—	—
Propylene glycol monomethyl ether	107-98-2	—	—	—	100	360	150	540	—	—	—
Propylene imine	75-55-8	2	5	X	2	5	—	—	—	—	X
Propylene oxide	75-56-9	100	240	—	20	50	—	—	—	—	—
Propyne; see Methyl acetylene											
Pyrethrum	8003-34-7	—	5	—	—	5	—	—	—	—	—
Pyridine	110-86-1	5	15	—	5	15	—	—	—	—	—
Quinone	106-51-4	0.1	0.4	—	0.1	0.4	—	—	—	—	—
RDX; see Cyclonite											
Resorcinol	108-46-3	—	—	—	10	45	20	90	—	—	—
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	—	0.1	—	—	0.1	—	—	—	—	—
Rhodium (as Rh), soluble compounds	7440-16-6	—	0.001	—	—	0.001	—	—	—	—	—
Ronnel	299-84-3	—	10	—	—	10	—	—	—	—	—

TABLE Z.—Shipyards—Continued

Substance	Transitional Limits[a] (1970 TLVs)			Proposed Final Rule Limits						
				TWA		STEL[a]		CEILING		
	CAS No.[d]	ppm[a]	mg/m³[b]	Skin Designation	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	Skin Designation
Rosin core solder pyrolysis products, as formaldehyde		—	—	—	—	0.1	—	—	—	—	
Rotenone	83-79-4	—	5	—	—	5	—	—	—	—	—
Rouge		—									
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Selenium compounds (as Se)	7782-49-2	—	0.2	—	—	0.2	—	—	—	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	—	0.05	0.4	—	—	—	—	—
Silica, amorphous, precipitated and gel	112926-00-8	(2)	(2)	(2)	—	6	—	—	—	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	(2)	(2)	(2)	—	6	—	—	—	—	—
Silica, crystalline cristobalite, respirable dust	14464-46-1	(2)	(2)	(2)	—	0.05	—	—	—	—	—
Silica, crystalline quartz, respirable dust	14808-60-7	(2)	(2)	(2)	—	0.1	—	—	—	—	—
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	(2)	(2)	(2)	—	0.1	—	—	—	—	—
Silica, crystalline tridymite, respirable dust	15468-32-3	(2)	(2)	(2)	—	0.05	—	—	—	—	—
Silica, fused, respirable dust	60676-86-0	(2)	(2)	(2)	—	0.1	—	—	—	—	—
Silicates (less than 1% crystalline silica)											
Mica (respirable dust)	12001-26-2	(2)	(2)	(2)	—	3	—	—	—	—	—
Soapstone, total dust		(2)	(2)	(2)	—	6	—	—	—	—	—
Soapstone, respirable dust		(2)	(2)	(2)	—	3	—	—	—	—	—
Talc (containing asbestos): use asbestos limit 1910.1001		(3)	(3)	(3)	—	0.2 f/cc	—	1 f/cc (30 min)	—	—	—
Talc (containing no asbestos), respirable dust	14807-96-6	(2)	(2)	(2)	—	2	—	—	—	—	—
Tremolite		(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Silicon	7440-21-3										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Silicon carbide	409-21-2										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Silicon tetrahydride	7803-62-5	—	—	—	5	7	—	—	—	—	—
Silver, metal and soluble compounds (as Ag)	7440-22-4	—	0.01	—	—	0.01	—	—	—	—	—
Soapstone; see Silicates											
Sodium azide	26628-22-8										
(as HN_3)		—	—	—	—	—	—	0.1	—	X	
(as NaN_3)		—	—	—	—	—	—	—	0.3	X	
Sodium bisulfite	7631-90-5	—	—	—	—	5	—	—	—	—	—
Sodium fluoroacetate	62-74-8	—	0.05	X	—	0.05	—	0.15	—	—	X
Sodium hydroxide	1310-73-2	—	2	—	—	—	—	—	—	2	—
Sodium metabisulfite	7681-57-4	—	—	—	—	5	—	—	—	—	—
Starch	9005-25-8	—									
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Stibine	7803-52-3	0.1	0.5	—	0.1	0.5	—	—	—	—	—
Stoddard solvent	8052-41-3	200	1150	—	100	525	—	—	—	—	—
Strychnine	57-24-9	—	0.15	—	—	0.15	—	—	—	—	—
Styrene	100-42-5	100	420	50	215	100	425	—	—	—	—
Subtilisins (Proteolytic enzymes)	9014-01-1	—	—	—	—	—	—	0.00006[c] (60 min)	—	—	—
Sucrose	57-50-1										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Sulfur dioxide	7446-09-5	5	13	—	2	5	5	13	—	—	—
Sulfur hexafluoride	2551-62-4	1000	6000	—	1000	6000	—	—	—	—	—
Sulfuric acid	7664-93-9	—	1	—	—	1	—	—	—	—	—
Sulfur monochloride	10025-67-9	1	6	—	—	—	—	—	1	6	—

Sulfur pentafluoride	5714-22-7	0.025	0.25	—	—	—	—	—	0.01	0.1	—
Sulfur tetrafluoride	7783-60-0	—	—	—	—	—	—	—	0.1	0.4	—
Sulfuryl fluoride	2699-79-8	5	20	—	5	20	10	40	—	—	—
Sulprofos	35400-43-2	—	—	—	—	1	—	—	—	—	—
Systox, see Demeton											
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)	93-76-5	—	10	—	—	10	—	—	—	—	—
Talc; see Silicates											
Tantalum, metal and oxide dust	7440-25-7	—	5	—	—	5	—	—	—	—	—
TEDP (Sulfotep)	3689-24-5	—	0.2	X	—	0.2	—	—	—	—	X
Teflon decomposition products			A[9]								
Tellurium and compounds (as Te)	13494-80-9	—	0.1	—	—	0.1	—	—	—	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	—	0.02	0.2	—	—	—	—	—
Temephos	3383-96-8										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
TEPP (Tetraethyl pyrophosphate)	107-49-3	—	0.05	X	—	0.05	—	—	—	—	X
Terphenyls	26140-60-3	(C)1	(C)9	—	—	—	—	—	0.5	5	—
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	500	4170	—	500	4170	—	—	—	—	—
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	500	4170	—	500	4170	—	—	—	—	—
1,1,2,2-Tetrachloroethane	79-34-5	5	35	X	1	7	—	—	—	—	X
Tetrachloroethylene; see Perchloroethylene											
Tetrachloromethane; see Carbon tetrachloride											
Tetrachloronaphthalene	1335-88-2	—	2	X	—	2	—	—	—	—	X
Tetraethyl lead (as Pb)	78-00-2	—	0.1	X	—	0.075	—	—	—	—	X
Tetrahydrofuran	109-99-9	200	590	—	200	590	250	735	—	—	—
Tetramethyl lead, (as Pb)	75-74-1	—	0.15	X	—	0.075	—	—	—	—	X
Tetramethyl succinonitrile	3333-52-6	0.5	3	X	0.5	3	—	—	—	—	X
Tetranitromethane	509-14-8	1	8	—	1	8	—	—	—	—	—
Tetrasodium pyrophosphate	7722-88-5	—	—	—	—	5	—	—	—	—	—
Tetryl (2,4,6-Trinitrophenylmethylnitramine)	479-45-8	—	1.5	X	—	0.1	—	—	—	—	X
Thallium, soluble compounds (as Tl)	7440-28-0	—	0.1	X	—	0.1	—	—	—	—	X
4,4'-Thiobis (6-tert, Butyl-m-cresol)	96-69-5										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Thioglycolic acid	68-11-1	—	—	—	1	4	—	—	—	—	X
Thionyl chloride	7719-09-7	—	—	—	—	—	—	—	1	5	—
Thiram	137-26-8	—	5	—	—	5	—	—	—	—	—
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	—	2	—	—	2	—	—	—	—	—
Tin, organic compounds (as Sn)	7440-31-5	—	0.1	—	—	0.1	—	—	—	—	X
Tin oxide (as Sn)	21651-19-4	—	—	—							
Total dust		—	15	—	—	2	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—	—	—	—
Titanium dioxide	13463-67-7										
Total dust		—	15	—	—	10	—	—	—	—	—
Toluene	108-88-3	200	750	100	375	150	560	—	—	—	—
Toluene-2,4-diisocyanate (TDI)	584-84-9	(C)0.02	(C)0.14	—	0.005	0.04	0.02	0.15	—	—	—
m-Toluidine	108-44-1	—	—	—	2	9	—	—	—	—	X
o-Toluidine	95-53-4	5	22	X	5	22	—	—	—	—	X
p-Toluidine	106-49-0	—	—	—	2	9	—	—	—	—	X
Toxaphene; see Chlorinated camphene											
Tremolite; see Silicates											
Tributyl phosphate	126-73-8	—	5	—	0.2	2.5	—	—	—	—	—
Trichloroacetic acid	76-03-9	—	—	—	1	7	—	—	—	—	—
1,2,4-Trichlorobenzene	120-82-1	—	—	—	—	—	—	—	5	40	—
1,1,1-Trichloroethane; see Methyl chloroform											
1,1,2-Trichloroethane	79-00-5	10	45	X	10	45	—	—	—	—	X
Trichloroethylene	79-01-6	100	535	—	50	270	200	1080	—	—	—
Trichloromethane; see Chloroform											
Trichloronaphthalene	1321-65-9	—	5	X	—	5	—	—	—	—	X
1,2,3-Trichloropropane	96-18-4	50	300	—	10	60	—	—	—	—	—
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	—	1000	7600	1250	9500	—	—	—
Triethylamine	121-44-8	25	100	—	10	40	15	60	—	—	—
Trifluorobromomethane	75-63-8	1000	6100	—	1000	6100	—	—	—	—	—
Trimellitic anhydride	552-30-7	—	—	—	0.005	0.04	—	—	—	—	—
Trimethylamine	75-50-3	—	—	—	10	24	15	36	—	—	—
Trimethyl benzene	25551-13-7	25	120	—	25	125	—	—	—	—	—

TABLE Z.—Shipyards—Continued

Substance	Transitional Limits[a] (1970 TLVs)			Proposed Final Rule Limits						
				TWA		STEL[c]		CEILING		
	CAS No.[d]	ppm[e]	mg/m³[e,b]	Skin Designation	ppm[e]	mg/m³[e,b]	ppm[e]	mg/m³[e,b]	ppm[e]	mg/m³[e,b]	Skin Designation
Trimethyl phosphite	121-45-9	—	—	—	2	10	—	—	—	—	—
2,4,6-Trinitrophenyl; see Picric acid											
2,4,6-Trinitrophenylmethylnitramine; see Tetryl											
2,4,6-Trinitrotoluene (TNT)	118-96-7	—	1.5	X	—	0.5	—	—	—	—	X
Triorthocresyl phosphate	78-30-8	—	0.1	—	—	0.1	—	—	—	—	X
Triphenyl amine	603-34-9	—	—	—	—	5	—	—	—	—	—
Triphenyl phosphate	115-86-6	—	3	—	—	3	—	—	—	—	—
Tungsten (as W)	7440-33-7										
Insoluble compounds		—	5	—	—	5	—	10	—	—	—
Soluble compounds		—	1	—	—	1	—	3	—	—	—
Turpentine	8006-64-2	100	560	—	100	560	—	—	—	—	—
Uranium (as U)	7440-61-1										
Soluble compounds		—	0.2	—	—	0.05	—	—	—	—	—
Insoluble compounds		—	0.2	—	—	0.2	—	0.6	—	—	—
n-Valeraldehyde	110-62-3	—	—	—	50	175	—	—	—	—	—
Vanadium	1314-62-1										
Respirable dust (as V_2O_5)		—	(C)0.5	—	—	0.05	—	—	—	—	—
Fume (as V_2O_5)		—	(C)0.1	—	—	0.05	—	—	—	—	—
Vegetable oil mist											
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Vinyl acetate	108-05-4	—	—	—	10	30	20	60	—	—	—
Vinyl benzene; see Styrene											
Vinyl bromide	593-60-2	—	—	—	5	20	—	—	—	—	—
Vinyl chloride[f]; see 1910.1017	75-01-4	(f)	(f)	(f)	1	—	5	—	—	—	—
Vinyl cyanide; see Acrylonitrile											
Vinyl cyclohexene dioxide	106-87-6	—	—	—	10	60	—	—	—	—	X
Vinylidene chloride (1,1-Dichloroethylene)	75-35-4	—	—	—	1	4	—	—	—	—	—
Vinyl toluene	25013-15-4	100	480	—	100	480	—	—	—	—	—
VM & P Naphtha	8032-32-4	—	—	—	300	1350	400	1800	—	—	—
Warfarin	81-81-2	—	0.1	—	—	0.1	—	—	—	—	—
Welding fumes (total particulate)[e,e]		—	—	—	—	5	—	—	—	—	—
Wood dust, all soft and hard woods, except Western red cedar		—	—	—	—	5	—	10	—	—	—
Wood dust, Western red cedar		—	—	—	—	2.5	—	—	—	—	—
Xylenes (o-, m-, p- isomers)	1330-20-7	100	435	—	100	435	150	655	—	—	—
m-Xylene alpha, alpha, diamine	1477-55-0	—	—	—	—	—	—	—	—	0.1	X
Xylidine	1300-73-8	5	25	X	2	10	—	—	—	—	X
Yttrium	7440-65-5	—	1	—	—	1	—	—	—	—	—
Zinc chloride fume	7646-85-7	—	1	—	—	1	—	2	—	—	—
Zinc chromate (as CrO_3) Varies with Compound	13530-65-9	—	—	—	0.1	—	—	—	—	—	—
Zinc oxide fume	1314-13-2	—	5	—	—	5	—	10	—	—	—
Zinc oxide	1314-13-2										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Zinc stearate	557-05-1										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Zirconium compounds (as Zr)	7440-67-7	—	5	—	—	5	—	10	—	—	—

Footnotes:
[1] Same as Final Rule Limits.
[2] See Mineral Dusts Table.
[3] Use Asbestos Limit 1910.1001.
[4] See 1910.1001 for asbestiform; for non-asbestiform see 1910.1101.
[a] The transitional PELs are 8-hour TWAs unless otherwise noted; a (C) denotes a ceiling limit.
[e,e] As determined from breathing-zone air samples.
[e] Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 torr.

[b] Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.
[c] Duration is for 15 minutes, unless otherwise noted.
[d] The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given—not CAS numbers for the individual compounds.
[e] Compliance with the subtilisins PEL is assessed by sampling with a high volume sampler (600–900 liters per minute) for at least 60 minutes.
[f] For those substances for which a full standard exists, exposure limits are provided in the table for informational purposes, and the binding requirements are as set forth in the single-substance standard.
[g] For sectors excluded from 1910.1028 the limit is 10 ppm and see 1910.1000, Table Z–2 for ceiling limits.
[h] Where OSHA has published a proposal for a substance separately from this rulemaking but has not issued a final rule, the proposal is referenced and the existing limit is published in the Transitional Limits columns. The proposed new limit is published in the Final Rule Limits columns. However, the proposed new limit is presented just for information purposes, and the substances are not being considered in this rulemaking.

The 1970 TLVs use letter designations instead of a numerical value as follows:

A[1] Because of the high incidence of cancer, either in humans or in animals, no exposure or contact by any route, respiratory, oral or skin should be permitted.

A[2] Polytetrafluoroethylene decomposition products. Because these products decompose in part by hydrolysis in alkaline solution, they can be quantitatively determined in air as fluoride to provide an index of exposure. No TLV is recommended pending determination of the toxicity of the products, but air concentrations should be minimal.

A[3] Gasoline and/or Petroleum Distillates. The composition of these materials varies greatly and thus a single TLV for all types of these materials is no longer applicable. The content of benzene, other aromatics and additives should be determined to arrive at the appropriate TLV.

E Simple asphyxiant.

II. OSHA proposes to amend 29 CFR Part 1917 as follows:

PART 1917—MARINE TERMINALS

1. It is proposed to revise the authority citation for part 1917 to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

2. It is proposed to amend § 1917.1 by revising paragraph (a)(2)(ii) as follows:

§ 1917.1 Scope and applicability.

(a) * * *
(2) * * *
(i) * * *

(ii) Toxic and hazardous substances. 29 CFR 1917, Subpart Z applies generally except when a substance or cargo is contained within a sealed intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements; [1]

* * * * *

3. It is proposed to amend § 1917.2 by revising paragraph (p)(1) as follows:

§ 1917.2 Definitions.

* * * * *

(p) *Hazardous cargo, material, substance or atmosphere* means:

(1) Any substance listed in 29 CFR 1917, subpart Z. A hazardous atmosphere, or hazardous level of a hazardous cargo, material, substance or atmosphere or a hazardous vapor concentration exists for any substance covered by 29 CFR 1917 or subpart Z when the exposure level in the marine terminal workplace is above the permissible exposure limits specified in 29 CFR 1917, subpart Z;

* * * * *

4. It is proposed to amend § 1917.23 by revising paragraph (a) to read as follows:

§ 1917.23 Hazardous atmospheres and substances. (See § 1917.2 (p)).

(a) *Purpose and scope.* This section covers areas in which the employer is aware that a hazardous atmosphere or substance may exist except that 29 CFR 1917, subpart Z always applies pursuant to its terms, and except that paragraphs (b) through (e) of this section do not apply where one or more of the following sections apply: Section 1917.22 *Hazardous cargo;* § 1917.24 *Carbon monoxide;* § 1917.25 *Fumigants, pesticides, insecticides and hazardous preservatives;* § 1917.73 *Menhaden terminals;* § 1917.152 *Welding, cutting, and heating (hot work);* and § 1917.153 *Spray painting.*

* * * * *

5. It is proposed to amend § 1917.24 by revising paragraph (a) as follows:

§ 1917.24 Carbon monoxide.

(a) Exposure limits. The carbon monoxide content of the atmosphere in a compartment room, building, vehicle, railcar or any enclosed space shall be maintained at not more than 35 ppm (0.0035%) as an 8-hour time weighted average and employees shall be removed from the enclosed space if the carbon monoxide concentration exceeds 100 parts per million (0.01%). The short term exposure limit in outdoors non-enclosed spaces shall be 200 ppm (0.02%) measured over a 5 minute period.

* * * * *

Subparts H–Y [Reserved]

6. It is proposed to reserve Subparts H–Y and to add a new Subpart Z consisting of § 1917.1000 to read as follows:

Subpart Z—Toxic and Hazardous Substances

§ 1917.1000 Air Contaminants.

(a) *Exposure limits.* An employee's exposure to any substance listed in Table Z, Longshoring and Marine Terminals shall be limited in accordance with the requirements of the following paragraphs of this section:

(1) Final Rule Limits Columns. An employee's exposure to any substance listed in Table Z, Longshoring and Marine Terminals shall not exceed the Time Weighted Average (TWA), Short Term Exposure Limit (STEL) and Ceiling Limit specified for that substance in Table Z, Longshoring and Marine Terminals under the Final Rule Limits columns.

(2) Skin Designation. To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Table Z, Longshoring and Marine Terminals with an "X" in one or both of the Skin Designation columns following the substance name shall be prevented or reduced to the extent necessary in the circumstances through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls or work practices.

(3) Definitions. The following definitions are applicable to Table Z, Longshoring and Marine Terminals:

(i) *Time weighted average (TWA)* is the employee's average airborne exposure in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) *Short term exposure limit (STEL)* is the employee's 15-minute time weighted average exposure which shall not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time period shall not be exceeded at any time during the working day.

(iii) *Ceiling* is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure which shall not be exceeded at any time over a working day.

(b) *Computation formulae.* The computation formula which shall apply to employee exposure to more than one substance for which 8-hour time weighted averages are listed in subpart Z in order to determine whether an employee is exposed over the regulatory limit is as follows:

(1)(i) The cumulative exposure for an 8-hour work shift shall be computed as follows:

$$E=(C_aT_a+C_bT_b+\ \ldots\ C_nT_n)\div 8$$

Where:

E is the equivalent exposure for the working shift.
C is the concentration during any period of time T where the concentration remains constant.
T is the duration in hours of the exposure at the concentration C.

The value of E shall not exceed the 8-hour time weighted average specified in subpart Z or 29 CFR part 1917 for the material involved.

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z. Assume that an employee is subject to the following exposure:

Two hours exposure at 150 ppm
Two hours exposure at 75 ppm
Four hours exposure at 50 ppm

Substituting this information in the formula, we have

$$\{2\times 150+2\times 75+4\times 50\}\div 8=81.25\ \text{ppm}$$

Since 81.25 ppm is less than 100 ppm, the 8-hour time weighted average limit, the exposure is acceptable.

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with the International legal requirements of the International Convention for the Safety of Life at Sea, 1960.

(2)(i) In case of a mixture of air contaminants an employer shall compute the equivalent exposure as follows:

$$E_m = (C_1 \div L_1 + C_2 \div L_2) + \ldots (C_n \div L_n)$$

Where:

E_m is the equivalent exposure for the mixture.

C is the concentration of a particular contaminant.

L is the exposure limit for that substance specified in subpart Z of 29 CFR part 1917.

The value of E_m shall not exceed unity (1).

(ii) To illustrate the formula prescribed in paragraph (d)(2)(i) of this section, consider the following exposures:

Substance	Actual concentration of 8-hour exposure (ppm)	8-hr. TWA PEL (ppm)
B	500	1,000
C	45	200
D	40	200

Substituting in the formula we have:

$E_m = 500 \div 1,000 + 45 \div 200 + 40 \div 200$
$E_m = 0.500 + 0.225 + 0.200$
$E_m = 0.925$

Since E_m is less than unity (1), the exposure combination is within acceptable limits.

(c) *Methods of compliance.* To achieve compliance with paragraph (a) of this section administrative or engineering controls must first be implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and technical measures used for this purpose must first be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with § 1917.92 which cross references 29 CFR 1910.134.

(d) *Sealed containers.* (1) When a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements, then the rest of this section is not applicable.

(2) When sealed, intact means of packaging complying with Department of Transportation or International Maritime Organization requirements containing substances or cargo break, leak or are damaged so that there is a reasonable possibility of leakage, the exposure limits specified in 29 CFR Part 1917, Subpart Z are applicable. These exposure limits shall be met by any reasonable combination of engineering controls work practices and personal protective equipment.

(e) *Effective and start-up dates.*—(1) *effective date.* The effective date for the permissible exposure limits specified in the Final Rule Limits columns of Table Z, Longshoring and Marine Terminals is [90 days after date of Publication in the **Federal Register**].

(2) Start-up dates. (i) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Longshoring and Marine Terminals shall be achieved by any reasonable combination of engineering controls, work practices and personal protective equipment from the effective date through [4 years after date of publication in the **Federal Register**].

(ii) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Longshoring and Marine Terminals shall be achieved by the method of compliance specified in paragraph (c) of this section commencing [4 years after date of publication in the **Federal Register**].

(iii) The skin designation in the Final Rule Limits columns shall be complied with commencing on the effective date.

(3) Transitional provision. The permissible exposure limits specified in the Transitional Limits columns of Table Z, Longshoring and Marine Terminals (which are a Time Weighted Average unless preceded by a "C" in which case they are a Ceiling) shall continue to be achieved by the methods of compliance specified in paragraph (c) of this section from the effective date through [4 years after date of publication in the **Federal Register**].

(4) If any new or amended provisions or new or revised limits for any substance or substances are either administratively stayed or judicially stayed or vacated, then the existing provisions or limits for those substances specified in the Transitional Limits columns of Table Z, Longshoring and Marine Terminals shall remain in effect until such stay is lifted, or indefinitely if the limit is vacated.

TABLE Z.—Longshoring & Marine Terminals

Substance [a]	CAS No. [d]	Transitional Limits PEL [b]		Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL [c]		CEILING		
		ppm [e]	mg/m [3] [b]		ppm [e]	mg/m [3] [b]	ppm [e]	mg/m [3] [b]	ppm [e]	mg/m [3] [b]	
Acetaldehyde	75-07-0	200	360	—	100	180	150	270	—	—	—
Acetic acid	64-19-7	10	25	—	10	25	—	—	—	—	—
Acetic anhydride	108-24-7	5	20	—	—	—	—	—	5	20	—
Acetone	67-64-1	1000	2400	—	750	1800	1000	2400	—	—	—
Acetonitrile	75-05-8	40	70	—	40	70	60	105	—	—	—
2-Acetylaminofluorine; see 1910.1014	53-96-3										
Acetylene dichloride; see 1,2-Dichloroethylene											
Acetylene tetrabromide	79-27-6	1	14	—	1	14	—	—	—	—	—
Acetylsalicylic acid (Aspirin)	50-78-2	—	—	—	—	5	—	—	—	—	—
Acrolein	107-02-8	0.1	0.25	—	0.1	0.25	0.3	0.8	—	—	—
Acrylamide	79-06-1	—	0.3	X	—	0.03	—	—	—	—	X
Acrylic acid	79-10-7	—	—	—	10	30	—	—	—	—	X
Acrylonitrile [f]; see 1910.1045	107-13-1	(f)	(f)	(f)	2	—	10	—	—	—	X
Aldrin	309-00-2	—	0.25	X	—	0.25	—	—	—	—	X
Allyl alcohol	107-18-6	2	5	X	2	5	4	10	—	—	X
Allyl chloride	107-05-1	1	3	—	1	3	2	6	—	—	—
Allyl glycidyl ether (AGE)	106-92-3	(C)10	(C)45	—	5	22	10	44	—	—	—
Allyl propyl disulfide	2179-59-1	2	12	—	2	12	3	18	—	—	—
alpha-Alumina	1344-28-1										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Aluminum (as Al)	7429-90-5										
Metal											
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Pyro powders		—	—	—	—	5	—	—	—	—	—
Welding fumes**		—	—	—	—	5	—	—	—	—	—
Soluble salts		—	—	—	—	2	—	—	—	—	—
Alkyls		—	—	—	—	2	—	—	—	—	—
4-Aminodiphenyl; see 1910.1011	92-67-1										
2-Aminoethanol; see Ethanolamine											
2-Aminopyridine	504-29-0	0.5	2	—	0.5	2	—	—	—	—	—
Amitrole	61-82-5	—	—	—	—	0.2	—	—	—	—	—
Ammonia	7664-41-7	50	35	—	—	—	35	27	—	—	—
Ammonium chloride fume	12125-02-9	—	—	—	—	10	—	20	—	—	—
Ammonium sulfamate	7773-06-0										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
n-Amyl acetate	628-63-7	100	525	—	100	525	—	—	—	—	—
sec-Amyl acetate	626-38-0	125	650	—	125	650	—	—	—	—	—
Aniline and homologs	62-53-3	5	19	X	2	8	—	—	—	—	X
Anisidine (o-, p-isomers)	29191-52-4	—	0.5	X	—	0.5	—	—	—	—	X
Antimony and compounds (as Sb)	7440-36-0	—	0.5	—	—	0.5	—	—	—	—	—
ANTU (alpha Naphthylthiourea)	86-88-4	—	0.3	—	—	0.3	—	—	—	—	—
Arsenic, inorganic compounds (as As) [f]; see 1910.1018	7440-38-2	—	0.01	—	—	0.01	—	—	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	—	0.5	—	—	0.5	—	—	—	—	—
Arsine	7784-42-1	0.05	0.2	—	0.05	0.2	—	—	—	—	—
Asbestos [f]; see 1910.1001 and 1910.1101	Varies	(f)	(f)	(f)	—	0.2 f/cc	—	1 f/cc (30 min.)	—	—	—
Asphalt (Petroleum) Fumes	8052-42-4	—	—	—	—	5	—	—	—	—	—
Atrazine	1912-24-9	—	—	—	—	5	—	—	—	—	—
Azinphos-methyl	86-50-0	—	0.2	X	—	0.2	—	—	—	—	X
Barium, soluble compounds (as Ba)	7440-39-3	—	0.5	—	—	0.5	—	—	—	—	—
Barium sulfate	7727-43-7										
Total dust		—	15	—	—	10	—	—	—	—	—

Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Benomyl	17804-35-2											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Benzene [f-g]; see 1910.1028	71-43-2	(1)	(1)	(1)	1	—	5	—	—	—	—	X
Benzidine; see 1910.1010	92-87-5											
p-Benzoquinone; see Quinone												
Benzo(a)pyrene; see Coal tar pitch volatiles												
Benzoyl peroxide	94-36-0	—	5	—	—	5	—	—	—	—	—	—
Benzyl chloride	100-44-7	1	5	—	1	5	—	—	—	—	—	—
Beryllium and beryllium compounds (as Be)	7440-41-7	(1)	(1)	(1)	—	0.002	—	0.025 (30 min.)	—	—	—	—
Biphenyl; see Diphenyl												
Bismuth telluride, Undoped	1304-82-1											
Total dust		—	15	—	—	15	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Bismuth telluride, Se-doped	1304-82-1	—	—	—	—	5	—	—	—	—	—	—
Borates, tetra, sodium salts												
Anhydrous	1330-43-4	—	—	—	—	10	—	—	—	—	—	—
Decahydrate	1303-96-4	—	—	—	—	10	—	—	—	—	—	—
Pentahydrate	12179-04-3	—	—	—	—	10	—	—	—	—	—	—
Boron oxide	1303-86-2											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Boron tribromide	10294-33-4	—	—	—	—	—	—	—	1	10	—	—
Boron trifluonde	7637-07-2	(C)1	(C)3	—	—	—	—	—	1	3	—	—
Bromacil	314-40-9	—	—	—	1	10	—	—	—	—	—	—
Bromine	7726-95-6	0.1	0.7	—	0.1	0.7	0.3	2	—	—	—	—
Bromine pentafluoride	7789-30-2	—	—	—	0.1	0.7	—	—	—	—	—	—
Bromoform	75-25-2	0.5	5	X	0.5	5	—	—	—	—	—	X
Butadiene (1,3-Butadiene) [h]; see 55 FR 32736	106-99-0	1000	2200	—	2	—	10	—	—	—	—	—
Butane	106-97-8	—	—	—	800	1900	—	—	—	—	—	—
Butanethiol; see Butyl mercaptan												
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	—	200	590	300	885	—	—	—	—
2-Butoxyethanol	111-76-2	50	240	X	25	120	—	—	—	—	—	X
n-Butyl-acetate	123-86-4	150	710	—	150	710	200	950	—	—	—	—
sec-Butyl acetate	105-46-4	200	950	—	200	950	—	—	—	—	—	—
tert-Butyl acetate	540-88-5	200	950	—	200	950	—	—	—	—	—	—
Butyl acrylate	141-32-2	—	—	—	10	55	—	—	—	—	—	—
n-Butyl alcohol	71-36-3	100	300	—	—	—	—	—	50	150	—	X
sec-Butyl alcohol	78-92-2	150	450	—	100	305	—	—	—	—	—	—
tert-Butyl alcohol	75-65-0	100	300	—	100	300	150	450	—	—	—	X
Butylamine	109-73-9	(C)5	(C)15	X	—	—	—	—	5	15	—	X
tert-Butyl chromate (as CrO_3)	1189-85-1	—	(C)0.1	X	—	—	—	—	—	0.1	—	X
n-Butyl glycidyl ether (BGE)	2426-08-6	50	270	—	25	135	—	—	—	—	—	—
n-Butyl lactate	138-22-7	—	—	—	5	25	—	—	—	—	—	—
Butyl mercaptan	109-79-5	10	35	—	0.5	1.5	—	—	—	—	—	X
o-sec-Butylphenol	89-72-5	—	—	—	5	30	—	—	—	—	—	—
p-tert-Butyltoluene	98-51-1	10	60	—	10	60	20	120	—	—	—	—
Cadmium fume (as Cd) [h]; see 55 FR 4052	7440-43-9	(1)	(1)	(1)	—	0.001 or 0.005	—	0.005 or 0.025	—	—	—	—
Cadmium dust (as Cd) [h]; see 55 FR 4052	7440-43-9	(1)	(1)	(1)	—	0.001 or 0.005	—	0.005 or 0.025	—	—	—	—
Calcium carbonate	1317-65-3											
Total dust		—	15	—	—	15	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Calcium cyanamide	156-62-7	—	—	—	—	0.5	—	—	—	—	—	—
Calcium hydroxide	1305-62-0											
Total dust		—	15	—	—	15	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—

TABLE Z.—Longshoring & Marine Terminals—Continued

Substance	CAS No.[4]	Transitional Limits PEL[5]		Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL[6]		CEILING		
		ppm[6]	mg/m³[7]		ppm[6]	mg/m³[7]	ppm[6]	mg/m³[7]	ppm[6]	mg/m³[7]	
Calcium oxide	1305-78-8	—	5	—	—	5	—	—	—	—	—
Calcium silicate	1344-95-2										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Calcium sulfate	7778-18-9										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Camphor, synthetic	76-22-2	—	2	—	—	2	—	—	—	—	—
Caprolactam	105-60-2										
Dust		—	—	—	—	1	—	3	—	—	—
Vapor		—	—	—	5	20	10	40	—	—	—
Captafol (Difolatan)	2425-06-1	—	—	—	—	0.1	—	—	—	—	—
Captan	133-06-2	—	—	—	—	5	—	—	—	—	—
Carbaryl (Sevin)	63-25-2	—	5	—	—	5	—	—	—	—	—
Carbofuran (Furadan)	1563-66-2	—	—	—	—	0.1	—	—	—	—	—
Carbon black	1333-86-4	—	3.5	—	—	3.5	—	—	—	—	—
Carbon dioxide	124-38-9	5000	9000	—	10,000	18,000	30,000	54,000	—	—	—
Carbon disulfide	75-15-0	(3)	(3)	(3)	4	12	12	36	—	—	X
Carbon monoxide	630-08-0	50	55	—	35	40	—	—	200	229	—
Carbon tetrabromide	558-13-4	—	—	—	0.1	1.4	0.3	4	—	—	—
Carbon tetrachloride	56-23-5	(3)	(3)	(3)	2	12.6	—	—	—	—	—
Carbonyl fluoride	353-50-4	—	—	—	2	5	5	15	—	—	—
Catechol (Pyrocatechol)	120-80-9	—	—	—	5	20	—	—	—	—	X
Cellulose	9004-34-6										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Cesium hydroxide	21351-79-1	—	—	—	—	2	—	—	—	—	—
Chlordane	57-74-9	—	0.5	X	—	0.5	—	—	—	—	X
Chlorinated camphene	8001-35-2	—	0.5	X	—	0.5	—	1	—	—	X
Chlorinated diphenyl oxide	55720-99-5	—	0.5	—	—	0.5	—	—	—	—	—
Chlorine	7782-50-5	(C)1	(C)3	—	0.5	1.5	1	3	—	—	—
Chlorine dioxide	10049-04-4	0.1	0.3	—	0.1	0.3	0.3	0.9	—	—	—
Chlorine trifluoride	7790-91-2	(C)0.1	(C)0.4	—	—	—	—	—	0.1	0.4	—
Chloroacetaldehyde	107-20-0	(C)1	(C)3	—	—	—	—	—	1	3	—
α-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	—	0.05	0.3	—	—	—	—	—
Chloroacetyl chloride	79-04-9	—	—	—	0.05	0.2	—	—	—	—	—
Chlorobenzene	108-90-7	75	350	—	75	350	—	—	—	—	—
o-Chlorobenzylidene malononitrile	2698-41-1	0.05	0.4	—	—	—	—	—	0.05	0.4	X
Chlorobromomethane	74-97-5	200	1050	—	200	1050	—	—	—	—	—
2-Chloro-1,3-butadiene; see beta-Chloroprene											
Chlorodifluoromethane	75-45-6	—	—	—	1000	3500	—	—	—	—	—
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9	—	1	X	—	1	—	—	—	—	X
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1	—	0.5	X	—	0.5	—	—	—	—	X
1-Chloro,2,3-epoxypropane; see Epichlorohydrin											
2-Chloroethanol; see Ethylene chlorohydrin											
Chloroethylene; see Vinyl chloride											
Chloroform (Trichloromethane)	67-66-3	(C)50	(C)240	—	2	9.78	—	—	—	—	—
bis(Chloromethyl) ether; see 1910.1008	542-88-1										
Chloromethyl methyl ether; see 1910.1006	107-30-2										
1-Chloro-1-nitropropane	600-25-9	20	100	—	2	10	—	—	—	—	—
Chloropentafluoroethane	76-15-3	—	—	—	1000	6320	—	—	—	—	—
Chloropicrin	76-06-2	0.1	0.7	—	0.1	0.7	—	—	—	—	—
beta-Chloroprene	126-99-8	25	90	X	10	35	—	—	—	—	X
o-Chlorostyrene	2039-87-4	—	—	—	50	285	75	428	—	—	—
o-Chlorotoluene	95-49-8	—	—	—	50	250	—	—	—	—	—
2-Chloro-6-(trichloromethyl) pyridine	1929-82-4										
Total dust		—	15	—	—	15	—	—	—	—	—

Respirable fraction		—	5	—	—	5	—	—	—	—	—
Chlorpyrifos	2921-88-2	—	—	—	—	0.2	—	—	—	—	X
Chromic acid and chromates (as CrO_3)	Varies with compound	—	(C)0.1	—	—	—	—	—	—	0.1	—
Chromium (II) compounds (as Cr)	7440-47-3	—	0.5	—	—	0.5	—	—	—	—	—
Chromium (III) compounds (as Cr)	7440-47-3	—	0.5	—	—	0.5	—	—	—	—	—
Chromium metal (as Cr)	7440-47-3	—	1	—	—	1	—	—	—	—	—
Chrysene; see Coal tar pitch volatiles											
Clopidol	2971-90-6										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Coal dust (less than 5% SiO_2), Respirable fraction		[1]	[1]	[1]	—	2	—	—	—	—	—
Coal dust (greater than or equal to 5% SiO_2), Respirable quartz fraction		[1]	[1]	[1]	—	0.1	—	—	—	—	—
Coal tar pitch volatiles (benzene-soluble fraction), anthracene BaP, phenanthrene, acridine, chrysene, pyrene	65966-93-2	—	0.2	—	—	0.2	—	—	—	—	—
Cobalt metal, dust, and fume (as Co)	7440-48-4	—	0.1	—	—	0.05	—	—	—	—	—
Cobalt carbonyl (as Co)	10210-68-1	—	—	—	—	0.1	—	—	—	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	—	—	—	—	0.1	—	—	—	—	—
Coke oven emissions [2]; see 1910.1029											
Copper	7440-50-8										
Fume (as Cu)		—	0.1	—	—	0.1	—	—	—	—	—
Dusts and mists (as Cu)		—	1	—	—	1	—	—	—	—	—
Cotton dust [3]; see 1910.1043		—	1	—	—	0.5	—	—	—	—	—
This 8-hour TWA applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. For the Transitional Limit and where it is not feasible to use a vertical elutriator, a respirable dust personal sampler may be used. In these circumstances the exposure limit is 1mg/m³ respirable dust, personal sampler.											
Crag herbicide (Sesone)	136-78-7										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Cresol, all isomers	1319-77-3	5	22	X	5	22	—	—	—	—	X
Crotonaldehyde	123-73-9; 4170-30-3	2	6	—	2	6	—	—	—	—	—
Crufomate	299-86-5	—	—	—	—	5	—	—	—	—	—
Cumene	98-82-8	50	245	X	50	245	—	—	—	—	X
Cyanamide	420-04-2	—	—	—	—	2	—	—	—	—	—
Cyanides (as CN)	Varies with Compound	—	5	—	—	5	—	—	—	—	—
Cyanogen	460-19-5	—	—	—	10	20	—	—	—	—	—
Cyanogen chloride	506-77-4	—	—	—	—	—	—	—	0.3	0.6	—
Cyclohexane	110-82-7	300	1050	—	300	1050	—	—	—	—	X
Cyclohexanol	108-93-0	50	200	—	50	200	—	—	—	—	X
Cyclohexanone	108-94-1	50	200	—	25	100	—	—	—	—	—
Cyclohexene	110-83-8	300	1015	—	300	1015	—	—	—	—	—
Cyclohexylamine	108-91-8	—	—	—	10	40	—	—	—	—	X
Cyclonite	121-82-4	—	—	—	—	1.5	—	—	—	—	—
Cyclopentadiene	542-92-7	75	200	—	75	200	—	—	—	—	—
Cyclopentane	287-92-3	—	—	—	600	1720	—	—	—	—	—
Cyhexatin	13121-70-5	—	—	—	—	5	—	—	—	—	—
2,4-D (Dichlorophenoxyacetic acid)	94-75-7	—	10	—	—	10	—	—	—	—	—
Decaborane	17702-41-9	0.05	0.3	X	0.05	0.3	0.15	0.9	—	—	X
Demeton (Systox)	8065-48-3	—	0.1	X	—	0.1	—	—	—	—	—
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2	50	240	—	50	240	—	—	—	—	—
1,2-Diaminoethane; see Ethylenediamine											
Diazinon	333-41-5	—	—	—	—	0.1	—	—	—	—	X
Diazomethane	334-88-3	0.2	0.4	—	0.2	0.4	—	—	—	—	—
Diborane	19287-45-7	0.1	0.1	—	0.1	0.1	—	—	—	—	—
1,2-Dibromo-3-chloropropane (DBCP) [4]; see 1910.1044	96-12-8	0.001	—	X	0.001	—	—	—	—	—	X
1,2-Dibromoethane; see Ethylene dibromide											
2-N-Dibutylaminoethanol	102-81-8	—	—	—	2	14	—	—	—	—	—
Dibutyl phosphate	107-66-4	1	5	—	1	5	2	10	—	—	—
Dibutyl phthalate	84-74-2	—	5	—	—	5	—	—	—	—	—
Dichloroacetylene	7572-29-4	—	—	—	—	—	—	—	0.1	0.4	—
o-Dichlorobenzene	95-50-1	(C)50	(C)300	—	—	—	—	—	50	300	—

TABLE Z.—Longshoring & Marine Terminals—Continued

Substance	CAS No.[d]	Transitional Limits PEL[a]		Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL[c]		CEILING		
		ppm[a]	mg/m[3][b]		ppm[a]	mg/m[3][b]	ppm[a]	mg/m[3][b]	ppm[a]	mg/m[3][b]	
p-Dichlorobenzene	106-46-7	75	450	—	75	450	110	675	—	—	—
3,3'-Dichlorobenzidine; see 1910.1007	91-94-1										
Dichlorodifluoromethane	75-71-8	1000	4950	—	1000	4950	—	—	—	—	—
1,3-Dichloro-5,5-dimethyl hydantoin	118-52-5	—	0.2	—	—	0.2	—	0.4	—	—	—
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	—	1	X	—	1	—	—	—	—	X
1,1-Dichloroethane	75-34-3	100	400	—	100	400	—	—	—	—	—
1,2-Dichloroethylene	540-59-0	200	790	—	200	790	—	—	—	—	—
Dichloroethyl ether	111-44-4	(C)15	(C)90	X	5	30	10	60	—	—	X
Dichloromethane; see Methylene chloride											
Dichloromonofluoromethane	75-43-4	1000	4200	—	10	40	—	—	—	—	—
1,1-Dichloro-1-nitroethane	594-72-9	(C)10	(C)60	—	2	10	—	—	—	—	—
1,2-Dichloropropane; see Propylene dichloride											
1,3-Dichloropropene	542-75-6	—	—	—	1	5	—	—	—	—	X
2,2-Dichloropropionic acid	75-99-0	—	—	—	1	6	—	—	—	—	—
Dichlorotetrafluoroethane	76-14-2	1000	7000	—	1000	7000	—	—	—	—	—
Dichlorvos (DDVP)	62-73-7	—	1	X	—	1	—	—	—	—	X
Dicrotophos	141-66-2	—	—	—	—	0.25	—	—	—	—	X
Dicyclopentadiene	77-73-6	—	—	—	5	30	—	—	—	—	—
Dicyclopentadienyl iron	102-54-5										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Dieldrin	60-57-1	—	0.25	X	—	0.25	—	—	—	—	X
Diethanolamine	111-42-2	—	—	—	3	15	—	—	—	—	—
Diethylamine	109-89-7	25	75	—	10	30	25	75	—	—	—
2-Diethylaminoethanol	100-37-8	10	50	X	10	50	—	—	—	—	X
Diethylene triamine	111-40-0	—	—	—	1	4	—	—	—	—	—
Diethyl ether; see Ethyl ether											
Diethyl ketone	96-22-0	—	—	—	200	705	—	—	—	—	—
Diethyl phthalate	84-66-2	—	—	—	—	5	—	—	—	—	—
Difluorodibromomethane	75-61-6	100	860	—	100	860	—	—	—	—	—
Diglycidyl ether (DGE)	2238-07-5	(C)0.5	(C)2.8	—	0.1	0.5	—	—	—	—	—
Dihydroxybenzene; see Hydroquinone											
Diisobutyl ketone	108-83-8	50	290	—	25	150	—	—	—	—	—
Diisopropylamine	108-18-9	5	20	X	5	20	—	—	—	—	X
4-Dimethylaminoazobenzene; see 1910.1015	60-11-7										
Dimethoxymethane; see Methylal											
Dimethyl acetamide	127-19-5	10	35	X	10	35	—	—	—	—	X
Dimethylamine	124-40-3	10	18	—	10	18	—	—	—	—	—
Dimethylaminobenzene; see Xylidine											
Dimethylaniline (N-Dimethylaniline)	121-69-7	5	25	X	5	25	10	50	—	—	X
Dimethylbenzene; see Xylene											
Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate	300-76-5	—	3	—	—	3	—	—	—	—	X
Dimethylformamide	68-12-2	10	30	X	10	30	—	—	—	—	X
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone											
1,1-Dimethylhydrazine	57-14-7	0.5	1	X	0.5	1	—	—	—	—	X
Dimethylphthalate	131-11-3	—	5	—	—	5	—	—	—	—	—
Dimethyl sulfate	77-78-1	1	5	X	0.1	0.5	—	—	—	—	X
Dinitolmide (3,5-Dinitro-o-toluamide)	148-01-6	—	—	—	—	5	—	—	—	—	—
Dinitrobenzene (all isomers)		—	1	X	—	1	—	—	—	—	X
(ortho)	528-29-0										
(meta)	99-65-0										
(para)	100-25-4										
Dinitro-o-cresol	534-52-1	—	0.2	X	—	0.2	—	—	—	—	X
Dinitrotoluene	25321-14-6	—	1.5	X	—	1.5	—	—	—	—	X
Dioxane (Diethylene dioxide)	123-91-1	100	360	X	25	90	—	—	—	—	X
Dioxathion (Delnav)	78-34-2	—	—	—	—	0.2	—	—	—	—	X
Diphenyl (Biphenyl)	92-52-4	0.2	1	—	0.2	1	—	—	—	—	—

Diphenylamine	122-39-4	—	—	—	—	10	—	—	—	—	—	—	—
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate													
Dipropylene glycol methyl ether	34590-94-8	100	600	X	100	600	150	900	—	—	—	—	X
Dipropyl ketone	123-19-3	—	—	—	50	235	—	—	—	—	—	—	—
Diquat	85-00-7	—	—	—	—	0.5	—	—	—	—	—	—	—
Di-sec octyl phthalate (Di-(2-ethylhexyl) phthalate	117-81-7	—	5	—	—	5	—	10	—	—	—	—	—
Disulfiram	97-77-8	—	—	—	—	2	—	—	—	—	—	—	—
Disulfoton	298-04-4	—	—	—	—	0.1	—	—	—	—	—	—	X
2,6-Di-tert-butyl-p-cresol	128-37-0	—	—	—	—	10	—	—	—	—	—	—	—
Diuron	330-54-1	—	—	—	—	10	—	—	—	—	—	—	—
Divinyl benzene	1321-74-0	—	—	—	10	50	—	—	—	—	—	—	—
Emery	12415-34-8												
Total dust		—	15	—	—	10	—	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—	—
Endosulfan	115-29-7	—	—	—	—	0.1	—	—	—	—	—	—	X
Endrin	72-20-8	—	0.1	X	—	0.1	—	—	—	—	—	—	X
Epichlorohydrin	106-89-8	5	19	X	2	8	—	—	—	—	—	—	X
EPN	2104-64-5	—	0.5	X	—	0.5	—	—	—	—	—	—	X
1,2-Epoxypropane; see Propylene oxide													
2,3-Epoxy-1-propanol; see Glycidol													
Ethanethiol; see Ethyl mercaptan													
Ethanolamine	141-43-5	3	6	—	3	8	6	15	—	—	—	—	X
Ethion	563-12-2	—	—	—	—	0.4	—	—	—	—	—	—	X
2-Ethoxyethanol (Cellosolve)	110-80-5	200	740	X	200	740	—	—	—	—	—	—	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	100	540	X	100	540	—	—	—	—	—	—	X
Ethyl acetate	141-78-6	400	1400	—	400	1400	—	—	—	—	—	—	X
Ethyl acrylate	140-88-5	25	100	X	5	20	25	100	—	—	—	—	—
Ethyl alcohol (Ethanol)	64-17-5	1000	1900	—	1000	1900	—	—	—	—	—	—	—
Ethylamine	75-04-7	10	18	—	10	18	—	—	—	—	—	—	—
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	—	25	130	—	—	—	—	—	—	—
Ethyl benzene	100-41-4	100	435	—	100	435	125	545	—	—	—	—	—
Ethyl bromide	74-96-4	200	890	—	200	890	250	1110	—	—	—	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	—	50	230	—	—	—	—	—	—	—
Ethyl chloride	75-00-3	1000	2600	—	1000	2600	—	—	—	—	—	—	—
Ethyl ether	60-29-7	400	1200	—	400	1200	500	1500	—	—	—	—	—
Ethyl formate	109-94-4	100	300	—	100	300	—	—	—	—	—	—	—
Ethyl mercaptan	75-08-1	(C)10	(C)25	—	0.5	1	—	—	—	—	—	—	—
Ethyl silicate	78-10-4	100	850	—	10	85	—	—	—	—	—	—	X
Ethylene chlorohydrin	107-07-3	5	16	X	—	—	—	—	1	3	—	—	—
Ethylenediamine	107-15-3	10	25	—	10	25	—	—	—	—	—	—	—
Ethylene dibromide	106-93-4	[1]	[1]	[1]	20	—	50 (5 min.)	—	—	—	—	—	—
Ethylene dichloride	107-06-2	[2]	[2]	[2]	1	4	2	8	—	—	—	—	—
Ethylene glycol	107-21-1	—	—	—	—	—	—	—	50	125	—	—	X
Ethylene glycol dinitrate	628-96-6	(C)0.2	(C)1	X	—	—	—	0.1	—	—	—	—	—
Ethylene glycol methyl acetate; see Methyl cellosolve acetate													
Ethyleneimine; see 1910.1012	151-56-4												
Ethylene oxide [1]; see 1910.1047	75-21-8	[1]	[1]	[1]	1	—	5	—	—	—	—	—	—
Ethylidene chloride; see 1,1-Dichloroethane													
Ethylidene norbornene	16219-75-3	—	—	—	—	—	—	—	5	25	—	—	—
N-Ethylmorpholine	100-74-3	20	94	X	5	23	—	—	—	—	—	—	X
Fenamiphos	22224-92-6	—	—	—	—	0.1	—	—	—	—	—	—	X
Fensulfothion (Dasanit)	115-90-2	—	—	—	—	0.1	—	—	—	—	—	—	X
Fenthion	55-38-9	—	—	—	—	0.2	—	—	—	—	—	—	X
Ferbam	14484-64-1												
Total dust		—	15	—	—	10	—	—	—	—	—	—	—
Ferrovanadium dust	12604-58-9	—	1	—	—	1	—	3	—	—	—	—	—
Fibrous glass													
Total dust		—	15	—	—	1 f/cc	—	—	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—	—	—	—	—	—
Fluorides (as F)	Varies with compound	—	2.5	—	—	2.5	—	—	—	—	—	—	—
Fluorine	7782-41-4	0.1	0.2	—	0.1	0.2	—	—	—	—	—	—	—
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	1000	5600	—	—	—	—	—	1000	5600	—	—	—

TABLE Z.—Longshoring & Marine Terminals—Continued

Substance	CAS No.[d]	Transitional Limits PEL[e]		Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL[c]		CEILING		
		ppm[a]	mg/m³[b]		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
Fonofos	944-22-9	—	—	—	—	0.1	—	—	—	—	X
Formaldehyde [f,h]; see 1910.1048; 56 FR 3202	50-00-0	1	(2 ppm STEL)		0.75	—	2	—	—	—	
Formamide	75-12-7	—	—	—	20	30	30	45	—	—	
Formic acid	64-18-6	5	9	—	5	9	—	—	—	—	
Furfural	98-01-1	5	20	X	2	8	—	—	—	—	X
Furfuryl alcohol	98-00-0	50	200	—	10	40	15	60	—	—	X
Gasoline	8006-61-9	—	—	—	300	900	500	1500	—	—	
Germanium tetrahydride	7782-65-2	—	—	—	0.2	0.6	—	—	—	—	
Glutaraldehyde	111-30-8	—	—	—	—	—	—	—	0.2	0.8	
Glycerin (mist)	56-81-5										
Total dust		—	15	—	—	10	—	—	—	—	
Respirable fraction		—	5	—	—	5	—	—	—	—	
Glycidol	556-52-5	50	150	—	25	75	—	—	—	—	
Glycol monoethyl ether; see 2-Ethoxyethanol											
Grain dust (oat, wheat, barley)		—	—	—	—	10	—	—	—	—	
Graphite, natural, respirable dust	7782-42-5	([3])	([3])	([3])	—	2.5	—	—	—	—	
Graphite, synthetic											
Total dust		—	15	—	—	10	—	—	—	—	
Respirable fraction		—	5	—	—	5	—	—	—	—	
Guthion; see Azinphos methyl											
Gypsum	13397-24-5										
Total dust		—	15	—	—	15	—	—	—	—	
Respirable fraction		—	5	—	—	5	—	—	—	—	
Hafnium	7440-58-6	—	0.5	—	—	0.5	—	—	—	—	
Heptachlor	76-44-8	—	0.5	X	—	0.5	—	—	—	—	X
Heptane (n-Heptane)	142-82-5	500	2000	—	400	1600	500	2000	—	—	
Hexachlorobutadiene	87-68-3	—	—	—	0.02	0.24	—	—	—	—	
Hexachlorocyclopentadiene	77-47-4	—	—	—	0.01	0.1	—	—	—	—	
Hexachloroethane	67-72-1	1	10	X	1	10	—	—	—	—	X
Hexachloronaphthalene	1335-87-1	—	0.2	X	—	0.2	—	—	—	—	X
Hexafluoroacetone	684-16-2	—	—	—	0.1	0.7	—	—	—	—	
n-Hexane	110-54-3	500	1800	—	50	180	—	—	—	—	
Hexane isomers	Varies with compound	—	—	—	500	1800	1000	3600	—	—	
2-Hexanone (Methyl n-butyl ketone)	591-78-6	100	410	—	5	20	—	—	—	—	
Hexone (Methyl isobutyl ketone)	108-10-1	100	410	—	50	205	75	300	—	—	
sec-Hexyl acetate	108-84-9	50	300	—	50	300	—	—	—	—	
Hexylene glycol	107-41-5	—	—	—	—	—	—	—	25	125	
Hydrazine	302-01-2	1	1.3	X	0.1	0.1	—	—	—	—	X
Hydrogenated terphenyls	61788-32-7	—	—	—	0.5	5	—	—	—	—	
Hydrogen bromide	10035-10-6	3	10	—	—	—	—	—	3	10	
Hydrogen chloride	7647-01-0	(C)5	(C)7	—	—	—	—	—	5	7	
Hydrogen cyanide	74-90-8	10	11	X	—	—	4.7	5	—	—	
Hydrogen fluoride (as F)	7664-39-3	([3])	([3])	([3])	3	—	6	—	—	—	
Hydrogen peroxide	7722-84-1	1	1.4	—	1	1.4	—	—	—	—	
Hydrogen selenide (as Se)	7783-07-5	0.05	0.2	—	0.05	0.2	—	—	—	—	
Hydrogen sulfide	7783-06-4	([3])	([3])	([3])	10	14	15	21	—	—	
Hydroquinone	123-31-9	—	2	—	—	2	—	—	—	—	
2-Hydroxypropyl acrylate	999-61-1	—	—	—	0.5	3	—	—	—	—	
Indene	95-13-6	—	—	—	10	45	—	—	—	—	
Indium and compounds (as In)	7440-74-6	—	—	—	—	0.1	—	—	—	—	
Iodine	7553-56-2	(C)0.1	(C)1	—	—	—	—	—	0.1	1	
Iodoform	75-47-8	—	—	—	0.6	10	—	—	—	—	
Iron oxide fume	1309-37-1	—	10	—	—	10	—	—	—	—	
Iron pentacarbonyl (as Fe)	13463-40-6	—	—	—	0.1	0.8	0.2	1.6	—	—	

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TABLE Z.—Longshoring & Marine Terminals—Continued

Substance	CAS No.[d]	Transitional Limits PEL[c]		Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL[c]		CEILING		
		ppm[a]	mg/m[3][b]		ppm[a]	mg/m[3][b]	ppm[a]	mg/m[3][b]	ppm[a]	mg/m[3][b]	
Methyl cellosolve; see 2-Methoxyethanol											
Methyl cellosolve acetate; see 2-Methoxyethyl acetate											
Methyl chloride	74-87-3	(*)	(*)	(*)	50	105	100	210	—	—	—
Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350	1900	—	350	1900	450	2450	—	—	—
Methyl 2-cyanoacrylate	137-05-3	—	—	—	2	8	4	16	—	—	—
Methylcyclohexane	108-87-2	500	2000	—	400	1600	—	—	—	—	—
Methylcyclohexanol	25639-42-3	100	470	—	50	235	—	—	—	—	—
o-Methylcyclohexanone	583-60-8	100	460	X	50	230	75	345	—	—	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	—	—	—	—	0.2	—	—	—	—	X
Methyl demeton	8022-00-2	—	—	—	—	0.5	—	—	—	—	X
4,4'-Methylene bis (2-chloroaniline) (MBOCA)	101-14-4	—	—	—	0.02	0.22	—	—	—	—	X
Methylene bis(4-cyclohexylisocyanate)	5124-30-1	—	—	—	—	—	—	—	0.01	0.11	—
Methylene chloride[h]; see 56 FR 57036	75-09-2	(*)	(*)	(*)	25	—	125	—	—	—	—
Methyl ethyl ketone (MEK); see 2-Butanone											
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	—	—	—	—	—	0.7	5	—
Methyl formate	107-31-3	100	250	—	100	250	150	375	—	—	—
Methyl hydrazine (Mono- methyl hydrazine)	60-34-4	(C)0.2	(C)0.35	X	—	—	—	—	0.2	0.35	X
Methyl iodide	74-88-4	5	28	X	2	10	—	—	—	—	X
Methyl isoamyl ketone	110-12-3	—	—	—	50	240	—	—	—	—	—
Methyl isobutyl carbinol	108-11-2	25	100	X	25	100	40	165	—	—	X
Methyl isobutyl ketone; see Hexone											
Methyl isocyanate	624-83-9	0.02	0.05	X	0.02	0.05	—	—	—	—	X
Methyl isopropyl ketone	563-80-4	—	—	—	200	705	—	—	—	—	—
Methyl mercaptan	74-93-1	(C)10	(C)20	—	0.5	1	—	—	—	—	—
Methyl methacrylate	80-62-6	100	410	—	100	410	—	—	—	—	—
Methyl parathion	298-00-0	—	—	—	—	0.2	—	—	—	—	X
Methyl propyl ketone; see 2-Pentanone											
Methyl silicate	681-84-5	—	—	—	1	6	—	—	—	—	—
alpha-Methyl styrene	98-83-9	(C)100	(C)480	—	50	240	100	485	—	—	—
Methylene bisphenyl isocyanate (MDI)	101-68-8	(C)0.02	(C)0.2	—	—	—	—	—	0.02	0.2	—
Metribuzin	21087-64-9	—	—	—	—	5	—	—	—	—	—
Mica; see Silicates											
Molybdenum (as Mo)	7439-98-7										
Soluble compounds		—	5	—	—	5	—	—	—	—	—
Insoluble compounds											
Total dust		—	15	—	—	10	—	—	—	—	—
Monocrotophos (Azodrin)	6923-22-4	—	—	—	—	0.25	—	—	—	—	—
Monomethyl aniline	100-61-8	2	9	X	0.5	2	—	—	—	—	X
Morpholine	110-91-8	20	70	X	20	70	30	105	—	—	X
Naphtha (Coal tar)	8030-30-6	100	400	—	100	400	—	—	—	—	—
Naphthalene	91-20-3	10	50	—	10	50	15	75	—	—	—
alpha-Naphthylamine; see 1910.1004	134-32-7										
beta-Naphthylamine; see 1910.1009	91-59-8										
Nickel carbonyl (as Ni)	13463-39-3	0.001	0.007	—	0.001	0.007	—	—	—	—	—
Nickel, metal and insoluble compounds (as Ni)	7440-02-0	—	1	—	—	1	—	—	—	—	—
Nickel, soluble compounds (as Ni)	7440-02-0	—	1	—	—	0.1	—	—	—	—	—
Nicotine	54-11-5	—	0.5	X	—	0.5	—	—	—	—	X
Nitric acid	7697-37-2	2	5	—	2	5	4	10	—	—	—
Nitric oxide	10102-43-9	25	30	—	25	30	—	—	—	—	—
p-Nitroaniline	100-01-6	1	6	X	—	3	—	—	—	—	X
Nitrobenzene	98-95-3	1	5	X	1	5	—	—	—	—	X
p-Nitrochlorobenzene	100-00-5	—	1	X	—	1	—	—	—	—	X
4-Nitrodiphenyl; see 1910.1003	92-93-3										
Nitroethane	79-24-3	100	310	—	100	310	—	—	—	—	—
Nitrogen dioxide	10102-44-0	(C)5	(C)9	—	—	—	1	1.8	—	—	—

Nitrogen trifluoride	7783-54-2	10	29	—	10	29	—	—	—	—	—	—
Nitroglycerin	55-63-0	(C)0.2	(C)2	X	—	—	—	0.1	—	—	—	X
Nitromethane	75-52-5	100	250	—	100	250	—	—	—	—	—	—
1-Nitropropane	108-03-2	25	90	—	25	90	—	—	—	—	—	—
2-Nitropropane	79-46-9	25	90	—	10	35	—	—	—	—	—	—
N-Nitrosodimethylamine; see 1910.1016	62-79-9											
Nitrotoluene (all isomers)		5	30	X	2	11	—	—	—	—	—	X
o-isomer	88-72-2;											
m-isomer	99-08-1;											
p-isomer	99-99-0											
Nitrotrichloromethane; see Chloropicrin												
Nonane	111-84-2	—	—	—	200	1050	—	—	—	—	—	—
Octachloronaphthalene	2234-13-1	—	0.1	X	—	0.1	—	0.3	—	—	—	X
Octane	111-65-9	500	2350	—	300	1450	375	1800	—	—	—	—
Oil mist, mineral	8012-95-1	—	5	—	—	5	—	—	—	—	—	—
Osmium tetroxide (as Os)	20816-12-0	—	0.002	—	0.0002	0.002	0.0006	0.006	—	—	—	—
Oxalic acid	144-62-7	—	1	—	—	1	—	2	—	—	—	—
Oxygen difluoride	7783-41-7	0.05	0.1	—	—	—	—	—	0.05	0.1	—	—
Ozone	10028-15-6	0.1	0.2	—	0.1	0.2	0.3	0.6	—	—	—	—
Paraffin wax fume	8002-74-2	—	—	—	—	2	—	—	—	—	—	—
Paraquat, respirable dust	4685-14-7; 1910-42-5; 2074-50-2	—	0.5	X	—	0.1	—	—	—	—	—	X
Parathion	56-38-2	—	0.1	X	—	0.1	—	—	—	—	—	X
Particulates not otherwise regulated												
Total dust		—	15	—	—	15	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
PCB; see Chlorodiphenyl (42% and 54% chlorine)												
Pentaborane	19624-22-7	0.005	0.01	—	0.005	0.01	0.015	0.03	—	—	—	—
Pentachloronaphthalene	1321-64-8	—	0.5	X	—	0.5	—	—	—	—	—	X
Pentachlorophenol	87-86-5	—	0.5	X	—	0.5	—	—	—	—	—	X
Pentaerythritol	115-77-5											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Pentane	109-66-0	1000	2950	—	600	1800	750	2250	—	—	—	—
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	—	200	700	250	875	—	—	—	—
Perchloroethylene (Tetrachloroethylene)	127-18-4	(5)	(5)	(5)	25	170	—	—	—	—	—	—
Perchloromethyl mercaptan	594-42-3	0.1	0.8	—	0.1	0.8	—	—	—	—	—	—
Perchloryl fluoride	7616-94-6	3	13.5	—	3	14	6	28	—	—	—	—
Perlite	93763-70-3											
Total dust		—	15	—	—	15	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Petroleum distillates (Naphtha)		500	2000	—	400	1600	—	—	—	—	—	—
Phenol	108-95-2	5	19	X	5	19	—	—	—	—	—	—
Phenothiazine	92-84-2	—	—	—	—	5	—	—	—	—	—	—
p-Phenylene diamine	106-50-3	—	0.1	X	—	0.1	—	—	—	—	—	—
Phenyl ether, vapor	101-84-8	1	7	—	1	7	—	—	—	—	—	—
Phenyl ether-biphenyl mixture, vapor		1	7	—	1	7	—	—	—	—	—	—
Phenylethylene; see Styrene												
Phenyl glycidyl ether (PGE)	122-60-1	10	60	—	1	6	—	—	—	—	—	—
Phenylhydrazine	100-63-0	5	22	X	5	20	10	45	—	—	—	—
Phenyl mercaptan	108-98-5	—	—	—	0.5	2	—	—	—	—	—	—
Phenylphosphine	638-21-1	—	—	—	—	—	—	—	0.05	0.25	—	—
Phorate	298-02-2	—	—	—	—	0.05	—	0.2	—	—	—	—
Phosdrin (Mevinphos)	7786-34-7	—	0.1	X	0.01	0.1	0.03	0.3	—	—	—	—
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	—	0.1	0.4	—	—	—	—	—	—
Phosphine	7803-51-2	0.3	0.4	—	0.3	0.4	1	1	—	—	—	—
Phosphoric acid	7664-38-2	—	1	—	—	1	—	3	—	—	—	—
Phosphorus (yellow)	7723-14-0	—	0.1	—	—	0.1	—	—	—	—	—	—
Phosphorus oxychloride	10025-87-3	—	—	—	0.1	0.6	—	—	—	—	—	—
Phosphorus pentachloride	10026-13-8	—	1	—	—	1	—	—	—	—	—	—
Phosphorus pentasulfide	1314-80-3	—	1	—	—	1	—	3	—	—	—	—
Phosphorus trichloride	7719-12-2	0.5	3	—	0.2	1.5	0.5	3	—	—	—	—
Phthalic anhydride	85-44-9	2	12	—	1	6	—	—	—	—	—	—
m-Phthalodinitrile	626-17-5	—	—	—	—	5	—	—	—	—	—	—
Picloram	1918-02-1											

TABLE Z.—Longshoring & Marine Terminals—Continued

Substance	CAS No.[4]	Transitional Limits PEL[5]		Skin Designation [6]	Proposed Final Rule Limits						Skin Designation
					TWA		STEL [6]		CEILING		
		ppm [6]	mg/m [3] [b]		ppm [6]	mg/m [3] [b]	ppm [6]	mg/m [3] [b]	ppm [6]	mg/m [3] [b]	
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Picric acid	88-89-1	—	0.1	X	—	0.1	—	—	—	—	X
Piperazine dihydrochloride	142-64-3	—	—	—	—	5	—	—	—	—	—
Pindone (2-Pivalyl-1,3-indandione)	83-26-1	—	0.1	—	—	0.1	—	—	—	—	—
Plaster of Paris	26499-65-0										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Platinum (as Pt)	7440-06-4										
Metal		—	—	—	—	1	—	—	—	—	—
Soluble salts		—	0.002	—	—	0.002	—	—	—	—	—
Portland cement	65997-15-1										
Total dust		(7)	(7)	(7)	—	10	—	—	—	—	—
Respirable fraction		(7)	(7)	(7)	—	5	—	—	—	—	—
Potassium hydroxide	1310-58-3	—	—	—	—	—	—	—	—	[2] —	—
Propane	74-98-6	1000	1800	—	(7)	(7)	(7)	(7)	(7)	(7)	—
Propargyl alcohol	107-19-7	—	—	—	1	2	—	—	—	—	X
beta-Propriolactone; see 1910.1013	57-57-8										
Propionic acid	79-09-4	—	—	—	10	30	—	—	—	—	—
Propoxur (Baygon)	114-26-1	—	—	—	—	0.5	—	—	—	—	—
n-Propyl acetate	109-60-4	200	840	—	200	840	250	1050	—	—	—
n-Propyl alcohol	71-23-8	200	500	—	200	500	250	625	—	—	—
n-Propyl nitrate	627-13-4	25	110	—	25	105	40	170	—	—	—
Propylene dichloride	78-87-5	75	350	—	75	350	110	510	—	—	—
Propylene glycol dinitrate	6423-43-4	—	—	—	0.05	0.3	—	—	—	—	—
Propylene glycol monomethyl ether	107-98-2	—	—	—	100	360	150	540	—	—	—
Propylene imine	75-55-8	2	5	X	2	5	—	—	—	—	X
Propylene oxide	75-56-9	100	240	—	20	50	—	—	—	—	—
Propyne; see Methyl acetylene											
Pyrethrum	8003-34-7	—	5	—	—	5	—	—	—	—	—
Pyridine	110-86-1	5	15	—	5	15	—	—	—	—	—
Quinone	106-51-4	0.1	0.4	—	0.1	0.4	—	—	—	—	—
Resorcinol	108-46-3	—	—	—	10	45	20	90	—	—	—
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	—	0.1	—	—	0.1	—	—	—	—	—
Rhodium (as Rh), soluble compounds	7440-16-6	—	0.001	—	—	0.001	—	—	—	—	—
Ronnel	299-84-3	—	15	—	—	10	—	—	—	—	—
Rosin core solder pyrolysis products, as formaldehyde		—	—	—	—	0.1	—	—	—	—	—
Rotenone	83-79-4	—	5	—	—	5	—	—	—	—	—
Rouge											
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Selenium compounds (as Se)	7782-49-2	—	0.2	—	—	0.2	—	—	—	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	—	0.05	0.4	—	—	—	—	—
Silica, amorphous, precipitated and gel	112926-00-8	(3)	(3)	(3)	—	6	—	—	—	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	(3)	(3)	(3)	—	6	—	—	—	—	—
Silica, crystalline cristobalite, respirable dust	14464-46-1	(3)	(3)	(3)	—	0.05	—	—	—	—	—
Silica, crystalline quartz, respirable dust	14808-60-7	(3)	(3)	(3)	—	0.1	—	—	—	—	—
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	(3)	(3)	(3)	—	0.1	—	—	—	—	—
Silica, crystalline tridymite, respirable dust	15468-32-3	(3)	(3)	(3)	—	0.05	—	—	—	—	—
Silica, fused, respirable dust	60676-86-0	(3)	(3)	(3)	—	0.1	—	—	—	—	—
Silicates (less than 1% crystalline silica)		(3)	(3)	(3)							
Mica (respirable dust)	12001-26-2	(3)	(3)	(3)	—	3	—	—	—	—	—
Soapstone, total dust		(3)	(3)	(3)	—	6	—	—	—	—	—
Soapstone, respirable dust		(3)	(3)	(3)	—	3	—	—	—	—	—

Talc (containing asbestos)		(3)	(3)	(3)	—	0.2 f/cc	—	1 f/cc (30 min.)	—	—	—	—
Talc (containing no asbestos), respirable dust	14807-96-6	(3)	(3)	(3)	—	2	—	—	—	—	—	—
Tremolite		(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Silicon	7440-21-3											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Silicon carbide	409-21-2											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Silicon tetrahydride	7803-62-5	—	—	—	5	7	—	—	—	—	—	—
Silver, metal and soluble compounds (as Ag)	7440-22-4	—	0.01	—	—	0.01	—	—	—	—	—	—
Soapstone; see Silicates												
Sodium azide												
(as HN_3)	26628-22-8	—	—	—	—	—	—	—	0.1	—	—	X
(as NaN_3)		—	—	—	—	—	—	—	—	0.3	—	X
Sodium bisulfite	7631-90-5	—	—	—	—	5	—	—	—	—	—	X
Sodium fluoroacetate	62-74-8	—	0.05	X	—	0.05	—	0.15	—	—	—	X
Sodium hydroxide	1310-73-2	—	2	—	—	—	—	—	—	2	—	—
Sodium metabisulfite	7681-57-4	—	—	—	—	5	—	—	—	—	—	—
Starch	9005-25-8											
Total dust		—	15	—	—	15	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Stibine	7803-52-3	0.1	0.5	—	0.1	0.5	—	—	—	—	—	—
Stoddard solvent	8052-41-3	500	2900	—	100	525	—	—	—	—	—	—
Strychnine	57-24-9	—	0.15	—	—	0.15	—	—	—	—	—	—
Styrene	100-42-5	(3)	(3)	—	50	215	100	425	—	—	—	—
Subtilisins (Proteolytic enzymes)	9014-01-1	—	—	—	—	—	—	0.00006° (60 min.)	—	—	—	—
Sucrose	57-50-1											
Total dust		—	15	—	—	15	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Sulfur dioxide	7446-09-5	5	13	—	2	5	5	10	—	—	—	—
Sulfur hexafluoride	2551-62-4	1000	6000	—	1000	6000	—	—	—	—	—	—
Sulfuric acid	7664-93-9	—	1	—	—	1	—	—	—	—	—	—
Sulfur monochloride	10025-67-9	1	6	—	—	—	—	—	1	6	—	—
Sulfur pentafluoride	5714-22-7	0.025	0.25	—	—	—	—	—	0.01	0.1	—	—
Sulfur tetrafluoride	7783-60-0	—	—	—	—	—	—	—	0.1	0.4	—	—
Sulfuryl fluoride	2699-79-8	5	20	—	5	20	10	40	—	—	—	—
Sulprofos	35400-43-2	—	—	—	—	1	—	—	—	—	—	—
Systox, see Demeton												
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)	93-76-5	—	10	—	—	10	—	—	—	—	—	—
Talc; see Silicates												
Tantalum, metal and oxide dust	7440-25-7	—	5	—	—	5	—	—	—	—	—	—
TEDP (Sulfotep)	3689-24-5	—	0.2	X	—	0.2	—	—	—	—	—	X
Tellurium and compounds (as Te)	13494-80-9	—	0.1	—	—	0.1	—	—	—	—	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	—	0.02	0.2	—	—	—	—	—	—
Temephos	3383-96-8											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	X
TEPP (Tetraethyl pyrophosphate)	107-49-3	—	0.05	X	—	0.05	—	—	—	—	—	X
Terphenyls	26140-60-3	(C)1	(C)9	—	—	—	—	—	0.5	5	—	—
1,1,1,2-Tetrachloro- 2,2-difluoroethane	76-11-9	500	4170	—	500	4170	—	—	—	—	—	—
1,1,2,2-Tetrachloro- 1,2-difluoroethane	76-12-0	500	4170	—	500	4170	—	—	—	—	—	—
1,1,2,2-Tetrachloroethane	79-34-5	5	35	X	1	7	—	—	—	—	—	X
Tetrachloroethylene; see Perchloroethylene												
Tetrachloromethane; see Carbon tetrachloride												
Tetrachloronaphthalene	1335-88-2	—	2	X	—	2	—	—	—	—	—	X
Tetraethyl lead (as Pb)	78-00-2	—	0.075	X	—	0.075	—	—	—	—	—	X
Tetrahydrofuran	109-99-9	200	590	—	200	590	250	735	—	—	—	—
Tetramethyl lead, (as Pb)	75-74-1	—	0.075	X	—	0.075	—	—	—	—	—	X
Tetramethyl succinonitrile	3333-52-6	0.5	2	X	0.5	2	—	—	—	—	—	X
Tetranitromethane	509-14-8	1	6	—	1	6	—	—	—	—	—	—
Tetrasodium pyrophosphate	7722-88-5	—	—	—	—	5	—	—	—	—	—	—

TABLE Z.—Longshoring & Marine Terminals—Continued

Substance	CAS No.[4]	Transitional Limits PEL[6]		Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL[c]		CEILING		
		ppm[a]	mg/m[3][b]		ppm[a]	mg/m[3][b]	ppm[a]	mg/m[3][b]	ppm[a]	mg/m[3][b]	
Tetryl (2,4,6-Trinitrophenylmethylnitramine)	479-45-8	—	1.5	X	—	1.5	—	—	—	—	X
Thallium, soluble compounds (as Tl)	7440-28-0	—	0.1	X	—	0.1	—	—	—	—	X
4,4'-Thiobis (6-tert, Butyl-m-cresol)	96-69-5										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Thioglycolic acid	68-11-1	—	—	—	1	4	—	—	—	—	X
Thionyl chloride	7719-09-7	—	—	—	—	—	—	—	1	5	—
Thiram	137-26-8	—	5	—	—	5	—	—	—	—	—
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	—	2	—	—	2	—	—	—	—	—
Tin, organic compounds (as Sn)	7440-31-5	—	0.1	—	—	0.1	—	—	—	—	X
Tin oxide (as Sn)	21651-19-4	—	—	—	—	2	—	—	—	—	—
Titanium dioxide	13463-67-7										
Total dust		—	15	—	—	10	—	—	—	—	—
Toluene	108-88-3	[5]	[5]	[5]	100	375	150	560	—	—	—
Toluene-2,4-diisocyanate (TDI)	584-84-9	(C)0.02	(C)0.14	—	0.005	0.04	0.02	0.15	—	—	—
m-Toluidine	108-44-1	—	—	—	2	9	—	—	—	—	X
o-Toluidine	95-53-4	5	22	X	5	22	—	—	—	—	X
p-Toluidine	106-49-0	—	—	—	2	9	—	—	—	—	X
Toxaphene; see Chlorinated camphene											
Tremolite; see Silicates											
Tributyl phosphate	126-73-8	—	5	—	0.2	2.5	—	—	—	—	—
Trichloroacetic acid	76-03-9	—	—	—	1	7	—	—	—	—	—
1,2,4-Trichlorobenzene	120-82-1	—	—	—	—	—	—	—	5	40	—
1,1,1-Trichloroethane; see Methyl chloroform											
1,1,2-Trichloroethane	79-00-5	10	45	X	10	45	—	—	—	—	X
Trichloroethylene	79-01-6	[5]	[5]	—	50	270	200	1080	—	—	—
Trichloromethane; see Chloroform											
Trichloronaphthalene	1321-65-9	—	5	X	—	5	—	—	—	—	X
1,2,3-Trichloropropane	96-18-4	50	300	—	10	60	—	—	—	—	—
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	—	1000	7600	1250	9500	—	—	—
Triethylamine	121-44-8	25	100	—	10	40	15	60	—	—	—
Trifluorobromomethane	75-63-8	1000	6100	—	1000	6100	—	—	—	—	—
Trimellitic anhydride	552-30-7	—	—	—	0.005	0.04	—	—	—	—	—
Trimethylamine	75-50-3	—	—	—	10	24	15	36	—	—	—
Trimethyl benzene	25551-13-7	—	—	—	25	125	—	—	—	—	—
Trimethyl phosphite	121-45-9	—	—	—	2	10	—	—	—	—	—
2,4,6-Trinitrophenyl; see Picric acid											
2,4,6-Trinitrophenylmethylnitramine; see Tetryl											
2,4,6-Trinitrotoluene (TNT)	118-96-7	—	1.5	X	—	0.5	—	—	—	—	X
Triorthocresyl phosphate	78-30-8	—	0.1	—	—	0.1	—	—	—	—	X
Triphenyl amine	603-34-9	—	—	—	—	5	—	—	—	—	—
Triphenyl phosphate	115-86-6	—	3	—	—	3	—	—	—	—	—
Tungsten (as W)	7440-33-7										
Insoluble compounds		—	—	—	—	5	—	10	—	—	—
Soluble compounds		—	—	—	—	1	—	3	—	—	—
Turpentine	8006-64-2	100	560	—	100	560	—	—	—	—	—
Uranium (as U)	7440-61-1										
Soluble compounds		—	0.05	—	—	0.05	—	—	—	—	—
Insoluble compounds		—	0.25	—	—	0.2	—	0.6	—	—	—
n-Valeraldehyde	110-62-3	—	—	—	50	175	—	—	—	—	—
Vanadium	1314-62-1										
Respirable dust (as V_2O_5)		—	(C)0.5	—	—	0.05	—	—	—	—	—
Fume (as V_2O_5)		—	(C)0.1	—	—	0.05	—	—	—	—	—
Vegetable oil mist											
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Vinyl acetate	108-05-4	—	—	—	10	30	20	60	—	—	—

Vinyl benzene; see Styrene												
Vinyl bromide	593-60-2	—	—	—	5	20	—	—	—	—	—	—
Vinyl chloride [f]; see 1910.1017	75-01-4	[1]	[1]	[1]	1	—	5	—	—	—	—	—
Vinyl cyanide; see Acrylonitrile												
Vinyl cyclohexene dioxide	106-87-6	—	—	—	10	60	—	—	—	—	—	—
Vinylidene chloride (1,1-Dichloroethylene)	75-35-4	—	—	—	1	4	—	—	—	—	—	—
Vinyl toluene	25013-15-4	100	480	—	100	480	—	—	—	—	—	—
VM & P Naphtha	8032-32-4	—	—	—	300	1350	400	1800	—	—	—	—
Warfarin	81-81-2	—	0.1	—	—	0.1	—	—	—	—	—	—
Welding fumes (total particulate) [e] [g]		—	—	—	—	5	—	—	—	—	—	—
Wood dust, all soft and hard woods, except Western red cedar		—	—	—	—	5	—	10	—	—	—	—
Wood dust, Western red cedar		—	—	—	—	2.5	—	—	—	—	—	—
Xylenes (o-, m-, p-isomers)	1330-20-7	100	435	—	100	435	150	655	—	—	—	—
m-Xylene alpha, alpha'diamine	1477-55-0	—	—	—	—	—	—	—	—	—	—	—
Xylidine	1300-73-8	5	25	X	2	10	—	—	—	0.1	—	—
Yttrium	7440-65-5	—	1	—	—	1	—	—	—	—	—	—
Zinc chloride fume	7646-85-7	—	1	—	—	1	—	2	—	—	—	—
Zinc chromate (as CrO_3)	13530-65-9	[3]	[3]	[3]	—	—	—	—	—	0.1	—	—
Zinc oxide fume	1314-13-2	—	5	—	—	5	—	10	—	—	—	—
Zinc oxide	1314-13-2											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Zinc stearate	557-05-1											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Zirconium compounds (as Zr)	7440-67-7	—	5	—	—	5	—	10	—	—	—	—

Footnotes:
[1] Same as Final Rule Limits.
[2] 1910.1000, Table Z-2 or Table Z-3.
[3] See discussion.
[4] See 1910.1001 for asbestiform; for non-asbestiform see 1910.1101.
[5] Use asbestos limit 1910.1001.
[*] The transitional PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit.
[**] As determined from breathing-zone air samples.
[a] Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 torr.
[b] Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.
[c] Duration is for 15 minutes, unless otherwise noted.
[d] The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given—not CAS numbers for the individual compounds.
[e] Compliance with the subtilisins PEL is assessed by sampling with a high volume sampler (600–800 liters per minute) for at least 60 minutes.
[f] For those substances for which a full standard exists, exposure limits are provided in the table for informational purposes, and the binding requirements are as set forth in the single-substance standard.
[g] For sectors excluded from 1910.1028 the limit is 10 ppm TWA and see 1910.1000, Table Z-2 for ceiling limits.
[h] Where OSHA has published a proposal for a substance but has not issued a final rule, the proposal is referenced and the existing limit is published in the transitional limit column, and the proposed final limit is placed in the proposed final limit column. However, this is presented just for information purposes, and the substances are not being considered in this rulemaking.

III. OSHA proposes to amend 29 CFR part 1918 as follows:

PART 1918—LONGSHORING

1. It is proposed to amend the authority citation for Part 1918 to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1918.90 and 1918.92 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

2. It is proposed to amend § 1918.93 by revising paragraph (a)(1)(ii), and removing paragraphs (e) and (f) as follows:

§ 1918.93 Ventilation and atmospheric conditions.

(a) Ventilation requirements with respect to carbon monoxide:

(1) (i) * * *

(ii) The carbon monoxide content of the atmosphere in a compartment, room, building, hold, vehicle, railcar or any enclosed space shall be maintained at not more than 35 ppm per million (0.0035%) as an 8-hour time weighted average and employeea shall be removed from the enclosed space if the carbon monoxide concentration exceeds 100 parts per million (0.01%). The short term exposure limit in outdoors, non-enclosed spaces shall be 200 ppm (0.02%) measured over a 5 minute period.

* * * * *

Subparts K–Y—[Reserved]

3. It is proposed to reserve subparts K–Y and to add a new subpart Z consisting of § 1918.1000 to read as follows:

Subpart Z—Toxic and Hazardous Substances

§ 1918.1000 Air contaminants.

(a) *Exposure limits.* An employees exposure to any substance listed in Table Z, Longshoring & Marine Terminals (located at 29 CFR 1917.1000) shall be limited in accordance with the requirements of the following paragraphs of this section:

(1) Final Rule Limits Columns. An employee's exposure to any substance listed in Table Z, Longshoring & Marine Terminals shall not exceed the Time Weighted Average (TWA), Short Term Exposure Limit (STEL) and Ceiling Limit specified for that substance in Table Z—Longshoring and Marine Terminals under the Final Rule Limits columns.

(2) Skin Designation. To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Table Z, Marine Terminals & Longshoring with an "X" in one or both of the Skin Designation columns following the substances name shall be prevented or reduced to the extent necessary in the circumstances through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls or work practices.

(3) Definitions. The following definitions are applicable to Table Z, Longshoring & Marine Terminals:

(i) *Time weighted average (TWA)* is the employee's average airborne exposure in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) *Short term exposure limit (STEL)* is the employee's 15-minute time weighted average exposure which shall not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time period shall not be exceeded at any time during the working day.

(iii) *Ceiling* is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure which shall not be exceeded at my time over a working day.

(b) *Computation formulae.* The computation formula which shall apply to employee exposure to more than one substance for which 8-hour time weighted averages are listed in subpart Z of 29 CFR Part 1918 in order to determine whether an employee is exposed over the regulatory limit is as follows:

(1)(i) The cumulative exposure for an 8-hour work shift shall be computed as follows:

$$E=(C_aT_a+C_bT_b+ \ldots C_nT_n)\div 8$$

Where.

E is the equivalent exposure for the working shift.

C is the concentration during any period of time T where the concentration remains constant.

T is the duration in hours of the exposure at the concentration C.

The value of E shall not exceed the 8-hour time weighted average specified in Subpart Z or 29 CFR Part 1918 for the material involved.

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z. Assume that an employee is subject to the following exposure:

Two hours exposure at 150 ppm

Two hours exposure at 75 ppm

Four hours exposure at 50 ppm

Substituting this information in the formula, we have

$$(2\times 150+2\times 75+4\times 50)\div 8=81.25 \text{ ppm}$$

Since 81.25 ppm is less than 100 ppm, the 8-hour time weighted average limit, the exposure is acceptable.

(2)(i) in case of a mixture of air contaminants an employer shall compute the equivalent exposure as follows:

$$E_m=(C_1\div L_a+C_2\div L_a)+ \ldots (C_n\div L_n)$$

Where:

E_m is the equivalent exposure for the mixture.

C is the concentration of a particular contaminant.

L is the exposure limit for that substance specified in Subpart Z of 29 CFR Part 1918.

The value of E_m shall not exceed unity (1).

(ii) To illustrate the formula prescribed in paragraph (d)(2)(i) of this section, consider the following exposures:

Substance	Actual concentration of 8 hour exposure (ppm)	8 hr. TWA PEL (ppm)
B	500	1,000
C	45	200
D	40	200

Substituting in the formula we have:

$$Em=500\div 1{,}000+45\div 200+40\div 200$$
$$Em=0.500+0.225+0.200$$
$$Em=0.925$$

Since Em is less than unity (1), the exposure combination is within acceptable limits.

(c) *Methods of compliance.* To achieve compliance with paragraph (a) of this section administrative or engineering controls must first be implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and technical measures used for this purpose must first be approved for each particular use by a competent industrial hygienist or other technically qualified person.

(d) *Sealed containers.* (1) When a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements then the rest of this section is not applicable.

(2) When sealed, intact means of packaging complying with Department of Transportation or International Maritime Organization requirements containing substances or cargo break, leak or are damaged so that there is a reasonable possibility of leakage, the exposure limits specified 29 CFR Part 1918, Subpart Z are applicable. These exposure limits shall be met by my reasonable combination of engineering controls, work practices and personal protective equipment.

(e) *Effective and start-up dates.* (1) *Effective date.* The effective date for the permissible exposure limits specified in the Final Rule Limits columns of Table Z, Longshoring & Marine Terminals is [90 days after date of publication in the **Federal Register**].

(2) Start-up dates. (i) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Longshoring & Marine Terminals shall be achieved by any reasonable combination of engineering controls, work practices and personal protective equipment from the effective date through [4 years after date of publication in the **Federal Register**].

(ii) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Longshoring & Marine Terminals shall be achieved by the methods of compliance specified in paragraph (c) of this section commencing [4 years after date of publication in the **Federal Register**].

(iii) The skin designation in the Final Rule Limits columns shall be complied with commencing on the effective date.

(3) Transitional provision. The permissible exposure limits specified in the Transitional Limits columns of Table Z, Longshoring & Marine Terminals (which are Time Weighted Averages unless proceeded by a "C" in which case they are ceilings) shall continue to be achieved by the methods of compliance specified in paragraph (c) of this section through [4 years after date of publication in the **Federal Register**].

(4) If any new or amended provisions or new or revised limits for any substance or substances are either administratively stayed or judicially stayed or vacated, then the existing provisions or limits for those substances specified in the Transitional Limits columns of Table Z, Longshoring & Marine Terminals shall remain in effect until such stay is lifted, or indefinitely if the limit is vacated.

IV. OSHA proposes to amend 29 CFR part 1926 as follows:

PART 1926—CONSTRUCTION

1. It is proposed to revise the authority citation for 29 CFR part 1926, subpart D as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Sections 1926.55 and 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

2. It is proposed to revise § 1926.55 to read as follows:

§ 1926.55 Air contaminants.

(a) *Exposure limits.* Employers shall prevent exposure of employees to inhalation of substances above the exposure limits specified in Table Z, Construction and minimize skin absorption as follows:

(1) An employee's exposure to any substance in Table Z, Construction under the Transitional Limits columns, the exposure limit of which is preceded by a "C" shall at no time exceed the exposure limit given for that substance in Table Z, Construction under the Transitional Limits columns.

(2) An employee's exposure to any substance in Table Z, Construction under the Transitional Limits columns, the exposure limit of which is not preceded by a "C", shall not exceed the 8-hour time Weighted Average given for that substance in Table Z, Construction under the Transitional Limits columns in any 8-hour work shift of a 40-hour work week.

(3) An employee's exposure to any substance listed in Table Z, Construction shall not exceed the Time Weighted Average (TWA), Short Term Exposure Limit (STEL) and Ceiling Limit specified for that substance in Table Z, Construction under the Final Rule Limits columns.

(4) To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Table Z, Construction with an "X" in one or both of the Skin Designation columns following the substance name shall be prevented or reduced to the extent necessary in the circumstances through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls or work practices.

(5) The following definitions are applicable to the Final Rule Limits columns of Table Z, Construction:

(i) *Time weighted average (TWA)* is the employee's average airborne exposure in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) *Short term exposure limit (STEL)* is the employee's 15-minute time weighted average exposure which shall not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time period shall not be exceeded at any time during the working day.

(iii) *Ceiling* is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure which shall not be exceeded at any time over a working day.

(b) *Methods of compliance.* To achieve compliance with paragraph (a) of this section, administrative or engineering controls must first be implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and technical measures used for this purpose must first be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with § 1926.103.

(c) *Computation formulae.* The computation formula which shall apply to employee exposure to more than one substance for which 8-hour time weighted averages are listed in Table Z, Construction in order to determine whether an employee is exposed over the regulatory limit is as follows:

(1)(i) The cumulative exposure for an 8-hour work shift shall be computed as follows:

$$E=(C_aT_a+C_bT_b+\ldots C_nT_n)\div 8$$

Where:

E is the equivalent exposure for the working shift.

C is the concentration during any period of time T where the concentration remains constant.

T is the duration in hours of the exposure at the concentration C.

The value of E shall not exceed the 8-hour time weighted average specified in Table Z, Construction for the material involved.

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z. Assume that an employee is subject to the following exposure:

Two hours exposure at 150 ppm
Two hours exposure at 75 ppm
Four hours exposure at 50 ppm

Substituting this information in the formula, we have:

$(2\times150+2\times75+4\times50)\div8=81.25$ ppm

Since 81.25 ppm is less than 100 ppm, the 8-hour time weighted average limit, the exposure is acceptable.

(2)(i) In case of a mixture of air contaminants an employer shall compute the equivalent exposure as follows:

$E_m=(C_1\div L_1+C_2\div L_2)+\ldots(C_n\div L_n)$

Where:

E_m is the equivalent exposure for the mixture.
C is the concentration of a particular contaminant.
L is the exposure limit for that substance specified in Table Z, Construction.

The value of E_m shall not exceed unity (1).

(ii) To illustrate the formula prescribed in paragraph (d)(2)(i) of this section, consider the following exposures:

Substance	Actual concentration of 8 hour exposure (ppm)	8 hr. TWA PEL (ppm)
B	500	1000
C	45	200
D	40	200

Substituting in the formula we have:

$Em=500\div1,000+45\div200+40\div200$
$Em=0.500+0.225+0.200$
$Em=0.925$

Since Em is less than unity (1), the exposure combination is within acceptable limits.

(d) *Effective and start-up dates—(1) Effective date.* The effective date for the permissible exposure limits specified in the Final Rule Limits columns of Table Z, Construction is [90 days after date of publication in the Federal Register].

(2) Start-up dates. (i) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Construction shall be achieved by any reasonable combination of engineering controls, work practices and personal protective equipment from the effective date through [4 years after date of publication in the Federal Register].

(ii) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Construction shall be achieved by the method of compliance specified in paragraph (b) of this section commencing [4 years after date of publication in the Federal Register].

(iii) The skin designations in the Final Rule Limits columns shall be complied with commencing on the effective date.

(3) Transitional provision. The permissible exposure limits specified in the Transitional Limits columns of Table Z, Construction shall continue to be achieved by the methods of compliance specified in paragraph (b) of this section through [4 years after the date of publication in the Federal Register].

(4) If any new or amended provisions or new or revised limits for any substance or substances are either administratively stayed or judicially stayed or vacated, then the existing provisions or limits for those substances specified in the Transitional Limits columns of Table Z, Construction shall remain in effect until such stay is lifted, or indefinitely if the limit is vacated.

TABLE Z.—Construction

Substance	Transitional Limits[a] (1970 TLVs)			Proposed Final Rule Limits						
				TWA		STEL[c]		CEILING		
	CAS No.[d]	ppm[e]	mg/m³[b]	Skin Designation	ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	Skin Designation
Abate; see Temephos											
Acetaldehyde	75-07-0	200	360	—	100	180	150	270	—	—	—
Acetic acid	64-19-7	10	25	—	10	25	—	—	—	—	—
Acetic anhydride	108-24-7	5	20	—	—	—	—	—	5	20	—
Acetone	67-64-1	1000	2400	—	750	1800	1000	2400	—	—	—
Acetonitrile	75-05-8	40	70	—	40	70	60	105	—	—	—
2-Acetylaminofluorine; see 1910.1014	53-96-3										
Acetylene	74-86-2	E									
Acetylene dichloride; see 1,2-Dichloroethylene											
Acetylene tetrabromide	79-27-6	1	14	—	1	14	—	—	—	—	—
Acetylsalicylic acid (Aspirin)	50-78-2	—	—	—	—	5	—	—	—	—	—
Acrolein	107-02-8	0.1	0.25	—	0.1	0.25	0.3	0.8	—	—	—
Acrylamide	79-06-1	—	0.3	X	—	0.03	—	—	—	—	X
Acrylic acid	79-10-7	—	—	—	10	30	—	—	—	—	X
Acrylonitrile[f]; see 1910.1045	107-13-1	(1)	(1)	X	2	—	10	—	—	—	X
Aldrin	309-00-2	—	0.25	X	—	0.25	—	—	—	—	X
Allyl alcohol	107-18-6	2	5	X	2	5	4	10	—	—	X
Allyl chloride	107-05-1	1	3	—	1	3	2	6	—	—	—
Allyl glycidyl ether (AGE)	106-92-3	(C)10	(C)45	—	5	22	10	44	—	—	—
Allyl propyl disulfide	2179-59-1	2	12	—	2	12	3	18	—	—	—
alpha-Alumina	1344-28-1										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Aluminum (as Al)	7429-90-5										
Metal											
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Pyro powders		—	—	—	—	5	—	—	—	—	—
Welding fumes[g]		—	—	—	—	5	—	—	—	—	—
Soluble salts		—	—	—	—	2	—	—	—	—	—
Alkyls		—	—	—	—	2	—	—	—	—	—
Alundum; see alpha-Alumina											
4-Aminodiphenyl; see 1910.1011	92-67-1										
2-Aminoethanol; see Ethanolamine											
2-Aminopyridine	504-29-0	0.5	2	—	0.5	2	—	—	—	—	—
Amitrole	61-82-5	—	—	—	—	0.2	—	—	—	—	—
Ammonia	7664-41-7	50	35	—	—	—	35	27	—	—	—
Ammonium chloride fume	12125-02-9	—	—	—	—	10	—	20	—	—	—
Ammonium sulfamate	7773-06-0										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
n-Amyl acetate	628-63-7	100	525	—	100	525	—	—	—	—	—
sec-Amyl acetate	626-38-0	125	650	—	125	650	—	—	—	—	—
Aniline and homologs	62-53-3	5	19	X	2	8	—	—	—	—	X
Anisidine (o-, p-isomers)	29191-52-4	—	0.5	X	—	0.5	—	—	—	—	X
Antimony and compounds (as Sb)	7440-36-0	—	0.5	—	—	0.5	—	—	—	—	—
ANTU (alpha Naphthylthiourea)	86-88-4	—	0.3	—	—	0.3	—	—	—	—	—
Argon	7440-37-1	E	—								
Arsenic, inorganic compounds (as As)[f]; see 1910.1018	7440-38-2	—	0.01	—	—	0.01	—	—	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	—	0.5	—	—	0.5	—	—	—	—	—
Arsine	7784-42-1	0.05	0.2	—	0.05	0.2	—	—	—	—	—
Asbestos[f]; see 1926.58	Varies	(1)	(1)	(2)	—	0.2 f/cc	—	1 f/cc (30 min.)	—	—	—
Asphalt (Petroleum) fumes	8052-42-4	—	—	—	—	5	—	—	—	—	—
Atrazine	1912-24-9	—	—	—	—	5	—	—	—	—	—

TABLE Z.—Construction—Continued

Substance	CAS No.[d]	Transitional Limits[a] (1970 TLVs) ppm[a]	Transitional Limits[a] (1970 TLVs) mg/m³[b]	Skin Designation	Proposed Final Rule Limits TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
Azinphos-methyl	86-50-0	—	0.2	X	—	0.2	—	—	—	—	X
Barium, soluble compounds (as Ba)	7440-39-3	—	0.5	—	—	0.5	—	—	—	—	—
Barium sulfate	7727-43-7										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Benomyl	17804-35-2										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Benzene[f, g]; see 1910.1028	71-43-2	(1)	(1)	(1)	1	—	5	—	—	—	—
Benzidine; see 1910.1010	92-87-5		A[1]								
p-Benzoquinone; see Quinone											
Benzo(a)pyrene; see Coal tar pitch volatiles											
Benzoyl peroxide	94-36-0	—	5	—	—	5	—	—	—	—	—
Benzyl chloride	100-44-7	1	5	—	1	5	—	—	—	—	—
Beryllium and beryllium compounds (as Be)	7440-41-7	—	0.002	—	—	0.002	—	0.025 (30 min.)	—	—	—
Biphenyl; see Diphenyl											
Bismuth telluride, Undoped	1304-82-1										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Bismuth telluride, Se-doped	1304-82-1	—	—	—	5	—	—	—	—	—	—
Bisphenol A; see Diglycidyl ether											
Borates, tetra, sodium salts											
Anhydrous	1330-43-4	—	—	—	—	10	—	—	—	—	—
Decahydrate	1303-96-4	—	—	—	—	10	—	—	—	—	—
Pentahydrate	12179-04-3	—	—	—	—	10	—	—	—	—	—
Boron oxide	1303-86-2										
Total dust		—	15	—	—	10	—	—	—	—	—
Boron tribromide	10294-33-4	1	10	—	—	—	—	—	1	10	—
Boron trifluoride	7637-07-2	(C)1	(C)3	—	—	—	—	—	1	3	—
Bromacil	314-40-9	—	—	—	1	10	—	—	—	—	—
Bromine	7726-95-6	0.1	0.7	—	0.1	0.7	0.3	2	—	—	—
Bromine pentafluoride	7789-30-2	0.1	0.7	—	0.1	0.7	—	—	—	—	—
Bromoform	75-25-2	0.5	5	X	0.5	5	—	—	—	—	—
Butadiene (1,3-Butadiene)[h]; see 55 FR 32736	106-99-0	1000	2200	—	2	—	10	—	—	—	—
Butane	106-97-8	—	—	—	800	1900	—	—	—	—	—
Butanethiol; see Butyl mercaptan											
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	—	200	590	300	885	—	—	—
2-Butoxyethanol	111-76-2	50	240	X	25	120	—	—	—	—	—
n-Butyl-acetate	123-86-4	150	710	—	150	710	200	950	—	—	—
sec-Butyl acetate	105-46-4	200	950	—	200	950	—	—	—	—	—
tert-Butyl acetate	540-88-5	200	950	—	200	950	—	—	—	—	—
Butyl acrylate	141-32-2	—	—	—	10	55	—	—	—	—	—
n-Butyl alcohol	71-36-3	100	300	—	—	—	—	—	50	150	—
sec-Butyl alcohol	78-92-2	150	450	—	100	305	—	—	—	—	—
tert-Butyl alcohol	75-65-0	100	300	—	100	300	150	450	—	—	—
Butylamine	109-73-9	(C)5	(C)15	X	—	—	—	—	5	15	X
tert-Butyl chromate (as CrO_3)	1189-85-1	—	(C)0.1	X	—	—	—	—	—	0.1	X
n-Butyl glycidyl ether (BGE)	2426-08-6	50	270	—	25	135	—	—	—	—	—
n-Butyl lactate	138-22-7	—	—	—	5	25	—	—	—	—	—
Butyl mercaptan	109-79-5	0.5	1.5	—	0.5	1.5	—	—	—	—	—
o-sec-Butylphenol	89-72-5	—	—	—	5	30	—	—	—	—	X
p-tert-Butyltoluene	98-51-1	10	60	—	10	60	20	120	—	—	—

Cadmium fume (as Cd) [b]; see 55 FR 4052	7440-43-9	—	(C)0.1	—	—	0.001 or 0.005	—	0.005 or 0.025	—	—	—	
Cadmium dust (as Cd) [b]; see 55 FR 4052	7440-43-9	—	0.2	—	—	0.001 or 0.005	—	0.005 or 0.025	—	—	—	
Calcium carbonate	1317-65-3											
Total dust		—	15	—	—	15	—	—	—	—	—	
Respirable fraction		—	5	—	—	5	—	—	—	—	—	
Calcium cyanamide	156-62-7	—	—	—	—	0.5	—	—	—	—	—	
Calcium hydroxide	1305-62-0	—	—	—	—	5	—	—	—	—	—	
Calcium hydroxide												
Total dust		—	15	—	—	15	—	—	—	—	—	
Respirable fraction		—	5	—	—	5	—	—	—	—	—	
Calcium oxide	1305-78-8	—	5	—	—	5	—	—	—	—	—	
Calcium silicate	1344-95-2											
Total dust		—	15	—	—	15	—	—	—	—	—	
Respirable fraction		—	5	—	—	5	—	—	—	—	—	
Calcium sulfate	7778-18-9											
Total dust		—	15	—	—	15	—	—	—	—	—	
Respirable fraction		—	5	—	—	5	—	—	—	—	—	
Camphor, synthetic	76-22-2	—	2	—	—	2	—	—	—	—	—	
Caprolactam	105-60-2											
Dust		—	—	—	—	1	—	3	—	—	—	
Vapor		—	—	—	5	20	10	40	—	—	—	
Captafol (Difolatan)	2425-06-1	—	—	—	—	0.1	—	—	—	—	—	
Captan	133-06-2	—	—	—	—	5	—	—	—	—	—	
Carbaryl (Sevin)	63-25-2	—	5	—	—	5	—	—	—	—	—	
Carbofuran (Furadan)	1563-66-2	—	—	—	—	0.1	—	—	—	—	—	
Carbon black	1333-86-4	—	3.5	—	—	3.5	—	—	—	—	—	
Carbon dioxide	124-38-9	5000	9000	—	10,000	18,000	30,000	54,000	—	—	—	
Carbon disulfide	75-15-0	20	60	X	4	12	12	36	—	—	X	
Carbon monoxide	630-08-0	50	55	—	35	40	—	—	200	229	—	
Carbon tetrabromide	558-13-4	—	—	—	0.1	1.4	0.3	4	—	—	—	
Carbon tetrachloride	56-23-5	10	65	X	2	12.6	—	—	—	—	—	
Carbonyl fluoride	353-50-4	—	—	—	2	5	5	15	—	—	—	
Catechol (Pyrocatechol)	120-80-9	—	—	—	5	20	—	—	—	—	X	
Cellulose	9004-34-6											
Total dust		—	15	—	—	15	—	—	—	—	—	
Respirable fraction		—	5	—	—	5	—	—	—	—	—	
Cesium hydroxide	21351-79-1	—	—	—	—	2	—	—	—	—	—	
Chlordane	57-74-9	—	0.5	X	—	0.5	—	—	—	—	X	
Chlorinated camphene	8001-35-2	—	0.5	X	—	0.5	—	1	—	—	X	
Chlorinated diphenyl oxide	55720-99-5	—	0.5	—	—	0.5	—	—	—	—	—	
Chlorine	7782-50-5	1	3	—	0.5	1.5	1	3	—	—	—	
Chlorine dioxide	10049-04-4	0.1	0.3	—	0.1	0.3	0.3	0.9	—	—	—	
Chlorine trifluoride	7790-91-2	(C)0.1	(C)0.4	—	—	—	—	—	0.1	0.4	—	
Chloroacetaldehyde	107-20-0	(C)1	(C)3	—	—	—	—	—	1	3	—	
α-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	—	0.05	0.3	—	—	—	—	—	
Chloroacetyl chloride	79-04-9	—	—	—	0.05	0.2	—	—	—	—	—	
Chlorobenzene	108-90-7	75	350	—	75	350	—	—	—	—	—	
o-Chlorobenzylidene malononitrile	2698-41-1	0.05	0.4	—	—	—	—	—	0.05	0.4	X	
Chlorobromomethane	74-97-5	200	1050	—	200	1050	—	—	—	—	—	
2-Chloro-1,3-butadiene; see beta-Chloroprene												
Chlorodifluoromethane	75-45-6	—	—	—	1000	3500	—	—	—	—	—	
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9	—	1	X	—	1	—	—	—	—	X	
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1	—	0.5	X	—	0.5	—	—	—	—	X	
1-Chloro,2,3-epoxypropane; see Epichlorohydrin												
2-Chloroethanol; see Ethylene chlorohydrin												
Chloroethylene; see Vinyl chloride												
Chloroform (Trichloromethane)	67-66-3	50	240	—	2	9.78	—	—	—	—	—	
bis(Chloromethyl) ether; see 1910.1008	542-88-1											
Chloromethyl methyl ether; see 1910.1006	107-30-2											
1-Chloro-1-nitropropane	600-25-9	20	100	—	2	10	—	—	—	—	—	

TABLE Z.—Construction—Continued

Substance	Transitional Limits[a] (1970 TLVs)			Proposed Final Rule Limits						
					TWA		STEL[c]		CEILING		
	CAS No.[d]	ppm[a]	mg/m³[b]	Skin Designation	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	Skin Designation
Chloropentafluoroethane	76-15-3	—	—	—	1000	6320	—	—	—	—	—
Chloropicrin	76-06-2	0.1	0.7	—	0.1	0.7	—	—	—	—	—
beta-Chloroprene	126-99-8	25	90	X	10	35	—	—	—	—	X
o-Chlorostyrene	2039-87-4	—	—	—	50	285	75	428	—	—	—
o-Chlorotoluene	95-49-8	—	—	—	50	250	—	—	—	—	—
2-Chloro-6-(trichloromethyl) pyridine	1929-82-4										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Chlorpyrifos	2921-88-2	—	—	—	—	0.2	—	—	—	—	X
Chromic acid and chromates (as CrO_3)	Varies with compound	—	0.1	—	—	—	—	—	—	0.1	—
Chromium (II) compounds (as Cr)	7440-47-3	—	0.5	—	—	0.5	—	—	—	—	—
Chromium (III) compounds (as Cr)	7440-47-3	—	0.5	—	—	0.5	—	—	—	—	—
Chromium metal and insol. salts (as Cr)	7440-47-3	—	1	—	—	1	—	—	—	—	—
Chrysene; see Coal tar pitch volatiles											
Clopidol	2971-90-6										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Coal dust (less than 5% SiO_2), Respirable fraction		—	—	—	—	2	—	—	—	—	—
Coal dust (greater than or equal to 5% SiO_2), Respirable quartz fraction		—	—	—	—	0.1	—	—	—	—	—
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	65966-93-2	—	0.2	—	—	0.2	—	—	—	—	—
Cobalt metal, dust, and fume (as Co)	7440-48-4	—	0.1	—	—	0.05	—	—	—	—	—
Cobalt carbonyl (as Co)	10210-68-1	—	—	—	—	0.1	—	—	—	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	—	—	—	—	0.1	—	—	—	—	—
Coke oven emissions[f]; see 1910.1029		—	0.15	—	—	0.15	—	—	—	—	—
Copper	7440-50-8										
Fume (as Cu)		—	0.1	—	—	0.1	—	—	—	—	—
Dusts and mists (as Cu)		—	1	—	—	1	—	—	—	—	—
Corundum; see Emery											
Cotton dust[g]; see 1910.1043		—	1	—	—	0.5	—	—	—	—	—
This 8-hour TWA applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. For the Transitional Limit and where it is not feasible to use a vertical elutriator, a respirable dust personal sampler may be used. In these circumstances the exposure limit is 1 mg/m³ respirable dust, personal sampler											
Crag herbicide (Sesone)	136-78-7										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Cresol, all isomers	1319-77-3	5	22	X	5	22	—	—	—	—	X
Crotonaldehyde	123-73-9; 4170-30-3	2	6	—	2	6	—	—	—	—	—
Crufomate	299-86-5	—	—	—	—	5	—	—	—	—	—
Cumene	98-82-8	50	245	X	50	245	—	—	—	—	X
Cyanamide	420-04-2	—	—	—	—	2	—	—	—	—	—
Cyanides (as CN)	Varies with Compound	—	5	—	—	5	—	—	—	—	—
Cyanogen	460-19-5	10	—	—	10	20	—	—	—	—	—
Cyanogen chloride	506-77-4	—	—	—	—	—	—	—	0.3	0.6	—
Cyclohexane	110-82-7	300	1050	—	300	1050	—	—	—	—	—
Cyclohexanol	108-93-0	50	200	—	50	200	—	—	—	—	X
Cyclohexanone	108-94-1	50	200	—	25	100	—	—	—	—	X
Cyclohexene	110-83-8	300	1015	—	300	1015	—	—	—	—	—
Cyclohexylamine	108-91-8	—	—	—	10	40	—	—	—	—	—
Cyclonite	121-82-4	—	1.5	X	—	1.5	—	—	—	—	X

Cyclopentadiene	542-92-7	75	200	—	75	200	—	—	—	—	—	—
Cyclopentane	287-92-3	—	—	—	600	1720	—	—	—	—	—	—
Cyhexatin	13121-70-5	—	—	—	—	5	—	—	—	—	—	—
2,4-D (Dichlorophenoxyacetic acid)	94-75-7	—	10	—	—	10	—	—	—	—	—	—
Decaborane	17702-41-9	0.05	0.3	X	0.05	0.3	0.15	0.9	—	—	X	—
Demeton (Systox)	8065-48-3	—	0.1	X	—	0.1	—	—	—	—	X	—
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2	50	240	—	50	240	—	—	—	—	—	—
1,2-Diaminoethane; see Ethylenediamine												
Diazinon	333-41-5	—	—	—	—	0.1	—	—	—	—	X	—
Diazomethane	334-88-3	0.2	0.4	—	0.2	0.4	—	—	—	—	—	—
Diborane	19287-45-7	0.1	0.1	—	0.1	0.1	—	—	—	—	—	—
1,2-Dibromo-3-chloropropane (CBCP) [1]; see 1910.1044	96-12-8	0.001	—	X	0.001	—	—	—	—	—	X	—
1,2-Dibromoethane; see Ethylene dibromide												
2-N-Dibutylaminoethanol	102-81-8	—	—	—	2	14	—	—	—	—	—	—
Dibutyl phosphate	107-66-4	1	5	—	1	5	2	10	—	—	—	—
Dibutyl phthalate	84-74-2	—	5	—	—	5	—	—	—	—	—	—
Dichloroacetylene	7572-29-4	(C)0.1	(C)0.4	—	—	—	—	—	0.1	0.4	—	—
o-Dichlorobenzene	95-50-1	(C)50	(C)300	—	—	—	—	—	50	300	—	—
p-Dichlorobenzene	106-46-7	75	450	—	75	450	110	675	—	—	—	—
3,3'-Dichlorobenzidine; see 1910.1007	91-94-1											
Dichlorodifluoromethane	75-71-8	1000	4950	—	1000	4950	—	—	—	—	—	—
1,3-Dichloro-5,5-dimethyl hydantoin	118-52-5	—	0.2	—	—	0.2	—	0.4	—	—	—	—
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	—	1	X	—	1	—	—	—	—	X	—
1,1-Dichloroethane	75-34-3	100	400	—	100	400	—	—	—	—	—	—
1,2-Dichloroethane; see Ethylene dichloride												
1,2-Dichloroethylene	540-59-0	200	790	—	200	790	—	—	—	—	—	—
Dichloroethyl ether	111-44-4	(C)15	(C)90	X	5	30	10	60	—	—	X	—
Dichloromethane; see Methylene chloride												
Dichloromonofluoromethane	75-43-4	1000	4200	—	10	40	—	—	—	—	—	—
1,1-Dichloro-1-nitroethane	594-72-9	(C)10	(C)60	—	2	10	—	—	—	—	—	—
1,2-Dichloropropane; see Propylene dichloride												
1,3-Dichloropropene	542-75-6	—	—	—	1	5	—	—	—	—	X	—
2,2-Dichloropropionic acid	75-99-0	—	—	—	1	6	—	—	—	—	—	—
Dichlorotetrafluoroethane	76-14-2	1000	7000	—	1000	7000	—	—	—	—	—	—
Dichlorvos (DDVP)	62-73-7	—	1	X	—	1	—	—	—	—	X	—
Dicrotophos	141-66-2	—	—	—	—	0.25	—	—	—	—	X	—
Dicyclopentadiene	77-73-6	—	—	—	5	30	—	—	—	—	—	—
Dicyclopentadienyl iron	102-54-5											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Dieldrin	60-57-1	—	0.25	X	—	0.25	—	—	—	—	X	—
Diethanolamine	111-42-2	—	—	—	3	15	—	—	—	—	—	—
Diethylamine	109-89-7	25	75	—	10	30	25	75	—	—	—	—
2-Diethylaminoethanol	100-37-8	10	50	X	10	50	—	—	—	—	X	—
Diethylene triamine	111-40-0	(C)10	(C)42	X	1	4	—	—	—	—	—	—
Diethyl ether; see Ethyl ether												
Diethyl ketone	96-22-0	—	—	—	200	705	—	—	—	—	—	—
Diethyl phthalate	84-66-2	—	—	—	—	5	—	—	—	—	—	—
Difluorodibromomethane	75-61-6	100	860	—	100	860	—	—	—	—	—	—
Diglycidyl ether (DGE)	2238-07-5	(C)0.5	(C)2.8	—	0.1	0.5	—	—	—	—	—	—
Dihydroxybenzene; see Hydroquinone												
Diisobutyl ketone	108-83-8	50	290	—	25	150	—	—	—	—	—	—
Diisopropylamine	108-18-9	5	20	X	5	20	—	—	—	—	X	—
4-Dimethylaminoazobenzene; see 1910.1015	60-11-7											
Dimethoxymethane; see Methylal												
Dimethyl acetamide	127-19-5	10	35	X	10	35	—	—	—	—	X	—
Dimethylamine	124-40-3	10	18	—	10	18	—	—	—	—	—	—
Dimethylaminobenzene; see Xylidine												
Dimethylaniline (N,N-Dimethylaniline)	121-69-7	5	25	X	5	25	10	50	—		X	—
Dimethylbenzene; see Xylene												
Dimethyl-1,2-dibromo- 2,2-dichloroethyl phosphate	300-76-5	—	3	—	—	3	—	—	—	—	X	—
Dimethylformamide	68-12-2	10	30	X	10	30	—	—	—	—	X	—
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone												
1,1-Dimethylhydrazine	57-14-7	0.5	1	X	0.5	1	—	—	—	—	X	—

TABLE Z.—Construction—Continued

Substance	Transitional Limits[a] (1970 TLVs)			Skin Designation	Proposed Final Rule Limits						Skin Designation
					TWA		STEL[c]		CEILING		
	CAS No.[d]	ppm[e]	mg/m³[b]		ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	ppm[e]	mg/m³[b]	
Dimethylphthalate	131-11-3	—	5	—	—	5	—	—	—	—	—
Dimethyl sulfate	77-78-1	1	5	X	0.1	0.5	—	—	—	—	X
Dinitolmide (3,5- Dinitro-o-toluamide)	148-01-6	—	—	—	—	5	—	—	—	—	—
Dinitrobenzene (all isomers)											
(ortho)	528-29-0	—	1	X	—	1	—	—	—	—	X
(meta)	99-65-0										
(para)	100-25-4										
Dinitro-o-cresol	534-52-1	—	0.2	X	—	0.2	—	—	—	—	X
Dinitrotoluene	25321-14-6	—	1.5	X	—	1.5	—	—	—	—	X
Dioxane (Diethylene dioxide)	123-91-1	100	360	X	25	90	—	—	—	—	X
Dioxathion (Delnav)	78-34-2	—	—	—	—	0.2	—	—	—	—	X
Diphenyl (Biphenyl)	92-52-4	0.2	1	—	0.2	1	—	—	—	—	—
Diphenylamine	122-39-4	—	10	—	—	10	—	—	—	—	—
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate											
Dipropylene glycol methyl ether	34590-94-8	100	600	X	100	600	150	900	—	—	X
Dipropyl ketone	123-19-3	—	—	—	50	235	—	—	—	—	—
Diquat	85-00-7	—	—	—	—	0.5	—	—	—	—	—
Di-sec octyl phthalate (Di-(2-ethylhexyl) phthalate)	117-81-7	—	5	—	—	5	—	10	—	—	—
Disulfiram	97-77-8	—	—	—	—	2	—	—	—	—	—
Disulfoton	298-04-4	—	—	—	—	0.1	—	—	—	—	X
2,6-Di-tert-butyl-p-cresol	128-37-0	—	—	—	—	10	—	—	—	—	—
Diuron	330-54-1	—	—	—	—	10	—	—	—	—	—
Divinyl benzene	1321-74-0	—	—	—	10	50	—	—	—	—	—
Emery	12415-34-8	—									
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Endosulfan	115-29-7	—	0.1	X	—	0.1	—	—	—	—	X
Endrin	72-20-8	—	0.1	X	—	0.1	—	—	—	—	X
Epichlorohydrin	106-89-8	5	19	X	2	8	—	—	—	—	X
EPN	2104-64-5	—	0.5	X	—	0.5	—	—	—	—	X
1,2-Epoxypropane; see Propylene oxide											
2,3-Epoxy-1-propanol; see Glycidol											
Ethane	74-84-0	E									
Ethanethiol; see Ethyl mercaptan											
Ethanolamine	141-43-5	3	6	—	3	8	6	15	—	—	—
Ethion	563-12-2	—	—	—	—	0.4	—	—	—	—	X
2-Ethoxyethanol (Cellosolve)	110-80-5	200	740	X	200	740	—	—	—	—	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	100	540	X	100	540	—	—	—	—	X
Ethyl acetate	141-78-6	400	1400	—	400	1400	—	—	—	—	—
Ethyl acrylate	140-88-5	25	100	X	5	20	25	100	—	—	X
Ethyl alcohol (Ethanol)	64-17-5	1000	1900	—	1000	1900	—	—	—	—	—
Ethylamine	75-04-7	10	18	—	10	18	—	—	—	—	—
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	—	25	130	—	—	—	—	—
Ethyl benzene	100-41-4	100	435	—	100	435	125	545	—	—	—
Ethyl bromide	74-96-4	200	890	—	200	890	250	1110	—	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	—	50	230	—	—	—	—	—
Ethyl chloride	75-00-3	1000	2600	—	1000	2600	—	—	—	—	—
Ethyl ether	60-29-7	400	1200	—	400	1200	500	1500	—	—	—
Ethyl formate	109-94-4	100	300	—	100	300	—	—	—	—	—
Ethyl mercaptan	75-08-1	0.5	1	—	0.5	1	—	—	—	—	—
Ethyl silicate	78-10-4	100	850	—	10	85	—	—	—	—	—
Ethylene	74-85-1	E									
Ethylene chlorohydrin	107-07-3	5	16	X	—	—	—	—	1	3	X
Ethylenediamine	107-15-3	10	25	—	10	25	—	—	—	—	—
Ethylene dibromide	106-93-4	(C)25	(C)190	X	—	—	—	—	25	190	X
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	50	200	1	4	2	8	—	—	—	—

Ethylene glycol	107-21-1	—	—	—	—	—	—	—	50	125	—
Ethylene glycol dinitrate	628-96-6	(C)0.2	(C)1	X	—	—	—	0.1	—	—	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate											
Ethyleneimine; see 1910.1012	151-56-4	0.5	1	X	—	—	—	—	—	—	—
Ethylene oxide [f]; see 1910.1047	75-21-8	[1]	[1]	[1]	1	—	5	—	—	—	—
Ethylidene chloride; see 1,1-Dichloroethane											
Ethylidene norbornene	16219-75-3	—	—	—	—	—	5	25	—	[1]	—
N-Ethylmorpholine	100-74-3	20	94	X	5	23	—	—	—	—	X
Fenamiphos	22224-92-6	—	—	—	—	0.1	—	—	—	—	X
Fensulfothion (Dasanit)	115-90-2	—	—	—	—	0.1	—	—	—	—	X
Fenthion	55-38-9	—	—	—	—	0.2	—	—	—	—	X
Ferbam	14484-64-1										
Total dust		—	15	—	—	10	—	—	—	—	—
Ferrovanadium dust	12604-58-9	—	1	—	—	1	—	3	—	—	—
Fibrous Glass											
Total dust			15	—	—	1 f/cc	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—	—	—	
Fluorides (as F)	Varies with compound	—	2.5	—	—	2.5	—	—	—	—	—
Fluorine	7782-41-4	0.1	0.2	—	0.1	0.2	—	—	—	—	—
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	1000	5600	—	—	—	—	—	1000	5600	—
Fonofos	944-22-9	—	—	—	—	0.1	—	—	—	—	X
Formaldehyde [f, b]; see 1910.1048; and 56 FR 32302	50-00-0	1	(2 ppm STEL)	—	0.75	—	2	—	—	—	—
Formamide	75-12-7	—	—	—	20	30	30	45	—	—	—
Formic acid	64-18-6	5	9	—	5	9	—	—	—	—	—
Furfural	98-01-1	5	20	X	2	8	—	—	—	—	X
Furfuryl alcohol	98-00-0	50	200	—	10	40	15	60	—	—	X
Gasoline	8006-61-9		A [2]		300	900	500	1500	—	—	—
Germanium tetrahydride	7782-65-2	—	—	—	0.2	0.6	—	—	—	—	—
Glutaraldehyde	111-30-8	—	—	—	—	—	—	—	0.2	0.8	—
Glycerin (mist)	56-81-5										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Glycidol	556-52-5	50	150	—	25	75	—	—	—	—	—
Glycol monoethyl ether; see 2-Ethoxyethanol											
Grain dust (oat, wheat, barley)		—	—	—	—	10	—	—	—	—	—
Graphite, natural, respirable dust	7782-42-5	[3]	[3]	[3]	—	2.5	—	—	—	—	—
Graphite, synthetic		—									
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Guthion; see Azinphos methyl											
Gypsum	13397-24-5										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Hafnium	7440-58-6	—	0.5	—	—	0.5	—	—	—	—	—
Helium	7440-59-7	E									
Heptachlor	76-44-8	—	0.5	X	—	0.5	—	—	—	—	X
Heptane (n-Heptane)	142-82-5	500	2000	—	400	1600	500	2000	—	—	—
Hexachlorobutadiene	87-68-3	—	—	—	0.02	0.24	—	—	—	—	—
Hexachlorocyclopentadiene	77-47-4	—	—	—	0.01	0.1	—	—	—	—	—
Hexachloroethane	67-72-1	1	10	X	1	10	—	—	—	—	X
Hexachloronaphthalene	1335-87-1	—	0.2	X	—	0.2	—	—	—	—	X
Hexafluoroacetone	684-16-2	—	—	—	0.1	0.7	—	—	—	—	X
n-Hexane	110-54-3	500	1800	—	50	180	—	—	—	—	—
Hexane isomers	Varies with compound	—	—	—	500	1800	1000	3600	—	—	—
2-Hexanone (Methyl n-butyl ketone)	591-78-6	100	410	—	5	20	—	—	—	—	—
Hexone (Methyl isobutyl ketone)	108-10-1	100	410	—	50	205	75	300	—	—	—
sec-Hexyl acetate	108-84-9	50	300	—	50	300	—	—	—	—	—
Hexylene glycol	107-41-5	—	—	—	—	—	—	—	25	125	—
Hydrazine	302-01-2	1	1.3	X	0.1	0.1	—	—	—	—	X
Hydrogen	1333-74-0	E									
Hydrogenated terphenyls	61788-32-7	—	—	—	0.5	5	—	—	—	—	—

TABLE Z.—Construction—Continued

Substance	Transitional Limits[a] (1970 TLVs)			Proposed Final Rule Limits						
					TWA	STEL[c]		CEILING		
	CAS No.[d]	ppm[a]	mg/m³[b]	Skin Designation	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	Skin Designation
Hydrogen bromide	10035-10-6	3	10	—	—	—	—	—	3	10	—
Hydrogen chloride	7647-01-0	(C)5	(C)7	—	—	—	—	—	5	7	—
Hydrogen cyanide	74-90-8	10	11	X	—	—	4.7	5	X		
Hydrogen fluoride (as F)	7664-39-3	3	2	—	3	—	6	—	—	—	—
Hydrogen peroxide	7722-84-1	1	1.4	—	1	1.4	—	—	—	—	—
Hydrogen selenide (as Se)	7783-07-5	0.05	0.2	—	0.05	0.2	—	—	—	—	—
Hydrogen sulfide	7783-06-4	10	15	—	10	14	15	21	—	—	—
Hydroquinone	123-31-9	—	2	—	—	2	—	—	—	—	—
2-Hydroxypropyl acrylate	999-61-1	—	—	—	0.5	3	—	—	—	—	X
Indene	95-13-6	10	45	—	10	45	—	—	—	—	—
Indium and compounds (as In)	7440-74-6	—	0.1	—	—	0.1	—	—	—	—	—
Iodine	7553-56-2	(C)0.1	(C)1	—	—	—	—	—	0.1	1	—
Iodoform	75-47-8	—	—	—	0.6	10	—	—	—	—	—
Iron oxide fume	1309-37-1	—	10	—	—	10	—	—	—	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	—	—	—	0.1	0.8	0.2	1.6	—	—	—
Iron salts (soluble) (as Fe)	Varies with compound	—	1	—	—	1	—	—	—	—	—
Isoamyl acetate	123-92-2	100	525	—	100	525	—	—	—	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100	360	—	100	360	125	450	—	—	—
Isobutyl acetate	110-19-0	150	700	—	150	700	—	—	—	—	—
Isobutyl alcohol	78-83-1	100	300	—	50	150	—	—	—	—	—
Isooctyl alcohol	26952-21-6	—	—	—	50	270	—	—	—	—	X
Isophorone	78-59-1	25	140	—	4	23	—	—	—	—	—
Isophorone diisocyanate	4098-71-9	—	—	—	0.005	—	0.02	—	—	—	X
2-Isopropoxyethanol	109-59-1	—	—	—	25	105	—	—	—	—	—
Isopropyl acetate	108-21-4	250	950	—	250	950	310	1185	—	—	—
Isopropyl alcohol	67-63-0	400	980	—	400	980	500	1225	—	—	—
Isopropylamine	75-31-0	5	12	—	5	12	10	24	—	—	—
N-Isopropylaniline	768-52-5	—	—	—	2	10	—	—	—	—	X
Isopropyl ether	108-20-3	500	2100	—	500	2100	—	—	—	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	—	50	240	75	360	—	—	—
Kaolin	1332-58-7										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Ketene	463-51-4	0.5	0.9	—	0.5	0.9	1.5	3	—	—	—
Lead, inorganic (as Pb)	7439-92-1	—	0.2	—	—	0.05	—	—	—	—	—
Limestone	1317-65-3										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Lindane	58-89-9	—	0.5	X	—	0.5	—	—	—	—	X
Lithium hydride	7580-67-8	—	0.025	—	—	0.025	—	—	—	—	—
L.P.G. (Liquefied petroleum gas)	68476-85-7	1000	1800	—	1000	1800	—	—	—	—	—
Magnesite	546-93-0										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Magnesium oxide fume	1309-48-4										
Total particulate		15	—	—	10	—	—	—	—	—	
Malathion	121-75-5										
Total dust		—	15	X	—	10	—	—	—	—	X
Maleic anhydride	108-31-6	0.25	1	0.25	1	—	—	—	—	—	—
Manganese compounds (as Mn)	7439-96-5	—	(C)5	—	—	—	—	—	—	5	—
Manganese fume (as Mn)	7439-96-5	—	(C)5	—	—	1	—	3	—	—	—
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	—	—	—	—	0.1	—	—	—	—	X
Manganese tetroxide (as Mn)	1317-35-7	—	—	—	—	1	—	—	—	—	—
Marble	1317-65-3	—									
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—

Mercury (aryl and inorganic)(as Hg)	7439-97-6		0.1	X	—	—	—	—	—	0.1		X
Mercury (organo) alkyl compounds (as Hg)	7439-97-6	—	0.01	X	—	0.01	—	0.03	—	—		X
Mercury (vapor) (as Hg)	7439-97-6	—	0.1	X	—	0.05	—	—	—	—		X
Mesityl oxide	141-79-7	25	100	—	15	60	25	100	—	—		—
Methacrylic acid	79-41-4	—	—	—	20	70	—	—	—	—		X
Methane	74-82-8	E										
Methanethiol; see Methyl mercaptan												
Methomyl (Lannate)	16752-77-5	—	—	—	—	2.5	—	—	—	—		—
Methoxychlor	72-43-5											
Total dust		—	15	—	—	10	—	—	—	—		—
2-Methoxyethanol (Methyl cellosolve)	109-86-4	25	80	X	25	80	—	—	—	—		X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110-49-6	25	120	X	25	120	—	—	—	—		X
4-Methoxyphenol	150-76-5	—	—	—	—	5	—	—	—	—		—
Methyl acetate	79-20-9	200	610	—	200	610	250	760	—	—		—
Methyl acetylene (Propyne)	74-99-7	1000	1650	—	1000	1650	—	—	—	—		—
Methyl acetylene-propadiene mixture (MAPP)		1000	1800	—	1000	1800	1250	2250	—	—		—
Methyl acrylate	96-33-3	10	35	X	10	35	—	—	—	—		X
Methylacrylonitrile	126-98-7	—	—	—	1	3	—	—	—	—		X
Methylal (Dimethoxymethane)	109-87-5	1000	3100	—	1000	3100	—	—	—	—		—
Methyl alcohol	67-56-1	200	260	—	200	260	250	325	—	—		X
Methylamine	74-89-5	10	12	—	10	12	—	—	—	—		—
Methyl amyl alcohol; see Methyl isobutyl carbinol												
Methyl n-amyl ketone	110-43-0	100	465	—	100	465	—	—	—	—		—
Methyl bromide	74-83-9	(C)20	(C)80	X	5	20	—	—	—	—		X
Methyl butyl ketone; see 2-Hexanone												
Methyl cellosolve; see 2-Methoxyethanol												
Methyl cellosolve acetate; see 2-Methoxyethyl acetate												
Methyl chloride	74-87-3	100	210	—	50	105	100	210	—	—		—
Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350	1900	—	350	1900	450	2450	—	—		—
Methyl 2-cyanoacrylate	137-05-3	—	—	—	2	8	4	16	—	—		—
Methylcyclohexane	108-87-2	500	2000	—	400	1600	—	—	—	—		—
Methylcyclohexanol	25639-42-3	100	470	—	50	235	—	—	—	—		—
o-Methylcyclohexanone	583-60-8	100	460	X	50	230	75	345	—	—		X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	—	—	—	—	0.2	—	—	—	—		X
Methyl demeton	8022-00-2	—	—	—	—	0.5	—	—	—	—		X
4,4'-Methylene bis (2-chloroaniline) (MBOCA)	101-14-4	—	—	—	0.02	0.22	—	—	—	—		X
Methylene bis (4-cyclohexylisocyanate)	5124-30-1	—	—	—	—	—	—	—	0.01	0.11		—
Methylene chloride [h]; see 56 FR 57036	75-09-2	500	1740	—	25	—	125	—	—	—		—
Methyl ethyl ketone (MEK); see 2-Butanone												
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	—	—	—	—	—	0.7	5		—
Methyl formate	107-31-3	100	250	—	100	250	150	375	—	—		—
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	(C)0.2	(C)0.35	X	—	—	—	—	0.2	0.35		X
Methyl iodide	74-88-4	5	28	X	2	10	—	—	—	—		X
Methyl isoamyl ketone	110-12-3	100	475	—	50	240	—	—	—	—		—
Methyl isobutyl carbinol	108-11-2	25	100	X	25	100	40	165	—	—		X
Methyl isobutyl ketone; see Hexone												
Methyl isocyanate	624-83-9	0.02	0.05	X	0.02	0.05	—	—	—	—		X
Methyl isopropyl ketone	563-80-4	—	—	—	200	705	—	—	—	—		—
Methyl mercaptan	74-93-1	0.5	1	—	0.5	1	—	—	—	—		—
Methyl methacrylate	80-62-6	100	410	100	410	—	—	—	—	—		—
Methyl parathion	298-00-0	—	—	—	—	0.2	—	—	—	—		X
Methyl propyl ketone; see 2-Pentanone												
Methyl silicate	681-84-5	5	30	—	1	6	—	—	—	—		—
alpha-Methyl styrene	98-83-9	(C)100	(C)480	—	50	240	100	485	—	—		—
Methylene bisphenyl isocyanate (MDI)	101-68-8	(C)0.02	(C)0.2	—	—	—	—	—	0.02	0.2		—
Metribuzin	21087-64-9	—	—	—	—	5	—	—	—	—		—
Mica; see Silicates												
Mineral wool												
Total dust		—	15	—	—	1 f/cc	—	—	—	—		—
Respirable dust		—	5	—	—	—	—	—	—	—		—
Molybdenum (as Mo)	7439-98-7											
Soluble compounds		—	5	—	—	5	—	—	—	—		—
Insoluble compounds												
Total dust		—	15	—	—	10	—	—	—	—		—

TABLE Z.—Construction—Continued

Substance	CAS No.[4]	Transitional Limits[a] (1970 TLVs) ppm[a]	Transitional Limits[a] (1970 TLVs) mg/m³[b]	Skin Designation	Proposed Final Rule Limits TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
Monocrotophos (Azodrin)	6923-22-4	—	—	—	—	0.25	—	—	—	—	—
Monomethyl aniline	100-61-8	2	9	X	0.5	2	—	—	—	—	X
Monomethyl hydrazine; see Methyl hydrazine											
Morpholine	110-91-8	20	70	X	20	70	30	105	—	—	X
Naphtha (Coal tar)	8030-30-6	100	400	—	100	400	—	—	—	—	—
Naphthalene	91-20-3	10	50	—	10	50	15	75	—	—	—
alpha-Naphthylamine; see 1910.1004	134-32-7										
beta-Naphthylamine; see 1910.1009	91-59-8		A[1]								
Neon	7440-01-9	E									
Nickel carbonyl (as Ni)	13463-39-3	0.001	0.007	—	0.001	0.007	—	—	—	—	—
Nickel, metal and insoluble compounds (as Ni)	7440-02-0	—	1	—	—	1	—	—	—	—	—
Nickel, soluble compounds (as Ni)	7440-02-0	—	1	—	—	0.1	—	—	—	—	—
Nicotine	54-11-5	—	0.5	X	—	0.5	—	—	—	—	X
Nitric acid	7697-37-2	2	5	—	2	5	4	10	—	—	—
Nitric oxide	10102-43-9	25	30	—	25	30	—	—	—	—	—
p-Nitroaniline	100-01-6	1	6	X	—	3	—	—	—	—	X
Nitrobenzene	98-95-3	1	5	X	1	5	—	—	—	—	X
p-Nitrochlorobenzene	100-00-5	—	1	X	—	1	—	—	—	—	X
4-Nitrodiphenyl; see 1910.1003	92-93-3										
Nitroethane	79-24-3	100	310	—	100	310	—	—	—	—	—
Nitrogen	7727-37-9	E									
Nitrogen dioxide	10102-44-0	(C)5	(C)9	—	—	—	1	1.8	—	—	—
Nitrogen trifluoride	7783-54-2	10	29	—	10	29	—	—	—	—	—
Nitroglycerin	55-63-0	(C)0.2	(C)2	X	—	—	—	0.1	—	—	X
Nitromethane	75-52-5	100	250	—	100	250	—	—	—	—	—
1-Nitropropane	108-03-2	25	90	—	25	90	—	—	—	—	—
2-Nitropropane	79-46-9	25	90	—	10	35	—	—	—	—	—
N-Nitrosodimethylamine; see 1910.1016	62-79-9		A[1]								
Nitrotoluene (all isomers)		5	30	X	2	11	—	—	—	—	X
o-isomer	88-72-2;										
m-isomer	99-08-1;										
p-isomer	99-99-0										
Nitrotrichloromethane; see Chloropicrin											
Nitrous oxide	10024-97-2	E									
Nonane	111-84-2	—	—	—	200	1050	—	—	—	—	—
Octachloronaphthalene	2234-13-1	—	0.1	X	—	0.1	—	0.3	—	—	—
Octane	111-65-9	400	1900	—	300	1450	375	1800	—	—	—
Oil mist, mineral	8012-95-1	—	5	—	—	5	—	—	—	—	—
Osmium tetroxide (as Os)	20816-12-0	—	0.002	—	0.0002	0.002	0.0006	0.006	—	—	—
Oxalic acid	144-62-7	—	1	—	—	1	—	2	—	—	—
Oxygen difluoride	7783-41-7	0.05	0.1	—	—	—	—	—	0.05	0.1	—
Ozone	10028-15-6	0.1	0.2	—	0.1	0.2	0.3	0.6	—	—	—
Paraffin wax fume	8002-74-2	—	—	—	—	2	—	—	—	—	—
Paraquat, respirable dust	4685-14-7; 1910-42-5; 2074-50-2	—	0.5	X	—	0.1	—	—	—	—	X
Parathion	56-38-2	—	0.1	X	—	0.1	—	—	—	—	—
Particulates not otherwise regulated											
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
PCB; see Chlorodiphenyl (42% and 54% chlorine)											
Pentaborane	19624-22-7	0.005	0.01	—	0.005	0.01	0.015	0.03	—	—	—
Pentachloronaphthalene	1321-64-8	—	0.5	X	—	0.5	—	—	—	—	X
Pentachlorophenol	87-86-5	—	0.5	X	—	0.5	—	—	—	—	X
Pentaerythritol	115-77-5										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—

Pentane	109-66-0	500	1500	—	600	1800	750	2250	—	—	—
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	—	200	700	250	875	—	—	—
Perchloroethylene (Tetrachloroethylene)	127-18-4	100	670	—	25	170	—	—	—	—	—
Perchloromethyl mercaptan	594-42-3	0.1	0.8	—	0.1	0.8	—	—	—	—	—
Perchloryl fluoride	7616-94-6	3	13.5	—	3	14	6	28	—	—	—
Perlite	93763-70-3										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Petroleum distillates (Naphtha)(Rubber Solvent)			A [3]		400	1600	—	—	—	—	—
Phenol	108-95-2	5	19	X	5	19	—	—	—	—	X
Phenothiazine	92-84-2	—	—	—	—	5	—	—	—	—	X
p-Phenylene diamine	106-50-3	—	0.1	X	—	0.1	—	—	—	—	X
Phenyl ether, vapor	101-84-8	1	7		1	7	—	—	—	—	—
Phenyl ether-biphenyl mixture, vapor		1	7	—	1	7	—	—	—	—	—
Phenylethylene; see Styrene											
Phenyl glycidyl ether (PGE)	122-60-1	10	60	—	1	6	—	—	—	—	—
Phenylhydrazine	100-63-0	5	22	X	5	20	10	45	—	—	X
Phenyl mercaptan	108-98-5	—	—	—	0.5	2	—	—	—	—	—
Phenylphosphine	638-21-1	—	—	—	—	—	—	—	0.05	0.25	—
Phorate	298-02-2	—	—	—	—	0.05	—	0.2	—	—	X
Phosdrin (Mevinphos)	7786-34-7	—	0.1	X	0.01	0.1	0.03	0.3	—	—	X
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	—	0.1	0.4	—	—	—	—	—
Phosphine	7803-51-2	0.3	0.4	—	0.3	0.4	1	1	—	—	—
Phosphoric acid	7664-38-2	—	1	—	—	1	—	3	—	—	—
Phosphorus (yellow)	7723-14-0	—	0.1	—	—	0.1	—	—	—	—	—
Phosphorus oxychloride	10025-87-3	—	—	—	0.1	0.6	—	—	—	—	—
Phosphorus pentachloride	10026-13-8	—	1	—	—	1	—	—	—	—	—
Phosphorus pentasulfide	1314-80-3	—	1	—	—	1	—	3	—	—	—
Phosphorus trichloride	7719-12-2	0.5	3	—	0.2	1.5	0.5	3	—	—	—
Phthalic anhydride	85-44-9	2	12	—	1	6	—	—	—	—	—
m-Phthalodinitrile	626-17-5	—	—	—	—	5	—	—	—	—	—
Picloram	1918-02-1										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Picric acid	88-89-1	—	0.1	X	—	0.1	—	—	—	—	X
Piperazine dihydrochloride	142-64-3	—	—	—	—	5	—	—	—	—	—
Pindone (2-Pivalyl-1,3-indandione)	83-26-1	—	0.1	—	—	0.1	—	—	—	—	—
Plaster of Paris	26499-65-0										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Platinum (as Pt)	7440-06-4										
Metal		—	—	—	—	1	—	—	—	—	—
Soluble salts		—	0.002	—	—	0.002	—	—	—	—	—
Polytetrafluoroethylene decomposition products			A [3]								
Portland cement	65997-15-1										
Total dust		15	—	10	—	—	—	—	—	—	—
Respirable fraction		5	—	—	5	—	—	—	—	—	—
Potassium hydroxide	1310-58-3	—	—	—	—	—	—	—	—	2	—
Propargyl alcohol	107-19-7	1	—	X	1	2	—	—	—	—	X
beta-Propriolactone; see 1910.1013	57-57-8		A [1]								
Propionic acid	79-09-4	—	—	—	10	30	—	—	—	—	—
Propoxur (Baygon)	114-26-1	—	—	—	—	0.5	—	—	—	—	—
n-Propyl acetate	109-60-4	200	840	—	200	840	250	1050	—	—	—
n-Propyl alcohol	71-23-8	200	500	—	200	500	250	625	—	—	—
n-Propyl nitrate	627-13-4	25	110	—	25	105	40	170	—	—	—
Propylene dichloride	78-87-5	75	350	—	75	350	110	510	—	—	—
Propylene glycol dinitrate	6423-43-4	—	—	—	0.05	0.3	—	—	—	—	—
Propylene glycol monomethyl ether	107-98-2	—	—	—	100	360	150	540	—	—	—
Propylene imine	75-55-8	2	5	X	2	5	—	—	—	—	X
Propylene oxide	75-56-9	100	240	—	20	50	—	—	—	—	—
Propyne; see Methyl acetylene											
Pyrethrum	8003-34-7	—	[5]	—	—	5	—	—	—	—	—
Pyridine	110-86-1	5	15	—	5	15	—	—	—	—	—
Quinone	106-51-4	0.1	0.4	—	0.1	0.4	—	—	—	—	—
RDX; see Cyclonite											
Resorcinol	108-46-3	—	—	—	10	45	20	90	—	—	—

TABLE Z.—Construction—Continued

Substance	CAS No.[d]	Transitional Limits[a] (1970 TLVs) ppm[a]	Transitional Limits[a] (1970 TLVs) mg/m³[b]	Skin Designation	Proposed Final Rule Limits TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	—	0.1	—	—	0.1	—	—	—	—	—
Rhodium (as Rh), soluble compounds	7440-16-6	—	0.001	—	—	0.001	—	—	—	—	—
Ronnel	299-84-3	—	10	—	—	10	—	—	—	—	—
Rosin core solder pyrolysis products, as formaldehyde		—	—	—	—	0.1	—	—	—	—	
Rotenone	83-79-4	—	5	—	—	5	—	—	—	—	—
Rouge		—									
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Selenium compounds (as Se)	7782-49-2	—	0.2	—	—	0.2	—	—	—	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	—	0.05	0.4	—	—	—	—	—
Silica, amorphous, precipitated and gel	112926-00-8	(2)	(2)	(2)	—	6	—	—	—	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	(2)	(2)	(2)	—	6	—	—	—	—	—
Silica, crystalline cristobalite, respirable dust	14464-46-1	(2)	(2)	(2)	—	0.05	—	—	—	—	—
Silica, crystalline quartz, respirable dust	14808-60-7	(2)	(2)	(2)	—	0.1	—	—	—	—	—
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	(2)	(2)	(2)	—	0.1	—	—	—	—	—
Silica, crystalline tridymite, respirable dust	15468-32-3	(2)	(2)	(2)	—	0.05	—	—	—	—	—
Silica, fused, respirable dust	60676-86-0	(2)	(2)	(2)	—	0.1	—	—	—	—	—
Silicates (less than 1% crystalline silica)											
Mica (respirable dust)	12001-26-2	(2)	(2)	(2)	—	3	—	—	—	—	—
Soapstone, total dust	—	(2)	(2)	(2)	—	6	—	—	—	—	—
Soapstone, respirable dust	—	(2)	(2)	(2)	—	3	—	—	—	—	—
Talc (containing asbestos)	—	(3)	(3)	(3)	—	0.2 f/cc	—	1 f/cc (30 min.)	—	—	—
Talc (containing no asbestos), respirable dust	14807-96-6	(2)	(2)	(2)	—	2	—	—	—	—	—
Tremolite		(1)	(1)	(1)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Silicon	7440-21-3										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Silicon carbide	409-21-2										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Silicon tetrahydride	7803-62-5	—	—	—	5	7	—	—	—	—	—
Silver, metal and soluble compounds (as Ag)	7440-22-4	—	0.01	—	—	0.01	—	—	—	—	—
Soapstone; see Silicates											
Sodium azide	26628-22-8										
(as HN_3)		—	—	—	—	—	—	—	0.1	—	X
(as NaN_3)		—	—	—	—	—	—	—	—	0.3	X
Sodium bisulfite	7631-90-5	—	—	—	—	5	—	—	—	—	—
Sodium fluoroacetate	62-74-8	—	0.05	X	—	0.05	—	0.15	—	—	X
Sodium hydroxide	1310-73-2	—	2	—	—	—	—	—	—	2	—
Sodium metabisulfite	7681-57-4	—	—	—	—	5	—	—	—	—	—
Starch	9005-25-8										
Total dust		—	15	—	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Stibine	7803-52-3	0.1	0.5	—	0.1	0.5	—	—	—	—	—
Stoddard solvent	8052-41-3	200	1150	—	100	525	—	—	—	—	—
Strychnine	57-24-9	—	0.15	—	—	0.15	—	—	—	—	—
Styrene	100-42-5	100	420	50	215	100	425	—	—	—	—
Subtilisins (Proteolytic enzymes)	9014-01-1	—	—	—	—	—	—	0.00006 • (60 min.)	—	—	—
Sucrose	57-50-1										
Total dust		—	15	—	—	15	—	—	—	—	—

Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Sulfur dioxide	7446-09-5	5	13	—	2	5	5	13	—	—	—	—
Sulfur hexafluoride	2551-62-4	1000	6000	—	1000	6000	—	—	—	—	—	—
Sulfuric acid	7664-93-9	—	1	—	—	1	—	—	—	—	—	—
Sulfur monochloride	10025-67-9	1	6	—	—	—	—	—	1	6	—	—
Sulfur pentafluoride	5714-22-7	0.025	0.25	—	—	—	—	—	0.01	0.1	—	—
Sulfur tetrafluoride	7783-60-0	—	—	—	—	—	—	—	0.1	0.4	—	—
Sulfuryl fluoride	2699-79-8	5	20	—	5	20	10	40	—	—	—	—
Sulprofos	35400-43-2	—	—	—	—	1	—	—	—	—	—	—
Systox, see Demeton												
2,4,5-T (2,4,5-trichlorophenoxyacetic acid)	93-76-5	—	10	—	—	10	—	—	—	—	—	—
Talc; see Silicates												
Tantalum, metal and oxide dust	7440-25-7	—	5	—	—	5	—	—	—	—	—	—
TEDP (Sulfotep)	3689-24-5	—	0.2	X	—	0.2	—	—	—	—	X	—
Teflon decomposition products	A2											
Tellurium and compounds (as Te)	13494-80-9	—	0.1	—	—	0.1	—	—	—	—	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	—	0.02	0.2	—	—	—	—	—	—
Temephos	3383-96-8											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
TEPP (Tetraethyl pyrophosphate)	107-49-3	—	0.05	X	—	0.05	—	—	—	—	X	—
Terphenyls	26140-60-3	(C)1	(C)9	—	—	—	—	—	0.5	5	—	—
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	500	4170	—	500	4170	—	—	—	—	—	—
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	500	4170	—	500	4170	—	—	—	—	—	—
1,1,2,2-Tetrachloroethane	79-34-5	5	35	X	1	7	—	—	—	—	X	—
Tetrachloroethylene; see Perchloroethylene												
Tetrachloromethane; see Carbon tetrachloride												
Tetrachloronaphthalene	1335-88-2	—	2	X	—	2	—	—	—	—	X	—
Tetraethyl lead (as Pb)	78-00-2	—	0.1	X	—	0.075	—	—	—	—	X	X
Tetrahydrofuran	109-99-9	200	590	—	200	590	250	735	—	—	—	—
Tetramethyl lead, (as Pb)	75-74-1	—	0.15	X	—	0.075	—	—	—	—	X	X
Tetramethyl succinonitrile	3333-52-6	0.5	3	X	0.5	3	—	—	—	—	X	X
Tetranitromethane	509-14-8	1	8	—	1	8	—	—	—	—	—	—
Tetrasodium pyrophosphate	7722-88-5	—	—	—	—	5	—	—	—	—	—	—
Tetryl (2,4,6-Trinitrophenylmethylnitramine)	479-45-8	—	1.5	X	—	0.1	—	—	—	—	X	X
Thallium, soluble compounds (as Tl)	7440-28-0	—	0.1	X	—	0.1	—	—	—	—	X	X
4,4'-Thiobis (6-tert, Butyl-m-cresol)	96-69-5											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—	—
Thioglycolic acid	68-11-1	—	—	—	1	4	—	—	—	—	X	—
Thionyl chloride	7719-09-7	—	—	—	—	—	—	—	1	5	—	—
Thiram	137-26-8	—	5	—	—	5	—	—	—	—	—	—
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	—	2	—	—	2	—	—	—	—	—	—
Tin, organic compounds (as Sn)	7440-31-5	—	0.1	—	—	0.1	—	—	—	—	X	—
Tin oxide (as Sn)	21651-19-4	—	—	—								
Total dust		—	15	—	—	2	—	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—	—	—	—	—
Titanium dioxide	13463-67-7											
Total dust		—	15	—	—	10	—	—	—	—	—	—
Toluene	108-88-3	200	750	100	375	150	560	—	—	—	—	—
Toluene-2,4-diisocyanate (TDI)	584-84-9	(C)0.02	(C)0.14	—	0.005	0.04	0.02	0.15	—	—	—	—
m-Toluidine	108-44-1	—	—	—	2	9	—	—	—	—	X	—
o-Toluidine	95-53-4	5	22	X	5	22	—	—	—	—	X	X
p-Toluidine	106-49-0	—	—	—	2	9	—	—	—	—	X	X
Toxaphene; see Chlorinated camphene												
Tremolite; see Silicates												
Tributyl phosphate	126-73-8	—	5	—	0.2	2.5	—	—	—	—	—	—
Trichloroacetic acid	76-03-9	—	—	—	1	7	—	—	—	—	—	—
1,2,4-Trichlorobenzene	120-82-1	—	—	—	—	—	—	—	5	40	—	—
1,1,1-Trichloroethane; see Methyl chloroform												
1,1,2-Trichloroethane	79-00-5	10	45	X	10	45	—	—	—	—	X	—
Trichloroethylene	79-01-6	100	535	—	50	270	200	1080	—	—	—	—
Trichloromethane; see Chloroform												
Trichloronaphthalene	1321-65-9	—	5	X	—	5	—	—	—	—	X	—
1,2,3-Trichloropropane	96-18-4	50	300	—	10	60	—	—	—	—	—	—
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	—	1000	7600	1250	9500	—	—	—	—

TABLE Z.—Construction—Continued

Substance	Transitional Limits[a]		(1970 TLVs)		Proposed Final Rule Limits						
	CAS No.[d]	ppm[a]	mg/m[3][b]	Skin Designation	TWA ppm[a]	TWA mg/m[3][b]	STEL[c] ppm[a]	STEL[c] mg/m[3][b]	CEILING ppm[a]	CEILING mg/m[3][b]	Skin Designation
Triethylamine	121-44-8	25	100	—	10	40	15	60	—	—	—
Trifluorobromomethane	75-63-8	1000	6100	—	1000	6100	—	—	—	—	—
Trimellitic anhydride	552-30-7	—	—	—	0.005	0.04	—	—	—	—	—
Trimethylamine	75-50-3	—	—	—	10	24	15	36	—	—	—
Trimethyl benzene	25551-13-7	25	120	—	25	125	—	—	—	—	—
Trimethyl phosphite	121-45-9	—	—	—	2	10	—	—	—	—	—
2,4,6-Trinitrophenyl; see Picric acid											
2,4,6-Trinitrophenylmethylnitramine; see Tetryl											
2,4,6-Trinitrotoluene (TNT)	118-96-7	—	1.5	X	—	0.5	—	—	—	—	X
Triorthocresyl phosphate	78-30-8	—	0.1	—	—	0.1	—	—	—	—	X
Triphenyl amine	603-34-9	—	—	—	—	5	—	—	—	—	—
Triphenyl phosphate	115-86-6	—	3	—	—	3	—	—	—	—	—
Tungsten (as W)	7440-33-7										
Insoluble compounds		—	5	—	—	5	—	10	—	—	—
Soluble compounds		—	1	—	—	1	—	3	—	—	—
Turpentine	8006-64-2	100	560	—	100	560	—	—	—	—	—
Uranium (as U)	7440-61-1										
Soluble compounds		—	0.2	—	—	0.05	—	—	—	—	—
Insoluble compounds		—	0.2	—	—	0.2	—	0.6	—	—	—
n-Valeraldehyde	110-62-3	—	—	—	50	175	—	—	—	—	—
Vanadium	1314-62-1										
Respirable dust (as V_2O_5)		—	(C)0.5	—	—	0.05	—	—	—	—	—
Fume (as V_2O_5)		—	(C)0.1	—	—	0.05	—	—	—	—	—
Vegetable oil mist	—										
Total dust		—	15	[1]	—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Vinyl acetate	108-05-4	—	—	—	10	30	20	60	—	—	—
Vinyl benzene; see Styrene											
Vinyl bromide	593-60-2	—	—	—	5	20	—	—	—	—	—
Vinyl chloride[f]; see 1910.1017	75-01-4	([1])	([1])	([1])	1	—	5	—	—	—	—
Vinyl cyanide; see Acrylonitrile											
Vinyl cyclohexene dioxide	106-87-6	—	—	—	10	60	—	—	—	—	X
Vinylidene chloride (1,1Dichloroethylene)	75-35-4	—	—	—	1	4	—	—	—	—	—
Vinyl toluene	25013-15-4	100	480	—	100	480	—	—	—	—	—
VM & P Naphtha	8032-32-4	—	—	—	300	1350	400	1800	—	—	—
Warfarin	81-81-2	—	0.1	—	—	0.1	—	—	—	—	—
Welding fumes (total particulate)**		—	—	—	—	5	—	—	—	—	—
Wood dust, all soft and hard woods, except Western red cedar		—	—	—	—	5	—	10	—	—	—
Wood dust, Western red cedar		—	—	—	—	2.5	—	—	—	—	—
Xylenes (o-, m-, p-isomers)	1330-20-7	100	435	—	100	435	150	655	—	—	—
m-Xylene alpha, alpha'-diamine	1477-55-0	—	—	—	—	—	—	—	—	0.1	X
Xylidine	1300-73-8	5	25	X	2	10	—	—	—	—	X
Yttrium	7440-65-5	—	1	—	—	1	—	—	—	—	—
Zinc chloride fume	7646-85-7	—	1	—	—	1	—	2	—	—	—
Zinc chromate (as CrO_3)	13530-65-9	—	—	—	—	—	—	—	—	0.1	—
Zinc oxide fume	1314-13-2	—	5	—	—	5	—	10	—	—	—
Zinc oxide	1314-13-2										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Zinc stearate	557-05-1										
Total dust		—	15	—	—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	5	—	—	—	—	—
Zirconium compounds (as Zr)	7440-67-7	—	5	—	—	5	—	10	—	—	—

Footnotes:
[1] Same as Final Rule Limits.

[2] See Mineral Dusts Table.
[3] Use Asbestos Limit 1910.1001.
[4] See 1910.1001 for asbestiform; for non-asbestiform see 1910.1101.
[5] The transitional PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit.
[6] As determined from breathing-zone air samples.
[7] Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 torr.
[8] Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.
[9] Duration is for 15 minutes, unless otherwise noted.
[10] The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given—not CAS numbers for the individual compounds.
[11] Compliance with the subtilisins PEL is assessed by sampling with a high volume sampler (600-800 liters per minute) for at least 60 minutes.
[12] For those substances for which a full standard exists, exposure limits are provided in the table for informational purposes, and the binding requirements are as set forth in the single substance standard.
[13] For sectors excluded from 1910.1028 the limit is 10 ppm TWA and see 1910.1000, Table Z-2 for ceiling limits.
[14] Where OSHA has published a proposal for a substance separately from this rulemaking but has not issued a final rule, the proposal is referenced and the existing limit is published in the Transitional Limits columns. The proposed new limit is published in the Final Rule Limits columns.

The 1970 TLV uses letter designations instead of a numerical value as follows:

A [1] Because of the high incidence of cancer, either in man or in animals, no exposure or contact by any route, respiratory, oral, or skin, should be permitted.

A [2] Polytetrafluoroethylene decomposition products. Because these products decompose in part by hydrolysis in alkaline solution, they can be quantitatively determined in air as fluoride to provide an index of exposure. No TLV is recommended pending determination of the toxicity of the products, but air concentrations should be minimal.

A [3] Gasoline and/or Petroleum Distillates. The composition of these materials varies greatly and thus a single TLV for all types of these materials is no longer applicable. The content of benzene, other aromatics and additives should be determined to arrive at the appropriate TLV.

E Simple asphyxiants.

V. OSHA proposes to amend 29 CFR part 1928 as follows:

PART 1928—AGRICULTURE

1. It is proposed to revise the authority citation for part 1928 to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Order, No. 12–7 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR Part 1911.

Subparts J–Y—[Reserved]

2. It is proposed to reserve Subparts J–Y and to add a new Subpart Z consisting of § 1928.1000 to read as follows:

Subpart Z—Toxic and Hazardous Substances

§ 1928.1000 Air contaminants.

(a) *Exposure limits.* An employee's exposure to any substance listed in Table Z, Agriculture shall be limited in accordance with the requirements of the following paragraphs of this section:

(1) Final Rule Limit Columns. An employee's exposure to any substance listed in Table Z, Agriculture shall not exceed the Time Weighted Average (TWA), Short Term Exposure Limit (STEL) and Ceiling Limit specified for that substance in Table Z, Agriculture under the Final Rule Limits columns.

(2) Skin Designation. To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Table Z, Agriculture with an "X" in the Skin Designation column following the substance name shall be prevented or reduced to the extent necessary in the circumstances through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls or work practices.

(3) Definitions. The following definitions are applicable to the Final Rule Limits columns of Table Z, Agriculture:

(i) *Time weighted average (TWA)* is the employee's average airborne exposure in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) *Short term exposure limit (STEL)* is the employee's 15-minute time weighted average exposure which shall not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time period shall not be exceeded at any time during the working day.

(iii) Ceiling is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure which shall not be exceeded at any time over a working day.

(b) *Computation formulae.* The computation formula which shall apply to employee exposure to more than one substance for which 8-hour time weighted averages are listed in subpart Z of 29 CFR Part 1918 in order to determine whether an employee is exposed over the regulatory limit is as follows:

(1)(i) The cumulative exposure for an 8-hour work shift shall be computed as follows:

$$E=(C_aT_a+C_bT_b+\ldots C_nT_n)\div 8$$

Where:

E is the equivalent exposure for the working shift.

C is the concentration during any period of time T where the concentration remains constant.

T is the duration in hours of the exposure at the concentration C.

The value of E shall not exceed the 8-hour time weighted average specified in Subpart Z or 29 CFR Part 1918 for the material involved.

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z. Assume that an employee is subject to the following exposure:

Two hours exposure at 150 ppm
Two hours exposure at 75 ppm
Four hours exposure at 50 ppm

Substituting this information in the formula, we have:

$$(2\times 150+2\times 75+4\times 50)\div 8=81.25 \text{ ppm}$$

Since 81.25 ppm is less than 100 ppm, the 8-hour time weighted average limit, the exposure is acceptable.

(2)(i) in case of a mixture of air contaminants an employer shall compute the equivalent exposure as follows:

$$Em=(C_1\div L_1+C_2\div L_2)+\ldots(C_n\div L_n)$$

Where:

E_m is the equivalent exposure for the mixture.

C is the concentration of a particular contaminant.

L is the exposure limit for that substance specified in subpart Z of 29 CFR part 1918.

The value of E_m shall not exceed unity (1).

(ii) To illustrate the formula prescribed in paragraph (d)(2)(i) of this section, consider the following exposures:

Substance	Actual concentration of 8 hour exposure (ppm)	8 hr. TWA PEL (ppm)
B	500	1000
C	45	200
D	40	200

Substituting in the formula we have:

$$E_m=500\div 1,000+45\div 200+40\div 200$$
$$E_m=0.500+0.225+0.200$$
$$E_m=0.925$$

Since Em is less than unity (1), the exposure combination is within acceptable limits.

(c) *Methods of compliance.* To achieve compliance with paragraph (a) of this section administrative, work practice or engineering controls must first be implemented whenever feasible. When such controls are not feasible, respirators or other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Whenever respirators are used, their use shall comply with 29 CFR § 1910.134.

(d) *Effective and Start-up dates*—(1) *Effective date.* The effective date for the permissible exposure limits specified in the Final Rule Limits columns of Table Z, Agriculture is [90 days after date of publication in the **Federal Register**].

(2) Start-up dates (i) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Agriculture shall be achieved by any reasonable combination of engineering controls, administrative controls, work practices and personal protective equipment effective [1 year after date of publication in the **Federal Register**].

(ii) The permissible exposure limits specified in the Final Rule Limits columns of Table Z, Agriculture shall be achieved by the method of compliance specified in paragraph (b) of this section effective [4 years after date of publication in the **Federal Register**].

(iii) The skin designations in the Final Rule Limits columns shall be complied with commencing [1 year after date of publication in the **Federal Register**].

TABLE Z.—Agriculture

Substance	CAS No.[a]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
Acetaldehyde	75-07-0	100	180	150	270	—	—	—
Acetic acid	64-19-7	10	25	—	—	—	—	—
Acetic anhydride	108-24-7	—	—	—	—	5	20	—
Acetone	67-64-1	750	1800	1000	2400	—	—	—
Acetonitrile	75-05-8	40	70	60	105	—	—	—
Acetylene tetrabromide	79-27-6	1	14	—	—	—	—	—
Acetylsalicylic acid (Aspirin)	50-78-2	—	5	—	—	—	—	—
Acrolein	107-02-8	0.1	0.25	0.3	0.8	—	—	—
Acrylamide	79-06-1	—	0.03	—	—	—	—	X
Acrylic acid	79-10-7	10	30	—	—	—	—	X
Acrylonitrile [i]; see 1910.1045	107-13-1	2	—	10	—	—	—	X
Aldrin	309-00-2	—	0.25	—	—	—	—	X
Allyl alcohol	107-18-6	2	5	4	10	—	—	X
Allyl chloride	107-05-1	1	3	2	6	—	—	—
Allyl glycidyl ether (AGE)	106-92-3	5	22	10	44	—	—	—
Allyl propyl disulfide	2179-59-1	2	12	3	18	—	—	—
alpha-Alumina	1344-28-1							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Aluminum (as Al)	7429-90-5							
Metal								
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Pyro powders		—	5	—	—	—	—	—
Welding fumes[c]		—	5	—	—	—	—	—
Soluble salts		—	2	—	—	—	—	—
Alkyls		—	2	—	—	—	—	—
2-Aminoethanol; see Ethanolamine								
2-Aminopyridine	504-29-0	0.5	2	—	—	—	—	—
Amitrole	61-82-5	—	0.2	—	—	—	—	—
Ammonia	7664-41-7	—	—	35	27	—	—	—
Ammonium chloride fume	12125-02-9	—	10	—	20	—	—	—
Ammonium sulfamate	7773-06-0							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
n-Amyl acetate	628-63-7	100	525	—	—	—	—	—
sec-Amyl acetate	626-38-0	125	650	—	—	—	—	—
Aniline and homologs	62-53-3	2	8	—	—	—	—	X
Anisidine (o-, p-isomers)	29191-52-4	—	0.5	—	—	—	—	X
Antimony and compounds (as Sb)	7440-36-0	—	0.5	—	—	—	—	—
ANTU (alpha Naphthylthiourea)	86-88-4	—	0.3	—	—	—	—	—
Arsenic, inorganic compounds (as As) [j]; see 1910.1018	7440-38-2	—	0.01	—	—	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	—	0.5	—	—	—	—	—
Arsine	7784-42-1	0.05	0.2	—	—	—	—	—
Asbestos [f]; see 1910.1001 and 1910.1101	Varies		0.2 f/cc		1 f/cc (30 min.)			
Asphalt (petroleum) fumes	8052-42-4	—	5	—	—	—	—	—
Atrazine	1912-24-9	—	5	—	—	—	—	—
Azinphos-methyl	86-50-0	—	0.2	—	—	—	—	X
Barium, soluble compounds (as Ba)	7440-39-3	—	0.5	—	—	—	—	—
Barium sulfate	7727-43-7							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Benomyl	17804-35-2							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Benzene [i,o]; see 1910.1028	71-43-22	1	—	5	—	—	—	
p-Benzoquinone; see Quinone								
Benzo(a)pyrene; see Coal tar pitch volatiles								
Benzoyl peroxide	94-36-0	—	5	—	—	—	—	—
Benzyl chloride	100-44-7	1	5	—	—	—	—	
Beryllium and beryllium compounds (as Be)	7440-41-7	0.002	0.025 (30 min.)					
Biphenyl; see Diphenyl								
Bismuth telluride, Undoped	1304-82-1							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Bismuth telluride, Se-doped	1304-82-1	—	5	—	—	—	—	—
Borates, tetra, sodium salts								
Anhydrous	1330-43-4	—	10	—	—	—	—	—
Decahydrate	1303-96-4	—	10	—	—	—	—	—
Pentahydrate	12179-04-3	—	10	—	—	—	—	—
Boron oxide	1303-86-2							
Total dust		—	10	—	—	—	—	—

TABLE Z.—Agriculture—Continued

Substance	CAS No.[d]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
Boron tribromide	10294-33-4	—	—	—	—	1	10	—
Boron trifluoride	7637-07-2	—	—	—	—	1	3	—
Bromacil	314-40-9	1	10	—	—	—	—	—
Bromine	7726-95-6	0.1	0.7	0.3	2	—	—	—
Bromine pentafluoride	7789-30-2	0.1	0.7	—	—	—	—	—
Bromoform	75-25-2	0.5	5	—	—	—	—	X
Butadiene (1,3-Butadiene)[h]; see 55 FR 32736	106-99-0	2	—	10	—	—	—	—
Butane	106-97-8	800	1900	—	—	—	—	—
Butanethiol; see Butyl mercaptan								
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	300	885	—	—	—
2-Butoxyethanol	111-76-2	25	120	—	—	—	—	X
n-Butyl-acetate	123-86-4	150	710	200	950	—	—	—
sec-Butyl acetate	105-46-4	200	950	—	—	—	—	—
tert-Butyl acetate	540-88-5	200	950	—	—	—	—	—
Butyl acrylate	141-32-2	10	55	—	—	—	—	—
n-Butyl alcohol	71-36-3	—	—	—	—	50	150	X
sec-Butyl alcohol	78-92-2	100	305	—	—	—	—	—
tert-Butyl alcohol	75-65-0	100	300	150	450	—	—	—
Butylamine	109-73-9	—	—	—	—	5	15	X
tert-Butyl chromate (as CrO_3)	1189-85-1	—	—	—	—	—	0.1	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25	135	—	—	—	—	—
n-Butyl lactate	138-22-7	5	25	—	—	—	—	—
Butyl mercaptan	109-79-5	0.5	1.5	—	—	—	—	—
o-sec-Butylphenol	89-72-5	5	30	—	—	—	—	X
p-tert-Butyltoluene	98-51-1	10	60	20	120	—	—	—
Cadmium fume and dust (as Cd)[f]; see 55 FR 4052	7440-43-9	—	0.001 or 0.005	—	0.005 or 0.025			
Calcium carbonate	1317-65-3							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Calcium cyanamide	156-62-7	—	0.5	—	—	—	—	—
Calcium hydroxide	1305-62-0							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Calcium oxide	1305-78-8	—	5	—	—	—	—	—
Calcium silicate	1344-95-2							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Calcium sulfate	7778-18-9							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Camphor, synthetic	76-22-2	—	2	—	—	—	—	—
Caprolactam	105-60-2							
Dust		—	1	—	3	—	—	—
Vapor		5	20	10	40	—	—	—
Captafol (Difolatan)	2425-06-1	—	0.1	—	—	—	—	—
Captan	133-06-2	—	5	—	—	—	—	—
Carbaryl (Sevin)	63-25-2	—	5	—	—	—	—	—
Carbofuran (Furadan)	1563-66-2	—	0.1	—	—	—	—	—
Carbon black	1333-86-4	—	3.5	—	—	—	—	—
Carbon dioxide	124-38-9	10,000	18,000	30,000	54,000	—	—	—
Carbon disulfide	75-15-0	4	12	12	36	—	—	X
Carbon monoxide	630-08-0	35	40	—	—	200	229	—
Carbon tetrabromide	558-13-4	0.1	1.4	0.3	4	—	—	—
Carbon tetrachloride	56-23-5	2	12.6	—	—	—	—	
Carbonyl fluoride	353-50-4	2	5	5	15	—	—	—
Catechol (Pyrocatechol)	120-80-9	5	20	—	—	—	—	X
Cellulose	9004-34-6							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Cesium hydroxide	21351-79-1	—	2	—	—	—	—	—
Chlordane	57-74-9	—	0.5	—	—	—	—	X
Chlorinated camphene	8001-35-2	—	0.5	—	1	—	—	X
Chlorinated diphenyl oxide	55720-99-5	—	0.5	—	—	—	—	—
Chlorine	7782-50-5	0.5	1.5	1	3	—	—	—
Chlorine dioxide	10049-04-4	0.1	0.3	0.3	0.9	—	—	—
Chlorine trifluoride	7790-91-2	—	—	—	—	0.1	0.4	
Chloroacetaldehyde	107-20-0	—	—	—	—	1	3	—
a-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	—	—	—	—	—
Chloroacetyl chloride	79-04-9	0.05	0.2	—	—	—	—	—
Chlorobenzene	108-90-7	75	350	—	—	—	—	—
o-Chlorobenzylidene malononitrile	2698-41-1	—	—	—	—	0.05	0.4	X
Chlorobromomethane	74-97-5	200	1050	—	—	—	—	—

TABLE Z.—Agriculture—Continued

Substance	CAS No.[a]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
2-Chloro-1,3-butadiene; see beta-Chloroprene								
Chlorodifluoromethane	75-45-6	1000	3500	—	—	—	—	—
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9	—	1	—	—	—	—	X
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1	—	0.5	—	—	—	—	X
1-Chloro,2,3-epoxypropane; see Epichlorohydrin								
2-Chloroethanol; see Ethylene chlorohydrin								
Chloroethylene; see Vinyl chloride								
Chloroform (Trichloromethane)	67-66-3	2	9.78	—	—	—	—	—
1-Chloro-1-nitropropane	600-25-9	2	10	—	—	—	—	—
Chloropentafluoroethane	76-15-3	1000	6320	—	—	—	—	—
Chloropicrin	76-06-2	0.1	0.7	—	—	—	—	—
beta-Chloroprene	126-99-8	10	35	—	—	—	—	X
o-Chlorostyrene	2039-87-4	50	285	75	428	—	—	—
o-Chlorotoluene	95-49-8	50	250	—	—	—	—	—
2-Chloro-6-(trichloromethyl) pyridine	1929-82-4							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Chlorpyrifos	2921-88-2	—	0.2	—	—	—	—	X
Chromic acid and chromates (as CrO_3)	Varies with compound	—	—	—	—	0.1	—	
Chromium (II) compounds (as Cr)	7440-47-3	—	0.5	—	—	—	—	—
Chromium (III) compounds (as Cr)	7440-47-3	—	0.5	—	—	—	—	—
Chromium metal (as Cr)	7440-47-3	—	1	—	—	—	—	—
Chrysene; see Coal tar pitch volatiles	—							
Clopidol	2971-90-6							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Coal dust (less than 5% SiO_2), Respirable fraction		—	2	—	—	—	—	
Coal dust (greater than or equal to 5% SiO_2), Respirable quartz fraction		—	0.1	—	—	—	—	
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	65996-93-2	—	0.2	—	—	—	—	—
Cobalt metal, dust, and fume (as Co)	7440-48-4	—	0.05	—	—	—	—	—
Cobalt carbonyl (as Co)	10210-68-1	—	0.1	—	—	—	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	—	0.1	—	—	—	—	—
Copper	7440-50-8							
Fume (as Cu)		—	0.1	—	—	—	—	—
Dusts and mists (as Cu)		—	1	—	—	—	—	—
Cotton dust [c]; see 1910.1043		—	0.5	—	—	—	—	—
This 8-hour TWA applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. Where it is not feasible to use vertical elutriator, a respirable dust personal sampler may be used. In these circumstances the exposure limit is 1 mg/m³ respirable dust, personal sampler.								
Crag herbicide (Sesone)	136-78-7							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Cresol, all isomers	1319-77-3	5	22	—	—	—	—	X
Crotonaldehyde	123-73-9; 4170-30-3	2	6	—	—	—	—	—
Crufomate	299-86-5	—	5	—	—	—	—	—
Cumene	98-82-8	50	245	—	—	—	—	X
Cyanamide	420-04-2	—	2	—	—	—	—	—
Cyanides (as CN)	Varies with Compound	—	5	—	—	—	—	—
Cyanogen	460-19-5	10	20	—	—	—	—	—
Cyanogen chloride	506-77-4	—	—	—	—	0.3	0.6	—
Cyclohexane	110-82-7	300	1050	—	—	—	—	—
Cyclohexanol	108-93-0	50	200	—	—	—	—	X
Cyclohexanone	108-94-1	25	100	—	—	—	—	X
Cyclohexene	110-83-8	300	1015	—	—	—	—	—
Cyclohexylamine	108-91-8	10	40	—	—	—	—	—
Cyclonite	121-82-4	—	1.5	—	—	—	—	X
Cyclopentadiene	542-92-7	75	200	—	—	—	—	—
Cyclopentane	287-92-3	600	1720	—	—	—	—	—
Cyhexatin	13121-70-5	—	5	—	—	—	—	—
2,4-D (Dichlorophenoxyacetic acid)	94-75-7	—	10	—	—	—	—	—
Decaborane	17702-41-9	0.05	0.3	0.15	0.9	—	—	X
Demeton (Systox)	8065-48-3	—	0.1	—	—	—	—	X
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2	50	240	—	—	—	—	—
1,2-Diaminoethane; see Ethylenediamine								
Diazinon	333-41-5	—	0.1	—	—	—	—	X
Diazomethane	334-88-3	0.2	0.4	—	—	—	—	—
Diborane	19287-45-7	0.1	0.1	—	—	—	—	—
1,2-Dibromo-3-chloropropane (DBCP) [c]; see 1910.1044	96-12-8	0.001	—	—	—	—	—	X
2-N-Dibutylaminoethanol	102-81-8	2	14	—	—	—	—	—
Dibutyl phosphate	107-66-4	1	5	2	10	—	—	—
Dibutyl phthalate	84-74-2	—	5	—	—	—	—	—
Dichloroacetylene	7572-29-4	—	—	—	—	0.1	0.4	—

TABLE Z.—Agriculture—Continued

Substance	CAS No.[a]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
o-Dichlorobenzene	95-50-1	—	—	—	—	50	300	—
p-Dichlorobenzene	106-46-7	75	450	110	675	—	—	—
Dichlorodifluoromethane	75-71-8	1000	4950	—	—	—	—	—
1,3-Dichloro-5,5-dimethyl hydantoin	118-52-5	—	0.2	—	0.4	—	—	—
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	—	1	—	—	—	—	X
1,1-Dichloroethane	75-34-3	100	400	—	—	—	—	—
1,2-Dichloroethylene	540-59-0	200	790	—	—	—	—	—
Dichloroethyl ether	111-44-4	5	30	10	60	—	—	X
Dichloromethane; see Methylene chloride								
Dichloromonofluoromethane	75-43-4	10	40	—	—	—	—	—
1,1-Dichloro-1-nitroethane	594-72-9	2	10	—	—	—	—	—
1,2-Dichloropropane; see Propylene dichloride								
1,3-Dichloropropene	542-75-6	1	5	—	—	—	—	X
2,2-Dichloropropionic acid	75-99-0	1	6	—	—	—	—	—
Dichlorotetrafluoroethane	76-14-2	1000	7000	—	—	—	—	—
Dichlorvos (DDVP)	62-73-7	—	1	—	—	—	—	X
Dicrotophos	141-66-2	—	0.25	—	—	—	—	X
Dicyclopentadiene	77-73-6	5	30	—	—	—	—	—
Dicyclopentadienyl iron	102-54-5							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Dieldrin	60-57-1	—	0.25	—	—	—	—	X
Diethanolamine	111-42-2	3	15	—	—	—	—	—
Diethylamine	109-89-7	10	30	25	75	—	—	—
2-Diethylaminoethanol	100-37-8	10	50	—	—	—	—	X
Diethylene triamine	111-40-0	1	4	—	—	—	—	—
Diethyl ether; see Ethyl ether								
Diethyl ketone	96-22-0	200	705	—	—	—	—	—
Diethyl phthalate	84-66-2	—	5	—	—	—	—	—
Difluorodibromomethane	75-61-6	100	860	—	—	—	—	—
Diglycidyl ether (DGE)	2238-07-5	0.1	0.5	—	—	—	—	—
Dihydroxybenzene; see Hydroquinone								
Diisobutyl ketone	108-83-8	25	150	—	—	—	—	—
Diisopropylamine	108-18-9	5	20	—	—	—	—	X
Dimethoxymethane; see Methylal								
Dimethyl acetamide	127-19-5	10	35	—	—	—	—	X
Dimethylamine	124-40-3	10	18	—	—	—	—	—
Dimethylaminobenzene; see Xylidine								
Dimethylaniline (N-Dimethylaniline)	121-69-7	5	25	10	50	—	—	X
Dimethylbenzene; see Xylene								
Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate	300-76-5	—	3	—	—	—	—	X
Dimethylformamide	68-12-2	10	30	—	—	—	—	X
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone								
1,1-Dimethylhydrazine	57-14-7	0.5	1	—	—	—	—	X
Dimethylphthalate	131-11-3	—	5	—	—	—	—	—
Dimethyl sulfate	77-78-1	0.1	0.5	—	—	—	—	X
Dinitolmide (3,5-Dinitro-o-toluamide)	148-01-6	—	5	—	—	—	—	—
Dinitrobenzene (all isomers)		—	1	—	—	—	—	X
(ortho)	528-29-0							
(meta)	99-65-0							
(para)	100-25-4							
Dinitro-o-cresol	534-52-1	—	0.2	—	—	—	—	X
Dinitrotoluene	25321-14-6	—	1.5	—	—	—	—	X
Dioxane (Diethylene dioxide)	123-91-1	25	90	—	—	—	—	X
Dioxathion (Delnav)	78-34-2	—	0.2	—	—	—	—	X
Diphenyl (Biphenyl)	92-52-4	0.2	1	—	—	—	—	—
Diphenylamine	122-39-4	—	10	—	—	—	—	—
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate								
Dipropylene glycol methyl ether	34590-94-8	100	600	150	900	—	—	X
Dipropyl ketone	123-19-3	50	235	—	—	—	—	—
Diquat	85-00-7	—	0.5	—	—	—	—	—
Di-sec octyl phthalate (Di-(2-ethylhexyl) phthalate)	117-81-7	—	5	—	10	—	—	—
Disulfiram	97-77-8	—	2	—	—	—	—	—
Disulfoton	298-04-4	—	0.1	—	—	—	—	X
2,6-Di-tert-butyl-p-cresol	128-37-0	—	10	—	—	—	—	—
Diuron	330-54-1	—	10	—	—	—	—	—
Divinyl benzene	1321-74-0	10	50	—	—	—	—	—
Emery	12415-34-8							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Endosulfan	115-29-7	—	0.1	—	—	—	—	X
Endrin	72-20-8	—	0.1	—	—	—	—	X
Epichlorohydrin	106-89-8	2	8	—	—	—	—	X
EPN	2104-64-5	—	0.5	—	—	—	—	X
1,2-Epoxypropane; see Propylene oxide								

TABLE Z.—Agriculture—Continued

Substance	CAS No.[d]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
2,3-Epoxy-1-propanol; see Glycidol								
Ethanethiol; see Ethyl mercaptan								
Ethanolamine	141-43-5	3	8	6	15	—	—	—
Ethion	563-12-2	—	0.4	—	—	—	—	X
2-Ethoxyethanol (Cellosolve)	110-80-5	200	740	—	—	—	—	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	100	540	—	—	—	—	X
Ethyl acetate	141-78-6	400	1400	—	—	—	—	—
Ethyl acrylate	140-88-5	5	20	25	100	—	—	X
Ethyl alcohol (Ethanol)	64-17-5	1000	1900	—	—	—	—	—
Ethylamine	75-04-7	10	18	—	—	—	—	—
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	—	—	—	—	—
Ethyl benzene	100-41-4	100	435	125	545	—	—	—
Ethyl bromide	74-96-4	200	890	250	1110	—	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	—	—	—	—	—
Ethyl chloride	75-00-3	1000	2600	—	—	—	—	—
Ethyl ether	60-29-7	400	1200	500	1500	—	—	—
Ethyl formate	109-94-4	100	300	—	—	—	—	—
Ethyl mercaptan	75-08-1	0.5	1	—	—	—	—	—
Ethyl silicate	78-10-4	10	85	—	—	—	—	—
Ethylene chlorohydrin	107-07-3	—	—	—	—	1	3	X
Ethylenediamine	107-15-3	10	25	—	—	—	—	—
Ethylene dibromide	106-93-4	20	—	50 (5 min.)	—			
Ethylene dichloride	107-06-2	1	4	2	8	—	—	—
Ethylene glycol	107-21-1	—	—	—	—	50	125	—
Ethylene glycol dinitrate	628-96-6	—	—	—	0.1	—	—	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate								
Ethylene oxide[c]; see 1910.1047	75-21-8	1	—	5	—	—	—	—
Ethylidene chloride; see 1,1-Dichloroethane								
Ethylidene norbornene	16219-75-3	—	—	—	—	5	25	—
N-Ethylmorpholine	100-74-3	5	23	—	—	—	—	X
Fenamiphos	22224-92-6	—	0.1	—	—	—	—	X
Fensulfothion (Dasanit)	115-90-2	—	0.1	—	—	—	—	—
Fenthion	55-38-9	—	0.2	—	—	—	—	X
Ferbam	14484-64-1							
Total dust		—	10	—	—	—	—	—
Ferrovanadium dust	12604-58-9	—	1	—	3	—	—	—
Fibrous glass		—	1 f/cc	—	—	—	—	—
Fluorides (as F)		Varies with compound	—	2.5	—	—	—	—
Fluorine	7782-41-4	0.1	0.2	—	—	—	—	—
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	—	—	—	—	1000	5600	—
Fonofos	944-22-9	—	0.1	—	—	—	—	X
Formaldehyde[f, h]; see 19190.1048; 56 FR 32302	50-00-0	0.75	—	2	—	—	—	—
Formamide	75-12-7	20	30	30	45	—	—	—
Formic acid	64-18-6	5	9	—	—	—	—	—
Furfural	98-01-1	2	8	—	—	—	—	X
Furfuryl alcohol	98-00-0	10	40	15	60	—	—	X
Gasoline	8006-61-9	300	900	500	1500	—	—	—
Germanium tetrahydride	7782-65-2	0.2	0.6	—	—	—	—	—
Glutaraldehyde	111-30-8	—	—	—	—	0.2	0.8	—
Glycerin (mist)	56-81-5							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Glycidol	556-52-5	25	75	—	—	—	—	—
Glycol monoethyl ether; see 2-Ethoxyethanol								
Grain dust (oat, wheat, barley)		—	10	—	—	—	—	—
Graphite, natural, respirable dust	7782-42-5	—	2.5	—	—	—	—	—
Graphite, synthetic	7782-42-5							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Guthion; see Azinphos methyl								
Gypsum	13397-24-5							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Hafnium	7440-58-6	—	0.5	—	—	—	—	X
Heptachlor	76-44-8	—	0.5	—	—	—	—	—
Heptane (n-Heptane)	142-82-5	400	1600	500	2000	—	—	—
Hexachlorobutadiene	87-68-3	0.02	0.24	—	—	—	—	—
Hexachlorocyclopentadiene	77-47-4	0.01	0.1	—	—	—	—	X
Hexachloroethane	67-72-1	1	10	—	—	—	—	X
Hexachloronaphthalene	1335-87-1	—	0.2	—	—	—	—	X
Hexafluoroacetone	684-16-2	0.1	0.7	—	—	—	—	—
n-Hexane	110-54-3	50	180	—	—	—	—	—

TABLE Z.—Agriculture—Continued

Substance	CAS No.[a]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
Hexane isomers	Varies with compound	500	1800	1000	3600	—	—	—
2-Hexanone (Methyl n-butyl ketone)	591-78-6	5	20	—	—	—	—	—
Hexone (Methyl isobutyl ketone)	108-10-1	50	205	75	300	—	—	—
sec-Hexyl acetate	108-84-9	50	300	—	—	—	—	—
Hexylene glycol	107-41-5	—	—	—	—	25	125	—
Hydrazine	302-01-2	0.1	0.1	—	—	—	—	X
Hydrogenated terphenyls	61788-32-7	0.5	5	—	—	—	—	—
Hydrogen bromide	10035-10-6	—	—	—	—	3	10	—
Hydrogen chloride	7647-01-0	—	—	—	—	5	7	—
Hydrogen cyanide	74-90-8	—	—	4.7	5	—	—	X
Hydrogen fluoride (as F)	7664-39-3	3	—	6	—	—	—	—
Hydrogen peroxide	7722-84-1	1	1.4	—	—	—	—	—
Hydrogen selenide (as Se)	7783-07-5	0.05	0.2	—	—	—	—	—
Hydrogen sulfide	7783-06-4	10	14	15	21	—	—	—
Hydroquinone	123-31-9	—	2	—	—	—	—	—
2-Hydroxypropyl acrylate	999-61-1	0.5	3	—	—	—	—	X
Indene	95-13-6	10	45	—	—	—	—	—
Indium and compounds (as In)	7440-74-6	—	0.1	—	—	—	—	—
Iodine	7553-56-2	—	—	—	—	0.1	1	—
Iodoform	75-47-8	0.6	10	—	—	—	—	—
Iron oxide fume	1309-37-1	—	10	—	—	—	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	0.1	0.8	0.2	1.6	—	—	—
Iron salts (soluble) (as Fe)	Varies with compound	—	1	—	—	—	—	—
Isoamyl acetate	123-92-2	100	525	—	—	—	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100	360	125	450	—	—	—
Isobutyl acetate	110-19-0	150	700	—	—	—	—	—
Isobutyl alcohol	78-83-1	50	150	—	—	—	—	—
Isooctyl alcohol	26952-21-6	50	270	—	—	—	—	X
Isophorone	78-59-1	4	23	—	—	—	—	—
Isophorone diisocyanate	4098-71-9	0.005	—	0.02	—	—	—	X
2-Isopropoxyethanol	109-59-1	25	105	—	—	—	—	—
Isopropyl acetate	108-21-4	250	950	310	1185	—	—	—
Isopropyl alcohol	67-63-0	400	980	500	1225	—	—	—
Isopropylamine	75-31-0	5	12	10	24	—	—	—
N-Isopropylaniline	768-52-5	2	10	—	—	—	—	X
Isopropyl ether	108-20-3	500	2100	—	—	—	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	75	360	—	—	—
Kaolin	1332-58-7							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Ketene	463-51-4	0.5	0.9	1.5	3	—	—	—
Lead, inorganic (as Pb)[c]; see 1910.1025	7439-92-1	—	0.05	—	—	—	—	—
Limestone	1317-65-3							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Lindane	58-89-9	—	0.5	—	—	—	—	X
Lithium hydride	7580-67-8	—	0.025	—	—	—	—	—
L.P.G. (Liquefied petroleum gas)	68476-85-7	1000	1800	—	—	—	—	—
Magnesite	546-93-0							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Magnesium oxide fume	1309-48-4							
Total particulate		—	10	—	—	—	—	—
Malathion	121-75-5							
Total dust		—	10	—	—	—	—	X
Maleic anhydride	108-31-6	0.25	1	—	—	—	—	—
Manganese compounds (as Mn)	7439-96-5	—	—	—	—	—	5	—
Manganese fume (as Mn)	7439-96-5	—	1	—	3	—	—	—
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	—	0.1	—	—	—	—	X
Manganese tetroxide (as Mn)	1317-35-7	—	1	—	—	—	—	—
Marble	1317-65-3							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Mercury (aryl and inorganic) (as Hg)	7439-97-6	—	—	—	—	—	0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439-97-6	—	0.01	—	0.03	—	—	X
Mercury (vapor) (as Hg)	7439-97-6	—	0.05	—	—	—	—	X
Mesityl oxide	141-79-7	15	60	25	100	—	—	—
Methacrylic acid	79-41-4	20	70	—	—	—	—	X
Methanethiol; see Methyl mercaptan								
Methomyl (Lannate)	16752-77-5	—	2.5	—	—	—	—	—
Methoxychlor	72-43-5							
Total dust		—	10	—	—	—	—	—
2-Methoxyethanol (Methyl cellosolve)	109-86-4	20	80	—	—	—	—	X
2-Methoxyethanol acetate (Methyl cellosolve acetate)	110-49-6	25	120	—	—	—	—	X

TABLE Z.—Agriculture—Continued

Substance	CAS No.[a]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
4-Methoxyphenol	150-76-5	—	5	—	—	—	—	—
Methyl acetate	79-20-9	200	610	250	760	—	—	—
Methyl acetylene (Propyne)	74-99-7	1000	1650	—	—	—	—	—
Methyl acetylene-propadiene mixture (MAPP)	—	1000	1800	1250	2250	—	—	—
Methyl acrylate	96-33-3	10	35	—	—	—	—	X
Methylacrylonitrile	126-98-7	1	3	—	—	—	—	X
Methylal (Dimethoxymethane)	109-87-5	1000	3100	—	—	—	—	—
Methyl alcohol	67-56-1	200	260	250	310	—	—	X
Methylamine	74-89-5	10	12	—	—	—	—	—
Methyl amyl alcohol; see Methyl isobutyl carbinol								
Methyl n-amyl ketone	110-43-0	100	465	—	—	—	—	—
Methyl bromide	74-83-9	5	20	—	—	—	—	X
Methyl butyl ketone; see 2-Hexanone								
Methyl cellosolve; see 2-Methoxyethanol								
Methyl cellosolve acetate; see 2-Methoxyethyl acetate								
Methyl chloride	74-87-3	50	105	100	210	—	—	—
Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350	1900	450	2450	—	—	—
Methyl 2-cyanoacrylate	137-05-3	2	8	4	16	—	—	—
Methylcyclohexane	108-87-2	400	1600	—	—	—	—	—
Methylcyclohexanol	25639-42-3	50	235	—	—	—	—	—
o-Methylcyclohexanone	583-60-8	50	230	75	345	—	—	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	—	0.2	—	—	—	—	X
Methyl demeton	8022-00-2	—	0.5	—	—	—	—	X
4,4'-Methylene bis (2-chloroaniline) (MBOCA)	101-14-4	0.02	0.22	—	—	0.01	0.11	—
Methylene bis (4-cyclo-hexylisocyanate)	5124-30-1	—	—	—	—	—	—	—
Methylene chloride[h]; see 56 FR 57036	75-09-22	25	—	125	—	—	—	—
Methyl ethyl ketone (MEK); see 2-Butanone								
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	—	—	0.7	5	—
Methyl formate	107-31-3	100	250	150	375	—	—	—
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	—	—	—	—	0.2	0.35	X
Methyl iodide	74-88-4	2	10	—	—	—	—	X
Methyl isoamyl ketone	110-12-3	50	240	—	—	—	—	—
Methyl isobutyl carbinol	108-11-2	25	100	40	165	—	—	X
Methyl isobutyl ketone; see Hexone								
Methyl isocyanate	624-83-9	0.02	0.05	—	—	—	—	X
Methyl isopropyl ketone	563-80-4	200	705	—	—	—	—	—
Methyl mercaptan	74-93-1	0.5	1	—	—	—	—	—
Methyl methacrylate	80-62-6	100	410	—	—	—	—	—
Methyl parathion	298-00-0	—	0.2	—	—	—	—	X
Methyl propyl ketone; see 2-Pentanone								
Methyl silicate	681-84-5	1	6	—	—	—	—	—
alpha-Methyl styrene	98-83-9	50	240	100	485	—	—	—
Methylene bisphenyl isocyanate (MDI)	101-68-8	—	—	—	—	0.02	0.2	—
Metribuzin	21087-64-9	—	5	—	—	—	—	—
Mica; see Silicates								
Mineral wool		—	1 f/cc	—	—	—	—	
Molybdenum (as Mo)	7439-98-7							
Soluble compounds		—	5	—	—	—	—	—
Insoluble compounds								
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Monocrotophos (Azodrin)	6923-22-4	—	0.25	—	—	—	—	X
Monomethyl aniline	100-61-8	0.5	2	—	—	—	—	X
Morpholine	110-91-8	20	70	30	105	—	—	—
Naphtha (Coal tar)	8030-30-6	100	400	—	—	—	—	—
Naphthalene	91-20-3	10	50	15	75	—	—	—
Nickel, metal and insoluble compounds (as Ni)	7440-02-0	—	1	—	—	—	—	—
Nickel, soluble compounds (as Ni)	7440-02-0	—	0.1	—	—	—	—	X
Nicotine	54-11-5	—	0.5	—	—	—	—	—
Nitric acid	7697-37-2	2	5	4	10	—	—	—
Nitric oxide	10102-43-9	25	30	—	—	—	—	X
p-Nitroaniline	100-01-6	—	3	—	—	—	—	X
Nitrobenzene	98-95-3	1	5	—	—	—	—	X
p-Nitrochlorobenzene	100-00-5	—	1	—	—	—	—	—
Nitroethane	79-24-3	100	310	—	—	—	—	—
Nitrogen dioxide	10102-44-0	—	—	1	1.8	—	—	—
Nitrogen trifluoride	7783-54-2	10	29	—	—	—	—	—
Nitroglycerin	55-63-0	—	—	—	0.1	—	—	X
Nitromethane	75-52-5	100	250	—	—	—	—	—
1-Nitropropane	108-03-2	25	90	—	—	—	—	—
2-Nitropropane	79-46-9	10	35	—	—	—	—	—
N-Nitrosodimethylamine; see 1910.1016	62-79-9	2	11	—	—	—	—	X
Nitrotoluene (all isomers)								
o-isomer	88-72-2							
m-isomer	99-08-1							
p-isomer	99-99-0							

TABLE Z.—Agriculture—Continued

Substance	CAS No.[4]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
Nitrotrichloromethane; see Chloropicrin								
Nonane	111-84-2	200	1050	—	—	—	—	—
Octachloronaphthalene	2234-13-1	—	0.1	—	0.3	—	—	X
Octane	111-65-9	300	1450	375	1800	—	—	—
Oil mist, mineral	8012-95-1	—	5	—	—	—	—	—
Osmium tetroxide (as Os)	20816-12-0	0.0002	0.002	0.0006	0.006	—	—	—
Oxalic acid	144-62-7	—	1	—	2	—	—	—
Oxygen difluoride	7783-41-7	—	—	—	—	0.05	0.1	—
Ozone	10028-15-6	0.1	0.2	0.3	0.6	—	—	—
Paraffin wax fume	8002-74-2	—	2	—	—	—	—	—
Paraquat, respirable dust	4685-14-7 1910-42-5 2074-50-2	—	0.1	—	—	—	—	X
Parathion	56-38-2	—	0.1	—	—	—	—	X
Particulates not otherwise regulated								
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
PCB; see chlorodiphenyl (42% and 54% chlorine)								
Pentaborane	19624-22-7	0.005	0.01	0.015	0.03	—	—	—
Pentachloronaphthalene	1321-64-8	—	0.5	—	—	—	—	X
Pentachlorophenol	87-86-5	—	0.5	—	—	—	—	X
Pentaerythritol	115-77-5							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Pentane	109-66-0	600	1800	750	2250	—	—	—
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	250	875	—	—	—
Perchloroethylene (Tetrachloroethylene)	127-18-4	25	170	—	—	—	—	—
Perchloromethyl mercaptan	594-42-3	0.1	0.8	—	—	—	—	—
Perchloryl fluoride	7616-94-6	3	14	6	28	—	—	—
Perlite	93763-70-3							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Petroleum distillates (Naphtha)		400	1600	—	—	—	—	—
Phenol	108-95-2	5	19	—	—	—	—	X
Phenothiazine	92-84-2	—	5	—	—	—	—	X
p-Phenylene diamine	106-50-3	—	0.1	—	—	—	—	X
Phenyl ether, vapor	101-84-8	1	7	—	—	—	—	—
Phenyl ether-biphenyl mixture, vapor		1	7	—	—	—	—	—
Phenylethylene; see Styrene								
Phenyl glycidyl ether (PGE)	122-60-1	1	6	—	—	—	—	—
Phenylhydrazine	100-63-0	5	20	10	45	—	—	X
Phenyl mercaptan	108-98-5	0.5	2	—	—	—	—	—
Phenylphosphine	638-21-1	—	—	—	—	0.05	0.25	—
Phorate	298-02-2	—	0.05	—	0.2	—	—	X
Phosdrin (Mevinphos)	7786-34-7	0.01	0.1	0.03	0.3	—	—	X
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	—	—	—	—	—
Phosphine	7803-51-2	0.3	0.4	1	1	—	—	—
Phosphoric acid	7664-38-2	—	1	—	3	—	—	—
Phosphorus (yellow)	7723-14-0	—	0.1	—	—	—	—	—
Phosphorus oxychloride	10025-87-3	0.1	0.6	—	—	—	—	—
Phosphorus pentachloride	10026-13-8	—	1	—	—	—	—	—
Phosphorus pentasulfide	1314-80-3	—	1	—	3	—	—	—
Phosphorus trichloride	7719-12-2	0.2	1.5	0.5	3	—	—	—
Phthalic anhydride	85-44-9	1	6	—	—	—	—	—
m-Phthalodinitrile	626-17-5	—	5	—	—	—	—	—
Picloram	1918-02-1							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Picric acid	88-89-1	—	0.1	—	—	—	—	X
Piperazine dihydrochloride	142-64-3	—	5	—	—	—	—	—
Pindone (2-Pivalyl-1,3-indandione)	83-26-1	—	0.1	—	—	—	—	—
Plaster of Paris	26499-65-0							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Platinum (as Pt)	7440-06-4							
Metal		—	1	—	—	—	—	—
Soluble salts		—	0.002	—	—	—	—	—
Portland cement	65997-15-1							
Total dust		—	10	—	—	—	—	
Respirable fraction		—	5	—	—	—	—	
Potassium hydroxide	1310-58-3	—	—	—	—	—	2	—
Propargyl alcohol	107-19-7	1	2	—	—	—	—	X
beta-Propriolactone; see 1910.1013	57-57-8							
Propionic acid	79-09-4	10	30	—	—	—	—	—
Propoxur (Baygon)	114-26-1	—	0.5	—	—	—	—	—
n-Propyl acetate	109-60-4	200	840	250	1050	—	—	—

TABLE Z.—Agriculture—Continued

Substance	CAS No.[a]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
n-Propyl alcohol	71-23-8	200	500	250	625	—	—	—
n-Propyl nitrate	627-13-4	25	105	40	170	—	—	—
Propylene dichloride	78-87-5	75	350	110	510	—	—	—
Propylene glycol dinitrate	6423-43-4	0.05	0.3	—	—	—	—	—
Propylene glycol monomethyl ether	107-98-2	100	360	150	540	—	—	—
Propylene imine	75-55-8	2	5	—	—	—	—	X
Propylene oxide	75-56-9	20	50	—	—	—	—	—
Propyne; see Methyl acetylene								
Pyrethrum	8003-34-7	—	5	—	—	—	—	—
Pyridine	110-86-1	5	15	—	—	—	—	—
Quinone	106-51-4	0.1	0.4	—	—	—	—	—
Resorcinol	108-46-3	10	45	20	90	—	—	—
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	—	0.1	—	—	—	—	—
Rhodium (as Rh), soluble compounds	7440-16-6	—	0.001	—	—	—	—	—
Ronnel	299-84-3	—	10	—	—	—	—	—
Rosin core solder pyrolysis products, as formaldehyde		—	0.1	—	—	—	—	—
Rotenone	83-79-4	—	5	—	—	—	—	—
Rouge								
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Selenium compounds (as Se)	7782-49-2	—	0.2	—	—	—	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	—	—	—	—	—
Silica, amorphous, precipitated and gel	112926-00-8	—	6	—	—	—	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	—	6	—	—	—	—	
Silica, crystalline cristobalite, respirable dust	14464-46-1	—	0.05	—	—	—	—	—
Silica, crystalline quartz, respirable dust	14808-60-7	—	0.1	—	—	—	—	—
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	—	0.1	—	—	—	—	—
Silica, crystalline tridymite, respirable dust	15468-32-3	—	0.05	—	—	—	—	—
Silica, fused, respirable dust	60676-86-0	—	0.1	—	—	—	—	—
Silicates (less than 1% crystalline silica)								
Mica (respirable dust)	12001-26	—	3	—	—	—	—	—
Soapstone, total dust		—	6	—	—	—	—	—
Soapstone, respirable dust		—	3	—	—	—	—	—
Talc (containing asbestos): use asbestos limit		—	0.2 f/cc	—	1 f/cc (30 min.)	—	—	—
Talc (containing no asbestos), respirable dust	14807-96-6	—	2	—	—	—	—	—
Tremolite; see 1910.1001 for asbestiform, and for non-asbestiform see 1910.1101								
Silicon	7440-21-3							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Silicon carbide	409-21-2							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Silicon tetrahydride	7803-62-5	5	7	—	—	—	—	—
Silver, metal and soluble compounds (as Ag)	7440-22-4	—	0.01	—	—	—	—	—
Soapstone; see Silicates								
Sodium azide	26628-22-8							
(as HN_3)		—	—	—	—	0.1	—	X
(as NaN_3)		—	—	—	—	—	0.3	X
Sodium bisulfite	7631-90-5	—	5	—	—	—	—	—
Sodium fluoroacetate	62-74-8	—	0.05	—	0.15	—	—	X
Sodium hydroxide	1310-73-2	—	—	—	—	—	2	—
Sodium metabisulfite	7681-57-4	—	5	—	—	—	—	—
Starch	9005-25-8							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Stibine	7803-52-3	0.1	0.5	—	—	—	—	—
Stoddard solvent	8052-41-3	100	525	—	—	—	—	—
Strychnine	57-24-9	—	0.15	—	—	—	—	—
Styrene	100-42-5-2	50	215	100	425	—	—	—
Subtilisins (Proteolytic enzymes)	9014-01-1	—	—	—	0.00006[c] (60 min.)	—	—	—
Sucrose	57-50-1							
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Sulfur dioxide	7446-09-5	2	5	5	10	—	—	—
Sulfur hexafluoride	2551-62-4	1000	6000	—	—	—	—	—
Sulfuric acid	7664-93-9	—	1	—	—	—	—	—
Sulfur monochloride	10025-67-9	—	—	—	—	1	6	—
Sulfur pentafluoride	5714-22-7	—	—	—	—	0.01	0.1	—
Sulfur tetrafluoride	7783-60-0	—	—	—	—	0.1	0.4	—
Sulfuryl fluoride	2699-79-8	5	20	10	40	—	—	—

TABLE Z.—Agriculture—Continued

Substance	CAS No.[a]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
Sulprofos	35400-43-2	—	1	—	—	—	—	—
Systox, see Demeton								
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)	93-76-5	—	10	—	—	—	—	—
Talc; see Silicates								
Tantalum, metal and oxide dust	7440-25-7	—	5	—	—	—	—	—
TEDP (Sulfotep)	3689-24-5	—	0.2	—	—	—	—	X
Tellurium and compounds (as Te)	13494-80-9	—	0.1	—	—	—	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	—	—	—	—	—
Temephos	3383-96-8							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
TEPP (Tetraethyl pyrophosphate)	107-49-3	—	0.05	—	—	—	—	X
Terphenyls	26140-60-3	—	—	—	—	0.5	5	—
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	500	4170	—	—	—	—	—
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	500	4170	—	—	—	—	—
1,1,2,2-Tetrachloroethane	79-34-5	1	7	—	—	—	—	X
Tetrachloroethylene; see Perchloroethylene								
Tetrachloromethane; see Carbon tetrachloride								
Tetrachloronaphthalene	1335-88-2	—	2	—	—	—	—	X
Tetraethyl lead (as Pb)	78-00-2	—	0.075	—	—	—	—	X
Tetrahydrofuran	109-99-9	200	590	250	735	—	—	—
Tetramethyl lead, (as Pb)	75-74-1	—	0.075	—	—	—	—	X
Tetramethyl succino-nitrile	3333-52-6	0.5	3	—	—	—	—	X
Tetranitromethane	509-14-8	1	8	—	—	—	—	—
Tetrasodium pyro-phosphate	7722-88-5	—	5	—	—	—	—	—
Tetryl (2,4,6-Trinitrophenylmethylnitramine)	479-45	—	1.5	—	—	—	—	X
Thallium, soluble compounds (as Tl)	7440-28-0	—	0.1	—	—	—	—	X
4,4'-Thiobis (6-tert, Butyl-m-cresol)	96-69-5							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Thioglycolic acid	68-11-1	1	4	—	—	—	—	X
Thionyl chloride	7719-09-7	—	—	—	—	1	5	—
Thiram	137-26-8	—	5	—	—	—	—	—
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	—	2	—	—	—	—	—
Tin, organic compounds (as Sn)	7440-31-5	—	0.1	—	—	—	—	X
Tin oxide (as Sn)	21651-19-4	—	2	—	—	—	—	—
Titanium dioxide	13463-67-7							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Toluene	108-88-3	100	375	150	560	—	—	—
Toluene-2,4-diisocyanate (TDI)	584-84-9	0.005	0.04	0.02	0.15	—	—	—
m-Toluidine	108-44-1	2	9	—	—	—	—	X
o-Toluidine	95-53-4	5	22	—	—	—	—	X
p-Toluidine	106-49-0	2	9	—	—	—	—	X
Toxaphene; see Chlorinated camphene								
Tremolite; see Silicates								
Tributyl phosphate	126-73-8	0.2	2.5	—	—	—	—	—
Trichloroacetic acid	76-03-9	1	7	—	—	—	—	—
1,2,4-Trichlorobenzene	120-82-1	—	—	—	—	5	40	—
1,1,1-Trichloroethane; see Methyl chloroform								
1,1,2-Trichloroethane	79-00-5	10	45	—	—	—	—	X
Trichloroethylene	79-01-6-2	50	270	200	1080	—	—	—
Trichloromethane; see Chloroform								
Trichloronaphthalene	1321-65-9	—	5	—	—	—	—	X
1,2,3-Trichloropropane	96-18-4	10	60	—	—	—	—	—
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	1250	9500	—	—	—
Triethylamine	121-44-8	10	40	15	60	—	—	—
Trifluorobromomethane	75-63-8	1000	6100	—	—	—	—	—
Trimellitic anhydride	552-30-7	0.005	0.04	—	—	—	—	—
Trimethylamine	75-50-3	10	24	15	36	—	—	—
Trimethyl benzene	25551-13-7	25	125	—	—	—	—	—
Trimethyl phosphite	121-45-9	2	10	—	—	—	—	—
2,4,6-Trinitrophenyl; see Picric acid								
2,4,6-Trinitrophenylmethylnitramine; see Tetryl								
2,4,6-Trinitrotoluene (TNT)	118-96-7	—	0.5	—	—	—	—	X
Triorthocresyl phosphate	78-30-8	—	0.1	—	—	—	—	X
Triphenyl amine	603-34-9	—	5	—	—	—	—	—
Triphenyl phosphate	115-86-6	—	3	—	—	—	—	—
Tungsten (as W)	7440-33-7							
Insoluble compounds		—	5	—	10	—	—	—
Soluble compounds		—	1	—	3	—	—	—
Turpentine	8006-64-2	100	560	—	—	—	—	—
Uranium (as U)	7440-61-1							
Soluble compounds		—	0.05	—	—	—	—	—
Insoluble compounds		—	0.2	—	0.6	—	—	—
n-Valeraldehyde	110-62-3	50	175	—	—	—	—	—

TABLE Z.—Agriculture—Continued

Substance	CAS No.[d]	Proposed Final Rule Limits						Skin Designation
		TWA		STEL		CEILING		
		ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	ppm[a]	mg/m³[b]	
Vanadium	1314-62-1							
Respirable dust (as V_2O_5)		—	0.05	—	—	—	—	—
Fume (as V_2O_5)		—	0.05	—	—	—	—	—
Vegetable oil mist								
Total dust		—	15	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Vinyl acetate	108-05-4	10	30	20	60	—	—	—
Vinyl benzene; see Styrene								
Vinyl bromide	593-60-2	5	20	—	—	—	—	—
Vinyl chloride[h]; see 1910.1017	75-01-4	1	—	5	—	—	—	—
Vinyl cyanide; see Acrylonitrile								
Vinyl cyclohexene dioxide	106-87-6	10	60	—	—	—	—	X
Vinylidene chloride (1,1-Dichloroethylene)	75-35-4	1	4	—	—	—	—	—
Vinyl toluene	25013-15-4	100	480	—	—	—	—	—
VM & P Naphtha	8032-32-4	300	1350	400	1800	—	—	—
Warfarin	81-81-2	—	0.1	—	—	—	—	—
Welding fumes (total particulate)**		—	5	—	—	—	—	—
Wood dust, all soft and hard woods, except Western red cedar		—	5	—	10	—	—	—
Wood dust, Western red cedar		—	2.5	—	—	—	—	—
Xylenes (o-, m-, p- isomers)	1330-20-7	100	435	150	655	—	—	—
m-Xylene alpha, alpha'-diamine	1477-55-0	—	—	—	—	—	0.1	X
Xylidine	1300-73-8	2	10	—	—	—	—	X
Yttrium	7440-65-5	—	1	—	—	—	—	—
Zinc chloride fume	7646-85-7	—	1	—	2	—	—	—
Zinc chromate (as CrO_3)	13530-65-9	—	—	—	—		0.1	—
Zinc oxide fume	1314-13-2	—	5	—	10	—	—	—
Zinc oxide	1314-13-2							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Zinc stearate	557-05-1							
Total dust		—	10	—	—	—	—	—
Respirable fraction		—	5	—	—	—	—	—
Zirconium compounds (as Zr)	7440-67-7	—	5	—	10	—	—	—

Footnotes:
** As determined by breathing-zone air samples.
[a] Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 torr.
[b] Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.
[c] Duration is for 15 minutes, unless otherwise noted.
[d] The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given—not CAS numbers for the individual compounds.
[e] Compliance with the subtilisins PEL is assessed by sampling with a high volume sampler (600–900 liters per minute) for at least 60 minutes.
[f] The reference to the comprehensive standard is for informational purposes and is not binding in agriculture. Only the exposure limits and 1928.1000 are binding in agriculture.
[g] For sectors excluded from 1910.1028, the limit is 10 ppm and see 1910.1000, Table Z-2 for ceiling limits.
[h] Where OSHA has published a proposal for a substance separate from this rulemaking but has not issued a final rule. The proposal is referenced, and the proposed final limit is placed in the table. However, this is presented just for information purposes, and the substances are not being considered in this rulemaking.

XI. Appendices

For "Sampling and Analytical Methods" see 54 FR 2961–2983, January 19, 1989. Additional and updated material on this issue will be found in the docket established for this rulemaking (H–020–A).

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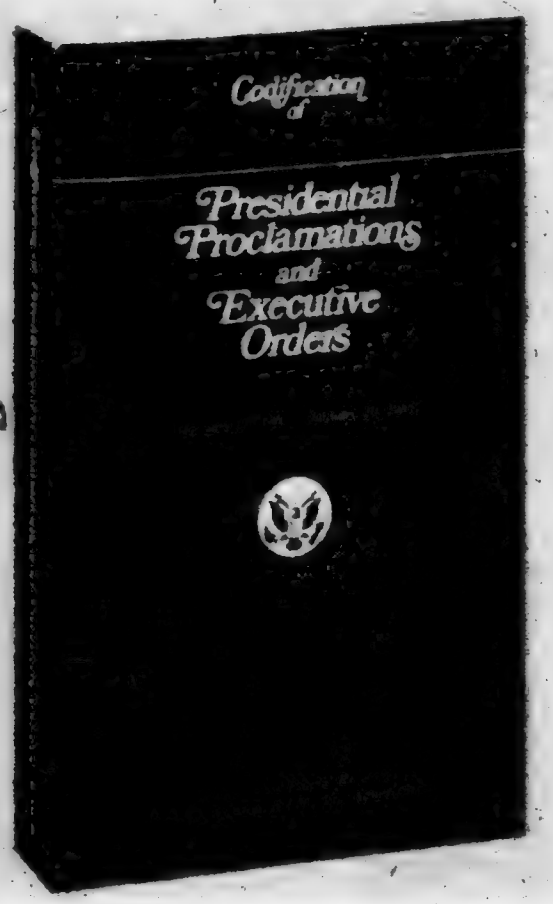

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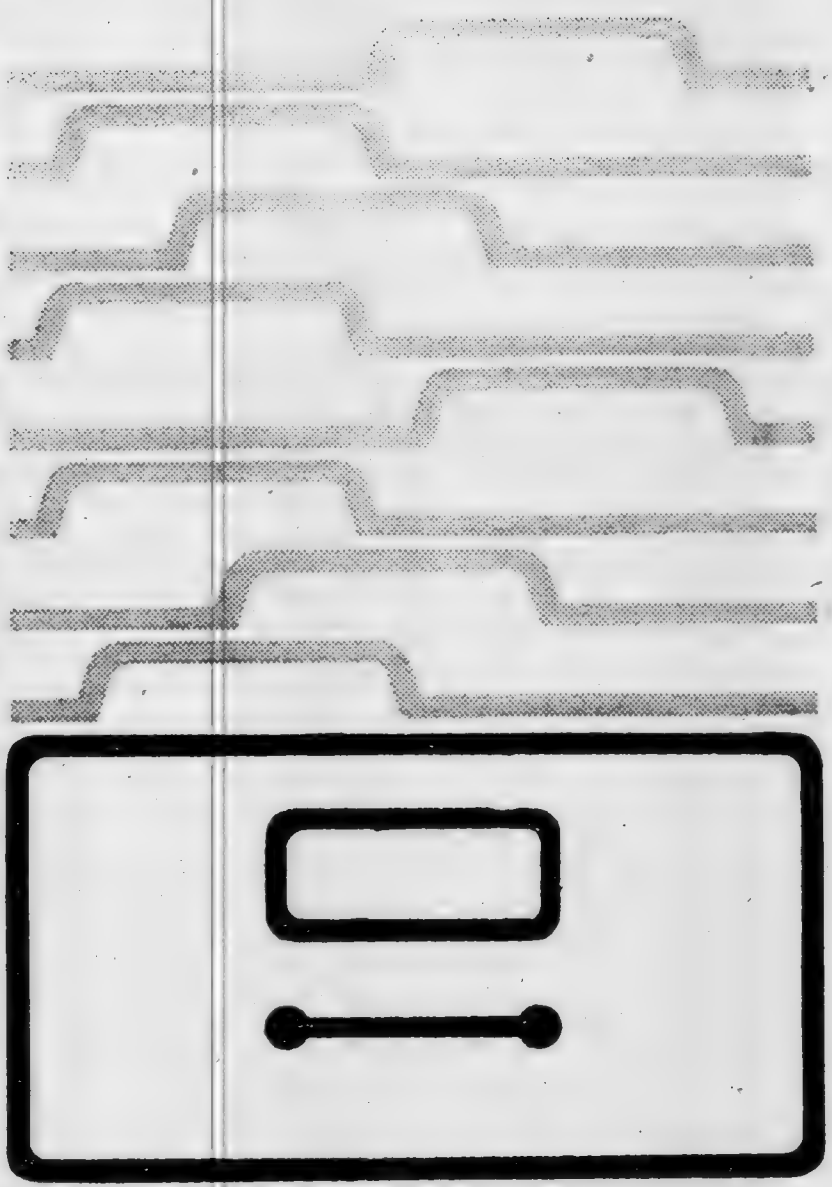

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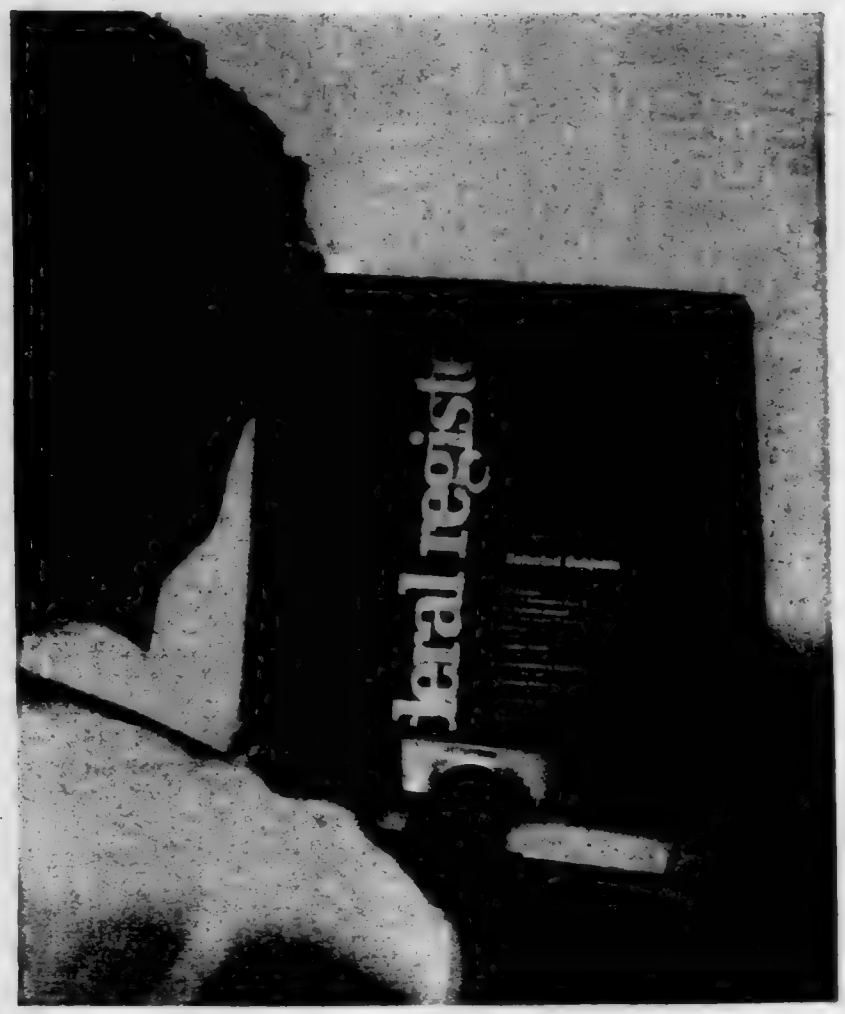

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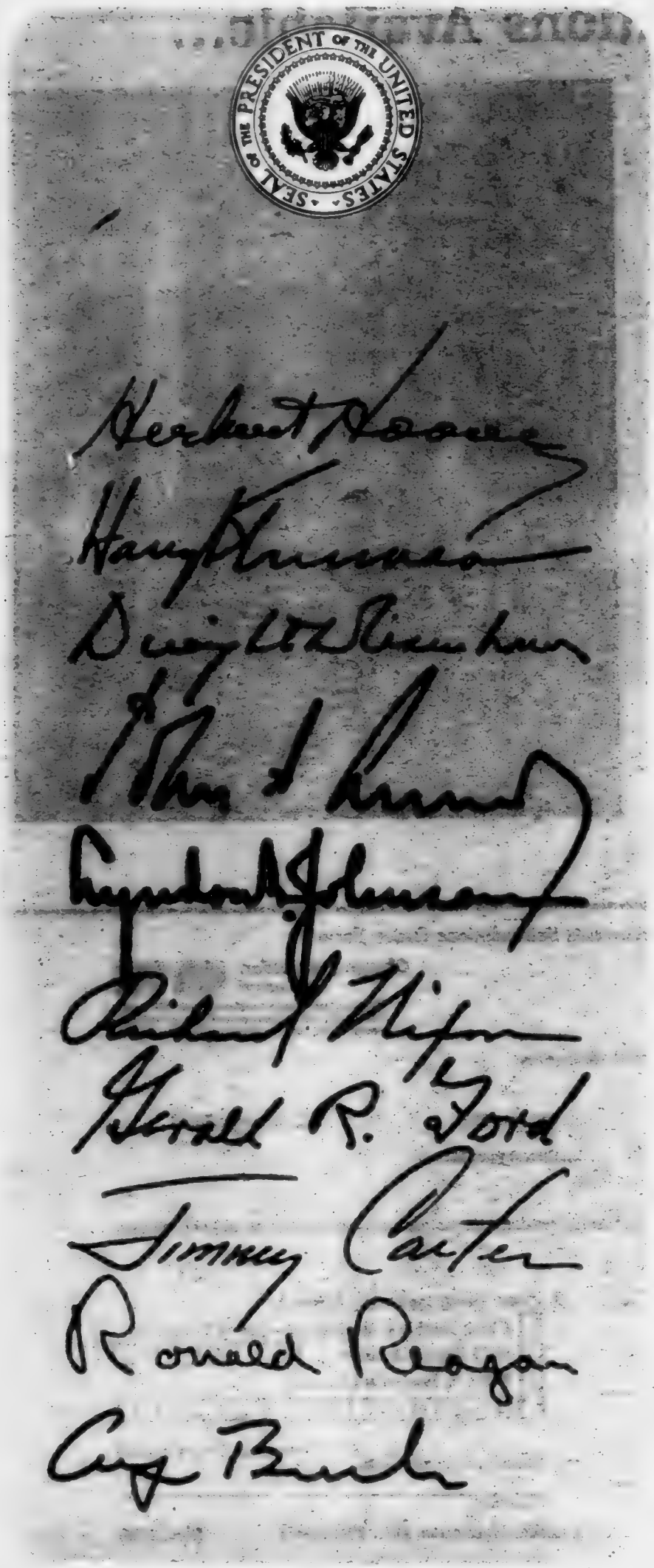

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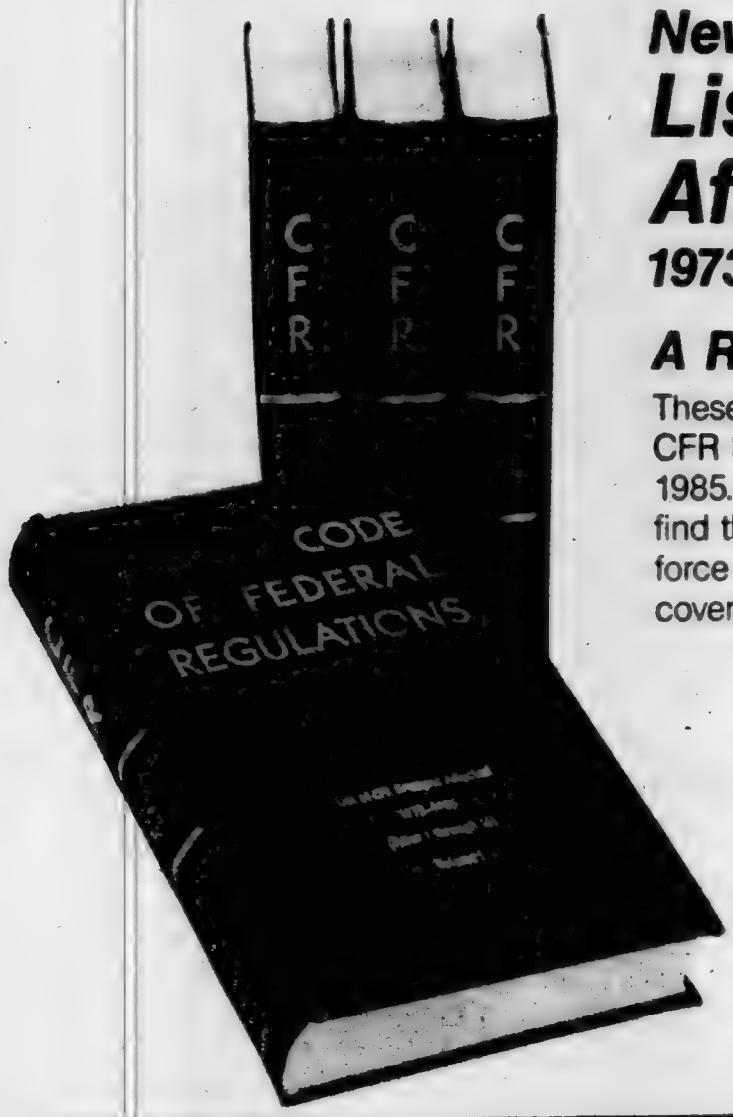

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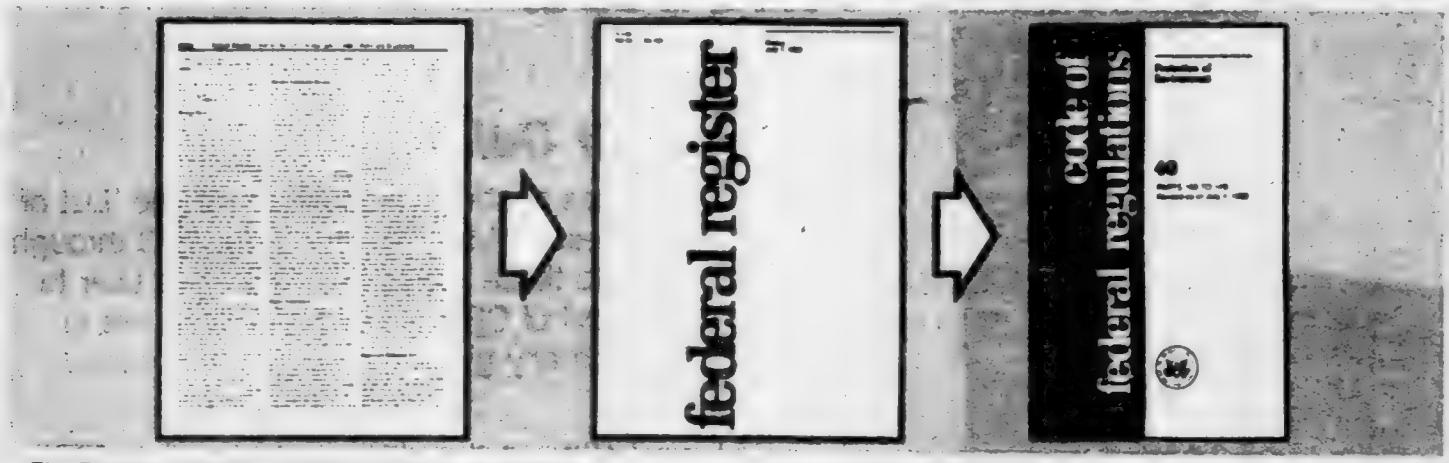

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Rules and Regulations

Federal Register
Vol. 57, No. 115
Monday, June 15, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

Pay Rates and Systems (General); Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is rescinding portions of the interim regulations issued by OPM on May 3, 1991 (56 FR 20334), which have not yet been made final, to implement the decision of the U.S. District Court for the District of Columbia (*National Treasury Employees Union* v. *Newman*, Number 83–0279 (D.D.C., June 28, 1991)), in which the court ordered OPM to promulgate a conversion rule for adjusting the pay schedules of employees paid special salary rates as required by 5 U.S.C. 5305(f) and as consistent with the guidelines set forth in the decision.

DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 606–1413.

SUPPLEMENTARY INFORMATION: On June 28, 1991, the U.S. District Court for the District of Columbia issued a decision, cited above, affecting the manner in which the pay schedules of certain Federal employees paid special salary rates shall be adjusted in anticipation of salary adjustments made in the relevant underlying statutory pay schedules. The court concluded that OPM must consider the following factors when formulating the appropriate "conversion rule" for adjusting the pay schedules of special salary rate employees:

(1) OPM must take into consideration the former non-special pay rate of the special rate employee to avoid any action that would allow the salary of a special rate employee to fall below the salary the employee would have received if still a non-special rate employee.

(2) The starting point for making any adjustment shall be the statutory increase given to non-special rate employees. The reasoning behind this step is that the factors leading to a statutory increase in pay will most likely affect the special rate employee as well.

(3) OPM should then review the special pay rate in a given occupation and location to determine whether an adjustment is necessary to recruit and retain special rate employees. (It may be that such a review was undertaken prior to the date of the statutory pay increase.) Such a review may lead to a determination, taking into consideration such matters as special rate pay adjustments that year or in previous years, that no increase is necessary for the special rate employees, notwithstanding that there is a statutory increase for non-special rate employees, or that an increase that is greater than the statutory increase is necessary for the special rate employees in order to recruit and retain such employees in the involved occupation and location.

(4) OPM will make such adjustment based on the requirements of 5 U.S.C. 5305, not for mechanical reasons or for the purpose of automatic adjustments.

In view of the court's decision, interim regulation 5 CFR 530.307(a) is being rescinded because it contains an automatic adjustment mechanism that the court concluded would not be proper. Elsewhere in this **Federal Register** issue, OPM is proposing that interim regulation 5 CFR 530.304, providing for an annual review of special salary rate schedules, be amended in order to have it conform with the court's criteria. Proposed regulation 5 CFR 530.304 requires OPM to conduct a review of existing special salary rate schedules prior to the effective date of an adjustment in the scheduled rates of pay, or at least annually, to determine the extent to which that adjustment shall apply to the special rate schedules. The criteria OPM considers include giving full consideration to the court's guidelines in conjunction with the factors that appear in 5 CFR 530.303 of the interim regulations. In accordance with the changes made in 5 CFR 530.304, necessary revisions have also been proposed in 5 CFR 530.307.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. Section 530.307(a) of the interim regulations is being rescinded immediately because it does not comply with a decision of the U.S. District Court for the District of Columbia. The notice is being waived and the rescission is being made effective immediately to enable OPM to implement the court's decision at the earliest practicable date.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 530 as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for 5 CFR part 530 continues to read as follows:

Authority: 5 U.S.C. 5305; E.O. 12748, 56 FR 4521.

§ 530.307 [Amended]

2. In § 530.307, paragraph (a) is removed and paragraphs (b), (c), and (d) are redesignated as (a), (b), and (c), respectively.

[FR Doc. 92-13817 Filed 6-12-92; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Neomycin Sulfate Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Pfizer, Inc. The ANADA provides for the use of a generic neomycin sulfate soluble powder for the treatment and control of colibacillosis in cattle (excluding veal calves), swine, sheep, and goats.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8623.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed ANADA 200-046 which provides for the use of a generic neomycin sulfate soluble powder for the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin sulfate in cattle (excluding veal calves), swine, sheep, and goats. The neomycin sulfate soluble powder covered by ANADA 200-046 is a generic copy of the Upjohn Co.'s FDA-approved product (NADA 11-315). The data in ANADA 200-046 demonstrate that Pfizer, Inc.'s generic neomycin sulfate soluble powder satisfies the requirements of the Federal Food, Drug, and Cosmetic Act as amended by the Generic Animal Drug and Patent Term Restoration Act of 1988. Accordingly, the ANADA is approved as of May 15, 1992, and 21 CFR 520.1484 is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

There are no current patent or exclusivity rights which would prohibit this approval.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1484 is amended by revising paragraph (b) to read as follows:

§ 520.1484 Neomycin sulfate soluble powder.

* * * * *

(b) *Sponsors.* See Nos. 000009 and 000069 in § 510.600(c) of this chapter.

* * * * *

Dated: June 8, 1992.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 92-13965 Filed 6-12-92; 8:45 am]
BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

June 9, 1992.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning July 1, 1992. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after July 1, 1992 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the Subpart C formulas to

determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since March 1, 1992. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after July 1, 1992, which set reflects a decrease of ¼ percent in the immediate interest rate from 6½ percent to 6¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after July 1, 1992, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good causes exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 97 of appendix B is revised and Rate Set 98 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
• • •	•	•	•	•	•	•	•	
97	3-1-92	7-1-92	6.50	1.0575	1.0450	1.0400	7	8
98	7-1-92	.....	6.25	1.0550	1.0425	1.0400	7	8

Issued in Washington, DC, on this 8th day of June, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-13970 Filed 6-12-92; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of July 1992.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC finds the notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United

States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
July 1992	.06625	.065	.06375	.0625	.06125	.06	.06	.06	.06	.06	.05875	.05875	.05875	.05875	.05875	.055

Issued at Washington, D.C., on this 8th day of June 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-13971 Filed 6-12-92; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-92-21]

Special Local Regulations for Marine Events; The Great Chesapeake Bay Swim Event, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.507.

SUMMARY: This document implements 33 CFR 100.507 for the Great Chesapeake Bay Swim Event to be held on June 28, 1992. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATE: The regulations in 33 CFR 100.507 are effective from 7:30 a.m. to 1 p.m., June 28, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Baltimore (301) 576-8516.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QMI Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Mr. Charles Nabit, representing the March of Dimes submitted an application on April 7, 1992 to hold the Great Chesapeake Bay Swim Event on June 28, 1992. Approximately 600 swimmers will start from Sandy Point State Park and swim between the William P. Lane Jr. Memorial Twin Bridges to the Eastern Shore. Since this is the type of event contemplated by these regulations, and the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.507 are being implemented. Vessel traffic will be permitted to transit the regulated area as the swim progresses, so commercial traffic should not be severely disrupted.

Dated: June 5, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92-13967 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

[FPMR Temp. Reg. G-54, Supp. 1]

Use of Contractor for Express Small Package Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: FPMR temporary regulation G-54 mandates the use of the GSA's contractor by Federal civilian executive agencies when next day express small package transportation is required. The regulation contains a description of the services provided, an appendix listing the rates and accessorial charges, and information concerning the provisions of the contract. This supplement extends the expiration date of FPMR Temp. Reg. G-54 which, as revised, reflects the current contract.

DATES: Effective Date: January 15, 1992. Expiration Date: November 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Pollock, Transportation Management Division, 703-305-5671.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Under the Administrator's authority, 40 U.S.C. 486(c), 41 CFR chapter 101 is amended by adding FPMR Temp. Reg. G-54, Supplement 1 to the appendix at the end of subchapter G to read as follows:

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER G—AVIATION, TRANSPORTATION, AND MOTOR VEHICLES

Appendix to Subchapter G—Temporary Regulations

* * * * *

[FPMR Temp. Reg. G–54; Supplement 1]

April 16, 1992

Use of Contractor for Express Small Package Transportation

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation G–54.

2. *Effective date.* This supplement is effective January 15, 1992.

3. *Expiration date.* This supplement expires November 15, 1992, unless sooner canceled or revised.

4. *Background.* FPMR Temporary Regulation G–54, dated July 9, 1991, prescribes policies and procedures applicable to Federal agencies when transportation of express small packages from, to, and between specified locations in the United States (including Alaska and Hawaii) and Puerto Rico, is required and the contractor or its agent provides next day service. This regulation also identifies the contractor and the effective rates.

5. *Explanation of change.* The expiration date in paragraph 3 of FPMR Temporary Regulation G–54 is extended to November 15, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–13747 Filed 6–12–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6930

[NM–940–4214–10; NMNM 81795]

Withdrawal of Public Land for Wild Rivers Recreation Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,979.94 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Wild Rivers Recreation Area near the vicinity of Cerro, New Mexico. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–7115, 505–438–7593.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Wild Rivers Recreation Area:

New Mexico Principal Meridian

T. 28 N., R. 12 E.,
- Sec. 3, lots 1 to 4, inclusive, and S½N½;
- Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 5, lots 1 to 4, inclusive, S½N½, N½SW¼, and SE¼;
- Sec. 6, lot 1, and SE¼NE¼;
- Sec. 8, E½E½ and E½W½E½;
- Sec. 9, NW¼NE¼, W½SW¼NE¼, W½SW¼, W½E½SW¼, and NE¼NE¼SW¼;
- Sec. 16, NW¼NW¼;
- Sec. 17, E½NE¼ and E½W½NE¼.

T. 29 N., R. 12 E.,
- Sec. 22, W½SW¼ and W½E½SW¼;
- Sec. 27, W½W½E½ and W½;
- Sec. 28;
- Sec. 29, lots 1 to 8, inclusive, E½E½, SE¼SE¼NW¼, E½NE¼SW¼, and SE¼SW¼;
- Sec. 31, SE¼SE¼;
- Sec. 32, E½NW¼NW¼;
- Sec. 33;
- Sec. 34, W½.

The area described contains 4,979.94 acres in Taos County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: June 3, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92–13986 Filed 6–12–92; 8:45 am]

BILLING CODE 4310–FB–M

43 CFR Public Land Order 6931

[CO–930–4920–10–4329; COC–53301]

Transfer of Public Land for the Gunnison Disposal Site; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order permanently transfers 115 acres of public land to the Department of Energy in accordance with the terms of the Uranium Mill Tailings Remedial Action Amendments Act of 1988.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–1706.

By virtue of the authority vested in the Secretary of the Interior by the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916 (1988)), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby permanently transferred to the Department of Energy, and as a result of this transfer, the land is no longer subject to the operation of the general land laws, including the mining and mineral leasing laws, for the Gunnison Disposal Site:

New Mexico Principal Meridian

T. 49 N., R. 1 E.,
- Sec. 15, S½SW¼NE¼NE¼, S½S½NW¼NE¼, SW¼NE¼, W½SE¼NE¼, S½SE¼NE¼NW¼, NE¼SE¼NW¼, N½SE¼SE¼NW¼, SE¼SE¼SE¼NW¼, NE¼NE¼NE¼SW¼, N½NW¼NE¼SE¼, and N½N½NW¼SE¼.

The area described contains approximately 115 acres of public land in Gunnison County.

2. The transfer of the above-described land to the Department of Energy vests in that Department the full management jurisdiction, responsibility, and liability for such land and all activities conducted thereon, except as provided in paragraph 3.

3. The Secretary of the Interior shall retain the authority to administer any existing claims, rights, and interests in this land established before the effective date of the transfer.

Dated: June 3, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92–13985 Filed 6–12–92; 8:45 am]

BILLING CODE 4310–JB–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91-139; RM-6711, FCC 92-232]

Private Land Mobile Radio Services; Fire Radio Frequency Power Increase

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: To improve on-the-scene fire fighting communications, the Commission has adopted a *Report and Order* that increases the allowable transmitter power for the Fire Radio Service frequency 153.83 MHz to 100 watts and restricts the use of this frequency to mobile use.

EFFECTIVE DATE: The effective date of the rule change is July 15, 1992.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 91-139, adopted May 22, 1992, and released June 5, 1992. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, telephone (202) 452-1422.

Summary of Report and Order

The Fire Radio Service frequency 153.83 MHz is currently designated for mobile and fixed use and is limited to a transmitter output power of 10 watts. In May 1991, a Notice of Proposed Rulemaking, 56 FR 25650, June 5, 1991 6 FCC Rcd 3426 (1991) was released that proposed to increase the authorized transmitter power from 10 watts to 100 watts and eliminate the fixed use designation. This *Report and Order* amends the Commission's Rules by adopting these proposals. These changes will permit increased on-the-scene fire-fighting communications capability.

List of Subjects in 47 CFR Part 90

Private land mobile radio, Fire Radio Service, Radio

Amendatory Text

47 CFR part 90 is amended as follows:

PART 90—[AMENDED]

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 331, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 and 332 unless otherwise noted.

2. 47 CFR 90.21 is amended by revising the entry for 153.83 in the table in paragraph (b) and by adding paragraph (c)(18) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
153.83	Mobile	18

(c) * * *

(18) The maximum output power of any transmitter authorized to operate on this frequency shall not exceed 100 watts. Stations authorized prior to July 15, 1992 for fixed operations will be permitted to continue such operations, but at a maximum transmitter power output of 10 watts.

* * * * *

3. 47 CFR 90.555 is amended by revising the entry for 153.830 in the table in paragraph (b) to read as follows:

§ 90.555 Combined Frequency Listing.

* * * * *

(b) * * *

Frequency	Services	Special limitations
153.830	PF	Max. Power 100 W.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13671 Filed 6-12-92; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 513 and 552

[APD 2800.12A CHGE 40]

General Services Administration Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), is amended to revise paragraph (a) to delete unnecessary language, revise paragraph (b)(1) to increase the threshold for use of certified invoice procedures and to amend paragraph (g) of section 513.7001; and revise section 552.242-70 to delete the requirement for the use of GSA Form 1678 as a cover page when submitting the required information via an automated printout form in lieu of the GSA form. Copies of GSA forms may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Sts., NW., Washington, DC 20405. The intended effect is to provide guidance to GSA contracting activities and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy (VP), (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public comments

This rule was not published in the **Federal Register** for public comment because it is not a significant revision as defined in FAR 1.501-1.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule was not required to be published in the **Federal Register** for public comment.

D. Paperwork Reduction Act

This rule contains an information collection requirement that has been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and assigned OMB Control No. 3090-0027. The title of the collection is 48 CFR part 546, "Status Report of Orders and Shipments." The clause requires contractors to submit a monthly report showing the status of processing of orders received under the contract. The estimated annual burden for this collection is 3,900 hours. This is based on an estimated average burden hour per response of approximately 2 hours, 1 response per respondent, and an estimated 300 respondents per year. No

greater burden is imposed by this rule. Comments on the information collection may be directed to the Office of Information and Regulatory Affairs of OMB. Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 513 and 552

Government procurement.

Accordingly, 48 CFR parts 513 and 552 are amended to read as follows:

PART 513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR parts 513 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 513.7001 is amended by revising paragraphs (a), (b)(1), and (g) to read as follows:

§ 513.7001 Certified invoice procedure for procurements not requiring a written purchase order.

(a) When advantageous to the Government, supplies or services may be acquired on the open market from local suppliers using vendors' invoices instead of purchase orders. Certified invoice procedures may not be used to place orders under established contracts unless authorized in the contract.

(b) * * *

(1) The amount of any one purchase is $2,000 or less for construction services and $2,500 or less for supplies or service other than construction.

* * * * *

(g) Upon receiving the invoice, the receiving office shall time-stamp the invoice to indicate the date the invoice is received, verify the accuracy of the invoiced amount, and verify that the supplies and/or services have been received and accepted. The contracting officer or a designated representative shall obtain a certification of receipt and acceptance from the individual that actually inspected and accepted the supplies and/or services before certifying the invoice and forwarding to the appropriate Finance Division for payment. Supplies and/or services should be inspected and accepted or rejected within 7 calendar days of delivery/completion. The invoice must be forwarded to the appropriate Finance Division for payment within 5 workdays after receipt of the invoice or acceptance of the supplies and/or services, whichever is later. Before forwarding the invoice to Finance, the contracting officer shall stamp it with the Certified Invoice Stamp, complete the accounting information, type of business (corporation, sole proprietorship/partnership, or other), and certification, and affix the ACT number label. If a Certified Invoice Stamp is not available, place the following statement on the invoice along with the ACT number label, accounting information and the type of business. (Note: In some organizations, the ACT number label is affixed by a budget or executive office within the service or staff office.)

"I certify that these goods and/or services were received on *[Date]* and accepted on *[Date]*. An oral purchase was authorized and no confirming order has been issued."

Signature of Contracting/Ordering Officer

Print name and telephone No.
I20Date Invoice received

3. Section 552.242–70 is revised to read as follows:

§ 552.242–70 Status Report of Orders and Shipments.

As prescribed in 542.1107, insert the following clause:

Status Report of Orders and Shipments (Apr 1992)

(a) The contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instruction on the form. The information required by the GSA Form 1678 may also be submitted in an automated printout form if authorized by the ACO. Alternatively, the required information may be reported by electronic data interchange using ANSI standards. For further information, contact GSA, Contract Administration Division [Contracting Officer insert appropriate telephone number of FQC]. Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or reproduced by the Contractor.

(End of Clause)

Dated: June 1, 1992.

Arthur E. Ronkovich,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 92–13762 Filed 6–12–92; 8:45 am]
BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 74]

RIN 2127–AD10

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration; Technical amendment.

SUMMARY: This notice responds to the two petitions asking for reconsideration of this agency's final rule extending the automatic crash protection requirements currently applicable to passenger cars to light-duty trucks, buses, and multipurpose passenger vehicles. This notice corrects a typographical error noted in one of the petitions, but denies the petitions in all other respects. More specifically, this notice denies a request to change the test conditions to eliminate the claimed effects of electrostatic discharge on the force measurements recorded during compliance testing. The petitioner did not present any evidence to show either that electrostatic discharge occurs during compliance testing or how, even if an electrostatic discharge were to occur, it would affect the force measurements recorded. This notice also denies requests to change the language specifying the distribution of the test load and the applicability of the phase-in requirements to multistage vehicles, because such changes are unnecessary. Finally, this notice denies a request to exempt multistage vehicles from the automatic crash protection requirements. Since the petitioner presented no new information or arguments to support its request, NHTSA has no basis for reaching a different conclusion than it reached when it previously considered this issue.

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cohen, Chief, Frontal Crash Protection Division, NRM–12, room 5320, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366–2264.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection (49 CFR 571.208), is intended

to reduce the likelihood of occupant deaths and the likelihood and severity of occupant injuries in crashes. As one means of achieving these goals, Standard No. 208 has long required the installation of safety belts in passenger cars. Since September 1, 1989, Standard No. 208 has also required each new passenger car to be equipped with automatic crash protection for outboard front-seat occupants. Vehicle seating positions equipped with automatic crash protection protect their occupants by means that require no action by the occupants. The effectiveness of a vehicle's automatic crash protection is dynamically tested; that is, a vehicle must comply with specified injury criteria, as measured on a test dummy, when tested by this agency in a 30 mile per hour barrier crash test. The two types of automatic crash protection currently offered on new passenger cars are automatic safety belts (whose automatic nature helps to encourage belt use) and air bags (which supplement safety belts and offer some protection even when safety belts are not used). Automatic crash protection in cars will save thousands of lives and prevent tens of thousands of serious injuries each year when all cars are so equipped.

NHTSA decided it was appropriate to consider whether other light-duty vehicles should be required to provide automatic crash protection. The agency focused on trucks, multipurpose passenger vehicles (such as passenger vans and four-wheel drive utility vehicles), and buses, all with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These vehicles are collectively termed "light trucks" throughout the rest of this preamble. Although Standard No. 208 has long required the installation of safety belts at all designated seating positions in light trucks, it has not required those vehicles to provide automatic crash protection. NHTSA concluded that automatic crash protection in light trucks could prevent more than 2,000 fatalities and more than 28,000 serious injuries every year. Moreover, the agency concluded that it would be feasible to equip light trucks with automatic crash protection and that this could be done at a cost that was very reasonable in relation to the safety benefits. These factors led NHTSA to propose to require automatic crash protection in light trucks in a notice of proposed rulemaking (NPRM) published on January 9, 1990 (55 FR 747).

The NPRM proposed to measure the performance of the light truck automatic crash protection by using the same dynamic crash test procedures specified in Standard No. 208 for passenger cars. Additionally, the NPRM proposed to ease the implementation of the light truck automatic crash protection requirements by phasing them in, as was done with the passenger car automatic crash protection requirements. Finally, to encourage the production of the light trucks with air bags, it proposed to provide a "one-truck credit" for vehicles with an air bag at the driver's position and a manual safety belt for the other outboard front seat occupant. The provision is similar to the "one-car credit" provided in Standard No. 208 for passenger cars. (See S4.1.4.3 of Standard No. 208.)

NHTSA received 34 comments in response to this NPRM. Commenters included vehicle manufacturers, air bag suppliers, trade associations, representatives of the insurance industry, academia, other governmental agencies, and consumers. Several of the manufacturers commented that they would have difficulty complying with some or all of the elements of the proposed implementation schedule. To further explore the issues raised by these comments, NHTSA requested additional information from five vehicle manufacturers (Chrysler, Ford, General Motors, Mazda, and Toyota) on May 24, 1990.

NHTSA considered and analyzed all of the comments and other submissions by the public in developing the final rule published on March 26, 1991 (56 FR 12472). That final rule essentially adopted the requirements proposed in the NPRM, with some minor modifications. The automatic crash protection requirements for light trucks will be phased-in over a period of several years, beginning with light trucks manufactured on or after September 1, 1994. Compliance with the automatic crash protection requirements will be evaluated by conducting the same type of test and using the same injury criteria as Standard No. 208 specifies for passenger cars. Final stage manufacturers and alterers will not be required to assure that a specified percentage of their vehicles comply with the automatic crash protection requirements of Standard No. 208 during the phase-in period. However, once the phase-in is completed, all subject light trucks, including those produced by final stage manufacturers and alterers, must be equipped with automatic crash protection. Interested readers may wish to review the March 26, 1991 final rule for more details about its provisions.

Petitions for Reconsideration

Two timely petitions for reconsideration of the March 26 rule were filed with NHTSA. The petitioners were Ford Motor Co. (Ford) and the National Truck Equipment Association (NTEA). Ford requested the agency to modify the test criteria to reduce test variability; to specify more precisely vehicle loading during compliance tests; and to clarify the applicability of phase-in attribution requirements to multi-stage vehicles. NTEA argued that there was no safety need to extend the automatic crash protection requirements to multi-stage work-related light trucks. It argued also that, because of certification difficulties, the requirements were impracticable for final stage manufacturers. Finally, it argued that the agency improperly concluded that the requirements would have no impact on small businesses.

NHTSA Authorization Act of 1991

On December 18, 1991, the President signed into law legislation which includes provisions mandating the installation of air bags in light trucks. That legislation is the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240). The air bag provisions for light trucks appear in Title II, Part B of that Act, also known as the National Highway Traffic Safety Administration Authorization act of 1991. Section 2508 (105 stat. 2084–2087) provides that the agency must amend Standard No. 208 to require that the driver's and the front right passenger's seats in light trucks be equipped with air bags. This requirement must apply to 80 percent of each manufacturer's annual production of light trucks manufactured on or after September 1, 1997, and before September 1, 1998, and to all light trucks manufactured after that period. Further, the requirement must apply to all light trucks, making no distinction between those that are single stage and those that are multi-stage.

NHTSA Response to Petitions for Reconsideration

The actions requested by the petitioners and the agency's responses to those requests are as follows:

1. Ford Petition

(a) Modify Test Criteria to Reduce Test Variability.

Ford stated in its petition that it "continues to be concerned about the unacceptably high variability and unpredictability in dynamic test results." Ford suggested that the variability would be further exacerbated

by the wide range of light truck models. Ford alleged that one cause of variability is electrostatic discharge, which, according to Ford, "can result in much higher HIC readings during dynamic tests conducted on dry winter days than on identical tests conducted on humid summer days." (HIC is an acronym for Head Injury Criterion, and is calculated from readings taken by a triaxial accelerometer mounted in the test dummy's head.) In accordance with this belief, Ford asked for reconsideration of the Standard No. 208 test conditions to eliminate the effects of electrostatic discharge on HIC measurements.

Test data signal anomalies have occasionally been recorded during NHTSA's crash testing. In some of the tests, there were so-called "spikes." A "spike" means a situation in which an apparent force or acceleration is recorded during a crash test, without any explanation for such a force or acceleration occurring at that time or with such magnitude. For example, a spike may consist of the recording of an acceleration of the dummy in a direction that is inconsistent with the direction of the crash forces, a recorded acceleration and deceleration in an impossibly short period of time, a recorded total force of extraordinary magnitude without any corresponding damage to the dummy, and so forth.

NHTSA acknowledges that it is theoretically possible that electrostatic phenomena could play a role in producing spikes in crash tests, especially crash tests of vehicles equipped with air bags. Static electricity can be built up by friction between dissimilar materials. Air bags are made of a fabric material, while the test dummy is clothed in formfitting cotton stretch garments with shoes upon its feet. Either the air bag fabric or the test dummy's clothing or both could contribute to the generation of static electricity under certain conditions during a crash test. However, the agency's acknowledgement that the occurrence of electrostatic discharges is theoretically possible still leaves the agency far from convinced that it should adopt special provisions (such as requiring the test dummy's garments to be grounded to the vehicle structure) to regulate electrostatic discharge during Standard No. 208 compliance tests.

Contrary to Fords's implication, Standard No. 208 currently specifies environmental limits which are to be followed during all compliance crash tests. The stabilized temperature of the test dummy must be between 66° and 78° Fahrenheit when the Hybrid II test dummy is used, and between 69° and 72° Fahrenheit when the Hybrid III test dummy is used. See S8.1.12 of Standard No. 208. These temperature limits apply to the test dummy under all ambient weather conditions. Thus, they are to be followed regardless of whether the crash test is conducted on a 20° day in the winter or a 90° day in the summer.

These temperature limits apparently have adequately controlled environmental effects on crash test results. Various manufacturers and independent test laboratories have conducted crash tests all over the world under a wide variety of environmental conditions. NHTSA is not aware of any information suggesting that spikes, whether from electrostatic discharge or other sources, occur more frequently in winter than in summer. Ford did not provide any information in its petition showing that the spikes it experienced during winter testing were disproportionate to the spikes experienced during summer testing. Thus, NHTSA has no reason to conclude that test variability from electrostatic discharges is a serious problem under the existing test procedures.

Further, even if NHTSA were to accept Ford's allegation about test variability, the existence of such variability would not demonstrate or even imply that electrostatic phenomena are the cause of that variability. Nothing in Ford's petition even purports to demonstrate that electrostatic discharges have ever occurred during a Standard No. 208 crash test. Further, NHTSA is not aware of any such information from any other source. Ford also did not show either how electrostatic discharges would influence HIC measurements, or the magnitude of error that electrostatic discharges would introduce into the HIC. Absent any evidence either in Ford's petition or from other sources about electrostatic discharges being the source of variability in Standard No. 208 compliance tests, Ford's petition is supported only by speculation and theory. Such a basis, absent any supporting data, is not sufficient justification for changing the existing test procedures in Standard No. 208. This portion of Ford's petition is therefore denied.

(b) Technical Amendments

Ford requested three technical amendments to the final rule in its petition for reconsideration. These requests were as follows:

(i) *Vehicle loading during compliance tests.* Ford noted in its petition that, in response to Ford's comments on the NPRM, the final rule revised the vehicle loading for Standard No. 208 testing to make that standard's provisions regarding work-performing accessories on light trucks identical to the corresponding provisions in Standards No. 212 and 219. Those standards exclude the weight of such accessories from unloaded vehicle weight. However, Ford noted that the provisions in Standard No. 208 regarding the proportioning of test load between the axles of the test vehicle (S8.1.1(b)) of Standard No. 208) differed slightly from the load proportioning provisions in Standards No. 212 and 219. Ford asserted that the provisions in Standard No. 208 could be interpreted as specifying different load proportioning for that Standard than is specified in Standards No. 212 and 219, and asked that this language in Standard No. 208 be amended to make it identical to that used in Standards No. 212 and 219.

In response to this petition, NHTSA has carefully reexamined the weight distribution provisions in Standards No. 208, 212, 219, and 301. That reexamination shows that the weight distribution provisions of the four standards are now substantively identical, although Standard No. 208's are abbreviated and simplified. In addition, NHTSA has always interpreted Standard No. 208's weight distribution provisions in the manner suggested by Ford. That is, NHTSA places the test dummies in the vehicle and then distributes the cargo weight in proportion to the assigned gross axle weight ratings. The agency has followed this procedure in all of its crash tests of passenger cars to determine compliance with Standard No. 208, since that allows the single crash test to be used for simultaneous evaluation of Standards No. 208, 212, 219, and 301. A different interpretation would force the agency as well as the manufacturers to conduct repetitive crash testing for no valid purpose.

Therefore, NHTSA has always interpreted the weight distribution provisions in these four safety standards to be the same. In addition, no manufacturer other than Ford has sought an interpretation of the Standard No. 208 weight distribution procedures. Further, all manufacturers, including Ford, have conducted their Standard No. 208 certification tests using the same weight distribution as specified in Standards No. 212, 219, and 301. In other words, the simplified and abbreviated weight distribution provisions in Standard No. 208 have not been perceived as ambiguous by any affected parties prior to Ford's petition, and the weight distribution procedures followed

for Standard No. 208 testing by both vehicle manufacturers and NHTSA have been the same weight distribution procedures followed for testing under Standards No. 212, 219, and 301. Given these circumstances, it is not necessary to amend the weight distribution provisions in Standard No. 208 to ensure that the procedures will be identical to the weight distribution procedures for testing pursuant to Standards No. 212, 219 and 301. Hence, Ford's request is denied.

(ii) *Applicability of phase-in attribution requirements to vehicles manufactured in more than one stage.* During the phase-in of automatic crash protection for light trucks, it is necessary to attribute vehicles with more than one "manufacturer," as that term is defined in the Safety Act, to a single manufacturer for the purposes of calculating compliance with the percentage requirements of the phase-in. To accomplish this purpose, the final rule provided that the same attribution rules would apply to light trucks as were previously applied to passenger cars. That is, the attribution may be decided between the manufacturers in a written contract, a copy of which is filed with the agency. Absent an agreement among the several manufacturers, an imported vehicle will be attributed to the importer and vehicles made in the U.S. by more than one manufacturer will be attributed to the manufacturer that markets the vehicle. See S4.2.5.6 of Standard No. 208.

Ford argued in its petition that the attribution rules could be read to apply to vehicles manufactured in more than one stage, or multistage vehicles, because such vehicles are "produced by more than one manufacturer." To ensure that it was not interpreted in this manner, Ford asked that the attribution rules be amended to expressly state that those rules do not apply to vehicles manufactured in two or more stages.

Ford's requested amendment is unnecessary. Ford apparently did not note that the final rule explicitly provides that multistage vehicles are not subject to the automatic crash protection requirements during the phase-in period. That is, S4.2.5.5(a)(3) of Standard No. 208 provides that any light truck "that is manufactured in two or more stages * * * is not subject to the [phase-in] requirements." This provision applies with respect to all of the light truck phase-in requirements set forth in S4.2.5, including the attribution rules in S4.2.5.6. Thus, since multistage vehicles are excluded from all of the phase-in requirements, it is unnecessary to also specifically exclude such vehicles from each of the individual phase-in requirements.

(iii) *Typographical error in phase-in attribution requirements.* Ford observed that S4.2.5.6.2 of Standard No. 208, which sets forth the phase-in attribution requirements, refers to an attribution under S4.2.5.4.1. Since there is no such section in the final rule, Ford suggested that this reference was a typographical error, and that the intended reference was actually to S4.2.5.6.1. Ford is correct. This notice corrects the typographical error.

2. NTEA Petition

The NTEA petition argued that NHTSA had not shown that the extension of the automatic crash protection requirements to light trucks manufactured in two of more stages "meets the need for motor vehicle safety," as required by the National Traffic and Motor Vehicle Safety Act. In addition, NTEA argued that the automatic crash protection requirements were not practicable for light trucks manufactured in two or more stages and that final stage manufacturers faced particular certification difficulties with automatic crash protection. Finally, NTEA argued that NHTSA had not properly analyzed the negative affects which NTEA believed this rule would have on small businesses. These points are addressed below.

NTEA's arguments draw heavily upon *National Truck Equipment Association* v. *NHTSA*, 919 F.2d 1148, *rehearing denied*, 928 F.2d 739 (6th Cir. 1990), a case in which a divided panel reversed, in part, the extension of Standard No. 204, Steering Control Rearward Displacement, to light trucks. The majority determined that the safety benefits of the standard were "not at all clear" (*id.* at 1154) as applied to multi-stage light trucks because it "found" that these vehicles are driven by "professional drivers" for "short distances" and at "low speeds" on local streets instead of on "highways." Based on that finding, the majority stated that it was "justified" in examining the economic impact of the extension (*ibid.*). The majority accepted NTEA's argument that the amendment provided no means by which final stage manufacturers could demonstrate compliance with Standard No. 204, and it concluded that the standard would destroy the truck customization industry (*id.* at 1154–1155). Accordingly, the majority found that the amendment did not satisfy the statutory requirement that safety standards be "practicable" (*id.* at 1153). Noting that its ruling addressed only the problems faced by final stage manufacturers, the majority invalidated the extension only "to the extent that it applies to vehicles manufactured by final stage manufacturers that cannot pass through the certification of the initial manufacturer" (*id.* at 1158).

As discussed in detail below, the facts and analyses associated with this rulemaking differ significantly from those associated with the 1987 final rule extending Standard No. 204 to light trucks. First and foremost is the existence of a Congressional mandate requiring air bags in light trucks within the specified weight ranges. This statutory mandate in effect ratifies this agency's extension of the automatic crash protection requirements to multistage light trucks, as well as single stage light trucks. Second, the record in this rulemaking resolves the issues of safety need and consumer choice concerns expressed by the panel majority in *NTEA* v. *NHTSA*. For example, the significant and separate contributions of automatic crash protection to vehicle safety have been widely demonstrated, analyzed, and accepted. Third, the agency has initiated rulemaking (56 FR 61395; December 3, 1991) to amend its certification regulations in a manner that would ease the perceived certification burdens on final stage manufacturers. Fourth, significant aspects of NTEA's representations to this agency regarding the Standard No. 208 rulemaking, and similar representations by that organization to the Sixth Circuit regarding the earlier Standard No. 204 rulemaking, can be shown to be unsupported, without merit, or both.

(i) *Safety need.* NTEA argued that NHTSA had not satisfied the statutory criteria that safety standards "meet the need for motor vehicle safety" with respect to "vehicles produced in two or more stages and equipped with a cargo or property-carrying body and/or work-related equipment," because in extending the automatic crash protection requirements to light trucks in general, the agency did not show that this narrow subclass of light trucks has a significant rate of accidents, serious injuries, or fatalities. Absent such a showing, NTEA asserted that NHTSA had not satisfied its obligations under the Safety Act.

As an initial matter, it is instructive to note that implicit in the enactment of the section 2508 of the NHTSA Authorization Act of 1991 is the finding by Congress that requiring the installation of air bags in light trucks, including those light trucks "produced in two or more stages and equipped with a cargo or property-carrying body and/or work-related equipment," will enhance

motor vehicle safety. This supports and ratifies NHTSA's earlier similar conclusion that the installation of automatic restraints, whether air bags or automatic belts, in light trucks, including those light trucks produced in two or more stages and equipped with a cargo or property-carrying body and/or work-related equipment, will enhance motor vehicle safety.

The basis for that earlier agency conclusion is found in the Final Regulatory Impact Analysis for the March 26, 1991 final rule, filed in Docket No. 74–14, Notice 70. It contains a summary of the safety benefits to be expected from extending the automatic crash protection requirements to light trucks. As shown in that analysis, the final rule could prevent 2,000 deaths and lessen the severity of 28,000 serious injuries every year. These estimated benefits are from all types of light trucks within the specified weight categories, including minivans and compact pickups, motor homes, full-size pickups, and some work-related vehicles produced in two or more stages, such as vans, bread delivery trucks, small dump trucks, tow trucks, etc.

NTEA does not dispute the agency's overall estimate of the rule's safety benefits for all light trucks. Instead, NTEA is limiting its comment to the alleged lack of a demonstrated safety benefit in a particular subcategory of light trucks. NTEA seems to be arguing that NHTSA may not aggregate safety data for light trucks of similar size and weight, but must gather separate data for each subclass and demonstrate a separate safety need for each identifiable subclass. The agency disagrees for three reasons. First, it is undesirable from a statistical standpoint to excessively subdivide the regulated vehicle population and the associated safety data for that population. Second, it is inconsistent with the requirements of the Safety Act to base the applicability of safety standards on the circumstances of manufacture, such as whether a vehicle is manufactured in one or more stages. Third, petitioner has presented no data or analysis justifying subdividing light trucks into work-related light trucks and non-work-related light trucks or subdividing work-related light trucks into single stage work-related light trucks and multistage work-related light trucks.

The inappropriateness of NTEA's approach may be seen by considering the implications of applying it to the most familiar type of vehicle safety rulemaking, that concerning passenger cars. If it were so applied, this agency would have to make a separate showing of safety need for sedans, coupes, station wagons, and hatchbacks, and a further separate showing of safety need for each size class of each type of car, e.g., subcompact sedans, compact sedans, mid-size sedans and full size sedans. If the vehicle population were subdivided into increasingly smaller and smaller units, the small data cells available for each unit might not allow any valid statistical conclusions to be drawn for any unit. Thus, if this approach were taken, NHTSA could effectively be prevented from ever issuing any safety standards, because it could not show a safety need for any of these subdivided vehicle classes. Such a result is demonstrably inconsistent with the Safety Act, because it would effectively thwart the Safety Act's stated purpose to increase motor vehicle safety through the establishment and implementation of Federal motor vehicle safety standards.

NTEA goes a step further in the case of light trucks, suggesting that the agency is obliged to subdivide further the existing vehicle categories into vehicles that are manufactured in one stage and vehicles manufactured in two or more stages. Thus, under NTEA's suggested approach, physically similar passenger vans or walk-in vans would be placed in separate subclasses, depending upon whether the vehicle was manufactured by a single manufacturer or in more than one stage.

There are many reasons why this suggestion is not persuasive. Initially, NHTSA notes that the crash data compiled by NHTSA and the States do not differentiate between vehicles on the basis of the number of stages in which the vehicles were manufactured. Instead, the crash data identify the vehicles involved in the crash by means of the vehicle identification number (VIN) assigned to them. The information coded in the VIN does not by itself indicate whether the completed vehicle was manufactured in one or more stages. While it might be possible to amend the VIN requirements so that the VIN by itself would show the number of stages in which a vehicle was manufactured and to change the existing crash data collection to ensure that this information was obtained, such changes would be difficult and costly. NTEA has not set forth any reason to believe that this significant change in the VIN and crash data collection would be worthwhile.

The agency has long interpreted section 103(f) of the Safety Act as contemplating that vehicles are to be grouped within broad categories based on physical differences between groups of vehicles. The different groupings are sometimes defined by specifically identifying the physical differences between vehicles and other times by referring to the uses for which the vehicles have been designed. This interpretation is consistent with Congress' explicit indication that any different application of the safety standards among vehicles should be based upon vehicle attributes. This indication is provided in section 103(f) of the Act, in which Congress directed the agency to consider, in prescribing standards, whether each proposed standard is "reasonable, practicable and appropriate for the *particular type* of motor vehicle or motor vehicle equipment for which it is prescribed." (Emphasis added.) Regarding that provision, the Senate Committee Report on the Safety Act states:

> Thus it is not intended that standards will be set which will eliminate or necessarily be the same for small cars or such widely accepted models as convertibles and sports cars, so long as all motor vehicles meet basic minimum standards. Such differences would, of course, be based on the type of vehicle rather than its place of origin or any special circumstances of its manufacturer. S. Rep. No. 1301, 89 Cong., 2d Sess., at 6 (1966).

For the purpose of setting and applying the safety standards to appropriate groups of vehicles, NHTSA has defined the basic vehicle groups in 49 CFR 571.3 in accordance with section 103(f)(3) and the legislative history quoted above. The current vehicle groupings are passenger car, multipurpose passenger vehicle, truck, bus, motorcycle, and trailer.

The agency on occasion has applied safety standards only to some vehicles within one of the groups when it has reason to believe that a distinct subgroup within a broad grouping should not be subject to the same safety standards as the other vehicles in the broad grouping. This subdivision is usually done on the basis of the gross vehicle weight rating or unloaded vehicle weight of vehicles. For instance, the extension of the automatic crash protection requirements applies only to those multipurpose passenger vehicles, buses, and trucks that are below specified weights. This differentiation is based on data showing that occupants of the heavier vehicles are at a lesser risk in the event of a crash. These data follow from the laws of physics pursuant to which the occupants of heavier vehicles striking lighter vehicles generally experience lower decelerations (i.e., crash forces) than do the occupants of the lighter vehicles. Clearly, such a subdivision is based

upon the characteristics of the vehicles in question, instead of on the identity of their manufacturers or the nature of the manufacturing process.

NTEA's request to establish a special class for work-related light trucks manufactured in two or more stages is contrary to the above-cited language in the legislative history precluding NHTSA from reliance on special circumstances of manufacture as a basis for differentiating among vehicles for the purposes of the safety standards. The agency could, however, subdivide the light truck category into (a) light trucks designed for certain specified work-related purposes and (b) all other light trucks, *if* there were some reason to believe that the different design or use of the first category of trucks somehow indicated a sufficiently different level or type of safety need that would warrant applying more or less stringent requirements, or even no standard at all. Stated otherwise, if the record supported it, NHTSA could impose different standards on a particular type of work-related light truck, such as a tow truck or delivery truck, but NHTSA cannot specify that different standards apply to tow trucks or delivery trucks produced in two or more stages than to tow trucks or delivery trucks produced in a single stage. In any event, neither the materials submitted by NTEA nor the rest of the record indicate that work-related light trucks have less of a safety need for automatic crash protection than other types of light trucks.

In assessing NTEA's arguments, NHTSA begins from the premise that a person driving or riding in a vehicle while on the job is entitled to the same level of safety protection as a person who is driving or riding in a vehicle off the job. Accordingly, unless there is some reason to believe that work-related light trucks are substantially less likely to be involved in crashes, the fact that a vehicle is used extensively or even solely for work-related purposes does not of itself suggest there is any lesser safety need to protect the occupants in the event of a crash.

NTEA suggested two reasons for believing that work-related vehicles were safer in use than other comparably sized vehicles. First, NTEA suggested that most commercial vehicles are driven by "professional drivers." Second, NTEA suggested that most commercial vehicles are not used on the "highways," but are primarily used in short distance, low-speed trips.

NTEA's petition did not provide any data to substantiate either of its claims. Likewise, the petitioner did not elaborate upon these assertions or explain why NTEA believes either of them to be correct. This agency does not believe that these unsupported NTEA assertions demonstrate that there is a lesser safety need to provide automatic crash protection for drivers of work-related, multistage light trucks than for drivers of other light trucks.

NTEA's assertion that most work-related, multistage light trucks are driven by "professional drivers" is misleading. Although many of the drivers of these vehicles may be professionals, those persons are not "professional drivers." Their professionalism lies not in driving, but in the areas of their special training and skills, i.e., plumbing, exterminating, repairing, etc. Locksmith trucks are driven by professional locksmiths, electrical repair company trucks are driven by professional electricians, and so forth. No special license or demonstration of skill is required in most jurisdictions to drive commercial light trucks. Hence, NHTSA concludes that there is no reason to believe that drivers of work-related light trucks as a whole have any more driving skill than drivers of other light trucks.

NHTSA does not find the assertion that commercial vehicles are used primarily in short distance, low-speed trips any more persuasive regarding safety need. Even if it were true that work-related, multistage light trucks are less likely than other light trucks to be driven on long trips on freeways, this would not indicate a lesser safety need. Most accidents occur within 25 miles of place of residence or business. Further, many serious accidents occur on roads other than highways. While it is true that a majority of vehicle occupant deaths occur in rural areas, a substantial number (more than 43 percent) occur in urban areas where NTEA suggested many work-related, multistage vehicles are likely to be operated. In the same vein, while a majority of those urban vehicle occupant deaths occur at night, a sizable number (more than 41 percent) occur during daytime hours when most types of work-related, multistage vehicles are also likely to be operating. Thus, there is no safety data to support NTEA's assertion that work-related, multistage vehicles have a lesser safety need for automatic crash protection than other comparable light trucks.

Additionally, the driving situations in which many work-related, multistage light trucks are used suggests a greater, not a lesser, safety need for automatic crash protection. For example, tow trucks, emergency and rescue vehicles, and snow removal vehicles are frequently driven at high speeds, in hazardous situations, and/or in inclement and less safe weather conditions.

In sum, NHTSA reaffirms its previous conclusion that there is no reason to believe that the safety need for automatic crash protection in work-related, multistage light trucks is any less than the safety need for automatic crash protection in other similarly-sized light trucks. Moreover, the overall safety benefits of automatic crash protection are such that, even if work-related, multi-stage light trucks were shown to be somewhat less likely to be involved in accidents than other light trucks, there is no reason to believe that the difference is so substantial that the agency could conclude that extending the automatic crash protection requirements to these vehicles does not "meet the need for motor vehicle safety."

(ii) *Practicability.* NTEA next argued that NHTSA had not shown that applying the automatic crash protection requirements to light trucks manufactured in two or more stages was "practicable," as required by section 103 of the Safety Act (15 U.S.C. 1923). In the preamble to the final rule, NHTSA explained:

> Very few (if any) final stage manufacturers have the engineering and financial resources necessary to independently determine whether a completed vehicle complies with a complex safety standard such as Standard No. 208. Thus, as a practicable matter, NHTSA anticipates that most, if not all, final stage manufacturers will have to complete their vehicles within specifications established by an incomplete vehicle manufacturer, and, in most cases, they will have to use chassis-cabs. 56 FR 12472, at 12478; March 26, 1991.

In its petition for reconsideration, NTEA argued that this statement demonstrated that the rule was not practicable for final stage manufacturers, because the only way in which NHTSA had suggested final stage manufacturers could comply was to remain within the specifications established by the incomplete vehicle manufacturer. Specifically, NTEA stated that "vehicles exist that cannot always be completed to the end user's satisfaction within the guidelines established by the incomplete vehicle manufacturer to allow for passing through the incomplete vehicle manufacturer's certification. The NTEA expects this rulemaking will increase the number of such vehicles."

The House Committee Report on the Safety Act included the following explanation of the meaning of the term "practicable" in the Safety Act:

> In establishing standards, [NHTSA] must conform to the requirement that the standard be practicable. This would require consideration of all relevant factors, including technological ability to achieve the goal of a particular standard as well as consideration of economic factors. H. Rep. No. 1776, 89th Cong., 2d Sess., at 16 (1966).

Following this legislative guidance, NHTSA must consider practicability from two different perspectives, one technical and the other economic. First, for a standard, to be practicable, it must be technically possible for the affected manufacturers to achieve compliance within the specified time limits. In the case of this rule, NHTSA has concluded that it will be technically possible for final stage manufacturers to comply with the automatic crash protection requirement in their light trucks on or before by September 1, 1997.

This conclusion is based upon the fact that NHTSA's regulations provide final stage manufacturers with a technologically feasible means of assuring that their vehicles comply with the automatic crash protection requirements. Specifically, 49 CFR Part 568 requires incomplete vehicle manufacturers to provide specifications along with their incomplete vehicles. Part 568 also provides that completion of an incomplete vehicle in accordance with the specifications set forth in the incomplete vehicle document will ensure conformity with applicable standards and provide the final stage manufacturer with a basis for certifying its completed vehicles. See 49 CFR § 568.4(a)(7) (i) and (ii). Incomplete vehicle manufacturers need not provide specifications for their incomplete vehicles only if conformity with the particular standard is "not substantially affected by the design of the incomplete vehicle." See 49 CFR 568.4(a)(7)(iii). If the incomplete vehicles used by the final stage manufacturers do not provide specifications for completing them in conformity with applicable standards, the final stage manufacturers will have to use different incomplete vehicles, that provide the needed specifications, from which to complete their vehicles.

When examining technical feasibility of new requirements in the safety standards, the issue under the Safety Act is not whether final stage manufacturers can comply with the automatic crash protection or other new requirements without making any changes to their existing practices. Instead, the issue is whether it is practicable for final stage manufacturers to make changes to their practices so that they can assure that their completed vehicles will comply with the requirements.

In this case, final stage manufacturers may need to make some changes in the selection of the incomplete vehicle from which the completed vehicle will be built and may need to make some modifications in how they complete the vehicle, go as to ensure that the vehicle will be completed in accordance with the specifications provided in the incomplete vehicle document. However, those changes and modifications will not pose any special technical problems for final stage manufacturers. Accordingly, NHTSA reaffirms its previous conclusion that it is technically possible for final stage manufacturers to comply with the automatic crash protection requirements by completing their vehicles within the specifications established by the incomplete vehicle manufacturer, and basing the certification of the completed vehicle upon the incomplete vehicle manufacturer's specifications.

The second prong of the "practicability" requirement relates to whether a standard's economic impacts are reasonable. That is, NHTSA must consider whether the costs and other economic impacts associated with the rule are excessive. In the final rule, NHTSA concluded that this amendment would not impose an unreasonable economic burden on final stage manufacturers. NTEA has not provided any information that would lead the agency to change this conclusion.

It is true that in the interest of safety, final stage manufacturers may on occasion have to use a different incomplete vehicle from the one initially specified by a customer in order to make all of the modifications desired by the customer. Conversely, in some cases final stage manufacturers will not be able to make all of the modifications desired by a customer who decides not to change the initial selection of an incomplete vehicle. This does *not*, however, show that the economic impacts of the automatic crash protection requirement are unreasonable for final stage manufacturers. All safety standards impose limits on how a manufacturer can design and manufacture its vehicles and on what vehicles consumers can purchase.

For example, it would certainly cost less to manufacture large trucks if vehicle manufacturers could place their smallest, least expensive brake systems on their largest trucks. However, vehicles with inadequate braking capabilities would pose an unreasonable safety risk on the public roads. Thus, manufacturers of large trucks must instead use larger and more expensive brake systems on these trucks, and consumers must pay a higher price that reflects the added cost to the manufacturer of using a braking system with adequate stopping capabilities, even if some customers would have preferred a less effective system. The greater expense that arises from not permitting manufacturers to equip their vehicles with whatever braking system the customer wants or with the least expensive braking system does not show that the requirement for adequate braking capabilities imposes unreasonable economic burdens.

Thus, the proper inquiry is not simply whether it might cost final stage manufacturers more to manufacture their vehicles if they are subject to the automatic crash protection requirement. Neither is it dispositive that final stage manufacturers may not be able to provide the precise version of the type of vehicle their customers desire. It probably will cost final stage manufacturers more to ensure that their vehicles comply with the automatic crash protection requirements. However, this "burden" is fully justified by the improvement in motor vehicle safety associated with this rule. Moreover, the "burden" is a manageable one.

After considering the economic aspects of a practicability determination, NHTSA reaffirms its previous conclusion that the extension of the automatic crash protection requirements to light trucks, including those manufactured in two or more stages, is practicable. It will not impose a significant economic burden on final stage manufacturers to examine the features requested by a customer and determine whether modifications to incorporate those features can be made within the envelope established by the incomplete vehicle manufacturer for a particular incomplete vehicle. Further, there is no reason to believe that the increased costs to purchasers of multistage vehicles that comply with the automatic crash protection requirements would be substantially different from the increased costs to purchasers of single stage light trucks that comply with those requirements. In the Final Regulatory Impact Analysis prepared for the final rule, NHTSA estimated that compliance with the automatic crash protection requirements could add $464 (in 1989 dollars) to the cost of a light truck.

(iii) *Consumer choice.* NTEA also argues that the final rule would restrict consumer choice to an extent inconsistent with section 103(f)(3) of the Safety Act and its legislative history. That section provides that, in prescribing safety standards, NHTSA

shall consider whether the standards are "appropriate for the particular type of motor vehicle for which it is prescribed." The Senate Report explaining this section provides:

> In determining whether any proposed standard is "appropriate" for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, the committee intends that the Secretary will consider the desirability of affording consumers continued wide range of choices in the selection of motor vehicles. Thus it is not intended that standards will be set which will eliminate or necessarily be the same for small cars or such widely accepted models as convertibles and sports cars, so long as all motor vehicles meet basic minimum standards.

NHTSA agrees that this language requires the agency to consider whether its standards would impose unreasonable restrictions on consumer choice. The agency recognizes that the extension of the automatic restraint requirements will narrow consumer choice to the extent that consumers who would prefer a multistage light truck that is not certified as providing automatic crash protection will not have that option. It will also narrow consumer choice to the extent the consumers and final stage manufacturers must, in deference to interests of motor vehicle safety, be more careful in selection of incomplete vehicles to be incorporated into multistage light trucks. Further, some design or styling changes might have to be made. However, these are not the sorts of restriction on consumer choice that is prohibited by the Safety Act.

The actual extent of section 103(f)(3)'s protection of consumer choice is revealed in the test that the section's legislative history sets forth regarding the appropriateness of a standard. The proper test is whether a given standard would eliminate a type of vehicle, such as convertibles or tow trucks. In this case, no information, including the petitioner's arguments, suggests that the extension to light trucks of Standard No. 208's automatic crash protection requirements fails this test.

Petitioner has not argued, much less demonstrated, that the extension of the automatic crash protection requirements would eliminate some particular type of vehicle, e.g., a tow truck, delivery truck, or utility truck. Petitioner has also not suggested that the extension would eliminate or have a substantial adverse effect on key distinguishing attributes of those vehicles. That is, petitioner has made no showing that purchasers will not be able to find chassis types and models that are compatible with desired work-related features, or, conversely, to obtain work-related features or devices that are compatible with a desired chassis. Instead, the petitioner made a much more limited argument, i.e., petitioner argued that this amendment will narrow the range of choice which a vehicle purchaser has in selecting among various chassis models and/or modifications to these chassis.

The fact that the extension of automatic crash protection requirements to light trucks will preclude consumers from buying light trucks without automatic crash protection does not suggest that the extension is inappropriate. Any safety standard or other regulation imposes restrictions on consumer choice. Moreover, those restrictions often make it necessary for the consumer to pay more for a vehicle than otherwise. For example, cars would be simpler and less expensive to produce or purchase if they were produced without any safety belts or other occupant protection, without side door beams, without a fuel system designed to withstand a 30 mph crash, and without a padded dashboard. However, such a car would not comply with Standards No. 201, 208, 214, and 301, and would not meet the goals of the Safety Act that vehicles be made safer.

Some consumers might wish to purchase such a new car without these safety features, in part because they could pay less for such a vehicle. However, the Safety Act does not permit consumers that option. Instead, section 108 of the Safety Act (15 U.S.C. 1397) expressly prohibits the manufacture, sale, or introduction into commerce of new vehicles that do not conform with all applicable safety standards. To this extent, the Safety Act consciously limits consumer choice in order to assure an appropriate level of safety. Thus, it is not a telling point to assert simply that a new requirement in a safety standard will limit consumer choice. Even if true, such an assertion by itself does not even suggest, much less demonstrate, that the new requirement is outside the authority granted in the Safety Act.

There is also no suggestion in either section 103(f)(3) or its legislative history of there being any right on the part of a manufacturer or a consumer to produce a particular type of light truck through mixing and matching incomplete vehicles and vehicle modifications packages without due regard for safety. As explained at length above, this is not the sort of consumer "choice" that Congress sought to protect in section 103(f)(3).

(iv) *Certification difficulties.* NTEA next argued that the automatic crash protection requirements would result in serious certification problems for final stage manufacturers. NHTSA does not agree that this rule will impose any significant additional certification problems for final stage manufacturers. 49 CFR § 568.4(a)(7) currently requires incomplete vehicle manufacturers to make one of three statements regarding the compliance of their incomplete vehicles with the automatic crash protection requirements. (Part 568 sets forth the agency's regulations regarding certification of vehicles manufactured in two or more stages). These are:

(1) The vehicle will conform to the automatic crash protection requirements if no alterations are made in identified components of the incomplete vehicle (§ 568.4(a)(7)(i));

(2) The vehicle will conform to the automatic crash protection requirements if specific conditions of final manufacture are followed (§ 568.4(a)(7)(ii)); or

(3) Conformity with the automatic crash protection requirements is not substantially affected by the design of the imcomplete vehicle and the incomplete manufacturer makes no representation as to conformity with the standard (§ 568.4(a)(7)(iii)).

The effect of this regulation is to ensure that final stage manufacturers will have a basis for certifying compliance with the automatic crash protection requirements. However, final stage manufacturers will not be able to use incomplete vehicles for which the incomplete vehicle manufacturer has made the third statement above with respect to the automatic crash protection requirements. When final stage manufacturers choose an incomplete vehicle for which the incomplete vehicle manufacturer has made either of the first two statements above, completion of that incomplete vehicle in accordance with the incomplete vehicle manufacturer's specifications provides the final stage manufacturer with a basis for certifying the compliance of the completed vehicle. This allows final stage manufacturers to certify compliance with the automatic crash protection requirements and any other applicable standards without *any* independent testing, analysis, etc., as long as they stay within the guidelines provided by the incomplete vehicle manufacturers.

The experience of final stage manufacturers in certifying compliance with the dynamic testing requirements in Standard No. 208 for manual belts in light trucks, which went into effect on September 1, 1991, is instructive in considering the practicability of implementing the automatic crash protection requirements. The dynamic

testing requirements represented the first time that multistage vehicles were subject to crash testing requirements where compliance was determined using injury criteria and test dummies. Just as is the case with automatic crash protection, few (if any) final stage manufacturers had the engineering and financial resources necessary to independently determine whether a completed vehicle complies with these dynamic testing requirements. Thus, the simplest, if not the only, practicable way for final stage manufacturers to certify compliance with the dynamic testing requirements was to complete the vehicles in accordance with the specifications established by the incomplete vehicle manufacturer.

The final stage manufacturers represented by the Recreation Vehicle Industry Association (RVIA) were concerned about meeting those requirements. These final stage manufacturers believed it was essential to their business that their van conversions include custom seats at the front outboard seating positions. They were also concerned that the incomplete vehicle manufacturers would establish specifications for the incomplete vehicles that would preclude final stage manufacturers from installing custom seats at front outboard seating positions satellites. If the incomplete vehicle manufacturers were to do so, these van converters feared they would lose a substantial portion of their business.

To ensure that the incomplete vehicle manufacturers established specifications that took into account the need of the final stage manufacturers to install custom seats, the final stage manufacturers acted cooperatively with each other and through the trade association RVIA. The final stage manufacturers met with Chrysler, Ford, and General Motors to explain their concerns about the forthcoming incomplete vehicle specifications.

As a result of this communication and cooperation, Chrysler, Ford, and General Motors each established incomplete vehicle specifications that allowed the installation of custom seats by final stage manufacturers, subject to some limitations. To wit, Chrysler established a design envelope on which final stage manufacturers can rely on in certifying compliance with the dynamic testing requirements if the final stage manufacturers use custom seats that are within that envelope. Ford's incomplete vehicle specifications provide that final stage manufacturers must use the Ford-installed risers, seat cushions, and so forth, but allow the final stage manufacturer to change the seat back. General Motors allows converters to build generic versions of GM seats.

Although all three of these incomplete vehicle manufacturers set forth different limits in their incomplete vehicle specifications, all three sets of specifications allowed final stage manufacturers to continue installing custom seats as part of a van conversion. Thus, final stage manufacturers have been able to continue to produce van conversions with custom seats, while the public receives the safety benefits of van conversions certified as complying with the dynamic testing requirements for manual belts. This same sort of communication and cooperative effort by the incomplete vehicle manufacturers and final stage manufacturers will allow final stage manufacturers to certify that their vehicles comply with the automatic crash protection requirements beginning September 1, 1997.

In addition, the agency has proposed amendments to its certification regulations (49 CFR parts 567 and 568) that address some of the concerns NTEA raised regarding certification in its petition. In *NTEA* v. *NHTSA*, the majority held that the extension of Standard No. 204 was not practicable as it related to multistage vehicles for which there is not an incomplete vehicle manufacturer certification which the final stage manufacturer can pass through. After noting that NHTSA's regulations do not permit final stage manufacturers that use incomplete vehicles other than chassis-cabs to pass through a certification made by the incomplete vehicle manufacturer, the court observed that it could see no reason why the certification requirements for those incomplete vehicles that are chassis-cabs should differ from those for other incomplete vehicles. In response to these statements by the court, NHTSA issued a notice proposing to extend the existing requirements for certification of chassis-cabs to all incomplete vehicles. (56 FR 61392; December 3, 1991).

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this response to the petitions for reconsideration and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because it simply corrects a typographical error in the final rule without making any other changes to the previously published final rule.

NHTSA prepared a Final Regulatory Impact Analysis for the final rule extending the automatic crash protection requirements to light trucks. That document provides a detailed look at the benefits and burdens associated with the rulemaking action. Those persons interested in that document will find it in NHTSA Docket No. 74–14; Notice 70, and may obtain copies of it by writing to: Docket Section, NHTSA, room 5109, 400 Seventh Street SW., Washington, DC 20590.

Regulatory Flexibility Act

NHTSA has analyzed the effects of this response on small entities, in accordance with the Regulatory Flexibility Act. I hereby certify that this response will not have a significant economic impact on a substantial number of small entities. The only change this notice makes to the previously published final rule is a correction of a typographical error. Thus, this response will not have any effects other than those that were considered in the final rule.

Executive Order 12612 (Federalism)

This response to petitions for reconsideration has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this response will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has also analyzed this response for the purposes of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Section 571.208 is amended by revising S4.2.5.6.2 to read as follows.

S4.2.5.6.2 A truck, bus, or multipurpose passenger vehicle with, GVWR of 8,500 pounds or less and an

unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified in an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S4.2.5.6.1 of this standard.

* * * * *

Issued on June 8, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92-13890 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 57, No. 115
Monday, June 15, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

RIN 3206-AE22

Pay Rates and Systems (General); Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to implement the decision of the U.S. District Court for the District of Columbia (*National Treasury Employees Union* v. *Newman*, Number 83-0279 (D.D.C., June 28, 1991)), in which the court ordered OPM to promulgate a conversion rule for adjusting the pay schedules of employees paid special salary rates as required by 5 U.S.C. 5305(f) and as consistent with the guidelines set forth in the decision. These proposed regulations amend a relevant portion of the interim regulations issued by OPM on May 3, 1991 (56 FR 20334), which have not yet been made final.

DATES: Comments must be received on or before August 14, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, room 6H30, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 606-1413.

SUPPLEMENTARY INFORMATION: On June 28, 1991, the U.S. District Court for the District of Columbia issued a decision, cited above, affecting the manner in which the pay schedules of certain Federal employees paid special salary rates shall be adjusted in anticipation of salary adjustments made in the relevant underlying statutory pay schedules. The court concluded that OPM must consider the following factors when formulating the appropriate "conversion rule" for adjusting the pay schedules of special salary rate employees:

(1) OPM must take into consideration the former non-special pay rate of the special rate employee to avoid any action that would allow the salary of a special salary rate employee to fall below the salary that employee would have received if still a non-special rate employee.

(2) The starting point for making any adjustment shall be the statutory increase given to non-special rate employees. The reasoning behind this step is that the factors leading to a statutory increase in pay will most likely affect the special rate employee as well.

(3) OPM should then review the special pay rate in a given occupation and location to determine whether an adjustment is necessary to recruit and retain special rate employees. (It may be that such a review was undertaken prior to the date of the statutory pay increase.) Such a review may lead to a determination, taking into consideration such matters as special rate pay adjustments that year or in previous years, that no increase is necessary for the special rate employees, notwithstanding that there is a statutory increase for non-special rate employees, or that an increase that is greater than the statutory increase is necessary for the special rate employees in order to recruit and retain such employees in the involved occupation and location.

(4) OPM will make such adjustment based on the requirements of 5 U.S.C. 5305, not for mechanical reasons or for the purpose of automatic adjustments.

In view of the court's decision, interim regulation 5 CFR 530.307(a) is being rescinded (refer to a final rule elsewhere in today's **Federal Register**) because it contains an automatic adjustment mechanism that the court concluded would not be proper. In addition, OPM proposes to amend interim regulation 5 CFR 530.304, providing for an annual review of special salary rate schedules, in order to have it conform with the court's criteria. Proposed regulation 5 CFR 530.304 requires OPM to conduct a review of existing special salary rate schedules prior to the effective date of an adjustment in the scheduled rates of pay, or at least annually, to determine the extent to which that adjustment shall apply to the special rate schedules. The criteria OPM considers include giving full consideration to the court's guidelines in conjunction with the factors that appear in 5 CFR 530.303 of the interim regulations. In accordance with the changes made in 5 CFR 530.304, necessary revisions have also been made in 5 CFR 530.307.

Equal Opportunity 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Equal Opportunity 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM proposes to amend 5 CFR part 530 as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for 5 CFR part 530 continues to read as follows:

Authority: 5 U.S.C. 5305; E.O. 12748, 56 FR 4521.

2. Section 530.304 is revised to read as follows:

§ 530.304 Annual review.

(a) Prior to an adjustment in the scheduled rates of pay for one or more grades or levels for which special rates have been authorized under 5 U.S.C. 5305, but at least annually, OPM shall review special salary rate schedules to determine whether the factors in § 530.303 of this part and paragraph (b) of this section require those schedules to continue, and, if they are to continue, the extent to which they are to be adjusted, if at all.

(b) In addition to the factors in § 530.303 of this part, OPM shall consider, for the purpose of making the determination required by paragraph (a) of this section—

(1) The former non-special pay rates of the special rate employees to ensure

that any adjustment in the special rates of pay would not cause those rates to fall below the non-special rates of pay to which the special rate employees would otherwise have been entitled;

(2) The likelihood that the factors leading to a statutory adjustment in pay will affect special rate employees, as well; and

(3) Other special rate pay adjustments that occurred prior to the date of the anticipated statutory pay adjustment.

(c) Any adjustment in the special rates of pay shall be based on the factors in paragraphs (a) and (b) of this section and shall not be made solely for mechanical reasons or for the purpose of providing automatic adjustments. Any adjustment must be based on the pay OPM determines is necessary in a given occupation and area to recruit and retain the special rate employees.

(d) In conducting the annual review, OPM shall designate lead agencies for assistance in coordinating the collection of relevant data. All agencies are responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(e) When special rates are adjusted as a result of this review, an employee's pay shall be fixed in the same manner as provided in § 530.307 of this part.

3. § 530.307 is revised to read as follows:

§ 530.307 Effect of an adjustment in scheduled rates of pay.

(a) Except as provided in paragraphs (b) and (c) of this section, when an employee was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date the rate of basic pay for the numerical rank in the new special rate range established under § 530.304 of this part for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date.

(b) If a special rate range is terminated under § 530.304 of this part, an employee who was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay shall receive on that effective date the numerical rank in the new statutory pay schedule for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date.

(c) In the case of an employee in a position under the Performance Management and Recognition System who was receiving a special pay rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date a rate of basic pay determined under § 540.106 of this chapter.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 88-143-1]

RIN 0579-AA12

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world, and to allow seven kinds of currently imported fruits and vegetables to enter the United States from certain parts of the world under less restrictive conditions. A limited number of the fruits and vegetables would be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. In addition, all of the fruits and vegetables, as a condition of entry, would be subject to inspection at the port of first arrival and to such treatment as may be required by a U.S. Department of Agriculture inspector. This proposed action would provide the United States with additional kinds and sources of fruits and vegetables, while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

DATES: Consideration will be given only to comments received on or before July 30, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-143. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-3249.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 *et seq.* (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within the United States.

We are proposing to revise the regulations by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

We are also proposing to revise the regulations to allow seven currently imported fruits and vegetables to enter the United States from certain parts of the world under less restrictive conditions. These fruits and vegetables are avocado, grapefruit, lemon, and sweet orange from Bermuda, snow pea from Colombia, cucurbits from Grenada, and globe artichoke from Guatemala. The importaion of avocado, grapefruit, and sweet orange from Bermuda has been prohibited unless the fruit has been treated for the Mediterranean fruit fly. However, we have determined that this pest has been eradicated from Bermuda. (The European Plant Protection Organization Reporting Service, citing Hildurn, D., Dow, R.L. (1990), Mediterranean fruit fly, *Ceratitis capitata*, eradicated from Bermuda. Florida Entomologist 73, 342-343.) Therefore, it no longer appears necessary to require that avocado, grapefruit, or sweet orange imported

[1] Information on these pest risk assessments and any other pest risk assessment referred to in this document may be obtained by writing to the Administrator, c/o the Biological Assessment and Taxonomic Support Staff, PPQ, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

into the United States from Bermuda be treated for the Mediterranean fruit fly.

Lemon from Bermuda, snow pea from Colombia, cucurbits from Grenada, and globe artichoke from Guatemala have been allowed importation only through North Atlantic ports of arrival. The restriction to North Atlantic ports of arrival came about because the original requests to the Animal and Plant Health Inspection Service (APHIS) to approve the commodities for importation asked for importation through North Atlantic ports only. The continued restriction to North Atlantic ports does not appear to be warranted because pest risk evaluations have shown that the commodities are not attacked in these countries by any foreign plant pests of concern that would not be readily detectable by inspection.

All of the fruits and vegetables included in this document would be subject to the requirements in § 319.56–6 of the regulations. This section provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection at the port of first arrival and to such treatment as may be required by a U.S. Department of Agriculture inspector. Section 319.56–6 also provides that shipments of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

A limited number of the fruits and vegetables proposed for importation would be required to undergo mandatory treatment for fruit flies or other insect pests as a condition of entry, or to meet other special conditions.

The proposed conditions for entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of injurious plant pests by the fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival

The following freuits and vegetables would be allowed entry into the United States in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Country	Common name	Botanical name	Plant part(s)
Argentina	Endive	*Cichorium endivia*	Leaf and stem.
Barbados	Banana	*Musa* spp	Flower.
Belgium	Pepper	*Capsicum* spp	Fruit.
Bermuda	Avocado	*Persea americana*	Fruit.
	Carambola	*Averrhoa carambola*	Fruit.
	Grapefruit	*Citrus paradisi*	Fruit.
	Guava	*Psidium guajava*	Fruit.
	Lemon	*Citrus limon*	Fruit.
	Longan	*Dimocarpus longan*	Fruit.
	Loquat	*Eriobotrya japonica*	Fruit.
	Natal plum	*Carissa macrocarpa*	Fruit.
	Orange, sour	*Citrus aurantium*	Fruit.
	Orange, sweet	*Citrus sinensis*	Fruit.
	Passion fruit	*Passiflora* spp	Fruit.
	Suriname cherry	*Eugenia uniflora*	Fruit.
Bolivia	Belgian endive	*Cichorium intybus*	Leaf.
Colombia	Rhubarb	*Rheum rhabarberum*	Stalk.
	Snow pea	*Pisum sativum* subsp. *sativum*	Flat, immature pod.
Cook Islands	Banana	*Musa* spp	Green fruit.[2]
	Cucumber	*Cucumis sativus*	Fruit.
	Drumstick	*Moringa pterygosperma*	Leaf.
	Indian mulberry	*Morinda citrifolia*	Leaf.
Costa Rica	Basil	*Ocimum* spp	Whole plant.
	Chinese kale	*Brassica alboglabra*	Leaf and stem.
	Chinese turnip	*Raphanus sativus*	Root.
Dominica	Durian	*Durio zibethinus*	Fruit.
Great Britain	Basil	*Ocimum* spp	Leaf and stem.
Grenada	Abiu	*Pouteria caimito*	Fruit.
	Bilimbi	*Averrhoa bilimbi*	Fruit.
	Breadnut	*Brosimum alicastrum*	Fruit.
	Cocoplum	*Chrysobalanus icaco*	Fruit.
	Cucurbits	Cucurbitaceae	Fruit.
	Durian	*Durio zibethinus*	Fruit.
	Jackfruit	*Artocarpus heterophyllus*	Fruit.
	Jambolan	*Syzygium cumini*	Fruit.
	Jujube	*Ziziphus* spp	Fruit.
	Langsat	*Lansium domesticum*	Fruit.
	Litchi	*Litchi chinensis*	Fruit.
	Malay apple	*Syzygium malaccense*	Fruit.
	Mammee apple	*Mammea americana*	Fruit.
	Peach palm	*Bactris gasipaes*	Fruit.
	Piper	*Piper* spp	Fruit.
	Pulasan	*Nephelium ramboutan-ake*	Fruit.
	Rambutan	*Nephelium lappaceum*	Fruit.
	Rose apple	*Syzygium jambos*	Fruit.
	Santol	*Sandoricum koetjape*	Fruit.
	Sapote	*Pouteria sapota*	Fruit.
Guatemala	Artichoke, globe	*Cynara scolymus*	Immature flower head.
	Eggplant	*Solanum melongena*	Fruit.
	Loroco	*Fernaldia* spp	Above ground parts.
	Mint	*Mentha* spp	Above ground parts.
	Oregano	*Origanum* spp	Leaf and stem.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Tarragon	*Artemisia dracunculus*	Leaf and stem.
	Yam bean	*Pachyrhizus tuberosus* or *P. erosus*	Root.

Country	Common name	Botanical name	Plant part(s)
Haiti [3]	Jackfruit	*Artocarpus heterophyllus*	Fruit.
Honduras	Banana	*Musa* spp	Flower.
	Chicory	*Cichorium* spp	Leaf and stem.
	Radish	*Raphanus sativus*	Below ground parts.
Israel	Garden rocket	*Eruca sativa*	Leaf and stem.
	Mint	*Mentha* spp	Above ground parts.
	Watercress	*Nasturtium officinale*	Leaf and stem.
Jamaica	Jackfruit	*Artocarpus heterophyllus*	Fruit.
Japan	Mung bean	*Vigna radiata*	Seed sprout.
	Soybean	*Glycine max*	Seed sprout.
Korea	Bonnet bellflower	*Codonopsis lanceolata*	Root.
	Chard	*Beta vulgaris* subsp. *cicla*	Leaf.
	Mugwort	*Artemisia vulgaris*	Leaf and stem.
	Onion	*Allium cepa*	Bulb.
	Shepherd's purse	*Capsella bursa-pastoris*	Leaf and stem.
	Watercress	*Nasturtium officinale*	Leaf and stem.
Liberia	Jute	*Corchorus capsularis*	Leaf.
	Potato	*Solanum tuberosum*	Leaf.
Mexico	Anise	*Pimpinella anisum*	Leaf and stem.
	Banana	*Musa* spp	Flower.
	Cucurbits	Cucurbitaceae	Inflorescence.
	Garden rocket	*Eruca sativa*	Leaf and stem.
	Piper	*Piper* spp	Leaf and stem.
	Porophyllum	*Porophyllum* spp	Above ground parts.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Thyme	*Thymus vulgaris*	Above ground parts.
New Zealand	Fig	*Ficus carica*	Fruit.
Panama	Basil	*Ocimum* spp	Above ground parts.
	Bean, green and lima	*Phaseolus vulgaris* and *P. lunatus*	Seed.
	Chervil	*Anthriscus cerefolium*	Above ground parts.
	Eggplant	*Solanum melongena*	Fruit.
	Lemon thyme	*Thymus citriodorus*	Leaf and stem.
	Mint	*Mentha* spp	Above ground parts.
	Oregano	*Origanum* spp	Above ground parts.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Tarragon	*Artemesia dracunculus*	Leaf and stem.
Peru	Basil	*Ocimum* spp	Leaf and stem.
	Dill	*Anethum graveolens*	Above ground parts.
	Oregano	*Origanum* spp	Leaf and stem.
	Parsley	*Petroselinum crispum*	Leaf and stem.
	Radicchio	*Cichorium* spp	Leaf.
	Thyme	*Thymus vulgaris*	Above ground parts.
Sierra Leone	Cassava	*Manihot esculenta*	Leaf.
	Jute	*Corchorus capsularis*	Leaf.
	Potato	*Solanum tuberosum*	Leaf.
Suriname	Amaranth	*Amaranthus* spp	Leaf and stem.
	Black palm nut	*Astrocaryum* spp	Fruit.
	Jessamine	*Cestrum latifolium*	Leaf and stem.
	Malabar spinach	*Bassella alba*	Leaf and stem.
	Mung bean	*Vigna radiata*	Seed sprout.
	Pak choi	*Brassica chinensis*	Leaf and stem.
Sweden	Dill	*Anethum graveolens*	Above ground parts.
Taiwan	Wasabi (Japanese horseradish)	*Wasabia japonica*	Root and stem.
Thailand	Dasheen	*Alocasia* spp., *Colocasia* spp., and *Xanthosoma* spp	Leaf and stem.
Tonga	Burdock	*Arctium lappa*	Root, stem and leaf.
Trinidad	Leren	*Calathea allouia*	Tuber.

[2] The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if: (1) bananas shipped by air are still green upon arrival in the United States; and (2) bananas shipped by sea are either still green upon arrival in the United States or are yellow but firm.

[3] Executive Order 12779 of October 28, 1991 (56 FR 55975–55976, published October 30, 1991), prohibits the importation into the United States of any goods of Haitian origin, other than publications and other informational materials, or of services performed in Haiti. Importation of any Haitian produce would not be allowed as long as this Executive Order is in effect.

Pest risk analyses conducted by the agency have determined that these fruits and vegetables are not attacked by either fruit flies or other injurious plant pests in the countries listed, either because they are not hosts to these pests or because these pests are not present in the country of origin. In addition, we have determined that any other injurious plant pests that might be carried by the fruits or vegetables would be readily detectable by a U.S. Department of Agriculture inspector. Therefore, the provisions in § 319.56–6 concerning inspection and treatment upon arrival appear adequate to prevent the introduction of injurious plant pests by these fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival: Restricted Destinations

After cotton, okra (*Abelmoschus esculentus*) is probably the preferred host of the pink bollworm (*Pectinophora gossypiella* (Saunders)), which is known to occur in Mexico, the West Indies, South America, and limited areas of the United States. Pink bollworm can cause extensive damage to cotton by feeding inside the squares and bolls. Under the current regulations at § 319.56–2p, okra may be imported into the United States without treatment for the pink bollworm only if the okra is entered into the United States through a North Atlantic port with approved treatment facilities, and is destined to Alaska, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York,

North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, or the District of Columbia, or any part of Illinois, Kentucky, Missouri, or Virginia that is north of the 38th parallel.

We propose to allow okra produced in the South American country of Suriname to be moved into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, and any part of Illinois, Kentucky, Missouri, and Virginia south of the 38th parallel, without treatment for the pink bollworm, except during May 16 through November 30, inclusive. We also propose to allow okra produced in Suriname to be moved into California without treatment for the pink bollworm, except during March 16 through December 31, inclusive. Based on the growing season of pink bollworm host plants in the southeastern States and Nevada, we have determined that these States do not have the host material necessary to sustain an infestation of the pink bollworm except during May 16 through November 30, inclusive. Based on the somewhat longer growing season of host plants in California, we have determined that California does not have the host material necessary to sustain an infestation of the pink bollworm except during March 16 through December 31, inclusive. Treatment of the okra for the pink bollworm does not appear necessary during times when host material is not available because the pest would not survive if introduced during the specified time periods.

We also propose to allow okra produced in Suriname to be moved into Arizona, New Mexico, Oklahoma, and Texas without treatment for the pink bollworm during any time of the year. The pink bollworm is firmly established in Arizona, New Mexico, Oklahoma, and Texas, which are part of the Cotton Belt. These States are under Federal guarantine to prevent the spread of the pink bollworm into noninfested areas of the United States. Under these circumstances, the pink bollworm would present no new pest risk, during any time of the year, if it were carried into these States in okra from Suriname.

Pest risk analyses conducted by APHIS have determined that okra from Suriname is not attached by fruit flies or certain other injurious plant pests, either because it is not a host to these pests or because these pests are not present in Suriname. In addition, we have determined that any other injurious plant pests that might be carried by the okra would be readily detectable by a U.S. Department of Agriculture inspector. Therefore, the provisions in § 319.566 concerning inspection and treatment upon arrival appear adequate to prevent the introduction of injurious plant pests by the okra.

Treatment Required

The fruits and vegetables listed below are attached by the Mediterranean fruit fly or other injurious insects, as specified below, in their country of origin. Visual inspection cannot be relied upon to detect these insects. However, the fruits and vegetables can be treated to destroy the insects. Therefore, we propose to allow these fruits and vegetables to be imported into the United States, or specified portions of the United States, only if they have been treated in accordance with the PPQ Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1.

Country	Common name	Botanical name	Plant part(s)
Greece	Kiwi	*Actinidia delicious*	fruit
(1) Cold treatment as follows for the Mediterranean fruit fly: 10 days at 0°C (32°F) or below. 11 days at 0.55°C (33°F) or below. 12 days at 1.11°C (34°F) or below. 14 days at 1.66°C (35°F) or below. 16 days at 2.22°C (36°F) or below. (Pulp must be at or below the indicated temperature at time of beginning treatment) or (2) Fumigation plus refrigeration as follows for the Mediterranean fruit fly: *Fumigation:* With methl bromide at NAP—chamber of tarpaulin: 32 b/m ^{3} (2 lb/1000 ft ^{3}) at 21°C (70°F) or above, with minimum gas concentration of 18g (oz) at 2 hours after fumigation begins. *Refrigeration:* For 4 days at 0.55°–0.7°C (33°–37°F); or for 11 days at 3.33°–8.3°C (38°–47°F). (Fruit must be aerated at least 2 hours following fumigation. Cooling must begin not less than 24 hours after fumigation is completed).			
Greece	Tangerine	*Citrus reticulata*	fruit
Treatment for the Mediterranean fruit fly as set forth above for kiwi from Greece: (1) cold treatment or (2) fumigation plus refrigeration.			
Israel	Loquat	*Eriobotrya japonica*	fruit
Cold treatment for the Mediterranean fruit fly as set forth above for kiwi from Greece.			
Jordan	Apple	*Malus domestica*	fruit
Cold treatment for the Mediterranean fruit fly as set forth above for kiwi from greece.			
	Persimmon	*Diospyros* spp.	fruit
Cold treatment for the Mediterranean fruit fly as set forth above for kiwi from greece.			
Lebanon	Apple	*Malus domestica*	fruit
Cold treatment for the Mediterranean fruit fly as set forth above for kiwi from greece.			
Panama	Bean, green and lima.	*Phaseolus vulgaris* and *P. lunatus*	pod

—Continued

Country	Common name	Botanical name	Plant part(s)
Treatment for pod-boring insects as follows:			
(1) Fumigation with methyl bromide at NAP—chamber or tarpaulin:			
24 g/m³ (1-½ lb/1000 ft³) for 2 hours at 26.5°C-31.5°C (80°-89°F), with minimum gas concentration as follows:			
19 g (oz) at ½ hour after fumigation begins.			
14 g (oz) at 2 hours after fumigation begins.			
32 g/m³ (2 lb/1000 ft³) for 2 hours at 21°C-26°C (70°-79°F), with minimum gas concentration as follows:			
26 g (oz) at ½ hour after fumigation begins.			
19 g (oz) at 2 hours after fumigation begins.			
40 g/m³ (2-½ lb/1000 ft³) for 2 hours at 15.5°C-20.5°C (60°-69°F), with minimum gas concentration as follows:			
32 g (oz) at ½ hour after fumigation begins.			
24 g (oz) at 2 hours after fumigation begins.			
48 g/m³ (3 lb/1000 ft³) for 2 hours at 10°C-15°C (50°-59°F), with minimum gas concentration as follows:			
38 g (oz) at ½ hour after fumigation begins.			
29 g (oz) at 2 hours after fumigation begins.			
56 g/m³ (3-½ lb/1000 ft³) for 2 hours at 4.5°C-9.5°C (40°-49°F), with minimum gas concentration as follows:			
48 g (oz) at ½ hour after fumigation begins.			
38 g (oz) at 2 hours after fumigation begins or			
(2) Fumigation with methyl bromide in 381 mm (15 inch) vacuum:			
8 g/m³ (½ lb/1000 ft³) for 1½ hours at 32°-35.5°C (90°-96°F).			
16 g/m³ (1 lb/1000 ft³) for 1½ hours at 26.5°-31.5°C (80°-89°F).			
24 g/m³ (1-½ lb/1000 ft³) for 1½ hours at 21°-26°C (70°-70°F).			
32 g/m³ (2 lb/1000 ft³) for 1½ hours at 15.5°-20.5°C (60°-69°F).			
40 g/m³ (2-½ lb/1000 ft³) for 1½ hours at 10°-15°C (50°-59°F).			
48 g/m³ (3 lb/1000 ft³) for 1½ hours at 4.5°-9.5°C (40°-49°F).			
Taiwan	Mango	*Mangifera indica*	fruit
Treatment for the Oriental fruit fly (*Bactrocera dorsalis*) as follows: Temperature of the fruit raised by saturated water vapor at 47.5°C (117.5°F) until the internal pulp temperature near the seed reaches 46.5°C (115.7°F). This temperature must be maintained for 30 minutes. The fruit must be sized for treatment, with temperature probes placed in the largest fruit in the batch being treated.			

The treatments described above have been determined to be effective against the specified insects. This determination is based on research evaluated and approved by the Department. A bibliography and additional information on this research may be obtained from the Hoboken Methods Development Center, APHIS, USDA, 209 River Street, Hoboken, NJ 07030.

Fruits and vegetables required to be treated for fruit flies would be restricted to North Atlantic ports of arrival if treatment has not been completed before the fruits and vegetables arrive in the United States. Climatic conditions at North Atlantic ports are unsuitable for the fruit flies listed above. Therefore, in the unlikely event that any fruit flies escape before treatment, they will not become established pests in the United States. North Atlantic ports are: Atlantic ports north of and including Baltimore; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments to Washington, DC (including Baltimore-Washington International and Dulles International airports).

Pest risk analyses conducted by the agency have determined that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a U.S. Department of Agriculture inspector. As noted, the fruits and vegetables would be subject to inspection and treatment at the port of first arrival, in accordance with § 319.56–6.

Special Conditions

Cantaloupe from Ecuador: The regulations do not currently provide for the importation of cantaloupe (*Cucumis melo*) from Ecuador because of the presence in South America of the South American cucurbit fly (*Anastrepha grandis*). We are proposing to allow the importation of cantaloupe from Ecuador under the following conditions:

(1) The cantaloupe may be imported in commercial shipments only;

(2) The cantaloupe must have been grown in an area where trapping for the South American cucurbit fly has been conducted for at least the previous 12 months by the plant protection service of Ecuador, under the direction of APHIS,[4] with no findings of the pest. Currently, the area that meets these criteria is an area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through E1 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guyaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaja, and Zapotal to El Azucar; and

(3) The cantaloupe may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. The boxes in which the cantaloupe is packed must be stamped "not for distribtuion" in these areas.

We believe that these multiple safeguards would be adequate to prevent the introduction of the South American cucurbit fly. These safeguards are based on the following rationale:

Cantaloupe is a recorded host of the South American cucurbit fly, which is known to exist in a few places in South America. However, no commercially-produced cantaloupe has ever been recorded as a host of the South American cucurbit fly, nor has APHIS dtected the South American cucurbit fly in cantaloupe from any source. This information indicates that commercially-produced cantaloupe is unlikely to present a risk of introducing the South American cucurbit fly. Because this information is based on limited data, however, we believe additional precautions are warranted to ensure that even commercially-produced

[4] Information on the trapping program may be obtained by writing to the Administrator, c/o International Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

cantaloupe from Ecuador is free of the South American cucurbit fly.

In Ecuador, there have been unconfirmed reports of the South American cucurbit fly is only a limited area. To ensure that commercially-produced cantaloupe for export is free of the South American cucurbit fly, the Ecuadoran government has conducted trapping for the fruit fly under the direction of APHIS for over a year now throughout the area where this cantaloupe is being grown. No South American cucurbit flies have been detected in this area. It would appear that commercially-produced cantaloupe from this trapped area would present very little risk of introducing the South American cucurbit fly.

However, the trapping will not keep the South American cucurbit fly from entering the commercial growning area; it will only let us know if this happens. And although measures could be taken immediately to stop cantaloupe from being exported from this area to the United States if the South American cucurbit fly is detected, we would have to consider the possibility that cantaloupe carrying the fruit flies might already have been shipped to the United States.

Therefore, as one final precaution, we believe it would be prudent to prohibit the movement of the cantaloupe into areas of the United States where the South American cucurbit fly could become established. These area are: Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands.

Pest risk analyses conducted by the agency have determined that any other injurious plant pests that might be carried by the commercially-produced cantaloupe would be readily detectable by a U.S. Department of Agriculture inspector. As noted, the cantaloupe would be subject to inspection and treatment at the port of first arrival, in accordance with § 319.56–6.

We are not proposing to allow the importation of noncommercially-produced cantaloupe from Ecuador. Wild or "backyard" produce is generally grown and packed under very different conditions than commercially-produced fruits and vegetables (e.g., wild or backyard produce usually involves different varieties of produce and different cultivation techniques, little or no pest control, and a lack of sanitary controls during growing and packing). As a result, there is reason to believe that wild or backyard produce presents a greater pest risk than commercially produced fruits and vegetables. The scientific literature does not support or refute this idea. Not only is there limited information available about the South American cucurbit fly, as noted above, but most studies upon which the scientific literature on this pest and other plant pests are based are conducted in commercial fields or on commercially produced fruits and vegetables. Very few such studies are made on wild or backyard plantings.

Miscellaneous

We propose to add the following definitions:

"*Above ground parts.* Any plant parts, such as stems, leaves, fruit, or inflorescence, that grow solely above the soil surface."

"*Commercial shipment.* Shipment containing fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer."

"*Cucurbits. Benincapsa hispida* (wax gourd), *Citrullus lanatus* (watermelon), *Cucumis* spp. (including, but not limited to cucumber, kiwano, cantaloupe, honeydew, muskmelon, and Indian gherkin), *Cucurbita* spp. (including, but not limited to squash, zucchini, crenshaws, pumpkin, and marrow), *Legenaria* spp. (including, but not limited to the white-flowered gourds), *Luffa* spp. (including, but not limited to luffa and angled luffa), *Momordica balsamina* (balsam-apple), *Momordica charantia* (bitter gourd), and *Sechium edule* (chayote)."

Executive Order 12291 and Regulatory Flexibility Act

This proposal would amend the regulations governing the importation of fruits and vegetables into the United States by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious plant pests into the United States. This proposal also would amend the regulations by allowing seven currently imported fruits and vegetables to be entered into the United States under less restrictive conditions.

A limited number of the fruits and vegetables would be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. In addition, all of the fruits and vegetables, as a condition of entry, would be subject to inspection at the port of first arrival and to such treatment as may be required by a U.S. Department of Agriculture inspector. This proposed action would provide the United States with additional kinds and sources of fruits and vegetables, while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

This proposed action is part of an ongoing process of updating the list of enterable fruits and vegetables, as data on pest risk changes and as we receive and evaluate requests to import new commodities.

As previously announced in the annual Regulatory Program of the United States Government, we are considering other changes to the regulations in order to improve our ability to prevent the introduction of plant pests. We have also reviewed the regulations in response to the President's regulatory review initiative. We will analyze the projected costs and benefits of any changes to the regulations that we propose; their potential economic impact is unknown at this time.

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

We estimated the economic impact of this proposed rule using data for three of the 93 commodities included: apples, bananas, and mangoes. These were the only commodities for which retail price data, retail demand elasticities, and some information on national production and trading capabilities were available. The economic impact was

estimated for the first year only, because there are many variables which cannot be adequately predicted over a longer time frame.

Based on our evaluation of these three commodities, we project a net benefit to the United States of more than $19 million in the first year following adoption of this proposed rule. We estimate that U.S. consumer gains would exceed $64 million in the first year, with most of these gains (70 percent) attributable to increased apple supplies. An estimated 27 percent of projected consumer gains would be due to increased supplies of mangoes.

We estimate that consumers will reap additional gains from importation of the remaining 90 commodities, with little or no losses to domestic producers, because many of the remaining 90 commodities are specialty crops that are either not produced in the United States, or are produced in limited quantities.

We estimate that U.S. producer losses for the three commodities we evaluated would be about $45 million in the first year, with about 93 percent attributable to greater apple supplies. The projected first year loss for fresh apple producers is estimated at no more than 1 percent of their almost $4 billion annual revenue.

It is likely that U.S. demand for fresh fruits and vegetables will continue to increase. In the longer run, this growth in demand could allow the United States to absorb additional quantities of fresh fruits and vegetables without a change in price. Therefore, U.S. producers could face losses only in the short run.

The proposed rule could have economic consequences for some small U.S. producers. The following figures were taken from the 1987 Census of Agriculture. There are 36,718 apple producers in the United States. The top five apple producing States are Washington, California, Michigan, Pennsylvania, and New York. Ninety-four percent of the 563 U.S. banana producers are located in Hawaii. Seventy-two percent of the 379 U.S. mango producers are located in Florida.

The Census of Agriculture also provides data concerning the total market value of agricultural products sold by all fruit and tree nut producers. Approximately 14 percent of all U.S. fruit and tree nut producers sell agricultural products with a total average market value of $100,000 or more. About 23 percent of the fruit and tree nut producers have annual average sales between $20,000 and $99,999, while almost 31 percent have sales between $2500 and $19,999. Thirty-three percent of the total fruit and tree nut producers in the United States have annual sales of less than $2500. It would appear, therefore, that a large number of small entities could be affected by the changes in this proposed rule. However, it is important to note that the principal occupation for over 54 percent of all fruit and tree nut producers is something other than farming. This implies that while these small producers could face losses, sales of fruits and nuts is probably not their primary source of income. While the Census of Agriculture does not provide similar information for specific fruits and nuts, it is assumed that a similar sales profile exists for the three commodities examined in this analysis.

It was not possible to determine how the estimated producer losses that may result from this rulemaking would affect producers' profit margins, because production costs were not available for the commodities examined in this analysis. It also was not possible to determine whether U.S. producers would lose 100 percent of the projected price decline or share a portion of the losses with fresh fruit and vegetable wholesalers and retailers.

As an alternative to this proposed rule, we considered taking no action to relieve restrictions on previously prohibited fruits and vegetables. This alternative was rejected because the Department's regulatory authority with respect to the importation of fruits and vegetables is limited to preventing the introduction of exotic plant pests and diseases. Pest risk assessments indicate that the actions we are proposing will not result in any significant pest or disease risk.

This proposed rule would not result in any significant increase in reporting, recordkeeping, or compliance requirements.

Regulations governing the importation of fruits and vegetables are authorized under the Plant Quarantine Act (7 U.S.C. 151–165 and 167).

Executive Order 12778

This proposed rule would allow certain fruits and vegetables to be imported into the United States. State and local laws and regulations regarding the importation of fresh fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. This proposed rule would have no retroactive effect and would not require administrative proceedings before parties could file suit in court.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this proposed rule. The assessment provides a basis for the conculusion that the importation of fruits and vegetables under the conditions specified in this proposed rule would not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator, Animal and Plant Health Inspection Service, has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under "**FOR FURTHER INFORMATION CONTACT.**"

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we propose to amend title 7, chapter III, of the Code of Federal Regulations as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In § 319.56–1, three definitions would be added in alphabetical order to read as follows:

§ 319.56–1 Definitions.

Above ground parts. Any plant parts, such as stems, leaves, fruit, or inflorescence, that grow solely above the soil surface.

Commercial shipment. A shipment containing fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Cucurbits. Benincapsa hispida (wax gourd), *Citrullus lanatus* (watermelon), *Cucumis* spp. (including, but not limited to cucumber, kiwano, cantaloupe, honeydew, muskmelon, and Indian gherkin), *Cucurbita* spp. (including, but not limited to squash, zucchini, crenshaws, pumpkin, and marrow), *Lagenaria* spp. (including, but not limited to the white-flowered gourds), *Luffa* spp. (including, but not limited to luffa and angled luffa), *Momordica balsamina* (balsam-apple), *Momordica charantia* (bitter gourd), and *Sechium edule* (chayote).

* * * * *

§ 319.56–2p [Amended]

5. In § 319.56–2p, paragraph (a)(1) would be amended by adding the word "Suriname," immediately after the word "Peru,".

6. In § 319.56–2p, the heading to paragraph (c) would be amended by removing the phrase "Mexico and the Dominican Republic" and by adding "the Dominican Republic, Mexico, and Suriname" in its place.

7. In § 319.56–2p, the introductory text to paragraph (c) would be amended by removing the phrase "Mexico or the Dominican Republic" and by adding "the Dominican Republic, Mexico, or Suriname" in its place.

8. In § 319.56–2p, paragraph (c)(1) would be amended by removing the phrase "the Dominican Republic or Mexico" and by adding "the Dominican Republic, Mexico, or Suriname" in its place.

9. Section 319.56–2t, would be revised to read as follows:

§ 319.56–2t Administrative instructions; conditions governing the entry of certain fruits and vegetables.

The following commodities may be imported into the United States from the places specified in accordance with § 319.56–6 and all other applicable requirements of this subpart:

Country	Common name	Botanical name	Plant part(s)
Argentina	Endive	*Cichorium endivia*	Leaf and stem.
Barbados	Banana	*Musa* spp	Flower.
Belgium	Pepper	*Capsicum* supp	Fruit.
Bermuda	Avocado	*Persea americana*	Fruit.
	Carambola	*Averrhoe carambola*	Fruit.
	Grapefruit	*Citrus paradisi*	Fruit.
	Guava	*Psidium guajava*	Fruit.
	Lemon	*Citrus limon*	Fruit.
	Longan	*Dimocarpus longan*	Fruit.
	Loquat	*Eriobotrya japonica*	Fruit.
	Natal plum	*Carissa macrocarpa*	Fruit.
	Orange, sour	*Citrus aurantium*	Fruit.
	Orange, sweet	*Citrus sinensis*	Fruit.
	Passion fruit	*Passiflora* spp	Fruit.
	Suriname cherry	*Eugenia uniflora*	Fruit.
Bolivia	Belgian endive	*Cichorium intybus*	Leaf.
Colombia	Rhubarb	*Rheum rhabarbarum*	Stalk.
	Snow pea	*Pisum sativum* subsp. *sativum*	Flat, immature pod.
Cook Islands	Banana	*Musa* spp	Green fruit.[1]
	Cucumber	*Cucumis sativus*	Fruit.
	Drumstick	*Moringa pterygosperma*	Leaf.
	Indian mulberry	*Morinda citrifolia*	Leaf.
Costa Rica	Basil	*Ocimum*, spp	Whole plant.
	Chinese kale	*Brassica alboglabra*	Leaf and stem.
	Chinese turnip	*Raphanus sativus*	Root.
Dominica	Durian	*Durio zibethinus*	Fruit.
Great Britain	Basil	*Ocimum* spp	Leaf and stem.
Grenada	Abiu	*Pouteria caimito*	Fruit
	Bilimbi	*Averrhoa bilimbi*	Fruit.
	Breadnut	*Brosimum alicastrum*	Fruit.
	Cocoplum	*Chrysobalanus icaco*	Fruit.
	Cucurbits	Curcurbitaceae	Fruit.
	Durian	*Durio zibethinus*	Fruit.
	Jackfruit	*Artocarpus heterophyllus*	Fruit.

Country	Common name	Botanical name	Plant part(s)
	Jambolan	*Syzygium cumini*	Fruit.
	Jujube	*Ziziphus* spp	Fruit.
	Langsat	*Lansium domesticum*	Fruit.
	Litchi	*Litchi chinensis*	Fruit.
	Malay apple	*Syzygium malaccense*	Fruit.
	Mammee apple	*Mammea americana*	Fruit.
	Peach palm	*Bactris gasipaes*	Fruit.
	Piper	*Piper* spp	Fruit.
	Pulasan	*Nephelium ramboutan-ake*	Fruit.
	Rambutan	*Nephelium lappaceum*	Fruit.
	Rose apple	*Syzygium jambos*	Fruit.
	Santol	*Sandoricum koetjape*	Fruit.
	Sapote	*Pouteria sapota*	Fruit.
Guatemala	Artichoke, globe	*Cynara scolymus*	Immature flower head.
	Eggplant	*Solanum melongena*	Fruit.
	Loroco	*Fernaldia* spp	Above ground parts.
	Mint	*Mentha* spp	Above ground parts.
	Oregano	*Origanum* spp	Leaf and stem.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Tarragon	*Artemisia dracunculus*	Leaf and stem.
Haiti [2]	Jackfruit	*Artocarpus heterophyllus*	Fruit.
Honduras	Banana	*Musa* spp	Flower.
	Chicory	*Cichorium* supp	Leaf and stem.
	Radish	*Raphanus sativus*	Below ground parts.
Israel	Garden rocket	*Eruca sativa*	Leaf and stem.
	Mint	*Mentha* spp	Above ground parts.
	Watercress	*Nasturtium officinale*	Leaf and stem.
Jamaica	Jackfruit	*Artocarpus heterophyllus*	Fruit.
Japan	Mung bean	*Vigna radiata*	Seed sprout.
	Soybean	*Glycine max*	Seed sprout.
Korea	Bonnet bellflower	*Codonopsis lanceolata*	Root.
	Chard	*Beta vulgaris* subsp. *cicla*	Leaf.
	Mugwort	*Artemisia vulgaris*	Leaf and stem.
	Onion	*Allium cepa*	Bulb.
	Shepherd's purse	*Capsella bursa-pastoris*	Leaf and stem.
	Watercress	*Nasturtium officinale*	Leaf and stem.
Liberia	Jute	*Corchorus capsularis*	Leaf.
	Potato	*Solanum tuberosum*	Leaf.
Mexico	Anise	*Pimpinella anisum*	Leaf and stem.
	Banana	*Musa* spp	Flower.
	Cucurbits	*Curcurbitaceae*	Inflorescence.
	Garden rocket	*Eruca sativa*	Leaf and stem.
	Piper	*Piper* spp	Leaf and stem.
	Porophyllum	*Porophyllum* spp	Above ground parts.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Thyme	*Thymus vulgaris*	Above ground parts.
New Zealand	Avocado	*Persea americana*	Fruit.
	Fig	*Ficus carica*	Fruit.
Panama	Basil	*Ocimum* spp	Above ground parts.
	Bean, green and lima	*Phaseolus vulgaris* and *P. lunatus*	Seed.
	Chervil	*Anthriscus cerefolium*	Above ground parts.
	Eggplant	*Solanum melongena*	Fruit.
	Lemon thyme	*Thymus citriodorus*	Leaf and stem.
	Mint	*Mentha* spp	Above ground parts.
	Oregano	*Origanum* spp	Above ground parts.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Tarragon	*Artemesia dracunculus*	Leaf and stem.
Peru	Basil	*Ocimum* spp	Leaf and stem.
	Dill	*Anethum graveolens*	Above ground parts.
	Oregano	*Origanum* spp	Leaf and stem.
	Parsley	*Petroselinum crispum*	Leaf and stem.
	Radicchio	*Cichorium* spp	Leaf.
	Thyme	*Thymus vulgaris*	Above ground parts.
Sierra Leone	Cassava	*Manihot esculenta*	Leaf.
	Jute	*Corchorus capsularis*	Leaf.
	Potato	*Solanum tuberosum*	Leaf.
Suriname	Amaranth	*Amaranthus* spp	Leaf and stem.
	Black palm nut	*Astrocaryum* spp	Fruit.
	Jessamine	*Cestrum latifolium*	Leaf and stem.
	Malabar spinach	*Basselia alba*	Leaf and stem.
	Mung bean	*Vigna radiata*	Seed sprout.
	Pak choi	*Brassica chinensis*	Leaf and stem.
Sweden	Dill	*Anethum graveolens*	Above ground parts.
Taiwan	Wasabi (Japanese horseradish)	*Wasabia japonica*	Root and stem.
Thailand	Dasheen	*Alocasia* spp., *Colocasia* spp., and *Xanthosoma* spp	Leaf and stem.
Tonga	Burdock	*Arctium lappa*	Root, stem and leaf.
Trinidad	Leren	*Calathea allouia*	Tuber.

[1] The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if: (1) bananas shipped by air are still green upon arrival in the United States; and (2) bananas shipped by sea are either still green upon arrival in the United States or are yellow but firm.

[2] Executive Order 12779 of October 28, 1991 (56 FR 55975–55976, published October 30, 1991), prohibits the importation into the United States of any goods of Haitian origin, other than publications and other informational materials, or of services performed in Haiti. Importation of any Haitian produce would not be allowed as long as this Executive Order is in effect.

10. In Subpart—Fruits and Vegetables, a new § 319.56–2w and § 319.56–2x would be added to read as follows:

§ 319.56–2w Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) The following fruits and vegetables may be imported into the United States only if they have been treated as follows, in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

Fruit or vegetable	Country	Treatment
Kiwi (fruit), *Actinidia deliciosa*	Greece	(1) Cold treatment—for the Mediterranean fruit fly, or (2) Fumigation with methyl bromide plus refrigeration—for the Mediterranean fruit fly.
Tangerine (fruit), *Citrus reticulata*	Greece	(1) Cold treatment—for the Mediterranean fruit fly, or (2) Fumigation with methyl bromide plus refrigeration—for the Mediterranean fruit fly.
Loquat (fruit), *Eriobotrya japonica*	Israel	Cold treatment—for the Mediterranean fruit fly.
Apple (fruit) *Malus domestica*	Jordan	Cold treatment—for the Mediterranean fruit fly.
Persimmon (fruit), *Diospyros* spp	Jordan	Cold treatment—for the Mediterranean fruit fly.
Apple (fruit), *Malus domestica*	Lebanon	Cold treatment—for the Mediterranean fruit fly.
Bean, green and lima (pod), *Phaseolus vulgaris*	Panama	Fumigation with methyl bromide—for pod-boring insects.
Mango (fruit), *Mangifera indica*	Taiwan	Vapor heat treatment—for the Oriental fruit fly.

(b) Fruits and vegetables listed above and required to be treated for fruit flies may arrive in the United States only at a North Atlantic port if treatment has not been completed before the fruits and vegetables arrive in the United States. North Atlantic ports are: Atlantic ports north of and including Baltimore; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC (including Baltimore-Washington International and Dulles International airports).

§ 319.56–2x Administrative instructions; conditions governing the entry of cantaloupe from Ecuador.

(a) Cantaloupe (*Cucumis melo*) may be imported into the United States from Ecuador only under the following conditions:

(1) The cantaloupe may be imported in commercial shipments only;

(2) The cantaloupe must have been grown in an area where trapping for the South American cucurbit fly has been conducted for at least the previous 12 months by the plant protection service of Ecuador, under the direction of APHIS,[3] with no findings of the pest.

(3) The following area meets the requirements of paragraph (a)(2) of this section: The area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through El 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guayaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaja, and Zapotal to El Azucar; and

(4) The cantaloupe may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands.

The boxes in which the cantaloupe is packed must be stamped "Cantaloupes not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI."

(b) [Reserved]

Done in Washington, DC, this 10th day of June 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–13994 Filed 6–12–92; 8:45 am]

BILLING CODE 3410–34–M

[3] Information on the trapping program may be obtained by writing to the Administrator, c/o International Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–55–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain de Havilland Division Model DHC–7 series airplanes, that would have required a detailed inspection to detect corrosion of the main landing gear (MLG) emergency down release cables, and replacement, if necessary. That proposal was prompted by a report of corrosion found underneath the anti-friction sleeve of the two MLG emergency down release cables. This action revises the proposed rule by requiring installation of stainless steel cable assemblies. The actions specified by this proposed AD are intended to prevent failure of the cables to extend, resulting in a gear-up landing.

DATES: Comments must be received by July 6, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–55–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Mr. Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-55-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-55-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain de Havilland Division Model DHC-7 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 8, 1992 (57 FR 11924). That NPRM would have required a detailed inspection to detect corrosion of the main landing gear (MLG) emergency down release cables, and replacement, if necessary. That NPRM was prompted by a report of corrosion found underneath the anti-friction sleeve of the two MLG emergency down release cables. That condition, if not corrected, could result in failure of the cables to extend, resulting in a gear-up landing.

Since the issuance of that NPRM, the FAA has determined that the installation of stainless steel cable assemblies, as described in de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991, is necessary in order to reduce the possibility of corrosion in the cable assembly. Therefore, the proposal has been revised to include a requirement for such installation. The proposal would require that affected operators install stainless steel cables within six months.

If operators detect corrosion as a result of the inspection proposed by this AD action, they would be permitted to install carbon steel cables after accomplishing the inspection; however, operators would be required to replace the carbon steel cables with stainless steel cables within twelve months.

The economic analysis paragraph, below, has been revised to include the number of work hours and parts costs associated with installation of the cable assemblies.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the inspection, and 15 work hours per airplane to accomplish the modification, at an average labor rate of $55 per work hour. Required parts would cost approximately $825 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $91,080.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and Responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation of part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, de Havilland Division: Docket 92-NM-55-AD.

Applicability: Model DHC-7 airplanes; on which stainless steel cables, Post-Modification Number 7/2609, have not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a gear-up landing, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a detailed inspection of the left- and right-hand main landing gear (MLG) emergency down release cables to detect corrosion, in accordance with de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991.

(b) If any corrosion is detected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace both cable assemblies with either stainless steel cables (Post-Modification Number 7/2609) or carbon steel cables (Pre-Modification 7/2609), in accordance with de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991.

(c) Within 6 months after the effective date of this AD, or within 12 months after installing carbon steel cables, if installed in accordance with paragraph (b) of this AD: Install Post-Modification 7/2609 cables, in accordance with de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991.

(d) An alternative method of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York ACO.

(e) Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 18, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13974 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-46-AD]

Airworthiness Directives; British Aerospace Model 146-100A, -200A, and -300A Series Airplanes, Equipped With Dunlop Hydraulic Fuses, Part Number ACM29100

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model 146-100A, -200A, and -300A series airplanes. This proposal would require removing certain hydraulic fuses and installing new hydraulic fuses that have an improved design. This proposal is prompted by two cases of fuse failure. The actions specified by the proposed AD are intended to prevent double hydraulic system failure and potential loss of airplane braking and directional control.

DATES: Comments must be received by July 21, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, (FAA) Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-46-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-46-AD." The postcard will be date stamped and returned to the commenter. Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-46-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is airworthines authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model 146-100A, -200A, and -300A series airplanes. The CAA advises that there have been several failures to the fork end fitting to the hydraulic fuses in the "yellow" hydraulic system. Similar fuses are installed in the "green" hydraulic system. The failure of the "yellow" hydraulic system is most likely to occur during operation of the parking brake when the four fuses of that system experience full system hydraulic pressure. There have been two occurrences of a double hydraulic system failure caused by the failure of either a green or yellow hydraulic system hydraulic fuse, followed by a similar failure of the fuse in the remaining system. This condition, if not corrected, could result in loss of airplane braking and directional control while the airplane is on the ground.

British Aerospace has issued Modification Service Bulletin SB.32-130-70295C, dated September 27, 1991, which describes procedures for removal of certain "yellow" and "green" hydraulic systems Dunlop hydraulic fuses, and installation of new hydraulic fuses having an improved design. (This British Aerospace service bulletin references Dunlop Service Bulletin ACM29100-32-1056, dated September 27, 1991, for additional information). The CAA classified this British Aerospace service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require removing certain Dunlop hydraulic fuses and installing new hydraulic fuses. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Replacement parts will be provided at no cost to operators.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $54,945. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive, or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 an 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–46–AD.

Applicability: Model 146–100A, –200A, and –300A series airplanes, equipped with Dunlop hydraulic fuses, part number ACM29100; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential loss of airplane braking and directional control, accomplish the following:

(a) Prior to the accumulation of 4,000 landings since installation of Dunlop hydraulic fuses having part number ACM29100 (Mod. states 1 or 2), or within 60 days after the effective date of this AD, whichever occurs later, remove green and yellow hydraulic systems Dunlop hydraulic fuses having part number ACM29100 (Mod states 1 or 2) and install new hydraulic fuses having part number ACM30506 (Mof. 1), in accordance with British Aerospace Modification Service Bulletin SB.32–130–70295C, dated September 27, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 21, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13975 Filed 6–12–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AF49

Updating Rehabilitation Criteria

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs is proposing to revise current provisions under which a service-disabled veteran who has been provided a program of rehabilitation services may be found rehabilitated. Under current criteria a determination of rehabilitation is generally limited to cases in which the veteran secures the type of employment specified in his or her rehabilitation plan or has achieved the goals of a program of independent living services. We believe it would be more consistent with statutory provisions to also declare a veteran rehabilitated if he or she has overcome the employment handicap which necessitated the program of rehabilitation services, but may not have done so as stipulated in the rehabilitation plan. The intended effect of these proposed regulatory changes is to make decisions regarding the determination of rehabilitation more consistent with statutory provisions.

DATES: Comments must be received on or before July 15, 1992. These proposed amendments are effective 30 days after the date of final publication in the **Federal Register.**

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, (202) 233–6496, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, 202–233–6496.

SUPPLEMENTARY INFORMATION: The purposes of the rehabilitation program are "to provide for all services necessary to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable, and to obtain and maintain suitable employment". A requirement for basic entitlement to a rehabilitation program is that the individual be found "in need. Under the law, veterans found to have employment handicaps (i.e., the impairment of the veteran's ability to prepare for, obtain or maintain employment) may be provided a program of rehabilitation services to overcome his or her handicap through achievement of a suitable vocational goal or a substantial increase in the veteran's ability to live independently. The services which VA determines are necessary to become rehabilitated are incorporated in an Individualized Written Rehabilitation Plan (IWRP).

VA has established a case status system in order to mark the progress of a veteran in a rehabilitation program. As provided in § 21.196 the "rehabilitated status is for the purpose of identifying cases where rehabilitation or employment service goals are substantially achieved." However, current regulatory provisions permit

administrative assignment of this case status only under the narrower criterion that the veteran has obtained and maintained employment consistent with the veteran's Individualized Written Rehabilitation plan (IWRP). This provision does not include cases in which the veteran has overcome his or her employment handicap to the maximum extent feasible, but may not have done so in the field or occupation stipulated in the veteran's IWRP. We are proposing that current rules be modified to declare a veteran rehabilitated when the employment handicap (i.e., the impairment of the veteran's ability to prepare for, obtain or maintain employment) has been overcome to the maximum extent feasible. The provisions of the revised regulation are described below.The proposed criteria for determining rehabilitation retain the current provisions under which a veteran who completes the training portion of the rehabilitation plan and achieves the employment or independent living goals of the program may be declared rehabilitated. It is proposed that the veteran also be declared rehabilitated under the following conditions:

1. An intensive search for employment in the occupational objective of the veteran's plan or in a closely related occupation or field is unsuccessful. The veteran subsequently secures employment in another occupation or field which is consistent with his or her abilities, aptitudes and interests. In addition, the employment requires the use of some of the academic, technical or professional knowledge and skills which the veteran has obtained during his or her participation in the rehabilitation program, and he or she maintains the employment for at least 60 days.

2. A veteran completes the prescribed training and rehabilitation services and then pursues additional training that may not be provided under the rehabilitation program. The veteran may be declared rehabilitated if the additional training will enhance the veteran's ability to secure suitable employment; or

3. The veteran does not complete all of the prescribed program of rehabilitation services and subsequently obtains employment which is not in the field or occupation specified in the plan or in a closely related field or occupation. The veteran may be declared rehabilitated if employment which he or she has obtained makes substantial use of the services provided under the rehabilitation plan, is consistent with his or her abilities, aptitudes and interests and the veteran has maintained the employment for at least 60 continuous days.

VA has determined that these proposed amendments do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. These amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

These regulatory amendments are effective 30 days after the date of final publication in the **Federal Register**. The Secretary certifies that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational Education, Vocational rehabilitation.

Approved: April 8, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR, part 21, is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. The authority citation for part 21, subpart A is revised to read as follows:

Authority: 38 U.S.C., 501(a).

2. Section 21.194 is amended by revising paragraph (d) (1) and (2) to read as follows:

§ 21.194 "Employment services" status.

* * * * *

(d) *Termination of employment services status.* * * *

(1) He or she is determined to be rehabilitated under the provisions of § 21.283; or

(2) He or she is:

(i) Employed for at least 60 days in employment that does not meet the criteria for rehabilitation contained in § 21.283, if the veteran intends to maintain this employment and declines further assistance; and

(ii) Adjusted to the duties and responsibilities of the job.

* * * * *

3. Section 21.196 is amended by revising paragraph (b) and the authority to paragraph (b) to read as follows:

§ 21.196 "Rehabilitated" status.

* * * * *

(b) *Assignment to "rehabilitated" status.* A veteran's case shall be assigned to "rehabilitated" status when his or her case meets the criteria for rehabilitation contained in § 21.283.

(Authority: 38 U.S.C. 3102, 3107 and 3117)

* * * * *

4. In part 21, Subpart A, § 21.283 is added to read as follows:

§ 21.283 Rehabilitated.

(a) *General.* For purposes of Chapter 31 a veteran shall be declared rehabilitated when he or she has overcome the employment handicap to the maximum extent feasible as described in paragraph (c), (d) or (e) of this section.

(Authority: 38 U.S.C. 3101(1)(2))

(b) *Definition.* The term *suitably employed* includes employment in the competitive labor market, sheltered situations, or on a nonpay basis which is consistent with the veteran's abilities, aptitudes and interests if the criteria contained in paragraph (c) (1) or (2) of this section are otherwise met.

(Authority: 38 U.S.C. 3100)

(c) *Rehabilitation to the point of employability has been achieved.* The veteran who has been found rehabilitated to the point of employability shall be declared rehabilitated if he or she:

(1) Is employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

(2) Is employed in an occupation unrelated to the occupational objective of the veteran's rehabilitation plan for at least 60 continuous days if the veteran concurs in the change and such employment:

(i) Follows intensive, yet unsuccessful, efforts to secure employment for the veteran in the occupational objective of a rehabilitation plan or a closely related occupation contained in the veteran's rehabilitation plan;

(ii) Is consistent with the veteran's aptitudes, interests, and abilities; and

(iii) Utilizes some of the academic, technical or professional knowledge and skills obtained under the rehabilitation plan; or

(3) Pursues additional education or training, in lieu of obtaining employment, after completing his or her prescribed program of training and rehabilitation services if:

(i) The additional education or training is not approvable as part of the veteran's rehabilitation program under this chapter; and

(ii) Achievement of employment consistent with the veteran's aptitudes, interests, and abilities will be enhanced by completion of the additional education or training.

(Authority: 38 U.S.C. 3101(1), 3107, 3117)

(d) *Rehabilitation to the point of employability has not been completed.* A veteran under a rehabilitation plan who obtains employment without being declared rehabilitated to the point of employability as contemplated by the plan, including a veteran in a rehabilitation program consisting solely of employment services, is considered to be rehabilitated if the following conditions exist:

(1) The veteran obtains and retains employment substantially using the services and assistance provided under the plan for rehabilitation.

(2) The employment obtained is consistent with the veteran's abilities, aptitudes and interests.

(3) Maximum services feasible to assist the veteran to retain the employment obtained have been provided.

(4) The veteran has maintained the employment for at least 60 continuous days.

(Authority: 38 U.S.C. 3100(1), (3107) (3117)

(e) *Independent living.* A veteran who has pursued a program of independent living services will be considered rehabilitated when all goals of the program have been achieved, or if not achieved, when:

(1) The veteran, nevertheless, has attained a substantial increase in the level of independence with the program assistance provided;

(2) The veteran has maintained the increased level of independence achieved for at least 60 days; and

(3) Further assistance is unlikely to significantly increase the veteran's level of independence.

(Authority: 38 U.S.C. 3101(1), (2), 3107)

§ 21.284 [Amended]

5. In § 21.284, the introductory text to paragraph (a) is amended by removing the reference to "§ 21.196" and adding in its place "§ 21.283."

[FR Doc. 92-13795 Filed 6-12-92; 8:45 am]

BILLING CODE 8320-01-M

UNITED STATES COMMISSION ON CIVIL RIGHTS

45 CFR Part 708

Regulations for Collection by Salary Offset From Indebted Current or Former Employees

AGENCY: United States Commission on Civil Rights.

ACTION: Proposed regulation.

SUMMARY: This regulation implements the collection procedures of the Debt Collection Act of 1982, Public Law 97-365, codified in 5 U.S.C. 5514, which authorizes the Federal government to collect debts owed by a Federal employee to the United States through salary offset.

DATES: To be assured of consideration, comments must be in writing and must be received on or before August 14, 1992.

ADDRESSES: Comments should be sent to: Solicitor's Unit, U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Washington, DC 20425.

Comments received will be available for public inspection at: The Robert S. Rankin National Civil Rights Library, room 709, 1121 Vermont Avenue, NW., Washington, DC 20425.

Copies of this notice are available on tape for those with impaired vision or other physical handicap. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Emma Monroig, Solicitor, (202) 376-8351, TDD (202) 376-2683.

Background: Under the Debt Collection Act of 1982, when the head of a Federal agency determines that an employee of an agency is indebted to the United States or is notified by the head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin.

As required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management on July 3, 1984, 49 FR 27472, codified in 5 CFR 550 subpart K.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980, 5 CFR 1320.3(c) the information collection provisions contained in this regulation are not subject to review and approval by the Office of Management and Budget.

Executive Order 12291

This rule has been reviewed and determined not to be a "major rule" as defined by Executive Order 12291, dated February 17, 1981 because it will not result in: (1) An annual effect on the economy of more than $100 million or more; (2) a major increase in costs and prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule applies only to individual Federal employees. It will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 5 U.S.C. 605(b). Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 45 CFR Part 708

Administrative offset, Administrative practice, Claims, Debt collection, Government employee, Wages.

For the reasons set out in the preamble, part 708 of title 45 of the Code of Federal Regulations is added to read as follows:

PART 708—COLLECTION BY SALARY OFFSET FROM INDEBTED CURRENT AND FORMER EMPLOYEES

Sec.

708.1 Purpose and Scope
708.2 Policy
708.3 Definitions
708.4 Applicability
708.5 Notice
708.6 Petitions for Hearing
708.7 Hearing Procedures
708.8 Written Decision
708.9 Coordinating Offset with Another Federal Agency
708.10 Procedures for Salary Offset
708.11 Refunds
708.12 Statute of Limitations
708.13 Non-Waiver of Rights by Payments
708.14 Interest, Penalties, and Administrative Costs

Authority: 5 U.S.C. 5514; sec. 6(1) of E.O. 11609; redesignated in sec. 2-1 of E.O. 12107.

§ 708.1 Purpose and scope.

(a) These regulations provide the procedure pursuant to 5 U.S.C. 5514 and 5 CFR 550 subpart K for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal government. This procedure applies to all Federal employees who owe debts to the U.S. Commission on Civil Rights ("the Commission"). This provision does not apply when the employee consents to recovery from his/her current pay account.

(b) This procedure does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended (26 U.S.C. 1 et seq.);

(2) The Social Security Act (42 U.S.C. 301 et seq.);

(3) The tariff laws of the United States; or

(4) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) The Commission shall except from salary offset provisions any adjustments to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits programs requiring periodic payroll deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude an employee or former employee from requesting a waiver of salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office (GAO) in accordance with procedures prescribed by the GAO. In addition, this procedure does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 708.2 Policy.

It is the policy of the Commission to apply the procedure(s) in these regulations uniformly and consistently in the collection of internal debts from its current and former employees.

§ 708.3 Definitions.

For the purposes of these regulations the following definitions apply:

(a) "Agency" means: (1) An Executive agency as defined in section 105 of title 5 United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission; (2) a military department as defined in section 102 of title 5, United States Code; (3) an agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial panel on Multidistrict Litigation; (4) an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and (5) other independent establishments that are entities of the Federal Government.

(b) "Creditor agency" means the agency to which the debt is owed.

(c) "Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States, and amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) "Assistant Staff Director for Management" means the Assistant Staff Director for Management of the U.S. Commission on Civil Rights or in his/her absence, or in the event of a vacancy in the position or its elimination, the Personnel and EEO Officer.

(e) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(g) "Former employee" means an employee who is no longer employed with the Commission but is currently employed with another Federal agency.

(h) "FCCS" means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 et seq.

(i) "Hearing official" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Assistant Staff Director for Management of the U.S. Commission on Civil Rights.

(j) "Paying agency" means the agency employing the individual who owes the debt and is responsible for authorizing the payment of his or her current pay.

(k) "Pay interval" will normally be the biweekly pay period but may be some regularly recurring period of time in which pay is received.

(l) "Retainer pay" means the pay above the maximum rate of an employee's grade which he/she is allowed to keep in special situations rather than having the employee's rate of basic pay reduced.

(m) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 708.4 Applicability.

These regulations are to be followed when:

(a) The U.S. Commission on Civil Rights is owed a debt by an individual who is a current employee of the Commission; or

(b) The U.S. Commission on Civil Rights is owed a debt by an individual currently employed by another Federal agency; or

(c) The Commission employs an individual who owes a debt to another Federal agency.

§ 708.5 Notice.

(a) Deductions shall not be made unless the employee who owes the debt has been provided with written notice signed by the Assistant Staff Director for Management (ASDM) or in his/her absence, or in the event of a vacancy in that position or its elimination, the Personnel and EEO Officer (or the U.S. Department of Agriculture, National Finance Center acting on behalf of the Commission) of the debt at least 30 days before salary offset commences.

(b) The written notice from the ASDM, acting on behalf of the Commission, as the creditor agency, shall contain

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the requirements concerning the current interest rate, penalties, and administrative costs, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards (4 CFR 101.1 et seq.);

(5) The employee's right to inspect, request, or receive a copy of the government records relating to the debt;

(6) The employee's right to enter into a written repayment schedule for the voluntary repayment of the debt in lieu of offset;

(7) The right to a hearing conducted by an impartial hearing official (either an administrative law judge or an official who is not under the control of the Commission);

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing (i.e., within 15 calendar days) of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if one is requested) will be issued at the earliest practical date but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(11) A statement that an employee knowingly submitting false or frivolous statements (5 CFR part 550.1101), representations, or evidence may subject the employee to disciplinary procedures under 5 U.S.C. chapter 75 and 5 CFR part 752; penalties under the False Claims Act, 31 U.S.C. 3729–3731; or criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(13) A statement that an employee will be promptly refunded any amount paid or deducted for a debt which is later waived or found not valid unless there are applicable contractual or statutory provisions to the contrary; and

(14) The name, address, and phone number of an official who can be contacted concerning the indebtedness.

§ 708.6 Petitions for hearing.

(a) Except as provided in paragraph (d) of this section, an employee who wants a hearing must file a written petition for a hearing to be received by the Assistant Staff Director for Management not later than 15 calendar days from the date of receipt of the Notice of Offset. The petition must state why the employee believes the determination of the Commission concerning the existence or amount of the debt is in error.

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses which the employee believes support his/her position.

(c) If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(d) If the employee files a petition for a hearing later than the 15 calendar days from the date of receipt of the Notice of Offset, as described in paragraph (a) of this section, the hearing official may accept the request if the employee can show that there was good cause (such as due to circumstances beyond his/her control or because he/she was not informed or aware of the time limit) for failing to meet the deadline date.

(e) An employee will not be granted a hearing and will have his/her disposable pay offset in accordance with the ASDM's offset schedule if he/she fails to show good cause why he/she failed to file the petition for a hearing within the stated time limits.

§ 708.7 Hearing procedures.

(a) If an employee timely files a petition for a hearing under the above procedures, the Assistant Staff Director for Management shall select the time, date, and location for the hearing.

(b) The hearing shall be conducted by an impartial hearing official.

(c) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c).

(d) The Commission, as the creditor agency, will have the burden of proving the existence of the debt.

(e) The employee requesting the hearing shall have the burden of proof to demonstrate that the existence or amount of the debt is in error.

§ 708.8 Written decision.

(a) The hearing official shall issue a written opinion no later than sixty (60) days after the filing of the petition for hearing; or no longer than sixty (60) days from the proceedings if an extension has been granted pursuant to § 708.5(b)(10).

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt; and if applicable, the repayment schedule.

§ 708.9 Coordinating offset with another federal agency.

(a) The Commission is the creditor agency when the Assistant Staff Director for Management determines that an employee of another Federal agency owes a delinquent debt to the Commission. The Assistant Staff Director for Management shall, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee of the paying agency owes the debt, the amount, and basis of the debt, the date on which payment is due, the date of Government's right to collect the debt first accrued, and that the Commission's regulations for salary offset have been approved by the Office of Personnel Management;

(3) If the collection must be made in installments, the Commission, as the creditor agency, will advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and the commencement date of the installments;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken, unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(5) If the employee is in the process of separating, the Commission will submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification of the monies already collected and notice of the employee's separation to the Commission. If the paying agency is aware that the employee is entitled to Civil Service or Foreign Service Retirement and Disability Fund or similar payments, it must provide written notification to the agency responsible for making such payments stating the amount of the debt and indicating that the provisions of this party have been followed; and

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Assistant Staff Director for Management may request, unless otherwise prohibited, that money payable to the employee from the Civil Service

Retirement and Disability Fund or other similar funds be collected by administrative offset. The Commission will provide the agency responsible for these payments with a property certified claim.

(b) The Commission is the paying agency when an employee of this agency owes a debt to another Federal agency which is the creditor agency.

(1) Upon receipt of a properly certified debt claim from a creditor agency, deductions will be scheduled to begin at the next established pay interval.

(2) The Commission must give the employee written notice that it has received a certified debt claim from a creditor agency (including the amount), and the date that deductions will be scheduled to begin and the amount of the deduction.

(3) The Commission shall not review the merits of the creditor agency's determination of the amount of the certified claim or of its validity.

(4) If the employee transfers to another paying agency after the creditor agency has submitted its debt claim but before the debt is collected completely, the Commission must certify the total amount collected to the creditor agency with notice of the employee's transfer. One copy of this certification must be furnished to the employee. The creditor agency will submit a properly certified claim to the new paying agency before collection can be resumed.

(5) When the Commission, as a paying agency, receives an incomplete debt claim from a creditor agency, it must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

§ 708.10 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Assistant Staff Director for Management's written notice of intent to collect from the employee's current pay, unless alternative arrangements for repayment are made.

(b) If the employee filed a petition for a hearing with the Assistant Staff Director for Management before the expiration of the period provided, then deductions will begin after the hearing official has provided the employee with a hearing, and a final written decision has been rendered in favor of the Commission.

(c) A debt will be collected in a lump-sum if possible.

(d) If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of the installment deduction(s) will bear a reasonable relationship to the size of the debt and the deduction will be established for a period not greater than the anticipated period of employment. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years.

(e) Installment payments may be less than 15 percent of disposable pay if the Assistant Staff Director for Management determines that the 15 percent deduction would create an extreme financial hardship.

(f) Installment payments of less than $25 per pay period or $50 per month, will only be accepted in the most unusual circumstances.

(g) Unliquidated debts may be offset by the paying agency under 31 U.S.C. 3716 against any financial payment due to a separating employee including but not limited to final salary payment, retired pay, or lump sum leave, etc. as of the date of separation to the extent necessary to liquidate the debt.

(h) If the debt cannot be liquidated by offset from any final payment due a separated employee it may be recovered by the offset in accordance with 31 U.S.C. 3716 from any later payments due the former employee from the United States.

§ 708.11 Refunds.

(a) The Commission will refund promptly any amounts deducted to satisfy debts owed to the Commission when the debt is waived, found not owed to the Commission, or when directed by an administrative or judicial order; or

(b) The creditor agency will promptly return any amounts deducted and forwarded by the Commission to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order;

(c) Upon receipt of monies returned in accordance with 02. above, the Commission will refund the amount to the current or former employee.

(d) Unless required by law, refunds under this subsection shall not bear interest nor shall liability be conferred to the Commission for debt or refunds owned by other creditor agencies.

§ 708.12 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 708.13 Non-waiver of rights by payments.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 708.14 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated: June 2, 1992.

Emma Monroig,

Solicitor.

[FR Doc. 92-13370 Filed 6-12-92; 8:45 am]

BILLING CODE 6335-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 572, 580, and 581

[Docket No. 92-35]

Inquiry Concerning Various Regulatory Issues

AGENCY: Federal Maritime Commission ("FMC" or "Commission").

ACTION: Notice of inquiry.

SUMMARY: The FMC is soliciting comment on the following issues concerning service contracts (Issue No. 1 also pertains to tariffs):

1. Consider changing FMC regulations to no longer accept the voluntary filing of tariffs and service contracts covering excepted commodities;

2. Consider an FMC rulemaking to simplify the filing of service contracts' "essential terms";

3. Consider an FMC rulemaking to define the term "similarly situated shipper";

4. Consider an FMC rulemaking to clarify carriers' and conferences' obligations with regard to their duty to deal with shippers' associations and non-vessel-operating common carriers

("NVOCCs") with respect to service contracts; and

5. Consider an FMC rulemaking permitting service contracts to be based on a percentage of a shipper's cargo.

In addition, the Commission is soliciting comment on whether to:

6. Consider an FMC rulemaking to require every conference to establish an ombudsman or other nautral entity which would address complaints from shippers.

The information received will be used by the Commission to help determine which, if any, of these or other possible regulatory changes warrant consideration.

DATES: Comments (original and 15 copies) on or before July 30, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: Robert A. Ellsworth, Director, Policy, Planning and Analysis, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5911.

During the deliberative process undertaken by the Advisory Commission on Conferences in Ocean Shipping, six major areas were identified by various parties as possible candidates for administrative action by the FMC. Of the six, five pertain, in whole or in part, to the subject of service contracts.

A service contract is defined by section 3(21) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1702 3(21), as * * *

> * * * A contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

A service contract is similarly defined by the FMC at 46 CFR 581.1.

The issues concerning service contracts are (Issue No. 1 also pertains to tariffs):

1. Consider changing FMC regulations to no longer accept the voluntary filing of tariffs and service contracts covering excepted commodities;

2. Consider an FMC rulemaking to simplify the filing of service contracts' "essential terms";

3. Consider an FMC rulemaking to define the term "similarly situated shipper";

4. Consider an FMC rulemaking to clarify carriers' and conferences' obligations in regard to their duty to deal with shippers' associations and NVOCCs with respect to service contracts; and

5. Consider an FMC rulemaking permitting service contracts to be based on a percentage of a shipper's cargo.

The remaining Issue No. 6 is whether the FMC should initiate a rulemaking to require every conference to establish an ombudsman or other neutral entity which would address complaints from shippers. Such a process would be in addition to, and not in lieu of, existing legal remedies available to shippers or carriers at the Commission.

1. Excepted Commodities

Background

The 1984 Act continues the requirement of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 801 *et seq.*, that all common carriers operating in the foreign commerce of the U.S. file tariffs with the FMC. Section 8(a) of the 1984 Act, 46 U.S.C. app. 1707(a), requires that "each common carrier and conference shall file with the Commission, and keep open to public inspection, tariffs showing all its rates, charges, classifications, rules, and practices * * *." Certain commodities, however, are specifically excepted from the tariff filing requirement. These are: bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste. 46 U.S.C. app. 1707(a)(1). Both "bulk caro" and "forest products" (in the form of a lumber exemption) had been previously excepted from tariff filing under the 1916 Act. "Recycled metal scrap," "waste paper," and "paper waste" were new classes of excepted commodities which were added by the 1984 Act.

The 1984 Act also excepted service contracts covering these same five classes of commodities from certain statutory filing requirements. Section 8(c) of the 1984 Act, 46 U.S.C. app. 1707(c), requires that all service contracts be filed on a confidential basis and that a statement of essential terms be published "[e]xcept for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste * * *." Thus, under the scheme of the 1984 Act, excepted commodities are not subject to filing in tariffs or as service contracts.

Nevertheless, during the rulemaking process implementing the 1984 Act, the question arose as to whether a carrier or conference could voluntarily file tariff provisions covering otherwise excepted transportation. In its final rules, the Commission allowed such voluntary filing. See 46 CFR 580.1(a). The Commission also allowed conferences to voluntarily file service contracts covering excepted commodities. See 46 CFR 581.3(d). In both cases, voluntary filing would then subject excepted commodities to the tariff and service contract requirements of non-excepted commodities.

At the time that it determined to permit such voluntary filing, the Commission announced its intention to consider more fully the question of the status and treatment of excepted commodities under the 1984 Act in a separate proceeding. See Docket Nos. 84–21, 84–23, and 84–24, Service Contracts; Loyalty Contracts; and Publishing and Filing Tariffs By Common Carriers in the Foreign Commerce of the United States, 22 S.R.R. 1424, 1431 (1984). The Commission indicated that this inquiry would include the subject of voluntary tariff filing and conference ratemaking authority over excepted commodities. The Commission initiated such a proceeding in Docket No. 85–6, Notice of Inquiry Concerning Interpretation of Section 8(a) and Section 8(c) of the Shipping Act of 1984, 50 FR 10,807–10,810 (March 18, 1985), and invited comment on the interpretation to be given sections 8(a) and 8(c) with respect to excepted commodities.

Based upon the extensive comments received from carrier, shipper, and other interests, as well as the Department of Justice, the Commission determined that the issues raised were not subject to administrative resolution at that time. The Commission, therefore, discontinued the proceeding and determined to include the record in the proceeding in its report to Congress required by the 1984 Act, 46 U.S.C. app. 1717(c). See "Discontinuance of Proceeding," 24 S.R.R. 131 (May 6, 1987).

Discussion

The legislative history of the various statutes relating to excepted commodities suggests that considerations of competition and rate flexibility were the reasons for excepting them from tariff filing. Voluntary filing of tariffs covering excepted commodities could be seen as undercutting the apparent purpose of allowing excepted commodities to be

priced in a free market not subject to the price stabilizing effect of a tariff.

Unlike tariffs, service contracts are negotiated in an open market between carrier/conference and shipper. Thus, the stability established by the contract is mutually agreed to by both parties. Moreover, because service contracts exist over an extended period of time, there is less concern for speedy and flexible adjustments in terms. Finally, the legislative history of the pre-1984 Act Amendments dealing with excepted commodities does not have direct relevance to service contracts. Voluntary filing, nevertheless, subjects such service contracts to the same requirements as those for service contracts involving non-excepted commodities, and makes public the service contracts' essential terms which would otherwise be confidential. See 46 CFR 581.3(d)(3).

While voluntary filing of tariffs and service contracts covering excepted commodities is not precluded by the 1984 Act, such filing may not be wholly consistent with the original purposes in excepting certain commodities from mandatory filing. Also, it is not clear what proportion of excepted commoditiy rates and contracts are in fact filed with the Commission. Although the Commission determined not to administratively resolve these issues in Docket No. 85–6, it believes the issues to be of sufficient interest that it again seeks comment on whether administrative action may now be appropriate. Therefore, in order to provide the Commission with the most complete information available and to enable it to make an informed judgment in this matter, interested persons are invited to respond to the following specific questions and to comment on the proper treatment of excepted commodities under sections 8(a) and 8(c) of the 1984 Act.

1. Should a common carrier or a conference be permitted to continue to voluntarily file a tariff with the FMC covering a commodity which is excepted from mandatory tariff filing under section 8(a) of the 1984 Act?

2. Should a common carrier or a conference be permitted to continue to voluntarily file a service contract with the FMC covering a commodity which is excepted from mandatory service contract filing under section 8(c) of the 1984 Act?

2. Filing of Service Contracts' Essential Terms

Background

Section 8(c) of the 1984 Act states the regulatory requirements for service contracts filed with the Commission. Specifically, section 8(c) requries that * * *

* * * Each [service] contract * * * shall be filed confidentially with the Commission, and at the same time, *a concise statement* of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms *shall include*—

(1) The origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

(2) The commodity or commodities involved;

(3) The minimum volume;

(4) The line-haul rate;

(5) The duration;

(6) Service commitments; and

(7) The liquidated damages for nonperformance, if any * * * (Emphasis added.)

The Commission's regualtion concerning the content of essential terms, 46 CFR 581.5, tracks these statutory requirements. Under this provision, the requirement to file the statement of essential terms can be met by filing the entire text of the confidentially filed service contract, minus the shipper's name, or by filing a more abbreviated statement of the essential terms of the contract. As the Commission previously stated: "[t]o the extent that a service contract meets all the essential terms format requirements and is appropriately stated in terms of geographic areas or port ranges, it could be submitted, minus the shipper's name, in lieu of a statement of essential terms". Docket No. 84–21, Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the U.S.—Service Contracts and Time/Volume Contracts, 49 CFR 45,370 (November 15, 1984). This alternative filing procedure remains available under the current rules.

Discussion

When a carrier or a conference files as the essential terms of a service contract the entire text of a confidentially filed service contract, minus the name of the shipper, more information may be publicly disclosed than is statutorily required. It may be possible by means of a Commission rulemaking to simplify the filing of service contracts' essential terms. The future implementation of the Commission's Automated Tariff Filing and Information System ("ATFI"), in particular, could allow for a more efficient procedure for the filing of the essential terms of service contracts. The Commission is accordingly seeking comment on the feasibility and desirability of amending the existing service contract regulations to limit statements of essential terms to only that information which is expressly required by statute.

Specific comments are also sought on the following issues, as well as on any other matter deemed to be relevant.

1. Is the recitation of essential terms contained in section 8(c) 1–7 of the 1984 Act legally intended to comprise the exclusive list of such terms, or could the essential terms include other factors or variables?

2. What are the benefits and what are the costs associated with filing as the essential terms of a service contract the entire text of a confidentially filed service contract, minus the name of the shipper?

3. What are the benefits and what are the costs associated with the public disclosure of a service contract's non-essential terms?

4. Is it a matter of significant business importance or convenience that the Commission simplify the filing of service contracts' essential terms?

3. Similarly Situated Shipper

Background

Although section 8(c) of the 1984 Act requires that service contract essential terms be filed with the Commission, and that those essential terms be made available to all shippers similarly situated, the 1984 Act does not define the term "similarly situated shipper". The Commission has interpreted the term "similarly situated shipper" in the context of an access request to a service contract. An access or "me-too" shipper is any shipper seeking to access the essential terms of a service contract—*i.e.*, moving the same commodities, between the same points, during the same time periods. The Commission concluded that in that context "similary situated shipper" means a shipper willing and able to meet all the essential terms of a particular contract. *See* Docket No. 88–15, *California Shipping Line, Inc.* v. *Yangming Marine Transport Corp.*

Discussion

If a carrier or conference chooses to conduct or induce business by means of a service contract, it should be prepared to offer the same essential terms to other similarly situated shippers. *See* Docket Nos. 84–21, 84–23 and 84–24, *Service Contracts; Loyalty Contracts;*

and Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States.

Some carriers and shippers have argued that the lack of a definition of "similarly situated shipper " inhibits service contracting, because a carrier/conference entering into a service contract for a commodity does not know whether it must grant the same rate to a shipper in a different industry shipping a similar commodity. The number of "me-too" contracts is, however, a very small percentage of the service contracts filed with the Commission. This may suggest that any shipper which can come close to meeting the terms of a service contract is in a position to negotiate its own. This could also be due to the fact that carriers and conferences may write contracts in such detail and with such shipper specificity that technically nobody but the contracting shipper could use or benefit from the particular contract. Concepts like "similarly situated" may be best left to resolution on an *ad hoc* basis, especially given the infinite variety of terms in a service contract.

Nevertheless, in the interest of exploring whether the Commission might and should by rule define the term "similarly situated shipper," the Commission is seeking comments on the issue. In order to provide the Commission with the most complete information available and to enable it to make an informed judgment in this matter, commenters are urged to suggest an appropriate definition of a "similarly situated shipper" and to also address the following specific questions.

1. Does the lack of a definition for "similarly situated shippers" inhibit service contracts?

2. Is the interpretation of the term "similarly situated" best left to resolution on an *ad hoc* basis?

4. Carrier and Conference Service Contract Obligations

Background

The Commission's regulations concerning carrier or conference obligations as they pertain to service contracts is contained in 46 CFR 581.4(b)(2). Specifically, carrier/conference obligations to shippers include maintaining a single, current copy of the service contract and Essential Terms Publication in the form prescribed under § 581.4(b)(2). The carrier/conference also must make available the essential terms of an initial service contract to all other shippers similarly situated under the same terms and conditions for a specified period of no less than thirty (30) days from the date of filing of the service contract, as may be adjusted under § 581.8(d). The carrier/conference shall reply to shipper requests for the same essential terms by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or an explanation in writing why the applicant is not entitled to such a contract. The carrier/conference may require the contract offer to be accepted within a specified period of time.

Discussion

In enacting the 1984 Act, Congress sought to balance reforms easing government regulation of carriers with provisions to enhance shipper negotiating power with carriers. Thus, while Congress authorized carriers to organize into conferences and rationalize services with clear antitrust immunity, it counterbalanced the conference system with competitive safeguards such as mandatory independent action and service contracts. *See* H.R. Rep. No. 53, 98th Cong. 2d Sess. 3, (1983). At the same time, Congress was concerned that in balancing the interests of carriers and shippers there was a danger that small and medium-sized shippers would be placed at a competitive disadvantage with large shippers, who had the volume of shipments required to effectively negotiate service contracts:

> It is likely that service contracts will be sought mainly by large shippers with strong market leverage. Small shippers would be left to face higher common carriage rates, which would be required by the shift of large volumes of hitherto high value cargoes to lower contract rates. The Committee is seriously concerned that service contracts not be employed so as to discriminate against all who rely upon the common carriage tradition of the liner system. The purpose of this legislation is to regulate fairly a system of common carriage.

Id. at 17.

As a result of its concern that small and medium-sized shippers not be unfairly discriminated against, Congress gave statutory recognition under the 1984 Act of shippers' associations. They are intended to redress the imbalance between small and medium-sized shippers and larger shippers which might otherwise have resulted from the introduction of service contracting into the statutory scheme. Congress further emphasized the importance of shippers' associations by making it a prohibited act for any common carrier, either alone or in conjunction with any other person, directly or indirectly, to refuse to negotiate with a shippers' association. Section 10(b)(13) 46 U.S.C. app. 1709(b)(13). Thus, shippers' associations are an alternative for small or medium sized shippers who do not have sufficient volume to obtain a favorable service contract from an ocean common carrier or conference. A "shippers' association" is defined as "* * * a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts." 46 U.S.C. app. 1702(24). Shippers' associations are cooperative membership associations which may or may not have NVOCC members.

Despite Congress' statutory recognition of shippers' associations, and the requirement that conferences negotiate service contracts with shippers' associations, there is a concern that shippers' associations may not have been as successful in negotiating service contracts with conferences as intended by Congress. In this regard, the Commission has received complaints from shippers' associations concerning their attempts to negotiate service contracts with conferences or access such contracts as similarly situated shippers.

A Commission rulemaking might serve to clarify carriers'/conferences' obligations with regard to their negotiations with shippers' associations. Such a rulemaking might also consider the obligations of carriers/conferences in their negotiations with NVOCCs with respect to service contracts. The Commission is accordingly seeking comment on these issues. In order to provide the Commission with the most complete information available and to enable it to make an informed judgment in this matter, commenters are urged to address the following specific questions.

1. Have shippers' associations experienced difficulties in negotiating service contracts with carriers or conferences? If so, what have been the reasons?

2. What specific mechanism could be established to ensure that carriers fulfill their obligation to negotiate with shippers' associations?

3. Should the Commission develop procedures to ensure that conferences deal fairly with NVOCCs with respect to service contracts? If so, what specific mechanism is proposed?

5. Service Contracts Based on a Percentage of Business

Background

The essential terms of a service contract must include the minimum volume of cargo to be tendered to the carrier or conference. 46 U.S.C. app. 1707(c)(3). The 1984 Act does not, however, provide a definition for the term "minimum volume." Some have advocated an interpretation of "minimum volune" to mean a fixed percentage of a shipper's total cargo destined to a particular geographic area. In Docket No. 84–21, Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States—Service Contracts and Time/Volume Contracts, 49 FR 45,364 (November 15, 1984), the FMC determined that the term "minimum volume" meant a fixed amount of shipper's total cargo, such as a given number of containers, revenue tons, or weight tons. The Commission deemed service contracts specifying a fixed percentage of cargo to be loyalty contracts,[1] and concluded that permitting fixed percentage service contracts would be inconsistent with Congress' treatment of loyalty contracts in the 1984 Act. The Commission's existing service contract regulation concerning the miminum quantity of cargo specified in a service contract's essential terms, 46 CFR 581.5(a)(v), therefore, prohibits a cargo commitment from being stated as a fixed percentage of a shipper's cargo.

Discussion

Some shippers have indicated a desire to be able to enter into a service contract where the specified service contract minimum quantity is expressed as a fixed percentage of their cargo.[2] Smaller shippers, in particular, have commented that a fixed amount of cargo requirement precludes them from entering into service contracts. Unlike a large shipper, a smaller shipper may not have sufficient cargo to meet any fixed amount cargo commitment. Moreover, to the extent shippers large or small may not be in a position at any given point in time to know with contractual certainty the amount of cargo they will be shipping over a future period, percentage term contracts could offer them more commercial flexibility.

Service contracts based on a percentage of business, in lieu of or in addition to a specific volume commitment, could offer a solution to a shipper whose future business volume is uncertain. A shipper entering a new market or marketing a new product, for example, may prefer a service contract minimum quantity based on a fixed percentage of its cargo. In such a case, volume and price of product are unpredictable. Hence, while a shipper might be hesitant to commit a specific number of containers, the shipper might be willing to commit a specified percentage of its cargo. The shipper and carrier which are party to the service contract might both benefit if business levels in the new market were to develop.

Alternatively, a shipper whose future business volume is uncertain may find that a service contract based upon a fixed minimum amount of cargo, plus a fixed percentage of its total cargo once the fixed minimum amount has been tendered, provides the flexibility needed for dealing with the uncertainty. A service contract based solely upon a fixed amount of cargo may not provide such flexibility. Furthermore, a service contract based on a fixed minimum amount of cargo, plus a fixed percentage of a shipper's total cargo, may be distinguishable from one based *solely* upon a fixed percentage of cargo in terms of any loyalty contract analysis.

Other than the possible legal impediment, an additional concern with a service contract where the minimum volume is based upon a percentage of a shipper's total cargo volume is that it could be difficult for a carrier to verify that its share of a shipper's cargo moving under a given service contract is at least as great as the specified fixed percentage of the total of that shipper's cargo moving in a trade.

The issue of allowing service contracts to be based on: (1) A percentage of a shipper's total cargo; and/or (2) on a fixed amount of cargo plus a specific fixed percentage commitment after the cargo volume tendered exceeds the fixed amount, is significant and complex both from a legal and economic perspective. Therefore, in order to provide the Commission with the most complete information available and to enable it to make an informed judgment in this matter, interested persons are invited to comment generally about permitting service contracts based on a percentage of business and on the following specific questions.

1. Can an ocean common carrier or conference and a shipper or shippers' association be legally permitted under the 1984 Act to enter into a service contract that specifies as the service contract's minimum volume (a) a fixed percentage of the shipper's or shippers' association's total cargo, or (b) a combination of a fixed amount of cargo plus a percentage of the shipper's remaining cargo moving in the trade?

2. What are the specific commercial advantages or disadvantages of requiring service contracts to be based on a fixed amount of a cargo?

3. What are the specific commercial advantages or disadvantages of permitting contracts to be based on a percentage of a shipper's cargo?

6. Conference Ombudsman

Background

Section 5(6)(a) of the 1984 Act, 46 U.S.C. app. 1704(6)(a), provides that each conference agreement must—

(6) Provide for a consultation process designed to promote—

(A) Commercial resolution of disputes, and

(B) Cooperation with shippers in preventing and eliminating malpractices;

(7) Establish procedures for promptly and fairly considering shippers' requests and complaints.

Section 11(a) of the 1984 Act, 46 U.S.C. app. 1710(a), provides that any person may file with the Commission a sworn complaint alleging a violation of the 1984 Act. Each conference agreement must also, at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members, 46 U.S.C. app. 1704(b)(4).

Discussion

A proposal to require conferences to establish an ombudsman or other neutral entity to address shipper complaints could provide an alternative to complaints and neutral body self-policing. Therefore, in the interest of improving the means by which shipper complaints are addressed, the Commission is seeking comment on a requirement that every conference establish an ombudsman or other neutral entity which would address complaints from shippers within a certain period of time, *e.g.*, 45 days of receipt. Commenters are urged to suggest rule language in addressing the issue.

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[1] The 1984 Act, in section 3(14), 46 U.S.C. app. 1702 3(14), defines a loyalty contract as * * *

* * * a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing *all or a fixed portion* of its cargo to that carrier or conference. (Emphasis added).

[2] *See* for example, the FMC's section 18 Report on the Shipping Act of 1984, pp. 643–644, and the Report of the Advisory Commission on Conferences in Ocean Shipping, p. 147.

By the Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 92-14019 Filed 6-12-92; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-65; DA 92-602]

Requested Modification of Pay-Per-Call Rules

AGENCY: Federal Communications Commission.

ACTION: Petition for rulemaking; request for comments.

SUMMARY: In response to a petition, we are soliciting public comment on a request for clarification and modification of the Commission's pay-per-call rules. Specifically, the Petition, which was filed on April 30, 1992, by the National Association of Attorneys General and thirty-four states, seeks the issuance of an order clearly stating the application of pay-per-call rules to certain aspects of standard inward WATS (800 Number) services. Though the Petition was initially filed in CC Docket 91-65, this serves as notice that the Petition will be treated as a petition for rule making (RM-7990), rather than as a filing in CC Docket 91-65.

DATES: Comments must be filed on or before July 8, 1992, and reply comments must be filed on or before July 28, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas David, (202) 632-4887, Common Carrier Bureau, Enforcement Division.

SUPPLEMENTAL INFORMATION:

Public Notice

Released: Petition for Clarification and Modification of Pay-Per-Call Rules Filed by National Association of Attorneys General To Be Treated as a Petition for Rule Making, RM-7990

Comment Date: July 8, 1992.
Reply Comments Due: July 28, 1992.

The 900 Number Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General (NAAG) and thirty-four states filed a Petition for Clarification and Modification of the Commission's pay-per-call rules on April 30, 1992. The Petition was filed in CC Docket 91-65, Policies and Rules Concerning Interstate 900 Telecommunications Services. The Petition requests that the Commission issue an order (1) clearly stating that the pay-per-call rules apply when such services are offered over standard inward WATS (800 Number) services and (2) prohibiting carriers from providing standard inward WATS service for services which bill customers through the use of either tone-generation technology, automatic number identification (ANI) or billing detail information.

The Petition will be treated as a petition for rule making rather than as a filing in CC Docket 91-65. Parties wishing to comment on this matter may do so no later than July 8, 1992. Replies may be filed no later than July 8, 1992. All filings concerning this matter should refer to RM-7990.

Copies of the Petition and any subsequently filed documents in this proceeding may be obtained from Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. The Petition and documents are also available for inspection and copying during regular business hours in the Dockets Reference Room (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

For further information, contact Thomas David at (202) 632-4887.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92-13917 Filed 6-12-92; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 115
Monday, June 15, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Cherry Hill Planning Area, Sequoia National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to propose site specific projects and vegetative treatments for managing vegetation and resources on a landscape basis in the Cherry Hill Planning Area, Cannell Meadow Ranger District, Sequoia National Forest, Tulane County, California. The Sequoia National Forest Land and Resource Management Plan has been prepared.

ADDRESSES: Submit written comments and suggestions to Gene Blankenbaker, District Ranger, Cannell Meadow Ranger District, P.O. Box 6, Kernville, California 93238.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Ray Huber, District Timber Management Officer or to Sue Porter, Sale Planner, Cannell Meadow Ranger District, P.O. Box 6, Kernville, California 93238, telephone (619) 376–3781.

SUPPLEMENTARY INFORMATION: The Cherry Hill Planning Area encompasses approximately 25,000 acres of National Forest land extending from the Kern River on the west to the ridgeline between Sherman and Sirretta Peaks on the east, from the Horse Meadow vicinity in the south to Brush Creek on the north; it includes parts of Townships 22 and 23 South, and Ranges 33 and 34 East, Mount Diablo Meridian.

A range of alternatives for this planning areas will be considered, One of these will be a no action/no change alternative, essentially leaving current land management in place. Other alternatives will propose site specific projects and vegetative treatments designed to provide for recreation opportunities, habitat for wildlife and fisheries, timber harvesting, livestock summer forage, and watershed protection.

Sandra H. Key, Forest Supervisor, Sequoia National Forest is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a previous environmental review.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect,and cumulative effects and
6. Determining potential cooperating agencies and task assignments.

The draft EIS (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1992. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date that EPA's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the management of the area encompassed by the Cherry Hill Planning Area participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts, *City of Angoon* v. Hodel, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS shall be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement.

After the comment period for the draft EIS ends, the comments received will be analyzed and considered by the Forest Service in the preparation of the final EIS. The final EIS is scheduled to be completed by April 1993.

Dated: June 4, 1992.

Sandra H. Key,

Forest Supervisor.

[FR Doc. 92–13923 Filed 6–12–92; 8:45 am]

BILLING CODE 3410–11–M

Forest Legacy Program Guidelines

AGENCY: Forest Service, USDA.

ACTION: Notice; availability of final guidelines.

SUMMARY: The forestry title of the 1990 Farm Bill authorized a new Forest Legacy Program, the purpose of which is to identify and protect environmentally important private forest lands that are threatened by present or future conversion to nonforest uses. The Forest Service hereby gives notice that guidelines are now available for implementing an initial Forest Legacy Program in Fiscal Year 1992.

EFFECTIVE DATE: June 15, 1992.

ADDRESSES: Single copies of the guidelines for implementing the Forest

Legacy Program may be obtained by writing the Director, Cooperative Forestry Staff (CF), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ruth McWilliams, Cooperative Forestry Staff, (202) 205–1394, or David Sherman, Lands Staff, (202) 205–1362.

SUPPLEMENTARY INFORMATION: Section 1217 of title XII of the Food, Agriculture, Conservation, and Trade Act of 1990 (104 Stat. 3528), known as the 1990 Farm Bill, directs the Secretary of Agriculture to establish a Forest Legacy Program in cooperation with State, regional and other units of government. The Act authorizes the Secretary to acquire from willing landowners lands and interests therein, including conservation easements and rights of public access, for Forest Legacy purposes. This authority is in addition to authorities granted under section 6 of the Act of March 1, 1911 (16 U.S.C. 515), and section 11(a) of the Department of Agriculture Organic Act of 1956 (7 U.S.C. 428(a)).

The Secretary is directed to establish initial programs in Fiscal Year 1992. One of the initial programs will be in New York, New Hampshire, Vermont, and Maine. Another initial program will be in Washington State. Language in the appropriation bill for Fiscal Year 1992 also gives the State of Massachusetts and opportunity to join the program in 1992. Expansion of the program beyond the initial States is dependent on future appropriations and designation of any additional State Forest Legacy Program by the Secretary of Agriculture.

To implement the initial programs within Fiscal Year 1992, the agency has developed guidelines consisting of (1) eligibility criteria for determining which geographic areas may be designated as Forest Legacy Areas under the initial programs; (2) procedures for analyzing, documenting, and attaining public involvement in the assessment of the need for a Forest Legacy Program; and (3) procedures for setting up a Forest Legacy Program in States.

The guidelines will be used by State agencies, State Forest Stewardship Coordinating Committees, and the Forest Service in implementing the initial programs and testing the procedures for implementation of the program nationwide.

Draft implementation guidelines were provided for review and comment to about 3,000 individuals and organizations including the Governors through State forestry agencies, and to land trusts, conservation organizations, forest industry groups, landowners, and other organizations interested in the Forest Legacy Program. Public notice of the availability of draft guidelines also was given on July 5, 1991. An extension of the public comment period was given, and comments were received through October 16, 1991. Public comments were considered in writing the present guidelines.

Dated: June 9, 1992.

George M. Leonard,

Associate Chief.

[FR Doc. 92–13995 Filed 6–12–92; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Associated Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Associated Electric Cooperative, Inc. (AECI) to modify its New Madrid Power Plant to burn low sulfur coal. The FONSI is based on a borrower's environmental report (BER) prepared by AECI and submitted to REA covering the proposed modifications. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the AECI BER as the environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Robert M. Quigel, Environmental Protection Specialist, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The New Madrid Power Plant is located in the St. Jude Industrial Park, in New Madrid County, Missouri, south of the town of New Madrid along the Mississippi River. The proposed project consists of modifications necessary to switch from burning high sulfur Illinois coal to burning low sulfur Wyoming coal. All modifications will take place within the St. Jude Industrial Park. The project entails the following modifications:

(1) Construction of a rail spur from the existing St. Louis and Southwestern Railroad track, located on the western side of the St. Jude Industrial Park, into the power plant site. The length of the spur is estimated to be 2.5 miles and will be located entirely within the industrial park boundaries;

(2) Construction of fuel handling and storage consisting of rotary car dumpers, railcar storage area, long- and short-term coal storage, a conveyance system for sorting, stacking and reclaiming coal, and coal crushing facilities;

(3) Changes to the existing plant boilers and ductwork;

(4) Addition of a new dry ash handling system; and

(5) Construction of a new ash disposal pond.

Alternatives considered to the project as proposed were no action, installation of flue gas desulfurization at the plant, and the purchase of emission allowances. REA has considered these alternatives and concludes that converting the New Madrid Power Plant to operate by firing low sulfur coal is the preferred alternative to phase in plans for complying with the Clean Air Act Amendments of 1990 (40 U.S.C. 7401 to 7671).

Based on analysis of the adopted BER, REA has concluded that the construction and operation of the proposed fuel conversion modifications will have no significant impact on air quality, water quality, wetlands, the 100-year floodplain, existing land uses, prime farmland, cultural resources, or flora and fauna. In addition, REA has determined that the construction and operation of the fuel conversion modifications will have no effect on federally-listed threatened and endangered species or designated critical habitat or species proposed for listing or proposed critical habitat.

No other potential significant impact resulting from the construction and use of the proposed project has been identified.

Copies of the environmental assessment and finding of no significant impact are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Charles Means, P.O. Box 754, Springfield, Missouri 65801.

Dated: June 2, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92–13936 Filed 6–12–92; 8:45 am]

BILLING CODE 3410–15–F

Soil Conservation Service

Talofofo Village Watershed, Guam; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Talofofo Village Watershed, Territory of Guam.

FOR FURTHER INFORMATION CONTACT: Joan B. Perry, Director, Soil Conservation Service, suite 602, GCIC Building, 414 W. Soledad Avenue, Agana, Guam 96910, telephone (671) 472–5940.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these finding, Joan B. Perry, Director, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project provides a plan for agricultural flood prevention. The planned works of improvement include three grass-lined waterway totalling 3,374 linear feet and installation of 200 feet of buried pipeline to a cobble filled drain.

The Notice of a Finding of No Significant impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, Guam government, and local organizations and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joan B. Perry, Director, at the above address or phone number.

No administrative action on implementation of the proposal will be taken until 30 days after date of this publication in the **Federal Register**

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: June 1, 1992.

Joan B. Perry,

Director.

[FR Doc. 92–13922 Filed 6–12–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813, A–583–816]

Initiation of Antidumping Duty Investigations: Certain Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone, (202) 377–1174.

INITIATION OF INVESTIGATIONS:

The Petitions

On May 20, 1992, we received petitions filed in proper form by Flowline Division of Markovitz Enterprises, Inc. (petitioner). In accordance with 19 CFR 353.12, the petitioner alleges that certain stainless steel butt-weld pipe fittings (stainless butt-weld pipe fittings) from the Republic of Korea (Korea) and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petitions because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

The products subject to these investigations are stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Stainless steel butt-weld pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Stainless steel butt-weld pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub ends", and "caps". The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from these investigations. The stainless steel butt-weld pipe fittings subject to these investigations are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Korea

Petitioner based its estimates of United States price (USP) on quoted prices for stainless steel butt-weld pipe fittings, f.o.b. port of export. Petitioner made no adjustments to USP for movement expenses. No further adjustments were made to the quoted USPs.

Petitioner's estimate of foreign market value (FMV) is based on constructed value (CV) because petitioner was unable to obtain pricing information for the subject merchandise in either the home market or a third country.

The cost of raw materials was based on petitioner's own consumption at prices in Korea reported in a November 1991, antidumping petition filed with the

Department. Petitioner based direct and supervisory labor, natural gas, and electricity expenses on its own usage at wage rates and energy rates in Korea. The cost of utilities other than electricity and natural gas, tools and supplies, direct manufacturing overhead, and packing are based on petitioner's actual experience during 1991.

Pursuant to section 773(e) of the Act, petitioner added the statutory minima of ten percent for general expenses and eight percent for profit to the cost of manufacturing (COM).

Taiwan

Petitioner based its estimates of USP on quoted prices for stainless steel butt-weld fittings, c.i.f. port of U.S. entry. Petitioner deducted foreign inland freight, ocean freight, marine insurance and brokerage charges from the quoted USP. No further adjustments were made to USP.

Petitioner's estimate of FMV is based on CV because petitioner was unable to obtain pricing information for the subject merchandise in either the home market or a third country.

The cost of raw materials was based on petitioner's own consumption at prices in Taiwan reported in a November 1991, antidumping petition filed with the Department. Petitioner based direct and supervisory labor, natural gas, and electricity expenses on its own usage at wage rates and energy rates in Taiwan. The cost of utilities other than electricity and natural gas, tools and supplies, direct manufacturing overhead, and packing are based on petitioner's actual experience during 1991.

Pursuant to section 773(e) of the Act, petitioner added the statutory minima of ten percent for general expenses and eight percent for profit to the COM.

Based on the above information, petitioner alleges dumping margins ranging from 11.6 percent to 21.2 percent for stainless butt-weld fittings from Korea, and 14.5 percent to 76.2 percent for stainless butt-weld fittings from Taiwan.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of the subject merchandise from Korea and Taiwan.

Initiation of Investigations

We have examined the petitions on stainless butt-weld fittings from Korea and Taiwan, and have found that the petitions meet the requirements of 19 CFR 353.12. Therefore, we are initiating antidumping duty investigations to determine whether imports of stainless butt-weld fittings from the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the International Trade Commission

The ITC will determine by July 6, 1992, whether there is a reasonable indication that imports of stainless butt-weld fittings from Korea and/or Taiwan are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed to conclusion in accordance with the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 9, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-14022 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-DS-M

Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 18, 1992, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand. We have now completed that review and determine the total bounty or grant during the period January 1, 1990 through December 31, 1990 to be 8.51 percent *ad valorem*.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki, Sylvia Chadwick, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1990, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 9413) the preliminary results of its administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand (54 FR 19130; May 3, 1989). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of ball bearings and parts thereof. Such merchandise is described in detail in Appendix A to this notice. The Harmonized Tariff Schedule (HTS) item numbers listed in Appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990, two producers/exporters, NMB Thai Ltd. (NMB) and Pelmec Thai Ltd. (Pelmec), and twelve programs: Electricity Discounts for Exporters; Investment Promotion Act (IPA) Sections 31, 28, and 36(1); Tax Certificates for Exporters; Export Packing Credits; Rediscount of Industrial Bills; Export Processing Zones; IPA Sections 33 and 36(4); Reduced Business Taxes for Producers of Intermediate Goods for Export Industries; and International Trade Promotion Fund.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from the respondents and a rebuttal comment from the petitioner.

Comment: Respondents contend that the Department's failure to adjust the benefit calculation to account for the difference between the export price and the import value of the subject merchandise will lead to overcollection of countervailing duties. Therefore, it is contrary to U.S. law (*see* 19 U.S.C. 1303(a)(1)), to GATT Article VI(3), and administrative precedent (*see*, Preliminary Results of Administrative Review—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Singapore (56 FR 9631; March 7, 1991)).

Respondents point out that, generally, the export price of the merchandise leaving the country of origin is identical to the import value of the merchandise entering the United States; in those instance, the methodology applied by the Department results in the collection of countervailing duties "equal" to the

amount of the subsidy. In the instant case, however, shipments of ball bearings from NMB or Pelmec leave Thailand at an F.O.B. price which is lower than the value at which the merchandise enters the United States. This higher value is due to the parent company's mark-up imposed on the merchandise in a back-to-back intercompany sales transaction. Therefore, respondents argue that the Department should calculate the countervailing duty rate for the IPA benefits and the electricity discount by multiplying the subsidy rate calculated on the basis of total exports by the value of the merchandise exported to the United States (without mark-up). This computes the amount of subsidies bestowed on the merchandise exported to the United States. This amount should then be divided by the import value of the same merchandise (including the mark-up), which is the basis for the duty collection by the U.S. Customs Service. The benefit for the tax certificates would be calculated in the same manner. Respondents claim that this calculation methodology will allow the Department to collect an amount equal to the bounty or grant found on the subject merchandise.

Petitioner argues that the accuracy of respondents' proposed calculation method depends upon the accuracy of the allocation of subsidies to U.S. exports as opposed to all exports. Petitioner claims that the Thai export price is merely an inter-company transfer price, and that the Thai producers have not shown that the mark-up on shipments to other countries is equal to the mark-up on shipments to the United States. Petitioner contends that because transfer prices may vary by country of destination, the allocation of subsidies to exports to different countries may be skewed. Therefore, following the methodology proposed by respondents, the Department cannot insure that the full amount of subsidies bestowed on U.S. exports would be offset. Therefore, petitioner urges the Department to apply the same calculation methodology used in the preliminary determination to calculate the final duty rate.

Department's Position: We have reexamined our calculations and have determined that the unique circumstances of this case warrant a modification to the subsidy calculation. First, in this case, there are two F.O.B. export prices for the same sale: the one on which subsidies are applied for and received by NMB and Pelmec, and the one which includes Minebea Japan's mark-up and which is the value listed on the NMB or Pelmec invoice accompanying the merchandise to the United States. At verification, NMB and Pelmec demonstrated that their accounting systems are set up to track the mark-up for each individual shipment of bearings via back-to-back invoices that are identical except for price. When NMB and Pelmec have a shipment ready for export, they will electronically transmit a copy of the invoice to Minebea Japan, who then adds the mark-up amount and transmits the invoice back to Thailand. This marked-up invoice is then cut in Thailand and packed with the shipment for export from Thailand. Even though Minebea Japan determines the mark-up, the merchandise is shipped from Thailand to the United States accompanied by the marked-up invoice.

Because there is an exact one-to-one correlation between the invoice which reflects the price on which the subsidies are received and the invoice which reflects the marked-up price that accompanies each shipment, and because the merchandise is shipped directly from Thailand to the United States and is not transshipped, combined with other merchandise, or repackaged with other merchandise, the Department has determined that it is possible to make an adjustment to the subsidy rate so that the amount of countervailing duty collected will reflect the amount of subsidies bestowed.

Accordingly, we have divided the F.O.B. value of the exports of the subject merchandise before the inter-company transaction (before mark-up) by the value of the same merchandise as it entered the United States (after mark-up). This results in a ratio which reflects the difference in the export and import values. We then multiplied this ratio by the subsidy rate to obtain an adjusted rate of 8.51 percent *ad valorem*. Since the methodology applied by the Department is based on the existence of the one-to-one invoice tracking system for U.S. shipments, it is not necessary for the Department to allocate subsidies by country and petitioner's objections are misplaced.

Final Results of Review

As a result of our review, we determine the total bounty or grant during the period January 1, 1990 through December 31, 1990 to be 8.51 percent *ad valorem*.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 8.51 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1990 and on or before December 31, 1990.

Further, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 8.51 percent of the f.o.b. invoice price on all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this invoice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 5, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

Appendix A

Scope of The Review

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, constitute the following as outlined below.

Ball Bearings, Mounted or Unmounted, and Parts Thereof

These products include all antifriction bearings which employ balls as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction balls (Tariff Schedules of the United States Annotated [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3706, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA item 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA item 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA item 681.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80.

8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment after importation.

[FR Doc. 92-14023 Filed 6-12-92; 8:45 am]
BILLING CODE 3510-DS-M

[C-122-819]

Termination of Countervailing Duty Investigation; Portable Seismographs From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Susan Strumbel, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2239 or (202) 377-1442, respectively.

Case History

Since publication of the Department's preliminary countervailing duty determination (57 FR 20464; May 13, 1992), we verified information submitted in the responses by the Government of Canada, the Government of the Province of Ontario, and one of the two producers/manufacturers/exporters of the subject merchandise.

Scope of Investigation

The products covered by this investigation are portable seismographs from Canada. Portable seismographs are used by the mining, construction, and blasting industries to measure the ground and air vibrations produced by man-made blasting in compliance with seismograph standards established by the U.S. Bureau of Mines. The basic components and ranges of measurement are: ground peak particle velocity (.02 to 10 inches per second); ground motion frequency (2 to 100 Hz); direction of motion [3 orthogonal axes (L,T,V)]; airblast level (100 to 140 dBL); airblast overpressure (1/10,000 to 1/100 psi); and airblast frequency (2 to 200 Hz). Earthquake, nuclear, and reflection/refraction seismographs are not included in the scope of investigation. Portable seismographs are currently provided for in subheading 9015.80.6000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Termination of Investigation

In a letter submitted June 1, 1992, petitioner notified the Department that it was withdrawing its February 12, 1992 petition, and requested that the Department terminate the countervailing duty investigation.

Under section 19 CFR 355.17(a), the Department may terminate an investigation after the withdrawal of the petition by the petitioner, after notifying all parties to the proceeding and after consultation with the International Trade Commission (ITC). The Department may not terminate an investigation unless it concludes that the termination is in the public interest. We have notified all parties to the proceeding and consulted with the ITC concerning the potential termination of this investigation. Based upon those contacts and our assessments of the public interest, we have concluded that termination of the investigation is in the public interest. Accordingly, we are terminating the countervailing duty investigation of portable seismographs from Canada. This action is taken pursuant to section 704(a)(1) of the Tariff Act of 1930, as amended.

Dated: June 5, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-13968 Filed 6-12-92; 8:45 am]
BILLING CODE 3510-DJ-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 92-00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to World International Investments Corp. ("WIIC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*—All Products.
2. *Services*—All Services.
3. *Technology Rights*—Technology rights, including, but not limited to, patents and trademarks, that relate to Products and Services.
4. *Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights)*—Export Trade Facilitation Services, including consulting, research on overseas markets, market analysis and strategy, collection of information on trade opportunities, arranging for exporter risk coverage with the Export-Import Bank, legal assistance, services related to compliance with customs requirements, transportation, facilitating the formation of shippers' associations, financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, WIIC may:

1. Export specific Products and/or Services in response to specific orders and contact individual Suppliers as to competitive prices, quality, and availability;
2. Provide and arrange for Export Trade Facilitation Services;

3. Exchange information only in one-on-one discussions with specific Suppliers on specific orders or market conditions;

4. Enter into exclusive licensing and distributorship agreements with Suppliers for the export of Products, Services, and Technology Rights to the Export Markets;

5. Allocate export sales or divide the Export Markets among Suppliers for the sale, licensing or distribution of Products, Services, and Technology Rights;

6. Establish the price of Products, Services, and Technology Rights for sale, licensing or distribution in the Export Markets;

7. Negotiate and manage licensing agreements for the export of Technology Rights; and

8. Collect information on trade opportunities in the Export Markets and distribute such information to clients.

Definition

"Supplier" means a person who produces, provides, or sells Products, Services, or Technology Rights.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 9, 1992.

Linda F. Powers,

Deputy Assistant Secretary for Services.

[FR Doc. 92-14021 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Steller Sea Lions; Buffer Area Exemption

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of exemption determination.

SUMMARY: The Alaska Regional Office, NMFS, has received and denied a request from Alaska Maritime Tours for an exemption to the 3-nautical-mile buffer zone established around Sugarloaf Island, a principal Steller sea lion rookery.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802 (907-586-7233).

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1990, NMFS published a final rule (55 FR 49204) that listed the Steller (northern) sea lions as a threatened species under the Endangered Species Act (16 U.S.C. 1531-1543). This rule contained several protective regulations codified at 50 CFR 227.12(a), including the establishment of buffer zones around 32 sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. These buffer zones prohibit the approach of any vessel within 3 nautical miles of these rookeries or the approach of any person on land not privately owned within one-half statutory mile or within sight of the listed rookery sites, whichever is greater.

The final rule gives the Director, Alaska Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, the authority to grant exemptions to the prohibitions of the rule (50 CFR 227.12 (a)(6)). Exemptions allowing entry into buffer zones may be granted only if (1) the activity will not have a significant adverse impact on Steller sea lions, (2) the activity has been conducted historically and traditionally in the buffer zones, and (3) there is no feasibly available and acceptable alternative to, or site for, the activity.

On March 21, 1992, Mr. W.E. Murphy, Alaska Maritime Tours, submitted to the Alaska Region, NMFS, a written request for exemption to allow entry into the buffer zone around the sea lion rookeries on Sugarloaf Island in the Barren Islands (58° 53.0'N, 152° 02.0'W) in order to observe sea bird colonies on these islands. The information supplied by Mr. Murphy indicates that a single tour boat would visit the islands on a maximum of nine days in 1992. Alternatively, Mr. Murply requested an examption to the buffer zones around East and West Amatuli islands only, which would bring the tourists no closer than one mile to the Sugarloaf Island rookeries.

On June 5, 1992, the Alaska Regional Director, NMFS, denied the request of Alaska Maritime Tours because it does not meet the legal requirements for granting an exemption. Human disturbance at the rookery sites has the potential for animal stampedes and mortality of pups. Also, the activity has not been conducted historically and traditionally in the buffer zone, and alternative sites are available for viewing sea birds in addition to viewing Steller sea lions at haulouts sites rather than at the Sugarloaf Island rookery.

Dated: June 5, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-14020 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, DOC.

ACTION: Issuance of modification to permit No. 638 (P319A).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Scientific Research Permit No. 638 issued to the Dolphin Biology Research Associates, Inc., 163 Siesta Drive, Sarasota, Florida 34242 on July 14, 1988, is modified to allow up to 3000 Atlantic Bottlenose dolphins (*Tursiops truncatus*) to be inadvertently harassed (by: (a) Approach closer than 50 yards; or by (b) showing signs of disruption of normal behavior no matter what the distance) during photographic identification censuses, behavior observations, underwater acoustic recordings, controlled playback experiments of low frequency sounds, and to examine the potential behavioral responses to those sounds.

This modification became effective upon signature.

The Permit, as modified, is available for review by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); and Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141).

Dated: June 9, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-13928 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification of scientific research permit no. 598 (P77#28).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the regulations governing the taking and importing of marine mammals (50

CFR part 216), scientific research permit no. 598 issued to the Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, Washington, 98115, is modified to include an additional take of up to 600 fur seals on the Pribilof Islands of which 100 (50 female/pup pairs) can be marked with hair bleach, 100 adult females can be tagged with All-Flex numbered tags, and 400 can be inadvertently harassed during these activities and during recording and playback of mother/pup vocalizations.

This modification became effective upon signature.

Documents pertaining to this Modification and Permit, as amended, are available for review, by appointment, in the:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/568–7221);

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526–6150); and

Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

Dated: June 9, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–13927 Filed 6–12–92; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Rule Establishing Large Lot Transactions in Currency and Currency Cross-Rate Futures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed new contract market rule.

SUMMARY: The Chicago Mercantile Exchange, Inc. ("CME" or "Exchange") has submitted a proposed rule to the Commodity Futures Trading Commission ("Commission") for its review and approval. The proposed rule would establish large lot transactions in currency and cross-rate futures contracts.

Acting pursuant to the authority delegated by Commission regulation 140.96, the Director of the Division of Trading and Markets ("Division"), with the concurrence of the General Counsel, has determined to publish the CME's proposal for public comment on behalf of the Commission. The Division believes that publication of the proposed rule is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before July 15, 1992.

FOR FURTHER INFORMATION CONTACT: Brian Regan, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

By letter dated May 8, 1992, the CME submitted proposed rule 554 for review by the Commission pursuant to section 5a(12) of the Commodity Exchange Act ("Act") and Commission regulation 1.41(b). The proposed rule would provide for the immediate execution of large lot trades in currency and cross-rate currency futures contracts at a single price for a minimum number of contracts, or multiples of that minimum.

The CME has stated that its proposal is intended to provide an alternative to existing ways of handling large currency futures trades and to strengthen the competitive position of the CME's currency markets relative to that of the interbank market. Two members of the CME Board of Directors opposed the adoption of the large lot execution procedures based upon their view that a large lot rule for currency futures should be designed in a manner similar to the CME's Standard and Poor's 50 Stock price Index futures contracts ("S&P 500 LOX") rule.

The CME's large lot proposal differs from its S&P 500 LOX rule in two notable respects. First, the large lot currency proposal would provide for two different markets in the same contract, one for large lot trades and one for other trades. Second, the CME proposal does not contemplate off-floor negotiations of orders in the manner provided for in the S&P 500 LOX rule.

II. Request for Comments

Acting pursuant to the authority delegated by Commission regulation 140.96, the Director of the Division of Trading and Markets, with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of the proposed rule is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule for public comment. The Commission request comments on any aspect of proposed rule 554 that members of the public believe may raise issues under the Act or Commission regulations, including, for example, those issues previously identified by the Commission as pertinent to large order execution procedures [1] and a prior large lot proposal from another futures exchange.[2]

Copies of the CME submission are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or comments on the proposed regulation should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date. Issued in Washington, DC on June 9, 1992.

Alan L. Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 92–13932 Filed 6–12–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Supplemental Environmental Assessment (EA) for Lightweight Exoatmospheric Projectile (LEAP) Test Program

AGENCY: Strategic Defense Initiative Organization (SDIO), DoD.

ACTION: Proposed Modifications to the Lightweight Exoatmospheric Projectile (LEAP) Test Program.

SUMMARY: Pursuant to Council on Envionmental Quality Regulations (40 CFR parts 1500–1508) for implementing

[1] See 55 FR 50,267 (Dec. 5, 1989); 55 FR 23,127 (June 6, 1990).

[2] The Division previously published a proposal from the Commodity Exchange, Inc. ("Comex") which would have established procedures for large lot transactions in gold futures contracts. FR 2506 (January 23, 1991). The Division later requested further information from Comex on May 3, 1991.

the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 et. seq.), and Department of Defense Directive 6050.1, the Strategic Defense Initiative Organization (SDIO) has conducted an environmental assessment of the potential environmental consequences of modifications to the Lightweight Exoatmoshperic Projectile (LEAP) Test Program. The original environmental assessment of the LEAP Test Program, prepared by SDIO, resulted in a Finding of No Significant Impact (FONSI) on July 18, 1991.

Since that FONSI, modifications to the program have been made that include: changes to existing launches, and adding two new launches to the program. Activities to support modifications will occur at two additional private contracting facilities not addressed in the original EA. Also, another type of liquid rocket propellant has been added to the program to support technology evaluation.

Background

The LEAP Test Program was established to demonstrate and evaluate advanced technology to determine whether an exoatmospheric interceptor is feasible. To reach this determination, the LEAP program office at SDIO has established a program of design, fabrication, ground test, and flight testing of potential technologies to meet program goals. Since preparation of the LEAP EA and FONSI (July 1991), SDIO has identified a need to modify the LEAP Test Program.

Originally, the LEAP Program consisted of six test flights. The first four flights, LEAP–1–2–3, and–4 were (and are) planned to occur at White Sands Missile Range (WSMR), New Mexico. Three of the test flights are single-rocket launches using Aries I Launch vehicles. The fourth WSMR test flight is a two-rocket launch using Aries II Launch Vehicles. Two of the test fights, LEAP–5 and LEAP–6, were (and are) planned to occur at Kwajalein Missile Range (KMR), U.S. Army Kwajalein Atoll (USAKA), and Wake Island. The Test flights are two-rocket launches using an Aries II Launch Vehicle to launch the LEAP projectile from KMR and a Castor IVA Target Launch Vehicle to launch the Target from Wake Island.

Modifications to the original program include the following:

The flight trajectory for LEAP–3 test flight at WSMR has been modified to emulate the trajectories for LEAP–1 and LEAP–2 at WSMR;

LEAP launches at Meck Island at KMR, in USAKA are now planned to occur from the HEDI Launch Facility on the southern portion of Launch Hill, rather than the ERIS site as previously planned;

An additional launch, LEAP–X, is planned to occur at KMR. The Flight test is a single-rocket from Mech Island using the Aries II Launch Vehicle;

The Advanced Liquid Axial Stage (ALAS) liquid propellant rocket motor has been added as the LEAP axial propulsion system for the LEAP–X and LEAP–6 flights at KMR. The system will include the use of chlorine pentafloride (ClF_5) as the liquid oxidizer;

An additional Launch, LEAP–7, is planned to occur at KMR. The test flight is a two rocket launch using the Aries II launch Vehicle (KMR) and Castor IVA Target Launch Vehicle (Wake Island), and;

The Advanced Solid Axial Stage (ASAS) solid propellant axial motor has been added as the LEAP axial propulsion system for the LEAP–7 flight.

Activities to support the LEAP program are still planned to occur at the facilities identified in the LEAP EA. In addition, component assembly activities will be performed at Aerojet, Sacramento, California and Thiokol Corporation, Elkton, Maryland.

The potential for environmental impacts was determine through an analysis of modifications of, and additions to, the LEAP program and the facilities where these activities are planned to occur. All significant changes to the program occur at KMR. A summary of the environmental resources at KMR is presented in the LEAP Supplemental EA and includes: physical setting and land-use; geology and water resources; air quality; noise; biological resources; threatened and endangered species; cultural resources; infrastructure; hazardous materials and wastes; and public health and safety.

The methodology consisted of identification of potential environmental issues and a determination of potential significance. For any impacts from the proposed action that could potentially be significant, it was determined whether mitigation measures could be implemented to reduce the impacts to less than significant levels.

Findings

All potentially significant impacts from modifications to LEAP Test Program ground, preflight, and flight test activities will be precluded by implementing standard engineering practices, planned safety measures, and the mitigation measures outlined in the LEAP Test Program Environmental Assessment (July 1991) and the USAKA EIS (August 1989).

All LEAP Test Program activities will be conducted according to operational criteria or on-going activities at White Sands Missile Range, USAKA, and Wake Island. The modifications to the LEAP Test Program will not result in any cumulative impacts, or significant irreversible or irretrievable commitments of resources. The analysis in this EA demonstrates no conflicts with Federal, regional, state, local or Native American Tribe land use plans, policies, or controls. All activities associated with this program occur at existing facilities used for activities similar to the testing planned for this program. Private contractors supporting the test program will use existing facilities and structures to support their activities.

The analysis indicates no potentially significant impacts would occur as a result of implementing the proposed program modifications, or the no action alternative. The no action alternative is defined as conducting the LEAP Test Program as defined in the July 1991 LEAP EA, but precludes gathering significant data that SDIO has deemed necessary for full implementation of its objectives.

FOR FURTHER INFORMATION CONTACT: Mr. Crate J. Spears, SDIO Environmental Coordinator, SDIO/TNE, Washington, DC 20301–7100, (703) 673–1576.

Dated: June 11, 1992.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–14128 Filed 6–11–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on July 23, 1992 and from 8:30 a.m. to 4:30 p.m. on July 24, 1992. The meeting will be held at the Monterey Plaza Hotel, 400 Cannery Row, Monterey, CA. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests, and to complete the biennial report. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and

Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 695–5525, no later than July 10, 1992.

Dated: June 10, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13980 Filed 6–12–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Notice of Public Hearings for the Draft Supplemental Environmental Impact Statement for Proposed Disposal of Dredged Material From Naval Air Station Alameda and Naval Supply Center Oakland at the Navy Ocean Disposal Site

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Supplemental Environmental Impact Statement (DSEIS) for proposed disposal of dredged material from Naval Air Station Alameda (NAS) and Naval Supply Center (NSC) Oakland at the Navy ocean disposal site.

The DSEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DSEIS findings and to solicit comments will be held on June 30, 1992, beginning at 7 p.m., in the Kaiser Center, 300 Lakeside Drive, Oakland, California.

The public hearing will be conducted by the Navy and will be a joint hearing with the U.S. Army Corps of Engineers. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by July 13, 1992, to become part of the official record.

The proposed action is for designation of an open ocean site for disposal of material dredged from berths at NAS Alameda and pier and channel areas at NSC Oakland to provide adequate clearance for aircraft carriers and the Navy's modern supply ships. The Navy prepared an EIS in 1990 for the dredging at NAS Alameda and NSC Oakland. As discussed in its Record of Decision, the Navy decided to prepare a Supplemental EIS for the proposed use of a former chemical munitions dumping area as a disposal site for the material to be dredged.

Current analysis and dispersion modelling conducted during preparation of the DSEIS indicates that disposal of sediments at the proposed site would have a negligible impact on marine resources.

Additional information concerning this notice may be obtained by contacting Mr. John Kennedy (Code 20), telephone (415) 244–3713, Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, CA 94066.

Dated: June 11, 1992.

Wayne Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 92–14091 Filed 6–12–92; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: June 26, 1992—9 a.m. to 5 p.m.

ADDRESSES: The Ritz-Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Florez, Executive Director, White House Initiative on Educational Excellence for Hispanic Americans, U.S. Department of Education, Washington, DC 20202–7588. Telephone: (202) 205–2420.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 12729.

The Commission is established to advise the Secretary of Education on the educational status of Hispanic Americans, including the progress of Hispanic Americans towards achievement of the national educational goals, and on Federal efforts to promote quality education for Hispanic Americans.

On June 26, the Commission will meet in an open session from 9 am to 5 pm. The agenda will be the ongoing public awareness campaign around the country and the work of the Commission in preparing recommendations for the Secretary of Education.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Avenue, SW., Washington, DC 20202–7588 from the hours of 8:30 am to 5 pm.

The public is being given less than fifteen days notice of this meeting because of the difficulties encountered in scheduling a meeting of the participants who are essential to the actions described in this notice.

Lanny Griffith,

Assistant Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 92–13956 Filed 6–12–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Inviting Giant Applications for Innovative Concepts Program

AGENCY: U.S. Department Of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Department of Energy (DOE), Innovative Concepts Program (InnCon), is soliciting grant proposals for advanced concepts having the potential to reduce the energy and/or environmental costs of waste generation/treatment processes. The concepts must be specific, differ substantially from existing practices or application, and not degrade the quality of the product or service being supplied. Proposed advanced concepts should

have the potential to eliminate, reduce, or utilize gas, liquid, or solid waste streams. The purpose of InnCon is to identify promising new concepts for saving energy or improving energy utilization while improving industrial efficiency and maintaining the quality of the environment. Each proposal submitted will be reviewed and evaluated against established qualifications and evaluation criteria. DOE InnCon allocation will not exceed $300,000 with an intent to award up to 15 grants of approximately $20,000 each. Cost sharing is not mandatory. Grant awards will require innovators to conduct a preliminary technical and market evaluation and to present their concepts to potential sponsors.

ELIGIBILITY: All are eligible except for, Federal Laboratories, Battelle Memorial Institute, their affiliates and employees.

DATES: A solicitation will be available on or about June 8, 1992. Request for copies of the solicitation must be made in writing to: U.S. Department of Energy, Seattle Support Office, Attn: Lisa Barnett, 800 Fifth Avenue, Seattle, Washington, 98104. Proposals are due on August 3, 1992.

ADDRESSES AND FURTHER INFORMATION: U.S. Department of Energy (DOE), Seattle Support Office, Seattle, Washington, 98104, Contact Lisa Barnett, (202) 553–2166).

Issued in Chicago, Illinois on June 2, 1992.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 92–14018 Filed 6–12–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP92–182–001; and CP92–415–000]

Florida Gas Transmission Co., Transcontinental Gas Pipe Line Corp. and Florida Gas Transmission Co.; Schedule of Public Scoping Meetings on Environmental Issues for the FGT Phase III Expansion Project

June 10, 1992.

The Federal Energy Regulatory Commission (FERC or Commission) staff hereby announces the schedule of public scoping meetings on the above dockets.

On May 22, 1992, the FERC issued a Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) and Request for Comments on Environmental Issues for the FGT Phase III Expansion Project (NOI) (53 FR 23220) filed in the dockets referenced above. Florida Gas Transmission Company (FGT) is seeking approval to construct and operate about 799.8 miles of loop, replacement, and new pipeline; 89,500 horsepower (HP) of compression at 3 new and 7 existing compressor stations; and metering, regulating, and odorization facilities. The proposed facilities would be located in Louisiana, Mississippi, Alabama, and Florida.

Transcontinental Gas Pipe Line Corporation (Transco) and FGT also jointly propose to construct and operate a new 10,766-HP compressor station and a metering and regulating facility in southern Alabama.

Scoping Meetings

The meetings will be conducted to identify the scope and significance of environmental impact associated with the proposals by FGT and Transco. The meetings are scheduled as follows:

Date	Location	Time
Monday, June 22, 1992	Radisson Hotel, 415 North Monroe Street, Tallahassee, FL 32301, Phone (904) 224–6000.	7 p.m.
Tuesday, June 23, 1992	Best Western Inn, 1125 U.S. Highway 19 North, Chiefland, FL 32626, Phone (904) 493–0663.	7 p.m.
Wednesday, June 24, 1992	Sheraton Inn, 5316 U.S. Highway 19, New Port Richey, FL 34652, Phone (813) 847–9005.	7 p.m.

As referenced in the Commission's May 22, 1992 NOI, the public scoping meetings are intended as an opportunity for state and local governments and the general public to provide information and assistance directly to the FERC staff regarding the range of environmental issues and concerns that need to be addressed in the impact analysis.

Persons who would like to make oral presentations at the public scoping meetings should contact the FERC project manager identified below to have their names placed on the speakers' list. Persons on the speakers' list prior to the date of the meeting will be allowed to speak first. A second speakers' list will be available for sign-up at the public meeting. Priority will be given to those persons representing groups.

Further information concerning the public scoping meetings or about the project in general is available from: Mr. Mark Jensen, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 7312, Washington, DC 20426, Telephone (202) 208–1121.

Organizations and individuals receiving this notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. Any subsequent information, including the environmental document, published regarding the FGT Phase III Expansion Project will be sent automatically to the appropriate Federal and state agencies. However, to reduce printing and mailing costs and related logistical problems, the DEIS will only be distributed to those organizations, local agencies, and individuals who have returned the DEIS Request Form sent out previously with our NOI.

Lois D. Cashell,

Secretary.

[FR Doc. 92–14002 Filed 6–12–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER92–578–000 et al.]

Iowa Power, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Fillings

June 5, 1992.

Take notice that the following filings have been made with the Commission:

1. Iowa Power, Inc.

[Docket No. ER92–578–000]

Take notice that on May 26, 1992, Iowa Power, Inc. tendered for filing a

Notice of Cancellation of FERC Rate Schedule Nos. 75 and 78 with Central Iowa Power Cooperative.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket Nos. ER92-376-000, ER92-424-000 and ER92-427-000]

Take notice that on May 27, 1992, Florida Power Corporation (FPC) tendered for filing an amendement to its filing in the above-referenced dockets.

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER92-568-000]

Take notice that on May 20, 1992, Minnesota Power & Light Company (MP&L) tendered for filing Notices of Cancellation for the following FERC Rate Schedules:

FERC Rate Schedule No. 0008
FERC Rate Schedule No. 0077
FERC Rate Schedule No. 0101
FERC Rate Schedule No. 0108
FERC Rate Schedule No. 0114
FERC Rate Schedule No. 0117
FERC Rate Schedule No. 0130
FERC Rate Schedule No. 0138
FERC Rate Schedule No. 0139
FERC Rate Schedule No. 0140
FERC Rate Schedule No. 0142
FERC Rate Schedule No. 0143
FERC Rate Schedule No. 0144
FERC Rate Schedule No. 0151
FERC Rate Schedule No. 0152
FERC Rate Schedule No. 0154
FERC Rate Schedule No. 0155
FERC Rate Schedule No. 0157

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. United Illuminating Company

[Docket No. ER92-566-000]

Take notice that on May 20, 1992, United Illuminating Company (UI) tendered for filing Notices of Cancellation of the following Rate Schedules:

FERC Rate Schedule No. 44
FERC Rate Schedule No. 49
FERC Rate Schedule No. 50
FERC Rate Schedule No. 51
FERC Rate Schedule No. 52
FERC Rate Schedule No. 53
FERC Rate Schedule No. 57

Comment date: June 18, 1992, in accordance with Standard Paragraph E end of this notice.

5. James R. Leva

[Docket No. ID-1606-005]

Take notice that on April 16, 1992, James R. Leva (Applicant) tendered for filing a supplemental application to hold interlocking positions under the Federal Power Act. On May 15, 1992 Applicant filed an amendment to its April 16, 1992 filing in this docket.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER92-602-000]

Take notice that on June 1, 1992, New England Power Company (NEP) submitted for filing a Power Sales Contract with the Commonwealth Electric Company for a 30 megawatt sale of capacity and energy from NEP's Bear Swamp pumped storage facility from June 29, 1992 to August 3, 1992. NEP requests waiver of the Commission's regulations to allow this Contract to become effective on June 29, 1992.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. People's Electric Cooperative

[Docket No. ER92-583-000]

Take notice that on May 27, 1992 People's Electric Cooperative (PEC) tendered for filing a letter stating that on or about July 1, 1992 the transmission facilities of PEC will be interconnected with the transmission facilities of Southwestern Power Administration (SWPA) and SWPA's Tupelo Switching Station.

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Montaup Electric Company

[Docket No. ER92-604-000]

Take notice that on June 1, 1992, Montaup Electric Company (Montaup or the Company) filed as an informational filing a report titled Conservation and Load Management Annual Report Information Filing, Proposed Surcharge and Projected Revenue Requirements—June 1, 1992—describing the activities performed by Montaup in designing, implementing and monitoring Conservation and Load Management (C&LM) programs as part of a cooperative effort at the state level in Massachusetts and Rhode Island. This informational filing is required under the C&LM clause which was adopted in the settlement agreement in Phase I of Montaup's M-12 rate case in Docket No. ER90-247, as approved by the Commission on January 23, 1991 (54 FERC ¶61,084), and which is contained in Montaup's wholesale rate schedules for services to its retail distribution affiliates, Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company (Blackstone) and Newport Electric Corporation (Newport) in Rhode Island. The filing (1) describes the C&LM clause, (2) describes C&LM coordination at the state level, and (3) presents a "true-up" credit of $7.1 million for the 12 months beginning May 1, 1991 and $13.5 million of estimated C&LM costs for the 12 months beginning May 1, 1992.

Under the C&LM mechanism, the adjustment becomes final unless protests are filed or an investigation ordered within 90 days of the filing of the report. The 90-day period allows time for any issues to be resolved. Accordingly, the time for filing protests is set at August 30, 1992.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana Michigan Power Company

[Docket No. ER92-606-000]

Take notice that American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company (I&M), on June 2, 1992, tendered for filing an adjustment to the monthly demand charge rates for Firm Power supplied by I&M to Wabash Valley Power Association, Inc. (Wabash Valley) under the August 31, 1988 Settlement Agreement (Agreement) between I&M and Wabash Valley. The Commission has previously designated this Agreement as I&M's Rate Schedule FERC No. 76. The demand charge adjustment is based on an historical average of the Producer Price Index as provided for in the Agreement.

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, and Wabash Valley.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas & Electric

[Docket No. ER92-608-000]

Take notice that on June 2, 1992, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated January 31, 1992 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge

from $4,075.67 to $3,823.17 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, an increase in the monthly Transmission Charge from $4,414.05 to $4,588.37 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $4,179.49 to $4,367.57 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of Subsection 35.3 of the Commission's Regulation to permit this proposed increase to become effective January 1, 1992.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, 4500 Vestal Parkway, East, Binghamton NY 13902.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Public Service Company

[Docket No. ER92-607-000]

Take notice that on June 2, 1992, Central Illinois Public Service Company (CIPS) tendered for filing a revision to its Rate Schedule for Full Requirements Service to Mt. Carmel Public Utility Company (Mt. Carmel). Under the revision, proposed to be effective June 1, 1992, CIPS will increase slightly the demand charge for service to Mt. Carmel.

CIPS requests an effective date of June 1, 1992 for revision of the Demand Charge and, accordingly seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Mt. Carmel Public Utility Company and the Illinois Commerce Commission.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER92-601-000]

Take notice that Entergy Services, Inc. as agent for Entergy Power, Inc. (Entergy Power), on June 1, 1992, tendered for filing an energy sale agreement between Entergy Power and Tennessee Valley Authority. Entergy Power requests an effective date of June 1, 1992, and also requests waiver of the notice requirements under § 35.11 of the Commission's regulations.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER92-595-000]

Take notice that on June 1, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a Rate Schedule For the Interconnection of the California-Oregon Transmission Project (COTP) and the PG&E Electric System. This rate schedule sets forth the rates, terms and conditions under which PG&E offers to the owners of the COTP to interconnect that transmission facility with the PG&E electric system and to operate its system in parallel with the COTP.

Copies of this filing have been mailed to the owners of the COTP; the United States Department of Energy, Western Area Power Administration; the Carmichael Water District; the City of Vernon, California; the San Juan Suburban Water District; the Shasta Dam Area Public Utility District; the Southern Sal Joaquin Valley Power Authority; and the Transmission Agency of Northern California, including the following of its members: The California cities of Alameda, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah, the Modesto Irrigation District, the Plumas-Sierra Rural Electric Cooperative, the Sacramento Municipal Utility District and the Turlock Irrigation District; and to the California Department of Water Resources and the California Public Utilities Commission.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14001 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

June 8, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 9694-008

c. *Date Filed:* April 23, 1991.

d. *Applicant:* Power Resources Development Corp. (licensee), Jefferson National Bank (transferee).

e. *Name of Project:* Fine Project.

f. *Location:* On the Oswegatchie River in St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Peter C. Kissel, Baller Hammett, P.C., 1225 Eye Street, NW., Suite 1200, Washington, DC 20005, (202) 682-3300.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Comment Date:* June 29, 1992.

k. *Description of Project:* On April 23, 1991, the transferee filed an application to transfer the license for the Fine Project No. 9694. In response to the Commission's June 4, 1991, order directing the transferee to submit additional information, the transferee submitted evidence on May 4, 1992, that the licensee had agreed to cooperate and join in the transfer proceedings. The Commission issued an order on May 21, 1992, finding that sufficient evidence had been submitted of the licensees' consent to justify processing the transfer application.

The proposed transfer will not result in any change in the project. The transferee states that it would comply with all terms and conditions of the license. The purpose of the transfer is to allow the transferee to enforce its rights as a secured creditor for loans which are now in default.

l. *This notice also consists of the following standard paragraphs:* B and C

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

c. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF

INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027–UPC, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13828 Filed 6–12–92; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Filed With the Commission

June 8, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application*: Transfer of License.

b. *Project No.*: 6962–014.

c. *Date Filed*: April 23, 1991.

d. *Applicant*: Yankee Hydro Corporation (licensee), Jefferson National Bank (transferee).

e. *Name of Project*: Dunn & McCarthy Project.

f. *Location*: On the Owasco Lake outlet in Cayuga County, New York.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Peter C. Kissel, Baller Hammett, P.C., 1225 Eye Street, NW., Suite 1200, Washington, DC 20005, (202) 682–3300.

i. *FERC Contact*: Michael Dees (202) 219–2807.

j. *Comment Date*: June 29, 1992.

k. *Description of Project*: On April 23, 1991, the transferee filed an application to transfer the license for the Dunn & McCarthy Project No. 6962. In response to the Commission's June 4, 1991, order directing the transferee to submit additional information, the transferee submitted evidence on May 4, 1992, that the licensee had agreed to cooperate and join in the transfer proceedings. The Commission issued an order on May 21, 1992, finding that sufficient evidence had been submitted of the licensees' consent to justify processing the transfer application.

The proposed transfer will not result in any change in the project. The transferee states that it would comply with all transfer is to allow the transferee to enforce its rights as a secured creditor for loans which are now in default.

l. *This notice also consists of the following standard paragraphs:* B, and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210,.211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027–UPC, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13930 Filed 6–12–92; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

June 8, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 6786–015.

c. *Date Filed:* April 23, 1991.

d. *Applicant:* Yankee Hydro Corporation (licensee), Jefferson National Bank (transferee).

e. *Name of Project:* Aurelius Avenue Dam Project.

f. *Location:* On the Owasco Lake outlet of the Owasco River in Cayuga County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Peter C. Kissel, Baller Hammett, P.C., 1225 Eye Street, NW., Suite 1200, Washington, DC 20005, (202) 682–3300.

i. *FERC Contact:* Michael Dees, (202) 219–2807.

j. *Comment Date:* June 29, 1992.

k. *Description of Project:* On April 23, 1991, the transferee filed an application to transfer the license for the Aurelius Avenue Dam Project No. 6786. In response to the Commission's June 4, 1991, order directing the transferee to submit additional information, the transferee submitted evidence on May 4, 1992, that the licensee had agreed to cooperate and join in the transfer proceedings. The Commission issued an order on May 21, 1992, finding that sufficient evidence had been submitted of the licensees' consent to justify processing the transfer application.

The proposed transfer will not result in any change in the project. The transferee states that it would comply with all terms and conditions of the license. The purpose of the transfer is to allow the transferee to enforce its rights as a secured creditor for loans which are now in default.

l. *This notice also consists of the following standard paragraphs:* B, and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027–UPC, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the application specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13931 Filed 6–12–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–518–000, et al.]

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corp.

[Docket No. CP92–518–000]

June 5, 1992.

Take notice that on May 26, 1992, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP92–518–000 an application pursuant to section 7 (b) and (c) of the Natural Gas Act for permission and approval to abandon two compressor units and related facilities located in Botetourt County, Virginia and for a certificate of public convenience and necessity authorizing the construction and operation of one compressor unit and related facilities located in Summers County, West Virginia in order to provide a firm transportation service for Westvaco Corporation (Westvaco), an enduser, under Columbia's blanket certificate authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to: (1) Install one 890-horsepower compressor unit and related structures and facilities at Flat Top Compressor Station in Summers County, West Virginia (Flat Top); and (2) abandon two 800-horsepower compressor units (Nos. 4 and 5) at Gala Compressor Station in Botetourt County, Virginia (Gala). Columbia states that Columbia would also install appurtenant gas cooler and uprate station piping at Flat Top and regulation on Lines KA–5 Loop and KB on its KA System in Summers County, West Virginia under § 2.55 of the Commission's Regulations to increase its existing operating pressure from 395 psig to 50 psig and improve operations. Columbia states that its current maximum allowable operating pressure on the KA System between Flat Top and Gala is 720 psig. The additional compressor at Flat Top would provide the capacity needed for the firm transportation service of 4,186 dt per day to Westvaco in Covington, Virginia, it is stated. Columbia states that the compressor units at Gala have become physically deteriorated and obsolete to the extent that replacement with additional horsepower at Flat Top is deemed advisable. Columbia indicates that the increased horsepower at Flat Top and the increase in the operating pressure on the KA System between Flat Top and Gala is the most economical means for replacing two deteriorating units at Gala while maintaining historic levels of throughput. The estimated cost of the proposed facilities is $3,109,000. The cost would be financed with funds generated from internal sources and a contribution in aid of construction of $800,000 from Westvaco.

Comment date: June 26, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Co.; Natural Gas Pipeline Company of America

[Docket Nos. CP79–205–010, CP79–204–010]

June 5, 1992.

Take notice that on May 26, 1992, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, and Natural Gas Pipeline Company of America (Natural) 701 East 22Ad Street, Lombard, Illinois 60148, hereinafter referred to as Applicants, filed in Docket Nos. CP79–205–010 and CP79–204–010, respectively, a joint petition to amend the order issued November 21, 1979 [1] in Docket Nos. CP79–205 and CP79–204 pursuant to Section 7(c) of the Natural Gas Act so as to amend the transportation service performed pursuant to a gas transportation and exchange agreement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, Applicants states that they are amending Rate Schedules X–111 and X–36, respectively, so as to, add new transportation rates, reduce contract quantities, and update the supplies under the December 29, 1978 Agreement, as amended.

Comment date: June 26, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Co.

[Docket No. CP92–525–000]

June 5, 1992.

Take notice that on June 3, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP92–525–000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of certain farm tap and grain drying/irrigation installations and the associated transportation service, all a more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it seeks to abandon and transfer ownership to Peoples Natural Gas Company (Peoples) Panhandle's farm tap and grain drying/irrigation facilities located in Kansas, Oklahoma and Texas. It is stated that all facilities abandoned by Panhandle would remain in place for the continued use by Peoples. It is also stated that Peoples has agreed to assume Panhandle's obligation to serve these farm and grain driving/irrigation tap installations and any additional customers who may elect to exercise a previously unexercised tap right pursuant to the right-of-way agreement, and to continue to provide comparable service to the customers. Panhandle further states that it would provide transportation service to Peoples for the farm and grain/drying installations under Panhandle's open access blanket transportation rate schedules.

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[1] 9 FERC (CCH) ¶ 61,223 (1979).

Comment date: June 26, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corp.

[Docket No. CP92-524-000]

June 5, 1992.

Take notice that on June 2, 1992, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Ave., SE., Charleston, West Virginia 25314, filed in Docket No. CP92-524-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for service to Penn Fuel Gas, Inc. (Penn Fuel), an existing wholesale customer, under Columbia's blanket certificate issued in Docket No. CP83-76-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the delivery point, consisting of a tap and interconnecting facilities, for residential, commercial and industrial end uses in Chester County, Pennsylvania. It is stated that Penn Fuel has requested the facilities in order to accommodate new industrial service for its customer, Emerald Industries, and to upgrade service for the town of Oxford, Pennsylvania. It is asserted that sales would be made under Columbia's currently effective service agreement with Penn Fuel under Columbia's Rate Schedule CDS. Columbia states that it would utilize the facilities to deliver up to 1,000 dt equivalent of gas on a peak day and 281,600 dt equivalent on an annual basis. It is explained that these volumes are within Penn Fuel's current entitlement from Columbia. The construction cost of the proposed facilities is estimated at $81,420, for which Columbia would be reimbursed by Penn Fuel.

Comment date: July 20, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Direct Energy Marketing Inc.

[Docket No. CI92-56-000]

June 8, 1992.

Take notice that on June 2, 1992, Direct Energy Marketing Inc. (DEMI) of 1580, 727-7th Avenue SW., Calgary, Alberta, Canada T2P 0Z5, filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of any natural gas, including all NGPA categories of previously certificated and/or contractually uncommitted NGA gas for which the producer or other supplier has the necessary sales and abandonment authorization, imported natural gas or LNG and natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply. DEMI's application is on file with the Commission and open to public inspection.

Comment date: June 24, 1992, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14003 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-596-000]

Pacific Gas and Electric Co.; Errata to Notice of Filing

June 9, 1992.

The Notice of Filing issued on June 4, 1992 in the above-referenced docket was incorrect. The correct notice should read as follows:

Take notice that on June 1, 1992, Pacific Gas and Electric Company tendered for filing a Transmission Rate Schedule For COTP Transmission Service provided to Transmission Agency of Northern California (TANC) by Pacific Gas and Electric Company (PG&E). This rate schedule sets forth the rates, terms and conditions under which PG&E offers to TANC firm transmission service associated with the completion of the California-Oregon Transmission Project.

Copies of this filing have been mailed to TANC and the following of its members: The California cities of Alameda, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa

Clara and Ukiah, the Modesto Irrigation District, the Plumas-Sierra Rural Electric Cooperative, the Sacramento Municipal Utility District and the Turlock Irrigation District; and to the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20423, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13946 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. CAC-006]

Energy Conservation Program for Consumer Products; Petitions for Waiver and Applications for Interim Waiver of Central Air Conditioner Test Procedures From Enviro Master International

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Enviro Master International (EMI) from the existing Department of Enrgy (DOE) central air conditioning test procedures relating to testing of EMI's ductless split system single-zone central air conditioner heat pumps series CHB and multizone central air conditioner heat pumps series MC/MH.

Today's notice also publishes two "Petitions for Waiver" from EMI requesting waivers from the existing Department of Energy (DOE) test procedure for central air conditioners. The first petition requests DOE to grant relief relating to testing of EMI's ductless split system central air conditioner heat pumps series CHB and MC/MH in the heating mode. EMI requests that a heating mode rating not be required because the models specified do not have defrost control. Therefore, these heat pumps are not capable of being tested in the heating mode in accordance with the test procedures. The second petition requests permission to use a modified test in order to test the EMI series MC/MH multizone systems in the cooling mode. This request is made because the test procedure has provisions for testing systems with one or two compressors, but not three or four compressors as manufactured by EMI in its series MC/MH systems. DOE is soliciting comments, data and information respecting the petition.

DATES: DOE will accept comment, data and information not later than July 15, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. CAC-006, Mail Station CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock Jr., U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-5778.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA). Public Law 95-619, 92 Stat. 3266, The National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendment of 1988 NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners and heat pumps. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process, 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures, 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

EMI's air conditioning and heat pump systems are used mostly in commercial applications, however, some of the designs can and have been used in multifamily residential facilities. Therefore it has been determined by DOE that the requirements of EPCA, as amended, apply to those EMI units powered by single phase current and rated below 65,000 Btu per hour. On December 3, 1991, EMI petitioned DOE for a waiver from the DOE test provisions that require a low temperature test at 17° F and a frost accumulative test at 35° F and the requirement to determine a Heating Seasonal Performance Factor (HSPF) for its CHB and MC/MH series systems. In a second letter dated December 4, 1991, EMI requested permission to use a modification of the DOE test in order to test its MC/MH series three and four

zone systems. On January 18, 1992, EMI submitted an Application for an Interim Waiver of the HSPF requirement. In a separate letter dated March 18, 1992, EMI requested Interim and Permanent Waivers to portions of the cooling mode test for multizone systems found in the central air conditioner test procedure. Additional information relating to these petitions, as requested by DOE, was provided by EMI in letters dated January 27, and February 25, 1992.

EMI proposes rating its heat pump model series CHB and MC/MH at the 47° F high temperature heating rating point and omitting the low temperature test at 17° F and frost accumulation test at 35° F. EMI states that these heat pump product lines, having a heating cycle low limit of approximately 35° F, offer consumers heat pump efficiency without the complication and cost of reversing cycle defrost components. These units find widespread use in regions where much of the prevailing heating season bin temperature is 35° F and above and there is little need for reverse cycle defrost. Since current DOE test procedures do not address this control feature, EMI asks that a waiver from rating its heat pump model series CHB and MC/MH in the heating mode be granted.

The Department finds that the design of the EMI model series CHB and MC/MH cannot be rated using the DOE test procedures. This is caused by a design feature which disengages the heat pump when the outdoor temperature falls below 35° F. The absence of a defrost control system in the EMI models and the company's inability to operate the basic models for the low temperature test at 17° F and the frost accumulation test at 35° F makes rating these units in the heating mode using the current test procedures impossible. Therefore, interim testing of these systems in order to determine the minimum Heating Seasonal Performance Factor in not required.

In regards to testing of the MC/MH multizone systems, EMI seeks to test its three and four zone systems in the manner prescribed in the DOE test for two zone systems. Current DOE test procedures only provide for testing of systems with one and two zones. For this reason, interim testing shall be done in the manner as requested by EMI.

In the letter dated December 3, 1991, EMI stated that heat pump model series CHB and MC/MH account for most of the company's heat pump sales. In a follow-up letter requesting an Interim Waiver, dated January 18, 1992, EMI stated that these product lines accounted for approximately 35% of its 1991 gross revenue and that loss of these product lines could result in loss of distribution channels which sell its cooling only product lines. The DOE showing of economic hardship for granting an Interim Waiver requires that the manufacturer demonstrate an adverse impact on the company caused by the inability to sell its product during the time required to process the Petition for Waiver. DOE believes that the information provided by EMI satisfies the requirement of economic hardship.

EMI's Applications for Interim Waivers requesting relief from the DOE test procedures for its central air conditioning ductless split system heat pumps, model series CHB and MC/MH, is granted.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petitions for Waiver" in their entirety. The petition contains no confidential information. DOE solicits comments, data and information respecting these petitions.

In addition, pursuant to paragraph (e) of 10 CFR 430.27, the following letter granting the Applications for Interim Waiver was issued to Enviro Master International.

Issued in Washington, DC, June 9, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92–14016 Filed 6–12–92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Developement

[FRL–4144–2]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for an Equivalent Method Determination

Notice is hereby given that on May 18, 1992, the Environmental Protection Agency received an application from Advanced Pollution Instrumentation Inc., 8815 Production Avenue, San Diego, California 92121–2219, to determine if their Model 400 UV Photometric Ozone Analyzer should be designated by the Administrator of the EPA as an equivalent method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 92–14007 Filed 6–12–92; 8:45 am]

BILLING CODE 6560-50-M

[FRL–4141–6]

Approval of PSD Permits; Region 6

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. Enterprise Products Company—Permit PSD–TX–789, which was issued on August 9, 1991, authorizes the installation of a gas turbine cogeneration facility at the existing chemical manufacturing plant located on FM Road 1942, approximately one mile west of Mont Belvieu, Chambers County, Texas.

2. Texaco Chemical Company—Permit PSD–TX–780, which was issued on August 21, 1991, authorizes the construction of two gas turbine cogeneration units at the existing petrochemical complex located on State Highway 366, approximately one-half mile north of Port Neches, Jefferson County, Texas.

3. Natural Gas Pipeline Company—Permit PSD–TX–783, which was issued on August 21, 1991, authorizes the construction of a compressor station off FM Road 1184, approximately four miles southeast of Roxton, Lamar County, Texas.

4. Texaco Chemical Company—Permit PSD–TX–794, which was issued on August 29, 1991, authorizes the construction of a new cracking furnace at the existing petrochemical plant located at Gate 24 Savannah Avenue, Port Arthur, Jefferson County, Texas.

5. Houston Lighting and Power Company—Permit PSD–TX–371M–2 modifies PSD–TX–371M–1 to authorize an increase in the opacity limit to 15%, a three-hour maximum allowable emission rate for SO_2 of 9,000 lbs/hr with no change in the tons/year, and the company is no longer required to determine the concentration of lead in the lignite ash from representative samples from each 5-year mining plan at the electric generating station located off FM Road 39, approximately five miles southeast of Farrar, Limestone County, Texas. This modified permit was issued on August 29, 1991.

6. Simpson Pasadena Paper Company—Permit PSD–TX–769M–1

modifies PSD–TX–769 to authorize the company to conduct continuous emission monitor (CEM) performance evaluation tests at the same time the initial compliance test is conducted and submit the CEM performance evaluation report at the same time the compliance test report is submitted for the paper mill located on N. Shaver Street, Pasadena, Harris County, Texas. This modified permit was issued on September 26, 1991.

7. Enterprise Products Company—Permit PSD–TX–790, which was issued on October 1, 1991, authorizes the construction of a deisobutanizer/heat pump unit at the existing chemical manufacturing complex located on FM Road 1942, approximately one mile west of Mont Belvieu, Chambers County, Texas.

8. El Paso Natural Gas Company—Permit PSD–NM–1000, which was issued on October 1, 1991, authorizes the addition of a new 9,716 Hp turbine, a 7.5 lb boiler and a 400 Hp standby generator, and the upgrade of an existing 6,350 Hp turbine to 6,668 Hp at the existing White Rock compressor station located on the Navajo Indian Reservation off Highway 666, approximately 55 miles northeast of Gallup, San Juan County, New Mexico.

9. Vetrotex CertainTeed Corporation—Permit PSD–TX–784, which was issued on October 2, 1991, authorizes the construction of a new fiberglass manufacturing line at the existing fiberglass plant located at 4515 Allendale Road, Wichita Falls, Wichita County, Texas.

10. Shintech, Incorporated—Permit PSD–TX–285M–3 modifies PSD–TX–285M–2 to authorize the replacement of two existing polyvinyl chloride (PVC) dryers with a new PVC dryer and the addition of 4 PVC storage silos at the bagging facility at the existing PVC facility located at 5618 Highway 332 East, Freeport, Brazoria County, Texas. This modified permit was issued on October 28, 1991.

11. Maxus Exploration Company—Permit PSD–TX–797, which was issued on November 22, 1991, authorizes the construction of a cryogenic gas processing plant at the existing compressor station located off FM Road 119, approximately 3.25 miles southeast of Sunray, Moore County, Texas.

12. Koch Refining Company—Permit PSD–TX–763, which was issued on December 18, 1991, authorizes the construction of a new crude unit (No. 4) at the existing refinery located on Suntide Road, Corpus Christi, Nueces County, Texas.

13. Temple-Inland Forest Products Corporation—Permit PSD–TX–785M–1 modifies PSD–TX–785 to authorize the shutdown of the existing Kamyr continuous digester instead of the two 8,000 cubic foot batch digesters at the existing bleached Kraft pulp mill located on Highway 105 South, Evadale, Jasper County, Texas. This modified permit was issued on December 31, 1991.

These permits have been issued under EPA's Prevention of significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at CFR 124.19 for petitioning the administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been field with the Administrator.

Under section 307(b)(1) of the clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals, for sources in Texas, and the Tenth Circuit Court of Appeals, for sources located in New Mexico, within 60 days of June 15, 1992. Under section 307(b)(2) of the Clean Air Act, the requirements, which are the subject of today's notice, may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Dated: May 15, 1992

Joe D. Winkle,

Acting Regional Administrator, Region 6.

[FR Doc. 92–14010 Filed 6–12–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4143–7]

Prevention of Significant Deterioration of Air Quality (PSD) Multitrade Limited Partnership, Inc., Pittsylvania County, VA

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this Notice is to announce that the Environmental Appeals Board of the United States Environmental Protection Agency issued a final decision, pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21 and the Procedures for Decisionmaking codified at 40 CFR part 124, regarding Multitrade Limited Partnership, Inc. in Pittsylvania County, Virginia.

DATES: The effective date of the Environmental Appeals Board's decision was April 29, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Denis M. Lohman, Chief, New Source Review Section, Air Enforcement Branch, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, Mail Code 3AT22, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 597–3024.

SUPPLEMENTARY INFORMATION: In separate petitions for review, two citizens, Margaret P. West and Dale Phillips, challenged the decision of the Virginia Department of Air Pollution Control (VDAPC) to issue an amended PSD permit to Multitrade Limited Partnership for construction and operation of a small wood-fired power generation plant.

Ms. West's petition for review was denied because it failed to identify any factual or legal errors or any policy consideration or exercises of discretion that warranted review. Mr. Phillips petition was denied because it was not filed in a timely fashion as well as it also failed to identify any factual or legal errors or any policy considerations or exercises of discretion for review.

Anyone wishing to review the final permit, petition, final order, or related materials should contact the following offices:

U.S. Environmental Protection Agency, Region III, Air Enforcement Branch, New Source Review Section (3AT22), 841 Chestnut Building, Philadelphia, Pennsylvania 19107

Virginia Department of Air Pollution Control, Room 801, Ninth Street Office Building, Richmond, Virginia 23219

Pursuant to 40 CFR 124.19(f)(2), for purposes of judicial review, notice is today being published in the Federal Register of this final Agency action. If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under Section 307(b)(1) of the Clean Air Act (Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on

which this determination is published in the **Federal Register**. Under section 307(b)(2) of the Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: June 5, 1992.

Thomas C. Voltaggio,

Acting Regional Administrator.

[FR Doc. 92-14009 Filed 6-12-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4143-9]

Science Advisory Board Environmental Engineering Committee Open Meeting

July 7-9, 1992.

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet on Tuesday, July 7 through Thursday, July 9, 1992. The meeting will be at the Howard Johnson National Airport Hotel, Dominion Rooms 1 and 2, 2650 Jefferson Davis Highway, Arlington, VA 22202. The hotel telephone number is (703) 684-7200. The meeting will begin at 9 am on Tuesday, July 7th and 8:30 am on both Wednesday and Thursday, July 8th and 9th, and will adjourn no later than 3 pm on July 9th.

At this meeting, the EEC will (1) conduct edits and revise a working draft report on the Agency's Office of Research and Development (ORD) Bioremediation Research Program Strategy, which was presented to the SAB's Bioremediation Research Review Subcommittee on February 10 and 11, 1992; (2) review a draft document entitled "Hydrogen Fluoride Study: Report to Congress" which was required to be developed pursuant to section 301(n)(6), Clean Air Act Amendments of 1990 and was prepared by the Agency's Chemical Emergency Preparedness and Prevention Office (CEPPO). For information on the draft document entitled "Hydrogen Fluoride Study: Report to Congress", call Dr. R. Craig Matthiessen on the CEPPO Staff at (202) 260-9781; (3) receive briefings from Agency staff and discuss possible reviews in FY 1993, including (a) the Office of Solid Waste's (OSW's) Oily Waste issues, (b) ORD's proposed Anticipatory Research Plan and proposed pilot, (c) ORD's numerous issue plans that are engineering-oriented, and other possible FY 1993 activities; (4) discuss possible follow-up activities to the EEC's report on Leachability Phenomena (EPA-SAB-EEC-92-003), dated October 1991, and (5) On July 9, 1992 conduct a consultation on the topics of Superfund's Ground Water Strategic Plan as well as the Superfund Dense Non-Aqueous Phase Liquids (DNAPL's) issues.

The proposed charge on review of the hydrogen fluoride (HF) study to the SAB's EEC from the Agency's CEPPO is to focus on the techniques used to address hazards and risks, worst-case accident assumptions and source terms, atmospheric modeling of consequences and assessment of mitigation or prevention practices. The specific questions asked by the CEPPO staff are as follows: (1) Does the technical information related to chemical and process hazards of HF appear to be complete? (2) Is the industry manufacturing, processing and use information properly characterized? (3) Do the industry practices sections appear to be complete and adequately characterized?, and (4) Does the technical information on accident history and accident scenarios appear to be adequately characterized and complete?

The proposed charge on the Superfund DNAPL consultation is to review the overall approach and strategy for addressing DNAPL ground water contamination that will outlined for the future draft guidance documents. The SAB/EEC is being asked to provide informal technical advice in this consultation to ensure that the draft guidance documents are technically sound and that they incorporate the state-of-the-art methods and instrumentation and address the significant information gaps and guidance needs for ground water research.

The meeting is open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/260-6552. Written comments received by June 25, 1992 will be mailed to the SAB/EEC; comments received after that date will be provided to the EEC at the meeting. Written comments of any length (at least 35 copies) may be provided to the EEC up until the meeting.

Members of the public who wish to make a brief oral presentation should contact Dr. K. Jack Kooyoomjian no later than July 2, 1992. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time to five minutes.

Dated: June 8, 1992.

Donald G. Barnes,

Staff Director, Science Advisory Board (A101F).

[FR Doc. 92-14008 Filed 6-12-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement Number 246]

Developing/Implementing Postdoctoral Specialty Training Programs in Occupational Health Psychology; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for a cooperative agreement to develop a postdoctoral training program in occupational health psychology. The overall purpose of this program is to establish necessary expertise to advance the knowledge of psycho-social/job stress factors in the workplace, their effects on the mental and physical health, performance, and well-being of workers, and ways for preventing such problems. The agreement expands the current occupational health and safety training efforts of CDC and the National Institute for Occupational Safety and Health (NIOSH) to include professional capacity building to address a growing occupational problem-psychological stress.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (for ordering Healthy People 2000, see section **WHERE TO OBTAIN ADDITIONAL INFORMATION**.)

The agreement also supports implementation of the NIOSH Proposed Strategy for the Prevention of Work Related Psychological Disorders which calls for increased professional training and mental health services to deal with workplace stress/health problems and means for their alleviation.

Authority.—This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)).

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations, associations or groups representing relevant behavioral/social science professions, or universities, colleges, and training institutions offering professional (postdoctoral) development programs in cogent areas and in a position to affect the leadership, coordination, and other actions needed to implement the requirements of the cooperative agreement.

Availability of Funds

Approximately $50,000 will be available in Fiscal Year 1992 to fund one cooperative agreement. The award is expected to begin on or about September 30, 1992, for a 12-month budget period within a project period of up to four years. Funds for the first year will cover start-up, and organizing activities to facilitate the development of the proposed training project. It is anticipated that awarded funding levels available in the second through fourth years will be $300,000 to $500,000 per year to cover operational costs of selected/approved training sites, stipends for postdoctoral students selected for such training, and administrative matters related to the program.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this award is to develop a plan for a model postdoctoral training program in occupational health psychology based in university sites which would address issues of workplace psycho-social stress, its effects on worker mental and physical health, performance and well-being, and means for preventing its occurrence or otherwise alleviating its adverse effects. Subsequent effort would provide for the implementation of the plan with the support for a first cohort of psychologists to undertake such training in solidifying the program and building a base for advancing research, applications, and interventions consistent with the NIOSH strategy for preventing work-related psychological disorders.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop a complete plan to establish a model postdoctoral training program in occupational health psychology acknowledging the needs for integrating knowledge in the behavioral and social sciences with that found in occupational medicine, public health, industrial hygiene, and management/organization theory so as to suitably address workplace stress/health problems and the psycho-social issues that may be involved.

2. Effect contacts with established professional groups in the behavioral and social sciences along with those representing occupational medicine, public health, industrial hygiene, and organization/management to obtain necessary support/inputs into curricula/program development.

3. Provide incentives/mechanisms for soliciting university-based sites for the postdoctoral training.

4. In cooperation with CDC, develop criteria for selection of the training sites.

5. Provide incentives/mechanisms for recruiting postdoctoral trainees.

6. In cooperation with CDC, establish criteria for the selection and placement which matches attributes of postdoctoral trainees and training sites to ensure maximal success in specialty development.

7. Develop and implement a plan for program evaluation and ways for establishing the program as a recognized specialty area in occupational health accenting psycho-social science.

8. Provide for trainee orientation and opportunities for their interaction with leading researchers/practitioners active in areas of psycho-social factors affecting worker health/productivity and well-being.

9. Collaborate with CDC in publicizing the program, the sites available which offer such training, significant trainee activities and projects.

B. CDC Activities

1. Provide technical assistance and consultation, through site visits and correspondence, in the areas of program development and implementation.

2. Supply training materials in the form of NIOSH technical reports, research publications, project summaries and other programmatic data on timely subjects/issues for training exercises, student projects.

3. Serve as invited lecturers and offer seminars in the course of visits to training sites.

4. Co-arrange with the recipient orientation sessions for new postdoctoral trainees.

5. Effect contacts between the recipient and traditional NIOSH-supported professional training institutions in appreciating role of the new specialty area, and expansion possibilities for meeting added training needs.

6. In cooperation with recipient, establish criteria and procedures for selecting university-based training sites and postdoctoral trainees best able to satisfy the program goals.

Evaluation Criteria

Applications will be reviewed and evaluated to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including (a) the applicant's understanding of the objectives of the proposed cooperative agreement, and (b) the relevance of the proposal to the objectives. (20%)

2. Strength, unique qualities of the proposal in terms of satisfying the objectives, particular elements in the development of the training program, its manner of implementation and evaluation. (25%)

3. Feasibility of meeting the proposed goals of the cooperative agreement including (a) proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement, (b) the proposed method for determining such accomplishments. (20%)

4. Training and experience of the Program Director and key staff members with regards to expertise in the subject matter of the proposed cooperative agreement and other special capabilities for effecting the planned work. (15%)

5. Viability of mechanisms for ensuring participation of affiliate parties, enabling access to university-based training sites and recruitment of postdoctoral trainees best qualified to advance the specialty area of study, and means for enhancing its durability once established. (20%)

6. The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number for this program is 93.263.

Application Submission and Deadline

The original and two copies of the PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, GA 30305, on or before August 15, 1992.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date or,

b. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 246. You will receive a complete program description, information on application procedures, and application forms.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grant Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6630. Programmatic technical assistance may be obtained from Alexander Cohen, Ph.D., Division of Biomedical and Behavioral Service, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, Mailstop C–22, Cincinnati, Ohio 45226, (513) 533–8462.

Please refer to Announcement Number 246 when requesting information on this program.

Potential applicants may obtain a copy of Healthy People 2000; (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Copies of the NIOSH Proposed Strategy for the Prevention of Work Related Psychological Disorders DHHS (NIOSH) Publication No. 89–137, are available from NIOSH Publications, 4676 Columbia Parkway, Ohio 45226, or by calling (513) 533–8287.

Dated: June 9, 1992.

J. Donald Miller,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 92–13982 Filed 6–12–92; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 92N–0202]

Chemdex, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Chemdex, Inc. The NADA provides for the use of Iron Hy-Dex (iron dextran complex injection) for the prevention and treatment of anemia due to iron deficiency in baby pigs. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8749.

SUPPLEMENTARY INFORMATION: Chemdex, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215, is the sponsor of NADA 12–685 which provides for the use of Iron Hy-Dex (iron dextran complex injection) for the prevention and treatment of anemia due to iron deficiency in baby pigs. By letter dated February 12, 1992, the sponsor requested the withdrawal of approval of the NADA because the product is no longer being marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 12–685 and all supplements and amendments thereto is hereby withdrawn, effective June 25, 1992.

Dated: June 8, 1992.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 92–13986 Filed 6–12–92; 8:45 a.m.]

BILLING CODE 4160–01–F

[Docket No. 92N–0239]

Drug Export; Peritosteril (Delflex Peritoneal Dialysis Solution in Low Calcium Formulation)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fresenius USA, Inc., has filed an application requesting approval for the export of the human drug Peritosteril (delflex peritoneal dialysis solution in low calcium formulation) to New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Fresenius USA, Inc., 4090 Pike Lane, Concord, CA 94520, has filed an

application requesting approval for the export of the human drug Peritosteril (delflex peritoneal dialysis solution in low calcium formulation) to New Zealand. This drug is indicated for use in peritoneal dialysis. The application was received and filed in the Center for Drug Evaluation and Research on May 11, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 25, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 4, 1992.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-13924 Filed 6-12-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0238]

Drug Export; Peritosteril (Delflex Peritoneal Dialysis Solution in 2.5 Liter Bags)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fresenius USA, Inc., has filed an application requesting approval for the export of the human drug Peritosteril (Delflex Peritoneal Dialysis Solution in 2.5 Liter Bags) to New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Fresenius USA, Inc., 4090 Pike Lane, Concord, CA 94520, has filed an application requesting approval for the export of the human drug Peritosteril (Delflex Peritoneal Dialysis Solution in 2.5 Liter Bags) to New Zealand. This drug is indicated for use in peritoneal dialysis. The application was received and filed in the Center for Drug Evaluation and Research on May 11, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 25, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 4, 1992.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-13925 Filed 6-12-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-92-4111-16]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement on the MetFuel Hanna Basin Coalbed Methane Project in central Carbon County, Wyoming.

SUMMARY: This draft environmental impact statement (EIS) assesses the environmental consequences of a methane gas development project in the Hanna Basin of northeast central Carbon County, approximately 7 miles north of Hanna, Wyoming. The proposed project entails the drilling, testing, operation, abandonment, and reclamation of a coalbed methane gas production operation in the Hanna Basin by Metfuels, Inc.

DATES: The public comment period will begin on or about June 22, 1992 and will end on or about August 22, 1992. A public meeting has been scheduled for July 15, 1992, beginning at 7 p.m. at the Hanna Town Government Office, 301 S. Adams Street, Hanna, Wyoming. To ensure that comments will be considered in the final EIS, they should be received no later than close of business, August 22, 1992 at the address listed below.

ADDRESSES: Comments or concerns should be addressed to Area Manager, Great Divide Resource Area, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Bob Tigner, Rawlins District Office, phone (307) 324-7171, or contact the address listed above.

SUPPLEMENTAL INFORMATION: The proposed project addressed in this draft EIS involves the drilling and development of a maximum of 130

coalbed methane wells on a 160 acre spacing within the project area. The proposed project would disturb approximately 1018 acres on or adjacent to the 28,044 acre project area from the construction of pipelines, well pads, roads, powerlines and compressor stations. It is anticipated that full field development would require several years, with approximately 50 wells being drilled in 1992 and the remainder drilled in 1993.

Dated: June 9, 1992.

F. William Eikenberry,

Associate State Director.

[FR Doc. 92-13981 Filed 6-12-92; 8:45 am]

BILLING CODE 4310-22-M

[CO-930-5440-005; COC-53865]

Proposed Issuance of Disclaimer of Interest, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed issuance of recordable disclaimer of interest for patented mining claims in Pitkin County, Colorado.

SUMMARY: Notice is hereby given pursuant to section 315 of the Act of October 21, 1976 (43 U.S.C. 1745), that Marjorie B. Stein,

c/o Thomas C. Hill, Attorney at Law, 201 North Mill Street, Aspen, Colorado 81611, has filed application Colorado 53865 for a recordable disclaimer of interest for the Alpine, Ide, Boaze, Brooklet, and Brookside patented lode mining claims, Mineral Survey No. 6783, in sections 22 and 27, T. 9 S., R. 84 W., Sixth Principal Meridian, Colorado.

The Bureau of Land Management has reviewed the official records and has determined that the United States has no claim to or interest in the above-described patented mining claims and that issuing a recordable disclaimer of interest will help to remove a cloud on the title to the claims. Accordingly, the recordable disclaimer of interest will be issued no sooner than ninety days after the date of this publication. Information concerning the proposed disclaimer may be obtained from the State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Dated: June 3, 1992

Robert S. Schmidt,

Chief, Branch of Realty Programs, Colorado State Office.

[FR Doc. 92-13934 Filed 6-12-92; 8:45 am]

BILLING CODE 4310-JB-M

[ID-050-5700-11; IDI-28818]

Direct Sale of Public Land in Lincoln County, Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land has been examined and through the public supported land use planning process has been determined to be suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the fair market value of $3,280. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 6 S., R. 21 E., Boise Meridian,
Sec. 30: Lot 4.

The area described contains 16.4 acres.

DATES: For a period of 45 days after publication, interested parties may submit comments to the District Manager.

Objections will be reviewed by the State Director who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Upon publication, the land will be segregated from appropriation under the public land laws, including the mining laws, except from mineral leasing and the sale provisions of the Federal Land Policy and Management Act. The segregation will end upon issuance of patent, or 270 days from the date of publication, whichever occurs first.

ADDRESS: Shoshone District Bureau of Land Management, 400 West F Street, P.O. Box 2-B, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Mical E. Walker, Monument Resource Area Realty Specialist, at telephone (208) 886-2206.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to L.R. Gillette. It has been determined that this parcel contains no known mineral values; therefore, mineral interests, with the exception of oil and gas, will be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain a reservation to the United States for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945) and a reservation to the United States for oil and gas by the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.).

Dated: June 5, 1992.

Mary C. Gaylord,

District Manager.

[FR Doc. 92-13969 Filed 6-12-92; 8:45 am]

BILLING CODE 4310-GG-M

[ID-913-02-4740-04]

Recreation Management Restrictions, etc.: Idaho; Camping Stay limits

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping and occupancy stay limits for campgrounds and undeveloped public lands in Idaho.

SUMMARY: Persons may camp within designated campgrounds or on undeveloped public lands not closed to camping on the public lands within the State of Idaho for a period of not more than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas with specifically designated camping stay limits. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation during the 28 day period. After the 14th day of occupation campers must move outside of a 25-mile radius of the previous location. The 28-day period will begin when a camper initially occupies a specific location on public land. When a camping limit has been reached, use of a site shall not occur again until at least 14 days have elapsed from the last day of authorized use. Under special circumstances, and upon request, the authorized officer may give written permission for extension of the 14-day limit.

Additionally, no person except those holding valid mining, tunnel, or millsite claims, with a current notice on file with the BLM office responsible for management of the lands where the supplies are located, may leave personal property or supplies unattended on public lands for a period of more than 24 hours in designated campgrounds or recreation areas or 5 days on other public lands without written permission of the authorized officer.

DEFINITIONS: As used in these supplementary rules, the term:

(a) *Camping* is defined as the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home, or trailer for the apparent purpose of

overnight occupancy. Occupying a developed campsite or specific location within campgrounds other than for administrative activities during the established night period of 10 p.m. to 6 a.m. will be considered overnight camping for fee collection and enforcement purposes.

(b) *Occupation* means the taking or holding possession of a camp or residence on public land.

(c) *Public lands* mean any lands or interest in lands owned by the United States and administered by the Bureau of Land Management.

(d) *Authorized Officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform under Title 43.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau of Land Management in reducing the incidence of long-term occupancy trespass being conducted under the disguise of camping on public lands within the State of Idaho. Of equal importance is the problem of user conflicts resulting from long-term camping, which precludes equal opportunities for other members of the public to camp in the same area.

Authority for this stay limit is contained in CFR title 43, chapter II, part 8360, subparts 8365.1–2, 8365.1–6, and 8365.2–3.

Dated: May 29, 1992.

Pieter J. Van Zanden,

Associate State Director.

[FR Doc. 92–13921 Filed 6–12–92; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Endangered Species Permits Issued for the Months of January, February, and March 1992

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539, *et seq.*). Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Name	Part No.	Issued date
January		
San Antonio Zoological Gardens & Aquarium	763484	1/31/92
Leland, David Jung	762752	1/29/92
San Antonio Zoological Soc.	764268	1/27/92
San Antonio Zoological Gardens & Aquarium	762581	1/21/92
Depner, Greg L	761961	1/17/92
Chicago Zoological Park	762127	1/17/92
San Diego Zoological Society	763770	1/15/92
The University of Michigan Museum of Zoology	759741	1/15/92
San Diego Zoological Society	763489	1/07/92
San Diego Zoological Society	763487	1/07/92
Institute For Herp. Research	761678	1/06/92
February		
Morris, Jay	763260	2/17/92
H. Co. Simon Lakeline Mall Partnership	762988	2/13/92
Gruenerwald, William	762605	2/13/92
R. Bruce Thatcher	760317	2/13/92
Hunt, Carl	761569	2/12/92
San Diego Zoological Society	764463	2/10/92
Manimal Magic Act	765658	2/10/92
Metro Washington Park Zoo	761872	2/09/92
Arnold R. Marshall	761891	2/09/92
Jacksonville Zoological Park	763744	2/07/92
Miami Metro Zoo	763740	2/07/92
Florida Game & Fresh Water Fish Commission	763741	2/06/92
White Oak Plantation	763743	2/06/92
Lowry Park Zoological Garden	763742	2/06/92
Shortino, Leo M.	764121	2/04/92
Penner, Toni	764200	2/03/92
March		
Mesa Garden	678845	3/26/92
Johnson, Gary M.	717614	3/26/92
Stafford, Robert W.	756126	3/24/92
McNatt, Henry III	765141	3/23/92
Minnesota Zool. Garden	763867	3/20/92
Burnet Park Zoo	765194	3/19/92
USFWS, Regional Dir., Reg. 6	704930	3/19/92
House, William R.	764231	3/14/92
Brooks, James P.	763430	3/14/92
Jan Giacinto & Dirk Arthur Exotic Animals	762966	3/13/92
L.A. Waters	765052	3/10/92
Bartels, Ronald J.	764966	3/06/92
Institute For Wildlife Studies	744878	3/05/92
Nat'l Marine Fisheries	759401	3/04/92
Binder Park Zool. Soc.	763759	3/04/92
LSA Associates, Inc.	746056	3/02/92
San Diego Zool. Soc.	764955	3/02/92

Additional information on these permit actions may be requested by contacting the Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203, telephone (703/358–2104) during normal business hours (7:45 a.m.–4:15 p.m.) weekdays.

Dated: June 9, 1992.

Margaret Tieger,

Acting Chief, Branch of Permit, Office of Management Authority.

[FR Doc. 92–13935 Filed 6–12–92; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. The name of the parent corporation and its principal address is: D.L. Lee & Sons, Inc., Post Office Box 206, 8th and Alma Streets, Alma, Georgia 31510.

2. The name of the subsidiary which will participate in the operations in the States of Georgia, Florida, South Carolina, and Alabama: F.D. of Georgia, Inc., State of Incorporation: Georgia.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–14005 Filed 6–12–92; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by July 15, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93/94 Visual Arts Fellowships Application Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals.

Use: Guideline instructions and applications elicit relevant information from individual artists that apply for funding under the Visual Arts Program Fellowships category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process

Estimated Number of Respondents: 5250.

Average Burden Hours per Response: 1.5.

Total Estimated Burden: 7,875.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92–13948 Filed 6–12–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: U.S. Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission (new, revision, or extension):* Extension.
2. *The title of the information collection:* 10 CFR 4, "Nondiscrimination in Federally Assisted Commission Programs."
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* On occasion.
5. *Who will be required or asked to report:* Recipients of Federal financial assistance provided by the Nuclear Regulatory Commission.
6. *An estimate of the number of responses:* 60 per year.
7. *An estimate of the total number of hours needed to complete the requirement or request:* 176 hours annually (an average of .23 hours per response plus 5.6 hours per recordkeeper).
8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.
9. *Abstract:* Recipients of NRC financial assistance provide data on procedures to provide assurance to NRC that they are in compliance with nondiscrimination policies.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document, Room, 2120 L Street NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0053), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 5th day of June 1992.

For this U.S. Nuclear Regulatory Commission.

George H. Messenger,

Acting Senior Official for Information Resources Management.

[FR Doc. 92–13996 Filed 6–12–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.24, criticality accident requirements relative to Facility Operating license No. DPR–73, issued to GPU Nuclear Corporation (the licensee), for the Three Mile Island Nuclear Station, Unit 2 (TMI–2), located in Londonderry Township, Dauphin County, Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, date February 11, 1980, a new set of formal license requirements was imposed by order to reflect the post-accident condition of the facility and to assure the continued maintenance of the safe, stable, long-term cooling condition of the facility (45 FR 11292). These license conditions and those imposed by subsequent orders were formally incorporated in the TMI–2 license on January 27, 1987. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

Environmental Assessment

Identification of Proposed Action

The action being considered by the Commission is exemption from 10 CFR 70.24 requirement for a monitoring system capable of detecting a criticality accident in special nuclear materials (SNM) storage areas. The need for such a system at TMI–2 is obviated by the use of safe mass limits and safe geometries in the SNM storage areas.

The Need for the Proposed Action

The exemption is necessary to grant relief from criticality monitoring requirements that are burdensome and not needed for safety purposes.

Environmental Impacts of the Proposed Action

The proposed action will have no environmental impact as it only affects the installation or lack thereof of electronic instrumentation in SNM storage areas. Thus, this exemption will not change the types, or allow an increase in the amounts of effluents that may be released to the environment. Individual and cumulative occupational radiation exposure would actually decrease slightly as the need to use radioactive sources to periodically calibrate the criticality monitors would be obviated. The SNM storage areas will be criticality safe by mass limit and geometric limits. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within restricted areas as defined by 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concludes that there are no significant environmental effects associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action; this would increase the environmental impact by increasing occupational radiation exposure to personnel calibrating the instruments using radiation sources.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Programmatic Environmental Impact Statement for TMI–2 dated March 1981 as supplemented.

Finding of no Significant Impact

Based upon the foregoing environmental assessment, the NRC staff concludes that this action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the letter from GPUN, Request for Exemption from 10 CFR 70.24, dated May 21, 1987. This document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland this 8th day of June 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate Division of Reactor Projects—III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 92–13988 Filed 6–12–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 44th meeting on Thursday, June 25, 1992 at 1 p.m. until 5 p.m., at the Quality Inn on Clover Island, 435 Clover Island, Kennewick, WA. The entire meeting will be open to public attendance. Notice of this meeting was previously published in the **Federal Register** on Thursday, May 21, 1992 (57 FR 21678).

The agenda for the subject meeting shall be as follows:

A. Address the request from Chairman Selin made on April 24, 1992, for a supplemental report regarding a systems analysis approach for reviewing the overall HLW management and disposal program.

B. Hear a report from the ACNW Working Group Chairman on a recent meeting in which the NRC staff presented the results of its review of DOE's Early Site Suitability Evaluation. A report on this topic by the Committee is expected.

C. Hear a briefing regarding the status of remedial actions at the Hanford site.

D. Hear a briefing and hold discussions regarding in situ vitrification programs.

E. Discuss and consider a draft report concerning progress on the DOE's Site Characterization plan for the proposed high-level waste repository, complementary study plans, and DOE's efforts to resolve the issues raised in the NRC staff's Site Characterization Analysis.

F. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: June 9, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–13997 Filed 6–12–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on June 25, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, June 25, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will continue to discuss the revision to NUREG–1365, Severe Accident Research Program Plan.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions

with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. (e.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 8, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors 3ranch.

[FR Doc. 92–13998 Filed 6–12–92; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensees and the public insights into our approach to safety regulations and to provide a forum for feedback from those in attendance on their concerns about our overall approach, as well as feedback on differences that may exist on technical issues. NRC staff will provide information on on-going programs and potential new initiatives as a basis for discussion.

Discussions will proceed from general (i.e., the plenary sessions) to specific (i.e., the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. Four plenary sessions are planned, three of which will be followed by breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: The conference will be held July 21–22, 1992.

ADDRESSES: The conference will be held at the Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036, telephone: (202) 347–3000.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Weiss, Brookhaven National Laboratory, Building 197C, Upton, New York 11973, telephone (516) 282–4473.

SUPPLEMENTARY INFORMATION:

Registration: There is a registration fee of $200 which must be received by July 2, 1992. Questions regarding registration should be directed to Allen Weiss, Brookhaven National Laboratory (address and telephone number stated above).

Participation: This conference is open to the general public; however, advance registration is required.

The following is the preliminary program for the conference:

Tuesday, July 21, 1992, 9 a.m.–5:15 p.m.

1. Introductory and Opening Remarks
2. Morning Plenary Session: Regulatory Trends
3. Breakout Sessions:
   a. Plant Life Extension
   b. Shutdown Risks
   c. Pilot Revised Procurement Inspection
   d. Enforcement and Office of Investigation Issues
4. Luncheon Speaker: Chairman Ivan Selin, 12:30 p.m.–2 p.m.
5. Afternoon Plenary Session: Status of Advanced Light Water Reactor (ALWR) Design Certification
6. Breakout Sessions:
   a. ALWR Technical Issues
   b. Individual Plant Examinations
   c. Engineering Issues
   d. Legal Issues
7. Dinner Speaker: Commissioner Forrest J. Remick, 6:30 p.m.–8:30 p.m.

Wednesday, July 22, 1992, 8:30 a.m.–5 p.m.

1. Speaker: Commissioner James R. Curtiss 8:30 a.m.–9:15 a.m.
2. Morning Plenary Session: Regional Issues
3. Breakout Sessions:
   a. Maintenance Rule Implementation
   b. Training/Requalification
   c. Standard Technical Specifications
   d. Steam Generator Issues
2. Luncheon Speaker: Commissioner Kenneth C. Rogers 12:15 p.m.–1:30 p.m.
3. Breakout Sessions:
   a. Reactor Vessel Integrity
   b. Digital Control Systems
   c. Service Water Issues
   d. Reporting Issues
4. Closing Plenary Session: Summary/ Closing 3:30–4:30 p.m.

Note: There will be a question and answer period after each session each date.

Next year's conference is tentatively scheduled for May 4–5, 1993.

Subject: Notice of meeting at Mayflower Hotel; July 21–22, 1992

Dated in Rockville, Maryland this 8th day of June 1992.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Chief, Planning, Program, and Management Support Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 92–13967 Filed 6–12–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8027]

Sequoyah Fuels Corp., Gore, OK, Facility; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a Petition dated July 1, 1991, and a Supplemental Petition dated November 15, 1991, submitted by Citizens' Action for a Safe Environment regarding Sequoyah Fuels Corporation's Gore, Oklahoma, facility.

By Memorandum and Order dated August 2, 1991, the Atomic Safety and Licensing Board, presiding over the proceeding on the license renewal for Sequoyah Fuels Corporation (SFC), referred the Petition to the staff for consideration under 10 CFR 2.206. The Petition requested that the U.S. Nuclear Regulatory Commission (NRC) deny SFC's application to renew its operating license for the Sequoyah facility. The Supplemental Petition requests that the NRC revoke SFC's operating license.

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny both the Petition and the Supplemental Petition. The reasons for this Decision are explained in a "Director's Decision Under 10 CFR 2.206" (DD–92–02), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street NW., Washington, DC 20555, and the Local Public Document Room, Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 8th day of June 1992.

For The Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92–13999 Filed 6–12–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-461]

Clinton Power Station, Unit No. 1; Withdrawal of Application for Amendment to Facility Operating License; Illinois Power Company, et al.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Illinois Power Company (IP), and Soyland Power Cooperative, Inc. (the licensees) to withdraw a December 21, 1988, application for an amendment to Facility Operating License No. NPF-62 for the Clinton Power Station, Unit No. 1, located in Harp Township, DeWitt County, Illinois.

The proposed amendment would have modified the facility Technical Specifications pertaining to section 3/4.3.2, "Containment and Reactor Vessel Isolation Control System" (CRVICS) Table 3.3.2-1, "CRVICS Instrumentation," to clarify the minimum operable channels required per trip system for the Residual Heat Removal (RHR) system isolation logic. This would have been effected, in part, by separating the RHR Isolation section of Table 3.32-1 into two parts to address the isolation logic associated with RHR Division I separately from the isolation logic associated with RHR Division II.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 7, 1990 (55 FR 4272). However, by letter dated April 24, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 21, 1988, and the licensee's letter of April 24, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 5th day of June 1992.

For the Nuclear Regulatory Commission.

C.E. Carpenter, Jr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-14000 Filed 6-12-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Standard Form 113-G

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request submitted to OMB for clearance to continue to collect information for the Monthly Report of Full-time Equivalent/Work-Year Civilian Employment (Standard Form 113-G). The data collected are used by OMB and OPM to: (1) Monitor agencies' progress in increasing part-time employment; (2) aid OMB and the President in making decisions on agencies' budget appropriations for the next fiscal year; and (3) monitor agency work year usage under assigned ceilings during the current fiscal year. One hundred thirty-one Federal agencies provide monthly reports to OPM. It takes two hours to complete one report, for an annual total information collection burden of 3,144 hours. For copies of the clearance package, call C. Ronald Trueworthy, Agency Clearance Officer, on (703) 908-8550.

DATES: Comments on this information collection should be received within 30 days from date of this publication.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, CHP 500, 1900 E Street NW., Washington, DC 20415

And

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606-2684.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-13958 Filed 6-12-92; 8:45 am]

BILLING CODE 6325-01-M

Request for Clearance of Form SF 3105

AGENCY: Office of Personnel Management

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form SF 3105, Documentation in Support of Disability Retirement Application, is used by applicants for disability retirement under the Federal Employees Retirement System, to supply OPM with documentation of their medical condition. The information is used by OPM to determine if the applicant meets the requirements for disability retirement.

Approximately 2,100 SF 3105 forms will be completed per year. The form requires 90 minutes to fill out. The annual burden is 3150 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—

Mr. Edward Chmielowski, Acting Chief, FERS Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E. Street, NW, rm. 4429, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-13959 Filed 6-12-92; 8:45 am]

BILLING CODE 6325-01-M

Federal Salary Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the tenth meeting of the Federal Salary Council will be at the time and place shown below. The agenda for this meeting will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees

Pay Comparability Act of 1990 (FEPCA). The meeting will be open.

DATE: June 30, 1992, beginning at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Constance Berry Newman,

Director.

[FR Doc. 92–13957 Filed 6–12–92; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A92–12; Order No. 927]

Summit, Kentucky 42783 (Tom Richardson, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued June 9, 1992.

Docket Number: A92–12.

Name of Affected Post Office: Summit, Kentucky 42783.

Name(s) of Petitioner(s): Tom Richardson.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: June 3, 1992.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)];

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before June 18, 1992.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

June 3, 1992—Filing of Petition

June 9, 1992—Notice and Order of Filing of Appeal

July 13, 1992—Last day for filing of petitions to intervene [see 39 3001.111(b)]

July 23, 1992—Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)]

August 12, 1992—Postal Service Answering Brief [see 39 CFR 3001.115(c)]

August 27, 1992—Petitioner's Reply Brief should petitioner choose to file one [see 39 CFR 3001.115(d)]

September 8, 1992—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]

September 30, 1992—Expiration of 120-day decisional schedule [see 39 U.S.C. sec. 404(b)(5)].

[FR Doc. 92–13963 Filed 6–12–92; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18761; 812–7757]

Comstock Partners Strategy Fund, Inc., et al.; Application

June 5, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Comstock Partners Strategy Fund, Inc. (the "Fund"), Comstock Partners, Inc. (the "Investment Adviser"), and Dreyfus Service Corporation (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 18(f)(1), 18(g), and 18(i) of such Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Fund to issue a new class of shares representing interests in the same portfolio of securities as an existing class of shares, with the existing class thereafter only being issued to shareholders of the existing class upon reinvestment of distributions.

FILING DATES: The application was filed on July 19, 1991 and amendments were filed on December 24, 1991 and April 22, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 30, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: the Fund and the Investment Adviser, 45 Broadway, New York, New York 10006; the Distributor, 200 Park Avenue, 8th Floor West, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190 or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The fund originally commenced operations in May of 1988 as a non-diversified closed-end management investment company. At a special meeting of shareholders held on June 14, 1991, a majority of the Fund's outstanding shares voted to approve the conversion of the Fund to an open-end investment company. The conversion occurred on August 1, 1991.

2. Comstock Partners, Inc. is the investment adviser for the Fund, and the Dreyfus Corporation (the "Sub-Investment Adviser") is the sub-investment adviser for the Fund. Princeton Administrators, Inc. (the "Administrator") is the administrator for the Fund. After conversion of the Fund to an open-end investment company, Dreyfus Service Corporation became the distributor for the Fund, and Financial Data Services, Inc. (the "Transfer Agent") and The Bank of New York (the "Custodian") became the transfer agent and custodian, respectively, for the Fund.

3. As of the date of the conversion, Fund shares are sold with a maximum front-end sales load of 4.50% (subject to change if later deemed advisable) by the Distributor, certain financial institutions

(that may include banks), securities dealers, and other industry professionals (collectively, "Service Agents") who have entered into service agreements with the Distributor.

4. Applicants believe that the conversion may cause a substantial redemption of Fund shares over time resulting in a significant increase in the Fund's ratio of operating expenses to net assets. To offset these redemptions by facilitating the sale of Fund shares, the fund proposes to adopt an account maintenance plan pursuant to rule 12b–1 under the Act (the "Account Maintenance Plan"). Applicants, however, realize that shareholders who purchased fund shares in the Fund's initial public offering in 1988 paid an underwriting commission of up to 6.50% of the price of the shares. In addition, these shareholders, as well as those shareholders who purchased shares prior to the date of the proxy statement proposing the conversion, did not anticipate the payment of a rule 12b–1 fee. In light of the foregoing, the Fund believes, that in the interests of fairness, only purchasers of new shares should be required to bear the costs of a rule 12b–1 fee.[1]

5. Applicants propose the creation of two classes of shares, "Class A Shares" and "Class B Shares." Class A and Class B Shares would represent interests in the same investment portfolio, rather than in separate portfolios. Under this arrangement, each Class A Share and Class B Share would represent an equal *pro rata* interest in the Fund and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, subject to certain exceptions listed below in item 1 under Applicants' Conditions.

6. If the requested exemptive order is granted, all of the existing shares of the Fund (the "Existing Shares") would be converted into Class A shares upon the effectiveness of an amendment to the Fund's registration statement on Form N–1A relating to both the Class A and B Shares. Class A Shares would be identical in all respects and would be subject to the same investment objective, policies, and limitations that currently apply to the Existing Shares. Class A Shares, however, would no longer be sold, except dividends declared on Class A Shares and reinvested in the fund would be invested in Class A. Any new shares of the Fund sold would be Class B Shares.

7. The fund will offer Class B Shares subject to a front-end sales load. The Fund anticipates that the sales load will be the same as that charged to Existing Shares. In addition, Class B shareholders will be assessed an ongoing account maintenance fee (the "Account Maintenance Fee") under the Account Maintenance Plan at an expected annual rate of .25 of 1% of the value of the Fund's average daily net assets attributable to Class B Shares.

8. Under the Account Maintenance Plan, the Class B shareholders will pay to the Distributor the Account Maintenance Fee for advertising, marketing, and distributing the Class B Shares and for servicing these shares. Under the plan, the Distributor is obligated to pay Service Agents for administration with respect to Class B Shares, for servicing Class B shareholders who are also their clients, and/or for distribution of Class B shares. The fees payable to the Distributor for the above services are payable without regard to actual expenses incurred. The provision of services under the Account Maintenance Plan will not duplicate the services that will be provided to the Fund by the Investment Adviser, the Sub-Investment Adviser, the Administrator, the Transfer Agent or the Custodian.

9. The Fund will bear the costs of preparing and providing prospectuses and statements of additional information used for regulatory purposes and for distribution to existing holders of both Class A and Class B Shares. Under the Account Maintenance Plan, Class B Shares will bear the costs of preparing, printing, and distributing prospectuses and statements of additional information used for other purposes and the costs associated with implementing and offering the Account Maintenance Plan (such as costs of printing and mailing service agreements), the aggregate of such amounts not to exceed in any fiscal year of the Fund the greater of $100,000 or .005 of 1% of the value of the Fund's average daily net assets attributable to the Class B Shares. These costs are in addition to the Account Maintenance Fee described in item 7 above (both fees are collectively referred to as "Account Maintenance Fees").

10. The net asset value of any of the Class A Shares and Class B Shares would be computed on the same days and at the same times, and dividends on each of the Class A Shares and the Class B Shares would be declared and paid on the same days and at the same times. With the exception of Account Maintenance Fees, all Fund expenses will be borne on a *pro rata* basis by each class on the basis of the relative net asset values of the respective classes. However, because the Account Maintenance Fees would be borne by the Class B Shares, the net income per share of and dividends payable per share to the Class B Shares may be lower than those paid on the Class A Shares. As a result, the net asset value per share attributable to Class A Shares may be higher than the net asset value attributable to Class B Shares.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) to the extent that the proposed arrangement may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights under the arrangement may violate the provisions of 18(i). Applicants believe that the proposed arrangement does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Fund since all such shares will participate *pro rata* in all of the Fund's income and expenses with the exception of the Account Maintenance Fees.

2. Applicants assert that investors will not be given misleading impressions as to the safety or risk of the Class A and Class B Shares and the nature of Fund shares will be not be rendered speculative by virtue of the existence of the two classes of shares because neither class will have any liquidation preference over the other, neither class will be protected by any reserve or other account, and the characteristics of both classes will be fully disclosed in the Fund's prospectus.

3. Applicants state that the Fund's capital structure under the proposed arrangements will not include any group of shareholders to invest in risky securities to the detriment of any other group of shareholders since the investment risks of the Fund will be borne equally by all of its shareholders. The Fund's capital structure will not enable insiders to manipulate the expenses and profits between the classes since (a) the Fund is not organized in a pyramid fashion, (b) all the expenses and profits of the Fund,

[1] Shareholders who purchase their shares prior to obtaining the exemptive relief necessary to add a new class of shares and implement the Account Maintenance Plan will not be requested to bear such costs.

except Account Maintenance Fees, will be borne *pro rata* by each class on the basis of the relative net asset values of the respective classes, and (c) all shareholders will have equal voting rights, except with respect to the Account Maintenance Plan.

4. Applicants argue that the proposed arrangement raises no valuation concerns. Moreover, applicants will implement steps to ensure that the respective yields of the Fund's classes are fairly disclosed in the Fund's prospectus and shareholder reports.

5. Applicants believe that the proposed arrangement will facilitate the distribution of shares by a Fund. In addition, applicants believe owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in open-end management investment companies since such costs would, potentially, be spread over a greater number of shares than they would otherwise.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Class A Shares and Class B Shares will represent interests in the same portfolio of investments in the Fund and be identical in all respects except as described below. The only differences between the Class A and Class B Shares will be as follows: (a) The Class A Shares and Class B Shares would have different class designations; (b) the Class B Shares would pay all Account Maintenance Fees payable under the Account Maintenance Plan; and (c) only the beneficial holders of Class B Shares would be entitled to vote on matters pertaining to the Account Maintenance Plan.

2. The directors of the Fund, including a majority of the independent directors, will approve the proposed arrangement. The minutes of the meetings of the directors of the Fund regarding the deliberations of the directors with respect to the approvals necessary to implement the proposed arrangement will reflect in detail the reasons for the directors' determination that the proposed arrangement is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the directors of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the two classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Investment Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Investment Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The Account Maintenance Plan relating to the Class B Shares will be submitted to the public shareholders of Class B Shares for approval at the next meeting of shareholders after the initial issuance of the Class B Shares. Such meeting is to be held within 16 months of the date that the amendment to the registration statement necessary to offer Class B Shares first becomes effective.

5. The directors of the Fund will receive quarterly and annual statements concerning expenditures pursuant to the Account Maintenance Plan, complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale of Class B Shares or the services provided with respect to Class B Shares will be used to justify any Account Maintenance Fees charged to the Class B Shares. Expenditures not related to the sale of Class B Shares or the services provided with respect to Class B Shares will not be presented to the directors to justify any Account Maintenance Fees attributable to the Class B Shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that the Account Maintenance Fees relating to the Class B Shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes have been reviewed by an expert (the "Expert") who has rendered a report to the Fund, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon written request to the Fund by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The Fund has adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition (7) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. The Fund will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

9. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Fund with respect to the proposed arrangement will be set forth in guidelines which will be furnished to the directors.

10. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in its prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. Because Class A Shares will no longer be sold (except for the reinvestment of dividends and other

distributions on Class A Shares) after the effectiveness of the N–1A Amendment if the exemptive order requested hereby is granted, any advertisement or sales literature used by the applicants relating in whole or in part to the period commencing with the sale of Class B Shares (other than the Fund's prospectus) will for such period be based upon only the expenses and/or performance data applicable to the Class B Shares. Similarly, the information provided by the applicants for publication in any newspaper or similar listing of the Fund's net asset value or public offering price will present only information for the Class B Shares.[2]

11. The applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of payments that the Fund may make pursuant to the Account Maintenance Plan in reliance on this exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13939 Filed 6–12–92; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–6901]

Issuer Delisting; Application To Withdraw From Listing and Registration; (Fort Howard Corporation, 14⅛ percent Junior Subordinated Discount Debentures Due November 1, 2004; 14⅝ percent Junior Subordinated Debentures Due November 1, 2004

June 9, 1992.

Fort Howard Corporation ("Company") has filed an application with the Securities and Exchange Commission, ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, the Board of Directors considers withdrawal from listing and registration of the Debentures on the PSE to be warranted because:

(i) The Debentures were listed on the PSE in 1988 in order to facilitate compliance by the Company with certain State "blue sky" requirements in connection with their original issuance, and these objectives were met at the time or original issuance and are no longer relevant;

(ii) Since the original issuance of the Debentures in November of 1988, trading volume has been and continues to be very low;

(iii) Since issuance of the Debentures there has been and continues to be a limited number of registered holders of each of the Debentures;

(iv) The Company appears to meet at least one of the PSE's delisting standards since it has no class of equity securities held by 500 or more persons;

(v) Delisting of the Debentures would result in there being no requirement to comply with the proxy rules promulgated under the Act, as amended, in the future in connection with any solicitation of consents relating thereto; and

(vi) The Company seeks to avoid the expense and administrative burden associated with continued listing of the Debentures on the PSE.

Any interested person may, on or before June 30, 1992, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–13937 Filed 6–12–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18783; 812–7849]

Government Securities Equity Trust, et al.; Notice of Application

June 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Government Securities Equity Trust (the "Trust"); Delaware Management Company, Inc. ("Delaware Management"); Delaware Distributors, Inc. ("Delaware Distributors"); Delaware Group Trend Fund, Inc., Delaware Group Tax-Free Fund, Inc., Delaware Group Decatur Fund, Inc., Delaware Group Government Fund, Inc., Delaware Group Delaware Fund, Inc., Delaware Group Delchester High-Yield Bond Fund, Delaware Group DelCap Fund, Inc., Delaware Group Treasury Reserves, Inc., DMC Tax-Free Income Trust-PA, Delaware Group Pennsylvania Tax-Free Trust, Delaware Group Value Fund, Inc., and Delaware Group Global & International Funds, Inc., on behalf of themselves and any series or portfolio thereof (other than money market or no-load funds), and any open-end management investment companies (including any portfolios or series thereof), other than money market or no-load funds, not presently advised by Delaware Management or having as their distributor Delaware Distributors, but that may in the future be advised by or have as their distributor Delaware Management or Delaware Distributors or any entity controlling, controlled by, or under common control with Delaware Management or Delaware Distributors (the "Funds"); and Prudential Securities Incorporated (the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) to grant exemptions from sections 12(d)(1), 14(a), 19(b), and 22(d) and rule 19b–1; under sections 11 (a) and (c) to permit certain offers of exchange; and under section 17(d) and rule 17d–1 to permit certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants seek a conditional order: (a) permitting series of the Trust to invest in shares of one of the Funds and zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of Fund shares within a reasonable time after receipt; (d) permitting waiver of any sales load otherwise applicable on Fund shares that the Trust has purchased; (e) permitting certain offers of exchange involving the Trust; and (f) permitting certain affiliated transactions involving the Trust.

FILING DATES: The application was filed on January 13, 1992, and amended on

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[2] Applicants note that disclosure concerning respective distribution arrangements, services, fees, sales load and exchange privileges applicable to Class A Shares will not be included in every prospectus because Class A will no longer be sold except for the reinvestment of distributions on Class A Shares.

April 23, 1992 and May 18, 1992. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Prudential Securities Incorporated, One Seaport Plaza, 199 Water Street, New York, NY 10292; Delaware Management Company, Inc., One Commerce Square, 40th floor, Philadelphia, PA 19103; Other applicants, 1818 Market Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Each Fund has entered into an investment advisory or management agreement with Delaware Management, or one of its affiliates, and a distribution agreement with Delaware Distributors under which Delaware Distributors acts as its principal underwriter. Delaware Management is an investment advisor registered under the Investment Advisers Act of 1940. Delaware Distributors is a broker-dealer registered under the Securities Exchange Act of 1934.

2. The existing Funds have adopted rule 12b–1 plans. None of the Funds currently impose any deferred sales charges.

3. The Trust will be registered under the Act as a unit investment trust and will offer units in series ("Trust Series"), each of which will contain shares of one of the Funds that is normally offered with a sales load and U.S. Government zero coupon obligations ("zero coupon obligations"). The Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. Each Trust Series will be organized pursuant to a trust indenture which will incorporate a master trust agreement relating to the entire Trust and which will name a qualified bank as trustee (the "Trustee").

4. Each Trust Series will be sponsored by the Sponsor, which will perform the functions typical of unit investment trust sponsors, including: depositing fund shares in the Trust; acquiring zero coupon obligations and depositing them in the Trust; arranging for the evaluation of the zero coupon obligations (but not shares of the Funds since the Funds calculate net asset value daily); offering units to the public; and maintaining a secondary market in units (although such Sponsor would not be obligated not do so). The Sponsor expects to deposit in the Trust substantially more than $100,000 aggregate value of zero coupon obligations and Fund shares. Simultaneously with such deposit the Trustee will deliver to the Sponsor registered certificates for units which will represent the entire ownership of the Trust Series.

5. Trust units will be offered for sale to the public through the final prospectus by the Sponsor following the declaration of the effectiveness of the registration statement for the securities of the Trust Series under the Securities Act of 1933 and clearance by the blue sky authorities of the various states. Trust Series are intended to be offered to the public initially at prices based on the net asset value of the Fund shares selected for deposit in that Trust Series, plus the offering side value of the zero coupon obligations contained therein, plus a sales charge. The Trust will redeem units at prices based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares.

6. With the deposit of the securities in the Trust Series on the initial date of deposit, the Sponsor will have established a proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. The sponsor will be permitted under the Trust Agreement to deposit additional securities, which may result in a corresponding increase in the number of units outstanding. Such units may be continuously offered for sale to the public by means of the prospectus. The Sponsor anticipates that any additional securities deposited in the Trust Series subsequent to the initial date of the deposit in connection with the sale of these additional units will maintain the proper proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. Fund shares may from time to time be redeemed under the limited circumstances set forth in the trust indenture.

7. The sales load that would normally be applicable on sales of underlying Fund shares will be waived. Moreover, the Sponsor will rebate to the Trustee any payments it receives in respect of units under any rule 12b–1 plans adopted by the Funds.

8. The Trust will be structured so that each Trust Series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust Series, the purchaser of a unit would receive back the approximate total amount of the original investment in the Trust, including the sales charge. Such investor would receive more than the original investment to the extent that the underlying Fund made any distributions during the life of the trust and/or had any value at the maturity of the Trust Series.

9. The Sponsor intends to maintain secondary market for Trust units based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares, but is not obligated to do so. The existence of such a secondary market will reduce the number of units tendered to the Trustee for redemption and thus alleviate the necessity of selling portfolio securities to raise the cash necessary to meet such redemptions. In the event that the Sponsor does not maintain a secondary market, the Trust Agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series until shares of the Fund have been liquidated in order not to impair the protection provided by the zero coupon obligations, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportionate relationship to unit value and further, that zero coupon obligations cannot be sold to meet Trust expenses.

10. The Trust has taken certain steps to reduce the impact of the termination of a Trust Series on the Fund deposited therein. First, the Trust will, with respect

to all unitholders still holding units at scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of Fund shares from the Trust to a registration in the investor's name in lieu of redeeming such shares and, second, the Fund will offer all such unitholders the option of investing the proceeds from the zero coupon obligations in Fund shares at net asset value (*i.e.*, without the imposition of the normal sales load). The Fund also will offer unitholders the option of investing all distributions from the Trust during the life of the Trust Series in Fund shares at net asset value. Thus, it is anticipated that many of the unitholders will become and remain direct shareholders of the Fund and that many will elect to invest their proceeds of the Trust Series in an account of the Fund.

Applicants' Legal Conclusions

1. Section 12(d)(1) of the Act generally limits acquisition by an investment company, such as the Trust, of shares of a registered investment company, such as a Fund, in the following ways: (1) the acquiring company may not acquire more than 3% of the voting stock of the acquired company; (2) the securities of the acquired company many not amount to more than 5% of the value of the assets of the acquiring company; and (3) securities of the acquired company and all other investment companies may not have more than 10% of the assets of the acquiring company.

2. A major purpose of section 12(d)(1) is to prevent the duplication of costs and other adverse consequences to investors incident to the pyramiding of investment companies. This proposal is structured to eliminate the pyramiding of expenses. No sales charge or distribution fee will be imposed on Fund shares deposited in the Trust. No investment advisory fee will be charged with respect to the Trust since it will be unmanaged, and no evaluation fee will be charged with respect to Fund shares in the Trust. Another concern addressed by 12(d)(1) is potentially abusive control problems that could result from the concentration of voting power in a fund holding company. To address this concern, applicants have agreed that shares of a Fund that are held by a Trust will be voted by the Trustee in the same proportion as all other shares of that Fund not held by the Trust are voted. Another concern underlying section 12(d)(1) is the possibility of large-scale redemptions of shares of the underlying fund. The Trust Agreement will, however, permit the Trust to sell shares only when necessary to meet the redemptions or pay Trust expenses. Neither the Trustee nor the Sponsor will have any discretionary authority to determine when shares of the underlying Funds are to be sold or to substitute shares of another Fund for those deposited in the Trust. The threat to a Fund from large-scale redemptions is further reduced by the fact that each Trust Series is prohibited from acquiring more than 10% of the outstanding shares of any Fund.

3. Section 14(a) requires that investment companies have $100,000 of net worth prior to making a public offering. Since the Trust will have an initial net worth in excess of $100,000 invested in zero coupon obligations and Fund shares prior to the date on which effectiveness is requested for the Trust's registration statement under the Securities Act of 1933, applicants believe that each Trust will comply fully with section 14(a). Applicants recognize, however, that by withdrawing certificates representing the entire beneficial ownership of the Trust, the Sponsor may be deemed to be reducing the Trust's net worth below the requirements of section 14(a). Applicants request an exemption on the grounds that such an exemption is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants intend to comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that the Trust would not restrict its portfolio to "eligible trust securities."

4. Section 19(b) and rule 19b–1 provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. These provisions were designed to remove the temptation to realize capital gains on a frequent and regular basis and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Moreover, there was concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distributions of investment income. Applicants request an exemption from rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares to be distributed to unitholders along with the Trust's regular distributions. The requested exemption is consistent with the purposes of section 19(b) and rule 19b–1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust since the Trust and its Sponsor have substantially no control over events, other than the selection of the portfolio, which might trigger capital gains (*i.e.* the tendering of units for redemption). For the reasons stated above, and because distributions of capital are clearly indicated in accompanying reports to unitholders as a return of principal and are relatively small in comparison to normal dividend distributions, the danger of confusion is not present in the operations of the Trust.

5. Section 22(d) generally prohibits a registered investment company from selling its shares except at a current offering price described in the prospectus. Applicants request an exemption from the provisions of section 22(d) to permit the waiver of any otherwise applicable sales load where: (a) the Sponsor has purchased such shares in connection with the sale of units; (b) the proceeds of zero-coupon obligations upon termination of a Trust, and distributions from a Trust made during the existence of the Trust, have been reinvested by a unitholder in additional Fund shares; and (c) a Trust at maturity has transferred a unitholder's proportionate number of Fund shares from the Trust to a registration in the unitholder's name in lieu of redeeming such shares. The imposition of any sales load upon sales or redemption of Fund shares held by a Trust would be duplicative to investors in the Trusts and, accordingly, would raise questions under section 12(d)(1) with regard to the pyramiding of expenses. Waiver of the sales load will not harm the Funds or remaining shareholders. All Funds whose shares are subject to any sales load will fully disclose the waiver provision in their prospectuses.

6. Section 11(a) makes it unlawful for any registered open-end investment company or principal underwriter for such company to make or cause to be made certain offers of exchange on any basis other than the relative net asset value of the securities to be exchanged, unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Applicants seek an order pursuant to section 11 (a) and (c) of the Act approving the termination option described below. At the termination of the Trust, unitholders still holding units at maturity will have the option of either

(a) transferring the registration of their proportionate number of fund shares from the Trust to a registration in the investor's name, or (b) receiving a cash distribution. Such unitholders also will have the option of either (a) reinvesting the proceeds of the zero-coupon obligations in additional shares of the Fund (without imposition of the normal sales load), or (b) receiving a cash distribution. This termination option will give unitholders the flexibility of a choice. The exchange will be made on the basis of the net asset value of the Fund shares.

7. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of, or principal underwriter for a registered investment company, or any affiliated person of either of them, acting as a principal, to engage in a joint transaction with the investment company unless the joint transaction has been approved by the SEC. Neither the Trust nor any Fund will participate on a basis different from or less advantageous than any other participant. Applicants have structured the Trust to eliminate as many potential areas of concern involving affiliated transactions as possible. There will be no duplication of sales charges or distribution fees with respect to the Fund shares and Trust units. In addition, there will be no overlap of fees for portfolio management, no management fee will be charged at the Trust level, and no evaluation fee will be assessed with respect to that portion of a Trust's portfolio represented by Fund shares. The proposed arrangements are consistent with the provisions, policies, and purposes of the Act, and participation by each registered investment company is not on a basis less advantageous than that of other participants.

Applicants' Conditions

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions received on Fund shares and rebated rule 12b–1 fees prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor in connection with the distribution of Fund shares to the Trust will be immediately rebated by the Sponsor to the Trustee.

3. No one Trust Series will, at the time of any deposit of any Fund shares, hold as a result of that deposit, more than 10% of the then-outstanding shares of a Fund.

4. All Trust Series will be structured so that their maturity dates will be at least thirty days apart from one another.

5. Applicants will comply in all respect with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

6. Shares of a Fund which are held by a Trust Series will be voted by the Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust Series in the same proportion as all other shares of the Fund not held by the Trust are voted.

7. Any shares of the Funds deposited in any Trust Series or any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination will be made without imposition of any otherwise applicable sales load and at net asset value.

8. Applicants agree to comply with rule 6c–10 as currently proposed, and as it may be reproposed, adopted or amended.

9. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13940 Filed 6–12–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18759; 812–7863]

Strong Discovery Fund II, Inc., Strong Special Fund II, Inc., et al.

June 5, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for an Order of Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Strong Discovery Fund II, Inc. ("Strong Discovery"), Strong Special Fund II, Inc. ("Strong Special", and together with Strong Discovery, the "Funds"), Strong/Corneliuson Capital Management, Inc. (the "Adviser") and other similar funds which the Adviser may manage in the future ("Other Funds") (the Funds, the Adviser and the Other Funds are collectively referred to herein as "Applicants").

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under section 6(c) of the 1940 Act for exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of both the Funds and the Other Funds to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies").

FILING DATE: The application was filed on February 7, 1992 and an amended and restated application was filed on March 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on June 29, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit, or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: Helge Krist Lee, Strong/Corneliuson Capital Management, Inc., 100 Heritage Reserve, Menomonee Falls, Wisconsin 53051.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, at (202) 272–5415, or Wendell Faria, Deputy Chief, at (202) 272–2060, Office of Insurance products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are incorporated as separate corporations under Wisconsin law. Each of the Funds filed registration statements on Forms N–1A and N–8A with the Commission to register as a diversified, open-end management investment company under the 1940 Act. The Adviser serves as investment adviser to the Funds.

2. The Funds intend to offer their shares to the separate accounts of Participating Insurance Companies for the purpose of funding variable annuity

and variable life insurance contracts (the "Contracts").

3. The use of a common management investment company as the investment medium of both variable annuity and variable life insurance separate accounts of a single insurance company (or two or more affiliated insurance companies) is referred to as "mixed funding". The use of a common management investment company as the investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management company to fund a variable annuity separate account of one insurance company and the variable annuity or variable life separate accounts of other affiliated and unaffiliated insurance companies.

Applicants' Legal Analysis

1. Applicants request relief from section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding. Rule 6e–2(b)(15) precludes mixed and shared funding while Rule 6e–3(T)(b)(15) permits mixed funding but precludes shared funding. Applicants also request that the Commission, pursuant to its authority in section 6(c) of the 1940 Act, extend relief to a class consisting of insurers and separate accounts investing in the Funds and the Other Funds (and principal underwriters and depositors of such separate accounts).

2. Applicants assert that insurance companies have been reluctant to offer variable insurance contracts for various reasons, including: The cost of organizing and funding an investment medium; the lack of expertise with respect to investment management (particularly with respect to stock and money market investments); and the lack of public name recognition as investment experts. Applicants argue that use of the Funds as investment vehicles for mixed and shared funding would minimize the reservations of these insurance companies because the companies would benefit from the investment and administrative expertise of the Adviser as well as from the cost efficiency, diversification and investment flexibility afforded by a large pool of assets. Applicants further assert that allowing mixed and shared funding would permit use of the Funds as investment media by a number of insurance companies. This, in turn, Applicants argue, would increase competition due to expanded availability of the Funds and result in product variation. Applicants state that contract owners would benefit because mixed and shared funding would eliminate a significant amount of the costs of establishing and administering separate funds.

3. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Under Rules 6e–2(b) (15) and 6e–3(T)(b)(15), these disqualification standards apply only to affiliated individuals or companies that directly participate in the management of the underlying investment company.

4. Applicants state that the exemptions from section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is unnecessary to apply the provisions of section 9(a) to the many individuals in a large insurance company, most of whom would have no connection with the investment company funding the Contracts. Since the Participating Insurance Companies are not expected to have management or administrative roles in either the funds or the Other Funds, Applicants assert that applying the restrictions of section 9(a) to the Funds or to the Other Funds would serve no regulatory purpose; rather, such restrictions would instead reduce the net rates of return realized by contract owners because of increased monitoring costs.

5. Similarly, Applicants believe that the limits on pass-through voting privileges contained in Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) should continue to apply under mixed and shared funding. Generally, a contract owner may vote on, among other things, changes in a fund's investment policies (section 13(a)), changes in a fund's investment adviser or approval of an advisory contract (section 15(a)), and changes in a fund's principal underwriter or approval of the underwriting contract (section 15(b)). Both Rules 6e–2 and 6e–3(T), however, permit an insurance company to disregard the voting instructions of contract owners in certain cases. When required to do so by an insurance regulatory authority, an insurance company may disregard voting instructions with respect to the investments of an underlying fund or any contract between a fund and its investment adviser. Additionally, an insurance company may disregard voting instructions if, in good faith, it determines that the requested change would violate state law or result in investments inconsistent with the investment objectives of the separate account. An insurance company similarly may overrule contract owners' voting instructions to change an investment adviser if, in good faith, the insurance company concludes that the new advisory fee would exceed the rate which may be charged against the separate account assets or that the proposed adviser would employ investment techniques inconsistent with the investment objectives of the investment company or the general techniques used by the current adviser.

6. Exemption from the pass-through voting requirements is recognized as necessary to ensure both solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the insurer to act when certain proposals reasonably could be expected to increase the risk undertaken by the insurer. Applicants assert that these considerations are no less important or necessary when the insurance company funds its separate account obligations with an investment company that is used in connection with mixed and shared funding. Applicants state that the Commission, by permitting mixed and shared funding, would in no way compromise its regulatory goals or the goals of the state regulatory bodies; rather, mixed and shared funding may help to eliminate needless duplication of start-up and administrative expenses and allow increases in a fund's assets that may in turn result in economies of scale.

7. Applicants assert that shared funding does not create any issues not already existing where a single insurance company offers its product in several states. For example, a state insurance regulatory authority might require action inconsistent with other states in which the insurance company offers its product. Applicants assert that, in this respect, it appears that shared funding by unaffiliated insurers is no different than the use of the same investment company as the funding vehicle by affiliated insurers, which is currently permitted under the rules. With regard to mixed funding, Applicants argue that, because the Contracts are designed as long-term investment programs, a fund's investment policies should not be materially different from what they would have been had the investment company funded only one type of insurance product.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the Board of Directors of each Fund (singularly, a "Board", together, the "Boards") will consist of persons who are not "interested persons" of Funds, as such term is defined by the 1940 Act.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all separate accounts investing in the Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of a Fund are managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners or by contract owners of different Participating Insurance Companies; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. Participating Insurance Companies and the Adviser will report any potential or existing conflicts to the Boards. Participating Insurance Companies will be responsible for assisting the Boards in carrying out their responsibilities by providing the Boards with all information reasonably necessary for the Boards to consider any issues raised including information as to a decision by an insurer to disregard voting instructions of contract owners. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all insurers investing in the Funds under their agreements governing participation in the Funds.

4. If it is determined by a majority of the Board of a Fund or a majority of such Board's disinterested directors that a material irreconcilable conflict exists, the relevant Participating Insurance Companies, shall, at their expense, take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Funds and reinvesting such assets in a different investment medium or submitting the questions of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any particular group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard variable contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Funds' election, to withdraw its separate account's investment in the Funds, and no charge or penalty will be imposed against a separate account as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Funds and these responsibilities will be carried out with a view only to the interests of the variable contract owners. For purposes of this condition 4, a majority of the disinterested members of the Board will determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Funds be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of affected contract owners.

5. A Board's determination of the existence of an irreconcilable material conflict and its implications will be made known promptly and in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners to the extent the Commission continues to interpret the 1940 Act to require pass-through voting privileges for variable contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in the Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all of the separate accounts investing in the Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Funds. The insurance company will vote shares, for which it has not received voting instructions as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions.

7. All reports received by a Board of potential or existing conflicts, and all such Board action with regard to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of such Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

8. Each of the Funds shall disclose in its respective prospectus that (a) shares of the Fund are offered in connection with mixed and shared funding, (b) mixed and shared funding may present certain conflicts of interest and (c) the Board will monitor for the existence of any material conflicts and determine what action, if any, should be taken in response to such conflicts.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13938 Filed 6-12-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18760; 812-7759]

SunAmerica Capital Appreciation Fund, Inc., et al.; Application

June 5, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: SunAmerica Capital Appreciation Fund, Inc., SunAmerica Cash Fund, SunAmerica Equity Portfolios, SunAmerica Income Plus Fund, Inc., SunAmerica Income Portfolios, SunAmerica Money Market Securities, Inc., SunAmerica Multi-Asset Portfolios, Inc., and SunAmerica Fund Group (other than the SunAmerica U.S. Government Fund series and the SunAmerica Precious Metals Fund series) (collectively, the "Group A Funds"); Home Investors Government Income Fund, Inc., Selected Tax-Exempt Real Estate Income Pooled Shares portfolio of SunAmerica Tax Free Portfolios, Anchor Series Trust, SunAmerica U.S. Government Securities Fund series and SunAmerica Precious Metals Fund series of SunAmerica Fund Group (collectively, the "Group B Funds"); all investment companies (the "future SAAMCo Funds") for which SunAmerica Asset Management Corp. ("SAAMCo") or any future investment adviser or sub-adviser that is a direct or indirect, wholly-owned subsidiary of Broad, Inc. (the "Broad Subsidiaries") will act in the future as investment adviser; all Future SAAMCo Funds for which Wellington Management Company ("Wellington") will act as subadviser; SAAMCo; and Wellington. SAAMCo, the Broad Subsidiaries and Wellington are collectively referred to herein as the "Adviser." The Group A Funds, the Group B Funds, the Future SAAMCo Funds and, where applicable, separately organized portfolios within each Fund are collectively referred to herein as the "Funds."

RELEVANT 1940 ACT SECTION: Exemption requested under section 17(d) of the 1940 Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to participate in one or the other of two joint accounts to be used to enter into repurchase agreements.

FILING DATES: The application was filed on July 22, 1991, and an amendment to the application was filed on February 25, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 30, 1992, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o SunAmerica Asset Management Corp., 1733 Third Avenue, 3d Floor, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock Jr., Special Counsel, at (202) 272–3030 or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the existing Funds is a registered open-end, management investment company under the 1940 Act. SAAMCo., a wholly-owned subsidiary of Broad Inc., serves as sponsor and investment adviser or manager to all the Funds. Wellington serves as sub-adviser to the Group B Funds.

2. Each Fund frequently has uninvested cash balances at the end of its business day, which, in the normal course of business are invested in short term investments, including repurchase agreements, in order to provide liquidity for and earn additional income for the Fund. At the present time, the Adviser must separately pursue, secure and implement such investments in repurchase agreements, resulting in certain inefficiencies and limiting the return that some or all of the Funds could otherwise achieve.

3. The Funds now wish to establish two joint accounts into which they may deposit some or all of their cash balances needed for repurchase agreements. One of the joint accounts ("Joint Account A") will be created for participation by Group A Funds and any other Funds for which SAAMCo (or the Broad Subsidiaries, as the case may be) serves as investment adviser, but for which Wellington does not serve as sub-adviser. The second joint account ("Joint Account B") will be created for the use of the Group B Funds and any other Funds sub-advised by Wellington. It will be necessary to create two joint accounts because SAAMCo provides investment advice for repurchase agreements to the Group A Funds, for which it is investment adviser, and Wellington provides investment advice for repurchase agreements with respect to the Group B Funds, for which it is sub-adviser.

4. All of the Funds are presently authorized to invest in repurchase agreements. SAAMCo and Wellington have procedures for negotiating daily repurchase agreement investments that are substantially the same. On behalf of the Funds, each morning the money market trading desk begins negotiating the interest rate for repurchase agreements for that day and identifying the securities required as collateral. Only suitable U.S. government obligations, i.e., obligations guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities are held as collateral. The estimated amount of the required collateral is based on preliminary information indicating the amount of the current day's available cash.

5. The Funds will invest only those assets in the joint accounts which, in the absence of the joint accounts, would be available to be invested in repurchase agreements. A Fund's decision to use one of the joint accounts will be based on the same factors as the Fund's decision to enter into any repurchase agreement. These factors would primarily be the yield and liquidity of the contemplated repurchase agreement and the creditworthiness of the repurchase agreement contra-party.

6. After the conclusion of its daily trading activity, each Fund will transfer cash it intends to invest to the appropriate joint account. The daily balance of each joint account will be used to enter into one or more large repurchase agreements in a total amount approximately equal to the aggregate daily balance in that joint account.

7. In connection with the use of repurchase transactions, each Fund has established the same systems and standards. These standards, adopted in compliance with Investment Company Act Release No. 13005 (Feb. 2, 1983), include creditworthiness standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements be fully collateralized at all times. Any joint repurchase agreement transaction entered into through the proposed joint accounts will comply with the standards and guidelines set forth in the above-referenced Release No. 13005 and any other existing and future positions taken by the SEC or its staff by rule, release or otherwise relating to joint repurchase agreement transactions.

8. Although the joint accounts will each seek to enter into only one repurchase agreement, it may be

necessary to make more than one such investment because many of the Funds are limited to investing no more than a stated percentage of their assets with any single issuer (other than U.S. governmental issuers), dealer or bank. Where a fund subject to a percentage restriction invests more than that percentage of its assets in a joint account, the joint account will have to enter into more than one repurchase agreement in order to avoid causing such Fund to violate such percentage restriction. Because it would be unusual for most of the Funds to have a high percentage of their respective assets in repurchase agreements, it is not expected that more than three repurchase agreements will be entered into by each of the joint accounts, except under unusual circumstances.

Applicants' Legal Analysis

1. Each Fund, by participating in one of the proposed joint accounts, and the Adviser, by managing the proposed joint accounts, could be deemed to be joint participants in a transaction within the meaning of section 17(d) of the 1940 Act, and each of the proposed joint accounts could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d-1 under the 1940 Act.

2. The Board of Directors/Trustees of each of the Funds has considered the proposed joint accounts and determined that the use of the applicable joint account will be beneficial to each Fund that invests or could invest in repurchase agreements for the following reasons: (a) The Funds will collectively save approximately $70,000 in yearly transaction fees at present levels by substituting relatively few transactions for the transactions that are necessary currently; (b) under most market conditions it is possible to negotiate a rate of return on large repurchase agreements that is greater than the rate of return that can be negotiated for smaller repurchase agreements; (c) by reducing the number of trade tickets, the mechanism by which the Funds enter into repurchase agreements will be simplified with a reduction in the opportunities for error; and (d) an institution entering into a large repurchase agreement generally is able and willing to increase the amount covered by such an agreement near the end of a day.

3. The proposed method of operating the joint accounts will not result in conflicts of interest between or among any of the Funds or between a Fund and its Adviser. Applicants believe that the operation of the joint accounts will be free of any inherent bias favoring one Fund over another. They have also considered that, although the Adviser will gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries will be the Funds and their shareholders because the joint accounts may earn higher returns for the Funds and will be a more efficient way of administering daily investment transactions.

4. Applicants believe that future participation in the joint accounts by one or more Funds which are not presently advised by the Adviser, whether or not such Funds are currently in operation, would be desirable. Applicants represent that future Funds will be required to participate in the applicable joint account on the same terms and conditions as the existing Funds have set forth herein.

5. Each Fund will participate in the applicable joint account on the same basis as every other Fund in conformity with its investment objectives and restrictions.

Applicants' Conditions

As express conditions to obtaining an exemptive order, Applicants agree to operate the joint accounts according to the following procedures:

1. A separate custodial cash account will be established into which each Fund will cause some or all of its net cash balances intended for repurchase agreements to be deposited daily. After the conclusion of its daily trading activity, each Fund will transfer cash it intends to invest to the appropriate joint account. The joint accounts will not be distinguishable from any other accounts maintained by a Fund with its custodian bank except that monies from the Funds will be deposited on a commingled basis. The joint accounts will not have any separate existence which will give rise to indicia of a separate legal entity. The sole function of each of the joint accounts will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management by each Fund of its uninvested cash balances.

2. Cash in the joint accounts will be invested in repurchase agreements collateralized by suitable U.S. government obligations, i.e., obligations guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the uniform standards set by the Funds for such investments. Any such repurchase agreement will have, with rare exceptions, an overnight or over-the-weekend duration, and in no event will it have a duration of more than seven calendar days.

3. All investments held by the joint accounts will be valued on the basis of amortized cost.

4. In order to assure that there would be no opportunity for one Fund to use any part of a balance of a joint account credited to another Fund, no Fund will be allowed to create a negative balance in a joint account for any reason, although it will be permitted to draw down its entire balance at any time. A Fund's decision to invest in the applicable joint account will be solely at the Fund's option. No Fund will be obligated to invest in the joint account or maintain any minimum balance therein. A Fund may withdraw all or a portion of its investment in the joint account at any time. In addition, each Fund will retain the sole rights of ownership of any of its assets invested in the joint account, including interest payable on such assets. Each Fund's investment in a joint account will be documented daily on the books of each Fund as well as on the books of the Fund's custodian. Applicants believe that a Fund's investment in a joint account will not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceedings, of any other participant Fund in that joint account. Each Fund's liability on any repurchase agreement entered into by the applicable joint account will be limited to its proportionate interest in such repurchase agreement.

5. Each Fund will participate in the income earned or accrued in the joint account in which it has invested, including all instruments held by that joint account, on the basis of the Fund's percentage of the total amount in the joint account on any day represented by its share of the joint account.

6. SAAMCo (or the Broad Subsidiaries, as the case may be) and Wellington will each administer the investment of the cash balances in and operation of Joint Account A and Joint Account B, respectively, as part of their duties under existing or future investment advisory arrangements with each Fund entitled to participate in the respective accounts, and will not collect any additional fee for the management of those accounts. (The Adviser will collect fees in accordance with each Fund's respective investment advisory arrangements.)

7. The Board of Directors/Trustees of the Funds will evaluate the arrangements of the applicable joint account annually, and will continue the joint account only if they determine that

there is a reasonable likelihood that it will benefit the relevant Funds and their shareholders.

8. The administration of the joint accounts will be within the fidelity bond coverage required by section 17(g) of the 1940 Act and rule 17g–1 thereunder.

9. Each Fund relying upon rule 2a–7 under the 1940 Act for valuation of its net assets on the basis of amortized cost will use the average maturity of the repurchase agreements in the joint account used by such Fund for the purpose of computing such Fund's average portfolio maturity with respect to the portion of its assets held in such joint account.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13941 Filed 6–12–92; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Disaster Survey Worksheet
SBA Form No.: SBA Form 987
Frequency: On occasion
Description of Respondents: Individuals, businesses and public officials within an area requesting a disaster declaration.
Annual Responses: 4,000
Annual Burden: 333

Title: Transaction Report on Loans Serviced by Lenders
SBA Form No.: SBA Form 172
Frequency: Monthly
Description of Respondents: Small Business Administration Participating Lenders
Annual Responses: 53,148
Annual Burden: 8,504

Title: SBA Request for Counseling
SBA Form No.: SBA Form 641
Frequency: On occasion
Description of Respondents: Individuals requesting management counseling from SBA
Annual Responses: 500,000
Annual Burden: 83,000

Title: Management Training Report
SBA Form No.: SBA Form 888
Frequency: On occasion
Description of Respondents: Attendees at SBA sponsored training
Annual Responses: 16,000
Annual Burden: 2,656.

Dated: June 8, 1992.

Cleo Verbillis,

Acting, Chief, Administrative Information Branch.

[FR Doc. 92–13955 Filed 6–12–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0534]

Creditanstalt Capital Corporation

Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1992)), Creditanstalt Capital Corporation, 245 Park Avenue, New York, New York 10167, incorporated under the laws of the State of Delaware, has surrendered its license, No. 02/02–0534 issued by the SBA on December 21, 1989.

Creditanstalt Capital Corporation has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Creditanstalt Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–13954 Filed 6–12–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–5356]

Commonwealth Enterprise Fund, Inc.; Issuance of a Small Business Investment Company License

On January 31, 1992, a notice was published in the **Federal Register** (57 FR 922379) stating that an application has been filed by Commonwealth Enterprise Fund, Inc., 10 Post Office Square, Suite 1090, Boston, Massachusetts 02109, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1992)) for a license to operate as a small business investment company.

Interested parties were given until close of business March 2, 1992 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01–5356 on May 28, 1992, to Commonwealth Enterprise Fund, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 1, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–13951 Filed 6–12–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 03/03–0193]

Legacy Fund Ltd. Partners; Issuance of a Small Business Investment Company License

On January 10, 1990, a notice was published in the Federal Register (56 FR 1050) stating that an application has been filed by Legacy Fund Ltd. Partners, 815 Connecticut Ave., NW. Washington, DC 20006, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies

(13 CFR 107.102 (1992)) for a license as a small business investment company.

Interested parties were given until close of business February 10, 1991 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0193 on April 16, 1992, to Legacy Fund Ltd. Partners to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated May 15, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–13954 Filed 6–12–92; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 07051100]

Springfield Capital, Inc. Application for a Small Business Investment Company License

Notice is hereby given of the filling of an application with the Small Business Administration (SBA) pursuant § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1991)) by Springfield Capital, Incorporated (Applicant) 328 South Atlantic Blvd., suite 200B, Monterey Park, California, 91754, for a license to operate as a corporate small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.) and the Rules and Regulations promulgated thereunder.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
Li Pei Wu, 2126 Camino San Rafael, Glendale, CA 91206	25
Shirley Chuang, 16700 Yukon Ave., #225, Torrance, CA 90504	25
Johnny Wei-Chao Kao, 10520 Wilshire Blvd. #1103, Los Angeles, CA 90024	25
Huei Ping Chen, 5955 Ocean Terrace Drive, Rancho Palos Verdes, CA 90274	25

Indirect Ownership

Springfield Capital, Incorporated will be managed by Mr. Paul Bor-Jun Ding. The officers and directors of the Applicant will be as follows:

Name	Title	Relationship to manager
Paul Bor-Jun Ding, 13308 Tree Top View Court, St. Louis, MO 63141.	President, Chief Financial Officer, and Director.	N/A.
Chuan Yin Cheng, 4418 Tomik Circle, Rosemead, CA 91770.	Secretary	None.
Li Pei Wu, 2126 Camino San Refael, Gendale, CA 91206.	Director	Brother-in-Law.
Shirley Chuang, 16700 Yukon Avenue, #225, Torrance, CA 90504.	Director	None.
Johnny Wei-Chao Kao, 10520 Wilshire Blvd., #1103, Los Angeles, CA 90024.	Director	None.
Huei Ping Chen, 5955 Ocean Terrace Drive, Rancho Palos Verdes, CA 90274.	Director	None.

Shirley Chuang is currently a director and shareholder of Myriad Capital, Incorporated, an SSBIC located in Monterey Park, California. The Applicant, a corporation organized under the provisions of the General Corporation Law of California, and duly qualified to do business in the State of California, and will begin operations with a capitalization of $2,000,000. Initially, the applicant will conduct its activities solely in Southern California and will be a source of equity capital and long term funds for qualified socially or economically qualified small business concerns. The Applicant may later expand the business to other geographical areas.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the Monterey Park, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 7, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–13953 Filed 6–12–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 5, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48171.
Date filed: June 1, 1992.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 571 (Change The Denomination of Passenger R–1 Tariffs In Cayman Islands From KYD To USD)
Mail vote 572 (Change The Denomination of Cargo Tariffs R–2 In Cayman Islands From KYD to USD)
Telex dated May 29, 1992–Technical Correction To MV572 And Declaration Of Adoption.
Proposed Effective Date: July 1, 1992.

Docket Number: 48172.
Date filed: June 1, 1992.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 573 (Within South America Economy & Excursion Fares) r–1–061d r–2– 070j r–3– 070vv.
Proposed Effective Date: June 15, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–13944 Filed 6–12–92; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 5, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process

the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48173.
Dated filed: June 1, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1992.
Description: Application of Key Airlines, Incorporated, pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity to permit it to provide scheduled air transportation of persons, property and mail between Savannah, Georgia, on the one hand, and Cancun and Cozumel, Mexico, and a point or points in Aruba, the Bahamas, Antigua, the Netherlands Antilles, and Jamaica, on the other.

Docket Number: 48176.
Date filed: June 3, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 1, 1992.
Description: Application of Traslados, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations applies for an amendment to its existing foreign air carrier permit authorizing it to engage in nonscheduled and charter air transportation of property and mail between Guatemala City, Guatemala, and Miami, Florida. By this application, Traslados seeks the removal of condition (2) of its permit, so that is may conduct U.S. flights using its own aircraft.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 92-13945 Filed 6-12-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Flight Crewmember Flight/Duty/Rest Requirements Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Flight Crewmember Flight/Duty/Rest Requirements Working Group.

SUMMARY: Notice is given of the establishment of a Flight Crewmember Flight/Duty/Rest Requirements Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. Williams W. Edmunds, Jr., Air Line Pilots Association International, P.O. Box 1169, Herndon, VA 22070; telephone (703) 689-2270; fax number (703) 689-4370.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its May 12, 1992, meeting, the subcommittee established the Flight Crewmember Flight/Duty/Rest Requirements Working Group.

Specifically, the working group's task is the following:

To determine whether regulations pertaining to air carrier flight crewmember, flight, duty, and rest requirements are consistently interpreted and understood by the FAA, air carriers, and pilots. Evaluate industry compliance/practices regarding scheduling of duty, reserve, and rest periods and reports of excessive pilot fatigue as a result of such scheduling. If appropriate, develop recommendations for advisory material and/or a regulatory revision.

The Flight Crewmember Flight/Duty/Rest Requirements Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Flight Crewmember Flight/Duty/Rest Requirements Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 9, 1992.

David S. Potter,
Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-13977 Filed 6-12-92; 8:45 am]
BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Baton Rouge Municipal Airport, Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comments on the application to impose a PFC at Baton Rouge Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 15, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. William Perkins, Planning and Programming Branch, ASW-610D, Airports Division, Southwest Region, Forth Worth, Texas 76193-0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Iray Ledoux, of the Parish of East Baton Rouge, city of Baton Rouge at the following address: Baton Rouge Municipal Airport, Parish of East Baton Rouge, City of Baton Rouge, Suite 212, Terminal Building, Baton Rouge, Louisiana 70807.

Comments from air carriers and foreign air carriers may be in the same form as provided to the city of Baton Rouge, Baton Rouge Municipal Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. William Perkins, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0610, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose a PFC at Baton Rouge Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 5, 1992, the FAA determined that the application to impose a PFC submitted by the city of Baton Rouge was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 29, 1992.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.
Proposed charge effective date: October 1, 1992.
Proposed charge expiration date: September 30, 1998.
Total estimated PFC revenue: $9,823,159.00.

Brief description of proposed project(s):

Land Acquisition of Parcel No. 5
Land Acquisition of Parcel No. 6
Terminal Concept Study
Noise Mitigation Program

Proposed class or classes of air carriers to be exempted from collecting PFC's:

1. Part 135 on-demand air taxis, both fixed wing and rotary.
2. Part 121 Supplemental Operators

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0610.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Baton Rouge.

Issued in Forth Worth, Texas on June 5, 1992.

John M. Dempsey,
Manager, Airports Division.

[FR Doc. 92–13976 Filed 6–12–92; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Dane and Sauk Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that Environmental Impact Statement (EIS) will be prepared for the proposed improvement of USH 12 between the City of Middleton and Sauk City in Dane and Sauk Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5967

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement on a proposal to improve U.S. Highway 12 (USH 12) from the City of Middleton to Sauk City in Dane and Sauk Counties, a distance of about 29 km (18 miles).

Improvements to the corridor are considered necessary to provide for traffic demand and safety and the compatibility of the highway with the regional function of the USH 12 route. Alternates under consideration include: (1) *No-build*—this alternative assumes the continued use of the existing facility with sufficient maintenance provided to ensure its serviceability; (2) *Improve the Existing Roadway*—this alternative would provide for the reconstruction of the existing two-lane roadway with consideration given to improvements in substandard vertical and horizontal alignment; *Expressway*—this alternate would provide for a four-lane divided expressway along the existing rural corridor, with possible relocated horizontal alignment along portions of the route.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, an interagency coordination meeting will be held. Agencies having an interest in, or jurisdiction regarding the proposed action will be contacted regarding the date and location of the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on June 3, 1992.

James L. Wenning,
District Engineer, Madison, Wisconsin.

[FR Doc. 92–13919 Filed 6–12–92; 8:45 am]
BILLING CODE 4910–22–M

Environmental Impact Statement: Iowa and Lafayette Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that Environmental Impact Statement (EIS) will be prepared for the proposed improvement of USH 151 between Belmont and Dodgeville in Iowa and Lafayette Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement on a proposal to improve U.S. Highway 151 (USH 151) from west to the Village of Belmont to south of the City of Dodgeville, a distance of about 32.2 km (20 miles).

The improvement of USH 151 is being considered to provide for safe and efficient travel while enhancing the overall economic development potential for the USH 151 corridor from Dubuque, Iowa to Madison, Wisconsin. The Wisconsin Department of Transportation's Corridors 2020 Program, which provides a network of multi-lane highways serving statewide and regional transportation needs, includes this segment of USH 151 on the backbone network.

The existing facility is a rural two-lane roadway passing through the communities of the Village of Belmont and the City of Mineral Point. Alternates under consideration include: (1) Take no action; (2) improvements along the existing rural corridor, with possible relocated alignments along portions of the route; (3) bypass of the City of Mineral Point; and (4) bypass of the Village of Belmont.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, an interagency coordination meeting will be held. Agencies having an interest in, or jurisdiction regarding the proposed action will be contacted regarding the date and location of the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on June 3, 1992.

James L. Wenning,

District Engineer, Madison, Wisconsin.

[FR Doc. 92-13920 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 92-01; No. 2]

Philatron International; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Philatron International (Philatron) of Santa Fe Springs, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act ("Safety Act") (15 U.S.C. 1381 *et seq.*) on the basis that a noncompliance with Federal Motor Vehicle Safety Standard No. 106 is inconsequential as it relates to motor vehicle safety. Notice of receipt of the petition was published on January 17, 1992, and an opportunity afforded for comment (57 FR 2130).

Philatron determined that 45,411 air brake hose assemblies manufactured from January 1991 through September 30, 1991, do not comply with the oil resistance requirements of S7.3.4 of Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses." Section S7.3.4 requires that after immersion in ASTM No. 3 oil for 70 hours at 212 degrees Fahrenheit, the volume of a specimen prepared from the inner tube and cover of an air brake hose shall not increase more than 100 percent. Philatron supported its petition with the following:

"There is no possibility for the interiors of the coiled tubing to become saturated with oil at any termperature; and specifically, there is no possibility under any condition for the items to be saturated with oil for 70 hours at a temperature of 212 [degrees Fahrenheit].

The compressors of all trucks are designed to pass compressed air, and not oil, through the coiled tubing. Any small quantities of oil which might travel with the compressed air are reduced in at least two (2) reservoirs (commonly referred to as the wet tank and the service tank) which are included in all trucks, and in which any moisture and any minute quantities of oil are removed from the compressed air passed through the tubing to the towed vehicles.

Moreover, virtually every truck today is also equipped with an air dryer which dries and purifies the compressed air before it enters the reservoirs. This dryer has a 99.9 percent oil removal efficiency.

There is also no possibility for the temperature of the compressor air passed through the tubing ever to be above ambient temperature at the inner area of the tubing. The compressed air is rapidly cooled as it travels from the compressor, and when it enters the air reservoirs it is cooled to ambient temperatures well before it reaches the tubing located further down the line.

Most if not all trucks today are equipped with an air dryer which is positioned between the compressor and the air reservoirs, normally 6 to 15 feet from the compressor. Virtually all trucks which are equipped with air dryers are also equipped with pre-cooling coils which pre-cool the air before it enters the air dryers. The dryers themselves cool the air. Again, it [sic] is no possibility that compressed air could exceed ambient temperature within the tubing.

There is also no possibility that the outer surface of the items when in use would ever come in contact with or be immersed in hot oil. This is because the items are located between the rear of the towing vehicle and the front of the towed vehicle at a significant distance from any sources of hot oil.

Additionally, there is no conceivable possibility of any quantity of hot oil being spilled on the items while the vehicles are at rest, and any small quantity of oil which might contact the items when the vehicles are in motion are cooled by the wind chill factor of the traveling vehicles to below ambient temperatures."

In addition to the above arguments, Philatron conducted the following tests to demonstrate what it believes to be a considerable margin of safety associated with the hoses in question with respect to oil resistance.

The first test consisted of air brake tubing with the coupling plugged at the end and immersed in ASTM No. 3 oil. Ambient temperatures ranged from 33 degrees Fahrenheit to 91 degrees Fahrenheit. After 3,310 hours, 138 days, the assembly was removed from the oil and subjected to a burst test. The tubing burst at 1,200 psi, well above Standard No. 106's requirement for burst strength of 800 psi.

The second test consisted of air brake tubing without the couplings. The tubing was not plugged as to allow the oil to reach the inner surface of the tubing and then immersed in ASTM No. 3 oil for 70 hours at 134 degrees Fahrenheit. After 70 hours the assembly was allowed to cool at ambient temperature and subjected to a burst strength test. The tubing burst at 1050 psi, which is above the requirement.

The notice drew one of the greatest responses to an inconsequentiality petition that NHTSA has never received. There were 19 comments to the docket. Eight companies and three individuals supported Philatron. The companies were Heavy Duty Marketing, Pac West Intermountain, Inc., Truck Parts East, Sherman-Pearson Company, Jakubik Sales, Inc., Cunningham Seles Company, Raymond Tucker Company, and H&W Marketing. The individuals were P.A. Hames, R.E. Heller, and J.G. Harbeson. The petition was opposed by four companies: Phillips, Parker Hannifin, Imperial Eastman, and Furon. It was also opposed by four individuals: W.A. Hertel, F.C. Destro, D.L. Chimino, and L.R. Phillippi.

The notice requesting comments failed to specify that Philatron had filed its petition following NHTSA compliance tests. Further, the notice did not indicate that, in NHTSA's compliance testing, the failure to comply with the standard was not marginal, as is the usual case where a manufacturer seeks an inconsequentiality determination with respect to a failure of a standard's performance requirement. These facts, however, appear to have been well known to some if not most of the commenters.

Although the fact of failure *per se* caused Messrs. Chimino and Destro to oppose granting the petition, the comments of others raised three principal issues. The first of these is the ability of the hose to resist heat in the absence of oil. This was of concern to the four opposing companies, some of which had run their own heat tests. Parker Hannifin's tests showed that the hoses began to melt at "temperatures below 250 deg. F." Imperial Eastman tested sections of the hoses, pressurizing them to 150 psi, which is approximately the maximum pressure in an ordinary air brake system. The sections were then subjected to various temperatures, beginning at 150 degrees Fahrenheit. The sections withstood one hour at 190 degrees, and five minutes at 200 degrees. Three sections burst at pressures ranging from 240 psi to 520 psi while exposed to 150 degree temperature. Furon and Phillips commented that the hoses would be exposed to high ambient heat in the work environment, from nearby engine components and exhaust stackes.

This aspect of hose performance is addressed by S7.3.2 High temperature resistance of Standard No. 106. The test procedure calls for bending a hose for 70 hours at 212 degrees Fahrenheit over a cylinder; when it is straightened after the test, it "shall not show external or internal cracks, charring, or disintegration visible without magnification." Although the Philatron hose manifested a tangible softening at the end of NHTSA's high temperature test, none of the prohibited conditions had occurred. Regardless of how Parker Hannifin may have conducted its test, the test temperature exceeded by almost 20 percent the temperature specified by Standard No. 106 to demonstrate resistance to high temperature in the absence of oil. Imperial Eastman's pressurization of hose samples is also not one of the test conditions of the high temperature or oil resistance tests of Standard No. 106. The comments of Furon and Phillips are unsupported by data.

There have been no reports that these hoses were damaged or failed due to heat in the work environment. NHTSA representatives telephone the vendors of Philatron hoses that filed comments in support of the petition, and others as well, and verified representations that the hoses had proven satisfactory in use. For these reasons, NHTSA has concluded that tests conducted by Parker Hannifin and Imperial Eastman are not relevant to the real world safety performance of the brake hoses in question.

The second argument raised by the opponents of the petition is the allegation that the Philatron hoses will not pass a combined heat/pressure test. As part of its inconsequentiality petition, Philatron immersed an unplugged sample of hose for 70 hours in oil heated to 134 degrees Fahrenheit. The hose was removed, dried, and burst tested, failing at a pressure of 1,050 psi. When Furon ran the test, it experienced burst pressures between 569 and 613 psi. When Parker Hannifin attempted to run a similar test, the hoses melted before they could be burst tested. NHTSA fails to see the relevance of these tests. A combined heat/pressure test such as Philatron, Furon, and Parker Hannifin have conducted, is not required by Standard No. 106, and the hoses' performance under these tests is unrelated to the issue of whether the noncompliance with S7.3.4 is inconsequential as it relates to safety.

The third issue addressed by the commenters in opposition is the likelihood of the hose in use coming into contact with hot oil. Philatron had asserted that "There is no possibility for the coiled tubing to become saturated with oil at any temperature." Parker Hannifin, Imperial Eastman, Furon, and W.A. Hertel disagreed, commenting that the hoses come into contact with oil in everyday operation. Parker Hannifin elaborated that this contact could occur by way of leaky air compressors, engine leaks, and splashes during refueling. However, according to Philatron and several companies, the hoses are used only as connecting hoses between truck tractors and trailers. Under these circumstances, NHTSA agrees with Philatron's assertion that excessive oil build-up will not occur and that there will be no saturation of the hoses with hot oil.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described in inconsequential as it relates to motor vehicle safety. The petition is granted with respect to the hoses covered by Philatron's Noncompliance Report dated January 7, 1992.

Unlike the subjects of previous inconsequentiality petitions, the reason for the noncompliance here lies in the basic nature of the Philatron hoses instead of in an error of omission or commission that is easily correctable. It appears that the Philatron hoses cannot be manufactured to comply with the oil resistance test because of the nature of the material used in their construction. Accordingly, on January 27, 1992, Philatron filed a petition for rulemaking for an appropriate amendment to Standard No. 106 that would allow it to continue the manufacture of these hoses. This petition was granted on April 10, 1992, and the matter is currently under review.

In the absence of an amendment, Philatron cannot legally manufacture or sell a brake hose of this type, since it has determined that they fail to conform to Standard No. 106. A grant of an inconsequentiality petition relieves a manufacturer only of the obligation under sections 151-154 of the Safety Act (15 U.S.C. 1411-1414) to notify and remedy noncompliances. It is not a license to continue the manufacture and sale of a noncompliant product, which is prohibited by section 108(a)(1)(A) of the Safety Act (15 U.S.C. 1397(a)(1)(A)). Philatron is statutorily prohibited from the manufacture for sale, sale, or the offer for sale of the hoses in question, effective the day the company filed its noncompliance report, January 7, 1992. This prohibition is in effect until such time as Standard No. 106 may be amended in an appropriate manner.

Some of Philatron's competitors have asserted that the petitioner continues to sell noncompliant hoses in violation of section 108(a)(1)(A), and the agency is investigating these allegations.

Further, because of the newness of Philatron's product, and the public concern evidenced by the comments in opposition, NHTSA has decided to incorporate into this notice of grant a formal request pursuant to section 112(b) of the Safety Act (15 U.S.C. 1410(b)) that Philatron report to the agency within 5 days of receipt, any complaint that Philatron may receive about the performance of the hoses, together with a copy of that complaint. Failure to do so would constitute a violation of section 108(a)(1)(B) of the Safety Act (15 U.S.C. 1401(b)), for which a civil penalty may be imposed. This requirement will remain in effect until the conclusion of the rulemaking proceeding that NHTSA has commenced to consider amending Standard No. 106.

Finally, it should be noted that a grant of inconsequentiality does not preclude the agency from conducting a defect investigation, should facts warrant. Should such an investigation indicate the presence of a safety-related defect, the agency could seek notification and remedy of the defect.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 501.8.)

Issued on: June 9, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13943 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 9, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Customs Service

OMB Number: 1515-0100.
Form Number: None.
Type of Review: Reinstatement.
Title: Customhouse Brokers.
Description: 19 CFR part III requires various types of information from Customhouse brokers to ensure statutory and regulatory compliance. The information is used for audit and investigations of interstate theft, narcotics smuggling, and prevents persons connected with organized crime syndicates from penetrating the industry.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: Respondents: 2,246. Recordkeepers: 4,682.
Estimated Burden Hours Per Respondent/Recordkeeper:
Response Time.....3 hours, 30 minutes.
Recordkeeping Time.....308 hours.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,448,633 hours.
OMB Number: 1515-0144.
Form Number: CF 301 and CF 5297.
Type of Review: Reinstatement.
Title: Customs Bond Structure.
Description: The CF 301 is used for the revenue and to ensure compliance with law, regulation and instruction. Bonds are authorized and required by law, regulation or instruction and are used as security for various types of Customs transactions.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 590,250.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 147,563 hours.
Clearance Officer: Ralph Meyer (202) 566-9182, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW. Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-13984 Filed 6-12-92; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of Public Law 98-164. USIA is requesting approval for a three-year extension of the Update of Information on Exchange Visitor Program Sponsor (IAP-87), under OMB control number 3116-0011, which expires July 31, 1992. Estimated burden hours per response is twenty minutes.

DATES: Comments are due on or before July 15, 1992.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Ms. Lin Liu, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average twenty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Update of Information on Exchange Visitor Program Sponsor.
Form Number: IAP 87.
Abstract: The USIA form IAP-87 is used by the Exchange Visitor Sponsors when they wish to change the name of their institution and/or organization, the names of the personnel involved, address, or telephone numbers. The form is also used to order supply of other forms, code books, or cancel the program.
Proposed Frequency of Responses:
No. of Respondents—1,500.
Recordkeeping Hours—104.
Total Annual Burden—854.

Dated: June 9, 1992.

Rose Royal,

Federal Register Liaison.

[FR Doc. 92-13933 Filed 6-12-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 115
Monday, June 15, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 16, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Budget and Corporate Planning.

Memorandum and resolution re: Statement of Policy Regarding FDIC's Right to Consent to Foreclose and Right of Redemption.

Discussion Agenda

Memorandum re: Bank Insurance Fund Recapitalization Schedule.

Memorandum and resolution re: Extension of the comment period for the proposed amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which would increase the deposit insurance assessment to be paid by Bank Insurance Fund members.

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of a new Part 362, entitled "Activities and Investments of Insured State Banks," which would prohibit insured state banks, subject to certain exceptions, from making equity investments of a type, or in an amount, that are not permissible for a national bank.

Memorandum and resolution re: Proposed amendment to Part 333 of the Corporation's rules and regulations entitled, "Extension of Corporate Powers," which would eliminate current language applying certain prohibitions concerning equity investments by savings associations to state banks that are members of the Savings Association Insurance Fund, with such banks thereafter to be subject to the restrictions of Part 362.

Memorandum and resolution re: Joint advance notice of proposed rulemaking to solicit comment on all aspects of the safety and soundness standards required to be prescribed by the Federal Deposit Insurance Corporation Improvement Act of 1991.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 9, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–14123 Filed 6–11–92; 2:33 pm]

BILLING CODE 6714–0–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 16, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552(c)(2), (c)(6) (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda:

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal processings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names of locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunsine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirement, separations, removals, etc.:

Name of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(2), and (c)(6)).

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: June 9, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-14124 Filed 6-11-92; 2:33 pm]

BILLING CODE 6714-0-M

federal register

Monday
June 15, 1992

Part II

National Science Foundation

Request for Public Comment; Solicitation Concept; Notice

NATIONAL SCIENCE FOUNDATION

Request for Public Comment; Solicitation Concept

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: NSF is requesting comments on a proposed solicitation covering two separate projects: a Network Access Point (NAP) Manager and Routing Authority (RA) organization; and a provider of very high speed Backbone Network Services (vBNS). This draft solicitation is being released to the public to solicit comments specifically on the scope of NSF's concept on how the various services can best be provided, including (but not limited to) the methodology and feasibility of providing services as proposed. It is anticipated that a new approach to the provision of NSFNET Backbone Network Services will help provide for the continued development and growth of NSFNET and to continue the transition to a more privatized network.

DATES: After consideration of comments received by August 3, 1992, NSF intends to prepare and release a final program solicitation for the NAP Manager/RA and the vBNS Provider projects.

ADDRESSES: To become part of the official record and to guarantee that issues are addressed through this process, all comments regarding the concepts contained in this draft solicitation must be submitted to NSF in writing (paper, facsimile, or electronic mail) and must be received by 3 p.m. Eastern standard time, Monday, August 3, 1992, at:

National Science Foundation, Division of Networking and Communications Research and Infrastructure, 1800 G Street, NW., room 416, Washington, DC 20550, ATTN: G Strawn (NAP Manager/RA and vBNS Provider Comment). Facsimile: 202–357–0320; Electronic mail: gstrawn@nsf.gov.

FOR FURTHER INFORMATION CONTACT: George Strawn, Program Director, NSFNET Program, 202–357–9717.

SUPPLEMENTARY INFORMATION:

Public draft—Network Access Point Manager/Routing Authority and Very High Speed Backbone Network Services Provider for NSFNET and the NREN Program

Program Solicitation

I. Purpose of this Solicitation

The NSFNET was designed to support the data networking needs of the research and education community. It has become an essential infrastructure for that community used daily to facilitate communication among researchers, educators and students and to provide them with remote access to information and computing resources. The number of users, the number of connected networks, and the amount of network traffic continue to grow rapidly.

NSFNET also supports the goals of the High Performance Computing and Communications (HPCC) Program which was delineated in the President's Fiscal 1992 and 1993 budgets and became law with the passage of The High Performance Computing Act of 1991 (Pub. L. 102–194). One component of the HPCC Program is the National Research and Education Network (NREN) Program which calls for gigabit per second speed networking for research and education by the mid 1990s.

Since the creation of the NSFNET in 1986, the data networking industry itself has evolved considerably. New companies have been created and a number of existing companies have shown increasing interest in data networking. These and other evolutionary changes, together with the pending expiration of the current Cooperative Agreement for NSFNET Backbone Network Services, have prompted the need for new arrangements for NSFNET Backbone Network Services.

To provide for the continued development and growth of NSFNET and to continue the transition to a more privatized network, a new architecture to provide for Backbone Network Services has been formulated and is specified here. The architecture includes two separate projects for which solicitations are required: a Network Access Point (NAP) Manager and Routing Authority (RA) organization; and, a provider of very high speed Backbone Network Services (vBNS). This architecture also includes components such as regional networks and network service providers for which NSF solicitations are not required. (These components are, however, discussed in Section III.D.)

The solicitation invites proposals for a NAP Manager/RA organization to: Arrange for and oversee a specific number of NAPs where the vBNS and other appropriate networks may interconnect; establish and maintain a route server database at each NAP which may be used by the NAP-attached networks to obtain routing information with which to construct routing tables. This component of the backbone network services architecture will: Provide access for other networks to the U.S. Research and Education community; provide for the interconnection for appropriate networks in an environment which is not subject to the NSF Acceptable Use Policy (AUP) which, in essence, limits traffic to that which is in support of research and education; provide routing stability; provide for advances in routing technology; and, provide for the maintenance of a policy routing database.

The solicitation also invites proposals for a vBNS Provider to establish and maintain a vBNS which will be connected to all NAPs and all of whose NSFNET vBNS traffic must be in compliance with the NSF AUP. In the tradition of NSFNET and as discussed below, the vBNS Provider will be expected to demonstrate leadership in the development and deployment of high performance data communications networks. This component of the architecture will: provide for high speed interregional connectivity; enable distributed computing applications; enable multimedia applications such as visualization, collaboration, and distance learning; and, promote the development and deployment of advanced routing technologies.

It is anticipated that the solicitation will result in two separate five-year cooperative agreements between NSF and the organizations and/or consortia chosen as NAP Manager/RA, and vBNS Provider. The two anticipated awards will be made to different organizations (or non-overlapping consortia of organizations). Total NSF funding is expected to be approximately $10,000,000 per year.

This solicitation is issued pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861 et seq.) and the Federal Cooperative Agreement Act (31 U.S.C. 6305) and is not subject to the Federal Acquisition Regulations.

II. Background

The network of networks known as the Internet includes more than 5,000 networks. These networks link together hundreds of thousands of computers and millions of users throughout the world. The domestic portion of the Internet contains a number of NSF-supported networks. These include: Campus network connections at educational institutions; midlevel networks; and NSFNET backbone network services. Broadly speaking, NSFNET consists of all of these networks together with a number of other networks at locations such as government laboratories and private corporations.

The Internet also includes other federally-sponsored networks such as NASA Science Internet (NSI), DOE's

Energy Sciences Network (ESnet), and DARPA's DARTnet and TWBnet. These and other networks and the NSFNET are expected to evolve into a gigabit per second network that allows for both the interconnection and interoperability of federally funded research and education networks with each other and with private sector networks. This multi-agency program is referred to as the NREN.

During the evolution of the NREN Program, account will have to be taken of the requirements of the various network-sponsoring federal agencies. For example, network traffic on NSI and ESnet normally must be in support of the focused missions of NASA and DOE, respectively. NSF, on the other hand, has the broad mission to support science and engineering research and education. As such, NSFNET will carry traffic in support of general research and education requirements.

Because of the breadth of the charter of the NSFNET and because of its wide use by the research and education community, it is projected that the NSFNET user base will continue to grow and that its users will continue to require new levels of network services. The expansion in numbers of users and levels of services make the provision of increasingly high performance Backbone Network Services necessary for the continued success and growth of NSFNET. The new NSFNET Backbone Network Services will also be important in the evolution of the NREN Program.

After consultation with many segments of the Internet community, the National Science Foundation has developed this solicitation for a NAP Manager/RA organization and a vBNS Provider. In the manner specified below, it is anticipated that NSFNET will: Develop increasingly high performance network services; accommodate the anticipated growth in numbers of users and networks and in network traffic; and, transition to a networking infrastructure that is increasingly provisioned by network service providers from the private sector.

III. Network Architecture and Project Requirements

NSF intends to establish a vBNS for NSFNET in the following manner. A number of NAPs will be established where the vBNS and other appropriate networks will be interconnected. (The number and location of the NAPs will be specified in the final solicitation.) A NAP Manager/RA organization will arrange for and oversee the NAPs and will maintain Route Servers with routing and policy databases for networks attached to the NAPs. The NAP Manager/RA will also provide certain routing services for the Internet community. This section gives more details on this approach to providing backbone network services and gives specific requirements for both providers.

A. Network access points. A NAP is defined as a high speed network or switch to which a number of routers can be connected for the purpose of traffic exchange and interoperation. It must have capacity adequate to keep up with the switching requirements of the attached networks. A NAP Manager/RA Organization will be responsible for oversight and coordination of the NAPs. The NAPs will be a conceptual evolution of the Federal Information eXchanges (FIX-East and FIX-West) and the Commercial Information eXchange (CIX). The FIXes are each built around a 100 mbps FDDI ring with attached networks operating at speeds of up to 45 megabits per second (but neither the FIXes nor the CIX currently have dedicated route servers with route databases).

Examples of NAP implementation include (but are not limited to) a LAN (like the FIXes) or a MAN (Metropolitan Area Network) using a service such as Switched Multimegabit Data Service (SMDS). With any implementation, it would be desirable to provide an environment which attempts to equalize and lower the cost of connecting to the NAPs for prospective network services providers. For example, this might be accomplished by locating each NAP "close" to a Point of Presence (POP) of each of the major Inter-eXchange Carriers (IXCs). ("Close" might mean within the same Local Access and Transport Area and, for a LAN implementation, also within a specified number of air miles of the POP of each major IXC.)

The vBNS will operate under the same Acceptable Use Policy (AUP) as the current NSFNET BNS. However, the NAPs will operate in an "AUP-free" mode. This will permit, for example, two attached networks to exchange traffic without violating AUPs of any other attached network.

B. NAP manager/routing authority. Under the current cooperative agreement that provides for backbone network services, the same consortium which provides the BNS also acts as routing authority. Under the new cooperative agreements described here, the routing authority function will be separated from the provision of the BNS. The NAP Manager/RA will provide for equitable treatment of the various network services providers during routing administration and will provide for a common database of route information to promote stability of the network.

By the use of specified external gateway protocols such as BGP and IDRP (Boarder Gateway Protocol and Inter-Domain Routing Protocol), the NAP Manager/RA will create a database of all announced networks and their paths of accessibility. This information will be maintained in route databases which will be deployed at each NAP. Attached networks will be able to utilize this information while creating and modifying their own routing tables.

The NAP Manager/RA organization will also provide certain other services which will facilitate the logical interconnection of the attached networks. In particular, it will assist in the development of new routing technologies and the deployment of simplified routing strategies for attached networks.

The specific anticipated duties of the NAP Manager/RA organization are as follows:

- Establish and maintain, possibly with subcontractors, the specified NAPs for the purpose of connecting the vBNS and other appropriate networks. NAPs are to be AUP-free and can be proposed to be implemented as LANs or MANs or other innovative approaches. NAPs must operate at speeds of at least 100 mbps and must be able to be upgraded as required by demand and usage and by Program goals.
- Develop and establish attachment policies (including attachment fee schedules) which would apply to networks that connect to NAPs.
- Specify reliability and security standards for the NAPs and ensure that these standards are met.
- Specify appropriate access procedures to the NAPs for authorized personnel of connecting networks and ensure that these procedures are carried out.
- Provide appropriate NAP accounting and statistical capabilities.
- Establish and maintain a Route Server database at each NAP by exchanging routing information with and dynamically updating routing information from the attached Autonomous Systems using BPG and IDRP. NAPs must support the switching of IP and CLNP packets (Internet Protocol and ConnectionLess Networking Protocol).
- Work to ensure routing stability.
- Develop advanced routing standards and technologies in cooperation with the global Internet community.

- Provide for simplified routing strategies for attached networks such as default routing.
- Propose and establish procedures to work with the vBNS Provider and personnel from other attached networks to resolve problems and to support end-to-end connectivity and quality of service for network users.
- Promote distributed operation of the Internet.

C. Very high speed backbone network services provider. Since its inception, the NSFNET has been a leader in providing for high speed networking services for the research and education community. The vBNS will continue this tradition and will provide for: high speed interregional connectivity; multimedia traffic in support of visualization, collaboration, and distance learning and, distributed computing capabilities.

The vBNS must be able to switch both IP and CLNP packets and it must operate at speeds of at least 155 megabits per second. The vBNS Provider must participate in the development of advanced routing technologies such as type of service and precedence routing.

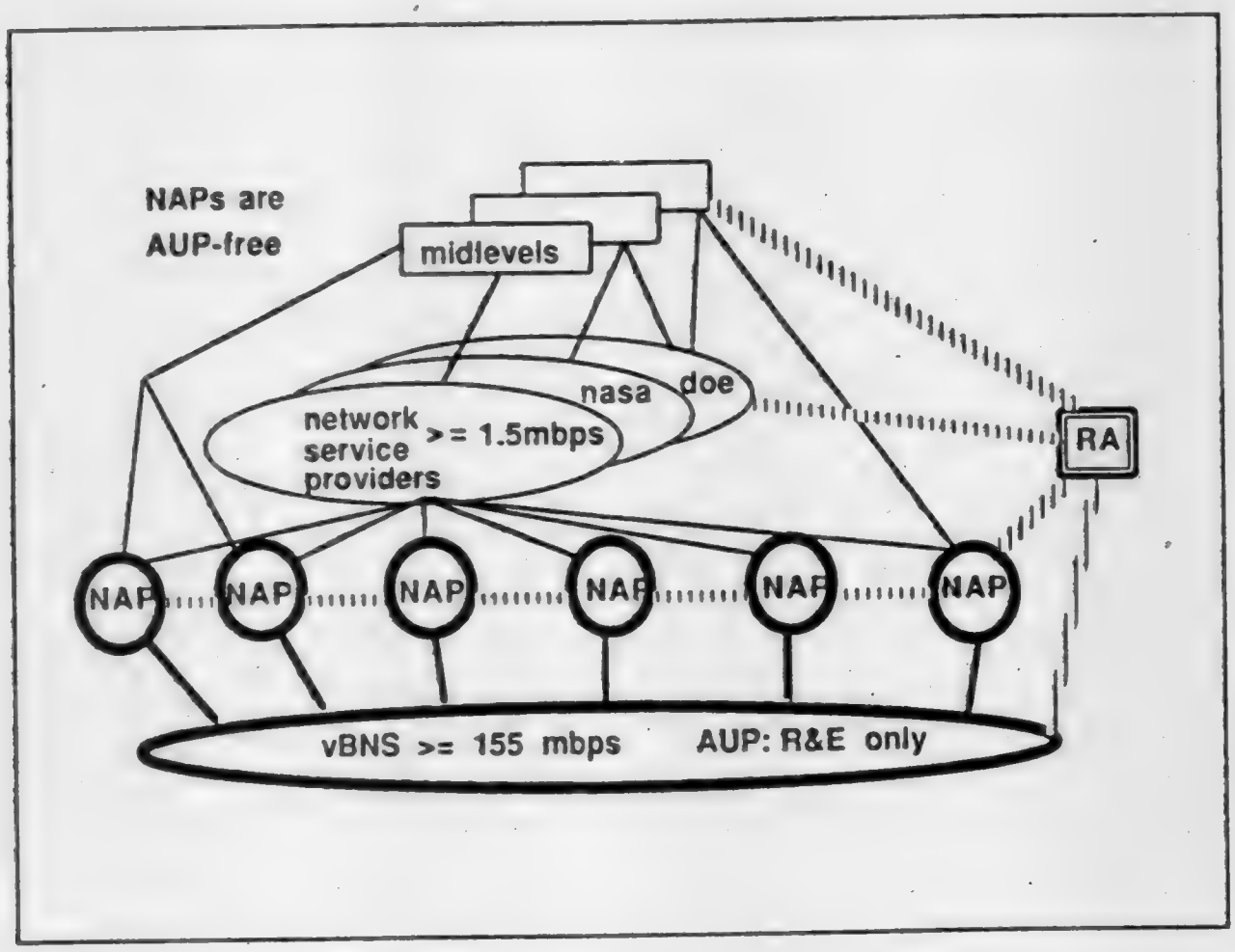

Figure 1. NSF's view of the network architecture

The vBNS may have connections and customers beyond those specified by NSF as long as the quality and quantity of required services for NSF-specified customers are not affected. In this regard, the vBNS Provider must be able to distinguish between NSF customer traffic and that of other customers and to report traffic statistics based on these categories. Figure 1 shows the network architecture from the point of view of NSF.

The specific anticipated duties of the vBNS Provider are as follows:

- Establish and maintain a 155 mbps or higher transit network which switches IP and CLNP packets and which connects to all NAPs in order to provide NSFNET users with a vBNS.
- Propose and establish a set of quality of service metrics which will be used to characterize the proposed network services and to ascertain and publicize network performance on an ongoing basis.
- Subscribe to the policies of the NAP Manager/RA; implement BGP- and IDRP-based procedures to interact with those of that organization to assist in establishing and maintaining the route database.
- Provide for real-time multimedia services, including multicasting and video teleconferencing.
- Propose and establish procedures to work with the NAP Manager/RA and personnel from other attached networks to resolve problems and to support end-to-end connectivity and quality of service for network users.
- Participate in the development of advanced routing technologies (such as type of service or precedence routing) in cooperation with the global Internet community.
- Propose and establish a schedule to enhance both the speed at which the

network operates and other quality of service measures and type of service advances in line with NSF's broad program goals and consistent with anticipated NSF customer requirements and available funding.

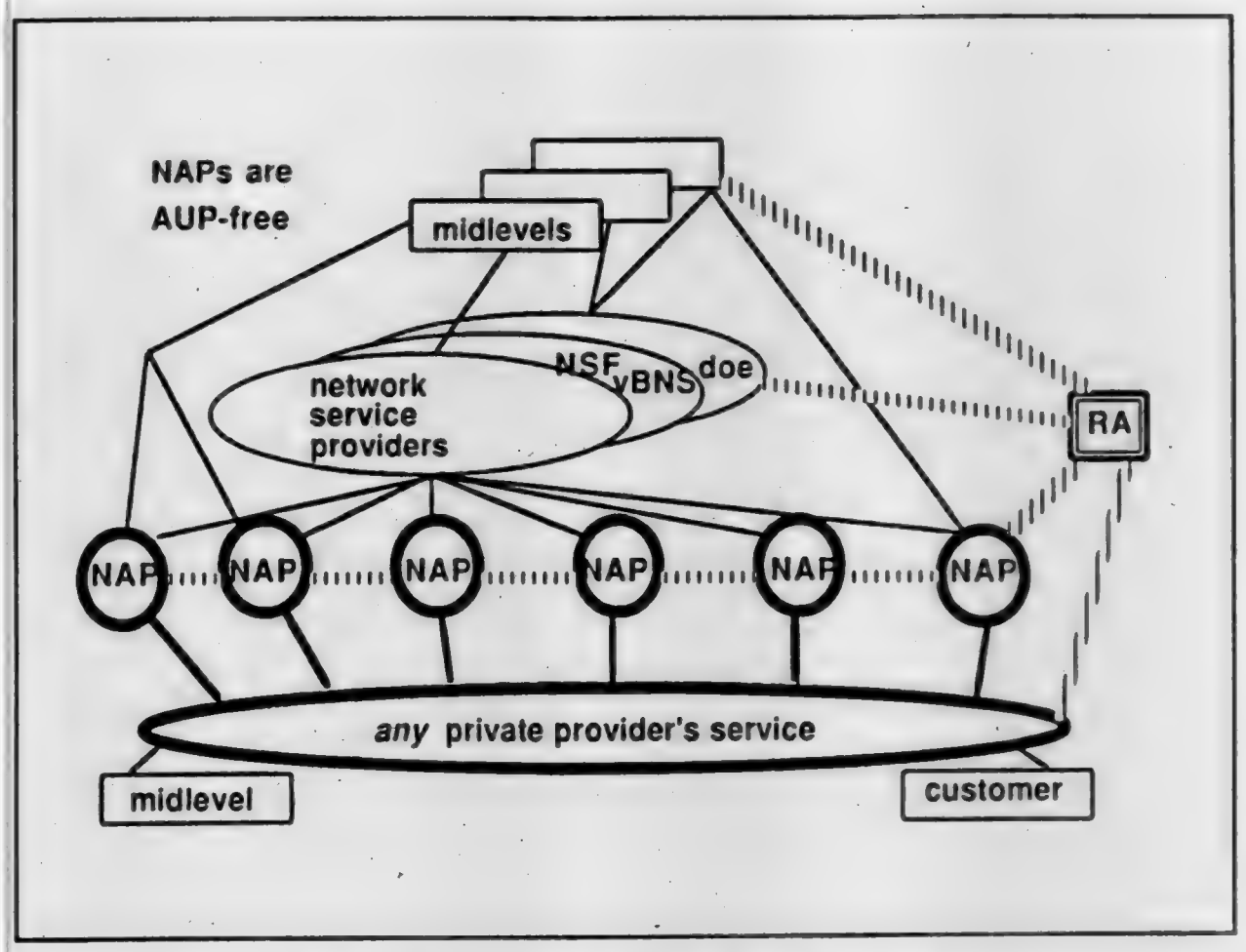

Figure 2. *Any* provider's view of the network architecture

D. Other Architectural and Policy Considerations

It is anticipated that networks other than the vBNS will connect to the NAPs. Examples of such networks include: other federally sponsored networks; other service providers for research and education; service providers for traffic which is not limited to the support of research and education; and international networks.

In each case, attachment of a network to one or more NAPs will require the payment of both an initial and an annual fee (which will depend on parameters such as number of NAP connections and bandwidth of the connections). Fees will be determined by the NAP Manager/RA and NSF so as to recover the expenses associated with the NAPs and with the NAP Manager/RA.

To attach to a NAP, a network must also subscribe to the policies of the NAP Manager/RA and implement BGP- and IDRP-based procedures to interact with those of the NAP Manager/RA to assist in establishing and maintaining the route database. Networks attaching to NAPs must operate at speeds of 1.5 mbps or greater and must be able to switch both IP and CLNP packets. Additionally, attached networks must be able to support video teleconferencing, either by packet video or by circuits multiplexed from their total bandwidth.

As shown in Figure 2, when the network architecture is viewed from the perspective of *any* network service provider, the vBNS is just another service provider. (This may even be the view for the network which underlies the vBNS if that network has customers beyond those specified by NSF.)

NSFNET midlevel networks may connect either to network services providers which are connected to NAPs or directly to NAPs. NSF will support for one year a single such connection fee for midlevel networks which are currently connected to the NSFNET Backbone Network Service. In the following years of the cooperative agreement, NSF support for the connection fee will decrease and the midlevel network will need to increase other sources of support correspondingly. NSF support of this fee will cease after the (first) term of the NAP Manager/RA Cooperative Agreement.

It is anticipated that a number of research institutions will want to take advantage of the advanced capabilities of the vBNS as they access facilities such as the NSF Supercomputing Centers and the NSF Science and Technology Centers, especially for multimedia-based and distributed computing-based applications. Although the subject is not addressed in this solicitation, NSF expects to support such institutional requirements where

feasible based on the scientific merit of proposed applications.

Each network connected to the NAPs may be required to provide access to the NAP Manager/RA to certain network Management Information Base (MIB) variables. (Specific MIB variables may be listed in the final solicitation, but the list of variables will be subject to change as conditions warrant.) The use of these MIB variables will be to promote the performance and stability of the network.

Karen L. Sandberg,

Grant and Contract Officer, Division of Grants and Contracts.

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federal register

Monday
June 15, 1992

Part III

Department of Commerce

International Trade Administration

United States-Canada Free Trade Agreement, Article 1904 Panel Rules Amendments; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Panel Rules Amendments

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Amendments to Rules of Procedure for Article 1904 Binational Panel Reviews.

SUMMARY: The United States and Canada have amended the Rules of Procedure for Article 1904 Binational Panel Reviews. These amendments are intended to improve the panel review process under chapter 19 of the U.S.-Canada Free Trade Agreement in order to increase its efficiency and effectiveness.

EFFECTIVE DATE: These amendments to the Article 1904 Panel Rules shall take effect on the date of publication in the **Federal Register**. The Rules of Procedure, as amended, apply to all panel proceedings commenced on or after the effective date of the amendment. The amended Rules may be referred to for guidance in respect of panel proceedings commenced prior to the effective date except that in no case shall any of the times prescribed for the taking of any action be altered.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, or Robert J. Heilferty, Attorney-Adviser, Office of the Chief Counsel for Import Administration (202) 377–5285. For procedural matters respecting cases under panel review, contact James R. Holbein, U.S. Secretary, Binational Secretariat, (202) 377–5438.

SUPPLEMENTARY INFORMATION:

Background

Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. These panels, acting in place of national courts will, if requested, expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country. Title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law No. 100–449, 102 Stat. 1851 (1988) amends U.S. law to implement Chapter 19 of the Agreement.

The Rules of Procedure for Article 1904 Binational Panel Reviews are intended to give effect to the provisions of Chapter 19 of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement. These rules set forth the procedures for requesting, conducting and completing panel reviews.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established the Rules, which were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). All panel reviews are conducted in accordance with the Rules, as amended.

The further amendments to these rules contained in this notice are the result of negotiations between the United States and Canada to implement Article 1904 of the Agreement. A comprehensive review and request for comments on the Article 1904 Binational Panel Rules was announced in the **Federal Register** on December 27, 1989 (54 FR 53166). In addition, all panelists and counsel for every participant in the panel reviews commenced prior to July 1991 received a letter soliciting their suggestions for improving the Article 1904 Panel Rules. These comments, combined with the experiences of the investigating authorities and Binational Secretariats, suggested that improvements could be made which would more efficiently and effectively carry out the provisions of Article 1904 of the Agreement.

A summary description of the amendments to the Article 1904 Panel Rules is contained in the following section-by-section analysis.

Rule 2

The amendment to rule 2 is intended to clarify that where there is a "gap" in the panel rules and a situation is not covered, the panel may look to the rules of procedure of the Court that would otherwise have jurisdiction as well as to the Article 1904 Panel Rules.

Rule 3

The definition of "interested person" was amended to include persons who, while not entitled to commence proceedings, would be entitled to appear and be represented in domestic judicial review. The definition of interested person was previously restricted to those persons entitled to commence judicial review proceedings. This restriction could have been construed to deny standing to parties, particularly those who had appeared before the U.S. International Trade Commission proceedings, that would have standing as defendant-intervenors, but not as plaintiffs, in U.S. courts. To deny standing to such parties would be contrary to Article 1904.7 of the Agreement, which provides that any party that would have standing to appear and be represented in a domestic judicial review shall have the right to appear before a panel. The amended definition of "interested person" is intended to cure only this particular inadvertent oversight.

The definition of "legal holiday" was amended to clarify that the term includes days other than the listed holidays on which the offices of the Government of Canada are officially closed and partial days on which the offices of either the Government of the United States or the Government of Canada are officially closed, *i.e.*, days on which government offices are closed early on account of inclement weather or other reasons.

In light of the changes to the definition of "interested person," which now includes those who "would be entitled to appear and be represented in judicial review", subrule (d) of the definition of "participant" is now covered by subrule (c) and subrule (d) has been deleted.

The Canadian definition of "service list" was amended so that it includes only those persons eligible to participate in the panel review. The previous definition of "service list" required service on all persons who were involved in the administrative proceeding at the Canadian International Trade Tribunal, which could include participants that appeared in respect of goods other than those of the United States.

Rule 10

Rule 10 has been amended and four subrules created. For ease of reading, the first three sentences of former rule 10 have been restructured and now comprise subrules (1) and (2). New subrule (3) provides for removing a document, filed after the announcement of a panel, that is either not provided for in these Rules (such as a surreply) or is not in accordance with the rules (*e.g.*, a late filing). After the panel is formed, and if the panel has delegated the power to the chairperson under rule 17, the responsible Secretary may refer such a document to the chairperson and shall follow the chairperson's instructions to retain the document in the file or to

remove and return it to the submitter. Regardless of the chairperson's instructions, new subrule (4) provides that the participants can appeal the decision to the panel through appropriate motions.

Rule 13

Subrule 13(2) was amended to provide for the delegation of authority from the investigating authority to authorized persons for the issuing of Disclosure Orders (in Canadian panel reviews) or Protective Orders (in U.S. panel reviews) to the Secretary or staff of the Secretariat.

Rule 14

Former subrules 14(1) and 14(2), dealing with Disclosure Undertakings and Protective Order Applications for panelists, assistants to panelists, court reporters and translators, now appear in a new rule 49. Rule 14 now deals exclusively with the duties of the Secretaries. Subrule 14(1) replaces former subrule (3), reflecting the current practice, which is that the responsible Secretary forwards to the investigating authority one original and six copies of any Disclosure Undertaking or Protective Order Application filed by a panelist, assistant to a panelist, court reporter or translator. The rule was expanded to include amendments or modifications to such persons' protective order applications or disclosure undertakings. Subrule (2) is essentially identical to former subrule (3), except that only one copy of a Disclosure Order or Protective Order need be filed with the responsible Secretariat. Current subrule (3) helps ensure that the responsible Secretary is aware of any changes to the terms under which a panelist, assistant to a panelist, court reporter or translator has access to proprietary information.

Rule 17

Two new subrules have been added to rule 17. Subrule (2) was added to allow the panel to delegate to the chairperson the authority to reject filings in accordance with rule 10 and to grant certain consent motions. This new authority is intended to discourage improper filings and expedite approval of unopposed motions. Because the Agreement requires that all decisions be rendered by the panel, subrule (3) provides that a decision by the chairperson under subrule 17(2) be issued as an order of the panel. Subrule (4) contains the text of former subrule (2).

Rule 20

Rule 20 has been amended by adding three subrules. As a result, the text of former rule 20 is redesignated as subrule 20(1). In an effort to avoid last-minute requests for extension, subrule 20(2) requires that requests for extensions of time for filing be filed no later than ten days prior to the day the filing would otherwise be due. Responses to the motion must be filed within seven days of the extension request. Because rare circumstances may preclude meeting these filing requirements, subrule 20(3) permits a notice of motion for leave to file out of time but requires the participants to give reasons why they need additional time and why they failed to meet the deadline for requesting an extension. Subrule 20(4) provides that the panel will normally rule on the motion before the filing deadline expires.

Rule 23

In order to ensure protection of all information in the panel review process, subrule 23(c) has been amended to ensure that any amendments, modifications or revocations of Disclosure Orders or Protective Orders are served on all counsel for participants.

Rule 24

This rule was amended by adding the term "expedited," to clarify that mail service, as well as delivery courier service, must be expedited.

Rule 25

Like rule 24, this rule was amended by adding the term "expedited," to clarify that mail service, in addition to delivery courier service, must be expedited.

Rule 35

Subrule 35(1)(c)(ii) was amended to clarify that an interested person that has not filed a complaint may support some parts of the determination, but if the interested person intends to support any portion of the determination, that interested person must file a Notice of Appearance in accordance with rule 40. Former subrule (c)(iii) was deleted because the amended definition of "interested person" made it redundant. Former subrule (iv) is redesignated subrule (iii).

Rule 38

Subrule 38(2) was added to address circumstances in which the final determinations of both U.S. investigating authorities are reviewed jointly. In the event that both determinations are remanded to the respective investigating authorities, subrule (2) permits the panel to stay review of the International Trade Commission's remand determination until the Department of Commerce has filed its remand determination. This amendment allows panels to consider the situation in which a redetermination by the Commission is dependent upon the results of Commerce's redetermination. Former subrule (2) is renumbered as subrule (3).

Rule 39

The amendments to subrules 39 (1) and (2), and the addition of subrule (3) derive from the amendment to the definition of "interested person" and concern the standing requirement for persons filing complaints. This requirement is contained in subrule (3), which has been added to clarify that a person's entitlement to file a complaint is based upon whether that person would otherwise be entitled to commence proceedings for judicial review. The amendment to subrule (1) is a parallel change and subrule (2)(c) now requires that the complaint include a statement of the complainant's standing. Schedule C(3) has been modified accordingly. Amended subrule (4) and new subrules (5) and (6) create a procedure for amending complaints. Amended complaints may be filed "as of right" until five days before the deadline for filing Notices of Appearance; after that time, permission to amend complaints must be sought from the panel. The period for filing amended complaints "as of right" ends five days before Notices of Appearance are due in order to give interested parties who are making the decision whether to participate sufficient notice of the terms of the complaint(s). According to subrule 39(5), however, no complaint can be amended when there is less than 20 days left to file briefs. This provision ensures that persons filing briefs have at least 20 days to respond to all issues raised. Finally, subrule 39(6) provides that where a panel does not issue a decision on a motion to amend complaints, the motion is deemed denied.

Rule 40

With respect to filing Notices of Appearance, a number of changes have been made to clarify the filing requirements of the rule. Subrule 40(1)(c) clarifies that an appearance may be made in support of both portions of the final determination and portions of the complaint(s). Subrule (1)(d) requires a statement as to the grounds for a person's entitlement to file a Notice of Appearance, in order to put all parties on notice at an early stage in the

proceedings of any issues regarding the proposed participant's standing. The provisions of subrule (1)(e) repeat those previously found in subrule 40(f). Finally, subrule (2) is a new provision requiring that an interested person that has filed a complaint but that also wishes to support portions of the final determination must file a Notice of Appearance containing a statement to that effect and a statement as to the interested person's entitlement to participate. In addition, a model form has been provided in Schedule C(4).

Rule 41

Rule 41 has been amended to add two new paragraphs. Subrule (3) has been amended to provide that, at the time the Designation of Record is filed, a participant need file proof of service only on the investigating authority. New subrule (4) allows participants to delay by two days service of the record designations on other participants. Under the prior rule, which required service of record designations on all the participants before all participants had been identified, some participants believed that to comply with the rule they had to serve all the parties on the agency's service list. Delay of this service requirement until after the deadline for filing Notices of Appearance ensures that all participants have been identified before the designations must be served. Subrule (5) has been included to clarify that failure to designate an administrative record document does not preclude the filing of that document as an attachment to the brief. This clarification should encourage designation of less than the entire record in a case.

Rule 49

Subrule 49(1) contains language previously contained in subrule 14(1). The requirement that the investigating authority issue a Disclosure Order or ■ Protective Order was formerly contained in subrule 14(2). Subrule (2) is intended to permit delegations of authority to facilitate issuance of Disclosure Orders. These provisions are more appropriately located in this section of the rules, which deals with the internal functioning of the panel. Rule 49 generally clarifies that panelists, their assistants, court reporters, and translators submit their Disclosure Undertakings or Protective Order Applications to the responsible Secretary, who forwards them to the investigating authority. This is done to avoid contact between the defending participant and persons other than the Secretariat involved either in adjudicating or rendering technical support. In addition, new subrules (3) & (4) ensure that the responsible Secretary is informed of any amendments, modifications, or revocations of a protective order or disclosure order.

Rule 52

Former rule 52 now appears as subrule 52(1) and has been amended to require a person who has been issued a protective order or disclosure order (other than those identified in rule 49) to file with the responsible Secretariat any modifications or amendments thereto made by the investigating authority. In addition, the requirement that four copies of the order be filed with the Secretariat has been reduced to one copy. A new subrule (2) requires that a person whose disclosure order or protective order has been revoked file notice of such revocation with the Secretariat.

Rule 53

This rule is amended to reflect that the investigating authority may modify, as well as amend, a disclosure order or protective order at any time. By specifying modifications, the rule more closely corresponds to the U.S. International Trade Commission's regulations.

Rule 60

A number of changes have been made to this rule. Amended subrule 60(1) states that a participant who files either a complaint under rule 39 or a Notice of Appearance in support of any part of a complaint shall file a brief within 60 days of the last day on which the Administrative Record is filed. This brief is restricted in scope to support of allegations contained in a complaint. The amendments to subrule (2) make clear that participants that support the final determination in whole or in part are to file briefs limited to such positions within 60 days after the complainant briefs are filed. These changes do not change the timing of brief filing but clarify that a participant may file both a brief in support of portions of a complaint and another brief in support of portions of the determination. The amendments to subrule (3) streamline the language previously found in this subrule. To facilitate the panelists' consideration of the briefs, subrule (4) provides for the filing of an appendix containing authorities principally relied upon. The appendix is not, however, to include items from the administrative record. This appendix must be filed within 10 days of the filing of reply briefs under subrule (3). Rule 62A describes the contents of an appendix. Subrules (4)–(6) have been renumbered as subrules (5)–(7).

Rule 61

Subrule 61(3) has been amended to provide that, where no brief is filed in support of the investigating authority by either the investigating authority or an interested party, a panel may, of its own motion, issue its decision.

Rule 62

Rule 62 has been amended to add the requirement that the table of authorities in part I of a brief shall reference the page(s) of the brief where each authority is cited, arrange the cases alphabetically, and mark the authorities principally relied upon with an asterisk. Subrule 62(1) also includes technical changes that conform the references to amendments elsewhere in these rules. Newly added subrule (3) provides that reply briefs also shall include a table of contents and a table of authorities.

Rule 62A

A new rule 62A has been created to give specific guidance regarding the appendix that subrule 60(4) requires. Subrule 62A(1) describes the contents of the appendix to the briefs. Subrule 62A(2) provides that the appendix will be compiled by a participant who filed a brief in support of a complaint as designated by all the participants who have filed briefs. Subrule 62A(3) states that the cost of compiling the appendix will be borne equally by all participants who have filed briefs.

Rule 63

The provision for a statement as to whether other participants consent to a motion, which was contained in subrule 63(3)(d), has been deleted and replaced by subrule 63(5), which provides that any notice of motion consented to by all parties be entitled a consent motion. This change serves several purposes. It helps the responsible Secretary identify consent motions in order to expedite approval of such motions by the chairperson under rules 10 and 17. It also makes clear that if the motion is not a consent motion, the moving participant is not required to expend valuable time attempting to determine every other participants' position with respect to the motion.

Rule 64

This rule is amended by adding a cross-reference to subrule 20(2) to clarify that a response to a notice of motion requesting an extension of time must be filed within 7 days after the notice of motion is filed.

Rule 65

This rule has been amended to change the cross-reference to subrule 66(2), reflecting changes made to rule 66.

Rule 66

Subrule 66(1) has been rephrased to clarify that motions may be disposed of based solely on the pleadings filed in connection with that motion, *i.e.*, without oral argument. Subrule (2) makes explicit that oral argument on a motion may be in person or by means of a telephone conference call. A new subrule (3) authorizes the panel to deny a motion before responses to the pleading are filed.

Rule 70

Subrule 70(1) has been restructured to introduce certain limitations on the circumstances in which a subsequent authority may be brought before the panel.

Rule 72

This rule has been amended to clarify that the publication requirement of the rule applies to decisions of the panel under rule 74 and therefore does not require publication of every procedural order issued by a panel.

Rule 74

This rule has been amended to require that rule 74 decisions be released by noon on the date of issuance. This requirement is meant to relieve the strains placed on both the Secretariats and the participants when decisions are released at or after the close of the business day.

Rule 75

This rule has been amended to include more specific provisions regarding determinations on remand. Generally, the amendments eliminate the step of requesting review on remand. If a participant intends to challenge the remand determination, it does so by simply filing a written submission. Specifically, subrule (2) addresses remands in which the agency has supplemented the record on remand while subrule (3) governs remands in which the record remains unchanged. Under subrule (2)(a), the investigating authority must file an index of the supplementary record items and, subject to rule 46, a copy of each non-privileged document within 5 days after filing the remand determination. The timing of briefs filed to challenge a remand and to respond to the challenge is set from the filing of the supplemental record and index under subrule (2) and from the filing of the remand determination under subrule (3). In both cases, a challenger has 20 days in which to file and participants in support of the remand determination have 20 days in which to reply. Subrule 75(4) states that, where no written submissions are filed challenging the remand determination, and where no rule 20 motion is pending, the panel will affirm the remand determination. Where a remand determination is challenged, subrule (5) requires that a panel issue a written decision within 90 days of the Determination on Remand being filed.

Rule 75A

This new rule has been added to identify some factors which the panel may take into account in setting the date by which a remand determination shall be due. Subrule (a) recognizes that the date on which a remand regarding the same goods is due from the other investigating authority may be relevant. Subrule (b) provides that the panel may also consider the effect the remand determination from the other investigating authority may have on the deliberations of the investigating authority whose determination is under review.

Rule 77

Regarding a notice of motion requesting that a panel re-examine its decision, subrule 77(5) has been added to provide that, where a panel has not ruled on the motion prior to the issuance of a notice of completion pursuant to rule 80, the motion shall be deemed denied.

Rule 80

This rule consolidates the list of events the thirty-first day after which a Notice of Completion of Panel Review will be effective. Those events are: (1) Dismissal for failure to file briefs pursuant to subrule 61(2);

(2) Dismissal by decision of the panel upon a motion pursuant to subrule 73(1);

(3) Dismissal upon a consent motion pursuant to subrule 73(2); and

(4) Affirmance of the agency's decision pursuant to rule 74 (a panel also has an option under rule 74 to remand to the agency but eventually, the panel will affirm the agency's decision under rule 74). This list subsumes provisions previously found in rules 80–84.

Rule 81

This rule has been amended to instruct the responsible Secretary, in the event of a Request for Extraordinary Challenge Review, to publish a Notice of Completion of Panel Review to be effective on the day after the day referred to in rule 59 or subrule 60(a) of the Extraordinary Challenge Committee Rules. The provisions of the original rule have been replaced by subrules 80(a) and (d).

Rule 82

The substance of this rule has been removed to subrule 80(d) and this rule is reserved.

Rule 83

This rule is not necessary because, following a decision to review a remand pursuant to subrule 75(5), the panel will either remand again to the administrative agency, or affirm the agency's decision and issue an order pursuant to rule 74. Therefore, the rule has been removed and reserved.

Rule 84

Amended rule 81 incorporates instructions to the responsible Secretary to publish the Notice of Completion of Panel Review and hence this rule is removed and reserved.

Rule 85

This rule is amended to add that panelists are also discharged from their duties on the day on which an Extraordinary Challenge Committee vacates a panel review pursuant to subrule 60(b) of the Extraordinary Challenge Committee Rules.

RULES OF PROCEDURE FOR ARTICLE 1904 BINATIONAL PANEL REVIEWS, U.S.-CANADA FREE TRADE AGREEMENT

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Preamble

The Parties,

Having regard to Chapter Nineteen of the Free Trade Agreement between Canada and the United States of America;

Acting pursuant to Article 1904.14 of the Agreement;

Adopt the following rules of Procedure, which shall come into force on the same day as the Agreement comes into force and shall from that day govern all panel reviews conducted pursuant to Article 1904 of the Agreement.

Short Title

1. These rules may be cited as the Article 1904 Panel Rules.

Statement of General Intent

2. These rules are intended to give effect to the provisions of Chapter Nineteen of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement and are designed to result in decisions of panels within 315 days after the commencement of the panel review. The purpose of these rules is to secure the just, speedy and inexpensive review of final determinations in accordance with the objectives and provisions of Article 1904. Where a procedural question arises that is not covered by these rules, a panel may adopt the procedure to be followed in the particular case before it by analogy to these rules or may refer for guidance to rules of procedure of a court that would otherwise have had jurisdiction in the importing country. These Article 1904 Panel Rules shall not be construed to extend or limit the jurisdiction of the panels.

Interpretation

3. In these rules,

Agreement means the Free Trade Agreement between Canada and the United States of America, signed on January 2, 1988;

Code of Conduct means the code of conduct established by the Parties pursuant to Article 1910 of the Agreement;

Complainant means a Party or interested person that files a Complaint pursuant to rule 39;

Counsel means:

(a) With respect to a panel review of a final determination made in the United States, a person entitled to appear as counsel before a federal court in the United States; and

(b) With respect to a panel review of a final determination made in Canada, a person entitled to appear as counsel before the Federal Court of Canada;

Counsel of record means a counsel referred to in subrule 21(1);

Deputy Minister means the Deputy Minister of National Revenue for Customs and Excise or his successor and includes any person authorized to perform any power, duty or function of the Deputy Minister under the Special Import Measures Act;

Final determination includes, in the case of Canada, a definitive decision within the meaning of subsection 77.1(1) of the Special Import Measures Act;

First Request for Panel Review means:

(a) Where only one Request for Panel Review is filed for review of a final determination, that Request, and

(b) Where more than one Request for Panel Review is filed for review of the same final determination, the Request that is filed first;

Government information means:

(a) With respect to a panel review of a final determination made in Canada, information

(i) The disclosure of which would be injurious to international relations or national defence or security,

(ii) That constitutes a confidence of the Queen's Privy Council for Canada, or

(iii) Contained in government to government correspondence that is transmitted in confidence, and

(b) With respect to a panel review of a final determination made in the United States, information classified in accordance with Executive Order No. 12065 or its successor;

Interested person means a person that, pursuant to the laws of the country in which a final determination was made, would be entitled to appear and be represented in a judicial review of the final determination;

Investigating authority means the competent investigating authority that issued the final determination subject to review;

Legal holiday means:

(a) With respect to the United States section of the Secretariat, Saturday, Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any day designated as a holiday by the President or the Congress of the United States, and any day on which the offices of the Government of the United States located in the District of Columbia are officially closed in whole or in part; and

(b) With respect to the Canadian section of the Secretariat, Saturday, Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day (third Monday in May), Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the section is located, and any day on which the offices of the Canadian section of the Secretariat are officially closed in whole or in part;

Panel means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement for the purpose of reviewing a final determination;

Participant means any of the following that files a Complaint pursuant to rule 39 or a Notice of Appearance pursuant to rule 40:

(a) A Party,

(b) An investigating authority, and

(c) An interested person;

Party means the Government of Canada or the Government of the United States;

Person means:
(a) An individual,
(b) A Party,
(c) An investigating authority,
(d) A government of a province, state or other political subdivision of the country of a Party,
(e) A department, agency or body of a Party or of a government referred to in paragraph (d), or
(f) A partnership, corporation or association;
Pleading means a Request for Panel Review, a Complaint, a Notice of Appearance, a Change of Service Address, a Designation of Record, a Notice of Motion, a Notice of Change of Counsel of Record, a brief and any other written submission filed by a participant;
Privileged information means:
(a) With respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada or constitutes part of the deliberative process with respect to the final determination and with respect to which the privilege has not been waived, and
(b) With respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to which the privilege has not been waived;
Proof of service means:
(a) With respect to a panel review of a final determination made in Canada,
(i) An affidavit of service stating by whom the document was served, the day of the week and date on which it was served, where it was served and the manner of service, or
(ii) An acknowledgement of service by counsel for a participant stating by whom the document was served, the day of the week and date on which it was served and the manner of service and, where the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel, and
(b) With respect to a panel review of a final determination made in the United States,
(i) A certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service, or
(ii) An acknowledgement of service by the person served stating by whom the document was served and the date and manner of service;
Proprietary information means:
(a) With respect to a panel review of a final determination made in the United States, business proprietary information under the laws of the United States, and
(b) With respect to a panel review of a final determination made in Canada, information that was accepted by the Deputy Minister or the Tribunal as confidential in the proceedings before the Deputy Minister or the Tribunal and with respect to which the person that designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;
Responsible Secretariat means the section of the Secretariat located in the country in which the final determination under review was made;
Responsible Secretary means the Secretary of the responsible Secretariat;
Secretariat means the Secretariat established pursuant to Article 1909 of the Agreement;
Secretary means the Secretary of the United States section or the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on behalf of the Secretary;
Service address means:
(a) With respect to a Party, the facsimile number, if any, and address filed as the service address of the Party with the Secretariat,
(b) With respect to a person other than a Party, the facsimile number, if any, and address of the counsel of record for the person or, where the person is not represented by counsel, the facsimile number, if any, and address set out by the person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served, or
(c) Where a Change of Service Address has been filed by a Party or the person, the facsimile number, if any, and address set out as the service address in that form;
Service list means, with respect to a panel review,
(a) Where the final determination was made in the United States, the list maintained by the investigating authority of persons that have been served in the proceedings leading to the final determination, and
(b) Where the final determination was made in Canada, the list of persons to whom notice was sent of the final determination made in respect of goods of the United States, or the list of persons that appeared in the proceedings before the Tribunal in respect of goods of the United States;
Tribunal means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf.

4. The definitions set forth in Article 1911 of the Agreement are hereby incorporated into these rules.

5. Where these rules require notice to be given, it shall be given in writing.

Part I—General

Duration and Scope of Panel Review

6. A panel review commences on the day on which a first Request for Panel Review is filed with the Secretariat and terminates on the day on which a Notice of Completion of Panel Review is effective.

7. Panel review shall be limited to: (a) The allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review; and
(b) Procedural and substantive defenses raised in the panel review.

Responsibilities of the Secretary

8. The normal business hours during which the offices of the Secretariat shall be open to the public shall be 9 a.m. to 5 p.m. each weekday except
(a) In the case of the United States section of the Secretariat, legal holidays of that section; and
(b) In the case of the Canadian section of the Secretariat, legal holidays of that section.

9. The responsible Secretary shall provide administrative support for each panel review and shall make the arrangements necessary for the oral proceedings and meetings of each panel, including court reporters to record the oral proceedings and, if required, interpreters to provide simultaneous translation.

10. (1) Each Secretary shall maintain a file for each panel review. Subject to subrules (3) and (4), the file shall be comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these rules, in the panel review.
(2) The file number assigned to a first Request for Panel Review shall be the Secretariat file number for all documents filed or issued in that panel review. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.
(3) Where, after the announcement of a panel pursuant to rule 44, a document is filed that is not provided for in these rules or that is not in accordance with the rules, the responsible Secretary may refer the unauthorized filing to the chairperson of the Panel for instructions, provided such authority has been

delegated by a Panel to its chairperson pursuant to rule 17. The chairperson may direct the Secretary either to retain the document in the file or to return the document to the person who filed the document.

(4) Where the chairperson directs the Secretary to retain the document in the file, such action shall be without prejudice to a motion to strike such document. Where the chairperson directs the Secretary to return the document, such action shall be without prejudice to a motion for leave to file the document.

11. The responsible Secretary shall forward to the other Secretary a copy of all documents filed in the office of the Secretary in a panel review and all orders and decisions issued by a panel.

12. Where under these rules a responsible Secretary is required to cause a notice or other document to be published in the **Canada Gazette** and the **Federal Register**, the responsible Secretary and the other Secretary shall each cause the document to be published in the publication of the country in which that section of the Secretariat is located.

13. (1) Each Secretary and every member of the staff of the Secretariat shall, before taking up his duties, file

(a) A Disclosure Undertaking, in the form referred to in Schedule A, with the Deputy Minister and the Tribunal; and

(b) A Protective Order Application, in the form referred to in Schedule B, with the International Trade Administration of the United States Department of Commerce and the United States International Trade Commission.

(2) Where a Secretary or a member of the staff of the Secretariat files a Disclosure Undertaking or Protective Order Application in accordance with subrule (1), the appropriate investigating authority, including any person authorized to do so by the appropriate investigating authority, shall issue to the Secretary or the member a Disclosure Order or a Protective Order, as the case may be.

14. (1) The responsible Secretary shall file with the investigating authority one original and six copies of any Disclosure Undertaking or Protective Order Application, and any amendments or modifications thereto, filed by a panelist, assistant to a panelist, court reporter or translator pursuant to rule 49.

(2) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter and translator, before taking up his duties in a panel review, files with the responsible Secretariat.

(a) In the case of a panelist, a copy of a Disclosure Order or of a Protective Order, signed by the panelist; and

(b) In any other case, a copy of a Disclosure Order or of a Protective Order.

(3) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter and translator files with the responsible Secretariat any amendment to, modification to or revocation of a Disclosure Order or Protective Order issued by the investigating authority.

15. Where a document containing proprietary information or privileged information is filed with the Secretariat in a panel review, each Secretary shall ensure that:

(a) The document is stored in an area dedicated to the storage of documents containing proprietary information or privileged information and the area is identified as such an area;

(b) The wrapper of the document is clearly marked to indicate that it contains proprietary information or privileged information, as the case may be; and

(c) Access to the document is limited to:

(i) In all cases, officials of and counsel for the investigating authority whose final determination is under review,

(ii) In the case of proprietary information, the person who submitted the proprietary information to the investigating authority or counsel for that person,

(iii) In the case of proprietary information, persons who have filed with the responsible Secretariat a Disclosure Order or Protective Order with respect to the document, and

(iv) In the case of privileged information filed in a panel review of a final determination made in the United States, persons with respect to whom the panel has ordered disclosure of the privileged information under rule 55, if the persons have filed with the responsible Secretariat a Protective Order with respect to the document.

16. (1) Each Secretary shall permit access by any person to the information in the file in a panel review that is not proprietary information or privileged information and shall provide copies of that information on request and payment of an appropriate fee.

(2) Each Secretary shall, in accordance with subrule 15(c) and the terms of the applicable Disclosure Order, Protective Order or order of the panel:

(a) Permit access to proprietary information or privileged information in the file of a panel review; and

(b) On payment of an appropriate fee, provide a copy of the information referred to in subrule (a).

(3) No document filed in a panel review shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a panel.

Internal Functioning of Panels

17. (1) A panel may adopt its own internal procedures, not inconsistent with these rules, for routine administrative matters.

(2) A panel may delegate to its chairperson: (a) The authority to accept or reject filings in accordance with rule 10(3); and

(b) The authority to grant motions consented to by all participants, except motions filed pursuant to rule 20 or 55, a motion for remand of a final determination, or a motion that is inconsistent with an order or decision previously made by the panel.

(3) Any decision of the chairperson referred to in subrule (2) shall be issued as an order of the panel.

(4) Subject to subrule 26(b), meetings of a panel may be conducted by means of a telephone conference call.

18. The deliberations of a panel shall take place in private and remain secret and only panelists may take part in the deliberations. Staff of the responsible Secretariat and assistants to panelists may be present by permission of the panel.

Computation of Time

19. (1) In computing any time period fixed in these rules or by an order or decision of a panel, the day from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holiday of the responsible Secretariat immediately following that day shall be excluded from the computation.

20. (1) A panel may extend any time period fixed in these rules if:

(a) Adherence to the time period would result in unfairness or prejudice to a participant or the breach of a general legal principle of the country in which the final determination was made;

(b) The time period is extended only to the extent necessary to avoid the unfairness, prejudice or breach;

(c) The decision to extend the time period is concurred in by four out of the five panelists; and

(d) In fixing the extension, the panel takes into account the intent of the rules to secure just, speedy and inexpensive reviews of final determinations.

(2) A participant may request an extension of time by filing a notice of motion not later than the tenth day prior to the last day of the time period. Any response to the notice of motion must be filed not later than seven days after the request for an extension of time.

(3) A participant that fails to request an extension of time pursuant to subrule (2) may file a notice of motion for leave to file out of time accompanied by reasons why additional time is required and why the participant has failed to comply with the provisions of subrule (2).

(4) The panel will normally rule on such a motion before the last day of the time period which is the subject of the motion.

Counsel of Record

21. (1) A counsel who signs any document filed pursuant to these rules on behalf of a participant shall be the counsel of record for the participant from the date of filing until a change is effected in accordance with subrule (2).

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and the other participants.

Filing, Service and Communications

22. (1) Subject to subrules 14(3) and 41(7), rule 43, subrule 48(1) and rules 49, 52 and 55, no document is filed with the Secretariat until one original and eight copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

(2) Receipt, date and time stamping, or placement in the file of any document by the responsible Secretariat does not waive any time period fixed for filing and does not mean that the document has been properly filed in accordance with these rules.

23. The responsible Secretary shall be responsible for the service of documents as follows:

(a) Notices of Intent to Commence Judicial Review shall be served on each Party;

(b) Requests for Panel Review, Complaints and Notices of Appearance shall be served on the Parties, the investigating authority and the persons listed on the service list; and

(c) Disclosure Orders and Protective Orders and any amendments, modifications or revocations thereto, decisions and orders of a panel, and Notices of Completion of Panel Review shall be served on the participants.

24. (1) Subject to subrule (4), all documents filed by a participant, other than the administrative record, an item of the administrative record filed pursuant to subrule 41(7) or rule 43 and documents required by rule 23 to be served by the responsible Secretary, shall be served by the participant on the counsel of record of the other participants, or where a participant is not represented by counsel, on the participant.

(2) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(3) Where a document is served by an expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the courier service or is mailed.

(4) A document containing proprietary information or privileged information shall be under seal in accordance with rule 46 and shall be served only on

(a) The investigating authority; and

(b) Participants that have been granted access to the proprietary information or privileged information under a Disclosure Order, Protective Order or order of the panel, as the case may be.

25. Subject to subrule 26(a), service of a document may be effected in the following manner:

(a) By delivering a copy of the document to the service address of the participant;

(b) By sending a copy of the document to the service address of the participant by facsimile transmission or an expedited delivery courier or expedited mail service, such as express mail in the United States or Priority Post in Canada; or

(c) By personal service on the participant.

26. Where proprietary information or privileged information is disclosed in a panel review to a person pursuant to a Disclosure Order or Protective Order, the person shall not

(a) File, serve or otherwise communicate the proprietary information or privileged information by facsimile transmission; or

(b) Communicate the proprietary information or privileged information by telephone.

27. Service on an investigating authority shall not constitute service on a Party and service on a Party shall not constitute service on an investigating authority.

Pleadings and Simultaneous Translation of Panel Reviews in Canada

28. Rules 29 to 31 apply with respect to a panel review of a final determination made in Canada.

29. Either English or French may be used by any person or panelist in any document or oral proceeding.

30. (1) Subject to subrule (2), any order or decision, including the reasons therefor, issued by a panel shall be made available simultaneously in both English and French where

(a) In the opinion of the panel, the order or decision is in respect of a question of law of general public interest or importance; or

(b) The proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) Where: (a) An order or decision issued by a panel is not required by subrule (1) to be made available simultaneously in English and French, or

(b) An order or decision is required by subrule (1)(a) to be made available simultaneously in both English and French but the panel is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant,

the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

31. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) Where a participant requests simultaneous translation of oral proceedings in a panel review, the request shall be made as early as possible in the panel review and preferably at the time of filing a Complaint or Notice of Appearance.

(3) Where the chairperson of a panel is of the opinion that there is a public interest in the panel review, the chairperson may direct the responsible Secretary to arrange for simultaneous

translation of any of the oral proceedings in the panel review.

Costs

32. Each participant shall bear the costs of and incidental to its own participation in any panel review.

Part II—Commencement of Panel Review

Notice of Intent to Commence Judicial Review

33. (1) Where an interested person intends to commence judicial review of a final determination, the interested person shall

(a) Where the final determination was made in the United States, serve a Notice of Intent to Commence Judicial Review on

(i) Both Secretaries,

(ii) The investigating authority, and

(iii) All persons listed on the service list; and

(b) Where the final determination was made in Canada, serve a Notice of Intent to Commence Judicial Review on both Secretaries and all persons listed on the service list.

(2) Where the final determination referred to in subrule (1) was made in Canada, the Secretary of the Canadian section shall serve a copy of the Notice of Intent to Commence Judicial Review on the investigating authority.

(3) Every Notice of Intent to Commence Judicial Review referred to in subrule (1) shall include the following information (model form provided in Schedule C(1)):

(a) The information set out in subrules 58(1)(c) to (f);

(b) The title of the final determination for which judicial review is sought, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the **Canada Gazette** or the **Federal Register**; and

(c) The date on which the notice of the final determination was received by the other Party if the final determination was not published in the **Canada Gazette** or the **Federal Register**.

Request for Panel Review

34. (1) A Request for Panel Review shall be made in accordance with the requirements of

(a) § 77.11 or § 96.3 of the Special Import Measures Act and regulations made thereunder;

(b) section 516A of the Tariff Act of 1930, as amended, and regulations made thereunder; or

(c) section 408 of the United States-Canada Free Trade Agreement Implementation Act of 1988, as amended, and regulations made thereunder.

(2) a Request for Panel Review shall contain the following information (model form provided in Schedule C(2)):

(a) The information set out in rule 58(1);

(b) The title of the final determination for which panel review is requested, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the **Canada Gazette** or the **Federal Register**;

(c) The date on which the notice of the final determination was received by the other Party if the final determination was not published in the **Canada Gazette** or the **Federal Register**;

(d) Where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect; and

(e) The service list, as defined in rule 3.

35. (1) On receipt of a first Request for Panel Review filed within the time period fixed in the Act referred to in paragraph 34(1) (a), (b) or (c) pursuant to which the Request for Panel Review is made, the responsible Secretary shall

(a) Forthwith forward a copy of the Request to the other Secretary;

(b) Forthwith inform the other Secretary of the Secretariat file number; and

(c) Serve a copy of the first Request for Panel Review on the persons listed on the service list together with a statement setting out the date on which the Request was filed and stating that

(i) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for Panel Review,

(ii) A Party, an investigating authority or other interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review, and

(iii) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

(2) On the filing of a first Request for Panel Review each Secretary shall forthwith cause a notice of that Request to be published in the **Canada Gazette** and the **Federal Register**. The notice shall state that a Request for Panel Review has been received and shall specify the date on which the Request was filed, the final determination for which review is requested and the information set out in subrule (1)(c).

Joint Panel Reviews

36. (1) Subject to subrules (3) and 37(1), where a panel is established to review a final determination made under paragraph 41(1)(a) of the Special Import Measures Act that applies with respect to particular goods of the United States and a first Request for Panel Review of a final determination made under paragraph 43(1) of that Act with respect to those goods is filed, on the motion of

(a) A participant in the former panel review,

(b) An interested person listed in the service list of the latter panel review that certifies that it intends to become a participant in the latter panel review, or

(c) The investigating authority in the latter panel review,

the final determinations shall be reviewed jointly by one panel if none of the persons listed above objects.

(2) Subject to subrules (3) and 37(2), where a panel is established to review a final determination made under section 705(a) or 735(a) of the Tariff Act of 1930, as amended, that applies with respect to particular goods of Canada and a first Request for Panel Review of a final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, on the motion of

(a) A participant in the former panel review,

(b) An interested person listed in the service list of the latter panel review that certifies that it intends to become a participant in the latter panel review, or

(c) The investigating authority in the latter panel review,

the final determinations shall be reviewed jointly by one panel if none of the persons listed above objects.

(3) A motion for joint panel review may be filed at any time before, but not later than, 10 days after the first Request for Panel Review of the final determination made under paragraph 43(1) of the Special Import Measures Act or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, is filed. Any objection to the motion for joint panel

review must be filed within 10 days thereafter.

37. (1) Where a panel is established to review a final determination made under paragraph 41(1)(a) of the Special Import Measures Act that applies with respect to particular goods of the United States and a Request for Panel Review of a negative final determination made under paragraph 43(1) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

(2) Where a panel is established to review a final determination made under section 705(a) or 735(a) of the Tariff Act of 1930, as amended, that applies with respect to particular goods of Canada and a Request for Panel Review of a negative final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

38. (1) Subject to subrules (2) and (3), where final determinations are reviewed jointly pursuant to rule 36 or 37, the time periods fixed for the review of the final determination made under paragraph 43(1) of the Special Import Measures Act or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, shall apply.

(2) Where final determinations are reviewed jointly pursuant to subrule 36(2), and where the panel remands each final determination to the relevant investigating authority, the Panel may stay review on remand of the final determination under section 705(b) or 735(b) until the Determination on Remand under section 705(a) or 735(a), respectively, is filed with the responsible Secretariat.

(3) Where final determinations are reviewed jointly pursuant to rule 37, the panel shall issue its decision with respect to the final determination made under paragraph 43(1) of the Special Import Measures Act or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, and where the panel remands the final determination to the investigating authority and the Determination on Remand is affirmative, the panel shall promptly thereafter issue its decision with respect to the final determination made under paragraph 41(1)(a) of the Special Import Measures Act or section 705(a) or 735(a) of the Tariff Act of 1930, as amended.

Complaint

39. (1) Subject to subrule (3), any interested person that intends to make allegations of errors of fact or law, including the jurisdiction of the investigating authority, with respect to the final determination shall file with the responsible Secretariat a Complaint within 30 days after the filing of a first Request for Panel Review of a final determination.

(2) Every Complaint referred to in subrule (1) shall contain the following information (model form provided in Schedule C(3)):

(a) The information set out in rule 58(1);

(b) The precise nature of the Complaint, including the applicable standard of review and the allegations of errors of fact or law, including the jurisdiction of the investigating authority;

(c) A statement describing the interested person's entitlement to file a Complaint under this rule; and

(d) Where the final determination was made in Canada, a statement as to whether the complainant

(i) Intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) Requests simultaneous translation of any oral proceedings.

(3) Only an interested person that would otherwise be entitled to commence proceedings for judicial review of the final determination may file a Complaint, whether or not that person has filed a Request for Panel Review and whether or not that person supports any reviewable portion of the final determination.

(4) An amended Complaint may be filed no later than 5 days before the expiration of the time period for filing a Notice of Appearance pursuant to rule 40.

(5) Upon leave of the panel, an amended Complaint may be filed, together with a notice of motion, no later than 20 days before the expiration of the time period for filing briefs pursuant to rule 60(1).

(6) Where the panel does not, within the time period for filing briefs pursuant to rule 60(1), issue its decision on the motion referred to in subrule (b), the motion shall be deemed to be denied.

Notice of Appearance

40. (1) Subject to subrule (2), within 45 days after the filing of a first Request for Panel Review of a final determination, the investigating authority and any other person that is entitled to and proposes to participate in the panel review and that has not filed a Complaint in the panel review shall file with the responsible Secretariat a Notice of Appearance containing the following information (model form provided in Schedule C(4)):

(a) The information set out in rule 58(1);

(b) In the case of a Notice of Appearance filed by an investigating authority, admissions, if any, with respect to the allegations set out in the Complaints;

(c) A statement as to whether appearance is made:

(i) In support of the investigating authority;

(ii) In support of the allegations of a Complaint; or

(iii) Party in support of any reviewable portion of the final determination and partly in support of the allegations of a Complaint;

(d) A statement as to the basis for the person's claim of entitlement to file a Notice of Appearance under this rule; and

(e) Where the final determination was made in Canada, a statement as to whether the person filing the Notice of Appearance:

(i) Intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) Requests simultaneous translation of any oral proceedings.

(2) Any complainant that intends to appear partly in support of any reviewable portion of the final determination shall file a Notice of Appearance containing the statements provided in subrules (1)(c)(iii) and (1)(d).

Record for Review

41. (1) The investigating authority whose final determination is under review shall file with the responsible Secretariat, within 5 days after the expiration of the time period fixed for filing a Complaint, an Index comprised of a descriptive list of all items contained in the administrative record with proof of service of the Index on persons listed on the service list.

(2) An Index referred to in subrule (1) shall, where applicable, identify those items that contain proprietary information, privileged information or government information by a statement to that effect.

(3) Within 10 days after the expiration of the time period fixed for filing the Index referred to in subrule (1), each complainant shall, and any other participant may, file with the responsible Secretariat, together with proof of service on the investigating authority, a Designation of Record, designating those items in the Index that the complainant or participant considers relevant to the panel review and requests be filed by the investigating authority.

(4) Within 12 days after the expiration of the time period fixed for filing the Index referred to in subrule (1), each complainant, and any other participant that files a Designation of Record, shall

serve all other participants other than the investigating authority with a copy of the designation, and file such proof of service with the responsible Secretariat.

(5) Any document included in the Index filed pursuant to subrule (1) but not designated pursuant to subrule (3), may be filed as an attachment to the briefs filed pursuant to subrules 60 (1) or (2), provided the document is relied upon in the brief.

(6) Where a complainant or participant, in a Designation of Record referred to in subrule (3), designates an item identified as containing privileged information, the complainant or participant shall file, together with the Designation of Record, a Notice of Motion for disclosure of the document containing the privileged information in accordance with subrule 55(1).

(7) Within 15 days after the expiration of the time period fixed for filing a Designation of Record, the investigating authority shall file with the responsible Secretariat

(a) Nine copies of the final determination, including reasons for the final determination, if any;

(b) Subject to subrules (8), (9) and (10), two copies of

(i) Any item listed in the Index and designated by the complainants or participants pursuant to subrule (4) and any other item listed in the Index that the investigating authority considers relevant to the panel review, or

(ii) The administrative record; and

(c) The Index marked to identify those items filed by the investigating authority.

(8) Where a document containing proprietary information is filed under subrule (7)(b) or rule 43, it shall be filed under seal in accordance with rule 46.

(9) No privileged information shall be filed with the responsible Secretariat unless it is filed pursuant to an order of a panel made under subrule 55 (3)(b), (7) or (8).

(10) No government information shall be filed with the Secretariat unless the investigating authority, after having reviewed the government information and, where applicable, pursued appropriate administrative review procedures, determines that the information may be disclosed.

42. Reserved.

43. Subject to subrules 41(8), (9) and (10), where a panel directs, on its own motion or pursuant to the motion of a participant, that any part of the administrative record relevant to the panel review be filed with the responsible Secretariat, the investigating authority shall forthwith file two copies of the part with the responsible Secretariat.

Part III—Panels

Announcement of Panel

44. On the completion of the selection of a panel, the responsible Secretary shall notify the participants and the other Secretary of the names of the panelists.

Violation of Code of Conduct

45. Where a participant in a panel review believes that a panelist is in violation of the Code of Conduct, the participant shall forthwith notify a Party in writing of the alleged violation.

Part IV—Proprietary Information and Privileged Information

Filing Under Seal

46. (1) Where, under these rules, a document containing proprietary information or privileged information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this rule and, where the document is a pleading, with rule 59.

(2) A document filed or served under seal shall be

(a) Bound separately from all other documents;

(b) Clearly marked

(i) In the case of a document containing proprietary information, "proprietary" or "confidential", and

(ii) In the case of a document containing privileged information, "privileged"; and

(c) Contained in an opaque inner and an opaque outer wrapper.

(3) An inner wrapper referred to in subrule (2)(c) shall disclose

(a) That proprietary information or privileged information is enclosed, as the case may be; and

(b) The Secretariat file number of the panel review.

47. Filing or service of proprietary information or privileged information with the Secretariat shall not constitute a waiver of the designation of the information as proprietary information or privileged information.

Disclosure Orders and Protective Orders

48. (1) A counsel of record or a professional retained by, or under the control or direction of, a counsel of record who wishes disclosure of proprietary information in a panel review shall file a Disclosure Undertaking, in the form referred to in Schedule A, or a Protective Order Application, in the form referred to in Schedule B, as the case may be, with respect to the proprietary information as follows:

(a) Four copies with the responsible Secretariat; and

(b) One original and six copies with the investigating authority.

(2) A Disclosure Undertaking or Protective Order Application referred to in subrule (1) shall be served

(a) Where the Disclosure Undertaking or Protective Order Application is filed before the expiration of the time period fixed for filing a Notice of Appearance in the panel review, on the persons listed in the service list; or

(b) In any other case, on all participants, in accordance with subrule 24(1).

49. (1) Every panelist, assistant to a panelist, court reporter and translator shall, before taking up his duties in a panel review, submit to the responsible Secretary a Disclosure Undertaking in the form referred to in Schedule A or a Protective Order Application in the form referred to in Schedule B, as the case may be.

(2) Where the responsible Secretary, pursuant to rule 14(1), files a Disclosure Undertaking or a Protective Order Application, as the case may be, on behalf of a panelist, assistant to a panelist, court reporter or translator, the investigating authority, including any person authorized to do so by the appropriate investigating authority, shall issue the Disclosure Order or Protective Order.

(3) Where a panelist, assistant to a panelist, court reporter or translator amends or modifies his Disclosure Undertaking or Protective Order Application, he shall file a copy of that amendment or modification with the responsible Secretariat in order that the Secretary may file the amendment or modification in accordance with rule 14(1).

(4) Where the investigating authority amends, modifies or revokes a Disclosure Order or Protective Order, the person whose Disclosure Order or Protective Order has been amended, modified or revoked shall file a copy of the amendment, modification or notice of revocation with the responsible Secretariat.

50. (1) The investigating authority shall, within 30 days after a Disclosure Undertaking or Protective Order Application is filed with it in accordance with subrule 48(1), serve on the person who filed the Disclosure Undertaking or Protective Order Application

(a) A Disclosure Order or Protective Order as the case may be; or

(b) A notification in writing setting out the reasons why a Disclosure Order or Protective Order is not issued.

(2) Reserved.

51. (1) Where an investigating authority refuses to issue a Disclosure Order or Protective Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record or where the investigating authority issues a Disclosure Order or Protective Order with terms unacceptable to the counsel of record, the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the panel review the decision of the investigating authority.

(2) Where, after consideration of any response made by the investigating authority referred to in subrule (1), the panel decides that a Disclosure Order or Protective Order should be issued or that the terms of a Disclosure Order or Protective Order should be modified, the panel shall so notify counsel for the investigating authority.

(3) Where the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the panel may issue such orders as are just in the circumstances, including, without limiting the generality of the foregoing,

(a) An order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings; or

(b) An order resolving issues relating to the non-disclosed information in a manner contrary to the position of the investigating authority.

52. (1) Where a Disclosure Order or Protective Order is issued to a person in a panel review, or is amended or modified pursuant to rule 53, the person shall file a copy of the Disclosure Order or the Protective Order, or of the amendments or modifications, with the responsible Secretariat.

(2) Where a Disclosure Order or a Protective Order is revoked by the investigating authority, the person whose Disclosure Order or Protective Order has been revoked shall file a copy of the Notice of Revocation with the responsible Secretariat.

53. A Disclosure Order or a Protective Order may be amended or modified by the investigating authority at any time in a panel review if the person named in the Disclosure Order or Protective Order signs a declaration acknowledging that his Disclosure Undertaking or Protective Order Application applies with respect to the amendment or modification.

54. Where a Disclosure Order or Protective Order is issued to a person, the person is entitled

(a) To access to the document; and

(b) Where the person is a counsel of record, to a copy of the document containing the proprietary information, on payment of an appropriate fee, and to service of pleadings containing the proprietary information.

Privileged Information

55. (1) A Notice of Motion for disclosure of a document in the administrative record identified as containing privileged information shall set out

(a) The reasons why disclosure of the document is necessary to the case of the participant filing the Notice of Motion; and

(b) A statement of any point of law or legal authority relied on, together with a concise argument in support of disclosure.

(2) Within 10 days after a Notice of Motion referred to in subrule (1) is filed, the investigating authority shall, if it intends to respond, file the following in response:

(a) An affidavit of an official of the investigating authority stating that, since the filing of the Notice of Motion, the official has examined the document and has determined that disclosure of the document would constitute disclosure of privileged information; and

(b) A statement of any point of law or legal authority relied on, together with a concise argument in support of non-disclosure.

(3) After having reviewed the Notice of Motion referred to in subrule (1) and the response referred to in subrule (2), if any, the panel may order

(a) That the document shall not be disclosed; or

(b) That the investigating authority file two copies of the document under seal with the responsible Secretariat in order that two panelists may examine the document.

(4) In a panel review of a final determination made in the United States, before examining a document in accordance with subrule (6) or (8), a panelist shall file with the responsible Secretariat four copies of a Protective Order with respect to the document, signed by him.

(5) The panel shall select the two panelists to make the examination referred to in subrule (3)(b) in such a way that one is a lawyer who is a citizen of Canada and the other a lawyer who is a citizen of the United States.

(6) The two panelists selected under subrule (5) shall

(a) Examine the document *in camera*; and

(b) communicate their decision, if any, to the panel.

(7) The decision referred to in subrule (6)(b) shall be issued as an order of the panel.

(8) Where the two panelists selected under subrule (5) fail to come to a decision, the panel shall

(a) Examine the document *in camera*; and

(b) Issue an order with respect to the disclosure of the document.

(9) Where an order referred to in subrule (7) or (8) is to the effect that the document shall not be disclosed, the responsible Secretary shall return all copies of the document to the investigating authority by serving them under seal on the investigating authority.

56. In a panel review of a final determination made in the United States, where, pursuant to rule 55, disclosure of a document is granted to a person

(a) The panel shall limit disclosure to persons who must have access in order to permit effective representation in the panel review and effective functioning of the panel, and name such persons in the panel order; and

(b) The investigating authority shall issue to that person a Protective Order with respect to that document in accordance with the order of the panel.

Violations of Disclosure Undertakings and Protective Orders

57. Where any person alleges that the terms of a Disclosure Undertaking or Protective Order have been violated, the panel shall refer the allegations to the investigating authority for investigation and, where applicable, the imposition of sanctions in accordance with section 77.26 of the Special Import Measures Act or section 777(d) of the Tariff Act of 1930 as amended.

Part V—Written Proceedings

Form and Content of Pleadings

58. (1) Every pleading filed in a panel review shall contain the following information:

(a) The title of and the Secretariat file number for the panel review, if assigned;

(b) A brief descriptive title of the pleading;

(c) The name of the Party, investigating authority or interested person filing the document;

(d) The name of counsel for the person referred to in paragraph (c);

(e) The service address, as defined in rule 3; and

(f) The telephone number of the counsel referred to in paragraph (d) or, where the interested person is not

represented by counsel, the telephone number of the interested person.

(2) Every pleading filed in a panel review shall be on paper 8½×11 inches (216 millimeters by 279 millimeters) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1½ inches (40 millimeters) on the left-hand side with double-spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs and columns of figures shall be presented in a readable form. Briefs shall be securely bound along the left-hand margin.

(3) Every pleading filed on behalf of a participant in a panel review shall be signed by counsel for the participant or, where the participant is not represented by counsel, by the participant.

59. (1) Where a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) One set of pleadings under seal containing the proprietary information and labelled "Proprietary" or "Confidential" with the top of each page that contains proprietary information marked with the word "Proprietary" or "Confidential" and with the proprietary information enclosed in brackets; and

(b) One set of pleadings labelled "Non-Proprietary" or "Non-Confidential" with each page from which proprietary information has been deleted bearing a legend indicating the location from which the proprietary information was deleted.

(2) Where a participant files a pleading that contains privileged information, the participant shall file two separate sets of the pleading in the following manner:

(a) One set of pleadings under seal containing the privileged information and labelled "Privileged" with the top of each page that contains privileged information marked with the word "Privileged" and with the privileged information enclosed in brackets; and

(b) one set of pleadings labelled "Non-Privileged" with each page from which privileged information has been deleted bearing a legend indicating the location from which the privileged information was deleted.

Filing of Briefs

60. (1) Every participant that has filed a Complaint under rule 39, or a Notice of Appearance with a statement under subrule 40(1)(c)(ii) or (iii), shall file a brief, setting forth grounds and arguments supporting the allegations of a Complaint no later than 60 days after the expiration of the time period fixed for filing the administrative record referred to in subrule 41(7).

(2) Every participant that has filed a Notice of Appearance with a statement under subrule 40(1)(c)(i) or (iii) shall file a brief supporting any reviewable portion of the final determination no later than 60 days after the expiration of the time period for the filing of briefs referred to in subrule (1).

(3) Every participant that has filed a brief pursuant to subrule (1) may file a brief replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2) no later than 15 days after the expiration of the time period fixed for filing of briefs referred to in subrule (2), and shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrule (2).

(4) An appendix containing authorities cited in briefs filed under subrules (1), (2) and (3) shall be filed with the responsible Secretariat within 10 days of the last day on which a brief under subrule (3) may be filed.

(5) Any number of participants may join in a single brief, and any participant may adopt by reference any part of the brief of another participant.

(6) A participant may file a brief without appearing to present oral argument.

(7) Where a panel review of a final determination made by an investigating authority of the United States with respect to certain goods involves issues that may relate to the final determination of the other investigating authority with respect to those goods, the latter investigating authority may file an *amicus curiae* brief in the panel review in accordance with subrule (2).

Failure to File Briefs

61. (1) Where a participant fails to file a brief within the time period fixed, the panel may order that the participant is not entitled

(a) To present oral argument;

(b) To service of any further pleadings, orders or decisions in the panel review; or

(c) To further notice of the proceedings in the panel review.

(2) Where no brief is filed by any complainant or by any participant in support of any of the complainants within the time periods established pursuant to these rules and where no motion pursuant to rule 20 is pending, the panel may, on its own motion or pursuant to the motion of any participant, issue an order to show cause why the panel review should not be dismissed and if good cause is not shown, the panel shall issue an order dismissing the panel review.

(3) Where no brief is filed by an investigating authority or by any interested person in support of the investigating authority within the time period fixed in subrule 60(2), a panel may issue a decision referred to in rule 74.

Content of Briefs and Appendices

62. (1) Every brief filed pursuant to subrule 60(1) or (2) shall contain information in the following order, divided into five parts:

Part I: A table of contents with page references and a table of authorities cited, except references to documents designated from the administrative record. The table of authorities shall reference the page(s) of the brief where each authority is cited, arrange the cases alphabetically, and mark those authorities primarily relied upon with an asterisk in the margin.

Part II: A statement of the case:

(a) In the brief of a complainant or of a participant filing a brief pursuant to subrule 60(1), this Part shall contain a concise statement of the relevant facts;

(b) In the brief of an investigating authority or of a participant filing a brief pursuant to subrule 60(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to the statement of facts set out in the briefs referred to in paragraph (a), including a concise statement of other facts relevant to its case; and

(c) In all briefs, references to evidence in the administrative record shall be made by page and, where practicable, by line.

Part III: A statement of the issues:

(a) In the brief of a complainant or of a participant filing a brief pursuant to subrule 60(1), this Part shall contain a concise statement of the issues; and

(b) In the brief of an investigating authority or of a participant filing a brief pursuant to subrule 60(2), this part shall contain a concise statement of the position of the investigating authority or the participant with respect to each issue relevant to its case.

Part IV: Argument:

This part shall consist of the argument setting out concisely the points of law relating to the issues with applicable citations to authorities and the administrative record.

Part V: Relief:

This part shall consist of a concise statement of the precise relief requested.

(2) Paragraphs in parts I to V of a brief may be numbered consecutively.

(3) A reply brief filed pursuant to rule 60(3) shall include a table of contents and a table of authorities indicating those principally relied upon in the argument.

Appendix to the Briefs

62A. (1) Every appendix filed pursuant to subrule 60(4) shall contain the authorities primarily relied upon in the briefs filed according to subrules 60(1), (2) and (3) and marked according to subrule 62(1). The appendix shall include first a list of contents, followed by all treaty and statutory references, references to regulations, cases set out alphabetically, and all other references except to documents designated from the administrative record.

(2) The appendix shall be compiled by a participant who filed a brief under subrule 60(1) who was so designated by all the participants who filed a brief. Each participant who filed a brief under subrule 60(2) shall provide the designated participant with a copy of each authority upon which it primarily relied in its brief that was not primarily relied upon in a brief filed under subrule 60(1); and each participant who filed a brief under subrule 60(3) shall provide the designated participant with a copy of each authority upon which it primarily relied in its brief not primarily relied upon in briefs filed pursuant to subrules 60(1) or (2).

(3) The costs for compiling the appendix shall be borne equally by all participants who file briefs.

Motions

63. (1) A motion shall be made by Notice of Motion in writing (model form provided in Schedule C(5)) unless the circumstances make it unnecessary or impracticable.

(2) Every Notice of Motion and affidavit in support thereof, if any, shall be accompanied by a proposed order of the panel (model form provided in Schedule C(6)), and shall be filed with the responsible Secretariat together with proof of service on all participants.

(3) Every Notice of Motion shall contain the following information:

(a) The title of the panel review, the Secretariat file number for that panel review and a brief descriptive title indicating the purpose of the motion;

(b) A statement of the precise relief requested;

(c) A statement of the grounds to be argued, including a reference to any rule, point of law or legal authority to be relied on, together with a concise argument in support of the motion; and

(d) Where necessary, references to evidence in the administrative record by page and, where practicable, by line.

(4) The pendency of any motion in a panel review shall not alter any time period fixed in these rules or by an order or decision of the panel.

(5) Every Notice of Motion to which all participants consent shall be entitled a Consent Motion.

64. Except as provided in subrule 20(2), unless the panel otherwise orders, a participant may file a response to a Notice of Motion if the response is filed within 10 days after the Notice of Motion is filed.

65. Pursuant to subrule 66(2), at the direction of the chairperson, the responsible Secretary shall fix a date, time and place for the hearing of a motion and shall notify all participants of the same.

66. (1) A panel may dispose of a motion based upon the pleadings filed pertaining to the motion.

(2) The panel may hear oral argument in person or, subject to subrule 26(b), direct that a motion be heard by means of a telephone conference call with the participants.

(3) A panel may deny a motion before responses to the Notice of Motion have been filed.

Part VI—Oral Proceedings

Location

67. Oral proceedings in a panel review shall take place at the office of the responsible Secretariat or at such other location as the responsible Secretary may arrange.

Pre-Hearing Conference

68. (1) A panel may hold a pre-hearing conference and the responsible Secretary shall give notice of the conference to all participants.

(2) A participant may request that the panel hold a pre-hearing conference by filing with the responsible Secretariat a written request setting out the matters that the participant proposes to raise at the conference.

(3) The purpose of a pre-hearing conference shall be to facilitate the expeditious advancement of the panel review by addressing such matters as

(a) The clarification and simplification of the issues;

(b) The procedure to be followed at the hearing of oral argument; and

(c) Any outstanding motions.

(4) Subject to subrule 26(b), a pre-hearing conference may be conducted by means of a telephone conference call.

(5) Following a pre-hearing conference, the panel shall promptly issue an order setting out its rulings with respect to the matters considered at the conference.

Oral Argument

69. (1) A panel shall commence the hearing of oral argument no later than 30 days after the expiration of the time period fixed for filing reply briefs. At the direction of the panel, the responsible Secretary shall notify all participants of the date, time and place for the oral argument.

(2) Oral argument, limited to the issues in dispute and subject to the time constraints set by the panel, shall, unless the panel otherwise orders, be presented in the following order:

(a) The complainants and any participant that filed a brief in support of a complainant or in support of both a complainant and the investigating authority;

(b) The investigating authority and any participant that filed a brief in support of the investigating authority, other than a participant referred to in subrule (a); and

(c) Argument in reply, at the discretion of the panel.

(3) If a participant fails to appear at oral argument, the panel may hear argument on behalf of the other participants that are present. If no participant appears, the panel may decide the case on the basis of briefs.

Subsequent Authorities

70. (1) A participant that has filed a brief may bring to the attention of the panel

(a) At any time before the conclusion of oral argument, an authority that is relevant to the panel review;

(b) With the leave of the panel, an authority that is relevant to the panel review and that came to the attention of counsel after the conclusion of oral argument; and

(c) Before the panel has issued its decision, an authority that was reported subsequent to the conclusion of oral argument,

by filing with the responsible Secretariat a written request setting out the citation of the decision or judgment, the page reference of the brief of the participant to which the decision or judgment relates and a concise statement, no more than one page in length, of the relevance of the decision or judgment.

(2) A request referred to in subrule (1) shall be filed as soon as possible after the issuance of the decision or judgment by the court.

(3) Where a request referred to in subrule (1) is filed with the responsible Secretariat, any other participant may file a concise statement, no more than one page in length, in response within

five days of the day that the request was filed.

Oral Proceedings in Camera

71. During that part of oral proceedings in which proprietary information or privileged information is presented, a panel shall not permit any person other than the following persons to be present:

(a) The person presenting the proprietary information or privileged information;

(b) A person who has been granted access to the proprietary information or privileged information under a Disclosure Order, Protective Order or an order of a panel;

(c) In the case of proprietary information, a person as to whom the confidentiality of the proprietary information has been waived; and

(d) Officials of and counsel for the investigating authority.

Part VII— Decisions and Completions of Panel Reviews

Orders, Decisions and Terminations

72. The responsible Secretary shall cause notice of every decision of a panel issued pursuant to rule 74 to be published in the **Canada Gazette** and the **Federal Register**.

73. (1) Where a Notice of Motion requesting dismissal of a panel review is filed by a participant, the panel may issue an order dismissing the panel review.

(2) Where a Notice of Motion requesting termination of a panel review filed by a participant is consented to by all the participants and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged.

74. A panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of the panelists, in accordance with Article 1904.8 of the Agreement. The decision will be released by noon on the date of issuance.

Panel Review of Action on Remand

75. (1) An investigating authority shall give notice of the action taken pursuant to a remand of the panel by filing with the responsible Secretariat a Determination on Remand within the time specified by the panel.

(2) If on remand the investigating authority has supplemented the administrative record,

(a) The investigating authority shall file with the responsible Secretariat an Index listing each item in the supplementary remand record, and a copy of each non-privileged item listed in that Index, within five days of the date on which the investigating authority filed the Determination on Remand with the panel;

(b) Any participant that intends to challenge the Determination on Remand shall file a written submission in respect to the Determination on Remand within 20 days of the date on which the investigating authority filed the Index and supplementary record on remand;

(c) Any response to the written submissions referred to in subrule (b) shall be filed by the investigating authority, and any participant supporting the investigating authority, within 20 days after the last day on which written submissions in opposition to the Determination on Remand may be filed.

(3) If, on remand, the investigating authority has not supplemented the record,

(a) Any participant that intends to challenge the Determination on Remand shall file a written submission within 20 days of the date on which the investigating authority filed the Determination on Remand with the panel; and

(b) Any response to the written submissions referred to in subrule (a) shall be filed by the investigating authority, and any participant filing in support of the investigating authority, within 20 days after the last day on which such written submissions may be filed.

(4) If no written submissions are filed under subrule 75(2)(b) or (3)(a) within the time periods established by these rules and if no motion pursuant to rule 20 is pending, the panel shall, within 10 days of the due date for such written submissions or of the denial of a motion pursuant to rule 20, issue an order pursuant to rule 74 affirming the investigating authority's Determination on Remand.

(5) Where a Determination on Remand is challenged, the panel shall issue a written decision pursuant to rule 74, either affirming the Determination on Remand or remanding it to the investigating authority, no later than 90 days after the Determination on Remand is filed.

75A. In setting the date by which a Determination on Remand shall be due from the investigating authority, the panel shall take into account, among other factors,

(a) The date that any Determination on Remand with respect to the same goods is due from the other investigating authority, and

(b) The effect the Determination on Remand from the other investigating authority might have on the deliberations of the investigating authority to make a final Determination on Remand.

Re-examination of Orders and Decisions

76. A clerical error in an order or decision of a panel, or an error in an order or decision of a panel arising from any accidental oversight, inaccuracy or omission may be corrected by the panel at any time during the panel review.

77. (1) A participant may, within 10 days after a panel issues its decision, file a Notice of Motion requesting that the panel re-examine its decision for the purpose of correcting an accidental oversight, inaccuracy or omission and setting out

(a) The oversight, inaccuracy or omission with respect to which the request is made;

(b) The relief requested; and

(c) A statement as to whether other participants consent to the motion, if ascertainable.

(2) The grounds for a motion referred to in subrule (1) shall be limited to one or both of the following grounds:

(a) That the decision does not accord with the reasons therefor; or

(b) That some matter has been accidentally overlooked, stated inaccurately or omitted by the panel.

(3) No Notice of Motion referred to in subrule (1) shall set out any argument already made in the panel review.

(4) There shall be no oral argument in support of a motion referred to in subrule (1).

(5) In the event that a panel has not, prior to issuance of a Notice of Completion pursuant to rule 80, otherwise disposed of a motion referred to in subrule (1), the motion shall be deemed denied.

Delay in Delivery of Decisions

78. Where a panelist becomes unable to fulfill panel duties, is disqualified or dies, panel proceedings and computations of time shall be suspended, pending the appointment of a substitute panelist in accordance with the procedures set out in Annex 1901.2 to Chapter Nineteen of the Agreement.

79. Where a panelist becomes unable to fulfill panel duties, is disqualified or dies after the oral argument, the chairperson may order that the matter be reheard on such terms as are appropriate after selection of a substitute panelist.

Part VIII—Completion of Panel Review

80. If no Request for an Extraordinary Challenge Committee is filed, the responsible Secretary shall cause to be published in the **Canada Gazette** and the **Federal Register** a Notice of Completion of Panel Review, effective on the 31st day following the day on which:

(a) A panel issues an order, pursuant to subrule 61(2), dismissing the panel review;

(b) A panel issues an order, pursuant to subrule 73(1), dismissing the panel review;

(c) A panel is terminated pursuant to subrule 73(2); or

(d) A panel issues a decision, pursuant to rule 74, that affirms the final determination.

81. Except as provided in rule 80, where a Request for an Extraordinary Challenge Committee has been filed, the responsible Secretary shall cause to be published in the **Canada Gazette** and the **Federal Register** a Notice of Completion of Panel Review, effective on the day after the day referred to in either rule 59 or 60(a) of the Extraordinary Challenge Committee Rules.

82. Reserved

83. Reserved

84. Reserved

85. Panelists are discharged from their duties on the day on which a Notice of Completion of Panel Review is effective, or on the day on which an Extraordinary Challenge Committee vacates a panel review pursuant to rule 60(b) of the Extraordinary Challenge Committee Rules.

Schedule A—Disclosure Undertaking Forms

The Disclosure Undertaking forms are available from the Deputy Minister or the Tribunal, as the case may be.

Schedule B—Protective Order Application Forms

The Protective Order Application forms are available from the International Trade Administration of the United States Department of Commerce or the United States International Trade Commission, as the case may be.

Schedule C—Procedural Forms

Forms C (1) through C (6) follow.

Schedule C (1)

Article 1904 Binational Panel Review
Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____

(Title of Final Determination)

Notice of Intent to Commence Judicial Review

Pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, notice is hereby served that:

_____

(interested person filing notice)
intends to commence judicial review in the

_____

(name of the court)
of the final determination referenced below. The following information is provided pursuant to Rule 33 of the *Article 1904 Panel Rules*:

1. _____
(The name of the interested person filing this notice)
2. _____
(The name of counsel for the interested person, if any)
3. _____

_____
(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)
4. _____
(The telephone number of counsel for the interested person or the telephone number of the interested person, if not represented by counsel)
5. _____
(The title of the final determination for which notice of intent to commence judicial review is served)
6. _____
(The investigating authority that issued the final determination)
7. _____
(The file number of the investigating authority)
8. (a) _____
(The citation and date of publication of the final determination in the **Federal Register** or **Canada Gazette**); or
(b) _____
(If the final determination was not published, the date notice of the final determination was received by the other Party)
Date _____

_____
Signature of Counsel (or interested person, if not represented by counsel)

Schedule C(2)

Article 1904 Binational Panel Review
Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____
(Title of Panel Review)
Secretariat File No.

_____

Request for Panel Review

Pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, panel review is hereby requested of the final determination referenced below. The following information is provided pursuant to Rule 34 of the *Article 1904 Panel Rules:*

1. _____
(The name of the Party or the interested person filing this request for panel review)
2. _____
(The name of counsel for the Party or the interested person, if any)
3. _____

_____

_____
(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)
4. _____
(The telephone number of counsel for the Party or the interested person or the telephone number of the interested person, if not represented by counsel)
5. _____
(The title of the final determination for which panel review is requested)
6. _____
(The investigating authority that issued the final determination)
7. _____
(The file number of the investigating authority)
8. (a) _____
(The citation and date of publication of the final determination in the **Federal Register** or **Canada Gazette**); or
(b) _____
(If the final determination was not published, the date notice of the final determination was received by the other Party)
9. Yes_____ No_____ Non-Applicable_____
(Where a Notice of Intent to Commence Judicial Review has been served, is the sole reason for requesting review of the final determination to require review by a panel?)
10. The Service List, as defined by Rule 3, is attached.
Date _____

_____
Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (3)

Article 1904 Binational Panel Review
Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____
(Title of Panel Review)
Secretariat File No.

_____

Complaint

1. _____

(The name of the interested person filing the complaint)

2. _____

(The name of counsel for the interested person, if any)

3. _____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. _____

(The telephone number of counsel for the interested person or telephone number of the interested person, if not represented by counsel)

5. Statement of the Precise Nature of the Complaint (See Rule 39)
   A. The Applicable Standard of Review
   B. Allegations of Errors of Fact or Law
   C. Jurisdiction of the Investigating Authority
6. Statement of the Interested Person's Entitlement to File a Complaint under Rule 39
7. For Panel Reviews of Determinations Made in Canada:
   (a) Complainant intends to use the specified language in pleadings and oral proceedings (Specify one)

_____ English _____ French

   (b) Complainant requests simultaneous translation of oral proceedings (Specify one)

_____ Yes _____ No

Date _____

_____

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (4)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)

Secretariat File No.

_____

Notice of Appearance

1. _____

(The name of the investigating authority or the interested person filing this notice of appearance)

2. _____

(The name of counsel for the investigating authority or the interested person, if any)

3. _____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. _____

(The telephone number of counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. This Notice of Appearance is made:
   _____ in support of the investigating authority;
   _____ in support of the allegations of a Complaint; or
   _____ partly in support of the reviewable portions of the final determination and partly in support of the allegations of a Complaint
6. Statement as to the basis for the interested person's entitlement to file a Notice of Appearance under rule 40
7. For Notices of Appearance Filed by the Investigating Authority
   Statement by the Investigating Authority regarding any admissions with respect to the allegations set out in the Complaints
8. For Panel Reviews of Determinations Made in Canada:
   (a) I intend to use the specified language in pleadings and oral proceedings (Specify one)

_____ English _____ French

   (b) I request simultaneous translation of oral proceedings (Specify one)

_____ Yes _____ No

Date _____

_____

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (5)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)

_____

Secretariat File No.

_____

Notice of Motion

_____

(descriptive title indicating the purpose of the motion)

1. _____

(The name of the investigating authority or the interested person filing this notice of motion)

2. _____

(The name of counsel for the investigating authority or the interested person, if any)

3. _____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. _____

(The telephone number of the counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. Statement of the Precise Relief Requested
6. Statement of the grounds to be argued, including references to any rule, point of law, or legal authority relied upon
7. Arguments in support of the motion, including references to evidence in the administrative record by page and line
8. Draft order attached (see Rule 63 and Schedule C (6))

Date _____

_____

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (6)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)

Secretariat File No.

_____

Order

Upon consideration of the motion for (relief requested), filed on behalf of (participant filing motion), and upon all other papers and proceedings herein, it is hereby ORDERED that the motion is

_____

Date (Panelist name)

_____

Date (Panelist name)

_____

Date (Panelist name)

_____

Date (Panelist name)

_____

Date (Panelist name)

Dated: May 12, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-11567 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-GT-M

federal register

Monday
June 15, 1992

Part IV

Department of Education
Department of the Interior
Department of Justice

Notice to Delegate Certain Civil Rights Compliance Responsibilities for Educational Institutions

DEPARTMENT OF EDUCATION

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF JUSTICE

Delegating Certain Civil Rights Responsibilities for Educational Institutions

AGENCY: Departments of Education, Interior, and Justice.

ACTION: Notice of agreement between the Department of the Interior and the Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for Educational Institutions.

A. Purpose

Section 1–207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions, as required in the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401–42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement the Department of the Interior designates the Department of Education as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to educational institutions. Responsibility for the following covered nondiscrimination provisions is delegated:

1. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d to 2000d–4); and

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission (EEOC) regulation concerning procedure for handling complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR 42.601–42.613, 29 CFR 1691.1–1697.13, 48 FR 3570 (January 25, 1983). Complaints covered by that regulation filed with a delegating agency against a recipient of Federal financial assistance solely alleging employment discrimination against an individual are to be referred directly to the EEOC by the delegating agency.

C. Duties of the Department of Education

The Department of the Interior assigns the following compliance duties to the Department of Education with respect to educational institutions. Specifically, the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to the Department of the Interior.

2. Develop and use information for the routine, periodic monitoring of compliance by educational institutions with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by the Department of the Interior, preapproval reviews for which supplemental information or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue written letters of findings of compliance or of noncompliance that (a) advise the recipient and, where appropriate, the compliant of the results of the postapproval review or complaint investigation; (b) provide recommendations, where appropriate, for achieving voluntary compliance; and (c) offer the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the State in which the applicant or recipient is located will be notified, if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The Department of Education shall promptly provide copies of its letters of findings to the Department of the Interior and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. If compliance cannot be voluntarily achieved and the Department of Education does not fund the applicant or recipient, refer the matter to the Department of the Interior for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral. If compliance cannot be achieved and both the Department of Education and the Department of the Interior fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide the Department of the Interior with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of the Interior of the referral.

9. Notify the Department of the Interior and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient.

D. Duties of the Department of the Interior

The Department of the Interior shall:

1. Issue and provide to the Department of Education all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer its responsibilities under this agreement.

2. Provide the Department of Education with information, technical

assistance and training necessary for it to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from the Department of the Interior, the types of assistance provided, compliance information solely in the Department of the Interior's possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the Department of Education. If the Department of the Interior requests the Department of Education to undertake an on-site review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an application, the Department of the Interior shall supply information necessary for the Department of Education to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with the Department of the Interior against a recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from the delegating agency.

5. Where the Department of Education has notified the applicant or recipient in writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to the Department of the Interior, make the final compliance determination and:

(a) If the Department of the Interior wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education whether the Department of the Interior will either join as a party in the administrative hearing conducted by the Department of Education or will conduct its own administrative hearing.

(b) When the Department of the Interior initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Education of the referral.

(c) If the Department of the Interior conducts its own hearing, notify the Department of Education and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient. The Department of the Interior may request the Department of Education to act as counsel in its administrative hearing.

(d) If the Department of the Interior neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, notify the Department of Education and the Assistant Attorney General for Civil Rights in writing, within fifteen (15) days after notification from the Department of Education, that voluntary compliance cannot be achieved.

E. Public Information Coordination

Subject to the Freedom of Information Act, 5 U.S.C. 552, disclosure of information to the public regarding actions implemented under this agreement will be made following consultation between the Department of the Interior and Department of Education representatives.

F. Redelegation

Duties delegated herein to the Department of Education may be redelegated. The Department of Education shall notify the Department of the Interior of any such redelegation thirty (30) days prior to its effective date.

G. Effect on Prior Delegation

This agreement supersedes and replaces the delegation agreement effectuated on April 21, 1967, between the U.S. Department of Health, Education and Welfare and the Department of the Interior (32 FR 6304, April 21, 1967).

H. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective thirty (30) days from publication in the **Federal Register**.

I. Amendment and Termination

This agreement may be modified or amended by written agreement among the signatory parties. This agreement may be terminated by either agency sixty (60) days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Dated: February 25, 1992.

Manuel Lujan, Jr.,

Secretary, Department of the Interior.

Dated: May 1, 1992.

Lamar Alexander,

Secretary, Department of Education.

Dated: June 2, 1992.

John R. Dunne,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 92-13869 Filed 6-12-92; 8:45 am]

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Monday
June 15, 1995

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary

Indian Applicants Under the HOME Program; Notice of Funding Availability for Fiscal Year 1992

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. -N-92-3443; FR-3206-N-01]

Notice of Funding Availability (NOFA) for Fiscal Year 1992 for Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1992 for Indian Applicants for the HOME Investment Partnerships Act (the Act) programs, referred to as the HOME program (Pub. L. 101-625).

DATES: Applications must be physically RECEIVED by the Indian Field Office (FO) having jurisdiction over the applicant on or before 3:15 p.m. (FO local time) on August 19, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile ("FAX") copies shall not be accepted.

SUMMARY: This NOFA announces the availability of funding for Fiscal Year (FY) 1992 for the HOME Program for Indian tribes, provides the selection criteria and information on how to apply and how selections shall be made. All eligible applicants are invited to submit applications for HOME funds in accordance with the requirements of this NOFA.

FOR FURTHER INFORMATION CONTACT: Prospective applicants may contact the appropriate Indian FO. Refer to Appendix 1 of this NOFA for a complete list of Indian FOs and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the information collection requirements contained in these application procedures for HOME funds were reviewed by the Office of Management and Budget for the HOME interim rule and approved under OMB control number 2501-0013.

NOFA Outline

I. Purpose and Substantive Description
(a) Authority
(b) Allocation Amounts
(c) Eligibility
(d) Suggestions for the Applicant
(e) Selection Criteria/Ranking Factors
II. Application Process
(a) Application Packages
(b) Submittal of Complete Application
(c) Application Due Date
III. Checklist of Application Submission Requirements
IV. Corrections to Deficient Applications
V. Other Matters
(a) Environment
(b) Energy
(c) Federalism Impact
(d) Family Impact
(e) Section 102 of the HUD Reform Act
(f) Section 103 of the HUD Reform Act
(g) Section 112 of the HUD Reform Act

LIST OF APPENDICIES

Appendix 1. List of Indian Field Offices

I. Purpose and Substantive Description

(a) Authority

The Cranston-Gonzalez National Affordable Housing Act (NAHA) was signed into law on November 29, 1990 (Pub. L. 101-625, approved November 28, 1990). Title II (which may be cited as the HOME Investment Partnerships Act) of NAHA creates the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income Americans. Interim regulations for the HOME Investment Partnerships Program were published as 24 CFR part 92 in the **Federal Register** on December 16, 1991 (56 FR 65312). The requirements of 24 CFR part 92, subpart M (sections 92.600-92.652) of the interim rule (at 56 FR 65372-65374) apply specifically to the Indian HOME program. References in this NOFA to sections and subparts of the rule refer to the interim rule.

(b) Allocation Amounts

(1) In accordance with section 217(a)(2) of NAHA, each Fiscal Year (FY) HUD shall provide funds to Indian tribes, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. The funds shall be awarded competitively by HUD FOs that have responsibility for the HOME Indian program. For FY 1992 the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992, (approved October 28, 1991, Pub. L. 102-139) (92 App. Act), appropriated a total of $1.5 billion for the HOME program. Thus, the amount of funding available for the HOME Indian program in FY 1992 is $15 million.

(2) HOME funds shall be allocated to the HUD FOs responsible for the HOME Indian program on the following basis:

(i) Initial Allocation. Each FO shall be allocated a minimum of $250,000 as a base amount.

(ii) Subsequent Allocation. Funds remaining after the base amount is subtracted shall be allocated to each FO as follows:

(A) By Population. Forty percent of the funds shall be allocated based upon each FO's share of the total eligible Indian population;

(B) By Poverty. Forty percent of the funds shall be allocated based upon each FO's share of the total extent of poverty among the eligible Indian population; and

(C) By Overcrowding. Twenty percent of the funds shall be allocated based upon each FO's share of the total extent of overcrowded housing among the eligible population.

(3) Figure 1 presents the amount of grant authority available for the HOME program for FY 1992 for the various FOs.

FIGURE 1.—FY 1992 GRANT AUTHORITY FOR INDIAN HOME

Indian region	Amount	Percentage
Chicago	$1,097,754	7.32
Oklahoma City	2,500,190	16.67
Denver	2,424,553	16.16
Phoenix	6,668,615	44.46
Seattle	810,685	5.40
Anchorage	1,498,203	9.99
Total	$15,000,000	100.00

(4) Project Grant Amount. There is no maximum grant amount per project.

(5) FO Directors shall select applications for funding for Indian housing on the basis of the criteria stated in this NOFA. FO Directors may fund at a level less than applied for. Projects with the highest score shall be funded in rank order until the FO allocation is exhausted.

(6) For the purposes of this NOFA, only FOs will ensure that all environmental reviews are performed in accordance with 24 CFR 50 after the grant award but prior to any commitment or release of project funds (except for approved Administrative Funds), and that any adverse environmental impacts will be resolved by mitigation, site change or project re-configuration.

(7) After the initial funding round, funds that have not been awarded shall be distributed to the FOs that still have unfunded projects that qualify for funding.

(8) If the Department does not award the entire $15 million in this funding round because there is not a sufficient number of eligible applications, the amount not awarded shall be awarded at another time.

(c) Eligibility

(1) Eligible Applicants. For the purposes of the HOME program, eligible applicants are defined as any Indian Tribe, band, group, or Nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

(2) Projects and Activities.

(i) Applications for one or more projects shall be considered under this NOFA. 24 CFR 92.2: "*Project* means a site or entire building (including a manufactured housing unit), or two or more buildings together with the site or sites on which the building or buildings is located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under this part. Project includes all of the activities associated with the site and building. If there is more than one site associated with a project, the sites must be within a four block area." However, "block" has no meaning for the Indian HOME program and should not be used in determining the extent of the project. 24 CFR 92.604: "There are four categories of projects that may be funded under the HOME Indian program: Housing rehabilitation (moderate and substantial), acquisition of housing, new housing construction, and tenant-based rental assistance." (1) a rehabilitation project consists of only rehabilitation, or includes acquisition of units with rehabilitation, (2) an acquisition project consists of the acquisition of standard units not requiring rehabilitation, (3) a new construction project consists of new construction of housing and may include acquisition and demolition, and (4) a tenant-based rental assistance project consists of tenant-based rental assistance, not tied to specific housing units. Project types (1), (2), and (3) may also include site improvements and relocation. An application may contain any number of projects. Each project must be presented separately and shall be rated and ranked separately. The project may be for rental or homeownership. If one project is needed for the success of a second, the second shall not be funded without the first.

(ii) Eligible activities are described at 24 CFR 92.611 as follows:

"(1) HOME funds may be used by an Indian tribe to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance; and to pay administrative costs. The specific eligible costs for these activities are set forth in § 92.612.

"(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing, and for which funds for construction have been committed.

"(3) Housing that has received an initial certificate of occupancy or equivalent document within a one-year period before an Indian tribe commits HOME funds to the project is new construction for purposes of this part.

"(4) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding a unit beyond the existing walls, in which case, the project is new construction for purposes of this part."

(d) Suggestions for the Applicant

(1) An application must provide a brief narrative summary description of its proposed project that tells HUD what the applicant wants to do with program funds. The applicant must include this brief narrative summary description. While there are no points for this project description requirement, it is a necessary threshold requirement. For an application to be considered for ranking, rating and funding, it must include a brief description of the project or projects proposed for funding.

(2) In addition to providing a brief summary project description, an application must tell HUD how each project meets the selection criteria. This NOFA presents the selection criteria in section I.(e), below. The selection criteria are taken from the regulation for the HOME program that was published as an interim rule in the Federal Register on December 16, 1991 (pp. 65312–65385). In this NOFA, HUD has divided up each major selection criterion according to the way it was described in the regulation, and then further subdivided those criteria to make it easier for applicants to identify and respond to each element of the criteria. The Department has described what the reviewer of the application will be looking for and just how many points that information is worth. For each project, the applicant must tell HUD how its project meets each element of the criteria listed in this NOFA. While there are no points for this requirement, it is also a threshold requirement.

(3) HUD suggests that each applicant score its own project, even though there is no requirement to do so. This will help to show how a project might be scored by the reviewers. It will also help to show if the application meets the thresholds and the minimum point score requirement (60 points), and where the strengths and weaknesses in a project are located. Then, the applicant can strengthen the weaker parts of a project and use the stronger parts as a model for other projects. Copies of the scoring sheets that will be used by HUD to evaluate a project are available from the FO.

(e) Selection Criteria/Ranking Factors

Each project submitted for grant funding shall be evaluated using the three criteria provided in 24 CFR 92.604, as more fully explained is sections I.(e)(1)(2), and (3) of this NOFA, below. See Figure 2. The complete rating and ranking process is described in detail at section I.(e)(4). Remember, the HOME program is for low-income and very low-income persons.

FIGURE 2.—INDIAN HOME PROGRAM SCORING

Selection criteria	Maximum points
Need and Design	40
Planning and Implementation	35
Leveraging	25

(1) Need and Design—40 points maximum. The first of the three criteria provided in 24 CFR 92.604 is: The degree to which the proposed project addresses the housing needs of the tribe as identified in the application and through other information available to HUD in the application, and the degree to which the proposed project is feasible while maximizing benefits to very low and low-income families.

This first criterion is divided into two parts that will be examined and evaluated separately:

(i) Need—20 points maximum. The degree to which the proposed project addresses the housing need(s) of the Indian tribe as identified in the documentation for the project and through other information available to HUD. Tribal need must be documented. This documentation should include current IHA waiting lists, data on the degree of overcrowding, percentage of population in need of housing based upon census data, etc. This discussion of need is a threshold requirement. To be considered further, the documentation of housing need for the project must receive a total of at least 8 points for items (A), (B), and (C) of this factor, as follows:

(A) Housing Need Expressed in Terms of Quantity (4 points maximum). The tribe shall express its housing needs within its reservation, service area, or area of operation by: quantity (number of housing units needed to meet the housing need), and unit size (number of bedrooms). The tribe shall submit documentation supporting this housing need. Documentation that contains a formal survey prepared by a tribe, a State, the Federal government or a commission authorized by a tribe, a State, or the Federal government, or a formal survey authorized by a tribe, State, the Federal Government or a tribe-authorized commission and actually performed by a third party, such as a consultant or university, shall receive four points. Documentation supporting housing need other than a formal survey shall receive points ranging from 0 to 3 depending upon the quality of the documentation presented. See Table 1.

TABLE 1.—SCORING GUIDE

[Quantity of Housing Need; Quality of Documentation]

Good	Fair	Unsatisfactory
3 or 4 points	1 or 2 points	0 points.

(B) Demographic Information Regarding Indian Households in Need of Housing (3 points maximum). Demographic characteristics of Indian households that are in need of the housing identified in (A), immediately above, shall quantify the number of Indian households and number of family members in the household, their age, and gender, as well as the number of households for which an accessible unit is needed. Documentation for a project that contains this data shall receive 3 points. An updated IHA waiting list may be used to supply this data. Documentation for a project that contains partial supporting documentation shall receive 1 or 2 points depending on the quality of the documentation. If the documentation is unclear or missing entirely it will receive 0 points. See Table 2.

TABLE 2.—SCORING GUIDE

[Quantity of Housing Need; Demographic Characteristics]

Complete or with IHA list	Partial documentation	Unclear or missing
3 points	1 or 2 points	0 points.

(C) Responsiveness of Proposed Project Design to Identified Need (3 points maximum). Documentation for a project must illustrate the degree to which the identified housing need shall be met. Documentation for a project that precisely responds to the housing need will receive 3 points. Documentation for a project that does not illustrate the degree to which the identified housing need shall be met, or that fails to meet the housing need will receive 2 to 0 points depending upon its responsiveness to this factor. See Table 3.

TABLE 3.—SCORING GUIDE

[Responsiveness of Proposed Project Design to Housing Need]

Very responsive	Fairly responsive	Not responsive
3 points	1 or 2 points	0 points.

(D) Benefits to Very Low and Low-Income Members of the Tribe (10 points maximum). Under this factor, the most points are given to the tribe that has the highest ratio of very low and low-income members to total members. The documentation for any of the four categories of project will be scored in relation to the number of very low and low-income members of the tribe compared to the number of non-very low and low-income members of the tribe. This is quantified as the ratio of very low and low-income members of the tribe to non-very low and low-income members of the tribe times 10, but not to exceed 10. See Table 4.

TABLE 4.—SCORING GUIDE

[Benefits to Very Low and Low Income Members]

10 × (low income/non-low income)—But not to exceed 10 points.—

(ii) Project feasibility—20 points maximum. Project feasibility as measured here is the degree to which the number and size of the proposed housing units matches the need for low income housing identified in the previous evaluation factor. Is there a match between the size of the proposed units and the size of units needed by the low income families to be housed? Is there a match between the number of proposed units and the number of families to be housed?

Documentation for a project must demonstrate that the proposed project is feasible for its community in terms of the degree to which it maximizes benefits to very low and low-income members of the tribe; demonstrate that the proposed project shall provide a sufficient number of units of the appropriate size for the need that was identified, and that the units are suitable for occupancy (or shall be made suitable); and, that the units are in compliance with building code requirements (or shall be brought into compliance). Modular and manufactured homes are eligible forms of housing.

(A) Identification of Appropriate Kind and Amount of Units for the Proposed Project (5 points maximum). The documentation for a project will receive 5 points if it properly identifies the quantity of housing units to be made available for very low and low-income members of the tribe and illustrates that the size of the units available meets the need of the very low and low-income members. The documentation for a project shall receive less than 5 points if it does not precisely identify the quantity of housing units to be provided and their availability for very low and low-income members of the Indian tribe, and does not clearly illustrate that the size of the units shall meet the needs of the very low and low-income members, depending on the quality of information presented. See Table 5.

TABLE 5.—SCORING GUIDE

[Identification of Quantity of Housing Units To Be Made Available to Low Income Members of the Tribe]

Good	Fair	Unsatisfactory
4 or 5 points	1 to 3 points	0 points.

(B) Maximizing Benefits—Reusing HOME dollars in subsequent projects (15 points maximum). HOME funds repaid or returned may be reinvested in additional projects. The applicant should view the HOME funds as seed money and look at the degree to which the seed money is used to create more

units than the HOME funds might have created directly. The applicant must submit a plan for reinvesting the HOME funds. This plan for reinvestment of HOME funds in subsequent HOME activities over 5 years has a maximum value of 15 points.

The degree to which HOME funds are reinvested will be evaluated based upon the additional number of dollars (for assisted housing) made available over 5 years by the reinvestment divided by the number of dollars for assisted housing in the grant made under this program.

When one dollar or more is made available by reinvestment for each dollar initially made available by the HOME grant, the maximum number of points (15) is earned. When one-half dollar is made available by reinvestment for each dollar initially made available by the HOME grant, one-half the maximum number of points to the next whole point (8) is earned. Points shall be awarded as presented in Table 6.

TABLE 6.—SCORING GUIDE

[Maximizing Benefits by Reinvestment]

	Ratio (Percentage)	Points	Score
1	200 or more	15	
2	150 to 199	12	
3	111 to 149	10	
4	100 to 110	8	
5	50 to 99	6	
6	1 to 49	4	
7	Less than 1, or unclear	0	

(2) Planning and Implementation—35 points maximum. The second of the three criteria provided in 24 CFR 92.604 is: The degree to which the financial, legal, and administrative actions necessary to undertake the proposed project have been considered and addressed in the documentation for the project, and the degree to which the applicant has the administrative staff to successfully carry out the project.

This section must be concrete and specific about the financial, administrative, and legal actions necessary to carry out the project, and it must address administrative capability—existing or planned. The applicant must demonstrate that the proposed project is feasible and meets the regulatory affordability requirements. This evaluation is to include complete cost estimates for the project and the cost reasonableness of the project.

(i) Financial—15 points maximum.

(A) Property identification and comparison of project cost and ability of needy family to pay (6 points maximum). The applicant must demonstrate that the proposed very low and low-income Indian owners or tenants shall be able to afford to buy or rent this housing in accordance with the affordability requirements under 24 CFR 92.613: "Tenant-based rental assistance," 24 CFR 92.615: "Qualification as affordable housing and income targeting: Rental housing," and 24 CFR 92.614: "Qualification as affordable housing: Homeownership." This evaluation is to include the results of market surveys for acquisition, rehabilitation, or new construction of housing and/or the identification of the actual properties to be acquired, rehabilitated, or constructed. In addition, for tenant-based rental assistance, the applicant must explain how much money the low income family is going to need in order to pay its share of the rent, and where the families will use the tenant-based rental assistance (i.e., where available rental units are located). For tenant-based rental assistance, the HOME assistance shall be less than or equal to 100% of the fair market rent (FMR). See Table 7.

TABLE 7.—SCORING GUIDE

[Cost vs. Ability To Pay]

Good	Fair	Unsatisfactory
5 or 6 points	1 to 4 points	0 points.

(B) Project cash flow projection (3 points maximum). This requirement deals with the year by year cash flow for the proposed project. For example, for a new construction project by the applicant of a single family detached unit and where that unit is to be sold to a low income family that will occupy the unit, the cash flow projection would show the cost of construction; the construction payments; any equity or debt using HOME or non-HOME funds; the sale of the unit to the family, identifying any downpayment and any mortgage loan; and the monthly mortgage payment and the source of funds to make those payments.

The applicant must provide a year-by-year cash flow projection that includes a proforma estimate of all project costs and revenues. The project must be financially feasible from the start. The costs and the revenues must be realistic. The units must be buildable for the amounts shown. The costs must not be unrealistically low, showing more product for less money. See Table 8.

TABLE 8.—SCORING GUIDE

[Project Cash Flow Projection]

Good	Fair	Unsatisfactory
3 points	1 or 2 points	0 points.

(C) Long-term financial feasibility (3 points maximum). This requirement deals with the financial feasibility of the proposed project. The project is viewed as having costs and revenues throughout its lifetime. The applicant is asked to identify all of the costs and revenues, year by year, and report them to ensure that all of the costs shall be paid by revenues reasonably anticipated to occur.

The project must be financially feasible for the long-term, while at the same time remaining affordable as prescribed by the requirements at 24 CFR 92.614 and 92.615. Arrangements to be made for long-term costs must be shown. See Table 9.

TABLE 9.—SCORING GUIDE

[Long Term Financial Feasibility]

Good	Fair	Unsatisfactory
3 points	1 or 2 points	0 points.

(D) Cost effectiveness test (3 points maximum). This factor gives more points to projects that use less HOME funds.

(1) Housing Rehabilitation. For proposed projects that consist of rehabilitation, the proposed expenditure of HOME funds shall be no more than 62.5% of the cost of new construction (i.e., no more than 62.5% of the total development cost (TDC)) for substantial rehabilitation and no more than 50% of the cost of new construction for moderate rehabilitation. If the HOME assistance is less than 20% of the maximum allowable, the project receives 3 points. For 20% to 60%, 2 points. For 61% to 99%, 1 point. If it is 100% of the maximum allowable, the project receives 0 points. See Table 10.

(2) Acquisition. For acquisition, for the proposed project, the proposed expenditure of HOME funds shall be no more than 62.5% of the cost of new construction (i.e., no more than 62.5% of the TDC) if it has been substantially rehabilitated and no more than 50% of new construction if it has been moderately rehabilitated. If the HOME assistance is less than 20% of the maximum allowable, the project receives 3 points. For 20% to 60%, 2 points. For 61% to 99%, 1 point. If it is 100% of the maximum allowable, the project receives 0 points. See Table 10.

(3) New Construction. For new construction, for the proposed project, the proposed expenditure of HOME funds shall be less than or equal to 100% of the TDC. If the HOME assistance is less than 20% of the maximum allowable, the project receives 3 points. For 20% to 60%, 2 points. For 61% to 99%, 1 point. If it is 100% of the maximum allowable, the project receives 0 points. See Table 10.

(4) Tenant-Based Rental Assistance. This factor measures amounts of HOME funds based on the estimated income of the tenants, so that HOME assistance is 100% of the FMR if the tenant's contribution is zero. When the HOME assistance is at 100% of FMR, the project shall receive no points. When the HOME assistance is greater than 60% of the FMR but less than 100%, the project will receive 1 point. When the HOME assistance is greater than 19% but less than 61% of the FMR, the project will receive 2 points. When the HOME assistance is less than 20% of FMR, the project will reeive 3 points. See Table 10.

TABLE 10.—SCORING GUIDE—COST EFFECTIVENESS TEST

[In Percentages]

0 to 19	20 to 60	61 to 99	100
3 points	2 points	1 points	0 points.

(ii) Legal and Administrative Actions—5 points maximum.

(A) Building codes or standards. See 24 CFR 92.621. The documentation for building codes or standards for the project is a threshold item and shall identify proper building codes or standards that the Tribal government shall enforce or promulgate when the grant is awarded.

(B) Other legal and administrative. 5 points maximum. All policies, procedures, standards, criteria, and planning documents necessary for the type of project proposed must be included in the documentation for the project. Where rental housing is envisioned, this includes the tenant selection requirements for rental housing at 24 CFR 92.622(e) and 92.613(a) for tenant-based rental assistance. Where assistance for first time homebuyers is contemplated, this includes the requirements to 24 CFR 92.615. In addition, if the applicant is assisting first time homebuyers, it must establish guidelines determined by HUD to be appropriate for the subsequent resale of the housing units, required under 24 CFR 92.615(a)(4). Points are to awarded based on inclusion of sample documents, as well as the quality of the documents. See Table 12. Reviewers will determine points based on the extent to which the applications include documentation on the following factors:

(1) Housing Rehabilitation. Data submitted should include adopted rehabilitation policies, including adopted rehabilitation standards that meet applicable local codes and/or ordinances; maximum rehabilitation cost per unit; rehabilitation selection criteria; and project planning documents.

(2) Acquisition. Data submitted should include adopted standards for houses that will be acquired, including maximum purchase price per unit; participant selection criteria, and project planning documents.

(3) New Construction. Data submitted should include adopted standards for construction that meet applicable or local codes and ordinances and that meet HUD prescribed energy-efficiency standards; maximum cost per unit; participant selection criteria; and project planning documents.

(4) Tenant-Based Rental Assistance. Data submitted should include adopted lease form and maximum rent standards; housing quality standards; use of IHA waiting list; tenant selection criteria; and project planning documents.

TABLE 12.—SCORING GUIDE—OTHER LEGAL AND ADMINISTRATIVE

Good	Fair	Unsatisfactory
4 or 5 points	1 thru 3 points.	0 points.

(iii) Administrative Staffing—15 points maximum.

(A) Staffing plan during implementation and operation (15 points maximum). The applicant must provide a staffing plan and timetable for implementation of the project, to include the following:

(1) The staffing plan should identify key personnel who will be employed during the implementation phase of the project, i.e., during acquisition, rehabilitation, new construction, etc., and their experience relative to the proposed project. In order to be properly rated, the experience identified must demonstrate the degree of competence key personnel have in relation to the tasks required in implementing the proposed project. A proposal having highly experienced/competent personnel will receive 11 to 15 points. Proposed staff will be rated in varying degrees of competency in accordance with table 12 below.

(2) If the tribe has an agreement for the tribal IHA (or any other entity) to implement the project, a copy of the agreement should be included, as well as a staffing plan of the IHA (or other implementing entity), which includes the addition of staff for this project, and a description of the impact on the entity due to administering this project.

(3) All proposed projects that will be operated as rental projects MUST include a management and maintenance plan and a staffing plan for these functions. An agreement with the tribal IHA to manage the units is not sufficient as a management and maintenance staffing plan; the IHA should include projected staffing to carry out these functions. See Table 12.

TABLE 12.—SCORING GUIDE—STAFFING PLAN DURING IMPLEMENTATION—PLAN AND TIMETABLE

Good	Fair	Unsatisfactory
11 thru 15 points.	6 thru 10 points.	0 thru 5 points.

(3) Leveraging—25 points maximum.

The third of the three criteria provided in 24 CFR 92.604 is: Leveraging of HOME funds. This means HOME funds attracting or bringing in other dollars. Leveraging is the degree to which other sources of assistance, including, but not limited to: loans, advances, equity investments, interest subsidies, State funds, private contributions, and in-kind contributions are used in conjunction with HOME funds to carry out the proposed project.

Funds from all sources shall be documented by a written commitment and may be contingent on approval of the HOME award. Resources shall be counted only if they are currently available or shall be available within 3 months of grant notification. The degree to which other sources of assistance are used shall be evaluated, and points shall be awarded based upon the additional number of dollars for assisted housing made available by the other sources of assistance divided by the number of dollars for assisted housing in the grant under this program.

(i) When two (or more) dollars are made available by other sources of assistance for each dollar made available by HOME funds, the maximum number of points (25) is earned. When one dollar is made available by other sources of assistance for each dollar made available by

HOME funds, ten (10) points is earned. Points shall be awarded as presented in Table 13.

TABLE 13.—*Scoring Guide*

[Leveraging]

	Ratio (Percentage)	*Points*	Score
1	200 or more	25	
2	150 to 199	20	
3	111 to 149	15	
4	100 to 110	10	
5	50 to 99	8	
6	10 to 49	5	
7	Less than 10, or unclear.	0	

(ii) Ratio as a percentage is computed by dividing the number of dollars made available by other resources of assistance by the number of dollars made available by HOME funds, and multiplying by 100.

(iii) Applicants must provide documentation of the amount and sources of additional funds, including mortgage insurance, tribal funds, private contributions, tribal in-kind contributions directly related to the activity (labor, material, and equipment, as well as for soft costs, e.g., architectural and engineering costs, administrative costs), etc., which are to be used in conjunction with HOME funds to carry out the proposed project.

(iv) In-kind contributions must be documented. Land already owned by the tribe shall not be counted. In the case of land donated by individuals or entities, it shall be counted if the donation was contingent upon the receipt of the award. All funds, services, and land to be contributed must be documented. Land value shall be counted as a contribution only to the extent of its appraised value. All appraisals shall be in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Donated services shall be accepted, provided: (1) The costs are demonstrated and determined necessary and directly attributable to the actual development of the project; and (2) comparable costs and time estimates are submitted that support the donation.

(v) The amounts recognized as leverage may not include any other Federal grant or assistance program. Loans secured through mortgage loan insurance programs (e.g., section 248 mortgage loan insurance) are not considered Federal assistance for this purpose.

(4) Rating and Ranking Factors. Rating and ranking of projects will be carried out separately by each FO for those applicants in its area. Each FO will create an Initial Project Ranking list.

For an overall picture of project rating, see Figure 2.—Indian HOME Program Scoring. Note the threshold requirements.

Figure 2.—Indian Home Program Scoring

1. Threshold reqm't: tribal housing plan. Yes [ ] No [ ]
2. Threshold reqm't: project narrative description. Yes [ ] No [ ]
3. Threshold reqm't: how project meets selection criteria. Yes [ ] No [ ]
4. Threshold reqm't: need and design (a) housing need (10 points max., 8 req'd). Yes [ ] No [ ]
5. Threshold reqm't: proposed compliance with building codes. Yes [ ] No [ ]
6. Threshold reqm't: operation mgmt, maintenance, & staffing plan. Yes [ ] No [ ]

Selection criteria	Maximum points
1. Need	40 total (maximum)
a. Need and design	[20 subtotal]
(1) Need-quantity	(4)
(2) Demographic info	(3)
(3) Design to need response	(3)
Threshold requirement= 8 points minimum Yes [ ] No [ ].	
(4) Low income benefit	(10)
b. Project feasibility	[20 subtotal]
(1) Kind and amount of units.	(5)
(2) Maximize benefits thru reinvestment.	(15)
2. Planning and Implementation.	35 total
a. Financial	[15 subtotal]
(1) Cost and ability to pay	(6)
(2) Cash flow	(3)
(3) Long-term feasibility	(3)
(4) Cost effectiveness	(3)
b. Legal and administrative	[5 subtotal]
1. Threshold requirement: building codes or standards.	Yes [ ] No [ ]
(2) Other legal and administrative.	(5)
c. Administrative	[15 subtotal]
(1) Implementation staffing plan.	(15)
Threshold requirement: operation mgmt, maint. & staffing plan.	Pass [ ] Fail [ ]
3. Leveraging	25 total

Selection criteria	Maximum points
Project Score	100 points maximum

The reviewer should use as a guide Figure 3.—Rating Form for Indian HOME Grant Applications, below, to roll-up the scores for each of the selection criteria.

Figure 3.—Rating Form for Indian HOME Grant Applications

Applicant _____
Reviewer _____
Date _____

Threshold factor	Yes	No
1. Submission of Tribal Housing Plan.		
2. Submission of project narrative description.		
3. Submission of how project meets selection criteria.		
4. Need and design (a) Housing need (10 points max., 8 req'd)..		
5. Proposed compliance with building codes.		
6. Operation mgmt, maint. & staffing plan.		
Pass all thresholds		

Point Scores for each factor	Max pts.	Application score
1. Need and design Total	40 max.	
a. Housing need Subtotal	20	
Table 1—Scoring Guide—Quantity of Housing Need—Quality of Documentation.	(4)	
Table 2—Scoring Guide—Quantity of Housing Need—Demographic Characteristics.	(3)	
Table 3—Scoring Guide—Responsiveness of Proposed Project Design to Housing Need.	(3)	
Table 4—Scoring Guide—Benefits to Low Income Members.	(10)	

Point Scores for each factor	Max pts.	Application score
b. Project feasibility Subtotal	(20)	
Table 5—Scoring Guide—Identification of Quantity of Housing Units Available to Low Income Members of the Tribe.	(5)	
Table 6—Scoring Guide—Maximizing Benefits by Reinvestment.	(15)	
2. Planning and Implementation Total	40	
a. Financial Subtotal (15)		
Table 7—Scoring Guide—Cost vs. Ability to Pay.	(6)	
Table 8—Scoring Guide—Project Cash Flow Projection.	(3)	
Table 9—Scoring Guide—Long Term Financial Feasibility.	(3)	
Table 10—Scoring Guide—Cost Effectiveness Test.	(3)	
b. Legal and Administrative Subtotal (5)		
Table 11—Scoring Guide—Other Legal and Administrative.	(5)	
c. Administrative Subtotal (15)		
Table 12—Scoring Guide—Staffing Plan During Implementation—Plan and Timetable.	(15)	
3. Leveraging Total	20	
Table 13—Scoring Guide—Leveraging. Subtotal (20)		
Project Score: _____(max. 100)		

(i) Merged Ranking. After the projects from all applicants have been rated, their scores will be assembled in a single, merged list of scores for all rated projects.

(ii) An applicant should indicate a project priority if applications for more than one project are submitted. Otherwise, applications for more than one project submitted by an applicant shall be ranked in the order of the score received.

(iii) Computation. Scores for ranking shall be carried out to two decimal places (e.g., 12.34).

(iv) Selection. The ranking process shall produce an ordered list of projects that may receive funding. The order is established by the number of points the project received in the rating process. The threshold for further consideration shall be 60 out of 100 points. Project applications scoring lower than 60 points shall be set aside as non-responsive and ineligible. Of the qualifying applications, the project with the highest point total shall be funded first, the next highest shall be funded second, and so on, continuing through all the projects that have met the threshold requirement or until the funds are exhausted.

(v) Tie Breaker. When rating results in a tie among projects, FOs shall approve projects in the following order:

(A) Those that can be fully funded over those that cannot be fully funded.

(B) Projects that benefit the most very low and low-income persons.

(C) Projects that beneift the highest percentage of the total population of the tribe.

II. Application Process

(a) Application Packages. An application kit, including Application Form 424 may be obtained from any Indian FO listed in Appendix 1.

(b) Submittal of Complete Application. Completed applications must be submitted to the Indian FO having jurisdiction for the applicant at the address/location listed at Appendix 1. The applicant shall be submitted on Form 424 and shall be accompanied by all the legal and administrative attachments required by the form.

(c) Application Due Date. An applicant may submit an application for a project at any time after the PUBLICATION DATE of this NOFA, to the Indian FO having jurisdiction over the applicant on or before 3:15 p.m. FO local time, August 19, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile ("FAX") copies shall not be accepted.

III. Checklist of Application Submission Requirements

Each application must contain the following:

(a) _____ Threshold requirement: Tribal Housing Plan. Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS) to receive HOME funds. However, the application must demonstrate how the proposed project shall contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe. The application must include a Tribal Housing Plan (THP), consisting of a comprehensive description of the housing needs of the tribe, steps for meeting that need year-by-year for five years, and a procedure for ensuring continuity from year-to-year as well as a process to accommodate change when needed. This THP is a threshold requirement. To be considered further, the application for the project must contain this information. In future years, the tribe shall be expected to submit the previous year's information as part of the new year's application and demonstrate how it is implementing its THP. The applicant shall be required to explain year-to-year deviations from the THP. The Tribal Housing Plan shall, at a minimum, consist of the following:

(1) Housing needs. A description of the tribe's estimated housing needs projected for the ensuing 5-year period, and the need for assistance for very low-income and low-income families, specifying such needs for different types of tenure and for various family sizes.

(2) Strategy for the homeless. A description of the nature and extent of homelessness within the tribal jurisdiction, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness, and a description of the tribe's strategy for:

(i) Helping very low and low-income families avoid becoming homeless;

(ii) Addressing needs of homeless persons (including a brief inventory of facilities and services that meet such needs within that jurisdiction); and

(iii) Helping homeless Indians make the transition to permanent housing and independent living.

(3) Housing market characteristics. A description of the significant characteristics of the tribe's housing market, including a description of the

physical condition of the housing units with such elements of infrastructure as proposed housing cluster sites, existing and proposed off-site roads, existing and proposed water and sewer facilities, utilities, parks, and landscaping. Indian housing units should be described separately. In addition, the plan should address geographical and topographical features, as well as socio-economic factors such as employment opportunities, schools and services which have an impact on the placement of residential housing.

(4) Coordination of the THP and policies. An explanation as to whether the cost of housing or the incentives to develop, maintain, or improve affordable housing within the tribe's jurisdiction are affected by tribal policies, including land use controls, zoning ordinances, building codes, fees and charges, and growth limits, and a description of the tribe's strategy to remove or ameliorate negative effects, if any.

(5) Institutional structure. An explanation of the actual and anticipated institutional structure, including private industry, nonprofit organizations, and public institutions, through which the tribe will have to carry out its THP.

(6) Availability of resources. An indication of the resources from private, non-Federal public, and Federal sources that are reasonably expected to be made available for housing and related activities, and an identification of where tribal land may be used.

(7) Strategy. A description of the tribe's strategy for housing activities and families to be assisted over a five year period.

(b) _____ Components that address the summary description and selection criteria thresholds. The applicant must provide a narrative and supporting documentation that are responsive to the selection criteria of sections I.(e)(1), (2), and (3) of this NOFA. This includes, but is not limited to, a description of the proposed project, building codes or standards, how the HOME funds shall be used, and the various kinds of information that are necessary in order to apply the selection criteria/rating factors.

(c) _____ Complete application on Standard Form 424, Application for Federal Assistance.

(d) _____ HUD Form 4122, Project Summary for CPD Small City Indian Program, and HUD Form 4125, Implementation Schedule.

(e) _____ Description of proposed project.

(f) _____ HUD Form 4123, Cost Summary.

(g) _____ Project cost information.

(h) _____ Project location map.

(i) _____ HUD Form 2880, Applicant Disclosures.

(j) The following certifications:

(1) _____ A certification that the applicant shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of section 92.634.

(2) _____ A certification that the applicant shall use HOME funds in compliance with all the requirements of 24 CFR part 92, the HOME investment partnerships program interim rule.

(3) _____ Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(4) _____ Debarment. The certification that neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24, appendix A.

IV. Corrections to Deficient Applications

Upon receipt of the application, HUD shall note the date and time and provide written acknowledgement to the applicant indicating the date and time the application was received. The FO will complete review of the application within 14 days after the application due date. If the applicant proposes to involve the IHA, the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135.

If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory or the involvement of a disqualified IHA, the Department shall notify the applicant in writing that the applicant has additional time to submit the missing item or correct the technical mistake. HUD must receive the correction within 14 calendar days from the date of issuance of the HUD notification letter. If HUD does not receive the missing item within the required time period, the application shall be ineligible for further processing.

V. Other Matters

(a) Environment. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(b) Energy. Utility expenses place a heavy burden on Indian housing and often cause abandonment. Applicants are encouraged to address this problem in applications for funding. 24 CFR 92.621: "Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR part 39." See also 24 CFR 905.250(b) and 24 CFR 85.36(b)(7).

(c) Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this NOFA shall not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The NOFA is limited to providing funds to Indian tribes in accordance with a program to expand the supply of affordable housing.

(d) Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA provides funds to Indian tribes in accordance with a program to expand the supply of affordable housing. To the extent that housing for families is increased, the impact on the family is beneficial. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

(e) Section 102 of the HUD Reform Act. Documentation and Public Access Requirements; Applicant/Recipient disclosures:

Documentation and public access requirements. HUD shall ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, shall be made available for public inspection for a five-year period beginning not less than 30 days after the

award of the assistance. Material shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD shall include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD shall make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) shall be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) Section 103 of the HUD Reform Act. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advanced information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics shall provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter should be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(g) Section 112 of the HUD Reform Act. Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: 42 U.S.C. 3535(d) and 12701–12839.

Dated: June 8, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

Appendix 1. List of Indian Field Offices

Region V—Chicago

Chicago Office of Indian Program, 77 West Jackson Boulevard, Chicago, Illinois 60606–3507, (312) 353–1282 or (800) 735–3239

Region VI—Oklahoma

Oklahoma City Indian Programs Division, Murrah Federal Building, 200 NW. 5th Street, Oklahoma City, Oklahoma 73102–3202, (405) 231–4101

Region VIII—Denver

Denver Office of Indian Programs, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–2963

Region IX—Phoenix

Indian Programs Office, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2360, (603) 379–4156

Region X—Seattle

Seattle Office of Indian Programs, 1321 Second Avenue, Seattle, Washington, 98101–2054, (206) 442–5298

Region X—Anchorage

Anchorage Indian Housing Division, 701 C Street, Box 64, Anchorage, Alaska 99513–7537, (907) 271–4170

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Monday
June 15, 1992

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary

Indian Housing Development and Indian Housing Family Self-Sufficiency Programs for Fiscal Year 1992; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3444; FR 3142-N-01]

NOFA for the Indian Housing Development and Indian Housing Family Self-Sufficiency Programs for Fiscal Year 1992

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for the Indian Housing Development and Indian Housing Family Self-Sufficiency Programs, Fiscal Year 1992.

DATE: Applications must be physically RECEIVED by the Indian field office (FO) having jurisdiction over the applicant by 3:15 p.m. (FO local time) on July 30, 1992 for the Family Self-Sufficiency Program, and by 3:15 p.m. (FO local time) on August 10, 1992 for the Indian Housing Development Program. Application(s) for the FSS Program and for new Indian housing units must be submitted on Form HUD-52730 with all supporting documentation required by the appendices to this NOFA, i.e., Appendix 2, Appendix 3, and Appendix 4, and for demolition or disposition in accordance with NOTICE PIH 91-17, "Fiscal Year 1992 Public and Indian Housing Demolition or Disposition Application Submission;" and 24 CFR part 905, subpart M.

The above-stated application deadlines are firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the stated deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

SUMMARY: This NOFA announces the availability of Indian housing (IH) development funds for Fiscal Year (FY) 1992 to support Family Self-Sufficiency (FSS) programs of IHAs. The purpose of the FSS program is to promote the development of local strategies that coordinate the use of Indian housing with both public and private resources, to enable eligible families to achieve economic independence and self-sufficiency.

A. This NOFA also announces the availability of funding for FY 1992 for the development of new IH units and provides the applicable criteria, processing requirements and action timetable. All Indian Housing Authorities (IHAs) that have not been determined to be administratively incapable, in accordance with 24 CFR 905.135, are invited to submit applications for Indian housing developments in accordance with the requirements of this NOFA.

b. In the body of this document is information concerning: the purpose of this NOFA; eligibility; available amounts; the procedures that an IHA must follow to apply for an Incentive Award of Indian housing development units and new Indian housing units. The procedures for rating, ranking, and funding IHA applications are also in this NOFA.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the appropriate Indian FO for further information. Refer to Appendix 1 for a complete list of FOs and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the information collection requirements contained in these application procedures for development funds were reviewed by the Office of Management and Budget and assigned OMB control number 2577-0030.

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I. Family Self-Sufficiency

A. Authority

The Family Self Sufficiency Program (FSS) is authorized under section 23, U.S. Housing Act of 1937, as added by section 554, of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990).

B. Incentive Award Allocation Amount

1. The FY 1992 HUD Appropriations Act (Pub. L. 102-39) made available $227,170,000 of budget authority for Indian housing development. However, this amount was reduced by $10,418,428 due to a budget adjustment necessitated by a slower rate of Section 202/8 conversions than originally anticipated. Therefore, the amount of funds available for Indian housing development in FY 1992 is $216,751,572.

Approximately ten percent ($22,000,000) of the $216,751,572 provided for new IH developments in FY 1992 is being set aside for FSS purposes, in accordance with section 23 of the U.S. Housing Act of 1937 (as amended by section 554 of the National Affordable Housing Act of 1990 (NAHA) (42 U.S.C. 14237u)). Those funds will be made available for competition in accordance with this NOFA. (FSS Indian housing development Incentive Award grant funds are exempt from the metropolitan/non-metropolitan requirement, see sec. III.B.)

2. To carry out the Incentive Award competition, the total amount of FSS funds is being made available for the FSS program and will be allocated to the six Indian FOs on the basis of fair-share factors which reflect the most recent Bureau of Indian Affairs (BIA) Consolidated Housing Inventory; and, where available, State or Tribal studies. The approximate share to be provided to each Indian FO is shown below:

Indian region	Estimated number of units	Amount
Chicago	45	$2,929,000
Oklahoma City	54	$2,985,000
Denver	44	3,864,000
Phoenix	81	6,405,000
Seattle	21	1,676,000
Anchorage	35	4,141,000
Total	280	$22,000,000

3. FO Directors will select applications for funding for Indian housing on the basis of the criteria stated in this NOFA. FO Directors may fund at a level less than applied for. To satisfy this procedure, the FO will find the percentage which enables its funding to be distributed to all

applicants above the threshold such that the percentage of units applied for which are funded is the same for all applicants. Otherwise, applications with the highest score will be funded in rank order until the FO allocation is exhausted.

Any unused funding in a specific region will be redistributed by Headquarters, proportional to need, among remaining allocation areas with approvable partially funded FSS applications. Unused FSS funding will be redistributed by Headquarters on the same fair-share basis to the Indian FOs after all approvable FSS applications have received funding consideration.

4. Regional offices may not authorize any selection criteria in addition to the criteria set out in this NOFA.

C. Eligibility for Incentive Award Units

1. IHA Eligibility

All IHAs are eligible to apply for Incentive Award units, except that applicants for Indian housing development units must be organized in accordance with 24 CFR 905.125 or 905.126; must have executed the required Tribal and/or local cooperation agreements as required by the U.S. Housing Act of 1937, as amended; and must maintain administrative capability in accordance with 24 CFR 905.135.

2. Eligibility for Multiple FSS Incentive Programs Under This NOFA

Applications may be made to more than one FSS incentive program; e.g., an IHA may apply for Incentive Section 8 rental certificates or rental vouchers *and* Incentive Indian housing units, as long as the IHA is eligible to participate in the programs for which it applies.

a. Applications for the FSS Incentive Awards under this NOFA do not preclude applications for funds under other NOFAs for Section 8 rental certificates and rental vouchers.

b. No Indian Housing Incentive Award application shall be for more than 50 units, and no IHA may file an application for more than one Incentive Award from Indian housing.

c. Ineligible Programs. Indian Mutual Help Housing is not eligible for FSS Incentive Award funding.

D. Incentive Award Application Process

1. Application Process

IHAs applying for Incentive Award units must submit the following to the appropriate FO in accordance with the FSS TIME TABLE.

FSS Time Table

a. Applications due from IHAs on or before 3:15 p.m., FO local time, July 830, 1992.

b. FOs to initiate immediate screening. One working day after the application is received, FO staff will initiate screening for completeness.

c. FOs begin application review and rating within 14 calendar days after the application deadline.

d. Award announcement September 19, 1992.

2. Application Forms

An application Form HUD–52730 for the number of Incentive Award units applied for. Applications must meet the general requirements for new Indian housing units. An Application Packet, including copies of the forms required, will be available in FOs listed in appendix 1.

3. Submittal of Complete Application

For a discussion of what constitutes a complete application, see III.A. Completed applications must be submitted to the Indian FO having jurisdiction of the IHA applicant at the address/location listed in appendix 1.

4. Required Exhibits

All applicants must submit a narrative demonstration that the IHA will be able to implement an FSS program within 12 months of application approval.

5. Incentive Award Application Screening

Immediately after the deadline for receipt of Incentive Award applications, the FO will screen applications to determine whether all information or exhibits were submitted. Appendix 2, appendix 3, and appendix 4 of this NOFA provide submission requirements and initial threshold screening checklists.

6. Action on Application

When the application is received by HUD, HUD will provide written notification to the IHA showing the date and time the application was received in the HUD office. The FO will begin review of the application within 14 calendar days after the application deadline. The application must be complete, must demonstrate legal sufficiency, and the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135.

If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory or the involvement of a disqualified IHA, the HUD FO shall notify the applicant in writing that the applicant has additional time to submit the missing item, or correct the technical mistake. HUD must receive the correction within 14 calendar days from the date of issuance of the HUD notification letter. If HUD does not receive the missing item within the required time period, the application shall be ineligible for further processing.

7. Application Rating, Ranking and Selection

a. Rating of Applications. Approvable applications shall be rated, ranked and funded by the FOs.

b. Processing of Incentive Award Projects. After funding, Incentive Award projects shall be processed in accordance with outstanding program procedures and shall be subject to all time frames set forth in program procedures.

c. Submission of Action Plan. The Action Plan must be submitted to the FO within 90 calendar days of notification of approval by HUD of the IHA's application.

E. Selection Criteria and Ranking Factors

1. Incentive Award—FSS Selection Criteria and Rating and Ranking Factors

a. Selection Criteria. To be selected for an incentive award, an IHA must meet the basic requirements for funding for new Indian housing units (see appendix 4 of this NOFA) and provide evidence that is satisfactory to HUD that it has:

(1) A broad base of support for an FSS program in its community;

(2) A broad range of supportive services that can be integrated to address the needs of FSS participants;

(3) The support of its resident population; and

(4) The active support of the Chief Executive Officer (CEO) of the unit of general local government.

b. Rating and Ranking Factors for FSS.

(1) Supportive Community Relationships.

The FSS program must have broad based community support, including ties to both minority and non-minority communities, and utilize local public and private organizations that are willing to comment funds, staff, equipment, the use of their buildings and equipment, training assistance, employment opportunities, or other support. Such organizations include local governments, businesses, religious organizations, private non-profit service providers, educational and training institutions, civic organizations,

foundations, corporations, and local benefit providers. A successful FSS program must have a broad range of commitments from public and private employers, trainers, counselors and service providers. Ideally, representatives of community groups, organizations and businesses also will serve on the Program Coordinating Committee.

25—16 Points: The IHA has: (i) A strong, coordinated, varied base of community support as evidenced by described existing working relationships with a variety of public/private resources in the community, including previous commitments of funds, staff, equipment, the use of buildings and equipment, training assistance or employment opportunities; and

(ii) Will further expand its existing base of support and/or the number of persons to be served, as evidenced by written commitments from additional entities to offer support and to coordinate support as participants in the proposed FSS program.

15—0 Points: The IHA meets only one of the two criteria set forth in paragraphs (i) and (ii) above.

(2) Supportive Services. A successful FSS program must offer a wide variety of services to address the needs of FSS participants that can be integrated into meaningful assistance for families. A key consideration relates to the fact that the services must be coordinated in their delivery and appropriate in scope to the needs of the residents. For example, quality child-care, capable to attending to a variety of age groups and operating a sufficient number of hours per week to accommodate work, training, and/or counseling schedules may be important. Another important service may be transportation, which links the other services together. The IHA shall describe past services provided by others to its residents, assess the range and depth of the services, and state how they might be transferred to an FSS program. The IHA shall include written commitments of support from organizations and entities willing to provide services under FSS.

25—16 Points: The IHA has: (i) Actively worked with public and private service providers to offer supportive services which are comprehensive in scope and quality and include combinations of child care, transportation, job training and placement, counseling, education, money management parenting, and/or rehabilitation services to residents; and

(ii) Will further expand the kinds of services and/or number of persons to be served as evidenced by written commitments from identified entities which are providers of such services.

15—0 Points: The IHA meets only one of the two criteria set forth in (i) and (ii) above.

(3) Resident support. The IHA shall describe its efforts to establish and/or support Resident Councils (RCs), Resident Management Corporations (RMCs), Homeownership programs and resident-based economic development activities. The IHA shall also describe how its residents are involved generally in IHA planning and operations and specifically resident involvement for support service programming and delivery. A Resolution of Support by resident groups for the FSS programs shall be included, along with any plans the IHA has developed for including resident participation in the development and operation of FSS programs. This may include resident membership on the Program Coordinating Committee (PCC) and participation in the preparation of the Action Plan.

25—16 Points: The IHA has a history of resident involvement that includes successful resident participation in IHA planning and operations, generally, and specifically incorporates resident involvement for support service programming and delivery. This is evidenced by described active involvement in Homeownership programs, economic development activities, etc., and there is written evidence of resident support for the application. Residents are, or will be, as described, represented on the Program Coordinating Committee and participate in the preparation of the Action Plan.

15—0 Points: The IHA has established resident initiatives and resident involvement does occur; there is movement toward greater participation. Residents will, as described, be represented on the PCC and participate in preparation of the Action Plan.

(4) Chief Executive Officer Support. The CEO of the Unit of general local government must evidence active support for the FSS program. CEO consultation is required in the development of the PCC and the preparation and implementation of the Action Plan. In evaluating this factor, HUD will look at past IHA undertakings that have involved the CEO and commitments provided by the CEO pledging local governmental funds, staff, equipment, use of buildings and property, etc. for proposed FSS activities and services.

25—16 Points: The CEO of the unit of general local government and the IHA have successfully cooperated in the past in the provision of service-related activities for IHA residents. The CEO has expressed strong, written support for the FSS application and has, by written commitment, pledged cooperation for expansion of such support through local governmental funds, staff, equipment, use of buildings and property, etc., for FSS activities and services.

15—0 Points: The CEO and the IHA have cooperated in the past, and the CEO has provided general support for the IHA or has committed to provide support in the future for an FSS program through funding, use of facilities, staff, etc.

Total Possible FSS Points: 100.

2. Minimum Score

Applications that receive less than 60 points will not receive further consideration.

F. Program Guidelines

At 56 FR 49592, September 30, 1991, HUD published guidelines for implementation of the FSS program. IHAs and other interested parties must consult that Notice to acquaint themselves fully with the operational details of the FSS program. The IHA is required to implement FSS within a twelve-month period, and the IHA must not wait until the new units are constructed and occupied before implementing its FSS program.

II. New Development

A. Authority

1. Statutory Authority. Secs. 5 and 6, U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437d); U.S. Department of Housing and Urban Development and Independent Agencies' Appropriations Act for Fiscal Year 1992 (Pub. L. 102–139, 105 Stat 736, Approved October 28, 1991).

2. Indian housing regulations. Indian housing development regulations are published at 24 CFR part 905.

B. Development Allocation Amount

This NOFA announces that $194,751,572 is being made available for non-FSS IH development grants (new Indian housing units) for the fiscal year.

Funds needed for replacing units that have been approved for demolition or disposition must also be funded from the amount available for new IH development as a priority. HUD headquarters is allocating "off the top" $9,000,000 in accordance with 24 CFR 791.403, which has been determined to be an amount that will adequately meet the FY 1992 funding needs for demolition/disposition ($3.0 million), HOPE 1 ($2.5 million), and section 5(h)

replacement housing ($3.5 million), leaving $185,751,752 for allocation to the FOs for new development.

Each of the six FO service areas has been designated as the smallest practicable area for allocation of assistance. The funds available for new units in FY 1992 will be assigned to the FOs in accordance with 24 CFR 791.403. Funds allocated for replacement units that are not reserved by the FOs by August 1, 1992 will be distributed to the FOs in the same manner as the amounts for new units were allocated.

A competitive process, described in section II.E of this NOFA, will be used to select IHA applications to be funded for new Indian housing units. The following chart specifies the amount of grant authority available for new units for FY 1992 for the various FOs, and it includes funds to be expended on off-site sewer and water for the development of the housing units. (However, in order to meet the metropolitan/non-metropolitan requirements of section 213(d) of the Housing and Community Development Act of 1974, the Department may be precluded from awarding Indian housing development funds to certain metropolitan and non-metropolitan areas.)

Indian region	Est. No. of units	Amount
Chicago	383	$24,729,000
Oklahoma City	466	25,204,000
Denver	373	32,625,000
Phoenix	696	54,077,000
Seattle	175	14,150,572
Anchorage	299	34,966,000
Total	2,392	185,751,572

C. Eligibility for New Housing Units

All IHAs which have not been determined to be administratively incapable in accordance with 24 CFR 905.135, have been organized in accordance with 24 CFR 905.125 and 905.126, and have the required Tribal and/or local cooperation agreements as required by the U.S. Housing Act of 1937, as amended, are invited to submit applications for new Indian housing units.

All IHAs that have developments assisted under the U.S. Housing Act of 1937, as amended, and meet the requirements of 24 CFR 905 Subpart M, may apply for funds for demolition or disposition, whether eligible for new units or not.

D. Development Award Application Process

1. Application Due Date

An IHA may submit an application(s) for a project at any time after the publication date of this NOFA, to the Indian FO having jurisdiction over the IHA applicant until 3:15 p.m., FO local time, on August 10, 1992 for new Indian housing units.

The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

Application(s) shall be submitted on Form HUD–52730 and shall be accompanied by all the legal and administrative attachments required by the form and the items specified in the checklist. Where the provisions for the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or a copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application. Applications submitted by facsimile are not acceptable.

2. Application Kit

Application Form HUD–52730 for new IH units may be obtained from any Indian FO listed in appendix 1 of this NOFA, or from Indian Housing Development Handook 7450.1, Chapter 2.

3. Submission of Complete Application

For a discussion of what constitutes a complete application, see section III.A. of this NOFA. Completed applications must be submitted to the Indian FO having jurisdiction of the IHA applicant at the address/location listed in appendix 1.

New Housing Time Table

a. Applications due from IHAs before 3:15 p.m., FO local time on August 10, 1992 for new Indian housing units.

b. FOs to initiate immediate screening. One working day after the application is received, FO staff will initiate screening for completeness.

c. FOs begin application review and rating within 14 calendar days after the application deadline.

d. Award announcement will be September 21, 1992.

e. Before approving proposed development program or modernization project, HUD will comply with the requirements of 24 CFR part 50.

4. Action on application

When the application is received by HUD, HUD will provide written notification to the IHA showing the date and time the application was received in the HUD office. The FO will begin review of the application within 14 calendar days after the application deadline. The application must be complete, must demonstrate legal sufficiency, and the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135.

If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, the HUD FO shall notify the applicant in writing that the applicant has additional time to submit the missing item, or correct the technical mistake. HUD must receive the correction within 14 calendar days from the date of issuance of the HUD notification letter. If HUD does not receive the missing item within the required time period, the application shall be ineligible for further processing.

5. Statutory Requirement Concerning Development Cost

In accordance with section 6(h) of the U.S. Housing Act of 1937, every application submitted in FY 1992 for a new construction development grant must be accompanied by evidence that the cost of new construction is less than the cost of acquisition or acquisition plus rehabilitation. In the alternative, the IHA may submit a certification that there is insufficient existing housing to undertake the development of housing through acquisition of existing housing or rehabilitation.

E. Selection Criteria and Ranking Factors.

1. Large Family Preference

The Department has determined that for the purposes of this NOFA the priority for families requiring three or more bedrooms will not be required. The large family preference, section 6(j) of the U.S. Housing Act of 1937, as amended, was repealed by the National Affordable Housing Act (NAHA) of 1990, Public Law 101–625. This determination is made, not withstanding the provision in 24 CFR 905.220.

2. Rating and Ranking

Complete and eligible applications will be ranked separately for each program. The score calculated for the application of an IHA that has not previously been funded will be adjusted, before ranking, by multiplying the IHA's score by a factor of 2.5 to compensate for lack of experience on which to base a rating. The rankings will be based on awarding points to each application for the following categories:

a. The relative unmet IHA need for housing units compared to the other eligible applications, based on IHA waiting lists and the total number of units in management and in the development pipeline. For IHAs that have not previously been funded, the points for this category will be 40. For all other IHAs, this need will be measured for each program type by dividing the number of families on the waiting list for the size of units involved, by the IHA's total number of units in management and under development. If the result of this division is greater than 1.00, the points for this category shall be 40. Otherwise, the result of this division shall be multiplied by 40. The maximum number of points an IHA can receive is 40 points. A waiting list of 500 or more applicants will be worth 40 points.

b. The relative IHA occupancy rate, compared to the occupancy rates of other eligible IHA applications. The occupancy rate for an IHA shall be derived from the most recent data entered in the HUD Multifamily Information Retrieval System (MIRS) national data base, which reports total units available and total units occupied based on information supplied by IHAs on forms submitted periodically to HUD. For all IHA projects in management, the total number of units occupied is divided by the total number of units available, multiplied by 100. This occupancy rate for an IHA will then be divided by the highest occupancy rate of any IHA (never to exceed 97%, in any event), and this ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base an occupancy rate, and they shall receive no points for this category. The maximum number of points that an IHA can receive is 20 points.

c. Length of time since the last Program Reservation date. The number of calendar days from January 1, 1991 to the date of the last Program Reservation for an IHA shall be divided by the longest time, in number of calendar days, since the last Program Reservation for any IHA. This ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category. The maximum number of points that an IHA can receive is 20 points. Awards of demolition/disposition or family self-sufficiency units are not included in this calculation.

Where units have been awarded in a subsequent fiscal year as a result of an error in an earlier fiscal year, the calculation for length of time since the last Program Reservation date should be based on when the Program Reservation would have been made had the error not occurred.

d. Current IHA development pipeline activity. Each IHA will start with 20 points. For each IHA development that was not completed by January 1, 1991, points will be deducted as follows (for this purpose "completed" means the Date Of Full Availability (DOFA)):

(1) For each IHA development not having an approvable Development Program submitted within one year of Program Reservation date (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

(2) For each IHA development not achieving construction start within 30 months (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

(3) For each IHA development not meeting HUD requirements for administration of development contracts as set forth in the regulations and handbooks, 4 points are deducted—up to a maximum deduction of 20 points.

(4) The maximum number of points an IHA can receive is 20 points. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category.

3. Computation

Scores for ranking shall be carried out to two decimal places (xx.xx).

4. Selection

a. The ranking process will produce an ordered list of IHAs that may receive funding. The order is established by the total number of points the application received in the rating process. The application with the highest point total will be funded first, the next highest will be funded second, until funds are exhausted.

b. The size of projects awarded shall be based upon the following table to ensure meaningful competition based on need. Exceptions to the maximum size of projects awarded based on the table shall be made by the Indian Field Office director only where good cause exists. Reductions may not be made based on the awarding of replacement units for HOPE or demolition/disposition.

Total of all units IHA requested in application(s) by program type	Maximum units awarded (subject to availability)
1,000 and above	300
750 to 999	200
500 to 749	150
400 to 499	100
300 to 399	80
200 to 299	60
199 or fewer	40

If an IHA that serves more than one distinct Indian community submits applications for housing units in several of the communities, each application will be treated separately, for purposes of the number of units awarded.

5. Tie Breaker

In the case of ties, priority will be given to the application that has the highest ratio of preapproved sites to:

a. Units, and, if there is still a tie,

b. BIA-approved leases (or similar site control on non-trust land) for the proposed project site(s).

F. Requests for Amendment Funds

1. Amendment funds for FY '92 may not be used for FY '92 approved projects (i.e., FY '92 program reservations).

2. Amendment funds will not be distributed to FOs on the same basis as funds for new units. Instead, they will be distributed by HUD Headquarters on the basis of (1) emergency requests from FOs, (2) amendment funds related to the impact of the change in calculation to Total Development Cost calculations mandated by Public Law 101–144 (103 Stat. 846), or (3) in response to amendment money need surveys submitted by the FOs as requested. Requests that are not emergency requests and that are not in response to the change in Total Development Cost calculations will be evaluated using the following order of priority:

a. Projects under construction with HUD-approved litigation settlement payable.

b. Projects that require a cost increase to cover immediate HUD-approved correction of a safety or health hazard that is not associated with off-site sewer and water needs.

c. Projects under construction with a cost increase needed to cove a HUD-approved off-site sewer and water component.

d. Projects under construction that require nominal HUD-approved change orders.

e. Projects with active Invitation to Bid or Request for Proposal status that require a nominal HUD-approved cost increase to execute construction contract or contract of sale.

f. Projects with an active Indian Health Service project summary that require a HUD-approved cost increase before a memorandum of agreement can be executed.

g. Projects that require a HUD-approved nominal cost increase to achieve project close-out.

h. Projects that require a HUD-approved cost increase for any reason not listed above.

III. Other Matters.

A. Corrections to Deficient Applications

Upon receipt of the application, HUD will note the date and time and provide written acknowledgement to the applicant indicating the date and time the application was received. The FO will complete review of the application within 14 calendar days after the application due date. The application must be complete, i.e., it must contain all the information called for by the appropriate checklist. For an FSS incentive award, that is Appendix 2, FSS Initial Screening Checklist; as well as Appendix 4, New Indian Housing Units Development Application Submission Checklist. For the development of new Indian housing units without an FSS incentive award, that is Appendix 4, New Indian Housing Units—Development Application Submission Checklist. The IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135.

If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, the HUD FO shall notify the applicant in writing that the applicant has additional time to submit the missing item, or correct the technical mistake. HUD must receive the correction within 14 calendar days from the date of issuance of the HUD notification letter. If HUD does not receive the missing item within the required time period, the application shall be ineligible for further processing.

B. Metropolitan/Non-Metropolitan Designation

Funds will be allocated to the Indian FOs for use in either metropolitan or non-metropolitan uses. Implementation of the pertinent statutory and regulatory provisions (Section 213(d) and 24 CFR 791.403(a)), requires that of the total budget authority available during the fiscal year subject to fair share, at least 20 percent and not less than 25 percent shall be allocated for use in non-metropolitan areas. Compliance with these provisions is accomplished in the aggregate at the Assistant Secretary level or Departmental level for all programs covered by the statute. Therefore, allocations for the Indian Housing program may need to be modified to achieve this compliance. This identification does not apply to FY 1992 amendment funds or replacement housing funds. If the county in which the Indian housing site is located is part of a Metropolitan Statistical Area (MSA), then funds for that Indian housing will be considered metropolitan. Otherwise, funds will be considered non-metropolitan. Indian housing projects that contain both metropolitan and non-metropolitan housing should have a ratio of metropolitan to non-metropolitan housing established that will be maintained throughout the development of the project. The FO shall consult with the IHA on the ratio prior to Program Reservation.

The FO shall advise the OIH Development Division Director of the amounts of metropolitan and non-metropolitan funds, to allow headquarters to comply with the provisions of the Regulations at 24 CFR 791.403(a). The Department has the obligation to skip over metro or non-metro applications to meet statutory requirements.

FSS funds are exempt from the metropolitan/non-metropolitan requirement.

C. HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

1. Required Disclosures by Applicants

a. Disclosures. All applicants are required to disclose information with respect to any additional funds that can reasonably be expected to be received by them as assistance in excess of $200,000 (in the aggregate) during the fiscal year that will be related to the project.

Disclosure must be made relative to any related assistance from the Federal Government (agencies or instrumentalities other than HUD), a state, or a unit of general local government that is expected to be made available with respect to the project for which the applicant is seeking assistance.

The assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

b. Updates: The IHA applicant shall update this disclosure within 30 calendar days of any substantial change. This update is required during the period when an application is pending or assistance is being provided.

2. Prohibited Disclosures by HUD Employees

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the

subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics, (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her FO counsel, or headquarters counsel for the IH development program.

3. Applicant/Recipient Disclosures; Subsidy-Layering: HUD Reform Act

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 calendar days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880, Applicant/Recipient Disclosure/Update Report) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Subsidy-layering determinations. 24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than is necessary to make the assisted activity feasible after taking account of other government assistance. HUD will make copies of the decision with respect to each certification available to the public free of charge for a three-year period. (See the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on requesting these decisions.) Additional information about applications, HUD certifications, and assistance adjustments, both before assistance is provided or subsequently, are to be made under the Freedom of Information Act (24 CFR part 15).

D. Lobbying

Requirements concerning lobbying which are applicable to IHAs established under state law. Section 319 of the FY 1990 Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), hereafter referred to as the "Byrd amendment," prohibits grantees from using any federally appropriated funds to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts. The Department has determined that the requirements of the Byrd amendment do not apply to IHAs established by a Tribal government exercising its sovereign powers. However, the Byrd amendment does apply to IHAs established under State law. The Byrd amendment requires all IHAs established under state law to submit the following documents for applications for grants exceeding $100,000.

1. Certification

A certification that no federal appropriated funds will be used for lobbying purposes. The certification shall be submitted on the Form entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements."

2. Disclosure Document

A document disclosing any lobbying activities (on Standard Form—LLL, "Disclosure of Lobbying Activities"), where any funds other than federally appropriated funds will be or have been used to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts.

E. Conversions

Project conversion between program type (LR or MH) may only be considered where:

1. An IHA submitted projects for mutual help (MH) and low rent (LR), each scored high enough to be funded, and the IHA has the waiting list to support the conversion, or

2. If only one application was submitted and approved, the application upon re-ranking in the other program has to score at least 0.01 higher than the number of points achieved by the highest rated application from any IHA which was not funded. If neither circumstance exists, the request to convert will not be approved.

F. Errors in Ranking and Rating FY 1991

1. Errors made by a FO during the 1991 fiscal year's rating and ranking that resulted in a change of rank order detrimental to an IHA may be corrected as follows:

a. The FO will construct a hypothetical distribution that would have existed if the error had not been made, and

b. The FO will determine what the unit award/funding would have been for the IHA subject to the funds that were available at the time.

2. Remedial action will be taken for errors made by a FO as follows:

a. The FO will deduct any funds needed from the FY 92 fair share assigned to that FO before any FY 92 rating and rankings are completed.

b. A correction of an error for an IHA will not adversely affect the IHA participation on the FY 92 rating and ranking process. The IHA's application will be rated and ranked on the same basis as other applications and as if no error had been made.

G. The General Counsel

As the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This NOFA only announces the availability of Indian housing development funds for fiscal year 1992 to support IHA Family Self-Sufficiency programs. It also announces availability of funding for the development of new IHA units in fiscal year 1992.

H. The General Counsel

As the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance and general well-being, and, thus, is not subject to review under the Order. This rule has no significant relationship to family-related issues.

I. Demolition or Disposition

IHA Applications for Replacement Housing. IHA applications for demolition or disposition may require a

commitment for replacement housing units on a one-for-one replacement to comply with requirements of section 18 of the U.S. Housing Act, as amended. IHAs are to process requests for Demolition or Disposition in accordance with NOTICE PIH 91–17, "Fiscal Year 1992 Public and Indian Housing Demolition or Disposition Application Submission;" 24 CFR part 905, subpart M.

Dated: June 9, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

Appendix 1. Listing of Indian Field Offices

1. Region V—Chicago

Chicago Office of Indian Programs, 77 West Jackson Boulevard, Chicago, Illinois 60606–3507, (312) 353–1282 or (800) 735–3239, TDD Number: 1–800–927–9275, 312–886–3741

2. Region VI—Oklahoma

Oklahoma City Indian Programs Division, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202, (405) 231–4101, TDD Number: 405–231–4181, 405–231–4891

3. Region VIII—Denver

Denver Office of Indian Programs, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–2963, TDD Number: 303–844–6158

4. Region IX—Phoenix

Indian Programs Office, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2360, (603) 379–4156, TDD Number: 602–379–4461

5. Region X—Seattle

Seattle Office of Indian Programs, 1321 Second Avenue, Seattle, Washington 98101–2054, (206) 442–5298, TDD Number: 206–553–4351

6. Region X—Anchorage

Anchorage Indian Housing Division, 701 C Street, Box 64, Anchorage, Alaska 99513–7537, (907) 271–4170, TDD Number: 907–271–4328

Appendix 2. FSS Initial Screening Checklist

A. Application Form HUD–52730:

—Complete application on Form HUD–52730.

—Attach all exhibits and tables as required. This includes a narrative demonstration that the IHA will be able to implement an FSS program within 12 months of application approval.

—Narrative response to Additional Rating Factors for FSS (see Appendix 3).

B. IHA Resolutions: IHA Resolution(s) containing the following:

1. A Statement that authorizes the submission of the application for units;

2. A statement explaining how solid waste disposal for the proposed development will be addressed;

3. A statement regarding the planned access to public utility services and a listing of any official commitment(s) for these utility services for the development;

4. A statement advising HUD of any persons with a pecuniary interest in the proposed development. Persons with a pecuniary interest in the development shall include but not be limited to any developers, contractors, and consultants involved in the application, planning, construction or implementation of the development. During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required within thirty calendar days of any substantial change.

C. Certifications: Each application must contain the following certifications provided by the Executive Director on IHA letterhead:

a. Certification Regarding Drug-Free Workplace Requirements, as required by 24 CFR 630(b), by submitting form HUD–50070.

b. Certification that the IHA will comply with 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

c. Certification that the IHA will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

d. If new construction is requested, certification that there is insufficient existing housing in such neighborhood to undertake the development of housing through acquisition of existing housing or rehabilitation.

e. Certification that the IHA will adhere to the Uniform Accessibility Standards/Architectural Barriers Act of 1968.

f. For IHAs established under State law, a certification that no Federal appropriated funds will be used for lobbying purposes (Form "Certification for Contracts, Grants, Loans and Cooperative Agreements," SF–LLL–A).

D. Letters: Each application shall be accompanied by a letter of support signed by the CEO of the general local government indicating:

a. Support for the proposed Indian housing application and development (see section I.E.1.b.(4));

b. That the IHA is authorized to apply for planning funds for the development;

c. Assurance to HUD that access road needs will be identified by Tribal Resolution (with BIA concurrence) and entered on the BIA Indian Reservation Roads prioritization schedule used by BIA for resource allocation (25 CFR 170; 57 BIAM 4 and Supplement 4; and 24 CFR part 905, appendix I, Item 6).

E. Supporting Documentation: Each application must be accompanied by the following supporting documentation:

a. If new construction is proposed, evidence that the cost of new construction is less than the cost of acquisition or acquisition plus rehabilitation.

b. Disclosure of additional assistance from other sources that will be used in association with the project for which the applicant is seeking assistance.

c. Demonstration of financial feasibility for the proposed development.

d. Statement about the overall and relative need for assisted housing in the area.

F. Items That Should Be Submitted, If Not Previously Submitted: If not previously submitted, or if changes have occurred since previous submission, the IHA should furnish:

a. A certified copy of the Transcript of Proceedings containing the IHA resolution pursuant to which the application is being made.

b. IHA Organization Transcript or General Certificate.

c. Tribal Ordinance.

d. Cooperation Agreement(s). Where the provisions of the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or a copy thereof) for the location involved, which is sufficient to cover the number of units in the application.

G. Optional Items: If the IHA is prepared, it may submit Preliminary Site Reports indicating pre-approved sites, and BIA approved leases for the proposed project site(s), as applicable.

H. FSS Certification: Resident Involvement. IHA certification that the application was developed with involvement and consultation of affected Indian housing residents, and includes a meaningful ongoing role for resident management corporations, resident councils, or other forms of resident involvement where RMCs and Rcs do not exist. This certification shall

include a support letter from RMCs and Rcs where they exist, or documentation of other resident involvement and consultation.

Appendix 3. Incentive Award. Additional FSS Selection Criteria and Rating and Ranking Factors

Additional Selection Criteria

In order to be selected for an incentive award, an IHA must meet the basic requirements for funding for new Indian housing units and provide evidence that is satisfactory to HUD that it has:

A. A broad base of support for an FSS program in its community;

B. A broad range of services that can be integrated to address the needs of FSS participants;

C. The support of its resident population;

D. The active support of the Chief Executive Officer (CEO) of the unit of general local Government; and

Additional Rating Factors

A. Supportive Community Relationships: The FSS program must have broad based community support, including ties to both minority and non-minority communities, and utilize local public and private organizations that are willing to commit funds, staff, equipment, the use of their buildings and equipment, training assistance, employment opportunities, or other support. Such organizations include local governments, businesses, religious organizations, private non-profit service providers, educational and training institutions, civic organizations, foundations, corporations, and local benefit providers. A successful FSS program must have a broad range of commitments from public and private employers, trainers, counselors and service providers. Ideally, representatives of community groups, organizations and businesses also will serve on the Program Coordinating Committee.

25—16 Points: The IHA has: (1) A strong, coordinated, varied base of community support as evidenced by described existing working relationships with a variety of public/private resources in the community, including previous commitments of funds, staff, equipment, the use of buildings and equipment, training assistance or employment opportunities; and

(2) Will further expand its existing base of support, as evidenced by written commitments from additional entities to offer support and to coordinate support as participants in the proposed FSS program.

15—0 Points: The IHA meets only one of the two criteria set forth in paragraphs (1) and (2) above.

B. Supportive services. A successful FSS program must offer a wide variety of services to address the needs of FSS participants that can be integrated into meaningful assistance for families. A key consideration relates to the fact that the services must be coordinated in their delivery and appropriate in scope to the needs of the residents. For example, quality child-care, capable of attending to a variety of age groups and operating a sufficient number of hours per week to accommodate work, training, and/or counseling schedules may be important. Another important service may be transportation, which links the other services together. The IHA shall describe past services provided by others to its residents, assess the range and depth of the services, and state how they might be transferred to an FSS program. The IHA shall include written commitments of support from organizations and entities willing to provide services under FSS.

25—16 Points: The IHA has: (1) actively worked with public and private service providers to offer supportive services which are comprehensive in scope and quality and include combinations of child care, transportation, job training and placement, counseling, education, money management, parenting, and/or rehabilitation services to residents; and

(2) Will further expand the kinds of services and/or number of persons to be served as evidenced by written commitments from identified entities who are providers of such services.

15—0 Points: The IHA meets only one of the two criteria set forth in (1) and (2) above.

C. Resident Support. The IHA shall describe its efforts to establish and/or support Resident Councils (Rcs), Resident Management Corporations (RMCs), Homeownership programs and resident-based economic development activities. The IHA shall also describe how its residents are involved generally in IHA planning and operations and specifically resident involvement for support service programming and delivery. A Resolution of Support by resident groups for the FSS programs shall be included, along with any plans the IHA has developed for including resident participation in the development and operation of FSS programs. This may include resident membership on the Program Coordinating Committee (PCC) and participation in the preparation of the Action Plan.

25—16 Points: The IHA has a history of resident involvement that includes successful resident participation in IHA planning and operations, generally, and specifically incorporates resident involvement for support service programming and delivery. This is evidenced by described active involvement in Mutual Help Homeownership programs, economic development activities, etc., and there is written evidence of resident support for the application. Residents are, or will be, as described, represented on the Program Coordinating Committee and participate in the preparation of the Action Plan.

15—0 Points: The IHA has established resident initiatives and resident involvement does occur; there is movement toward greater participation. Residents will, as described, be represented on the PCC and participate in preparation of the Action Plan.

D. Chief Executive Officer Support: The CEO of the unit of general local government must evidence active support for the FSS program. CEO consultation is required in the development of the PCC and the preparation and implementation of the Action Plan. In evaluating this factor, HUD will look at past IHA undertakings that have involved the CEO and commitments provided by the CEO pledging local governmental funds, staff, equipment, use of buildings and property, etc. for proposed FSS activities and services.

25—16 Points: The CEO of the unit of general local government and the IHA have successfully cooperated in the past in the provision of service-related activities for IHA residents. The CEO has expressed strong, written support for the FSS application and has, by written commitment, pledged cooperation for expansion of such support through local governmental funds, staff, equipment, use of buildings and property, etc., for FSS activities and services.

15—0 Points: The CEO and the IHA have cooperated in the past, and the CEO has provided general support for the IHA or has committed to provide support in the future for an FSS program through funding, use of facilities, staff, etc.

Total Possible FSS Points: 100.

Appendix 4. New Indian Housing Units. Development Application Submission Checklist

It Is the Responsibility of the IHA To Meet the Requirements of the Check List

Each application must contain the following:

I. _____ Components That Address the Selection Criteria. The applicant must provide a narrative and supporting documentation that are responsive to the selection criteria at section II.E. of this NOFA. This includes, but is not limited to, a description of the proposed project, how the grant funds shall be used, and various kinds of information which are necessary in order to apply the selection criteria/rating factors.

II. Application Form HUD–52730:

A. _____ Complete application on Form HUD–52730.

B. _____ Attach all exhibits and tables as required.

III. IHA Resolution(s): Each application must be accompanied by an IHA Resolution which contains the following, or it will be considered non-responsive. (To correct minor technical deficiencies, refer back to section III.A.)

A _____ A statement that authorizes the submission of the application for units.

B. _____ A statement explaining how solid waste disposal for the proposed development will be addressed.

C. _____ A statement regarding the planned access to public utility services and a listing of any official commitment(s) for these utility services for the development.

D. _____ The IHA Resolution must advise HUD of any persons with a pecuniary interest in the proposed development. Persons with a pecuniary interest in the development shall include but not be limited to any developers, contractors, and consultants involved in the application, planning, construction or implementation of the development. During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required within thirty calendar days of any substantial change.

IV. Certifications: Each application must contain the following certifications provided by the Executive Director on IHA letterhead. (To correct minor technical deficiencies, refer back to section III.A.)

A. _____ Certification Regarding Drug-Free Workplace Requirements as directed by 24 CFR 24.630(b).

B. _____ Certification that the IHA will comply with 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973.

C. _____ Certification that the IHA will comply with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

D. _____ Certification that there is insufficient existing housing in such neighborhood to undertake the development of housing through acquisition of existing housing or rehabilitation.

E. _____ Certification that the IHA will adhere to the Uniform Accessibility Standards/Architectural Barriers Act of 1968.

F. _____ For IHAs established under state law, a certification that no federal appropriated funds will be used for lobbying purposes. (Form entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements.")

G. _____ Where applicable, and only for IHAs established under state law, a statement disclosing lobbying activities using other than federal appropriated funds. (Standard Form—LLL, "Disclosure of Lobbying Activities.")

V. Letters: Each IHA application must be accompanied by a letter of support signed by the CEO of the general local government indicating (to correct minor technical deficiencies, refer back to section III.A)

A. _____ support for the proposed application and development.

B. _____ an authorization to apply for planning funds for the development.

C. _____ where applicable, assurance to HUD that access road needs will be identified by Tribal Resolution (with BIA concurrence) and entered on the BIA Indian Reservation Roads prioritization schedule used by BIA for resource allocation (25 CFR 170; 57 BIAM 4 and Supplement 4; and 24 CFR Part 905 B, Appendix I, Item 6).

VI. Supporting Documentation: Each application must be accompanied by the following supporting documentation:

A. _____ Evidence that the cost of new construction is less than the cost of acquisition or acquisition plus rehabilitation if there is no certification to this effect by the IHA or if there is an IHA certification of insufficient existing housing.

B. _____ Disclosure of additional assistance from other sources that will be used in association with the project for which the applicant is seeking assistance.

C. _____ Demonstration of financial feasibility for the proposed development—that there is a market, and that the required annual operating subsidy corresponds to the performance funding system annual expense level.

D. _____ Statement about the overall and relative need in the area.

E. _____ Waiting list of applicant families by program type (LR or MH) and with a certification that the waiting list is supported by current applications from eligible families.

F. _____ Identify sites in the application in accordance with sections 905.230 and 905.245.

VII. Items That Should Be Submitted, If Not Previously Submitted:

A. _____ Certified copy of the transcript of proceedings containing the IHA resolution pursuant to which the application is being made.

B. _____ IHA Organization Transcript or General Certificate.

C. _____ Tribal Ordinance.

D. _____ Cooperation Agreements. Where the provisions of the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application.

VIII. Optional Items: A. _____ Preliminary Site Reports indicating pre-approved sites, and BIA-approved leases for the proposed project site(s), if any.

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Monday
June 15, 1992

Part VII

Department of Health and Human Services

Centers for Disease Control

Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs

AGENCY: Centers for Disease Control (CDC). Public Health Service, HHS.

ACTION: Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs.

SUMMARY: Pursuant to the May 11, 1992 court decision in *Gay Men's Health Crisis* v. *Sullivan*, No 88–CIV–7482 (S.D.N.Y. 1992), the "Requirements for Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs" are being revised. The interim revisions in the terms and conditions are described below.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Gary West, National Center for Prevention Services, Centers for Disease Control, (404) 639–1480.

SUPPLEMENTARY INFORMATION: Since 1985, the Centers for Disease Control (CDC), as part of the terms and conditions for receipt of CDC funds for human immunodeficiency virus (HIV) prevention programs, has required that all educational and related program materials be reviewed by a Program Review Panel designated by the recipient. Since education about preventing HIV transmission involves effectively presenting sensitive subject matter, the purpose of this requirement has been to avoid disruptions of CDC-funded programs by requiring a careful consideration of the content and intended audience of the materials and programs. A guidance document for this review, entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs," was last revised and published in the **Federal Register** on March 30, 1992 (57 FR 10794).

On May 11, 1992, the U.S. District Court for the Southern District of New York found unconstitutional the use of the "offensiveness" standard by Program Review Panels which review AIDS education materials and activities in CDC assistance programs. *Gay Men's Health Crisis* v. *Sullivan*, 88–CIV–7482 (S.D.N.Y. 1992).

On May 27, 1992, the court enjoined CDC from further application or enforcement of the "offensiveness" standard, as provided in paragraph 1.b. and 2.d. of the Revised Grant Terms published on March 30, 1992. Accordingly, effective immediately, recipients of CDC funds are not to use the "offensiveness" standard in reviewing CDC-funded AIDS education materials.

In addition to the finding regarding the constitutionality of the "offensiveness" standard, the court in the May 11, 1992 Gay Men's Health Crisis decision, erroneously indicated that section 2500 of the Public Health Service Act ("PHS Act"), 42 U.S.C. 300ee, and section 318 of the PHS Act, 42 U.S.C 247c, provide the statutory authority for CDC's AIDS prevention programs. In reality, CDC has relied upon the totally separate assistance authority contained in sections 301 and 317 of the PHS Act, 42 U.S.C. 241 and 247b, for CDC's AIDS prevention programs. Although section 2500, et seq., was passed by Congress in 1988 as part of the Health Omnibus Programs Extension (HOPE) Act, Congress has never appropriated funds to CDC to carry out AIDS activities under the HOPE Act.

Nevertheless, because of the May 27, 1992 order of the District Court, and in order to maintain program continuity, CDC has decided, as a matter of discretionary policy, to use the language set forth in section 2500 of the PHS Act as the interim standard for review of AIDS educational materials and programs in place of the language enjoined by the court. This decision by CDC does not reflect a change in position of the agency with respect to the fact that actual funding authority in FY 1992 for CDC's AIDS prevention programs is contained in sections 301 and 317 of the PHS Act.

The Centers for Disease Control thus disagrees with the findings of the court in the Gay Men's Health Crisis decision, and is contemplating seeking an appeal and stay of this decision. In the interim period of time, consistent with the District Court's opinion, recipients in CDC assistance programs should adhere to the revisions of the March 30, 1992 grant terms and conditions which are set forth below:

1. Section 1.b. of the "Basic Principles" section of the document is revised to provide as follows:

"b. Written materials, audiovisual materials, and pictorials should be reviewed by Program Review Panels consistent with the provisions of section 2500 (b), (c), and (d) of the Public Health Service Act, 42 U.S.C. 300ee (b), (c), and (d), as follows:

'Sec. 2500. Use of Funds.

(b) Contents of Programs.—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) Limitation.—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction.—Subsection (c) may not be construed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.' "

2. Section 2.d. of the "Program Review Panel" section of the document is revised to provide as follows:

"d. CDC-funded organizations that undertake program plans in other than school-based populations which are national, regional (multistate), or statewide in scope, or that plan to distribute materials as described above to other organizations on a national, regional, or statewide basis, must establish a single Program Review Panel to fulfill this requirement. Such national/regional/state panels must include as a member an employee of a state or local health department, or an appropriate designated representative of such department, consistent with the provisions of section 2.c.(1). Materials reviewed by such a single (national, regional, or state) Program Review Panel do not need to be reviewed locally unless such review is deemed appropriate by the local organization planning to use or distribute the materials. Such national/regional/state organization must adopt a national/regional/statewide standard when applying Basic Principles 1.a. and 1.b."

In the event that further court action in this matter or other developments necessitate a further revision of this

document, the agency will provide timely notice of those further revisions.

The following interim revised terms and conditions, reprinted below in their entirety, are effective immediately.

Dated: June 9, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations Centers for Disease Control.

CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS IN CENTERS FOR DISEASE CONTROL ASSISTANCE PROGRAMS

Interim Revisions June 1992

1. Basic Principles

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. These methods include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship with an uninfected partner. For those individuals who do not or cannot cease risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial. These principles are intended to provide guidance for the development and use of educational materials, and to require the establishment of Program Review Panels to consider the appropriateness of messages designed to communicate with various groups.

a. Written materials (e.g., pamphlets, brochures, fliers), audiovisual materials (e.g., motion pictures and video tapes), and pictorials (e.g., posters and similar educational materials using photographs, slides, drawings, or paintings) should use terms, descriptors, or displays necessary for the intended audience to understand dangerous behaviors and explain less risky practices concerning HIV transmission.

b. Written materials, audiovisual materials, and pictorials should be reviewed by Program Review Panels consistent with the provisions of section 2500(b), (c), and (d) of the Public Health Service Act, 42 U.S.C. 300ee(b), (c), and (d), as follows:

"Sec. 2500. Use of Funds

(b) *Contents of Programs.*—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) *Limitation.*—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) *Construction.*—Subsection (c) may not be construed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene."

c. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

d. Messages provided to young people in schools and in other settings should be guided by the principles contained in "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR 1988;37 [suppl. No. S–2]).

2. Program Review Panel

a. Each recipient will be required to establish or identify a Program Review Panel to review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This requirement applies regardless of whether the applicant plans to conduct the total program activities or plans to have part of them conducted through other organization(s) and whether program activities involve creating unique materials or using/distributing modified or intact materials already developed by others. Whenever feasible, CDC funded community-based organizations are encouraged to use a Program Review Panel established by a health department or an other CDC-funded organization rather than establish their own panel. The Surgeon General's Report on Acquired Immune Deficiency Syndrome (October 1986) and CDC-developed materials do not need to be reviewed by the panel unless such review is deemed appropriate by the recipient. Members of a Program Review Panel should:

(1) Understand how HIV is and is not transmitted; and

(2) Understand the epidemiology and extent of the HIV/AIDS problem in the local population and the specific audiences for which materials are intended.

b. The Program Review Panel will be guided by the CDC Basic Principles (in the previous section) in conducting such reviews. The panel is authorized to review materials only and is not empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the recipient organization or local governmental jurisdiction.

c. Applicants for CDC assistance will be required to include in their applications the following:

(1) Identification of a panel of no less than five persons which represent a reasonable cross-section of the general population. Since Program Review Panels review materials for many intended audiences, no single intended audience shall predominate the composition of the Program Review Panel, except as provided in subsection (d) below. In addition:

(a) Panels which review materials intended for a specific audience should draw upon the expertise of individuals who can represent cultural sensitivities and language of the intended audience either through representation on the panels or as consultants to the panels.

(b) The composition of Program Review Panels, except for panels reviewing materials for school-based populations, must include an employee of a state or local health department with appropriate expertise in the area under consideration who is designated by the health department to represent the department on the panel. If such an employee is not available, an individual with appropriate expertise, designated by the health department to represent the agency in this matter, must serve as a member of the panel.

(c) Panels which review materials for use with school-based populations should include representatives of groups such as teachers, school administrators, parents, and students.

(d) Panels reviewing materials intended for racial and ethnic minority populations must comply with the terms of (a), (b), and (c), above. However, membership of the Program Review Panel may be drawn predominately from such racial and ethnic populations.

(2) A letter or memorandum from the proposed project director, countersigned by a responsible business official, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the panel.

d. CDC-funded organizations that undertake program plans in other than school-based populations which are national, regional (multistate), or statewide in scope, or that plan to distribute materials as described above to other organizations on a national, regional, or statewide basis, must establish a single Program Review Panel to fulfill this requirement. Such national/regional/state panels must include as a member an employee of a state or local health department, or an appropriate designated representative of such department, consistent with the provisions of Section 2.c.(1). Materials reviewed by such a single (national, regional, or state) Program Review Panel do not need to be reviewed locally unless such review is deemed appropriate by the local organization planning to use or distribute the materials. Such national/regional/state organization must adopt a national/regional/statewide standard when applying Basic Principles 1.a. and 1.b.

e. When a cooperative agreement/grant is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment copies of written materials, pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals which are under development;

(3) Prior to expenditure of funds related to the ultimate program use of these materials, assure that its project files contain a statement(s) signed by the Program Review Panel specifying the vote for approval or disapproval for each proposed item submitted to the panel; and

(4) Provide to CDC in regular progress reports signed statement(s) of the chairperson of the Program Review Panel specifying the vote for approval or disapproval for each proposed item that is subject to this guidance.

[FR Doc. 92-13973 Filed 6-12-92; 8:45 am]
BILLING CODE 4160-18-M

federal register

Monday
June 15, 1992

Part VIII

Department of Education

Technology, Educational Media, and Materials for Individuals With Disabilities Program; Notice of Final Priority and Inviting Applications for New Awards

DEPARTMENT OF EDUCATION

Technology, Educational Media, and Materials for Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal years 1992 and 1993 for the Technology, Educational Media, and Materials for Individuals with Disabilities Program.

SUMMARY: The Secretary announces a final priority for the Technology, Educational Media, and Materials for Individuals with Disabilities Program to ensure effective use of program funds and to direct funds to an area of identified need during fiscal years 1992 and 1993.

EFFECTIVE DATES: This priority takes effect July 30, 1992 or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 732–1099. Deaf and hard of hearing individuals may call (202) 732–6153 for TDD services.

SUPPLEMENTARY INFORMATION: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, assistive technology, educational media, and materials in the education of children and youth with disabilities. In creating part G, of the Individuals with Disabilities Education Act, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

This priority supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by promoting the effective and efficient use of technology, media, and materials among special education, related services, and regular education personnel. The priority thereby seeks to help children and youth with disabilities reach the high levels of academic achievement called for by the Goals.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

On April 16, 1992, the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 13602–13604).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, one party submitted a comment. An analysis of this comment follows. Technical and other minor changes are not addressed.

Comment: One commenter recommended that the priority should address the need to develop systems and equipment for transcribing from the technology of print-text publishers to hard-copy or refreshable braille textual materials.

Discussion: The Secretary concurs that the activities recommended by the commenter have potential value, and believes that they are included under the rubric of the priority as written. Rather than prescribe specific activities, the Secretary prefers to allow individual applicants to propose and justify activities.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that respond to the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Priority—Practice Improvement Center on the Effective and Efficient Use of Technology, Media, and Materials in the Provision of Education and Related Services to Children and Youth with Disabilities (CFDA 84.180N)

Background

Effective and efficient use of technology, media, and materials can support two objectives of the Individuals with Disabilities Education Act (IDEA): (1) Designing instruction to meet the unique needs of children with disabilities, and (2) maximizing the extent to which children with disabilities can be appropriately educated with children who do not have disabling conditions.

Yet, previous Office of Special Education Programs supported research, as well as field-initiated research, has found that there are many barriers to the effective and efficient use of technology, media, and materials with children and youth with disabilities. Many instructional products are not designed to fit the needs of children and youth with disabilities. Technology, media, and materials are not always compatible with the curriculum or with other instructional procedures. Assistive devices are not always fully appropriate to the needs of specific children and youth with disabilities or the settings in which they must function. Teachers using technology, media, and materials do not always have access to sufficient training and assistance in the schools.

Purpose

The purpose of this priority is to establish a national practice improvement center, the mission of which is to promote the effective and efficient use of technology, media, and materials by improving the professional practices of special education, related services, and regular education personnel providing special education and related services to children and youth with disabilities. The center must be national in scope and must encompass the full range of disabling conditions.

The phrase "technology, media, and materials" encompasses a broad range of products and systems, including books and other textual materials, audiotapes, videotapes, videodiscs, computer hardware and software, compact disks and CD–ROM, broadcast media such as television and radio, multimedia, and other products and systems that store, convey, and process information. Specifically included are instructional technologies, media, and materials, as well as "assistive technology devices" as defined in section 602(a)(25) of the IDEA.

Effective and efficient use of technology, media, and materials is based on compatibility with (a) the needs of children and youth with disabilities and their families; (b) curriculum, instruction, and related services; and (c) systems and procedures used to provide special education and related services and to promote access and inclusion in educational activities. Effective and efficient use must be associated with positive outcomes for children and youth with disabilities and their families.

This national center must improve professional practices, which include a range of functions performed by teachers, administrators, and others in planning, administering, delivering, and evaluating special education and related services. Those practices are based upon professional competencies and attitudes, and on organizational factors such as policies, resources, and linkages. Practice improvement may entail professional development,

organizational development, implementation of innovations, knowledge access and use, collaboration and linking, and other processes. Practice improvement should be associated with positive outcomes for children and youth with disabilities and their families.

The center must be a catalyst and facilitator that collects and anaylzes available information, validates and extends the information, tests approaches for improving practices, and promotes the exchange and use of information.

Strategic Plan

Given the scope and magnitude of the center's national mission, it is essential for the center to formulate a strategic plan to focus and guide its efforts. The strategic plan must include the following:

(1) A statement and justification of critical goals for accomplishing the center's mission

The critical goals in the strategic plan must address processes that, singly or in combination, have significant potential for improving professional practices in the efficient and effective use of technology, media, and materials. The practices of teachers, administrators, and others must be targeted directly or indirectly. The goals must be selected and justified on the basis of their potential for meeting needs and accomplishing the center's mission productively and efficiently.

(2) An analysis of factors that may impede or facilitate attainment of the goals

The goals must be analyzed to identify such factors as needs, challenges, resources, and issues that may affect their attainment. These factors must then be reflected in the objectives and activities developed for attaining the goals.

(3) A set of objectives and activities that translate the goals into operational plans for the center

Although the strategic plan is subject to modification during the course of the center's operation, it must be developed as a five-year plan. Goals, objectives, and activities must be formulated for this entire period. The plan must include five general types of activities—analysis and synthesis of extant information, research studies, developing and supporting networks and exchanges, knowledge access and use, and evaluation. These activities are discussed below. Additional activities may be performed as needed to accomplish the center's goals and mission.

A plan for refining the proposed strategic plan during the initial months of the project and a plan for annually reviewing and revising the strategic plan must also be included.

Required Center Activities

Analysis and Synthesis of Extant Information

The center must provide for the ongoing collection, review, and analysis of extant information on the use of technology, media, and materials with children and youth with disabilities and on approaches for improving professional practices. Research findings must be used, if available. For critical topics where research findings are limited or inconclusive, the center must use information such as program descriptions and evaluations, theoretical papers, policy statements, expert opinions, etc., as well as research findings. Procedures for collecting, analyzing, interpreting, and reporting information must be rigorous and systematic.

Research Studies

The center must conduct or commission carefully targeted research studies for validating or extending its information analyses and testing approaches for improving practices in the use of technology, media, and materials. Both qualitative and quantitative techniques may be employed, including group and single-subject designs, surveys, case studies, and focus groups.

Developing and Supporting Networks and Exchanges

The center must establish and maintain contacts with institutions of higher education; professional associations; Federal, State and local agencies; projects engaged in activities relevant to the center's mission; practitioners; and other individuals and organizations who can contribute to the center's efforts. These contacts are intended to facilitate a range of activities. For example, ongoing communication with members of the research community will gain access to research issues, activities, and findings, allow possible research collaboration, and provide a means for distributing the center's findings and influencing future research trends. Ongoing communication with practitioners and their representative groups will guide the development of strategic plans, gain access to the practitioners' perspectives, obtain knowledge for improving practice, and provide a means for evaluating and distributing the center's products.

Contacts may be accomplished through the full range of communication mechanisms, including in-person contact, print interaction and procedures, use of media such as electronic networks, and computer or telephone-based conferencing.

The center must coordinate its activities, as appropriate, with recipients of grants under the Technology Related Assistance Act (Pub. L. 100-407). In addition, the center must maintain an ongoing exchange of information with the Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities (CFDA 84.180M) at the University of Oregon. This ongoing exchange must include (1) sharing information about ongoing activities and resources; (2) joint planning; and (3) collaborating in each other's activities, to the extent appropriate.

Knowledge Access and Use

Providing access to knowledge and promoting its use are critical to the center's mission and must include a range of functions beyond increasing general awareness and distributing center information. Knowledge access and use activities must include communication between the center and targeted audiences and exchange of information between practitioners and among different communities. Activities must also be tailored for various uses of information, such as selection, adoption, and implementation of improved practices.

Throughout the project, the center must engage targeted audiences in the development, exchange, distribution, and use of center materials. Formats for the exchange, distribution, and use of center information may include a range of media formats (e.g., videotape, audiotape, etc.) as well as print formats.

Evaluation.

Evaluation activities must address both "proximal" and "distal" effects of the center's activities. Proximal (immediate) effects include impact on audiences having direct contact with center products, information, and activities. Distal (more long-term) effects include indicators or widespread impact on the practices of special education, related services, and regular education personnel in using technology, media, and materials with children and youth with disabilities. Evaluation activities

must reflect a clear operational definition of professional practices needed for the effective and efficient use of technology, media, and materials.

Time Frame

The Secretary will approve a cooperative agreement with a project period, of up to 36 months. The Secretary may make a continuation award for an additional two-year project period, subject to the requirements of 34 CFR 75.253(a). Activities in the first year must include staffing, refinement of the strategic plan, specification and implementation of activities for analysis and synthesis, research, networks and exchanges, knowledge access and use, and evaluation. At the beginning of each subsequent year, the strategic plan must be reviewed and revised as needed and associated activities must be defined and implemented.

In determining whether to continue the center for the two option years, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the center's performance and the added contribution to the purpose of the project that would accrue from the continuation.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations

34 CFR Part 333, as amended on October 22, 1991 (56 FR 54686–54705).

Program Authority: 20 U.S.C. 1461.

(Catalog of Federal Domestic Assistance Number 84.180, Technology, Educational Media, and Materials for Individuals with Disabilities Program).

Dated: June 10, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–14011 Filed 6–12–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.180N]

Technology, Educational Media, and Materials for Individuals With Disabilities Program; Notice Inviting Applications for New Awards Under the Technology, Educational Media, and Materials for Individuals With Disabilities Program for Fiscal Year 1992

PURPOSE OF PROGRAM: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, assistive technology, educational media, and materials in the education of children and youth with disabilities.

ELIGIBLE APPLICANTS: The eligible applicants are institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: July 31, 1992.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: September 30, 1992.

APPLICATIONS AVAILABLE: June 19, 1992.

AVAILABLE FUNDS: $500,000 per year.

ESTIMATED NUMBER OF AWARDS: 1.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 60 months (including 2 year option).

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333, as amended on October 22, 1991. See 56 FR 54686–54705.

Priority

The notice of final priority, entitled "Practice Improvement Center on the Effective and Efficient Use of Technology, Media, and Materials in the Provision of Education and Related Services to Children and Youth with Disabilities," published elsewhere in this issue of the **Federal Register**.

This priority supports AMERICA 2000, the President strategy for moving the Nation toward the National Education Goals, by promoting the effective and efficient use of technology, media, and materials among special education, related services, and regular education personnel. The priority thereby seeks to help children and youth with disabilities reach the high levels of academic achievement called for by the Goals.

FOR APPLICATIONS OR INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 732–1099. Deaf and hard of hearing individuals may call (202) 732–6153.

Program Authority: 20 U.S.C. 1461.

Dated: June 10, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–14012 Filed 6–12–92; 8:45 am]

BILLING CODE 4000–01–M

Monday
June 15, 1992

Part IX

Department of Education

34 CFR Part 769
Library Literacy Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 769

RIN: 1850-AA43

Library Literacy Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary amends the regulations governing the Library Literacy Program, title VI of the Library Services and Construction Act (LSCA title VI). This action is taken to implement revisions made to the program by the National Literacy Act (Pub. L. 102-73) enacted in July 1991. It also provides the first major revision to the regulations since the program began operation in 1986.

DATES: Comments must be received on or before July 30, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Carol Cameron Lyons, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208-5571.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Carol Cameron Lyons. Telephone: (202) 219-1321. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by encouraging coordination of adult literacy programs, assessments of local needs, and other adult literacy activities. In addition to implementing the recent statutory changes, the proposed regulations clarify and update certain sections of the regulations. The selection criteria are revised to reflect changes in the Education Department General Administrative Regulations (EDGAR) and in program administration made since the program regulations were written in 1985, before the program began operation in 1986.

Changes include implementing a new statutory priority for programs and services that demonstrate need and coordination, and revising the definition of "literacy" as required by the National Literacy Act. A new definition of "local public library" clarifies that a library that is an integral part either of a non-public library or of a library that is not primarily a local library is not eligible to receive funds. The regulations also provide a clearer description of program activities and update the selection criteria in § 769.31 of the regulations, especially to implement the new statutory priority.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small local public libraries receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small local public libraries because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Section 769.31 contains information collection rquirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

State and local public libraries are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 18 hours per response for 600 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 404, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Public Law 102-73 (the National Literacy Act) requires the Secretary to give priority to applicants that propose programs and services that will be delivered in the areas of greatest need and coordinated with other literacy services in the community. Public Law 102-73 further specifies the types of indicators of need the Secretary is to consider. Those indicators are spelled out in proposed § 769.31, where the Secretary proposes the award of up to 25 points each for "Need" and "Coordination" criteria. The Secretary particularly invites comments on what types of data and information are available that applicants could provide and that would be comparable across projects.

List of Subjects in 34 CFR Part 769

Education, Education of disadvantaged, Grant programs—education, Libraries, Literacy program—libraries, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.167, Library Literacy Program)

Dated: March 20, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to revise part 769 of title 34 of the Code of Federal Regulations to read as follows:

PART 769—LIBRARY LITERACY PROGRAM

Subpart A—General

Sec.

769.1 What is the Library Literacy Program?
769.2 Who is eligible for an award?
769.3 What regulations apply?
769.4 What definitions apply?

Subpart B—What Types of Projects Does the Secretary Fund?

769.10 For what types of projects does the Secretary provide assistance to State libraries?
769.11 For what types of projects does the Secretary provide assistance to local public libraries?

Subpart C—How Does One Apply for an Award?

769.20 How do State libraries review applications submitted under the Library Literacy Program?

Subpart D—How Does the Secretary Make an Award?

769.30 How does the Secretary evaluate an application?
769.31 What selection criteria does the Secretary use?

Authority: 20 U.S.C. 375, unless otherwise noted.

Subpart A—General

§ 769.1 What is the Library Literacy Program?

Under the Library Literacy Program the Secretary provides Federal financial assistance for adult literacy projects.

(Authority: 20 U.S.C. 375(a))

§ 769.2 Who is eligible for an award?

State libraries and local public libraries are eligible to apply for grants under the Library Literacy Program.

(Authority: 20 U.S.C. 375(a))

§ 769.3 What regulations apply?

The following regulations apply to the Library Literacy Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 769.

(Authority: 20 U.S.C. 375 (a))

§ 769.4 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Public library
State library administrative agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Library Services and Construction Act, as amended.

Adult means an individual in any State who has exceeded the maximum age for compulsory schooling in that State.

Library materials means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for individuals with disabilities.

Literacy means an individual's ability to read, write, and speak in English, compute, and solve problems at levels of proficiency necessary to function on the job and in society; to achieve one's goals; and to develop one's knowledge and potential.

(Authority: Pub. L. 102–73, Sec. 3)

Literacy program means a project or activity designed to help individuals achieve literacy.

Local public library means a public library that is not an integral part of a State or Federal agency and that is authorized to independently apply for, receive, and carry out an LSCA Title VI grant.

State Library means, for this program, the State library administrative agency.

(Authority: 20 U.S.C. 351 *et seq.*)

Subpart B—What Types of Projects Does the Secretary Fund?

§ 769.10 For what types of projects does the Secretary provide assistance to State libraries?

(a) The Secretary provides assistance to State libraries for projects designed to do either or both of the following:

(1) Coordinate and plan library literacy programs for adults.

(2) Arrange for the training of librarians and volunteers to carry out these types of programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Conducting statewide library literacy initiatives.

(2) Assessing literacy needs.

(3) Promoting cooperation between libraries and other agencies in providing literacy programs for adults.

(4) Training librarians and volunteers in the development of literacy programs or in recruitment, training, collection development, evaluation, and other activities to implement a local library literacy program.

(5) Assisting or training librarians and volunteers in extending library literacy programs to groups and individuals that may not be adequately served by existing programs. Examples of these types of persons include—

(i) Individuals with disabilities.

(ii) The institutionalized;

(iii) Older Americans; and

(iv) Other disadvantaged individuals.

(Authority: 20 U.S.C. 375 (b))

§769.11 For what types of projects does the Secretary provide assistance to local public libraries?

(a) The Secretary provides assistance to local public libraries for projects designed to do one or more of the following:

(1) Promote the use of the voluntary services of individuals, agencies, and organizations in providing literacy programs for adults.

(2) Acquire library materials for literacy programs.

(3) Use library facilities for literacy programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Disseminating information about literacy programs.

(2) Training librarians and volunteers to serve local literacy programs.

(3) Developing a collection of literacy materials or acquiring tutor and student literacy materials.

(4) Conducting literacy programs for adults.

(5) Serving as the headquarters for a literacy program.

(6) Encouraging other libraries in the community to volunteer the use of their facilities for literacy programs.

(Authority: 20 U.S.C. 375(c))

Subpart C—How Does One Apply for an Award?

§ 769.20 How do State libraries review applications submitted under the Library Literacy Program?

An applicant shall use the State comment procedures in 34 CFR 75.156–75.160 to afford the State library administrative agency an opportunity to comment on any application for a grant. For purposes of complying with these procedures—

(a) As used in 34 CFR 75.156–75.160—

(1) *State* means the State library administrative agency; and

(2) *Appropriate State official* means the head of the State library administrative agency.

(b) Notwithstanding the provisions of § 75.159(a), the State library administrative agency may review the application only for consistency with its long-range program required under titles I, II, and III of the Act.

Authority: 20 U.S.C. 351d(h))

Subpart D—How Does the Secretary Make an Award?

§ 769.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §769.31.

(b) The Secretary awards up to 115 possible points for the criteria in §769.31.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 20 U.S.C. 375(d))

§ 769.31 What selection does the Secretary use?

(a) *Need.* (25 points)

(1) The Secretary reviews each application to determine the extent of the need for the proposed project.

(2) The Secretary considers—

(i) The extent of the concentration of adults who do not have a secondary education or its equivalent in the area to be served by the project; and

(ii)(A) Whether are community or financial resources available that could be used to establish the project without Federal assistance; or

(B) The per capita income and rate of unemployment or underemployment in the area to be served by the project.

(3) To earn points under this criterion, an applicant must have earned at least one point under paragraph (b) of this section.

(b) *Coordination.* (25 points)

(1) The Secretary reviews each application to determine the extent to which the applicant coordinates its services with literacy organizations and community based organizations providing similar or related literacy services.

(2) The Secretary considers—

(i) The extent to which the applicant—

(A) Has identified other providers of literacy-related services, including state or local adult education agencies or community based organizations, as appropriate;

(B) Has identified the services provided by these parties; and

(C) Has communicated with officials of these parties or their representatives; and

(ii) The quality of the specific measures for cooperation and coordination the applicant has proposed.

(3) To earn points under this criterion, an applicant must have earned at least one point under paragraph (a) of this section.

(Authority: 20 U.S.C. 375)

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) A clear description of how the proposed literacy services would meet the needs of the population to be served;

(iii) Specific intended outcomes that—

(A) Will accomplish the purpose of the program;

(B) Are attainable within the project period, given the project's budget and other resources;

(C) Are susceptible to evaluation; and

(D) Are objective and measurable.

(iv) An effective plan of management that ensures proper and efficient administration of the project;

(v) High quality in the applicant's plans for using its resources and personnel to achieve each objective and intended outcome during the period of federal funding;

(vi) A distinct role for State or local libraries;

(vii) An efficient timeline for meeting each objective; and

(viii) An effective plan for providing equal access and treatment for eligible project participants without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Quality of key personnel. (15 points)*

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director or coordinator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that the project director and other key personnel will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary considers the extent to which methods of evaluation—

(i) Are appropriate for the project;

(ii) Will determine how successful the project is in meeting its intended outcomes; and

(iii) Are objective and produce data that are measurable quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 375)

[FR Doc. 92-14015 Filed 6-12-92; 8:45 am]

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Federal Register

Monday
June 15, 1992

Part X

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; State Curriculum Frameworks for Mathematics and Science Competition; Notice Inviting Applications for New Awards

DEPARTMENT OF EDUCATION

[CFDA No. 84.168A]

Dwight D. Eisenhower National Program for Mathematics and Science Education; State Curriculum Frameworks for Mathematics and Science Competition

ACTION: Notice Inviting Applications for New Awards for Fiscal Year 1992.

Purpose of Program: To award grants to support projects of national significance designed to improve the quality of teaching and instruction in mathematics and science in the nation's elementary and secondary schools, and increase the access of all students to that instruction.

Eligible Applicants: State educational agencies (SEAs), or SEAs working with other entities of their own choice such as the following: local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions.

Deadline for Transmittal of Applications: July 29, 1992.

Deadline for Intergovernmental Review: September 29, 1992.

Applications Available: June 19, 1992.

Available Funds: $2,000,000.

Estimated Range of Awards: $150,000–$500,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 755.

SUPPLEMENTARY INFORMATION: On May 1, 1992, the Secretary published a notice of proposed priorities for State Curriculum Frameworks for Mathematics and Science in the **Federal Register** (57 FR 19014). The public comment period for the notice of proposed priorities ended on June 1, 1992.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is necessary to solicit applications on the basis of the notice of proposed priorities in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1992).

Eight parties, almost all of whom were supportive of the priority, commented on the notice. The Secretary anticipates making two changes in response to these comments. Section (a) will allow grantees to build on science standards emerging from major curriculum reform projects, such as those of the National Science Teachers Association, the American Association for the Advancement of Science, the Mathematical Sciences Education Board, and the National Academy of Sciences, rather than require that the frameworks build on these projects. In addition, the priority will require that educators with expertise in working with students with disabilities be included in the project's advisory committee.

This notice contains the priority as the Secretary expects to issue it in the notice of final priority. Applicants should prepare their applications on the basis of this priority. If the Secretary makes any substantive changes to this priority before issuing the notice of final priority, applicants will be given an opportunity to revise their applications.

The Secretary solicits applications for this absolute priority.

Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 755.12(c) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

State Curriculum Frameworks for Mathematics and Science Education

Projects in which States, or States in collaboration with other entities, carry out all the following activities:

(a) Develop a State curriculum framework, kindergarten through grade 12 (K–12), that reflects world-class standards and will be made available for local schools and districts to implement, or to adapt for themselves. These frameworks must cover mathematics or science or both disciplines. The frameworks must embody coherent, non-repetitive curricula carefully designed to ensure that all children study challenging subject material in every grade, K–12. Frameworks must build upon nationally-recognized mathematics standards developed by the National Council of Teachers of Mathematics and science standards emerging from major curriculum reform projects, such as the National Science Teachers Association's Scope, Sequence, and Coordination project, the American Association for the Advancement of Science's Project 2061—Science for All Americans, and the work of the Mathematical Sciences Education Board and the National Academy of Sciences. The design of these frameworks must involve college and university scholars and specialists as well as teachers and administrators from public or private schools working together as equal collaborators.

(b) Develop model guidelines for effective approaches to teacher education and certification based upon the world-class standards and the State curriculum framework tied to those world-class standards. The model guidelines must be developed in cooperation with one or more institutions of higher education in the State. The collaborative work of designing these model guidelines must also involve scholars and specialists, school teachers, and school administrators from public or private schools.

(c) Develop criteria for teacher recertification, and design and pilot test a model, cost-effective inservice professional development program for teachers based upon the world-class standards and the State curriculum framework tied to those standards. Again, the work of designing these programs must involve collaboration among scholars and specialists, school teachers, and school administrators from public or private schools. In addition, these programs must be pilot tested in a variety of schools throughout the State.

(d) Provide the Secretary with a copy of the evaluation conducted under 34 CFR 75.590.

To guide the activities of the project, each project must establish an overall advisory committee that includes classroom teachers, educators with expertise in working with students with disabilities, university scholars in mathematics and science, State and local school administrators, representatives of private schools, specialists in teacher education, representatives of the State legislature, the Governor's office, and State and local boards of education, and representatives of business, labor, industry, and the community at large.

Selection Criteria

The Secretary evaluates an application on the basis of the selection criteria in 34 CFR 755.32. Under 34 CFR 755.30, the Secretary is authorized to distribute an additional 10 points among the criteria to bring the total to a

maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

National Significance

(34 CFR 755.32(f)). Ten (10) additional points will be added for a possible total of 30 points for this criterion.

For Applications or Information Contact: Becky Wilt, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching (FIRST) Office, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2992.

Dated: June 10, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–14014 Filed 6–12–92; 8:45 am]

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federal register

Monday
June 15, 1992

Part XI

Department of Education

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training Program; Proposed Priorities, Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1993.

SUMMARY: The Secretary proposes priorities for fiscal year (FY) 1993 under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest needs. These priorities are intended to ensure the continued availability of closed-captioned television, to expand the cultural experiences available to children who are deaf and hard of hearing, and to disseminate information about new media technologies for persons with sensory disabilities.

DATES: Comments must be received on or before July 15, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4620, Switzer Building, Washington, DC 20202–2644.

FOR FURTHER INFORMATION CONTACT: Joseph Clair. Telephone: (202) 732–4503. Deaf and hard of hearing individuals may call (202) 732–1169 for TDD services.

SUPPLEMENTARY INFORMATION: This notice contains six proposed priorities under the Educational Media Research, Production, Distribution, and Training Program authorized under part F of the Individuals with Disabilities Education Act (IDEA). These priorities would provide cooperative agreements to assist in the provision of closed-captioned news, movies, mini-series, and special programs, and children's and syndicated television. The proposed priorities also would provide assistance for producing and disseminating information about media technology for persons with sensory disabilities and for providing cultural experiences that enrich the lives of deaf and hard of hearing children and youth. These proposed priorities would ensure the continued availability of closed-captioned television and expand the educational and cultural opportunities available for persons with sensory disabilities in areas of identified need.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by comments received in response to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only those applications that meet one of these absolute priorities:

Proposed Priority 1—Closed-Captioned National News and Public Information

Background: This priority supports cooperative agreements to continue and expand closed-captioned national news, public information programs, and emergency broadcasting, so that persons with hearing impairments can have access to up-to-date national morning, evening, and weekend news, as well as information concerning current events and other significant public information. In making awards the Secretary will consider the extent to which programs on each major national commercial and public broadcast network continue to be captioned.

Funds provided under this priority may be used to support no more than two-thirds of the captioning costs for each program hour captioned, except for short periods of time—up to six months—while private sector support is sought or for emergency announcements.

Priority: Projects must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general, educational, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(3) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time, as a separate feed, or offline—and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that will ensure successful, timely captioning service, despite possible national or regional emergency situations;

(6) Demonstrate the willingness of major national commercial or public broadcast or cable networks to permit captioning of their programs by the project; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Priority 2—Closed-Captioned Syndicated Television Programming

Background: This priority supports cooperative agreements for closed-captioning syndicated television programs, thereby making a variety of programs available at different times, depending on the local broadcast or cable station. Syndicated programming includes both previously broadcast programs or series, as well as new programs distributed for showing on individual stations.

Priority: Projects must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general, educational, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(3) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is to be provided in real-time, as a separate feed, using live

display, offline, or reformatted—and the cost per hour for each method used;

(5) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(6) Demonstrate the willingness of providers of syndicated programs to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Priority 3—Closed-Captioned Children's Programs

Background: This priority supports cooperative agreements for closed-captioning children's programs shown on national commercial and public broadcast networks, as well as syndicated and cable programs shown nationally, so that children who are deaf or hard of hearing will have access to popular children's programs. In making awards the Secretary will consider the extent to which programs on each major national commercial and public broadcast network and cable network targeting children's audiences continue to be captioned.

Priority: Projects must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general, educational, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(3) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time, live display, offline, or reformatted—and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(6) Demonstrate the willingness of major networks or providers of syndicated programs to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Priority 4—Closed-Captioned Movies, Mini-Series, and Special Programs Broadcast During Prime-Time

Background: This priority supports cooperative agreements to continue and expand the closed-captioning of movies, mini-series, special programs, and other programs broadcast during prime-time on major national commercial broadcast networks. In making awards the Secretary will consider the extent to which prime-time movies and other programs on each major national commercial broadcast network continue to be closed-captioned.

Funds provided under this priority may be used to support no more than two-thirds of the captioning costs for each movie, mini-series, and special program captioned. Funds may also be used to support no more than two-thirds of the captioning costs for other prime-time programs on major broadcast networks for short periods of time—up to six months—while private or other public sector support is sought.

Priority: Projects must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general, educational, and cultural experiences of individuals with hearing impairments;

(2) Provide a flexible plan to assure closed-captioning of television programs without interruption, while accommodating last-minute program substitutions and new programs;

(3) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(4) Identify for each proposed program to be captioned, the source of private or other public support and the projected dollar amount of that support;

(5) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time, live display, offline, or reformatted—and include the projected cost per hour for each method used;

(6) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(7) Demonstrate the willingness of major national commercial broadcast networks to permit captioning of their programs; and

(8) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Priority 5—Symposium on Educational Media Technology Relating to Persons with Sensory Disabilities

Background: This priority supports one cooperative agreement for a three-day symposium to (1) disseminate information related to current and future research and advances in the field of media technology for individuals with sensory impairments, and (2) provide recommendations for additional educational applications of this media technology. This technology includes, but is not limited to, speech recognition systems, video teleconferencing, telecommunications devices and system access, braille devices, descriptive video, and visible light spectrum. Findings from recent research in captioning technology must also be one of the focuses of the symposium. This symposium is consistent with the recommendations of the Commission on the Education of the Deaf, which studied the status of, and needed improvements in, education for individuals with hearing impairments.

Priority: This project must conduct a symposium that offers at least six commissioned presentations by professionals or experts in their respective areas, including but not limited to, educational media and technology, advanced technology, media access, and rehabilitation engineering. The project must make arrangements for discussions and responses at the symposium by participants and for developing suggestions for implementing research findings and practical implications for new and advanced technology.

Following the symposium, the commissioned presenters must refine their papers, reflecting discussions at the symposium. The project must publish a proceedings document and distribute this document to symposium participants and relevant clearinghouses.

Proposed Priority 6—Cultural Experiences for Deaf and Hard of Hearing Children and Youth

Background: This priority supports cooperative agreements that will provide cultural experiences to enrich the lives of deaf and hard of hearing children and youth.

During FY 1992 the Department expects to fund projects that will (1) provide for the presentation of theatrical experiences for deaf and hard of hearing individuals, and (2) use an integrated approach by having among cast members a mixture of deaf, hard of hearing and hearing performers. This

priority for FY 1993 is intended to extend these experiences to younger people with hearing impairments. Projects must actively involve children and youth with and without hearing impairments in cultural activities such as the production of a play or creation of a work of art. A grantee may not use funds under this priority for passive activities such as viewing a play or video produced by adults.

Priority: Projects must—

(1) Use an integrated approach that mixes children and youth who are deaf, hard of hearing, and hearing in conducting theatrical or cultural activities or both; and

(2) Develop and implement strategies that will increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard of hearing individuals, including children, youth, and adults.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

INVITATION TO COMMENT: Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period, in room 4620, Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

APPLICABLE PROGRAM REGULATIONS: 34 CFR part 332.

Program Authority: 20 U.S.C. 1451, 1452.

(Catalogue of Federal Domestic Assistance Number: 84.028, Educational Media Research, Production, Distribution, and Training Program).

Dated: May 7, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-14013 Filed 6-12-92; 8:45 am]

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federal register

Monday
June 15, 1992

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Federal Aviation Regulation (SFAR) No. 50-2; Special Flight Rules in the Vicinity of the Grand Canyon National Park; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

Special Federal Aviation Regulation (SFAR) No. 50-2 Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule continues for an additional 3 years the effectiveness of the temporary procedures for the operation of all aircraft in the airspace above Grand Canyon National Park up to an altitude of 14,500 feet above mean sea level. The provisions of SFAR 50-2 originally established the flight restriction areas for a period of 4 years to allow the National Park Service (NPS) time to complete studies of the impact of aircraft overflights on the Grand Canyon and to forward its recommendations to the FAA. This rule continues the effectiveness of these procedures while NPS studies and analyses are being conducted.

DATES: *Effective date:* June 15, 1992.

Expiration date: SFAR No. 50-2 expires on June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Melodie DeMarr Fouts, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3497. Communications must identify the special rule number of the document.

Background

On June 5, 1987, the FAA issued SFAR 50-1 (52 FR 22734, June 15, 1987) which established flight regulations in the vicinity of the Grand Canyon National Park.

On August 18, 1987, legislation was enacted to require a study of aircraft noise impacts at a number of national parks and to impose flight restrictions at three parks: Grand Canyon National Park, Yosemite National Park in California, and Haleakala National Park in Hawaii. (Pub. L. 100-91).

Section 3 of Pub. L. 100-91 required the Secretary of the Interior to submit to the FAA Administrator recommendations for action necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The recommendations were to provide for substantial restoration of the natural quiet and experience of the Grand Canyon. With limited exceptions, the recommendations were to prohibit the flight of aircraft below the rim of the Canyon and to designate zones that were flight free except for purposes of administration of underlying lands and emergency operations.

Public Law 100-91 further required the Administrator of the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon. The plan was to implement the recommendations of the Secretary without change unless the Administrator determined, after consultation with the Secretary an opportunity for notice and public hearing, that implementing the recommendations would adversely affect aviation safety. In that event, the FAA was required to revise the Department of the Interior (DOI) recommendations to resolve the safety concerns and issue regulations implementing the revised recommendations in the plan.

In December 1987, the Office of the Secretary of the Interior transmitted recommendations to the FAA for an aircraft management plan at the Grand Canyon. The recommendations submitted included both rulemaking and nonrulemaking actions.

On May 27, 1988, the FAA issued SFAR 50-2 (53 FR 20264, June 2, 1988) which revised the procedures for operation of aircraft in the airspace above the Grand Canyon. The rule implemented the preliminary recommendations of the Office of the Secretary of the Interior for an aircraft management plan at the Grand Canyon with some modifications that the FAA initiated in the interest of aviation safety.

Public Law 100-91 also required the DOI to conduct a study, with the technical assistance of the Secretary of Transportation, to determine the proper minimum altitude to be maintained by aircraft when flying over units of the National Park System. The research was to include an evaluation of the noise levels associated with overflights. Before submission to Congress, the DOI is to provide a draft report (containing the results of its studies) and recommendations for legislative and regulatory action to the FAA for review. The FAA is to notify the DOI of any adverse effects these recommendations would have on the safety of aircraft operations. The FAA is to consult with the DOI to resolve these issues. The final report must include a finding by the FAA that implementation of the DOI recommendations will not have adverse effects on the safety of aircraft operations, or, in the alternative, a statement of the reasons why the recommendations will have an adverse effect.

On a continuing basis, the FAA reviews the existing rules and regulations pertaining to flight in the National Airspace System which includes the airspace over national park units. The rules currently provide for the safety of aircraft by specifying a minimum safe altitude for the operation of aircraft. The FAA will consider specific rule changes relating to aircraft overflights of national park system units, consistent with aviation safety, after completion of the NPS studies on the impact of aircraft overflights and the FAA's receipt of NPS recommendations.

On February 4, 1992, the FAA issued a Notice of Proposed Rulemaking to extend the provisions of SFAR 50-2 for another 3 years to allow the NPS to complete studies to assess the adverse impact of aircraft overflights at Grand Canyon National Park and forward its recommendations to the FAA and to Congress. At that time, the FAA will determine the necessity for adjustment of flight restrictions over the Grand Canyon National Park.

This rulemaking action continues for 3 years the effectiveness of the provisions of SFAR 50-2.

Comments on SFAR No. 50-2: Five comments were received on the proposed extension of SFAR 50-2 during the comment period. All of the commenters presented themselves as private pilots with a common interest in maintaining the ability to view and enjoy the natural wonders of the Grand Canyon from the air. The commenters generally agreed that the 14,500 foot altitude restriction over the flight free zones is discriminatory against general aviation aircraft that do not have the performance capability and oxygen equipment to operate at or above that altitude. The commenters also cited resentment of the impact environmental concerns have had on airspace usage over the Grand Canyon.

The FAA acknowledges that the altitude restrictions of the flight free zones are potentially burdensome to a large percentage of general aviation

aircraft. However, it was the intent of the Department of the Interior, as stated in previous rulemaking, to require aircraft to deviate around these zones as part of the plan for the management of air traffic over the park. In areas of the Special Flight Rules Area outside of the flight free zones, the minimum altitudes range from 5,000 to 10,000 feet mean sea level to permit transient operation of aircraft through the area at altitudes separated from congested commercial tour routes.

One commenter stated that the visual flight rules (VFR) corridors are difficult to follow for the transient pilot because they are not aligned with navigational aids.

On the contrary, in the development of the final rule the FAA received many comments suggesting that VFR corridors be realigned with the terrain rather than VOR radials since VOR signals often cannot be received at lower altitudes near the canyon due to terrain and distance from the stations. The FAA agreed and reconfigured the corridors to rely on prominent terrain features as well as VOR signals where possible. Also, the Grand Canyon VFR aeronautical chart is available for pilots transiting the area. That chart includes pictures of the terrain which is overflown in each of the VFR corridors to assist pilots in visual identification of the route.

One commenter submitted that the rule should not apply to aircraft that can be "seen and not heard" such as sailplanes.

The Grand Canyon attracts an unusual level of air traffic in the airspace above the canyon. The FAA is concerned that safety could be impacted by the concentration of air traffic, including powered and non-powered aircraft, over the canyon if the minimum altitudes were lowered. Because of the terrain of the canyon and the relatively low level of most sightseeing flights over the Grand Canyon, air traffic control procedures are not the most feasible method to segregate air traffic. The FAA believes that there is a need to separate transient general aviation traffic from the regular commercial tour operations through the designation of certain routes and altitudes for both Part 135 and non-Part 135 operators.

Environmental Review

An environmental assessment of SFAR 50–2 and a Finding of No Significant Impact were placed in the rules docket. The environmental assessment concluded that, as a result of the SFAR, certain areas of the Grand Canyon would be subject to less aircraft noise than under existing regulations; and other areas, in particular the Hermits Rest area of the south canyon rim, would be subject to slight increase in perceived aircraft noise. However, in consideration of the volume of traffic, the altitude of flight routes, and the noise characteristics of the aircraft typically used in canyon flights, the FAA has determined that no significant environmental impact would result from this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Regulatory Evaluation Summary

This action extends the provisions of SFAR 50–2 for 3 years. SFAR 50–2 was justified based on DOI's December 1987 cost/benefit analysis. Since that SFAR was published as a final rule in June 1988, the FAA has not obtained any information that is contrary to that analysis. In its original cost-benefit analysis, the DOI concluded the cost to air tour operators would be negligible, and there would be significant benefits to park resources and visitors. Therefore, the DOI determined that the requirements of SFAR 50–2 would be cost-beneficial. For lack of information to the contrary, the FAA contends that the DOI's negligible cost impact conclusion is still valid. However, a recent review of Docket No. 25149 revealed that one operator stated that his company would incur an additional operating cost of $150,000 as a result of the original SFAR 50–2 published in 1988. The FAA has solicited further comments on this SFAR concerning additional operating costs imposed on affected operators.

International Trade Impact Statement

This rule is expected to have neither an adverse impact on the trade opportunities for U.S. firms doing business abroad nor on foreign firms doing business in the United States. This assessment is based on the fact that part 135 air tour aircraft operators potentially impacted by this proposed SFAR do not compete with similar operators abroad. That is, their competitive environment is confined to the Grand Canyon National Park.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that all small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Government agencies to review rules which may have "a significant economic impact on a substantial number of small entities." The small entities potentially impacted by this rule represent part 135 air tour operators with nine or less aircraft owned, but not necessarily operated. Based on FAA Order 2100.14A, the FAA's annualized threshold of significant economic impact for each of these small entities is estimated to be $60,000 (in 1990 dollars). As a result of adopting the DOI assessment of negligible cost of compliance to the small entities operating over the Grand Canyon, which was published in the cost-benefit analysis for SFAR 50–2 on June 2, 1988, the FAA concludes that this rule will not have a substantial economic impact on a substantial number of small entities.

Federalism Determination

The regulation herein will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. This regulation is promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which has been construed to preempt state law regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation Summary and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This amendment is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

List of Subjects

14 CFR Part 91

Air traffic control, Aircraft, Aviation safety, Grand Canyon.

14 CFR Part 135

Air taxes, Aircraft, Aviation safety, Grand Canyon.

The Rule

In consideration of the foregoing, the Federal Aviation Administration is amending SFAR 50–2 (14 CFR Parts 91 and 135) as follows:

PART 91—[AMENDED]

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 comp., p. 902; 49 U.S.C. 106(g).

PART 135—[AMENDED]

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

3. Section 9 of Special Federal Aviation Regulation No. 50–2 is revised to read as follows:

SFAR No. 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Sec. 9. *Termination date.* This Special Federal Aviation Regulation expires on June 15, 1995.

* * * * *

Issued in Washington, DC on June 11, 1992.

Barry Lambert Harris,

Acting Administrator.

[FR Doc. 92–14134 Filed 6–11–92; 4:42 pm]

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S. 870/P.L. 102-299

Golden Gate National Recreation Area Addition Act of 1992. (June 9, 1992; 106 Stat. 236; 2 pages) Price: $1.00

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

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Rules and Regulations

Federal Register
Vol. 57, No. 116
Tuesday, June 16, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration; Delegation of Authority, Claims Review Committees

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is amending its regulations delegating authority to its claims review committees. Claims review committees exist at the District, Regional, and Central Office level and have the authority to sell primary obligations or other evidence of an indebtedness owed the SBA for an amount less than the total amount due thereon. This rule sets forth the circumstances for and the procedures by which the various claims review committees exercise such authority.

DATES: This rule is effective June 16, 1992.

FOR FURTHER INFORMATION CONTACT: Earl Chambers, Director, Office of Portfolio Management, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205–6481.

SUPPLEMENTARY INFORMATION: SBA is amending its regulations setting forth the authority delegated to its various claims review committees. Claims review committees are established at the District, Regional, and Central Office level for the purpose of determining the action SBA will take with respect to debts owed the Agency. Specifically, the various claims review committees have authority, at differing amounts depending upon their organizational level, to reach settlement on primary obligations or other evidence of an indebtedness owed the SBA for an amount less than the total amount due thereon.

In each SBA District Office, a District Claims Review Committee shall be established. The membership of the Committee shall consist of three incumbents in the following order of position classification: the Liquidation Chief (or Liquidation Supervisor); Portfolio Management (PM) Chief (or PM Supervisor); District Counsel; and the Finance Division (FD) Chief (or FD Supervisor). The first person available in the above order shall serve as chairperson of the committee. The regulation provides authority by which the Regional Administrator or the District Director may alter this committee structure. Further, the regulation sets forth the degree of concurrence required of committee members in order to undertake certain action as well as the level of authority, in specific dollar amounts, which may be exercised by the District Claims Review Committee. The SBA may, however, modify the membership and level of authority of a particular District Claims Review Committee by notice in the **Federal Register**. Finally, the rule states that split decisions are reconsiderations (appeals) of actions taken by the District Office Claims Review Committee are to be taken to the Regional Claims Review Committee. A split decision for purposes of this rule means less than unanimity on those matters which require unanimity.

In each SBA Regional Office, a Regional Claims Review Committee shall be established. The membership of the Committee shall be, in the following order, the Assistant Regional Administrator (ARA) for Finance and Investment as Chairperson; Regional Counsel; and, as directed by the Regional Administrator, one of the following: the ARA for Business Development; ARA for Procurement Assistance; or ARA for Minority Small Business and Capital Ownership Development. Further, the regulation sets forth the degree of concurrence required of committee members in order to undertake certain action as well as the level of authority, in specific dollar amounts, which may be exercised by the Regional Claims Review Committee. The SBA may, however, modify the membership and level of authority of a particular Regional Claims Review Committee by notice in the **Federal Register**. Finally, the rule states that split decisions and reconsiderations (appeals) of actions taken by the Regional Office Claims Review Committee are to be taken to the Central Office Claims Review Committee.

In SBA's Central Office, a Central Office Claims Review Committee shall be established. The Central Office Claims Review Committee shall be comprised of the Director, Office of Portfolio Management as Chairperson; Associate General Counsel for Litigation; and Director, Office of Financing; or their respective designees. A designee refers to one selected to act pursuant to the delegating official's authority on a particular matter. This Committee shall have the authority, upon unanimous vote of its members, to take final action on all Agency claims above the specific dollar limits established for the Regional Claims Review Committees. On the same basis, the Central Office Claims Review Committee may approve all actions under authority of the Office of Portfolio Management and the Investment Division. The Committee shall have final authority, upon majority vote, on split decisions and appeals of matters delegated to the Regional Claims Review Committees. Finally, the Committee shall have authority, upon unanimous vote, to take final action on proposals to sell a loan or other evidence of indebtedness owed the SBA for less than the total amount due thereon. All split decisions and reconsiderations (appeals) of actions taken by the Central Office Claims Review Committee shall be determined by the Assistant Administrator for Financial Assistance.

Due to the fact that this rule governs matters of agency organization, management, and personnel and makes no substantive change to the current regulation, SBA is not required to determine if it constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to do a Federalism Assessment pursuant to Executive Order 12612, or to determine if this rule imposes an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35).

SBA is publishing this regulation governing agency organization, practice, and procedure as a final rule without

opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure, Authority delegation, Organization and function, Government agency, Reporting and recordkeeping requirements.

For the reasons set forth above, SBA is amending part 101 of title 13, Code of Federal Regulations, as follows:

PART 101—[AMENDED]

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5 of Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 306, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Part V of Section 101.3–2, Delegation of authority to conduct program activities in field offices, is revised to read as follows:

§ 101.3–2 Delegation of authority to conduct program activities in field offices.

* * * * *

Part V—Claims Review Committee

Committee Authority

(1) No authority has been delegated within SBA to take final action in compromise settlement of any Agency claim except through the established Claims Review Committees. Actions taken by such Committees must be in compliance with the provisions of this regulation.

(a) *District Claims Review Committee.* A District Claims Review Committee (DCRC) shall be established in each district office. Membership shall consist of three incumbents (or those acting officially on their behalf) in the following order of position classification. The first member available in this order shall serve as chairperson: Liquidation Chief (or Liquidation Supervisor), PM Chief (or PM Supervisor), District Counsel, FD Chief (or FD Supervisor).

In offices where the ADD/F&I also serves as the direct supervisor of one of the divisions, the ADD/F&I may serve on the Committee in his or her capacity as a line supervisor.

As an alternative, the District Director may establish a Committee membership consisting of the Assistant District Director for Finance and Investment (acting as chairperson), District Counsel, and the Assistant District Director for Business Development (or those acting officially in their behalf). In the face of limited staffing availability, the Regional Administrator may authorize a different Committee structure if such structure is monitored to ensure that each member of the Committee is free to give independent opinions regarding the matters at hand.

(1) Authority is delegated to this Committee to take final approval action on:

(A) Claims not in excess of $200,000 (excluding interest), upon the majority vote of its members.

(B) Claims exceeding $200,000 but not in excess of $300,000 (excluding interest), upon the unanimous vote of its members.

(C) Claims of any size when the amount offered represents the full principal balance due (thereby forgiving only accrued interest), upon the majority vote of its members.

(D) Claims of any size involved in insolvency proceedings (bankruptcies, state and Federal receiverships, USDA Certified Mediation cases, assignments for the benefit of creditors, etc.) or which are under the administrative control of the U.S. Department of Justice, upon the unanimous vote of its members.

(E) Requests to reduce or eliminate the interest rate charged and/or the interest accrued by the Agency when authority for such action is not otherwise delegated to the line supervisor or the Central Office Claims Review Committee, upon the majority vote of its members.

(F) Private sales of collateral and collateral purchased which exceed the delegated authority of the line supervisor, upon the unanimous vote of its members.

(G) Bid proposals responding to an authorized Request for Proposals for annual auctioneering services, upon the unanimous vote of its members.

(2) Committee recommendations to sell a loan or other evidence of indebtedness owed the Agency for less than the principal amount due, or to compromise an Agency claim against a "going" business which is not involved in insolvency proceedings or under the administrative control of U.S. Department of Justice, must be forwarded through channels, with District and Regional Committee comments, to the Central Office Claims Review Committee for final action.

(3) Settlement offers on claims of any size may be declined by majority vote of its members.

(4) Split decisions and reconsiderations (appeals) of actions taken by this Committee must go to the Regional Claims Review Committee.

(5) SBA may, as it deems appropriate, increase, decrease, or set the level of authority of a particular District Claims Review Committee as well as alter the composition of committee membership by notice published in the **Federal Register**.

(b) *Regional Claims Review Committee.* A Regional Claims Review Committee (RCRC) shall be established in each regional office. Membership shall consist of the three incumbents (or those acting officially on their behalf) of the following positions: Assistant Regional Administrator for Finance and Investment (Chairperson), Regional Counsel, and, as directed by the Regional Administrator, one of the following: Assistant Regional Administrator for Business Development, or Assistant Regional Administrator for Procurement Assistance, or Assistant Regional Administrator for Minority Small Business/Capital Ownership Development.

(1) Authority is delegated to this Committee to take final approval action on:

(A) Claims not in excess of $300,000 (excluding interest), upon the majority vote of its members.

(B) Claims exceeding $300,000 but not in excess of $500,000 (excluding interest), upon the unanimous vote of its members.

(C) Split decisions and appeals of actions on matters delegated to the district level, upon the majority vote of its members.

(2) Committee recommendations to sell a loan or other evidence of indebtedness owed the Agency for less than the principal amount due, or to compromise an Agency claim against a "going" business which is not involved in insolvency proceedings or under the administrative control of the U.S. Department of Justice, must be forwarded, with Committee comments, to the Central Office Claims Review Committee for final action.

(3) Settlement offers on claims of any size may be declined by majority vote of its members.

(4) Split decisions and reconsiderations (appeals) of actions taken by this Committee must go to the Central Office Claims Review Committee for final action.

(5) SBA may, as it deems appropriate, increase, decrease, or set the level of authority of a particular Regional Claims Review Committee as well as alter the composition of committee membership by notice published in the **Federal Register**.

(c) *Central Office Claims Review Committee.* A Central Office Claims Review Committee (COCRC) shall be established in the Central Office. Membership in this Committee shall consist of the three incumbents (or those officially acting on their behalf) of the following positions: Director, Office of Portfolio Management, (Chairperson), Associate General Counsel, Litigation, Director, Office of Financing.

In the event a committee member or individual acting in such position is unable to attend a particular meeting of the committee, such committee member may designate an official to act in his/her stead.

(1) This Committee shall have the authority to take final action on:

(A) All Agency claims above the limits established for the RCRCs, upon the unanimous vote of its members. On the same basis, it also may approve actions on all programs under the purview of Portfolio Management (e.g., Lease Guarantees, Pollution Control Bond Guarantees, and 8(a) advance payments) as well as programs under the purview of the Investment Division (SBIC and SSBIC).

(B) Split decisions and appeals of actions on matters delegated to the regional level, upon the majority vote of its members.

(C)(i) Proposals to sell a loan or other evidence of indebtedness owed the Agency for less than the principal amount due, or to compromise an Agency claim against a "going" business, upon the unanimous vote of its members.

(ii) Split decisions and reconsiderations (appeals) of actions taken by this Committee may be decided by the AA/FA.

(d) A split decision for purposes of this part means less than unanimity on those matters which require unanimity.

* * * * *

Dated: May 12, 1992.

Particia Saiki,

Administrator.

[FR Doc. 92-13950 Filed 6-15-92; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 108

Loans to State and Local Development Companies Extension of Annual Report Filing, etc.

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule is intended to: (1) Provide more flexibility in granting an SBA Certified Development Company (503 company) a temporary expansion of its area of operations; (2) delete the requirement that names and addresses of individuals who are members of the 503 companies, but not members of the Boards of Directors of 503 companies, must be published as part of the certification process; (3) allow a 60-day extension on the deadline for the filing of a 503 company's annual report if the company is awaiting the report of its public accountant; (4) amend the 503 company annual report requirement to permit the use of unaudited financial statements if prepared according to Generally Accepted Accounting Principles; (5) add a provision that interim financing for a project to be financed by a 503 company cannot be derived from funds obtained through other SBA programs; (6) clarify that a small concern (or its associate) is allowed to pay for goods or services and receiving subsequent reimbursement from an interim lender; (7) delete a redundant requirement that the maximum private sector financing must be obtained before a 503 company may participate in a project; (8) allow SBA flexibility to establish the level of borrower injection required in connection with a development company financing; (9) change the circumstances under which SBA would disburse funds to cover borrower's tax liabilities on 503 loans; and (10) delete the specific amount of the reserve deposit and the funding fee and provide for their publication in the **Federal Register** in the event they are changed.

EFFECTIVE DATE: June 16, 1992.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street, SW., suite 8300, Washington, DC 20416. Telephone (202) 205-6485.

SUPPLEMENTARY INFORMATION: On January 15, 1992 (at 57 FR 1688) a proposed regulation including the changes listed in the summary above was published. Two (2) comments were received and their content was taken into consideration in developing this final rule. SBA is hereby adopting the proposed regulation with modifications indicated below as final.

By this final regulation, 13 CFR 108.503-1(c)(1)(iii) is amended to allow SBA's Central Office to extend, beyond 1 year, a temporary expansion of a development company's geographical service area when the area of expansion is underserved. Such expansions are currently available for up to 1 year. The proposed rule contained a limit of one additional year. However, SBA received information which suggests that more flexibility would serve the best interests of the program. Therefore, the language published in this final rule does not limit the number of extensions available but does provide for approval of additional expansion by the program office. This issue has arisen because contractions in the number of development companies have resulted in more areas of the country having no primary coverage. This rule is promulgated in order to assure that the program is available to all businesses, regardless of their geographic location.

13 CFR 108.503-2(b) is amended to delete the present requirement that the names and addresses of members be published as part of the public notice that a development company has applied to be certified in the 503 program. Many 503 companies have extensive memberships reflecting broad support from the community. The Board of Directors is representative of the membership as a whole and each board member's name and address must be published under the existing and proposed regulations. The Agency has decided that the additional expense of publishing long lists of member names cannot be justified as it does not provide significant information to the public.

Requirements regarding annual report filings for 503 companies are changed in two ways under this rule: (1) 13 CFR 108.503-3 would allow a 60-day extension for the filing of a 503 company's annual report if the company is awaiting the report of its public accountants. (2) The regulation would also provide that financial statements prepared using Generally Accepted Accounting Principles (GAAP) are required. The two comments received address the issue of the 60-day extension of the filing deadline. Both comments were highly supportive of this change.

Restrictions contained in the present regulations regarding interim financing are clarified and strengthened. 13 CFR 108.503-7(b)(1) will now provide that interim financing for a development company funded project cannot be derived from funds obtained through other SBA programs. This change clarifies SBA policy that the Agency not be exposed to construction financing risks. Amended § 108.503-7(b)(3) will now clarify that a small concern (or its associate) will be allowed to pay for goods or services related to a project and receive subsequent reimbursement from an interim lender. A borrower may make expenditures in the normal course of business (e.g., deposits to hold orders, etc.) that are legitimate project costs commonly reimbursed as part of the interim financing.

The present regulation governing third party financing is amended to delete a requirement that the maximum private sector financing must be obtained. 13 CFR 108.503-8(a)(3) would be amended to decrease the potential for misinterpretation. In some projects financed partially by 503 companies it is desirable for the small concern to make an injection that is more than the minimum required by the regulation. In such situations the private sector financing might be equal to the injection and development company's portion of the total project financing. The change in the regulatory language makes it clear that those situations can be accommodated.

13 CFR 108.503-10 as amended is intended to give SBA the flexibility to make sensible arrangements related to 503 Company injections, repayment terms, and requirements for subordination to SBA.

This final rule also amends the present regulatory provision related to borrowers' from development companies receipt of funds from their Escrow/Reserve Account to meet tax liabilities. The rule will now require that borrowers request such funds within 60 days of the date they were required to file their returns. Lastly, this regulation deletes regulatory provisions which govern the specific percentages of the reserve deposit and the funding fee required and provides for SBA publication in the **Federal Register** of changes in required amounts. Presently, each borrower signs individual documents that delineate these amounts in conjunction with development company financing. Given the need to act in a timely manner when responding

to changes in program costs, the Agency has determined that a more efficient method of notification of specific percentages is the publication of a notice in the **Federal Register.**

Compliance With Executive Orders 12291, 12612, and 12778 the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this final rule does not constitute a major rule for the purposes of Executive Order 12291, because the annual effect of this rule on the national economy will not attain $100 million. In this regard, the amendments to 13 CFR 108.503–3, 108.503–7(b)(1), 108.503–7(b)(3), 108.503–8(a)(3), 108.503–10, 108.503–11 and 108.504(e) are policy or procedural in nature and are therefore revenue neutral. The amendment to § 108.503–1(c)(1)(iii) is unlikely to result in more than 10 additional loans being funded. Since the average loan size is $285,000, the maximum effect would be an additional $2.8 million in loan approvals. The amendment to § 108.503–2(b) will result in lowered publication costs for 503 company applicants. Since there are approximately 15 new applications and 24 applications for expansion of area annually, we estimate that the savings to the industry will be about $44,000 per year.

This rule will not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and will not have adverse effects on competition, employment, investment productivity, or innovation.

SBA certifies that this final rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For the purpose of compliance with the Regulatory Flexibility Act, SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities for the same reasons that this rule does not constitute a major rule under Executive Order 12291 analysis above.

For purposes of Executive Order 12778, SBA certifies this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

For purposes of the Paperwork Reduction Act, Public Law 98–115, 44 U.S.C. Ch. 35, SBA certifies that this rule does not impose new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set out in the preamble, part 108 of title 13, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.503–1 is amended by revising paragraph (c)(1)(iii) to read as follows:

§ 108.503–1 Eligibility requirements for 502 companies.

* * * * *

(c) Area of Operations. * * *

(1) * * *

(iii) With SBA prior approval of each loan, temporarily expand its area of operations to include an area underserved by the 503 program. Such temporary expansion may be granted for up to one year, provided, however, that the Director, ORA & ED may extend such expansion for additional periods. A 503 company granted such temporary expansion shall be exempt from the requirements of paragraphs (b)(2), (c)(4) and (d) of § 108.503–1 of this part, as they would apply to the area of temporary expansion.

* * * * *

3. Section 108.503–2 is amended by revising paragraph (b) to read as follows:

§ 108.503–2 Certification.

* * * * *

(b) *Public notice.* The proposed 503 company shall publish a notice in a newspaper of general circulation in the city, county or counties of the proposed area of operations, and shall furnish a certified copy to SBA within 10 days of the date of publication. Such notice shall include the name and location of the proposed company, its purpose and area of operations, and the names and addresses of its officers and directors. The public shall be afforded reasonable opportunity for the submission of written comments to the local SBA office.

* * * * *

4. Section 108.503–3 is amended by adding a sentence at the end of paragraph (f) introductory text, and by revising paragraph (f)(1) to read as follows:

§ 108.503–3 Operational requirements for 503 companies.

* * * * *

(f) *Reporting requirements.* * * * The SBA may grant an extension of up to 60 days if the 503 Company is awaiting the final report of its public accountant as set forth in the following paragraph.

(1) The Financial statements contained in the annual report shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP). If opinion audits or reviews are otherwise required by the 503 company, copies of the results shall be submitted.

* * * * *

5. Section 108.503–7 is amended by redesignating paragraphs (b)(1) through (b)(4) as paragraphs (b)(2) through (b)(5), adding a new paragraph (b)(1), and revising the newly redesignated (b)(3) to read as follows:

§ 108.503–7 Interim financing.

* * * * *

(b) *Source of interim financing.*

* * * * *

(1) Such financing is not derived, directly or indirectly, from any SBA program.

* * * * *

(3) The interim lender is not associated with the small concern. (See definition in § 108.2 of this part.) This does not disallow the small concern or its associates from paying for goods or services for subsequent reimbursement from an interim lender. See also § 108.503–5(d).

* * * * *

§ 108.503–8 [Amended]

6. Section 108.503–8 is amended by removing the last sentence of paragraph (a)(3).

7. Section 108.503–10(a) is amended by revising the last sentence to read as follows:

§ 108.503–10 503 Company injection.

* * * * *

(a) * * * Such injection shall be subordinate to the 503 Debenture and shall not be repaid at a faster rate than the 503 Loan unless SBA provides its prior written consent to the waiver of one or both of these conditions on a case-by-case basis.

* * * * *

8. Section 108.503–11(b)(2) is amended by revising the fourth sentence to read as follows:

§ 108.503–11 Central fiscal agent.

* * * * *

(b) * * *

(2) * * * A small concern may make this request through its 503 company to the appropriate SBA field office within the 60 days of the filing date. * * *

* * * * *

§ 108.504 [Amended]

9. Section 108.504(e) is amended by removing the phrases "of one half of one percent (0.5%)," and "of one quarter of

one percent (0.25%) of the net debenture proceeds, see definitions in § 108.2 of this part" and adding in place of the latter the phrase "to be published from time to time in the **Federal Register**".

Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans).

Dated: April 10, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-13949 Filed 6-15-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 90-ASW-1]

Establishment of Restricted Area R-6320 Matagorda, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R-6320 Matagorda, TX. The United States Customs Service will install an aerostat-borne radar system in R-6320. The aerostat-borne radar system will provide surveillance to detect suspected illegal drug transportation into the United States. The aerostat balloon will fly up to 15,000 feet mean sea level (MSL). This action supports the drug interdiction program. In addition, the Continental Control Area is amended to reflect R-6320.

EFFECTIVE DATE: 0901 u.t.c., August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On March 7, 1990, the FAA proposed to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to establish Restricted Area R-6320 Matagorda, TX, and to amend the Continental Control Area to reflect R-6320 (55 FR 8151). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, and a minor change to the location coordinates from "lat. 28°42'34"N." to "lat. 28°42'37"N." these amendments are the same as those proposed in the notice. Section 73.63 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.8 effective November 1, 1991. The airspace of certain restricted areas included in the Continental Control Area is published in Section 71.151 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

These amendments to parts 71 and 73 of the Federal Aviation Regulations establish Restricted Area R-6320 Matagorda, TX. The United States Customs Service will install an aerostat-borne radar system in R-6320. The restricted area will provide airspace for the operation of a tethered aerostat-borne radar system. This system will provide surveillance of airspace to detect low-altitude aircraft attempting to penetrate U.S. airspace undetected. The restricted area encompasses a 3-statute-mile radius of a geographical point, lat. 28°42'37"N., long. 95°57'26"W., from the surface up to and including 15,000 feet MSL. The system will increase the probability of the interception and interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. Also, the Continental Control Area is amended to reflect R-6320.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

In compliance with the National Environmental Policy Act of 1969 (NEPA), the U.S. Customs Service evaluated the environmental impacts resulting from the establishment of Restricted Area R-6320. On the basis of the Environmental Assessment developed by the U.S. Customs Service, which has been placed in the public docket, the FAA finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Incorporation by reference. Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 71 and 73 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.151 Restricted Areas included.

* * * * *

R-6320 Matagorda, TX [New]

* * * * *

PART 73—[AMENDED]

3. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.63 [Amended]

4. § 73.63 is amended as follows:

R-6320 Matagorda, TX [New]

Boundaries. That airspace within a 3-mile circle centered at lat. 28°42'37"N., long. 95°57'26"W.

Designated altitudes. Surface up to and including 15,000 feet MSL.

Time of designation: Continuous.

Controlling agency: Houston ARTCC.

Using agency: United States Customs Service.

Issued in Washington, DC, on June 5, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-14072 Filed 6-15-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26889; Amdt. No. 1495]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on June 5, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs;

§ 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*** * * Effective August 20, 1992**

Medera, CA—Madera Muni, VOR RWY 30, Amdt. 8
Van Nuys, CA—Van Nuys, ILS RWY 16R, Amdt. 5
Bozeman, MT—Gallatin Field, VOR RWY 12, Amdt. 13
Bozeman, MT—Gallatin Field, VOR/DME RWY 12, Amdt. 2
Bozeman, MT—Gallatin Field, NDB RWY 12, Amdt. 5
Bozeman, MT—Gallatin Field, ILS RWY 12, Amdt. 6
Dunkirk, NY—Chautauqua County/Dunkirk, VOR RWY 6, Amdt. 1
Dunkirk, NY—Chautauqua County/Dunkirk, VOR RWY 24, Amdt. 6
Graham, TX—Graham Muni, NDB RWY 21, Amdt. 1

*** * * Effective July 23, 1992**

Aitkin, MN—Aitkin Muni, NDB RWY 16, Amdt. 3
Chapel Hill, NC—Horace Williams, VOR/DME RNAV RWY 9, Orig.
Columbus, OH—Bolton Field, ILS RWY 4, Amdt. 4

*** * * Effective June 25, 1992**

Santa Monica, CA—Santa Monica Muni, LDA/DME RWY 21, Orig.
Brookings, SD—Brookings Muni, VOR RWY 30, Amdt. 9
Brookings, SD—Brookings Muni, ILS/DME RWY 30, Orig.
Salt Lake City, UT—Salt Lake City Intl, ILS/DME RWY 16R, Amdt. 5

[FR Doc. 92-14071 Filed 6-15-92; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 778

[Docket No. 920647-2147]

Expansion of Foreign Policy Controls; Missile Technology Destinations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: The Department of Commerce is amending the Export Administration Regulations (EAR) in support of U.S. non-proliferation policies. This interim rule clarifies which destinations require a validated license when an exporter knows that the items will be used in the design, development, production or use of missiles, and adds a list of missile technology projects, countries and regions to Supplement No. 6 to part 778 of the EAR.

DATES: *Effective date:* This rule is effective June 16, 1992. *Comment date:* Comments must be received by July 16, 1992.

ADDRESSES: Written comments (six copies) should be sent to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, room 4054, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Ofice of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4819.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 1991, the Bureau of Export Administration (BXA) published a rule in the **Federal Register** (56 FR 10756) that proposed to expand foreign policy controls in several ways in support of U.S. non-proliferation policies. The changes proposed by that rule addressed some of the measures called for in President Bush's December 13, 1990, decision on the Enhanced Proliferation Control Initiative (EPCI). On August 15, 1991, BXA published an interim rule in the **Federal Register** implementing many of the measures set forth in the March 13 proposed rule. The August 15 interim rule (56 FR 40464) requires a validated license when an exporter knows that the item proposed for export will be used for the design, development, production or use of missiles in certain destinations. It also created a new Supplement No. 6 to part 778 to list such destinations. This rule adds that list to Supplement No. 6 to part 778, requiring a validated license for exports to certain regions, countries, and projects. This list has been agreed to in consultation with the Department of State and other agencies of the U.S. Government.

One of the countries listed in Supplement No. 6 to part 778 is Brazil. It is of particular importance to note that although U.S. foreign policy does not permit exports in support of any missile or space launch vehicle (SLV) program of Brazil, several positive developments in the field of non-proliferation have taken place, reducing the possibility of proliferation from this country. Brazil, together with Argentina and Chile, signed the Mendoza Declaration in September 1991, declaring their intent to become original contracting parties to the Chemical Weapons Convention, and agreeing to ban these weapons within their territories and to prohibit exports of chemical weapons as an interim measure. In December 1991, Brazil signed a full-scope nuclear safeguards agreement with the International Atomic Energy Agency (IAEA) that requires IAEA safeguards on its nuclear exports. It has also expressed interest in the Missile Technology Control Regime (MTCR), and a team representing the MTCR visited Brazil in April 1992. In addition, Brazil recently announced its intent to transfer all space-related activities, including its SLV project, to a new civilian space agency. A Brazilian government interministerial commission recently completed draft legislation establishing a legal framework for a domestic export control regime, with legislative action expected in 1992.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0007, and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is being issued as an interim rule and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close July 16, 1992. The Department will consider all comments

received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–5653.

List of Subjects

15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

Accordingly, parts 771 and 778 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 771 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

2. The authority citation for 15 CFR part 778 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 771—[AMENDED]

3. Section 771.2 is amended by revising paragraph (c)(13)(i)(B) to read as follows:

§ 771.2 General provisions.

* * * * *

(c) * * *

(13) * * *

(i) * * *

(B) Will be used in the design, development, production, or use of missiles in or by a country listed in Supplement No. 6 to part 778 of this subchapter; or

* * * * *

PART 778—[AMENDED]

4. Section 778.7 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 778.7 Equipment and related technical data used in the design, development, production, or use of missiles.

* * * * *

(c) * * *

(1) * * *

(ii) Will be used in the design, development, production or use of missiles in or by a country listed in Supplement No. 6 to this part 778, whether or not that use involves a listed project.

* * * * *

5. Section 778.9 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 778.9 Activities of U.S. persons.

(a) * * *

(1) Will be used in the design, development, production, or use of missiles in or by a country listed in Supplement No. 6 to this part 778; or

* * * * *

(b) * * *

(1) Perform any contract, service or employment that the U.S. person knows will assist in the design, development, production or use of missiles in or by a country listed in Supplement No. 6 to this part 778;

* * * * *

6. Supplement No. 6 to Part 778 is revised to read as follows:

SUPPLEMENT NO. 6—MISSILE TECHNOLOGY DESTINATIONS

Location	Project
Brazil	Sonda III, Sonda IV, SS–300, SS–1000, MB/EE Series Missile, VLS Space Launch Vehicle.
China	M Series Missiles, CSS–2.
India	Agni, Prithvi, SLV–3 Satellite Launch Vehicle, Augmented Satellite Launch Vehicle (ASLV), Polar Satellite Launch Vehicle (PSLV), Geostationary Satellite Launch Vehicle (GSLV).
Iran	Surface-to-Surface Missile Project, Scud Development Project.
Middle East:[1]	
North Korea	No Dong I, Scud Development Project.
Pakistan	Hatf Series Missiles.
South Africa	Surface-to-Surface Missile Project, Space Launch Vehicle.

[1] See § 770.2 of this subchapter for a list of countries covered by this region.

Dated: June 12, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92–14163 Filed 6–15–92; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 92-57]

Personal Information on Checks Submitted to Customs

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that certain identifying information must be recorded on personal checks over $25 presented to Customs in payment of duties, taxes, and other charges due on noncommercial importations. The identifying information consists of the payor's name, home and business telephone number with area code, and date of birth, as well as one of the following: The payor's social security number, current passport number, or current driver's license number and issuing state. The amendment enhances the ability of Customs to pursue collection efforts on debts arising from dishonored personal checks.

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hamilton, Revenue Branch, National Finance Center (317-298-1308).

SUPPLEMENTARY INFORMATION:

Background

In an effort to facilitate collection on debts arising from dishonored personal checks presented to Customs in payment of duties, taxes, and other charges on noncommercial importations at piers, terminals, bridges, airports and other similar places, on July 11, 1991, Customs published a notice in the **Federal Register** (56 FR 31576) proposing to amend the Customs Regulations to set forth specific identifying information regarding the payor that must be recorded on personal checks over $25 in amount submitted to Customs to cover such payments. Specifically, the notice proposed an amendment to § 24.1(b) of the Customs Regulations (19 CFR 24.1(b)) to require that the following be recorded on such checks: (1) The payor's name, home and business telephone number including area code, and date of birth, and (2) the payor's social security number or current passport number or current driver's license number including issuing state.

The notice solicited comments from the public regarding the proposal, and the public comment period closed on September 9, 1991. No comments were submitted in response to the notice. In addition, the notice stated that, in accordance with the requirements of section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a Note) regarding any request for disclosure of a social security number by an individual, Customs would have in place a procedure to inform each payor that the disclosure is voluntary, by what statutory or other authority the number is solicited, and what uses will be made of it.

Based on the above, Customs has determined that the proposed regulatory amendment should be adopted as a final rule. The regulatory text, as set forth below, is identical to the proposed text except for certain non-substantive changes of a purely editorial nature intended primarily to improve the clarity of the text.

Executive Order 12291 and Regulatory Flexibility Act

Because this matter relates to agency organization and management, it is not subject to either Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes.

Amendment to the Regulations

Based on the above, part 24, Customs Regulations (19 CFR part 24), is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a-58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701, unless otherwise noted.

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648.

* * * * *

2. The introductory text of § 24.1(b) is revised to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other charges.

* * * * *

(b) At piers, terminals, bridges, airports and other similar places, in addition to the methods of payment prescribed in paragraph (a) of this section, a personal check drawn on a national or state bank or trust company of the United States shall be accepted by Customs inspectors and other Customs employees authorized to receive Customs collections in payment of duties, taxes, and other charges on noncommercial importations, subject to the identification requirements of paragraph (a)(4) of this section and this paragraph. Where the amount of the check is over $25, the Customs cashier or other employee authorized to receive Customs collections shall ensure that the payor's name, home and business telephone number including area code, and date of birth are recorded on the instrument. In addition, one of the following shall be recorded on the instrument: The payor's social security number, current passport number, or current driver's license number including issuing state. A personal check received under this paragraph and a United States Government check, traveler's check, or money order received under paragraph (a) of this section by such Customs inspectors and other Customs employees shall also be subject to the following conditions:

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: June 2, 1992.

Dennis M. O'Connell,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-14068 Filed 6-15-92; 8:45 am]

BILLING CODE 4820-02-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 83

RIN 3067-AB67

Increase in Rates Charged for Commercial Crime Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Crime Insurance Program (FCIP) rate tables which apply to commercial properties located in eligible jurisdictions that are set forth in § 83.25(e). The rule is necessary to affect heavy losses under commercial coverge and the higher-than-average administrative expenses of the program. The intent is to assure the financial and administrative viability of the program.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Kimber A. Wald, Federal Insurance Administration, Federal Emergency

Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3440.

SUPPLEMENTARY INFORMATION: A proposed rule was published at 56 FR 58019 on November 15, 1991. It was later amended in a notice published at 56 FR 66824 on December 26, 1991. The proposed rule was necessary to offset heavy losses under commercial coverage and the higher-than-averge administrative expenses associated with operating a single-line residual market program. As a result, a fifteen percent increase in the commercial insurance rate tables was proposed.

No written comments were received during the comment period.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

EO 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

EO 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 83

Crime insurance.

Accordingly, 44 CFR part 83 is amended as follows:

PART 83—[AMENDED]

1. The authority citation for part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb. *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR 1979 Comp., p. 376.

2. § 83.25(e) is revised as follows:

§ 83.25 Commercial crime insurance rates.

* * * * *

(e) The following tables shall be used to determine rates for commercial risks:

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, 1991

Amount of insurance	Gross receipts											
	Less than $100,000		$100,000–$199,999		$200,000–$299,999		$300,000–$499,999		$500,000–$999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
Annual Premiums, Class 1												
1,000	90	137	135	206	135	206	180	274	225	343	360	548
2,000	165	245	247	368	247	368	329	490	412	613	659	981
3,000	239	353	359	530	359	530	479	707	599	884	958	1414
4,000	309	452	463	678	463	678	617	904	772	1130	1235	1808
5,000	351	511	527	767	527	767	702	1022	878	1278	1404	2044
6,000	383	562	575	843	575	843	767	1123	959	1404	1534	2247
7,000	403	596	605	894	605	894	806	1192	1008	1490	1613	2384
8,000	421	633	632	949	632	949	842	1266	1053	1582	1685	2532
9,000	428	644	643	966	643	966	857	1288	1071	1610	1714	2576
10,000	441	669	661	1003	661	1003	882	1337	1102	1671	1764	2674
11,000	474	729	711	1093	711	1093	949	1458	1186	1822	1897	2915
12,000	500	778	749	1167	749	1167	999	1556	1249	1945	1998	3113
13,000	511	801	767	1202	767	1202	1022	1603	1278	2004	2045	3206
14,000	518	814	776	1221	776	1221	1035	1628	1294	2034	2070	3255
15,000	525	826	787	1239	787	1239	1049	1652	1312	2065	2099	3304
Annual Premiums, Class 2												
1,000	108	164	162	247	162	247	216	329	270	411	432	658
2,000	198	294	296	441	296	441	395	589	494	736	791	1177
3,000	287	424	431	636	431	636	575	848	718	1060	1149	1697
4,000	370	543	556	814	556	814	741	1085	926	1356	1482	2170
5,000	421	613	632	920	632	920	842	1226	1053	1533	1685	2453
6,000	460	674	690	1011	690	1011	920	1348	1150	1685	1840	2696
7,000	484	715	726	1073	726	1073	968	1430	1210	1788	1935	2861
8,000	505	760	758	1139	758	1139	1011	1519	1264	1899	2022	3038
9,000	514	773	771	1159	771	1159	1028	1545	1285	1932	2056	3091
10,000	529	802	794	1203	794	1203	1058	1605	1323	2006	2117	3209
11,000	569	875	854	1312	854	312	1138	1749	1423	2187	2277	3498
12,000	599	934	899	1401	899	1401	1199	1868	1499	2334	2398	3735
13,000	613	962	920	1443	920	1443	1227	1923	1534	2404	2454	3847
14,000	621	977	932	1465	932	1465	1242	1953	1553	2441	2484	3906
15,000	630	991	944	1487	944	1487	1259	1983	1574	2478	2519	3965
Annual Premiums, Class 3												
1,000	121	171	182	257	182	257	243	343	304	428	486	685
2,000	222	307	334	460	334	460	445	613	556	766	889	1226
3,000	323	442	485	663	485	663	646	884	808	1105	1293	1767
4,000	417	565	625	848	625	848	833	1130	1042	1413	1667	2261
5,000	474	639	711	958	711	958	948	1278	1185	1597	1895	2555
6,000	518	702	776	1053	776	1053	1035	1404	1294	1755	2070	2809

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, 1991—Continued

Amount of insurance	Gross receipts											
	Less than $100,000		$100,000–$199,999		$200,000–$299,999		$300,000–$499,999		$500,000–$999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
7,000	544	745	816	1117	816	1117	1089	1490	1361	1862	2177	2980
8,000	569	791	853	1187	853	1187	1137	1582	1422	1978	2274	3165
9,000	578	805	868	1207	868	1207	1157	1610	1446	2012	2313	3220
10,000	595	836	893	1254	893	1254	1191	1671	1488	2089	2381	3343
11,000	640	911	960	1367	960	1367	1281	1822	1601	2278	2561	3644
12,000	674	973	1011	1459	1011	1459	1349	1945	1686	2432	2697	3891
13,000	690	1002	1035	1503	1035	1503	1380	2004	1725	2505	2760	4007
14,000	699	1017	1048	1526	1048	1526	1397	2034	1747	2543	2794	4069
15,000	708	1033	1063	1549	1063	1549	1417	2065	1771	2582	2833	4131
Annual Premiums, Class 4												
1,000	131	178	196	267	196	267	261	356	326	445	522	712
2,000	239	319	358	478	358	478	478	638	597	797	955	1275
3,000	347	459	521	689	521	689	694	919	868	1149	1389	1838
4,000	448	588	671	882	671	882	895	1175	1119	1469	1790	2351
5,000	509	664	763	996	763	996	1018	1329	1272	1661	2036	2657
6,000	556	730	834	1095	834	1095	1112	1460	1390	1826	2224	2921
7,000	585	775	877	1162	877	1162	1169	1549	1462	1937	2339	3099
8,000	611	823	916	1234	916	1234	1221	1646	1527	2057	2443	3291
9,000	621	837	932	1256	932	1256	1242	1674	1553	2093	2485	3348
10,000	639	869	959	1304	959	1304	1279	1738	1599	2173	2558	3477
11,000	688	947	1032	1421	1032	1421	1375	1895	1719	2369	2751	3790
12,000	724	1012	1086	1517	1086	1517	1449	2023	1811	2529	2897	4046
13,000	741	1042	1112	1563	1112	1563	1482	2084	1853	2605	2965	4168
14,000	750	1058	1126	1587	1126	1587	1501	2116	1876	2645	3002	4232
15,000	761	1074	1141	1611	1141	1611	1522	2148	1902	2685	3043	4296
Annual Premiums, Class 5												
1,000	135	185	203	277	203	277	270	370	338	462	540	740
2,000	247	331	371	497	371	497	494	662	618	828	988	1324
3,000	359	477	539	716	539	716	718	954	898	1193	1436	1909
4,000	463	610	695	916	695	916	926	1221	1158	1526	1852	2441
5,000	527	690	790	1035	790	1035	1053	1380	1316	1725	2106	2759
6,000	575	758	863	1137	863	1137	1150	1517	1438	1896	2300	3033
7,000	605	805	907	1207	907	1207	1210	1609	1512	2011	2419	3218
8,000	632	854	948	1282	948	1282	1264	1709	1580	2136	2527	3418
9,000	643	869	964	1304	964	1304	1285	1739	1607	2173	2570	3477
10,000	662	903	992	1354	992	1354	1323	1805	1654	2256	2646	3610
11,000	711	984	1067	1476	1067	1476	1423	1968	1779	2460	2846	3936
12,000	749	1051	1124	1576	1124	1576	1499	2101	1873	2626	2997	4202
13,000	767	1082	1150	1623	1150	1623	1534	2164	1917	2705	3067	4328
14,000	776	1099	1164	1648	1164	1648	1553	2197	1941	2747	3105	4394
15,000	787	1115	1181	1673	1181	1673	1574	2230	1968	2788	3148	4461
Annual Premiums, Class 6												
1,000	177	190	266	285	266	285	354	379	443	474	709	759
2,000	324	340	486	509	486	509	649	679	811	849	1297	1359
3,000	471	490	707	734	707	734	943	979	1178	1224	1886	1958
4,000	608	626	912	939	912	939	1216	1252	1520	1565	2431	2505
5,000	691	708	1037	1062	1037	1062	1382	1415	1728	1769	2764	2831
6,000	755	778	1132	1167	1132	1167	1510	1556	1887	1945	3020	3112
7,000	794	825	1191	1238	1191	1238	1588	1651	1985	2063	3176	3302
8,000	829	877	1244	1315	1244	1315	1659	1753	2073	2192	3317	3506
9,000	844	892	1265	1338	1265	1338	1687	1784	2109	2230	3374	3567
10,000	868	926	1302	1389	1302	1389	1737	1852	2171	2315	3473	3704
11,000	934	1009	1401	1514	1401	1514	1868	2019	2335	2524	3736	4038
12,000	984	1078	1475	1617	1475	1617	1967	2156	2459	2694	3934	4311
13,000	1007	1110	1510	1665	1510	1665	2013	2220	2516	2775	4026	4440
14,000	1019	1127	1528	1691	1528	1691	2038	2254	2547	2818	4076	4508
15,000	1033	1144	1550	1716	1550	1716	2066	2288	2583	2860	4133	4577

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

Dated: June 3, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-14033 Filed 6-15-92; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 91-111, FCC No. 92-230]

Miscellaneous Amendments to Part 80 of the Rules Governing Maritime Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends Part 80 of the Commission's Rules to clarify the maritime frequency tolerance rules, to change the certification requirements for field strength measurements on radiotelegraph ship installations, and to update and correct various Part 80 rule sections. This rule making updates and corrects certain outdated or contradictory rule sections.

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Susan Jones, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This rule making is a result of petitions filed by Mackay Communications, Exxon Communications Company, and the United States Coast Guard. Pursuant to the suggestions made within the petitions, this rule making will simplify the Maritime Services rules to allow field strength measurements for shipboard manual Morse code installations to be conducted by qualified employees of the ship station licensees. In addition, amendments made here will update and correct inconsistencies in the frequency tolerance table applicable to ship station transmitters. And finally, editorial and minor changes have been made with this rule making to update and clarify the Commission's rules. Adequate notice was given by a Notice of Proposed Rule Making, (Notice), 56 FR 22145, May 14, 1991 6 FCC Rcd 2478 (1991), with no negative comments filed in response.

List of Subjects in 47 CFR Part 80

Marine safety, Radio, Vessels, Communications equipment.

Authority: Authority for issuance of this final rule is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), part 80 of the Commission's Rules, 47 CFR Part 80, is amended as set forth below.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rule

Part 80 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

§ 80.5 [Amended]

2. Section 80.5 is amended by removing "Future" from the entry for *Future global maritime distress and safety system (FGMDSS)* to read *Global maritime distress and safety system (GMDSS).*

3. Section 80.23 is amended by adding a sentence at the end of the introductory paragraph, removing paragraph (c) and redesignating paragraphs (d) and (e) as (c) and (d) to read as follows:

§ 80.23 Filing of applications.

* * * Applications requiring fees as set forth in Part 1, Subpart G of this Chapter must be filed with the Federal Communications Commission in accordance with § 1.1102 of the Rules.

* * * * *

4. Section 80.207(d) is amended by revising footnote 2 to read:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

[2] Frequencies used in the automated multi-station system. See § 80.385(c).

* * * * *

5. Section 80.209 is amended by revising paragraph (a) and the table following paragraph (a) to read as follows:

§ 80.209 Transmitter frequency tolerances.

(a) The frequency tolerance requirements applicable to transmitters in the maritime services are shown in the following table. Tolerances are given as parts in 10^6 unless shown in Hz.

Frequency bands and categories of stations	Tolerances[1]
(1) Band 100–525 kHz:	
(i) Coast stations:	
For single sideband emissions	20 Hz.
For transmitters with narrow-band direct printing and data emissions.	10 Hz.[2]
For transmitters with digital selective calling emissions.	10 Hz.
For all other emissions	100
(ii) Ship stations:	
For transmitters with single sideband emissions type accepted or type approved before November 30, 1977.	20 Hz
For transmitters with other emissions type accepted or type approved before November 30, 1977.	1000.[5]
For transmitters with narrow-band direct printing and data emissions.	10 Hz.[2]
For transmitters with digital selective calling emissions.	10 Hz.[3]
For all other transmitters type accepted or type approved after November 29, 1977.	20 Hz.
(iii) Ship stations for emergency only:	
For transmitters type approved before November 30, 1977.	3000.[5]
For all transmitters type accepted or type approved after November 29, 1977.	20 Hz.
(iv) Survival craft stations:	
For transmitters type approved before November 30, 1977.	5000.[5]
For transmitters type approved or type accepted after November 29, 1977.	20 Hz.
(v) Radiodetermination stations:	
For all emissions	100.
(2) Band 1600–4000 kHz:	
(i) Coast Stations and Alaska fixed stations:	
For single sideband and facsimile.	20 Hz.
For narrow-band direct-printing and data emissions.	10 Hz.[2]
For digital selective calling emissions.	10 Hz.
For all other emissions	50.
(ii) Ship stations:	
For transmitters with narrow-band direct printing and data emissions.	10 Hz.[2]
For transmitters with digital selective calling emissions.	10 Hz.[3]
For all other transmitters	20 Hz.
(iii) Survival craft stations:	20 Hz.
(iv) Radiodetermination stations:	
With power 200W or less	20.
With power above 200W	10.
(3) Band 4000–27500 kHz:	
(i) Coast stations and Alaska fixed stations:	
For single sideband and facsimile emissions.	20 Hz.
For narrow-band direct printing and data emissions.	10 Hz.[2]
For digital selective calling emissions.	10 Hz.
For Morse telegraphy emissions	10.
For all other emissions	15.
(ii) Ship stations:	
For transmitters with narrow-band direct printing and data emissions.	10 Hz.[2]
For transmitters with digital selective calling emissions.	10 Hz.[3]
For all other transmitters	20 Hz.

Frequency bands and categories of stations	Tolerances[1]
(iii) Survival craft stations:	50 Hz.
(4) Band 72–76 MHz:	
(i) Fixed stations:	
Operating in the 72.0–73.0 and 75.4–76.0 MHz bands.	5.
Operating in the 73.0–74.6 MHz band.	50.
(5) Band 156–162 MHz:	
(i) Coast stations:	
For stations licensed to operate with a carrier power:	
Below 3 watts	10.
3 to 100 watts	5.
Above 100 watts	2.5.
(ii) Ship stations	10.[4]
(iii) Survival craft stations operating on 121.500 MHz.	50.
(iv) EPIRBs:	
Operating on 121.500 and 243.000 MHz.	50.
Operating on 156.750 and 156.800 MHz.	10.
(6) Band 216–220 MHz	
(i) Coast Stations:	
For all emissions	5.
(ii) Ship stations:	
For all emissions	5.
(7) Band 400–466 MHz:	
(i) EPIRBs operating on 406.025 MHz.	5.
(ii) On-board stations	5.
(iii) Radiolocation and telecommand stations.	5.
(8) Band 1626.5–1646.5 MHz:	
(i) Ship earth stations	5.

[1] Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain type acceptance and comply with the applicable standards in this part.

[2] The frequency tolerance for narrow-band direct printing and data transmitters installed before January 2, 1992, is 15 Hz for coast stations and 20 Hz for ship stations. The frequency tolerance for narrow-band direct printing and data transmitters type accepted or installed after January 1, 1992, is 10 Hz.

[3] Until February 2, 1999, the frequency tolerance for DSC ship station transmitters in the MF and HF bands that were installed before January 2, 1992, is 20 Hz. The frequency tolerance for DSC ship station transmitters in the MF and HF bands type accepted or installed after January 1, 1992, is 10 Hz. After February 1, 1999, the frequency tolerance for all DSC ship station transmitters in the MF and HF bands (regardless of installation date) is 10 Hz.

[4] For transmitters in the radiolocation and associated telecommand service operating on 154.585 MHz, 159.480 MHz, 160.725 MHz and 160.785 MHz the frequency tolerance is 15 parts in 10^6.

[5] This frequency tolerance applies to ship station transmitters until February 1, 1999. Thereafter, the frequency tolerance is 20 Hz.

* * * * *

6. In § 80.371 the table in paragraph (c) is amended by revising the first sentence in footnote 3 to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

[3] Within 121 kilometers (75 miles) of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, the frequency 157.425 MHz is available for use by ship stations for public correspondence communications only. * * *

* * * * *

7. In § 80.373 paragraph (f) is amended by revising the introductory text, adding the capital letter "A" to the numeric channels 01, 05, 07, 18, 19, 20, 22, 63, 65, 66, 78, 79, 80 and 88 listed under the column titled "Channel designator" in all tables to read 01A, 05A, 07A, 18A, 19A, 20A, 22A, 63A, 65A, 66A, 78A, 79A, 80A and 88A, adding footnote 14 to the entry for channel 70 and revising the entry and footnote for newly designated channel 20A to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(f) *Frequencies in the 156–162 MHz band.* The following tables describe the carrier frequencies available in the 156–162 MHz band for radiotelephone communications between ship and private coast stations. (Note: the letter "A" following the channel designator indicates simplex operation on a channel designated internationally as a duplex channel.)

* * * * *

FREQUENCIES IN THE 156–162 MHZ BAND

*	*	*	* *
20A[12]	157.000		Intership only.
*	*	*	* *
70[14]	156.525	156.525	
*	*	*	* *

[12] The duplex pair for channel 20 (157.000/161.600 MHz) may be used for ship to coast station communications.

* * * * *

[14] The frequency 156.525 MHz is to be used exclusively for distress, safety and calling using digital selective calling techniques. No other uses are permitted.

* * * * *

§ 80.375 [Amended]

8. Section 80.375(a) is amended by replacing the frequencies 121.500 kHz and 243.000 kHz with 121.500 MHz and 243.000 MHz, respectively.

9. Section 80.377 is amended by revising the last sentence to read as follows:

§ 80.377 Frequencies for ship earth stations.

* * * The frequency band 1645.5–1646.5 MHz is reserved for use in the Global Maritime Distress and Safety System (GMDSS).

10. Section 80.802 is amended by revising paragraph (a)(2) to read as follows:

§ 80.802 Inspection of station.

(a) * * *

(2) At inspection, the minimum field strength capability of the main installation and reserve installation when connected to the main antenna may be shown by the licensee by one of the following methods:

(i) Producing a record of communications on 500 kHz over a minimum distance of 370 kilometers (200 nautical miles) for the main installation and 185 kilometers (100 nautical miles) for the reserve installation which demonstrates the transmission and reception of clearly perceptible signals from ship to ship by day and under normal conditions and circumstances, or

(ii) Provide documentation by a professional engineer, or a person holding a first or second class radiotelegraph operator's certificate, or a general radiotelephone operator license, that the installation produces at 1.85 kilometers (one nautical mile) a minimum field strength of thirty (30) millivolts per meter for the main installation and ten (10) millivolts per meter for the reserve installation. The licensee shall provide, at a minimum, the name and license number of the individual making the measurements or record of communications.

* * * * *

[FR Doc. 92–14027 Filed 6–15–92; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 80

[Gen. Docket 88–372; FCC 92–235]

Automated Maritime Telecommunications Systems (AMTS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action dismisses as moot a petition for reconsideration filed by the Association for Maximum Service Television, Inc. (MSTV) asking the Commission to reconsider its determination that no harmful interference would result from expanding Automated Maritime Telecommunications System (AMTS) operations to the Group C and D channels. It is necessary to clarify the issue of AMTS operation on Group C and D channels. The effect of the rule change is to reflect the reallocation of the Group C and D channels to the interactive video and data service.

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: James A. Shaffer, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632–7197.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

(Proceeding Terminated)

Adopted: May 28, 1992.

Released: June 10, 1992.

By the Commission:

I. Introduction

1. This Memorandum Opinion and Order dismisses as moot the Association for Maximum Service Television, Inc. (MSTV) Petition for Reconsideration requesting we reconsider our determination that no harmful interference would result from expanding Automated Maritime Telecommunications System (AMTS)[1] operations to the Group C and D channels.[2]

II. Discussion

2. In the Notice of Proposed Rule Making, 53 FR 30075, August 10, 1988, 3 FCC Rcd 4736 (1988), we proposed to permit nationwide (*i.e.*, throughout the 50 states) AMTS operations in the entire 216–220 MHz band (Group A, B, C and D channels). In the First Report and Order, 56 FR 3782, January 31, 1991, 6 FCC Rcd 437 (1991), we amended the rules to permit AMTS operations on a nationwide basis and concluded that the safeguards built into the rules to protect TV channel 13 operations would allow nationwide use of all four Groups of AMTS channels.[3] Because of the Notice of Proposed Rule Making in GEN Docket No. 91–2, 56 FR 10222, March 11, 1991, 6 FCC Rcd 1368 (1991), which proposed to reallocate a portion of the Group C and D spectrum, we amended the rules to provide for nationwide AMTS operation only on Group A and B channels. A decision on allowing nationwide use of Group C and D channels was held in abeyance pending the outcome of that proceeding.

3. MSTV filed a Petition for Reconsideration, see FCC Public Notice No. 1841, March 21, 1991, requesting that we reconsider our conclusion in the First Report and Order that no harmful interference to TV Channel 13 reception would result from AMTS operation on frequencies below 217.000 MHz (Group C and D channels) in areas closer than 105 miles to television stations operating on TV Channel 13. See MSTV petition at 10. Waterway Communications System, Inc. (Watercom), and Riverphone, Inc. (Riverphone) filed comments opposing MSTV's Petition for Reconsideration. MSTV filed reply comments.

4. As noted previously, we withheld consideration of issues pertaining to the nationwide expansion of AMTS operations on Group C and D channels. These issues were to be addressed after consideration of the Notice of Proposed Rule Making in GEN Docket No. 91–2 seeking a portion of the 216–220 MHz band for a new interactive video and data service (IVDS). In view of the decision in GEN Docket No. 91–2 to reallocate the 218–219 MHz band (Group C and D ship transmit channels) for IVDS, See 7 FCC Rcd 1630 (1992), the issue of AMTS operation on Group C & D channels is moot.[4] We have made editorial changes to the Rules, however, to reflect the reallocation of the Group C and D ship channels.

III. Ordering Clauses

5. Accordingly *it is Ordered* that pursuant to the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r) and § 1.429(i) of the Commission's Rules, 47 CFR 1.429(i), the Petition for Reconsideration filed by MSTV is dismissed as moot.

6. *It is further Ordered* that pursuant to the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), Part 80 of the Commission's Rules is amended asset forth below, effective July 16, 1992. Because these amendments ordered herein are non-substantive and editorial in nature, and, therefore, not controversial, they constitute minor amendments to our rules in which the public is not likely to be interested. For good cause shown, compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b)(B).

7. *It is further Ordered* that this proceeding is terminated.

[1] The AMTS provides automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system, including non-voice services, for vessels to use as they move along a waterway. It offers improved services over those available from individual public coast stations.

[2] There are 80 channel pairs in the AMTS, divided into four groups of 20 (Groups A, B, C and D). *See* § 80.385, 47 CFR 80.385.

[3] In the First Report and Order, we rejected broadcasters argument that there would be greater risk of interference to TV reception from AMTS operation on the Group C and D channels. These rules require an AMTS licensee to demonstrate no harmful interference to broadcast operations, but, more importantly, if interference does occur the AMTS licensee must eliminate it or cease operation. See 47 CFR 80.215(h)(1)–(5) and 80.475(b)(1)&(2). We concluded that TV reception interference concerns had been thoroughly considered and resolved.

[4] The reallocation of Group C and D ship channels for IVDS leaves 40 single channels (Group C and D coast stations). AMTS is designed to use channel pairs. We will decide at a later time how these single channels can best be used.

List of Subjects in 47 CFR Part 80

Communications equipment, Vessels, Automated Maritime Telecommunications System.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rule

Part 80 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority. Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

2. Section 80.385 is amended by revising paragraph (a)(2) to read as follows:

§ 80.385 Frequencies for automated systems.

(a) * * *

(2) The following carrier frequency pairs are available for radiotelephony, facsimile and teleprinter communications. AMTS operations must not cause harmful interference to the U.S. Navy SPASUR system which operates in the band 216.880–217.080 MHz.

Channel No.	Carrier frequency (MHz)		
	Ship transmit [1]	Coast transmit [2]	Group
101		216.0125	D
102		216.0375	
103		216.0625	
104		216.0875	
105		216.1125	
106		216.1375	
107		216.1625	
108		216.1875	
109		216.2125	
110		216.2375	
111		216.2625	
112		216.2875	
113		216.3125	
114		216.3375	
115		216.3625	
116		216.3875	
117		216.4125	
118		216.4375	
119		216.4625	
120		216.4875	
121		216.5125	C
122		216.5375	
123		216.5625	
124		216.5875	
125		216.6125	
126		216.6375	
127		216.6625	
128		216.6875	
129		216.7125	

Channel No.	Carrier frequency (MHz)		
	Ship transmit [1]	Coast transmit [2]	Group
130		216.7375	
131		216.7625	
132		216.7875	
133		216.8125	
134		216.8375	
135		216.8625	
136		216.8875	
137		216.9125	
138		216.9375	
139		216.9625	
140		216.9875	
141	219.0125	217.0125	B
142	219.0375	217.0375	
143	219.0625	217.0625	
144	219.0875	217.0875	
145	219.1125	217.1125	
146	219.1375	217.1375	
147	219.1625	217.1625	
148	219.1875	217.1875	
149	219.2125	217.2125	
150	219.2375	217.2375	
151	219.2625	217.2625	
152	219.2875	217.2875	
153	219.3125	217.3125	
154	219.3375	217.3375	
155	219.3625	217.3625	
156	219.3875	217.3875	
157	219.4125	217.4125	
158	219.4375	217.4375	
159	219.4625	217.4625	
160	219.4875	217.4875	
161	219.5125	217.5125	A
162	219.5375	217.5375	
163	219.5625	217.5625	
164	219.5875	217.5875	
165	219.6125	217.6125	
166	219.6375	217.6375	
167	219.6625	217.6625	
168	219.6875	217.6875	
169	219.7125	217.7125	
170	219.7375	217.7375	
171	219.7625	217.7625	
172	219.7875	217.7875	
173	219.8125	217.8125	
174	219.8375	217.8375	
175	219.8625	217.8625	
176	219.8875	217.8875	
177	219.9125	217.9125	
178	219.9375	217.9375	
179	219.9625	217.9625	
180	219.9875	217.9875	

[1] Ship transmit frequencies in Group C and D are not authorized for AMTS use.

[2] Coast station operation on frequencies in Group C and D are not currently assignable.

* * * * *

[FR Doc. 92-14028 Filed 6-15-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

DATES: Effective 12 noon, Alaska local time (A.l.t.), June 12, 1992, until 12 noon, A.l.t., June 29, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC to statistical area 63 is 10,402 metric tons, determined in accordance with § 672.20(a)(2)(iv).

Under § 672.20(c)(2)(ii), the Director of the Alaska Region, NMFS, has determined that the second quarterly allowance of pollock TAC to statistical area 63 will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in statistical area 63, effective from 12 noon A.l.t., June 12, 1992, until 12 noon, A.l.t., June 29, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 10, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation, and Management, National Marine Fisheries Service.

[FR Doc. 92-14078 Filed 6-11-92; 2:32 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 116
Tuesday, June 16, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1703

RIN 0572-AA60

Deferments of REA Loan Payments for Rural Development Projects

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to establish policies, requirements and procedures that would allow REA-financed electric and telephone borrowers to defer insured or direct loan payments in an amount equal to an investment in a rural development project. Deferments of REA loan payments are provided for the purpose of promoting rural development opportunities.

DATES: Written comments must be received by REA or carry a postmark or equivalent no later than July 16, 1992.

ADDRESSES: Submit an original and three copies of written comments to Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, room 4025, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments may be inspected at room 2238 of the South Building between 8:30 a.m. and 5 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, telephone number (202) 720–9552.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule: (1) will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) will not have any retroactive effect; and (3) will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

This action does not fall within the scope of the Regulatory Flexibility Act.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Background

Section 12 of the Rural Electrification Act of 1936 was amended by Section 2344 of the Rural Economic Development Act of 1990 (7 U.S.C. 912). Subject to limitations established in appropriations Acts, the Administrator of REA shall permit any electric and telephone borrower to defer the payment of principal and interest on any insured or direct electric or telephone loan made under the RE Act and invest the deferred amounts in rural development projects. The total amount of deferments approved under this program shall not exceed 3 percent of the total payments due during each of the fiscal years 1990 through 1993 from all borrowers on direct and insured loans made pursuant to the RE Act. For each subsequent fiscal year after 1993, the total amount of deferments in any year shall not exceed 5 percent of the total payments due for the year from all borrowers on direct and insured loans.

This proposal establishes the policies and requirements which would enable the Administrator to defer loan payments for the purpose of promoting rural development projects. The principal proposed provisions of 7 CFR 1703.300 are summarized as follows:

(1) Borrowers may defer the payment of principal and interest on any insured or direct loan provided the deferred amount is invested in a rural development project.

(2) Deferments would be limited to 50 percent of the total cost of the rural development project(s).

(3) Borrowers may defer debt service payments only in an amount equal to an investment made by the borrower in the rural development project(s).

(4) Borrowers must make a cushion of credit payment to the Administrator equal to the amount deferred. The cushion of credit payment must be made during the period that begins one full year prior to the date REA receives the borrower's application for the deferment and ends on the date the payment is deferred. The balance of the account containing these cushion of credit payments could not be reduced by the borrower below the level of the unpaid balance of the payment deferred.

(5) The cushion of credit payment would earn 5 percent interest per year.

(6) In the case of deferments made to enable a borrower to provide financing to local businesses, the deferment shall be repaid over a period of 60 months, in equal installments, with payments beginning on the date of the deferment and continuing in such a manner until the total amount of the deferment is repaid. The deferment payments shall be made in accordance with the existing repayment terms of the loan being deferred. The deferment shall not accrue interest.

(7) In the case of deferments made to enable a borrower to provide community development assistance, technical assistance to businesses, and for other community, business, or economic development projects not included above, the deferment shall be repaid over a period of 120 months, in equal installments, with payments beginning on the date of the deferment and continuing in such a manner until the total amount of the deferment is repaid. The deferment payments shall be made in accordance with the existing repayment terms of the loan being deferred. The deferment shall not accrue interest.

(8) Upon approval of a deferment, the incremental amounts of the deferment for a specific project may be requested over a period of one year. Prior to each incremental deferment request:

(a) REA must have received the cushion of credit payment in an amount equal to the incremental amount deferred, and

(b) A certification shall be received from the borrower that an investment has been made in the rural development project by the borrower in an amount equal to the incremental amount deferred.

(9) In the case of electric borrowers, investments in rural development projects made under this program will be included in the calculation to determine the percentage of investments to total utility plant under 7 CFR part 1717, subpart N.

(10) Investments in rural development projects made by telephone borrowers under this subpart will be subject to the provisions of 7 CFR part 1744.

The Administrator reserves the right to require additional data from borrowers before acting on a deferment. For example, in states where the borrower is regulated by a utility commission, the Administrator may require a letter from the commission granting approval of a loan payment deferment and the authorization to invest the deferred amount in a rural economic development project. The Administrator also reserves the right to require, as a condition of approving a loan payment deferment pursuant to this subpart, that the borrower execute and deliver any amendments or supplements to its loan documents that may be necessary or appropriate to achieve the purposes outlined in this subpart.

Prospective recipients of funds received from the deferment of loan payments are encouraged to fully consider the potential environmental impacts of their applications at the earliest planning stages and develop plans and projects that minimize the potential to adversely affect the quality of the environment.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs-housing and community development, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

For reasons set out in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for 7 CFR part 1703 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*

2. Subpart C is added and reserved and subpart E is added to part 1703 to read as follows:

Subpart C—Rural Business Incubator Program [Reserved]

* * * * *

Subpart E—Deferments of REA Loan Payments for Rural Development Projects

Sec.

1703.300 Purpose.
1703.301 Policy.
1703.302 Definitions and rules of construction.
1703.303 Eligibility criteria for deferment of loan payments.
1703.304 Requirement criteria for deferment of loan payments.
1703.305 Limitation on funds derived from the deferment of loan payments.
1703.306 Uses of the deferments of loan payments.
1703.307 Amount of deferment funds available.
1703.308 Terms of repayment of deferred loan payments.
1703.309 Environmental considerations.
1703.310 Application procedures for deferment of loan payments.
1703.311 REA review requirements.
1703.312 Compliance with other regulations.

Subpart C—Rural Business Incubator Program [Reserved]

* * * * *

Subpart E—Deferments of REA Loan Payments for Rural Development Projects

§ 1703.300 Purpose.

This subpart sets forth REA's policies and procedures for making loan deferments of principal and interest payments on insured or direct loans made for electric or telephone purposes, but not for loans made for rural economic development purposes, in accordance with subsection (b) of section 12 of the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 *et seq.*). Loan deferments are provided for the purpose of promoting rural development opportunities.

§ 1703.301 Policy.

It is REA's policy to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. Borrowers are encouraged to use this program to promote economic, business and community development projects that will benefit rural areas.

§ 1703.302 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this subpart, the following terms will have the following meanings:

Administrator means the Administrator of REA.

Borrower means any organization which has an outstanding insured or direct loan made by REA for the provision of electric or telephone service.

Borrower's own funds means money belonging to the borrower other than:

(1) Proceeds of loans made, guaranteed or lien accommodated by the Administrator or grants made by the Administrator;

(2) Funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien accommodated by the Administrator;

(3) Insurance proceeds from mortgaged property;

(4) Damage awards and sale proceeds resulting from eminent domain and similar proceedings involving mortgaged property;

(5) Sale proceeds from mortgaged property sales requiring specific Administrator approval; and

(6) Funds on deposit in the cash construction fund—trustee account.

Cushion of credit payment means a voluntary unscheduled payment on an REA note made after October 1, 1987, credited to the cushion of credit account of a borrower.

Deferment means an authorized delay in the payment of principal and/or interest on an REA loan for a specified time.

Financially distressed borrower means an REA-financed borrower determined by the Administrator to be either:

(1) In default or near default on interest or principal payments due on loans made or guaranteed under the RE Act;

(2) Participating in a workout or debt restructuring plan with REA; or

(3) Experiencing a financial hardship.

Insured loan means a loan which is made, held, and serviced by the Administrator, and sold and insured by the Administrator, in accordance with section 305 of the RE Act (7 U.S.C. 901 et. seq.).

Job creation means the creation of jobs in rural areas, or in close enough proximity to rural areas so that it is likely that the majority of the jobs created will be held by residents of rural areas.

Loan means a loan made by the Administrator pursuant to titles I, II, or III of the RE Act for the provision of electric or telephone service in rural areas and does not include a loan made to promote economic development in rural areas.

Project means a rural development project that a borrower proposes and the Administrator approves as qualifying under this subpart.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

Technical assistance means market research, product or service improvement, feasibility studies, environmental studies, and similar activities that benefit rural development or rural job creation projects.

(b) *Rules of construction.* Unless the context otherwise indicates, "includes" and "including" are not limiting, and "or" is not exclusive. The terms defined in § 1703.302(a) of this part include the plural as well as the singular, and the singular as well as the plural.

§ 1703.303 Eligibility criteria for deferment of loan payments.

The deferment of loan payments may be granted to any borrower that is not a financially distressed borrower, delinquent on any Federal debt, or in bankruptcy proceedings. However, the deferment of loan payments will not be granted to a borrower during any period in which the Administrator has determined that no additional financial assistance of any nature should be provided to the borrower pursuant to any provision of the RE Act. The determination to suspend eligibility for the deferment of loan payments under this subpart will be based on:

(a) The borrower's demonstrated unwillingness to exercise diligence in repaying REA loans or loan guarantees that results in the Administrator being unable to find that a loan, or loan guaranteed by the Administrator, would be repaid within the time agreed;

(b) The borrower's demonstrated unwillingness to meet the requirements in REA's legal documents or regulations; or

(c) Other actions on the part of the borrower that thwart the achievement of the objectives of the REA program.

§ 1703.304 Requirement criteria for deferment of loan payments.

(a) The deferment must not impair the security of any loans made on behalf of the United States of America under the RE Act or by the Administrator.

(b) A borrower may defer debt service payments only in an amount equal to an investment made in a rural development project. The investment must be made from the borrower's own funds.

(c) The amount of the deferment must not exceed 50 percent of the total cost of a community, business, or economic development project for which a deferment is provided.

(d) The borrower must make a cushion of credit payment equal to the amount of the payment deferred. The cushion of credit payment must be made during the period that begins one full year prior to the date REA receives the borrower's application for the deferment and ends on the date the payment is deferred. One full year begins on the same calendar date in the previous year. The balance of the account containing these cushion of credit payments must not be reduced by the borrower below the level of the unpaid balance of the payment deferred. The cushion of credit payment will earn 5 percent interest.

(e) Upon approval of a deferment by the Administrator, the incremental amounts of the deferment for a rural development project may be requested over a period of one year. Prior to each incremental deferment request:

(1) A cushion of credit payment must be received by the Administrator in an amount equal to the incremental amount deferred in accordance with paragraph (d) of this section; and

(2) A certification must be received from the borrower which indicates that an investment has been made in the rural development project by the borrower in an amount equal to the incremental amount deferred.

§ 1703.305 Limitation on funds derived from the deferment of loan payments.

Funds derived from the deferment of loan payments will not be used:

(a) To fund or assist projects which would, in the judgement of the Administrator, create a conflict of interest or the appearance of a conflict of interest. The borrower must disclose to the Administrator information regarding any potential conflict of interest or appearance of a conflict of interest;

(b) For any purpose not reasonably related to the project as determined by the Administrator;

(c) To transfer existing employment or business activities from one area to another; or

(d) For the borrower's electric or telephone operations, nor for any operations affiliated with the borrower unless the Administrator has specifically informed the borrower in writing that the affiliated operations are part of the approved purposes.

§ 1703.306 Uses of the deferments of loan payments.

The deferment of loan payments will be made to enable the borrower to provide funding and assistance for rural development and job creation projects. This includes, but is not limited to, the borrower providing financing to local businesses, community development assistance, technical assistance to businesses, and other community, business, or economic development projects that will benefit rural areas.

§ 1703.307 Amount of deferment funds available.

(a) The total amount of deferments made available for each fiscal year under this program will not exceed 3 percent of the total payments due during each of the fiscal years 1990 through 1993 from all borrowers on direct and insured loans made under the RE Act. For each subsequent fiscal year after 1993, the total amount of deferments will not exceed 5 percent of the total payments due for the year from all borrowers on direct and insured loans.

(b) The total amount of annual deferments are subject to limitations established by appropriations Acts.

§ 1703.308 Terms of repayment of deferred loan payments.

(a) Deferments made to enable the borrower to provide financing to local businesses will be repaid over a period of 60 months, in equal installments, with payments beginning on the date of the

deferment, and continuing in such a manner until the total amount of the deferment is repaid. The deferment payments will be made in accordance with the existing repayment terms of the loan being deferred. The deferment will not accrue interest.

(b) In the case of deferments made to enable the borrower to provide community development assistance, technical assistance to businesses, and for other community, business, or economic development projects not included in paragraph (a) of this section, the deferment will be repaid over a period of 120 months, in equal installments, with payments beginning on the date of the deferment and continuing in such a manner until the total amount of the deferment is repaid. The deferment payments will be made in accordance with the existing repayment terms of the loan being deferred. The deferment will not accrue interest.

(c) The maturity date of a loan may not be extended as a result of a deferment.

(d) If the required payment is not made by the borrower or received by the Administrator when due, the Administrator will reduce the borrower's cushion of credit amount established under this subpart in an amount equal to the deferment payment required.

§ 1703.309 Environmental considerations.

Prospective recipients of funds received from the deferment of loan payments are encouraged to consider the potential environmental impact of their proposed projects at the earliest planning stage and plan development in a manner that reduces, to the extent practicable, the potential to affect the quality of the human environment adversely.

§ 1703.310 Application procedures for deferment of loan payments.

(a) A borrower applying for a deferment must:

(1) Submit a certified board resolution to the Administrator requesting a deferment of principal and interest. The resolution must:

(i) Be signed by the president or vice president of the borrower;

(ii) Contain information on the total amount of deferment requested for each specific project;

(iii) Contain information on the type of project and the length of deferment requested as defined in § 1703.308 of this subpart; and

(iv) Certify that the proposed project will not violate the limitations set forth in § 1703.305 and disclose all information regarding any potential conflict of interest or appearance of a conflict of interest that would allow the Administrator to make an informed decision;

(2) Certify to the Administrator that an investment in the rural development project will be made by the borrower in an amount equal to the deferred debt service payment;

(3) Certify to the Administrator that the amount of the deferment will not exceed 50 percent of the total cost of the project for which the deferment is provided;

(4) Certify to the Administrator that it will make, or has made within the last full year, a cushion of credit payment necessary to satisfy the requirement of § 1703.304(d);

(5) Identify to the Administrator in writing the loan or loans for which payments are to be deferred;

(6) Provide a written narrative which contains information regarding the proposed rural development or job creation project such as the manner in which the project will promote community, business, or economic development in rural areas, the nature of the project, its location, the primary beneficiaries, and, if applicable, the number and type of jobs to be created;

(7) Certify to the Administrator that it will comply with § 1703.312 and provide documentation showing that its total investments, including the proposed investment, will not exceed the investment limitations specified in 7 CFR part 1717, Subpart N, Investments, Loans and Guarantees by Electric Borrowers, or 7 CFR part 1744, Post Loan Policies and Procedures Common to Guaranteed and Insured Loans. The documentation must provide a list of each rural development project the borrower has invested in to date, including the investment amounts; and

(8) Provide a letter of approval from the state regulatory authority, if applicable, granting its approval for the borrower to defer a loan payment and invest the amount in a rural development project.

(b) The Administrator reserves the right to determine that special circumstances require additional data from borrowers before acting on a deferment. The Administrator also reserves the right to require, as a condition of approving a loan payment deferment pursuant to this subpart, that the borrower execute and deliver any amendments or supplements to its loan documents that may be necessary or appropriate to achieve the purposes outlined in § 1703.300. The Administrator will decide whether to approve the deferment and notify the borrower of the decision.

§ 1703.311 REA review requirements.

Borrowers shall ensure that funds are invested in the rural development project as approved by REA. The Administrator reserves the right to review the books and copy records of borrowers receiving loan payment deferments as necessary to ensure that the investments in the rural development project are in accordance with the borrower's application, REA's approved purposes, and this subpart. If an audit discloses that the amount deferred was not used for the approved purposes, the borrower shall be required to promptly repay the amount deferred and the benefits of the deferment to the borrower will be recaptured by REA. The borrower is responsible for ensuring that disbursements and expenditures of funds covering the investment in the rural development project are properly supported with certifications, invoices, contracts, bills of sale, cancelled checks, or any other forms of evidence determined appropriate by the Administrator and that such supporting material is available at the borrower's premises for review by the REA field accountant, borrower's certified public accountant, the Office of Inspector General, the General Accounting Office and any other accountant conducting an audit of the borrower's financial statements or this rural development program.

§ 1703.312 Compliance with other regulations.

(a) Investments in a rural economic development project made by an electric borrower under this subpart are subject to the provisions of 7 CFR part 1717, Subpart N, Investments, Loans and Guarantees by Electric Borrowers.

(b) Investments in a rural economic development project made by a telephone borrower under this subpart are subject to the provisions of 7 CFR Part 1744, Post Loan Policies and Procedures Common to Guaranteed and Insured Loans.

Dated: March 23, 1992.

Michael M.F. Liu,

Acting Administrator.

[FR Doc 92-14105 Filed 6-15-92; 8:45 am]

BILLING CODE 3410-15-F

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AA09

Organization; Director Compensation

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) by the Farm Credit Administration Board (Board) proposes to amend § 611.400 so that it conforms with the Farm Credit Act of 1971 (1971 Act) as amended by the Agricultural Credit Technical Corrections Act of 1988 (1988 Act).[1] The proposed amendment to § 611.400 would authorize Farm Credit System (FCS) banks to pay their directors fair and reasonable compensation that does not exceed the amount set forth in section 4.21 of the 1971 Act, as amended. The proposed regulation would also require FCS banks to identify the amount of reimbursement that directors receive for travel, subsistence, and other related expenses separately from cash compensation in annual disclosures to shareholders and reports to the FCA.

DATES: Comments should be received on or before July 16, 1992.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administraiton.

FOR FURTHER INFORMATION CONTACT: Linda C. Sherman, Senior Credit Specialist, Policy and Risk Analysis Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or Richard A. Katz, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

In August 1988, Congress amended the 1971 Act to: (1) Limit the compensation paid to a bank director to $15,000 per annum; [2] and (2) abolish the district boards. [3] The FCA now proposes to amend § 611.400 [4] so it conforms with the 1971 Act, as amended by the 1988 Act. Accordingly, the FCA proposes to delete the provision in current § 611.400(b)(2) that prohibits FCS banks from paying directors more than $200 per day. Instead, proposed § 611.400(b)(2) would authorize FCS banks to pay their directors compensation in an amount that does not exceed the limit set by the 1971 Act, as amended. Proposed technical amendments to § 611.400 include: (1) Replacing the terms "district board" and "district directors" with "bank board" and "bank directors" respectively throughout the regulation; and (2) changing the reference to the 1971 Act in § 611.400(a) from "section 5.5" to "section 4.21."

The FCA also proposes to add a new paragraph (c)(6) to § 611.400 which would require each bank to distinguish the reimbursement of travel, subsistence, and other related expenses incurred by a director from cash compensation paid to the director, both in disclosures to shareholders pursuant to § 620.5(i)(1),[5] and in reports to the FCA. While the bank is not required to include travel, subsistence, and other related expenses as an element of total compensation for the purposes of computing the maximum compensation allowed by statute, such reimbursable expenses should be reasonable and well documented. Proposed § 611.400(c)(6) would ensure that any party reviewing the annual compensation figures will be able to clearly identify the various components of director compensation paid during the year. Currently, all forms of director compensation are reported in a lump sum in each FCS bank's call report to the FCA. The FCA is withdrawing its proposed rule that was published at 52 FR 43081 (November 9, 1987) because FCS banks are currently required by § 620.5(i)(1) to disclose director compensation to their shareholders.

The FCA has not made any other substantive changes to the remainder of § 611.400, but the agency proposes several technical changes in order to provide greater clarity and consistency in this regulation. Accordingly, the FCA continues to believe that it is necessary for FCS banks to develop written policies and maintain records documenting all compensation and expense allowances paid to directors by each board. Furthermore, the proposed regulation would continue to prohibit any FCS bank from compensating a director for rendering services to an FCS association, a service corporation, the Federal Farm Credit Banks Funding Corporation, or a cooperative of which the director is a member, or for performing other assignments of a nonofficial nature.

List of Subjects in 12 CFR Part 611

Accounting, Agriculture, Archives and records, Banks, banking, Credit, Government securities, Investments, Organization and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12, of the Code of Federal Regulations is proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233; secs. 409 and 414 of Pub. L. 100–399.

Subpart D—Rules for Compensation of Board Members

2. Section 611.400 is amended by removing the words, "district directors" and adding in their place, "bank directors" in paragraph (b) introductory text and paragraph (b)(2); by removing the words, "$200 per day" and adding their place, "limits established by the Farm Credit Act of 1971, as amended" in paragraph (b)(2); by adding the words "travel, subsistence, and other related" after the word "for" in paragraph (b)(3); by removing the words "and subsistence" and adding in their place, the words", subsistence, and other related" in paragraph (b)(5); by removing the words "district board" and adding in their place, the words "bank board" each place it appears in paragraphs (b) introductory text and (c) introductory text; by revising paragraph (a); and by adding a new paragraph (c)(6) to read as follows:

§ 611.400 Compensation of Bank Board members.

(a) Farm Credit banks are authorized to pay, in accordance with section 4.21 of the Farm Credit Act of 1971, as amended, fair and reasonable compensation to directors for services performed in an official capacity. No Farm Credit bank shall compensate any director for rendering services on behalf of any other Farm Credit institution or a

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[1] Pub. L. No. 100–399, 102 Stat. 989 (1988).

[2] Section 414 of the 1988 Act, which added section 4.21 to the 1971 Act.

[3] Section 409 of the 1988 Act repealed sections 5.1 through 5.6 of the 1971 Act.

[4] See 52 FR 36012, (September 25, 1987), as redesignated and amended at 53 FR 50381, (December 15, 1988).

[5] See 56 FR 29412 (June 27, 1991), as corrected at 56 FR 42649 (August 28, 1991).

cooperative of which the director is a member, or for performing other assignments of a nonofficial nature.

* * * * *

(c) * * *

(6) Such compensation shall be disclosed to shareholders on an annual basis, in compliance with § 620.5(i)(1) of this chapter. Such disclosure, and any requisite reporting to the Farm Credit Administration shall identify cash compensation paid to directors separately from the reimbursement of travel, subsistence, and other related expenses paid to each director.

Dated: June 10, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-13960 Filed 6-15-92; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Part 612

RIN 3052-AB08

Personnel Administration; Human Resources Policies, Retirement Plans

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) by the Farm Credit Administration Board (Board) proposes to repeal the current regulations in subpart A of part 612 governing human resources policies, and retirement and thrift savings plans at all Farm Credit System (FCS or System) institutions. Amendments to the Farm Credit Act of 1971 (1971 Act) during the past 12 years support the FCA's decision to repeal these regulations. The FCA believes that System institutions should now assume greater responsibility for developing and implementing their own human resources management policies because the FCA, in the aftermath of the Farm Credit Amendments Act of 1985 [1] (1985 Act), is the arms-length safety and soundness regulator of the FCS. As a result of the Food, Agriculture, Conservation and Trade Act of 1990 [2] (1990 Farm Bill), the FCA proposes to repeal § 612.2110, which requires agency approval of Farm Credit district retirement and thrift savings plans. The FCA will retain safety and soundness authority over human resources administration and Farm Credit district retirement and thrift savings plans once these regulations are replaced.

DATES: Comments should be received on or before July 16, 1992.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Senior Credit Specialist, Policy and Risk Analysis Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090 (703) 883-4327, TDD (703) 883-4444, or

Richard A. Katz, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. General

While Congress has substantially restructured the FCS during the past 12 years, the FCA has not made major revisions to its human resources management regulations in subpart A of part 612 since 1980. See 45 FR 69881 (October 22, 1980). As a result of the 1985 Act, the FCA is now an arms-length safety and soundness regulator that exercises regulatory and examination authority, rather than operational control, over the FCS. In this context, the FCA concludes that FCS institutions should assume a greater role in formulating the human resources policies that affect their employees.

Accordingly, the FCA proposes to repeal the regulations in subpart A of part 612. The FCA adopts an approach toward human resources management that is consistent with the policies of other Federal regulators of financial institutions. The FCA notes that other Federal financial institution regulators rely upon their examination powers to detect and prevent unsafe and unsound human resources management practices.

Similarly, the FCA upon repeal of the regulations in subpart A, part 612, will rely upon its examination and enforcement authority over FCS institutions to detect and prevent unsafe and unsound human resources management practices. This safety and soundness authority derives from several provisions of the 1971 Act. Section 1.2 of the 1971 Act states that all FCS institutions are subject to the regulation of the FCA. Section 5.17(a)(9) of the 1971 Act authorizes the FCA to prescribe rules and regulations that are necessary or appropriate for carrying out the Act. The FCA is authorized by section 5.17(a)(10) to ensure the safety and soundness of all System institutions by exercising the enforcement powers conferred on it by part C of title V of the 1971 Act. Section 5.17(11) of the 1971 Act confers upon the FCA the authority to exercise incidental powers as may be necessary to fulfill its duties and carry out the purposes of the statute. Section 5.19(a) of the 1971 Act authorizes the FCA to examine the compensation paid to chief executive officers (CEO) and the salary scales of employees at Farm Credit banks.

II. Retirement Plans

One of the regulations in subpart A of part 612 that the FCA proposes to repeal is § 612.2110, which governs Farm Credit district and thrift savings plans. Except for one Farm Credit district, all bank and association employees in each Farm Credit district are covered by a single retirement plan. Retirement benefits are also supplemented by thrift savings program. Section 612.2110 requires bank boards to: (1) Provide retirement benefits to employees who are not covered by the Civil Service Retirement Act; (2) obtain prior approval from the FCA for retirement and thrift savings plans; and (3) secure Internal Revenue Service (IRS) approval of such plans.

Prior to the 1990 Farm Bill, section 5.17(a)(13) of the 1971 Act required FCA approval of employee salary scales and the compensation of the CEO at all System banks, while section 6.6(a)(8)(B) of the 1971 Act, authorized the FCA to approve the compensation and retirement benefits of the CEO, other managers, and directors of all System institutions that receive financial assistance from the Farm Credit System Assistance Board. Section 1843 of the 1990 Farm Bill repealed both of these provisions, but amended section 5.19(a) of the 1971 Act to specifically require FCA examination of the employee salary scales and CEO compensation at all System banks.

In the aftermath of the 1990 Farm Bill, the FCA has decided that the agency no longer needs to approve Farm Credit district retirement and thrift savings plans. After § 612.2110 is repealed, the FCA will exercise its safety and soundness authority over Farm Credit district retirement and thrift savings plans through the examination and enforcement process. From the perspective of the FCA, Farm Credit district retirement plans that are not properly funded or managed can expose the institutions in the district to liabilities that undermine their solvency.

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[1] Public Law No. 99-205, 99 Stat. 1678 (1985).

[2] Public Law No. 101-624, 104 Stat. 3359 (1990).

Farm Credit district retirement plans are government pensions plans under the Budget and Accounting Procedures Act of 1950, as amended, 31 U.S.C. 9502(1)(B)(iv). Government pension plans are exempt from most provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.* ERISA provisions pertaining to participation and vesting, funding, and fiduciary responsibility are not applicable to government pension plans. See 29 U.S.C. 1051, 1081, and 1101. Furthermore, the Department of Labor has not exercised supervisory authority over Farm Credit district retirement plans since the Secretary of Labor opined that System plans are not covered by ERISA. See Op. Sec. of Labor (June 16, 1976).

Government pension plans are not insured by the Pension Benefit Guaranty Corporation (PBGC), 29 U.S.C. 1321(b)(2). The General Counsel of PBGC issued a legal opinion on April 15, 1977, which specifically concluded that Farm Credit district retirement plans are not subject to the insurance provisions in title IV of ERISA.

The Budget and Accounting Procedures Act of 1950, 31 U.S.C. 9503 requires that government pension plans comply with the reporting and disclosure requirements of sections 103 and 104(a) of ERISA, 29 U.S.C. 1023 and 1024(a). Accordingly, Farm Credit district retirement plans are required to submit annual reports that comply with sections 103 and 104(a) of ERISA to the Comptroller General. Additionally, section 103 of ERISA and 31 U.S.C. 9503(a)(5) require that an audit prepared by an independent qualified public accountant accompany the annual report.

Farm Credit district retirement and thrift savings plans qualify as government plans under section 414(d) of the Internal Revenue Code (IRC), 26 U.S.C. 414(d). Government plans are exempt from IRC provisions that establish minimum participation, vesting, and funding standards. See 26 U.S.C. 410(c)(1), 411(e)(1), and 412(h). As a result of these exemptions, the supervisory authority of the Internal Revenue Service (IRS) over Farm Credit district retirement plans is minimal.

Since the Federal agencies that regulate pension plans have minimal supervisory and regulatory authority over Farm Credit district retirement plans, the FCA shall exercise its powers under the 1971 Act to examine these plans for safety and soundness. If the prior approval authority is repealed, the FCA recognizes the possibility that abuses, if any, may only be discovered after they have occurred. The FCA emphasizes the responsibility of FCS institutions to continue to act in a manner which addresses the best interests of the System, its employees, and its shareholders.

III. Miscellaneous

The FCA is also making a technical correction in § 612.2150(b)(5) to clarify the meaning of the regulation.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Rural areas.

For the reasons stated in the preamble, part 612 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 612—PERSONNEL ADMINISTRATION

1. The authority citation for part 612 is revised to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 2254.

Subpart A—[Removed]

2. Subpart A, consisting of §§ 612.2000 through 612.2110, and the subpart heading are removed in their entirety.

Subpart B—[Amended]

3. The heading of subpart B is removed.

§ 612.2150 [Amended]

4. Section 612.2150 is amended by removing the word "of" the third place it appears, and adding in its place, the word "or" in the first sentence of paragraph (b)(5).

Dated: June 10, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-13961 Filed 6-15-92; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Part 615

RIN 3052-AB18

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed suspension of rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes for public comment the temporary suspension, for a period of 2 years, of certain provisions of the regulations governing the computation of permanent capital ratios of Farm Credit System (System) institutions. The effect of the suspension would be to permit Farm Credit Banks and direct lender associations, for the succeeding 2 years, to determine whether, and to what extent, an association's investment in a Farm Credit Bank is deducted from the assets of the association in the computation of the permanent capital ratio.

DATES: Comments must be received by July 16, 1992.

ADDRESSES: Comments should be submitted in writing, in triplicate, to Jean Noonan, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Senior Credit Specialist, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444, or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On September 28, 1988, the Board adopted final regulations amending 12 CFR part 615 that, among other things, established minimum permanent capital standards for System institutions. Those regulations implemented section 301(a) of the Agricultural Credit Act of 1987 (1987 Act), Public Law 100-233, which directed the FCA to issue regulations under section 4.3(a) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2001 *et seq.* Section 4.3(a) requires the FCA to cause System institutions to achieve and maintain adequate capital by establishing minimum levels of capital for System institutions. See 53 FR 39229 (October 6, 1988).

Section 615.5210 of those regulations sets forth the method for the computation of the permanent capital ratio. Paragraph (d) provides that, for the sole purpose of computing the permanent capital ratio, certain adjustments must be made to the assets and capital of System institutions. First, where two System institutions own stock in each other, an amount equal to the smaller of the two investments must be eliminated from the assets and total capital of both institutions.

Second, after the elimination of the reciprocal stock investments, the so-called "double-counted capital" must be eliminated in such a way that it is included in the capital of only one institution. The "double-counted

capital" represents a direct lender association's investment in a Farm Credit Bank and consists of purchased stock and distributed equities. (The investment is referred to as "double-counted capital" because, prior to 1989, it was included in the assets and capital of both the bank and the direct lender association. This gave the impression that there was a greater amount of capital in some institutions than there actually was.) Traditionally, banks have made non-cash patronage distributions to direct lender associations while retaining cash at the bank level. The "double-counted capital" is required by § 615.5210(d) to be treated, for the purpose of computation of the permanent capital ratio, as follows:

1. Paragraph (d)(2)(i)

This provision states that, until January 1, 1993, each Farm Credit Bank shall, with the agreement of a majority of the direct lender associations in its district, adopt a districtwide plan specifying a percentage allocation of an association's investment in the bank between the bank and the association. The bank and associations are permitted to amend the plan each year. In the event that the bank and the associations are unable to reach agreement on the allocation, the direct lender associations' investments are allocated 20 percent to the bank and 80 percent to the associations.

2. Paragraph (d)(2)(ii)

This provision states that, beginning January 1, 1993, and thereafter, all equities of a Farm Credit Bank that were purchased by direct lender associations must be allocated to the bank.

3. Paragraph (d)(2)(iii)

This provision sets forth a phase-in period for the allocation of equities distributed by a Farm Credit Bank to direct lender associations. The phase-in period is to commence on January 1, 1993, and specifies the minimum percentage of distributed equities that must be allocated to the banks. In 1993, banks and associations are permitted to allocate up to 100 percent of the distributed equities to the association; the permissible allocation to the association decreases by 20 percentage points each following year until 1998. In 1998 and thereafter, all of the distributed equities must be allocated to the bank.

Since the promulgation of § 615.5210(d)(2), concerns have been expressed by some System institutions about the potential effects on the capital positions of the direct lender associations and the financial health of the System as a whole. In particular, such institutions have indicated that, in order for some direct lender associations to achieve their minimum required permanent capital levels, it may be necessary for a district bank to transfer assets to the associations either through the payment of cash dividends or the retirement of distributed equities. Both types of transportations are taxable and could therefore result in the depletion of an association's capital funds.

In addition, concern has been expressed by System institutions and others that any significant transfer of assets from Farm Credit Banks to direct lender associations may have a long-term effect on the cost of funds to the System as a whole. Most of the funds of System institutions are raised through the issuance by the Farm Credit Banks and the banks for cooperatives of Systemwide obligations. Such obligations are insured by the Farm Credit System Insurance Fund, but in the event that the Insurance Fund is ever exhausted, all of the banks are jointly and severally liable under section 4.4 of the 1971 Act to pay the principal and interest on the obligations. Therefore, the Systemwide bonds are ultimately backed by the assets of all of the System banks. However, the direct lender associations, to which the banks lend most of the funds raised through the issuance of Systemwide obligations, are not jointly and severally liable on the Systemwide obligations. It has been asserted that, once assets have been transferred by a bank to an association, they may no longer be available to pay the principal and interest on Systemwide obligations under the joint and several liability provisions. Concern has been expressed that a significant movement of capital from the Farm Credit Banks to the direct lender associations could increase the cost to the System of raising funds through the issuance of Systemwide obligations.

Because of these concerns, it is the opinion of the Board that the current regulations on the computation of a direct lender association's investment in a bank should be reexamined. Therefore, the Board proposes to delay the effect of those provisions that, commencing January 1, 1993, require part or all of a direct lender association's investment in a Farm Credit Bank to be eliminated from the capital of the associations.

The following provisions are proposed to be temporarily suspended:

1. The phrase "until January 1, 1993," in § 615.5210(d)(2)(i);

2. Section 615.5210(d)(2)(ii) in its entirety; and

3. Section 615.5210(d)2)(iii) in its entirety.

During the period these provisions are suspended, other provisions of the regulation would remain in effect. This means that a Farm Credit Bank, with the agreement of a majority of the direct lender associations in its district, could adopt a districtwide plan specifying a percentage of where the direct lender associations' investment in the bank would be counted for the purpose of computing the permanent capital ratio. In the absence of such an agreement, 20 percent of the direct investment would be allocated to the bank, and 80 percent would be allocated to the associations.

The Board further proposes that the suspension be effective for a 2-year period, commencing 30 days after it is published in the **Federal Register** during which either or both Houses of the Congress are in session. After the 2-year period expires, these provisions would automatically become effective again unless the Board has taken further action to amend them.

It is the intention of the Board to reexamine the capital regulations during the suspension period in light of the concerns described above, particularly as they relate to the safety and soundness of individual institutions and districts as well as the System as a whole.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

Dated June 10, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–13962 Filed 6–15–92; 8:45 am]

BILLING CODE 6705–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

12 CFR Part 1502

Availability of Information Under the Freedom of Information Act

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would prescribe procedures to implement the Freedom of Information Act. The Thrift Depositor Protection Oversight Board, which is an agency for the purposes of the Freedom of Information Act, is required to make available certain records pursuant to published rules and to promulgate regulations specifying a schedule of fees applicable to the processing of requests for its records. The proposed rule would set forth the kinds of information made available to the public and procedures for inspecting or obtaining documents and records of the Board.

DATES: Comments must be received on or before August 17, 1992.

ADDRESSES: Comments may be mailed to Office of General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, telephone (202) 786–9681.

SUPPLEMENTARY INFORMATION:

Background

The Thrift Depositor Protection Oversight Board ("Board") is a corporate instrumentality of the United States, established as the "Oversight Board" by section 21A(a)(1) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(a)(1), as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The Oversight Board was redesignated as the Thrift Depositor Protection Oversight Board by the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Public Law No. 102–233, sec. 302(a), 105 Stat. 1761, 1767. The Board's principal duty is to oversee the Resolution Trust Corporation ("RTC"), also established under FIRREA, whose principal duty is to manage and resolve cases involving failing and failed thrift institutions.

Pursuant to 12 U.S.C. 1441a(a)(2), the Board is an agency of the United States for the purposes of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, which requires agencies to publish certain materials, make certain materials available for public inspection and copying and other records available to any person in accordance with published rules, and promulgate regulations under FOIA, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests.

Proposed Rule

The proposed rule would establish regulations and procedures for the implementation of FOIA by the Board. The RTC is a mixed-ownership Government corporation that, like the Board, is an agency of the United States for the purposes of FOIA when it is acting as a corporation. The proposed rule does not apply to the RTC, and its procedures are not applicable to the publication of RTC documents or the availability of RTC records under FOIA.

Consistent with the requirements of FOIA, the proposed rule divides Board records into three major categories and provides methods under which each category of information, to the extent not exempt from disclosure, will be published or made available by the Board. The categories are: (1) Information to be published in the **Federal Register**; (2) information to be made available for public inspection and copying; and (3) information to be made available promptly to any person upon appropriate request. The proposed rule sets forth detailed procedures for the processing of requests, including procedures for appealing denials. Under the rule, requests for records created by or obtained from the RTC or another agency may be referred to the RTC or such other agency.

Consistent with FOIA, the proposed rule provides that the Board shall maintain and make available current indexes providing identifying information for the public as to any matter required by 5 U.S.C. 552(a)(2) to be made available or published. The Board believes that publication of such indexes would be unnecessary and impracticable and anticipates issuing and publishing an order to that effect when its Freedom of Information regulations are issued in final form. The Board will provide copies of any such index on request at a cost not to exceed the direct cost of duplication.

Pursuant to Executive Order 12600, the proposed rule includes a section concerning the protection of persons or entities submitting information to the Board that arguably includes material exempt from public disclosure under the fourth exemption of FOIA, 5 U.S.C. 552(b)(4), as trade secrets or commercial or financial information that is privileged or confidential. In accordance with the Executive Order, the rule establishes procedures under which such a person or entity will be notified of requests encompassing such material and, to the extent permitted by law, will be given an opportunity to object to its disclosure.

The proposed rule includes a schedule of fees for the processing of requests and procedures for determining when such fees should be waived or reduced. The schedule of fees conforms to the guidelines promulgated by the Director of the Office of Management and Budget, 52 FR 10012, March 27, 1987; and the procedures concerning the waiver or reduction of fees follow the guidance of the memorandum of the Department of Justice issued on April 2, 1987. In this connection it should be noted that § 1502.10(d)(1)(ii) of the proposed rule, which sets forth the requirement of 5 U.S.C. 552(a)(4)(A)(iv)(II) that no agency shall charge fees for certain requests for the first two hours of search time or for the first one hundred pages of duplication, also incorporates the Office of Management and Budget's guidelines on this matter by referring to the "cost equivalent" of such search time and duplication. The Office of Management and Budget guidelines provide [52 FR 10019]:

> For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ × 11" or "11 by 14." Thus, requesters would not be entitled to 100 microfiche or computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.
>
> Similarly, the term "search time" in this context has as its basis, manual search. To apply this term to searches made by computer, agencies should determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operting the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, agencies should begin assessing charges for the computer search.

The proposed rule describes or refers to exemptions listed in FOIA pursuant to which agency records may be withheld from the public. In this connection, the rule makes it clear that the Board will apply the fifth exemption, 5 U.S.C. 552(b)(5), which, among other things, incorporates what has come to be known as the "deliberative process privilege," to records of the deliberations of the Board, except for the records of the Board's open meetings, which are held at least six times each year.

The Conference Report and accompanying FIRREA discusses briefly the status of the Board and the RTC as agencies for the purposes of FOIA. After noting that 5 U.S.C. 552(b)(8) specifically exempts from disclosure certain information related to the regulation and supervision of financial institutions, the Conference Report states that neither the Board nor the RTC acts as a

supervisor or regulator of insured depository institutions. H.R. Rep. No. 101–222, 101st Cong., 1st Sess. 410 (1989). In this connection, it should be noted that the proposed rule tracks or refers to all of the FOIA exemptions, including 5 U.S.C. 552(b)(8), and treats them as possibly applicable to the Board's processing of requests for records. It is the Board's intention to utilize 5 U.S.C. 522(b)(8), which specifically exempts examination reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, to withhold in appropriate circumstances examination reports and similar information forwarded to the Board by a financial institution regulatory agency. When forwarded, such information has been provided to the Board to enable it to carry out its statutory functions; and it is the position of the Board that the use of the eighth exemption in appropriate circumstances is not inconsistent with its governing statute or with the statements in the Conference Report.

Executive Order 12291

The proposed rule is not a major rule under Executive Order No. 12291.

Regulatory Flexibility Act

The Thrift Depositor Protection Oversight Board certifies that the rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The total economic impact of the rule is minimal.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number 3203–0003, which expires December 31, 1994. Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (Agency Code 1551), Washington, DC 20503, with copies to the Thrift Depositor Protection Oversight Board at the address previously specified.

The collections of information in this proposed rule are in §§ 1502.6, 1502.8, and 1502.10. This information is required by the Board to identify the requesters and the records sought, enable submitters of business information to apply for confidential treatment, and assure appropriate assessment and payment of fees. This information will be used to process requests for records. The likely respondents are persons or entities seeking information from records of the Board. It is not likely that persons or entities will submit confidential business information to the Board.

The total annual reporting and recordkeeping burden that will result from these collections is estimated not to exceed fifteen hours. The estimated average burden hours per response is not more than one half hour for requesters of records under §§ 1502.6 and 1502.10. The annual number of likely respondents is estimated not to exceed twenty-six, and the proposed frequency of response is on occassion.

List of Subjects in 12 CFR Part 1502

Confidential business information, Freedom of information.

For the reasons set forth in the preamble, it is proposed to amend chapter XV of title 12 of the Code of Federal Regulations by adding new part 1502 to subchapter A to read as follows:

PART 1502—AVAILABILITY OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.

1502.1 Authority, purpose, and scope.
1502.2 Definitions.
1502.3 Published information.
1502.4 Public inspection and copying.
1502.5 Specific requests for records.
1502.6 Request procedures.
1502.7 Responses to requests.
1502.8 Business information.
1502.9 Appeals.
1502.10 Fees.
1502.11 Exemptions.
1502.12 Preservation of records.

Authority: 5 U.S.C. 552; 12 U.S.C. 1441a(a)(2) and (13).

§ 1502.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Thrift Depositor Protection Oversight Board (Board) pursuant to 5 U.S.C. 552 and 12 U.S.C. 1441a(a) (2) and (13).

(b) *Purpose.* This part sets forth the kinds of information made available to the public and the rules and procedures for obtaining documents and records of the Board.

(c) *Scope.* This part applies to the information and records of the Board, an instrumentality of the United States separate and distinct from the Resolution Trust Corporation (RTC); and this part does not govern or set forth procedures for the implementation of the Freedom of Information Act by the RTC. This part explains:

(1) The kinds of information which the Board is required to publish in the **Federal Register**;

(2) The kinds of records made available to the public on request;

(3) The kinds of information made exempt from disclosure;

(4) The procedures for obtaining records and for processing requests;

(5) The schedule of fees for processing requests; and

(6) The procedures for appealing denials of requests for information.

§ 1502.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(a) and 5 U.S.C. 552(e).

(b) *Appeal* means the administrative appeal by a requester of an adverse initial determination on a request for records, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(c) *Business information* means trade secrets and commercial or financial information provided to the Board that arguably is exempt from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(d) *Denial* means a denial, based upon an exemption of the Freedom of Information Act, of a request for records, or a denial of a fee waiver request.

(e) *Director* means the Board's Vice President for Public Affairs or, in case of the absence or a vacancy in the office of the Vice President, the head or acting head of the Board's Office of Public Affairs.

(f) *President* means the President of the Board.

(g) *Request* except for the purposes of § 1502.10, means any request for Board records made pursuant to 5 U.S.C. 552(a)(3).

(h) *Requester* except for the purposes of § 1502.10, means any person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(3).

(i) *Submitter* means any person or entity that provides business information to the Board.

§ 1502.3 Published information.

(a) Subject to the exemptions described or referred to in § 1502.11 and to paragraph (b) of this section, pursuant to 5 U.S.C. 552(a)(1) the Board shall separately state and currently publish in the **Federal Register** for the guidance of the public:

(1) Descriptions of its organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain

information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which such forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board; and

(5) Each amendment, revision, or repeal of the foregoing.

(b) Except to the extent that a person is not required in any matter to resort to, or be adversely affected by, a matter required to be published pursuant to paragraph (a) of this section and not so published. For the purposes of this section, matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when it is incorporated by reference therein with the approval of the Director of the Federal Register.

§ 1502.4 Public inspection and copying.

(a) Subject to the exemptions described or referred to in § 1502.11 and to paragraphs (b), (d), and (e) of this section, the Board shall make available for public inspection or copying:

(1) Final opinions of the Board, including concurring and dissenting opinions, as well as orders of the Board, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the Board and are not published in the **Federal Register**; and

(3) Administrative staff manuals and instructions of the Board to staff that affect a member of the public.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Board may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. In each case, however, the justification for the deletion shall be explained in writing. The Director is authorized to act for the Board in implementing this paragraph.

(c) The Board shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated and required by this section to be made available or published. The Board shall provide copies of such an index on request at a cost not to exceed the direct cost of duplication.

(d) A final order, opinion, statement of policy, interpretation, or staff manual or instruction described in paragraph (a) of this section that affects a member of the public may be relied on, used, or cited as precedent by the Board against a party other than an agency only if such document has been indexed and made available pursuant to this section or the party has actual and timely notice of the terms of the document.

(e) Applications to inspect or copy records of the Board that are made available in accordance with paragraphs (a) and (c) of this section shall be made to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232.

§ 1502.5 Specific requests for records.

(a) Except with respect to the records made available pursuant to § 1502.3 and § 1502.4, and subject to the application of the exemptions in § 1502.11, the Board, upon any request for records that reasonably describes such records and complies with this part, shall make such records promptly available to any person.

(b) Records exempt from disclosure to the public pursuant to 5 U.S.C. 552(b), as described in § 1502.11, may be released if the President or the Board's General Counsel determines that disclosure is in the public interest, provided that such disclosure is not prohibited by statute, regulation, or order.

§ 1502.6 Request procedures.

(a) *Written requests.* Except as provided in paragraph (d) of this section, each request for Board records shall be made in writing, signed by or on behalf of the person making the request, and state that the request is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or this part. Requests shall be submitted to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232. The Director is authorized to act for the Board under this section.

(b) *Description of records and form of request.* (1) Each request for records must describe the records sought in reasonably sufficient detail to enable a Board employee who is familiar with the subject matter to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of the Board's operations. Whenever possible, a request should include specific information about each record sought, such as the date, title, name, author, recipients, and subject matter of the record. If a request does not reasonably describe the records sought, the requester shall be advised what additional information is needed or why the request is insufficient. The requester shall also be given an opportunity to confer with Board staff with the objective of reformulating the request in a manner that will meet the requirements of this section.

(2) Both the envelope and the written request should be clearly marked "Freedom of Information Act Request." Each request shall include:

(i) The name and address of the person filing the request, and the telephone number, if any, at which the requester can be reached during normal business hours;

(ii) The title of any case in litigation to which the request relates, the court, and the nature of the case;

(iii) Whether the requested information is intended for commercial use, and whether the requester is an educational institution, noncommercial scientific institution, or news media representative, employing the definitions in § 1502.10(a);

(iv) A statement indicating the requester's wish to have a copy of a record; or a statement that the requester wishes to inspect a record before copying; and

(v) A statement agreeing to pay applicable fees or a fee waiver request that complies with § 1502.10.

(c) *Returned requests.* The Board need not accept or process a request that is not a request for identifiable records, does not comply with the requirements of paragraphs (a) and (b) of this section, or can be complied with only by designing an information retrieval system. The Board may return such a request, specifying the defects, and the requester may submit a corrected request, which shall be treated as a new request. If a request would require the generation of new documents or files or the creation or editing of a database, it will be returned as a request for which there are no responsive Board records.

(d) *Oral requests.* The Board may honor an oral request for Board records, but if the requester is dissatisfied with the Board's response and wishes to obtain further consideration, the requester must submit a written request, which shall be treated as an initial request.

(e) *Advance payment of fees.* Whenever the Board requires payment of any fee pursuant to § 1502.10(h)(1) or (2), the requester shall promptly remit the required payment to the Board as a

condition to further processing of the request.

(f) *Date of receipt.* A request shall be considered as received for the purposes of this part when:

(1) A request that satisfies the requirements of paragraphs (a) and (b) of this section is received by the Office of Public Affairs; and

(2) If payment has been required under paragraph (e) of this section, payment is received from the requester.

§ 1502.7 Responses to requests.

(a) *Authority to grant or deny requests.* The Director is authorized to grant or deny any request for a Board record and to act for the Board under this section.

(b) *Determination.* Pursuant to 5 U.S.C. 552(a)(6)(A)(i), the Director's determination whether or not to comply with a request shall be made within ten days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of the request unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(c) *Notice of determination.* The Director shall immediately notify the requester in writing of the determination whether or not the Board will comply with a request. If a request is granted in whole or in part, the notice shall describe the manner in which a record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place, and any fees to be charged in accordance with § 1502.10. If a request is denied in whole or in part, the notice shall include a brief statement of the reason or reasons for the denial, including the exemption or exemptions relied upon, and inform the requester of the requester's right to appeal to the Board pursuant to § 1502.9.

(d) *Referrals.* To the extent that a request is for records that were created by or obtained from the RTC or another agency, the Board may refer the request to the RTC or such other agency for determination and a direct response to the requester. The Board shall promptly give written notice of such referral to the requester.

(e) *Classified information.* Whenever a request is made for a record containing information that has been classified or that may be eligible for classification by another agency under the provisions of Executive Order 12356 (3 CFR, 1982 Comp., p. 166) or other Executive Order concerning the classification of records, the Board shall refer the responsibility for responding to the request to the agency that classified the information or should consider classifying the information.

(f) *Unlocated or destroyed records.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the Director shall notify the requester in writing.

§ 1502.8 Business information.

(a) *General.* Business information provided to the Board by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this seciton. The President, the Director, or such other officer as the Board may designate, with the advice of the General Counsel to the Board, may act for the Board under this section.

(b) *Submission and request for confidential treatment.* (1) Any submitter of information to the Board who desires that it be afforded confidential treatment pursuant to 5 U.S.C. 552(b)(4) shall file an application for confidential treatment with the Board at the time the information is submitted or within a reasonable time thereafter.

(2) Each application for confidential treatment shall state in reasonable detail the facts and arguments supporting the application and its legal justification. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment.

(3) The submitter should clearly designate as "Confidential" all material for which confidential treatment is desired and separate it from other information in the submission.

(4) Applications for confidential treatment of any documents shall be considered in connection with a request for access to the documents. At their discretion, the Board, the President, or the Director may approve or disapprove an application for confidential treatment prior to a request for access to the documents.

(c) *Notice to submitters.* Except as provided in paragraph (h) of this section and to the extent permitted by law, the Board shall give prompt written notice to a submitter of a request or appeal encompassing business information provided to the Board by the submitter if:

(1) The submitter has designated the information as confidential pursuant to paragraph (b) of this section within ten years prior to the date of the request; or

(2) The Board has reason to believe that disclosure of the information may reasonably be expected to cause substantial competitive harm to the submitter.

(d) *Opportunity to object.* Through the notice described in paragraph (c) of this section, the Board shall afford the submitter or its designee a reasonable period of time within which to object to disclosure and state grounds for such objection. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is priviledged or confidential. Whenever possible, the statement should be supported by a certification by the submitter or an authorized representative of the submitter that the information has been treated as confidential by the submitter and has not been disclosed to the public. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(e) *Notice to requester.* At the same time that the Board notifies the submitter, the Board shall also notify the requester that the request is subject to the provisions of this section and that the submitter is being notified of the request.

(f) *Notice of intent to disclose.* (1) The Board shall consider carefully a submitter's objections and grounds for nondisclosure prior to deciding whether to disclose business information. If the Board decides to disclose business information over the objection of a submitter, the Board shall forward to the submitter a written notice, which shall include:

(i) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose shall, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified disclosure date, and a copy of the notice shall be forwarded to the requester at the same time.

(g) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the Board shall promptly notify the submitter.

(h) *Exceptions to notice requirements.* The notice requirements of paragraph (c) of this section shall not apply if:

(1) The Board determines that the information shall not be disclosed;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, the Board shall provide the submitter with written notice of any final administrative decision to disclose information within a reasonable number of days prior to a specified disclosure date.

§ 1502.9 Appeals.

(a) *Appeal to the Board.* When a request has been denied in whole or in part, or when the Board fails to respond to a request within the time limits set forth in the Freedom of Information Act, the requester may appeal the denial of the request or fee waiver request to the Board within thirty days of receipt of a notice of denial. An appeal to the Board shall be made in writing and shall be addressed to the President, Oversight Board, 1777 F Street, NW., Washington, DC 20232. Both the envelope and the letter of appeal itself should be clearly marked "Freedom of Information Act Appeal."

(b) *Untimely appeals.* The Board may consider an untimely appeal if:

(1) It is accompanied by a written request for leave to file an untimely appeal; and

(2) The President determines, within the President's discretion and for good and substantial cause shown, that the appeal should be considered.

(c) *Action on appeals.* The President or such other officer as the Board may designate, with the advice of the General Counsel, shall act on behalf of the Board on appeals under this section, but no officer who has denied a request or application for a waiver or reduction in fees shall act on the appeal from that denial. The Board shall make a determination with respect to an appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(d) *Form of action on appeal.* The disposition of an appeal shall be in writing and shall constitute final Board action on the request and appeal. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or in the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified, and the request shall be processed promptly in accordance with the decision on appeal.

§ 1502.10 Fees.

(a) *Definitions.* For the purposes of this section:

(1) *Commercial use* in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or a person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a requester properly belongs in this category, the Board must determine the use to which a requester will put the documents requested. If the Board has reasonable cause to doubt the stated use, or if that use is not clear from the request itself, the Board will seek additional clarification before assigning the request to a specific category.

(2) *Direct costs* means those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request. Direct costs include, for example, the salary of an employee performing work to respond to a request (the basic rate of pay for the employee plus a factor of 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Overhead expenses, such as the costs of space and heating or lighting the facility in which the records are stored, are not included in direct costs.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. A copy shall be in a form that is reasonably usable by a requester.

(4) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(5) *Fee waiver request* means a request for the waiver or reduction of a fee charged for processing a request.

(6) *News* means information that is about current events or that would be of current interest to the public.

(7) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals, but only in those instances when they can qualify as disseminators of news, who make their products available for purpose or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through the organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Oversight Board may also look to the past publication record of a requester in making this determination.

(9) *Request* means a request for records pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(10) *Requester* means a person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(11) *Review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of the document may be withheld. It also includes processing documents for disclosure, e.g., doing all that is necessary to excise portions and otherwise prepare the document for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(12) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is separate from review.

(b) *General.* (1) The Board's fees for the processing of requests shall recover

the direct costs of search, duplication, or review in accordance with the following:

(i) Fees for the processing of requests shall be limited to reasonable standard charges for document search, duplication, and review when records are requested for commercial use.

(ii) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research or by a representative of the news media.

(iii) Fees for other requesters shall be limited to reasonable standard charges for document search and duplication.

(iv) No fee shall be charged if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(v) Fees shall be assessed according to the schedule in paragraph (c) of this section; and all fees so assessed shall be charged to the requester except to the extent that the charging of fees is limited under paragraph (d) of this section or unless a waiver or reduction of fees is granted under paragraph (e) of this section.

(vi) Requests from record subjects for records about themselves, which are filed in Board systems of records, will be charged under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a), which permit fees only for reproduction or duplication of records.

(2) Except as otherwise specifically provided, the Director is authorized to act for the Board under this section.

(c) *Assessment of fees.* In responding to requests, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (e) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (d) of this section. The Board may assess fees for time spent searching even if records cannot be located or if records located are subsequently determined to be entirely exempt from disclosure.

(ii) The fee assessed for other than computer searches shall be $3.25 for each quarter hour spent by clerical personnel in searching for and retrieving a requested record. If a search and retrieval requires the use of professional or managerial personnel, the fee assessed for other than computer searches shall be $7.00 for each quarter hour spent by such professional or managerial personnel.

(iii) For computer searches that may be undertaken through the use of existing programming, the requester shall be assessed the actual direct costs of the search. This shall include the cost of operating a processing unit for that portion of operating time that is directly attributable to searching for records responsive to the request as well as the costs of operator/programmer salary apportionable to the search. The Board is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record, the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, a requester shall be charged the actual direct costs of such copy, including operator time. For other methods of duplication, requesters shall be charged the actual direct costs of duplicating a record.

(3) *Review.* (i) Commercial use requesters shall be assessed for review at the initial administrative processing level at the rates set forth in paragraph (c)(1)(ii) of this section.

(ii) No charge shall be assessed for review at the administrative appeal level of an exemption already applied. Records or portions of records withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again, however, to determine the applicability of exemptions not previously considered. The costs of such a subsequent review are assessable at the rates set forth in paragraph (c)(1)(ii) of this section.

(4) *Other services.* Applications for other services and materials that are not required by or subject to the Freedom of Information Act are chargeable at the actual cost to the Board. These include, but are not limited to:

(i) Certifying that records are true copies; and

(ii) Sending records to the requester by special methods such as express mail or messenger.

(5) *Use of private contractors.* The Board, not acting by delegated authority, may authorize contracting with private sector contractors for the services of locating, reproducing, and disseminating records in response to requests if the Board determines that such functions may be performed more efficiently and for less cost through private sector contractors. In such case, a requester shall be charged the actual costs to the Board for the services furnished with respect to the request, provided, however, that in no event shall the requester be charged more than what the Board would have charged if it had performed such services itself.

(d) *Limitations on charging fees.* Except for requesters seeking records for a commercial use, as defined in paragraph (a)(1) of this section, the Board shall provide without charge:

(1) The first 100 pages of duplication, or its cost equivalent; and

(2) The first two hours of search, or its cost equivalent.

(2) *Waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if the Board determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Board, that:

(i) Disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure is not primarily in the commercial interest of the requester.

(2) In order to determine whether the requirement set forth in paragraph (e)(1)(i) of this section is met, the Board shall consider the following four factors in sequence:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether the disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) In order to determine whether the requirement set forth in paragraph (e)(1)(ii) of this section is met, the Board shall consider the following two factors in sequence:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(ii) Whether the magnitude of an identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) If only a portion of the requested records satisfies the requirements of paragraphs (e)(1)(i) and (e)(1)(ii) of this section, a waiver or reduction shall be granted only as to that portion.

(5) Fee waiver requests shall be considered on a case-by-case basis. A fee waiver request shall address each of the factors listed in paragraphs (e)(2) and (3) of this section as they apply to each request for records.

(6) Normally no charge shall be made for providing records to Federal, state, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(7) In connection with any request by an employee, former employee, or applicant for employment for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived if the total charges (including charges for information provided under the Privacy Act of 1974) are $50 or less; but the Board, in its discretion, may waive fees in excess of that amount.

(8) Appeals from denials of fee waiver requests shall be decided in accordance with § 1509.2(a) and the criteria set forth in paragraph (e)(1) of this section by an official authorized to decide appeals from denials of requests for records. Such appeals shall be addressed in writing to the Board within thirty days after receipt of a denial of a fee waiver request; both the envelope and the letter of appeal itself should be clearly marked "Fee Waiver Request Appeal."

(f) *Notice of anticipated fees in excess of $25.00.* If the Board determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Board shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has agreed in advance to pay fees as high as those anticipated. If a requester is notified that actual or estimated fees may exceed $25.00, the request shall be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph (f) shall offer the opportunity to confer with Board staff for the purpose of reformulating the request to meet the requester's needs at a lower cost.

(g) *Aggregating request.* If the Board reasonably believes that a requester or group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. It is considered reasonable for the Board to presume that multiple requests for clearly related documents made within a thirty day period have been made in order to evade fees. Multiple requests for unrelated documents will not be aggregated.

(h) *Advance payments.* (1) If the Board estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, unless it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) If a requester has previously failed to pay a records access fee within thirty days of the date of billing, the Board may require the requester to pay the full amount owed, plus any applicable interest, as provided for in paragraph (i) of this section, and to make an advance payment of the full amount of any estimated fee before the Board begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (h) (1) and (2) of this section, the Board shall not require the requester to make an advance payment. Payment owed for work already completed is not an advance payment.

(4) If the Board requires a payment under paragraph (h) (1) or (2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) for the processing of an initial request or an appeal, and the permissible extensions of such limits, shall be deemed not to begin to run until the Board has received payment of the assessed fee.

(i) *Form of payment.* Payment of fees shall be made by check or money order payable to the Treasurer of the United States. The payment shall be forwarded to the Board.

(j) *Other statutes specifically providing for fees.* The fee schedule in this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records.

§ 1502.11 Exemptions.

(a) *General.* Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552 and this part do not apply to certain matters which are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and that are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Board;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Board, including, but not limited to, records of deliberations of the Board other than meetings held pursuant to 12 U.S.C. 1441a(a)(10);

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished only by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Other law enforcement records.* The Board may also withhold disclosure of records pursuant to 5 U.S.C. 552(c).

(c) *Segregable portions of record.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. Reasonably segregable nonexempt portions of a record are those:

(1) Whose meaning is not distorted by deletion;

(2) That are sufficient to be intelligible and useful to the requester; and

(3) From which a skillful and knowledgeable person could not reconstruct any exempt information.

(d) *Computer information.* Information stored in a computer that can be segregated only by creating an information retrieval program is not considered reasonably segregable.

§ 1502.12 Preservation of records.

The Board shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Freedom of Information Act.

Peter H. Monroe,

President.

[FR Doc. 92-13905 Filed 6-15-92; 8:45 am]

BILLING CODE 2222-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-52-AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This docuemnt proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Industrie Model A320 series airplanes. This proposal would require a revision to the FAA-approved Airplane Flight Manual (AFM) to prohibit automatic landings in configuration 3. This proposal is prompted by a report that during an automatic landing in configuration 3, a pitch-up due to activation of the spoilers could result in an excessive attitude, if not immediately counteracted by the flight crew. The actions specified by the proposed AD are intended to prevent tail strikes and damage to the airplane.

DATES. Comments must be received by July 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-52-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-52-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-52-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Industrie Model A320 series airplanes. The DGAC advises that during an automatic landing in configuration 3, a pitch-up due to activiation of the spoilers could result in an excessive attitude, if not immediately counteracted by the flight crew. This condition, if not corrected, could result in tail strikes and damage to the airplane.

The DGAC Issued French Airworthiness Directive 91-061-016(B) to require verification that the Airplane Flight Manual (AFM) does not permit automatic landings in configuration 3 in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA Informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a revision to the FAA-approved Airplane Flight Manual (AFM) to prohibit automatic landings in configuration 3.

The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $990. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evalution prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 92–NM–52–AD.

Applicability: Model A320 series airplanes, certificated in any category

Compliance: Required as indicated, unless accomplished previously.

To prevent tail strikes and damage to the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM: "Use of automatic landing in configuration 3 (CONF 3) is prohibited."

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 29, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14080 Filed 6–15–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–50–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. This proposal would require replacement of certain braking system anti-skid control boxes; an operational test of the anti-skid control box; and an anti-skid braking system integrity test. This proposal is prompted by a report indicating that a malfunctioning integrated circuit board in the braking system anti-skid control box, combined with a single item failure, can cause loss of normal braking. The actions specified by the proposed AD are intended to prevent the loss of normal braking during ground operations.

DATES: Comments must be received by August 3, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–50–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–50–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–50–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist

on certain British Aerospace Model 146–100A, –200A, and –300A series airplanes. The Civil Aviation Authority advises that a report has been received indicating that, during a pre-delivery check, a malfunctioning integrated circuit board in the braking system anti-skid control box, combined with a single item failure, resulted in a loss of normal braking. A recent investigation by the manufacturer has revealed that a certain integrated circuit board, while meeting specifications, may operate incorrectly, due to a voltage spike caused by selecting the anti-skid system "on", when combined with a failure in another integrated circuit board. If uncorrected, this condition could result in the loss of normal braking during ground operations. (If loss of all normal braking occurs, limited emergency braking would still be available.)

British Aerospace has issued BAe 146 Service Bulletin SB 32–124–70491A&B, Revision 1, dated November 25, 1991, which describes procedures for replacement of certain landing gear braking system anti-skid control boxes; an operational test of the anti-skid control box; and an anti-skid braking system integrity test. The original integrated circuit, from one manufacturing source, was susceptible to voltage spikes, and was removed from all existing control boxes by British Aerospace and the parts manufacturer. The new replacement control boxes are designed so as to provide protection against voltage spikes for all current and future fits of integrated circuits from all sources. The Civil Aviation Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of certain landing gear braking system anti-skid control boxes; an operational test of the anti-skid control box; and an anti-skid braking system integrity test. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by British Aerospace at no charge to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,775. This total cost figure assumes that no operator has yet accomplished the proposed requirements for this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–50–AD.

Applicability: Model BAe 146–100A series airplanes, Constructor's Nos. E1002 and subsequent; Model BAe 146–200A series airplanes, Constructor's No. E2008 and subsequent; and Model BAe 146–300A series airplanes, Constructor's Nos. E3116 and subsequent; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of normal braking during ground operations, accomplish the following:

(a) For airplanes having pre-Modification MCM00716B configuration: Within 6 months after the effective date of ths AD, remove the anti-skid control box, and install a new anti-skid control box, Modification HCM70491A; and perform an operational test on the anti-skid control box; in accordance with British Aerospace BAe 146 Service Bulletin SB 32–124–70491A&B, Revision 1, dated November 25, 1991.

(b) For airplanes having post-modification HCM00716B configuration: Within 6 months after the effective date of this AD, remove the anti-skid control box, and install a new anti-skid control box, Modification HCM70491B; and perform an anti-skid braking system integrity test; in accordance with British Aerospace BAe 146 Service Bulletin SB 32–124–70491A&B, Revision 1, dated November 25, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 1, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14066 Filed 6–15–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92-NM-88-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, Model DC-9-80 Series Airplanes, and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, and Model MD-88 airplanes, that currently requires installation of a new girt bar flap and firing line in the evacuation slide system, and modification of the valise. This action would require modification of the previously installed girt bar flap or installation of a new girt bar flap and firing line, and modification of the valise, as applicable. This proposal is prompted by a report that an improperly installed girt bar in the airplane floor fittings could render the inflation handle inaccessible after slide deployment from the airplane or inhibit the opening of the emergency exit door. The actions specified by the proposed AD are intended to prevent obstruction or hindrance of the emergency evacuation of the airplane and possible injuries to the passengers and the crew.

DATES: Comments must be received by August 3, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-88-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-88-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-88-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On February 17, 1991, the FAA issued AD 91-06-10, Amendment 39-6929 (56 FR 9838, March 8, 1991), which is applicable to McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, and Model MD-88 airplanes, equipped with certain BFGoodrich evacuation slides. That AD requires installation of a new girt bar flap and firing line on the evacuation slide system, and modification of the valise. That action was prompted by reports of incidents of inadvertent in-flight inflations of the evacuation slides. The requirements of that AD are intended to prevent obstruction or hindrance of the emergency evacuation of the airplane and possible injuries to the passengers and the crew.

Since the issuance of that AD, the FAA has been advised by a number of operators that it is possible to improperly install the slide girt bar in the airplane floor fitting, if slides have been modified in accordance with the requirements of AD 91-06-10. Improper installation of the slide girt bar could render the inflation handle inaccessible after slide deployment and could inhibit the opening of the emergency exit door. This condition, if not corrected, could obstruct and hinder the emergency evacuation of the airplane, and could result in injuries to passengers and crew.

The FAA has reviewed and approved BFGoodrich Service Bulletin 11331-25-248, dated April 15, 1992, that describes procedures for installation of a new designed girt bar flap and firing line, and modification of the valise. The new design of the flap and firing line precludes the possibility of improper installation. For units that were previously modified (in accordance with AD 91-06-10), this service bulletin also describes procedures for modification of the girt bar flap.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91-06-10, to require modification of the previously installed girt bar flap or installation of a new girt bar flap and firing line, and modification of the valise, as applicable. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 3,150 slides of the affected design installed on McDonnell Douglas Model DC-9 series, Model DC-9-80 series, and Model MD-88 airplanes in the worldwide fleet. The FAA estimates that 800 airplanes of U.S. registry would be affected by this proposed AD. Each airplane is equipped with two slides, for a total of 1,600 affected slides.

For airplanes equipped with slides having detachable girts on which the modifications required previously by AD 91-06-10 have not yet been accomplished, it would take approximately 2.25 work hours per slide to accomplish the proposed actions, at an average labor rate of $55 per hour. Required parts would cost approximately $355 per slide. Based on these figures, the cost for accomplishing this proposed action would be approximately $479 per slide, or $958 per airplane.

For airplanes equipped with slides having fixed girts on which the modifications required previously by AD 91-06-10 have not yet been accomplished, it would take approximately 6.25 work hours per slide

to accomplish the proposed actions, at an average labor rate of $55 per hour. Required parts would cost approximately $355 per slide. Based on these figures, the cost for accomplishing this proposed action would be approximately $699 per slide, or $1,398 per airplane.

For airplanes equipped with slides on which the modifications required by AD 91-06-10 have been accomplished, it would take approximatley 1 work hour per slide to accomplish the proposed actions, at an average labor rate of $55 per hour. Required parts would cost approximately $25 per slide. Based on these figures, the cost for accomplishing this proposed action would be approximately $80 per slide, or $160 per airplane.

Based on the figures discussed above, the total cost impact of the proposed AD on U.S. operators is estimated to be between $128,000 and $1,118,000. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6929 (56 FR 9838, March 8, 1991), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 92-NM-88-AD. Supersedes AD 90-06-10, Amendment 39-6929.

Applicability: Model DC-9, Model DC-9-80 series airplanes, and Model MD-88 airplanes; equipped with BFGoodrich, Aircraft Evacuation Systems (formerly Sargent Industries, Pico Division; formerly Pico, Inc.) evacuation slides, P/N 11331-(-); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent obstruction or hindrance with the emergency evacuation of the airplane and possible injuries to the passengers and the crew, accomplish the following:

(a) For airplanes on which the evacuation slides have been modified in accordance with Section 2, Accomplishment Instructions, of BFGoodrich Service Bulletin 11331-25-228, Revision 2, dated January 4, 1991: Within 9 months after the effective date of this AD, modify the girt bar flap, in accordance with Paragraph 2B of BFGoodrich Service Bulletin 11331-25-248, dated April 15, 1992.

(b) For airplanes on which the evacuation slides have not been modified in accordance with Section 2, Accomplishment Instructions, of BFGoodrich Service Bulletin 11331-25-226, Revision 2, dated January 4, 1991: Within 9 months after the effective date of this AD, install a new girt bar flap and firing line, and modify the valise, in accordance with Paragraph 2A of BFGoodrich Service Bulletin 11331-25-248, dated April 15, 1992.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 1, 1992.

Bill R. Bowell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-14076 Filed 6-15-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Application and Closing Out of Offsetting Long and Short Positions; Exception

AGENCY: Commodity Futures Trading Commission.

ACTION: Petition for rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has received a petition for rulemaking requesting that the Commission amend § 1.46 of its regulations, 17 CFR 1.46, to provide an additional exception to the general rule pertaining to the application, and closing out, by a futures commission merchant ("FCM") of offsetting long and short commodity futures or option positions in a customer account or option customer account. The additional exception requested by the petitioner would apply to purchases and sales of commodity futures or option contracts in error accounts, including, but not limited to, broker error accounts. The Commission is requesting comment on the proposed rule amendment as suggested by the petitioner, with certain modifications.

DATES: Comments must be submitted on or before August 17, 1992.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Mary Cademartori, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 1.46(a) of the Commission's regulations generally requires that the FCM close out a customer's or option customer's previously-held short or long commodity futures or option position if an offsetting purchase or sale is made

for such customer's or option customer's account, and that an FCM furnish promptly to such customer or option customer a purchase-and-sale statement showing the financial result of the transactions involved. Section 1.46(b) generally provides that if the short or long position in the account of such customer or option customer immediately prior to the offsetting purchase or sale is greater immediately prior to the offsetting purchase or sale is greater than the quantity purchased or sold, the FCM must apply the offsetting purchase or sale to the oldest portion of the previously-held short or long position, unless the customer or option customer specifically instructs otherwise. There are currently seven exceptions to § 1.46.[1] The petitioner requests that the Commission establish an additional exception to the requirements of paragraphs (a) and (b) of § 1.46 for purchases or sales in error accounts, including, but not limited to, broker error accounts. The Commission has decided to request comment on the proposed rule amendment as suggested by the petitioner, with certain modifications.

II. Petition Excerpts

Excerpts from the petition are set forth below.

The Chicago Board of Trade hereby submits a petition to the Commodity Futures Trading Commission for rulemaking to amend the language of Commission Regulation 1.46, which concerns the application and closing out of offsetting long and short positions.

Specifically, the Exchange requests that Regulation 1.46(d) "Exceptions" be amended to include a new exception for *"purchases or sales in error accounts, including, but not limited to, broker error accounts."*

The Exchange submits that, as a practical matter, positions which have been incurred as the result of an error should be kept separate, for offset purposes, for positions which are established as part of the market participant's actual trading strategy. The proposed amendment to Commission Regulation 1.46 would facilitate this separation. [emphasis in original]

(End of Excerpts From Petition)

III. Commission Views

Error positions can arise in various circumstances. For example, a customer may have requested a buy order and a sell order gets transmitted to the floor, or the quantity requested may get misreported. In these circumstances, the FCM, associated person (AP) or floor broker (FB) responsible for the error would have to take the error position (*i.e.*, the position which the customer did not request) into its error account. If the FCM, AP or FB also has its own trading account, this could require the closing out of a position in the FCM's house account or the personal account of an AP or FB with an offsetting position in the error account.[2] Thus, a position the FCM, AP or FB intended to take could be closed out because of a transaction that resulted from an error.

The Commission believes that there may be some merit to the petition. The Commission further believes that interested persons should have an opportunity to comment upon the amendment to § 1.46 of the Commission's regulations suggested by the petitioner, with certain modifications proposed by the Commission and discussed below.

The major modification which the Commission proposes to make to the petitioner's suggested amendment is to limit the exception to error positions which are promptly closed out by the close of business the next business day. The new exception would therefore not be applicable where the "error trade" was kept open beyond the close of business the following business day. The Commission believes that if the trade represents an error then it must be closed out the next business day on or subject to the rules of a contract market, or otherwise the trade will lose its identity as an error trade and become subject to the rules applicable to any other trade and require close out against existing positions. If any commenters wish to address this issue, the Commission requests that they set forth with particularity standards to determine when a trade loses its identity as an error trade. Accordingly, the proposed § 1.46(d)(8) contains a timing requirement whereby a position in the error account must be offset by a trade on or subject to the rules of a contract market by no later than the close of business the next business day.

The Commission also wishes to clarify that offsetting positions within an error account must be offset and should not be left open. While the Commission acknowledges that positions in error accounts should be separate from positions in regular accounts, offsetting positions in error accounts are not to be specially treated. The Commission has proposed adding language to this effect to the petitioner's suggested amendment.

The Commission has also modified the petitioner's suggested amendment to permit the exception to rule 1.46 to apply to positions identified as errors but carried in an account that includes positions other than errors. The Commission understands that FCMs, APs and FBs normally establish an error account that is intended to include all of their error positions, and some exchanges require this by rule.[3] However, if a separate error account has not been established, the proposal contained herein would allow an error position identified as such when the position is established to remain open in an account despite an offsetting non-error position. The Commission also requests comment as to whether positions eligible for the exception to rule 1.46 discussed herein should be required to be carried in an error

[1] Seven types of transactions are exempt from the requirements of paragraphs (a) and (b) of § 1.46, including generally: (1) Purchases or sales of commodity options held by commercial interests in the underlying commodity, where such purchases or sales are determined by the contract market to be economically appropriate to the reduction of risks for the conduct and management of a commercial enterprise pursuant to rules of the contract market which have been adopted in accordance with the requirements of § 1.61(b) (17 CFR 1.61(b) (1991)) and approved by the Commission pursuant to Section 5a(12) of the Act; (2) Purchases or sales constituting "bona fide hedging transactions" as defined in § 1.3(z) of the Commission's regulations (17 CFR 1.3(z) (1991)); (3) Sales during the delivery period of a futures contract for the purpose of making delivery on the contract during such delivery period if such sales are accompanied by appropriate documentation (see § 1.46(d)(3)); (4) Purchases or sales made in separate accounts of a commodity pool, provided that the trading for such pool is directed by two or more unaffiliated commodity trading advisors acting independently, each of which is directing the trading of a separate trading account (see § 1.46(d)(4)); (5) Purchases or sales made by a leverage transaction merchant constituting cover of its obligations to leverage customers and made in accordance with §§ 31.18(a) and 31.12(b) of the Commission's regulations (17 CFR 31.18(a) and 31.12(b) (1991)) (see § 1.46(d)(5)); (6) Purchases or sales made in separate accounts owned by a customer or option customer, provided that each person directing trading for one of the separate accounts (one of whom may be the customer or option customer himself) is unaffiliated with and acts independently from each other person directing trading for a separate account (see § 1.46 (d)(6) and (e) (1991)); and (7) Purchases or sales made in the separate accounts of a person granted an exemption in accordance with § 150.3 of the Commission's regulations (56 FR 14308, April 9, 1991). Purchases or sales closed out during the same day (commonly known as "in-and-out trades" or "day trades") are exempt from the requirements of § 1.46(b) concerning application of offsetting purchase or sale to the oldest portion of the previously-held short or long position (see § 1.46(c)).

[2] The definition of the term "customer" under Commission Rule 1.3(k) (17 CFR 1.3(k)(1991)) provides in pertinent part that "an owner or holder of * * * a proprietary account shall * * * be deemed to be a customer within the meaning of * * * [Rule] 1.46." Thus, Rule 1.46 would apply to accounts of an FCM's AP and even the FCM's own accounts, as well as those of FBs. Further, an FCM must take into consideration positions in separate accounts of the same customer which it is carrying in applying Rule 1.46. U.S. Department of Agriculture, Commodity Exchange Authority Administrative Determination No. 134 (May 25, 1948).

[3] See *e.g.*, Chicago Mercantile Exchange Rule 527.

account, *i.e.*, an account that includes only error positions.

One purpose of § 1.46 is to ensure accurate reporting of open interest. The Commission previously expressed its concern regarding the accuracy of published open interest calculations in connection with the adoption of an amendment to § 1.46 to provide an additional exception for purchases or sales made in separate accounts owned by a customer or option customer where the trading for the customer accounts is directed by two or more unaffiliated persons acting independently, each of which is directing the trading of a separate account. In promulgating that exception to § 1.46, which was also prompted by a petition for rulemaking, the Commission revised that petitioner's suggested amendment to ensure that trades entered into by separate persons acting independently for the account of a customer are offset in an open and competitive manner on or subject to the rules of a contract market and not by means of a "transfer trade," *i.e.*, simply by means of an entry on the books of an FCM for the purpose of transferring existing trades from one account to another carried by the FCM where no change in ownership is involved.[4] Similarly, in these circumstances, the Commission believes that to permit the transfer of trades between the market participant's own trading account and the market participant's error account would cast doubt upon the "independence" of such separate accounts. Furthermore, the Commission recognizes that because each position of the market participant's accounts will be traded separately and offset separately, the amount of open interest reported for any commodity futures contract or commodity option contract traded by the market participant's own account and the market participant's error account will be greater than if all open positions in both of the market participant's accounts were offset against each other. However, the Commission believes that any increase in reported open interest will have no adverse impact since all open positions in each of the market participant's accounts must be offset, on or subject to the rules of a contract market, prior to the delivery date of a futures contract or the exercise date of a commodity option contract.[5]

[4] 49 FR 19989, 19970 (May 11, 1984).

[5] The Commission wishes to note, however, that if the FCM carrying the broker's error account or the FCM carrying the broker's own trading account sought the protection of the bankruptcy laws, the Commission might, in appropriate cases and upon application by the trustee or the affected clearing organization, permit offsetting open contracts to be liquidated, or settlement on such contracts to be made, by transfer trades. 17 CFR 190.04(d) (1991).

[6] See 47 FR 18618, 18619 (April 30, 1982).

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 et. seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. The Commission has determined that this proposed amendment has no burden.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The direct impact of the proposed amendment to rule 1.46 affects FCMs, which have the obligation generally to close out offsetting positions and issue a purchase-and-sale statement. The Commission has previously determined that FCMs should not be considered small entities for purposes of the RFA. Specifically, the Commission found that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[6] Accordingly, the requirements of the RFA do not apply to FCMs. In addition, the Commission has determined that the proposed amendment to rule 1.46 will impact upon APs or FBs who must also close out offsetting positions. The proposed amendment does not, however, impose any additional burdens, but rather, alleviates an already existing obligation to offset certain positions in the AP's or FB's account. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that the proposed rule amendment will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact the proposed rule amendment may have on small entities.

List of Subjects in 17 CFR Part 1

Offsetting positions, Close-out requirements, Commodity trading advisors, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4g, 5 and 8a of the Act, 7 U.S.C. 6g, 7 and 12a (1988), the Commission hereby proposes to amend chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a–1, 13a–2, 16, 19, 21, 23 and 24; 5 U.S.C. 552 and 552b, unless otherwise noted.

2. Section 1.46 is proposed to be amended by adding new paragraph (d)(8) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

* * * * *

(d) *Exceptions.* * * *

(8) Purchases or sales held in error accounts, including but not limited to floor broker error accounts, and purchases or sales identified as errors when the position is established held in accounts that contain other purchases or sales not identified as errors ("error trades"), provided that:

(i) Each error trade does not offset another error trade held in the same account;

(ii) Each error trade is offset by open and competitive means on or subject to the rules of a contract market by not later than the close of business the following day; and

(iii) No error trade is closed out by transferring such an open position to another account also controlled by that same market participant.

* * * * *

Issued in Washington, DC on June 10, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–14026 Filed 6–15–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 284 and 285

[Docket No. RM88–13–000]

Brokering of Interstate Natural Gas Pipeline Capacity; Order Terminating Proposed Rulemaking

Issued June 10, 1992.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Termination order.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is terminating its proposed rulemaking regarding the brokering of interstate natural gas pipeline capacity. In Order No. 636,[1] the Commission adopted new capacity allocation regulations which require all interstate pipelines to provide for a capacity releasing mechanism to be determined during the pipeline's Order No. 636 restructuring proceeding. The capacity releasing mechanisms will replace the brokering of interstate pipeline capacity.

ADDRESSES: All requests for rehearing should refer to Docket No. RM88-13-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sharon Dameron, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2017.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this termination order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order Terminating Proposed Rulemaking

Issued June 10, 1992.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On April 4, 1988, the Commission issued a notice of proposed rulemaking (NOPR) in Docket No. RM88–13–000 regarding the brokering of interstate natural gas pipeline capacity.[2] The Commission recently issued Order No. 636 [3] which, among other things, adopted new capacity allocation regulations. These regulations provide that all interstate pipelines must provide for a "capacity releasing mechanism," to be determined during the pipeline's Order No. 636 restructuring proceeding. The capacity releasing mechanisms will replace the brokering of interstate pipeline capacity. In view of the new regulations adopted in Order No. 636, the Commission is terminating the proposed rulemaking in Docket No. RM88–13–000.

I. Discussion

In the latter part of the 1980's, the issue of whether the Commission should permit brokering of capacity rights on interstate pipelines arose, largely in the context of proposals by various interstate pipelines to become open access transporters pursuant to part 284 of the Commission's regulations. Generally, these proposals fell into two broad categories. One category included proposals whereby the interstate pipeline would permit its own capacity to be brokered; the other category included proposals for the brokering of the interstate pipeline's capacity on other pipelines.

The Commission initially declined to approve these proposals for several reasons. One reason was concern for the requirement that capacity should be made available among shippers on a first-come, first-served basis. Another reason was that both categories of proposals generally limited the benefits of brokering to a particular class of customers. A further reason was that none of the proposals involving the brokering of the pipeline's capacity on other pipelines included a method for reallocating the Account No. 858 costs (the costs of transmission and compression of gas by other pipelines). The Commission determined that approval of the proposals would restrict access to capacity by new market entrants and inhibit competition.[4]

However, the Commission recognized that there were benefits to be derived from the brokering of interstate capacity. Consequently, the Commission issued in NOPR, which proposed regulations that would apply to the brokering of capacity. Under the NOPR, an interstate pipeline that wanted to allow brokering on its system would be required to obtain a "system brokering certificate". A person seeking to broker capacity rights on a pipeline holding a system brokering certificate would be required to obtain a "blanket broker certificate". The NOPR also provided for price ceilings on brokering transactions only in those natural gas markets that were not workably competitive.

The Commission received over one hundred comments on the NOPR. In response to numerous requests during the comment period, the Commission staff held a technical conference on July 28, 1988. Subsequently, the Commission requested supplemental comments on the issues raised in the technical conference.[5]

The commenters contend that the NOPR lacks specific detail as to how capacity brokering will be implemented on the various interstate pipelines. At the technical conference, the general consensus of the industry was that the technical problems presented by the NOPR were too numerous to be ironed out. As an alternative to the NOPR, the industry participants urged the Commission to consider individual capacity brokering proposals submitted by pipelines. Subsequently, the Commission approved a number of individual capacity brokering proposals.[6]

On April 8, 1992, the Commission issued Order No. 636, which mandates the restructuring of pipeline services to provide for the unbundling of sales and transportation. In a notice issued contemporaneously with Order No. 636, the Commission instituted "restructuring proceedings" for all interstate pipelines. Among other things, Order No. 636 adopted new capacity allocation regulations which include a requirement

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[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under part 284 of the Commission's Regulations, Order No. 636, 59 FERC ¶ 61,030 (1992), 57 FR 13267 (April 16, 1992).

[2] Brokering of Intersate Natural Gas Pipeline Capacity, FERC Statutes and Regulations, Proposed Regulations ¶ 32,460 (1988); 53 FR 15061 (April 27, 1988); 53 FR 31885 (August 22, 1988).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under part 284 of the Commission's Regulations, Order No. 636, 59 FERC ¶ 61,030 (1992), 57 FR 13267 (April 16, 1992).

[4] Supra, n. 1 at 32,216.

[5] Brokering of Interstate Gas Pipeline Capacity: Request for Supplemental Comments, FERC Statutes and Regulations, Proposed Regulations ¶ 30,463 (1988); 53 FR 25629 (July 8, 1988); 53 FR 31885 (August 22, 1988).

[6] See e.g., Texas Eastern Transmission Corp., 48 FERC ¶ 61,248, *clarified*, 48 FERC ¶ 61,378 (1989), *order on reh'g*, 51 FERC ¶ 61,170 (1990), *order on reh'g*, 52 FERC ¶ 61,273 (1990); Columbia Gas Transmission Company, 49 FERC ¶ 61,071 (1989); Transcontinental Gas Pipe Line Corporation, 52 FERC ¶ 61,277 (1990).

that pipelines provide for a "capacity releasing mechanism." Thus, the intent of the NOPR to develop regulations which would allow pipeline capacity to be more efficiently used has been adopted in Order No. 636.

Order No. 636 provides that after a pipeline's capacity releasing mechanism goes into effect, all allocations of interstate pipeline capacity must be done under that capacity releasing mechanism.[7] Thus existing capacity brokering programs will be superseded by the capacity releasing mechanisms.

In view of the comments and supplemental comments, the information received at the technical conference, and the issuance of Order No. 636, the Commission concludes that it would not be in the public interest for the Commission to issue a final rule in this proceeding. In Order No. 636 the Commission determined that the public interest would be better served by the capacity allocation regulations adopted therein, than by capacity brokering.[8] Therefore, the Commission is terminating the instant rulemaking proceeding.

The Commission Orders:

Docket No. RM88–13–000 is terminated.

By the Commission.

Lois D. Cashell,

Secretary.

[FR 92–14108 Filed 6–15–92; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Service Field Organization, Vicksburg, MS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations governing the Customs field organization by changing the boundaries of the Port of Vicksburg, Mississippi, which lies within the South Central Region. The current port boundaries would be expanded to encompass the user fee airport at Jackson, Mississippi and the neighboring counties of Hinds, Rankin, and Madison. This change is being made to reflect the changing nature of the international trade in the area from the river to the airport.

DATES: Comments must be received on or before August 17, 1992.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Sevice, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Peg Reyen, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 566–8157.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by realigning the boundaries of the port of Vicksburg, Mississippi, in the South Central Region. The proposed expansion of the port would add the Mississippi counties of Hinds, Rankin, and Madison to the existing limits which are Warren County in Mississippi and Madison Parish is Louisiana.

The present port of Vicksburg generates little Customs activity. However, the volume of international traffic at the user fee airport at Jackson, Mississippi, which was established in 1989, has become increasingly significant. The activity in the area is not occurring within the present port limits of Vicksburg, but is at the airport and in the neighboring counties which are served by the airport. Accordingly, Customs believes that the port limits should be expanded to include the three neighboring counties and Jackson International Airport.

By including the Jackson International Airport within the limits of the port of entry, Customs will convert the status of the airport from a user fee airport to a landing rights airport. Through this proposed change the public and importers will be better served and Customs personnel and resources will be more efficiently utilized. It is not anticipated that this change will have any adverse financial impact on either the agency or the community.

The proposed revised limits of the port of Vicksburg are as follows:

All of the territory within Madison Parish, Louisiana, and Warren, Hinds, Rankin, and Madison counties, Mississippi.

If the proposed extension of the boundaries of the port is adopted, the list of Customs and ports of entry in 19 CFR 101.3(b) will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regualtions (31 CFR 1.4, and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority: This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12291

Because this document relates to agency organization and management, it is not subject to Executive Order 12291.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: June 2, 1992.

Dennis M. O'Connell,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92–14069 Filed 6–15–92; 8:45 am]

BILLING CODE 4820–02–M

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[7] Order No. 636, *supra*, at slip opin. p. 72, 57 FR 13283 (April 16, 1992).

[8] Order No. 636, *supra*, slip opin. at pages 69–85, 57 FR 13283–13286 (April 16, 1992).

19 CFR Part 101

Extension of Port Limits of Morgan City, LA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the port of entry of Morgan City, Louisiana. The proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before August 17, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Peg Reyen, Office of Inspection and Control (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is proposing to amend §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3 and 101.4), by extending the geographical limits of the port of entry of Morgan City, Louisiana.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Morgan City is listed as a port of entry in the New Orleans, Louisiana, Customs District within the South Central Region. The Morgan City port of entry was originally established by T.D. 54682 (published in the **Federal Register** on September 16, 1958, 23 FR 7131) with specific geographical limits which may be described generally as encompassing the southeastern one-third of St. Mary Parish and including the town of Morgan City where the office of the Customs Port Director is currently located. The geographical limits of the Morgan City port of entry were republished without change in connection with a restatement of all New Orleans Customs District port boundaries in T.D. 84–126 (published in the **Federal Register** on May 31, 1984, 49 FR 22629).

In addition, in § 101.4(c), Houma, Louisiana (located within Terrebonne Parish), and Galliano, Louisiana (located within Lafourche Parish), are listed as Customs stations within the New Orleans Customs District and under the supervision of the Morgan City port of entry. Customs stations are defined in § 101.1(d), Customs Regulations, as "any place, other than a port of entry, at which Customs officers or employees are stationed * * *" for purposes of entering and clearing vessels, accepting entries of merchandise, collecting duties, and enforcing the various provisions of the Customs and navigation laws of the United States. Thus, Customs stations are by definition located outside the limits of a port of entry, and Customs services are normally provided to the public at Customs stations on a reimbursable basis.

The Morgan City port of entry was established primarily to provide vessel documentation (now the function of the U.S. Coast Guard) in southwest Louisiana, and for a number of years after creation of the port of entry most Customs functions could be adequately carried out within the port limits as originally established by T.D. 54682. However, in more recent years the Customs workload increased significantly in both volume and geographical scope, with the result that the majority of Customs service provided by the Morgan City port of entry now takes place outside the present port limits, extending to Iberia Parish to the west of St. Mary Parish and, on the east, to the parishes of Terrebonne and Lafourche and the town of Grand Isle in Jefferson Parish.

Iberia Parish regularly receives foreign steel shipments by LASH-type barge and has a livestock export facility at its airport, and international trade activities, including the construction of warehousing and other support facilities, is on the increase in both Iberia Parish and in the western portion of St. Mary Parish. Terrebonne and Lafourche Parishes include four major shipyards where vessel construction and drydock repairs take place and where Customs clearance is required in connection with vessels arriving for repairs, and approximately 20 additional vessel arrivals take place each month at docking facilities along the Intracoastal Waterway within these two parishes. In addition, Port Fourchon, which is located in Lafourche Parish, serves as a hub for helicopter and service launch traffic to lightering vessels and tankers at the Louisiana Offshore Oil Port (LOOP) supertanker unloading terminal, resulting in approximately 100 helicopter and 45 service launch clearances by Customs each month in addition to the Customs services rendered in connection with the approximately 270 tankers arrivals at the LOOP each year. Port Fourchon is also used as a base for foreign-flag research vessels and derrick barges operating in the Gulf of Mexico, and vessels carrying containerized and other cargo from foreign countries arrive at Port Fourchon on a weekly basis. Finally, the town of Grand Isle is the home port for a large number of private seagoing yachts which are required to report to Customs upon arrival from any foreign port or place. Customs services in connection with all of these activities are provided by personnel assigned to the Morgan City port of entry.

Based on the present Customs workload pattern described above, Customs proposes to extend the present limits of the Morgan City port of entry to include all territory within the parishes of Iberia, St. Mary, Terrebonne, and Lafourche, as well as the incorporated limits of the town of Grand Isle in Jefferson Parish and that portion of the State highway which connects Grand Isle to Lafourche Parish. Customs believes that the proposed extension, if adopted, would provide significant benefits to both Customs and the public. Although the name of the port of entry would remain Morgan City, extension of the port limits would enable Customs to move the office of the Port Director to Galliano in Lafourche Parish, which is more centrally located given present workload conditions. This relocation would increase the efficiency and productivity of the Port Director's office by reducing the time and effort required for travel and transportation of documents between the office and other locations within the extended port of entry, by enabling the Port Director to more effectively administer outside assignments and oversee other port details, and by streamlining Customs duty and other collection procedures. This increase in Customs efficiency and productivity would have corresponding benefits for the public by enabling Customs to be more responsive to the needs of the trade community. In addition, by extending the present port of entry limits to include areas now serviced by Customs on a reimbursable basis, the proposal would reduce the operating costs of private sector recipients of those services and would thereby lead to an improvement in the overall prospects for increased international trade in the area covered by the new port of entry limits.

The proposed extended geographical limits of the Morgan City port of entry are specifically as follows:

In the State of Louisiana: All of the territory within the Parishes of Iberia, St. Mary, Terrebonne, and Lafourche; that portion of the right-of-way pertaining to State Highway 1 extending in a northeasterly direction from the Lafourche Parish and Jefferson Parish boundary line to the corporate limits of the town of Grand Isle; and the corporate limits of the town of Grand Isle.

If the proposed Morgan City port of entry limits are adopted, the list of Customs regions, districts, and ports of entry in 19 CFR 101.3(b) will be amended accordingly. In addition, the list of Customs stations in 19 CFR 101.4(c) will be amended to remove the references to the Customs stations at Houma and Galliano as these will fall within the new port of entry limits and thus will no longer retain their separate identities as Customs stations.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Authority: This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12291

Because this document relates to agency management and organization, it is not subject to E.O. 12291.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Carol Hallett,

Commissioner of Customs.

Approved: June 2, 1992.

Dennis M. O'Connell,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-14070 Filed 6-15-92; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-13-4-5413; FRL-4144-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Sacramento Metropolitan Air Quality Management District (SMAQMD). The California Air Resources Board submitted these revisions to EPA on May 13, 1991. The revisions concern SMAQMD's Rule 442, Architectural Coatings, and Rule 446, Storage of Petroleum Products, adopted October 2, 1990 and December 4, 1990, respectively. Both of these rules concern the control of volatile organic compounds (VOCs). EPA evaluated the revisions found in Rules 442 and 446, and on November 5, 1991 (56 FR 56485), EPA proposed a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA), because these revisions strengthen the SIP. At this time, EPA is proposing a limited disapproval of Rules 442 and 446 under section 110(k)(3) because the rules do not meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before [July 16, 1992].

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada & Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: William Davis, Southern California, Arizona & Guam Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1183, FTS: 484-1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amendment Act), that included the SMAQMD. 43 FR 8964, 40 CFR 81.305. Because it was not possible for SMAQMD to reach attainment by the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date for ozone in the SMAQMD to December 31, 1987. 40 CFR 52.222(d). SMAQMD did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the SMAQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1]

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed

Continued

EPA's SIP–Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Sacramento is classified as serious; [2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on May 13, 1991, including the two SMAQMD rules being acted on in this notice. The submittal was found to be complete on July 10, 1991 pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V.[3] This notice addresses EPA's second proposed action for Rule 442, Architectural Coating, and Rule 446, Storage of Petroleum Products. See 56 FR 56485 (November 5, 1991).

Rule 442 controls the emissions of VOCs from architectural coating operations, and Rule 446 controls the emissions of VOCs from tanks storing petroleum products. VOCs contribute to the production of ground level ozone and smog. SCAQMD's Rules 442 and 446 were originally adopted as part of the District's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP–Call and the section 182(a)(2)(A) CAA requirement.

On November 5, 1991, EPA proposed a limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA because the revisions strengthen the SIP (56 FR 56485). In that notice, EPA states its intention to also propose a limited disapproval of submitted Rules 442 and 446 because they contained deficiencies that had not been corrected as required by section 182(a)(2)(A) of the CAA and, as such, the rules did not fully meet the requirements of Part D of the Act. In today's action, EPA is proposing a limited disapproval of these rules. The following is EPA's evaluation and proposed action for SCAQMD's Rules 442 and 446.

post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SMAQMD retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirement of the Act, specified the presumptive norms for what is RACT for specific source categories. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). There is no EPA CTG for Rule 442 concerning architecture coatings. The CTG to Rule 446 is entitled "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks", EPA document EPA–450/2–78–047. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SMAQMD's submitted Rule 442, Architectural Coatings, includes the following revisions to the current SIP rule:

—Exemptions for several specialty coatings have been deleted.
—The exemption for small businesses has also been deleted.
—The test methods to be used to establish compliance have been included.

SMAQMD's submitted Rule 446, Storage of Petroleum Products, includes the following revisions to the current SIP rule:

—An exemption for underground jet fuel tanks has been deleted.
—Definitions of "gas tight" and "organic liquid" have been added.
—A provision for the discretionary use of alternate vapor recovery systems by the Air Pollution Control Officer (APCO) has been deleted.
—APCO discretion of alternate closure devices has also been deleted.
—Provisions for maintenance plans have been added.
—Recordkeeping and test methods to be used for determining compliance have been added.

EPA has evaluated SMAQMD's submitted Rules 442 and 446 for consistency with the CAA, EPA regulations and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although the approval of SMAQMD's Rules 442 and 446 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. These deficiencies involve allowance for the use of equivalent test methods in both Rules 442 and 446. A detailed discussion of rule deficiencies can be found in the Technical Support Document (TSD) and addendum for Rule 442 and 446 (the TSDs are dated July 23, 1991; the addendum, January 3, 1992) which are avilable from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because the deficiencies cause them to be inconsistent with the interpretation of section 172 of the pre-amended Act as found in the Blue Book and may lead to rule enforceability problems.

Thus, EPA is today proposing a limited disapproval of these rules under section 110(k)(3) because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator dissaproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. At the end of that period, if EPA has not approved these rules as meeting the applicable requirements of section 182(a)(2)(A),

EPA will impose one of these two sanctions. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedure published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, The Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 8, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–14094 Filed 6–15–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502 and 550

[Docket No. 92–36]

Reduction of Notice Requirements for Tariff Increases in the Domestic Offshore Trades; Exemption Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce and its rules governing protests and replies thereto. These amendments would reduce notice requirements for tariff increases by carriers providing port-to-port service in the domestic offshore trades and would amend the time for protesting such increases. The proposed exemption would permit such carriers to publish, on not less than seven workdays' notice, any new or changed tariff matter which results in an increased cost to the shipper, but which does not meet the statutory definition of general rate increase. Protests to such increases or changes could be filed not later than 9 a.m. of the last workday prior to the effective date of the increase or rule change.

DATES: Comments due July 16, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Seymour Glanzer, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5783 (Phone), (202) 523–5785 (FAX).

SUPPLEMENTARY INFORMATION: Section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. app. 844, requires ocean carriers providing port-to-port service in the domestic offshore trades to file, on thirty days' notice, any new or changed tariff matter, except for general rate increases or decreases, which must be filed on sixty days' notice. On December 16, 1991, the Commission issued a final rule in Docket No. 91–42 Tariff Filing Notice Requirements; Domestic Offshore Trades, 26 S.R.R. 70 (1991), which creates an exemption under section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a, for such carriers to file on one day's notice any new or changed tariff matter which does not increase the shipper's cost of transportation.[1] This action followed and superseded several earlier exemptions to the thirty days' notice requirement which were granted to particular carriers or trades pursuant to individual applications for such relief.[2]

In granting these exemptions from statutory notice requirements, the Commission cited regulations of the Interstate Commerce Commission ("ICC"), at 49 CFR 1312.39(h), which permit new and reduced joint, single-factor, motor-water rates to be filed on one day's notice with that agency.

For more than a decade, regulatory jurisdiction in the domestic offshore trades has been split between this Commission and the ICC, depending on whether the form of transportation is port-to-port, or joint intermodal transportation with a segment taking place within a state or the District of Columbia. In the latter case, the entire transportation, including the ocean portion, is subject to ICC jurisdiction.[3]

Independent motor-water rates and charges in the domestic offshore trades filed at the ICC may be increased on not less than seven workdays' notice pursuant to ICC regulations at 49 CFR 1312.39(h) (2) and (4). Those same regulations permit changes on seven workdays' notice to rules or other provisions which effect reductions in the value of service or increases in rates or charges. Rates, rules and charges of ICC-regulated freight forwarders of household goods are governed by the same provisions.

Ocean carriers providing port-to-port services subject to FMC jurisdiction compete with carriers providing motor-water services subject to ICC jurisdiction.[4] Thus, to foster greater consistency in regulation and to permit carriers to compete more equally in the domestic offshore trades, the Commission is proposing to reduce notice requirements for tariff increases in these trades from thirty days to seven workdays.

This change would apply to both vessel-operating carriers and NVOCCs and would govern commodity rate

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[1] This exemption does not extend to any "general decrease in rates" as that term is defined by section 1 of the 1933 Act, 46 U.S.C. app. 843. Such general decreases still require sixty days' notice.

[2] Matson Navigation Co., Inc.—Application for Section 35 Exemption, 24 S.R.R. 1518 (1989); Tariff Filing Periods—Exemption, 24 S.R.R. 1604 (1989); Application of Sea-Land Service Inc. For Exemption Under Section 35 of the Shipping Act, 1916, 25 S.R.R. 660 (1990); Tropical Shipping & Construction Co. Ltd.—Application for Section 35 Exemption, 25 S.R.R. 1471 (1991); Application of Trailer Marine Transport Corporation Under Section 35 of the Shipping Act, 1916, 25 S.R.R. 1660 (1991); Puget Sound Tug & Barge Co.—Application for Section 35 Exemption: Hawaii and Alaska Trades, 26 S.R.R. 61 (1991).

[3] *Puerto Rico Maritime Shipping Authority* v. *ICC*, 645 F. 2d 1102 (D.C. Cir. 1981); *Trailer Marine Transport Corp.* v. *FMC*, 602 F. 2d 370 (D.C. Cir. 1979).

[4] There also may be competition in some of the domestic offshore trades from carriers offering rail-water services subject to ICC jurisdiction. In general, rates, rules and charges for rail services may be increased on 20 days' notice. 49 CFR 1312.39(h)(2) and 1312.4(e)(1)(i)(A). However, rail carriers also may provide intermodal service which is exempt from regulation under 49 CFR part 1090.

increases as well as other new or changed tariff filings which would result in an increase in the shippers' cost of transportation, but which would not meet the statutory definition of "general rate increase." [5] These filings may include, for example:

—Across-the-board increases, including charges or surcharges, of less than 3 percent;
—Rule changes resulting in an increase; or
—Cancellation of or reduction in service which increases the shippers' costs.

All of these filings now must be made on at least thirty days' notice and the Commission proposes to reduce the notice period to at least seven workdays for all such tariff increases. Congress has created a clear distinction in notice requirements between general rate increases and other types of tariff increases, but has provided no easily discernible basis for distinguishing among the various types of other tariff increases. Neither the statute nor the Commission's rules contain definitions which would be helpful in differentiating among these other types of tariff increases.[6] Moreover, the ICC's rules make no such distinctions.

Currently, the Commission's rules permit protests to proposed tariff changes made pursuant to the 1933 Act to be filed and served no later than twenty days prior to the proposed effective date of the change. 46 CFR 502.67(b)(2). This provision also must be changed to conform to the proposed seven workdays' notice for tariff increases.

The ICC permits protests of tariffs filed on less than ten days' notice (including motor-water tariffs filed pursuant to 49 CFR 1312.39(h) (2) and (4)) to be submitted not later than 9 a.m. on the last workday before the tariffs' scheduled effective date. 49 CFR 1132.1(b). To be consistent with the ICC, and to give protestants the maximum amount of time for preparing protests and requests for investigation and suspension, we are proposing a similar rule for challenging tariff increases before the FMC. In addition, the proposed rule would reduce the required contents of such protests to accommodate the shorter time for preparation.

The Commission does not believe that this exemption from the statutory notice period will substantially impair effective regulation, be unjustly discriminatory, or be detrimental to commerce.

Some have argued that requiring a long notice period to increase individual rates introduces price rigidity and creates an incentive for a carrier not to cut rates. Thus, if a carrier knows that it cannot increase rates for thirty days after a rate decrease, it might be reluctant to reduce a rate in the first place. Reducing the notice period for rate increases from thirty to seven days may, therefore, prove beneficial to shippers and carriers.[7]

General rate increases would continue to require sixty days' notice and must be accompanied by the supporting data specified at 46 CFR part 552. Shippers or other persons who believe they may be harmed by these other tariff increases would not be deprived of remedies by this proposal. Protests and requests for investigation and suspension still would be available before increases become effective. Moreover, section 4 of the 1933 Act and section 22 of the Shipping Act, 1916, would continue to provide complainants with the right to obtain reparation for rates found to be unjust, unreasonable, or otherwise unlawful.

In recognition of the vital interests of offshore states, territories and possessions in ocean transportation, the Commission is also proposing that increases filed by carriers on less than 30 days' notice be transmitted to designated offshore government officials or offices by facsimile transmission, or by hand delivery, on the date of filing. This should provide several extra days for review now consumed by the process of mailing such tariff changes.

If this proposal becomes final, appropriate changes also will be made to the final rule promulgated at 46 CFR 514, implementing the Commission's automated tariff filing and information system. See e.g. § 514.9 of the September 9, 1991, Proposed Rule in FMC Docket No. 90–23 Tariffs and Service Contracts (56 FR 46044, 46071).

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980. (Pub. L. 96–511), as amended. Public reporting burden for this amendment is estimated to average twenty (20) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and

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[5] General rate increases, as defined by section 1 of the 1933 Act, would continue to be filed on sixty days' notice, to permit the thorough analysis of these increases directed by Congress in the 1978 amendments to that statute. See H.R. Rep. No. 474, 95th Cong. 1st Sess. 9 (1977); S. Rep. No. 1240, 95th Cong. 2d Sess. 12 (1978).

[6] The difficulty of defining "commodity rate increase," for example can be seen in the most recent Commission investigation and suspension of "commodity" rates in the domestic offshore trades. There, the carrier filed amendments to its tariff proposing a 2.9 percent increase in approximately 300 commodity items and rules. Puerto Rico Maritime Shipping Authority—Proposed 2.9% Rate Increase Affecting Major Commodities in the U.S. Atlantic and Gulf/Puerto Rico and Virgin Islands Trades, Docket No. 81–70, Order of Investigation and Suspension issued November 19, 1981. That proceeding was discontinued by order of December 30, 1981, upon cancellation of the proposed rate increases.

[7] *See, e.g.*, Addendum Report to the Advisory Commission on Conferences in Ocean Shipping, by Professor David A. Butz, page E–39 (1992).

841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, parts 502 and 550 of title 46, Code of Federal Regulations are proposed to be amended as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 28 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6569); and 21 U.S.C. 853a.

2. In § 502.67, paragraph (b)(2) is revised to read as follows:

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

* * * * *

(b)(1) * * *

(2) Protests against other proposed changes in tariffs made pursuant to section 3 of the Intercoastal Shipping Act, 1933, shall be filed and served not later than 9 a.m. on the last workday before the scheduled effective date of the change. Any protest may be made by letter and shall be filed with the Director, Bureau of Tariffs, Certification and Licensing, and served upon the tariff publishing officer of the carrier in accordance with subpart H of this part. Such protests shall identify the tariff in question and the grounds for opposition to the change as well as the relief sought by the protestant. A protest is deemed filed on the date it is received by the Commission.

* * * * *

PART 550—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE

3. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

4. In section 550.1, paragraph (b) is revised to read as follows:

§ 550.1 Exemptions.

* * * * *

(b) Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish:

(1) On one day's notice any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption shall not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843; and

(2) On seven workdays' notice any new or amendatory tariff matter that results in an increased cost to the shipper.

This exemption shall not apply to any increase which is part of a "general increase in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843.

* * * * *

5. In § 550.3, paragraphs (f) and (h)(2) are revised to read as follows:

§ 550.3 Filing of tariffs; general.

* * * * *

(f) Unless otherwise provided by the Commission, or this part, all tariff matter tendered for filing (including the tariffs of carriers entering a trade for the first time) shall bear an effective date which permits at least seven workdays' notice of the filing, except that any new or amendatory tariff matter that does not result in an increased cost to the shipper may be filed on not less than one day's notice. See § 550.1(b). The notice period between filing date and effective date shall commence at 12:01 a.m. of the day of filing, as evidenced by the Commission's receipt notation. The tariff may take effect at 12:01 a.m. of the 8th workday or 2nd day, as appropriate. Workdays means all days except Saturdays, Sundays, and federal holidays observed in the District of Columbia.

* * * * *

(h) * * *

(2) The governor of any state, commonwealth or territory served by a domestic offshore carrier may request a carrier in writing to furnish a designated government official or office no more than two (2) copies of any tariff matter filed by the carrier which pertains to trades affecting the state, commonwealth or territory in question. Upon receipt of such a request, the carrier shall provide promptly to the designated official or office the requested copies of its existing tariff(s) and add the official or office to its list of tariff subscribers. No charge shall be made for the service, but such officials and offices shall be treated in the same fashion as paid subscribers in all other respects. In addition, that carrier shall promptly file a rule in its applicable tarriff(s) publishing the name, address, and facsimile number of each designated official or office, along with a statement substantially as follows:

> A copy of any new or amendatory tariff matter that results in an increased cost to the shipper and that is filed on less than 30 days' notice pursuant to 46 CFR 550.1(b)(2), shall be provided to the designated government officials or offices listed in this rule, by facsimile transmission, or hand delivery, on the same day that such tariff matter is filed with the Federal Maritime Commission.

* * * * *

6. In § 550.5, paragraph (b)(9) is amended by removing the number "18" and adding, in its place, the number "19" and paragraph (b)(8) is amended by adding a new paragraph (b)(8)(xviii) reading as follows:

§ 550.5 Contents of tariffs.

* * * * *

(b) * * *

(8) * * *

(xviii) *Notice of tariff increases to designated government officials.* If a carrier chooses to take advantage of the exemption provided by subsection 550.1(b)(2) of this part, by filing tariff increases on less than 30 days notice, a rule as required by subsection 550.3(h)(2) of this part must be set forth in its tariff(s) publishing the name, address and facsimile number of each official or office designated by the governor of a state, commonwealth or territory served by that carrier and indicating that a copy of any such new or amendatory tariff matter shall be provided by facsimile transmission, or hand delivery, on the day of file, to each such official or office.

* * * * *

7. In section 550.10, paragraph (b)(5) is removed in its entirety, paragraph (b)(7) is amended by removing the words "ten days' " and adding in their place, "7 workdays';" paragraphs (b)(6) and (b)(7) are redesignated (b)(5) and (b)(6) respectively; and paragraph (b)(4) is revised to read as follows:

§ 550.10 Amendments to tariffs.

* * * * *

(b) * * *

(4) Amendments which do not result in an increased cost to the shipper, except for general rate decreases, may be posted and filed on not less than one day's notice;

* * * * *

PART 550—[AMENDED]

8. In addition to the amendments set forth above, in 46 CFR part 550, remove the words "30 days" and add, in their place, the words "7 workdays" in the following places;

(a) Section 550.3(o)(3).

(b) Section 550.10(b).
(c) Section 550.17(b)(2).
(d) Section 550.17(c).
(e) Section 550.17(e).

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-14118 Filed 6-15-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[PR Docket No. 92-125; FCC 92-231]

Authorization of Use of 406.025 MHz for Emergency Locator Transmitters (ELTs)

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This Notice of Proposed Rule Making proposes amending part 87 of its rules to authorize use of the frequency 406.025 MHz for Emergency Locator Transmitters (ELTs) on aircraft. This action is in response to a request from the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA). The proposed use of 406.025 MHz for ELTs will permit the use of digital technology, aid search and rescue personnel and give a more accurate location of the beacon.

DATES: Comments must be received on or before July 27, 1992, and reply comments on or before August 11, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James A. Shaffer, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632-7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 92-100, adopted May 22, 1992, and released June 5, 1992. The complete text of the Notice of Proposed Rule Making, including Appendices, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036

Summary of Notice of Proposed Rulemaking

1. The National Oceanic and Atmospheric Administration (NOAA) requests that the Commission amend its Aviation Services Rules (part 87) to authorize the use of the frequency 406.025 MHz for emergency locator transmitters (ELTs) on aircraft. ELTs are small battery powered transmitters carried on aircraft that are used to transmit a distress signal. Currently, only on the frequencies 121.500 or 243.000 MHz are authorized for aircraft operations. These distress signals are detected by overflying aircraft or nearby land stations if they are monitoring the distress frequency, or by low orbiting satellites that are part of an international satellite system, COSPAS/SARSAT. ELTs and other beacons operating on these frequencies use analog signals that have "blind spots" where activated beacons can not be detected by satellites.

2. The 1983 Mobile World Administrative Radio Conference for the Mobile Services allocated the 406.0-406.1 MHz band for the exclusive use of low-power, earth-to-space emergency position indicating radiobeacons. Because the 406 MHz signal is digital, it is able to be stored and retransmitted once the satellite is over a ground station. This gives the system world-wide coverage with no blind spots. The proposed use of 406.025 MHz for ELTs will permit the use of digital technology, aid search and rescue personnel and give more a accurate location of the beacon.

Procedural matters

3. This is a non-restricted notice and comment rule making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

4. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 27, 1992, and reply comments on or before August 11, 1992. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Docket's Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

5. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. The change proposed herein will have a beneficial effect on the aviation community by permitting the use of 406.025 MHz for ELTs by aircraft. These changes are voluntary and will not cause significant economic impact on any entity. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601-612 (1980).

List of Subjects in 47 CFR Part 87

Frequency allocations, Radio, communications equipment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

Part 87 of chapter 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1084-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. In § 87.133(a) the stability table is amended by adding a new entry at the end of paragraph (6) to read as follows:

§ 87.133 Frequency stability.

(a) * * *

Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations.	Tolerance[1]	Tolerance[2]
* * * * *		
(6) Band-137 to 470 MHz:		
* * * * *		

Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations	Tolerance[1]	Tolerance[2]
Emergency locator transmitters on 406 MHz	N/A	5

[1] This tolerance is the maximum permitted until January 1, 1990 for transmitters installed before January 2, 1985, and used at the same installation. Tolerance is indicated in parts in 10^6 unless shown as Hertz (Hz).

[2] This tolerance is the maximum permitted after January 1, 1985 for new and replacement transmitters and to all transmitters after January 1, 1990. Tolerance is indicated in parts in 10^6 unless shown in Hertz (Hz).

3. In § 87.137(a) the emission table is amended by adding a new entry in alphabetical order to read as follows:

§ 87.137 Types of emission.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kilohertz)		
		Below 50 MHz	Above 50 MHz	Frequency deviation
G1D	16K0G1D		20 kHz	

4. In § 87.147 paragraph (b) is amended by revising the first sentence and adding a new paragraph (e) to read as follows:

§ 87.147 Type acceptance of equipment.

(a) * * *

(b) ELTs that operate on the frequencies 121.500 mHz and 243.000 MHz that are manufactured after October 1, 1988, must meet the power output characteristics contained in paragraph 87.141(i) of this section when tested in accordance with the Signal Enhancement Test contained in subpart N, part 2 of this chapter. * * *

(e) Application for type acceptance for ELTs capable of operating on the frequency 406.025 MHz must include sufficient documentation to show that the ELT meets the requirements of § 87.199(a).

5. In § 87.173 the frequency table in paragraph (b) is amended by adding a new entry in numeric order to read as follows:

§ 87.173 Frequencies.

(b) * * *

Frequency or frequency band	Subpart	Class of station	Remarks
406.025MHz	F, G, H, I, J, K, M, O	MA, FAU, FAE, FAT, FAS, FAC, FAM, FAP.	Emergency and distress.

6. In § 87.187 existing paragraphs (m) through (aa) are redesignated (n) through (bb) and a new paragraph (m) is added to read as follows:

§ 87.187 Frequencies.

(m) The frequency 406.025 MHz is an emergency and distress frequency available for use by emergency locator transmitters. Use of this frequency must be limited to transmissions of distress and safety communications.

7. In § 87.195 paragraph (a) is amended by adding a new sentence to read as follows:

§ 87.195 Frequencies.

(a) * * * ELTs that transmit on the frequency 406.025 MHz use G1D emission.

8. A new § 87.199 is added to read as follows:

§ 87.199 Special requirements for 406.025 MHz ELTs.

(a) 406.025 MHz ELTs must meet all the technical and performance standards contained in the Radio Technical Commission for Aeronautics document titled "Minimum Operational Performance Standards 406 MHz Emergency Locator Transmitters (ELT)" Document No. RTCA/DO–204 dated September 29, 1989. This RTCA document is incorporated by reference in accordance with 5 U.S.C. 552(a). The document is available for inspection at Commission headquarters in Washington, DC or may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, 800 Independence Avenue SW., Washington, DC 20591.

(b) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.025 MHz COSPAS/SARSAT satellite system, must be programmed in each ELT unit to establish a unique identification for each ELT station. With each marketable ELT unit the manufacturer or grantee must include a postage pre-paid registration card addressed to: NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233. The registration card must include the ELT identification code and must request the owner's name, address, telephone number and type of aircraft.

(c) In addition to the identification plate or label requirements contained in §§ 2.925, 2.926 and 2.1003 of the Commission rules, each 406.025 MHz ELT must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: "It is extremely important that the owner of this 406.025 MHz ELT register NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NAOO) whose address is: NOAA, NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233."

(d) For 406.025 MHz ELTs whose identification code can be changed after manufacture, the identification code shown on the plate or label must be

easily replaceable using commonly available tools.

[FR Doc. 92-13914 Filed 6-15-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 213

Defense Federal Acquisition Regulation Supplement; Contingency Small Purchases

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for public comments.

SUMMARY: The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement to permit use of the small purchase procedures of FAR part 13 for acquisitions of up to $100,000, made outside the United States, in support of a contingency operation declared by the Secretary of Defense.

DATES: Comments on the proposed DFARS rule should be submitted in writing at the address shown below on or before July 15, 1992, to be considered in the formulation of a final rule. Please cite DAR Case 91-310.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Ms. Kathy Fenk, OUSD(A)DP(DARS), The Pentagon, Washington, DC 20301-3000. FAX (703) 697-9845.

FOR FURTHER INFORMATION CONTACT: Kathy Fenk, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

These changes implement section 805 of the FY 92 National Defense Authorization Act, which amended Section 2302(7) of title 10, United States Code. Revisions to the Defense FAR Supplement are proposed to add sections 213.000 and 213.101 to increase the small purchase threshold, up to $100,000, for any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation declared by the Secretary of Defense.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed rule only applies to purchases made and contracts awarded and performed outside the United States during contingency operations. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 92-610 in correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 213

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR part 213 be amended as follows:

PART 213—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR part 213 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

2. Section 213.00 is added to read as follows:

213.000 Scope of part.

This part also implements section 805 of Public Law 102-190 (10 U.S.C. 2302(7)) which increases the small purchase threshold to $100,000 for any acqusition to be awarded and performed outside the United States in support of a contingency operation declared by the Secretary of Defense.

3. Subpart 213.1 is added to read as follows:

Subpart 213.1—General

213.101 Definitions.

Small purchase also means an acquisition of $100,000 or less using the procedures prescribed in FAR Part 13, if the acquisition is awarded and performed outside the United States in support of a contingency operation declared by the Secretary of Defense.

[FR Doc. 92-14104 Filed 6-15-92; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 920648-2148]

RIN 0648-AE75

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). This proposed rule would remove from the regulations the detailed procedures applicable to the Gulf of Mexico Fishery Management Council (Council) and NMFS for assessing the stock and determining the allowable biological catch (ABC) of red drum; remove from the regulations language specifying that, at such time as a catch of red drum were allowed, a person landing red drum, other than from a directed commercial fishery, must comply with the landing and possession laws of the state where landed; and make other minor corrections and clarifications to the regulations. In addition, Amendment 3 would change the requirement that the procedure for stock assessments, panel reports, and setting ABC and total allowable catch (TAC) be commenced prior to October 1 every year to "prior to October 1 every other year or at such time as agreed upon by the Council and the Regional Director," Southeast Region, NMFS (Regional Director). The intended effects of this rule are to simplify the regulations by removing administrative procedures that are not applicable to the conduct of the red drum fishery; to comply with a ruling by the U.S. District Court for the District of Columbia; and to ease an unnecessarily burdensome requirement for stock assessments, panel reports, and findings regarding ABC and TAC.

DATES: Written comments must be received on or before July 31, 1992.

ADDRESSES: Comments on the proposed rule should be sent to Robert A. Sadler, NMFS, Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of Amendment 3, which includes an Environmental Assessment and a Regulatory Impact Review, may be obtained from the Gulf of Mexico

Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The red drum fishery is managed under the FMP, prepared and amend by the Council, and its implementing regulations at 50 CFR part 653 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP, as amended, and § 653.24 of the implementing regulations require annually that (1) the Science and Research Director, Southeast Fisheries Science Center, NMFS, prepare a stock assessment for the red drum fishery; (2) the Council appoint a scientific assessment group to review the Science and Research Director's report and other data and to prepare an assessment report; (3) the Council consider the reports and public comments, hold a public hearing, and, if a change in TAC is proposed, initiate an FMP amendment to set TAC within the ABC range. Amendment 3 would change the annual requirement for these procedures, commencing in 1993, to "prior to October 1 every other year or such time as agreed upon by the Council and Regional Director." The Council believes that annual assessments are unnecessarily frequent and that changes over such a brief time span are difficult to measure.

Rather than revise § 653.24 of the implementing regulations, NMFS proposes to delete the section from the regulations because the procedures (1) are purely administrative; (2) do not control the conduct of the fishery; and (3) do not constitute a framework procedure for amending the regulations—changes that may result from the procedures may only be implemented by an amendment to the FMP. The procedures would still be effective as part of the approved FMP, as amended.

In its ruling in the case of *Southeastern Fisheries Ass'n* v. *Mosbacher*, D.D.C. No. 86–1948 (August 6, 1991), the U.S. District Court for the District of Columbia held that the failure by the Secretary of Commerce (Secretary) to supersede state laws with respect to the landing of red drum taken in the EEZ was arbitrary and an abuse of discretion. The case is moot as a practical matter, because current regulations prohibit harvest or possession of red drum from the EEZ. However, the FMP and the regulations at 50 CFR 653.3(c) provide that, at such time as a TAC for red drum is specified, a person landing red drum, other than from a directed commercial red drum fishery, must comply with the landing and possession laws of the state where landed. These provisions are not in accord with the District Court's ruling. Accordingly, NMFS intends to withdraw the Secretary's approval of the provision of Amendment 1 that preserves the state landing laws and to remove 50 CFR 653.3(c). This withdrawal and removal does not preclude use by the Council and NMFS of specific state landing and possession laws in future management regimes for red drum, if it can be demonstrated that the state laws are consistent with the Federal management scheme.

NMFS also proposes to remove definitions that are no longer used in the regulations.

Additional information regarding the proposed change in the frequency of the stock assessment procedure is contained in Amendment 3, the availability of which was published in the **Federal Register** (57 FR 23199, June 2, 1992).

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 3, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) for Amendment 3, which concludes that this rule, if adopted, would reduce costs.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The red drum fishery in the exclusive economic zone is closed to all harvest, and that prohibition is expected to continue for a long-time period. Accordingly, there are no "small business entities" to be affected, and the action is not considered "significant."

The Council prepared an environmental assessment (EA) as part of Amendment 3 that discusses the impact on the environment as a result of this rule. A copy of the EA is available (see ADDRESSES) and comments on it are requested.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 653

Fisheries, Reporting and recordkeeping requirements.

Dated: June 10, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 653 is proposed to be amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 653 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 653.2 [Amended]

2. In § 653.2, the definitions for *Commercial fishing (fishery)*. *Directed commercial red drum fishing*

(fishery)", and "*Regional Director*" are removed.

§ 653.3 [Amended]

3. In § 653.3, paragraph (c) is removed.

4. In § 653.7, paragraph (d) is revised to read as follows:

§ 653.7 Prohibitions.

* * * * *

(d) Fail to release immediately with a minimum of harm a red drum caught in the EEZ; or possess a red drum in or from the EEZ, as specified in § 653.22(a).

* * * * *

§ 653.22 [Amended]

5. In § 653.22, the section heading is revised to read "*Harvest and possession limitations.*"

§ 653.24 [Removed]

6. Section 653.24 is removed.

§ 653.25 [Redesignated as § 653.24]

7. Section 653.25 is redesignated as new § 653.24.

[FR Doc. 92-14079 Filed 6-15-92; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 683

[Docket No. 920530-2130]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes a rule to extend for 6 years the moratorium on fishing in the Hancock Seamount fisheries under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific (FMP). This proposed rule is intended to ensure that fishing mortality in the exclusive economic zone (EEZ) will not contribute to further declines in the seamount groundfish stocks and may help foster a rebound of those stocks throughout their range. The seamount groundfish stocks are overfished, and if the moratorium is not extended and fishing resulted, the recovery of the stocks would be further threatened.

DATES: Comments on the proposed rule must be received on or before July 16, 1992.

ADDRESSES: Comments should be sent to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Long Beach, CA 90802. Copies of the document requesting and supporting this action and the environmental impact statement prepared for the FMP imposing the initial Hancock Seamount fishery moratorium may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, at 310-980-4034, or Alvin Katekaru, NMFS, at 808-955-8831.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Western Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce in 1986 (51 FR 27413, July 31, 1986). The FMP established a moratorium on fishing for bottomfish and seamount groundfish (mainly pelagic armorhead and alfonsin) within the Hancock Seamount subarea of the EEZ due to the severely depressed status of the stocks. It was noted at the time that the range of the stocks extends beyond the EEZ, and that action in the EEZ alone would not ensure rebuilding of the stocks. Nonetheless, it was concluded that affirmative action in the EEZ was appropriate. The moratorium was designed to last for 6 years (i.e., until August 27, 1992), after which it was hoped that stocks would have rebounded in the EEZ to permit a fishery.

The FMP also provided a framework (codified at 50 CFR 683.24) for changing the conservation and management measures through rulemaking rather than an FMP amendment.

NMFS has conducted periodic assessments of the stocks in the EEZ for the past 5 years and has concluded that the stocks have not recovered. In its annual report on the bottomfish and seamount groundfish fisheries for the 1990 fishing year, the Council's plan team indicated that the estimated current spawning potential ratio (SPR), which is a measure of the spawning biomass relative to the spawning biomass prior to the fishery, was only 2.2 percent, far below the threshhold (SPR = 20 percent) established to define overfishing for bottomfish and seamount groundfish stocks. The catch per unit effort of pelagic armorhead in research fishing was at the lowest point since research fishing began in 1985.The team recommended that the Council request that the moratorium be extended indefinitely.

At its March 1992 meeting, the Council considered the information from the team and concluded that extension of the moratorium is warranted. The Council subsequently submitted a request for NMFS to take action under the framework procedure of the FMP. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has agreed that there is a sound basis for this request and proposes to implement it.

The proposed rule would extend the moratorium on harvest of bottomfish and seamount groundfish in the EEZ through August 31, 1998. This will provide additional time for recovery of the stocks in the EEZ and may contribute to a recovery of the stocks throughout their range. NMFS will continue to monitor the status of the stocks and will advise the Council of its findings annually.

The Assistant Administrator requests public comment on this proposed rule.

Classification

This proposed rule is published under the authority of 50 CFR part 683 and was prepared at the request of the Council. The Assistant Administrator initially has determined that this proposed rule is necessary for the conservation and management of the western Pacific bottomfish and seamount groundfish fishery and is consistent with the Magnuson Act and other applicable law.

An environmental impact statement (EIS) was incorporated into the original FMP and included assessment of the impacts of the moratorium for the seamount groundfish fishery proposed and implemented at that time. There has been no change in the condition of the stocks and extension of the moratorium is within the range of alternatives considered in the EIS. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment in accordance with paragraph 6.02c.3.(f) of NOAA Administrative Order 216-6. A copy of the EIS is available from the Council (see **ADDRESSES**).

In a Biological Opinion on the original FMP, NMFS concluded that the FMP, including the moratorium on the Hancock Seamount fishery, would not jeopardize the continued existence of any species listed under the Endangered Species Act or adversely affect any critical habitat for listed species. Extension of the moratorium for 6 years will not affect any listed species or any critical habitat in a manner not analyzed in that Biological Opinion.

The Assistant Administrator initially has determined that the proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect of $100 million or

more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises. This conclusion is based on the original combined FMP/EIS, regulatory impact review, and the supplementary document prepared for this rule, which indicates that there is not now and never has been a U.S. fishery for seamount groundfish. The intent is that the moratorium will allow the seamount groundfish stocks to rebuild, providing a potential U.S. fishery in the future.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This proposed rule would continue a moratorium that has been in place for 5 years. There is no fishery in the area now and there never has been a U.S. fishery for these stocks. There is no immediate impact from this action. However, the action may result in rebuilding of the seamount groundfish stocks and provide future economic benefits to the United States.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 683

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 10,1992.

Samuel W. McKeen,

Acting Assistant Adminstrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 683 is proposed to be amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Section 683.23 is revised to read as follows:

§ 683.23 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 1998.

[FR Doc. 92–14101 Filed 6–15–92; 8:45 am]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 116
Tuesday, June 16, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Oil and Gas Leasing: Custer National Forest; Little Missouri National Grassland: Billings, Golden Valley and Slope Counties, ND; Cedar River National Grassland: Sioux and Grant Countries, ND; Grant River National Grassland: Corson and Perkins Counties, SD; Custer National Forest: Hardin Counties, SD

AGENCY: Forest Service, USDA.

ACTION: Notice; revision of notice of intent to prepare an environmental impact statement.

SUMMARY: The Notice of Intent was publish in the **Federal Register** (56 FR 29459) on Thursday June 27, 1991 that an environmental impact statement (EIS) would be prepared on the proposal to lease Federal oil and gas minerals in North and South Dakota on the Custer National Forest, including the Little Missouri, Cedar River and Grand River National Grasslands. The Notice of Intent is revised to reduce the area to be covered by that analysis, and to change the schedule for completion of the draft and final EIS.

The revised area to be covered by the analysis is the Little Missouri National Grassland in Billings, Golden Valley and Slope Counties, North Dakota, and the Cedar River National Grassland in Sioux and Grant Counties, North Dakota. The Grand River National Grassland in Corson and Perkins Counties, South Dakota, and the Custer National Forest lands in Hardin County, South Dakota, will be covered under a future environment impact statement.

Originally the draft environmental impact statement was scheduled to be released to the public on or about April 30, 1992 with the final statement to be filed by December 20, 1992. Under the current schedule, the draft environmental impact statement should be available for review in May 1993, and the final statement should be released in December 1993.

John Mumma, Regional Forester, was originally listed as the responsible official for this EIS and decision. This authority has since been delegated to the Custer National Forest. The Responsible offical is now Curtis Bates, Forest Supervisior, Custer National Forest.

DATES: June 16, 1992.

ADDRESSES: Curtis W. Bates, Forest Supervisor, Custer National Forest, P.O. Box 2556, Billings, MT 59103.

FOR FURTHER INFORMATION CONTACT: James Gray, EIS Team Leader, Custer National Forest, phone (406) 657–6361.

Dated: June 6, 1992.

[FR Doc. 92–14067 Filed 6–15–92; 8:45]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–807]

Initiation of Antidumping Duty Investigation: Crushed Limestone From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 16, 1992.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–0116.

INITIATION OF INVESTIGATION:

The Petition

On May 20, 1992, we received a petition filed in proper form by the Texas Crushed Stone Company, Parker Lafarge, Inc., and Gulf Coast Limestone, Inc. (the petitioners). Supplements to the petition were received on May 21, May 26, and June 2, 1992. In accordance with 19 CFR 353.12, the petitioners allege that crushed limestone from Mexico is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of a regional U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

We received letters dated May 22, 1992, from Vulcan Materials Company, Pioneer Concrete of Texas Inc., and The Fordyce Company, and a letter dated May 27, 1992, from Thorstenberg Materials Company, regarding the standing of petitioner to file on behalf of the industry. On June 5, 1992, the Department sent standing questionnaires to these companies. We will examine the responses to these questionnaires during the course of the investigation.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigation

The product covered by this investigation is crushed limestone from Mexico. The subject merchandise consists of all forms of crushed limestone, including limestone base—whether or not stabilized—limestone aggregate, including coarse aggregate and fine aggregate (limestone sand), and any other forms of crushed limestone. Crushed limestone is classifiable under subheading 2517.10.00.20 of the Harmonized Tariff Schedule of the United States (HTS). Specifically excluded from the scope of the investigation are limestone flux, agricultural limestone and limestone cement kiln feed, used in the manufacture of lime and cement, provided for under subheading 2521.00.00.00.6 of the HTS. Although the HTS subheadings are provided for convenience and customs purposes, our

written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Petitioners' estimate of U.S. price (USP) is based on information from domestic industry sources and is comprised of sales, bids, or offers for sale of the subject merchandise in the United States by the Mexican producer. Petitioners based USP on exporter's sales price and deducted movement charges and selling expenses. We have modified the deduction for ocean freight and marine insurance by applying the ocean freight and insurance charge into the port of Port Arthur, Texas. We examined ocean freight and insurance statistics from the U.S. Bureau of Census for entries of subject merchandise into the ports of New Orleans, Houston/ Galveston and Port Arthur. Based on its proximity to the alleged region, it appears that freight costs into the port of Port Arthur are most reasonable. We have also adjusted USP for handling. We have accepted only those U.S. prices which were reported for the period May 1991 through May 1992.

Petitioners estimated foreign market value (FMV) based on (1) a home market sales price list obtained from market research commissioned by petitioners in Mexico and (2) constructed value (CV). Petitioners made no deductions from the home market price.

For the purposes of initiation, we are not accepting petitioners' less than fair value allegations which were based on comparisons of U.S. prices and the home market price list, because the respondent allegedly has no sales in the home market and because the price list is outdated. An independent research firm included estimates of materials, labor and overhead incurred at a quarry in Mexico in its calculation of CV. The petitioners added general expenses based upon the aforementioned research firm's estimates of general and administrative and interest expenses, and the statutory minimum of eight percent profit. The Department excluded depreciation expenses on the port facilities because these expenses were incurred after the merchandise left the factory. Interest expenses were recalculated based upon the last known expenses incurred.

Based on the comparisons of both the home market price list and CV to the U.S. prices, the petitioners' alleged dumping margins for crushed limestone from Mexico range from 1.90 percent to 901.90 percent. Since we have rejected the home market price list, disallowed U.S. prices that are not contemporaneous, and made the adjustments stated above, our recalculated margins range from 2.52 percent to well over 900 percent. Our recalculated margins are based on all comparisons of USP to CV.

Initiation of Investigation

We have examined the petition on crushed limestone from Mexico and have found that the petition meets the requirements of section 732(b) of the Act and 19 CFR 353.12. Therefore, we are initiating an antidumping duty investigation to determine whether imports of crushed limestone are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by July 6, 1992, whether there is a reasonable indication that imports of crushed limestone from Mexico are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 9, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-14112 Filed 6-15-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council (Council) has established an Ad Hoc Committee (AHC) to help develop a long-term allocation plan for Pacific whiting to be in effect until the Council's proposed license limitation program takes effect. The AHC, which is composed of members from each major segment of the affected industry, will hold a public meeting on July 1, 1992, beginning at 10:00 a.m. and ending no later than 4:30 p.m. The meeting will be held in the Tualatin Room at the Columbia River Red Lion, 1401 North Hayden Island Drive, Portland, OR.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: June 10, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-14036 Filed 6-15-92; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on July 16, 1992, starting at 8:30 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA. The panel will hear presentations and recommendations by the various panel working groups on the statutes they have reviewed to date. For further information contact Laura Neal at (703) 355-2865.

Dated: June 11, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 92-14081 Filed 6-15-92; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 7, 1992; Tuesday, July 14, 1992; Tuesday, July 21, 1992; and Tuesday, July 28, 1992, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: June 11, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 92–14082 Filed 6–15–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Proposed Aggregate Mining in the Klamath River in Del Norte County, CA

AGENCY: Army Corps of Engineers (San Francisco District), Department of Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Red Rock Industries and the Coast Indian Community of Resighini Rancheria have applied for a Department of the Army (DA) permit to discharge dredged and fill material and work in the navigable waters of the United States in association with proposed aggregate mining in the Klamath River in Del Norte County, California. This river is a component of the National Wild and Scenic Rivers System. The permit application process, scoping process, and preparation of the Draft EIS will be the responsibility of the Regulatory Branch of the San Francisco District.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process, preparation of the Draft EIS, and processing of the permit application may be directed to Jennifer Vick at the Corps of Engineers (telephone 415–744–3322, ext. 225).

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps of Engineers has received an application for a Department of the Army permit from Red Rock Industries and the Coast Indian Community of Resighini Rancheria to mine aggregate resources from an overflow channel of the Klamath River in Del Norte County, California. The permit will be processed by the Regulatory Branch of the San Francisco District, Corps of Engineers pursuant to the provisions of section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act (33 U.S.C. 1344).

The purpose of the proposed project is to obtain aggregate resources for sale in the construction of the U.S. Route 101 Redwoods National Park Bypass and in meeting long-term, local needs. The applicant proposes to extract a total of 450,000 cubic yards of material from a 33-acre site over a three year period. Extraction would average 150,000 cubic yards per year.

In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.)*, the Corps has determined that the proposed action may have a significant impact on the quality of the human environment and therefore requires the preparation of an Environmental Impact Statement.

2. Alternatives

The project alternatives identified thus far include:

a. Proposed Project

The proposed project would include the extraction of a total of 450,000 cubic yards of material from a 33-acre site over a three year period. Extraction would average 150,000 cubic yards per year. This extraction would be divided into three phases. Phase one would include the removal of approximately 30,000 cubic yards of material from a natural berm at the upstream margin of the overflow channel. Phase two would consist of skimming approximately 100,000 cubic yards of material from previously unmined areas of the bar. Phase three would consist of the extraction of approximately 300,000 cubic yards of material by excavating the downstream end of the overflow channel to a depth of 15 feet below summer groundwater levels. A ten-acre temporary processing plant would be located on an adjacent upland site. This plant would include equipment for washing, screening, sorting, and crushing the aggregate as well as a sedimentation basin for the treatment of processing water. Annual cross sections would be provided to monitor aggregate extraction and recruitment. Upon completion of operations, all equipment would be removed from the site; the sedimentation basin would be filled in with gravel and graded to match the adjacent topography; and the extraction site would be graded to eliminate benches, trenches, or wells.

b. No Action Alternative

This alternative would entail no mining.

3. Scoping Process

Pursuant to the National Environmental Policy Act, as amended, agency planning for federal or federally permitted projects must include a scoping process. Scoping primarily involves determining the scope of issues to be addressed and identifying significant issues for in-depth analysis in the draft EIS. The scoping process includes public participation to integrate information regarding public needs and concerns into the environmental document.

The Corps of Engineers will hold a public scoping meeting on July 21, 1992 at 6:30 p.m. at the Coast Indian Community of Resighini Rancheria located at 151 Northeast Klamath Beach, Klamath, California 95548.

Representatives from the Corps of Engineers and Rising Sun Enterprises (the consultant preparing the EIS) will be available at this meeting to receive comments from the public regarding issues of concern that should be addressed in the environmental document.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the scoping meeting. These comments should specifically describe environmental issues or topics which the commentator believes the document should address. Written statements should be mailed no later than August 20, 1992 to the District Engineer, U.S. Army Corps of Engineers, San Francisco District, 211 Main Street, San Francisco, California, 94105 ATTN: Jennifer Vick.

a. Significant Issues

The following issues have been identified as potentially significant and will be evaluated in the Draft EIS. However, the scope of analysis is not limited to these issues.

(1) Geologic conditions.
(2) Hydrologic conditions.
(3) Erosion/sedimentation rates.
(4) Habitat for fish, other aquatic organisms, and wildlife.
(5) Pool and riffle areas (special aquatic site).
(6) Endangered species.
(7) Native American concerns.
(8) Cultural resources.
(9) Cumulative impacts.

b. Environmental Requirements

Environmental review and other consultation requirements applicable to the proposed action include:

(1) National Environmental Policy Act, as amended.
(2) National Wild and Scenic Rivers Act.
(3) Clean Water Act, as amended.
(4) Clean Air Act, as amended.
(5) National Historic Preservation Act, as amended.
(6) Fish and Wildlife Coordination Act.
(7) Endangered Species Act, as amended.
(8) Rivers and Harbors Act of 1899.
(9) California Surface Mining and Reclamation Act.
(10) California Environmental Quality Act.
(11) California Wild and Scenic River Act.

4. Availability of the EIS

The time of completion of the draft EIS is estimated to be December 1993.

Stanley G. Phernambucq,

Col, En Commanding.

[FR Doc. 92–14032 Filed 6–15–92; 8:45 am]

BILLING CODE 3710–FS–M

Notice of Availability of a Joint Draft Environmental Statement

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of Availability of a Joint Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for Deep-Draft Navigation Improvements, Los Angeles and Long Beach Harbors, San Pedro Bay, California.

SUMMARY: This Draft EIS/EIR analyzes the potential environmental impacts associated with the planned expansion of the Port of Los Angeles to efficiently accommodate projected increased cargo input and the relocation of hazardous and other facilities at the Port. The proposed action involves the dredging of navigation channels and turning basins in Los Angeles Harbor, California, and the placement of the dredged material in the harbor creating about 582 acres of new landfill to support new terminals and associated handling and storage facilities. This proposed action is consistent with pertinent local planning documents and Federal planning guidelines. While the Federal navigation improvements have been authorized by Congress (Pub. L. 99–662 and 100–676) pending the recommendations of the Chief of Engineers and the Assistant Secretary of the Army (for Civil Works), the Port is concurrently seeking approval for a Port Master Plan Amendment for the development of associated terminal facilities. Previous related planning efforts include the participation of the Port of Long Beach; however, planning efforts were refocused to emphasize proposed actions in the Port of Los Angeles after the Port of Long Beach withdrew from the process in October 1991.

This Draft EIS/EIR has been prepared to fulfill the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The overall analysis considers an array of alternative plans developed to meet the primary planning objectives of improving efficiencies in the movement of commodities through the Port in a manner which would avoid or minimize adverse impacts to the maximum extent practicable. The Proposed Action/ Recommended Plan provides for four increments of phased construction so that facilities are developed over time when forecasts indicate a need. The anticipated cumulative efforts of phased construction of the proposed action, including mitigation measures, also have been considered and addressed. Individual terminal development expected to be constructed by the Port of Los Angeles in the future will be addressed in future site-specific environmental analyses and documents consistent with the NEPA and/or CEQA, as necessary.

PUBLIC HEARING: A public hearing regarding this action is scheduled for June 29, 1992, 7 p.m., Port of Los Angeles, 425 South Palos Verdes Street, San Pedro, California.

FOR FURTHER INFORMATION CONTACT: Comments concerning the Draft EIS/EIR should be received by July 27, 1992 and should be addressed to: U.S. Army Corps of Engineers, Los Angeles District, (ATTN: Mr. Frank Piccola, CESPL–PD–RN), 300 North Los Angeles Street, Los Angeles, California 90012–2325 (213) 894–0244.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–14031 Filed 6–15–92; 8:45 am]

BILLING CODE 3710–KF–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet July 9-10, 1992, from 9:00 am to 5:00 pm, in Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding national security policy, naval strategy and related intelligence and naval research and development. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria Virginia 22302-0268, Phone (703) 756-1205.

Dated: June 5, 1992.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-14065 Filed 6-15-92; 8:45 am]

BILLLING CODE 3810-AE-F

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend nine existing systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on July 16, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, Apr. 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30393, Aug. 26, 1986
51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22671, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25363, Jul. 6, 1988
53 FR 39499, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep .29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51784, Dec. 18, 1989
54 FR 52976, Dec. 26, 1989
55 FR 21910, May 30, 1990 (Updated Navy Mailing Addresses)
55 FR 37930, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990
55 FR 47508, Nov. 14, 1990
55 FR 48678, Nov. 21, 1990
55 FR 53167, Dec. 27, 1991
56 FR 424, Jan. 4, 1991
56 FR 12721, Mar. 27, 1991
56 FR 27503, Jun. 14, 1991
55 FR 28144, Jun. 19, 1991
56 FR 31394, Jul. 10, 1991 (DOD Updated Indexes)
56 FR 40877, Aug. 16, 1991
56 FR 46167, Sep. 10, 1991
56 FR 59217, Nov. 25, 1991
56 FR 63503, Dec. 4, 1991
57 FR 2719, Jan. 23, 1992
57 FR 2726, Jan. 23, 1992
57 FR 2898, Jan. 24, 1992
57 FR 5430, Feb. 14, 1992
57 FR 9246, Mar. 17, 1992
57 FR 12914, Apr. 14, 1992
57 FR 14698, Apr. 22, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: June 10, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01001–2

SYSTEM NAME:

Naval Reserve Law Program Officer Personnel Information, (51 FR 18088, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Office of the Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals applying for appointment or transfer to the Judge Advocate General's Corps of the Naval Reserve."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Information regarding an applicant's qualifications and intentions to affiliate in Naval Reserve Law Program."

* * * * *

PURPOSE(S):

Delete entry and replace with "To publish a directory of Naval Reserve Judge Advocates' location, reserve assignment, etc. Information in the Directory is made available to Navy Judge Advocates, active and reserve, to enable them to locate and identify the legal expertise of Naval Reserve Judge Advocates in the various states with varying legal qualifications and state licenses and to permit contact between Navy Judge Advocates."

* * * * *

STORAGE:

Delete entry and replace with "File folders."

RETRIEVABILITY:

Delete entry and replace with "Name."

* * * * *

SYSTEM(S) MANAGER AND ADDRESS:

Delete entry and replace with "Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Judge Advocate General (Code 61), Department of the Navy, Room 9S05, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400.

Written requests must be signed by the requesting individual, and for personal visits, the individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "The individual."

* * * * *

N01001-2

SYSTEM NAME:

Naval Reserve Law Program Officer Personnel Information.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals applying for appointment or transfer to Judge Advocate General's Corps of the Naval Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information regarding an applicant's qualifications and intentions to affiliate in Naval Reserve Law Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806.

PURPOSE(S):

To publish a directory of Naval Reserve Judge Advocates' location, reserve assignment, etc. Information in the Directory is made available to Navy Judge Advocates, active and reserve, to enable them to locate and identify the legal expertise of Naval Reserve Judge Advocates in the various states with varying legal qualifications and state licenses and to permit contact between Navy Judge Advocates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Judge Advocate General (Code 61), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Judge Advocate General (Code 61), Department of the Navy, Room 9S05, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400.

Written requests must be signed by the requesting individual, and for personal visits, the individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01070–1

SYSTEM NAME:

JAG Corps Officer Personnel Information, (51 FR 18089, May 16, 1986).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Active Duty Officers in the Judge Advocate General's Corps, Law Education and Excess Leave Programs."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, grade, designator, date of birth, Social Security Number, date of rank, pay entry base data, active duty service date, active commission base date, year and month of graduation from Naval Justice School, service date, lineal number, year group, current billet, future billets that are finalized, sub-specialty code, number of primary and secondary dependents, spouse's name, projected loss date and reason for loss, projected rotation date, law school and year of graduation from law school, state bar membership and year admitted, officer's preference for duty assignment and postgraduate education."

* * * * *

PURPOSE(S):

Delete entry and replace with "To manage the officers of the Navy JAG Corps, as the Judge Advocate General is statutorily required to make recommendation on the assignment of all active duty JAG Corps officers; to determine qualifications of an officer to receive a JAG Corps designation and to be certified as a trial or defense counsel; to determine the rotation dates and release from active duty dates of JAG Corps officers as well as the date new officers will be available for duty; to prepare JAG Corps strength plans for submission to OPNAV; and to obtain an officer's preference for duty assignment as well as eligibility for consideration for postgraduate education and overseas assignments. Certain of this information is promulgated to all active duty JAG Corps officers in a semi-annual publication known as the Directory of Navy Judge Advocates. The information is promulgated in the directory for general informational purposes within the JAG Corps, including provision of position (billet) availability information to officers contemplating rotation."

* * * * *

STORAGE:

Delete entry and replace with "Data is maintained on personal computers and paper records filed in file folders in storage devices."

RETRIEVABILITY:

Delete entry and replace with "Name."

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Deputy Assistant Judge Advocate General (Code 61), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Code 61), Department of the Navy, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400.

Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

Personnel visits may be made to the JAG Personnel Office, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy's rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual; orders to active duty and subsequent transfer orders; and computer strips provided by the Bureau of Naval Personnel on all active duty officers."

* * * * *

N01070–1

SYSTEM NAME:

JAG Corps Officer Personnel Information.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Officers in the Judge Advocate General's Corps, Law Education and Excess Leave Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, grade, designator, date of birth, Social Security Number, date of rank, pay entry base data, active duty service date, active commission base date, year and month of graduation from Naval Justice School, service date, lineal number, year group, current billet, future billets that are finalized, sub-specialty code, number of primary and secondary dependents, spouse's name, projected loss date and reason for loss, projected rotation date, law school and year of graduation from law school, state bar membership and year admitted, officer's preference for duty assignment and postgraduate education.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806 and Executive Order 9397.

PURPOSE(S):

To manage the officers of the Navy JAG Corps, as the Judge Advocate General is statutorily required to make recommendation on the assignment of all active duty JAG Corps officers; to determine qualifications of an officer to receive a JAG Corps designation and to be certified as a trial or defense counsel; to determine the rotation dates and release from active duty dates of JAG Corps officers as well as the date new officers will be available for duty; to prepare JAG Corps strength plans for submission to OPNAV; and to obtain an officer's preference for duty assignment as well as eligibility for consideration for postgraduate education and overseas assignments. Certain of this information is promulgated to all active duty JAG Corps officers in a semi-annual publication known as the Directory of Navy Judge Advocates. The information is promulgated in the directory for general informational purposes within the JAG Corps, including provision of position (billet) availability information to officers contemplating rotation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Certain of this information (not including Social Security Number and date of birth) is promulgated to active-duty JAG Corps officers in a semi-annual publication known as the Directory of Navy Judge Advocates. The information is promulgated for general informational purposes within the JAG Corps, including provision of position (billet) availability information to officers contemplating rotation and as a social roster for official and nonofficial functions.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is maintained on personal computers and paper records filed in file folders in storage devices.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Data is maintained on personal computers and paper records filed in file folders in storage devices.

RETENTION AND DISPOSAL:

Upon release from active duty, records are kept three years and then destroyed. Upon retirement from active duty, records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Code 61), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Code 61), Department of the Navy, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400.

Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400. Personnel visits may be made to the JAG Personnel Office, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400.

CONTESTING RECORD PROCEDURES:

The Department of the Navy's rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; orders to active duty and subsequent transfer orders; and computer strips provided by the Bureau of Naval Personnel on all active duty officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01572–1

SYSTEM NAME:

Reservists Reporting for Active Duty for Training, Background Questionnaires, (51 FR 18116, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "NJAG Reserve Officer Questionnaires."

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PURPOSE(S):

Delete entry and replace with "To prepare a memorandum to the Judge Advocate General and/or Deputy Judge Advocate General on each officer who reports for active duty for training. The memorandum permits the JAG and/or Deputy JAG to familiarize himself with the officer's background. It also assists the Reserve Personnel Division to make an informed assignment of the officer during his/her training period which will enable the officer and the JAG and/or Deputy JAG to obtain maximum benefit from the officer's training period."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Reserve and Retired Personnel Programs), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Reserve and Retired Personnel Programs), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual."

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N01572–1

SYSTEM NAME:

NJAG Reserve Officer Questionnaires.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 62), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers reporting for duty in the Office of the Judge Advocate General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, designator, rank, unit to which attached, law school attended, year admitted to practice and State or Territory where admitted, and employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806.

PURPOSE(S):

To prepare a memorandum to the Judge Advocate General and/or Deputy Judge Advocate General on each officer who reports for active duty for training. The memorandum permits the JAG and/or Deputy JAG to familiarize himself with the officer's background. It also assists the Reserve Personnel Division to make an informed assignment of the officer during his/her training period which will enable the officer and the JAG and/or Deputy JAG to obtain maximum benefit from the officer's training period.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in a file cabinet.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the cabinets are located is locked outside of official working hours.

RETENTION AND DISPOSAL:

Records are retained for two months and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Reserve and Retired Personnel Programs), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Reserve and Retired Personnel Programs), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Reserve and Retired Personnel Programs), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05370-2

SYSTEM NAME:

Statements of Employment and Financial Interest, (51 FR 18154, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Financial Interest Disclosure Statements."

SYSTEM LOCATION:

Delete entry and replace with "Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals required to file DD Form 1555, SF-278, and/or DD Form 1787."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "DD Form 1555, Confidential Statement of Affiliations and Financial Interests; SF-278, Financial Disclosure Report; DD Form 1787, Report of DOD and Defense Related Employment; Position Descriptions; and related information."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; Public Law 95-521, Ethics in Government Act of 1978; Executive Order 11222; and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To permit supervisors, counselors, and other responsible DON officials to determine whether there are actual or apparent conflicts of interests between members' or employees' present and prospective official duties and their nonfederal affiliations and financial interests."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete first paragraph.

* * * * *

SAFEGUARDS:

Delete entry and replace with "Information is locked in a file cabinet accessible to authorized personnel only."

RETENTION AND DISPOSAL:

Delete entry and replace with "DD Forms 1555 and a complete record of all action taken thereon are retained for a period of six years in a central location within the command or activity to which the reporting official was assigned at the time of filing, after which they will be destroyed.

SFs-278 and DD Forms 1787 are retained for six years from the date of filing, and then destroyed unless needed for any investigation in which case they shall be held pending completion of the investigation."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Officials: General Counsel, Navy Department, Washington, DC 20360-5110 and Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400.

Record Holder: Commanding Officer or head of the organization in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual concerned, his/her supervisor, and ethics counselor."

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N05370-2

SYSTEM NAME:

Financial Interest Disclosure Statements.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals required to file DD Form 1555, SF-278, and/or DD Form 1787.

CATEGORIES OF RECORDS IN THE SYSTEM:

DD Form 1555, Confidential Statement of Affiliations and Financial Interests; SF-278, Financial Disclosure Report; DD Form 1787, Report of DOD and Defense Related Employment; Position Descriptions; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Public Law 95-521, Ethics in Government Act of 1978; Executive Order 11222; and Executive Order 9397.

PURPOSE(S):

To permit supervisors, counselors, and other responsible DON officials to determine whether there are actual or apparent conflicts of interests between members' or employees' present and prospective official duties and their nonfederal affiliations and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and card files.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Information is locked in a file cabinet accessible to authorized personnel only.

RETENTION AND DISPOSAL:

DD Forms 1555 and a complete record of all action taken thereon are retained for a period of six years in a central location within the command or activity

to which the reporting official was assigned at the time of filing, after which they will be destroyed.

SFs–278 and DD Forms 1787 are retained for six years from the date of filing, and then destroyed unless needed for any investigation in which case they shall be held pending completion of the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: General Counsel, Navy Department, Washington, DC 20360–5110 and Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332–2400.

Record Holder: Commanding Officer or head of the organization in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, his/her supervisor, and ethics counselor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05371–1

SYSTEM NAME:

Conflicts of Interest and Employment Activities, (51 FR 18154, May 16, 1986).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Office of the Judge Advocate General (Code 13), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400."

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CATEGORIES OF RECORDS IN THE SYSTEM:

In lines 18 and 19, delete the words "Navy Finance Center" and replace with "Defense Finance and Accounting Service".

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 3326, 5532; 10 U.S.C. 973, 974, 1032, 6223; 18 U.S.C. 202, 203, 205, 207, 209, 219, 281, 283; 37 U.S.C. 801; U.S. Const., Art. I, 9, cl 8; 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101."

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STORAGE:

Delete entry and replace with "File folders."

RETRIEVABILITY:

Delete entry and replace with "Name."

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain full name and be signed."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain full name and be signed."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

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N05371–1

SYSTEM NAME:

Conflicts of Interest and Employment Activities.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 13), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, reserve, or retired military personnel and present and former civilian employees of the Navy or Marine Corps who, by reason of their own inquiries or inquiries or complaints of Department of the Navy or other federal officials or other appropriate persons, have been the subject of correspondence with the Judge Advocate General concerning the legality of outside federal, state, or private employment or financial interests, dual federal employment, post-retirement employment, defense related employment, or foreign employment; acceptance of gifts, gratuities, or benefits from government contractors, foreign governments, or other sources, or other possible violations of federal conflicts-of-interest or standards-of-conduct laws or regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from, to, or concerning, individuals of the above stated category regarding their current, past, or prospective outside federal, state, or private employment; defense-related employment; post-retirement employment; foreign employment; dual federal employment; acceptance of gifts, gratuities, or benefits from government contractors, foreign governments, or other questionable sources; or other possible violations of conflicts-of-interest or standards-of-conduct laws or regulations. Additionally, such records sometimes include copies of statements of employment submitted by retired military personnel to the Defense Finance and Accounting Service and referred to the Judge Advocate General for review and further action, and copies

of investigative reports concerning suspected violations of pertinent laws or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3326, 5532; 10 U.S.C. 973, 974, 1032, 6223; 18 U.S.C. 202, 203, 205, 207, 209, 219, 281, 283; 37 U.S.C. 801; U.S. Const., Art. I, 9, cl 8; 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101.

PURPOSE(S):

Information is used as the basis for advisory opinions on the legality of employment activities, financial interests, and the related conflicts-of-interest and standards-of-conduct questions described above.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the General Accounting Office; the Department of Justice; and the Office of Personnel Management in instances of suspected violations of pertinent laws or regulations.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Files are maintained in file cabinets under the immediate control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are permanent and are retained indefinitely in the Office of the Judge Advocate General. However, after five years, name indexes are destroyed, eliminating the capability for retrieval by the names of individuals. Thereafter, they are retrievable only by topical indexes arranged according to the legal issues involved.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain full name and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain full name and be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; correspondence from federal officials and current, past, and prospective employers; other interested persons regarding possible conflicts of interest and employment activities; and by investigations pertaining to particular suspected violations. Additional information in the form of statements of employment is forwarded by officers of the Navy Finance Center to the Judge Advocate General for review and further action.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05814–1

SYSTEM NAME:

Summary Courts-Martial and Non-Bad Conduct Discharge Courts-Martial--Navy and Marine Corps, (51 FR 18170, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Summary and Non-BCD Courts-Martial Records."

SYSTEM LOCATION:

Delete entry and replace with "Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

At end of entry, add "(BCD)."

CATEGORIES OF RECORDS IN THE SYSTEM:

In lines one and two, replace "bad conduct discharge" with "BCD".

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

In line one, after "301" add ", Departmental Regulations".

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Information may be obtained from the Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400, by written request including the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400, by written request including the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contents and appealing initial determinations by the individual concern are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

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N05814–1

SYSTEM NAME:

Summary and Non-BCD Courts-Martial Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps enlisted personnel tried by summary courts-martial or by special courts-martial which did not result in a bad conduct discharge (BCD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Summary courts-martial and non-BCD special courts-martial records of trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 865; 5 U.S.C. 301, Departmental Regulations; and, Executive Order 11476 of June 19, 1969, as amended by Executive Order 11835 of January 27, 1975, paragraph 94b (Manual for Courts-Martial, 1969 (rev.)).

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 864(a) and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Type of courts-martial, date, command which convened the courts-martial, name of individual defendant, and command which completed the supervisory authority's action.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are retained for two years after final action by officers having supervisory authority over shore activities, and for three months by officers having supervisory authority over fleet activities. At the termination of the appropriate retention period, records are forwarded for storage to the National Personnel Records Center (Military Personnel Records), GSA, 9700 Page Avenue, St. Louis, MO 63132–5100. Records are destroyed 15 years after final action has been taken.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400 and appropriate officers having supervisory authority over naval activities.

NOTIFICATION PROCEDURE:

Information may be obtained from the Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400, by written request including the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400, by written request including the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contents and appealing initial determinations by the individual concern are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Proceedings of summary courts-martial and special courts-martial which did not result in a bad conduct discharge.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05880–2

SYSTEM NAME:

Admiralty Claims Files, (51 FR 18179, May 16, 1986).

CHANGES:

* * * * *

PURPOSE(S):

Delete entry and replace with "To evaluate admiralty claims asserted against the Navy for settlement."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete first paragraph.

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name of claimant or ship."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N05880-2

SYSTEM NAME:

Admiralty Claims Files.

SYSTEM LOCATION:

Office of the Judge Advocate General; Office of the Commander in Chief, United States Naval Forces Europe; Office of the Commander Sixth Fleet; and the Federal Records Center, Suitland, MD. Local commands with which claims under the Public Vessels Act and the Suits in Admiralty Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have asserted claims or instituted suits under the Public Vessels Act and Suits in Admiralty Act against the Department of the Navy in the name of the United States and all individuals who have instituted suits against third parties who have impleaded the Department of the Navy in the name of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Admiralty Claims Act (10 U.S.C. 7622); 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 310.

PURPOSE(S):

To evaluate admiralty claims asserted against the Navy for settlement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices.

RETRIEVABILITY:

Name of claimant or ship.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

RETENTION AND DISPOSAL:

Records are retained in active files until each claim is settled or litigation resulting therefrom has been concluded. Thereafter, the files are maintained within the office for two years and then retired to the Federal Records Center, Suitland, MD.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: X-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports; witnesses; and correspondence from claimants and their representatives.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05891-1

SYSTEM NAME:

Litigation Case File, (51 FR 18185, May 16, 1986).

CHANGES:

SYSTEM NAME:

At beginning of entry, add "NJAG".

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Delete entry and replace with "Individuals who may or have instituted litigation concerning matters under the cognizance of the Judge Advocate General, Department of the Navy. Excluded are cases arising in admiralty, under the Federal Tort Claims Act, and from matters under the cognizance of the Navy's General Counsel Office."

* * * * *

STORAGE:

Delete entry and replace with "Paper records in file folders."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Generally retained in office files for six years after final action, then destroyed. Specially designated files are retained for longer periods and then destroyed."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400. Written requests should include full name and be signed."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400. Written requests should include full name and be signed."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N05891-1

SYSTEM NAME:

NJAG Litigation Case File.

SYSTEM LOCATION:

Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may or have instituted litigation concerning matters under the cognizance of the Judge Advocate General, Department of the Navy. Excluded are cases arising in admiralty, under the Federal Tort Claims Act, and from matters under the cognizance of the Navy's General Counsel Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records, correspondence, pleadings, documents, memoranda, and notes relating to the litigation or anticipated litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department Regulations; 10 U.S.C. 5148; and 44 U.S.C. 3101.

PURPOSE(S):

To represent the Department of the Navy and cognizant officials in litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To U.S. Attorneys, litigants, and other parties in litigation.

To Federal and state courts to whom and which information may be provided.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Name of litigant or anticipated litigant.

SAFEGUARDS:

Records are maintained in file cabinets accessible only to persons responsible for servicing the record system in performing their official duties.

RETENTION AND DISPOSAL:

Generally retained in office files for six years after final action, then destroyed. Specially designated files are retained for longer periods and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400. Written requests should include full name and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400. Written requests should include full name and be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From all sources with information which may impact upon actual or anticipated litigation, e.g., other record systems within DON, DOD, and other agencies and departments of the Federal Government, particularly the Department of Justice; state and local governments and law enforcement agencies; counsel and parties in litigation; third parties who provide information voluntarily or in response to discovery, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06310-1

SYSTEM NAME:

Personal Injury and Illness Reports on Civilian and Govt-Service Seaman Employed on MSC Ships, (51 FR 18189, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Reports of injury/illness for personnel on MSC ships."

SYSTEM LOCATION:

Delete entry and replace with "Office of the Judge Advocate General (Code 31), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400."

* * * * *

PURPOSE(S):

Delete entry and replace with "To evaluate and settle admiralty claims asserted against the Navy."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete first paragraph.

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name of injured seaman; name of MSC ship; date of injury."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

equesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N06310–1

SYSTEM NAME:

Reports of Injury/Illness for Personnel on MSC Ships.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 31), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Injured civilian seamen and government service seamen employed by the Military Sealift Command or its contract operators for service on board MSC ships.

CATEGORIES OF RECORDS IN THE SYSTEM:

System consists of preliminary personal injury and illness reports on civilian seamen and government service seamen employed by the Military Sealift Command or its contract operators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Admiralty Claims Act (10 U.S.C. 7622); 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101.

PURPOSE(S):

To evaluate and settle admiralty claims asserted against the Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets.

RETRIEVABILITY:

Name of injured seaman; name of MSC ship; date of injury.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Reports are maintained in personal injury report file folders for a period of two years from the date of particular injury or illness and are, thereafter, destroyed at the local office level.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street Alexandria, VA 22332–2400.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Masters of Military Sealift Command ships; witnesses; medical and dental forms; and investigative reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–14083 Filed 6–15–92; 8:45am]

BILLING CODE 3810–01–F

DEPARTMENT OF EDUCATION

Chapter 1 Migrant Education Coordination Program for State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of proposed priority for Fiscal Year 1992.

SUMMARY: The Secretary proposes to amend the notice of final funding priorities for fiscal year (FY) 1992 grant competitions under the Chapter 1—Migrant Education Coordination Program for State Educational Agencies, by adding an additional absolute priority to the list of priorities that may be used in the FY 1992 competition for funds. Under the new priority, the Secretary would support projects to expand State efforts to recruit currently migratory children so that more children

can be served by the Migrant Education Program (MEP). Under this priority, funds would be reserved for State educational agencies (SEAs) whose MEP funds are insufficient to support adequate recruitment into the program of currently migratory children throughout their States, to expand their recruitment efforts, and provide services, in coordination with other States, that will benefit more currently migratory children on an interstate or intrastate basis. The Secretary also proposes a competitive preference and other considerations to direct the use of these funds.

DATES: Comments must be received on or before July 16, 1992.

ADDRESSES: All comments concerning this proposed priority should be addressed to Francis V. Corrigan, Director, Office of Migrant Education, U.S. Department of Education, room 2149, 400 Maryland Avenue, SW., Washington, DC 20202–6135.

FOR FURTHER INFORMATION CONTACT: Ann Weinheimer, Office of Migrant Education, U.S. Department of Education, room 2149, 400 Maryland Avenue, SW., Washington, DC 20202–6135. Telephone: (202) 401–0744. Deaf and hearing impaired individuals may call (202) 401–1985 or, if unavailable the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Authority for the chapter 1—Migrant Education Coordination Program for SEAs is contained in section 1203 of the Elementary and Secondary Education Act of 1965. Under this program, awards are made to SEAs to improve the interstate and intrastate coordination of educational programs available for migratory students. The statute directs the Secretary to make awards to SEAs in consultation with and with the approval of the States.

On February 28, 1991, the Secretary published in the **Federal Register** (56 FR 8610) a notice of eight final funding priorities from which the Secretary could select in conducting competitions for funds appropriated in FY 1991 and FY 1992. For FY 1991, the Secretary awarded grants under two of those priorities—a national project for a system of credit exchange and accrual and a migrant stop-over site service center—and, for FY 1992, intends to make continuation awards to these grant recipients.

Since publication of the notice of absolute priorities, migrant education officials in many States have asked the Department to determine whether section 1203 funds could be made available to enhance their efforts to recruit currently migratory children (those who have migrated across school district boundaries during the past 12 months). These officials believe that there may be significant numbers of currently migratory children residing in their States who do not benefit from the MEP because the SEAs have inadequate funds for identifying these children and recruiting them into the program. These officials have indicated that the problem is particularly acute in States with relatively small MEP formula allocations. Data provided to the Department by the Migrant Student Record Transfer System (MSRTS) also suggest that many other currently migratory children are identified in only one State, even though they crossed State boundaries.

Currently migratory children are among the Nation's neediest populations, and a more concerted effort is needed to identify and recruit these children. Large numbers of children who could benefit from the supplemental educational services that the MEP offers are never identified in any of the several States in which they reside during the year.

This priority seeks to help States to provide appropriate supplemental MEP assistance to currently migratory children, thereby helping to ensure that those children reach the higher levels of achievement called for in AMERICA 2000, the President's strategy to help the Nation move itself toward the six National Education Goals. MEP programs for preschool and school-aged children are designed to help migratory children enter school ready to learn (Goal 1), increase their high school graduation rate (Goal 2), and demonstrate competency in challenging subjects such as English, mathematics, science, history, and geography (Goal 3). In addition, MEP programs help young adults attain full literacy and increase their ability to compete in a global economy and exercise the rights and responsibilities of citizenship (Goal 5).

So that greater numbers of currently migratory children may benefit from the MEP and the assistance it provides in helping the Nation to meet these goals, the Secretary proposes this new funding priority. Under this priority, the Secretary would reserve a portion of funds available for the FY 1992 Migrant Education Coordination projects for competitive grants to SEAs whose MEP allocations are inadequate to enable them to identify and recruit all the currently migratory children who move to or pass through their States, and to expand and strengthen the capacity of States to recruit these children in ways that may yield permanent benefit while retaining a needed focus on activities that promote interstate or intrastate coordination. Publication of this notice of proposed priority follows discussions at a December 1991 meeting of the National Association of State Directors of Migrant Education (NASDME) about the need to find ways to identify and recruit more currently migratory children. At that meeting, NASDME concurred with a proposal to use section 1203 funds to support projects described in this proposed priority.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under the Migrant Education Coordination Program for SEAs for the following priority. Assuming the availability of funds, the Secretary would reserve funds under section 1203 of the Act for competitive grants to SEAs only for projects that implement this priority.

Proposed Priority

Under this priority, SEAs would compete for grants to cover the costs of supplemental efforts to identify and recruit currently migratory children who are found to be residing in their States during portions of the grant period. Funds would be made available to SEAs whose 1991–92 or 1992–93 MEP project year allocations are insufficient to permit full recruitment of currently migratory children in their States. The Secretary will consider only applications from SEAs that establish the likelihood that a State's proposed activities will address unmet national needs by increasing the number of identified currently migratory children beyond levels now permitted by its MEP allocations.

Aside from recruiting these children and entering data on them into the MSRTS, recipients would undertake activities to enhance the likelihood that currently migratory children found in one State will subsequently be identified in other States to which the children migrate, so that MEP services on an interstate or intrastate basis can become more available to these children.

At a minimum, project activities would have to include—(1) development of a plan of operation that promotes the most efficient and effective use of program funds for supplemental activities designed to recruit additional currently migratory children into the MEP under 34 CFR 201.20(a)(3) and 201.30; (2) assessment of these children's special educational needs, as required by 34 CFR 201.32 and, where possible, provision of necessary instructional or support services to them; and (3) special activities designed to enhance the likelihood that these children will continue to be recruited and served by the MEP as they migrate within the State or to other States. These special activities would include, but not be limited to—

(a) Advance notification, on the basis of information gathered during the recruitment and any follow-up interviews, to other States and localities of the locations to which the children are expected later to move and their expected dates of arrival;

(b) Communication with those other States and localities to determine whether the children made those moves and were subsequently recruited;

(c) Use of the recruitment interview to determine whether the children's families have migrated previously to the location in which they were identified, and whether they are likely to do so in the future;

(d) Development and distribution of oral and written information to parents and guardians of migratory children on the MEP and its parental involvement components, and on how to contact school officials and service agencies in all other locations to which they migrate; and

(e) Recruitment efforts planned for future years, using the SEA's allocation of MEP funds, in those areas of the State in which currently migratory children are found to be likely to return.

SEAs would be required to coordinate, to the extent possible, all recruitment and other activities with other States to or from which identified children migrate and to seek appropriate assistance from MEP coordination centers, the Chapter 1 Technical Assistance Centers and the Rural Technical Assistance Centers.

Restrictions on the Use of Project Funds

To ensure that activities funded under this priority are used to recruit migratory children whom an SEA otherwise would not identify, program funds could be used only for recruitment activities that supplement, rather than supplant, resources that the SEA otherwise would expend on the State's recruitment activities. Moreover, as activities designed to promote interstate or intrastate coordination, funds awarded under this competition could not be targeted for identifying or recruiting formerly migratory children.

Proposed Competitive Preference and Other Considerations

The Secretary also proposes to give a competitive preference under 34 CFR 75.105(c)(2) of up to 15 additional points to applicants that establish, under the selection criterion in 34 CFR 205.31(a)(2) (yielding a maximum of 25 points), the likelihood that their States' "proposed activities address unmet national needs" by increasing the number of identified currently migratory children beyond levels now permitted by their MEP allocations.

Depending on the availability of funds, the Secretary proposes to allocate up to $1.2 million from funds appropriated in FY 1992 only for projects that meet this priority. In keeping with the belief that insufficient recruitment may be particularly severe in States that receive relatively small MEP allocations, the Secretary proposes to award grants from two different applicant pools. One pool would consist of SEAs whose MEP allocations for either the 1991–92 or 1992–93 program years were $500,000 or less. Fourteen States would qualify for this pool on the basis of 1991–92 program year allocations. The other applicant pool would be open to all other SEAs. Of the total amount made available to the Secretary, up to two-thirds would be available for awards to the smaller allocation SEAs. The remainder would be available for awards to the larger allocation SEAs. The actual amounts awarded to SEAs in each pool of applicants would depend on both the total amount of funds available to fund activities that support this priority and the number and quality of applications. The Secretary believes that these procedures will permit program funds to be concentrated in States with the most limited means to recruit migratory children, and at the same time, allow SEAs with larger MEP allocations, but with a demonstrable need for additional funds with which to recruit these children, the opportunity to benefit from the program.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 2149, FOB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations 34 CFR part 205.

Program Authority: 20 U.S.C. 2783.

(Catalog of Federal Domestic Assistance Number 84.144, Chapter 1—Migrant Education Coordination Program for State Educational Agencies)

Dated: June 10, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–14055 Filed 6–15–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to American Statistical Association

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(B), it is making a discretionary financial assistance award based on acceptance of an unsolicited application under Grant Number DE–FG01–92EH89227. The purpose of the grant is to support an international conference of recognized experts on the quantitative aspects of the health effects of both ionizing and non-ionizing

radiation and on the interaction of radiation with other agents such as chemicals. This effort will have a total estimated cost of $75,000 to be provided by the DOE.

SUPPLEMENTARY INFORMATION: The grant will provide funding to the American Statistical Association (ASA) to organize and hold its "Tenth ASA Conference on Radiation and Health" at the Hyatt Regency in Hilton Head Island, South Carolina, from June 28, 1992, through July 2, 1992. The goal of this conference is to open new areas of concern such as the role other risk factors play in radiation risk and to further investigate the results and methodological techniques of some long-term studies. Additionally, the conference participants will discuss the applicability of meta-analysis in the study of radiation risks.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—the interchange and dissemination of results from studies on copromotion, residential radon, miners occupationally exposed to radon, nonionizing radiation, combined radiation and chemical exposures, and health surveillance of the DOE workforce.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach to transmitting the most current data and to developing new areas of concern. Quantitative aspects of the health effects of both ionizing and non-ionizing radiation and the interaction of radiation with other agents such as chemicals will be discussed.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, PR-322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

Richard G. Lewis, Acting Director, *Program Support Division, Office of Placement and Administration.*

[FR Doc. 92-14106 Filed 6-15-92; 8:45 am]

BILLING CODE 6750-01-M

Energy Information Administration

Forms EIA-412, 759, 826, 860, 861, and 867 (Electric Power Program Package)

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the Proposed Extension of the Forms EIA-412, 759, 826, 860, 861, and 867 (Electric Power Program Package) and solicitation of comments concerning proposed changes.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96-511, as amended, 44 U.S.C. 3501 *et seq.*), conducts a pre-survey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program ensures that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revisions and a three-year extension of approval for its electric power forms. These forms include: Form EIA-412, "Annual Report of Public Electric Utilities;" Form EIA-759, "Monthly Power Plant Report;" Form EIA-826, "Monthly Electric Utility Sales and Revenue Report with State Distributions;" Form EIA-860, "Annual Electric Generator Report;" Form EIA-861, "Annual Electric Utility Report;" and Form EIA-867, "Annual Nonutility Power Producer Report.".

DATES: Written comments must be submitted on or before July 16, 1992. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so, as soon as possible.

ADDRESSES: Send comments to John G. Colligan, Energy Information Administration (EI-521), 1000 Independence Avenue, SW., U.S. Department of Energy, Washington, DC 20585 (telephone number: 202-254-5465).

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information or copies of the forms and instructions should be directed to John G. Colligan at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Current Actions.
III. Request for Comments.

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy Organization Act (Pub. L. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate date, the EIA conducts statistical surveys that encompass each significant source of electric power, distribution and consumption activity in the United States.

II. Current Actions

The EIA proposes the following changes and improvements:

- Deleting data items no longer required;
- Adding data items for analysis;
- Improving the clarity of the instructions; and
- Improving the design of the forms.

EIA proposes a three-year extension with changes to its existing collections. These changes will have little impact on respondent burden, better reflect current industry operations and enable EIA to respond accurately to congressional, Federal and public data users' requirements. The proposed changes are summarized below:

1. Form EIA-412

To minimize burden and eliminate duplication or obsolete data, eight schedules of the Form EIA-412 have been revised.

a. Schedule I: Electric Utility Balance Sheet.

Clarified the reporting instructions for the Electric Utility Plant elements to include Nuclear Fuel assets. Uniform System Account numbers have been added as an aid in definition. The number of requested data elements on this schedule, however, remain the same.

b. Schedule II: Electric Utility Income Statement for the Year.

A data element, Other Electric Deductions, has been added to clarify the composition of Electric Utility Income.

c. Schedule III: Electric Utility Plant

A line has been added to include Nuclear Fuel to clarify the composition of Electric Utility Plants for the "Balance Beginning of Year" and the "Balance End of Year."

d. Schedule IV: Taxes, Tax Equivalents Contributions, and Services During Year

Columns "d", "Amount of Contribution/Value of Service Included in Financial Statements," and "e", "Amount of Contribution/Value of Service Not Included in Financial Statements," have been deleted as this information has limited use. This action will eliminate 24 data elements from the schedule.

e. Schedule V: Sales of Electricity for Resale

The codes required for column (b), "Sales Code Type," have been reduced from seven to three to lessen burden. The data elements, "Point of Receipt" and "Kilovolts at Which Delivered," have been replaced with "Demand Charges" and "Energy/Other Charges" to improve the financial reporting of resales.

f. Schedule VI: Electric Utility Operation and Maintenance Expenses

Changes have been made to column (c), "Maintenance Expenses" to blank out four data elements that cannot be expensed. Added to the schedule are the number of Electronic Department employees to monitor the productivity and the implementation of Financial Accounting Standards Board (FASB) 106 on post-employment benefits.

g. Schedule VII: Purchase Power

The codes required for column (6), "Purchase Code Type," have been reduced from seven to four to lessen the burden. To improve the financial reporting of purchases and exchanges, the data elements, "Point of Receipt" and "Kilovolts at Which Received," have been replaced with "Demand Charges" and "Energy/Other Charges".

h. Schedule VIII: Electric Energy Account

Reporting under "Sources of Energy," the transmission data elements have been modified to be consistent with collection efforts on the investor-owned electric utilities (FERC Form 1). Likewise, under the "Disposition of Energy," Sales for Resale have been divided into "Requirements" and "Nonrequirements" and the Energy Losses consolidated from 3 entries into "Total."

2. Form EIA–759

Changes and revisions have been made to the instructions only. The revisions clarify the instructions making them easier to read. There are no changes to the form itself or to the format.

3. Form EIA–826

Changes and revisions have been made to the instructions only. The revisions clarify the instructions making them easier to read. There are no changes to the form itself or to the format.

4. Form EIA–860

No Changes Proposed.

5. Form EIA–861

Schedule V: Demand Side Management (DSM) Information. Mandatory reporting is required of all utilities that have a DSM program. Schedule V has been modified to provide detailed DSM information on energy, load, and cost by program category and consuming sector (residential, commercial, industrial, and other). The information is collected for current year, cumulative and incremental effects. The ten year forecasts of DSM affects have been replaced by a first and fifth year projection. A checklist has been added for measurement and evaluation techniques.

6. EIA–867

Reporting requirements have been changed. Owner/operators with facility generators' total nameplate rating(s) of 1 to 5 megawatts will file a limited report annually (previously, these facilities filed every 3 years). There is no change in reporting for units of 5 megawatts and above.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension and revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form or forms your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarifications?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average (hours per response) for each of the following forms is shown below:

EIA–412=33.2 hrs.; EIA–759=1.4 hrs.; EIA–826=1.8 hrs.; EIA–860=16.1 hrs.; EIA–861=6.9 hrs.; EIA–867=2.27 hrs.

How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require to complete and submit the required form(s)?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How could the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Please be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Electric Power Program Package.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the forms; they also will become a matter of public record.

Statutory Authorities: Sections 5(a), 5(b), 13(b), and 52 of Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC June 1, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–14107 Filed 6–15–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RM84–6–037]

Refunds Resulting From Btu Measurement Adjustments

June 10, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of decision to cease collection efforts.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is ceasing efforts to recover overdue Btu refunds in 124 cases. The Commission believes that further efforts are not warranted since such efforts are not

likely to result in the payment of any Btu refunds. The cases include (1) 111 cases where the first seller cannot be located and (2) 13 cases where the first seller's assets have been liquidated during Chapter 7 bankruptcy proceedings and the company ceased operations. The Commission, however, is not waiving the refund obligation and emphasizes that a case may be reactivated and refunds may be pursued if a first seller is subsequently located.

DATE: This notice was issued June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Garry L. Penix, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0622.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, all interested persons may inspect or copy the contents of this document during normal business hours in room 3308 at the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuane Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accesssed using a personal computer with a modem by dialing (202) 208–1297. To access CIPS, set your communications software to use 300, 1200 or 2400 brand full duplex, no parity, 8 data bits, and 2 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The computer text on diskette in WordPerfect format also may be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Decision To Cease Efforts To Collect Certain Btu Refunds

June 10, 1992

Take notice that for the reasons set forth below the Federal Energy Regulatory Commission (Commission) will cease its efforts to recover overdue Btu refunds in 124 cases. The Commission believes that further efforts are not warranted since such efforts are not likely to result in the payment of any Btu refunds. The cases include (1) 111 cases where the first seller cannot be located and (2) 13 cases where the first seller's assets have been liquidated during chapter 7 bankruptcy proceedings and the company ceased operations.[1] The Commission emphasizes, however, that it is not waiving or extinguishing the Btu refund obligation. The Commission's staff will maintain a database so that it can reactivate a case if a first seller is found and if circumstances warrant pursuing payments.

Background

In 1983, the United States Court of Appeals for the District of Columbia Circuit vacated the Commission's regulations that permitted first sellers to measure the Btu content of natural gas based on the condition of the gas as delivered (the "dry rule") and required maximum lawful prices under the Natural Gas Policy Act of 1978 (NGPA) to be calculated by measuring the Btu content under the "wet" rule used under the Natural Gas Act.[2]

In Order No. 399, *et seq.*,[3] the Commission required first sellers to refund all overcharges due to using the dry rule by November 5, 1986.[4] In addition, the Commission required interstate and intrastate pipelines to file reports identifying first sellers who had not paid their Btu refunds.[5] The Commission also required interstate pipelines to flow the Btu refunds through to their customers.[6]

Order Nos. 399, *et seq.* resulted in refunds of more than $1 billion. However, pipelines reported 5,610 cases involving over $140,000,000 in unpaid Btu refunds. The Commission's staff has actively pursued payment of outstanding Btu refund obligations and has sent more than 4,000 letters directing payment of Btu refunds. As of May 1, 1992, staff's efforts have reduced the number of pending Btu refund cases to 692 with a total refund obligation of approximately $28.7 million.

[1] The names of these first sellers are set forth on appendices A and B. Since some first sellers owe refunds to more than one pipeline, the number of first seller names set forth on the appendices is less than the number of cases.

[2] *Interstate Natural Gas Association of America* v. *Federal Energy Regulatory Commission* 716 F.2d 1 (D.C. Cir. 1983), cert. denied, 465 U.S. 1108 (1984).

[3] Order No. 39, FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶30,597; Order No. 399–A FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶30,612; Order No. 399–B, FERC Stats. & Regs. [Regulation Preambles 1982–1985], ¶30,651.

[4] Btu refunds generally were required for sales made from December 1, 1978 until September 1983.

[5] The order required pipelines to file the reports by December 18, 1984, June 17, 1985 and January 5, 1987.

[6] The Commission did not impose that condition on intrastae pipelines receiving the refunds. Where a state regulatory agency regulates the intrastate pipelines within its jurisdiction, it may determine the disposition of Btu refunds received by those pipelines.

Discussion

The Commission previously ceased collection efforts in 356 Btu cases where staff could not find the first seller and 45 cases where the first seller's assets had been liquidated under Chapter 7. The Commission published notice of its decisions in the **Federal Register**.[7] In these cases, the Commission stated that it had taken every reasonable step to pursue payment of the refunds and found that expending further resources was unwarranted since no refunds were likely to be paid in those cases.

Staff's ongoing efforts have identified additional cases where expending further staff resources is unlikely to result in the payment of any refunds. Therefore, the Commission has determined to cease its collection efforts in the following cases:

I. 111 Cases Where First Sellers Cannot Be Found

Appendix A lists the first sellers in 111 pending cases where all of staff's letter directing payment of Btu refunds were returned as undeliverable. Staff sent letters to every address it obtained for each first seller from the Energy Information Administration files, the Commission user fee files, interstate and intrastate pipelines, directory assistance at the area code of the first seller's last known address, and reference books in the Commission's library. The refund obligations in these 111 cases range from $115.67 to $208,363.71; the sum of the refund obligations is $1,061,966.46.[8]

Dollar range	Number of cases	Refund obligation
$100,001–$210,000	2	$352,048.55
50,001–100,000	4	262,131.97
25,001–50,000	4	129,733.51
2,001–25,000	37	269,301.27
100–2,000	64	48,751.16

II. 13 Cases Where the First Sellers' Assets Have Been Liquidated

The assets of the first sellers listed in Appendix B were liquidated during Chapter 7 bankruptcy proceedings and the companies have ceased operations. The refund obligations in these 13 cases range from $308.54 to $45,688.12; the sum of the refund obligations is $154,700.12.[9]

[7] The notices were published in the **Federal Register** on August 6, 1990 (55 FR 32028) and February 14, 1991 (56 Fed. Reg. 6000). The notices emphasized that the Commission was not waiving or extinguishing the Btu refund obligations and that cases would be reactivated if the first sellers were subsequently located.

[8] The dollar range in these cases is as follows:

[9] The dollar range in these cases is as follows:

Dollar range	Number of cases	Refund obligation
$25,001-$50,000	3	$103,445.92
2,001-25,000	5	49,310.77
300-2,000	5	1,943.43

In consideration of the foregoing, the Commission takes the action as set forth above.

By direction of the Commission.

Lois D. Cashell,

Secretary.

Appendix A

First Sellers That Cannot Be Located

A.L. Phillips
Acadiana Reserves, Inc.
Allgood/Bramlett & Associates
Alliance Exploration Corporation
Allied Production Corporation
American Crude, Inc.
AMGO, Inc.
Arbor Petroleum Corporation
B&B Oil & Gas Company, Inc.
B&T Oil Company
Bartelleu Development
Bayside Petroleum
Berry Petroleum Corporation
Blocker Exploration Company
Bronco Energy
Byron A. Williams II
Calvert Western Exploration
Carmea, Inc.
Carr Exploration, Inc.
Century Mineral Corporation Agent for Great Southern Oil & Gas
Cola Petroleum, Inc.
Corpening Enterprises
Custom Oil Exploration, Inc.
D&S Investments, Inc.
D.W. Underwood
DAC Pipeline Company
Dalco Petroleum U.S. Ltd.
David M. Phillip
DFC Oil & Gas Company
Dunn-Mar Oil & Gas Company
Dynex Energy, Inc.
East Millsap Venture Ltd.
Ed Kirkpatrick
Edward Gerber Ancillary Administrator of Will of Nat Gerber
Elaion I.N.V. c/o Gruy Management Services
Enbloc Petroleum, Inc.
Explora Oil Corp. N.V. c/o Mineral Income
Fargo Trading Company, Inc.
Ferguson Oil Company, Inc.
Fluid Power Pump Company
Fraley Oil Company, Inc.
Freeman Oil Company
Fusulina Petroleum Corporation
Gemara Pipeline, Inc.
Gold Lake Oil Company, Inc.
Golden Eagle I
H&G
H&W Gas Systems
Holden, J.E.
Hulen H. Lemon
Integral Energy Corporation
Internationaler Energy Funds
Jade Petroleum Corporation
Jojon Petroleum Company
Kaneb Oil & Gas Company
Lanaux Walter T. Oil & Gas Properties
Lifestyle Energy Corporation
Lloyd R. Stahl
Malka Production Company
Martin Exploration Company
Martin Oil Company
Matagorda Exploration Inc./Alliance Well Service Inc.
McCabe Petroleum Corporation
Mrs. Treon Finley
Nelson, Harry E.
Nicholas Petroleum Company
Nicor Drilling Company
NRM Petroleum Corporation
OBK, Inc., KM Acc't
Odyssey Resources (fka C F I Vegas 1980)
OFT Exploration, Inc.
PCSI
Prodex Operation Company
Progress Oil Company
Reeves Resources, Inc.
Regent Oil & Gas, Inc.
Seagull Resources, Inc.
Search Drilling Company
Sooner Locaters
Steedco Limited
Steve Warren & Associates, Inc.
Stimco Oil
Sunbelt Exploration, Inc.
Sundance Oil Company
Tepco Engineering, Inc.
The Operating Company
Tri-County Oil Corporation
Tri-Ex Oil
Tulsa Gas Gathering
Twiner Oil & Gas Corporation
United Gathering, Inc.
Universal Resources Corporation
W D L Enterprises, Inc.
Washington Cty Transmission
Wicklund Petroleum Corporation
Willow Pipe Line Company

Appendix B

First Sellers Whose Assets Have Been Liquidated

Barnett Serio Exploration Company
Barnett Serio Exploration Company for OMNI Partnership
D Gridley Enterprises
Dowco Petroleum
International Continental Energy
Louisiana Bank & Trust Company
Louisiana Bank & Trust Company for Miles Oil & Gas
Marlex Oil & Minerals, Inc.
RA-Gale Ltd.
Seaco Production Company

[FR Doc. 92-14109 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-184-000]

Columbia Gas Transmission Corp.; Petition for Waiver

June 10, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 2, 1992, filed a Petition for Authorization to Grant Waiver of certain provisions of Columbia's CDS Rate Schedule and any other provisions of the Commission's Regulations that may be necessary in order for Columbia to accommodate the request of New Jersey Natural Gas Company (New Jersey Natural) to nominate Standby Service for a portion of the gas received from Columbia under the CDE Rate Schedule.

Columbia states that it has received the request of New Jersey Natural to revise appendix A of its Service Agreement to provide Standby Service at the 50% level. Standby Service was established and incorporated into Columbia's CDS Rate Schedule as a service option October, 1989, pursuant to Columbia's Global Settlement. Under this option, a CD customer desiring Standby Service may make such election at the time of execution of its Service Agreement. New Jersey Natural was not a party to the Global Settlement, and its Service Agreement was executed in August, 1989, several months prior to approval of the Global Settlement. Therefore, New Jersey Natural was not given the opportunity to nominate Standby Service at the time of the execution of its Service Agreement.

New Jersey Natural has recently requested Columbia allow it to make such election. Columbia is willing to grant to recent CDS customers, on a nondiscriminatory basis, a waiver of the requirement that such election be made at the time of execution of the Service Agreement.

Columbia states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice, on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14061 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-2-001]

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariffs

Issued June 10, 1992.

Take notice that on June 3, 1992, East Tennessee Natural Gas Company (East Tennessee) tendered for filing the following tariff sheets:

Effective May 1, 1992 (RP91-204-000 and RP90-111-000)

First Revised Volume No. 1

Substitute Twentieth Revised Sheet No. 4
Substitute Twentieth Revised Sheet No. 5

Original Volume No. 1A

Fifth Revised Sheet No. 6
Fifth Revised Sheet No. 7

Effective June 1, 1992 (TQ92-3-2)

First Revised Volume No. 1

Substitute Twenty-first Revised Sheet No. 4
Substitute Twenty-first Revised Sheet No. 5

Effective July 1, 1992 (TQ92-4-2)

First Revised Volume No. 1

Substitute Twenty-second Revised Sheet No. 4
Substitute Twenty-second Revised Sheet No. 6

East Tennessee states that on April 17, 1992, in Docket No. RP91-204-000 and RP90-111-000, East Tennessee filed a Motion For Limited Implementation of Settlement, in order to allow it to implement Article III, Section 1 of a Stipulation and Agreement filed on March 20, 1992. This portion of the settlement would allow East Tennessee to charge the settlement rates to any party that so requests in writing. On May 27, 1992, the Commission granted East Tennessee's motion contingent upon East Tennessee filing the necessary tariff sheets to put the settlement rates into effect.

East Tennessee states that on May 29, 1992, in Docket No. TQ92-3-2 East Tennessee filed an an out-of-cycle PGA to be effective June 1, 1992. East Tennessee states that it is filing substitute sheets to reflect the changes in the base tariff rates from the settlement. East Tennessee also states that it also filed on May 29, 1992 in Docket No. TQ92-4-2, its quarterly PGA to be effective July 1, 1992. East Tennessee states that it is also filing substitute sheets which reflect the base tariff rates from the settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14038 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-187-000]

Florida Gas Transmission Co.; Petition for Waiver of Tariff Provisions

June 10, 1992.

Take notice that on June 8, 1992, Florida Gas Transmission Company (FGT), pursuant to Rule 207 of the Commission rules of practice and procedure, 18 CFR 385.207, tendered for filing a petition for waiver of its FERC Gas Tariff, Second Revised Volume No. 1, Section 18 of the General Terms and Conditions to permit FGT to bill the City of Starke (Starke) for the contract year ending September 30, 1992 for volumes taken in excess of Maximum Annual Transportation Quantities (MATQ) at the commodity rate under the FTS-1 Rate Schedule rather than under Rate Schedule G or an overrun rate.

FTS states that absent the granting of the waiver, under Section 18 of FGT's tariff it would be required to bill Starke for quantities taken in excess of contract MATQs at the rate applicable for service under a sales rate or an overrun rate. FGT states that the waiver will permit FGT to bill Starke for the service scheduled within daily contractual entitlements, but in excess of MATQs at the transportation rate under Rate Schedule FTS-1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14040 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-10-4-000; TM92-16-4-000]

Granite State Gas Transmission Inc.; Proposed Changes in Rates

June 10, 1992.

Take notice that on June 5, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5309 tendered for filing with the Commission the revised tariff sheets identified below in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1992:

Fifteenth Revised Sheet No. 21
Sixth Revised Sheet No. 22

According to Granite State, its filing is the regular quarterly purchased gas cost adjustment based on projected gas costs and sales for the third quarter of 1992. It is further stated that, in addition to reflecting revised purchase costs, the sales rates include a revised Transportation Cost Adjustment based on Tennessee Gas Pipeline Company's revised Rate Schedule CGT-NE rate for the transportation service for Granite State's purchases from Boundary Gas, Inc.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a

motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14045 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-634-019]

Iroquois Gas Transmission System, L.P.; Compliance Filing

June 10, 1992.

Take notice that Iroquois Gas Transmission System, L.P. ("Iroquois"), on May 22, 1992, tendered for filing with the Federal Energy Regulatory Commission ("Commission") proposed changes in its FERC Gas Tariff, Volume No. 1. The proposed changes have been made in compliance with the Commission's May 6, 1992 Order on Rehearing in Docket Nos. CP89-634-014 and RP92-25-002 and in compliance with the Commission's May 7, 1992 Order Terminating Technical Conference in Docket Nos. RP92-25-000, RP92-25-001, and MT92-1-000.

Iroquois states that copies of the filing were served upon Iroquois' jurisdictional customers and interested state regulatory commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14046 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-5-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

June 10, 1992.

Take notice that on May 29, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective on July 1, 1992.

Sixth Revised Sheet No. 118
Fifth Revised Sheet No. 119
Fifth Revised Sheet No. 121
Fourth Revised Sheet No. 122

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of section 20 of the General Terms and Conditions to National's FERC Gas Tariff, Second Revised Volume No. 1. National further states that its pipeline-suppliers which have received approval to bill revised take-or-pay charges, as reflected in National's filing herein, are: Columbia Gas Transmission Corporation, CNG Transmission Corporation, and Transcontinental Gas Pipeline Company.

National states that copies of its filing were served upon National's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 or 211 of the Commission's rules of practice and procedure 18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14050 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT92-22-000

K N Energy, Inc.; Notice of Report of Refunds

June 10, 1992.

Take notice that K N Energy, Inc. (K N) on May 1, 1992, tendered for filing with the Commission its report of direct refunds made to its Jurisdictional Customers in accordance with the § 154.305(i) of the Commission's regulations. The regulations require direct refunds to jurisdictional customers if the credit balance in the refund subaccount exceeds the lesser of one cent per MMBtu of the actual annual sales or $2 million. K N states that K N's commodity refund subaccount exceeded the threshold in February 1992.

K N States that on April 30, 1992, K N refunded to its jurisdictional sales customers the February 29, 1992 balance of its Account No. 191 commodity refund subaccount. The refund, including carrying charges, totals $341,705. K N states that the total amount of the direct refunds, including carrying costs through April 30, is $341,705. In accordance with § 154.305(i)(2), the refund was made proportionally based on twelve months actual sales ending October 31, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 92-14042 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA92-5-000]

O'Neill Properties, Ltd., Petition of Adjustment

June 10, 1992.

Take notice that on June 2, 1992, O'Neill Properties, Ltd. (O'Neill) tendered for filing with the Commission a petition for an adjustment under Rule 1104 of the Commission's regulations for a finding that the Jurisdictional Agency determination (Corporation Commission of Oklahoma, Cause No. 13385, Order No. 359308, 15 August 1991) made under 18 CFR 274.206, in applicable retroactive to December 1, 1998, to O'Neill's Angell 1-30 well located in Major County, Oklahoma.

The Producers applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and procedure.

Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with

the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 92–14043 Filed 6–15–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RO92–186–000]

Texas Gas Transmission Corp; Petition for Limited Waiver

June 10, 1992.

Take notice that on June 5, 1992, Texas Gas Transmission Corporation (Texas Gas) hereby files a petition seeking a limited waiver of §§ 7.3 and 7.4 of its G Rate Schedule, section 8 of its GN and CDN Rage Schedules, and §§ 6.3 and 6.4 of its CD and CDL Rate Schedules, in order to allow customers served under those sales rate schedules to purchase volumes of gas in excess of their summer season billing demand D–2 quanity (D–2 quantity) through October 31, 1992, without incurring any seasonal D–2 overrun charges.

Texas Gas states that it submits the limited waiver of summer season D–2 overrun charges requested herein will allow Texas Gas to compete on an equal basis with other suppliers of gas and allow its customers to base their gas supply purchase decisions on market prices, unhindered by outdated regulatory constraints such as D–2 overrun charges.

Texas Gas requests that the Commission act upon the waiver expeditiously and seeks approval by July 1, 1992, in order to assist the supply planning decisions being made by affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken,but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the pubic reference room.

Lois D. Cashell,

Secretry.

[FR Doc. 92–14041 Filed 6–15–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–14–29–000

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

June 10, 1992.

Take notice that on June 8, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Second Revised Sheet No. 44 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to effective July 1, 1992.

Transco states that the purpose of the instant filing is to revise the fuel retention percentages applicable to firm and interruptible transportation (System Transportation) services on the Transco system. Transco states that it is proposing to reduce its currently effective System Transportation fuel retention factors by 35% in order to more closely align Transco's fuel retainage with actual fuel usage.

Transco states that copies of the filing have been mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–14039 Filed 6–15–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–13–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

June 10, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 5, 1992 Fourth Revised Third Revised Sheet No. 50 to its Third Revised Volume No. 1 of its FERC Gas Tariff which is proposed to be effective May 1, 1992.

Transco states that the purpose of the filing is to track rate changes attributable to (1) storage services purchased from Consolidated Natural Gas (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS and (2) transportation services purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The tracking filing is being made pursuant to section 4 of Transco's Rate Schedule LSS and section 4 of Transco's Rate Schedule FT–NT.

Included in Appendices B and C attached to the filing are explanations and detailed computations regarding the proposed tracking changes under Rate Schedules LSS and FT–NT. Appendix B indicates that the rate change attributable to the GSS service purchased from CNG does not result in a rate change in the bundled rates under Transco's Rate Schedule LSS.

Transco states that copies of the filing are being mailed to each of its LSS and FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protests said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14048 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-43-003]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 10, 1992.

Take notice that Williams Natural Gas Company (WNG) on June 4, 1992 tendered for filing a revision to its compliance filing made June 1, 1992, in Docket No. TA92-1-43-000, *et al.*

WNG states that the filing made June 1, 1992 contained a typographical error on Attachment B, page 1 of 8. The immediate filing is being made to correct this error.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14049 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-10-017

Williston Basin Interstate Pipeline Co.; Compliance Filing

June 10, 1992.

Take notice that on June 4, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, tendered for filing revised tariff sheets in compliance with the Commission's Order dated May 20, 1992.

The proposed effective date of the tariff sheets included in appendix A of the filing is May 20, 1992. In accordance with the requirements of the May 20, 1992 Order, additional tariff sheets were included in appendix B to reflect the Company's PGA in Docket Nos. TQ92-3-49-000 and TQ92-3-49-001 to be effective May 1, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14047 Filed 6-15-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order During the Week of June 1 Through June 5, 1992

During the week of June 1 through June 5, 1992, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: June 9, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Ernest E. Latsha, Inc., Harrisburg, PA, Reporting Requirements, LEE-0035

Ernest E. Latsha, Inc., (Latsha) filed an Application for Exception from the provision of filing Form EIA-863, entitled "Petroleum Product Sales Identification Survey." The Exception request, if granted, would permit Latsha to be exempted from filing Form EIA-863. On June 3, 1992, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 92-14111 Filed 6-15-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-81021A; FRL-4061-2]

TSCA Chemical Substance Inventory Removal of 61 Incorrectly Reported Chemical Substances from the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In an earlier notice published in the **Federal Register** of September 5, 1991 (56 FR 43920), EPA announced its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 72 chemical substances or classes of chemical substances which were believed to have been incorrectly reported and listed. Fourteen comments were received in response to the September 5, 1991 notice. EPA has determined that 11 of the chemical substances mentioned in the September 5, 1991 notice have been manufactured or imported for distribution in commerce prior to the date of the notice or require additional consideration and review by the Agency. The remaining 61 chemical substances were incorrectly reported and listed on the Inventory. The 61 chemical substances listed in this document are deleted from the TSCA Inventory as of June 16, 1992.

EFFECTIVE DATE: The 61 chemical substances listed in this document are

deleted from the TSCA Inventory as of June 16, 1992.

ADDRESSES: A record of the nonconfidential versions of these comments is available for viewing and photocopying in the TSCA Public Docket Office, Northeast Mall, Rm. G004, 401 M St., SW., Washington, DC. Documents may be viewed from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

EPA announced in the **Federal Register** of September 5, 1991 (56 FR 43920), its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 72 chemical substances which were believed to have been incorrectly reported and listed. Prior to the September 5, 1991 notice, persons who had originally reported the 72 chemical substances informed EPA that the chemical identities they reported to the Agency and included on the Inventory were incorrect. The corrected identities and in some instances, identities of additional chemical substances for these 72 chemical substances have been provided by the original submitters and added to the Agency's Master Inventory File. EPA reviewed each of these 72 chemical substances, as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No other manufacturers were found at the time. Therefore, in accordance with the established EPA policy that an erroneously or incorrectly reported chemical substance should be removed from the Inventory, EPA announced its intent to remove these chemical substances from the Inventory in the **Federal Register** of September 5, 1991 (56 FR 43920).

The **Federal Register** of September 5, 1991, solicited public comments on the proposed removal action. EPA was specifically interested in knowing whether any of the 72 chemical substances had been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulation (40 CFR 710.2), by anyone between the period of January 1, 1975 through September 5, 1991. EPA was also interested in knowing whether any person could show that any of the 72 chemicals substances could have been properly reported for the Inventory. EPA also solicited comments from anyone who believed that any of the chemical substances should not be removed from the TSCA Inventory for any reason.

EPA received 14 comments in response to the September 5, 1991 notice. Five comments pointed out that Chemical Abstracts Service Registry Numbers (CASRNs) 26375-31-5, 27306-78-1, 55850-01-6, 68440-71-1, and 68911-68-2 were among the 10 chemical substances that EPA had announced in the **Federal Register** of August 1, 1990 (55 FR 31312), to remain on the TSCA Inventory. Four comments requested that CASRNs 6222-63-5, 38613-77-3, 68554-60-9, respectively, not be removed from the Inventory. Three comments requested that "vegetable oil" (CASRN 68956-68-3) not be removed from the Inventory. One comment pointed out that the replacement CASRNs for CASRN 72245-33-1 were invalid. The valid replacement CASRNs should be 123209-70-1, 123209-71-2, and 123209-72-3. One comment inquired whether the replacement CASRN for 61951-68-2 is included in the TSCA Inventory.

II. Substances Not To Be Removed

The Agency acknowledged that inclusion of CASRNs 26375-31-5, 27306-78-1, 55850-01-6, 68440-71-1, and 68911-68-2 in the **Federal Register** of September 5, 1991 (56 FR 43920), was an error. Therefore, the Agency will not remove from the Inventory these five chemical substances.

The Agency will also retain CASRNs 6222-63-5, 38613-77-3, and 68554-60-9 on the Inventory because the submitters of the comments concerning these three chemical substances provided evidence indicating that these substances have been in commercial production or importation prior to September 5, 1991.

The Agency uncovered an error concerning CASRN 59707-20-9. This substance, which was reported by more than one original submitter during the Initial Inventory reporting period, should not have been included in the **Federal Register** of September 5, 1991 (56 FR 43920). Therefore, the Agency will retain this CASRN on the TSCA Inventory.

The CASRNs and Chemical Abstracts Service (CAS) Index Names of the aforementioned nine chemical substances not to be removed from the TSCA Inventory are as follows:

CASRN	CAS Index Name
6222-63-5	2-Naphthalenesulfonic acid, 7-(acetylamino)-3-[[4-(acetylamino)phenyl]azo]-4-hydroxy-, monosodium salt
26375-31-5	2-Propenoic acid, 2-methyl-, polymer with ethene and ethenyl acetate
27306-78-1	Poly(oxy-1,2-ethanediyl), .alpha.-methyl-.omega.-[3-[1,3,3,3-tetramethyl-1-[(trimethylsilyl)oxy]disiloxanyl]propyl]
38613-77-3	Phosphonous acid, [1,1'-biphenyl]-4,4'-diylbis-, tetrakis[2,4-bis(1,1-dimethylethyl)phenyl]ester
55850-01-6	3H-Indolium, 1,3,3-trimethyl-2-[(methylphenylhydrazono)methyl]-, chloride
59707-20-9	Phosphoric acid, monooctyl ester, compd. with 2,2'-iminobis[ethanol] (1:2)
68440-71-1	Siloxanes and Silicones, di-Me, Me 3-(oxiranylmethoxy)propyl
68554-60-9	Siloxanes and silicones, di-Me, polymers with ethylene glycol, isophthalic acid, Me Ph silsesquioxanes, terephthalic acid and trimethylolpropane
68911-68-2	Amines, C12-14-tert-alkyl, compds. with 2(3H)-benzothiazolethione

The Agency uncovered an error associated with CASRN 72828-11-6 in the **Federal Register** Notice of September 5, 1991 (56 FR43920). CASRN 72828-11-6 was intended to be listed under "CASRNs of Incorrectly Reported

Substances." However, it was inadvertently listed under the "CASRNs of Replacement Chemicals." The Agency will publish this CASRN again in a future **Federal Register** to solicit public comment on the appropriateness of its removal from the TSCA Inventory.

The Agency will temporarily retain "vegetable oil" (CASRN 68956–68–3) on the TSCA Inventory to allow EPA's Chemical Inventory Section to further evaluate the comments received. The Agency will publish in the future **Federal Register** notice the decision on whether or not the chemical substance should be removed from the Inventory.

III. Substances that are Removed from the Inventory

The Agency concluded that the remaining 61 chemical substances were not manufactured, imported, or processed for commercial purposes between January 1, 1975 and September 5, 1991, and thus are not eligible for continued inclusion on the Inventory. Therefore, Premanufacture Notification (PMN) requirements of section 5(a) of TSCA would apply to future manufacture or import of any of these 61 chemical substances. The 61 chemical substances to be removed from the Inventory are listed below in ascending CAS Registry Number sequence, and by their corresponding Chemical Abstracts Service (CAS) Index Names:

Chemical Substances Removed from the TSCA Inventory

CASRN	CAS Index Name
128–49–4	Butanedioic acid, sulfo-, 1,4-bis(2-ethylhexyl) ester, calcium salt
496–03–7	Hexanal, 2-ethyl-3-hydroxy-
922–32–7	Glycine, N-[imino(phosphonoamino)methyl]-N-methyl-, disodium salt
3343–24–6	Benzeneundecanoic acid
5988–51–2	Ethanol, 2-(dimethylamino)-, [R-(R*,R*)]-2,3-dihydroxybutanedioate (1:1) (salt)
10116–15–1	2,7-Naphthalenedisulfonic acid, 5-(acetylamino)-4-hydroxy-3-[[2-methoxy-5-[[2-(sulfooxy)ethyl]sulfonyl]phenyl] azo]-
10149–98–1	1H-Pyrazole-3-carboxylic acid, 4,5-dihydro-5-oxo-4-[[4-[[2-(sulfooxy)ethyl]sulfoxyl]phenyl] azo]1-(4-sulfophenyl)-
12002–22–1	.alpha.-D-Glucopyranoside, .beta.-D-fructofuranosyl, mono-2-propenyl ether
13147–57–4	Acetic acid, (phosphonooxy)-
25497–66–9	1,4-Benzenedicarboxylic acid, polymer with 2,2,4-trimethyl-1,6-hexanediamine and 2,4,4-trimethyl1,6-hexanediamine
25619–63–0	Benzene, dodecylphenoxy-
26898–17–9	Benzene, methylbis(phenylmethyl)-
28679–10–9	Cyclohexanedithiol, ethyl-
30260–72–1	Benzenesulfonic acid, dodecyl(sulfophenoxy)-
30260–73–2	Benzenesulfonic acid, oxybis[dodecyl-
35254–10–5	1H-Xantheno[2,1,9-def]isoquinoline-1,3(2H)-dione, 2-(2-hydroxypropyl)-5-methoxy-
38806–92–7	Phenol, 4,4'-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane and 1,1'methylene-bis[4-isocyanatobenzene]
43094–71–9	Oxirane, polymer with ethene
52609–16–2	Poly(oxy-1,2-ethanediyl), .alpha.-(2,2,6,6-tetramethyl-4-piperidinyl)-.omega.-hydroxy-
54471–98–6	2-Propenoic acid, 2-methyl-, methyl ester, polymer with N,2-dimethyl-N-(2-methyl-1-oxo-2-propenyl)-2-propenamide
55963–78–5	Benzene, 1-methoxy-4-(1-propenyl)-, (E)-, homopolymer, sulfonated, sodium salt
61951–98–2	2-Naphthalenecarboxamide, N-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-hydroxy-4-[[5-methoxy-2-methyl-4-[(methylamino) sulfonyl]phenyl]azo]-
62587–77–3	Tetradecenoic acid, 2-bromo-, methyl ester
64659–59–2	Cuprate(4-), [5-(acetylamino)-4-hydroxy-3-[[5-hydroxy-6-[[2-hydroxy-5-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-7-sulfo-2-naphthalenyl]azo]-2,7-naphthalenedisulfonato(6)]-, tetrahydrogen
65652–34–8	1,6-Hexanediol, compd. with N-butyl-N-ethyl-1-butanamine (1:2)
66272–25–1	Poly(oxy-1,2-ethanediyl), .alpha.-isododecyl-.omega.-hydroxy-, phosphate
68071–06–7	Phenol, 4,4'-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane, (Z)-2-butenedioate 2-propenoate
68084–37–7	2-Naphthalenecarboxamide, N-(2,4-dimethoxyphenyl)-3-hydroxy-7-methoxy-
68131–25–9	Soybean oil, polymer with benzoic acid, p-tertbutylphenol, formaldehyde, glycerol, isophthalic acid and pentaerythritol
68258–79–7	Nonanoic acid, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol
68298–91–9	1-Naphthalenesulfonic acid, 4-[(3-hydroxy-1-oxo-2-butenyl)amino]-
68399–92–8	Ethanol, 2,2'-[[3-chloro-4-[[4-[[2-(sulfooxy)ethyl] sulfonyl]phenyl]azo]phenyl]imino]bis-, bis(hydrogen sulfate)(ester)
68399–93–9	2,7-Naphthalenedisulfonic acid, 4-amino-6-[[2,5-dimethoxy-4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-5-hydroxy-3-[[4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-
68440–59–5	Siloxanes and Silicones, diethoxy
68440–64–2	Siloxanes and Silicones, di-Me, di-Ph, polymers with Me Ph silsesquioxanes
68442–10–4	9,12-Octadecadienoic acid (Z,Z)-, dimer, polymer with bisphenol A, carboxy-terminated acrylonitrile-butadiene polymer and epichlorohydrin
68525–97–3	Fatty acids, coco, polymers with isophthalic acid, neopentyl glycol and trimellitic anhydride

Chemical Substances Removed from the TSCA Inventory—Continued

CASRN	CAS Index Name
68541-42-4	2-Propenoic acid, 2-methyl-, telomer with ethenylbenzene, ethyl 2-propenoate and isooctyl 3-mercaptopropanoate
68554-47-2	Siloxanes and Silicones, bis(2-ethylbutyl), polymers with 2-ethylbutyl silsesquioxanes, 2-ethylbutyl-terminated
68584-48-5	Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.hydroxy-, mixed monoisooctyl and monotridecyl ethers, phosphates
68908-44-1	Sulfuric acid, mono-C10-16-alkyl esters, compds. with ethanolamine
68989-70-8	Fatty acids, C18-unsatd., dimers, polymers with C18-unsatd. alkyl amine dimers and sebacic acid
69012-02-8	Castor oil, polymer with benzoic acid, glycerol, phthalic anhydride, soybean oil and toluene
69430-45-1	Siloxanes and Silicones, di-Me, reaction products with polyethylene glycol monallyl ether and 1,1,3,3-tetramethyldisiloxane
69834-19-1	Benzene, 1,1'-oxybis[dodecyl-
69855-99-8	Furan, tetrahydro-, polymer with ammonia and 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane]
70210-28-5	Benzoic acid, 5-[[4'-[[6-amino-5-(1H-benzotriazol-5-ylazo)-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3,3'-dimethoxy[1,1'-biphenyl]-4-yl]azo]-2-hydroxy-4-methyl-, disodium salt
70693-19-5	Copper, [29H,31H-phthalocyaninato(2-)-N29,N30,N31,N32]-, aminosulfonyl[[3-[[(3,6-dichloro-4-pyridazinyl)carbonyl] amino]-4-methyl-5-sulfophenyl] amino]sulfonyl sulfo derivs.
71002-41-0	Poly(difluoromethylene), .alpha.-[2-(acetyloxy)-2-[(carboxymethyl)dimethylammonio]ethyl]-.omega.fluoro-, hydroxide, inner salt
71617-64-6	2-Propenenitrile, polymer with 1,3-butadiene, carboxy-terminated, polymers with epichlorohydrin-formaldehyde-phenol polymer
72138-97-7	Benzenesulfonic acid, 3,3'-(1,3,6,8-tetrahydro-1,3,6,8-tetraoxobenzo[lmn][3,8]phenanthroline-2,7-diyl)bis[6-[(4-amino-6-chloro-1,3,5-triazin-2-yl)amino-, disodium salt
72245-33-1	2-Propenenitrile, polymer with 1,3-butadiene, carboxy-terminated, polymer with bisphenol A diglycidyl ether homopolymer
72391-11-8	Hexanedioic acid, polymer with N-(2-aminoethyl)-1,2-ethanediamine, (chloromethyl)oxirane, 2,2-dimethyl-1,3-propanediol, 2-(methylamino)ethanol and 4,4'-(1-methylethylidene) bis[phenol] acetate (salt)
72441-90-8	Formaldehyde, polymer with 1,3-benzenedimethanamine, 4-(1,1-dimethylethyl)phenol, octylphenol and trimethyl-1,6-hexanediamine
72828-14-9	Phenol, polymer with formaldehyde, ethoxylated, polymers with ethylene oxide, propylene oxide and TDI
73398-65-9	Siloxanes and Silicones, di-Me, [(1-oxo-2-propenyl)oxy]methy group-terminated
75864-20-9	Peanut oil, polymer with maleic anhydride, phthalic anhydride, triethylene glycol and trimethylolpropane
96416-91-0	1,3-Propanediamine, N-(2-aminoethyl)-, polymer with (chloromethyl)oxirane and 1,2-dichloroethane, formate
97645-28-9	Pentaneperoxoic acid, 2,2-dimethyl-, 1-methyl-1-phenylethyl ester
97676-34-1	Oils, oak
111368-19-5	2-Propenoic acid, polymer with ethenol, sodium salt, graft

Accordingly, the 61 chemical substances listed above are deleted from the TSCA Inventory as of June 16, 1992.

Dated: June 8, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-14097 Filed 6-15-92; 8:45 am]

BILLING CODE 6560-50-F

Coastal Nonpoint Source Pollution Management Measures Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of additional information and request for comment.

SUMMARY: Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 requires EPA to publish guidance on management measures for sources of nonpoint pollution in coastal waters. The statute defines "management measures" as economically achievable measures * * * which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint control practices, technologies, processes, siting criteria, operating methods, or other alternatives. On June 14, 1991, EPA announced the availability for public review and comment of proposed guidance under this section.

Since publication of the proposed management measures guidance, EPA has investigated the economic achievability of the proposed management measures. The following reports are now available for review and comment:

- Assessment of the achievability of agicultural measures including reports on the achievability of the measures for: confined animal facilities; the erosion control management measure; and pesticide management, nutrient management, grazing management, irrigation management and the

combined impact of a variety of the agricultural management measures.

• Assessment of the achievability of the forestry measures.

• Assessment of the achievability of marinas measures.

• Assessment of the achievability of urban and hydromodification measures and measures for vegetated filter strips and wetlands.

EPA is also requesting comments on three management measures with respect to which EPA is considering significant changes from the proposed measures. EPA is not, however, seeking any additional comment on any of the other management measures and requests that commenters limit comments to the proposed changes.

DATES: Written comments should be addressed to the person listed directly below by July 16, 1992.

ADDRESSES: Comments should be sent to Ann Beier, Assessment and Watershed Protection Division (WH–553), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Copies of any or all of the listed reports are available from the above address. These documents are also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, room 2404 (rear), 401 M St. SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services. Copies of these documents are also available for review in the EPA Regional Office libraries.

FOR FURTHER INFORMATION CONTACT: Ann Beier at (202) 260–7085.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires EPA to publish (and periodically revise thereafter), in consultation with the National Oceanic and Atmospheric Administration (NOAA), the Fish and Wildlife Service, and other Federal agencies, guidance on management measures for sources of nonpoint pollution in coastal waters. These management measures are to be implemented through state coastal nonpoint pollution control programs. The statute defines management measures as: economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

EPA's proposed management measures guidance, published in June 1991, proposed measures for nonpoint source pollution from the following sources: Agriculture, silviculture, urban (including certain construction activities), marinas, and hydromodification. The proposed guidance also included general measures for vegetated filter strips and wetlands.

The proposed guidance included some information on the costs of the proposed measures but did not assess whether or not the management measures are "economically achievable". EPA requested comments on the economic achievability of the proposed measures and also solicited comments on appropriate analytic methods for EPA to apply in assessing economic achievability.

EPA received some comments noting the lack of an economic achievability analysis in the proposed guidance, but did not receive any specific suggestions on methods to assess achievability.

II. Methodology for Assessing Economic Achievability

A. Introduction

Congress did not define the term "economically achieavable" in the statute; nor did it explain the term in legislative history. However, the legislative history does indicate that the management measures approach of section 6217 is "patterned" after the "best available technology economically achievable" (BAT) approach used in the Clean Water Act for point sources.

In evaluating these management measures for economic achievability, EPA has determined that the term "economically achievable," when used in this context, should not be interpreted precisely in the same manner for the nonpoint source management measures guidance as it has been for point source BAT regulation. Specific features of the CZARA management measures guidance, provided for in the statute, as well as the nature of nonpoint source pollution itself require distinctions in the interpretation of "economically achievable."

First, the legislative history of Section 6217 indicates that state and local governments are to have considerable flexibility in the selection of management measures. Therefore, EPA is developing relatively broad management measures that are each accompanied by a number of specific practices that may be employed to achieve the management measure. EPA expects that the actual measures to be implemented by states will vary, and, because of flexibility CZARA provides for states in developing their coastal nonpoint pollution control programs, not every source will implement every management measure. Third, the nonpoint source management measures apply to a broader range of entities than the industry-specific BAT regulations. Local governments, individual farming operations, and forest managers may all be responsible for implementing management measures. Consequently, the economic achievability analysis must consider a wide variety of affected entities under a host of different scenarios. Statutory time constraints and data limitations necessitate reliance on a more limited approach than the type of exhaustive industry-wide analysis used for BAT regulations.

B. General Methodology

Given the wide variety of communities, industries and individuals potentially affected by the management measures guidance, it was necessary to use a range of methods in assessing the economic achievability of the management measures for the major source categories—agriculture, silviculture, urban (including certain construction activities), marinas, and hydromodification—and for the general measures for vegetated filter strips and wetlands. However, each analysis shares the following features.

First, each analysis identifies the classes of entities potentially affected by the management measures. Second, each analysis attempts to assess the entities' financial situations before the entities bear the cost of implementing the management measure. Third, each analysis is adjusted to reflect only the incremental costs of implementing the management measures. That is, if an entity is already required by existing authorities to implement a nonpoint source control specified by a management measure, there is no cost to the entity attributable to implementing the new management measures. Finally, change in economic well-being for the affected entities is assessed to evaluate the economic achievability of the measures. Changes in economic well being may include decreases in income, decreases in employment, significant increases in costs as a share of municipal budget, restrictions in the ability of a governmental unit to issue a bond, and other similar measures.

The actual test for economic achievability varies for the source

categories. Measures found to be unachievable under these tests will either be modified to ensure that the measure is economically achievable, or, if a less stringent, achievable alternative cannot be identified, will be excluded from the final management measures guidance.

III. Request for Comments on Economic Achievability of the Proposed Management Measures

EPA requests comments on the analysis of the economic achievability of the management measures proposed in the Section 6217(g) guidance. The agency requests additional information on costs associated with implementing the measures, on existing requirements to implement similar measures, and on the methodologies used for assessing achievability. Also, where a commenter believes that a management measure is not economically achievable, commenters are requested to recommend an alternative management measure that would, in the commenter's view, be achievable.

IV. Request for Comments on Selected Aspects of the Proposed Management Measures Guidance

EPA solicits additional public comment on the following three aspects of the proposed management measures guidance:

1. Agricultural Management Measure for Erosion and Sediment Control

EPA's proposed management measure for erosion control was the lesser of T or conservation tillage. EPA has received considerable, though not universal, negative public comment on this proposal. EPA is considering as a possible alternative, and is requesting comment on, an alternative approach that would require the minimization of the delivery of sediment from agricultural lands to receiving waters by either applying the erosion control component of a Conservation Management System (established by the U.S. Department of Agriculture on a farm-by-farm basis), *or* designing and installing a combination of management and physical practices to remove the settleable solids and associated pollutants in runoff delivered from the contributing areas for storms up to and including the 10-year, 24-hour storm.

2. Agricultural Management Measure for Confined Animal Facility Management

EPA's proposed management measure was to store the runoff from storms up to and including a 24-hour, 25-year frequency storm, prevent pollutant movement to ground water, and apply manure and runoff water that is utilized on agricultural land in accordance with the nutrient management measure. EPA's draft economic analysis on this measure indicates that this measure is not economically achievable for smaller facilities. As a result, EPA is considering, and requesting public comment on, an alternative management measure for smaller facilities. Instead of storing all runoff, this alternative management measures would be to minimize the discharge of contaminants in both facility wastewater and in runoff by using practices such as solids separation basins in combination with vegetative practices and practices that eliminate or reduce runoff.

3. Management Measure for Urban Runoff in Developing Areas

EPA is considering, and requesting public comment on, adding to the urban runoff chapter and to the marinas chapter a management measure to prevent, attenuate and treat runoff from new development sites so that the equivalent of at least 80 percent of the average annual total suspended solids (TSS) loading is removed. The basis for considering this additional measure are:

a. Several coastal States and sub-State jurisdictions (e.g., Delaware, Florida, and the Lower Colorado River Authority in Texas) already require this measure and have found it to be achievable.

b. Several practices have been demonstrated to be capable of achieving 80 percent or better removal of TSS, including wet ponds, infiltration ponds, constructed stormwater wetlands, and sand filters, as well as combinations of these and other practices.

Under EPA's proposal, actual monitoring of TSS removal rates would not be required, so long as practices are appropriately designed to meet the 80% TSS removal performance expectation.

Dated: June 8, 1992.

LaJuana S. Wilcher,

Assistant Administrator for Water.

[FR Doc. 92-14095 Filed 6-15-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public

Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Starlite Cruises (Florida), Inc. and Starlite Cruises, Inc., 1007 North American Way, Miami, Florida 33132. Vessel: TROPIC STAR II.

Dated: June 10, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-14053 Filed 6-15-92; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR, part 540, as amended: Starlite Cruises (Florida), Inc., Starlite Cruises, Inc., and Stena America Line, Inc., 1007 North American Way, Miami, Florida 33132. Vessel: TROPIC STAR II.

Dated: June 10, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-14054 Filed 6-15-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Charles R. Shipley, Jr. and Lucia H. Shipley, Rohm and Haas Company, Rohm and Haas Company	92-0953	05/26/92
Rohm and Haas Company, Charles R. Shipley, Jr. and Lucia H. Shipley, Shipley Company Inc.	92-0954	05/26/92
The 1818 Fund, L.P. LDDS Communications, Inc., LDDS Communications, Inc.	92-0955	05/26/92
The Future Now, Inc., Intelligent Electronics, Inc., Monterey-Waldec, Inc.	92-0989	05/26/92
Intelligent Electronics, Inc., The Future Now, Inc., The Future Now, Inc.	92-0990	05/26/92
Siemens Aktiengesellschaft, International Business Machines Corporation, ROLM Company	92-0956	05/27/92
Siemens Aktiengesellschaft, Siemens Aktiengesellschaft, ROLM Company	92-0964	05/27/92
The Morgan Stanley Leveraged Equity Fund II, L.P., BASF AG, BASF AG	92-0999	05/27/92
The Rouse Company, Metropolitan Life Insurance Company, Echelon Mall Joint Venture	92-1011	05/27/92
Standard Commercial Corporation, W.A. Adams Company, Inc., W.A. Adams Company, Inc.	92-0969	05/28/92
Selective Insurance Group, Inc., Niagara Exchange Corporation, Niagara Exchange Corporation	92-0895	05/29/82
Aurora Health Care, Inc., Sheboygan Memorial Hospital, Inc., Sheboygan Memorial Hospital, Inc.	92-0937	05/29/92
Computer Associates International, Inc., Barry G. Rebell Nantucket Corporation	92-0962	05/29/92
The Elder-Beerman Stores Corp., H.C. Prange Company, H.C. Prange Company	92-0979	05/29/92
Edwards Dunlop and Company Limited, The Meade Corporation Seaboard Paper Company	87-1488	05/30/98
The Atlantic Foundation, LEGENT Corporation, LEGENT Corporation	92-0917	06/01/92
Aoki Corporation, The Equitable Life Assurance Society of the U.S., The Equitable Life Assurance Society of the U.S.	92-0991	06/01/92
HMC/Neodata, L.P., Wiland Services, Inc., Wiland Services, Inc.	92-1004	06/01/92
Northern States Power Company, National Westminster Bank Plc., National Westminster Bank Plc.	92-1005	06/01/92
Willy R. Strothotte, Willy R. Strothotte, Ravenswood Aluminum Corporation	92-1017	06/01/92
Nucorp, Inc., Surewest Financial Corp., Surewest Financial Corp.	92-1019	06/01/92
ComputerLand Corporation, TRW, Inc., TRW, Inc.	92-1020	06/01/92
Societe BIC S.A., Wite-Out Products, Inc., Wite-Out Products, Inc.	92-1021	06/01/92
Thermo Electron Corporation, United Technologies Corporation, FES, Inc.	92-1022	06/01/92
Merry-Go-Round Enterprises, Inc., Reitmans (Canada) Limited, Worths Stores Corp.	92-1038	06/01/92
Estate of Dr. Albert Reimann, Pfizer Inc., Pfizer Inc.	92-0932	06/03/92
Corporate Offshore Partners, L.P., Continental Cablevision, Inc., Continental Cablevision, Inc.	92-0939	06/03/92
Corporate Partners, L.P., Continental Cablevision, Inc., Continental Cablevision, Inc.	92-0940	06/03/92
Corporate Offshore Partners, L.P., Continental Cablevision, Inc., Continental Cablevision, Inc.	92-0942	06/03/92
Corporate Partners, L.P., Continental Cablevision, Inc., Continental Cablevision, Inc.	92-0943	06/03/92
Media/Communication Partners Limited Partnership, George D. Lilly, SJL of Michigan Corp.	92-0971	06/03/92
General Electric Company, First Interstate Bancorp., First Interstate Bank of California	92-1032	06/03/92
Archer-Daniels-Midland Company, Lonnie A. Pilgrim, Pilgrim's Pride Corporation	92-1036	06/03/92
Beneficial Corporation, Green Capital Investors, L.P., Rhodes, Inc. and Rhodes Financial Services Corp.	92-1016	06/04/92
First Financial Management Corporation, BankAmerica Corporation, Summit Information Systems Corporation	92-1035	06/04/92
The Southern Company, Rosenberg Real Estate Equity Fund-III, Granada Village and Ygnacio Plaza Shopping Centers	92-1030	06/05/92
Karl Eller, Gannett Co., Inc., Gannett Outdoor Co. of Arizona	92-1045	06/05/92
General Dynamics Corporation, Aker A.S. (incorporated in Norway), Continental Cement Company	92-1046	06/05/92
General Dynamics Corporation, Euroc AB (incorporated in Sweden), Continental Cement Company	92-1047	06/05/92
The Prudential Insurance Company of America, Sylvan S. Shulman, The Plaza at West Covina	92-1049	06/05/92
The Prudential Insurance Company of America, Linda Schrobilgen, The Plaza at West Covina	92-1050	06/05/92
The Prudential Insurance Company of America, Michael Shulman, The Plaza at West Covina	92-1051	06/05/92
John W. Stanton, Cellular Information Systems Inc., C.I.S. of Billings, Inc.	92-1053	06/05/92
Toufic Aboukhater, The Henley Group, Inc., Abex Inc.	92-1070	06/05/92

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Renee A. Horton, Contact Representatives
Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, D.C. 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-14086 Filed 6-15-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3231]

NME Hospitals, Inc., d/b/a Continent Ostomy Center; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the California-based hospital chain from misrepresenting the comparative efficacy, permanence, or likely complications of any reconstructive surgical procedure, and would require that the respondent base future claims about the efficacy, permanence, or likely complications of any surgical procedure used in the treatment of bowel-related diseases on competent and reliable scientific evidence that substantiates any such representation.

DATES: Comments must be received on or before August 17, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Katz, FTC/H-200, Washington, DC 20580. (202) 326-3123.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited.

Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of NME Hospitals, Inc., d/b/a Continent Ostomy Center ("NME Hospitals"), a corporation, and it now appearing that NME Hospitals, sometimes referred to as proposed respondent or respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed By and between NME Hospitals, by its duly authorized officer, and its counsel, and counsel for the Federal Trade Commission that:

1. Proposed respondent NME Hospitals is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2700 Colorado Avenue, Santa Monica, California 90404.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the attached draft complaint and the following order. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports to monitor respondent's compliance with this agreement and order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

For purposes of this Order, the following definition shall apply:

"Competent and reliable scientific evidence" shall mean tests, analysis, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

I.

It is ordered That respondent NME Hospitals, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale or sale of services relating to the treatment of ulcerative colitis and other bowel-related diseases, do forthwith cease and desist from:

A. Representing in any manner, directly or by implication, that respondent's surgical procedure—the Barnett ileostomy—for the treatment of ulcerative colitis and other bowel-related diseases is superior to other surgical procedures used as alternatives to a conventional ileostomy, unless such is the case, or otherwise misrepresenting the efficacy of the Barnett ileostomy as compared to any other surgical procedure used in the treatment of bowel-related diseases.

B. Misrepresenting in any manner, directly or by implication, that patients who had received a Barnett ileostomy have not experienced slippage or leakage problems, or otherwise misrepresenting complications following the Barnett ileostomy procedure, or any other surgical procedure used in the treatment of bowel-related diseases.

C. Representing in any manner, directly or by implication, that there is over a 50 percent chance that patients who receive an ileoanal anastomosis will need corrective surgery, or otherwise misrepresenting the need for corrective surgery for any procedure used in the treatment of bowel-related diseases.

D. Misrepresenting in any manner, directly or by implication, that respondent's clinical experience shows that the incidence of valve slippage and reoperation for the Barnett ileostomy is substantially less than that for the surgical procedure commonly referred to as the "Kock procedure," or otherwise misrepresenting its clinical experience with complications following any other surgical procedure used in the treatment of bowel-related diseases.

E. Making any representation, directly or by implication, about the efficacy, permanence, or likely complications of any surgical procedure used in the treatment of bowel-related diseases unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates any such representation.

II.

It is ordered That respondent NME Hospitals, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection

with the advertising, promotion, offering for sale or sale of services relating to "reconstructive surgery," cease and desist from misrepresenting, directly or by implication, the efficacy, permanence, or likely complications of any of respondent's "reconstructive surgical procedures" as compared to the efficacy, permanence, or likely complications of any other surgical procedure. For purposes of this Order provision, "reconstructive surgery" or "reconstructive surgical procedures" are those surgical procedures listed on Attachment A which is appended to this Order.

III.

It is further ordered That respondent shall maintain for a period of five (5) years after the date the representation was last made, and make available to the Federal Trade Commission upon request for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this Order, and all test reports, studies, or information in their possession or control that contradict, qualify or call into question any such representation.

IV.

It is further ordered That, for a period of five years after the date of entry of this order, respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in respondent which may affect compliance obligations arising out of this order.

V.

It is further ordered That respondent NME Hospitals, Inc., a corporation, and its successors or assigns, shall forthwith distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees who are engaged in the preparation and placement of advertisements or promotional materials, who communicate with patients or prospective patients, or who have any responsibilities with respect to the subject matter of this Order; and, for a period of five (5) years from the date of entry of this Order distribute same to all of respondent's future officers, agents, representatives, independent contractors and employees having said responsibilities.

It is further ordered That respondent shall, within (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all requirements of this Order.

Attachment A—

RECONSTRUCTIVE SURGICAL PROCEDURES

ICD–CM Procedure codes	Procedure
	Nervous system
0204	Bone graft to skull.
0205	Insert of skull plate.
0212	Repair of cerebral meninges (includes graft).
022	Ventriculostomy (includes valve/shunt insertion).
0231	Ventricular shunt to structure in head and neck.
0232	Ventricular shunt to circulatory system.
0233	Ventricular shunt to thoracic cavity.
0234	Ventricular shunt to abdominal cavity and organs.
0235	Ventricular shunt to urinary system.
0239	Operation to Establish drainage of ventricle.
0242	Replacement of ventricular shunt.
0293	Implantation of intracranial neurostimulator.
0294	Insertion/replacement of skull tongs/halo traction device.
0371	Spinal subarachnoid-peritoneal shunt.
0372	Spinal subarachnoid-ureteral shunt.
0379	Shunt of spinal theca.
0390	Insertion of catheter into spinal canal for infusion of therapeutic/palliative substances.
0393	Insertion or replacement of spinal neurostimulator.
0395	Spinal blood patch.
045	Cranial/peripheral nerve graft.
0492	Implantation/replacement of peripheral neurostimulator.
	Endocrine system
0694	Thyroid tissue reimplanation.
0695	Parathyroid tissue reimplantation.
0745	Reimplantation of Adenal tissue.
0794	Transplantation of thymus.
	Eye
0861	Reconstruction of eyelid with skin flap graft.
00862	Reconstruction of eyelid with mucous membrane flap/graft.
0863	Reconstruction of eyelid with hair follicle graft.
0869	Reconstruction of eyelid with flap/graft.
0944	Intubation of nasolacrimal duct.
0983	Conjunctivorhinostomy with insertion of tube/stent.
1041	Repair of symblepharon with free graft.
1042	Reconstruction of conjunctival cul-de-sac with free graft.
1044	Free graft to conjunctiva.
	Eye
1132	Excision of pterygium with corneal graft.
1153	Repair of corneal laceration/wound with conjunctival flap.
1160	Corneal transplant, not otherwise specified.
1162	Lamellar keratoplasty.
1164	Penetrating keratoplasty.
1169	Corneal transplant.
1172	Keratophakia.
1173	Keratoprosthesis.
1176	Epikeratophakia.
1285	Repair of scleral staphyloma with graft.
1287	Scleral reinforcement with graft.

RECONSTRUCTIVE SURGICAL PROCEDURES—Continued

ICD–CM Procedure codes	Procedure
1292	Injection into anterior chamber.
1371	Insertion of intraocular lens prosthesis at time of cataract extraction (one-stage).
1370	Insertion of pseudophakos, unspecified.
1372	Secondary insertion of intraocluar lens prosthesis.
1441	Scleral buckling with implant.
1449	Scleral buckling (with virtrectomy).
1475	Injection of vitreous substitute.
1631	Removal of ocular contents with synchronous implant.
1641	Eyeball enucleation with synchronous implant into tenon's capsule; attachment of muscles.
1642	Eyeball enucleation with synchronous implant.
1661	Secondary insertion of ocular implant.
1662	Revision & reinsertion of ocular implant.
1663	Revision of enculeation socket with graft.
1665	Secondary graft to exenteration cavity.
	Ear
186	Reconstruction of external auditory canal.
1871	Construction of auricle of ear.
1911	Stapedectomy with incus replacement.
1921	Revision of stapedectomy with incus replacement.
1952	Type II tympanoplasty.
1953	Type III tympanoplasty.
1954	Type IV tympanoplasty.
1955	Type V tympanoplasty.
2001	Myringotomy with insertion of tube.
2061	Fenestration of inner ear (initial).
2071	Endolymphatic shunt.
208	Operations on eustachian tube (includes insertion of catheter or tube).
2095	Implantation of electromagnetic hearing device.
2096	Implantation of cochlear prosthetic device, not otherwise specified.
2097	Implantation or replacement of cochlear prosthetic device, single channel.
2098	Implantation or replacement of cochlear prosthetic device, multiple channel.
	Nose, mouth, pharynx
2107	Control of epistaxis by excision of nasal mucosa & skin graft of septum/lateral nasal wall.
2185	Augmentation rhinoplasty.
242	Gingivoplasty.
245	Alveoloplasty.
247	Application of orthodontic appliance.
2755	Full-thickness skin graft to lip & mouth.
2756	Skin graft to lip & mouth.
	Respiratory system
3175	Reconstruction of trachea & construction of artificial larynx.
3193	Replacement of laryngeal/tracheal stent.
3485	Implantation of diaphragmatic pacemaker.
	Cardiovascular [2]
3520	Replacement of unspecified heart valve.
3521	Replacement of aortic valve with tissue graft.
3522	Replacement of aortic valve.
3523	Replacement of mitral valve with tissue graft.
3524	Replacement of mitral valve.
3525	Replacement of pulmonary valve with tissue graft.
3526	Replacement of pulmonary valve.
3527	Replacement of tricuspid valve with tissue graft.

RECONSTRUCTIVE SURGICAL PROCEDURES—Continued

ICD–CM Procedure codes	Procedure
3528	Replacement of tricuspid valve.
3550	Repair of unspecified septal defect of heart with prosthesis.
3551	Repair of atrial septal defect with prosthesis, open technique.
3552	Repair of atrial septal defect with prosthesis, closed technique.
3553	Repair of ventricular septal defect with prosthesis.
3554	Repair of endocardial cushion defect with prosthesis.
3560	Repair of unspecified septal defect of heart with tissue graft.
3561	Repair of atrial septal defect with tissue graft.
3562	Repair of ventricular septal defect with tissue graft.
3563	Repair of endocardial cushion defect with tissue graft.
3595	Revision of corrective procedure on heart (includes replacement of heart valve).
3603	Open chest coronary angioplasty (with patch graft).
3610	Aortocoronary bypass for heart revascularization, not otherwise specified.
3611	Aortocoronary bypass of one coronary artery.
3612	Aortocoronary bypass of two coronary arteries.
3613	Aortocoronary bypass three coronary arteries.
3614	Aortocoronary bypass of four or more coronary arteries.
3615	Single internal mammary-coronary artery bypass.
3616	Double internal mammary-coronary artery bypass.
3619	Other bypass anastomosis for heart revascularization.
362	Heart revascularization by arterial implant.
375	Heart transplantion.
3761	Implant of pulsation balloon.
3762	Implant of heart assist system.
3763	Replacement and repair of heart assist system.
3770	Initial insertion of pacemaker lead (electrode), unspecified.
3771	Initial insertion of travsvenous lead (electrode) into ventricle.
3772	Initial insertion of transvenous leads (electrodes) into atrium and ventricle.
3773	Initial insertion of transvenous lead (electrode) into atrium.
3774	Insertion of replacement of epicardial lead (electrode) into epicardium.
3776	Insertion of transvenous atrial/ventricular lead(s) (electrode).
3778	Insertion of temporary transvenous pacemaker system.
3780	Insertion of permanent pacemaker, initial or replacement type of device unspecified.
3781	Initial insertion of single-chamber device, not specified as rate responsive (to physiologic stimuli).
3782	Initial insertion of single-chamber device, rate responsive.
3783	Initial insertion of dual-chamber device.
3785	Replacement of any type of pacemaker device with single-chamber device, not specified as rate responsive.
3786	Replacement of any type of pacemaker device with single-chamber device, rate responsive.
3787	Replacement of any type of pacemaker device with dual-chamber device.
3794	Implantation/replacement of automatic cardioverter/defibrillator, total system (AICD).
3795	Impantation of automatic cardioverter/defibrillator lead(s) only.
3796	Impantation of automatic cardioverter/defibrillator pulse generator only.
3797	Replacement of automatic cardioverter/defibrillator lead(s) only.
3798	Replacement of auttomatic cardioverter/defibrillator pulse generator only.
3840	Resection of vessel with replacement, unspecified site.
3841	Resection of vessel with replacement, intracranial vessel.
3842	Resection of vessel with replacement, vessel of head & neck.
3843	Resection of vessel with replacement, upper limb vessel.
3844	Resection of vessel with replacement, abdominal aorta.
3845	Resection of vessel with replacement, thoracic vessel (AORTA).
3846	Resection of vessel with replacement, abdominal artery.
3847	Resection of vessel with replacement, abdominal vein.
3848	Resection of vessel with replacement, lower limb artery.
3849	Resection of vessel with replacement, lower limb vein.
387	Interruption of the vena cava (includes with implant or sieve).
3895	Venous catheterization for renal dialysis.
3956	Repair of blood vessel with tissue patch graft.
3957	Repair of blood vessel with synthetic patch graft.
3958	Repair of blood vessel with unspecified type of patch graft.
3964	Intraoperative cardiac pacemaker.
398	Operations of carotid body and other vascular bodies.
3993	Insertion of vessel-to-vessel cannula.
	hemic/lympahatic system
4061	Cannulation of thoracic duct.
4100	Bone marrow transplant, not otherwise specified.
4101	Allologous bone marrow transplant.
4102	Allogenic bone marrow transplant with purging.
4103	Allogenic bone marrow transplant without purging.
4194	Transplantation of spleen.
	Digestive system ([3])
4281	Insertion—permanent tube into esophagus.
4287	Graft of esophagus.
4311	Percutaneous (Endoscopic) gastrostomy (PEG).
4493	Insertion of gastric bubble (balloon).
4622	Continent ileostomy.
4632	Percutaneous (endosopic) jejunostomy (PEJ).
4610	Colostomy, unspecified.
4612	Permanent magnetic colostomy.
4613	Permanent colostomy.
4620	Ileostomy, unspecfied.
4621	Temporary Ileostomy.
4992	Insertion of subcutaneous electrical anal stimulator.
5059	Liver transplant.
5143	Insertion of Choledochoheptatic tube for decompression.
5186	Endosopic insertion of nasobiliary drainage tube.
5187	Endoscopic insertion of stent (tube) into bile duct.
5280	Pancreatic transplant, unspecified.
5281	Reimplantation of pancreatic tissue.
5282	Homotransplant of pancreas.
5283	Heterotransplant of pancreas.
5292	Cannulation fo pancreatic duct.
5297	Endoscopic insertion of nasopancreatic drainage tube.
5303	Unilateral repair of direct inguinal hernia with graft/prosthesis.
5304	Unilateral repair of indirect inguinal hernia with graft/prosthesis.
5305	Unilateral repair of inguinal hernia with graft/prosthesis, unspecified.
5314	Bilateral repair of direct inguinal hernia with graft/prosthesis.
5315	Bilateral repair of indirect inguinal hernia with graft/prosthesis.
5316	Bilateral repair of inguinal, hernia direct & indirect, with graft/prosthesis.
5317	Bilateral repair of inguinal hernia, with graft/prosthesis specified.
5321	Unilateral repair of femoral hernia with graft/prosthesis.
5331	Bilateral repair of femoral hernia with graft/prosthesis.
5341	Repair of umbilical hernia with prosthesis.
5361	incisional hernia with prosthesis.
569	Repair of hernia of anterior abdominal wall with graft/prosthesis.
	Urinary system
5561	Renal autotransplantation.
5569	Kidney transplantation.
5597	Implantation/replacement of mechanical kidney.
5692	Implantation of electronic ureteral stimulator.
5693	Replacement of electronic ureteral stimulator.
5794	Insertion of indwelling urinary catheter.
5795	Replacement of indwelling urinary catheter.
5796	Implantation of electronic bladder stimulator.
5797	Replacement of electronic bladder stimulator.
5893	Replacement of artificial urinary sphincter (AUS).
598	Ureteral catheterization.
5993	Replacement of ureterostomy tube.
5994	Replacement of cystostomy tube.
	Male genital organs
627	Insertion of testicular prosthesis.
6395	Insertion of valve in vas deferens.
6443	Construction of penis.
6494	Fitting of external prosthesis of penis.
6495	Insertion or replacement of internal non-inflatable prosthesis of penis.
6497	Insertion or replacement of internal inflatable prosthesis of penis.
	Female genital organs
6693	Implantation/replacement of prosthesis of fallopian tube.
697	Insertion of intrauterine contraceptive device.
6991	Insertion of therapeutic device into uterus.
6992	Artificial insemination (includes invitro fertilization).

RECONSTRUCTIVE SURGICAL PROCEDURES—Continued

ICD-CM Procedure codes	Procedure
	Musculoskletal
7691	Bone graft to fiscal bone
7692	Insertion synthetic implant in facial bone.
7800	Bone graft to unspecified bone.
7801	Bone graft to to scapula/clavicle/thorax (ribs/sternum).
7802	Bone graft to humerus.
7803	Bone graft to radius/ULNA.
7804	Bone graft to carpals/metacarpals.
7805	Bone graft to femur.
7806	Bone graft to patella.
7807	Bone graft to tibia/fibula.
7808	Bone graft to tarsals/metatarsals.
7809	Bone graft to specified bone, except facial bone.
7810	Application of external fixation device, unspecified bone.
7811	Application of external fixation device, device, scapula/clavicle/thorax (ribs/sternum).
7812	Application of external fixation device, humerus.
7813	Application of external fixation device, radius/ulna.
7814	Application of external fixation device, carpals/metacarpals.
7815	Application of external fixation device, femur.
7816	Application of external fixation device, patella.
7817	Application of external fixation device, tibia/fibula.
7818	Application of external fixation device, tarsals/metatarsals.
7819	Application of external fixation device.
7830	Limb lengthening, unspecified bone.
7832	Limb lengthening, humerus.
7833	Limb lengthening, radius/ULNA.
7834	Limb lengthening, carpals/metacarpals.
7835	Limb lengthening, femur.
7837	Limb lengthening, tibia/fibula.
7838	Limb lengthening, tarsals/metatarsals.
7839	Limb lengthening.
7850	Internal fixation of bone without fracture reduction, unspecified site.
7851	Internal fixation of bone without fracture reduction, scapula/clavicle/thorax (ribs/sternum).
7852	Internal fixation of bone without fracture reduction, humerus.
7853	Internal fixation of bone without fracture reduction, radius/ULNA.
7854	Internal fixation of bone without fracture reduction, carpals/metacarpals.
7855	Internal fixation of bone without fracture reduction, femur.
7856	Internal fixation of bone without fracture reduction, Patella.
7857	Internal fixation of bone without fracture reduction, tibia/fibula.
7858	Internal fixation of bone without fracture reduction, tarsals/metatarsals.
7859	Internal fixation of bone without fracture reduction, specified bone, except facial bone.
7890	Insertion of bone growth stimulator into unspecified bone.
78991	Insertion of bone growth stimulator into scapula/clavicle/thorax (ribs/sternum).
7892	Insertion of bone growth stimulator into humerus
7893	Insertion of bone growth stimulator into radius/ULNA.
7894	Insertion of bone growth stimulator into carpals/metacarpals.

RECONSTRUCTIVE SURGICAL PROCEDURES—Continued

ICD-CM Procedure codes	Procedure
7895	Insertion of bone growth stimulator into femur.
7896	Insertion of bone growth stimulator into patella.
7897	Insertion of bone growth stimulator into tibia/fibula.
7898	Insertion of bone growth stimulator into transals/matatarsals.
7899	Insertion of bone growth stimulator into specified bone, except facial bone.
7910	Closed reduction of fracture with internal fixation of unspecified site.
7911	Closed reduction of fracture with internal fixation of humerus
7912	Closed reduction of fracture with internal fixation of or radius/ULNA
7913	Closed reduction of fracture with internal fixation of carpals/metacarpals.
7914	Closed reduction of fracture with internal fixation of phalanges of hand.
7915	Closed reduction of fracture with internal fixation of femur.
7916	Closed reduction of fracture with internal fixation of tibia/fibula.
7917	Closed reduction of fracture with internal fixation of tarsals/metatarsals.
7918	Closed reduction of fracture with internal fixation of phalanges of foot.
7919	Closed reduction of fracture with internal fixation of specified bone.
7930	Open reduction of fracture with internal fixation of unspecified site.
7931	Open reduction of fracture with internal fixation of humerus.
7932	Open reduction of fracture with internal fixation of radius/ULNA.
7934	Open reduction of fracture with internal fixation of phalanges of hand.
7935	Open reduction of fracture with internal fixation of femur.
7936	Open reduction of fracture with internal fixation of tibia/fibula.
7937	Open reduction of fracture with internal fixation of tarsals/metatarsals.
7938	Open reduction of fracture with internal fixation of phalanges of foot.
7939	Open reduction of fracture with internal fixation of specified bone.
8100	Spinal fusion, unspecified.
8101	Atlas-axis spinal fusion.
8102	Cervical fusion, anterior technique.
8103	Cervical fusion, Posterior technique.
8104	Dorsal/dorsolumbar fusion, anterior technique.
8105	Dorsal/dorsolumbar fusion, Posterior technique.
8106	Lumbar/lumbosacral fusion, anterior technique.
8107	Lumbar/lumbosacral fusion, lateral transverse process technique.
8108	Lumbar/lumbosacral fusion, posterior technique.
8109	Refusion of spine, any level or technique.
8111	Ankle fusion.
8112	Triple arthrodesis.
8113	Subtalar fusion.
8114	Midtarsal fusion.
8115	Tasometatarsal fusion.
8116	Metatarsophalangeal fusion.
8117	Fusion of foot.
8120	Athrodesis of unspecified joint.
8121	Arthrodesis of hip.
8122	Arthrodesis of knee.
8123	Arthrodesis of shoulder.
8124	Arthrodesis of elbow.

RECONSTRUCTIVE SURGICAL PROCEDURES—Continued

ICD-CM Procedure codes	Procedure
8125	Carporadial fusion.
8126	Metacarpocarpal fusion.
8127	Metacarpophalangeal fusion.
8128	Interphalangeal fusion.
8129	Arthrodesis of specified joint.
8151	Total hip replacement.
8152	Partial hip replacement.
8154	Total knee replacement.
8156	Total ankle replacement.
8157	Replacement of joint of foot & toe.
8171	Arthroplasty of metacarpophalangeal & interphalangeal joint with implant.
8173	Total wrist replacement.
8174	Arthroplasty of carpocarpal or carpometacarpal joint with implant.
8180	Total shoulder replacement.
8181	Partial shoulder replacement.
8184	Total elbow replacement.
8261	Surgical construction of thumb from portion of index finger.
8269	Reconstruction of thumb.
8272	Plastic operation on hand with graft of muscle or fascia.
8279	Plastic operation on hand with graft or implant.
8375	Tendon transfer/transplant.
8377	Muscle transfer/transplant.
8381	Tendon graft.
8382	Muscle/fascia graft.
8392	Insertion/replacement of skeletal muscle stimulator.
8440	Implantation/fitting of prosthetic limb device, unspecified.
8441	Fitting of prosthesis of upper arm & shoulder.
8442	Fitting of prosthesis of lower arm & hand.
8443	Fitting of prosthesis of arm, unspecified.
8444	Implantation of prosthetic device of arm.
8445	Fitting of prosthesis above knee.
8446	Fitting of prosthesis below knee.
8447	Fitting of prosthesis of leg, unspecified.
8448	Implantation of prosthetic device of leg.
	Skin
8533	Unilateral subcutaneous mammectomy with synchronous implant.
8535	Unilateral subcutaneous mammectomy with synchronous implant.
8550	Augmentation mammoplasty, unspecified.
8551	Unilateral injection into breast for augmentation.
8552	Bilateral injection into breast for augmentation.
8553	Unilateral breast implant (for Augmentation).
8554	Bilateral breast implant (for Augmentation).
857	Total reconstruction of breast.
8582	Split-thickness graft to breast.
8583	Full-thickness graft to breast.
8584	Pedicle graft to breast.
8585	Muscle flap graft to breast.
8595	Insertion of breast tissue expander.
8606	Insertion of totally implantable infusion pump.
8607	Insertion of totally implantable vascular access device (VAD).
8660	Free skin graft, unspecified.
8661	Full-thickness skin graft to hand.
8662	Skin graft to hand.
8663	Full-thickness skin graft.
8664	Hair transplant.
8665	Heterograft to skin.
8666	Homograft to skin.
8669	Skin graft.

RECONSTRUCTIVE SURGICAL PROCEDURES—Continued

ICD-CM Procedure codes	Procedure
8670	Pedicle flap/graft, unspecified.
8671	Cutting & preparation of pedicle flap/graft.
8672	Advancement of pedicle graft.
8673	Attachment of pedicle flap/graft to hand.
8674	Attachment of pedicle flap/graft.
8693	Insertion of tissue expander.

[1] Excludes dental procedures.
[2] Does not include specialized pediatric cardiovascular procedures (not performed at any hospital owned by NME Hospitals, Inc.)
[3] Excludes bifroths, by passes, and anastomoses.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from NME Hospitals, Inc. of Santa Monica, California. NME Hospitals, through its Continent Ostomy Centers, offers surgical services for the treatment of ulcerative colitis and other bowel-related diseases.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission has alleged that the proposed respondent has misrepresented its past success in the treatment of ulcerative colitis and the comparative superiority of its procedure to other surgical procedures used in the treatment of this disease.[1] The Commission further has alleged that the proposed respondent failed to have a reasonable basis for the representations made. The allegations do not concern the competence of individual surgeons performing the continent ostomy procedure offered by NME Hospitals, Inc.

In particular, NME Hospitals, Inc. claimed that:

1. Its surgical procedure for the treatment of ulcerative colitis and other bowel-related diseases is superior to other surgical procedures used as alternatives to a conventional ileostomy.

2. Patients who have had respondent's surgical procedure have not experienced slippage or leakage problems.

3. Patients who have received an ileoanal anastomosis have more than a 50 percent chance of needing corrective surgery.

4. Its clinical experience shows that the incidence of valve slippage and reoperation for its procedure is substantially less than that for the Kock procedure.

The Commission alleges that these claims were deceptive because:

1. Proposed respondent's surgical procedure is not superior to other surgical procedures used as alternatives to a conventional ileostomy.

2. Some of proposed respondent's patients have experienced slippage and leakage problems.

3. There is significantly less than a 50 percent chance that patients who have received an ileoanal anastomosis will need corrective surgery.

4. Proposed respondent's clinical experience does not show that the incidence of valve slippage and reoperation for its continent ileostomy procedure is substantially less than that for the Kock procedure.

The Commission further alleges that these claims were deceptive because, at the time NME Hospitals made the representations, it lacked a reasonable basis to support the claims.

Part I of the proposed consent order seeks to address the alleged misrepresentations cited in the complaint. It prohibits the "no slippage or leakage" claim (I.B.) and the "50 percent chance that patients who receive an ileoanal anastomosis will need corrective surgery" claim (I.C). Further, the proposed order prohibits misrepresentations relating to the "superiority" of proposed respondent's procedure as compared to other surgical procedures used as alternatives to a conventional ileostomy (I.A), and specifically, to the Kock procedure (I.D). Finally, Part I.E requires that NME Hospitals, Inc. base future claims about the efficacy, permanence, or likely complications of any surgical procedure used in the treatment of ulcerative colitis on competent and reliable scientific evidence that substantiates any such representation.

Part II of the proposed consent order provides a fencing-in provision with regard to future comparative claims. Part II prohibits misrepresentations as to the comparative efficacy, permanence, or likely complications of numerous surgical procedures delineated on a 12-page list attached to the proposed order. The list includes surgical procedures performed by NME Hospitals that fall within the same generic type of surgery as that performed in proposed respondent's continent ileostomy procedure.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-14087 Filed 6-15-92; 8:45 am]

BILLING CODE 6750-01-M

[1] There are three basic surgical procedures used in the treatment of ulcerative colitis and other bowel-related diseases. Medical literature indicates that for many years beginning in the 1940s, the conventional surgical treatment for ulcerative colitis was a total proctocolectomy with a "Brooke ileostomy." That is, the removal of the colon, rectum and anus and replacement by an incontinent reservoir that empties fecal matter into an external pouch. In the late 1960s, the continent ileostomy was developed by Dr. Nils Kock of Norway as an alternative operative procedure to the Brooke ileostomy. The continent ostomy procedure, which also involves the removal of the colon, rectum and anus, provides for an internal pouch that acts as a reservoir for the collection of fecal matter. Continence is maintained by a nipple valve until the patient initiates waste removal by means of a catheter. In the early 1980s, a third surgical technique was developed that allowed for a more normal route of defecation: The ileoanal anastomosis. That procedure provides for the uniting of the ileum to the anal canal with construction of a proximal pouch, thus preserving the anal sphincter and anus. This procedure preserves the normal route of defecation.

[Docket No. C-3383]

Slender You, Inc. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Tennessee company and its officers from making false and misleading representations regarding the weight loss and physical fitness benefits of any exercise machines or devices and diet or fitness programs, and would require the respondents to have competent and reliable scientific evidence to substantiate such claims at the time they are disseminated.

DATES: Complaint and Order issued May 22, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Thomas Jefferson or Theresa McGrew, Chicago Regional Office, Federal Trade

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

Commission, 55 East Monroe St., suite 1437, Chicago, IL. 60603. (312) 353–7178.

SUPPLEMENTARY INFORMATION: On Tuesday, November 26, 1991, there was published in the **Federal Register**, 56 FR 59946, a proposed consent agreement with analysis In the Matter of Slender You, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 92–14085 Filed 6–15–92; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902 3025]

The Winning Combination, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California corporation and its officer from misrepresenting the efficacy of Essential Factors with Oxy-Energizer, a food supplement, or any similar product; from making certain representations unless they possess competent and reliable scientific evidence to substantiate the representations; and from representing that any such product has been accepted by the U.S. Government as effective for relieving fatigue or providing extra energy.

DATES: Comments must be received on or before August 17, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Milgrom, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520–A, Cleveland, OH. 44114. (216) 522–4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Winning Combination, Inc., a corporation, and Andrew Lessman, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts or practices being investigated,

It is hereby agreed by and between proposed respondents and their attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent The Winning Combination, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office or principal place of business located at 1661 19th Street, Santa Monica, California 90404.

Proposed respondent Andrew Lessman is an officer of the corporate respondent named herein. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint, or that the facts alleged in the attached draft complaint other than the jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

It is ordered, That respondents The Winning Combination, Inc., a corporation, and Andrew Lessman, individually and as an officer of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the food supplement Essential Factors with Oxy-Energizer, or any other product of similar composition, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

(A) That consumption of such product has been scientifically proven to prevent fatigue and tiredness;

(B) That consumption of such product has been scientifically proven to provide energy, stamina or endurance beyond its coloric value; and

(C) That such product has been accepted by the United States Government, or any agency or division thereof, as effective for relieving fatigue or providing extra energy.

II

It is further ordered, That respondents, The Winning Combination, Inc., a corporation, and Andrew Lessman, individually and as an officer of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the food supplement Essential Factors with Oxy-Energizer, or any other health-related service or product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test or study.

III

It is further ordered, That respondents The Winning Combination, Inc., a corporation, and Andrew Lessman, individually and as an officer of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

(A) Consumption of such product prevents fatigue and tiredness; or

(B) Consumption of such product provides energy beyond its caloric value;

unless, at the time such representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purpose of the order, for any test, analysis, research, study or other evidence to be "competent and reliable," the test, analysis, research, study, or other evidence shall be conducted and evaluated in an objective manner by perons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.

IV

It is further ordered, That respondent The Winning Combination, Inc., a corporation, shall distribute a copy of this order to each of its operating divisions and to each officer and other person responsible for the preparation or review of advertising materials at the time this order becomes effective.

V

It is further ordered, That, for a period of five (5) years from the date that any representation covered by this order is last disseminated, respondents The Winning Combination, Inc., a corporation, and Andrew Lessman, individually and as an officer of said corporation, shall maintain and, upon request, make available to the Commission for inspection and copying, all advertising promotional and/or sales materials containing any representation covered in this order and all materials relied upon to substantiate such representation, and all test reports, studies, surveys, demonstrations or other evidence in respondents' possession or control that contradict, qualify or call into question either the representation or the basis upon which respondents relied in making the representation.

VI

It is further ordered, That respondent Andrew Lessman shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the service date of this order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the manufacture, sale or distribtion of food or drug products, or of his affiliation with a new business or employment in which his own duties and responsibilities relate to the manufacture, advertising, offering for sale, sale or distribution of food or drug products. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VII

It is further ordered, That respondent The Winning Combination, Inc., a corporation, shall:

(A) Notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of his order; and

(B) Require, as a condition precedent to the closing of the sale or other disposition of 50 percent of the stock or assets of The Winning Combination, Inc., that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this order.

VIII

It is further ordered That respondents The Winning Combination, Inc., and Andrew Lessman shall, within one hundred twenty (120) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order, including, but not limited to, the names and addresses

of all recipients of materials distributed pursuant to part IV of this order.

Analysis Of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order from The Winning Combination, Inc. (TWC), a corporation, and Andrew Lessman (Lessman).

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and take other appropriate action, or make final the proposed Order contained in the agreement.

This matter concerns advertisements by TWC for its Essential Factors with Oxy-Energizer, a nutritional supplement. Lessman is the president and owner of TWC.

The Complaint alleges that TWC and Lessman engaged in deceptive advertising in violation of sections 5 and 12 of the Federal Trade Commission Act by falsely claiming that Essential Factors with Oxy-Energizer had been scientifically proven to:

(1) prevent fatigue and tiredness; and

(2) provide energy, stamina and endurance beyond its caloric value.

The Complaint also alleges that the advertising implied, falsely, that TWC and Lessman had scientific substantiation for the claims that Oxy-Energizer prevents fatigue and tiredness and provides energy beyond its caloric value. In addition, the complaint alleges that the advertising falsely claimed that the United States Government has accepted the active ingredient in Oxy-Energizer as effective for relieving fatigue and providing extra energy.

The consent order contains provisions designed to prevent misrepresentations related to these specific matters and others. Part I of the order prohibits TWC and Lessman from misrepresenting that Essential Factors with Oxy-Energizer or any similar product has been scientifically proven to prevent fatigue or tiredness, has been scientifically proven to provide energy, stamina or endurance beyond its caloric value, or that it has been accepted by the United States Government as effective for relieving fatigue or providing extra energy.

Part II of the order prohibits TWC and Lessman from misrepresenting, in connection with the sale or advertising of health-related services or products, the contents, validity, results, conclusions or interpretations of any test or study.

Part III of the order prohibits TWC and Lessman from representing that consumption of any product prevents fatigue and tiredness or provides energy beyond its caloric value unless they possess and rely upon a reasonable basis, consisting of competent and reliable scientific evidence, to substantiate the representation.

The remainder of the order contains standard record-retention and notification provisions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Deborah K. Owen

In the matter of The Winning Combination, Inc.

Although I concurred in the decision to accept the proposed consent agreement in this matter for public comment, I would have preferred to expand one aspect of the draft complaint and the consent agreement.

The advertisements attached to the Commission's draft complaint are replete with references to "extra energy," and "increases" or "improvements in stamina." As a result, based on the evidence available to date, in my view, the most clearly implied message in the challenged ads was that the "Essential Factors" product would reduce fatigue, rather than prevent it, as the complaint alleges. However, because references in the ads could also make a claim that the product will prevent fatigue, the preferred course would have been to allege both types of claims. To parallel this allegation, part I of the order prohibiting specified misrepresentations should also prohibit misrepresentations of fatigue reduction claims. Finally, I would have preferred that the order's substantiation requirement also explicitly cover fatigue reduction, as well as other efficacy or performance claims related to fatigue. Although it is possible that part III.B of the order relating to claims that the product provides energy beyond its caloric value can be read to include such claims, I would favor greater clarity in this regard, to facilitate compliance and enforcement.

[FR Doc. 92-14088 Filed 6-15-92; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of GSA Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection, 3090-0027, GSAR part 542—Contract Administration & part 546—Quality Assurance. This information is used by various contract administration and other support offices for quality assurance, acceptance of supplies and services, shipments, and to justify payments.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW, Washington, DC 20405.

Annual Reporting Burden:

Respondents: 8,100; annual responses: 76.0; average hours per response: .03; burden hours: 17,300.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501-1224. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F Street NW., Washington, DC 20405, telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: June 3, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92-14058 Filed 6-15-92; 8:45 am]

BILLING CODE 6820-61-M

Record of Decision, Crystal City Site

ACTION: Record of Decision to purchase land at the "Crystal City Site" on which to construct and occupy one million occupiable square feet (OSF) of office and related space, with the potential to lease up to an additional one million OSF of office and related space for use by the Naval Systems Commands (Navy) in Arlington County, Virginia.

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500-1508), General Services Administration (GSA) Order PBS P 1095.4B, and Chief of Naval Operations Instruction 5090.1A, GSA, in cooperation

with the Department of the Navy, announces its decision to purchase land at the "Crystal City Site" on which to construct and occupy one million OSF of office and related space, with the potential to lease up to an additional one million OSF of office and related space for use by the Navy in Arlington County, Virginia.

This action was identified as the "preferred alternative" in a Supplemental Draft Environmental Impact Statement (SDEIS) distributed to the public on February 21, 1992. The action is the acquisition of 16.8 acres of land in Arlington County, Virginia, bounded on the west by Hayes Street, on the south by 15th Street, on the east by Fern Street, and on the north by 12th Street. This site is also known as the "AT&T parcel." An office complex of not more than one million OSF (1.4 million gross square feet) will be constructed by GSA on this site, along with a detached parking structure capable of accommodating 1,800 vehicles. In addition, up to one million OSF of existing office space and 1,750 parking spaces in Crystal City may, at the option of the Government, be leased to accommodate the Navy's future housing needs.

The Naval Systems Commands currently occupy approximately 2.4 million occupiable square feet (OSF) of space leased by GSA in 20 separate buildings located in the Crystal City area of Arlington County, Virginia; and in the City of Alexandria, Virginia. Many of the Commands are located in several facilities thus decreasing the administrative and working efficiency of the affected Commands. Many of the Systems Commands comparatively inexpensive long-term leases have expired over the last two years. Expiration of long-term leases has forced GSA into executing new leases at significantly higher rates than those under the previous long-term leases. This has resulted in substantially increasing housing costs to the Government. In addition, some older existing facilities are in need of extensive repairs in order to meet minimum GSA quality standards.

To address these issues, GSA, in cooperation with the Department of the Navy, proposed Government acquisition of a site suitable for Government construction of one million OSF of office and related space, and, if approved by Congress, procurement of up to an additional one million OSF of office and related space from a private sector owner on a privately-owned site.

The Government evaluated three alternatives for implementing the proposed action including No Action; construction/rehabilitation of two million OSF of office space on a Government-owned site; and, construction/rehabilitation of two million OSF of office space on a developer-controlled site. The No Action alternative was eliminated as this alternative would necessitate the continued leasing of unsuitable space at high cost to the Government.

For the latter two alternatives, two Government-owned and 16 developer-controlled sites were initially evaluated under the Government's Site Selection Process. One Government-owned and 12 developer-controlled sites were rejected for further consideration because in the Government's determination the sites either did not possess the development potential to support at least two million OSF of space without constituting an unreasonable intrusion on the local community or were grossly incompatible with local land use plans and objectives.

During the technical evaluation of the remaining five potential sites, the remaining Government-owned and one developer-controlled site were found to possess site characteristics that, in the Government's determination, would unduly complicate site development, or unreasonably delay construction and occupancy of the facility. Accordingly, these two sites were eliminated from further consideration. The remaining three developer-controlled sites, Crystal City, Eisenhower Avenue, and Van Dorn, were evaluated in detail in the SDEIS. Based on the environmental impact analysis presented in the SDEIS, the Crystal City site was found to be the environmentally preferred alternative. Based on technical and cost criteria, the Government found the Crystal City site to be the preferred alternative.

All practicable means to avoid or minimize environmental impacts to the Crystal City area have been adopted. As part of the action, the existing warehouse structure on the AT&T parcel of the Crystal City site will be demolished. This structure is known to contain asbestos containing materials. GSA will conduct all demolition, asbestos removal, and off-site disposal in accordance with GSA's Asbestos Abatement Procedures (Sections 02060, 02085, and 02085–R), which include compliance with applicable state, local, and U.S. Environmental Protection Agency regulations. The parcel also contains three underground storage tanks, one of which has leaked in the past. GSA will prepare and implement a Corrective Action Plan that will address the removal and disposal of this tank and associated petroleum contaminated soil. The Plan will be submitted to the Arlington County Office of Environmental Affairs and to the Virginia State Water Control Board for review and concurrence prior to plan implementation.

Even if the Government does not implement the proposed action at the Crystal City Site, background traffic congestion by the year 2000 will require substantial regional and localized mitigation measures above those planned or programmed by the Virginia Department of Transportation or Arlington County. Because the Systems Commands are currently located in the Crystal City area, current and future Navy traffic will contribute to this congestion even under the No Action alternative. Implementation of the proposed action will significantly increase localized traffic congestion above projected background traffic levels, particularly around the AT&T parcel. Regional traffic impacts resulting from the proposed action, though, will not significantly increase beyond projected regional background traffic.

To partially mitigate localized impact GSA will undertake two actions: First, GSA will grant a transportation easement along the 15th Street (south) side of the AT&T parcel to Arlington County so that the County may construct and maintain additional traffic or turning lanes adjacent to the site to improve traffic flow; second, GSA and the Navy will implement an aggressive Transportation Management Plan (TMP) that will, at a minimum, include a market-based parking fee system designed to encourage high-occupancy vehicle use (car and vanpools), a car and vanpool incentive program, and designation of approximately 90 percent of on-site parking for car and vanpools. The TMP may also include implementation of a "guaranteed ride home program," preferential parking locations for high-occupancy vehicles, vehicle storage, shower, and locker room facilities for bicycle commuters, as well as additional TMP elements designed to increase the use of public transportation. GSA and the Navy will coordinate preparation of the TMP with Arlington County and with the National Capital Planning Commission.

Although an increase in carbon monoxide from vehicle exhausts will occur as a result of the projected increases in traffic in the Crystal City area, this increase will be minor and will not exceed Federal air quality standards.

Although Arlington County will experience a loss in tax revenues resulting from Government purchase and ownership of privately-held land, the Government has determined that

this impact is minor. The Government has determined that implementation of the proposed action at either of the two alternative locations would result in a greater short run revenue loss for Arlington County than implementation under the Crystal City alternative due to the relocation of 2.4 million OSF of Navy-occupied space, plus an undetermined amount of private sector contract personnel from Arlington County to the City of Alexandria, and the need to backfill this space over a greater or lesser period of time.

Existing public recreational facilities proximate to the Crystal City Site are insufficient to serve local community needs as well as increased Navy needs resulting from the proposed action. To mitigate the impact of Government occupancy of a facility at the AT&T parcel, GSA has arranged for 1.8 acres of the parcel to be deeded to Arlington County for use as a park or other public open space as mutually agreed to by GSA and Arlington County officials. In addition, GSA will construct a physical fitness center on-site to further mitigate intensive Navy use of similar community facilities.

Neither Federally-protected wetlands nor endangered or threatened species will be affected by implementation of the proposed action at the Crystal City Site. GSA will implement Best Management Practices for erosion control during construction in compliance with Arlington County regulations implementing the Chesapeake Bay Preservation Act.

Existing and planned utility services (e.g., water, sanitary sewer, electrical) are sufficient to accommodate the proposed action under the Crystal City alternative.

No cultural or historic resources listed, or determined to be eligible for listing on the National Register of Historic Places, will be affected by the proposed action.

GSA, in cooperation with the Navy, filed a Draft Environmental Impact Statement (DEIS) on November 30, 1990, for this project, and held public hearings in Arlington County, Virginia, on January 8, 1990, and in the City of Alexandria on January 10, 1990. Subsequent to distribution of the DIS, the scope and alternatives of the action changed, thus requiring GSA to prepare the SDEIS. The SDEIS was distributed to the public on February 21, 1992, and public hearings were held April 1, 1992, in Arlington County, and on April 2, 1992, in Alexandria. In general, public comments centered on traffic impacts, air emissions, and fiscal impacts. GSA filed a Final EIS with the United States Environmental Protection Agency on April 17, 1992.

GSA and the Navy believe that there are no outstanding environmental issues to be resolved with respect to the Naval Systems Commands Consolidation in Northern Virginia. Questions regarding the EIS prepared for this action may be directed to Mr. George Chandler, NCR Planning Staff (WPL), GSA National Capital Region, room 7618, 7th and D Streets, SW., Washington, DC 20407, telephone 202/708–5334.

Dated: May 28, 1992.

James C. Handley,

Regional Administrator, General Services Administration.

[FR Doc. 92–14061 Filed 6–15–92; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement Number 245]

Environmental Health Education Activities for Educating Health Professionals Concerned With Human Exposure to Environmentally Hazardous Substances

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1992 funds for a cooperative agreement program for state departments of health and state departments of environment to build state capacity for educating health professionals on health issues related to human exposures to hazardous substances in the environment.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 104(i) (14) and (15) of the comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i) (14 and (15).

Eligible Applicant

Assistance will be provided only to the official health departments and/or environmental departments of the states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $643,000 is available in FY 1992 to fund approximately 12 new awards totaling approximately $410,000 and 7 non-competing continuations totaling approximately $233,000. It is expected that the average award will be $40,000 ranging from $30,000 to $45,000. The awards will begin on or about September 30, 1992, and are made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change. Applicants should specify whether they are applying for 1 or 2 years of funding. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the awardee, as the direct and primary recipient of the PHS funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds; however, justification must be provided which should include a cost comparison of purchases versus lease.

Purpose

The purpose of the program is to assist state health departments and state environmental departments to identify, develop, disseminate, and evaluate appropriate educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances found at or near Environmental Protection Agency (EPA) Superfund sites. (Superfund sites are defined as sites proposed to be on the EPA's National Priorities List (NPL) or any sites for which Superfund monies have been

expended). These educational efforts include short courses appropriate to Superfund, such as those on hazardous substances found at Superfund sites, chemicals on the priority pollutant list, environmental exposure histories, and issues related to exposure to hazardous substances in underserved/minority areas. These courses should emphasize those substances prioritized by ATSDR and the Environmental Protection Agency. (This ranked list appears in **Federal Register** issue 56 FR 52166, October 17, 1991.)

This is a program to build state capacity, that is, to enable states to respond to health professionals' questions about the potential health effects of exposure to toxic substances in the environment. The applicant should demonstrate significant contribution to and primary responsibility for the design, implementation, and evaluation of the projects. Emphasis should be placed on both public and private health professionals who are concerned about disease prevention, diagnosis and treatment of illness in populations potentially exposed to hazardous substances found at Superfund sites.

Sample goals for projects funded by this award include the following:

- Educate primary care physicians in the state on how to diagnose potential health effects of exposure to hazardous substances from Superfund sites.
- Conduct site-specific training activities to educate health professionals about health concerns related to Superfund hazardous substances.
- Develop and distribute resource guides and other materials with relevant and up-to-date information about hazardous substances found at Superfund sites.
- Develop regular mechanisms of interaction among public and private health organizations and professionals concerned with the potential exposure and health effects of Superfund hazardous substances.
- Build state capacity so that the department of health or environment may serve as a resource in responding to health professionals' requests and concerns related to exposure to hazardous substances.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop, implement, and evaluate educational materials or methods to improve the skills and knowledge of health-care providers concerning potential exposure to hazardous substances at or near Superfund sites.

2. Develop and distribute resource guides that contain relevant and up-to-date information concerning Superfund sites and chemicals, including environmental health references and local, state, and Federal resources and contacts.

3. Promote the development of educational activities and instructional methods relevant to Superfund sites and/or chemicals. Activities include grand rounds, conferences, and workshops (may be held in conjunction with existing local and national professional meetings). Also, promote the development of methods or materials to improve the knowledge and skills of health-care providers in determining potential hazardous substance exposures as an integral part of their patient workup.

4. Develop materials and methods to be used by health-care providers in communicating and counseling their patients about health risks concerning potential exposure to hazardous substances found at or near Superfund sites.

5. Promote the use of effective resources to furnish health-care providers with information about hazardous substances at or near Superfund sites.

6. Assess program effectiveness by outlining an evaluation plan that includes process and impact measures.

7. Consider the option to devote 25% of the state's efforts under this cooperative agreement to a demonstration project in community health education related to potential exposure to hazardous substances at Superfund sites.

B. ATSDR Activities

1. Collaborate with the recipient in developing a resource guide.

2. Collaborate with the recipient to determine effective methods to enhance skill and knowledge required for appropriate medical surveillance, screening, treatment, and prevention of injury or disease related to exposure to hazardous substances at Superfund sites.

3. Collaborate with the recipient in identifying successful health communication methods for health-care practitioners concerned about their patients who are potentially exposed to hazardous substances found at Superfund sites.

4. Collaborate with the recipient in evaluating the effectiveness of educational materials and activities.

5. Participate in state-based hospital grand rounds, workshops, conferences, and seminars to exchange current information concerning the diagnosis, treatment, and prevention of illness or injury associated with exposure to hazardous substances.

6. Collaborate with the recipient in developing and reviewing all materials and ensuring scientific consistency.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria.

1. Proposed Project and Appropriateness of Project Design—40%

The adequacy of the proposal relative to the:

a. Project purpose;

b. Rationale of project;

c. Applicant's justification of the need or problem to be addressed;

d. Identification of a target group;

e. Quality of project objectives in terms of specificity, measurability, and feasibility;

f. Specificity and feasibility of the applicant timetable for implementing project activities;

g. Thoroughness of the approach to be used in carrying out project, including measurability;

h. Appropriateness and feasibility of the methods used to carry out the project;

i. Focus of at least 50% of the program activities on NPL sites; otherwise, the focus should be on priority pollutants as discussed in the "Purpose" section; and

j. Evidence to assure that the project does not duplicate other training programs.

2. Applicant Capability and Coordination Effort—30%

a. Ability of the applicant to provide staff required to perform the applicant's responsibilities in the project, including specific staff and credentials (when possible);

b. Applicant's basic knowledge required to perform the applicant's responsibilities in the project; and

c. Ability of the applicant to provide other resources required to perform the applicant's responsibilities in the project.

3. Program Evaluation—30%

a. Appropriateness of the methods used to evaluate project;

b. Thoroughness of the methods used to evaluate project; and

c. Extent to which evaluation plan includes measures of program outcome (i.e., effect on participants' knowledge, attitudes, and behaviors).

4. Project Budget—(Not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of funds.

5. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

a. Satisfactory progress has been made in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

d. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Casell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Atlanta, Georgia 30305, no later than 60 days after the application deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS form 5161-1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305 on or before July 15, 1992. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on applications procedures, an application package, and business management assistance may be obtained from Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Roads, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305; telephone: (404) 842-6797. Programmatic technical assistance may be obtained from Neannette May, M.P.H., Division of Health Education, Agency for Toxic Substances and Disease Registry, Mailstop E-33, 1600 Clifton Road, NE., Atlanta, Georgia 30333; telephone: (404) 639-6205.

Please Refer to Announcement Number 245 When Requesting Information and Submitting an Application

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone: 202-783-3238).

Dated: June 10, 1992.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-14062 Filed 6-15-92; 8:45 am]

BILLING CODE 4160-70-M

[Announcement Number 233]

Surveillance to Determine the Relationship Between Human Exposure to Hazardous Substances and Adverse Health Outcomes

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1992 funds for a grant program for surveillance to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes (e.g., birth defects and reproductive disorders, cancer [selected sites], immune function disorders, kidney dysfunction, liver dysfunction, lung and respiratory diseases and neurotoxic disorders).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Health People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under sections 104(i)(1)(E) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604 (i)(1)(E) and (15)).

Eligible Applicants

Eligible applicants are the official public health agencies of the states or

their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. Local health jurisdictions may apply with written concurrence of the state health officer.

Availability of Funds

Approximately $150,000 is available in FY 1992 to fund approximately 1–2 awards. It is expected that the average awards will be $75,000, ranging from $50,000 to $100,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to 3 years. The length of the project period will depend on the complexity of the problems associated with any particular surveillance project. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested. However, the grantee, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party.

Purpose

The purpose of this surveillance activity is to enhance the recipients' capabilities to characterize the relationship between exposure to hazardous substances and adverse health outcomes through the development of surveillance activities.

Epidemiologic surveillance can be defined as "the ongoing and systematic collection, analysis, and interpretation of health data in the process of describing and monitoring a health event." Data obtained through surveillance are very important for appropriate decisions regarding the planning, evaluating, or implementing of public health interventions. Surveillance has proven to be valuable for monitoring the occurrence of infectious diseases, occupational illnesses, and injuries. Although data have been developed from occupational illness which correlates the association of high levels of exposure to specific hazardous substances with certain adult diseases, few studies have addressed the potential risk posed to various age groups by relatively low-level exposure to hazardous substances over a long period of time.

Surveillance provides a unique tool to evaluate low-level exposures. Surveillance can be conducted for different geographic locations and/or for different population subsets. For purposes of this program, the following types of surveillance are applicable:

A. State-Based

Most state health departments have or can access a variety of health outcome and environmental data bases such as the mandatory registration of vital events or municipal water testing. State-based surveillance attempts to link these diverse preexisting data bases proactively, to analyze any ecological correlations that may arise, and to conduct appropriate follow-up studies, as necessary.

B. Site-Specific

Residential settings located near hazardous waste sites provide populations and environments for surveillance which can help elucidate the importance of the many interacting factors in the exposure/disease relationship. Surveillance at a particular site may focus on specific hazardous substances at that site, as well as monitoring plausible health outcome data (morbidity or mortality) for a specific medical condition. Periodic follow-up of a well-defined, unexposed cohort can be a useful measure of baseline patterns for that disease. the site-specific surveillance may detect usual or unusual patterns of disease. The latter may trigger further investigations, such as a study of exposed individuals or an analytic epidemiology study.

C. Hazardous Waste Workers

It is reasonable to assume that workers employed in the cleanup of hazardous waste would have a greater exposure to toxic substances than the general public. Although actual contaminant exposures may not be documented, the potential for this exposure exists. Therefore, surveillance of hazardous waste workers may provide insight into the health effects related to human exposure to toxic substances.

Using the Occupational Safety and Health Administration's classification to identify hazardous waste occupations, the following job descriptions are considered for inclusion in the ATSDR hazardous waste workers surveillance program:

1. Workers employed in the cleanup of uncontrolled hazardous waste disposal sites that have been identified for remedial action by a governmental health or environmental agency; and

2. Workers performing routine operations or corrective actions at hazardous waste treatment, storage, and disposal facilities.

Surveillance of hazardous waste workers would identify cohorts of workers meeting the above definition that can be followed to monitor plausible health outcome data (morbidity or mortality) for a specific medical condition. The surveillance may detect usual or unusual patterns of disease. The latter may trigger further investigations, such as a study of exposed individuals, an analytic epidemiology study, or may demonstrate a need to change worker training.

Program Requirements

ATSDR will provide financial assistance to applicants in conducting surveillance activities to explore the relationship between exposure to hazardous substances and the occurrence and risk factors for disease. The program requirements include, but are not limited to, surveillance activities designed to evaluate the occurrence of adverse health effects over time in a population. This will include the evaluation of the incidence or prevalence of a disease, disease symptoms, self-reported health concerns, or biological markers of disease, or exposure. Efforts should be made to link information on adverse health effects with environmental data.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and Technical Review Criteria of New Applications

a. Appropriateness and Knowledge of Surveillance Design—30%

The extent to which the applicant's proposal addresses:

(1) A rationale for the surveillance;

(2) The identification of a potentially exposed population;

(3) The identification of an appropriate reference population with which to compare morbidity and and mortality rates;

(4) A plan for exposure assessment and/or a plan for evaluating adverse health outcomes; and

(5) A detailed plan for analysis of the data.

b. Proposed Surveillance—30%

The adequacy of the proposal relevant to:

(1) The surveillance purpose, objectives, and rationale;

(2) The quality of program objectives in terms of specificity, measurability, and feasibility;

(3) The specificity and feasibility of the applicant's timetable for implementing program activities and timely completion of the surveillance;

(4) The likelihood of the applicant agency completing proposed program activities and attaining proposed objectives based on the thoroughness and clarity of the overall program; and

(5) A plan for phasing out surveillance.

c. Applicant Capability and Coordination Efforts—15%

The extent to which the proposal has described:

(1) The capability of the applicant's administrative structure to foster successful scientific and administrative management of a surveillance program;

(2) The capability of the applicant to demonstrate an appropriate plan for interaction with the community; and

(3) The suitability of facilities and equipment available for the project.

d. Quality of Data Collection—15%

The extent to which:

(1) The questionnaire ascertains the information necessary to meet the objectives, including (but not limited to) information on pathways of exposure and confounding factors;

(2) The quality control and quality assurance of questionnaire data are provided, including (but not limited to) interviewer training and consistency checks of data;

(3) The laboratory tests (if applicable) are sensitive and specific for the analyte or disease outcome of interest;

(4) The quality control, quality assurance, precision, and accuracy of information for the proposed tests are provided and acceptable; and

(5) The quality control and assurance of secondary data sets to be used are provided and acceptable.

e. Program Personnel—10%

The extent to which the proposal has described:

(1) The qualification, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership; and

(2) The competence of associate investigators and support staff to accomplish the proposed surveillance activities, their commitment, and the time they will devote to the project.

f. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

2. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

a. Satisfactory progress has been made in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and

d. The budget request is clearly justified and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 83.161.

Application Submission and Deadline Dates

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassel, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, on or before June 30, 1992. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1(a) or 1(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management assistance may be obtained from Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, or by calling (404) 842–6797. Programmatic technical assistance may be obtained from Dr. Wendy E. Kaye, Chief, Epidemiology and Surveillance Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Mail Stop E–31, Atlanta, Georgia 30333 or by calling (404) 639–6203.

Please Refer to Announcement Number 233 When Requesting Information and Submitting an Application

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents,

Government Printing Office, Washington, DC 20402-9235 (Telephone: 202-783-3238).

Dated: June 9, 1992.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-14063 Filed 6-15-92; 8:45 am]

BILLING CODE 4160-70-M

[Announcement Number 224]

Health Studies Initiative of Priority Health Conditions; Availability of Funds for Fiscal Year 1992

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces that grant applications will be accepted to conduct health studies as they relate to hazardous substances and which investigate health conditions prioritized by ATSDR, with emphasis on birth defects and reproductive disorders.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Health People 2000, see Section "**Where To Obtain Additional Information.**")

Authority

This program is authorized in sections 104(i)(1)(E), (7), (9), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)(1)(E), (7), (9), and (15)).

Eligible Applicants

Eligible applicants are states and the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and political subdivisions thereof, including federally recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $2,000,000 is available in fiscal year 1992 to fund 1 to 3 new awards and 1 to 3 non-competing continuation awards. It is expected that new awards will range from $75,000 to $300,000 for the first year and will be made on or about September 30, 1992. It is anticipated that awards will be for a 12-month budget period with a proposed project period of 1 to 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. ATSDR anticipates that funds will be available in fiscal year 1993 to continue approved projects, and may be available to fund a limited number of new projects. Funding estimates may vary and are subject to change.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds, however, justification must be provided which should include a cost comparison of purchase versus lease.

Purpose

The purpose of this announcement is to solicit scientific proposals designed to study the occurrence of/and risk factors for priority adverse health conditions, with emphasis on birth defects and reproductive disorders, including studies of cardiac congenital malformations and/or neural tube defects at Superfund sites. The ATSDR Priority Health Conditions are (in alphabetical order): Birth defects and reproductive disorders, cancers (selected sites), immune function disorders, kidney dysfunction, liver dysfunction, lung and respiratory diseases, and neurotoxic disorders. Studies should utilize existing data sources to the maximum extent possible. One such data source that exists within ATSDR and is available for use by researchers is the TCE Subregistry, a list of persons enrolled on the National Exposure Registry. Priority will be given to studies using data from multiple sites, such as ecologic studies, which will assess the health status of several communities. This will improve the recipients' ability to address potential public health problems related to exposure to hazardous substances.

Program Requirements

ATSDR will provide financial assistance to applicants in developing methods and technologies to explore the relationship between exposure to hazardous substances and occurrence and risk factors for priority adverse health conditions with emphasis on birth defects and reproductive disorders. ATSDR is also interested in funding applicant programs that identify human populations at higher risk of birth defects and reproductive disorders resulting from exposure or toxicity caused by hazardous substances in their environment. The program requirements include, but are not limited to, studies designed to:

1. Evaluate the occurrence of adverse health effects in a population. This will include the evaluation of the incidence or prevalence of a disease, disease symptoms, self-reported health concerns, or biological markers of disease, susceptibility, or exposure.

2. Identify risk factors for adverse health effects in populations. This will include hypothesis generated cohort or case-control studies on potentially impacted populations to identify linkages between exposure and adverse health effects and those risk factors which may be impacted by prevention actions.

3. Develop methods to diagnose adverse health effects in populations. This will include medical research to evaluate currently available biological tests (biomarkers) and disease occurrence in potentially impacted populations.

Evaluation Criteria

The review for scientific and technical merit by an objective review group will be based on the following criteria:

1. Proposed Program 50%

The extent to which the applicant's proposal addresses:

(a) The scientific merit of the proposed project, including the originality and feasibility of the approach; background and literature review; adequacy, and rationale of the design;

(b) The specific study objectives and scientific hypothesis;

(c) The technical merit of the methods and procedures (including QA/QC procedures) for the proposed project, including the degree to which the project can be expected to yield or demonstrate results that meet the program objective as described in the **Purpose** section of this announcement;

(d) The proposed project schedule, including clearly established and obtainable project objectives, and activity time lines for which progress

toward attainment can and will be measured.

2. Program Personnel 30%

The extent to which the proposal has described:

(a) The qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership and

(b) The competence of associate investigators and support staff to accomplish the proposed study, their commitment, and the time they will devote to the project.

3. Applicant Capability 20%

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

4. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of grant funds.

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of grant funds.

Executive Order 12372

Applications are not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161, Health Programs for Toxic Substances and Disease Registry.

Application and Submission Deadline

The original and two copies of the application Form PHS 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, on or before July 24, 1992. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

2. Late Applications

Applications which do not meet the criteria in 1.a or 1.b above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Additional information on application procedures, copies of application forms, other material, and business management assistance may be obtained from Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Mail Stop E–14, Atlanta, Georgia 30305; telephone: (404) 842–6797.

Programmatic assistance may be obtained from Dr. Jeffrey A. Lybarger, Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333; telephone: (404) 639–6200.

Please Refer to announcement number 224 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238)

Dated: June 10, 1992.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92–14059 Filed 6–15–92; 8:45 am]

BILLING CODE 4160–70–M

[Announcement Number 217]

Health Outcomes Studies on Human Exposure to Hazardous Substances and Adverse Health Effects

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of grant funds in fiscal year (FY) 1992 to continue its Superfund-related grant program to conduct health outcomes studies to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes (e.g., birth defects and reproductive disorders, cancers (selected sites), immune function disorders, kidney dysfunction, liver dysfunction, respiratory diseases, and neurotoxic disorders).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section **Where To Obtain Additional Information.")**

Authority

This program is authorized in section 104(i)(7)(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)(7)(A) and (15)).

Eligible Applicants

Eligible applicants are the official public health agencies of the states and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, American Samoa, and federally recognized Indian Tribal governments.

If the official public health agency decides to designate other state agencies or local health jurisdictions responsible for applying for funds, the official public health agency must provide written concurrence of this designation.

Note: Eligible applicants may enter into contracts (epidemiologic, medical consultant, statistical analysis, biological and environmental sampling, data entry, laboratory analysis, etc.) as necessary to meet the requirements of the program and strengthen the overall application.

Availability of Funds

Approximately $400,000 is available in FY 1992 to fund approximately 3 grant awards. It is expected that the average new award will be $133,000 for the first year, with the range being $100,000 to $300,000. The new awards are expected to begin on or about September 30, 1992. It is anticipated that awards will be for a 12-month budget period with a proposed project period ranging from 1 to 2 years. The length of the project period will depend on the complexity of the problems associated with any particular hazardous substance site. Continuation awards will be for the recommended project period indicated in the original award and will be made on the basis of satisfactory progress and the availability of funds. Funding estimates may vary and are subject to change.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. ATSDR has in place a contract to provide biological testing and analysis for use by grantees. Therefore, funding will not be available for laboratory services. Grant funds may not be used to purchase equipment.

Purpose

The purpose of this program is for the states to investigate and characterize the association between exposure to hazardous substances and adverse health outcomes. The activities will utilize (when feasible) ATSDR-developed biomarker panels to assist the states in identifying pre-clinical pathological changes with respect to exposure studies. To help the states develop a better understanding of hazardous substances, ATSDR will provide the states with standardized and compatible methods of data collection and analysis. This will help ATSDR to incorporate site-specific data with data from sites with similar exposures in a multi-site study design.

Project Types

Financial assistance will be provided to study the association between human exposure to hazardous substances in the environment and adverse health outcomes. The primary focus of these projects should be on specific health outcomes, although it is also important to measure the magnitude, pathway, and duration of potentially associated exposures. These projects should include, but need not be limited to, health endpoints measured by standard questionnaires and biomarkers of health outcomes.

ATSDR is particularly interested in similar studies conducted at multiple sites. Therefore, ATSDR is developing standardized questionnaires and organ system-specific panels of biomarkers of health outcomes. By incorporating these survey instruments and biomarker panels into the proposed studies, the recipient will be able to develop results that can be compared to other locations for health outcome trends. In addition, this will allow ATSDR to standardize the results and to increase the statistical power of the studies.

The areas of investigation for these projects may include:

(1) One or more of the seven priority health conditions identified by ATSDR, which are selected cancers, birth defects and reproductive diseases, kidney dysfunction, liver dysfunction, immune dysfunction, neurotoxic disorders, and lung and respiratory diseases. (The seven priority health conditions are not listed in priority order.)

(2) The health outcomes of residents in communities potentially exposed to hazardous waste incinerators.

(3) The health outcomes of residents in communities potentially exposed to environmental sources of dioxins and furans or chlorinated hydrocarbons.

(4) The health outcomes of residents in communities potentially exposed to complex to complex chemical mixtures at hazardous waste sites.

(5) The health outcomes of minority residents in communities potentially exposed to hazardous waste sites.

(6) The health outcomes of residents in communities potentially exposed to Volatile Organic Compounds (VOCs) from hazardous waste sites.

(7) The health outcomes of residents in communities potentially exposed to other hazardous substances.

Program Requirements

Grantees must meet the following requirements: In a grant the applicant is expected to conduct the health outcomes study of exposed individuals without ATSDR's substantial programmatic involvement. Therefore, the grantee's application should be presented in a manner that demonstrates the following:

1. The applicant must have the ability to address the environmental health problems.

2. The applicant's protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, procedures for collecting biologic and environmental specimens and for conducting laboratory analysis and medical evaluation of the test results of biologic specimens and statistical and epidemiologic analysis of the study information, and a description of the safeguards for protecting the confidentiality of individuals on whom data are collected.

3. The principal investigator must have experience in the area of environmental epidemiology, demonstrate the ability to conduct epidemiological investigations, and be able to commit an appropriate amount of time in order to accomplish the study.

4. The applicant must have the ability to provide qualified staff, acceptable institutional resources, and knowledge to implement the provisions of the project.

5. The applicant must have the established capacity to collect and analyze data.

6. The applicant must indicate the proposed method of disseminating the study results to state and local public health officials, policy and decision-makers, community residents, and other concerned individuals and organizations.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and Technical Review Criteria of New Applications

A. Proposed Program—60%

The extent to which the applicant's proposal addresses:

(1) The scientific merit of the proposed project, including the originality of the approach and the feasibility, adequacy, and rationale of the design;

(2) The technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the "PURPOSE" section of this announcement;

(3) The proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured; and

(4) The proposed method to disseminate the study results to state and local public health officials.

community residents, and other concerned individuals and organizations.

B. Program Personnel—30%

The extent to which the proposal has described:

(1) The qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership, and

(2) The competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the study.

C. Applicant Capability—10%

Description of the adequacy and commitment of institution resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

D. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

2. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

A. Satisfactory progress has been made in meeting project objectives;

B. Objectives for the new budget period are realistic, specific, and measurable;

C. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and

D. The budget request is clearly justified and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mail Stop E–14, Atlanta, Georgia 30305, no later than 60 days after the application deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161, Health Programs for Toxic Substances and Disease Registry.

Application Submission and Deadline Dates

Applicants should follow the guidance provided in PHS form 5161–1 in preparing grant applications. The original and two copies must be submitted on or before July 20, 1992, to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, Georgia 30305. By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305 or by calling (404) 842–6797.

Programmatic Assistance may be obtained from Robert W. Amler, M.D., M.S., Chief, Health Investigations Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333 or by calling (404) 639–6201.

Please refer to announcement number 217 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: June 9, 1992.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

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BILLING CODE 4160–70–M

[Program Announcement Number 227]

State Health Departments and Public Health Agencies to Conduct Public Health Assessments and Related Site-Specific Biological Testing

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1992 funds for a cooperative agreement program to conduct (1) Preliminary Public Health Assessments and Public Health Assessments on sites listed or proposed for listing on the National Priorities List (NPL), excluding Federal facilities, and Resource Conservation and Recovery Act (RCRA) facilities; and/or (2) site-specific biological testing activities in communities where ATSDR's Health Activities Recommendation Panel (HARP) has determined that an imminent threat to public health exists. That determination must be based on data and information obtained in a Public Health Assessment, a Preliminary Public Health Assessment, a Public Health Advisory, or a Health Consultation.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce

morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section "**Where To Obtain Additional Information.**")

Authority

This program is authorized under Sections 104(i) (4), (6) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i) (4), (6) and (15)].

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $5,520,000 is available in FY 1992 to fund an estimated 20 awards. It is expected that the average new award will be $275,000, ranging from $100,000 to $400,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. Supplemental funding is available for awards from $10,000 to $100,000 for site-specific biological testing.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested. However, the awardee, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. ATSDR has in place a contract to provide biological testing and analysis for use by recipients.

Purpose

The purpose of this program is for public health agencies, in coordination with ATSDR, to fulfill the mandated objectives of CERCLA and RCRA, as amended, by performing (1) Public Health Assessments and (2) biological testing at sites where a Public Health Assessment, Public Health Advisory, or Health Consultation has identified such a need.

Assessments, consultation, advisory, HARP and biological testing are defined as follows:

Public Health Assessment—is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other health recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects.

Preliminary Public Health Assessment—is prepared only when preliminary environmental contamination data are available or no relevant health outcome or environmental data exist (e.g., at the time the site is proposed for listing on the NPL). Preliminary Public Health Assessments may be followed by public Health Assessments if and when additional data become available. Preliminary Public Health Assessments may lead to the determination that specific public health actions, such as biological testing, are needed.

Health Consultation—is a written or verbal response to a specific question or specific request for information from ATSDR staff or a request for information about health risks posed by a specific site, chemical release, or hazardous material. Consultations may lead to specific recommendations, including public health actions such as biological testing. A Health Consultation may need to be prepared and indicated actions performed rapidly in order to mitigate or prevent adverse human health effects from exposure to hazardous substances in the environment.

Public Health Advisory—is a communication from the ATSDR Administrator to the Administrator of the Environmental Protection Agency (EPA), state health officials, and other pertinent individuals stating ATSDR's concern that a public health threat exists of such importance and magnitude that immediate action should be taken, including biological testing if indicated. The Public Health Advisory is also provided to the appropriate EPA regional office and state health department.

Health Activities Recommendation Panel (HARP)—is an ATSDR-wide multidisciplinary panel composed of staff with expertise in several fields including environmental epidemiology, medicine, environmental health, toxicology, and health education. HARP evaluates the data and information developed in the Public Health Assessments, Preliminary Public Health Assessments, Public Health Advisories, and Health Consultations using established criteria to determine the appropriate public health activities that should be undertaken in populations whose health is impacted by hazardous waste sites. Biological testing is among the determinations that may be made for a specific site.

Biological Testing—is an evaluation that uses standard medical tests to collect data about a defined population for the purpose of determining if exposure to hazardous substances poses an imminent threat to public health. Biological testing may be undertaken at sites for which HARP has determined that such activities are indicated, based on information developed in a Public Health Assessment, Preliminary Public Health Assessment, Public Health Advisory, or Health Consultation performed by ATSDR or by a state through a cooperative agreement with ATSDR. The testing will not require control groups or comparison populations, because test results will be compared to generally accepted medical standards (such as normal ranges for liver function studies or blood lead levels in children). For some substances, the technology and/or reference ranges for testing a compound or its metabolite (analyte) in human biologic systems may not exist. Therefore, biomedical tests may be administered to determine if adverse health conditions may be occurring in the exposed population. Testing will only be used to determine if exposure is currently occurring at levels of public health concern.

Program Requirements

In a cooperative agreement, ATSDR will assist the recipient in conducting the activities. The application should be presented in a manner that demonstrates the applicant's ability to address the health issues in a collaborative manner with ATSDR. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and ATSDR shall be responsible for conducting activities under B., below:

A. Recipient Activities:

1. Public Health Assessments

a. Conduct Public Health Assessments, Preliminary Public Health

Assessments, and addenda to Public Health Assessments on non-Federal NPL sites within the territorial boundaries of the respective state in accordance with a work plan to be mutually agreed upon by ATSDR and recipient that complies with requirements of applicable sections of CERCLA, as amended. Public Health Assessments must be performed in accordance with the methodology provided in the ATSDR Health Assessment Guidance Manual, ATSDR's Review and Handling Producers for Public Health Assessments, and other applicable guidance.

b. The Public Health Assessment process will generally require that states perform the following activities:

(i) Acquire appropriate health and environmental data from relevant state agencies, EPA regional offices, as well as community concerns, independently or in conjunction with ATSDR staff. States must also conduct a site visit as part of performing a public health assessment for a site.

(ii) Conduct a comprehensive, multidisciplinary evaluation and analysis of appropriate extant data in accordance with the ATSDR Health Assessment Guidance Manual and other written/oral guidance. Such evaluation and analysis will include:

(a) Assessment, toxicity, and location of identified contaminants;

(b) Evaluation of actual or potential pathways of exposure;

(c) Assessment and evaluation of community concerns related to potential health impacts of the site;

(d) Assessment of the analytical data being reviewed to determine its reliability (i.e., if it meets all applicable quality assurance and quality control standards); and

(e) Identification of significant data gaps, inconsistencies, and environmental sampling needs;

(f) Comparison of rates or indices of relevant morbidity and mortality data on diseases that may be associated with measured, suspected, or potential levels of exposure related to the site, when applicable and where data are available.

(iii) Prepare draft Public Health Assessments or Preliminary Public Health Assessments which conform to ATSDR's Health Assessment Guidance Manual (including format) and ATSDR's Review and Handling Procedures for Health Assessments. Submit drafts to ATSDR for review in a format compatible with ATSDR software and document handling procedures. The drafts should address the following major areas of concern:

a. Identification of potentially hazardous substances;

b. Concentrations of concern by chemical and environmental media;

c. Environmental and human exposure pathways;

d. Judgment of the recipient as to whether the pathways constitute a public health problem and the basis for such judgment;

e. Impacted community's health concerns associated with the site under evaluation;

f. Overall public health implications of the site; and

g. Recommendations to mitigate or prevent human exposure, including appropriate public health actions and the need for follow-up activities, as necessary, including health studies, and environmental health education for health professionals and for communities whose health is impacted by the hazardous waste site(s) evaluated.

(iv) Participate in the ATSDR Health Activities Recommendation Panel (HARP) review of the Public Health Assessment or Preliminary Public Health assessment and comply with established review and handling procedures for incorporating the results of the HARP review into the Public Health Assessment or Preliminary Public Health Assessment.

(v) Make available the Public Health Assessments and/or the Preliminary Public Health Assessments to the general public for comment in accordance with the ATSDR Health Assessment Guidance Manual.

(vi) Participate in state health, environmental, and/or EPA public workshops and community meetings to discuss and/or respond to questions concerning a particular site's impact on public health.

(vii) Develop a final Public Health Assessment or Preliminary Public Health Assessment in collaboration with ATSDR that reasonably and responsibly incorporates comments and concerns elicited during the review process, such that the final product represents, insofar as possible, the consensus of the recipient and ATSDR.

(viii) On own initiative or upon request from ATSDR, if appropriate, perform addenda to Public Health Assessments of NPL sites previously performed by the recipient or ATSDR when additional data warrants.

2. Site-Specific Biological Testing

Conduct, when applicable, appropriate biological testing. Biological testing uses the measurement of a chemical (analyte), its metabolite (analyte), or another marker of exposure in human body fluids or tissues or standard medical testing of physiologic function in order to determine if exposure to a hazardous substance poses an imminent threat to public health. Control groups and comparison populations are not required. Conducting such testing will require the applicant to:

a. Implement the protocol and conduct the testing activities.

b. Analyze and interpret test results.

B. ATSDR Activities

1. Public Health Assessments

a. Collaborate with recipients in determining the schedule for conducting Public Health Assessments and Preliminary Health Assessments; assist the recipients in establishing and maintaining appropriate and timely schedules during the Public Health Assessment process; assist recipients in acquiring appropriate training for conducting Public Health Assessments; provide materials and applicable guidance in performing the Public Health Assessments and Preliminary Public Health Assessments.

b. Assist the public health agency in performing the Public Health Assessment. This assistance may include:

(1) Assisting the states in acquiring health and environmental data. Provide technical assistance and guidance in performing Public Health Assessments as needed, including participation in site visits.

(2) Provide technical assistance in the evaluation and analysis of appropriate environmental data, health outcome data, and community concerns, especially where ATSDR has unique capabilities. This assistance may include the following, as needed:

(i) Assist in assessing the toxicology of contaminants;

(ii) Assist in the evaluation of completed or potential pathways of exposure;

(iii) Assist in the evaluation of community health concerns as they relate to the potential public health impacts of the site;

(iv) Assist in interpreting analytic data and determining if the data meet applicable quality assurance and quality control standards;

(v) Assist in identification of significant data gaps or environmental sampling needs; and

(vi) Assist in obtaining or comparing relevant morbidity and mortality data.

(3) Assist the public health agency in preparation of the Public Health Assessments or Preliminary Public

Health Assessments. Collaborate with the recipients in the development of the Public Health Assessments and Preliminary Public Health Assessments through close technical review and comment and processing of draft documents.

(4) Conduct ATSDR's Health Activities Recommendation Panel (HARP) evaluation of the Public Health Assessment or Preliminary Public Health Assessment in a timely fashion. Review the HARP statement following the HARP review and provide technical assistance in developing the HARP statement.

(5) Provide assistance in addressing public comments received during the public comment period.

(6) Provide assistance and/or participate in public workshops and community meetings to discuss or respond to questions concerning a particular site's impact on public health.

(7) Assist in the publication of the final technically reviewed and approved Public Health Assessment or Preliminary Public Health Assessment.

c. Conduct program reviews to determine the status of the cooperative agreements and to discuss accomplishments, as well as problems and solutions. Evaluate the overall performance of recipients and adherence to technical and policy guidelines of ATSDR's health assessment process.

2. Site-Specific Biological Testing

a. Assist in implementing the protocol and conducting the testing activities.

b. Assist in analyzing and interpreting test results.

c. Provide technical and scientific review of the draft report.

Evaluation Criteria

A. Applications Will Be Reviewed and Evaluated According to the Following Criteria

1. Scientific and Technical Review Criteria of New Applications for Performing Public Health Assessments

a. *Proposed Program*—50%.

The extent to which the applicant's proposal addresses (1) the scientific merit of the proposed project, including approach, feasibility, adequacy, and rationale of the design; (2) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the Purpose section of this announcement; (3) the proposed project schedule, including clearly established project objectives for which progress toward attainment can and will be measured and provide time lines for meeting these objectives; (4) the proposed mechanism to be utilized as a resource to address community concerns and opinions and create lines of communication; and (5) the proposed method to disseminate the results to state and local public health officials, community residents, and to other concerned individuals and organizations.

b. *Program Personnel*—30%.

The extent to which the proposal has described the (1) qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership; and (2) the competence of associates to accomplish the proposal and their commitment and time they will devote.

c. *Applicant Capability—20%.*

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed investigation.

d. *Program Budget*—(not scored).

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of funds.

2. Scientific and Technical Review Criteria of Supplemental Applications for Performing Site-Specific Biological Testing

a. *Proposed Program*—50%.

The site must have been determined by HARP that biological testing is needed. The extent to which the applicant's proposal addresses (1) the scientific and public health merit of the proposed project, including the approach, feasibility, adequacy and rationale of the design; (2) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the PURPOSE section of this announcement; (3) the objectives for the proposal are realistic, specific, and measurable; (4) protocol covers all aspects of the proposed project, including procedure to collect biological and environmental specimens, laboratory analysis and medical evaluation of test results, statistical analysis, and a description of the safeguards to protect the confidentiality of individuals on whom testing is performed; (5) quality assurance/quality control—provide a mechanism to ensure the quality of the data and the statistical and/or laboratory procedures used; (6) the proposed project schedule, including clearly established project objectives for which progress toward attainment can and will be measured, appropriate time lines for meeting those objectives, and a schedule of progress developed and reported to ATSDR; and (7) the proposed method of addressing any testing results which indicate exposure at levels of public health concern and plans to mitigate or prevent the exposure if identified.

b. *Program Personnel*—30%.

The extent to which the proposal has described the (1) qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership; and (2) the competence of associates to accomplish the proposal, their commitment, and the time they will devote to the project.

c. *Applicant Capability—20%.*

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on the performance of the investigation.

d. *Program Budget*—(not scored).

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of funds.

3. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

a. Satisfactory progress has been made in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in objectives, methods of operation, need for financial support, and/or evaluation procedures will lead to achievement of project objectives; and

d. The budget request is clearly justified and consistent with the intended use of Federal funds.

Funding Priorities

All applications will be given equal consideration. States will be selected for funding the new cooperative agreements using the following priorities:

1. States with 50 or more sites listed or proposed for listing on the NPL, excluding Federal facilities.

2. States with 30 to 49 sites listed or proposed for listing on the NPL, excluding Federal facilities.

3. States with fewer than 30 sites listed or proposed for listing on the NPL, excluding Federal facilities.

Applicants are requested to include in their application as an appendix the name and number of sites listed or proposed for listing on the NPL, excluding Federal facilities.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Application Submission and Deadline

The original and two copies of application PHS Form 5161–1 should be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before July 1, 1992. (By formal agreement, the DCD Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or (b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management assistance may be obtained from Van Malone, Grants, Management Specialist, Grants Management Branch, Procurement and Grants Office,Centers for Disease Control, 255 East paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, telephone (404) 842–6797. Programmatic technical assistance may be obtained from Richard Gillig, Chief, State Programs Section, Remedial Programs Branch, Division of Health Assessment and Consultation, Agency for toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0628.

Please refer to announcement number 227 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Dated: June 10, 1992.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92–14060 Filed 6–15–92; 8:45 am]

BILLING CODE 4160–70–M

Food and Drug Administration

Advisory Committee; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Anti-Infective Drugs Advisory Committee

Date, time, and place. July 10, 1992, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 10, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 6 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 1, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) new drug application (NDA) 20–250, Halfan® (halofantrine, SmithKline Beecham) for treatment of acute malaria, and (2) safety data relating to approved NDA 20–043, Omniflox (temafloxacin hydrochloride, Abbott Labs).

Radiological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. July 14, 1992, 8:30 a.m., Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Adrianne Galdi, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1050.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in

writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 30, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for an ultrasound contrast agent.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 11, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–14117 Filed 6–15–92; 8:45 a.m.]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HSQ–201–N]

Medicare Program; Peer Review Organizations: Revised Scopes of Work for the District of Columbia, Puerto Rico, the Virgin Islands, and all States Except Delaware, Florida, Missouri, Montana, Nebraska, Nevada, Oklahoma, Rhode Island, South Carolina, Washington, and Wyoming

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice describes requirements for the review activities of Utilization and Quality Control Peer Review Organizations (PROs) under contract extensions of the Scope of Work for the District of Columbia, Puerto Rico, the Virgin Islands and all States except Delaware, Florida, Missouri, Montana, Nebraska, Nevada, Oklahoma, Rhode Island, South Carolina, Washington, and Wyoming. Section 1153(h)(1) of the Social Security Act requires us to publish any new policy or procedure adopted by the Secretary that affects substantially the performance of PRO contract obligations at least 30 days before the date the policy or procedure is to be used.

Specifically, this notice describes the way in which PRO contract requirements are changed and explains significant changes in the PRO program (e.g., the way in which cases will be selected for review) and also describes continuing requirements. This notice also implements provisions of the Omnibus Budget Reconciliation Act of 1990.

EFFECTIVE DATES: The effective dates of this notice are as follows:

For PROs in	On
Alaska, Arizona, California, District of Columbia, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, South Dakota and Vermont.	July 16, 1992.
Arkansas, Colorado, Illinois, Kansas, Mississippi, New Hampshire, Ohio, Oregon, Tennessee, Utah and West Virginia.	Oct. 1, 1992.
New York and Pennsylvania	Dec. 1, 1992.
Alabama, Connecticut, Iowa, Massachusetts, North Carolina, North Dakota, Puerto Rico, Texas, Virginia and Wisconsin.	Apr. 1, 1993.
Hawaii and the Virgin Islands	July 1, 1993.

ADDRESS: Allison Herron Eydt, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Bldg., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandy Kappert, (410) 966–6890.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248) established the Utilization and Quality Control Peer Review Organization (PRO) program. Section 1153, as modified by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), requires that the Secretary enter into contracts, which may be renewable on a triennial basis, with private peer review organizations for the review of services for which payment may be made in whole or in part by the Medicare program.

PROs review services furnished to Medicare beneficiaries to determine if the services meet professionally recognized standards of health care, are medically necessary and are delivered in the most appropriate setting. The first level of review of the beneficiary's medical record is performed by a nonphysician reviewer, using criteria and generic quality screens. If the case fails the criteria or screens, it is referred to a physician reviewer, who must be engaged in active practice and have active staff privileges in the PRO area. If, after review of the complete medical record, the PRO physician believes there might be a problem, the attending physician and provider are given an opportunity to discuss the case with the PRO.

The specific review obligations of PROs are outlined in a document known as the Scope of Work, which defines the duties and Medicare review functions performed by the PRO. Such duties and functions include the implementation and operation of a review system to ensure the quality of services for which payment may be made, in whole or in part, under title XVIII of the Social Security Act and to eliminate unreasonable, unnecessary, and inappropriate care provided to Medicare beneficiaries.

The First Scope of Work covered the 1984–1986 contract period. The Second Scope of Work was effective for the 1986–1988 contract period.

On September 12, 1988 (53 FR 35234), we published a notice in the **Federal Register** that announced the development of the Third Scope of Work for 48 States (that is, all States except New Jersey and Maryland), the District of Columbia, and Puerto Rico. A subsequent notice, published on March 1, 1989 (54 FR 8599), described the Third Scope of Work for Maryland, New Jersey, the Virgin Islands, and Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

On July 31, 1989 (54 FR 31576), we published a notice in the **Federal Register** stating that the area of American Samoa, Guam, and the Northern Mariana Islands and the area of Hawaii were redesignated as a single PRO area effective September 29, 1989. The PRO Scope of Work for Hawaii was revised at that time to reflect the change in area designation.

On September 4, 1991 (56 FR 43790), we published in the **Federal Register** a notice outlining the Scope of Work requirements for renewed PROs entering the fourth contracting cycle; that is, the States of Delaware, Missouri, Montana, Nebraska, New Jersey, Nevada, Oklahoma, Rhode Island, South Carolina, Washington, and Wyoming. (These were classified as Group I PROs because they were to be the first group of PROs to enter into contracts during the new contract cycle.) As a result of that notice, contracts were negotiated timely in all those States except New Jersey. Of the Group I PROs, Delaware, Missouri, Montana, Nebraska, Oklahoma, Rhode Island, Washington, and Wyoming will operate under the Scope of Work requirements specified in the September 4, 1991 **Federal Register** notice through September 30, 1994. The PRO contract in Nevada expires October 31, 1994 and in South Carolina on November 30, 1994. Additionally, PROs in Kentucky and Indiana began review under the Extension Scope of Work set forth in this notice when their contracts were negotiated and extended on March 1, 1992. These last two contracts will expire June 30, 1993.

All other PROs are operating under a Third Scope of Work not modified by the September 4, 1991 notice. Contracts have been extended beyond the original March 31, 1992 expiration dates in Alaska, Arizona, California, District of Columbia, Georgia, Idaho, Louisiana, Maine, Maryland, Michigan, Minnesota, New Mexico, South Dakota, and Vermont. These 14 PRO contracts, and the New Jersey PRO contract, have been extended through June 30, 1992 and are classified as Group II PROs.

In Arkansas, Colorado, Illinois, Kansas, Mississippi, New Hampshire, Ohio, Oregon, Tennessee, Utah, and West Virginia, PRO contracts are scheduled to end September 30, 1992. In New York and Pennsylvania, the PRO contracts are scheduled to expire November 30, 1992. (These 13 PROs are classified as Group III PROs.) Additionally, contracts for PROs in Alabama, Connecticut, Iowa, Massachusetts, North Carolina, North Dakota, Puerto Rico, Texas, Virginia, and Wisconsin expire March 31, 1993. The Virgin Islands and Hawaii PRO contracts are scheduled to expire June 30, 1993. (These 12 PROs are classified as Group IV PROs.)

Currently, PRO activities in Florida are conducted by Blue Cross/Blue Shield of Florida and, for HMO review, by the Alabama PRO and are not affected by this notice.

HCFA includes the Scope of Work requirements in its Request for Proposal (RFP), which is used by offerors to develop proposals to perform PRO review. Minor changes in the PRO Scope of Work requirements can be implemented during the contract negotiation process for individual States, or if new requirements are implemented after the contract is negotiated, the contract can be modified.

We plan to implement the provisions of the Extension Scope of Work in Group II PROs through a contract modification. Additionally, unless we publish a **Federal Register** Notice to the contrary, we will implement the provisions of this Extension Scope of Work through a contract modification for Group III and Group IV PROs. Although Blue Cross/Blue Shield of Florida is now conducting fee-for-service review activities in Florida and the Alabama PRO is conducting review of HMO/CMP activities in Florida, we plan to issue an RFP for a competitive procurement of the Florida PRO contract in the near future. At that time, we plan to implement the provisions of the Fourth Scope of Work. Also, we will implement the provisions of the Fourth Scope of Work in Group I PROs at a later date.

During the extension period, PRO review efforts will be gradually modified in anticipation of the requirements to be imposed in the Fourth Scope of Work, which will include the implementation of the Health Care Quality Improvement Initiative (HCQII). The HCQII activities will focus on the analysis of patterns and outcomes of care and providing feedback and education to the community. It is essential that data that PROs collect be based on consistent sampling methodologies, thus insuring reliable national data bases. To assure that consistency, HCFA will identify all cases for PRO review, while PROs will continue to perform medical review activites. The RFP for each PRO area will include the number of reviews included in the random sample identified by HCFA for the PRO to review during the period of its extension contract. HCFA will calculate the number of reviews each PRO will perform using historic hospital discharge data and the individual PRO's historical experience for non-hospital categories. We will recalculate these numbers as the PRO redirects its activities to those that support the new initiatives of pattern analysis and HCQII. During negotiation of an extension contract, HCFA and the PRO will agree on a plan to modify review levels; however, the PRO will maintain a continuing medical review responsibility.

II. Extension Scope of Work

Implementation of the Extension Scope of Work described herein will occur with the extension of a current contract.

This Scope of Work is the result ot extensive analysis of the review

requirements and results achieved under the provisions of the Third Scope of Work. In an effort to achieve a more systematic and effective approach to utilization review and quality assurance in the Medicare program, we are redirecting PRO review activities. Where we have made changes, we have done so to create a more effective review system and to make more efficient use of PRO resources. For example, certain categories of cases are reviewed as they occur in the beneficiary-specific sample, rather than being identified as individual categories of cases selected for review because of their unqiue characteristics.

Additionally, HCFA is committed to the development of a systematic, computerized epidemiological and biostatistical analysis of large data bases to identify patterns of use and patterns of outcome. We believe that a program of eidemiologic surveillance and oversight is an efficient and effective approach to utilization review and quality assurance and will result in overall improvement in the care provided to Medicare beneficiaries. One of the essential roles PROs will play in this future review process will be analyzing the data derived from the new system of review. Further, the PROs will participate in increased education and feedback activity with the local medical community. Thus, the Extension Scope of Work offers PROs the opportunity to gain valuable data experience upon which future data analysis will be based.

Additionally, the Extension Scope of Work incorporates the provisions of Public Law 101–508, as described in section III of this notice.

An individual or organization interested in obtaining copies of the new Scope of Work should address requests to: Edward T. Hodges, Contracting Officer, Division of Health Standards Contracts, Office of Budget and Administration room G–M–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

III. Implementation of Recent Legislation

The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, enacted on November 5, 1990) contained several changes to the PRO legislation. Provisions of Public Law 101–508 that changed PRO requirements follow:

- Section 4205(a) amended section 1156(b)(1) of the Act to require that, before recommending a sanction to the Office of Inspector General (OIG), the PRO, if appropriate, allow the practitioner or other person a reasonable opportunity to enter into, and successfully complete, a corrective action plan, which may include remedial education.
- Section 4205(b) amended section 1154(b)(2) of the Act to require that PROs shall, to the extent necessary and appropriate, use the services of podiatrists and optometrists in the performance of their contracts.
- Section 4205(c)–(d) amended section 1154(a)(9) of the Act to require increased coordination and information sharing by PROs with Medicare carriers and State medical boards/licensing boards.
- Section 4205(e) amended section 1160(d) of the Act to clarify that no document or other information produced by the PRO in connection with its deliberations in making determinations about utilization or quality of care must be subject to subpoena or discovery in any administrative or civil proceedings.
- Section 4207(a) amended section 1867(d) of the Act to require the PRO, as requested by the Secretary, to review and report about alleged anti-dumping cases with regard to selected medical issues before sanctions can be imposed under section 1867(d)(1).

Accordingly, we made changes to the Scope of Work to implement these provisions.

IV. Specific Provisions of the Scope of Work

A. Continuing Requirements

The PRO must—

- Perform the following review activities on each case selected for retrospective review: quality, discharge, invasive procedure (if applicable), admission, and coverage review as well as diagnosis-related group (DRG) validation and, if the case is denied, application of the limitation of liability provisions.
- Maintain an internal quality control system that requires a sampling of the accuracy of nonphysician screening decisions and physician reviewer's work products. The structure of the Internal Quality Control requirements is similar to that required by the Third Scope of Work, but is less specific than the requirements of the September 4, 1991, **Federal Register** Notice.
- Meet certain organizational (for example, nonphysician consumer representation on its board) and eligibility requirements (that is, be a physician sponsored or physician access organization).
- Demonstrate that it meets certain other requirements, including that it is not a health care facility, an affiliate of a health care facility, or an association of such facilities, and that it can operate with complete independence and objectivity.
- Investigate beneficiary complaints about the quality of care and respond appropriately to the beneficiary (or his/her representative).
- When appropriate, initiate sanction recommendations to the OIG regarding practitioners and other persons.
- Coordinate the exchange of information with Medicare fiscal intermediaries (FIs) and carriers.
- Upon request, reconsider initial denial determinations and review DRG changes. When a hearing is requested, the PRO must prepare the appeals folder.
- Review the accuracy of hospital issued notices of noncoverage and perform review for the OIG as part of its investigation of possible areas of fraud and abuse. In addition, the PRO monitors all hospitals to ensure that the "Important Message from Medicare" notices are accurate and given in a timely fashion to all Medicare beneficiaries.
- Publish and distribute a report, not less often than annually, to providers and practitioners that describes the PRO's findings on types of cases in which the PRO has frequently determined that care or services were unnecessary, delivered in an inappropriate setting, or did not meet professionally recognized standards of care.
- Set dynamic objectives to correct identified problems when other required interventions (for example, as required under the Quality Intervention Plan (QIP)) fail to correct the problem. This allows PROs to focus review on validated utilization and quality problems not corrected through required interventions. The PRO must, however, clearly delineate to HCFA the relationship between productivity measures and the additional work effort; that is, the cost effectiveness associated with the additional level of effort.

B. Continuing Requirements With Some Amendment(s)

The PRO must continue to—

- Use HCFA's QIP, a prescribed blueprint that requires each PRO to implement specific interventions in response to certain thresholds of confirmed quality problems. The 3-level severity indexing system continues with the same point value for each level as in the prior Scope of Work (that is, Level I = 1 point, Levell II = 5 points, Level III = 25 points). Potential Level I cases are placed in a "pending" status until a threshold is met or exceeded. When that threshold is met or exceeded, the

physician and/or provider (that is, the source of the potential quality problem) is given an opportunity to discuss the issue with, and submit additional information (if any) to, the PRO. In response to objections from large hospitals and their physicians that they have the same numerical thresholds as small hospitals and their physicians for having cases come out of pending status, we have developed thresholds that recognize differences in case review volume and require that the PRO use these for determining when to review pended cases.

- Review a sample of discharges; however, the sample is identified by HCFA rather than by the PRO through random selection from Medicare claims files. Additionally, the sample is selected from both prospective payment system (PPS) and specialty hospital discharges, and the sample size may vary. Under the provisions of the Scope of Work announced in the September 4, 1991, **Federal Register** Notice, the sample size is 15 percent.
- Review day and cost outliers. When, as part of the review of the HCFA-selected sample cases, the PRO identifies one of these outliers (with reimbursed charges of $3,000 or more about the cost outlier threshold), the PRO will conduct and report its review as outlier review. However, it will no longer select for review a specific percent of cases from the universe of day and cost outliers.
- Perform length-of-stay review for a stay when specialty hospital care is included in a case selected as part of the sample cases. However, the PRO will no longer select a random sample of cases from specialized units in PPS hospitals and hospitals certified as being exempt from Medicare's PPS. (The Third Scope of Work required a 15 percent sample of specialty hospital care.)
- Review instances where the beneficiary also received intervening care services, was readmitted to a hospital within 31 days of a discharge, or was transferred. However, HCFA rather than the PRO, will identify for the PRO review cases involving these types of services, readmission, or transfer. The RPO will no longer specifically select cases for review simply because they are representative of transfer and readmission cases, or intervening care. (Intervening care is defined as care that takes place between hospital admissions occurring less than 31 days from each other, including emergency room services, observation services, continuing outpatient hospital services, covered skilled nursing facility stays, home health care, ambulatory surgery services.) The Third Scope of Work required that PROs select specified percentages of each hospital's transfer cases, readmissions within 31 days, and a sample of intervening care.
- Review 100 percent of all hospital adjustments submitted by the hospital to the FI that result in a higher weighted diagnosis related group (DRG); however, the review will be performed on a postpayment basis.
- Review a three percent facility-specific random sample of surgical procedures designated on HCFA's List of Covered Surgical Procedures for Ambulatory Surgical Centers. (Formerly a five percent sample was reviewed.) These surgeries are performed in ambulatory surgery centers and hospital outpatient areas. The universe of ambulatory surgery cases includes cataract surgeries that were previously reviewed under HCFA's requirement for 100 percent preadmission/preprocedure review of those procedures.
- Review for Medicare payment all cases for an assistant at surgery for the following cataract procedures: Current Procedural Terminology (CPT) codes 66852, 66920, 66940, 66984, and 66985. (Formerly, all assistants at cataract extractions or subsequent lens insertions required PRO prior approval. Public Law 101–508, however, mandated that payment for an assistant at cataract surgery could be made only when an assistant is used at a type of cataract surgery 5 percent or more of the time. The codes listed above are the only codes that meet the 5 percent requirement and thus are the only ones for which payment can be made. Accordingly, these are the only ones that will be subjected to PRO prior approval.)
- Identify all cases selected for review but not completed prior to a contract extension. The PRO is required to complete review of certain pending cases. Identified errors in these cases will not be included in the computation for intensified review.
- Enforce the requirements of intensified review whenever the quarterly error rate for utilization issues exceeds the allowable tolerance levels identified by HCFA (that is, five percent with a minimum of six cases); however, we amended the levels of review that the PRO initiates when intensification is triggered.
- Report data to HCFA on a regular basis; however, we have modified the data elements to be reported and the reporting of a PRO's financial information.
- Conduct a beneficiary outreach program that requires, at a minimum, that the PRO maintain a hotline for beneficiaries, provide educational programs and certain informational materials, and coordinate similar activities with other concerned organizations. Under the Third Scope of Work, the PRO was required to sponsor beneficiary meetings four time a year. We have reduced the requirement to twice a year but are encouraging PROs to increase the effectiveness of the meetings.
- Offer to meet with the medical and administrative staffs of hospitals. However, the requirement has been changed from quarterly to semiannually.

C. Requirements That Are Eliminated

Where review proved not to be efficient or effective nationwide, and is not statutorily mandated, the requirement for PRO review has been eliminated. Accordingly, the PRO will no longer perform these activities which were identified as being non-productive—

- Selection of any DRG-specific samples. Under the Third Scope of Work, PROs reviewed 25 percent of cases assigned to DRG 462 (Rehabilitation), 50 percent of those assigned to DRG 468 (Unrelated Operating Room Procedure), plus all cases grouping to DRGs 472 (Extensive Burns), 475 (Respiratory System Diagnosis with Ventilator Support), and 385–391 (Major Diagnostic Category 15—Newborns and other Neonates with Conditions Originating in the Prenatal Period). PROs will review these DRGs when they occur in the sample cases.
- Review 100 percent of the cases identified by the Medicare Code Editor. The Third Scope of Work requires this review. These cases, however, may appear as part of the beneficiary-specific sample.
- Perform preadmission/preprocedure review under a plan approved by HCFA. (The Third Scope of Work [as modified by Directed Change Order 91–13] allows PROs to propose preadmission/preprocedure review.)
- Perform profiling of data derived from PRO review, as described in the Third Scope of Work (except for compiling review results as required by the QIP and for calculation of error rates for intensified review). Although profiling activities have provided some useful information to HCFA and to PROs, we are replacing this requirement with an improved data analysis to compare how patterns of care or outcomes in one place or at one time may differ from patterns of care in other places or at other times. These analyses

will provide PROs with the analytical experience to allow a smoother transition to future evaluation of practice patterns and outcomes as described in the Scope of Work.

D. New Requirements

Under previous Scopes of Work, PROs received magnetic tapes from the FI that contained listings of all discharges for which claims were submitted to the FI. The PRO was required to select the cases it reviewed from those tapes.

We have changed the methodology for selecting cases for PRO review. The Scope of Work requires the PRO to review cases that have been identified by HCFA through a random sample; however, the PRO will continue to select cases for focused review. Accordingly, PROs will no longer be responsible for the initial identification of all cases to be reviewed. PROs are still required to review, on a preprocedure basis, requests for the use of the services of an assistant at cataract surgery.

The PRO reviews on a postpayment basis all inpatient hospital care rendered in the sample discharges identified by HCFA. For all discharges, the PRO must review all care provided in short term/acute care hospitals (i.e., PPS hospitals), as well as specialty hospitals and units exempt from PPS. The PRO will review incidences of readmission, intervening care or transfer that occur within the sample.

Additionally, the PRO is required to offer to meet with State hospital associations and medical societies at least quarterly to discuss, for example, review process issues and PRO findings. We believe that these interactions are vital to the success of a peer review program.

The most significant change is the implementation of new data analysis activities. PROs will begin the initial phase of analytic work to redirect the focus of the PRO program from individual case review to analysis of patterns of care and outcome. While PROs will continue to maintain case review responsibility, HCFA is committed to changing the strategy of systematic analysis of patterns of care and patterns of outcome in the context of national, State and local experience and trends. Ultimately, the data analysis should provide information vital to improving the quality of services provided to Medicare beneficiaries. The data analysis activities in this Scope of Work will provide PROs with experience they will need to proceed into the more advanced systematic analyses of the future.

Accordingly, in this Scope of Work, PROs will examine how patterns of care and of outcomes in one place or at one time differ from patterns of care and of outcomes in other places or at other times.

The PRO will compare the rates at which certain services are provided to patients with particular characteristics according to where and by whom they are treated and the rates at which different outcomes occur for patients with similar conditions according to where and by whom they are treated. HCFA will analyze outcomes using models which focus on long-term and short-term outcomes as well as the extent to which the risks of those outcomes change over time. PROs will derive data from the National Claims History File, the Medicare Hospital Information Release Mortality Analysis, and other analytic data sets developed by HCFA.

This program of determining variations of use and outcome by descriptive statistical analysis will provide a foundation for more sophisticated analytic work to be undertaken once the Uniform Clinical Data Set becomes available for use.

V. Information Collection Requirements

Provisions of this notice will be implemented by information collection requirements contained in revised PRO quarterly and monthly reporting forms. As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), these revised forms have been approved by the Office of Management and Budget (OMB) under control numbers 0938–0531 for HCFA forms 613 through 617 and 619 (PRO reporting forms) and 0938–0591 for HCFA forms 618 and 620 through 627 (cost reporting forms). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the **"ADDRESSES"** section of the preamble.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: May 27, 1992.

William Toby,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–14034 Filed 6–15–92; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–6310–11–257A; G2–277]

Medford District Advisory Council; Meeting

June 5, 1992.

AGENCY: Bureau of Land Management, Medford District Office, Interior.

ACTION: Notice.

SUMMARY: This notice announces postponement of the Medford District Advisory Council meeting scheduled for June 25, 1992 at 8:30 a.m. at the Medford District Office, 3040 Biddle Road, Medford, Oregon. This notice is given in accordance with Public Law 99–463.

FOR FURTHER INFORMATION CONTACT: Kurt Austermann, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504; Telephone 503–770–2424.

SUPPLEMENTARY INFORMATION: The meeting will be rescheduled for a date to be announced.

David A. Jones,

District Manager.

[FR Doc. 92–14030 Filed 6–15–92; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 6, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 1, 1992.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Los Angeles County

Hollywood Melrose Motel, 5150–70 Melrose Blvd., Los Angeles. 92000834

Seraight, Charles E., House, 4333 Emerald Ave., La Verne. 92000833

MASSACHUSETTS

Bristol County

Cadman-White-Handy House, 202 Hixbridge Rd., Westport. 92000831

MICHIGAN

Marquette County

Cliffs Shaft Mine, Euclid St between Lakeshore Dr. and Spruce St., Ishpeming. 92000832

NORTH CAROLINA

Halifax County

Tillery-fries House, SE side of NC 481, 0.3 mi N of jct. with NC 1117, Tillery vicinity, 92000830

TENNESSEE

Wayne County

Water Street Historic District, Water St. (TN 128) between Polk and Cedar Sts., Clifton, 92000829

[FR Doc. 92-13918 Filed 6-15-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-406-12]

Oscillating Fans From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 406(a) of the Trade Act of 1974 (19 U.S.C. 2436(a)) and scheduling of a public hearing in connection therewith.

SUMMARY: Following receipt of a petition filed on May 22, 1992, on behalf of Lasko Metal Products, Inc., West Chester, PA, the United States International Trade Commission instituted investigation No. TA-406-12 under section 406(a) of the Trade Act of 1974 to determine, with respect to imports from the People's Republic of China of oscillating table, floor, and wall fans, not for permanent installation, provided for in subheading 8414.51.00 of the Harmonized Tariff Schedule of the United States, whether market disruption exists with respect to an article produced by a domestic industry. Section 406(e)(2)(A) of the act states that market disruption exists within a domestic industry whenever "imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry." The Commission will make its determination in this investigation by August 24, 1992.

EFFECTIVE DATE: May 22, 1992.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Hearing.—The Commission will hold a public hearing in connection with this investigation beginning at 9:30 a.m. on July 9, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 25, 1992. All persons desiring to appear at the hearings and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on June 29, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs in July 1, 1992. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is July 17, 1992. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 17, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the rules.

In accordance with § 201.16(c) of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy.—Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing or posthearing briefs or other written submissions.

Authority: This investigation is being conducted under the authority of section 406 of the Trade Act of 1974. This notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: June 10, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-14119 Filed 6-15-92; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Connecticut State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On November 3, 1978, notice was published in the **Federal Register** (43 FR 51390) of the approval of the Connecticut Public Sector State Plan and the adoption of subpart E to part 1956 containing the decision.

The Connecticut Public Sector only State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing an intent to amend the State Plan by adopting the standard(s) in the Connecticut Law Journal.

b. Approval by the Commissioner of Labor and the Attorney General of the State of Connecticut.

c. Approval by the Legislative Regulation Review Committee, State of Connecticut.

d. Filing in the Office of the Secretary of State, State of Connecticut.

e. Publishing a notice that the State Plan is amended by adopting the standard(s) in the Connecticut Law Journal.

The Connecticut Public Sector State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6, of the Act. By letter dated February 21, 1992, from Commissioner Ronald F. Petronella, Connecticut Department of Labor, to John B. Miles, Jr., Regional Administrator, and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR parts 1910 and 1926 and subsequent amendments thereto, as described below:

(1) Revision to 29 CFR 1910, Electrical Safety-Related Work Practices; Final Rule, as contained in 55 FR 31984, dated 8/6/90.

(2) Correction to 29 CFR 1910, Electrical Safety-Related Work Practices; Final Rule, as contained in 55 FR 46052, dated 11/1/90.

(3) Correction and technical amendments to 29 CFR 1910, Control of Hazardous Energy Sources (Lockout/Tagout); Final Rule, as contained in 55 FR 38677, dated 9/20/90.

(4) Amendment to 29 CFR 1926, Concrete and Masonry Construction Safety Standards; Lift-Slab Construction Operations; Final Rule, as contained in 55 FR 42328, dated 10/18/90.

(5) Amendment to 29 CFR 1926, Safety Standards for Stairways and Ladders Used in the Construction Industry; Final Rule, as contained in 55 FR 47687, dated 11/14/90.

(6) Correction to 29 CFR 1926, Safety Standards for Stairways and Ladders Used in the Construction Industry, as contained in 56 FR 2585, dated 1/23/91.

(7) Correction to 29 CFR 1910, Hazardous Waste Operations and Emergency Response; Final Rule, as contained in 56 FR 15832, dated 4/18/91.

(8) Correction to 29 CFR 1910, Occupational Exposure to Lead; Final Rule, as contained in 56 FR 25686 dated 5/31/91.

These standards became effective on November 29, 1991, and December 30, 1991, pursuant to section 31–372 of State Law.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State Standards are identical to the Federal standards and accordingly are approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts, 02114; Office of the Commissioner, State of Connecticut, Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, and the OSHA Office of State Programs, room N–3476, Third Street and Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Connecticut Public Sector Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

This decision is effective June 16, 1992.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Massachusetts, this 22nd day of May 1992.

John B. Miles, Jr.,

Regional Administrator.

[FR Doc. 92–14096 Filed 6–15–92; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92–37]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by July 16, 1992. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project 2700–XXXX), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–9897.

Reports

Title: NASA FAR Supplement, Parts 18–19, Small Business and Small Disadvantaged Business Concerns and Related Contract Provisions.

OMB Number: New.

Type of Request: Regular Submission.

Frequency of Report: 3 times yearly.

Type of Respondent: Businesses or other for-profit, non-profit institutions, Small businesses or organizations.

Number of Respondents: 185.

Responses per Respondent: 3.

Annual Responses: 555.

Hours per Response: 16.21.

Annual Burden Hours: 8,997.

Abstract-Need/Uses: NASA requires more frequent reporting of Small Disadvantaged Business subcontract awards in order to more effectively manage its Congressionally mandated 8% goal.

Dated: June 8, 1992.

D.A. Gerstner,

Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 92–14089 Filed 6–15–92; 8:45 am]

BILLING CODE 7510–01–M

[Notice 92–38]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the

NAC Aerospace Medicine Advisory Committee.

DATES: June 22, 1992, 8 a.m. to 5 p.m.; June 23, 1992, 8 a.m. to 5 p.m.; and June 24, 1992, 8 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 226, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Richard Keefe, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1530).

SUPPLEMENTARY INFORMATION: The Aerospace Medicine Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range planning of aerospace medicine research. The Committee will meet to discuss the status of the NAC AMAC Executive Report, medical support requirements in NASA, the Biomedical Monitoring and Countermeasures (BMAC) program, science and technology for human presence, and Space Station operational medicine planning. The Committee is chaired by Dr. Harry C. Holloway and is composed of 22 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda:

Monday, June 22
- 8 a.m.—Introduction and Chairman's Remarks.
- 8:15 a.m.—Status of Life Sciences Division.
- 10:30 a.m.—NAC/AMAC Executive Report Status and Actions.
- 1 p.m.—Medical Support Requirements in NASA.
- 3:15 p.m.—Status of BMAC Planning.
- 5 p.m.—Adjourn.

Tuesday, June 23
- 8 a.m.—Agenda Review and Announcements.
- 8:15 a.m.—Status of OSSA Roles and Missions.
- 10:15 a.m.—Science and Technology for Human Presence.
- 1 p.m.—Space Station Operational Medicine Planning.
- 3 p.m.—Status of Radiation Health Program.
- 4:30 p.m.—Committee Discussion.
- 5 p.m.—Adjourn.

Wednesday, June 24
- 8 a.m.—Agenda Review and Announcements.
- 8:15 a.m.—Status of Space Physiology and Countermeasures Program.
- 10:15 a.m.—Status of Recent Biomedical Studies.
- 1 p.m.—Discussion of Committee Executive Report Actions.
- 2:15 p.m.—Discussion of Action Items and Report Development.
- 3 p.m.—Adjourn.

Dated: June 10, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–14090 Filed 6–15–92; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the National Commission on America's Urban Families will hold a roundtable meeting in Minneapolis, Minnesota on Tuesday, July 7, 1992. For exact time and location of the meeting, please contact the Commission two days prior to the event at 202–245–6462.

The purpose of the meeting is to enable invited participants to express their views on the condition of America's urban families and inform the Commission about programs and approaches that work to strengthen families.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW., room 305–F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92–14035 Filed 6–15–92; 8:45 am]

BILLING CODE 4150–04–M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co.; Byron Station, Unit Nos. 1 and 2; Braidwood Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company (CECo, the licensee), for operation of the Byron Station, Unit Nos. 1 and 2, located in Ogle County, Illinois, and Facility Operating License Nos. NPF–72 and NPF–77, issued to the licensee, for operation of the Braidwood Station, Unit Nos. 1 and 2, located in Will County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would allow the discontinuance of performing the venting surveillance required by Technical Specification (TS) 4.5.2 for Emergency Core Cooling System (ECCS) piping inside containment. TS 4.5.2 currently states, in part, that each ECCS subsystem shall be demonstrated operable, at least once per 31 days, by verifying that the ECCS piping is full of water by venting the ECCS pump casings and accessible discharge piping high points.

The proposed action is in accordance with the licensee's request dated March 17, 1989, as supplemented by letters dated August 25, 1989, March 12, 1990, and June 10, 1991.

The Need for the Proposed Action

The proposed amendment to TS 4.5.2 clarifies which ECCS piping vent valve locations require venting by stating that only venting of the ECCS pump casings and the discharge piping high points outside of containment will be performed at least once per 31 days. This change discontinues the requirement to perform venting surveillances at the seven (7) high point vent valve locations inside containment in Unit 1 at the Byron and Braidwood Stations. (These valves are not installed inside Unit 2 at each station.) This proposed change will reduce substantial radiation exposure to those individuals who would otherwise be performing the surveillance inside containment while the reactor is at power. This reduction in radiation exposure is in accordance with as low as reasonably achievable (ALARA) guidelines while maintaining the intended safety function of the ECCS equipment.

The operational experience of venting ECCS discharge lines at Unit 1 of Byron and Braidwood Stations indicated insignificant or nil amount of air in those pipes. Venting performed at least once per 31 days on the suction side of the ECCS pumps, at the pump casings, and at the discharge piping high points located outside of containment has provided sufficient venting to remove any entrapped air in the ECCS system. Also, CECo's engineering analysis has determined that in the unlikely event of an air void entering the discharge side of the ECCS pumps, the piping has the capability to withstand a water hammer event caused by the maximum credible air void. This was reviewed and found acceptable by the staff.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS and concludes that the proposed changes would not change the types, or allow an increase in the amounts, of effluents that may be released offsite. Now would they result in an increase in individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves a modification to the existing surveillance requirements for venting of ECCS discharge piping. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for Byron Station, Unit Nos. 1 and 2, dated April 1982, and for Braidwood Station, Unit Nos. 1 and 2, dated June 1984.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 17, 1989, and supplements dated August 25, 1989, March 12, 1990, and June 10, 1991, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. Dated at Rockville, Maryland, this 4th day of June 1992.

For the Nuclear Regulatory Commission.

Richard J. Barrett,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–14116 Filed 6–15–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Union Electric Company (the licensee) for an amendment to Facility Operating License No. NPF–30 issued to the licensee for operation of the Callaway Nuclear Power Plant, Unit 1, located in Fulton, Missouri. A Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Determination and Opportunity for Hearing was published in the **Federal Register** on January 22, 1992 (57 FR 2602).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to allow entry into Modes 2 or 1 without applying the provisions of Specification 4.0.4 for "Reactor Trip System Instrumentation Surveillance Requirements" and to allow entry into Modes 3, 2, or 1 without applying the provisions of specification 4.0.4. for "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements."

The NRC Staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed changed by letter dated June 8, 1992.

By July 16, 1992, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Gerald Charnoff, Esquire, and Thomas A. Baxter, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney of the licensee.

For further details with respect to this action, see (1) the application for amendment dated August 7, 1991, and the letter to the licensee dated June 8, 1992.

These documents are available for public inspection at the Commission's Public Document Room and the Callaway Country Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevard, St. Louis, Missouri 63130. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 8th day of June 1992.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Acting Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–14115 Filed 6–15–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under schedules A and B, and placed under schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Stephen H. Perloff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on May 18, 1992 (57 FR 21139). Individual authorities established or

revoked under schedules A and B and established under schedule C between April 1 and April 30, 1992, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1992.

Schedule A

No Schedule A authorities were established or revoked during April.

Schedule B

No Schedule B authorities were established or revoked during April.

Schedule C

Action

One Special Assistant to the Deputy Director. Effective April 14, 1992.

Department of Agriculture

One Staff Assistant to the Director, Publishing and Visual Communications, Office of Public Affairs. Effective April 6, 1992.

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective April 16, 1992.

Two Confidential Assistants to the Administrator, Food and Nutrition Service. Effective April 17, 1992.

One Staff Assistant to the Manager, Federal Crop Insurance Corporation. Effective April 21, 1992.

Agency for International Development

One Special Assistant to the Assistant Administrator, Bureau of Europe. Effective April 6, 1992.

One Writer-Editor to the Director, Office of External Affairs. Effective April 17, 1992.

One Public Affairs Specialist to the Chief, Public Liaison Division, Office of External Affairs. Effective April 17, 1992.

One Public Affairs Specialist to the Chief, Public Liaison Division, Office of External Affairs. Effective April 27, 1992.

Department of Commerce

One Special Assistant to the Deputy Assistant Secretary for Program Support, Economic Development Administration. Effective April 6, 1992.

One Director of Congressional Affairs to the Assistant Secretary and Commissioner of the Patent and Trademark Office. Effective April 17, 1992.

One Special Assistant to the General Counsel, National Oceanic and Atmospheric Administration. Effective April 27, 1992.

Department of Defense

One Personal and Confidential Assistant to the Director of Research and Engineering. Effective April 6, 1992.

One Principal Director for Drug Enforcement Policy to the Deputy Assistant Secretary. Effective April 6, 1992.

One Private Secretary to the Principal Deputy General Counsel. Effective April 6, 1992.

One Law Clerk to the Judge, U.S. Court of Military Appeals. Effective April 22, 1992.

One Special Assistant for Family Advocacy and External Relations to the Deputy Assistant Secretary of Defense (Prisoner of War/Missing in Action Affairs). Effective April 27, 1992.

Department of Education

One Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective April 3, 1992.

One Special Assistant to the Assistant Secretary, Office of Management and Budget/Chief Financial Officer. Effective April 14, 1992.

One Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective April 16, 1992.

One Special Assistant to the Director of Communications/Counselor to the Secretary. Effective April 16, 1992.

One Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective April 16, 1992.

One Confidential Assistant to the Deputy Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective April 20, 1992.

One Confidential Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective April 24, 1992.

Two Special Assistants to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective April 24, 1992.

Department of Energy

One Staff Assistant to the Principal Associate Deputy Under Secretary for Policy, Planning and Analysis. Effective April 7, 1992.

One Staff Assistant to the Director, Office of Special Projects. Effective April 7, 1992.

Evironmental Protection Agency

One Director, Regional Operations Division, to the Associate Administrator for Regional Operations and State/Local Relations. Effective April 7, 1992.

Federal Emergency Management Agency

One Confidential Assistant to the Assistant Associate Director for Public Affairs. Effective April 17, 1992.

General Services Administration

One Special Assistant to the Commissioner, Information Resources Management Service. Effective April 6, 1992.

Department of Health and Human Services

One Special Assistant to the Deputy Director. Effective April 6, 1992.

One Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective April 6, 1992.

One Special Assistant to the Director of Communications, Office of the Deputy Assistant Secretary for Public Affairs (Policy and Communication). Effective April 14, 1992.

One Special Assistant to the Commissioner, Social Security Administration. Effective April 14, 1992.

One Legislative Liaison to the Associate Commissioner, Office of Legislation and Congressional Affairs, Office of Policy and External Affairs, Social Security Administration. Effective April 27, 1992.

Department of Housing and Urban Development

One Deputy to the General Counsel. Effective April 3, 1992.

One Staff Assistant to the Deputy Assistant Secretary for Executive Services. Effective April 3, 1992.

One Special Assistant to the Assistant Secretary, Office of Public Affairs. Effective April 6, 1992.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective April 17, 1992.

One Director, Health Care Staff, to the Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner. Effective April 22, 1992.

One Deputy Assistant to the Assistant Secretary for Public Affairs. Effective April 22, 1992.

One Program Policy Advisor to the Deputy Assistant Secretary for Policy Development. Effective April 22, 1992.

One Confidential Assistant to the Chairman. Effective April 22, 1992.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective April 22, 1992.

International Trade Commission

One Staff Assistant to the Chairman. Effective April 27, 1992.

Department of Justice

One Special Assistant to the Associate Attorney General. Effective April 6, 1992.

One Confidential Assistant to the Assistant Attorney General, Office of Legal Counsel. Effective April 27, 1992.

One Deputy to the Director, Office of Policy and Communications. Effective April 27, 1992.

Department of Labor

One Assistant to the Secretary's Representative, Office of Congressional and Intergovernmental Affairs, San Francisco, California. Effective April 3 1992.

One Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration. Effective April 6 1992.

One Staff Assistant to the Assistant Secretary, Occupational Health Safety and Health Administration. Effective April 14, 1992.

Office of National Drug Control Policy

One Legislative Assistant to the Director of Congressional Relations. Effective April 3, 1992.

Two Special Assistants (Regional Liaison) to the Special Assistant, Regional Coordinator, Bureau of State and Local Affairs. Effective April 14, 1992.

One Special Assistant (Regional Liaison) to the Special Assistant, Regional Coordinator, Bureau of State and Local Affairs. Effective April 27, 1992.

Occupational Safety and Health Review Commission

One Confidential Assistant to a Member (Commissioner). Effective April 27, 1992.

Small Business Administration

One Special Assistant to the Deputy to the Associate Deputy Administrator for Management and Administration. Effective April 6, 1992.

One Special Assistant to the Counselor to the Administrator. Effective April 6, 1992.

One Region IV Special Assistant to the Regional Administrator, Dallas, TX. Effective April 27, 1992.

Department of State

One Foreign Affairs Officer to the Ambassador-at-Large for Non-Proliferation Policy and Nuclear Energy Affairs. Effective April 3, 1992.

Department of the Treasury

One Staff Assistant to the Assistant Secretary for Policy Management. Effective April 3, 1992.

One Special Assistant to the Assistant Secretary (Public Affairs and Public Liaison). Effective April 3, 1992.

One Special Assistant to the Assistant Secretary (International Affairs). Effective April 9, 1992.

One Confidential Assistant to the Commissioner, Internal Revenue Service, Effective April 27, 1992.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-14004 Filed 6-15-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-18764/File No. 811-4266]

LifeFund Account

June 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: LifeFund Account (the "Applicant").

RELEVANT 1940 ACT SECTIONS: Application filed pursuant to section 8(f) of the 1940 Act and Rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The applicant was filed on March 20, 1992, and amended on June 3, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1992, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Mr. Al W. Kennon, Jr., Southwestern Life Insurance Company, 500 North Akard, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pitts, Attorney, at (202) 272-3040, or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant was originally established by Southwestern Life Insurance Company ("Southwestern") as a separate account pursuant to the insurance laws of the state of Texas on March 13, 1985. There has been no change in Applicant's legal status under Texas law.

2. On March 21, 1985, the Applicant registered under the 1940 Act as a unit investment trust. On that same date, the Applicant filed a registration statement registering an indefinite number of securities under the Securities Act of 1933. The registration statement became effective on January 9, 1986 and the definitive prospectus, pursuant to which the initial public offering was made, was filed on February 24, 1986.

3. On January 25, 1991, a letter was sent by Southwestern to all of Applicant's policyowners extending an offer to surrender their variable universal life policies in return for any one of three specified payment options. The offer was made contingent upon all outstanding policyowners accepting it not later than February 15, 1991 (the "Initial Acceptance Date"). Briefly, the offer consisted of the opportunity for the policyowners to exchange their policies for a dollar amount equal in each case to the net asset value of their respective policies as of a specified date, increased by ten percent ("Enhanced Value"). The Enhanced Value would be paid, at the option of each policyowner, in the form of either: (1) A non-variable universal life insurance policy to be issued by Southwestern; (2) a fixed annuity contract to be issued by Southwestern; or (3) cash. Southwestern extended the date for receipt of the documents by policyowners accepting the offer until March 15, 1991. All policyowners accepted the offer and, by March 22, 1991, Applicant had distributed all of its

net assets to policyowners. No contingent deferred sales charge, redemption fee, or other fee was imposed in connection with the exchange transaction.

4. The portfolio securities of the Applicant were shares of Neuberger & Berman Advisers Management Trust ("AMT"), an open-end diversified management investment company registered under the 1940 Act. The Applicant redeemed its shares of AMT at net asset value which was next computed after receipt by AMT of the redemption request.

5. The value initially paid or credited to the new policies pursuant to Applicant's liquidation procedure were the values as of the Initial Acceptance Date. At various times between the Initial Acceptance Date and March 22, 1991, however, the account values of certain of Applicant's subaccounts increased, the difference between the values originally applied or credited and such subsequent higher values, plus interest, was paid to the affected policyowners. The shortfall between each policyowner's proportionate share of Applicant's net asset value and the amount he or she ultimately received was provided by Southwestern from its general account assets.

6. Expenses of the Applicant and/or Southwestern incurred in connection with the liquidation of Applicant have been borne by Southwestern. There were no brokerage fees incurred in connection with the liquidation.

7. The Applicant has no assets, liabilities or policyowners. The Applicant has not transferred any of its assets to a separate trust.

8. The Applicant is not party to any litigation or administrative proceedings (other than this deregistration proceeding).

9. The Applicant is not now engaged, nor does it intend to engage, in any business activity other than that necessary for the winding-up of its affairs. Applicant has made all required filings of Form N–SAR, and Applicant represents that it will continue to make such filings as required until such time as the Commission issues an order granting deregistration of the Applicant under the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–14093 Filed 6–15–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25554; International Series Release No. 398]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 12, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 1, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or other issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

PSI Resources, Inc. (70–7964)

PSI Resources, Inc. ("PSI"), an Indiana public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, and PSI Energy, Inc. ("PSI Energy"), its wholly owned public-utility subsidiary company, both of 1000 East Main Street, Plainfield, Indiana 46168 ("Applicants"), have filed an application in connection with the proposed acquisition of an interest in a newly-formed Argentine electric public-utility company ("Target"). Applicants request an unqualified order of exemption pursuant to section 3(b) of the Act for PSI Energy Argentina, Inc. ("Energy Argentina"), a newly-formed, wholly owned Indiana subsidiary of PSI Energy, Investor Co., a to-be-formed partially owned subsidiary of Energy Argentina, and Target. Alternatively, Applicants request an order of the Commission under sections 9(a)(2) and 10, approving the proposed acquisition of an interest in Target, and granting exemptions under section 3(a)(5) from all provisions of the Act except section 9(a)(2) to Energy Argentina and Investor Co.

PSI Energy generates, transmits and sells electric power in Indiana. PSI Energy and PSI reported operating revenues of approximately $1.1198 billion and $1.1223 billion, respectively, in 1991.

PSI intends to participate in an international consortium ("Consortium") that will bid to acquire 51% of the voting securities of either of two newly-formed Argentine electric-utility companies, Edenor, S.A. and Edesur, S.A. ("Targets"), that own and operate transmission and distribution systems in the City of Buenos Aires and the surrounding area.[1] The Argentine government currently owns 100% of each Target and has called for public tenders to sell a majority (51%) of the shares to private owners. It is contemplated that up to 39% of the remaining shares will be sold by the Argentine government to Argentine investors through a public offering on the Argentine stock exchange, and 10% will be held by Target employees.

If the bid made by the Consortium is successful, the members of the Consortium intend to form Investor Co. to acquire the 51% ownership interest in Target. Energy Argentina will hold from 4.99 to 10% of Investor Co. and will have the right to elect one of its twelve directors.[2] In addition, Energy Argentina will operate Target.

Although the actual amount of PSI's investment will not be determined until a formal bid is made, the application states that PSI will not invest more than approximately $20 million. PSI intends to fund its portion of the Target acquisition through the issuances of long-term debt. PSI represents that: (1) No funds will be provided by PSI Energy; (2) neither PSI nor PSI Energy will assume any of Target's liabilities; and (3) only a small number of employees will be involved in providing services to Target and none of PSI's or PSI Energy's senior management will be assigned on a full-time or long-term basis to such tasks. To the extent that employees of PSI Energy provide any services in connection with the Argentine operations, PSI Energy will charge for such services based upon accounting procedures already in place

[1] Participants in the public tender process are permitted to bid on both Targets, but may acquire the voting securities of only one Target.

[2] The application states that Entergy Corporation, a registered public-utility holding company, has the option to acquire up to 10% of Investor Co.

and subject to review by the Indiana Utility Regulatory Commission ("IURC").

As a result of the acquisition of Target, Investor Co., Energy Argentina, PSI Energy, and PSI will each be a "holding company" within the meaning of section 2(a)(7) with respect to Target, and Target will be a direct or indirect "subsidiary company" of each within the meaning of section 2(a)(8). Energy Argentina will also be an "electric utility company" within the meaning of section 2(a)(3) because it will operate Target.

Applicants request orders of exemption under section 3(b) for Target, Investor Co. and Energy Argentina. The application states that none of Target, Investor Co. or Energy Argentina will derive a material part of its income, directly or indirectly, from sources within the United States, and will not operate, or have any subsidiary company that operates, as a public-utility company in the United States. The application also states that, if unqualified exemptions are granted, Investor Co., Energy Argentina and PSI Energy will rely upon rule 10(a)(1) to provide an exemption insofar as each is a holding company; and Energy Argentina, PSI Energy and PSI will rely on rule 11(b)(1) to provide an exemption from the approval requirements of sections 9(a)(2) and 10 to which they would otherwise be subject.

If unqualified orders of exemption are not granted, Applicants request authorization under sections 9(a)(2) and 10 to organize and acquire Energy Argentina; to participate in the organization and acquisition of up to a 10% interest in Investor Co. through Energy Argentina; and to acquire up to a 5.1% interest in Target through Investor Co. Applicants also request orders under section 3(a)(5) exempting Energy Argentina and Investor Co. from all provisions of the Act, except section 9(a)(2).

The Applicants estimate, based on a 5.1% interest in Target's revenues for 1990, that PSI's pro forma share of such revenues would be approximately $30.6 million (or less than 3% of PSI's consolidated revenues in 1991). PSI anticipates that Energy Argentina will receive less than $1 million per year for its services as operator of Target, which amount will not significantly change the above calculation. PSI states that it will continue to qualify as an exempt holding company under section 3(a)(1) after the acquisition.

While the current structure of the proposed transaction calls for the involvement of four levels of holding companies (PSI, PSI Energy, Energy Argentina and Investor Co.), Applicants expect that, upon completion of regulatory and judicial proceedings related to the formation of PSI, only three holding companies will remain in the PSI chain of ownership. Applicants have informed the IURC of the proposed transactions and have provided a letter from the IURC stating that the proposed activities do not require its prior approval.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-14275 Filed 6-15-92; 4:24 pm]

BILLING CODE 8010-01-M

[Release No. IC-18765; International Series Rel. No. 397; 812-7914]

Tasmanian Public Finance Corporation; Application

June 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Tasmanian Public Finance Corporation.

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicant, a statutory corporation established by the State of Tasmania, Commonwealth of Australia, seeks an order exempting it from all provisions of the 1940 Act in connection with the offer and sale of its debt securities in the United States.

FILING DATE: The application was filed on May 6, 1992. Applicant has undertaken to file an amendment to its application during the notice period. The representations and conditions contained in the amendment will conform to those in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 1, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Jeffrey F. Browne, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 504-2259, or Barry D. Miller, Senior Special Counsel, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a statutory corporation of the State of Tasmania ("Tasmania"), Commonwealth of Australia. It was established by the Tasmanian Public Finance Corporation Act 1985 of Tasmania (the "Public Finance Corporation Act") principally to borrow in both the Australian and international capital markets and lend to the Government of Tasmania and certain public authorities, including semi-governmental and local authorities in Tasmania and other entities designated by regulations made on the recommendation of the Treasurer of Tasmania ("Participating Authorities").

2. Applicant also is empowered to arrange borrowings as agent for Participating Authorities, issue its securities in exchange for securities that have previously been issued directly by Participating Authorities, invest funds, accept funds for investment from the State and Participating Authorities, and provide or arrange other financial services for Participating Authorities. All investments by applicant are made in accordance with a "Risk Management Policy" that imposes strict limits on the manner in which its funds may be invested, with respect to both the nature of the investment and the creditworthiness of the counterparty. To date, applicant's principal activities have been, and are presently intended to continue to be, borrowing moneys as principal and lending the proceeds to Participating Authorities. Of applicant's A$3.3 billion of assets at June 30, 1991, 66% consisted of advances to Participating Authorities, 8% consisted of funds invested on behalf of Participating Authorities, 22% consisted of advances to applicant's wholly-owned subsidiary The Finance Trust of Tasmania Limited ("FINTAS"), and 4%

consisted of property, plant and equipment, and other assets.

3. FINTAS was established in 1989 to facilitate the issuance and debt management strategies of applicant and to act as a liquidity buffer. In seeking to discharge its objective of ensuring the availability of funds to the lowest possible cost to Participating Authorities, applicant attempts to ensure that the needs of investors in its securities are met. To satisfy these investor needs, applicant may issue securities at times and in volumes that are not compatible with the immediate needs of the Participating Authorities. On such occasions some or all of the funds raised will be directed to FINTAS for subsequent reinvestment. Funds advanced to FINTAS may be invested in securities issued by borrowers with a Standard & Poor's rating of at least A–1 (long term) or A–2 (short term) or equivalent Moody's Investors Service ratings, securities guaranteed by the Commonwealth or a State Government, or debt securities issued by applicant. FINTAS acts as a liquidity buffer in that, should the financial markets be closed to applicant for any reason or should funds not be available at attractive rates, applicant is able to generate the necessary funding through liquidation of FINTAS assets. FINTAS also provides secondary market support to securities issued by applicant by the purchase (when demand is low) and resale (when demand is high) of those securities.

4. Under section 5 of the Public Finance Corporation Act, applicant consists of the following four members: (1) The Secretary of the Department of Treasury and Finance, who acts as chairman; (2) two persons who are commissioners of, or employed in a permanent capacity by, the Hydro-Electric Commission, appointed by the Governor, upon the nomination of the Treasurer; and (3) one director, associate director, or officer of the Tasmanian Development Authority, appointed by the Governor, upon the nomination of the Treasurer. The four members determine the policy of, and give directions to, the chief executive of applicant in connection with the management of the affairs of applicant. Although applicant has delegated authority to make its own day-to-day operating decisions, these decisions must serve to carry out government policy. No equity in applicant has been sold, and there is neither a provision in the Public Finance Corporation Act permitting the sale of equity in applicant nor a present intention to amend the Public Finance Corporation Act to permit the sale of equity in applicant.

5. Applicant proposes, from time to time in the future, to offer and sell unsecured debt securities in the United States ("Debt Securities"). The payment of principal of, and any interest or premium on, the Debt Securities issued by applicant will be unconditionally guaranteed by Tasmania pursuant to section 7 of the Public Authorities (Overseas Borrowing) Act 1979 (the "Public Authorities Act"). There is no requirement that legal proceedings be commenced against applicant prior to making a demand against or, if necessary, taking proceedings against Tasmania in respect of section 7.

6. Applicant complies with the arrangements that govern borrowings by the Commonwealth of Australia and the Australian States. Pursuant to these arrangements, Tasmania, in common with the other Australian States, is not permitted to issue its own long-term debt instruments without the approval of the Australian Loan Council,[1] although it may guarantee the debt of its authorities, such as applicant. Applicant will promptly on-lend [2] to Participating Authorities substantially all of the proceeds of any offering of Debt Securities.

Applicant's Legal Analysis

1. At June 30, 1991, 66% of applicant's assets consisted of obligations of the Participating Authorities to repay loans made to them by applicant and 22% consisted of advances to applicant's wholly-owned subsidiary, FINTAS. These obligations could be deemed to be "investment securities" within the meaning of section 3(a)(3) of the 1940 Act. As a result, applicant may be deemed to be an "investment company" under the 1940 Act. In order to ensure that applicant will be entitled, without registration under the 1940 Act, to issue and sell its Debt Securities in the manner contemplated, applicant is seeking an exemption pursuant to section 6(c) of the 1940 Act.

2. Applicant believes that granting the exemption requested would be appropriate in the public interest. It would expand the United States market for applicant's securities and thus further the policy of the United States to encourage the free flow of capital among nations.

3. Applicant further believes that granting the exemption requested would be consistent with the protection of investors. The payment of the principal of, and any premium or interest on, the Debt Securities will be unconditionally guaranteed by Tasmania. As a result, the Debt Securities will be backed by the sovereign credit of Tasmania and not merely the credit and assets of applicant.

4. Finally, applicant believes an exemption would be consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant is a governmental central borrowing authority with characteristics different from the types of investment companies at which the 1940 Act was generally directed and for which its substantive provisions are necessary or suitable.

Applicant's Conditions

Applicant agrees that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. No Debt Securities will be offered or sold unless (a) they are registered under the Securities Act of 1933 (the "1933 Act") or (b) in the opinion of United States counsel for applicant an exemption from registration under the 1933 Act is available with respect to such offer and sale.

2. All borrowings by applicant, including the issuance of Debt Securities by applicant, will be effected in accordance with the provisions of the Public Finance Corporation Act. All investments of applicant's funds, including temporary investments of funds to be on-lent to Participating Authorities, will be made by applicant in accordance with the requirements of the Public Finance Corporation Act and applicant's Risk Management Policy, as from time to time in effect.

3. The payment of principal of, and any interest or premium on, the Debt Securities issued by applicant will be unconditionally guaranteed by the Treasury of the State of Tasmania for and on behalf of the Crown in right of the State of Tasmania pursuant to section 7 of the Public Authorities act.

4. In connection with any offering by applicant of its Debt Securities in the United States, each of applicant and Tasmania will appoint an agent in the United States to accept service of process in any suit, action, or proceeding brought with respect to such

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[1] Financial arrangements between the Commonwealth and States are settled at annual meetings of the Premiers of each Australian State with the Prime Minister of the Commonwealth and at meetings of a representative of the Commonwealth Government, in practice the Federal Treasurer, and of each State Government, usually either the Premier or the Treasurer, called the Australian Loan Council.

[2] The term "on-lend" refers to applicant's function of borrowing money and thereafter relending such money to Participating Authorities.

Debt Securities instituted in any state or federal court in The City or State of New York. Applicant and Tasmania will expressly submit to the jurisdiction of any such court with respect to any such suit, action, or proceeding. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of such Debt Securities have been paid. Applicant will agree to explicitly waive any immunity it may have from jurisdiction and from execution or attachment or any process in the nature thereof in respect of any such action. Tasmania will agree to explicitly waive any immunity it may have from jurisdiction in respect of any such action. Applicant's waiver of immunity from execution or attachment or any process in the nature thereof will not apply to any action or procedure in any court in Tasmania to enforce a judgment with respect to such Debt Securities.

5. In addition, in respect of any suit, action, or proceeding brought with respect to such Debt Securities instituted in any state or federal court in the United States (other than any suit, action, or proceeding referred to in condition 4 above), each of applicant and Tasmania will agree to accept service of process by any form of mail requiring a signed receipt effected in accordance with sections 1608(b)(3)(B) and 1608(a)(3), respectively, of the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. 1608). In agreeing to accept such service of process in any such suit, action, or proceeding, neither applicant nor Tasmania will waive any claim of sovereign immunity it may have in respect of any such suit, action, or proceeding, consent to the subject matter jurisdiction or jurisdiction *in personam* of any such court, agree that any such court is a proper forum for any such suit, action, or proceeding or waive any rights it may have to remove any such suit, action, or proceeding from state court to federal court.

6. Applicant and Tasmania consent to any order of the SEC being expressly conditioned on their compliance with the conditions and representations contained in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-14092 Filed 6-15-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-92-17]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 26, 1992.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 9, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 15590.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To extend Exemption No. 3859, as amended, from § 141.65 of the Federal Aviation Regulations (FAR) which allows Embry-Riddle Aeronautical University to recommend graduates of its Certified Flight Instructor Courses for certification without taking the FAA written or practical examination.

Docket No.: 23492.
Petitioner: United States Hang Gliding Assn., Inc.
Sections of the FAR Affected: 14 CFR 103.1(a).
Description of Relief Sought: To extend Exemption No. 4721, as amended, from § 103.1(a) of the Federal Aviation Regulations (FAR) which permits members of the United States Hang Gliding Association to operate two-place unpowered ultralight vehicles for the purposes of sport, training, and recreation.

Docket No.: 24800.
Petitioner: Tennessee Air Cooperative, Inc.
Sections of the FAR Affected: 14 CFR 103.1(e)(1).
Description of Relief Sought: To extend Exemption No. 5001, as amended, from § 103.1(e)(1) of the Federal Aviation Regulations (FAR) which allows Tennessee Air Cooperative, Inc., to operate powered ultralight vehicles at an empty weight of more than 254 pounds in order to accommodate physically disabled persons.

Docket No.: 25024.
Petitioner: Institute of Aviation, University of Illinois.
Sections of the FAR Affected: 14 CFR part 141, Appendices A, C, D, and H.
Description of Relief Sought: To extend Exemption No. 4719, as amended, from part 141, appendices A, C, D, and H of the Federal Aviation Regulations (FAR) which allows the University of Illinois Institute of Aviation to train its students to a performance standard in lieu of meeting minimum flight time requirements.

Docket No.: 26609.
Petitioner: Jet Exam.
Sections of the FAR Affected: 14 CFR 61.57 (c) and (d), 61.157(e), appendix A of part 61 and appendix H of part 121.

Description of Relief Sought: To amend Exemption No. 5373 from §§ 61.57 (c) and (d), 61.157(e), appendix A of part 61 and appendix H of part 121 of the Federal Aviation Regulations (FAR) to include alternate flight experience in lieu of some of the prerequisite flight experience currently stipulated in Condition 19 of Exemption No. 5373. This relief from Condition 19 is requested to the extent necessary to permit applicants for an ATP certificate to accomplish the entire practical test required by § 61.157 in Phase II or Phase III simulators.

Docket No.: 26645.
Petitioner: Memphis Soaring Society, Inc.
Sections of the FAR Affected: 14 CFR 61.118.
Description of Relief Sought: To permit private pilots to log the flight time accumulated while towing gliders for the Memphis Soaring Society, Inc.

Docket No.: 26759.
Petitioner: MGM Grand Air.
Sections of the FAR Affected: 14 CFR 121.139(a).
Description of Relief Sought: To allow MGM Grand Air to operate its aircraft without a portable microfilm reader on board.

Docket No.: 26764.
Petitioner: Florida West Airlines.
Sections of the FAR Affected: 14 CFR 121.583(a)(8).
Description of Relief Sought: To allow Florida West Airlines to transport employee dependents on their cargo flights without the limitation of being on company business traveling to and from outlying stations not served by adequate regular passenger service.

Docket No.: 26804.
Petitioner: Mr. Jim Gallagher.
Sections of the FAR Affected: 14 CFR 21.19.
Description of Relief Sought: To allow you to apply for a Supplemental Type Certificate to install a Norton NR–642 rotary aeroengine in a Lark IS–28B2 sailplane (glider).

Docket No.: 26820.
Petitioner: Golden Eagle Enterprises dba Mazzei Flying Service.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To allow Golden Eagle Enterprises, doing business as Mazzei Flying Service, to hold examining authority for flight instructor and airline transport pilot written tests.

Docket No.: 26855.
Petitioner: Academics of Flight.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To allow Academics of Flight to recommend graduates of its approved certification courses for the airline transport pilot certificate without taking the Federal Aviation Administration (FAA) written examination.

Docket No.: 26861.
Petitioner: Southern Air Transport, Inc.
Sections of the FAR Affected: 14 CFR 36.1(g) and 36.7(d)(2) (i) and (ii).
Description of Relief Sought: To allow Southern Air Transport, Inc., to operate its Boeing B–707–300C aircraft at takeoff weights in excess of those allowable under ICAO Annex 16 or FAR part 36 (Stage 2) in those foreign countries or airports where ICAO Annex 16 noise standards and FAR part 36 (Stage 2) noise limitations are inapplicable.

Dispositions of Petitions

Docket No.: 21605.
Petitioner: Alaska Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.574.
Description of Relief Sought/ Disposition: To amend and extend Exemption No. 3850, as amended, which would permit ASA to carry and operate oxygen storage and dispensing equipment for medical use by patients requiring emergency or continuing medical attention while being carried as passengers by ASA. The equipment shall be furnished and maintained by the hospital treating the patient. Grant, May 26, 1992, Exemption No. 3850D

Docket No.: 24761.
Petitioner: Executive Jet Aviation, Inc.
Sections of the FAR Affected: 14 CFR 91.511(a)(2) and 135.165(b).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 7409, as amended, which permits Executive Jet Aviation, Inc., (EJA), to operate its turbojet powered aircraft in extended overwater operations, equipped with a single long-range navigation system (LRNS) and a single high-frequency communications radio. Grant, May 20, 1992, Exemption No. 4709C

Docket No.: 26058.
Petitioner: Gallup Flying Service.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To extend Exemption No. 5177 which allows properly trained pilots employed by Gallup Flying Service to change the seating configuration by removing aircraft passenger seats and installing approved stretchers when certificated maintenance personnel are not available. Grant, May 28, 1992, Exemption No. 5177A

Docket No.: 26267.
Petitioner: Mrs. Anne L. Julio.
Sections of the FAR Affected: 14 CFR 121.311(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 5195 to allow Jacqueline Julio to use her personal safety belt and be held on the lap of her caregiver while aboard aircraft even though she has reached her second birthday. Grant, May 20, 1992, Exemption No. 5195A

Docket No.: 26389.
Petitioner: Britt Airways, Inc., dba Continental Express.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought/ Disposition: To allow Britt Airways, Inc., to use certain foreign original equipment manufacturers to perform maintenance, preventive maintenance, and alterations on specific components and parts that are used on the Aerospatiale ATR–42 aircraft operated by Continental Express. Grant, June 1, 1992, Exemption No. 5457

Docket No.: 26396.
Petitioner: Mr. Barry G. Thompson, dba Oceanair.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow Mr. Barry G. Thompson to perform the preventive maintenance task of removing and/or reinstalling passenger seats in the Cessna Model 207 aircraft operated by Oceanair under part 135 of the FAR. Grant, June 1, 1992, Exemption No. 5458

Docket No.: 26465.
Petitioner: National Air Transportation Association.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow the pilots employed by non-scheduled air carriers that are members of the National Air Transportation Association to remove and reinstall passenger seats, medical equipment, and cargo restraining device on aircraft used in operations conducted under Part 135 of the FAR. Denial June 1, 1992, Exemption No. 5456

Docket No.: 26502.
Petitioner: Critical Air Medicine, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow pilots employed by Critical Air Medicine, Inc., to

change the configuration of its aircraft by removing and replacing seats and stretchers to accommodate its air ambulance operations. Grant, June 2, 1992, Exemption No. 5459

Docket No.: 26541.
Petitioner: Alaskan Air Charters dba Air Adventures.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow properly trained pilots employed by Alaskan Air Charters dba Air Adventures to convert the cabins of its aircraft operated under FAR Part 135 from passenger to cargo configurations and vice versa by removing and replacing passenger seats, when such aircraft are specifically designated for that purpose. Grant, May 18, 1992, Exemption No. 5454

Docket No.: 26868.
Petitioner: Ground Air Transfer, Inc., dba Charter One.
Sections of the FAR Affected: 14 CFR 121.358(c)(1).
Description of Relief Sought/ Disposition: To permit Ground Air Transfer, Inc. to submit a request for approval of a retrofit schedule for windshear equipment after the June 1, 1990 deadline to the Flight Standards Division Manager in the region of the certificate holding district office. Grant, May 14, 1992, Exemption No. 5453

[FR Doc. 92-14074 Filed 6-15-92; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-92-16]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received; correction.

SUMMARY: This notice corrects the summary for the petition for exemption for Robinson Helicopter Company (Docket No. 006SW), published in the **Federal Register** on June 2, 1992 at FR 23252.

Corrected Summary of the Petition for Exemption

Description of Relief Sought:

Requests an exemption from §§ 27.955(a)(7) and 27.1305(q) applying to the provision of a clogged fuel filter indicator for the R-44 fuel system and instead demonstrate compliance with the provisions of § 23.955(b) using the guidelines of Advisory Circular 23.955-1.

Issued in Washington, DC, on June 9, 1992.
Denise D. Castaldo,
Manager, Program Management Staff.
[FR Doc. 92-14075 Filed 6-15-92; 8:45 am]
BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of Public Law 98-164. USIA is requesting approval for a three-year extension of an information collection entitled "United States Information Agency Arts America Program Fact Sheet for Performing Artists Touring Privately," (IAP-90), under OMB control number 3116-0165. Minor revisions were made to the fact sheet to enhance clarity of needed information. Estimated burden hours per response is one hour.

DATES: Comments are due on or before July 16, 1992.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office of USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Ms. Lin Liu, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: United States Information Agency Arts America Program Fact Sheet to Performing Artists Touring Abroad.
Form Number: IAP-90.
Abstract: The USIA form IAP-90 facilitates submission of tapes and supporting materials to the U.S. Information Agency for artistic panel evaluation of artists being considered for USG financial support as a cultural presentation; and/or inclusion in USIA's quarterly listing of performers touring privately, sent to all American Embassies for possible facilitation assistance.
Proposed Frequency of Responses:
No. of Respondents—500
Recordkeeping Hours—0
Total Annual Burden—500.

Dated: June 10, 1992.
Rose Royal,
Federal Register Liaison.
[FR Doc. 92-14102 Filed 6-15-92; 8:45 am]
BILLING CODE 8230-01-M

Book and Library Advisory Committee Meeting

AGENCY: United States Information Agency.

ACTION: Notice of Meeting.

SUMMARY: The United States Information Agency announces an open meeting of the Book & Library Advisory Committee on Wednesday, June 24, 1992, 1 p.m.-4:30 p.m. in room 800-A, USIA Headquarters, 301 Fourth Street SW., Washington, DC. The Agenda will include reports from Book and Library Subcommittee Chairmen; David Hitchcock, USIA Director of East Asian & Pacific Affairs; and The Honorable Marvin Stone, President, International Media Fund. Chris Winston, USIA, Director of Public Liaison, and Andras Barkoczi, editor of Europa Publishers,

Budapest, an NYU publishing scholarship recipient, will also address the group.

DATE: June 24, 1992.

ADDRESS: 301 4th Street, SW., Washington, DC 20547

FURTHER INFORMATION CONTACT: Louise G. Wheeler or Patricia Gribben at 619–6089.

SUPPLEMENTARY INFORMATION: Copies of minutes can be obtained by calling 619–6089.

Dated: June 11, 1992.

Douglas Wertman,

Committee Management Officer.

[FR Doc. 92–14103 Filed 6–15–92; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 116
Tuesday, June 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Public Hearing

There will be a public hearing on the proposed solid waste facility in Douglas, MA by the Subcommittee on the Environment of the Blackstone River Valley National Heritage Corridor Commission. Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that this hearing will be held. The Commission was established pursuant to Public Law 99-647, in order to protect and interpret the nationally significant resources in the Blackstone Valley.

PLACE: Douglas High School, Route 16, Constitution Drive, East Douglas, MA.

DATE: Thursday, June 25, 1992.

TIME: 7:00 p.m.

The Subcommittee on the Environment is holding this hearing to present environmental and other issues of concern within the Heritage Corridor as they relate to the proposed solid waste facility in Douglas, MA, and to promote discussion among the State agencies, the developer, and the public as to how those concerns may be addressed.

Requests from the public to address the subcommittee shall be made in writing and received in the Commission office no later than Monday, June 22, 1992. *Comments or presentations will be limited to 4 minutes each and comments may also be provided in writing. All comments must be received in the Commission office no later than July 24, 1992.*

Requests to address the subcommittee or written comments should be mailed to:

Blackstone River Valley National Heritage Corridor Commission, Uxbridge, MA 01569.

Nancy I. Brittain,

Acting Executive Director, Blackstone River Valley National Heritage Corridor.

[FR Doc. 92-14256 Filed 6-12-92; 3:00 pm]

BILLING CODE 4310-70-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, June 18, 1992

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 18, 1992, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Compliance Processes. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making and Order* concerning procedures and methodologies for prescribing interstate rates of return and ensuring compliance thereto.

2—Common Carrier—Title: Price Cap Performance Review for AT&T. Summary: The Commission will consider adoption of a *Notice of Inquiry* concerning AT&T Communications' performance since price cap regulation was initiated on July 1, 1989.

3—Common Carrier—Title: Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning methods of regulating local exchange carriers not subject to price caps.

4—Office of Engineering and Technology—Title: Amendment of Part 15 to Enable Widespread Implementation of Home Automation and Communications Technology (ET Docket No. 91-269, RM-7296). Summary: The Commission will consider adoption of a *Report and Order* to facilitate introduction of sophisticated, new home automation and communications systems.

5—Private Radio—Title: Amendment of Part 97 of the Commission's Rules to Change the Restrictions on the Scope of Permissible Communications in the Amateur Service (RM-7849, RM-7895, RM-7896). Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning whether to change the restrictions on the communications that may be transmitted by amateur stations.

6—Private Radio—Title: Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89-552). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* concerning private land mobile operations in the 220-222 MHz band.

7—Mass Media—Title: Amendment of Part 76, Subpart J, Section 76.501 of the Commission's Rules and Regulations to Change the Prohibition on Common Ownership of Cable Television Systems and National Television Networks (MM Docket No. 82-434). Summary: The Commission will consider adoption of a *Report and Order* amending the network-cable cross-ownership rule.

The meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: June 11, 1992.
Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-14249 Filed 6-12-92; 2:58 pm]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 18, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Francis A. Marin* v. *Asarco, Inc.*, Docket No. WEST 91-161-DM (Issues include whether the judge erred in denying Asarco's motion for sanctions under Fed. R. Civ. P. 11 & 37(b)(2) against Marin for filing a frivolous claim and for discovery abuse.)

2. *Peabody Coal Company*, Docket No. LAKE 91-11. (Issues include whether the judge erred in finding that Peabody's violation of 30 C.F.R. § 75.400 was caused by its unwarrantable failure to comply with the standard.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Issued: June 11, 1992

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92-14262 Filed 6-12-92; 3:25 pm]

BILLING CODE 6735-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-92-15]

TIME AND DATE: June 24, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and complaints.
5. Inv. 731-TA-522 (Final) (Minivans from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: June 10, 1992.

Kenneth Mason,

Secretary.

[FR Doc. 92-14214 Filed 6-12-92; 2:08 pm]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-92-16]

TIME AND DATE: June 25, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. 701-TA-312 (Final) (Softwood lumber from Canada)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: June 10, 1992.

Kenneth Mason,

Secretary.

[FR Doc. 92-14215 Filed 6-12-92; 2:08 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 15, 22, 29, and July 6, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 15

Friday, June 19

10:00 a.m.
Briefing on Requests to DOE for Technology Transfers Under 10 CFR Part 810 (Closed—Ex. 1 and 4)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 22—Tentative

Wednesday, June 24

9:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

2:30 p.m.
Briefing on Proposed Part 100 Rule Change (Public Meeting)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, June 25

9:00 a.m.
Briefing on Industry Progress on First-of-a-Kind Engineering (FOAKE) (Public Meeting)

1:30 p.m.
Discussion of Nuclear Issues in the Former Soviet Union (Public Meeting)

Week of June 29—Tentative

Thursday, July 2

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 6—Tentative

Wednesday, July 8

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504-1661.

Dated: June 12, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-14253 Filed 6-12-92; 2:59 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 57, No. 116
Tuesday, June 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-30772; International Series Release No. 393; File No. S7-13-92]

RIN 3235-AE41

Short Sales

Correction

In proposed rule document 92-13465 beginning on page 24415 in the issue of Tuesday, June 9, 1992, in the second column, under **DATES**, in the second line, "July 9, 1992" should read "August 10, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Secretary

Cancellation of Treasury Order

Correction

In notice document 92-12677 appearing on page 23119 in the issue of Monday, June 1, 1992, in the second column, under **SUMMARY**, in the first line, "Treasury Order 122-02" should read "Treasury Order 112-02".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8394]

RIN 1545-A037

Proceeds of Bonds Used for Reimbursement

Correction

In rule document 92-2023 beginning on page 3526 in the issue of Thursday, January 30, 1992, make the following correction:

§ 1.103-18 [Corrected]

1. On page 3531, in § 1.103-18(c)(1)(iii), in the second column, in the third line, "owed by" should read "owned by".

BILLING CODE 1505-01-D

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federal register

Tuesday
June 16, 1992

Part II

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Parts 323 and 328

Environmental Protection Agency

40 CFR Parts 110, et al.

Proposed Rules for the Clean Water Act Regulatory Programs

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 323 and 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232 and 401

Proposed Rule for the Clean Water Act Regulatory Programs of the Army Corps of Engineers and the Environmental Protection Agency

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Corps of Engineers and the Environmental Protection Agency (EPA) are proposing today to undertake the following actions with regard to the Clean Water Act Section 404 regulatory program: (1) Modify the definition of "discharge of dredged material;" (2) clarify when the placement of pilings is considered to result in a discharge of fill material; and (3) clarify that prior converted croplands are not waters of the United States. EPA is also proposing conforming changes to the Clean Water Act "waters of the United States" and "navigable waters" definitions in other Clean Water Act program regulations. This proposed rulemaking is consistent with the President's August 9, 1991, Wetlands Protection Plan. In addition, the first two proposed changes implement the settlement agreement in *North Carolina Wildlife Federation* v. *Tulloch.*

DATES: Written comments must be submitted by August 17, 1992.

ADDRESSES: Written comments should be submitted to: The Chief of Engineers, United States Army Corps of Engineers, ATTN: Mr. Sam Collinson, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Davis, Office of the Assistant Secretary of the Army for Civil Works at (703) 695–1376 or Mr. John Studt (Corps) at (202) 272–0199 or Mr. Gregory Peck (EPA) at (202) 260–8794 or Ms. Hazel Groman (EPA) at (202) 260–8798.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1992, the Federal government agreed to settle a pending lawsuit brought by the North Carolina Wildlife Federation and the National Wildlife Federation (*North Carolina Wildlife Federation, et al.* v. *Tulloch,* Civil No. C90–713–CIV–5–BO (E.D.N.C. 1992)) involving section 404 of the Clean Water Act (CWA) as it pertains to certain activities in waters of the United States. In accordance with the settlement agreement, the Corps and EPA are proposing changes to their regulations to clarify that mechanized landclearing, ditching, channelization, and other excavation activities involve discharges of dredged material and when performed in waters of the United States will be regulated under section 404 of the CWA when such activities have or would have the effect of destroying or degrading waters of the United States, including wetlands. In addition, the Corps and EPA have agreed to incorporate into the section 404 regulations the substantive provisions of the Corps Regulatory Guidance Letter (RGL) 90–8 to clarify the circumstances under which the placement of pilings have the effect of "fill material" subject to regulation under section 404. These proposed changes will not affect in any manner the existing statutory exemptions for normal farming, ranching, and silviculture activities in section 404(f).

The settlement agreement is consistent with one of the components of President Bush's Plan for Protecting America's Wetlands which acknowledges the need to evaluate the scope of activities regulated under the section 404 program. The President's Plan, announced August 9, 1991, is a balanced approach of administrative actions that will enhance protection of wetlands on Federal lands, improve Federal wetlands research, and increase Federal land acquisition, revise the Federal wetlands delineation manual, and streamline and improve the section 404 regulatory program.

In addition to the changes proposed in accordance with the settlement agreement and consistent with the President's Wetlands Plan, the Corps and EPA are proposing to incorporate into the section 404 regulations the substantive provisions of the Corps RGL 90–7 to clarify that prior converted croplands are not waters of the United States subject to regulation under the CWA. EPA is also proposing conforming changes to the definitions of "waters of the United States" and "navigable waters" for all other CWA program regulations contained in 40 CFR parts 110, 112, 116, 117, 122, and 401 to provide consistent definitions in all CWA program regulations.

Overall, these proposed changes will promote national consistency, more clearly notify the public of regulatory requirements and ensure that the section 404 regulatory program is more equitable to the regulated public, enhance the protection of waters of the United States, and clarify which areas in agricultural crop production will not be regulated as waters of the United States.

Proposed Changes

33 Part 323—Permits for Discharges of Dredged or Fill Material into Waters of the United States

40 CFR Part 232—404 Program Definitions; Exempt Activities Not Requiring 404 Permits

33 CFR Secton 323.2(d) and 40 CFR 232.2(e)

The Corps and EPA jointly administer the CWA section 404 regulatory program. The CWA provides the Corps and EPA with broad authority to regulate activities involving a discharge of dredged or fill material into the Nation's waters, including wetlands. Based on this authority, the Corps and EPA have broad discretion in defining those activities that involve a discharge of dredged or fill material and therefore require authorization under section 404.

Historically, the Corps has regulated all activities involving discharges of fill material. However, Corps guidance has not been entirely clear or uniform among all Corps district offices regarding which activities involving discharges of material excavated (i.e., dredged) from the waters of the United States require authorization under section 404. The Corps has traditionally regulated ditching activities where the material was excavated and sidecast into adjacent wetlands resulting in spoil piles or berms. In situations where the excavated material was almost completely removed to the surrounding uplands, Corps districts have varied markedly in exercising their discretion to regulate the activity. Based in part on 15 years of experience, the Corps and EPA do not believe that it is possible to conduct mechanized landclearing, ditching, channelization, or other excavation activities in waters of the United States without at least some incidental discharge of dredged material; nor do the agencies believe that it is possible to completely remove all excavated material to the uplands.

The differences from one Corps district to another in the types of excavation activities regulated did not greatly affect the section 404 program until recently. The Corps has received numerous questions regarding which ditching activities would require a section 404 permit. This has increased

workload, and the resulting delays are taxing Federal resources and delaying project proponents who often wait for a written determination from the Corps on whether their activities are regulated. Furthermore, in certain circumstances, applicants with substantial resources appeared to attempt to avoid section 404 regulation for drainage activities by removing, as much as possible, the excavated material to uplands. As a result, project proponents were sometimes not regulated under the current Corps and EPA policy framework although the impacts of such projects were similar to those of projects currently being regulated. The changes that the Corps and EPA are proposing in this rule will make the regulatory program more equitable for all project proponents, and the agencies will be able to focus limited resources on reasonably regulating mechanized landclearing, ditching, channelization, or other excavation activities. States with authorized section 404 programs will need to review their statute and regulations for consistency and if necessary, change their regulations in accordance with 40 CFR 233.16(b).

The Corps' current definition of "discharge of dredged material," at 33 CFR 323.2(d), provides that *de minimis* incidental soil movement occurring during normal dredging operations is not considered to be within this regulatory definition. This exclusion derives, in part, from a desire to avoid duplicative regulation of dredging itself in waters within the jurisdictional scope of the Rivers and Harbors Act. EPA's regulations contain a similar definition, with the same exclusion, at 40 CFR 232.2(e).

Over the years, application of this "*de minimis*" language has become problematic, especially when applied to activities which did not involve dredging for the purposes of maintaining navigation in traditionally navigable waters. Because of the lack of guidance in the regulation, in some instances this language has been interpreted to exclude from regulation landclearing and drainage activities in wetlands where the actual quantity of excavated material discharged was relatively small, but where the discharge was part of an activity which could have significant environmental impacts on the waters of the United States, contrary to the intent of the Clean Water Act. While the Corps and EPA have attempted to address this problem through guidance memoranda, e.g., RGL 90–5, addressing which landclearing activities are subject to section 404 jurisdiction, the agencies believe that a regulatory change would lead to a better understanding of the scope of the term "discharge of dredged material" and would promote greater national consistency and more effective protection of the aquatic environment.

Under the proposal, language has been added to the definition of "discharge of dredged material" to clarify both what is included in the definition of regulated activities and what is excluded from the definition. For example, the proposal clarifies that the phrase "normal dredging operations" refers to "dredging to maintain, deepen, or extend navigation channels in the navigable waters of the United States, as defined in 33 CFR part 329 [section 10 waters], with proper authorization from the Corps."

In addition, the new language would clarify that, apart from the exclusion for "normal dredging operations," the term "discharge of dredged material" includes any discharge, i.e., addition or redeposition, of excavated material into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation, which has or would have the effect of destroying or degrading any area of the waters of the United States. The term "discharge of dredged material" does not include *de minimis* soil movement incidental to activities which do not or would not have such an effect.

The Corps has regulated discharges associated with mechanized landclearing operations for many years. However, it has not always been clear which landclearing activities would result in discharges, in part due to uncertainty over whether the activity involved a discharge sufficiently large to trigger Section 404 regulation. Over the years the Corps has issued several RGLs to clarify this issue. Most recently, the Corps issued RGL 90–5, dated July 18, 1990, to address which landclearing activities should be subject to Section 404 jurisdiction. This issue was also addressed in *Avoyelles Sportsmen's League, Inc.* v. *Marsh*, 715 F.2d 897 (5th Cir. 1983). In this case the court stated that the term "discharge" may reasonably be understood to include "redeposit" and concluded that the term "discharge" covers the redepositing of soil taken from wetlands, such as occurs during mechanized landclearing activities. Our experience over the years, and the Fifth Circuit ruling in *Avoyelles*, have convinced us that mechanized landclearing, ditching, channelization, and other excavations do consistently involve discharges and that the activities which produce the discharges should be regulated where the activities would destroy or degrade waters of the United States.

We believe that it is appropriate to look at the environmental effect of activities that involve incidental soil movement for several reasons. First, the Federal government has broad authority under section 404(a) to regulate any discharge of dredged or fill material into any water of the United States. This authority has been upheld by many decisions of the Federal courts. Second, the Act contains no explicit exemption for *de minimis* discharges; any inference of one would need to be consistent with the environmental purposes of the Act. Third, the proposed language also parallels the approach and implements the policy of section 404(f), which generally exempts minor discharges from farming, ranching, and silvilcultural activities, but "recaptures" them when the activity alters waters of the United States. Specifically, CWA section 404(f)(2) states that "*any* discharge of dredged or fill material into navigable waters incidental to *any activity*" (emphasis added) that could bring any area of the waters of the United States into a new use and where the reach of the waters could be reduced or where their flow or circulation could be impaired shall be required to have a permit under section 404 (See 40 CFR 232.3 and 33 CFR 323.4 for a more detailed description of the scope of the section 404(f) exemptions). Furthermore, we believe that normal dredging operations, as we propose to define them, should not be regulated under section 404, since they generally do not alter the reach or flow or circulation of the waters, nor do they convert waters of the United States into dry land or degrade wetlands. Normal dredging in navigable waters will continue, however, to be regulated under section 10 of the Rivers and Harbors Act of 1899.

Discussion of Proposed Revisions

The Corps and EPA are proposing to change the definition of the term "discharge of dredged material" at 33 CFR 323.2(d) and 40 CFR 232.2(e). The practical effect of this change in definition is that the Corps, EPA as appropriate, and authorized states as appropriate, would regulate under Section 404 all mechanized landclearing, ditching, channelization, and other excavation activities performed in waters of the United States that have or would have the effect of destroying or degrading waters of the United States, including wetlands. This will eliminate the current inconsistencies associated with the regulation of these activities.

The proposed rule does not change in any way the manner in which the Corps and EPA determine whether an activity is exempt under section 404(f)(1) of the CWA. Therefore, the proposal will not, in any way, affect the exemptions for agriculture, silviculture or ranching activities now provided by CWA section 404(f).

Moreover, the proposed changes as a general rule will not result in the Corps regulating pumping of water from a waterbody, snagging operations, or vehicular traffic in wetlands. Pumping water from a wetland or other water of the United States or snagging vegetative material from a water of the United States generally would not, in and of itself, result in a discharge of dredged material. However, if excavation or filling would be done to accomplish the pumping and the activity would destroy or degrade a water of the United States (or if the snagging operation would result in a discharge through redeposition of soil and would destroy or degrade a water of the United States) then the activity would be regulated. The term "snagging" as used in this paragraph means the removal of trees, parts of trees, or the like, from a water body to prevent their interfering with navigation. Although vehicular traffic may result in a redeposition of material, that activity generally would not destroy or degrade a water of the United States. We invite specific comments from the public on all issues presented in this paragraph.

Although the Corps and EPA have not yet adopted a final definition for either the term "destroy" or the term "degrade," we propose the following and invite and encourage public comment on this issue. Under the proposed rule, destruction of a wetland, or other water of the United States, would occur when the activity that involved the discharge of dredged material alters the area in such a way that it would no longer be a water of the United States. Also under the proposal, degradation of a wetland or other water of the United States would occur when the activity that involves the discharge results in an identifiable decrease in the functional values of the water of the United States. Under these definitions, activities may come within section 404 jurisdiction, but could be regulated under a nationwide or regional general permit if they would have minimal environmental effects. We invite public comment identifying appropriate categories of excavation activities that would generally have minimal environmental effects and therefore be potential candidates for authorization under general permit.

The proposed definition of "degradation" is intended to define a threshold which excludes from regulation certain activities that would have no identifiable adverse effect on waters of the United States. The Corp and EPA are inviting suggestions on alternative methods for defining this threshold. The Corp and EPA are specifically inviting comment on whether "identifiable decreases" in aquatic resource functional value is an appropriate threshold test that is sufficiently clear for the purposes of implementing the regulatory program. For example, if a wetland is drained in such a way that the hydrologic regime is altered enough to change the vegetative composition of the area, the wetland will be considered to be degraded. Further, most sand and gravel mining in waters of the United States results in, at a minimum, incidental discharges and destroys or degrades waters of the United States and thus would be regulated. We invite public comment suggesting any categories of activities which might involve incidental discharges of dredged or fill material into waters of the United States, but which as a general rule would not be regulated under this regulation because they would not destroy or degrade waters of the United States.

Under the proposed rule, it would not be necessary for the Corps, EPA, or authorized states to establish, on a case-by-case basis, that mechanized landclearing, ditching, channelization, and other excavation activities involve a discharge of dredged material because, as discussed above, the agencies do not believe that it is possible to conduct these activities without redepositing some of the excavated material. Moreover, the agencies believe that, in virtually all cases, mechanized landclearing, ditching, channelization, and other excavation in waters of the United States would destroy or degrade waters of the United States, and the agencies will therefore apply a rebuttable presumption that these types of activities would have such an effect, and are therefore regulated under section 404. Where a project proponent believes that its activities will not destroy or degrade waters of the United States, the proponent will have the burden of demonstrating to the Corps that such effects will not occur as a result of the activity. The activity will be subject to regulation under section 404 unless the Corps, EPA when it is the lead enforcement agency or undertaking a section 404(c) action in advance of a specific permit application, or an authorized state as appropriate, determine that the project proponent has made such a showing.

33 CFR Section 323.3(c) and 40 CFR Section 232.2(r)

The Corps for many years has considered pilings to be structures regulated under section 10 of the Rivers and Harbors Act of 1989, but did not consider them as a general rule to constitute a discharge of fill material for purposes of section 404. However, the Corps has also long recognized that, under certain circumstances, pilings can have the effect of fill and thus should be regulated under section 404. Recognizing this problem, the Corps, on November 3, 1988, issued RGL 88–14. Subsequent to that RGL, additional questions were raised concerning when pilings should be regulated under section 404. A number of new projects were being proposed to be constructed on pilings in an attempt to avoid section 404 jurisdiction. These projects were for activities that would normally be constructed on fill such as hotels, industrial developments, stores, and parking structures. Since these issues were not addressed in RGL 88–14, a new RGL 90–8 was issued on December 14, 1990.

In summary, RGL 90–8 provides that there are two situations where pilings are regulated under section 404 of the CWA: (1) Pilings that have the physical effect of fill (including pilings that are closely spaced rather than normal open pile structures); and (2) Pilings that have the functional use and effect of fill (including pilings that support structures that are normally placed on fill such as multi-family housing, office buildings, etc.). Under RGL 90–8, however, pilings are not to be regulated in circumstances involving linear projects traditionally used to cross waters of the United States such as bridges, elevated walkways, and powerline structures. Similarly, placement of pilings would not be regulated for structures that traditionally are constructed on pilings such as piers, boathouses, wharves, marinas, lighthouses, and individual houses built on stilts where pile-supported construction is used to avoid substantial flooding.

In the settlement agreement reached between the Federal government and the National Wildlife Federation, as a result of the case *North Carolina Wildlife Federation, et al.* v. *Tulloch*, Civil No. C90–713–CIV–5–BO (E.D.N.C.), the Corps and EPA agreed to propose that the relevant portions of RGL 90–8 concerning the regulation of

pilings under section 404 be promulgated in the Code of Federal Regulations through notice and comment rulemaking under the Administrative Procedure Act process. Therefore, the Corps and EPA are seeking comments on this proposal to define clearly when pilings should be regulated under section 404. In particular, the Corps is considering adding some restaurants that are constructed on pilings to the list of activities that are not subject to regulation pursuant to RGL 90–6.

33 CFR Part 328–Definition of Waters of the United States
40 CFR Part 110–Discharge of Oil
40 CFR Part 112–Oil Pollution Prevention
40 CFR Part 116–Designation of Hazardous Substances
40 CFR Part 117–Determination of Reportable Quantities for Hazardous Substances
40 CFR Part 122–EPA Administered Permit Programs: The National Pollutant Discharge Elimination System
40 CFR Part 230–Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material
40 CFR Part 232–404 Program Definitions; Exempt Activities Not Requiring 404 Permits
40 CFR Part 401–Effluent Guidelines and Standards

CFR Section 328.3(a)(8), 40 CFR Section 110.1, 40 CFR Section 112.2, 40 CFR Section 116.3, 40 CFR Section 117(i)(7), 40 CFR Section 122.2, 40 CFR Section 230.3(s)(8), 40 CFR Section 232.2(g)(8), and 40 CFR 401.11(1)

We propose to add new language to 33 CFR 328.3(a), 40 CFR 110.1, 40 CFR 112.2, 40 CFR 116.3, 40 CFR 117(i)(7), 40 CFR 122.2, 40 CFR 230.3(s), 40 CFR 232.2(g), and 40 CFR 401.11(1) which currently define waters of the United States. The Corps new language would note two examples of areas that are not waters of the United States. The first is simply waste treatment systems, as presently described at the referenced section. The second, in accordance with the President's Wetlands Plan, would codify the Corps and EPA's present policy regarding prior converted cropland. EPA's new language would not modify any current references to waste treatment systems, but would codify the Corps and EPA's policy regarding prior converted cropland at the referenced sections.

On September 26, 1990, the Corps issued RGL 90–7 "Clarification of the Phrase 'Normal Circumstances' as it Pertains to Cropped Wetlands," in order to establish greater consistency between the section 404 regulatory program and the Swampbuster provisions of the Food Security Act, as amended by the Food, Agriculture, Conservation and Trade Act of 1990, which is implemented by the Soil Conservation Service (SCS). Under RGL 90–7, "prior converted cropland," as defined by the SCS National Food Security Act Manual, are not wetlands within the meaning of the Corps and EPA regulations. Prior converted croplands are wetlands that, prior to December 23, 1985, were both manipulated (drained or otherwise physically altered to remove excess water from the land) and cropped to the extent that they are inundated for no more than 14 consecutive days during the growing season. Prior converted croplands do not include pothole or playa wetlands.

The Corps and EPA are proposing to amend their definitions of waters of the United States with regard to prior converted croplands in order to provide for consistency in the administration of the various Federal programs affecting these types of areas. This proposed change would achieve the agencies' policy objectives of achieving greater predictability for affected parties as they deal with the Federal government regarding prior converted cropland.

SCS determinations of prior converted cropland do not constitute section 404 jurisdictional determinations because only the Corps and EPA have the statutory authority to determine the geographic scope of section 404 jurisdiction. The final determination of whether an area is a water of the United States for purposes of section 404 regulation is made by the Corps or EPA as appropriate, pursuant to the January 19, 1989, Army/EPA Memorandum of Agreement on geographic jurisdiction. The Corps (and EPA, as appropriate) will accept and concur in SCS prior converted cropland designations to the extent possible. Nevertheless, any person considering a proposal that would involve the discharge of dredged or fill material into areas designated as prior converted cropland by the SCS is encouraged to obtain Corps (or EPA) concurrence in the prior converted cropland designation.

The Corps and EPA note that under today's proposal a prior converted cropland is considered to be abandoned unless: For once in every five years the area has been used for the production of an agricultural commodity; or, the area has been used and will continue to be used for the production of an agricultural commodity in a commonly used rotation with aquaculture, grasses, legumes or pasture production.

The Corps and EPA are proposing to define "prior converted cropland" in accordance with the SCS National Food Security Manual, Second Edition, 180–V–VFSAM, Amendment 6, May 1991. The National Food Security Act Manual sets forth SCS policy and procedures for implementing, *inter alia*, the Swampbuster provisions of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990. By virtue of this incorporation by reference, the Corps and EPA are only incorporating the cited version of the National Food Security Act Manual, i.e., Second Edition, Amendment 6, May 1991. With respect to any subsequent version of the National Food Security Act Manual issued by SCS, the Corps and EPA will review any such subsequent version regarding changes made to the definition of "prior converted cropland" and determine at that time whether to incorporate by reference such subsequent version into the section 404 regulations and other CWA program regulations.

In proposing to codify the prior converted cropland RGL, the Corps and EPA do not intend to alter their longstanding position that a party cannot eliminate the jurisdiction of the CWA over an area through an unauthorized discharge activity. This, an area which becomes prior converted cropland by virtue of such unauthorized discharge is still covered by section 404 and subject to an enforcement action for any activity which violated the CWA.

By proposing to codify the prior converted cropland RGL into regulation, the agencies would be revising the definitions of "waters of the United States" and "navigable waters" for all EPA programs under the CWA to clarify that prior converted croplands are not within the scope of CWA jurisdiction. EPA is interested in receiving public comment on what effect, if any, such codification would have on compliance, response, and enforcement efforts under other EPA programs, in particular, the CWA Section 311 program which prohibits the discharge of oil and hazardous substances, requires notification of any such discharge, and sets requirements for prevention and clean-up (see 40 CFR 110.1, 112.2, 116.3, and 117.1).

Environmental Documentation

We have made a preliminary determination that this action does not constitute a major Federal action significantly affecting the quality of the human environment. However, an environmental assessment will be

prepared prior to making a final decision on this proposed regulation. If we determine that there would be a significant impact on the quality of the human environment an Environmental Impact Statement will be prepared before a final decision is made. Furthermore, appropriate environmental documentation is prepared for all permit decisions.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Army and the Environmental Protection Agency have determined that the revisions to these regulations do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12291. The Department of the Army and the Environmental Protection Agency certify, pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, that these regulations will not have a significant impact on a substantial number of entities.

Note 1.—The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 323

Navigation, Water pollution control, Waterways.

33 CFR Part 328

Incorporation by reference, Navigation, Water pollution control, Waterways.

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, and 401

Incorporation by reference, Wetlands, Water pollution control.

Dated: June 4, 1992.

Nancy P. Dorn,

Assistant Secretary of the Army (Civil Works), Department of the Army.

F. Henry Habicht, II,

Deputy Administrator Environmental Protection Agency.

Accordingly, 33 CFR parts 323 and 328 and 40 CFR parts 110, 112, 116, 117, 122, 230, 232 and 401 are proposed to be amended as follows:

33 CFR CHAPTER II—[AMENDED]

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIALS INTO WATERS OF THE UNITED STATES

1. The authority citation for part 323 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Section 323.2(d) is revised to read as follows:

§ 323.2 Definitions.

* * * * *

(d)(1) The term *discharge of dredged material* means any addition of dredged material into the waters of the United States. The term includes, withhout limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable state. The term "discharge of dredged material" includes, without limitation, any addition or redeposit of dredged materials, including excavated materials, into waters of the United States which is incidental to any activity (except normal dredging operations as defined below), including mechanized landclearing, ditching, channelization, or other excavation which has or would have the effect of destroying or degrading any area of waters of the United States. The term does not include *de minimis* soil movement incidental to any activity which does not have or would not have the effect of destroying or degrading any area of waters of the United States. Moreover, the term does not include *de minimis*, incidental soil movement occurring during normal dredging operations, defined as dredging to maintain, deepen, or extend navigation channels in the navigable waters of the United States, as defined in 33 CFR part 329, with proper authorization from the Congress and/or the Corps. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products (See § 323.4 for the definition of these terms).

(2) For purposes of paragraph (d)(1), mechanized landclearing, ditching, channelization, or other excavation activities in waters of the United States result in a discharge of dredged material. Further, where such activities occur in waters of the United States, the activity is presumed to result in the destruction or degradation of such waters unless the project proponent demonstrates to the satisfaction of the Corps, or EPA as appropriate, that the activity would not have such an effect in a particular case.

§ 323.2 [Amended]

3. Section 323.2(e) is amended by adding a sentence at the end that reads as follows:

* * * * *

(e) * * * See § 323.3(c) concerning the regulation of the placement of pilings in waters of the United States.

* * * * *

4. Section 323.2(f) is amended by adding a sentence at the end that reads as follows:

* * * * *

(f) * * * See § 323.3(c) concerning the regulation of the placement of pilings in waters of the United States.

* * * * *

5. Section 323.3(c) is added to read as follows:

§ 323.3 Discharges requiring permits.

* * * * *

(c) *Pilings.* (1) The placement of pilings in waters of the United States shall require a section 404 permit when such placement is used in a manner essentially equivalent to a discharge of fill material in physical effect or functional use and effect. Examples include, but are not limited to, the following activities in waters of the United States:

(i) *Physical effect of fill:* Projects that in effect replace an aquatic area or change the bottom elevation of a waterbody as a result of the placement of pilings that are so closely spaced that sedimentation rates are increased or the pilings themselves essentially replace the bottom will require a section 404 permit. This circumstance would include pilings placed in waters of the United States for dams, dikes, or other structures utilizing densely spaced pilings, or as a foundation for large structures.

(ii) *Functional use and effect of fill:* Construction projects will require a section 404 permit where pilings serve essentially the same functional use as a solid fill foundation, and where the project would result in essentially the same effects as fill (e.g., alter flow or circulation of the waters, bring the area into a new, non-aquatic use, or significantly alter or eliminate aquatic functions and values). Regulated activities include the placement of pilings to facilitate the construction of office and industrial developments, parking structures, restaurants, stores, hotels, multi-family housing projects, and similar structures in waters of the United States.

(2) Placement of pilings in waters of the United States will not require a permit under section 404 in

circumstances involving linear projects such as bridges, elevated walkways, or powerline structures. Similarly, placement of pilings in waters of the United States will not require a section 404 permit in circumstances that involve structures that have been traditionally been constructed on pilings; examples are piers, boathouses, wharves, marinas, lighthouses, and individual houses built on stilts solely to reduce the potential of flooding (e.g., beach houses where road access is on uplands, but the house may be located in a low area necessitating construction on stilts). However, all pilings placed in the navigable waters of the United States (see 33 CFR part 329) require authorization under section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR part 322).

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

6. The authority citation for part 328 continues to read as follows:

Authority: 33 U.S.C. 1344.

7. Section 328.3(a) is amended by removing the last sentence and adding a new paragraph (a)(8) that reads as follows:

§ 328.3 Definitions.

* * * * *

(a) * * *

(8) Waters of the United States do not include:

(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition); or

(ii) Prior converted cropland, as defined by the National Food Security Act Manual, Second Edition, 180–V–NFSAM, Amendment 6, May 1991, Soil Conservation Service. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the National Food Security Act Manual may be obtained from the U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Ave. SW., Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

* * * * *

40 CFR CHAPTER I—[AMENDED]

PART 110—DISCHARGE OF OIL

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1321 (b)(3) and (b)(4) and 1361(a); 33 U.S.C. 1517(m)(3).

2. Section 110.1, definition of navigable waters, is amended by adding three new sentences of concluding text at the end of the definition to read as follows:

§ 110.1 Definitions.

* * * * *

Navigable waters do not include prior converted cropland, as defined by the National Food Security Act Manual, Second Edition, 180–V–NFSAM, Amendment 6, May, 1991, Soil Conservation Service. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the National Food Security Act Manual may be obtained from the U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

* * * * *

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 112.2(k), definition of navigable waters, is amended by adding three new sentences of concluding text at the end of the definition to read as follows:

§ 112.2 Definitions.

* * * * *

Navigable waters do not include prior converted cropland, as defined by the National Food Security Act Manual, Second Edition, 180–V–NFSAM, Amendment 6, May, 1991, Soil Conservation Service. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the National Food Security Act Manual may be obtained from the U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

* * * * *

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

1. The authority citation for part 116 continues to read as follows:

Authority: 33 U.S.C. 1521 *et seq.*

2. In § 116.3, the definition of navigable waters is amended by adding three new sentences of concluding text at the end of the definition, as set forth below, and the definitions are placed in alphabetical order.

§ 116.3 Definitions.

* * * * *

Navigable waters do not include prior converted cropland, as defined by the National Food Security Act Manual, Second Edition, 180–V–NFSAM, Amendment 6, May, 1991, Soil Conservation Service. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the National Food Security Act Manual may be obtained from the U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

* * * * *

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. The definition of navigable waters, § 117.1(i), is amended by adding three new sentences of concluding text at the end of the definition to read as follows:

§ 117.1 Definitions.

* * * * *

Navigable waters do not include prior converted cropland, as defined by the National Food Security Act Manual, Second Edition, 180–V–NFSAM, Amendment 6, May, 1991, Soil Conservation Service. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. §552(a) and 1 CFR part 51. Copies of the National Food Security Act Manual may be obtained from the U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 122.2, definition of waters of the United States, is amended by adding three new sentences at the end of the definition to read as follows:

§ 122.2 Definitions.

* * * * *

Waters of the United States do not include prior converted cropland, as defined by the National Food Security Act Manual, Second Edition, 180–V–NFSAM, Amendment 6, May, 1991, Soil Conservation Service. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the National Food Security Act Manual may be obtained from the U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

* * * * *

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

1. The authority citation for part 230 continues to read as follows:

Authority: 33 U.S.C. 1344(b) and 1361(a).

2. Section 230.3(s), definition of waters of the United States, is amended by adding three new sentences of concluding text at the end of the definition to read as follows:

§ 230.3 Definitions.

* * * * *

Waters of the United States do not include prior converted cropland, as defined by the National Food Security Act Manual, Second Edition, 180–V–NFSAM, Amendment 6, May, 1991, Soil Conservation Service. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the National Food Security Act Manual may be obtained from the U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

1. The authority citation for Part 232 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Section 232.2(e), definition of discharge of dredged material, is revised to read as follows:

§ 232.2 Definitions.

* * * * *

(e)(1) The term *discharge of dredged material* means any addition of dredged material into waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or the State section 404 program. The term "discharge of dredged material" includes, without limitation, any addition or redeposit of dredged materials, including excavated materials, into waters of the United States which is incidental to any activity (except normal dredging operations as defined below), including mechanized landclearing, ditching, channelization, or other excavation which has or would have the effect of destroying or degrading any area of waters of the United States. The term does not include *de minimis* soil movement incidental to any activity which does not have or would not have the effect of destroying or degrading any area of waters of the United States. Moreover, the term does not include *de minimis*, incidental soil movement occurring during the normal dredging operations, defined as dredging to maintain, deepen, or extend navigation channels in the navigable waters of the United States, as defined in 33 CFR Part 329, with proper authorization from the Congress and/or the Corps. The term does not include plowing, cultivating, seeding and harvesting for the protection of food, fiber, and forest products (See § 323.4 for the definition of these terms).

(2) For purposes of paragraph (e)(1), mechanized landclearing, ditching, channelization, or other excavation activities in waters of the United States result in a discharge of dredged material. Further, where such activities occur in waters of the United States, the activity is presumed to result in the destruction or degradation of such waters unless the project proponent demonstrates to the satisfaction of the Corps, or EPA as appropriate, that the activity would not have such an effect in a particular case.

* * * * *

3. Section 232.2(f), definition of discharge of fill material, is revised to read as follows:

§ 232.2 Definitions.

* * * * *

(f)(1)The term "discharge of fill material" means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: placement of fill that is necessary for the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs. The term does not include plowing, cultivating, seeding, and harvesting for the production of food, fiber, and forest products (See Section 232.3 for the definition of these terms.)

(2) In addition, the placement of pilings in waters of the United States shall require a section 404 permit when such placement is used in a manner essentially equivalent to a discharge of fill material in physical effect or functional use and effect. In such cases, the placement of pilings in waters of the United States constitutes a discharge of fill material for purposes of Section 404. Examples includes, but are not limited to, the following activities in waters of the United States:

(i) *Physical effect of fill:* Projects that in effect replace an aquatic area or change the bottom elevation of a waterbody as a result of the placement of pilings that are so closely spaced that sedimentation rates are increased or the pilings themselves essentially replace the bottom will require a Section 404

permit. This circumstances would include pilings placed in waters of the United States for dams, dikes, or other structures utilizing densely spaced pilings, or as a foundation for large structures.

(ii) *Functional use and effect of fill*: Construction projects will require a Section 404 permit where pilings serve essentially the same functional use as a solid fill foundation, and where the project would result in essentially the same effects as fill (e.g., alter flow or circulation of the waters, bring the area into a new, non-aquatic use, or significantly alter or eliminate aquatic functions and values). Regulated activities include the placement of pilings to facilitate the construction of office and industrial developments, parking structures, restaurants, stores, hotels, multi-family housing projects, and similar structures in waters of the United States.

The term *discharge of fill material* does not include the placement of pilings in waters of the United States in circumstances involving linear projects such as bridges, elevated walkways, or powerline structures. Similarly, the term does not include the placement of pilings in waters of the United States in circumstances that involve structures that have been traditionally constructed on pilings; examples are piers, boathouses, wharves, marinas, lighthouses, and individual houses built on stilts solely to reduce the potential of flooding (e.g., beach houses where road access is on uplands, but the house may be located in a low area necessitating costruction on stilts). However, all pilings placed in the navigable waters of the United States (see 33 CFR part 329) require authorization under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR part 322).

4. Section 232.2(q), definition of waters of the United States, is amended by adding three new sentences of concluding text at the end of the definition to read as follows:

§ 232.2 Definitions.

* * * * *

Waters of the United States do not include prior converted cropland, as defined by the National Food Security Act Manual, Second Edition, 180–V–NFSAM, Amendment 6, May, 1991, Soil Conservation Service. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the National Food Security Act Manual may be obtained from the U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

* * * * *

PART 401—EFFLUENT GUIDELINES AND STANDARDS

1. The authority citation for part 401 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 401.11(l), definition of navigable waters, is amended by adding three new sentences at the end of the definition to read as follows:

§ 401.11 General definitions.

* * * * *

* * * Navigable waters do not include prior converted cropland, as defined by the National Food Security Act Manual, Second Edition, 180–V–NFSAM, Amendment 6, May, 1991, Soil Conservation Service. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the National Food Security Act Manual may be obtained from the U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

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Tuesday,
June 16, 1992

Part III

Department of Education

Indian Vocational Education Program; Office of Vocational and Adult Education; Notice Inviting Applications for New Awards

DEPARTMENT OF EDUCATION

[CFDA No. 84.101]

Indian Vocational Education Program, Office of Vocational and Adult Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

The Secretary wishes to highlight, for potential applicants, that this program can help to further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. Specifically, the program addresses Track III of the AMERICA 2000 strategy—Transforming America into "A Nation of Students"—and National Education Goal 5—ensuring that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Purpose of Program: To provide financial assistance to Indian tribes and certain schools funded by the Department of the Interior to plan, conduct, and administer programs, or portions of programs, that are authorized by and consistent with the Carl D. Perkins Vocational and Applied Technology Education Act.

Eligible Applicants: The following entities are eligible for an award under this program:

(a) A tribal organization of any Indian tribe that is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(b) A Bureau-funded school offering a secondary program.

(c) Any tribal organization or Bureau-funded school described in paragraphs (a) or (b) above may apply individually or jointly as part of a consortium with one or more eligible tribal organizations or schools.

(i) A consortium shall enter into an agreement signed by all members of the consortium and designating one member of the consortium as the applicant and grantee.

(ii) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(iii) The applicant shall submit the agreement with its application.

Deadline for Transmittal of Applications: July 30, 1992.

Available Funds: $1,509,725.

Estimated Range of Awards: $45,000 to $595,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements For Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations governing the Indian Vocational Educational Program, as proposed to be codified in 34 CFR part 401.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, for the following reasons, in this case it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program, as published in the **Federal Register** on October 11, 1991 (56 FR 51448). Solicitation of applications based upon the proposed regulations will allow applicants sufficient time in which to prepare and submit applications for the FY 1993 competition as well as permit them to implement their projects on a timely basis so as to meet fixed institutional schedules. In addition, solicitation of applications based on the NPRM should provide applicants that ultimately are not funded under this program with sufficient time in which to apply for funds under other Department programs for which they may be eligible to apply, as well as prevent funding gaps between projects that are currently funded and new projects for which applicants may be seeking funding under this competition.

Finally, the Secretary has not received any substantive comments on the proposed regulations and does not anticipate making any substantive changes to the final regulations. In any event, if substantive changes are made in the final regulations, applicants will be given an opportunity to revise and resubmit their applications.

Selection Criteria: The Secretary uses the following selection criteria contained in 34 CFR 401.21 of the proposed regulations to evaluate applications for new grants under this competition.

The proposed regulations at 34 CFR 401.20(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points.

The maximum score for each criterion is indicated in parentheses following each criterion. For this competition, the Secretary distributes the 15 points reserved in 34 CFR 401.20(b) as follows: Five additional points to the selection criterion in 34 CFR 401.21(b) (Need) for a possible total of 20 points. Five additional points to the selection criterion in 34 CFR 401.21(c) (Plan of Operation) for a possible total of 20 points. Five additional points to the selection criteria in 34 CFR 401.31(e) (Budget and Cost Effectiveness) for a possible total of 10 points.

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which it—

(1) Proposes measurable goals for student enrollment, completion, and placement that are realistic in terms of stated needs, resources, and job opportunities in each occupation for which training is to be provided;

(2) Proposes goals that take into consideration any related goals or standards developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) training programs operating in the area, and, where appropriate, any goals set by the State board for vocational education for the occupation and geographic area;

(3) Describes, for each occupation for which training is to be provided, how successful program completion will be determined in terms of academic and

vocational competencies demonstrated by enrollees prior to completion and any academic or work credentials acquired by enrollees upon completion;

(4) Demonstrates the active commitment in the project's planning and operation by advisory committees, tribal planning offices, the JOBS program office, the JTPA program director, and potential employers such as tribal enterprises, private enterprises (on or off reservation), and other organizations;

(5) Is targeted to individuals with inadequate skills to assist those individuals in obtaining new employment; and

(6) Includes a thorough description of the approach to be used including some or all of the following components:

(i) Methods of participant selection.

(ii) Assessment and feedback of participant progress.

(iii) Coordination of vocational instruction, academic instruction, and support services such as counseling, transportation, and child care.

(iv) Curriculum and, if appropriate, approaches for providing on-the-job training experience.

(b) *Need.* (20 points) The Secretary reviews each application to determine the extent to which the project addresses specific needs, including—

(1) The job market and related needs (such as educational level) of the target population;

(2) Characteristics of that population, including an estimate of those to be served by the project;

(3) How the project will meet the needs of the target population; and

(4) A description of any ongoing and planned activities relative to those needs, including, if appropriate, how the State plan developed under 34 CFR 403.30–403.34 is designed to meet those needs.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of objectives that are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and placements;

(2) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity; and

(3) The way the applicant intends to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) Subject to the Indian preference provisions of the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*) that apply to grants and contracts to tribal organizations, how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project and the number of participants to be served; and

(3) The budget narrative justifies the expenditures.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kind of academic and work credentials acquired by participants who complete the training;

(2) The plan identifies, at a minimum, types of data to be collected and reported with respect to the achievement of project goals for the enrollment, completion, and placement of participants. The data must be broken down by sex and by occupation for which training was provided;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(g) *Employment opportunities.* (10 points) The Secretary reviews each application to determine the quality of the plan for job placement of participants who complete training under this program, including—

(1) The expected employment opportunities (including any military specialties) and any additional educational or training opportunities that are related to the participants' training;

(2) Information and documentation concerning potential employers' commitment to hire participants who complete the training; and

(3) An estimate of the percentage of trainees expected to be employed (including self-employed individuals) in the field for which they were trained following completion of the training.

Special Consideration: In accordance with the authority provided in section 103(b)(1)(C) of the Act and with § 401.20(e) of the proposed regulations, in addition to the 100 points to be awarded based on the selection crieria in § 401.21 of the proposed regulations, the Secretary awards:

(a) Up to five points to applications that propose exemplary approaches that involve, coordinate with, or encourage tribal economic development plans; and

(b) Five points to applications from tribally controlled community colleges that—

(1) Are accredited or are candidates for accreditation by a nationally recognized accredidation organization as an institution of postsecondary vocational education; or

(2) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Services, Attention: (CFDA #84.101), Washington, D.C. 20202–4725 or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.101, Room #3633, Regional

Office Building #3, 7th and D Street SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes

(1) The U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The Appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and aditional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4/88) and instructions.

Part II: Budget Information.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Lobbying, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form 80–0013) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Harvey G. Thiel or Purnell Swett, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., room 4512, Mary E. Switzer Building, Washington, DC 20202–7242. Telephone (202) 732–2380 or 732–2379. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2313.

Dated: June 10, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 0 1

TITLE: Indian Vocational Education Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION AA - Budget Summary by Categories (First Budget Period)

	A*	B**
1. Personnel		
2. Fringe Benefits (Rate %)		
3. Travel		
4. Equipment		
5. Supplies		
6. Contractual		
7. Other		
8. Total, Direct Cost (Lines 1 through 7)		
9. Indirect Cost (Rate %)		
10. Training Costs/Stipends		
11. TOTAL, Federal Funds Requested (Lines 8 through 10)		

SECTION BB - Other Available Resources

	A*	B**
1. Federal		
2. State and Local		
3. TOTAL		

*NOTE: Fill in only Column A for one year budget periods. Continuation amounts for future years go in Section C.

**NOTE: Fill in columns A and B when full-funded projects are longer than 12 months.

SECTION C - Budget Estimates (Federal Funds Only) For Balance of Project

Budget Periods			
Second	Third	Fourth	FIfth

BILLING CODE 4000-01-C

Instructions for Part II—Budget Information

Section A—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid to project personnel.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. *Equipment:* Indicate the cost of non-expandable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project.

6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. *Total, Direct Cost:* Show the total for lines 1 through 7.

9. *Indirect Costs:* Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. *Training/Stipend Cost:* (if allowable)

11. *TOTAL, Federal Funds Requested:* Show total for lines 8 through 10.

Section B—Other Available Resources

List the total resources available from other Federal, State and Local sources that will be used to achieve the institution's goals and objectives.

Section C—Budget Estimates (Federal funds Only) for Balance of Project

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate.

Instructions for Part III—Budget Narrative

The itemized budget and budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Part III—Application Narrative

Instructions for Part III—Application Narrative

All applicants are urged to submit application narratives that are concise and clearly written. Before preparing the application narrative, applicants should read and become familiar with the law and the regulations covering the program to which they are applying.

Applicants should use the selection criteria for a program as an outline for preparing their application narrative, addressing the selection criteria in the order the criteria are listed. Applicants are encouraged to provide a table of contents and to number the pages of the application narrative. The application narrative should not exceed 25 double-space typed pages, (on one side only). While supporting documentation (e.g., letters of support, footnotes, resumes, etc.) may be submitted with applications, applicants are advised that letters of support sent separately from the formal application package are not considered in the review by the technical review panels. In addition, applications are advised that:

(a) Under 34 CFR 75.112 of EDGAR:

(1) An application must propose a project period for the project.

(2) An application must describe when, in each budget period of the project, the application plans to meet each objective of the project.

(b) Under 34 CFR 75.117 of EDGAR, an applicant that proposes a multi-year project shall include in its application—

(1) Information that shows why a multi-year project is needed;

(2) A budget for the first budget period of the project; and

(3) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

(c) Under 34 CFR 75.217(a) of EDGAR, the Secretary ranks applications for funding consideration and selects applications on the basis of the authorizing statute, the selection criteria, and other requirements contained in the proposed regulations.

(d) A technical review panel used by the Secretary to review application evaluates each application solely on the basis of the established selection criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments that pertain to the established selection criteria, such as commitment of resources and placement of successful completers.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden for this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Paperwork Reduction Project, OMB control number: 1830–00.13, Office of Management and Budget, Washington, DC 20503. (Information collection approved under OMB control number 1830–0013. Expiration date 6/30/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of eridangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Appendix A

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, a properly prepared application must meet the specifications of the competition to which it is submitted.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 4 to 5 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors meeting, you may also wish to include a trip or two to Washington, D.C., in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require classification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) The Carl D. Perkins Vocational and Applied Technology Education Act, as amended by Public Law 101–392, 20 U.S.C. 2301 *et seq.*, 104 Stat. 753 (1990).

(2) The Education Department General Administrative Regulations at 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86.

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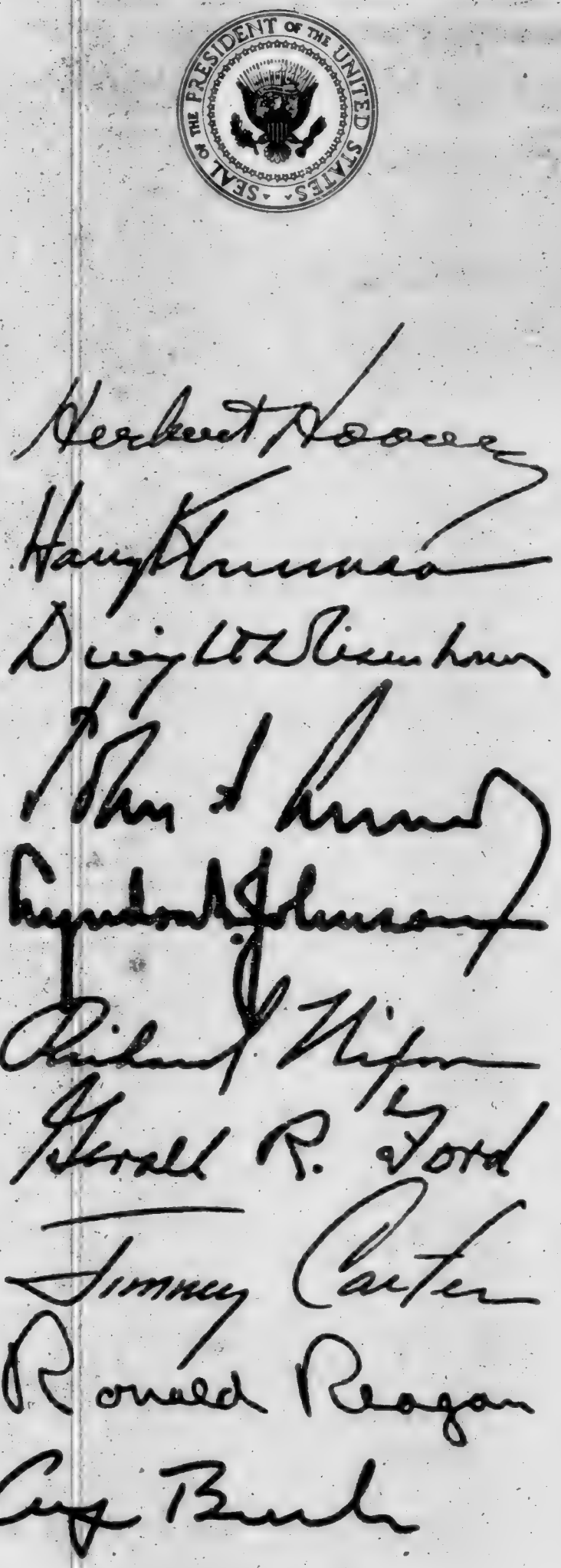

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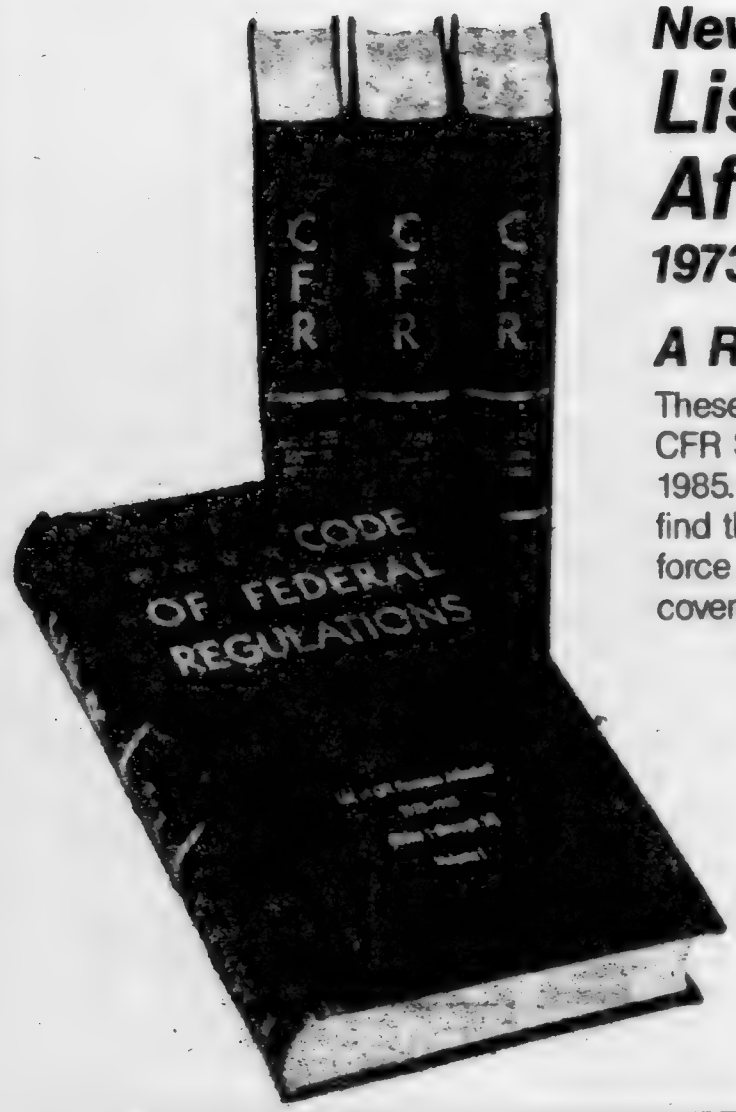

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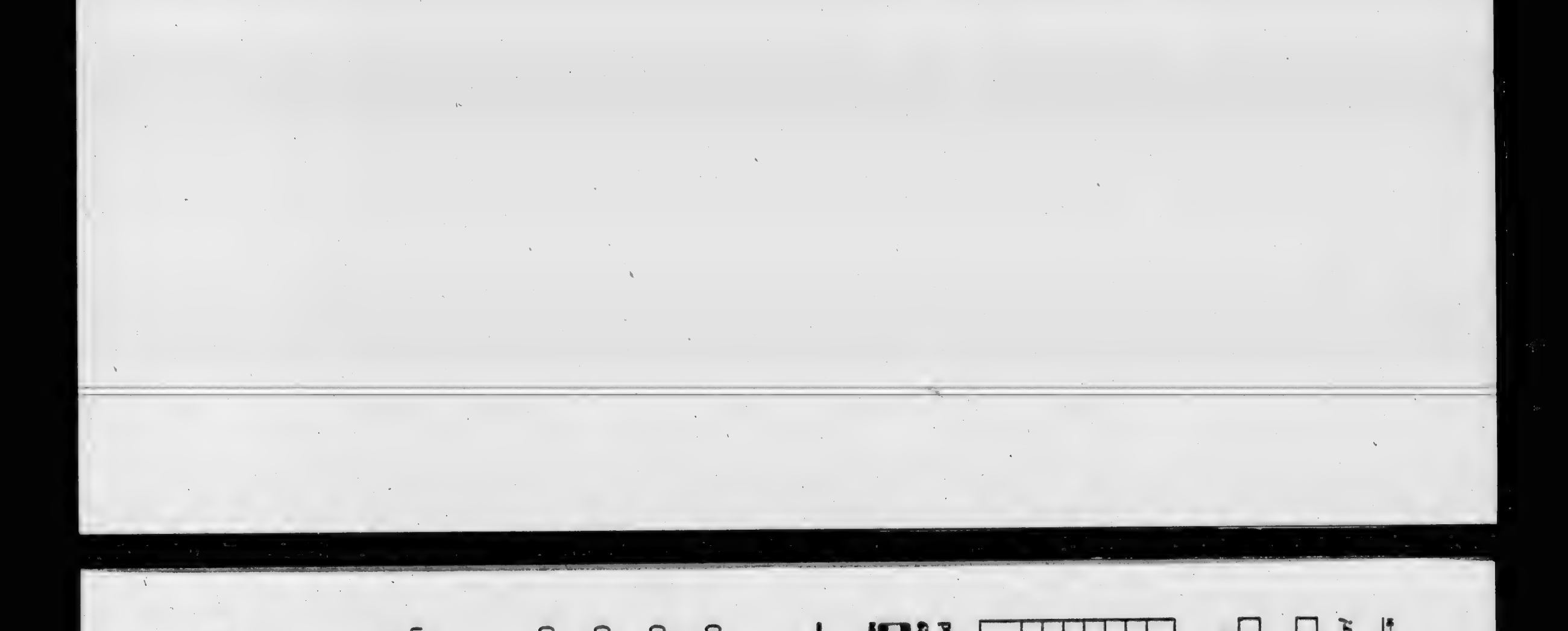

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The President

Proclamation 6445 of June 15, 1992

Agreement on Trade Relations Between the United States of America and the Republic of Albania

By the President of the United States of America

A Proclamation

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of Albania to conclude an agreement on trade relations between the United States of America and Albania.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the United States of America and the Republic of Albania," including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Albanian, was signed on May 14, 1992, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of Albania, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register**.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Albania".

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of June, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

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AGREEMENT ON TRADE RELATIONS
BETWEEN THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF ALBANIA

The United States of America and the Republic of Albania (hereinafter referred to collectively as "Parties" and individually as "Party"),

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging that the development of trade relations and direct contact between nationals and companies of both Parties will promote openness and mutual understanding,

Considering that expanded trade relations between the Parties will contribute to the general well-being of the peoples of each Party,

Recognizing that development of bilateral trade may contribute to better mutual understanding and cooperation and promote respect for internationally recognized worker rights,

Taking into account Albania's membership in the International Monetary Fund and the International Bank for Reconstruction and Development and the prospects for economic reform and restructuring of the economy,

Having agreed that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Being convinced that an agreement on trade relations between the two Parties will best serve their mutual interests, and

Desiring to create a framework which will foster the development and expansion of commercial ties between their respective nationals and companies,

Have agreed as follows:

ARTICLE I

MOST FAVORED NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and

(e) laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation, distribution, storage and use of products in the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party

nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

3. Each Party shall accord to imports of products and services originating in the territory of the other Party nondiscriminatory treatment with respect to the allocation of and access to the currency needed to pay for such imports.

4. The provisions of paragraphs 1 and 2 shall not apply to:

(a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area;

(b) advantages accorded to adjacent countries for the facilitation of frontier traffic;

(c) actions by either Party which are required or permitted by the General Agreement on Tariffs and Trade (the "GATT") (or by any joint action or decision of the Contracting Parties to the GATT) during such time as such Party is a Contracting Party to the GATT and special advantages accorded by virtue of the GATT; and

(d) actions taken under Article XI (Market Disruption) of this Agreement.

5. The provisions of paragraph 2 of this Article shall not apply to Albanian exports of textiles and textile products.

ARTICLE II

MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Each Party shall administer all tariff and nontariff measures affecting trade in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

2. Accordingly, neither Party shall impose, directly or indirectly, on the products of the other Party imported into its territory, internal taxes or charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

3. Each Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use.

4. The charges and measures described in paragraphs 2 and 3 of this Article should not be applied to imported or domestic products so as to afford protection to domestic production.

5. The Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade or to protect domestic production. Furthermore, each

Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to like domestic products and to like products originating in any third country in relation to such technical regulations or standards, including conformity testing and certification.

6. The Government of the Republic of Albania shall accede to the Convention Establishing the Customs Cooperation Council and the International Convention on the Harmonized Commodity Description and Coding System, and shall take all necessary measures to implement entry into force of such Conventions with respect to the Republic of Albania. The United States of America shall endeavor to provide technical assistance, as appropriate, for the implementation of such measures.

ARTICLE III

GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. The Parties agree to maintain a satisfactory balance of market access opportunities, including through concessions in trade in products and services and through the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade resulting from multilateral negotiations.

2. Trade in products and services shall be effected by contracts between nationals and companies of both Parties

concluded on the basis of nondiscrimination and in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, availability, delivery, and terms of payment.

3. Neither Party shall require or encourage its nationals or companies to engage in barter or countertrade transactions. Nevertheless, where nationals or companies decide to resort to barter or countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

ARTICLE IV

EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate trade in goods and services and to secure favorable conditions for long-term development of trade relations between their respective nationals and companies.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of the Republic of Albania expects that, during the term of this Agreement, nationals and companies of the Republic of Albania shall increase their orders in the United States for

products and services, while the United States expects that the effect of this Agreement shall be to encourage increased purchases by nationals and companies of the United States of products and services from the Republic of Albania. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE V

GOVERNMENT COMMERCIAL OFFICES

1. Subject to its laws and regulations governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures, third-country nationals.

2. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.

3. Each Party shall encourage the participation of its nationals and companies in the activities of the other Party's government commercial offices, especially with respect to events held on the premise of such commercial offices.

4. Each Party shall encourage and facilitate access by government commercial office personnel of the other Party to host-country officials at both the national and subnational level, and representatives of nationals and companies of the host Party.

ARTICLE VI

BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

2. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit the establishment within its territory of commercial representations of nationals and companies of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial

representations of nationals and companies of third countries.

3. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

4. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

5. Each Party shall permit, on a nondiscriminatory basis and at nondiscriminatory prices (where such prices are set or controlled by the government), commercial representations of the other Party access to and use of office space and living accommodations, whether or not designated for use by foreigners. The terms and conditions of such access and use shall in no event be on a basis less favorable than that accorded to commercial representations of nationals and companies of third countries.

6. Subject to its laws and procedures governing immigration, each Party shall permit nationals and companies

of the other Party to engage agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties.

7. Subject to its immigration laws and procedures, each Party shall permit nationals and companies of the other Party to serve as agents, consultants and distributors of nationals and companies of either Party and of third countries on prices and terms mutually agreed between the parties.

8. Each Party shall permit nationals and companies of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national or company.

9. Each Party shall encourage direct contact, and permit direct sales, between nationals and companies of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales.

10. Each Party shall permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall upon request make available non-confidential, non-proprietary information

within its possession to nationals and companies of the other Party engaged in such efforts.

11. Each Party shall provide nondiscriminatory access to governmentally-provided products and services, including public utilities, to nationals and companies of the other Party in connection with the operation of their commercial representations.

12. Each Party shall permit commercial representations to stock an adequate supply of samples and replacement parts for aftersales service on a non-commercial basis.

13. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals and companies of the other Party.

ARTICLE VII

TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall also make such information available in reading rooms in its own capital and in the capital of the other Party.

2. Each Party shall provide nationals and companies of the other Party with access to available non-confidential,

non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow the other Party the opportunity to comment on the formulation of rules and regulations which affect the conduct of business activities.

ARTICLE VIII

FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between nationals and companies of the Parties shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.

2. Neither Party shall restrict the transfer from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals and companies of the other Party.

3. Nationals and companies of a Party holding currency of the other Party received in an authorized manner may deposit such currency in financial institutions located in the territory of the other Party and may maintain and use such currency for local expenses.

4. Without derogation from paragraphs 2 or 3 of this Article, in connection with trade in products and services,

each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:

(a) opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country;

(c) rates of exchange and related matters, including access to freely usable currencies, such as through currency auctions; and

(d) the receipt and use of local currency and its use for local expense.

ARTICLE IX

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets, industrial designs and layout designs for integrated circuits. Each Party agrees to adhere to the Paris Convention for the Protection of Industrial Property as revised at Stockholm in 1967, the

Berne Convention for the Protection of Literary and Artistic Works as revised at Paris in 1971, the Universal Copyright Convention of September 6, 1952 as revised at Paris on July 24, 1971, and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1971).

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, inter alia, observe the following commitments:

(a) Copyright and related rights

(i) Each Party shall protect the works listed in Article 2 of the Berne Convention (Paris 1971) and any other works now known or later developed, that embody original expressions within the meaning of the Berne Convention, not limited to the following:

(1) all types of computer programs (including application programs and operating systems) expressed in any language, whether in source or object code which shall be protected as literary works and works created by or with the use of computers; and

(2) collections or compilations of protected or unprotected material or data whether in print, machine readable or any other medium, including data bases, which shall be protected if they constitute intellectual creation by reason of the selection, coordination, or arrangement of their contents.

(ii) Rights in works protected pursuant to paragraph 2(a)(i) of this Article shall include, inter alia, the following:

(1) the right to import or authorize the importation into the territory of the Party of lawfully made copies of the work as well as the right to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right-holder;

(2) the right to make the first public distribution of the original or each authorized copy of a work by sale, rental, or otherwise; and

(3) the right to make a public communication of a work (e.g., to perform, display, project, exhibit, broadcast, transmit, or retransmit a work); the term "public" shall include:

(A) communicating a work in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(B) communicating or transmitting a work, a performance, or a display of a work, in any form, or by means of any device or process to a place specified in clause 2(a)(ii)(3)(A) or to the public, regardless of whether the members of the public capable of receiving such communications can receive them in the same place or separate places and at the same time or at different times.

(iii) Each Party shall extend the protection afforded under paragraph 2(a)(ii) of this Article to authors of the other Party, whether they are natural persons or, where the other Party's domestic law so provides, companies and to their successors in title.

(iv) Each Party shall permit protected rights under paragraph 2(a)(ii) of this Article to be freely and separately exploitable and transferable. Each Party shall also permit assignees and exclusive licensees to enjoy all rights of their assignors and licensors acquired through voluntary agreements, and be entitled to enjoy and exercise their acquired exclusive rights.

(v) In cases where a Party measures the term of protection of a work from other than the life of the author, the term of protection shall be no less than 50 years from authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years after the making.

(vi) Each Party shall confine any limitations or exceptions to the rights provided under paragraph 2(a)(ii) of this Article (including any limitations or exceptions that restrict such rights to "public" activity) to clearly and carefully defined special cases which do not impair an actual or potential market for or the value of a protected work.

(vii) Each Party shall ensure that any compulsory or non-voluntary license (or any restriction of exclusive rights to a right of remuneration) shall provide means to ensure payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

(viii) Each Party shall, at a minimum, extend to producers of sound recordings the exclusive rights to do or to authorize the following:

(1) to reproduce the recording by any means or process, in whole or in part; and

(2) to exercise the importation and exclusive distribution and rental rights provided in paragraphs 2(a)(ii)(1) and (2) of this Article.

(ix) Paragraphs 2(a)(iii), 2(a)(iv) and 2(a)(vi) of this Article shall apply mutatis mutandis to sound recordings.

(x) Each Party shall:

(1) protect sound recordings for a term of at least 50 years from publication; and

(2) grant the right to make the first public distribution of the original or each authorized sound recording by sale, rental, or otherwise except that the first sale of the original or such sound recording shall not exhaust the rental or importation right therein (the "rental right" shall mean the right to authorize or prohibit the

disposal of the possession of the original or copies for direct or indirect commercial advantage).

(xi) Parties shall not subject the acquisition and validity of intellectual property rights in sound recordings to any formalities, and protection shall arise automatically upon creation of the sound recording.

(b) Trademarks

(i) Protectable Subject Matter

(1) Trademarks shall consist of at least any sign, words, including personal names, designs, letters, numerals, colors, the shape of goods or of their packaging, provided that the mark is capable of distinguishing the goods or services of one national or company from those of other nationals or companies.

(2) The term "trademark" shall include service marks, collective and certification marks.

(ii) Acquisition of Rights

(1) A trademark right may be acquired by registration or by use. Each Party shall provide a system for the registration of trademarks. Use of a trademark may be required as a prerequisite for registration.

(2) Each Party shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In

addition, each Party may afford an opportunity for the other Party to oppose the registration of a trademark.

(3) The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

(iii) Rights Conferred

(1) The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion.

(2) Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. A Party may not require that the reputation of the trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

(3) The owner of a trademark shall be entitled to take action against any unauthorized use which constitutes an act of unfair competition or passing off.

(iv) Term of Protection

The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years

when conditions for renewal have been met. Initial registration of a trademark shall be for a term of at least 10 years.

(v) Requirement of Use

(1) If use of a registered mark is required to maintain trademark rights, the registration may be cancelled only after an uninterrupted period of at least two years of non-use, unless legitimate reasons for non-use exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

(2) Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the trademark holder (such as import restrictions on or other government requirements for products protected by the trademark) which constitute an obstacle to the use of the mark.

(vi) Other Requirements

The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark.

(vii) Compulsory Licensing

Compulsory licensing of trademarks shall not be permitted.

(viii) Transfer

Trademark registrations may be transferred.

(c) Patents

(i) Patentable Subject Matter

(1) Patents shall be available for all inventions, whether they concern products or processes, in all fields of technology.

(2) Parties may exclude from patentability any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon.

(ii) Rights Conferred

(1) A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing at least the product obtained directly by that process.

(2) Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer at least in one of the following situations:

(A) the product is new, or

(B) a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

(3) A patent may only be revoked on grounds that would have justified a refusal to grant the patent.

(iii) Exceptions

Each Party may provide limited exceptions to the exclusive rights conferred by a patent, such as for acts done for experimental purposes, provided that the exceptions do not significantly prejudice the economic interests of the right-holder.

(iv) Term of Protection

Each Party shall provide a term of protection of at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent. Each Party is encouraged to extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

(v) Transitional Protection

A Party shall provide transitional protection for chemical products, including pharmaceuticals and

agricultural chemicals, for which it did not provide product patent protection prior to its implementation of this Agreement, provided the following conditions are satisfied:

(1) the subject matter to which the product relates will become patentable after implementation of this Agreement;

(2) the product is subject to premarket regulatory review in the territory of the other Party and a patent has been issued for the product by the other Party or an application is pending for the product with the other Party prior to the date on which the subject matter to which the product relates becomes patentable in the territory of the Party providing transitional protection; and

(3) the product has not been marketed in the territory of the Party providing such transitional protection.

The owner of a patent or of a pending application for a product satisfying the conditions set forth above shall have the right to submit a copy of the patent or provide notification of the existence of a pending application with the other Party, to the Party providing transitional protection. These submissions and notifications shall take place any time after the implementation of the new Albanian patent law, and Albanian authorities shall accept such submissions for a period of no less than 1 year from the date of implementation of the law. In the case of

a pending application, the applicant shall notify the competent Albanian authorities of the issuance of a patent based on his application within six months of the date of grant by the other Party. The Party providing transitional protection shall limit the right to make, use, or sell the product in its territory to such owner for a term to expire with that of the patent submitted. Such protection may be implemented through a confirmation patent system.

(vi) Compulsory Licenses

(1) Each Party may limit the patent owner's exclusive rights through compulsory licenses but only:

(A) to remedy an adjudicated complaint based on competition laws;

(B) to address, only during its existence, a declared national emergency; and

(C) to enable compliance with national air pollutant standards, where compulsory licenses are essential to such compliance.

(2) Where the law of a Party allows for the grant of compulsory licenses, such licenses shall be granted in a manner which minimizes distortions of trade, and the following provisions shall be respected:

(A) Compulsory licenses shall be non-exclusive and non-assignable except with that part of the enterprise or goodwill which exploits such license.

(B) The payment of remuneration to the

patent owner adequate to compensate the patent owner fully for the license shall be required, except for compulsory licenses to remedy adjudicated violations of competition law.

(C) Each case involving the possible grant of a compulsory license shall be considered on its individual merits.

(D) Any compulsory license shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the patent owner.

(E) Judicial review shall be available for:

(1) decisions to grant compulsory licenses, except in the instance of a declared national emergency,

(2) decisions to continue compulsory licenses, and

(3) the compensation provided for compulsory licenses.

(d) Layout-Designs of Semiconductor Chips

(i) Subject Matter for Protection

(1) Each Party shall provide protection for original layout-designs incorporated in a semiconductor

chip, however the layout-design might be fixed or encoded.

(2) Each Party may condition protection on fixation or registration of the layout-designs. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout-design in which to apply. A Party which requires deposits of identifying material or other material related to the layout-design shall not require applicants to disclose confidential or proprietary information unless it is essential to allow identification of the layout-design.

(ii) Rights Acquired

(1) Each Party shall provide to owners of rights in integrated circuit lay-out designs of the other Party the exclusive right to do or to authorize the following:

(A) to reproduce the layout-design;

(B) to incorporate the layout-design in a semiconductor chip; and

(C) to import or distribute a semiconductor chip incorporating the layout-design and products including such chips.

(2) The conditions set out in paragraph (c)(v) of this Article shall apply, mutatis mutandis, to the grant of any compulsory licenses for layout-designs.

(3) Neither Party is required to extend protection to layout-designs that are commonplace in the

industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the circuit to which they apply.

(4) Each Party may exempt the following from liability under its law:

(A) reproduction of a layout-design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout-design that is itself original;

(B) importation and distribution of semiconductor chips, incorporating a protected layout-design, which were sold by or with the consent of the owner of the layout-design; and

(C) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout-design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout-design was protected, provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock but is liable for a reasonable royalty on the sale of each item after notice is received.

(iii) Term of Protection

The term of protection for the lay-out design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the

design, if required, whichever is earlier.

(e) Acts Contrary to Honest Commercial Practices and the Protection of Trade Secrets

(i) In the course of ensuring effective protection against unfair competition as provided for in Article 10 bis of the Paris Convention, each Party shall provide in its domestic law and practice the legal means for nationals and companies to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices insofar as such information:

(1) is not, as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

(2) has actual or potential commercial value because it is not generally known or readily ascertainable; and

(3) has been subject to reasonable steps under the circumstances to keep it secret.

(ii) Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph 2(e)(i) of this Article exist.

(iii) Licensing

Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive

or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

(iv) Government Use

(1) If a Party requires, as a condition of approving the marketing of pharmaceutical or agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, that Party shall protect such data against unfair commercial use. Further, each Party shall protect such data against disclosure except where necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

(2) Unless the national or company submitting the information agrees, the data may not be relied upon for the approval of competing products for a reasonable period of time, taking into account the efforts involved in the origination of the data, their nature, and the expenditure involved in their preparation, and such period of time shall generally be not less than five years from the date of marketing approval.

(3) Where a Party relies upon a marketing approval granted by the other Party or a country other than the United States or Albania, the reasonable period of exclusive use of the data submitted in connection with

obtaining the approval relied upon shall commence with the date of the first marketing approval relied upon.

(f) Enforcement of Intellectual Property Rights

(i) Each Party shall protect intellectual property rights covered by this Article by means of civil law, criminal law, or administrative law or a combination thereof in conformity with the provisions below. Each Party shall provide effective procedures, internally and at the border, to protect these intellectual property rights against any act of infringement, and effective remedies to stop and prevent infringements and to effectively deter further infringements. These procedures shall be applied in such a manner as to avoid the creation of obstacles to legitimate trade and provide for safeguards against abuse.

(ii) Procedures concerning the enforcement of intellectual property rights shall be fair and equitable.

(iii) Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

(iv) Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in national laws concerning the importance of a case, an opportunity for judicial review of the legal

aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided.

(v) Remedies against a Party

Notwithstanding the other provisions of paragraph 2(f), when a Party is sued for infringement of an intellectual property right as a result of the use of that right by or for the government, the Party may limit remedies against the government to payment of full compensation to the right-holder.

3. Each Party agrees to submit for enactment no later than December 31, 1993, the legislation necessary to carry out the obligations of this Article, and to exert its best efforts to enact and implement this legislation, as well as to adhere to the Conventions mentioned in paragraph 1, by that date.

4. For purposes of this Article:

(a) "right-holder," means the right-holder himself, any other natural or legal person authorized by him who are exclusive licensees of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights; and

(b) "A manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, breach of contract, inducement to

breach, electronic and other forms of commercial espionage, and includes the acquisition of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in the acquisition.

ARTICLE X

AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in the exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.

2. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

3. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

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ARTICLE XI

MARKET DISRUPTION SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory or the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. Determination of market disruption or threat thereof by the importing Party shall be based upon a good faith application of its laws and on an affirmative finding of relevant facts and on their examination. The importing Party, in determining whether market disruption exists, may consider, among other factors: the volume of imports of the merchandise which is the subject of the inquiry; the effect of imports of the merchandise on prices in the territory of the importing Party for like or directly competitive articles; the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns.

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3. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruptions. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

4. Unless a different solution is mutually agreed upon during the consultations, and notwithstanding paragraphs 1 and 2 of Article I, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures it deems appropriate to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

5. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that

such consultations shall be requested immediately thereafter.

6. In the selection of measures under this Article, the Parties shall endeavor to give priority to those which cause the least disturbance to the achievement of the goals of this Agreement.

7. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

8. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

ARTICLE XII

DISPUTE SETTLEMENT

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of

arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States and nationals or companies of the Republic of Albania. Such arbitration may be provided for by agreements in contracts between such nationals and companies, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules of December 15, 1976 and any modifications thereto, in which case the parties should designate an Appointing Authority under said rules in a country other than the United States or the Republic of Albania.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States or the Republic of Albania, that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties

from agreeing upon any other form of arbitration or on the law to be applied in such arbitration, or other forms of dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XIII

NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIV

CONSULTATIONS

1. The Parties agree to set up a Joint Commercial Commission which will, subject to the terms of reference of its establishment, foster economic cooperation and the expansion of trade under this Agreement and review periodically the operation of this Agreement and make recommendations for achieving its objectives.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or

implementation of this Agreement and other relevant aspects of the relations between the Parties.

ARTICLE XV

DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship or other organization legally constituted under the laws and regulations of a Party or a political subdivision thereof, whether or not organized for pecuniary gain or privately or governmentally owned; provided that, either Party reserves the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations;

(b) "commercial representation," means a representation of a company of a Party;

(c) "national," means a natural person who is a national of a Party under its applicable law.

ARTICLE XVI

GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of:

(a) measures necessary to secure compliance with laws or regulations which are not contrary to the purposes of this Agreement;

(b) measures for the protection of intellectual property rights and the prevention of deceptive practices as set out in Article IX of this Agreement, provided that such measures shall be related to the extent of any injury suffered or the prevention of injury; or

(c) any other measure referred to in Article XX of the GATT.

2. Nothing in this Agreement limits the application of any existing or future agreement between the Parties on trade in textiles and textile products.

ARTICLE XVII

ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including its side letters which are an integral part of the Agreement) shall enter into force on the date of exchange of written notices of acceptance by the two governments and shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraph (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out is obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law, seek to minimize disruption to existing trade relations between the two countries.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

IN WITNESS THEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington on this 14th day of May 1992, in two original copies in the English language. An Albanian language text shall be prepared which shall be considered equally authentic upon an exchange of diplomatic notes confirming its conformity with the English language text.

FOR THE UNITED STATES OF AMERICA:

FOR THE REPUBLIC OF ALBANIA:

Washington, May 14, 1992

Dear Mr. Secretary:

I have the honor to confirm receipt of your letter of today's date which reads as follows:

"In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Republic of Albania (the 'Agreement'), I have the honor to confirm the understanding reached by our Governments (the 'Parties') regarding tourism and travel-related services as follows:

1. The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and the Republic of Albania. In this regard, the Parties recognize the desirability of exploring the possibility of negotiating a separate bilateral agreement on tourism.

2. The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Official Tourism Promotion Offices

3. Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory.

4. Permission to open tourism promotion offices or field offices, and the status of personnel who head and staff such offices, shall be as agreed upon by the Parties and subject to the applicable laws and regulations of the host country.

5. Tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country.

John G. Keller, Jr.
Under Secretary for
Travel and Tourism

6. Official governmental tourism offices shall engage in activities related to the facilitation of development of tourism between the United States and the Republic of Albania, including:

a) providing information about the tourism facilities and attraction in their respective countries to the public, and travel trade and the media;

b) conducting meetings and workshops for representatives of the travel industry;

c) participating in trade shows;

d) distributing advertising materials such as posters, brochures and slides, and coordinating advertising campaigns; and

e) performing market research.

7. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other Party.

Commercial Tourism Enterprises

8. Commercial tourism enterprises, whether privately or governmentally-owned, shall be treated as private commercial enterprises, fully subject to all applicable laws and regulations of the host country.

9. Each Party shall ensure within the scope of its legal authority and in accordance with its laws and regulations that any company owned, controlled or administered by that Party or any joint venture therewith or any private company or joint venture between private companies, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party on a fair and equitable basis.

Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from the Agreement as fully as all other industries and sectors.

I have the honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government."

Page 3

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

Naske Afezolli
Deputy Minister
Ministry of Trade and
Foreign Economic Relations

[FR Doc. 92-14414
Filed 6-15-92; 4:17 pm]
Billing code 3190-01-C

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Presidential Documents

Proclamation 6446 of June 15, 1992

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to title V of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461, *et seq.*), the President may designate specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to sections 501, 503(a), and 504(a) of the 1974 Act (19 U.S.C. 2461, 2463(a), and 2464(a)), in order to subdivide and amend the nomenclature of existing provisions of the HTS to modify the GSP, I have determined, after taking into account information and advice received under section 503(a), that the HTS should be modified to adjust the original designation of eligible articles. In addition, pursuant to title V of the 1974 Act, I have determined that it is appropriate to designate certain articles provided for in the HTS as eligible for preferential tariff treatment under the GSP when imported from designated beneficiary developing countries. Further, pursuant to section 504(a)(1) of the 1974 Act (19 U.S.C. 2464(a)(1)) and having considered the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)), I have determined that certain beneficiary countries should not receive preferential tariff treatment under the GSP with respect to certain articles designated as eligible for preferential tariff treatment under the GSP.

3. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to designate certain articles as eligible articles for purposes of the GSP when imported from certain designated beneficiary developing countries, the HTS is modified as provided in Annex I to this proclamation.

(2)(a) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any designated beneficiary developing country, the Rates of Duty 1-Special subcolumn for the HTS subheadings enumerated in Annex II(a) to this proclamation is modified by inserting in the parentheses the symbol "A" as provided in such Annex.

(b) In order to designate certain articles as eligible articles for purposes of the GSP when imported from certain designated beneficiary developing countries and to provide that certain countries should not be treated as a beneficiary developing country with respect to such eligible articles, the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in Annex II(b) to this proclamation is modified by inserting the symbol "A*" as provided in such Annex.

(3) In order to provide that certain countries should not be treated as a beneficiary developing country with respect to certain eligible articles for

purposes of the GSP, general note 3(c)(ii)(D) to the HTS is modified as provided in Annex III to this proclamation.

(4) In order to provide for the continuation of previously proclaimed staged reductions on Canadian goods in the HTS subheadings modified in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex IV to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in Annex IV to this proclamation is modified as provided in such Annex.

(5) In order to provide for the continuation of previously proclaimed staged reductions on products of Israel in the HTS subheadings modified in Annex I to this proclamation, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex V to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "IL" in parentheses for each of the HTS subheadings enumerated in Annex V to this proclamation is modified as provided in such Annex.

(6) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(7)(a) The modifications made by Annexes I, II, and III to this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

(b) The modifications made by Annex IV(a) to this proclamation shall be effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1993.

(c) The modifications made by Annex IV(b) to this proclamation shall be effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates indicated in Annex IV(b).

(d) The amendments made by Annex V to this proclamation shall be effective with respect to products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1995.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of June, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

Billing code 3195-01-M

Annex I

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS)

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the Federal Register.

1. Subheading 2204.21.40 is superseded by:

	[Wine of fresh grapes,...:] [Other wine;...:] [In containers holding 2 liters...:] [Other:] "Of an alcoholic strength by volume not over 14 percent vol.:			
2204.21.30	If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Tokay" and if so designated on the approved label.....	9.9¢/liter	Free (A,E,IL) 5.9¢/liter (CA)	33¢/liter
2204.21.50	Other.....	9.9¢/liter	Free (E,IL) 5.9¢/liter (CA)	33¢/liter"

2. Subheading 2902.90.50 is superseded by:

	[Cyclic hydrocarbons:] [Other:]			
"2902.90.40	Anthracene; and 1,4-Di-(2-methylstyryl)benzene.....	10.4%	Free (A*,E,IL) 2% (CA)	15.4¢/kg + 66.5%
2902.90.80	Other.....	10.4%	Free (E,IL) 2% (CA)	15.4¢/kg + 66.5%"

Conforming change: The article description for HTS heading 9902.29.02 is modified by deleting "2902.90.50" and inserting "2902.90.80" in lieu thereof.

3. Subheadings 2904.10.20 and 2904.10.30 are superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Sulfonated, nitrated...:] [Derivatives containing only sulfo...:]			
"2904.10.04	2-Anthracenesulfonic acid.....	13.5%	Free (A*,E,IL) 2.7% (CA)	15.4¢/kg + 51%
2904.10.08	Benzenesulfonyl chloride.....	3.7¢/kg + 15.9%	Free (A*,E,IL) 0.7¢/kg + 3.1% (CA)	15.4¢/kg + 51%"
	[Other:] [Aromatic:]			
"2904.10.32	Products described in additional U.S. note 3 to section VI.....	13.5%	Free (E,IL) 2.7% (CA)	15.4¢/kg + 51%
2904.10.37	Other.....	3.7¢/kg + 15.9%	Free (E,IL) 0.7¢/kg + 3.1% (CA)	15.4¢/kg + 51%"

4. Subheading 2907.15.50 is superseded by:

	[Phenols;...:] [Monophenols:] [Naphthols...:]			
"2907.15.30	2-Naphthol (β-Naphthol).....	20%	Free (A*,CA,E,IL)	15.4¢/kg + 73%
2907.15.60	Other.....	20%	Free (E,IL) 4% (CA)	15.4¢/kg + 73%"

Conforming changes:

a) The article description for HTS heading 9902.29.08 is modified by deleting "2907.15.50" and inserting "2907.15.30" in lieu thereof.

b) HTS subheading 9905.29.04 is deleted.

Annex I (con.)

5. Subheadings 2908.20.10 and 2908.20.50 are superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Halogenated, sulfonated,...:]				
	[Derivatives containing only sulfo...:]				
"2908.20.04	2,5-Dihydroxybenzenesulfonic acid, potassium salt; 3,6-Dihydroxy-2,7-naphthalenedisulfonic acid; 3,6-Dihydroxy-2,7-naphthalenedisulfonic acid, sodium salt; 4-Hydroxy-1-naphthalenesulfonic acid, sodium salt; 1-Naphthol-3,6-disulfonic acid; and 2-Naphthol-3,6-disulfonic acid and its salts	6.4%	Free (E,IL) 1.2% (CA)	15.4¢/kg + 45.5%
2908.20.08	4-Hydroxy-1-naphthalenesulfonic acid (1-Naphthol-4-sulfonic acid)	6.4%	Free (A*,E,IL) 1.2% (CA)	15.4¢/kg + 45.5%
2908.20.15	1,8-Dihydroxynaphthalene-3,6-disulfonic acid and its disodium salt	1.5¢/kg + 19.4%	Free (A*,E) 0.2¢/kg + 1.9% (IL) 0.3¢/kg + 3.8% (CA)	15.4¢/kg + 62%"
	[Other:]			
"2908.20.60	Other	1.5¢/kg + 19.4%	Free (E) 0.2¢/kg + 1.9% (IL) 0.3¢/kg + 3.8% (CA)	15.4¢/kg + 62%"

Conforming changes:

a) The article description for HTS heading 9902.30.14 is modified by deleting "2908.20.10" and inserting "2908.20.04 or 2908.20.08" in lieu thereof.

b) The article descriptions for HTS headings 9902.29.10 and 9902.30.15 are modified by deleting "2908.20.50" and inserting "2908.20.60" in lieu thereof.

6. Subheading 2908.90.20 is superseded by:

	[Halogenated, sulfonated,...:]			
	[Other:]			
	"Dinitro-o-cresol and 4-nitro-m-cresol:			
2908.90.24	4,6-Dinitro-o-cresol	6%	Free (A*,E,IL) 1.2% (CA)	15.4¢/kg + 45.5%
2908.90.28	Other	6%	Free (E,IL) 1.2% (CA)	15.4¢/kg + 45.5%"

7. Subheading 2914.49.10 is superseded by:

	[Ketones...:]			
	[Ketone-alcohols.. :]			
	[Other:]			
	"Aromatic:			
2914.49.20	1,2,3-Indantrione monohydrate (Ninhydrin)	11%	Free (A*,E,IL) 2.2% (CA)	15.4¢/kg + 42%
2914.49.40	Other	11%	Free (E,IL) 2.2% (CA)	15.4¢/kg + 42%"

8. Subheading 2915.90.15 is superseded by:

	[Saturated acyclic...:]			
	[Other:]			
	[Acids:]			
	"Other:			
2915.90.14	Valproic acid	4.2%	Free (A*,E,IL) 0.8% (CA)	25%
2915.90.18	Other	4.2%	Free (E,IL) 0.8% (CA)	25%"

9. Subheading 2916.39.60 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Unsaturated acyclic...:]			
	[Aromatic monocarboxylic...:]			
	[Other:]			
"2916.39.06	Cinnamic acid	3.7¢/kg + 17.9%	Free (A*,E,IL) 0.7¢/kg + 3.5% (CA)	15.4¢/kg + 57%"
	[Other:]			
	[Other:]			
"2916.39.70	Other	3.7¢/kg + 17.9%	Free (E,IL) 0.7¢/kg + 3.5% (CA)	15.4¢/kg + 57%"

Conforming changes:

a) The article description for HTS heading 9902.29.20 is modified by deleting "2916.39.50" and inserting "2916.39.70" in lieu thereof.

b) The article description for HTS subheading 9905.29.16 is modified by deleting "2916.39.60" and inserting "2916.39.70" in lieu thereof.

Annex I (con.)

10. Subheading 2918.29.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Carboxylic acids with...:]			
	[Carboxylic acids with phenol...:]			
	[Other:]			
"2918.29.25	3-Hydroxy-2-naphthoic acid.....	3.7¢/kg + 17.9%	Free (A*,CA,E,IL)	15.4¢/kg + 57%"
	[Other:]			
"2918.29.80	Other.....	3.7¢/kg + 17.9%	Free (CA,E,IL)	15.4¢/kg + 57%"

Conforming change: The article descriptions for HTS headings 9902.29.90 and 9902.30.25 are modified by deleting "2918.29.50" and inserting "2918.29.80" in lieu thereof.

11. Subheading 2921.42.70 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Amine-function compounds:]			
	[Aromatic monoamines...:]			
	[Aniline derivatives...:]			
"2921.42.15	N-Ethylaniline; and N,N-Diethylaniline.....	2.4¢/kg + 18.8%	Free (A*,E,IL) 0.4¢/kg + 3.7% (CA)	15.4¢/kg + 60%"
	[Other:]			
	[Other:]			
"2921.42.75	Other.....	2.4¢/kg + 18.8%	Free (E,IL) 0.4¢/kg + 3.7% (CA)	15.4¢/kg + 60%"

Conforming change: The article descriptions for HTS headings 9902.30.28, 9902.30.30 and 9902.30.31 are modified by deleting "2921.42.70" and inserting "2921.42.75" in lieu thereof.

12. Subheadings 2922.30.20 and 2922.30.30 are superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Oxygen-function amino-compounds:]			
	[Amino-aldehydes,...:]			
	[Aromatic:]			
"2922.30.14	2-Aminoanthraquinone..	13.5%	Free (A*,E,IL) 2.7% (CA)	15.4¢/kg + 50%
2922.30.18	1-Aminoanthraquinone; and Ketamine hydrochloride.....	3.7¢/kg + 15.6%	Free (A*,E,IL) 0.7¢/kg + 3.1% (CA)	15.4¢/kg + 50%"
	[Other:]			
"2922.30.25	Products described in additional U.S. note 3 to section VI.....	13.5%	Free (E,IL) 2.7% (CA)	15.4¢/kg + 50%
2922.30.35	Other	3.7¢/kg + 15.6%	Free (E,IL) 0.7¢/kg + 3.1% (CA)	15.4¢/kg + 50%"

Conforming change: The article descriptions for HTS headings 9902.29.43, 9902.29.44 and 9902.30.52 are modified by deleting "2922.30.30" and inserting "2922.30.35" in lieu thereof.

13. Subheading 2922.49.20 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Oxygen-function amino-compounds:]			
	[Amino-acids...:]			
	[Other:]			
	[Aromatic:]			
"2922.49.15	Benzocaine, and Procaine hydrochloride..	7%	Free (A*,E,IL) 1.4% (CA)	15.4¢/kg + 45%"
	[Other:]			
"2922.49.25	Drugs	7%	Free (E,IL) 1.4% (CA)	15.4¢/kg + 45%"

14. Subheading 2922.50.15 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Oxygen-function amino-compounds:]			
	[Amino-alcohol-phenols,...:]			
	[Aromatic:]			
"2922.50.05	α-Methyldopa.....	8%	Free (A*,CA,E,IL)	15.4¢/kg + 65%"
	[Other:]			
	[Drugs:]			
	[Other:]			
"2922.50.1[illegible]	Cardiovascular drugs...	8%	Free (CA,E,IL)	15.4¢/kg + 65%"

Annex I (con.)

15. Subheadings 2924.21.20 and 2924.21.30 are superseded by:

	[Carboxyamide-function compounds;...:]			
	[Cyclic amides...:]			
	[Ureines...:]			
	[Aromatic:]			
	[Other:]			
"2924.21.18	sym-Diethyldiphenylurea.....	3.7¢/kg + 18.1%	Free (A*,E,IL) 0.7¢/kg + 3.6% (CA)	15.4¢/kg + 58%
	Other:			
2924.21.20	Products described in additional U.S. note 3 to section VI...	13.5%	Free (E,IL) 2.7% (CA)	15.4¢/kg + 58%
2924.21.45	Other.....	3.7¢/kg + 18.1%	Free (E,IL) 0.7¢/kg + 3.6% (CA)	15.4¢/kg + 58%"

16. Subheading 2925.20.30 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Carboxyimide-function compounds...]			
	[Imines...:]			
	[Aromatic:]			
"2925.20.15	N,N-Diphenylguanidine.....	15%	Free (A*,CA,E) 1.5% (IL)	15.4¢/kg + 61%"
	[Other:]			
"2925.20.40	Other.....	15%	Free (E) 1.5% (IL) 3% (CA)	15.4¢/kg + 61%"

Conforming changes:

a) The article description for HTS heading 9902.29.56 is modified by deleting "2925.20.30" and inserting "2925.20.15 or 2925.20.40" in lieu thereof.

b) The article description for HTS subheading 9905.29.29 is modified by deleting "diphenylguanidine, ".

17. Subheadings 2926.90.10, 2926.90.35 and 2926.90.40 are superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Nitrile-function compounds:]			
	[Other:]			
	[Aromatic:]			
2926.90.04	2-Amino-4-chlorobenzonitrile (5-Chloro-2-cyanoaniline); 2-Amino-5-chlorobenzonitrile; 4-Amino-2-chlorobenzonitrile; (Cyanoethyl)(hydroxyethyl)-m-toluidine; 2-Cyano-4-nitroaniline; p-Cyanophenyl acetate; Dichlorobenzonitrile; Phthalonitrile; and Tetrachloro-3-cyanobenzoic acid, methyl ester.....	6.8%	Free (E,IL) 1.3% (CA)	15.4¢/kg + 41%
2926.90.08	Benzonitrile.....	6.8%	Free (A*,E,IL) 1.3% (CA)	15.4¢/kg + 41%
2926.90.14	p-Chlorobenzonitrile; and Verapamil hydrochloride.....	13.5%	Free (A*,E,IL) 2.7% (CA)	15.4¢/kg + 65.5%
2926.90.17	o-Chlorobenzonitrile.....	20%	Free (A*,E,IL) 4% (CA)	15.4¢/kg + 65.5%"
	[Other:]			
	[Other:]			
"2926.90.44	Products described in additional U.S. note 3 to section VI.....	13.5%	Free (E,IL) 2.7% (CA)	15.4¢/kg + 65.5%
2926.90.48	Other.....	20%	Free (E,IL) 4% (CA)	15.4¢/kg + 65.5%"

Conforming changes:

a) The article description for HTS heading 9902.30.69 is modified by deleting "2926.90.10" and inserting "2926.90.04" in lieu thereof.

b) The article description for HTS heading 9902.29.57 is modified by deleting "2926.90.40" and inserting "2926.90.48" in lieu thereof.

18. Subheading 2930.90.20 is superseded by:

	[Organo-sulfur compounds:]			
	[Other:]			
	[Aromatic:]			
	"Other:			
2930.90.24	N-Cyclohexylthiophthalimide.....	6.7%	Free (A*,E,IL) 1.3% (CA)	15.4¢/kg + 40.5%
2930.90.28	Other.....	6.7%	Free (E,IL) 1.3% (CA)	15.4¢/kg + 40.5%"

Annex I (con.)

18. (con.):

Conforming change: The article descriptions for HTS headings 9902.29.61, 9902.30.74 and 9902.30.75 and HTS subheading 9905.29.31 are modified by deleting "2930.90.20" and inserting "2930.90.28" in lieu thereof.

19. Subheadings 2932.29.30 and 2932.29.40 are superseded by:

	[Heterocyclic compounds with oxygen...:]			
	[Lactones:]			
	[Other lactones:]			
	[Aromatic:]			
	[Other:]			
"2932.29.25	4-Hydroxycoumarin.....	3.7¢/kg + 16.2%	Free (A*,CA,E,IL)	15.4¢/kg + 52%
	Other:			
2932.29.30	Products described in additional U.S. note 3 to section VI...	13.5%	Free (CA,E,IL)	15.4¢/kg + 53.5%
2932.29.45	Other.....	3.7¢/kg + 16.2%	Free (CA,E,IL)	15.4¢/kg + 52%"

20. Subheading 2933.39.35 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Heterocyclic compounds with nitrogen...:]			
	[Compounds containing an unfused pyridine...:]			
	[Other:]			
"2933.39.15	Cyproheptadine hydrochloride.....	6%	Free (A*,E,IL) 1.6% (CA)	15.4¢/kg + 65%"
	[Other:]			
	[Drugs:]			
"2933.39.37	Other.....	6%	Free (E,IL) 1.6% (CA)	15.4¢/kg + 65%"

Conforming change: The article descriptions for HTS headings 9902.29.70, 9902.29.99 and 9902.30.81 and HTS subheading 9905.29.32 are modified by deleting "2933.39.35" and inserting "2933.39.37" in lieu thereof.

21. Subheadings 2933.40.25 and 2933.40.50 are superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Heterocyclic compounds with nitrogen...:]			
	[Compounds containing a quinoline...:]			
"2933.40.04	Chloroquine diphosphate.....	8.1%	Free (A*,E,IL) 1.6% (CA)	15.4¢/kg + 67.5%
2933.40.08	4,7-Dichloroquinoline.	3.7¢/kg + 16.2%	Free (A*,E,IL) 0.7¢/kg + 3.2% (CA)	15.4¢/kg + 52%"
	[Other:]			
	[Drugs:]			
"2933.40.27	Other.....	8.1%	Free (E,IL) 1.6% (CA)	15.4¢/kg + 67.5%"
	[Other:]			
"2933.40.70	Other.....	3.7¢/kg + 16.2%	Free (E,IL) 0.7¢/kg + 3.2% (CA)	15.4¢/kg + 52%"

22. Subheading 2933.51.50 is superseded by:

	[Heterocyclic compounds with nitrogen...:]			
	[Compounds containing a pyrimidine...:]			
	[Malonylurea...:]			
"2933.51.30	Phenobarbital.....	3.7%	Free (A*,E,IL) 0.7% (CA)	50%
2933.51.60	Other.....	3.7%	Free (E,IL) 0.7% (CA)	50%"

23. Subheading 2933.59.26 is superseded by:

	[Heterocyclic compounds with nitrogen...:]			
	[Compounds containing a pyrimidine...:]			
	[Other:]			
	[Drugs:]			
	[Aromatic or modified...:]			
	[Anti-infective agents:]			
"2933.59.31	Nicarbazin.....	6.7%	Free (CA,E,IL)	15.4¢/kg + 46%
2933.59.32	Trimethoprim.....	6.7%	Free (A*,CA,E,IL)	15.4¢/kg + 46%".

Annex .I (con.)

23. (con.):

Conforming changes:
a) HTS subheadings 2933.59.27, 2933.59.28, 2933.59.29, 2933.59.30, 2933.59.35, 2933.59.40 and 2933.59.50 are renumbered as 2933.59.36, 2933.59.45, 2933.59.55, 2933.59.59, 2933.59.70, 2933.59.80 and 2933.59.90, respectively.
b) The article descriptions for HTS headings 9902.30.82 and 9902.30.85 are modified by deleting "2933.59.27" and inserting "2933.59.36" in lieu thereof.
c) The article description for HTS heading 9902.30.86 is modified by deleting "2933.59.50" and inserting "2933.59.90" in lieu thereof.

24. Subheadings 2933.90.27 and 2933.90.32 are superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Heterocyclic compounds with nitrogen...:]				
	[Other:]				
	[Aromatic or modified aromatic:]				
	[Other:]				
	[Drugs:]				
	[Anti-infective agents:]				
"2933.90.41	Acriflavine; Acriflavine hydrochloride; and Pyrazinamide	6.7%	Free (E,IL) 1.3% (CA)	15.4¢/kg + 46%	
2933.90.44	Carbadox	6.7%	Free (A*,E,IL) 1.3% (CA)	15.4¢/kg + 46%"	
	[Drugs primarily...:]				
	[Antidepressants,...:]				
"2933.90.57	Clozapine; and Droperidol	6.6%	Free (E,IL) 1.3% (CA)	15.4¢/kg + 45.5%"	
2933.90.59	Imipramine hydrochloride	6.6%	Free (A*,E,IL) 1.3% (CA)	15.4¢/kg + 45.5%"	

Conforming changes:
a) HTS subheadings 2933.90.28, 2933.90.29, 2933.90.30, 2933.90.31, 2933.90.33, 2933.90.34, 2933.90.35, 2933.90.36, 2933.90.37, 2933.90.39, 2933.90.40, 2933.90.47, 2933.90.48 and 2933.90.50 are renumbered as 2933.90.46, 2933.90.51, 2933.90.53, 2933.90.55, 2933.90.61, 2933.90.65, 2933.90.70, 2933.90.75, 2933.90.80, 2933.90.83, 2933.90.85, 2933.90.87, 2933.90.90 and 2933.90.95, respectively.
b) General note 3(c)(ii)(D) to the HTS is modified by deleting "2933.90.47" and inserting "2933.90.87" in lieu thereof.
c) The article description for HTS heading 9902.30.00 is modified by deleting "2933.90.33" and inserting "2933.90.61" in lieu thereof.
d) The article description for HTS heading 9902.30.88 is modified by deleting "2933.90.36" and inserting "2933.90.75" in lieu thereof.
e) The article description for HTS heading 9902.30.53 is modified by deleting "2933.90.37" and inserting "2933.90.80" in lieu thereof.
f) The article description for HTS heading 9902.30.89 is modified by deleting "2933.90.39" and inserting "2933.90.83" in lieu thereof.
g) The article descriptions for HTS headings 9902.30.53 and 9902.30.90 are modified by deleting "2933.90.50" and inserting "2933.90.95" in lieu thereof.

25. Subheadings 2934.30.10 and 2934.30.20 are superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Other heterocyclic compounds:]				
	[Compounds containing a phenothiazine...:]				
"2934.30.04	Butaperazine maleate; Chloropromazine; Etymemazine chlorhydrate; Fluphenazine decanoate; Fluphenazine enanthate; Mesoridazine besylate; Piperacetazine; Promazine hydrochloride; 2-(Trifluoromethyl)phenothiazine; and Trifluoperazine hydrochloride	6.6%	Free (E,IL) 1.3% (CA)	15.4¢/kg + 45%	
2934.30.08	Prochlorperazine maleate; and Promethazine hydrochloride	6.6%	Free (A*,E,IL) 1.3% (CA)	15.4¢/kg + 45%	
2934.30.15	Chlorpromazine hydrochloride	16.6%	Free (A*,E,IL) 3.3% (CA)	15.4¢/kg + 149.5%"	
	[Other:]				
	[Drugs:]				
"2934.30.25	Antidepressants, tranquilizers and other psychotherapeutic agents	16.6%	Free (E,IL) 3.3% (CA)	15.4¢/kg + 149.5%"	

Annex I (con.)

26. Subheading 2934.90.45 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	{Other heterocyclic compounds:}			
	[Other:]			
	[Aromatic or modified aromatic:]			
"2934.90.08	2,5-Diphenyloxazole	3.7¢/kg + 16.2%	Free (A*,E,IL) 0.7¢/kg + 3.2% (CA)	15.4¢/kg + 52%"
	[Other:]			
	[Other:]			
"2934.90.44	Other	3.7¢/kg + 16.2%	Free (E,IL) 0.7¢/kg + 3.2% (CA)	15.4¢/kg + 52%"

27. Subheading 2935.00.46 is superseded by:

	{Sulfonamides:}			
	[Other:]			
	[Drugs:]			
	[Other:]			
"2935.00.53	Glyburide; and Furosemide	6.9%	Free (A*,CA,E,IL)	15.4¢/kg + 45%
2935.00.57	Other	6.9%	Free (CA,E,IL)	15.4¢/kg + 45%"

Conforming changes:

a) HTS subheadings 2935.00.47 and 2935.00.50 are renumbered as 2935.00.70, and 2935.00.90, respectively.

b) The article descriptions for HTS headings 9902.29.87, 9902.30.98 and 9902.30.99 are modified by deleting "2935.00.47" and inserting "2935.00.70" in lieu thereof.

c) The article description for HTS heading 9902.29.86 is modified by deleting "2935.00.50" and inserting "2935.00.90" in lieu thereof.

28. Subheading 2937.92.30 is superseded by:

	{Hormones, natural or...:}			
	{Other hormones...:}			
	[Estrogens...:]			
	[Other:]			
"2937.92.40	Ethynodiol decanoate; D-Norgestrel; and DL-Norgestrel	8.7%	Free (A*,E,IL) 1.7% (CA)	15.4¢/kg + 78.5%
2937.92.80	Other	8.7%	Free (E,IL) 1.7% (CA)	15.4¢/kg + 78.5%"

29. Subheadings 2937.99.10 and 2937.99.50 are superseded by:

	{Hormones, natural or...:}			
	[Other hormones...:]			
	[Other:]			
"2937.99.20	Desonide; Epinephrine; Epinephrine hydrochloride; and L-Thyroxine (Levothyroxine), sodium	6.8%	Free (E,IL) 1.3% (CA)	15.4¢/kg + 42%
2937.99.40	Nandrolone decanoate; and Pipecuronium bromide	3.2%	Free (A*,E,IL) 0.6% (CA)	25%
2937.99.60	Nandrolone phenpropionate	6.8%	Free (A*,E,IL) 1.3% (CA)	15.4¢/kg + 42%
2937.99.80	Other	3.2%	Free (E,IL) 0.6% (CA)	25%"

30. Subheading 5404.10.20 is superseded by:

	{Synthetic monofilament of 67 decitex...:}			
	[Monofilament:]			
	"Other:			
5404.10.40	Of polypropylene, not over 254 mm in length	7.6%	Free (A,E) 0.8% (IL) 4.6% (CA)	50%
5404.10.80	Other	7.6%	0.8% (IL) 4.6% (CA)	90%"

Conforming changes: HTS subheading 9905.54.11 is modified by deleting "5404.10.20" and inserting "5404.10.80" in lieu thereof.

Annex II

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the Federal Register.

(a) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order:

0210.12.00	2204.21.80	7318.15.80	8482.80.00
1210.10.00	2401.10.40	8112.91.10	9404.30.80
1210.20.00	6912.00.35	8482.30.00	9609.10.00
1602.49.40	6912.00.48	8482.40.00	
2204.10.00	7013.31.30	8482.50.00	

(b) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A*," in alphabetical order.

1602.50.20	2917.19.10	2939.40.10	3204.20.50	9105.19.10
2904.90 35	2918.21.50	2939.40.50	3812.10.10	9105.19.40
2907.23.00	2921.59.20	2941.40.00	3812.30.40	
2914.61.00	2936.26.00	3204.20.10	3822.00.50	

Annex III

Modifications to General Note 3(c)(ii)(D) of the HTS

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the Federal Register.

General note 3(c)(ii)(D) is modified by adding, in numerical sequence, the following HTS subheadings and countries set opposite them:

1602.50.20	Argentina	2922.30.14	India	2934.30.15	India
2902.90.40	India	2922.30.18	India	2934.90.08	India
2904.10.04	India	2922.49.15	India	2935.00.53	India
2904.10.08	India	2922.50.05	India	2936.26.00	India
2904.90.35	India	2924.21.18	India	2937.92.40	India
2907.15.30	India	2925.20.15	India	2937.99.40	India
2907.23.00	India	2926.90.08	India	2937.99.60	India
2908.20.08	India	2926.90.14	India	2939.40.10	India
2908.20.15	India	2926.90.17	India	2939.40.50	India
2908.90.24	India	2930.90.24	India	2941.40.00	India
2914.49.20	India	2932.29.25	India	3204.20.10	India
2914.61.00	India	2933.39.15	India	3204.20.50	India
2915.90.14	India	2933.40.04	India	3812.10.10	India
2916.39.06	India	2933.40.08	India	3812.30.40	India
2917.19.10	India	2933.51.30	India	3822.00.50	India
2918.21.50	India	2933.59.32	India	9105.19.10	Brazil
2918.29.25	India	2933.90.44	India	9105.19.40	Brazil
2921.42.15	India	2933.90.59	India		
2921.59.20	India	2934.30.08	India		

Annex IV

Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

(a) For each of the following subheadings created by Annex I to this proclamation, on or after January 1, 1993, in the Rates of Duty 1-Special subcolumn of the HTS, delete the symbol "(CA)" and the duty rate preceding it, and insert in the parentheses following the "Free" rate the symbol "CA," in alphabetical order:

2902.90.40	2915.90.18	2926.90.08	2933.90.44	2933.90.95
2902.90.80	2916.39.06	2926.90.14	2933.90.46	2934.30.04
2904.10.04	2916.39.70	2926.90.17	2933.90.51	2934.30.08
2904.10.08	2921.42.15	2926.90.44	2933.90.53	2934.30.15
2904.10.32	2921.42.75	2926.90.48	2933.90.55	2934.30.25
2904.10.37	2922.30.14	2930.90.24	2933.90.57	2934.90.08
2907.15.60	2922.30.18	2930.90.28	2933.90.59	2934.90.44
2908.20.04	2922.30.25	2933.39.15	2933.90.61	2935.00.70
2908.20.08	2922.30.35	2933.39.37	2933.90.65	2937.92.40
2908.20.15	2922.49.15	2933.40.04	2933.90.70	2937.92.80
2908.20.60	2922.49.25	2933.40.08	2933.90.75	2937.99.20
2908.90.24	2924.21.18	2933.40.27	2933.90.80	2937.99.40
2908.90.28	2924.21.20	2933.40.70	2933.90.83	2937.99.60
2914.49.20	2924.21.45	2933.51.30	2933.90.85	2937.99.80
2914.49.40	2925.20.40	2933.51.60	2933.90.87	
2915.90.14	2926.90.04	2933.90.41	2933.90.90	

(b) For each of the following subheadings created by Annex I to this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Subheading	1993	1994	1995	1996	1997	1998
2204.21.30	4.9¢/liter	3.9¢/liter	2.9¢/liter	1.9¢/liter	0.9¢/liter	Free
2204.21.50	4.9¢/liter	3.9¢/liter	2.9¢/liter	1.9¢/liter	0.9¢/liter	Free
5404.10.40	3.9%	3.1%	2.3%	1.5%	0.7%	Free
5404.10.80	3.9%	3.1%	2.3%	1.5%	0.7%	Free

Annex V

Effective with respect to products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1995.

For each of the following subheadings, created by Annex I to this proclamation, in the Rates of Duty 1-Special subcolumn of the HTS, delete the symbol "(IL)" and the duty rate preceding it, and insert in the parentheses following the "Free" rate the symbol "IL" in alphabetical order:

2908.20.15	2925.20.40
2908.20.60	5404.10.40
2925.20.15	5404.10.80

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Proclamation 6447 of June 15, 1992

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to title V of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461, *et seq.*), the President may designate specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 504(c) of the 1974 Act (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the 1974 Act (19 U.S.C. 2464(c)(6)), are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the 1974 Act (19 U.S.C. 2464(c)(5)), a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year. Pursuant to section 504(d)(1) of the 1974 Act (19 U.S.C. 2464(d)(1)), the limitation provided for in section 504(c)(1)(B) of the 1974 Act (19 U.S.C. 2464(c)(1)(B)) shall not apply with respect to an eligible article if a like or directly competitive article was not produced in the United States on January 3, 1985. Further, pursuant to section 504(d)(2) of the 1974 Act (19 U.S.C. 2464(d)(2)), the President may disregard the limitation provided for in section 504(c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

3. Sections 502(b)(7) and 502(c)(7) of the 1974 Act (19 U.S.C. 2462(b)(7) and 2462(c)(7)) provide that a country that has not taken or is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)), is ineligible for designation as a beneficiary developing country for purposes of the GSP. Pursuant to section 504(a) of the 1974 Act (19 U.S.C. 2464(a)), the President may withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any article or with respect to any country upon consideration of the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)).

4. Pursuant to sections 501, 503(a), and 504(a) of the 1974 Act (19 U.S.C. 2461, 2463(a), and 2464(a)), in order to subdivide and amend the nomenclature of existing provisions of the HTS to modify the GSP, I have determined, after taking into account information and advice received under section 503(a), that the HTS should be modified to adjust the original designation of eligible articles. In addition, pursuant to title V of the 1974 Act, I have determined that it is appropriate to designate certain articles provided for in the HTS as

eligible for preferential tariff treatment under the GSP when imported from designated beneficiary developing countries, and that such treatment for certain other articles should be terminated. I have also determined, pursuant to sections 504(a), (c)(1), and (c)(2) of the 1974 Act (19 U.S.C. 2464(a), (c)(1), and (c)(2)), that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles. Further, I have determined, pursuant to section 504(c)(5) of the 1974 Act, that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles. These countries have been previously excluded from benefits of the GSP with respect to such eligible articles pursuant to section 504(c)(1) of the 1974 Act. Further, pursuant to section 504(d)(1) of the 1974 Act, I have determined that the limitation provided for in section 504(c)(1)(B) of the 1974 Act should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985. Finally, I have determined that section 504(c)(1)(B) of the 1974 Act should not apply with respect to certain eligible articles pursuant to section 504(d)(2) of the 1974 Act.

5. Pursuant to sections 502(b)(7), 502(c)(7), and 504(a) of the 1974 Act, I have determined that it is appropriate to provide for the suspension of preferential treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Syria. Such suspension is the result of my determination that Syria has not taken and is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act.

6. Section 503(c)(1) of the 1974 Act (19 U.S.C. 2463(c)(1)) provides that the President may not designate certain specified categories of import-sensitive articles as eligible articles under the GSP. Section 503(c)(1)(A) of the 1974 Act (19 U.S.C. 2463(c)(1)(A)) provides that textile and apparel articles that are subject to textile agreements are import-sensitive. Pursuant to section 504(a) of the 1974 Act, I am acting to modify the HTS to remove from eligibility under the GSP those articles that have become subject to textile agreements and to make certain conforming changes in the HTS.

7. In order to correct certain typographical errors in the HTS, I have determined that certain technical rectifications to the HTS are necessary and appropriate.

8. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to designate certain articles as eligible articles for purposes of the GSP when imported from certain designated beneficiary developing countries and to remove from eligibility under the GSP those articles that have become subject to textile agreements, the HTS is modified as provided in Annex I to this proclamation.

(2)(a) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any designated beneficiary developing country, the Rates of Duty 1-Special subcolumn for the HTS subheadings enumerated in Annex II(a) to this proclamation is modified by inserting in the parentheses the symbol "A" as provided in such Annex.

(b) In order to restore preferential tariff treatment under the GSP to a certain country that has been excluded from the benefits of the GSP for an eligible article, the Rates of Duty 1-Special subcolumn for the HTS provision set forth in Annex II(b) to this proclamation is modified: (i) by deleting the symbol "A*" in parentheses, and (ii) by inserting the symbol "A" in lieu thereof.

(c) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, the Rates of Duty 1-Special subcolumn for each of the HTS provisions enumerated in Annex II(c) to this proclamation is modified: (i) by deleting the symbol "A" in parentheses, and (ii) by inserting the symbol "A*" in lieu thereof.

(3) In order to provide for the suspension of preferential treatment under the GSP for Syria, to provide that one or more countries which have not been treated as beneficiary developing countries with respect to an eligible article should be redesignated as beneficiary developing countries with respect to such article for purposes of the GSP, and to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, general note 3(c)(ii) to the HTS is modified as provided in Annex III to this proclamation.

(4) In order to provide for the continuation of previously proclaimed staged reductions on Canadian goods in the HTS provisions modified in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex IV to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in Annex IV to this proclamation is modified as provided in such Annex.

(5) In order to correct certain typographical errors, the HTS is modified as set forth in Annex V to this proclamation.

(6) In order to provide for certain modifications to the GSP, the HTS is modified as set forth in Annex VI to this proclamation.

(7) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(8)(a) The amendments made by Annexes I, II, and III(a) to this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1992.

(b) The amendment made by Annex III(b) to this proclamation shall be effective on or after 60 days after the date of publication of this proclamation in the **Federal Register**.

(c) The modifications made by Annex IV(a) to this proclamation shall be effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1993.

(d) The modifications made by Annex IV(b) to this proclamation shall be effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates indicated in such Annex.

(e) The amendments made by Annex V to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation.

(f) The amendments made by Annex VI to this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after a date to be announced in the **Federal Register** by the United States Trade Representative.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of June, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

Billing code 3195-01-M

Annex I

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1992.

1. Subheading 2902.90.80 is superseded by:

	[Cyclic hydrocarbons:]				
	[Other:]				
"2902.90.60	Biphenyl (diphenyl) in flakes	10.4%	Free (A*,E,IL,J) 2% (CA)	15.4¢/kg + 68.5%
2902.90.90	Other	10.4%	Free (E,IL,J) 2% (CA)	15.4¢/kg + 68.5%"

Conforming change: The article description for HTS heading 9902.29.02 is modified by deleting "2902.90.80" and inserting "2902.90.90" in lieu thereof.

2. Subheadings 6307.90.86 and 6307.90.94 are superseded by:

	[Other made up...:]				
	[Other:]				
	[Other:]				
"6307.90.89	Surgical towels; cotton towels of pile or tufted construction; pillow shells, of cotton; shells for quilts, eiderdowns, comforters and similar articles of cotton	7%	Free (B,E*,IL,J*) 4.2% (CA)	40%
6307.90.99	Other	7%	Free (A,B,E,IL,J) 4.2% (CA)	40%"

Conforming change: HTS subheadings 9902.57.01 and 9905.63.10 are modified by striking out "6307.90.94" and inserting "6307.90.99" in lieu thereof.

3. Subheading 7320.10.00 is superseded by:

	[Springs and leaves for springs, of iron or steel:				
"7320.10	Leaf springs and leaves therefor:				
	Suitable for motor-vehicle suspension:				
7320.10.30	To be used in motor vehicles having a G.V.W. not exceeding 4 metric tons	4%	Free (A,B,E,IL,J) 2.4% (CA)	25%
7320.10.60	Other	4%	Free (B,E,IL,J) 2.4% (CA)	25%
7320.10.90	Other	4%	Free (A,B,E,IL,J) 2.4% (CA)	25%"

4. Subheading 8527.29.00 is superseded by;

	[Reception apparatus...:]				
	[Radiobroadcast receivers...:]				
"8527.29	Other:				
8527.29.40	FM only or AM/FM only	8%	Free (A,B,E,IL,J) 1.6% (CA)	35%
8527.29.80	Other	8%	Free (B,E,IL,J) 1.6% (CA)	35%"

Annex II

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1992.

(a) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order:

0712.10.00	2005.70.21	2008.50.20	7318.15.20	8483.50.80
2005.70.11	2005.70.22	3926.20.50	7318.15.40	
2005.70.13	2005.70.25	7202.41.00	7318.15.60	
2005.70.15	2005.70.75	7202.49.50	7318.16.00	

(b) For HTS subheading 0710.80.70, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof.

(c) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, delete the symbol "A" and insert an "A*" in lieu thereof:

0703.20.00	4820.90.00	8422.90.05	8527.11.60	9032.89.60
1905.90.90	7103.99.10	8431.42.00	8541.40.80	9403.90.60
3920.71.00	7321.11.30	8507.30.00	8708.29.00	9613.80.20
4008.19.10	7322.90.00	8512.90.20	8713.10.00	
4016.99.25	7407.21.90	8516.10.00	9018.90.80	
4104.10.20	8112.91.50	8517.10.00	9026.80.60	

Annex III

Modifications to General Note 3(c)(ii) of the HTS

(a) Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1992.

General note 3(c)(ii)(D) is modified:

(1) by deleting the following HTS subheading and the country set opposite such subheading:

0710.80.70 Guatemala

(2) by adding in numerical sequence, the following HTS subheadings and countries set opposite them:

0703.20.00	Mexico	8512.90.20	Mexico
1905.90.90	Mexico	8516.10.00	Mexico
2902.90.60	India	8517.10.00	Thailand
3920.71.00	Mexico	8527.11.60	Malaysia
4008.19.10	Malaysia	8541.40.80	Mexico
4016.99.25	Thailand	8708.29.00	Mexico
4104.10.20	Argentina	8713.10.00	Mexico
4820.90.00	Mexico		
7103.99.10	Thailand	9018.90.80	Dominican Republic; Mexico
7321.11.30	Mexico		
7322.90.00	Mexico		
7407.21.90	Brazil	9026.80.60	Mexico
8112.91.50	Chile	9032.89.60	Mexico
8422.90.05	Mexico	9403.90.60	Mexico
8431.42.00	Mexico	9613.80.20	Mexico
8507.30.00	Mexico		

Annex III (con.)

(a) (con.):

(3) by deleting the following countries opposite the following HTS subheadings:

1701.11.01	Dominican Republic
2929.90.50	Bahamas

(4) by adding, in alphabetical order, the following countries opposite the following HTS subheadings:

1701.11.02	Guatemala
2905.31.00	Mexico
2915.24.00	Mexico
2934.90.14	Brazil
8521.10.00	Malaysia

(b) Effective on or after 60 days after the date of publication of this proclamation in the Federal Register.

General note 3(c)(ii)(A) is modified by deleting "Syria" from the enumeration of independent countries.

Annex IV

Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth below.

(a) For each of the following subheadings created by Annex I to this proclamation, on or after January 1, 1993, in the Rates of Duty 1-Special subcolumn of the HTS, delete the symbol "(CA)" and the duty rate preceding it, and insert in the parentheses following the "Free" rate the symbol "CA," in alphabetical order:

2902.90.60
2902.90.90
8527.29.40
8527.29.80

(b) For each of the following subheadings created by Annex I to this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Subheading	1993	1994	1995	1996	1997	1998
6307.90.89	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6307.90.99	3.5%	2.8%	2.1%	1.4%	0.7%	Free
7320.10.30	2%	1.6%	1.2%	0.8%	0.4%	Free
7320.10.60	2%	1.6%	1.2%	0.8%	0.4%	Free
7320.10.90	2%	1.6%	1.2%	0.8%	0.4%	Free

Annex V

Effective with respect to articles which are entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation:

1. The article description for HTS subheading 0709.20.10 is deleted and the following is inserted in lieu thereof:

"Not reduced in size, entered during the period from September 15 to November 15, inclusive, in any year, and transported to the United States by air"

2. The article description for HTS subheading 7214.60.00 is modified by striking out "or or" and inserting "or" in lieu thereof.

3. The article description for HTS subheading 8215.99.50 is modified by striking out "parts" and inserting "parts)" in lieu thereof.

Annex VI

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after a date to be announced in the Federal Register by the United States Trade Representative.

1. The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Subheading 0814.00.90 is superseded by:

	{Peel of citrus...:}			
"0814.00.40	Limo	2¢/kg	Free (A,CA,E,IL,J)	4.4¢/kg
0814.00.80	Other	2¢/kg	Free (CA,E,IL,J)	4.4¢/kg"

2. For HTS subheading 1604.19.25:

(a) In the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order.

(b) Pursuant to section 504(d)(1) of the 1974 Act, the limitation provided for in section 504(c)(1)(B) should not apply to articles provided for in HTS subheading 1604.19.25 because no like or directly competitive article was produced in the United States on January 3, 1985.

3. For HTS subheading 7413.00.10:

(a) General note 3(c)(ii)(D) is modified by deleting "7413.00.10 Peru".

(b) In the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof.

[FR Doc. 92-14418
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Billing code 3190-01-C

Rules and Regulations

Federal Register
Vol. 57, No. 117
Wednesday, June 17, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563c and 571

[No. 92-16]

Investment Portfolio Policy and Accounting Guidelines

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule; removal of statement of policy and conforming amendments.

SUMMARY: The Office of Thrift Supervision (OTS) is removing its Statement of Policy concerning investment portfolio policy and accounting guidelines and is making conforming amendments to its regulations on accounting requirements. The Statements of Policy became effective on April 1, 1990 after the effective date was delayed twice. The OTS has determined to remove the Statement of Policy in response to the release of the FFIEC "Statement of Policy on Securities Activities".

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: David H. Martens, Chief Accountant, Office of Thrift Supervision, (202) 906-5654; or Gary Jeffers, Chief Accountant, Corporate and Securities Division, (202) 906-6457, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: With the increased investment powers granted savings associations in the 1980s' and the utilization of those powers by savings associations, the Federal Home Loan Bank Board ("Board"), predecessor to the Office of Thrift Supervision ("OTS"), became concerned that savings associations were not following generally accepted accounting principles ("GAAP") in accounting for their holdings of various types of securities.

By Board Resolution No. 88-460, 51 FR 23244 (June 21, 1988), the Board proposed a Statement of Policy that was intended to clarify GAAP in the area of accounting for securities and to set forth certain documentation requirements for securities investment and trading activities conducted by savings associations. After considering written comments submitted to the Board and comments offered in a public hearing, the Board revised the proposed Statement of Policy and issued the final Statement of Policy by Board Resolution No. 89-1480, 54 FR 23457 (June 1, 1989).

In adopting the final Statement of Policy, the board stated its belief that it was merely clarifying existing GAAP, not revising, redefining or setting new GAAP. Further, in the preamble to the final Statement of Policy, the Board stated that it realized:

> That GAAP, specifically, accounting for securities, as currently defined and interpreted by the [Financial Accounting Standards Board] FASB staff, may change through the due process of the accounting standards setting bodies. When these bodies promulgate new generally accepted accounting principles, the Board, consistent with its requirements, will adopt the new principles. Until such time, the Board will continue to apply and uphold current authoritative literature.
>
> 54 FR 23464, 23465 (June 1, 1989).

In the preamble to the final Statement of Policy, the Board noted that the Federal Financial Institutions Examination Council ("FFIEC") and the American Institute of Certified Public Accountants (through the Accounting Standards Executive Committee ("AcSEC")) were developing documents to address, respectively, the regulatory and accounting aspects of accounting for securities transactions. See 54 FR 23460. During the pendency of the AcSEC's work, the Board and, later, the Director of the OTS delayed twice the effective date of the Statement of Policy to permit further development of uniform accounting standards for all financial institutions. The FFIEC continued its work on a document to address, *inter alia*, certain types of securities transactions the FFIEC believed to be inherently trading activities and to address documentation standards.

On May 25, 1990, the AcSEC released to the public an exposure draft of a Statement of Position ("draft SOP") entitled, "Reporting by Financial Institutions of Debt Securities Held as Assets," that addressed accounting standards for securities transactions. The intent of the AcSEC at that time was to permit a certain period for comment on the draft SOP, to consider such comments, and to publish a final SOP so it would apply to fiscal years ending after December 15, 1990. The draft SOP contained certain revisions to GAAP, most notably, the change from a "hold to maturity" standard for the use of amortized cost accounting for securities held for investment purposes to a "hold for the foreseeable future" [1] standard as the predicate for use of amortized cost accounting.

It has been anticipated that the SOP would be adopted in final form by the AcSEC. Regrettably, however, this did not occur. The final SOP—issued on November 30, 1990—requires additional market value and maturity disclosures in the footnotes to the financial statements. In addition, the AcSEC indicated that the FASB should consider adding to the agenda of the FASB financial instruments project a measurement standard for securities held for investment purposes.

Given the failure of AcSEC to provide guidance on this matter, and the continued risk of abusive accounting practices to continue in this area, the OTS determined that, rather than undertake further effort to clarify GAAP, the OTS continued to support the FFIEC efforts to address this issue and would also proceed separately to promulgate rigorous supervisory reporting standards for savings associations through a separate rulemaking implementing the OTS's authorities under FIRREA to establish uniform accounting and disclosure standards for savings associations.

On December 3, 1991, the FFIEC announced its approval of a policy statement on securities activities that updates and revises its Supervisory Policy Statement on the "Selection of Securities Dealers and Unsuitable Investment Practices," which was approved by the FFIEC in April 1988. In approving the policy statement, the

[1] The draft SOP defined the "foreseeable future" as one year from the present balance sheet date; however, known plans which would be accomplished over periods greater than one year would be considered to affect the intent to hold securities. Thus, such plans are considered to be part of the foreseeable future.

FFIEC recommended to the five member agencies—which includes the OTS—that they adopt the policy statement.

The new policy statement, among other things, requires depository institutions to establish prudent policies and strategies for securities transactions, defines securities trading or sales practices that are viewed by the agencies as being unsuitable when conducted in an investment portfolio, and indicates the characteristics of loans held for sale or trading. This new policy statement was the subject of two comment periods, resulting in the receipt and consideration of over 200 comment letters.

The OTS has adopted this policy statement through the issuance of Thrift Bulletin Number 52. The guidance in this Thrift Bulletin supersedes this old policy statement.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), 553(d)(1) and 553(d)(3), the OTS finds good cause for dispensing the notice and comment, and the 30-day delay of the effective date provisions of the Administrative Procedures Act.

Pursuant to section 553(b)(B), where good cause is found, a Federal agency may dispense with notice and comment procedures where such procedures are unnecessary and contrary to the public interest. As noted above, the new FFIEC policy statement was subjected to two comment periods, resulting in the receipt and consideration of over 200 comment letters. Thus, an interagency coordinating and standards setting body, the FFIEC, after extensive public comment process, has adopted accounting standards in this area. Notice and comment on withdrawal of the Statement of Policy therefore is unnecessary as interested persons already have had a full opportunity to comment on the relevant issues through the FFIEC due process procedures. Further, the OTS believes that it would be contrary to the public interest to revisit the accounting issues when the FFIEC, following extensive public comment, has developed standards that are applied uniformly on an interagency basis. Delaying withdrawal of the OTS Statement of Policy only prolongs confusion and additional, unnecessary costs for savings associations as they attempt to understand how two different standards apply, and to achieve compliance. It is not in the public interest to continue unclear and unnecessarily burdensome regulatory requirements.

Section 553(d)(1) permits dispensing with the 30-day delay of the effective date where a substantive rule relieves a restriction. Here, the withdrawal of the Statement of Policy relieves savings associations from a more restrictive accounting standard as savings associations will be required to comply with a less restrictive accounting standard. Thus, the OTS believes immediate withdrawal of the Statement of Policy is appropriate pursuant to section 553(d)(1).

Furthermore, the OTS finds good cause for dispensing with the 30-day delay of the effective date of this notice pursuant to section 553(d)(3). One purpose of the 30-day delay of the effective date is to provide affected persons with the opportunity to come into compliance with a new rule or regulation. This is not an issue here; essentially, compliance with the present, more restrictive accounting standard will include compliance with the FFIEC-developed accounting standard. Thus, in the instant case, minimal transition efforts, if any, will be necessary to conform to the new standard. Moreover, where, as here, the Federal agency is replacing the Statement of Policy with a Supervisory Policy Statement approved by the FFIEC, a recognized standards setting body, the OTS does not believe delaying the effective date serves any public interest. Therefore, pursuant to section 553(d)(3), the OTS withdraws its Statement of Policy effective immediately.

Executive Order 12291

The OTS has determined that this rule does not constitute a "major rule" and therefore, does not require the preparation of a final regulatory impact analysis.

Regulatory Flexibility Act

The rule is not subject to the provisions of the Regulatory Flexibility Act because no notice of proposed rulemaking is required.

List of Subjects

12 CFR Part 563c

Accounting, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Reporting, Investments and recordkeeping requirements, Savings associations.

Accordingly, the OTS hereby amends chapter V, title 12, Code of Federal Regulations, as set forth below.

Subchapter D—Regulations Applicable to All Savings Associations

PART 563c—ACCOUNTING REQUIREMENTS

1. The authority citation for part 563c continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a), sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w).

2. Section 563c.102 is amended by revising paragraph I.4, the first sentence of paragraph I.6(a), and paragraph I.7 to read as follows:

§ 563c.102 Financial statement presentation.

* * * * *

I. Balance Sheet

* * * * *

4. *Trading account assets.* Include securities considered to be held for trading purposes.

* * * * *

6. *Investment securities.* (a) Include securities considered to be held for investment purposes. * * *

* * * * *

7. *Assets held for sale.* Investments in assets considered to be held for sale purposes should be reported separately in the statement of financial condition.

* * * * *

PART 571—STATEMENTS OF POLICY

3. The authority citation for part 571 continues to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.19 [Removed]

4. Section 571.19 is removed.

Note: This document was received at the Office of the Federal Register on June 11, 1992.

Dated: January 22, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92–14129 Filed 6–16–92; 8:45 am]

BILLING CODE 6720–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB14

Organization

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts a final regulation amending subpart I of part 611 of FCA regulations, addressing the organization of service corporations by Farm Credit System (System) institutions. This regulation was published as a proposed regulation on March 12, 1990, 55 FR 9138. The final regulation addresses the organization of service corporations under section 4.25 of the Farm Credit Act of 1971, as amended (Act), to exercise authority granted under title VIII of the Act, to act as certified agricultural mortgage marketing facilities (title VIII service corporations). The final regulation also authorizes all institutions of the System, except the Federal Agricultural Mortgage Corporation (Farmer Mac) or its affiliates, to organize title VIII service corporations and exempts such corporations from the requirement of existing regulations that the stock of service corporations be owned only by System banks. The final rule permits persons (individuals and legal entities) other than System institutions to own stock in such organizations provided that 80 percent of the voting stock is held by System institutions (other than Farmer Mac or its affiliates).

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John J. Hays, FCA Examiner, Policy and Risk Analysis Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4258, TDD (703) 883-4444, or Christine C. Dion, Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. General

The Agricultural Credit Act of 1987 (1987 Act) established the Federal Agricultural Mortgage Corporation (Farmer Mac) to guarantee securities issued by agricultural mortgage marketing facilities that pool and securitize agricultural real estate and rural home loans under a new title VIII of the Farm Credit Act of 1971, as amended (Act). Section 8.5(e) of the Act authorizes System institutions other than Farmer Mac, notwithstanding any other provision of the Act, to establish and operate, as an affiliate, an agricultural mortgage marketing facility (pooler) if it obtains certification from Farmer Mac. It is clear from the 1987 Act and its legislative history that System institutions are empowered to participate fully in the secondary market for agricultural real estate and rural home loans under title VIII. Consequently, section 8.5 of the Act is read by the FCA to amend inconsistent provisions of the Act, such as section 4.25, to the extent necessary to permit the chartering of such an entity with such powers as are necessary to conduct an effective pooling operation.

Section 4.25 of the Act authorizes the banks of the Farm Credit System to organize a corporation for the purpose of performing functions and services for or on behalf of the organizing banks that the banks may perform pursuant to the Act. Such a corporation, like the organizing banks, is designated a Federal instrumentality. Since section 8.5(e) authorizes all System institutions other than Farmer Mac to establish a pooler affiliate, and since section 4.25 is the exclusive mechanism for chartering System affiliates, section 4.25 is considered to be amended by section 8.5(e) to the extent necessary to permit the chartering of a pooler affiliate by an institution empowered to do so by section 8.5(e), including institutions other than banks. Moreover, such a statutory amendment overrides any inconsistent FCA regulations.

It is noted that the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102-237; 105 Stat. 1876 (1991 Act), amended title VIII of the Act to authorize Farmer Mac to establish, acquire, and maintain affiliates under applicable State laws. Such affiliates may only conduct those activities that Farmer Mac is authorized to perform under title VIII. Farmer Mac is not authorized under section 8.5(e) of the Act to establish and operate, as an affiliate, an agricultural mortgage marketing facility. Therefore, neither Farmer Mac nor its affiliates may organize title VIII service corporations. Accordingly, the words "or its affiliates" have been inserted after the words "other than the Federal Agricultural Mortgage Corporation" in the final regulation. The final regulation does not address the authorities granted to Farmer Mac and its affiliates under the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101-624; 104 Stat. 3834, to pool and securitize qualified loans, as defined in section 8.0(9)(B) of the Act. Furthermore, the final regulation does not address the authorities granted under the 1991 Act to Farmer Mac to establish, acquire, and maintain State-chartered affiliates.

Although the Act itself contains no restriction on who may own stock in a service corporation, existing FCA regulations governing the organization of service corporations (set forth in subpart I of part 611) restrict ownership in service corporations organized under section 4.25 to banks of the Farm Credit System. The proposed amendment was issued to allow any System institution(s) (other than Farmer Mac) to organize a pooler and to own stock in a System pooler. The proposed amendment also permitted minority ownership by persons other than System institutions provided that 80 percent of the equity of the corporation would at all times be held by System institutions.

The FCA has considered the appropriateness of proceeding with this regulation in light of the President's 120-day regulatory review period and has determined the implementation of this final regulation would enhance System opportunity to participate in the growth of the secondary agricultural mortgage market. The final regulation broadens eligibility for stock ownership of a title VIII service corporation by permitting associations and persons or entities other than System institutions to own stock. The FCA believes the ability to issue stock to non-System originators would enable the System pooler to compete effectively for loan volume. Also, the ability to issue stock to non-System institutions would facilitate joint ventures for the purpose of sharing the expertise and technical capacity of non-System institutions to achieve cost efficiencies.

Comments concerning the proposed amendment to the service corporation regulations were received from the Farm Credit Council (FCC) and a Farm Credit Bank (FCB). The FCB concurred with the comments of the FCC. The FCC stated that all System banks and service corporations had reviewed and concurred with its comments.

II. Discussion of Comments

The FCC agreed with the stated objectives of the proposed regulation, to authorize System institutions to participate fully in the agricultural secondary mortgage market by the creation of title VIII service

corporations, and to permit some non-System ownership of such corporations. The FCC also agreed generally with the FCA's position, expressed in the preamble of the proposed regulation, that the ability to control significant corporation actions (such as dissolution, merger, and sale of substantially all assets) should be retained by System institutions. The FCC, however, suggested two modifications to the proposed regulation regarding non-System stock ownership.

The FCC's first suggestion was to amend the regulation to reserve the right for the FCA to approve a higher percentage of non-System stock ownership on a case-by-case basis for good cause. The second suggestion was to clarify whether the regulation's limitation on non-System stock ownership applied to both voting and nonvoting stock. While acknowledging the need to restrict non-System ownership of voting stock, the FCC questioned whether the same concerns regarding control are applicable to nonvoting stock. The FCC requested that any limitation imposed on non-System ownership of nonvoting stock be at a higher level than the 20-percent limitation imposed on non-System ownership of voting stock. Specifically, the FCC suggested that the proposed regulation be amended to permit non-System ownership of 50 percent of the nonvoting stock, with the FCA reserving the discretionary right to raise the percentage.

The FCA notes that statutes authorizing national banks and federally chartered savings and loan institutions to organize service corporations require 100-percent ownership by the organizing institutions. However, since there is no such requirement in section 4.25 of the Act, the FCA is endeavoring to allow System poolers the flexibility to issue stock to non-System institutions while at the same time ensuring that control of the pooler organized under section 4.25 is retained in System institutions. The control requirement of 80 percent of all classes of equity was proposed to ensure that Farm Credit institutions collectively retain control of the title VIII service corporation. The 80-percent control level ensures that non-System institutions could not block significant corporate actions, requiring a two-thirds majority, in which important interests of the System are at stake. The FCA also set the percentage higher than that required for a simple majority vote, to take into account that not all System institutions will agree on all issues and to ensure that a single non-System shareholder owning more voting stock than any single System institution could not exercise its considerable influence to the detriment of the System as a whole. The FCA's 80-percent stock ownership requirement is consistent with control levels required for national banks' operating subsidiaries, which are similar to the service corporations in that they allow a segment of an institution's business to be spun off into a separate legal entity. It is also noted that the FCA's 80-percent control level is comparable to the requirements of change-of-control statutes applicable to national banks and federally chartered savings and loan institutions. The statutes define the term "control" to include the power to vote 25 percent of the institution's stock. Under such statutes, an institution must, at a minimum, have the power to vote 75 percent of the stock to retain control of corporate operations.

In view of the above, the FCA has determined to retain the 80-percent requirement for System ownership of stock in the final regulation. Application of the requirement will not be on a discretionary or case-by-case basis. The FCA continues to believe that non-System stock ownership of more than 20 percent would jeopardize requisite control by System institutions of significant corporate matters. However, the FCA agrees with the FCC that the 80-percent stock ownership requirement should only be applied to equity with voting rights. The final regulation does not limit non-System ownership of nonvoting stock, as such stock, unlike voting stock, does not pose a regulatory concern regarding control. The final regulation, which requires System institutions (other than Farmer Mac or its affiliates) to hold at least 80 percent of voting stock, authorizes non-System ownership of 20 percent of voting stock and unlimited ownership of nonvoting stock.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Conflict of interest, Rural areas.

For reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638.

Subpart I—Service Organizations

2. Subpart I is amended by adding a new § 611.1137 to read as follows:

§ 611.1137 Title VIII service corporations.

(a) Service corporations may be organized by any Farm Credit institution(s) other than the Federal Agricultural Mortgage Corporation or its affiliates for the purpose of exercising the authorities granted under title VIII of the Act to act as agricultural mortgage marketing facilities. The requirements of §§ 611.1135 and 611.1136 apply as if such organizing institutions were banks, except for good cause as determined by the Farm Credit Administration. Such service corporations may issue stock to Farm Credit institutions other than the Federal Agricultural Mortgage Corporation or its affiliates and to persons that are not Farm Credit System institutions, provided at least 80 percent of the voting stock is at all times held by Farm Credit institutions other than the Federal Agricultural Mortgage Corporation or its affiliates.

(b) For the purposes of this regulation, *person* means an individual or a legal entity organized under the laws of the United States or any State or territory thereof.

Dated: June 11, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–14149 Filed 6–16–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 920528–2128]

Foreign Policy Controls on Items Related to the Design, Development, Production, or Use of Missiles; Batch Mixers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration maintains the Commerce Control List (CCL), which identifies those items that are subject to Department of Commerce export controls. This interim rule amends a number of Export Control Classification Numbers (ECCNs) on the CCL to conform with U.S. foreign policy

controls on commodities, software, and technology related to the design, development, production, or use of weapons delivery systems described in § 778.7(a) of the Export Administration Regulations (EAR). These foreign policy controls are maintained by the United States in consultation with other countries that participate in the Missile Technology Control Regime (MTCR).

Specifically, this rule revises ECCN 1B28B to reflect recent technical changes in multilateral export controls on certain batch mixers and continuous mixers for mixing solid propellants. In adddition, a new ECCN 9A23B is added to control certain liquid or slurry propellant control systems, for rocket systems and unmanned air vehicle systems described in § 778.7(a)(3). Servo valves and pumps for these propellant control systems, which were previously controlled by ECCNs 9B23B and 9B24B, respectively, have been moved to new ECCN 9A23B because they belong in Category 9A (Equipment, Assemblies and Components) instead of Category 9B (Test, Inspection and Production Equipment). Finally, ECCN 9B07A, which controls equipment specially designed for inspecting the integrity of rocket motors, is revised by removing the Note that describes controls on certain radiographic equipment. This radiographic equipment is now controlled by ECCN 9B27B.

This rule will have a limited impact on validated licensing requirements, and on the paperwork burden on exporters, because the revisions made by this rule will not result in a significant change in the number of export license applications that will have to be submitted.

DATES: This rule is effective June 17, 1992. Comments must be received by July 17, 1992.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls related to missiles, call Raymond Jones, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–4244.

For questions of a technical nature on missile-related controls, call Bruce Webb, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–3806.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce maintains foreign policy controls on certain commodities, software, and technology on the Commerce Control List (CCL) that are related to the design, development, production, or use of weapons delivery systems described in § 778.7(a) of the EAR. The items on the CCL that are subject to these foreign policy controls are included in the "Equipment and Technology Annex" (the Annex) maintained by the governments participating in the Missile Technology Control Regime (MTCR). As agreed by all MTCR participating governments, items contained on the Annex are controlled by these governments through the implementation of national export control programs. Annex items are subject to control because of concerns relating to the proliferation of weapons delivery systems described in § 778.7(a)(3).

This interim rule revises certain Export Control Classification Numbers (ECCNs) on the CCL to conform with the MTCR Annex. These ECCN revisions are based on multilateral technical consultations with MTCR countries.

This interim rule revises ECCN 1B28B to reflect recent technical changes in the Annex affecting multilateral export controls on certain batch mixers and continuous mixers for mixing solid propellants. ECCN 1B28B now controls batch mixers that have all of the following characteristics: (i) Capable of mixing solid propellants or propellant constituents under vacuum in the range from 0 kPa to 13.326 kPa; (ii) temperature control capacity of the mixing chamber; (iii) total volumetric capacity of 110 liters (30 gallons) or more; and (iv) at least one mixing/kneading shaft mounted off center. Previously, batch mixers were controlled if they had a working capacity of 110 liters (30 gallons) or more, or a total volumetric capacity of 170 liters (45 gallons) or more.

In addition, ECCN 1B28B now controls continuous mixers that have all of the following characteristics: (1) Capable of mixing solid propellants or propellant constituents under vacuum in the range from 0 kPa to 13.326 kPa; (ii) temperature control capacity of the mixing chamber; (iii) two or more mixing/kneading shafts; and (iv) mixing chamber capable of being opened.

This rule also adds a new ECCN 9A23B, which controls liquid or slurry propellant control systems, for rocket systems and unmanned air vehicle systems described in § 778.7(a)(3), that are designed or modified to operate in vibration environments of more than 10 g RMS between 20 Hz and 2,000 Hz. New ECCN 9A23B also controls servo valves and pumps for these propellant control systems, which were previously controlled by ECCNs 9B23B and 9B24B, respectively. These items, which were inappropriately included in the list of test, inspection, and production equipment for Category 9, have been moved to the list of equipment, assemblies, and components for Category 9. Software and technology entries 9D24B and 9E21B are also revised to reflect the transfer of these valves and pumps from ECCNs 9B23B and 9B24B to ECCN 9A23B. Except for the new controls on liquid or slurry propellant systems in ECCN 9A23B, this rule does not affect the level of control for any of the items described in these entries.

Finally, ECCN 9B07A, which controls equipment specially designed for inspecting the integrity of rocket motors, is revised by removing the Note that describes controls on certain radiographic equipment. This radiographic equipment is now controlled by ECCN 9B27B, which provides more complete coverage than ECCN 9B07A because 9B07A previously controlled only radiographic equipment that was "specially designed" for inspecting the integrity of rocket motors. For this reason, the controls previously maintained on radiographic equipment under ECCN 9B07A were not consistent with the multilateral controls described in the Annex. This rule corrects this inconsistency by clarifying that all such equipment, as described in 9B27.a, is controlled.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3051 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory

Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments on the contract sanctity provisions contained in this rule are especially encouraged.

The period for submission of comments will close July 17, 1992. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be folllowed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copies in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–5653.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.*) and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), ECCN 1B28B is revised to read as follows:

1B28B Other equipment for the production of propellants.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number; components in $ value
Reason for Control: MT
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Batch mixers and continuous mixers, as follows, capable of mixing solid propellants or propellant constituents under vacuum in the range from 0 kPa to 13.326 kPa, and with temperature control capability of the mixing chamber:

a.1. Batch mixers having:

a.1.a. A total volumetric capacity of 110 liters (30 gallons) or more; and

a.1.b. At least one mixing/kneading shaft mounted off center;

a.2. Continuous mixers having:

a.2.a. Two or more mixing/kneading shafts; and

a.2.b. Capability to open the mixing chamber;

b. Other equipment for production, handling, mixing, curing, casting, pressing, machining, extruding or acceptance testing of solid propellants or propellant constituents, including but not limited to:

b.1. Equipment for the production of atomized or spherical metallic powder in a controlled environment; and

b.2. Fluid energy mills for grinding or milling ammonium perchlorate, RDX, or HMX;

c. Equipment for production, handling, or acceptance testing of liquid propellants or propellant constituents;

d. Specially designed components for the items described in 1B28.a through 1B28.c.

3. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), new ECCN 9A23B is added immediately following ECCN 9A22B, as follows:

9A23B Liquid or slurry propellant control systems, pumps and servo valves therefor, and specially designed components therefor.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number; parts and accessories in $ value
Reason for Control: MT
GLV: $1,000
GCT: No
GFW: No

List of Items Controlled

a. Liquid or slurry propellant (including oxidizers) control systems, for rocket systems and unmanned air vehicle systems described in § 778.7(a)(3) of this subchapter, that are designed or modified to operate in vibration environments of more than 10 g RMS between 20 Hz and 2,000 Hz;

b. Pumps, for liquid propellant control systems controlled by 9A23.a, that:

b.1. Have shaft speeds equal to or

greater than 8,000 RPM or discharge pressures equal to or greater than 7,000 kPA (1,000 psi); and

b.2. Are designed or modified to operate in vibration environments of more than 10 g RMS between 20 Hz and 2,000 Hz;

c. Servo valves, for liquid or slurry propellant control systems controlled by 9A23.a, that:

c.1. Are designed or modified for flow rates of 24 liters per minute or greater, at an absolute pressure of 7,000 kPa (1,000 psi) or greater;

c.2. Have an actuator response time of less than 100 msec.; and

c.3. Are designed or modified to operate in vibration environments of more than 10 g RMS between 20 Hz and 2,000 Hz;

d. Specially designed components for liquid or slurry propellant control systems described in 9A23.a.

4. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), ECCN 9B07A is revised to read as follows:

9B07A Equipment specially designed for inspecting the integrity of rocket motors using non-destructive test (NDT) techniques other than planar X-ray or basic physical or chemical analysis.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS, MT
GLV: $0
GCT: No
GFW: No

5. In Supplement No. 1 to § 799.1, Category 9, ECCNs 9B23B and 9B24B are removed.

6. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), ECCN 9B27B is revised to read as follows:

9B27B Test equipment and test benches or stands for complete rocket systems and unmanned air vehicle systems, and subsystems for these systems, capable of delivering at least a 500 kg payload to range of at least 300 km.

Requirements

Validated License Required: QSTVWYZ
Unit: Test equipment in number; test benches or stands in $ value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

List of Items Controlled

a. Test equipment, as follows, for complete rocket systems, unmanned air vehicle systems, and subsystems for these systems: radiographic equipment (linear accelerators) capable of delivering electromagnetic radiation produced by "bremsstrahlund" from accelerated electrons of 2 MeV or greater or by using radioactive sources of 1 MeV or greater, except those specially designed for medical purposes;

b. Test benches or stands that have the capacity to handle solid or liquid propellant rockets or rocket motors of more than 90 KN (20,000 lbs.) of thrust, or that are capable of simultaneously measuring the three axial thrust components.

7. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), ECCN 9D24B is revised to read as follows:

9D24B "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of propulsion systems and equipment controlled by 9A21, 9A22, 9A23, 9B21, 9B25, 9B26, or 9B27, and "software", n.e.s., specially designed or modified for the "use" of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT
GTDR: No
GTDU: No

8. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), ECCN 9E21B is revised to read as follows:

9E21B Technology for the "development", "production", or "use" of equipment controlled by 9A21, 9A22, 9A23, 9B21, 9B25, 9B26, or 9B27, or "software" controlled by 9D24, and technology for the "use" of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: MT
GTDR: No
GTDU: No

Dated: June 11, 1992.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 92-14170 Filed 6-16-92; 8:45 am]
BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for a new animal drug application (NADA) from Mobay Corp., Animal Health Division, to Miles, Inc., Agriculture Division, Animal Health Products.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, has informed FDA of a change of sponsor name from Mobay Corp., Animal Health Division, to Miles, Inc., Agriculture Division, Animal Health Products. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Mobay Corp., Animal Health Division" and in the table in paragraph (c)(2) in the entry for "000859" by revising the

sponsor name to read "Miles, Inc., Agriculture Division, Animal Health Products."

Dated: June 9, 1992.

Lonnie W. Luther,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-14174 Filed 6-16-92; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 546

Animal Drugs, Feeds, and Related Products; Change of Sponsor; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a final rule that appeared in the **Federal Register** of March 4, 1992 (57 FR 7651). The document amended the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Pfizer, Inc., to Wade Jones Co., Inc. The amended regulation failed to reflect that Pfizer, Inc., is the sponsor of another NADA for an identical product. This document corrects that error.

EFFECTIVE DATE: March 4, 1992.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 4, 1992 (57 FR 7651), FDA published a document that amended the animal drug regulations to reflect a change of sponsor for NADA 65-140 for tetracycline soluble powder from Pfizer, Inc., to Wade Jones Co., Inc. Accordingly, FDA amended the regulations in 21 CFR 546.180d to remove the drug labeler code for Pfizer, Inc., and replace it with the drug labeler code for Wade Jones Co., Inc. However, Pfizer, Inc., is the sponsor of approved NADA 65-123 for tetracycline soluble powder and should remain as an NADA sponsor in that regulation. Therefore, 21 CFR 546.180d is corrected to add Pfizer, Inc.'s, drug labeler code.

List of Subjects in 21 CFR Part 546

Part 546: Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 546 is amended as follows:

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 546 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 546.180d [Amended]

2. Section 546.180d *Tetracycline soluble powder* is amended in paragraphs (c)(6)(i) (*a*)(*3*), (c)(6)(i)(*b*)(*3*), (c)(6)(ii)(*d*), (c)(6)(iii)(*a*)(*3*), (c)(6)(iii)(*b*)(*3*), (c)(6)(iii)(*c*)(*3*), (c)(6)(iv)(*a*)(*3*), and (c)(6)(iv)(*b*)(*3*) by removing "000009 and 047864" and adding in its place "000009, 000069, and 047864".

Dated: June 9, 1992.

Lonnie W. Luther,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-14175 Filed 6-16-92; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Records and Reports for State and Local Governments

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; waiver of reporting requirement.

SUMMARY: In conjunction with a proposed regulation change published elsewhere in this issue of the **Federal Register**, the Equal Employment Opportunity Commission voted on May 5, 1992, to waive the requirement for filing the State and Local Government Information Report EEO-4 for calendar year 1992. This action does not change the recordkeeping requirements, which are not waived, and the Commission reaffirms its filing requirements, for which it has published a notice of proposed rulemaking elsewhere in this issue of the **Federal Register**, on a biennial basis starting in calendar year 1993. See 29 CFR 1602.32. Since the 1992 reporting requirements have been waived and no EEO-4 forms will be mailed to entities required to report, no further reporting action is required on the 1992 reports. The Commission used its authority under sections 709 and 713 of title VII, 42 U.S.C. 2000e-8, 2000e-12, in determining to waive the filing requirement for 1992.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division at (202) 663-4958 (voice) or (202) 708-9300 (TDD).

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

[FR Doc. 92-14161 Filed 6-16-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the consolidated offshore operating rules which were published on Friday, April 1, 1988 (53 FR 10596). The correcting amendments relate to the installation, testing, and repair requirements for the Department of the Interior pipelines contained in § 250.153.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: Wanda Stepanek, Offshore Regulatory Liaison, Engineering and Standards Branch, telephone (703) 787-1600.

SUPPLEMENTARY INFORMATION: The final rule published by the Minerals Management Service (MMS) in the **Federal Register** on April 1, 1988 (53 FR 10596), consolidated and restructured within 30 CFR part 250 various existing rules contained in the regulations, Outer Continental Shelf Orders, and Notices to Lessees and Operators. The promulgation of that rule resulted in an error in the sequential numbering of paragraphs that is being corrected by this action.

The MMS is issuing this technical amendment of 30 CFR part 250 as a final rule under the authority of the Outer Continental Shelf Lands Act, as amended.

Need for Correction

As published, the final regulations at § 250.153 contain an error that may prove to be misleading and is in need of clarification.

Author: This document was prepared by Wanda Stepanek, Engineering and Standards Branch, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference,

Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights of way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 8, 1992,

Richard Roldan,

Deputy Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR part 250 is corrected by making the following correcting amendments:

PART 250—OIL AND GAS AND SULPHUR OPERATION IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

§ 250.153 [Amended]

2. In § 250.153, redesignate paragraph (c)(4) as paragraph (b)(4).

[FR Doc. 92–14130 Filed 6–16–92; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO4–2–5350; FRL–4114–4]

Approval and Promulgation of State Implementation Plans; Colorado; PM–10 New Source Review, Emission Trading, Prevention of Significant Deterioration and New Source Review Disapprovals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves revisions to the Colorado State Implementation Plan (SIP) submitted by the Governor of Colorado on November 17, 1988. Specifically, revisions were made to the Common Provisions Regulation and Regulation No. 3 as follows: (1) Amendments to provide for the review of new sources to protect the PM–10 national ambient air quality standard (NAAQS), (2) revisions to correct deficiencies and previous EPA disapprovals, as identified in the May 28, 1988 SIP Call (3) revisions to the Emission Reduction Credit (ERC) regulations to create a generic emissions trading rule in accordance with EPA's Emission Trading Policy Statement (ETPS), and (4) revisions to increase permit processing and annual fees. In addition, the Governor also submitted revisions to Regulations Number 1, 11, and 13, which are addressed in other **Federal Register** notices.

After a thorough review of the State's revised ERC regulations, EPA has determined that the State's ERC rule does not qualify as a generic emission trading rule. However, the State's ERC rule may be approved in the SIP because the ERC rule specifically requires case-by-case SIP revisions for approval of bubbles.

The 1988 submittal did not address many of the existing deficiencies which the State was required to correct as part of its workplan for the May 26, 1988 SIP Call. EPA requested a commitment from the State to address all outstanding deficiencies and disapprovals before EPA would continue to process any pollutant-specific SIP submittal. On April 29, 1991, the State provided EPA with a schedule of revisions to be made to Regulation No. 3 and the Common Provisions Regulation, to address all remaining deficiencies.

EPA is today approving the State's revisions to Regulation No. 3 and the Common Provisions Regulation, with the condition that the State will correct all deficiencies that it committed to rectify in its April 29, 1991 letter. EPA proposed to approve the revisions to Regulation No. 3 and the Common Provisions Regulation on October 2, 1990 (55 FR 40201). No comments were received concerning this proposal.

EPA is also revising the list of disapprovals of Colorado's New Source Review (NSR) and Prevention of Significant Deterioration (PSD) regulations listed in 40 CFR 52.329 and 40 CFR 52.343, respectively. These disapprovals are being revised to reflect the disapprovals that have changed due to the State's regulatory revisions, and to reflect recodification of some of the provisions, Regulation No. 3 and the Common Provisions Regulation.

EFFECTIVE DATE: This action will be effective on July 17, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Denver, Colorado 80202–2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Colorado Department of Health, Air Pollution Control Division, Ptarmigan Place, North Cherry Creek Drive and Colorado Blvd., Denver, Colorado 80209.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street—suite 500, Denver, Colorado 80202–2405, (303) 293–1765, (FTS) 330–1765.

SUPPLEMENTARY INFORMATION:

A. Background of Revisions

1. PM–10 NAAQS

The 1977 amendments to the Clean Air Act require EPA to periodically review and, if appropriate, revise the criteria on which each national ambient air quality standard (NAAQS) is based, along with revising the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under 10 microns in size (known as PM–10) on July 1, 1987 (52 FR 24634). As a result, the State of Colorado revised its SIP to provide for attainment and maintenance of the new PM–10 NAAQS. Since the SIP must protect both the PM–10 NAAQS and the total suspended particulate (TSP) PSD increments, Colorado's Common Provisions Regulation and Section IV. of Regulation No. 3 were revised to trigger preconstruction review for major new or modified sources which would emit significant amounts of either TSP or PM–10.

2. Deficient Provisions

Colorado's NSR program was initially approved on October 5, 1979 (44 FR 57405), with the exception of certain provisions which EPA disapproved. The conditional approval was based on the understanding that the deficiencies would be corrected by March 1, 1980. On June 20, 1980, the State submitted revisions to its regulations which resolved the majority of deficiencies listed in the October 5, 1979 notice. However, additional changes were made to Regulation No. 3 which EPA found acceptable. EPA disapproved these unacceptable provisions on April 30, 1981 (46 FR 24182).

These disapprovals were inadvertently removed in a subsequent EPA approval of a revision to the Colorado SIP on December 12, 1983 (49 FR 55285). On June 28, 1985 (50 FR 26734), EPA reinstated these disapprovals of the State's NSR program.

EPA's disapprovals of Colorado's NSR program, listed in 40 CFR 52.329, are as follows: (1) The exemption from the definition of "major modification," in Section I.2. of Regulation No. 3, of a

change in an existing oil-fired or gas-fired boiler to the use of a coal/oil mixture, shale oil, or coal-derived fuels, provided that such change would not interfere with reasonable further progress towards attainment of any NAAQS; (2) The definitions of "major modification" and "major stationary source," in Section I. of Regulation No. 3, which provide that fugitive emissions of particulate matter from any of the 26 listed source categories would be excluded in determining whether a source is major, even though quantifiable, if it could be demonstrated that such emissions are of a size and substance that would not adversely affect public health or welfare; (3) The provision in Section IV.H.6. of Regulation No. 3 that allowed the State to grant an applicant a period of greater than six months to bring a source into compliance; and (4) The absence of a provision for "reconstruction" in Regulation No. 3, which might allow certain fugitive emissions to escape review.

Colorado's PSD program was initially approved on September 2, 1986 (51 FR 31125), except for certain sources for which the State's PSD regulations were found to be inadequate. However, the September 2, 1986 **Federal Register** notice inadvertently disapproved the State's PSD regulations for whole categories of sources. Thus, on February 13, 1987 (52 FR 4622), EPA clarified the disapprovals of the State's PSD regulations. The State PSD regulations were disapproved for the following sources: (1) Sources belonging to any of the 15 source categories, which the State omitted from its regulations, for which fugitive emissions must be included in calculating the potential to emit in the definitions of "major modification" and "major stationary source"; (2) sources avoiding requirements based on exemptions in Colorado regulations that would not be exempt under the Federal Regulations; (3) sources exempt under the definition of "major modification," in Section I.2. of Regulation No. 3, for a change of an existing oil-fired or gas-fired boiler to the use of a coal/oil mixture, shale oil, or coal-derived fuels, provided that such change would not interfere with reasonable further progress towards attainment of any NAAQS; (4) sources exempt under the definition of "stationary source," in the Common Provisions Regulation, due to the State's right-of-way provision; (5) sources that would obtain a Colorado permit based upon the exceedance of a time constraint, per Section IV.F. of Regulation No. 3; (6) sources that would avoid compliance due to the allowance of a compliance waiver of up to six months in Section IV.H.4. of Regulation No. 3; and (7) sources which were regulated under Section 111 or 112 of the Clean Air Act as of August 7, 1980 with the exception of those for which fugitive emissions are included in calculating potential to emit. These disapprovals are listed in 40 CFR 52.343.

On February 17, 1988, EPA notified the State of numerous deficiencies that existed in its NSR and PSD regulations, in addition to the disapproved provisions listed in 40 CFR 52.329 and 52.343. On May 26, 1988, EPA issued a SIP Call to the State, due to the failure of many areas in the State to attain the NAAQS for ozone and carbon monoxide. In a subsequent letter to the State dated June 17, 1988, EPA reiterated the list of deficiencies and EPA disapprovals from the February 17, 1988 letter and required that the State correct all deficiencies as part of its workplan to address the SIP Call. On August 5, 1988, the State submitted its workplan, in which it committed to revising its NSR and PSD rules in Regulation No. 3 and the Common Provisions Regulation by September 30, 1988. The State planned to address these deficiencies concurrent with its revisions to Regulation No. 3 and the Common Provisions Regulation to protect the newly promulgated PM–10 NAAQS.

3. Emission Trading

EPA published an Emission Trading Policy Statement on December 4, 1986 (51 FR 43814). This policy replaced the original bubble policy (44 FR 71779, December 11, 1979). The policy described emission trading and set out the general principles for EPA to use when evaluating bubbles and other emissions trades. The policy also described requirements for approvable generic rules. In order for an emissions trading rule to be generic, it must contain replicable procedures which are sufficient in operation to guarantee that emission limits produced under the rule will not interfere with timely maintenance and attainment of the NAAQS or jeopardize the PSD increments for visibility. A rule is considered replicable when separate reviewers applying the rule to the a given trade would reach the same conclusion. The State revised its ERC rules in Section V. of Regulation No. 3 in order to create a generic rule which would eliminate the need for a SIP revision for approval of bubble transactions.

4. Fee Increases

The 1988 submittal also included amendments to Section VI of Colorado Regulation No. 3 to increase permit processing and annual fees. Annual fees were increased from a fee of $60 per emission source to a fee of $157 per emission source. The permit processing fee was increased by approximately $2 per hour. These fee increases were to cover program costs and are encouraged by the Clean Air Act (CAA).

B. Evaluation of 1988 Submittal

1. PM–NAAQS

EPA evaluated the State's 1988 submittal against the SIP checklist for protection of the PM–10 NAAQS. The State's regulations were found to adequately address all Federal requirements for new source review of PM–10 sources that were in existence at the time of the State submittal.

2. Deficient Provisions

a. EPA Disapprovals

The November 17, 1988 submittal partially addressed some of the NSR regulation deficiencies, outlined in 40 CFR 52.329, as follows: (1) In Section IV.D.2.b.(i) of Regulation No. 3, the State included a provision in its NSR rules to ensure that reconstructed sources in nonattainment areas meet NSR permitting requirements. (2) In Section I. of Regulation No. 3, the definitions of "major modification" and "major stationary source" were amended to include all fugitive emissions, except fugitive dust, in the determination of potential to emit of a source belonging to any of the 26 listed source categories. In the Federal definitions of "major stationary source" and "major modification," all fugitive emissions, including fugitive dust, are included when determining the potential to emit for any of the 26 listed source categories. Therefore, the State's exemption of fugitive dust from the determination of potential to emit of these sources is not allowed.

The November 17, 1988 submittal also partially addressed some of the PSD regulation deficiencies, outlined in 40 CFR 52.343, as follows: The State has amended the definitions of "major modification" and "major stationary source" in Section I. of Regulation No. 3 to include fugitive emissions in the calculation of potential to emit for the previously excluded 15 source categories and for sources regulated as of August 7, 1980 under section 111 or 112 of the CAA. However, the State regulations exempt figutive dust from the determination of potential to emit. The Federal definition of fugitive emissions does not exclude fugitive dust, and thus, it can not be exempted in

the determination of potential to emit for any of the listed source categories or for any source regulated as of August 7, 1980 under section 111 or 112 of the CAA.

b. Other Deficiencies

Further review of the 1988 submittal found that the State did not address many of the other deficient provisions the State committed to revising in its workplan to address the May 26, 1988 SIP Call.

On March 26, 1991, EPA submitted a letter to the State which listed all of the remaining deficiencies in the State's NSR and PSD regulations. In this letter, EPA requested a commitment from the State to revise Regulation No. 3 and the Common Provisions Regulation and address all deficiencies before EPA would continue to process any pollutant specific SIP submittals. The State responded on April 29, 1991 with a list of the deficiencies that the State had existing authority to correct, and a list of deficiencies that would require legislative action to correct. The State committed to revising Regulation No. 3 and the Common Provisions Regulation to correct all deficiencies that would not require legislative authority and to adopt the revised regulations by October, 1991. The State plans to present a package containing the PSD and NSR deficiencies requiring legislative authority to correct at the 1992 Colorado legislative session. Once the required statute changes are signed by the Governor, the State will proceed with the revisions to its regulations and request a public hearing to adopt the revised regulations.

3. Emission Trading

After reviewing the State's ERC regulation, it was determined that the State's rule was not generic because it did not contain all of the specific requirements necessary to ensure replicability of the rule. In addition, Section V.G.1. of Regulation No. 3 requires SIP revisions for establishment of bubbles. Thus, the Colorado ERC rule cannot be interpreted to be a generic emissions trading rule.

In a May 21, 1991 letter, EPA notified the State that Section V.A.3. of Regulation No. 3, which stated that the purpose of its ERC rule was to reduce the number of trades requiring SIP revisions, conflicted with the requirements in the State's ERC regulations and with EPA's findings that the rule was not approvable as a generic rule. EPA requested a commitment from the State to revise the provision to be consistent with EPA's findings and its ERC regulation. The State responded on June 12, 1991 with a commitment to delete Section V.A.3. from Regulation No. 3.

In a September 12, 1991 letter, EPA informed the State of the general deficiencies in the State's ERC rule which impede it from being approved by EPA as a generic rule. EPA also notified the State that ERC rule would be approved as a emissions trading rule which requires case-by-case SIP revisions for EPA approval of all bubble transactions.

4. Fee Increases

EPA determined the fee increases were fully approvable.

EPA proposed approval of these revisions to the Colorado SIP on October 2, 1990 (55 FR 40201). No comments were received pursuant to the proposal.

Final Action:

EPA is approving the revisions to the Colorado SIP submitted by the Governor on November 17, 1988, because, in general, they are consistent with EPA policy and regulations. However, as discussed above, EPA has previously identified deficiencies in various sections of Regulation No. 3 and the Common Provisions Regulation, and approval of this submittal is based upon the State's commitment to correct these deficiencies.

The revisions being approved include amendments to the NSR and PSD programs in the Common Provisions Regulation and Regulation No. 3 which are necessary to protect the PM–10 NAAQS and provide for consistency with EPA requirements, revisions that address previously outlined deficiencies and EPA disapprovals, amendments to Section V. of Regulation No. 3 to provide for the certification and trading of emission offset credits, and amendments to Section IV. of Regulation No. 3 to increase permit processing and annual fees. The State's emission reduction credit rule is being approved only as a rule which requires case-by-case SIP revisions for EPA approval of all bubbles.

EPA is also revising the disapprovals of Colorado's NSR and PSD programs, outlined in 40 CFR 52.329 and 40 CFR 52.343, respectively. The revised disapprovals of the State's NSR and PSD regulations reflect those disapprovals which the State has partially corrected and State regulations which were recodified during revisions.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Note: This document was received at the Office of the **Federal Register** on June 10, 1992.

Dated: February 28, 1992.

Kerrigan G. Clough,

Acting Regional Administrator.

40 CFR part 52, subpart G is amended as follows:

PART 52 [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(54) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(54) On November 17, 1988 the Governor submitted revisions to Regulation No. 3 and the Common Provisions Regulation which included:

Provisions for the review of new sources to protect the PM–10 national ambient air quality standards (NAAQS) and for consistency with EPA requirements;

Amendments to address deficiencies and previous EPA disapprovals as identified in the May 26, 1988 SIP Call;

Provisions for the certification and trading of emission offset credits; and

Amendments to increase permit processing and annual fees.

(i) Incorporation by reference

(A) Regulation No. 3: Sections I.B.2.c.(i)–(vi), I.B.3.a., II.B.1.d & e, II.B.3.c., II.C.1.h., II.C.3., III.A.1., IV.C.4.e., IV.C.4.f.(i) & (iv)–(v), IV.C.6–10, IV.D.1.e., IV.D.2.a.(iv), IV.D.2.b., IV.D.2.c.(i) & (ii), IV.D.3.a.(vi), IV.D.3.b.(i)(D), IV.D.3.b.(iii)(A)(3), (5), (7), & (11), IV.D.3.d.(ii), IV.D.3.e., IV.G.3., IV.H.7., V.C–I, VI.A.2., VI.C.1., VI.D., VII.A., VIII.D., IX.K., XIII.B., XIV.B.1, XIV.B.4.c.; and the Common Provisions Regulation: Section I.G., definitions of "Best Available Control Technology," "Complete," "Construction," "Enforceable," "Fixed Capital Cost," "Lowest Achievable Emission Rate (LAER)," "Modification," Net Emissions Increase," "Particulate Matter," "Particulate Matter Emissions," "PM10," "PM10 Emissions," "Reconstruction," "Significant," "Total Suspended Particulate;" revised August 18, 1988, effective September 30, 1988.

(ii) Additional Material

(A) Letter dated April 29, 1991 from the Colorado Air Pollution Control Division to EPA.

3. Section 52.329 is amended by revising paragraphs (a)(1) through (a)(3) and removing paragraph (a)(4) to read as follows:

§ 52.329 Rules and regulations.

* * * * *

(a) * * *

(1) Section I.B.2.c.(vii), which exempts from "major modification" a change of an existing oil-fired or gas-fired boiler to the use of a coal/oil mixture, shale oil, or coal derived fuels, provided that such change would not interfere with reasonable further progress toward attainment of any National Ambient Air Quality Standard.

(2) Sections I.B.2.e. and I.B.3.f., the definitions of "major modification" and "major stationary source" which provide that fugitive dust from any of the 26 listed source categories or any other stationary source category which, as of August 7, 1980 was regulated under Section 111 or Section 112 of the Act, will be excluded in calculating the potential to emit of a source or modification.

(3) Section IV.H.6., that allows the Division to grant an applicant a period of greater than six months to bring a source into compliance.

4. Section 52.343 is amended by revising paragraphs (a)(1), (a)(3), and (a)(8) to read as follows:

§ 52.343 Significant deterioration of air quality.

* * * * *

(a) * * *

(1) Any source belonging to any of the 26 listed source categories for which fugitive dust is included in calculating potential to emit under 40 CFR 52.21 unless the source is required to obtain a Colorado PSD permit pursuant to regulations identified in 52.320(c) (36) and (37).

* * * * *

(3) Sources exempt under Regulation 3.I.B.2.c.vii.

* * * * *

(8) Sources which were regulated under Section 111 or 112 of the Clean Air Act as of August 7, 1980 for which fugitive dust is included in calculating potential to emit under 40 CFR 52.21 unless the source is required to obtain a Colorado PSD permit pursuant to regulations identified in § 52.320(c) 36 and 37.

* * * * *

[FR Doc. 92–14006 Filed 6–16–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43–CFR Public Land Order 6933

[NM–930–4214–11; NMNM 055653]

Partial Revocation of Public Land Order No. 2051; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 175.35 acres of public land withdrawn for New Mexico State University (formerly New Mexico College of Agriculture and Mechanic Arts) for research programs in connection with Federal programs. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through sale as directed by Public Law 100–559.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–7115, 505–438–7594.

By virtue of the authority vested in the Secretary of the Interior by Section 502 of Public Law 100–559, it is ordered as follows:

1. Public Land Order No. 2051, which withdrew public land for use by the New Mexico College of Agriculture and Mechanic Arts, now New Mexico State University, for research programs in connection with Federal programs, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 23 S., R. 2 E.,
Sec. 26, lots 4 to 7, inclusive, and W½NW¼NE¼.

The area described contains 175.35 acres in Dona Ana County.

2. The land described above is hereby made available for conveyance as authorized and directed by section 502 of Public Law 100–559.

Dated: June 10, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92–14182 Filed 6–16–92; 8:45 am]

BILLING CODE 4310–FB–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7543]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes

the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20796, (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.4 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in the community	Current effective map date
New Eligibles—Emergency Program			
Michigan: Grayling, city of, Crawford County	260901	May 21, 1992	
Texas: Woodcreek, city of, Hays County	481641	do	
Alaska: Emmonak, city of, Unorganized Borough	020125	May 22, 1992	
New Eligibles—Emergency Program			
North Carolina: Cramerton, town of, Gaston County	370321	May 21, 1992	Mar. 4, 1980.
Texas: Ingleside on The Bay, city of, San Patricio County.[1]	481645	May 11, 1992	
Reinstatement—Emergency Program			
Michigan: Haynes, township of, Alcona County	260274	June 12, 1974, Emergency; May 1, 1992, Regular; May 21, 1992 Suspension; May 21, 1992, Reinstatement.	May 1, 1992.
Vermont: Roxbury, town of, Washington County	500276	July 9, 1975, Emergency; Jan. 17, 1986, Regular; June 18, 1990, Suspension; May 28, 1992, Reinstatement.	Jan. 17, 1986.
Withdrawn—Regular Program			
Michigan: Silver Creek, township of, Cass County	260369	November 16, 1977, Emergency; April 1, 1988, Regular; May 1, 1992, Withdrawn.	April 1, 1988.
Minimal Conversions—Region V			
Michigan: Beaugrand, township of, Cheboygan County	260646	May 1, 1992, suspension withdrawn	May 1, 1992.
Regular Conversions—Region II			
New York: Newstead town of, Erie County	360251	do	May 4, 1992.
Region IV			
Georgia:			
Athens, city of, Clarke County	130040	do	May 4, 1992.
Gwinnett County, Unincorporated areas	130322	do	May 4, 1992.
Region VI			
Oklahoma: Sallisaw, city of, Sequoyah County	400199	do	May 4, 1992.
Missouri: Cass County, unincorporated areas	290783	do	May 4, 1992.
Region I			
Connecticut: Ansonia, city of, New Haven County	090079	May 18, 1992, Suspension Withdrawn	May 18, 1992.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in the community	Current effective map date
Region II			
New York:			
Perington, town of, Monroe County	360428	do	May 18, 1992.
Willsboro, town of, Essex County	360267	do	May 18, 1992.
Region III			
Virginia:			
Stuart, town of, Partick County	510111	do	May 3, 1990.
Appomattox County, Unincorporated areas	510011	do	July 17, 1978.
Bedford County, Unincorporated areas	510016	do	Sept. 29, 1978.
Regular VII			
Iowa: Griswood, city of, Cass County	190346	do	May 18, 1992.
Region IX			
Arizona: Yavapai County, Unincorporated areas	040093	do	May 18, 1992.

[1] Use the San Patricio County (485506) FIRM.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: June 10, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-14155 Filed 6-16-92; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 64

[Docket No. FEMA-7542]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region III				
West Virgin:				
Harrison County, unincorporated areas.	540053	Aug. 17, 1976, Emerg.; July 4, 1988, Reg.; July 2, 1992, Susp.	July 2, 1992	July 2, 1992.
Marion County, unincorporated areas	540097	Aug. 21, 1975, Emerg.; July 4, 1988, Reg.; July 2, 1992, Susp.	do	Do.
Somerset, township of, Somerset County.	422055	July 19, 1976, Emerg.; May 17, 1990, Reg.; July 2, 1992, Susp.	do	Do.
Maryland: Secretary, town of, Dorchester County.	240123	June 13, 1975, Emerg.; Dec. 19, 1980, Reg.; May 4, 1989, Susp.; Sept. 27, 1989, Rein.; July 2, 1992, Susp.	Apr. 2, 1992	Do.
Pennsylvania: Greene, township of, Pike County.	421965	Aug. 6, 1975, Emerg.; Oct. 18, 1988, Reg.; July 2, 1992, Susp.	do	Do.
Region VI				
Arkansas: Ward, city of, Lonoke County	050372	Sept. 8, 1975, Emerg.; Sept. 5, 1978, Reg.; July 2, 1992, Susp.	July 2, 1992	Do.
Texas: Brazos County, unincorporated areas.	481195	Jan. 13, 1986, Emerg.; July 2, 1992, Reg.; July 2, 1992, Susp.	do	Do.
Oklahoma:				
Binger, town of, Caddo County	400530	Sept. 16, 1975, Emerg.; Nov. 19, 1987, Reg.; July 2, 1992, Susp.	Sept. 27, 1991	Do.
Fort Cobb, town of, Caddo County	400022	Nov. 1, 1974, Emerg.; Sept. 27, 1991, Reg.; July 2, 1992, Susp.	do	Do.
Lookeba, town of, Caddo County	400025	Feb. 18, 1976, Emerg.; July 13, 1982, Reg.; July 2, 1992, Susp.	do	Do.
Region I				
New Hampshire:				
Grantham, town of, Sullivan County	330158	May 24, 1976, Emerg.; Sept. 1, 1989, Reg.; July 15, 1992, Susp.	July 15, 1992	July 15, 1992.
South Hampton, town of, Rockingham County.	330193	Sept. 2, 1987, Emerg.; June 1, 1989, Reg.; July 15, 1992, Susp.	do	Do.
Region IV				
Florida: Manatee County, unincorporated areas.	120153	June 25, 1971, Emerg.; June 25, 1971, Reg.; July 15, 1992, Susp.	do	Do.
Region VIII				
Colorado:				
Fruita, town of, Mesa County	080194	June 5, 1975, Emerg.; Dec. 1, 1981, Reg.; July 15, 1992, Susp.	do	Do.
Grand Junction, city of, Mesa County	080117	Oct. 13, 1978, Emerg.; Jan. 6, 1983, Reg.; July 15, 1992, Susp.	do	Do.
Mesa County, unincorporated areas	080115	July 26, 1973, Emerg.; July 3, 1978, Reg.; July 15, 1992, Susp.	do	Do.
Palisade, town of, Mesa County	080198	Sept. 27, 1982, Emerg.; Feb. 5, 1986, Reg.; July 15, 1992, Susp.	do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

[Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance."]

Issued: June 10, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-14156 Filed 6-16-92; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 920128-2142]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the permitting requirements applicable to vessels in the fishery for coastal migratory pelagic fish. Specifically, this final rule (1) removes from the regulations the specification of an April-through-March permit year; (2) conditions the reissuance of a permit on the receipt of all required reports for the vessel; (3) removes from the regulations the specification of the permit fee; and (4) otherwise clarifies existing policies and procedures for issuing vessel permits. These revisions were previously published as an interim final rule with request for comments. The intended effects of this final rule are to standardize and simplify, to the extent possible, the permitting requirements applicable to participants in the federally managed fisheries off the South Atlantic and Gulf of Mexico states.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish is managed under the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) and its implementing regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The regulations at 50 CFR 642.4 require (1) an owner or operator of a fishing vessel to obtain a vessel permit in order for persons aboard that vessel to fish for king or Spanish mackerel in the exclusive economic zone (EEZ) under the commercial allocations; and (2) an owner or operator of a charter vessel to obtain a charter vessel permit in order for persons aboard that vessel to fish for coastal migratory pelagic fish in the EEZ. This final rule revises the permitting requirements to standardize them, to the extent possible, with the current permitting requirements in other fisheries, including the reef fish fishery of the Gulf of Mexico and the snapper-grouper fishery off the South Atlantic states, and with the proposed permitting requirements for the Atlantic shark fishery. The goal of this standardization is to reduce the occasions when an applicant is required to apply for a Federal fisheries permit. In lieu of an application for a permit for each fishery submitted at different times during a year, an applicant would apply once each year, based on the month of birth of the owner, for all fisheries in which he desires a permit. The total permit fees paid by an applicant would be reduced accordingly.

Detailed descriptions of and rationales for the revisions to the permitting requirements were included in the interim final rule (57 FR 11582, April 6, 1992) and are not repeated here.

Comments, Responses, and Changes to the Interim Final Rule

Two commenters asked what the permit expiration date would be for a vessel owned by a corporation, i.e., what month would be the equivalent of the birth month of a vessel owner. As is the case for vessel permits issued in the reef fish and snapper-grouper fisheries, permits for corporate-owned vessels in the coastal migratory pelagic fishery expire at the end of the month during which the corporation was formed. The date a corporation was formed has been collected from corporate owners on applications for permits in these fisheries. For clarification, this final rule specifies that, for a corporate-owner vessel, the date the corporation was formed is required on an application in lieu of the date of birth of the vessel owner.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this final rule is (1) necessary for the conservation and management of the fishery for coastal migratory pelagic fish; (2) consistent with the Magnuson Act and other applicable Federal law; and (3) not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule before issuance as a final rule by section 553 of the Administrative Procedure Act or by any other law. Accordingly, neither an initial nor a final regulatory flexibility analysis has been prepared.

This final rule does not change any of the factors considered in the environmental impact statement prepared for the FMP or in the environmental assessments prepared for its amendments; accordingly, this action is categorically excluded from the requirement to prepare an environmental assessment, as specified in NOAA Administrative Order 216-6.

In the final rules implementing the FMP and its amendments, NMFS concluded that, to the maximum extent practicable, the FMP and amendments are consistent with the approved coastal zone management programs of all the affected states. Since this final rule does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and amendment and their consistency determinations, a new consistency determination under the Coastal Zone Management Act is not required.

This final rule restates the collection-of-information requirement for applications for permits, which is subject to the Paperwork Reduction Act. That requirement was previously approved and OMB Control No. 0648-0205 applies. That requirement has a public reporting burden estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 an to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator, pursuant to section 553(d)(3) of the Administrative Procedure Act, finds that, because this final rule does not substantively change the procedures that have been in effect since April 1, 1992, the effective date of the interim final rule, good cause exists for making this rule effective immediately.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 11, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, the interim final rule amending 50 CFR 642.4, 642.5(b), and 642.7(f) and (v), which was published at 57 FR 11582 on April 6, 1992, is adopted as final with the following change:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.4, paragraph (b)(2)(v) is revised to read as follows:

§ 642.4 Permits and fees.

* * * * *

(b) * * *

(2) * * *

(v) Social Security number and date of birth of the applicant and the owner (if the owner is a corporation, in lieu of the social security number, provide the employer identification number, if one has been assigned by the Internal Revenue Service, and, in lieu of the date of birth, provide the date the corporation was formed);

* * * * *

[FR Doc. 92-141331 Filed 6-14-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 117
Wednesday, June 17, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 100

Revision of Appendix A

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff will meet with the staff of the Nuclear Management and Resources Council (NUMARC) and other industry representatives to discuss the revision of appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," to 10 CFR part 100.

DATES: July 10, 1992, 1 p.m.

ADDRESSES: 11555 Rockville Pike, Room: 1 F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Chief, Structural and Seismic Enginering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3860.

SUPPLEMENTARY INFORMATION: Appendix A to 10 CFR part 100 describes the seismic and geologic siting and earthquake engineering criteria for nuclear power plants. Because of the advances in the state-of-the-art since the publication of the regulation (effective December 13, 1973), a need for the revision has been established. Staff progress in the revision of appendix A to 10 CFR part 100 has been discussed in public meetings with NUMARC and other industry representatives on February 4, 1992 and April 23, 1992.

The purpose of this meeting is to meet with NUMARC and other industry representatives to discuss industry recommended alternatives to the draft proposed revision of appendix A to 10 CFR part 100 that was placed in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC (Memorandum from Lawrence C. Shao to Raymond F. Fraley, dated January 21, 1992, Subject: Revision of Appendix A to 10 CFR Part 100—Geological and Seismological Siting Criteria for Nuclear Power Plants). No specific agenda is being proposed.

The meeting cited herein is in addition to the meeting scheduled for June 17, 1992 (57 FR 23548, June 4, 1992).

Dated at Rockville, Maryland, this 8th day of June, 1992, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92–14218 Filed 6–16–92; 8:45 am]

BILLING CODE 7590–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 607 and 618

RIN 3052–AB19

Assessment and Apportionment of Administrative Expenses; General Provisions; FCA Assessment Regulations Negotiated Rulemaking Committee

AGENCY: Farm Credit Administration (FCA).

ACTION: Notice of meetings and time change for previously announced meeting.

SUMMARY: In accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act, the FCA hereby gives notice of the third meeting of the FCA Assessment Regulations Negotiated Rulemaking Committee, which has been convened to negotiate and develop proposed amendments to FCA assessment regulations. These regulations prescribe the method for assessing Farm Credit System (System) institutions for the FCA's annual expenses in administering the Farm Credit Act of 1971. The FCA is also giving notice of a change in the starting time of its previously announced committee meeting for June 22, 1992 from 9 a.m. to 8:30 a.m.

DATES: The third meeting of the Assessment Regulations Negotiated Rulemaking Committee will be a 3-day session. The meeting will be on July 7, 1992 from 8:30 a.m. to 5 p.m., continuing on July 8, 1992 from 8:30 a.m. to 5 p.m., and on July 9, 1992 from 8:30 a.m. to 3:30 p.m.

The starting time of the previously announced (See 57 FR 21755, May 22, 1992) June 22, 1992 meeting has been changed from 9 a.m. to 8:30 a.m.

ADDRESSES: The Committee will meet in Rooms 1101–02 of the FCA, 1501 Farm Credit Drive, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Senior Credit Specialist, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4189, TDD (703) 883–4444,

or

William L. Larsen, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Pursuant to the Negotiated Rulemaking Act of 1990, 5 U.S.C. 581, 585, and the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10, the FCA gives notice of the third meeting of its Assessment Regulations Negotiated Rulemaking Committee. The meetings will be held at the FCA's McLean, Virginia headquarters and will be open to the public.

The Committee is meeting to develop and negotiate proposed amendments to FCA assessment regulations. The agenda for the third meeting will be shaped by the progress of discussions and negotiations at the second meeting and will continue to focus on development of an assessment formula for banks, associations and banks for cooperatives of the Farm Credit System (System). Tentatively, the Committee is scheduled to meet biweekly for 2-day sessions continuing through approximately August 4, 1992, subject to adjustment by the Committee if needed.

On May 6, 1992, the FCA published notice of its intent to establish a negotiated rulemaking committee to develop and negotiate proposed amendments to its assessment regulations. 57 FR 19405. The Notice of Intent describes the negotiated rulemaking process and how it will apply to development of proposed assessment regulations.

The assessment regulations prescribe the method for assessing System institutions for the FCA's annual expenses in administering the Farm Credit Act of 1971, 12 U.S.C. 2001 *et seq.* A complete discussion of the current assessment procedures and the need for new regulations can be found in the

FCA's Notice of Proposed Rulemaking published at 56 FR 13424, April 2, 1991.

The FCA also gives notice that the starting time of the previously announced (See 57 FR 21755, May 22, 1992) second meeting of the Committee, scheduled for June 22, 1992, has been changed by the Committee from 9 a.m. to 8:30 a.m. As permitted by General Services Administration Federal Advisory Committee Act regulations (See 41 CFR 101–6.1015(b)(2)), this meeting notice change will appear in the **Federal Register** less than 15 days before the meeting. This is due to the fact that the Committee made this schedule change at its June 9, 1992 meeting, only 13 days before the June 22 meeting. The FCA believes that all members of the public who attended the June 8–9, 1992 meeting received notice of the meeting time change. In addition, the FCA will post public notice of the meeting time change.

Dated: June 12, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–14164 Filed 6–16–92; 8:45 am]

BILLING CODE 6705–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Records and Reports for State and Local Governments

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is proposing an amendment to the reporting regulations for state and local governments, which would reduce the filing requirement from once a year to once every other year for those political jurisdictions subject to the reporting requirements covered by this regulation.

Such jurisdictions include jurisdictions, other than public school districts, with 100 or more full-time employees and similar jurisdictions with from 15 to 99 full-time employees from whom the Commission requests the filing of reports. The Commission is publishing elsewhere in this issue of the **Federal Register** a rule waiving the requirement for filing such reports for 1992. Starting with the 1993 survey year and every odd-number year thereafter, those jurisdictions will be required to file EEO–4 reports. The Commission takes this action for budgetary reasons. The Commission has also determined that the reduction in reporting requirements will not substantially affect the utility of the information being collected. At the same time, it will cut in half the number of hours employers will speed in complying with this reporting requirement and thus the change will result in significant cost reductions. Since this change involves a decreased reporting requirement, it will benefit rather than harm public jurisdictions.

DATES: Written comments must be submitted on or before August 17, 1992. The Commission will publish a separate notice of public hearing after the comments have been received.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC between the hours of 9:30 a.m. and 5 p.m. Any comments should additionally be filed with the Office of Management and Budget (See "Paperwork Reduction Act" below).

As a convenience to commenters, the Executive Secretariat will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only public comments of six of fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledge, except that the sender may request confirmation of receipt by calling the Executive Secretariat Staff at (202) 663–4078. (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division at (202) 663–4958 (voice) or (202) 708–9300 (TDD).

SUPPLEMENTARY INFORMATION: Section 709(c) of title VII of the Civil Rights Act of 1964, as amended, requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the Equal Employment Opportunity Commission. Accordingly, the Commission has issued regulations which set forth the reporting requirements for various kinds of employers. State and local government jurisdictions have been required to submit annual reports to the Commission since 1973. The change to biennial reporting is intended to reduce the cost and reporting burden on such jurisdictions as required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* However, the recordkeeping requirements of § 1602.30 remain unchanged. After the end of the written comment period, the Commission proposes to consider those comments for a period of at least two weeks and to adopt the final regulations thereafter.

Paperwork Reduction Act

This proposed change involves a reduction of cost and reporting burden to respondents. The Office of Management and Budget (OMB) has been apprised of this proposal. Organizations or individuals desiring to submit comments for consideration by OMB on this change should address them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph Lackey.

The Commission also certifies under 5 U.S.C. 605(b) enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed change will not result in a significant impact on small employers, and that a regulatory flexibility analysis therefore is not required.

List of Subjects in Part 1602

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, it is proposed to amend 29 CFR part 1602 as follows:

1. The authority citation for part 1602 continues to read as follows:

Authority: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.*; 42 U.S.C. 12117.

2. It is proposed to revise § 1602.32 to read as follows:

§ 1602.32 Requirement for filing and preserving copy of report.

On or before September 30, 1993, and biennially thereafter, certain political jurisdictions subject to title VII of the Civil Rights Act of 1964, as amended, shall file with the Commission or its delegate executed copies of "State and Local Government Information Report EEO–4" in conformity with the direction set forth in the form and accompaning instructions. The political jurisdictions covered by this section are those which have 100 or mroe employees, and those other political jurisdictions which have

15 or more employees from whom the Commission requests the filing of reports. Every such political jurisdiction shall retain at all times a copy of the most recently filed EEO–4 at the central office of the political jurisdiction for a period of 3 years and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710 of title VII, as amended.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

[FR Doc. 92–14160 Filed 6–16–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 201, 202, 203, 206, 207, 208, 210, 212, 215, 216, 217, 218, 219, 220, 228, 229, 230, 232, 233, 234, 241, 242, 243

Request for Information for Improvements to Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Assessment of rules.

SUMMARY: The evaluation of Minerals Management Service (MMS) Royalty Management Program (RMP) regulations is a continuous process, and information from the public is an important part of the evaluation process. The MMS rules for product valuation were substantially modified in 1988 based on an effort started in January 1985 with creation of the RMP Advisory Committee. It has been several years since most of the regulations in 30 CFR Parts 201 through 243 were published, and public comments are requested to help MMS assess where improvements to rules can be made. This notice solicits public comments on RMP's regulatory programs.

DATES: Comments must be received or postmarked by August 17, 1992.

ADDRESSES: Written comments regarding this notice should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225–0165, Attention: Dennis C. Whitcomb, telephone (303) 231–3432.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, telephone (303) 231–3432.

SUPPLEMENTARY INFORMATION: The Department has been collecting bonuses, rents, royalties, and other revenues from Federal and Indian mineral leases since 1921. The MMS has been responsible for this function since its establishment in 1982. The mission of RMP is to ensure that all revenues, approximately $4 billion annually, from Federal and Indian leases are efficiently, effectively, and accurately collected, accounted for, verified, and disbursed. The revenue is disbursed to the appropriate recipients in a timely manner and in accordance with existing laws, regulations, lease terms, orders, and notices. These recipients include the U.S. Department of the Treasury, State, Indians, and Other Federal agencies.

To accomplish the RMP mission, supporting legislation and implementing regulations are necessary to assure compliance in this area. The implementing regulations for RMP are contained in title 30 of the Code of Federal Regulations, chapter II, subchapter A, and listed below by part.

Part	Title
201	General.
202	Royalties.
203	Relief or reduction in royalty rates.
206	Product valuation.
207	Sales agreements or contracts governing the disposal of lease products.
208	Sales of Federal royalty oil.
210	Forms and reports.
212	Records and files maintenance.
215	Accounting and auditing standards [Reserved].
216	Production accounting.
217	Audits and inspections.
218	Collection of royalties, rentals, bonuses, and other monies due the Federal Government.
219	Distribution and disbursement of royalties, rentals, and bonuses.
220	Accounting procedures for determining net profit share payment for Outer Continental Shelf oil and gas leases.
228	Cooperative activities with States and Indian tribes.
229	Delegation to States.
230	Royalty refunds [Reserved].
232	Interest payments [Reserved].
233	Escrow and investments [Reserved].
234	Bonding-payment liability [Reserved].
241	Penalties.
242	Notices and orders [Reserved].
243	Appeals-Royalty Management Program.

This notice solicits public comments on existing RMP regulations, referenced above, and on new RMP regulations that are being developed. Regulatory initiatives that are in the process of being developed are described in the Department's Semiannual Regulatory Agenda which was published in the **Federal Register** on April 27, 1992 (57 FR 16855). Comments on existing legislation would be helpful in assessing RMP's effectiveness. In particular, we would appreciate comments on legislation and regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, impose needless costs or administration. Furthermore, we would appreciate assistance in identifying areas in which there are overlapping, duplicative, inconsistent, or conflicting requirements with other Federal, State, or local governmental rules. In some cases, important innovations, technologies, or new markets may have been created since the rules were proposed and/or implemented. We are soliciting new comments on the areas identified above. It is not necessary to submit the same comments provided on previous rulemakings.

The Bureau will use the information received to develop new legislative and regulatory initiatives in those areas where improvements are possible and needed. New initiatives would be coordinated with other Federal and State government agencies, Indian representatives, and industry groups. Also, the public will be given the opportunity to present their viewpoints on specific initiatives to improve the legislative and regulatory programs.

Dated: June 8, 1992.

Daniel Talbot,

Deputy Assistant Secretary for Land and Minerals Management.

[FR Doc. 92–14131 Filed 6–16–92; 8:45 am]

BILLING CODE 4310–MR–M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 92–21]

Amendments to Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 92–21 and found that the resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review are due on or before June 29, 1992.

ADDRESSES: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Information Resources Management, Federal

Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Information Resources Management has determined that Docket No. 92–21 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket 92–21 the Commission proposes to amend its regulations in Part 581 governing service contracts to allow the parties to a filed service contract to amend the contract's "essential terms." The intent of this proposal is to create a more flexible service contract system in order to benefit carriers, U.S. shippers and consumers. Similarly situated shippers who had previously accessed the contract would have the option of either continuing under the original contract or accessing the amended terms. The Commission also solicits comments on related issues that may result in further amendments to its service contract regulations.

The Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–14247 Filed 6–16–92; 8:45 am]

BILLING CODE 6730–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC–100 (Sub-No. 7)]

Single State Insurance Registration—1993 Rules

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise its regulations pertaining to registration of certificates and permits with the States on an interim basis by eliminating the so-called "bingo card" system (whereby States issue stamps to be affixed to cab cards) while retaining and augmenting existing rules permitting State regulatory agencies to assign motor carriers identification numbers Consistent with Congressional intent and the public interest, the proposed rules are intended to alleviate the burdens that the present registration system imposes. Comments are solicited from interested parties.

DATES: Comments must be submitted by July 17, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Executive Parte No. MC–100 (Sub-No. 7) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz, (202) 927–5316 or Richard B. Felder, (202) 927–5610 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Section 4005 of Title IV of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. No. 102–240) significantly amends 49 U.S.C. 11506—Registration of motor carriers by a State. The new law, at 49 U.S.C. 11506(c)(1), requires that, not later than 18 months after its enactment, the Interstate Commerce Commission (ICC) prescribe amendments to the regulations governing the existing registration system. The present regulations are codified at 49 CFR part 1023.

At the heart of the present system is the so-called "bingo card" program. In essence, under the current regulations, each State may require carriers annually to register their ICC authority by applying for identifying numbers and/or stamps for each vehicle the carriers intend to operate within the borders of that State during the coming year. Each State participating in the program must issue identification stamps or numbers that the carriers must place in squares on the back of uniform identification cab cards that must be maintained in the cab of the vehicle for which the identification stamp or number has been issued.

Congress determined that the "bingo card" program is inefficient and has been an administrative burden on the trucking industry and the States. Therefore, in section 4005, Congress acted to benefit interstate carriers and, ultimately, the public by replacing the present bingo card program with a simplified insurance registration system under which States no longer may require carriers to register or identify specific vehicles operated.

In Ex Parte No. MC–100 (Sub-No. 6), Single State Insurance Registration (not printed), decision served May 8, 1992 (Single State), and an advance notice of proposed rulemaking published at 57 FR 20072–20073 on May 11, 1992, the Commission examined the new law and requested the trucking industry and State regulatory agencies to participate in the formulation of revised regulations. The Commission is awaiting comments by interested parties.

In the meantime, we believe that it would be consistent with the Congressional intent and the public interest to take immediate action to alleviate the burdens that the present registration system imposes. We believe that adopting these rules would facilitate the transition to the new registration system that amended section 11506 mandates.

In formulating the proposed transitional rules, we have worked within the framework of the present rules. In essence, we propose to revise or eliminate most sections of subpart D and to remove one section of subpart J of part 1023 in order to eliminate the "bingo card" facet of the existing program. We emphasize that the proposed rules are intended as temporary, interim measures.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. We preliminarily conclude that it will have a positive economic impact on a number of small entities.

List of Subjects in 49 CFR Part 1023

Insurance, Motor carriers, Surety bonds.

Authority: 5 U.S.C. 553, 49 U.S.C. 10321.

Decided: June 9, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1023 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1023—STANDARDS FOR REGISTRATION OF CERTIFICATES AND PERMITS WITH STATES

1. The authority citation for part 1023 continues to read as follows:

Authority: 49 U.S.C. 11506.

2. Section 1023.32 is revised to read as follows:

§ 1023.32 Registration and identification.

(a) On or before the tenth day of December of each calendar year, but not earlier than the preceding first day of October, such motor carrier shall apply to the Commission of such State for the assignment of an identification number for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the ensuing year. The Commission of such State shall distribute identification numbers to individual carriers by December 31 or within 3 weeks of receiving an individual carrier's application, whichever is sooner. The motor carrier may thereafter file one or more supplements to its application for the purpose of registering and identifying additional vehicles or driveaway operations if the need therefor arises or is anticipated.

(b) If the State Commission determines that the motor carrier has complied with all applicable provisions of these standards, the Commission shall assign the motor carrier an identification number.

(c) An identification number assigned under the provisions of this subpart shall be used for the purpose of registering and identifying a vehicle or driveaway operations as being operated or conducted by a motor carrier under authority issued by the Interstate Commerce Commission, and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification number under the provisions of this subpart shall not knowingly permit the use of same by any other person or organization.

(d) The registration and identification of a vehicle or driveaway operations under the provisions of this subpart and the number evidencing same shall become void on the date or dates designated in the amendments to this part to take effect by January 1, 1994, unless such registration is terminated prior thereto.

3. Section 1023.33 is revised to read as follows:

§ 1023.33 Form and execution of application for identification number.

The application for the issuance of such identification number shall be in the form set forth in Form B appended to this part and made a part of this section. The application shall be printed on a rectangular card or sheet of paper 11 inches in height and 8½ inches in width. The application shall be duly completed and executed by an official of the motor carrier, and shall be accompanied by the fee, if any, prescribed by the law of such State. The fee shall, as pertinent, either equal the flat fee or be calculated by using the per vehicle fee (not to exceed $10 per vehicle), collected by the State as of November 15, 1991, for the issuance of identification stamps or an identification number under the former provisions of this part.

4. Section 1023.34 is revised to read as follows:

§ 1023.34 Form of identification number.

Any identification number issued by a State Commission under the provisions of this subpart shall be specified on a written receipt or other document issued by the State Commission. The receipt or document shall specify the name of the State Commission, the name of the carrier, the carrier's ICC MC number, the amount of fees paid the State by the carrier, and the carrier's identification number. The carrier shall maintain the receipt or document at its principal corporate offices.

5. Section 1023.35 is revised to read as follows:

§ 1023.35 Form of evidence of payment of fees.

Each carrier shall maintain in each of the vehicles it operates pursuant to the provisions of this part a copy of a list setting forth the States to which the carrier has paid a fee under this subpart and the identification number issued the carrier by each such State. No State shall require a carrier to display a decal, sticker, or emblem or otherwise maintain evidence of payment except as provided under this section. However, each carrier shall continue to maintain a cab card in each of its vehicles, in the manner specified by the predecessor to this section, until January 1, 1993.

§§ 1023.36 and 1023.37 [Removed]

§§ 1023.38, 1023.39 [Redesignated as §§ 1023.36 and 1023.37]

6. Sections 1023.36 and 1023.37 are removed and §§ 1023.38 and 1023.39 are redesignated as new §§ 1023.36 and 1023.37 respectively and revised to read as follows:

§ 1023.36 Use of list in driveaway operations.

In the case of a driveaway operation, a copy of the list specified in § 1023.35 shall be maintained in the cab of the vehicle furnishing the motive power for the driveaway operation whenever such an operation is conducted under the authority of the carrier identified on the list. A cab card shall be maintained in the cab, in the manner specified by the predecessor to this section, until January 1, 1993.

§ 1023.37 Inspection of list.

A copy of the list specified in § 1023.35 shall, upon demand, be presented by the driver to any authorized Government personnel for inspection. Until January 1, 1993, a cab card issued under the predecessor to this subpart must be presented.

§ 1023.40–1023.42 [Removed]

7. Sections 1023.40, 1023.41, and 1023.42 are removed.

§ 1023.101 [Removed]

8. Section 1023.101 is removed and reserved.

[FR Doc. 92–14206 Filed 6–17–92; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 920494–2094]

Taking and Importing of Marine Mammals; Listing of Eastern Spinner Dolphin as Depleted

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: NMFS was petitioned to list the eastern spinner dolphin, *Stenella longirostris orientalis*, as depleted under the Marine Mammal Protection Act (MMPA). NMFS believes that the best available information indicates that the population of eastern spinner dolphin is at low levels relative to its initial size, well below optimal sustainable population levels. NMFS, therefore, proposes to designate eastern spinner dolphins as depleted.

DATES: Comments must be submitted on or before August 17, 1992.

ADDRESSES: Comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources (F/PR),

1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne or Dr. Aleta A. Hohn, Office of Protected Resources, 301/713–2322.

SUPPLEMENTARY INFORMATION:

Background

Section 3 of the MMPA (16 U.S.C. 1362) defines the term "depletion" or "depleted" as meaning any case in which

(A) the Secretary, after consultation with the Marine Mammal Commission [MMC] and the Committee of Scientific Advisors on Marine Mammals * * *, determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred * * *, determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under th Endangered Species Act of 1973.

Section 3 of the MMPA defined optimum sustainable population (OSP) as:

With respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

NMFS regulations at 50 CFR 216.3 define OSP as a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem [K] to the population level that results in maximum net productivity [MNPL]. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

Section 2 of the MMPA (16 U.S.C. 1361) states that marine mammal species, populations and/or stocks should not be permitted to fall below their OSP level. The MNPL is the lower end of OSP. Historically, MNPL has been expressed as a range of values (generally 50–70 percent of K) determined theoretically by estimating what size stock in relation to the original stock size will produce the maximum net increase in population (42 FR 12010, Mar. 1, 1977). In 1977, the midpoint of this range (60 percent) was used to determine if a stock was depleted (42 FR 64548, Dec. 27, 1977). The 60 percent value was supported in the final rule governing the taking of marine mammals incidental to commercial fishing operations by the best scientific evidence available (45 FR 72178, Oct. 31, 1980).

The status of the eastern spinner dolphin has been at issue for many years. On October 14, 1976, NMFS proposed regulations to govern the taking of marine mammals incidental to yellowfin tuna purse-seining in 1977, and give notice of a hearing thereon which was to be presided over by an Administrative Law Judge (ALJ) (at 41 FR 45015). One issue addressed was whether the eastern spinner dolphin population was depleted relative to OSP. Evidence presented during the hearing indicated that the eastern spinner dolphin population was at 54 percent of its initial stock size. Having reviewed the record, and in consideration of the recommendations of the MMC, NMFS determined that the eastern spinner dolphin population should be considered depleted at that time (42 FR 12010, Mar. 1, 1977).

Over August 27–31, 1979, NMFS held a workshop to reconsider the population status of eastern tropical Pacific (ETP) dolphin stocks (Smith, 1979). The report from the workshop contained new information concerning the status fo these dolphin stocks, some of which suggested that several stocks of dolphin may be depleted (workshop report availability announced 44 FR 6448, Nov. 7, 1979). NMFS announced that a formal hearing to review the contents of the report would be conducted before an ALJ (45 FR 10552, Feb. 15, 1980). The formal hearing was convened, and the recommended decision of the ALJ was issued on July 18, 1980 (availability announced 45 FR 50375, July 29, 1980). In accordance with rule 15 of the procedural rules published on February 15, 1980 (45 FR 10562), and section 103(d) of the MMPA, the final decision and regulations governing the taking of marine mammals incidental to commercial fishing operations were published on October 31, 1980 (45 FR 72178).

The hearing focused on, among other issues, estimates of current population size relative to pre-exploitation or historical abundance (considered as maximum abundance of the ecosystem, or carrying capacity (K)). Based on NMFS testimony, and the best available scientific information at the time, NMFS determined that the stock of eastern spinner dolphin had declined to approximately 20 percent of its pre-exploitation size (data and analyses presented in Smith 1983), and was, therefore, "depleted" under the MMPA. The American Tunaboat Association (ATA), representing the tuna industry, filed suit in United States District Court for the Southern District of California challenging the estimates and status of dolphin stocks adopted by NMFS in 1980 rulemaking on the grounds that NMFS did not follow all the ALJ's recommendations on what constituted the best scientific evidence available (see *ATA* v. *Baldrige*, 738 F.2d 1013 (9th Cir., 1984), describing the proceedings that were unreported in the district court). The findings subject to dispute were whether (1) the calculation of mean school size by NMFS should have used data obtained by its observers aboard tuna vessels, rather than from research vessels only, (2) observers on aerial surveys could be expected to sight all large dolphin schools on the trackline (NMFS's calculations of the dolphin density assumed this to be so), and (3) the area inhabited by the populations of dolphins was larger than the value used in NMFS's analysis.

On March 10, 1982, the District Court ruled in favor of the ATA, concluding that the "best available scientific evidence" should include data collected by observers on tuna vesssels, and required the use of more current data on dolphin estimates and ranges. On July 24, 1984, the United States Court of Appeals for the Ninth Circuit affirmed the District Court Order (at *ATA* v. *Baldrige*, *supra*), holding that NMFS's 1980 final regulations, which set quotas for the taking of dolphins incidental to the tuna fishery, were unsupported by substantial evidence. As a result, NMFS's population estimates were adjusted to consider a larger average school size, increased densities of schools within the range of each dolphin species, and an increased area inhabited by the stock. Subsequent to the court-mandated revisions to the parameters used to estimate abundance, NMFS's 1979 estimate of abundance for the eastern spinner population more than doubled (NMFS 1985). The recalculated estimate was at 55 percent of K (NMFS 1985), a population level still considered depleted.

No status of stocks review was done in the mid-1980s as had been anticipated in the 1979 hearing. Instead, the MMPA was amended in 1984 to require that a minimum 5-year survey using research vessels be conducted to estimate the abundance of eastern tropical Pacific (ETP) dolphin stocks. Recent findings from the 5-year survey, as well as new analyses of sighting data from tuna vessels, are now available. The results indicate that the population of eastern spinner dolphin has not increased in size relative to the 1979 population levels (see Anganuzzi, Buckland and Cattanach 1991; Anganuzzi, Cattanach and Buckland, in press; DeMaster *et al.*,

in press; Wade and Gerrodette, in press).

NMFS was petitioned to list the eastern spinner dolphin as a depleted species or population under the MMPA on August 2, 1991. Section 115(a)(3)(A) of the MMPA states that "[i]f the Secretary receives a petition for a status review as described in paragraph (1), the Secretary shall publish a notice in the **Federal Register** that such a petition has been received and is available for public review" (16 U.S.C. 1383b(a)(3)(A)). NMFS published a notification of receipt of this petition, a request for comments and a determination that this petition presented substantial information, indicating that the petitioned action may be warranted (56 FR 56502, Nov. 5, 1991).

The determination that the petition presented substantial information was published simultaneously with the notice of receipt of the petition in this instance. This was because NMFS, when petitioned, was in the process of analyzing scientific information regarding this species available in the literature and obtained from individuals and organizations concerned with the conservation of marine mammals, persons in industries which may be affected by determinations regarding the status of stocks, and from academic institutions during the course of meetings held annually to review status of dolphin stocks involved in the ETP purse seine tuna fishery. A request for comments was nevertheless included in the **Federal Register** notice so that any previously unknown information could be evaluated by NMFS.

Section 115(a)(3)(D) of the MMPA further states that "[n]o later than two hundred and ten days after the receipt of the petition, the Secretary shall publish in the **Federal Register** a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination." (16 U.S.C. 1383b(a)(3)(D)) NMFS believes that, based on the best scientific information available, that population of eastern spinner dolphin is at levels well below optimal sustainable population levels, and, therefore, proposes through this notice to designate the eastern spinner dolphin as depleted under the MMPA.

On August 30, 1991, NMFS was also petitioned to list the eastern spinner dolphin as threatened under the ESA (56 FR 56502). This document does not represent a finding on that petition. Based on comments received and a review of the status of the stock of eastern spinner dolphin relative to the ESA, NMFS will publish a determination in the **Federal Register** at a later date on whether a listing of "threatened" under the ESA is warranted.

Comments

Written comments were requested in the receipt of petition notice (56 FR 56502, Nov. 5, 1991). Many of the issues raised in the comments have previously been raised and discussed at the annual status of stocks meetings, and consequently are not individually addressed here, although the issues are generally addressed in this proposed rule.

Status Determination

1. Distribution

The eastern spinner dolphin, a subspecies of the spinner dolphin, *Stenella Longirostris*, is endemic to the ETP (Perrin 1990). Over almost 25 years of observations from tuna purse seine and research vessels in the ETP, an extensive database on the distribution of this subspecies has been compiled. The eastern spinner dolphin is distributed over a large triangular region, with the northern point of the triangle off the coast of Baja, California (24° N. latitude), the southern point just south of the equator off the coast of Peru, and the offshore point at about 12° N. latitude, 135° W. longitude. The core range of the subspecies is much more restricted from near the coast of Mexico and Central America, extending about 1,000 km offshore (8–15° N. latitude and 90–125° W. longitude) (Perrin *et al.* 1985; Perrin 1990; Perrin, Akin, and Kashiwada 1991).

2. The Purse-Seine Fishery: Observer Programs and the Collection of Dolphin Mortality Data

The purse-seine fleet for yellowfin tuna was dominated by, if not comprised entirely of, U.S. vessels from 1959 to 1969. However, during the mid-1980s, the size of the U.S. fleet declined appreciably (Table 1). From 1982 to 1984 the number of U.S. vessels purse seining in the ETP decreased from 95 to 42 (Table 1). The decline continued through 1991 (Table 1). The current tuna purse seine fleet of about 100 vessels that continues to set on dolphins in the ETP includes only from two to six from the U.S. As the U.S. representation in this fishery diminished, other countries entered the fishery (Table 1).

A mandatory observer program was implemented on U.S. vessels in 1976, and since 1979 dolphin mortality data have been collected on U.S. vessels by either NMFS or Inter-American Tropical Tuna Commission (IATTC) observers. In 1986, NMFS initiated 50 percent observer coverage and in 1987 extended it to 100 percent in an effort to validate the accuracy of the data collected for estimating marine mammal mortality. Observer coverage was reduced to 50 percent at the beginning of 1988 and was maintained at this level throughout the year. After the 1988 amendments to the MMPA required 100 percent observer coverage during 1989 and subsequent fishing seasons, NMFS implemented a 100 percent observer program beginning with the 1989 season for the domestic fleet (54 FR 20171, May 10, 1989).

In the non-U.S. fleet, observer data on dolphin mortality were not available until 1979 when observers were placed on non-U.S. vessels through a program managed by the IATTC. However, participation was voluntary and observer coverage on representative vessels from each country was low prior to 1986 (Hall and Boyer 1988). When the observer program expanded in 1986, overall observer coverage increased from about 25 percent in 1987 to 49 percent in 1990. On December 23, 1988, the NMFS notified the IATTC that the U.S. tuna fleet would be required to carry an observer on every trip after January 1, 1989. Under the 1988 amendments to the MMPA, this action would require nations participating in the IATTC observer program to implement 100 percent observer coverage unless it was determined that an alternative program "will provide sufficiently reliable evidence of the average rate of incidental taking of marine mammals in this fishery" (54 FR 20171, May 10, 1989). For the non-U.S. fleet for the 1989 year, it was determined that 33 percent coverage of a harvesting nation's purse seine fleet's fishing trips would provide sufficiently reliable estimates of the average dolphin mortality rates of those fleets. In 1990, fifty percent observer coverage was required for fishing trips for any nation with five to nine vessels (55 FR 42235, Oct. 18, 1990). Further, a standard of 75 percent observer coverage was proposed for the 1991 fishing season, and 90 percent for the 1992 and subsequent seasons (55 FR 42235, Oct. 18, 1990).

3. Estimation of Incidental Dolphin Mortality

Back-calculating historical or pre-exploitation population size (K) requires estimates of historical kill rates in the fishery. The incidental kill of dolphins is generally estimated by multiplying the mean kill of dolphins per set in a year (kill rate) by the total number of net sets involving dolphins made by the tuna fleet during the same year. Because there were few observations on the rate

of dolphin kill in the puse-seine fishery for yellowfin tuna during the period 1958–1972, especially in the early part of the period, and because there was no information available on kill rates from non-U.S. vessels during 1959–1962, extrapolation of kill rate data was necessary (Smith 1983).

TABLE 1.—THE NUMBER OF CLASS 6 VESSELS (THE CLASS OF VESSELS LARGE ENOUGH TO SET ON DOLPHINS) THAT HAVE OPERATED IN THE EASTERN TROPICAL PACIFIC SINCE 1971. THE NUMBER REPRESENTS VESSELS FISHING ON YELLOWFIN TUNA AND DOES NOT DISTINGUISH BETWEEN VESSELS FISHING ON DOLPHINS, LOGS OR SCHOOLS[1]

Year	Number of class six vessels		
	U.S.	Non-U.S.	Total
1971	71	13	84
1972	80	18	98
1973	93	26	119
1974	102	29	131
1975	112	34	146
1976	112	44	156
1977	108	52	160
1978	98	58	156
1979	98	59	157
1980	94	70	164
1981	97	68	165
1982	95	58	153
1983	66	55	121
1984	42	62	104
1985	41	74	115
1986	37	71	108
1987	37	91	128
1988	40	92	132
1989	40	82	122
1990	28	94	122
1991	14	90	104

[1] Data are from IATTC Annual Reports except for 1990 (data from the IATTC Third Quarterly Report for 1990) and 1991 (data are from the IATTC Third Quarterly Report for 1991).

Substantially more data on kill rates are available for 1973–1978 than for the period 1959–1972 (Smith 1983). The kill rate data for the U.S. fleet during 1973–1978 are more reliable than in the earlier data because they were collected by NMFS employees trained specifically for obtaining kill information. The non-U.S. tuna purse seine fleet increased markedly during this period. The first observations of the dolphin kill rate by this fleet were in 1979, and kill rates are considered similar to that of the U.S. fleet for that year. Smith (1983) assumed that during the early 1970s the non-U.S. kill rate was also comparable to that of the U.S. fleet. Therefore, following the 1979 workshop, Smith (1983) estimated the non-U.S. kill by assuming (1) the same kill rates by species in 1971–1972 for the non-U.S. fleet as that observed aboard U.S. vessels in those years; (2) the same kill rates by species in 1973 for the non-U.S. fleet as that of the U.S. fleet in 1975; and (3) a linear convergence of kill rates by the non-U.S. fleet toward the 1979 U.S. rate.

4. Incidental Take Quotas

Quotas on total dolphin mortality have been imposed on the U.S. tuna purse-seine fishery (the kill by species/stock and of all species combined) since 1977 (41 FR 45015, Oct. 14, 1976). The maximum allowable kill was decreased annually from approximately 30,000 in 1977 (41 FR 45015, Oct. 14, 1976) until 1980 when NMFS set an annual quota of 20,500 for each of the next 5 years (1981 through 1985) (45 FR 72178, Oct. 31, 1980). The maximum allowable total kill (all species) by the U.S. fleet has remained at 20,500 individuals until the present.

The quota for directed incidental kill of eastern spinner dolphins by the U.S. fleet was set at zero following the 1977 determination that the population of eastern spinner dolphins was depleted (42 FR12010, Mar. 1, 1977). Only accidental takes (non-directed takes) were permitted thereafter until 1985.

The 1984 amendments to the MMPA re-established an incidental take quota for the stock of eastern spinner dolphins at 2,750 for the U.S. fleet (at 49 FR 46908, Nov. 29, 1984). This quota is still in effect. However the 1984 amendments further state that "no accidental taking of either species (*i.e.*, coastal spotted and eastern spinner dolphin) is authorized at any time when an incidental taking of that species is permitted," meaning in this case that if the quota on the stock of eastern spinner dolphins is reached, the accidental take policy would not apply to cover further takings of that species.

5. Eastern Spinner Dolphin Mortality

The best estimates of the number of eastern spinner dolphins killed by non-U.S. vessels and U.S. vessels (as determined by a recognized panel of experts following the November 18–22, 1991 workshop on the status of ETP dolphin stocks, DeMaster, in press) are presented in Table 2. NMFS estimates that between 1959 and 1990, over 1,300,000 eastern spinner dolphins died as a result of this fishery. The total fishery-related mortality of eastern spinner dolphins in the U.S. and non-U.S. fleets was greatest from 1960 to 1975, peaking in 1961 during which an estimated 138,800 were killed. Mortality exceeded 100,000 dolphins per year in 6 years from 1960 to 1970, and approached 100,000 again in 1966 and 1972 (Table 2).

In 1977 the quota for directed incidental kill was set at zero (42 FR 12010, Mar. 1, 1977), and only an accidental take (a non-directed take) was permitted. In protest, the purse-seine fleet remained in port until May, 1977 (Scheele and Wilkinson 1988). Mortality was lower than previous years (1,800, from Table 2), primarily because fishing occurred for approximately half the year. The significant reduction in reported mortality levels of eastern spinner dolphin was coincident with the U.S. prohibition against intentional incidental takes of this species, an imposition of quotas on the total number of dolphins (all species) which could be killed in the fishery (42 FR 22575, May 4, 1977), and implementation of the mandatory observer program in 1976. The mortality of the eastern spinner dolphin continued to decline to a low of approximately 745 animals in 1983 (Table 2). The low mortality in 1983 (Table 2) occurred during a year when a major El Niño-Southern Oscillation event forced many fishing vessels to leave the ETP for the western Pacific (Scheele and Wilkinson 1988) or stay in port, resulting in very low fishing effort (IATTC 1985). The 1984 amendments to the MMPA established an incidental take quota of 2,750 for the U.S. fleet (49 FR 46908, Nov. 29, 1984) which is still in effect.

The best estimates of eastern spinner dolphin mortality are from 1986 to the present. In 1986, the first year of observer coverage for the entire U.S. and non-U.S. purse-seine fleet, estimated total mortality (all species combined) was 133,000 dolphins (Table 2), and mortality estimates exceeding 52,000 animals per year have continued through 1990 (Table 2). The number of eastern spinner dolphins killed annually between 1986 and 1989 ranged between 10,358 and 19,526 individuals (Table 2). The increase in total dolphin mortality was primarily attributable to the non-U.S. fleet, as the quota for the U.S. fleet remained at 2,750 individuals. The high kill levels recorded in the non-U.S. fleet when observer coverage was adequate to obtain more precise estimates of mortality (beginning in 1986) suggest that dolphin mortality by the non-U.S. fleet may also have been high during years prior to implementation of the observer program. Therefore the mortality level of eastern spinner dolphins and total dolphin mortality (all species) in the purse-seine fishery may be greater than that indicated in Table 2 due, primarily, to underestimation of dolphin mortality by the non-U.S. fleet until, at least, 1986.

In 1990, the number of eastern spinner dolphin kills decreased to 5,378, and total dolphin mortality decreased to approximately 52,000 individuals (Table

2). Preliminary IATTC estimates for 1991 indicated that total dolphin mortality has further decreased to about 25,000 individuals (per J. Joseph's testimony at the March 18, 1992 hearing before the House Subcommittee on Fisheries and Wildlife and the Environment).

6. Abundance of Eastern Spinner Dolphins

Smith (1979) estimated abundance of eastern spinner dolphins in 1979 as 298,400 animals using pooled data from research and fishing vessels. Holt and Powers (1982), using recalculated values for average school size, mixed-species proportions, and area inhabited by each population calculated a 1979 estimate of 293,000 eastern spinner dolphins on the basis of data collected from research vessels, and 292,700 using data collected from research vessels and tuna vessels combined, with coefficients of variation (CV) of 0.22 and 0.24, respectively. Smith (1983) used the 293,000 value to determine the status of the 1979 population relative to the pre-exploitation size of the population.

Following *ATA* v. *Baldridge*, NMFS recalculated the population estimate of eastern spinner dolphin using MOPS survey data collected from 1977 to 1983, and the parameter values for mean school size, number of animals on trackline, and an increased area inhabited by the dolphin population (as mandated by the Court directives). The adjusted 1979 population estimate more than doubled to 918,800 (NMFS 1985).

Abundance estimates of eastern spinner dolphins have recently become available as a result of data collected during research vessel surveys (referred to as Monitoring of Porpoise Stocks (MOPS)) conducted in the ETP, between 1986–90 (Wade and Gerrodette, in press), as directed by the 1984 amendments to the MMPA. The MOPS surveys were designed to detect trends in the relative abundance of the dolphin stocks and previous analyses were directed towards that end (Holt, Gerrodette and Cologne 1987). Additionally, the MOPS surveys have produced the best available information for calculating population estimates, and Wade and Gerrodette (in press) have re-analyzed the MOPS data to produce the best estimates of absolute abundance currently available. This determination was made during the November 18–22, 1991, workshop on the status of ETP dolphin stocks, after a review of the analytical techniques by a recognized panel of experts (DeMaster, in press).

TABLE 2.—ESTIMATES[1] OF FISHING MORTALITY FOR EASTERN SPINNER DOLPHIN AND OF ALL SPECIES (TOTAL MORTALITY) FROM 1959–1990 FOR THE U.S. AND NON-U.S. PURSE-SEINE FLEETS IN THE ETP

Year	Number killed	
	Eastern spinner	Total mortality
1959	14,300	55,000
1960	124,300	478,000
1961	138,800	534,000
1962	56,200	216,000
1963	62,400	240,000
1964	101,400	390,000
1965	119,600	460,000
1966	97,200	374,000
1967	66,800	257,000
1968	59,500	229,000
1969	106,000	461,000
1970	107,400	467,000
1971	58,400	254,000
1972	87,400	380,000
1973	18,400	151,000
1974	17,800	135,000
1975	17,100	136,000
1976	14,700	135,000
1977	1,800	31,000
1978	1,100	21,000
1979	1,460	21,000
1980	1,108	32,000
1981	2,261	35,000
1982	2,606	29,000
1983	745	13,000
1984	6,033	41,000
1985	8,853	59,000
1986	19,526	133,000
1987	10,358	99,000
1988	18,793	79,000
1989	15,245	97,000
1990	5,378	52,000

[1] Data from Smith (1979, 1983), Wahlen (1986) and Pungsley (1983) for the years 1959–1976; IATTC (1989, 1990, 1991) for the years 1979–1990, in addition to Hall and Boyer (1990, 1992) for the years 1989–1990. Table since 1973 presented in DeMaster, in press.

Wade and Gerrodette (in press) estimated the population of eastern spinner dolphins to be 391,200 to 754,200 for each of the 5 years of the MOPS surveys, with CVs of 0.37–0.42. The average abundance estimate over the 5 years of the survey period was 588,500. That estimate was further revised as a result of review and comments of the methodology delivered during the November, 1991, workshop. The revised estimate of 565,800 (Wade and DeMaster, pers. comm.) is considered the best available estimate of the current population (1991) of the eastern spinner dolphin.

7. Classification of the Eastern Spinner Dolphin as Depleted Under the MMPA

Population estimates of the eastern spinner dolphin population prior to 1979 were calculated by Smith (1983) (methods described therein), using 1979 abundance estimates (from combined research vessel and fishing vessel data, and from research vessel data alone), pooled kill-rate data collected by observers prior to (and including) 1972, then extrapolated back to 1959 for the years when no kill-rate data were collected (at Smith 1983). Smith estimated that the pre-exploitation or hisorical population of eastern spinner dolphin in 1959 (population size at K) was approximately 1,500,000. The 1979 population estimate (relative to the back-calculated estimate of the population at K) indicated that the eastern spinner dolphin population in 1979 was reduced to 17–25 percent of K (Smith 1983).

Following the decision of the Court of Appeals in *ATA* v. *Baldrige*, the historical or pre-exploitation population size (K) as re-back-calculated using the increased 1979 population estimate of 918,000 and kill-rate values lower than those used by Smith (1983). Using these values, K was estimated at 1,670,000 (Scheele and Wilkinson 1988) and the 1979 status of eastern spinner dolphins was considered to be at 55 percent of K (NMFS 1985).

Because back-calculation estimates of historical abundance are sensitive to estimates of current abundance (Smith and Polacheck 1979; Wade 1991), and because the 1986–1990 MOPS surveys resulted in estimates of current abundance that are considered more reliable than estimates based on previous data, Wade (1991) recalculated the status of eastern spinner dolphins using the best range of recent estimates of abundance, 391,200 to 754,200, a recruitment rate equal to 0.03, and a MNPL equal to 65 percent of K (values duplicating the mid-range parameter estimates of Smith 1983). Using these parameters, Wade considered the current population to be from 26 to 44 percent of K, a range substantially below the MNPL, and depleted under the MMPA.

The abundance estimates from each year of the MOPS surveys, 1986–1990 (at Wade and Gerrodette 1991) can also be compared to the 1979 population size of 918,800 (considered to be 55 percent of K), as adjusted after *ATA* v. *Baldrige*. The 1986–1990 population estimates range from 43 to 82 percent of the 1979 estimate, or 24–45 percent of K. When

using the best estimate of the population from the MOPS surveys, 565,800 (Wade (1991) revised by DeMaster (in press) based on comments received during the November, 1991, workshop), the current population is 62 percent of the adjusted 1979 estimate, or 33 percent of K.

Conclusion

A determination of depletion must, in significant part, be based on the relationship between the K and OSP, as described in the MMPA. MNPL is considered the lower end of OSP, and NMFS has adopted by regulation that MNPL occurs at 60 percent of K (42 FR 64548, Dec. 27, 1977 and 45 FR 72178, Oct. 31, 1980).

The MOPS surveys, 1986–1990, have produced the best available data for calculating the current population estimate of ETP dolphin populations. When using these data, the current population estimate is considered substantially below OSP (Wade 1991), and depleted under the MMPA. Compared to the adjusted 1979 population size as a result of the decision of the Court of Appeals in *ATA v. Baldrige* (NMFS 1985), the 1986–1990 population estimates range from 43–62 percent of the 1979 estimate, or 24–45 percent of K. Using the best estimate of the population obtained from the MOPS surveys, 565,800, the current population of eastern spinner dolphin is considered to be at 33 percent of K.

Based on previous determinations regarding the status of the eastern spinner dolphin population (42 FR 12010, Mar. 1, 1977; Smith 1983; and *ATA v. Baldrige*) and the best scientific information available, NMFS has determined that this population is below OSP, and that the petitioned action is warranted. Therefore, the eastern spinner dolphin is proposed to be designated as depleted under the MMPA.

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Classification

The Assistant Administrator has determined that this proposed rule is exempt from the requirements of Executive Orders 12291 and 12612, the Paperwork Reduction Act, and the Regulatory Flexibility Act, because section 115(a)(2) of the MMPA requires listing decisions to be based "solely on the basis of the best scientific information available."

A designation of depletion in this instance, which is similar to a listing action under ESA section 4(a), is categorically excluded by NOAA Administrative Order 216–6 from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act.

Dated: June 12, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.15, a new paragraph (d) is added to read as follows:

§ 216.15 Depleted species.

* * * * *

(d) Eastern spinner dolphin (*Stenella longirostris orientalis*).

[FR Doc. 92–14209 Filed 6–16–92; 8:45 am]

BILLING CODE 3510–06–M

Notices

Federal Register
Vol. 57, No. 117
Wednesday, June 17, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Meeting of the National Organic Standards Board (NOSB)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463), as amended, the Agricultural Marketing Service announces the forthcoming meeting of the NOSB.

DATES: July 8–10, 1992.

ADDRESSES: The July 8 meeting will be held in the conference room of the Larimer County Extension Office, 200 West Mountain Avenue, Fort Collins, Colorado, from 8 a.m. to 5:30 p.m., with public input scheduled from 1 p.m. to 5:30 p.m. The July 9 and 10 meetings will be held in the Eddy Building on the Colorado State University campus from 8 a.m. to 5:30 p.m. in rooms 109, 113, 221, and 222. Specific committee meetings, room assignments, and times will be announced in the agenda.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, National Organic Standards Board, Room 4006–South Building, P.O. Box 96456, Washington, DC 20090–6456. Telephone: (202) 720–2704.

SUPPLEMENTARY INFORMATION: Section 2119 of the Food, Agriculture Conservation, and Trade Act of 1990 (Fact Act), Pub. L. 101–624 (7 U.S.C. 6501 *et seq.*), requires establishment of a National Organic Standards Board. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and handling and to advise the Secretary on any other aspects of the implementation of Title XXI of the Fact Act. The NOSB met for the first time in Washington, DC, in March and formed six committees to work on various aspects of the Program. The committees are: Crops Standards, Processing, Labeling and Packaging, Livestock Standards, Accreditation, National Materials List, and International Issues. The full Board will meet in plenary sessions and the six committees will meet in separate sessions.

The purpose of this meeting is to receive input on organic standards issues from individuals and organizations, with particular emphasis on issues and concerns of producers and handlers in the local region. The Board will also review progress reports and plans of its working committees and work to develop a possible approach for a long range plan for program implementation. The Board is seeking input on: Materials needed for livestock and poultry health; processing aids, and inputs, especially those for which exemptions are needed; possible criteria for accrediting certifying agents; elements that should be considered in developing a farm plan; and, other concerns as they relate to the organic program.

At the request of the local organic industry, the Board will participate in a fact finding tour on July 7, to meet with organic producers and processors to become acquainted with their specific concerns and issues.

A final agenda will be available on June 12, 1992. Persons requesting copies should contact Mrs. Fox at the above address or telephone number.

Meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Harold S. Ricker at the above address or FAX to (202) 690–0338 by June 26, 1992, in order to be scheduled. Each individual or organization will be allocated 10 minutes for orally presenting the key issues of concern and should provide 16 copies of written material elaborating on those issues for the Board.

Dated: June 12, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92–14212 Filed 6–16–92; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

[3410–11]

Nighthawk Timber Sale, Medicine Bow National Forest, Carbon County, WY

AGENCY: Forest Service, USDA

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber on the Medicine Bow National Forest within Carbon County, Wyoming. The proposed Nighthawk Timber Sale would be located in the Singer Peak roadless area.

The Nighthawk Timber Sale area was analyzed in a previous Environmental Assessment which also included the Mill Creek Timber Sale south of this proposal in 1985. This EIS will provide an updated and intensified analysis of this proposed timber sale.

The proposal includes harvesting trees, road construction and reconstruction, road closures, site preparation and slash treatment.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice it is beginning a full environmental analysis and decision-making process for this period so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by July 27, 1992.

ADDRESSES: Send written comments to Michael B. Murphy, District Ranger, Hayden Ranger District, P.O. 187, Encampment, WY 82325.

FOR FURTHER INFORMATION CONTACT: George Foley, NEPA Coordinator, (307) 327–5481.

SUPPLEMENTARY INFORMATION:

The Nighthawk Timber Sale is a site specific project identified in the Medicine Bow Land and Resource Management Plan (Forest Plan). This project was tentatively scheduled during the first ten-year period of the Forest Plan, and is intended to implement the

Forest Plan and achieve the desired future condition for the area.

The proposal includes harvesting lodgepole pine and spruce/fir on approximately 1,200 acres. Under this proposal, 14.3 miles of roads will be constructed to remove the trees. Upon sale termination, 90 percent of the constructed roads will be closed.

The proposed timber sale contains portions of management prescription areas 4B and 7. The emphasis in 4B is on habitat for one or more indicator species and 7 has an emphasis on wood-fiber production and utilization. The proposed action is consistent with the Forest Plan goals of "monitoring of insect and disease * * * and treatment to reduce risk of epidemic outbreaks" and "providing for timber harvest to support local dependent industries."

The decision to be made is how to best manage the Singer Peak area, and whether to implement the proposed timber sale and other related activities. The related activities would include road construction and reconstruction, site preparation, and road closures.

The Deciding Official will be Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest, 2468 Jackson Street, Laramie, Wyoming, 82070–6535.

We expect to publish a draft environmental impact statement in late 1992, to ask for public comment on the draft material for a period of 45 days, and to complete a final environmental impact statement by June, 1993.

The 45 day public comment period on the draft environment impact statement will commence on the day the Environmental Protection Agency publishes a "Notice of Availability" in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points). Please note that comments you make on the draft environmental impact statement will be regarded as public information.

USDA Forest Service, R–2, Medicine Bow National Forest, KP, May 26, 1992, (307) 327–5481.

Dated: May 29, 1992.

Gerald G. Heath,

Forest Supervisor.

[FR Doc. 92–14127 Filed 6–16–92; 8:45 am]

BILLING CODE 3410–11–M

Environmental Analysis

AGENCY: Pacific Southwest Region, Forest Service, USDA.

ACTION: Notice of environmental analysis for interim guidelines for management of the Sierran Province of the California spotted owl.

SUMMARY: The Pacific Southwest Region of the Forest Service is initiating environmental analysis to amend the Regional Guide and Forest Plans for interim management of habitat of the Sierran Province of the California spotted owl. An Interdisciplinary Team will prepare interim guidelines to maintain habitat management options. The interim guidelines will affect timber harvest, fuels management, snag and large woody debris retention as well as projects that may remove trees but have non-timber management goals such as campground construction or hazard tree removal.

It is intended that the interim guidelines be in effect for approximately two years. This time is needed for additional data to be gathered, analyzed and documented to provide the final direction for management of the California spotted owl in accordance with the National Environmental Policy Act (NEPA) nad the National Forest Management Act (NFMA).

The interim guidelines will amend the Regional Guide for the Pacific Southwest Region and up to ten Forest Plans, including Forest Plans for the Eldorado, Inyo, Lassen, Modoc, Plumas, Sequoia, Sierra, Stanislaus and Tahoe National Forests, and the Lake Tahoe Basin Management Unit. The Records of Decision for the Lassen and Sierra Forest Plans have not yet been issued. If they are still not issued when the interim guidelines decision is made, the Regional Guide will direct management of the Sierran Province of the California spotted owl on these Forests.

The Forest Service expects to complete analysis on the interim guidelines by September 1992. At the completion of the analysis, a decision will be made to either document the analysis in an evnironmental assessment (EA) or begin to prepare an environmental impact statement (EIS). Note that this Notice is not a Notice of Intent to prepare an EIS. Due to the short-term nature of these interim guides, the Forest Service currently expects that the analysis will be documented in an environmental assessment and a Finding of No Significant Impact will be issued as a result of this analysis. However, if the analysis determines that an EIA is necessary, a Notice of Intent would be issued in the **Federal Register** at a later date.

It is our intent that these interim guidelines apply to project planning initiated after the interim guideline decision is implemented. Project analyses farther in the analysis process may comply with this interim guidelines decision at the discretion of the Forest Supervisor.

Public comment is requested. The Pacific Southwest Region (Region 5) is now soliciting public comments to help identify issues related to this analysis and these comments are requested by July 3, 1992.

FOR FURTHER INFORMATION CONTACT: Comments or questions about this Notice should be addressed to DeAnn Zwight, California Spotted Owl Interim Guidelines Team Leader, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 at (415) 705–2842.

SUPPLEMENTARY INFORMATION:

History

In April 1990, the report of the Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl (ISC Report) stated that the spotted owl habitat area (SOHA) strategy was a "prescription of extinction" for the northern spotted owl because it tended to isolate spotted owl populations from each other and did not facilitate dispersal of owls. Although the California subspecies of the spotted owl is not currently listed, nor proposed for listing as threatened or endangered, the Forest Service is obligated under regulations promulgated pursuant to the National Forest Management Act to insure maintenance of viable populations of all native species. Region 5 has identified the California spotted owl as a sensitive species on National Forest throughout its range.

The ISC Report, although not specific to the California spotted owl, did cast doubt on the validity of a SOHA management system for all spotted owl subspecies. In June 1991, a California Spotted Owl Assessment Team Steering Committee was formed by the Forest Service and State of California as a partnership of State and Federal agencies to make an assessment of the current status of the California subspecies. The Steering Committee included members from serveral State of California and Federal entities, and included observers from local agencies and private entities, including timber industry and environmental groups.

The Steering Committee established two teams to conduct the assessment—a Technical Assessment Team and a Policy-Implementation Team. The Technical Assessment Team was to produce a report on the California spotted owl which would analyze and Interpret relevant information on owl biology, characterize habitat attributes, evaluate current land management practices, evaluate a range of options to achieve an amount and configuration of suitable habitat to provide for the long-term maintenance of the owl throughout its range and identify research, inventory and monitoring needs. The report of the Technical Assessment Team (the CASPO Report) was issued on May 8, 1992.

The Policy-Implementation Team is now examining and evaluating alternative institutional approaches for maintaining viability of the California spotted owl while minimizing negative economic, environmental and social costs. The Policy-Implementation Team's report is expected in September 1992.

Since July, the Forest Service has been using a cumulative effects analysis (CEA) process in order to identify and preserve options for maintaining habitat for the California spotted owl pending completion of the CASPO report. The CEA process was developed with the assistance of Dr. Jared Verner, team leader for the Technical Assessment Team. The CEA process is still being used for all projects proposing harvest of timber.

The release of the CASPO Report on May 8, 1991, clarified the need to reexamine current management and develop interim direction for the protection of the California spotted owl and its habitat. The California Spotted Owl Steering Committee process will not be concluded until September 1992.

Interim Guideline Public Involvement

This notice solicits public involvement. Due to the importance of issuing interim guidelines in a timely manner, the time available for solicitation of public comment must necessarily be short. Public comment request letters have been mailed to over 300 publics in California. This mailing asked for a public comment due date of June 26. Due to the time it has taken to gather some information about the scope of this analysis, this **Federal Register** Notice is being published later than anticipated, and thus the public comment due date has been extended. Publics, including those who received the mailing, have until July 3, 1992 to provide their comments.

Part of the recent information gathered was a more detailed review of the time required for development and analysis of final guidelines. In our initial mailing, the Forest Service estimated it would take two to three years to develop final guidelines for management of the California spotted owl. We now believe a two year period is more realistic, and that is the time period stated in this Notice.

Scope of Interim Guideline Analysis

This analysis will analyze alternative methods for managing the Sierran Province of the California spotted owl for approximately the next two years. It is not feasible within these time frames to analyze how changing the spotted owl management standards and guidelines relates in detail to other Regional Guide and Forest Plan features such as riparian, visual quality and archaeological direction. This level of analysis will be completed with individual Forest Plan amendments as appropriate. Only general effects analysis will be possible for indirectly related resources. More detail will be necessary for directly related resources such as the California spotted owl itself, and timber and fuels resources.

This analysis will not address the Southern Province of the California spotted owl. Because the CASPO Report endorsed the existing management direction on National Forest System lands, amendment is not warranted. Long-term research and monitoring needs will also not be addressed in this analysis.

Tentative Interim Guideline Analysis Objectives

Provide for maintenance of options to manage the Sierran Province of the California spotted owl, during the short-term. Based on findings in the CASPO report, specific objectives are:

(1) Protect known owl nest stands (or main roost stands if nest stands are not known) from any significant modification.

(2) Protect very large old trees throughout Sierran conifer forests.

(3) Begin to address the issue of excessive fuels.

We have a challenging job ahead of us to analyze interim management of the Sierran Province of the California spotted owl within these short time frames. We encourage your comments and input to help shape this analysis. Please remember the short-term nature of these guidelines and frame your input in that context. With your help we can make this process a success.

Dated: June 10, 1992.

Dale N. Bosworth,

Deputy Regional Forester.

[FR Doc. 92-14153 Filed 6-16-92; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Pitchpine Run Watershed, PA

AGENCY: USDA—Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pitchpine Run Watershed, Jefferson County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. Richard N. Duncan, State

Conservationist, Soil Conservation Service, One Credit Union Place, suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 782–2202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard N. Duncan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention. The planned works of improvement involve the installation of a conduit system through the Borough of Reynoldsville, Pennsylvania to replace an existing modified channel. The project includes fish and wildlife enhancement features.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Richard N. Duncan.

No administrative action on implementation of the proposal will be taken until July 17, 1992.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 5, 1992.

Richard N. Duncan,

State Conservationist.

[FR Doc. 92–14120 Filed 6–16–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 580]

Expansion of Foreign-Trade Zone 9, Honolulu To Include a Site in Kihei (Maui County), Hawaii

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the FTZ Board Regulations (15 CFR part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, The State of Hawaii's Department of Business, Economic Development and Tourism, on behalf of the State of Hawaii, Grantee of FTZ 9, has applied to the Board for authority to expand its general-purpose zone, which presently consists of 3 sites in Honolulu, to include a site in Kihei (Maui County), Hawaii, adjacent to the Kahului Customs port of entry;

Whereas, The application was accepted for filing on November 5, 1991, and notice inviting public comment was given in the **Federal Register** on November 19, 1991 (Docket 73–91, 56 FR 58335),

Whereas, An examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, The expansion is necessary to establish general-purpose zone services in the Kahului Customs port of entry area; and,

Whereas, The Board has found that the requirements of the FTZ Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now therefore, The Board hereby orders:

That the Grantee is authorized to expand its general-purpose zone (FTZ 9) to include a site in Kihei, Maui County, Hawaii, in accordance with the application filed on November 5, 1991 (Doc. 73–91), subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28.

Signed at Washington, DC, this 9th day of June, 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 92–14237 Filed 6–16–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 581]

Expansion of Foreign-Trade Zone 9, Honolulu To Include a Site in Hilo (Hawaii County), Hawaii

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the FTZ Board Regulations (15 CFR part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, The State of Hawaii's Department of Business, Economic Development and Tourism, on behalf of the State of Hawaii, Grantee of FTZ 9, has applied to the Board for authority to expand its general-purpose zone, which presently consists of 3 sites in Honolulu, to include a site in Hilo (Hawaii County), Hawaii, within the Hilo Customs port of entry;

Whereas, The application was accepted for filing on November 5, 1991, and notice inviting public comment was given in the **Federal Register** on November 19, 1991 (Docket 74–91, 56 FR 58335),

Whereas, An examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, The expansion is necessary to establish general-purpose zone services in the Hilo Customs port of entry area; and,

Whereas, The Board has found that the requirements of the FTZ Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now therefore, The Board hereby orders:

That the Grantee is authorized to expand its general-purpose zone (FTZ 9) to include a site in Hilo, Hawaii County, Hawaii, in accordance with the application filed on November 5, 1991 (Doc. 74–91), subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28.

Signed at Washington, DC, this 9th day of June 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–14238 Filed 6–16–92; 8:45 am]

BILLING CODE 3510–DS–M

[Board Order No. 579]

Approval for Manufacturing Activity (Telephone and Related Equipment) Within Foreign-Trade Zone 171 Liberty County, Texas (Houston Poe Area)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act) and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, Pursuant to § 400.28(a)(2) of the Board's regulations, approval of the Board is required prior to commencement of new manufacturing / processing activity within existing zone facilities;

Whereas, Pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has

authority to act for the board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is the same as activity recently approved by the Board (§ 400.32(b)(1)(i));

Whereas, The Liberty County Economic Development Corporation, grantee of FTZ staff 171, has made application (filed 1–24–92, A(32b1)–2–92; Doc. 14–92, 5–27–92) to the Board on behalf of Sinopac International Corporation for authority to manufacture telephones and related equipment within FTZ 171 in Liberty County, Texas;

Whereas, The FTZ has reviewed the proposal and finds that the criteria for processing the proposal under § 400.32(b)(1) are met and that, upon consideration of the criteria enumerated in § 400.31(b), the proposal is deemed to be in the public interest;

Whereas, Based on the foregoing review and pursuant to § 400.32(b)(1), the Executive Secretary recommends approval of the proposal;

Now, Therefore, The Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request for manufacturing at the Sinopac International Corporation plant within FTZ 171, located in Liberty County, Texas, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including §400.28.

Signed at Washington, DC, this 9th day of June 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–14239 Filed 6–16–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–357–807, A–834–804, A–821–804, A–570–819, A–823–804, A–307–807]

Initiation of Antidumping Duty Investigations: Ferrosilicon From Argentina, Kazakhstan, the People's Republic of China, Russia, Ukraine, and Venezuela

AGENCY: Import Administration International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1776.

INITIATION OF INVESTIGATIONS:

The Petitions

On May 22, 1992, we received petitions filed in proper form by AIMCOR, Alabama Silicon, Inc., American Alloys, Inc., Globe Metallurgical, Inc., Silicon Metaltech Inc., United Autoworkers of America Local 523, United Steelworkers of America Locals 12646, 2528, 5171 and 3081, and Oil, Chemical & Atomic Workers Local 389 (petitioners). In accordance with 19 CFR 353.12, the petitioners allege that ferrosilicon from Argentina, Kazakhstan, the People's Republic of China (PRC), Russia, Ukraine, and Venezuela is being or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under sections 771(9)(C) and 771(9)(D) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations and on behalf of certified unions representing the production employees of U.S. ferrosilicon producers. In any interested party, as described under paragraph (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

The product covered by these investigations is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these investigations. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing by weight not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Argentina

Petitioners based their estimate of United States Price (USP) on the December 1991 U.S. f.o.b. import value of ferrosilicon. Petitioners subtracted from USP foreign inland freight charges. Petitioners added to USP the amount of Argentine value added taxes (VAT) which would have been collected had the exported merchandise been taxed.

Petitioners' estimate of FMV is based on two types of information, both obtained by a foreign research consultant: (1) Observed prices in Argentina for ferrosilicon, exclusive of

packing, during September 1991 and March 1992 and (2) quoted base prices for ferrosilicon, inclusive of packing, in the same periods. Petitioners added U.S. packing to the observed prices but made no adjustment for packing costs to the quoted base prices. Consequently, we subtracted from the quoted base prices the home market packing cost provided in the petition and added U.S. packing cost. Petitioners also added to both the observed and quoted base prices the amount of VAT assessed in Argentina on home market sales. We adjusted FMV by subtracting Argentine VAT and adding the theoretical amount of VAT which would have been paid on the U.S. merchandise had it been taxed.

Kazakhstan

Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon from the former Union of Soviet Socialist Republics (U.S.S.R.) for the period September 1991 to February 1992. U.S. Customs statistics for imports from Kazakhstan were not available because the U.S. import statistics did not differentiate U.S. imports of the subject merchandise from the former republics of the U.S.S.R. The Department will conduct a separate investigation of the subject merchandise produced in Kazakhstan and will collect and analyze USP data from specific exporters and/or producers in this proceeding. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Petitioners contend that the FMV of Kazakhstan-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy (NME) countries. In accordance with section 771(18)(c) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. This presumption covers the geographic area of the former U.S.S.R., each part of which retains the previous NME status of the former U.S.S.R. Therefore, Kazakhstan will continue to be treated as an NME until this presumption is overcome (see, Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan, 57 FR 23380 (June 3, 1992) (Uranium)). In the course of this investigation, parties will have the opportunity to raise and provide relevant information on this issue, as well as on whether FMV should be based on prices or costs in the NME. The Department further presumes, based on the extent of central control in an NME, that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific rates. (See, Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588, (May 6, 1991) (Sparklers), for a discussion of the information the Department considers appropriate in this regard.)

In accordance with section 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the Kazakh government has selected which factories produce for export to the United States, for purposes of this investigation we intend to base FMV only on those factories in Kazakhstan which are known to produce ferrosilicon for export to the United States.

Petitioners calculated FMV on the basis of the valuation of the factors of production. Because Kazakhstan-specific economic data were not available at the time of the filing of the petition, due to the recent dissolution of the U.S.S.R., petitioners were unable to determine which market economy was most comparable to Kazakhstan in terms of economic development. Consequently, petitioners used publicly available economic data on the U.S.S.R. in order to select the appropriate surrogate. Based on their comparison of the relative levels of economic development, petitioners used Mexico as the surrogate country in valuing the factors of production. For purposes of this initiation, we have accepted Mexico as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c) (4) of the Act.

Petitioners used one of their members' (*i.e.*, AIMCOR's) factors for raw material and processing material inputs, electricity, and labor for constructed value (CV). The raw material, energy and labor factors for producing ferrosilicon are based on AIMCOR's actual experience from October 1990 through September 1991. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by AIMCOR.

Petitioners based labor and electricity values on 1990 wage rates and 1991 energy rates in Mexico. Petitioners based the value of raw material costs for steel scrap, quartzite, coke, bituminous coal, and charcoal on 1991 f.a.s export values from the United States to Mexico. Petitioners added an amount for foreign inland freight expense to Mexico for these raw materials. Petitioners based the value of raw material costs for electrode paste on a delivered import price from Brazil to Mexico. Petitioners based raw material costs for diesel oil, woodchips, water and other processing materials on its own average costs from October 1990 through September 1991.

Pursuant to section 773(c) of the Act, petitioners added to CV the statutory minima of 10 percent for general expenses and eight percent for profit, and an amount for shipment preparation.

PRC

Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon for the period September 1991 to February 1992. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Petitioners contend that the FMV of PRC-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns NME countries. In accordance with section 771(18)(c) of the Act, the PRC is presumed to be an NME and the Department has treated it as such in previous investigations (see, Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the PRC, 57 FR 21058 (May 18, 1992)). In the course of this investigation, parties will have the opportunity to raise and provide relevant information on this issue, as well as on whether FMV should be based on prices or costs in the NME. The Department further presumes, based on the extent of central control in an NME, that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific rates. (See, Sparklers, *supra*.)

In accordance with 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the PRC government has selected which factories produce for export to the United States, for purposes of this investigation we intend to based FMV only on those factories in the PRC

which are known to produce ferrosilicon for export to the United States.

Petitioners calculated FMV on the basis of the valuation of the factors of production. In valuing the factors of production, petitioners used India as a surrogate country. For purposes of this initiation, we have accepted India as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioners used AIMCOR's factors for raw material and processing material inputs, electricity, and labor for CV. The raw material, energy and labor factors for producing ferrosilicon are based on AIMCOR's actual experience from October 1990 through September 1991. However, petitioners made an adjustment to the labor factor to account for the smaller scale of more labor-intensive ferrosilicon operations existing in the PRC. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by AIMCOR.

Petitioners based labor and electricity values on 1991 wage rates and energy rates in India. Petitioners based the value of raw material costs for steel scrap, quartzite, coke, bituminous coal, diesel fuel, and water on Indian values. Petitions basesd the value of raw material costs for electrode paste on a delivered import price from Italy to India. Petitioners based material costs for charcoal and woodchips, and other processing materials on AIMCOR's average costs from October 1990 through September 1991.

Pursuant to section 773(c) of the Act, petitioners added to CV the statutory minima of 10 percent for general expenses and eight percent for profit, and an amount for shipment preparation.

Russia

Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon from the former U.S.S.R. for the period September 1991 to February 1992. U.S. Customs statistics for imports from Russia were not available because the U.S. import statistics did not differentiate U.S. imports of the subject merchandise from the former republics of the U.S.S.R. The Department will conduct a separate investigation of the subject merchandise produced in Russia and will collect and analyze the USP data from specific exporters and/or producers in this proceeding. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Petitioners contend that the FMV of Russian-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns NME countries. In accordance with section 771(18)(c) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. This presumption covers the geographic area of the former U.S.S.R., each part of which retains the previous NME status of the former U.S.S.R. Therefore, Russia will continue to be treated as an NME until this presumption is overcome (see, Uranium, *supra*).

In the course of this investigation, parties will have the opportunity to raise and provide relevant information on this issue, as well as on whether FMV should be based on prices or costs in the NME. The Department further presumes, based on the extent of central control in a NME, that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to seprate, company-specific rates. (See, Sparklers, *supra*.)

In accordance with section 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the Russian government has selected which factories produce for export to the United States, for purposes of this investigation we intend to base FMV only on those factories in Russia which are known to produce ferrosilicon for export to the United States.

Petitioners calculated FMV on the basis of the valuation of the factors of production. Because Russia-specific economic data were not available at the time of the filing of the petition, due to the recent dissolution of the U.S.S.R., petitioners were unable to determine which market economy was most comparable to Russia in terms of economic development. Consequently, petitioners used publicly available economic data on the U.S.S.R. in order to select the appropriate surrogate. For further discussion of petitioners' choice of surrogate and calculation of FMV, see the "Kazakhstan" section of this notice.

Ukraine

Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon from the former U.S.S.R. for the period September 1991 to February 1992. U.S. Customs statistics for imports from Ukraine were not available because the U.S. import statistics did not differentiate U.S. imports of the subject merchandise from the former republics of the U.S.S.R. The Department will conduct a separate investigation of the subject merchandise produced in Ukraine and will collect and analyze USP data from specific exporters and/or producers in this proceeding. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Petitioners contend that the FMV of Ukrainian-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, concerning NME countries. In accordance with section 771(18)(c) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. This presumption covers the geographic area of the former U.S.S.R., each part of which retains the previous NME status of the former U.S.S.R. Therefore, Ukraine will continue to be treated as an NME until this presumption is overcome (see, Uranium, *supra*). In the course of this investigation, parties will have the opportunity to raise and provide relevant information on this issue, as well as on whether FMV should be based on prices or costs in the NME. The Department further presumes, based on the extent of central control in a NME, that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific rates. (See, Sparklers, *supra*.)

In accordance with section 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the Ukrainian government has selected which factories produce for export to the United States, for purposes of this investigation we intend to base FMV only on those factories in Ukraine which are known to produce ferrosilicon for export to the United States.

Petitioners calculated FMV on the basis of the valuation of the factors of production. Because Ukraine-specific economic data were not available at the time of the filing of the petition, due to the recent dissolution of the U.S.S.R., petitioners were unable to determine which market economy was most comparable to Ukraine in terms of

economic development. Consequently, petitioners used publicly available economic data on the U.S.S.R. in order to select the appropriate surrogate. For further disucssion of petitioners' choice of surrogate and calculation of FMV, see the "Kazakhstan" section of this notice.

Venezuela

Petitioners based their estimate of USP on the U.S. f.o.b. import value of ferrosilicon. Petitioners calculated separate USPs for two time periods: (1) September 1991 through February 1992 and (2) September 1991. Petitioners subtracted from each USP foreign inland freight charges.

Petitioners' based their estimate of FMV on a price for ferrosilicon, exclusive of packing, obtained by a foreign consultant. Petitioners added U.S. packing to FMV.

Less Than Fair Value Comparisons

Petitioners allege dumping margins ranging from 20.52% to 113.27% for ferrosilicon from Argentina, 104.18% for Kazakhstan, Russia, and Ukrain, 137.73% for the PRC, and 22.99% to 23.80% for Venezuela. We recalculated the margins alleged for Argentina as described above. The recalculated margins range from 17.70% to 96.23%.

Regarding Venezuela, we do not consider petitioners' comparison of USP based on average September through February import data and FMV based on a price for a different period to be appropriate for purposes of initiation. Such a comparison involves non-contemporaneous sales. Consequently, the Department is initiating this investigation on the basis of petitioners' comparison of USP based on September 1991 import data and FMV.

Initiation of Investigations

We have examined the petitions on ferrosilicon from Argentina, Kazakhstan, Russia, the PRC, Ukraine, and Venezuela and have found that the petitions meet the requirements of section 732(c). Therefore, we are initiating antidumping duty investigations to determine whether imports of ferrosilicon from the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by July 6, 1992, whether there is a reasonable indication that imports of ferrosilicon from Argentina, Kazakhstan, Russia, the PRC, Ukraine, and/or Venezuela are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed to conclusion in accordance with the statutory and regulatory time limits.

The notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 11, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-14240 Filed 6-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-808]

Initiation of Countervailing Duty Investigation: Ferrosilicon From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: Paulo F. Mendes or Annika L. O'Hara, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5050 or (202) 377-0588, respectively.

INITIATION:

The Petition

On May 22, 1992, AIMCOR, Alabama Silicon, Inc., American Alloys, Inc., Globe Metallurgical, Inc., Silicon Metaltech, Inc., United Autoworkers of America—Local 523, United Steelworkers of America—Local 12646, United Steelworkers of America—Local 2528, United Steelworkers of America—Local 5171, United Steelworkers of America—Local 3081, and Oil, Chemical & Atomic Workers—Local 389 (hereinafter, the petitioners) filed with the Department of Commerce (the Department) a countervailing duty petition on behalf of the United States industry producing ferrosilicon. In accordance with section 702(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that manufacturers, producers, or exporters of ferrosilicon in Venezuela receive bounties or grants within the meaning of section 701 of the Act. In past countervailing duty investigations, Venezuela was considered to be a "country under the Agreement" within the meaning of section 701(b)(3) of the Act. As such, Title VII of the Act applied in those investigations, and the U.S. International Trade Commission (ITC) was required to determine whether imports of the subject merchandise from Venezuela were materially injuring, or threatened material injury to, a U.S. industry before countervailing duties could be imposed.

On August 31, 1990, Venezuela became a contracting party to the General Agreement on Tariffs and Trade (GATT). Since qualification as a "country under the Agreement" under section 701(b)(a) requires that the GATT not apply between the United States and the country from which the subject merchandise is imported, Venezuela is no longer eligible for treatment as a "country under the Agreement" within the meaning of section 701(b)(3). However, because Venezuela is a GATT contracting party, and merchandise within the scope of the petition which is imported under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7202.21.1000, 7202.21.5000, 7202.29.0010, and 7202.29.0050 is nondutiable, the petitioners are nonetheless required to allege that, and the ITC is required to determine whether, pursuant to section 303(a)(2), imports of this nondutiable merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry. The remaining HTSUS items, as described in the "Scope of Investigation" section of this notice, are dutiable. Therefore, for these items, the ITC is not required to determine whether, pursuant to section 303(a)(2), imports from Venezuela of these products materially injure, or threaten material injury to, a U.S. industry.

The petitioners stated that they have standing to file the petition because they are interested parties, as defined in sections 771(9)(C) and 771(9)(D) of the Act. In addition, the petitioners stated that the union petitioners have standing independent of the producer petitioners. The union petitioners represent workers at several facilities currently producing ferrosilicon in the United States; such facilities employ the majority of the ferrosilicon production workers in the United States. If any interested party, as described in sections 771(9)(C), (D), (E), or (F) wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration, room B099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Allegation of Bounties or Grants

The petitioners allege that the following programs provide bounties or grants to producers of the subject merchandise in Venezuela:

1. Preferential Power Rates
2. Preferential Rates from Government of Venezuela (GOV)-owned corporate affiliates
3. GOV Grants
4. GOV's Assumption of Debt
5. GOV's Equity Infusions
6. General Interest Rate Subsidy
7. Sales Tax Exemption
8. Preferential Short-term Financing—FINEXPO
9. Other Preferential FINEXPO Financing

We are not investigating certain programs alleged to be benefitting producers of the subject merchandise in Venezuela. The petitioners point to FESILVEN's financial statements as evidence that accounts payable at year-end amount to preferential rates provided by GOV-owned corporate affiliates. However, because the evidence provided concerning accounts payable does not indicate that benefit is being provided in this case, we are not investigating this program. We are also not investigating the alleged equity infusion because the petitioners provided insufficient evidence to support their claim that the equity infusion was made on terms inconsistent with commercial considerations. Finally, we are not investigating the alleged general interest rate subsidy. The evidence provided by the petitioners does not take into account the terms of FESILVEN's loans in connection with the company's expansion plan.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Initiation of Investigation

Under section 702(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on ferrosilicon from Venezuela and have found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of ferrosilicon receive bounties or grants.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agency in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages of weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Clacium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy contained by weight not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the HTSUS: 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

ITC Notification

Section 702(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determination by the ITC

The ITC will determine, by July 6, 1992, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Venezuela of certain products covered in the scope of this investigation. If the ITC determination is negative, our investigation with respect to the products classified under HTSUS items 7202.21.1000, 7202.21.5000, 7202.29.0010, and 7202.29.0050 will terminate; otherwise, it will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: June 11, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-14241 Filed 6-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-812, C-427-805, C-428-812, C-412-811]

Postponement of Preliminary Determinations; Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, Germany, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: For Brazil contact Phil Pia (202-377-3691), Office of Countervailing Compliance, for Germany contact Rick Herring (377-3530), for France contact Vincent Kane (377-2815), and for the United Kingdom contact Stephanie Hager (377-5055), Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

POSTPONEMENT: On May 8, 1992, the Department published in the **Federal Register** the initiation of countervailing duty investigations on certain hot rolled lead and bismuth carbon steel products from Brazil, France, Germany, and the United Kingdom (57 FR 19884). Our preliminary determinations were originally scheduled for July 7, 1992.

In accordance with section 703(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 355.15(b), we determine these investigations to be extraordinarily complicated due to the number and

complexity of the subsidy programs alleged, including regional, national, and European Community programs, and the novel issues raised. Among the novel issues raised are privatization and the impact of corporate structures and corporate restructuring on the bestowal of benefits upon the companies under investigation.

For these reasons, we determine that these investigations are extraordinarily complicated. We further determine that the governments and other parties are cooperating and that additional time is necessary to make these preliminary determinations. Therefore, in accordance with section 703(c)(1)(B) of the Act and 19 CFR 355.15(b), we are postponing the preliminary determination for each investigation to no later than September 10, 1992.

This notice is published pursuant to section 703(c)(2) of the Act and 19 CFR 355.15(e).

Dated: June 11, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-14242 Filed 6-16-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[CFDA No. 11.431; Docket No. 920408-2108]

NOAA Climate and Global Change Program—Program Announcement

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) began the Climate and Global Change Program (Program) in 1989. This Program contributes to the evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. The Program builds on NOAA's mission requirements and longstanding capabilities in global change research and prediction.

NOAA's Climate and Global Change Program is a key contributing element of the U.S. Global Change Research Program (USGRP), which is coordinated by the Interagency Committee on Earth and Environmental Sciences. NOAA's Program is designed to complement other agency contributions to that national effort, including, in particular, the Earth System Science activities of the National Aeronautics and Space Administration and the Global Geosciences Program of the National Science Foundation.

NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Current Program plans assume that 30–35% of the total resources available will support extramural efforts, particularly those involving the broad academic community. The President's budget request for the Climate and Global Change Program is $78 million in FY93.

This Program Announcement is for short duration projects to be conducted by investigators over a one to two year period. Based upon the actual appropriation received, NOAA anticipates as much as $8 million (approximately 10% of anticipated FY93 program funds) will be applied toward extramural grants and cooperative agreements already in progress. Similarly, as much as $18 million (approximately 23% of anticipated FY93 funding) is expected to be devoted for new starts, the majority of which will be applied to extramural grants and cooperative agreements. Actual funding levels are dependent upon the President's FY93 budget request and the final FY93 appropriations.

DATES: Proposals must be submitted on or before July 17, 1992.

ADDRESSES: Proposals may be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, suite 1225, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: The individual project managers listed in the Program Priorities section, below, or the Office of Global Programs, National Oceanic and Atmospheric Administration, at the address given above, (301) 427–2089 [OMNET: NOAA.GP].

SUPPLEMENTARY INFORMATION:

Program Authority

49 U.S.C. 1463; 15 U.S.C. 313; 15 U.S.C. 2901; and 15 U.S.C. 2921.

Program Objectives

The long term objective of the Climate and Global Change Program is to provide reliable predictions of global climate change and associated regional implications on time scales ranging from seasons to a century or more. NOAA believes that these time scales can be studied with an acceptable probability of success and are the most relevant for fundamental social concerns. Predicting the behavior of the coupled ocean-atmosphere-land surface system will characterize NOAA's role in a successful national effort to deal with observed or anticipated changes in the global environment.

Program Priorities

In FY 1992, NOAA will give priority attention to individual proposals in the areas described below.

Atmospheric Chemistry—The Atmospheric Chemistry Project focuses on global monitoring, process-oriented laboratory and field studies, and theoretical modeling to improve the predictive understanding of atmospheric trace gases that influence the Earth's chemical and radiative balance. FY93 grants in Atmospheric Chemistry will focus on studies associate with the International Global Atmospheric Chemistry (IGAC) program of the International Geosphere-Biosphere Programme (IGBP). Proposals are solicited for the following: (i) (highest priority) the North Atlantic Regional Study (NARE), with emphasis on intensive field studies and modeling; (ii) the international Support Activity: Intercalibrations/intercomparisons, with emphasis on the Nonmethane Hydrocarbon Intercomparison Experiment; (iii) the East Asian/North Pacific Regional Experiment (APARE), with emphasis on coordination of ground-based chemical processes; and (iv) the Northern Wetlands Study (NOWES) and associated programs, with emphasis on atmospheric chemical processes. For an information sheet containing further details, contact: Daniel L. Albritton or Fred C. Fehsenfeld, NOAA/Aeronomy Laboratory, Boulder, CO, 303–497–5785, or –5819 [OMNET: D.Albritton].

Surface and Upper Ocean Observations—This program focuses on long-term, *in situ* ocean observations needed to assess climate and global change. The long range goal is to establish an effective system for *in situ* ocean observations in support of the U.S. Global Change Program. In FY93, observational programs will focus on measurements of the upper ocean temperature field on a global basis, the surface temperature and thickness of the high latitude ice cover, the sea surface and upper ocean salinity and sea surface meteorology. This Program also will give priority to observing system simulation experiments (OSSE) aimed at sampling strategy and optimum design studies for the parameters listed above. Priority will be given to projects in support of measurement requirements of the Tropical Ocean Global Atmosphere (TOGA) Program, the Global Energy and Water Cycle Experiment (GEWEX), the World Ocean Circulation Experiment

(WOCE), the Joint Global Ocean Flux Studies (JGOFS), the Atlantic Climate Change Program (ACCP), and the Arctic System Science (ARCSS) initiative. For further information contact: William Woodward, NOAA/National Ocean Service, Rockville, MD, 301–443–8110 [OMNET: W.Woodward].

Global Sea Level—The goal of the Global Sea Level Program is to monitor, understand, and predict global sea level change. Proposals for research and development are sought to enhance our understanding of past, present, and future rates of change in global sea level. For FY93, priority will be given to the following topics: (i) Analysis of sea level variability in the deep oceans on interdecadal and longer time scales and its relation to coastal tide gauge measurements; (ii) research on the phenomenon of postglacial rebound; (iii) analysis of the existing global sea level record; (iv) assimilation of satellite altimeter data into ocean models; and (v) improved environmental and other corrections for Very Long Baseline Interferometry (VLBI) and Global Positioning System (GPS). For further information contact: Bruce Douglas, NOAA/National Ocean Service, Rockville, MD, 301–443–8858 [OMNET: NOAA.GEOSAT].

Atlantic Climate Change—The goal of this project is to determine the nature and influence of the interactions between the meridional circulation of the Atlantic Ocean, sea surface temperature and salinity, and the global atmosphere. Proposals are sought in the following areas: (i) Seasonal to decadal variability in the climate system resulting from interactions between the global atmosphere and the North Atlantic Ocean [These studies should be model-based or utilize existing observational data.]; (ii) monitoring of the ocean structure in the Grand Banks and adjacent Newfoundland Basin, particularly mechanisms that control sea surface temperature anomalies and meridional thermohaline fluxes; and (iii) compilation and analysis of observations collected in the tropical Atlantic to study interhemispheric and intergyre exchange and to develop monitoring strategies. Observational studies directed at developing strategies for monitoring the intensity of tropical thermohaline circulation also will be considered. For further information contact: David Goodrich, NOAA/Office of Global Programs, Silver Spring, MD, 301–427–2089 x38 [OMNET: D.Goodrich].

Tracers and WOCE Hydrography—As part of NOAA's contribution to the World Ocean Circulation Experiment (WOCE), proposals are sought for tracer observations on upcoming WOCE hydrographic cruises. Of particular interest are studies employing tracers operating on decadal to centennial time scales, including chloroflourocarbons, helium/tritium, and C–14. It is anticipated that WOCE-related proposals will be jointly-reviewed by NOAA and the National Science Foundation. For further information contact: David Goodrich, NOAA/Office of Global Programs, Silver Spring, MD, 301–427–2089 x38 [OMNET: D. Goodrich].

Ocean—Atmosphere Carbon Fluxes—As part of NOAA's contribution to the Joint Global Ocean Flux Study (JGOFS), and as a continuing effort aimed at enhancing our understanding of the role of the ocean in sequestering the increasing burden of anthropogenically-derived carbon dioxide in the atmosphere, proposals are sought for planned 1993 NOAA research cruises along 110° W (South Pacific) and 20° W (North Atlantic). Proposals addressing the measurement of specific chemical variables including alkalinity, pH, nutrients, dissolved organic carbon, dissolved organic nitrogen, primary productivity, and carbon isotopes are encouraged. For an information sheet containing further details, contact: James F. Todd, NOAA/Office of Global Program, Silver Spring, MD, 301–427–2089 x32 [OMNET: J. Todd].

Tropical Oceans and Global Atmosphere (TOGA)—The goal of the TOGA Program is to understand and model the coupled variations of the global atmospheric circulation and tropical ocean circulation for the purpose of predicting the inter-annual variability of the atmospheric regime. TOGA supports research in the areas of monitoring and data management, empirical studies, and modeling and prediction. For further information contact: Kenneth Mooney, NOAA/Office of Global Programs, Silver Spring, MD, 301–427–2089 x14 [OMNET: K. Mooney].

Climate Modeling and Prediction—The long-term goal of this program is to model and predict climate variability on time and space scales relevant to global change. For FY93, priority will be given to establishment of regional modeling centers. However, limited funding will be available for projects which support: (i) Research contributing to description of the fully coupled climate system; (ii) identification of the characteristics of past fluctuations in the climate system; and (iii) the prediction of future climate system states. This program also includes support for prediction research by both the Dynamic Extended Range Forecasting, TOGA, Atlantic Climate Change, and Atmospheric and Land Surface Programs. For further information contact: David Goodrich, Michael Coughlan or Kenneth Mooney, NOAA/Office of Global Programs, Silver Spring, MD, 301–427–2089 [OMNET: D. Goodrich, M. Coughlan, or K. Mooney].

Operational Measurements—The goal of this project is to develop and produce climate and global change information products from NOAA operational measurement systems, including environmental satellite and *in situ* observing systems. Priority will be given to satellite-based or combined satellite/*in situ* products representing the following: (i) Oceanic variables; (ii) land surface variables; (iii) Earth radiation budget, atmospheric water vapor, clouds and aerosols; (iv) temperature, moisture and wind soundings; (v) stratospheric variables; and (vi) precipitation (see also: Atmospheric and Land Processes Project). Activities include: Instrument calibration; monitoring in support of climate and global change requirements; development and testing of algorithms for remote sensing products; generation of operational data and information products; product validation; development and generation of integrated satellite/*in situ* products; and product evaluation and application. Proposals dealing with the planetary and surface radiation budget, development of climate products from the Trios Operational Vertical Sounder (TOVS), and the production and evaluation of operational climate products, are encouraged. For further information contact: Thomas Kaneshige, NOAA/Office of Global Programs, Silver Spring, MD, 301–427–2089 x26 [OMNET: T. Kaneshige]; or Arnold Gruber, NOAA/NESDIS, Washington, DC 20233, 301–763–8053 [OMNET: A. Gruber].

Information Management—The goals of this project are: (i) To provide the organization and focus through which data producers, data managers, and data users actively participate in the design, implementation and review of the NOAA Climate and Global Change (C&GC) information management system; (ii) to assist in construction of data and information (metadata) sets required by C&GC researchers; (iii) to provide users with easy access to C&GC data and information; and (iv) to manage long-term C&GC data and information archives. Proposals are sought which support the data and information management goals of the NOAA C&GC Program. Priorities include construction of long-term

climate and global change data sets, information products involving data assembly, digitization quality control, data rescue, and information management in applicable national and international research programs. For further information contact: Thomas Kaneshige, NOAA/Office of Global Programs, Silver Spring, MD, 301–427–2089 x26 [OMNET: T. Kaneshige]; or Gregory Withee, NOAA/NESDIS, Washington, DC 20235, 202–606–4594 [OMNET: G. Withee].

Atmospheric and Land Surface Processes—Proposals are encouraged for research into the wide range of problems that limit our understanding of those atmospheric and land surface processes through which the overall energy and water balance of the Earth's climate system is maintained. Priority is given to proposals directed at understanding and modeling processes associated with: (i) Clouds, aerosols and water vapor, (ii) precipitation, and (iii) land surface hydrology. Proposals are encouraged which support the objectives of the Global Energy and Water Cycle Experiment (GEWEX), including the GEWEX Continental-Scale International Project (GCIP) which has the Mississippi Basin as its primary study area, and relevant aspects of BOREAS which is focussed on the boreal forest region of Canada. Detailed science plans have been prepared for GEWEX, GCIP and BOREAS. In view of strong mutual interests in conducting and supporting research directed at these programs, close coordination in reviewing and funding proposals will be maintained between NOAA and other USGCRP funding agencies such as NASA and NSF. For further information contact: Michael Coughlan, NOAA/Office of Global Programs, Silver Spring, MD, 301–427–2089 x40 [OMNET: M. Coughlan].

Marine Ecosystem Response—The principal objective of the Marine Ecosystem Response Program is to determine the relationship between ecosystem dynamics and the climatic variability associated with global change. This program is integrated with the USGCRP Global Ocean Ecosystem Dynamics (GLOBEC) program, which in turn is part of the emerging International GLOBEC. NOAA and the National Science Foundation (NSF) have agreed to jointly plan and support GLOBEC research. A joint solicitation for proposals, separate from this announcement, will be issued by NSF and NOAA at a later date. New proposals for FY 1992 NOAA funding will be entertained in the North Atlantic, Eastern Boundary Currents, and Coral Reefs ecosystems, and for innovative/pilot studies. For further information contact Mark Eakin NOAA/Global Programs, Silver Spring, MD, 301–427–2089 x710 [OMNET: M. Eakin]; or Michael Sissenwine, NOAA/National Marine Fisheries Service, Silver Spring, MD, 301–427–2239 [OMNET: M. Sissenwine].

Paleoclimatology—The Paleoclimatology Program solicits proposals that will make significant advances in our understanding of decade to century-scale variability in the climate system. This includes use of new, high-resolution time series from climatically-sensitive areas presently without adequate data coverage (e. g., the tropics and southern hemisphere), and large data sets that can be used to reconstruct large-scale historical patterns of climatic change. FY93 funds will also be available for the development of databases used to verify climate and ocean models. For further information contact Mark Eakin, NOAA/Global Programs, Silver Spring, MD, 301–427–2089 x710 [OMNET: M. Eakin]; or Jonathan Overpeck of NOAA/National Geophysical Data Center, Boulder, CO, 303–497–6390 [OMNET: J. Overpeck].

Economics—The Economics Program has two primary research areas: (i) The value of information and decision-making under uncertainty; and (ii) impacts and adaptation. Examples of prototype research projects which strengthen ties between physical and economic modeling include: identification and characterization of the scientific and economic factors critical to decision-making; total cost analysis of response to accelerated sea level rise; economic impacts and management implications of climate change on Pacific fisheries; and development of standards for measuring differential environmental/economic impacts and forcing characteristics associated with various trace gases. For further information contact: Sally Kane, NOAA Office of the Chief Scientist, Washington, DC, 202–606–4360.

Proposal should indicate clearly which of these areas is being investigated. The names, affiliations, and phone numbers of Climate and Global Change project managers are provided above. Prospective applicants are encouraged to contact these individuals for further information. NOAA has a range of unique facilities and capabilities that can be applied to climate and global change investigations. Proposals that seek to exploit these resources in collaborative efforts between NOAA and extramural investigators are encouraged. Proposals should be sent to the NOAA Office of Global Programs rather than to the individual project managers.

Selection Criteria

Selection criteria, with approximate weights, are as follows:

(1) Scientific Merit (40%): (a) intrinsic scientific value of the study; and (b) importance and relevance to the goal of the Climate and Global Change Program and to the research areas listed above.

(2) Methodology (20%): (a) focused scientific objective and strategy, including measurement strategies and data management considerations where appropriate; and (b) time line and milestones, products.

(3) Readiness (20%): (a) nature of the problem; (b) relevant history and status of existing work; (c) level of planning, including existence of supporting documents; (d) strength of proposed scientific and management team; and (e) past performance record of proposers.

(4) Linkages (10%): (a) connections to existing or planned national and international programs; and (b) partnerships with other agency or NOAA participants, where appropriate.

(5) Costs (10%): (a) adequacy of proposed resources; (b) appropriate share of total available resources; (c) prospects for joint funding; and (d) identification of long term commitments. Matching funding is encouraged but is not required.

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Non-academic proposers are urged to seek collaboration with academic institutions. Funding for non-US. institutions is not available under this announcement. Awards are made on the basis of competitive review. Each proposal receives independent mail review and is evaluated by one or more independent review panels. The time from target date to grant award varies with program area. Applicants will be notified of their status within 3 to 6 months.

Proposal Requirements

Proposals submitted in response to this announcement should include the following:

(1) An original and two copies of the proposal.

Proposals must be limited to 30 pages (numbered), including budget, investigators' vitae, and all appendices, and should be limited to funding requests for one or two years duration. Proposals should be sent to the NOAA

Office of Global Programs at the address given in this notice. The target date for submission of proposals for the FY 93 funding cycle is 30 days after the date of publication of this notice.

(2) Signed title page and abstract.

The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address.

(3) Statement of work.

The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and relevance to the program priorities listed above. Benefits of the proposed project to the scientific community, governmental agencies and the general public should be discussed. An abstract must be included in the statement of work.

(4) Budget.

A detailed budget is required. Personnel costs, including salaries and fringe benefits, permanent equipment, expendable equipment, travel, publication costs, indirect costs and other costs such as those for supplies, printing, computer time, or utilities must be included.

(5) Vitae.

Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years, with up to five other relevant papers.

(6) Other requirements.

(a) Applications for federal assistance must be submitted on Standard Form 424 (Rev 4–88), Standard Form 424A (4–88), and Standard Form 424B (Rev 4–88).

(b) All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

(i) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of Form CD–511.

(ii) *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of Form CD–511.

(iii) *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of Form CD–511 apply to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

(iv) *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(c) Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL. Form CD–512 is intended for the use of recipients and should not be transmitted to NOAA. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NOAA in accordance with the instructions contained in the award document.

(d) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(e) Applicants that incur costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of the Department of Commerce to cover pre-award costs.

(f) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable. This program is excluded from coverage under Executive Order 12372.

(g) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(h) Applicants are reminded that inclusion of false information on an application can provide grounds for denying or terminating funds. In addition, unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(i) Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until either:

(i) These debts have been paid;

(ii) A negotiated repayment schedule is established and at least one payment is received; or

(iii) Other arrangements satisfactory to the Department of Commerce are made to pay the debt.

(j) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Dated: June 11, 1992.

Dr. J. Michael Hall,

Director, Office of Global Programs, National Oceanic and Atmospheric Administration.

[FR Doc. 92–14121 Filed 6–16–92; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Nepal

June 11, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 19, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or

call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 640 and 641 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 56507, published on November 5, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 11, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 31, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on June 19, 1992, you are directed to amend the October 31, 1991 directive to reduce the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Nepal:

Category	Twelve-month limit
640	109,111 dozen.
641	250,470 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–14168 Filed 6–16–92; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of a Request for Public Comments on Bilateral Textile Consultations with the Government of India on Certain Cotton and Man-Made Fiber Textile Products

June 11, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 29, 1992, the Government of the United States requested consultations with the Government of India with respect to pajamas and other nightwear in Categories 351/651.

Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, between the Governments of the United States and India, the United States reserves the right to establish a limit of 45,080 dozen for the ninety-day consultation period which began on May 29, 1992 and extends through August 28, 1992.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 351/651, produced or manufactured in India and exported during the prorated period beginning on May 29, 1992 and extending through December 31, 1992, of not less than 91,639 dozen.

A summary market statement concerning Categories 351/651 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 351/651, under the agreement with the Government of India, or to comment on domestic production or availability of products included in Categories 351/651, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of India.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 351/651. Should such a solution be reached in consultations with the Government of India, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the , CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 ER 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—India

Category 351/651—Men's and Boys' and Women's and Girls' Cotton and Man-Made Fiber Pajamas and Other Nightwear

May 1992

Import Situation and Conclusion

U.S. imports of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear, Category 351/651, from India reached 152,327 dozen in the year ending March 1991, 72 percent above the 88,310 dozen imported a year earlier. During the first three months of 1992 imports of Category 351/651 from India

reached 76,067 dozen, 82 percent above their January-March 1991 level.

The sharp and substantial increase in Category 351/651 imports from India is causing a real risk of disruption in the U.S. market for men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear.

U.S. Production and Market Share

U.S. production of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear, Category 351/651, declined from 16,173 thousand dozen in 1987 to 11,393 thousand dozen in 1991, a 30 percent decline. The domestic manufacturers' share of the U.S. men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear market fell from 75 percent in 1987 to 58 percent in 1991, a drop of 17 percentage points..

U.S. Imports and Import Penetration

U.S. imports of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear, Category 351/651, increased from 5,360 thousand dozen in 1987 to 8,109 thousand dozen in 1991, an increase of 51 percent. Category 351/651 imports continue to increase in 1992, up 10 percent in the first three months of 1992 over the January-March 1991 level. The ratio of imports to domestic production doubled increasing from 33 percent in 1987 to 71 percent in 1991.

Duty-Paid Value and U.S. Producers' Price

Approximately 80 percent of Category 351/651 imports from India during the year ending March 1992 entered under HTSUSA number 6208.21.0020—women's cotton nightdresses and pajamas other than of yarn dyed fabrics. These nightdresses and pajamas entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable nightwear.

[FR Doc. 92-14167 Filed 6-16-92; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with Oman on Certain Cotton Textile Products

June 11, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories for which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 31, 1992, under the terms of Section 204 of the agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Oman with respect to cotton trousers, breeches and shorts in Categories 347/348, produced or manufactured in Oman.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Oman, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Oman and exported during the twelve-month period which began on May 31, 1992 and extends through May 30, 1993, at a level of not less than 617,492 dozen.

A summary market statement concerning Categories 347/348 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 347/348, or to comment on domestic production or availability of products included in Categories 347/348, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Oman.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 347/348. Should such a solution be reached in consultations with the Government of Oman, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Oman

Category 347/348—Trousers, Slacks and Shorts

May 1992

Import Situation and Conclusion

U.S. imports of cotton trousers, slacks, and shorts, Category 347/348, from Oman surged to 661,969 dozen in the year ending in March 1992, double the 328,470 dozen imported during the year ending March 1991. During the first three months of 1992, imports of Category 347/348 from Oman reached 325,023 dozen, two and one half times the 130,422 dozen imported in January-March 1991, and 70 percent of Oman's total calendar year 1991 imports.

The sharp and substantial increase in Category 347/348 imports from Oman is causing disruption in the U.S. market for cotton trousers, slacks, and shorts.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton trousers, slacks, and shorts, Category 347/348, declined from 48,816 thousand dozen in 1987 to 46,749 thousand dozen in 1991, a decline of 4 percent. U.S. imports of cotton trousers, slacks, and shorts, Category 347/348, increased from 29,132 thousand dozen in 1987 to 39,448 thousand dozen in 1991, an increase of 35 percent. Category 347/348 imports continue to increase in 1992, up 39 percent in the first three months of 1992 over the January-March 1991 level. The ratio of imports to domestic production increased from 60 percent in 1987 to 84 percent in 1991, an increase of 24 percentage points. The domestic manufacturers' share of the U.S. cotton

trousers market fell from 63 percent in 1987 to 54 percent in 1991.

Duty-Paid Value and U.S. Producers' Price

Approximately 80 percent of Category 347/348 imports from Oman during the year ending March 1992 entered under HTSUSA numbers 6203.42.4015—men's woven cotton trousers other than of corduroy and denim; 6203.42.4050—men's woven cotton shorts; 6203.42.4060—boys' woven cotton shorts; 6204.62.4020—women's woven cotton trousers other than of corduroy and denim and 6204.62.4055—women's cotton woven shorts. These trousers and shorts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 92-14169 Filed 6-16-92; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 92-C0002]

General Electric Company, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with General Electric Company, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 2, 1992.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 92-C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0626.

SUPPLEMENTARY INFORMATION: See Settlement Agreement and Order which appear below.

Dated: June 1, 1992.

Sheldon D. Butts,

Deputy Secretary.

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of General Electric Company, Inc., a corporation; Settlement Agreement and Order

[CPSC Docket No. 92-C0002]

1. This Settlement Agreement and Order, entered into between General Electric Company, Inc., a corporation ("GE"), and the staff of the Consumer Product Safety Commission ("staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

2. The provisions of this Settlement Agreement and Order shall apply to GE and to each of its successors and assigns.

I. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission ("Commission"), an independent federal regulatory agency of the United States of America, established by Congress pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2053.

4. GE is a corporation organized and existing under the laws of the State of New York, with its principal place of business located in Schenectady, New York.

II. Jurisdiction

5. GE has distributed certain models of automatic drip coffeemakers ("coffeemakers"), (a) for sale to a consumer for use in or around a permanent or temporary household or residence, in recreation or otherwise, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation or otherwise. The coffeemakers are "consumer products" within the meaning of section 3(a) (1) of the CPSA, 15 U.S.C. 2052(a) (1).

6. GE manufactured and distributed the coffeemakers for sale to consumers throughout the United States. GE, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4) and (11).

III. The Product

7. GE manufactured, and distributed, and sold approximately nine million (9,000,000) single fuse drip coffeemakers from April 1977 through April 1984. These coffeemakers use a model No. 4415 thermal cut off ("TCO"), a safety device manufactured by a third party, to prevent overheating.

IV. Staff Allegations of the Failure of GE to Comply With the Reporting Requirements of Section 15(b) of the CPSA

8. From 1982 through 1990, GE received an increasing number of claims and lawsuits alleging that coffeemakers containing the 4415 TCO had overheated or caught fire. By September 1989, claims and lawsuits against GE exceeded 300 in number. The complaints received by GE included claims of extensive fire damage, personal injury and loss of life.

9. On August 22, 1990, GE submitted to the Commission a report under section 15(b) of the CPSA. The report described GE's concerns about the shortcomings of the 4415 TCO. The Commission staff contends that, before August 22, 1990, GE had information which reasonably supported the conclusion that GE 4415-fuse coffeemakers contained a defect which could create a substantial product hazard; and that GE failed to report that information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

V. Response of GE

10. GE responds as follows: In September 1989 GE received its first notification of a valid claim involving serious injuries and the loss of two lives in a fire attributable to the coffeemaker. Following that notification, GE conducted engineering analyses which led to the filing of its report to the Commission on August 22, 1990. Based on the number and nature of the claims it received and the information in GE's possession concerning the reliability of the 4415 TCO, GE reasonably believed, at all relevant times before August 2, 1990, that a report was not required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

11. GE denies that, before August 2, 1990, it had information which reasonably supported the conclusion that its coffeemakers contained a defect which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further denies that it failed to meet its obligations to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to the coffeemakers. After filing its section 15(b) report, GE voluntarily recalled the coffeemakers.

VI. Agreement of the Parties

12. GE and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement Order.

13. Without admitting any fault, liability or statutory violation, GE agrees to pay the Commission $400,000, in settlement of this civil penalty action, within 10 days after service of the Final Order of the Commission accepting this Settlement Agreement. This payment is made as a settlement to resolve the dispute arising from allegations by the staff that GE violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to the subject coffeemakers manufactured and sold by GE.

14. Statements contained herein are in connection with the compromise of a disputed claim, and nothing in this Settlement Agreement and Order shall be deemed an admission. The Commission has made no determination that the coffeemakers contain a defect which could create a substantial product hazard or that a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred.

15. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

16. Upon final acceptance of this Settlement Agreement by the Commission, GE knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the staff allegations cited herein, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to the staff allegations cited herein, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the staff claims cited herein.

17. Upon final acceptance of this Settlement Agreement by the Commission, the Commission will issue a press release announcing the Agreement, its subject and its terms.

18. This Settlement Agreement is binding upon the Commission and GE and, with the exception of GE's successors and assigns, does not bind or limit others not party to this Settlement Agreement.

19. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject GE to appropriate legal action.

20. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

General Electric Company, Inc.
Dated: April 7, 1992.

Jay F. Lapin,
Vice President-General Counsel and Public Affairs, General Electric Company, Inc.

Dated: April 8, 1992.

Daniel Marcus,
Wilmer, Cutler & Pickering, Attorney for General Electric Company, Inc.

The Consumer Product Safety Commission.

David Schmeltzer,
Associate Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,
Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: June 1, 1992.

William J. Moore, Jr.,
Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby *Ordered*, That General Electric Company, Inc. shall pay, within 10 days of final acceptance of this Settlement Agreement and service of this order, a sum in the amount of $400,000 to the Consumer Product Safety Commission.

Provisionally accepted on the 1st day of June 1992.

By order of the Commission.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 92–14114 Filed 6–16–92; 8:45 am]
BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Rockwell International Corporation, a corporation of the State of Delaware, having an office at 2201 Seal Beach Blvd, P.O. Box 4250, Seal Beach, CA 90740–8250, an exclusive, world-wide license under its interest in a joint invention of Paul R. Smith, a Government employee, and Jeffery A. Graves, a Rockwell International Corporation employee, titled "Improved Titanium Aluminide and Titanium Alumjnide Composites Via an In-Situ Ductile/Fracture Resistant Layer," and identified by Air Force Invention No. 20162 and Rockwell Invention No. 91L091.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the disclosure may be obtained upon request from the same addressee.

All communications concerning this notice should be sent to Donald J. Singer, Chief, Patents Division, Air Force Legal Services Agency, 1900 Half Street, SW., room 5160, Washington, DC 20324–1000. Telephone inquiries may be directed to (202) 475–1386.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 92–14125 Filed 6–16–92; 8:45 am]
BILLING CODE 3910–01–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Stealth and Stealth Countermeasures Task Force will meet July 8, 1992, from 9:00 am to 5:00 pm, at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy requirements for stealth and stealth countermeasures systems. The entire agenda for the meeting will consist of discussions of key issues related to stealth, stealth countermeasures, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense

and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has been determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia, 22302-0268, Telephone Number (703) 756-1205.

Dated: June 8, 1992.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-14180 Filed 6-16-92; 8:45 am]

BILLING CODE 3810-AE-F

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 24, 1992. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in room 107/108 of the meeting facility at Penn State Great Valley, 30 East Swedesford Road, Malvern, Pennsylvania.

An informal conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include a presentation by the National Park Service on studies concerning possible scenic rivers designation of White Clay Creek (DE-PA) and the Maurice River (NJ); discussion of Commission penalty policies and reports on the upper Delaware ice jam project, amendment of Compact section 15.1(b) to fund the F. E. Walter Reservior project and Pennsylvania's compliance with Commission water conservation performance standards for plumbing fixtures and fittings.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Mount Laurel Municipal Utilities Authority D-85-9 CP.* An application for approval of a ground water withdrawal project to supply up to 105 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 6 and 7, and to increase the existing withdrawal limit from all wells from 89.4 to 120 mg/30 days. The project is located in Mount Laurel Township, Burlington County, New Jersey. This hearing continues that of May 20, 1992.

2. *Holdover Project: Lehigh County Authority—Western Lehigh Service Area D-92-13 CP.* An application for approval of a ground water withdrawal project to supply up to 86.4 mg/30 days of water to the applicant's Central Division distribution system from new Well Nos. 17 and 18, and to increase the existing withdrawal limit of all wells from 188 mg/30 days to 201 mg/30 days. The project is located in Upper Macungie Township, Lehigh County, Pennsylvania. This hearing is deferred from that of May 20, 1992.

3. *Ralph Franceschini D-81-49 RENEWAL-2.* An application for the renewal of a ground water withdrawal project to supply up to 5.83 mg/30 days of water to the applicant's agricultural irrigation system from three existing wells. Commission approval on May 27, 1987 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 5.83 mg/30 days. The project is located in the City of Vineland, Cumberland County, New Jersey.

4. *Mid-Atlantic Canners Association D-86-83 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 5.7 mg/30 days of water to the applicant's bottling and canning facility from Well Nos. 1, 2 and 3. Commission approval on May 27, 1987 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 5.1 mg/30 days to 5.7 mg/30 days. The project is located in Hamburg Borough, Berks County, Pennsylvania.

5. *Bedminster Municipal Authority D-87-61 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 2.0 mg/30 days of water to the applicant's distribution system from Well Nos. 2 and 9. Commission approval on August 5, 1987 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 2.0 mg/30 days. The project is located in Bedminster Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Delran Sewerage Authority D-87-74 CP.* An application to expand a 1.5 million gallons per day (mgd) sewage treatment plant to process a design average flow of 2.5 mgd through the year 2000. The Delran Wastewater Treatment Plant is surrounded by Rancocas Creek, Dredge Harbor, Delaware River, and the Riverside Park Community in Delran Township, Burlington County, New Jersey. The proposed tertiary level treatment plant will serve Delran Township and a portion of Moorestown Township, also in Burlington County. The proposed contact stabilization plant will discharge to the Rancocas Creek/Delaware River confluence through a new outfall in Water Quality Zone 2.

7. *Burlington Township D-89-86 CP.* An application for approval of a ground water withdrawal project to supply up to 43.2 mg/30 days of water to the applicant's distribution system from new Well No. 5, and to reduce the existing withdrawal limit from all wells of 81.0 mg/30 days to 69.0 mg/30 days. The project is located in Burlington Township, Burlington County, New Jersey.

8. *Mid-Monroe Development Corporation D-90-77-CP.* An application for approval of a ground water withdrawal project to supply up to 3.7 mg/30 days of water to the applicant's Big Ridge Development from new Well No. 1, and to limit the withdrawal from all wells to 3.7 mg/30 days. The project is located in Middle Smithfield Township, Monroe County, Pennsylvania.

9. *Buckingham Water Company D-91-87 CP.* A ground water withdrawal project to serve as a standby source of supply for the applicant's distribution system. The application requests that the withdrawal from standby Well No. 3 be limited to 7.2 mg/30 days, and that the total withdrawal from all wells remain limited to 7.2 mg/30 days. The project is located in Buckingham Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

10. *Clifton Canning Company D-91-89 (G).* An application for approval of a ground water withdrawal project to supply up to 8.0 mg/30 days of water to the applicant's vegetable processing facility from existing Well Nos. 2 and 3, and to limit the withdrawal from all wells to 8.0 mg/30 days. The project is located north of the Town of Milton, Sussex County, Delaware.

11. *Clifton Canning Company D-91-89 (D).* An application for approval of a spray irrigation discharge project that serves the Clifton Canning Company's vegetable processing facility. The project provides primary treatment prior to distribution of 0.225 mgd (average monthly) of effluent to approximately 30 acres of spray irrigation field where biological treatment is accomplished via slow-rate land application. The project is located just off Route 38 and approximately 3000 feet north of Route 1

in Sussex County, Delaware. The spray irrigation field is located in the Primehook Creek watershed.

12. *Wallenpaupack Lake Estates Property Owners Association D–92–4.* An application for approval of the proposed expansion of its existing 0.10 mgd sewage treatment plant (STP) to treat an average flow of 0.40 mgd. The STP will continue to serve the residential/resort development of Wallenpaupack Lake Estates in Salem and Paupack Townships. The STP will continue to provide tertiary treatment and discharge to an unnamed tributary of Lake Wallenpaupack. The STP project is located in Paupack Township, Wayne County, Pennsylvania.

13. *Wheaton Industries D–92–14.* An application for approval of a ground water withdrawal project to supply to to 15.75 mg/30 days of water to the applicant's industrial facility from existing Well Nos. 15 and 16, and to decrease the existing withdrawal limit of 83 mg/30 days from all wells to 65.3 mg/30 days. The project is located in the City of Millville, Cumberland County, New Jersey.

14. *Smithfield Sewer Authority D–92–17 CP.* A sewage treatment plant (STP) upgrade and expansion project that will increase the applicant's STP average design capacity from 0.10 mgd to 0.40 mgd. The STP will continue to serve approximately 60 percent of Smithfield Township and discharge via the existing outfall structure to Little Sambo Creek. The STP will provide tertiary treatment facilities and will be located just off Valhalla Drive in Smithfield Township, Monroe County, Pennsylvania.

15. *Musconetcong Sewerage Authority D–92–26 CP.* An application for approval of the Musconetcong Sewerage Authority's upgrade and expansion project and rerating the existing 2.2 mgd sewage treatment plant (STP) to 2.275 mgd. The STP was previously upgraded and expanded from 1.15 mgd to 2.2 mgd and no new modifications are proposed for the rerating. The STP will continue to provide advanced secondary treatment including microscreening, post-aeration, and ultraviolet disinfection prior to discharge to the Musconetcong River. The STP serves the Boroughs of Stanhope and Netcong and part of Mount Olive and Roxbury Townships, and is located in Mount Olive Township, just north of the Route 206 interconnection with Interstate 80, in Morris County, New Jersey.

16. *Cinnaminson Sewerage Authority D–92–30 CP.* A sewage treatment plant (STP) upgrade project to improve the treatment process at the applicant's existing 2.0 mgd secondary activated sludge STP. The STP will continue to operate at 2.0 mgd, serve the Township of Cinnaminson, and discharge to Water Quality Zone 2 of the Delaware River Estuary, approximately 300 feet upstream of the Pompeston Creek confluence. The STP is located on Randolph Avenue, adjacent to the Delaware River in Cinnaminson Township, Burlington County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

* * * * *

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1993. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, water quality standards, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it will be available for examination and review by interested individuals at the Commission's offices upon request beginning July 1, 1992. The public review and comment period will end July 31, 1992. Please contact Seymour P. Gross for further information.

Dated: June 9, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92–14184 Filed 6–16–92; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

Transitional Bilingual Education Program; Special Alternative Instructional Program

AGENCY: Department of Education.

ACTION: Notice of proposed priority for Fiscal Year 1993.

SUMMARY: The Secretary proposes an absolute priority in fiscal year (FY) 1993 for a special competition under the Transitional Bilingual Education (TBE) Program and the Special Alternative Instructional (SAI) Program—two of the Basic Programs under Part A of the Bilingual Education Act. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priority is intended to improve the achievement of limited English proficient (LEP) students in mathematics and science.

DATES: Comments must be received on or before July 17, 1992.

ADDRESSES: All comments concerning this proposed priority should be addressed to Harry G. Logel, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641.

FOR FURTHER INFORMATION CONTACT: Harry G. Logel. Telephone: (202) 732–5715. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The TBE and SAI programs are authorized by section 7021 of the Bilingual Education Act (20 U.S.C. 3291). Grants are made to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to provide instructional services to LEP children. The TBE program provides structured English language instruction and, to the extent necessary to allow a LEP child to achieve competence in English, instruction in the child's native language. The SAI program provides structured English language instruction and special instructional services to help LEP children achieve competence in English. It allows, but does not require, instruction in the child's native language.

The Secretary proposes a special competition under the TBE and SAI programs in addition to the regular competitions under these programs for FY 1993 to provide LEAs additional assistance to improve the achievement of LEP students in mathematics and science. This special competition is part of the President's AMERICA 2000 strategy for helping the Nation move itself toward the National Education Goals, particularly Goal 3 and Goal 4. Goal 3 calls for all students to demonstrate competency in challenging subject matter, including English, mathematics, and science. Goal 4 calls for American students to be first in the world in science and mathematics achievement by the year 2000. The proposed priority would focus a portion of the TBE and SAI funds on these goals to help LEP students achieve competence in English, mathematics, and science.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105 (c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

An instructional approach that emphasizes one or both of the following core curriculum areas in addition to English: mathematics or science.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 5611, Switzer Building, 330 "C" Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays. Applicable Program Regulations: 34 CFR parts 500 and 501.

Program Authority: 20 U.S.C. 3291.

(Catalog of Federal Domestic Assistance Numbers: 84.003A Transitional Bilingual Education Program; and 84.003E Special Alternative Instructional Program)

Dated: May 12, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-14143 Filed 6-16-92; 8:45 am]

BILLING CODE 4000-01-M

Educational Personnel Training Program

AGENCY: Department of Education.

ACTION: Notice of proposed priority for Fiscal Year 1993.

SUMMARY: The Secretary proposes an absolute priority for a special competition under the Educational Personnel Training (EPT) Program of the Office of Bilingual Education and Minority Languages Affairs for fiscal year (FY) 1993. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priority is intended to assist institutions of higher education (IHEs) to meet the need for additional or better trained bilingual education and English-as-a-second-language (ESL) teachers in mathematics and science.

DATES: Comments must be received on or before July 17, 1992.

ADDRESSES: All comments concerning this proposed priority should be addressed to Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6642.

FOR FURTHER INFORMATION CONTACT: Cynthia J. Ryan. Telephone: (202) 732-1542. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Awards under the EPT program are made to IHEs to prepare additional or better trained educational personnel for programs for limited English proficient (LEP) persons. Authority for the EPT program is in section 7041 of the Bilingual Education Act (20 U.S.C. 3321).

The Secretary proposes to hold a special competition under the EPT program for FY 1993 to assist IHEs in providing bilingual education and ESL teachers with certification-oriented training that emphasizes one or both of the following core curriculum areas: mathematics or science. This special competition is part of the President's AMERICA 2000 strategy for helping the Nation move itself toward the National Education Goals, particularly Goals 3 and 4. Goal 3 calls for all students to demonstrate competency in challenging subject matter, including mathematics and science. Goal 4 calls for American students to be first in the world in science and mathematics achievement by the year 2000. The proposed priority would set aside a portion of the funds for the EPT program for projects that prepare teachers to help LEP students achieve competence in mathematics and science.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Certification-oriented programs providing bilingual education and English-as-a-second-language teachers with training that emphasizes one or both of the following core curriculum areas: mathematics or science.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 5622, Switzer Building, 330 "C" Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR Parts 500 and 561.

Program Authority: 20 U.S.C. 3321.

(Catalog of Federal Domestic Assistance Number 84.195R Educational Personnel Training Program)

Dated: May 12, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-14142 Filed 6-16-92; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education; College Work-Study—Community Service Learning Program

AGENCY: Department of Education.

ACTION: Notice of closing date for filing the campus-based reallocation form to receive supplemental allocations for the College Work-Study—Community Service Learning (CWS–CSL) Program.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for supplemental 1992–93 allocations under the CWS–CSL Program. The Secretary is authorized under section 442(e) of the Higher Education Act of 1965, as amended (HEA), to reallocate unexpended College Work-Study (CWS) funds that institutions received for expenditures during the 1991–92 award year (July 1, 1991 through June 30, 1992) as supplemental allocations for the 1992–93 award year (July 1, 1992 through June 30, 1993). Supplemental allocations will be issued this fall in accordance with reallocation procedures contained in 34 CFR 675.3 and 675.4.

Section 442(e)(2) of the HEA requires the Secretary to use an amount not in excess of 25 percent of those CWS funds available for reallocation each year to issue supplemental CWS–CSL allocations to eligible institutions for the purpose of initiating, inproving, and expanding programs of community service learning. CWS–CSL supplemental allocations may be use only for administrative expenses related to developing work-study programs involving the employment of CWS-eligible students in community service learning activities.

The CWS–CSL program is authorize by section 447 of Title IV of the HEA. (42 U.S.C. 2756a).

CLOSING DATE: An institution must apply for 1992–93 supplemental allocations for the CWS–CSL Program by submitting the completed data on the Campus-Based Reallocation Form (ED Form E40–4P; OMB No. 1840–0559).

To ensure consideration for the 1992–93 funds, the Campus-Based Reallocation Form must be mailed or hand-delivered to the address that follows by July 17, 1992.

CAMPUS–BASED REALLOCATION FORMS DELIVERED BY MAIL: A Campus-Based Reallocation Form delivered by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 400 Maryland Avenue SW., (room 4621, Regional Office Building 3), Washington, DC 20202–5452.

An institution must be able to show proof of mailing consisting of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (2) A legibly dated U.S. Postal Service postmark; (3) A dated shipping-label invoice or receipt from a commercial carrier; or (4) Any other proof of mailing deemed acceptable by the Secretary of Education.

For a Campus-Based Reallocation Form sent through the U.S. Postal Service, the Secretary does not accept as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark on items delivered by mail. Before replying on this delivery method, an institution should check with its local post office on how to receive proof of mailing. An institution is encouraged to use certified, or at least first-class, mail when mailing the form.

CAMPUS–BASED REALLOCATION FORMS DELIVERED BY HAND: A Campus-Based Reallocation Form delivered by hand must be taken to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 7th and D Streets SW., room 4621, Regional Office Building 3, Washington, DC 20202–5452. Hand-delivered Campus-Based Reallocation Forms will be accepted between 8 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. A hand-delivered Campus-Based Reallocation Form will not be accepted after 4:30 p.m. on July 17, 1992.

CAMPUS–BASED REALLOCATION FORM AND INFORMATION PACKAGE: Campus-Based Reallocation Forms and a CWS–CSL program information package will be mailed to participating institutions by the Campus-Based Programs Branch in June. Each institution applying for 1992–93 supplemental allocations must submit the form in accordance with the instructions included in the package.

The CWS–CSL program information package is intended to help applicants apply for assistance under the CWS–CSL Program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the program.

APPLICABLE REGULATIONS: Applicable regulations are the 34 CFR part 675 (College Work-Study), 34 CFR part 668 (Student Assistance General Provisions), 34 CFR part 82 (New Restriction on Lobbying), and 34 CFR part 85 (Administrative practices and procedures, Debarment, Grant Programs—Education, Grants administration; Suspension).

FOR FURTHER INFORMATION CONTACT: For further information or to request a Campus-Based Reallocation Form, contact Ms. Gloria Easter, Chief, Financial Management Section, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., (room 4621, ROB–3), Washington, DC 20202–5452. Telephone (202) 708–7741. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–377–8339. (In the Washington, DC 202 area, telephone 708–9300 between 8 a.m. and 7 p.m., Eastern time.)

Program Authority: 42 U.S.C. 2751–2756a.

(Catalog of Federal Domestic Assistance No. 84.033, College Work-Study Program)

Dated: June 11, 1992.

Carolyn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-14210 Filed 6-16-92; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Perkins Loan and National Defense Student Loan Programs

AGENCY: Department of Education.

ACTION: Notice of availability of published amendments to the 1991–92 National Defense and Perkins (National Direct) Student Loan Programs Directory of Designated Low-Income Schools.

SUMMARY: Institutions and borrowers participating in the National Defense and Perkins (National Direct) Student Loan Programs and other interested persons are advised that they may obtain information regarding the amendments to the 1991–92 National Defense and Perkins (National Direct) Student Loan Programs Directory of Designated Low-Income Schools (Directory). The amendments identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATES: The amendments to the Directory are currently available.

ADDRESSES: Information concerning specific schools listed in the amendments to the Directory may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4651, ROB–3), Washington, DC 20202–5453. Telephone (202) 708–6730.

FOR FURTHER INFORMATION CONTACT: The amendments to the Directory are available at (1) each institution of higher education participating in the Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** on November 18, 1991 (56 FR 58278) that the 1991–92 National Defense and Perkins (National Direct) Student Loan Programs Directory of Designated Low-Income Schools was available. The Secretary has revised the Directory due to the opening and closing of schools, school name changes, and the need for other corrections. These revisions are in the amendments to the Directory.

The procedures for selecting the schools that qualify borrowers for teacher cancellation benefits are described in the Perkins Loan Program regulations at 34 CFR 674.53 and 674.54. The Secretary has determined that for the 1991–92 academic year full-time teaching in the schools set forth in the Directory, as amended, qualifies a borrower for cancellation.

The Secretary is providing the amendments to the Directory to each institution participating in the Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1991–92 academic year.

The Office of Student Financial Assistance will retain, on a permanent basis, copies of all published amendments and Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct and Perkins Student Loan Cancellations.)

Dated: June 11, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–14213 Filed 6–16–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for the Proposed Des Moines, Iowa, Pressurized Circulating Fluidized Bed (PCFB) Repowering Project

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) to assess the environmental effects of the construction and operation of the proposed Pressurized Circulating Fluidized Bed (PCFB) Repowering Project located at the Des Moines Energy Center (DMEC), Pleasant Hill, Polk County, Iowa, and to conduct a public scoping meeting.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed construction and operation of a project proposed by the DMEC–1 Limited Partnership, which is composed of Dairyland Power Cooperative (DPC) as the limited partner and Iowa Power, Inc. (IPR), as the general partner. The proposed project involves the construction and operation of a 70-megawatt (minimum) electric (MWe) coal-fired PCFB to repower an existing steam turbine. The steam turbine is part of the Des Moines Energy Center (DMEC), located in Pleasant Hill, Iowa. The DMEC site is owned by IPR. DOE is proposing to provide cost-shared financial assistance for the project.

Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Qualtiy (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE regulations for compliance with NEPA (57 FR 15122, April 24, 1992). The purpose of this Notice is to invite public participation in the process that DOE will follow to comply with NEPA and to solicit public comments on the proposed scope and content of the EIS.

INVITATION TO COMMENT AND DATES: To ensure that the full range of issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the draft EIS and should be postmarked by July 23, 1992. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The location, date, and time for the scoping meeting are provided in the section of this Notice entitled SCOPING MEETING. Written and oral comments will be given equal weight and will be considered in determining the scope of the draft EIS. When the draft EIS is completed, its availability will be announced in the **Federal Register**, and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Ms. Wennona A. Brown at the address noted below.

ADDRESSES: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meeting, or questions concerning the project, should be directed to: Ms. Wennona A. Brown, Environmental Protection Specialist, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4294.

Envelopes should be labeled "Scoping for DMEC–1 EIS."

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue,

SW., Washington, DC 20585, Tel. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

Under terms of Public Law 100–446, Congress provided approximately $575 million to DOE to support the construction and operation of demonstration facilities selected for cost–shared financial assistance as part of DOE's Clean Coal Technology (CCT) Demonstration Program. The CCT projects cover a broad spectrum of technologies having the following things in common: (1) All are intended to increase the use of coal in an environmentally acceptable manner and (2) all are ready to be proven at the demonstration level.

On May 1, 1989, DOE issued Program Opportunity Notice (PON) Number DE–PS01–89FE61825 for Round III of the CCT program, soliciting proposals to conduct cost-shared projects to demonstrate innovative, energy efficient, technologies that are capable of being commercialized in the 1990s. These technologies must be capable of (1) achieving significant reductions in the emissions of sulfur dioxide and/or the oxides of nitrogen from existing facilities to minimize environmental impacts such as transboundary and interstate pollution and/or (2) providing for future energy needs in an environmentally acceptable manner. The PON provided that candidate technologies must be capable of either retrofitting or repowering existing facilities. Such existing facilities currently may be designed to use any fuel (e.g., coal, oil, gas, etc.) and may be either stationary (e.g., power plants) or mobile (e.g., transportation applications). The demonstration projects, however, can be at new facilities provided the technology is capable of retrofitting or repowering applications. In response to the solicitation, 48 proposals were received. Thirteen projects were selected by DOE for negotiation in December 1989, including a proposal submitted by DPC.

During negotiations, DPC and IPR formed a partnership with the purpose of jointly demonstrating PCFB technology at a utility scale. The partnership's official name is DMEC–1 Limited Partnership, and this partnership is the official participant with whom DOE entered into a Cooperative Agreement. With the formation of the partnership, the location of the PCFB Repowering Project was changed from DPC's Alma Station in Wisconsin to IRR's DMEC site in Iowa.

The DMEC–1 Limited Partnership has requested financial assistance from DOE for the design, construction, and operation of a 70–MWe (minimum) PCFB unit in a repowering application. The proposed project site is the Des Moines Energy Center, Pleasant Hill, Polk County, Iowa. The site is currently owned by IPR. Several coals, including high-sulfur bituminous coal and western sub-bituminous coal, are proposed for testing in the PCFB Repowering Project. Cost, environmental, and technical data from the project would be developed for use by the utility industry in evaluating this technology as a commercially viable power generation alternative. After the demonstration period of operation is concluded, IPR intends to continue project operation on a commercial basis. The Pyropower Corporation, the technology developer, intends to use technical data from this project to enlarge the scale of the technology in the form of a PCFB power station module suitable for commercial deployment.

Proposed Action

The proposed Federal action is for DOE to provide cost-shared financial assistance to the DMEC–1 Limited Partnership for the design, construction, and operation of a 70–MWe (minimum) coal-fired power generation facility to be located at the DMEC, which is owned by IPR. The proposed project would demonstrate a PCFB combustor by repowering an existing steam turbine with a single PCFB module operated in a combined-cycle mode.

The total cost of the proposed project is estimated at $203 million, with DOE's share being approximately 45.9 percent, or $93.2 million. The proposed project would last approximately 72 months; if the outcome of the NEPA review process is favorable, construction currently is projected to start about January 1994. After construction and shakedown, PCFB operation would be demonstrated on several coals, including high-sulfur bituminous coal and western sub-bituminous coal. Operation of the project during this two-year demonstration period, currently projected to begin in December 1995, would provide the information and experience needed for future applications and commercialization of the PCFB technology. Once DOE's involvement is completed, the DMEC–1 Limited Parternship intends to continue operating the project on a commercial basis.

The DMEC site is located in an industrial land use are within the city limits of Pleasant Hill, Polk County, Iowa (southeast part of the Des Moines metropolitan area). The Des Moines River is situated south and west of the site and State Highway 46 extends north and south through the site. The entire project site occupies approximately 138 acres. IPR's Pleasant Hill Energy Center (combustion turbines) is located near the DMEC site on the east side of State Highway 46. There are 69-kilovolt and 161-kilovolt substations east of the DMEC, and an ash disposal area is situated northeast of the substations. There is a flood wall and levee between the Des Moines River and the DMEC facilities, including the substation and ash disposal area.

The DMEC was constructed in 1925 and commercially generated power for several decades. Beginning in 1980, the facility operated only in a very limited capacity until its retirement in 1985. The major components comprising the DMEC are the turbine/boiler building, transformer switch yard, substation, cooling towers, coal storage and handling facilities, an ash disposal area, railroad spurs, and a warehouse. While an existing steam turbine and some support equipment would be used for the proposed project, the facility would require extensive renovation to accommodate the new equipment.

The proposed DMEC–1 project, repowering of DMEC's No. 6 steam turbine, combines the new technology of PCFB with conventional steam generation power plant technology. The PCFB technology includes a single PCFB module, ceramic hot gas clean-up filters, and combined cycle technology. The PCFB system is comprised of the following major subsystems and key components:

- Coal feed system,
- Sorbent feed system,
- PCFB hot loop,
- Ceramic filter,
- Hot ash depressurization and cooling systems,
- Heat recovery superheater/economizer,
- Gas turbine generator,
- Gas turbine control and emergency shutdown valves, and existing balance-of-plant (steam turbine and generator, condenser, deaerator, feedwater heaters, and boiler feedwater pumps).

Alternatives

Under its authority pursuant to Public Law No. 100–446, DOE is presented with only two alternatives: (1) To cooperatively fund the proposed project; or (2) to decline to fund it (the "no action" alternative). In the latter case, the project would not contribute to the

objective of the CCT program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable, coal technologies. The facility probably would not be constructed and operated; therefore, neither potential environmental impacts related to facility construction and operation, nor potential environmental benefits resulting from commercialization of the technology, would occur.

DOE acknowledges the obligation to examine reasonable alternatives which are beyond its immediate authority to implement, but which could also meet the objectives of the CCT Program. DOE is requesting public comment on reasonable alternatives to the DMEC PCFB Demonstration Project.

A Final Programmatic Environmental Impact Statement (PEIS) for the CCT Program was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) The "no action" alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and oxides of nitrogen controls to meet New Source Performance Standards would continue to be used; and (2) the proposed action, which assumed that CCT projects were selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

Identification of Environmental Issues

The following issues associated with the construction and operation of the proposed PCFB Repowering Project will be considered in detail by DOE during its evaluation. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) Air Quality: The effects of air emissions within the region surrounding the site.

(2) Water Resources and Water Quality: The qualitative and quantitative effects on water resources and other water users in the region.

(3) Flood Plains: Nearly all of the project site is located in an area classified as Zone C by the Federal Emergency Management Agency, i.e, an area of minimal flooding. A levee extends along a portion of the river front that protects the project site. However, a narrow strip along the Des Moines River above the levee is classified as Zone A6, i.e., a special flood hazard area that is inundated by the 100-year flood.

(4) Wetlands: A small, manmade, wetland, vegetated by hydrophytic plant species, is located within the inactive ash disposal area; however, it is neither State nor Federally regulated. According to the U.S. Army Corps of Engineers, the wetland probably does not come under their jurisdiction because it lacks hydric soils. A determination by the Corps on the regulatory status of the onsite wetland is expected shortly.

(5) Socioeconomics: Potential bearing on communities that might be affected by the project.

(6) Land Use: The potential consequences to land, utilities, transportation routes, and traffic patterns resulting from the project.

(7) Solid Waste: The environmental effects of generation, treatment, transport, storage, and disposal of solid wastes.

(8) Polychlorinate Biphenyls (PCBs): Previous activities at the proposed site, not related to the DMEC–1 project, have resulted in some areas requiring PCB remediation. Iowa Power is assessing the magnitude of the problem, and is developing the appropriate remediation plan to remove the PCBs from the site.

(9) Biological Resources: Potential disturbance or destruction of species, including the potential effects on threatened or endangered species of flora and fauna.

(10) Cultural Resources: Potential effects on historical, archaeological, scientific, or culturally important sites.

(11) Cumulative Impacts: NEPA requires that the EIS evaluate the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably forseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts will be evaluated within the EIS for all important issues in the vicinity of the site.

Issues that are significant will be addressed in detail; issues that are not considered significant will be discussed in less detail, or as appropriate to clarify and distinguish impacts among alternatives.

NEPA and the Scoping Process

DOE will comply with the NEPA process as outlined in the CEQ's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508) and DOE's regulations for compliance with NEPA (57 FR 15122, April 24, 1992).

Scoping, which is an integral part of the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume time and effort; (3) the draft EIS is thorough and balanced; and (4) delays occasioned by an inadequate draft EIS are avoided (40 CFR 1501.7). DOE's NEPA regulations require that the scoping process commence as soon as practicable after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in a Draft EIS will be determined, in part, from written comments submitted by mail, and comments presented orally or in writing at a public scoping meeting (see below). The results of the scoping process will be incorporated into a document called an Implementation Plan (IP), which provides guidance for the preparation of an EIS.

The above preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. DOE identified the reasonable alternatives and potential environmental issues shown above based on its experience with similar subjects that have been raised for other comparable DOE projects. DOE considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant examination, and new matters may be identified for potential evaluation. The scoping process will involve all interested agencies (Federal, State, County, and local), groups, and individual members of the public. Interested parties are invited to participate in the scoping process by providing comments on both the alternates and the issues to be addressed in the EIS. DOE will consider all comments in preparing the IP, which will specify the reasonable alternatives, identify the significant environmental issues to be analyzed in depth, and eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent. When complete, the IP will be available for public review at the locations identified below.

Scoping Meeting

A public scoping meeting will be held at the location, on the date, and at the time indicated below. This scoping meeting will be informal, with a

presiding officer designated by DOE who will establish procedures governing the conduct of the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting. They will be called on to present their comments as time permits. Oral and written comments will be given equal weight by DOE. Written comments may also be submitted after the scoping meeting, but should be postmarked by July 23, 1992, and forwarded to Ms. Wennona A. Brown, Environmental Protection Specialist, Morgantown Energy Technology Center, as provided in the ADDRESS section of this Notice. Written comments postmarked after that date will be considered to the degree practicable.

The meeting is scheduled as follows:

Date Wednesday, July 8, 1992.

Time: 7 p.m. (Registration opens at 6 p.m.)

Place: Youth Center at Doanes Park, 5050 Doanes Park Road, Pleasant Hill, Iowa 50317.

A complete transcript of the public scoping meeting will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, and at the Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, Morgantown, West Virginia 26505. Additional copies of the public scoping meeting transcript will also be made available during normal business hours at the following location: Pleasant Hill Public Library, (Attn: Mr. John Lerdal), 4830 Maple Drive, Des Moines, Iowa 50317.

In addition, copies of the public scoping meeting transcript will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS when it is prepared, should notify Ms. Wennona A. Brown, Environmental Protection Specialist, Morgantown Energy Technology Center, at the address given in the ADDRESS section of this Notice.

Signed in Washington, DC, this 12th day of June 1992, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92-14231 Filed 6-16-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Award

AGENCY: U.S. Department of Energy, Bartlesville Project Office.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) and (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center (PETC) to Stanford University for the continuation of their effort entitled "Scale-up of Miscible Flood Processes for Heterogeneous Reservoirs".

SUPPLEMENTARY DATA:

Grant No.: DE-FG22-92BC14852.

Title: Support of "Scale-up of Miscible Flood Processes for Heterogeneous Reservoirs."

Awardee: Stanford University.

Term: 36 months.

Cost: Total estimated cost is $1,049,961.

Scope: Based upon the authority of 10 CFR 600.7(b)(2)(i) criteria (A) and (D), the objective of this Grant is for Stanford University to continue developing design techniques for miscible floods for heterogeneous fluvial deltaic and carbonate reservoirs. The proposed work is considered to be relevant to the DOE mission in that the program will provide a mechanism for communication and interaction research between DOE and Stanford University in the extension of the applicability of miscible flood processes to a much wider range of reservoirs than are currently considered to be suitable candidates for miscible EOR. It will make possible rational design of recovery processes that make use of better reservoir descriptions in the design process. The proposed research is the logical complement to the DOE program to investigate fluvial deltaic and carbonate reservoirs.

For Further Information Write To: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Ms. Cynthia Mitchell, Contract Specialist, Acquisition and Assistance Division, P.O. Box 10940, MS 921-118, Pittsburgh, PA 15236-0940.

Dated: June 4, 1992.

Dale A. Siciliano,

Chief, Contracts Group, Acquisition and Assistance Div.

[FR Doc. 92-14232 Filed 6-16-92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance: Weirton Steel Corporation

AGENCY: U.S. Department of Energy.

ACTION: This notice amends previous notice published on May 5, 1992, concerning an intent to negotiate a cooperative agreement entitled "Integrated Manufacturing Information System (IMID)™".

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.14(f) it plans to award a cooperative agreement to Weirton Steel Corporation. This new agreement is the result of an unsolicited proposal (No. P9507073) as modified August 30, 1991. The objective of the project will be for development of a material marking and tracking system and a process planning and scheduling system. This award would be for a one year period at a total estimated cost of $5,666,000. DOE's share of the cost will total approximately $2,833,000. This action is authorized by Public Law 93-577, Federal Nonnuclear Energy Research and Development Act of 1974. Development of an integrated manufacturing information system for the steel industry is further provided for in Public Law 101-512. The acceptable of this unsolicited proposal is justified under 10 CFR 600.14(e). The project, as proposed, represents a unique approach to addressing a widely perceived need for obtaining and integrating plant-wide manufacturing information and real-time materials management data. There are no recent, current, or planned solicitations under which this unsolicited proposal would be eligible for consideration.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Field Office, Attn: Linda A. Hallum, Contracts Management Division, 785 DOE Place, MS 1221, Idaho Falls, ID 83401-1562, (208) 526-5545.

PROCUREMENT REQUEST NUMBER: 07-92ID13162.000.

Dated: June 8, 1992.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 92-14233 Filed 6-16-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-59-NG]

IGI Resources, Inc.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on May 1, 1992, by IGI Resources, Inc. (IGI), requesting blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term, beginning on August 1, 1992, the day after IGI's current two-year blanket import authorization expires. See DOE/FE Opinion and Order No. 415, 1 FE ¶ 70,341 (August 1, 1990). IGI intends to continue using existing facilities, and will submit quarterly reports of its transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 17, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: IGI, an Idaho corporation with its principal place of business in Boise, Idaho, is a wholly-owned subsidiary of Intermountain Industries, Inc. IGI, a marketer of natural gas, requests authority to continue to import gas from Canada, either for its own account or as agent for others, for sale to industrial end-users and local distribution companies. IGI would continue to file reports with FE within 30 days after the end of each calendar quarter giving the details of individual transactions. IGI's prior quarterly reports filed with FE indicate that approximately 27.4 Bcf of natural gas were imported under Order 415 through March 31, 1992.

The decision on IGI's request for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties should comment on the issue of competitiveness as set forth in those guidelines. IGI asserts in its application that the proposed arrangement is competitive. Parties opposing IGI's request for import authorization bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of IGI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-14234 Filed 6-16-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-62-NG]

SDS Petroleum Products, Inc.; Application for Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 19, 1992, as revised on June 3, 1992, of an application filed by SDS Petroleum Products, Inc. (SDS) to export 135,000 MMBtu per day of natural gas from the United States to Mexico for a two-year period beginning on the date of first

delivery. The proposed exports would take place at any point on the international border where existing pipeline facilities are located. SDS would file quarterly reports detailing any transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–1111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 17, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: SDS, a Colorado corporation with its principal place of business in Denver, Colorado, is a marketer of natural gas. It purchases gas from several major domestic producers and resells it to a variety of end-users and local distribution centers. The exported gas would come from production areas in the United States with surplus supplies of natural gas or would consist of supplies which are incremental to the needs of current purchasers. No contracts for the sale of the proposed exports have been executed, however, the specific details of each export transaction would be filed by SDS in conformity with DOE's quarterly reporting requirements. SDS anticipates all sales would result from arms-length negotiations and the prices would be determined by market conditions.

This export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if DOE approves this requested blanket export authorization, it may designate a total authorized volume for the two-year term, or approximately 98.5 Bcf of natural gas, rather than the 135,000 MMBtu per day requested by SDS, in order to maximize the applicants flexibility of operation.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of SDS's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–14235 Filed 6–16–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 349–024, et al.]

Hydroelectric Applications [Alabama Power Co., et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Application for Non-Project Use of Project Lands.

b. *Project No:* 349–024.

c. *Date Filed:* January 31, 1992.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Project.

f. *Location:* Elmore County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–8259(r).

h. *Applicant Contact:* John E. Dorsett, Vice President, Power Generation Services, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291–0364, (205) 250–1380.

i. *FERC Contact:* Dan Hayes, (202) 219–2660.

j. *Comment Date:* July 13, 1992.

k. *Description of Project:* Alabama Power Company, licensee for the Martin Dam Project, filed an application for non-project use of project lands to permit Mr. Roy Granger to excavate two sloughs. One of the sloughs was excavated during 1991 and approval is requested after the fact. Excavation of the sloughs would facilitate residential development of the shoreline. The application also contains revised boundary exhibits showing the present location of the project boundary.

1. *This notice also consists of the following standard paragraphs: B, C, and D2.*

a. *Type of Application:* Subsequent License.

b. *Project No:* 2341–004.

c. *Date Filed:* November 20, 1991.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Langdale.

f. *Location:* On the Chattahoochee River in Harris County, Georgia, and Chambers County, Alabama

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mayor H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526–7140.

i. *FERC Contact:* James Hunter at (202) 219–2839.

j. *Deadline Date:* July 16, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The project consists of: (1) A 15-foot-high, 1,892-foot-long rubble masonry dam with a 1,362-foot long overflow spillway at elevation 550.25 feet and a gated intake section containing two active and four retired water passageways connecting to the powerhouse, each 25 feet wide, 15 feet high, and 30 feet long; (2) a reservoir with a surface area of approximately 270 acres at the spillway elevation; (3) an integral, 35-foot-wide, 245-foot-long, 30-foot-high, concrete and brick powerhouse on the right bank containing two identical generating units with a total installed capacity of 1,040 kW; (4) a 250-foot-wide, 1,500-foot-long tailrace channel; and (5) a substation connecting directly to the applicant's distribution system. The average annual generation is 5.12 GWh. The applicant is not proposing any changes to the existing project works. Subsequent licenses are defined in 18 CFR 16.2(e).

m. *Purpose of Project:* Power generated at the project is delivered to customers within the applicant's service area.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Georgia Power Company's office at 333 Piedmont Avenue, Atlanta, Georgia, (404) 526–6526.

3a. *Type of Application:* Subsequent License.

b. *Project No.:* 2350–005.

c. *Date Filed:* November 20, 1991.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Riverview.

f. *Location:* On the Chattahoochee River in Harris County, Georgia, and Chambers County, Alabama.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526–7140.

i. *FERC Contact:* James Hunter at (202) 219–2839.

j. *Deadline Date:* July 16, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The project consists of: (1) A 15-foot-high, 994-foot-long stone masonry diversion dam with an overflow spillway at elevation 532.3 feet; (2) a back-channel headrace about 5,000 feet long; (3) a 200-foot-long lower stone masonry dam with an overflow crest at elevation 530.5 feet, raised to 532.5 feet with flashboards; (4) a 58-foot-long, 61-foot-wide, 25-foot-high, concrete and brick powerhouse at the western end of the lower dam with a gated intake section containing two 22-foot-wide, 18-foot-high, 30-foot-long water passageways connecting to the two generating units rated at 240 kW each; (5) a 100-foot-wide, 2,000-foot-long tailrace channel; and (6) a substation connecting directly to the applicant's distribution system. The average annual generation is 2.99 GWh. The applicant is not proposing any changes to the existing project works. Subsequent licenses are defined in 18 CFR 16.2(e).

m. *Purpose of Project:* Power generated at the project is delivered to customers within the applicant's service area.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Georgia Power Company's office at 333 Piedmont Avenue, Atlanta, Georgia, (404) 526–6526.

4a. *Type of Application:* New Minor License.

b. *Project No.:* 2361–001.

c. *Date Filed:* December 13, 1991.

d. *Applicant:* Minnesota Power & Light Company.

e. *Name of Project:* Prairie River Hydroelectric Project.

f. *Location:* On the Prairie River near the city of Grand Rapids in Itasca County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stephen A. Kopish, Hydro Operations Manager, Minnesota Power & Light Company, 30 West Superior Street, Duluth, Minnesota 55802, (218) 722–2641.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* July 16, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The run-of-river project consists of: (1) A 17-foot-high dam; (2) a 2,000-acre impoundment; (3) a powerhouse containing two generating units with a total installed capacity of 1,084 kW; (4) a 2.3/23-kV transmission bank; and (5) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 3,033 MWh.

m. *Purpose of Project:* All project energy generated would be put into the applicant's electrical grid and distributed to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Minnesota Power & Light Company, located at 30 West Superior Street, Duluth, Minnesota 55802, or by calling Mr. Stephen A. Kopish at (218) 722–2641.

5a. *Type of Application:* Subsequent License.

b. *Project No.:* 2587–002.

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* Superior Falls Hydro Project.

f. *Location:* On the Montreal River in Iron County, Wisconsin and Gogebic County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, Vice President, Power Supply, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI, (715) 839–2621.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 13, 1992.

k. *Status of Environment Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) Two existing concrete gravity non-overflow sections, a total length of approximately 105 feet long, with an intake structure for a conduit including a metal trashrack and a mechanically operated timber headgate; (2) an existing concrete gravity gated spillway section, about 90 feet long, containing (a) two steel Tainter gates, approximately 16 feet long by 18 feet high, and (b) three timber Tainter gates, approximately 12 feet long by 9 feet high; (3) an existing concrete gravity overflow weir section, about 45 feet long, containing three concrete bulkheaded overflow weir bays; (4) an existing reservoir with a surface area of 16.9 acres and a total storage volume of 80.9 acre-feet at the normal maximum surface elevation of 740.0 feet USGS; (5) an existing 84 inch diameter reinforced concrete pipe conduit, approximately 1,697 feet long, conveying water from the intake structure to the surge tank; (6) an existing 28 foot diameter surge tank with a concrete base and lower section (13 feet high) and a steel upper section extending 28 feet above the concrete; (7) two existing 54 inch diameter steel penstocks, each 190 feet long; (8) an existing reinforced concrete powerhouse, approximately 32 feet by 62 feet, containing (a) two horizontal Francis turbines with a combined plant hydraulic capacity of 220 cfs, manufactured by Allis-Chalmers and rated at 1,250 hp each, and (b) two General Electric generators, rated at 660 kW each, providing a combined plant rating of 1,320 kW; (9) an existing 2.4 kV transmission line, 200 feet long; and (10) existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 12,018 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company 100 North Barstow Street, P.O. Box 8, Eau Claire, WI or by calling (715) 839–2621.

6a. *Type of Application:* Surrender of license.

b. *Project No.:* 9193–011.

c. *Date Filed:* April 21, 1992.

d. *Applicant:* Riverdale Hydro Associates.

e. *Name of Project:* Davis-Weber Canal.

f. *Location:* On the Davis-Weber Canal, in Weber County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Louis Rosenman, 1725 Desales Street, NW., Suite 800, Washington, DC 20036, (202) 659–6568.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* July 9, 1992.

k. *Description of Proposed Action:* The proposed project would have consisted of a diversion dam, a canal, penstock, and a powerhouse. The Licensee seeks to surrender its license because it will be unable to meet the deadline for start of construction.

The Licensee states that no construction has been done.

l. *This notice also consists of the following standard paragraphs:* B and C.

7a. *Type of Application:* Surrender of License.

b. *Project No.:* 9273–023.

c. *Date Filed:* April 27, 1992.

d. *Applicant:* Upstate Hydro Associates.

e. *Name of Project:* Seneca Mills.

f. *Location:* On the Keuka Lake Outlet in Yates County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* J. Ben Guthrie, 6235 Bridge Street, Valois, NY 14888, (607) 546–8241.

i. *FERC Contact:* Charles T. Raabe (tag), (202) 219–2811.

j. *Comment Date:* July 10, 1992.

k. *Description of Project:* The proposed project would have consisted of: (1) An 18-foot-high, 68-foot-long reinforced concrete spillway topped by 2-foot-high flashboards, with a crest elevation of 598 feet mean sea level measured at the top of flashboards; (2) an impoundment with a surface area of 4 acres; (3) an intake structure; (4) a 240-foot-long steel penstock, 78 inches in diameter; (5) a single turbine generator unit with a total installed capacity of 830 kW; (6) a reinforced concrete powerhouse; (7) the 0.48-kV generator leads; (8) the 0.48/34.5-kV, 900-kVA transformer; (9) a 25-foot-long, 34.5-kV transmission line; and (10) other appurtenances.

Licensee states that the electric rates available to the licensee in the existing Power Purchase Agreement will not support the construction and operation of the site. Therefore, licensee has requested that its license be terminated. The license was issued March 31, 1987, and would have expired February 28, 2027. Licensee has commissioned a contractor to restore the property to its original grassy condition.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

8a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11276–000.

c. *Date Filed:* April 6, 1992.

d. *Applicant:* Lewis Basin Limited Partnership.

e. *Name of Project:* Fly Creek Hydroelectric Project.

f. *Location:* On Fly Creek near the town of Chelatchie in Clark County, Washington. Section 31 in T6N, R4E; sections 6, 7, 8, 9, 15, and 16 in T5N, R4E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael S. Wright, Permit/Engineering, Inc., 1300—114th Ave., SE., Suite 220, Bellevue, Washington 98004, (206) 451–7371.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* July 9, 1992.

k. *Description of Project:* The proposed project would consist of: (1) A 12-foot-high diversion structure on Fly Creek; (2) a 17,000-foot-long, 4.5-foot-diameter penstock; (3) a powerhouse with a total installed capacity of 7.6 MW; (4) a tailrace returning the water to Fly Creek; (5) a 1.6-mile-long transmission line interconnecting with an existing Pacific Power & Light transmission line; (6) a 2,000-foot-long access road; and (7) appurtenant facilities.

No new roads will be needed to conduct the studies. The approximate cost of the studies would be $350,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

9a. *Type of Application:* Minor license.

b. *Project No.:* 11288–000.

c. *Date filed:* May 11, 1992.

d. *Applicant:* Fair Haven Hydroelectric Company.

e. *Name of Project:* Fair Haven.

f. *Location:* On the Castleton River, in the Town of Fair Haven, Rutland County, Vermont.

g. *Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).*

h. *Applicant Contact:* Geoff Shadroui, P.O. Box 1250, Barre, VT 05641, (802) 476–4062.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Deadline Date:* July 10, 1992.

k. *Description of Project:* The proposed project would consist of: (1) An existing masonry dam 6 feet high and 75 feet long; (2) a new reinforced concrete intake structure; (3) a small reservoir with 1 acre area and 4 acre-feet of storage capacity at a surface elevation of 353 m.s.l.; (4) a new steel penstock 6 feet in diameter and 80 feet long; (5) a new concrete powerhouse housing a generating unit rated 220 kW; (6) a short tailrace channel; (7) a transmission line 150 feet long; and (8) appurtenant facilities. The existing facilities are owned by the Town of Fair Haven. Applicant estimates that the project's annual generation would be 750,000 kWh. Project power would be sold to Central Vermont Public Service Company.

l. Pursuant to 4.32(b)(7) of 18 CFR of the Commisson's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days after the application is filed and serve a copy of the request on the applicant.

10a. *Type of Application:* Preliminary Permit.

b. *Project No.: 11221–000.*

c. *Dated Filed:* January 8, 1992; amended April 3, 1992, and May 18, 1992.

d. Applicant: Peak Power Corporation.

e. *Name of Project:* Tropicana Modular Hydroelectric Pumped Storage Project.

f. *Location:* Predominantly on lands administered by the Bureau of Land Management near Las Vegas in Clark County, Nevada. T21S, R59E in sections 32, 33, and 34; T22S, R59E in sections 3, 4, 10, 11, 14, 15, 22, 25, 26, and 27; T22S, R60E in sections 25, 26, 27, 28, 29, and 30.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Rick S. Koebbe, Peak Power Corporation, 10 Lombard Street, suite 410, San Francisco, CA 94111, (415) 362–0887.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* July 16, 1992. This notice supplements the notice issued February 5, 1992, for the Peak Power Corporation's Project No. 11221.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) A 140-foot-high dam and 47-acre upper reservoir at the Blue Diamond Mine; (2) a 10-foot-diameter, 12,500-foot-long penstock connecting the upper reservoir with a lower refervoir; (3) a 60-foot-high dam and 54-acre lower reservoir in a naturally formed desert valley to the east of the upper reservoir; (4) a powerhouse containing two 50–MW generating units; (5) a 14-mile-long transmission line interconnecting with an existing Nevada Power Company transmission line; and (6) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $200,000.

l. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, and D2.

Standard Paragraphs

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. *Preliminary Permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must confirm with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this pubic notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a

development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E1. *Filing and Service of Responsive Documents*—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE "; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protecting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: June 12, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14186 Filed 6-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07070T Texas-55]

Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

June 11, 1992.

Take notice that on June 8, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Cook Mountain Sand formation in portions of Wharton County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Cook Mountain Sand formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended Cook Mountain Sand Formation is located in Wharton County, Texas, within Railroad Commission District 3.

All of P. Norton Survey A-313
All of S. Hanna Survey A-690
All of Washington Co. RR Survey A-381
All of F. Page Survey A-479
All of H. Rogers Survey A-323
All of I & GNRR Co. Survey A-227
All of I & GNRR Co. Survey A-234
All of J. Hamilton Survey A-588 except N & NW ⅓
SE corner of Washington Co. RR Survey A-364
East half of Washington Co. RR Survey A-382
Most Northerly half of J. Hamilton Survey A-589
North & NW ⅓ of L. Cronkrite Survey A-16
North ⅔ of Jos. McLawrence Survey A-275
NW tip of I & GNRR Co. Survey A-228
West Panhandle and NW ½ of I & GNRR Co. Survey A-248
North & NW ½ of I & GNRR Co. Survey A-247
NW tip of H. & TCRR Co. Survey A-186
SW tip of Chas. Riley Survey A-618
South ⅓ of I & GNRR Co. Survey A-233
South ⅔ of B. Pearce Survey A-318
South ½ of W. Vess Survey A-349
SE ⅓ of Washington Co. RR Survey A-379
All of F. Page Survey A-477 except NW corner
SE corner of Washington Co. RR Survey A-365

[FR Doc. 92-14187 Filed 6-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-29-036]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

June 10, 1992.

Take notice that on March 16, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing its Report of Refunds in compliance with the January 15, 1992 Order issued by this Commission under

Docket No. TA85-3-29-033. Such order required Transco to refund transition gas cost amounts recovered by Transco to its customers for the period ending February 12, 1992. Additionally, Transco was to submit a report to the Commission detailing the distribution of the refunds to the various customers and setting forth the data and computations supporting such distribution within sixty days of the date of the Order.

Transco states that on February 18, 1992, it refunded transition gas cost amounts, with interest, in accordance with the Commission's January 15 Order. Transco further states that it has served copies of the refund report to all its customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14136 Filed 6-16-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-42029C; FRL-4063-6]

New Mexico, Approval of Revised New Mexico Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of revised State Plan.

SUMMARY: In the Federal Register of March 4, 1992, EPA announced its intent to approve the revised New Mexico Plan for Certification of Applicators of Pesticides Classified for Restricted Use and Compound 1080 Livestock Protection Collars. EPA hereby announces final approval of the revised New Mexico Plan.

ADDRESSES: Copies of the New Mexico Certification Plan are available for review at the following locations during normal business hours.

1. New Mexico Department of Agriculture, Box 30005, Dept. 3189, Corner of Gregg and Espina, Las Cruces, NM 88003-0005, Telephone: (505) 646-3007.
2. Environmental Protection Agency, Region VI, 1445 Ross Avenue, 12th Floor, suite 1200, Dallas, TX 75202-2733, Telephone: (214) 655-7239.

FOR FURTHER INFORMATION CONTACT: Jerry Oglesby, Pesticides and Toxic Substances Branch, Region VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, TX 75202-2733, Telephone: (214) 655-7239.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 4, 1992 (57 FR 7551), EPA announced its intention to approve the revised New Mexico Plan for Certification of Applicators of Pesticides classified for restricted use and Compound 1080 Livestock Protection Collars. This revised New Mexico Plan consolidated the existing New Mexico Plan and approved amendments. The revised New Mexico Plan also contained an additional program for the certification of applicators of Compound 1080 Livestock Protection Collars. Interested parties were given 30 days to comment. There were nine comments received and all comments favored the approval of the revised New Mexico Plan. All commenters identified themselves as being involved in ranching in New Mexico. Each of the nine commenters, many of whom represented Associations, specifically supported the adoption of the New Mexico program for the certification of applicators of Compound 1080 Livestock Protection Collars.

EPA therefore grants final approval of the revised New Mexico Plan for the Certification of Applicators of Pesticides Classified for Restricted Use and Compound 1080 Livestock Protection Collars.

Dated: June 4, 1992.

Joe D. Winkle,

Acting Regional Administrator, Region VI.

[FR Doc. 92-14098 Filed 6-16-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-34013A; FRL 4059-6]

Sulfur: Receipt of Comments on Reregistration Eligibility Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to Sulfur Reregistration Eligibility Document.

SUMMARY: This Notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 7 U.S.C. 136 et seq., constitutes an amendment to the Sulfur Reregistration Eligibility Document and concludes the comment period. The amendment exempts certain sulfur products labeled only for home and garden use from the 24-hour reentry labeling requirement.

FOR FURTHER INFORMATION CONTACT: Eric Feris, Reregistration Branch, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Crystal Station 1, WF33G5, 2800 Crystal Drive, Arlington, Virginia. By telephone, call (through the Virginia Relay: 1-800-828-1140), (703) 308-8048.

SUPPLEMENTARY INFORMATION: On June 5, 1991 EPA issued a Notice published in the Federal Register (56 FR 25699) announcing the availability of the Sulfur Reregistration Eligibility Document (RED). The RED was issued as a final document, but a public comment period of 60 days was initiated. The Sulfur RED outlined EPA's position on the use of Sulfur as a pesticide and set forth requirements for product-specific data pursuant to FIFRA section 4(g)(2)(B).

Only one set of comments was received. An ad-hoc coalition of Sulfur registrants responded to the RED on July 1, 1991. This response requested three waivers or exemptions from requirements imposed by the Sulfur RED.

The first request was for a waiver of the acute toxicity data requirements in the Sulfur RED for products which meet the following three criteria:

1. Sulfur is the sole active ingredient.
2. No "List 1" or "List 2" inert ingredients are included.
3. The products contain only innocuous inert ingredients or inert ingredients which are exempt from tolerance requirements under 40 CFR 180.1001 or by other specific Agency action.

EPA denied this request. The Agency determined that an exemption from the requirement for a tolerance is not relevant to the assessment of acute toxicity of inert ingredients contained in pesticide formulations. In addition, whether or not an inert ingredient is on List 1 or List 2 is not pertinent to support this waiver request. Assignment of an inert ingredient to List 1 or List 2 bears no significance or relation to the acute toxicity assessment of the sulfur products. Acute toxicity data are needed to determine the appropriate toxicity category, signal word and precautionary statements for each registered product.

The second request was for exemption of products meeting the

above three criteria from the requirements to submit product specific product chemistry data identified in the Sulfur RED, except for guideline requirements 61–1 (Product Identity), and 62–2 (Certification of Limits). EPA is denying this request except for guideline requirements 63–2 (Color), and 63–4 (Odor). Storage Stability data (63–17) must be generated by registrants and kept on file, but are not required to be submitted except for sulfur gasser products used to control rodents. The Agency needs complete information on all product components and manufacturing byproducts to allow thorough evaluation of safety.

The third request was for an exemption from the requirement that a 24–hour reentry statement be added to the labels of sulfur–containing products which meet the above three criteria and are registered only for home and garden uses. EPA has granted approval of this request for all sulfur products registered for home and garden plant pest and disease control, animal ectoparasite control, and for all candle and rodent gasser applications. If a label lists agricultural uses as well as home and garden uses, the 24–hour reentry statement is required, as stated by the original Sulfur RED. However, on labels which list both agricultural and home and garden uses, the directions for use for home and garden applications must be listed separately from the directions for use for agricultural applications so that the reentry statement will not apply to the home and garden uses.

The original Sulfur RED, the Sulfur RED fact sheet, and this Notice which amends the RED with regard to the 24–hour reentry interval for home and garden use products are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, ATTN: Order Desk; telephone: (703) 487–4650. To obtain the Sulfur RED, request publication number PB92–114453; to obtain the fact sheet, request publication number PB92–114347. This statement of amendment of the Sulfur RED is also being forwarded to NTIS and will be available soon.

Dated: June 4, 1992.

Daniel M. Borolo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92–14223 Filed 6–16–92; 8:45 am]

BILLING CODE [illegible]

[FRL–4143–3]

CERCLA Administrative Order on Consent for Response Costs at Chronar Corporation's Bakers Basin Facility in Lawrence Township, Mercer County, NJ

AGENCY: Environmental Protection Agency.

ACTION: Proposed Consent Order; Request for comments.

SUMMARY: The Environmental Protection Agency ("EPA") Region II announces its intent to issue a proposed Administrative Order on Consent ("Order on Consent"), pursuant to sections 106, 107, 122(h) and 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606, 9607, 9622(h) and 9622(i), between EPA and Chronar Corporation for the performance of a private removal action and settlement of certain EPA claims for response costs.

The proposed Consent Order provides for the Chronar Corporation to perform a private removal action treating and disposing of approximately 126 compressed gas cylinders. Because Chronar Corporation filed for protection under chapter 11 of the Bankruptcy Code and plans to liquidate, and to avoid protracted litigation, EPA and Chronar have agreed in principle that Chronar will perform the removal action and EPA will waive certain EPA claims for past response costs and response costs to be incurred up to the completion of the removal action. However, the settlement does not include future costs that EPA may incur for future or unknown environmental problems at the Bakers Basin facility.

DATES: EPA will receive comments relating to the proposed Order on Consent until July 17, 1992.

ADDRESSES: Comments may be mailed to Douglas R. Blazey, Regional Counsel, U.S. Environmental Protection Agency, Attention: Chief, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York, 10278. The proposed Order on Consent may be examined at the Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, room 309, 26 Federal Plaza, New York, New York 10278. A copy of the proposed Order on Consent may be obtained in person or by mail from the Office of Regional Counsel, New Jersey Superfund Branch, U.S. Environmental Protection Agency, Region II, room 309, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Melva J. Hayden, Assistant Regional Counsel, New Jersey Superfund Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, room 309, New York, New York 10278, Telephone (212) 264–3148.

Dated: May 26, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 92–14224 Filed 6–16–92; 8:45 am]

BILLING CODE [illegible]

[FRL–4143–2]

Proposed Settlements Under Sections 122(g) and 122(h) of Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlements and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") is proposing to enter into two administrative settlements to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlements and of the opportunity to comment. The settlements are intended to resolve past and estimated future liabilities of 136 *de minimis* parties and 27 non-*de minimis* parties for costs incurred, or to be incurred, by EPA at the Shore Realty Site, also known as the Applied Environmental Services, Inc. Site in Glenwood Landing, Nassau County, New York.

DATES: Comments must be provided on or before July 17, 1992.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York City, New York, 10278 and should refer to: In Re: Applied Environmental Services, Inc. Site, Glenwood Landing, Nassau County, New York, U.S. EPA Index No. II CERCLA–122–20201 and U.S. EPA Index No. II CERCLA–122–20202.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York City, New York 10278, (212) 264–9794, Attention: Alexander Schmandt.

SUPPLEMENTARY INFORMATION:

In accordance with section 122(i)(1) of CERCLA, notice is hereby given of two proposed administrative settlements concerning the Applied Environmental Services, Inc. Site (the "Site"), Glenwood Landing, Nassau County, New York. Sections 122(g) and 122(h) of CERCLA provide EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

The proposed administrative agreements would reimburse EPA $275,000 for its past response costs and certain estimated future response costs at the Site. EPA has incurred past response costs of $125,000 at the Site and will incur estimated future response costs of $150,000 for EPA's oversight of the remedial action at the Site. The remedial action will be implemented pursuant to a consent judgment entered into by the State of New York and certain defendants in the case of *State of New York* versus *Shore Realty Corp.*, Nos. 84 CV 0864 and 85 CV 2270 (E.D.N.Y.).

Administrative Order on Consent, Index No. II CERCLA–122–20201, which was negotiated pursuant to section 122(g)(4) of CERCLA, provides that the *de minimis* respondents (i.e. generators of hazardous substances that contributed less than one percent by volume of the hazardous substances to the Site) will reimburse EPA their allocated share of EPA's past response costs and estimated future response costs. In addition to reimbursing EPA's response costs, the *de minimis* respondents will pay a premium to a trust fund established pursuant to the State of New York settlement, which the non-*de minimis* defendants will use to implement the remedial program at the Site. Upon payment of its share of EPA's response and the premium, a *de minimis* respondent will be released from liability for past and future CERCLA response costs at the Site.

One-hundred and thirty-six potentially responsible parties ("PRPs") of the one-hundred and ninety-eight eligible for *de minimis* status at the Site have committed to participate in the *de minimis* settlement: A & T Auto Radiator; AAR Technical Service Center Corp.; Abilities, Inc.; Accurate Forming Corp.; AD-View Publishers Printing Corp.; ADEMCO, Division of Pittway Corp.; Advance Central Station Alarm Co.; Aircraft Finishing Corp.; Aladdin Transparent Packaging Corp.; All American Metal Corp.; American Bank Stationary; American Biltrite, Inc.; American Precision Finishing Corp.; American Technical Ceramics Corp.; Arkwin Industries, Inc.; Armstrong World Industries, Inc.; AT&T Resource Management Corp.; Avery Label; Award Packaging Corp.; Baumann & Sons Buses, Inc.; Benjamin Moore & Co.; Beth Israel Hospital; Brookhaven Memorial Hospital Medical Center; C.J. Osborn Chemicals, Inc.; C.W. Post Center of L.I.U.; C–P Convertors, Inc.; CAMVAK International, Inc.; Castlereagh Press, Inc.; Cellu Craft, Inc.; Center Laboratories Inc.; Central Aviation and Marine Corp.; Charles Ross & Son Company; Chemical Pollution Control, Inc.; ChemLawn Corp.; Coherent Communications Systems Corp.; Colonial Craft; Comstron Corp.; Continental Can Co.; Convertors Inc; Dasco Cleaners; Datacard Corp.; Designatronics, Inc.; Dionics, Inc.; Dorr-Oliver, Inc.; Driver-Harris Co.; Dytrol Corp.; Edgewood State Hospital; Electronic Devices, Inc.; Ell-Bee Chemical; Fabric Leather Corp.; Falcon Automotive Products, Inc.; Freeport, Village of; General Waste Oil Co.; Glendale Protective Technologies, Inc.; Gould, Inc.; Grumman Aerospace Corp.; GTE Products Corp.; H&N Chemical; Halm Industries Co., Inc.; Hartman Systems Co.; Hetem Bros., Inc.; Hitemco Division—Barson Composites Corp.; Inco Selective Surfaces, Inc./MPD Technology, Corp.; Inscom Electronics Corp.; Irwin Measuring Tool Co.; ITM, Ltd.; J. Josephson, Inc.; Kimball Systems; Kirker Chemical Co.; Kleartone, Inc.; Lancaster Metals Science Corp.; Lawrence-McFadden Co.; Lin Pac Corrugated Container; Logus Mfg. Corp.; Long Island Lighting Company, Lyndal Chemical, Division of Millmaster Onyx Corp.; Magnetic Media Corp.; Marathon Carey McFall; Marconi Circuit Technology Corp. (formerly known as Circuit Technology); Marine Pollution Control; Marksmen Mfg., Inc.; Mattituck Airbase, Inc./Mattituck Aviation Corp.; Metal Improvement Co., Inc.; Milgray Electronics, Inc.; Mod-A-Can Corp.; Monoplast Chemical Corp.; New York State Office of General Services; New York Telephone Co.; Newsday; Oakes Machine Corp.; Oneida Packaging; Orelube Corp.; Paxar Corp.; Penguin Industries, Inc.; Periphonics Corp.; Poly-Pak Industries, Inc.; Polymer Industries; Prestigeline Inc.; Pride Solvents & Chemical Co., Inc.; Public Service Electric and Gas Co.; Purex Corp.; Quantronix Corp.; Republic Electronics Co.; Ridge Printing Co., Inc.; Roche Biomedical Laboratories, Inc.; Rocky Point Auto Parts, Inc.; Schildwachter, Fred M. & Sons; Secrest Handprints, Inc.; Shaw Aero Devices, Inc.; Solid Power, Inc.; South Nassau Communities Hospital; St. Francis Hospital; Technical Coatings Co.; Tekni-Plex Inc.; Telephonics Corp.; Thomson Industries, Inc.; Thrift Auto Painting Co., Inc.; Time Electronics Sales Co.; Tire Supply Corp. of Suffolk; Transcontrol Corp.; Tri Metal Fabrication, Inc.; Ulano Corp.; Unifoil Corp.; United States Coast Guard; United States Veterans Administration; Utility Manufacturing Co.; Inc.; Vernitron Corp.; Vicon Industries, Inc.; Volt Information Sciences, Inc.; Wallmates Vinyls, Inc.; Walt's Auto Radiator & Heater; Wantagh Union Free School District; Washington Molding; Wesco Steel Drum Co., Inc.; Willow Press, Inc.; and Winkler Cleaners, Inc.

Administrative Cost Recovery Agreement, Index No. II CERCLA–122–20202, which was negotiated pursuant to section 122(h) (1) of CERCLA, provides that the owner/operators of the Site and the generators of hazardous substances, who contributed greater than one percent by volume of the hazardous substances to the Site, (collectively, the "non-*de minimis* respondents") will reimburse EPA the remainder of EPA's past and estimated future response costs that have not been reimbursed pursuant to the *de minimis* settlement. Upon payment of EPA's response costs, the non-*de minimis* respondents will be released from liability for EPA's $125,000 past response costs and EPA's estimated future oversight costs up to $150,000 for the oversight of the remedial action conducted pursuant to the State of New York settlement. The non-*de minimis* respondents will remain liable for any additional future EPA oversight costs in excess of $150,000, as well as any other EPA response costs incurred at the Site.

Twenty-seven non-*de minimis* PRPs (8 owner/operators and 19 generators) out of thirty-seven (9 owner/operators and 28 generators) at the Site have committed to participate in the non-*de minimis* settlement: Bartur, Amnon; Ber Mar Corp.; Brookhaven National Laboratory; Calleia Bros., Inc.; Capitol Records, Inc.; Chamberlain Mfg. Corp.; Chemical Waste Disposal Corp.; Dayton T. Brown, Inc.; Dial Ace Uniform Supply Co.; Dri Print Foils, Inc.; General Electric Co.; General Instrument Corp.; The Glidden Company; LeoGrande, Donald; LeoGrande, Joseph Jr.; LeoGrande, Joseph Sr.; Maken Industries, Inc.; Phillips Petroleum Co.; Raffi & Swanson, Inc. (Surface Coatings, Inc.); Saleh, Joseph; The Sherwin-Williams Company; Shore Realty Corp.; Texaco Refining and Marketing, Inc.; Valspar Corp.; Waters Chromatograph, Division of Millipore Corp.; Westinghouse Electric Corp.; and Windsor Fuel Co., Inc.

A copy of the proposed administrative settlement agreements, as well as background information relating to the settlements, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York City, New York, 10278, Attention: Alexander Schmandt.

Dated: June 1, 1992.

Kathleen C. Callahan,

Director, Emergency and Remedial Response Division.

[FR Doc. 92-14225 Filed 6-16-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 11, 1992

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB No.: 3060-0136
Title: Temporary Permit to Operate a General Mobile Radio Service System
Form No.: FCC 574-T

The approval on FCC 574-T has been extended through 4/30/95. The June 1990 edition with the previous expiration date of 4/30/92 will remain in use until updated forms are available.

OMB No.: 3060-0107
Title: Private Radio Application for Renewal, Reinstatement and/or Notification of Change to License Information
Form No.: FCC 405-A

A revised application form FCC 405-A has been approved for use through 4/30/95. The current edition of the form is dated May 1992.

OMB No.: 3060-0139
Title: Request for Antenna Height Clearance and Obstruction Marking and Lighting Specifications
Form No.: FCC 854

A revised request form FCC 854 has been approved for use through 4/30/95. The current edition of the form is dated May 1992. All previous editions are obsolete.

OMB No.: 3060-0318
Title: Notification of Status of Facilities
Form No.: FCC 489

A revised application form FCC 489 has been approved for use through 4/30/93. The March 1991 edition with an OMB expiration date of 4/30/93 will remain in use until revised forms are available.

OMB No.: 3060-0444
Title: 800 MHz Construction Letter
Form No.: FCC 800-A

A revised form letter FCC 854 has been approved for use through 4/30/95. The April 1992 edition with an OMB expiration date of 8/31/93 will remain in use until revised forms are available.

OMB No.: 3060-0497
Title: Mediator Survey and Party Survey Forms
Form No.: FCC 91 and 92

New survey forms FCC 91 and 92 have been approved for use through 5/31/95. The current edition of the survey forms is dated July 1992.

OMB No.: 3060-0498
Title: Confidential Alternative Dispute Resolution Statement
Form No.: FCC 90

A new statement form FCC 90 has been approved for use through 5/31/95. The current edition of the form is dated July 1992.

OMB No.: 3060-0499
Title: 470-512 MHz Eight Month Mobile Loading
Form No.: FCC 6027-H

The form letter FCC 6027-H has been approved for use through 4/30/95. The February 1988 edition will remain in use until revised forms are available.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-14250 Filed 6-16-92; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 12, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

Note: The Commission had requested emergency OMB approval for this information collection by June 3, 1992.

OMB Number: None
Title: Political Broadcast Audit
Action: New collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: One time audit
Estimated Annual Burden: 60 responses; 1 hour average burden per response; 60 hours total annual burden
Needs and Uses: The collection of this information is needed for the commission to determine whether broadcast licensees and cable television system operators are maintaining "political" files containing information related to sales of time to candidates about their commercial and political sales practices, as required by 47 CFR 73.1943 of the Commission's rules and are disclosing specific information to candidates about their commercial and sales practices as required by 47 CFR 73.1942(b). the information will be used by FCC in gauging compliance by these entities with the above-referenced political broadcast rules and taking any appropriate enforcement action.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-14251 Filed 6-16-92; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/state	File No.	MM docket No.
A. Rosamond Radio, Inc	Rosamond, CA	BPH-910225MG	92-121
B. Jamie Leigh Coberly	Rosamond, CA	BPH-910225MH	

Applicant	City/state	File No.	MM docket No.
C. Diane K. Hitt.	Rosamond, CA	BPH-910225MI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. City Coverage	A, B, C
2. Environmental Impact	B, C
3. Comparative	A, B, C
4. Ultimate	A, B, C

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 92-14248 Filed 6-16-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1895]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

June 10, 1992.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed July 2, 1992.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after thetime for filing oppositions has expired.

Subject: Revision of Radio Rules and Policies (MM Docket No. 91-140) Number of Petitions filed: 20.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-14029 Filed 6-16-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-943-DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: May 25, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-943-DR), dated May 4, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 25, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-14154 Filed 6-16-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Port of Seattle/Jore Marine Services; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200110-001.

Title: Port of Seattle/Jore Marine Services Terminal Agreement.

Parties: Port of Seattle ("Port"), Jore Marine Services, Inc.

Synopsis: The amendment extends for ten years, a lease between the parties for 21.08 acres of yard and apron area at the Port's Terminal 115.

Agreement No: 301-200670.

Title: Georgia Ports Authority/ National Shipping Company of Saudi Arabia Terminal Agreement.

Parties: Georgia Ports Authority ("GPA"), National Shipping Company of Saudi Arabia ("NSCSA").

Synopsis: The subject Agreement between GPA and NSCSA establishes a rate agreement for services to be provided and performed by GPA at its Savannah, Georgia terminal facilities.

Dated: June 11, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-14150 Filed 6-16-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank

holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 10, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Citizens National Bancorp, Inc., Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bancshares, Inc., Springfield, Missouri, and thereby indirectly acquire Citizens National Bank of Springfield, Springfield, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. New Mexico National Financial Incorporated, Roswell, New Mexico; to become a bank holding company by acquiring 80 percent of the voting shares of Western Bancshares of Truth or Consequences, Inc., Truth or Consequences, New Mexico, Firstbank, Farmington, Farmington, New Mexico, and Firstbank of Truth or Consequences, Truth or Consequences, New Mexico.

Board of Governors of the Federal Reserve System, June 11, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-14157 Filed 6-16-92; 8:45 am]

BILLING CODE 6210-01-F

Jay H. Lustig and Sharen Tyber Lustig; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Jay H. Lustig and Sharen Tyber Lustig, Redondo Beach, California; to acquire 20 percent of the voting shares of National Bancshares Corporation of Texas, San Antonio, Texas, and thereby indirectly acquire NBC Bank - Eagle Pass, N.A., Eagle Pass, Texas, NBC Bank - Laredo, N.A., Laredo, Texas, and NBC Bank - Rockdale, Rockdale, Texas.

Board of Governors of the Federal Reserve System, June 11, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-14158 Filed 6-16-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Drug Abuse; Meetings

Editorial Note: This document was incorrectly published on June 8, 1992. The corrected document appears below.

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for July 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10-42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443-2755).

Substantive program information may be obtained from the contacs whose names, room numbers, and telephone numbers are listed below.

Committee Name: Biobehavioral/Clinical Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 14-15, 1992.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 14, 9 a.m. to 9:30 a.m.

Closed: Otherwise.

Contact: Iris W. O'Brien, room 10-42, Parklawn Building, Telephone (301) 443-2620.

Committee Name: Sociobehavioral Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 21-23, 1992.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 21, 9 a.m. to 9:30 a.m.

Closed: Otherwise.

Contact: H. Noble Jones, room 10-22, Parklawn Building, Telephone (301) 443-9042.

Dated: June 2, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-13246 Filed 6-5-92; 8:45 am]

BILLING CODE 1505-01-D

National Institute of Mental Health; Meeting

Editorial Note: This document was incorrectly published on June 8, 1992. The corrected document appears below.

Pursuant to Public Law 92-463, notice is hereby given of a meeting of an advisory committee of the National Institute of Mental Health for July 1992.

The initial review group will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The summary of the meeting and roster of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9-105, 5600 Fishers Lane, Rockville, MD 20857 (telephone: 301-443-4333).

Substantive program information may be obtained from the contact whose name, room number, and telephone number are listed below.

Committee Name: Behavioral Subcommittee, Mental Health Special Projects Review Committee.

Meeting Date: July 21–22, 1992.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: July 21, 9–10 a.m.

Closed: Otherwise.

Contact: Phyllis D. Artis, room 9C–15, Parklawn Building, Telephone (301) 443–6470.

Dated: June 2, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–13245 Filed 6–5–92; 8:45 am]

BILLING CODE 1505–01–D

Centers for Disease Control

[Announcement Number 269]

Development of Innovative Technology for the Measurement of Lead in Blood; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of funds in Fiscal Year 1992 for the development and new and innovative technology, or significant improvement of existing technology, for the measurement of lead in blood. State-, community- and physician office-based childhood lead poisoning prevention programs have a need for reasonably priced, accurate, precise, portable, rugged, and easy-to-operate instruments or analytical techniques to measure the concentration of lead in blood. Such programs screen large numbers of infants and young children and identify those with lead poisoning.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under sections 301(a) [42 U.S.C. 241(a)] and 317A [42 U.S.C. 247b–1] of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51b.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, minority and/or women-owned business are eligible for these grants. Individual organizations that now have a CDC Cooperative Research and Development Agreement (CRADA) dealing with blood lead are eligible to apply. However, if funded the CDC CRADA dealing with blood lead will be terminated.

Note: Eligible applicants are encouraged to enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Availability of Funds

Approximately $550,000 per year will be available to fund up to four grants. It is expected that the average new award will be approximately $125,000 for the first year, with a range of $90,000 to $150,000. The new awards are expected to begin on or about September 30, 1992. Awards generally are made for a 12-month budget period within project periods not to exceed 3 years. Funding estimates may vary and are subject to change. Continuation awards with in the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

State and community health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities. Universal screening of children is recommended under the provisions of the 1991 CDC Lead Statement; however, the lack of analytical systems (methods plus instrumentation) which are easy-to-operate, rugged, and suitable for field use in screening programs have made it difficult and costly for agencies to develop programs for the elimination of this totally preventable disease.

This program will provide financial support for the development and validation of new and innovative technology leading to better blood lead measurement systems. In contrast, the CRADA with Radiometer Analytical A/S, and other CRADAs which are contemplated, are intended to improve and refine existing proprietary lead measurement technology owned by the non-government CRADA partner, for the purpose of making acceptable blood lead measurement systems available for childhood lead poisoning prevention programs as soon as possible. CDC envisions the possibility that research and development performed by the Grantee may, in some cases, also aid in the achievement of CRADA objectives.

Program Requirements

The following are essential requirements of the Grantee:

1. A principal investigator with the authority, responsibility, and research experience to carry out the objectives of the grant.

2. Ability to provide qualified staff, laboratory and/or production facilities, equipment, and other resources necessary to carry out the objectives of the grant.

3. Ability to conduct a scientifically sound, goal-oriented research and development program which will yield all or portions of practical analytical systems which measure one or more chemicals in complex solutions. Ability to understand and address the difficult analytical problem presented by a blood sample matrix.

4. Ability to publish the results of the research effort in the peer-reviewed scientific literature, or otherwise make the research findings available for objective evaluation and use.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. *Evidence of Technical Expertise and Research Capacity* (30%). The applicant's ability to successfully plan, implement, and conduct a successful research and development program aimed at clinical measurement systems including the development and validation of analytical methods and/or instruments.

2. *Understanding the Problem* (20%). The applicant's understanding of the requirements, objectives, and interactions required for a successful research and development program. The applicant must also present evidence of understanding of the difficult analytical problem presented by the complexity of a blood sample matrix for the measurement of trace elements, and of the potential for interferences and contamination during sample preparation and analysis.

3. *Program Personnel* (10%). The extent to which the proposal has described (a) the qualifications and commitment of the applicant including training and experience in chemistry, biochemistry, biomedical engineering or other relevant scientific disciplines, (b) detailed allocations of time and effort of staff devoted to the project, (c)

information on how the applicant will develop, implement and administer the program, and (d) the qualifications of the support staff.

4. *Technical Approach* (30%). The overall technical merit of the research plan and the soundness and scientific validity of the proposed measurement system. The adequacy of the research plan includes the extent to which the evaluation plan can be used to effectively measure progress towards the stated objectives.

5. *Collaboration* (5%). While collaboration is not required, it is encouraged if necessary to accomplish the research objectives in a timely manner. If applicable, the applicant should demonstrate the ability to collaborate with other research centers, manufacturers, or commercial interests to conduct the described research and development plan. Evidence of collaborative relationships include jointly developed plans for developing separate components of the analytical system and written commitments of support from other program-related entities that describe the collaborative activities.

6. *Plans to Publicize the Research Effort* (5%). The purpose of this grant is to encourage the rapid development and deployment of measurement systems for blood lead which will be useful in lead poisoning prevention screening programs. Therefore, an explanation of how the grantee plans to encourage the publication of the research findings or otherwise make the information available to the public is required. Research which results only in findings of academic interest with no practical application to the objectives of the grant is not acceptable.

7. *Budget Justification* (Not Scored). The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Application Submission and Deadline

Applicants should follow the guidance provided in PHS Form 398 (REVISED 9/91) in preparing grant applications. The original and two copies must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before August 12, 1992.

1. *Deadline.* Applications shall be considered as meeting the deadline if they are either: A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. *Late Applications.* Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 269. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6630. Programmatic technical assistance may be obtained from Dayton T. Miller, Ph.D., or Daniel C. Paschal, Ph.D., Nutritional Biochemistry Branch, Division of Environmental Health Laboratory Sciences, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–18, Atlanta, Georgia 30333, (404) 488–4026.

Please refer to Announcement Number 269 when requesting information and submitting any application.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) is available through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402–9325 (Telephone (202) 783–3238).

A copy of Preventing Lead Poisoning in Young Children—a Statement by the Centers for Disease Control—October 1991 may be obtained from the Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–28, Atlanta, Georgia 30333, (404) 488–4880.

Dated: June 11, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–14151 Filed 6–16–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92F–0214]

Stroh Brewery Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Stroh Brewery Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame in beer containing less than 3 percent of alcohol by volume.

FOR FURTHER INFORMATION CONTACT: F. Owen Fields, Center for Food Safety and Applied Nutrition (HFF–333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2A4324) has been filed by Stroh Brewery Co., 100 River Pl., Detroit, MI 48207–4291. The petition proposes to amend the food additive regulations in § 172.804 *Aspartame* (21 CFR 172.804) to provide for the safe use of aspartame in beer containing less than 3 percent of alcohol by volume.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 5, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-14173 Filed 6-16-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Facilities Management Contract

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 56, No. 102, p. 24082 and pp. 24084–85, dated Tuesday, May 28, 1991) is amended to reflect various changes resulting from the transfer of the management of the Facilities Management Contract from the Office of Computer Operations, Bureau of Data Management and Strategy (BDMS), to the Office of Information Resources Management, BDMS.

The specific changes to Part F are:

• Section FH.20.D.1., Office of Information Resource Management (FHE1), is deleted in its entirety and replaced by the following revised functional statement. The new section FH.20.D.1 reads as follows:

1. Office of Information Resources Management (FHE1)

• Plans, organizes, and coordinates the activities required to maintain an HCFA-wide Information Resources Management (IRM) program including the management of funds to support IRM operations and information systems development activities.

• Formulates and executes the HCFA IRM common expense budget and Information Technology Systems plans and budgets in conjunction with HCFA-wide budgetary submissions to the Department.

• Develops and maintains a process to administer, document, and monitor the software and hardware changes planned and implemented within HCFA.

• Provides systematic identification, assessment, and certification of new, revised, or existing HCFA information systems and processes in accordance with HCFA policies, standards, information plans, and department requirements.

• Develops, coordinates, and directs the HCFA automated data processing (ADP) Systems Security Program to ensure the protection of HCFA systems and ADP equipment.

• Designs, evaluates, and performs analyses related to HCFA-wide data administration and database administration improvement projects.

• Negotiates and administers agreements and provides ADP liaison between HCFA users, the Social Security Administration, and other external organizations for the provision of ADP capacity and support services.

• Formulates strategies, prepares procurement documents, and performs contract administration activities for major contractual agreements in support of Agency IRM requirements.

• Section FH.20.D.1.a., Division of Information Systems Management (FHE11), is deleted in its entirety and replaced by the following revised functional statement. The new section FH.20.D.1.a. reads as follows:

a. Division of Information Systems Management (FHE11)

• Directs the planning, design, and maintenance of information systems development standards and database administration policies and standards, including review of work products for compliance with standards, and the support of the Standards Board activities.

• Plans, directs, and coordinates the development and maintenance of a project management and software metrics program to monitor, evaluate, and improve the information systems development processes for HCFA. Directs the establishment and maintenance of the HCFA IRM systems inventory.

• Directs and coordinates the performance of post-implementation reviews for Agency systems to validate that all systems components are maintained concurrently with the operational systems.

• Formulates strategies and performs contract administration activities for major software contractual agreement across all phases of the information systems development life cycle.

• Formulates strategies and performs contract administration activities for major IRM contractual agreements.

• Section FH.20.D.6., Office of Computer Operations (FHE6), is deleted in its entirety and replaced by the following revised functional statement. The new section FH.20.D.6. reads as follows:

6. Office of Computer Operations (FHE6)

• Directs the planning, budgeting, evaluation, procurement, operation, maintenance, control and security of all centralized automated data processing (ADP) and data communications (DC) equipment and services for HCFA's Data Center (HDC) which includes: DC activities and equipment; centralized large-scale computers; nationally distributed departmental minicomputers; vendor supplied operating systems; utility software; OCO utilization of the Facilities Management Contract; and various intra/inter Agency agreements.

• Advises the bureau and HCFA executive staff on ADP and DC issues and concerns and represents HCFA in dealings with Federal and non-Federal agencies and organizations in these areas.

• Serves as the Agency's final technical authority for the approval of the purchase, lease, and maintenance of all ADP and DC equipment and systems.

• Manages the HDC and DC resource planning function to ensure the availability of resources for Agency approved projects.

• Develops HDC and DC plans and policies and provides program direction to HCFA staff and contractor support organizations to ensure that the Agency mission is efficiently and effectively met.

• Section FH.20.A.6.a, Technical Research and Planning Staff (FHE6–1), is deleted in its entirety and replaced by the following revised functional statement. The new Section FH.20.A.6.a. reads as follows:

a. Technical Research and Planning Staff (FHE6–1)

• Advises the Director, Office of Computer Operations, and executives throughout HCFA components of the impact on the HCFA Data Center (HDC) of new technology and Agency programmatic activities including new requirements and growth. Serves as principal focus and coordinator of HDC involvement for major system designs/redesigns resulting from new technology or significant legislation.

• Provides contract management expertise to major contracts and provides program direction to contract support organizations to ensure Agency mission is efficiently and effectively met. Monitors and analyzes lease, purchase, and maintenance agreements to ensure continuing efficient use of the HDC and data communications (DC) equipment. Develops and manages the HDC, minicomputer, and DC spending plans and estimates for equipment, software, maintenance, supplies, and support services. Prepares and controls contract performance evaluation procedures including the specification of evaluation periods, award fee criteria, evaluation categories and performance measurement controls.

• Serves as the Agency representative and inter- and intra-Department liaison for technology changes in the HDC and DC environment. Plans, organizes, and directs the acquisition of HDC and DC hardware and software within HCFA. Coordinates the procurement, installation, acceptance, and certification of newly acquired HDC and DC hardware and new/existing vendor maintenance agreements and service requests for installed hardware/software.

• Reviews HDC procurements and subsequent contract administration for compliance with Federal and Department standards and regulations, as well as for conformance with Agency plans.

• Develops and manages the HDC capacity planning activities. Monitors HDC and DC equipment utilization and capacity, making available the necessary planning reports for all levels of management.

• Performs technical assessments of new products, conducts independent evaluations, and acts as liaison for all beta testing.

• Conducts comprehensive impact analyses on HDC and DC network planning and design to ensure continuity in support of the total HCFA user community. Conducts studies to determine and define HDC and DC user requirements.

• Section FH.20.A.6.b., Contract Administration and Utilization Staff (FHE6–2) and Section FH.20.A.6.c., Division of Data Center Services (FHE61), are deleted in their entirety and replaced by the following new Section FH.20.A.6.b. which reads as follows:

b. Division of Data Center Services (FHE61)

• Directs the planning, budgeting, operation, maintenance control, and security for the HCFA Data Center (HDC) data processing resources and related support facilities (backup power, environmental systems, fire protection, etc.).

• Develops standards and policies for the efficient use of the HDC. Effects these policies and standards through software and hardware controls.

• Manages, evaluates, installs, and maintains HDC operating systems software, utility software products, and data base management systems.

• Plans, organizes, schedules, and controls activities required to maintain a contingency and disaster recovery plan for the HDC.

• Develops HDC operations policies, operational plans, and technical guidelines, and provides program direction to contractor support organizations to ensure that the Agency mission is efficiently and effectively met.

• Develops and maintains the HCFA-wide accounting and chargeback system for HDC and DC users, determining and/or recommending the allocation of resources to the user community. Oversees the resource billing to non-HCFA users of the HDC.

Dated: June 10, 1992.

William Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–14217 Filed 6–16–94; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Maternal and Child Health (MCH) Services Federal Set-Aside Program; MCH Training Program; University Affiliated Programs

AGENCY: Health Resources and Services Administration (HRSA), Public Health Service (PHS), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Maternal and Child Health Bureau (MCHB), HRSA, announces that fiscal year (FY) 1992 funds are available for grants for long term interdisciplinary graduate and postgraduate training of health professionals in University Affiliated Programs. These training projects will develop personnel for leadership in providing comprehensive health and related services to children with mental retardation, developmental disabilities, or other chronic handicapping conditions (especially those with neurodevelopmental/neuromuscular involvement), and their families. It is anticipated that a total of $800,000 per year will be available for grants to support not more than two projects, one to be located in a Southeastern State.

Awards for long term training in University Affiliated Programs are made under the program authority of section 502(a) of the Social Security Act, the MCH Federal Set-Aside Program. The regulation implementing this program was published in the March 5, 1986, issue of the **Federal Register** at 51 FR 7726 (42 CFR part 51a).

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The MCH Federal Set-Aside Program will address the Healthy People 2000 objectives related to improving maternal, infant, child and adolescent health and developing service systems for children at risk of chronic and disabling conditions. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202 783–3238).

DUE DATES: The deadline for receipt of applications is July 24, 1992. To receive consideration, all applications must be sent to the Chief, Grants Management Branch, Office of Program Support, MCHB, at the address below. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Grant applications postmarked after the deadline or sent to any other location will not be considered for funding and will be returned to the applicant.

The initial budget period for grantees will begin October 1, 1992, and will extend through June 30, 1993. The project period will run for two years and nine months, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: John Gallicchio, Chief, Grants Management Branch, Office of Program Support, MCHB, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–1440, regarding business management, administrative, or fiscal issues related to the awarding of grants under this announcement. Applications should be submitted on PHS Form 6025–1, approved by OMB under control number 0915–0060.

Requests for technical or programmatic information, application forms and guidelines should be directed to: Elizabeth Brannon, M.S., R.D., Director, MCH Training, Maternal and Child Health Bureau, HRSA, room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–2190.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

On April 16, 1991, our major notice of availability of FY 1992 funds under the MCH Federal Set-Aside Program was published (57 FR 13367). Planning for

this subcategory of training projects was not completed in time for publication in that notice.

Under Section 502(a) of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1989, 15 percent of funds appropriated annually for the MCH Block Grant that are not in excess of $600 million, as well as 15 percent of any amount over $600 million after section 502(b)(1)(A) funds have been withdrawn, are set aside at the Federal level for specified purposes, including long term training of professional personnel providing health and related care of children with special health care needs (CSHCN). University Affiliated Programs (UAPs), which train professional personnel for leadership roles in providing health and related services to mentally retarded children and children with multiple handicaps or other special health care needs, are a major recipient of the MCH long term training program.

Authority for UAPs was first enacted under title V of the Social Security Act in 1965, in response to recommendations of the President's Panel on Mental Retardation for development of interdisciplinary training programs in which specialists would be trained to work together and appreciate each other's role and functions. The current UAP network includes 22 MCH-funded programs throughout the United States at institutions of higher learning with accredited schools of medicine. These UAPs combine research and training with provision of comprehensive, clinical care at the highest levels to children with mental retardation, developmental disabilities, or other chronic handicapping conditions (especially those with neurodevelopmental/neuromuscular involvement) and their families.

The Congressional directive to expand the current UAP network is contained in the Report of the Senate Committee on HHS Appropriations (Senate Report 102–104) for fiscal year (FY) 1992, and is reiterated in the Appropriations Conference Report (House Report 102–282). The Senate committee report specifies that a portion of amounts set aside for projects under the MCH Federal Set-Aside Program for FY 1992 be used for establishment of new UAPs, one to be located in a Southeastern State.

Purpose

In compliance with Congressional intent, the MCHB will award grants to support and strengthen State MCH programs through establishment of not more than two new UAPs capable of delivering the same level of high quality, interdisciplinary, graduate and postgraduate training to specialists providing comprehensive services to mentally retarded children as existing UAP programs. One award will be made in each of the following designated geographic areas:

1. Southeastern United States (U.S. Census Bureau South Atlantic and East South Central Divisions, encompassing the States of Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi).

2. All States of the United States except those listed in 1., above.

Availability of Funds

Approximately $800,000 is available per year to support not more than two new projects in the designated geographic areas.

Eligible Applicants

Grants are made only to public or nonprofit private institutions of higher learning with accredited schools of medicine. Applications may be accepted from programs which have formed a consortium of institutions of higher learning. In such instances, however, the institution containing the medical and other health profession schools/departments must be the primary administrative, training, and clinical site for the project. Joint applications, co-project directors and similar multi-institutional arrangements will not be accepted.

Review Criteria

The Secretary has adopted the following general criteria for use, as pertinent, in reviewing and evaluating proposed MCH Federal Set Aside Program projects in all project categories, including long term training:

- The quality of the project plan or methodology.
- The need for the training.
- The cost-effectiveness of the proposed project relative to the number of persons proposed to be benefited, served or trained, considering, where relevant, any special circumstances associated with providing care or training in various areas.
- The extent to which the project will contribute to the advancement of MCH and/or CSHCN services.
- The extent to which rapid and effective use of grant funds will made by the project.
- The effectiveness of procedures to collect the cost of care and service from third-party payment sources (including government agencies) which are authorized or under legal obligation to make such payment for any service (including diagnostic, preventive and treatment services).
- The soundness of the project's management, considering the qualifications of the staff of the proposed project and the applicant's facilities and resources.
- The strength of the project's plans for evaluation.

Executive Order 12372

The MCH Block Grant program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: May 8, 1992.

John H. Kelso,

Acting Administrator.

[FR Doc. 92–14171 Filed 6–16–92; 8:45 am]

BILLING CODE 4165–15–M

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1992:

Name: Advisory Committee on Infant Mortality

Date and Time: July 9–10, 1992, 9 a.m.

Place: Columbia Room, North, Capitol Holiday Inn, 550 C Street, SW., Washington, DC 20024.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start Initiative and other recommendations of the Domestic Policy Council, and infant mortality objectives from Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.

Agenda: During the meeting of the Committee, new members will be introduced. Topics that will be discussed include: Infant Mortality Review; Progress Review: Maternal and Infant Health Year 2000 Objectives; and Access to Care Initiatives. There will also be a report on the Healthy Start Initiative.

Anyone requiring information regarding the Committee should contact Mr. Ronald Carlson, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and

Services Administration, room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2460.

Persons interested in attending any portion of the meeting should contact Ms. Kyungeun Carol Han, Public Health Analyst, Office of the Planning, Evaluation and Legislation, Health Resources and Services Administration, Telephone (301) 443–1900.

Agenda Items are subject to change as priorities dictate.

Dated: June 11, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–14172 Filed 6–16–92; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

National Center for Health Statistics; The ICD–9–CM Coordination and Maintenance Committee; Meeting

AGENCY: National Center for Health Statistics, DHHS.

ACTION: Notice of meeting.

SUMMARY: The ICD–9–CM Coordination and Maintenance Committee (C&M) will be holding its second meeting of the year on August 4, 1992. The C&M is a public forum for the presentation of proposed modifications to the International Classification of Diseases, ninth-revision, clinical modification.

DATES: The meeting will be held on August 4, 1992 from 9 a.m.–5 p.m.

ADDRESSES: The Hubert H. Humphrey building, rm. 703A, 200 Independence Ave. Washington, DC.

FOR FURTHER INFORMATION CONTACT: Amy Blum 301–436–4216.

SUPPLEMENTAL INFORMATION: Tentative agenda.

Diabetes Mellitus, uncontrolled
Deep versus superficial veins
Reflex Sympathetic Dystrophy
Addenda
Gastroesophageal reflux
Cervical metaplasia
Human papilloma virus

Sue Meads, R.R.A.,

Co-chair ICD–9–CM Coordination and Maintenance Committee.

[FR Doc. 92–14181 Filed 6–16–92; 8:45 am]

BILLING CODE 4160–18–M

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Administration (ADAMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently by 56 FR 51227, October 10, 1991) is amended to reflect changes within the National Institute on Drug Abuse (NIDA), ADAMHA. These changes involve deleting a function involving international program activities within the Office of Science Policy, Education, and Legislation.

Section HM–B, Organization and Functions, Alcohol, Drug Abuse, and Mental Health Administration (HM) is amended as follows:

Under the heading Office of Science Policy, Education, and Legislation (HMH14), following the semicolon after item (3), delete all remaining words and add the following words: (4) prepares briefing materials and testimony for congressional hearings, and serves as liaison with Congress, the White House, and other significant Federal and governmental agencies; (5) prepares reports, develops responses, and provides information on legislative efforts, responds to congressional inquiries, and analyzes legislative proposals for the Director; (6) advises the Director on national drug abuse policy issues; (7) conducts relevant public affairs activities, writes scientific articles, deals with the press, media and related efforts, and collaborates with a variety of agencies both public and private to further knowledge and awareness of the Institute, its programs and findings; and (8) provides liaison with professional groups and private organizations, coordinates technical assistance to other governmental agencies, and coordinates analytic studies requested by other governmental agencies.

Dated: June 9, 1992.

Elaine M. Johnson,

Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–14162 Filed 6–16–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3453]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and (9) the

names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 10, 1992.

Kay Weaver,

Acting Director, Information Resources, Management Policy and Management Division.

Proposal: Public and Indian Housing: Contract Administration.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This information is needed because standard construction practice require public housing agencies (PHAs) to retain certain records. These records are submitted with documents used in conjunction with the award of construction contracts and the development or modernization of public housing projects.

Form Number: HUD–5372 and HUD–51000.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hour per response	=	Burden hours
Bidding Control Record	1,462		1		.50		731
Register of Change Orders and Time Extensions	1,200		1		.25		300
Disputes and Claims Records/Findings for Liquidated Damages/PHA Contract Report	863		1		4.25		3,668
HUD–5372, Construction Progress Schedule	1,200		1		1		1,200
HUD–51000, Schedule of Amounts for Contract Payments	1,124		1		1		1,124

Total Estimated Burden Hours: 7,023.

Status: Reinstatement.

Contact: William Thorson, HUD (202) 708–4703, Jennifer Main, OMB, (202) 395–6880.

Dated: June 10, 1992.

[FR Doc. 92–14147 Filed 6–16–92; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Cincinnati Zoo, Cincinnati, OH—PRT–768264.

The applicant requests a permit to import one pair of captive-bred cheetahs (*Acinonyx jubatus*) from the DeWildt Cheetah Research and Breeding Centre, Pretoria, South Africa, for purposes of educational display, breeding and scientific research.

Applicant: Albert E. Landau, Ft. Lauderdale, FL 33326—PRT–768278.

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) from the captive herd of H. v Z. Kock, Meriman, South Africa, for the purpose of enhancement of survival of the species.

Applicant: Duke University Primate Center, Durham, NC—PRT–679043.

The applicant requests renewal of their existing permit to sell in interstate and foreign commerce and export dead specimens of endangered and threatened species for scientific research; and requests amendment of the permit to include specimens in the families Lorisidae and Tarsiidae.

Applicant: Norton Colvin, Jr., Brownsville, TX—PRT–767269.

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) from the captive herd of F.W.M. Bowker, Jr., Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

Applicant: Amos Deinard, Yale University, New Haven, CT—PRT–767825.

The applicant requests a permit to import blood and tissue samples taken from captive chimpanzees (*Pan troglodytes*) and pygmy chimpanzees (*Pan paniscus*) in Canada, Spain, Germany, Gabon, Equitorial Guinea and Zaire for scientific research on the evolutionary genetics of the chimpanzees. Samples will be taken in conjunction with normal veterinary routines.

Applicant: Los Angeles Zoo, Los Angeles, CA—PRT–768247.

The applicant requests a permit to import two captive-born female yellow-footed rock wallabies (*Petrogale xanthopus*) from Adelaide Zoo, Adelaide, Australia, for breeding and display.

Applicant: Circus Tihany, Sarasota, FL 34230—PRT–768272.

The applicant requests a permit to export and reimport one pair of tigers (*Panthera tigris*), (male is white with black stripes), one pair of leopards (*Panthera pardus*) and one black leopard to and from Mexico for enhancement of propagation of the species through education and exhibition. Applicant anticipates multiple shipments for this purpose. All the animals were captive-bred in the United States.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 12, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–14159 Filed 6–16–92; 8:45 am]

BILLING CODE 4310–55–M

Trinity River Basin Fish and Wildlife Restoration Program; Trinity River, Northwestern California

AGENCY: Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Assessment/ Environmental Impact Report.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969, the Fish and Wildlife Service intends to prepare and Environmental Assessment on a proposed project to construct anadromous fish habitat improvement measures in a 40-mile section of the Trinity River. The Environmental Assessment will be tiered to a Programmatic Environmental Impact Statement (INT/FES 83–53) completed in 1983. Modification of the river channel is one of several essential components of a broad program to restore the anadromous fishery of the Trinity River Basin. The Environmental Assessment (EA) will be combined with an Environmental Impact Report (EIR) to achieve concurrent compliance with the California Environmental Quality Act (CEQA). Trinity County will be lead agency for the CEQA process.

FOR FURTHER INFORMATION CONTACT: Mr. Charles B. Lane, Project Leader, U.S. Fish and Wildlife Service, Trinity River Fishery Resource Office, P.O. Box 1450, Weaverville, CA 96093–1450; telephone 916–623–3931.

SUPPLEMENTARY INFORMATION: Over the years, particularly since 1963 with the completion of the Trinity Division of the Central Valley Project, the mainstem Trinity River below Lewiston Dam has experienced drastic changes in its shape and ability to provide habitat for salmon and steelhead. The natural spawning, rearing, pool and food-producing areas have progressively become covered by sand and the river channel encroached with riparian vegetation. Other factors contributing to loss of habitat are large increases in sediment yields from tributary watersheds resulting from timber harvests and other landscape disturbances. Habitat reduction has contributed to severe declines in fish populations.

The Trinity River Restoration Program, currently in progress, was authorized in 1984 under Public Law 98–541. That Act provided the authorization, funding and structure to implement an 11 action item management plan developed by a multi-agency Task Force in 1982. The 10-year program was initiated in 1986 and is being implemented by the Secretary of the Interior with the assistance of a 14-member Task Force. A field office staffed jointly by the U.S. Bureau of Reclamation (USBR) and the U.S. Fish and Wildlife Service (FWS) is located in Weaverville, California. The program is scheduled to end in 1995.

A 12-year flow evaluation program, authorized by a 1981 Secretary of the Interior directive was initiated in 1984 and is being carried out by FWS concurrently with the restoration program. Objectives of this program include developing recommendations for optimum fishery flows and evaluation of channel restoration measures as to the quality and quantity of habitat provided.

Provision of adequate flows, reduction of sediment loading from tributaries, and modification of the mainstem channel have been identified as three of the most critical measures needed to achieve restoration success. This EA/EIR will identify and evaluate impacts attributable to the mainstem channel modification component of the restoration program.

Implementation of pilot projects including gravel placement, pool dredging, and construction of side-channels and bank feathering sites have provided information sufficient to prepare an overall plan for the approximately 40-miles of river from Lewiston Dam to the North Fork of the Trinity River. The EA/EIR will include the no action alternative of not proceeding further with restoring the mainstem and the proposed alternative of completing all of the potential projects that meet a rigid set of site specific criteria. Other alternatives discussed will be an intermediate scenario between no further action and full implementation as well as use of reservoir releases alone to achieve the desired fish habitat benefits.

The draft EA/EIR is expected to be available for public review in July or August 1992.

Scoping for the mainstem plan has been ongoing since 1986 when the field office was opened. The process has involved many technical meetings, field reviews, public meetings, specific scoping meetings held in November 1991 and circulation of a preliminary draft document for review and comment in 1992. Trinity County will hold a CEQA public scoping meeting in June 1992.

Dated: June 5, 1992.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–14177 Filed 6–16–92; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[ID–020–5101–09–XDBJ]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Southwest Intertie Project Draft Environmental Impact Statement and Draft Land Use Plan Amendment.

SUMMARY: Idaho Power Company, Boise, Idaho has made application for a 200 foot wide right-of-way (R/W) in which they propose to construct, operate and maintain the 500Kv Southwest Intertie Project (SWIP) power transmission line. The proposed line would run from their Midpoint substation near Shoshone, Idaho to a new proposed substation in the Dry Lake Valley area northeast of Las Vegas, Nevada. The purpose of this line would be for the seasonal interchange of electrical power between the northwest and southwest part of the United States. The application also includes a 200 foot wide R/W for a 500Kv power transmission line that would run from a new substation near Ely, Nevada to the Intermountain Power Plant near Delta, Utah. This power line would be constructed, operated, and maintained by the Los Angeles Department of Water and Power and would be part of the Utah-Nevado (UNTP) Power Project.

DATES: Six formal public meetings to receive comments on the Draft Environmental Impact Statement and Draft Plan Amendment (DEIS/DPA) will be held on the following dates at the locations specified below. The meetings will start at 7 p.m. and run through 9 p.m.

August 3, 1992—Weston Plaza, 1350 Blue Lake Blvd. N., Twin Falls, Idaho.
August 4, 1992—Wells High School, Wells Nevada.
August 5, 1992—Bristlecone Convention Center, 150 6th Street, Ely, Nevada.
August 6, 1992—City Council Chambers, 76 N. 200 West, Delta, Utah.
August 19, 1992—Soil Conservation Service Office, Caliente, Nevada.
August 20, 1992—Las Vegas BLM Office, 4765 Vegas Drive, Las Vegas, Nevada.

ADDRESSES: Comments regarding the DEIS/DPA may be made orally at these meetings or they can be submitted in writing to the Burley District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho, 83318. All comments must be received by BLM or postmarked by September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Karl Simonson, Southwest Intertie Project Manager, Bureau of Land Management, Burley District Office. Phone: (208) 678–5514.

SUPPLEMENTARY INFORMATION: A Draft Environmental Impact Statement/Draft Plan Amendment (DEIS/DPA) has been prepared which identifies resource values and analyzes the environmental impacts to these resources that would

be expected from the proposed action. The DEIS/DPA identifies the environmentally preferred, the agency preferred, and the utility company's preferred routing alternative.

The Bureau of Land Management is the lead Federal Agency in the preparation of the SWIP DEIS/DPA. Cooperating agencies in the EIS process include the Bureau of Reclamation, U. S. Forest Service, National Park service, and the Bureau of Indian Affairs.

Copies of the DEIS/DPA are being sent to all individuals and agencies that have participated in the public scoping process or have otherwise asked to be included on the SWIP mailing list. Additional copies are available from the Burley District of the Bureau of Land Management, Route 3, Box 1, Burley, Idaho, 83318. The Burley District telephone number is (208) 678–5514. A copy of the DEIS/DPA is also available for public review at the Boise and Shoshone District offices in Idaho, the Elko, Ely, and Las Vegas District offices in Nevada and the Richfield District Office in Utah. A copy would also be available for public review at the various Bureau of Land Management State Offices in Boise, Idaho, Reno, Nevada, and Salt Lake City, Utah.

Delmar D. Vail,

State Director, Bureau of Land Management.

[FR Doc. 92–14152 Filed 6–16–92; 8:45 am]

BILLING CODE 4310–GG–M

[ES–960–9800–12; ES–045419, Group 93, Arkansas]

Filing of Plat of the Corrective Dependent Resurvey, Retracement Subdivision and Survey

The plat, in fourteen sheets, of the corrective dependent resurvey of a portion of the east boundary and subdivisional lines, the retracement of portions of the exterior boundaries and subdivisional lines, the subdivision of certain sections, and the survey of certain lots and parcels in Township 15 North, Range 12 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on July 31, 1992.

The survey was made upon request submitted by the United States Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., July 31, 1992.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: June 10, 1992.

Lonna O'Neal,

Acting State Director.

[FR Doc. 92–13122 Filed 6–16–92; 8:45 am]

BILLING CODE 4310–GJ–M

Bureau of Reclamation

Middle Green River Basin Study, National Irrigation Water Quality Program (NIWQP), Northeastern UT

AGENCIES: Bureau of Reclamation (Interior), U.S. Fish and Wildlife Service (Interior), U.S. Geological Survey (Interior).

ACTION: Notice of intent and scoping.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation), as lead agency, proposes to conduct a remediation planning study and prepare a draft environmental impact statement (EIS) on remediation alternatives to correct elevated selenium problems related to irrigation drainage in the Stewart Lake Waterfowl Management Area (WMA), lower Ashley Creek, and their mixing zones in the Green River near Vernal, Utah. The purpose of the remediation planning study is to determine the most implementable alternative(s) to correct the irrigation drainage related selenium problems resulting from the Vernal and Jensen Units of the Central Utah Project. Previous NIWQP studies have indicated that selenium in water, bottom sediments, and biota has caused unacceptable hazards to fish, wildlife, and human health in Stewart Lake WMA, Marsh 4720, and lower Ashley Creek. A Public scoping process will be used to elicit information for use in determining the scope of the environmental impacts and issues related to the proposal and to determine alternative methods to accomplish the goals of the project. The results of the scoping process will help the involved agencies determine the scope and extent of the impact analysis. The scoping process may consist of public meetings, private consultation, written comments or combinations of these. A subsequent notice will be published in the **Federal Register** at least 30 days prior to the first scoping meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Noyes, Study Manager, Bureau of Reclamation (Code: PPO–710), P.O. Box 51338, Provo UT 84605–1338; telephone: (801) 379–1000.

SUPPLEMENTARY INFORMATION: During the last few years, there has been increasing concern in the Western United States about the quality of irrigation drainage from surface and subsurface water and its potential effects on human health and on fish and wildlife. The U.S. Congress shared those concerns, and in 1985, the Department of the Interior (DOI) began studies under the five-phase NIWQP. The purpose of the studies was to identify toxic constituents in irrigation return flows from DOI projects and determine if concentration levels of these constituents were causing impacts to human health, fish, and wildlife. Phases I through III of the Middle Green River Basin Study have been completed, and Phase IV, Remediation Planning, has been initiated. These earlier studies have confirmed that samples of water, sediment, and biota from Stewart Lake WMA, lower Ashley Creek, Marsh 4720, and their mixing zones in the Green River contain concentrations of selenium that exceed the Federal and State criteria for, and resulted in, adverse impacts to human health, fish, and wildlife.

The present Phase IV study started in late 1990. A draft plan of study including a public involvement plan has been developed, and informal meetings with numerous Federal, State, and local agencies have been conducted. The Phase IV study on the Middle Green River Basin is being managed by a Department of the Interior core team under the direction of the Bureau of Reclamation. Other members include the U.S. Geological Survey and the U.S. Fish & Wildlife Service, with various other Federal, State, and local agencies serving as advisors.

The goals and objectives of the Phase IV study are to:

- Reduce selenium in water and bottom sediments in the study area which has caused unacceptable hazards to fish and wildlife.
- Minimize the ecological hazards and satisfy requirements of the Migratory Bird Treaty Act and the Endangered Species Act.
- Minimize public health risks resulting from consumption of fish and wildlife with elevated selenium levels in the study area.
- Select, through a public involvement process, a plan to correct Department of the Interior irrigation drainage-related selenium problems in Stewart Lake WMA and Ashley Creek and their mixing zones in the Green River.

A preliminary list of potential remediation options has been developed for presentation to the public during the

scoping process. The general types of options identified to date include institutional changes, collection and treatment, disposal, dilution, source control, and a no action alternative (required under NEPA).

A preferred plan including NEPA compliance will be available for review and comment in 1994.

Dated: June 10, 1992.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92-14056 Filed 6-16-92; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-556 (Preliminary)]

Dynamic Random Access Memories of One Megabit and Above From the Republic of Korea

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Republic of Korea (Korea) of dynamic random access memories (DRAMs) of one megabit (Meg) and above,[2] provided for in subheadings 8473.30.40 and 8542.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of Commerce's investigation, DRAMs include all 1 Meg and above dynamic random access memory semiconductors, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut dice, and cut dice. Processed wafers produced in Korea but packaged in a third country are included in the scope; however, wafers produced in a third country and assembled or packaged in Korea are not included in the scope. The scope also includes memory modules, such as single in-line processing modules (SIPs) and single in-line memory modules (SIMMs), that contain 1 Meg or above dynamic random access memory semiconductors that are assembled together and function as memory. Modules that contain other parts that are needed to support the function of memory are considered to be covered memory modules. Only those modules containing additional items which alter the function of the module to something other than memory are not covered modules. The scope also includes video random access memories (VRAMs), as well as any future packaging and assembling of DRAMs.

Background

On April 22, 1992, a petition was filed with the Commission and the Department of Commerce by Micron Technology, Inc., Boise, ID, alleging that an industry in the United States is materially injured and is threatened with material injury by reason of LTFV imports of DRAMs of one Meg and above from Korea. Accordingly, effective April 22, 1992, the Commission instituted antidumping investigation No. 731-TA-556 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 29, 1992 (57 FR 18163). The conference was held in Washington, DC, on May 13, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 8, 1992. The views of the Commission are contained in USITC Publication 2519 (June 1992), entitled "Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea: Determination of the Commission in Investigation No. 731-TA-556 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 9, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-14203 Filed 6-16-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-325]

The Economic Effects of Significant U.S. Import Restraints

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on May 15, 1992 of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332-325 on the economic effects of significant U.S. import restraints, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested, the investigation will assess the economic effects of significant U.S. import restraints on U.S. consumers, on the activities of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. The investigation will not include import restraints resulting from final antidumping or countervailing duty investigations, section 337 or 406 investigations, or section 301 actions.

The Commission will provide an initial report on this investigation by November 15, 1993. Subsequent reports will be provided every two years. Copies of Commission reports on this subject will be made available to the public at the same time they are provided to the USTR.

EFFECTIVE DATE: June 5, 1992

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on October 14, 1992. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, October 2, 1992. The deadline for filing prehearing briefs (original and 14 copies) is October 2, 1992. Dates for public hearings in connection with future phases of this investigation will be announced later.

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. If confidential treatment is desired, submission of separate confidential and public versions is required. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested person.

FOR FURTHER INFORMATION CONTACT: Joseph Francois or Joseph Flynn (202-205-3223), Office of Economics, U.S. International Trade Commission.

Hearing impaired persons are advised that information on this investigation can be obtained by contacting the

Commission's TDD terminal on 202–205–1810. Issued: June 10, 1992.Q02

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–14201 Filed 6–16–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 303–TA–22 (Final)]

Extruded Rubber Thread From Malaysia

AGENCY: United States International Trade Commission.

ACTION: Notice of discontinuation of investigation.

SUMMARY: On August 29, 1991, the North American Rubber Thread Company filed a petition with the Commission and the U.S. Department of Commerce seeking the imposition of countervailing duties on imports of extrude rubber thread from Malaysia. Although Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930 (the Act), extruded rubber thread from Malaysia was nondutiable under the Generalized System of Preferences (GSP), and Malaysia is a contracting party of the General Agreement on Tariffs and Trade. Therefore, the U.S. International Trade Commission instituted preliminary countervailing duty investigation No. 303–TA–22 (Preliminary) (56 FR 43938, September 5, 1991) under section 303(a) of the Act and determined that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports. Following an affirmative preliminary determination by Commerce, the U.S. International Trade Commission instituted final countervailing duty investigation No. 303–TA–22 (Final) (57 FR 4479, February 5, 1992).

On March 12, 1992, the President of the United States determined that it was appropriate to withdraw the duty-free treatment afforded under the GSP to imports from Malaysia of extruded rubber thread (57 FR 9041, march 16, 1992). Therefore, Malaysia is no longer entitled to an injury determination under section 303 of the Act with regard to the countervailing duty investigation that has been initiated by the Department of Commerce on extruded rubber thread. Accordingly, the Commission gives notice that its countervailing duty investigation concerning extruded rubber thread from Malaysia (investigation No. 303–TA–22 (Final)) is discontinued.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Authority: This action is taken under authority of the Tariff Act of 1930, section 303 and title VII.

Issued: June 10, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretry.

[FR Doc. 92–14200 Filed 6–16–92; 845am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–572 (Preliminary]

Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Rods and Semifinished Products Thereof From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–572 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain special quality carbon and alloy hot-rolled steel bars and rods, and seimfinished products thereof [1] covered by subheadings/statistical reporting numbers 7207.11.00, 7207.12.0010, 7207.19.0030, 7207.20.0025, 7207.20.0075, 7214.30.00, 7214.40.00, 7214.50.00, 7214.60.00, 7224.10.0075, 7224.90.0045, 7224.90.0065, and 7228.30.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.

As provided in section 733(a) of the Tariff Act, the Commission must complete its preliminary antidumping investigation in 45 days, or in this case by July 24, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A throguh E (19 CFR part 201), and part 207, subparts A and B(19 CFR part 207).

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, Dc 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on June 9, 1992, by Republic Engineered Steels, Inc., Massillon, OH, and The Timken Company, Canton, OH.

Participation in the Investigation and Public Service List.

Persons (other than petitioners) wishing to participate in this investigation as parties must file an

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[1] For purposes of this investigation, the subject imports consist of certain special quality carbon (nonalloy) steel and alloy steel (other than stainless steel, high-speed steel, silico-manganese steel, and tool steel) semifinished products and hot-rolled bars and rods. The subject imports are semifinished and hot-rolled products that may have been subjected to direct hardening, carburizing, induction hardening, and nitriding, and exhibit creep resistance; and are used in applications requiring critical levels of hardness and/or hardenability, strength, toughness, fatigue resistance, high-temperature creep and fracture resistance, wear resistance, machinability, and formability. The imports subject to investigation include products that are produced from the following grades of steel: AISI carbon series 1000 (excluding grades 1000 through 1044 designated with the prefix M), 1100, 1200, and 1500; AISI certain alloy series 1300, 4000, 4100, 4300, 4600, 4700, 4800, 5000, 5100, 5200, 6100, 8100, 8600, 8700, 8800, 9200, 9300 and 9400; and the grades for both carbon and certain alloy include Boron and H-steels. The subject imports of hot-rolled bars and rods are in cut lengths and various shapes and sizes. The subject imports of semifinished products include cast certain alloy steel ingots and strand castings, and semi-wrought ingots and strand castings; and nonalloy and certain alloy steel rolled or forged blooms, billets, and slabs for forging, if destined for use in the subject hot-rolled bars and rods. Excluded from the scope of the investigation are imports of semifinished products or hot-rolled bars and rods which contain by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth; nonalloy steel ingots or other primary forms; semifinished or hot-rolled products of merchant quality steels (AISI grades M 1000 through M 1044); hot-rolled bars and rods in coiled form; forged bars; and reinforcing bars and rods.

entry of appearance with the Secretary to the Commission as provided in § 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 30, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202–205–3184) not later than June 25, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in § 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 6, 1992, a written brief containing information and arguments pertinent to the subject matter of this investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with § 201.16(c) and 207.3 of the rules, each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 12, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–14205 Filed 6–16–92; 8:45am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–539–A through 539–F (Final)]

Uranium From Kazakhstan, Kyrgystan, Russia, Tajikistan, Ukraine, and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–539–A through 539–F (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Kazakhstan, Kyrgystan, Russia, Tajikistan, Ukraine, and Uzbekistan of uranium,[1] provided for in subheadings 2612.10.00, 2844.10.10, 2844.10.20, 2844.10.50, and 2844.20.00 of the Harmonized Tariff Scheduel of the United States.

For further information concerning the conduct of these investigations, hearing procdures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 2, 1992.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of uranium from Kazakhstan, Kyrgystan, Russia, Tajikistan, Ukraine, and Uzbekistan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 0, 1991, on behalf of the Ad Hoc Committee of Domestic Uranium Producers and the Oil, Chemical and Atomic Workers International Union. The names and addresses of the petitioners are as follows: Ferret Exploration Company, Inc., Denver, CO; First Holding Company, Denver, CO; Geomex Minerals, Inc., Denver, CO; Homestake Mining Company, San Francisco, CA; IMC Fertilizer, Inc., Northbrook, IL; Malapai Resources Company, Houston, TX; Pathfinder Mines Corporation, Bethesda, MD; Power Resources, Inc., Denver, CO; Rio Algom Mining Corporation, Oklahoma City, OK; Solution Mining Corporation, Laramie, WY; Total Minerals Corporation, Houston, TX; Umetco Minerals Corporation, Danbury, CT; Uranium Resources, Inc., Dallas, TX; and Oil, Chemical and Atomic Workers International Union, Denver, CO.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a pulbic service list containing the names and addresses of all persons, or their representatives, who are parties to these

[1] The product covered by these investigations is uranium from Kazakhstan, Kyrgystan, Russia, Tajikistan, Ukraine, and Uzbekistan. This includes natural uranium in the forms of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U_{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U_{235} or compounds of uranium enriched in U_{235}.

investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on July 31, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on August 13, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 29, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 3, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is August 7, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provision of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is August 21, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearnace as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before August 21, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: June 12, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-14204 Filed 6-16-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-331]

Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same; Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this date, Thomas L. Jarvis, Esq. and Alesia M. Woodworth, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Thomas L. Jarvis, Esq.

The Secretary is requested to publish this notice in the **Federal Register**.

Dated: June 9, 1992.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 92-14202 Filed 6-16-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 414X)]

CSX Transportation, Inc., Abandonment Exemption; Bell County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 1.34 miles of its Pine Mountain Railroad Branch between milepost PR-199.06 near Dunley and milepost PR-200.09 near Dade, including the remainder of the Bell-Jellico Branch between milepost BJ-199.85 near Dade and Milepost BJ-200.16 at Ruby, in Bell County, KY, subject to standard employee protective and historic preservation conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 17, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 27, 1992, petitions to stay must be filed by July 2, 1992, and petitions for reconsideration must be filed by July 13, 1992. Requests for a public use condition must be filed by July 7, 1992.

ADDRESSES: Send pleadings, referring to Docket No. AB-55 (Sub-No. 414X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Petitioner's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610, (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: June 10, 1992.

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-14207 Filed 8-16-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 11, 1992, a proposed Consent Judgment in *State of New York* v. *Shore Realty Corp., et al.*, Civil Nos. 84-0864 (JBW), 85-2270 (JBW), was lodged with the United States District Court for the Eastern District of New York. The proposed Consent Judgment is entered into by the State of New York; the United States, on behalf of the National Oceanographic and Atmospheric Administration and the Department of the Interior ("Natural Resource Damage Trustees"); and the settling potentially responsible parties.

The Consent Judgment settles claims by the State of New York and the United States, on behalf of the Natural Resource Damage Trustees, relating to the Applied Environmental Services Site ("Site"), under the Comprehensive Environmental Response, Compensation, and Liability Act.

Pursuant to the terms of the Consent Judgment, certain settling defendants will pay the sum of $124,000 to the United States on behalf of the Natural Resource Damage Trustees. These defendants shall also be responsible for implementing a planting program at the Site and ensuring that a bulkhead located at the Site does not serve as a source of contamination. In addition, the Consent Judgment permits the Natural Resource Damage Trustees to participate in the development and implementation of the monitoring program at the Site.

Pursuant to the Consent Judgment, the Veterans Administration and the United States Coast Guard shall also settle claims brought against them as de minimis generators at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *State of New York* v. *Shore Realty Corp, et al*, D.O.J. Ref. 90-11-3-72A.

The proposed Consent Decree may be examined at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044 (202-347-2072). A copy of the proposed Consent Judgment may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $113.25 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-14226 Filed 6-16-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Dry Systems Technologies

Notice is hereby given that, on May 14, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Cyprus Coal Company, has filed written notification of Dry Systems Technologies cooperative research project simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the project, and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general area of planned activities are given below.

The current members to the project are: Brookville Mining Equipment Corporation, Brookville, Pennsylvania; Cooling Systems International, Grand Junction, Colorado; Cyprus Coal Company, Englewood, Colorado; Fuel Resources Development Co., Denver, Colorado; Getman Technologies Co., Bangor, Michigan; and Goodman Equipment Corporation, Bedford Park, Illinois.

The objectives of the cooperative research project are to develop, refine and patent, license and/or produce an exhaust treatment system for diesel engines used in underground mines. The primary function of the exhaust treatment system is to remove substantially all particulate matter from the exhaust gases. The cooperative research project is currently engaged in certifying the underground system with the Mine Safety and Health Administration (MSHA), and expects to receive a certification shortly. As a secondary objective, the cooperative research project also plans to adapt the exhaust treatment system so that it can be used on diesel engines not used in the mining environment. The parties intend to file additional written notification disclosing all changes in membership of this cooperative research project.

Jospeh H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-14179 Filed 6-16-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 CFR 50.7, and section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on May 12, 1992 a proposed Consent Decree in *United States* v. *Pennsylvania Power & Light Co., et al.*, Civil Action No. 92-CV-2730, was lodged with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree requires defendants to pay $416,503.65 in past response costs incurred by the United States at the Brodhead Creek Superfund Site in the Borough of Stroudsburg, Monroe County, Pennsylvania. The Consent Decree also requires the defendants to implement the remedy selected in EPA's March 29, 1991 Record of Decision.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to he Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pennsylvania Power & Light Co., et al.*, DOJ Ref. #90-11-2-718.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail

from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. If requesting a copy of the Consent Decree only, please enclose a check in the amount of $22.00 (25 cents per page reproduction charge). If requesting a copy of the Consent decree and Appendices, please enclose a check in the amount of $48.25 (25 cents per age reproduction cost). Checks should be payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-14178 Filed 6-16-92; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

[INS No. 1382-92]

Mailing Addresses for Filing Asylum and Asylum-Related Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice provides mailing addresses for filing applications for asylum in the United States under section 208 of the Immigration and Nationality Act. This notice is necessary to streamline the processing of applications in the asylum offices.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Senior Policy Analyst, Office of International Affairs, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Attn: ULLICO, Third Floor; Telephone (202) 633-1041.

SUPPLEMENTARY INFORMATION: Beginning June 17, 1992, Form I-589, Request for Asylum in the United States, and related Forms G-325A, Biographic Information, FD-258, Applicant Chart, G-28, Notice of Entry of Appearance as Attorney or Representative, and Form I-765, Application for Employment Authorization (when accompanying the I-589), must be mailed to the respective Service Center that has jurisdiction over the alien's place of residence for the four asylum offices located in Los Angeles, Miami, Newark, and San Francisco, as delineated below. Complete asylum applications, including all the required forms, must be filed in quadruplicate and must include two photographs (according to ADIT specifications) for each individual included in the asylum application.

Los Angeles

Asylum applicants within the jurisdiction of the Los Angeles Asylum Office shall mail their applications to the USINS Western Service Center, P.O. Box 10589, Laguna Niguel, CA 92607-0589. The Asylum Office in Los Angeles has jurisdiction over the State of Arizona, the southern portion of California as listed in 8 CFR 100.4(b)(16) and 100.4(b)(39), and the southern portion of the State of Nevada currently within the jurisdiction of the Las Vegas suboffice.

Miami

Asylum applicants within the jurisdiction of the Miami Asylum Office shall mail their applications to the USINS Southern Service Center, P.O. Box 152122, Department A, Irving, TX 75015-2122. The Asylum Office in Miami has jurisdiction over the State of Florida, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

Newark

Asylum applicants within the jurisdiction of the Newark Asylum Office shall mail their applications to the USINS Eastern Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0008. The Asylum Office in Newark has jurisdiction over the State of Pennsylvania excluding the jurisdiction of the Pittsburgh suboffice, and the States of Maine, New Hampshire, Vermont, New York, Connecticut, Massachusetts, Rhode Island, New Jersey, and Delaware.

San Francisco

Asylum applicants within the jurisdiction of the San Francisco Asylum Office shall mail their applications to the USINS Northern Service Center, room B-26, 100 Centennial Mall North, Lincoln, NE 68508. The Asylum Office in San Francisco has jurisdiction over the northern part of California as listed in 8 CFR 100.4(b)(13), the portion of Nevada currently under the jurisdiction of the Reno suboffice, and the States of Oregon, Washington, Alaska, Hawaii and the Territory of Guam.

Filing Applications With Other Asylum Offices

Asylum applicants filing applications under the jurisdiction of the other three asylum offices located in Arlington, VA; Chicago, IL; and Houston, TX, will continue to file their applications with the respective asylum office (at the addresses listed below) until October 1, 1992.

ADDRESSES:

Arlington Asylum Office, P.O. Box 3599, Arlington, VA 22203-0599.
Houston Asylum Office, P.O. Box 670626, Houston, TX 77267-0262.
Chicago Asylum Office, 175 West Jackson Boulevard, suite 1641, Chicago, IL 60604.

After October 1, 1992, asylum applications must be sent directly to the Service Centers. The appropriate Service Centers accepting applications after October 1, 1992, for these locations will be identified by notice published in the **Federal Register** at a later date.

Dated: June 10, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-14145 Filed 6-16-92; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-8944, et al.]

Proposed Exemptions; NCNB Stable Capital Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendence before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a

general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefor, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

NCNB Stable Capital Fund (the Fund) Located in Charlotte, North Carolina

[Application No. D–8944]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the retention by the Fund from December 31, 1991, through April 6, 1992, of a certain bank investment contract (the Contract), provided that such retention was on terms at least as favorable to the Fund as those available in arm's length transactions with unrelated parties.

Effective Date: If granted, this proposed exemption will be effective as of December 31, 1991.

Summary of Facts and Representations

1. Until December 31, 1991, NCNB National Bank of North Carolina (NCNB) was a national banking association wholly owned by NCNB Corporation. Until December 31, 1991, Sovran Bank, N.A. (Sovran) was a national banking association wholly owned by C&S/Sovran Corporation (C&S/Sovran). C&S/Sovran was acquired by NCNB Corporation as of December 31, 1991, resulting in a new parent company named NationsBank Corporation (NationsBank). NCNB became NationsBank of North Carolina, N.A. and Sovran became NationsBank of Virginia, N.A.

2. The Fund is a common trust fund originally established by NCNB for the collective investment of funds contributed thereto by employee benefit trusts. NationsBank of North Carolina, N.A. succeeded NCNB as the trustee of the Fund and has sole investment discretion with respect to the assets of the Fund. The assets of the Fund totaled approximately $715 million, as of November 29, 1991. Approximately 900 pension plans are currently participating in the Fund.

3. The Contract was purchased by the Fund from Sovran on April 6, 1990, in the amount of $15 million. The interest rate on the Contract was 9.15 percent and the maturity date was April 6, 1992. Because of the acquisition of C&S/Sovran by NCNB Corporation and subsequent name changes, the Contract was a deposit obligation of NationsBank of Virginia, N.A., incurred by such institution in the ordinary course of business. The terms of the Contract explicitly provided that such Contract was nontransferable and that neither the principal sum nor any portion thereof could be withdrawn prior to maturity. The Contract was treated as a "deposit" subject to Federal Deposit Insurance Corporation coverage and the applicant believes it would be classified as a "time deposit" under applicable Federal banking regulations.[1]

4. At the time of the purchase of the Contract, NCNB was unrelated to Sovran. However, the applicant believes that the retention of the Contract following the acquisition of C&S/Sovran by NCNB Corporation might have resulted in prohibited transactions under sections 406(a) and 406(b) of the Act because of the ensuing relationship between the discretionary trustee of the Fund and the issuer of the Contract. That relationship after December 31, 1991, according to the applicant, may have involved an extension of credit between plans (participating in the Fund) and a party in interest, a transfer to a party in interest of any assets of such plans, and transactions whereby a fiduciary deals with plan assets in the fiduciary's own interest or acts in a transaction involving the plans on behalf of a party whose interests are adverse to those of the plans. Accordingly, the applicant requests an exemption for the continued holding of the Contract by the Fund from December 31, 1991, through April 6, 1992.

The applicant states that interest rates available on other investments comparable to the remaining term of the Contract (taking account of the size, term and safety of the investment) were substantially lower at the time of the above mentioned acquisition than that on the Contract. For example, the rate on six-month certificates of deposit as of December 31, 1991, was approximately 4.32 percent according to the Bloombering Financial Market Commodity News, a database analysis program (not affiliated with NationsBank) which offers a variety of reference services, especially in regard

[1] Section 408(b) (4) of the Act and the regulations issued thereunder (29 CFR 2550.408b–4) provide a statutory exemption, under certain conditions, for the investment of a plan's assets in deposits which bear a reasonable interest rate in a bank supervised by the United States or a State if the bank is a fiduciary of the plan. However, the applicant represents that the investment in the Contract does not meet the conditions of such statutory exemption in the case of plans (participating in the Fund) for employees of employers other than NationsBank or its affiliates for the following reasons. First, investment in the Contract is not expressly authorized by a provision of the plan documents of such plans stating that NationsBank of North Carolina, N.A. as trustee of the Fund may invest assets of the Fund in deposits which bear a reasonable rate of interest in itself or an affiliate. Second, investment of assets of such plans in the Contract has not been authorized by a fiduciary (other than NationsBank or any of its affiliates) who is expressly empowered by the plans to provide such investment instructions to the Fund trustee and who has no interest in the transaction which may affect the exercise of such person's best judgment as a fiduciary.

to fixed income investments. The continued holding of the Contract to its maturity by the Fund offered plans participating in the Fund the opportunity to retain the benefits of an asset bearing a superior yield with a high degree of safety. As of the maturity of the Contract on April 6, 1992, all payments of interest were credited to the Fund and the principal amount of the Contract was returned to the Fund.

5. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because: (1) The issuer of the Contract was unrelated to the trustee of the Fund at the time of its purchase by the Fund; (2) the retention of the Contract by the Fund after December 31, 1991, was prohibited merely as a result of the acquisition of C&S/Sovran by NCNB Corporation; (3) according to the terms of the Contract such Contract was nontransferable and could not be withdrawn prior to maturity (4) all payments of interest were credited to the Fund and the principal amount of the Contract was returned to the Fund as of maturity on April 6, 1992; and (5) the yield commensurate with safety on the Contract was considerably higher at the time of the acquisition of C&S/Sovran than that available on suitable alternative investments for the Fund.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

S&C Pension Plan (the Plan) Located in Chicago, Illinois

[Application No. D–8985]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The continued holding by the Plan on and after January 1, 1993, of stock (the Stock) of S&C Electric Company (S&C), the Plan sponsor and a party in interest with respect to the Plan; and (2) the acquisition, holding and exercise by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Stock to S&C at a price which is the greater of the appraised fair market value of the Stock as of December 31, 1992, or the appraised fair market value of the Stock at the time of the exercise of the Put Option, provided: (a) the Plan's continued holding of the Stock is monitored by a qualified, independent fiduciary; (b) the Plan's independent fiduciary will take whatever action is necessary to protect the Plan's rights, including, but not limited to, the exercising of the Put Option if the independent fiduciary, in his sole discretion, determines that such exercise is appropriate; and (c) S&C establishes an account for the benefit of the Plan (the Account), as described herein, which will be maintained as long as the Plan continues to hold any shares of the Stock.

Effective Date: If the proposed exemption is granted, the exemption will be effective January 1, 1993.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which had 1,488 participants as of October 1, 1991 and had total assets with an approximate fair market value of $27,856,000 as of that date. The Plan is maintained by S&C, a corporation headquartered in Chicago, Illinois, which is engaged in the production of high-voltage switching and protection for the electricity industry.

2. S&C has two classes of Stock: Class A and Class B. Owners of each class of Stock share equally in the equity of S&C. However, shareholders of Class A stock are entitled to one vote per share, while shareholders of Class B stock are entitled to ten votes per share. The Stock is closely-held stock which is not publicly-traded.

3. The Plan currently holds 1,256.2 shares of Stock, which includes 1,142 shares of Class A Stock and 114.2 shares of Class B Stock. As of the most recent Plan asset valuation date, September 30, 1991, the Stock equalled approximately 12% of total Plan assets. The Plan has continually held Stock since 1968.

The last acquisition of Stock by the Plan was in 1983. While the value of the Stock has increased recently relative to the value of the rest of the Plan's assets, the applicant represents that immediately following each acquisition of Stock, no more than 10% of the then fair market value of the Plan's assets consisted of Stock. The applicant represents that the Plan will not acquire any additional Stock.

4. The applicant represents that the Stock currently meets, and will continue to meet, the requirements of section 407(f)(1)(A) of the Act because the Plan now holds only 3.4% of each class of issued and outstanding Stock. However, the applicant represents that, because the Stock is closely-held, it will not satisfy section 407(f)(1)(B) which requires that at least 50% of the aggregate amount of the Stock which is issued and outstanding be held by persons who are independent of the issuer. Accordingly, the applicant has requested the relief proposed herein to permit the Plan's continued holding of the Stock.

5. In connection with the Plan's continued holding of the Stock, the Plan will obtain a Put Option from S&C effective January 1, 1993. The Put Option will be exercisable by the Plan's independent fiduciary (see Rep. 6, below). The Put Option will permit the Plan to require S&C to purchase from the Plan all or any portion of the Stock then held by the Plan. The Put Option will remain in effect as long as the Plan continues to hold any shares of the Stock, even if a portion of the Stock is sold either pursuant to the Put Option or otherwise. The purchase price to S&C of such Stock sold pursuant to the Put Option will be the greater of the fair market value of the Stock as of December 31, 1992, or the fair market value of the Stock as of the exercise of the Put Option. In both cases, the fair market value of the Stock will be determined by a qualified, independent appraiser. As of March 6, 1992, the independent accounting firm of Price Waterhouse (PW) has appraised the fair market value for a nonmarketable, minority interest in the Class A Stock to be within the range of $3,035 and $3,135 per share. PW has appraised the fair market value for a nonmarketable minority interest in the Class B Stock to be within the range of $3,187 and $3,292 per share, also as of March 6, 1992.

6. The Plan will, at all times while it continues to hold the Stock, retain an independent fiduciary to monitor the continued holding of the Stock. The Plan has retained as independent fiduciary for this purpose Mr. James A. McMullen (McMullen). McMullen, a CPA, is a retired partner of PW, where he worked from 1958–1989. At PW, McMullen was responsible for large client tax, trust and estate work. As part of his work at PW, he specialized in the analysis and valuation of privately-held securities such as the Stock. McMullen represents that he is independent, having no employment, director, ownership or other relationship to S&C. McMullen represents that he will monitor the Plan's continued holding of the Stock and, will exercise on behalf of the Plan the Put Option obtained from S&C, if and when he believes that it is appropriate to do so. Under the Put Option, McMullen has the authority to

require S&C to buy all or any part of the Plan's holdings of the Stock that he determines to be appropriate.

7. The applicant represents that an independent appraisal of the Stock will be performed no less frequently than on an annual basis. For purposes of the Plan's exercising of the Put Option, the independent appraiser will be directed to provide a specific price for the Stock instead of a range of values. McMullen will have the authority to select the independent appraiser of his choosing.

8. As an additional safeguard for the Plan, S&C represents that it will establish the Account by January 1, 1993. The Account will be established for the specific purpose of honoring S&C's obligations under the Put Option. The Account will be maintained at Harris Bank in Chicago, Illinois, and will be entitled "S&C Electric Company for the Benefit of S&C Pension Plan Trust Agreement". The assets of the Account will consist of U.S. Treasury Bills and U.S. Treasury Notes which will represent 25% of the value of the Stock as of December 31, 1992. The Plan will have a lien against the assets in the Account, so that the Plan will have priority over all creditors of S&C with respect to those assets. The applicant represents that the Account will be maintained as long as the Plan continues to hold the Stock, and will hold assets with a minimum value of 25% of the price per share of the Stock as of December 31, 1992, times the number of shares still held by the Plan. The applicant represents that it is intended that payments made by S&C to honor the Put Option will not actually be funded from the Account, but the Account is designed as "insurance" to make certain that S&C will be able to honor its obligations under the Put Option.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (1) The Plan holds only 3.4% of each class of issued and outstanding Stock; (2) the Plan has obtained a Put Option which will permit the Plan to sell any or all shares of the Stock to S&C, upon the independent fiduciary's decision, at a price which is the higher of the fair market value of the Stock as of December 31, 1992, or at the time of the exercise of the Put Option; (3) the fair market value of the Stock will be determined by a qualified, independent appraiser; (4) McMullen, the Plan's independent fiduciary, will monitor the Plan's continued holding of the Stock and will determine, among other things, whether to exercise the Put Option; and (5) S&C will establish the Account, which will hold assets worth 25% of the value of the Stock as of December 31, 1992, for the purpose of honoring S&C's obligations with respect to the Put Option.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of June, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-14244 Filed 6-16-92; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 92-39; Exemption Application No. D-8861, et al.]

Grant of Individual Exemptions; Toplis and Harding, Inc. Retirement Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the

Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Toplis and Harding, Inc. Retirement Plan (the Plan) Located in New York, New York

[Probibited Transaction Exemption 92–39; Exemption Application No. D–8861]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of certain units (the Units) in the Real Estate Fund No. 1 of the Continental Investment Trust for Employee-Benefit Plans to Toplis and Harding, Inc., a party in interest with respect to the Plan, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan pays no commissions with respect to the sale; and (3) the sales price will be the higher of (a) the Plan's cost for the Units, or (b) the fair market value of the Units on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 24, 1992 at 57 FR 15109.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Communications Workers of America Pension and Death Benefit Trust Fund and The National Paint and Coatings Association, Inc. Pension Trust (together, the Plans) Located in Washington, DC

[Prohibited Transaction Exempion 92–40; Exemption Application Nos. D–8634 and D–8636]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plans of certain participations (the Participations) in a real estate loan (the Loan) secured by certain deeds of trust held by the respective Plans, to First American Bank, a party in interest with respect to the Plans, provided the following conditions are satisfied: (1) The sales are one-time transactions for cash; (2) each Plan receives an amount representing the greater of (a) fair market value of the Participation held by it as of the date of the sale, or (b) the outstanding principal balance of the Participation, plus accrued interest, at the time the transaction is consummated; and (3) at the time the transaction is consummated, a qualified, independent appraiser has appraised the property securing the Loan and valued the Participations, and determined that the sales price is no less than the current fair market value of the Participations.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 24, 1992 at 57 FR 15105.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Marquette Bank Minneapolis, N.A. Employee Benefit Select Fixed Income Contract Fund (the Fund) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 92–41; Exemption Application No. D–8652]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain assets of the Fund (the Assets) by the Fund to Marquette Bank Minneapolis, N.A. (the Bank), a party in interest with respect to the Fund, for the greater of either (1) the aggregate fair market value of the Assets, as determined by a qualified, independent appraiser, plus the face value of any contracts for deed and mortgage notes that have matured and remain unpaid on the date of the Sale, or (2) the aggregate value of the Assets on July 31, 1990, as determined by the regular valuation procedures of the Bank and reduced by the amount of distribution to participants of the Fund for the period beginning on August 1, 1990, and ending immediately prior to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1992, at 57 FR 15107.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Palm Springs Mirror and Glass, Inc. Money Purchase Pension Plan and the Palm Springs Mirror and Glass, Inc. Restated Profit Sharing Plan (collectively, the Plans) Located in Cathedral City, CA

[Prohibited Transaction Exemption 92–42; Exemption Application Nos. D–8855 and D–8856, respectively]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to proposed loans (the Loans) by the Plans of an amount that will not exceed $72,000 to Valley Investment (the Partnership), a party in interest with respect to the Plans, provided the following conditions are satisfied: (1) The terms of the Loans are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party; (2) the Loans will not exceed 25 percent of the assets of either Plan; (3) the Loans are secured by a first mortgage on certain real property (the Property), which has been appraised by a qualified, independent appraiser, to ensure that the fair market value of the Property is at least 150 percent of the amount of the Loans; (4) throughout the duration of the Loans, the fair market value of the collateral remains at least equal to 150 percent of the outstanding balance of such Loans; and (5) the independent fiduciary, who has initially determined that the proposed Loans are appropriate investments for the Plans, monitors the repayment of the Loans and enforces the rights of the Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 17, 1992 at 57 FR 13774.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the P/S Plan) Located in Pine Bluff, Arkansas

[Prohibited Transaction Exemption 92–43; Exemption Application No. D–8874]

Exemption

The restrictions of section 406 (a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The secured loans (the Loans) by the P/S Plan to Motors Finance Company (Motors), a party in interest with respect to the P/S Plan and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the P/S Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions as set forth in paragraph six of the Notice of Proposed Exemption (the Notice); and (c) the balance for all Loans, plus the balance of any outstanding loans made pursuant to PTE 85–121, will at no time exceed 25% of the assets of the P/S Plan.

Written Comments

The Department received no requests for hearing and one written comment from the applicant with respect to the Notice. In this letter, the applicant informed the Department that it wished to correct certain typographical errors and other information published in the Summary of Facts and Representations in the notice. In paragraph number three, Richard L. Smart is incorrectly represented to be on the Trust Advisory Committee of Worthen Bank, when in fact he is on the Trust Advisory Committee of the Worthen Trust. Accordingly, the above information is incorporated into the granted exemption as corrected.

Temporary Nature of Exemption

The Department has determined that the exemption will be temporary in nature and will expire five years after the date of the grant. However, the exemption will extend until the maturity of any of the ninety day Loans made with the five year period.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on April 24, 1992, 57 FR 15109.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department telephone (202) 523–8883. (This is not a toll-free number.)

Sterling S. Baker, M.D., Inc. Profit Sharing Plan (the Plan) Located in Oklahoma City, Oklahoma

[Prohibited Transaction Exemption 92–44; Exemption Application No. D–8909]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain unimproved real property (the Property) by the Plan to Sterling S. Baker, M.D., a party in interest with respect to the Plan, provided that the consideration paid for the Property is no less than the greater of (1) $115,483.77, or (2) the fair market value of the Property on the date of the Sale as determined by a qualified, independent appraiser.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1992, at 57 FR 15112.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bill Rodgers, Inc. Pension Plan (the Plan) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 92–45; Exemption Application No. D–8911]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase (the Purchase) of certain real property (the Property) by the Plan from William H. Rodgers, a disqualified person with respect to the Plan, provided that (1) The Plan pays no more than the fair market value for the Property as determined by a qualified, independent appraiser on the date of the Purchase; and (2) the Property is not leased to or used by any disqualified person with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 8, 1992, at 57 FR 19949.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Richmond, Fredericksburg and Potomac Railway Company Employee Thrift and Investment Plan (the Plan) Located in Richmond, Virginia

[Prohibited Transaction Exemption 92–46; Exemption Application No. D–8921]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) interest-free extensions of credit to the Plan (the Advances) by the Richmond, Fredericksburg & Potomac Corporation, a party in interest with respect to the Plan, with respect to guaranteed investment contract number GA–5250 (the GIC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the Plan's potential repayment of the Advances (the Repayments); provided that (a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party, (b) no interest and/or expense are paid by the Plan, (c) the Advances are made only in lieu of payments due from Mutual Benefit with respect to the GIC, (d) the Repayments are restricted to amounts received by the Plan from Mutual Benefit or any other responsible party making payments pursuant to the GIC, and (e) the Repayments shall in no event exceed the amounts actually received by the Plan from Mutual Benefit and other responsible parties with respect to the GIC.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1992 at 57 FR 13768.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exception under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404

of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject of the exemption.

Signed at Washington, DC, this 12th day of June, 1992.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-14245 Filed 6-16-92; 8:45 am]

BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 92-1]

Policy Decision

AGENCY: Library of Congress; Copyright Office.

ACTION: Policy Decision.

SUMMARY: The Copyright Office records transfers and other documents relating to copyright under the Copyright Act, and documents relating to mask works under the Semiconductor Chip Protection Act of 1984. The administration of the recordation functions are governed by sections 203, 205, 302(c) and 304(c) of the Copyright Act and section 903(b) of the Semiconductor Chip Act

Regulations issued by the Copyright Office under authority of the Copyright Act are found in 37 CFR 201.4, 201.10, 201.25, and 201.26. No regulations concerning recordation have been issued under the Semiconductor Chip Act. In addition, the Office issued chapter 16 of the Compendium of Copyright Office Practices II covering practices for the recordation of documents in 1984. This announcement is to inform the public that the Office continues to record only those documents meeting statutory and regulatory requirements, but no longer examines documents for compliance with all of the requirements set out in chapter 16 of Compendium II.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20540. Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: The Compendium of Copyright Office Practices II is a manual of practices intended primarily for use of the staff of the Copyright Office as a general guide to its examination of claims to copyright, recordation of documents, and related practices. It is not a book of rules meant to provide a ready-made answer to all registration or recordation questions that could arise. The practices of the Copyright office are subject to constant review and modification in the light of new experience and continuing reappraisal. Accordingly, additions, deletions, and amendments to practices are made from time to time.

This Policy Decision announces new practices with respect to recordation of documents pertaining to copyright.

In the past, the Office would examine a document not merely for compliance with the requirements of the Copyright Act and Office regulations. As a service to the public and in the interest of creating an accurate record, the Office would to a limited extent also examine the document for formal sufficiency, i.e., that it did not obviously fail to satisfy the legal requirements to be an effective document. The practices the Office followed in this regard are among those included in chapter 16 of Compendium II. This depth of examination is necessarily time consuming and labor intensive especially given the complexity and size of some documents.

The Office has recently reassessed its practices concerning recordation of documents with a view to minimize delays in the recordation process. The Office has experienced a substantial increase in the number of documents submitted for recordation in the last few years, especially after the decision in *National Peregrine, Inc.* v. *Capitol Federal Savings and Loan Association of Denver*, 116 B.R. 194 (C.D. Cal. 1990). That case held that the Copyright Act preempts the recordation provisions of article Nine of the Uniform Commercial Code which specified recordation in the states of "security interests" in copyrighted works. "Security interest" documents are among some of the more complex documents the Office receives.

The Office generally does not attempt to judge the legal sufficiency or interpret the substantive content of any document submitted for recordation. In the past it has, however, screened the document for obvious errors or discrepancies and brought these to the attention of the remitter, without refusing to record the document as submitted. Because of the increased number and complexity of documents submitted for recordation, the Office can no longer screen the documents for content and engage in correspondence with the remitter over apparent problems with the sufficiency of the document.

The Copyright Office continues to require that all documents must meet the requirements of the Copyright Act (or the Semiconductor Chip Protection Act, if applicable), and regulations which are applicable to the type of document submitted for recordation. Chapter 16 of Compendium II is hereby withdrawn and will be replaced in due course by a revised chapter 16. In submitting documents for recordation, the public should comply with the Copyright Act (or the Semiconductor Chip Protection Act, if applicable), especially 17 U.S.C., 203, 205, 302(c), 304(c), and 903(b), and also with Copyright Office regulations, 37 CFR, 201.4, 201.10, 201.25, and 201.26.

In the case of section 205 transfers (which constitute the bulk of recordable documents), the statutory and regulatory requirements can be summed up as follows. Any transfer of copyright ownership or any other document pertaining to a copyright may be recorded if: (1) The document bears the actual signature of the person who executed it, or if the document is accompanied by a sworn or official certification that it is a true copy of the original signed document; (2) the document is complete by its own terms or otherwise recordable; (3) the document is legible and capable of reproduction in legible microform copies; and (4) it is accompanied by the statutory recording fee.

Members of the public who submit documents for recordation cannot rely on the Copyright Office to screen their documents for even obvious errors in formal sufficiency. The public is therefore cautioned to review and scrutinize any document to assure its formal sufficiency before submitting it to the Copyright Office for recordation. The Copyright Office will record the

document without examining it even for obvious errors, but recordation may be without legal effect unless the remitter has prepared the document in a way that satisfies applicable legal requirements.

Dated: May 6, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92-14110 Filed 6-16-92; 8:45 am]

BILLING CODE 1410-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement to Promote Artistic Exchange Between the U.S. and the Countries of Eastern Europe, Central Europe and the Former Soviet Union

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a nonprofit organization to carry out a project to promote artistic exchange between artists and arts organizations from the U.S. and those from the countries of Eastern Europe, Central Europe and the former Soviet Union. The tasks will include the administration of a process for the review of applications and awarding of grants to performing artists and arts organizations planning to work on collaborative projects with colleagues from the countries of Eastern Europe, Central Europe and the former Soviet Union, the administration of a related process for screening and placement of arts managers to carry out management fellowships in U.S. host organizations, and the planning and coordination of an orientation program for these fellows at the outset of their residency period. Eligibility to apply for the Cooperative Agreement is limited to nonprofit organizations. Subject to the availability of fiscal year 1993 funds, the Endowment anticipates awarding $70,000 for subgrants under the cooperative agreement. The successful recipient will be expected to contribute matching funds of at least $50,000. Those interested in receiving the Solicitation package should reference Program Solicitation PS 92-07 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 92-07 is scheduled for release approximately July 6, 1992 with proposals due August 6, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania, Ave., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 92-14128 Filed 6-16-92; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Regional Arts Organizations Presenting Support and Rural/Inner City Presenters Regrant Initiative Sections) to the National Council on the Arts will be held on July 1, 1992 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 11:15 a.m.-2 p.m. and 4:30 p.m.-5:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting from 9 a.m.-11:15 a.m. and 2 p.m.-4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: June 11, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-14146 Filed 6-16-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of North Carolina

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of North Carolina. The MOU provides the basis for mutually agreeable procedures whereby the North Carolina Division of Emergency Management may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in the State of North Carolina. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register**, Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective May 11, 1992.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-4155 or (301) 492-7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of North Carolina to provide data related to plant conditions during

emergencies at commercial nuclear power plants in North Carolina.

Dated at Rockville, Maryland, this 4th day of June 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of North Carolina and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of North Carolina enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

North Carolina recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clear Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. North Carolina fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the North Carolina Emergency Response Plan for the Brunswick Steam Electric Plant, the North Carolina Emergency Response Plan for the Shearon Harris Nuclear Power Plant, the North Carolina Emergency Response Plan for the McGuire Nuclear Station, and the North Carolina Emergency Response Plan for the Catawba Nuclear Station.

III. Scope

A. This Agreement defines the way in which NRC and North Carolina will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of North Carolina.

B. It is understood by the NRC and the State of North Carolina that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of North Carolina, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of North Carolina on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of North Carolina authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of North Carolina during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of North Carolina. The NRC will provide any software which is not commercially available and is necessary for configuring an ERDS workstation.

V. North Carolina General Responsibilities

A. North Carolina will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, North Carolina will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. North Carolina agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10-mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

North Carolina and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. North Carolina and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and North Carolina agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and North Carolina will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to North Carolina by the NRC. North Carolina may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the

NRC is not participating, North Carolina will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director of the North Carolina Division of Emergency Management. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and North Carolina staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and North Carolina will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: May 3, 1992.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: May 11, 1992.

For the State of North Carolina.

Joseph F. Myers,

Director, North Carolina Division of Emergency Management.

[FR Doc. 92-14221 Filed 6-16-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8027]

Sequoyah Fuels Corp., Gore, OK, Facility; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a Petition dated November 27, 1991, submitted by Native Americans for a Clean Environment and the Cherokee Nation regarding Sequoyah Fuels Corporation's (SFC's) Gore, Oklahoma, facility.

By Memorandum dated December 9, 1991, the Commission referred the Petition to the staff for consideration pursuant to 10 CFR 2.206. The Petition requested that the U.S. Nuclear Regulatory Commission revoke Sequoyah Fuels Corporation's operating license for the Sequoyah facility.

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petition, except insofar as a Notice of Violation will be issued citing SFC for violating 10 CFR 40.9, and has decided to grant the Petition insofar as the staff will publish, in the **Federal Register**, notice of all SFC's license amendment applications until the staff takes final action on the license renewal application. The reasons for this Decision are explained in a "Director's Decision Under 10 CFR 2.206" (DD-92-03), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street, NW., Washington, DC 20555, and the Local Public Document Room Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 8th day of June 1992.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92-14219 Filed 6-16-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445 and 50-446]

Texas Utilities Electric Co., Comanche Peak Steam Electric Station, Units 1 and 2; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition of May 19, 1992, Sandra Long Dow, dba Disposable Workers of Comanche Peak Steam Electric Station, and Micky Dow (Petitioners) have requested that the Commission take action regarding the Comanche Peak Steam Electric Station, Units 1 and 2. Specifically, the Petitioners request that the Commission order the immediate shutdown of Unit 1 of the Comanche Peak Steam Electric Station and institute a proceeding to modify, suspend, or revoke the license held by the Texas Utilities Electric Company for Unit 1. The Petitioners also request suspension of any consideration of extension or modification of the construction permit for Unit 2 of the facility pending the resolution of any proceeding regarding the license for Unit 1.

As a basis for this request, the Petitioners allege that the licensee has failed to demonstrate the necessary character and capability that are the primary factors to be considered in granting a license, and has shown a "downward spiral" in violations, reportable incidents, and NRC staff concerns, including perjury and probable criminal misconduct. To support this general assertion, the Petitioners allege numerous specific incidents, including that since November 1991, there has occurred: (1) A leak in a pressure tank causing 100 mile-per-hour winds in the access tunnel between Units 1 and 2, which resulted in a female employee being blown into a radiation area; (2) resin was spilled into the core because of personnel error and misalignment of valves; (3) a "hot" valve in Unit 2 cut in two causing a radiation release and exposure to several individuals; (4) of the sample weekly reports, 26 documented "reportable incidents," numerous areas showing

direct concern by Region IV, and at least 6 reactor trips; (5) proposed fines for violations totaling about $100,000 for 1992; and (6) an additional reactor trip occurred during the week of May 11, 1992, after which the spent fuel pool for Unit 1 was without cooling water for approximately 20 hours causing an abnormal rise in temperature and which Petitioners submit is evidence of a continuing problem involving the use of improperly trained control room personnel. The Petitioners also submit as an attachment to their Petition a photograph which they assert shows Comanche Peak control room staff to be asleep, a practice which they state is known to be the common manner for control room personnel. The Petitioners also allege inaction on the part of Region IV personnel in response to the licensee's violations, and duplicity between the licensee and Region IV personnel. To support their assertion of such duplicity, the Petitioners claim that they can provide the Commission with the transcripts of audio tapes of conversations between the licensee and certain individuals.

The request is being treated pursuant to § 2.206 of title 10 of the Code of Federal Regulations (10 CFR 2.206). The request has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). As provided by 10 CFR 2.206, appropriate action will taken on this request within a reasonable time.

A copy of the Petition is available for inspection in the U.S. Nuclear Regulatory Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 10th day of June 1992.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-14220 Filed 6-16-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Power Authority (Shoreham Nuclear Power Station, Unit 1); Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility

I

Long Island Power Authority (LIPA) is the holder of Facility Operating License No. NPF-82 issued by the U.S. Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR part 50 on April 21, 1989. The license was amended on June 14, 1991, to remove the authority to operate the Shoreham Nuclear Power Station (SNPS) in accordance with conditions specified therein, and authorizes the possession only of SNPS. The facility is located on the licensee's site in the Town of Brookhaven, Suffolk County, New York.

II

On February 28, 1989, Long Island Lighting Company (LILCO), the former licensee, entered into an agreement with the State of New York to transfer its Shoreham assets to an entity of the State for decommissioning. LILCO, however, continued to pursue with the NRC its request for a full-power license to operate its Shoreham plant. On April 21, 1989, the NRC issued to LILCO a Facility Operating License No. NPF-82, which allowed full-power operation of the Shoreham plant. On June 28, 1989, LILCO's shareholders ratified LILCO's agreement with the State. Consistent with the terms of the settlement agreement, which prohibits further operation of the Shoreham facility, LILCO defueled the reactor and reduced its staff. The NRC approved by Order, dated February 29, 1992, the transfer of the Shoreham license to the State entity, LIPA.

By letter dated January 2, 1991, LILCO requested approval of the proposed Decommissioning Plan for the Shoreham Nuclear Power Station, previously submitted by LIPA on December 29, 1990. The Decommissioning Plan was supplemented on August 26, November 27, and December 6, 1991. Additionally, LIPA submitted a No Significant Hazards Consideration Analysis concerning the Decommissioning Plan on January 22, 1992. A Notice of Consideration of Issuance of Amendment and Opportunity for Hearing regarding approval of the Decommissioning Plan was published in the **Federal Register** on December 23, 1991 (56 FR 66459). Comments and requests for hearings were received from the Shoreham-Wading River School District and Scientists and Engineers for Secure Energy, Inc., by letters dated January 22, 1992. The Commission in its Order dated April 3, 1992, directed the Secretary to forward the intervention petitions to the Atomic Safety and Licensing Board for further action. The petitions were withdrawn on June 3, 1992. The Commission, by order dated June 10, 1992, dismissed the proceeding based on this withdrawal. Also on June 10, 1992, the Commission in a Staff Requirements Memorandum (SRM) stated that it had no objection to the issuance of an order authorizing decommissioning of the Shoreham facility.

III

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the application with respect to the provisions of the Commission's rules and regulations and has found that decommissioning as stated in the licensee's Decommissioning Plan will be consistent with the regulations in 10 CFR chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis for these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation. The staff's No Significant Hazards Consideration Determination, as well as an evaluation of those issues raised in the hearing requests, are also documented in this Safety Evaluation.

The staff concluded that this order should contain conditions relating to three issues addressed in the Safety Evaluation. These issues include fuel disposal, onsite low-level radioactive waste storage, and use of a temporary liquid radwaste system. Therefore, in regard to fuel disposal, the licensee will be required to (1) have the fuel completely removed from the site within the 6 years specified in the Safety Evaluation, consistent with the time period during which the fuel remains onsite for the DECON alternative as described in the Generic Environmental Impact Statement on Decommissioning, NUREG-0586 (GEIS) or (2) suspend the on-going decommissioning, and within 30 days from the end of the allotted time, request NRC approval of a modified decommissioning plan that addresses disposition of irradiated fuel. Similarly, if it appears that onsite low-level radioactive waste storage will exceed the 5 years specified in the Safety Evaluation, the licensee will be required to apply for a license amendment, pursuant to 10 CFR part 30, that addresses storage of low-level radioactive waste. The application for a license amendment must be submitted for NRC review no later than 30 days beyond the end of the 5 year period specified. Finally, the licensee referenced use of a temporary liquid radwaste system during decommissioning. Such a system may not be used until the licensee submits sufficient system design information and the NRC has approved the use of the system.

The staff also added a fourth conditioning to this Order to specify the

method by which changes could be made to the Decommissioning Plan.

IV

Accordingly, pursuant to section 103, 161b, 161i, and 161o, of the Atomic Energy Act of 1954, as amended, 10 CFR 50.82, and the Commission's SRM dated June 10, 1992, the licensee's Decommissioning Plan is approved and decommissioning of the Shoreham Nuclear Power Station is authorized subject to the following conditions:

(1) Should the licensee fail to remove all fuel from the 10 CFR part 50 reactor site within 6 years from the date of this Order, the licensee is required to:

(a) Suspend the on-going decommissioning; and

(b) Within 30 days from the end of the 6 year period, request NRC approval of a modified decommissioning plan.

(2) If the licensee is unable to ship all solid radioactive waste offsite within 5 years of the date of this Order, the licensee shall apply for a license amendment, pursuant to 10 CFR part 30, within 30 days from the end of the 5 year period that addresses storage of low-level radioactive waste.

(3) In the event the licensee intends to utilize a temporary liquid radwaste system to complete the decontamination efforts, the licensee shall submit sufficient system design information to the NRC and receive NRC approval of the design prior to dismantlement of the installed liquid radwaste system.

(4) The licensee may make changes to the Decommissioning Plan other than those associated with the above conditions provided that:

(a) Such changes are approved in writing by the onsite review committee;

(b) The Director, Office of Nuclear Material Safety and Safeguards is notified of such changes in writing, and is provided with a copy of the written approval by the onsite review committee, not less than 30 days before such changes are implemented; and

(c) Such changes do not result in an unreviewed safety question or result in environmental impacts different from and exceeding those set forth in the licensee's Supplement to Environmental Report, December 1990.

Changes not meeting the above criteria must be submitted by the licensee to the Director, Office of Nuclear Material Safety and Safeguards for prior NRC review and approval before they may be implemented.

Pursuant to 10 CFR 51.21, 51.30, and 51.35, the Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared. The Notice of Issuance of Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on June 11, 1992 (57 FR 24832).

V

For further details with respect to this action, see: (1) The application for authorization to decommission the facility, dated December 29, 1990, and January 2, 1991, as supplemented August 26, November 27, December 6, 1991, and January 24, 1992; (2) the Commission's related Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact dated June 5, 1992. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III/IV/V.

Dated at Rockville, Maryland, this 11th day of June 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-14222 Filed 6-16-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Labor-Management Relations

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of opportunity to file comments.

SUMMARY: This notice announces a study by the Office of Personal Management (OPM) of the Federal Service Labor-Management Relations Program, and invites agencies, labor unions, other employee organizations, and interested persons to submit written comments on the scope and methods of the study. The study will examine the overall efficiency and effectiveness of the Federal Service Labor-Management Relations Program, with particular focus on those policy issues that are key to defining the purposes of the Federal Service Labor-Management Relations Statue and its effect on the operation of Government programs.

DATES: Comments and recommendations in response to this notice will be considered if received by July 17, 1992.

ADDRESSES: Mail or deliver comments or recommendations to Allan D. Heuerman, Assistant Director for Labor Relations and Workforce Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., room 7412, Washington, DC 20415-0001.

SUPPLEMENTARY INFORMATION: The current Federal Service Labor-Management Relations Program was established under Title VII of the Civil Service Reform Act of 1978 (codified as chapter 71 of title 5, United States Code). Prior to the enactment of the Federal Service Labor-Management Relations Statute, Federal Service Labor-Management Relations were governed by Presidential Executive order.

In enacting the Federal Service Labor-Management Relations Statute, Congress found that labor organizations and collective bargaining in the Federal civil service are in the public interest. The Statute sets forth the rights and obligations of employees, labor organizations, and agencies pertaining to labor-management relations. Congress also created an independent agency, the Federal Labor Relations Authority (FLRA), to carry out the purposes of the Statute.

A variety of studies and assessments, formal and informal, have been made of the Federal Service Labor-Management Relations Program. This includes efforts by Federal employee labor organizations, the FLRA, the Administrative Conference of the U.S. (in its study of Federal dispute resolution procedures), and, most recently, by the General Accounting Office (GAO) in its 1991 report *Federal Labor Relations: A Program in Need of Reform*. Some of these studies have looked broadly at the program as a whole (e.g., the GAO report); others have reviewed a single major aspect of the program (e.g., the Administrative Conference's study of dispute resolution). None of these studies, however, has developed specific proposals for changing the current program, or indicate what would be required to establish a consensus for change.

The Director of OPM, in testifying on the GAO report in November 1991 before the House Post Office and Civil Service Committee, stated that OPM

"would be pleased to participate in studying the Labor-Management Relations Program with a view toward determining the origin and nature of the problems as a basis for considering the extent and character of solutions." She agreed that the program needs a comprehensive review, but noted that there are considerable differences of opinion about problems and solutions, and that it is not clear from the GAO report just what the outcome ought to be.

OPM to Conduct Review

Given the concerns that have been raised, the Director decided to initiate a review of the Federal Service Labor-Management Relations Program. The review will examine the overall efficiency and effectiveness of Federal Service Labor-Management Relations, with a particular focus on those issues that deal with the purposes of the Federal Service Labor-Management Relations Statute and its effect on the operation of Government programs.

Request for Public Comment

At this preliminary stage, OPM is seeking public comment to assist in planning the scope and method of the review. Specifically, we would like comments on the following questions:

(1) *Issues and Problems*: What specific issues or problems should be addressed by the review? Why are these issues important? (*Please address each issue or problem separately.)*

(2) *Current Knowledge of Issues and Problems*: What is known about the issues or problems identified? Please identify factual information, documentation, studies or analyses, and experiences that address these issues and problems.

(3) *Areas Where Additional Knowledge is Needed*: What information is generally lacking with respect to the issues and problems identified?

(4) *Methods for Gaining Additional Knowledge*: How do you recommend OPM obtain a broader knowledge and a better understanding of the issues and problems? Please be specific in identifying sources (e.g., published studies or research papers) or proposed methods (e.g., additional research, surveys, focus groups, public hearings).

(5) *Process for Assessing Problems and Reaching Conclusions*: What process should OPM follow (making use of the information gathered in response to items 1 through 4) for assessing indicated problems with the Federal Service Labor-Management Relations Program, and for reaching conclusions with respect to proposed solutions to those problems? Also, within the limits of current knowledge, what would you suggest as possible solutions to indicated problems?

As the OPM study progresses, we may seek additional public input or comment.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-14132 Filed 6-16-92; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. A92-13; Order No. 928]

Milfay, Oklahoma 74046 (Edith Schiller, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued June 11, 1992

Docket Number: A92-13.

Name of Affected Post Office: Milfay, Oklahoma 74046.

Name(s) of Petitioner(s): Edith Schiller.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: June 8, 1992.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

Docket No. A92-13.

The Commission orders:

(A) The record in this appeal shall be filed on or before June 23, 1992.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Docket No. A92-13

Appendix

June 8, 1992—Filing of Petition.

June 11, 1992—Notice and Order of Filing of Appeal.

July 6, 1992—Last day for filing of petitions to intervene [see 39 CFR 3001.111(b)].

July 13, 1992—Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)].

August 3, 1992—Postal Service Answering Brief [see 39 CFR 3001.115(c)].

August 18, 1992—Petitioner's Reply Brief should petitioner choose to file one [see 39 CFR 3001.115(d)].

August 25, 1992—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].

October 6, 1992—Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 92-14183 Filed 6-16-92; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Hospital Staffing Services, Inc.
Common Stock, $.001 Par Value (File No. 7-8537)

International Murex Technologies Corp.
Common Stock, No Par Value (File No. 7-8538)

Sulcus Computer Corporation
Common Stock, No Par Value (File No. 7-8539)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 2, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all

the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-14141 Filed 6-16-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Midwest Stock Exchange, Incorporated

June 11, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Columbia Laboratories, Inc.
Common Stock, $.01 Par Value (File No. 7-8547)
Hospital Staffing Services, Inc.
Common Stock, $.001 Par Value (File No. 7-8548)
Hubco, Inc.
Common Stock, No Par Value (File No. 7-8549)
Aracruz Celulose S.A.
American Depositary Shares (each representing five shares Class B Stock) (File No. 7-8550)
Davstar Industries, Ltd.
Class A Common Stock, No Par Value (File No. 7-8551)
Nuveen Select Tax Free Income Portfolio 2
Shares of Beneficial Interest, $.01 Par Value (File No. 7-8552)
Santa Fe Energy Resources, Inc.
7% Convertible Preferred Stock, No Par Value (File No. 7-8553)
Health Management Associates, Inc.
Common Stock, $.01 Par Value (File No. 7-8554)
Interstate Bakeries Corporation
Common Stock, $.01 Par Value (File No. 7-8555)
Van Kampen Merritt Municipal Opportunity Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-8556)
Van Kampen Merritt Trust for Investment Grade California Municipals
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-8557)
Westinghouse Electric Corp.
Depository Shares (each representing ¼ share Series B Convertible Preferred Stock, $1.00 Par Value (File No. 7-8558)
First Commonwealth Financial Corporation
Common Stock, $5.00 Par Value (File No. 7-8559)
Revco D.S., Inc.
Common Stock, $.01 Par Value (File No. 7-8560)
International Thoroughbred Breeders, Inc.
Common Stock, $2.00 Par Value (File No. 7-8561)
Valero Natural Gas Partners L.P.
Common Units of Limited Partnership, No Par Value (File No. 7-8562)
Sybron Corporation
Common Stock, $.01 Par Value (File No. 7-8563)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 2, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-14140 Filed 6-16-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

June 11, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Aracruz Celulose SA
American Depository Shares (representing 5 Shares of Class B Stock) (File No. 7-8540)
GFC Financial Corporation
Common Stock, $.01 Par Value (File No. 7-8541)
John Nuveen Co.
Class A Common Stock, $.01 Par Value (File No. 7-8542)
National Media Corporation
Common Stock, $.01 Par Value (File No. 7-8543)
Unisys Corporation
Common Stock, $.01 Par Value (File No. 7-8544)
Westinghouse Electric Corporation
Depository Share (each representing ¼ of a share of Series B Conversion Preferred Stock—PERCS, $1.00 Par Value) (File No. 7-8545)
WorldCorp, Inc.
Common Stock, $1.00 Par Value (File No. 7-8546)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 2, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-14138 Filed 6-16-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

June 11, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Hospital Staffing Services, Inc.
Common Stock, $.001 Par Value (File No. 7-8564)
Aracruz Celulose S.A.
American Depositary Shares, Class B Stock (File No. 7-8565)

Conagra, Inc.
Class E Cum. Cv. Voting Pfd. Stock (File No. 7–8566)
Revco D.S., Inc.
When Issued Common Stock, $.01 Par Value (File No. 7–8567)
Nuveen Select Tax Free Income Portfolio 2
Shares of Beneficial Interest, $.01 Par Value (File No. 7–8568)
Santa Fe Energy Resources, Inc.
Cv. Pfd. Stock, $0.01 Par Value (File No. 7–8569)
Van Kampen Trust for Investment Grade California Municipal
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–8570)
Van Kampen Merritt Municipal Opportunity Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–8571)
Westinghouse Electric Corporation
Depositary Shares ("PERCS") (File No. 7–8572)
Interstate Bakeries Corporation
Common Stock, $.01 Par Value (File No. 7–8573)
Health Management Associates
Class A Common Stock, $.01 Par Value (File No. 7–8574)
Lydall, Inc.
Common Stock, $3⅓ Par Value (File No. 7–8575)
Pacificorp
Preferred Stock, No Par Value (File No. 7–8576)
Chemical Banking Corporation
Preferred Stock, $1 Par Value (File No. 7–8577)
First Commonwealth Financial Corp.
Common Stock, $5.00 Par Value (File No. 7–8578)
Santander Overseas Bank, Inc.
Non Cum. Gtd Pfd. Series B, $25.00 Par Value (File No. 7–8579)
Graham Field Health Products, Inc.
Common Stock, $.25 Par Value (File No. 7–8580)
Sybron Corporation
Common Stock, $.01 Par Value (File No. 7–8581)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 2, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–14139 Filed 6–16–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Defense Trade Advisory Group; Meeting

Pursuant to section 10(a)(1) of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Defense Trade Advisory Group (DTAG) on Friday, July 10, 1992. The open session will take place in the Loy Henderson Auditorium of the U.S. Department of State, 2201 C Street NW., Washington, DC 20520 from 10 a.m. to 12 noon.

The DTAG, established in February 1992 pursuant to the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), provides a formal mechanism for U.S. government officials, U.S. defense contractors, and other defense trade specialists to consult regularly on issues related to commercial arms sales. These include broad policy and technology transfer issues, as well as regulations and licensing procedures governing U.S. commercial munitions exports.

The agenda will include the following items:

- DTAG structure and officers.
- Objectives and duties.
- Responsibilities of the DTAG members, Chair, and Vice-Chair.
- Administrative procedures.
- Topic discussion and development of a DTAG agenda.

Attendance is open to the general public, but will be limited to the space available. As entry into the State Department is controlled, persons wishing to attend must notify the DTAG Executive Secretariat at least one week before the meeting date. Attendees must provide their date of birth and social security number to the DTAG Secretariat, and must carry a valid photo ID with them to the open session. Entrance to State will be through the Diplomatic ("C" Street) entrance. Department officers will be at the Diplomatic Entrance to escort attendees.

For further information, contact: Marlene Urbina de Breen, DTAG Executive Secretary, U.S. Department of State, PM/DTP—Room 7815 Main State, Washington, DC 20520–7815. Phone (202) 647–3529. Fax: (202) 647–4232/1346.

Dated: June 3, 1992.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 92–14176 Filed 6–16–92; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Cost Guard

[CGD 92–037]

Bordeaux Railroad Bridge, Cumberland River, Bordeaux, TN

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Congress declared the Bordeaux Railroad Bridge an unreasonable obstruction to navigation, eligible for Federal participating funds for alterations under the Truman-Hobbs Act. The Commandant of the Coast Guard has authorized a public hearing to be held by the Commander, Second Coast Guard District, at Bordeaux, Tennessee. The purpose of the hearing is to provide an opportunity for all interested persons to present data, views, and comments orally, or in writing, concerning possible alteration of the railroads bridge across the Cumberland River near Bordeaux, Tennessee.

DATES: The public hearing will be held July 15, 1992, commencing at 10 a.m., continuing until all persons in attendance wishing to comment have been heard.

ADDRESSES: The hearing will be held in room A–7–61 (7th floor conference room) at the Federal Building Annex, 801 Broadway, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2398, (314) 539–3724.

SUPPLEMENTARY INFORMATION: In the Coast Guard Authorization Act of December 19, 1991 (Pub. L. 102–241), Congress declared the Bordeaux' Railroad Bridge across the Cumberland River, mile 185.2, near Bordeaux, Tennessee, an unreasonable obstruction to navigation, eligible for Federal participating funds for alterations under the Truman-Hobbs Act (act of June 21, 1940, as amended; Stat. 497; 33 U.S.C. 511 *et seq.*). The Commandant of the Coast Guard has authorized a public hearing to be held by the Commander, Second Coast Guard District, at Bordeaux, Tennessee. The information presented at this hearing will be used by

the Coast Guard to help determine what alterations are needed to render navigation through the bridge relatively free and unobstructed. All interested parties will have full opportunity to be heard and to present evidence as to what alterations are needed in their opinion, giving due consideration to the needs of rail and river traffic, and environmental concerns. Persons planning to appear and make statements or otherwise present information are requested to notify the Commander, Second Coast Guard District, Bridge Administration Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2398, (314) 539–3724, no later than 48 hours prior to the hearing and indicate the amount of time needed. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitation of time allocated to each speaker will be announced at the beginning of the hearing.

Written statements and exhibits may be submitted in place of, or in addition to, oral statements and will be made part of the hearing record. Written statements and exhibits may be delivered at the hearing or mailed in advance to the Commander, Second Coast Guard District, at the above address. Transcripts of the hearing may be ordered for purchase upon request to the court reporting service at the conclusion of the hearing.

The hearing will be held: July 15, 1992, commencing at 10 a.m. Room A–7–61, 7th floor conference room, Federal Building Annex, 801 Broadway, Nashville, Tennessee 37203.

Authority: 33 U.S.C. 513; 33 CFR 116.20.

Dated: June 12, 1991.

W.J. Ecker,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–19191 Filed 6–16–92; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

[Docket No. P–007]

Lykes Bros. Steamship Co., Inc.; Notice of Application under Section 608 of the Merchant Marine Act, 1936, as Amended

Notice is hereby given that an application, dated June 8, 1992, has been filed for authorization under section 608 of the Merchant Marine Act, 1936, as amended, to transfer the Operating-differential Subsidy Agreement (ODSA), Contract No. MA/MSB–451, of Lykes Bros. Steamship Co., Inc. (Lykes) to Louisiana Vessel Management, Inc. (LVM). Lykes advises that LVM is a company currently being formed as a subsidiary of Lykes. It is contemplated that upon approval of the transfer, all of the stock of LVM will be sold to new shareholders.

LVM will be a 100 percent United States citizen-owned entity totally separate from Lykes and have no shareholders, directors, officers or employees in common with Lykes, Lykes' parent, or any of Lykes' affiliates. LVM will become the bareboat charterer of all the vessels now operated by Lykes; and LVM will operate those vessels in the liner services covered by the ODSA consistent with all the terms and conditions thereof. The vessels will be managed by skilled, experienced personnel, many of whom have been engaged in the maritime industry for decades. LVM will also maintain the labor contracts applicable to the covered vessels.

Approval of the Maritime Administration for the requested transfer is required under section 608 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1178). The Maritime Administration is allowing public comment solely as a matter of discretion for the purpose of protecting the Government's interest in performance of the ODSA.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation desiring to express views thereon, may file written comments in triplicate with the Secretary, Maritime Administration, room 7300, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on June 26, 1992. The Maritime Administration will consider any comments submitted.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-differential Subsidies).

By Order of the Maritime Administrator/ Maritime Subsidy Board.

Dated: June 12, 1992.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 92–14308 Filed 6–15–92; 10:24 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. T84–01; Notice 28]

Final Passenger Motor Vehicle Theft Data for 1990

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Publication of final theft data for 1990.

SUMMARY: The Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2021 *et seq.*) provides that NHTSA shall periodically publish passenger motor vehicle theft data for review and comment. The periodic publication of these theft data does not have any effect on the obligations or regulated parties under the Cost Savings Act. These theft data serve only to inform the public of the extent of the motor vehicle theft problem. NHTSA has previously published 1990 theft data for public review and comment. After evaluating those public comments, the agency has made some changes to the previously published 1990 data. This notice informs the public of those minor changes and of this agency's final calculations of 1990 theft data.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: NHTSA's Federal motor vehicle theft prevention standard (49 CFR part 541) applies to cars that are in lines designated as "high theft lines." Whether a car line is a high theft line depends, as required by the Cost Savings Act, on the relationship of the line's actual or likely theft rate to the median theft rate for car lines in 1983 and 1984. Section 603(b)(3) of the Cost Savings Act (15 U.S.C. 2033(b)(3)) sets forth the steps NHTSA had to follow in making its determination of the median theft rate for 1983 and 1984. The agency followed those steps, published final theft data for the 1983 and 1984 car lines, and made a determination of the median theft rate for those years. (See 50 FR 46666; November 12, 1985.)

Section 603(b)(3) of the Cost Savings Act also provides that NHTSA shall "periodically" publish theft data from later calendar years for public review and comment. These publications of theft data for subsequent model years have no effect on the determination of whether a car line is or should be subject to the requirements of the theft prevention standard. The agency believes that the reason Congress directed it to periodically publish theft data for later years was to inform the public, particularly law enforcement groups, automobile manufacturers, and the Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts of the Federal motor vehicle theft prevention standard.

Pursuant to this directive, on November 4, 1991 (56 FR 56330), NHTSA published for public review and comment the theft rates for calendar year 1990. The theft rates were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI).

In response to the November 1991 notice, the agency received comments from Fiat Auto R&D U.S.A. (Fiat), Mazda (North America), Inc. (Mazda), Mercedes-Benz of North America, Inc. (Mercedes-Benz), and Nissan Research and Development, Inc. (Nissan). In its comments, all four manufacturers provided updated production figures for their car lines. Mercedes-Benz also provided production information for an additional car line, the 350 SDL, that was available for sale in the U.S. in 1990. The 350 SDL was not listed in NHTSA's November 1991 notice. There were no thefts of the 350 SDL in 1990.

The updated production figures from the four manufacturers affected the theft rates of the car lines of each manufacturer as follows:

For the Fiat car lines, the Alpha Romeo Spider Veloce 2000, formerly ranked no. 131 with a theft rate of 2.1854 (thefts/production) is now no. 146, with a theft rate of 0.8137. The Ferrari Testarossa, formerly ranked no. 99 with a theft rate of 3.3333, is now no. 116, with a theft rate of 2.6247.

For the Mazda car lines, the Mazda 626/MX-6, formerly ranked no. 1 with a theft rate of 18.8365, is now no. 43, with a theft rate of 5.5999. The Mazda RX-7, formerly no. 2 with a theft rate of 17.6773, is now no. 21, with a theft rate of 7.4811. The Miata MX-5, formerly no. 71 with a theft rate of 4.4238, is now no. 100, with a theft rate of 3.0624. The Mazda 323, formerly no. 80 with a theft rate of 4.1634, is now no. 81, with a theft rate of 4.1041. The Mazda 929, formerly no. 135 with a theft rate of 2.0517, is now no. 134, with a theft rate of 2.0453.

For the Mercedes-Benz car lines, the 300 CE, formerly no. 17 with a theft rate of 8.2531, is now no. 15, with a theft rate of 8.2493. The 190 E, formerly no. 65 with a theft rate of 4.6486, is now no. 66, with a theft rate of 4.6502. The 300 SL, formerly no. 75 with a theft rate of 4.3103, is now no. 76, with a theft rate of 4.2702. The 300 SEL, no. 91 with a theft rate of 3.7901, is still ranked no. 91, but with a theft rate of 3.7934. The 500 SL, formerly no. 100 with a theft rate of 3.2573, is now no. 109, with a theft rate of 2.8199.

The 300 D/E, formerly ranked no. 102 with a theft rate of 3.1582, is now no. 99, with a theft rate of 3.1665. The 560 SEL, formerly no. 105 with a theft rate of 2.9240, is now no. 104 with a 2.9233. The 300 TE, formerly no. 107 with a theft rate of 2.8769, is now no. 103, with a theft rate of 2.9638. The 420 SEL, formerly no. 110 with a theft rate of 2.8319, is now no. 108, with a theft rate of 2.8304.

For the Nissan car lines, the Nissan 300 ZX, formerly ranked no. 5 with a theft rate of 12.4601, is now ranked no. 3, with a theft rate of 12.4479. The Sentra, formerly ranked no. 36 with a theft rate of 6.1780, is now no. 44, with a theft of 5.5523. The 240 SX, ranked no. 51 with a theft rate of 5.1269, remains no. 51 with a theft rate of 5.1170. The Maxima, formerly ranked no. 81, with a theft rate of 4.1240, is now no. 59, with a theft rate of 4.9329.

The Stanza, formerly ranked no. 101 with a theft rate of 3.2454, is now no. 83, with a theft rate of 4.0073. The Axxess, ranked no. 121 with a theft rate of 2.5018, remains at no. 121 with a theft rate of 2.5008. The Infiniti M30, formerly ranked no. 112 with a theft rate of 2.7525, is now no. 113, with a theft rate of 2.6788. The Infiniti Q45 formerly no. 139 with a theft rate of 1.7227, is now no. 138 with a theft rate of 1.7219.

The following list represents NHTSA's calculation of theft rates for all 1990 car lines. As noted above, this list is only intended to inform the public of 1990 motor vehicle theft experience, and does not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2033; delegation of authority at 49 CFR 1.50.

Issued: June 11, 1992.

Frederick H. Grubbe,

Deputy Administrator.

MODEL YEAR 1990 THEFT RATES FOR CAR LINES PRODUCED IN CALENDAR YEAR 1990

Manufacturer	Make/Model (line)	Thefts 1990	Production (mfgr's)	Theft rate (1990 thefts per 1,000 cars produced)
1. Ford Motor Co	Ford Mustang	1,622	115,812	14.0044
2. Volkswagen	Cabriolet	117	8,671	13.4933
3. Nissan	300ZX	484	38,882	12.4479
4. Toyota	Supra	72	6,200	11.6129
5. General Motors	Cadillac Seville	319	32,346	9.8621
6. Porsche	928	4	414	9.6618
7. General Motors	Cadillac Brougham	302	32,052	9.4222
8. General Motors	Geo Metro	259	28,029	9.2404
9. General Motors	Chevrolet Camaro	300	33,200	9.0361
10. Mercedes-Benz	560SEC	13	1,446	8.9903
11. General Motors	Pontiac Grand Am	1,640	189,150	8.6704
12. General Motors	Pontiac Firebird	164	19,157	8.5606
13. Mitsubishi	Galant/Sigma	319	37,490	8.5089
14. BMW	3	149	17,517	8.5060
15. Mercedes-Benz	300CE	18	2,182	8.2493
16. General Motors	Chevrolet Corvette	181	22,034	8.2146
17. General Motors	Pontiac Sunbird	847	106,960	7.9188
18. Chrysler Corp	Dodge Shadow	563	72,776	7.7361
19. Mitsubishi	Mirage	461	60,040	7.6782
20. Chrysler Corp	LeBaron	648	86,571	7.4852
21. Mazda	RX-7	79	10,560	7.4811
22. Audi	Coupe Quattro	10	1,349	7.4129
23. Volvo	780	7	945	7.4074
24. Porsche	911	34	4,609	7.3769
25. Chrysler Corp	Plymouth Sundance	451	61,366	7.3493
26. Volkswagen	Jetta	344	48,065	7.1540
27. Ford Motor Co	Ford Probe	776	110,201	7.0417
28. General Motors	Buick Reatta	58	8,431	6.8794
29. General Motors	Chevrolet Caprice	373	55,152	6.7631
30. General Motors	Pontiac Bonneville	506	75,655	6.6883

MODEL YEAR 1990 THEFT RATES FOR CAR LINES PRODUCED IN CALENDAR YEAR 1990—Continued

	Manufacturer	Make/Model (line)	Thefts 1990	Production (mfgr's)	Theft rate (1990 thefts per 1,000 cars produced)
31.	Honda	Prelude	384	60,000	6.4000
32.	Chrysler Corp	Chrysler's TC	12	1,894	6.3358
33.	General Motors	Buick Skylark	523	83,666	6.2510
34.	General Motors	Geo Prizm	1,056	170,253	6.2143
35.	Ford Motor Co	Lincoln Mark VII	129	21,658	5.9562
36.	BMW	5	132	22,479	5.8721
37.	Ford Motor Co	Ford Thunderbird	609	104,847	5.8085
38.	General Motors	Chevrolet Cavalier	1,524	263,199	5.7903
39.	General Motors	Oldsmobile Cutlass Calais	507	88,229	5.7464
40.	General Motors	Pontiac 6000	300	52,352	5.7304
41.	Chrysler Corp	Plymouth Acclaim	550	96,371	5.7071
42.	Ford Motor Co	Ford Escort	1,061	188,146	5.6392
43.	Mazda	626/MX-6	543	96,966	5.5999
44.	Nissan	Sentra	907	163,355	5.5523
45.	General Motors	Oldsmobile 98/Touring	323	58,444	5.5267
46.	Volkswagen	Golf/GTI	77	13,952	5.5189
47.	Chrysler Corp	Dodge Dynasty	524	96,446	5.4330
48.	Mitsubishi	Precis	17	3,210	5.2960
49.	Chrysler Corp	Dodge Spirit	433	82,567	5.2442
50.	Mitsubishi	Eclipse	392	74,820	5.2392
51.	Nissan	240SX	310	60,582	5.1170
52.	General Motors	Geo Storm	378	74,501	5.0738
53.	Toyota	Corolla/Corolla Sport	1,104	218,200	5.0596
54.	General Motors	Buick Electra/LeSabre Estate Wagon	38	7,524	5.0505
55.	General Motors	Oldsmobile Custom Cruiser Wagon	18	3,573	5.0378
56.	Sterling	Sterling 827	6	1,201	4.9958
57.	Chrysler Corp	Chrysler Laser	259	52,239	4.9580
58.	Honda	Accord	1,896	382,800	4.9530
59.	Nissan	Maxima	546	110,685	4.9329
60.	Chrysler Corp	Dodge Daytona	191	38,752	4.9288
61.	Toyota	Tercel	416	86,200	4.8260
62.	Chrysler Corp	Eagle Premier	60	12,563	4.7759
63.	General Motors	Oldsmobile Cutlass Ciera	597	126,321	4.7261
64.	Ford Motor Co	Ford Tempo	1,025	218,975	4.6809
65.	Chrysler Corp	Eagle Talon	119	25,554	4.6568
66.	Mercedes-Benz	190E	43	9,247	4.6502
67.	Honda/Acura	Legend	345	75,400	4.5756
68.	Hyundai	Excel	418	91,995	4.5437
69.	Volkswagen	Corrado	50	11,034	4.5314
70.	Ford Motor Co	Mercury Cougar	343	76,580	4.4790
71.	Chrsyler Corp	Dodge Omni	74	16,523	4.4786
72.	Ford Motor Co	Lincoln Town Car	631	142,648	4.4235
73.	General Motors	Chevrolet Beretta	397	90,981	4.3635
74.	General Motors	Oldsmobile Delta 88 Royale	455	105,508	4.3125
75.	BMW	7	47	10,917	4.3052
76.	Mercedes-Benz	300SL	11	2,576	4.2702
77.	Chrysler Corp	Chrysler New Yorker Fifth Ave./Imperial	234	54,971	4.2568
78.	General Motors	Buick Electra Park Avenue	197	46,360	4.2494
79.	General Motors	Pontiac Lemans	154	36,626	4.2047
80.	Chrysler Corp	Eagle Summit	40	9,733	4.1097
81.	Mazda	323	305	74,316	4.1041
82.	General Motors	Buick Century	504	123,893	4.0680
83.	Nissan	Stanza	318	79,356	4.0073
84.	Chrysler Corp	Plymouth Horizon	63	15,920	3.9573
85.	General Motors	Buick LeSabre	601	152,967	3.9290
86.	General Motors	Cadillac Allante	12	3,055	3.9280
87.	Toyota	Camry	1,081	275,600	3.9224
88.	Ford Motor Co	Mercury Topaz	285	73,206	3.8930
89.	Toyota	Celica	320	83,800	3.8186
90.	General Motors	Cadillac Fleetwood/Deville	650	170,517	3.8119
91.	Mercedes-Benz	300SEL	13	3,427	3.7934
92.	General Motors	Chevrolet Corsica	629	168,855	3.7251
93.	Honda/Acura	Integra	492	132,780	3.7054
94.	General Motors	Oldsmobile Cutlass Supreme	389	106,705	3.6456
95.	Chrysler Corp	Dodge Monaco	24	6,718	3.5725
96.	Subaru	Loyale	50	14,097	3.5469
97.	Hyundai	Sonata	76	21,822	3.4827
98.	General Motors	Pontiac Grand Prix	384	110,549	3.4736
99.	Mercedes-Benz	300D/E	57	18,001	3.1665
100.	Mazda	MX-5 Miata	160	52,247	3.0624
101.	Ford Motor Co	Mercury Sable	282	93,126	3.0282
102.	Ford Motor Co	Ford Festiva	142	47,449	2.9927
103.	Mercedes-Benz	300TE	5	1,687	2.9638
104.	Mercedes-Benz	560SEL	12	4,105	2.9233
105.	Toyota	Cressida	36	12,500	2.8800
106.	General Motors	Buick Regal	154	53,571	2.8747
107.	Audi	80/90	26	9,171	2.8350
108.	Mercedes-Benz	420SEL	16	5,653	2.8304

MODEL YEAR 1990 THEFT RATES FOR CAR LINES PRODUCED IN CALENDAR YEAR 1990—Continued

Manufacturer	Make/Model (line)	Thefts 1990	Production (mfgr's)	Theft rate (1990 thefts per 1,000 cars produced)
109. Mercedes-Benz	500SL	8	2,837	2.8199
110. General Motors	Chevrolet Celebrity	81	29,271	2.7672
111. Volvo	740	151	55,178	2.7366
112. Ford Motor Co	Ford Crown Victoria	156	57,680	2.7046
113. Nissan	Infiniti M30	20	7,466	2.6788
114. General Motors	Chevrolet Lumina	790	296,720	2.6624
115. Honda	Civic	756	287,000	2.6341
116. Ferrari	Testarossa	1	381	2.6247
117. General Motors	Oldsmobile Toronado/Trofeo	38	14,480	2.6243
118. Suzuki	Swift	20	7,671	2.6072
119. Jaguar	XJ-S	14	5,407	2.5892
120. Volkswagen	Passat	44	17,427	2.5248
121. Nissan	Access	45	17,994	2.5008
122. General Motors	Cadillac Eldorado	54	21,764	2.4812
123. Ford Motor Co	Ford Taurus	745	309,211	2.40942
124. Ford Motor Co	Mercury Grand Marquis	169	70,633	2.3926
125. Volkswagen	Fox	60	25,745	2.3305
126. Saab	900	33	14,517	2.2732
127. Saab	9000	13	5,732	2.2680
128. Ford Motor Co	Lincoln Continental	139	62,657	2.2184
129. Volvo	240	80	36,357	2.2004
130. Subaru	Legacy	89	40,686	2.1875
131. Daihatsu	Charade	26	12,430	2.0917
132. Porsche	944	6	2,886	2.0790
133. Chrysler Corp	Plymouth Colt/Colt Vista	25	12,183	2.0520
134. Mazda	929	37	18,090	2.0453
135. Toyota	Lexus LS400	82	40,600	2.0197
136. Volvo	760	18	9,554	1.8840
137. Toyota	Lexus ES250	35	19,600	1.7857
138. Nissan	Infiniti Q45	20	11,615	1.7219
139. Jaguar	XJ-6	26	15,316	1.6976
140. Chrysler Corp	Dodge Colt/Colt Vista	23	13,744	1.6735
141. Mercedes-Benz	300SE	8	5,545	1.4427
142. General Motors	Buick Rivera	29	21,982	1.3193
143. Audi	100/200	16	13,777	1.1614
144. Subaru	Justy	6	5,482	1.0945
145. General Motors	Chevrolet Sprint	1	1,171	0.8540
146. Alfa Romeo	Spider Veloce 2000	2	2,458	0.8137
147. Peugeot	505	0	2	0.0000
148. General Motors	Oldsmobile Cutlass Cruiser	0	8,891	0.0000
149. Isuzu	Impulse	0	4,772	0.000
150. Ferrari	Mondial	0	98	0.000
151. Nissan	Pulsar	0	1,168	0.000
152. Yugo	GV/GVX/GVL/GVS	0	1,323	0.000
153. Peugeot	405	0	686	0.000
154. Rolls-Royce/Bentley	Bentley Eight	0	24	0.000
155. Rolls-Royce/Bentley	Silver Spirit/Silver Spur	0	180	0.000
156. Rolls-Royce/Bentley	Bentley Turbo R	0	200	0.000
157. Mercedes-Benz	350SDL	0	855	0.000
158. General Motors	Buick Skyhawk	0	4	0.000
159. Lotus	Esprit	0	400	0.000
160. Ferrari	348	0	381	0.000
161. Rolls-Royce/Bentley	Corniche/Continental/Mulsanne	0	141	0.000
162. Mesarati	430/228	0	18	0.000
163. Maserati	Spyder	0	26	0.000

[FR Doc. 92-14144 Filed 6-16-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Adminstration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 2, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
6754-X	Air Products Chemicals, Inc., Gardner Cryogenic Di, Lehigh Valley, PA (See Footnote 1).	6765
9485-X	Chem-Tech, Limited, Des Moines, IA (See Footnote 2).	9485
9491-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 3).	9491
9884-X	Puritan-Bennett Corporation, Indianapolis, IN (See Footnote 4).	9884
10288-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 5).	10288

(1) To authorize use of a 11,000 gallon non-DOT specification portable tank with a design pressure of 151 psig for shipment of Helium, refrigerated liquid.

(2) To modify exemption to provide for flammable gas as an additional Class of material for transportation in DOT Specification 4BA 240 cylinders.

(3) To modify the exemption to include DOT 3A and 3AA cylinders as additional authorized packaging for transporting various compressed gases.

(4) To add additional pressure vessels comparable to those currently authorizes for shipment of oxygen, refrigerated liquid, classed as a nonflammable gas.

(5) To modify exemption to provide for additional tank cars for transporting various hazardous materials classed as flammable liquids.

Application No.	Applicant	Parties to exemption
4453-P	ICI Explosives USA Inc., Dallas, TX	4453
5206-P	ICI Explosives USA Inc., Dallas, TX	5206
5704-P	United Technologies Corp./Chemical Systems Div., San Jose, CA	5704
6325-P	ICI Explosives USA Inc., Dallas, TX	6325
6759-P	ICI Explosives USA Inc., Dallas, TX	6759
6971-P	Chromatography Research Supplies, Inc., Addison, IL	6971
7716-P	ICI Explosives USA Inc., Dallas, TX	7716
8426-P	Northwest EnviroService, Inc., Seattle, WA	8426
8453-P	ICI Explosives USA Inc., Dallas, TX	8453
8538-P	ICI Explosives USA Inc., Dallas, TX	8538
8554-P	ICI Explosives USA Inc., Dallas, TX	8554
8645-P	C & K Coal, Clarion, PA	8645
8723-P	ICI Explosives USA Inc., Dallas, TX	8723
8815-P	ICI Explosives USA Inc., Dallas, TX	8815
8845-P	Owen Oil Tools, Inc., Fort Worth, TX	8845
8958-P	Petro-Explo, Inc., Arlington, TX	8958
9101-P	Southern Air Transport, Inc., Virginia Gardens, FL	9101
9108-P	ICI Explosives USA Inc., Dallas, TX	9108
9275-P	Calvin Klein Cosmetics Company, Mount Olive, NJ	9275
9346-P	Marsulex Inc., North York, Ontario, Canada	9346
9348-P	DC Battery Products, St. Paul, MN	9348
9377-P	ICI Explosives USA. Inc., Dallas TX	9377
9481-P	ICI Explosives USA. Inc., Dallas TX	9481
9623-P	ICI Explosives USA. Inc., Dallas TX	9623
9750-P	ICI Explosives USA. Inc., Dallas TX	9750
10001-P	Huber Supply Co., Inc., Mason City, IA	10001
10247-P	Thermedics Inc., Woburn, MA	10247
10303-P	Alaska Air Guides, Inc., Anchorage, AK	10303
10789-P	DXI Industries, Inc., Houston, TX	10789
10789-P	DX Systems Company, Houston, TX	10789

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 10, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-14135 Filed 6-16-92; 8:45 am]

BILLING CODE 4910-60-M

Research and Special programs Administration

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 17, 1992.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Program, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10782-N	American Cryogas Industries, Pennsauken, NJ.	49 CFR 174.67(i) and (j)	To authorize tank cars containing carbon dioxide refrigerated liquid, nonflammable compressed gas to remain connected during unloading without the physical presence of an unloader. (mode 2)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10786–N	Puerto Rico Maritime Shipping Authority, Pueble Viejo, Guaynabo, PR.	49 CFR 176.905(k)	To authorize the transportation of vehicles with gasoline in their tanks in closed freight containers, with or without ramps, with connected battery cables equipped with wire seals. (mode 2)
10787–N	Emery Worldwide Airlines, Vandalia, OH	49 CFR 172.101, 172.204(c)(3), 173.27, 173.54(j), 175.30(a)(1), 175.320(b), 175.75 Part 107, Appendix B.	To authorize the transportation of Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (mode 4)
10788–N	P.S.I. Plus, Inc., Middletown, CT	49 CFR 173.302(a)(1), 175.3, 178.65–2, 178.65–5(a)(4).	To authorize the manufacture, mark and sell of non-DOT specification non-refillable steel inside cylinder for use in transporting nonflammable gases. (modes 1, 2, 3, 4, 5)
10789–N	DPC Industries, Inc., Houston, TX	49 CFR 173.304(a)(2), 173.34(d) and (e)	To authorize the use of non-DOT specification full open head, steel salvage cylinder for overpacking damaged or leaking chlorine cylinders. (mode 1)
10790–N	Kalitta Flying Service, Inc., Ypsilanti, MI	49 CFR 172.101, 172.204(c)(3), 173.27, 173.54(j), 175.30(a)(1), 175.320(b), 175.75, Part 107, Appendix B.	To authorize the transportation of Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (mode 4)
10791–N	Con-Quest Products, Inc., Elk Grove Village, IL.	49 CFR 173.12(b)(1)	To authorize the manufacture, mark and sell of a non-DOT specification tri-wall corrugated container with a polyethylene inner base for use as a lab pack outer package for transporting various classes of material. (mode 1)
10793–N	Witco Corporation, Marshall, TX	49 CFR 173.225	To authorize an alternative cargo tank design for shipment of certain organic peroxides classed as flammable liquid. (mode 1)
10794–N	LND, Inc., Oceanside, NY	49 CFR 173.302, 175.3	To authorize the use of non-DOT specification containers described as hermetically sealed electron tube device for transporting various nonflammable gases. (modes 1, 4, 5)
10795–N	Mobil Oil Corporation, Fairfax, VA	49 CFR 173.31(b)(1), 174.67(a)(7)	To authorize an alternative method of blocking wheels of each car of unit train during loading and unloading and requirement to open bottom discharge outlet caps of each car during loading of gasoline and fuel oil. (mode 2)
10796–N	GE Aerospace, King of Prussia, PA	49 CFR 173.416(c), Part 107, Appendix B to Subpart B, Paragraph 1.	To authorize a one-time domestic shipment of two packages of radioactive materials which are certified for import and export shipment only. (mode 1)
10797–N	Monroe Auto Equipment Company, Monroe, MI.	49 CFR 171.8, 172.101	To authorize the transportation of various types of two-tube gas-pressurized shock absorbers and struts to be classed as ORM–D commodity instead of compressed gas. (modes 1, 2, 3, 4, 5)
10798–N	Olin Corporation, Stamford, CT	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (mode 2)
10799–N	ESM II, Inc., Niagara Falls, NY	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245(b), 173.66.	To authorize the shipment of certain hazardous materials in internally-coated polypropylene flexible intermediate bulk containers. (modes 1, 2, 3)
10800–N	Aviation Charter, Inc., Eden Prairie, MN	49 CFR 172.191, 172.204(c)(3), 173.27, 175.30(a)(i), 175.320(b), 175.75.	To authorize the transportation of Class A, B, and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (mode 4)
10801–N	Pipe Welding Supply Co., Inc., Liverpool, NY.	49 CFR 174.67 (i) and (j)	To authorize tank cars containing carbon dioxide, refrigerated liquid, classed as non-flammable gas to remain connected during unloading without the physical presence of an unloader. (mode 2)
10802–N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(f)	To authorize the transportation of carbon monoxide and carbon monoxide mixture classed as flammable and nonflammable gases in DOT 3AL cylinders with service pressures up to and including 3000 psig. (modes 1, 2, 4)
10803–N	Western Electric Corporation, Pittsburgh, PA.	49 CFR 172.203(a) 177.834(1), (2)(i)	To authorize the manufacture, mark and sell of a cargo heater to transport flammable liquids or flammable gases and the elimination of the shipping paper requirement. (mode 1)
10804–N	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.31(d)	To authorize the one-time shipment of four multi-unit tank car tanks containing phosgene, classed as a poisonous gas, which are overdue for hydrostatic pressure test. (mode 1)
10805–N	Landers Propane, Higgins, TX	49 CFR 173.315	To authorize the transport of propane, classed as a flammable gas in non-DOT specification cargo tanks. (mode 1)
10806–N	First Brands Corporation, Danbury, CT	49 CFR 173.306–3(i)	To authorize the transportation of DOT Specification 2Q aersol tire inflator and sealer containers fitted with a vented dome with a release pressure of 225 psig at 130 degrees. (mode 1)
10807–N	U.S. Environmental Protection Agency, New York, NY.	49 CFR 173.403	To authorize the bulk shipment of solids debris contaminated with a radioactive material from superfund clean-up site to a disposal facility. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10809–N	Enviro Pax, Inc., W. Caldwell, NJ	49 CFR 173.245b, 173.365	To authorize the manufacture, mark and sell of a non-DOT specification bulk fiberboard box for shipment of certain corrosive and poison B solids, n.o.s. (modes 1, 2)
10810–N	U.S. Department of the Army, Kingsport, TN.	49 CFR 173.62(E–6(a), (b)	To authorize shipment of RDX, HMX an RDX/HMX mixtures, classed as 1.1D to be shipped wetted with 10% water and 5% alcohol instead of the required 15% water. (modes 1, 2)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 10, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92–14137 Filed 6–16–92; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 11, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0159.
Form Number: IRS Form 3520.
Type of Review: Extension.
Title: Creation of or Transfers to Certain Foreign Trusts.
Description: Form 3520 is filed by U.S. persons who create a foreign trust or transfer property to a foreign trust. IRS uses Form 3520 to establish the identity of the U.S. person and to determine if the transfer is subject to the excise tax.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hours, 44 minutes
Learning about the law or the form—35 minutes
Preparing and sending the form to the IRS—43 minutes
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,525 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–14165 Filed 6–16–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 11, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1199.
Form Number: None.
Type of Review: Reinstatement.
Title: Confidentiality and Privacy Study.
Description: The proposed 1992–1995 IRS/BLS "Confidentiality and Privacy Study" will investigate a number of dimensions of commonly used information collection, protection and disclosure terms, e.g., concepts of "confidentiality" and "privacy", and the potential impact of respondents" understanding and interpretation of those terms on participatory behavior in a survey research setting.
Respondents: Individuals or households, Federal agencies or employees.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.
Frequency of Response: Other (one-time study/studies).
Estimated Total Reporting Burden: 600 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–14166 Filed 6–16–92; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 117
Wednesday, June 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the July 9, 1992 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, July 16, 1992. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: June 15, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–14385 Filed 6–15–92; 2:40 pm]

BILLING CODE 6705–01–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 21446, May 20, 1992.

PREVIOUS ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m. Wednesday, May 27, 1992.

CHANGES IN THE MEETING: The following topic was added to the agenda during the open portion of the meeting.

Housing Finance AHP/CIP Policy Discussion.

The following topic was added to the agenda during the closed portion of the meeting.

FHLBank System 1st Quarter 1992 Actual to Budget Report.

The above matter is exempt under (c)(9)(B) of title 5 of the United States Code. 5 U.S.C. 522b(c)(9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 92–14284 Filed 6–12–92; 4:49 pm]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 22, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–14312 Filed 6–15–92; 11:21 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 57, No. 117
Wednesday, June 17, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Ahmad Modarressi; Order Denying Permission To Apply for Or Use Export Licenses

Correction

In notice document 92-7010 appearing on page 10459 in the issue of Thursday, March 26, 1992, in the first column, in the subject heading, "Ahmed" should have appeared as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications For Duty-Free Entry of Scientific Instruments

Correction

In notice document 92-13131 appearing on page 23573 in the issue of Thursday, June 4, 1992, in the first column, in the fifth paragraph, in the third line, "Maine" should read "Marine".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Community and Migrant Health Centers for Reducing Infant Mortality

Correction

In notice document 92-13192 beginning on page 24049 in the issue of Friday, June 5, 1992, in the second column, under **FOR FURTHER INFORMATION CONTACT**, in the last line, "(301) 443-8143" should read "(301) 443-8134".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AD43

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Representative Payment Under Title XVI of the Social Security Act (the Act)—Compensation of Qualified Organizations Serving as Representative Payees

Correction

In rule document 92-12553 beginning on page 23054 in the issue of Monday, June 1, 1992, make the following correction:

§ 416.640a [Corrected]

On page 23058, in the second column, in § 416.640a(g)(4), in the last line, "§ 416.646" should read "§ 416.645".

BILLING CODE 1505-01-D

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federal register

Wednesday
June 17, 1992

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 14

Humane and Healthful Transport of Wild Mammals and Birds to the United States; Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018-AB22

Humane and Healthful Transport of Wild Mammals and Birds to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends regulations pertaining to the humane and healthful transport of wild mammals and birds to the United States. These regulations enable the Secretary of the Interior to meet responsibilities designated by the Lacey Act Amendments of 1981 (Pub. L. 87-79, 95 Stat. 1073), enacted on November 16, 1981. For the convenience of the public, the entire rule is being published at this time, rather than the amended sections only. Rules covering humane and healthful transport of wild fish, reptiles, amphibians, and invertebrates included in the Lacey Act will be promulgated in a separate rulemaking.

EFFECTIVE DATE: This rule is effective September 15, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 15, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., room 432, Arlington, VA 22203, telephone (703) 358-2093.

SUPPLEMENTARY INFORMATION: The Lacey Act Amendments of 1981 (Pub. L. 87-79, 95 Stat. 1073), enacted on November 16, 1981, required the Secretary of the Interior to prescribe requirements for the humane and healthful transport of wild animals and birds to the United States. This requirement was delegated to the U.S. Fish and Wildlife Service (Service), which held a public meeting on March 28, 1982, in Washington, DC, to receive information and comments regarding the development of appropriate regulations. On June 30, 1982 (47 FR 28432), the Service published a notice of intent that summarized the issues raised and discussed at the March 28, 1982, public meeting and invited comments and recommendations from all interested persons. On December 4, 1985, the Service published a proposed rule (50 FR 49709-49736). Comments received in response to the notice of intent were summarized in that proposal. A final rule was published in the **Federal Register** on November 10, 1987 (52 FR 43274), and was to have taken effect on February 8, 1988. A notice correcting several typographical errors appeared in the **Federal Register** of December 3, 1987 (52 FR 46019).

Before the effective date of the final rule, the Service received a significant number of comments indicating the likelihood of impediments to its enforcement, the possible inhumane treatment that could be brought about by compliance with some of its provisions, and the possibility that some of the rule's requirements could without good reason render the transport of some animals virtually impossible. In addition, the Service received indications that some air carriers were prepared to refuse all wildlife shipments bound for the United States because of a perceived inability to assure compliance with the new rule. Critics of the rule met with Service officials on January 22, 1988, to discuss their reservations over its implementation. Service officials also met during late January 1988 with representatives of groups supporting implementation of the rule. Subsequently, a decision was made to extend the effective date until August 1, 1988, so that a thorough evaluation could be conducted. Notice of the extension and of the opening of a 30-day comment period was published in the **Federal Register** of February 10, 1988 (53 FR 3894). A further notice of explanation appeared on March 17, 1988 (53 FR 8765).

On April 18, 1988, however, responding to a lawsuit seeking implementation of the November rule, the United States District Court for the District of Columbia issued a preliminary injunction ruling that delay of the effective date was without good cause. Consequently, the Service issued a notice of effective date and enforcement policy on April 27, 1988 (53 FR 15041) and a further notice of enforcement policy on May 23, 1988 (53 FR 18287).

On August 10, 1988, the Service published a notice of intent (53 FR 30077) indicating those provisions of the November 1987 rule that appeared to warrant amendment or clarification and inviting public comment to assist in developing a proposed rule. The comment period for that notice closed on September 9, 1988. On October 15, 1990 the Service published a proposed rule amending the November 1987 rule (55 FR 41708-41718), and gave notice that comments must be received by December 14, 1990 in order to be assured consideration. This rule finalizes the proposals made in the **Federal Register** of November 10, 1987. For the convenience of the public, the entire rule is being published at this time, rather than the amended sections only.

Comments and Information Received

Comments on the proposed rule were received from 30 interested persons and organizations. Specifically, written comments were received from six individuals, four government agencies, four shippers and importers, one pet industry representative, two veterinary associations, four humane or animal welfare organizations, one environmental agency, two conservation organizations, two zoological parks or associations, three bird breeders, and one circus.

Comments Pertaining to § 14.101: Purposes

One commenter noted that one can never guarantee that live wild mammals and birds arrive alive, healthy, and uninjured and that their transportation occurs under humane and healthful conditions, and recommends that the purpose be to help ensure humane transport. The Service disagrees, and notes that the Lacey Act requires the Secretary of the Interior to "prescribe such requirements and issue such permits as he may deem necessary for the transportation of wild animals and birds under humane and healthful conditions." If there are species so sensitive to injury and mortality that any transportation would be inhumane or unhealthful, consideration should be given by shippers and importers as to whether or not that species should be in trade. No change is made in the rule.

Comments Pertaining to § 14.102: Definitions

Ambient Air Temperature

One commenter questioned whether this refers to air in the holding area, on the tarmac, in a truck, or in an airplane. Ambient air temperature refers to the air temperature surrounding the primary enclosure at any time, including in any conveyance or holding area, and on the tarmac.

Carrier

Three commenters noted that the term "carrier" should not be restricted to entities engaged in the business of transporting any wild mammal or bird for hire, for commercial purposes, or for exhibition, but should include all purposes for which a wild mammal or bird would be transported. The Service agrees, and will remove the words "for

hire, for commercial purposes, or for exhibition" from the definition. The intent of the Lacey Act is to cover all wild animals and birds being imported into the United States, regardless of the purposes for which the wild animal is being transported. One commenter was concerned that the definition be clear that both carriers and their employees are responsible for complying with the rule. That is implicit in the rule, wherein a carrier and all of its employees are responsible.

Domesticated

Three commenters found the proposed definition to be confusing, unclear, or unnecessary, which defines domesticated as "belonging to a species that has been habituated through human genetic selection for hundreds of generations to living in close proximity to humans and that has been bred to fulfill human requirements for food, fiber, or companionship, or as a subject of scientific research." One commenter considered aesthetic enjoyment and scientific research as irrelevant or redundant. The Service agrees, in that the use to which a wild animal will be put does not have any bearing on the conditions under which it is required to be transported. The Service agrees with one commenter that domesticated does not cover tame or habituated specimens of wild species that are genetically indistinguishable from their wild counterparts. Thus, a tiger or parrot that was born in captivity may be "tamed" through human contact, but in no way is a domesticated animal, and in no circumstances should be exempt from this rule. Two commenters noted that the term "many" generations is too vague. The Service agrees, in that domestication takes hundreds if not thousands of generations of human genetic selection. Several commenters noted that any mammal or bird that is required to be cleared and inspected by the Service should be covered by this rule. The Service strongly agrees, and as such has eliminated the definition of domesticated. Furthermore, the term "domesticated" is not used at any time in the rule, and need not be defined. The Service has defined wild as the same as "fish or wildlife", which is already defined in both 50 CFR 10.12 and 18 U.S.C. 42(a)(2).

Do Not Tip

One commenter requested an exemption from this requirement for the placement of primary enclosures on conveyor belts used to load aircraft. The Service disagrees. Rough handling when loading enclosures on conveyor belts that are not operating on a substantially horizontal plane, including excessive tipping, can be very stressful to animals; can upset food and water dishes; and can cause serious injuries. Any such handling would be a violation of this rule, and extreme care should be exercised in the operation on conveyor belts. This regulation is consistent with the International Air Transport Association (IATA) Live Animals Regulations, which require that carriers "avoid unnecessary tilting and jolting * * * animal containers shall be handled and towed in the upright and level position."

Normal Rigors of Transportation

Three commenters recommended deleting this term and definition, contending that animals are automatically exposed to unaccustomed or unfamiliar conditions, and that the term is too vague. Another commenter recommended replacing the term with "stress caused by transportation", since stress can be defined and quantified more identifiably. The Service prefers to leave the term defined as proposed, and notes that the definition should be understood in relation to its use in § 14.105(b). The intention is that, before being accepted by a carrier, animals are to be certified by a qualified veterinarian as able to withstand the usual stresses that are unavoidably associated with transport.

Primary Conveyance

Two commenters noted that, since there can be more than one primary conveyance, there is no need to modify the term conveyance with the adjective primary. The Service agrees, since there is no use in the rule of any conveyance that is not a primary conveyance, and will drop the modifier "primary" from the definition and from the rule wherever used. Two commenters recommended removing "for a significant distance" from the definition, because it is not defined and has no authority in the Lacey Act. The Service agrees, in that the term significant distance does not add to the definition. A conveyance can certainly be used for a short or long distance, and the humane and healthful transport of the animals contained therein does not become a lesser concern when the distance is short; the definition is adjusted accordingly.

Primary Enclosure

One commenter was confused because compartment is used twice in the definition. Persons commenting on other sections of the proposed rule were also confused as to the difference between a compartment and a primary enclosure, which are not the same. Primary enclosures can and often are subdivided into compartments. Space and density requirements in this rule (and the IATA Live Animals Regulations) refer to enclosures, and not compartments or subdivisions thereof. Thus, for example, a crate containing live wild birds that is subdivided with three partitions contains four compartments, but is a single primary enclosure. Compartment in the definition refers to compartments of a conveyance (such as part of a truck, but not a subdivision of a crate or box), and has therefore been replaced with the word "stall".

Professionally Accepted Standards

Two commenters recommended deleting this definition, claiming that it is used only once, in § 14.105(b), referring to methods used to determine the last trimester of pregnancy. It is in fact used several times, and will be retained as proposed, in order to make it clear to the public that determinations should be based on established veterinary standards.

Psychological Trauma

Three commenters disagreed with including the refusal of food or water as psychological trauma, since it can be a normal response for many species. The Service agrees that many species eat or drink intermittently, and not eating is a normal response to stress; however, for other species, the first sign of psychological trauma or abnormal levels of stress is the refusal to eat or drink. This and other definitions should be viewed in the context of the use of the terms in the body of the regulations, rather than out of context. Psychological trauma is used only in § 14.111(a), where care is required to be exercised to avoid causing psychological trauma. Care should always be exercised to avoid causing the refusal of food or water by an animal that would otherwise not refuse nourishment or liquid. Two commenters recommended that any stressful conditions resulting in significant behavioral abnormality should be considered psychological trauma, whether or not the conditions are abnormal (as in the definition). The Service agrees that any stressful conditions that result in significant behavioral abnormality constitute psychological trauma, and has removed "abnormal" from the definition (which appears twice). Two commenters recommended removing the word significant, such that any behavioral abnormality would constitute psychological trauma. The Service

disagrees, since there are many potential behavioral abnormalities that are not manifestations of psychological trauma, but are normal responses to new surroundings.

Wild

Several commenters found this definition to be confusing. One commenter noted that since it ties in with the definition of domesticated, "wild" should include species that have not been domesticated and non-captive populations of species that have been domesticated. The Service agrees. Two individual commenters preferred that the definition include both animals caught in the wild or bred in captivity. It is the intent of the Service that whether an animal is born in the wild or in captivity is not germane to the issue of its being a wildlife species. Habituated or tame captive individuals of otherwise wild species are wildlife. The Service notes that, as per 50 CFR 14.52, all wildlife imported into the United States must be cleared by a Service officer. This Subpart J applies to all mammals and birds that require Service clearance. The Service also notes that "wild" is the same as "fish or wildlife", as defined in both 50 CFR 10.12 and 18 U.S.C. 42(a)(2). Therefore, "wild" is defined as "the same as fish or wildlife, as defined in § 10.12".

Additional Definitions Recommended

Several commenters suggested that the Service define the terms "perching" and "non-perching", which are used several times in §§ 14.172 and 14.173, so as to distinguish this functional definition from the ornithological limitation of perching birds to passerines only. The intent of this term is to include all birds that rest by perching. Rather than add a new definition, the Service has changed all references to "perching birds" in §§ 14.172–14.173 to "birds that rest by perching".

One commenter suggested defining the term raptor. The Service agrees to define "raptor", based on the definition in 50 CFR 21.3, but also including golden eagles and bald eagles.

Several commenters suggested defining the term "fledged" in reference to the proposed prohibition on the importation of unfledged chicks. The Service prefers to replace the term "unfledged" with the term "unweaned", as discussed in § 14.105(b), below. A new definition of "unweaned" is included, incorporating all of the comments received on this issue.

Comments Pertaining to § 14.103: Prohibitions

One commenter noted that it should be stated more clearly that the responsibility for humane and healthful transport is shared by shippers, carriers, and importers. The Service feels that the rule is sufficiently clear: All persons involved with the importation of wild animals into the United States, including but not limited to shippers, importers, exporters, and carriers, are responsible for compliance with this rule; and for the humane and healthful transport of all wild mammals and birds to the United States. The transport of wild mammals or birds to the United States under inhumane or unhealthful conditions is a violation of this rule, independent of whether any mortalities result or not; the Lacey Act states that "In any criminal prosecution for violation of this subsection * * * the condition of any vessel or conveyance, or the enclosures in which wild animals or birds are confined therein, upon its arrival in the United States * * * shall constitute relevant evidence in determining whether the provisions of this subsection have been violated."

Comments Pertaining to § 14.104: Translations

One commenter noted that this section should refer to certificates of veterinary inspection, rather than health certificates, which is a more correct professional veterinary term, and which more correctly refers to the documentation to be provided by the inspecting veterinarian (which certifies that an animal is healthy and can withstand the normal rigors of transport). The Service agrees. Three commenters suggested that all documents required by this rule, and not just the veterinary certificate, should be translated into English. The Service agrees. The required documents with food, water, and care requirements (as well as signs of stress) that accompany a shipment must be translated into English. It is recommended that they also be translated into the language of countries where there is a stopover or change of conveyance. Two commenters felt that because translations are not available everywhere in the world, they should only be required if necessary. The Service disagrees, for several reasons. Veterinary certificates must be in English for enforcement purposes. Food, water, and care requirements must be in English to both facilitate enforcement and to help ensure that the animals' needs are met.

Comments Pertaining to § 14.105: Consignment to Carrier

One commenter inquired as to why the statement in the November 1987 final rule that "a carrier shall only accept for transport * * * a primary enclosure which conforms to the requirement set forth in § 14.106 * * *" was removed. The Service removed it because it is duplicative with the first sentence in § 14.106 in this rule.

Comments Pertaining to § 14.105(a): Acceptance by Carrier

One commenter recommended replacing "national government" with "appropriate government authority," because in many countries jurisdiction is at a state level. The Service disagrees, since allowing any government authority to sign the document creates too much potential for abuse. Many law enforcement verification problems exist when state or provincial authorities sign documents. For imports of species covered by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), for example, only documents from national authorities are accepted, unless a country's management authority officially declares that a state or provincial authority is authorized to sign documents. The Service will apply the same standard to certificates of veterinary inspection, in order to reduce the chances of abuse and resultant shipment of animals unable to withstand the rigors of transportation. If a country's national government does not certify veterinarians, that country's national government should officially declare a state or provincial authority as authorized to certify veterinarians. The Service has modified § 14.105(a) accordingly.

Another commenter recommended allowing any designated government official to sign the veterinary document, since some countries do not have a system of veterinary certification. The Service disagrees. Any country that does not even have certified veterinarians cannot guarantee that it can prepare and ship animals humanely and healthfully, and without risk to the animals, or to human health and agriculture in the United States. As stated in the proposed rule (55 FR 41709), evidence of inadequate national certification procedures in a country of origin may lead the Service not to accept certificates issued in that country; such a policy for a given country will be announced to the public in advance. One commenter recommended that shipments be inspected by a full-time

salaried veterinary officer of the national government of the exporting country. That was discussed in the proposed rule as beyond the ability of the Service to enforce.

One commenter wanted to know if "10 days prior" refers to just the air journey, or includes the ground segment of transport. It is the Service's policy that transport commences when a shipment is consigned by a shipper or exporter and includes all ground segments of a journey. If a bird or mammal is on the ground after consignment for shipment for more than 10 days after the veterinary certificate is issued, the animals must be reexamined and the certificate reissued, due to the increased probability of injury or disease transmission in the interim.

Four commenters recommended that the veterinary examination be within 48 hours prior to transport, rather than within 10 days. They noted that many animals can be injured, become ill, or die within 10 days, and that 48 hours is a more appropriate time frame. Insufficient information is available at this time to indicate a need to change the rule; the Service will continue to monitor this situation.

Comments Pertaining to § 14.105(b): Health Certificate

One commenter recommended replacing "health" certificate with "certificate of veterinary medical inspection", as the professionally more valid term; the Service agrees.

One commenter from a professional veterinary organization recommended that certificates of veterinary inspection include a veterinarian's certification number or license number, or equivalent. The Service agrees and has modified the requirement accordingly.

Several commenters responded to the requirement that a veterinarian certify that an animal is healthy, appears to be free of any communicable disease, and is able to withstand the normal rigors of transport. One commenter felt that a veterinarian could only certify that an animal appears to be healthy and free of disease, but not that an animal is actually healthy and able to withstand transport. Another commenter felt that the requirement was too weak, in that the regulations should require a veterinarian to certify that an animal is free of communicable disease, rather than appears to be free of disease. Another commenter supported the regulation as proposed. The Service feels that it is within the capability of the veterinary profession to determine whether or not an animal is healthy and appears free of disease. There are of course diseases that are either dormant or beyond the capability of a qualified veterinarian using appropriate diagnostic tools to detect; no veterinarian can ever certify that an animal is 100 percent free of communicable disease, but any veterinarian should be able to certify that an animal appears to be free of communicable disease, using established standards of the veterinary profession.

Three commenters noted that the requirement that a veterinarian certify that an animal can withstand the normal rigors of transport is too subjective and should be deleted. The Service disagrees. This requirement is unchanged from the November 10, 1987 (52 FR 43274) final rule. The Service believes that at a minimum, animals must be examined by a qualified veterinarian to determine if they are able to withstand the stresses of transport. Injured or ill animals, or animals of species so sensitive to any transport that there is a significant probability that they will not survive transport, should not be consigned to transport. The Service considers this requirement to be a minimum, which by necessity must be followed by packing and handling that give the utmost attention to an animal's health and welfare.

Comments Pertaining to § 14.105(b): Transport of Unfledged Birds

Sixteen commenters responded to the requirement that an unfledged bird not be transported except for necessary medical treatment. One commenter opposed allowing unfledged birds to be shipped even for medical treatment (discussed below). Three commenters supported the proposal, noting both that many parrot chicks suffer high mortalities in transport and that unfledged parrot chicks are often difficult to identify to the species level. One commenter recognized that shipment of unfledged birds is a problem, but thought it should be allowed under separate permit when accompanied by an attendant. Several commenters noted that a distinction would need to be made between altricial and precocial chicks, as several species do not attain full adult plumage for several years. Other commenters suggested a detailed test for the extent to which juvenile down is covered by juvenile plumage, or the presence of blood feathers; while biologically valid, such a requirement would be burdensome, confusing, and very difficult to enforce. Several commenters noted that unfledged raptors travel very well, and are important for many bird reintroduction programs, including bald eagles; the Service would not want to jeopardize these programs in any way. The Service is aware that no good data base exists for the relationship of age at shipment to either stress or mortality. The Service was referring more specifically to parrots than other birds that are commonly shipped prior to fledging, including cranes, ratites, penguins, or young waterfowl, which travel well prior to fledging. The Service is aware that for many species, juveniles are less likely to suffer psychological stress than adults that have spent many years in the wild. The Service would not want anything in this rule to encourage the taking from the wild of mature rather than juvenile birds, if that might be more detrimental to the species in the wild.

The Service will replace "unfledged" with "unweaned", such that no unweaned bird can be transported, except for necessary medical treatment, and then only when accompanied by an attendant. The Service is aware that the term "unweaned" may appear anthropomorphic. Such is not the Service's intention; the important point is that the rule prohibits the transport of birds and mammals that are incapable of feeding themselves independently. The Service remains concerned that juvenile birds incapable of adequate thermoregulation not be shipped; such is also the case with juvenile mammals. The Service is not aware of any objective test that could be used by enforcement personnel to assess thermoregulatory capacity. It is the Service's intent that when a veterinarian certifies that an animal is able to withstand the normal rigors of transport, the animal's exposure to temperature fluctuations and ability to thermoregulate competently be given full consideration; therefore, birds or mammals that cannot thermoregulate fully should not be granted veterinary certificates and should not be transported. The Service will continue to monitor this situation.

Comments Pertaining to § 14.105(b): Transport for Medical Purposes

Two commenters recommended that pregnant mammals, injured or ill animals, or unweaned birds should never be transported, even for medical treatment, due to the great risk of spontaneous abortion or the potential for abuse. One commenter preferred that a veterinarian travel to where the animal is, in the case of an ill or injured animal. The Service disagrees. The Service is aware of many cases and many potential cases where an ill or injured animal cannot be properly treated unless brought to veterinary

medical facilities in the United States; this is particularly true in the case of endangered species. It is the Service's intent that the examining veterinarian determine that the animal is able to withstand the rigors of transportation, and that the animal be accompanied throughout its journey by a qualified attendant able to attend to its medical needs. The rule is modified to clarify that the transport of a nursing mother with young, an unweaned mammal unaccompanied by its mother, or an unweaned bird for necessary medical treatment, should be so certified by the examining veterinarian.

One commenter noted that the term "trimester of pregnancy" is too anthropomorphic. The Service believes that for many mammals, including but not limited to primates, the term is medically appropriate. For mammals for which the term is not commonly used, the intent of the Service is to cover the final third of the gestation period.

Two commenters questioned whether sick or injured animals may be shipped in the belly of an airplane, without access to an attendant, or if an attendant is to travel in the cargo hold. It is the Service's intent that an attendant qualified in veterinary medicine, and licensed to administer any necessary medications or treatment, accompany at all times an animal being imported for medical purposes, and has so clarified in the final rule. If access to the portion of a conveyance where the animal is located is not available, another conveyance should be found, since the transport of an ill or injured animal for medical treatment necessitates constant monitoring by veterinary personnel. The availability of an attendant at all stopovers is not sufficient; the rule reflects the Service's intent that continuous access be available to the animal by the veterinary attendant. Another commenter stated that injured animals are often transported without serious effects. The Service is unaware of any data supporting this claim.

Comments Pertaining to § 14.105(d): Acceptance Time Prior to Departure

Several commenters supported the rule as proposed whereby no carrier shall accept any wild mammal or bird for transport to the United States presented less than 2 hours or more than 8 hours prior to the scheduled departure of the conveyance. One commenter preferred a 6-hour maximum time, in order to retain a 4-hour window. Another commenter noted that the 8-hour maximum is too long a period for most marine mammals, noting that the U.S. Department of Agriculture (USDA) regulations (9 CFR 3.112) require that carriers not accept a marine mammal more than 4 hours before scheduled departure. The Service notes that the Animal Welfare Act Regulations of USDA (9 CFR chapter I part 3) place a 6-hour maximum on the amount of time prior to shipment that an animal can be presented to a carrier. In order to facilitate regulatory consistency between agencies, to aid enforcement, and to facilitate understanding and compliance by shippers and carriers, the Service has changed the rule to reflect a 6-hour maximum.

Comments Pertaining to § 14.106: Primary Enclosures; Number of Animals or Species Per Primary Enclosure

Two commenters recommended that animals of different species be prohibited from being transported in the same primary enclosure. The Service prefers to handle the species mixing issue together with the issue of numbers per primary enclosure, according to taxonomic group; regulations pertaining to species mixing can be found in §§ 14.121, 14.131, 14.142, 14.151, 14.161, and 14.172. The net result is that all mammals other than rodents are to be transported in individual primary enclosures, except for rodents of the same species, and birds must be of the same species if transported in the same primary enclosure. Animals of different species may be shipped together, in the case of in the same shipment, but they may not be shipped in the same primary enclosure.

Two commenters recommended that no more than one animal be allowed per primary enclosure, except as specifically allowed in §§ 14.161 and 14.172. This is the case in the rule as proposed; the Service herein clarifies that only some rodents and some birds can be transported with more than one individual animal per primary enclosure, and the allowable densities of birds and rodents per primary enclosure are specified in § 14.161(c) and § 14.172(c) and (e). The Service further notes that this section requires that the current container requirements of the Live Animal Regulations adopted by the IATA shall be complied with by all persons transporting wild mammals or birds to the United States. Those container requirements include enclosure design and construction, density guidelines, preparations, feeding, and general care requirements, which must all be complied with. For clarification, § 14.106(a) has been modified to clarify that all aspects of the IATA Live Animals Regulations (LAR) Container Requirements shall be complied with. Therefore, if densities are not restricted further in §§ 14.121–14.172, those densities specified in the applicable IATA LAR Container Requirement constitute the maximum number of animals per primary enclosure.

Four commenters supported the proposal to require that all primary enclosures conform to the current container requirements of the IATA Live Animals Regulations; none were opposed.

Comments Pertaining to § 14.106(b): Primary Enclosure Construction

One commenter suggested that § 14.106(b) be modified to require that a primary enclosure be so constructed that it may be easily opened without the risk of escape of the animal, in order to facilitate inspection and reduce stress to the animals contained therein. The Service agrees, and has modified § 14.106(b)(5) accordingly.

Three commenters opposed the language in § 14.106(b)(3), which they felt allows some parts of an animal to extend or protrude outside of the enclosure, even if it is dangerous, by allowing a violator to claim that the protrusion was not expected to cause injury. It is the Service's intent that any protrusion that has the potential to cause injury to the animal or nearby persons or animals, whether such an injury occurs or not, is prohibited. Benign protrusions of hair or fur are permitted. Section 14.106(b)(3) is therefore modified to replace "in such a way as to cause injury" with "which may result in injury".

Several commenters requested a clarification of the authorized personnel referred to in § 14.106(b)(5) that can remove an animal in the case of an emergency. One commenter felt that only experts should have access to animals; another felt that carrier employees, volunteers, or untrained persons should never interact with animal during shipment. It is the Service's intent that authorized personnel include Service personnel, authorized representatives of the national government of the exporting country, and authorized representatives of the shipper, carrier, exporter, and importer. The Service cannot enforce who removes an animal in the case of an emergency, according to instructions provided by the shipper.

Comments Pertaining to § 14.106(c) and (d): Spacer Bars and Hand-Holds

Eight commenters supported the proposed requirement regarding spacer bars, although seven felt that the requirement is still too complex. Three

commenters recommended that 6-inch spacer bars be required on all primary enclosures, except those with hand-holds or slanted walls with ventilation openings. The Service agrees that such a requirement would be much simpler to enforce, although six inches is certainly extreme for very small enclosures that are less than 12 inches in length. Two commenters recommended .75 inch spacer bars, claiming that 6 inch spacer bars will make enclosures cumbersome. The Service disagrees, noting that a major cause of mortality during transport is lack of sufficient air to breathe, due to overcrowding or substandard ventilation, and there is no evidence that .75 inches will provide sufficient air circulation to prevent asphyxiation. The Service does not consider the requirement to be too complex. Any spacer bar that extends 6 inches will satisfy this requirement. Any spacer bar that extends less than 6 inches cannot be less than 10 percent of the length of the surface to which it is attached if there is one animal in the enclosure and cannot be less than 20 percent of the length of the surface if more than one animal is in the enclosure.

One commenter recommended that the statement that hand-holds be designed so that the person handling the enclosure will "not come into contact with its contents" be replaced with "not come in contact with the animals contained therein", to clarify that it is the animals inside that should not be disturbed; contact with food and water containers contained therein, as instructed by the shipper, is appropriate. The Service agrees and has modified the rule accordingly.

Comments Pertaining to § 14.106(e)–(f): Enclosure Construction

All comments on these sections were supportive of the proposed revisions. One commenter suggested that for some species of birds, absorbent material may be appropriate, though should not be required for all bird species. The Service agrees, and will allow for litter in primary enclosures containing birds only if it is specified in writing by the examining veterinarian.

Comments Pertaining to § 14.106(g): Marking on Enclosures

One commenter supported the proposed labeling requirements for enclosures. One commenter claimed that the requirement that the "THIS WAY UP" arrows be on all sides is inconsistent with USDA regulations that require only one side. The Service prefers that these regulations correspond with the IATA LAR, which require labels with "This Way Up" arrows on all four sides of the container, where possible. Furthermore, compliance with these regulations satisfies USDA regulations.

One commenter noted that USDA regulations require that primary enclosures containing primates be marked "Wild Animals" instead of "Live Animals", and that "Wild Animals" is an alternative to "Live Animals" for many other species. The Service agrees that our requirement of "Live Animals" only is an unnecessary inconsistency, and has modified the rule such that enclosures shall be marked either "Live Animals" or "Wild Animals".

Comments Pertaining to § 14.106(h): Shipper's Food and Water Instructions

Several commenters supported the rule as proposed. One commenter suggested that instructions specify when water and food are necessary. The intent of this requirement is that the shipper provide the carrier with precise information on what the animal needs to be fed, and when and how frequently it should be fed and/or watered. One commenter suggested that shippers and consignees be required to provide telephone numbers where they can be reached. The Service urges shippers and consignees to provide telephone and facsimile numbers, when available. The Service will continue to explore this issue and may propose such a requirement in the next revision of this rule, which is anticipated to include reptiles, amphibians, and fishes.

One commenter requested clarification of under what circumstances and under whose authority access to wildlife is granted, suggesting that only individuals identified by the shipper be so authorized. The Service feels that only individuals identified and authorized by the shipper, importer, exporter, and carrier should be authorized to provide medication to an animal, but Fish and Wildlife Service and other government officials retain their authority to have access to animals. Furthermore, any animal that is so fragile as to not be able to be accessed in any way by appropriate carrier staff should be accompanied by a veterinary attendant throughout its journey.

One commenter suggested that the recipient should determine food and water needs together with the shipper. The Service encourages this communication prior to preparation of the animal for shipment, in order to provide the carrier with as specific and as appropriate a set of food, water, and care instructions as is possible.

Two commenters suggested that copies of purchase orders and instructions by the importer to the shipper be made available to enforcement personnel on request. This would place responsibility on the importer as well as the shipper and not allow the importer to claim that he/she gave correct instructions to the shipper, but they were ignored, if that were not the case. Regardless of whether or not the importer gave the correct instructions to the shipper, the importer, the carrier, and the shipper are all responsible for ensuring the humane and healthful transport of live wild animals to the United States. Even if an importer can prove that he/she gave the correct instructions to the shipper, if the animals were shipped inhumanely the importer shares in the legal responsibility. Two commenters recommended that food and water instructions be in document packets accompanying a shipment, but not physically attached to the primary enclosures. The Service disagrees. Unattached documents can become separated from shipments, and enclosures can become separated, making it impossible for carrier personnel to know what the food and water requirements of the animals are. Copies of these instructions should also be attached to air waybills or other bills of lading, to allow carrier staff to verify compliance with the instructions. Physical attachment of the required instructions to each primary enclosure is necessary to help ensure that the instructions are available to appropriate personnel; this would preclude any carrier personnel from claiming that they were unaware of the specific instructions. The shipment of an enclosure without such a document affixed would be in violation of this subpart J.

Comments Pertaining to § 14.106(h): Obvious Signs of Stress

Two commenters, while supporting the proposal, recommended that information on signs of stress be always required without providing the loophole "when known to the shipper." Since § 14.109(a) requires that the "carrier shall also determine whether any animals are in obvious distress as described in documents attached to the enclosure," the Service notes that such documents are always required and agrees to remove the phrase "when known to the shipper." If the shipper does not have the appropriate food, water, and stress information, it is his/her responsibility to obtain it. The absence of such basic information

would preclude the humane and healthful transport of an animal. One commenter noted that such a requirement is too subjective, in that experts might have a difference of opinion. The Service disagrees that basic information on obvious signs of stress is subjective; the Service does not require the type of detailed behavioral information that would potentially be equivocal among animal behaviorists. One commenter felt that information on animal husbandry is not understood by foreign carriers and not available. The Service believes that animals about which information on basic husbandry is not available from experts in the field or veterinarians should not be shipped.

Two commenters recommended that drugs be given only by a veterinarian or other qualified attendant, and never by unlicensed or unqualified carrier personnel. The Service agrees. Sick or injured animals are required by § 14.105(c) to be accompanied by a veterinary attendant; as such, all medications should be administered by this attendant only. The Service has modified the rule accordingly while continuing to require that medication requirements be attached to the enclosure. This would provide verification of medications used.

Comments Pertaining to § 14.106(i): Food and Water Troughs

One commenter supported the proposed rule, while two others suggested that this requirement is not appropriate for psittacine birds, since they do not need foam or sponge inserts. The rule states that the water trough "shall contain a foam or sponge insert, a perforated wooden block, or other suitable device to prevent spillage or drowning". If a water trough can be constructed in such a manner as to prevent spillage or drowning while remaining full and accessible to the birds between replenishments, this section is satisfied.

Comments Pertaining to § 14.106(j): Permanently Affixed Enclosures

One commenter noted that expanded metal mesh is inherently sharp on all sheared surfaces, and since it can never be smooth it is unsuitable for primarily enclosures used for live animals. The Service agrees and has removed this term from the rule.

One commenter recommended that permanently affixed enclosures be required to have a passageway at least 12 inches wide in the conveyance. The proposed rule already requires that such passageways or aisles within a conveyance be unobstructed; the Service considers an unobstructed passageway to be at least 12 inches wide, and this is incorporated into the rule.

Comments Pertaining to § 14.107: Conveyance

Two commenters supported the rule as proposed. Two commenters disagreed with removing the requirement that primary enclosures be positioned for easy removal in case of an emergency. The Service believes that this requirement was virtually impossible to enforce and potentially dangerous for animals in some circumstances. The Service is aware that, if animals are placed in a cargo hold of an aircraft nearest the exit, there can be circumstances where the animal is thereby handled excessively and off-loaded unnecessarily during short stopovers. The Service further notes that the provision in § 14.111(e) that animals be last loaded and first unloaded helps ensure that animals are accessible in the case of an emergency in transit.

Two commenters disagreed with the Service's removal of the provision requiring sufficient air for normal breathing. The Service would like to clarify that it has modified the regulation, without in any way removing the requirement that animals are provided with sufficient ventilation for normal breathing. The Service notes that § 14.106(b)(6) requires that "the enclosure has sufficient openings to ensure adequate circulation of air at all times", and § 14.107(c) requires that "No wild mammal or bird shall be placed in a cargo space of a conveyance that does not provide sufficient air for it to breathe normally. Primary enclosures shall be positioned in a cargo space in such a manner that each animal has access to sufficient air for normal breathing." The Service considers these two provisions to be enforceable and sufficient, if complied with, to ensure adequate ventilation.

One commenter recommended that the interior of an animal cargo space be required to be "kept clean", rather than be "kept clean of disease-causing agents." The Service prefers that carriers be required to attempt to remove disease-causing agents, and that this requirement is necessary to ensure healthful transport conditions, and to reduce the risk of disease transmission in transport.

One commenter recommended that the regulation require that enclosures should be placed within the heated and pressurized area of a conveyance, in the case of aircraft. The Service agrees with this requirement, and believes that it is covered by § 14.109.

Comments Pertaining to § 14.108(a): Food and Water Instructions

One commenter suggested that food and water requirements be required to be translated into English. The Service agrees, and has incorporated that into § 14.104. One commenter suggested that food and water instructions be in the documents packet but not attached to crates, as they would not be required during normal transport. The Service disagrees, as the carrier is required to provide for the animal's food and water needs in all circumstances; the food and water requirements must be attached to each enclosure in order for all responsible personnel to be aware of animals individual needs. One commenter requested clarification of who is responsible to assure that food and water instructions are consistent with professionally accepted standards. Shippers, importers, exporters, and carriers are all responsible for compliance with this subpart J and for the humane and healthful transport of all wild mammals and birds to the United States; they all share responsibility to ensure that instructions for care are consistent with professionally accepted standards. A shipment that is unaccompanied by food and water instructions is a violation of this subpart J; a shipment accompanied by instructions that result in inhumane or unhealthful transport is also a violation of this subpart J. The Service urges shippers, importers, and exporters to consult with zoological, veterinary, and scientific experts to verify the appropriate food and water regimes for animals during transport. One commenter suggested that the Service use the CITES checklist recommended in Resolution Conf. 7.13 to ensure food and water requirements. The Service is currently working on a proposed rule that may require the checklist for all CITES-controlled shipments, but this subpart J applies to imports into the United States of all wild mammals and birds, including those not listed in the CITES Appendices.

Comments Pertaining to § 14.108(b): Water Suitable for Drinking

Two commenters supported the rule as proposed. One commenter recommended including a requirement that water be uncontaminated to prevent a shipper from considering fetid water to be suitable for drinking. The Service agrees and notes that uncontaminated refers to water that is free from any matter or organisms that could cause injury or disease. One commenter preferred returning to the

earlier requirement that water be "potable." Since potability standards for humans differ from those for animals, this term was eliminated.

Comments Pertaining to § 14.108(c): Animals That Obtain Moisture From Their Food

One commenter maintained that this requirement could contravene USDA restrictions on the importation of fresh fruit. The Service, based on discussions with USDA's Animal and Plant Health Inspection Service (APHIS), disagrees; fruit can and should be provided to animals that obtain their moisture from fruit. When fruit is removed from an enclosure on arrival at the port of entry or at a quarantine station, fresh fruit can be provided. The Service is aware that mortalities have resulted when animals that can only obtain moisture from fruit are not provided with any fruit during transport.

Comments Pertaining to § 14.108(d): Periodic Observations

Two commenters suggested that this section contradicts § 14.111(f)(4), which protects animals from harassment by humans. The Service knows of no practical way a carrier can determine if an animal requires food and water replenishment, or if an animal has been injured or requires veterinary attention, without observing it. The Service is aware that many animals travel better when they cannot see people moving about outside of their enclosure; the IATA Live Animals Regulations, which must be complied with in enclosure construction, allow for the use of a burlap cloth covering the opening to an enclosure in such circumstances. One commenter questioned if this requirement for inspection every four hours requires off-loading during delays to provide food and water every four hours. If food and water can be provided without off-loading (which should be possible, since enclosures with animals are required to be accessible at all times in the cargo hold), off-loading is not required. Any circumstance where an aircraft is delayed and animals are not provided with required food and water at least every four hours (unless instructed otherwise by the shipper), is a violation of this subpart J. One commenter recommended that the carrier be required to note the time an observation was made, the ambient temperature, and care given, in order to facilitate compliance and enforcement as well as to corroborate compliance when problems arise. The Service agrees and considers such a requirement in the best interest of both the animals and the carrier responsible. The Service will continue to explore this issue and may propose such a requirement in the next revision of this rule, which is anticipated to include reptiles, amphibians, and fishes.

Comments Pertaining to § 14.108(e): Provision of Food

One commenter questioned if the shipper is required to provide an emergency food supply; another recommended that for birds an emergency food supply suitable for 1½ days be supplied by the shipper. The Service notes that this subsection requires that food be provided. The Service expects shippers to provide food appropriate for the species that is suitable for the entire journey, with due consideration given to delays or emergencies. The Service considers a 1–2 day food supply to be reasonable. In the event of longer delays, both the carrier and the shipper are responsible for obtaining and providing the required food. To clarify this intent, the Service has modified this subsection to require that suitable and sufficient food be made available.

One commenter requested clarification as to who is responsible for providing the food. As stated in § 14.103, it is unlawful for any person to import, transport, or cause or permit to be transported to the United States any wild mammal or bird in violation of this rule. Therefore it is the responsibility of all persons involved to ensure compliance with this and other sections of this subpart J. The Service has modified this subsection to clarify this intent, in that all persons involved are responsible for making suitable and sufficient food available.

Comments Pertaining to § 14.109(a): Care in Transit

Several commenters discussed the required inspections every four hours, which was discussed in § 14.108, above. In addition, three commenters supported the required inspections every four hours, but objected to the exemption "whenever the cargo hold is accessible." They recommended that when the cargo hold is not accessible, transportation should not exceed 3 or 4 hours. The Service disagrees. The Service has included this exemption because cargo holds are not accessible while an aircraft is in flight. At any time that an aircraft is on the ground, cargo holds are accessible, and the required inspections must take place. The Service does not consider it reasonable to limit all air transport to flights of less than four hours; this could result in inhumane care by encouraging transport with more stopovers and aircraft connections rather than nonstop flights. For example, the Service believes that in most cases a nonstop flight of 6 or 7 hours wherein an animal is not disturbed is preferable to two 3-hour flights including a change of aircraft. Insufficient information is available at this time to indicate a need to change the rule; the Service will continue to monitor this situation.

One commenter opposed the required inspections every 4 hours, claiming that this could preclude expeditious transport. The Service notes that inspections when an aircraft is in flight and the cargo hold is not accessible are not required; inspections on the ground during stopovers are encouraged to be carried out without off-loading, and animal enclosures are required to be placed accessibly in cargo holds to facilitate such inspections. One commenter noted that the required inspections would prohibit overnighting of shipments at connecting airports that are not open 24 hours a day. The Service reminds the public of § 14.110, which requires animal holding areas at terminal facilities in stopover countries. Stopover facilities without such animal holding areas should not be used. The use of facilities that are closed overnight requires that arrangements be made in advance for inspection. The use of such unattended overnighting facilities may not constitute the most expeditious routing possible.

One commenter recommended that the Service determine when a carrier should contact the shipper or a veterinarian, based on observed signs of distress. That is a species-specific matter that cannot be spelled out for each species. It is the responsibility of the shipper to provide that information to the carrier, and the carrier should not accept a shipment without that information. Three commenters noted that it may be impossible to reach the shipper concerning the need for veterinary care, which should be provided by qualified persons only. The rule requires that "the carrier shall attempt to correct any condition causing distress and shall consult the shipper concerning any possible need for veterinary care if no veterinarian or qualified attendant is traveling with the shipment." The carrier should therefore contact the shipper if distress is observed; if the shipper is unavailable, a local veterinarian should be consulted. The carrier should document such consultations as required by this subsection.

Two commenters asked the Service to remove this requirement, claiming that it is not realistic to require a carrier to determine whether an animal is in

distress. The Service disagrees. Under the authority of the Lacey Act, it is a carrier's responsibility to assess whether an animal is in distress, and to alleviate such distress to the best of its ability.

One commenter questioned whether loading personnel are required to read English to assess if animals are in distress. The Service requires that documents be translated into English for U.S. compliance and enforcement purposes. The carrier, shipper, and importer are free to have pertinent instructions available in any other language understood by their own personnel.

Three commenters opposed allowing veterinary exceptions to the requirement that pressure be maintained equivalent to a maximum altitude of 8000 feet, arguing that there is too much risk that a veterinary document could be "manufactured." The Service agrees, in that few animals will ever be transported to the United States from high altitude habitats that could not tolerate pressures equivalent to 8000 feet; if these pressures could not be tolerated, the animals probably are not suitable for maintenance in the United States. Pressurization at 8000 feet is an industry standard. The rule is modified accordingly.

Comments Pertaining to § 14.109(b): Air Temperatures

Several commenters considered the temperature range requirements to be cumbersome, complex, inconsistent, and unenforceable. Several commenters recommended higher minimum temperatures for birds and mammals due to the serious risk of chilling and the fact that the majority of birds and mammals come to the United States from tropical habitats. One commenter noted that the requirement that ambient air temperatures not fall below 7.2 degrees C (45 degrees F) is inconsistent with the requirement in § 14.111(f)(3) that animals be provided protection from cold when ambient air temperatures fall below 10 degrees C (50 degrees F). The Service agrees. Since ambient air temperature is defined as the temperature of the air surrounding a primary enclosure containing a wild mammal or bird, in the interests of consistency and humane treatment, the Service has added "terminal facility" to this subsection.

Several commenters recommended that one set of minimum and maximum temperatures would be much more enforceable and realistic for carrier compliance. Several commenters suggested that it is unnecessary and cumbersome to have separate temperature requirements for birds and mammals. The Service agrees. One commenter recommended that, in the case of birds, the regulations state that temperatures be maintained that are neither too high nor too low for their comfort. The Services believes that actual temperature ranges should be specified rather than leaving it to a subjective determination of comfort. As proposed in this subsection and in § 14.173, ambient temperatures for mammals cannot fall below 7.2 degrees C (45 degrees F) and cannot fall below 7.2 degrees C for some birds and 12.8 degrees C (55 degrees F) for other birds. The Service is consolidating these requirements into a single requirement that temperatures not fall below 12.8 degrees C (55 degrees F) for all species of birds and mammals, that temperatures not exceed 26.7 degrees C (80 degrees F) at any time, and that auxiliary ventilation be provided when the temperature exceeds 23.9 degrees C (75 degrees F). The Service has moved the temperature requirement for penguins and auks to this subsection to facilitate compliance. One commenter suggested adding specific temperature requirements for cold water marine mammals, which the Service has done in this subsection. This further consolidates the requirement that sets one maximum temperature and another temperature that could not be exceeded for more than four hours at a time.

The Service is aware that species from extremely cold climates do well in colder temperatures and that species from warm tropical climates do well in warmer temperatures. Any variations from the above temperatures that are in an animal's best interest and would help ensure more healthful and humane transport should be specified in writing by the examining veterinarian. The Service is also aware, however, that temperatures an animal is accustomed to in the wild are often higher or lower than those that are optimal when in captivity or when confined during transport. In the wild, an animal is under less physiological stress, is less crowded, and is able to make behavioral adjustments, including escape to a location with more optimal temperatures or ventilation. The Service urges all shippers, importers, and exporters to consult with veterinarians and zoological professionals prior to shipment to determine the optimal temperatures for specific animals.

Comments Pertaining to § 14.110: Terminal Facilities

One commenter questioned if carriers are precluded from stopping over in countries without animal holding areas, even if they can meet other requirements of this Subpart. The Service notes that the rule requires that terminal facilities used for wild mammal or bird transport in stopover countries contain an animal holding area or areas.

One commenter noted that holding areas in the Third World do not have air conditioning and recommended that ventilation substitute for maximum temperatures. The Service disagrees. The rule now requires that ambient air temperatures not exceed 26.7 degrees C (80 degrees F). If appropriate auxiliary ventilation is utilized, even without air conditioning the ambient air temperature should be able to be maintained at or below 26.7 degrees C.

Comments Pertaining to § 14.111: Handling

Comments Pertaining to § 14.111(a): Physical or Psychological Trauma

One commenter maintained that physical trauma is undefined and that psychological trauma is still unclear. The Service considers psychological trauma to be sufficiently defined. The Service considers physical trauma in the context of this rule to be self-explanatory. The essence of this subsection is that primary enclosures should never be handled in a manner likely to cause any trauma to an animal.

Comments Pertaining to § 14.111(c): Incompatible Animals

One commenter felt that the provision that incompatible animals should not be crated together or held in close proximity belongs in § 14.106, which refers to acceptance procedures. The Service disagrees since incompatible animals should not be near one another at any time. Please refer to the discussion of comments pertaining to § 14.106, above.

Comments Pertaining to § 14.111(d): Handling in an Expeditious Manner

One commenter noted that airlines often have unscheduled delays beyond their control and asked for clarification if these delays are violations of § 14.111(d), which requires that transport be accomplished expeditiously and without unnecessary delays. The Service is aware that unscheduled delays beyond a carrier's control do occur. Such delays, when beyond a carrier's control or ability to avoid, are not a violation of this subsection; however, both the carrier and the shipper are responsible to arrange for transport in an expeditious manner and to guarantee that an emergency food supply is available in the event of such delays.

One commenter recommended a requirement that animals be let into a larger enclosure after every 12 hours of confinement for a rest period of at least 5 hours. For transport by sea or land, the Service encourages shippers and carriers to provide animals that need to exercise with an opportunity to do so. For air transport, however, such a requirement would be potentially stressful and inhumane to the animals.

Comments Pertaining to § 14.111(e): Last Loaded, First Unloaded

Three commenters support the rule as proposed. One supports the wording that wild mammals or birds shall be last loaded and first unloaded, "consistent with other procedures and requirements of the carrier," while two opposed it. Three other commenters recommended that the wording state that wildlife be loaded as late as possible and unloaded as early as possible, to afford the least amount of handling and greatest opportunity for observation of wildlife. Other provisions in this subpart J provide for as minimal handling of primary enclosures as is possible. The Service believes that loading animals last helps ensure their rapid removal in the case of an emergency. However, there may be procedures of a carrier that require that some other cargo is loaded after an animal is loaded, with no consequence for the humane and healthful treatment of an animal; it is not the intent of the Service that such a procedural matter be considered a violation of this subpart J. Furthermore, to clarify that these regulations apply to all forms of transport, § 14.111(e) is modified to apply to all conveyances.

Comments Pertaining to § 14.111(f): Shelter and Protection

The Service notes that temperature requirements are in § 14.109(b) (see the above discussion of § 14.109(b)), and has modified § 14.111(f)(3) to require that shelter from cold be provided. Ambient temperatures cannot be allowed to fall below those specified in § 14.109(b).

One commenter recommended that routine exposure to noise, fumes, heat, and light not constitute a violation. Another commenter suggested adding the words "harmful and excessive" to the disturbances that animals shall be protected from. The Service disagrees. The exposure of an animal to any harassment is potentially inhumane and unhealthful, and it is the carrier's responsibility to move animals to a safer area. Subsection § 14.110(a) requires that terminal facilities used for wild animals contain an animal holding area, in which live animal shipments and inanimate cargo should not be commingled. Therefore, if a carrier is in compliance with § 14.110(a), compliance with § 14.111(f)(4) will be facilitated. Another commenter recommended instead that animals be placed away from machinery to minimize exposure to noise, fumes, heat, light, or vibrations, but not to be precluded from such harassment altogether. The Service believes that harassment by humans or other animals, or by machinery as listed in this subpart, constitutes inhumane treatment of an animal confined in such a way that it cannot avoid the harassment.

Another commenter recommended that "moisture" and "cold drafts" be added to sources of harassment in this subsection. The Service agrees with the principle that animals should be sheltered from moisture and cold drafts, but that this subsection refers more specifically to harassment by humans, other animals, or machinery. The Service considers § 14.111(f)(2) sufficient to protect animals from excessive moisture and § 14.111(f)(3) sufficient to protect animals from cold drafts.

Another commenter noted that shelter should be provided from cold in holding areas, conveyances, and terminal facilities, in addition to transporting devices. The Service agrees, and has modified this section accordingly.

Comments Pertaining to §§ 14.121–14.123: Specifications for Non-Human Primates

Comments Pertaining to § 14.121(a): Densities in Primary Enclosures

One commenter noted that many primates are colonial and that there is no reason to ship them in separate enclosures, recommending that groups of animals that have been habitually housed together should be able to be shipped in the same enclosure. The Service believes that this factor is taken into consideration in the provision that pairs that have been habitually housed together can be shipped in the same enclosure. The Service is concerned that allowing for larger groups to be shipped together might allow some unscrupulous individuals to pack primates into enclosures at inhumane densities while claiming that they had been housed together previously. The Service is aware that juveniles, family groups, or pairs familiar with one another should not be separated and has provided for their being able to be shipped together. If four animals have been habitually housed as a unit, they could be shipped in two separate primary enclosures. The Service further notes that the IATA Live Animals Regulations Container Notes for primates, which this subpart J requires compliance with, are designed for primates to be shipped singly. One commenter noted that primates of different species should never be shipped together in the same enclosure. The Service agrees, and has clarified the rule. One commenter opposed the exception allowing mothers and nursing young to be shipped for medical treatment, which was discussed above in the comments on § 14.105.

Comments Pertaining to § 14.121(c): Ventilation Openings in Enclosures

One commenter supported the provision that ventilation openings comprise 30 percent of the surface area of each wall if only two walls have openings and comprise at least 20 percent of the surface area if all four walls have ventilation openings. The Service notes that this provision is not changed from the final rule of November 10, 1987 (52 FR 43274). One commenter found this requirement confusing, claiming that total ventilation should equal 30 percent, rather than 30 percent per wall. The Service notes that the two terms are equivalent, as long as at least two walls are ventilated.

Three commenters considered this provision to be inconsistent with the primate transportation requirements of the Animal Welfare Act Regulations of USDA in 50 CFR part 9, which require 16 percent and 8 percent ventilation, respectively. The Service disagrees. The Service notes that in written correspondence USDA/APHIS has stated: "We find no areas of conflict between the two proposed rules * * * The USFWS proposals for ventilation comply with and exceed USDA proposals. The additional ventilation requirement is probably desirable for newly captured, nonhuman primates that are subjected to very long transport periods during importation. Enclosures meeting USFWS proposed requirements are satisfactory for shipping nonhuman primates within the United States as they meet or exceed USDA requirements * * * All other aspects of our proposed rules for primates are very close if not identical." Therefore, no change will be made in this subsection.

Another commenter questioned why the ventilation is required above the midline, claiming that ventilation near the bottom of an enclosure may make the animal more comfortable. The Service disagrees, noting that most primates prefer dark places to hide in and are more comfortable if they can hide below the midline of an enclosure.

Another commenter noted that the Service should make it clear, both in this subsection and in later subsections

dealing with ventilation, that ventilation must be on at least two walls, unless the enclosure is permanently affixed. The Service agrees, and has clarified this requirement.

Comments Pertaining to § 14.122: Food and Water

One commenter questioned how a carrier could be expected to determine the age of a primate, if the age is not required to be included on the veterinary certificate, yet the rule requires that primates younger than 1 year of age be fed more frequently than older individuals. The Service agrees and has modified the rule so that all primates are to be fed at least every 12 hours, unless instructed otherwise by the shipper. For older primates, if feeding less frequently than every 12 hours is in the animal's best interest, the shipper should specifically instruct the carrier accordingly.

Another commenter noted that water is very important for primates, and that sick and dying animals frequently are dehydrated, in spite of an appropriate ambient temperature. The Service agrees, and has clarified this section such that primates shall be provided with suitable drinking water at least every 12 hours, unless instructed in writing to do so more frequently by the shipper.

Comments Pertaining to § 14.123: Care in Transit

One commenter recommended adding a new section requiring that ambient temperatures in a conveyance or animal holding area or with nonhuman primates never be allowed to fall below 15.6 degrees C (60 degrees F), since primates cannot tolerate lower temperatures. In subsection § 14.109(b), the rule now requires that all holding areas, conveyances, or terminal facilities, ambient air temperatures not fall below 12.8 degrees C (55 degrees F). The Service notes that if this minimum temperature is too low for a given species, the examining veterinarian can and should specify what temperatures are necessary for the animal's humane and healthful transport.

Comments Pertaining to §§ 14.131–14.133: Specifications for Marine Mammals

Comments Pertaining to § 14.131: Primary Enclosures

One commenter considered the ventilation requirements to be confusing noting that the required amount of ventilation would be insufficient for most marine mammals, particularly pinnipeds, walruses, and otters. Two commenters recommended increasing the per side ventilation requirement for marine mammals to 25 percent, while another suggested conformity with primates by requiring 20 percent per side. The Service agrees, and has changed the 16 percent ventilation requirement to 20 percent. The provision of more ventilation than is required is of course in compliance with this subsection. One commenter recommended changing the wording to state that the percentage of the total surface area of the sides should be divided equally among the sides, rather than as proposed that ventilation shall comprise a given percentage of the total surface area of each side. The Service notes that the two are the same: X percent of the total surface area divided equally among four sides is the same as X percent per side for four sides.

One commenter questioned whether it is necessary for a polar bear to be able to turn around. The Service considers it necessary, until such time as sufficient evidence is provided that either not providing the space is preferable for the animal's health and humane treatment or that providing sufficient space to turn around is inhumane or unhealthful.

One commenter requested clarification of the acceptable means that could be used to restrict a marine mammal's movements, claiming that this provision provides a loophole for unduly restraining marine mammals. This provision is unchanged from the final rule of November 10, 1987 (52 FR 43274). The Service disagrees with the commenter and is unaware of any circumstances since this rule has been finalized where marine mammals have been unduly restrained.

One commenter objected to allowing more than one marine mammal in a given primary enclosure even if they are of compatible groups of the same species, particularly in the case of polar bears and sea otters. No changes will be made in this subsection at this time, but the Service is open to receiving information about any cases where marine mammals have been transported in compatible groups and inhumane or unhealthful transport has resulted, or violations of this subpart have occurred.

Comments Pertaining to § 14.132: Food and Water

One commenter requested clarification as to why marine mammals can be transported for more than 36 hours without being offered suitable food. That requirement is based on consultations with the Marine Mammal Commission, USDA, and marine mammal experts, and is for the purpose of humane and healthful transport.

Comments Pertaining to § 14.133: Care in Transit

One commenter strongly supported the requirement that an attendant accompany a marine mammal at all times, but recommended further that the carrier be required to inform the crew of the presence of a marine mammal and that the attendant be provided with access to the animal and be informed of any unexpected delays. The Service agrees that any attendant traveling with any shipment should be provided with access to the animal, and has modified § 14.109 (Care in transit) accordingly. In the case of notifying the crew of the presence of a marine mammal, the Service considers it the responsibility of the carrier to notify the crew of the presence of any animal and that in all cases animals and their humane care should take precedence over that of inanimate cargo; the Service has modified § 14.105(d) (Consignment to carrier) accordingly.

Comments Pertaining to §§ 14.141–14.142: Specifications for Elephants and Ungulates

Comments Pertaining to § 14.142: Primary Enclosures

Two commenters objected to not allowing more than one elephant or ungulate in a primary enclosure, claiming that ungulates and animals experience less stress if they are shipped together. The commenters suggested allowing pairs or groups that have been habitually housed together to be shipped together. The Service agrees that young elephants that have been habitually housed together could be shipped together, but is concerned that this must be combined with real humane concerns about creating a loophole that would stimulate overcrowding and resultant inhumane and unhealthful transport. In addition, in the case of transport by sea or land conveyance, young elephants and ungulates are better off if shipped together. Therefore, the Service has modified § 14.142(b) to allow a pair of juvenile animals or other pairs that have been habitually housed together to be shipped in the same primary enclosure for land or sea transport. It is the responsibility of the shipper or carrier (in this case and in other cases when applicable) to provide the Service, upon request, with evidence that these animals have been habitually housed together.

One commenter recommended that in addition to requiring that an enclosure not be large enough for an elephant or ungulate to roll over, it not be large enough for an ungulate to turn around,

since an enclosure that is too large could be dangerous to an ungulate. The Service does not consider this necessary, since if a primary enclosure is not large enough for an animal to roll over, it will certainly not be large enough for it to move around excessively. The Service does not want to limit enclosure sizes to the point that normal postural adjustments are precluded.

One commenter opposed allowing food or water containers to be hung within the enclosure above the floor since elephants may injure themselves. The same commenter recommended that, as in the case of marine mammals, elephants be accompanied by an attendant at all times, who could provide an elephant with food or water using a bucket. The Service will continue to explore this issue and, if warranted, may propose such a requirement in the next revision of this rule.

Comments Pertaining to § 14.151: Specifications for Sloths, Bats, and Flying Lemurs

One commenter questioned the need to list flying lemurs separately here since they are not imported for exhibition purposes and could easily be included with other terrestrial mammals in § 14.161. The Service has decided however to keep flying lemurs with sloths and bats for consistency since the IATA LAR container requirements for bats and flying lemurs are combined and all three of these species require a bar or perch to hang from.

Comments Pertaining to § 14.161: Other Terrestrial Mammals

One commenter recommended that it be specifically stated that species should not be mixed. The Service believes that this requirement already exists since this subsection requires that no more than one sloth, bat, or flying lemur shall be transported in a primary enclosure, notwithstanding certain exceptions.

One commenter opposed the requirement for a device for sloths to hang by which could be potentially dangerous. The Service disagrees and considers the requirement broad enough to allow for any type of wide perch, bar, or mesh for an animal to hang from. The Service believes that sloths require either a perch or bar to hang from and is not aware of any cases of inhumane or unhealthful transport of sloths resulting from the presence of a perch or bar.

Comments Pertaining to § 14.161: Specifications for Other Terrestrial Mammals

One commenter requested a new section specifying temperature minima of 50 degrees F (10 degrees C) for all terrestrial mammals. The Service has set a minimum ambient air temperature of 55 degrees F (12.8 degrees C) for all terrestrial mammals in § 14.109(b).

One commenter recommended that pairs or groups of terrestrial mammals that have been habitually housed together may be shipped together. Such animals may be shipped together, in the case of in the same shipment, but they may not be shipped in the same primary enclosure. The rule allows only rodents to be transported in the same primary enclosure. The Service is not aware of other groups of species of terrestrial mammals that it would be more humane or healthful to ship them in higher densities than to ship them singly. One commenter claimed that hedgehogs and hyrax should be able to be shipped in pairs or compatible groups. The Service disagrees and is aware of significant aggression between members of these species, including cannibalism, and considers it in their best interest to always be shipped individually.

One commenter opposed the allowance for more than one rodent per enclosure, considering it to be too stressful for them. The Service disagrees and is aware that rodents that are compatible can and have been shipped humanely and healthfully within the specified density guidelines. Insufficient information is available at this time to indicate a need to change the rule; the Service will continue to monitor this situation.

One commenter questioned why the density requirements in § 14.161(c) differ from those in the IATA Live Animals Regulations (LAR). These regulations are actually a simplification of the IATA LAR density guidelines in IATA Container Note number 26, and the Service does not believe them to be contradictory in any way.

Comments Pertaining to §§ 14.171–14.172: Specifications for Birds

Comments Pertaining to § 14.171: Consignment to Carrier

One commenter requested that the Service limit lot sizes rather than just numbers per enclosure, noting that this would improve care for individual animals and reduce the risk of disease transmission. The commenter questioned whether any carrier, shipper, or importer is capable of adequately looking after a single shipment of 15,000 birds. Shipments of this size currently occur. The Service is aware that higher mortality rates often occur in shipments with very large numbers of birds, although high mortalities also do occur in smaller shipments. The Service will continue to explore this issue and may propose such a requirement in the next revision of this rule.

Two commenters opposed the exemption from veterinary inspection for pet birds, claiming that there is no scientific basis and disease and injury could result. The Service agrees that pet birds also require a certificate of veterinary inspection and notes that the rule only exempts a personally owned pet bird originally transported from the United States and being returned to this country with its original United States certificate of veterinary inspection within 60 days of departure.

One commenter recommended that the owner of a bird, and not the veterinarian, be able to certify that the bird has been held in captivity for at least 14 days. The Service is aware that for personally owned pet birds, the owner knows that the bird has been held in captivity for at least 14 days. However, for commercial consignments, the Service is unaware of how to authenticate such a determination without requiring it as part of the veterinary certificate. If the shipper is allowed to certify that the birds have been acclimated to captivity for at least 14 days, without veterinary corroboration, the Service is concerned about the potential for intentional misrepresentation. Another commenter recommended that any appropriate government authority, rather than specifically the national government, be able to authorize veterinarians. The Service disagrees and refers the public to the discussion of comments pertaining to § 14.105(a), above.

Comments Pertaining to § 14.172: Primary Enclosures

One commenter supported the ventilation requirements as proposed. Another claimed that the requirement in § 14.172(a) that a primary enclosure have ventilation openings on two vertical sides that comprise at least 16 percent of the surface area of each side eliminates slanted sides for ventilation purposes. The Service believes that this requirement has been misinterpreted by the commenter; a slanted or sloped side, while not required, is recommended for birds, since it allows for greater ventilation. Another commenter claimed that this requirement contradicts the IATA container requirements for birds. The Service disagrees; an enclosure that fully satisfies the IATA LAR container

requirements for birds will also satisfy this subsection.

Two commenters objected to requiring perches for birds that rest by perching, claiming that birds could be thrown off and perches are unnecessary. Two other commenters supported the rule as proposed. The Service considers perches to be necessary for the humane transport of birds that rest by perching, which is consistent with the IATA LAR for psittacines, which states that "Wooden perches shall be provided for such birds that rest by perching." Four commenters supported the requirement in § 14.172(c) that an enclosure used to transport one or more birds that rest by perching be large enough to ensure that sufficient perch space is available for all birds to perch comfortably at the same time. Three commenters recommended that the Service add the requirement that space be adequate to allow birds to stretch their wings, in a space equal to the width of the bird itself; another commenter recommended that birds be given the amount of perching space twice that required if the birds were perching side by side on the perch. The Service considers these recommendations both impracticable to enforce and redundant with the proposal. The space requirement for birds that rest by perching should be seen in the context of the density limitations. The Service notes that birds cannot perch comfortably at the same time unless sufficient space exists to stretch their wings and move onto and off the perch easily; it is the regulatory requirement of space to stretch their wings that has been removed due to its unenforceability and not the awareness that birds must be able to stretch their wings.

One commenter opposed the elimination of the requirement that the enclosure be large enough to permit perching without tail feathers being damaged, suggesting a complex requirement incorporating consultation with a local field guide to determine the size of a species and appropriate enclosure size. The Service believes that requirement to have been both unenforceable and easily circumvented by cutting the tail feathers. The Service notes that § 14.103 states that it is unlawful to transport or cause to be transported to the United States any wild mammal or bird under inhumane or unhealthful conditions; transport conditions whereby a bird becomes injured are de facto inhumane and/or unhealthful.

Comments Pertaining to § 14.172(c): Densities in Primary Enclosures

A typographical error was made in this subsection. In the preamble to the proposed rule of October 15, 1990, it was correctly stated that psittacine birds longer than 23 cm (9 inches) are to be limited to 25 birds in any one enclosure; the actual proposed rule stated that the size limit is 25 cm. The Service hereby corrects the size to 23 cm, which is the same as 9 inches, and is the size cut-off in the IATA LAR.

Six commenters were very supportive of the density maxima (25 for larger birds; 50 for smaller birds). Two other commenters recommended replacing this requirement with one that lists specific genera rather than size cutoffs. Two other commenters suggested listing the lengths and weights of common bird species and then giving size-specific density guidelines. The Service considers such proposed solutions to the problems of overcrowding to be too complicated and difficult to implement or enforce. The Service prefers utilizing an international standard such as that in the IATA LAR. Furthermore, insufficient information is available at this time to indicate a need to change the rule; the Service will continue to monitor this issue and will consider any information on inhumane or unhealthful shipment of birds that would support future amendments to these regulations.

Two commenters supported the 25/50 limits, but recommended that they apply to compartments within an enclosure and not the entire primary enclosure. The Service strongly disagrees. The intent is to reduce mortalities due to crowding and lack of sufficient ventilation: allowing more and more birds to be crowded into smaller compartments or allowing a rule to be contravened by placing dividers within an enclosure is contrary to the intent of this rule and poses too great a risk of inhumane or unhealthful treatment. Another commenter recommended replacing "psittacines" with "birds," because § 14.172(c) refers to birds that rest by perching, which are not limited to psittacines. The Service agrees and has adjusted the rule accordingly. The Service also reminds the public that these are density maxima, and not recommended average densities.

Comments Pertaining to § 14.172(d): Raptors

One commenter was supportive of the requirement that only one raptor be shipped per primary enclosure. Another claimed that small raptors like owls can be shipped together without problems. The Service believes that owls or other raptors are better off shipped separately; furthermore, in keeping with the IATA LAR, the Service will retain the one raptor per enclosure requirement. The Service will continue to explore and monitor this issue and may propose a change in this requirement in the future.

Two commenters noted that this subsection contradicts the IATA LAR requirement which states that "the container shall be large enough to carry one bird and permit it to turn without stretching its wings to the fullest extent." The commenters noted that requiring eagles, condors, or other large raptors to have space to stretch their wings is both impractical and dangerous. Another noted that the containers commonly used for raptors allow for a full upright position, but do not allow the birds to spread their wings out. Five more commenters noted that if a raptor can fully extend its wings, it may injure itself. The Service accepts these critical concerns and has modified the rule to reflect the danger to raptors of excessive space. Another commenter recommended adding a requirement that raptors be provided with limited access to light. That requirement already exists in the IATA LAR (Container requirement 56) by requiring a burlap curtain which can be lowered over the front of the container. The Service does not consider it necessary to incorporate the light access requirement into the rule, which is normal practice for species for which it is appropriate. The Service will consider any information on inhumane or unhealthful shipment of raptors that would support future amendments to these regulations.

Comments Pertaining to § 14.172(e): Nonperching, Nonraptorial Birds

One commenter recommended deleting the requirement of space for these birds to stand fully erect, claiming that excessive crate height could result for some species, without explaining in what way large crates could be unhealthful or inhumane. The Service believes that birds should have sufficient space to stand erect, and that crates must be designed accordingly and for the individual animal. The commenter recommended greater flexibility since some species are shipped in stockings with their legs folded, which could be considered a violation of the requirement that they be able to change posture in a normal manner. The Service is aware of cases where greater immobilization of birds is preferable, but is also aware of cases where inappropriate immobilization has caused either injury or death. The

Service will continue to explore this issue and will consider any information on inhumane or unhealthful shipment of non-perching, non-raptorial birds that would support future amendments to these regulations, including possibly requiring an attendant with all shipments of birds that require immobilization.

Two commenters recommended limiting the numbers of non-raptorial, non-perching birds per primary enclosure, citing cases of shipments of ducks where some suffocated because birds piled up on one another. The Service strongly agrees with limiting densities of these birds. The IATA LAR limits ducks to two per compartment within a primary enclosure, while other birds, as appropriate for their species, are limited to one per enclosure. Section 14.106(a) requires that the current Container Requirements of the Live Animal Regulations (LAR) adopted by the International Air Transport Association (IATA) be complied with by all persons transporting wild mammals or birds to the United States. The Service refers the public to the discussion of comments pertaining to § 14.106(a), above.

Another commenter recommended adding a requirement for light to be able to enter only at the top of the sides of the enclosures, and for the floor to be covered with a material that allows a bird to grip the floor. The Service agrees that such enclosures are appropriate for some species of birds, but does not want to expand the regulations to be overly species-specific, complex, and difficult to enforce. Such conditions of transport, if in the individual bird's best interest, should be utilized. The Service notes that these regulations constitute minimum requirements and it should be the responsibility of the shipper, the carrier, and the importer to ensure that a wild animal is transported under the most humane and healthful conditions possible.

Comments Pertaining to § 14.172(g): Species Mingling

Three commenters supported this requirement as proposed, wherein birds transported in the same primary enclosure shall be of the same species and be compatible with one another. Three commenters noted that it is common to mix bird species, especially for finches and lovebirds. One commenter questioned the Service's evidence that species cannot be co-mingled. The Service is aware that interspecific aggression in birds can be a factor increasing stress during shipment and that increased stress can lead to injury, disease, and death. Insufficient information is available at this time to indicate a need to change the rule; the Service will continue to monitor this situation. The proper identification of species in transport, which is critical for the enforcement of both the Lacey Act and the Endangered Species Act, necessitates the separation of species in primary enclosures, although mixing in shipments as opposed to enclosures is acceptable.

Comments on Typographical Errors

Seven typographical errors were noted by commenters, that were also noted by the Service. They were of an editorial and non-substantive nature that had no impact on the public's ability to understand the proposed rule; the changes have been made in the final rule.

Miscellaneous Comments

One commenter recommended the use of the checklist recommended in CITES Resolution Conf. 7.13. The Service agrees, but notes that the checklist is applicable to only those species listed in the CITES Appendices. The use of the checklist will be proposed in proposed amendments to 50 CFR part 23, which are under review within the Service at this time.

One commenter questioned whether this subpart J refers to only import of wild mammals and birds or also re-import of previously exported specimens. The Service notes that the Lacey Act Amendments of 1981 (Pub. L. 97–79, 95 Stat. 1073), enacted on November 16, 1981, make no distinction between import and re-import. Therefore, this subpart J refers to all transport of wild mammals and birds to the United States.

One commenter requested an exemption from this subpart J for entities licensed by the USDA under the Animal Welfare Act that export and re-import specimens, such as circuses. The Service strongly disagrees. There is insufficient evidence to warrant exempting circuses from humane and healthful transport requirements; indeed, ample evidence of inhumane and unhealthful transport problems with some circuses and other entities licensed under the Animal Welfare Act strongly supports their inclusion. In addition, the Animal Welfare Act regulations at this time do not apply to birds, which these regulations cover.

Effects of the Rule

A Finding of No Significant Impact was signed on June 1, 1990. The Service determines that this final rule concerning the humane and healthful transport of wild mammals and birds to the United States is not a major Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act and, therefore, preparation of an Environmental Impact Statement is not required.

Executive Orders 12291, 12612, and 12630 and the Regulatory Flexibility Act

It has been determined that the revisions to 50 CFR part 14 do not constitute a "major" rule under the criteria established by Executive Order 12291. The revisions principally represent clarifications of existing provisions that are expected to make compliance more practical and enforcement more efficient. This action is not expected to have significant taking implications, as per Executive Order 12630, since compliance with the revised regulations will have neither greater nor lesser effect on constitutionally protected individual property rights. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Small entities are already required to comply with the current regulations. It is expected that the revisions would reduce the burden on small entities by making requirements clearer, but not more stringent. Since the rule applies to importations of live wildlife into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Paperwork Reduction

This final rule does not contain any increase in information collection or record keeping requirements as defined by the Paperwork Reduction Act of 1980.

Author

The author of this final rule is Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/358–2095).

List of Subjects in 50 CFR Part 14

Exports, Imports, Incorporation by Reference, Labeling, Reporting and recordkeeping requirements, Transportation and Wildlife.

Regulation Promulgation

PART 14—[AMENDED]

Accordingly, part 14 of chapter I of title 50 of the Code of Federal Regulations is hereby amended to read as follows:

1. The authority citation for part 14 is revised to read as follows:

Authority: 18 U.S.C. 42(c); 16 U.S.C. 3371–3378; 16 U.S.C. 1538(d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 705, 712; 31 U.S.C. 483(a).

2. Subpart J is revised to read as follows:

Subpart J—Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States

Sec.

14.101 Purposes.
14.102 Definitions.
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Specifications for Nonhuman Primates

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Specifications for Marine Mammals (Cetaceans, Sirenians, Sea Otters, Pinnipeds, and Polar Bears)

14.131 Primary enclosures.
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Specifications for Elephants and Ungulates

14.141 Consignment to carrier.
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Specifications for Sloths, Bats, and Flying Lemurs (Cynocephalidae)

14.151 Primary enclosures.

Specifications for Other Terrestrial Mammals

14.161 Primary enclosures.

Specifications for Birds

14.171 Consignment to carrier.
14.172 Primary enclosures.

Subpart J—Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States

§ 14.101 Purposes.

The purpose of this subpart is to prescribe requirements necessary to ensure that live wild mammals and birds shipped to the United States arrive alive, healthy, and uninjured, and that transportation of such animals occurs under humane and healthful conditions. These regulations implement section 9(d) of the Lacey Act Amendments of 1981.

§ 14.102 Definitions.

In addition to the definitions contained in part 10 of subchapter B of this chapter, in this subpart—

Ambient air temperature means the temperature of the air surrounding a primary enclosure containing a wild mammal or bird.

Auxiliary ventilation means cooling or air circulation provided by such means as vents, fans, blowers, or air conditioning.

Carrier means any person operating an airline, railroad, motor carrier, shipping line, or other enterprise engaged in the business of transporting any wild mammal or bird for any purpose including exhibition and for any person, including itself.

Communicable disease means any contagious, infectious, or transmissible disease of wild mammals or birds.

Conveyance means any vehicle, vessel, or aircraft employed to transport an animal between its origin and destination.

Do not tip means do not excessively rock or otherwise move from a vertical to a slanting position, knock over, or upset.

Handle means feed, manipulate, crate, shift, transfer, immobilize, restrain, treat, or otherwise control the movement or activities of any wild mammal or bird.

Holding area means a designated area at or within a terminal facility that has been specially prepared to provide shelter and other requirements of wild mammals or birds being transported to the United States and in which such mammals or birds are maintained prior to, during, or following such shipment.

Kept clean means maintained free from dirt, trash, refuse, excreta, remains from other cargo, and impurities of any type.

Marine mammal means an individual of a species of the orders Cetacea, Pinnipedia, or Sirenia, or a polar bear (*Ursus maritimus*) or sea otter (*Enhydra lutris*).

Noncompatible means not capable of existing together in harmony.

Nonhuman primate means any nonhuman member of the order Primates.

Normal rigors of transportation means the stress that a wild animal can be expected to experience as a result of exposure to unaccustomed surroundings, unfamiliar confinement, caging, unfamiliar sounds, motion, and other conditions commonly encountered during transport.

Primary enclosure means any structure used to restrict a mammal or bird to a limited amount of space, such as a cage, room, pen, run, stall, pool, or hutch.

Professionally accepted standards means a level of practice established as acceptable by a body of qualified persons of the veterinary medical profession.

Psychological trauma means an episode of exposure to stressful conditions resulting in significant behavioral abnormality including, but not limited to, manifestations of unaccustomed aggressiveness, self-mutilation, or refusal of food or water.

Raptor means a live migratory bird of the order Falconiformes or the order Strigiformes.

Sanitize means to make physically clean and, as far as possible, free of toxic or infectious agents injurious to the health of wild mammals or birds.

Scheduled departure time means the time listed on a timetable of departures and arrivals or, in the absence of a timetable, the time of departure agreed to by a carrier and shipper.

Shipper means any person, other than a carrier, involved in the transport of wild animals to the United States regardless of the purpose of such transport; e.g., exporter, importer, or agent.

Terrestrial mammals means mammals other than marine mammals.

Transport means to move, convey, carry, or ship by any means, or to deliver or receive for the purpose of movement, carriage, or shipment, by air, land, or sea.

Transporting device means any vehicle or device used to transport an animal between a conveyance and a terminal facility, in and around a terminal facility of a carrier, or within a conveyance.

Unweaned means a bird or mammal incapable of feeding itself independently.

Wild means the same as fish or wildlife, as defined in § 10.12 of this chapter.

§ 14.103 Prohibitions.

Unless the requirements of this subpart are fully satisfied and all other legal requirements are met, it is unlawful for any person to transport to the United States, cause to be transported to the United States, or allow to be transported to the United States any live wild mammal or bird. It shall be unlawful for any person to import, to transport, or to cause or permit to be transported to the United States any wild mammal or bird under inhumane or unhealthful conditions or in violation of this subpart J.

§ 14.104 Translations.

Any certificate or document required by this subpart to accompany a mammal or bird transported to the United States and written in a foreign language must be accompanied by an accurate English translation.

§ 14.105 Consignment to carrier.

(a) No carrier shall accept any live wild mammal or bird for transport to the United States that has not been examined within 10 days prior to commencement of transport to the United States by a veterinarian certified as qualified by the national government of the initial country from which the mammal or bird is being exported. If the national government of such country does not certify veterinarians, then the veterinarian must be certified or licensed by a local government authority designated by the national government as authorized to certify veterinarians.

(b)(1) A certificate of veterinary medical inspection, signed by the examining veterinarian, stating that the animal has been examined, is healthy, appears to be free of any communicable disease, and is able to withstand the normal rigors of transport must accompany the mammal or bird; the certificate should include the veterinarian's license number, certification number, or equivalent. A mammal in the last third of its pregnancy, if this is detectable using professionally accepted standards, shall not be accepted for transport to the United States except for medical treatment and unless the examining veterinarian certifies in writing that the animal has been examined, the state of pregnancy has been evaluated, and that, despite the medical condition requiring treatment, the animal is physically able to withstand the normal rigors of transportation to the United States.

(2) A nursing mother with young, an unweaned mammal unaccompanied by its mother, or an unweaned bird shall be transported only if the primary purpose is for needed medical treatment and upon certification in writing by the examining veterinarian that the treatment is necessary and the animal is able to withstand the normal rigors of transport. Such an unweaned mammal or bird shall not be transported to the United States for medical treatment unless it is accompanied at all times by and completely accessible to a veterinary attendant.

(c) A sick or injured wild mammal or bird shall be permitted transport to the United States only if the primary purpose of such transport is for needed medical treatment and upon certification in writing by the examining veterinarian that the treatment is necessary and the animal is able to withstand the normal rigors of travel in its present condition. A sick or injured animal shall be accompanied at all times throughout the transport process by a veterinary attendant qualified to care for and treat it, with continuous access to the animal. This individual shall be in possession of or have ready access to all medications to be administered during the transport.

(d) No carrier shall accept any wild mammal or bird for transport to the United States presented by the shipper less than 2 hours or more than 6 hours prior to the scheduled departure of the conveyance on which it is to be transported. The carrier shall notify the crew of the presence of live animal shipments.

§ 14.106 Primary enclosures.

No carrier shall accept for transport to the United States any live wild mammal or bird in a primary enclosure that does not conform to the following requirements:

(a) The Container Requirements of the Live Animal Regulations (LAR), 18th Edition, July 1, 1991, published by the International Air Transport Association (IATA) shall be complied with by all parties transporting wild mammals or birds to the United States. The incorporation by reference of the LAR was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from IATA, 2000 Peel St., Montreal, Quebec, Canada H3A 2R4. Copies may be inspected at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Arlington, VA 22203 or at the Office of the **Federal Register**, 1100 L St., NW., room 8401, Washington, DC.

(b) A primary enclosure shall be constructed so that—

(1) The strength of the enclosure is sufficient to contain the mammal or bird and to withstand the normal effects of transport;

(2) The interior of the enclosure is free from any protrusion that could be injurious to the mammal or bird within;

(3) No part of the animal can extend or protrude outside of the primary enclosure which may result in injury to the contained animal, to nearby persons or animals, or to handlers of the primary enclosure;

(4) Access to the primary enclosure is closed and secured with an animal-proof device designed to prevent accidental opening and release of the mammal or bird;

(5) The opening of the enclosure is easily accessible for either emergency removal or inspection of the mammal or bird by authorized personnel without the risk of escape of the mammal or bird;

(6) The enclosure has sufficient openings to ensure adequate circulation of air at all times.

(7) The material of which the primary enclosure is constructed is not treated with any paint, preservative, or other chemical that is injurious or otherwise harmful to the health or well-being of mammals and birds.

(c) Unless the enclosure is permanently affixed in the conveyance or has an open top for certain large mammals, spacer bars allowing circulation of air around the enclosure shall be fitted to the exterior of its top, sides, and base. Spacer bars on an enclosure need extend no more than 6 inches (15 centimeters) from the surface of the enclosure. Within this 6-inch limit, the spacers on an enclosure containing one animal shall extend a distance equal to at least 10 percent of the longer dimension of the surface to which they are attached, and the spacers on an enclosure containing more than one animal shall extend a distance equal to at least 20 percent of the longer dimension of the surface to which they are attached. Hand-holds may serve as spacer bars for the sides of the enclosure to which they are attached. A primary enclosure constructed with one or more slanted or curved walls containing ventilation openings need not be fitted with spacer bars on such walls.

(d) An enclosure that is not permanently affixed within the conveyance shall have adequate hand-holds or other devices for lifting by hand or to facilitate lifting and carrying by machine. Such hand-holds or other devices shall be made an integral part of the enclosure, shall enable it to be lifted without excessive tipping, and shall be designed so that the person handling the enclosure will not come in contact with the animals contained therein.

(e) An enclosure shall have a solid, leak-proof bottom or removable, leak-proof collection tray under a slatted or wire mesh floor. The slatted or wire mesh floor shall be designed and constructed so that the spaces between the slats or the holes in the mesh cannot trap the limbs of animals contained within the enclosure. An enclosure for mammals shall contain unused absorbent litter on the solid bottom or in the leak-proof tray in sufficient quantity to absorb and cover excreta. This litter shall be safe and nontoxic and shall not resemble food normally consumed by the mammals. An enclosure used to transport marine mammals in water, in a waterproof enclosure, a sling, or on foam is exempt from the requirement to contain litter. An enclosure used to transport birds shall not contain litter, unless it is specified in writing by the examining veterinarian as medically necessary.

(f) If an enclosure has been previously used to transport or store wild mammals

or birds, it shall have been cleaned and sanitized in a manner that will destroy pathogenic agents and pests injurious to the health of mammals and birds before the enclosure can be re-used.

(g) An enclosure that is not permanently affixed in the conveyance shall be clearly marked in English on the outside of the top and one or more sides of the enclosure, in letters not less than 2.5 centimeters (1 inch) in height, "Live Animals" or "Wild Animals", "Do Not Tip," "Only Authorized Personnel May Open Container," and other appropriate or required instructions. All enclosure sides shall also be conspicuously marked on the outside with arrows to indicate the correct upright position of the enclosure. These arrows should extend up the sides of the enclosure so that the point of the arrow is visible and clearly indicates the top of the enclosure.

(h) Food and water instructions as specified in § 14.108, information regarding what constitutes obvious signs of stress in the species being transported, and information about any drugs or medication to be administered by the accompanying veterinary attendant shall be securely attached to each enclosure. Copies of shipping documents accompanying the shipment shall also be securely attached to the primary enclosure. Original documents shall be carried in the carrier's pouch or manifest container or by the shipper's attendant accompanying the wild mammal or bird.

(i) Any food and water troughs shall be securely attached to the interior of the enclosure in such a manner that the troughs can be filled from outside the enclosure. Any opening providing access to a trough shall be capable of being securely closed with an animal-proof device. A water trough in an enclosure containing birds shall contain a foam or sponge insert, a perforated wooden block, or other suitable device to prevent spillage or drowning.

(j) When a primary enclosure is permanently affixed within a conveyance so that its front opening is the only source of ventilation, the opening shall face the outside of the conveyance or an unobstructed aisle or passageway within the conveyance. Such an aisle or passageway shall be at least 12 inches (30 centimeters) wide. The opening in the primary enclosure shall occupy at least 90 percent of the total surface area of the front wall of the enclosure and be covered with bars or wire mesh.

§ 14.107 Conveyance.

(a) The animal cargo space of a conveyance used to transport wild mammals or birds to the United States shall be designed, constructed, and maintained so as to ensure the humane and healthful transport of the animals.

(b) The cargo space shall be constructed and maintained so as to prevent the harmful ingress of engine exhaust fumes and gases produced by the conveyance.

(c) No wild mammal or bird shall be placed in a cargo space of a conveyance that does not provide sufficient air for it to breathe normally. Primary enclosures shall be positioned in a cargo space in such a manner that each animal has access to sufficient air for normal breathing.

(d) The interior of an animal cargo space shall be kept clean of disease-causing agents.

(e) A wild mammal or bird shall not be transported in a cargo space that contains any material, substance, or device that may reasonably be expected to result in inhumane conditions or be injurious to the animal's health unless all reasonable precautions are taken to prevent such conditions or injury.

§ 14.108 Food and water.

(a) No carrier shall accept any wild mammal or bird for transport to the United States unless written instructions from the shipper concerning the animal's food and water requirements are securely affixed to the outside of its primary enclosure. Such instructions shall be consistent with professionally accepted standards of care and include specifically the quantity of water required, the amount and type of food required, and the frequency of feeding and watering necessary to ensure that the animal is transported humanely and healthfully.

(b) A mammal or bird requiring drinking water shall have uncontaminated water suitable for drinking made available to it at all times prior to commencement of transport to the United States, during intermediate stopovers, and upon arrival in the United States, or as directed by the shipper's written instructions.

(c) A mammal or bird that obtains moisture from fruits or other food shall be provided such food prior to commencement of transport to the United States, during stopovers, and upon arrival in the United States, or as directed by the shipper's written instructions.

(d) During a stopover or while still in the custody of the carrier after arrival in the United States, a mammal or bird in transit shall be observed no less frequently than once every four hours and given food and water according to the instructions required by § 14.108(a).

(e) Suitable and sufficient food shall be made available during transport.

(f) Additional requirements for feeding and watering particular kinds of animals are found below in the specifications for the various groups.

§ 14.109 Care in transit.

(a) During transportation to the United States, including any stopovers during transport, the carrier shall visually inspect each primary enclosure not less than once every 4 hours, or in the case of air transport, every 4 hours whenever the cargo hold is accessible. During such inspections, the carrier shall verify that the ambient air temperature is within allowable limits (see § 14.109(b)), that enclosures have not been damaged, that adequate ventilation is being provided, and when transport is by air, that air pressure suitable to support live animals is maintained within the cargo area (pressure equivalent to a maximum altitude of 8000 feet). During these observations the carrier shall also determine whether any animals are in obvious distress as described in documents attached to the enclosure. The absence of such a document or the absence of information as to signs of distress shall not remove this responsibility. The carrier shall attempt to correct any condition causing distress and shall consult the shipper concerning any possible need for veterinary care if no veterinary attendant is traveling with the shipment; if the shipper cannot be reached in the case of an emergency, qualified veterinary care should be provided. A veterinarian or qualified attendant traveling with the shipment shall be provided access to the animal.

(b) Unless otherwise specified in writing by the examining veterinarian the ambient air temperature in a holding area, transporting device, conveyance or terminal facility containing mammals or birds shall not be allowed to fall below 12.8 degrees C (55 degrees F) nor to exceed 26.7 degrees C (80 degrees F). Auxiliary ventilation shall be provided when the ambient air temperature is 23.9 degrees C (75 degrees F) or higher. In the case of penguins and auks, the ambient air temperature shall not be allowed to exceed 18.3 degrees C (65 degrees F) at any time, and auxiliary ventilation shall be provided when the ambient air temperature exceeds 15.6 degrees C (60 degrees F). In the case of polar bears and sea otters, ambient air temperature shall not be allowed to exceed 10 degrees C (50 degrees F).

§ 14.110 Terminal facilities.

(a) Any terminal facility used for wild mammal or bird transport in the country

of export, stopover countries, or the United States shall contain an animal holding area or areas. No carrier or shipper shall co-mingle live animal shipments with inanimate cargo in an animal holding area.

(b) A carrier or shipper holding any wild mammal or bird in a terminal facility shall provide the following:

(1) A holding area cleaned and sanitized so as to destroy pathogenic agents, maintained so that there is no accumulation of debris or excreta, and in which vermin infestation is minimized;

(2) An effective program for the control of insects, ectoparasites, and pests of mammals or birds;

(3) Sufficient fresh air to allow the animals to breathe normally with ventilation maintained so as to minimize drafts, odors, and moisture condensation;

(4) Ambient air temperatures maintained within prescribed limits as specified in § 14.109(b).

§ 14.111 Handling.

(a) Care shall be exercised to avoid handling the primary enclosure in a manner likely to cause physical or psychological trauma to the mammal or bird.

(b) A primary enclosure used to move any mammal or bird shall not be dropped, tipped excessively, or otherwise mishandled, and shall not be stacked or placed in a manner that may reasonably be expected to result in its falling or being tipped.

(c) Animals incompatible with one another shall not be crated together or held in close proximity.

(d) Transport of mammals or birds to the United States shall be accomplished by the carrier in the most expeditious manner, with the fewest stopovers possible, and without unnecessary delays.

(e) Consistent with other procedures and requirements of the carrier, live wild mammals or birds shall be last loaded and first unloaded from a conveyance.

(f) A carrier shall not allow mammals or birds to remain for extended periods of time outside a holding area and shall move them between a holding area and a conveyance as expeditiously as possible. A carrier or shipper maintaining mammals or birds in a holding area, or transporting them to or from a holding area or between a holding area and a conveyance, shall provide the following:

(1) Shelter from sunlight. When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect animals from the direct rays of the sun.

(2) Shelter from precipitation. Animals shall be provided protection so that they remain dry during rain, snow, or other forms of precipitation.

(3) Shelter from cold. Animals shall be provided protection from cold. Protection shall include, but not be limited to, that provided by covering and/or heating of transporting devices, holding areas, conveyances or terminal facilities.

(4) Protection from harassment. Animals shall be protected from disturbances, including, but not limited to, harassment by humans, other animals, or machinery that makes noise, emits fumes, heat, or light, or causes vibration.

§ 14.112 Other applicable provisions.

In addition to the provisions of §§ 14.101–14.111, the requirements of §§ 14.121–14.172 applicable for particular groups of animals shall be met for all shipments of wild mammals and birds covered by this part.

Specifications for Nonhuman Primates

§ 14.121 Primary enclosures.

(a) No more than one primate shall be transported in a primary enclosure. However, a mother and her nursing young being transported to the United States for medical treatment, an established male-female pair, a family group, a pair of juvenile animals that have not reached puberty, or other pairs of animals that have been habitually housed together may be shipped in the same primary enclosure. Primates of different species shall not be shipped together in the same enclosure.

(b) A primary enclosure used to transport a primate shall be large enough to ensure that the animal has sufficient space to turn around freely in a normal manner, lie down, stand up (as appropriate for the species), and sit in a normal upright position without its head touching the top of the enclosure. However, a primate may be restricted in its movements according to professionally accepted standards of care when greater freedom of movement would constitute a danger to the primate or to its handler or other persons.

(c) Except as provided in § 14.106(j), ventilation openings must be located on at least two walls of a primary enclosure. When the required ventilation openings are located on two opposite walls of the primary enclosure, these ventilation openings shall comprise at least 30 percent of the total surface area of the ventilated wall and be situated above the midline of the enclosure. If ventilation openings are located on all four walls of the enclosure, the openings on each wall shall comprise at least 20 percent of the total surface area of the wall and be situated above the midline of the primary enclosure.

§ 14.122 Food and water.

(a) A nonhuman primate shall be provided water suitable for drinking within 4 hours prior to commencement of transport to the United States unless the shipper's written instructions direct otherwise. A carrier shall provide suitable drinking water to any primate at least every 12 hours after acceptance for transport to the United States, unless instructed in writing to do so more frequently by the shipper.

(b) After acceptance for transport, and unless otherwise instructed in writing by the shipper, a carrier shall provide suitable food to any nonhuman primate at least once every 12 hours.

§ 14.123 Care in transit.

(a) A primate shall be observed for signs of distress and given food and water according to the shipper's instructions during any intermediate stop that lasts more than 4 hours.

(b) Care shall be taken to keep enclosures containing primates sufficiently separated in the conveyance or holding area to minimize the risk of spread of disease from one species or shipment to another.

Specifications for Marine Mammals (Cetaceans, Sirenians, Sea Otters, Pinnipeds, and Polar Bears)

§ 14.131 Primary enclosures.

(a) A primary enclosure that is not open on top shall have air inlets situated at heights that provide cross ventilation at all levels and that are located on all four sides of the enclosure. Such ventilation openings shall comprise not less than 20 percent of the total surface area of each side of the enclosure.

(b) Straps, slings, harnesses, or other such devices used for body support or restraint when transporting marine mammals such as cetaceans or sirenians shall meet the following requirements:

(1) The devices shall not prevent attendants from having access to the mammal to administer care during transportation;

(2) The devices shall be equipped with sufficient padding to prevent trauma or injury at points of contact with the mammal's body;

(3) Slings or harnesses shall allow free movement of flippers outside of the harness or sling;

(4) The devices shall be capable of preventing the mammal from thrashing

about and causing injury to itself, handlers, or other persons, but shall be designed so as not to cause injury to the mammal.

(c) A primary enclosure used to transport marine mammals shall be large enough to assure the following:

(1) A sea otter or polar bear has sufficient space to turn about freely with all four feet on the floor and to sit in an upright position, stand, or lie in a natural position;

(2) A pinniped has sufficient space to lie in a natural position;

(3) If a sling, harness, or other supporting device is used, there are at least 3 inches (7.5 centimeters) of clearance between any body part and the primary enclosure;

(d) A marine mammal may be restricted in its movements according to professionally accepted standards of care when freedom of movement would constitute a danger to the animal or to handlers or other persons.

(e) All marine mammals contained in a given primary enclosure shall be of the same species and be maintained in compatible groups. A marine mammal that has not reached puberty shall not be transported in the same primary enclosure with an adult marine mammal other than its mother. Socially dependent animals (e.g., siblings, mother, and offspring) transported in the same conveyance shall be allowed visual and, when appropriate for the species, olfactory contact. A female marine mammal shall not be transported in the same primary enclosure with any mature male marine mammal.

§ 14.132 Food and water.

A marine mammal shall not be transported for more than a period of 36 hours without being offered suitable food unless the shipper's written instructions or the shipper's attendant travelling with the mammal direct otherwise. After feeding, a marine mammal shall be rested for 6 hours prior to resuming transport.

§ 14.133 Care in transit.

(a) Any marine mammal shall be accompanied, in the same conveyance, by the shipper or an authorized representative of the shipper knowledgeable in marine mammal care to provide for the animal's health and well-being. The shipper or representative shall observe such marine mammals to determine whether or not they need veterinary care and shall provide or obtain any needed veterinary care as soon as possible. Care during transport shall include the following (on a species-specific basis):

(1) keeping the skin moist or preventing the drying of the skin by such methods as covering with wet cloths, spraying it with water or applying a nontoxic emollient;

(2) assuring that the pectoral flippers (when applicable) are allowed freedom of movement at all times;

(3) making adjustments in the position of the mammal when necessary to prevent necrosis of the skin at weight pressure points; and

(4) calming the mammal to prevent struggling, thrashing, and other activity that may cause overheating or physical trauma.

(b) Unless otherwise directed by a shipper or authorized representative, at least one-half of the floor area in a primary enclosure used to transport sea otters to the United States shall contain sufficient crushed ice or ice water to provide each otter with moisture necessary to maintain its hair coat by preventing it from drying and to minimize soiling of the hair coat with urine and fecal material.

(c) A marine mammal exhibiting excited or otherwise dangerous behavior shall not be taken from its primary enclosure except under extreme emergency conditions and then only by the shipper or other authorized individual who is capable of handling the animal safely.

Specifications for Elephants and Ungulates

§ 14.141 Consignment to carrier.

Species that grow antlers shall not be accepted for transport unless the antlers have been shed or surgically removed.

§ 14.142 Primary enclosures.

(a) Except as provided in § 14.106(j), ventilation openings must be located on at least two walls of a primary enclosure. When the required ventilation openings are located on two opposite walls of the primary enclosure, these ventilation openings shall comprise at least 16 percent of the total surface area of each ventilated wall. When ventilation openings are located on all four walls of the primary enclosure, the openings shall comprise at least 8 percent of the total surface area of each wall. At least one-third of the minimum area required for ventilation shall be located on the lower one-half of the primary enclosure and at least one-third of the total minimum area required for ventilation shall be located on the upper one-half of the primary enclosure.

(b) No more than one elephant or ungulate shall be transported in a primary enclosure, except that: a mother and nursing young may be shipped in the same primary enclosure if the shipment complies with the provisions of § 14.105(b); in the case of land or sea transport, a pair of juvenile elephants or ungulates or other pairs that have been habitually housed together may be shipped in the same primary enclosure.

(c) A primary enclosure used to transport an elephant or ungulate shall be large enough to allow the animal to lie or stand in a natural upright position with the head extended, but not large enough for the animal to roll over.

(d) A primary enclosure used to transport an elephant or ungulate with horns or tusks shall be designed and constructed to prevent the horns or tusks from becoming trapped or injuring the animal itself, other animals nearby, attendants, or cargo handlers.

(e) A primary enclosure for an elephant or ungulate shall be equipped with a removable water trough that can be securely hung within the enclosure above the floor and can be filled from outside the enclosure.

Specifications for Sloths, Bats, and Flying Lemurs (Cynocephalidae)

§ 14.151 Primary enclosures.

(a) Except as provided in § 14.106(j), ventilation openings must be located on at least two walls of a primary enclosure. When the required ventilation openings are located on two opposite walls of the primary enclosure, these ventilation openings shall comprise at least 16 percent of the total surface area of the ventilated wall. When ventilation openings are located on all four walls, the openings shall comprise at least 8 percent of the total surface area of each wall. At least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the upper one-half of the primary enclosure.

(b) No more than one sloth, bat, or flying lemur (Cynocephalidae) shall be transported in a primary enclosure. However, a mother and her nursing young being transported for medical reasons, an established male-female pair, a family group, a pair of juvenile animals that have not reached puberty, or other small groups of animals that have been habitually housed together may be shipped in the same primary enclosure.

(c) A primary enclosure used to transport sloths, bats, or flying lemurs shall be large enough to ensure that each animal has sufficient space to move freely and in a normal manner and shall have a wide perch, bar, or mesh of suitable strength fitted under the top of the enclosure and spaced from it in such

a way that the animals may hang from it freely in a natural position.

Specifications for Other Terrestrial Mammals

§ 14.161 Primary enclosures.

(a) Except as provided in § 14.106(j), ventilation openings must be located on at least two walls of a primary enclosure. When the required ventilation openings are located on two opposite walls of the primary enclosure, these ventilation openings shall comprise at least 16 percent of the total surface area of each ventilated wall. When openings are located on all four walls of the enclosure, the openings shall comprise at least 8 percent of the total surface area of each wall. At least one-third of the minimum area required for ventilation shall be located on the lower one-half of the enclosure, and at least one-third of the total minimum area required for ventilation shall be located on the upper one-half of the enclosure.

(b) No more than one terrestrial mammal (other than rodents) shall be transported in a primary enclosure. However, a mother and her nursing young may be shipped in the same primary enclosure if the shipment complies with the provisions of § 14.105(b).

(c) More than one rodent may be transported in the same primary enclosure if they are members of the same species and are maintained in compatible groups. Rodents that are incompatible shall be transported in individual primary enclosures that are stored and transported so they are visually separated. A female with young being transported for medical reasons shall not be placed in a primary enclosure with other animals. The following chart specifies maximum densities minimum space for transporting rodents that fall within the specified weight limitations. Max.No. refers to maximum number per primary enclosure; Space/animal refers to minimum area of floor space per animals. Rodents weighing more than 5,000 grams shall be transported in individual enclosures.

DENSITY GUIDELINES FOR RODENTS

	Max. No.	Space/animal		Ht. of box	
		cm^2	in^2	cm	in
wt. in grams of rodent:					
220 or less	20	194	30	15	6
220–450	12	388	60	20	8
450–1000	6	770	120	25	10
1,000–5,000	2	2,310	360	30	12

(d) A primary enclosure used to transport terrestrial mammals shall be large enough to ensure that each animal has sufficient space to turn around freely in a normal manner. The height of the primary enclosure shall provide adequate space for the animal to stand upright in a normal posture with space above its head. The length of the primary enclosure shall be great enough to enable the animal to lie in a full prone position.

Specifications for Birds

§ 14.171 Consignment to carrier.

(a) A personally owned pet bird originally transported from the United States and being returned to this country with its original United States certificate of veterinary inspection within 60 days of departure may be accepted by a carrier without a new veterinary examination.

(b) No carrier shall accept for transport to the United States any bird that was captured in the wild unless a qualified veterinarian, authorized by the national government of the country from which the bird is being exported, certifies that the bird has been held in captivity for at least 14 days.

§ 14.172 Primary enclosures.

(a) A primary enclosure for birds shall have ventilation openings on two vertical sides that comprise at least 16 percent of the surface area of each side and are positioned so as to decrease the likelihood of creating a draft.

(b) Perches shall be provided for birds that rest by perching. The diameter of the perch shall be sufficient to permit the birds to maintain a firm, comfortable grip. Perches shall be placed so that droppings do not fall into food or water troughs or onto other perched birds. There shall be enough head room to allow the birds to move onto and off the perches without touching the top of the enclosure.

(c) An enclosure used to transport one or more birds that rest by perching shall be large enough to ensure that sufficient perch space is available for all birds to perch comfortably at the same time. No more than 50 birds that rest by perching shall be transported in one primary enclosure, with the exception of large birds (longer than 23 cm, or 9 inches), which are limited to a maximum of 25 per primary enclosure.

(d) A primary enclosure used to transport a raptorial bird shall be large enough to transport the bird comfortably and to permit it to turn around without stretching its wings to the fullest extent. Only one raptorial bird shall be contained in a primary enclosure.

(e) A primary enclosure containing nonraptorial birds that do not rest by perching shall be large enough for the birds to turn around, to lie down, to stand erect, and to change posture in a normal manner.

(f) Nectar-feeding birds shall either be transported in a primary enclosure equipped with feeding bottles accessible from outside the enclosure for replenishment or hand-carried and fed in accordance with the written instructions of the shipper.

(g) Birds transported in the same primary enclosure shall be of the same species and be compatible with one another. Birds that are incompatible shall be placed in individual primary enclosures and these enclosures shall not be stored or transported in visual proximity to one another.

Note: This document was received at the Office of the Federal Register on May 19, 1992.

Dated: January 17, 1992.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–12094 Filed 6–16–92; 8:45 am]

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June 17, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Inclusion of Program Income in CDBG Calculations of Public Service Spending Caps; Homeownership Assistance; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-92-1593; FR-2905-I-01]

RIN 2506-AB24

Inclusion of Program Income in CDBG Calculations of Public Service Spending Caps; Homeownership Assistance

AGENCY: Office of the Assistant Secretary for Community Planning and Development, CPD.

ACTION: Interim rule.

SUMMARY: This rule amends the regulations for the Community Development Block Grant (CDBG) Program to permit CDBG entitlement recipients to include program income in the base amount of CDBG funds from which the funds available for public services are calculated and to permit CDBG funds to be used for homeownership assistance. Additionally, the rule makes clarifying changes to the CDBG conflict of interest regulations.

DATES: Effective July 17, 1992. Comment Due Date: August 17, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Office of Community Planning and Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1577. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Statutory Changes in the Regulations

Public Services Cap

Section 908 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (NAHA) amended section 105(a)(8) of the Housing and Community Development Act of 1974, (42 U.S.C. 5305) (HCD Act), to include program income in the base amount for calculating the maximum amount of CDBG funds that may be used for public service activities. The inclusion of program income in this calculation will increase the amount of CDBG funds a grantee may use for public services.

This provision is being partially implemented by interim regulation at this time so that entitlement grantees may have the immediate benefit of the increased amount of CDBG funds available for public services. Comment is specifically requested on the time period in which program income is received that is to be used in calculating the cap for a particular year, and on how the addition of program income affects the exception to the 15% cap that was earlier provided under § 570.201(e)(3).

In selecting the period over which program income is received that is to be credited for purposes of determining the cap for a grantee, HUD considered three alternatives: program income received during the grantee's program year for which the cap is being determined; program income received during the immediately preceding program year; or, program income received during the program year prior to the immediately preceding program year.

Using program income received during the program year for which the cap is being determined would have precedent in the CDBG program. It is currently used for calculating how much an entitlement grantee may use for planning and administration. (See 24 CFR 570.200(g).) Moreover, in preparing its final statement for a given year, the grantee is required to plan for the use of the amount of program income it expects to receive during that year. (§ 570.301(b)(1)(i)). However, for almost all grantees, there is a significant disparity between the program income estimated and what is reported as actually received in the annual performance reports. Many grantees miss by a very large margin, reflecting the degree to which the grantee cannot control when this income will be received. Grantees frequently contract with smaller non-profit entities for the delivery of public services. For such organizations, it is critical to their survival that they know how much they will receive and when they will receive it. Consequently, many grantees enter into contracts for public services early in the year, and it is much more difficult for the grantee to adjust the amount of funds it obligates for these activities late in the year if it becomes apparent that the amount of income estimated is not materializing. It is vital, therefore, that grantees have a high level of confidence in the amount of funds that they may use for such services. For these reasons, the use of the income received in the program year for which the cap is being calculated was not selected for this purpose.

For many of the reasons discussed above, the Department has selected the program year immediately preceding the year for which the cap is being determined as the period during which receipts of program income will be credited for this purpose, so that the grantee can have a high level of certainty about the amount available for public services. While it is true that the amount will not be fully known until the end of that program year and the grantee will have to proceed with its citizen participation based on an estimate, the grantee should have a reasonably solid estimate by the time the final statement is submitted. Even more importantly, the amount would be fully known by the time the grantee will need to make contracts for the provision of public services that would be governed by that figure.

The use of a time period that ends one year before the beginning of the program year for which the cap is being determined has one principal advantage: It would offer absolute certainty about the amount of program income receipts during the presubmission, planning stages. But the Department believes this period is too far removed in time from the period in which the obligation of funds for public services is to be measured. A grantee that received even an exceptionally large amount of program income in a given program year could be expected to have programmed and obligated most of those funds by the end of the following program year. Therefore, it would make too little sense to base the determination of the public services limitation on an amount of funds that is not likely even to be available for expenditure on such services.

Accordingly, § 570.201(e) of the Title 24 of the Code of Federal Regulations is being amended to permit CDBG entitlement recipients to use the amount of the program income (as defined at § 570.500(a)) received by the grantee in the program year preceding the program year for which the public services cap is being determined.

The wording of § 570.201(e) is also being changed to eliminate the current impression that public services must meet each of the criteria at § 570.201(e)(1), (2), and (3), because this effect was unintended. Under section 105(a)(8) of

the Act, public services must meet the requirements as stated in § 570.201(e)(1), and those stated in either § 570.201(e) (2) or (3), but they need not meet the requirements of all three. Therefore, existing paragraph (1) has been incorporated into the introductory paragraph to paragraph (e); a statement has been added to (e) that the amount of CDBG funds used for public services shall not exceed newly revised (1) or (2); and paragraph (1) now provides that the amount of program income received during the preceding program year is to be included in the base used for calculating the public services cap for Entitlement grantees.

The exception provision currently at § 570.201(e)(3) allows a grantee (instead of having to follow the general rule of 15%) to determine the cap amount of CDBG funds available to it for public services by using the percentage or amount obligated in Federal fiscal year 1982 or 1983. That provision is changed in this rule to allow entitlement grantees to use the amount authorized under the exception provision plus 15% of the program income received in the program year preceding the year for which the cap is being determined. HUD believes that the intention of the statutory amendment to section 105(a)(8) of the HCD Act is to enable grantees to use 15% of their program income for public services in addition to the amount they could use for such activities before the amendment.

It is arguable that program income should be considered in a different way where the exception provision is applicable. For example, the amount of program income received during fiscal year 1982 or 1983 could be considered for determining whether and how to apply the exception. However, there are several reasons why HUD does not believe that it should be so used: first, during that period, audits and monitoring found a consistent pattern of grantees failing to keep accurate records of program income receipts. Accordingly, it is probable that many of the affected grantees did not keep sufficiently accurate records for this purpose and it would be virtually impossible to reconstruct those figures accurately. It is also important to note that during 1982–83 the regulatory definition of program income was ambiguous. (It was modified to add clarity in 1988.) Finally, a decision to include program income for this purpose could disqualify a grantee that currently uses the exception from being able to continue to do so. (This is because if a grantee that has been qualifying for the exception had received a large amount of program income during those years, the inclusion of that income could mean that the amount of funds actually used for public services in those years would represent less than 15% of the recomputed base, thus making the grantee ineligible for the exception.) The Department does not believe that such an outcome was intended. Accordingly, the determination of the percent of funds used for public services during those two years would continue to be made only against the amount of grant received for those years, as under the current rule.

This rule does not change the calculation of the public services cap for the HUD-administered, Indian and Insular area CDBG programs. These programs are administered differently than the Entitlement program and require separate consideration. The Department has not received requests for waiver (before enactment of NAHA) to include program income in determining the cap on public services under either of these programs. Therefore, rulemaking will be deferred on how program income will be treated for them, until further thought can be given concerning their unique aspects. To assist the Department in this effort, public comment is specifically invited on whether and how program income should be used in the computation of the public services cap for grantees in these programs.

This rule also does not apply to the State-administered small cities program. Separate rulemaking will be undertaken for that program to implement the new statutory provision.

Homeownership Assistance

Section 907 of NAHA amended the HCD Act to add a new paragraph (20) to section 105(a). The amendment makes homeownership assistance an eligible activity. Grantees were notified shortly following enactment that they may make use of the new category immediately, based on the clear language of the statutory provision itself. The provision was implemented immediately in that manner and is now being included in the regulations by means of an interim rule because the NAHA provides that the provision is terminated, effective October 1, 1992, or October 1, 1993 if HUD determines that the later date is necessary to continue to provide homeownership assistance until homeownership assistance is available under the HOME program.

A new paragraph (n) is added to § 570.201 making eligible the provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income. The specific categories of assistance that are made eligible are delineated. Because of the above-mentioned termination date, the regulation limits assistance provided under this authority to that which is provided during the period from November 28, 1990 to September 30, 1992. (If necessary to extend this authority, the Department will revise this provision.)

The provision added in this rule closely follows the language of the statutory provision which authorizes this assistance. Comment is invited on whether clarification is needed on any of the specific forms of assistance made eligible in the rule.

This provision is being added as a new paragraph, because the statute specifically states that assistance provided under this authority shall not be considered a public service. (Before the statutory amendment, grantees could not provide homeownership assistance because it was ineligible under § 570.207(b)(4). When made eligible by being carried out by a subrecipient under § 570.204(c), this category of assistance was considered a public service and was subject to the limitations provided under § 570.201(e).)

II. Changes Not Related to Statutory Amendment

This rule also incorporates two changes not stemming from statutory amendment: A change to the prohibition against conflicts of interest in the use of CDBG funds; and a broadening of the form in which CDBG funds may be provided for use by subrecipients. Both of these changes are being made at this time in response to a number of comments received from grantees and other interested parties in connection with specific cases involving application of the regulations.

Conflicts of Interest

While not required by statute, for many years the Department has by regulation prohibited conflicts of interest in the use of CDBG funds. (The regulation does not apply to conflicts in regard to procurement contracts, which are covered by 24 CFR part 85.) Before this rulemaking, 24 CFR 570.611 defined the prohibited conflicts to include the situation where a covered person may obtain a "personal or financial interest or benefit" from a CDBG-assisted activity. The regulation provided no further definition of what might be considered to be a "personal" interest or benefit. This lack of detail led to many questions and a great deal of ambiguity as to the circumstances that would constitute a conflict based on personal

interest or benefit. One of the most problematic areas has been with respect to public officials participating in the affairs of local non-profit organizations. Many grantees make a practice of designating some of their elected or appointed officials to serve on the boards of non-profit organizations that operate in areas they consider to be in the public interest. In such situations, the question arises whether the provision of CDBG funds to a non-profit organization constitutes a conflict because of the presence of a grantee official on the non-profit's board. If the grantee official is not receiving a salary or any other compensation for serving on the board, the only interest or benefit that might be construed for the official would be a personal one. In some cases, HUD determined situations of this kind to constitute a personal interest and thus CDBG funds could not be made available to the non-profit since it would result in a prohibited conflict. However, HUD believes that this kind of public participation often is beneficial and should not be discouraged.

The Department considered the possibility of revising the rule to identify more specifically the kinds of personal interests or benefits that should be prohibited without preventing public official participation of the kind described. An important purpose of the conflicts rule is to protect the reputation of the program from the appearance of providing special treatment or serving special interests. Clearly, there are some situations where even a non-financial interest or benefit could create such an appearance. However, HUD has been unable to identify clear criteria that would serve to distinguish the kinds of personal interest or benefits that should be prohibited in such cases. The Department therefore, believes that the conflict rules should now be limited to the prohibition of situations that provide a financial interest or benefit. Accordingly, in this rule the term "personal" has been removed from § 570.611(b). Public comment is invited on this issue, especially on identifying any specific kinds of non-financial interests or benefits that should be prohibited.

Loans to Subrecipients

Almost from the beginning of the program, grantees have been involving non-profit organizations in their local CDBG programs. In 1977, the statute was amended to expressly authorize grantees to make subgrants to certain qualified types of subrecipients for neighborhood revitalization or community economic development under section 105(a)(15) of the HCD Act. In addition, subsection 105(a)(14) of the HCD Act was added authorizing the use of CDBG funds for a broad array of activities carried out by public and private nonprofit entities. In 1983, § 570.200(f) was added to the regulations listing the means by which grantees could carry out eligible activities, including through agreements with public or private entities as subrecipients. In 1987, section 105(a)(15) was amended to permit grantees to make loans to subrecipients qualified under that provision, in addition to subgrants, and the implementing regulation at § 570.204 was amended accordingly. Over time, non-profit organizations have proliferated, and many have become involved in carrying out a wide variety of community and economic development and housing activities. Today, many grantees consider non-profit organizations to be a vital component of their community and economic development strategies. Most CDBG grantees use subrecipients to some degree in carrying out community development activities, and many grantees involve a large number of them in the CDBG program in any given year.

Early in 1991, a question arose concerning whether grantees could lend funds to other kinds of subrecipients than those expressly qualified for loan assistance under § 570.204. An opinion was issued on February 8, 1991 construing the regulations to authorize grantees to make loans only for (1) rehabilitation financing, (2) assistance to for-profits for economic development projects, and (3) subrecipient activities qualified under § 570.204. Several grantees contacted the Department expressing concern about the limitations this imposed on their ability to meet their objectives. They argued that not only do the regulations fail clearly to express such a limitation, but imposing it unduly restricted their flexibility. Two major interest groups (National Association of Counties and National Community Development Association) reacted similarly.

The Department believes that grantees should be given additional flexibility to maximize the impact of the funds available under this program. Therefore, this rule amends § 570.200(f)(1)(ii) to state that grantees may carry out activities through loans or grants under agreements with all subrecipients. Comments are solicited on whether any restrictions should be imposed on the rule.

This rule also makes certain other changes related to subrecipients. In reviewing the matter concerning loans to subrecipients, HUD discovered an anomaly that can occur when grantees provide funds to subrecipients in the form of loans. The question arises as to the appropriate treatment of program income when the loan proceeds are used in a manner that generates income. For example, when loaned funds are used to purchase property, under the definition of program income in current regulations both the proceeds from the sale of such property and the loan repayments constitute CDBG program income. [24 CFR 570.500(a)(1)]. If the recipient wanted to allow the subrecipient to use the program income generated by the sale to repay the loan, it could not do so. This is because program income must be used for activities eligible under the CDBG regulations, and the repayment of such a loan is not an eligible use of CDBG funds. However, the recipient may accomplish the same purpose by having the subrecipient return to the recipient the program income generated by the sale of the property and consider that to satisfy the loan obligation. Because the current definition of program income does not take into account such a transaction, both the sales proceeds received by the subrecipient and the loan repayment received by the recipient could be misconstrued to be program income. This would overstate the actual amount of income to the CDBG program and could be used by the recipient to receive excess credit towards calculating the caps on planning and administration and public services. (24 CFR 570.200(g) and 570.201(e)). (Both of those caps are based, in part, on how much program income is received during a particular period of time.) In order to avoid such an outcome, the definition of program income is amended in this rule at § 570.500(a)(1)(v) and (a)(3) to make clear that when the ecipient accepts CDBG program income received by a subrecipient as the fulfillment of an obligation to repay a loan made by the recipient to the subrecipient using CDBG funds, the payments to the grantee are considered to be a transfer of program income from the subrecipient and not additional program income. In a related matter, it was noted that the "reversion of assets" provision required to be included in the agreement between the recipient and the subrecipient makes the subrecipient responsible for "reimbursing" the recipient under certain circumstances. (§ 570.503(b)(8)(ii)) Because it could create confusion as to whether the repayment of the loan, where applicable, would constitute fulfillment of this responsibility, changes are also made in this rule to that provision.

replacing the term "reimbursement" with "payment" and making other conforming changes.

Two other changes related to subrecipients are also being made at this time to clarify current rules. The definition of the term subrecipients at § 570.500(c) is modified to make clear that the term includes entities that receive CDBG funds through another subrecipient as well as those that receive funds from the grantee directly. An amendment is also being made to the requirement at § 570.501(b) concerning the treatment of units of government participating as part of an urban county or metropolitan city. The period of time to be used for such units of government for purposes of assets reversion under § 570.503(b)(8)(i) is modified to be five years from the date that it is no longer considered by HUD to be part of the metropolitan city or urban county, rather than from the date that the subrecipient agreement expires.

III. Other Matters

The Department finds that there is good cause to publish this rule as an interim rule, to be effective before the receipt of public comment, since the provisions of the rule are intended, in post instances, to ease program administration for affected grantees. In other instances, the rule makes conforming changes to the CDBG program regulations to reflect recent statutory amendments. While the rule will become effective 30 days after publication, the Department will take public comments received in response to the rule into account in developing a final rule at a later time.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary, in approving this rule for publication, has certified in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act) that this rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to changes in the CDBG program that affect local decision making concerning the expenditure of available funds for an array of authorized purposes. The impact on small entities if any, should be indirect and minor.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This rule carries out statutory directions concerning Federal controls on the use of block grant funds, and represents the minimum degree of interference with local government decision making consonant with the CDBG statute.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. Its subject matter affects only the expenditure, by grantees, of funds received under the block grant program and program income derived from those funds. Any affect on the family would be indirect and minor.

This rule was listed as item 1211 in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16837), in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pecific Islands Trust Territory, Puerto Rico, Reporting and record keeping requirements, Virgin Islands, Student aid.

Accordingly, part 570 of title 24 of the Code of Federal Regulations is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart C—Eligible Activities

1. The authority citation for part 570 is revised to read as follows:

Authority: 42 U.S.C. 5300–5320; 42 U.S.C. 3535(d).

2. In § 570.200, paragraph (f)(1)(ii) is revised to read as follows.

§ 570.200 General policies.

* * * * *

(f) * * *

(1) * * *

(ii) Through loans or grants under agreements with subrecipients, as defined at § 570.500(c); or

* * * * *

3. In § 570.201, paragraph (e) is revised and a new paragraph (n) is added, to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(e) *Public services.* Provision of public services (including labor, supplies, and materials) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education; fair housing counseling, energy conservation, welfare, or recreational needs. To be eligible for CDBG assistance, a public service must be either a new service, or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the unit, or received by the unit from the State in which it is located) in the twelve calendar months before the submission of the statement. (An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the unit of general local government.) The amount of CDBG funds used for public services shall not exceed paragraphs (e) (1) or (2) of this section, as applicable:

(1) The amount of CDBG funds used for public services shall not exceed 15 percent of each grant, except that for

entitlement grants made under subpart D of this part, the amount shall not exceed 15 percent of the grant plus 15 percent of program income, as defined in § 570.500(a). For entitlement grants under subpart D of this part, compliance is based on limiting the amount of CDBG funds obligated for public service activities in each program year to an amount no greater than 15 percent of the entitlement grant made for that program year plus 15 percent of the program income received during the grantee's immediately preceding program year.

(2) A recipient which obligated more CDBG funds for public services than 15 percent of its grant funded from Federal fiscal year 1982 or 1983 appropriations (excluding program income and any assistance received under Public Law 98–8), may obligate more CDBG funds than allowable under paragraph (e)(1) of this section, so long as the total amount obligated in any program year does not exceed:

(i) For an entitlement grantee, 15% of the program income it received during the preceding program year; plus

(ii) a portion of the grant received for the program year which is the highest of the following amounts:

(A) The amount determined by applying the percentage of the grant it obligated for public services in the 1982 program year against the grant for its current program year;

(B) The amount determined by applying the percentage of the grant it obligated for public services in the 1983 program year against the grant for its current program year;

(C) The amount of funds it obligated for public services in the 1982 program year; or,

(D) The amount of funds it obligated for public services in the 1983 program year.

* * * * *

(n) *Homeownership assistance.* During the period from November 28, 1990 to September 30, 1992, CDBG funds may be used to provide direct homeownership assistance among low- and moderate-income persons to—

(1) Subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

(2) Finance the acquisition, by low- and moderate-income homebuyers, of housing that is occupied by the homebuyers;

(3) Acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that CDBG funds may not be used to guarantee such mortgage financing directly, and grantees may not provide such guarantees directly);

(4) Provide up to 50 percent of any downpayment required from a low- or moderate-income homebuyer; or

(5) Pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low- or moderate-income homebuyer.

Subpart J—Grant Administration

4. In § 570.500, paragraph (a)(1)(v) and the first sentence of paragraph (c) is revised, and a new paragraph (a)(3) is added, to read as follows:

§ 570.500 Definitions.

* * * * *

(a) * * *

(1) * * *

(v) Payments of principal and interest on loans made using CDBG funds, except as provided in paragraph (a)(3) of this section;

* * * * *

(3) The calculation of the amount of program income for the recipient's CDBG program as a whole (i.e., comprising activities carried out by a grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on loans received from grantees where such payments are made from program income received by the subrecipient. (By making such payments, the subrecipient shall be deemed to have transferred program income to the grantee.) The amount of program income derived from this calculation shall be used for reporting purposes and in determining limitations on planning and administration and public services activities to be paid for with CDBG funds.

* * * * *

(c) *Subrecipient* means a public or private nonprofit agency, authority or organization, or an entity described in § 570.204(c), receiving funds from the recipient or another subrecipient to undertake activities eligible for assistance under subpart C of this part.

* * *

5. In § 570.501, paragraph (b) is amended by adding a phrase to the end of the last sentence, to read as follows:

§ 570.501 Responsibility for grant administration.

(b) * * *, except that the five-year period identified under § 570.503(b)(8)(i) shall begin with the date that the unit of general local government is no longer considered by HUD to be a part of the metropolitan city or urban county, as applicable, instead of the date that the subrecipient agreement expires.

6. In § 570.503, the introductory text in paragraph (b)(8) is amended by inserting the phrase "(including CDBG funds provided to the subrecipient in the form of a loan)" in the second sentence immediately after the words "CDBG funds", and paragraph (b)(8)(ii) is revised to read as follows:

§ 570.503 Agreements with subrecipients.

* * * * *

(b) * * *

(ii) Not used in accordance with paragraph (b)(8)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(8)(i) of this section.)

Subpart K—Other Program Requirements

7. In § 570.611, paragraph (b) is revised to read as follows:

§ 570.611 Conflict of interest.

* * * * *

(b) *Conflicts prohibited.* Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or to gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For the UDAG program, the above-stated restriction shall apply to all activities that are a part of the UDAG project, and shall cover any financial interest or benefit during, or at any time after, the person's tenure.

* * * * *

Dated: May 8, 1992.

Randall Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92–14148 Filed 6–16–92; 8:45 am]

BILLING CODE 4210–29–M

federal register

Wednesday
June 17, 1992

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of June 1, 1992, of 128 rescission proposals and 11 deferrals contained in the special messages for FY 1992. These messages were transmitted to Congress on September 30, and December 19, 1991, and on February 19, March 10, March 20, April 8, and April 9, 1992.

Rescissions (Table A and Attachment A)

As of June 1, 1992, 128 rescission proposals totaling $7,879.5 million were pending before Congress. Of the total amount proposed for rescission, $2,199.9 is currently being withheld. Attachment A shows the history and status of each rescission proposed during FY 1992.

Deferrals (Table B and Attachment B)

As of June 1, 1992, $3,039.3 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1992.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

56 FR 50620, Monday, October 7, 1991.
56 FR 67402, Monday, December 30, 1991.
57 FR 6644, Wednesday, February 26, 1992.
57 FR 11140, Wednesday, April 1, 1992.
57 FR 11528, Friday, April 3, 1992.
57 FR 13151, Wednesday, April 15, 1992.
57 FR 13779, Friday, April 17, 1992.

Richard Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1992 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	7,879.5
Rescission proposals rejected by the Congress.....	---
Rescission proposals for which funding was previously withheld and has been released.....	-5,654.5
Rescission proposals for which funding was not withheld.....	-25.0
Rescission proposals for which funding is currently being withheld.....	-2,199.9

TABLE B

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	5,631.1
Routine Executive releases through June 1, 1992 (OMB/Agency releases of $3,725.2 million, partially offset by cumulative positive adjustments of $1,133.4 million).....	-2,591.8
Overturned by the Congress.....	---
Currently before the Congress.....	3,039.3

Attachments

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

As of June 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research Service								
Building and facilities	R92-36		250	3-20-92		250	5-29-92	
	R92-37		500	3-20-92		500	5-29-92	
	R92-38		500	3-20-92		500	5-29-92	
	R92-39		2,710	3-20-92		2,710	5-29-92	
	R92-40		375	3-20-92		375	5-29-92	
	R92-41		3,050	3-20-92		3,050	5-29-92	
	R92-42		225	3-20-92		225	5-29-92	
Cooperative State Research Service	R92-43		225	3-20-92		225	5-29-92	
	R92-44		750	3-20-92		750	5-29-92	
	R92-45		94	3-20-92		94	5-29-92	
	R92-46		39	3-20-92		39	5-29-92	
	R92-47		387	3-20-92		387	5-29-92	
	R92-48		85	3-20-92		85	5-29-92	
	R92-49		49	3-20-92		49	5-29-92	
	R92-50		125	3-20-92		125	5-29-92	
	R92-51		185	3-20-92		185	5-29-92	
	R92-52		120	3-20-92		120	5-29-92	
	R92-53		134	3-20-92		134	5-29-92	
	R92-54		100	3-20-92		100	5-29-92	
	R92-55		46	3-20-92		46	5-29-92	
	R92-56		200	3-20-92		200	5-29-92	
	R92-57		250	3-20-92		250	5-29-92	
	R92-58		50	3-20-92		50	5-29-92	
	R92-59		187	3-20-92		187	5-29-92	
	R92-60		140	3-20-92		140	5-29-92	
	R92-61		76	3-20-92		76	5-29-92	
Extension Service								
Extension Service	R92-62		647	3-20-92		647	5-29-92	
	R92-63		150	3-20-92		150	5-29-92	

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As of June 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress Less than 45 days	 More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
National Agricultural Library								
National Agricultural Library	R92-64		500	3-20-92		462 1/	5-29-92	
Animal and Plant Inspection Service								
Salaries and expenses	R92-35		100	3-20-92		100	5-29-92	
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R92-2		21,425	3-10-92		21,425	5-11-92	
DEPARTMENT OF DEFENSE								
Operation and Maintenance								
Operation and maintenance, Army	R92-3		92,850	3-10-92		92,850	5-11-92	
Operation and maintenance, Navy	R92-4		104,650	3-10-92		104,650	5-11-92	
Operation and maintenance, Marine Corps	R92-5		22,000	3-10-92		22,000	5-11-92	
Operation and maintenance, Air Force	R92-6		4,500	3-10-92		4,500	5-11-92	
Operation and maintenance, Defense Agencies	R92-7		20,200	3-10-92		20,200	5-11-92	
Procurement								
Aircraft procurement, Army	R92-103	133,000		4-9-92				
Procurement of weapons and tracked combat vehicles, Army	R92-9		110,000	3-10-92		110,000	5-11-92	
	R92-104	225,000		4-9-92				
	R92-105	196,300		4-9-92				
	R92-106	17,600		4-9-92				
Procurement of ammunition, Army	R92-10		1,000	3-10-92		1,000	5-11-92	
Aircraft procurement, Navy	R92-11		262,000	3-10-92		262,000	5-11-92	

1/ Only $462,000 was withheld from obligation.

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

As of June 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
	R92-107	15,000		4-9-92				
	R92-108	8,000		4-9-92				
Weapons procurement, Navy	R92-12		13,200	3-10-92		13,200	5-11-92	
	R92-109	130,000		4-9-92				
	R92-110	4,000		4-9-92				
	R92-111	60,000		4-9-92				
Shipbuilding and conversion, Navy	R92-13		238,100	3-10-92		238,100	5-11-92	
	R92-101		2,765,900	3-20-92		2,765,900	5-21-92	
Other procurement, Navy	R92-14		41,300	3-10-92		41,300	5-11-92	
	R92-102		189,400	3-20-92		189,400	5-21-92	
	R92-112	10,000		4-9-92				
	R92-113	4,000		4-9-92				
	R92-114	2,000		4-9-92				
Procurement, Marine Corps	R92-15		40,200	3-10-92		40,200	5-11-92	
	R92-115	6,500		4-9-92				
Procurement, Defense Agencies	R92-16		154,800	3-10-92		154,800	5-11-92	
National guard and reserve equipment	R92-116	21,000		4-9-92				
	R92-117	799,300		4-9-92				
	R92-118	67,000		4-9-92				
	R92-119	9,300		4-9-92				
	R92-120	45,000		4-9-92				
	R92-121	15,000		4-9-92				
	R92-122	20,000		4-9-92				
	R92-123	60,000		4-9-92				
	R92-124	15,000		4-9-92				
evaluation, Army	R92-18		102,200	3-10-92		102,200	5-11-92	
	R92-125	4,000		4-9-92				
Research, development, test, and evaluation, Navy	R92-19		140,600	3-10-92		140,600	5-11-92	
Research, development, test, and evaluation, Air Force	R92-20		127,100	3-10-92		127,100	5-11-92	
	R92-21		375,900	3-10-92		375,900	5-11-92	

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(Amounts in thousands of dollars)

As of June 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress Less than 45 days	 More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
	R92-126	3,000		4-9-92				
	R92-127	248,800		4-9-92				
Research, development, test, and evaluation, Defense Agencies	R92-128	5,000		4-9-92				
	R92-129	6,000		4-9-92				
	R92-130	70,000		4-9-92				
Military Construction								
Military construction, Army	R92-22		9,050	3-10-92		9,050	5-11-92	
Military construction, Navy	R92-23		17,400	3-10-92		17,400	5-11-92	
Military construction, Air Force	R92-24		6,000	3-10-92		6,000	5-11-92	
Military construction, Defense Agencies	R92-25		48,000	3-10-92		48,000	5-11-92	
Military construction, Army National Guard	R92-26		16,565	3-10-92		16,565	5-11-92	
Military construction, Air National Guard	R92-27		306	3-10-92		306	5-11-92	
Military construction, Army Reserve	R92-28		2,749	3-10-92		2,749	5-11-92	
Military construction, Naval Reserve	R92-29		36,000	3-10-92		36,000	5-11-92	
DEPARTMENT OF DEFENSE-CIVIL								
Corps of Engineers								
Construction, general	R92-91		3,000	3-20-92		3,000	5-21-92	
Operation and maintenance, general	R92-92		1,350	3-20-92		1,350	5-21-92	
DEPARTMENT OF ENERGY								
Energy Programs								
Fossil energy research and development	R92-34	145		4-8-92				

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

As of June 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R92-30		25,000 2/	3-10-92				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R92-65		547,659	3-20-92		547,659	5-21-92	
	R92-66		1,500	3-20-92		1,500	5-21-92	
	R92-67		1,000	3-20-92		1,000	5-21-92	
	R92-68		2,000	3-20-92		2,000	5-21-92	
	R92-69		150	3-20-92		150	5-21-92	
	R92-70		100	3-20-92		100	5-21-92	
	R92-71		1,200	3-20-92		1,200	5-21-92	
	R92-72		1,000	3-20-92		1,000	5-21-92	
	R92-73		1,300	3-20-92		1,300	5-21-92	
	R92-74		3,900	3-20-92		3,900	5-21-92	
	R92-75		2,500	3-20-92		2,500	5-21-92	
	R92-76		1,500	3-20-92		1,500	5-21-92	
	R92-77		500	3-20-92		500	5-21-92	
	R92-78		1,000	3-20-92		1,000	5-21-92	
	R92-79		1,000	3-20-92		1,000	5-21-92	
	R92-80		505	3-20-92		505	5-21-92	
	R92-81		65	3-20-92		65	5-21-92	
	R92-82		101	3-20-92		101	5-21-92	

2/ Funding was never withheld.

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

As of June 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
	R92-83		1,500	3-20-92		1,500	5-21-92	
	R92-84		700	3-20-92		700	5-21-92	
	R92-85		1,000	3-20-92		1,000	5-21-92	
Annual contributions for assisted housing	R92-86		800	3-20-92		800	5-21-92	
Congregate services program	R92-1		16,700	2-19-92		16,700	4-6-92	
Flexible subsidy fund	R92-31		25,000	3-10-92		25,000	5-11-92	
Policy Development and Research								
Research and technology	R92-87		400	3-20-92		400	5-21-92	
DEPARTMENT OF THE INTERIOR								
National Park Service								
Construction	R92-89		7,700	3-20-92		7,700	5-21-92	
Operation of the national park system	R92-90		1,975	3-20-92		1,975	5-21-92	
Bureau of Indian Affairs								
Operation of Indian programs	R92-32		5,880	3-10-92		5,880	5-11-92	
Construction	R92-88		8,593	3-20-92		8,593	5-21-92	
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R92-33		9,880	3-10-92		9,880	5-11-92	

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

As of June 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
ENVIRONMENTAL PROTECTION AGENCY								
Research and development	R92-98		116	3-20-92		116	5-21-92	
Abatement, control and compliance	R92-93		1,250	3-20-92		1,250	5-21-92	
	R92-94		390	3-20-92		390	5-21-92	
	R92-95		70	3-20-92		70	5-21-92	
	R92-96		1,450	3-20-92		1,450	5-21-92	
Buildings and facilities	R92-97		20,000	3-20-92		20,000	5-21-92	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Construction of facilities	R92-99		3,400	3-20-92		3,400	5-21-92	
Research and development	R92-100		750	3-20-92		750	5-21-92	
TOTAL RESCISSIONS		2,199,945	5,679,528		0	5,654,490		0

ATTACHMENT B
Status of FY 1992 Deferrals – As of June 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 6–1–92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D92–1	244,777		09–30–91					
	D92–1A		1,623,312	12–19–91	1,508,249			1,108,866	1,468,706
Foreign military financing	D92–8	1,908,000		12–19–91	996,300				911,700
Agency for International Development									
International disaster assistance, Executive	D92–2	40,704		09–30–91					
	D92–2A		12,483	02–19–92	42,731				10,456
Demobilization and transition fund	D92–9	13,000		12–19–91					13,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D92–3	482,378		09–30–91	135,434				346,944
Expenses, brush disposal	D92–10	101,006		12–19–91					101,006
Timber salvage sales	D92–11	131,549		02–19–92	7,000				124,549
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D92–4	1,416		09–30–91	93				1,324

ATTACHMENT B
Status of FY 1992 Deferrals – As of June 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 6–1–92
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92–5	7,317		09–30–91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92–6	30,053		09–30–91					
	D92–6A		24,750	12–19–91	25,000			24,520	54,323
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92–7	1,010,375		09–30–91	1,010,375				0
TOTAL, DEFERRALS		3,970,575	1,660,545		3,725,182	0		1,133,386	3,039,324

[FR Doc. 92–14216 Filed 6–16–92; 8:45 am]
BILLING CODE 3110–01–C

federal register

Wednesday
June 17, 1992

Part V

The President

Memorandums of June 15—Actions Concerning the Generalized System of Preferences

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Presidential Documents

Title 3—

The President

Memorandum of June 15, 1992

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

Pursuant to section 504 of the 1974 Act, after considering various requests for a waiver of the application of section 504(c) of the 1974 Act (19 U.S.C. 2464(c)) with respect to certain eligible articles, I have determined that it is appropriate to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to certain articles and to certain beneficiary developing countries.

Specifically, pursuant to section 504(c)(3) of the 1974 Act (19 U.S.C. 2464(c)(3)), I have determined that it is appropriate to waive the application of section 504(c) of the 1974 Act with respect to Harmonized Tariff Schedule of the United States (HTS) subheading 2401.10.40 for Turkey. I have received the advice of the United States International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waiver, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)), that such waiver is in the national economic interest of the United States.

Further, I have also determined, pursuant to section 504(d)(1) of the 1974 Act (19 U.S.C. 2464(d)(1)), that the limitation provided for in section 504(c)(1)(B) of the 1974 Act (19 U.S.C. 2464(c)(1)(B)) should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985. Such articles are enumerated in the list below of HTS subheadings.

These determinations shall be published in the **Federal Register**.

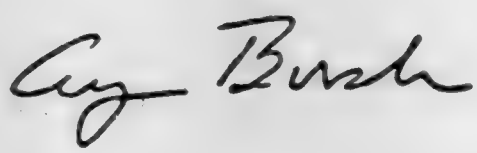

THE WHITE HOUSE,
Washington, June 15, 1992.

Billing code 3190-01-M

ANNEX A

HTS subheadings for which no like or directly competitive article was produced in the United States on January 3, 1985

HTS Subheading
2401.10.40
2904.10.04
2907.15.30
2908.20.08
2908.20.15
2914.61.00
2922.30.14
2925.20.15
2926.90.17

[FR Doc 92-14419
Filed 6-15-92; 4:17 pm]
Billing code 3190-01-C

Presidential Documents

Memorandum of June 15, 1992

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

Pursuant to sections 502(b)(4), 502(b)(7), and 502(c)(5) and section 504 of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2462(b)(4), 2462(b)(7), 2462(c)(5), and 2464), I am authorized to make determinations concerning the alleged expropriation without compensation by a beneficiary developing country, to make findings concerning whether steps have been taken or are being taken by certain beneficiary developing countries to afford internationally recognized worker rights to workers in such countries, to take into account in determining the Generalized System of Preferences (GSP) eligibility of a beneficiary developing country the extent to which certain beneficiary developing countries are providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights, and to modify the application of duty-free treatment under the GSP currently being afforded to such beneficiary developing countries as a result of my determinations.

Specifically, after considering a private sector request for a review concerning the alleged expropriation by Peru of property owned by a United States person allegedly without prompt, adequate, and effective compensation, without entering into good faith negotiations to provide such compensation or otherwise taking steps to discharge its obligations, and without submitting the expropriation claim to arbitration, I have decided to continue the review of the alleged expropriation by Peru.

Second, after considering various private sector requests for a review of whether or not certain beneficiary developing countries have taken or are taking steps to afford internationally recognized worker rights (as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)) to workers in such countries, and in accordance with section 502(b)(7) of the 1974 Act (19 U.S.C. 2462(b)(7)), I have determined that Bangladesh and Sri Lanka have taken or are taking steps to afford internationally recognized worker rights, and I have determined that Syria has not taken and is not taking steps to afford such internationally recognized rights. Therefore, I am notifying the Congress of my intention to suspend the GSP eligibility of Syria. Finally, I have determined to continue to review the status of such worker rights in El Salvador, Mauritania, Panama, and Thailand.

Third, after considering various private sector requests for a review of whether or not certain beneficiary developing countries are providing adequate and effective means under their laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights, I have determined to continue the review of Guatemala and Malta.

Pursuant to section 504 of the 1974 Act, after considering various requests for a waiver of the application of section 504(c) of the 1974 Act (19 U.S.C. 2464(c)) with respect to certain eligible articles, I have determined that it is appropriate to modify the application of duty-free treatment under the GSP currently being afforded to certain articles and to certain beneficiary developing countries.

Specifically, pursuant to section 504(c)(3) of the 1974 Act (19 U.S.C. 2464(c)(3)), I have determined that it is appropriate to waive the application of section 504(c) of the 1974 Act with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the United States International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)), that such waivers are in the national economic interest of the United States. The waivers of the application of section 504(c) of the 1974 Act apply to the eligible articles in the HTS subheadings and the beneficiary developing countries set opposite such HTS subheadings enumerated below.

These determinations shall be published in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, June 15, 1992.

Billing code 3190-01-M

ANNEX A

HTS subheadings and countries granted waivers of section 504(c) of the 1974 Act

HTS Subheading	Country
2836.91.00	Chile
7113.19.10	Peru
7413.00.10	Peru
9502.10.40	Malaysia
9502.10.80	Malaysia

[FR Doc. 92-14428
Filed 6-16-92; 9:58 am]
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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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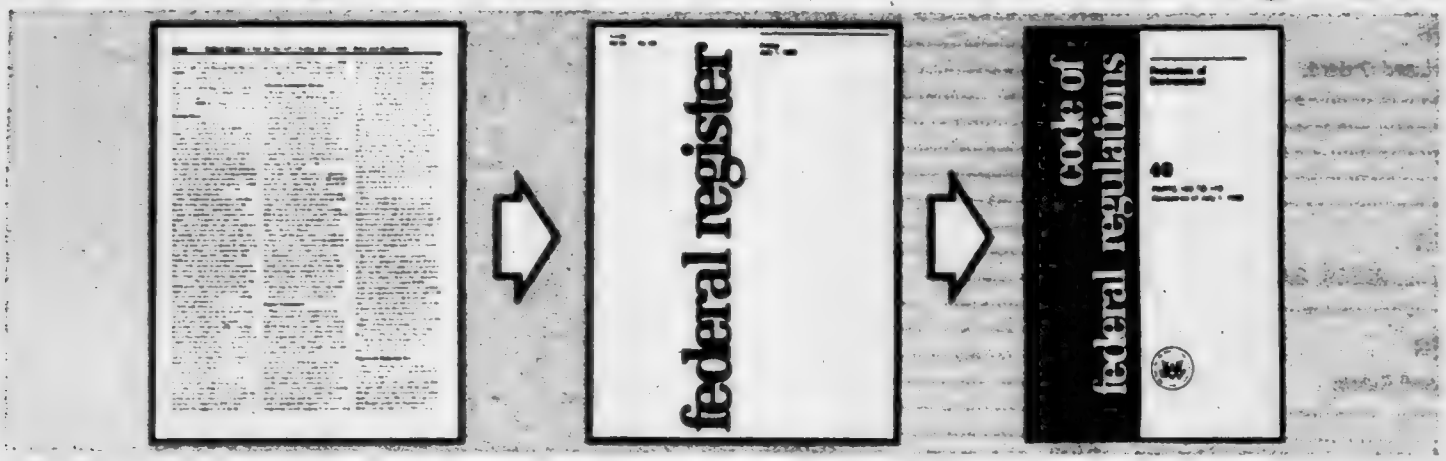

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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, and Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends regulations at 7 CFR part 729 with respect to: (1) The definition in § 729.103 of "actual undermarketings" of quota peanuts, (2) the method for making required reductions in a farm's poundage quota pursuant to § 729.204, and (3) the temporary transfer of a farm's poundage quota pursuant to § 729.212. Additionally, this interim rule amends regulations at 7 CFR part 1446 with respect to: (1) The "disaster transfer" of peanuts for pricing purposes, pursuant to § 1446.307, from an additional loan pool to a quota loan pool, (2) in § 1446.309, the conditions under which loan additional peanuts may be sold under the "immediate buyback" provisions, (3) the requirements in § 1446.410 for granting an extension of time to a handler to export or crush contract additional peanuts, and (4) the provisions in §§ 1446.703 and 1446.704 that relate to the handling of appeals and requests for reconsideration.

The final rule for the 1991 through 1995 crops of peanuts was issued on August 13, 1991. Several of the issues addressed in this interim rule were restricted by the final rule to the 1991 crop of peanuts. Accordingly, this action is necessary to provide applicable rules for 1992 through 1995 crops of peanuts with respect to those issues that are addressed in this interim rule.

DATES: This interim rule is effective June 18, 1992. Comments must be received on or before July 20, 1992 in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013, or deliver to room 5750, South Building, 14th Street and Independence Avenue, SW., Washington, DC. All written comments received in response to this request will be made available for public inspection in room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. on regular workdays.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Deputy Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–720–0156.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases—10.051.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Commodity Credit Corporation and the Agricultural Stabilization and Conservation Service are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements contained in the regulations of 7 CFR parts 729 and 1446 for the poundage quota program and the price support program were approved by the Office of Management and Budget (OMB), as required by 44 U.S.C. chapter 35, and assigned OMB control numbers 0560–0006, 0560–0014, and 0560–0033. OMB has approved the collection requirements through May 31, 1992. A request for an extension of the approval of the information collection requirements has been submitted to OMB and it is anticipated that approval will be forthcoming. This interim rule does not change the information collection as approved by OMB. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #050–0006), Washington, DC 20503.

Background

On January 16, 1992, a notice was published in the **Federal Register** (57 FR 1879) seeking public comments on several issues relating to the peanut poundage quota and price support programs. This interim rule implements regulations for each of those issues except with respect to whether, for the 1992 through 1995 crops of peanuts, export credit would be granted for peanut products that are made from "additional" peanuts and exported to Canada or Mexico. This issue will be the subject of a separate notice that will be published in the **Federal Register** at a later date. In addition, this interim rule: (1) Implements the provisions in section 122 of the Food, Agriculture, Conservative, and Trade Act Amendments of 1991 (Pub. L. 102–237) with respect to the transfer of undermarketings when poundage quotas are transferred between eligible farms, and (2) amends the regulations at 7 CFR part 1446 with respect to: (a) Eligibility

to make a "disaster transfer" of peanuts from an "additional" loan to a "quota" loan, and (b) with respect to reconsideration or appeal of the assessment of penalties for violations of the provisions of the peanut price support program.

Since peanut farmers are now preparing to plant their 1992 crop of peanuts and need to be informed of program provisions as soon as possible and since this rule may affect those plans, it has been determined that it would be impracticable and contrary to the public interest to delay implementation of this rule. The interim rule is subject to change upon consideration of the comments submitted in response to this rule.

The January 16 issues covered regulations in 7 CFR parts 729 and 1446. The comments received on the two parts and new issues addressed in the present rule are discussed separately as follows:

1. Summary of Comments to Part 729

Fourteen respondents commented on the issues relating to part 729 (the poundage quota regulations) that were addressed in the January 16, 1992, notice.

Section 729.103—Actual Undermarketings

Thirteen comments were submitted concerning the determination of "undermarketings" of quota peanuts for a farm.

Four respondents stated that the "total marketings of quota peanuts" should include, to the extent the quota is undermarketed, any peanuts that were marketed as additional peanuts that could have been marketed as quota peanuts.

Seven respondents stated generally that the quota should not be considered undermarketed to the extent that there were additional peanuts that could have been marketed as quota peanuts except that, in those cases in which the producer is required by a contract for additional peanuts to deliver a specific amount of additional peanuts and to the extent that such amount is produced on the farm, any peanuts delivered under the contract should not be considered as peanuts that "could have been marketed as quota peanuts." However, if the recommendation of these 7 respondents was adopted, the producers, who are required by their contracts for additional peanuts to deliver a specific amount of additional peanuts would receive undue preferential treatment when compared with those producers who market additional peanuts without having contracts.

One respondent stated that for purposes of determining whether the quota for a farm had been undermarketed, the "total marketings of quota peanuts" from the farm should take into account only the actual marketings of quota peanuts. But, if this recommendation was adopted, in a year of short supply producers could increase their undermarketings by simply marketing peanuts as additional peanuts with high pool dividends. This would, at a minimum, adversely affect the producers who marketed all of their eligible peanuts as quota peanuts. It would also effect the marketing of quota peanuts in subsequent years.

Another respondent addressed the issue but without making a specific recommendation.

Under this interim rule, for the 1992 through 1995 crops of peanuts, "actual undermarketings" will be defined, as a part of the definition of "undermarketings" in § 729.103(b), as the pounds by which the farm's effective quota exceeds the larger of: (1) The sum of peanuts retained on the farm for seed or other uses, Segregation 2 or Segregation 3 peanuts that were transferred from an additional loan to a quota loan, Segregation 2 or Segregation 3 peanuts that were produced for seed and marketed as quota peanuts for seed, and the production of other Segregation 1 peanuts on the farm, or (2) the pounds of peanuts marketed, or which are "considered marketed" under the definition for "market" in § 729.103, from the farm as quota peanuts. This is essentially the same definition that has been in effect for recent years. In a year of short supply when additional peanuts virtually will be as valuable as quota peanuts, this definition will prevent producers from marketing peanuts as additional peanuts rather than as quota peanuts in order to increase the farm's undermarketings.

Section 729.204—Quota Reduction for Nonproduction

Two methods of making quota reductions for nonproduction were described in the **Federal Register** of January 16, 1992, namely, a "factor method" and a "poundage method". Essentially, the "poundage" method for calculating the quota reduction for nonproduction in 2 of 3 years would make the reduction in an amount equal to the sum of the nonproduction for the 2 years of the 3 when the nonproduction was the least amount of nonproduced pounds. In the "factor" method, the average percentage of nonproduction in the 2 years having the greatest percentage of nonproduction of the 3 years would be used and would be applied against the current quota amount to determine the reduction for nonproduction. There were 14 comments received with respect to quota reductions for nonproduction.

Eleven respondents recommended that the "poundage method" should be used to reduce the farm's quota for nonproduction because it was more consistent with the "fair and equitable" provision of section 358–1(b)(3) of the Agricultural Adjustment Act of 1938, as amended (the 1938 Act).

Two respondents recommended that the "factor method" should be used for making quota reductions. One of these respondents indicated, without specifying why, the "factor method" was more consistent with the 1938 Act.

One respondent recommended that the "factor method" should be used for making quota reductions in Texas because this would increase the amount of quota lost by nonproduction and would be more consistent, said the respondent, with the "Texas only provision" in the 1990 Farm Bill in which special quota distribution rules were created for certain counties in Texas with a history of high production of additional peanuts.

Section 358–1(b)(3) of the 1938 Act provides that "Insofar as practicable and on such fair and equitable basis as the Secretary may by regulations prescribe, the farm poundage quota established for a farm for any of the 1991 through 1995 marketing years shall be reduced to the extent that the Secretary determines that the farm poundage quota established for the farm for any 2 of the 3 years preceding the marketing year for which the determination is being made was not produced or considered produced, on the farm." Using the "poundage method" will result in a reduction in quota that is exactly equal to the deficiency in production that resulted in the need to reduce the quota and therefore appears to be a better method of implementing the statute. Contrariwise, while there is some logic to the use of the "factor method", using that method will result in a reduction in quota that may be substantially greater than the deficiency in production that resulted in the need to reduce the quota.

Section 729.212—Transfer of Undermarketings

Transfer of undermarketings was not an issue for which public comments were requested in the **Federal Register** on January 16, 1992. However, a technical amendment to section 358b(a) of the 1938 Act enacted in Public Law 102–237 specified that undermarketings

of peanut poundage quota could be transferred when poundage quotas are transferred between eligible farms. Accordingly, § 729.212 is amended by this interim rule to implement that new statutory provision. The revision of § 729.212 includes a provision that would prohibit a fall transfer of poundage quota unless it is determined that the producers made a good faith effort to produce a normal crop of peanuts on the farm. The existing rule prohibits a transfer if the production, despite the good faith effort of the producer, was greater than the farm's effective quota minus the farm's effective undermarketings.

2. Summary of Comments to Part 1446

A total of 19 respondents submitted comments with respect to those 2 issues involving 7 CFR part 1446 of the 3 part 1446 issues addressed in the Federal Register of January 16, 1992. Those two issues are: (1) The conditions under which loan additional peanuts may be sold under the "immediate buyback" provisions in § 1446.309 and (2) the requirements for granting an extension of time under § 1446.410 for a handler to export or crush additional peanuts. The third issue, involving whether disposition credit will be granted for peanut products made from 1992 and subsequent crops contract additional peanuts and exported to Canada or Mexico, is not addressed in this rule.

Section 1446.309—Immediate Buyback

Nineteen comments were submitted with respect to whether, when a producer has given the statutorily required written consent for loan additional peanuts to be sold upon delivery for domestic edible use under the "buyback" provisions, additional restrictions should be required by regulation before such peanuts may be purchased as an "immediate buyback."

Seven respondents opposed any additional restrictions. Two respondents stated that "immediate buybacks" should not be permitted until the producer for the type of peanuts contracted, has delivered the full quantity the producer has contracted for sale as contract additional peanuts. These respondents emphasized that these restrictions would not apply to "immediate buybacks" of any type of additional peanuts that were produced without a contract.

Ten respondents stated that "immediate buybacks" should not be permitted until the full contracted quantity of additional peanuts has been delivered, regardless of the type of peanuts offered for the buyback.

However, while these recommendations were intended to protect handlers with contracts for the purchase of additional peanuts, 9 of the respondents recommended that in any case, upon mutual agreement of the producer and handler who have entered into a contract for additional peanuts, the producer, at least in some instances, should be able to market the contracted peanuts through the additional loan method and the handler should be able to make an "immediate buyback" of such peanuts. Six of the 9 respondents indicated that this choice should be available only when prescribed determinations are made by the Secretary that there is a shortage with respect to the National quantity of peanuts that will be available for domestic edible uses. This choice of shifting from the contract to an "immediate buyback" would afford the contracting parties an opportunity to respond to changing marketing conditions to the mutual benefit of all concerned parties.

Respondents supporting additional restrictions suggested that the absence of restrictions would increase the potential for Commodity Credit Corporation losses on the peanut price support program. They also suggested that restrictions would prohibit producers from entering the loan pool in years of short supply to the possible detriment of producers who use the loan pool to market their additional peanuts rather than contracting their additional peanuts for export or for crushing into oil and meal.

In view of the significant support by respondents for additional restrictions by regulations on the conditions by which loan additional peanuts may be purchased as an "immediate buyback", this interim rule provides that peanuts of a type that have been contracted by a producer for export or crush may not be diverted from the contract to an additional loan and offered for purchase by a handler as an "immediate buyback" at the time of delivery by the producer for an additional loan. This means that as long as the producer's marketing card shows undelivered contracted pounds, peanuts delivered into the additional loan of the same type contracted from the farm by the producer for export or crush will not be considered eligible for an "immediate buyback."

Section 1446.410—Extension of Time

Sixteen respondents submitted comments with respect to whether an extension of time should be granted for a handler to dispose of contract additional peanuts without requiring an explanation from the handler to show that conditions beyond the handlers control will prevent compliance with the prescribed disposition date.

Three respondents indicated that an extension of the final disposition date should not be contingent on an explanation. However, one of these respondents indicated that the peanut lots, for which an extension in requested, should be designated by September 15.

One respondent indicated that an extension of the final disposition date should be contingent on a full explanation by the handler as to why the handler is unable to meet the final disposition date.

Twelve respondents indicated that an extension of the final disposition date should be contingent upon an explanation but indicated varying explanations that should be required. Also, most of these respondents indicated that a failure to obtain a market should be an acceptable reason for granting an extension.

Additionally, one of the 16 respondents also indicated that provisions should be made through an appeal process for granting an extension of time after the final disposition date has passed and 4 of the 16 respondents indicated that the October 15 final disposition date should be extended. Of the 4, there were 2 who recommended October 31 as the final disposition date, while 1 recommended November 30 and another recommended December 31.

In view of the comments, and in order to remove a requirement that was viewed as being too restrictive, this interim rule provides that an extension of time to export or crush contract additional peanuts may be granted upon timely written request from the handler. Requiring an explanation does not seem to provide any material program benefit and explanations would be difficult to verify. Accordingly, under this interim rule, an explanation of a reason that will prevent timely export or crush will not be required as a condition for granting an extension of time.

3. New Issues in 7 CFR Part 1446

As indicated above, this interim rule addresses two additional issues relating to part 1446 that were not addressed in the January 16, 1992, notice.

Section 1446.307—Disaster Transfer

Section 1446.307 provides the conditions for approving a "disaster transfer" of Segregation 2 and Segregation 3 peanuts from an additional loan to a quota loan. Generally, such transfer may be

approved to the extent the effective farm poundage quota exceeds the sum of the amount of peanuts retained on the farm for seed or other uses and the production of Segregation 1 peanuts on the farm. CCC will incur a loss on each ton of peanuts that is transferred from an additional loan to a quota loan under the disaster transfer provisions. The loss will range between $350 and $550 on each ton that is transferred.

Under the "fall transfer" provision of 7 CFR part 729, peanut poundage quota may be transferred to a farm by lease, owner, or operator to the extent needed to market the entire production of peanuts on the farm as quota peanuts. If the harvest of peanuts has not been completed, the quantity of peanut poundage quota that may be transferred is determined on the basis of estimated production. When peanuts are graded as Segregation 2 or Segregation 3 after a fall transfer of poundage quota has been approved, the poundage quota that has been transferred to the farm may be used to effect a disaster transfer with resulting loss to CCC.

The purpose of the disaster transfer is to prevent an economic disaster to the producer who has a poundage quota and plants peanuts with the expectation of marketing the peanuts as quota peanuts but, because of conditions beyond the producers control, is prevented from marketing some of the peanuts as quota peanuts because the peanuts are graded as Segregation 2 or Segregation 3 peanuts that are ineligible for marketing as quota peanuts. The current difference between an additional loan and a quota loan is more than $500 per ton of peanuts.

A producer should not produce peanuts in excess of a farm's poundage quota with the expectation that such peanuts could be marketed as quota peanuts. Therefore, CCC should not be expected to suffer the loss that will be incurred by transferring Segregation 2 or Segregation 3 peanuts from an additional loan to a quota loan through the use of quota that was transferred to the farm under the "fall transfer" rules. Accordingly, this interim rule amends § 1446.307 to limit a disaster transfer to the amount by which the poundage quota, that was in effect on the farm before the "fall transfer" of quota, is greater than the sum of peanuts retained on the farm for seed or other purposes and the production of Segregation 1 peanuts on the farm. In the event the farm has Segregation 2 or Segregation 3 peanuts, however, it may be that the farm will qualify as having undermarketings which can be carried forward.

Sections 1446.703 and 1446.704—Reduction of Penalties and Appeals

This rule also adopts new penalty procedures for part 1446. Existing rules in part 1446 provide for an initial determination by a CCC official and an appeal to the Executive Vice President, CCC. The amendments reflect the recent establishment of the National Appeals Division (NAD). The NAD was established pursuant to section 1126 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624). NAD handles matters relating to the activities of the Agricultural Stabilization and Conservation Service and the CCC. NAD operates pursuant to provisions in 7 CFR part 780. Because NAD is independent of the program divisions, the revised rules provide that penalty reductions, where justified, may be made by the CCC official that initially considers the case. Reductions may also be made by the NAD or by the Executive Vice President, CCC, or by the designee of the Executive Vice President, CCC.

List of Subjects

7 CFR Part 729

Poundage quotas, Peanuts, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, the regulations set forth in chapters VII and XIV of title 7 are amended as follows:

PART 729—[AMENDED]

1. In chapter VII, the regulations at 7 CFR part 729 are amended as follows:

a. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375; 7 U.S.C. 1445c–3.

b. In § 729.103, paragraph (b), the definition of "Undermarketings" is amended by revising paragraph (i) to read as follows:

§ 729.103 Definitions.

* * * * *

Undermarketings. (i) *Actual.* The pounds by which a farm's effective quota exceeds the larger of:

(A) The sum of:

(*1*) Peanuts retained on the farm for seed or other uses,

(*2*) Segregation 2 or Segregation 3 peanuts that were transferred from an additional loan to a quota loan,

(*3*) Segregation 2 or Segregation 3 peanuts that were produced for seed and marketed as quota peanuts for seed, and

(*4*) The production of Segregation 1 peanuts on the farm, excluding such peanuts retained on the farm for seed or other uses, or

(B) The pounds of peanuts marketed or considered marketed from the farm as quota peanuts.

* * * * *

§ 729.204 [Amended]

c. In § 729.204, paragraph (d)(2) is amended by removing in the second sentence the words "with respect to the 1991 crop,".

d. In § 729.212, paragraphs (a)(2) and (e)(1)(iii)(B) are revised to read as follows:

§ 729.212 Transfer of quota by sale, lease, owner, or operator.

* * * * *

(a) * * *

(2) *Temporary:* A temporary transfer is for one year and shall be based with respect to the 1992 and subsequent crops on a part or all of the farm's effective quota. The maximum quota that may be temporarily transferred from a farm in the current year is the farm's effective quota. A temporary transfer, to the extent permitted by this section, may be by:

(i) *Lease.* The lease and transfer of a farm's effective quota.

(ii) *Owner.* The owner transferring effective quota to another farm owned or operated by such owner.

(iii) *Operator.* The operator transferring effective quota to another farm owned or operated by such operator.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(B) The county committee determines that the producers on the farm made a good faith effort to produce a normal crop of peanuts on the acreage devoted to peanuts.

* * * * *

PART 1446—AMENDED

2. In chapter XIV, the regulations at 7 CFR part 1446 are amended as follows:

a. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 1359a, 1375, 1421 *et seq.*; 15 U.S.C. 714b and 714c.

b. In § 1446.307, paragraph (b) is revised to read as follows:

§ 1446.307 Disaster transfer of Segregation 2 or Segregation 3 peanuts from additional loan to quota loan.

* * * * *

(b) *Limitation of amount eligible for transfer.* The amount of such transfer made in accordance with this section may not exceed the effective farm poundage quota minus the sum of:

(1) Peanuts retained on the farm for seed or other uses,

(2) Production of Segregation 1 peanuts on the farm, and

(3) Amount of peanuts equal to the amount of quota transferred to the farm through a fall transfer pursuant to part 729 of this title.

* * * * *

c. In § 1446.309, paragraph (a) is amended by removing from the beginning of paragraph (a)(1) the word "If" and adding in its place the words "Except as provided in this section, if" and by adding new paragraph (a)(7) to read as follows:

§ 1446.309 Immediate buyback and sale of loan peanuts to the storing handler.

(a) * * *

(7) *Additional restrictions on "immediate buyback" sales.*

(i) Additional peanuts of the type contracted for export or crushing from a farm may not be purchased from such farm under the "immediate buyback" provisions of this section until all of the producer's contracts for additional peanuts for the relevant crop year have been satisfied for the type to be used for the buyback, as evidenced by a contract balance of zero for that type of peanuts on the farm's marketing card;

(ii) An immediate buyback that otherwise is prohibited by paragraph (a)(7)(i) of this section may be permitted by CCC in the case of any producer on a farm who does not share in the additional peanuts for which there is a contract.

(iii) An agreement between the handler and producer to void a contract that was approved in accordance with this part shall not reduce the balance shown on the producer's marketing card for contract additional peanuts and until such contract is renewed and satisfied the producer's additional peanuts of the same type as were covered by that contract shall not be eligible for that crop year for purchase under an "immediate buyback."

* * * * *

d. In § 1446.410, paragraph (b) is revised to read as follows:

§ 1446.410 Disposition date.

* * * * *

(b) *Extension of final disposition date.* The final disposition date for an individual handler may be extended by the marketing association to November 30 of the year following the calendar year in which the crop was grown if, by September 15 preceding the final disposition date, the handler files a written request with the marketing association that specifies the number of pounds for which an extension is requested.

e. In § 1446.703, paragraph (b) is amended by revising the paragraph heading and the introductory paragraph to read as follows:

§ 1446.703 Assessment of penalties against handlers.

* * * * *

(b) *Amount of penalty.* Except when reduced in accordance with this part, the penalty amount for any violation of this part shall be equal to 140 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts:

* * * * *

f. Section 1446.704 is revised to read as follows:

§ 1446.704 Reductions of penalties, reconsideration and appeals.

(a) *Reduction of penalties.* (1) *By CCC Contracting Officer.* To the extent permitted by the provisions of paragraph (a)(4) of this section, the CCC Contracting Officer may reduce the amount of penalty that is otherwise determined or assessed in accordance with this part. Such reduction may be made before the penalty is assessed or may be made upon a request for reconsideration by the handler to whom the penalty is assessed.

(2) *By Director, National Appeals Division or by the Executive Vice President, CCC.* To the extent permitted by the provisions of paragraph (a)(4) of this section, the Director, National Appeals Division, upon an appeal by the handler to whom the penalty is assessed, or the Executive Vice President, CCC, or the Executive Vice President's designee, may reduce the amount of penalty that has been assessed in accordance with this part.

(3) *Reduction criteria.* A penalty that is determined or assessed in accordance with this part may be reduced by the CCC Contracting Officer or by the Director, National Appeals Division, or the Executive Vice President, CCC, or the Executive Vice President's designee, if such person determines that:

(i) The violation for which the penalty was assessed was minor or inadvertent;

(ii) A reduction in the amount of the penalty would not impair the effective operation of the peanut program; and

(iii) The assessment of penalty was not made for failure to export contract additional peanuts.

(4) *Reduction limits.* (i) If the reduction criteria in paragraph (a)(3) of this section has been met, the CCC Contracting Officer or the Director, National Appeals Division, or the Executive Vice President, CCC, or the Executive Vice President's designee, as applicable, may reduce the penalty by such amount as such person considers appropriate (including a full reduction of the entire penalty) after taking into account the severity of the violation and the violation history of the handler.

(ii) If one of the criteria in paragraphs (a)(3)(i) and (ii) of this section has not been satisfied and the remaining criteria has been satisfied, the penalty shall not be reduced to less than an amount which is equal to 40 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts involved in the violation.

(iii) There shall not be a limit on the amount by which an assessment of liquidated damages may be reduced by the CCC Contracting Officer or the Director, National Appeals Division or the Executive Vice President, CCC, or the Executive Vice President's designee.

(b) *Request for reconsideration.* A handler who is dissatisfied with a penalty that has been assessed against such handler by the CCC Contracting Officer pursuant to this part may file a written request for reconsideration or reduction of the penalty that has been assessed. Such request for reconsideration or reduction must be made within 15 days after the date of the notice of assessment.

(c) *Appeal.* If handler is dissatisfied with the determination of the CCC Contracting Officer with respect to a request for reconsideration or reduction of a penalty that has been assessed against such handler, the handler may appeal such determination to the Director, National Appeals Division. Any appeal of such determination of the CCC Contracting Officer must be submitted in writing to the Director, National Appeals Division, within 15 days after the date of notice of such determination by the CCC Contracting Officer. The appeal may be to contest liability for the penalty, to request that the penalty be reduced, or both. An appeal shall be conducted in accordance with the regulations set forth in part 780 of this title.

Signed at Washington, DC on June 12, 1992.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-14267 Filed 6-12-92; 4:08 pm]

BILLING CODE 3410-05-M

FEDERAL ELECTION COMMISSION

11 CFR Part 106

[Notice 1992-9]

Allocation of Joint Federal and Non-Federal Expenses

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On March 13, 1992 (57 FR 8990), the Commission published the text of revised regulations at 11 CFR part 106, governing allocation of expenses that jointly benefit federal and non-federal candidates. These regulations implement 2 U.S.C. 441a and 441b, provisions of the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. 431 *et seq.* The Commission announces that amendments to 11 CFR 106.5(d), dealing with the ballot composition ratio by which state and local political party committees allocate their joint expenditures, are effective retroactive to January 1, 1991. The remaining amendments, which concern the "window" for transfers between non-federal and federal accounts, and the period for recalculating federal/non-federal ratios in connection with fundraising events, are effective as of June 18, 1992.

EFFECTIVE DATE: Amendments to 11 CFR 106.5(d) are effective retroactively to January 1, 1991. Other amendments to 11 CFR 106.5(f), (g) and 106.6(d) and (e) are effective as of June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR part 106 were transmitted to Congress on March 9, 1992. Thirty legislative days expired in the Senate on May 15, 1992, and in the House of Representatives on May 19, 1992.

Amendments to 11 CFR 106.5(d), which deals with the ballot composition ratio by which state and local political party committees allocate their administrative and generic voter drive expenditures, are effective retroactive to January 1, 1991, the effective date of the allocation rules. Committees may add the new non-federal point(s) authorized by these amendments to their ballot composition ratios prospectively at any time. However, if a committee wishes to apply the adjusted ratio retroactively, and to make a transfer from its non-federal to its federal account to reflect this retroactive application, this action must be taken no later than July 20, 1992.

To report this transfer, the committee should file an amended Schedule H1 showing the revised ratio with its next due report, and include a note citing these new rules as the basis for the change. An entry should be made on Schedule H3 at the time the transfer is made, along with an entry on Schedule H4 adjusting the allocated total of administrative and generic voter drive disbursements from January 1, 1991, through the date of the transfer. The H4 entry should have a "total amount" of $0, with equal nonfederal (positive) and federal (negative) entries, to reflect the shift in the amount allocated between these accounts. This approach is consistent with that taken in Advisory Opinion 1991-15, which involved a similar situation. That opinion includes sample forms illustrating how these changes should be reported.

The remaining amendments, which concern the "window" for transfers between non-federal and federal accounts, and the period for recalculating federal/non-federal ratios in connection with fundraising events, are effective as of June 18, 1992. These latter amendments apply to all party committees, including national party committees; nonconnected committees; and those separate segregated funds that are covered by the allocation rules.

Announcement of Effective Date

11 CFR 106.5(d), as published at 57 FR 8990, is effective retroactive to January 1, 1991. 11 CFR 106.5(f) and (g), and 106.6(d) and (e), also published at 57 FR 8990, are effective as of June 18, 1992.

Dated: June 15, 1992.

Joan D. Aikens,

Chairman Federal Election Commission.

[FR Doc. 92-14363 Filed 6-17-92; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-03-AD; Amendment 39-8252; AD 92-11-02]

Airworthiness Directives; Aerospatiale Model SN 601 Corvette Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model SN 601 Corvette series airplanes, that requires repetitive high frequency eddy current inspections of the canopy inner skin for evidence of cracks, and modification, if necessary. This amendment is prompted by the detection of a structural crack on a fatigue test airframe. The actions specified by this AD are intended to prevent a reduction in the structural integrity of the fuselage.

DATES: Effective July 23, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060, Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206)227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Aerospatiale Model SN 601 Corvette series airplanes was published in the **Federal Register** on February 12, 1992 (57 FR 5081). That action proposed to require repetitive high frequency eddy current inspections of the canopy inner skin for evidence of cracks, and modification, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and public interest require the adoption of the rule as proposed.

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $275.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-11-02. Aerospatiale: Amendment 39-8252. Docket 92-NM-03-AD.

Applicability: Aerospatiale Model SN 601 Corvette series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduction in the structural integrity of the fuselage, accomplish the following:

(a) Prior to the accumulation of 14,100 flight cycles or within the next 100 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current inspection to detect cracks in the left-hand (LH) and right hand (RH) side canopy inner skins forward of Frame 10 at the height of Stringer 4, in accordance with Aerospatiale Service Bulletin 53-26, dated January 24, 1991.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5,600 flight cycles.

(c) If cracks are detected as a result of the inspection required by paragraph (a) or (b) of this AD, prior to further flight, install Modification 1395 in accordance with Aerospatiale Service Bulletin No. 53-14, Revision 1, dated January 24, 1991.

(d) Accomplishment of Modification 1395, in accordance with Aerospatiale Service Bulletin No. 53-14, Revision 1, dated January 24, 1991, constitutes terminating action for the inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with Aerospatiale Service Bulletin 53-26, dated January 24, 1991. The modifications shall be done in accordance with Aerospatiale Service Bulletin No. 53-14, Revision 1, dated January 24, 1991, which includes the following list of effective pages:

Page numbers	Revision level	Date
1, 3	1	January 24, 1991.
2, 4-6	Original	June 23, 1983.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060, Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment becomes effective on July 23, 1992.

Issued in Renton, Washington, on April 28, 1992.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-14292 Filed 6-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-70-AD; Amendment 39-8263; AD 92-12-03]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires inspection, repair if necessary, and modification of certain fuselage frames. This amendment reduces the threshold for the initial inspection, and expands the area requiring modification. This amendment is prompted by reports of cracking on airplanes that had accumulated less than the current threshold of 40,000 cycles. The actions specified by this AD are intended to prevent loss of structural integrity of the fuselage that could result in airplane depressurization.

DATES: Effective July 23, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket 91-NM-70-AD, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2772; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-06-16, Amendment 39-6545 (56 FR 19328, April 26, 1991), which is applicable to all Boeing Model 727 series airplanes, was published in the Federal Register on January 8, 1992 (57 FR 652). The action proposed to reduce the threshold for the initial inspection to detect fatigue cracking of certain fuselage frames, and to expand the area requiring modification.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its member operators, requests that the provision to retrofit the structure adjacent to Stringer (S)-28 be withdrawn from proposed paragraph (e), since the number of cracks found at S-28 has been significantly lower than the number of cracks found at the S-26 and S-27 locations. Several members have already accomplished the retrofit of the S-26 and S-27 structure, and do not believe that reworking the S-28 structure is necessary, since continued repetitive inspections of this area will provide an acceptable level of safety. While they support the FAA policy of emphasizing modification of aircraft structure over continued inspection, these commenters consider that the inspection process remains as the primary method of ensuring airworthiness. The commenter points out that the Airworthiness Assurance Task Force (AATF) recommends modification over continued inspection of aircraft structure by reviewing criticality/airworthiness, ease of inspection, and in-service findings; however, the commenters consider that the proposed retrofit of S-28 fails to meet all three criteria, when retrofit to the S-26 and S-27 structure has already been accomplished. Further, the commenters maintain that airplanes that have already been modified in accordance with AD 90-06-16 are not an airworthiness concern and do not require repetitive inspections. The FAA does not concur with the commenters' request. Although the commenters correctly point out that fewer cracks have been found in the S-28 area, the fact remains that cracking does occur in this area. The FAA, in concert with the AATF, considers three criteria for those situations where repetitive inspections of a crack-prone area may be permitted to continue indefinitely, even though a positive fix to the problem exists: (1) The area is easily accessible, (2) the cracking is easily detectable, and (3) the consequences of the cracking are not likely to be catastrophic. In consideration of the cracking that may occur at S-28, the FAA has determined that the circumstances warranting continual repetitive inspections "fail" these three criteria. In this case, the FAA has determined that long term continued operational safety of these airplanes will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. The modification requirement of this AD is in consonance with these considerations.

One commenter asserts that previously modified airplanes should not be required to accomplish the preventative modification at S-28 within 7,500 flight cycles after the effective date of this AD. If the FAA insists upon mandating this retrofit, then the commenter requests that the compliance period be consistent with the time frame required for the "aging aircraft structural modifications," required by AD 90-06-09, Amendment 39-6488 (55 FR 8370, March 7, 1990). The FAA does not concur. The compliance time was selected specifically to allow accomplishment of the modification during normally scheduled heavy maintenance checks. The FAA has determined that the compliance time, as proposed, is appropriate in that the modification can be accomplished in a timely manner and affected operators would not be required to disrupt normal maintenance to arrange for special scheduling.

One commenter questions the reasoning for the proposed repetitive inspection interval of "30 months or 4,000 flight cycles," as specified in proposed paragraph (b). This commenter states that, based on average utilization rates for the majority of the affected fleet, a more accurate calendar time that would parallel 4,000 flight cycles is 36 months, rather than 30 months. For this reason, the commenter requests that the calendar time interval be extended to 36 months. The FAA concurs with this request, and paragraph (b) of the final rule has been revised accordingly. The FAA has determined that this extension will not adversely affect safety.

Another commenter requests that Boeing Drawing 65C35998 be referred to as an approved means of compliance with the repair requirements of proposed paragraph (c). The commenter states that the drawing appears to deal directly with the frame cracking issue. The FAA does not concur. While the drawing may be used for certain airplanes at particular frames, it cannot be considered as an acceptable means of repair for most cases. In situations where the drawing is applicable, it may be approved as an alternative method of compliance with the requirements of this AD, as provided by paragraph (g) of the final rule.

One commenter suggests that the economic analysis paragraph of the preamble be revised to include the cost of modification. This commenter considers that the total cost impact estimate, which was indicated in the cost analysis paragraph in the preamble to the notice, was too low. The "16 hours per airplane" cited in the notice only includes the time necessary to perform the required inspections. The commenter states that the mandatory preventative modification requires an additional 60 to 88 work hours per airplane, raising the total cost to U.S. operators to approximately $6 million, rather than $1,031,360. The FAA partially concurs. Upon further review of the necessary work involved with the actions that would be required by this AD, the FAA finds that the mandatory preventative modification itself will only require an additional 18 to 28 work hours per airplane, depending upon the airplane's configuration. The number of work hours quoted by the commenter is excessive, because it includes work required by previous AD's. Based on this new data, the economic analysis paragraph, below, has been revised accordingly.

Boeing Commercial Airplane Group requests that Revision 1 of Boeing Alert Service Bulletin 727-53A0195, dated September 19, 1991, be listed as the only service bulletin reference in proposed paragraph (a), since it corrects errors and omissions found in the inspection instructions of the original 1989 issue of the service bulletin. The FAA partially concurs. Revision 1 of the service bulletin contains essentially the same material as was in the original issue, but adds procedures for modification of the fuselage frame adjacent to Stringers S-28 left and S-28 right. Therefore, the FAA has revised paragraphs (a), (c), and (d) of the final rule to cite Revision 1 of the service bulletin as an additional source for service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,695 Boeing Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,172 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required inspection, and that the average labor rate is $55 per work hour. The required modification will take approximately 18 to 28 hours per airplane to accomplish, depending upon the airplane's configuration, at an average labor charge of $55 per work hour. The cost of parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be between $2,191,640 and $2,836,240. These amounts represent a cost per airplane of between $1,870 and $2,420, depending upon the airplane's configuration.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6545 (56 FR 19328, April 26, 1991), and by adding a new airworthiness directive (AD), amendment 39-8263, to read as follows:

92-12-03. Boeing: Amendment 39-8263. Docket 91-NM-70-AD. Supersedes AD 90-06-16, Amendment 39-6545.

Applicability: Model 727 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking in the fuselage aft lower lobe frames between body stations (BS) 950 and BS 1166, accomplish the following:

(a) Conduct a detailed visual inspection of the fuselage frames in accordance with Part I of the Accomplishment Instructions for Boeing Alert Service Bulletin 727-53A0195, dated May 4, 1989; or Revision 1, dated September 19, 1991; prior to the time specified in subparagraph (a)(1) or (a)(2) of this AD, whichever occurs first.

(1) Prior to the time specified in subparagraph (a)(1)(i) or (a)(1)(ii) of this AD, whichever occurs later:

(i) Within the next 3,000 flight cycles or 15 months after April 24, 1990 (the effective date of AD 90-06-16, Amendment 39-6545), whichever occurs first; or

(ii) Prior to the accumulation of 40,000 flight cycles.

(2) Prior to the time specified in subparagraph (a)(2)(i) or (a)(2)(ii) of this AD, whichever occurs later:

(i) Within the next 3,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first; or

(ii) Prior to the accumulation of 28,000 flight cycles.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 4,000 flight cycles or 36 months, whichever occurs first.

(c) If any cracks are detected, repair prior to further flight, in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0195, dated May 4, 1989; or Revision 1, dated September 19, 1991. Skin repairs must be accomplished in accordance with Section 53-30-3 of the Boeing 727 Structural Repair Manual.

(d) Accomplishment of repairs in accordance with Boeing Alert Service Bulletin 727-53A0195, dated May 4, 1989; or Revision 1, dated September 19, 1991; constitutes terminating action for the inspections required by paragraphs (a) and (b) of this AD for the repaired areas only.

(e) Accomplish the preventive modification in accordance with Part I, Paragraph B., of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0195, Revision 1, dated September 19, 1991, prior to the time specified in subparagraph (e)(1) or (e)(2) of this AD, whichever occurs later:

(1) Within the next 7,500 flight cycles or 45 months after the effective date of this AD, whichever occurs first; or

(2) Prior to the accumulation of 47,500 flight cycles.

(f) Accomplishment of the preventive modification required by paragraph (e) of this AD constitutes terminating action for the inspections required by this AD for the modified area only.

(g) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections, repairs, and modifications shall be done in accordance with Boeing Alert Service Bulletin 727-53A0195, dated May 4, 1989; or Boeing Alert Service Bulletin 727-53A0195, Revision 1, dated September 19, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(j) This amendment becomes effective on July 23, 1992.

Issued in Renton, Washington, on May 12, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 92-14291 Filed 6-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-232-AD; Amendment 39-8260; AD 92-11-10]

Airworthiness Directives; McDonnell Douglas Model DC-9-20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, that currently requires repetitive inspections to detect cracks of the forward slat drive drums' bellcrank shafts, and replacement, if necessary. That action was prompted by a number of reports of slat drive bellcrank failures resulting in

slat malfunction. This amendment requires replacement of the slat drive drums' bellcrank shafts with an improved part within a specific time period, thus terminating the need for repetitive inspections. The actions specified by this AD are intended to prevent slat asymmetry and potential reduction of lift and lateral control of the airplane at takeoff rotation, as well as the potential for rejected takeoffs from speeds beyond V_1 (the critical engine failure speed).

DATES: Effective July 23, 1992.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of July 8, 1991 (56 FR 28479, June 21, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Technical Publications—Technical Administrative Support, C1–L5B (54–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David Hempe, Aerospace Engineer, Los Angeles Aircraft Certification Office, Airframe Branch ANM–120L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5224; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–13–09, Amendment 39–7040 (56 FR 28479, June 21, 1991), which is applicable to certain McDonnell Douglas Model DC–9 series airplanes, was published in the **Federal Register** on December 26, 1991 (56 FR 66812). That action proposed to require replacement of the slat drive drums' bellcrank shafts with an improved part within a specific time period, thus terminating the need for the required repetitive inspections of the shafts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

The Air Transport Association (ATA) of America, on behalf of its member operators requests that the proposed compliance time of 18 months for replacement of the slat drive drum bellcrank shafts be extended to 3 years or 100,000 landings, whichever occurs later, based on general concerns about parts availability and costs. The commenter objects to the proposed compliance time because it does not consider parts status and the extended down time required to accomplish parts replacement. One member operator expresses a specific concern about parts availability, stating that the manufacturer currently has a limited number of the parts (approximately 100) and that approximately 400 ship sets would be needed to accomplish the required task. The FAA does not concur that an adjustment to the compliance is necessary based on any parts availability problem. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the modification in the affected fleet in an orderly and timely manner. As for parts availability, the manufacturer has recently advised the FAA that it has 208 parts available (130 parts for sale and 78 parts reserved for airlines.) In addition, the vendor supplying the titanium forgings to the manufacturer for manufacturing has 774 parts in its stock. Parts can be produced at a rate of 100/month with a 12-week lead time. If the manufacturer had to produce all 844 parts (worst case scenario), it could accomplish this in approximately 12 months, which is well within the proposed compliance time of 18 months.

The ATA also requests that the proposed compliance time of 18 months for the replacement of the slat drive drum bellcrank shaft be extended so that it can be accomplished during regularly scheduled maintenance. This commenter believes that the repetitive inspections currently required by the existing AD will provide an acceptable level of safety in the interim, since these inspections already have proven to be successful in maintaining a very high state of readiness and safety. Another commenter states that it is currently inspecting 13 bellcrank shafts (6.5 airplanes) at every 750 cycles and had planned to replace these during scheduled "Q" checks, which are normally scheduled beyond the proposed 18-month compliance time. This commenter notes that an extended compliance time would allow the affected operators to replace the part within a scheduled "Q-check" and not require an additional heavy maintenance visit. The FAA concurs that the compliance time for replacement may be adjusted somewhat based on these commenters' concerns. It should be noted that the FAA's decision to require the replacement action within 18 months is based on the fact that the visual inspection method of non-destructive testing (currently required by the existing AD) does not maintain the highest level of confidence (approximately 90% probability) of finding a detectable crack, without disassembling the area of inspection and using a more accurate inspection method. The FAA never considered that such visual inspections would constitute long term safety. Due to the numerous failures of the subject part in service, and due to a better understanding of the human factors associated with numerous repetitive inspections, the FAA determined that long term operational safety can only be positively assured by replacement of the part within a minimum amount of time, thereby removing the source of the problem. However, in consideration of the composition of materials being inspected, the repetitive inspection intervals, and the proposed compliance time for replacement, the FAA does acknowledge that the visual inspection method will provide an adequate level of safety in the interim, until replacement is accomplished. Upon reconsideration of an appropriate compliance time for replacement, the FAA recognizes the importance of accomplishing the replacement during a period of regularly scheduled maintenance, when necessary special equipment and trained personnel would be available. Therefore, the FAA has revised paragraph (f) of the AD to specify that replacement of the slat drive drum bellcrank shaft is required within 18 months or 2,250 flight cycles after the effective date of the AD, whichever occurs later. The intent of this revision to the compliance time is to provide affected operators with more flexibility in scheduling time for the required replacement.

One commenter is concerned with regard to the requirements of this proposed AD, and the current requirements of AD 90–18–03, Amendment 39–6701 (55 FR 34704, August 24, 1990), which mandates various structural modifications described in McDonnell Douglas Report Number MDC–K1572, "DC–9/MD–80 Aging Aircraft Service Action Requirement Document" (MDC–K1572). Specifically, this commenter points out

that the proposed AD would require replacement of the slat drive drum bellcrank shaft within 18 months, whereas AD 90–18–03 requires replacement within 4 years or 100,000 flight hours, whichever occurs later. The commenter believes that, if McDonnell Douglas plans to revise Document MDC–K1572 to coincide with the compliance time proposed in this AD action, then this proposed action should be canceled, thereby eliminating a duplication of AD's. The FAA does not concur that cancellation of this proposed action is necessary. The FAA is aware of the inconsistency regarding compliance times for replacement of the bellcrank shafts as set forth in this AD action and as currently required by AD 90–18–03. In fact, a statement to this effect was contained in the preamble to the notice. The FAA reiterates that this new AD action will supersede the specific requirements of AD 90–18–03 with regard to bellcrank shaft replacement (and the compliance time for such replacement) by requiring replacement within 18 months or 2,250 flight hours, whichever occurs later, in accordance with procedures described in McDonnell Douglas Alert Service Bulletin, Revision 3, dated May 15, 1991. This inconsistency between the two AD's will exist only temporarily, however. McDonnell Douglas has advised the FAA that, with the next revision of Document MDC–K1572, all references to Service Bulletin 27–250, Revision 2, dated January 3, 1990 (mandated by AD 90–18–03), will be deleted and replaced with references to Revision 3 of that Service Bulletin; further, the "incorporation threshold" for replacement of the bellcrank shaft will be revised in Document MDC–K1572 to correspond with the compliance time of this amendment. At that time, the FAA intends to revise AD 90–18–03 to cite the latest revision of Document MDC–K1572 as the appropriate source of service information, and thereby eliminate the inconsistency between that AD and this amendment with regard to the bellcrank shaft replacement requirements.

The same commenter requests a clarification of paragraph (e) of the proposed notice. Paragraph (e) states that both the slat drive mechanism and the slat drive bellcrank shaft need to be replaced in order to terminate the requirements of the AD. However, this proposed requirement is contradictory to "Condition I" specified in McDonnell Douglas Service Bulletin 27–196, Revision 2, dated December 17, 1990, which states that only the slat drive mechanism needs to be replaced if inspections occur at intervals not to exceed 1,600 cycles. If this inspection is not being conducted, then only the bellcrank shaft needs to be replaced in order to terminate the requirements of the proposed notice. The FAA does not concur. Paragraph (e) of the AD (which was also mandated by AD 91–13–09) strictly addresses "Condition II" specified in both McDonnell Douglas Service Bulletin 27–196, Revision 2, dated December 17, 1990, and McDonnell Douglas Alert Service Bulletin 27–250, Revision 3, dated May 15, 1991. The AD references the accomplishment of Condition II as one way to terminate the requirements of the AD, by replacing both of the applicable parts. "Condition I" is not addressed in paragraph (e) of this AD.

The same commenter requests that the rule be revised to state that, even if the bellcrank shaft has been replaced and, thus, the repetitive inspections terminated, a one-time inspection of the actuator slat drive shafts [such as is required by paragraph (a) of the rule] must be accomplished, unless it can be shown that such an inspection has already been performed. The commenter considers that this would be beneficial in those cases in which an airplane is purchased and AD compliance information is not available from the previous operator. The FAA does not concur that such a requirement is necessary. Section 121.380(a)(2)(v) of the Federal Aviation Regulations (FAR) requires that operators (those operating under FAR part 121) maintain records indicating the current status of applicable airworthiness directives, including the method of compliance; § 121.380a(b) of the FAR requires that those records be transferred with the airplane at the time of sale. If records of compliance with an AD are lost prior to a transfer or sale of an airplane, then the operator would have to reestablish compliance with the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 685 Model DC–9–20, –30, –40, –50, and C–9 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 422 airplanes of U.S. registry will be affected by this AD. The requirements of this amendment will not add any new additional economic burden on affected operators, other than the costs that are associated with replacing the bellcrank shafts at an earlier time than would have been required by AD 90–18–03 (replacement is now required within 18 months or 2,250 flight cycles, rather than 4 years or 100,000 flight cycles). However, for the convenience of affected operators, the current costs associated with this amendment are reiterated in their entirety (as follows):

The costs associated with the currently required inspections entail 1.5 work hours per airplane per inspection, at an average labor rate of $55 per work hour. (This figure does not include the time necessary for gaining access and closing up.) Based on these figures, the total cost impact of the AD on U.S. operators, with regard to the inspections, is estimated to be $34,815, or $82.50 per airplane per inspection.

The costs associated with the required replacement entail approximately 118 work hours per airplane (59 work hours per slat drive unit), at an average labor rate of $55 per work hour. (This figure does not include the time necessary for gaining access and closing up.) Required parts will cost approximately $7,658 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators, with regard to the replacement requirement, is estimated to be $5,970,456, or $14,148 per airplane. This "total cost" figure assumes that no operator has yet accomplished the required replacement of the bellcrank shaft.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–7040 (56 FR 28479, June 21, 1991), and by adding a new airworthiness directive (AD), amendment 39–8260, to read as follows:

92–11–10. McDonnell Douglas: Amendment 39–8260. Docket 91–NM–232–AD. Supersedes AD–91–13–09, Amendment 39–7040.

Applicability: Model DC–9–20, –30, –40, –50, and C–9 (Military) series airplanes; which correspond to factory serial numbers listed in McDonnell Douglas Service Bulletin 27–196, Revision 1, dated September 28, 1984, or Revision 2, dated December 17, 1990; McDonnell Douglas Service Bulletin 27–250, dated August 29, 1984, or Revision 1, dated October 18, 1984, or Revision 2, dated January 3, 1990; and McDonnell Douglas Alert Service Bulletin A27–250, Revision 3, dated May 15, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks and prevent failure of the slat drive mechanism and its interrelated structure, accomplish the following:

(a) Within 20 days or 135 landings, whichever occurs first after January 10, 1985 (the effective date of AD 84–24–03, Amendment 39–4956), inspect the left and right actuator slat drive mechanism in accordance with McDonnell Douglas Service Bulletin 27–196, Revision 1, dated September 28, 1984, or Revision 2, dated December 17, 1990.

(1) If no cracks are found, no further inspection is required.

(2) If a crack is found, and the crack is less than one inch in length, continue to inspect the actuator slat drive shaft at intervals not to exceed 1,600 landings in accordance with the service bulletin.

(3) If a crack is found, and the crack is one inch or greater in length, prior to further flight, replace the actuator slat drive shaft in accordance with Condition II specified in the service bulletin. Such replacement constitutes terminating action for the inspections required by paragraph (a)(2) of this AD.

(b) Within 20 days or 135 landings, whichever occurs first after January 10, 1985, inspect the forward slat drive drums' bellcrank shafts that have accumulated 4,000 or more landings since new or last overhaul.

(1) If no cracks are detected, continue to inspect the slat drive drum bellcrank shaft for cracks at intervals not to exceed 1,500 landings as shown in Figure 1 of McDonnell Douglas Service Bulletin 27–250, dated August 29, 1984; Revision 1, dated October 18, 1984; or Revision 2, dated January 3, 1990.

(2) If cracks are found, prior to further flight, replace the slat drive drum bellcrank shaft in accordance with Condition II of the service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of parapraph (b)(1) of this AD.

(c) Within 500 landings after July 8, 1991 (the effective date of AD 91–13–09, Amendment 39–7040), or at the next scheduled inspection in accordance with paragraph (b) of this AD, whichever occurs earlier, inspect the slat drive drums' bellcrank shafts for cracks, in accordance with McDonnell Douglas Alert Service Bulletin A27–250, Revision 3, dated May 15, 1991. This inspection constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1) of this AD.

(1) If no cracks are found, repeat the inspection of the slat drive drum bellcrank shaft for cracks at intervals not to exceed 750 landings, in accordance with the alert service bulletin.

(2) If cracks are found, prior to further flight, replace the slat drive drum bellcrank shaft with a new drum shaft, P/N 5920212–505, in accordance with Condition II specified in the alert service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (c)(1) of this AD.

(d) If cracks are found in locations in the slat drive shaft(s) other than those specified in McDonnell Douglas Service Bulletin 27–196, Revision 1 or 2; and McDonnell Douglas Alert Service Bulletin A27–250, Revision 3; prior to further flight, replace or rework the cracked component(s) in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(e) Replacement of both the actuator slat drive mechanism and the slat drive drum bellcrank shaft in accordance with Condition II of the following service bulletins, as applicable, constitutes terminating action for the requirements of this AD:

McDonnell Douglas service bulletin number	Revision level	Date
27–196	Revision 1	September 28, 1984.
	Revision 2	December 17, 1990.
27–250	Original	August 29, 1984.
	Revision 1	October 18, 1984.
	Revision 2	January 3, 1990.
A27–250	Revision 3	May 15, 1991.

(f) Within 18 months or 2,250 flight cycles after the effective date of this AD, whichever occurs later, replace the slat drive drum bellcrank shaft with a new drum shaft, P/N 5920212–505, in accordance with Condition II specified in McDonnell Douglas Alert Service Bulletin 27–250, Revision 3, dated May 15, 1991. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraphs (b)(1) and (c)(1) of this AD.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

(i) Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

(j) The inspection and replacement requirements shall be done in accordance with McDonnell Douglas Service Bulletin 27–196, Revision 1, dated September 28, 1984, or Revision 2, dated December 17, 1990; McDonnell Douglas Service Bulletin 27–250, dated August 29, 1984, or Revision 1, dated October 18, 1984, or Revision 2, dated January 3, 1990; and McDonnell Douglas Alert Service Bulletin A27–250, Revision 3, dated May 15, 1991. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of July 8, 1991 (56 FR 28479, June 21, 1991). Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Technical Publications—Technical Administrative Support, C1–L5B (54–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(k) This amendment becomes effective on July 23, 1992.

Issued in Renton, Washington, on May 29, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14285 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92-NM-19-AD; Amendment 39-8272; AD 92-13-02]

Airworthiness Directives; Aerospatiale Model SN 601 Corvette Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model SN 601 Corvette series airplanes, that requires repetitive eddy current inspections of the fuselage skin sheets, and modification of any cracked parts, if necessary. A terminating action is also provided, which, if accomplished, will eliminate the need for repetitive inspections. This amendment is prompted by reports of corrosion on the fuselage skin panels. The actions specified by this AD are intended to prevent structural failure of the fuselage and associated decompression of the passenger cabin.

DATES: Effective July 23, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Aerospatiale Model SN 601 Corvette series airplanes was published in the **Federal Register** on March 5, 1992 (57 FR 7894). That action proposed to require repetitive eddy current inspections of the fuselage skin sheets, and modification of any cracked parts, if necessary. A terminating action is also provided, which, if accomplished, will eliminate the need for repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and public interest require the adoption of the rule as proposed.

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $165.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-13-02. Aerospatiale: Amendment 39-8272. Docket 92-NM-19-AD.

Applicability: Aerospatiale Model SN 601 Corvette series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the fuselage and associated decompression of the passenger cabin, accomplish the following:

(a) Prior to the accumulation of 18,200 landings, or within 100 landings after the effective date of this AD, whichever occurs later, inspect the skin panels between Frame FR17 and FR19, on the right side below stringer 11, to detect cracks, using an eddy current procedure, in accordance with Aerospatiale Corvette Service Bulletin 53-24, dated January 25, 1991.

(b) If no cracks are found as a result of the inspection required by paragraph (a) of this AD, repeat the eddy current inspection thereafter at intervals not to exceed 7,300 landings.

(c) If any crack is found as a result of any inspection required by this AD, prior to further flight, install Modification 1399, in accordance with Aerospatiale Corvette Service Bulletin 53-15, dated January 22, 1991.

(d) Installation of Modification 1399, in accordance with Aerospatiale Corvette Service Bulletin 53-15, dated January 22, 1991, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and modifications shall be done in accordance with Aerospatiale Corvette Service Bulletin 53-24, dated January 25, 1991; and Aerospatiale Corvette Service Bulletin 53-15, dated January 22, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment becomes effective on July 23, 1992.

Issued in Renton, Washington, on May 28, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-14360 Filed 6-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-166-AD; Amendment 39-8254; AD 92-11-04]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION. Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model ATP series airplanes, that requires the installation of modified earthing arrangements to the pitot static and stall warning systems and overhead stowage units; modification of the roof and sidewall light wiring and a standby compass check; and installation of a warning placard. This amendment is prompted by reports of standby compass deviations exceeding the required tolerance when certain airplane electrical equipment is operated. The actions specified by this AD are intended to prevent inaccurate navigation when using the standby compass.

DATES: Effective July 23, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplance Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to British Aerospace Model ATP series airplanes was published in the **Federal Register** on February 12, 1992 (57 FR 5098). That action proposed to require the installation of modified earthing arrangements to the pitot static and stall warning systems and overhead stowage units; modification of the roof and sidewall light wiring and a standby compass check; and installation of a warning placard.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and public interest require the adoption of the rule as proposed.

The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 229 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,523 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $112,944.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-11-04. British Aerospace: Amendment 39-8254. Docket 91-NM-166-AD.

Applicability: British Aerospace Model ATP airplanes; as listed in British Aerospace Service Bulletin ATP-24-34, dated April 25, 1991, and British Aerospace Service Bulletin ATP-33-8, Revision 2, dated April 11, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inaccurate navigation when using the standby compass, accomplish the following:

(a) Within 14 days after the effective date of this AD, fabricate and install a temporary placard near the standby magnetic compass, worded as follows:

"WARNING: OPERATION OF CABIN ROOF AND SIDEWALL LIGHTING, PITOT HEAT, AND STALL WARNING SYSTEMS MAY INDUCE EXCESSIVE ERROR IN THE MAGNETIC COMPASS READINGS."

(b) Within 6 months after the effective date of this AD, accomplish the following:

(1) Modify the earthing arrangements to the pitot static and stall warning systems (Modification 10194A) and to the overhead stowage units (Modification 10194B), as applicable, in accordance with British Aerospace Service Bulletin ATP-24-34, dated April 25, 1991.

(2) Modify the roof and sidewall light wiring (Modification 35113A) in accordance with British Aerospace Bulletin ATP-33-8, Revision 2, dated April 11, 1991.

(3) Accomplish a compass swing of the standby compass in accordance with British Aerospace Service Bulletin ATP-24-34, dated April 25, 1991.

(4) Remove the temporary placard installed in accordance with paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modifications shall be done in accordance with British Aerospace Service Bulletin ATP–24–34, dated April 25, 1991; and British Aerospace Service Bulletin ATP–33–8, Revision 2, dated April 11, 1991. These service bulletins contain the following list of effective pages:

Service bulletin No.	Page No.	Revision level	Date
ATP–24–34	1–3, 5–21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53–54	Original	Apr. 25, 1991.
	4, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52	(These pages are not used).	
ATP–33–8 revision 2	1	2	Apr. 11, 1991.
	2–5, 19–20, 31, 33	1	Sept. 5, 1990.
	6–18, 21, 23, 25, 27, 29, 35, 37, 39–40	Original	Apr. 29, 1990.
	22, 24, 26, 28, 30, 32, 34, 36, 38	(These pages are not used).	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041–0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(f) This amendment becomes effective on July 23, 1992.

Issued in Renton, Washington, on April 29, 1992.

N. B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14290 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–104–AD; Amendment 39–8273; AD 92–13–03]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires either modification or replacement of the flap control module quadrant. This amendment is prompted by several incidents of inadvertent slat deployment during flight at cruise altitude. The actions specified in this AD are intended to prevent inadvertent slat deployment during flight at cruise altitude, which could create significant vibrations and cause damage to the elevators.

DATES: Effective July 6, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 1992.

Comments for inclusion in the Rules Docket must be received on or before August 17, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–104–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Maurice Cook, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–121L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5226; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: There have been several incidents of inadvertent slat deployment, caused by either inadvertent bumping of the slat/flap handle or an improper positioning of the slat/flap handle, on certain Model MD–11 airplanes during flight at cruise altitude. The FAA has been advised by the manufacturer that insufficient latching capability of the flap control module caused the inadvertent movement of the flap handle. Additionally, a design review conducted by the manufacturer revealed that a false detent can exist at the flap detent and gate assembly interface, thus decreasing the latching capability. This false detent, coupled with a down force on the handle, could allow the handle to move backward through the gate and extend the slats. If the slats are inadvertently deployed, the airplane can potentially enter the stall buffet flight

regime, which could cause vibration in the horizontal stabilizer and the elevators. Such vibrations have occurred on at least two Model MD–11 airplanes on which the slats were deployed inadvertently. Subsequent ground inspections of these airplanes detected damage to the outboard portion of the composite elevators and revealed that, during one incident, parts of the elevator trailing edge had fallen off the airplane. Inadvertent slat deployment during flight at cruise altitude could result in the airplane entering the stall buffet flight regime, which could create significant vibrations and cause damage to the elevators.

The FAA has reviewed and approved McDonnell Douglas MD–11 Service Bulletin 27–18, dated August 30, 1991, that describes procedures for replacement of certain components of the flap control module quadrant. The FAA has also reviewed and approved McDonnell Douglas MD–11 Service Bulletin 27–18 Revision 1, dated October 16, 1991, that also describes procedures for replacement of certain components of the flap control module quadrant, but includes procedures for an optional modification of the module, as well. The modification involves trimming the radius of the gate and the quadrant in the flap control module, which flattens the surface, thus eliminating the false detent. Either the modification or replacement procedures will delete the false detent and minimize inadvertent flap handle movement and slat extension.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent inadvertent slat deployment during flight at cruise altitude, which could result in the airplane entering the stall buffet flight regime, and subsequently creating significant vibrations and causing damage to the elevators. This AD requires either the modification or replacement of the flap control module quadrant. The actions are required to be accomplished in accordance with the service bulletin described previously.

The requirements of this rule are considered interim action until the manufacturer completes a design review of the slat/flap system, at which time, the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–104–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–13–03. McDonnell Douglas: Amendment 39–8273. Docket 92–NM–104–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Service Bulletin 27–18, Revision 1, dated October 16, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent slat deployment during flight at cruise altitude, which could create significant vibrations and cause damage to the elevators, accomplish the following:

(a) Within 15 days after the effective date of this AD, accomplish the requirements of either sub-paragraph (a)(1) or (a)(2) of this AD:

(1) Replace the quadrant, gate, and spacer on the flap control module, and re-identify the module, in accordance with paragraph C. of McDonnell Douglas MD–11 Service Bulletin 27–18, dated August 30, 1991 or "Option I" of paragraph C. of McDonnell Douglas MD–11 Service Bulletin 27–18, Revision 1, dated October 16, 1991.

(2) Modify the quadrant and gate on the flap control module, and replace a spacer on the flap control module, and re-identify the module, in accordance with "Option II" of paragraph C. of McDonnell Douglas MD–11

Service Bulletin 27-18, Revision 1, dated October 16, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement and modification shall be done in accordance with McDonnell Douglas MD-11 Service Bulletin 27-18, dated August 30, 1991; or McDonnell Douglas MD-11 Service Bulletin 27-18, Revision 1, dated October 16, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on July 6, 1992.

Issued in Renton, Washington, on June 2, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-14289 Filed 6-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-33-AD; Amendment 39-8279; AD 92-13-09]

Airworthiness Directives; Canadair, Ltd., Model CL-600-1A11 (CL-600), CL-600-2A12 (CL-601), and CL-600-2B16 (CL-601-3A) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Canadair Model CL-600, CL-601, and CL-601-3A series airplanes, that currently requires inspections for potential crossed wiring in the engine fire extinguishing system and the engine fire detection and warning system, and correction of any discrepancies. This amendment requires modification of the engine fire extinguishing system. This amendment is prompted by a report indicating that any disconnection and subsequent reconnection of the wiring or warning system wiring harnesses may lead to inadvertent crossed wiring. The actions specified by this AD are intended to prevent severe damage to an airplane in the event of an engine fire.

DATES: Effective July 23, 1992.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of February 11, 1992 (57 FR 3006, January 27, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond O'Neill, Aerospace Engineer, Propulsion Branch, ANE-174, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581-1145; telephone (516) 791-7421; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92-03-06, Amendment 39-8161 (57 FR 3006, January 27, 1992), which is applicable to certain Canadair Model CL-600, CL-601, and CL-601-A series airplanes, was published in the **Federal Register** on March 16, 1992 (57 FR 9078). [A correction of the rule was published in the **Federal Register** on April 2, 1992 (57 FR 11352).] The action proposed to require modification of the engine fire extinguishing system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 100 airplanes of U.S. registry will be affected by this AD. The actions previously required by AD 92-03-06 necessitated 2 work hours to accomplish, at an average labor charge of $55 per work hour; the total cost to affected U.S. operators was approximately $11,000, or $110 per airplane. The modification that will be required by this AD will require an additional 6 work hours to accomplish, at an average labor charge of $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Therefore, the additional cost to U.S. operators with regards to the required modification action is estimated to be $33,000, or $330 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $44,000, or $440 per airplane. The total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39–AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 108(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8161 (57 FR 3006, January 27, 1992), and by adding a new airworthiness directive (AD), amendment 39–8279, to read as follows:

92–13–09. Canadair, Ltd.: Amendment 39–8279. Docket 92–NM–33–AD. Supersedes AD 92–03–06, Amendment 39–8161.

Applicability: Model CL–600–1A11 series airplanes, serial numbers 1004 to 1085, except serial number 1037; Model CL–600–2A12 series airplanes, serial numbers 3001 to 3066; and Model CL–600–2B16 series airplanes, serial numbers 5001 to 5049; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe damage to an airplane in the event of an engine fire, accomplish the following:

(a) Within 30 days after February 11, 1992 (the effective date of AD 92–03–06, Amendment 39–8161), accomplish the following:

(1) For Model CL–600–1A11 series airplanes: Perform an inspection for potential crossed wiring in the engine fire extinguishing system, and inspect the electrical connectors for unlocked or inoperative pins, in accordance with Canadair Alert Service Bulletin A600–0581, dated September 8, 1989.

(2) For Model CL–600–2A12 and CL–600–2B16 series airplanes: Perform an insepction for potential crossed wiring in both the engine fire detection and warning system and the engine fire extinguishing system, and inspect the electrical connectors for unlocked or inoperative pins, in accordance with Canadair Alert Service Bulletin A601–0309, dated September 8, 1989.

(b) If any wiring discrepancies are detected as a result of the inspections required by paragraph (a) of this AD, prior to further flight, correct the discrepancies and replace any discrepant electrical connectors found, in accordance with Canadair Alert Service Bulletin A600–0581, dated September 8, 1989 (for Model CL–600–1A11 series airplanes); or Canadair Alert Service Bulletin A601–0309, dated September 8, 1989 (for Model CL–600–2A12 and CL–600–2B16 series airplanes); as applicable.

(c) Within 120 days after the effective date of this AD, or the next time the fire bottles are removed from the airplane, whichever occurs first, modify the engine fire extinguishing warning harnesses and perform a functional test, in accordance with Canadair Alert Service Bulletin A600–0581, dated September 8, 1989 (for Model CL–600–1A11 series airplanes); or Canadair Alert Service Bulletin A601–0309, dated September 8, 1989 (for Model CL–600–2A12 and CL–600–2B16 series airplanes); as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and modification shall be done in accordance with Canadair Alert Service Bulletin A600–0581, dated September 8, 1991 (for Model CL–600–1A11 series airplanes); or Canadair Alert Service Bulletin A601–309, dated September 8, 1989 (for Model CL–600–2A12 and CL–600–2B16 series airplanes); as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of February 11, 1992 (57 FR 3006, January 27, 1992). Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on July 23, 1992.

Issued in Renton, Washington, on June 3, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14287 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASO–15]

Alteration of VOR Federal Airway V–157

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V–157 located in the States of North Carolina and South Carolina. The airway's continuity is interrupted by a 130–mile gap between Florence, SC, and Kinston, NC. This action connects the airway south of Florence, SC, with the continuation of the airway north of Kinston, NC, by extending V–157 over that 130–mile segment. Elimination of this gap will improve flight planning.

EFFECTIVE DATE: 0901 u.t.c., August 20, 1992

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace–Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On September 17, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of V–157 located in the States of North Carolina and South Carolina (56 FR 47038). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The only comment received came from the Department of the Air Force which commented that the airway alteration would increase the traffic flow in the vicinity of the Echo Military Operations Area between Fayetteville and Kinston, NC. The FAA does not believe that the alteration of V–157 will interfere with any military operations, because instrument flight operations are not permitted to penetrate military operations areas when they are being utilized by military training aircraft. Furthermore, an airway, V–54, already exists along the route over which V–157 will be extended. Except for editorial changes, this amendment is the same as that proposed in the notice. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designation of the airway listed in this document will be published subsequently in § 71.123 of the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of V–157 located in the States of North Carolina and South Carolina. Federal Airway V–157, which extends from Key West, FL, to Albany, NY, had a 130–mile gap between Florence, SC, and Kinston, NC, prior to

this Final rule. This action improves flight planning by eliminating the gap.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g) 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–157 [Revised]

From Key West, FL; Miami, FL; INT Miami 337° and La Belle, FL, 124° radials, La Belle; Lakeland, FL; Ocala, FL; Gainesville, FL; Taylor, FL; Waycross, GA; Alma, GA; Allendale, SC; Vance, SC; Florence, SC; Fayetteville, NC; Kinston, NC; Tar River, NC; Lawrenceville, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Kenton, DE; Woodstown, NJ; Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032° and Deer Park, NY, 326° radials; INT Deer Park 326° and Kingston, NY, 191° radials; Kingston, NY; to Albany, NY. The airspace within R–2901A and R–6602A is excluded. The airspace at and above 7,000 feet MSL which lies within the Lake Placid MOA is excluded during the time the Lake Placid MOA is activated. The airspace within R–4005 and R–4006 is excluded.

Issued in Washington, DC, on June 10, 1992.

Harold W. Becker,

Manager, Airspace–Rules and Aeronautical Information Division.

[FR Doc. 92–14341 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

[T.D. 92–58]

RIN 1515–AB05

Priority Status in Bankruptcy Proceedings

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that to the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7) of the Bankruptcy Code for that portion of the duties which the broker or surety has paid. The assignment of this priority status will minimize the risk incurred by a broker or a surety in assuming liability for duties and thus encourage early payment of duties to Customs.

EFFECTIVE DATE: July 20, 1992.

FOR FURTHER INFORMATION CONTACT: John Lehman, Office of Chief Counsel (202) 566–5476.

SUPPLEMENTARY INFORMATION:

Background

The Bankruptcy Code provides in 11 U.S.C. 507(a)(7) for seventh priority status in a bankruptcy proceeding for allowed unsecured claims of governmental units. Priority status of claims by Customs for duties arising out of the importation of merchandise prior to the filing of bankruptcy are specifically provided for in three instances: (1) Merchandise is entered for consumption within one year before the date of the filing of the petition; (2) merchandise covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; (3) merchandise entered for consumption within four years before the date of the filing of the petition, but unliquidated on that date where the failure to liquidate was due to a pending investigation or need for information. 11 U.S.C. 507(a)(7). Such claims are given seventh priority along with governmental claims for taxes for income or gross receipts, property tax, withholding tax, and excise tax generally assessed one year prior to the filing of the bankruptcy petition.

Presently, brokers or sureties which pay Customs duties on behalf of an importer which files for bankruptcy protection are relegated to the status of unsecured creditor. On March 6, 1991, Customs published a Notice of Proposed Rulemaking in the **Federal Register** (56 FR 9311), which announced a proposal to amend the Customs Regulations in such a way that a broker or surety which had paid Customs duties on behalf of an importer who then declared bankruptcy would be assigned the priority status conferred by section 507(a)(7) of the Bankruptcy Code upon Customs for unsecured claims for duties.

Analysis of Comments

In response to a request for comments on the proposed amendment, Customs received numerous replies. The vast majority were limited to simple expressions of support for the proposal and did not address any particular aspect of the proposal. However, some did raise specific points which are addressed below.

Comment: Two commenters expressed concern that section 507(d) of the Bankruptcy Code would preclude Customs from allowing a broker or surety to assert Customs priority in a bankruptcy action.

Response: The Bankruptcy Code provides in section 507(d) that an entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(6) (subsequently changed to (a)(7) in Public L. No. 98–353, but not so reflected in section 507(a)) is not subrogated to the right of the holder of such a claim to priority under such subsection. Indeed, this language would preclude assertion of priority status by any entity other than Customs under a theory of subrogation.

In this amendment, Customs is not attempting to use the theory of subrogation to enable brokers and sureties to assert its priority. Instead, Customs is assigning its priority rights in any bankruptcy action to brokers and sureties to the extent that the broker or surety has paid the duties that were due on the imported merchandise. By stating that this is an assignment of rights in the amendment, Customs intends to preclude possible questions of agency intent in the future.

Comment: One commenter suggested that the wording of the amendment be changed to cover other expenses incurred by brokers and sureties.

Response: Customs does not believe that it would be possible to assign anything more than duties paid by brokers or sureties. The reason for this is that the priority provisions applicable to a claim of Customs under the Bankruptcy Code only cover the payment of duties. Because Customs has not received priority rights in other obligations of the bankrupt, it cannot assign them to anyone.

Comment: One commenter asked whether a broker or surety would be entitled to priority status even if Customs was not owed any money by the importer at the time of the bankruptcy filing. This situation could arise where the broker or surety pays an amount owed as duties on behalf of an importer who subsequently files for bankruptcy.

Response: This comment raises the question about the ability of Customs to assign a claim which has been satisfied by the broker or surety. Under the Bankruptcy Code, Customs has a priority status for unpaid duties. If those duties have been paid by another party, can the claim for that obligation be assigned to another party? Customs believes that question can be answered affirmatively. Even if another party pays duties which are owed by an importer, the importer is still primarily responsible for payment of those duties. The language as set forth in the amendment states that the priority which is assigned to the broker or surety is the priority for the duties owed. Since the importer is liable for the duties until it pays them, the fact that the broker or surety advanced a similar amount to Customs should not defeat the assignment of the importer's obligation in the event of a bankruptcy filing by the importer.

Comment: Some comments expressed concern that the background statement of the proposal contained the language to the effect that in paying the duties for the importer, the broker or surety was "assuming liability" for the duties of the importer. The comments stated that it would not be fair for Customs to hold a broker liable for any of the importer's liabilities.

Response: Customs agrees. The use of the phrase "assuming liability" referred only to the fact that by paying the duties on behalf of the importer, the broker or surety has assumed that liability of the importer, and not that Customs would hold the broker or surety liable for any debt owed by the importer. The only situations in which Customs would hold a broker liable for duties would be when the entry is made by the broker as importer of record.

Comment: A commenter expressed confusion over the use of the phrase "on a pro rata basis" in the proposed change to § 141.1(c), and asked for a clarification.

Response: Customs agrees that there might be some question in the future over the construction of that phrase and the phrase "pro rata" might be confusing to some readers. Customs intent is to permit brokers or sureties to be able to avail themselves of the priority Customs has under the Bankruptcy Code only to the extent that the broker or surety has voluntarily paid the duties owed by the importer. Accordingly, the language of the amendment will be changed to clearly state that the priority which Customs is assigning is a priority for that portion of Customs claim which the broker or surety has paid.

Comment: One commenter suggested that, because the Bankruptcy Code is a creature of Congress, rather than amending its regulations, Customs should attempt to have Congress amend the Code to expressly grant brokers or sureties the priority Customs will be assigning them.

Response: Customs agrees that legislative action would be the best means of achieving the desired objective. Should the brokers and sureties feel that this regulatory action will be ineffectual, Customs encourages them to pursue legislative alternatives.

Determination

After consideration of all the comments received in response to the Notice of Proposed Rulemaking, and further review of the matter, it has been determined to adopt the regulations in final form with the modifications discussed.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604.

Executive Order 12291

Because this document does not result in a "major rule" as defined by Executive Order 12291, the regulatory analysis and review prescribed by the Executive Order is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 141

Customs duties and inspection; Imports.

Amendment to the Regulations

Part 141 Customs Regulations (19 CFR part 141) is amended as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 is revised in part to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.1 also issued under 11 U.S.C. 507(a)(7)(F), 31 U.S.C. 191, 192;

* * * * *

2. In § 141.1, paragraph (c) is revised to read as follows:

§ 141.1 Liability of importer for duties.

* * * * *

(c) *Claim against estate of importer.* The claim of the Government for unpaid duties against the estate of a deceased or insolvent importer has priority over obligations to creditors other than the United States. To the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7) of the Bankruptcy Code for that portion of Customs claim which the surety or broker has paid.

Dated: May 13, 1992.

Carol Hallett,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-14373 Filed 6-17-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-225D]

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; corrections.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is correcting errors that appeared in the final rule on occupational exposure to formaldehyde which was published on May 27, 1992 (57 FR 22290).

EFFECTIVE DATE: June 26, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department Of Labor, room N–3647, 200 Constitution Avenue NW., Washington, DC 20010. Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1992, the Occupational Safety and Health Administration amended its standard on occupational exposure to formaldehyde. The amendments lowered the permissible exposure limit for formaldehyde from 1 part per million (ppm) to 0.75 ppm, measured as an 8-hour time-weighted average (TWA). The amendments also added medical removal protection provisions for employees suffering from certain adverse effects from formaldehyde exposure. In addition, changes were made to the standard's hazard communication and employee training provisions.

Need for Corrections

In addition to the amendments and revisions mentioned above, for the convenience of the public, OSHA republished the entire formaldehyde standard as revised. However, during the process of preparing the document for republication, certain information was inadvertently omitted or not revised in accordance with the amended standard. This notice amends the standard to correct the omissions and make the necessary technical revision.

Correction of Publication

Accordingly, the publication on May 27, 1992 of the final rule on occupational exposure to formaldehyde which appeared at 57 FR 22290 is corrected as follows:

§ 1910.1048 [Corrected]

1. On page 22307, third column, in instruction paragraph 2., the following instruction is added after the seventh line: "and the OMB control number for the section is added".

2. On page 22309, third column, the OMB control number for § 1910.1048 is added at the end of the column to read as follows:

(Approved by the Office of Management and Budget under control number 1218–0145)

3. On page 22316, first column, the OMB control number for § 1910.1048 is added preceding Appendix A to read as follows:

(Approved by the Office of Management and Budget under control number 1218–0145)

4. On page 22316, first column, on the line next to the end of the column, for OSHA TWA, "1 ppm" is corrected to read "0.75 ppm".

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, D.C. this 12th Day of June, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–14236 Filed 6–17–92; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100, 110, and 165

[CGD1 91–165]

Temporary Regulations, Boston Harbor, July 4–16, 1992

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations in Boston Harbor for port activities associated with Boston Harborfest and Sail Boston 1992 occurring July 4–16, 1992. This document contains the temporary regulations necessary to conduct these activities in a safe and orderly manner and includes: regulated areas with special local regulations for minimum wake zones and for a two-day offshore sailing regatta; anchorage regulations for the tall ship parade and departure; and safety zone regulations for the CONSTITUTION Turnaround, a fireworks display, a tall ship rally, parade, and departure, and the restart of the Grand Regatta. These temporary regulations are issued to promote the safe navigation of vessels in Boston Harbor in anticipation of the significant increase to the volume of vessel traffic expected to attend these celebrations by controlling vessel activity in the harbor during major waterside events and by limiting access to the areas where participating vessels are operating, anchored, or moored.

DATES: These rules are effective as listed below:

33 CFR 100.T01–165–1 (Regulated Area, Hull Gut/Boston Main Channel), from 8 a.m. July 9, 1992 to 4 p.m. July 16, 1992.

33 CFR 100.T01–165–2 (Regulated Area, Challenge Cup Sailboat Racing Regatta), from 9 a.m. to 3 p.m. July 13, 1992; from 9 a.m. to 3 p.m. July 14, 1992; and from 9 a.m. to 3 p.m. July 15, 1992 (rain date).

33 CFR 110.134 (Temporary Anchorage Regulations, Boston Harbor Mass.), from 2 p.m., July 4, 1992 to 6 p.m. July 16, 1992.

33 CFR 165.T01–165–4 (Safety Zone, CONSTITUTION Turnaround), from 10 a.m., July 4, 1992 to 2 p.m. July 4, 1992 and from 10 a.m., July 5, 1992 to 2 p.m July 5, 1992 (rain date).

33 CFR 165.T01–165–6 (Safety Zone, Tall Ship Rally), from 10 a.m., July 10, 1992 to 12 noon, July 10, 1992.

33 CFR 165.T01–165–7 (Safety Zone, Grand Parade of Sail), from 6 a.m., July 11, 1992 to 8 p.m. July 11, 1992.

33 CFR 165.T01–165–8 (Safety Zone, Reserved Channel), from 4:30 p.m., July 11, 1992 to 9:30 a.m. July 16, 1992.

33 CFR 165.T01–165–9 (Safety Zone, Fireworks Extravaganza), from 5:30 p.m. July 12, 1992 to 11 p.m. July 12, 1992 and from 5:30 p.m. July 15, 1992 to 11 p.m., July 15, 1992 (rain date).

33 CFR 165.T01–165–11 (Safety Zone, Farewell Departure), from 8 a.m., July 16, 1992 to 6 p.m. July 16, 1992.

33 CFR 165.T01–165–12 (Safety Zone, Grand Regatta Restart), from 11:30 a.m., July 16, 1992 to 6 p.m., July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander S. Garrity, Marine Safety Officer Boston, (617) 223–3020.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LCDR S. Garrity, Project Officer, Marine Safety Office Boston, and LCDR J. Astley, Project Counsel, First Coast Guard District Legal Office.

Regulatory History

On April 9, 1992, the Coast Guard published a Notice of Proposed Rulemaking entitled, "Temporary Regulations, Boston Harbor, July 2–17, 1992." The Coast Guard received two letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

At the request of the organizers as contained in applications for marine events associated with Harborfest and Sail Boston 1992, the Coast Guard is establishing temporary regulations in Boston Harbor for the period of July 4–16, 1992. These regulations are prompted by the high degree of control necessary to ensure the safety of participating and spectator vessels for the major

waterside events occurring in Boston Harbor during these two celebrations. Major waterside events include the CONSTITUTION Turnaround, a tail ship rally, a tall ship parade in and departure from Boston Harbor with designated anchorage areas for spectator vessels, an offshore sailing regatta, a fireworks display in celebration of the tall ships' visit to Boston, and the restart of the Grand Regatta. These regulations provide specific guidance on vessel movement controls, temporary anchorage regulations, and safety zones that will be in effect in Boston Harbor during the period specified.

Chronologically, the events planned for this period are as follows:

(1) CONSTITUTION Turnaround, July 4, 1992

On the morning of July 4, 1992, the USS CONSTITUTION will get underway in the Boston Main Channel, Boston Inner Harbor, to make its annual turnaround cruise. For the cruise, CONSTITUTION will depart its berth at Pier 1, Charlestown Navy Yard and proceed outbound in the Boston Main Channel to the vicinity of Castle Island. After passing Castle Island, the CONSTITUTION will turn to port, proceed inbound in Boston Harbor, and at noon, when abeam Fort Independence, Castle Island, fire a twenty-one gun salute, honoring our Nation's birthday. Following the salute, the CONSTITUTION will return to the Charlestown Navy Yard and safely moor. The cruise will be conducted between 10 a.m. and 2 p.m. During this event, the Coast Guard will establish a safety zone in the Boston Main Channel, Boston Inner Harbor, from the Charlestown Navy Yard to Spectacle Island, including the waters on either side of the channel to the shoreline. The safety zone will be in effect for the duration of the event while CONSTITUTION is underway from the time the vessel departs the Charlestown Navy Yard to the time it returns and is safely moored. The zone includes special regulations requiring spectator craft to maintain at all times at least 300 yards safe distance from CONSTITUTION, to select and remain in positions outside the channel, and not to maneuver between anchored vessels. A rain date of July 5, 1992, is planned, with all times remaining the same. This zone is needed to protect the USS CONSTITUTION, persons viewing the transit, and any other vessel or land structure from a safety hazard associated with the limited maneuverability of CONSTITUTION while underway in Boston Harbor for its turnaround cruise. Implementation of this zone will close the affected portion of the Boston Main Channel to navigation by all vessels while the zone is in effect, and vessel movements within the zone will be as directed by on-scene Coast Guard patrol personnel.

In support of this event, the Gridley Locks at the Charles River Dam and the Earhart Dam, Mystic River will be closed to navigation between 9:45 a.m. and 2 p.m.

(2) Hull Gut and Boston Main Channel Regulated Area, July 9–16, 1992

To accommodate the number of patrol craft necessary to control vessel movements during the tall ships' visit to Boston for Sail Boston 1992, the Coast Guard is establishing temporary mooring sites off Hull Gut Channel at USCG Station Point Allerton, Hull, MA, and in the Little Mystic Channel, Charlestown, MA. The sites will be equipped with enough floating docks to berth the additional Coast Guard and Coast Guard Auxiliary vessels brought on scene to assist in safety patrols to be conducted during this period of increased activity. To protect these vessels while they are at berth, the Coast Guard is establishing a regulated area in two separate locations. The first of these locations is in the vicinity of Hull Gut Channel, off USCG Station Point Allerton, Hull, MA; and the second, in the Boston Main Channel in the vicinity of Little Mystic Channel. Special regulations will be in effect for vessels transiting through the regulated area locations. The Hull Gut location extends across Hull Gut Channel, bounded north by the northern tip of Peddocks Island and bounded south by Hull Gut Channel, Lighted Buoy "4." The Boston Main Channel location extends across Boston Main Channel from Charlestown to East Boston, bounded north by the northeastern corner of Massport Pier 49, Charlestown and bounded south by the southeastern corner of Pier 11, Charlestown Navy Yard. The regulated area remains in effect from 8 a.m., July 9, 1992, to 4 p.m., July 16, 1992. During the effective period, the Coast Guard will require vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour. On-scene Coast Guard patrol personnel will enforce restrictions on vessel movements through the regulated area.

(3) Tall Ship Rally, July 10, 1992

Event organizers estimate that approximately 200 tall ships will visit Boston for the events associated with the Sail Boston 1992 celebration. Since Sail Boston 1992 expects to limit participation in its Grand Parade of Sail on July 11th to 126 vessels, organizers will conduct a Tall Ship Rally on July 10, 1992 for tall ships visiting Boston excluded from participating in the tall ship parade. The rally will consist of approximately 75 vessels sailing together as a group in the inner harbor between the President Roads Anchorage and Rowe's Wharf. The rally will be conducted between 10 a.m. and 12 noon.

During this event, the Coast Guard is establishing a safety zone in Boston Harbor to include President Roads, Boston Main Channel, and the Fort Point Channel. The safety zone extends from the USCG Support Center Boston to Deer Island, including the waters on either side of the channel to the shoreline. The safety zone will be in effect for the duration of the event while the tall ships are underway for the rally. The zone includes special regulations requiring spectator craft to maintain at all times at least 300 yards safe distance from rally participants, to select and remain in positions outside the channel, not to maneuver between anchored vessels, and not to block the entrance into Fort Point Channel. This zone is needed to protect tall ship rally participants, persons viewing the tall ship rally, and any other vessels or land structures from a safety hazard associated with the limited maneuverability of participating vessels underway in Boston Harbor for the tall ship rally.

(4) Temporary Anchorage Regulations, July 10–11, 1992; July 15–16, 1992

In anticipation of the movement of hundreds of tall ships and thousands of spectator craft through Boston Harbor for the Sail Boston 1992 Grand Parade of Sail and Farewell Departure, the Commander, First Coast Guard District is modifying the existing Boston Harbor anchorage regulations, as contained in 33 CFR 110.134, to establish temporary anchorages, designated spectator areas, and rules to govern those areas during the tall ships' visit to Boston. The existing Boston Harbor anchorage regulations specify five Federal anchorages in Boston Harbor, which are as follows: Bird Island Anchorage, President Roads Anchorage, Long Island Anchorage, Castle Island Anchorage, and Explosives Anchorage. These areas are depicted numerically on Charts 13270 and 13272 as Anchorages 1–5. The attached chartlets marked, "Boston Harbor Existing Anchorage Areas," show these areas as they presently exist.

Past experience from Boston tall ship visits in 1976 and 1980 has proven that five anchorages will not accommodate

the volume of vessel traffic that can be expected to arrive in port for the Sail Boston 1992 tall ship parade and departure. Accordingly, the First District Commander, through temporary modifications to the existing Boston Harbor anchorage regulations, is establishing a total of fourteen designated spectator areas for the parade and departure. Additionally, the First District Commander is also establishing two tall ship anchorage areas (one in Broad Sound and Nahant Bay, the other in the Mystic River) and restrict access to the President Roads 40-ft anchorage, (as deemed appropriate by the Captain of the Port (COTP) Boston), Long Island Anchorage, and Explosives Anchorage for these events. Modifications to the existing regulations will include specific provisions to govern the use of each area and general provisions with which vessel operators using the areas must comply.

Listed below in Table I is a condensed summary of the anchorage areas that will be established for the tall ship parade and departure. The summary contains each anchorage area designation, the specific use of that area, its general location, and its effective period. The table is marked, "Sail Boston 1992 Anchorages and Designated Spectator Areas," and it corresponds to the attached chartlets marketed "Boston Harbor Temporary Anchorages and Spectator Areas for Tall Ship Parade and Departure." The temporary anchorage regulations work in concert with safety zone regulations to ensure the safe anchoring, coordinated movement, and mooring of participating parade vessels and the effective control of the huge spectator fleet these events will attract. Violators of safety zone regulations in effect during the tall ship parade and departure, including the rules implemented for temporary anchorages and spectator areas, will be prosecuted and may be assessed civil penalties of up to $25,000.

In addition to anchorages and designated spectator areas the Coast Guard is establishing for these events, a limited number of mooring areas are available through the Boston Harbormaster.

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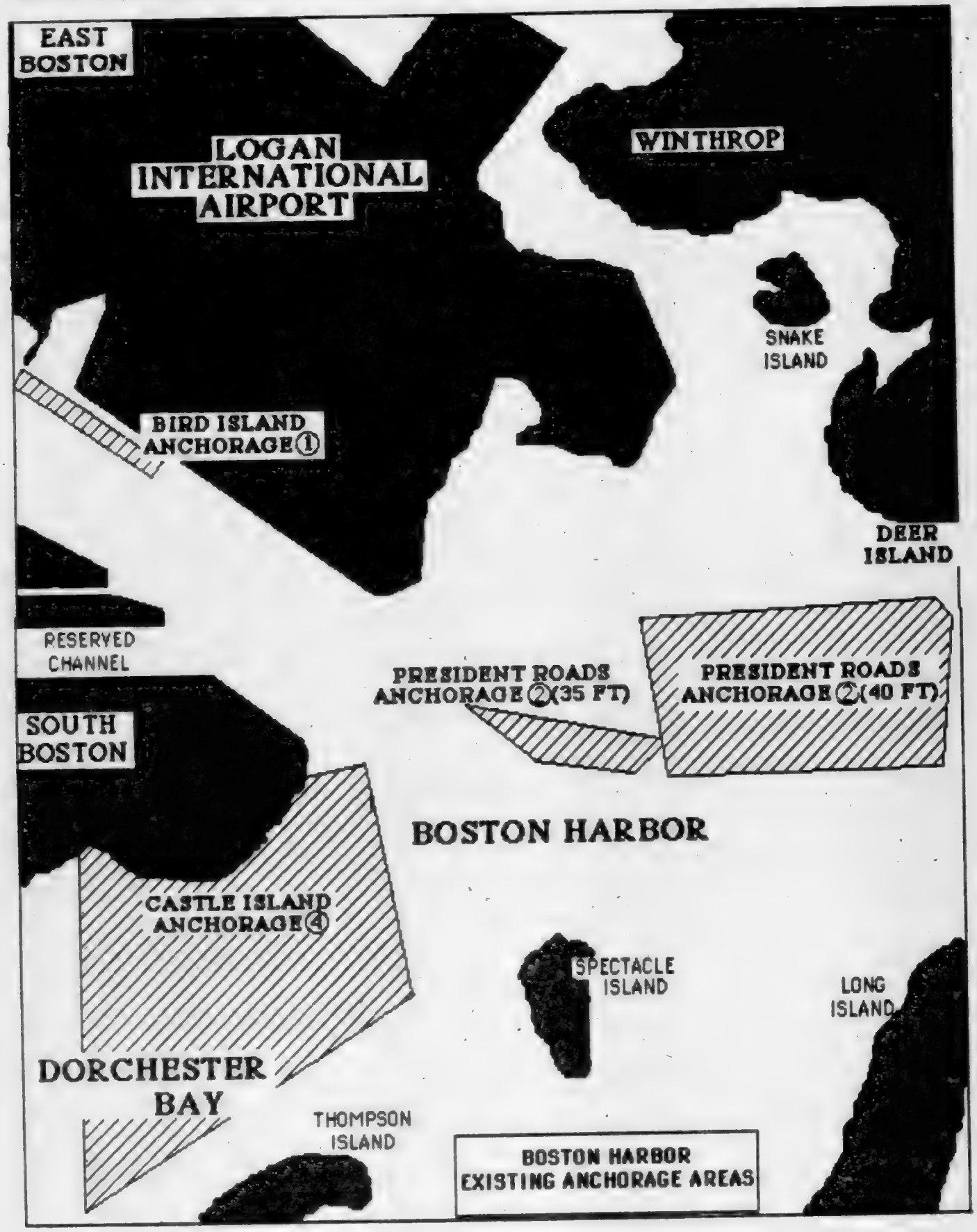
EAST BOSTON
LOGAN INTERNATIONAL AIRPORT
WINTHROP
SNAKE ISLAND
BIRD ISLAND ANCHORAGE (1)
DEER ISLAND
RESERVED CHANNEL
PRESIDENT ROADS ANCHORAGE (2) (35 FT)
PRESIDENT ROADS ANCHORAGE (2) (40 FT)
SOUTH BOSTON
BOSTON HARBOR
CASTLE ISLAND ANCHORAGE (4)
SPECTACLE ISLAND
LONG ISLAND
DORCHESTER BAY
THOMPSON ISLAND
BOSTON HARBOR
EXISTING ANCHORAGE AREAS

8 A

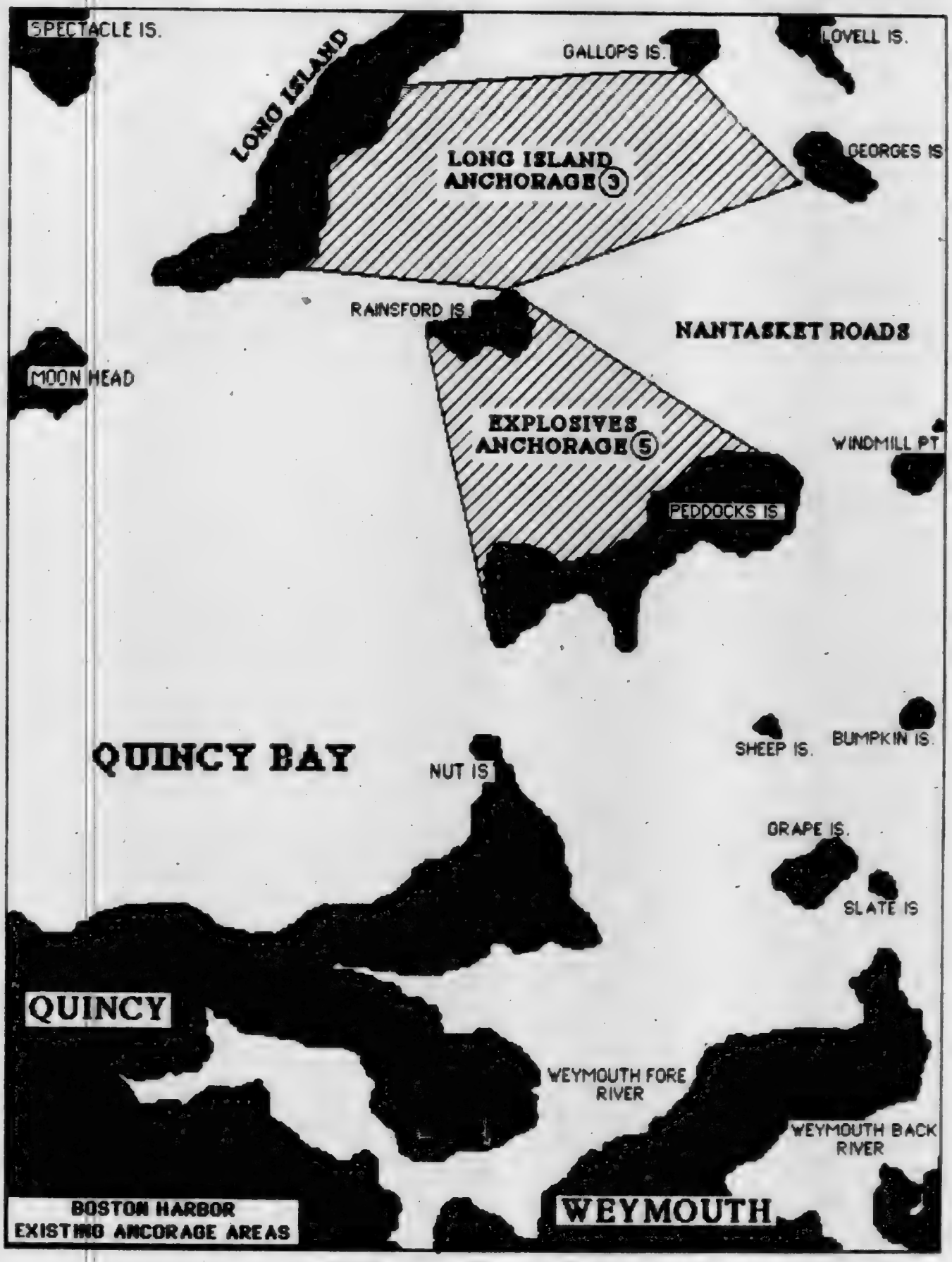
SPECTACLE IS.
LONG ISLAND
GALLOPS IS.
LOVELL IS.
GEORGES IS
LONG ISLAND ANCHORAGE (3)
RAINSFORD IS
NANTASKET ROADS
MOON HEAD
EXPLOSIVES ANCHORAGE (5)
WINDMILL PT
PEDDOCKS IS
QUINCY BAY
NUT IS
SHEEP IS.
BUMPKIN IS.
GRAPE IS.
SLATE IS
QUINCY
WEYMOUTH FORE RIVER
WEYMOUTH BACK RIVER
WEYMOUTH
BOSTON HARBOR
EXISTING ANCORAGE AREAS

8 B

TABLE I.—SAIL BOSTON 1992 ANCHORAGES AND DESIGNATED SPECTATOR AREAS

Designation	Location	Effective period
Tall Ship Anchorage	Broad Sound/Nahant Bay	1200, 7/10–1600, 7/11/92.
Mystic Anchorage	Mystic River	1200, 7/7–1600, 7/16/92.
Long Island Anchorage	Nantasket Roads	1200, 7/10–1600, 7/11/92.
Explosives Anchorage	Nantasket Roads	1200, 7/10–1600, 7/11/92.
Designated Spectator Areas		
A Unrestricted	Main Channel-north	0900–1700, 7/11/92, 0800–1600, 7/16/92.
B, F, G Recreational vsls only, boats 45 ft or less in length, superstructure 10 ft or less in heights.	LoPresti Park North Jetty Fan Pier	1200, 7/10–1800, 7/11/92, 1200, 7/15–1700, 7/16/92.
C Passenger [T] Vsls	Cashman's Shipyard	0600–1800 7/11/92, 0600–1700, 7/16/92.
D Recreational vsls only, boats 45 ft or less in length	Logan-west	1200, 7/10–1800, 7/11/92, 1200, 7/15–1700, 7/16/92.
E Recreational vsls only, above water 50 ft or less	Logan-east	0600–1800, 7/11/92, 0600–1700, 7/16/92.
H Recreational vsls only	President Roads	1200, 7/10–1800, 7/11/92, 1200, 7/15–1700, 7/16/92.
J Fishing Vessels	President Roads	1200, 7/10–1800, 7/11/92, 1200, 7/15–1700, 7/16/92.
K Reserved, COTP Permission Required	President Roads	1200, 7/10–1800, 7/11/92, 1200, 7/15–1700, 7/16/92.
L Passenger [T], Uninspec Passenger, Sail School, Bareboat Charter Vsls.	Sculpin Ledge Ch	2000, 7/10–1800, 7/11/92, 2000, 7/15–1700, 7/16/92.
M Recreational vsls only	Spectacle Island	2000, 7/15–1800, 7/11/92, 2000, 7/15–1600, 7/16/92.
N, P Unrestricted	North Channel	0600–1800, 7/11/92, 0600–1800, 7/16/92.
Q Passenger [T], Uninspec Passenger, Sail School, Bareboat Charter Vsls.	South Channel	0600–1800, 7/11/92, 0600–1800, 7/16/92.

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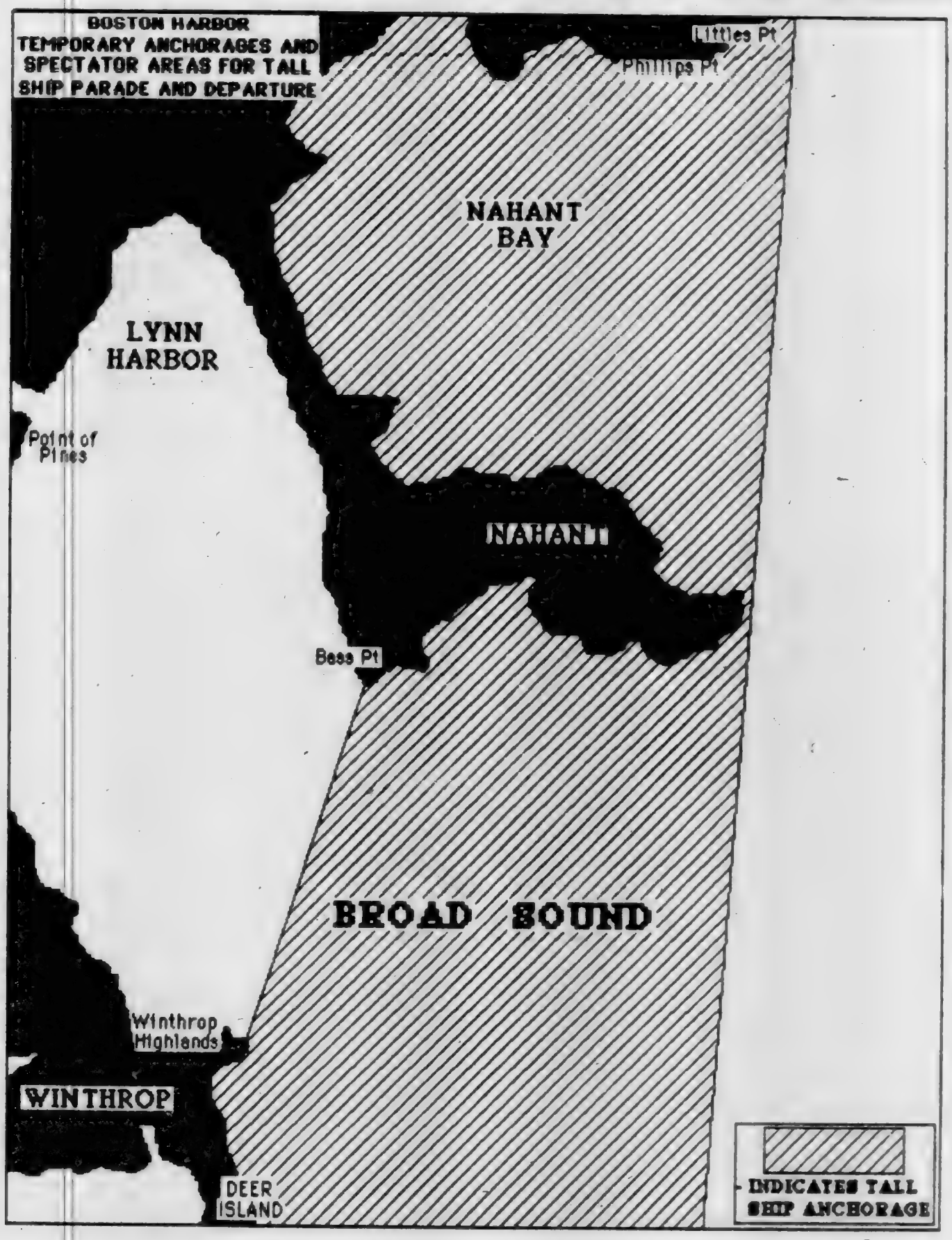
BOSTON HARBOR
TEMPORARY ANCHORAGES AND
SPECTATOR AREAS FOR TALL
SHIP PARADE AND DEPARTURE
Little Pt
Phillips Pt
NAHANT
BAY
LYNN
HARBOR
Point of
Pines
NAHANT
Bass Pt
BROAD SOUND
Winthrop
Highlands
WINTHROP
DEER
ISLAND
INDICATES TALL
SHIP ANCHORAGE

8 D

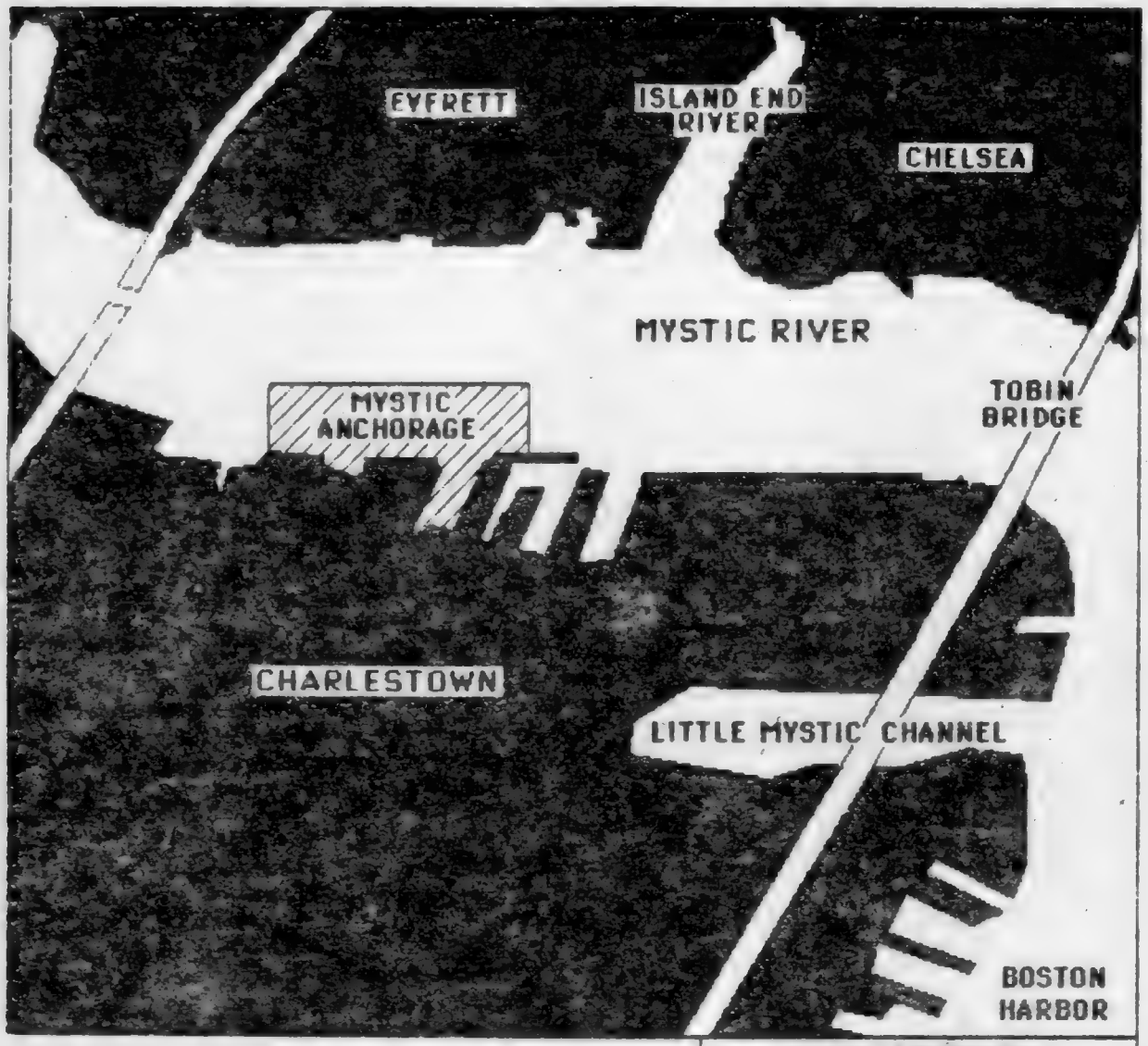

MYSTIC ANCHORAGE
TEMPORARY ANCHORAGE AND SPECTATOR AREA FOR TALL SHIP PARADE

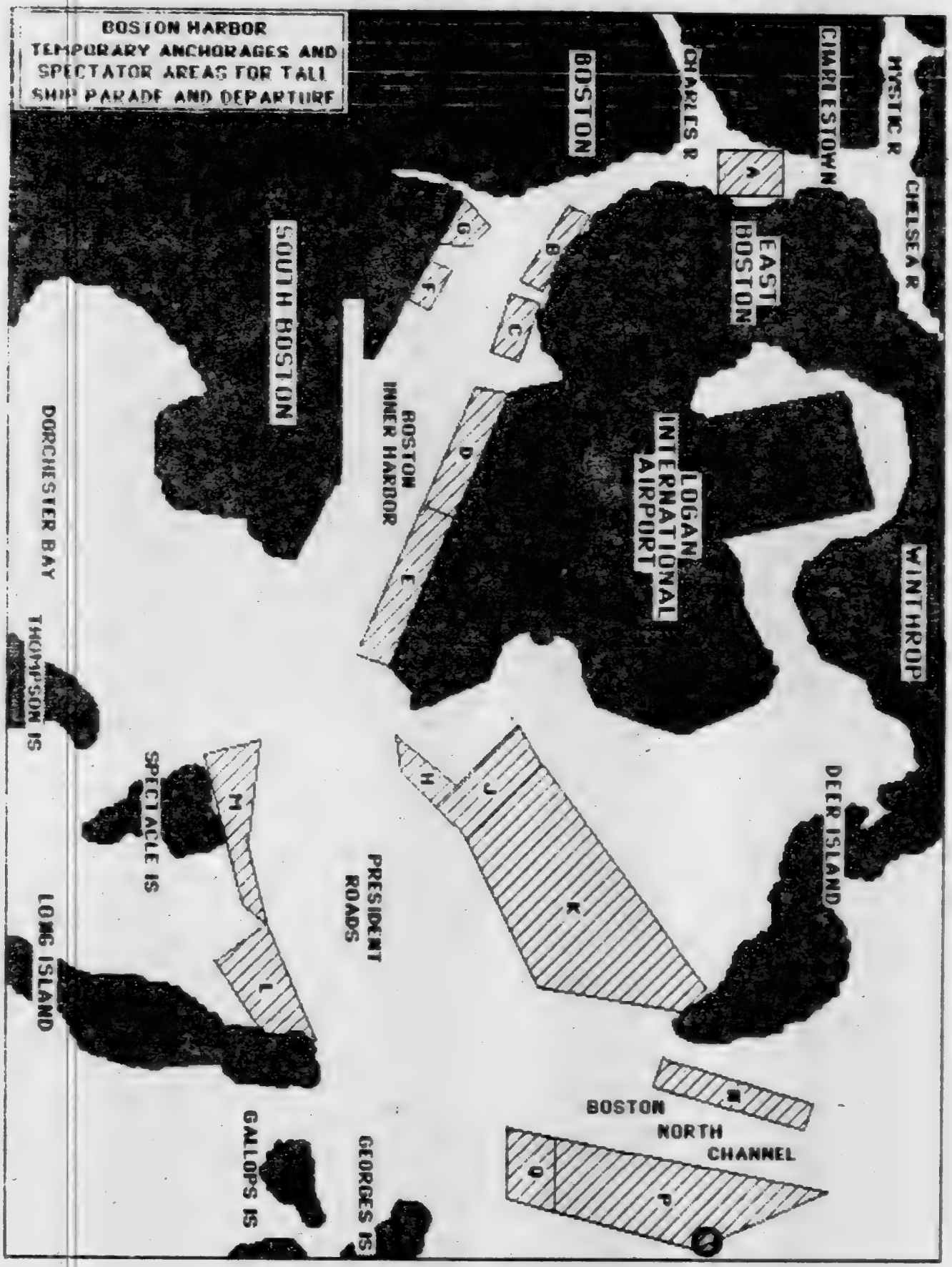
BOSTON HARBOR
TEMPORARY ANCHORAGES AND
SPECTATOR AREAS FOR TALL
SHIP PARADE AND DEPARTURE
BOSTON
CHARLES R
CHARLESTOWN
MYSTIC R
CHELSEA R
EAST BOSTON
SOUTH BOSTON
BOSTON INNER HARBOR
LOGAN INTERNATIONAL AIRPORT
WINTHROP
DEER ISLAND
DORCHESTER BAY
THOMPSON IS
SPECTACLE IS
PRESIDENT ROADS
LONG ISLAND
GALLOPS IS
GEORGES IS
BOSTON NORTH CHANNEL
A
B
C
D
E
F
G
H
J
K
L
M
N
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P

8 F

Pursuant to local ordinances, persons requesting to anchor or moor in Boston Inner Harbor Special Anchorage "A" or in the Boston Magenta Zone should apply to the Harbormaster, Boston Police Department, 34 Drydock Avenue, Boston, MA, 02210.

Vessel operators visiting the port of Boston for these events are urged to obtain current editions of the following charts of Boston Harbor: Nos. 13267, 13270, 13272, and 13275. Mariners are cautioned that sites designated as anchorages and spectator areas for the purposes of this rule have not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. Moreover, these areas may be subject to substantial currents and, in some cases, may not be over good holding ground. Accordingly, mariners are advised to take appropriate precautions when using these areas. Also, these sites are not special anchorage areas. At night, vessels must display anchor lights, as required by the navigation rules.

While specific anchorage positions will be assigned in the Tall Ship Anchorage, designated spectator areas are available on a first come first served basis. However, operators of spectator vessels arriving in port for the tall ship parade or departure at times other than the effective period listed for designated spectator areas will be directed to Long Island Anchorage, Castle Island Anchorage, or Explosives Anchorage. Except for those specific periods when they are redesignated as spectator areas for the tall ship parade and departure, the Bird Island and President Roads anchorages will be reserved for use by deep draft commercial vessel traffic or Third Harbor Tunnel contractor vessels, as appropriate.

Vessel operators intending to use spectator areas during the tall ship parade or departure are advised to plan for these events by fully anticipating their length of stay in these areas and acquainting themselves with the operational restrictions that will be in effect concerning their use. For example, operators may not leave unattended vessels in an anchorage or designated spectator area at any time and may not nest or tie-off to other vessels or buoys. Additionally, regulations will be in place to minimize damage to lobstering equipment. Masters of tall ships departing the Tall Ship Anchorage will be required to work cooperatively with local lobstermen before getting underway to free anchors fouled on lobster traps. Similarly, operators of other vessels whose anchors become fouled on lobster traps must buoy with identifiable markers and release fouled anchors so as not damage lobstering equipment. Local lobstermen will pick up buoyed anchors and bring them to reclamation areas where boaters can retrieve them. The location of these reclamation areas will published in the Local Notice to Mariners.

Moreover, due to the number of spectator craft expected, vessel operators should remember it will be virtually impossible to move either safety or legally to new positions, as maneuvering between anchored vessels is prohibited. Accordingly, vessels should have sufficient facilities on board to retain all garbage and untreated sewage. Discharge of either in any waters of the United States, which includes all waters addressed in this rule, is strictly forbidden. Violators may be assessed civil penalties of up to $25,000.

All vessel operators and passengers are reminded, too, that in addition to the safety equipment requirements for pleasure craft, vessels carrying passengers must comply with certain additional rules and regulations. When a vessel is not being used exclusively for pleasure purposes but rather is carrying passengers, the vessel operator must possess a Coast Guard issued license and, in most cases, must also display a Certificate of Inspection issued by the U.S. Coast Guard. While the legal definition of "passenger" found in 46 USC 2101 (21) varies, depending on the type of vessel involved, it means in general any person who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage on board the vessel. The same laws provide for substantial penalties for any violation. On-scene Coast Guard patrol personnel will aggressively enforce the provisions of the temporary anchorage regulations and board vessels that appear to be overloaded or carrying passengers illegally. Violators will be prosecuted.

(5) *Grand Parade of Sail, July 11, 1992.*

On the morning of July 11, 1992, Sail Boston 1992 will conduct its Grand Parade of Sail. The event marks the beginning of the tall ships' visit to Boston, as part of the Grand Regatta Columbus 1992 Quincentenary, commemorating the 500th anniversary of the discovery of the Americas. The tall ship parade is expected to begin at 9 a.m., when the first vessel passes the starting point, and to end at 4:30 p.m., when all participating vessels are safely moored at their respective berths. A staging area will be established near the starting point, northeast of the Boston North Channel Entrance Lighted Gong Buoy "NC," extending 500 yards in all directions from position 42–23–06 N, 070–53–26 W.

The parade route starts abeam of Boston North Channel Lighted Bell Buoy "2" on Finns Ledge, Boston North Channel. It continues down the North Channel to President Roads, through President Roads to the Boston Main Channel, in the Main Channel to a turning point off the USCG Support Center Boston near the confluence of the Boston Main Channel and the Charles River, with participating vessels peeling off after the turn to various locations throughout the port.

Parade vessels will be arranged in flotillas. The first flotilla will consist of C Class tall ships proceeding to Mystic Anchorage. Other flotillas will consist of a flag or large vessels the flotilla guide with approximately six smaller vessels behind the guide vessel. There will be 18 flotillas in the parade, with a distance of approximately one nautical mile maintained between flotillas.

Departing berth at the Charlestown Navy Yard at 7 a.m., the USS CONSTITUTION will get underway by tow and proceed under escort to the vicinity of Spectator Area K (The redesignation for President Roads 40-ft anchorage) to await the start of the tall ship parade. At approximately 9:30 a.m., after the first flotilla makes the turn at Deer Island Light in President Roads and passes by enroute to the Mystic River, the CONSTITUTION will greet and join the parade, taking up position ahead of the second flotilla guide vessel. After taking up position at the head of the parade, CONSTITUTION will fire a welcoming salute to signal the official start of the Grand Parade of Sail.

Because of the magnitude of this event, the Coast Guard is establishing a safety zone for the waters of Boston Harbor west of longitude 070–52 W to control vessel traffic and to enable tall ships to maneuver safely. The safety zone includes the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, President Roads, including President Road Anchorage, Sculpin Ledge Channel, Western Way, the Boston Main Channel, the Reserved Channels to the Summer Street retractile bridge, the Forth Point Channel to the Congress Street bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Alford Street Bridge, and the Chelsea River to the McArdle Bridge. The zone includes also the designated staging area for the tall ship parade, all tall ship

anchorage areas, and all designated spectator areas.

This safety zone is in effect from 6 a.m. to 8 p.m., July 11, 1992, and includes special regulations restricting vessel movements during this period. Specified in these regulations are provisions to: close main shipping channels of Boston Harbor to deep draft commercial vessels from 6 a.m. to 8 p.m.; restrict access to CONSTITUTION and other parade vessels while they are underway; close the main shipping channels of Boston Harbor to all vessel traffic, except Sail Boston 1992 tall ships, assisting tugs, pilot boats, patrol vessels, and other authorized craft from 9 a.m. to 5 p.m.; restrict vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour from 6 a.m. to 8 p.m.; require spectator vessels to take position and remain in designated spectator areas for the duration of the event; prohibit spectator craft from blocking access to tall ship mooring sites or emergency medical evacuation areas; and establish traffic patterns in Boston Harbor to take effect upon the conclusion of the parade. After closure of the harbor at 9 a.m., vessel movements within the safety zone will be as directed by on-scene Coast Guard patrol personnel.

In support of this event, the Gridley Locks at the Charles River Dam and the Earhart Dam, Mystic River will be closed to navigation initially between 6:45 a.m. and 7:30 a.m. The Gridley Locks and Earhart Dam will close again at 9 a.m. and remain closed till 5 p.m.

With the many sailing vessels and spectator craft arriving in Boston for this event, additional restrictions on vessel movements may be imposed in the form of security zones or other emergency measures to safeguard dignitaries or specific individual vessels. In all cases, further restrictions on vessel movements will be held to the minimum necessary to ensure vessel and personal safety. Every attempt will be made to inform the public regarding any additional restrictions the COTP Boston may need to impose. Details of these restrictions will be published separately in emergency rulemaking.

(6) Reserved Channel Safety Zone, July 11–16, 1992

From 4:30 p.m., July 11, 1992, to 9:30 a.m., July 16, 1992, the Reserved Channel, South Boston will be the primary mooring location for tall ships and other vessels visiting Boston Harbor for Sail Boston 1992. Because these ships will attract large numbers of waterside visitors, with thousands of vessels transiting through the area, the COTP Boston is establishing a safety zone in the Reserved Channel for the safety and protection of the tall ships, vessel operators, waterside visitors viewing the tall ships, and large commercial vessels operating in the channel transiting to and from commercial berths. The Coast Guard safety zone in the Reserved Channel is in effect for the duration of the tall ships' visit to Boston and includes regulations to control the movement of vessels operating in the Reserved Channel during that period. While the safety zone for the Reserved Channel is in effect, vessel movements through that area will be as directed by on-scene Coast Guard patrol personnel.

(7) Fireworks Extravaganza, July 12, 1992

On the evening of July 12, 1992, Sail Boston 1992 will sponsor its Fireworks Extravaganza to occur in the Boston Main Channel in the vicinity of Pier 4, South Boston in approximate position, 42–21–26 N, 071–02–22 W. The fireworks are scheduled to take place between 9:30 p.m. and 10 p.m. For this event, the Coast Guard is establishing a safety zone from the Alford Street Bridge, Mystic River to Castle Island, Boston Main Channel, including the Island End River and the waters on either side of the channel to the shoreline. This safety zone is in effect between 5:30 p.m. and 11 p.m. and will include special regulations requiring spectator craft to maintain at all times at least 300 yards safe distance from all fireworks barges and their attending tugs; requiring spectator craft to select and remain in position at least one half hour before this event; restricting vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour; establishing traffic patterns to take effect upon the conclusion of the display; and prohibiting boaters from passing outboard patrol vessels showing blue lights. A rain date of July 15, 1992, is planned, with all times remaining the same. This zone is needed to protect the fireworks barges and their attending tugs, persons viewing the display, spectator craft, and personnel in the area from the safety hazard associated with explosives-laden barges and the display itself. Implementation of this zone closes the affected portion of the Island End River, Mystic River, and the Boston Main Channel to navigation by deep draft vessels while this zone is in effect. Vessel movements within the zone will be as directed by on-scene Coast Guard patrol personnel.

(8) Challenge Cup Regatta, July 13–14, 1992

On July 13–14, 1992, Sail Boston 1992, in association with the Offshore Maxi Yacht Association and local yacht clubs, will conduct a two-day Challenge Cup Sailboat Racing Regatta to be held in two different locations in Massachusetts Bay off of Nahant and off of Nantasket Beach. The race scenario is to have one Maxi race and two 12-Meter races on Monday, July 13, 1992 off Nantasket Beach. On Tuesday, July 14, 1992, there will be two Maxi races and one 12-Meter race off Nahant. A rain date of Wednesday, July 15, 1992 is planned for either event. Races will be held from 9 a.m. to 3 p.m. at the specified race locations. For these races the Coast Guard is establishing regulated areas in two separate three-square mile locations in Massachusetts Bay.

The first site is the Nantasket Beach race course, bounded by the following:

Point 1: Latitude 42–20.7 N Longitude 070–49.0 W
Point 2: Latitude 42–20.7 N Longitude 070–44.8 W
Point 3: Latitude 42–17.7 N Longitude 070–44.8 W
Point 4: Latitude 42–17.7 N Longitude 070–49.0 W

The second site is the Nahant race course, bounded by the following:

Point 1: Latitude 42–27.2 N Longitude 070–50.0 W
Point 2: Latitude 42–27.2 N Longitude 070–46.0 W
Point 3: Latitude 42–24.1 N Longitude 070–46.0. W
Point 4: Latitude 42–24.1 N Longitude 070–50.0. W

The regulated area is in effect each day for the duration of the day's racing events, with special regulations requiring spectator craft to maintain at all times at least 200 yards safe distance from all participating sail race vessels. This area is needed to ensure the safety of participants and spectators during the two-day offshore event, and vessel movements within the regulated area will be as directed by on-scene Coast Guard patrol personnel.

(9) Farewell Departure, July 16, 1992

On July 16, 1992, the Sail Boston Farewell Departure will be conducted in Boston Harbor. How this event will proceed depends on the weather encountered during the Grand Parade of Sail on July 11, 1992. If the weather is good on the 11th and the Grand Parade of Sail proceeds as scheduled, the Farewell Departure will occur as a "Sailout," with tall ships departing from various locations throughout the port at

times consistent with offshore activities planned for later in the day. In this case, tall ships participating in the restart of the Grand Regatta will leave first followed by those participating in the American Sail Training Association (ASTA) rally. Vessels departing for other locations will do so sometime after this peak departure period. Grand Regatta participants will depart port between 8 a.m. and 12 noon; ASTA Rally participants, between 10 a.m. and 12 noon. If inclement weather on the 11th cancels the Grand Parade, the Farewell Departure will be a more formally structured event similar in scope to the parade scheduled for the 11th.

To ensure the safe navigation of vessel traffic in Boston Harbor during the tall ships' departure, the COTP Boston will establish a safety zone similar to the one established for the July 11th Grand Parade of Sail with designated spectator areas as listed previously in Table I marked, "Sail Boston 1992 Anchorages and Designated Spectator Areas." Vessels intending to go offshore after the departure to watch the restart of the Grand Regatta should use spectator areas N, P, or Q, as appropriate.

Because of the magnitude of this event, the Coast Guard is establishing a safety zone in the waters of Boston Harbor west of longitude 070–54 W to include the following waterways: Boston North Channel, Boston South Channel, the Narrows, Nantasket Roads, Nubble Channel, President Roads, including President Roads Anchorage, Sculpin Ledge Channel, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Tobin Bridge, and the Chelsea River to the McArdle Bridge. The zone includes also all designated spectator areas for this event.

The safety zone is in effect from 8 a.m. to 6 p.m., July 16, 1992, and includes special regulations to restrict the movement of vessel traffic during this period. Specified in these regulations are provisions to: Close the main shipping channels in Boston Harbor, including the Narrows, to deep draft vessel traffic from 8 a.m. to 6 p.m.; restrict access to the USS CONSTITUTION, the USS CASSIN YOUNG, and all other parade vessels while they are underway; close the main shipping channels of Boston Harbor to all vessel traffic, except Sail Boston 1992 tall ships, assist tugs, pilot boats, patrol vessels, and other authorized craft from 8 a.m. to 4 p.m.; restrict vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour from 8 a.m. to 6 p.m.; require spectator vessels to take position and remain in designated spectator areas for the duration of the event, except that vessels anchored in Spectator Areas N, P, and Q may depart outbound to view related tall ship activity occurring offshore; prohibited spectator craft from blocking access to tall ship mooring sites or emergency medical evacuation areas; and establish traffic patterns in Boston Harbor to take effect upon conclusion of the departure.

As the country's oldest seagoing vessel and a treasured national monument, the USS CONSTITUTION will have the honor of bidding official farewell to the Sail Boston 1992 tall ships. Departing berth at the Charlestown Navy Yard at 8:00 a.m. on the 16th, CONSTITUTION will get underway by tow and proceed under escort outbound through Boston Harbor to Spectator Area K. Arriving on location at 9:30 a.m., CONSTITUTION will take up position to mark the departure of tall ships participating in the Grand Regatta and the ASTA Rally. Vessel operators must maintain at least 300 yards safe distance around CONSTITUTION during its transit and while on scene in Spectator Area K.

Meanwhile, in preparation for CONSTITUTION's shift to drydock, the USS CASSIN YOUNG will change berths and moor at Pier 1, Charlestown Navy Yard. While CASSIN YOUNG shifts berths, vessel operators must maintain at least 300 yards safe distance from the vessel. At 2 p.m., CONSTITUTION will begin its return trip to the Navy Yard, arriving at approximately 3 p.m. No other vessel movements will be allowed while CONSTITUTION is underway enroute back to the Navy Yard, and a 300 yard safety perimeter will be maintained around CONSTITUTION during its transit.

After closure of the harbor at 8 a.m., vessel movements within the safety zone, except for Sail Boston 1992 tall ships, assist tugs, pilot boats, patrol vessels, and other authorized craft, will be as directed by on-scene Coast Guard patrol personnel.

In support of this event, the Gridley Locks at the Charles River Dam and the Earhart Dam, Mystic River will be closed to navigation between 8 a.m. and 4 p.m.

If the COTP Boston has to establish security zones or additional emergency measures to safeguard dignitaries or certain vessels participating in this event, the public will be informed in emergency rulemaking.

(10) Grand Regatta Restart, July 16, 1992

On the afternoon of July 16, 1992, the Sail Training Association, assisted by local yacht clubs, will conduct the restart of the Grand Regatta Columbus 1992 Quincentenary in Massachusetts Bay off of Nahant. The event marks the beginning of the final leg of the tall ship race back to Liverpool, England. To protect the vessels participating in this event as they practice for and restart the race, the COTP Boston is establishing a safety zone in a three square-mile area northeast of the Boston North Channel Lighted Gong Buoy "NC." Included in the area will be a practice area for tall ships to conduct sail crew training in preparation for the restart of the race and a restart area to include a two-mile starting line for the event. The site of the safety zone is bounded by the following:

Point 1: Latitude 42–27.2 N Longitude 070–40.0 W
Point 2: Latitude 42–27.2 N Longitude 070–36.0 W
Point 3: Latitude 42–24.1 N Longitude 070–36.0 W
Point 4: Latitude 42–24.1 N Longitude 070–40.0 W

This safety zone is in effect between 11:30 a.m. and 6 p.m. and includes special regulations to control the movement of spectator vessels on scene in the area to view the restart of the Grand Regatta. This zone is needed to ensure the safety of participants and spectators during this offshore event, and entry into the safety zone is prohibited unless authorized by the COTP Boston.

If changes are made to these regulations or if the COTP Boston implements additional controls on vessel movements, notice will be provided to the public in emergency rulemaking. Details of these events and of the special regulations in effect for each event will be published also in the Local Notice to Mariners. Additionally, an appropriate Safety Marine Information Broadcast will be initiated for each event. For all events, vessel operators will be required to maneuver as directed by on-scene Coast Guard patrol personnel. Coast Guard patrol personnel enforcing regulations in effect for safety zones, anchorages, designated spectator areas, and regulated areas for these events include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, and local law enforcement vessels. Violators will be prosecuted. Violations of Coast

Guard safety zone regulations may result in civil penalties of up to $25,000.

Discussion of Comments and Changes

Comments: Two comment letters were received. One comment addressed the potential adverse impact of the Farewell Departure on July 16, 1992, on contractors working on the Deer Island Boston Harbor Cleanup Project. The COTP Boston has not made significant changes to the regulations, but will work directly with contractors to accommodate scheduled vessel movements to the greatest degree practicable.

Another comment was received requesting blanket permission for unrestricted vessel movement for a different project contractor in Boston Harbor throughout the period of the temporary regulations. In the interest of safety, the COTP Boston has denied the request after discussions with the contractor.

Changes:

(1) Proposed safety zones for the Harborfest and Farewell Fireworks and the arrival and departure of the USS JOHN F. KENNEDY have been deleted due to the cancellation of these events.

(2) For the Hull Gut and Boston Main Channel Regulated Area, the effective time and date for terminating these regulations has been changed from 4 p.m. July 17, 1992, to 4 p.m. July 16, 1992 due to the cancellation of the USS JOHN F. KENNEDY departure.

(3) For the Temporary Anchorage Regulations, an effective date has been added to eliminate confusion regarding impact on existing permanent Boston Harbor anchorage regulations. A new Mystic Anchorage has been added for C Class tall ships. This change is necessary due to a shortage of available berthing to accommodate the larger-than-expected C Class fleet participating in Sail Boston 1992. The number of C Class participants exceeds original estimates by approximately 100 vessels. In selecting a suitable anchorage for these vessels, the Coast Guard and event organizers have identified the Mystic River as a feasible site. The relative inactivity of the Charlestown waterfront area in the vicinity of the old Revere and Domino Sugar terminals makes that portion of the Mystic River a safe and sheltered area. Recognizing the NPRM did not address this concept, the Coast Guard has initiated discussion with the principal waterway users and property owners in that area. All parties contacted have expressed their support of such a plan. Accordingly, a temporary anchorage will be established in the Mystic River. Paragraph lettering/numbering have been changed to reflect this addition. The size of and effective period for Designated Spectator Area A have been modified to provide a safe fairway for C Class vessels transitting to the Mystic River and to reflect the 8 a.m. start time for the Farewell Departure. Anchorage closure periods associated with the USS JOHN F. KENNEDY inbound transit have been deleted.

(4) For the Grand Parade of Sail, the limits of the proposed safety zone have been extended to include the Mystic River up to the Alford Street Bridge. This revision was prompted by the establishment of the temporary Mystic Anchorage for C Class vessels in the Mystic River and the need to provide for their safe transit during the tall ship parade.

(5) For the Fireworks Extravaganza, the limits of the proposed safety zone have been extended to include the Mystic River up to the Alford Street Bridge and the Island End River. This revision was prompted by a change in the designated loading location of the fireworks barges. The time of the barge transit has been modified slightly and a Wednesday, July 15, 1992, rain date has been added at the request of the event organizer.

(6) For the Challenge Cup Regatta, the times of the events have been revised. Also, a Wednesday, July 15, 1992, rain date has been added at the request of the event organizers.

(7) For the Farewell Departure, the effective time for safety zone has been extended to begin at 8 a.m. July 16, 1992, to accommodate earlier departure of the tall ships from Boston Harbor.

(8) For the Grand Regatta Restart, the designated location has been shifted to the east, outside the Boston Precautionary Area, to provide race participants more maneuvering area.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of these regulations to be so minimal that a Regulatory Evaluation is unnecessary. These regulations will be in effect only for portions of a thirteen day period. In that period, the two days with the greatest impact on port users will be Saturday, July 11, 1992, and Thursday, July 16, 1992. For these two days, most areas and waterways within the port of Boston will be closed, and the port community will be disrupted from conducting normal port activity. However, because of the temporary nature of these disruptions, they can be planned for in advance to minimize the attendant economic hardship that might result. Segments of the port community facing disruptions as a result of this rulemaking are operators of deep draft vessel traffic, terminal operators, marine contractors involved in major harbor projects, the Logan and Charlestown Navy Yard shuttle ferry service, commuter boats, local sailing centers and marinas, lobstermen, and commercial fishermen. Recognizing the adverse economic impact that could result from these expected port closures, the COTP Boston has established liaison with the port community to create a steering committee that has assisted in the planning for these events. Attendance at steering committee meetings is open to all parties with a vested economic interest in the effects of this rulemaking.

The committee is working cooperatively with the COTP Boston to make certain that restrictions imposed on vessel movements during this period are held to the minimum necessary to ensure safety and that these events are conducted in such a manner so as to cause the least economic burden possible. The COTP Boston expects that the amount of publication and advertisement about these events and about these regulations will allow the industry sufficient time to adjust schedules and minimize expected adverse impacts. Weighted against and counterbalanced with adverse impacts are the favorable economic impacts that Harborfest and Sail Boston 1992 will have on commercial activity in the port as a whole from the boaters and tourists these events will attract to the area.

The changes implemented in the final rule as discussed above (i.e., the deletion of four events and other minor revisions), collectively, will lessen the adverse economic impact associated with these events.

Small Entities

No comments were received from "small entities." Accordingly, there has been no change to the regulatory text in this regard as related to small entities. Based on the lack of comments on this issue, the coast Guard does not expect these rules to have a significant impact on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking action and concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**."

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water).

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

For reasons set out in the preamble, the Coast Guard amends 33 CFR parts 100, 110, and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Temporary § 100.TO1–165–1 is added to read as follows:

§ 100.TO1–165–1 Regulated Area, Hull Gut Channel and Boston Main Channel, Boston, MA.

(a) *Regulated Area*: A regulated area is established in two locations in Boston Harbor. The first location is in Hull Gut Channel and the waters just off the channel in the vicinity of the USCG Stations Point Allerton, extending between imaginary lines drawn across the gut, bounded on the north by a line drawn from the northern tip of Peddocks Island to the northwestern tip of Wind Mill Point, Hull, MA; and bounded on the south by a line drawn from Hull Gut Channel, Lighted Buoy "4" to Inner Seal Rock. The second location is in the Boston Main Channel in the vicinity of Little Mystic Channel extending between imaginary lines drawn across the channel, bounded on the north by a line drawn from the northeastern corner of Massport Pier 49, Charlestown due east to East Boston; and bounded on the south by a line drawn from the southeastern corner of Pier 11, Charlestown Navy Yard due east to East Boston.

(b) *Effective dates*: These regulations will be effective from 8 a.m., July 9, 1992 to 4 p.m. on July 16, 1992.

(c) *Special Local Regulation*:

(1) During the effective period operators of vessels transiting through regulated area locations shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(2) All persons and vessels shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

3. Temporary § 100.TO1–165–2 is added to read as follows:

§ 100.TO1–165–2 1992 Challenge Cup Sailboat Racing Regatta.

(a) *Regulated Area*: A regulated area is established in two locations in Massachusetts Bay. The first is the site of the Nantasket Beach race course, bounded by the following:

Point 1: Latitude 42–20.7 N Longitude 070–49.0 W
Point 2: Latitude 42–20.7 N Longitude 070–44.8 W
Point 3: Latitude 42–17.7 N Longitude 070–44.8 W
Point 4: Latitude 42–17.7 N Longitude 070–49.0 W

The second is the site of the Nahant race course, bounded by the following:

Point 1: Latitude 42–27.2 N Longitude 070–50.0 W
Point 2: Latitude 42–27.2 N Longitude 070–46.0 W
Point 3: Latitude 42–24.1 N Longitude 070–46.0 W
Point 4: Latitude 42–24.1 N Longitude 070–50.0 W

(b) *Effective Dates*: These regulations will be effective from 9 a.m. to 3 p.m. July 13, 1992 and from 9 a.m. to 3 p.m. on July 14, 1992. A rain date of July 15, 1992 is planned, with all times remaining the same.

(c) *Special Local Regulations*:

(1) The regulated area shall be closed during the effective period to all vessel traffic except participants in this event, duly authorized patrol craft, and those vessels on-scene Coast Guard patrol personnel allow to enter the area, as directed by the Commander, Coast Guard Group Boston.

(2) Participating race vessels should arrive at their respective race course at 9 a.m. and must complete racing by 3 p.m. on both July 13, 1992, and July 14, 1992. If event is held on the rain date, all times remain the same.

(3) Spectator vessels allowed to enter the regulated area by on-scene Coast Guard patrol personnel shall maintain at all times at least 200 years safe distance from all participating sail race vessels operating inside the regulated area.

(4) The Commander, Coast Guard Group Boston reserves the right at any time to cancel or suspend race events at either or both race locations.

(5) All persons and vessels shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels. Upon hearing five or more blasts from a U.S. Coast Guard vessel, vessel operators shall stop immediately and proceed as directed by on-scene Coast Guard patrol personnel.

PART 110—ANCHORAGE REGULATIONS

4. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. under 1223 and 1231.

5. Section 110.134 is temporarily amended by revising paragraphs (a)(1) and (a)(2), by adding paragraphs (a)(6) through (a)(22), by revising paragraph (b), and by adding new paragraph (c) to read as follows:

§ 110.134 Boston Harbor, Mass.

(a) *The anchorage grounds*—(1) *Bird Island Anchorage*. Beginning at a point bearing 93°, 1,400 yards, from the aerial beacon on top of the Boston Custom House tower; thence to a point bearing 81°, 1,600 yards, from the aerial beacon on top of the Boston Custom House tower; thence to a point bearing 102°, 3,100 yards, from the aerial beacon on top of the Boston Custom House tower; thence to a point bearing 109°, 3,050 yards, from the aerial beacon on top of the Boston Custom House tower; and thence to the point of beginning. The Bird Island Anchorage is temporarily disestablished from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992. During these periods, the Bird Island Anchorage is divided, reconfigured, and redesignated as Spectator Areas C and D in accordance with paragraphs (a)(10) and (a)(11) of this section.

(2) *President Roads Anchorage*—(i) *40-foot anchorage.* Beginning at a point bearing 237°, 522 yards from Deer Island Light; thence to a point bearing 254°, 2,280 yards from Deer Island Light; thence to a point bearing 261°, 2,290 yards from Deer Island Light; thence to a point bearing 278°, 2,438 yards from Deer Island Light; thence to a point bearing 319°, 933 yards from Deer Island Light; thence to a point bearing 319°, 666 yards from Deer Island Light; and thence to a point of beginning. The President Roads 40-foot anchorage is temporarily disestablished from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992 and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992. During these periods, the President Roads 40-foot anchorage is redesignated as Spectator Area K in accordance with paragraph (a)(17) of this section.

(ii) *35-foot anchorage.* Beginning at a point bearing 256°, 2,603 yards from Deer Island Light; thence to a point bearing 258° 30', 3,315 yards from Deer Island Light; thence to a point bearing 264°, 3,967 yards from Deer Island Light; thence to a point bearing 261°, 2,290 yards from Deer Island Light; thence to point of beginning. The President Roads 35-foot anchorage is temporarily disestablished from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992. During these periods the President Roads 35-foot anchorage is divided, reconfigured, and redesignated as part of Spectator Areas H and J in accordance with paragraphs (a)(15) and (a)(16) of this section.

(3) * * *

(4) * * *

(5) * * *

(6) *Tall Ship Anchorage.* In the outer harbor in Broad Sound and Nahant Bay, the waters west of a line connecting Boston North Channel Lighted Bell Buoy "2" on Finns Ledge to Off Rock, Littles Point, Swampscott, MA. The Tall Ship Anchorage is temporarily established from 12 noon on July 10, 1992 to 4 p.m. on July 11, 1992.

(7) *Mystic Anchorage.* In the inner harbor in the Mystic River, the waters off Charlestown, in the vicinity of the old Amstar and Revere Sugar docks, bounded west longitude 071–04–00 extending into the river 400 feet from shore; thence 100° to 071–03–44, bounded east along longitude 071–03–44 extending 400 feet back to shore; and thence to point of beginning. The Mystic Anchorage is temporarily established from 12 noon on July 7, 1992, to 4 p.m. on July 16, 1992.

(8) *Spectator Area A.* In the inner harbor in the Boston Main Channel, the waters north of a line drawn across the Boston Main Channel from the northeastern corner of Pier 8, Charlestown Navy Yard to the southernmost point of the Boston Towing and Transportation, North Yard, East Boston, and bound on the west by the midpoint of the Boston Main Channel. Spectator Area A is temporarily established from 9 a.m. to 5 p.m. on July 11, 1992, and from 8 a.m. to 4 p.m. on July 16, 1992.

(9) *Spectator Area B.* In the inner harbor along the shoreline of East Boston, east of the Boston Main Channel, bounded on the north by the southernmost point of Boston Towing and Transportation South Yard are bounded on the south by the southwest corner of Massport Pier 1, East Boston. Spectator Area B is temporarily established from 12:00 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12:00 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(10) *Spectator Area C.* In the inner harbor along the southern edge of Cashman's shipyard, East Boston on the western side of the disestablished Bird Island Anchorage, situated to provide a channel between it and Spectator Area D, allowing access to Bird Island Flats, beginning at Bird Island Flats Buoy "1"; thence 210° to the north edge of the Boston Main Channel; thence northwest along Boston Main Channel edge to 42–21–42 N, 71–02–28 W; thence to 42–21–47.5 N, 071–02–23 W; thence to point of beginning. Spectator Area C is temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 5 p.m. on July 16, 1992.

(11) *Spectator Area D.* In the inner harbor along the southwestern edge of Logan Airport, East Boston, in the eastern side of the disestablished Bird Island Anchorage situated to provide a channel between it and Spectator Area C, allowing access to Bird Island Flats, beginning at Bird Island Flats Buoy "2"; thence 210° to the north edge of the Boston Main Channel; thence eastward to Boston Main Channel Lighted Buoy "12"; thence 027° to land; and thence to point of beginning. Spectator Area D is temporarily established from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(12) *Spectator Area E.* In the inner harbor along the southeastern edge of Logan Airport, beginning at Boston Main Channel Lighted Buoy "12"; thence 027° to land; thence eastward along the shore to 42–20–50 N, 071–00–17.5 W; thence to the Boston Main Channel Lighted Buoy "10"; thence along the northern edge of Boston Main Channel to point of beginning. Spectator Area E is temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 5 p.m. on July 16, 1992.

(13) *Spectator Area F.* In the inner harbor along the Massport North Jetty, South Boston, beginning at 42–21–05 N, 071–01–54 W; thence to 42–20–59 N, 071–01–39 W; thence northwestward to 42–20–56 N, 071–01–41 W; thence along the face of the Massport Marine Terminal, North Jetty to the corner; thence to point of beginning. Spectator Area F is temporarily established from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(14) *Spectator Area G.* In the inner harbor along the Fan Pier, South Boston, situated to provide a channel between it and Boston Special Anchorage, allowing access to the Fort Point Channel, beginning at 42–21–22 N, 071–02–50 W; thence to 42–21–24 N, 071–02–38 W; thence to 42–21–24 N, 071–02–31 W; thence to 42–21–20 N, 071–12–26 W; thence to Pier Four Wreck Buoy "WRI", 42–21–14 N, 071–02–31 W; thence to point of beginning. Spectator Area G is temporarily established from 12:00 noon on July 10, 1992 to 6 p.m. on July 11, 1992, and from 12:00 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(15) *Spectator Area H.* In the inner harbor to include the western side of the disestablished President Roads 35-foot anchorage, beginning at the Boston Main Channel Lighted Buoy "6"; thence to 42–20–12 N, 070–59–15 W; thence to Boston Main Channel Lighted Buoy "4"; thence to point of beginning. Spectator Area H is temporarily established from 12 noon on July 10, 1992 to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(16) *Spectator Area J.* In the inner harbor to include the eastern side of the disestablished President Roads 35-foot anchorage, beginning at 42–20–12 N, 070–59–14.5 W; thence to 42–20–30 N, 070–59–14.5 W; thence to President Roads Anchorage Lighted Buoy "C", 42–20–33 N, 070–58–52 W; thence to 42–20–05 N, 070–58–43.5 W; thence to Boston Main Channel Lighted Bell Buoy 4, 42–20–04 N, 070–59–26 W; thence to point of beginning. Spectator Area J is temporarily established from 12:00 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12:00 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(17) *Spectator Area K.* In the inner harbor, constituting the disestablished President Roads 40-foot anchorage, as described in paragraph (a)(2)(i) of this section. Spectator Area K is temporarily established from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(18) *Spectator Area L.* in the inner harbor off the northwestern edge of Long Island into the entrance to Sculpin Ledge Channel, beginning at Boston Main Channel Lighted Buoy "13"; thence to 42–19–40 N, 070–57–50 W; thence to 42–19–40 N, 070–58–40 W; thence to point of beginning. Spectator Area L is temporarily established from 8 p.m. on July 10, 1992 to 6 p.m. on July 11, 1992, and from 8 p.m. on July 15, 1992, to 5 p.m. on July 16, 1992.

(19) *Spectator Area M.* In the inner harbor along the northern edge of Spectacle Island, beginning at Boston Main Channel LIGHT "5"; thence to Boston Main Channel Lighted Buoy "3"; thence to Boston Main Channel Lighted Buoy "1"; thence to Dorchester Bay Buoy "2"; thence to point of beginning. Spectator Area M is temporarily established from 8 p.m. on July 10, 1992 to 6 p.m. on July 11, 1992, and from 8 p.m. on July 15, 1992, to 4 p.m. on July 16, 1992.

(20) *Spectator Area N.* In the outer harbor along the western edge of the Boston North Channel, extending 200 yards west, bounded on the north by Boston North Channel Lighted Buoy "4" and bounded on the south by Boston North Channel Lighted Bell Buoy "10", Off Little Faun Shoal. Spectator Area N is temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 6 p.m. on July 16, 1992.

(21) *Spectator Area P.* In the outer harbor between the eastern edge of the Boston North Channel and Boston South Channel, beginning at Boston North Channel Lighted Buoy "1"; thence southeast to Boston South Channel Buoy "6"; thence along the northern edge of Boston South Channel to Boston North Channel Lighted Buoy "9"; thence along the eastern edge of the Boston North Channel to point of beginning. Spectator Area P is temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 6 p.m. on July 16, 1992.

(22) *Spectator Area Q.* In the outer harbor at the entrance to the Boston South Channel, beginning at Boston North Channel Lighted Buoy "9"; thence to 42–20–48 N, 070–55–10 W; thence to Boston South Channel Buoy "11"; thence to 42–20–15 N, 070–56–23 W; thence to the point of beginning. Spectator Area Q is temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 6 p.m. on July 16, 1992.

(b) *Effective dates*: These regulations are effective from 2 p.m. July 4, 1992 to 6 p.m. July 16, 1992.

(c) *The Regulations.* The anchorages and spectator areas designated in paragraphs (a)(1) through (a)(21) of this section are subjects to the following temporary regulations:

(1) *Bird Island Anchorage.* While the Bird Island Anchorage is disestablished, reconfigured, and redesignated, as specified in paragraphs (a)(1), (a)(10), and (a)(11) of this section, vessels anchored in this area must comply with the operational restrictions imposed in paragraphs (c)(9), (c)(10), and (c)(16) of this section. Except for those periods when Bird Island Anchorage is redesignated as spectator areas for tall ship parade and departure, only deep draft commercial vessel traffic or Third Harbor contractor vessels may anchor in this area.

(2) *President Roads Anchorage*

(i) *40-foot anchorage.* While the President Roads 40-foot anchorage is disestablished and redesignated, as specified in paragraphs (a)(2)(i) and (a)(17) of this section, vessels anchored in this area must comply with the operational restrictions imposed in paragraphs (c)(14) and (c)(16) of this section. Except for those periods when the President Roads 40-ft anchorage is redesignated as a spectator area for tall ship parade and departure, only deep draft commercial vessel traffic may anchor in this area.

(ii) *35 foot anchorage.* While the President Roads 35-foot anchorage is disestablished, reconfigured, and redesignated, as specified in paragraphs (a)(2)(ii), (a)(15), and (a)(16) of this section, vessels anchored in this area must comply with the operational restrictions imposed in paragraphs (c)(12), (c)(13), and (c)(16) of this section. Except for those periods when the President Roads 35-ft anchorage is redesignated as spectator areas for tall ship parade and departure, only deep draft commercial vessel traffic may anchor in this area.

(3) *Long Island Anchorage.* From 12 noon, July 10, 1992, to 9 a.m., July 11, 1992, Long Island Anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 1992 Grand Parade of Sail. Except for that period, Long Island Anchorage is open for use by recreational vessels on hand for Boston Harborfest and Sail Boston 1992. Vessel operators using Long Island Anchorage must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(4) *Castle Island Anchorage.* From 6 a.m. on July 2, 1992, to 4 p.m. July 16, 1992, the Castle Island Anchorage is open for use by recreational vessels on hand for Boston Harborfest and Sail Boston 1992. Vessel operators using Castle Island Anchorage must comply with general operational requirements specified in paragraph (c)(16) of this section.

(5) *Explosives Anchorage.* From 12 noon, July 10, 1992, to 9 a.m. July 11, 1992, Explosive Anchorage is designated for the exclusive use of tall ship participating in the Sail Boston 1992 Grand Parade of Sail. Except for that period, Explosives Anchorage is open for use by recreational vessels on hand for Boston Harborfest and Sail Boston 1992. Vessel operators using Long Island Anchorage must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(6) *Tall Ship and Mystic Anchorages.* For the period specified in paragraphs (a)(6) and (a)(7) of this section, Tall Ship and Mystic Anchorages are designated for the exclusive use of tall ships participating in the Sail Boston 1992 activities. Vessel movements through these areas during the periods specified will be as directed by on-scene Coast Guard patrol personnel. Operators of tall ships anchoring in these areas whose anchors become fouled in lines of lobster traps will work cooperatively with on-scene lobstermen prior to getting underway so as to minimize damage to lobster pots.

(7) *Spectator Areas A, N, and P.* For the periods specified in paragraphs (a)(8), (a)(20), and (a)(21) of this section, Spectator Areas A, N, and P, are designated for any latecoming spectator craft on hand to view Sail Boston 1992 tall ship parade and departure. Vessel operators using Spectator Areas A, N, or P must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(8) *Spectator Areas B, F, and G.* For the periods specified in paragraphs (a)(9), (a)(13), and (a)(14) of this section, Spectator Area B, F, and G are designated for the exclusive use of recreational vessels 45 feet or less in length with superstructures not to exceed 10 feet in height. Vessel operators using Spectator Areas B, F, or G must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(9) *Spectator Area C.* For the periods specified in paragraph (a)(10) of this section, Spectator Area C is designated for the exclusive use of inspected small passenger vessels (passenger vessels certified by the Coast Guard under Subchapter T of Title 46, Code of Federal Regulations.) Vessel operators using Spectator Area C must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(10) *Spectator Area D.* For the periods specified in paragraph (a)(11) of this section, Spectator Area D is designated

for the exclusive use of recreational vessels 45 feet or less in length. Vessel operators using Spectator Area D must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(11) *Spectator Area E.* For the periods specified in paragraph (a)(12) of this section, Spectator Area E is designated for the exclusive use of recreational vessels with height above water at any point not to exceed 50 feet. Vessel operators using Spectator Area E must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(12) *Spectator Areas H and M.* For the periods specified in paragraphs (a)(15) and (a)(19) of this section, Spectator Areas H and M are designated for the exclusive use of recreational vessels. Vessel operators using Spectator Areas H or M must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(13) *Spectator Area J.* For the periods specified in paragraph (a)(16) of this section, Spectator Area J is designated for the exclusive use of commercial fishing vessels. Vessel operators using Spectator Area J must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(14) *Spectator Area K.* For the periods specified in paragraph (a)(17) of this section, Spectator Area K is a special use anchorage, as deemed appropriate by the COTP Boston. No vessel may anchor in this area without the permission of the COTP Boston. Vessel operators using Spectator Area K must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(15) *Spectator Areas L and Q.* For the periods specified in paragraphs (a)(18) and (a)(22) of this section, Spectator Areas L and Q are designated for the exclusive use of inspected small passenger vessels, sailing school vessels, uninspected passenger vessels, and bareboat charter vessels. Vessel operators using Spectator Areas L or Q must comply with the general operational requirements specified in paragraph (c)(16) of this section.

(16) *General Operational Requirements for Anchorages and All Designated Spectator Areas.* Vessel operators using any of the anchorages or spectator areas established in this section shall:

(i) Ensure their vessels are properly anchored and remain safely in position at anchor under all prevailing conditions.

(ii) Comply as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(iii) Vacate anchorages and spectator areas after termination of the effective period for those areas.

(iv) Buoy with identifiable markers and release anchors fouled on lines of lobster traps if such anchors cannot be freed or raised.

(v) Use only Spectator Areas N, P, or Q if going offshore to view tall ship events occurring in Massachusetts Bay on July 16, 1992.

(vi) Display anchor lights when anchoring at night in any anchorage or designated spectator area.

(vii) Not leave vessels unattended in any anchorage or spectator area at any time.

(viii) Not tie off to any buoy.

(ix) Not maneuver between anchored vessels.

(x) Not nest or tie off to other vessels in that anchorage or spectator area.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

6. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(G), 6.04–1, 6.04–6, and 160.5.

7. A new § 165.TO1–165–4 is added to read as follows:

§ 165.TO1–165–4 Safety Zone: CONSTITUTION Turnaround, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

The Boston Main Channel and Charles River bounded on the east by a line drawn from Boston Main Channel Lighted Buoy "3" to Boston Main Channel Lighted Bell Buoy "4"; bounded on the north by a line drawn from the northeastern corner of Pier 7, Charlestown Navy Yard to the southernmost point of the Boston Towing and Transportation South Yard, East Boston; and bounded on the west by a line drawn from the easternmost point of the MDC pier at Puopolo Park to the northeastern corner of Hoosac Pier, Charlestown. The zone includes also the waters on either side of the channel to the shoreline.

(b) *Effective Date.* This regulation becomes effective on July 4, 1992, at 10 a.m. when the USS CONSTITUTION departs the Charlestown Navy Yard. It terminates on July 4, 1992, at 2 p.m. when the vessel returns and is safely moored at its berth, unless sooner terminated by the COTP Boston. A rain date of July 5, 1992, is planned with all times remaining the same.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit the zone from 10 a.m. to 2 p.m., except as authorized by the COTP Boston.

(2) Other vessels, except CONSTITUTION, those participating in the turnaround, and duly authorized patrol craft, may not transit the affected portion of the Boston Main Channel from 10 a.m. to 2 p.m., July 4, 1992, except as authorized by the COTP Boston.

(3) Vessel operators shall maintain at all times at least 300 yards safe distance from CONSTITUTION while the vessel is underway in Boston Harbor.

(4) Vessel operators, except operators of small passenger vessels, must transit to and select viewing positions outside the Boston Main Channel before CONSTITUTION is underway and must remain in position until CONSTITUTION has finished its twenty-one gun salute.

(5) Vessel operators may not maneuver between anchored vessels during the event.

(6) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

8. A new § 165.TO1–165–6 is added to read as follows:

§ 165.TO1–165–6 Safety Zone: Tall Ship Rally, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

President Roads, Boston Main Channel, and Fort Point Channel bounded on the east by Deer Island Light; bounded on the north by a line drawn from Pier 3, USCG Support Center Boston to the northernmost point of the Hodge Boiler Works Building, East Boston; and bounded on the west by the Congress Street Bridge, South Boston, in the Fort Point Channel. The zone includes also the waters on either side of the channels to the shoreline.

(b) *Effective Date.* This regulation becomes effective on July 10, 1992, at 10 a.m., when participating vessels assemble in President Roads for the start of the Tall Ship Rally. It terminates on July 10, 1992, at 12 noon, when participating vessels have completed the rally and disassemble, unless sooner terminated by the COTP Boston.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit the zone from 10 a.m. to 12 noon, except as authorized by the COTP Boston.

(2) Other vessels, except those participating in the rally and duly authorized patrol craft, may not transit the affected portion of President Roads, Boston Main Channel, or Fort Point Channel from 10 a.m. to 12 noon, except as authorized by the COTP Boston.

(3) Vessels shall maintain at all times at least 300 yards safe distance from participating vessels while the Tall Ship Rally is underway in Boston Harbor.

(4) Vessel operators, except operators of small passenger vessels, must transit to and select viewing positions outside the Boston Main Channel before the Tall Ship Rally begins and must remain in position until the rally is completed and participating vessels disassemble.

(5) Vessel operators may not maneuver between anchored vessels during the event.

(6) Vessel operators may not obstruct the entrance to or mooring areas in the Fort Point Channel.

(7) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

9. A new § 165.TO1–165–7 is added to read as follows:

§ 165.TO1–165–7 Safety Zone: Grand Parade of Sail, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

The waters of Boston Harbor west of Longitude 070–52 W, including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, President Roads, including the President Roads anchorages, Sculpin Ledge Channel, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Alford Street Bridge, and the Chelsea River to the McArdle Bridge. The zone includes also a staging area for the tall ship parade extending 500 yards in all directions from the position 42–23–06 N, 070–53–26 W, and all tall ship anchorages and spectator areas designated in 33 CFR 110.134.

(b) *Effective Date.* This regulation becomes effective on July 11, 1992, at 6 a.m., when tall ship and spectator vessel traffic is expected to congest Boston Harbor. It terminates on July 11, 1992, at 8 p.m., when visiting tall ships have moored and congestion in Boston Harbor has moderated to an acceptable level, unless sooner terminated by the COTP Boston.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit the zone from 6 a.m. to 8 p.m., except as authorized by the COTP Boston.

(2) Other vessels, except those participating in the Grand Parade of Sail and duly authorized patrol craft, may not transit the tall ship staging area in Broad Sound, Boston North Channel, President Roads, or Boston Main Channel and must remain in designated spectator areas from 9 a.m. to 5 p.m., except as authorized by the COTP Boston.

(3) Vessels shall maintain at all times at least 300 yards of safe distance from CONSTITUTION or any other tall ship participating in the Grand Parade of Sail while those vessels are underway in Boston Harbor.

(4) Vessel operators must comply with the temporary restrictions imposed for the anchorages and designated spectator areas, as specified in 33 CFR 110.134.

(5) Vessels, except for those participating in the Grand Parade of Sail or duly authorized patrol craft, may not enter or remain in the Reserved Channel or block access to any tall ship mooring site or emergency medical evacuation area from 9 a.m. to 4:30 p.m., except as authorized by the COTP Boston.

(6) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(7) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(8) Following the tall ship parade, Boston Harbor will reopen in sequence with the movement and mooring of the final flotilla of tall ships:

(i) After the final flotilla of tall ships has passed Castle Island, vessel operators anchored in spectator areas east of Castle Island may depart for locations outside Boston Harbor.

(ii) After the final flotilla of tall ships has moored, vessel operators may depart from designated spectator areas. Vessels transiting inbound through Boston Harbor must keep to the right in the Boston Main Channel and proceed as directed by onscene Coast Guard personnel, with vessel traffic moving in a counterclockwise direction around the turning point established off the USCG Support Center Boston, as marked by an appropriate on-scene patrol vessel.

(iii) Inbound vessels must keep to the starboard or "red" side of the channel; and outbound vessels, to the port or "green" side.

10. A new § 165.TO1–165–8 is added to read as follows:

§ 165.TO1–165–8 Safety Zone: Reserved Channel, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: The Reserved Channel, South Boston, MA between the Boston Main Channel and the Summer Street retractile bridge.

(b) *Effective Dates.* This safety zone becomes effective at 4:30 p.m. on July 11, 1992, after visiting tall ships are safely moored in the Reserved Channel. It terminates at 9:30 a.m. on July 16, 1992, just prior to the tall ships' departure from Boston Harbor.

(c) *Regulations.* The following special regulations apply:

(1) Vessel operators transiting the safety zone must maneuver or anchor as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(2) Vessel operators transiting the safety zone must enter along the right side of the Reserved Channel and keep to the right, proceeding as directed by on-scene Coast Guard patrol personnel, with vessel traffic moving in a counterclockwise direction around the turning point established off the Boston Edison power plant, as marked by an appropriate on-scene patrol vessel.

(3) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(4) Vessel operators transiting the safety zone must maintain at least 50 feet safe distance from all moored vessels, and keep clear of and make way for all deep draft vessel traffic underway in the safety zone enroute to or from Massport's Conley Terminal, Castle Island, South Boston or Coastal Oil Terminal, South Boston.

11. A new § 165.TO1–165–9 is added to read as follows:

§ 165.TO1-165-9 Safety Zone: Sail Boston 1992 Fireworks Extravaganza, Boston Inner Harbor, Boston MA.

(a) *Location.* The following area is a safety zone:

The Mystic River, the Island End River, the Boston Main Channel, and Charles River bounded on the east by a line drawn from the McKay Monument, Castle Island to the end of the approach pier at Logan Airport, East Boston; bounded on the north by the Alford Street Bridge in the Mystic River; and bounded on the west by a line drawn from the easternmost point of the MDC Pier at Puopolo Park to the northeastern corner of Hoosac Pier, Charlestown, MA. The zone includes also the waters on either side of the channel to the shoreline.

(b) *Effective Date.* This zone becomes effective on July 12, 1992, at 5:30 p.m., when Sail Boston 1992 Fireworks Extravaganza barges and attending tugs depart their Everett, MA loading site to take position in the Boston Main Channel off the Pier 4, South Boston, in approximate position, 42-21-26 N, 071-02-22 W. It terminates on July 12, 1992, at 11 p.m., when the vessels return and are safely moored at their respective Everett, MA loading site, unless sooner terminated by the COTP Boston. A rain date of July 15, 1992 is planned, with all times remaining the same.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit through the safety zone from 5:30 p.m. to 11 p.m., except as authorized by the COTP Boston.

(2) Vessel operators shall maintain at all times at least 300 yards safe distance from Sail Boston 1992 Fireworks Extravaganza barges and attending tugboats.

(3) Vessel operators must transit to and select viewing positions before 9 p.m. and remain in position until the fireworks display ends at 10 p.m.

(4) Vessel operators may not maneuver between anchored vessels.

(5) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(6) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(7) Following the event, inbound vessels must keep to the starboard or "red" side of the channel; and outbound vessels to the port or "green"side.

(8) After completion of the fireworks display, vessel operators within the safety zone are prohibited from passing outbound patrol vessels showing blue lights.

12. A new § 165.TO1-165-11 is added to read as follows:

§ 165.TO1-165-11 Safety Zone: Farewell Departure, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: The waters of Boston Harbor west of Longitude 070-54 W, including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, the Narrows, Nantasket Roads, Nubble Channel, President Roads, including the President Roads Anchorage, Sculpin Ledge Channel, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Tobin Bridge, and the Chelsea River to the McArdle Bridge. The zone includes also all temporary spectator areas designated in 33CFR 110.134.

(b) *Effective Date.* This regulation becomes effective on July 16, 1992, at 8 a.m., when tall ship and spectator vessel traffic is expected to congest Boston Harbor. It terminates on July 16, 1992, at 6 p.m., when visiting tall ships have departed Boston Harbor and vessel traffic has moderated to a safe level, unless sooner terminated by the COTP Boston.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit the zone from 8 a.m. to 6 p.m., except as authorized by the COTP Boston.

(2) Other vessels, except those participating in the Farewell Departure and duly authorized patrol craft, may not transit the Boston Main Channel, President Roads, Boston North Channel or the Narrows and must remain in designated spectator areas from 8 a.m. to 4 p.m., except as authorized by the COTP Boston. Vessel operators anchored in Spectator Areas N, P, or Q may depart those areas to view offshore activities, provided they transit outside main channels and maintain 300 yards safe distance from participating tall ships.

(3) Vessel operators shall maintain at all times at least 300 yards safe distance from CONSTITUTION, USS CASSIN YOUNG, or any other tall ship participating in the Farewell Departure while those vessels are underway in Boston Harbor.

(4) Vessel operators must comply with the temporary restrictions imposed for the anchorages and designated spectator areas, as specified in 33 CFR 110.134.

(5) Vessels, except for those participating in the Farewell Departure or duly authorized patrol craft, may not enter or remain in the Reserved Channel or block access to any tall ship mooring site or emergency medical evacuation area from 8 a.m. to 4 p.m., except as authorized by the COTP Boston.

(6) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(7) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(8) Following the tall ship departure, Boston Harbor will reopen in sequence with the movement of the last outbound tall ship.

(i) After the last outbound tall ship has passed the Boston North Channel Entrance Lighted Gong Buoy "NC", operators of vessels anchored in designated spectator areas may depart for locations outside Boston Harbor.

(ii) After the last outbound tall ship has passed Castle Island, vessel operators may depart designated spectator areas west of Castle Island and transit to locations within Boston Harbor, but west of Castle Island. Operators of vessels underway within the inner harbor in the Boston Main Channel must keep to the right and proceed as directed by on-scene Coast Guard patrol personnel, with vessel traffic moving in a counterclockwise direction around the turning point established off the USCG Support Center Boston, as marked by an appropriate on-scene patrol vessel.

(iii) Inbound vessels must keep to the starboard side of the channel; and outbound vessels, to the port or "green" side.

13. A new § 165.TO1-165-12 is added to read as follows:

§ 165.TO1-165-12 Safety Zone: Grand Regatta Restart, Massachusetts Bay, Boston, MA.

(a) *Location.* The following area is a safety zone:

A three square mile area in Massachusetts Bay off of Nahant to include a practice area for tall ships to conduct sail crew training in preparation

for the restart of the race and a restart area with a two-mile starting line for the event. The safety zone is bounded by the following:

Point 1: Latitude 42–27.2 N Longitude 070–40.0 W
Point 2: Latitude 42–27.2 N Longitude 070–36.0 W
Point 3: Latitude 42–24.1 N Longitude 070–36.0 W
Point 4: Latitude 42–24.1 N Longitude 070–40.0 W

(b) *Effective Dates.* This safety zone becomes effective on July 16, 1992, at 11:30 a.m., when tall ships participating in the Grand Regatta Restart begin to arrive offshore. It terminates on July 16, 1992, at 6 p.m., just after the restart of the Grand Regatta.

(c) *Regulations.* The following special regulations apply:

(1) The safety zone shall be closed during the effective period to all vessel traffic except participants in this event, duly authorized patrol craft, and those vessels on-scene Coast Guard patrol personnel allow to enter the area, as directed by the COTP Boston.

(2) Vessel operators must keep clear of and make way for all tall ships participating in the Grand Regatta Restart.

(3) Vessel operators must maneuver or anchor as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy or local law enforcement vessels.

June 4, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District, Boston, Massachusetts.

[FR Doc. 92–13854 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore, Regulation 92–05–21]

Safety Zone Regulation: Patapsco River Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the Fourth of July fireworks display. The fireworks will be launched from a barge anchored approximately 600 feet south of Pier 6, Patapsco River, Inner Harbor, Baltimore, Maryland. The safety zone is necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective from 8:30 p.m. to 11 p.m., July 4, 1992 with a rain date of July 5, 1992.

FOR FURTHER INFORMATION CONTACT: LT Cynthia L. Stowe, U.S.C.G. Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (301) 962–5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible.

Specifically, the sponsor's application to hold the event was not received until June 2, 1992, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this regulation are LT Cynthia L. Stowe, project officer for the Captain of the Port, Baltimore, Maryland, and LCDR David H. Sump, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The Baltimore Office of Promotion submitted an application to hold a fireworks display on July 4, 1992. As part of the application, the Baltimore Office of Promotion requested that the Coast Guard provide control of spectator and commerical traffic during the fireworks display.

Discussion of Regulations

The fireworks will be launched from a barge anchored approximately 600 feet south of Pier 6, Inner Harbor, Patapsco River, Baltimore, Maryland. This Safety Zone will consist of a circle, with a radius of 600 feet, around the barge located at latitude 39–17–00 North, longitude 076–36–15 West.

This emergency rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this emergency rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 countinues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T0526 is added to read as follows:

§ 165.T0526 Safety Zone: Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Location.* The following area is a safety zone: The waters of the Patapsco River, Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39–17–00 North, longitude 076–36–15 West.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The Coast Guard Patrol Commander and each Coast Guard vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(d) *Effective date.* The regulation in this section is effective from 8:30 PM to

11:00 PM, July 4, 1992, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: June 5, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92-14347 Filed 6-17-92; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Printed Educational Reference Charts

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Section 724.1g of the Domestic Mail Manual is amended to provide further guidance on the eligibility of printed educational reference charts for mailing at the special fourth-class rates of postage.

EFFECTIVE DATE: September 20, 1992.

FOR FURTHER INFORMATION CONTACT: Martin L. Cohen (202) 268-5169.

SUPPLEMENTARY INFORMATION: Section 724.1g of the Domestic Mail Manual provides that printed educational reference charts can qualify for mailing at the special fourth-class rates of postage. The Postal Service has determined to amend this regulation to provide more explicit guidance to mailers concerning the rate eligibility of printed educational reference charts. The amendment includes a further definition of educational reference charts and some examples of charts that do and do not qualify for special fourth-class rates. This definition is consistent with the standards long used in issuing classification decisions.

Accordingly, although exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service has determined that, if the Postal Service were not exempt from the provisions of the Administrative Procedure Act, notice and comment rulemaking and a delayed effective date would not be required.

The Postal Service adopts the following amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. Section 724.1g of the Domestic Mail Manual is revised to read as follows:

724 SPECIAL FOURTH-CLASS RATES

* * * * *

724.1 General Description

* * * * *

g. Printed Educational Reference Charts

Each chart must be a single printed sheet of information which is primarily designed to be used for educational reference purposes. It must be designed to instruct or train individuals for the purpose of improving or developing their capabilities. The information on the chart, which may be printed on one or both sides of the sheet, must be primarily conveyed by graphs, diagrams, tables, or other non-narrative matter. A chart on which the information is primarily conveyed by textual matter in a narrative form does not qualify as a printed educational reference chart for mailing at the special fourth-class rates even if it includes graphs, diagrams, or tables.

An educational reference chart is normally, but not necessarily, devoted to one subject. Examples of qualifying charts include, but are not limited to: Maps produced primarily for educational reference purposes; tables of mathematical or scientific equations; noun declensions; verb conjugations used in the study of languages; the periodic table of elements; botanical or zoological tables; and other tables used in the study of science.

A transmittal letter making the change in the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-14334 Filed 6-17-92; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA7-1-5438; A-1-FRL-4144-7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Deletion of Alternate Control Program for J.W. Fergusson & Sons, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision deletes the alternate control program (bubble) for J.W. Fergusson & Sons, Inc., approved by EPA on March 4, 1983 (48 FR 9257). J.W. Fergusson & Sons, Inc. emits volatile organic compounds (VOCs) from its operations. Upon approval of this SIP revision, J.W. Fergusson & Sons, Inc. will still remain subject to the federally-approved reasonable available control technology (RACT) regulations for graphic arts in the Virginia State Implementation Plan (SIP). The intended effect of this action is to approve the Commonwealth's request to amend its SIP by deleting J.W. Fergusson & Sons, Inc.'s source-specific alternate control program (bubble) for meeting RACT. This action is being taken in accordance with section 110 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990.

EFFECTIVE DATE: This action will become effective August 17, 1992 unless notice is received within 30 days that adverse or critical comments will be submitted. If final action is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia, 23240.

FOR FURTHER INFORMATION CONTACT: Cristina M. Schulingkamp, U.S. EPA Region III, (215) 597–0545.

SUPPLEMENTARY INFORMATION: On October 31, 1991, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of deleting the source-specific alternate control program (bubble) for J.W. Fergusson & Sons, Inc.

The currently approved Virginia SIP contains a source-specific alternate control program (bubble) for J.W. Fergusson & Sons, Inc. Under this bubble. the source complies with the Virginia SIP's graphic arts RACT regulation via an equivalent but alternative compliance plan. EPA approved this bubble on March 4, 1983 (48 FR 9257).

J.W. Fergusson & Sons, Inc. still remains subject to the Virginia SIP's graphic arts RACT regulations once this source-specific alternate control program (bubble) is removed from the SIP. A more detailed discussion can be found in the technical support document (TSD) accompanying this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the "**ADDRESSES**" section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on August 17, 1992.

Final Action

EPA is approving the deletion of the source-specific alternate control program (bubble) for J.W. Fergusson & Sons, Inc. approved on March 4, 1983 (48 FR 9257). The Company is still subject to the graphic arts RACT regulations previously approved by EPA on January 25, 1984 (49 FR 3082), Virginia SIP regulation 4.55(m).

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), the Regional Administrator certifies that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action, pertaining to the deletion of the alternate control program (bubble) for J.W. Fergusson & Sons, Inc., located in Richmond, Virginia, has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 17, 1992. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

June 2, 1992.

Edwin B. Erickson,

Regional Administrator.

Subpart VV, part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart VV—Virginia

§ 52.2420 [Amended]

2. In § 52.2420 paragraph (c)(72) is removed and reserved.

3. Section 52.2423 is amended by adding paragraph (i) to read as follows:

§ 52.2423 Approval status.

* * * * *

(i) Pursuant to an October 31, 1991 request submitted by the Virginia Department of Air Pollution Control, the source-specific Alternate Control Program (bubble) for J.W. Fergusson & Sons, Inc. which EPA had approved on March 4, 1983, is removed from the plan. J.W. Fergusson & Sons, Inc. located in Richmond, Virginia is required to comply with the Virginia SIP graphic arts RACT regulation approved by EPA on January 25, 1984 (see 40 CFR 52.2420 (c)(48) and (c)(74)).

[FR Doc. 92–14268 Filed 6–17–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 87–124; FCC 92–217]

Access to Telecommunications Equipment by Hearing Impaired

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order (R&O) in CC Docket 87–124 adopts proposed amendments to part 68 of the rules to require that most telephones (as specified) be hearing aid-compatible by May 1, 1992. However, to avoid excessive costs associated with field retrofitting, the compliance date of the rules is delayed until May 1, 1993 for establishments with 20 or more employees and until May 1, 1994 for all others.

DATES: July 20, 1992.

COMPLIANCE DATE: The compliance date of the rules is delayed until May 1, 1993 for establishments with 20 or more employees and until May 1, 1994 for all others.

FOR FURTHER INFORMATION CONTACT: Robert Kimball, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, (202) 634–4215.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's R&O in the matter of Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons, CC Docket No. 87–124, FCC 92–217, adopted May 14, 1992. The R&O and supporting file may be examined during federal business hours in the Commission's Dockets Branch, room 230, 1919 M St., NW., Washington, DC, or purchased from the duplicating contractor, Downtown Copy Center, 1114 21st St., NW., Washington, DC 20036, (202) 452–1422.

This proceeding was initiated by the Commission's Memorandum Opinion

and Order (MO&O) and Further Notice of Proposed Rulemaking (NPRM) in CC Docket 87-124, 5 FCC Rcd 3434 (1990) [55 FR 28762 (July 13, 1990), 55 FR 28781 (July 13, 1990)]; *recon. denied*, 6 FCC Rcd 4799 (1991). In the MO&O portion of the proceeding, the Commission determined, among other things, that all credit card operated telephones and telephones in common areas of the workplace would have to be hearing aid-compatible by May 1, 1991. That decision was based, in part, upon an estimated retrofitting cost of $1.50 per telephone as stated in Senate Report No. 100-391, 100th Cong. 2d Sess. (1988) and the limited number of instruments that would be affected by the rule change. On reconsideration, the Commission decided that even if the $1.50 estimate was unrealistically low, the benefits of the change still outweighed the costs because of the limited number of instruments affected.

The NPRM portion of the proceeding proposed rules requiring that most other telephones (as specified) be hearing aid-compatible by May 1, 1992. The proposed rules would result in those telephones being subject to retrofitting which would, in a large number of cases, require the discovery and replacement or refurbishment of non-hearing aid-compatible telephones at locations where they already have been installed and are in use. Eight comments and two reply comments were filed and each was carefully considered with due consideration to the requirement in 47 U.S.C. 610(a) that the Commission establish regulations to insure reasonable access to telephone service by persons with impaired hearing, but that, pursuant to 47 U.S.C. 610(f), the Commission not require retrofitting of equipment other than coin operated telephones and telephones provided for emergency use. The Commission is not precluded from adding new categories of emergency telephones; indeed, 47 U.S.C. 610(f) provides that the Commission shall periodically review the regulations established pursuant to § 610.

Three of the commenting parties argue that the estimated cost of $1.50 per telephone for retrofitting is underestimated, and they cite costs ranging from $2.60 to an average of $45.14. Other parties challenge those estimates as being inconsistent and unsupported. In reply comments, parties contending that the retrofitting cost of $1.50 per telephone is underestimated argue that the cost does not include field testing to identify those telephones which are non-hearing aid-compatible and to perform retrofitting. The evidence shows to our satisfaction that the $1.50 cost cited in the Senate Report does not reliably represent the cost of retrofitting telephones in the field, and may not have been intended to represent those costs. Accordingly, in reviewing the arguments as to the costs and benefits of the proposed rules, we find that the costs of field retrofitting are likely to be significantly higher than the $1.50 per set estimate originally relied upon, and that the universe of telephones affected by the proposed rules will be considerably larger than that affected by the rules upheld in the reconsideration.

Evidence indicates that the number of non-hearing aid-compatible telephones still in the working place continues to be reduced by operation of the requirements of the Hearing Aid Compatibility Act of 1988 and § 68.4(a)(1) of the rules which requires that, with limited exceptions, every telephone manufactured in the United States (other than for export) or imported for use in the United States after August 16, 1989, must be hearing aid-compatible. At the current rate of depletion, the number of non-hearing aid-compatible telephones will be reduced by a predictable amount over the next few years and the benefits ultimately will outweigh the costs. We conclude that in the case of small establishments, i.e., those with fewer than twenty employees, a delay of two years in the date on which the proposed rules will become applicable will proportionately reduce the size of the universe of telephones affected by the rules to about 4.2 million telephones. With reference to larger establishments, however, i.e., those with twenty or more employees, the cost per instrument would be proportionally smaller, and we believe that a delay of only one year is justified. Therefore, the proposed rules are adopted with the condition that they not go into effect until May 1, 1993 for establishments with twenty or more employees, and until May 1, 1994 for all others.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, the Commission's final analysis in this R&O is as follows:

I. Need and Purpose of This Action

The regulations affected by this Report and Order were required by the Hearing Aid Compatibility Act of 1988. On reexamination of the rules adopted pursuant to that Act, the Commission finds that certain amendments are necessary to fulfill the goals established by Congress.

II. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were filed in direct response to the initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected

The Commission considered the alternatives raised by the parties in this proceeding and considered all timely filed comments directed to those issues. After carefully weighing all aspects of this proceeding, the Commission has adopted the most reasonable course of action under the mandate of the Hearing Aid Compatibility Act and the Communications Act of 1934, as amended.

Ordering Clause

It is ordered, Pursuant to section 1, 4(i) and 710 of the Communications Act of 1934, as amended, that part 68 of the Commission's Rules and Regulations is amended as set forth below.

List of Subjects for 47 CFR Part 68

Hearing aid-compatible telephones, Hearing aid-compatibility, Administrative practice and procedure.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 68, is amended as follows:

1. The authority citation for part 68 is revised to read as follows:

Authority: (47 U.S.C. 151, 154, 155, 201-205, 208, 215, 218, 226, 303, 313, 314, 403, 404, 410, 522, 610.

2. Section 68.4 is amended by revising paragraph (a)(2) to reach as follows:

§ 68.4 Hearing aid-compatible telephones.

(a) * * *

(2) Unless otherwise stated and except for telephones used with public mobile services, telephones used with private radio services and secure telephones, every telephone listed in § 68.112 must be hearing aid-compatible.

* * * * *

3. Section 68.112 is amended by revising paragraphs (B)(1), (b)(3) and (c) and adding paragraph (b)(5) to read as follows:

§ 68.112 Hearing aid-compatibility.

* * * * *

(b) *Emergency use telephones.* * * *

(1) Telephones in places where a person with impaired hearing might be

isolated in an emergency, including, but not limited to, elevators, automobile, railroad or subway tunnels, highways and all areas of the workplace including common areas (libraries, reception areas and similar locations where employees are reasonably expected to congregate). With respect to the workplace, non-common area telephones are not required to be hearing aid-compatible until May 1, 1993 for establishments with twenty or more employees, and until May 1, 1994 for all other establishments, except for telephones made available to a hearing impaired employee for use by that employee in his or her employment duty. Such telephones shall be hearing aid-compatible by May 1, 1992.

* * * * *

(3) Telephones needed to signal life-threatening or emergency situations in confined settings, including but not limited to, rooms in hospitals, residential health care facilities for senior citizens, convalescent homes, and prisons. If an alternative means of signalling life-threatening or emergency situations is available, a hearing aid-compatible telephone is not required until May 1, 1993 for establishments with twenty or more employees, and until May 1, 1994 for all other establishments, unless replaced before that time.

* * * * *

(5) Until May 1, 1993 for establishments with twenty or more employees, and until May 1, 1994 for all other establishments, telephones in hotel and motel rooms replaced after January 1, 1985, must be hearing aid-compatible unless at least ten percent of the rooms in a hotel or motel are equipped to accommodate a hearing impaired customer. A room is equipped to accommodate a hearing impaired customer if

(i) It contains a permanently installed hearing aid-compatible telephone; or

(ii) It contains a telephone which will accept a plugin hearing aid-compatible handset, which shall be provided to the hearing impaired customer by the hotel or motel; or

(iii) The room contains a jack into which a hearing air-compatible telephone provided to the customer by the hotel or motel may be plugged (i.e., in addition to a permanently installed telephone which is not hearing aid-compatible). If fewer than ten percent of the rooms in a hotel or motel are hearing aid-compatible, when replacing a telephone the hotel or motel must, until the ten percent minimum is reached:

(A) Replace it with a hearing aid-compatible telephone, or

(B) Procure and maintain a plug-in hearing aid-compatible telephone handset which it will provide to a hearing impaired customer upon request at check-in. For establishments with twenty or more employees, all telephones in hotel and motel rooms are required to be hearing aid-compatible by May 1, 1993. For establishments with fewer than twenty employees, all telephones in hotel and motel rooms are required to be hearing aid-compatible by May 1, 1994.

(c) *Telephones frequently needed by the hearing impaired.* Closed circuit telephones, i.e., telephones which cannot directly access the public switched network, such as telephones located in lobbies of hotels or apartment buildings; telephones in stores which are used by patrons to order merchandise; telephones in public transportation terminals which are used to call taxis or to reserve rental automobiles, need not be hearing aid-compatible until replaced.

[FR Doc. 92-13669 Filed 6-17-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR PART 90

[PR Docket No. 91-62; FCC 92-196]

Eligibility in the Motion Picture Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning eligibility in the motion picture radio service, (57 FR 19811 (May 8, 1992)), by adding a Final Regulatory Flexibility Analysis.

EFFECTIVE DATE: June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Land Mobile and Microwave Division, (202) 634-2443.

SUPPLEMENTARY INFORMATION: In FR Doc 92-10646, published in 57 FR 19811 (May 8, 1991, the Supplementary Information section is corrected by redesignating paragraphs 4 and 5 as paragraphs 5 and 6 and adding a new paragraph 4 to read as follows:

4. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows.

I. Need and Purpose of This Action

This Report and Order amends the eligibility criteria governing the Motion Picture Radio Service, which has been renamed the Video Production Radio Service, to encompass additional technologies developed since the service was created. In addition to motion picture production, eligibility is extended to on-location videotape production of mass media programming, regardless of the ultimate distribution mode. Many small video and film production entities could be positively affected by this action because additional radio communications options will be made available to them. This action furthers the Commission's goals of promoting efficiency and innovation in the allocation, licensing and use of the electromagnetic spectrum.

II. Summary of the Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered

The Notice of Proposed Rule Making asked whether amendment of the rules governing eligibility for the Motion Picture Radio Service was desirable to accommodate technologies, such as television broadcasting, developed after the MPRS was created in 1927. After considering the comments, we adopted some of the commenters' suggestions to modify the proposal set out in the Notice.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-14252 Filed 6-17-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 492]

Montana Rail Link, Inc. and Wisconsin Central Ltd., Joint Petition for Rulemaking

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission raises the revenue classification level for class I rail carriers from $50 million to $250 million and concurrently revises the revenue deflator formula from a base period of 1978 to 1991. Also, the Commission raises the revenue classification level for class II rail carriers from $10 million to $20 million (also rebased to 1991 dollars). The purpose and intended effect of the changes is to reduce accounting and

reporting burdens on railroad companies.

EFFECTIVE DATE: These revisions are effective July 20, 1992.

FOR FURTHER INFORMATION CONTACT: Brian A. Holmes, (202) 927–5730, (TDD for hearing impaired: (202) 927–5721.).

SUPPLEMENTARY INFORMATION: By petition dated December 3, 1990, Montana Rail Link, Inc. (MRL) and Wisconsin Central Ltd. (WC) requested that the Commission amend the rail carrier classification regulations.

After considering the proposal, we issued a Notice of Proposed Rulemaking (NPR), served September 10, 1991 (56 FR 46272, Sept. 11, 1992). After consideration of all comments, we are raising the revenue classification level for class I rail carriers set forth in 49 CFR 1201, General Instruction 1–1(a) from $50 million to $250 million, while concurrently revising the base year for calculating the revenue deflator formula from 1978 to 1991 (See Note A to Instruction 1–1). We are also raising the revenue classification level for class II rail carriers from $10 million to $20 million.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721 or by pickup from Dynamic Concepts Inc. in room 2229 at Commission headquarters.]

This revision will not have a significant economic impact on a substantial number of small entities and this decision will not significantly affect the quality of the human environment or the conservation of energy resources.

This decision will not impose additional reporting hours on rail carriers now filing reports with the Commission. In effect, it will make the reporting requirements inapplicable to one currently reporting carrier, the Florida East Coast Railway, and to four carriers (Montana Rail Link, Inc., Wisconsin Central Ltd., Western Rail Properties, Inc., and Duluth, Missabe, and Iron Range Railway Co.) that would have been required to file reports in the absence of this revision.

List of Subjects in 49 CFR Part 1201

Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: June 10, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, Part 1201 of the Code of Federal Regulations is amended as follows:

PART 1201—RAILROAD COMPANIES

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 11166.

Subpart A—[Amended]

2. In subpart A, General Instructions is amended by revising Instruction 1–1.

General Instructions

1–1 *Classification of carriers.* (a) For purposes of accounting and reporting, carriers are grouped into the following three classes:

Class I: Carriers having annual carrier operating revenues or $250 million or more after applying the railroad revenue deflator formula shown in Note A.

Class II: Carriers having annual carrier operating revenues of less than $250 million but in excess of $20 million after applying the railroad revenue deflator formula shown in Note A.

Class III: Carriers having annual carrier operating revenues of $20 million or less after applying the railroad revenue deflator formula shown in Note A.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after the railroad revenue deflator adjustment. Upward and downward reclassification will be effected as of January 1 in the year immediately following the third consecutive year of revenue qualification.

(2) If a Class II or Class III carrier's classification is changed based on three years' adjusted revenues the carrier shall complete and file the Classification Index Survey Form with the Commission by March 31 of the year following the end of the period to which it relates.

(3) Newly organized carriers shall be classified on the basis of their annual carrier operating revenues after railroad revenue deflator adjustment for the latest period of operation. If actual data are not available, new carriers shall be classified on the basis of their carrier operating revenues known and estimated for a year (after railroad revenue deflator adjustment).

(4) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred (after railroad revenue deflator adjustment).

(5) In unusual circumstances, such as partial liquidation and curtailment or elimination of contracted services, where regulations will unduly burden the carrier, the carrier may request the Commission for an exception to the regulations. This request shall be in writing specifying the conditions justifying an exception.

(c) Class I carriers shall keep all of the accounts of this system which are applicable to their operations. Class II and III carriers are not required to maintain the accounts of this system.

(d) All switching and terminal companies, regardless of their operating revenues will be designated Class III carriers.

(e) Unless provided for otherwise, all electric railway carriers, regardless of operating revenues, will be designated Class III carriers.

Note A: The railroad revenue deflator formula is based on the Railroad Freight Price Index developed by the Bureau of Labor Statistics. The formula is as follows:

Current Year's Revenues × (1991 Average Index/Current Year's Average Index)

Note B: See related regulations 49 CFR 1241.15 Railroad classification survey form.

* * * * *

[FR Doc. 92–14358 Filed 6–17–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Apportionment of reserve; closure of directed fishing; request for comments.

SUMMARY: NMFS announces that amounts of the operational reserve are needed in the fishery for pollock in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is closing the directed fishery for pollock by the inshore component in the AI. This action is necessary to prevent exceeding the pollock allowance available for harvest by the inshore component in the AI.

DATES: Effective 12 noon, Alaska local time (A.l.t.), June 12, 1992, through 12 midnight, A.l.t., December 31, 1992. Comments are invited through June 27, 1992.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Apportionment

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(b)(1)(i), that the initial total allowable catch (TAC) specified for pollock needs to be supplemented from the nonspecific reserve in order to continue operations. Therefore, NMFS apportions 3,870 metric tons (mt) from the reserve to the pollock TAC in the AI, resulting in a revised AI pollock TAC of 47,730 mt. The revised allowances available in the second pollock season by the inshore and offshore components are 5,662 mt and 10,516 mt, respectively, in accordance with § 675.20(a)(3)(ii).

Closure to Directed Fishing

The Regional Director has determined, in accordance with § 675.20(a)(8), that the pollock allowance for the inshore component in the AI will soon be reached. Therefore, the Regional Director has established a directed fishing allowance of 5,500 mt and set aside the remaining 162 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the AI by the inshore component effective from 12 noon, A.l.t., June 12, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this notice is impractical and contrary to the public interest. Without this apportionment, U.S. groundfish fishermen would have to discard bycatches of pollock in the AI, resulting in needless economic waste of valuable fishery resources. Under § 675.20(b)(2), interested persons are invited to submit written comments on this apportionment to the above address until June 27, 1992.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 12, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–14276 Filed 6–12–92; 4:24 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 118
Thursday, June 18, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 50

RIN 3150-AE30

Reducing the Regulatory Burden on Nuclear Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to reduce the regulatory burden on nuclear licensees. This proposal reflects an initiative undertaken by the Commission in order to respond to a Presidential memorandum requesting that selected Federal agencies review and modify regulations that will reduce the burden of governmental regulation to ensure that the regulated community is not subject to duplicative or inconsistent regulation. In that spirit, the NRC's Committee to Review Generic Requirements (CRGR) identified regulations in eight areas that could be amended to reduce the regulatory burden on licensees without in any way reducing the protection for the public health and safety or the common defense and security. The proposed amendments address the frequency of reporting information and emergency core cooling system analysis for operating power reactors, clarify and update regulations affecting certain material licensees, and remove unnecessary regulatory requirements.

DATE: The comment period expires on July 20, 1992. Comments received after this date will be considered if it is practicable to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, MD, between the hours of 7:30 a.m. and 4:15 p.m. on weekdays.

Copies of the comments received, as well as other documents referenced in this package may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Nilsen, telephone (301) 492–3834 or Mr. Joseph J. Mate, telephone (301) 492–3795, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, the President of the United States signed a memorandum addressed to selected Federal Agency Heads who are concerned with energy production and protection of the environment. The memorandum requested the addressees work together to streamline the regulatory process and ensure that the regulatory community is not subject to duplicative or inconsistent regulation.

On January 28, 1992, the President signed a second memorandum entitled "Reducing the Burden of Government Regulation." This memorandum, which was sent to all Federal agencies, set aside a 90–day period to review and evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden. At the end of the review period, agencies were to submit a written report indicating the regulatory changes recommended or made during the review period and the potential savings as a result of the changes.

In response to the Presidential memoranda, the Commission decided that it would be consistent with its policy to monitor the impact of complying with NRC regulations by its licensees to instruct the Committee to Review Generic Requirements (CRGR) to review existing NRC regulations to determine whether regulatory burdens can be reduced without in any way reducing the protection for the public health and safety and the common defense and security. In accomplishing their review, the CRGR drew upon previous studies and solicited comments from the public, other Federal agencies, and the Commission's staff. A **Federal Register** Notice was published on February 24, 1992 (57 FR 6299) seeking public comments in connection with the review, and a second **Federal Register** Notice on March 23, 1992 (57 FR 9985) discussed likely or possible candidates for action, based on CRGR's preliminary evaluation of comments. An associated public meeting was held on March 27, 1992, in Bethesda, Maryland.

After completing their special review, the CRGR recommended revising the regulations in eight areas. The suggested revisions met the criteria for reducing the burden without in any way reducing the protection for public health and safety and common defense and security.

The Chairman of the NRC sent a report to the President of the United States on April 27, 1992, which summarized NRC's activities concerning the President's directive and advised the President that NRC would pursue the CRGR's recommendations expeditiously within the framework of the procedures and practices for rulemaking.

On June 1, 1992, in response to a memorandum from the President of the United States, dated April 29, 1992, the Commission directed the staff to strive to publish the proposed rule changes in the eight areas previously identified by a special review group in the Federal Register for comment as soon as possible, but not later than June 15, 1992, with a view to issuing the final rules in the Federal Register no later than August 27, 1992.

Discussion

The Nuclear Regulatory Commission is proposing amendments to 10 CFR parts 20 and 50 to implement the eight proposed actions identified in the report on "Special Review of Existing NRC Regulations" that was completed by the CRGR and that was attached to Chairman Selin's letter to the White House dated April 27, 1992. The actions proposed to be amended would not reduce the NRC's protection of the public health and safety or the common defense and security.

During the special review of existing NRC regulations, some comments were received which indicated that adequate time should be allowed for public

comment on any proposed rule changes. A thirty-day comment period is being provided.

1. Frequency of Final Safety Analysis Report (FSAR) Updates (10 CFR 50.71)

This proposed action would provide licensees with an option from the current requirements for the annual updating of the Final Safety Analysis Report (FSAR). In lieu of an annual submission, licensees may choose to provide the required information once per each refueling outage. According to the proposed revision, updates to the FSAR can be submitted 6 months after each refueling outage, provided the interval between successive updates to the FSAR does not exceed 24 months. This proposed action does not affect the substance of FSAR updates.

The estimated savings for this action, assuming an average remaining plant life of 26 years, is $11,100,000 for licensees and $910,000 for the NRC.

2. Annual Design Change Reports (10 CFR 50.59)

This proposed action would revise the requirements for the annual submission of reports for facility changes under § 50.59 (Changes, tests, and experiments) to conform with the proposed change for updating the FSAR (see Item 1). This proposed action does not affect the substance of the evaluation or the documentation required for § 50.59 type changes. It only affects the interval for submission of the information to NRC. Instead of submitting the information annually, the information could be submitted on a refueling cycle, provided the interval between successive reports does not exceed 24 months.

The estimated savings for this action, assuming an average remaining plant life of 26 years, is $1,500,000 for licensees and $400,000 for the NRC.

3. Elimination of Unnecessary Event Reports (10 CFR 50.72 and 50.73)

The proposed revision concerning event reporting is covered in a separate rulemaking action. For additional details on this action, please see the Commission Paper, SECY–92–146, dated April 22, 1992, entitled "Proposed Minor Rulemaking to Modify Operating Power Reactors Event Reporting Requirements." This proposed rule will be announced separately and details will be available in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555, in late June 1992.

4. Use of Fuel With Zirconium-Based (Other Than Zircaloy) Cladding (10 CFR 50.44, 50.46, and Appendix K to Part 50)

This proposed action would revise the acceptance criteria in 10 CFR 50.44 and 50.46, Part 50, relating to evaluations of emergency core cooling systems, and combustible gas control applicable to zircaloy clad fuel to include ZIRLO clad fuel. This revision to include ZIRLO as an acceptable zirconium based cladding material with zircaloy will reduce the licensee burden but will not reduce the protection of the public health or safety. The NRC will address, through an appropriate separate rulemaking, the use of other similar Zirconium based cladding materials when all of the necessary safety evaluations for those materials have been completed.

The estimated savings for eliminating the need to process recurring exemptions to the regulations is based on six plants per year requesting the use of ZIRLO clad fuel over the next 8 years. The estimated savings to the licensees is $2,000,000 per year and the savings to the NRC is $50,000 per year.

5. Frequency of Radiological Effluent Reports (10 CFR 50.36a)

This proposed action would reduce the requirements for the submission of reports concerning the quantity of principal nuclides released to unrestricted areas in liquid and gaseous effluents from semiannually to annually.

The estimated savings for this action, assuming an average remaining plant life of 26 years, is $16,800,000 for licensees and $360,000 for the NRC.

6. Receipt Back of Processed Low Level Waste (10 CFR 50.54)

This action is addressed in a separate rulemaking. For additional information on this action, see the proposed rule entitled "Receipt of Byproduct and Special Nuclear Material" published in the **Federal Register** on April 24, 1992 (57 FR 15034).

7. Contamination Monitoring of Packages (10 CFR 20.1906(b))

This proposed action would clarify the regulations and reduce the monitoring burden for packages containing radioactive material in the form of a gas or in a special form as defined in 10 CFR 71.4.

The estimated savings to licensees is $66.4 million.

8. Posting of Rooms Occupied by Diagnostic Nuclear Medicine Patients (10 CFR 20.1903(b))

The proposed revision would reduce the posting requirements for rooms in hospitals occupied by patients administered radioactive materials who might otherwise be released from confinement under the provisions of 10 CFR 35.75.

The estimated savings to licensees is $300,000 for elimination of the need for posting.

Environmental Impact: Categorical Exclusion

The NRC determined that the proposed regulation is the type of action described in categorical exclusions 10 CFR 51.22(c((2) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The reduction of the public reporting burden for this collection of information is estimated to average 208 hours per response for operating power reactors and 1 hour per response for certain materials licensees, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions on this reduced burden to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0011, 3150–0014), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Nuclear Regulatory Commission is proposing to amend its regulations to reduce the regulatory burden on nuclear licensees. This action reflects an initiative on the part of the NRC and responds to the spirit of President Bush's memoranda of January 28, 1992, which requested that selected Federal agencies review and modify regulations that will reduce the burden of governmental regulation to ensure that the regulated community is not subject to duplicative or inconsistent regulation. The Nuclear Regulatory Commission has identified eight proposed rulemaking actions that

would eliminate duplicative or inconsistent regulatory requirements. Six of the proposed actions are included in this package. Two of the eight actions are being processed as separate rulemakings and are not discussed here. The actions are as follows:

1. Frequency of Final Safety Analysis Report Updates—to change the frequency of safety analysis report updates from one per year to once per refueling cycle (10 CFR 50.71);

2. Annual Design Change Reports—to change the frequency of reporting changes at power reactors from once per year to once per refueling cycle (10 CFR 50.59(b));

3. Elimination of unnecessary event reports—separate rulemaking;

4. Use of Fuel and Zirconium-Based Cladding—to eliminate the need to obtain exemptions in order to use certain fuel cladding materials not presently addressed in the regulations (10 CFR 50.44, 10 CFR 50.46 and 10 CFR part 50, appendix K);

5. Frequency of Radiological Effluent Reports—to change the frequency of reports on power reactor radiological effluents from twice per year to once per year (10 CFR 50.36a);

6. Receipt Back of Processed Low Level Waste—separate rulemaking.

7. Contamination Monitoring of Packages—to eliminate certain provisions for contamination monitoring of packages containing certain types of radioactive material (10 CFR 20.1906)b));

8. Posting of Rooms Occupied by Diagnostic Nuclear Medicine Patients—to include exceptions for posting requirements for rooms in hospitals for patients adminsitered radiopharmaceuticals for diagnostic tests (10 CFR 20.1903(b)).

Each of these proposed actions considers the elimiantion or relaxation of regulatory requirements currently imposed on NRC licensees. Actions 1, 2, 4, and 5 would affect power reactor licensees, whereas Actions 7 and 8 would affect materials licensees. For each regulatory action, the staff has evaluated the health and safety implications and the cost impacts relative to a status quo alternative. The staff finds that each would result in a reduction in burden without reducing protection of the public health and safety. The public health and safety determination appears in a document entitled, "Report on Special Review of Existing NRC Regulations by the Committee to Review Generic Requirements" issued on April 13, 1992. Additionally, an analysis of the safety implications of Action 3 is available in a U.S. NRC Letter to Westinghouse Corporation dated July 1, 1991, entitled "Acceptance For Referencing Of Topical Report WCAP-12610 "Vantage+Fuel Assembly Reference Core Report" (TAC NO. 77258)."

The cost savings to both the licensee population and the NRC appear below. Dollar impacts are expressed on a 1992 present worth basis in 1992 dollars. The basis for these cost estimates is available in a report entitled "Analyses of Potential Cost Savings for Selected NRC Reforms dated June 10, 1992."

TOTAL DISCOUNTED (1) COST SAVINGS ASSOCIATED WITH PROPOSED REGULATORY REVISIONS (1992 $ IN MILLIONS)

Regulatory revision	Licensees	NRC
Item 1	11.1	0.910
Item 2	1.5	0.400
Item 3	(2) N/A	(2) N/A
Item 4	2.0	0.050
Item 5	16.8	0.360
Item 6	N/A	N/A
Item 7	86.4	(3) −0.100
Item 8	0.3	(3) −0.100

NOTE: (1) assumes an annual real discount rate of 5%.
(2) not applicable—separate rulemaking.
(3) negative cost savings represent a cost expenditure.

The NRC concludes that each of these proposed regulatory revisions is justified due to the net cost saviangs that would accrue without compromising public health and safety.

Regulatory Flexibility Certification

Based on the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that, if promulgated, these rules will not have a significant adverse economic impact on a substantial number of small entities. The NRC has adopted size standards that classify a small entity as a small business or organization, one whose gross annual receipts do not exceed $3.5 million, or as a small governmental jurisdiction whose supporting population is 50,000 or less. The first six issues effect 112 power reactor licensees. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the NRC Size Standards. The remaining two issues involve the relaxation of requirements which will affect approximately 10,000 material licensees. Although many of these licensees may be small entities, there should be no adverse impact on these small licensee because the regulations are being relaxed.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed regulation and, therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 20 and 50.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 233, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103 (a), (b), and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305, 20.1102, 20.1201–20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1501, 20.1502, 20.1601 (a) and (d), 20.1602, 20.1603, 20.1701, 20.1704, 20.1801, 20.1802, 20.1901(a), 20.1902, 20.1904, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005 (b) and (c), 20.2006, 20.2101–20.2110, 20.2201–20.2206, and 20.2301 are issued under sec. 161(b), 68 Stat. 948 as amended (42 U.S.C. 2201(b)); § 20.2106(d) is issued under the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a; and §§ 20.102, 20.103(e),

20.401–20.407, 20.408(b), 20.409, 20.1102(a) (2) and (4), 20.1204(c), 20.1206 (g) and (h), 20.1904(c)(4), 20.1905 (c) and (d), 20.2005(c), 20.2006 (b)–(d), 20.2101–20.2103, 20.2104(b)–(d), 20.2105–20.2108, and 20.2201–20.2207 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 20.1903 is amended by revising paragraph (b) to read as follows:

§ 20.1903 Exceptions to posting requirements.

* * * * *

(b) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to § 20.1902 provided that the patient could be released from confinement pursuant to § 35.75 of this chapter.

* * * * *

3. Section 20.1906 is amended by revising paragraph (b) to read as follows:

§ 20.1906 Procedures for receiving and opening packages.

* * * * *

(b) Each licensee shall—

(1) Monitor the external surfaces of a labeled [3a] package for radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 10 CFR 71.4;

(2) Monitor the external surfaces of a labeled [3a] package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in § 71.4 and Appendix A to Part 71 of this chapter, and the radioactive material is in the form of a gas or in special form as defined in 10 CFR 71.4; and

(3) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if the package has evidence of potential contamination, such as packages that are crushed, wet, or damaged.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

4. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (1)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h, 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h) and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

5. Section 50.36a is amended by revising paragraph (a)(2) to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

(a) * * *

(2) Each licensee shall submit a report to the Commission annually that specifies the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous 12 months of operation, including any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The report must be submitted as specified in § 50.4, and the time between submission of the reports must be no longer than 12 months. If quantities of radioactive materials released during the reporting period are significantly above design objectives, the report must cover this specifically. On the basis of these reports and any additional information the Commission may obtain from the licensee or others, the Commission may require the licensee to take action as the Commission deems appropriate.

* * * * *

6. Section 50.44 is amended by revising the introductory text of paragraphs (a), (b), and (c)(1) to read as follows:

§ 50.44 Standards for combustible gas control system light-water-cooled power reactors.

(a) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, shall, as provided in paragraphs (b) through (d) of this section, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA), by—

* * * * *

(b) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with the capability for—

* * * * *

(c)(1) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, it must be shown that during the time period following a postulated LOCA, but prior to effective operation of the combustible gas control system, either:

* * * * *

7. Section 50.46 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors.

(a)(1)(i) Each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical Zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the most servere postulated loss-of-coolant accidents are calculated. Except as provided in paragraph (a)(1)(ii) of this

[3a] Labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations, 49 CFR 172.403 and 172.436–440.

section, the evaluation model must include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during loss-of-coolant accident. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and input must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for, so that, when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (b) of this section, there is high level of probability that the criteria would not be exceeded. Appendix K, part II, Required Documentation, sets forth the documentation requirements for each evaluation model.

* * * * *

8. Section 50.59 is amended by revising paragraph (b)(2) to read as follows:

§ 50.59 Changes, tests, and experiments.

* * * * *

(b) * * *

(2) The licensee shall submit, as specified in § 50.4, a report containing a brief description of any changes, tests, and experiments, including a summary of the safety evaluation of each. The report may be submitted annually or along with the FSAR updates as required by § 50.71(e), or at such shorter intervals as may be specified in the license.

* * * * *

9. Section 50.71 is amended by revising paragraph (e)(4) to read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(e) * * *

(4) Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceeed 24 months. The revisions must reflect all changes up to a maximum of 6 months prior to the date of filing.

* * * * *

Dated at Rockville, Maryland, this 11th day of June 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-14370 Filed 6-18-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-101-AD]

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Airbus Industrie Model A310 series airplanes. This proposal would require conducting an integrity test to detect corrosion in the wing tip brake solenoids, and replacement, if necessary. This proposal is prompted by several incidents in which wing tip brake solenoids failed as a result of corrosion in the solenoid coils. The actions specified by the proposed AD are intended to prevent wing tip brake valve failure, which could lead to reduced controllability of the airplane.

DATES: Comments must be received by August 4, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-101-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700, Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2104; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-101-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-101-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Direction Général de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Airbus Industrie Model A310 series airplanes. The DGAC advises that there have been several incidents in which wing tip brake solenoids failed as a result of corrosion in the solenoid coils. Subsequent inspections detected corrosion in the coils leading to open circuit or high resistance value. The corrosion was apparently caused by an electrolytic phenomenon brought about by ingress of hydraulic fluid coming in contact with the coil which is under continuous monitoring current. Reduced controllability of the airplane could occur if both solenoids fitted on one wing tip brake are inoperative and if this failure is combined with a flap or slat asymmetry occurring due to a transmission disconnection.

Airbus Industrie has issued Service Bulletin A310-27-2042, Revision 1, dated December 11, 1986, which describes procedures for conducting repetitive integrity tests of the solenoids to detect corrosion, and replacement, if

necessary. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92-010-129(B) in order to assure the continued airworthiness of these airplanes in France.

Airbus Industries has also issued Service Bulletin A310-27-2046, Revision 1, dated November 24, 1989, that describes procedures for installing Modification 6275. This modification involves the installation of hermetically sealed wing tip brake solenoids in all eight solenoid valves. Such installation would eliminate the need for repetitive integrity testing of the solenoids. The DGAC has not classified this service bulletin as mandatory. (This service bulletin refers to Lucas Service Bulletin 520A-27-05, Revision 1, dated December 8, 1986, for additional instructions.)

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require conducting repetitive integrity tests of the solenoids to detect corrosion, and replacement, if necessary. The actions would be required to be accomplished in accordance with the Airbus Service Bulletin A310-27-2046, described previously. Replacement of the solenoids with Modification 6725 would constitute terminating action for the repetitive integrity tests.

The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,025. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is detemined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regualtory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of their Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 92-NM-101-AD.

Applicability: Model A310 series airplanes having manufacturer's serial numbers (MSN) 1 through 432, inclusive, 440, and 441; on which Modification 6725 has not been accomplihsed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent wing tip brake valve failure, which could lead to reduced controllability of the airplane, accomplish the following:

(a) Within 350 flight hours after the effective date of this AD, conduct an integrity test to detect corrosion of the wing tip brake solenoids, in accordance with Airbus Industrie Service Bulletin A310-27-2042, Revision 1, dated December 11, 1986. Thereafter, repeat the integrity test at intervals not to exceed 350 flight hours.

(b) If corrosion in the wing tip brake solenoids is detected as a result of any integrity test required by paragraph (a) of this AD, prior to further flight, replace the corroded solenoid with a modified one having part number 500A000-03. Accomplishment of such replacement constitutes terminating action for the integrity testing of the solenoid replaced as required by paragraph (a) of this AD.

(c) Installation of Modification 6725, in accordance with Airbus Industrie Service Bulletin A310-27-2046, Revision 1, dated November 24, 1989, which involves the installation of improved solenoids on all eight solenoid valves in the wing tip brake, constitutes terminating action for the integrity testing required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manger, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative mehtods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 4, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-14337 Filed 6-17-92; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-68-AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require the replacement of currently installed aluminum alloy rivets in the rib-to-auxiliary-spar attachment at wing station 10110 with nickel copper alloy rivets and Hilok bolts. This proposal is prompted by a full-scale fatigue test of the wings that detected numerous broken rivets. The actions specified by the proposed AD are intended to

prevent reduced structural integrity of the wings.

DATES: Comments must be received by August 4, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–68–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–68–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–68–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that a full-scale fatigue test of the wings on the Fokker Model F28 Mark 0100 test article revealed six broken aluminum alloy rivets. These rivets are located at the rib-to-auxiliary-spar attachment at wing station 10110. Failed rivets at this location could result in reduced structural integrity of the wings.

Fokker has issued Service Bulletin SBF100–57–017, dated September 12, 1991, that describes procedures for removing currently installed aluminum alloy rivets at the rib-to-auxiliary-spar attachment at wing station 10110, and replacing those rivets with nickel copper alloy rivets and Hilok bolts. Installation of the copper alloy rivets and Hilok bolts will strengthen the attachments. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 91–107 in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require the replacement of currently installed aluminum alloy rivets in the rib-to-auxiliary-spar attachment at wing station 10110 with nickel copper alloy rivets and Hilok bolts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts would be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,000 or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 92–NM–68–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11256, inclusive; 11259; 11260; and 11268 through 11278, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Prior to the accumulation of 18,000 landings or within 60 days after the effective date of this AD, whichever occurs later, replace the currently installed aluminum alloy rivets at the rib-to-auxiliary-spar attachment at wing station 10110 with nickel copper alloy rivets and Hilok bolts, in accordance with Fokker Service Bulletin SBF100–57–017, dated September 12, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

Issued in Renton, Washington, on June 4, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14335 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–70–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of currently installed blind bolts that attach the latch brackets to the radome. This proposal is prompted by inspections during final assembly that revealed that the nose radome latch bracket attach bolts had been installed incorrectly on several airplanes, causing loss of the securing ring. The actions specified by the proposed AD are intended to prevent the radome from coming off during flight or ground operations, which could lead to subsequent structural damage to the wind, empennage, or an engine.

DATES: Comments must be received by August 4, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–70–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–70–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–70–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that inspections by the manufacturer during final assembly of several Model F28 Mark 0100 series airplanes revealed that the nose radome latch bracket attach bolts had been installed incorrectly, thus causing loss of the securing ring. Without the securing rings, the blind bolt stems could drop out leading to insufficient strength to retain the radome in place. This condition, if not corrected, could cause the radome to come off during flight or ground operations, which could lead to subsequent structural damage to the wing, empennage, or an engine.

Fokker has issued Service Bulletin SBF100–53–067, dated July 1, 1991, that describes procedures for removing the currently installed blind bolts that attach the latch brackets to the radome, and replacing them with new bolts, using the correct installation procedure. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 91–070 in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacing the currently installed blind bolts that attach the latch brackets to the radome with new bolts, using the

correct installation procedure. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $70 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $940. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 92–NM–70–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11290, 11296, 11298, 11299, 11301, 11306, 11308, 11310, and 11313; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural damage to the wing, empennage, or an engine, caused by the radome coming off during flight or ground operations, accomplish the following:

(a) Within 6 months after the effective date of the AD, replace the currently installed blind bolts that attach the latch brackets to the radome with new bolts, in accordance with Fokker Service Bulletin SBF100–53–067, dated July 1, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 4, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14336 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–ANE–42]

Airworthiness Directives; Pratt & Whitney Canada JT15D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD) applicable to Pratt & Whitney Canada (PWC) JT15D–4B series turbofan engines that currently requires initial and repetitive borescope inspections of the high pressure turbine (HPT) assembly and removal of the HPT assembly if forward blade movement exists. This action would include the initial and repetitive borescope inspection requirements of the existing AD, but would also extend its effectivity to include all PWC JT15D–1, –1A, –1B, –4, –4B, –4C, and –4D series engines. This action would also require the incorporation of a new or reworked high turbine (HT) stator assembly and new HPT blade retention rivets as terminating actions to the inspection program. This proposal is prompted by reports of two recent contained HPT blade failures that occurred on JT15D–4D series engines. The actions specified by the proposed AD are intended to prevent an HPT assembly failure, and an inflight shutdown or loss of engine power.

DATES: Comments must be received by August 3, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91–ANE–42, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney Canada, Box 10, Longueuil, Quebec, Canada J4K 4X9. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, (617) 273–7082; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may

be changed in light of comments recieved.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy apsects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–42." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–42, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion

On February 11, 1991, the FAA issued Airworthiness Directive (AD) 91–06–01, Amendment 39–6911 (56 FR 7802, February 26, 1991), to require initial and repetitive high pressure turbine (HPT) assembly borescope inspections at 300 hour intervals for all Pratt & Whitney Canada (PWC) JT15D–4B series engines. If evidence of forward blade movement is found, the HPT assembly must be removed. That action was prompted by more than ten contained events of PWC JT15D–4B series engine HPT assembly failures resulting from HPT blade shifting. Also, several instances of excessive blade platform axial movement were found during hot section inspections (HSI) on PWC JT15D–4B series engines. A review of the rivet design and rivet assembly procedures was conducted after issuance of AD 91–06–01. At that time, no blade release events had occurred on the other PWC JT15D series engines.

Since issuance of that AD (91–06–01), two contained HPT blade failure events occurred on PWC JT15D–4D series engines as a result of HPT blade shift. The rivet design and assembly procedures were found to contribute to the blade shift problem. With the existing rivets, and under adverse tolerance conditions, there can be excessive clearance between the rivet shanks and the disk/blade assembly on all PWD JT15FD series engines. To improve this blade retention capability, three classifications of rivet sizes have been introduced into service which will achieve acceptable fits for all tolerances. After analysis of the failures, the FAA has determined that on PWC JT15D–4B, –4C, and –4D series engines, high HPT disk rim temperatures can contribute to HPT blade release. The FAA has also determined that reducing the gap between the HPT stator and the HPT disk will reduce the risk of hot gas ingestion resulting in a significantly cooler rim. A new or reworked HPT stator assembly with an extended rear inner rim will reduce that gap. This proposed AD would require initial and repetitive borescope inspections of the HPT assembly on PWC JT15D–1, –1A, –1B, and –4 series engines until the new rivets are incorporated into the HPT assembly. This proposed AD would also require initial and repetitive borescope inspections at 300 hour intervals of the HPT assembly on the PWC JT15D–4B, –4C, and –4D series engines until the new rivets and the new or reworked HPT stator assembly are incorporated. The 300 hour repetitive inspection interval is the same as is required by the current AD.

The FAA has reviewed Temporary Revision (TR) 72–32 to the JT15D–4C Maintenance Manual, Part Number (P/N) 3032942, and TR 72–100 to the JT15D–1 and –4 Maintenance Manual, P/N 3017542, that describe the procedures for the borescope inspection of the HPT assembly on the JT15D series turbofan engines. The FAA has reviewed and approved the technical contents of PWC Service Bulletin (SB) JT15D 72–7297, dated December 18, 1990, that describes the incorporation of the new HPT blade retaining rivets. The FAA has reviewed and approved the technical contents of PWC SB JT15D 72–7296, dated February 8, 1991, and PWC SB JT15D 72–7307, dated May 15, 1991, that describe the replacement or rework of the high turbine (HT) stator assembly on PWC JT15D series turbofan engines.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would supersede AD 91–06–01 to require initial and repetitive borescope inspections of the HPT assembly. The proposed AD would also require the incorporation of a new or reworked HPT stator assembly and new HPT blade retention rivets as terminating actions to the inspection program in accordance with the service bulletin previously described.

There are approximately 1,400 PWC JT15D–1, –1A, –1B, and –4 engines and 1,70–0 PWC JT15D–4B, –4C, –4D engines of the affected design installed on aircraft of U.S. registry that would be affected by this AD. It is estimated that it would take approximately 4 manhours per engine to accomplish the inspection requirements of this AD, and 11 manhours per engine to incorporate is required to incorporate HPT blade retention rivets. An additional 8 manhours per engine is required to incorporate the new or reworked HPT stator on approximately 1,700 affected PWC JT15D–4B, –4C, and –4D engines. The labor cost would be $55 per manhour. The total material cost will be approximately $50 per engine for new rivets on all engines. There is no additional parts cost due to the new or reworked HPT stator. Based on these figures, the estimated total cost impact of this AD on U.S. operators is $3,460,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons dicussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3), if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended].

2. Section 39.13 is amended by removing Amendment 39–6911 (56 FR 7802, February 26, 1991), and by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Docket Number 91–ANE–42. Supersedes AD 91–06–01, Amendment 39–6911.

Applicability: Pratt & Whitney Canada (PWC) JT15D–1, –1A, –1B, –4,–4B,–4C, and –4D series turbofan engines installed on but not limited to Cessna Citation I, Citation II/SII and Citation 500, Aerospatiale Corvette, Mitsubishi Diamond 1/1A and Agusta S211 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a high pressure turbine (HPT) assembly failure, and an inflight shutdown or loss of engine power, accomplish the following:

(a) For JT15D–4B, –4C, and –4D series engines for which the requirements of PWC Service Bulletin (SB) JT15D 72–7297, dated December 18, 1990, and either PWC SB JT15D 72–7296, dated February 8, 1991, or PWC SB JT15D 72–7307, dated May 15, 1991, have not been accomplished as of the effective date of this AD, accomplish the following:

(1) Borescope inspect the HPT assembly for HPT blade shift in accordance with the inspection requirements outlined in Temporary Revision (TR) 72–32 to the JT15D–4C Maintenance Manual, Part Number (P/N) 3032942, or TR 72–100 to the JT15D–1 and –4 Maintenance Manual, P/N 3017542, whichever is applicable, as follows:

(i) Within 25 hours time in service (TIS) or 30 days after the effective date of this AD, whichever occurs first, for those engines which have accumulated on the effective date of this AD, greater than 275 hours TIS since the last inspection performed in accordance with AD 91–06–01, or since the last hot section inspection (HSI), or since new, if not previously inspected.

(ii) Prior to accumulating 300 hours TIS since the last inspection performed in accordance with AD 91–06–01, or since the last HSI, or since new if not previously inspected, for those engines which have accumulated on the effective date of this AD 275 hours or less TIS since the last inspection performed in accordance with AD 91–06–01 or since the last HSI, or since new, if not previously inspected.

(iii) Thereafter, reinspect the HPT assembly for HPT blade shift in accordance with the applicable maintenance manuals, at intervals not to exceed 300 hours TIS since the last inspection.

(iv) Remove from service prior to further flight, and replace with a serviceable assembly those HPT assemblies with evidence of forward blade movement in excess of the 0.20 inch limit as provided in the applicable maintenance manuals. Serviceable assemblies include HPT assemblies removed from engines which have completed an HSI, or that portion of the HSI requiring deblading and re-riveting the turbine assembly in accordance with the applicable JT15D Maintenance Manuals.

(2) Incorporate high turbine (HT) blade retaining rivets in accordance with PWC SB JT15D 72–7297, dated December 18, 1990, at the next shop visit when the engine is disassembled sufficiently to afford access to the HPT assembly.

(3) Incorporate the new or reworked HT stator assembly in accordance with applicable PWC SB JT15D 72–7307, dated May 15, 1991, or PWC SB JT15D 72–7296, dated February 8, 1991, at the next shop visit when the engine is disassembled sufficiently to afford access to the HPT assembly.

(4) Initial and repetitive borescope inspections performed in accordance with paragraph(a)(1) of this AD are not required once the new HPT blade retention rivets and the new or reworked HT stator assembly are incorporated in accordance with paragraphs (a) (2) and (a) (3) of this AD.

(b) For JT15D–1, –1A, –1B, and –4 series engines for which the requirements of PWC SB JT15D 72–7297, dated December 18, 1990, have not been accomplished as of the effective date of this AD, accomplish the following:

(1) Borescope inspect the HPT assembly within 300 hours TIS after the effective date of this AD for HPT blade shift in accordance with the inspection requirements outlined in TR 72–100 to the JT15D–1/–4 Maintenance Manual P/N 3017542.

(i) Thereafter, reinspect at intervals not to exceed 300 hours TIS since last inspection.

(ii) Remove from service prior to further flight HPT assemblies that exhibit forward blade movement in accordance with paragraph (a)(1)(iv) of this AD.

(2) Incorporate HT blade retaining rivets in accordance with PWC SB JT15D 72–7297, dated December 18, 1990, at the next shop visit when the engine is disassembled sufficiently to afford access to the HPT assembly.

(3) Initial and repetitive borescope inspections in accordance with paragraph (b)(1) of this AD are no longer required once the new HPT blade retention rivets are incorporated in accordance with paragraph (b)(2) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, that provides an acceptable level of safety, may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may send comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine and Propeller Directorate.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 17, 1992.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–14333 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–108–AD]

Airworthiness Directives; Boeing Model 737 and Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 and Model 757 series airplanes. This proposal would require modifying the oxygen box assemblies (containing oxygen masks) in lavatories and at certain flight attendant stations. This proposal is prompted by the results of oxygen drop tests, which revealed that a maintenance test stop feature of the oxygen box assemblies may interfere with proper oxygen mask development. This condition, if not corrected, may prevent the availability of oxygen to affected passengers and flight attendants during a loss of cabin pressure.

DATES: Comments must be received by August 4, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–108–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commerical Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terrell W. Rees, Aerospace Engineer, Seattle Aircraft Certification Office, ANM–120S; FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056;

telephone (206) 227–2785; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or argument as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specificed above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–108–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–108–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

One operator reported that the oxygen box door of the aft left lavatory on a Model 757 airplane did not open during a test of the oxygen system. The subsequent investigation of this malfunction by the manufacturer revealed that the doors for the oxygen masks may not open in all lavatories on all Model 737 and Model 757 series airplanes, and at doors 1 and 4 flight attendant seats on Model 757 series airplanes. (Model 737 and Model 757 series airplanes use the same design of oxygen box assemblies in the lavatory.) The test stop plunger on these oxygen box assemblies has a sharp 90 degree edge that can catch on the oxygen box door and prevent it from opening.

Other testing on Model 737 series airplanes revealed that in "A" lavatories, the mask lanyards are routed over the top of the test stop assembly. This causes the lanyard to catch on the test stop assembly during deployment of the oxygen mask. Should this occur, actuation of the oxygen generator may be prevented.

Failure of the oxygen box doors to open or failure of the oxygen generator to actuate, if not corrected, could prevent the availability of oxygen to affected passengers and flight attendants during an emergency cabin depressurization.

The FAA has reviewed and approved the following service bulletins:

a. Boeing Alert Service Bulletin 737–35A1037, dated February 13, 1992, that describes procedures for modification of the test stop plungers in the oxygen box assemblies in the lavatories on Model 737 series airplanes. The modification adds a 0.05 inch by 45 degree chamfer around the edge of the test stop plungers. This modification will provide more reliable oxygen mask deployments.

b. Boeing Alert Service Bulletin 757–35A0010, dated February 13, 1992, that describes procedures for modification of the test stop plungers in the oxygen box assemblies in the lavatories and at flight attendant stations on Model 757 series airplanes. The modification adds a 0.05 inch by 45 degree chamfer around the edge of the test stop plungers. This modification will provide more reliable oxygen mask deployments.

c. Boeing Alert Service Bulletin 737–35A1038, dated March 19, 1992, that describes procedures for modifying the oxygen box assemblies in modular "A" lavatories on Model 737 series airplanes. The modification involves moving the attach point of the oxygen generator release cable to a new position, thus changing the routing of mask lanyards. This modification assures that the test stop assembly does not interfere with oxygen generator actuation.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modifying the oxygen box assemblies (containing oxygen masks) in the lavatories and at certain flight attendant stations. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 376 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 228 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1.50 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model 757 series airplanes is estimated to be $18,810.

There are approximately 1,030 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 509 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.75 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model 737 series airplanes is estimated to be $76,986.

Based on the figures described above, the total cost impact of the proposed AD on U.S. Operators is estimated to be $95,796. This total cost figure assumes that no affected U.S. operator has accomplished the proposed modifications.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BOEING: Docket 92–NM–106–AD.

Applicability: Model 737 series airplanes, as listed in Boeing Alert Service Bulletin 737–35A1037, dated February 13, 1992, and Boeing Alert Service Bulletin 737–35A1038, dated March 19, 1992; and Model 757 series airplanes, as listed in Boeing Alert Service Bulletin 737–35A0010, dated February 13, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent maintenance test stop plungers from interfering with proper deployment of oxygen masks, accomplish the following:

(a) For Model 737 series airplanes: Within 900 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Modify the test stop plungers in the oxygen box assemblies in the lavatories, in accordance with Boeing Alert Service Bulletin 737–35A1037, dated February 13, 1992.

(2) Modify the oxygen box assemblies in modular lavatory "A," in accordance with Boeing Alert Service Bulletin 737–35A1038, dated March 19, 1992.

(b) For Model 757 series airplanes: Within 900 flight hours after the effective date of this AD, modify the test stop plungers in the oxygen box assemblies in the lavatories and at doors 1 and 4 flight attendant seats, in accordance with Boeing Alert Service Bulletin 757–35A0010, dated February 13, 1992.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certificaiton Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 4, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14338 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–86–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9, Model DC–9–80 Series Airplanes; Model MD–88 Airplanes; and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC–9 and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes. This proposal would require visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the rudder pedals adjuster hub assembly, if necessary. This proposal is prompted by several occurrences of failure of the rudder pedal adjuster hub assembly due to broken detent lugs. The actions specified by the proposed AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

DATES: Comments must be received by August 4, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–86–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Los Angeles Aircraft Certification Office, ANM–122L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the addresss specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self–addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–86–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–86–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

Three operators of McDonnell Douglas Model DC–9 series airplanes have experienced failure of the detent lug installed in the rudder pedals adjuster hub assembly. One of these operators reported that one of the detent lugs was found to be cracked at approximately 38,000 landings. Another operator reported that both lugs were found to be cracked on an airplane with approximately 31,000 landings. The third operator reported that, during taxi and just prior to takeoff, the captain experienced lost rudder pedals control; subsequent investigation revealed that

both detent lugs had cracked and separated from the hub assembly. The broken detent lugs allowed the rudder pedals on the affected side to move beyond the normal full forward adjustment position, causing the loss in rudder pedals control. That airplane had accumulated 19,495 landings. Failure of the rudder pedals adjuster hub assembly at either the Captain's or First Officer's position could result in loss of rudder control and reduction of braking capability at that location.

The FAA has reviewed and approved McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992, that describes procedures for conducting visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly. The service bulletin also describes procedures for replacement of the rudder pedals adjuster hub assembly if cracking is found.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require visual and eddy current inspections on the rudder pedals adjuster hub assembly to detect cracking, and replacement of the rudder pedals adjuster hub assembly, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The requirements of this AD are considered interim action. The manufacturer is currently developing a modification that, if installed, will terminate the need for the repetitive inspections. Once the modification is developed and approved, the FAA may consider revising this AD to require its installation as terminating action for the required inspections.

There are approximately 721 McDonnell Douglas Model DC–9 and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 373 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $61,545. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 92–NM–86–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

(a) Prior to the accumulation of 15,000 landings or within 180 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992.

(b) If no cracks are detected as a result of the inspections required in paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,500 landings.

(c) If cracks are detected as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number. Thereafter, conduct a visual and eddy current inspection of the replacement rudder pedals adjuster hub assembly in accordance with paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 4, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14339 Filed 6–17–92; 8:45am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–110–AD]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes. This proposal would require visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the rudder pedals adjuster hub assembly, if necessary. This proposal is prompted by several occurrences of failure of the rudder pedal adjuster hub assembly due to broken detent lugs. The actions specified by the proposed AD are intended to prevent loss of rudder

pedals control and reduction of braking capability.

DATES: Comments must be received by August 4, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–110–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–122L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–110–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–110–AD, 1601 Lind Avenue SW., Renton, Washington 98055–44056.

Discussion

Three operators of McDonnell Douglas Model DC–9 series airplanes have experienced failure of the detent lug installed in the rudder pedals adjuster hub assembly. One of these operators reported that one of the detent lugs was found to be cracked at approximately 38,000 landings. Another operator reported that both lugs were found to be cracked on an airplane with approximately 31,000 landings. The third operator reported that, during taxi and just prior to takeoff, the captain experienced lost rudder pedals control; subsequent investigation revealed that both detent lugs had cracked and separated from the hub assembly. The broken detent lugs allowed the rudder pedals on the affected side to move beyond the normal full forward adjustment position, causing the loss in rudder pedals control. That airplane had accumulated 19,495 landings. Failure of the rudder pedals adjuster hub assembly at either the Captain's or First Officer's position could result in loss of rudder control and reduction of braking capability at that location.

The rudder pedals adjuster hub assembly used on Model DC–9 series airplanes is identical to that used on Model DC–8 series airplanes; therefore, the described unsafe condition may exist with regard to Model DC–8 series airplanes as well.

The FAA has reviewed and approved McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992, that describes procedures for conducting visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly. The service bulletin also describes procedures for replacement of the rudder pedals adjuster hub assembly if cracking is found.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive visual and eddy current inspections on the rudder pedals adjuster hub assembly to detect cracking, and replacement of the rudder pedals adjuster hub assembly, if necesary. The actions would be required to be accomplished in accordance with the service bulletin described previously. (The FAA has initiated similar rulemaking with regard to Model DC–9 series airplanes.)

The requirements of this AD are considered interim action. The manufacturer is currently developing a modification which, if installed will terminate the need for the repetitive inspections. Once the modification is developed and approved, the FAA may consider revising this AD to require its installation as terminating action for the required inspections.

There are approximately 341 McDonnell Douglas Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $36,630. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 92–NM–110–AD.

Applicability: Model DC–8 series airplanes, as listed in McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

(a) Prior to the accumulation of 15,000 landings or within 180 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hum assembly, part number 4616066, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992.

(b) If no cracks are detected as a result of the inspections required in paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,500 landings.

(c) If cracks are detected as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number. Thereafter, conduct a visual and eddy current inspection of the replacement rudder pedals adjuster hub assembly in accordance with paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles, ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 4, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–14340 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Revision of Federal Speculative Position Limits; Reopening of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening of comment period.

SUMMARY: On April 13, 1992, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a Notice of Proposed Rulemaking relating to Commission-set speculative position limits. 57 FR 12766. The applicable comment period expired on June 12, 1992. The Commission has received a request for an extension of the comment period. In light of the apparently widespread interest in the proposed revisions to these rules, and because it wishes to ensure that all interested parties have an adequate opportunity to submit informed comments, the Commission has determined to reopen the period for public comment.

DATES: The comment period will remain open through August 3, 1992.

ADDRESS: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should make reference to "Revision of Federal Speculative Position Limits."

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–3201 or 254–6990, respectively.

Issued in Washington, DC, this 12th day of June, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–14381 Filed 6–17–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 91N–0278]

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 15, 1992, the comment period for the proposed rule that provides procedures under which the agency would accelerate approval of new drugs and biologicals for serious or life-threatening illnesses. This proposed rule was published in the **Federal Register** of April 15, 1992 (57 FR 13234). FDA is taking this action in response to a request for an extension of the comment period.

DATES: Comments by July 15, 1992.

ADDRESSES: Submit written comments to Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8038.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 15, 1992 (57 FR 13234), FDA issued a proposed rule which proposed new procedures to accelerate the agency's approval of new drugs and biologicals for serious or life-threatening illnesses. The proposal also contained provisions for any necessary continued study of the drugs' clinical effects after approval, or with restrictions on use, if necessary.

Interested persons were given until June 15, 1992, to respond to the proposal. A request to extend the comment period for an additional 30 days has been received from a trade association. The request was made to provide adequate time for the association and its member companies to submit comprehensive comments that would be of significant assistance to FDA in finalizing this proposed regulation. After careful consideration and finding good cause to grant the request, FDA is extending the comment period to July 15, 1992.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

Dated: June 12, 1992.
Michael R. Taylor,
Deputy Commissioner for Policy.
[FR Doc. 92-14365 Filed 6-15-92; 1:38 pm]
BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB75

Endangered and Threatened Wildlife and Plants; Proposal to List the Northern Riffleshell and the Clubshell Mussels as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the northern riffleshell mussel (*Epioblasma torulosa rangiana*) and the clubshell mussel (*Pleurobema clava*) as endangered species under the Endangered Species Act (Act) of 1973, as amended. The northern riffleshell is known historically from the tributaries of the Ohio River, western Lake Erie, and the St. Clair and Detroit Rivers. It occurs today in relatively short reaches of six streams in Kentucky, Michigan, Ohio, and Pennsylvania. The clubshell historically was widespread in the Ohio River basin and tributaries of western Lake Erie in nine states; today it is known from relatively short reaches of 12 streams in Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia.

Both of these species have experienced greater than a 95 percent range reduction. In over half of the stream reaches where the mussels are presumed extant, biologists have located only a few dead shells in the last five years. Causes of the drastically reduced ranges of these two species include: channelization, streambank clearing, agriculture, and chemical and wastewater runoff. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by August 17, 1992. Public hearing requests must be received by August 3, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 1278, Elkins, West Virginia 26241. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: William A. Tolin at the above address or by telephone (304/636-6586).

SUPPLEMENTARY INFORMATION:

Background

The northern riffleshell (*Epioblasma torulosa rangiana*) was described by Lea in 1839. This freshwater mussel occurs in a wide variety of streams, large and small, preferring runs with a bottom composed of firmly packed sand and fine to coarse gravel (Stansbery *et al.* 1982).

The northern riffleshell is a small to medium size mussel, up to three inches (7.6 cm) long. The species expresses sexual dimorphism. The male is irregular ovate in outline, with a wide shallow sulcus just anterior to the posterior ridge. The female is obovate in outline, greatly expanded postventrally. This postventral expansion is very broadly rounded. The shell exterior is brownish yellow to yellowish green with fine green rays. The inside of the shell is normally white, rarely pink (Stansbery *et al.* 1982).

The clubshell (*Pleurobema clava*) was described by Lamarck in 1819. The species occurs in clean swept sand and gravel in medium to small rivers and streams (Stansbery *et al.* 1982). Thomas Watters (Ecological Specialists Inc., pers. comm., 1991) has found the clubshell to bury in clean loose sand to a depth of two to four inches.

The clubshell is also small to medium size, up to three inches (7.6 cm) long. The outline of the shell is wedge-shaped and solid. The umbos are pointed and fairly high. The exterior of the shell is bright yellow to brown with bright green blotchy rays. The inside of the shell is white (Stansbery *et al.* 1982).

Like other freshwater mussels, the northern riffleshell and the clubshell feed and respire by filtering macroscopic food particles and oxygen from the water column. Their complicated reproductive cycle includes one or more species of fish where a larval form of the mussel, known as a glochidium, attaches to the gills, fins, or skin of the fish and is nourished for a short time period. This relationship is generally species-specific. Many aspects of the life history of these mussels are not known.

The historic ranges of the northern riffleshell and the clubshell mussels overlapped, but the clubshell was more widely distributed. Both species were known from Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. The range of the clubshell extended farther south in Tennessee and Alabama in the Tennessee River Basin while the northern riffleshell extended north into western Ontario. Both were widespread in the Ohio River basin in rivers such as the Ohio, Allegheny, Scioto, Kanawha, Little Kanawha, Licking, Kentucky, Wabash, White, Vermillion, Mississinewa, Tippecanoe, Tennessee, Green, and Salt Rivers. They were also located in the Maumee River basin and tributaries of western Lake Erie such as the Huron River and the River Raison. The northern riffleshell also occurred in southern Michigan and western Ontario in streams such as the St. Clair, Black, Ausable, and Sydenham Rivers (Stansbery *et al.* 1982).

Presently, the two species co-occur in portions of four streams in two states. They are found in the Green River, Edmonson and Hart Counties, Kentucky. In Pennsylvania, they occur in French Creek, Crawford, Venango, and Mercer Counties; LeBoeuf Creek, Irie County, and the Allegheny River, Warren and Forest Counties.

The northern riffleshell is also found in the upper 2.0 miles of the Detroit River from Lake St. Clair to Belle Isle, Wayne County, Michigan and in Big Darby Creek, Pickaway County, Ohio. Of the six total locations for this species, only two, those in the Detroit River (Michigan) and French Creek (Pennsylvania) show evidence of recent reproduction.

The clubshell retains a wider distribution than the northern riffleshell. However, this species was also historically wider spread and locally very abundant. The clubshell presently occurs in 12 streams: The Tippecanoe River, Kosciusko, Fulton, Pulaskia, and Tippecanoe Counties, Indiana; Fish Creek of the St. Josephs River, Williams County, Ohio, and DeKalb County, Indiana; West Branch of the St. Josephs River, Williams County, Ohio, and Hillsdale County, Michigan; Walhonding River, Coshocton County, Ohio; East Fork of the West Branch of the St. Josephs River, Hillsdale County, Michigan; Little Darby Creek, Madison County, Ohio; Conneautee Creek of French Creek, Crawford County, Pennsylvania; and Elk River, Braxton and Clay Counties, West Virginia.

The clubshell was first recognized by the Service in the May 22, 1984 **Federal Register** (49 FR 21664). That notice, which covered invertebrate wildlife under consideration for endangered or threatened status, included the clubshell as a Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed

rules. In the **Federal Register** Animal Notice of Review published on January 6, 1989 (54 FR 554), the clubshell was retained as a Category 2 species and the northern riffleshell was added in the same category.

During 1989 and early 1990, the Service sent more than 80 requests for information about these two species to State and Federal resource agencies, private organizations, and knowledgeable individuals. On the basis of responses received, the Service moved both species to Category 1 in the Animal Notice of Review published in the November 21, 1991 **Federal Register** (56 FR 58804). Category 1 includes species for which the Service now possesses sufficient information to support a listing as threatened or endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the northern riffleshell and the clubshell are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat Range

The northern riffleshell and the clubshell mussels were once widespread through the Ohio River watershed with the highest concentrations occurring in the northern portion of the basin and western Lake Erie drainages. Communication with knowledgeable experts (Ronald Cicerello, Kentucky Nature Preserves Commission, 1991; Steven Ahlstedt, Tennessee Valley Authority, 1991; Thomas Watters, Ecological Specialists, Inc., 1991; Charles Bier, Western Pennsylvania Conservancy, 1990; Arthur Bogan, Philadelphia Academy of Natural Science, 1990; David Stansbery, Ohio State University, 1991; Arthur Clarke, Ecosearch, Inc., 1991; Kevin Cummings, Illinois Natural History Survey, 1990; Thomas Frietag, U.S. Army Corps of Engineers, 1991; Randy Hoeh, University of Michigan, 1990; Leni Wilsman, Michigan Natural Features Inventory, 1990; Richard Trdan, Saginaw Valley State College, 1991; Bill Kovalak, Detroit Edison, 1991; Mike Hoggarth, Ohio Department of Transportation, 1991; Bob Anderson, Indiana Department of Natural Resources) and a review of the current literature (Cicerello and Hannan 1990, Watters 1986 and 1988, Cummings et al. 1987) reveal that both the northern riffleshell and the clubshell have undergone a greater than 95 percent range reduction.

Since mussels are sedentary, they are extremely susceptible to environmental degradation. The range reductions of both these mussels are attributed to physical loss of habitat and degraded water quality related primarily to water impoundments, channelization, streambank clearing, and agriculture. Impacts associated with run-off from human waste, chemical outfalls, and coal mining have also affected many tributaries. Increased turbidity and suspended sediments can result in increased water temperature, decreased oxygen levels, and siltation. Smothering from siltation, in turn, decreases or eliminates the mussels' ability to breathe, feed, and reproduce. Impacts to the fish species composition can also affect reproduction since a fish host is an integral component of the mussel's reproduction cycle. These factors continue to threaten the remaining habitats and populations of these species.

The northern riffleshell has been extirpated from Illinois, Indiana, West Virginia, and Ontario. Most recent population losses include the Black River, Sanilac County, Michigan, as a result of channelization and draining for agriculture which occurred in 1989 (Kovalac, pers. comm., 1991). In 1991, the Service became aware that the Sydenham River northern riffleshell population had been extirpated because of siltation, most likely a result of intense farming (Clarke, pers. comm., 1991). Loss, probably due to siltation, of a riffleshell population in Fish Creek of the St. Josephs River was also documented in 1991 (Kovalac, pers. comm., 1991). Surveys conducted during 1991 failed to find the riffleshell in its former locations in the Elk River, West Virginia (J. Clayton, West Virginia Division of Natural Resources, pers. comm., 1991), and the Tippecanoe River, Indiana (Watters, pers. comm., 1991).

The clubshell has been extirpated from Alabama, Illinois, and Tennessee, and is no longer found in many streams elsewhere in its former range. Domestic and industrial waste and navigation developments have eliminated or reduced populations of the clubshell on the upper Ohio and Wabash River watersheds (Watters, pers. comm., 1991). The newly rediscovered Elk River population of the clubshell in West Virginia could be affected by plans to deep coal mine in the watershed, which might create sedimentation, heavy metal leaching, and acidification of the water.

B. Over-utilization for Commercial, Recreational, Scientific, or Educational Purposes

Neither of these species are commercially valuable. However, small size and number of remaining populations increase their vulnerability to over-zealous scientific collecting or educational programs. Federal protection would help control the take of individuals by requiring Federal endangered species collecting permits.

Disease of Predation

Predation on mussels is a natural occurrence. Predators, such as freshwater drum, river otter, and muskrats, are known to feed on mussels. In a time when these mussels were widespread and abundant, the impact of this predation was insignificant. However, at the present time, their greatly reduced distribution and populations have made them susceptible to predators, especially muskrats (Neves, pers. comm., 1991). Watters (pers. comm., 1991) stated that during a 1988 survey of the French Creek, Pennsylvania population, he observed at least 200 northern riffleshells that had been harvested by muskrats. Watters also noted that the clubshell is less susceptible to mammalian predators because of its burying behavior.

Although extensive, unexplained, die-offs have occured in the past in the Mississippi River drainage, these were for the most part restricted to large rivers. The rivers and streams preferred by the clubshell are medium to small rivers and streams, and disease has not been documented as a factor affecting its population dynamics. A portion of the northern riffleshell's historic range included large rivers, and die-offs may have played a role in the species' decline.

D. The Inadequancy of Existing Regulatory Mechanisms

All States throughout the range of the northern riffleshell and the clubshell prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. Ohio, Michigan, and Indiana have endangered species legislation, which protects the clubshell and northern riffleshell from other types of unauthorized take. The Mighigan Endangered Species Act of 1974 also regulates take that may occur as a result of development and construction projects; however, this State law did not

avert the recent loss of the northern riffleshell population in the Black River. Ohio and Indiana endangered species laws do not provide protection to species from habitat loss or degradation, although the Indiana Flood Control law allows that State to "remove or eliminate any structure, obstruction, deposit, or excavation in any floodway which, * * * is unreasonably detrimental to fish, wildlife, or botanical resources (Indiana 13–2–22–13)." Except for requiring a permit for scientific collecting, Pennsylvania, West Virginia, and Kentucky provide no protection to these species or their habitats. Federal listing will provide additional protection under the Endangered Species Act by requiring Federal permits to take the clubshell and the northern riffleshell for any purpose throughout their range and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect these species.

E. Other Natural or Man-made Factors Affecting its Continued Existence

The exotic, prolific zebra mussel *(Dreissena polymorpha)*, accidentially introduced to North America in the mid-1980's, poses a severe threat to all native mussel fauna through the competition for space, food, and survival of glochida. Presently, the zebra mussel, which was conveyed to the area through ship ballast water from interior European ports, is abundant in the lower Great Lakes. It poses an immediate threat to the populations of the northern riffleshell in the Detroit and St. Clair Rivers and to populations of both these rare species in the Maumee and Black River drainages. As it continues its rapid range expansion, the zebra mussel may threaten the continued existence of all native freshwater mussels in the Mississippi and Great Lakes drainages.

The high potential of a toxic chemical spill from a ship or factory in the Detroit and St. Clair Rivers threaten the northern riffleshell populations in these rivers. A number of toxic spills have occurred in the "Chemical Valley" near Sarnia, Ontario.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the northern riffleshell mussel and the clubshell mussel as endangered. Historically, these species were widely distributed throughout the Ohio River and western Lake Erie drainages. The radically reduced distribution of these species and their continued vulnerability to loss of habitat and water quality deterioration constitute severe threats to their continued existence, and therefore, endangered status appears to be the most appropriate classification.

Critical Habitat

Section 4(a)(3) of the Act as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed for listing as endangered or threatened. Section 3 of the Act defines critical habitat as, "(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." Designation of critical habitat is prudent unless: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)). Designation of critical habitat is determinable unless: (1) Information sufficient to perform the required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)).

The Service finds that designation of critical habitat for these two mussels is not prudent. Because of their sedentary nature and susceptibility to a wide variety of changes in water quality, mussels are highly vulnerable to vandalism. Due to the low number of reproducing populations of these species, even a single such incident could be catastrophic. The publication of critical habitat maps could increase this risk.

The Service also finds that designation of critical habitat for the northern riffleshell and the clubshell mussels is not presently determinable. Most existing populations of these mussels are located in widely scattered streams of declining suitability. The number and location of stream habitats required to provide for the long-term survival of existing populations have not been identified. In addition, information needed to analyze the impacts of critical habitat designation is unavailable at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery action be carried out for all listed species.

The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7a(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service has notified Federal agencies having programs that may affect the northern riffleshell and the clubshell mussels. Federal activities that could occur and impact the species, either directly through funding and development, or through issuance of permits or licenses, include dredge and fill, flood protection, water impoundments and channelization, hydroelectric projects, powerline and highway construction, railroads, industrial and domestic wastewater discharge projects, commercial and recreational development, and mining. For example, the recently rediscovered population of the clubshell in the Elk River in West Virginia is threatened by

the acceleration of coal mining in the watershed; potential Federal involvement in such coal mining operations includes permitting by the Office of Surface Mining and the U.S. Army Corps of Engineers. In addition, reconstruction and operation of a railroad along the Elk River to carry coal will require approvals from the Interstate Commerce Commission.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell it or offer it for sale in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing (see Addresses Section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environment Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cicerello, R.R., and R.R. Hannan. 1990. Survey of the freshwater unionids (mussels) (Bivalvia: Margaritiferidae, and unionidae) in the Green River in Mammoth Cave National Park, Kentucky. Unpublished. Prepared for Mammoth Cave National Park. 44 p.

Cummings, K.S., C.A. Mayer, L.M. Page, and J.M.K. Berlocher. 1987. Survey of the freshwater mussels (Mollusca: Unionidae) of the Wabash River drainage, Phase I: lower Wabash and Tippecanoe River. Unpublished. Prepared for Indiana Department of Natural Resources. 167 pp.

Lea, Issac. 1838. Description of new freshwater and land shells. Trans. Amer. Phil. Soc. 6 (N.S.): 1–154, pl. 1–24 [*Unio rangianus*, p. 95–96, pl. 18, fig. 45].

Lamarck, Jean Baptiste. 1819 Les Nayades. Vol. 6, pp. 67–89 *in:* Histoire naturelle des animaux sans vertebres. * * * Paris, 6 volumes. [*Unio clava*, p. 74].

Stansbery, D.H., K.G. Borror, and K.E. Newman. 1982. Biological abstracts of selected species of Unionid mollusks recovered from Ohio. Unpublished. Prepared for the Ohio Heritage Foundation. Ohio Department of Natural Resources.

Watters, G.T. 1986. The distribution and relative abundance of the Unionid mollusks of the Big Darby Creek system in Ohio. Unpublished. Prepared for the Ohio Chapter of the Natural Conservancy. 158 pp.

Watters, G.T. 1988. A survey of the freshwater mussels of the St. Josephs River system with emphasis on the federally endangered white cat's paw perly mussel. Unpublished. Indiana Department of Natural Resources. 127 pp.

Author

The primary author of this proposed rule is William A. Tolin, U.S. Fish and Wildlife Service, West Virginia Field Office, Post Office Box 1278, Elkins, West Virginia 26241 (304/636–6586).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544, 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Clams, to the List of Endangered and Threatened Wildlife.

17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
*	*	*	*	*	*		
Riffleshell, Northern	*Epioblasma torulosa rangiana.*	U.S.A (IL, IN, KY, MI, OH, PA, WV, Canada (Ont.).	NA	E		NA	NA
Clubshell	*Pleurobema cava*	U.S.A (AL, IL, IN, KY, MI, OH, PA, TN, WV.	NA	E		NA	NA
*	*	*	*	*	*		

Dated: May 11, 1992.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 92-14230 Filed 6-17-92; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 920544-2144]

Taking and Importing of Marine Mammals; Listing of the Northern Offshore Spotted Dolphin as Depleted

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: NMFS was petitioned to list the northern stock of the offshore spotted dolphin, (*Stenella attenuata*), as depleted under the Marine Mammal Protection Act (MMPA). NMFS believes that the best available information indicates that the population of northern offshore spotted dolphin is below its optimal sustainable population level. NMFS, therefore, proposes to designate the northern stock of the offshore spotted dolphin as depleted.

DATES: Comments must be submitted on or before August 17, 1992.

ADDRESSES: Comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources (F/PR), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne or Dr. Aleta A. Hohn, Office of Protected Resources, 301/713-2322.

SUPPLEMENTARY INFORMATION: Section 3 of the MMPA (16 U.S.C. 1362) defines the term "depletion" or "depleted" as meaning any case in which.

(A) The Secretary, after consultation with the Marine Mammal Commission [MMC] and the Committee of Scientific Advisors on Marine Mammals * * *, determines that a species or population stock is below its optimum sustainable population

(B) A State, to which authority for the conservation and management of a species or population stock is transferred * * *, determines that such species or stock is below its optimum sustainable population; or

(C) A species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973 * * *.

Section 3 of the MMPA further defines optimum sustainable (OSP) population as:

With respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

NMFS regulations at 50 CFR 216.3 define OSP as

A population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem [K], to the population level that results in maximum net productivity [MNPL]. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or losses due to natural mortality.

Section 2 of the MMPA (13 U.S.C. 1361) states that marine mammal species, populations and/or stocks should not be permitted to fall below their OSP level. Historically, MNPL has been expressed as a range of values (generally 50-70 percent of K) determined theoretically by estimating what size stock in relation to the original stock size will produce the maximum net increase in population (42 FR 12010, Mar. 1, 1977). In 1977, the midpoint of this range (60 percent) was used to determine if a stock was depleted (42 FR 64548, Dec. 27, 1977). The 60 percent value was supported in the final rule governing the taking of marine mammals incidental to commercial fishing operations (45 FR 72178, Oct. 31, 1980).

Discussion

Background

NMFS was petitioned by Environmental Solutions International and Greenpeace U.S.A. to list the northern offshore spotted dolphin as a depleted species or population under the MMPA on October 29, 1991. Section 115(a)(3)(A) of the MMPA (16 U.S.C. 1383b(a)(3)(A)) states that "if the Secretary receives a petition for a status review as described in paragraph (1), the Secretary shall publish a notice in the **Federal Register** that such a petition has been received and is available for public review." NMFS has published a notification of receipt of this petition, a request for comments, and a determination that this petition presented substantial information, indicating that the petitioned action may be warranted (56 FR 56502, Nov. 5, 1991).

When petitioned, NMFS was in the process of analyzing scientific information regarding this species. This information included that which was available in the literature, from individuals and organizations concerned with the conservation of marine mammals, from persons in industries which may be affected by determinations regarding the status of stocks, and from academic institutions during the course of meetings held annually to review status of dolphin stocks involved in the ETP purse seine tuna fishery. A request for comments was included in the **Federal Register** notice so that any previously unknown information would be evaluated by NMFS.

Section 115(a)(3)(D) of the MMPA (15 U.S.C. 1383b(a)(3)(D)) states that "no later than two hundred and ten days after the receipt of the petition, the Secretary shall publish in the **Federal Register** a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination." NMFS believes that, based on the best scientific information available, the population of northern offshore spotted dolphin is at levels below OSP, and, therefore, is proposing to designate the northern offshore spotted dolphin as depleted under the MMPA.

On October 29, 1991 (at 56 FR 56502, Dec. 18, 1991), and on January 23, 1992, NMFS was petitioned to list the northern offshore spotted dolphin as threatened under the ESA. The January 23, 1992 "threatened" petition essentially duplicated the October 29, 1991 accepted petition and was, therefore, not accepted by NMFS. The information provided in the denied petition will be considered during the evaluation of the initial petition.

This document does not represent a finding on the petition to list this species as *threatened* under the ESA. Based on comments received and a review of the status of the stock of northern offshore spotted dolphin relative to the ESA, NMFS will publish a determination in the **Federal Register** at a later date on whether a listing of "threatened" under the ESA may be warranted.

Comments

Written comments were requested in the receipt of petition notice (56 FR 65724, Dec. 19, 1991). Many of the issues raised in the comments have previously been raised and discussed, and consequently are not individually addressed here, although the issues are generally addressed in this proposed rule.

Status Determination

1. Distribution

Geographical variation in *S. attenuata* was described by Perrin (1975). He

partitioned the genus into three subspecies from the eastern and Central Pacific: (1) The coastal spotted, (2) the offshore spotted dolphin and (3) the Hawaiian spotted dolphin. The offshore spotted dolphin was further divided into a "northern" and "southern" stock (Perrin, Sloan and Henderson 1979). The northern offshore form occurs from near the coast of southern Mexico at 25° north, to 1° south and west to 145° (Perrin *et al.* 1985).

A hiatus in distribution between the northern and southern offshore stocks occurs at about 2°S (Perrin *et al.* 1983; Au and Perryman 1985; Reilly 1990; Reilly and Fiedler 1991). At present, there is no evidence of movement across this hiatus (Allen 1985) indicating a degree of isolation between stocks. Evidence for reproductive isolation between the offshore forms (Barlow 1984; Perrin, Coe and Zweifel 1976; Hohn, Chivers and Barlow 1985), and morphological differences (Perrin *et al.* 1985, 1991) further justifies dividing the offshore spotted dolphin into northern and southern stocks (see review of distribution at Dizon, Perrin, Akin, in press).

2. Estimates of Incidental Dophin Mortality

The methods of collecting dolphin mortality data, and of estimating dolphin mortality from these data are presented in the preamble of the proposed rule to list the eastern spinner dolphin, *S. longirostris orientalis*, as depleted under the MMPA published in the **Federal Register** on June 17, 1992.

The estimated number of northern offshore spotted dolphins killed by non-U.S. vessels and U.S. vessels for the period 1959–1990 are presented in Table 1. NMFS estimates that between 1959 and 1990, over 4,000,000 northern spotted dolphins were incidentally killed during operations in this fishery. The total fishery-related mortality of northern offshore spotted dolphin in the U.S. and non-U.S. fleets was greatest from 1960 to 1972, peaking in 1961 when an estimated 402,000 were killed. Generally, incidental mortality approached or exceeded 200,000 dolphins each year between 1960–1972. Mortality exceeded 300,000 dolphin per year in 7 years from 1960 to 1970 (Table 1).

The best estimates of dolphin mortality are from 1986 to the present. Between 1986 and 1990 over 32,000 northern offshore spotted dolphins were killed annually (Table 1). Preliminary IATTC estimates for 1991 indicate that total dolphin mortality (all species) has further decreased to about 25,000 inviduals (IATTC 1991a).

TABLE 1.—ESTIMATES [1] OF FISHING MORTALITY FOR THE NORTHERN OFFSHORE STOCK OF SPOTTED DOLPHIN AND OF ALL SPECIES (TOTAL MORTALITY) FROM 1959–1990 FOR THE U.S. AND NON-U.S. PURSE-SEINE FLEETS IN THE ETP

Year	Number killed
	Northern offshore spotted dolphin
1959	71,000
1960	357,000
1961	402,000
1962	167,000
1963	183,000
1964	306,000
1965	337,000
1966	306,000
1967	206,000
1968	178,000
1969	365,000
1970	355,000
1971	176,000
1972	288,000
1973	74,448
1974	76,900
1975	75,068
1976	50,183
1977	18,522
1978	12,825
1979	8,870
1980	13,058
1981	16,324
1982	15,427
1983	3,414
1984	15,940
1985	31,309
1986	67,989
1987	51,685
1988	36,137
1989	52,093
1990	32,267

[1] Data for the years 1959–1972 are from Smith (1979, 1983); for 1973–1978 from Smith (1979, 1983), Wahlen (1986) and Punsley (1983); for the years 1979–1990 from IATTC (1989, 1990, 1991b), in addition to Hall and Boyer (1990, in press) for the years 1989–1990. Incidental take data since 1973 found in DeMaster *et al.*, 1992.

3. Abundance of Northern Offshore Spotted Dolphins

Absolute Abundance Estimates: On August 27–31, 1979, NMFS convened a workshop to consider the population status of ETP dolphin stocks (Smith 1979). The 1979 population estimate for northern offshore spotted dolphin was 3,150,000 (45 FR 72179, October 31, 1980).

NMFS' estimate for the northern offshore spotted dolphin stock for 1979 was adjusted (following the decision of the Ninth Circuit Court of Appeals, in *ATA* v. *Baldridge*, 738 F.2d. 1013 (9th Cir. 1984)) to consider data collected by observers on tuna vessels, specifically a larger average school size, an increased density of schools within the range of each dolphin species, and an increased area inhabited by the stocks. The resulting estimate of abundance for the northern stock of offshore spotted dolphin in 1979 nearly doubled to 6,115,000 (NMFS 1985).

More recent estimates of northern offshore spotted-dolphin abundance have become available as a result of data collected during research vessel surveys (referred to as Monitoring of Porpoise Stocks (MOPS)) conducted between 1986–90 (Wade and Gerrodette, in press). The MOPS surveys have produced the best available information for estimating population size, and Wade and Gerrodette (in press) re-analyzed the MOPS data to produce the best estimates of absolute abundance currently available. This determination was made during the November 18–22, 1991, workshop on the status of ETP dolphin stocks, after a review of the analytical techniques by a recognized panel of experts (DeMaster, in press).

Estimates of northern offshore spotted dolphin from the MOPS surveys ranged from 658,300 to 2,205,500 (Wade and Gerrodette, in press), with coefficients of variance (CVs) between 29 and 36 percent. DeMaster *et al.* (1992) obtained an average estimate over the 5 years of the survey of approximately 1,514,800. This average was further revised as a result of review and comments of the methodology delivered during the November, 1991, workshop. The revised estimate of 1,651,600 (CV = 21 percent) is considered the best available estimate of the current population (1991) of the northern offshore spotted dolphin (Wade and DeMaster, pers. comm.).

Relative Abundance Estimates: In addition to MOPS survey estimates of absolute abundance, estimates of relative abundance have been made based on sighting data collected by observers onboard tuna fishing vessels (Anganuzzi and Buckland 1989; Anganuzzi, Buckland and Cattanach 1991; Anganuzzi, Cattanach and Buckland, in press). Sighting data collected by observers on the tuna vessels are currently considered the most reliable for monitoring trends in the abundance of northern offshore spotted dolphins (Anganuzzi and Buckland, 1989; DeMaster *et al.*, 1992).

Estimates of abundance obtained from tuna vessel data, however, cannot be compared directly to estimates derived from sighting data collected by observers on research vessels. This is due to the non-random search patterns of tuna vessels which effectively search out larger concentrations of dolphins over short time periods and geographic areas, and the recording of sighting angles after a vessel has responded to the presence of a group of dolphins. These biases result in an overestimate of density, (Buckland and Anganuzzi 1988; Anganuzzi and Buckland 1989), therefore an overestimate of the

population size. These data, however, have a large number of sightings (relative to research vessel data), and span the entire period from 1974 to the present. Therefore they provide a continuous sequence of relative abundance necessary to monitor trends in dolphin population levels, rather than providing estimates of absolute abundance (as do the research vessel data).

Estimates of relative abundance for the northern stock of offshore spotted dolphin obtained from observer data collected onboard tuna vessels for 1975–1990 are provided in Table 2. The 1990 estimate (2,553,000) is 35 percent lower than the estimate for 1975 (3,949,000) (Table 2), indicating a significant decline since 1975. This is in agreement with the results of Buckland and Anganuzzi (1988), who determined that the average stock size of the northern offshore spotted dolphin during 1975–1980 was significantly greater than the average during 1981/1986, and provides evidence of stock declines between 1975–1986.

TABLE 2.—RELATIVE POPULATION ESTIMATES [1] (X 1000) FOR THE NORTHERN STOCK OF OFFSHORE SPOTTED DOLPHIN, USING OBSERVER DATA COLLECTED ON TUNA VESSELS

Year	Estimate
1975	3,949
1976	4,253
1977	3,828
1978	3,212
1979	2,950
1980	3,335
1981	2,536
1982	2,550
1983	1,221
1984	2,158
1985	2,884
1986	3,165
1987	2,953
1988	2,700
1989	2,900
1990	2,553

[1] Data for 1975 to 1987 are from Anganuzzi and Buckland (1989), for 1988–1989 from Anganuzzi, Cattanach and Buckland, in press, and for 1990 from DeMaster, pers. comm.

40. Classification of the Northern Offshore Spotted Dolphin as Depleted under the MMPA

A determination of depletion must, in significant part, be based on the relationship between the optimum carrying capacity (K) and OSP, as described in the MMPA. The MMPA states that marine mammal species, populations and/or stocks should not be permitted to fall below OSP. MNPL is considered the lower end of OSP, and NMFS has adopted by regulation that MNPL is at 60 percent of K (42 FR 64548, Dec. 27, 1977 and 45 FR 72178, Oct. 31, 1980).

The 1986–1990 MOPS surveys resulted in estimates of absolute abundance from research vessels that are considered more reliable than estimates based on previous research vessel data. The range of the recent estimates of absolute abundance for each year of the survey, 658,300 (in 1990) to 2,606,000 (in 1988) (at Wade and Gerrodette 1991), is considered to be 31–54 percent of K (Wade, pers. comm.), therefore depleted under the MMPA.

The abundance estimates from each year of the MOPS surveys can also be compared to the adjusted 1979 population size of 6,115,000 (considered to be 85 percent of K). The greatest number of dolphins estimated during the MOPS surveys, 2,606,000 (1988), is 43 percent of the 1979 estimate, or 36 percent of K, and therefore depleted under the MMPA. The best estimate of the absolute population size obtained from the MOPS surveys, 1,651,600 (Wade 1991, as revised by DeMaster (in press) based on comments received during the November, 1991, workshop), is considered 27 percent of the adjusted 1979 estimate, or 23 percent of K, also depleted under the MMPA.

Furthermore, relative abundance data collected onboard tuna vessels (at Table 2), indicate a northern offshore spotted dolphin population in 1990 which had been reduced by 35 percent since 1975. Prior to 1975 (1960 to 1972), the number of dolphins killed in this fishery approached or exceeded 200,000 per year, and a minimum estimate of incidental take by this fishery prior to 1973 exceeds 3,000,000 individuals (from Table 1). Smith (1983) suggested that, given the number of dolphin killed, the population of offshore spotted dolphins declined rapidly during this period. The magnitude of the spotted dolphin kill prior to 1975 (as compared to estimates of abundance from either research vessel data, or tuna vessel data) indicates a population reduced by an amount significantly greater than 5 percent during the 1960s and early 1970s (prior to 1975). Based on the best information available, NMFS has concluded that the extensive level of incidental take prior to the mid 1970s, coupled with the continued reduction of this stock between 1975 and 1990 by approximately 35 percent (as indicated by relative trend data, Table 2) has resulted in a current population which has been reduced from its historical or pre-exploitative size (K) by greater than 40 percent.

NMFS, therefore, has determined that the northern offshore spotted dolphin population is below OSP, and that the petitioned action is warranted. Accordingly, NMFS proposes that the northern offshore spotted dolphin be designated as depleted under the MMPA.

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Classification

The Assistant Administrator has determined that this proposed rule is exempt from the requirements of Executive Orders 12291 and 12612, the Paperwork Reduction Act, and the Regulatory Flexibility Act because section 115(a)(2) of the MMPA requires listing decisions to be based "solely on the basis of the best scientific information available."

A designation of depletion in this instance, which is similar to a listing action under ESA section 4(a), is categorically excluded by NOAA Administrative Order 216–6 from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act.

Dated: June 12, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mamals, Penalties, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.15, a new paragraph (f) is added to read as follows:

§216.15 Depleted species.

* * * * * * *

(f) Northern offshore spotted dolphin (*Stenella attenuata*).

[FR Doc. 92–14208 Filed 6–17–92; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 118
Thursday, June 18, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administration Committee Meeting

ACTION: Committee on Administration notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States.

The Committee will discuss a draft report on the formula grant program at the Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

Copies of the draft report are available from the Conference.

DATES: Wednesday, July 8, 1992 at 2 p.m.

LOCATION: Library of the Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

PUBLIC PARTICIPATION: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meetings. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Dated: June 10, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–14307 Filed 6–17–92; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 12, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250 (202) 690–2118.

Extension

• Foreign Agricultural Service. Issuing Certificates For The Importation of Specialty Sugars. On occasion. Businesses or other for-profit; 30 responses; 60 hours. Cleveland H. Marsh (202) 720–5676.

New Collection

• Rural Electrification Administration. Loan Payment Deferments for Rural Development Projects. Recordkeeping: On occasion. Businesses or other for-profit; Small businesses or organizations; 108 responses; 421 hours; Paul D. Marsden (202) 720–9551.

• Food and Nutrition Service. Welfare Program Coordination Study. One time only. Individual or households; State or local governments; 192 responses; 48 hours. Boyd Kowal (703) 305-2130.

Reinstatement

• Animal and Plant Inspection Service. Application for Veterinary Accreditation and Veterinary Accreditation Examination. VS Form 1–36A. Recordkeeping: Annually. State or local governments; Businesses or other for-profit; Small businesses or organizations; 8,324 responses; 51,689 hours. Julie Heamon (301) 436–8954.

Revision

• Agricultural Marketing Service. Kiwifruit Grown in California, Marketing Order No. 920. Recordkeeping: On occasion; Annually; Monthly; Once every 6 years Farms; Business or other for-profit; 1583 responses; 748 hours Caroline Thorpe or Mark Hessel (202) 720–8139.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 92–14364 Filed 6–17–92; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Stillwater Mining Company Expansion, Stillwater County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability of an Environmental Impact Statement.

Draft EIS, USFS/DSLL, Mt., Stillwater Mining Company, Mine Expansion 2000 TPD, Application to Amend Operating Permit No. 00118, Custer National Forest. Due June 5, 1992.

Comments, suggestions or questions concerning the Environmental Impact Statement should be sent to Ms. Jo Stephen, Montana Department of State Lands, 1625 11th Avenue, Helena, Montana, 59620, 406–444–2074; or Greg Visconty, Custer National Forest, P.O. Box 2556, Billings, Montana, 59103, 406–657–6361.

The U.S. Department of Agriculture's Forest Service and Montana Department of State Lands are joint lead agencies for this project.

Dated: June 16, 1992.

Leroy White,

Acting Forest Supervisor.

[FR Doc. 92–14313 Filed 6–17–92; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Electric Program Regulations

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice: Proposed rescission of bulletins, request for comments.

SUMMARY: As part of an ongoing project to simplify, clarify, and update Agency regulations and in response to the President's regulatory review initiative, the Rural Electrification Administration (REA) is requesting public comments on a proposal to rescind a number of outdated publications.

DATES: Written comments must be received by REA, or bear a postmark or equivalent, by July 20, 1992.

ADDRESSES: Written comments should be addressed to William F. Albrecht, Director, Program Support Staff, Rural Electrification Administration, room 2234-S, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. REA requires an original and 3 copies of all comments (7 CFR 1700.30(e)).

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Management Analyst, Program Support Staff, Rural Electrification Administration, room 2230-S, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–0736.

Copies of individual bulletins are available from the Publications and Directives Management Branch, Rural Electrification Administration, room 0180-S, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. Telephone 202–720–8674.

SUPPLEMENTARY INFORMATION: In the State of the Union Address on January 28, 1992, President Bush announced a 90-day moratorium on new regulations and a concurrent review of existing regulations. In a January 28, 1992, memorandum to certain Department and Agency heads, the President directed that agencies set aside a 90-day period "to evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden or otherwise promote economic growth." On February 25, 1992, at 57 FR 6483, the Department of Agriculture published a request for public comments on how Departmental regulations can be improved, updated or streamlined and made more "user friendly."

In 1990 REA began its own independent project to simplify, clarify and update Agency regulations. Consistent with the spirit of both regulatory review projects, REA is now requesting public comment on a proposal to rescind the REA bulletins listed below. These bulletins contain regulatory material that has become outdated. Some of the information and instructions in the bulletins have been rendered obsolete through legislation, regulations published by REA in 7 CFR Chapter XVII, or regulations published by other agencies. The material in other bulletins is unnecessary in today's business environment.

List of REA Bulletins Proposed For Rescission

Number	Title	Issued
24–1	Electric Loan Policy for Section 5 Loans	3/69
45–4	Distribution System Energy Losses	4/90
100–1:400–2	Selection of an Attorney by an REA Borrower (Supplement 2/75)	4/60
107–1:407–1	Data Processing Systems	2/79
107–2	Coding System for Material Items	6/77
107–3	Data Processing Systems—Factors to Consider in Conversion	10/72
109–6	Personnel Practices for Business Security	12/58
110–1	Member Services, Community Relations and Power Use	2/71
112–3	Area Coverage Service	9/58
180–5	Authorization and Accounting for Travel and Incidental Expenses	6/67

Authority: 7 U.S.C. 901 *et seq.*

Dated: May 27, 1992.

Michael M.F. Liu,

Acting Administrator.

[FR Doc 92–14280 Filed 6–17–92; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with May anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements, with May anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than May 31, 1993.

Antidumping duty proceedings and firms	Periods to be reviewed
Brazil:	
Frozen concentrated orange juice A–351–605.	
Branco Peres Citrus, S.A. Citropectina S.A., Frutropic, S.A.	5/1/91–4/30/92.
Japan:	
Gray portland cement and clinker A–588–815.	
Onoda Cement Co., Ltd	10/31/90–4/30/92.
Portable electric typewriters A–588–087.	
Matsushita Electric, Industrial Co., Ltd., Brother Industries, Ltd., Nakajima All Co., Ltd., Canon, Inc., Silver Seiko, Ltd.	5/1/91–4/30/92.
Countervailing duty proceedings	
Argentina:	
Cold rolled carbon steel flat rolled products. C–357–005.	1/1/91–12/31/91

Antidumping duty proceedings and firms	Periods to be reviewed
Mexico:	
Ceramic tile C–201–003	1/1/91–12/31/91.
Singapore:	
Antifriction bearings (other than tapered roller bearings and parts thereof) C–559–802.	1/1/91–12/31/91.
Sweden:	
Viscose rayon staple fiber C–401–056.	1/1/91–12/31/91.
Thailand:	
Ball bearings and parts thereof C–549–802.	1/1/91–12/31/91.

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) and § 353.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: June 10, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–14378 Filed 6–17–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–401]

Certain Valves and Connections, of Brass, for Use in Fire Protection Systems From Italy; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of Antidumping Duty Administrative review.

SUMMARY: On August 5, 1991, the Department of commerce submitted to the Court of International Trade (CIT) the final results of redetermination pursuant to a remand from the CIT in *Giacomini, S.p.A., et. al.*, v. *United States* (Slip Op. 91–16, March 8, 1991). On September 8, 1991, the CIT affirmed our redetermination. In accordance with the court's determination we are hereby amending the final results of the administrative review for Giacomini, S.p.A. for the period March 1, 1986 through February 28, 1987.

EFFECTIVE DATE: June 18, 1992.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen A. Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1991, the court of International Trade (CIT), in *Giacomini S.p.A. et. al.*, v. *United States* (Slip Op. 91–16), remanded to the Department of Commerce (the Department) for redetermination the final results of the administrative review of the antidumping duty order on certain valves and connections of brass, for use in fire protection systems (brass fire protection equipment) from Italy (54 FR 40155, September 29, 1989). In the Department's final results, the dumping margin for brass fire protection equipment manufactured or exported by Giacomini S.p.A. (Giacomini) during the March 1, 1986 through February 28, 1987 period was 85.54 percent. The final results were based on the best information available (BIA).

Giacomini contested the Department's decision to use BIA for all models included in this review. On June 6, 1990, in a memorandum to the Court, the Department requested that the review by remanded so that it could calculate the proper margins, if any, for the three models for which there was sufficient information on the record, that is, those models for which there were third country matches. With respect to the remaining models, the Department continued to maintain that Giacomini failed to provide adequate information by which to calculate their constructed values. The Department asked the Court, however, to remand the case with respect to those five models so that it could reconsider the appropriateness of the BIA rate applied thereto. The Court remanded the proceeding to the Department to (1) redetermine the amount of dumping margin, if any, for the products at issue; and (2) redetermine whether it was necessary to use BIA for the models for which the Department deemed constructed value to be the appropriate method of valuation.

On remand, the Department (1) recalculated margins for the three models for which there were third country matches; and (2) determined that it was necessary to use BIA for the models for which the Department deemed constructed value to be the appropriate method of valuation. With respect to the latter, the Department determined that the appropriate rate was 6.74 percent, Giacomini's rate from the investigation of sales at less than fair value. Based on the foregoing, the Department recalculated Giacomini's weighted-average margin for the review period in question as 9.44 percent.

Interested parties were invited to comment on the draft results. After consideration of the comments received, the draft results remained unchanged. The Department submitted its final results of redetermination to the CIT on August 5, 1991. On September 8, 1991, the CIT affirmed the Department's redetermination.

Amended Final Results of Review

Based on our analysis, we have amended our final results of review for the March 1, 1986 through February 28, 1987 period with respect to Giacomini. The amended weighted-average margin for Giacomini is 9.44 percent. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

The cash deposit rate for Giacomini will continue to be 1.40 percent, Giacomini's rate from the most recent final results of administrative review. See Final Results of Antidumping Administrative Review, Certain Valves and Connections, of Brass, for Use in Fire Protection Systems from Italy (56 FR 5388, February 11, 1991).

This notice is in accordance with section 516A(e) of the Tariff Act of 1930, as amended, (19 U.S.C. 1516A(E)).

Dated: June 11, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–14376 Filed 6–17–92; 8:45 am]

BILLING CODE 3510–DS–M

Argonne National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 98–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–169. *Applicant:* Argonne National Laboratory, Argonne, IL 60439. *Instrument:* Scanning Electron Microscope Accessories. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 57 FR 399, January 6, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent

scientific value to the foreign instrument, for such purposes as it is intended to use, is being manufactured in the United States. *Reasons:* These are compatible accessories for an instrument previously imported for the use of the applicant. The instrument and accessories were made by the same manufacturer.

The accessories are pertinent to the intended uses and we know of no domestic accessories which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-14374 Filed 6-17-92; 8:45 am]

BILLING CODE 3510-DS-M

Argonne National Laboratory, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Education, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Comments None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number 91-168R. *Applicant:* Argonne National Laboratory, Argonne, IL 60439. *Instrument:* Scanning Electron Microscope, Model JSM-6400. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 56 FR 64244, December 9, 1991. *Reasons:* The foreign instrument provides two wavelength dispersive spectrometers for simultaneous analysis of two elements in the surface zone. *Advice Received From:* National Institute of Standards and Technology, January 28, 1992.

Docket Number: 92-051. *Applicant:* Indiana University, Bloomington, IN 47405. *Instrument:* Electron Microprobe, Model Camebax SX 50. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 57 FR 15283, April 27, 1992. *Reasons:* The foreign instrument provides an intense electron beam to excite characteristic x-rays of a sample phase down to 1.0μm area. *Advice Received from:* National Institute of Standards and Technology, May 29, 1992.

The National Institute of Standards and Technology advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-14375 Filed 6-17-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651); 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purpose for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Docket Number: 92-069. *Applicant:* University of California, Irvine, School of Physical Sciences, Department of Chemistry, 200 Public Services Building, Irvine, CA 92717. *Instrument:* Electron Paramagnetic Resonance Spectrometer, Model ESP 300E. *Manufacturer:* Bruker, Germany. *Intended Use:* The instrument will be used to provide ESR/EPR capability to a group of researchers with interests that include analysis network polymer dynamics, electrochemical-ESR studies of metal-containing active sites in proteins, structural organization and function of the MoFe proteins, chemically and genetically modified biological iron-sulfur clusters structure/function and studies on steroid hydroxylase components and paramagnetic yttrium and lanthanide metal complexes and low-valent organosamarium(II) complexes. *Application Received by Commissioner of Customs:* May 15, 1992.

Docket Numbers: 92-070. *Applicant:* Northwestern University, Programs in Physical Therapy, 345 E. Superior Street, Room 1323, Chicago, IL 60611. *Instrument:* Kinematic Analysis Instrumentation, Model ELITE 50 Hz. *Manufacturer:* Bioengineering Technology and Systems, Italy. *Intended Use:* The instrument will be used to study the control and learning of coordinated, balance movements in healthy, and neurologically or musculoskeletally impaired persons. Experiments will be conducted that alter practice conditions, attention, mechanical loads, and extent of movement permitted as human subjects perform arm movements while standing. In these experiments, the device will be used to transduce joint position changes by applying reflective markers at joint centers. *Application Received by Commissioner of Customs:* May 21, 1992.

Docket Number: 92-071. *Applicant:* The University of Texas at Austin, 8701 N. Mopac Boulevard, suite 450, Austin, TX 78759-8345. *Instrument:* Rolling Wheel Compactor for Testing Asphalt Paving Mixtures. *Manufacturer:* Societe Nouvelle D'Applications Mecaniques et Optiques, France. *Intended Use:* The instrument will be used for studies of asphalt-aggregate mixtures for paving roadways in order to develop performance based asphalt binder and mixture specifications as directed by Congress through the National Research Council and the Strategic Highway Research Program. *Application Received by Commissioner of Customs:* May 21, 1992

Docket Number: 92-072. *Applicant:* Oregon State University, College of Oceanography, Oceanography Administration Building 104, Corvallis, OR 97331-5503. *Instrument:* Deep-Sea Fluorometer, Model Aquatracka Mark III. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the distribution of fluorescence and particulate matter in the oceans. *Application Received by Commissioner of Customs:* May 21, 1992.

Docket Number: 92-073. *Applicant:* Indiana University/Purdue, 620 Union Drive, Room 542, Indianapolis, IN 46202. *Instrument:* Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for analysis by a number of researchers in studies utilizing stable isotopic tracers to investigate the important questions in nutrition and metabolism. These investigations will involve quantifying the oxidation of metabolic substrates (e.g. glucose amino acids, lipids) in a variety of physiologic and pathophysiologic conditions in humans (including newborns and pregnant women) and in animals using isotope ratio mass spectrometry. The

instrument will also be used to employ a powerful new technique for noninvasively determining energy expenditure (doubly labeled water method). *Application Received by Commissioner of Customs:* May 22, 1992.

Docket Number: 92–075. *Applicant:* Brooklyn College of City University of New York, Bedford Avenue and Avenue H, Brooklyn, NY 11210. *Instrument:* Coaxial Nanosecond Flashlamp, Model Mark 3. *Manufacturer:* IBH Consultants, Ltd., United Kingdom. *Intended Use:* The instrument will be used in measurements of the nanosecond time-scale polarized/unpolarized fluorescence decay kinetics of fluorescent molecules inserted in model lipid membranes (prepared using purified phospholipids) or in solution. *Application Received by Commissioner of Customs:* May 27, 1992.

Docket Number: 92–076. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument:* Electronic Scaler, Model C243. *Manufacturer:* CAEN, Italy. *Intended Use:* The instrument will be used in the study of sub-atomic particles which must be observed with charge sensitive detectors and high-speed electronics. The device measures counting rates of detectors to determine if the detectors are performing optimally and to determine the number of charged particles produced in various collisions of high-energy particles. This information makes it possible to diagnose detector problems and measure reaction properties. *Application Received by Commissioner of Customs:* May 28, 1992.

Docket Number: 91–186R. *Applicant:* Hofstra University, 1000 Fulton Street, Hempstead, NY 11550. *Instrument:* Stopped-Flow Kinetics Accessory, Model SFA–12M. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the **Federal Register** of January 15, 1992.

Docket Number: 92–077. *Applicant:* Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Mississippi Laboratory, Building 1103, room 218, Stennis Space Center, MS 39529–6000. *Instrument:* Digital Fish Measuring Boards, Model FMB IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* The instrument will be used for an area of research to update and expand shrimp trawl bycatch estimates both temporally and spatially in the offshore, nearshore, and inshore waters of the Gulf of Mexico and along the U.S. coast of the southeastern Atlantic. *Application Received by Commissioner of Customs:* June 3, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–14377 Filed 6–17–92; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Pilot MEGA Center Applications: States of Wisconsin, Illinois, Iowa, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, and Michigan

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Pilot MEGA Center. The cost of performance is estimated at $1,800,000 in Federal funds, and a minimum of $317,647 in non-Federal (cost sharing) contributions from October 1, 1992 to September 30, 1993. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The Pilot MEGA Center will service in a ten-state geographic service area, which includes Wisconsin, Illinois, Iowa, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, and Michigan. The award number of this pilot project will be 05–10–92007–01.

The funding instrument for this pilot project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes, and educational institutions.

The purpose of the pilot MEGA Center concept is to provide business development services more effectively by: (1) Upgrading the current level of M&TA assistance provided in the Chicago MSA with professionals with higher qualifications (through its Basic Service Component), and (2) expanding the scope of services and assistance throughout the ten-state regional area by providing specialized assistance in the areas of Franchise Development, Construction Assistance and Bonding, Capital Development, International Trade, and Integrated Information Systems. Each one of these specialized business areas are considered FUNCTIONAL COMPONENTS of the Pilot MEGA Center, and serve as integral parts of the center. This pilot effort should demonstrate a more efficient and effective client service delivery system by offering higher quality assistance and servicing more complex business needs of the minority business community. This, in turn, is expected to create growing and more profitable ventures resulting in increased job opportunities.

Applications will be evaluated initially within the region on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) for performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the pilot effort. The application will then be forwarded to the Department for final processing and approval, if appropriate.

The Pilot MEGA Center shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the Pilot MEGA Center may charge client fees for management and technical assistance (M&TA) rendered under the Basic Service Component. Based on a standard rate of $50 per hour, the MEGA Center will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Awards and subawards under this pilot effort shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the

Department of Commerce (DoC) are made.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying:"

- Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;
- Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;
- Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and
- Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Government to cover pre-award costs.

If an application is selected for funding, the U.S. Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity; and

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

CLOSING DATE: The closing date for applications is July 31, 1992. Applications must be postmarked on or before July 31, 1992.

ADDRESSES: Chicago Regional Office, 55 East Monroe Street, suite 1440, Chicago, Illinois 60603, (312) 353–0182.

FOR FURTHER INFORMATION, CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is approximately 110 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. A pre-bid conference will be held on July 1, 1992, at 10:00 a.m. at the MBDA Chicago Regional Office. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. The MBDC Program Application Kit is approved with OMB Number 0640–0006, which expires May 31, 1994.

Dated: June 15, 1992.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Bharat Bhargava,

Associate Director, Office of Operations, Minority Business Development Agency.

[FR Doc. 92–14420 Filed 6–17–92; 8:45 am]

BILLING CODE 3510-21-M

National Telecommunications and Information Administration

Federal Telecommunication Standard; Formal Briefing

AGENCY: National Telecommunications and Information Administration, Institute for Telecommunication Sciences (NTIA/ITS), Commerce.

ACTION: Notice of open meeting to present a formal briefing on proposed Federal Standard (pFED–STD) 1052, HF (High Frequency) Radio Modems.

FOR FURTHER INFORMATION CONTACT: Mr. David F. Peach or Mr. Nathaniel B. McMillian, Institute for Telecommunication Sciences, Boulder, CO, telephone (303) 497–5116.

SUPPLEMENTARY INFORMATION: The development of pFED–STD–1052 has been by a technical Advisory Committee (TAC) consisting of both industry representatives and representatives from several Government agencies. This standard is being developed under the sponsorship of the National Communications System (NCS) Office of Technology and Standards, and under the leadership of NTIA/ITS.

The briefing, by TAC members, will be followed by an open forum for questions and answers. Industry and Government representatives are encouraged to attend.

The meeting will be held at the MITRE Corporation, Hayes Building, 7525 Colshire Drive, McLean, VA, in Conference Room A. The meeting will commence at 0900 hours, July 15, 1992 and is scheduled for all day. The point of contact (POC) for the meeting will be Mr. Fred Leiner, MITRE Corp., telephone (703) 883–6998.

Dated: June 9, 1992.

Val J. Pietrasiewicz,

Senior Staff Associate Systems and Networks Division.

[FR Doc. 92–14266 Filed 6–17–92; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Simulation, Readiness and Prototyping; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Simulation, Readiness and Prototyping will meet in open and closed sessions on 1 and 2 July, 1992, at the Institute for Defense Analyses, Alexandria, Virginia. The closed session of the meeting is scheduled for the afternoon of 1 July.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will receive briefings on current projects in the area of virtual prototyping, and briefings on information technology trends which have application to the subject of advanced distributed simulation. The closed session of the meeting, scheduled for the afternoon of 1 July, is devoted to the presentation of a classified briefing on a particular Air Force system.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that a portion of this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, that specific portion of the meeting will be closed to the public.

For further information, contact Lieutenant Colonel John Fair at (703) 695–1535.

Dated: June 15, 1992

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–14345 Filed 6–17–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Department of Defense National Agency Questionnaire (NAQ), DD Form 398–2, OMB Control Number 0704–0298.

Type of Request: Revision; expedited submission—approval date requested: 30 days after publication in the Federal Register.

Average Burden Hours/Minutes Per Response: 2.25 hours.

Responses per Respondent: 1.

Number of Respondents: 682,000.

Annual Responses: 682,000.

Annual Burden Hours: 1,534,500.

Needs and Uses: The Department of Defense National Agency Questionnaire (NAQ), DD Form 398–2, is used by the Defense Investigative Service for the purpose of conducting National Agency Checks which provide the basis for determination of a person's eligibility for access to classified information, employment in sensitive positions, and entrance into the Armed Forces.

Affected Public: Individuals or households; Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: June 12, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

BILLING CODE 3810–01–M

DEPARTMENT OF DEFENSE

NATIONAL AGENCY QUESTIONNAIRE (NAQ)

CONTENTS

THE NAQ PACKAGE CONSISTS OF THE FOLLOWING:

1. Privacy Act Statement
2. Authority for Release of Information and Records
3. DD Form 398-2, "Department of Defense National Agency Questionnaire (NAQ)"
4. DD Form 398-2I, "Instructions for Completing the Department of Defense National Agency Questionnaire (NAQ)"

PLEASE BE SURE YOU HAVE ALL PARTS OF THE PACKAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 50 U.S.C. Sections 781-887, Internal Security Act of 1950; 5 U.S.C. Section 9101, Criminal history record information for national security purposes; Executive Order 9397, November 1943 (SSN), Numbering System for Federal Register Accounts Relating to Individual Persons; Executive Order 10450, Security Requirements for Government Employment; Executive Order 10865, Safeguarding Classified Information Within Industry; Executive Order 11935, Citizenship Requirements for Federal Employment; Executive Order 12333, United States Intelligence Activities; Executive Order 12356, National Security Information; and 5 U.S.C. Section 301, Department Regulations.

PRINCIPAL PURPOSES: To obtain background information for personnel security investigative and evaluative purposes to make reliability and security determinations; to allow access to classified information, sensitive areas, or equipment; to ensure that enlistment and retention in the Armed Forces is clearly consistent with national security; or to permit assignment to sensitive national security positions. The data may later be used as part of a review process to evaluate continued eligibility for access to classified information. The Social Security Number will be used to verify identity and locate existing records.

ROUTINE USES: To federal, state, local, or foreign law enforcement authorities if the record indicates, on its face or in conjunction with other records, a violation of law; to federal, state, or local government agencies if necessary to obtain information for a reliability or personnel security determination; to a requesting federal agency concerning its retaining, issuing a security clearance, or making a reliability or personnel security determination concerning assignment to or retention in a sensitive position, or letting a contract; to a congressional office in response to an inquiry made at the request of the individual; to foreign law enforcement, security, investigatory, or administrative authorities to comply with international agreements; to the Office of Personnel Management when necessary to carry out its personnel security functions; to the Department of Justice in pending or potential litigation to which the record is pertinent; to the General Services Administration and National Archives and Records Administration for records management purposes; to the Merit Systems Protection Board for use in administrative proceedings and investigations of possible prohibited personnel practices; to individuals and entities outside the Department of Defense and U.S. Government for counterintelligence activities authorized by federal law or executive order.

DISCLOSURE: Voluntary; however, failure to furnish the requested information may result in our being unable to complete your investigation, which could result in your not being considered for clearance, access, entry into a uniformed service, or assignment to sensitive duties. For contractor personnel, failure to furnish information may result in administrative termination of any existing Industrial Security Clearance to include a contractor-granted clearance.

AUTHORITY FOR RELEASE OF INFORMATION AND RECORDS

I have been provided a Privacy Act Statement advising me that certain information is required to assist the Department of Defense in making a security determination concerning me and that execution of this form is voluntary. The information will be used for the purpose of determining my qualification for employment with the Federal Government, service in the Armed Forces, or access to classified information.

I therefore authorize any duly accredited representative of the Department of Defense, including those from the Defense Investigative Service, to obtain any information relating to my activities from individuals, schools, residential management agents, employers, criminal justice agencies, financial or lending institutions, credit bureaus, consumer reporting agencies, retail business establishments, medical institutions, hospitals or other repositories of medical records. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, personal history, disciplinary, criminal history record, arrest, conviction, medical, psychiatric/psychological, and financial and credit information.

I further authorize the Defense Investigative Service and any other authorized Department of Defense agency, to request criminal history record information about me from criminal justice agencies for the purpose of determining my eligibility for access to classified information, or assignment to, or retention in, sensitive national security duties, in accordance with 5 U.S.C. 9101. I understand that I may request a copy of such records as may be available to me under the law.

I direct you to release such information upon request of the duly accredited representative of any authorized Department of Defense agency regardless of any agreement I may have made with you previously to the contrary.

I have been advised that the original of this authorization will be placed on file with the Department of Defense. This authorization will expire in five (5) years or upon the termination of my affiliation with the Department of Defense, whichever is sooner.

a. TYPED NAME *(LAST, First, Middle Initial)*		b. OTHER NAMES USED
c. DATE OF BIRTH *(YYMMDD)*	d. SOCIAL SECURITY NUMBER	e. CURRENT HOME ADDRESS *(Street, City, State and Zip Code)*
f. HOME TELEPHONE NUMBER *(Include Area Code)*		
g. SIGNATURE		h. DATE SIGNED *(YYMMDD)*

DD Form 398-2, 920604 Draft

DEPARTMENT OF DEFENSE NATIONAL AGENCY QUESTIONNAIRE (NAQ)

Before completing form, read attached Privacy Act Statement and DD Form 398-2I, "Instructions for Completing the Department of Defense National Agency Questionnaire (NAQ)," General and Detailed Instructions.

Items outlined by heavy black line are for Requesting Agency's use only.

Form Approved
OMB No. 0704-0298
Expires Jul 31, 1992

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PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES.
RETURN COMPLETED FORM TO THE INDIVIDUAL OR OFFICE FROM WHICH YOU RECEIVED IT.

A. REQUEST DATE (YYMMDD)	B. TYPE REQUEST (X one)	C. LOCAL FILES CHECKED WITH FAVORABLE RESULTS (X one) (See DD 398-2I, Detailed Instructions) (If "No," explain in Item 16)	FOR DIS USE ONLY
	( ) (1) NAC ( ) (4) Other (Specify) ( ) (2) ENTNAC ( ) (3) SECRET-PR	( ) Yes ( ) No	

D. CODE	E. GOVERNMENT EMPLOYMENT (X one)	F. CITIZENSHIP VERIFIED (X one)
	( ) Yes ( ) No	( ) Yes ( ) No

G. FORWARD THIS REQUEST TO (Include Zip Code)	H. RETURN RESULTS TO (Include Zip Code)

I. REASON FOR REQUEST

- ( ) SECRET
- ( ) CONFIDENTIAL
- ( ) COMMISSION
- ( ) ENLISTMENT
- ( ) NATIONAL GUARD
- ( ) RESERVES
- ( ) ROTC
- ( ) OFFICER CANDIDATE
- ( ) SERVICE ACADEMY
- ( ) PERS RELIABILITY PROGRAM
- ( ) RED CROSS / USO
- ( ) NAFI
- ( ) SUMMER HIRE
- ( ) EDUCATION / ORIENTATION
- ( ) NON-CITIZEN OVERSEAS
- ( ) DOD BUILDING PASS
- ( ) UNESCORTED ENTRY
- ( ) AREA ACCESS
- ( ) SPOUSE / COHABITANT
- ( ) FOREIGN BORN FAMILY MEMBER
- ( ) OTHER (Specify)

( )	REINSTATEMENT	SPECIFY CLEARANCE LEVEL
( )	REVALIDATION	
( )	CONVERSION	
( )	CONCURRENT	

1. NAME

a. LAST, First, Middle (LAST name in all capital letters)	b. Maiden Name (If any)

2. OTHER NAMES USED (LAST, First, Middle) (Include all other names used and dates of use)	3. SOCIAL SECURITY NUMBER (SSN)

4. DATE OF BIRTH (YYMMDD)	5. PLACE OF BIRTH a. City	b. County	c. State	d. Country

6. PHYSICAL CHARACTERISTICS (Complete all blocks)

a. Sex	b. Race	c. Height	d. Weight	e. Hair Color	f. Eye Color

7. STATUS (X a, b, c, d, or e and complete as applicable)

( )	a. Consultant	( )	d. U.S. Government Employee (Complete (1) and (2))	( )	e. Military (Complete (1) - (3))
( )	b. Contractor Employee		(1) Grade		(1) Grade / (2) Branch of Service
( )	c. OODEP		(2) X if Applicant		(3) X if Applicant

8. CITIZENSHIP (See DETAILED INSTRUCTIONS in DD Form 398-2I before completing this item.) (X a, b, or c, and complete as applicable)

( ) a. United States (X (1), (2), (3), (4), or (5))

( ) (1) Born in U.S.
( ) (2) Born abroad of U.S. parents
( ) (3) Naturalized (Complete (a) through (e))
( ) (4) Derived from naturalized parent (Complete (a) through (e))

(a) Certificate Number(s)	(b) Date (YYMMDD)	(c) Place	(d) Court	(e) Alien Registration Number

( ) (5) Dual Citizenship (List country) (See DD Form 398-2I, DETAILED INSTRUCTIONS)

( ) b. United States National (List U.S. Trust Territory or Possession)

( ) c. Alien (Complete (1) through (5)) — (1) Current Citizenship | (2) Registration Number | (3) Petition Number

( ) (4) Intend to become a U.S. citizen? (X one) ( ) Yes ( ) No — (5) Permanent Resident Status? (X one) ( ) Yes ( ) No

9. MILITARY SERVICE (List in chronological order beginning with the most recent period. Include Reserve / National Guard service.)

a. From (YYMMDD)	b. To (YYMMDD)	c. Branch of Service	d. Grade	e. Service Number(s)	f. Type of Discharge	g. Country

10. RESIDENCES *(List in chronological order beginning with current address. Give the inclusive dates for each period of residence.*

a. Current Home Telephone *(Include Area Code)*

If you list a Rural Route address, provide instructions or map for locating that residence. Do not list Post Office Box addresses. See DD Form 398-2I, DETAILED INSTRUCTIONS.)

b. Dates (YYMM)		c. Address				
(1) From	(2) To	(1) Number, Street and Apartment Number	(2) City	(3) State	(4) Zip Code	(5) Country
	Present					

11. EMPLOYMENT / DUTY ORGANIZATION *(List in chronological order, beginning with the present, each period of employment, self-employment, part-time employment, and/or unemployment. List inclusive dates for each period. Also list current Reserve or National Guard Unit. If discharged for cause, so state in Item 14. See DD Form 398-2I, DETAILED INSTRUCTIONS.)*

Yes	No	
		a. **Have you ever been in Federal Civil Service?** *(If "Yes," explain in accordance with DD Form 398-2I, DETAILED INSTRUCTIONS.)*

b. Dates (YYMM)		c. Name of Employer	d. Job Site, Duty Station or Home Port *(Street, City, State and Zip Code)*	e. Immediate Supervisor	
(1) From	(2) To			(1) Name *(LAST, First, Middle Initial)*	(2) Telephone No *(Incl. Area Code)*
	Present				

12. FAMILY / ASSOCIATES *(Give requested data for:*

- *Father, Mother, Spouse, Cohabitant, and Children*
- *All brothers and sisters NOT born in the United States*
- *ALL relatives or friends with whom you, your spouse, or cohabitant have continuing contact or are bound by affection or obligations, IF such persons are residing in, are citizens of, or are employed by or otherwise acting as representatives of ANY foreign country)*

a. Relationship and Name *(LAST, First, Middle Initial)*	b. Present Address *(Street, City, State and Zip Code)*	c. Date of Birth *(YYMMDD)*	d. Place of Birth *(City, State, Country)*	e. Citizenship
(1) Father				
(2) Mother *(Maiden Name)*				
(3) Spouse *(Maiden Name if applicable)*				
(4)				
(5)				
(6)				

13. FOREIGN TRAVEL / CONNECTIONS (X "Yes" or "No" for each question. "Yes" answers must be explained in accordance with DD Form 398-2I, DETAILED INSTRUCTIONS.)	Yes	No
a. Do you have any foreign property, business connections, or financial interests?		
b. Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm, or agency?		
c. Have you ever traveled outside the United States on other than official U.S. Government orders? (Include short trips to Canada or Mexico)		
d. Have you ever had any contact with a foreign government, its establishments (e.g. embassies, consulates), or its representatives, whether inside or outside the U.S., other than on official U.S. Government business?		
e. Do you possess a current U.S. passport or any other passport issued by a foreign government?		

14. REMARKS (You may provide any additional information which you feel may have a bearing or impact on your security eligibility which has not been specifically asked for on this form.)

15. CERTIFICATION BY PERSON COMPLETING FORM. I certify that the entries made by me are true, complete, and accurate to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement or misrepresentation on this form can be punished by fine or imprisonment or both. (See U.S. Code, Title 18, Section 1001.)

a. Typed Name (LAST, First, Middle Initial)	b. SSN	c. Signature	d. Date Signed (YYMMDD)

16. RESULTS OF LOCAL FILES CHECK

FOR INDUSTRIAL REQUESTER ONLY

17. CERTIFICATION. I certify that the above named individual is employed by this company and has the need for the clearance indicated to perform on classified contracts.	a. Contract Number	b. Telephone Number of FSO / Designee (Include Area Code)	
c. Typed Name of FSO / Designee (LAST, First, Middle Initial)	d. Signature		e. Date Signed (YYMMDD)

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Answers to questions in items 18 through 22 are NOT limited to the last 5 years, but pertain to your entire life. *(See DD Form 398-2I, DETAILED INSTRUCTIONS.)*

18. ARRESTS

- *You must list ALL arrest information regardless of whether you have previously listed or disclosed this information or whether the record in your case has been "sealed," expunged, or otherwise stricken from the court record. You must also include all courts-martial or non-judicial punishment (Article 15 UCMJ or Captain's Mast).*
- *The only exceptions are for certain convictions under the Federal Controlled Substances Act (21 U.S.C. 844 or 18 U.S.C. Section 3607) (See DD Form 398-2I, DETAILED INSTRUCTIONS.)*
- *You may exclude minor traffic violations for which a fine or forfeiture of $100 or less was imposed, unless alcohol or drug related.*
- *IF YOU ARE A MILITARY ENLISTMENT APPLICANT: you must list ALL traffic violations.*

Yes	No	
		a. Have you ever been arrested, charged, cited, held, or detained by Federal, State, or other law enforcement or juvenile authorities regardless of whether the charge was dropped or dismissed or you were found not guilty?

b. List details of "Yes" answers. *(If additional space is required, provide details in Item 14.)*

(1) Date *(YYMMDD)*	(2) Nature of Offense or Violation	(3) Name and Location of Law Enforcement Agency *(City and State)*	(4) Name and Location of Court / Magistrate *(City and State)*	(5) Penalty Imposed or Other Disposition in Each Case

19. CREDIT HISTORY

Yes	No	*("YES" answers must be explained in accordance with DD Form 398-2I, DETAILED INSTRUCTIONS.)*
		a. Have you ever filed a petition under any chapter of the bankruptcy code *(to include Chapter 13)*?
		b. Have you ever had your wages garnished or anything repossessed?
		c. Have you ever had a lien placed upon your property for failing to pay taxes?
		d. Do you have any judgments against you which you have not paid?
		e. Are you now or have you been significantly delinquent on debts? *(Paid more than 120 days from scheduled payment due date)*

20. DRUG/ALCOHOL USE AND MENTAL HEALTH *("YES" answers must be explained in accordance with DD Form 398-2, DETAILED INSTRUCTIONS.)*		
Yes	No	
		a. Have you ever tried or used or possessed any narcotic *(to include heroin or cocaine)*, depressant *(to include quaaludes)*, stimulant, hallucinogen *(to include LSD or PCP)*, or cannabis *(to include marijuana or hashish)*, or any mind-altering substance *(to include glue or paint when inhaled for psychedelic purposes)*, even one-time or on an experimental basis, except as prescribed by a licensed physician?
		b. Have you ever been involved in the illegal purchase, manufacture, trafficking, production, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis?
		c. Have you ever misused or abused any drug prescribed by a licensed physician for yourself or for someone else?
		d. Has your use of alcoholic beverages *(such as liquor, beer, wine)* ever resulted in the loss of a job, disciplinary action, arrest by police, or any alcohol-related treatment or counseling *(such as for alcohol abuse or alcoholism)*?
		e. Have you ever been treated for a mental, emotional, psychological, or personality disorder/condition/problem?
		f. Have you ever consulted or been counseled by any mental health professional?

21. ORGANIZATIONS *("YES" answers must be explained in accordance with DD Form 398-2, DETAILED INSTRUCTIONS.)*		
Yes	No	Are you now or have you ever been affiliated with any organization, association, movement, group, or combination of persons which:
		a. Advocates the overthrow of our constitutional form of government?
		b. Advocates or approves the commission of acts of force, violence, coercion, or intimidation to deny persons their rights under the Constitution of the U.S.?
		c. Seeks to alter the form of government of the United States by force, violence, or other unconstitutional means?
		d. Advocates or engages in the disruption or halting of U.S. government activities through force, violence, or infiltration of the government service?

22. SECURITY CLEARANCE

Yes	No	a. Have you ever held a security clearance, to include a contractor-granted Confidential? *(If "YES," give details below.)*			
		(1) Level	(2) Date Granted *(YYMMDD)*	(3) Granted By	(4) Name of Employer
		b. Have you ever had a security clearance denied, suspended or revoked? *(If "YES," give details in Item 14.)*			
		c. In the past five years, have you been investigated by the Federal Government for a security clearance or sensitive position? *(If "YES," give details below.)*			

(1) Date *(YYMM)*	(2) Investigating Agency	(3) Employer Who Requested Investigation

23. CERTIFICATION BY PERSON COMPLETING FORM.

I certify that the entries made by me are true, complete, and accurate to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. *(See U.S. Code, Title 18, Section 1001.)*

a. Typed Name *(LAST, First, Middle Initial)*	b. SSN	c. Signature	d Date Signed *(YYMMDD)*

INSTRUCTIONS FOR COMPLETING THE DEPARTMENT OF DEFENSE NATIONAL AGENCY QUESTIONNAIRE (NAQ)

CONTENTS

THE NAQ INSTRUCTIONS PACKAGE CONSISTS OF THE FOLLOWING:

1. General Instructions
2. Detailed Instructions
3. Listing of Reportable Drugs

PLEASE BE SURE YOU HAVE ALL PARTS OF THE PACKAGE.

GENERAL INSTRUCTIONS

AUTHORITY FOR RELEASE OF INFORMATION AND RECORDS.

You must read the Privacy Act Statement and the "Authority for Release of Information and Records." Sign and date the authorization. Completion of the authorization is voluntary; however, failure to authorize the release of records may result in our being unable to complete your investigation. The "Authority for Release of Information and Records" must not be altered.

COMPLETING THE NATIONAL AGENCY QUESTIONNAIRE (NAQ).

The NAQ is an important document and must be completed without misstatement or omission of important facts. Failure to provide all requested information will significantly delay your investigation. All entries are subject to verification by investigation. **All items on the NAQ must be completed.** A knowing and willful false statement on the NAQ can be punished by a fine or imprisonment or both.

- Before entering any information on the NAQ, carefully read the General Instructions and Detailed Instructions in this form, and the Privacy Act Statement provided with the NAQ.
- **If the form is being completed for a spouse, cohabitant, or a foreign-born immediate family member of Subject, complete only Items 1 through 6 and Item 8, unless the spouse, cohabitant, or any immediate family member was born abroad of U.S. parents. If so, complete Item 12(a), (b), (c), (d), and (e) on the mother and father of that individual. It is not necessary to complete Items 15 and 23 when completing the form for a spouse, cohabitant or foreign-born family member.**
- For Items 10 and 11, provide information in these items for the last 5 years; however, if you are under the age of 21, the time period is the last 3 years or the period since your 16th birthday, whichever is shorter.
- For all other items, complete without regard to time.
- **All questions must be answered. Omissions, gaps, errors, or incomplete items may result in long investigative or processing delays.**
  - Do not indicate on the form that certain information can be obtained from another source. Take the time to obtain information not readily available. If requested information cannot be provided, state the reason.
  - **If an item does not apply, enter "None" or "Not Applicable," as appropriate.**
  - If you do not know dates of employment or residence precisely, provide the dates to the best of your memory and follow with "est." for "estimated" or "app." for "approximately." Do not use the term "unknown."
  - If an entry refers to a current or formerly divided country, specify whether East or West, North or South.
  - If additional space is required for any item, use Item 14 and, if needed, additional sheets of paper. (See Detailed Instructions for Item 14.)

Before signing the NAQ, ensure that each item is checked against the Detailed Instructions for that item and that the completed NAQ is carefully read. If you have a question about the NAQ that is not answered by the Detailed Instructions, contact the person or office that gave you the NAQ.

- Unless otherwise specified:
  - List all dates using the last two digits of the year and the two-digit numbers representing the month and day (e.g. May 1992 would be entered as 9205; 1 May 1992 would be entered as 920501.)
  - Names of persons will be entered in the following order: Last name, first name, and middle initial. The last name will appear in all CAPITAL LETTERS.
  - Addresses must include the number and street, city, state, and zip code, or country as appropriate. Attach a sketch map or detailed directions for rural or difficult to locate addresses in the United States.
  - All items on the form must be completed in chronological order beginning with the present or most recent and working backwards.
  - Telephone numbers must include the area code.

GENERAL INSTRUCTIONS

- The NAQ must be typed (electronically generated forms are acceptable), unless a waiver has been granted.
- You must sign the original NAQ.
  - For initial investigations an original NAQ and one copy is required. For Secret Periodic Reinvestigations an original NAQ and four copies are required. Forms and copies should be given to the person or office that gave you the form. Copies may be photocopies of the original NAQ. All copies must be complete reproductions that include signatures (signatures on the copies do not have to be original). It is recommended that an extra copy be prepared and retained for your personal records.
  - For contractor conversions, revalidations, reinstatements, or concurrent clearances*, an original NAQ must be submitted to DISCO.
  - "Reinstatement" means reactivating a personnel clearance that was terminated because the individual terminated employment with the contractor or another contractor.
  - "Revalidation" means reactivating a personnel clearance that was administratively terminated by the contractor; the individual is still employed by the contractor.

  * All references to conversions, revalidations, reinstatements or concurrent clearances pertain only to contractor employees.
- If the Electronic National Agency Questionnaire is utilized:
  - The requester must retain the original signed copy of the printed DD Form 398-2 until the clearance processing is complete. This signed copy shall be released to DIS upon request. When an applicant is terminated while the clearance is in process, the requester must retain the original signed copy of the form for one year subsequent to the date of termination.
  - As a contractor employee, if you elect to submit Pages 6 and 7 in a sealed envelope, the Electronic NAQ will not be used.

DETAILED INSTRUCTIONS

All items must be completed in their entirety.

ITEMS A THROUGH I AND ITEM 16 MUST BE COMPLETED BY ALL REQUESTING AGENCIES OR CONTRACTORS AND ITEM 17 MUST BE COMPLETED BY ALL CONTRACTORS.

ITEM A.

Enter the date of the request in year, month, day order. April 1, 1992, should be shown as 920401.

ITEM B.

Mark the appropriate block for the type of request.

ITEM C.

Mark the appropriate block. In the event there is derogatory information on file, list this information in Item 16 and attach a copy whenever possible. Local files are defined in Detailed Instructions for Item 16. Explain "No" answers in accordance with the instructions provided in Item 16.

ITEM D.

Enter the Unit Identification Code (UIC) or Personnel Accounting System (PAS) code. Contractors should enter the Commercial and Government Entity (CAGE) code.

ITEM E.

Current Federal Government employment. Mark "Yes" or "No." (Does not refer to military service.)

ITEM F.

Citizenship verified. Mark "Yes" or "No."

ITEM G.

For DoD Military and DoD Civilian enter:

Defense Investigative Service
Personnel Investigations Center
P. O. Box 1083
Baltimore, Maryland 21203-1083

For contractors enter:

Defense Industrial Security Clearance Office
P. O. Box 2499
Columbus, Ohio 43216-5006

ITEM H.

Enter the name of the organization and mailing address that the investigation should be sent to upon completion. All contractor investigations will be returned to the Defense Industrial Security Clearance Office (DISCO).

ITEM I.

Mark the appropriate block indicating reason for request. If form is used for contractor conversions, revalidations, reinstatements or concurrent clearances, indicate in the shaded area the security classification of the material or information to which the employee will have access. (Specify DOE or NRC "Q" or "L" conversions to TS / S / CONF in shaded area.)

DETAILED INSTRUCTIONS
All items must be completed in their entirety.

ITEMS 1 THROUGH 15 AND 18 THROUGH 23 SHALL BE COMPLETED BY THE APPLICANT.

ITEM 1 - NAME.

a. LAST, First, Middle. List your name in the following order: LAST NAME, first name, and complete middle name; LAST NAME IN ALL CAPITAL LETTERS. Names should agree with military and/or civilian employment records; if not, explain in Item 14.

- If you have no middle name, enter "NMN."
- Include additional designations, such as Jr., Sr., II (2nd), III (3rd), when applicable.
- If your name consists of initial(s) only, enter the appropriate initial(s) followed by "(IO)."
- Make sure your name appears the same in all name blocks on the NAQ and all other documents, attachments, etc., you submit with the NAQ. In signature blocks, a middle initial is acceptable in lieu of the full middle name.

b. Maiden Name. Enter if applicable.

ITEM 2 - OTHER NAMES USED.

List any other name by which you are or have been known. Include former names, changes in names, nicknames, or variant spellings used. If the name has changed, explain, in Item 14, why, when, and where such change took place. List the inclusive dates all other names were used.

ITEM 3 - SOCIAL SECURITY NUMBER.

Copy exactly as on your Social Security card. List ALL Social Security Numbers you have ever used.

ITEM 4 - DATE OF BIRTH.

Give the year, month, and day of your birth using the last two digits of the year, the two-digit number for the month, and the two-digit number for the day (e.g., October 30, 1948, would be entered as 481030).

ITEM 5 - PLACE OF BIRTH.

List your place of birth in the following order:

a. City. Do not abbreviate.

b. County. Do not abbreviate.

c. State. Use the two-letter abbreviation.

d. Zip Code. Self-explanatory.

e. Country. If other than the U.S.

ITEM 6 - PHYSICAL CHARACTERISTICS.

a. Sex. Enter "Male" or "Female."

b. Race. Enter one of the following, as appropriate.

- **AI / AN - American Indian or Alaskan Native.** Persons originating in North America and who maintain cultural identification through tribal affiliation or community recognition.
- **ASN / PI - Asian or Pacific Islander.** Persons originating in the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This includes China, India, Japan, Korea, the Philippine Islands, and Samoa.

ITEM 6 - PHYSICAL CHARACTERISTICS. *(Continued)*

- **BLK - Black.** Persons originating in any of the black racial groups of Africa.
- **HISP - Hispanic.** Persons originating in Mexico, Puerto Rico, Cuba, Central or South America, or any other Spanish culture or origin, regardless of race.
- **WHITE.** Persons originating in any of the original peoples of Europe, North Africa, or the Middle East.

c. Height. Enter height in feet and inches.

d. Weight. Enter weight in pounds.

e. Hair Color. Self-explanatory.

f. Eye Color. Self-explanatory.

ITEM 7 - STATUS.

Mark one of the following:

a. Consultant.

b. Contractor Employee.

c. OODEP (Owner, Officer, Director and/or Executive Personnel who are required to be cleared to obtain or retain facility clearance).

d. U.S. Government Employee. List grade or wage scale. If you are an applicant for a Federal Civil Service position, mark block (2).

e. Military. List pay grade and branch of service. If you are a Reserve or National Guard member and if your unit is requesting this investigation, mark this block only. If you are an applicant for entry into the U.S. military, mark block (3).

ITEM 8 - CITIZENSHIP.

a. United States Citizen. Mark Block a., and either block (1), (2), (3), (4), or (5). If block (2) is marked, you must provide place of initial entry into the U.S. and indicate location of birth registration with the U.S. authorities in Item 14. If you received a Certificate of Citizenship, list the certificate number and date of issuance by the Immigration and Naturalization Service. If either block (3) or (4) is marked, (a) through (e) must be completed.

(a) Certificate Number(s). If naturalized or derived, provide naturalization certificate number.

(b) Date. List date naturalization or derived citizenship certificate was issued.

(c) Place. List city and state where naturalization or derived citizenship certificate is recorded.

(d) Court. List the name of the court where naturalization or derived certificate is recorded.

(e) Alien Registration Number. Self-explanatory.

If block (5) is marked, indicate in Item 14 the name of the other country in which you hold citizenship. Also, explain the circumstances of how you hold dual citizenship. If you possess a passport from another country, provide details in Item 14. (See Item 13.e.)

DETAILED INSTRUCTIONS
All items must be completed in their entirety.

ITEM 8 - CITIZENSHIP. *(Continued)*

b. United States National. For personnel security purposes, includes persons born in American Samoa, Federated States of Micronesia, or the Republic of the Marshall Islands.

c. Alien. Complete blocks (1) through (5).

(1) Current Citizenship. List the country of which you are currently a citizen.

(2) Registration Number. If you have not been granted permanent resident status, provide your type of visa in this block.

(3) Petition Number. Self-explanatory.

(4) Intend to become a U.S. citizen? Mark the appropriate block. If "Yes," and you have made application for citizenship, list date and place of application. If "No," explain in Item 14 the reason why you do not intend to become a U.S. citizen.

(5) Permanent Residence Status? Mark the appropriate block.

ITEM 9 - MILITARY SERVICE.

Complete blocks a. through g. Indicate date of first enlistment and date of final discharge for each branch of service if you had continuous duty. If you had break(s) in duty, each separate period should be listed. If additional space is needed, use Item 14.

Officers who have prior enlisted, warrant, or reserve service should list each of these periods separately. Reserve or National Guard service will be shown in this item. If more room is needed, provide the information in Item 14. The most recent period should be listed first.

a. From. Enter date service began.

b. To. Enter date service ended. (If currently on active duty enter "present" for the latest entry and appropriate ending dates for all other periods of service.)

c. Branch of Service. List the appropriate branch of service.

d. Rank. List your current rank or rank held on the date of discharge for each period of service.

e. Service Number(s). If you entered the U.S. Armed Forces after January 1970, your service number is the same as your Social Security Number. If you entered the U.S. Armed Forces before January 1970, enter both your Social Security Number and your original service number.

f. Type of Discharge. Indicate if you are currently on active duty. If you have been discharged, list type of discharge. If you received anything other than an Honorable Discharge (even if it has now been changed), provide a full statement regarding the circumstances surrounding the discharge. If your discharge has been updated, provide information regarding the change, including the date it occurred, in Item 14.

g. Country. If service was with other than the U.S. Armed Forces, list appropriate country (explain in Item 14).

ITEM 10 - RESIDENCES.

- List residences for last 5 years.
- Do not furnish information prior to your 16th birthday.
- IF ANY PERIOD OF RESIDENCE WAS OUTSIDE THE U.S., provide the names and addresses of two individuals (preferably currently living in the U.S.), who can verify the period of residence outside the U.S. through personal knowledge. This information should be listed in Item 14.

a. Current Home Telephone. Self-explanatory.

b. Dates. Give the inclusive dates for each period of residence. Dates of residence must be consecutive and without breaks for the entire period. If there is a break in the dates, an explanation must be provided in Item 14.

c. Address.

(1) Number, Street and Apartment Number. Do not list a permanent mailing address or family residence in this item unless you actually resided at that address during the period listed. Furnish residence address in local community or on base/ installation while in military service.

- If you resided in an apartment complex in the last 5 years, list the name of the complex in Item 14.
- If you have been assigned to any temporary duty location for 90 days or longer within the investigative period, you must list your residence(s) during that temporary duty.
- If the residence was on a military installation, provide location where you resided.
- List the actual place of residence while attending school. Do not list merely the name of the school or "On Campus" as a place of residence.
- If you received mail at a Post Office Box address, do not list the Post Office Box; list your actual residence address.
- If you give a metropolitan address (e.g. New York, Los Angeles), list the borough or suburb.
- A sketch map or detailed instructions must be appended if you now reside or have in the past resided in a rural or difficult to locate address.

(2) City. Do not abbreviate.

(3) State. Use the two-letter abbreviation.

(4) Zip Code. Self-explanatory.

(5) Country. Do not abbreviate.

DETAILED INSTRUCTIONS
All items must be completed in their entirety.

ITEM 11 - EMPLOYMENT / DUTY ORGANIZATION.

List, beginning with the present, each period of employment (to include part-time employment, self-employment and unemployment) for the required number of years. Also list current Reserve or National Guard unit.

- List employment, self-employment, or unemployment information for the last 5 years.
- Do not furnish information prior to your 16th birthday.
- If self-employed or unemployed and not attending school full time during any period, list, in Item 14, the name and current address of an individual who can verify your activities during the unemployment/self-employment period.
- IF ANY PERIOD OF EMPLOYMENT WAS OUTSIDE THE U.S., list, in Item 14, the names and addresses of two individuals (preferably currently living in the U.S.) who can verify the period of employment outside the U.S. through personal knowledge.
- For contractors, if a pre-employment clearance is being submitted in accordance with the Industrial Security Manual, the current employment listed in Item 11 would not be that of the facility to which the applicant is seeking employment and the remarks section should so indicate. If the physical location of the employment is different from the location of the requesting facility, Item 11 should reflect the applicant's physical location. You should indicate, in Item 14, the name of the company requesting this investigation and that a pre-employment clearance is the purpose of the investigation.

a. Federal Service. If "Yes," list in Item 14 the inclusive dates of service and name and address of last organization. If listed in 11.c, so indicate.

b. Dates. Provide the inclusive dates for each period of employment, part-time employment, self-employment, unemployment, and current Reserve or National Guard service. All time periods must be covered. If you worked for two different employers at the same time, list both. Dates of employment must be consecutive and without breaks for the entire period. If there is a break in dates, an explanation must be provided in Item 14.

c. Name of Employer. Civilian employees and applicants should provide the name of the employing organization. Military personnel should identify each unit, organization, or station to which assigned. If self-employed during any period, list the name and address of the business. If any period of employment was for a temporary help supplier, list only the temporary help supplier as the employer, even though work may have been performed at different locations with client companies. If employed through a union hiring hall, list firms by which employed. Do not list the union as an employer unless your salary was, in fact, paid by the union.

ITEM 11 - EMPLOYMENT / DUTY ORGANIZATION. *(Continued)*

d. Job Site, Duty Station or Home Port. Provide the address (include Zip Code) for each employment listed. If any period of employment was in a large metropolitan area (e.g., New York, Chicago, Los Angeles), include the borough or suburb.

If employed by a large manufacturing concern (i.e. Chrysler or General Motors Corporation in Detroit, Michigan), give the specific name and address of the plant where you worked. List, in Item 14, the complete address of the location of your employment records if it is different from the address of the job site or duty station. List any temporary duty locations totalling 90 days or longer within the required period.

e. Immediate Supervisor.

(1) Name. List LAST NAME, first name, and middle initial.

(2) Telephone Number. List the area code and work telephone number of the supervisor.

ITEM 12 - FAMILY / ASSOCIATES.

Provide the information listed below for:

- Your parents (natural, adoptive, foster or step), guardian(s), spouse, cohabitant, children, stepchildren, and adopted children.
- All brothers and sisters (by birth, adoption or remarriage of either parent) **NOT** born in the United States.
- All relatives or friends to whom you, your spouse, or cohabitant are bound by affection or obligations IF such persons are residing in, are citizens of, or are employed by or otherwise acting as representatives of any foreign country.

a. Relationship and Name. Provide the individual's relationship to you (if not already provided on the form), and name. Include maiden name of mother and spouse, if applicable.

b. Present Address. Provide the current address of each person listed. If person listed is dead, enter "Deceased."

c. Date of Birth. Provide date of birth for all persons listed in terms of year, month, and day using the last two digits of the year, the two digit number for the month and the two digit number for the day (e.g., October 30, 1948, would be entered as 481030).

d. Place of Birth. List city and state or country (if other than the U.S.).

e. Citizenship. Enter citizenship of each person listed. Additionally, provide, in Item 14, naturalization information as in Item 8.a., or alien registration information as in Item 8.c., for all listed foreign-born relatives. Alien registration information must include the alien registration number and the date the card was issued.

DETAILED INSTRUCTIONS
All items must be completed in their entirety.

ITEM 13 - FOREIGN TRAVEL / CONNECTIONS.

a. Foreign Connections. Mark the appropriate block. If "Yes," explain in Item 14 the nature and extent of your foreign property interests, business connections and/or financial/property interests, to include details of ownership, nature of business for each foreign firm, details of ownership for each foreign entity, and/or monetary amounts involved in financial interest.

b. Foreign Employment. Mark the appropriate block. If employed by, previously acting or currently acting as a consultant, identify the foreign government, firm, or agency and describe the nature of employment or relationship. Provide, in Item 14, inclusive dates of all such employment(s) or relationship(s). In addition, if such employment or relationship is current, provide:

- Details of ownership for each foreign entity.
- The percentage of time devoted to each foreign entity.
- For the position requiring this security clearance or investigation, provide a summary of your duties with the U.S. firm submitting your NAQ.
- Product or service of that U.S. firm.
- Summary of your duties with the foreign entity, to include nature of product or service.

c. Foreign Travel. Mark the appropriate block. List, in Item 14, inclusive dates of travel for each country visited and the purpose of the travel. Travel to Canada or Mexico must be listed. Travel on official U.S. Government orders may be omitted. However, you must list all travel outside the sphere of your official duty location. Include all travel while in leave status to any country outside the U.S.

(NOTE: Foreign travel as a military dependent or U.S. Government contractor is not considered as "under official U.S. Government orders.")

If during any of your travels you established a residence in a foreign country, provide the exact address, unless previously listed under Item 10.

If you established a residence in a foreign country to meet citizenship requirements for that country, explain in Item 14.

If you have lived near the border with another country and you have made short (one day or less) trips to that neighboring country, you do not need to list each trip. Instead, list:

- The time period over which the trips were made.
- The fact that numerous trips were made.
- To what country the trips were made.
- The purpose(s) of the trips, such as sightseeing, shopping, etc.

ITEM 13 - FOREIGN TRAVEL / CONNECTIONS.
(Continued)

d. Foreign Contact. Mark the appropriate block. If "Yes," provide the following information:

- Date(s) of contact.
- Identity of government, establishment, or representative contacted.
- Location of contact.
- Purpose of contact.
- Means of contact (e.g. in person, by telephone, written correspondence).

e. Passport. If you possess a current passport issued by the U.S. Government or have ever been issued a passport from a foreign country, provide the following in Item 14:

- Name of country issuing passport.
- Date passport was issued.
- Circumstances under which you qualify to hold that passport.

ITEM 14 - REMARKS.

Use this space for the continuation of those items where insufficient space was provided or to provide additional pertinent information. If necessary, attach additional sheets and indicate "See Attached Sheet(s)" at the end of the "Remarks" section. When using the "Remarks" section or attaching additional sheets, always identify the item number being continued and follow the format for entering information as prescribed on the NAQ and in the instructions. If additional space is required, continue on a plain sheet of 8½" by 11" paper; in the top left hand corner of the paper, enter your full name, date, and Social Security Number, and the phrase "Continuation Sheet - DD Form 398-2." Sign and date the bottom of each page.

ITEM 15 - CERTIFICATION BY PERSON COMPLETING FORM.

You should carefully review the portion of the form you have completed to ensure that you have answered all items and that it is accurate in all details. If you have not yet signed the authorization for release of information and records, do that now. You must fully understand the implication of certifying to a false statement. When you are satisfied that it is complete, sign and date the certification, and sign and date all attachments. (For contractor conversions, attach DD Form 214 or SF 50, as appropriate.)

DETAILED INSTRUCTIONS
All items must be completed in their entirety.

ITEM 16 - RESULTS OF LOCAL FILES CHECK.

To be completed by ALL REQUESTERS. See Item C.

A local files check consists of a review of any available records maintained by or for the military or employing agency/activity concerning its personnel. Such records are local in the sense that they do not constitute a central file maintained by the component. This check does not include state and local law enforcement records; legal and legal assistance files, special program files, and civilian medical files.

Examples are organization, management, performance, supervisor files; personnel, disciplinary, performance, counseling files; military medical files; security, law enforcement and intelligence indices or files maintained at the organization or component.

If no local records are available, the reason that no records are maintained (i.e. that the individual is an applicant, summer hire, the company/component maintains no records, etc.) should be explained in Item 16.

ITEM 17 - CERTIFICATION BY CONTRACTOR.

The Facility Security Officer (FSO) or a designee must complete this block. (Requests for conversion, reinstatement, or revalidation of Top Secret clearances must be signed by FSO or another cleared OODEP.)

a. Contract Number. Enter the number of the contract for which the clearance is being requested.

b. Telephone Number of FSO / Designee. Self-explanatory.

c. Typed Name of FSO / Designee. Self-explanatory.

d. and e. Signature of FSO / Designee and Date Signed. Sign that the security clearance is required, and date.

ANSWERS TO ITEMS 18 THROUGH 22 ARE NOT LIMITED TO THE LAST 5 YEARS, BUT PERTAIN TO YOUR ENTIRE LIFE.

FOR CONTRACTOR PERSONNEL ONLY:

- If you prefer, pages 6 and 7 may be detached, completed in private, placed in a sealed envelope, and given to security personnel with the other pages of your form. If you decide to choose this option, sign and date the form before placing it in a sealed envelope.
- If you choose this option, it is important that you carefully read the Detailed Instructions for Items 18 through 22 and follow them completely since these questions will not be reviewed by your security personnel.
- Failure to provide all required information will result in further processing delays.
- If you choose the option of completing these items in private and additional space is required to answer them, do not use the "Remarks" section (Item 14). Instead, continue your answer on a plain sheet of 8½" x 11" paper; in the top left corner of the paper, enter your full name and Social Security Number and the phrase "Continuation Sheet - DD Form 398-2." Sign and date each addendum page. Place the completed addendum page(s) in the sealed envelope with pages 6 and 7 and give them to security personnel with the other pages of your form.

ITEM 18 - ARRESTS.

Regardless of the outcome of the incident or when it occurred, if the answer to Item 18 is "Yes," it must be explained completely. If you were adjudicated a youthful offender or juvenile delinquent and the record has been "sealed," expunged, or stricken from the court record, you must still answer "Yes," and provide the required information in Item 18.b. with the following exception:

ITEM 18 - ARRESTS. *(Continued)*

If you have been found guilty of a federal offense under Section 404 of the Controlled Substances Act (21 U.S.C. 844) and, subsequent to such a finding, the court issued an expungement order under the authority of either 21 U.S.C. Section 844 or 18 U.S.C. Section 3607, then you need not report the arrest or disposition information on your NAQ. This, however, is the only exception to this reporting requirement.

NOTE: FOR MILITARY ENLISTMENT APPLICANTS ONLY: You must list, in Item 18, all traffic violations regardless of what type of violation or amount of fine. If additional space is required, use Item 14.

WHEN IN DOUBT AS TO THE NECESSITY FOR LISTING INFORMATION IN THIS ITEM, IT IS RECOMMENDED THAT INCIDENTS BE LISTED TO PRECLUDE FUTURE QUESTIONS REGARDING OMISSIONS FROM THE FORM. IF AN INCIDENT WAS LISTED ON A PREVIOUSLY SUBMITTED NAQ, IT IS STILL REQUIRED TO BE LISTED ON THE CURRENT NAQ.

a. Mark either "Yes" or "No." If "Yes," provide the following clarifying information in Item 18.b:

b. Details.

(1) Date. Provide date(s) of arrest(s) or charge(s).

(2) Nature of Offense or Violation. Any action that resulted in the placement of your name on a police or court record must be listed, including any act committed while still a juvenile or if you were considered a "Juvenile Offender." Give a docket number or indictment number in addition to charge, if known. List all Article 15, UCMJ, or Captains' Mast if they resulted in fines, restrictions, demotions, etc. DO NOT LIST PENAL CODES. THE ACTUAL OFFENSE OR VIOLATION MUST BE STATED.

DETAILED INSTRUCTIONS
All items must be completed in their entirety.

ITEM 18 - ARRESTS. *(Continued)*

(3) Name and Location of Law Enforcement Agency. Enter the name of the law enforcement agency and its location (city or county and state, or country if not in the U.S.):

(4) Name and Location of Court/Magistrate. Enter the name of the court/magistrate and its location (city or county and state, or country if not in the U.S.). If the case did not go to court, mark "None."

(5) Penalty Imposed or Other Disposition in Each Case. Provide details as to the outcome of the action against you. If you were granted probation before judgment, if the charges were nolle prosequi, dismissed or waived, or if any penalty was imposed, give details. If you spent any time in jail, prison, reform or industrial school or any juvenile facility or institution, list in Item 14 the location and duration of your confinement. If you are currently under a suspended sentence, parole, probation, or are awaiting any action on charges against you, that information should be indicated.

ITEM 19 - CREDIT HISTORY.

If any "Yes" block is marked in Items a through e, list in Item 14 the information indicated below:

a. Bankruptcy.

- Name and location of court where bankruptcy petition was filed.
- Provide bankruptcy petition number and name under which bankruptcy is filed.
- Date of filing.
- If bankruptcy is pending, the date the petition will be heard.
- Date of bankruptcy discharge, if known.

b. Wages Garnished/Repossessions.

- Date(s) and amount(s) of garnishment(s) and/or repossession(s).
- Name and location of individual(s) or organization(s) involved.
- Total amount of debt which resulted in garnishment or amount of debt remaining after repossession.
- Date of debt repayment, if any.

c. Tax Liens.

- Date(s) and amount(s) of lien(s).
- Name and location of court where lien was filed against you.
- Identity of taxing authority which filed the lien.
- Date of lien release, if any.

ITEM 19 - CREDIT HISTORY. *(Continued)*

d. Unpaid Judgments.

- Date(s) and amount(s) of judgment(s).
- Name and location of court where judgment was filed against you.
- Identity of person(s) or business(es) filing judgment.

e. Delinquent Debts.

- Name and address of creditor(s) involved.
- Dollar amount(s) past due.
- Length(s) of time past due.
- Date(s) of delinquency.

ITEM 20 - DRUG / ALCOHOL USE AND MENTAL HEALTH.

If "Yes" is answered to any of the questions in this item, describe the circumstances in Item 14, in accordance with the following explanations. If necessary, attach additional sheets for a full detailed statement. Sign and date each addendum page.

a. Drug Use / Possession. A listing of those drugs which have been designated as controlled substances is located on the last page of these instructions. If you used any of these drugs, or any other mind-altering substances, mark "Yes" and provide, in Item 14, the following details:

- Drug(s) used/possessed.
- Date(s) of use/possession, specifying last date used/possessed.
- Frequency of use/possession.
- Intentions regarding future use/possession.
- City and state (or country if not in U.S.) where used/possessed.
- Circumstances surrounding use/possession.

IF MORE THAN ONE DRUG HAS BEEN USED / POSSESSED, PROVIDE THE INFORMATION ABOVE FOR EACH DRUG SEPARATELY.

b. Drug Activity. The drugs referred to are again those listed on the attachment, or any other mind-altering substances. If "Yes," you must indicate on the NAQ the activity (or activities) in which you were involved by circling "purchase," "manufacture," "trafficking," "production," or "sale," and provide, in Item 14, the following details:

- Drug(s) involved.
- Date(s) of Activity.
- Number of times you participated in activity.
- Current activity.
- Intentions regarding future activity.
- City and state (or country if not in U.S.) where activity took place.
- Circumstances surrounding activity.

AGAIN, IF MORE THAN ONE DRUG HAS BEEN USED/ POSSESSED, PROVIDE THE INFORMATION ABOVE FOR EACH DRUG SEPARATELY.

DETAILED INSTRUCTIONS
All items must be completed in their entirety.

ITEM 20 - DRUG / ALCOHOL USE AND MENTAL HEALTH. *(Continued)*

c. Abuse of Prescribed Drugs. The drugs referred to are any medication prescribed either for you or for someone else by a licensed physician, which you abused by taking other than as prescribed. If "Yes," please provide, in Item 14, the following details:

- Drug(s) involved.
- Date(s) of use, specifying last date used.
- Frequency of use.
- Intentions regarding future use.
- City and state (or country if not in U.S.)
- Circumstances surrounding use and/or any other involvement such as illegal sale or distribution.

AGAIN, IF MORE THAN ONE DRUG IS INVOLVED, PROVIDE SPECIFIC INFORMATION FOR EACH DRUG SEPARATELY.

d. Alcohol Abuse. If "Yes," you must indicate on the NAQ the activity (or activities) in which you were involved by circling "loss of a job," "disciplinary action," "arrest by police," or "any alcohol-related treatment or counseling." Explain, in Item 14, the circumstances of each incident as follows:

- If loss of a job, provide name and address of employer, and dates of employment.
- If disciplinary action, provide dates, locations, and final disposition of each incident.
- If arrested by police, provide information as in Item 18.b. If already explained, state, "Refer to Item 18.b."
- If you received treatment or counseling for alcoholism or alcohol abuse, provide name and address of treatment/counseling facility, dates of treatment/counseling, name and office address of physician/counselor or other individual who provided treatment/ counseling.

e. and f. Mental Health. If "Yes" is answered to either e. or f., provide, in Item 14, the following information:

- Exact problem (including name of disorder, if known).
- Name and address of primary physician, therapist, counselor, or other mental health professional who treated you or from whom you received counseling.
- Date(s) of treatment/counseling.
- If treatment/counseling is still continuing, so indicate and provide frequency of visits.
- Name and address of any hospital, clinic, and/or agency where treated/counseled as an in-patient or out-patient.
- Date(s) of hospitalization and/or in-patient/out-patient treatment/counseling.

ITEM 21 - ORGANIZATIONS.

If "Yes" is answered, provide the full name of the organization and the circumstances of your membership or affiliation. Include in your statement the dates, places, offices, positions, or credentials now or formerly held. If associations have been with individuals who are members of the described organizations, then list the individuals and the organization with which they were or are affiliated.

ITEM 22 - SECURITY CLEARANCE.

a. Have you ever held a security clearance? Mark appropriate block. If you have held a contractor-granted CONFIDENTIAL security clearance, mark "Yes."

(1) Level. List TOP SECRET, SECRET, or CONFIDENTIAL.

(2) Date Granted. Enter the date the security clearance was granted.

(3) Granted By. Enter the name of the organization or activity that granted the security clearance.

(4) Name of Employer. Enter the name of the organization or contractor who was your employer at the time the last personnel security clearance was held.

b. Have you ever had a security clearance or access denied, suspended, or revoked? Mark appropriate block. If "Yes," provide full details of the suspension, denial, or revocation in Item 14, to include level of security clearance or access, date of suspension, denial or revocation, as well as the name and address of the organization/ employer who took the action. NOTE: An administrative downgrade or termination of a security clearance is not a revocation.

c. Within the past 5 years, have you been investigated by the Federal Government for a security clearance or sensitive position? Mark appropriate block. If "Yes," include information on pending investigations and investigations conducted by the Federal government within the last five years for the purpose of making a security clearance determination or for placement in a sensitive position. List the date of the investigation, the name of the government agency that conducted or is conducting the investigation, and the name of the employer who requested the investigation.

ITEM 23 - CERTIFICATION BY PERSON COMPLETING FORM.

You should carefully review the form to ensure that you have answered all items and that the form is accurate in all details. You must fully understand the implication of certifying to a false statement. When you are satisfied that the form is complete, sign and date the original NAQ in ink along with any attachments. Return the completed and signed form to the office that gave it to you.

DRUGS TO BE REPORTED WHEN COMPLETING DD FORM 398-2

NARCOTICS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
Opium	Dover's Powder, Paregoric
Morphine	Morphine
Codeine	Codeine
Heroin	None
Meperidine (Pethidine)	Demerol, Pethadol
Methadone	Dolophine, Methadone, Methadose
Other Narcotics	Dilaudid, Leritine, Numorphan, Percodan

DEPRESSANTS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
Chloral Hydrate	Noctec, Somnos
Barbiturates	Amytal, Butisol, Nembutal, Phenobarbital, Seconal, Tuinal
Glutethimide	Doriden
Methaqualone	Optimil, Parest, Quaalude, Somnafac, Sopor
Tranquilizers	Equanil, Librium, Miltown, Serax, Tranxene, Valium
Other Depressants	Clonopin, Dalmane, Dormate, Noludar, Placydil, Valmid

STIMULANTS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
Cocaine	Cocaine
Amphetamines	Benzedrine, Biphetamine, Desoxyn, Dexedrine
Phenmetrazine	Preludin
Methylphenidate	Ritalin
Other Stimulants	Bacarate, Cylert, Didrex, Ionamin, Plegine, Pondimin, Pre-State, Sanorex, Voranil

HALLUCINOGENS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
LSD	None
Mescaline	None
Psilocybin-Psilocyn	None
MDA	None
PCP	Sernylan
Other Hallucinogens	None

CANNABIS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
Marijuana	None
Hashish	None
Hashish Oil	None

DD Form 398-2I, 920604 Draft

[FR Doc. 92-14343 Filed 6-17-92; 8:45 am]
BILLING CODE 3810-01-C

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Telecommucations Service Priority System; SF 315, SF 316, SF 317, SF 318, SF 319, SF 320; OMB Control Number 0704–0298.

Type of Request: Revision; expedited submission—Approval date requested; 30 days following publication in the **Federal Register.**

Average Burden Hours/Minutes Per Response: 1.303 hours.

Responses Per Respondent: 19.

Number of Respondents: 150.

Annual Responses: 2,850.

Annual Burden Hours: 3,713.

Needs and Uses: The Telecommunications Service Priority (TSP) System identifies leased telecommunications services vital to National Security and Emergency Preparedness and provides the legal basis for vendor priority installation and restoration. Collected information is used to make TSP assignment and maintain data base currency.

Affected Public: State or local governments, Businesses or other for-profit, Federal agencies or employees, and Small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: June 12, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 3810-01-M

TELECOMMUNICATIONS SERVICE PRIORITY (TSP) SYSTEM
TSP REQUEST FOR SERVICE USERS
(See NCS Manual 3-1-1 for instructions before completion.)

Form Approved
OMB No. 0704-0305
Expires

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0305), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO ADDRESS BELOW.

1. ACTION REQUESTED *(Enter applicable code)*

A INITIAL PRIORITY FOR A NEW SERVICE
B INITIAL PRIORITY FOR AN EXISTING SERVICE
C CHANGE TO A SERVICE, SERVICE PRIORITY, OR INFORMATION ABOUT A SERVICE
D REVOKE A SERVICE'S PRIORITY
F REVALIDATE A SERVICE'S PRIORITY

2. DATE SERVICE REQUIRED *(MM/DD/YY)*

3. NEW SERVICE USER SERVICE ID

4. SERVICE IDENTIFIERS *(Complete a and/or b below only if action requested is C, D, or F.)*

a. TSP AUTHORIZATION CODE — T S P – –

b. PREVIOUS SERVICE USER SERVICE ID

5. SERVICE PROFILE *(List all choices that apply)*

6. RESTORATION PRIORITY INFORMATION *(Complete ONLY if requesting a restoration priority)*

a. SUBCATEGORY UNDER WHICH SERVICE QUALIFIES FOR PRIORITY TREATMENT

b. CRITERIA UNDER WHICH SERVICE QUALIFIES

c. RESTORATION PRIORITY REQUESTED *(5, 4, 3, 2, or 1)*

7. PROVISIONING PRIORITY INFORMATION *(Complete ONLY if requesting a provisioning priority)*

a. SUBCATEGORY UNDER WHICH SERVICE QUALIFIES FOR PRIORITY TREATMENT

b. CRITERIA UNDER WHICH SERVICE QUALIFIES

c. PROVISIONING PRIORITY REQUESTED *(5, 4, 3, 2, 1, or E)*

d. INVOCATION OFFICIAL'S NAME

e. INVOCATION OFFICIAL'S TITLE

f. TELEPHONE NUMBER *(Area Code / Number / Extension)*

g. HAS THE INVOCATION OFFICIAL AUTHORIZED THIS ACTION? *(Y or N)*

h. SERVICE LOCATION(S) *(Street Address, Building Number, Room Number, etc.)*

i. PRIME VENDOR POINT-OF-CONTACT FOR PROVISIONING *(Company, Name and Telephone Number)*

j. IS ORDER IN PROGRESS? *(Y or N)*

NSN 7540-01-280 5506
315-101

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Standard Form 315 (920528 Draft)
Prescribed by DOD NCS
NCS Manual 3

8. SERVICE USER 24 HOUR POINT-OF-CONTACT *(REQUIRED for provisioning priority)*

a. TITLE OR NAME

b. DAYTIME TELEPHONE NUMBER *(Area Code / Number / Extension)*

c. OFF-HOURS TELEPHONE NUMBER *(Area Code / Number / Extension)*

9. SUPPLEMENTAL INFORMATION *(i.e., circuit information)*

10. SERVICE USER *(Enter applicable code)*

A FEDERAL GOVERNMENT
B STATE GOVERNMENT
C LOCAL GOVERNMENT
D PRIVATE SECTOR
E FOREIGN GOVERNMENT
F OTHER

11. SERVICE USER ORGANIZATION *(Dept / Agency)*

12. MAJOR NETWORK INFORMATION *(If service is part of or uses a major network (e.g., PSN, FTS, DSN), identify the network.)*

13. SERVICE USER POINT-OF-CONTACT *(For correspondence regarding this service)*

a. TITLE OR NAME

b. ORGANIZATION *(Dept / Agency)*

c. MAILING ADDRESS

d. CITY / STATE / ZIP CODE

e. TELEPHONE NUMBER *(Area Code / Number / Extension)*

f. FACSIMILE NUMBER *(Area Code / Number / Extension)*

14. TSP REQUESTOR INFORMATION

a. NAME

b. ORGANIZATION *(Dept / Agency)*

c. TELEPHONE NUMBER *(Area Code / Number / Extension)*

d. SIGNATURE AND DATE: **I confirm this is a National Security Emergency Preparedness (NSEP) service.**

▶ ◀

15. SPONSORSHIP INFORMATION FOR NON-FEDERAL SERVICE *(To be completed by sponsor)*

a. FEDERAL SPONSORING AGENCY

b. RECOMMENDED DISPOSITION

c. SPONSOR NAME

d. SPONSOR TITLE

e. TELEPHONE NUMBER *(Area Code / Number / Extension)*

f. SPONSOR SIGNATURE AND DATE: **I confirm this is a National Security Emergency Preparedness (NSEP) service.**

▶ ◀

Non-Federal users: send form to your Federal government sponsor.

Federal users or sponsors: send completed form to:

Manager, NCS
Attn: TSP Program Office
701 South Courthouse Road
Arlington, VA 22204-2198

Standard Form 315 (920528 Draft) (Back)

TELECOMMUNICATIONS SERVICE PRIORITY (TSP) SYSTEM
TSP SERVICE ORDER REPORT

(See Instructions on reverse before completion)

Form Approved
OMB No. 0704-0305
Expires

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project 0704-0305), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO ADDRESS BELOW.

1. SERVICE USER/CONTRACTING ACTIVITY NAME

2. TSP SERVICE INFORMATION

a ITEM NO	b. TSP AUTHORIZATION CODE (1) Control ID (2) TSP Code	c. SERVICE USER CONTRACT ID	d. PRIME SERVICE VENDOR NAME	e. NET TOTAL CIRCUITS
1	TSP –			
2	TSP –			
3	TSP –			
4	TSP –			
5.	TSP –			
6	TSP –			
7	TSP –			
8.	TSP –			
9	TSP –			
10	TSP –			
11.	TSP –			
12	TSP –			
13.	TSP –			
14	TSP –			
15.	TSP –			
16.	TSP –			
17	TSP –			
18	TSP –			
19	TSP –			
20.	TSP –			

3. POINT OF CONTACT *(Title or Name)*

4. ORGANIZATION

a DEPARTMENT/AGENCY NAME

b. MAILING ADDRESS

c TELEPHONE NUMBER *(Area Code/Number/Extension)*

d. CITY/STATE/ZIP CODE

5. DATE DATA COMPILED *(MM/DD/YY)*

6. NUMBER OF ITEMS REPORTED

7. SIGNATURE

8. DATE

SEND COMPLETED FORM TO: Manager, NCS
Attn: TSP Program Office
701 South Courthouse Road
Arlington, VA 22204-2198

NSN 7540-01-280-5507
316-101

AUTHORIZED FOR LOCAL REPRODUCTION BY THE PUBLIC

Standard Form 316 (920528 Draft)

INSTRUCTIONS FOR TSP SERVICE ORDER REPORT

Complete this form if you ordered a TSP service from a service vendor.

The service user / contracting activity is to provide the information contained in this report within 45 days of issuing a service order or change order to a prime service vendor regarding a service that involves a TSP assignment.

If there are more than 20 TSP services to report, attach additional Service Order Report forms (SF 316) or separate sheets of plain paper the same size and format as the printed forms. Complete items 3 through 7 on the first form only.

Item 1. Service User / Contracting Activity Name. Enter the name of the organization that ordered the respective TSP service(s) from the prime service vendor(s).

Item 2. TSP Service Information. For each TSP service for which you have contracted (i.e., issued a service order or a change order), provide the following:

b. TSP Authorization Code. Enter the full 12-character code, assigned by the TSP Program Office, which you provided to the prime service vendor(s).

c. Service User Contract ID. Enter the identification (up to 24 characters) that you use to identify the service order. The ID may be the purchase number, service agreement number, contract service agreement, contract number, order number, procurement ID, etc.

d. Prime Service Vendor Name. Identify the prime service vendor that will provide the service. If there is more than one prime service vendor, provide information for each one.

e. Net Total Circuits. Enter the net total of the number of circuits installed plus those pending installation. The total is to include all of this prime vendor's circuits for this TSP Authorization Code as of the Date Data Compiled (see item 5 below). Do not add disconnected circuits. Do not include sub-contractor circuits. For example, if this prime service vendor has installed 6 circuits to date, 2 additional circuits are pending installation, and you are now disconnecting 3 circuits, the net total circuits would be 5 (6 plus 2 minus 3).

Item 3. Point of Contact Information. Identify the person who should be called if the TSP Program Office has any questions regarding the information on the form.

Item 4. Organization. Enter the parent organization that ordered the service(s). Federal agencies are to use the appropriate 4 digit code for their organization, from Federal Information Processing Standard (FIPS) Publication 95. All others should enter a title such as: "California Highway Patrol," or "Nelson County Hospital."

Item 5. Date Data Compiled. Enter the latest month/day/year when data was compiled.

Item 6. Number of Items Reported. Enter the total number of items (item numbers completed) including service orders reported on attached Service Order Reports or sheets of paper.

Standard Form 316 (920528 Draft, Back)

TELECOMMUNICATIONS SERVICE PRIORITY (TSP) SYSTEM
TSP ACTION APPEAL FOR SERVICE USERS

(See Instructions on reverse before completion)

Form Approved
OMB No. 0704-0305
Expires

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0305), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO ADDRESS BELOW.

1. APPEAL REQUESTOR INFORMATION

a. NAME / TITLE	b. MAILING ADDRESS
c. ORGANIZATION *(Dept / Agency)*	d. CITY / STATE / ZIP CODE
e. TELEPHONE NUMBER *(Area Code / Number / Extension)*	f. SIGNATURE / g. DATE

2. APPEAL RATIONALE *(Attach additional sheets as necessary)*

3. SPONSORSHIP INFORMATION FOR A NON-FEDERAL USER *(To be completed by sponsor)*

a. FEDERAL SPONSORING AGENCY	b. SPONSOR NAME / TITLE
c. TELEPHONE NUMBER *(Area Code / Number / Extension)*	d. RECOMMENDED DISPOSITION
e. SPONSOR SIGNATURE	f. DATE

NOTE: Attach all information submitted to and received from the Manager, NCS regarding the appeal. Send a copy, clearly marked as an information copy, to the Federal Communications Commission.

Send completed form to:

Manager, NCS
Attn: TSP Program Office
701 South Courthouse Road
Arlington, VA 22204-2198

Send copy to:

Federal Communications Commission
Attn: Chief, Domestic Services Branch
Common Carrier Bureau
Washington, D.C. 20554

TO BE COMPLETED BY THE TSP PROGRAM OFFICE

4. RESOLUTION OF APPEAL:		GRANTED		DENIED

5. COMMENTS

6. APPROVED BY

a. NAME	
b. SIGNATURE	c. DATE

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Standard Form 317 (920528 Draft)
Prescribed by DOD
NCS Manual

INSTRUCTIONS FOR TSP ACTION APPEAL

Complete this form only if you are a service user or sponsoring Federal organization appealing an action taken by the TSP Program Office.

Item 1. **Appeal Requestor Information.** Provide the name and commercial phone number (area code/phone/extension) of an individual knowledgeable about this appeal.

Item 2. **Appeal Rationale:** Explain the reason for your appeal. Use additional sheets if required. Attach copies of all relevant correspondence.

Item 3. **Sponsorship Information for a Non-Federal User.** This information MUST be completed and signed by the sponsoring activity.

APPEAL PROCESS

1. Service users or sponsoring Federal Organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to the TSP Program Office within 30 days of notification to the service user. The appeal must include supporting factual details. (NOTE: Non-Federal service users must appeal through their sponsor.) An appeal that includes a claim of new information may be submitted at any time.

2. Service users may appeal any priority action to the TSP Program Office within 30 days of notification of the action. All TSP appeals must be filed using this form. Submit the completed appeal form, along with copies of any relevant correspondence, to the TSP Program Office. A copy of the appeal package, clearly marked as an information copy, must also be submitted to the Federal Communications Commission (FCC). The TSP Program Office will determine the disposition of the appeal and respond within 30 days of receipt.

3. If the service user is not satisfied with the TSP Program Office's decision, they may then escalate the appeal to the Manager, NCS. This escalation must be submitted within 30 days of the TSP Program Office's notice of action on the initial appeal. The service user will submit a letter explaining the reason for escalating the appeal and attach the appeal package previously submitted to the TSP Program Office. The Manager, NCS will determine the disposition of the appeal and respond to the service user within 30 days of receipt.

4. Service users may only appeal a priority action directly to the FCC after first submitting an appeal to the TSP Program Office and escalating the appeal to the Manager, NCS. This appeal must be submitted to the FCC within 30 days of notification of the decision made by the Manager, NCS on the escalated appeal. The service user will submit a letter to the FCC Common Carrier Bureau detailing the reasons for appealing the decision made by the Manager, NCS. Copies of the letter of appeal to the FCC will be submitted to the TSP Program Office, Manager, NCS, and any other parties directly involved. The FCC will not issue a public notice of an appeal. The FCC will provide notice of its decision on the appeal to all parties of record.

5. Following the FCC's decision, involved parties may file a response to the FCC within 20 days of the FCC's appeal determination. The organization that originally filed the appeal may then file replies to the FCC's decision within 10 days of the FCC's response. Additionally, the TSP Program Manager may appeal any FCC revision, approval, or disapproval to the FCC.

TELECOMMUNICATIONS SERVICE PRIORITY (TSP) SYSTEM
TSP SERVICE CONFIRMATION FOR SERVICE VENDORS

(See instructions on reverse before completion)

Form Approved
OMB No. 0704-0305
Expires

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0305), Washington, DC 20503.
PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO ADDRESS BELOW.

1. VENDOR NAME

2. TSP SERVICE INFORMATION

a. ITEM NO.	b. TSP AUTHORIZATION CODE (1) Control ID	(2) TSP Code	c. PRIME SERVICE VENDOR SERVICE ID (1) Circuit / Service ID	(2) Segment (Optional)	d. TYPE OF ORDER
1.	TSP	–		/	
2.	TSP	–		/	
3.	TSP	–		/	
4.	TSP	–		/	
5.	TSP	–		/	
6.	TSP	–		/	
7.	TSP	–		/	
8.	TSP	–		/	
9.	TSP	–		/	
10.	TSP	–		/	
11.	TSP	–		/	
12.	TSP	–		/	
13.	TSP	–		/	
14.	TSP	–		/	
15.	TSP	–		/	
16.	TSP	–		/	
17.	TSP	–		/	
18.	TSP	–		/	
19.	TSP	–		/	
20.	TSP	–		/	

3. POINT OF CONTACT

a. TITLE OR NAME

b. MAILING ADDRESS (Street / City / State / ZIP Code)

c. TELEPHONE NUMBER (Area Code / Number / Extension)

4. DATE DATA COMPILED (MM / DD / YY)

5. NUMBER OF ITEMS REPORTED

6. REMARKS (Y or N)

7. TYPED NAME OF POINT OF CONTACT OR COMPANY OFFICIAL

a. SIGNATURE

b. DATE

SEND COMPLETED FORM TO: Manager, NCS
Attn: TSP Program Office
701 South Courthouse Rd.
Arlington, VA 22204-2198

NSN 7540-01-280-5508
318-101

AUTHORIZED FOR LOCAL REPRODUCTION BY THE PUBLIC

Standard Form 318 (920528 Draft)
Prescribed by DOD-NCS
NCS Handbook

INSTRUCTIONS FOR TSP SERVICE CONFIRMATION

A service vendor, when acting as a prime contractor to a TSP service user, is to confirm service completion directly to the TSP Program Office within 45 calendar days of completing a TSP service order.

If there are more than 20 TSP services (or 20 Prime Service Vendor Service IDs) to confirm, attach additional TSP Service Confirmation Forms (SF 318) or sheets of paper the same size and format as the printed forms. Complete Items 3 through 7 on the first form only.

Item 1. **Vendor Name.** Enter full vendor name, exactly as previously submitted to the TSP Program Office by your company. If this is the first TSP Service Confirmation for your company, so indicate by entering "first submission" and enter the precise vendor name you will be using on subsequent confirmations and reconciliations.

Item 2. **TSP Service Information.** For each TSP service which you are confirming, provide:

b. TSP Authorization Code. Enter the full 12-character code received on the service order from the service user or contracting activity.

c. Prime Service Vendor Service ID. Enter the Circuit/Service ID to the left of the slash (/). The segment number (optional information except for "Disconnection" or "Out") is entered to the right of the slash (/).

d. Type of Order. Enter "I" for Installation, "N" for New, "D" for Disconnection, "O" for Out, "C" for Change, or "FT" for From / To orders.

Item 3. **Point of Contact.** The point of contact is the representative of the prime service vendor who will be called if there are any questions regarding information on this form. Use title, if available; otherwise use the person's name. Enter full business address and telephone number.

Item 4. **Date Data Compiled.** Enter the latest month/day/year when data was compiled.

Item 5. **Number of Items Reported.** Enter the total number of items (number of confirmations) being reported. Include confirmations on attached forms or sheets of paper in the total.

Item 6. **Remarks.** If you have any other comments regarding the information provided, enter Y and provide remarks on a separate sheet of paper; otherwise, enter N.

Item 7. **Signature.** The point of contact or a company official must sign and date the form.

Standard Form 318 (920528) (Back)

TELECOMMUNICATIONS SERVICE PRIORITY (TSP) SYSTEM
TSP SERVICE RECONCILIATION FOR SERVICE VENDORS

(See instructions on reverse before completion)

Form Approved
OMB No. 0704-0305
Expires

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0305), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO ADDRESS BELOW.

1. VENDOR NAME

2. TSP SERVICE INFORMATION

a. ITEM NO.	b. TSP AUTHORIZATION CODE (1) Control ID *(Optional)*	(2) TSP Code	c. PRIME SERVICE VENDOR SERVICE ID *(Circuit / Service ID) (Do NOT indicate segments)*
1.	TSP	–	
2.	TSP	–	
3.	TSP	–	
4.	TSP	–	
5.	TSP	–	
6.	TSP	–	
7.	TSP	–	
8.	TSP	–	
9.	TSP	–	
10.	TSP	–	
11.	TSP	–	
12.	TSP	–	
13.	TSP	–	
14.	TSP	–	
15.	TSP	–	
16.	TSP	–	
17.	TSP	–	
18.	TSP	–	
19.	TSP	–	
20.	TSP	–	

3. POINT OF CONTACT

a. TITLE OR NAME

b. MAILING ADDRESS *(Street / City / State / ZIP Code)*

c. TELEPHONE NUMBER *(Area Code / Number / Extension)*

4. DATE DATA COMPILED *(MM / DD / YY)*

5. NUMBER OF ITEMS REPORTED

6. REMARKS *(Y or N)*

7. TYPED NAME OF POINT OF CONTACT OR COMPANY OFFICIAL

a. SIGNATURE

b. DATE

SEND COMPLETED FORM TO: Manager, NCS
Attn: TSP Program Office
701 South Courthouse Rd.
Arlington, VA 22204-2198

NSN 7540-01-317-7365
319-101

AUTHORIZED FOR LOCAL REPRODUCTION BY THE PUBLIC

Standard Form 319 (920528 Draft)
Prescribed by DCA/NCS
NCS Handbook 3-1-2

INSTRUCTIONS FOR TSP SERVICE RECONCILIATION

Complete this form only if the TSP Program Office has requested TSP reconciliation information from your company.

If you are reconciling information on more than 20 TSP services (or 20 Prime Service Vendor Service ID's), attach additional TSP Service Reconciliation forms (SF 319) or sheets of paper the same size and format as the printed forms. Complete Items 3 through 7 on the first form only. List every Prime Service Vendor Service ID for which your company is providing priority restoration (i.e., TSP restoration priority of 1, 2, 3, 4, or 5) as a prime contractor to a service user.

Item 1. Vendor Name. Enter full vendor name, exactly as previously submitted to the TSP Program Office by your company.

Item 2. TSP Service Information. For each TSP service which you are reconciling, provide:

b. TSP Authorization Code. The TSP Control ID (positions 1-9 of the TSP Authorization Code) is the only optional item on the form; the TSP Code (positions 11 and 12 of the TSP Authorization Code) is required.

c. Prime Service Vendor Service ID. Enter the Circuit/Service ID. DO NOT enter segment numbers.

Item 3. Point of Contact. The point of contact is the representative of the prime service vendor who will be called if there are any questions regarding information on this form. Use title, if available; otherwise use the person's name. Enter full business address and telephone number.

Item 4. Date Data Compiled. Enter the latest month/day/year when data was compiled.

Item 5. Number of Items Reported. Enter the total number of items (Circuit/Service ID's) including those reported on attached TSP Reconciliation Forms (SF 319) or sheets of paper.

Item 6. Remarks. If you have any other comments regarding the information provided, enter Y and provide remarks on a separate sheet of paper; otherwise, enter N.

Item 7. Signature. The point of contact or a company official must sign and date the form.

Standard Form 319 (920528) (Back)

TELECOMMUNICATIONS SERVICE PRIORITY (TSP) SYSTEM NSEP INVOCATION REPORT

(See Instructions before completion)

Form Approved
OMB No. 0704-0305
Expires

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0305), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO ADDRESS BELOW.

1. TSP AUTHORIZATION CODE	2. WAS NSEP TREATMENT INVOKED FOR THIS SERVICE? *(Y or N) (If "No," proceed to item 5.)*
T S P _ _ _ _ _ _ _ _ – _ _	

3. IF NSEP TREATMENT WAS INVOKED FOR THIS SERVICE, COMPLETE THE FOLLOWING:

a. DATE OF EVENT ASSOCIATED WITH INVOCATION *(MM/DD/YY)*	b. EVENT ASSOCIATED WITH INVOCATION
c. WAS TSP SERVICE OPERATIONAL BY THE REQUESTED DUE DATE? *(Y or N)*	d. IF THE TSP SERVICE WAS NOT OPERATIONAL BY THE REQUESTED DUE DATE, EXPLAIN.
e. WERE ADDITIONAL CHARGES INCURRED DUE TO THIS SERVICE HAVING A TSP PROVISIONING PRIORITY ASSIGNED? *(Y or N)*	

4. INVOKING OFFICIAL

a. FEDERAL AGENCY	b. NAME	c. TITLE
d. MAILING ADDRESS	e. CITY / STATE / ZIP CODE	f. TELEPHONE NUMBER *(Area Code / Number / Extension)*

5. SUBMITTER

a. NAME	b. ORGANIZATION *(Dept. / Agency)*	c. TELEPHONE NUMBER *(Area Code / Number / Extension)*
d. SIGNATURE	e. DATE	**SEND COMPLETED FORM TO:** Manager, NCS Attn: TSP Program Office 701 South Courthouse Rd. Arlington, VA 22204-2198

INSTRUCTIONS FOR COMPLETING AN NSEP INVOCATION REPORT

Complete this form ONLY after receiving a priority action notice, that includes a provisioning priority, from the TSP Program Office. Attach a copy of the priority action notice. If any of the information in the priority action notice is incorrect, submit a TSP Request for Service Users (SF 315) to amend the information about your service.

If the invocation report is classified handle in accordance with prescribed directives.

Item 1. TSP Authorization Code. Enter the full 12-character code conveyed to the service vendor.

Item 2. Was NSEP treatment invoked? If NSEP treatment was not invoked, enter an N and proceed to item 5. If NSEP treatment was invoked, enter a Y and proceed to item 3.

Item 3. If NSEP treatment was invoked for this service, please provide the following:

a. Enter the date of the event associated with this invocation (MM/DD/YY).

b. Describe the event which caused you to invoke.

c. If the TSP service was operational by the requested due date enter a Y. If the TSP service was NOT operational by the requested date enter an N and briefly explain why not in item 3d.

e. If additional charges or expenses, above and beyond what you would normally incur, were involved in provisioning this service enter a Y, if not enter an N. Do not delay returning this form if you do not know if any additional costs were incurred.

Item 4. Invoking Official. Complete required Invoking Official Information.

Item 5. Submitter. Complete required Submitter information.

b. Federal agencies are to use the appropriate 4 digit code in Federal Information Processing Standard (FIPS) Publication 95.

d Signature and date. This form must be signed.

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Standard Form 320 (920528 Draft)
Prescribed by DOD/NCS
NCS Manual 3-1-1

[FR Doc. 92-14344 Filed 6-17-92; 8:45 am]
BILLING CODE 3810-01-C

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995–2020 (Support Panel) will meet on 22–24 June 1992 instead of 25–26 June 1992, at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA, 8 a.m. to 5 p.m.

The purpose of this meeting is to gather information and prepare a briefing for the chairmen meeting on 23 June 92.

The meetings will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–14265 Filed 6–17–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, Defense.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent application cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications copies sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000, telephone (703) 696–4001.

Patent 5,009,728: Castable, Insensitive Energetic Compositions; filed 12 January 1990; patented 23 April 1991.

Patent 5,010,341: High Pulse Repetition Frequency Radar Early Warning Receiver; filed 23 October 1989; patented 23 April 1991.

Patent 5,014,062: Electronic Projectile Impact Spotting Device; filed 23 November 1973; patented 7 May 1991.

Patent 5,014,248: Air-Deliverable, Ice-Penetrating SONOBUOY; filed 5 February 1974; patented 7 May 1991.

Patent 5,015,805: Kellems Grip Construction for Cable Connector and Method of Using Same; filed 23 March 1990; patented 14 May 1991.

Patent 5,017,150: Low Force Cable Connect; filed 23 May 1990; patented 21 May 1991.

Patent 5,018,472: Horizontally Moveable Weight Stabilizing Device; filed 22 June 1989; patented 23 May 1991.

Patent 5,021,098: High Contact Blind Hole Thermocouple Plug; filed 28 March 1990; patented 4 June 1991.

Patent 5,022,100: Apparatus and Method for Underwater Acoustic Receiving System Installation in Diving Helmet; filed 2 September 1990; patented 11 June 1991.

Patent 5,023,006: Thermal Insulation Chemical Composition and Method of Manufacture; filed 30 November 1990; patented 11 June 1991.

Patent 5,025,744: Submarine Torpedo Tube Axial Weapon Restrainer; filed 14 August 1990; patented 25 June 1991.

Patent 5,026,160: Monolithic Optical Programmable Spectrometer; filed 4 October 1989; patented 25 June 1991.

Patent 5,028,112: Precision Multi-Channel Fiber Optic Interface and Method; filed 27 June 1990; patented 2 July 1991.

Patent 5,028,864: Optically Stable, Large Time Bandwidth Acousto-Optic Hetherodyne Spectrum Analyzer With Fixed Non-Zero Heterodyne Output; filed 14 September 1990; patented 2 July 1991.

Patent 5,033,030: Turbulence Velocimetry Technique; filed 5 June 1990; patented 16 July 1991.

Patent 5,035,622: Generic Machine Gun and Minor Caliber Weapon Trainer; filed 29 November 1989; patented 30 July 1991.

Patent 5,036,520: Holmium Laser Pumped With a Neodymium Laser; filed 15 October 1990; patented 30 July 1991.

Patent 5,038,768: Carbon Monoxide Conversion Device; filed 26 September 1989; patented 13 August 1991.

Patent 5,039,228: Fixtureless Environmental Stress Screening Apparatus; filed 2 November 1989; patented 13 August 1991.

Patent 5,040,157: Expendable Virtual Vertical Sensing Array; filed 15 October 1990; patented 13 August 1991.

Patent 5,042,157: Fiber Optic Angular Orientation Sensor Using Digital Serial Encoding; filed 8 August 1988; patented 27 August 1991.

Patent 5,042,415: Vehicle Handling System for Submersibles; filed 7 February 1990; patented 27 August 1991.

Patent 5,042,744: Guidable Stores; filed 30 April 1990; patented 27 August 1991.

Patent 5,043,302: Glassy Binder System for Ceramic Substrates, Thick Films and the Like; filed 25 March 1989; patented 27 August 1991.

Patent 5,044,253: Submarine Weapon Launch System External Impulse Tank; filed 15 August 1990; patented 3 September 1991.

Patent 5,045,588: High Polymer Suspension; filed 7 November 1974; patented 3 September 1991.

Patent 5,045,707: Laser Detection and Discrimination System; filed 16 August 1989; patented 3 September 1991.

Patent 5,045,769: Intelligent Battery Charging System; filed 14 November 1989; patented 3 September 1991.

Patent 5,045,857: High-Speed Beam Switching Processor; filed 23 October 1974; patented 10 September 1991.

Patent 5,047,626: Optical Fiber Sensor for Measuring Physical Properties of Liquids; filed 3 January 1990; patented 10 September 1991.

Patent 5,048,568: Quick Opening Slide Valve; filed 26 February 1991; patented 17 September 1991.

Patent 5,049,753: Optically Powered High Voltage Electron Gun; filed 28 June 1990; patented 17 September 1991.

Patent 5,049,883: Combined Microwave and Infrared Chaff; filed 30 May 1978; patented 17 September 1991.

Patent 5,050,136: Super Polyelectrolytic Communication Links; filed 26 September 1990; patented 17 September 1991.

Patent 5,050,523: Pivoting Launch Method for Submarines; filed 17 October 1990; patented 24 September 1991.

Patent 5,051,751: Method of Kalman Filtering for Estimating the Position and Velocity of a Tracked Object; filed 12 February 1991; patented 24 September 1991.

Patent 5,054,004: Method of Active Sonar Detection of a Stationary Target; filed 28 September 1990; patented 1 October 1991.

Patent 5,054,039: Digital Calibration Circuit Employing Composite Sine Wave Signals; filed 30 August 1990; patented 1 October 1991.

Patent 5,054,758: Multi-Ply Paper Separator; filed 30 November 1989; patented 8 October 1991.

Patent 5,054,922: Differential Polarimetric Fiber Optic Sensor; filed 16 January 1990; patented 8 October 1991.

Patent 5,056,405: Propellant-to-Inhibitor Bonding System; filed 30 November 1990; patented 15 October 1991.

Patent 5,056,760: T-Slot Assembly; filed 2 April 1990; patented 15 October 1991.

Patent 5,057,047: Low Capacitance Field Emitter Array and Method of Manufacture Therefor; filed 27 September 1990; patented 15 October 1991.

Patent 5,057,279: Pressurized Membrane Chemical Sensor; filed 13 October 1988; patented 15 October 1991.

Patent 5,057,590: Bislactone Curing Agents for Epoxy Resins and Polymers Obtained Therefrom; filed 29 March 1990; patented 15 October 1991.

Patent 5,057,697: DC Uninterrupted Power Supply Having Instantaneous Switching Followed by Low Impedance Switching; filed 22 March 1990; patented 15 October 1991.

Patent 5,058,190: Selective Readout of a Detector Array; filed 14 September 1990; patented 15 October 1991.

Patent 5,058,481: Dual-Modular Rocket Launcher; filed 15 October 1990; patented 22 October 1991.

Patent 5,059,702: SN-Labelled Tetra-N-Butyltin and Tri-N-Butyltin Bromide; filed 29 September 1989; patented 22 October 1991.

Patent 5,059,911: Cable Fault Location Detector; filed 24 October 1990; patented 22 October 1991.

Patent 5,060,550: Rocket Nozzle Snubber; filed 29 February 1991; patented 29 October 1991.

Patent 5,061,199: Wall Outlet Lock Apparatus; filed 14 March 1991; patented 29 October 1991.

Patent 5,061,857: Waveguide-Binding Sensor for Use With Assays; filed 9 November 1990; patented 29 October 1991.

Patent 5,062,154: Mid Range UV Communications; filed 3 March 1989; patented 29 October 1991.

Patent 5,062,593: Solid-Propellant-Powered Maneuvering System for Spacecraft; filed 25 February 1991; patented 5 November 1991.

Patent 5,062,939: Selective Metallization of Carbonyl-Containing Polymer Films; filed 29 March 1990; patented 5 November 1991.

Patent 5,063,290: All-Optical-Fiber Faraday Rotation Current Sensor With Heterodyne Detection Technique; filed 14 September 1990; patented 5 November 1991.

Patent 5,063,419: Heterostructure Device Useable as a Far Infrared Photodetector; filed 15 November 1988; patented 5 November 1991.

Patent 5,063,487: Main and Auxiliary Transformer Rectifier System for Minimizing Line Harmonics; filed 22 March 1990; patented 5 November 1991.

Patent 5,063,958: Burst Diaphragm Sequence Valve; filed 24 January 1991; patented 12 November 1991.

Patent 5,064,146: Pivoting Seat for Fighter Aircraft; filed 26 September 1990; patented 12 November 1991.

Patent 5,064,268: High Pressure Fiber Optic Connector Plug; filed 7 December 1990; patented 12 November 1991.

Patent 5,065,370: Programmable Pulse Shaper for Sonobuoy Apparatus; filed 20 November 1990; patented 12 November 1991.

Patent 5,065,688: Flexible Weapon Handling Support System; filed 20 June 1990; patented 19 November 1991.

Patent 5,066,148: Bi-Directional Optical Transmission System for RF Electrical Energy; filed 28 July 1990; patented 19 November 1991.

Patent 5,066,613: Semiconductor-on-Insulator Device Interconnects; filed 17 July 1989; patented 19 November 1991.

Patent 5,068,880: Optical Interconnects in the Computer Environment; filed 6 September 1990; patented 26 November 1991.

Patent 5,070,760: Pneumatically-Actuated Multiple Store Launcher; filed 30 October 1990; patented 10 December 1991.

Patent 5,071,088: High Lift Aircraft; filed 29 November 1989; patented 10 December 1991.

Patent 5,073,409: Environmentally Stable Metal Powders; filed 28 June 1990; patented 17 December 1991.

Patent 5,073,711: Fiber-Optic Remote Angular Position Sensor Including a Polarization; filed 17 September 1990; patented 17 December 1991.

Patent 5,074,186: Electrically Actuated Multiple Store Launcher; filed 30 October 1990; patented 24 December 1991.

Patent 5,074,187: Rocket Nozzle Shield; filed 4 March 1991; patented 24 December 1991.

Patent 5,074,324: Method and Apparatus for Reducing Drag and Noise Associated With Fluid Flow in a Conduit; filed 12 July 1991; patented 24 December 1991.

Patent 5,074,493: Wing-Extendible Gliding Store; filed 21 December 1990; patented 24 December 1991.

Patent 5,076,134: Launch Container for Multiple Stores; filed 30 October 1990; patented 31 December 1991.

Patent 5,077,699: Digital Bottom Mapping; filed 7 December 1990; patented 31 December 1991.

Patent 5,077,700: Doppler Velocity Profiler; filed 21 December 1990; patented 31 December 1991.

Patent 5,078,009: Transient Impeller Test Facility; filed 24 December 1990; patented 7 January 1992.

Patent 5,080,067: Water-Activated Sonobuoy System; filed 29 April 1991; patented 14 January 1992.

Patent 5,080,120: Replaceable Valve Seat; filed 25 April 1991; patented 14 January 1992.

Patent 5,085,122: Firing Assembly for Stored Energy Launcher; filed 7 February 1991; patented 4 February 1992.

Patent 5,086,423: Crosstalk Correction Scheme; filed 5 July 1989; patented 4 February 1992.

Patent Application 489,161: Electromagnetic Warming of Submerged Extremities; filed 6 March 1990.

Patent Application 544,574: Magnetic Coupler for Electroacoustic Hydrophones; filed 26 June 1990.

Patent Application 573,084: Device to Measure Unwanted Electric and Magnetic Field Induced Voltages in Remote Measurement Sensors; filed 27 August 1990.

Patent Application 599,557: Composition and Method for Producing an Aluminum Alloy Resistant to Environmentally-Assisted Cracking; filed 15 October 1990.

Patent Application 599,559: Broadband Quadrifilar Phased Array Helix; filed 17 October 1990.

Patent Application 605,901: Electrically Actuated Multiple Store Launcher; filed 30 October 1990.

Patent Application 622,658: Piezoelectric Ceramic Hydrostatic Sound Sensor; filed 5 December 1990.

Patent Application 625,720: High Pressure Fiber Optic Connector Plug; filed 7 December 1990.

Patent Application 656,330: Method and Apparatus for Synchronization of Dynamical Physical Systems; filed 19 February 1991.

Patent Application 659,765: Method and Composition for the Preservation of Red Blood Cells by Lyophilization; filed 19 February 1991.

Patent Application 660,364: Polymer-Reinforced Metal Matrix Composite; filed 19 February 1991.

Patent Application 668,289: Fiber Optic Coil Shipping and Storage Container; filed 11 March 1991.
Patent Application 678,580: Method and Apparatus for Signal Prediction in a Time-Varying Signal; filed 27 March 1991.
Patent Application 684,091: Tunable Flashpumped TM—Activated Garnet Lasers Between 1.9 and 2.1um; filed 12 April 1991.
Patent Application 691,071: Interferometric Vibration and Thermal Expansion Compensator; filed 15 April 1991.
Patent Application 691,581: Undersea Data Collection Analysis and Display System; filed 23 April 1991.
Patent Application 700,374: Binders for Melt Castable Plastic Bonded Explosives; filed 10 May 1991.
Patent Application 700,831: Protective Coating System for Aluminum; filed 16 May 1991.
Patent Application 702,570: Muffler for Air Powered Turbine Drive; filed 17 May 1991.
Patent Application 704,563: Synthesis of Microstructurally Toughened (MT) Discontinuous Composite Tubes via Centrifugal Casting; filed 17 May 1991.
Patent Application 704,744: Detection of Explosives by Nuclear Quadrupole Resonance; filed 23 May 1991.
Patent Application 705,048: Resonantly Pumped, Erbium-Doped, 2.8 Micron Solid State Laser With High Slope Efficiency; filed 23 May 1991.
Patent Application 708,254: Electrochemical Noise Measurement Technique for the Determination of Aluminum Alloy Pit Initiation Rates; filed 28 May 1991.
Patent Application 710,848: Pulsed-Gradient Spin-Diffusion NMR Method; filed 6 June 1991.
Patent Application 710,860: Diamond and Diamond-Coated Filaments; filed 6 June 1991.
Patent Application 714,815: Shield Ground Adapter for Kick Pipes and Stuffing Tubes; filed 13 June 1991.
Patent Application 718,123: Material and Method for Fast Generation of Hydrogen Gas and Steam; filed 20 June 1991.
Patent Application 722,447: Plasma Chemical Vapor Deposition of Halide Glasses; filed 27 June 1991.
Patent Application 722,804: Color-Coded Radar Plan Position Indicator; filed 28 June 1991.
Patent Application 724,083: Steady-State, High Dose Neutron Generation and Concentration Apparatus and Method For Deuterium Atoms; filed 1 July 1991.
Patent Application 725,719: Grounding Ring for Ground Adapters; filed 3 July 1991.
Patent Application 726,483: Method of Joining Diamond Structures; filed 8 July 1991.
Patent Application 726,488: Consolidation of Diamond Packed Powders; filed July 8, 1991.
Patent Application 726,489: Method for Doping Single Diamond for Electronic Devices; filed 8 July 1991.
Patent Application 728,905: Method and Apparatus for Acoustically Measuring Rainfall; filed 8 July 1991.
Patent Application 728,918: Energic Composites of Cyclodextrin Nitrate Esters and Nitrate Esters Plasticizer; filed 8 July 1991.
Patent Application 729,919: Nitrate Esters of Cyclodextrins; filed 8 July 1991.
Patent Application 736,327: Fiber Optic Gyroscope with Wide Dynamic Range Analog Phase Tracker; filed 26 July 1991.
Patent Application 749,244: Large Scale Purification of Contaminated Air; filed 23 August 1991.
Patent Application 749,357: Concentration of Isotopic Hydrogen by Temperature Gradient Effect in Soluble Metal; filed 23 August 1991.
Patent Application 751,371: Three Dimensional Ranging Imaging System; filed 28 August 1991.

Dated: June 10, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-14314 Filed 6-17-92; 8:45 am]

BILLING CODE 3810-AEM

Government-owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned for the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy.

Requests for copies of the patent application cited should be directed to the Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, Telephone (703) 696-4001.

Patent Application Serial No. 07/623.324 filed December 5, 1990 for "Method of Predicting Steady Incompressible Fluid Flow".

Dated: June 10, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-14315 Filed 6-17-92; 8:45 am]

BILLING CODE 3810-AE-F

Intent to Grant Exclusive License

AGENCY: Department of the Navy, DoD.

ACTION: Intent to Grant Exclusive License; Biocontrol Technology, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Biocontrol Technology, Inc. a revocable, nonassignable, exclusive license to practice the Government-owned inventions described in U.S. Patent No. 5,026,160, "Monolithic Optical Programmable Spectrograph (MOPS)", issued June 25, 1991, in the field of biomedical use.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, Telephone (703) 696-4001.

Dated: June 10, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-14316 Filed 6-17-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Cooperative Agreement National Conference of State Legislatures

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(5) it is making a financial assistance award to the National Conference of State Legislatures (NCSL) to facilitate the exchange of information, discussion of issues and to enhance public participation in the implementation of

the Nuclear Waste Policy Act of 1982 as amended (NWPA). The cooperative agreement will also facilitate public understanding of the status of the activities of the DOE Office of Environmental Restoration and Waste Management (EM).

SCOPE: Work under the cooperative agreement will include organizing and conducting meetings to involve the State Legislators and their constituents in the implementation of the NWPA and inform them of the activities of the Office of Civilian Radioactive Waste Management (RW). Specifically, the objectives are to highlight and explain environmental, social and economic impacts of DOE nuclear waste management program, i.e., the development of a repository, monitored retrievable storage (MRS) activities, and transportation activities of RW as well as provide background and status information on the EM program.

BASIS FOR NONCOMPETITIVE AWARD: Pursuant to 10 CFR 600.7(b)(2)(i)(D), DOE has determined that NCSL has exclusive capacity to perform the activities successfully based upon the unique, non-partisan relationship the organization has with State governments, its familiarity with the historical and ongoing implementation of the NWPA, and its expertise in State and public involvement in radioactive waste and environmental restoration issues.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Attention: Michelle Miskinis, PR–322.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1022.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 92–14369 Filed 6–17–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 92–45–NG]

Cornerstone Natural Gas Co., Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 2, 1992, of an application filed by Cornerstone Natural Gas Company (Cornerstone) for blanket authorization to import up to 100 Bcf of natural gas and export up to 100 Bcf of natural gas from and to Canada and Mexico, over a two-year term beginning on October 5, 1992, the day after the date Cornerstone's current import/export authority expires. Cornerstone intends to utilize existing pipeline facilities for the transportation of the volumes to be imported and exported and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 20, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: Cornerstone, a Delaware corporation, with its principal place of business in Dallas, Texas, proposes to import and export natural gas either for its own account or as agent on behalf of both suppliers and purchasers, including local distribution companies, pipelines, municipalities, and end-users. Cornerstone contemplates the following types of import and export transactions:

(1) Importation of supplies of Canadian and Mexican natural gas for consumption in U.S. markets; (2) importation of Canadian and/or Mexican natural gas for eventual return (via export) to Canadian or Mexican markets; (3) exportation of domestically produced natural gas for consumption in Canadian and Mexican markets; and (4) exportation of domestically produced gas to Canada and/or Mexico for eventual return (via import) to U.S. markets. In support of its application, Cornerstone states that the terms of each import or export transaction will be the product of arms-length negotiations and determined by competitive factors in the natural gas market. Cornerstone also asserts that, the proposed export will benefit domestic natural gas producers who have suffered as a result of the current natural gas surplus by lessening the overdeliverability of natural gas currently existing in the United States, and by the way of increased tax receipts and related revenues.

The decision on Cornerstone's application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to negotiate freely their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this arrangement would be competitive and there is no current need for the domestic gas that would be exported. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not

parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, request for additional procedures and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Cornerstone's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–14368 Filed 6–17–92; 8:45 am]
BILLING CODE 6450–01–M

[FE Docket No. 92–63–NG]

Goetz Energy Corp.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 18, 1992, of an application filed by Goetz Energy Corporation (Goetz) for blanket authorization to import up to 140 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery. Goetz intends to utilize existing pipeline facilities for the transportation of the volumes to be imported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 20, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Goetz, a New York corporation with its principal place of business in Buffalo, New York, is a marketer of oil and natural gas in the United States. Goetz requests authority to import competitively priced natural gas from reliable Canadian producers for sale to purchasers in the United States on a short-term or spot basis. Goetz proposes to import natural gas for either its own account or as agent for U.S. purchasers and/or Canadian suppliers.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should

explain why they are necessary. Any request for an oral presentation should identify the substantial question of act, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Goetz's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., June 15, 1992.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–14367 Filed 6–17–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TM92–11–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 12, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 8, 1992, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1:

To be Effective July 9, 1992

Eighth Revised Sheet Nos. 30A1–30A05
Fourth Revised Sheet No. 30A06
Third Revised Sheet Nos. 30A10–30A12

By this filing Columbia proposes (i) to reallocate to its customers the currently billed fixed monthly demand surcharges applicable to Transcontinental Gas Pipe Line Corporation (Transco) Docket Nos. RP88–68, RP91–147 and RP90–179, effective November 1, 1991, and to implement a one-month reallocation adjustment, due to the fact that Virginia Electric Power Company (VEPCO), which was included in the development of the allocation factors, had not initiated service by the November 1, 1991 deadline for inclusion in the filing; (ii) to flow through the revised PSP charges from Transco for the Annual Recovery Period May 1, 1992 through April 30, 1993, as reflected in Transco's April 1, 1992 filing in Docket No. TM92–10–29; and (iii) to flow through the revised LPSP charges from Transco for the Annual Recovery Period June 1, 1992 through May 31, 1993, as reflected in Transco's May 1, 1992 filing in Docket No. TM92–12–29.

Columbia states that copies of the filing were served upon Columbia's jurisidictional customers, interested state commissions, and upon each person designated on the official service list in Docket Nos. RP88–187, *et al.*, RP91–41, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 19, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 92–14269 Filed 6–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER92–436–00 and EL92–29–000]

Florida Power Corp.; Notice of Initiation of Proceeding and Refund Effective Date

June 12, 1992.

Take notice that on June 4, 1991, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL92–29–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL92–29–000 will be 60 days after publication of this notice in the **Federal Register.**

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–14270 Filed 6–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–184–00 and CP92–184–001 and CP92–185–000 and CP92–185–001]

Texas Eastern Transmission Corp. and Algonquin Gas Transmission Co.; Notice of Site Visit

June 12, 1992.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission will conduct a site visit of the pipeline facilities proposed by Algonquin Gas Transmission Company in Phase I of the Integrated Transportation Project. The facilities to be visited are located in Tolland and New London Counties, Connecticut.

No other facilities in Connecticut are proposed for Phase I of the Integrated Transportation Project.

The site visit of the proposed facilities will take place June 30, 1992. Anyone planning to attend must provide their own transportation. For further information, contact Mr. Jeff Gerber at (202) 208–0282.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–14271 Filed 6–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT92–25–000]

United Gas Pipe Line Co.; Proposed Change in FERC Tariff

June 12, 1992.

Take notice that on June 9, 1992 United Gas Pipe Line Company ("United"), P.O. Box 1478, Houston, Texas 77251–1478, filed the following tariff sheet as part of its Third Revised Volume No. 1 to reflect to correct maximum daily quantity for Mobile Gas Service Corporation.

Third Revised Volume No. 1

Third Revised Original Sheet No. 240A

United states that the tariff sheet serves to correctly reflect the maximum daily quantity for Mobile Gas Service Corporation. This filing will have no effect on United's rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC, 20426, on or before June 19, 1992 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214.

Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-14272 Filed 6-17-92; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM

IBC Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; Correction

This notice corrects a previous Federal Register notice (FR Doc. 92-11196) published at page 20491 of the issue for Wednesday, May 13, 1992.

Under the Federal Reserve Bank of Chicago, the entry for IBC Bancorp, Inc. is revised to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. IBC Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of International Bank of Chicago, Chicago, Illinois.

Comments on this application must be received by July 13, 1992.

Board of Governors of the Federal Reserve System, June 12, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-14301 Filed 6-17-92; 8:45 am]

BILLING CODE 6210-01-F

Marvin R. Selden, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 8, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marvin R. Selden, Jr., Melvin H. Nielsen, Dennis L. Gallagher, Robert F. McLaughlin and Doris R. Olson, as trustees for the Hugh Gallagher Trust; to acquire 54.86 percent of the voting shares of Iowa State Bank Holding Company, Des Moines, Iowa, and thereby indirectly acquire Iowa State Bank, Des Moines, Iowa.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Joe C. Denman, Jr., Lufkin, Texas; to acquire an additional 2.32 percent, for a total of 17.26 percent, of the voting shares of Diboll State Bancshares, Inc., Diboll, Texas, and thereby indirectly acquire First Bank & Trust East Texas, Diboll, Texas.

Board of Governors of the Federal Reserve System, June 12, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-14302 Filed 6-17-92; 8:45 am]

BILLING CODE 6210-01-F

Society Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 13, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio; to acquire 100 percent of the voting shares of First of America Bank - Monroe, Monroe, Michigan.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. American Chartered Bancorp II, Inc., Lake Zurich, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of American Chartered Bank of Lake Zurich, Lake Zurich, Illinois.

Board of Governors of the Federal Reserve System, June 12, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-14303 Filed 6-17-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Public Building Service (PQ), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection, 3090-0043, Appraisal of Fair Annual Parking Rate per Space for Standard Level User Charge, GSA Form 3357. This form is needed by contract and staff appraisers to estimate the assessed parking rates for agencies occupying space in Federal and private buildings.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 260; annual responses: 5; average hours per response: 1.6; burden hours: 2,100.

FOR FURTHER INFORMATION CONTACT: Jerry Yuter, (202) 501-1746.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW, Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: June 8, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92-14317 Filed 6-17-92; 8:45 am]

BILLING CODE 6820-23-M

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of the Comptroller (BCDP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection, 3090-0007, Contractor's Qualification and Financial Information. This information is used to determine whether prospective contractors are financially responsible.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW, Washington, DC 20405.

Annual Reporting Burden

Respondents 6,250; annual responses: 1.2; average hours per response: 1.8667; burden hours: 14,000.

FOR FURTHER INFORMATION CONTACT: Edgar K. Davis, (202) 501-0208. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW, Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: June 9, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92-14318 Filed 6-17-92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Drug Abuse Human Development Research Review Committee; Establishment

Pursuant to section 510(j) of the Public Health Service Act, 42 U.S.C. 290aa(j), and the Federal Advisory Committee Act, 5 U.S.C. appendix 2, the Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the establishment, effective June 4, 1992, of the following National Institute on Drug Abuse initial review committee:

Drug Abuse Human Development Research Review Committee

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: June 12, 1992.

Elaine M. Johnson,

Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-14310 Filed 6-17-92; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Program Announcement Number 275]

National Institute for Occupational Safety and Health; Demonstration of an Ergonomic Intervention in the Red-Meat Packing Industry; Notice of Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for a cooperative agreement to develop an intervention to reduce ergonomic hazards in red-meat packing plants.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000 see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)).

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for these cooperative agreements.

Availability of Funds

Approximately $150,000 is available in Fiscal Year 1992 to fund one or more awards. If multiple awards are made, it is expected the awards will range from $30,000 to $70,000. If a single award is made, it is expected the award will be approximately $150,000. The awards are expected to begin on or about September 30, 1992, for a 12-month budget period within a project period of 1 year.

Purpose

The purpose of this cooperative agreement is to assist in the development of an ergonomic team comprised of plant personnel at a red-meat packing plant. The team, with recipient assistance, will identify ergonomic problems in a task or series of tasks, and develop work practice, engineering, and/or administrative controls to solve the problems. Lessons learned from this targeted project will be used to sustain continued ergonomic improvements in the plant and to transfer information about the team approach to other plants within the industry.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below.

A. Recipient Activities

1. The recipient should secure and sustain a formal relationship with a red-meat (pork and/or beef) packing plant (trial plant) and its work force that assures commitment of the participants to the project and assures access to the plant by the recipient for the project period. The trial plant agrees to make information learned available publicly.

2. With collaboration, the recipient will plan and implement a demonstration ergonomic project at a red-meat packing plant which should include the following elements:

a. *Targeting, with CDC and that plant collaboration, a task or series of tasks within the trial plant for the intervention.*

The task(s) selected will be from among those that are associated with a known high risk of cumulative trauma disorders (CTDs). These include various kill and fabrication tasks. (Example: Fabrication tasks are clod pulling, chuck boning, dropping founds, and boning hams.)

b. *Developing a participatory ergonomic team.*

The team should be comprised of workers and supervisors from the selected job area and other plant personnel such as engineering, management, and medical staff as appropriate.

c. *Training the team in ergonomic awareness.*

The recipient should introduce ergonomic concepts that enable the team to recognize CTD risk factors, ergonomic hazards, analyze tasks, and refine and implement ergonomic controls.

d. *Developing controls.*

The recipient, in collaboration with CDC, will assist the ergonomic team's development of engineering, work practice, and/or administrative controls to reduce ergonomic hazards associated with the selected task.

e. *Implementing controls.*

The recipient should assist the team's implementation of the controls.

(Note: Cooperative agreement funds are not available to be spent by the meat packing plant for the controls.)

f. *Evaluation.*

Using concepts introduced during team training, the recipient will facilitate a team process of evaluation and feedback to refine and improve implemented controls. Measures of the effectiveness of controls could include a demonstrable reduction of ergonomic risk factors.

3. The recipient will monitor and evaluate the success of the team approach. Measures of team success may include effectiveness of implemented controls, whether the team activity is continued and whether controls are sustained and improved.

4. In collaboration with CDC, the recipient will develop a written case study of the participatory ergonomic projects.

B. CDC Activities

1. Provide technical information and support concerning ergonomics.

2. Provide technical assistance to the recipient in: (a) Choosing the task or series of tasks for the intervention; (b) developing team awareness training; (c) developing control measures for project success; and (d) developing a case study report.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Demonstrate Technical Ability (15%)

Understands ergonomic problems of meat packing plants and understands participatory ergonomic interventions.

B. Program personnel (15%)

Ability to provide the staff, knowledge and other resources and experience to carry out the project. The staff is competent and experienced in the skills required in the scope of work. Resumes of staff should reflect not only academic qualifications but also length and variety of experience in similar tasks.

C. Proposed Plan (30%)

Proposed trial plant is committed to a team approach to ergonomic improvements and is representative of the red-meat packing industry in terms of employment and product and process. (Letters from the proposed trial plant and its labor representative, if applicable, documenting their commitment to the project should be included for the proposal to be considered for an award.)

D. Approach and Capability (30%)

Approach is sound. Proposal describes an approach and goals consistent with the activities or suggests alternative approaches to achieve the same purpose. Application outlines reasonable approaches to task targeting team building, team training, and control development, implementation, and refinement. Proposed project monitoring and evaluation methods and measures are reasonable.

E. Schedule (10%)

Proposed schedule is reasonable and consistent with the proposed approach.

F. Budget (Not Scored)

The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Application and Submission Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before August 15, 1992.

1. Deadline.

Applications will be considered to have met the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applicants:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 275. You will receive a complete program description, information on application procedures, and application forms.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, GA 30305, (404) 842–6630. Programmatic technical assistance is available from Christopher Gjessing, Division of Physical Sciences and Engineering, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 841–4354.

Please refer to Announcement Number 275 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1), referenced in the INTRODUCTION, through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402–9325, (202) 783–3238.

Copies of OSHA's ERGONOMICS PROGRAM MANAGEMENT GUIDELINES FOR MEATPACKING PLANTS (OSHA Publication No. 3123) may be ordered through OSHA Publications, U.S. Department of Labor, 200 Constitution Ave. NW., North 3101, Washington DC, 20210.

Dated: June 11, 1992.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 92-14331 Filed 6-17-92; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 92D-0019]

Center for Veterinary Medicine Policy and Procedures Guide: NADA Review of Dosage Form Oral Electrolytes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of its new Center for Veterinary Medicine (CVM) Policy and Procedures Staff Manual Guide 1240.3150 entitled "NADA Review of Dosage Form Oral Electrolytes." The guide discusses ways of satisfying statutory and other requirements concerning effectiveness, target animal and human food safety, environmental impact, chemistry/manufacturing, and labeling.

DATES: Written comments by August 17, 1992.

ADDRESSES: Submit written requests for single copies of the Policy and Procedures Guide 1240.3150 entitled "NADA Review of Dosage Form Oral Electrolytes" to the Communications and Education Branch (HFV-12), Center For Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on Guide 1240.3150 to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Regarding general information on guide 1240.3150: Steven M. Solomon, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8758.

Regarding information on submitting new animal drug applications for approval: George K. Haibel, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8649.

SUPPLEMENTARY INFORMATION: Dosage form oral electrolyte products for animal use are intended for the mitigation of fluid and electrolyte losses and subsequent disruptions of metabolic activity associated with animal disease. Dosage form oral electrolyte products for use in animals are ordinarily new animal drugs as defined in section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act). Each such product that is a new animal drug requires an approved new animal drug application (NADA) as provided in section 512 of the act prior to manufacture and marketing. Guide 1240.3150 provides internal guidance to NADA reviewers on how the statutory requirement of a substantial evidence of effectiveness can be satisfied for a dosage form oral electrolyte product. It also provides internal guidance on the review of NADA's for conformance to statutory and other requirements for target animal safety, human food safety, environmental impact, chemistry/manufacturing, and labeling. This guide does not bind the agency nor does it create or confer any rights, privileges, or other benefits for or on any person.

Interested persons may submit written comments on the guide to the Dockets Management Branch (address above). Comments will be considered in evaluating the need to amend the guide. Two copies of comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The guide and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for assistance in filing applications for oral electrolyte products should be directed to the Office of New Animal Drug Evaluation (HFV-100), Center For Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8620 or 301-295-8623.

Dated: May 27, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92-14353 Filed 6-17-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92C-0179]

Microbio Resources, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Microbio Resources, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of comminuted *Haematococcus pluvialis* algae meal as a color additive in aquaculture feeds.

FOR FURTHER INFORMATION CONTACT: Emily Florio, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 1C0237) has been filed by Microbio Resources, Inc., 6150 Lusk Blvd., Suite B-105, San Diego, CA 92121. The petition proposes to amend 21 CFR part 73 of the color additive regulations to provide for the safe use of comminuted *Haematococcus pluvialis* algae meal as a color additive in aquaculture feeds.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 5, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-14382 Filed 6-17-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 90G-0412]

Fuji Oil Co., Ltd.; Filling of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fuji Oil Co., Ltd., has filed a petition (GRASP 7G0330), proposing to affirm that lipase-protease enzyme preparation derived from *Rhizopus niveus* is

generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by August 17, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(b)(5) (21 U.S.C. 321(s), 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Fuji Oil Co., Ltd., Osaka, Japan, has filed a petition (GRASP 7G0330), proposing that lipase-protease enzyme preparation derived from *Rhizopus niveus* be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before August 17, 1992, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 5, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–14383 Filed 6–17–92; 8:45 am]

BILLING CODE 4160–01–F

Investigational New Drugs; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is asking interested drug companies to submit the name and number of any investigational new drug trial placed on clinical hold during fiscal years 1991 and 1992 which the drug companies want reviewed by the committee that periodically reviews selected clinical holds of the Center for Drug Evaluation and Research (CDER). FDA imposes clinical holds on drug studies when it believes it necessary to protect the welfare of clinical subjects. Submissions should be made to the Chief Mediator and Ombudsman to ensure the confidentiality of the request.

DATES: The meeting will be held in August 1992. Drug companies may submit review requests for the August meeting before July 15, 1992.

ADDRESSES: Submit clinical hold review requests to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, rm. 14–84, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

FOR FURTHER INFORMATION CONTACT: Deborah Wolf, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8046.

SUPPLEMENTARY INFORMATION: FDA is announcing the fourth in a series of meetings of the committee that reviews the clinical holds that CDER has placed on certain investigational new drug trials. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects, or, for Phase 2 or 3 studies, is otherwise seriously deficient, it may impose a clinical hold on a study. FDA is asking interested drug companies to submit to the committee for its review the name and number of any investigational new drug trial placed on clinical hold during fiscal years 1991 and 1992 that the drug companies want the committee to review.

The clinical hold is FDA's primary mechanism for protecting subjects who are involved in investigational new drug trials. A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be placed on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug, and patients already in the study should stop receiving therapy involving the investigational drug unless FDA specifically permits it.

In the **Federal Register** of October 2, 1991 (56 FR 49894), the agency published a notice announcing the establishment of an experimental procedure for reviewing clinical holds. The notice described the IND regulations and the provisions governing clinical holds. The notice also described some concerns which IND sponsors have expressed concerning the reasons for imposition of clinical holds.

The procedure involved the creation of a committee composed of senior agency officials to review the process by which clinical holds are imposed. Under the procedure, the committee reviews a number of clinical holds at each of its regularly scheduled meetings. The Chief Mediator and Ombudsman develops the list of clinical holds to be reviewed. Some are selected randomly from CDER's management information system, but others are submitted by IND sponsors. The committee process neither replaces, nor prevents firms from using, the dispute resolution procedures described in the IND regulations (see 21 CFR 312.48).

The committee held a pilot meeting in August 1991 and regular meetings in November 1991 and April 1992, and will hold a meeting in June 1992. The August 1992 meeting will be the fourth regular meeting of the committee.

The meetings of the review committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding privileged commercial information, are available from the Chief Mediator and Ombudsman. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

FDA invites drug companies to submit to the FDA Chief Mediator and Ombudsman the name and number of any investigational new drug trial that was placed on clinical hold in fiscal year 1991 or 1992 that they want the committee to review at its August meeting. Submissions should be made by July 15, 1992, to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman (address above).

Dated: June 12, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-14254 Filed 6-17-92; 8:45 am]

BILLING CODE 4160-01-F-

Health Care Financing Administration

Privacy Act of 1974; Report of New System of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, we are proposing to establish a new system of records, "Post-Hospitalization Outcomes Studies," HHS/HCFA/ORD No. 09-70-0052. We have provided background information about the proposed system in the "**SUPPLEMENTARY INFORMATION**" section below. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, HCFA invites comment on all portions of this notice.

DATES: HCFA filed a New System Report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on June 12, 1992. The new system of records will become effective August 17, 1992, unless HCFA receives comments which would necessitate alterations to the system.

ADDRESSES: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room 2-H-4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Joan L. Warren, Ph.D., Division of Beneficiary Studies, Office of Research, Office of Research and Demonstrations, Health Care Financing Administration, Room 2504 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, telephone (410) 966-0677.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records for data collected for the Post-Hospitalization Outcomes Studies (PHOS), as part of the federal outcomes and effectiveness initiative. The PHOS have been designed to provide detailed information about Medicare beneficiaries' outcomes following hospitalization for specific conditions or procedures. The purpose of the proposed system of records is to acquire and maintain data necessary to assess patients' outcomes following hospitalization as part of the PHOS. A field test for the PHOS is scheduled to begin in 1992 with a fully study to commence in 1993.

Data for the PHOS are obtained from three sources: (1) Telephone interviews with Medicare beneficiaries who have been recently hospitalized; (2) patients' medical records; and (3) Medicare claims data. The primary goal of the PHOS is to assess the outcomes of elderly Medicare beneficiaries following hospitalization for specific conditions. This information, linked to existing Medicare data about health care utilization, can develop knowledge about: (1) The natural history of disease; (2) the risks, outcomes, and cost-effectiveness of treatments; and (3) indicators of patients who are at high risk for complications following hospitalization.

In order to fulfill this goal and complete the tasks of this project, HCFA and the contractor must have individually identified records. We are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act. We do not anticipate that establishment of the proposed system of records will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose individually identifiable information without the consent of the individual under an exception for "routine uses." Under the "routine uses" exception, disclosure is permitted for purposes that are compatible with the purpose for which HCFA collected the information. The proposed routine uses of the proposed system meet the compatibility criteria because the information in the system is collected for evaluating the PHOS, a collaborative project between HCFA and the Agency for Health Care Policy and Research. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: June 8, 1992.

Wiliam Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

09-70-0052

SYSTEM NAME:

Post-Hospitalization Outcomes Studies, HHS/HCFA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Data will be maintained at the contractor site and at HCFA. Contact system manager for location of contractor. See "System Manager(s) and Address" for system manager location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries age 65 and over who are hospitalized for specific conditions or procedures in a hospital selected to participate in the study. Hospitals will be randomly selected from geographically clustered sites.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system will contain information taken from three sources: (1) Telephone interviews with Medicare beneficiaries who have been recently hospitalized; (2) patients' medical records; and (3) Medicare claims data. The telephone interviews will address information about patients' medical signs and symptoms related to their hospitalization, functional status, quality of life indicators, availability of social supports, and satisfaction with the outcome from the hospitalization. Data from the medical records include clinical information relevant to patient outcomes. Data fields consist of comorbidities and medical history, course of treatment, intra-hospital events, and short-term medical outcomes.

Medicare claims data will include utilization of Medicare services, both pre-hospitalization and post-hospitalization; the type and place of service (physician, hospital, skilled nursing facility, etc.); and the amount charged and paid for the service.

During this project, approval for a beneficiary survey will be requested, in accordance with the Paperwork Reduction Act and 5 CFR part 1320. As described above, data from this survey

would be included in the proposed system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This proposed system of records is authorized by title IX, section 902(a) of the Public Health Service Act (42 U.S.C. 299a(a)), as amended; title III, section 304 of the Public Health Service Act (42 U.S.C. 242b), as amended; and title XVIII, section 1875 of the Social Security Act.

PURPOSE OF THE SYSTEM:

The primary objective of the PHOS is to assess the patient outcomes following hospitalization for specific conditions or procedures. This system of records will be used to study the outcomes following hospitalization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

Disclosure may be made:

1. To contractor(s) for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in the system or for developing, modifying, and/or manipulating automatic data processing (ADP) software. Data may also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance of an ADP or telecommunications system containing or supporting records in the system. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

2. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purposes for which the records were collected.

4. To an individual or organization for research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the proposed disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is a reasonable probability that the objective of the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record; and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information; and

(3) Make no further use of the record except:

(a) In emergency circumstances affecting the health or safety of any individual,

(b) For use in another research project, under these same conditions, and with written authorization of HCFA,

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Information will be retrieved by beneficiary's name, health insurance claim number, or social security number.

SAFEGUARDS:

Employees who maintain records in this system will be instructed to grant access only to authorized users. Data stored in computers will be accessed through the use of passwords, keywords, numbers, or some combination thereof known only to the authorized personnel. These passwords, keywords, or numbers will be changed as needed.

Contractors who maintain records in this system will be instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. (See title and business address of responsible agency official under "System Manager(s) and Address.") Privacy Act requirements will be included in contracts related to this system. The project officer and contract officer will oversee compliance with these requirements. The particular safeguards implemented will be developed in accordance with the HHS Information Resource Manual (IRM), Part 6, "Systems Security Policies" (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards..

RETENTION AND DISPOSAL:

Hard copy data collection forms and electronic media with identifiers will be retained in secure storage areas. The disposal technique of degaussing will be used to strip electronic media of all identifying names and numbers by December 2003, 10 years after project completion. Hard copy records will also be destroyed by that time.

SYSTEM MANAGER(S) AND ADDRESS:

The responsible agency official (System Manager) is the Director, Office of Research and Demonstrations. The address is the Health Care Financing Administration, Room 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address indicated above, specifying names, address, and health insurance claim or social security number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. These procedures are in accordance with HHS

regulations 45 CFR 5b.5(a)(2) and 45 CFR 5b.6.

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting the record (e.g., why it is inaccurate, irrelevant, incomplete, or not current), the corrective action sought, and give any supporting justification. These procedures are in accordance with HHS regulations (45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Information contained in these records will be obtained from PHOS beneficiary surveys conducted by HCFA's contractor, from patients' medical records, and from existing HCFA Medicare record systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92-14304 Filed 6-17-92; 8:45 am]
BILLING CODE 4120-03-M

Health Resources and Services Administration

Availability of Funds for Grants to Provide Health Services in the Pacific Basin

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $700,000 in fiscal year 1992 for grants to improve delivery of health services, including preventive health services, in the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. The funds will be awarded under the authority of Section 301 of the Public Health Service (PHS) Act. The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program is related to the priority area of improving access to health services in underserved areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9323 (Telephone 202-783-3238).

ADDRESSES: Grant application guidelines, application kits and guidance (Form PHS 5161-1 with revised Face Sheets DHHS Form 424, as approved by the OMB under control number 0937-0189) and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from Ms. Linda Gash, Chief, Office of Grants Management, Public Health Service, Region IX, room 335, 50 United Nations Plaza, San Francisco, CA 94102. Completed applications should be mailed to Mr. Gary Houseknecht, Grants Management Officer, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 12100 Parklawn Drive, Rockville, Maryland 20857. The application kit will be available June 15, 1992.

DATES: Applications are due on August 1, 1992. Applications shall be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked before the deadline date and received in time for orderly processing. Untimely applications will be returned to the applicant. Applicants should obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Ms. Joan Holloway, Director, Division of Special Populations Program Development, Bureau of Health Care Delivery and Assistance (BHCDA), 5600 Fishers Lane, room 7A-22, Rockville, Maryland 20857 (301) 443-8134.

SUPPLEMENTARY INFORMATION:

Background

This initiative is designed to establish a program of grants to improve health services for Pacific Islanders living in the Flag Territories and the Freely Associated States. These entities (or jurisdictions and nations) face rapidly growing populations, poor health status indicators, and poor economic conditions and who have a limited capacity to meet the primary and preventive health care needs of the populace. Programs will be funded to improve the provision of basic public health, prevention, mental health and primary care services. The provision of technical assistance relating to such projects is permitted under the appropriation.

Available Funds

There will be approximately $700,000 available for discretionary grants to improve health services and provide technical assistance in the Pacific Basin.

Number of Awards

Approximately 10 to 15 awards will be made, ranging from approximately $15,000 to $100,000. The budget and project periods will be for one year.

Eligible Applicants

Eligible applicants include public and private nonprofit entities.

Criteria for Evaluation

Eligible applicants will be evaluated based upon the following:

Need

- The relative need of the populations to be served for the proposed services to be provided based upon:

(1) The demographic and health status characteristics of the population to be served; (2) an overview and analysis of the existing services and delivery systems currently available to serve the population, as well as those services which will be developed under this Initiative; and (3) the identification of gaps within the existing services.

Proposed Plan to Close Gaps in Services

- The adequacy of experience in and knowledge of the proposed service areas;
- The extent to which goals and objectives are clearly defined, appropriate to the population being served, and achievable within the specified time frame;
- The extent to which the action plan thoroughly describes how the program will achieve its goals and objectives;
- The extent to which the proposed activities go beyond those services which are currently provided through Federal or local funding;
- The adequacy and feasibility of the new or expanded efforts proposed to meet the needs of the population and to improve the health status of the populace;
- Emphasis on improved health service delivery, including preventive health services, public health issues of major importance in one or more of the six Pacific areas and applicable to other jurisdictions, standards of professional practice, and quality assurance; and
- Emphasis on the provision of community based services to isolated or

underserved areas, including outer island populations.

Collaboration/Coordination

- The extent to which services will be integrated and coordinated with other Federal and local programs within the community and jurisdictions being served; and
- The extent of community support.

Budget

- The appropriateness of the proposed budget in relation to other resources and the adequacy of the budget justification to support the proposed interventions for this Initiative.

Evaluation

- The adequacy of the evaluation plan designed to measure how well the goals and objectives will be achieved.
- The extent to which grantees previously funded under this Initiative were successful in meeting their goals and objectives, particularly as they relate to the improvement of the population's health status.

Other Award Information

All grants to be awarded under this notice are subject to the provision of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States and local governments for assistance under certain Federal programs. Applicants (other than federally-recongized Indian tribal governments) should contact their Single Points of Contact (SPOC) as early as possible to alert then to the prospective applications and receive any necessary instructions on State process. For proposed projects serving more than one State or jurisdiction, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate application deadline date. The BHCDA does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

The OMB Catalog of Federal Domestic Assistance number of this program is 93.163.

Dated: May 4, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-14311 Filed 6-17-92; 8:45 am]

BILLING CODE 4160-15-M

Indian Health Service

Cessation of Services to Nonmembers of the Pascua Yaqui Tribe

AGENCY: Indian Health Service, HHS.

ACTION: Notice of cessation of services to nonmembers of the Pascua Yaqui Tribe.

SUMMARY: The Indian Health Service (IHS) is correcting a local practice of serving certain individuals who have applied for membership, but have not been enrolled, in the Pascua Yaqui Tribe. The local practice has been to allow such individuals to receive direct health care services in IHS facilities within the Tucson Area IHS, primarily the San Xavier Clinic, without proof that they meet the criteria for membership set out in Public Law 95-375 and the Tribe's governing documents. This practice has been determined to be contrary to Public Law 95-375, as we interpret the law; under that law, individuals of Pascua Yaqui descent are not eligible for IHS services unless they meet the criteria for membership set out in the law and the Tribe's governing documents.

DATES: Effective September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, Indian Health Service, room 8A-23, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301-443-1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to a provision in the Act of October 8, 1964, Priv. L. 88-350, Pascua Yaqui Indians were restricted from receiving benefits, services, and assistance under Federal Indian programs. The Act of September 18, 1978, Public Law 95-375, 25 U.S.C. 1300(f) et seq., repealed that provision of Private Law 88-350, and extended benefits, services, and assistance under Federal Indian programs (including IHS services), to Pascua Yaqui Indians who (1) were members of the Pascua Yaqui Association on September 18, 1978, or (2) thereafter became members of the Pascua Yaqui Tribe in accordance with section 3 of the Act, 25 U.S.C. 1300(f)(2). Section 3 of Public Law 95-375 defines the membership of the Pascua Yaqui Tribe to include (A) the members of the Pascua Yaqui Association, Incorporated, as of September 18, 1978, who apply for enrollment in the Pascua Yaqui Tribe within one year from September 18, 1978, pursuant to the membership criteria and procedures provided for in the official governing documents of the Pascua Yaqui Tribe; (B) all those persons of Yaqui blood who are citizens of the United States and who, within two years from September 18, 1978, apply for and are admitted to membership in the Association pursuant to article VII of the Articles of Incorporation of the Association; and (C) direct lineal descendants of such persons, subject to any further qualifications as may be provided by the Tribe in its constitution and bylaws or other governing documents, 25 U.S.C. 1300(f)(2). Public Law 95-375 also directed the Pascua Yaqui Tribe to adopt a constitution and bylaws, or other governing documents, and a membership roll, within thirty months of September 18, 1978, 25 U.S.C. 1300(f)(1).

Pursuant to the Public Law 95-375, the base membership roll of the Pascua Yaqui Tribe closed on September 18, 1980, and thereafter only those persons who were direct lineal descendants of individuals on the base membership roll and met any further qualifications imposed by the Tribe's governing documents were eligible for membership in the Tribe. Enrollment of eligible lineal descendants of the Tribe was delayed because the Tribe did not adopt its constitution and bylaws until 1988. Subsequent to the enactment of Public Law 95-375, the Tucson Area IHS began providing direct health care services to Yaquis who had applied for membership in the Tribe, but had not completed the enrollment process; this practie was adopted to accommodate Yaquis who had not been able to become tribal members because of the delay in the adoption of the tribal constitution.

The practice of serving all Yaquis who had applied for membership in the Tribe was inadvertently continued by the Tucson Area, however, after the Tribe adopted its constitution in 1988. The Tucson Area's practice was questioned when nonmember Yaquis sought services in IHS facilities in the Phoenix Area IHS, and were denied services because they were not members of the Tribe. The Tribe raised the issue with IHS, thus prompting a review of the Tucson Area's practice. As a result of the review, we have determined that the practice of providing direct IHS health care services to Yaquis who do not meet the criteria for membership is contrary to Public Law 95-375.

Therefore, the purpose of this notice is to withdraw IHS services from those Yaquis who do not meet the criteria for membership set out in the law and the Tribe's governing documents and who are currently receiving treatment at IHS facilities, in a manner which provides such patients adequate and reasonable time to secure another source of medical treatment. In order to accomplish this purpose, as of the effective date of this

notice, we are implementing the following procedures, which will apply to individuals who are not members of the Pascua Yaqui Tribe, as defined by Public Law 95–375 and the Tribe's governing documents, and who are not otherwise eligible for IHS services:

(1) Affected individuals who are presently inpatients in IHS facilities will continue to be hospitalized until the need for hospitalization has ended. The determination as to when hospitalization is no longer needed shall be made by the patient's physician and be based upon the medical circumstances of each patient. These patients will be notified that after discharge, they will no longer be eligible for IHS services other than for necessary follow-up services, and they should be assisted in locating other helth care providers. The need for necessary follow-up services will be determined by the IHS physician, after considering all relevant factors, including medical priorities.

(2) Affected individuals who are presently undergoing a course of outpatient treatment in an IHS facility will not be given further treatment unless, in the judgment of the medical officer in charge, immediate termination of treatment would threaten the life of or seriously impair the health of the patient. These patients will be notified that they are no longer eligible for IHS services, and they should be assisted in locating other health care providers.

(3) Affected individuals who are under treatment for chronic degenerative conditions may be provided additional treatment in IHS facilities for a period of up to one year beyond the effective date of this notice (taking into consideration medical priorities), notwithstanding any determination that it was otherwise safe to transfer treatment to other providers.

This notice will be posted in the public area of the San Xavier Clinic, as well as other IHS facilities, whether operated by IHS or by an Indian tribe or tribal organization under the authority of Public Law 93–638. Every reasonable effort will be made by the Tucson Area IHS to provide a copy of this notice to all affected individuals currently undergoing treatment in an IHS facility, and to assist them in locating other health care providers.

This notice makes no substantive change with respect to the eligibility of Indians for IHS services; rather, the IHS is simply bringing its practice into compliance with the terms of Public Law 95–375. This notice also does not preclude treatment by the IHS of non-beneficiaries on a fee or other basis where otherwise authorized by law (e.g., under section 707(a) of Pub.L. 100–713, 25 U.S.C. 1680(c)).

Dated: May 8, 1992.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 92–14380 Filed 6–17–92; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

Method for Evaluating and Establishing Reimbursement Rates for Health Care Services Authorized Under the Indian Health Service Contract Health Services Regulations—Selected IHS Sites

AGENCY: Indian Health Service, HHS.

ACTION: Addition of sites to the IHS pilot project.

SUMMARY: The Indian Health Service (IHS) issues this notice to inform the public that additional sites will be added to the IHS Pilot Project now being conducted in the Portland Area. This Pilot Project is to determine whether an alternative method of evaluating and establishing reimbursement rates for contract health services (CHS) will result in greater participation and lower cost to the IHS. The additional sites include the Alaska Native Medical Center and other selected locations within the Alaska Area IHS; the metropolitan Billings, Montana vicinity and other selected locations within the Billings Area IHS; and the Cherokee Service Unit, within the Nashville Area IHS.

EFFECTIVE DATE: June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ronald G. Freeman, Director, Division of Health Care Administration/Contract Health Services, rm. 6A–55, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8373 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The IHS issued a General Notice on March 13, 1991, 56 FR 10566, to inform the public that IHS was conducting a Pilot Project in the Portland Area IHS, to determine whether an alternative method of evaluating and establishing reimbursement rates for CHS will result in greater participation by health care providers and lower costs to IHS. Providers within the Portland Area were invited to submit their most favorable rate quotations. The response was far greater than the expectation of the IHS. As a result of preliminary information gained from the Portland Area Pilot Project, it has been determined that it will be beneficial to include additional sites in other geographic areas. The additional sites include: The Alaska Native Medical Center and other selected locations within the Alaska Area IHS; the metropolitan Billings, Montana vicinity and other selected locations within the Billings Area IHS; and the Cherokee Service Unit, within the Nashville Area IHS.

The IHS CHS program is administered under regulations last published in the CFR in 1986 [1] and 42 CFR, part 36, subpart G. Under this program IHS purchases health services from hospitals, physicians, and other health care providers to supplement the IHS direct delivery system. The IHS last issued a payment policy in 51 FR 23540 on June 30, 1986.

This policy requires the IHS Area Offices to negotiate contracts with the providers that they expect to use for health care services. With certain specified exceptions, the contract must provide for reimbursement for services at rates that do not exceed Medicare approved amounts (including deductibles and co-insurance), and the service units which report to the IHS Area Offices must procure their health care services under these contracts.

Although the number of contracts that the IHS has in place has been steadily increasing, it has not been possible to enter into contracts with each of the approximately 850 facilities and 4,600 professional providers that the IHS uses on a recurring basis. The Area Offices lack the contracting staff resources to develop solicitations, review proposals, and negotiate contracts with each of these providers; and, some providers are unwilling to review the lengthy solicitations or commit to accept the extensive and restrictive contract clauses required by the Federal Acquisition Regulations (48 CFR part 1). In addition, when contracts are awarded, it is sometimes difficult for the Area Offices to determine which contract provider is offering the most favorable rate.

The additional sites will honor their existing contracts for health care services during the pilot test, but will limit new contract awards to those situations in which it is feasible to fill all requirements for a specific service or set of closely related services from a single source and a requirements contract will yield lower prices that the preferred provider approach described below. For the duration of the Pilot Project, the IHS payment policy of June 30, 1986, will not apply to those sites that will be testing

[1] Copies of these regulations are available at: Division of Legislation and Regulations, rm. 8A–23, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

the use of a rate quotation methodology as described in the following paragraph.

The IHS uses most of its providers for broad categories of services rather than for a few specific services (e.g., for physician services rather than for selected medical procedures), and the Pilot Project is directed at testing an approach for simplifying communications and establishing favorable rates with these providers. Under this approach, the selected sites will send each of their current providers a standard rate solicitation letter that invites the provider to submit its most competitive rates for specified categories of services on an attached form. The IHS will use a specialized contractor, who is familiar with the various rate structures used within the health care industry, to analyze these rate quotations and develop a preferred provider list that ranks providers, by service unit and by category of service, based upon the relative favorableness of their rate offer. The sites will use this information to place their purchase order with the lowest cost provider or group of lowest cost providers that meet the quality of care, geographic, and other relevant criteria. Purchase orders will be issued, with rare exceptions, only to those providers on the preferred provider list.

The pilot project will not apply to services rendered by traditional Indian medicine men and women under Public Law 95–341, Joint Resolution on American Indian Religious Freedom.

This method is limited to the Pilot Project and the sites added by this notice. Any decision to institute the method in other sites will be announced in the **Federal Register**.

Dated: April 17, 1992.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 92–14361 Filed 6–17–92; 8:45 am]

BILLING CODE 92–14361–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D–92–996]

Office of the Manager, Oklahoma City Office, Region VI (Fort Worth); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Rita M. Vinson, Director, Management and Budget Division, Office of Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, telephone (817) 885–5451 (this is not a toll-free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager
2. Director, Indian Programs Division
3. Director, Housing Development Division
4. Director, Community Planning and Development Division
5. Director, Fair Housing and Equal Opportunity Division
6. Director, Housing Management Division
7. Chief Counsel

This designation supersedes the designation effective May 5, 1985.

Authority: Delegation of Authority by the Secretary effective October 1, 1970, in the **Federal Register** issue of February 23, 1971 (36 FR 3389).

Sam R. Moseley,

Regional Administrator—Regional Housing Commissioner, Region VI (Fort Worth).

[FR Doc. 92–14264 Filed 6–17–92; 8:45 am]

BILLING CODE 4210–01–M

Office of Administration

[Docket No. N–92–34–3455]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the followng information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Low-Income Public and Indian Housing Financial Statements.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The reports provide essential financial

information on the operation of Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs). The information is used to determine if residual receipts exist and need to be paid to HUD, and to determine if account balances are correct and have been correctly closed. The information is also used to reconcile balances shown in PHAs/IHAs accounting records with HUD's accounting records.

Form Number: HUD–52595, 52596, 52598, 52599, 52603, 52656, and 53049.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Semi-Annually, Annually and One-Time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52595	3,800		1		1.05		3,990
HUD–52596	3,300		1		1.21		3,993
HUD–52598	3,300		2		1.01		6,666
HUD–52599	3,300		2		1.02		6,732
HUD–52603	229		1		.90		206
HUD–52656	200		1		.50		100
HUD–53049	152		1		.50		71

Total Estimated Burden Hours: 21,758.

Status: Reinstatement.

Contact: John Comerford, HUD, (202) 708–1872, Jennifer Main, OMB, (202) 395–6880.

Dated: June 5, 1992.

[FR Doc. 92–14293 Filed 6–17–92; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–00–6310–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collection of information below has been submitted to the Office of Management and Budget for approval under the provisions of the Paper Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1004–0113), Washington, DC 20503, telephone 202–395–7340.

Title: Pre-Award Qualification for Timber Sale Contracts.

OMB Approval Number: 1004–0113.

Abstract: The respondent provides identifying information and amount of bid by value per unit and total value. The BLM uses the information to determine whether minimum bid values have been equaled or exceeded and the high bidder in sealed bid sales and to determine that a bidder is qualified to submit oral bids at an oral auction.

Bureau Form Number: 5440–9.

Frequency: On Occasion.

Description of Respondents: Firms or individuals wishing to submit bids on BLM timber sales.

Estimated Completion Time: 1 Hour 15 Minutes.

Annual Responses: 500.

Annual Burden Hours: 625.

Bureau Clearance Officer (Alternate): Gerri Jenkins 202–653–6105.

Dated: April 29, 1992.

Kemp Conn,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 92–14320 Filed 6–17–92; 8:45 am]

BILLING CODE 4310–84–M

[ID–030–02–4352–10]

Seasonal Restrictions and Limited Land Use, Closure Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with title 43 Group 6000 and 8000, and in accordance with the principles established by the National Environmental Policy Act of 1969, Endangered Species Act of 1973, and the Federal Land Policy and Management Act of 1976, that certain lands included in the Snake River Area of Critical Environmental Concern (ACEC) are closed to all forms of human activity from February 1 to July 31 of each year. Overnight camping in a portion of the Snake River ACEC is limited to Designated Camping Areas only. Camping is limited to a period of not more than 14 consecutive days.

This action implements provisions of the Snake River Activity/Operations Plan completed February 1991 jointly by the Bureau of Land Management and Forest Service and includes three other Bald Eagle nest sites adjacent to the Plan area. Extensive studies of the Bald Eagle (*Haliaeetus leucocephalus*) an endangered species, have resulted in completion of an interagency Bald Eagle Management Plan adopted in 1983. Detailed studies of bald eagles in the Snake River ACEC have allowed Nest Site Management Plans to be drafted. In order to provide nesting bald eagles with habitat suitable for producing young, a 400 meter radius from the nest needs to be free of human activity until the young have fledged and are able to leave the nest site. The critical period for the eagles has been determined to be from February 1 to July 31 and includes nest building, egg laying, incubation, care and feeding of young until they can fly.

Human activity within close proximity to a nest during the critical periods can result in the nesting pair of eagles abandoning the nest, or young eagles prematurely leaving the next to become prey for local predators. Distinctive signs have been placed and will be maintained along the river corridor to identify areas seasonally closed to human activity

Portions of the following described public lands are closed to human use from February 1 to July 31 of each year:

Boise Meridian, Idaho

T. 1 N., R. 43 E.,
Sec. 12.
T. 2 N., R. 43 E.,
Sec. 18 and 20.
T. 3 N., R. 42 E.,
Sec. 5.
T. 3 N., R. 43 E.,
Sec. 19 and 32.
T. 4 N., R. 40 E.,
Sec. 23.

T. 5 N., R. 39 E.,
Sec. 18.
T. 7 N., R. 40 E.,
Sec. 10.
T. 9 N., R. 42 E.,
Sec. 10.
T. 9 N., R. 43 E.,
Sec. 21.
T. 15 N., R. 43 E.,
Sec. 27.

The Great Blue Heron (*Ardea herodias*) is an important component of the cottonwood ecosystem. Herons build numerous nests in a relatively small area called a Rookery. As part of the implementation of the Snake River Activity/Operations Plan, four of these rookeries are closed to all forms of human activity from April 1 to July 15 of each year. An additional six rookeries will be monitored and similarly closed to all forms of human activity for that period if necessary to ensure reasonable survival rates of the young.

Portions of the following described public lands are closed to human use from April 1 to July 15 of each year:

Boise Meridian, Idaho

T. 1 N., R. 43 E.,
Sec. 12.
T. 3 N., R. 42 E.,
Sec. 4.
T. 4 N., R. 40 E.,
Secs. 7, 17, 21, and 22.
T. 5 N., R. 37 E.,
Sec. 12.
T. 5 N., R. 39 E.,
Secs. 18 and 34.
T. 7 N., R. 40 E.,
Secs. 10 and 11.

Observations and studies conducted for preparation of the Medicine Lodge Resource Management Plan and the subsequent detailed Snake River Activity/Operations Plan identified areas used by the public for overnight camping in the portion of the Snake River ACEC from Conant Landing Boat Access to Lufkin Bottom. This most scenic portion of the ACEC has also been the most heavily used by the public. Existing and presently used camp sites have been grouped into 15 Designated Camping Areas. Two camp areas have also been designated for use by commercial outfitters licensed by the Idaho Outfitter and Guide Board. All camping in this section of the river corridor shall occur in these designated areas and camping in other areas is prohibited. This action is necessary to preserve the integrity and continued health and continuity of the varied biological resources. Maintaining the extensive cottonwood riparian area is key to ensuring that plant and animal communities persist and that existing high public values can be maintained over the long term. This action also ensures that people do not camp in critical eagle zones.

Designated camping areas have been identified on maps made available to the public and by use of distinctive signs along the river corridor. These designated camping areas include portions of the following described lands:

Boise Meridian, Idaho

T. 2 N., R. 43 E.,
Secs. 6, 7, 17, 19, 20, 29, and 30.
T. 3 N., R. 42 E.,
Sec. 24.
T. 3 N., R. 43 E.,
Secs. 19, 30, and 32.

EFFECTIVE DATE: This seasonal restriction and limited land use closure order becomes effective June 17, 1992 and shall remain in effect until modified or canceled.

FOR FURTHER INFORMATION CONTACT: Lloyd H. Ferguson, District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 524–7500.

Dated: June 4, 1992.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 92–14326 Filed 6–17–92; 8:45 am]

BILLING CODE 4310–66–M

[OR–054–4340–15:GP2–283]

Emergency Closure of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior, Prineville District.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective June 15, 1992, all public lands as legally defined below, are closed to all motorized vehicle access and travel:

Township 14 South, Range 21 East,
Willamette Meridian:
Section 1: SE¼, S½SW¼.

The purpose of this closure is to protect a fragile watershed with erosive soils, native vegetation, wildlife and scenic values. This action will allow vehicle roads and trails in the area to revegetate and heal, reduce wildlife disturbance, improve natural beauty and reduce trash problems.

The only exception would be for special administrative use and emergency needs.

The authority for this closure is 43 CFR 8341.1. This closure order is effective June 15, 1992 and shall remain in effect until revised, revoked or amended by the authorized officer pursuant to 43 CFR 8360.

PENALTIES: Any person who violates this closure notice may be subject to a maximum fine of $1,000 and/or imprisonment not to exceed 12 months under authority of 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Dick Cosgriffe, BLM Central Oregon Resource Area, PO Box 550, Prineville, Oregon 97754, (503) 447–8731.

Dated: June 10, 1992.

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 92–14323 Filed 6–17–92; 8:45 am]

BILLING CODE 4310–33–M

[OR–110–6334–11–G2–269]

Closures and Restrictions; Oregon

June 9, 1992.

AGENCY: Bureau of Land Management (BLM), Interior, Medford District Office.

ACTION: Notice of closure and restrictions, in the Grants Pass Resource Area, Mount Peavine, French Flat Areas and West Illinois Area.

SUMMARY: Pursuant to 43 CFR part 8364, the BLM will close designated areas of the Grants Pass Resource Area to motorized vehicles. Subject to valid existing rights use of 11,980 acres of the Mount Peavine area, 1,160 acres of the French Flat area and 480 acres in the West Illinois area by motorized vehicle is prohibited. This closure shall apply year round. Any Bureau of Land Management employee, agent, contractor or cooperator, while in the performance of official duties is exempt from this closure. The Bureau of Land Management may authorize volunteers, or other parties to enter the areas for administrative, maintenance or other authorized purposes. With the exception of law enforcement officials individuals shall not carry firearms in vehicles which are permitted in the closed area.

The Peavine area supports a herd of Roosevelt elk which has been reduced from approximately fifty in 1970 to a low of nine animals in 1990 by poaching. The purpose of this closure and restriction notice is to provide a means by which the Secretary of the Interior through the Bureau of Land Management, may control and manage public use of the area to effectively carry out management objectives and provide wildlife with habitat that is free from disturbance and poaching from motor vehicles.

The French Flat area contains five sensitive plant species, *Lomatium cookii, Senecio hesperius* and *Microseris howellii* which are Federal candidate species and *Limnanthes gracilis* var. *gracilis* which is a Bureau sensitive species and *Erythronium*

howellii which is a Bureau assessment species, and two rare plant communities, *Deschampsia-Danthonia* grasslands which is rare at low elevation and white oak pine savanna which is classified as globally threatened by The Nature Conservancy. The purpose of this closure and restriction notice is to provide a means by which the Secretary of the Interior through the Bureau of Land Management, may control and manage public use of the area to effective carry out management objectives and provide plants and plant communities with a habitat which is free from disturbance by motorized vehicles.

Section 17 of the West Illinois area is very similar to the French Flat area in that it contains the same two rare plant communities. The purpose of this closure and restriction notice is to provide a means by which the Secretary of the Interior through the Bureau of Land Management, may control and manage public use of the area to effectively carry out management objectives and provide plants and plant communities with habitat which is free from disturbance of motorized vehicles.

Maps of the closed area are available from the Medford District Office, 3040 Biddle Road Medford, Oregon 97504. This closure and restriction order are effectively immediately and shall remain in effect until revised, revoked or amended by the authorized officer pursuant to 43 CFR 8360.0–7.

Any person who violates this closure and restriction notice may be subject to a maximum fine of $1,000 and/or imprisonment not to exceed 12 months under authority 43 CFR 8360.0–7.

Closed areas

Peavine Mountain is located approximately 2 miles west of Galice, Oregon and is further described as follows:

Township 34 South, Range 8 West, Willamette Meridian.
Secs. 3,4,8,9,10,11, all.
Sec. 14 N½, E½SE¼, W½SW¼.
Secs. 15,16,17,20,21, all.
Sec. 22 N½NE¼, W½, NW¼, SW¼, SW¼SE¼.
Sec. 27 W½NE¼, NW¼, N½SW¼, NE¼SW¼, SE¼SW¼, NW¼SE¼.
Secs. 28,29,30,31,32,33, all.

French Flat is located approximately five miles south of Cave Junction, Oregon and is further described as follows:

Township 40 South Range 8 West, Willamette Meridian.
Sec. 10 SW¼.
Sec. 15 NE¼, NE¼NW¼, NW¼NW¼, SE¼NW¼, E½SW¼SW¼, E½SE¼.
Sec. 21 NW¼NE¼, S½SE¼, SE¼SW¼, S½NE¼SW¼.
Sec. 22 NW¼NE¼, N½NW¼, SW¼NW¼, W½SW¼.
Sec. 23 W½W½, SE¼SW¼.

Section 17 of the West Illinois area is located approximately one mile west of Cave Junction, Oregon and is further described as follows:

Township 39 South, Range 8 West, Willamette Meridian.
Sec. 17 NW¼, E½NE¼, NW¼NE¼, N½SW¼.

FOR FURTHER INFORMATION, CONTACT: John Dutcher Natural Resource Specialist, Grants Pass Resource Area, Medford District Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504 (telephone 503/770/2277).

Harold J. Belisle,
Grants Pass Area Manager.

[FR Doc. 92–14325 Filed 6–17–92; 8:45 am]
BILLING CODE 4310–33–M

[WY–060–02–4320–04]

Casper District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Casper District Advisory Council.

SUMMARY: The Casper District Advisory Council will meet July 15, 1992 at 9 a.m. at the Buffalo Resource Area Office, 189 North Cedar, Buffalo, Wyoming for a tour of public lands administered by the Buffalo Resource Area. On July 16, at 8:30 a.m., the Council will reconvene for a business session at the Buffalo Federal Savings and Loan, 106 Fort Street.

The agenda items for the July 16, 1992 meeting includes (1) election of officers; (2) status reports on Buffalo and Newcastle Resource Management Plans, Platte River Resource Area Habitat Management Plan; (3) Water Monitoring for the Powder River Basin; (4) Land Tenure Adjustments; (5) BLM Visitor and Interpretative Centers; (6) BLM Reorganization 2015 and any other business introduced by council members. The Council will accept public comments on these agenda items or any other issues July 16, 1992, 10 a.m. during the officially established comment period.

FOR FURTHER INFORMATION CONTACT: Kate Padilla, Public Affairs Specialist, 307–261–7600, Casper District.

Dated: June 9, 1992.

Mike Karbs,
Acting District Manager.

[FR Doc. 92–14321 Filed 6–17–92; 8:45 am]
BILLING CODE 4310–22–M

[ID–060–02–4333–11]

Coeur d'Alene District Advisory Council, Meeting

AGENCY: Bureau of Land Management.

ACTION: District Advisory Council Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 92–463, that a meeting of the Coeur d'Alene District Advisory Council will be held July 28–29, 1992. The meeting will begin at 12 noon and will be held at the BLM Coeur d'Alene District, Cottonwood Resource Area Headquarters, Cottonwood, Idaho.

Agenda items include: election of officers, update on Lower Salmon River designations, field tour of portions of Lower Salmon River, and updates on other management issues.

The meeting is open to the public and interested persons may make oral statements to the Council between 11 a.m. and 11:30 a.m. on July 29, 1992 or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Coeur d'Alene District Office, 1808 N. 3rd St., Coeur d'Alene, ID 83814, by July 10, 1992.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days after the meeting.

Dated: June 9, 1992.

Eric Thomson,
Acting District Manager.

[FR Doc. 92–14322 Filed 6–17–92; 8:45 am]
BILLING CODE 4310–GG–M

[ID–030–02–4212–14; IDI–28621]

Correction to Legal Description Included in the Notice of Intent to Prepare a Planning Amendment to the Medicine Lodge Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Legal Description Included in the notice of intent to prepare a planning amendment to the Medicine Lodge Resource Management Plan.

SUMMARY: The legal description included in the original planning amendment published in the **Federal Register** on January 9, 1992, is hereby corrected as follows:

Boise Meridian, Idaho

T. 7 N., R. 39 E.
sec. 5, SE¼NE¼SE¼SW¼, E½SE¼S E¼SW¼.

Dated: May 28, 1992.

Gary L. Bliss,

Acting District Manager.

[FR Doc. 92-14324 Filed 6-17-92; 8:45 am]

BILLING CODE 4310-GG-M

[WY-940-4730-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 42 N., R. 117 W., accepted June 8, 1992.
T. 51 N., R. 69 W., accepted June 8, 1992.
T. 48 N., R. 88 W., accepted June 8, 1992.
T. 26 N., R. 72 W., accepted June 8, 1992.

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeals(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $2.00 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, metes and bounds surveys and subdivisions.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: June 8, 1992.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 92-14263 Filed 6-17-92; 8:45 am]

BILLING CODE 4310-22-M

[ID-943-4214-10; IDI-29282]

Proposed Withdrawal and Opportunity for Public Meeting; Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service has filed an application to withdraw 2964 acres of National Forest Systems lands for protection of the Valbois Resort. This notice closes the lands for up to 2 years from surface entry and mining. The land will remain open to mineral leasing and all other uses which may be made of National Forest System lands.

DATE: Comments and requests for a meeting should be receive on or before September 16, 1992.

ADDRESS: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, (202) 384-3166.

SUPPLEMENTARY INFORMATION: On June 1, 1992, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights:

Boise Meridian

T. 15N., R. 2 E., those portions of the following described lands lying along and generally to the east of the divide between the Weiser River and Payette River and being in the Payette River Watershed.
Sec. 1, lot 5, E½, E½W½, SW¼NW¼ and W½SW¼;
Sec. 11, NE¼NE¼, SW¼NE¼, SE¼NE¼, NE¼SE¼, W½SE¼ and SE¼SE¼;
Sec. 12, All except part of NW¼NW¼N W¼NW¼ lying in Adams County;
Sec. 13, All of the N½, except for part of NW¼SW¼NW¼NW¼ lying in Adams County.
Sec. 14, E½NE¼.
T. 15 N., R. 3E.,
Sec. 6;
Sec. 7, lots 1 to 4 inclusive, NW¼NE½ and E½W½;
Sec. 18, lots 1 and 2 and E½NW¼.

The area described aggregate 2,964 acres in Valley County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to Idaho State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are existing valid and authorized uses.

Dated: June 9, 1992.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92-14327 Filed 6-17-92; 8:45 am]

BILLING CODE 4310-GG-M

[OR-943-4214-10; GP2-280; OR-48432 (WASH)]

Proposed Withdrawal and Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army, Corps of Engineers, proposes to withdraw 9,745.82 acres of public domain lands to expend the Yakima Firing Center in Kittitas County. This notice closes the lands for up to two years from surface entry, mining and mineral leasing.

DATES: Comments must be received by September 16, 1992.

ADDRESSES: Comments should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208-2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On May 18, 1992, the U.S. Department of the Army filed an application to withdraw the following described public domain lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), and from applications and offers under the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Surface and Mineral Estates

T. 17 N., R. 20 E.,
Sec. 22, S½;
Sec. 24, S½SW¼ and that portion of the E½ lying south of the Interstate Highway 90 right-of-way;
Sec. 26.
T. 16 N., R. 21 E.,
Sec. 4, SW¼SW¼;
Sec. 12, SE¼;
Sec. 18, lots 1, 2, 3, and 4, E½ and E½W½.
T. 17 N., R. 21 E.,
Sec. 30, lots 3 and 4;
Sec. 32, NE¼/SE¼.
T. 16 N., R. 22 E.,
Sec. 2, lots 1, 2, 3, and 4, S½N½ and S½;
Sec. 4, lots 1, 2, 3, and 4, S½N½ and S½;
Sec. 10;
Sec. 14;
Sec. 20, SE¼SW¼;
Sec. 22;
Sec. 26, N½;
Sec. 28, N½.
T. 16 N., R. 23 E.,
Sec. 18, lots 3 and 4, E½SW¼ and SE¼;
Sec. 20, that portion of the SW¼ lying westerly of the easterly right-of-way line of the railroad;
Sec. 30, lots 1 and 2, NE¼ and E½NW¼.

Mineral Estate

T. 16 N., R. 20 E.,
Sec. 12;
Sec. 18, lot 4 and SE¼;
Sec. 20, S½.
T. 16 N., R. 21 E.,
Sec. 4, lots 1, 2, 3, and 4, and S½NE¼;
Sec. 8.
T. 17 N., R. 21 E.,
Sec. 32, S½SE¼;
Sec. 34, W½.
T. 16 N., R. 22 E.,
Sec. 12.

The areas described aggregate approximately 9,745.82 acres in Kittitas County, Washington.

The purpose of the proposed withdrawal is to expand the size of the existing Yakima Firing Center.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300 and under the provisions of the Engle Act of February 28, 1958 (43 U.S.C. 155–158).

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Subject to concurrence by the applicant agency the temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining or mineral leasing laws.

Dated: June 11, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–14309 Filed 6–17–92; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Outer Continental Shelf Advisory Board; Gulf of Mexico Regional Technical Group; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) Meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. 92–463). The Gulf of Mexico RTWG meeting will be held July 22, 1992, at the Ramada Resort Hotel, 600 South Beltline Highway, Mobile, Alabama.

The business portion of the meeting will be held beginning at 9 a.m. on July 22, 1991. Agenda items are as follows:

- Roundtable Discussion
- Oil Spill Operations System, Marine Spill Response Center
- Panel Discussion of GIS Needs/Initiatives
- Environmental Studies Update
- Features of new 5-Year Plan and Pending Energy Bill
- Public Comment

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ms. Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736–2589 by July 10, 1992. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: June 9, 1992.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 92–14328 Filed 6–17–92; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Backcountry Management Plan, Environmental Assessment; Canyonlands National Park, UT

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental assessment for the Backcountry Management Plan, Canyonlands National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental assessment for the Backcountry Management Plan for Canyonlands National Park.

The effort will result in a comprehensive backcountry management plan that encompasses preservation of natural and cultural resources, visitor use, roads and facilities. Alternatives to be considered include no-action, the preferred alternative, and other alternatives.

Major issues include setting use limits, establishing designated backcountry campsites, facilities and maintenance in the backcountry, limiting visitor impact on natural and cultural resources, rock climbing, horse and pack animal use, and commercial services.

A scoping brochure has been prepared and copies can be obtained from the Chief of Resources, Canyonlands National Park, 125 West 200 South, Moab, Utah 84532, telephone (801) 259–

7164. Scoping comments will be accepted at the above address for 30 days following publication of this notice.

FOR FURTHER INFORMATION: Contact Superintendent, Walter D. Dabney, Canyonlands National Park, telephone (801) 259–7164.

Dated: June 5, 1992.

Michael D. Snyder,

Associate Regional Director, Rocky Mountain Region.

[FR Doc. 92–14258 Filed 6–17–92; 8:45 am]

BILLING CODE 4310–70–M

Notice of Completion of Inventory of Native American Human Remains and Associated Funerary Objects Within the Campbell Collection, Joshua Tree National Monument, Twentynine Palms, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains and associated funerary objects within the Campbell Collection, a Federally curated collection at Joshua Tree National Monument, Twentynine Palms, California. Representatives of culturally affiliated Indian tribes are advised that the human remains and associated funerary objects in the Campbell Collection will be retained by the monument until July 20, 1992 after which they may be repatriated to the culturally affiliated groups.

The detailed inventory and assessment of the human remains and associated funerary objects within the Campbell Collection has been made by National Park Service professional curatorial staff, contracted specialists in physical anthropology and prehistoric archeology, and representatives of the following affected tribal organizations:

Agua Caliente Band of Cahuilla Indians
Twentynine Palms Band of Mission Indians
Torez Martinez Reservation
Santa Manual Band of Mission Indians
Cabazon Reservation
Anza Band of Cahuilla Indians
Saboba Reservation
Morongo Reservation
Coyote Reservation
Santa Rosa Reservation
Colorado River Indian Tribes Reservation
Fort Mojave Indian Reservation
Chemehuevi Reservation
Quechan Indian Nation of the Fort Yuma Reservation

Between July 1931 and July 1933, Elizabeth and William Campbell carried out legally authorized archeological studies on Federal public lands now within Joshua Tree National Monument. Among the archeological resources collected were human cremations and artifacts believed to be associated with funerary events practiced by prehistoric and historic Native Americans. Recent assessment studies indicate that eleven individuals are represented; approximately 12,225 Native American artifacts are believed to have been associated with the funerary events. These artifacts include historic glass trade beads, native shell beads, chipped and other stone implements, pottery vessels, clay smoking pipes and human effigies, and animal bone tools. One cremation appears to be 19th Century in date; others may be estimated as being between 9th to 14th Century in date. The collection does not contain materials which meet the definition of sacred object or objects of cultural patrimony.

Artifactual evidence does not allow specific identification as to tribal origin. However, recent assessment studies on portions of the Campbell Collection indicate basic similarities in crematory practice, ceramics, stone tool manufacture, ornamentation, and bone or shell artifacts of known archeological traditions believed ancestral to contemporary Cahuilla, Serrano, and Colorado River tribal peoples. Ten of the cremations are likely affiliated to Cahuilla or Serrano cultural traditions. One cremation is determined possibly to be of either Colorado River area cultural affiliation, represented by contemporary Quechan, Mojave, Maricopa or Chemehuevi peoples, or of Diegueñocultural affiliation to the southwest of the monument.

Representatives of any Indian tribe believed to be culturally affiliated with the human remains and associated funerary objects of the Campbell Collection that have not been contacted should talk with Superintendent David E. Moore, Joshua Tree National Monument, 74485 National Monument Drive, Twentynine Palms, CA 92277, (619) 367–6376, before July 20, 1992.

Dated: June 9, 1992.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief Archeological Assistance Division.

[FR Doc. 92–14257 Filed 6–17–92; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Contemplated Settlement of Case Involving Valid Existing Rights Determination Within the Wayne National Forest, Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of Contemplated Settlement Agreement and Reconsideration of VER Determination.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM), the United States Forest Service (USFS), and Belville Mining Company (BMC) are contemplating a settlement of *Belville Mining Co.* v. *United States*, No. 90–244–L (Cl. Ct.) (*Belville III*). To implement such a settlement, OSM would reconsider its Valid Existing Rights (VER) determination with respect to the McMullen property, located within the boundaries of the Wayne National Forest in Ohio. OSM would use a takings standard to make two VER determinations concerning the McMullen property. In anticipation of a possible settlement, OSM is announcing that it solicits additional relevant factual information on its contemplated reconsideration of its VER determination on the McMullen tract.

DATES: OSM will accept written materials on all issues pertaining to the McMullen property until 5 p.m. eastern time on July 20, 1992.

ADDRESSES: Hand deliver written materials to the Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, room 5131L, 1100 L Street NW., Washington, DC; or mail written materials to the Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, room 5131L, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Documents comprising the administrative record are available for public review and copying during regular business hours at the Administrative Record Room, room 5131L, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1100 L Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard Miller, Chief, Planning and Analysis Staff, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240, (202) 208–2618.

SUPPLEMENTARY INFORMATION:

I. VER Required

Section 522(e) of SMCRA provides that:

> After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted * * * on any federal lands within the boundaries of any national forest: * * *

30 U.S.C. 1272(e). Under the Federal regulations at 30 CFR 740.4(a)(4) and 745.13(o), the Secretary of the Interior retains responsibility for making VER determinations for surface coal mining operations on Federal lands within the boundaries of areas specified in section 522(e)(2) of SMCRA. This responsibility is exercised by OSM.

II. McMullen VER Determination and Belville III.

The McMullen property is approximately 81.32 acres in Lawrence County, Ohio, within the boundaries of the Wayne National Forest. For analytical purposes, the McMullen property may be divided into two tracts, the "North 40" and the "South 40', corresponding to two conveyances that created mineral reservations on the McMullen property. In an October 28, 1966 deed from certain grantors to the United States, the grantors reserved the following mineral rights:

> [T]he right under the rules and regulations of the Secretary of Agriculture dated April 30, 1963, * * * to explore for and remove oil, gas, coal, and clay until the termination of March 24, 1990.

This deed, however, was subject to a 1955 mineral reservation in a conveyance of the South 40 in which the grantor had reserved:

> All of the fireclay, and any coal that may be mined in conjunction or connection with the mining of said fireclay * * * together with the right to * * * remove said clay and/or coal by any recognized mining method, including stripping, * * * the said Grantors hereby discharging and releasing the said Grantee from any liability on account of injury to the surface of said lands, * * * arising through the mining and removal of said clay and/or coal.

On December 21, 1989, OSM determined that BMC did not have VER for the McMullen tract. The 1989 determination was a reconsideration of a December 1988 determination in which OSM found that BMC did have VER for the McMullen tract. See 54 FR 52465.

On March 19, 1990, BMC filed suit challenging the December 21, 1989, VER determination as a taking of BMC's property in violation of the Fifth Amendment. After extensive negotiations, the parties are considering the following proposal for settlement: in return for the Government recognizing BMC's entitlement to surface mine the South 40, BMC would surrender any rights it might have to the North 40, leaving the Government with a fee simple interest in that tract. BMC would be allowed to transport coal from the South 40, using an existing road as a haul road, for which the Forest Service would grant a special use permit.

To implement such a settlement, OSM would determine whether BMC had demonstrated VER both for surface mining the South 40 and for using the haul road. If on reconsideration OSM determines that BMC does not have VER for either surface mining the South 40 or for using the haul road, the settlement described above would not be implemented.

III. Effect of Belville I on Contemplated VER Determination

OSM's VER policy was set forth in a **Federal Register** notice published on November 20, 1986 (51 FR 41952). In that notice, OSM stated that under 30 CFR 740.11(a), the approved State regulatory program is applicable to Federal lands in a State. The notice provided that OSM would use the State program definition of VER on Federal lands subject to SMCRA section 522(e) (1) and (2) in States with approved regulatory programs.

On July 22, 1991, in *Belville Mining Co.* v. *Lujan*, No. C–1–89–790 (S.D. Ohio) (*Belville I*), pursuant to a challenge by BMC, the court enjoined OSM from enforcing the VER policy established in the 1986 Federal Register notice. OSM has filed for reconsideration of the court's decision, but must comply with the court's order until it is either reconsidered, stayed, or overturned on appeal. OSM thus decided to use the definition of VER which the same court has used in an earlier case. Accordingly, in a document entitled Defendants' Notice of Publication of Proposed Rule and of Interim Response to Court's Decision, filed on August 2, 1991, OSM stated:

> OSM intends to make VER determinations on a case-by-case basis during the interim period between the Court's decision and promulgation of a final rule * * *. OSM plans to use the approach followed by the court in *Sunday Creek Coal Co.* v. *Hodel* ("*Sunday Creek*"), No. 88–0416, slip op. (S.D. Ohio June 2, 1988). *Sunday Creek* effectively applied a "takings" analysis as the basis for VER determinations.

IV. Applicable VER Standard

If a settlement agreement is reached in *Belville III*, OSM anticipates using the approach followed by the court in *Sunday Creek*, to reconsider its VER determination concerning the South 40. OSM would determine whether denial of VER would result in a compensable taking under the Fifth Amendment to the Constitution.

If OSM determines that denial of VER would constitute a compensable taking, then OSM would determine that BMC has demonstrated VER for the South 40.

The use by OSM of a takings standard in a VER determination is not intended to prejudge OSM's pending national VER rulemaking. It merely reflects the agency's need to conduct business in the interim prior to the promulgation of a final VER definition, in accordance with the constraints imposed by the district court in *Belville I*.

For the contemplated haul road on the McMullen Tract, OSM would apply the existing regulation concerning the VER standard for haul roads. This regulation, at 30 CFR 761.5, provides as follows:

> Valid existing rights means: * * * [f]or haul roads—(1) A recorded right of way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977, or (2) Any other road in existence as of August 3, 1977;

All approved state regulatory programs, including Ohio, also apply such a VER test for haul roads.

On reconsideration, OSM would make its VER determination for both the South 40 and the haul road based on the existing administrative record concerning BMC's request for a VER determination on the McMullen property, and any additional relevant information submitted in response to this notice.

V. Comments Solicited

OSM is inviting interested persons to submit relevant information pertaining to OSM's anticipated reconsideration of the VER determination for the McMullen property, and the merits of BMC's request for a VER determination for surface mining on the South 40 and a haulroad.

Dated: June 10, 1992.

Harry M. Snyder,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 92–14255 Filed 6–17–92; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32072]

SPCSL Corp—Lease and Acquistion Exemption—IMX Intermodal Yard—Illinois Central Railroad Company and Chicago Intermodal Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts SPCSL Corp., from the requirements of 49 U.S.C. 11343, *et seq.*, for its lease and acquisition of the IMX Intermodal Yard in Chicago, IL from Illinois Central Railroad Company and its subsidiary Chicago Intermodal Corp. The exemption is subject to employee labor protective conditions.

DATES: This exemption is effective on June 23, 1992. Petitions to stay or reopen must be filed by June 22, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32072 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Karl Morell, Louis E. Gitomer, 919 18th Street, NW., suite 210, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: June 11, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–14357 Filed 6–17–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

National Advisory Commission on Work-Based Learning; Open Meeting

SUMMARY: The National Advisory Commission on Work-Based Learning was established in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) on December 14, 1990, (Federal Register December 26, 1990, pg. 53063). The Commission has broad responsibility to advise the Secretary of Labor on ways to increase the skill levels of the American work force and expand access to work-based learning. The Commission, in partnership with the Labor Department, is developing implementation strategies for:

- Establishing a voluntary, industry-led system of skill standards and for certification;
- Integrating human resource development and technology diffusion efforts;
- Promoting labor-management cooperative efforts to implement work-based learning;
- Changing accounting methods to promote human resource development;
- Valuing diversity as a corporate strategic asset;
- Developing a national quality award for excellence in human resource development.

TIME AND PLACE: The meeting will convene on Wednesday, July 22, 1992, from 1:30 p.m. until 5 p.m. at the Holiday Inn by the Bay, 88 Spring Street, Portland, Maine. (Phone: 207–775–2311 or 800–345–5050.) The meeting will reconvene from 8:30–12 on Thursday, July 23.

AGENDA: The agenda for the meeting will include:

Update on Commission Activities
Subgroup Reports/Discussion of Strategic Plans
Report on Skills Standards Public Hearings
Final Approval: "Framework for Action" Paper
Presentation on Cultural Diversity
Public Comment Period

The meeting will be open to the public. Thirty minutes will be set aside for public comments. Seating will be available for the public on a first-come, first-serve basis. Handicapped individuals wishing to attend should contact the Commission on Work-Based Learning in advance, so that staff can make appropriate accommodations. Individuals or organizations wishing to submit written statements should send 10 copies to Peter Carlson, Managing Director, National Advisory Commission on Work-Based Learning, FPB S2028, 200 Constitution Avenue NW., Washington, DC 20210, by July 11, 1992.

FOR FURTHER INFORMATION CONTACT: Peter E. Carlson, Managing Director,, National Advisory Commission on Work-Based Learning, FPB S2028, 200 Constitution Avenue NW., Washington, DC 20210; Tel. (202) 523–8271.

Signed at Washington, DC, this 12th day of June 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92–14350 Filed 6–17–92; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations of file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–535–0163 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 5th day of June 1992.

Robert J. Litman,

Acting Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations

[05/01/92 to 05/31/92]

CEO-name facility name/address	State	Approval date
Mr. Edward Mann, Ketchikan Gen'l Hosp., 3100 Tongas Avenue, Ketchikan, 99901, 907–225–5171	AK	05/14/92
Mr. Omar Miller, Hillcrest Home, 1111 Maplewood Rd., Harrison, 72601, 501–741–5001	AR	05/19/92
Mr. Robert C. Benjamin, Southeast Arizona Med. Ctr., Route 1, Box 30, Douglas, 85607, 602–364–7931	AZ	05/22/92
Mr. Michael K. Conner, Mohave Valley Hospital, Inc., 1225 E. Hancock Road, Bullhead City, 86442, 602–758–0105	AZ	05/22/92
Mr. Sam Pangburn, St. Luke Medical Center, 2632 E. Washington, Pasadena, 91109, 818–797–1141	CA	05/15/92
Mr. Frank D. Alvarez, Kaiser Foundation Hosp., French Campus, San Francisco, 94115, 415–202–2000	CA	05/15/92
J.D. Northway, M.D., Valley Children's Hosp., 3151 N. Millbrook, Fresno, 93703, 209–225–3000	CA	05/15/92
Mr. Bernard Salick, M.D., Salick Health Care, Inc., 8201 Beverly Blvd., Los Angeles, 90048, 213–276–0732	CA	05/15/92
Ms. Joann O'Boyle, Hi-Desert Memorial Hosp., Dist, 6601 White Feather Rd., Joshua, Tree, 92252, 619–366–6185	CA	05/19/92
Mr. Robert M. Jaramillo, Specialty Care Nur. Ser. Agen Travel Corps.—Jaramillo Cares, Inc. Los Angeles, 90048, 213–653–1792	CA	05/19/92
Mr. Dale Iversen, Warrack Hospital, 2449 Summerfield Road, Santa Rosa, 95405, 707–542–9030	CA	05/22/92
Mr. Robert C. Shaw, Irvine Medical Center, 16200 Sand Canyon Avenue, Irvine, 92718, 714–753–2114	CA	05/22/92
Ms. Barbara M. Yorobe, Health Power, Inc., 10850 Baroque Lane Ste. B, San Diego, 92124, 619–560–1638	CA	05/22/92
Ms. Lorraine Zipproli, Lucile Salter Packard Childrens Hospital at Stanford, Palo Alto, 94304, 415–497–8681	CA	05/22/92
Mr. Manuel T. Balanos, Jr., Nurses of Wellbest, 329 Eremland Drive, Covina, 91723, 818–332–5576	CA	05/22/92
Mr. Solomon M. Guerrero, Victor Valley Comm. Hosp., 15248 Eleventh Street, Victorville, 92392, 619–245–8691	CA	05/22/92
Mr. Steven Mattachions, Orthopaedic Hospital, 2400 S. Flower Street, Los Angeles, 90007, 213–742–1114	CA	05/22/92
Mr. Charles S. Ricks, White Memorial Medical Center, 1720 Brooklyn Avenue, Los Angeles, 90033, 213–268–5000	CA	05/29/92
Mr. Solomon Goldner, Golden State Health Centers, 13347 Ventura Blvd., Sherman Oaks, 91423, 213–872–2618	CA	05/29/92
Mr. Ralph N. Tisdial, Rosscare Convalescent Hosp., 370 Noble Court, Morgan Hill, 95037, 408–779–7346	CA	05/29/92
Mr. Stephen Dixon, La Palma Intercommunity Hosp., 7901 Walkter Street, La Palma, 90623, 714–670–7400	CA	05/29/92
Mr. Jack Stephens, Lakeland Reg'l Med. Ctr., 1324 Lakeland Hills Blvd., Lakeland, 33804, 813–687–1100	FL	05/06/92
Mr. James Tally, Ph.D., Scottish Rite Children's Med., 1101 Johnson Ferry Road, N.E., Atlanta, 30363, 404–256–5252	GA	05/06/92
Mr. William Dimas, Lee Manor Health Care Residen, 1301 Lee Street, Des Plaines, 60018, 708–635–4000	IL	05/06/92
Halm Perlstein, Mid America Conval. Ctr., 4920 N. Kenmore Avenue, Chicago, 60640, 312–769–2700	IL	05/15/92
Mr. Jeff S. Berns, Norridge Nursing Centre, Inc., 7001 W. Cullom Ave., Norridge, 60634, 708–457–0700	IL	05/22/92
Mr. Bradley Alter, Glenwood Terrace, LTD, 19330 S. Cottage Grove, Glenwood, 60425, 708–758–6200	IL	05/22/92
Ms. Virginia Barry, Villa Scalabrini Home for the, 480 North Wolf Road, Northlake, 60164, 708–562–0040	IL	05/22/92
Mr. Peter Fine, Grant Hospital of Chicago, 550 W. Webster, Chicago, 60614, 312–883–3500	IL	05/22/92
Chung S. Kim, M.D., Lake Bluff Health Care Ctre., d/b/a KBC Health Centre Inc., Lake Bluff, 60044, 708–295–3900	IL	05/22/92
Mr. Bradley Alter, Danville Care Center, LTD, 1701 N. Bowman, Danville, 61832, 217–443–2955	IL	05/29/92
Ms. Joanne Minorini, Abbott House, 405 Central Avenue, Highland Park, 60035, 708–432–6080	IL	05/29/92
Reverend Stephen A Dahl, Methodist Hospital of Chicago, 5025 N. Paulina Street, Chicago, 60640, 312–271–9040	KY–	05/15/92
Mr. Lyman V. Giner, Cardinal Hill Rehab. Hosp., 2050 Versailles Road, Lexington, 40504, 606–254–5701	LA	05/06/92
Chalmette, Chalmette Medical Ctr., 9001 Patricia Street, Chalmette, 70043, 504–278–6772	LU	05/22/92
Ms. Nini Bu, Health Care Specialist, Inc., 2040 Pioneer Court, Ste. #2, San Mateo, 9403, 415–571–7323	MA	05/15/92
Ms. Nancy Hsu, South Cove Manor Nursing Home, 120 Shawmut Avenue, Boston, 02118, 617–423–0590	MA	05/15/92
Mr. Andrew Riddell, AtlantiCare Medical Center, 500 Lynnfield Street, Lynn, 01940, 617–581–9200	MA	05/15/92
Mr. A. Jason Geisinger, VFW Parkway Nursing Home, First Healthcare Corp., d.b.a. West Roxbury, 02132, 617–325–1688	MA	05/19/92
Mr. Michael J. Geaney, Jr., Salem Hospital, 81 Highland Avenue, Salem, 01970, 508–741–1215	MD	05/22/92
Mr. James O. Dague, Bon Secours Hospital, Inc., 2000 West Baltimore Street, Baltimore, 21223, 410–362–3000	MO	05/15/92
Mr. Ronald A. Ommen, Trinity Lutheran Hospital, 3030 Baltimore, Kansas City, 64108, 816–753–4600	NC	05/15/92
Mr. A. Jason Geisinger, Hillhaven Convalescent Ctr., First Healthcare Corp. d.b.a. Raleigh, 27605, 919–828–6251	NC	05/22/92
Ms. Sharon Stiles, Brian Center Nursing Care/Gas, 969 Cox Road, Gastonia, 28054, 704–866–5496		

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[05/01/92 to 05/31/92]

CEO-name facility name/address	State	Approval date
Ms. Deborah Ann Sheffield, Brian Ctr. Nur. Care/Salisbury, 635 Statesville Blvd., Salisbury, 33401, 704–633–7390	NC	05/22/92
Mr. Robert D. Donovan, Meadowlands Hosp. Med. Ctr., Meadowlands Parkway, Secaucus, 07096, 201–392–3100	NJ	05/11/92
Mr. Geoffrey S. Perselay, B.S. Pollak Hosp. of Hudson C, 100 Clifton Place, Jersey City, 07304, 201–915–1035	NJ	05/15/92
Mr. Laurence M. Merlis, East Orange Gen'l Hosp., 300 Central Ave., East Orange, 07018, 201–672–8400	NJ	05/15/92
Ms. Blanquita Bonifacio, Beverwyck Nursing Home, d/b/a M.&B. Bonifacio, Inc., Parsippany, 07054, 201–887–0156	NJ	05/15/92
Mr. Robert Van Dyk, Christian Health Care Center, 301 Sicomac Avenue, Wyckoff, 07481, 201–848–6163	NJ	05/19/92
Mr. Michael P. Duffy, Essex County Hospital Center, 125 Fairview Avenue, Cedar Grove, 07009, 201–228–8000	NJ	05/22/92
Mr. Egon Scheil, King James Care & Rehab. Ctr, 465 Easton Avenue, Somerset, 08873, 908–246–4100	NJ	05/22/92
Michael H. Ford, M.D., Manhattan Psychiatric Center, Ward's Island, New York, 10035, 212–369–0500	NY	05/08/92
Mr. Warren J. Morris, Deepdale Gen'l Hosp., Inc., 55–15 Little Neck Parkway, Little Neck, 11362, 718–428–3000	NY	05/13/92
Ms. Mary Ann Dolak, Hudson Management Consultants, 50 Maine Avenue, Rockville Centre, 11570, 516–536–8000	NY	05/15/92
Mr. Jeffrey Sicklick, Hebrew Home for the Aged/Fairfield Div., Bronx, 10463, 212–549–9400	NY	05/15/92
Sister Mary Linehan, Saint Joseph's Hosp., Yonkers, 127 South Broadway, Yonkers, 10701, 914–378–7000	NY	05/19/92
Mr. Alexander Skutzka, Terrence Cardinal Cooke Health Ctr., New York, 10029, 212–360–3620	NY	05/22/92
Mr. Allan H. Channing, New York Downtown Hospital, 170 William Street, New York, 10038, 212–312–5000	NY	05/22/92
Mr. A. Jason Geisinger, Hillhaven Convalescent Ctr., First Healthcare Corp., d.b.a. Akron, 44310, 216–762–0901	OH	05/15/92
Ms. A. Susan Bernini, Albert Einstein Med. Ctr., York and Tabor Roads, Philadelphia, 215–456–7050	PA	05/15/92
Ms. Doris Powell, Brian Center Nursing Care/Col, 2451 Forest Drive, Columbia, 29204, 803–354–5960	SC	05/22/92
Mr. Paul S. Winton, Chesterfield General Hospital, Highway 9 West, Cheraw, 29520, 803–537–7881	SC	05/22/92
Mr. Boone Powell, Jr., Baylor University Med. Ctr., 3500 Gaston Avenue, Dallas, 75246, 214–820–2525	TX	05/06/92
Mr. Michael F. O'Keefe, Irving Healthcare System, 1901 N. MacArthur Blvd., Irving, 75061, 214–579–8180	TX	05/06/92
Ms. Cynthia McCreary, Memorial Hosp. and Med. Ctr., 2200 West Illinois, Midland, 79701, 915–685–1111	TX	05/06/92
Mr. L. Marcus Fry, Jr., Sierra Medical Center, National Medical Enterprises, El Paso, 79902, 915–747–4000	TX	05/15/92
Mr. Louis Bremer, Jr., Medical Center Hospital, Montgomery County Hosp. Dist., d/b/a Conroe, 77304, 409–539–7485	TX	05/22/92
Mr. Robert M. Bryant, Memorial City Med. Ctr. Hosp., 920 Frostwood, Houston, 77024, 713–932–3470	TX	05/22/92
Mr. Ray Ramon, Texas Valley Health Services, 509 W. Harrison, Harlingen, 78550, 512–412–2222	TX	05/22/92
Mr. Earnest Gibson, III, Riverside Gen'l Hosp., 3204 Ennis Street, Houston, 77004, 713–526–2441	TX	05/29/92
Ms. Callie Smith, Baptist Memorial Hosp. System, 111 Dallas Street, San Antonio, 78205, 512–554–2060	TX	05/29/92
Joel Warner, Northwest General Hosp., Inc., 5310 W Capitol Dr., Milwaukee, 53216, 414–447–8520	WI	05/15/92
Total Attestations: 74.		

[FR Doc. 92–14349 Filed 6–17–92; 8:45 am]

BILLING CODE 4510–30–M

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Payment Request Form

AGENCY: James Madison Memorial Fellowship Foundation.

ACTION: Request for information.

SUMMARY: The information sought on the proposed Payment Request Form will help implement the James Madison Memorial Fellowship Act of 1986. The information gathered will enable the Foundation to pay awards to James Madison Fellows for the expenses of such tuition, fees, books, room, and board at the universities in which they are matriculating for graduate study. The information provided by fellows on the payment request form and by those university officials they ask to certify their enrollment and costs on the Payment Request will be used by the Foundation staff to determine the appropriate payment amount due. The form will be used for payment purposes and to project costs for budget estimates.

DATES: Comments must be submitted in writing on or before July 6, 1992 in the **Federal Register**.

ADDRESSES: Send written comments to: James Madison Memorial Fellowship Foundation, 2000 K Street NW., suite 303, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Gary S. Foy, (202) 653–8700.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1980, the James Madison Memorial Fellowship Foundation has submitted a copy of the proposed form to the Office of Management and Budget for its review (40 U.S.C. 3540 (h)). Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. The annual public reporting burden for this collection of information is estimated to average .5 hours per response for an anticipated 53 fellows.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 et seq., the following information will be solicited one to four times annually depending on how a fellow is enrolled (i.e. by semester, trimester, or in summer sessions or quarter). Fellows will be both experienced high school teachers of American history, American government, and social studies (senior fellows) and graduating college seniors and recent college graduates who wish to become secondary school teachers of the same subjects (junior fellows). The Payment Request will be used for both types of fellows.

Paul A. Yost, Jr.,

President, James Madison Memorial Fellowship Foundation.

BILLING CODE 6820–05–M

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION (P.L. 99-591)

2000 K Street. N.W., Suite 303, Washington, D.C. 20006 **Payment Request**
Telephone: (202) 653-8700 Fax: (202) 653-6045

Part 1—To Be Completed By Each James Madison Fellow *(typed or printed in black ink)*

1. **Name:** _____ (last name, first name, middle initial)
2. **University of Graduate Study:** _____
3. **School/Department of Study:** _____
4. **Degree Sought:** _____
5. **Subject of Degree Sought:** _____
6. **Credit Hours Required for Master's Degree:** _____
7. **University Operates on** ☐ Semesters ☐ Trimesters ☐ Quarters ☐ Others (explain) _____
8. **Year Named a Madison Fellow:** 19___
9. **Payment for Academic Year:** 19___-19___
10. **Payment Request Number:** ___ of ___ (see instructions)
11. **Starting Date of Term:** ___/___/19___
12. **Your Home Address:**
    Street Address _____
    City/State/Zip _____
    Telephone (___) _____
13. **Your Address at University:** (if different from home)
    Street Address _____
    City/State/Zip _____
    Telephone (___) _____
14. **Where Do You Want the Payment Sent** (check one): ☐ Home Address ☐ University Address

15. Expenses for *TERM* on each line below: (see instructions)	Amount	16. Foundation Adjustments: (do not write in area below)	Code	17. Foundation Approved Amount: (do not write in area below)
a. Tuition	$	$		$
b. Fees				
c. Books				
d. Room & Board				
e. TOTAL	$	$		$

18. **Credit Hours Required for Full-Time Status Per Term:** ___ 19. **Number of Hours Fellow is Registered for this Term:** ___
20. **Fellow Will Live:** ☐ In University Housing ☐ In Off-Campus Housing ☐ At Home with Parent, Spouse, or Other
21. **List all scholarships, grants and loans you will receive for the *NEXT TERM* from all sources** (except family, Veteran's Administration, or your own employment). You should include University Scholarships, Fellowships, Tuition Waivers, National Direct Student Loans, Guaranteed Student Loans, Rotary Club Awards, and other similar forms of support. Indicate whether the awards are granted for: tuition, fees, books, room and board, travel, miscellaneous expenses or undesignated purposes. Include only those amounts that are applicable to the *NEXT TERM*. For yearly awards prorate the amount applicable for the *NEXT TERM*.

Initial if you will not receive any awards other than the Madison Fellowship _____ (see note)

Code	Source	Purpose of Award	Amount	Amount Deductible (do not write in area below)
A			$	$
B			$	$
C			$	$
D			$	$

FOR FOUNDATION USE ONLY

AUDITED BY	PAYMENT SUMMARY	PAYMENT APPROVAL
Initials	Payment Request Number: $	Appropriation: 95-X-8282
		Document Number: MF
Date	Total Payments to Date: $	Amount Approved: $

Approved by: _____ Signature _____ Date _____

22. I certify that the information given in item 15 for my *NEXT TERM* is correct, and that funds received will be utilized for the purposes specified in accordance with the provisions of the Madison Fellowship. I understand that benefits payable by the Foundation are limited to the four categories listed in 15 a-b-c-d above. I certify that the figures given in item 21 are true amounts paid for *NEXT TERM* on my behalf by other organizations, and any differences in payments will be reported immediately to the Madison Foundation. I agree to refund the payment if I withdraw from the university before the end of the term.

Signature of Madison Fellow _____ Date _____

Part 2—For Academic Officer—I certify that the Madison Fellow is a full-time ☐ or part-time ☐ student taking a course of study appropriate for a teaching career in secondary school; is not engaged in employment interfering with study; is in good academic standing; and is maintaining satisfactory progress toward a career in teaching. (see instructions below)

Signature and Title of Academic Officer _____ Date _____

Part 3—For Financial Aid Officer—I certify that the information given in items 15, 18, 19, and 21 is correct.

Signature and Title of Financial Aid Officer _____ Date _____

HOW TO COMPLETE THE PAYMENT REQUEST

Item 10—Payment Requests should be numbered as follows: 1 of 2, 1 of 3, etc. You may be required to submit additional payment requests for summer or other sessions.

Item 15—Give figures for the costs for the *NEXT TERM* (semester, trimester, quarter, or summer session). Do not deduct any amounts that are paid for you by other sources or waived by your university.

(a) Tuition: the amount normally charged for the courses you will take *NEXT TERM*;
(b) Fees: any required, nonrefundable charges you will pay *NEXT TERM*;
(c) Books: an estimate of the cost of books for the *NEXT TERM* (the Foundation can provide a maximum annual allowance of $400);
(d) Room and Board: university charges for a double room on campus for the *NEXT TERM*, whether you plan to live on campus or not;
(e) Total: your total costs for the *NEXT TERM*.

Item 16—The Foundation will use this space to make adjustments based upon the information you provide in item 21. The Foundation is not authorized to reimburse you for expenses that are already being met from other sources. The Foundation will show this amount as an adjustment in item 16 and deduct it from the amount you will receive from the Foundation. The code "x" indicates adjustments that were necessary to achieve the maximum allowances for books and for room and board, based on cost estimates from your university.

Item 17—The Foundation will use this space to indicate the approved amounts for the *NEXT TERM*. The figure shown in item 17, Total, will be the amount of your payment for the *NEXT TERM*. (A copy of this form will be sent to you with the check.) The Foundation cannot pay Fellows more than $12,000 per academic year, regardless of their actual costs. The Foundation will prorate allowable payments on a term basis. (For example, if you are attending half-time next term, 50% of allowable room, board, and books will be paid.) The Foundation will provide an allowance (not actual expenses) for room and board. This figure, obtained from the average room and board costs for that type of housing certified by the financial aid director of your university, will be given in item 17 (d).

Item 18—Provide the number of credit hours the university considers full-time status for graduate study.

Part 2—This certification is not required for a Fellow's first term at a university.

NOTES

You should count on a minimum of 3-4 weeks from submission of this form to receipt of payment providing all other documentation has been received. (see notes) Be sure all required certifications are signed.

Be sure to list all fellowships, scholarships, grants, and loans in item 21. If you have more than four, list them on an additional sheet. If you do not expect to receive any awards other than the Madison Fellowship, please initial. Failure to list all awards or to notify the Foundation immediately of any additional awards may result in the loss of the fellowship and prosecution by the U.S. Department of Justice.

The Foundation must have a Fellow's annual report, a current transcript of grades (for Junior Fellows), evidence of a teaching contract (for Senior Fellows), and a current payment request from the institution before the first payment request of each academic year can be processed.

Fellows are responsible for having their financial aid officers return completed payment request forms to the Madison Foundation. We suggest that Fellows submit payment request forms to their institutions two or three months before the start of the academic year.

PRIVACY ACT STATEMENT

The *Privacy Act of 1974* (P.L. 93-579) requires that you be given the following information in connection with this Payment Request:

- the authority for collecting this information is Public Law 99-591;
- furnishing the information is voluntary; the information will be used primarily to determine payment of the fellowship award;
- other uses of the information are for statistical analyses;
- although you may choose not to supply the requested information, your payment cannot be processed without it.

[FR Doc. 92-14306 Filed 6-17-92; 8:45 am]

BILLING CODE 6820-06-C

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Social, Behavioral and Economic Sciences has determined that the establishment of the Advisory Committee for the Social, Behavioral, and Economic Sciences (SBE) is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of committee: Advisory Committee for the Social, Behavioral, and Economic Sciences (SBE).

Purpose: To provide advice, recommendations, and oversight concerning support for research, education, and human resources in the areas of the social, behavioral, and economic sciences

Balanced membership plan: Membership will consist of about 10 persons selected to be representative of the scientific areas and types of institutions encompassed by SBE activities. Every effort is made to achieve a balanced membership with representation including women, minority scholars, disabled persons, as well as different geographic regions of the U.S.

Responsible NSF official: Dr. Cora Marrett, Assistant Director, Social, Behavioral, and Economic Sciences. National Science Foundation, room 538, Washington, DC 20550 (202) 357–7631.

Dated: June 15, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–14294 Filed 6–17–92; 8:45 am]

BILLING CODE 7555–01–M

Assessing Innovative Approaches to Calculus Instruction; Workshop

The National Science Foundation (NSF) will hold a two and one-half day workshop on Assessing Innovative Approaches to Calculus Instruction. The meeting will begin at 8:30 a.m. July 6, 1992 and end at 12 noon on July 8, 1992, at One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Discussions will include various issues regarding evaluating the effectiveness of the curricular and pedagogical innovations in calculus reform projects.

(1) Goals and Objectives of Calculus Reform Projects. One purpose of the workshop will be to articulate goals and objectives of calculus reform efforts.

(2) Assessment Approaches. Alternative assessment approaches will be identified.

(3) Mathematics Learning Theory. The implications of research in the learning of mathematics for assessment of student learning will be discussed.

(4) An Agenda for Assessment. An agenda for further discussions and research will be developed.

Although the workshop will not operate as an advisory committee, the public is invited to attend. Participants will include the calculus projects directors and representatives from several communities: assessment/evaluation, mathematics education, client disciplines, and mathematics. A report of the workshop will be published.

For additional information, contact James Lightbourne, Program Director, Division of Undergraduate Science, Engineering, and Mathematics Education, NSF, 1800 G Street, NW, Washington, DC 20550 (202) 357–7051.

Dated: June 15, 1992:

Dr. Robert Watson,

Director, Division of Undergraduate Science, Engineering, and Mathematics Education.

[FR Doc. 92–14299 Filed 6–17–92; 8:45 am]

BILLING CODE 7555–01–M

Integrating FPGAs Into Microelectronics Education; Notice of Workshop

The National Science Foundation (NSF) will hold a one and a half day workshop on Integrating FPGAs Into Microelectronics Education on July 16, 1992, 1 p.m. to 6 p.m. and July 17, 1992, 8:30 a.m. to 5 p.m. at the National Science Foundation in room 540 at 1800 G Street, NW., Washington, DC 20550.

The objective is to derive from this workshop information that will aid in formulating a basic implementation plan for FPGA integration into microelectronics education and a clear idea of any problems or weaknesses in the FPGA approach. Some issues to be considered are: the level of FPGA intregation; the role that semi-custom VLSI will play in the future; the role of simulation in system design; the extent of system-level design experience required in graduate and undergraduate training, and the mechanism for FPGA technology training distribution.

Although the workshop will not operate as an advisory committee, the public is invited to attend. Participants will include individuals from the microelectronics education community who are innovative leaders of FPGA-based instruction and other experts who have had wide research or educational experience with microelectronics design.

For additional information, contact Dr. Paul T. Hulina, Program Director for Systems Prototyping and Fabrication, 1800 G Street, NW., Washington, DC 20550 (202) 357–7853.

Dated: June 10, 1992.

Dr. Bernard Chern,

Division Director, Microelectronic Information Processing Systems.

[FR Doc. 92–14298 Filed 6–17–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: July 8–10, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500, NSF—1110 Vermont Avenue, NW., Washington, DC 20005.

Type of Meeting: Closed.

Contact Person: Kishan Baheti, Program Director, ECS Division, NSF, 1800 G Street NW., room 1151, Washington, DC 20550. Telephone: (202) 357–9618.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Intelligent Control Initiative.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–14296 Filed 6–17–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463,

as amended), the National Science Foundation announces the following meeting.

Date and Time: July 7 & 8, 1992, 8:30 a.m.–5:00 each day.

Place: State Plaza Hotel, Diplomat and Envoy Conference Rooms, 2117 E St. NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Drs. Jerome L. Sackman & Huseyin Sehitoglu, Program Directors, Rm 1108, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Individual Investigator Award proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4), and (6) of the Government in the Sunshine Act.

Dated: June 15, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–14295 Filed 6–17–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science Resources Studies; Meeting

In accordance with the Federal Advisory Committee Act (Pub.L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Science Resources Studies.

Date and Time: July 9, 1992, from 6 p.m. to 9 p.m.; and July 10, 1992, from 9 a.m. to 2:30 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 540, Washington, DC.

Type of Meeting: Open.

Contact Person: Lawrence Burton, Project Officer, Division of Science Resources Studies, room L–609, National Science Foundation, Washington, DC 20550, (202) 634–4300.

Purpose of Meeting: Final advice and discussion before field testing of new survey questionnaire for the Joint NSF/NIH Survey of Public Understanding of Science.

Agenda: Review sample design, draft survey questionnaire, and analysis plans.

Dated: June 15, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–14297 Filed 6–17–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–21276 License No. 37–20865–01 EA 91–129]

George S. Wineburgh Associates, Ltd. Philadelphia, PA; Order Imposing Civil Monetary Penalties

I

George S. Wineburgh Associates, LTD (Licensee), was the holder of Byproduct Material License No. 37–20865–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on October 24, 1986. The license authorized the Licensee to use certain byproduct materials for medical diagnosis. The license was terminated on October 4, 1990.

II

On September 1, 1991, the NRC received a notification from the City of Philadelphia that a container with a radioactive materials label had been found on a street in Philadelphia on that date. The NRC immediately responded to the location and took possession of that container. Its label indicated that it contained a gadolinium-153 (Gd–153) source of approximately 0.6 curies. Since papers in the trash indicated that it came from an office occupied by George S. Wineburgh Associates, LTD, the NRC contacted the licensee on September 3, 1991. During that telephone conservation, the licensee confirmed that the source had been possessed by the licensee pursuant to NRC License No. 37–20865–01. That license was terminated by the NRC on October 4, 1990, based upon the Licensee's submittal of a Certificate of Disposition of Materials (Form NRC–314), dated July 23, 1990, which indicated a transfer of the source to an authorized recipient in New Hampshire on July 25, 1990.

Based on subsequent NRC review of this event, the NRC determined that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated March 5, 1992. The Notice states the nature of the violations, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations. The Licensee responded to the Notice by a letter dated March 27, 1992. In its response, the Licensee admitted the violations but requested that the civil penalties be mitigated.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that an adequate basis has not been provided for mitigation of the civil penalties.

IV

In view of the foregoing, and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay civil penalties in the full amount of One Thousand Five Hundred Dollars ($1,500) by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, USNRC, Washington, D.C. 20555. This payment shall be made within thirty days of the date of this Order or in accordance with a promissory note agreed to by the Licensee and NRC.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region, I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time and the Licensee has either not entered into a promissory note to pay this penalty over time or properly made payments inaccordance with a promissory note, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violation admitted by the Licensee, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 9th day of June 1992.

Hugh L. Thompson,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusion

On March 5, 1992, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued to George S. Wineburgh Associates, LTD (Licensee), whose license had previously been terminated by the NRC on October 4, 1990. Dr. Wineburgh responded to the Notice by letter dated March 27, 1992. The licensee admitted the violations but requested either mitigation of the penalties, or that a deferred payment plan be permitted. The NRC's evaluations and conclusions regarding the licensee's requests are as follows:

1. Restatement of Violations

A. 10 CFR 30.36(b) and (c)(1(iv) require, in part, that submitted requests for license termination include a completed Form NRC–314, which certifies information concerning the proper disposal of licensed materials. 10 CFR 30.41(c) requires, in part, that prior to transferring byproduct material, the licensee verify that the transferee s license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, on Form NRC–314, "Certificate of Disposition of Materials", (signed and dated by George S. Wineburgh, M.D., on July 23, 1990), the former licensee, (whose license was subsequently terminated on October 4, 1990), provided to the Commission information that was not complete and accurate in all material respects. Specifically, the former licensee failed to verify that Biosources, LTD, Nashua, New Hampshire, the company to which all licensed materials were to be transferred, was authorized to receive licensed material as evidenced by the fact that Biosources, LTD's license to receive and possess licensed material had been terminated in 1988. As a result, the statement that the material was transferred to Biosources, LTD on July 25, 1990, or any other subsequent date was inaccurate. Further, the material described on the Form NRC–314 was not properly disposed of as it was discovered in the normal trash on a sidewalk in Philadelphia, Pennsylvania on August 31, 1991. The statements in the Form NRC–314 were material because the NRC would not have issued Amendment No. 04, terminating the license, on October 4, 1990, had it known that the licensee still possessed any licensed material.

This is a Severity Level III violation. (Supplement VII) Civil Penalty—$750

B. 10 CFR 30.3 requires, in part, that except for persons exempted, no person shall possess or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations.

Contrary to the above, from October 4, 1990, until August 31, 1991, when it discarded the material in the normal trash, George S. Wineburgh Associates, LTD, possessed a sealed source containing approximately 0.6 curies of gadolinium-153 without a valid license and was not exempted from requiring a license.

This is a Severity Level III violation. (Supplement VI) Civil Penalty—$750

2. Summary of Licensee's Response

In his response, Dr. Wineburgh admits the violations, but attributes the violations to "general unintended negligence" and "terrible judgement and laxity" in handling the byproduct material. Dr. Wineburgh further attributes this, in part, to severe emotional and financial turmoil which he is still experiencing at present. Dr. Wineburgh requests that the civil penaktues be reduced to $250, stating this is what he can afford at this time, or that a deferred payment plan be permitted.

3. NRC Evaluation and Conclusion

The NRC has evaluated Dr. Wineburgh's response and has determined that an adequate basis has not been provided for reduction in the amount of the civil penalty. While Dr. Wineburgh may have experienced personal difficulties, it was still his responsibility to ensure that the conditions of his NRC license were followed, that radioactive material was properly disposed (so that it would not present a hazard to members of the public), and that information provided to the NRC was complete and acurate. Dr. Wineburgh did not meet those responsibilities. Consequently, the civil penalties in the cumulative amount of $1,500 should be imposed. However, given his statements that personal and financial difficulties still exist, the NRC has agreed to allow Dr. Wineburgh to pay the civil penalties in 36 monthly installments, if he so chooses

[FR Doc. 92–14371 Filed 6–17–92; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–260]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Unit 2; Exemption Regarding Schedule for Containment Local Leak Rate Tests

I.

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License No. DPR–52, which authorizes operation of the Browns Ferry Nuclear Plant, Unit 2 (the facility) at steady-state reactor power levels not in excess of 3293 megawatts, thermal. The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama. Two other boiling water reactors located at this site are not affected by this exemption. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II.

Section III of appendix J to 10 CFR part 50 requires the development of a program to conduct periodic leak testing of the primary reactor containment and related systems and components, and components penetrating the primary containment pressure boundary. The interval between local leak rate tests for certain components (Type B and Type C testing) is specified by sections III.D.2(a) and III.D.3 to be no greater than 2 years.

III.

By letter dated December 30, 1991, the licensee, the Tennessee Valley Authority, requested a one-time exemption from the requirements of 10 CFR part 50, appendix J, sections III.D.2(a) and III.D.3 regarding the periodic Type B and Type C local leak rate test schedule for 87 components at the Browns Ferry Nuclear Plant, Unit 2. The requested exemption would permit continued operation of the facility until its next refueling outage, which will begin no later than January 29, 1993. Otherwise, the required testing would require a plant shutdown no later than July 31, 1992, well before the end of the current fuel cycle.

IV.

Sections III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 state that Type B and Type C tests shall be performed during reactor shutdowns for refueling, at an interval not to exceed 2 years. The licensee has requested a one-time exemption from these regulations.

The 2-year interval requirement for Type B and C components is intended to be often enough to preclude significant deterioration and long enough to permit the tests to be performed during routine plant outages. Leak rate testing of the penetrations during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Furthermore, some penetrations cannot be tested at power. For penetrations that cannot be tested during power operation, or for which testing at power would yield unnecessary radiation exposure of personnel, the Commission staff believes the increase in confidence of containment integrity following a successful test is not significant enough to justify the hardships and costs associated with a plant shutdown specifically to perform the tests within the 2-year time period.

V.

The Commission has determined that

pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR part 50 is to provide an interval short enough to prevent serious deterioration from occurring and long enough to permit testing to be performed during regular plant outages. For components that cannot be tested at power, or for components where testing involves unreasonable risk to personnel and equipment, the increased confidence in containment integrity following successful testing is not significant enough to justify a plant outage merely to perform the tests within the 2 year interval. The licensee has presented information accepted by the Commission, which gives a high degree of confidence that the components affected by this exemption will not degrade to an unacceptable extent. Acceptable leakage limits are defined by sections III.B.3(a) and III.C.3 of appendix J to 10 CFR part 50.

Accordingly, the Commission hereby grants an exemption as described in section III above, from sections III.D.2(a) and III.D.3 of appendix J to 10 CFR Part 50 to the effect that Type B and Type C testing for 87 components at Browns Ferry Nuclear Plant, Unit 2, that would otherwise be required to be performed at an earlier date, can be postponed to an outage which will begin no later than January 29, 1993, as specified in the staff's safety evaluation.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (57 FR 24063).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 10th day of June 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation

[FR Doc. 92–14372 Filed 6–17–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act [Public Law 92–463], notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee schedule for Thursday, June 25, 1992, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: June 10, 1992.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 92–14188 Filed 6–17–92; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—Thursday, August 6, 1992, Thursday, August 27, 1992, Thursday, September 10, 1992, Thursday, September 24, 1992.

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Public Law 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: June 10, 1992.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 92–14189 Filed 6–17–92; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–18769; 811–5401]

RXR Dynamic Government Fund, Inc.; Application

June 11, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: RXR Dynamic Government Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on October 9, 1990, and amended on February 26, 1992 and June 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 7, 1992 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 30 Buxton Farm Road, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 272–3035, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a Maryland corporation. On January 12, 1987, applicant registered under the Act and registered an indefinite number of its common shares under the Securities Act of 1933. The registration statement was declared effective on April 17, 1987, and applicant began the initial public offering of its shares immediately thereafter.

2. In a letter to shareholders accompanying applicant's semi-annual report for the period ended April 30, 1990, applicant noted that its expense ratio had risen to approximately 4.35% due to the effect of redemptions, and stated that it was considering liquidation. Shortly thereafter, all of applicant's remaining shareholders (other than RXR Capital Management, Inc., applicant's investment adviser) redeemed their shares. On October 8, 1990, applicant's Board of Directors and RXR Capital Management, Inc. each approved the liquidation of applicant. RXR Capital Management, Inc. redeemed all its shares on December 31, 1990.

3. As of August 31, 1990, applicant had 8,830 outstanding common shares, with an aggregate net asset value of $86,370 and a per share net asset value of $9.78.

4. Applicant has not incurred, and does not expect to incur, any expenses in connection with its liquidation, apart from legal fees totalling $4,211 that were borne by RXR Capital Management, Inc. Applicant's portfolio securities were sold in ordinary brokerage transactions to meet the redemption requests of its shareholders.

5. Upon receiving a Commission order on this application, applicant will terminate its status as a Maryland corporation by filing Articles of Dissolution with the Secretary of State of the State of Maryland.

6. Applicant has no assets, debts, or liabilities, and has no remaining shareholders.

7. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of applicant.

8. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to windup its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–14273 Filed 6–17–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18768; 811–5949]

StarTrade Fund, Inc.; Application

June 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company .Act of 1940 ("Act").

APPLICANT: StarTrade Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 24, 1992 and amended on June 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1992, and should be accompanied by proof of service on the applicant, in the from of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 40 Cutter Mill Road, suite 509, Great Neck, New York 11021.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is an open-end, diversified management investment company. On October 20, 1989, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. Applicant's registration statement was declared effective and its initial public offering commenced on July 23, 1990.

2. In October 1991, a majority of applicant's shareholders voted, in compliance with Maryland law, to authorize the liquidation of applicant. In November 1991, applicant distributed all of its assets, totaling $158,099, to its shareholders on a pro rata basis.

3. All expenses incurred in the liquidation were paid by the StarTrade Management, Inc., applicant's investment adviser (the "Adviser"). The organizational expenses of applicant were also borne exclusively by the adviser.

4. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-14274 Filed 6-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18777; 812-7880]

Waddell & Reed Funds, Inc., et al.; Application

June 11, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Waddell & Reed Funds, Inc. ("Waddell"), Waddell & Reed Investment Management Company ("WRIMCO"), and Waddell & Reed, Inc. ("W&R").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit them to impose a contingent deferred sales charge ("CDSC") on the redemption of certain shares purchased at net asset value and to waive the CDSC in certain instances.

FILING DATE: The application was filed on March 4, 1992 and amended on June 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 6300 Lamar, Shawnee Mission, Kansas 66201-9217.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Waddell is a newly organized Maryland corporation comprised of five separate portfolios: Total Return Fund; Growth Fund; Intermediate Bond Fund; Municipal Bond Fund; and Global Income Fund. On February 25, 1992, Waddell filed its registration statement on Form N-1A under the Securities Act of 1933 and the Act. The registration statement has not yet been declared effective.

2. It is contemplated that WRIMCO, a wholly owned subsidiary of W&R, will serve as investment adviser and W&R will serve as the principal underwriter for each of the funds. After effectiveness of Waddell's registration statement, shares of the common stock of the funds will be available tot he general public through W&R and its registered representatives.

3. Pursuant to a distribution and service plan under rule 12b-1 of the Act (the "Plan"), each fund may pay W&R an amount not to exceed on an annual basis 0.75% of each fund's average daily net assets as a distribution fee to finance the distribution of that fund's shares and may also pay W&R an amount not to exceed on an annual basis 0.25% of each fund's average daily net assets as a service fee to finance shareholder servicing by W&R or its affiliates.

4. Applicants propose that shares of certain of the funds will be subject to deferred charges consisting of a distribution fee and a service fee imposed pursuant to the Plan and a CDSC. In no event would the aggregate amount of the CDSC exceed 3% of the aggregate purchase payments made by an investor for shares of a fund. The distribution and service fees and the CDSC will be paid to W&R to defray expenses incurred by it in connection with the offer and sale of shares of the funds, including commission paid to its registered representatives, and certain other distribution and servicing expenses.

5. The amount of the CDSC will depend on the number of years since the investor purchased the shares being redeemed, as will be set forth in each fund's prospectus. The CDSC will comply with the requirements of section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. The CDSC will not be imposed on redemptions of shares that were purchased more than four years prior to the redemptions the "CDSC Period") on those shares representing payment of dividends or distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased in the CDSC Period. As a result, the amount of the CDSC will be calculated as the lesser of the amount representing a specified percentage of the net asset value of the shares at the time of purchase, or the amount representing such percentage of the net asset value of the shares at the time of redemption. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing payment of dividends and distributions, and finally of other shares held by the shareholder for the longest period of time. In accordance with rule 11a-3 under the Act, no CDSC will be applied in connection with the exercise of an exchange privilege whereby an investor exchanges shares of a fund for shares of another fund. No CDSC will be charged on shares of a fund purchased before the date of issuance of the order requested.

7. Applicants request the ability, either initially or in the future, as the board of directors may determine, to waive the CDSC: (a) On redemptions following death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if Waddell is notified of the death or disability at the time redemption is requested and such request is made within one year after death or disability of the shareholder, as relevant; (b) in connection with redemptions of fund shares held by an individual retirement account ("IRA") or other qualified retirement plan and which redemptions (i) result from the death or disability of the employee or the tax-free return of an excess contribution, (ii) are made to effect a lump-sum or partial distribution from a qualified retirement plan in the case of retirement, or (iii) are made to effect a distribution from an IRA, a Keogh Plan or section 403(b)(7) custodial account that is required because the distributee has reached the age at which distributions are required to commence, or as an alternative, if the board of directors so determines, Waddell may reduce the age so as to waive the CDSC with respect to distributions from such accounts after the distributee has attained the age at which distributions may be made without tax penalty; (c) in

connection with redemptions of shares of a fund purchased by current or retired directors of Waddell or by current or retired officers or employees of Waddell, WRIMCO, W&R, or their affiliated companies, registered representatives of W&R, and by members of the immediate families of such persons; (d) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted for a fund; (e) in part, in connection with redemptions by shareholders holding shares of a fund worth over $1 million (or other specified amount) immediately prior to redemption; (f) in connection with redemptions effected by advisory accounts managed by WRIMCO or any affiliated company or by any such affiliated company itself; (g) in connection with redemptions by any tax-exempt employee benefit plan for which continuation of its investment in a fund would be improper under applicable law or regulation; (h) in connection with redemptions effected by another registered investment company as part of a merger or other reorganization with a fund or by a former shareholder of such investment company of fund shares acquired pursuant to such reorganization; and (i) on redemptions effected pursuant to Waddell's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the applicable minimum account size.

8. Applicants also propose to waive the CDSC so as to provide a *pro rata* credit for any CDSC paid in connection with a redemption of shares followed by a reinvestment within 30 days, or other specified period, of all or part of the redemption proceeds. Such credit will be distributed by W&R from its house account where the CDSC will be held. The house account will maintain a sufficient balance to make such credits.

9. If Waddell waives or reduces the CDSC, such waiver or reduction will be uniformly applied to all offerees of the particular fund's shares. If the board of directors of Waddell determines, (a) with respect to a fund which has been waiving or reducing its CDSC, not to waive or reduce such CDSC any longer, or (b) with respect to a fund which is not then waiving or reducing its CDSC pursuant to a particular item, to waive or reduce its CDSC, the disclosure in the fund's prospectus will be appropriately revised. If the board of directors of Waddell makes a determination as described in (a) in the preceding sentence, the CDSC will be waived with respect to redemptions of fund shares as provided in that fund's prospectus as in effect at the time those shares were purchased.

Applicants' Legal Analysis:

1. Section 2(a)(32) of the Act defines "redeemable security" as "any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer * * * is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof." Applicants assert that the CDSC in no way restricts a shareholder from receiving his or her proportionate share of the current net assets of the fund, but merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur. However, in order to avoid uncertainty as to the funds' status as open-end companies, applicants request an exemption from section 2(a)(32) of the Act to the extent necessary to permit implementation of the proposed CDSC.

2. Section 2(a)(35) defines "sales load" as "the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer * * *" to determine the amount properly chargeable to sales or promotional activities. Applicants state that a CDSC is functionally a sales charge because it is paid to W&R to reimburse it for expenses related to offering shares of the funds for sale to the public. Therefore, applicants submit that the deferral of the sales charge, and its contingency upon the occurrence of an event which might not occur, does not change the basic nature of the charge, which is in every other respect a traditional sales load. However, to avoid uncertainty in this regard, applicants request an exemption from section 2(a)(35) to the extent necessary to implement the proposed CDSC.

3. Applicants also believe that implementation of the proposed CDSC does not violate section 22(c) of the Act or rule 22c–1 thereunder. Section 22(c) and rule 22c–1 thereunder preclude a registered investment company issuing a redeemable security from selling, redeeming, or purchasing any such security except at a price based on the current net asset value of such security. Applicants submit that, when a redemption of a fund's shares is effected, the price of the shares on redemption will be based on current net asset value. The CDSC will merely be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds. However, to avoid any question as to Waddell's compliance with section 22(c) and rule 22c–1, applicants request an exemption from rule 22c–1 to the extent necessary or appropriate to permit Waddell to implement the CDSC.

4. Section 22(d) of the Act generally requires a registered investment company and its principal underwriter to sell the company's securities at a current public offering price described in the company's prospectus. Subject to certain conditions, rule 22d–1 permits variation or elimination of sales loads to "particular classes of investors or transactions" provided that such variation or elimination is described in the registration statement. Applicants believe that an order would be consistent with the policies embodied in rule 22d–1. However, to avoid uncertainty in this regard, applicants request an exemption for Waddell from section 22(d) to the extent necessary to implement the CDSC and waivers therefrom as described above.

Applicants' Condition

Applicants agree that the following condition may be imposed in any order of the Commission granting the requested relief:

Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–14281 Filed 6–17–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18771; 811–5266]

The Williamsburg Fund, Inc.; Application

June 11, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Williamsburg Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 3, 1992 and an amendment was filed on May 18, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1992, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o BV Capital Management, Inc., 575 Fifth Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504–2406, or Barry D. Miller, Senior Special Counsel at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end non-diversified management investment company that was organized as a corporation under the laws of Maryland. On July 10, 1987, applicant filed a notification of registration pursuant to section 8(a) of the Act. On October 26, 1987, applicant filed a registration statement pursuant to section 8(b) of the Act. On that same date, applicant filed a registration statement under the Securities Act of 1933 to register an indefinite number of shares of applicant's common stock. Applicant's registration statement never became effective, applicant never made a public offering, and applicant does not propose to do so.

2. Applicant had two shareholders with whom shares were privately placed. The investment company was formed because of beneficial tax treatment, however due to the expiration of the tax treaty, each shareholder redeemed their shares.[1]

3. Pursuant to the liquidation, applicant's portfolio securities were sold at competitive bid through primary government securities dealers without payment of brokerage commissions.

4. On January 3, 1990, one shareholder redeemed its entire holdings of applicant, 5,043,234.995 common stock shares for $53,499,157.03, which applicant distributed to such shareholder on January 4, 1990. On December 19, 1990, the sole remaining shareholder redeemed 7,629,704.985 common stock shares for $75,282,259.

5. Unamortized organizational expenses in the amount of $8,065 were charged to applicant.

6. The amount of $10,000 was withheld from the final securityholder and held in escrow for liquidation expenses. Liquidation expenses consisted of dissolution fees of $505.50, tax expenses of $2,635.50, and a custodian fee of $877.01. The remaining $5,981.99 was returned to the securityholder.

7. Applicant filed Articles of Dissolution with the State of Maryland, which became effective on October 18, 1991.

8. Applicant retains no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant is not now engaged in, nor does it intend to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–14282 Filed 6–17–92; 8:45 am]

BILLING CODE 8010–01–M

[1] By letter dated June 5, 1992, Alasdair Findlay-Shirras, Vice President of applicant, stated that applicant was organized to provide institutional investors of the Federal Republic of Germany with an investment subject to favorable tax treatment. Pursuant to a new income tax treaty between the United States and what was then the Federal Republic of Germany, these tax advantages were eliminated as of December 31, 1990. Consequently, applicant's shareholders requested the redemption of all outstanding shares. Because of the redemptions, on December 4, 1990, applicant's board of directors authorized the dissolution of applicant.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 92–17]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, July 14, 1992, in the 29th floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Minutes of the April 21, 1992 meeting.
3. Old Business.
4. New Business.
5. Report from the VTS Subcommittee.
6. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting this waterway.

All meetings are open to the public. Members of the public may present written or oral statements at the meetings.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: June 10, 1992.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92–14346 Filed 6–17–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: June 12, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0041
Form Number: CF 6059B
Type of Review: Revision
Title: U.S. Customs Declaration
Description: The CF 6059B facilitates the clearance of persons and their goods upon arrival in the territory of the United States by requiring basic

information necessary to determine Customs exception status and if any duties or taxes are due. The form is also used for the enforcement of Customs and other Federal agencies laws and regulations.

Respondents: Individuals or households, Small business or organizations

Estimated Number of Respondents: 39,000,000

Estimated Burden Hours Per Respondent: 3 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 1,950,000 hours

OMB Number: 1515–0108

Form Number: None

Type of Review: Reinstatement

Title: Declaration by Person Abroad Who Received and is Returning Merchandise to the United States

Description: The declaration is used under conditions where articles are imported and exported and reimported, and are brought in duty free into the United States to insure Customs control over duty free merchandise

Respondents: Individual or households, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents/Recordkeepers: 500

Estimated Burden Hours Per Respondent/Recordkeeper: 10 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 292 hours

Clearance Officer: Ralph Meyer (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–14359 Filed 6–17–92; 8:45 am]

BILLING CODE 4820–02–M

Departmental Offices' Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Departmental Offices' Performance Review Board (PRB) and supersedes the list published in 56 FR 139 dated July 19, 1991, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and titles of the PRB members are as follows:

David M. Nummy, Assistant Secretary (Management) Chairperson

Joan Affleck-Smith, Director, Office of Thrift Institutions Oversight and Policy

Jeanne S. Archibald, General Counsel

John H. Auten, Director, Office of Financial Analysis

William E. Barreda, Deputy Assistant Secretary (Trade and Investment Policy)

Ralph L. Bayrer, Director, Office of Synthetic Fuels

Steven W. Broadbent, Deputy Assistant Secretary (Information Systems)

Mary E. Chaves, Director, Office of International Debt Policy

R. Blair Downing, Executive Secretary (Policy Management)

John C. Dugan, Deputy Assistant Secretary (Domestic Finance)

Lowell Dworin, Director, Office of Tax Analysis

James H. Fall, III, Deputy Assistant Secretary (Developing Nations)

George A. Folsom, Deputy Assistant Secretary (International Development and Debt Policy)

Jon M. Gaaserud, Director, U.S. Saudi Arabian Joint Commission Program Office

Geraldine A. Gerardi, Director for Business Taxation

Robert F. Gillingham, Deputy Assistant Secretary (Policy Coordination)

Fred T. Goldberg, Assistant Secretary (Tax Policy)

John R. Hauge, Deputy Assistant Secretary (Eastern Europe and Former Soviet Union)

Sidney L. Jones, Assistant Secretary (Economic Policy)

John W. Mangels, Director, Office of Operations (Enforcement)

Hollis S. McLoughlin, Assistant Secretary (Policy Management)

David C. Mulford, Under Secretary for International Affairs

Edward E. Murphy, Senior Economist (Economic Policy)

Gerald Murphy, Fiscal Assistant Secretary

Barry S. Newman, Deputy Assistant Secretary (International Monetary Affairs)

Peter K. Nunez, Assistant Secretary (Enforcement)

Thomas P. O'Malley, Director, Management Programs Directorate

Jill K. Ouseley, Director, Office of Market Finance

Marcus W. Page, Deputy Fiscal Assistant Secretary

Jerome H. Powell, Under Secretary for Finance

Charlene J. Robinson, Director, Human Resources Directorate

Ronald A. Rosenfeld, Deputy Assistant Secretary (Corporate Finance)

Charles Schotta, Deputy Assistant Secretary (Arabian Peninsula Affairs)

John P. Simpson, Deputy Assistant Secretary (Regulatory, Trade & Tariff Enforcement)

Mary C. Sophos, Assistant Secretary (Legislative Affairs)

Desiree Tucker-Sorini, Assistant Secretary (Public Affairs and Public Liaison)

Edwin A. Verburg, Director, Financial Services Directorate

Olin L. Wethington, Assistant Secretary (International Affairs)

Alan J. Wilensky, Deputy Assistant Secretary (Tax Policy)

FOR FURTHER INFORMATION CONTACT: Larry G. Hicks, Executive Secretary, PRB, room 1318, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone: (202) 622–1440. This notice does not meet the Department's criteria for significant regulations.

David M. Nummy,

Assistant Secretary of the Treasury (Management).

[FR Doc. 92–14329 Filed 6–17–92; 8:45 am]

BILLING CODE 4820–25–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535–7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 20, 1992.

Dated: June 12, 1992.

By direction of the Secretary:

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Locality Pay System Survey (Department of Veterans Affairs Nurse Pay Act of 1990).

2. The telephone survey will allow VA to collect pay data for registered nurses, nurse anesthetists, and other health care personnel based on beginning rates of compensation for corresponding position in the local labor market. The information will be used to implement a locality pay system within VA.

3. State and local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

4. 2,531 hours.

5. 45 minutes.

6. On occasion.

7. 3,375 respondents.

[FR Doc. 92–14300 Filed 6–17–92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 118
Thursday, June 18, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: June 26, 1992, 8:00 a.m.

PLACE: Ralph Metcalfe Federal Office Building, 77 East Jackson Boulevard, Chicago, Illinois.

STATUS: Open to the Public.

June 26, 1992

I. Approval of Agenda
II. Approval of Minutes of May 22 Meeting
III. Announcements
IV. Update on Prospective Los Angeles Hearing
V. *Education Opportunities for American Indians in Minneapolis and St. Paul Public Schools*
VI. *Shelter Issues in New York, the New Fair Housing Amendments and Eastern New York Public Housing*
VII. Appointments to the Montana (interim), South Dakota, and Wyoming (interim) Advisory Committees
VIII. Staff Director's Report
IX. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376-8105, (TDD 202-376-8116), at least five (5) working days before the scheduled date of the meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376-8312.

Dated: June 16, 1992.

Carol McCabe Booker,

General Counsel.

[FR Doc. 92-14513 Filed 6-16-92; 3:15 pm]

BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, July 2, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-14444 Filed 6-16-92; 12:49 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 10, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-14445 Filed 6-16-92; 12:49 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 17, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-14446 Filed 6-16-92; 12:49 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 24, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-14447 Filed 6-16-92; 12:49 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday July 31, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-14448 Filed 6-16-92; 12:49 pm]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 23, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, June 25, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-16: Mr. Roy A. Vitousek, III on behalf of Nansay
Advisory Opinion 1992-17: Mr. Ken Mack on behalf of Du Pont Merck
Advisory Opinion 1992-21: Senator Moynihan
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,

Administrative Assistant.

[FR Doc. 92-14517 Filed 6-16-92; 3:16 pm]

BILLING CODE 6715-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10 a.m. Wednesday, June 24, 1992.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the May Board Minutes
2. Examination and Regulatory Oversight Report
3. Legislative/Strategic Discussion
   A. Strategic Plan
   B. Legislative Update
4. Los Angeles/Community Investment Program Update
5. FHL Bank System Conference—July 1, 1992

The above matters are exempt under one or more of sections 552b(c)(2), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 92–14412 Filed 6–15–92; 4:18 pm]

BILLING CODE 6725–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 8:00 a.m. Wednesday, July 1, 1992.

PLACE: Park Ballroom C, The Park Hyatt Hotel, 24th and M Street, N.W., Washington, DC 20037.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Finance Board will be hosting a conference of the Federal Home Loan Bank System. Matters to be considered are the following:

1. Housing Finance Economic Environment
2. Federal Housing Finance Board Strategic/Housing Legislative Plans for 1993
   A. Strategic Plan
   B. Housing Finance Profile
   C. Legislative Program
3. FHLBank System Financial Plan for 1993
   A. 1992 FHLBank System Financials in Review
   B. 1993 Financial Plan

The above matters are exempt under one or more of sections 552b(c) (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c) (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 92–14413 Filed 6–15–92; 4:18 pm]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., June 24, 1992.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion open to the public:

1. Docket No. 90–23—Automated Tariff Filing and Information System—Consideration of comments.

Portion closed to the public:

1. Fact Finding Investigation No. 16, Fifth Report.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92–14526 Filed 6–16–92; 4:01 pm]

BILLING CODE 6730–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 10:10 a.m., Monday, June 15, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
2. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

They voted unanimously to close the meeting under the exemptions listed above. Deputy General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 92–14442 Filed 6–16–92; 12:48 pm]

BILLING CODE 7535–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Tuesday, June 23, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.
3. Progress Report—NCUA's Long Range Plan.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. NCUA's Long Range Plan—FY 1993–1997.
3. Proposed Rule: Amendment to Part 702, NCUA's Rules and Regulations, Reserves.
4. Final Rule: Amendment to Part 722, NCUA's Rules and Regulations, Appraisals.

TIME AND DATE: 11:00 a.m., Tuesday, June 23, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Request from State for Exemption from Section 701.21(h), NUCA's Rules and Regulations. Closed pursuant to exemptions (4), (8), (9)(A)(ii), and (9)(B).
3. Central Liquidity Facility Line of Credit. Closed pursuant to exemptions (4) and (9)(A)(ii).

4. Appeal under Parts 701 and 747, NCUA's Rules and Regulation. Closed pursuant to exemptions (8) and (9)(A)(ii).

5. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

6. Proposed National Corporate Credit Union Program. Closed pursuant to exemptions (2), (8), and (9)(B).

7. Delegations of Authority. Closed pursuant to exemptions (2) and (9)(B).

8. Conversion under Part 708, NCUA's Rules and Regulations. Closed pursuant to exemptions (8) and (9)(A)(ii).

9. FY 1992 Budget Reprogramming. Closed pursuant to exemptions (2) and (9)(B).

10. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Baord.

[FR Doc. 92–14443 Filed 6–16–92; 12:48 pm]

BILLING CODE 7535–01–M

federal register

Thursday
June 18, 1992

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 420, 421 and 424

Medicare Program; Criteria and Standards for Evaluating Regional Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS); Final Rule and Request for Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 420, 421 and 424

[BPO-102-FC]

RIN 0938-AF59

Medicare Program; Carrier Jurisdiction for Claims for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) and Other Issues Involving Suppliers, and Criteria and Standards for Evaluating Regional DMEPOS Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule—

- Modifies regulations to provide that claims for durable medical equipment, prosthetics, orthotics and certain other items covered under part B of Medicare be processed by designated carriers.
- Specifies the jurisdictions each designated carrier will serve.
- Changes the method by which claims for these items are allocated among the carriers from "point of sale" to "beneficiary residence."

Establishes certain minimum standards for suppliers for purposes of submitting the above claims.

Incorporates in regulations certain supplier disclosure requirements imposed under section 4164 of the Omnibus Budget Reconciliation Act of 1990, as part of the process for issuing and renewing a supplier's billing number. Describes the criteria and standards to be used beginning October 1, 1993 for evaluating the performance of designated carriers processing claims for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) in the administration of the Medicare program. Section 1842(b)(2) of the Social Security Act requires us to publish criteria and standards against which we evaluate Medicare carriers for public comment in the **Federal Register.**

We expect the above changes to lead to more efficient and economical administration of the Medicare program.

DATES: These regulations are effective August 17, 1992 with the exception of § 424.57(f) that imposes information collection and record keeping requirements subject to the Paperwork Reduction Act.

Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 17, 1992.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-102-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments to one of the following addresses: Room 308-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code BPO-102-FC. Written comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's office at 200 Independence Ave., SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

If you wish to submit comments on the information collection requirements contained in this final rule with comment, you may submit comments to: Allison Herron Edyt, HCFA Desk Officer, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:
Lisanne Bradley, (410) 966-3359, for carrier jurisdiction for claims for durable medical equipment, prosthetics, orthotics and supplies, and other issues involving suppliers.
Larry Pratt, (410) 966-7403, for criteria and standards for evaluating designated carriers processing durable medical equipment, prosthetics, orthotics, and supplier claims.

SUPPLEMENTARY INFORMATION:

I. Background

Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public and private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with HCFA (acting on behalf of the Secretary of HHS). These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act). Intermediaries primarily perform part A bill processing and benefit payment functions, and carriers perform part B claims processing and benefit payment functions. Section 1842(a) of the Act authorizes contracts with carriers for the payment of claims for Medicare covered services and items. The statute does not place any restriction on the area which any carrier must serve. Consequently, we have contracts for carriers to process claims in areas that are multi-State, State-wide, or lesser areas.

Our experience has been that there is diversity among carriers in their interpretation of coverage policies, local medical review policies, and pricing for similar items and services. To some extent a carrier's performance is affected by the nature of its workload. That is, the more unusual a piece of equipment or supply is in an area, the more difficult it is to make a coverage or pricing determination. To the extent that carrier determinations reflect local norms, diversity is desirable, but to the extent that local norms result in unwarranted variations in payment amounts, utilization parameters, or claims documentation policies for items furnished nationally, such diversity is undesirable.

Claims for DMEPOS are submitted by suppliers. The term "supplier" is defined in our regulations at 42 CFR 400.202 as a physician or other practitioner, or an entity other than a "provider", that furnishes health care services, including items, under Medicare. A "provider" as defined in § 400.202 means a hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement to furnish outpatient physical therapy or speech pathology services (see sections 1861(u) and 1866(e) of the Act). In practice, an entity, including a provider, that wishes to become a supplier to Medicare beneficiaries does so merely by issuing bills for Medicare covered items and services. Most carriers require some identifying information from a supplier before it receives a billing number, but there are no national requirements that a DMEPOS supplier must meet. The absence of a well-defined process for issuing supplier numbers and the diversity in handling claims have resulted in some abuses under the Medicare program by some entities that hold themselves out to be suppliers. Some suppliers exploit current carrier jurisdiction policies by submitting claims only to those carriers whose claims review policies result in more inclusive or expansive determinations of Medicare coverage or in higher payment amounts, for the items they supply.

Section 1834(a)(12) of the Act authorizes the Secretary to designate, by regulation under section 1842 of the Act, one carrier for one or more entire regions to process all claims within the region for certain covered items. When read in conjunction with sections 1834 (a)(13) and (h)(3), the covered items include all covered durable medical equipment, prosthetics, prosthetic devices, and orthotics. Other items for which claims may be processed by regional carriers include: Home dialysis supplies and equipment; surgical dressings; splints, casts, and other devices used for reduction of fractures and dislocations; immunosuppressive drugs; parenteral and enteral nutrients, equipment and supplies; and other items, including those provided by a physician for which separate payment is appropriately made outside the Medicare physician fee schedule, but not those items covered "incident to" a physician's service or bundled into a facility payment.

II. Notice of Proposed Rulemaking

On November 6, 1991 we published a proposed rule (NPRM) with a 60-day comment period (56 FR 56812) that would amend 42 CFR parts 400, 420, 421 and 424. Specifically, the rule proposed to change 42 CFR part 421, Intermediaries and Carriers, to allocate DMEPOS claims among carriers based on beneficiary residence. In the preamble to that NPRM we proposed that we would choose four carriers nationally that would each process an approximately equal number of claims. The concentration of claims processing would achieve economies as well as consistency of processing within each designated area. The area boundaries would coincide with those of existing Common Working File (CWF) sectors (which store data on Medicare beneficiaries residing within the area). We also proposed that the responsibility for processing claims for beneficiaries residing within each regional area would be allocated to the regional carrier for that area.

We proposed the types of criteria to be used for designating these carriers which would include experience in processing DMEPOS claims and establishing DMEPOS local medical review policy and pricing, quality, timeliness and processing cost per claim.

We proposed to establish in 42 CFR part 424, certain minimum standards for entities seeking to qualify as suppliers. In order to obtain a Medicare billing number, an entity would be required to meet, and to certify that it meets, a number of supplier standards. A supplier must receive and fill orders for DMEPOS from its own inventory or inventory in other companies with which it has contracted to fill such orders. In addition, a supplier must be responsible for delivering Medicare covered items to Medicare beneficiaries or arranging for their delivery to an outlet convenient to the beneficiary, honoring any warranties, answering any questions or complaints the beneficiaries might have, maintaining and repairing rental items and accepting returns of substandard or unsuitable items from beneficiaries. We also proposed that each supplier must maintain a complaint log.

We proposed a number of changes to 42 CFR part 420, which concerns Medicare program integrity. To improve out ability to curtail abusive practices on the part of some suppliers, we proposed to require a supplier to furnish ownership and control information. These requirements would implement the reporting requirements in section 1124A of the Act, as enacted by section 4164(b) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90).

We proposed to make several clarifying or conforming changes. We would—

Delete the definition of "supplier" in § 420.201 as it is unnecessary for program integrity purposes and conflicts with the definition in part 400.

Add the requirement that any physician with a Unique Physician Identification Number (UPIN) provide that number. This is now our most consistently used physician identifier.

Add a requirement that suppliers must report changes in ownership or control within 180 days. This would make our requirement consistent with provisions of section 1124A of the Act, as revised by OBRA 90.

Revise the definition of "disclosing entity" to include a part B supplier.

III. Analysis of and Responses to Public Comments, and Revisions to the Proposed Rule.

In response to the November 6, 1991 proposed rule, we received 42 timely items of correspondence. Comments were submitted from Medicare carriers, various associations and organizations representing facilities and suppliers, medical and other professional individuals, and law firms. A summary of individual comments and responses, and summarized changes, if any, to our rule are discussed below:

Effective Date

Comment: Two commenters were apprehensive that if pending legislation, which contains similar, but not identical, provisions to those of this regulation were passed, it would impede implementation of these amendments of the regulations. They suggested that we wait until legislation is passed before proceeding. One commenter thought that legislative authority would give more weight to some of our changes.

Response: Our plans for this regulation preceded any of the proposed legislation, and we expect that this regulation will be published in the **Federal Register** before any new legislation can be promulgated. Most of the provisions of the proposed legislation are generally consistent with what we are trying to achieve in this regulation, so if legislation is passed, we believe it will only strengthen the authority we already have to make these changes.

Regionalization

Comment: There was a general consensus from the commenters that regionalization of claims processing for DMEPOS items was desirable for the reasons mentioned in the proposed rule.

Response: We appreciate the support we have received for regionalization of claims processing for DMEPOS items.

Comment: One commenter expressed concern that success with the parenteral and enteral nutrition (PEN) specialty carriers was no reason to believe that there would be similar success with DMEPOS claims due to the much larger number of claims. Several commenters from the orthotic and prosthetic, PEN and home dialysis supply industries preferred that special arrangements be made for processing their claims.

Response: We believe that the processing of DMEPOS claims is significantly different from that of claims for medical services. We do not, however, see that there is a significant difference in the system used to process claims for different types of medical items. It is true that each type of DMEPOS is subject to its own coverage, utilization and documentation requirements, but medical review to determine whether a particular DMEPOS item is medically necessary follows essentially the same process for all such items.

Regionalization allows us to pool sufficient numbers of each type of claim so that carrier staff, including fair hearing officers; can be proficient in its review. No type of DMEPOS item is so rare that there will not be a sufficient number of claims at each of the four regional carriers to develop this expertise. While even greater expertise could be developed if certain types of claims were sent to only one or two

carriers, as is currently done with PEN claims, we cannot justify the higher average processing costs that are inevitable when a smaller number of claims are separately processed. We continue to believe that the designation of four carriers to process claims for all types of medical items continues to be the most feasible answer to the problems we have recently experienced with these claims. We note that the four regional carriers will assure that face-to-face fair hearings are conducted throughout their regions.

Comment: One commenter wanted a single carrier to process claims, while another commenter preferred that we consider establishing fewer than four regional carriers. Another suggested 10 regional carriers, one for each HCFA administrative region.

Response: Our major concern in establishing the number of regional carriers was that there be few enough to allow the carriers to develop medical review and pricing expertise for all types of Medicare part B covered items, but enough that each carrier would receive a manageable workload, i.e., about 6–7 million claims. We believe that four regional carriers best meet HCFA's needs for increased claims processing expertise and eoncomical and efficient processing.

The areas chosen as DMEPOS regions divide the national DMEPOS workload into approximately equal parts and conform to the areas established by CWF sector boundaries. Having the DMEPOS regions coincide with CWF boundaries is efficient because it minimizes the number of out of area claims to be processed. Out of area claims are more expensive to process. We also considered the number of suppliers in each area and the location of major metropolitan areas located on CWF boundaries.

Comment: A few comments were received on the configuration of the regions. One commenter suggested that if each of the regional carriers were linked to all CWF host sites, there could be a reconsideration of the boundaries described in the proposed regulation. Other commenters suggested that we choose our carriers first and then configure our regions around the carriers.

Response: We have decided to issue a competitive request for proposals for the regional carrier contracts. In order to effectively bid for these contracts, the offerors must know the number of claims and the area for which they are bidding. Therefore, we affirm the boundaries of the four regions specified in the proposed regulation.

Competitive Bidding

Comment: Most commenters agreed that the regional carriers should be determined as a part of a competitive procurement process.

Response: We have the authority either to select non-competitively carriers under section 1842 of the Act, or to procure the contracts competitively. We have chosen to use a competitive procurement this time. We have issued a Pre-Solicitation Notice for Comment which will be followed by a Request for Proposals (RFP).

Timely proposals will be accepted from all offerers which meet the definition of "carrier" in section 1842(f) of the Act: "* * * a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization * * *."

Criteria for Designation of Contractors

Comment: Several commenters expressed a great deal of interest in the criteria which HCFA would use to designate the four regional carriers. Of the four definite criteria listed in the proposed regulation, there was general agreement that they should all be factors in designation. Some commenters expressed some concern that cost might be treated as the overriding factor and actually put our current PEN carriers at a competitive disadvantage. There was also concern that two much reliance would be placed on Contractor Performance Evaluation Program (CPEP) data, since it reflects carrier overall performance and does not focus on a carrier's ability to process the 5 percent of its claims which are for DMEPOS. Most commenters specified indicia for judging that the four criteria were met or added other criteria. One of the commenters wanted to know the weights that would be applied to each of the criteria. Most commenters wanted the final criteria published in the Federal Register.

Response: We published the abbreviated criteria for carrier selection in the proposed regulation to notify the public of the general parameters we intended to use for either a selection or procurement of regional carriers. More specific criteria as well as the weights for those criteria will be included in the RFP.

Many excellent ideas for criteria were presented. We will seriously consider the criteria suggested by commenters for inclusion in the RFP, but we do not plan to publish those specific criteria in the Federal Register. That type of detailed information is more appropriate for inclusion in procurement documents, such as the RFP. After the initial contract period we may wish to change our emphasis and publish new criteria. However, we are including the general criteria in the regulation to make clear HCFA's intent to designate regional carriers with experience in claims processing to process claims with quality and timeliness, at a reasonable price.

Comment: Some of the commenters wanted suppliers, and associations representing them, to have a role in the selection of the regional carriers.

Response: It is not permissible to involve suppliers or their representatives in a competitive government procurement which is subject to the Federal Acquisition Regulations.

Regional Carrier Contract

Comment: One commenter believed that the regional carrier contracts should be totally separate and distinct from any other contracts the carrier might have with HCFA.

Response: We agree and will be executing separate contracts for the DMEPOS regional carriers. Pertinent portions of the proposed contract have been published with the Pre-Solicitation Notice. The DMEPOS regional carrier statement of work will also be included in the contracts.

Transition and Implementation

Comment: A large number of commenters expressed concern about the delays in payments which occurred in previous carrier transitions. Some commenters stated that a system for advance payments should be established for this transition.

Response: HCFA is committed to an orderly transition process which does not cause undue delays in payment. The details of that plan have been published in the Pre-Solicitation Notice. Comments on that notice have been received and are being analyzed before the RFP is published. We do not believe a special procedure for advance payments will be necessary, but we are developing general guidelines as to when advance payments will be appropriate for all carriers. The DMEPOS regional carriers

will follow the same procedures as all other carriers.

Comment: Several commenters thought some sort of phase-in would be appropriate. Most of the commenters preferred a phase-in by type of DMEPOS, and one commenter suggested a phase-in by States.

Response: An integral part of implementation will be a phase-in plan. We considered phasing-in by type of equipment, type of beneficiary, type of supplier, etc., but determined that phase-in on any of those criteria would cause some suppliers to be billing both regional and local carriers for an interim period. The plan we have chosen will first phase-in suppliers which operate in more than one State and which choose "early boarding," that is, to begin submitting all their DMEPOS claims to the regional DMEPOS carriers in the first month, and those that submit claims for Railroad Retirement beneficiaries, since the Railroad Retirement Board has agreed to contract with the four DMEPOS regional carriers for the processing of DMEPOS claims. As a result, suppliers will no longer need to obtain separate billing numbers for their Social Security and Railroad Retirement Medicare beneficiaries. During subsequent months of the four month implementation period, we will phase in claims State-by-State for claims currently being processed by the carriers located in each State. Under our current schedule, PEN claims will be phased-in at the same time as the other DMEPOS claims processed by Blue Cross and Blue Shield for South Carolina and Transamerica Occidental Life Insurance Company, unless PEN suppliers choose "early boarding" during the first month of implementation. The exclusive use of beneficiary residence for determining claims jurisdiction is required for the regional DMEPOS carriers only. During the implementation period, "point of sale" will continue to be used as the jurisdiction policy for DMEPOS claims processed at local carriers and "home office" claims jurisdiction policy for PEN claims processed by the two PEN specialty carriers.

Comment: Commenters placed emphasis on the need for education about the procedures to be used by the regional carriers for beneficiaries, physicians, suppliers and local carrier personnel.

Response: We agree. Education is an integral part of the transition plan published in the Pre-Solicitation Notice.

Comment: One commenter suggested that sufficient funding be allocated to the local carriers to assure that they provide the regional DMEPOS carriers with the support they need for a successful transition.

Response: We do not anticipate any problems resulting from less than full cooperation from the local carriers. Unlike transitions in the past, the local carriers will continue to be under contract with HCFA and process all other types of claims. Cooperation with the transition effort will be considered critical and will be evaluated as part of the total contractor evaluation.

We do not believe that some of the specific expected transition problems mentioned by commenters will exist. For example, we do not plan to require transfer of claims history or medical necessity documentation files from the local carriers to the regional DMEPOS carriers. Instead, we currently plan to have the regional carriers rely on CWF which will collect this information and make it an integral part of the query process, rejecting duplicate claims, ascertaining the existence of current medical necessity documentation, alerting questionable situations, etc. The files which local carriers must transfer, such as pricing data, will be transferred early in the transition period and can be tested rigorously before the "live" date.

Comment: Several commenters suggested that we first consolidate the non-PEN claims at the regional carriers; then, move the PEN claims.

Response: As mentioned above, we do not currently plan on moving the PEN claims after transition of other types of claims. We view these claims, with their one national pricing locality and well-established coverage policy and utilization parameters, as the claims which will be easiest for the new regional carriers to absorb.

Comment: One commenter suggested that administration of the regional carriers, at least on an interim basis, ought to be centered in HCFA's central operations, rather than in the regional offices, to assure timely and comprehensive resolution of any transition problems.

Response: Both the central and regional offices of HCFA will have integral roles in the monitoring of the transition. After operations at the regional carriers have stabilized, the four regional offices parallel to the regional carriers will assume primary operational responsibility for the regional carriers.

Evaluation of Regional Carriers

Comment: Commenters generally were in favor of a separate evaluation program for the regional carriers. The critieria they suggested for inclusion in that evaluation were very similar to the criteria they suggested for selection of the regional carriers.

Response: We agree that a separate evaluation of DMEPOS functions should be performed at the regional carriers, even if those carriers have other Medicare contracts. We have considered the many, excellent ideas presented by all commenters. The criteria for evaluation which we believe best address HCFA needs are included later in the preamble of this final rule, and we invite comment.

Claims Jurisdiction Policy

Comment: Most commenters agreed that using "point of sale" to determine carrier jurisdiction for processing claims for DMEPOS had served its purpose and that it was time to establish another policy. A few commenters suggested that there would be no need to change jurisdiction policy if we established pricing, coverage policy and utilization parameters on a national basis. A few commenters preferred using "point of delivery" as the point of reference for claims jurisdiction policy.

Response: We have thoroughly examined all possible bases for determining carrier claims processing jurisdiction. "Point of delivery" was analyzed when a component within the Department of Health and Human Services suggested that HCFA consider it. Our analysis concluded that in border areas, point of delivery could be manipulated by requiring beneficiaries to pick up their purchases or rentals from a location within the higher priced area. "Point of delivery" would be more expensive for HCFA to administer, since the claim histories for most beneficiaries are housed on the CWF host local to their permanent address. Under the current system, some suppliers have forced beneficiaries to call out of area offices to obtain items stored locally. We want to return to a system where beneficiaries have a choice of purchasing items their physicians find medically necessary for them, locally or from an out-of-State supplier. Whatever supplier the beneficiary chooses, the beneficiary's claim will be subject to the same carrier's regional coverage guidelines and the same State-wide payment rates, based on the site of the beneficiary's permanent address.

Comment: Several commenters requested exceptions to using beneficiary residence to determine carrier jurisdiction for beneficiaries living within a 60 mile radius of a border, those obtaining medical care in a tertiary care facility, and beneficiaries who are traveling or who have two homes.

Response: Exceptions to the beneficiary residence rule would not be appropriate, since one of the major intentions of these changes is to establish beneficiary specific records in the regional carrier within whose area a beneficiary has a permanent residence. Exceptions to the rule will result in the type of system we currently have where claims for a beneficiary may be processed anywhere in the country. No matter where borders are drawn there will be suppliers, which service a limited market area, that will be disadvantaged by having to submit claims to more than one regional carrier. Of course, there will be many fewer carriers, so that many claims for the exceptions cited above will actually be submitted to the same regional carrier. We have drawn the borders of the four regions to avoid, as much as possible, major metropolitan areas located on State borders, while conforming to the CWF sections.

Comment: Several commenters expressed concern about how a supplier was to determine the "legal address for tax purposes of a beneficiary," as required by the proposed rule.

Response: Concern about how to determine a beneficiary's legal address for tax purposes has led us to change the terminology to "permanent residence." Permanent residence is defined as the address at which a beneficiary intends to spend over six months of the calendar year. When a beneficiary moves to another address with the intent to stay at that address for over six months of the calendar year, then that address becomes the permanent residence. Thus, only the beneficiary can designate his/her permanent residence. A supplier must obtain permanent residence information from its customer, the Medicare beneficiary or his/her authorized representative.

A regional carrier will pay the rate applicable for the address shown on a claim unless it has reason to believe that the address is incorrect. If there is a question as to the correct permanent address, the regional carrier will conduct an investigation to determine the correct permanent address for the beneficiary.

Comment: One commenter suggested that the regional carrier be responsible for the determination of beneficiary residence or that suppliers be given access to the CWF to verify legal residence.

Response: There will be no need for the carriers to track beneficiary residence, except where there is evidence of abuse by a supplier. Likewise, suppliers will not need to verify, with the carrier or the CWF, the permanent residence of a beneficiary.

Issuance of Supplier Numbers

Comment: Commenters generally supported the supplier number issuance process. It was noted that the process is "akin to a license."

Response: The commenter is not correct in comparing the issuance of a supplier number to a license. A DMEPOS supplier can still furnish items to individuals other than Medicare beneficiaries, even if it is not approved for Medicare billing. However, if an entity meets the Medicare supplier standards it is a "supplier" and, therefore, eligible to receive Medicare payments or to have beneficiaries reimbursed for purchases or rentals it makes to them.

Comment: A few commenters preferred that suppliers be accredited or certified in a fashion similar to that used under Part A of Medicare, rather than the supplier numbering process we proposed.

Response: The certification process is authorized by statute for providers and certain suppliers, but not for DMEPOS suppliers. In general, that process is reserved for entities that furnish direct patient care and would not be appropriate for suppliers of items. We think it is appropriate, however, to require that entities which sell DMEPOS items to Medicare beneficiaries meet certain minimum business requirements in order to be recognized as Medicare suppliers.

Comment: A few commenters suggested that stating that we would reissue supplier numbers every two to three years did not give suppliers the certainty they need to plan adequately. It was also suggested that the supplier number re-issuance process be limited to suppliers in noncompliance with HCFA requirements. Another commenter thought that the process would be costly and an administrative nightmare, with little positive results. It was suggested that an annual purge of billing numbers which had not been used during the previous twelve months would avoid the problem of having defunct entities with supplier numbers.

Response: We agree that the two to three year language is ambiguous. We intend to require that suppliers reapply for supplier numbers every three years. For suppliers initially issued numbers in 1993, however, we will require about one-third of the suppliers to reapply for numbers two year later. In the third year we will require that another third of all suppliers reapply for supplier numbers and in the fourth year require the final third of suppliers to reapply. Supplier numbers issued in any of those years will not be subject to renewal for another three years. However, if no claims are submitted by a DMEPOS supplier over a period of four consecutive quarters, the supplier will also be asked to reapply for a supplier number. This process is intended to assure that only active suppliers have billing numbers. We plan to minimize cost and administrative effort for both the regional carriers and suppliers by providing to each supplier reapplying for a supplier number a copy of its current enrollment information and having the supplier check the information, make any necessary corrections and recertify that supplier standards are being met and that all ownership information is correct.

Comment: Several commenters stated their need for multiple supplier numbers for different addresses or product lines to aid in their accounting controls.

Response: We agree that for accounting purposes it is reasonable for suppliers with more than one business outlet to be allowed more than one billing number, in the form of a basic supplier number followed by a modifier. We do not agree to allow multiple numbers for multiple product lines, since a supplier can easily determine the amounts paid for each product line using the HCPCS codes.

Comment: One commenter requested that it be allowed to apply for billing numbers for all of its branch offices at one time.

Response: We would prefer that a supplier with multiple outlets submit supplier number application forms for all of it branches at the same time. Large suppliers should find this convenient, since only information on the addresses and managing employees, including any past or current associations with other suppliers and any sanctions they may have received, would differ.

Comment: We also received comments about implementation which emphasized the need for us to allow ample time for processing applications and obtaining any necessary additional or clarifying information. One carrier commented that it would be better to implement the disclosure statute in concert with the implementation of the regional carriers.

Response: We agree that sufficient implementation time is critical. We plan to collect supplier address information from all carriers this year and mail instructions and enrollment forms to all current suppliers. These forms will be returned to a single National Supplier Clearinghouse, one of the four regional carriers. New billing numbers should be

issued to DMEPOS suppliers approximately 2 months before claims are first processed by the regional carriers. The new numbers will not be used at local carriers.

Disclosure of Ownership

Comment: One commenter felt that the requirement proposed in § 420.206(b)(3) to provide updated information only 180 days after a change in ownership, etc., was too liberal.

Response: We agree. Although section 1124A(b) of the Act provides that a supplier must update ownership information within 180 days after a change, we believe that we have the authority to shorten the period, in the interest of effective implementation of the statute, and especially in light of our need to make correct payment decisions. We are revising § 420.206(b)(3) by shortening that period to 35 days to coincide with that for requested information.

This change would make the period for disclosure of changes the same as the period for response to requests for ownership information. Because of the problems we have experienced with fraudulent and abusive suppliers, the regional carriers will need to track closely changes in ownership to assure that suppliers related to problem suppliers are also closely scrutinized.

Comments: Several commenters requested a more precise definition of "control interest" and "managing employee." Some commenters suggested that we limit managing employees to those with ownership interests or that we use a standard commercial law definition. One commenter asked that specific ownership information on companies publicly traded on a major exchange be limited to those with a 10 percent or more interest.

Response: Section 1124A of the Act specifies the requirements for disclosure of ownership and defines "person with an ownership or control interest" as (1) a person described in section 1124(a)(3) of the Act or (2) a person who has one of the 5 largest direct or indirect ownership or control interests in a supplier. Section 1124(a)(3) defines "person with an ownership or control interest" as "a person who (A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in an entity; or (ii) is the owner of a whole or part interest in any mortgage, deed or trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 per centum of the total property and assets of the entity; or (B) is an officer or director of the entity, if the entity is organized as a corporation; or, (C) is a partner in the entity, if the entity is organized as a partnership." We also believe that "control interest" includes any person meeting the above definitions for an entity which is involved in a joint venture which is seeking to qualify as a supplier and receive a billing number. Most of this definition is repeated in 42 CFR 420.201, published in 44 FR 41642, July 17, 1979, under the definition of a "person with an ownership or control interest." We will amend the definition in the regulations to bring it completely into accord with the above definition. The above definition makes clear that we cannot adopt the suggestion to limit reporting to those with a ten percent interest.

"Managing employee" is defined in section 1124A of the Act as a person described in section 1126(b) of the Act. Section 1128(b) defines "managing employee" as "an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the entity, or who directly or indirectly conducts the day-to-day operations of the entity." This definition is repeated in 42 CFR 420.201 and needs no amendment.

Comments: One commenter asked that we not include criminal offenses against title XX of the Act, pertaining to the Social Services Block Grant program, in our definition of reportable criminal offenses. Another requested that only histories of administrative sanctions, i.e., multiple offenses, by managing employees be reportable.

Response: Section 1124A(a)(2) of the Act also requires disclosure of any administrative sanctions, i.e., "penalties, assessments or exclusions" which have been assessed against any person with an ownership or control interest or a managing employee under section 1128, 1128A or 1128B of the Act. Those sections deal, respectively, with mandatory an permissive exclusions, civil monetary penalties, and criminal penalties for acts involving Medicare or State health care programs. Section 1128(h) defines a "State health care program" as (1) a State health plan approved under title XIX of the Act (Medicaid), (2) any program receiving funds under title V (Maternal and Child Health Services Block Grant Program), or from an allotment to a State under such title or (3) any program receiving funds under title XX or from an allotment to a State under such title. Thus, we must include convictions for criminal offenses under title XX of the Act in the information to be reported. We also cannot agree that only "histories" of administrative sanctions be reported, when the statute is clear that any such instance must be reported.

Application of Disclosure of Ownership Requirements to Suppliers not Accepting Assignment

Comment: Two commenters questioned HCFA's authority to expand disclosure of ownership requirements to suppliers not accepting assignment. Another praised HCFA for extending the requirements.

Response: Section 1833(e) of the Act gives HCFA the general authority to obtain any information it needs to correctly pay part B claims. We believe that this authority extends to ownership information, which can be relevant in determining whether there are outstanding overpayments for individuals involved with a supplier. We also believe that the disclosure provision in section 4164(b) of OBRA 90 also provides authority, as specified in section 1124A of the Act, to request information from all suppliers. The statute states that "* * * no payment may be made for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information * * *" A "disclosing part B provider" means any entity receiving payment on an assignment related basis for furnishing items * * *" Even suppliers which do not "participate," i.e, agree to always accept assignment, may accept assignment on any claim. The statute does not require that more than one assigned claim be presented, but does require that full disclosure be made prior to payment of that claim. Therefore, it is reasonable to require disclosure routinely from all suppliers. It is also much more administratively efficient, since over 90 percent of all DMEPOS claims are, indeed, assigned.

We are also making disclosure a supplier standard. All entities must attest that they have made full and accurate disclosure in order to qualify as a Medicare supplier and to obtain a billing number.

National Database of Supplier Information

Comment: One commenter recommended a national supplier database to assemble and analyze relationships among suppliers.

Response: We agree. As mentioned above, we plan to designate one of the regional carriers as a National Supplier Clearinghouse. That carrier will process all supplier number applications, house files on all suppliers, including

ownership and other information collected on the HCFA-192, and correlate that information routinely, so that each regional carrier can annotate its files. It will also assist in special studies conducted by the regional carriers, HCFA or the DHHS Office of Inspector General (OIG).

Supplier Standards—General

Comment: There was general agreement that standards need to be set for suppliers. Several commenters thought that these standards ought to be quality, rather than business oriented, and more like the survey and certification process for Part A providers.

Response: As stated above, we do not want to establish quality of service standards for DMEPOS suppliers, since we can not pay suppliers for direct patient care, but can only pay for items and, in certain circumstances, maintenance, servicing, and repair. HCFA does have the responsibility and the authority to determine correct payment amounts and to ascertain that we are paying the correct suppliers. In order to assure we are paying the correct supplier, we must collect ownership information. We further have a responsibility to Medicare beneficiaries to assure that suppliers meet certain minimum business standards.

Comment: One commenter thought that certification as a part A provider ought to obviate the need for meeting the part B supplier standards.

Response: Since the part B supplier standards do not measure the same factors as the certification process, provider status will not automatically qualify the provider as a supplier. Any provider or physician who sells or rents items to a Medicare beneficiary for which a part B claim will be submitted to a DMEPOS regional carrier, must qualify as a supplier in order to be paid for those items.

Comment: One commenter felt that self-certification seemed ineffective and recommended that, at least, random validation would be necessary.

Response: We believe that self-certification is sufficient for almost all suppliers, especially since a false report to the government could constitute a serious offense. The regional carriers will investigate suppliers with which we experience problems and about which we received complaints.

Comment: Another commenter thought that while the idea of standards was admirable, these particular standards impede a supplier's ability to maintain business flexibility and result in excessive paperwork.

Response: We do not believe that the minimum standards proposed for suppliers will limit their business flexibility. We are adding a new § 424.57 Special payment rules for items provided by DMEPOS suppliers and issuance of DMEPOS supplier billing numbers, to clear up any misunderstandings there may be. We address these changes below, when we answer comments on specific standards. The paperwork associated with supplier standards, except for the complaint log, which is discussed below, consists of signing a certification that the standards are being met, usually only once every three years, and distributing copies of the supplier standards to Medicare customers.

Inventory Requirements

Comment: A few commenters were concerned about the requirement that suppliers fill orders from their own inventories or from inventory in companies with which they have contracted. The suppliers of prosthetics and orthotics were especially concerned since they maintain no inventory, but rather, custom fabricate items for each of their patients.

Response: We agree that we need to address the situation of the suppliers of prosthetics and orthotics. We specify in the requirement in new § 424.57(c)(1) the phrase: "or fabricates or fits items for sale from supplies it buys under a contract." The contracts referred to in this phrase and in the "inventory in other companies" need not be detailed written contracts, but they should be objectively provable. This provision is designed to exclude entities which merely act as brokers for other suppliers.

Delivery

Comment: Several commenters wanted clarification on the meaning of "delivery."

Response: Delivery does not necessarily mean delivery to the beneficiary's home. It also includes direct delivery to a beneficiary or his/her representative in the supplier's place of business. What we are trying to address with this provision are suppliers which accept orders from beneficiaries and then sell those orders to another company. This provision affirms that the supplier which accepts the order from the beneficiary has the responsibility to assure that the beneficiary receives what is ordered and that the supplier is responsible if the order is not received or is substandard or unsuitable.

Warranties

Comment: A number of commenters requested that we more narrowly define "warranties" as either those defined under the Uniform Commercial Code, under applicable State law or as "express and implied."

Response: We agree that further clarification is needed. In new § 424.57(c)(3), we clarify that "warranties" means "all warranties express and implied under applicable State law."

Comment: One commenter questioned how this provision would apply to customized devices and "service intensive treatments."

Response: Warranties for customized devices will be those applicable under State law for a completed device (materials and labor) as furnished to a Medicare beneficiary. "Service intensive treatments" are not reimbursable under any of the DMEPOS benefits.

Answers Questions and Complaints

Comment: One commenter recommended that we limit this standard to questions pertinent to the item being provided and not require suppliers to answer questions, in general, or, in specific, about the Medicare program.

Response: We agree. We are adding language to new § 424.57(c)(4) limiting what questions must be answered to those pertinent to the use of the item at issue. Suppliers will also be requested to refer beneficiaries with Medicare questions to the appropriate regional carrier beneficiary toll-free line.

Maintains and Repairs Rental Items

Comment: One commenter requested that language be added to make clear that a supplier may meet that requirement through a service contract with another company.

Response: We agree that service contracts are acceptable. We make this clear in new § 424.57(c)(5).

Comment: Two commenters asked that we include a standard which would require suppliers to disclose patients' rights information.

Response: We agree and have added a new § 424.57(c)(7). Suppliers will be required to supply to each Medicare beneficiary with whom it does business a copy of the supplier standards it must meet in order to enroll as a Medicare Part B supplier. The handout will include the telephone number of the regional carrier for the area and will invite beneficiaries to call if they feel that their suppliers are not complying with the standards.

Comment: Another commenter asked what arrangements should be made for items which beneficiaries take with them when they travel.

Response: A supplier remains responsible for repairs even when a beneficiary is traveling. We suggest that suppliers inform their customers what procedures should be followed in emergency situations.

Comment: Another commenter asked that suppliers of prosthetics and orthotics be exempted from this standard.

Response: If items are not rented, the standard is inapplicable.

Returns of Substandard and Unsuitable Items

Comment: One commenter was concerned that orthotic and prosthetic devices could be considered substandard when compared with another device of "higher quality" or with more elaborate features and that when a beneficiary's condition changes, custom devices may no longer be "suitable." Similar comments were received from commenters representing durable medical equipment suppliers.

Response: It is not intended that "substandard" or "unsuitable" include the situations mentioned by the commenter. "Substandard" means less than full quality for the particular item, not as that item is compared to other types of items. An example would be an item which is unusable for the purpose for which it was purchased. "Unsuitable" means not appropriate for the beneficiary at the time it was fitted and/or sold.

Comment: Another commenter stated that suppliers should be required to accept as returns only those items that are in compliance with company policy on packaging integrity and/or local health laws, since some items cannot be resold.

Response: We do not agree that suppliers should not be obliged to accept opened packages of sterile products, if those packages contain defective parts or items or are not what was ordered by the physician for the beneficiary or what the beneficiary thought he/she was purchasing. Suppliers should not be reselling defective items. To avoid selling unsuitable items and, especially, if there is a question about what has been ordered for the beneficiary, the supplier should contact the beneficiary's physician for clarification.

Other Standards

Comment: Several Commenters suggested additional standards: maintenance of a physical facility and personnel; proof of product/professional liability insurance; proof of meeting basic business, health and safety standards; proof of meeting more rigorous standards for ostomy and PEN suppliers; successful completion of an on-site inspection; documentation of a quality assessment and improvement plan; and an equipment management plan and documentation of management, administration, and governing body.

Response: We agree that every supplier should have a physical facility and personnel. Since both a street address and an employer identification number or Social Security number will be required for every supplier on the disclosure of ownership form, we do not believe that it is also necessary to make physical facility and personnel a standard.

We do not believe it is necessary to require proof of liability insurance. We do not wish to interfere in the way suppliers conduct their business any more than is absolutely necessary. We also feel that such a provision might prevent some small, local suppliers from providing DMEPOS to Medicare beneficiaries.

The disclosure of ownership from also requires the number of any license the supplier holds and the name of the licensing body. Since every State and locality has different licensing requirements, we cannot monitor that all of these are met in every case. We would expect the appropriate licensing bodies to monitor compliance with their own requirements.

We do not intend to require stricter standards for some types of suppliers than other suppliers. We have seen nothing to justify that the business operations of some types of suppliers are more problematic than others.

Routine on-site inspections would be extremely expensive. We do not believe they would be relevant to the types of business standards in this regulation.

We do not agree that a supplier quality assessment plan is relevant and should be required, nor do we agree that an equipment management plan is necessary. We believe that acceptance/rejection of such plans would be undue interference in the way suppliers do business.

Documentation about individuals involved in management, administration and governing of the supplier is already required on the disclosure of ownership form. Since failure to disclose ownership information has the same effect as failure to meet supplier standards, we are, as a matter of organization, making disclosure of ownership a supplier standard.

Complaint Log

Comment: Some commenters were concerned that a few clerical errors in a log might be cause for suspension. Two commenters felt that the requirement for a complaint log was reasonable. Most commenters expressed concern that the complaint log requirement was too expensive, especially if oral complaints had to be documented, would not be useful and was duplicative of existing complaint resolution processes, such as those for pharmacists. Several commenters thought that a viable alternative would be a protocol for receiving and maintaining complaints and to demonstrate actions taken to resolve or respond to the complaint.

Response: First, we would note that the requirement to maintain a complaint log is not a supplier standard, and, thus, a failure to maintain it would not, in the absence of violation of one or more supplier standards, be cause for revocation of a supplier number. Failure to maintain a complaint log is merely evidence that a supplier standard may not have been met.

We agree that the requirement for a complaint log, as presented in the proposed regulation at § 424.55(g) (now new § 424.57(f)), was more onerous and burdensome than is necessary. Instead, we require in § 424.57(f) that suppliers must have documentable complaint resolution processes and maintain a separate file of all written complaints, related correspondence, and notes of action taken in response to oral or written complaints. We reserve the right for a carrier to, on its own initiative or at the direction of HCFA, require that a full complaint log be kept by any supplier for which there has been one or more beneficiary complaints (depending on the gravity of those complaints) which a carrier has had to help resolve about the supplier's failure to meet supplier standards or comply with the law. Limiting required documentation to complaint protocols and recordkeeping of materials produced in the normal course of supplier operations should eliminate most of the paperwork burden from most suppliers, focusing more intensive requirements on suppliers with a history of possible abuse. In all cases, however, suppliers will bear the burden of proof when a carrier follows up on complaints. Records of notes and other documentation may be useful in demonstrating: (1) A supplier's efforts to resolve such complaints; and (2) the effectiveness of its complaint protocol. Among the factors that a carrier may employ in evaluating a supplier's performance will be the gravity of the

complaint(s) and the overall effectiveness of the complaint protocol and its implementation. We welcome any comments on the efficacy of this revised requirement: (1) focusing burden on the appropriate suppliers; and (2) improving supplier complaint protocols over time.

Comment: Several commenters wanted to know what constitutes a complaint. One commenter recommended that the regional carriers disclose to the suppliers, upon request, any complaints received and validated by the carrier, with enough detail so that suppliers can take corrective action.

Response: A complaint is an allegation that a supplier is not fully complying with a regional carrier requirement, a standard, regulation or law. Normally, when a complaint is received by a carrier, the carrier works with the supplier and beneficiary to resolve the complaint. If, however, the complaint is part of a larger pattern of abuse which is being reviewed, or the supplier is under investigation for fraud, the beneficiary is usually advised that his/her complaint will be handled as part of the larger review or investigation. In these situations, it could be inappropriate to inform a supplier about the existence of a complaint.

Appeals Process

Comment: Many of the commenters were concerned about the lack of due process afforded those entities which are denied supplier numbers or which have their supplier numbers revoked. Notice and fair hearing, with a chance to submit evidence, were requested. One commenter suggested that no revocation should be imposed until after all administrative appeals had been exhausted, or at least, until a supplier has had time to respond to a notice of revocation. Another commenter suggested that suspension of payment was sufficient punishment.

Response: We agree that there should be a timely appeals mechanism for the decision to not grant or to revoke a supplier number. However, we do not view either action as a punishment. As explained above, we are instituting a system where only entities which meet certain standards can be issued a billing number. If those standards are not met, the entity no longer qualifies as a supplier for Medicare payment purposes. We believe this to be an administrative determination rather than a sanction, to be effective as of 15 days after a notice that the entity no longer qualifies as a supplier is sent by the carrier to the supplier.

As a result of these comments, we are adding a new § 405.874, Appeals of carrier decisions that supplier standards are not met. We specify in this section that the carrier must send notice of its determination by certified letter. The determination will be effective 15 days after the notice is sent by the National Supplier Clearinghouse, that is, claims for items or services furnished to beneficiaries on the 15th day after the notice, and later, will not be allowed. We will, therefore, require that the carrier make arrangements for the entity to have a fair hearing, before a carrier official uninvolved with the original determination, within one week after the notice is sent, or later, if at the request of the entity. A decision based on information presented by both the carrier and entity will be issued no later than two weeks after the hearing is held and will be sent by certified mail to the supplier. The entity or carrier may then appeal that decision, if unfavorable, to the Health Care Financing Administration (HCFA). A HCFA official will decide the appeal based on the information submitted by the carrier hearing officer within two weeks of receipt of the entity's or carrier's appeal, unless the HCFA official feels the information provided is incomplete. HCFA may request additional written information from either the carrier or entity. A decision will be issued within two weeks of when the last information is received by the official, or four weeks from when it was requested, whichever is earlier. The decision will be sent by certified mail to both the carrier and entity. Until all administrative appeals are exhausted, any claims submitted by the entity for the period the National Supplier Clearinghouse has determined the entity does not qualify as a supplier will be logged in and held by the carrier, but not processed.

The National Supplier Clearinghouse may reinstate a "supplier" if the entity completes a corrective action plan which rectifies its past violations of supplier standards and provides sufficient assurance of its intent to comply fully with the supplier standard in the future.

Coverage Policy

Comment: Many commenters favored establishing national standard coverage policy. A number of commenters focused on the fact that some beneficiaries, in the absence of point of sale jurisdiction, will no longer have Medicare coverage for some few items and, in other situations, will not be able to have Medicare reimburse them or their supplier for as many supply items per month. They point out that all Medicare beneficiaries pay the same premium, but since coverage and utilization are different around the country, those Medicare beneficiaries receive different benefits.

Response: While it is theoretically possible to issue a national coverage decision for each DMEPOS item, the process would be extremely long and labor intensive for HHS. We generally follow the process as forth in proposed rules published in the **Federal Register** on January 30, 1989. There are potentially thousands of items that could be subject to the process, many of which have a low volume of utilization and minimal, if any, variation in existing local coverage policy. It could take years to implement national coverage policy just for items represented by the top 100 most used or abused billing codes.

Carriers will continue to be able to formulate local medical review policy for any item in the absence of, or as an adjunct to, national coverage policy and apply that local medical review policy in their processing areas as described in section 7531 of the Medicare Carriers Manual, under the authority of section 1842 of the Social Security Act. Each of the four carriers must send any proposed changes in local medical review policy to HCFA (to assure there is no conflict with national policy) and to the professional associations representing suppliers, physicians, hospital discharge planners, etc., in its are a for comment. After the 45 day comment period, the carrier must evaluate each comment and then publish its final local medical review policy for the entire supplier population it serves. The local medical review policy change will be effective 30 days after publication.

Comment: One commenter stated that if we standardized coverage guidelines, we would not need to change from "point of sale" claims jurisdiction to "beneficiary residence."

Response: As discussed above, development of standardized national coverage policy for all items would be a lengthy and cumbersome undertaking. Changing to four regional carriers will mean a change to only four sets of medical review policy, except for those items to which a national coverage decision applies. We intend to require each regional carrier to formulate local medical review policy for at least the top 100 used/abused codes before it begins reviewing claims. The medical directors for the four carriers will be conferring on these policies and it is our belief that in most cases the resulting decisions will be similar, if not the same.

Utilization parameters will also be established at each of the four carriers. We also believe that the parameters will be very similar at all four carriers.

Comment: A number of commenters pointed out that coverage and utilization were standardized nationally for the parenteral and enteral nutrients (PEN) program, and that there was supplier satisfaction with that standardization.

Response: There are only a few items covered under the PEN program. It was relatively easy to establish national policy for those few items.

Comment: Some commenters were worried about the effect on beneficiaries of changes in coverage and utilization rules.

Response: For some beneficiaries, changes in medical review policy and utilization will mean fewer supply items per month or noncoverage of a rental item which another carrier had previously determined was covered. For these beneficiaries, the regional carriers will consider, on a case by case basis, whether some sort of temporary "grandfathering" ought to be employed, i.e., whether the rules under which the claim was originally processed should be continued with respect to that item and that beneficiary.

Payment Policy

Comment: Similar comments were received on our plan to determine payment rates for each State within each region. Most commenters believed that national payment rates should be established. One commenter believed that HCFA could, based on the lowest charge level authority in section 1842(b)(3) of the Act, for items paid both on the basis of reasonable charges and fee schedules, establish one national locality for reasonable charge and fee schedule purposes or regions for the orthotics and prosthetics fee schedule which coincide with the four regional carrier areas.

Response: We do not believe that HCFA has the authority to establish national pricing under either the durable medical equipment or prosthetic and orthotic fee schedules or for items for which reasonable charges are determined. The fee schedule for durable medical equipment consistently refers to "local" rates. We do not believe that national rates could be determined to be "local." The fee schedule for prosthetics and orthotics explicitly refers to local and regional rates. HCFA does have some latitude in determining those regional areas. The lowest charge level provision applies to the "reasonable charges" payment system, but not to the fee schedule system.

Comment: One commenter suggested that the regions of the carriers might be constrained to be those of the regional pricing areas. Other commenters believed that it would not be administratively difficult to maintain multiple fee schedules, since they have traditionally maintained multiple pricing locality information, but wanted to know how pricing would be determined in States where there is more than one carrier.

Response: Reasonable charge legislation, in section 1842 of the Act, also refers to "locality" as does the lowest charge level provision. Except for the pricing of parenteral and enteral nutrients, equipment and supplies, HCFA has historically defined "local area" or "locality" as being no larger than a State. Carriers processing claims for more than one State maintain separate pricing data for each State. For DME, prosthetics and orthotics, although most localities are currently Statewide, some States contain more than one locality, and in two areas, a locality includes areas in more than one State, since fee schedule localities are carrier-wide. In addition, for items paid on a reasonable charge basis, there may be multiple localities within a State.

We are proposing that each State area now be treated as a locality by the regional carriers for DMEPOS items. For States where there is currently more than one locality, fee schedule data will be combined by HCFA and projected for the 1993 billing year. For the first part of 1993, before the local carriers transfer their DMEPOS claims to the regional carriers, all of the local carriers in such States will pay DMEPOS claims under the new consolidated fee schedule amounts.

Similarly, for areas covering more than one State, i.e., the District of Columbia area which includes two counties in Maryland and two counties and one municipality in Virginia, and the Kansas City, Missouri, area which contains two counties in Kansas, pricing will be calculated for each by geographic area and that data will be combined with those for the rest of the State.

In addition, by January 1993, each State will have only one locality for all DMEPOS items paid under reasonable charge rules. Prevailing and customary charge data will be combined and/or divided for the January 1, 1993 update, where appropriate, so that the regional carriers will merely carry over the rates paid by the local carriers when they assume the workload.

Comment: Another commenter asked how we would handle payment for some rentals for which the payment rates will change during the 15 month rental period.

Response: Some beneficiaries will be phased into new pricing or local medical review policy. The regional carriers will make those decisions on a case-by-case basis.

Part B Claims Processed By Part A Intermediaries

Comment: One commenter asked HCFA to be more specific about what claims would be transferred from Part A intermediaries. The effect on billings for ambulatory surgical centers, etc., was also questioned.

Response: We are planning to transfer most Part B claims for DMEPOS items from the fiscal intermediaries to the regional carriers approximately one year after the phase-in of DMEPOS claims from local carriers has been accomplished.

These claims will not include claims for any items for which payment is bundled into a larger payment package, such as for a hospital inpatient stay or an encounter in a hospital outpatient department, or claims for items which are supplied "incident to" services in a physician's office (see 42 CFR 410.26) or "incident to" a physician's service in a rural health clinic (see 42 CFR 405.2413).

Comment: The same commenter questioned HCFA's authority to transfer such claims, particularly claims submitted by home health agencies. It was also suggested that there would need to be a specific change in the regulations to permit transfer of such claims.

Response: Carriers have the primary responsibility to determine reasonable charges and fee schedule amounts for part B items. There is no prohibition, except for claims submitted by home health agencies, to requiring that they be processed by the regional carriers. We believe that DMEPOS claims would be more efficiently processed by the regional carriers which will maintain the reasonable charge levels and fee schedules for the area in which a beneficiary resides. Each of those carriers will also have uniform coverage guidelines and utilization parameters for items furnished to beneficiaries residing within it region, which an intermediary would find difficult to apply. Since there will be no difference in payment rates, we do not believe that another regulation will be necessary to transfer these claims. Intermediaries will continue to process claims for which payment is made on a reasonable cost basis or under the prospective payment system and claims for items provided by home health agencies.

Common Working File

Comment: Several recommendations were made by commenters that suppliers be allowed to directly access the Common Working File (CWF) to verify permanent address, utilization history, eligibility and Medicare Secondary Payer status.

Response: We do not believe that supplier access to the CWF is necessary. As explained above, the primary source of information on a beneficary's permanent residence is the beneficiary. The beneficiary should also be the primary source of information on eligibility, utilization history, Medicare secondary payer (MSP), etc. If a beneficiary is not competent to supply this information, the guardian, custodian or representative payee of the beneficiary will be the best source of information.

Comment: One commenter requested that each regional carrier be given extracts of all DMEPOS claims transactions contained in CWF and that the CWF file be enhanced to include information on other claims which will have an impact on the review and payment of DMEPOS claims.

Response: We do not believe it is necessary for each regional carrier to have access to all CWF host sites. The regional carriers will be linked to each CWF host site in their DMEPOS regions and the host for Railroad Retirement beneficiary claims. Claims for beneficiaries whose records are located at other CWF host sites outside the DMEPOS region will be sent electronically to the appropriate CWF host. This is considered out of service area processing. For most out of service area claims this should mean only a two or three day turn around process.

We do have plans to enhance the CWF so that the processing of DMEPOS claims can be facilitated, particularly during the transition period. A separate DMEPOS claim record, Certificate of Medical Necessity (CMN) transaction record, a CMN auxiliary file and some unique dispositions and trailers are being developed for DMEPOS processing.

These data will be stored so that a duplicate claim check can be run against other DMPEOS claims.

The CMN record will collect beneficiary and item specific information on medical necessity, e.g., that a Certificate of Medical Necessity for oxygen has been received and accepted and is valid through a certain date or that a physician's prescription has been received and accepted for a supply item.

Electronic Media Claims

Comment: While there was support for more intensive electronic media claim (EMC) processing, two commenters indicated that suppliers need assistance in implementing EMC; one that financial incentives would be necessary: $1 per claim for the first year of EMC submission. On the other hand, some commenters suggested that it would be helpful to provide free software to suppliers, that current non-national format claims ought to be allowed to be submitted for an interim period and that all current EMC "grandfathering" arrangements will need to be rescinded.

Response: We plan to encourage all suppliers to adopt EMC submissions of claims and medical documentation. Suppliers with special billing problems will be given special assistance. While we do not, believe that financial incentives, per se, would be appropriate, we would not discourage a carrier from proposing in its bid to become a regional carrier that it would provide free DMEPOS-specific software to all suppliers.

We do not believe that we can compromise on our requirement that the national standard format be used for submission of EMC claims. The new regional carriers will be adjusting to too many other changes. We will not further complicate transition by requiring the regional carriers to support multiple EMC formats. We expect that regional carriers will test claims submissions from suppliers several months before claims are actually received for processing. This should allow sufficient time to "debug" for all suppliers wishing to use EMC. In addition, suppliers may voluntarily choose to begin submitting EMC claims to their current carriers under the national standard format at an earlier date to mitigate conversion problems when the regional carriers assume the workload.

Payment Adjustments

Comment: One comment suggested that since small suppliers had been disadvantaged by "point of sale" jurisdiction rules, they should receive retroactive payment adjustments to make them whole.

Response: We disagree. We do not think it would be appropriate to change retroactively jurisdiction rules or the effects of those rules. We also believe that we do not have the legal authority to make such retroactive adjustments.

Ambulance Claims

Comment: One commenter was concerned that this regulation would change rules affecting when Unique Physician Identification Numbers (UPINs) would be required for referring physicians on ambulance claims.

Response: This regulation has no effect on when UPINs are required on ambulance claims. The only effect of this rule on ambulance suppliers is the requirement for them to submit ownership and control information at the request of their carriers.

Independent Physiological Laboratory Claims

Comment: One commenter objected to a change in claims jurisdiction policy for independent physiological laboratory claims.

Response: This regulation does not affect claims jurisdiction for independent physiological laboratory claims. Disclosure of ownership and control rules do apply to independent physiological laboratories.

Technical Corrections

In addition to the revisions discussed above, we are making technical corrections to §§ 405.505, 421.200 and 421.210. In § 405.505, Determination of locality, we revise the definition of "locality" to specify that a locality is the geographical area for which the carrier is to derive the reasonable charges or fee schedule amounts for services or items, to include a State or larger area as a locality. We are making this revision so that it will conform with § 421.210(e) which requires that the regional carriers pay on a State-wide locality basis.

We are making a technical correction to § 421.200 Carrier function, to clarify that a regional DMEPOS carrier is exempt from the requirements in that provision.

In § 421.210 Designations of regional carriers to process claims for durable medical equipment, prosthetics, orthotics and supplies, we are adding new paragraph (a)(7) which will allow HCFA to assign the processing of other Part B items to the regional carriers, when coverage for those items is established or items normally provided by physicians, such as pneumococcal and hepatitis B vaccines, are self-administered. Though suppliers and physicians will be notified when new coverage is established, it should be assumed that all items not bundled into a physician or facility payment should be billed to a regional DMEPOS carrier.

In new § 424.57, Special payment rules for items provided by DMEPOS suppliers and issuance of DMEPOS supplier billing numbers, we add a definition of the acronym "DMEPOS",

and a definition of "supplier" for the purpose of this provision to specify that a supplier is an entity or individual, including a physician or Part A provider, which sells or rents Part B covered items to Medicare beneficiaries under the standards of § 424.57(c), and an enrolled supplier is a supplier which has an active billing number. We had previously proposed to add this information to § 424.55, but, for purposes of clarify, have decided to create a new provision applicable only to DMEPOS suppliers.

Effective Dates

The regulation provisions are effective August 17, 1992. The disclosure of ownership and supplier standards provisions will be applied to new suppliers August 17, 1992 and for all other suppliers on January 1, 1993. The change to beneficiary residence claims jurisdiction will be implemented for claims submitted to regional carriers beginning July 1, 1993.

IV. Criteria and Standards for Evaluating Regional Carriers

Section 1842(b)(2) of the Act requires the Secretary to publish in the **Federal Register** criteria and standards for the efficient and effective performance of contract obligations, and provide an opportunity for public comment prior to implementation.

We proposed to designate four regional DMEPOS carriers. The proposed designation using current data on claims volumes and beneficiary distribution would result in four approximately equal workload areas. These carriers would process electronically submitted claims in one standard national electronic media format. We would expect that these carriers would have exclusive authority over all DMEPOS claims currently paid for by part B local and specialty carriers, and will be given jurisdiction over those part B DMEPOS claims processed by fiscal intermediaries, except for items furnished by home health agencies. The four regional DMEPOS carriers would take over the responsibilities of the two current regional carriers processing claims for enteral and parenteral nutrients, supplies, equipment and immunosuppressive drugs.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its function under its contract with us. We publish the criteria and standards in the **Federal Register** in order to allow the public an opportunity to comment on them before they are implemented. This preamble announces the criteria and standards to be used to measure the effectiveness and efficiency of the regional DMEPOS carriers.

In the event that the DMEPOS regional carrier contract is awarded to an organization which also has a contract with HCFA to perform the services of a Medicare carrier, the effectiveness and efficiency of that Medicare carrier contract will be evaluated with the criteria and standards applicable to all Medicare carriers. However, the organization's performance under the DMEPOS regional carrier contract will be evaluated using the criteria and standards applicable to DMEPOS regional carriers.

A. Criteria and Standards—General

We are establishing six separate criteria for evaluating regional DMEPOS carriers. Within each criterion we have identified the performance standard which, when measured, will evidence how well each DMEPOS regional carrier is performing.

The initial evaluation period for DMEPOS regional carriers will be from October 1, 1993 through September 30, 1994. We intend for subsequent evaluation periods to also follow the Federal fiscal year, October 1 through September 30.

The criteria and standards can be used to measure carrier performance at any time during the evaluation period and measurements can occur more than one time during a evaluation period. If a carrier's performance in a standard is measured two or more times during the evaluation period, all evaluations will be done on a cumulative basis back to the beginning of the evaluation period. Should a carrier's performance be deficient as measured against the criteria and standards at any time during the evaluation period, contract action may be initiated.

The criteria and standards will be contained in the contract with the regional DMEPOS carrier and will be effective for the duration of the contract, subject to revision if the contract is renegotiated or new contracts are awarded. We will publish in the **Federal Register** any revisions to the criteria and standards. Existing criteria and standards will remain in effect until the first day of the first month after the revisions are published in the **Federal Register**.

It is not our intention to revise either the evaluation period or the standards and criteria which will be used during the evaluation period once this information has been published in the **Federal Register**. However, on occasion, either because of administrative mandate or Congressional action, there may be a need for changes which have direct impact upon the criteria and standards previously published, or which require the addition of new criteria and standards, or which cause the deletion of previously published criteria and standards. Should such changes be necessitated, we will issue a **Federal Register** notice prior to implementation of the changes. The criteria and standards may also be revised to reflect changes in performance expectations. Should this become necessary, we will negotiate these changes to the standards with the regional DMEPOS carriers and we will publish changes in the **Federal Register** prior to implementation. Changes in standards and criteria will not be effective any earlier than the first day of the first month following publication.

As necessary, instructional issuances for implementing the criteria and standards will be published to ensure that the criteria and standards are implemented uniformly and accurately.

The **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the standards and criteria.

B. Action Based on Performance Evaluations

We may initiate action based on these performance criteria and standards. We plan to consider the results of the evaluation in our determinations on entering into, renewing/extending, or terminating contracts or contract amendments with regional DMEPOS carriers. Such decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:

1. Relative performance compared to other regional DMEPOS carriers;
2. Number of standards in which acceptable or deficient performance occurs;
3. Extent of each deficiency; and
4. Relative significance of the standards for which acceptable or deficient performance occurs within the overall regional DMEPOS carrier criteria and standards.

Decisions on contract actions are made after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare Program.

C. Scoring System

For a regional DMEPOS carrier to satisfactorily meet the overall criteria

and standards, the carrier must meet the performance requirements for each and every standard.

In general, if a carrier meets the level of performance required by its contract, it will pass each standard. Any rating below basic contractual performance obligations constitutes a deficiency whereby appropriate contract action may be initiated (see section B above). The carrier may be required to develop and implement a corrective action plan when performance problems are identified. The carrier will be monitored to assure effective and efficient compliance with the corrective action plan and improved performance where standards are not met.

D. Criteria and Standards for Regional DMEPOS Carriers

We will use six criteria to evaluate the overall performance of regional DMEPOS carriers. They are: (1) Quality; (2) efficiency; (3) service; (4) fraud and abuse; (5) National Supplier Clearinghouse; and (6) Statistical Analysis Regional DMEPOS carrier.

The six criteria contain a total of 12 standards. There are two for quality, four for efficiency, three for service, one for fraud and abuse, one for National Supplier Clearinghouse, and one for Statistical Analysis Regional DMEPOS carrier.

1. Quality Criterion

A DMEPOS regional carrier must pay claims accurately and in accordance with program instructions. The regional DMEPOS carrier is required to:

Standard 1. Process claims at an accuracy rate of 98.5%.

Claims are processed accurately with respect to coverage determinations, secondary payer consideration, supplier enrollment and the correct amount is approved for payment.

Standard 2. Implement measures to improve program effectiveness.

The regional DMEPOS carriers are expected to undertake actions to promote effective program administration with respect to DMEPOS claims. Such activities may include: overpayment recovery and offsetting of claim payment; assuring the proper submission of certificates of medical need; review of the implementation of medical fee schedules and reasonable charge updates, medical review activities; and implementation of coverage policy.

2. Efficiency Criterion

The regional DMEPOS carrier is required to:

Standard 1. Process 95.0% of clean claims within mandated timeframes and process 97.0% of all claims within 60 days.

Standard 2. Ensure that the Electronic Media Claims (EMC) goal is achieved.

DMEPOS regional carriers are advised of their specific goal for EMC prior to the evaluation period. In determining a carrier's specific goal, HCFA considers such factors as the extent to which DMEPOS claims have historically been submitted in EMC format.

Standard 3. Ensure that total actual expenditures are at or below budget authority and administrative funds are drawn in line with monthly expenditures.

Evaluates performance in controlling expenditures in line with the Notice of Budget Approval.

Standard 4. Ensure that unit cost does not exceed maximum negotiated unit cost.

Evaluates performance in controlling unit cost so that it is within the maximum negotiated unit cost.

3. Service Criterion

Beneficiaries and suppliers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations and general instructions. The regional DMEPOS carrier is required to:

Standard 1. Ensure that 95.0% of reviews and hearings are accurate and timely.

Reviews and hearings are evaluated to determine that decisions are accurate and communicated to the appropriate party within 45 days for reviews and 120 days for hearings.

Standard 2. Ensure that 95.0% of inquiries are responded to timely and accurately.

Telephone calls are answered within 120 seconds, callers do not get a busy signal more than 20% of the time, and responses are accurate. Written responses are accurate and prepared within 30 calendar days of date of receipt.

Standard 3. Respond to beneficiary and supplier education and training needs.

Carriers are expected to undertake actions that serve the beneficiary and supplier communities by explaining program requirements through up-to-date information, periodic educational training and bulletins, publishing and updating a supplier manual, meeting with trade associations and coordinating with local contractors on DMEPOS issues.

4. Fraud and Abuse Criterion

The regional DMEPOS carrier is required to:

Standard 1. Conduct an effective Program Integrity Program.

The regional DMEPOS carriers will be evaluated on a number of activities including: effectiveness in identifying and developing cases of fraud and abuse, bringing the cases to conclusion and collecting inappropriate payments, promoting beneficiary education in referring questionable suppliers or practices, and searching out supplier practices which are inappropriate.

5. National Supplier Clearinghouse (NSC) Criterion

Standard 1. Properly Administer the NSC.

The NSC will be reviewed to ensure it meets its various requirements such as: processing new and renewal applications for billing numbers, maintaining supplier file, matching OIG sanctioned suppliers, and enforcing supplier standards. In addition, the NSC will be evaluated based upon its performance in conducting statistical analysis of data to identify potential areas of over utilization, overpayments, fraudulent or abusive claims practices and other areas of concern to be identified by HCFA.

6. Statistical Analysis Regional DMEPOS Carrier Criterion

(The Statistical Analysis DMEPOS carrier function will be assigned to one of the Regional DMEPOS carriers. It will perform the functions measured by the standard.)

Standard 1. Properly Administer the Statistical Analysis Regional DMEPOS carrier program.

The Statistical Analysis Regional DMEPOS Carrier will be reviewed to ensure it meets its various requirements such as: analyzing national reports to identify trends, aberrancies, and utilization patterns, generating reports according to HCFA specifications, serving as the HCPCS definition resource center, developing national PEN pricing and national floors and ceiling for DME prices.

V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any final rule that meets one of the Executive Order criteria for a "major rule"; that is, would be likely to result in—

An annual effect on the economy of $100 million or more;

A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of the United States based enterprises to compete with Foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider carriers as small entities. Therefore, a RFA will not be required.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any regulation that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds. Unless claims for DMEPOS submitted by hospitals are moved to regional carriers, there will be no impact on hospitals. At this time, there are no definite plans to move these claims.

In light of the fact that many suppliers are in favor of these rule changes and for the reasons we have determined below, we do not believe that the threshold criteria under E.O. 12291 and RFA will be met. However, in the spirit of E.O. 12291 and the RFA, we are voluntarily providing the following information.

The contracts for the 4 regional DMEPOS carriers will be obtained competitively. Rather than merely select among existing Medicare carriers, as the Act permits, all entities which qualify as a "carrier" under the Act may bid for the contracts. We believe that this competition will allow the procurement of regional carriers which are both the most effective and the most efficient in DMEPOS processing.

DMEPOS claims compose only 5 percent of local Medicare carrier workloads. Regional carriers will be able to focus their attention on just DMEPOS claims. The staff will become expert in the processing of these claims. Special computer processing has been designed for these claims. We believe that his increased focus and expertise will result in significant program savings:

- Medical necessity criteria are being developed for all high volume and high cost items. Based on these criteria, claims will be evaluated by DMEPOS specialists. The closer scrutiny based on well defined standards should result in the denial of claims for items which are not medically necessary or the reduction of payment for items that are more complex than are medically necessary. Many such items have not been subjected to such comprehensive review, because there was no emphasis on developing the necessary review criteria.
- There should also be some savings achieved by eliminating the ability of suppliers to bill carriers with higher reimbursement, lenient local medical review policy and/or more generous utilization parameters. While some suppliers are being paid less now than they will under "beneficiary residence" claims jurisdiction, more suppliers are maximizing their profits by billing carriers which would pay more than the carrier local to the beneficiary to whom they sold a DMEPOS item.
- There will be additional savings attributable to both the prevention of fraud and the more effective and timely identification of fraud. Increased vigilance over all aspects of the DMEPOS program should prevent many suppliers from submitting fraudulent claims. The emphasis on beneficiary education, especially detection of potentially fraudulent practices, should also deter fraud.
- The new carriers will expand use of prepayment computer editing and cross checking to detect many fraudulent claims. The regional carriers will be assisted in their postpayment review by the SADMERC which will perform sampling and analysis of a national database of DMEPOS claims histories. Suppliers will find it more difficult to obscure fraudulent billing because of the more focused national postpayment review. Finally, each regional carrier will have a dedicated fraud unit which will be devoted to developing fraud cases for further investigation and prosecution.

We anticipate transitional questions from physicians who prescribe, and hospital discharge planners who help patients to obtain, DMEPOS. Educational campaigns will be conducted for these groups. There will also be an aggressive education campaign directed to both small and large suppliers, both about the changes in the program, and the desirability of submitting bills via electronic media claims (EMC) or in formats compatible for optical character readers.

We also anticipate questions from beneficiaries. An educational campaign is being designed to describe for them the change to regional carriers and to emphasize their role in the successful control of fraud and abuse in the DMEPOS industry. Since suppliers will no longer be able to choose the carrier to which they submit their bills, and thus, the payment rate they will receive, some beneficiaries will pay higher or lower copayment amounts. Those whose bills had been submitted to carriers with relatively high payments for supplier items may be subject to smaller copayments and a few beneficiaries, whose claims will now be priced at higher rates, will experience larger copayments. However, in many cases, these copayments will be paid for by Medicaid or a Medigap insurer. For some items, non-participating suppliers may no longer accept assignment, which may increase balance billing. In addition, the new supplier standards, including recordkeeping and disclosure requirements, may discourage some small suppliers from serving Medicare beneficiaries, thereby, limiting some beneficiaries living in small towns or rural areas to suppliers which market by catalog.

Most small suppliers which now bill a local carrier with which they are familiar would have to bill an unfamiliar carrier. On the other hand, large suppliers which now have set up their businesses so that they may bill only one carrier, may have to bill up to four carriers. Large suppliers which bill many local carriers may have the number of carriers which they bill reduced from as many as 34 to four.

All suppliers will be paid the same amounts for similar products used by beneficiaries residing within the same State. Their claims would also be subject to similar local medical review policies. HCFA would no longer be giving an unfair competitive advantage to larger suppliers which, under the current "point of sale" system, structure their businesses so that the "point of sale" is located within the area of a carrier with favorable documentation rules, utilization screens, local medical review policy or pricing for their products.

Suppliers currently filing EMC that are not currently using the standard EMC format to bill their local carriers would have to adapt their billing formats to HCFA's national standard format. This may cause a temporary reduction in the total number of DMEPOS claims to be processed by EMC. Since some suppliers may be unwilling or unable to establish completely new billing systems before the regional carriers begin processing every effort will be made to assist these suppliers in converting to the national

standard format while still being served by their local carriers. For those suppliers unable to convert to the national standard format before the claims are transferred to the regional carriers for processing, it will be expected that they will submit EMC claims before the end of the first processing year under the regional carriers. We expect, however, that, with aggressive EMC marketing and the reduced number of carriers, more suppliers will choose to utilize EMC. Suppliers using the national standard format at their local carriers would be able to bill their regional carriers electronically, immediately upon transition to the regional carriers.

Since all suppliers will need to apply for a billing number at the new carriers, we have developed a standard form, the HCFA–192. Suppliers will be required to submit, as part of their request for a billing number, certification that they meet supplier standards and information on those individuals with ownership and control interests or who are managing employees, and further identify any that have had any penalties, assessments or exclusions against them or against other suppliers with which they have been, or are, associated. Billing numbers must be renewed every 3 years.

The improved control of supplier billing numbers and change to beneficiary residence carrier jurisdiction should have positive impact on other third party payors, especially Medigap State agencies. We expect that the benefits of enforcing supplier standards will spill over into services and supplies reimbursed by other payors. Also, the consolidation of all claims for services and supplies provided to beneficiaries in a geographic area will enable the DMEPOS regional carriers to develop more comprehensive utilization profiles, facilitating the identification of fraudulent or abusive supplier billing practices. The recent General Accounting Office report, "Health Insurance: Vulnerable Payors Lose Billions to Fraud and Abuse" (May 19, 1992), suggested that one means of addressing the fraud and abuse in the health care industry would be better coordination among third party payors. We believe that proposed changes in the Medicare claims processing would promote the suggested coordination among insurers.

We expect all carriers, except any local carrier designated to act as a regional carrier, to experience a decrease of about 5 percent of their current claims workload. We expect that regional DMEPOS carriers would each process approximately 6 million claims. Increased start up costs for the first few years are expected. However, these costs would be partly offset by the reduced cost per claim resulting from economies of scale. There may be some administrative savings, both for the carriers losing DMEPOS claims, which must be handled quite differently from other claims, and for the regional carriers which will be handling an optimum number of claims for efficient processing. There will, however, be initial one time transition costs, for the first 1 to 2 years after implementation, as well as initial temporary increases in professional and beneficiary relations costs. While there will be some savings from increased use of EMC, these savings will primarily be achieved as the result of separate EMC initiatives. EMC claims for DMEPOS are currently processed at half the cost of hard copy claims. Some additional savings may be possible with increased use of optical character readable claims. With use of these techniques and suppliers preparing and submitting unassigned claims for beneficiaries (as required by section 1848(g)(4) of the Act, as enacted by section 6102 of Pub. L. 101–239), we expect fewer claims should be billed and processed in a hard copy format at a higher price.

Preliminary analysis suggests that the DMEPOS carrier criteria and standards will not result in significant utilization of Federal resources to administer them. We expect minimal effects on carrier costs due to this notice since the criteria and standards measure functional responsibilities that the carrier must be performing as a Medicare DMEPOS carrier.

The preamble to this rule sets forth the criteria and standards to be used for evaluation of Medicare regional DMEPOS carriers. This rule does not require specific performance of the operations being evaluated. It may have an effect on carrier operations such as bill processing, beneficiary services and provider services which could indirectly affect a substantial number of providers and suppliers.

The most important indirect effect on providers and suppliers as a result of this notice will be to ensure that they are paid timely and accurately. Therefore, we have determined, and the Secretary certifies that this rule does not meet the requirements to be determined a major rule nor does it meet criteria as having a significant impact on a substantial number of entities.

VI. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a final rule with comment, we are unable to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "COMMENT PERIOD" section of this preamble, and we will respond to comments in the preamble to the final rule.

VII. Collection of Information Requirements

Sections 420.206, 421.210 and 424.57(c)(7) and (f) of this final rule contain information collection requirements that are subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern the information necessary to request a billing number and for disclosure of ownership and control and the identities of managing employees. The respondents who will provide the information will be the suppliers. Public reporting burden for this collection of information is estimated to be 160,000 hours. We estimate that 160,000 suppliers will complete the information which is estimated at one hour per supplier. A notice requesting comments on the HCFA–192 was published in the **Federal Register** on October 30, 1991. OMB approval was obtained December 31, 1991.

Section 424.57(f) of the final rule seeks to establish the maintenance of a beneficiary complaint log, an additional information collection requirement on suppliers about which a carrier has obtained one or more complaints which it has to help resolve. The information to be collected in that log would include the date and nature of a beneficiary's complaint about a supplier's perceived noncompliance with supplier standards, the identity of the complainant and the date and nature of the response to the complaint. If a complaint is not investigated by the supplier, then the reason for the lack of investigation should be noted along with the identity of the person making the decision not to investigate. Other suppliers will need only to have complaint resolution protocols and maintain a file of all written complaints and related correspondence and notes of actions taken in response to oral and written complaints. We estimate that 130,000 suppliers will each require one hour to develop and document complaint resolution protocols creating a one-time paperwork burden of 130,000 hours. We further estimate that 130,000 suppliers will each receive 15 complaints per year and that the documentation and recordkeeping of materials already

produced in the normal course of supplier operations will require no more than 5 minutes each for a recordkeeping burden of 162,500 hours. For those suppliers which are asked to develop and report to Medicare more extensive records, probably no more than 100 to 200 suppliers, we estimate a burden of 15 minutes for each of 15 complaints, for an additional burden of 375 to 750 hours. The total burden would be approximately 293,000 hours. These requirements have been submitted to OMB for review and will not be effective until OMB approval is received. Comments on these requirements should be forwarded to OMB.

Finally, we will require all suppliers to give a copy of the supplier standards to each Medicare beneficiary with whom they do business. The National Supplier Clearinghouse will supply a copy to each enrolled supplier which may be photocopied. We estimate the burden for each supplier to average about 20 minutes per year, including photocopying and handing out the standards, which is about 53,500 hours. A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 420

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR chapter IV is amended as follows:

A. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405, subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842(b) and (h), 1861(b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u(b) and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. In subpart E, § 405.505 is revised to read as follows:

§ 405.505 Determination of locality.

"Locality" is the geographical area for which the carrier is to derive the reasonable charges or fee schedule amounts for services or items. Usually, a locality may be a State (including the District of Columbia, a territory, or a Commonwealth), a political or economic subdivision of a State, or a group of States. It should include a cross section of the population with respect to economic and other characteristics. Where people tend to gravitate toward certain population centers to obtain medical care or service, localities may be recognized on a basis constituting medical services areas (interstate or otherwise), comparable in concept to "trade areas." Localities may differ in population density, economic level, and other major factors affecting charges for services. Carriers therefore shall delineate localities on the basis of their knowledge of local conditions. However, distinctions between localities are not to be so finely made that a locality includes only a very limited geographic area whose population has distinctly similar income characteristics (e.g., a very rich or very poor neighborhood within a city).

3. The authority citation for part 405, subpart H is revised to read as follows:

Authority: Secs. 1102, 1831–1843, and 1871 of the Social Security Act, as amended. (42 U.S.C. 1302, 1395j–1395v, and 1395hh.)

4. A new § 405.874 is added to subpart H to read as follows:

Subpart H—Review and Hearing Under the Supplementary Medical Insurance Program

* * * * *

§ 405.874 Appeals of carrier decisions that supplier standards are not met.

(a) An entity serving as a National Supplier Clearinghouse must act promptly to determine if any entity submitting a request for a billing number as a Medicare supplier of part B items meets the standards set forth in part 424. Effective July 1, 1993, the National Supplier Clearinghouse must accept, reject or request additional information within 15 days of the receipt of an enrollment application.

(b) If the National Supplier Clearinghouse disallows an entity's request for a billing number or revokes, with the concurrence of HCFA, an entity's billing number, the National Supplier Clearinghouse notifies the entity by certified mail. Revocation is effective 15 days after the National Supplier Clearinghouse mails notice of its determination. The carrier disallows payment for items furnished by the supplier beginning with that effective date. The notice must inform the entity of the reason for the rejection or revocation, its right to appeal, the date by which it must file that appeal (90 days after the postmark of the notice) and the address to which the appeal must be sent in writing.

(c) A fair hearing officer not involved in the original determination to disallow an entity's request for a billing number, or to revoke an entity's billing number, must schedule a hearing to be held within one week of receipt of an appeal, or later at the request of the entity. Both the entity and carrier may offer evidence. The hearing officer issues notice of his/her decision within 2 weeks of the hearing. The notice is sent by certified letter to HCFA, the carrier, and the appealing entity. This notice must include information about the supplier's further right to appeal, the carrier's right to appeal, the date by which the appeal must be filed (90 days after the postmark of the notice) and the address to which the appeals must be sent in writing. Either the carrier or entity may appeal the hearings officer's decision to HCFA.

(d) A HCFA official, designated by the Administrator of HCFA, must make an appeal decision based on the evidence presented to the fair hearing officer and his or her decision. The HCFA official requests any additional information he or she deems necessary from either the carrier or the entity within two weeks of receipt by the HCFA of the appeal. Notice of the HCFA official's decision—

(1) Is issued within two weeks of when the last information is received is received by the HCFA official, or four weeks of when the information is requested, whichever is shorter, unless the party appealing the fair hearing decision requests a delay;

(2) Is sent by the HCFA official by certified mail to both the carrier and the entity; and

(3) Contains information on any further appeals the entity and carrier may have.

(e) A billing number is not issued, or remains revoked, and payment is not made, for items or services furnished by any entity which a carrier determines does not qualify for a billing number, until the carrier (upon reapplication of the entity), a fair hearing officer, or a HCFA official designated to hear such appeals, determines that the entity

qualifies for a billing number. Any claims for items or services furnished after revocation of the supplier's billing number and submitted by the entity during the appeals period are held and not processed, i.e., are neither approved, denied or developed, until all administrative appeals have been exhausted. If an entity is determined not to have qualified for a billing number in one period but to have qualified in another, the carrier pays for claims for items sold or rented to beneficiaries during the period the entity qualified as a supplier. If there is evidence of an overpayment, see subpart C of part 405 of this Chapter.

(f) A billing number may be reinstated after revocation when an entity completes a corrective action plan, to which HCFA has agreed, and provided sufficient assurance of its intent to comply fully with the supplier standards.

B. Part 420 is amended as follows:

PART 420—PROGRAM INTEGRITY: MEDICARE

1. The authority citation for part 420 is revised to read as follows:

Authority. Secs. 1102, 1124, 1124A, 1126, 1833(e), 1866 and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–3, 1320a–5, 13951(e), 1395cc, and 1395hh).

2. The heading of subpart C is revised to read as follows:

Subpart C—Disclosure of Ownership and Control Information

3. Section 420.200 is revised to read as follows:

§ 420.200 Purpose.

This subpart implements sections 1124, 1124A, 1126, 1833(e), 1861, and 1866 of the Social Security Act. It sets forth requirements for providers, Part B suppliers, intermediaries, and carriers to disclose ownership and control information and the identities of managing employees. It also sets forth requirements for disclosure of information about a provider's or Part B supplier's owners, those with a controlling interest, or managing employees convicted of criminal offenses against Medicare, Medicaid, or the title V (Maternal and Child Health Services) and title XX (Social Services) programs.

4. In § 420.201, the definition of "Disclosing entity" is revised and the definition of "Supplier" is removed to read as follows:

§ 420.201 Definitions.

* * * * *

Disclosing entity means:

(1) A provider of services, an independent clinical laboratory, a renal disease facility, or health maintenance organization (as defined in section 1301(a) of the Public Health Service Act);

(2) A carrier or other agency or organization that is acting for one or more providers of services for purposes of part A and part B of Medicare; and

(3) A part B supplier, as defined in § 400.202 of this chapter.

* * * * *

5. Section 420.204 is revised to read as follows:

§ 420.204 Principals convicted of a program-related crime.

(a) *Information required.* Prior to HCFA's acceptance of a provider agreement or issuance or reissuance of a supplier billing number, or at any time upon written request by HCFA, the provider or part B supplier must furnish HCFA with the identify of any person who:

(1) Has an ownership or control interest in the provider or part B supplier;

(2) Is an agent or managing employee of the provider or part B supplier; or

(3) Is a person identified in paragraph (a)(1) or (a)(2) of this section and has been convicted of, or was an owner of, had a controlling interest in, or was a managing employee of a corporation that has been convicted of a criminal offense, subjected to any civil monetary penalty, or excluded from the programs for any activities related to involvement in the Medicare, Medicaid, title V or title XX social services program, since the inception of those programs.

(b) *Refusal to enter into or renew agreement or to issue or reissue billing numbers.* HCFA may refuse to enter into or renew an agreement with a provider of services, or to issue or reissue a billing number to a part B supplier, if any person who has an ownership or control interest in the provider or supplier, or who is an agent or managing employee, has been convicted of a criminal offense or subjected to any civil penalty or sanction related to the involvement of that person in Medicare, Medicaid, title V or title XX social services programs. In making this decision, HCFA considers the facts and circumstances of the specific case, including the nature and severity of the crime, penalty or sanction and the extent to which it adversely affected beneficiaries and the programs involved. HCFA also considers whether it has been given reasonable assurance that the person will not commit any further criminal or civil offense against the programs.

(c) *Notification of Inspector General.* HCFA promptly notifies the Inspector General of the Department of the receipt of any application or request for participation, certification, re-certification, or for a billing number that identifies any person described in paragraph (a)(3) of this section and the action taken on that application or request.

6. Section 420.205 is revised to read as follows:

§ 420.205 Disclosure by providers and part B suppliers of business transaction information.

A provider or part B supplier must submit to HCFA, within 35 days after the date of a written request, full and complete information on—

(a) The ownership of a subcontractor with which the provider or part B supplier has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000;

(b) Any significant business transactions between the provider or part B supplier and any wholly owned supplier or between the provider or part B supplier and any subcontractor, during the 5 year period ending on the date of the request;

(c) The names of managing employees of the subcontractors;

(d) The identity of any other entities to which payment may be made by Medicare, which a person with an ownership or control interest or a managing employee in the subcontractor has or has had an ownership or control interest in the 3-year period preceding disclosure; and

(e) Any penalties, assessments, or exclusions under sections 1128, 1128A and 1128B of the Act incurred by the subcontractor, its owners, managing employees or those with a controlling interest in the subcontract.

7. In § 420.206, paragraph (a) introductory text is republished, paragraphs (a)(1), (a)(3), (b)(2), (b)(3), and (c) are revised to read as follows:

§ 420.206 Disclosure of persons having ownership, financial, or control interest.

(a) *Information that must be disclosed.* A disclosing entity must submit the following information in the manner specified in paragraph (b) of this section:

(1) The name and address of each person with an ownership or control interest in the entity or in any subcontractor in which the entity has direct or indirect ownership interest totaling 5 percent or more. In the case of a part B supplier that is a joint venture, ownership of 5 percent or more of any

company participating in the joint venture should be reported. Any physician who has been issued a Unique Physician Identification Number by the Medicare program must provide this number.

* * * * *

(3) The name of any other disclosing entity in which any person with an ownership or control interest, or who is a managing employee in the reporting disclosing entity, has, or has had in the previous three-year period, an ownership or control interest or position as managing employee, and the nature of the relationship with the other disclosing entity. If any of these other disclosing entities has been convicted of a criminal offense or received a civil monetary or other administrative sanction related to participation in Medicare, Medicaid, title V (Maternal and Child Health) or title XX (Social Services) programs, such as penalties assessments and exclusions under sections 1128, 1128A or 1128B of the Act, the disclosing entity must also provide that information.

* * * * *

(b) * * *

(2) Any disclosing entity that is not subject to periodic survey and certification must supply the information specified in paragraph (a) of this section to HCFA before entering into a contract or agreement with Medicare or before being issued or reissued a billing number as a part B supplier.

(3) A disclosing entity must furnish updated information to HCFA at intervals between recertification, or re-enrollment, or contract renewals, within 35 days of a written request. In the case of a part B supplier, the supplier must report also within 35 days, on its own initiative, any changes in the information it previously supplied.

(c) *Consequences of failure to disclose.* (1) HCFA does not approve an agreement or contract with, or make a determination of eligibility for, or (in the case of a part B supplier) issue or reissue a billing number to, any disclosing entity that fails to comply with paragraph (b) of this section.

(2) HCFA terminates any existing agreement or contract with, or withdraws a determination of eligibility for or (in the case of a part B supplier) revokes the billing number of, any disclosing entity that fails to comply with paragraph (b) of this section.

* * * * *

C. Part 421 is amended as follows:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for part 421 is revised to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1834(a) and (h), 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395m (a) and (h), 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

Subpart A—Scope, Definitions, and General Provisions

2. Section 421.1(a) is revised to read as follows:

§ 421.1 Basis and scope.

(a) This part is based on sections 1124A, 1815, 1816, 1834, 1842, and 1874 of the Social Security Act and 42 U.S.C. 1395e–1 (experimental authority).

* * * * *

3. In subpart C, § 421.200, the introductory text is revised to read as follows:

Subpart C—Carriers

§ 421.200 Carrier functions.

A contract between HCFA and a carrier, other than a regional DMEPOS carrier, specifies the functions to be performed by the carrier which must include, but are not necessarily limited to, the following:

* * * * *

4. In § 421.202, the introductory text and paragraph (c) are revised to read as follows:

§ 421.202 Requirements and conditions.

Before entering into or renewing a carrier contract, HCFA determines that the carrier—

* * * * *

(c) Will be able to meet any other requirements HCFA considers pertinent, and, if designated a regional DMEPOS carrier, any special requirements for regional carriers under § 421.210 of this subpart.

5. New § 421.210 is added to read as follows:

§ 421.210 Designations of regional carriers to process claims for durable medical equipment, prosthetics, orthotics and supplies.

(a) *Basis.* This section is based on sections 1834(a) and 1834(h) of the Act which authorize the Secretary to designate one or more carriers by specific regions to process claims for durable medical equipment, prosthetic devices, prosthetics, orthotics and other supplies (DMEPOS). This authority has been delegated to HCFA.

(b) *Types of claims.* Claims for the following, except for items incident to a physician's professional service as defined in § 410.26, incident to a physician's service in a rural health clinic as defined in § 405.2413, or bundled into payment to a provider, ambulatory surgical center, or other facility, are processed by the designated carrier for its designated region and not by other carriers—

(1) Durable medical equipment (and related supplies) as defined in section 1861(n) of the Act;

(2) Prosthetic devices (and related supplies) as described in section 1861(s)(8) of the Act, (including intraocular lenses and parenteral and enteral nutrients, supplies, and equipment, when furnished under the prosthetic device benefit);

(3) Orthotics and prosthetics (and related supplies) as described in section 1861(s)(9);

(4) Home dialysis supplies and equipment as described in section 1861(s)(2)(F);

(5) Surgical dressings and other devices as described in section 1861(s)(5);

(6) Immunosuppressive drugs as described in section 1861(s)(2)(J); and

(7) Other items or services which are designated by HCFA.

(c) *Region designation.* The boundaries of the four regions for processing claims described in paragraph (b) of this section coincide with the boundaries of 1 or more sectors or areas designated for the Common Working File. These four regions contain the following States and territories: Region A: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, and Delaware. Region B: Maryland, the District of Columbia, Virginia, West Virginia, Ohio, Michigan, Indiana, Illinois, Wiconsin and Minnesota. Region C: North Carolina, South Carolina, Kentucky, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Oklahoma, New Mexico, Colorado, Puerto Rico and the Virgin Islands. Region D: Alaska, Hawaii, American Samoa, Guam, the Northern Mariana Islands, California, Nevada, Arizona, Washington, Oregon, Montana, Idaho, Utah, Wyoming, North Dakota, South Dakota, Nebraska, Kansas, Iowa and Missouri.

(d) *Criteria for designating regional carriers.* HCFA designates regional carriers to achieve a greater degree of effectiveness and efficiency in the administration of the Medicare program as measured by—

(1) Timeliness of claim processing;

(2) Cost per claim;
(3) Claim processing quality;
(4) Experience in claim processing, and in establishing local medical review policy; and
(5) Other criteria that HCFA believes to be pertinent.

(e) *Carrier designation.* (1) Each carrier designated a regional carrier is responsible, using the payment rates applicable for the State of residence of a beneficiary, including a qualified Railroad Retirement beneficiary, for processing claims for items listed in paragraph (b) of this section for beneficiaries whose permanent residence is within the area designated in paragraph (c) of this section. A beneficiary's permanent residence is the address at which he or she intends to spend 6 months or more of the calendar year.

(2) The identities of the regional carriers are specified in a notice published in the **Federal Register** when contracts are established.

(f) *Collecting information of ownership.* Carriers designated as regional claims processors must obtain from each supplier of items listed in paragraph (b) of this section information concerning ownership and control as required by section 1124A of the Act and part 420 of this chapter, and certifications that supplier standards are met as required by part 424 of this chapter.

D. Part 424 is amended as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh and 1395ii).

2. Section 424.57 is added to subpart D to read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing numbers.

(a) *Definitions.* As used in this section—"DMEPOS" is the acronym for durable medical equipment, prosthetics, orthotics and supplies. A "supplier" is an entity or individual, including a physician or part A provider, which sells or rents part B covered items to Medicare beneficiaries and which meets the standards in paragraph (c) of this section.

(b) Medicare pays for items furnished by a supplier with a billing number to the—

(1) Supplier if the beneficiary (or the person authorized to request payment on the beneficiary's behalf) assigns the claim to the supplier and the supplier accepts assignment;

(2) Beneficiary, if the supplier does not accept assignment; or

(3) Partly to the beneficiary and partly to the supplier, if the supplier accepts assignment of the bill, as described in § 424.56.

(c) Medicare does not issue a billing number to a supplier that submits claims for items listed in § 421.210(b) of this subchapter until that supplier meets, and certifies that it meets, the following standards. The supplier—

(1) In response to orders which it receives, fills those orders from its own inventory or inventory in other companies with which it has contracted to fill such orders or fabricates or fits items for sale from supplies it buys under a contract;

(2) Is responsible for delivery of Medicare covered items to Medicare beneficiaries;

(3) Honors all warranties express and implied under applicable State law;

(4) Answers any questions or complaints a beneficiary has about the item or use of the item that was sold or rented to him or her, and refers beneficiaries with Medicare questions to the appropriate carrier;

(5) Maintains and repairs directly or through a service contract with another company, items it has rented to beneficiaries;

(6) Accepts returns of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and/or sold) from beneficiaries;

(7) Discloses consumer information to each beneficiary with whom it does business which consists of the supplier standards to which it must conform; and

(8) Complies with the disclosure provisions in § 420.206 of this subchapter.

(d) If a supplier is found not to meet the standards in paragraph (c) of this section, its billing number is revoked, effective 15 days after the entity is sent notice of the revocation. A billing number may be issued, with the concurrence of HCFA, when a supplier has successfully completed a corrective action plan rectifying past violations of the supplier standards and provided sufficient assurance that it will comply with the supplier standards in the future. Corrective action includes repayment of monies due to beneficiaries and Medicare, and honoring applicable warranties.

(e) Suppliers must renew their applications for a billing number 3 years after the billing numbers are first reissued, except for the first reissuance process, as follows: suppliers must renew applications for supplier numbers 2 years after initial issuance of billing numbers for one third of all suppliers. Another one third of suppliers must reapply 3 years after initial issuance. The last third of suppliers must reapply 4 years after initial issuance. Thereafter, each supplier must reapply 3 years after its last number is issued, unless no claim for an item furnished by a supplier has been submitted for four consecutive quarters, in which case the supplier must submit a new request for another billing number.

(f) Suppliers are required to have complaint resolution protocols to address beneficiary complaints which relate to the supplier standards in paragraph (c) of this section and to keep written complaints and related correspondence, and any notes of actions taken in response to written or oral complaints. Failure to maintain such information may be considered evidence that supplier standards have not been met. If a carrier determines that a supplier is not satisfactorily responding to one or more beneficiary complaints, the carrier may require that a supplier maintain the following information on all written and oral beneficiary complaints, including telephone complaints, it receives: The name, address, telephone number and health insurance claim number of the complaint, a summary of the complaint and the date it was made; the name of the person taking the complaint, a summary of any actions taken to resolve the complaint; and, if an investigation was not conducted, the name of the person making the decision and the reason for the decision.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and No. 93.774 Supplementary Medical Insurance Program)

Dated: April 28, 1992.

William Toby,

Acting Administrator, Health Care Financing Administration.

Approved: May 6, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–14044 Filed 6–12–92; 12:16 pm]
BILLING CODE 4120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO–102–GNC]

RIN 0938–AF59

Medicare Program; Criteria and Standards for Evaluating Regional Durable Medical Equipment, Prosthetics, Orthotics and Suppliers (DMEPOS) Carriers; Request for Comments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: We are establishing criteria and standards for evaluating the performance of designated carriers processing claims for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) in the administration of the Medicare program in a document published elsewhere in today's issue of the **Federal Register** ("Carrier Jurisdiction for Claims for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) and Other Issues Involving Suppliers, and Criteria and Standards for Evaluating Regional DMEPOS Carriers"). We will issue any response to public comments we receive on these criteria and standards in the notices section of the **Federal Register**. Future amendments to the criteria and standards for evaluating performance of Medicare carriers will also be issued as notice documents.

DATES: The effective date for the criteria and standards for the designated DMEPOS carriers is October 1, 1993.

Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 17, 1992.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–102–GNC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments to one of the following addresses: Room 308–G, Hubert H. Humphrey Building, 200 Independence Ave., SW, Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code BPO–102–GNC. Written comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's office at 200 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 8:30 to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Larry Pratt (410) 966–7403.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and No. 93.774 Supplementary Medical Insurance Program)

Dated: June 12, 1992.

Timothy C. Miller,

Acting Director, Office of Regulations Management, Health Care Financing Administration.

[FR Doc. 92–14195 Filed 6–12–92; 12:17 pm]

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Federal Register

Thursday
June 18, 1992

Part III

Department of the Interior

Bureau of Indian Affairs

Final Determination That the Miami Nation of Indians of the State of Indiana, Inc. Does Not Exist as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination That the Miami Nation of Indians of the State of Indiana, Inc. Does not Exist as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.9 (h), notice is hereby given that the Assistant Secretary has determined that the Miami Nation of Indians of the State of Indiana, Inc., does not exist as an Indian tribe within the meaning of Federal law.

This notice is based on a determination that the Miami Nation of Indians of Indiana, Inc., does not meet two of the seven mandatory criteria for acknowledgment set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States. This determination was made following a review of public comments on the proposed finding to decline to acknowledge the group.

DATES: This determination is final and will become effective August 17, 1992, unless the Secretary of the Interior requests a reconsideration by the Assistant Secretary—Indian Affairs pursuant to 25 CFR 83.10(a)-(c).

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

A notice of the proposed finding to decline to acknowledge the Miami Nation was published in the **Federal Register** on July 19, 1990 (pp. 29423–5, Volume 55, No. 139). The 120–day period provided for in the regulations for comment on the proposed finding was extended several times at the request of the Miami Nation. The comment period closed on June 17, 1991.

Substantial comments and evidence were submitted by the Miami Nation (Indiana Miami) in response to the proposed finding. Limited comments, not containing substantive new evidence and/or arguments, were received from two other interested parties.

This final determination is based on a consideration of the new evidence and arguments submitted by the Miami Nation together with new evidence obtained by the Branch of Acknowledgment and Research (BAR) staff in order to evaluate the materials submitted by the petitioner. In addition, the extensive evidence and arguments submitted by the Miami Nation or generated by BAR in the conduct of its own research in preparing the proposed finding were also considered in making this final determination.

The July 19, 1990, proposed finding against acknowledgment of the Miami Nation determined that the Indiana Miami fully met five of the seven criteria for acknowledgment. The Indiana Miami have been identified as an Indian entity throughout their history until the present by the Federal Government, local non-Indians, scholars, and other sources. They, therefore, met criterion 83.7(a). The Indiana Miami submitted a copy of their current governing document and the criteria used to determine eligibility for membership and therefore met criterion 83.7(d). Virtually all of the members could trace ancestry to Federal payment rolls created in 1889 and 1895 and thus were descended from the historic Miami tribe. They, therefore, met criterion 83.7(e). Less than one percent of the membership could be identified as a member of an already recognized tribe. The Indiana Miami, therefore, met criterion 83.7(f). A review of legislation affecting the Indiana Miami indicated that neither the petitioner, nor its members, are subject to congressional legislation terminating or forbidding the Federal relationship. The Indiana Miami, therefore, met criterion 83.7(g).

No evidence or arguments were submitted to refute the proposed finding that the Indiana Miami met criteria a, d, e, f, and g. Therefore, we conclude that the Indiana Miami meet these criteria.

The criterion in 25 CFR 83.7(b) requires "Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area and that its members are descendants of an Indian tribe which historically inhabited a specific area." The proposed finding concluded that the Indiana Miami met criterion b continuously from early historic times until at least the 1940's. It concluded further, however, that the available evidence was not sufficient to demonstrate that the present-day Indiana Miami constituted a distinct community within which significant interaction was maintained and, therefore, that the Indiana Miami did not meet the requirements of criterion 83.7(b).

We find that social contact within the present-day Indiana Miami membership is extremely limited in degree and extent, and there is virtually no social distinction between Indiana Miami members and the non-Miamis with whom they interact. The Indiana Miami do not meet the intent of the regulations and the precedents underlying the regulations that, to be acknowledged as a tribe, a group must constitute a community which is distinct and whose members have significant social ties with each other. We conclude, therefore, that the Indiana Miami do not meet the requirements of criterion 83.7(b).

The criterion in 25 CFR 83.7(c) requires "A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present." The proposed finding concluded that the Indiana Miami met the requirements of criterion c until the early 1940's. The proposed finding concluded further, however, that tribal political processes involving leaders or organizations with a broad following on issues of significance to the overall Indiana Miami membership did not exist after the early 1940's and that the Indiana Miami, therefore, did not meet criterion c.

Although the Indiana Miami maintained tribal political authority which meets the requirements of the regulations until the early 1940's, after the early 1940's the activities and influence of the leadership and/or organizations claiming to represent the Indiana Miami became so greatly diminished that significant political processes no longer existed after that point in time.

There are no clearcut, significant examples of the exercise of political influence or authority among the Indiana Miami between the early 1940's and the late 1970's. The available evidence did not demonstrate, by alternative means, the exercise of tribal political influence. It was not demonstrated that claims, the primary activity of the Miami organizations between the early 1940's and 1979, was of more than nominal significance to the membership of the Indiana Miamis as a whole. The extent of involvement of most Miamis with the Miami organizations was too limited to meet the requirements of the regulations for a bilateral political relationship. Bitter, faction-like conflicts between Miami organizations in the 1950's and 1960's provided some, largely indirect, evidence that political processes may have extended beyond the organizations to at least a portion of the membership in general. There was also some evidence that cemetery protection was a political issue of importance to a large portion of the membership. Overall, the

evidence was not sufficient to establish that between the early 1940's and 1979 the Miamis maintained political processes which meet the requirements of the regulations.

The present-day Indiana Miami organization and its leadership do not have a demonstrable political relationship with most of the membership they purportedly represent, and they do not act on matters which are of sufficient importance to the membership to meet the requirements of the regulations for the exercise of tribal political authority. Thus the present-day Indiana Miami do not meet the intent of the regulations and the precedents underlying the regulations in the following ways: The members do not maintain a bilateral political relationship with the tribe, and the leaders do not act on at least some matters which are of consequence to members or affect members' behavior in more than a minimal way.

We find that the available evidence does not demonstrate that the Indiana Miamis in the period between the early 1940's and the late 1970's maintained political processes which meet the requirements of criterion c. We find further that the available evidence establishes that the present-day Indiana Miami do not meet the requirements of criterion c. We conclude, therefore, that the Indiana Miami have not met the requirements of criterion c.

In accordance with 25 CFR 83.9(j) of the Acknowledgment regulations, an analysis was made to determine what, if any, option other than acknowledgment would be available under which the petitioning group could make application for services and other benefits as Indians. No alternatives were found. A few members are also enrolled with recognized tribes and additional individuals may be eligible, on the basis of other than Indiana Miami ancestry, to enroll in a recognized tribe.

Requests to the Secretary for reconsideration may be made by any party and must be received within 60 days of the publication of this notice. Requests should be accompanied by a detailed statement of the grounds for the request and should include any new evidence to be considered. If necessary, the 60-day time limit in 83.10(a) may be extended to allow the Secretary a period of 90 days from the receipt of a request in which to act.

Under the regulations, the Secretary may request reconsideration of any decision but shall request reconsideration of any decision which in his opinion meets the requirements of 25 CFR 83.10(c)(1–3). If the Secretary receives a request for reconsideration, the Assistant Secretary—Indian Affairs will recommend that such a request be referred to the Interior Board of Indian Appeals (IBIA) and that the IBIA be authorized (pursuant to 43 CFR part 4) to determine whether reconsideration is merited on the grounds stated in 83.10(c)(1–3) of the Acknowledgment regulations (25 CFR 83). The IBIA will be further authorized to either affirm this determination or, if the reconsideration request is merited, vacate the decision and return it to the Assistant Secretary for reconsideration. The IBIA will be authorized to request comments or technical assistance from the Assistant Secretary concerning the final determination and may, at its discretion, require a hearing conducted by an administrative law judge of the Office of Hearings and Appeals if the IBIA determines that further inquiry is necessary to resolve a genuine issue of material fact concerning the final determination.

This determination will become final and effective upon receipt by the Assistant Secretary of a decision by the IBIA to affirm the determination. If the determination is vacated and returned to the Assistant Secretary for reconsideration, the Assistant Secretary shall, in accord with § 83.10(a), issue a reconsidered determination within 60 days of receipt of the IBIA's decision. The reconsidered determination shall be final and effective upon publication in the **Federal Register**.

Dated: June 10, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–14319 Filed 6–17–92; 8:45 am]

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Thursday
June 18, 1992

Part IV

National Institute for Literacy

Grants Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

NATIONAL INSTITUTE FOR LITERACY

[CFDA No. 84.257]

National Institute for Literacy Grants Program; Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains al of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The National Institute for Literacy Grants Program supports inquiry designed to advance literacy theory and practice. These authorized activities support the National Literacy Act of 1991, Public Law 102–73, and the National goal to help make every adult literate by the year 2000.

Eligible Applicants: The following are eligible for awards under the National Institute for Literacy Grants Program: (a) Public or private non-profit institutions, agencies, organizations; (b) Consortia of such institutions, agencies, or organizations; and (c) Individuals.

Deadline for Transmittal of Applications: Applications may be submitted at anytime until August 14, 1992.

Note: Proposals will be considered on a continuous basis as received until the deadline date.

Available Funds: $2,500,000.

Estimated Range of Awards: $10,000–$100,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 45.

Note: The National Institute for Literacy is not bound by any estimates in this notice.

Project Period: Up to 12 months.

The Director of the Institute applies the following regulations to the extent that they are consistent with the National Literacy Act of 1991, Public Law 102–73:

The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 82 (New Regulations on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

Eligible Activity: Applications under this competition are restricted to those proposing to carry out activities that will contribute to the improvement and expansion of the system of delivery of adult literacy services. Only applications proposing to conduct these activities will be considered under this competition.

Priority

Invitational Priority: Under 34 CFR 75.105(c)(1) the Director is particularly interested in applications that meet the following invitational priority (however, an application that meets this invitational priority does not receive competitive or absolute preference over other applications):

Projects to conduct basic and applied research and demonstrations on literacy that investigate: (1) How adults learn to read and write and acquire other skills; (2) How the literacy skills of parents affect the ability of children to learn literacy skills; (3) How to improve and expand the delivery of program assistance, training and technical assistance for literacy programs; coordinate with existing research laboratories and the Carl D. Perkins Curriculum Centers and other relevant literacy providers; (4) Assessing literacy skills and the development of instructional techniques; (5) Best methods including the use of technology for assisting adults and families to acquire literacy skills; (6) Special literacy needs of individuals with learning disabilities and individuals with limited English proficiency; (7) How to effectively reach and teach the most educationally—and/or economically—disadvantaged individuals; (8) The use of technology and other studies which will increase the literacy knowledge base, but not duplicate the work of other research services, and build on the efforts of such research services; (9) How to attract, train, and retrain professional and volunteer teachers of literacy; (10) How to effectively collect, maintain, and disseminate research and information concerning literacy; and (11) Assessment tools and evaluation criteria for successful literacy programs.

The Director is particularly interested in providing assistance for projects focusing on family literacy, workplace literacy and the use of technology.

The Director is also interested in joint proposals emphasizing achievement of self-sufficiency for individuals and families. Proposals are sought from organizations, institutions and entities planning collaborative projects between organizations experienced in providing social (e.g., family support, parent education services), training, and employment services and organizations experienced in providing and or arranging for adult literacy services.

Selection Criteria

(a)(1) In evaluating applications for new grants under this competition, the Director uses the selection criteria in 34 CFR 75.210.

(2) The maximum score for all of the criteria in this section is 100 points.

(3) Subject to paragraph (c) of this section, the maximum score for each criterion is indicated in parentheses with the criterion.

(b) The criteria—(1) Meeting the purposes of the authorizing statute. (30 points) The Director reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program including consideration of:

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) Extent of need for the project. (20 points) The Director reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of:

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) Plan of operation. (15 points) The Director reviews each application to determine the quality of the plan of operation for the project, including:

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(4) Quality of key personnel. (7 points)

(i) The Director reviews each application to determine the quality of key personnel the applicant plans to use on the project, including:

(A) The qualifications of the project director (if one is used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Director considers:

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) Budget and cost effectiveness. (5 points) The Director reviews each application to determine the extent to which:

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) Evaluation plan. (5 points) The Director reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation:

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) Adequacy of resources. (3 points) The Director reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(c) Significance. (15 points) The Director reviews each application to determine the significance of the proposed project and the project's potential to make a significant contribution to literacy, as measured by factors such as:

(i) Importance of the proposed project from the standpoint of basic knowledge or of problems in literacy;

(ii) The likely magnitude of the addition that will be made to knowledge or practices if the project is successful, including the extent to which the proposed outcomes can be broadly applied;

(iii) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem areas; and

(iv) The extent to which the project is designed to yield products and outcomes that can be disseminated and utilized in other settings, such as information, materials, processes, or techniques.

Instructions for Transmittal of Applications

(a) To apply for a grant——

(1) Mail the original and two copies of the application on or before the deadline date of August 14, 1992, to: National Institute for Literacy, Attention: (CFDA # 84.257), 800 Connecticut Avenue NW., suite 200, Washington, DC 20202–7560 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: National Institute for Literacy, Attention: (CFDA # 84.257), 800 Connecticut Avenue NW., suite 200, Washington, DC 20202–7560.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The National Institute for Literacy will mail a Grant Applicant Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the National Institute for Literacy at (202) 632–1500.

(3) The applicant must indicate on the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the National Institute for Literacy

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Victor Westbrook, Special Advisor for Contracts and Grants, National Institute for Literacy, 800 Connecticut Avenue NW., suite 200, Washington, DC 20202–7560. Telephone: 202–632–1500. FAX: 202–632–1512. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 703–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1213c.

Dated: June 11, 1992.

Franmarie Kennedy-Keel,

Interim Director, National Institute for Literacy.

Part III—Application Narrative

A. Application Instructions for New Awards

In order to be considered for funding you must submit an original and two copies (and in order to expedite the review and award process, it is strongly suggested that you voluntarily submit three additional copies).

B. Instructions for Proposal Narrative

1. Research Priorities.

Applicants are invited to address the priority published in the **Federal Register** Notice Inviting Applications contained in this application package.

2. Proposal Narrative.

a. Applicants must provide a proposal narrative not to exceed 20 single spaced-pages (normal-sized type, no smaller than 10 point pica). The narrative must address each of the following criteria contained in 34 CFR 700.22:

(1) Plan of operation.
(2) Quality of key personnel.
(3) Budget and cost-effectiveness.
(4) Evaluation plan.
(5) Adequacy of resources.
(6) Significance.
(7) Technical soundness.

Under the discussion of technical soundness, applicants should describe in detail and justify the procedures that will be used to carry out the proposed work. Applicants must also include a vitae, listing only academic essentials for all key personnel.

b. Appendices may be added to the narrative describing available facilities, major items of equipment to be used in the proposed work or other information that will assist in the review of the proposal.

c. Applicants are encouraged to provide a summary of the program project (not to exceed one page).

3. Budget Information.

Applicants must provide a detailed budget for each project and activity to support the request in the budget information form (SF 424A). The cost categories for the detailed budget for each project must be consistent with the cost categories in the summary budget information form. (Instructions are included.)

Provide (at line 21 and attached sheets) a breakdown detailing individual units or activities and amounts for each "object class category." For example, for "personnel," show salaries and wages for each staff member by position or name; for "contractual," show consultants, sub-contractual services, and materials.

Indirect cost rates negotiated by the organization with the cognizant Federal negotiating agency must be used in computing indirect cost rates for a proposal. If an organizational or individual has no established indirect cost rate, it should consult the contact person named in the notice inviting applications for additional information.

4. Technical Assistance.

Any questions regarding the competition should be addressed to the contact person named in the notice inviting applications contained in this package.

5. Reporting Requirements.

Each applicant should consider reporting requirements in developing the plan of operation. Performance or financial reports are required at the completion of each project period. Additional guidance will be given prior to the time that the grant is awarded.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the National Institute for Literacy invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 27 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the National Institute for Literacy, and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

(Information collection approved under OMB control number 3200–0014. Expiration date: June 1993).

Victor A. Westbrook,

Special Advisor for Contracts and Grants.

BILLING CODE 6055-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item	Entry
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"New" means a new assistance award. —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 6055-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All aplications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or

supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333) regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions of State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research,

development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace (Grantees Other Than Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title,

to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Drug-Free Workplace (Grantees Who Are Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

_____

Name of Applicant

_____

PR/Award Number and/or Project Name

_____

Printed Name and Title of Authorized Representative

_____

Signature

_____

Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred,

suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of Applicant

PR/Award Number and/or Project Name

Printed Name and Title of Authorized Representative

Signature

Date

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name of description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number, the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF–LLL–A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, D.C. 20503.

BILLING CODE 6055-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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June 18, 1992

Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Public and Indian Housing

Notice of Funding Availability (NOFA) for FY 1992; Invitation for Applications: Public Housing Development/Major Reconstruction of Obsolete Public Housing/Family Self-Sufficiency; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3354; FR-3167-N-01]

Funding Availability (NOFA) for FY 1992; Invitation for Applications: Public Housing Development/Major Reconstruction of Obsolete Public Housing/Family Self-Sufficiency

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1992 for Public Housing Development/Major Reconstruction of Obsolete Public Housing, and Family Self-Sufficiency; Invitation for Applications.

SUMMARY: This Notice announces the availability of FY 1992 funding, and invites eligible entities to submit applications for public housing development or for the Major Reconstruction of Obsolete Public Housing (MROP) program, or for both programs. Development applications are limited to replacements for demolition/disposition including any HOPE 3 transfers subject to section 18 of the United States Housing Act of 1937 (USHA), replacements for homeownership transfers under HOPE I, replacements for homeownership under section 5(h) of the USHA, litigation settlement, and Family Self-Sufficiency Incentive Award housing. This Notice also provides instructions regarding the preparation and processing of applications. This Notice is not applicable to the Indian housing program.

DATES: Applications are due at the HUD Field Office on or before the close of business on August 3, 1992. Applicants should consult with the appropriate local Field Office regarding the time that the office closes. Forms comprising the application package may be obtained from the local HUD Field Office. (See sections II and III of this NOFA for further information on application submission.)

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4136, Washington, DC 20410. Telephone (202) 708–1800. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2577–0033, 2577–0036, 2577–0044 and 2502–0466.

I. Purpose and Substantive Description

A. Authority

Section 5 and 23 of the United States Housing Act of 1937 (42 U.S.C. 1437c and 1437u); section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Public housing development regulations are published at 24 CFR part 941; Comprehensive Improvement Assistance Program regulations are published at 24 CFR part 968. Demolition/disposition regulations are published at 24 CFR 970; section 5(h) regulations are published at 24 CFR 906. The Notice of Program Guidelines for the Family Self-Sufficiency Program was published in the **Federal Register** on September 30, 1991 (56 FR 49592). The Catalog of Federal Domestic Assistance Program number is 14.850.

B. Fund Availability

1. The VA-Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1992 (FY 1992 Appropriations Act) provided $573,983,000 of budget authority (grants) under section 5(a)(2) of the USHA, for public housing development costs for eligible public housing agencies (PHAs), including $15,719,158 to be set aside for a demolition/disposition housing demonstration in St. Louis, Missouri; and $200 million to be awarded for major reconstruction of obsolete public housing (MROP). Each grant contract shall remain in effect for a 40-year period. Budget authority recaptured in FY 1992 from previously reserved projects may not be reused and will be rescinded. An across-the-board reduction among HUD housing programs under the annual contributions appropriations due to a shortfall in the FY 92 appropriations resulted in a $26.3 million reduction in the funds available under this NOFA. Therefore, the amount available in FY 92 will be $547.7 million.

2. Section 23 of the USHA, requires that not less than 10 percent of the funds available in FY 1992 (excluding amounts for MROPs) be allocated in support of the Family Self-Sufficiency (FSS) program. Hence, FSS funding will be at least $35.7 million, as follows (in millions):

$574.0	appropriated.
−26.3	appropriation shortfall adjustment.
547.7	
−190.8	(MROP)
356.9	
−35.7	(10 percent minimum for FSS)
321.2	($14.9 for St. Louis, MO.; litigation; up to $82.5 for Sec. 18 replacements)

In addition, the Department has determined that any remaining funds available for allocation, after subtracting amounts to be used for section 18 replacements, litigation, MROP and replacements for homeownership, will be allocated for FSS Incentive Award units. The purpose of the FSS program is to promote the development of local strategies that coordinate the use of public housing with both public and private resources to enable eligible families to achieve economic independence and self-sufficiency. The FSS program is described in detail in the Notice of FSS Program Guidelines, published on September 30, 1991 (56 FR 49592). To promote the concept of family self-sufficiency, HUD is providing public housing development grants as an incentive to PHAs (Incentive Awards). The Incentive Awards must be applied for under this NOFA.

C. Funding assignments

1. Exemptions from Fair Share Allocation

The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) exempts from fair share allocation distribution requirements, amounts retained in a Headquarters Reserve for litigation settlements and appropriations determined incapable of geographic allocation, including funds to provide replacement housing in connection with demolition/disposition and any HOPE 3 transfers subject to section 18 of the USHA. Applications relating to replacements for homeownership transfers under the program referred to as HOPE I (HOPE for Public and Indian

Housing Homeownership) or homeownership under section 5(h) of the USHA, subject to the provisions of section 304(g) of the USHA; and applications for MROP, are also incapable of geographic allocation pursuant to 24 CFR 791.403(b)(1)(ii). The minimum FSS program is also exempted from the fair share allocation and the metropolitan/nonmetropolitan distribution requirements by section 554 of the Cranston-Gonzalez National Affordable Housing Act (NAHA).

2. Funding Categories

Within six weeks after the PHA application submission deadline, each Regional Administrator will submit to Headquarters (Public Housing Development Division) a list identifying the highest ranked projects recommended for funding in the categories described below. Based on the recommendations of HUD's Regional Administrators, litigation requirements, actual approvals for demolition/disposition, including any HOPE 3 transfers subject to section 18 of the USHA, HOPE I, and section 5(h) homeownership, HUD Headquarters will determine the funding required for the following categories:

a. Replacements. Threshold-approvable applications to replace existing public housing approved between February 6, 1988, and the time FY 92 development/MROP funding decisions are to be made, for demolition/disposition pursuant to section 18 of the USHA, including any HOPE 3 transfers subject to section 18 of the USHA, shall be selected before the allocations are determined (section 571 of the NAHA limits such funding, including any similar Indian rental housing funding, to $82,500,000 for Fiscal Year 1992). Funding of public housing commitments from demolition/disposition approvals in previous years will require $73 million, leaving $9.5 million available for FY 92 commitments under section 18. A portion of this $9.5 million remaining limit might be used with Indian program funds under its NOFA, if there is a need. If the total of $9.5 million is not required for section 18 replacements, the balance will be used to increase the amount available for other purposes.

In addition to section 18 replacements, threshold-approvable applications to replace public housing projects, approved by the time the FY 92 development-MROP funding decisions are to be made, for transfer under HOPE I or homeownership under section 5(h), subject to the provisions of section 304(g) of the USHA, shall be ascertained before the allocations are determined. (Section 571 of the NAHA, which limits replacement funding to $82,500,000, has been determined to be inapplicable to replacement housing for homeownership transfers.) It is anticipated that the remainder will be used for replacement housing for homeownership transfers; however, any amounts not so used will increase the amount available for FSS. Separate replacement housing applications must be submitted and approved for each year of replacement housing required by a multi-year replacement housing plan

b. Litigation. Threshold-approvable applications relating to litigation settlements involving lack of assisted or minority housing opportunities shall be assigned Headquarters Reserve funding before the allocations are determined.

c. MROP. Pursuant to the FY 1992 Appropriations Act, $200 million of the total appropriated ($190.8 million after deducting the aforementioned portion of the $26.3 million shortfall) shall be set aside for MROP: Regional Administrator recommendations for threshold-approvable MROP applications shall be considered in determining Regional fund allocations based on highest ratings and vacancy rates.

d. FSS. The remaining available funds (after deducting for replacements, litigation settlements, and MROPs) will be used to approve FSS Incentive Award development applications; however, the NAHA requires that at least ten percent of the available funds (after deducting for MROPs) be used for FSS—$35.7 million. Funds will be allocated to Regional Offices on the basis of the fair share factors listed below calculated pursuant to 24 CFR 791.402(b) and Regional Administrators will select the FSS Incentive Award applications for funding. Any unused Regional funding will be redistributed by Headquarters, proportional to need, among remaining Regions with approvable unfunded FSS Incentive Award applications.

Region	Fair-Share Factors (Percentages)
I Boston	7.5
II New York	18.2
III Philadelphia	9.3
IV Atlanta	13.6
V Chicago	15.0
VI Ft Worth	7.9
VII Kansas City	3.6
VIII Denver	2.5
IX San Francisco	18.8
X Seattle	3.6
Total	100

3. Reservation of Funds

Regional Administrators will select threshold approvable MROP and FSS Incentive Award public housing development applications on the basis of the criteria stated in this NOFA. For replacement, litigation settlement and FSS Incentive Award development projects, funds shall be reserved in an amount equal to the total development cost limit for the number of units being reserved (additional units may be provided to a project as a result of State or local donations, provided some section 5(c) funds are attached to each unit); for MROP projects, funds shall be reserved in the approved amount within the limits stated in section I.F.1.a(2) of this NOFA.

4. Partial Funding

Partial funding of highly ranked applications is authorized (so long as such projects are determined viable) to facilitate the funding in rank order of additional applications for highly ranked viable projects.

5. No Regional Imposed Selection Criteria

Regional Offices may not authorize any selection criteria in addition to the criteria set out in this NOFA.

D. Public Housing Development Threshold Approvability—All Programs

1. All applications must meet the development threshold requirements (as discussed in paragraph 4–29a of appendix 5 of the FY 1992 Processing Notice) for approvability to be eligible for funding under all funding categories.

2. To ascertain threshold approvability, the Field Office will review each application for required resolutions and certifications, and for compliance with all requirements of this NOFA and the FY 1992 Processing Notice. The Field Office will ensure that the PHA meets the requirements of: Legal eligibility (organization and local cooperation); acceptable certification of PHA intent to comply with all applicable civil rights and equal opportunity laws (see section II.B.3 of this NOFA); housing need and market; administrative capability (management and development); environmental issues; where applicable, housing type (see section 6(h) of the USHA relative to new construction); the certifications required by section 5(j) of the USHA; and other required certifications. For FSS Incentive Award applications, a Resident Involvement Certification is also required (see sections II.C. and III of this NOFA).

3. Pursuant to Notice PIH 91-45 (HUD), HUD Field Offices are to notify the Farmers Home Administration (FmHA) of public housing development applications being considered for funding in areas served by FmHA.

E. FSS Incentive Award Units

1. Eligibility

a. PHA eligibility. All PHAs are eligible to apply for public housing development Incentive Award units; however, applicants must have the legal capability to develop, own, and operate public housing projects and the required local cooperation (see section I.D. of this NOFA).

b. Eligibility for multiple FSS incentive programs. Applications may be submitted for more than one FSS incentive program; e.g., a PHA may apply for Incentive section 8 rental certificates or rental vouchers and Incentive public or Indian housing units, as long as the PHA is eligible to participate in the programs for which it applies. Applications for FSS Incentive Awards do not preclude applications for funds under other NOFAs for section 8 rental certificates, rental vouchers, public housing or Indian housing.

c. Ineligible programs. Homeownership is not eligible for Incentive Award funding.

d. FSS program eligibility. The purpose of the FSS program is to promote the development of local strategies that coordinate the use of assisted housing (in this case public housing) with both public and private resources to enable eligible families to achieve economic independence and self-sufficiency. The FSS program requires the formation of a Program Coordinating Committee (PCC), through which the PHA will obtain commitments of public and private resources to provide supportive services to participating families. The PHA must prepare an Action Plan for HUD approval, enter into Contracts of Participation with participating families, and establish escrow savings accounts for the benefit of participants when they complete the program and achieve self-sufficiency. Thus, a PHA must demonstrate that it will be able to establish and coordinate a successful FSS program. A PHA must provide evidence, in a form satisfactory to HUD, including evidence addressing the FSS rating factors (see sections I.E.2.b and II.C.2 of this NOFA), that the PHA has:

(1) A broad base of community support for an FSS program;

(2) A broad range of services that can be integrated to address the needs of FSS participants;

(3) The support of its resident population;

(4) The active support of the Chief Executive Officer (CEO) of the unit of general local government; and

(5) The administrative capability to initiate and operate an FSS program, including a willingness to commit or obtain staff resources to support the program.

(6) Additional points will be provided if the locality for the project has a higher relative need for the housing. The HUD Field Office will make this determination and the PHA may provide information (e.g., PHA waiting list or vacancy data) to assist the Field Office in its determination.

(7) Additional points will be provided if the PHA was approved under the HUD/HHS Economic Empowerment Demonstration (EED) program (see section I.E.2.b(6) of this NOFA), funded from the Community Development Block Grant (CDBG) Technical Assistance Program (see Program Announcement No. 91-1, 56 FR 22586, dated May 15, 1991).

2. Selection Criteria/Rating Factors—FSS Incentive Award Units

a. Inadequate housing supply and 3 or more bedroom preferences. Although FSS is not subject to fair share requirements and, hence, to the requirements of section 6(p) of the USHA, preference will be given to FSS Incentive Award applications having a rating of at least 80 points for proposed projects comprising 51 percent or more 3 or more bedroom units to be located in local market areas reasonably demonstrated as having an inadequate supply of housing available. In the event a Regional Office selects all of the applications up to the 80-point minimum in first the inadequate supply market areas and then the adequate supply market areas as discussed in section I.E.2.a.(1) of this NOFA, and all assigned funds have not been used, and there remain approvable applications below the minimum, the Regional Administrator may consider funding applications with ratings of less than the 80 points in the same order stated below. Threshold approvable applications (see sections I.D, II.A, II.B and III of this NOFA) will be placed into two subcategories:

(1) Inadequate Housing Supply. Applications which the Field Office has determined, based on its evaluation of PHA submitted documentation (see section III, Item 15 of this NOFA) and information available to the Field Office, reasonably demonstrate an inadequate housing supply (typically four percent or less vacancy rate considering housing market conditions, such as the level of growth or changes in the numbers of households relative to housing supply and the effect of housing supply on rent increases, and section 8 certificate/voucher holders are experiencing difficulty in leasing units—typically less than 85 percent lease-up within 60 days) will be selected for funding in order of ranking (see Sections I.E.2.b and I.E.2.c of this NOFA) as follows:

(a) First those comprising 51 percent or more 3 or more bedroom units shall be selected down to a minimum rating score of 80 points; and

(b) Then those comprising less than 51 percent 3 or more bedroom units shall be selected down to a minimum score of 80 points; and

(2) Adequate Housing Supply. If any Regional funding remains after selecting applications for inadequate housing supply locations, applications in order of ranking for locations with an adequate housing supply may be considered for funding as stated in section I.2.a.(1) (a) and (b) above, including the preference for 3 or more bedroom units.

b. FSS incentive award rating factors. (1) Supportive Community Relationships. The FSS program must have broad based community support, including ties to both minority and nonminority communities, and utilize local public and private organizations that are willing to commit funds, staff, equipment, the use of their buildings and equipment, training assistance, employment opportunities, or other support. Such organizations include local governments, businesses, religious organizations, private non-profit service providers, educational and training institutions, civic organizations, foundations, corporations, and local benefit providers. A successful FSS program must have a broad range of commitments from public and private employers, trainers, counselors and service providers. Ideally, representatives of community groups, organizations and businesses also will serve on the PCC.

25–16 Points: The PHA has:

(i) A strong, coordinated, varied base of community support as evidenced by described existing working relationships with a variety of public/private resources in the community, including previous commitments of funds, staff, equipment, the use of buildings and equipment, training assistance or employment opportunities; and

(ii) Will further expand its existing, or if a PHA new to FSS establish a, base of support, as evidenced by written commitments from entities to offer support and to coordinate support as

participants in the proposed FSS program.

15–0 Points: The PHA meets only one of the two criteria set forth in paragraphs (i) and (ii) above.

(2) Supportive Services. A successful FSS program must offer a wide variety of services to address the needs of FSS participants that can be integrated into meaningful assistance for families. A key consideration relates to the fact that the services must be coordinated in their delivery and appropriate in scope to the needs of the residents. For example, quality child-care, capable of attending to a variety of age groups and operating a sufficient number of hours per week to accommodate work, training, and/or counseling schedules may be important. Another important service may be transportation, which links the other services together. The PHA shall describe past services provided by others to its residents, assess the range and depth of the services, and state how they might be transferred to an FSS program. The PHA shall include written commitments of support from organizations and entities willing to provide services under FSS.

25–16 Points: The PHA has:

(i) Actively worked with public and private service providers to offer quality supportive services which are comprehensive in scope and include combinations of child care, transportation, job training and placement, counseling, education, money management, parenting, and/or rehabilitation services to residents; and

(ii) Will further expand, or if a PHA new to FSS establish, the kinds of services and/or number of persons to be served as evidenced by written commitments from identified entities who are providers of such services.

15–0 Points: The PHA meets only one of the two criteria set forth in (i) and (ii) above.

(3) Resident Support. The PHA shall describe its efforts to establish and/or support Resident Councils (RCs), Resident Management Corporations (RMCs), homeownership programs and resident-based economic development activities. The PHA also shall describe how its residents are involved generally in PHA planning and operations and specifically resident involvement for support service programming and delivery. A "Resolution of Support" by resident groups for the FSS programs shall be included, along with any plans the PHA has developed for including resident participation in the development and operation of FSS programs. This may include resident membership on the PCC and participation in the preparation of the Action Plan.

25–16 Points: The PHA has a history of resident involvement that includes successful resident participation in PHA planning and operations, generally, and specifically incorporates resident involvement for support service programming and delivery. This is evidenced by described active involvement in Homeownership programs, economic development activities, etc., and there is written evidence of resident support for the application. Residents are, or will be, as described, represented on the PCC and participate in the preparation of the Action Plan.

15–0 Points: The PHA has established resident initiatives and resident involvement does occur; there is movement toward greater participation. Residents will, as described, be represented on the PCC and participate in preparation of the Action Plan. (The last sentence may apply for a PHA new to FSS).

(4) Chief Executive Officer Support. The CEO of the unit of general local government must evidence active support for the FSS program. CEO consultation is required in the development of the PCC and the preparation and implementation of the Action Plan. In evaluating this factor, HUD will look at past PHA undertakings that have involved the CEO and commitments provided by the CEO pledging local governmental funds, staff, equipment, use of buildings and property, etc., for proposed FSS activities and services.

25–16 Points: The CEO of the unit of general local government and the PHS have successfully cooperated in the past in the provision of service-related activities for PHA residents. The CEO has expressed strong, written support for the FSS application and has, by written commitment, pledged cooperation for expansion of such support through local governmental funds, staff, equipment, use of buildings and property, etc. for FSS activities and services.

15–0 Points: The CEO and the PHA have cooperated in the past, and the CEO has provided general support for the PHA, or has committed to provide support in the future for an FSS program through funding, use of facilities, staff, etc. (The latter may apply for a PHA new to FSS).

(5) FSS Administrative Capability. A PHA applying for Incentive Units must meet the threshold administrative capability test in section I.D.2. of this NOFA. In addition, the PHA shall:

(a) Be evaluated against the criteria outlined in the HUD Handbook titled Field Office Monitoring of Public Housing Agencies (PHAs), No. 7460.7 Rev.-1, Chapter 2, Paragraph 2–1C;

(b) Demonstrate that it has committed or obtained appropriate staff resources, including but not limited to a capable service coordinator to develop and implement an FSS Program. The Field Office shall evaluate the PHA's performance in accordance with the above and, based upon that evaluation, score the PHA on a scale of 0–25 points.

(6) Relative Need. Application is for a project which will be located in a locality which has previously been underfunded for the household type (family or elderly) requested relative to the need for housing for the same household type in other localities in the respective metropolitan or non-metropolitan portion of the Field Office jurisdiction, or otherwise has a demonstrated greater relative need, such as a very long waiting list in the PHA and/or very low vacancies (e.g., 2 or 3 percent) in the PHA. 0–25 points

(7) Coordination with HUD/HHS Economic Empowerment Demonstration Program: If the PHA was funded under the HUD–HHS Economic Empowerment Demonstration Program, it should so indicate in the FSS application (see section I.E.1.d(6) of this NOFA.) 10 points

FSS Total Possible Points: 160 points

c. FSS incentive award application rating and ranking. (1) Threshold approvable public housing development applications shall be rated by the Field Office under the FSS rating factors of section I.E.2.b of this NOFA, within the appropriate subcategory—(1) Inadequate Housing Supply or (2) Adequate Housing Supply. Within each subcategory, those with 51 percent or more 3 or more bedroom units shall be listed first, followed by those with less than 51 percent 3 or more bedroom units, and each grouping shall be clearly identified. Each Field Office shall then forward its list of applications to the Regional Office by the Region's required date. The list shall include ratings assigned, the number of units and units by bedroom size, structure type(s), cost areas, funding required and the metropolitan/nonmetropolitan designations.

(2) The Regional Office will put applications in rank order (highest ranked first) within the two subcategories, submit a Regional listing, as described for the Field Offices in section I.E.2.c(1) above, to Headquarters pursuant to section I.C.2. of this NOFA. The Regional Administrator will make

funding selections pursuant to sections I.C. and I.E.2.a of this NOFA.

d. Processing of incentive award projects. After funding, FSS Incentive Award development projects shall be processed in accordance with outstanding program procedures and shall be subject to all time frames set forth in program procedures.

e. Submission of FSS action plan. The Action Plan must be submitted to the Field Office within 90 days of notification of approval by HUD of the PHA's application.

F. MROP

1. MROP Eligibility Requirements

a. An "obsolete project" must have design or marketability problems that have resulted in:

(1) Current vacancies of 25 percent or more of the units available for occupancy (except that, if necessary to fully utilize the $191 million available, if any funding remains, projects having vacancies of between 20 to 24 percent may then be qualified, and again, if funding remains, projects having vacancies of between 15 to 19 percent may then be qualified, and, finally, if funding still remains, projects having vacancies of 10 to 14 percent may then be qualified); and

(2) Estimated reconstruction and all other costs of the MROP project of at least 70 percent, but not more than 100 percent, of the total development cost limits for the area; and

(3) The need to go to Step 3 of the viability review of the Comprehensive Improvement Assistant Program (CIAP). (See Paragraph 3–9c of CIAP Handbook 7485.1 REV–4.)

b. Eligibility for approving an MROP application will be determined by CIAP procedures outlined in Handbook 7485.1, chapter 3 and the detailed processing notice as modified by this NOFA, including the threshold approvability requirements of section I.D. of this NOFA and the modified Technical Review Factors of section I.F.2. of this NOFA.

(1) An MROP project must have long-term (40-year) viability after reconstruction.

(2) If partial demolition/disposition is required, a demolition/disposition application must be approved within the time frame specified in section I.C.2.a of this NOFA, before approval of the MROP. (MROP funds may not be used for total demolition/disposition.)

(3) Conversions are not subject to section 18 of the USHA; however, proposed conversions must be approved before an MROP involving conversion may be approved.

(4) An MROP must be a rental (not homeownership) project.

(5) An MROP project must meet the requirements of section II.B.8.c. of this NOFA.

(6) Both CIAP-eligible and Comprehensive Grant Program-eligible PHAs may apply for MROP. The CIAP and Comprehensive Grant Programs are hereinafter referred to as "modernization."

c. Existing projects which consist of more than one building may have funding under MROP in any single year limited to one or more (less than all) of a project's buildings. Where separate portions of an existing project receive MROP funding in different fiscal years, each portion must be given a separate MROP project number and the funds reserved must be sufficient to complete all of the reconstruction needed to make the portion viable; in such cases, the funds for each project must be kept separate and may not be commingled.

d. A combination of MROP and modernization may be used in project reconstruction; e.g., where an existing project consists of family housing needing major reconstruction and elderly housing needing less extensive work. In such a situation, MROP funds could be reserved for designated buildings as an MROP project and the remaining buildings could be included in a modernization project. Modernization and MROP may not be used on the same units. If some modernization funding was previously received and the project still needs MROP, the modernization costs cannot be added to the MROP costs to meet the 70 percent requirement of section I.F.1(a)(2) above.

e. Management improvements are an ineligible cost under MROP; therefore, any proposed management improvements must be funded from the PHA's own operating funds or reserves, Comprehensive Grant Program funds, or from CIAP funding for management improvements.

2. Selection Criteria/Rating and Ranking—MROP

In accordance with the Regional Office designation of projects for Joint Reviews, the Field Office will schedule Joint Reviews for eligible MROPs as early as possible, if necessary. Field Offices will rate and rank threshold-approvable MROP applications in accordance with the CIAP technical review factors in chapter 3, CIAP Handbook 7485.1, REV–4, modified as follows:

a. MROP Technical Review Factors	Point Range
(1) Extent and urgency of need, including lead-based paint abatement and physical accessibility needs	1–20
(2) Extent of vacancies	1–10
(3) PHA's reconstruction capability	1–10
(4) PHA's management capability	1–10
(5) Adequacy of PHA's maintenance systems, including preventive and routine maintenance	1–10
(6) Degree of resident involvement in PHA operations	1–5
(7) Degree of PHA activity in resident initiatives, including resident management, economic development activities on behalf of residents, and drug elimination efforts	1–5
(8) Degree of PHA-wide resident employment	1–5
(9) Local government support (e.g., evidence of necessary support facilities)	1–10
(10) Resident support for proposed reconstruction	1–10
MROP Total Possible Points	95

b. *MROP rating considerations.* A PHA should not be automatically penalized in the rating of the reconstruction and management capability factors because it has not previously received funding under MROP or CIAP; in rating these factors, a PHA's expected ability to carry out the proposed reconstruction must be considered in relation to the PHA's proposed reconstruction, staffing and inspection plan. Conversely, a PHA that has modernization experience but missed deadline dates in a Project Implementation Schedule without valid reasons shall receive low ratings for these factors.

c. *Ranking approval applications.* Each threshold-approvable MROP application that has been rated under section I.F.2.a above shall be assigned to one of the four subcategories listed under subparagraph d below, based on the PHA's vacancy rate. (Applications in subcategory (1) down to a minimum rating of 50 points must be exhausted before any in subcategory (2) may be selected for funding, and subcategory (2) application down to a minimum rating of 50 points must be exhausted before any in subcategory (3) may be selected, and applications in subcategory (3) down to a minimum of 50 rating points must be exhausted before any in subcategory (4) down to a minimum of 50 points may be selected for funding.) If it becomes necessary in order to utilize all the funds available for MROP, Headquarters will authorize Regional Administrators to select applications with less than 50 point ratings within the highest vacancy rate categories.

d. *MROP subcategories.* The field Office rankings to be provided to the

Region by the Region's required date and the Regional Administrator rankings to be provided to HUD Headquarters, pursuant to section I.C.2 of this NOFA, shall be in accordance with the following MROP subcategories:

(1) Projects with vacancy rate of 25 percent or more;

(2) Projects with vacancy rates of 20 to 24 percent;

(3) Projects with vacancy rates of 15 to 19 percent; and

(4) Projects with vacancy rates of 10 to 14 percent.

e. *Field and regional submissions.* For each subcategory a listing of the threshold approvable projects, highest ranked first, including the ratings assigned, the number of units and units by bedroom size, structure type(s), cost areas, funding required and the metro/nonmetro area designation must be submitted. For each MROP, the following must also be prepared and submitted by the Field Office to the Regional Office:

(1) Narrative description of the results of Steps 1, 2 and 3 of the viability review, including the Field Office conclusions regarding project viability;

(2) Final rating of the Technical Review Factors, including the score for each factor and the total project score; and

(3) Review sheet summarizing critical information about the project, including a brief description of proposed reconstruction and its proposed cost including how any management improvements will be funded, a discussion of the relationship and approval date of any demolition/disposition or conversion, and the feasibility of reconstruction compared to demolition/disposition.

3. MROP Funding and Further Processing

a. MROP applications selected for funding shall:

(1) Have estimated total costs of at least 70 percent, but not more than 100 percent, of development cost limits for the area, calculated in accordance with the latest HUD Notice issued with regard to total development cost limits;

(2) Be assigned a development project number and entered into the appropriate HUD data systems; and

(3) After MROP fund reservation, follow development procedures (24 CFR part 941 and Handbook 7417.1 REV–1), except:

(a) Reconstruction work must be competitively bid (i.e., turnkey may not be used); and

(b) CIAP modernization standards set forth in Handbook 7485.2 REV–1 must be used.

b. The PHA must incorporate its approved MROP application into a PHA Proposal (Form HUD–52483–A).

c. The special MROP Annual Contributions Contract (Form HUD–53010–I), included in Notice PIH 89–41 (HUD), must be used.

d. The Regional Administrator, after initial reservation of an MROP, may only authorize MROP costs an additional five percent above the initial reservation amount for unforeseen costs; however, in no case may the original scope of reconstruction be increased. Also equivalent to the development procedures, any proposed costs in excess of 105 percent of the initial reservation may only be approved by the Assistant Secretary.

II. Application Invitation and Submission Process—All Programs

A. Application Invitation—All Programs

HUD is accepting, and all eligible PHAs (see section II.B.1 of this NOFA) are invited to submit, applications pursuant to 24 CFR 941.301 for grant assistance for the development (construction, rehabilitation or acquisition of existing units) of public housing for replacement, litigation settlement or FSS Incentive Award housing, and applications (see CIAP, 24 CFR part 968, with modifications) for MROP projects. While conformity with 24 CFR part 941 (development), and 24 CFR part 968 (MROP) is required, this funding effort is also subject to the additional specific requirements set forth in this NOFA (see sections II.B., II.C. and II.D. of this NOFA). Applicants for development funds also should consult Handbook 7417.1 REV–1 and the FY 1992 detailed Processing Notice. Applicants for FSS Incentive Award public housing development units also should consult the FSS Program Guidelines published in the **Federal Register** on September 30, 1991 (56 FR 49592). MROP applicants should also consult CIAP Handbook 7485.1 REV–4, chapter 3, as modified by the detailed CIAP Processing Notice.

B. Application Submission and Deadline—All Programs

1. General Application Requirements

To be eligible for funding in FY 1992, development applications (replacement, litigation settlement, or FSS Incentive Award housing) and MROP applications must be submitted by eligible PHAs which have the required local cooperation and legal authority to develop, own and operate public housing projects. The applications, in the number of copies specified by the HUD Field Office, must contain all exhibits and additional information required by 24 CFR 941.302 (for development) or 24 CFR part 968 (for MROP), with modifications as specified in this Notice and in the FY 92 detailed Processing Notice.

The applications must be received by the HUD Field Office by close of business (local time) on August 3, 1992. Applicants should consult with the appropriate local Field Office regarding the time that the office closes. Facsimile (Fax) applications will NOT be accepted.

The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

2. Separate Applications for Program Type

Separate applications must be submitted by program type (litigation, section 18 demolition/disposition and HOPE 3 replacement, HOPE I or 5(h) replacement, FSS Incentive Award units or MROP), housing type, development method, and community, for which the project is proposed (having a unit count capable of feasible development and management). A PHA must state, in an accompanying letter:

a. Its priorities for receiving funding if it is submitting more than one application; and

b. Whether it will accept funding for fewer units than requested. Refusal to accept fewer units may result in application non-funding due to a disproportionate requirement for funds.

3. PHA Resolution of Support

Each application must be accompanied by a PHA Resolution in Support of Public Housing Project, Form HUD–52471. The assurances that the PHA provides under this Resolution, wherein the PHA agrees to comply with all requirements of 24 CFR part 941 (e.g., the requirements of nondiscrimination under the civil rights laws (24 CFR 941.208)), also constitutes assurance that the PHA shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (see section II.B.13 of this NOFA); and with accessibility requirements (see section II.B.10 of this NOFA), such as 24 CFR part 8, which implements section 504 of

the Rehabilitation Act of 1973. If front-end funds are requested (for development projects only) under an Annual Contributions Contract (ACC), the PHA resolution must refer to such funding and must be accompanied by a certified copy of the Transcript of Proceedings containing the Local Governing Body Resolution (Form HUD–52472) approving the application for such funding.

4. Certification of a Drug-Free Workplace

In accordance with 24 CFR 24.630, the PHA must submit its Certification for a Drug-Free Workplace (Form HUD–50070.)

5. Certification Regarding Lobbying

Section 319 of the Fiscal Year 1990 Department of the Interior and Related Agencies Appropriations Act (the "Byrd Amendment") (31 U.S.C. 1352) prohibits use of appropriated funds for "influencing or attempting to influence" Federal officials in connection with grant awards exceeding $100,000. In addition, in accordance with 24 CFR part 87 (also see 24 CFR part 86):

a. The PHA must submit with each application a certification that no Federal funds have been or will be used to influence Federal employees, Members of Congress, and/or Congressional staff regarding specific grants or proposals.

b. If a PHA uses non-Federal funds for lobbying on behalf of a specific application or proposal, it must submit its Disclosure of Lobbying Activities, contained in its completed Form SF–LLL.

6. Disclosure of Government Assistance and Identity of Interested Parties

In accordance with the requirements of 24 CFR part 12, subpart C, PHAs must submit Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

7. Certification under 5(j) of the USHA.

A PHA certification as to one of the following is required under section 5(j) of the USHA for each application:

a. The units requested are specifically required in FY 1992 to meet the one-for-one replacement requirement set out:

(1) In section 18 of the USHA to replace public housing demolition/disposition and HOPE 3 transfers; or

(2) In section 304(g) of the USHA to replace existing public housing approved in FY 1992 for transfer under HOPE I or section 5(h) homeownership; or

b. The units requested are required to:

(1) Resolve ongoing litigation involving court orders to remedy lack of assisted or minority housing opportunities; or

(2) Implement directions of the Secretary pursuant to Family Self-Sufficiency Incentive Award units under section 23 of the USHA (as added by section 554 of the NAHA); or

(c) The units requested, limited to 100 or less, are needed for family housing to satisfy demands not being met by the section 8 Existing or Voucher rental assistance programs; or

d. That 85 percent of the PHA's dwelling units:

(1) Are maintained in substantial compliance with the section 8 housing quality standards (24 CFR 882.109); or

(2) Will be so maintained upon completion of modernization for which funding has been awarded; or

(3) Will be so maintained upon completion of modernization for which applications are pending that have been submitted in good faith under section 14 of the USHA (or a comparable State or local government program) and that there is a reasonable expectation, as determined by HUD in writing, that the application would be approved; or

e. The application is for MROP.

8. Replacement Housing Application

A PHA submitting a replacement housing application for demolition/disposition under, or for HOPE 3 transfer subject to, section 18 of the USHA, or for transfer under HOPE I or section 5(h) homeownership:

a. Must demonstrate that for demolition/disposition under section 18 of the USHA, the replacement units, alone or together with other identified replacement units,

(i) Will implement the PHA's Replacement Housing Plan submitted under 24 CFR 970.11; and

(ii) Are for no fewer than the same number of units to be demolished or disposed of; and

(iii) Will house at least the same number of individuals and families that could be served by the housing to be demolished or disposed of.

b. The proposed locations for the section 18 replacement housing (i.e., whether proposed to be located on the site of an existing public housing project where demolition is proposed (on-site) or off-site) must comply with the requirements of 24 CFR 970.11(h). Transfers under HOPE I or sections 5(h) homeownership must comply with the requirements of 24 CFR 941.202.

c. Only section 5 financed and former section 23 bond-financed (owned by a PHA instrumentality) leased housing projects that meet the following criteria may have MROP approved or may have demolition/disposition, including HOPE 3 transfers under section 18 of the USHA, or homeownership under HOPE I or section 5(h) with replacement housing approved:

(1) Clear title is vested in the PHA;

(2) The project had been converted to public housing by ACC amendment and no legal obstacles exist affecting the PHA's use of the project for public housing during the forty-year required ACC period; and

(3) The project is covered by a cooperation agreement assuring tax exemption and municipal services.

d. A replacement housing application, including HOPE 3 transfers under section 18 of the USHA, (or an MROP application proposing some demolition/disposition or conversion) must also have had a demolition/disposition, conversion, or homeownership application previously approved or approved at the time the allocation decisions are made.

9. New Construction Application.

In accordance with the requirements of section 6(h) of the USHA, every application for a new construction project must be accompanied by:

a. A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement); or

b. A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing for large families through acquisition of existing housing or rehabilitation; and

c. A statement that:

(1) Although the application is for new construction, the PHA will accept acquisition of existing housing or rehabilitation, if HUD determines that PHA cost comparison or certification of insufficient housing does not support approval of new construction; or

(2) The application is for new construction only. (In any such case, if HUD cannot approve new construction under section 6(h) of the USHA, the application will be rejected.)

10. Applications for Proposed Projects/Accessibility Requirements

Applications for proposed projects must take into consideration required compliance with the following accessibility requirements (see section II.B.3 of this NOFA):

a. Architectural Barriers Act of 1968 and the implementing rule at 24 CFR

part 40, including appendix A (Uniform Federal Accessibility Standards);

b. Section 504 of the Rehabilitation Act of 1973 and the implementing rule at 24 CFR part 8 (see Notice PIH 89-49 (PHA));

c. The Fair Housing Act (42 U.S.C. 3600-3620) and the implementing rule at 24 CFR part 100 (see Notice PIH 89-50 (PHA)).

11. Lead-Based Paint Poisoning Prevention Act

Rehabilitation, acquisition and MROP projects must comply with the Lead-Based Paint Poisoning Prevention Act (Pub.L. 91-965), section 566 of the Housing and Community Development Act of 1987 (Pub. L. 100-242), and section 1088 of the McKinney Amendment Act (Pub.L. 100-628). (See PIH Notice 91-16 (PHA).)

12. Environmental Requirements

HUD will comply with the requirements of 24 CFR part 50, implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4332 et. seq.) and related requirements of 24 CFR 50.4.

13. Examples of Ineligible Projects under Public Housing Program

Group homes, intermediate care facilities, nursing homes, projects serving special populations, etc. may not be approved under the public housing program.

14. Uniform Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Federal government-wide regulations at 49 CFR part 24, and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, govern the acquisition of real property and the displacement of any person (family, individual, business, nonprofit organization or farm) that moves from real property or moves personal property from real property, permanently as a direct result of acquisition, rehabilitation or demolition for an assisted project, including public housing development and MROP (see section II.B.3 of this NOFA).

a. Displacement should be minimized, but where it is unavoidable, timely referrals to comparable replacement units are essential to avoid excessive replacement housing payments. Also, to preclude claims by persons eligible for continued occupancy under 24 CFR part 960 and not scheduled to be displaced, PHAs must carefully follow policies governing the issuance of information notices and applicable temporary relocation policies.

b. Where necessary, reasonable relocation payments and other assistance under the Uniform Act are eligible development and MROP project costs.

15. United States Materials and Products

In accordance with section 571 of the Housing and Community Development Act of 1987, PHAs are encouraged to use materials and products mined and produced in the United States.

16. Minority Business Enterprises

PHAs are encouraged to employ Minority Business Enterprises in their contracts for development/MROP projects (see 24 CFR 941.208(e)).

17. Resident Owned Businesses

PHAs are encouraged to employ as many Resident Owned Businesses as possible in their contracts for development/MROP Projects.

18. PHA Procurement

The requirements of 24 CFR part 85 are applicable to public housing development/MROP projects as stated in 24 CFR 941.208(g). Method of selection as well as proposed contracts must be submitted pursuant to 24 CFR 941.205.

C. FSS Incentive Award Application Submission

For public housing FSS Incentive Award units, PHAs must submit a public housing development application for the number of Incentive Award units for which the PHA is applying. The application for Incentive Award units must comply with sections I.E., II.A and II.B of this NOFA, include the documents listed in section III, and meet the threshold requirements of section I.D. of this NOFA, including the submission of a PHA certification as to resident involvement (see section II.C.1) and a Demonstration of Inadequate Housing Supply (see section II.C.3). In addition, the following must be submitted:

1. Resident Involvement Certification

The PHA application must include a PHA certification that the application was developed with involvement and consultation of affected public housing residents, and includes a meaningful ongoing role for resident management corporations, resident councils, or other forms of resident involvement where RMCs and RCs and RCs do not exist. This certification shall include a support letter from RMCs where they exist, or documentation of other resident involvement and consultation. For example, the PHA must have documentation that at least the number of residents for which an FSS Incentive Award Program is proposed have formally expressed a willingness to participate in the FSS program.

2. Required Exhibits

All applicants must submit a narrative demonstration that the PHA will be able to implement an FSS program within 12 months of application approval. All applicants must submit descriptions including evidence addressing the following rating factors:

a. A description of PHA relationships with the local community (see rating factor at section I.E.2.b(1)) of this NOFA, with any written commitments from additional entities.

b. A description of past and proposed supportive services (see rating factors at section I.E.2.b(2) of this NOFA), with any written commitments from organizations and entities willing to provide services under FSS.

c. A description of PHA efforts to establish and/or support RCs, RMCs, Homeownership programs and resident based economic development activities (see rating factor at section I.E.2.b(3)), with resolutions from residents supporting FSS activities, evidence that resident participation will occur in the PCC and preparation of the Action Plan, and evidence from residents of existing resident involvement in PHA operations.

d. A description of past PHA relationships with the chief executive officer (CEO) of the unit of general local government (see rating factor at section I.E.2.b(4)), including any commitments or pledges.

e. If the PHA had an application funded under the Family Support Administration, Department of Health and Human Services or the HUD-HHS Economic Empowerment Demonstration (EED) program it should so state in this application. If the HUD-HHS EED was funded, the FSS application will automatically receive 10 rating points. (See rating factor at section I.E.2.b(6) of this NOFA.)

3. Demonstration of Inadequate Housing Supply

For FSS Incentive Award, documentation concerning rental housing supply to demonstrate a tight rental market (see section I.E.2.a of this NOFA) must be submitted to support a conclusion that there is an inadequate supply of available rental housing in the market area with an explanation of the conclusion and a description of the data

sources and methods used to obtain survey data.

a. It is recommended that PHAs consult with applicable community development agencies relative to their housing needs prior to submitting applications under this NOFA. Most of these agencies will have participated in the development of a Comprehensive Housing Affordability Strategy (CHAS).

b. Factors such as the following will provide evidence of conditions which taken together will provide documentation demonstrating a pattern of inadequate supply (generally no one factor taken alone is conclusive);

(1) The current rental housing vacancy rate is at a low level (typically four percent or less) which results in housing not being available for families seeking rental units (unless the housing market area is not growing and, as a result, experiencing low levels of demand);

(2) The annual production of rental housing units is insufficient to meet the demand arising from the increase in households, or, where there is little or no growth, is insufficient to meet the demand arising from net losses to the available inventory;

(3) The shortage of housing is resulting in rent increases exceeding those increases commensurate with rental housing operating costs; and

(4) A significant number or proportion of section 8 certificate/voucher holders are unable to find adequate housing because of the shortage of rental housing, as evidenced by PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units (typically less than 85 percent lease up within 60 days).

4. Demonstration of Need

For FSS Incentive Award, the PHA may submit any documentation, such as waiting list or vacancy rate data to demonstrate need for the housing, which will assist the Field Office in its determination of relative need.

D. MROP Application Submission

A PHA applying for MROP funding must comply with sections II.A and II.B of this NOFA, must follow CIAP procedures (see paragraph 3–6 of Handbook 7485.1 REV–4), and must submit: The Comprehensive Assessment/Program Budget (Form HUD 52825); a narrative statement addressing each of the technical review factors (see section I.F.2), and the PHA's viability review unless previously submitted under a comprehensive plan for modernization.

1. The application must identify the entire project and explain how the project, in whole or in part, meets the eligibility criteria in section I.F.1 of this NOFA. The application must identify the proposed physical and management improvement needs, estimated costs, and funding sources.

2. The PHA must also submit, with its MROP application, the PHA resolution referencing MROP and the certifications required by section II.B of this NOFA.

3. If demolition/disposition or conversion is needed for long-term viability after reconstruction, the PHA must so state in its MROP application and must have submitted a demolition/disposition or conversion application which has been approved in accordance with section I.C.2.a of this NOFA.

III. Checklist of Application Submission Requirements—All Programs

PHAs may use the following application checklist, which enumerates submission requirements of Sections II and ID, IE and IF of this NOFA. (Forms comprising the application package may be obtained from the HUD Field Office):

1. PHA is legally organized with a current (applicable) General Certificate (Form HUD 9009);

2. For development, requested units are covered by the Cooperation Agreement (Form HUD 52481) and any other State/local legal requirements are met;

3. Signed and dated complete PHA application:

a. For development (litigation, replacement, FSS Incentive Award), Form HUD 52470;

b. For MROP, Forms HUD 52824 & 52825, narrative statement addressing both the technical review factors and the PHA's viability review, unless it has been previously submitted under a comprehensive plan for modernization;

4. If more than one application is submitted, PHA priorities for receiving funding are identified;

5. Statement of whether PHA will accept fewer units;

6. PHA resolution in support of PHA application (HUD 52471);

7. For development, if Front End Funds Requested—(HUD 52472) LGB Resolution/Transcript of Proceedings and PHA Resolution (Form HUD 52471) must refer to the request for front end funds. If the PHA desires the project only if front end funds can be approved, the PHA must so state in its application;

8. PHA Certification for a Drug-Free Workplace (HUD 50070);

9. Byrd Amendment Disclosure (Form SF–LLL) and Certification Regarding Lobbying;

10. Disclosure of Government Assistance and Identity of Interested Parties (HUD Reform Act Applicant Disclosures) (Form HUD 2880);

11. Section 5(j) certification;

12. For development, if new construction application, PHA certification and supporting data under section 6(h) of the USHA;

13. For FSS Incentive Award, PHA Resident Involvement Certification, Demonstration of Ability to implement FSS within 12 months and Descriptions/evidence addressing FSS rating factors;

14. For FSS Incentive Award applications, the PHA must submit a demonstration of inadequate housing supply;

15. For FSS Incentive Award Applications, the PHA may submit documentation to demonstrate need.

IV. Corrections to Deficient Applications

Immediately after the deadline for receipt of applications, Field Offices will screen each application to determine whether all information and exhibits were submitted. If an application lacks any technical information or exhibits or contains a technical mistake, the PHA will be advised in writing and will have 14 calendar days from the date of the issuance of such notification to deliver the missing or corrected information or documentation to the Field Office. Curable technical deficiencies ralate only to items which do not improve the substantive quality of the application relative to the ranking factors. An application which does not meet the applicable threshold and NOFA requirements after the 14 day technical deficiency period will be rejected from processing and determined to be unapprovable. Inasmuch as the responsibility for submitting a complete application rests with the PHA, the failure of the HUD Field Office to identify and provide a notice of deficiency to the PHA shall not relieve the PHA of the consequences of failure to submit a complete application.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide funding for public housing development, including a portion as incentive awards for Family Self-Sufficiency Programs, and for major reconstruction of obsolete public housing.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. To the extent that the funding provided through this NOFA results in additional or improved housing, the effects on the family are beneficial.

D. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87 (See section II.B.5 of this NOFA). These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410. Telephone: (202) 708–3815 or 708–1112 (TDD). These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

F. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

G. Accountability in the Provision of HUD Assistance

HUD's regulations at 24 CFR part 12 implement section 102 of the HUD Reform Act. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access disclosures are applicable to assistance awarded under this NOFA.

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

H. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number is 14.850.

Authority. 42 U.S.C. 1437c and 1437u; 42 U.S.C. 3535(d); 24 CFR parts 906, 941, 968, and 970; and the Notice of Program Guidelines for the Family Self-Sufficiency Program, published on September 30, 1991 at 56 FR 49592.

Dated: June 12, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-14362 Filed 6-17-92; 8:45 am]

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federal register

Thursday
June 18, 1992

Part VI

Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Part 502

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 502

RIN 1215-AA79

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor

ACTION: Final rule.

SUMMARY: This rule amends the regulations to conform to changes adopted by the Immigration and Naturalization Service (INS) in October of 1989, in the Alien Registration Number series for the reporting of resident aliens who are employed in seasonal agricultural services. This rule also amends the address listed in § 502.34 of these regulations which is used for administrative hearing requests.

EFFECTIVE DATE: June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Solomon Sugarman, Chief, Branch of Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Telephone 1-800-800-0235. This is a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no additional reporting or recordkeeping requirements on the public. Reporting and recordkeeping requirements of 29 CFR part 502 are approved under Office of Management and Budget control number 1215-0148. Further approval by the Office of Management and Budget is not required.

II. Background

a. Alien Registration Number

Section 210A of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA), requires an employer to report information about work performed by certain resident aliens who perform seasonal agricultural services as defined in the INA. Any resident alien who is identified with an Immigration and Naturalization Service (INS) Alien Registration Number ("A" number) in a particular series is subject to the reporting requirement. The employer of the "reportable worker" ascertains the worker's "A" number from the information provided by the worker on the INS form I-9, which is required for all persons hired after November 6, 1986; an employee or prespective employee who is not a U.S. citizen must provide an "A" number in completing the form.

The regulations, 29 CFR 502.1(b)(1), effective as of October 1, 1988, specified that aliens lawfully admitted under section 210 of the INA for temporary residence, called "special agricultural workers" (SAWs), would be identifiable by INS "A" numbers in the A90000000 series. Section 502.1(b)(2) of the regulations provided that a technical amendment to the regulations would be issued to specify the "A" number series announced by INS for replenishment agricultural workers. A subsequent revision, effective October 1, 1989, specified in § 502.2(m) that a "replenishment agricultural worker" is identified by an "A" number beginning with A94 and followed by any six digits. Conforming changes were also made to § § 502.1(b)(2), (d), and (f), 502.10(c)(1), and 502.13(a).

In October of 1989, INS made changes to the Alien Registration Number series for reportable workers under the Immigration and Nationality Act which were not formally announced. Under the revised system, a reportable worker is an alien employed in seasonal agricultural services who was admitted with lawful temporary resident status or whose status was adjusted to lawful temporary residency, and who is identified by an INS Alien Registration Number in either the A90000000 or new A090000000 series (i.e., the number starts with either "A9" or "A09" followed by any seven digits) in the case of special agricultural workers (SAWs), and in the range of from A94399501 or new A094399501, to A94500000 or new A094500000 series (i.e., the number starts with either "A94" or "A094" followed by any six digits within the specific range of from 399501 to 500000) in the case of replenishment workers (RAWs). These series include:

(1) Resident aliens admitted under section 245A of the INA,

(2) Resident alien-special agricultural worker admitted under section 210 of the INA, and

(3) Resident alien-replenishment agricultural workers admitted between FY 1990 and FY 1993 under section 210A or the INA.

The purpose of this document is to conform the regulations to INS changes in designations of alien registration under the 'A" number series.

b. Hearing Requests

Section 502.34 of the regulations requires that any person desiring to request an administrative hearing on a notice of civil money penalty assessment must do so in writing within thirty (30) days after the date of issuance of the notice. Additionally, § 500.34 specifies that the written hearing request shall be made to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washigton, DC 20210.

This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based. Accordingly, all such hearing requests are now to be made to the Wage and Hour official that issued the notice in care of the address of the office that originated the notice.

III. Summary of Rule

Regarding SAWs, the regulation at § 502.2(n) is amended to specify that a "special agricultural worker" is identified by an "A" number beginning with either A9 or A09, followed by any seven digits. Conforming changes are made to § § 502.1(b)(1), (d), and (f), 502.10(a), and 502.12(b).

Regarding RAWS, § 502.2(m) is amended to specify that a "replenishment agricultural worker" is identified by an "A" number beginning with either A94 or A094 and followed by any six digits within the specific range of 399501 to 500000. Conforming changes are also made to § § 502.1(b)(2), (d), and (f), 502.10(c)(1), and 502.13(a).

Section 502.34 is also amended to provide for a new address for purposes of requesting administrative hearings. Under the amended regulation, such requests are to be directed to the Wage and Hour Division official who issued the notice of civil money penalty assessment, at the address appearing on the assessment notice.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291, because it will be result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because, as discussed below, no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq. pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

The Secretary has determined, pursuant to 5 U.S.C. 553(b)(3)(A), that this rule, making technical amendments to the regulations, does not require prior notice and comment. The changes to the existing regulations are minor clarifying revisions. They reflect the changed "A" number series now in use by INS, making the Department's regulations fully consistent with INS practice regarding "A" number series, and a changed address for use in requesting administrative hearings.

Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impractical and contrary to the public interest.

The Secretary also finds that good cause exists for waiver of the requirement to delay the effective date of these technical amendments. It is unnecessary to provide a 30-day delay, because the "A" number series incorporated in this rule have already been in use by the INS for more than two years. The new address for requesting administrative hearings under § 502.34, moreover, is merely a technical procedural change which does not effect any substantive rights.

Document Preparation

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 502

Administrative practice and procedure, Agricultural associations, Agricultural worker, Aliens, Farmers, Farm labor contractor, Immigration, Investigation, Labor, Penalties, Replenishment Agricultural Workers, Reporting requirements, Special Agricultural Workers.

For the reasons set forth above, 29 CFR part 500 is amended as set forth below.

Signed at Washington, DC, on this 11th day of June 1992.

Karen R. Keesling,

Acting Administrator, Wage and Hour Division.

PART 502—REPORTING AND EMPLOYMENT REQUIREMENTS FOR EMPLOYERS OF CERTAIN WORKERS EMPLOYED IN SEASONAL AGRICULTURAL SERVICES

1. The authority citation for part 502 continues to read as follows:

Authority: 8 U.S.C. 1160, 1161; 29 U.S.C. 1801 et seq.; section 502.6 also issued under 29 U.S.C. 49k.

2. In § 502.1, paragraphs (b)(1), (b)(2), (d), and (f) are revised to read as follows:

§ 502.1 Purpose and scope.

* * * * *

(b) (1) Section 210 of the INA provides that the Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien resided in the United States and performed work in seasonal agricultural services in the United States for at least 90 "man-days" during the 12-month period ending on May 1, 1986. An individual so legalized is called a special agricultural worker (SAW). A special agricultural worker is given an Immigration and Naturalization Service (INS) Alien Registration Number in either the A90000000 or A090000000 series.

(2) Section 210A of the INA provides that before the beginning of each fiscal year (beginning 1990 and ending 1993), the Secretaries of Labor and Agriculture shall jointly determine the number (if any) of replenishment agricultural workers (RAWS) to be admitted to the United States, or otherwise acquire the status of aliens lawfully admitted for temporary residence, to meet a shortage of agricultural workers. A replenishment agricultural worker is identified by an INS Alien Registration Number beginning with either A94 or A094, and followed by any six digits within the specific range of 399501 to 500000.

* * * * *

(d) Any person who hires any worker must complete the Employment Eligibility Verification Form (INS Form I–9). Any resident alien who is identified with an Alien Registration Number ("A" number) in either the A90000000 or A090000000 series on the I–9 Form (including any replenishment agricultural worker, who is identified by an INS Alien Registration Number beginning with either A94 or A094 and followed by any six digits within the specific range of 399501 to 500000) and who is employed in seasonal agricultural services, is an employee subject to this part (termed "reportable worker"). Employers cannot reliably determine whether such an employee is a special agricultural worker since employees cannot be required to document such status to anyone other than INS (see 8 CFR 274a.2 (b)(v)).

* * * * *

(f) Any employment of a reportable worker for at least one work-day in seasonal agricultural services is subject to reporting to the Federal Government. Additionally, any employment of a replenishment agricultural worker (who is identified by an INS Alien Registration Number beginning with either A94 or A094 and followed by any six digits within the specific range of 399501 to 500000) in seasonal agricultural services is subject to both the reporting requirements to the Federal Government and to the individual worker.

* * * * *

2. In § 502.2, paragraphs (m) and (n) are revised to read as follows:

§ 502.2 Definitions pertaining solely to a reportable worker employed in seasonal agricultural services.

* * * * *

(m) *Replenishment Agricultural Worker* (RAW) is an individual with an INS Alien Registration Number beginning with either A94 or A094 and followed by any six digits within the specific range of 399501 to 500000 who was admitted to the United States during FY 1990 through FY 1993 for lawful temporary resident status or whose status was adjusted to lawful temporary residency to meet a shortage of workers employed in seasonal agricultural services.

(n) *Reportable Worker* is an alien employed in seasonal agricultural services who was admitted with lawful temporary resident status or whose status was adjusted to lawful temporary residency, and who is identified by an INS Alien Registration Number in either the A90000000 or A090000000 series (i.e. the number starts with either "A9" or "A09," followed by any seven digits). This series includes:

(1) Resident aliens admitted under section 245A of the INA,

(2) Resident alien-special agricultural worker admitted under section 210 of the INA, and

(3) Resident alien-replenishment agricultural workers admitted between FY 1990 and FY 1993 under section 210A of the INA.

* * * * *

3. In § 502.10, paragraphs (a)(1) and (c)(1) are revised to read as follows:

§ 502.10 Requirements for reporting and employing a reportable worker in seasonal agricultural services.

* * * * *

(a) *Identify reportable worker(s).* (1) When completing the I–9 at the time of hiring (or reviewing a State Employment Service certificate), identify any reportable worker subject to these regulations. A reportable worker is identified as a worker with an INS Alien Registration Number in either the A90000000 or A090000000 series employed in seasonal agricultural services;

* * * * *

(c) *Report to the worker.* (1) For the period October 1, 1989, through September 30, 1992, furnish to any reportable worker who is a replenishment agricultural worker (identified by an INS Alien Registration Number beginning with either A94 or A094 and followed by any six digits within the specific range of 399501 to 500000) and who is employed for at least one work-day in seasonal agricultural services during the pay period, a report on each pay day containing the information specified in this part (see § 502.13), formulated from employment records maintained (see § 502.11); and

* * * * *

4. In § 502.12, paragraph (b) is revised to read as follows:

§ 502.12 Reporting to the Federal Government.

* * * * *

(b) A report must be filed with respect to any reportable worker (worker having an INS Alien Registration Number ("A Number") in either the A90000000 or A090000000 series) who has employed in seasonal agrcultural services for one or more work-days at any time during the quarter reported. The Alien Registration Number is furnished by the resident alien when the Form I–9 is completed at the time of hiring (or by a State Employment Service Agency on the certification of employment eligibility verification furnished the employer when referring an employee for agricultural employment).

* * * * *

5. In § 502.13, paragraph (a) is revised to read as follows:

§ 502.13 Reporting to the replenishment agricultural worker.

(a) For the period beginning October 1, 1989, through September 30, 1992, any person employing any reportable worker who is a replenishment agricultural worker (identified by an INS Alien Registration Number beginning with either A94 or A094 and ending with any six digits within the specific range of 399501 to 500000) in seasonal agricultural services for one or more work-day(s) during any pay period shall provide such worker, with each wage payment, no less than twice per month, a complete, accurate, and legible report certifying such reportable worker's employment.

* * * * *

6. In § 502.34, paragraphs (a) and (c) are revised to read as follows:

§ 502.34 Request for hearing.

(a) Any person desiring to request an administrative hearing on a civil money penalty assessment pursuant to this part shall make such request in writing to the official who issued the notice of assessment, at the Wage and Hour Division address appearing on the assessment notice. Such request must be made no later than thirty (30) days after the date of issuance of the notice referred to in § 502.32.

* * * * *

(c) The request for hearing must be received by the official at the address set forth in paragraph (a) of this section, within the time set forth in that paragraph. For the affected person's protection, if the request is by mail, it should be by certified mail, return receipt requested.

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The United States Government Manual 1991/92

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

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Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

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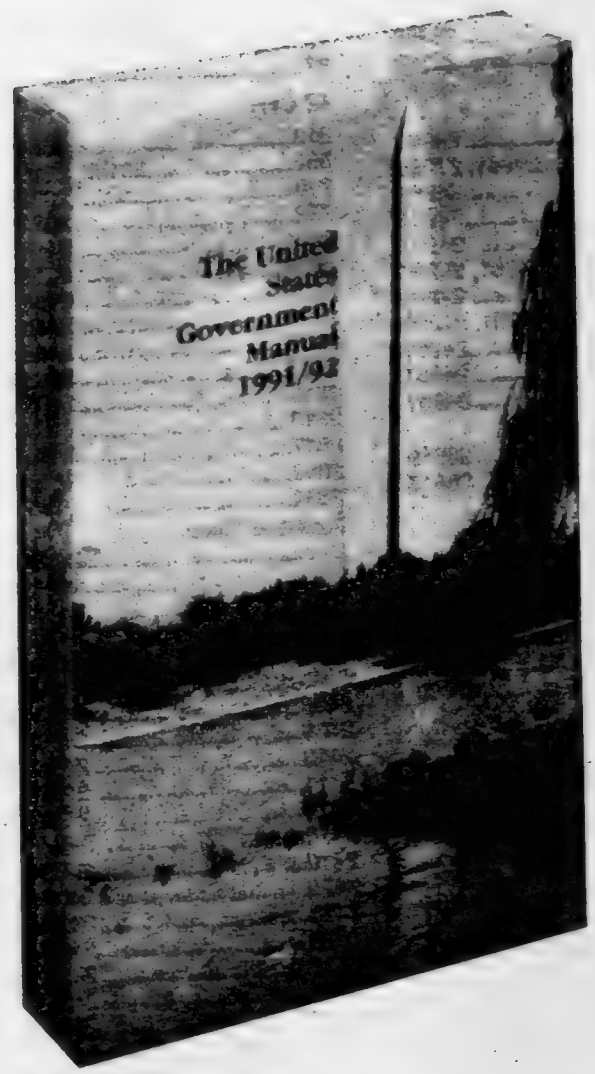

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Pages 27345-27676

federal register

Friday
June 19, 1992

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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Presidential Documents

Title 3—

The President

Proclamation 6448 of June 17, 1992

Father's Day, 1992

By the President of the United States of America

A Proclamation

Father's Day not only brings due honor to the men who have dedicated themselves to one of life's highest callings but also provides the American people with an opportunity to reflect on all that fatherhood means to us as individuals and as a Nation.

A person who has been blessed with a loving, responsible, and supportive father is considered, by all accounts, to be very lucky. In some respects, he or she is. Yet, however fortunate one may feel to have a faithful and devoted father, we know that "luck" ultimately has little to do with it. It is not luck that motivates a man to protect, nurture, and provide for his children. It is not luck that keeps a man at his family's side when times are tough. No, it is not luck; rather, it is the unconditional love and lifelong commitment of a man who understands and accepts his responsibilities and is determined to endure the hard work and sacrifices that are an inevitable part of family life.

This, of course, is not to deny that some families and fathers experience a tragic share of misfortune—that some dads, no matter how hard they might try, encounter extraordinary obstacles and setbacks. However, the American who counts himself lucky on Father's Day gives thanks, not for the blind charity of fate, but for the deliberate courage of a father who always tried his best, even in the face of adversity; who always labored to provide full measures of love and discipline; and who, above all, constantly strived to instill in his children the virtues of faith, industry, personal responsibility, and concern for others. A good father may be rich or poor, worldly or simple, but in every case he is determined to look after the safety and well-being of his children, as well as their physical, emotional, and spiritual development.

A loving father makes a difference by his presence alone. Indeed, youngsters who look forward to their dad's return from work or other responsibilities are delighted by the sound of his car in the driveway or of his sure step upon the threshold. Children treasure their father's attention and affection, as well as his encouragement and guidance, and in his company they find security, reassurance, and direction. While many a dad has been called far from home, either by military duty or by some other serious obligation, a loving father remains ever close in heart—and eager to return one day. In such cases, a father's absence is redeemed as an expression of love—like that of the distant soldier who is resolved to promote a safer, more peaceful world for his children.

While a father's presence makes a profound difference in the lives of his children, most important is his active participation in the development of their character and values. Parenthood is, from its most fundamental level, oriented by nature toward partnership and union. Thus, if the family is the foundation of society, then fatherhood may well be described as a cornerstone: Just as the physical structure of a house stands with each brick supporting the other, so do the institutions of home and family life endure through the mutual support of husband and wife.

Finally, it is not surprising that we are reminded that the Fourth Commandment given to man by God is the first with a promise: Honor your father and your mother, "that it may be well with you and that you may live long on the earth." This injunction might readily apply to nations, as well as to individuals—each of us should honor not only our own moms and dads but also the divinely ordained *institutions* of motherhood and fatherhood. These are the twin pillars of strong, loving families and stable, caring communities, and the very future of our Nation begs that we offer them our respect and support.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 21, as Father's Day. I urge all Americans to observe that day with appropriate activities, including prayer in their homes and places of worship, as a mark of abiding appreciation and respect for their fathers. I direct government officials to display the flag of the United States on all Federal buildings on that day, and I encourage individual citizens to display the flag at their homes and other suitable places as well.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of June, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

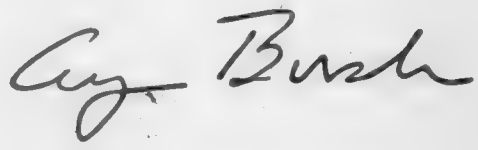

[FR Doc. 92-14656
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Rules and Regulations

Federal Register
Vol. 57, No. 119
Friday, June 19, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-91-016]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of results of referendum.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Williamston, Robersonville, and Windsor, North Carolina, to become a single consolidated market. A mail referendum was conducted during the period of April 27–May 1, 1992, among tobacco growers who sold tobacco on these markets in 1991 to determine producer approval/disapproval of the designation of these three markets as one consolidated market. Growers did not approve the merger. Therefore, the three markets will remain individually designated markets.

EFFECTIVE DATE: June 19, 1992.

FOR FURTHER INFORMATION CONTACT: Ernest Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Room 502 Annex, Washington, DC 20090–6456, telephone (202) 205–0567.

SUPPLEMENTARY INFORMATION: A notice was published in the April 22, 1992, issue of the **Federal Register** (57 FR 14669) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Williamston, Robersonville, or Windsor during the 1991 marketing season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Williamston, Robersonville, and Windsor, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory, Federal grading of tobacco sold at auction for the 1992 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Williamston, North Carolina, on November 7, 1991, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the April 27—May 1 referendum were mailed to 1,347 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The department received a total of 399 responses: 187 eligible producers voted in favor of the consolidation; 197 eligible producers voted against the consolidation; and 15 ballots were determined to be invalid. Since only 49 percent of the eligible votes received approved the consolidation, Williamston, Robersonville, and Windsor will remain separate auction markets.

Dated: June 16, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92–14460 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 915

[Docket No. FV–91–449FR]

Avocados Grown in South Florida; Finalize Relaxed Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule an interim final rule which relaxed grade requirements for Florida avocados to permit handlers to ship avocados of dissimilar varieties in the same container when they are shipped to destinations within the production area in South Florida. Prior to this relaxation, all of the avocados in a particular container shipped to any destination were required to have similar varietal characteristics in order to meet a minimum grade requirement of U.S. No. 2. The relaxation was designed to facilitate the picking and preparation of avocados for production area markets when more than one avocado variety matured at the same time, and help the Florida avocado industry more efficiently market its crop in production area markets.

EFFECTIVE DATE: July 20, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in

which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area in South Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The interim final rule amending § 915.306 (7 CFR 915.306) was published in the **Federal Register** on January 31, 1992, with a 30-day comment period ending March 2, 1992. No comments were received.

The interim final rule amended § 915.306 by relaxing grade requirements so that handlers could ship avocados of dissimilar varieties in the same container when they are shipped to destinations within the production area. Prior to this amendment, all of the avocados in a particular container shipped to any destination were required to have similar varietal characteristics in order to meet a minimum grade requirement of U.S. No. 2. The U.S. No. 2 grade requirements are defined in the United States Standards for Grades of Florida Avocados. Container regulations for Florida avocados are specified in §§ 915.305 and 915.306.

The interim final rule was designed to facilitate the picking and preparation of avocados for production area markets when more than one avocado variety matures at the same time, and help the Florida avocado industry more efficiently market its crop. Growers and handlers sometimes have relatively small quantities of avocados consisting of several dissimilar varieties ready for picking and packing at the same time, which they intend to ship to markets within the production area only. These growers and handlers believe that time and expense savings may be realized when commingling of such avocados in the same picking and shipping containers is permitted.

Avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 (7 CFR 944.28), at the present time. The grade requirement for imported avocados was not changed, since the amendment did not change the minimum grade requirement of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area. Section 8e of the Act (7 U.S.C. 608e–1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Maturity requirements for Florida avocados handled to points both within and outside the production area are specified in § 915.332. These requirements, based on minimum weights and diameters, remain in effect unchanged by this rule.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (57 FR 3715, January 31, 1992), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 915.306, which was published in the **Federal Register** (57 FR 3715, January 31, 1992) is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: June 15, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–14451 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 916

[Docket No. FV–91–461FR]

Nectarines Grown in California; Temporarily Relaxed Minimum Size Requirements for Nectarines for the 1992 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule an interim final rule which temporarily relaxed the minimum size requirements for fresh shipments of May Glo variety nectarines to size 108 from the current size 96 for the period April 15, 1992, through May 5, 1992, after which period the minimum size reverts back to size 96 for the remainder of the season. This rule also relaxed the minimum size requirements for April Glo variety nectarines to size 108 from the current applicable tighter requirements for the entire 1992 shipping season. These relaxations were based on this season's prosecutive crop and market demand conditions, and are expected to help in the successful marketing of the 1992 season May Glo and April Glo variety nectarine crops.

EFFECTIVE DATE: July 20, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 916 (7 CFR part 916) regulating the handling of nectarines grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 245 California nectarine handlers subject to regulation under the marketing order covering nectarines grown in California, and about 740 producers of nectarines in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

The interim final rule was published in the **Federal Register** on February 3, 1992, with a 30-day comment period ending March 4, 1992. No comments were received. That rule amended § 916.356 (7 CFR 916.356, as amended at 56 FR 22106, May 14, 1991, and 56 FR 40220, August 14, 1991), which specifies grade, maturity, and size requirements for fresh California nectarine shipments. This rule is in effect on a continuing basis subject to amendment, modification, or suspension as may be recommended by the Nectarine Administrative Committee (committee) and approved by the Secretary. The committee met on December 4, 1991, and unanimously recommended that the minimum size requirements for May Glo and April Glo variety nectarines be temporarily relaxed during the 1992 season.

The interim final rule amended paragraphs (a)(2) and (a)(3) of § 916.356 to relax minimum size requirements for fresh shipments of May Glo variety nectarines to size 108 from the current size 96 for the period April 15, 1992, through May 5, 1992, and to reestablish the size 96 requirement for the remainder of the season on and after May 6, 1992. May Glo variety nectarines shipped on and after May 6, 1992, are generally expected to be of sufficient size to meet the size 96 requirement.

Paragraph (a)(3) of § 919.356 provides that no handler shall ship any package or container of May Glo variety nectarines unless the nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 nectarines in the lug box, and unless such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines. Such nectarines are referred to size 96 fruit. Paragraph (a)(2) provides, for certain other specified varieties, that no handler shall ship any package or container of such nectarines unless the nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box, and unless such nectarines, when packed in any other container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines. Such nectarines are referred to as size 108 fruit.

The interim final rule also relaxed the minimum size requirements for April Glo variety nectarines to size 108 from the current tighter requirements for the entire 1992 shipping season. April Glo variety nectarines mature very early in the season at relatively small sizes, and they are not expected to attain sufficient size this season to meet the current minimum size requirements.

The interim final rule relaxed the minimum size requirements for April Glo variety nectarines specified in paragraphs (a)(6), (a)(7), and (a)(8) of § 916.356, by exempting that variety from such requirements and by adding a new paragraph (a)(9) specifying that April Glo variety nectarines must be at least size 108. Such nectarines are of a size that, when packed in molded forms (fray pack) in a No. 22D standard lug box, will pack, in accordance with the requirements of standard pack, not more than 108 nectarines in a lug box; or are of a size that, in any other container, a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines. In the absence of these changes, April Glo nectarines would have had to meet the more restrictive size requirements specified in paragraphs (a)(6), (a)(7), and (a)(8) of § 916.356.

The committee reported that most nectarines of these varieties are grown in the Coachella Valley desert area in California where they mature very early in the season at relatively small sizes. Fruit grown in this area generally does not size as well as fruit grown in other areas of the State, due to the onset of very hot weather early in the season which retards further fruit growth. Relaxation of the minimum size requirements as specified is expected to result in more May Glo and April Glo nectarines being shipped to the fresh market and increase returns to California nectarine growers.

The minimum size requirements established for California nectarines recognize that larger sized nectarines provide greater consumer satisfaction than those of smaller sizes. Different minimum size requirements have been issued for the various nectarine varieties, reflecting both seasonal and varietal influences which affect average fruit sizes. Smaller minimum sizes

generally have been established for earlier maturing varieties, while later maturing varieties, since they tend to attain a larger size at maturity, have been required to meet larger minimum sizes.

The desert area of the Coachella Valley is the growing area in California with the earliest nectarine harvests. Fruit grown in this area generally does not size as well as fruit grown in other areas of the State, due to the onset of very hot weather early in season which retards further growth and results in a relatively short growing season. In general, fruit grown in the Coachella Valley is smaller in size than fruit grown in other parts of the State. Nectarines have been grown commercially in the Coachella Valley for about six years.

Most May Glo and April Glo variety nectarines in California are grown in the Coachella Valley where they mature very early in the season at relatively small sizes compared with most other nectarines varieties grown in the State.

The May Glo and April Glo 1992 harvest season is expected to begin about mid-April in the Coachella Valley, and continue for about three weeks, depending on temperatures during the harvest period. May Glo nectarines from other parts of the State will continue to be shipped for several more weeks and are expected to reach the size 96 level. The size relaxations for May Glo and April Glo nectarines is for the 1992 season only to permit further evaluation of the sizing characteristics of these varieties in the Coachella Valley and other areas of the State.

This action reflects the committee's and the Department's appraisal of the need to maintain the relaxed requirements. The Department believes that relaxed requirements will have a beneficial impact on producers and handlers because it will provide handlers and growers additional opportunities for marketing the 1992 season May Glo and April Glo nectarine crops.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (57 FR 3918, February 3, 1992), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 916 is amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 916.356, which was published in the **Federal Register** (57 FR 3918, February 3, 1992), is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: June 15, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–14452 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 966 and 980

[Docket No. FV–91–434]

Tomatoes Grown in Florida, and Tomatoes Imported Into the United States; Change in the Effective Date for Domestic and Imported Tomato Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule changes the effective period of the handling regulations in effect for fresh market shipments of Florida tomatoes and imported tomatoes from June 30 to June 15 each season. Currently, both the domestic and import tomato handling regulations are in effect each season from October 10 through June 30. The change in the effective period applicable to domestic tomatoes is based on a recommendation of the Florida Tomato Committee, which works with the Department of Agriculture in administering the Federal marketing order for Florida tomatoes. The change applicable to tomatoes offered for importation is necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: This rule is effective June 15, 1992; comments received by July 20, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2170.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has

jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 dyas after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Florida tomatoes subject to regulation under the marketing order, and approximately 250 Florida tomato producers in the production area. There are approximately 70 importers of tomatoes who will be subject to the tomato import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,000,000. The majority of the handlers, producers, and importers of tomatoes may be classified as small entities.

Under the Florida tomato marketing order (order), tomatoes produced in the production area and shipped to fresh market channels are required to meet certain handling requirements in effect from October 10 through June 30 of each year. The production area is defined as the counties of Pinellas, Hillsborough, Polk, Osceola, and Brevard and all counties situated south of the before-mentioned counties.

The Florida Tomato Committee (Committee), the agency responsible for local administration of the order, met on September 5, 1991, and unanimously recommended changing the effective period of the handling regulation from June 30 to June 15.

Current requirements include a minimum grade of U.S. No. 3 and a minimum size of 2⅝₃₂ inches in diameter. Pack and container requirements are also in effect for tomato shipments to destinations outside the regulated area, which is defined as all of the State except the panhandle. The current regulation establishes three tomato size designations which are defined as medium, large, and extra-large. Each size designation is in terms of a minimum and maximum diameter. For example, medium size tomatoes range from a minimum diameter of 2⅝₃₂ inches to a maximum diameter of 2¹⅞₃₂ inches. There is a ⅓₃₂ inch overlap between the current size designations. Growers in the production area produce and harvest tomatoes into late June. In recent years, supplies of tomatoes grown in North Florida have been available in late June and in direct competiton with tomatoes produced in the production area. Heavy supplies of North Florida tomatoes are expected to be available this season.

Tomatoes grown outside the production area are not covered by the marketing order and therefore are not required to meet the grade, size, pack, and container requirements established for tomatoes grown in the production area, even when packed in the production area. According to the Committee, handlers regulated under the marketing order believe that having to meet the requirements of the handling regulation during the last two weeks that the handling regulation is in effect places them at a competitive disadvantage. Since tomatoes produced in North Florida are not regulated, handlers of such tomatoes do not have to pay inspection fees, and are able to sell their tomatoes at a lower price. The Committee believes that ending the handling requirements two weeks early will allow handlers of production area tomatoes to successfully compete in the marketplace with tomatoes produced in other areas.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for tomatoes under a domestic marketing order, imported tomatoes must meet the same or comparable requirements. Because this interim final rule changes the effective period of the domestic handling regulation, a corresponding change is needed in the tomato import regulation. For clarity, § 966.323 paragraph (f), *Applicability to imports*, will be removed from the domestic handling regulation, and the requirements therein will be relocated to the tomato import regulation. The tomato import regulation which appears in § 980.212 will be changed to reflect this action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The United States Trade Representative (USTR) has reviewed this action to determine whether it is inconsistent with U.S. internatinal trade obligations and concurs with its implementation.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relieves handling requirements and to be of maximum benefit for the 1992 season should be effective by June 15; (2) tomato shippers are aware of this action which was unanimously recommended by the Committee at a public meeting; (3) there is no special preparation required of affected handlers; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

7 CFR Part 980

Import regulations, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are amended to read as follows:

1. The authority citation for 7 CFR parts 966 and 980 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 966—TOMATOES GROWN IN FLORIDA

2. Section 966.323 is amended by revising the introductory text and removing paragraph (f) to read as follows:

§ 966.323 Handling regulation.

From October 10 through June 15 of each season, except as provided in paragraph (b) and (d) of this section, no person shall handle any lot of tomatoes produced in the production area for shipment outside the regulated area unless it meets the requirements of paragraph (a) of this section, and no person shall handle any lot of tomatoes

for shipment within the regulated area unless it meets the requirements of paragraphs (a)(1), (a)(2)(i), and (a)(4) of this section.

* * * * *

PART 980—VEGETABLES; IMPORT REGULATIONS

3. Section 980.212 is amended by revising paragraph (b)(1) to read as follows:

§ 980.212 Import regulations; tomatoes.

* * * * *

(b) * * *

(1) From October 10 through June 15 of each season, tomatoes offered for importation shall be at least 2–8/32 inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots with a minimum diameter of 2–17/32 inches and larger shall be at least U.S. No. 3 grade. All other tomatoes shall be at least U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2–17/32 inches in diameter shall grade at least U.S. No. 2.

* * * * *

Dated: June 15, 1992.

W.H. Crocker,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–14453 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[Docket No. FV–92–040FR]

Handling of Almonds Grown in California; Extension of Date for Satisfying Handler Reserve Disposition Obligations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule extends from March 10 to September 1, 1992, the date by which handlers of California almonds must satisfy their 1990–91 crop year reserve disposition obligations. A preliminary injunction hearing regarding the disposition of reserve almonds was held on April 6, 1992, and no decision has been made on the matter. Therefore, this action allows handlers to continue disposing of their reserve almonds until September 1, 1992.

EFFECTIVE DATE: March 10, 1992.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20009–8456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action extends from March 10 to September 1, 1992, the date by which handlers of California almonds must satisfy their 1990–91 crop year reserve disposition obligations. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entitites.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

The salable, reserve, and export percentages for the 1990–91 almond crop were first established in a final rule published in the **Federal Register** on September 21, 1990 (55 FR 38793). The initial salable percentage was 65 percent, the reserve percentage was 35 percent, and the export percentage was 0 percent. The Board based its recommendations on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year.

On December 3, 1990, the Board unanimously recommended revising the salable and reserve percentages. Subsequently, an interim final rule revising the salable percentage from 65 to 70 percent and revising the reserve percentage from 35 to 30 percent was published in the **Federal Register** on February 11, 1991 [56 FR 5307].

At its February 21, 1991, meeting the Board unanimously recommended to further revise the almond salable and reserve percentages for the 1990–91 crop year from 70 to 80 percent and 30 to 20 percent, respectively. A final rule was published in the **Federal Register** on May 31, 1991 (56 FR 24678).

The Board made its final review of the 1990–91 crop year salable and reserve percentages at its May 10, 1991, meeting. The Board unanimously recommended to increase the salable percentage from 80 percent to 93 percent and to decrease the reserve percentage from 20 percent to 7 percent. A final rule was published in the **Federal Register** on September 30, 1991 (56 FR 49392).

Section 981.66(e) of the order provides that all reserve almonds which remain unsold as of September 1 of the next crop year shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets. The date of September 1 may be extended to a later date by the

Secretary, upon recommendation of the Board or other information.

In a mail vote completed on October 19, 1990, the Board unanimously recommended to extend the reserve disposition date to December 31, 1991, for the 1990–91 crop year only. This action was an effort on the part of the Board to give handlers additional time to dispose of their reserve almonds. A final rule was published in the **Federal Register** on March 14, 1991 (56 FR 10793).

Effective December 31, 1991, a final rule extended the disposition obligation date to January 20, 1992 (57 FR 1858, January 16, 1992) to allow all handlers to continue disposing of their reserve almonds after the December 31 deadline. This action was taken because on December 19, 1991, a temporary restraining order (TRO) was granted in U.S. District Court in Fresno, California, preventing the Board from disposing of a handler's remaining 1990–91 reserve almonds after the December 31 deadline.

At that time, a hearing for a preliminary injunction was scheduled for January 13, 1992. However, that hearing was delayed until March 3, 1992. Thus, the January 20, 1992, disposition obligation date was extended to March 10, 1992 (57 FR 2984, January 27, 1992).

This action further extends the disposition date from March 10 to September 1, 1992. The hearing for the preliminary injunction was held on April 6, 1992, and no decision has been made on the matter. Therefore, the disposition date is being extended to September 1, 1992.

This action also further extends from June 30 to December 1, 1992, the date by which handlers are required to submit documentation to the Board verifying their disposition of reserve almonds to eligible outlets. Pursuant to § 981.67, the Board may authorize handlers to act as its agents in disposing of reserve almonds. The agency agreement in place for the 1990–91 crop year specifies the terms and conditions that handlers are required to meet when acting as the Board's agents. The extension of the document filing date to December 1, 1992, will provide handlers adequate time to prepare and submit the required documentation on their reserve dispositions.

Based on the above, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant matter presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on handlers by extending until September 1, 1992, the date for disposing reserve almonds; and (2) this action should be taken as soon as possible so that handlers may plan their operations accordingly.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Paragraph (d) of § 981.467 is revised to read as follows:

§ 981.467 Disposition in reserve outlets by handlers.

* * * * *

(d) For the 1990–91 crop year only, the reserve disposition obligation date is extended until September 1, 1992, and the date for submitting documentation verifying reserve dispositions is extended to December 1, 1992.

Dated: June 15, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–14450 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR part 1421 with respect to the farmer-owned reserve (FOR) program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of the Agricultural Act of 1949 (the 1949 Act), as amended. This rule implements the changes made to section 110 by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act). This rule simply codifies the determination made by the Secretary of Agriculture that 1991 crop feed grains may not be pledged as collateral for FOR loans.

EFFECTIVE DATE: March 15, 1992.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Director, Feed Grains Analysis Division (FEGAD), room 3744, South Building, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013 or call (202) 720–4417.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and it has been designated as "major". A Final Regulatory Impact Analysis has been prepared and is available from the above-named individual.

The title and number of the Federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this rule applies are Grain Reserve—10.067.

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12778. This rule does not involve the preemption of State law; it is retroactive to March 15, 1992; and it does not involve any exhaustion of administrative remedy issues.

Background

Section 110 of the 1949 Act sets forth the statutory authority for the FOR program which was added to the 1949 Act by the Food and Agriculture Act of 1977. The FOR was originally intended to encourage producers to store wheat and feed grains during times of surplus

for orderly marketing at a later time. As noted in the Conference Report to the 1990 Act, however, experience has shown that the FOR has not operated in an efficient manner:

> The managers feel that the FOR has not been operated in an efficient manner in the recent past. The changes made in this section are intended to provide for a more moderate transition of grain into and out of the reserve. The managers note that the program has, in the past, had the effect of completely isolating the reserve from the market—some wheat from the 1978 crop remains in the reserve at the time this Act is being completed. The managers intend that the changes made in the Act will allow for a more orderly flow of grain into and out of the FOR. Accordingly, the amendments adopted in the conference substitute become effective December 1, 1990, to govern the administration of the FOR as of that date.

In order to ensure that unreasonably large quantities of grain are not placed in the FOR, the 1990 Act amended section 110 to provide that the maximum quantity of wheat in the FOR cannot exceed 450 million bushels and the maximum quantity of feed grains cannot exceed 900 million bushels; there are no minimum quantities which must be maintained in the FOR. The maximum quantity of wheat in the FOR may be established within the range of 300–450 million bushels and the maximum quantity of feed grains within a range of 600–900 million bushels.

Entry into the FOR is triggered based upon price and stocks-to-use ratios. Section 110 provides:

(2) *Discretionary Entry*—The Secretary may make extended loans available to producers of wheat or feed grains if:

(A) The Secretary determines that the average market price for wheat or corn, respectively, for the 90-day period prior to December 15 for wheat or March 15 for feed grains is less than 120 percent of the current loan rate for wheat or corn, respectively; or

(B) As of the appropriate date specified above the Secretary estimates that the stocks-to-use ratio on the last day of the current marketing year will be:

(i) In the case of wheat, more that 37.5 percent; and

(ii) In the case of corn, more than 22.5 percent.

(3) *Mandatory Entry*—The Secretary shall make extended loans available to producers of wheat or feed grains if the conditions specified in subparagraphs (A) and (B) of paragraph (2) are met for wheat and feed grains, respectively.

If neither of the price or stocks-to-use ratio conditions is met, the Secretary has no authority to make extended loans available to producers of wheat or feed grains.

Section 110 provides that the determination of whether or not there will be entry of wheat into the FOR will be announced by December 15 of the year in which the crop of wheat was harvested and, in the case of feed grains, March 15 of the year following the year in which the crop of corn was harvested.

If entry into the FOR is allowed, as noted in the Conference Report, the terms and conditions of the FOR loans are designed to allow greater flexibility to producers than was previously allowed under section 110:

> The current statutory restrictions on access to FOR grain severely restrict usefulness of the FOR. The amendments adopted in the Conference substitute will allow producers to gain access to FOR-held grain to encourage producers to redeem grain from the FOR as market conditions and individual marketing plans warrant. The amendments allow all producers to redeem FOR loans at any time without imposition of penalties, as exist in current law. The amendments also provide that once market prices reach 95% of the current established price for the commodity, storage payments will end, and loans extended for FOR grain will begin accruing interest once market prices reach (sic) 105% of the established price for the commodity.

Storage payments will be paid with respect to FOR grain after the fact on a quarterly basis. Section 110 also provides:

> The Secretary shall cease making storage payments whenever the price of wheat or feed grains is equal to or exceeds 95 percent of the then current established price for the commodities, and for any 90-day period immediately following the last day on which the price of wheat or feed grains was equal to or in excess of 95 percent of the then current established price for the commodities.

Although the FOR program was intended to ensure that grain would come out of the FOR when prices were high, producers have shown a reluctance to repay FOR loans. In large part, this is due to the storage payments which they could earn under the FOR and due to special Internal Revenue Code tax provisions which allow producers the option to defer the declaration of the proceeds of CCC price support loans as income until the maturity of the loan.

In order to ensure orderly management of the FOR, section 110 provides that producers may, if entry is allowed, only enter the FOR after the maturity of the regular 9-month price support loan expired. Also, in order to provide for equitable treatment of producers, section 110 provides that the Secretary shall take regional differences into consideration when administering the FOR.

As discussed above, the determination as to whether there will be entry into the FOR is based upon a review of the market prices for the 90 days immediately preceding the determination, as well as upon a projection of the estimated stocks-to-use ratio which is projected to exist at the end of the marketing year for wheat and corn, respectively. Accordingly, on March 13, 1991, the Secretary announced that the 1991 corn "stocks-to-use" ratio was less than 22.5 percent and that the 90-day market price of corn was in excess of 120 percent of the 1991 price support level.

Based on a review of existing and projected market conditions, the Secretary has no authority to allow the 1991 crop feed grains into the FOR. This final rule amends 7 CFR part 1421 to set forth this determination.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Final Rule

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425 and 1445e; 15 U.S.C. 714b and 714c.

2. Section 1421.742 is revised to read as follows:

§ 1421.742 Reserve quantity.

(a) The maximum quantity of 1990 crop wheat which may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended, is 300 million bushels. No quantity of 1990 crop feed grains may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended.

(b) No quantity of 1991 crop wheat and feed grains may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended.

Signed at Washington, DC on June 12, 1992.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–14461 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-267-AD; Amendment 39-8264; AD 92-12-04]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to de Havilland Model DHC-7 series airplanes, that requires a one-time dye penetrant inspection to detect cracks in flap track no. 1, and replacement of cracked flap tracks; and modification of the lower surface of flap track no. 1. This amendment is prompted by reports of cracks found on in-service airplanes on the lower surface of flap track no. 1 due to high loads imposed by the flap roller bearing assembly. The actions specified by this AD are intended to prevent reduced structural integrity of flap track no. 1.

DATES: Effective July 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to de Havilland Model DHC-7 series airplanes was published in the Federal Register on January 15, 1992 (57 FR 1696). That action proposed to require a one-time dye penetrant inspection to detect cracks in flap track no. 1, and replacement of cracked flap tracks; and, if no cracks are found, modification of the lower surface of flap track no. 1.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and public interest require the adoption of the rule as proposed.

The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 36 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,790.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-12-04. **de Havilland, Inc.:** Amendment 39-8264. Docket 91-NM-267-AD.

Applicability: de Havilland Model DHC-7 series airplanes; serial numbers 1 through 23; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of flap track no. 1, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time dye penetrant inspection to detect cracks in flap track no. 1, in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(b) If cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the flap track in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(c) If no cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, within 6 months after the effective date of this AD, modify the lower surface of flap track no. 1 in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repairs shall be done in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601

Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on July 24, 1992.

Issued in Renton, Washington, on May 12, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-14288 Filed 6-18-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

RIN 1545-AP25

Statement of Procedural Rules; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the Statement of Procedural Rules which were published on Tuesday, May 28, 1991, (56 FR 24001). The Statement of Procedural Rules sets forth the procedural rules of the Internal Revenue Service for all taxes it administers as well as certain rules that apply to the Bureau of Alcohol, Tobacco, and Firearms.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick W. McDonough of the Office of Director of Practice, Internal Revenue Service, at (202) 535-6787 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The procedural rules that are the subject of this correction are a revision and restatement of the Conference and Practice Requirements contained in the Statement of Procedural Rules (26 CFR part 601). The requirements contain the procedural rules for powers of attorney required for representation of taxpayers before the Internal Revenue Service.

Need for Correction

As published, the procedural rules contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcohol beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Petroleum, Reporting and recordkeeping requirements, Taxes.

PART 601—STATEMENT OF PROCEDURAL RULES

Accordingly, 26 CFR part 601 is corrected by making the following correcting amendments:

1. The authority citation for subpart E of part 601 continues to read as follows:

Authority: 68A Stat. 917; 26 U.S.C. 7805; 5 U.S.C. 301.

§ 601.502 [Amended]

2. The paragraphs under § 601.502 are redesignated as follows:

Old paragraph	New paragraph
Undesignated first paragraph	(a).
(i)	(a)(1).
(ii)	(a)(2).
(a)	(b).
(b)	(c).

§§ 601.501 through 601.505 [Amended]

3. In the list below, for each section indicated in the left column, remove the language indicated in the middle column from wherever it appears in the section, and add the language indicated in the right column.

Section	Remove	Add
601.501(a)	601.502(b)	601.502(c).
601.501(b)(4)	601.502(b)	601.502(c).
601.502(a)(2)	601.502(a)	601.502(b).
601.502(a)(2)	601.502(b)	601.502(c).
601.502(c)(4)	601.502(a)	601.502(b).
601.503(b)(1)	601.502(b)	601.502(c).
601.504(b)(2)(i)	601.502(a)	601.502(b).
601.505(b)(2)(ii)	601.502(b)	601.502(c).
601.505(b)(2)(iii)	601.502(a)	601.502(b).

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-14260 Filed 6-18-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 43

[AG Order No. 1594-92]

Recovery of Cost of Hospital and Medical Care and Treatment Furnished by the United States

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends Department of Justice regulations to increase the settlement and waiver authority delegated to heads of departments and agencies of the United States responsible for the furnishing of hospital, medical, surgical, or dental care. This change responds to the increase in medical costs since 1978, when the current level of delegated settlement and waiver authority was fixed, and will further the efficient operation of the government.

EFFECTIVE DATE: June 19, 1992.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, Department of Justice, Washington, DC 20530, telephone (202) 501-7075.

SUPPLEMENTARY INFORMATION: These amendments represent the first increase in the settlement and waiver authority delegated to the departments and agencies of the United States responsible for the furnishing of hospital, medical, surgical, or dental care since 1978. During the intervening period, the cost of medical care and treatment has increased substantially. This increase warrants a corresponding increase in settlement and waiver authority to further the efficient operation of the Government.

These amendments are exempt from the requirements of Executive Order 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have a significant economic impact on a substantial number of small entities because its effect is internal to the Department of Justice. 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 43

Claims, Health care.

Accordingly, by virtue of the authority vested in the Attorney General by 42 U.S.C. 2651-2653 and Executive Order 11060 (3 CFR, 1959-1963 Comp., p. 651), part 43 of title 28 of the Code of Federal Regulations is amended as follows:

PART 43—[AMENDED]

1. The authority citation for part 43 is revised to read as follows:

Authority: Sec. 2, 76 Stat. 593; 42 U.S.C. 2651-2653; E.O. 11060, 3 CFR, 1959-1963 Comp., p. 651.

2. Section 43.3 is revised to read as follows:

§ 43.3 Settlement and waiver of claims.

(a) The head of the Department or Agency of the United States asserting such claim, or his or her designee, may:

(1) Accept the full amount of a claim and execute a release therefor;

(2) Compromise or settle and execute a release of any claim, not in excess of $100,000, which the United States has for the reasonable value of such care and treatment; or

(3) Waive and in this connection release any claim, not in excess of $100,000, in whole or in part, either for the convenience of the Government, or if the head of the Department or Agency, or his or her designee, determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of $100,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which:

(1) The claim of the United States for such care and treatment has been referred to the Department of Justice; or

(2) A suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described in § 43.1 and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving:

(1) Unusual circumstances;

(2) A new point of law which may serve as a precedent; or

(3) A policy question where there is or may be a difference of views between any of such Departments and Agencies.

Dated: June 1, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-13586 Filed 6-18-92; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-7044]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This interim rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This interim rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This interim rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This interim rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This interim rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona	Santa Cruz	Unincorporated areas	May 27, 1992, June 3, 1992, *Nogales International* .	The Honorable Ron Morries, Chairman, Santa Cruz County, Board of Supervisors, 2100 North Congress Drive, Nogales, Arizona 85621.	May 5, 1992	040090
California	Sacramento	Unincorporated areas	May 21, 1992, May 28, 1992, *Sacramento Bee* .	Mr. Douglas M. Fraleigh, Director, Sacramento County, Department of Public Works, 827 Seventh Street, Room 304, Sacramento, California 95814.	May 7, 1992	060262
Colorado	Boulder	City of Broomfield	May 21, 1992, May 28, 1992, *Broomfield Enterprise* .	The Honorable Robert Schulze, Mayor, City of Broomfield, Number Six Garden Office Center, P.O. Box 1415, Broomfield, Colorado 80038.	May 8, 1992	065073
Illinois	Cook	Unincorporated areas	Feb. 7, 1992, Feb. 14, 1992, *Chicago Tribune* .	Mr. Richard J. Phelan, President of the Cook County Board of Commissioners, County Building, Room 537, 118 North Clark Street, Chicago, Illinois 60602.	Jan. 27, 1992	170054 B
Do	DuPage	Unincorporated areas	May 8, 1992, May 15, 1992, *Daily Herald* .	The Honorable Aldo E. Botti, Chairman, DuPage County Board of Commissioners, 421 North County FarmRoad, Wheaton, Illinois 60187.	Apr. 28, 1992	170197
Nevada	Independent City	City of Carson City	June 3, 1992, June 10, 1992, *Nevada Appeal* .	The Honorable Marv Teixeira, Mayor, City of Carson City, 2621 Northgate Lane, Carson City, Nevada 89706.	May 11, 1992	320001
North Carolina	Brunswick	Village of Bald Head Island.	May 27, 1992, June 3, 1992, *The State Port Pilot* .	The Honorable Wallace Martin, Town Manager, Village of Bald Head Island, P.O. Box 10085, Southport, North Carolina 28461.	May 15, 1992	370442
Ohio	Medina	City of Brunswick	May 14, 1992, May 21, 1992, *Brunswick Sun Times* .	The Honorable Judith A. Beadell-Rapp, Mayor of the City of Brunswick, Medina County, 4095 Center Road, Brunswick, Ohio 44212.	May 5, 1992	390380 B
Tennessee	Shelby	Town of Collierville	May 7, 1992, May 14, 1992, *Collierville Herald* .	The Honorable Herman W. Cox, Jr., Mayor, Town of Collierville, 101 Walnut Street, Collierville, Tennessee 38017.	Apr. 27, 1992	470263
Texas	Tarrant and Denton	City of Fort Worth	Jan. 23, 1992, Jan. 30, 1992, *Fort Worth Star-Telegram* .	The Honorable Kay Granger, Mayor of the City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	Jan. 17, 1992	480596 D
Do	Bexar	City of San Antonio	May 6, 1992, May 13, 1992, *San Antonio Light* .	The Honorable Nelson Wolff, Mayor of the City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.	Apr. 29, 1992	480045 B

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Washington	Skagit	City of Mount Vernon	May 5, 1992, May 12, 1992, *The Skagit Argus*.	The Honorable Ray Reep, Mayor, City of Mount Vernon, P.O. Box 809, Mount Vernon, Washington 98273.	Apr. 15, 1992	530158
Wisconsin	St. Croix	Village of Baldwin	Apr. 21, 1992, Apr. 28, 1992, *Baldwin Bulletin*.	The Honorable Rollie Rieck, Village President, Village of Baldwin, 1090 10th Avenue, Baldwin, Wisconsin 54002.	Apr. 6, 1992	550380

(Catalog of Federal Domestic Assistance No. 83.100, "Flood insurance.")

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-14398 Filed 6-18-92; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona	Pima	City of Tucson (Docket No. 7041).	January 31, 1992, February 7, 1992, *Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726–7210.	January 27, 1992	040076
Arizona	Pima	Unincorporated areas (Docket No. 7043).	March 6, 1992, March 13, 1992, *Arizona Daily Star.*	The Honorable Reg Morrison, Chairman, Pima County, Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	February 10, 1992	040073
California	Ventura	Unincorporated areas (Docket No. 7041).	January 24, 1992, January 31, 1992, *Star Free Press.*	The Honorable Maggie, Erickson Kildee, Chairperson, Ventura, County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	January 21, 1992	060413
Colorado	Summit	Town of Frisco (Docket No. 7043).	January 22, 1992, January 29, 1992, *Summit Sentinel.*	The Honorable Jim Spenst, Mayor, Town of Frisco, P.O. Box 370, Frisco, Colorado 80443.	December 27, 1991	080245
Florida	Nassau (Docket No. FEMA–7041).	Unincorporated areas	December 18, 1991, December 24, 1991, *Fernandina Beach News Leader.*	The Honorable Jim B. Higginbotham, Chairman, Nassau County Board, P.O. Drawer 1010, Fernandina Beach, Florida 32034.	November 20, 1991	120170
Kansas	Douglas (Docket No. FEMA–7041.	City of Lawrence	December 27, 1991, January 3, 1992, *Journal World.*	The Honorable Bob Walters, Mayor, City of Lawrence, P.O. Box 708, Lawrence, Kansas 66044–0708.	December 16, 1991	200090
Kansas	Sedgwick and Sumner (Docket No. 7041).	City of Mulvane	January 2, 1992, January 9, 1992, *Mulvane News.*	The Honorable Gerald S. Wing, Mayor, City of Mulvane, 211 North Second Street, Mulvane, Kansas 67110.	December 18, 1991	200326
Minnesota	Dakota (Docket No. FEMA–7041).	City of Lakeville	December 30, 1991, January 6, 1992, *The Lakeville Life & Times.*	The Honorable Duane Zaun, Mayor, City of Lakeville, 20195 Holyoke Avenue West, Lakeville, Minnesota 55044.	December 17, 1991	270107
Minnesota	Olmsted (Docket No. FEMA–7041).	Unincorporated areas	January 10, 1992, January 17, 1992, *Rochester Post Bulletin.*	The Honorable James Roesman, Chairperson, Olmsted County, Board of Commissioners, 515 Second Street, SW., Rochester, Minnesota 55902.	December 26, 1991	270626
Virginia	Loudoun	Town of Leesburg (Docket No. 7043).	February 20, 1992, February 27, 1992, *Loudoun Times Mirror.*	The Honorable Steven C. Brown, Manager, Town of Leesburg, 25 West Market Street, P.O. Box 88, Leesburg, Virginia 22075.	February 12, 1992	510090
Washington	Spokane	Unincorporated areas (Docket No. 7041).	January 24, 1992, January 31, 1992, *Spokesman Review.*	The Honorable John McBride, Chairman, Spokane County, Board of Commissioners, West 1116 Broadway Avenue, Spokane, Washington 99260.	December 18, 1991	530174
Wisconsin	Green (Docket No. FEMA–7041).	Village of Albany	January 16, 1992, January 23, 1992, *Albany Herald.*	The Honorable Bob Ames, Village President, Village of Albany, P.O. Box 342, Albany, Wisconsin 53502.	January 8, 1992	550158

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: June 12, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-14400 Filed 6-18-92; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ARIZONA	
Chino Valley (town), Yavapai County (FEMA Docket No. 7032)	
Santa Cruz Wash:	
Approximately 60 feet upstream of Road 5 North	*4,491
At East Perkinsville Road	*4,582
At Road 2 North	*4,620
At Road 1 South	*4,726
150 feet north of Road 4 South	*4,801
Chino Valley Stream:	
Approximately 100 feet upstream of West Postle Road	*4,540
At Reed Road	*4,550
Maps are available for review at the Department of Planning and Zoning, 1020 West Palomino Street, Chino Valley, Arizona.	
Pima County (unincorporated areas), (FEMA docket No. 7042)	
Santa Cruz River:	
Approximately 4,400 feet downstream of Pinal-Pima County Line	*1,866
At Pinal-Pima County Line	*1,875
Just upstream to Trico Road	*1,909
Approximately 100 feet upstream of Trico-Marana Road	*1,937
Approximately 6,400 feet downstream of Sanders Road	*1,964
Approximately 2,800 feet upstream of Sanders Road	*1,985
Approximately 11,000 feet upstream of Sanders Road	*2,012
Approximately 10,000 feet downstream of Avra Valley Road	*2,037
At Avra Valley Road	*2,069
Approximately 100 feet upstream of Cortaro Road (relocated)	*2,143
At Ina Road	*2,168
At the confluence of Canada Del Oro	*2,190
Approximately 2,100 feet upstream of Sunset Road	*2,221
Approximately 3,300 feet upstream of Valencia Road	*2,470
Approximately 4,500 feet upstream of Valencia Road	*2,472
Approximately 5,700 feet downstream of San Xavier Road	*2,475
Just upstream of Interstate 19 Northbound	*2,501
Canada Del Oro:	
Approximately 175 feet downstream of Magee Road	*2,292
Approximately 1,000 feet upstream of Magee Road	*2,302
Approximately 2,100 feet downstream of La Cholla Boulevard	*2,346
Approximately 375 feet downstream of La Cholla Boulevard	*2,360
Approximately 375 feet upstream of La Cholla Boulevard	*2,369
Approximately 50 feet downstream of Overton Road	*2,386
Pima Wash:	
Approximately 2,800 feet upstream of Ina Road	*2,743
Approximately 4,600 feet upstream of Ina Road	*2,813
Approximately 6,400 feet upstream of Ina Road	*2,883
Approximately 8,200 feet upstream of Ina Road (at Coronado National Forest Boundary)	*2,969
Rillito Creek:	
At La Cholla Boulevard	*2,257
Just downstream of Flowing Wells Road	*2,278
Approximately 1,100 feet downstream of North Oracle Road (U.S. Highway 80, 89)	*2,294
Approximately 2,600 feet upstream of North First Avenue	*2,327
Approximately 250 feet upstream of Dodge Boulevard	*2,383
Just downstream of Swan Road	*2,406
At the confluence with Pantano Wash and Tanque Verde Creek	*2,431
Sabino Creek:	
At the confluence with Tanque Verde Creek	*2,492
Approximately 0.82 mile above the confluence with Tanque Verde Creek	*2,510
Approximately 1.57 miles above the confluence with Tanque Verde Creek	*2,525

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tanque Verde Creek:	
At the confluence with Rillito Creek and Pantano Wash	*2,431
Approximately 50 feet upstream of North Craycroft Road	*2,433
Approximately 0.6 mile (3,175 feet) upstream of North Craycroft Road	*2,444
Approximately 0.36 mile (1,900 feet) downstream of the confluence with Ventana Canyon Wash	*2,457
Maps are available to review at the Pima County Department of Transportation and Flood Control District, Public Works Building, 201 North Stone Avenue, Tucson, Arizona.	
Tucson (city) Pima County (FEMA Docket No. 7040)	
Santa Cruz River:	
Approximately 5,750 feet downstream of El Camino Del Cerro	*2,218
Approximately 50 feet upstream of El Camino Del Cerro	*2,234
At Sweetwater Drive	*2,256
Approximately 100 feet downstream of the confluence with Silvercroft Wash	*2,279
Approximately 200 feet upstream of West Grant Road	*2,305
Approximately 100 feet upstream of West Speedway Boulevard	*2,323
Approximately 50 feet downstream of West Congress Street	*2,343
Approximately 100 feet upstream of Silverlake Road	*2,370
Approximately 20 feet downstream of Ajo Way	*2,397
Approximately 100 feet upstream of Irvington Road	*2,415
At Valencia Road	*2,459
Approximately 6,300 feet upstream of Valencia Road (at Tucson Corporate Limits)	*2,475
Rillito Creek:	
Approximately 2,000 feet downstream of North Oracle Road (U.S. Highways 80 and 89)	*2,290
Just upstream of North First Avenue	*2,316
Approximately 50 feet downstream of North Campbell Avenue	*2,337
Approximately 3,400 feet downstream of Dodge Boulevard	*2,374
Just upstream of Dodge Boulevard	*2,382
Just downstream of Swan Road	*2,406
Sabino Creek:	
At the confluence of Tanque Verde Creek	*2,492
Approximately 1,200 feet upstream of the confluence with Tanque Verde Creek	*2,497
Approximately 3,775 feet upstream of the confluence with Tanque Verde Creek	*2,506
Approximately 4,800 feet upstream of the confluence with Tanque Verde Creek	*2,511
Hidden Hills Wash:	
Approximately 100 feet downstream of Rosewood Street	*2,629
Approximately 20 feet upstream of Fifth Street	*2,656
Approximately 80 feet downstream of Golden West Street	*2,684
Approximately 175 feet downstream of East Broadway Boulevard	*2,702
Enchanted Hills Wash:	
Approximately 120 feet upstream of the confluence with West Branch Santa Cruz River	*2,396
Approximately 80 feet upstream of Mission Road	*2,417
Approximately 880 feet upstream of Mission Road	*2,426
Approximately 1,320 feet upstream of Mission Road	*2,435
Alamo Wash:	
Approximately 200 feet downstream of East Grant Road	*2,477
Approximately 120 feet downstream of East Pima Street	*2,507
Approximately 60 feet upstream of Speedway Boulevard	*2,534
Approximately 20 feet upstream of East Broadway	*2,572
Approximately 60 feet downstream of southbound Wilmot Road	*2,583
Approximately 60 feet upstream of East 22nd Street	*2,631
At Golf Links Road	*2,670
Approximately 60 feet upstream of Golf Links Road	*2,672
Robb Wash:	
Approximately 1,000 feet downstream of Pima Street	*2,540
Approximately 550 feet downstream of Pima Street	*2,545
Just upstream of Pima Street	*2,549
Arcadia Wash:	
Approximately 400 feet upstream of Glenn Street	*2,444
Approximately 100 feet downstream of East Grant Road	*2,455
Approximately 75 feet downstream of Seneca Street	*2,467
Approximately 100 feet upstream of East Pima Street	*2,483
Railroad Wash:	
At the confluence with Tucson Arroyo	*2,430
Just upstream of 18th Street	*2,434
Just downstream of Aviation Avenue	*2,442
Just downstream of 36th Street	*2,491
Rodeo Wash:	
At Elizabeth Drive	*2,422
At South 12th Avenue	*2,441
At South Sixth Avenue	*2,473
Just upstream of South Park Avenue	*2,506
Maps are available for review at the Tucson City Engineer's Office, County-City Public Works Building, 201 North Stone Avenue, Third floor, Tucson, Arizona.	
CALIFORNIA	
Folsom (city) Sacramento County (FEMA Docket No. 7040)	
Humbug Creek:	
At East Bidwell Street	*285
One hundred feet upstream of Oak Avenue Parkway	*345
Approximately 1,800 feet upstream of Oak Avenue Parkway	*351
Maps are available for review at the Public Works Department, Engineering Division, 300 Persifer Street, Folsom, California.	
Lake County (unincorporated areas) (FEMA Docket No. 7040)	
Cache Creek:	
At the confluence with Copsey Creek	*1,331
Approximately 3,000 feet downstream of Lake Street	*1,331
Approximately 1,000 feet downstream of Lake Street	*1,331
At Lake Street	*1,331
At State Highway 53	*1,331
Seigler Canyon Creek:	
At the confluence with Cache Creek	*1,331
Maps are available for review at the Lake County Flood Control and Water Conservation District, 255 North Forbes Street, Lakeport, California.	
Mammoth Lakes (town) Mono County (FEMA Docket No. 7040)	
Mammoth Creek:	
Approximately 650 feet downstream of Old Mammoth Road	*7,823
Just upstream of Minaret Road	*7,878
At Waterford Street	*7,928
Just upstream of Sherwin Street	*7,976
Approximately 350 feet upstream of Western Street	*8,006
Mammoth Creek Tributary:	
At convergence with Mammoth Creek	*7,887
At Waterford Street	*7,929
At divergence from Mammoth Creek	*7,950
Sherwin Street Tributary:	
At convergence with Mammoth Creek	*7,942
Just upstream of Sherwin Street	
At divergence from Mammoth Creek	*7,992
Maps are available for review at City Hall, 437 Old Mammoth Road, Suite R, Mammoth Lakes, California.	
Riverside County (unincorporated areas) (FEMA Docket No. 7040)	
Perris Valley Storm Drain:	
At Orange Avenue	*1,430
Approximately 2,600 feet upstream of Orange Avenue	*1,434
Maps are available for review at the Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, California.	
Taft (city), Kern County (FEMA Docket No. 7042)	
Sandy Creek:	
At the east corporate limits, approximately 2,900 feet downstream of State Highway 119	*797
Approximately 80 feet downstream of State Highway 119	*850
Just upstream of Emmons Road	*930
At State Highway 33	*1,019
At the western corporate limits, approximately 2,000 feet upstream of State Highway 33	*1,064
North Sandy Creek:	
Approximately 1,260 feet downstream of Airport Road, at the corporate limits	*736
At Airport Road	*764
Approximately 1,150 feet upstream of Airport Road, at the north corporate limits	*778
Maps are available for review at the Department of Public Works, 209 East Kern Street, Taft, California.	
COLORADO	
Colorado Springs (city), El Paso County (FEMA Docket No. 7040)	
South Shooks Run:	
At the confluence with Fountain Creek	*5,898
Just downstream of Costilla Street	*5,950
Approximately 150 feet upstream of Willamette Avenue	*6,008
Approximately 1,650 feet upstream of East San Miguel Street	*6,060
Templeton Gap Floodway:	
Just downstream of Hopeful Drive	*6,460
Just downstream of Barnes Road	*6,505
Templeton Gap South Overflow:	
At the confluence with Templeton Gap Floodway	*6,368
At Academy Boulevard	*6,407
Approximately 1,450 feet upstream of Half Turn Road	*6,422
Cheyenne Run:	
At the confluence with Cheyenne Creek	*5,930
At Lorraine Street	*5,981
Approximately 550 feet downstream of the intersection of Skyway Boulevard and Saturn Drive	*6,045
At the intersection of Skyway Boulevard and Mars Drive	#1
Templeton Gap South Tributary:	
Just downstream of Hopeful Drive	*6,455
Approximately 100 feet downstream of Picturesque Drive	*6,472
Spring Run:	
At the confluence with Fountain Creek	*5,856
Just downstream of Southgate Road	*5,935
Approximately 200 feet downstream of South Nevada Avenue	*5,976
Approximately 250 feet downstream of Springmeadow Drive	*6,058
Spring Run Overflow:	
At the confluence with Spring Run	*5,896
Approximately 400 feet upstream of South El Paso Avenue	*5,911
Approximately 500 feet upstream of South El Paso Avenue	#1
Sand Creek West Fork:	
At the confluence with Sand Creek	*6,125
At Murray Boulevard	*6,208
Just downstream of Colorado and Eastern Railroad	*6,255
Just downstream of Mazeland Road	*6,305

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Oro Blanco Drive	*6,436
Approximately 2,350 feet upstream of Oro Blanco Drive	*6,528
At the intersection of Murray Boulevard and Galley Road	#2
Maps are available for review at the Regional Building Department, 101 West Costilla Street, Colorado Springs, Colorado.	
El Paso County (unincorporated areas) (FEMA Docket No. 7040)	
Templeton Gap Floodway:	
Approximately 450 feet upstream of the Academy Boulevard bridge	*6,422
Approximately 50 feet downstream of the Hopeful Drive bridge	*6,460
Approximately 150 feet west of the intersection of Hopeful Drive and Blissful Circle North	#1
Templeton Gap South Tributary:	
At the confluence with Templeton Gap Floodway	*6,450
At the intersection of Hopeful Drive and Blissful Circle South	*6,457
Approximately 150 feet north of the intersection of Hopeful Drive and Blissful Circle North	#1
Sand Creek Center Tributary:	
Approximately 1,075 feet downstream of Galley Road	*6,229
Just downstream of Omaha Boulevard	*6,304
Approximately 1,900 feet upstream of Omaha Boulevard	*6,345
Sand Creek Center Tributary Overflow:	
At the convergence with Sand Creek Center Tributary at Galley Road	*6,245
At the intersection of Paonia Street and Paonia Court	*6,273
At the intersection of Paonia Street and Omaha Boulevard	*6,302
At the divergence from Sand Creek Center Tributary	*6,304
Sand Creek East Fork Subtributary:	
At the confluence with Sand Creek East Fork	*6,418
Just downstream of Genoa Road	*6,494
Just upstream of Colorado and Eastern, Cadillac and Lake City Railroad	*6,545
Approximately 1,600 feet upstream of Colorado and Eastern, Cadillac and Lake City Railroad	*6,562
Crystal Creek:	
Approximately 100 feet upstream of Interstate 25	*7,057
Just upstream of Willow Parkway	*7,077
Approximately 1,050 feet upstream of Willow Parkway	*7,094
Dirty Woman Creek:	
Approximately 3,100 feet downstream of South Park Drive	*7,051
Just upstream of South Park Drive	*7,114
Approximately 400 feet upstream of Lake Woodmoor Drive	*7,131
Fisher Canyon:	
Just downstream of Maxwell Street	*5,779
Just upstream of Interstate 25	*5,789
Just downstream of B Street	*5,847
Just downstream of Loomis Avenue	*5,853
Jimmy Camp West Tributary:	
At the confluence with Jimmy Camp Creek	*5,572
Just downstream of Mark Sheffel Road	*5,613
At the divergence of Jimmy Camp Creek West Tributary south overflow	*5,635
Just upstream of dam	*5,677
Approximately 5,000 feet upstream of dam	*5,705
Jimmy Camp West Tributary South Overflow:	
At the confluence with Jimmy Camp Creek	*5,608
At the Furlong Circle bridge	*5,621
Just upstream of Mark Sheffel Road	*5,633
At the divergence from Jimmy Camp West Tributary	*5,635
Maps are available for review at the Regional Building Department, 101 West Costilla Street, Colorado Springs, Colorado.	
CONNECTICUT	
Madison (town), New Haven County (FEMA Docket No. 7040)	
Hammonasset River (upper reach):	
Upstream side of State Route 80	*214
Approximately 2,000 feet upstream of State Route 79	*315
Neck River:	
Upstream side of Goulds Pond Dam	*77
Approximately 1,450 feet upstream of Bradley Corners Road	*230
Iron Stream:	
At State Route 80	*97
At Race Hill Road	*217
Maps available for inspection at the Madison Town Clerk's Office, 8 Meetinghouse Lane, Madison, Connecticut.	
FLORIDA	
Pasco County (unincorporated areas) (FEMA Docket No. 7039)	
Bear Creek:	
Just downstream of Bear Creek Drive	*24
About one mile upstream of Citrus Street	*42
Buckhorn Creek:	
At mouth	*25
About 1.5 miles upstream of Sugar Creek Boulevard	*35
Cabbage Swamp:	
About 1,300 feet upstream of mouth	*52
Just downstream of Interstate 75	*53
Fivemile Creek:	
At mouth	*46
About 1,000 feet downstream of CSX railroad	*66
Trout Creek:	
At county boundary	*52
About 0.9 mile upstream of unnamed road	*78
Tributary No. 1:	
Just downstream of Ridge Top Drive	*10
Just upstream of Summerfield Drive	*12
Tributary No. 2:	
About 0.3 mile upstream of mouth	*10
About 1.3 miles upstream of Seven Springs Boulevard	*23
Tributary No. 2 Basin:	
About 1.3 miles upstream of Seven Springs Boulevard	*23
Just downstream of CSX railroad	*34
About 2.5 miles upstream of CSX railroad	*40
Tributary No. 5:	
At mouth	*11
Just downstream of unnamed road	*17
Tributary No. 6:	
At mouth	*13
Just downstream of Cedar Boulevard	*16
Tributary No. 7 Basin:	
About 2,000 feet upstream of mouth	*28
About 1.9 miles upstream of mouth	*29
Tributary No. 9:	
At mouth	*34
About 1,600 feet upstream of Trail Road	*35
Tributary No. 11:	
Just downstream of Manatee Avenue	*36
Just downstream of State Road 587	*41
Tributary No. 12:	
At mouth	*32
Just downstream of Quail Hollow Boulevard	*42
Tributary No. 13:	
Just downstream of Star Terrace	*18
Just downstream of Lake View Drive	*25
Tributary No. 14:	
About 0.3 mile upstream of Massachusetts Avenue	*23
About 1.0 mile upstream of Massachusetts Avenue	*24
Tributary No. 15:	
Within community	*35
Tributary No. 16:	
At mouth	*62
Just downstream of CSX railroad	*86
Tributary No. 18:	
About 1,600 feet upstream of mouth	*65
Just upstream of Golden Meadow Boulevard North	*72
Tributary No. 19	
At mouth	*70
Just downstream of Quail Hollow Boulevard	*73
Tributary No. 20.	
At mouth	*57
Just downstream of unnamed road	*70
Tributary No. 21:	
At mouth	*56
About 0.5 mile upstream of Haverhill Road	*70
Tributary No. 22:	
About 0.4 mile upstream of mouth	*57
About 300 feet downstream of Interstate 75	*66
Tributary No. 23:	
At mouth	*60
About 400 feet downstream of State Route 54	*78
Tributary No. 24:	
At mouth	*60
Just downstream of unnamed road	*86
Tributary No. 25.	
About 0.3 mile downstream of Lake View Drive	*24
About 0.7 mile upstream of Lake View Drive	*26
Zephyr Creek:	
About 0.6 mile upstream of mouth	*62
About 1.4 miles upstream of Geiger Road	*129
Maps available for inspection at the Development Services, 7432 Little Road, New Port Richey, Florida.	
Sarasota County (unincorporated areas) (FEMA Docket No. 7020)	
Phillippi Creek:	
At mouth	*11
Just downstream of Proctor Road	*28
Matheny Creek:	
About 500 feet upstream of mouth	*11
About 700 feet upstream of weir structure	*17
Hatchett Creek:	
At mouth	*11
Just downstream of Jacaranda Boulevard	*14
Woodmere Creek:	
At mouth	*11
Just downstream of State Road 775	*17
Maps available for inspection at the Zoning Department, 1301 Cattleman Road, Sarasota, Florida.	
GEORGIA	
Effingham County (unincorporated areas) (FEMA Docket No. 7039)	
Little Ogeechee River:	
About 1.9 miles downstream of CSX Railroad	*22
Just downstream of Blue Jay Road	*44
Ogeechee River:	
About 4.1 miles downstream of State Route 404	*30
About 6.2 miles upstream of State Route 26	*51
Horning Swamp:	
At mouth	*32
Just downstream of State Route 30	*59
Walthour Swamp:	
About 3.2 miles downstream of State Route 30	*20
Just downstream of State Route 30	*42
Ogeechee Run:	
At mouth	*42
About 1.1 miles upstream of State Route 17	*53
Maps available for inspection at the County Courthouse Annex, Zoning Office, Springfield, Georgia.	
IOWA	
Cascade (city), Dubuque and Jones Counties (FEMA Docket No. 7040)	
North Fork Maquoketa River:	
About 3,600 feet downstream of U.S. Highway 151	*812
About 2,000 feet upstream of U.S. Highway 151	*822
Maps available for inspection at the City of Cascade, City Clerk Office, 320 First Avenue West, Cascade, Iowa.	
Polk (unincorporated areas) (FEMA docket No. 7040)	
Des Moines River:	
About 2.3 miles downstream of State Highway 46	*780
Just downstream of Saylorville Dam	*812
Rock Creek:	
At mouth	*812
Just downstream of County Road	*813
Yeader Creek.	
About 1,100 feet upstream of Indianola Road	*824

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 400 feet downstream of Southeast 14th Street	*831
Easter Lake: Along shoreline	*818
Raccoon River:	
Just upstream of First Street	*814
About 1.7 miles upstream of Interstate 35	*831
Saylor Creek:	
At mouth	*804
About 500 feet downstream of State Highway 415	*875
Beaver Creek:	
At mouth	*805
About 3,200 feet upstream of Chicago and Northwestern Railroad	*807
Muchakinock Creek:	
At mouth	*839
About 2,300 feet upstream of Northeast 46th Street	*921
Spring Creek:	
Just upstream of Vandalia Drive	*781
Just upstream of Southeast 82nd Street	*784
North Walnut Creek:	
At county boundary	*890
Just downstream of Northwest 100th Street	*900
About 300 feet upstream of Northwest 100th Street	*906
Mud Creek:	
At mouth	*780
Just upstream of Southeast 56th Avenue	*780
Maps available for inspection at the Physical Planning Department, 5895 North East 74th Street, Des Moines, Iowa.	
KENTUCKY	
Lexington-Fayette Urban County Government, Fayette County (FEMA docket No. 7039)	
Cane Run:	
Just upstream of Private Drive	*892
Just upstream of Newton Road	*919
South Elkhorn River:	
Just upstream of Old Versailles Road	*849
Just upstream of Higbee Mill Road	*931
Cave Creek:	
At mouth	*862
Just downstream of Man O' War Boulevard	*916
Just upstream of Man O' War Boulevard	*936
Just downstream of Ridgecane Road	*939
Just upstream of Ridgecane Road	*947
About 1470 feet upstream of Ridgecane Road	*956
Parker's Mill Tributary:	
At Mouth	*869
About 0.72 miles upstream of Private Drive	*912
Dogwood Tributary:	
At mouth	*947
About 0.55 miles upstream of Unnamed Drive	*996
Drive-In Tributary:	
At mouth	*900
About 1.09 miles upstream of mouth	*915
Quarry Tributary:	
At mouth	*917
About 950 feet upstream of Clays Mill Road	*943
Waveland Museum Tributary:	
At mouth	*931
Just downstream of Grassy Creek Drive	*936
Just upstream of Grassy Creek Drive	*941
About 0.28 miles upstream of Field Road	*987
West Hickman Creek:	
Just downstream of New Circle Road	*931
Just upstream of New Circle Road	*937
Just downstream of Alumni Drive	*941
Just upstream of Alumni Drive	*948
Higbee Mill Road Tributary:	
At mouth	*894
About 1.79 miles upstream of mouth	*983
Tiverton Way Tributary:	
At mouth	*898
Just downstream of Man O' War Boulevard	*913
I-75 Tributary:	
Just downstream of Interstate 75	*923
Just upstream of Interstate 75	*930
About 1.39 miles upstream of Residential Drive	*1021
Eastland Park Tributary:	
At mouth	*931
About 0.42 miles upstream of the mouth	*936
U.S. Route 60 Tributary:	
At mouth	*936
Just downstream of dam	*952
Just upstream of dam	*969
Just downstream of Winchester Road	*970
Tiverton Way Tributary:	
Just upstream of Man O'War Boulevard	*921
Just downstream of Yale Drive	*957
Just upstream of Yale Drive	*964
Wilson Downing Road Tributary:	
At mouth	*906
Just downstream of Camelot Road	*935
Just upstream of Camelot Road	*945
About 370 feet upstream of Argonne Circle	*989
Flintridge Drive Tributary:	
At mouth	*964
About 950 feet upstream of mouth	*977
Pleasant Ridge Church Tributary:	
At mouth	*950
About 0.60 mile upstream of mouth	*966
Two Ponds Tributary:	
At mouth	*966
About 0.32 mile upstream of mouth	*988
East I-75 Tributary:	
At mouth	*937
About 0.26 mile upstream of Residential Drive	*978
Shadeland Tributary:	
At mouth	*980
Just downstream of Tates Creek Road	*994
Just upstream of Tates Creek Road	*999
About 850 feet upstream of Tates Creek Road	*1,004
Todds Road Tributary:	
Just downstream of Interstate 75	*995
Just upstream of Interstate 75	*1,002
About 0.45 mile upstream of Walnut Hill-Chilesburg Road	*1,013
Todds Road Tributary North:	
At mouth	*986
About 0.60 mile upstream of mouth	*1,012
Reservoir Tributary East:	
Just upstream of dam	*971
Just downstream of Jerrico Drive	*994
Just upstream of Jerrico Drive	*1,003
Just downstream of Private Drive	*1,008
Just upstream of Private Drive	*1,020
Just downstream of Palumbo Drive	*1,026
Cadentown Branch:	
At mouth	*972
Just downstram of Gingermill Lane	*977
Just upstream of Gingermill Lane	*984
Just downstream of Caden Lane	*1,026
Cadentown Branch East:	
At mouth	*991
Just downstream of Todds Road	*998
Just upstream of Todds Road	*1,006
About 0.38 mile upstream of Todds Road	*1,018
Tates Creek:	
Just downstream of eastbound New Circle Road exit ramp	*930
Just upstream of eastbound New Circle Road exit ramp	*935
Just upstream of New Circle Road	*940
Just downstream of Tates Creek Road	*943
Just upstream of Tates Creek Road	*949
About 1500 feet upstream of Alumni Drive	*1,004
Lansdowne Road Tributary:	
At mouth	*943
About 800 feet upstream of Libby Lane	*987
Maps available for inspection at the Planning Department, 200 East Main Street, Lexington, Kentucky.	
MARYLAND	
PERRYVILLE (town), Cecil County (FEMA docket No. 7040)	
Susquehanna River: For its entire shoreline affecting the community	*12
Maps available for inspection at the Perryville Town Hall, 515 Broad Street, Perryville, Maryland	
Washington County (unincorporated areas) (FEMA docket No. 7034)	
Tributary No. 33:	
Approximately 40 feet downstream of Interstate 81 East Exit Ramp	*445
Approximately 0.9 mile upstream of Doub Road	*514
Maps available for inspection at the Washington County Planning Department, County Administration Building, Room 320, 100 West Washington Street, Hagerstown, Maryland	
MASSACHUSETTS	
Lowell (city), Middlesex County (FEMA Docket No. 7040)	
Merrimack River:	
Downstream corporate limits	*58
Approximately 200 feet upstream of School Street	*95
Concord River:	
Approximately 300 feet downstream of State Route 110 (Church Street)	*67
At confluence with Merrimack River	*68
Beaver Brook:	
At confluence with Merrimack River	*71
Downstream side of Beaver Street	*71
Maps available for inspection at the Lowell City Hall, Planning and Zoning Department, 50 Arcand Drive, Lowell, Massachusetts.	
MISSISSIPPI	
Hinds County (unincorporated areas) (FEMA Docket No. 7039)	
Pearl River:	
At county boundary	*251
About 7.71 miles upstream of Old Byram Road	*267
Rhodes Creek:	
At confluence with the Pearl River	*256
Just downstream of Seven Springs Road	*390
Trahon Creek Tributary 1:	
At confluence with Trahon Creek	*265
Just upstream of Terry Road	*265
Straight Fence Creek:	
Just upstream of Williamson Road	*243
Just downstream of Pinehaven Drive	*288
Maps available for inspection at the Hinds County Permit and Zoning Office, Jacksonville, Mississippi.	
MISSOURI	
Smithville (city), Clay County (FEMA Docket No. 7040)	
Little Platte River:	
About 1750 feet downstream of confluence of Owens Branch	*813
About 1.1 miles upstream of confluence of Wilkerson Creek	*814
Owens Branch:	
At mouth	*813
About 2880 feet upstream of State Highway KK	*814
About 0.9 mile upstream of U.S. Highway 169	*845
Second Creek:	
At mouth	*814
About 1500 feet upstream of Main Street	*814
Wilkerson Creek:	
At mouth	*814
About 1060 feet upstream of State Highway DD	*814
Maps available for inspection at the City of Smithville, 107 West Main Street, Smithville, Missouri.	
MONTANA	
Kalispell (city), Flathead County (FEMA Docket No. 7040)	
Ashley Creek:	
Approximately 1,850 feet downstream of Airport Road	*2,921
Approximately 100 feet downstream of Airport Road	*2,921
Approximately 200 feet upstream of Airport Road	*2,922
Approximately 50 feet downstream of Begg Park Drive	*2,922
Approximately 50 feet upstream of Begg Park Drive	*2,924
Approximately 1,150 feet upstream of Begg Park Drive	*2,924
Approximately 2,500 feet upstream of Begg Park Drive	*2,924

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 250 feet northeast of the intersection of Fifth Avenue West and Sunnyside Drive	*2,925
Approximately 250 feet southeast of the intersection of Fifth Avenue West and Sunnyside Drive	*2,925
Approximately 1,500 feet downstream of Sunnyside Drive	*2,925
Approximately 5,000 feet downstream of Foys Lake Road	*2,928
Approximately 850 feet downstream of Foys Lake Road	*2,930
Maps are available for review at the City of Kalispell, Building Department, 248 Third Avenue East, Kalispell, Montana.	
NEBRASKA	
Scribner (city), Dodge County (FEMA Docket No. 7040)	
Pebble Creek:	
About 0.4 mile downstream of 11th Street	*1248
About 0.8 mile upstream of County Road 13	*1262
Maps available for inspection at the City Clerk's Office, 415 3rd Street, Scribner, Nebraska.	
NEW JERSEY	
Mendham (borough), Morris County (FEMA Docket No. 7040)	
North Branch Raritan River:	
At Ironia Road	*423
At Mountain Avenue	*497
Maps available for inspection at the Mendham Borough Hall, 2 West Main Street, Mendham, New Jersey.	
NEW YORK	
Afton (town), Chenango County (FEMA Docket No. 7040)	
Susquehanna River:	
Approximately 200 feet downstream of the downstream corporate limits	*964
Approximately 4,250 feet downstream of corporate limits	*976
Maps available for inspection at the Afton Town Hall, 169 Main Street, Afton, New York.	
Amherst (town), Erie County (FEMA Docket No. 7012)	
Tonawanda Creek:	
Approximately 1,800 feet downstream of E. Robinson Road	*574
Downstream side of Transit Road	*584
Black Creek:	
At the confluence with Ransom Creek	*581
Approximately 100 feet downstream of Transit Road	*585
Ransom Creek:	
At confluence with Tonawanda Creek	*579
Downstream side of Transit Road	*586
Maps available for inspection at the Municipal Center, 5583 Main Street, Williamsville, New York.	
Windsor (town), Broome County (FEMA Docket No. 7040)	
Susquehanna River:	
At a point approximately 800 feet upstream of the state boundary	*913
At a point approximately 1,000 feet downstream of the upstream corporate limits	*940
Maps available for inspection at the Windsor Town Hall, Building and Zoning Department, 36 Main Street, Windsor, New York.	
NORTH DAKOTA	
Emerado (city), Grand Forks County (FEMA Docket No. 7040)	
Hazen Brook Overflow:	
At the eastern corporate limits, approximately 100 feet upstream of County Highway No. 3	*901
Just upstream of East Hancock Avenue	*903
Just upstream of West Court Drive	*907
Hazen Brook:	
At the Burlington Northern Railroad Crossing of Hazen Brook	*901
Maps are available for review at City Hall, 101 Old Ham Street, City of Emerado, North Dakota.	
Linton (city), Emmons County (FEMA Docket No. 7042)	
Beaver Creek:	
Just downstream of County Road located along the extraterritorial limits, west of Linton	*1,702
Approximately 500 feet upstream of Farmer's Road	*1,707
Just upstream of U.S. Highway 83	*1,710
Approximately 3,800 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad	*1,718
Spring Creek:	
Approximately 600 feet downstream of Schley Avenue measured along the profile baseline	*1,703
Just upstream of Schley Avenue	*1,705
Just upstream of Chicago, Milwaukee, St. Paul & Pacific Railrod	*1,729
Approximately 3,000 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad	*1,738
Spring Creek Overflow:	
At the confluence with Spring Creek	*1,710
Just downstream of U.S. Highway 83	*1,711
Just upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad	*1,720
Just upstream of Laurel Avenue	*1,723
At the divergence from Spring Creek	*1,729
Unnamed Coulee:	
At the private drive located approximately 600 feet west of Broadway	*1,723
At Broadway	*1,737
At Fourth Street extended	*1,755
Approximately 550 feet upstream of Sixth Street extended	*1,770
Horner's Ravine:	
At the entrance to the storm sewer located just east of First Street SE	*1,723
At Third Street SE. extended	*1,743
At the extraterritorial limits located approximately 4,530 feet upstream of Third Street SE. extended	*1,825
Maps are available for review at City Hall, City of Linton, 120 East Hickory Avenue, P.O. Box 45, Linton, North Dakota.	
OKLAHOMA	
Bartlesville (city), Osage and Washington Counties (FEMA Docket No. 7039)	
Rice Creek:	
Approximately 0.6 mile upstream of U.S. Highway 75 (Washington Boulevard)	*708
Approximately 0.7 mile upstream of Madison Boulevard	*753
Maps available for inspection at the City Administration Building, 6th and Dewey, Bartlesville, Oklahoma.	
Bryan County (unincorporated areas) (FEMA Docket No. 7040)	
Red River:	
Approximately 2.2 miles downstream of State Route 120	*511
Approximately 2.04 miles upstream of U.S. Routes 69 & 75	*536
Lake Texoma (Washita River): For its entire shoreline within the country	*647
Maps available for inspection at the Bryan County Courthouse, 402 Evergreen Street, 2nd Floor, Durant, Oklahoma.	
PENNSYLVANIA	
Ashland (borough), Schuylkill County (FEMA Docket No. 7032)	
Mahanoy Creek:	
Downstream corporate limits	*850
Upstream corporate limits	*894
Maps available for inspection at the Borough Building, 5th & Chestnut Streets, Ashland, Pennsylvania	
Lower Chichester (township), Delaware County (FEMA Docket No. 7040)	
Naaman Creek:	
Approximately 150 feet downstream of downstream corporate limits	*44
At upstream corporate limits	*51
Maps available for inspection at the Lower Chichester Township Secretary's Office, Township Building, 1410 Market Street, Linwood, Pennsylvania.	
Montgomery (township), Franklin County (FEMA Docket No. 7040)	
Johnston Run:	
Approximately 275 feet downstream of Edwards Drive	*517
Approximately 350 feet upstream of Farm Access Road	*572
Maps available for inspection at the Montgomery Township Building, 11364 Fort Loudon Road, Mercersburg, Pennsylvania	
SOUTH CAROLINA	
Mauldin (city), Greenville County (FEMA Docket No. 7039)	
Gilder Creek Tributary No. 3A:	
Approximately .23 mile upstream of Corn Road	*838
Approximately 200 feet upstream of Interstate Route 385 (northbound)	*890
Gilder Creek:	
Approximately 200 feet downstream of Interstate Route 385	*805
Approximately 900 feet upstream of Interstate Route 385	*810
From a point approximately 200 feet upstream of the confluence of Gilder Creek Tributary No. 2	*821
To a point approximately 900 feet downstream of Old Mill Road	*824
Gilder Creek Tributary No. 3:	
At Butler Avenue	*821
To a point approximately 500 feet upstream of Butler Avenue	*822
Maps available for inspection at the City of Mauldin Town Hall, 5 East Butler Street, Mauldin, South Carolina.	
TENNESSEE	
Chattanooga (City), Hamilton County (FEMA Docket No. 7040)	
Chattanooga Creek:	
Just upstream of Hamill Road	*658
Just upstream of Hooker Road	*659
About 1,000 feet upstream of Burnt Mill Road	*663
Maps available for inspection at the City Hall, Engineering Department, East 11th Street, Chattanooga, Tennessee.	
Cocke County (unincorporated areas) (FEMA Docket No. 7037)	
Sinking Creek:	
Approximately 2,200 feet upstream of confluence with Pigeon River	*1,032
Approximately 3,800 feet upstream of Carson Springs Road	*1,611
Maps available for inspection at the Cocke County Courthouse, Newport, Tennessee	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Jellico (city), Campbell County (FEMA Docket No. 7037)	
Elk Creek:	
Approximately .4 mile downstream of corporate limits	*972
Approximately 2,000 feet upstream from Southern Railway	*973
Maps available for inspection at the City Hall, Jellico, Tennessee.	
Newport (city), Cocke County (FEMA Docket No. 7037)	
Sinking Creek:	
Approximately 650 feet downstream of downstream corporate limits	*1,043
Approximately 950 feet downstream of Fairgrounds Road	*1,060
Maps available for inspection at the Newport City Hall, Newport, Tennessee.	
South Pittsburg (city), Marion County (FEMA Docket No. 7040)	
Poplar Spring Branch:	
Just downstream of CSX Railroad	*618
About 1,000 feet upstream of Hughes Road	*678
Battle Creek:	
At mouth	*614
About 3,700 feet upstream of mouth	*617
Maps available for inspection at the City Hall, 204 West 3rd Street, South Pittsburgh, Tennessee.	
White Pine (town), Jefferson County (FEMA Docket No. 7039)	
Leadvale Creek:	
Just downstream of South Walnut Street	*1,084
Just downstream of Main Street	*1,131
Leadvale Creek Tributary:	
At mouth	*1,112
About 480 feet upstream of Sheila Street	*1,112
Maps available for inspection at the Town Hall, 1824 Maple Street, White Pine, Tennessee.	
TEXAS	
Cameron (City), Milam County (FEMA Docket No. 7042)	
Unnamed Ditch along Burns Avenue:	
Approximately 1,226 feet downstream of 21st Street	*388
At 15th Street	*400
Flow Path No. 1:	
At Jackson Avenue	*392
Approximately 35 feet upstream of 17th Street	*397
Maps available for inspection at the City Hall, 308 south Houston Street, Cameron, Texas.	
Chambers county (unincorporated area) (FEMA Docket No. 7042)	
Trinity River:	
At Interstate Route 10	*14
Upstream County boundary	*15
Maps available for inspection at the County engineer's Office, 201 Airport Road, Anahuac, Texas.	
Fort Bend County (unincorporated areas) (FEMA Docket No. 7040)	
Dry Creek:	
At Bryan Road	*86
Approximately 2,400 feet downstream of Bryan Road	*86
Maps available for inspection at the County Engineer's Office, 3403 Avenue F, Rosenberg, Texas.	
Hardin County (unincorporated areas) (FEMA Docket No. 7040)	
Pine Island:	
Confluence with Neches River	*15
Approximately 3 miles upstream of State Route 326	*43
Little Pine Island Bayou:	
Confluence with Pine Island Bayou	*26
Approximately 1.8 miles upstream of Lake Pinewood Dam	*30
Coon Marsh Gully:	
Confluence with Little Pine Island Bayou	*27
At State Route 105	*34
Clemmons Gully:	
Confluence with Little Pine Island Bayou	*29
Approximately 3.0 miles upstream of Pine Shadows Drive	*32
Goleman Gully:	
At confluence with Clemmons Gully	*30
At State Route 105	*31
Boggy Creek:	
At Boggy Creek Road	*19
Approximately 140 feet upstream of Boggy Creek Road	*19
Village Creek:	
Approximately 5.5 miles upstream of the confluence with Neches River	*29
At State Route 418	*55
Walton Creek:	
At confluence with Village Creek	*33
At corporate limits, approximately 120 feet downstream of U.S. Route 96	*36
Village Creek Tributary:	
At confluence with Village Creek	*42
At corporate limits, approximately .4 mile upstream of confluence with Village Creek	*42
Mill Creek:	
At confluence with Village Creek	*43
Approximately 4,200 feet upstream of State Route 327	*43
Mill Creek Tributary:	
At a point 1,300 feet upstream of confluence with Mill Creek	*50
At corporate limits, approximately 500 feet upstream of Lee Miller Road	*58
Maps available for inspection at Hardin County Courthouse, Courthouse Square, 326 & Redwood, Kountze, Texas.	
Irving (city), Dallas County (FEMA Docket No. 7037)	
Hackberry Creek:	
Approximately 800 feet upstream of Colwell Drive	*433
At MacArthur Boulevard bridge	*439
Maps Available for inspection at the City Hall, Public Works Department, Engineering Division, 825 West Irving Boulevard, Irving, Texas.	
Lumberton (city), Hardin County (FEMA Docket No. 7040)	
Village Creek:	
Approximately 8,500 feet downstream of Atchison, Topeka & Santa Fe Railway	*30
Approximately 600 feet upstream of Atchison, Topeka & Santa Fe Railway	*34
At U.S. Route 96	*37
Approximately 17,500 feet upstream of U.S. Route 96	*39
Walton Creek:	
At corporate limit approximately 100 feet downstream of U.S. Route 96	*36
At a point approximately 600 feet upstream of Walton Road	*36
Maps available for inspection at the Lumberton City Hall, Highway 96, Lumberton, Texas.	
Pasadena (city), Harris County (FEMA Docket No. 7040)	
Little Vince Bayou:	
At Richey Access Road	*13
Approximately 230 feet upstream of Wichita Street	*28
Maps available for inspection at the City Hall, 1211 East Southmore, Pasadena, Texas.	
Rose Hill Acres (city), Hardin County (FEMA Docket No. 7040)	
Pine Island Bayou:	
Approximately 700 feet upstream of U.S. Routes 69, 96 & 287	*18
At confluence of Boggy Creek	*19
Boggy Creek:	
At confluence with Pine Island Bayou	*18
At Boggy Creek Road	*19
Maps available for inspection at the Rose Hill Acres City Hall, 550 Jordan Road, Silsbee, Texas.	
Rosenberg (city), Fort Bend County (FEMA Docket No. 7040)	
Dry Creek:	
Approximately 2,400 feet downstream of Bryan Road	*86
Approximately 4,000 feet downstream of Bryan Road	*85
Maps available for inspection at the Public Works Department, 2110 Fourth Street, Rosenberg, Texas.	
Schertz (city), Bexar, Comal, and Guadalupe Counties (FEMA Docket No. 7040)	
Dietz Creek:	
Approximately 200 feet downstream of F.M. 3009	*699
Approximately 200 feet upstream of Meske Road	*726
East Branch Dietz Creek:	
Approximately 1.5 miles downstream of Woodland Oaks Drive	*701
Approximately .91 mile upstream of Crest Oak Lane	*818
Cibolo Creek:	
At downstream corporate limits	*686
Approximately 1.46 miles upstream of Avalon Boulevard	*725
Maps available for review at the City Hall, 1400 Schertz Parkway, Schertz, Texas.	
Silsbee (city), Hardin County (FEMA Docket No. 7040)	
Village Creek Tributary:	
At corporate limits approximately 2,100 feet downstream of Norvell Street	*42
Approximately 200 feet upstream of Norvell Street	*42
Maps available for inspection at the Silsbee City Hall, 105 S. 3rd Street, Silsbee, Texas.	
VERMONT	
West Fairlee (town), Orange County (FEMA Docket No. 7042)	
Ompompanoosuc River:	
At downstream corporate limits	*683
At upstream corporate limits	*772
Algenn Brook:	
At confluence with Ompompanoosuc River	*696
Upstream side of Access Road	*827
Middle Brook:	
Approximately 125 feet upstream of State Route 244	*682
Approximately .23 mile upstream of confluence of Bear Notch Brook	*742
Bear Notch Brook:	
At confluence with Middle Brook	*729
Approximately 430 feet upstream of Middle Brook Road	*736
Blood Brook:	
At State Route 244	*687
Approximately 100 feet downstream of Marsh Hill Road	*742
Maps available for inspection at the Town Hall, West Fairlee, Vermont	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: June 12, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-14402 Filed 6-18-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 92-211]

Lowest Unit Charge of Section 315(b)

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on reconsideration.

SUMMARY: By this Order on Reconsideration, the Federal Communications Commission denies two petitions for reconsideration of its December 13, 1991, Declaratory Ruling, 57 FR 1478 (January 14, 1992), 6 FCC Rcd 7511 (1991), concerning the lowest unit charge requirement of section 315(b) of the Communications Act. The Order on Reconsideration affirms that federal law preempts state causes of action dependent on any determination of the lowest unit charge or any other duty arising under section 315(b). This action is necessary to carry out congressional intent, to ensure uniform interpretation and enforcement of the lowest unit charge requirement and to avoid inconsistent and conflicting state court rulings regarding section 315(b). The intended effect of this action is to provide certainty to political candidates that they are indeed receiving the lowest unit charge for advertising time; and to broadcasters, the certainty that they are fully complying with the law.

FOR FURTHER INFORMATION CONTACT: Richard Welch, Office of General Counsel, Federal Communications Commission (202) 632-6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, FCC 92-211, which was adopted May 14, 1992, and released June 12, 1992. The full text of this decision is available for inspection and copying during normal business hours in the Administrative Law Division, Office of General Counsel, FCC, room 616, 1919 M Street NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (202) 452-1422.

Summary of Order on Reconsideration

Introduction

The Commission has issued an Order on Reconsideration denying two petitions for reconsideration of its December 13, 1991, Declaratory Ruling, 57 FR 1478 (January 14, 1992), 6 FCC Rcd 7511 (1991), concerning the lowest unit charge requirement of section 315(b) of the Communications Act. Section 315(b) provides that during specified periods before primary and general elections a broadcast station's charges for advertising time purchased by candidates may not exceed "the lowest unit charge of the station for the same class and amount of time for the same period." 47 U.S.C. 315(b). The Order on Reconsideration affirms the Commission's prior ruling that federal law preempts state causes of action dependent on any determination of the lowest unit charge or any other duty arising under section 315(b).

The Declaratory Ruling

On October 10, 1991, the Commission released a Public Notice, 56 FR 51895 (October 16, 1991), 6 FCC Rcd 5954 (1991), which noted the Commission's intention to issue a declaratory ruling concerning whether it has exclusive jurisdiction to determine questions of liability for violations of Section 315(b). The Public Notice also stated that the Commission was considering whether its exclusive jurisdiction should extend beyond the basic liability question and, if so, whether the Commission should preempt state causes of action in which an alleged violation of section 315(b) is an essential element. The Public Notice invited interested parties to comment on these issues.

After considering comments filed by interested persons in response to the Public Notice, the Commission issued its Declaratory Ruling on December 13, 1991. In the Declaratory Ruling, the Commission found that Congress by implication preempted state causes of action involving alleged violations of section 315(b), and declared that the FCC shall be the sole forum for adjudicating complaints arising under that subsection. In addition, as an independent basis for its action, the Commission found that preemption in these circumstances was within the FCC's broad delegated authority to implement and enforce Section 315(b) and necessary to ensure uniform interpretation and enforcement of the statute. The Declaratory Ruling preempted both determinations of liability under section 315(b) and remedies for enforcing the statute. Finally, the Declaratory Ruling established procedures governing complaints filed with the Commission alleging violations of section 315(b).

Petitions for Reconsideration

Two groups of candidates for political office in Georgia and Alabama and their respective campaign committees petitioned the Commission on January 15, 1992, to reconsider the Declaratory Ruling. The petitions challenge the Commission's preemption decision and ask the Commission to withdraw the Declaratory Ruling. The Commission issued a Public Notice on January 30, 1992, 57 FR 6121 (February 20, 1992), which noted the filing of the petitions and established a pleading cycle in accordance with 47 CFR 1.429 (1991). Oppositions were filed by three groups of broadcasters, and the petitioners replied to the oppositions.

The Commission's Decision on Reconsideration

The Order on Reconsideration denies the petitions for reconsideration and affirms in its entirety the holding of the Declaratory Ruling and the analysis contained therein. The Order on Reconsideration affirms that Congress by implication preempted state causes of action involving breaches of duties arising under Section 315(b). The Commission concludes that Congress's placement of section 315(b) within the Communications Act's existing regulatory framework demonstrates its intent to centralize interpretation and enforcement of the lowest unit charge requirement in the FCC. Moreover, the Commission notes that Congress in section 315(d) vested in the FCC explicit power to implement and enforce the requirements of Section 315. The Commission finds that this express delegation of authority further supports a conclusion that Congress intended only the Commission to resolve lowest unit charge disputes.

In addition, the Commission concludes that the legislative history and statutory objectives of the Federal Election Campaign Act of 1971 (FECA), which enacted the current version of section 315(b), support preemption in these circumstances. The Commission affirms its prior finding that the prospect of differing determinations of liability and remedies by various state courts not only would frustrate the congressional goals of uniformity and certainty in the application and enforcement of section 315(b), but might impede the dissemination of information regarding political campaigns favored by Congress in the FECA. The Commission also concludes that it has ample authority to

ensure enforcement of the lowest unit charge requirement and to fully protect the interests of political candidates, including the authority to require rebates from broadcasters to political candidates for section 315(b) overcharges.

The Order on Reconsideration also rejects the petitioners' contention that the Commission unlawfully conferred exclusive jurisdiction upon itself. The Commission concludes that, consistent with relevant Supreme Court precedent, its preemption action not only implements implied congressional intent to preempt, but comes within the Commission's broad, congressionally-delegated authority to enforce section 315(b) and ensure uniformity, certainty and consistency with respect to the lowest unit charge requirement.

Finally, the Order on Reconsideration rejects the petitioners' assertion that the procedures governing Section 315(b) complaints set forth in the Declaratory Ruling are inadequate and unlawful. To the contrary, the Commission finds that the procedures are consistent with applicable law, fully protect the rights and interests of the parties, and are designed to facilitate timely and fair resolution of section 315(b) complaints.

Conclusion

The Commission denies the petitions for reconsideration of the Declaratory Ruling, and affirms that federal law preempts state causes of action involving any determination of the lowest unit charge or any other duty arising under section 315(b).

Ordering Clauses

Accordingly, *it is ordered*, Pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, that the petitions for reconsideration filed on January 15, 1992, by certain candidates for political office in Georgia and Alabama and their respective campaign committees are denied.

It is further ordered, Pursuant to sections 1, 4(i), 4(j), 303(r), and 315(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 315(b) and (d); section 5(e) of the Administrative Procedure Act, 5 U.S.C. 556(e); and Section 1.2 of the Commission's rules, 47 CFR 1.2, that the Declaratory Ruling in this proceeding is affirmed.

List of Subjects in 47 CFR Part 73

Television/broadcasting, Elections, Political candidates, Radio broadcasting.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92-14505 Filed 6-18-92; 8:45am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-25; RM-7905]

Radio Broadcasting Services; Fort Bragg, CA

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document substitutes Channel 237B1 for Channel 237A at Fort Bragg, California, and modifies the license for Station KOZT(FM) to specify operation on the higher powered channel, as requested by California Radio Partners. See 57 FR 6210, February 21, 1992. Coordinates for Channel 237B1 at Fort Bragg are 39-24-24 and 123-44-04. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 31, 1992.
FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.
SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-25, adopted May 21, 1992, and released June 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 237A and adding Channel 237B1 at Fort Bragg.

Federal Communications Commission.
Michael C. Ruger,
Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 92-14509 Filed 6-18-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-21; RM-7796]

Radio Broadcasting Services; Cave City and Radcliff, KY, and Santa Claus, IN

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document substitutes Channel 278C3 for Channel 278A at Radcliff, Kentucky, and changes the reference coordinates for vacant but applied for Channel 277A at Santa Claus, Indiana, at the request of W & B Broadcasting, Inc. See 57 FR 06083, February 20, 1992. The coordinates for Channel 278C3 at Radcliff are North Latitude 37-50-34 and West Longitude 86-06-49. The new reference coordinates for Channel 277A at Santa Claus are North Latitude 38-12-50 and West Longitude 87-00-50. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 31, 1992.
FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.
SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-21, adopted May 21, 1992, and released June 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 278A and adding Channel 278C3 at Radcliff.

Federal Communications Commission.
Michael C. Ruger,
Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 92-14508 Filed 6-18-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-49; RM-7599 and RM-7332]

Radio Broadcasting Services; Lomira, Sheboygan and Sheboygan Falls, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249A for Channel 294A at Lomira, Wisconsin, and modifies the construction permit for Station WFDL(FM) to specify operation on Channel 249A in response to a counterproposal filed by Value Radio Corporation in MM Docket 91-49. See 56 FR 10277, March 3, 1991. The coordinates for Channel 249A are 43-38-30 and 88-28-30. To accommodate Channel 249A at Lomira, we shall substitute Channel 229A for Channel 249A at Sheboygan, Wisconsin, and modify the license for Station WWJR(FM) accordingly. The coordinates for Channel 229A are 43-43-12 and 87-44-04. The petition filed by WKTS, Inc., proposing the allotment of Channel 229A to Sheboygan Falls, Wisconsin, is dismissed (RM-7599). With this action, this proceeding is terminated.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-49, adopted May 22, 1992, and released June 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 294A and adding Channel 249A at Lomira, and by removing Channel 249A and adding Channel 229A at Sheboygan.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-14510 Filed 6-18-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 911053-2066]

RIN 0648-AD89

Fee Schedule for Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: In accordance with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), NOAA adopts a fee schedule for foreign fishing which establishes "poundage fees" to be paid for each metric ton of fish harvested by such foreign vessels as may be authorized to conduct directed fishing in the Exclusive Economic Zone (EEZ). The schedule also establishes a permit application fee of $354.00 per vessel which must accompany each foreign fishing application.

EFFECTIVE DATE: January 1, 1992.

ADDRESSES: Copies of a regulatory impact review (RIR) are available from the Office of Fisheries Conservation and Management, Operations Support and Analysis Division (F/CM1), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, 301-713-2337, or WU Telex No.: 467856 (US COMM FISH CI).

SUPPLEMENTARY INFORMATION: On November 26, 1991, NOAA published a Notice of Proposed Rulemaking (NPR) at 56 FR 59920 which proposed: (1) Maintaining the 1992 fee schedule for foreign fishing at the 1991 level, (2) removing a reference to the year in which a surcharge is waived for the Fishing Vessel Gear Damage Compensation Fund (FVGDCF) and, (3) updating the address to which fees should be remitted. Although the notice requested public comments for a 30-day period, no comments were received.

The Department of State was consulted about this final rule to establish a fee schedule.

The NPR described the proposed 1992 fee schedule for foreign fishing and discussed the reasoning behind maintaining fees found at § 611.22(b) at 1991 levels. The notice also discussed how fees maintained at such levels were reasonable and nondiscriminatory in accordance with requirements of Section 106 of the Fishery Conservation Amendments of 1990 (Pub. L. 101-627). The NPR was also careful to note that the most recent vote by the Mid-Atlantic Fishery Management Council on the subject of TALFF (Total Allowable Level of Foreign Fishing) resulted in a zero TALFF being recommended for 1992. The notice emphasized that publication of the proposed 1992 fee schedule for foreign fishing should not be construed to imply that any 1992 TALFF is likely or anticipated. Similarly, readers are cautioned that adoption of this final fee schedule is undertaken in the interest of operational orderliness and should not be viewed as any indicator of whether TALFF may or may not be made available in 1992. In addition to the above-referenced NPR, readers are invited to refer to 56 FR 1575, dated January 16, 1991, for further information on foreign fishing fees.

With respect to the FVGDCF, the NPR discussed the current status of the fund, and noted that the fund's current capitalization level makes it highly improbable that a surcharge will be necessary in 1992 or future years. Thus, in the interest of efficiency, the reference at § 611.22(c) to the year a surcharge waiver is effective is being deleted. In the unlikely event circumstances warrant a surcharge for the FVGDCF in 1992 or future years, an amendment of § 611.22(c) will be effected to reapply the surcharge.

Lastly, in the context of a technical correction, the NPR noted the need to update the address found at § 611.22(a) to which application fees should be directed.

As previously reported, no comments were received regarding the NPR published on November 26, 1991, at 56 FR 59920, and, accordingly, the fees and other changes proposed therein are adopted as final.

Additionally, readers are reminded that while cost-recovery provisions of section 204(b)(10) of the Magnuson Act necessitated development of an annual fee schedule for foreign fishing until passage of the Fishery Conservation Amendments of 1990, no such requirement now exists. Thus, since it is believed that the fee schedule adopted

herein will meet the foreseeable future the present requirements of section 204(b)(10) for fees to be both "reasonable" and applied "nondiscriminatorily," readers are advised that this fee schedule will remain in effect indefinitely. If circumstances warranting a change in the schedule arise for species currently on the schedule or species new to the schedule, fees deemed reasonable and nondiscriminatory for such species will be implemented in an interim final rule. Following a comment period of at least 30 days from the date of publication of the interim final rule, appropriate fees for the species in question will be determined and adopted as final. A fee schedule so adopted will then remain in effect until such time as further changes may be necessary to maintain compliance with section 204(b)(10).

Classification

NOAA prepared an RIR for the 1988 fee schedule which discussed the economic consequences and impacts of that fee schedule and alternatives. Copies of that RIR are available (see addresses). Based on that RIR, the Assistant Administrator for Fisheries, NOAA, determined that the 1988 fee schedule complied with the requirements for Section Two of Executive Order 12291. Since the poundage fees proposed for 1989 and 1990 were not increased, and were subsequently lowered in 1991, NOAA anticipated and perceived no new economic impact from the poundage fees adopted in 1991, and none is anticipated from maintaining these poundage fees indefinitely. It has been determined that the fee schedule for foreign fishing does not constitute a major rule.

The General Counsel of the Department of Commerce has certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small domestic entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification was forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the fee schedule will not have a significant economic impact upon a substantial number of small domestic entities, a regulatory flexibility analysis was not requried.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Assistant Administrator for Fisheries, NOAA, under the provisions of section 553(d) of the Administrative Procedure Act, finds for good cause, namely to implement the fee schedule as close to the beginning of the calendar/permit year as possible, that it is impractical and contrary to the public interest to delay the effective date of these regulations for 30 days. Allowing the effective date to be January 1, 1992, will maintain fees at 1991 levels. This action does not require significant changes in the plans or strategies of foreign fishing companies since it does not increase fees over the amounts which applied in 1988, 1989, 1990 and 1991.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program. The rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: June 11, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

For the reasons set forth above, 50 CFR part 611 is amended as follows:

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

§ 611.22 [Amended]

2. In § 611.22, the second sentence in paragraph (a) is amended by revising the phrase "Branch Chief, Fees and Permits Branch, F/TS21, National Marine Fisheries Service, Washington, DC 20235." to read "Chief, Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.".

3. In § 611.22, paragraph (b)(1) is revised to read as follows:

§ 611.22 Fee schedule.

* * * * *

(b) *Poundage fees.*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (c) of this section.

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring	61.76
5. Mackerel, Atlantic	58.33
6. Other groundfish	119.09
7. Squid, *Illex*	103.98
8. Squid, *Loligo*	245.73
Alaska fisheries:	
21. Snails	128.42

* * * * *

§ 611.22 [Amended]

4. In § 611.22, the last sentence in paragraph (c) is amended by revising the phrase "on 1991 fees." to read "until further notice.".

[FR Doc. 92–14286 Filed 6–18–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 119
Friday, June 19, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Part 13

RIN 0560-AC23

Excessive Manufacturing (Make) Allowances in State Marketing Orders for Milk

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish procedures for implementing section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (the "1990 Act"). Section 102 generally provides that no State shall provide under a milk pricing program, and no milk processor shall collect under such a State program, a greater allowance for the processing of milk than the manufacturing allowance provided under a Federal program. Under the proposed rule, the provisions of section 102 would apply only to those States that establish prices for milk manufactured into butter, nonfat dry milk, and cheese through the use of a product price formula. The State would be in compliance with section 102 if, in establishing such prices, it provides for manufacturing allowances that are no greater than the manufacturing allowances provided for the respective products under the Federal price support program. If a State is not in compliance, a milk processor subject to the State's pricing progam could be subject to the assessment of a penalty if the prices paid by the processor for milk manufactured into butter, nonfat dry milk, or cheese are less than the prices that would apply if the State were in compliance.

DATES: Comments must be received on or before July 20, 1992 in order to be assured of consideration.

ADDRESSES: Comments should be submitted to Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 720-7601.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1521-1 and has been classified "not major." It has been determined that this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. A preliminary regulatory impact analysis and initial regulatory flexibility analysis is available from the previously mentioned contact.

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

It has been determined by an environmental evaluation that this program will have no significant impact on the quality of the human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Executive Order 12612 of October 26, 1987, entitled "Federalism," requires that Executive departments and agencies shall, to the extent permitted by law, adhere to certain principles of federalism. Pursuant to that order, a Federalism Assessment has been prepared and is available from the previously mentioned contact person. It has been determined, as set out in that assessment, that these proposed regulations would implement section 102 of the 1990 Act with the minimum interference with the operations of State governments needed to achieve compliance with the provisions and intent of that section.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive; they preempt State laws to the extent that such laws are not consistent with section 102 of the 1990 Act; and any person who is affected by an adverse determination made pursuant to the provisions of this proposed rule would be required to exhaust administrative remedies available in accordance with 7 CFR part 780 before bringing an action in the appropriate U.S. District Court.

Section 102 of the 1990 Act provides, in part, that "no State shall provide for (and no person shall collect, directly or indirectly) a greater allowance for the processing of milk (hereafter referred to as a 'make allowance') than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese." This section also authorizes the Secretary of Agriculture to issue implementing regulations, investigate any alleged violations, and impose penalties. The U.S. District Courts are given the power to enforce the provisions of section 102.

Under this proposed rule, the provisions of section 102 would apply only to those States that establish prices for milk manufactured into butter, nonfat dry milk, and cheese through the use of a product price formula. Such formulas typically use the market value of products made from milk and manufacturing allowances to determine prices for milk. Presently, it appears that only the States of California, Montana, and Nevada establish milk prices in this manner.

This proposed rule also provides that a State would be out of compliance with section 102 if, in setting such prices, it uses manufacturing allowances, which on a comparable basis, are greater than the manufacturing allowances used in determining the prices at which Commodity Credit Corporation (CCC) acquires dairy products. Under the milk price support program currently operated pursuant to section 204 of the Agricultural Act of 1949, as amended (the "1949 Act"), the price of milk is supported by the removal of surplus milk from the market through purchases

by the CCC of butter, nonfat dry milk, and cheddar cheese. In determining the purchase prices of these products, manufacturing allowances are used that provide the incentive for manufacturers to pay to producers raw milk prices that, on average, reach the price support level provided for in section 204 of the 1949 Act. Presently, these allowances for milk containing 3.67 percent milkfat are $1.22 per hundredweight of milk that is processed into butter and nonfat dry milk and $1.37 per hundredweight of milk processed into cheese.

In addition to placing certain restrictions on States, section 102 also places restrictions on milk processors in that section 102 specifies that processors cannot "collect" a manufacturing allowance that is greater than that provided under a Federal program. The proposed regulations, if adopted, would provide that the section 102 restrictions would apply only to those milk processors who operate a milk plant in a State where prices are established for milk manufactured into butter, nonfat dry milk, and cheese through the use of a State-established product price formula. Under this proposed rule, the milk processor would be considered to be in compliance with section 102 if the State is in compliance.

If the State is not in compliance with section 102, the law places the compliance burden on the milk processor. Accordingly, a milk processor subject to the State's pricing program could be subject to the assessment of a penalty if the prices paid to producers by the processor for milk manufactured into butter, nonfat dry milk, or cheese are less than the prices that would apply if the State were in compliance. A milk processor in a noncomplying State, in order to be in compliance with section 102, would have to increase the prices it paid to producers by the same amounts per hundredweight that it would be necessary to increase the prices established by State regulations in order to bring the regulations into compliance with section 102.

Under this proposed rule, any dairy farmer who produces milk could file with the Administrator, Agricultural Stabilization and Conservation Service (ASCS), or the Administrator's designee, a written complaint that a milk processor to whom the producer sells milk is collecting a greater manufacturing allowance than is permitted under section 102. The petition should contain a full statement of the facts upon which the complaint is based and any available materials supporting the claim of the alleged violation.

Upon receipt and review of the complaint, the Administrator of ASCS, as needed, would request that the USDA Office of Inspector General (OIG) conduct an investigation of the alleged violation. If, after receiving the results of OIG investigation, the Administrator determines that a violation has occurred, the dairy farmer and the person who is charged with the violation would be notified of the penalty and of the violator's administrative appeal rights.

Section 102 provides that milk processors who are collecting greater manufacturing allowances than are permitted under that section are liable for penalties that are to be determined by the Secretary and that are enforceable in the U.S. District Courts. Under the proposed rule, and as provided for in section 102 of the 1990 Act, the penalty amount would be equal to the amount obtained by multiplying twice the applicable CCC manufacturing allowance established under this regulation by the quantity of milk determined by the Administrator to have been involved in such violation of the manufacturing allowance requirements.

List of Subjects in 7 CFR Part 13

Administrative practice and procedure, Dairy products, Penalties, Price support programs.

Proposed Rule

Accordingly, it is proposed that title 7 of the Code of Federal Regulations be amended to add a new part 13 to read as follows:

PART 13—EXCESSIVE MANUFACTURING (MAKE) ALLOWANCES IN STATE MARKETING ORDERS FOR MILK

Sec.

13.1 General statement.
13.2 Definitions.
13.3 Applicability of provisions.
13.4 States that are in compliance.
13.5 Persons who are in compliance; violations.
13.6 Filing of a complaint, investigation of alleged violation, and opportunity for a hearing.
13.7 Investigations.
13.8 Penalties.

Authority: 7 U.S.C. 1446e–1.

§ 13.1 General statement.

(a) This part implements section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990, which states in part that no State shall provide for (and no person shall collect, directly or indirectly) a greater allowance for the processing of milk (hereafter referred to as a "make allowance") than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese.

(b) The administration of this part shall be the responsibility of the Administrator, ASCS. The Office of Inspector General, USDA, at the request of the Administrator shall conduct investigations with respect to matters arising under this part.

§ 13.2 Definitions.

Act means the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1446e–1).

Administrator means the Administrator of the Agricultural Stabilization and Conservation Service of the USDA, or a designee.

ASCS means the Agricultural Stabilization and Conservation Service.

CCC means the Commodity Credit Corporation.

CCC manufacturing allowances means, the amounts as determined and announced by CCC, which are used in establishing purchase price levels for the milk price support program to provide a return to dairy product manufacturers for handling such surplus commodities.

OIG means the Office of Inspector General, USDA.

Person means any individual, partnership, corporation, association, or other business enterprise.

Price support program means the program for the support of milk prices that is operated by the CCC pursuant to the provisions of the Agricultural Act of 1949.

Producer means a dairy farmer who produces milk that is from cows and is marketed commercially.

Product price formula means a formula that uses in whole or in part the market value of products made from milk and one or more manufacturing allowances to determine a regulatory price for milk.

Secretary means the Secretary of Agriculture of the United States, or a designee.

USDA means the United States Department of Agriculture.

§ 13.3 Applicability of provisions.

The provisions of this part shall apply to:

(a) Any State that pursuant to statute or other authority establishes prices for milk manufactured into butter, nonfat dry milk, or cheese, and does so through the use of a product price formula; and

(b) Any person who operates a milk plant in a State identified under

paragraph (a) of this section and who is subject to the authority of the State which sets minimum prices to be paid to producers for milk manufactured into butter, nonfat dry milk, or cheese.

§ 13.4 States that are in compliance.

A State described in § 13.3(a) shall be considered for purposes of this part to be in compliance with section 102(a) of the Act if, in establishing prices for milk manufactured into butter, nonfat dry milk, or cheese, the State does not provide for, or take into account, manufacturing allowances that are greater than the CCC manufacturing allowances for the respective products.

§ 13.5 Persons who are in compliance; violations.

(a) Any person described in § 13.3(b), shall, for purposes of this part, be considered to be in compliance with section 102(a) of the Act with respect to any purchase or acquisition of milk if the following conditions are met for that milk:

(1) The State in which the person's milk plant is located is in compliance with section 102(a) of the Act, as determined pursuant to § 13.4; or

(2) If the State in which the person's milk plant is located is not in compliance with section 102(a) of the Act, as determined pursuant to § 13.4, the prices paid by the person for milk manufactured into butter, nonfat dry milk, or cheese are not less than the prices that would apply if the State were in compliance.

(b) For any milk with respect to which a person is determined under paragraph (a) of this section to be not in compliance with section 102(a) of the Act, such person shall be considered to be in violation of this part and shall be subject to penalties assessed in accordance with § 13.8.

§ 13.6 Filing of a complaint, investigation of alleged violation, and opportunity for a hearing.

(a) Any producer desiring to complain that a person, as described in § 13.3(b), to whom the producer sells milk is not in compliance with section 102(a) of the Act, may file a written petition with the Administrator that contains a full statement of the facts upon which the petition is based, the names and addresses of the parties involved, and any available materials supporting the claim of the alleged violation.

(b) Upon the receipt of a petition, the Administrator, if it is determined that the petition may have merit, shall request the OIG conduct an investigation of the alleged violations unless the Administrator shall designate other officials to conduct such investigation. In conducting the investigation, the provisions of § 13.7 shall apply.

(c) If the Administrator determines that the petition is without merit, the petition shall be denied and the petitioner notified of the grounds for such denial.

(d) If the Administrator based on the information reviewed determines that a violation of the provisions of this part has occurred, the petitioner and the person in violation of the provisions shall be notified of such decision and, the person in violation also shall be notified of any assessed penalty and rights of appeal. Appeal proceedings shall be conducted, in accordance with part 780 of this title, except that the initial request for reconsideration of the notice of the violation shall be filed with the Administrator.

§ 13.7 Investigations.

The Administrator may request such investigations as are considered necessary for the effective administration of this part. In conducting such investigations, the Administrator or an official of OIG may:

(a) Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the investigation; and

(b) In the case of contumacy by any person, or refusal of any person, to obey a subpoena, invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is carried on, or where the person resides or carries on business.

§ 13.8 Penalties.

(a) Upon the determination by the Administrator that a person described in § 13.3(b) is in violation of this part, the person shall be liable for a penalty equal to an amount obtained by multiplying:

(1) Twice the applicable CCC manufacturing allowance at the time of such violation; by

(2) The quantity of milk determined by the Administrator to have been involved in such violation.

(b) A person assessed such a penalty also shall be liable for an amount of interest on any unpaid penalty from the date that such person was notified of the penalty. Such interest shall accrue at a rate which shall be set out in the notice of violation to the person. Such rate shall be equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date of notification by the Administration of the violation.

Signed this 11th day of June 1992 in Washington, DC.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 92-14279 Filed 6-18-92; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 926

[Docket No. FV-92-066]

Proposed 1992-93 Fiscal Year Expenditures and Assessment Rate for Tokay Grapes Grown in San Joaquin County, CA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1992-93 fiscal year (April 1-March 31) under Marketing Order No. 926. These expenditures and this assessment rate are needed by the Tokay Grape Industry Committee (committee) established under this marketing order to pay marketing order expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the committee to perform its duties and operate the order.

DATES: Comments must be received by June 29, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Candace J. Mintz, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-3923.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 926 (7 CFR part 926) regulating the handling of Topay grapes grown in San Joaquin County in California. This agreement and order is effective under the Agricultural Marketing Agreement Act

of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, California Tokay grapes are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable California Tokay grapes handled during the 1992–93 fiscal year (April 1-March 31). This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 3 handlers of California Tokay grapes subject to regulation under this marketing order. In addition, there are about 40 California Tokay grape producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of the regulated commodity. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed at a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met on April 24, 1992, and unanimously recommended a 1992–93 fiscal year budget and assessment rate for this marketing order. The committee's recommendations are based on preseason projections of 1992 season shipments, expenses, and reserve fund levels under the order.

The proposed 1992–93 budgeted expenditures for this marketing order are lower than those for 1991–92. The decrease in the budget reflects a reduction in auditing expenses. The assessment rate for the 1992 season however, remained constant. In addition, the committee has adequate reserves to fund any expenditures in excess of income for 1992–93.

The proposed expenditures are all for administration of this order. Administrative expenses include those for salaries, and office operations.

The committee recommended a 1992–93 budget of $5,275 and an assessment rate of $0.07 per 23 pound lug of Tokay grapes shipped under M.O. 926. In comparison, the 1991–92 budgeted expenditures were $5,375 and the assessment rate was $0.07 per 23 pound lug.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 926

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 926 be amended as follows:

1. The authority citation for 7 CFR part 926 continues to read as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. A new section 926.231 is added to read as follows:

§ 926.231 Expenses and assessment rate.

Expenses of $5,275 by the Tokay Grape Industry Committee are authorized, and an assessment rate of $0.07 per 23 pound lug of assessable California Tokay grapes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: June 15, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–14454 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 948

[Docket No. FV-92-063]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 948 for the 1992–93 fiscal period (July 1, 1992, through June 30, 1993). Authorization of this budget would permit the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 29, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable potatoes handled during the 1992–93 fiscal period, beginning July 1, 1992, through June 30, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 17 handlers of Colorado Area III potatoes under this marketing order, and approximately 120 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Colorado Area III potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area III potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area III potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met April 9, 1992, and unanimously recommended a 1992–93 budget of $15,134, $10,799 more than the previous year. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. In previous years administrative expenses that were shared were divided so that 85 percent was paid under the State and 15 percent under the Federal order. Management has concluded that the jointly operated programs consume about equal administrative time, so it was recommended that the two orders split the administrative costs equally. Major increases include almost $5,300 for manager's salary, $800 for office supplies, $1,700 for rent, $510 for utilities, and $525 for compliance. All promotion and advertising expenses are financed under the State order.

The Committee also unanimously recommended an assessment rate of $0.02 per hundredweight, $0.0175 more than last season's rate. This rate, when applied to anticipated shipments of 824,200 hundredweight, would yield $16,485, which would be adequate to cover expected expenses. Interest income of $1,250 and $1,200 received from the Federal-State Inspection Service for rent would provide additional income of $2,450. Funds in the Committee's authorized reserve at the beginning of the 1992–93 fiscal period, estimated at $6,918, would be within the maximum permitted by the order of two fiscal periods' expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be

passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program begins on July 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Colorado Area III potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 948.208 is added to read as follows:

§ 948.208 Expenses and assessment rate

Expenses of $15,134 by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) are authorized, and an assessment rate of $0.02 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

Dated: June 15, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–14457 Filed 6–18–92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 953

[Docket No. FV–92–064]

Southeastern Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 953 for the 1992–93 fiscal period (June 1, 1992, through May 31, 1993). Authorization of this budget would permit the Southeastern Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 29, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina). The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12278, Civil Justice Reform. Under the marketing order provisions now in effect, Irish potatoes are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable Irish potatoes handled during the 1992–93 fiscal year period, beginning June 1, 1992, through May 31, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of Southeastern potatoes under this marketing order, and approximately 150 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Southeastern potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the Southeastern Potato Committee, the agency responsible for local

administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Southeastern potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Southeastern potatoes, based on last season's crop. Because that rate will be applied to actual shipment, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met April 16, 1992, and unanimously recommended a 1992–93 budget of $11,000, the same as last year. Major expense items include committee staff salaries and travel expense.

The Committee also recommended an assessment rate of $0.0050 per hundredweight, $0.0025 more than last season's rate. Production for the 1992–93 season could not be estimated at this time. However, the Committee anticipates shipments will be about the same as last year, approximately 400,000 hundredweight. The $17,829 reserve would be adequate to cover the expenses incurred. Funds remaining at the end of the 1992–93 fiscal period should be within the maximum permitted by the order of one fiscal period's expenses.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program begins on June 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Southeastern potatoes handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 953 be amended as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

1. The authority citation for 7 CFR part 953 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 953.249 is added to read as follows:

§ 953.249 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized, and an assessment rate of $0.0050 per hundredweight of assessable potatoes is established for the fiscal period ending May 31, 1993. Unexpended fund may be carried over as a reserve.

Dated: June 15, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–14458 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1007

[DA–92–14]

Milk in the Georgia Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend for the month of August 1992 certain provisions of the Georgia milk marketing order. The proposed suspension would make inoperative the requirement that producers be paid on the basis of a base and excess payment plan for the month of August 1992. A cooperative association requested the suspension because the current provisions tend to discourage milk production at a time when milk production is declining.

DATES: Comments are due no later than June 26, 1992.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202)–720–6274.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to encourage milk production during the month of August which is a month of declining milk production.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of

milk in the Georgia marketing area is being considered for August 1992.

1. In § 1007.32, paragraph (a).
2. In § 1007.61(a) the words "of September through January".
3. In § 1007.61, paragraph (b).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures by the August 1992 suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension makes inoperative the requirement that producers be paid on the base and excess plan for the month of August 1992. The proposal was submitted by Dairymen, Inc. (DI), a cooperative association of producers having a substantial amount of milk pooled on the Georgia milk market.

In support of its proposal, DI said the suspension is needed to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of August. DI said that the current order provisions provide that producers, for the months of February through August, be paid a base and excess price. The proponent cooperative said that this plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of February through August when the additional milk production is not needed for fluid use.

DI said that marketing conditions have changed since those provisions were adopted in the Georgia order. In recent years, milk production during the month of August has been in short supply. DI believes that production should not be discouraged during the month of August.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the month of August 1992.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: June 15, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–14455 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1098

[DA–92–13]

Milk in the Nashville, Tennessee Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend for the month of July 1992 certain provisions of the Nashville, Tennessee milk marketing order. The proposed suspension would make inoperative the requirement that producers be paid on the basis of a base and excess payment plan for the month of July 1992. A proprietary handler requested the suspension because the current provisions tend to discourage milk production at a time when milk production is declining.

DATES: Comments are due no later than June 26, 1992.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202)–720–6274.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to encourage milk production during the month of July which is a month of declining milk production.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Nashville, Tennessee marketing area is being considered for July 1992.

1. In § 1098.61(a), the words "for each of the months of August through February".
2. In § 1098.61(a)(5), the words "in the months of August through February".
3. In § 1098.61, paragraph (b).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures by the July 1992 suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension makes inoperative the requirement that producers be paid on the base or excess plan for the month of July 1992. The proposal was submitted by Malone & Hyde, Inc. (Malone), a proprietary handler operating a distributing plant that is regulated under the Nashville order.

In support of its proposal, Malone said the suspension is needed to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of July. Malone said that the current order provisions provide that producers, for the months of March through July, be paid a base and excess price. Malone said that this plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of March through July when the additional milk production is not needed for fluid use.

Malone said that marketing conditions have changed since those provisions were adopted in the Nashville order. In recent years, milk production during the month of July has been in short supply. Malone believes that production should not be discouraged during the month of July. Carolina Virginia Milk Producers Association, and many non-member producers, stated that they support the request for the suspension.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the month of July 1992.

List of Subjects in 7 CFR Part 1098

Milk marketing orders.

The authority citation for 7 CFR part 1098 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on June 15, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92–14456 Filed 6–18–92; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1924 and 1944

RIN 0575–AB08

Cost Containment and Vulnerability

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations regarding the processing of preapplications for Rural Rental Housing (RRH) assistance. This action is necessary to decrease costs associated with the program and to reduce program vulnerability. The intended effect is to improve credit quality and to make our regulations more responsive to the prudent development of RRH complexes in rural America.

DATES: Comments must be submitted on or before August 18, 1992.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulation Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gail McCowan, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5337—South Agriculture Building, Washington, DC 20250, telephone (202) 720–1623.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or be controversial. The net result is to provide better service to rural communities.

Background/Discussion

FmHA is amending its regulations to help curtail fraud, waste and abuse in the Section 515 program. Primary proposed changes in subpart A of part 1924 are:

(1) Section 1924.10(c) requires the approval of line item changes in construction by the District Office.

(2) Section 1924.13(a) reduces the amount paid to architects when they are providing less than full architectural services.

(3) Section 1924.13(e)(1) requires a contractor's credit report to reflect financial strength sufficient to carry out construction; requires FmHA personnel to review estimates of construction costs contained on Form FmHA 1924–13; requires a CPA/LPA to review borrower's accounting system; limits the amount for general requirements to those estimated prior to start of construction and that profit will be reduced to offset an increase in general requirements; requires the cost certification CPA/LPA to utilize the audit program specified by FmHA and requires the borrower to accept that audit program as part of the cost certification; contains the opinion letter to be used by the cost certification CPA/LPA; provides a sample of a CPA audit letter; states that cost certification will be obtained by FmHA through direct contract with a CPA/LPA; prohibits the same CPA/LPA who maintains borrower's books to also contract with the Agency to cost certify the construction costs; requires all applicants/borrowers to complete identity of interest forms; requires that the borrower identify kickbacks, rebates, etc., and that those amounts will be subtracted from the loan amount; prohibits the payment of profit and overhead for any contractors who are not performing actual construction work; requires that contracting entities certify as to their viability as an ongoing trade or business qualified and licensed to undertake the work; and requires State Offices to document review results pertaining to granting exceptions to competitive bidding.

(4) Section 1924.13(e)(2) requires a contractor's credit report to reflect financial strength sufficient to carry out construction; eliminates the reference to including cost certification fees into total development cost; requires a CPA/LPA to verify accounting systems of owner-builders; requires State Offices to document review results pertaining to granting exceptions to competitive bidding; limits the amount for general requirements to those estimated prior to start of construction; states that cost certification will be obtained by FmHA through direct contract with CPA/LPA's; requires the cost certification CPA/LPA to utilize the audit program specified by

FmHA and requires the borrower to accept that audit program as part of the cost certification; requires identification of kickbacks, rebates, etc., for cost certification and requires that those amounts will be subtracted from the loan amount; prohibits the payment of profit and overhead for contractors who are not performing actual construction work; and requires that contracting entities certify as to their viability as an ongoing trace or business qualified and licensed to undertake the work.

Primary proposed changes in subpart E of part 1944 are:

(1) Section 1944.211(a) limits the number of preapplications and requires the initial operations and maintenance (O&M) expenses to be provided in cash.

(2) Section 1944.212(b) limits the amount of the loan to be used to rehabilitate existing buildings.

(3) Section 1944.212(c) is changed to eliminate reference to land owned by an applicant or member of the applicant organization which is already included in § 1944.213(c), and specifies that site density requirements of § 1944.215 be used when considering excess land.

(4) Section 1944.212(d) establishes cost ranges within States for offsite development costs.

(5) Section 1944.212(g) includes the purchase of blinds.

(6) Section 1944.212(i) removes fees for market studies, tax credit fees, legal fees including closing costs, environmental, and other appropriate technical and professional fees as eligible loan purposes when the applicant will be receiving low income housing tax credits.

(7) Section 1944.212(j) corrects any existing typographical error.

(8) Section 213(b) contains examples of how loan amounts should be calculated.

(9) Section 1944 213(c) prohibits the financing of facilities contrary to cost containment measures and prohibits payment of commission fees in connection with land sales in certain circumstances.

(10) Section 1944.213(d) requires that FmHA verify in writing debts of applicants incurred prior to loan closing.

(11) Section 1944.213(e) requires that increases in per unit cost be approved by FmHA in writing before the expense is incurred.

(12) Section 1944.215(a) specifies cost containment measures and prohibits the financing of certain amenities and features. The absence of those particular features and amenities will not detract from the aesthetic value or functional use of the buildings. The Agency feels it necessary to contain costs wherever it will not reduce the overall quality. However, we specifically request comments on this section and other methods to reduce and/or contain costs.

(13) Section 1944.215(b) mandates unit dimension sizes.

(14) Section 1944.215(e) requires the execution of a loan resolution or loan agreement prior to loan approval.

(15) Section 1944.215(w) requires a more in-depth examination of feasibility for projects where tax credits will be utilized.

(16) Section 1944.231 states that the servicing office will have the discretion to contract for certain market studies.

(17) Section 1944.235(a) requires that evidence be on file with the servicing office that the cash amount for O&M has been deposited prior to loan closing.

(18) Section 1944.235(b) states the terms for transferring an obligation upon monetary default and foreclosure by an interim lender.

(19) Section 1944.235(c) prohibits the borrowing entity from providing its own interim financing.

(20) Section 1944.237(a) provides clarification that subsequent loan preapplications must compete for funding in those cases where the loan will be used to finance additional units.

(21) Section 1044.239(c) requires compliance with Fair Housing Act Amendments of 1988.

(22) Paragraph IV.B of Exhibit A states that market studies may be obtained directly by FmHA when there is a question of the need.

(23) Paragraph I of Exhibit A–7 requires an audited financial statement and income tax returns from applicants and requires the execution of new identity of interest forms.

(24) Paragraph II of Exhibit A–7 specifies how the need for new units will be calculated, requires FmHA staff to use a market study checklist to analyze studies, and requires the applicant to disclose the percentage of tax credits to be requested from the State Agency.

(25) Paragraph IV of Exhibit A–7 requires all applicants to submit Form FmHA 1924–13, "Estimate and Certificate of Actual Cost."

(26) Exhibit A–8 has been revised to incorporate more data pertaining to analysis of the market.

(27) Paragraphs 2 and 5 of Exhibit A–9 require applicants to submit Form FmHA 1924–13 and that the State Director will determine if updated market information must be submitted after 12 months have transpired.

(28) Additional conforming reference changes will be made to the regulation when published as a final rule.

Implementation Proposal

The subject rule proposes changes to certain structural features and related amenities and costs. When published as a final rule, FmHA intends for all preapplications and applications on hand to be subject to the contents of the final rule with the exception of applications whose plans and specifications have been finalized. The State Director may waive this requirement if the applicant can prove changes to an application to accommodate the provisions of the final rule will pose a financial hardship. We do not intend to "grandfather" existing preapplications or have a "phase-in" period. FmHA recognizes this action will have an impact on preapplications which are in process. However, as previously mentioned, FmHA has a large backlog of preapplications. A survey of demand completed last year indicated that FmHA had in excess of $1.8 billion in preapplications on hand—over three times our current annual allocation of funds. The changes addressed in this proposed rule reflect current Agency policy, complement rural development initiatives, prudent loan underwriting and are consistent with the intent of the Housing Act of 1949, as amended. FmHA recommends that any potential applicant be cognizant of the changes in this proposed rule before developing a preapplication.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 2015, subpart V, programs 10.415 Rural Rental Housing Loans and 10.427—Rural Rental Assistance Payments are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1949, Public Law 91–90, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Certification of Compliance With Executive Order No. 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 40 hours per response, with an average of 5.3 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, and Rural housing.

Accordingly, FmHA proposes to amend chapter XVIII, title 7, Code of Federal Regulations as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1980; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10 Pub. L. 93–357; 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. In § 1924.10 paragraph (c)(2)(i) is revised to read as follows:

§ 1924.10 Making changes in the planned development.

* * * * *

(c) * * *

(2) * * *

(i) Contract method. Changes shall be numbered in sequence as they occur using Form FmHA 1924–7 with necessary attachments. All transfers of funds between line item costs in contracts involving identity of interest entities will be approved by the servicing office using Form FmHA 1924–7.

* * * * *

3. In § 1924.13, paragraphs (a)(3), (e)(1)(iii)(B)(*3*), (e)(1)(iv), (e)(1)(v), (e)(1)(vii)(B)(*1*), (e)(2)(i)(D), (e)(2)(i)(G), (e)(2)(i)(H), (e)(2)(iii)(A), (e)(2)(iv), (e)(2)(v), and (e)(2)(viii) are revised to read as follows:

§ 1924.13 Supplemental requirements for more complex construction.

* * * * *

(a) * * *

(3) *Architectural fees.* Fees for architectural services shall not exceed the fee ordinarily charged by the profession for similar work when FmHA financing is not involved. The fee should cover only the architectural services rendered by the architect. The reduction of elimination of any services described in paragraph (a)(5) of this section shall be directly reflected in the fee. Fees for special services rendered by architects, such as the packaging of the loan application or additional non-architectural services, will not be authorized to be paid with loan funds.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(B) * * *

(*3*) A credit report (obtained at no expense to FmHA) attesting to the contractor's credit standing. The credit report must demonstrate a positive credit history and a financial strength sufficient to carry out all phases of construction, culminating in full completion of the project.

* * * * *

(iv) *Contract cost breakdown.* In any case where the loan approval official feels it appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4 (i) of this subpart, the contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must provide the applicant and FmHA with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety as required by § 1944.222 (h) and (i) of subpart E of part 1944 of this chapter and § 1924.6(a)(3) of this subpart will be included in the proposed contract amount and shown under Other Fees on Form FmHA 1924–13, which is available in all FmHA offices. FmHA personnel will be responsible for reviewing the estimates on Form FmHA 1924–13 to determine if the dollar amounts total correctly, to assure that costs are categorized under their appropriate columns, and to confirm that the estimated costs for all line items are reasonable and customary for the State.

(v) *Cost certification.* Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in § 1924.4(i) of this subpart, the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide documentation necessary to have the costs of construction certified by FmHA that those costs were the actual costs of the work performed as reported on the Form FmHA 1924–13. FmHA will contract directly with a CPA or LPA for the cost certification.

(A) Prior to the start of construction, the borrower, contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit, to the CPA or LPA, the accounting system that the borrower, contractor, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable the CPA or LPA must verify that the accounting system allows for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA 1924–13. Verification of the accounting systems by the CPA or LPA will be provided to FmHA by the borrower.

(B) Prior to final payment to anyone required to cost certify, a trade-item

breakdown showing the actual cost compared to the estimated cost must be provided to the owner and FmHA. Form FmHA 1924–13 is the form of comparative breakdown that should be used, and contains the certification required of the applicant and contractor prior to final payment. The amount for builder's general overhead builder's profit, and general requirements, respectively, shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(1)(iv) of this section for any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant. The amounts for general overhead, profit, and general requirements must be established prior to FmHA approving the construction contract and will not be changed during the course of construction. This applies to all contractors, subcontractors, material suppliers, or equipment lessors having or sharing an identity of interest with the applicant. Contract change orders will be processed to adjust the contract amount downward prior to the final payment to the contractor, if necessary, to assure that the amounts shown in the certificate of actual cost do not exceed the amounts represented in the contract cost breakdown. Reduction in the builder's profit will counterbalance any increase reflected in the line item and contract costs. Any funds remaining as a result of cost savings will be applied to the account as an extra payment or used for eligible loan purposes approved by FmHA.

(C) The CPA or LPA's audit will follow the audit requirements specified by FmHA and such other auditing procedures of the applicant/owner-builder and the contractor (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in accordance with the construction contract he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA 1924–13. The borrower must agree "that tests conducted on costs associated with (*project name*) will be sufficient to include the requirements specified by FmHA which may be separate and apart from normal auditing procedures."

(D) Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion concerning whether the constructions costs, as reported on Form FmHA 1924–13, present fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA regulations. If the CPA or LPA is able to express an unqualified opinion, the following format is suggested for the certification:

"We have examined the books and records of *(owner-builder, contractor, subcontractor, material supplier, equipment lessor)* related to the development of the (*project name and case number).*

Our examination was made in accordance with generally accepted Government auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. Tests were also made based on specific requirements stipulated by the Farmers Home Administration.

In our opinion, the accompanying documentation, including Form FmHA 1924–13, "Estimate and Certificate of Actual Cost," presents fairly the actual cost in the amount of $_____, of the _____, in conformity with generally accepted accounting principles and the instructions issued by FmHA for the recognition of such costs.

Amounts paid and to be paid are shown as of the close of business _____, 19____.

We certify that we have no financial interest in or with applicant/owner-builder, architect, engineer, attorney, contractor, subcontractors, material suppliers or equipment lessors, other than in the practice of our profession.

(E) Cost certification will be obtained by FmHA through direct contract with the CPA or LPA. The borrower and his/her CPA or LPA will cooperate fully with the contract CPA or LPA by providing all documentation necessary to conduct the certification. FmHA reserves the right to determine, upon receipt of the certified Form FmHA 1924–13 and the auditor's report, whether they are satisfactory to FmHA. If not satisfactory to FmHA, the borrower will be responsible for providing additional information.

(F) The CPA or LPA who initially reviews the borrowers accounting system and then maintains the accounts during construction will not be the same CPA or LPA who cost certifies the project.

(G) Forms FmHA 1944–30 and FmHA 1944–31, "Identity of Interest (IOI) Disclosure Certificate" and "Identity of Interest (IOI) Qualification Form," provide written notification to the borrower that willful and intentional falsification of cost certification documents will result in debarment of all violators in accordance with the provisions of FmHA Instruction 1940–M (available in any FmHA office). These forms require the disclosure of all identities of interest associated with project construction, certify the entity's ability to provide the contracted service, and cite the penalties for failure to disclose or falsify such certification. Each applicant/borrower will be required to complete and sign the forms (available in any FmHA office).

(H) Under no circumstances will loan funds be used to pay the applicant or its stockholders, members, directors or officers, directly or indirectly, any profits from the construction of the project except a typical builder's fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Where an identity of interest exists between the borrower and the contractor, discounts and rebates given the borrower or contractor in advance must be deducted before the invoices are paid. The amount of the rebate or discount may be used to cover cost increases in other line items but may not be used to increase builder's profit. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate. Under no circumstances will the dollar amount of rebates and discounts be placed in the reserve account.

(I) Contractors will not be allowed to obtain a profit and overhead unless they are performing actual construction.

(*1*) Language similar to that currently being used by the Department of Housing and Urban Development which prohibits payment of contractor's fee (general overhead and profit) is hereby implemented when:

(*i*) More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor, or

(*ii*) Seventy-five percent or more with three or less subcontractors, material suppliers and equipment lessors.

Note: If two or more subcontractors have common ownership, they are considered as one subcontractor.

(*2*) How to apply rule:

(*i*) The 50 percent rule will apply when division of the amount of the largest subcontract by the contract sum of the construction contract results in more than 50 percent.

(*ii*) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the contract sum of the construction contract results in 75 percent or more.

These provisions will apply regardless of whether or not an identity of interest exists.

(J) Contractors, subcontractors, material suppliers, and any other

individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Forms FmHA 1944–30 and FmHA 1944–31 will be prepared and executed by the contracting entities. The forms provide notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA Instruction 1940–M (available in any FmHA office).

* * * * *

(vii) * * *

(B) * * *

(*1*) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the costs are reasonable, an exception to competitive bidding will be granted. Written documentation of the State Office review results will be placed in the preapplication file.

* * * * *

(2) * * *

(i) * * *

(D) A credit report (obtained at no expense to FmHA) attesting to the owner-builder's credit standing. The credit report must demonstrate a positive credit history and a financial strength sufficient to carry out all phases of construction, culminating in full completion of the project.

* * * * *

(G) A current, dated and signed trade-item cost breakdown of the estimated total development cost of the project which has been prepared by the applicant/owner-builder. Form FmHA 1924–13 will be used for this purpose. If cost estimation services are required by FmHA, the cost of such services may be included in the total development cost of the project. Any subcontractor, material supplier or equipment lessor sharing an identity of interest with the applicant/owner-builder as defined in § 1924.4(i) of this subpart must also provide a trade-item cost breakdown of the proposed amount.

(H) The CPA or LPA must verify that the ledger-type accounting system that the applicant/owner-builder proposes to set up and use in maintaining a running record of the actual cost of the project provides for a trade item basis comparison of the actual cost as compared to the estimated cost submitted in accordance with paragraph (e)(2)(i)(G) of this section.

* * * * *

(iii) * * *

(A) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the construction cost is reasonable, an exception to competitive bidding will be granted. Written documentation of the State Office review results will be placed in the preapplication file.

* * * * *

(iv) The development cost of the project may include a typical allowance for general overhead, general requirements and a builder's profit. These amounts may be determined by local investigation and also from HUD data for the area. The applicant/owner-builder and any subcontractors, material suppliers and equipment lessors having or sharing an identity of interest with the applicant/owner-builder may not be permitted a builder's profit, general overhead, and general requirements which exceed the amounts represented on their cost breakdown.

* * * * *

(v) Under no circumstances will loan funds be used to pay the applicant or its stockholders, members, directors or officers, directly or indirectly, any profits from the construction of the project except a typical builder's fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Discounts and rebates given the owner-builder in advance must be deducted before the invoices are paid. The amount of the rebate or discount may be used to cover cost increases in other line items but may not be used to increase builder's profit. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate. Under no circumstances will the dollar amount of rebates and discounts be placed in the reserve account.

(viii) The applicant/owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest as defined in § 1924.4(i) of this subpart must each provide documentation necessary to have the costs of construction certified by FmHA that those costs were the actual costs of the work performed as reported on the FmHA Form 1924–13. FmHA will contract directly with a CPA or LPA for the cost certification. All projects involving a total development cost of more than $350,000, and any other project where the State Director determines it appropriate, will have its construction costs audited by FmHA.

(A) The CPA or LPA's audit will follow the audit requirements specified by FmHA and such other auditing procedures of the applicant/owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with construction of the project he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA 1924–13. The borrower must agree "that tests conducted on costs associated with _____ will be sufficient to include those requirements specified by FmHA which may be separate and apart from normal auditing procedures."

(B) Prior to final payment to anyone required to cost certify, FmHA must be provided with a trade-item breakdown showing the actual cost compared to the estimated cost furnished in accordance with paragraph (e)(2)(i)(G) of this section. Form FmHA 1924–13 is the form of comparative breakdown that must be used, and contains the certification required of the applicant/owner-builder prior to final payment. The amount for builder's general overhead, general requirements, and builder's profit shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(2)(i)(G) of this section for the owner-builder or any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant/owner-builder. Final payment to the owner/builder will be adjusted, if necessary, to assure that the amounts shown on the certificate of actual cost do not exceed the amounts represented on the cost breakdown.

(C) All discounts and rebates which were not previously disclosed to FmHA and deducted from the amount of the loan must be identified by the borrower for cost certification. The amount of undisclosed discounts and rebates are to be subtracted from the total construction price and the dollar amounts returned on the loan or be put into additional eligible project improvements. If the dollar amounts are to be returned on the loan, the builder's profit must be decreased accordingly. Under no circumstances will the dollar amount be placed in the reserve account.

(D) Owner-builders will not be allowed to obtain a profit and overhead

unless they are performing actual construction.

(*1*) Language similar to that currently being used by HUD which prohibits payment of contractor's fee (general overhead and profit) is hereby implemented when:

(*i*) More than 50 percent of the total cost of the building construction is subcontracted to one subcontractor, material supplier or equipment lessor, or

(*ii*) Seventy-five percent or more with three or less subcontractors, material suppliers, and equipment lessors.

Note: If two or more subcontractors have common ownership, they are considered as one subcontractor.

(*2*) How to apply rule:

(*i*) The 50 percent rule will apply when division of the amount of the largest subcontract by the total amount of the building cost results in more than 50 percent.

(*ii*) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the total building cost results in 75 percent or more.

These provisions will apply regardless of whether or not an identity of interest exists.

(E) Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Forms FmHA 1944–30 and 1944–31 will be prepared and executed by the contracting entities. The forms provide notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA Instruction 1940–M (available in any FmHA office).

* * * * *

PART 1944—HOUSING

6. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

7. In § 1944.211, paragraphs (a)(3) through (a)(13) are redesignated as (a)(4) through (a)(14); new paragraph (a)(3) is added; newly redesignated paragraphs (a)(5), (a)(7)(i), and (a)(7)(ii) are revised to read as follows:

§ 1944.211 Eligibility requirements.

(a) * * *

(3) Have no more than five preapplications on hand nationwide with FmHA. When any member of the applicant entity is a member of another applicant entity, this will count as a separate preapplication toward the limit of five.

* * * * *

(5) With the exception of a nonprofit organization, consumer cooperative or public body, have or be able to obtain the 3 percent borrower contribution required by § 1944.213(b)(2) of this subpart. This contribution must be in the form of cash, land, or a combination thereof.

(7) * * *

* * * * *

(i) The applicant will provide a detailed list of all materials and equipment needed to be funded by the initial operating capital including, but not limited to, property and liability insurance premiums, fidelity bond premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, purchase of office equipment and furniture, community room furnishings, congregate items referenced in § 1944.224 of this subpart, advertising expenses, management fees, etc. The list will be approved by the servicing office based upon similar projects in the State. The initial 2 percent O&M expenses, plus any amounts needed for these items above the 2 percent, must be provided in cash.

(ii) The O&M cash will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution. FmHA will be provided with documentation of the deposit prior to the start of construction or loan closing (whichever is first) and such funds will be used for authorized purposes only.

* * * * *

8. In § 1944.212, paragraph (c)(3)(iii) is added, and the introductory text of paragraph (b), paragraphs (c)(1), (c)(2), (c)(3)(ii), the introductory text of paragraph (d), paragraphs (g), (i), and the introductory text of paragraph (j) are revised to read as follows:

§ 1944.212 Loan purposes.

* * * * *

(b) Purchase and rehabilitate existing buildings only when the loan for such rehabilitation does not exceed by 5 percent the loan for new construction in the same area and when moderate or substantial modifications, repairs or improvements to the structures are necessary to meet the requirements of decent, safe, and sanitary living units.

* * * * *

(c) * * *

(1) Loan funds used to purchase land may not exceed the estimated market value of the site in its present condition as shown by a current appraisal in accordance with FmHA Instruction 1922–B (available in any FmHA office). Purchase price will not be used in determining the applicant's initial investment.

(2) With prior written approval of the State Director, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant/organization.

(3) * * *

(ii) The cost of the excess land is a reasonable portion of the loan; and

(iii) The site density requirements of § 1944.215(a)(5) of this subpart are met.

(d) Develop and install streets, a water supply, sewage disposal, heating, cooling, and light systems necessary in connection with the housing. States will establish and maintain cost ranges of those offsite facilities previously funded. Offsite facility costs in future loans will not exceed the established ranges, taking into consideration current inflation. If the facilities are located offsite, the following requirements must be met:

* * * * *

(g) Purchase and install ranges, refrigerators, drapes or blinds, drapery rods, and clothes washers and dryers. Laundry facilities are required in all projects and clothes washers and dryers should be provided in a central laundry room. Normally, a minimum of one washer and dryer should be provided for every 8 to 12 units in a project. Clothes washers and dryers may not be installed in individual units if the installation is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

* * * * *

(i) Pay related costs such as fees and charges for archeological, architectural, engineering, when the applicant will be receiving Low Income Housing Tax Credits. When the applicant is not receiving Low Income Housing Tax Credits, pay related costs such as fees and charges for market studies, legal fees which are directly related to loan closing only, archeological, architectural, and engineering. The fees

and charges may be paid to an applicant or officer, director, trustee, stockholder, member or agent of the applicant provided those fees and charges are reasonable and typical for the area and are earned and the identity of interest is disclosed. Legal, technical, and professional fees do not include the costs incurred in the formation or incorporation of the limited profit applicant, costs of syndication, or the payment of a loan packaging or development fee.

(j) Provide loan funds to enable a nonprofit group or public body to pay fees for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist it in the formation or incorporation and development and packaging of its loan docket and project, as well as legal, technical and professional fees incurred in the formation or incorporation of the applicant entity.

* * * * *

9. In § 1944.213, paragraphs (b)(1), (b)(2), (c)(6), (c)(10), and the introductory text of paragraphs (d) and (e)(1) are revised to read as follows:

§ 1944.213 Limitations.

* * * * *

(b) * * *

(1) For nonprofit corporations, consumer cooperatives, and State or local public agencies, the amount of the loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(v) of this subpart.

(2) For all other applicants, the amount of the RRH loan(s) will be limited to no more than 97 percent of the development cost or 97 percent of the security value of each project, whichever is less. The following examples show two ways in which loans should be calculated in order to avoid obligating excess loan amounts.

(i) If the appraised value of the land exceeds the 3 percent contribution requirement and the land is to be used as the applicant's initial contribution, then the excess over and above the 3 percent will reduce the loan amount accordingly. For example:

$1,500,000	total development cost.
45,000	3 percent requirement.
$1,455,000	typical loan amount.

If appraised value of land exceeds the 3 percent, then the loan amount is computed as:

$1,500,000	total development cost.
75,000	appraised land value.
$1,425,000	loan.

In this case, the applicant is contributing $30,000 over and above the normal 3 percent amount, resulting in a 95 percent loan.

(ii) If the cost of the land exceeds its appraised value, the amount used to determine the loan is the appraised value.

$900,000	total development cost without land.
100,000	cost of land.
$1,000,000	total development cost.
.97	
$970,000	incorrect loan amount.

The loan should have been calculated as:

$1,000,000	total development cost as appraised.
50,000	value of land.
950,000	basis for establishing loan.
.97	
$921,500	correct loan amount.

For purposes of this paragraph, the total development cost includes the appraised value of the land (not to exceed the purchase price) and not the cost of the land.

(c) * * *

(6) Facilities contrary to cost containment measures defined in § 1944.215(a) of this subpart.

* * * * *

(10) Land which the applicant or a member of an applicant/organization owns or land which is owned by any other organization in which any member of the applicant/organization has an interest, including any commission due on the sale thereof, except as authorized in § 1944.212(c)(2) of this subpart.

* * * * *

(d) *Obligations incurred before loan closing.* When an applicant files a preapplication for a loan, he/she will not start construction or incur any indebtedness until the loan is closed, except for those cases involving interim financing; the guidelines outlined in § 1944.235(c)(1) of this subpart will then apply. During the period of preapplication review and processing, applicants will not take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude the applicant from developing preliminary plans or designs or performing other work necessary to support an application for Federal, State, or local permits or assistance. If the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay the debts when all of the following conditions exist and are verified in writing by FmHA:

* * * * *

(e) * * *

(1) No increase in per unit development cost will be approved, whether the circumstances causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control and the increase in cost was approved by FmHA in writing before the expense was incurred, such as:

* * * * *

10. In § 1944.215, paragraph (w)(3) is added; and paragraph (a), the introductory text of paragraph (b), the introductory text of paragraph (b)(1), paragraphs (b)(1)(i), (b)(2), and the introductory text of paragraph (e) are revised to read as follows:

§ 1944.215 Special conditions.

(a) *Cost containment.* To achieve affordable rents and occupancy rates (not considering rental assistance or similar subsidies) all development costs will be economical in nature and not include costs for unnecessary or elaborate design features. Cost containment is not to be interpreted as accepting poor design or cheap construction. Project must provide the features and amenities necessary for the lifestyles of the tenants and members. Consideration must be given to the cost/benefit ratio when evaluating, recommending or requiring specific design features or construction techniques. Life cycle cost analysis will be employed to determine the types of materials which will reduce operation/maintenance costs even though their initial costs are higher. Operation and maintenance costs factored into proposed operating budgets will be adjusted accordingly. The following guidelines are to be followed when developing projects:

(1) Each State architect/engineer (A/E) will compile and maintain data on costs of all projects. Total project estimates will be compared with estimates available through the Marshall & Swift computer program to establish a benchmark for future project

costs. Any proposal that exceeds these cost estimate must be carefully evaluated for possible cost reductions. The borrower will be responsible for resolving the differences in cost to bring the project into line with the lesser of the cost tracking system or Marshall & Swift estimates. Final determinations must be realistic, interrelated to maintenance and operation costs, and based upon local conditions and common sense. The State will consider circumstances such as high land costs, remote rural areas, etc., which could present a problem in achieving such an alingment of costs. The cost tracking system available in the AMAS system will be used to record both estimates and actual construction costs.

(2) The elimination or reduction of unnecessary delays in application processing can contribute to cost containment through lower interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable processing timeframes are established, known and followed, appropriate time can be planned for preparing quality application and construction documents. This can result in better instructions to the builder, fewer errors and lower construction costs.

(3) Most materials and systems are available in a range of qualities and prices. The construction documents will be carefully reviewed for specifications that require qualities or grades higher than necessary. These specifications will be accepted only if fully justified and no reasonable alternatives are available.

(4) Designs which employ standard building material dimensions and reduce waste will be used.

(5) Sites will require a minimum amount of site development work. Each State will develop an average site development cost based on State-wide or servicing office-wide part statistics. The State Director may authorize a site requiring higher than average site development costs only if:

(i) The proposed site and site development costs are less than the cost of the average site and site development costs; or

(ii) There are no other sites available in the market area with a lower combined cost.

All project site densities (units per acre) will be within the following ranges, regardless of site conditions unless local zoning requirements dictate otherwise. Ranges for projects with a mixture of building heights can be extrapolated.

	Minimum	Maximum
One story building	10	14
Two story buildings	14	18
Three or more story buildings	18	22

For example: a 24-unit project composed of two story buildings must have a site of at least 1.3 acres. FmHA will finance the purchase and development of larger sites, but not more than 1.7 acres.

(6) Sound judgment and common sense must also be used in construction inspections and final acceptance of projects. Field staff involved in these activities must be careful not to impose additional or unreasonable requirements on the builder that will increase construction costs. States should consider hiring enough construction inspectors to provide more than the required inspections and to allow multiple unscheduled and unannounced visits. The State Office may also, with National Office authorization, contract for inspection services to deter deviations from the FmHA-accepted construction documents. Prefinal and final inspections must be conducted by qualified FmHA personnel.

(7) Buildings will not include numerous wall and roof breaks, unusual designs requiring excessive corners and foundation off-sets, or that require more exterior entrances than absolutely necessary. Designs will not be considered acceptable that place community rooms or dining facilities in structures attached to the main building when these amenities can be less expensively included within the main structure.

(8) Buildings will not include roof slopes less than 3/12 nor greater than 9/12.

(9) The use of repeat designs will be required from applicants whose architects have designed projects previously approved by FmHA. This does not mean "cloned" projects are required throughout the state and/or region. When a repeat design is being used in the same community, the exterior facade (such as color, siding material, etc.) must be noticeably changed except in the case of subsequent phases. The State Office Architect will ensure the sufficient differences are included in the proposed plans which will preclude the appearance of "cloned" designs. "Predesigned" buildings must fit the basic exterior contours of the proposed site.

(10) The following facilities are considered nonessential and will not be included in the loan unless required by local codes or ordinances:

(i) Garages/covered parking

(ii) Bay/box/picture or similar type windows

(iii) Fireplaces

(iv) Community Room furniture

(v) Sliding Glass/atrium or similar type doors

(vi) Materials atypical for the area

(vii) Atriums/solariums

(viii) Saunas

(ix) Whirlpools

(x) Gyms (facilities to accommodate physical exercises may be included in elderly projects without regard to this restriction)

(xi) Swimming pools.

(11) Other design features which will only be accepted if determined customary for the area are:

(i) Patios/balconies (minimum size which will accommodate handicapped accessibility)

(ii) Washer and dryer hookups in individual units

(iii) Washers and dryers in individual units

(12) The following is a list of allowable amenities according to the type of units:

	Family	Elderly	Congregate	Group home
Active outdoor recreation	Yes	No	No	Yes
Carpet	Yes	Yes	Yes	Yes
Central laundry facilities	Yes	Yes	Yes	Yes
Community rooms	No	Yes	Yes	Yes
Dishwashers	No	No	Yes [1]	Yes [1]
Drapes or blinds	Yes	Yes	Yes	Yes
Elevators for 2-story elderly		Yes	Yes	
Garbage disposals	No	No	Yes [1]	Yes.
Lawn sprinklers—financing will depend on geographic area.				

[1] In central kitchens only.

(13) Total on-site parking spaces per living unit (including spaces for tenants, visitors, and staff) will be within the following ranges unless otherwise required by local authorities:

Family		Elderly		Congregate		Group	
Min	Max	Min	Max	Min	Max	Min	Max
1.0	1.5	0.5	1.0	0.25	1.0	0.25	0.5

(14) A range of acceptable allowances for landscaping and for earth work (cut and fill) based on a percentage of total construction cost or on a cost per unit basis will be developed by each State.

(15) Management, maintenance, and community rooms should not exceed the limitations described in the FmHA Manual of Acceptable Practices (available in any FmHA office). Laundry rooms should be no larger than necessary to accommodate equipment, circulation (including handicapped accessibility) and areas for sorting and folding clothes.

(b) *Type of housing.* All housing will be designed to:

(1) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1924.5(d)(1) of subpart A of part 1924 of this chapter. The gross square foot living area of new units and related facilities will be within the ranges listed below. Living area is defined as: All enclosed space for the unit (except unfinished storage space for outdoor items and space needed for heating and/or cooling equipment) and measured from the exterior surface of the framing of exterior walls and the center line of interior party or corridor walls. States should establish ranges within these dimensions to be commensurate with unit sizes in the local market. For example, when conventional units in the market are at the low end of FmHA's range scale, FmHA will also build a comparably smaller unit.

Type of unit	Minimum/ maximum living area (square feet).
0-Bedroom Unit	350–500
1-Bedroom Unit	500–650
2-Bedroom Unit	650–800
3-Bedroom Unit	800–950
4-Bedroom Unit	950–1100

(i) An additional 100 to 120 square feet of living area may be added to the four-bedroom unit guideline for each bedroom in excess of four. The maximum square footage in congregate housing units will not exceed 110 percent of the minimum square footages listed above.

* * * * *

(2) Consist of multi-unit type housing with two or more units and appropriate related facilities except for the conversion of section 502 inventory housing as covered in § 1944.212(p) of this subpart, manufactured homes and group homes. Single family structures may be considered for cooperative housing projects if economically feasible.

* * * * *

(e) *Loan resolution or loan agreement.* The loan resolution or loan agreement contains provisions of policy and procedure which should be carefully read, fully understood by the applicant, and executed by the applicant prior to loan approval. If any provisions are not appropriate to a particular case, proposed substitute language must be approved by FmHA and OGC. Subpart C of part 1930 of this chapter provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving FmHA power to impose requirements regarding the housing and related operations of the applicant. All sections and requirements determined applicable by OGC will form part of any other loan resolution or agreement that may be submitted by the applicant. These are:

* * * * *

(w) * * *

(3) Feasibility for projects receiving tax credits will require a more extensive examination since tax credits are predicated on renting to very-low income persons. Applicants choosing to apply for tax credits will be responsible for identifying the percentage of tax credits it anticipates requesting from the State. The market study must substantiate the presence of persons whose incomes would qualify for tax credits who cannot afford the basic rent and those persons whose incomes are tax credit eligible but who are still able to afford the basic rent.

* * * * *

11. In § 1944.231, the second paragraph number (a)(5) beginning with the words "The District Director" through paragraph (a)(9) are redesignated as paragraphs (a)(6) through (a)(10), and paragraph (a)(2) is revised to read as follows:

§ 1944.231 Processing preapplications.

* * * * *

(a) * * *

(2) Upon receipt of the Form SF 424.2 and all other required information and materials, the servicing official will thoroughly review the package for completeness, accuracy, eligibility, and conformance with program policy and regulations. A determination of eligibility, feasibility and ranking should be sent to the applicant by issuing Form AD–622, "Notice of Preapplication Review Action," not later than 45 days after receipt of a complete preapplication. (Ranking will be in accordance with the priority rating system). In those cases where the need for new rental units is questioned by the servicing official, another market study may be obtained by the servicing office at its discretion through contract with a market analyst. Issuance of an AD–622 will be delayed until the FmHA market study has been completed and its contents reviewed by FmHA. Incomplete preapplications will be returned immediately, not later than 15 days, to the applicant for completion. The servicing official will use a check sheet and provide written documentation regarding all information not received.

* * * * *

12. In § 1944.235, paragraph (a)(1) is removed, paragraphs (a)(2) through (a)(5) are redesignated as paragraphs (a)(1) through (a)(4), newly redesignated paragraphs (a)(1) and (a)(2) and paragraph (c)(1) are revised and paragraph (b)(3) is added to read as follows:

§ 1944.235 Actions subsequent to loan approval.

(a) * * *

(1) FmHA will obtain closing instructions from OGC in accordance with the requirements of subpart B of part 1927 of this chapter (FmHA

Instruction 1927–B) and §§ 1944.236(a) and 1944.246(b)(4) of this subpart.

(2) Ensure that the servicing office has on file evidence that a deposit has been made to the general operating account of an amount of initial operating capital sufficient to cover the expected start-up costs.

* * * * *

(b) * * *

(3) Monetary default by original applicant/entity. An obligation may be transferred to any person or applicant eligible to receive an RRH loan when the original applicant/entity is in monetary default which has or may result in foreclosure by the interim lender, and

(i) The applicant/entity assuming the obligation, or the interim lender, removes any liens filed against the property;

(ii) There have been no deviations from the FmHA approved plans and specifications;

(iii) The transferee will not be composed of any principals of the transferor;

(iv) The transfer will be in the best interest of the FmHA and prospective tenants;

(v) The applicant/entity and all members thereof whose obligations are transferred will not be considered eligible for further participation in the RRH program for at least 5 years from the date of the transfer of the FmHA loan obligation;

(vi) Prior approval is obtained from the National Office.

(c) * * * (1) *Interim financing.* When the amount of the loan exceeds $50,000, the applicant should obtain interim financing from commercial or public sources for the construction period if it can be obtained at reasonable interest rates, fees, and terms. Interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. The interim lender must be licensed to operate in the State in which the project will be located and must have an established record of providing financing to entities other than FmHA-financed projects. Since the interim lender is responsible for inspecting construction along with FmHA, the borrowing entity (including any of its identity of interest entities) cannot provide interim financing to its own project. This will preclude the possibility of the borrower inspecting its own construction. Interim financing will be used subject to the following:

* * * * *

13. In § 1944.236, paragraph (a) is revised to read as follows:

§ 1944.236 Loan closing.

(a) *Applicable regulations.* RRH and RCH loans will be closed in accordance with subpart B of part 1927 of this chapter and any State supplements. Loan dockets for organizations and, in special cases, dockets for individuals will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization or individual applicant may use any title insurance company or attorney who has been approved by the State Director in accordance with the requirements of Subpart B of Part 1927 of this chapter to close the loan if the attorney or title insurance company and its principals or employees are not members, officers, directors, trustees, stockholders, or partners of the applicant entity. Nonprofit organizations may use an approved attorney who is a member of their organization if the cost is in accordance with § 1944.212(j) of this subpart.

* * * * *

14. In § 1944.237, paragraph (a) is revised to read as follows:

§ 1944.237 Subsequent loans.

(a) A subsequent loan is made to an applicant/borrower to complete, improve, repair, make modifications and/or expand the project initially financed by FmHA, or for equity and/or other purposes when authorized by the provisions of subpart B of part 1965 of this chapter to avert prepayment. A subsequent loan to develop additional units must be rated and ranked in accordance with the priority point system contained in § 1944.231 of this subpart. Other subsequent loan requests do not have to compete for funding under the priority point system. All subsequent loans made pursuant to a contract entered into on or after December 15, 1989, cannot be prepaid.

* * * * *

15. In § 1944.239, paragraph (c) is revised to read as follows:

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH and RCH.

* * * * *

(c) Participants in FmHA's housing program failing to comply with the requirements of title VIII, as amended by the Civil Rights Act of 1968 and by the Fair Housing Act Amendments of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made.

* * * * *

16. In exhibit A of subpart E paragraph IV.B.6.a. is revised to read as follows:

Exhibit A—How to Bring Rental and Cooperative Housing to Your Town

* * * * *

IV. * * *

B. * * *

6. *Analysis of market to determine demand for rental housing.*

a. Applicants will discuss with the servicing official the type of market analysis that will be needed. Applicants must comply with paragraph II of Exhibit A–7 when preparing market information. FmHA may, at its own discretion, contract with a market analyst to verify that a need does exist for the proposed number of units.

* * * * *

17. In exhibit A–7 of subpart E, paragraphs II. C., D. and E. are removed; paragraphs II. G. through I. are redesignated as II. C. through E.; paragraphs I. A. and H., II. A., B., and F., and IV.F. are revised to read as follows:

Exhibit A–7—Information To Be Submitted With Preapplication for a Rural Rental House (RRH) and Rural Cooperative Housing (RCH) Loan

* * * * *

I. * * *

A. Financial statements for Rental Projects—Each applicant must submit a current, signed, dated, and audited financial statement and a copy of the prior year's income tax return. The financial statement must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants may contribute cash, free and clear title to the building site or a combination of both as an equity contribution. The initial operating capital requirement must be fulfilled by contributing cash.

* * * * *

H. FmHA requires that applicants disclose identities of interest that will exist related to the development of the proposed housing. Forms FmHA 1944–30, "Identity of Interest (IOI) Disclosure Certificate," and 1944–31, "Identity of Interest (IOI) Qualification Form," (available in any FmHA office) will be completed and submitted as part of the preapplication package.

* * * * *

II. *Need and Demand.*

A. Economic justification and project size will be based on the housing need and demand from eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) will be discounted in determining the need and project size. The need will not be based on

persons who own their homes but will be derived from:

(1) Persons migrating into the market area;

(2) Persons sharing dwelling units who desire to move into their own units; and

(3) Conservative estimate (not to exceed 20 percent) of those living in substandard units.

(4) Older persons who have reached the age of eligibility since the last census report.

B. A detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories, or chambers of commerce is required. FmHA personnel will utilize the market study checklist found at Exhibit A–11 (available in any FmHA office) as a means for measuring market study credibility.

* * * * *

F. Identification of the percentage of tax credit units anticipated to be requested from the State Agency and to be applied to the project. This information is needed to determine the levels of incomes in the market area which will support the basic rents while also qualifying the borrower for tax credits.

* * * * *

IV. * * *

F. The estimated total development cost, the cost per unit, and the estimated loan amount. All applicants must submit Form FmHA 1924–13, "Estimate and Certificate of Actual Cost," containing preliminary cost estimates for the construction.

* * * * *

18. Exhibit A–8 is revised to read as follows:

Outline of Professional Market Study

The following information is to be used by analysts in the preparation of market studies for the 515 housing program. It generally contains the type and depth of information which FmHA requires for evaluating the feasibility of prospective housing developments. The analyst will be expected to provide sufficient quantative data (such as census tables), primary data (such as survey of existing comparables), and qualitative data (such as local contacts in the community) to support the conclusions reached. The analyst may present any other discussions and/or data which will help support the complete analysis of the market.

The outline provides for the demonstration of historical trends and allows the analyst to project into the two years beyond the last actual year of record. Additional guidance is offered in individual segments of the outline. You will need to provide a statement of your experience and why you think you are qualified to prepare such a study.

Determination of need and demand will be derived for prospective rental tenants only from (1) persons migrating into the area, (2) persons dwelling in family units who desire to move into their own units, (3) conservative estimate (not to exceed 20 percent) of persons living in substandard rental housing, and (4) allowance for a 5 percent vacancy rate. The analyst may discuss the possibility of persons living in substandard units moving into the project; however, only a conservative number will be accepted in the need and demand calculations.

For proposed congregate projects, the analyst will be responsible for researching the current need for, and usage of, services in the market area. The types of services being used, the provider of the services, and their location will be included.

Homeowners will not be included in the determination of need and demand for rental units. The analyst will discuss the current market for single family houses and how sales, or the lack of, will affect the demand for elderly rental units. If the economic conditions reflect a trend toward normal selling times for houses in the market area, then the discussion should point to how elderly homeowners may reinforce the need, but only as a secondary market and not as the primary market.

A statement, with signature, certifying that the analyst (including an individual under contract to the analyst's company) actually traveled to and physically surveyed the community where the proposed project will be located is also required.

Market studies which do not address all segments of this outline will not be considered acceptable and will be returned to the applicant.

I. Market area—General.

The market area will be the community where the project will be located and only those outlying rural areas which will be impacted by the project (excluding all other established communities). Any deviation from this definition must be coordinated with the district office. The market area must be realistic. The criteria for selection should be described by the analyst. A map showing the market area will be required. The following is an example of a market area description:

A. Based on an analysis of population and housing development patterns, major employers and commuting patterns, the effective market area for the subject proposal is defined to include all of (Name), 35 percent of (Name) and 25 percent of (Name) census divisions. This area is shown on Map 2 following Table 4 (page 11) in Section II of this report. In 1970, this geographic market area contained an estimated 6,350 persons (6.1 percent of the county total of 103,829 persons). During the 1970's decade, the overall market area experienced growth of 1,253 persons (representing 13.5 percent of total gains in the county). In 1980, the (Name) market area population of 7,603 represented 6.7 percent of the county population of 113,086. (See Table 4 and Map 2 in Section II for details.)

B. The effective market area for the subject proposal includes the town of (Name) and a portion of the unincorporated areas to the east and south. The (Name) River forms a natural barrier restricting development to the west. Housing development and population growth have occurred along major transportation corridors, particularly Interstate 81 and U.S. 11 between (Name) and (Name). Secondary growth has occurred along State Roads 63 and 68 to the northwest and southeast of (Name). The Interstate Industrial Park, with 16 employers providing 999 jobs, is centrally located within the market area.

II. Site.

This section will contain a full description of the site, its position in the community and location with respect to residential support services.

A. The proposed site is located in the eastern section of (Town) on (Major Thoroughfare). The area surrounding the site is predominantly comprised of modest single family dwellings. The terrain is gently sloped, with grass, Oak trees, and some shrubs.

B. The site is currently zoned for commercial business and is currently owned by a local car dealer.

C. The site is approximately .3 mile east of the heart of town which contains a grocery store, drugstore, restaurants, banking facilities, the post office and town hall. Other shopping is available .2 mile south at (Town) Plaza.

D. The medical clinic, which provides services of an osteopath, X-ray technician, a physician's assistant and a nurse, is approximately .8 mile north of this site. This clinic is open daily and also provides 24-hour emergency service. The nearest hospitals are (Large City) and (City).

E. All public services are available at the site.

F. Photographs of the site are required.

G. Communities suitable for multi-family projects will have certain smaller businesses necessary for the day-to-day living convenience of the tenants and to supplement the employment base. These include, but are not limited to, pharmacy, restaurants and fast food establishments, grocery and department stores, hardware and sundries, etc. A representative number of these businesses are to be listed (by name) and location with respect to the proposed site.

Name of business and street address

_____

_____

_____

III. Demographic characteristics.

A. Economic profile

1. Labor force and employment trends between 1980 and the present year. This will provide current year estimates and projected changes at the county level.

CIVILIAN LABOR FORCE AND EMPLOYMENT TRENDS AND FORECASTS, _____ COUNTY, 1980–19____

	1980	1990	19 _ [1]	19 _
Civilian Labor Force [2]				
Unemployment				
Rate of unemployment				
Employment				
Change in total employment				

[1] Preliminary—based on monthly data through _____.

[2] Data based on place of residence.

Source: _____.

	Number		Percent	
	Total	Annual	Total	Annual
1980–1990				
1990–19 __				

	Number		Percent	
	Total	Annual	Total	Annual
19___-19___ (2-year projection)				

2. Employment data. In order to determine how employment affects the market area, it will be necessary to show the number of employed persons for a 10 year period up to the current year, the increase and/or decrease and the percentage of unemployed at the county level. The employment figures can be obtained from the State Employment Commission.

Example:

Year	County		
	Number	Change	Unemployment (Percent)
19___			
19___			
19___			
19___			
19___			
19___			
19___			
19___ (through current year)			

Source: _____.

3. Major employers. This section will contain information pertinent to an analysis of the economic stability of the town. The major employers within the town and market area, the product or service offered by each employer, number of employees at each employer, salary range of each employer, location of employer, and year each employer was established are types of data FmHA will need to evaluate. It is also important to know if the larger employers intend to increase or decrease number of employees in the immediate future or if there have been any significant recent changes in number of employees.

Example:

Employer	Product/service	Location	Year established
Washington aircraft	Crop dusting.	Town	1957

Source: _____.

4. The analyst will give the percentage of persons employed inside the county and driving times, if appropriate.

B. Demographic Profile.

1. Population. The analyst will need to show population changes between 1980 and 1990, the reasons for the changes, the current year estimate and projected change. This information will be provided for the town, the market area, and the county. A discussion of how births/deaths (natural increase), and migration impact the population will be included, as well as changes due to annexation. Any change in the County subdivisions (CCD, Township, Election District, etc.) between census years will have to be explained. These are to be shown in numeric characters as well as percentages.

Example:

Year	Total			Annual	
	Number	Change	Percent	Change	Percent
1980					
1990					
19___ (current estimate)					
Projected: 19___ (2 years)					

2. Age Characteristics.

Age	Town—1980–1990			County—1990–1990		
	1980	1990	Change	1980	1990	Change
Under 18						
18–24						
25–44						
45–54						
55–61						
62 +						
65–74						
75–80						
80 +						
85						

3. Households. A breakdown by town, market area, and county for last 2 census years, a current year estimate and a projection to the year the housing would be built (24 months) will have to be illustrated so that household formations can be tracked. This data will tell us what portion of a housing demand is being created by an increase in numbers of new households.

Year*	Population	In group quarters	Households	Persons per household
1980				
1990				
19___				
Projected: 19___ (2 years)				

4. Households by Size/Type/Age of Members (elderly and congregate projects).

	City	Market area	County
Households with:			
1 or more age 60 years and over			
1 person household			
2 or more persons (family			
2 or more persons (nonfamily)			
1 or more age 65 and over			
1 person household			
2 or more persons (family)			
2 or more persons (nonfamily)			

5. Household Type and Relationship—Persons 65 + (elderly and congregate projects).

	City	Market area	County
Total—			
In Households			
In Family Households			
Householder			
Spouse			
Other Relatives			
Nonrelatives			
In Nonfamily Households			
Male Households			
Living Alone			
Not Living Alone			
Female Householder			
Living Alone			
Not Living Alone			
Nonrelatives			
In Group Quarters			
Institution (persons)			
Other Persons in Group Quarters			

6. Households by Tenure. This section is one of the more important aspects of the market analysis. This information will enable us to more closely pinpoint the number of households which would comprise the target group of our evaluation. If the proejcted percentage of renters exceeds the historic percentage of renters, the analyst will have to explain why there is an increase. The information will be provided for town, market area, and county.

EXAMPLE

Year	Total house-holds	Owner	Percent	Renter	Percent
1980					
1990					
Estimate: 19					
Projected: 19 (2 years)					

7. The study will provide number of households by household size for the town, market area, and county.

8. Tenure by Age of Householder for town, market area, and county (elderly and congregate projects)

	Owner	Renter	Total
55–64			
65–74			

	Owner	Renter	Total
75 years +			

9. Households by Income Group. This section is also vital to the evaluation of the market because of the low income ranges which exist in the rural areas and the lack of deep subsidy. For this reason, close attention must be paid to the number of persons whose incomes will allow them to pay the rent plus utilities and still remain within the 30 percent criterion. In some cases, persons with incomes in the upper range of the eligible income group have displayed a lack of interest since they would be required to pay the full market rent. Also, persons with lower incomes will move into projects even though they will pay more than 30 percent of their incomes. Irrespective of these considerations, the study will need to show the entire scale of incomes from lowest to highest. The number of *renters* who fall within the feasibility range will then be estimated by the analyst. Feasibility for projects expecting to receive tax credits will be based on the incomes required to support the tax credits. In come cases, this will mean a level of income slightly higher than FmHA very-low incomes. The applicant will be responsible for notifying FmHA and the market analyst of the percentage of tax credits being requested. Income data should be shown for total and renter households.

a. Rent for a 1-bedroom apartment is $250 with a $30 utility allowance (which can include electric or gas heat, air conditioning, lighting, cooking, water heating and trash collection, water, sewer). The amount of income needed to pay the total bill and stay within 30 percent of income would be:
Example: $280 divided by .30 × 12 = $11,088 income.

Household Income Profile, _____ County, 19 __ *

	All households		Renter households	
	Number	Percent	Number	Percent
Household Income Groups:				
Less than $000				
$000–$000				
$000–$000				
$000–$000				
$000–$000				
Total median				
Elderly Household Income Groups:				
Less than $				
$000–$000				
$000–$000				
$000–$000				
$000–$000				
Total				
Incomes of those eligible to live in the proposed project, considering tax credits and availability of RA:				
$000–$000				
$000–$000				
Source:				

b. It is recommended that decile distribution of incomes be obtained from HUD.

C. Housing supply profile.

1. Building permits issued for the last 10 years The Housing Units Authorized by Building Permits and Public Contracts (C–40 Construction Repoort), furnished by the Bureau of the Census, provides a list of permits issued in all reporting jurisdictions. This publication is printed monthly and annually.

EXAMPLE

Year	Town			County		
	Single family	Multi-family	Total	Single family	Multi-family	Total
19						
19						
19						
19						
Through current year						

2. Housing stock. The study must include the number of units within the town and county (where available), both single family and multi-family, the number of mobile homes by tenure, along with the number of substandard units by type, based on the most recent census data. Occasionally, a situation will exist within a community where a number of detached single family homes are standing vacant. How this condition may affect the rental market must be evaluated and discussed.

Example

Inventory Change Profile:

1980 Stock

1990 Stock

	Annual	Percent
Change in Number of Units:		

NUMBER OF REPLACEMENTS OVER 5 YEAR PERIOD

	Single family	Multi-family	Mobile home	
			Rent	Own
Numer of units				
Substandard Units:				
By Plumbing Facilities:				
Complete—Exclusive Use				
Lacking Complete Facilities				
By Overcrowding				

3. Existing rental housing. The analyst must determine where the proposed project will fit into the present housing stock. To accomplish this, the analyst will survey and existing units and will discuss how they (a) would be comparable with the proposed project in overall appeal; (b) are less than desirable because of the age factor or upkeep; (c) are inconveniently located; (d) do not provide the appropriate bedroom mix for the community need, etc.

4.a. Additional narrative which describes the rental stock and provides tenant characteristics may be included. The survey will include both subsidized and nonsubsidized rentals. In those communities containing too many rental properties to list, all subsidized and a representative number of conventional projects will be included. Those conventional projects which have rent levels comparable to the proposed project will be listed. Photographs of the comparables are required.

b. The analyst will explore the availability of individual Section 8 certificates with the local housing authority since they can be used on any project to bring the existing rents into an affordable range. For instance, 10–15 available Section 8 certificates in a community will have a definite influence on the determination for new units and the number should be reduced to correspond to this availability. (The bedroom sizes which the certificates cover must match the prospective bedroom sizes in the proposed project in determining the number of units to reduce.)

c. The information needed in the survey must include the characteristics shown below. In conjunction with the survey, the analyst is expected to discuss the reasons for extended vacancies, either in individual developments or in the community in general. The data needed are:

Name of Project
No. of Units
Bedroom Mix
Type (i.e., family, elderly)
Year Built
Rent levels
Vacancies
Location
Amenities: (if available)
Drapes
Carpet
Central Cooling
Dishwasher
Garbage Disposal
TV Cable

IV. Housing Demand Forecasts

A. The analyst must give a projection of the housing needs for a specified forecast period. The information may be presented in chart form in other formats with other types of information but should include the following as a minimum:

Sources of Demand	Town		County	
	Owner	Renter	Owner	Renter
New Households				
Substandards Units				
Plus Replecements (.05%)				
Plus Vacancy (of 5.0%)				
Total Demand				
Number of Total Demand determined income eligible				
Less number of units in planning stage (FmHA and HUD)				
Net Demand				

If a penetration percentage is used in the study analysis, explain how that particular percentage was chosen.

RECOMMENDED NUMBER BY UNIT SIZE

One	Two	Three	Four

Names and positions of individuals in the community who provided information for the study:

19. In Exhibit A–9 paragraphs 2 and 5 are revised to read as follows:

Exhibit A–9—Information To Be Submitted With Application For Rural Rental Housing (RRH) And Rural Cooperative Housing (RCH) Loans

* * * * *

2. A detailed cost breakdown of the project for such items as land and rights-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and on- and off-site improvements. The cost breakdown also must show separately the items not included in the loan, such as furnishings and equipment. A Form FmHA 1924–13, "Estimate and Certificate of Actual Cost," will be used for this purpose by

all applicants. This trade-item cost breakdown must be updated just prior to loan approval.

* * * * *

5. If more than 12 months have transpired since the applicant submitted the market analysis, the State Director may require a new one if he/she determines it necessary.

* * * * * *

LaVerne Ausman,

Administrator, Farmers Home Administration.

Dated: April 28, 1992.

[FR Doc. 92-14277 Filed 6-18-92; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Review of Reactor Licensee Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is seeking public comment in connection with a review of the reporting requirements for power reactor licensees appearing in Title 10 of the Code of Federal Regulations (10 CFR), Chapter I—Nuclear Regulatory Commission, NRC guidance documents (NUREGS, Regulatory Guides, or generic letters) that interpret the reporting requirements contained in the regulations, and reporting requirements for power reactor licensees contained in license documents such as Technical Specifications. This review is being conducted in response to a request from the Chairman that was forwarded to the NRC staff on January 16, 1992. The NRC staff is reviewing these requirements and associated guidance to determine if some reporting requirements can be reduced or eliminated to relieve unnecessary budens placed on power reactor licensees without reducing the protection for public health and safety. The NRC staff expects to complete its review and issue a report containing recommendations on the need to modify ongoing activities related to reporting requirements, initiate additional rulemaking, or prepare or revise guidance documents by December 1, 1992.

This request is similar to an earlier request for comments published in the **Federal Register** on February 24, 1992 (57 FR 6299). The earlier request pertained to a special, high priority review of 10 CFR Chapter I to determine whether regulatory burdens can be reduced. This request focuses more narrowly on the reporting requirements of power reactor licensees.

DATES: Comment period expires August 18, 1992.

ADDRESSES: Mail comments to: David L. Meyer, Chief, Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand delivered to room P-223, 7920 Norfolk Avenue, Bethedsa, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: James Shapaker, Division of Operational Events Assessment, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504-1151.

SUPPLEMENTARY INFORMATION:

The NRC has recently revised or initially promulgated a number of the regulations that contain reporting requirements for power reactor licensees. In the process of conducting these rulemaking activities, the regulations were published in the **Federal Register** for public comment and reviewed by the Committee to Review Generic Requirements (CRGR). Specifically, the NRC recently completed the following rulemaking activities:

1. Revised 10 CFR part 20, "Standards for Protection Against Radiation," (56 FR 23360; May 21, 1991). Shortly thereafter, the NRC revised 10 CFR part 20, in part, to delete certain event reporting requirements dealing with the loss of facility operation and the cost of incurred damage for events involving byproduct, source, or special nuclear material (56 FR 40757; August 16, 1991).

2. Revised 10 CFR part 21, "Reporting of Defects and Noncompliance," and 10 CFR 50.55(e), "Domestic Licensing of Production and Utilization Facilities," to reduce duplicate reporting requirements (56 FR 36081; July 31, 1991).

3. Promulgated 10 CFR part 26, "Fitness for Duty Programs," (54 FR 24468; June 7, 1989).

Two rules which contain significant reporting requirements for reactor licensees were issued earlier but were reviewed by the CRFR. They are 10 CFR 50.73, "Licensee Event Report System," which was issued in 1983 (48 FR 33850; July 26, 1983), and 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors," which was revised in 1983 (48 FR 39039; August 29, 1983). The NRC issued 10 CFR 50.73 to standardize written reporting requirements, eliminate requirements to report events of low individual significance, and require more thorough documentation and analysis of reported events. The NRC revised 10 CFR 50.72 to clarify reporting criteria and require early reports on only those matters that are relevant to the exercise fo the Commission's responsibilities. The revision to 10 CFR 50.72 also made it consistent with 10 CFR 50.73, and, therefore, most events promptly reported under 10 CFR 50.72 also require a detailed followup report under 10 CFR 50.73.

The following activities of the NRC also pertain to reporting requirements in the rules or to the interpretation of these rules:

In the fall of 1989, the NRC staff surveyed personnel from 13 nuclear power utilities to obtain their views on the effect of NRC regulatory activities on the safe operation of nuclear plants. The staff documented this survey in NUREG-1395, "Industry Perceptions of the Impact of the U.S. Nuclear Regulatory Commissioin on Nuclear Power Plant Activities," issued in draft in March 1990. Section 8, "Reporting Events," of draft NUREG-1395 included the industry's comments on reporting required by 10 CFR 50.72 and 10 CFR 50.73.

In 1990, the NRC sponsored four regional workshops to discuss the industry's concerns on the reporting of events. The NRC staff determined that it should clarify 10 CFR 50.72 and 10 CFR 50.73 to further improve their usefulness and quality, and to improve the threshold of reporting. On October 7, 1991, the NRC staff issued a Federal Register notice (56 FR 50598) requesting public comments on a draft of Revision 1 to NUREG-1022, "Event Reporting Systems (10 CFR 50.72 and 50.73), Clarification of NRC Systems and Guidelines for Reporting." The proposed revision to NUREG-1022 is intended to clarify and consolidate in one document existing guidance on the reporting of events and conditioins that could be safety significant pursuant to 10 CFR 50.72 and 10 CFR 50.73, without changing the reporting requirements of the regulations. On May 7, 1992, the NRC staff held a public meeting to discuss the comments that have been received, and expects to complete its effort on NUREG-1022 in 1992.

The NRC staff is also promulgating revisions to 10 CFR 50.72 and 10 CFR 50.73 to delete the reporting requirements for invalid actuations of certain engineered safety features, which it has found to be of no safety significance. The staff has found that reports of these events do not improve the staff's understanding of operating reactor safety. The rule changes are expected to reduce by about 5-10

percent the number of licensee event reports (LERs), that is, to eliminate about 150 LERs each year. A similar reduction is expected in the number of immediate event notifications pursuant to 10 CFR 50.72. This will reduce the industry's reporting burden and the NRC's burden in processing, reviewing, and assessing events. The staff currently expects to publish the proposed rule that would remove the unnecessary reporting requirements, in the Federal Register in June 1992.

On March 6, 1991, the NRC issued Generic Letter (GL) 91–03, "Reporting of Safeguards Events," to provide immediate relief from certain aspects of the NRC's policy for promptly reporting safeguards events under 10 CFR 73.71. The staff issued GL 91–03 as an interim measure pending the revision of Regulatory Guide (RG) 5.62, "Reporting of Safeguards Events." In RG 5.62 the staff clarifies and describes the process for reporting safeguards events under 10 CFR 73.71. The staff issued Revision 1 of RG 5.62 in 1987 following CRGR review and anticipates issuing the next revision of RG 5.62 for comment in 1993.

In 1984, the NRC staff reviewed existing requirements applicable to power reactors in order to find and eliminate any regulatory requirements that provide only a marginal contribution to safety while imposing a substantial burden. On February 4, 1992, the NRC issued a Federal Register notice (57 FR 4166) requesting public comment on the need for revisions to the regulations, including a move toward less prescriptive and more performance-oriented regulations. The comment period for this request closed on May 4, 1992. The staff is analyzing the public comments and will take appropriate action.

The NRC staff is developing new Standard Technical Specifications (STS) in accordance with the 1987 Commission Policy Statement on Technical Specification Improvements. In the past several years, the industry has contributed significantly to this effort. The staff is modifying the reporting requirements in the STS in response to the industry's comments. Where appropriate, changes to reporting requirements in the new STS will be offered as line-item technical specification improvements, making them available to each licensee through a license amendment, independent of whether a licensee plans to adopt the new STS.

On February 24, 1992, the NRC issued a Federal Register notice (57 FR 6299) to solicit public comments in connection with a special review of NRC regulations being conducted by the CRGR, to determine whether or not regulatory burdens can be reduced without in any way reducing the protection for public health and safety and the common defense and security. On March 27, 1992, the NRC held a public meeting to discuss the comments received and to allow additional comments from the public. The CRGR issued its report on the special review of NRC regulations on April 13, 1992, and forwarded it to the Commission on April 17, 1992 (SECY–92–141). The CRGR recommended taking the following four rulemaking actions pertaining to reporting requirements that met the objectives of its review:

1. Change the frequency of safety analysis report updates from once each year to once each refueling cycle (10 CFR 50.71);

2. Change the frequency of reporting changes at power reactors from once each year to once each refueling cycle (10 CFR 50.59 (b));

3. Eliminate certain power reactor event reports (10 CFR 50.72 and 10 CFR 50.73) (See above discussion); and

4. Change the frequency of reports on power reactor radiological effluents from twice each year to once each year (10 CFR 50.36a).

Although the CRGR received comments concerning reporting requirements from several sources, the Nuclear Management and Resources Council (NUMARC) broadly commented that the NRC should review its system of reporting requirements in the aggregate (which includes the regulations, license documents such as the Technical Specifications, and guidance documents such as NUREG reports, generic letters and Regulatory Guides), and consider eliminating duplicate reports, reports do not contribute to safety, and reports that are not reviewed by the NRC.

NUMARC identified over 100 reporting requirements, with an equal number being taken from 10 CFR Chapter I and the Standard Techical Specifications, to illustrate the magnitude of the reporting burden. NUMARC stated that many of the requirements are duplicates or do not contribute to safety. NUMARC did not discuss specific concerns regarding each reporting requirement. As previously discussed, many of the reporting requirements listed either have recently been, or are currently being, considered in a rulemaking action, and as noted above, several have been recommended for rulemaking action.

Many recently completed and ongoing NRC activities pertain to reporting requirements, including the guidance for reporting requirements in the regulations. Industry comments were or are being considered in all of these activities. However, to ensure that the potential for reducing reporting requirements is considered in an integrated manner, the NRC staff is soliciting the views of the nuclear power industry and other interested parties on reducing reporting requirements. Interested parties are asked to comment on specific reporting requirements that the NRC may not be considering in ongoing activities and that can be eliminated or reduced in scope. Comments are requested on power reactor licensee reporting requirements that are contained in the regulations, license documents (such as Technical Specifications), or guidance documents (NUREG documents, Regulatory Guides, or generic letters interpreting the regulations). Those submitting comments are asked to provide, for each item addressed, specific changes to the regulations, guidance, or Technical Specifications that will eliminate duplication, eliminate reporting perceived to be unnecessary for the NRC to perform its mission, or reduce the burden of reporting. Specific proposed changes may include eliminating a reporting requirement; revising its scope, frequency, or addressee list; or converting a reporting requirement to a recordkeeping requirement.

Dated at Rockville, Maryland, this 12th day of June 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92–14467 Filed 6–18–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Parts 220, 300 and 320

Existing Regulations and Programs; Regulatory Review

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 2, 1992, the Department of Energy (DOE) issued a notice of inquiry (57 FR 7327) to request public comment on existing regulations and programs that DOE had identified as meriting consideration for revision or elimination in compliance with the President's January 28, 1992, Memorandum for Certain Department and Agency Heads on the subject of

"Reducing the Burden of Government Regulation" ("President's Memorandum"). No comments were received on those existing regulations and programs identified in the notice of inquiry by the Office of Fossil Energy.

The Office of Fossil Energy is now proposing to eliminate the regulations codified at 10 CFR part 220, entitled "Strategic Petroleum Reserve Crude Oil Allocation"; 10 CFR part 300, entitled "Coal Loan Guarantee Program"; and 10 CFR part 320, entitled "University Coal Research Laboratories Program," in compliance with the President's Memorandum. The Office of Fossil Energy invites members of the public to comment on the proposed removal of the regulations.

DATES: Written comments (10 copies) will be considered if received at the address provided below on or before July 20, 1992.

ADDRESSES: All written comments (10 copies) are to be submitted to: J.E. Walsh Jr., Deputy Assistant Secretary for Management, Fundamental Research and Cooperative Development (FE–10), United States Department of Energy, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Keith N. Frye, Director, Office of Business Operations (FE–13), United States Department of Energy, Washington, DC 20585, (301) 903–2644.

SUPPLEMENTARY INFORMATION: The regulations codified at 10 CFR part 220, entitled "Strategic Petroleum Reserve Crude Oil Allocation," are proposed for elimination because they refer to options for allocating crude oil which are no longer available, due to the expiration of the Emergency Petroleum Allocation Act. Furthermore, in 1982, Strategic Petroleum Reserve Plan Amendment Number Four added a number of the terms and conditions that would apply to the use of a directed sales method to distribute SPR crude oil. Accordingly, the Department believes that if the directed sales method were to be employed, it would be appropriate to publish new regulations, rather than rely on 10 CFR part 220 as now written.

The regulations codified at 10 CFR part 300, entitled "Coal Loan Guarantee Program," are proposed for elimination because the program applicable to these regulations were suspended effective August 8, 1986, due to lack of program loan budget authority and lack of public interest in the program (51 FR 24610, July 9, 1986).

The regulations codified at 10 CFR part 320, entitled "University Coal Research Laboratories Program," are proposed for elimination since no budget authority was provided for the program and the regulations were never utilized. In lieu of it, budget authority was provided for the Office of Fossil Energy's Advanced Research and Technology Development Program, which provides competitive university research awards pursuant to general procurement regulations.

On January 28, 1992, the President issued the President's Memorandum which established a 90 day period for a moratorium, subject to certain exceptions, on issuance of proposed and final regulations and for a review of existing regulatory programs and pending regulatory initiatives with the objective of reducing the burdens of regulation to the extent that the law allows. The President's Memorandum directed that each regulation and regulatory initiative be reviewed, with public input, for compliance with the following standards.

(a) The expected benefits to society of any regulation should clearly outweigh the expected costs it imposed on society.

(b) Regulations should be fashioned to maximize net benefits to society.

(c) To the maximum extent possible, regulatory agencies should set performance standards instead of prescriptive command-and-control requirements, thereby allowing the regulated community to achieve regulatory goals at the lowest possible costs.

(d) Regulations should incorporate market mechanisms to the maximum extent possible.

(e) Regulations should provide clarity and certainty to the regulated community and should be designed to avoid needless litigation.

The President's Memorandum further directed that, to the maximum extent permitted by law, and as soon as possible, the agency should propose repeal or modifications in existing regulations to bring them into conformity with the foregoing standards.

Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposals set forth in this notice. Comments should be submitted to the Office of Fossil Energy at the address set forth above. The envelope and written comments submitted should be identified with the designation, "Notice of Proposed Rulemaking." Ten (10) copies of the comments should be submitted.

All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy marked confidential, as well as ten (10) copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

B. Public Hearing.

This notice of proposed rulemaking does not involve any significant issues of law or fact and the rule would be unlikely to have a substantial impact on the Nation's economy or large numbers of individuals of businesses. Accordingly, pursuant to 42 U.S.C. 7191(c) and 5 U.S.C. 553, DOE is not scheduling a public hearing.

Other Matters

A. Review Under Executive Order 12291

The proposed rule has been reviewed under Executive Order 12291. DOE has concluded that the rule would not be a "major rule" since it will not result in:

(1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete in domestic export markets. In accordance with the requirements of the Executive Order, this notice has been reviewed by the Office of Mangement and Budget.

B. Review Under the Regulatory Flexibility Act

The proposed rule has been reviewed under the Regulatory Flexibility Act, Public Law 96–354 (42 U.S.C. 601–612) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. This action would revoke certain regulations and thus would impose no economic burden upon small entities subject to those regulations.

DOE accordingly certifies that there will not be a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

C. Review Under the National Environmental Policy Act.

The proposed rule has been reviewed under the National Environmental Policy Act of 1969, Public Law 91–190 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500–08), and the Department of Energy environmental regulations (10 CFR part 1021) and has been determined not to constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, no environmental impact statement is required.

D. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation. The proposed rule will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a Federalism assessment is therefore unnecessary.

E. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms.

DOE certifies that today's proposal meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

List of Subjects in 10 CFR Parts 220, 300, and 320

Fossil Energy.

Issued in Washington, DC on June 15, 1992.

James G. Randolph,

Assistant Secretary for Fossil Energy.

For the reasons set forth in the preamble, title 10, chapter II, of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 220—STRATEGIC PETROLEUM RESERVE CRUDE OIL ALLOCATION

1. Part 220 is removed.

PART 300—COAL LOAN GUARANTEE PROGRAM

2. Part 300 is removed.

PART 320—UNIVERSITY COAL RESEARCH LABORATORIES PROGRAM

3. Part 320 is removed.

[FR Doc. 92–14410 Filed 6–16–92; 10:03 am]
BILLING CODE 6450–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0487]

21 CFR Parts 880 and 890

Medical Devices; Protective Restraints; Revocation of Exemptions From 510(K) Premarket Notification Procedures and Current Good Manufacturing Practice Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the protective restraint classification regulation, set forth in § 880.6760 (21 CFR 880.6760), by revoking exemptions from the premarket notification procedures and certain current good manufacturing practices (CGMP) requirements. The agency is also proposing to revise the final classification regulation for restraints as wheelchair accessories, set forth in § 890.3910 (21 CFR 890.3910). FDA is considering revision of the regulation in response to a number of recent reports of deaths or serious injuries that have been ascribed in the medical literature to improper supervision of restrained patients or to improper application of the protective restraint. FDA believes that these actions will have minimal economic effect and will not disrupt the supply of these devices.

DATES: Written comments by August 18, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia Dubill, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1980 (45 FR 69678 at 69729), FDA published a final rule, in accordance with the procedures contained in section 513 of the act (21 U.S.C. 360c), classifying a protective restraint as a device, usually a wristlet, anklet, or other type of strap, that is intended for medical purposes and that limits a patient's movement to the extent necessary for treatment, examination, or protection of the patient. Examples of protective restraint devices include safety vests, hand mitts, lap and wheelchair belts, body holders, straight jackets, and protection nets, as well as anklets and wristlets. FDA realizes that other items that are not intended or designed for use as medical devices useful for protective restraint have been adapted for such use. FDA has always strongly discouraged the use of any equipment for a medical or therapeutic purpose which has not been designed specifically and evaluated for that purpose.

In the current regulation, FDA had exempted manufacturers of the device from: (1) The premarket notification procedures in subpart E of part 807 (21 CFR part 807); and (2) the CGMP regulations in part 820 (21 CFR part 820), with the exception of §§ 820.180 and 820.198, relating to general requirements concerning records, and complaint files, respectively. FDA granted these exemptions because, at that time, FDA had no reason to suspect that there were any adverse experiences related to protective restraint devices.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended sections 1819 (Medicare) and 1919 (Medicaid) of the Social Security Act to address the use of restraints directly. The statute expressly requires Medicare skilled nursing facilities and Medicaid nursing facilities to protect and promote the residents' freedom from restraints. Sections 1819(c)(1)(A)(ii) and

1919(c)(1)(A)(ii) establish "[t]he right to be free from physical and mental abuse, corporal punishment, involuntary seclusion and any physical or chemical restraints * * * not required to treat the resident's medical symptoms." The statute permits imposition of restraints in those facilities only in restricted circumstances (see sections 1819(c)(1)(A)(ii) (I) and (II) and 1919(c)(1)(A)(ii) (I) and (II)). The Health Care Financing Administration (HCFA) has implemented these requirements in 42 CFR part 483, especially 42 CFR 483.13. The Medicare and Medicaid statutes also preclude the use of psychopharmacologic drugs except under authorized conditions (see sections 1819(c)(1)(D) and 1919(c)(1)(D). On February 5, 1992 (57 FR 4516), HCFA issued a proposed rule which would extensively expand existing Medicare and Medicaid requirements on long-term facilities to protect against inappropriate uses of restraints, including psychopharmacologic drugs. Among other things, the proposed rules would specify when a facility may use restraints and how they are to be applied.

The HCFA regulations address issues related to the clinical indications that would prompt use of restraints in these facilities. The current FDA proposal addressees pressing public health concerns related to the application, handling, and operation of these medical devices. Training, education, and guidelines for use may be highly beneficial in promoting safe use of any medical device, including protective restraints. Thus, FDA proposes that principles of human factor control be incorporated into the product labeling and accompanying directions for the application and handling of protective restraints to minimize the potential for human error. FDA's proposed rule will complement the HCFA regulations and HCFA's February 5, 1992, notice of proposed rulemaking for restraint use by addressing directions for use issues that may improve patient safety by educating personnel or by facilitating proper application. In other words, when use of a restraint is permitted as clinically indicated in regulated facilities, FDA's proposed rule would permit FDA to require that all restraints will incorporate simple and easy to follow directions for application, handling, and supervision.

Protective restraints provide benefits to many patients when used for indicated circumstances, such as precluding patients with temporary or medical-related cognitive deficits from impairing the resolution of their physical problems by involuntarily discontinuing life-support or other needed medical interventions, temporarily reducing the mobility of agitated patients who may otherwise hurt themselves, or helping patients feel safer in a bed or wheelchair. However, since publication of the original final classification regulation for protective restraints, § 880.6760, FDA has become aware, through various sources, of numerous reports of complications, including permanent physical injuries, severe psychological disabilities, other serious injuries, and deaths (Refs. 1 through 34), that have been attributed to incorrect supervision, handling, or application of protective restraint devices by medical or paramedical personnel. Reports refer to emotional desolation, agitation, fractures, chafing, burns, nerve damage, circulatory impairment, decubitus ulcers, strangulation, and death.

FDA's medical device reporting database lists 41 deaths and 16 serious injuries associated with protective restraints. These reports encompass all restraint types, regardless of manufacturer or design; all patient populations, regardless of clinical indication for the placement of the restraint; and various types of health care facilities, including home use situations. These prevalence and incidence data have led FDA to believe that further investigation, through analysis of 510(k) applications and adherence to CGMP's, is warranted. FDA does not currently have any information that would lead FDA to conclude that device design is inherently flawed. Indeed, incidents involving patient deaths, which result primarily from strangulation, suggest that improved directions for application, handling, and operation, or supervision of restrained patients may prove beneficial. FDA realizes that these devices are frequently used on very elderly, severely demented, or extremely ill patients who may require protective restraints for needed medical care, personal safety, or for other reasons. Thus, FDA recognizes the delicate balance between inherent risks and demonstrable medical benefits, but believes that gathering of further information about the potential usefulness of labeling and directions for use may ultimately limit untoward events.

Complications associated with protective restraints may result from a combination of misuse of the devices, inadequate supervision, and, possibly, the design of particular devices. To that end, FDA is aware of reports that injuries may have resulted from the simple error of applying the restraint backwards on the patient. This may be done accidentally because of the lack of clear labeling concerning the proper application of the device and directions for use that educate users about the hazards associated with applying the device backwards. FDA believes that warning labels may be needed to ensure that personnel are aware of these hazards and to differentiate clearly the front from the back of the garment.

Restraints have also allegedly resulted in injuries from improperly securing ties to the bed. Injury may occur, for example, if ties are secured to the fixed parts of the bed, rather than the parts that move with the bed when it is raised or lowered, thereby causing injury by automatic and unintended tightening of the patient restraint.

As noted above, the complications associated with protective restraint devices frequently result from misuse of the devices. FDA believes that, to address potential misuse, it would be advisable for manufacturers to include specific directions for use, to the extent that such directions are not currently available or are not attached to, or kept with, the garment. To that end, FDA believes that such instructions could include: (1) Step-by-step instructions on how to apply protective restraint devices and where to secure the ties; (2) attached warning labels that identify clearly the front and back of the restraining device, and the dangers of reversal using pictorials; and (3) use of standards such as size-color coding. Such instructions, or suggested education for users, may be particularly appropriate when devices are applied or handled by personnel who may have insufficient training in handling such devices.

Furthermore, FDA has had reports of injuries to patients in protective restraints related to fires. FDA is soliciting comment as to whether all or some protective devices should be constructed of flame retardant or resistant material.

Because of the exemption from premarket notification requirements, FDA has not collected information concerning the current availability and actual employment of directions for use, instructions, color coding or labeling for size or orientation, use of flame retardant material, and/or suggested user or purchaser educational programs, that might serve to reduce whatever patient risk may exist when the use of such devices is medically necessary or clinically indicated. Furthermore, FDA does not currently have clinical data on the impact on safety and effectiveness

that such programs or labeling might have for the susceptible patient population. FDA believes that revocation of the exemption from premarket notification requirements will enable the agency to acquire and act upon such information in order to fulfill its statutory mandate that protective restraints are as safe and as effective as is possible given the medical need for restraints in certain critical circumstances. Revocation of the exemption from the premarket notification procedures will permit FDA to monitor the introduction into commerce, by manufacturers and importers, of protective restraint devices. This will facilitate identification of the etiology and potential solutions to mishaps and allow for a labeling review prior to marketing.

In proposing to revoke the exemption from premarket notification, FDA is including persons presently marketing protective restraint devices among those who must file 510(k) notifications. The serious nature of the reported complications from marketed restraints creates a public health imperative that FDA has the means to evaluate the present and future safety and effectiveness of protective restraint devices.

Similarly, FDA believes that revocation of the exemption from most CGMP requirements will enable the agency to require such labeling and instructions on product use and supervision that would ensure that protective devices can be used in a manner in accordance with suggested good medical and nursing practice. To that end, compliance with all of the CGMP requirements will help ensure that restraints conform to their specifications for design, materials, performance, and labeling. For example, labels should remain affixed and legible for the life of the device. Detachment or deterioration in the legibility of labels from repeated washing of restraints may impair the clinical usefulness of the label as a tool to ensure proper use. Further, compliance with CGMP requirements will ensure that manufacturers are investigating any failure of the device or its components that might be obviated by user instructions or changes in labeling.

FDA believes that any use of a protective restraint represents a potential hazard to the patient that must be weighed by the prescriber against known and well-identified medical benefits. Accordingly, FDA plans to continue to monitor reports of adverse events attributed to protective restraints and to correlate these data with the information received in 510(k) submissions to identify those features of specific devices or directions for use that provide the least potential hazard in order to ensure maximization of the patient benefit.

The revocation of the exemptions would provide FDA: (1) Notification by manufacturers and importers of the devices that are intended for commercial distribution; and (2) assurance that manufacturers will follow CGMP regulations.

FDA is also making minor changes in the identification paragraphs (§§ 880.6760(a) and 890.3910(a)) of the classification regulations for protective restraints and for wheelchair accessories. These changes are for purposes of clarification only.

FDA advises that, although wheelchair accessories are classified as class I devices (see 21 CFR 890.3910) and are currently granted an exemption from premarket notification and certain CGMP requirements, those wheelchair accessories that function as protective restraint devices, e.g., wheelchair belts, roller bars, lap bars and Y-straps, would be required to comply with premarket notification and all CGMP requirments.

FDA is providing 60 days for public comment on the proposed rule. FDA is proposing that any final rule based on this proposal will apply to any person that is required to register and list under § 807.20 because of the manufacture or importation of protective restraint devices.

I. Effective Dates

A premarket notification submission would be required for any protective restraint device intended to be introduced into commercial distribution within 90 days after publication of a final rule in the **Federal Register**, pursuant to section 510(k) of the act (1 U.S.C. 360(k)) and the procedures in subpart E of part 807.

A manufacturer or initial distributor of a protective restraint device that is already in commercial distribution under the existing exemption from premarket notification or that introduces this device into commercial distribution at any time prior to 90 days after publication of the final rule in the **Federal Register** would be required to submit to FDA a premarket notification within 90 days after publication of the final rule in the **Federal Register**.

All protective restraints, whether made in the United States or imported, that are introduced or delivered for introduction into commerce more than 90 days after date of publication of the final rule in the **Federal Register**, would be reuqired to be manufactured in compliance with the CGMP regulations in part 820.

II. Environmental Impact

FDA has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact staement is required.

III. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–395), the agency has examined the economic impact of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been analyzed, and it has been determined that this proposed rule is not a major rule as defined in section 1(b) of the Executive Order. The proposed rule subjects manufacturers and initial distributors of protective restraint devices to the same requirements applicable to most other manufacturers of medical devices.

There are 31 registered establishments engaged in the manufacture of patient restraints. FDA estimates that the average cost of preparing a premarket notification would be $2,000. On the average, each firm manufactures five different restraints, all requiring separate premarket notifications. Therefore, the average initial cost per manufacturer of complying with the premarket notification requirements would be $10,000 ($2,000 times 5). FDA also estimates that the average expense a manufacturer would incur in coming into compliance with the CGMP requirements would be $20,000. Therefore, the total first-year costs imposed by this regulation would be $930,000 ($30,000 per manufacturer times 31). FDA anticipates that the annual cost in subsequent years would be considerably reduced after initial compliance with CGMP requirements is reached and also because fewer premarket notifications would be required. There would also be savings to manufacturers in reduced product liability exposure as a result of compliance with this rule and the necessary compilation of information or clinical data that would result from the need to file a 510(k). Furthermore, implementation of simple and easy-to-understand directions for use and clear labeling has the important objective of

severely reducing the number of lives lost and the number of serious injuries sustained by patients who require such devices. However, the benefits are difficult to quantify either in terms of dollars or avoidance of injuries or deaths because the benefits depend on whether the proposed labeling will change the behavior of users.

IV. Comments

Interested persons may, on or before August 18, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Katz, L., et al., "Patient Restraint and Safety Vests: Minimizing the Hazards," *Dimensions in Health Service*, pp. 10–11, May 1981.
2. Evans, L.K. and N.E. Strumpf, "Myths About Elder Restraint," *Image: Journal of Nursing Scholarship*, 22(2):124–125, 1990.
3. Fletcher, K., "Restraints Should Be a Last Resort," *RN*, pp. 52–57, January 1990.
4. Strumpf, N.E. and L.K. Evans, "Physical Restraint of the Hospitalized Elderly: Perceptions of Patients and Nurses," *Nursing Research*, 37(3):132–137, 1988.
5. Misik, I., "About Using Restraints—with Restraint," *Nursing*, 11:50–55, 1981.
6. Robbins, L.J., et al., "Binding the Elderly: A Prospective Study of the Use of Mechanical Restraints in an Acute Care Hospital," *Journal of the American Geriatric Society*, 35:290–296, 1987.
7. Janelli, L.M., "Physical Restraints: How Little We Know," *Nursing Homes*, pp. 10–14, October 1988.
8. Berland, B., et al., "Patient Characteristics Associated with the Use of Mechanical Restraints," *Journal of General Internal Medicine*, 5:480–485, 1990.
9. Emergency Care Research Institute, "Risk Analysis: Physical Restraints," Safety, Security, and Loss Prevention, *Hospital Risk Control*, pp. 1–8, September 1988.
10. Dube, A.H. and E.K. Mitchell, "Accidental Strangulation from Vest Restraints," *Journal of the American Medical Association*, 256(19):2725–2726, 1986.
11. Dodge, P., "Patient Restraints," letter to editor, *Dimensions in Health Service*, p. 12, September 1984.
12. Di Maio, V., *et al.*, "Deaths Caused by Restraint Vests," letter to editor, *Journal of the American Medical Association*, 255(7):905, 1986.
13. Katz, L., "Accidental Strangulation from Vest Restraints," letter to editor, *Journal of the American Medical Association*, 257(15):2032–2033.
14. "Minneapolis Star Tribune," December 2, 1990, at section 1A.
15. "Minneapolis Star Tribune," December 2, 1990, at section 20A.
16. "Minneapolis Star Tribune," December 3, 1990, at section 1A.
17. "Minneapolis Star Tribune," December 3, 1990, at section 10A.
18. "Minneapolis Star Tribune," December 4, 1990, at section 1A.
19. "Minneapolis Star Tribune," December 4, 1990, at section 19A.
20. "Minneapolis Star Tribune," December 4, 1990, at section 20A.
21. "Minneapolis Star Tribune," December 5, 1990, at section 1A.
22. "Minneapolis Star Tribune," December 5, 1990, at section 19A.
23. "Minneapolis Star Tribune," December 17, 1990, at section 1A.
24. Frank, Barbara, Associate Director for National Citizens' Coalition for Nursing Home Reform, letter to David Kessler, Commissioner, FDA, December 18, 1990.
25. Downey, Thomas J., Chairman, Select Committee on Aging, U.S. House of Representatives, letter to David Kessler, Commissioner, FDA, February 1, 1991.
26. Reed, Harry, U.S. Senate, letter to David Kessler, Commissioner, FDA, April 24, 1991.
27. Gibbins, Bob, President, Association of Trial Lawyers of America, letter to David Kessler, Commissioner, FDA, August 2, 1991.
28. Stewart, Mary C., letter to James Benson, Acting Commissioner, FDA, undated.
29. Stewart, Mary C., letter to Tom Downey, U.S. House of Representatives, August 29, 1991.
30. Lesseg, Mike, letter to Robert Mansell, FDA, May 10, 1991.
31. Sanders, Jeanne V., testimony to Subcommittee on Aging, U.S. Senate, June 13, 1991.
32. "Medical Devices Alert No. 32," Health Protection Branch, Health and Welfare Canada, January 15, 1991.
33. "Information Letter No. 618," Health Protection Branch, Health and Welfare Canada, February 19, 1992.
34. "Medical Devices Alert No. 92," Health Protection Branch, Health and Welfare Canada, March 13, 1990.

List of Subjects

21 CFR Part 880

Medical devices.

21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 880 and 890 be amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 880.6760 is revised to read as follows:

§ 880.6760 Protective restraint.

(a) *Identification.* A protective restraint is a device, including but not limited to a wristlet, anklet, vest, mitt, straight jacket, body/limb holder, or other type of strap, that is intended for medical purposes and that limits the patient's movements to the extent necessary for treatment, examination, or protection of the patient or others.

(b) *Classification.* Class I (general controls).

PART 890—PHYSICAL MEDICINE DEVICES

3. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

4. Section 890.3910 is revised to read as follows:

§ 890.3910 Wheelchair accessory.

(a) *Identification.* A wheelchair accessory is a device intended for medical purposes that is sold separately from a wheelchair and is intended to meet the specific needs of a patient who uses a wheelchair. Examples of wheelchair accessories include but are not limited to the following: armboard, lapboard, pusher cuff, crutch and cane holder, overhead suspension sling, head and trunk support, and blanket and leg rest strap.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as a protective restraint as defined in § 880.6760 of this chapter, it is exempt from the premarket notification procedures in subpart E of Part 807 of this chapter, and is also exempt from current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Dated: June 2, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-14427 Filed 6-16-92; 11:25 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-53-89]

RIN 1545-AN60

Inclusions in Income of Lessees of Passenger Automobiles and Other Listed Property; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on supplemental proposed regulations that relate to the treatment of lessees of luxury automobiles and other listed property.

DATES: The public hearing originally scheduled for Friday, June 26, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or 202-566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is supplemental proposed regulations under section 280F(c) of the Internal Revenue Code. A notice of public hearing appearing in the **Federal Register** for Friday, January 24, 1992 (57 FR 2862), announced that the public hearing on the supplemental proposed regulations would be held on Friday, June 26, 1992, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Friday, June 26, 1992, has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer Assistant Chief Counsel (Corporate).

[FR Doc. 92-14405 Filed 6-18-92; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 9

[Notice No. 742]

RIN 1512-AA31

Wine Labeling Amendments (88F-221P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is proposing to amend the wine labeling regulations in 27 CFR part 4 to:

(1) Broaden the use of the "Estate bottled" designation,

(2) Allow the use of a harvest year designation for fruit, berry and agricultural wines,

(3) Expand the use of a viticultural area designation,

(4) Allow the use of multicounty or multistate appellations of origin for other than grape wine,

(5) Allow the use of the designation "other than standard" on a wine label,

(6) Allow the use of a vineyard, orchard, farm or ranch name on a wine label,

(7) Allow the use of a brand name with a varietal (grape type) name,

(8) Allow more than three grape varieties on a wine label, and

(9) Address the use of a geographic brand name which has a viticultural artea significance.

DATES: Written comments must be received by July 20, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091-0221 (Notice No. 742).

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927-8230.

SUPPLEMENTARY INFORMATION:

I. Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code of Federal Regulations (CFR), part 4. The last multiple issue revision of the wine labeling regulations was Treasury Decision ATF-53, 43 FR 37672 (August 23, 1978), which was effective September 22, 1978. This notice of proposed rulemaking addresses several wine labeling issues which have been brought to our attention over a period of several years by industry members or other groups that we believe are of importance at this time.

II. Proposed Wine Labeling Amendments

1. Broadened Use of the "Estate bottled" Designation

The estate bottled regulation was a controversial area of the 1978 rulemaking process resulting in T.D. ATF-53. In Notice No. 290 leading to T.D. ATF-53, 41 FR 8188 (February 25, 1976), we first proposed an estate bottled regulation which required that the grapes be grown on land owned by and within five miles of the bottling winery. The proposal was revised in Notice No. 304, 41 FR 50004 (November 12, 1976), to cover wine produced by the bottling winery entirely from grapes grown within a single approved viticultural area or vineyard, on property owned and controlled by the bottling winery. In addition, the bottling winery had to be located within the State in which the viticultural area was located. Based on public comments, we then proposed in Notice No. 304, amended, 42 FR 30517 (June 15, 1977) to prohibit the use of the "Estate bottled" designation because the term had no real meaning to the consumer. However, during the public hearings on Notice No. 304, amended, another proposal was submitted which focused on grapes grown in vineyards owned by the winery in the viticultural area designated on the label. The testimony in support of that proposal indicated that wine producers considered the designation to convey the notion that the winery had control of the wine from the grape growing through the production process. As a result of the written comments and the testimony at the public hearings, we adopted the current regulation in 27 CFR 4.26. Under the regulation, in general terms, "Estate bottled" means that the bottling winery grew all the grapes used to make the wine on land which it owned or controlled within the viticultural area. In addition, the winery itself must be located within the viticultural area and must have crushed the grapes,

fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery). Proposed are three revisions to allow additional uses of the "Estate bottled" designation. There are many small bonded wine premises proprietors in the United States who grow their basic winemaking material on land located contiguous to their bonded wine premises which would qualify for the use of "Estate bottled" on their grape wine labels if such premises were located in a viticultural area. These proprietors believe they should not have to establish a viticultural area only for the purpose of being allowed to use the "Estate bottled" designation. In their view, it is the control over the grape growing and wine production activity which imparts the personal characteristics to the wine that the consumer attaches to the "Estate bottled" designation. The first proposed revision of 27 CFR 4.26 would allow the proprietor of a bonded wine premises outside of a viticultural area to use the "Estate bottled"designation for wine derived from primary winemaking material produced on land owned or controlled by the proprietor which is located contiguous to the proprietor's bonded wine premises. This proposal has the specific restriction that the land be contiguous to the bonded wine premises. Existing regulations allow wine to be labeled "Estate bottled" if the grapes are grown on land anywhere in the viticultural area where the bonded wine premises is located and such land is owned or controlled by the proprietor producing the wine. ATF believes that the "Estate bottled" designation on wine produced from grapes grown anywhere in a viticultural area can be allowed because the wine has that viticultural area stated on the label. However, we are requesting comments on restricting grapes to land contiguous to the bonded wine premises for proprietors outside a viticultural area while allowing proprietors inside a viticultural area to produce "Estate bottled" wine from grapes grown anywhere in such area. We are also requesting comments on whether there are characteristics or features unique to viticultural areas which would require continuing the restriction of the "Estate bottled" designation to wines from a viticultural area.

The second estate bottled proposal concerns proprietors producing wine from fruit and other agricultural products other than grapes who have asked to be allowed to use the "Estate bottled" designation on their wines also. T.D. ATF-53 allowed the "Estate bottled" designation for grape wine only since that was the only type of wine for which the designation was requested. This notice proposes to allow the "Estate bottled" designation for such wines with the same restrictions proposed for proprietors producing grapes on land contiguous to their bonded wine premises but outside of a viticultural area. We are requesting comment on whether the use of the "Estate bottled" designation on a wine label should be restricted to only grape wine or should wine made from other than grapes also be allowed such use.

The third estate bottled proposal would apply to proprietors who have more than one bonded wine premises in the same viticultural area. We have received requests from proprietors to allow the use of the "Estate bottled" designation for wine which prior to bottling was transferred in bond between their bonded wine premises located in the same viticultural area. The primary reason for the requests from proprietors in a few major wine producing areas is the space limitation on storage at the producing and bottling bonded wine premises and a corresponding local restriction on adding storage capacity at such premises. We have previously denied these requests because 27 CFR 4.26(a)(1) very specifically states that the wine at no time may leave the premises of the bottling winery. The proposed revision would allow a proprietor to move wine between their bonded wine premises located in the same viticultural area and use the "Estate bottled" designation. It has been suggested that this revision is consistent with the meaning of the "Estate bottled" designation because the grapes are allowed to come from anywhere in the viticultural area where the proprietor's bonded wine premises is located provided such grapes are grown on land owned or controlled by the bonded wine premises proprietor. We are seeking comment on whether a broadened use of the "Estate bottled" designation is a necessary outgrowth in recognizing needed flexibility for proprietors with multiple winery locations within a viticultural area. These comments should address whether such commonly-owned bonded wine premises in a viticultural area share sufficient common features in the production process resulting in the characteristics or features associated by the consumer with "Estate bottled" wines. Finally, since we are considering whether bonded wine premises located outside of a viticultural area should be allowed to use the "Estate bottled" designation, we are interested in comments concerning whether the bonded wine premises should also be allowed to move wine between commonly-owned premises, all of which are located outside a viticultural area. That is, do grounds exist for allowing such movement within a viticultural area which do not apply to such movement of wine between commonly-owned premises outside of a viticultural area.

2. Harvest Year Designations for Fruit, Berry and Agricultural Wines

ATF received two petitions to allow the use of harvest year designations on the labels of fruit, berry and agricultural wines. Currently, only grape wines made in accordance with the standards prescribed in classes 1, 2 or 3 of 27 CFR 4.21 are allowed to have the year of harvest, or vintage, under the provisions of § 4.27(a), on the brand label. Current regulations, 27 CFR 4.39(b) and 4.64(c), prohibit the use of any statement of age on wine, including harvest or vintage year, except as allowed in 27 CFR 4.27. Previously, ATF issued Notice No. 393, 46 FR 54963 (November 5, 1981), proposing to expand the term vintage, as defined in 27 CFR 4.27, to include fruit wines made in accordance with class 5 of 27 CFR 4.21. Notice No. 393 was subsequently withdrawn in September of 1982 by Notice No. 423, 47 FR 40451 (September 14, 1982). At that time, ATF agreed with the majority of the 14 commenters to Notice No. 393 who stated that consumers associate the term vintage only with grape wine products.

The petitions request a harvest year designation for fruit, berry and other agricultural wines in order to better inform the consumer as to the quality of the wine being purchased in a given year from a particular geographic area. The petitioners state that environmental factors such as heat, light and rain can influence the quality of the fermented products from year to year in the same way as grapes and with the same significant variations.

After consideration of the petitions received and of the notices previously issued concerning harvest or vintage year statements, we are proposing a new 27 CFR 4.28 to allow a harvest year designation for citrus fruit wines, other fruit and berry wines, and agricultural wines made in accordance with the standards prescribed in classes 4, 5 and 6 of 27 CFR 4.21.

3. Expanded Use of a Viticultural Area Designation

Various wineries purchase grapes grown in another State for use in their wine production. In many situations, the wine produced can only be labeled with a country appellation of origin. The producers of such wine want to use a vintage date on their labels and have asked ATF to amend the wine regulations to allow use of a vintage date on a wine bearing the country appellation of origin of "American." The rulemaking proceeding resulting in T.D. ATF–53 specifically prohibited the use of a vintage date on a wine label with the name of a country appellation of origin. A vintage date informs consumers that the grapes used to produce the wine may have influencing factors exerted on the grapes which are different from those factors of another year. ATF believes that the name of a country is too large an appellation of origin area for the consumer to consider the influences on the grapes of one year to be different than those of another year.

Alternatively, ATF believes that a different regulatory amendment would allow these wineries to use a vintage date in many situations. Wines having a viticulatural area appellation of origin designation are eligible to bear a vintage date. Wineries are purchasing grapes grown in other States which would qualify for a viticultural area designation if the wine from such grapes was produced in the State where the viticultural area is located. However, the regulations do not allow the finished wine to bear a viticultural area appellation of origin where the wine is produced outside the State containing the viticultural area. If the finished wine did bear a viticultural area appellation of origin and such wine was purchased by a wine premises proprietor in another State, then the label could include the viticultural area appellation of origin and a vintage date. Since the name and address of the bottling winery must appear on the label, the consumer can determine that an appellation of origin designation refers to where the grapes were grown and that the winery name and address statement refers where wine operations occurred.

A viticultural area designates a specific geographica grape growing region. The factors considered in approving a viticultural area, such as temperature, rainfall, elevation, soil, etc., are factors directly influencing the grapes grown in the area. The viticultural area factors influencing the grapes do not change if these grapes are transported to another State for the production of wine. ATF is proposing to amend § 4.25a(e)(3)(iv), one of the viticultural area requirements, to allow wine fully finished outside a viticultural area from where the grapes were grown to be labeled with a viticultural area designation as long as such wine was finished within the United States. Such a wine would then be eligible to use a vintage date. The viticultural area appellation of origin designation on a label informs the consumer where the grapes which made the wine was grown. The required winery name and address on the label would inform the consumer if such wine was produced and bottled at a location other than the viticultural area appellation of origin.

At this time, ATF is not proposing similar changes with respect to appellations of origin other than viticultural areas, such as county or State, because these names refer to geopolitical areas and not designated grape growing areas. Therefore, the requirement that the wine labeled with a State appellation be finished within the labeled State or adjacent State and wine labeled with a county appellation be finished within the State in which the labeled county is located would remain unchanged. Although not proposed, ATF will consider comments on allowing a similar expanded use of a geopolitical appellation of origin on labels for wine produced outside such appellation from grapes grown in such appellation.

4. Multicounty or Multistate Appellations of Origin for Other Than Grape Wine

The regulations allow American wine derived from fruit or other agricultural products to be labeled with an American, State or county appellation of origin. However, only wine produced from grapes can be labeled with a multistate or a multicounty appellation of origin.

As originally issued, the appellation of origin provision of the wine labeling regulations applied to wine produced from any fruit or other agricultural product. As part of the proceedings resulting in T.D. ATF–53, the grape wine industry asked ATF to permit, for the first time, the use of multistate or multicounty appellations of origin. The industry suggested that multicounty appellations were more meaningful to consumers than a State appellation and that multistate appellations were more meaningful than country appellations. In order to permit greater flexibility in appellation of origin labeling, these multicounty and multistate appellations were authorized for grape wine, provided the label disclosed the percentages of wine derived from grapes grown in the counties and States. Since producers of wine made from other than grapes and from other agricultural products desire to use multicounty and multistate appellations, ATF is proposing to revise 27 CFR 4.25a (c) and (d) to allow all fruit or other agricultural product wines to bear such appellations. ATF notes that such a revision is consistent with the original appellation of origin approach in the wine labeling regulations which included wine produced from any fruit or other agricultural products. However, ATF seeks comments on whether there are differences between grape wines and wines made from other fruits or other agricultural products which would compel restricting multicounty or multistate appellations of origin to grape wines.

5. Designation "Other Than Standard Wine" on a Wine Label

A petition was received to allow the designation "other than standard wine" on labels for certain wines (dried fruit, raspberry, wild plum) instead of the designation "substandard wine." Currently, the designation "other than standard wine" may be used on wine labels where such wine is sold intrastate only. Due to a very high acid level in the winemaking material used to produce some wines, ameliorating material in excess of limitations allowed for natural wine is sometimes necessary. Such wines are permitted in the Internal Revenue Code to be produced as other than standard wine, but these wines are required to be labeled as substandard wine under 27 CFR part 4. We do not believe that allowing the use of "other than standard wine" on a wine label instead of "substandard" will result in a jeopardy to the revenue or cause consumer deception or consumer confusion. Therefore, 27 CFR 4.21 is proposed to be amended by allowing either the label designation "Other than Standard" or "Substandard" on a wine label for wines with that standard of identity. However, ATF requests comments on whether the consumer would be better informed in making decisions on purchasing these wines because the designation "other than standard" may not have the same consumer negative reaction as might the designation "substandard" when used on one or more of the wines currently designated as "substandard." ATF also requests comments on whether the designation "substandard" should be retained. Finally, ATF requests comments on whether the regulation should impose any particular conditions on the use of the designation "other than

standard wine" in lieu of the designation "substandard."

6. Use of a Vineyard, Orchard, Farm or Ranch Name on a Wine Label

Many proprietors are using wine labels which refer to the name of a vineyard, orchard, farm or ranch as the source of the primary winemaking material used to produce their wine. The use of such names is not provided for in 27 CFR Part 4 and approval has been granted as additional label information. The criteria for such approval has been that at least 95 percent of the primary winemaking material used to produce the wine came from the named vineyard, orchard, farm or ranch. We are proposing to add a paragraph to 27 CFR 4.39 to allow the use of a vineyard, orchard, farm or ranch name on a wine label if 95 percent of the primary winemaking material used to produce the wine came from such named place. In addition, we are proposing that vineyard, orchard, farm or ranch names used on wine labels will be subject to the misleading brand name requirements of 27 CFR 4.33(b) and the geographic brand name requirements of 27 CFR 4.39(i).

7. Brand Names With a Varietal (Grape Type) Name

There is some interest by proprietors to use brand names which contain the name of a grape variety as part of that name. We believe that allowing the use of a grape variety name as part of a brand name would not mislead or confuse the consumer if such brand name and varietal wine name meet the same requirements. Therefore, we are proposing that a proprietor may use a grape variety name in a brand name if such wine meets the varietal (grape type) labeling requirements of 27 CFR 4.23a. Comments are requested on the impact such a change would have on existing or future brand names and whether exceptions should be allowed by an application to the Director where it is determined that the consumer is not likely to be mislead about a wine bearing a varietal brand name where the wine is not a varietal wine of that type.

8. More Than Three Grape Varieties on a Wine Label

Regulations allow no more than three grape variety names to be used on a wine label. Notice Nos. 304 (41 FR 50004, November 12, 1976) and 304, amended (42 FR 30517, June 15, 1977), which resulted in T.D. ATF–53, did not restrict the number of grape variety names which could be used on a wine label. The limit of three grape variety names was taken from written and oral comments in response to Notice No. 304; however, the number was not a major point of issue and comments at that time could have been interpreted as merely examples. We are proposing that 27 CFR 4.23(a) be amended to allow for more than three grape variety names on a wine label. Comments are requested as to whether the use of more than three grape variety names on a wine label would be confusing.

9. Geographic Brand Names of Viticultural Area Significance

Present regulations provide that a brand name of viticultural area significance, which cannot meet the appellation of origin requirements for the geographic area named, may not be used unless it was previously used in a certificate of label approval issued prior to July 7, 1986. Therefore, a viticultural area approved on or after July 7, 1986, would effectively cancel any certificates of label approval issued after this date with a brand name containing the name of that approved viticultural area. A proprietor with a geographical brand name approved after July 7, 1986, should not be penalized for any viticultural area established after the geographical brand name approval date. The proposed revision of 27 CFR 4.39 would correct this regulatory oversight.

10. Changing the Address of Where to Obtain U.S.G.S. Maps for Viticultural Areas

U.S.G.S. maps for describing the boundaries of viticultural areas are now obtained only from the Denver, Colorado office of the U.S. Geological Survey. Sections in 27 CFR parts 4 and 9 are amended to reflect the change in where U.S.G.S. maps may be obtained.

Executive Order 12291

In compliance with Executive Order 12291 issued February 17, 1981, ATF has determined that any regulation resulting from this notice of proposed rulemaking would not constitute a "major rule" since it would not result in: (a) An annual effect on the economy of $100 million or more; (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and, (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this notice of proposed rulemaking because a final rule would not have a significant economic impact on a substantial number of small entities. Any final rule would not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1512–0482), Washington, DC 20503, with copies to the Chief, Information Programs Branch, room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226.

The estimated average burden associated with this collection of information is 0 hours per respondent or recordkeeper because this requirement is usual and customary for wine producers.

Public Participation

ATF requests comments from all interested persons. Comments received no later than the closing date of the comment period will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action. ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is public information. During the comment period, any person may submit a request to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to

determine whether a public hearing would be necessary.

Disclosure

Copies of this notice and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The author of this document is Coordinator James A. Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Part 4—Labeling and Advertising of Wine and Part 9—American Viticultural Areas are amended as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The heading of § 4.21(h) and paragraph (h)(2) of the section are amended to add the phrase "other than standard" to read as follows:

§ 4.21 The standards of identity.

* * * * *

(h) *Class 8; imitation and substandard or other than standard wine.* * * *

(2) "Substandard wine" or "Other than standard wine" * * *

* * * * *

§ 4.23a [Amended]

Par. 3. In the heading and the first sentence of § 4.23a(d) remove the word "three" and add, in its place, the word "more."

Par. 4. Section 4.25a is amended by revising paragraphs (c), (d)(1), (e)(2)(v) and (e)(3)(iv) as follows:

§ 4.25a Appellations of origin.

* * * * *

(c) *Multicounty appellations.* An appellation of origin comprising two or no more than three counties in the same State may be used if all of the fruit or other agricultural products were grown in the counties indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each county is shown on the label with a tolerance of plus or minus two percent.

(d) *Multistate appellations.* * * *

(1) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus two percent;

* * * * *

(e) *Viticultural area—(1) Definition.* * * *

(2) *Establishment of American viticultural areas.* * * * (v) a copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked. (For U.S.G.S. maps, write the U.S. Geological Survey, Branch of Distribution, Box 25286, Federal Center, Denver, Colorado 80225. If the map name is not known, request a map index by State.)

(3) *Requirements for Use.* A wine may be labeled with a viticultural area appellation if:

(i) * * *;

(ii) * * *;

(iii) * * *, and

(iv) In the case of American wine, it has been fully finished within the United States.

* * * * *

Par. 5. Section 4.26 is revised to read as follows:

§ 4.26 Estate bottled.

(a) *Conditions for use.* The "Estate bottled" designation may be used by a bottling winery on a wine label if (1) the wine is produced from basic winemaking material grown on land contiguous (may only be separated by a road, highway, railway, waterway, or some similar separation) to the winery which is owned or controlled by the winery, or (2) the wine is labeled with a viticultural area appellation of origin and the bottling winery is located in the labeled viticultural area and grew all the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area. The bottling winery, in paragraphs (a) (1) or (2) of this section, crushed the basic winemaking material, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery in the case of paragraph (a)(1) of this section and the wine at no time having left the viticultural area in the case of paragraph (a)(2) of this section).

(b) *Special rule for cooperatives.* Basic winemaking materials grown by members of a cooperative bottling winery are considered grown by the bottling winery.

(c) *Definition of "Controlled by."* For purposes of this section, "Controlled by" refers to property on which the bottling winery has the legal right to perform, and does perform, all of the acts common to viticulture (or similar practices if the basic winemaking material is other than grapes) under the terms of a lease or similar agreement of at least 3 years duration.

Par. 6. A new § 4.28 is added to read as follows:

§ 4.28 Harvest year wine.

(a) *General.* Harvest year wine is wine labeled with the year of harvest of the fruit or other agricultural product and made in accordance with the standards prescribed in classes 4, 5 and 6 of § 4.21 for citrus wines, other fruit and berry wines, and agricultural wines. At least 95 percent of the wine must have been derived from fruit or agricultural products harvested in the labeled calendar year, and the wine must be labeled with an appellation of origin other than a country (which does not qualify for harvest year labeling). The appellation shall be shown in direct conjunction with the designation required by § 4.32(a)(2), in the same size of type, and in lettering as conspicuous as that designation. In no event may the quantity removed from the producing winery, under labels bearing a harvest date, exceed the volume of harvest year wine produced in that winery during the year indicated by the harvest date.

(b) *American wine.* A permittee who produced and bottled or packed the wine, or a person other than the producer who repackaged the wine in containers of 5 liters or less may show the year of harvest upon the label if the person possesses appropriate records from the producer substantiating the year of harvest and the appellation of origin and if the wine is made in compliance with the provisions of paragraph (a) of this section.

(c) *Imported wine.* Imported wine may bear a harvest year if: (1) It is made in compliance with the provisions of paragraph (a) of this section; (2) it is bottled in containers of 5 liters or less prior to importation, or bottled in the United States from the original container of the product (showing a harvest year); and (3) if the invoice is accompanied by,

or the American bottler possesses, a certificate issued by a duly authorized official of the country of origin (if the country of origin authorizes the issuance of such certificates) certifying that the wine is of the harvest year shown, that the laws of the country regulate the appearance of harvest dates upon the labels of wine produced for consumption within the country of origin, that the wine has been produced in conformity with those laws, and that the wine would be entitled to bear the harvest date if it had been sold within the country of origin.

Par. 7. Section 4.33 is amended by adding a second sentence to paragraph (b) to read as follows:

§ 4.33 Brand names.

* * * * *

(b) *Misleading brand names.* * * *. If a varietal (grape type) name is used in the brand name, the wine shall conform to the requirements of § 4.23a.

* * * * *

Par. 8. Section 4.34(b)(4) is revised to read as follows:

§ 4.34 Class and type.

* * * * *

(b) * * *

* * * * *

(4) The wine is labeled with the year of harvest of the fruit or other agricultural products, and otherwise conforms with the provisions of § 4.27, for grape wine, or § 4.28, for fruit, berry or agricultural wines. The appellation of origin for a vintage or harvest year wine shall be other than a country.

Par. 9. Section 4.39 is amended by revising paragraph (b)(1) and paragraph (i)(2) and by adding a new paragraph (m) to read as follows:

§ 4.39 Prohibited practices.

* * * * *

(b) *Statement of age.* * * * (1) for vintage or harvest year wines, in accordance with the provisions of § 4.27 or § 4.28; * * *

* * * * *

(i) *Geographic brand names.* (1) * * *

(2) If the wine does not meet the appellation of origin requirements for the geographic area named, the brand name may be used only if it was previously used in a certificate of label approval issued prior to July 7, 1986, or prior to the approval of the named geographic area as a viticultural area (whichever is later), and either:

(i) The wine is labeled with an appellation of origin, in accordance with § 4.34(b) as to location and size of type of either:

(A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a State, or

(B) A State, a county, or a viticultural area, if the brand name bears a State name; or

(ii) The wine is labeled with some other statement which the Director finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

* * * * *

(m) *Use of a vineyard, orchard, farm or ranch name.* The name of a vineyard, orchard, farm or ranch having geographical or viticultural significance is subject to the requirements of §§ 4.33(b) and 4.39(i) of this part. Additionally, the name of a vineyard, orchard, farm or ranch shall not be used on a wine label, unless 95 percent of the wine in the container was produced from primary winemaking material grown on the named vineyard, orchard, farm or ranch.

Par. 10. Section 4.64 is amended by revising paragraph (c)(1) to read as follows:

§ 4.64 Prohibited practices.

* * * * *

(c) *Statements of age.* * * * (1) for vintage or harvest year wines, in accordance with the provisions of § 4.27 or § 4.28; * * *

PART 9—[AMENDED]

Par. 11. Section 9.3(b)(5) is revised to read as follows:

§ 9.3 Relation to parts 4 and 71 of this chapter.

* * * * *

(b) * * *

* * * * *

(5) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked. (For U.S.G.S. maps, write the U.S. Geological Survey, Branch of Distribution, Box 25286, Federal Center, Denver, Colorado 80225. If the map name is not known, request a map index by State.)

Note: This document was received at Office of the Federal Register on June 15, 1992.

Signed: December 6, 1991.

Stephen E. Higgins,

Director.

Approved: January 17, 1992.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92-14342 Filed 6-18-92; 8:45 am]

BILLING CODE 4810-31-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7045]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to

calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. Section 67.4 is proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
IOWA	
Ely (city), Lin County	
Hoosier Creek:	
About 0.3 mile downstream of Vista Road	*720
About 1.0 mile upstream of Vista Road	*731
Maps available for inspection at the City Hall, Community Center, 1570 Rowley Street, Ely, Iowa.	
Send comments to The Honorable Thomas Tjelmeland, Mayor, City of Ely, P.O. Box 248, Ely, Iowa 52227.	
MAINE	
Cutler (town), Washington County	
Atlantic Ocean:	
Little Machias Bay at confluence of Eastern Marsh Brook and Western Marsh Brook	*14
Gulf of Maine along southeastern shoreline at Spruce Point	*41
Maps available for inspection at the Cutler Town Office, Route 191, Cutler, Maine.	
Send comments to Ms. Cythia Rowden, First Selectman for the Town of Cutler, Washington County, P.O. Box 236, Cutler, Maine 04626.	
Robbinston (town), Washington County	
St. Croix River:	
At Bunker Point	*17
Shoreline at southern most corporate limits	*25
Boyden Lake: Entire shoreline within community	*79
Maps available for inspection at the Robbinston Town Hall, Ridge Road, Robbinston, Maine.	
Send comments to Mr. Philip Stanhope, First Selectman of the Town of Robbinston, Washington County, Box 308, Robbinston, Maine 04671.	
MISSISSIPPI	
Tishomingo (unincorporated areas)	
Indian Creek:	
At mouth	*420
About 1.1 miles upstream of Mount Evergreen Road	*514
Tennessee River:	
About 3.5 miles downstream of confluence of Whetstone Branch	*420
About 4.4 miles upstream of confluence of Indian Creek	*421
Tennessee-Tombigee Waterway:	
At mouth	*420
North of Bay Springs Dam	*420
Maps available for inspection at the Chancery Clerk's Office, Tishomingo County Courthouse, 1008 Highway 25 South, Iuka, Mississippi.	
Send comments to The Honorable Ricky Cummings, President, Board of Supervisors, Tishomingo County, Tishomingo County Courthouse, 1008 Highway 25 South, Iuka, Mississippi 38852.	

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Hanceville, Cullman County.	Mud Creek	Just upstream of CSX railroad	*526	*530
			About 950 feet upstream of State Highway 91	None	*536
		North Fork Mud Creek	At mouth	*530	*532
			Just upstream of Commercial Street	*535	*535
Maps available for inspection at the City Hall, 112 Main Street, Hanceville, Alabama.					
Send comments to The Honorable Bobby Jack Camp, Mayor, City of Hanceville, City Hall, 112 Main Street, Hanceville, Alabama 35077.					
Alabama	City of Huntsville, Madison County.	Sherwood Branch	About 0.76 mile upstream of Wynn Avenue	*656	*656
			Just upstream of Rideout Road	*680	*682
			About 700 feet upstream of Rideout Road	*682	*682
		Tributary to Sherwood Branch	At mouth	*657	*657
			Just upstream of Rideout Road	*663	*660
		McDonald Creek	About 2,700 feet downstream of Bob Wallace Avenue.	None	*620
			Just upstream of Bob Wallace Avenue	*630	*630
Maps available for inspection at the Public Works Department, Huntsville, Alabama.					
Send comments to The Honorable Steve Hettinger, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804–0308.					
Arizona	Coconino County Unincorporated Areas.	Baderville Tributary	Approximately 1,100 feet downstream of Bader Road.	None	*7,301
			Just upstream of Suzette Lane	None	*7,312

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,600 feet upstream of confluence of Tributary No. 2.	None	*7,324
		Tributary No. 1 to Baderville Tributary.	Just upstream of Bader Road	None	*7,308
			Approximately 1,800 feet upstream of Bader Road.	None	*7,315
			Approximately 2,800 feet upstream of Bader Road.	None	*7,322
		Tributary No. 2 to Baderville Tributary.	At confluence with Baderville Tributary	None	*7,315
			Approximately 1,400 feet above confluence with Baderville Tributary.	None	*7,321
Maps are available for review at the Coconino County Flood Control District, 219 East Cherry Street, Flagstaff, Arizona.					
Send comments to The Honorable Paul J. Babbitt, Jr., Chairman, Coconino County Board of Supervisors, 219 East Cherry Street, Flagstaff, Arizona 86001.					
Georgia	City of Columbus, Muscogee County.	Standing Boy Creek	About 900 feet downstream of confluence of Heiferhorn Creek.	None	*342
			At upstream County Boundary	None	*393
		Standing Boy Creek Tributary No. 1.	At mouth	None	*350
			At County Boundary	None	*369
		Heiferhorn Creek	At mouth	None	343
			At County Boundary	None	*463
		Heiferhorn Creek Tributary No. 1.	At mouth	None	*392
			Just downstream of Interstate 185	None	*473
		Heiferhorn Creek Tributary No. 2.	At mouth	None	*424
			Just downstream of Norfolk Southern Railway	None	*463
			Just upstream of Norfolk Southern Railway	None	*479
			At County Boundary	None	*577
		Roaring Branch	Just upstream of New River Road	*345	*344
			Just downstream of Whitesville Road	*412	*413
			Just upstream of Whitesville Road	*415	*418
			Just downstream of Dam	*451	*452
			Just upstream of Dam	*463	*464
			Just downstream of Apartment Drive	*464	*465
			Just upstream of Apartment Drive	*465	*475
			Just downstream of Double Churches Road	*476	*478
			Just upstream of Double Churches Road	*473	*484
			About 0.5 mile upstream of Bascom Road	*502	*510
		Roaring Branch Tributary No. 1.	At mouth	*345	*344
			Just downstream of Private Drive	None	*388
			Just upstream of Private Drive	None	*396
			About 1,100 feet upstream of Private Drive	None	*436
		Flatrock Creek Tributary No. 1	At mouth	*365	*365
			Just downstream of Dam	*417	*393
			Just upstream of Dam	*419	*415
			Just downstream of Warm Springs Road	*440	*441
		Upper Bull Creek	Just upstream of Flood Control Dam	*404	*404
			Just downstream of Warm Springs Road	None	*418
		Lower Bull Creek Tributary No. 1.	At mouth	*265	*265
			About 0.7 mile upstream of Forrest Road	*334	*339
		Lower Bull Creek Tributary No. 3.	At mouth	*272	*272
			Just downstream of Woodruff Farm Road	*329	*328
		Cox Creek	Just upstream of Norfolk Southern Railway	None	*362
			Just downstream of Cross Creek Road	None	*388
			Just upstream of Cross Creek Road	None	*418
			About 0.4 mile upstream of Harper's Ferry Road.	None	*423
		Turkey Creek	At mouth	*227	*227
			Just downstream of Norfolk Southern Railway	None	*251
			Just upstream of Norfolk Southern Railway	None	259
			Just downstream of Farm Road	None	*300
		Tiger Creek	At Fort Benning Military Reservation boundary	None	*270
			About 0.4 mile downstream of Stream Mill Road.	None	*288
		Dozier Creek	Just upstream of Chatsworth Road	None	*371
			Just downstream of Norfolk Southern Railway	None	*379
			Just upstream of Norfolk Southern Railway	None	*386
			About 1.4 mile upstream of Macon Road	None	*429
		Kendall Creek	Just upstream of Norfolk Southern Railway	None	*348
			At county boundary	None	*430
		Randall Creek	Just upstream of Chatsworth Road	None	*368
			At County Boundary	None	*430

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Tar River	Just upstream of Norfolk Southern Railway	None	*355
			Just downstream of dam	None	*362
			Just upstream of dam	None	*374
			At County Boundary	None	*407

Maps available for inspection at the City of Columbus Engineer Department, Consolidated Government Center, 100 10th Street, Columbus, Georgia.

Send comments to The Honorable Frank K. Martin, Mayor, City of Columbus, P.O. Box 1340, Columbus, Georgia 31993.

Georgia	Town of Mineral Bluff, Fannin County.	Hempton Creek	About 2,400 feet upstream of mouth	None	*1,544
			About 2,900 feet upstream of Old Murphy Highway.	None	*1,563

Maps available for inspection at the Town Hall, Mineral Bluff, Georgia.

Send comments to The Honorable Leslie Queen, Mayor, Town of Mineral Bluff, P.O. Box 323, Mineral Bluff, Georgia 20559.

Illinois	Village of Bensenville, DuPage and Cook Counties.	South Unnamed Creek	About 1,500 feet upstream of Chicago and North Western railroad.	None	*660
			About 800 feet upstream of Fairway Drive	None	*669
		North Unnamed Creek	About 1,500 feet upstream of Chicago and North Western railroad.	None	*662
			About 0.9 mile upstream of Chicago and North Western railroad.	None	*667
		Bensenville Ditch	About 500 feet downstream of Orchard Avenue.	*661	*661
			Just downstream of Chicago and North Western railroad.	*664	*662
			Just upstream of Chicago and North Western railroad.	*664	*668
			About 650 feet upstream of Church Road	*667	*668
		Addison Creek	Within community	*656	*661
		Addison Creek Tributary No. 3	About 0.7 mile upstream of York Road	*683	*683
			Just downstream of Church Road	None	*686

Maps available for inspection at the Village Hall, 700 West Irving Park Road, Bensenville, Illinois.

Send comments to The Honorable John C. Geils, Village President, Village of Bensenville, Village Hall, 700 West Irving Park Road, Bensenville, Illinois 60106–1987.

Illinois	Unincorporated Areas of Will County.	Marley Creek	At mouth	*636	*636
			At confluence of East Marley Creek	None	*654
		East Marley Creek	At mouth	None	*654
			Just downstream of 104th Street	None	*687
		Hickory Creek	About 2,000 feet downsteam of Wolf Road	*661	*661
			Just downstream of Conrail	None	*692
			Just upstream of Conrail	None	*700
			At confluence of Hickory Creek Tributary A	None	*701
		Hickory Creek Tributary A	At mouth	None	*701
			Just downstream of Sauk Trail Road	None	710
		Rock Run South	Just upstream of U.S. Route 6	*516	*517
			About 2,800 feet upstream of Chicago and North Western railroad.	*522	*521
		Rock Run	At mouth	*530	*529
			About 1,700 feet upstream of Essington Road	*580	*581
		Rock Run Tributary No.1	About 600 feet downstream of Murphy Drive	*582	*582
			About 700 feet upstream of Barber Lane	None	*613
		Rock Run Tributary No. 2	At mouth	*575	*575
			Just downstream of Essington Road	*612	*611
			Just upstream of Essington Road	*612	*618
		Rock Run Tributary No. 3	At mouth	*574	*575
			Just down stream of Cemetery Road	*589	*592
			Just upstream of Cemetery Road	*598	*598
			About 1600 feet upstream of Rebecca Road	*619	*620
		Kankakee River	At downstream county boundary	*510	*512
			About 2,000 feet upstream of confluence of Ryans Creek.	*551	*559

Maps available for inspection at the Will County Land Use Department, 501 Ella Avenue, Joliet, Illinois.

Send comments to The Honorable Charles R. Adelman, County Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, Illinois 60432.

Iowa	Unincorporated Areas of Scott County.	Mississippi River	About 2.4 miles downstream of Interstate 280	*565	*563
			About 0.7 mile upstream of the confluence of Wapsipinicon River.	*588	**586

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Planning and Development Department, Scott County Administration, 416 West 4th Street, Davenport, Iowa.					
Send comments to The Honorable Glen Erickson, County Administrator, Scott County, Scott County Administration, 416 West 4th Street, Davenport, Iowa 52801.					
Michigan	Village of Ovid, Clinton and Shiawassee Counties.	Maple River	Just downstream of Front Street	*720	*721
			About 1250 feet upstream of State Highway 21	*724	*725
		Overland Flow	About 700 feet downstream of State Highway 21.	*721	*722
			About 1000 feet upstream of Main Street	*724	*725
Maps available for inspection at the Village Hall, 114 East Front Street, Ovid, Michigan.					
Send comments to The Honorable Carol Coleman, Village Clerk, Village of Ovid, Village Hall, 114 East Front Street, Ovid, Michigan 48866.					
Mississippi	Pearl River Valley Water Supply District, Hinds, Madison, Rankin, Leake, and Scott Counties.	Pearl River (Ross Barnett Reservoir).	Along shoreline downstream of State Highway 43.	None	*300
			Along shoreline upstream of State Highway 43	None	*301
		Pearl River	About 1.0 mile downstream of Ross Barnett Reservoir Dam.	*283	*286
			Just downstream of Ross Barnett Reservoir Dam.	*283	*287
		Brashear Creek	Just upstream of County Line Road	*283	*286
			About 900 feet upstream of Rice Road	*294	*297
		Culley Creek	Within community	*294	*296
		Haley Creek	About 1200 feet downstream of Old Rice Road	None	*300
			About 1000 feet upstream of Old Rice Road	*308	*308
		Stream "M"	At mouth	None	*301
			About 0.5 mile upstream of mouth	None	*304
		Pelahatchie Creek	About 0.8 mile downstream of State Highway 471.	None	*300
			About 1300 feet upstream of State Highway 25	None	*307
		Pelahatchie Creek Tributary	At mouth	None	*306
			About 300 feet upstream of State Highway 25	None	*307
		Plummer Slough	About 800 feet downstream of State Highway 471.	None	*303
			About 1200 feet upstream of State Highway 25	None	*307
		Spring Branch	About 0.6 mile downstream of North Shore Parkway.	None	*300
			About 0.6 mile upstream of North Shore Parkway.	None	*306
		Mill Creek	Just upstream of Spillway Road	None	*300
			About 1900 feet upstream of Spillway Road	None	*305
		Turtle Creek	Just downstream of Scenic Drive	None	*300
			About 1000 feet upstream of Spillway Road	None	*306
Maps available for inspection at the Pearl River Valley Water Supply District Offices, Rice Road, Madison County at the Ross Barnett Reservoir.					
Send comments to The Honorable Charles E. Moak, General Manager, Pearl River Valley Water Supply District, P.O. Box 12750, Jackson, Mississippi 39236.					
Missouri	City of Ballwin, St. Louis County.	Fishpot Creek	Approximately 3,800 feet downstream of Reis Road.	*535	*533
			Just downstream of Old Ballwin Road	*582	*580
			Just upstream of Smith Drive	*None	*607
Maps available for inspection at the City of Ballwin, 300 City Hall Drive, Ballwin, Missouri.					
Send comments to the Honorable Richard Andrews, Mayor, City of Ballwin, 300 City Hall Drive, Ballwin, Missouri 63011.					
Missouri	Village of Bel-Ridge, St. Louis County.	Maline Creek	About 1170 feet downstream of Natural Bridge Road.	*528	*527
			Just downstream of Natural Bridge Road	*529	*531
			Just upstream of Natural Bridge Road	*531	*531
Maps available for inspection at the Village Clerk's Office, Village Hall, 8765 Natural Bridge, Bel-Ridge, Missouri.					
Send comments to the Honorable Glenn Tope, Chairman, Board of Trustees, Village of Bel-Ridge, Village Hall, 8765 Natural Bridge, Bel-Ridge, Missouri 63121.					
Missouri	City of Ferguson, St. Louis County.	Maline Creek	About 1,000 feet downstream of Glen Owen Drive.	*458	*458
			About 1.15 miles upstream of Florissant Boulevard.	*507	*506
		Ferguson Branch	At mouth	*489	*487
			Just downstream of Hereford Avenue	*514	*507
			Just upstream of Hereford Avenue	*519	*518
			Just downstream of Scott Drive	*537	*535
		Halls Ferry Creek	About 0.41 mile downstream of New Halls Ferry Road.	*None	*476
			About 530 feet upstream of New Halls Ferry Road.	*None	*489
		Ball Creek	At mouth	*488	*486

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of Woodstock Road	*500	*499
		Ferguson Park Branch	At mouth	*475	*474
			About 940 feet upstream of mouth	*475	*475

Maps available for inspection at the Department of Public Works, City Hall, 110 Church Street, Ferguson, Missouri.

Send comments to the Honorable Doug Fletcher, Mayor, City of Ferguson, City Hall, 110 Church Street, Ferguson, Missouri 63135.

Missouri	City of Gideon, New Madrid County.	Shallow flooding from Ditch No. 2.	About 4,000 feet north of intersection of Fourth Street and Lunbeck Avenue.	*270	*271
			About 1,200 feet west of intersection of South Main Avenue and South Anderson Avenue.	*268	*269

Maps available for inspection at the City Hall, 2nd Street, Gideon, Missouri.

Send comments to the Honorable Barbara Lee, Mayor, City of Gideon, P.O. Box 396, Gideon, Missouri 63848.

Missouri	City of Kinloch, St. Louis County.	Maline Creek	About 2,240 feet downstream of Martin Luther King Boulevard.	*506	*502
			Just downstream of North Hanley Road	*516	*514

Maps available for inspection at 5990 Monroe Street, Kinloch, Missouri.

Send comments to The Honorable Charlton D. Clay, Mayor, City of Kinloch, 5990 Monroe Street, Kinloch, Missouri 63140.

Missouri	City of Moline Acres, St. Louis County.	Maline Creek	About 1,080 feet downstream of Lewis and Clark Boulevard.	*445	*445
			About 840 feet upstream of Lewis and Clark Boulevard.	*450	*449
		Black Jack Creek	About 2,650 feet downstream of Chambers Road.	*454	*451
			Just upstream of Chambers Road	*461	*459

Maps available for inspection at 9953 Lewis and Clark Boulevard, Moline Acres, Missouri.

Send comments to The Honorable Luther Bogan, Mayor, City of Moline Acres, 9953 Lewis and Clark Boulevard, Moline Acres, Missouri 63136.

Missouri	City of St. Louis Independent City.	Maline Creek	Within community	None	*433

Maps available for inspection at the City Hall, Board of Public Services, 1200 Market Street, Room 301, St. Louis, Missouri.

Send comments to The Honorable Vincent C. Schoemehl, Jr., Mayor, City of St. Louis, City Hall, 1200 Market Street, Room 200, St. Louis, Missouri 63103.

North Carolina	Unincorporated Areas of Dare County.	Shallow Flooding (from Atlantic Ocean).	About 100 feet east of intersection of State Road 1200 and Unnamed Court.	None	#1
			At Seatern Drive Cul-de-Sac	None	#2
		Atlantic Ocean/Currituck Sound.	At intersection of Duck Road and Ocean Bay Boulevard.	*7	*9
			Along Atlantic Ocean shoreline from county boundary south to about 700 feet north of the intersection of State Route 1200 and Martin Lane.	*12	*18
		Atlantic Ocean/Roanoke Sound.	At State Road 1257 east of Coast Guard Station.	*7	*8
			Along shoreline 1500 feet east of intersection of State Route 1214 and National Park Service Road.	*12	*16
			Along shoreline 1000 feet east of intersection of Hatteras Road and Oregon inlet camping area.	*12	*20
		Atlantic Ocean/Pamlico Sound.	About 1000 feet southeast of Billy Mitchell Airport Airstrip.	*6	*7
			Along shoreline 1200 feet southeast of Ferry Terminal.	*7	*15
			Along shoreline from South Point on Pea Island to 800 feet north of Corbina Drive East.	*11	*20

Maps available for inspection at the Building Inspector's Office, Administration Annex Building, Manteo, North Carolina.

Send comments to The Honorable Louis Dollard, Chairman, Dare County Board of Commissioners, Administration Annex Building, Manteo, North Carolina 27954.

North Carolina	Town of Kill Devil Hills, Dare County	Atlantic Ocean, Roanoke Sound, and Colington Creek.	At intersection of 5th Street and New Bern Street.	*9	*10
			Along Atlantic Ocean shoreline from just north of 2nd Street to about 700 feet north of Arch Street.	*12	*16
			Along Atlantic Ocean shoreline from just south of 2nd Street to just north of 8th Street.	*12	*20

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at Town Administration Building, Kill Devil Hills, North Carolina.					
Send comments to The Honorable Alden Hoggard, Town Manager, Town of Kill Devil Hills, Town Administration Building, P.O. Box 1719, Kill Devil Hills, North Carolina 27948.					
North Carolina	Town of Kitty Hawk, Dare County.	Shallow flooding (from Atlantic Ocean).	About 350 feet east of intersection of Lillian Street and Lindberg Avenue.	None	#2
		Atlantic Ocean/Currituck Sound/Kitty Hawk Bay.	Just east of intersection of Starfish Lane and Virginia Dare Trail.	*9	*9
			Along Atlantic Ocean shoreline	*12	*16
Maps available for inspection at the Municipal Building, Kitty Hawk, North Carolina.					
Send comments to The Honorable C.W. Nicholl, Town Manager, Town of Kitty Hawk, Municipal Building, P.O. Box 549, Kitty Hawk, North Carolina 27949.					
North Carolina	Town of Nags Head, Dare County.	Atlantic Ocean/Roanoke Sound.	Just east of intersection of U.S. Highway 158 Bypass and Sound Side Road.	*9	*10
			Along shoreline from about 500 feet south of McCall Court to Gallery Row.	*12	*16
			Along shoreline from just north of Gallery Row to just south of 8th Street.	*12	*20
Maps available for inspection at the Building Inspector's Office, Nags Head, North Carolina.					
Send comments to The Honorable J. Webb Fuller, Town Manager, Town of Nags Head, P.O. Box 99, Nags Head, North Carolina 27959.					
North Carolina	Town of Southern Shores, Dare County.	Shallow flooding (from Atlantic Ocean).	About 200 feet east of intersection of Purple Martin Lane and Ocean Boulevard.	None	#1
			At intersection of Ocean Boulevard and U.S Route 158.	None	#2
		Atlantic Ocean/Currituck Sound.	About 400 feet east of intersection of U.S. Route 158 and Ocean Boulevard.	*11	*13
			Along Atlantic Ocean shoreline 250 feet north of 13th Avenue down to about 600 feet north of intersection of Ocean Boulevard and U.S. Route 158.	*12	*18
Maps available for inspection at the Town Hall, 6 Skyline Road, Kitty Hawk, North Carolina.					
Send comments to The Honorable Cay A. Hackney, Town Manager, Town of Southern Shores, Town Hall, 6 Skyline Road, Kitty Hawk, North Carolina 27949.					
Ohio	City of Montgomery, Hamilton County.	North Branch Sycamore Creek.	About 3,500 feet downstream of State Route 3	None	*696
			Just downstream of Deerfield Road	None	*742
			Just upstream of Deerfield Road	None	*751
			About 1,000 feet upstream of Pfeiffer Road	None	*777
		Polk Run	About 4,500 feet downstream of East Kemper Road.	None	*586
			Just downstream of East Kemper Road	None	*668
			Just upstream of East Kemper Road	None	*680
			At confluence with Lake Chetac Creek	None	*681
		Lake Chetac Creek	At confluence with Polk Run	None	*682
			About 1,400 feet downstream of Pfeiffer Road	None	*725
Maps available for inspection at the City Hall, 10101 Montgomery Road, Montgomery, Ohio.					
Send comments to The Honorable Ivan Silverman, Mayor, City of Montgomery, City Hall, 10101 Montgomery Road, Montgomery, Ohio 45242.					
Ohio	City of Mount Healthy, Hamilton County.	West Fork Lake Tributary	Just downstream of Clovernook Avenue	None	*782
			About 1,790 feet upstream of Bernard Avenue	None	*785
		West Fork Mill Creek	About 2,000 feet upstream of Hamilton Avenue	None	*733
			About 3,900 feet upstream of Hamilton Avenue	None	*736
Maps available for inspection at the Building and Engineering, City Hall, 7700 Perry Street, Mt. Healthy, Ohio.					
Send comments to The Honorable Stephen Wolf, Mayor, City of Mt. Healthy, City Hall, 7700 Perry Street, Mt. Healthy, Ohio 45231.					
Tennessee	City of Cleveland, Bradley County.	Fillauer Branch	At mouth	*782	*782
			Just downstream of 12th Street	None	*848
			Just upstream of 12th Street	None	*854
			Just upstream of Carolina Avenue	None	*857
Maps available for inspection at the Cleveland Inspections Department, 109 Church Street, Cleveland, Tennessee.					
Send comments to The Honorable Tom Rowland, Mayor, City of Cleveland, P.O. Box 1519, Cleveland, Tennessee 37364-1519.					
Texas	Harris County Unincorporated Areas.	Willow Creek	Approximately 2.57 miles above confluence with Spring Creek.	*122	*121
			Approximately 0.3 mile downstream of the confluence of Hughes Gully.	*128	*127
		Tributary 2.44 to Willow Creek	At the confluence with Willow Creek	*124	*123
			Approximately .5 mile upstream of confluence with Willow Creek.	*124	*123
		Faulkey Gully	Approximately 520 feet downstream of Malcomson Road.	*125	*125

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 150 feet downstream of Addicks-Fairbanks Road.	*137	*133
			Approximately 1,650 feet upstream of Addicks-Fairbanks Road.	*139	*135
			Approximately 1,450 feet upstream of Spring Cypress Road.	*145	*146
			Approximately 3,260 feet upstream of Spring Cypress Road.	*148	*148

Maps available for inspection at the Harris County Courthouse, 301 Main Street, Houston, Texas.

Send comments to The Honorable Jon Lindsay, Harris County Judge, 1001 Preston, 9th Floor, Houston, Texas 77002.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: June 12, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-14401 Filed 6-18-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580, 581 and 583

[Docket No. 92-37]

Financial Responsibility for Non-Vessel-Operating Common Carriers

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking ("Advance Notice") solicits comments concerning implementation of the Non-Vessel-Operating Common Carrier Act of 1991 ("1991 Act"). The 1991 Act amended the Non-Vessel-Operating Common Carrier Amendments of 1990 ("1990 Amendments") to permit the Federal Maritime Commission ("FMC" or "Commission") to accept—in addition to bonds—insurance or other surety as proof of a Non-Vessel-Operating Common Carrier's ("NVOCCs") financial responsibility. The 1991 Act also deleted the $50,000 minimum amount for a bond previously specified by the 1990 Amendments. The Advance Notice requests comment on the appropriateness of accepting certain types of surety as evidence of an NVOCC's financial responsibility, the best method for developing procedures to be used for each type of surety guidelines for evaluating the acceptability of the companies that might issue each type of surety, and the appropriate amount and possible methods of protection to cover NVOCC's liabilities in general.

DATES: Comments (original and 15 copies) must be submitted by July 20, 1992.

ADDRESSES: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW. Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5787.

SUPPLEMENTARY INFORMATION:

Background

A. The 1990 Amendments

The 1990 Amendments amended the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.*, by adding a new section 23, 46 U.S.C. app. 1721, and by modifying section 10(b), 46 U.S.C. app. 1709(b). Section 23 of the 1984 Act (1) required NVOCCs to obtain a bond to ensure their financial responsibility for damages, reparations or penalties; (2) specified the amount of the bond to be no less than $50,000; (3) required that any bond submitted be issued by a surety company found acceptable by the Secretary of the Treasury; (4) provided that any bond obtained be available to pay any judgement for damages against an NVOCC arising from its transportation-related activities, or order for reparations issued pursuant to section 11 of the 1984 Act, 46 U.S.C. app. 1710, or any penalty assessed pursuant to section 13 of the 1984 Act, 46 U.S.C. app. 1712; (5) required the designation of a resident agent for NVOCCs not domiciled in the United States; and (6) provided for the suspension or cancellation of any or all tariffs of an NVOCC for failure to maintain a bond, resident agent or for a violation of section 10(a)(1) of the 1984 Act, 46 U.S.C. app. 1709(a)(1).

Section 10(b) of the 1984 Act was amended to make it a prohibited act for (1) a common carrier or conference to knowingly and willfully accept cargo from, or transport cargo for, the account of an unbonded untariffed NVOCC, or (2) an ocean common carrier or conference to knowingly and willfully enter into a service contract with an unbonded or untariffed NVOCC.

The Commission's Interim Rule (56 FR 1493, January 15, 1991) and Final Rule (56 FR 51987, October 17, 1991) implementing the 1990 Amendments became effective April 15, and November 18, 1991, respectively.

B. The 1991 Act

On March 9, 1992, the President signed H.R. 3866, Public Law 102-251. Section 201 of this statute containes the Non-Vessel-Operating Common Carrier Act of 1991. The 1991 Act amended the 1990 Amendments (section 710 of Public Law 101-595) to permit the Commission to accept—in addition to bonds—insurance or other surety as proof of an NVOCC's financial responsibility. Additionally, the $50,000 minimum amount for a bond specified in the 1990 Amendments was deleted. The 1991 Act became effective June 7, 1992.

In remarks accompanying this legislation, Congressman Walter B. Jones stated that there is merit to giving the FMC more flexibility in the manner by which it assures that NVOCCs are financially responsible. 138 Cong. Rec. H70-H71 (daily ed. January 28, 1992) (statement of Rep. Jones). He further noted that, although Congress is granting the Commission the authority to allow methods for financial security other than bonds, it is not necessarily requiring changes in the present regulatory structure. Mr. Jones stated that the current rules are an effective way of ensuring financial responsibility by NVOCCs. He also noted that, if the Commission chooses to allow alternative methods, it must ensure that shippers are afforded no less protection than provided by a bond. He added that any alternative method the Commission might accept should be no more

procedurally cumbersome for injured claimants than are bonds. Lastly, Mr. Jones referred to the Commission's experience with overseeing financial responsibility requirements relating to passenger vessels, and suggested that the Commission take full advantage of this experience when implementing the new legislation.

Congressman Davis, the only other Congressman to comment on the legislation, stated that the current law was proven to be costly to small businesses in that it only allows the posting of a bond. He further indicated that the change in the law should not diminish NVOCC financial responsibility. 138 Cong. Rec. H71 (daily ed. January 28, 1992) (statement of Rep. Davis).

Discussion

Implementation of the 1991 Act will be more complex than was implementation of the 1990 Amendments because the former, in addition to bonds, permits "* * * proof of insurance, or such other surety, as the Commission may require, in a form and an amount determined by the Commission to be satisfactory to insure the financial responsibility of * * *" NVOCCs. (section 201(a)(2)). In comparison, the 1990 Amendments permitted only bonds of no less than $50,000 and required them to be issued by a surety company found acceptable by the Secretary of the Treasury. The 1991 Act, therefore, requires the Commission to make determinations on the acceptability of a potentially wide range of financial instruments issued by all types of parties in possibly varying amounts, and to consider the impact of each on NVOCCs, ocean common carriers, shippers and the Commission.

The Commission believes that it would be beneficial to seek preliminary comment from interested persons on certain issues before considering a proposed rule. Therefore, the Commission is seeking comment on possible types of surety, development of forms and procedures for certain sureties, guidelines for evaluating the acceptability of companies that issue sureties, as well as appropriate amounts of coverage to ensure an NVOCC's financial responsibility.

A. Types of Coverage

1. Insurance

The Commission recognizes that insurance coverage can be obtained in different forms. It envisions that insurance able to satisfy the requirements of the 1991 Act could be either individual or group. In addition, it is possible that some NVOCCs could use current policies, while others may have to acquire some form of new coverage. Our primary concern is that all risks set forth in the 1991 Act are covered. Any NVOCC using insurance must ensure that it is covered for all liabilities arising under the 1991 Act. In those instances where a particular risk, e.g., imposition of a civil penalty by the FMC, is not specifically covered by an insurance policy, a separate policy or some other acceptable form of surety could be obtained and used in conjunction with the existing insurance policy. The Commission contemplates drafting its implementing rule relative to insurance with the foregoing general considerations in mind, and solicits comments thereon, along with any other approaches that may be feasible.

One approach might be allowing a group or association of NVOCCs to provide the Commission with a certified list of its members that carry liability and/or errors and omissions insurance adequate to satisfy each NVOCC's responsibility under the 1991 Act. Each NVOCC's insurance policy would have to permit claims against the insurer for risks stated in the 1991 Act, and the group would require its members to provide it with a valid certificate of insurance on a periodic basis. The group would be required to advise the Commission of all members carrying the required insurance, and keep the Commission apprised of any changes to its list. The name of each insurer, along with a sample copy of each's insurance policy, would be provided to the Commission by the group. Should some specific risk contained in the 1991 Act not be covered in the basic insurance policy, members would be required to obtain another form of coverage for such risk, either individually or with a group. The group or association would be responsible for apprising the Commission of any member in this category, along with the type of additional coverage obtained and verification or proof thereof. The Commission also would require some form of documentation, e.g., articles of incorporation, bylaws, etc., of any group or association using this procedure to ascertain its authenticity and acceptability to represent its members. The Commission also may review the qualifications of the insurance companies to ensure their acceptability. Again, the foregoing is one possible approach under the 1991 Act.

An integral part of any rule will be the verification procedures the Commission will use to ascertain the acceptability of the underwriting entity. While the 1991 Act specifies that surety companies issuing NVOCC bonds must be those found acceptable by the Secretary of the Treasury, it does not specify a standard for evaluating companies which might issue insurance. The Commission, therefore, must develop standards and procedures to evaluate the acceptability of insurance companies.

The Commission anticipates that U.S.-based as well as foreign-based insurance companies will provide NVOCC's with insurance to cover their financial responsibilities under the 1991 Act. The Commission, therefore, is seeking comment on standards that it could apply to insurance companies located in the U.S., as well as in foreign countries. In this regard, the Commission recognizes that there are institutions that rate the financial stability and underwriting record of insurance companies. The Commission seeks comment on whether such rating institutions' standards could be used to evaluate the financial status of insurance companies located in both the U.S. and foreign countries. Commenters are requested to provide information on whether insurance companies located in foreign countries maintain assets in the U.S. or should be required to do so. Suggestions for other possible methods of evaluating the acceptability of insurance companies also are welcomed.

Additionally, the Commission is interested in comments on any perceived adverse effects on beneficiaries and the industry in general regarding the submission, processing and settlement of claims under insurance coverage.

2. Guaranty

A guaranty is defined as, "(a)n agreement in which the guarantor agrees to satisfy the debt of another (the debtor), only if and when the debtor fails to repay (secondarily liable)." [1] Although a guaranty and a surety bond are by definition similar financial instruments and have the same overall purposes, they appear to be different in practice, the primary difference being that a guarantor is secondarily liable for another's debt, whereas a surety is primarily liable. The Commission contemplates considering a guaranty as an "other surety" acceptable for an NVOCC to evidence its financial responsibility under the 1991 Act.

Similar to insurance, the Commission assumes that guarantors could provide individual or group coverage, and that NVOCCs could negotiate with such entities to obtain the most favorable terms possible. The actual evidence of

[1] Black's Law Dictionary (6th ed., 1990), p. 705.

an NVOCC's financial responsibility under this type of coverage would be by use of a standard guaranty form. The form could be patterned after the one currently used by the Commission for passenger vessel nonperformance coverage (Form FMC–133A, Title 46 Code of Federal Regulations 540.9, Miscellaneous), but tailored to the specific liability covered by the 1991 Act. The Commission emphasizes that all risks arising under the 1991 Act must be covered by the guaranty, or, alternatively, by the guaranty in conjunction with any other type of coverage specified as acceptable by the Commission. Accordingly, the Commission seeks comment on the merits of guaranty coverage being implemented by terms and conditions similar to those presently used for passenger vessel nonperformance. Suggestions for other possible approaches for guaranty coverage also are welcomed.

As with insurance, adoption of a guaranty as an acceptable means for NVOCCs to evidence their financial responsibility would require the Commission to develop standards and procedures to evaluate the acceptability of guarantors. The Commission, therefore, is interested in information pertaining to the type of entities that might provide guaranties as a means to establish an NVOCC's financial responsibility under the 1991 Act, and any suggestions for appropriate standards or procedures for evaluating the acceptability of guarantors. Such comments should focus on standards and procedures that would avoid costly financial reporting by guarantors and undue administrative review and surveillance burdens for the Commission, yet by meaningful for an adequate evaluation of guarantors.

The Commission also requests comment on possibly requiring foreign-based entities that provide guaranties to maintain assets in the United States. Additionally, commenters should identify any perceived difficulties in the submission, processing and settlement of claims with the use of a guaranty, particularly those issued by foreign-based entities, as compared to a surety bond.

3. Other Instruments

The Commission recognizes that other means to evidence an NVOCC's financial responsibility may also be appropriate. The Commission, therefore, invites comment on whether there are other sureties that would be acceptable under the 1991 Act, suitable to evidence the financial responsibility of NVOCCs.

B. Level and Methods for Determining Surety Amount

Inasmuch as the $50,000 minimum bond amount was deleted by the 1991 Act, the Commission requests comment on whether the current bond amount is sufficient to cover NVOCC liabilities in general. Specifically, comment is requested on the level of coverage believed appropriate to protect the interests of shippers, ocean common carriers and others who deal with NVOCCs, and whether other methods to determine the coverage amount are desirable or practical. For example, one possible approach is a "sliding scale" method of determining the amount of protection which recognizes increases in liability and financial exposure through phased increases in the amount of protection. A sliding scale approach could be based on carrier gross revenue, cargo volume or other criteria. The Commission is also interested in comment on whether the coverage level should vary depending on the type of surety used. Comment on possible methods to determine the coverage amount should address any potential financial reporting and/or surveillance burdens associated with the proposed alternative.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–14502 Filed 6–18–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–124, RM–8001]

Radio Broadcasting Services; Dunsmuir, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Fatima Response, Inc., permittee of Channel 261A, Dunsmuir, California (BPH–910408MA), seeking the substitution of Channel 261C3 for Channel 261A and modification of its permit accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 41–17–20 and 122–14–25.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 261C3 at Dunsmuir, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 7, 1992, and reply comments on or before August 24, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Kimberly M. Thompson, Fatima Response, Inc., 2044 Beverly Plaza, suite 281, Long Beach, CA 90815.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–124 adopted May 29, 1992, and released June 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–14506 Filed 6–18–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92-123, RM-7992]

Radio Broadcasting Services; Mexico, New York

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Renard Communications Corp. seeking the allotment of Channel 280A to Mexico, New York, as its first local FM transmission service. Channel 280A can be allotted to Mexico in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 43–27–34 and West Longitude 76–13–45. Canadian concurrence in the allotment has been requested since Mexico is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 7, 1992, and reply comments on or before August 24, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Craig L. Fox, President, Renard Communications Corp., 4853 Manor Hill Drive, Syracuse, New York 13215–1336.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–123, adopted May 29, 1992, and released June 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–14507 Filed 6–18–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 920545–2145]

Endangered and Threatened Species; Endangered Status for Winter-Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS has determined that the winter-run chinook salmon in the Sacramento River, California, should be reclassified as an endangered species, rather than threatened, under the Endangered Species Act (ESA) of 1973, as amended, 16 U.S.C. 1531 *et seq.* Although conservation measures have been implemented since 1987 specifically to improve habitat conditions for Sacramento River winter-run chinook salmon, the population has continued to decline precipitously. Over a 25-year period, the population has declined almost 99 percent. The estimated 1991 run size of 191 fish was primarily the result of surviving progeny from the 1988 spawning population of 2,085 fish. The 1991 spawning escapement represents a 90 percent decline in a single generation and indicates that the 1988 year class was almost a total failure (USFWS 1991).

Reclassifying this species as endangered will not result in additional prohibitions against taking because all the protection afforded an endangered species under section 9 of the ESA was applied to the winter-run chinook salmon through regulations when it was listed as threatened (55 FR 46523, Nov. 5, 1990). However, a determination that the species is endangered more accurately reflects the current status of its population. To make this determination, NMFS conducted a status review of the species which is available from (See **ADDRESSES**).

DATES: Comments on the proposed rule must be received August 18, 1992. Requests for public hearings must be received by August 3, 1992.

ADDRESSES: Comments should be sent to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213, (310) 980–4015, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Winter-run chinook salmon are a unique population of chinook salmon in the Sacramento River and are distinguishable from the other chinook runs based on the timing of their upstream migration and spawning season. Basic information on the species biology, life history, and habitat requirements is included a status review of the species prepared by NMFS (1992c).

The best data on long-term trends in abundance for winter-run chinook are the annual estimates of spawning run size made by the California Department of Fish and Game (CDFG) based on counts at Red Bluff Diversion Dam. These annual estimates show a dramatic decline in the average run size from 84,000 fish in the years 1967–1969 to about 2,000 for the years 1982–1984 (Table 1). After a further decline in the run size to less than 1,000 fish, NMFS listed the species as threatened under the ESA on November 5, 1990 (NMFS 1992c).

On June 5, 1991, NMFS received a petition from the American Fishery Society to reclassify the status of winter-run chinook salmon from threatened to endangered under the ESA. NMFS reviewed the petition and determined that it contained substantial information indicating such an action might be warranted. On November 7, 1991, NMFS announced (56 FR 58986) its intention to review the status of the species to determine whether reclassification was appropriate. NMFS solicited information on the status of the species and received information and data from the United States Fish and Wildlife Service (USFWS) and the Pacific Coast Federation of Fishermen's

Associations. Then, NMFS conducted a status review to determine whether the species should be reclassified.

TABLE 1. ANNUAL ESTIMATED RUN SIZE AT RED BLUFF DIVERSION DAM

Year	Number of fish
1967	57,306
1968	84,414
1969	117,808
1970	40,409
1971	53,089
1972	37,133
1973	24,079
1974	21,897
1975	23,430
1976	35,096
1977	17,214
1978	24,862
1979	2,364
1980	1,156
1981	20,041
1982	1,242
1983	1,831
1984	2,663
1985	3,962
1986	2,422
1987	2,236
1988	2,085
1989	547
1990	441
1991	191

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA specifies five criteria to be evaluated in reviewing the status of a species or population proposed for listing or reclassification. In addition to the evaluation of these factors in this proposed rulemaking, these criteria were reviewed in the first Notice of Determination published February 27, 1987 (52 FR 6041), in a subsequent Notice of Determination published December 9, 1987 (52 FR 49722), in two emergency rules published August 4, 1989 (54 FR 32088) and April 2, 1990 (55 FR 12193), in the proposed rule to list winter-run chinook published March 20, 1990 (55 FR 10260), and in the final rule listing the species as threatened published November 5, 1990 (55 FR 46515).

1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Modification and loss of spawning and rearing habitat have been major factors contributing to the decline of the winter-run chinook. Specific habitat and other biological requirements of the species are discussed in the current status review and the first Notice of Determination.

Shasta and Keswick Dams

The effects of Shasta and Keswick Dams operations on winter-run chinook salmon are documented in the final rule listing the species as threatened. Based on known effects of these and other Central Valley Project (CVP) facilities on winter-run chinook, NMFS and the Bureau of Reclamation (Bureau) enterd into a formal section 7 consultation under the ESA on April 11, 1991, for the purpose of evaluating the effects of existing CVP facilities and operations on Sacramento winter-run chinook salmon.

On February 14, 1992, NMFS issued a biological opinion to the Bureau and the California Department of Water Resources (DWR) addressing the effects of CVP and the State Water Project (SWP) operations in 1992 on the winter-run chinook based on the assumption of a critical water supply (NMFS 1992a). The biological opinion concluded that the proposed operation of the CVP and SWP in 1992 would likely jeopardize the continued existence of winter-run chinook. With respect to Shasta and Keswick dams, NMFS identified specific reasonable and prudent alternatives to avoid jeopardy to winter-run chinook salmon in 1992. These reasonable and prudent alternatives required the Bureau to maintain (1) a minimum flow of 3,000 cubic feet/second (cfs) from Keswick Dam into the Sacramento River to ensure safe rearing conditions in the upper river for juveniles produced in 1991 and (2) daily average water temperature in the Sacramento River between Keswick Dam and Ball's Ferry (distance of 26 miles) of no more than 56 °F from April 15 through September 30, and of no more than 60 °F from October 1 through October 31 to ensure that safe temperature conditions were provided for developing eggs, pre-emergent fry and juveniles. The reasonable and prudent alterntive also required the establishment of an oversight committee to monitor implementation of these and other measures. This committee has met several times since the opinion was issued to ensure that water allocation plans of the Bureau and operations of the Bureau and DWR were consistent with the reasonable and prudent alternatives. Since this consultation only addressed the 1992 operations of the CVP and the SWP, NMFS is consulting with the Bureau and DWR on the long-term operations of CVP and SWP facilities. NMFS has requested the Bureau to complete its portion of the consultation by September 1, 1992, in order for NMFS to issue an opinion covering future operations by December 31, 1992.

In July 1991, the Bureau issued a Record of Decision to construct a permanent temperature-control device at Shasta Dam that would allow water to be drawn into the power penstocks from varying levels in Shasta Lake. This device would allow the Bureau to improve control of river temperatures which would significantly benefit winter-run chinook without foregoing the opportunity to generate power from the water released through the dam. As part of the long-term consultation on operations of the CVP, NMFS will address the need for a permanent temperature control device at Shasta Dam.

Spawning habitat in the Sacramento River has also been degraded by decreases in the rate of replenishing gravel suitable for spawning (NMFS 1992c). In 1990, 100,000 cubic yards (cy) of spawning gravel were placed in the upper Sacramento River between Salt Creek and Clear Creek by DWR to restore degraded spawning riffles in areas of the river used by winter-run chinook salmon (CFGC 1991). Additional gravel restoration is probably unnecessary until there is a significant increase in the winter-run chinook salmon spawning population since it is unlikely to be a factor in the species recovery (CFGC 1992).

Adult winter-run chinook can also be adversely impacted by operation of the spillway at Keswick Dam. Overflow of water from the stilling basin due to the operation of the spillway attracts upstream migrating adult salmon into the basin at the base of the dam where they become trapped (NMFS 1992a). CDFG and USFWS have conducted fish rescue operations at the stilling basin and removed hundreds of trapped salmon. Until the facility is structurally modified to allow fish free passage back to the river or without a fish rescue operation, it is likely that some spawning winter-run chinook salmon will be lost. NMFS plans to address problems with the Keswick stilling basin as part of the consultation with the Burau on long-term operations of the CVP.

Red Bluff Diversion Dam

Another serious habitat concern for winter-run chinook salmon is the impediment to adult upstream migration by operation of the Bureau's Red Bluff Diversion Dam (NMFS 1992c). Since 1988, the Bureau has agreed, under the terms of a Cooperative Agreement with NMFS, FWS, and CDFG, to leave the dam gates in the raised or open position from December 1 to April 1 each year to assist winter-run spawners in passing further up river where temperature conditions are more suitable for successful spawning and egg incubation. CDFG estimated that 98 and 93 percent

of the run spawned above the dam during 1988–1989 and 1989–1990, respectively, because of this action. In 1990–1991, the gates remained continuously open from December 10, 1990, until May 3, 1991, with all of the observed spawning activity occurring upstream of the Red Bluff Diversion Dam (NMFS 1992a).

The Bureau was expected to have difficulty controlling temperatures in the upper Sacramento River during 1992 due to an anticipated critical water supply; therefore, NMFS addressed operation of the dam gates in the biological opinion issued to the Bureau. Specifically, NMFS identified a reasonable and prudent alternative that required the Bureau to maintain dam gates in the raised position an additional month, or until May 1 1992 (NMFS 1992a). This alternative was designed to allow maximum passage of the 1992 winter-run spawning population past Red Bluff Diversion Dam and into the upper river where temperatures were most likely to be controlled by the Bureau.

Operation of the dam and its associated diversion facilities (Tehama-Colusa Canal) can have an adverse effect on juvenile winter-run salmon during their outmigration. To improve operations of the dam and the canal and to mitigate impacts to fish populations, the Bureau installed "state-of-the-art" drum screens and a bypass system at the canal headworks in 1990. Although initial studies have provided evidence that the entrainment problem has been greatly diminished by the new screens (Johnson 1991), a comprehensive evaluation of the bypass system effectiveness has not yet been conducted (CDFG 1992).

Because outmigrating winter-run juveniles can be adversely impacted by operation of the dam and the canal, NMFS addressed these impacts in the biological opinion issued to the Bureau. NMFS estimated that 45 to 80 percent of the juveniles produced by the 1992 spawning population could encounter Red Bluff Diversion Dam and be exposed to adverse survial conditions prior to December 1, 1992, when the gates would normally be raised under the existing Cooperative Agreement (NMFS 1992a). Therefore, the opinion identified a reasonable and prudent alternative that required the Bureau to raise the dam gates by November 1, 1992, to ensure survival of outmigrants was substantially increased (NMFS 1992a).

NMFS, FWS, and the Bureau are evaluating alternatives to the existing facilities at Red Bluff Diversion Dam (CFGC 1992). FWS found that a stand-alone screw pump would be the most efficient at passing fish downstream. The Bureau plans to complete an appraisal level study and begin public hearings to receive input from interested parties on a screw pump proposal.

Anderson Cottonwood Irrigation District Diversion Dam (ACID)

ACID operates a diversion dam and two diversion facilities on the upper Sacramento River at Redding, California. The adverse impacts of these facilities on winter-run chinook are well documented (NMFS 1992c).

ACID's Bonneyview water diversion facility (65 cfs capacity) is located downstream from the ACID dam in an important winter-run chinook spawning area and is currently unscreened. During the irrigation season which coincides with juvenile winter-run emergence and early outmigration, juveniles are entrained by the facility and either directly killed by passage through pumps or are diverted into the associated irrigation canal from which they cannot escape.

In late 1990, CDFG obtained funds to install new screens on the Bonneyview pumps (CFGC 1991; however, the screens were never installed because of disagreements between ACID and CDFG. Based on a fyke net sampling and salvage operation conducted from August 15 to October 3, 1991, CDFG estimated that from 1.23 to 2.45 percent of the 1991 winter-run fry production had been taken by the unscreened Bonneyview diversion facility during this period. On September 27, 1991, the State of California filed suit against ACID seeking a temporary restraining order and permanent injunction to stop the district from taking winter-run salmon under the California Endangered Species Act. Although a temporary injunction was issued, the court refused to issue either a preliminary or permanent injunction citing state endangered species act limitations on takings.

Based on the significant winter-run chinook take that was documented in 1991, NMFS issued a Notice of Violation and Assessment, including a penalty of $700,000, to ACID on December 19, 1991, for violating the ESA by unlawfully taking a threatened species. A hearing before an Administrative Law Judge is scheduled for June 1992. NMFS notified ACID that protective screening measures needed to be in place by early July 1992 to prevent further taking of juvenile winter run in 1992, and that permanent protective measures needed to be in place by July 1993. ACID has developed preliminary plans and applied for a Corps of Engineers permit to install an impervious barrier and screens at the facility by early July 1992. NMFS will consult with the Corps under section 7 of the ESA to evaluate the impact of installing and operating the ACID screening protective measures on winter-run chinook salmon.

Pollution

Pollution in the Sacramento River has also degraded winter-run chinook salmon spawning habitat. In particular, NMFS is concerned about heavy metal-contaminated runoff entering the upper Sacramento River from inactive mining operations at Iron Mountain Mine (IMM). Heavy metal concentrations from this runoff can reach levels that are lethal to winter-run chinook eggs and juveniles (NMFS 1992c).

The Environmental Protection Agency (EPA) has placed IMM on the Superfund Priority List. The State of California and EPA are currently considering options for a long-term solution to control the potential release of toxic chemicals from IMM into the Sacramento River. The owner responsbile for IMM is proposing to plug the mine and flood it with water to extinguish the chemical reaction that is creating the problem (CFGC 1992). NMFS has reviewed and evaluated long-term remediation alternatives, and intends to consult with EPA, under section 7 of the ESA, on any specific remedial plans that are proposed.

NMFS is also concerned that out-migrating juvenille winter-run chinook may be adversely impacted by the disposal of contaminated dredge sediments in San Francisco Bay. The residence time for out-migrating winter-run chinook salmon in the Bay is thought to range from 1 week to more than 2 months depending on the water year type (NMFS 1992b). Because winter-run chinook salmon prey may bioaccumulate and biomagnify contaminates orginating from in-bay disposal of contaminated dredge sediments, outmigrating juvenile winter-run could also be exposed to these contaminants as they migrate and forage throughout the Bay. NMFS formally consulted with the Corps of Engineers under section 7 of the ESA concerning the effects of in-bay disposal of material dredged from Guadalupe Slough on winter-run chinook salmon in 1991. In a biological opinion issued February 12, 1992, NMFS concluded that disposal of dredged sediments from Guadalupe Slough into the waters of San Francisco Bay was not likely to jeopardize the continued existence of winter-run because of the limited volume (100,000 cy/year for 3 years) of material that would be discharged (NMFS 1992b). The incidental take statement issued with

the opinion required that no disposal of contaminated dredge materials occur in the Bay between January 1 and April 30, and that a monitoring program be established to assess the effects of dredged sediment disposal and contaminant exposure on juvenile winter-run chinook salmon in the Bay. The results of the monitoring program will be submitted to NMFS by January 1, 1993.

NMFS has successfully negotiated reductions in the size of several dredging projects and limits on when disposal of contaminated material in San Francisco Bay is allowed in order to avoid potential adverse affects to winter-run chinook salmon. However, NMFS continues to be concerned about the potential effects of dredging because a large number of dredging projects are anticipated in San Francisco Bay (NMFS 1992b). In 1991, for example, nearly 4 million cy of material were disposed of in San Francisco Bay, and some of the discharged material had higher contaminant concentrations that the material already at the Alcatraz disposal site located in the Bay. In 1992, the Corps is considering approval of dredging projects involving the disposal of another four million cy of material. NMFS has recommended the Corps enter into a comprehensive section 7 consultation that would address all anticipated dredging and in-bay disposal from 1992 through 1995 (NMFS 1992b).

Hydroelectric Projects

The Federal Energy Regulatory Commission (FERC) was considering licensing applications for the Lake Redding and Lake Red Bluff Projects that, if authorized, would have adversely affected winter-run chinook salmon. In 1991, FERC rejected the licensing applications or both projects since they did not have acceptable cost/benefit ratios after meeting environmental requirements.

The city of Redding, California, is currently pursuing a small scale pump-storage hydroelectric project that would increase water temperatures in the upper Sacramento River (NMFS 1992c). NMFS will continue to monitor planning for this project, and if necessary, request the appropriate Federal agency to consult with NMFS under section 7 of the ESA.

Bank Stabilization

Bank stabilization projects in the Sacramento River are believed to adversely affect winter-run chinook salmon rearing habitat (NMFS 1992c). The Corp of Engineers has initiated the Sacramento River Bank Protection Project as a long-range program for construction of bank erosion control works and setback levees (Ecos 1990). Since portions (phase II) of the project could adversely impact juvenile winter-run chinook, the Corps initiated formal section 7 consultation with NMFS in March 1991. On October 28, 1991, NMFS issued a biological opinion that concluded phase II of the project would not likely jeopardize the continued existence of winter-run chinook salmon (NMFS 1991a).

2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Commercial and Recreational Fishing

NMFS consulted with the Pacific Fishery Management Council (PFMC) under section 7 of the ESA in 1991 to evaluate the potential effects of the Pacific Ocean Salmon Fishery Management Plan (FMP) on winter-run chinook salmon (NMFS 1991b). A biological opinion was issued to the PFMC on March 1, 1991, that concluded management of the salmon fishery under the Ocean Salmon FMP was not likely to jeopardize the continued existence of winter-run chinook (NMFS 1991b). NMFS also issued a biological opinion to the Council that concluded implementation of Amendment 4 to the Pacific Coast Groundfish FMP would not likely jeopardize the continued existence of winter-run chinook salmon as a result of incidental bycatch.

Since 1987, the CDFG has implemented seasonal fishing closures in the upper Sacramento River and monitored the recreational salmon catch (NMFS 1992c). In 1991, the Sacramento River was closed to salmon fishing from January 15-July 15 between Carquinez Strait and Bend Bridge, and until August 1 between Bend Bridge and Deschutes Road Bridge (CFGC 1991). In the ocean adjacent to the Golden Gate, there is a "Sacramento River Winter-Run Chinook Conservation Closure" where fishing is prohibited from March 2 through March 31. CDFG is also assessing proposed changes to the trout fishery angling regulations for their potential effect on winter-run chinook salmon.

Scientific Studies

In 1991, NMFS issued a scientific research permit, under section 10 of the ESA, to the FWS to conduct scientific research on Sacramento River winter-run chinook salmon (NMFS 1992c). The permit authorized (1) A census of juvenile downstream migrants and habitat use, (2) radio tracking of upstream migrating adults, (3) a captive propagation program at Coleman National Fish Hatchery, (4) an evaluation of juvenile entrainment into the Tehama-Colusa Canal, (5) temperature tolerance experiments with incubating eggs, and (6) studies on the differentiation of chinook salmon runs.

The FWS had initiated programs at the hatchery to hold, spawn, and rear winter-run chinook salmon prior to 1991 (Ecos 1990); however, they were not successful (NMFS 1992c). In 1991, despite the low numbers of fish available (only 22), the FWS was able to successfully hold and spawn six females. Nearly 29,000 eggs were spawned, and from these, 12,000 juveniles survived. On January 21, 1992, the FWS released about 11,000 coded-wire tagged juvenile winter-run chinook salmon into the Sacramento River near Redding, California. Because of concerns that these juveniles would be diverted from the Sacramento River into the Sacramento-San Joaquin Delta through the Bureau's Delta Cross Channel during their outmigration, NMFS, FWS, and the Bureau agreed to a plan in late January 1992 that involved monitoring the winter-run chinook salmon outmigration and closure of the cross channel to protect juveniles from being diverted. As a result of these efforts, the Bureau closed the Delta Cross Channel on February 3, 1992, to protect outmigrating juvenile winter-run chinook salmon.

In April 1992, the FWS applied for a modification of its scientific research permit to initiate a captive breeding program using about 1,000 juveniles that remained from the hatchery propagation effort in 1991. The FWS is proposing to transfer these fish from the hatchery to the California Academy of Sciences-Steinhart Aquarium and the University of California's Bodega Bay Marine Laboratory for extended captive rearing with subsequent transfer back to the hatchery for use as broodstock. A primary objective of the program is to provide insurance against extinction or loss of unique genetic variability until the wild stock can recover and sustain itself.

FWS annually conducts underwater counts of winter-run chinook salmon redds between ACID and the Redding water supply intake. In July 1991, 23 redds were observed (CFGC 1991). This information, in conjunction with fish counts at Red Bluff Diversion Dam and the results from CDFG's annual aerial winter-run chinook salmon redd surveys, is used to estimate the winter-run chinook salmon spawning run size.

3. Disease or Predation

The magnitude and extent of predation on winter-run chinook salmon throughout the Sacramento River has not been determined. However, studies indicate that predation at Red Bluff Diversion Dam, primarily by squawfish, can significantly contribute to the mortality of downstream winter-run chinook salmon migrants (NMFS 1992c). The FWS has undertaken periodic electrofishing below the dam which may be useful in developing a relative squawfish abundance index (CFGC 1991). All of the fisheries agencies believe that before squawfish control is possible, more must be learned about their life history. In 1992, the FWS plans to study predation at the fish bypass outfall as part of its continuing impact evaluation at Red Bluff Diversion Dam.

The potential for high levels of predation also exists at the Glenn-Colusa Irrigation District (GCID) diversion facility and other manmade structures such as the DWR's Suisun March Salinity Control Structure and Clifton Court Forebay. Squawfish and striped bass predation has also been observed on juvenile salmonids released back into the Sacramento River from salvage operations conducted at the CVP and SWP fish protection and export facilities in the lower Sacramento-San Joaquin Delta.

Several groups raised concerns in March 1992 about the possible effects of CDFG's striped bass enhancement and management program on winter-run chinook salmon. CDFG's striped bass stocking program has expanded in recent years as a result of mitigation agreements with the DWR and the Pacific Gas and Electric Company. NMFS reviewed CDFG's proposed enhancement program for 1992 and recommended several changes, as well as the implementation of studies designed to assess the magnitude of striped bass predation on winter-run chinook salmon. NMFS will continue to monitor the CDFG program, and, if necessary, request CDFG to apply for an ESA section 10 incidental take permit.

4. The Inadequacy of Existing Regulatory Mechanisms

Relevant laws that constitute existing regulatory mechanisms were discussed in the final rule listing winter-run chinook salmon as threatened. These laws were described as providing inadequate mechanisms for restoring winter-run chinook salmon in the Sacramento River. Since the final listing of Sacramento winter-run chinook salmon as a threatened species under the ESA, the run has continued to decline. This may indicate that regulatory mechanisms currently in place were not applied effectively, or that they were insufficient.

5. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Juvenile winter-run chinook salmon are subject to entrainment by hundreds of unscreened or inadequately screened diversions during their outmigration to the Pacific Ocean. These diversions range from small siphons diverting 20 cfs to the large export facilities operated by the Bureau and DWR in the southern Delta that have the combined capacity of pumping approximately 12,000 cfs of water daily.

Glenn-Colusa Irrigation District (GCID)

The GCID diversion facility located near Hamilton City, California, is the single largest diverter of water on the Sacramento River with the capacity to take up to 3,000 cfs daily. Inadequate fish screens at the facility allow entrainment of juvenile salmon, including small winter-run juveniles that are dispersing in the river system during the peak of the irrigation season. In 1990, the Corps initiated a section 7 consultation with NMFS to assess the impacts of proposed maintenance dredging and other in-river construction at the GCID facility on winter-run chinook salmon. In May 1991, NMFS issued a biological opinion that concluded maintenance dredging and construction and removal of a seasonal earthfill weir were likely to jeopardize the continued existence of winter-run chinook salmon (NMFS 1991c). NMFS identified a reasonable and prudent alternative that included gradient restoration work in the main channel of the Sacramento River near the facility and construction of a new "state-of-the-art" fish screen facility by GCID at the head of intake channel leading to the pumping and diversion facility.

GCID failed to act on the Corps permit or acknowledge acceptance of NMFS's reasonable and prudent alternative and also would not agree to apply to NMFS for a section 10 incidental take permit under the ESA that would authorize the taking of winter-run chinook salmon at the facility. Accordingly, NMFS requested the Department of Justice to seek injunctive relief in August 1991 to reduce the taking of juvenile winter-run chinook salmon at GCID's pumping and diversion facility. On August 16, 1991, the U.S. District Court in Sacramento issued a temporary restraining order (TRO) requiring GCID not to exceed a pumping rate of 1,100 cfs from August 19 to August 29, 1991, and by mutual agreement, the conditions of the TRO were extended through December 31, 1991. On January 9, 1992, the court issued a permanent injunction against GCID that prohibited pumping at the facility from July 15 through November 30. On March 31, 1992, the Court modified the permanent injunction by incorporating the terms and conditions of a joint stipulation agreed to between GCID and the United States. Under these terms and conditions, GCID will be allowed to pump water on a restricted basis between August 1 and November 30, in exchange for the District's commitment to implement a long-term solution to problems at the facility. GCID is currently revising a section 10 incidental take permit application that was submitted to NMFS in March 1991 and found to be incomplete. GCID has applied for a Corps permit to implement interim fish protection measures for winter-run chinook salmon that were identified in the joint stipulation that modified the permanent injunction. NMFS will conduct a section 7 consultation with the Corps concerning the effects of permit issuance on winter-run chinook salmon.

Delta Export Facilities of the CVP and SWP

The Bureau and the DWR operate facilities in the Sacramento-San Joaquin Delta to convey Sacramento River water into and through the Delta (i.e., the Delta Cross Channel), and to export water out of the Delta (i.e. the Bureau's Tracy Pumping Plant and the DWR's Byron Pumping Plant). The operations of these and other CVP and SWP facilities, which are coordinated through the Coordinated Operations Agreement between the Bureau and DWR, have the potential to adversely impact winter-run chinook salmon.

Outmigrating juvenile winter-run chinook salmon are diverted from the Sacramento River into the central and southern Delta when the DCC is open (NMFS 1992a). The proportion of winter-run chinook salmon diverted through the DCC is thought to be directly related to the amount of water diverted from the Sacramento River through the Delta Cross Channel. The survival of juvenile winter-run chinook salmon diverted through the DCC is reduced due to factors such as higher predation levels, higher water temperatures, exposure to a larger number of unscreened diversions, decreased water quality, and a complicated channel system that makes it difficult to find passage to the ocean (NMFS 1992a). To address the potential adverse effects of operation of

the Delta Cross Channel gate on juvenile winter-run chinook salmon survival, especially during the extremely critical water supply that was anticipated in 1992, NMFS identified a reasonable and prudent alternative in the February 1992 biological opinion that required the Bureau to close the Delta Cross Channel gate from February 1 through May 1 in 1992.

In the incidental take statement that was attached to the biological opinion, NMFS stated that operation of the CVP and SWP in 1992 was expected to take incidentally only a small percentage of the total winter-run chinook salmon outmigrants produced in 1991. Based on winter-run chinook salmon loss monitoring at the CVP and SWP facilities in the Delta by CDFG in February and April 1992, NMFS determined that reinitiation of consultation was necessary. Following consultation with the Bureau and DWR, NMFS amended the incidental take statement with new terms and conditions that (1) restricted the combined daily water export rate from the CVP and SWP facilities in the Delta to 1,200 cfs between April 11 and April 30, 1992, (2) required the Bureau and DWR to reinitiate consultation with NMFS if take exceeded a specified level (400 fish) during this period or there was evidence to indicate that winter-run chinook salmon outmigration would substantially continue beyond April 30, 1992, and (3) required the Bureau and DWR to support efforts to develop a more refined and accurate method for determining the level of taking incidental to pumping operations at the CVP and SWP facilities.

Suisun Marsh

The operation of DWR's Suisun Marsh Salinity Control Gates on Montezuma Slough can adversely affect winter-run chinook salmon by diverting outmigrating juveniles from the Sacramento River into Montezuma Slough where conditions for survival are lower due to a longer migration route, increased water temperatures and levels of predation, and exposure to numerous unscreened water diversions (Brown and Greene 1992). Upstream migrant adult winter-run chinook salmon that enter Montezuma Slough may also be blocked or delayed by the operation of the gates. NMFS included a reasonable and prudent alternative in the February 1992 biological opinion that required the gates either to be closed from March 1 through April 15, or that DWR provided evidence that unscreened diversions in the Slough were not operated during this period. DWR and CDFG conducted monitoring during this period and provided documentation to NMFS that these diversions were not operated.

Proposed Delta Projects

Additional water management facilities have been proposed by DWR (i.e., North Delta Water Management Project, South Delta Water Management Project, and Los Banos Grandes Project) that would increase the capacity to convey water through the Delta, potentially increase delta exports, and increase water storage capability south of the Delta. NMFS is concerned that these and other projects in the Delta (e.g., Los Vaqueros project of the Contra Costa Water District, Delta Wetlands project, etc.) have the potential to adversely impact winter-run chinook salmon. Currently, NMFS is informally consulting with the Corps on some of these projects and expects to consult with the Bureau on others. However, because these are major construction projects with Federal involvement, formal section 7 consultation will be required before construction can begin.

Droughts/El Niño

Natural factors of greatest concern to NMFS are drought conditions and the oceanographic phenomenon known as El Niño (NMFS 1992c). The effects of the extended drought on California's water supply were partially mitigated by the Bureau in 1990 and 1991 through low-level releases from Shasta Dam. Measures identified by NMFS in the biological opinion on 1992 CVP operations are expected to address drought related temperature concerns. Also, NMFS expects the consultation with the Bureau and DWR on the long-term operations of existing CVP and SWP facilities will address the need for a permanent temperature control facility at Shasta Dam. The only measure to mitigate the impact of a strong El Niño may be hatchery rearing to supplement natural smolt production from returning spawners that survive the poor ocean conditions. If the hatchery program continues to be successful, it may provide the necessary smolt production to offset the adverse effects of El Niño events.

Conclusion

Although conservation measures have been implemented since 1987 specifically to improve habitat conditions for Sacramento River winter-run chinook salmon, the population has continued to decline precipitously. In 1989, 1990, and 1991, for example, the run size was estimated at only 547, 441, and 191, respectively. These levels represent a dramatic decline in the run size of nearly 99 percent over a 25-year period. The 1990 spawning population of 441 winter-run chinook salmon should have been primarily the result of surviving progeny from the 1987 spawning population of 2,236 fish. Even with the implementation of protective measures (e.g., the Red Bluff Diversion Dam gates were open between December 1, 1986 and April 1, 1987, and low-level releases from Shasta Dam occured), the number of adults returning to spawn in 1990 represented a decline of 80 percent in one generation. Similarly, the estimated 1991 run size of 191 fish was primarily the result of surviving progeny from the 1988 spawning population of 2,085 fish. The 1991 spawning escapement represents a dramatic decline of 90 percent in a single generation and indicates that the 1988 year class was nearly a total failure (USFWS 1991) in spite of measures that were implemented in 1987–1988.

Modification and loss of spawning and rearing habitat, impediment of adult upstream and juvenile downstream migration, predation, pollution, and entrainment in water diversions on the Sacramento River and in the Delta continue to affect adversely the recovery of winter-run chinook salmon. Further, it is likely that the ongoing drought (1987–1992) in California has exacerbated these impacts. The 1991–1992 El Niño that is in progress could also influence the number of winter-run chinook salmon that return to spawn in 1992 and 1993.

NMFS estimates that for a population with about a 3 to 5 year life cycle, such as winter-run chinook salmon, an annual run size of about 200 to 300 fish is sufficient to avoid any serious loss of genetic diversity. A somewhat larger population size (e.g., 500 spawners per year) is necessary to provide some buffer in the short term against natural fluctuations in demographic and environmental parameters. Because of the low levels of run size in 1990 and 1991, NMFS believes the population will begin losing genetic diversity through genetic drift and inbreeding. Also, such small population sizes are vulnerable to major losses from random environmental events such as droughts and El Niño.

Based on these low run sizes and the continuing threats to the population, NMFS believes that the winter run of chinook salmon in the Sacramento River is in danger of becoming extinct, and that a designation of endangered under the ESA more accurately reflects the current status of the population.

Available Conservation Measures

Conservation measures provided to species that are listed under the ESA include listing, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. Some of the most useful protective measures are contained in section 7 of the ESA. Pursuant to section 7, Federal agencies are required to conduct conservation programs for endangered species and to consult with NMFS regarding the potential effects of their actions on species under NMFS' jurisdiction.

Since this species was listed as a threatened species on an emergency basis in August 1989, NMFS has conducted formal section 7 consultations with Federal agencies whose actions may affect the continued existence of the winter-run chinook salmon (NMFS 1991a, 1991b, 1991c, 1992a, 1992b). Currently, NMFS is consulting under section 7 with the Bureau and DWR concerning the long-term operation of the CVP and SWP facilities. Consultations are anticipated with the Corps on all future modifications or construction of siphons and pumps on the Sacramento River and in the Delta to ensure they are adequately screened, and on major DWR projects proposed for the Delta and elsewhere.

Section 10 of the ESA provides for addressing the effects of private (non-Federal) actions on endangered species. NMFS is currently working with GCID to address the impacts of their major diversion facility on winter-run chinook salmon through the section 10 process.

Also, NMFS will continue to participate in the State's review of sport and commercial fishing regulations (NMFS 1992c). Due to the continued decline of the eastern North Pacific salmon stocks, the PFMC recently proposed to reduce the allowed catch of all salmon on the west coast of the U.S. in the attempt to rebuild these stocks. Winter-run chinook salmon may benefit from these actions. Through consultations under state and Federal laws, if is possible that a State/Federal regulatory regime will be developed to ensure that the winter-run chinook salmon population is not adversely affected by sport or commercial fishing.

NMFS recently reappointed a recovery team to develop a recovery plan for Sacramento River winter-run chinook salmon. The recovery team is comprised of fishery resource managers, experts on winter-run chinook salmon biology and other conservation specialists. Over the next year, the team will develop a comprehensive recovery plan for this species.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent that it is prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, unlike designating a species as threatened or endangered, economic impacts must be considered when designating critical habitat. When winter-run chinook salmon was listed as threatened, no critical habitat was designated because an economic impact analysis had not been conducted. However, this analysis has been completed, and NMFS is currently developing a proposal for designating critical habitat. NMFS believes that the delay in designating critical habitat has not been detrimental to the conservation of the winter-run chinook salmon since section 7 consultations address Federal actions that may adversely affect the species as well as its habitat. The prohibitions on taking the species continue to be in effect, and any action that is likely to adversely modify or destroy habitat is considered a take and will be addressed by NMFS.

Classification

The 1982 Amendments to the ESA (Pub. L. 97–304), in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on the limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all endangered species listing from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

References

Brown, R.L., and S. Greene. 1992. Draft Biological Assessment on Effects of Central Valley Project and State Water Project Delta Operations on Winter-run Chinook Salmon. California Department of Water Resources. 130 pp.

CFGC. 1991. 1991 Progress Report to the Fish and Game Commission on recovery effects for Sacramento River winter-run chinook salmon. August 6, 1991. California Fish and Game Commission, Sacramento, California. 9 pp.

CFGC. 1992. 1992 Progress Report to the Fish and Game Commission on recovery efforts of Sacramento River winter-run chinook salmon. February 28, 1992. California Fish and Game Commission, Sacramento, California. 7 pp.

Ecos, Inc. 1990. Biological date report regarding Sacramento River Bank Protection Project impacts on winter-run chinook salmon, Third Phase. Sacramento, California. 131 pp.

Johnson, R.R. 1991. Entrainment evaluation of the newly installed Red Bluff Diversion Dam downstream migrant fish protection facilities. USFWS No. AFF1–FRO–91–17. Red Bluff, CA.

NMFS. 1991a. Endangered Species Act Section 7 Biological Opinion on the Sacramento Bank Protection Project, Second Phase. Southwest Regional Office, National Marine Fisheries Service.

NMFS. 1991b. Endangered Species Act Section of Biological Opinion on Pacific Coast Whiting Fishery. Southwest Regional Office, National Marine Fisheries Service.

NMFS. 1991c. Endangered Species Act Section 7 Biological Opinion on U.S. Army Corps of Engineers granting a permit to Glenn-Colusa Irrigation District to conduct maintenance dredging and construct and remove a seasonal earthfill weir. Southwest Regional Office, National Marine Fisheries Service.

NMFS. 1992a. Endangered Species Act Section 7 Biological Opinion on 1992 Central Valley Project operations. Southwest Regional Office, National Marine Fisheries Service.

NMFS. 1992b. Endangered Species Act Section 7 Biological Opinion on maintenance dredging of Guadalupe Slough and disposal of dredge material at the Alcatraz Disposal Site in San Francisco Bay. Southwest Regional Office, National Marine Fisheries Service.

NMFS. 1992c. Endangered Species Act Status Review: Sacramento Winter-Run Chinook Salmon (*Oncorhynchus tshawytscha*). Protected Species Management Division, Southwest Region, National Marine Fisheries Service, Long Beach, California.

USFWS. 1991. Letter (12/9/91) to the National Marine Fisheries Service to provide comments on their proposal to reclassify the Sacramento winter-run chinook salmon from threatened to endangered status.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: June 15, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR parts 222 and 227 are proposed to be amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a) is amended by adding the phrase "Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*)," immediately after the phrase "Snake River sockeye salmon (*Oncorhynchus nerka*)" in the second sentence.

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

§ 227.4 [Amended]

4. In § 227.4, paragraph (e) is removed and paragraphs (f) through (h) are redesignated paragraphs (e) through (g) respectively.

§ 227.21 [Amended]

5. In § 227.21, paragraphs (a) and (b)(1), the phrase "(e), (g) and (h) is removed, and the phrase "(f) and (g)" is added in its place; in paragraph (b)(2), the phrase "(g) and (h)" is removed and the phrase "(f) and (g)" is added in its place.

[FR Doc. 92–14399 Filed 6–18–92; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 119
Friday, June 19, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-92-37]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.
Date: July 7, 1992.
Time: 10 a.m.
Place: Campbell House Inn, 1375 Harrodsburg Road, Lexington, Kentucky 40405.
Purpose: To select officers, discuss Committee requests from previous meeting, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 et seq., and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 205-0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: June 15, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-14459 Filed 6-18-92; 8:45 am]

BILLING CODE 3410-02-M

Economic Research Service

Cost of Production Review Board; Solicitation of Nominations

Under authority of section 1005 of the Agriculture and Food Act of 1981, the Secretary of Agriculture established the National Agricultural Cost of Production Standards Review Board (Advisory Committee). Public Law No. 101-624 extended the authority for the Advisory Committee through September 30, 1995. The Advisory Committee was renewed by the Secretary of Agriculture on April 8, 1991. The Advisory Committee reviews the adequacy of the parity formulae; advises the Secretary as to whether the cost of production methodology used by the Department accurately and fairly represents the cost of production incurred by producers; makes such recommendations to the Secretary as the Committee deems appropriate, including ways of improving the cost of production methodology and the parity formulae; and reviews the adequacy, accuracy, and timeliness of the cost of production methodology used by the Department.

The Advisory Committee consists of 11 members appointed by the Secretary. Seven members of the Board are chosen from a pool of nominees who are, individually or as a group, engaged in the commercial production of each of the program crops (corn, barley, oats, grain sorghum, wheat, rice, and upland cotton) and in one or more of the various major agricultural commodities produced in the United States. Three members of the Board are chosen from a pool of nominees who are knowledgeable about cost of production by virtue of their education or experience and may be drawn from the fields of agricultural economics, banking, finance, accounting, or related areas. One member is an employee of the Department. Members of the Committee serve without compensation, except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code.

Nominations are needed for one person to serve on the Advisory Committee. This member should have detailed knowledge of cultural practices and costs related to wheat and small grain production. The term of this member will be for four years or until the expiration of authority for the Committee, whichever comes earlier. Any person appointed to fill a vacancy on the Committee will be appointed only for the unexpired term of such person's predecessor. It is the policy of the Department that membership on advisory committees should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Persons interested in serving on the Advisory Committee, or persons interested in nominating persons to serve, should contact John E. Lee, Jr., Administrator, ERS, Room 1226, 1301 New York Avenue NW., Washington DC 20005-47888, in writing (please mark Attention: COP Review Board), and request a copy of Form AD-755, which must be completed and submitted to the Administrator at the above address not later than August 18, 1992.

The final selection of committee members will be made by the Secretary.

John E. Lee, Jr.,

Administrator.

[FR Doc. 92-14389 Filed 6-18-92; 8:45 am]

BILLING CODE 3410-18-M

Forest Service

Management Guidelines for the Northern Goshawk in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice: Significant change to the interim policy published October 15, 1991.

SUMMARY: This current notice is being issued to replace an expired interim policy for goshawk management in the Southwestern Region of the Forest Service. This interim directive requires that Goshawk management units (nesting home ranges: Including nest areas, post-fledgling family areas, and foraging areas) be identified, established and managed whenever a northern goshawk reproductive site is located (both active and historical home ranges). The Southwestern Region will follow the Goshawk Scientific Committee Recommendations for management of goshawk habitat.

ADDRESSES: USDA Forest Service; Southwestern Region; 517 Gold Avenue, SW.; Albuquerque, NM 87102; ATTN: Director of Wildlife.

FOR FURTHER INFORMATION CONTACT: Wildlife Staff Unit; (505) 842-3261.

SUPPLEMENTARY INFORMATION: On October 6, 1991, the last interim policy for management of the northern

goshawk in the Southwestern Region was issued and then published on October 15, 1991, in the Federal Register. Specific direction was provided for the nest areas (totaling 180 acres) and the post fledgling family area (420 acres). The nest area and PFA total 10 percent of a goshawk home range size (600 acres). No specific region-wide policy for management of the foraging areas (5,400 acres) was provided. The intent was to "manage these areas to provide quality habitat for 'northern' goshawk prey species". Incorporated in the new interim policy of June 8, 1992, is specific management direction for the foraging area. This represents a major change to the old interim policy because specific management direction is now provided for 100 percent of the home range.

The new interim policy listed below replaces the old policy for management of the northern goshawk and provides Regional Forest Service direction while the agency is preparing final agency action. The Forest Service will shortly publish, in the Federal Register, a notice of intent to prepare an Environmental Impact Statement (EIS) to amend Forest Plans to include goshawk management guidelines. The EIS is expected to be completed over the course of the next 1.5 to 2.0 years (1994). In addition, the Forest Service is establishing a scientific group to analyze the impacts of applying these guidelines on other species living in the same ecosystems as the goshawk.

The new interim policy applies only to historical and active goshawk breeding home ranges (territories) in the Southwestern Region. The management direction is a synthesis of information provided by the Goshawk Task Force and the Goshawk Scientific Committee. The new interim policy stems mainly from the 'Recommendations' developed by the Goshawk Scientific Committee (GSC).

The purpose of the interim management policy, and the spirit of the GSC Recommendations, is through time to attain the desired future conditions for goshawk habitat in the Southwestern Region. Therefore, all future Forest Service actions taken within goshawk home ranges will be designed to achieve and then maintain desired goshawk habitat. The Goshawk Scientific Committee (GSC) realized that their recommendations are a gentler management approach than previously taken and that growing trees to mature and old-growth status requires considerable time and cannot be achieved immediately. The GSC also recognized that there is wide variation in tree-growth potentials among sites. Forests in some areas currently conform to the desired future habitat conditions for goshawks while other areas will need decades, or even centuries, of management to reach the desired goshawk habitat conditions. The capability of the land combined with tree growth rates and current management knowledge will determine the pace at which the Forest Service can produce goshawk habitat across the goshawk home range.

Readers should be aware that attaining the desired future forest conditions for goshawk home ranges may require a long time. Also, because of the range of variation among sites, applying the recommendations in a uniform way on each area may be difficult. The intent, therefore, is to create a sustainable intermixture of all forest ages (dominated by mid-aged, mature, and old forests) with a well developed herbaceous and shrubby layer understory that will sustain a viable population of goshawks in the Southwestern Region. Because the interim policy contains specific direction for management, some might unrealistically expect immediate compliance everywhere regardless of site conditions. The desired future conditions are goals to manage towards not hard rules to be accountable for on the day this policy goes into effect.

Using these short-term interim guidelines, along with Forest Plans, and the Integrated Resource Management Process, resource specialists will use their professional judgment to adjust and interpret site-specific needs at the project level to attain long-term habitat management goals.

Background Information

This interim policy will remain in effect while the Southwestern Region prepares an Environmental Impact Statement, to amend Forest Plans, for the management of goshawk habitat.

The Southwestern Region will follow the Goshawk Scientific Committee's (GSC) Recommendations for Managing goshawk habitat. For a summary of the desired future conditions for the goshawk home range see Executive Summary below. Specific detail is found in the GSC Recommendations (see definitions section) on file at National Forest Supervisor Offices and District Ranger Stations throughout the Southwestern Region.

The Southwestern Region has been concerned with the viability of the northern goshawk for the last decade. A review of the concern is provided in the **Federal Register** on October 15, 1991 (Volume 56, Number 199, pages 51672–51676).

Goshawk Scientific Committee—Executive Summary

Introduction

The northern goshawk (*Accipiter gentilis atricapilhus*) (hereafter goshawk) was listed as a "sensitive species" by the U.S. Department of Agriculture, Forest Service Southwestern Region in 1982. The principle forest types occupied by the goshawk in the southwest are ponderosa pine, mixed-species and spruce-fir. In these forests and elsewhere in the western United States there is concern that populations and reproduction of the goshawk are declining. These declines have been thought to be associated with forest changes caused by timber harvesting, but fire suppression, livestock grazing, drought, or toxic chemicals could also be involved.

The goshawk is the largest member of the North American genus *Accipiter*, which includes both the Sharp-shinned hawk and the Cooper's hawk. Both adult and juvenile goshawks are similarly sized (2–3 foot wingspan; 20–24 inches length; 2–3 pounds weight). The adult goshawk plumage is blue-gray on the back and is dull white to gray on the breast. Juvenile goshawks have a brown back while the breast is a rich cream-color with vertical chocolate-colored streaks.

The goshawk is a forest habitat generalist that uses a wide variety of forest ages, structural conditions, and successional stages. Special adaptations that give the goshawk the necessary maneuverability to hunt in forest situations include short, rounded wings and a long tail. The goshawk preys on large-to-medium-sized birds and mammals which it captures on the ground, in trees, or in the air. The food requirements of a single goshawk total to about one or two medium-to-large prey per day.

Approach

Three components of a goshawk's nesting home range (total about 6,000 acres) were identified: nest area, post fledgling-family area (PFA), and foraging area. The size of these home range components has been determined from behavioral and radio-telemetry studies of the goshawk.

The nest areas (approximately 30 acres), which may include one or more nest(s), are usually located on northerly aspects in drainages or canyons, and are often near streams. Nest areas contain one or more stands of large, old trees with a dense canopy cover. A goshawk pair occupies their nest area from early

March until late September. Nest areas are the focus of all movements and behaviors associated with breeding. Most goshawks have two to four alternate nest areas within their home range; alternate nest areas are used in different years and some may be used for decades.

The post fledgling-family area (PFA) (approximately 420 acres) surrounds the nest areas (within a home range) and most often, because of its size, includes a variety of forest types and conditions. The PFA appears to correspond to the territory (defended area) of a goshawk pair and represents an area of concentrated use by the family after the young leave the nest and until they are no longer dependent on the adults for food (up to 2 months). These areas are important for fledglings; they provide hiding cover and prey for developing hunting skills. PFAs have forests with patches of dense trees, developed understories, and habitat attributes (e.g., snags, downed logs, nest trees) that are critical in the life-histories of many goshawk prey.

Foraging areas are approximately 5,400 acres in size. Although little is known about how foraging goshawks use habitats, evidence suggests that they do so opportunistically. First, because most forests vary in composition and structure, foraging goshawks are more often than not confronted with a mosaic of forest types and conditions within their large home ranges. Second, many successful goshawk nests have been found in a variety of areas, each dominated by a large expanse of homogeneous forest of a single type and age (e.g., mid-aged ponderosa pine, old-growth mixed-species); by default, these goshawks must have foraged in these stands. Third, observations of foraging goshawks show that, in fact, they hunt in many forest conditions. This opportunism suggests that the choice of foraging habitat by goshawks may be as closely tied to prey availability as to habitat structure and composition. Furthermore, many raptor populations (e.g., hawks, falcons, owls) are often limited by availability and abundance of their prey. The recommendations were based on the available, but limited, information on how foraging goshawks use their habitat; this information was supplemented with information on the habitat of important goshawk prey.

A comparison of goshawk diets from disparate areas within North America showed that while as many as 50 species were eaten, about 20 were common in the diets; 14 of these common species occur in the diet of southwestern goshawks and were considered important. Information on the distribution, habitat, special habitat needs, home range size, and population density of these 14 prey were gleaned from the literature. A synthesis of this information provided a set of "desired forest conditions" that would result in abundant populations of each prey. Sufficient food resources are required to support goshawks in all seasons (especially in winter when few prey are available) and in years when prey populations may be low because of environmental variation (e.g., drought). Because no single prey species is likely to be abundant enough to support goshawks, especially during the winter, habitats and populations of all 14 prey are necessary.

Selected goshawk prey include squirrels, chipmunks, woodpeckers, jays, rabbits, and grouse. Specific habitat attributes used by these species include: snags, downed logs, wood debris, large trees, herbaceous and shrubby understories, and a mixture of various forest vegetative structural stages (VSS). Abundant prey populations within goshawk foraging areas will occur when 1) the specific habitat attributes are provided, 2) forests contain large trees and have relatively open understories, 3) forest openings are small-to-medium in size, 4) patches of dense, mid-aged forests are scattered throughout, and 5) the majority of forests are in the mid-aged, mature, and old age classes.

Present Forest Conditions

Southwestern forests occupied by goshawks (and many other plants and animals that have adapted to those forests) have been altered from pre-European settlement conditions by fire suppression, timber harvesting, livestock grazing, mining, and recreational uses. Prior to fire suppression in the western United States, ponderosa pine forests were burned by low intensity surface fires at 2 to 15 year intervals. Fires burned at lesser frequencies in mixed-species forests (5–22 years). These fires maintained forests that were relatively open and dominated by mature trees by regularly burning small trees. In spruce-fir forests, fire intervals were much longer (60–400 years) and were often catastrophic, stand-replacing fires. Habitat changes resulting from fire suppression in proderosa pine and mixed-species, and to a lesser extent spruce-fir forests, are: (1) Invasion of open, single-storied stands by dense regeneration, (2) loss of openings by invasion of trees, and (3) changes in the abundance and composition of plant species in both the understory and overstory due to the unnatural progression of plant succession. Accumulated fuels and dense forest conditions resulting from fire suppression have also increased the potential loss of goshawk habitat through catastrophic wildlife and epidemic infestations of insects and diseases. Increased shading from the dense regeneration has also resulted in a reduction of herbaceous and shrubby understories that provide important foods and cover for goshawk prey. Livestock and wildlife browsing and grazing has accentuated this loss. In addition to these changes, timber harvesting and related activities, which began in the 1800s, has removed large trees and snags (sources of downed logs), which has resulted in few remaining mature and old forests and associated habitat attributes.

Management Recommendations

The present forest conditions in the southwestern United States reflect the extent of human interference with natural processes. Given the improbability of returning to the frequencies of natural disturbances, some active management (e.g., thinning, prescribed fire) is necessary to produce and maintain the desired conditions for sustaining goshawks and their prey. In some forests, natural processes are still functioning and little or no management is necessary to reach the desired conditions (e.g., some spruce-fir forest(s).

Across the Southwestern Region there is considerable variation in site-specific growth potential. This variation is associated with elevation, slope, aspect, soil, available moisture and nutrients, and disturbance history. Therefore, sites have widely varying capabilities to produce the specified desired forest conditions; on certain sites desired conditions cannot be attained, while on others the conditions can be exceeded. Although high growth-potential sites have the greatest capabilities to produce quality goshawk habitat, low potential sites may still provide habitat given enough time.

Because trees and forests require many years to grow, it is prudent to minimize the possibility of immediate loss of goshawk habitat; these management recommendations, therefore, are conservative. The opportunities to produce, maintain and enhance goshawk habitat may not be equally applied on all forested lands because of "reserved forest land" designations (e.g., wilderness, research natural areas, National Parks) and area limitations (e.g., slope, soil, location). Desired conditions might be achieved in

these areas through the application of allowable management tools (e.g., fire, hand thinning).

Nest Areas (30 acres)

Three suitable nest areas (nest areas containing the necessary forest structure and therefore capable of containing a pair of nesting goshawks) should be maintained per nesting home range. In addition, three replacement areas should be developed and maintained per nesting home range (suitable areas may be lost because of insects or catastrophic fire). Nest areas are typified by one or more stands of mature or old trees and dense forest canopies. Desired forest conditions for the nest stands and management recommendations for maintaining and developing nest stands within nest areas are presented Table ES–1 and ES–2.

Post fledgling-family areas (PFA) (420 acres)

The PFA contains a variety of forest conditions and prey habitat attributes. Small openings, snags, downed logs, and woody debris are critical PFA attributes (Table ES–1). To sustain the desired canopy cover, size of trees, and the specified proportions of different forest ages within the PFA, forest regeneration in small patches is required every 20 to 30 years (not to exceed 10 percent of the PFA). Other management practices (e.g., prescribed fire, removing understory trees) are suggested for sustaining other critical elements of goshawk habitat (Table ES–1).

Small openings (less than 2 acres) in the forest are desired habitat for some prey species and are required for forest regeneration. If openings are greater than 0.5 acre in ponderosa pine and mixed-species forests, and 0.3 acre in the spruce-fir forests, up to 6 large mature and/or old trees (reserve trees) in groups should be left in regenerated openings. Reserve trees are not necessary if openings are less than 0.5 acre in ponderosa pine and mixed-species forests, and 0.3 acre in spruce-fir forests; this component can be met in adjacent forested areas (Table ES–1). Planting of ponderosa pine and other seral conifers is desired and, depending on forest type, aspen and oak regeneration is encouraged. Snags, downed logs, and woody debris should be present throughout the PFA (Table ES–1).

All management activities in the PFA should be limited to the period between October and February. Prescribed burning is the preferred method for management of woody debris (Table ES–2). Thinning from below (removing understory trees) is preferred for maintaining desired forest structures, and a variable spacing of trees is preferred for developing groups of trees with interlocking crowns. Road densities should be minimized and permanent skid trails should be used in lieu of permanent roads. Forage utilization should be 20 percent or less to maintain grass, forb, and shrub layers.

Foraging Area (5,400 acres)

Desired conditions and management recommendations for the foraging areas are similar to the PFA. The distribution of vegetative structural stages and the requirements for habitat attributes such as reserve trees, snags, and downed logs are the same as the PFA. Because the foraging area need not provide hiding cover for fledgling goshawks, a more open canopy is preferred—40 percent in the mid-aged forests and 40 to 60 percent in the mature and old forests—depending on the forest type. Medium openings (less than 4 acres), for understory development and tree regeneration, are desired in ponderosa pine and mixed-species forests; smaller openings are desired in spruce-fir forests (Table ES–1). The specific management recommendations to obtain the desired conditions for the foraging area are the same as the PFA (Table ES–2).

Related Benefits of Achieving Desired Conditions

A large-scale geographic and multi-resource approach is necessary when managing for the goshawk home ranges. The approach used in these recommendations provides for many wildlife species, timber, and forage. For example, timber harvesting is not excluded by the recommendations. Rather, timber harvesting is encouraged—albeit in a manner that mimics the effects of natural forest disturbances—to aid in the development and maintenance of the desired forest conditions for goshawks.

Soil productivity, fire, woody debris, large diameter snags and downed logs, microorganisms, mammals and birds (some that use old-growth forests), and forest health and productivity—all elements of functioning forest ecosystems—are addressed in the recommendations. As a result, the management recommendations for the northern goshawk in the southwestern United States are not limited to any single species or element.

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Table ES-1. Summary of desired forest conditions in three forest types for sustaining northern goshawk in the southwestern United States.

Attribute	Suitable Nest Area[1]	Home Range Components: Post Family-fledgling Area: Ponderosa Pine	Post Family-fledgling Area: Mixed-Species	Post Family-fledgling Area: Spruce-fir	Foraging Area: Ponderosa Pine	Foraging Area: Mixed-Species	Foraging Area: Spruce-fir
VSS Distribution %[2]							
VSS 1 grass/forb/shrub	0	10	10	10	10	10	10
VSS 2 seedling-sapling	0	10	10	10	10	10	10
VSS 3 young forest	0	20	20	20	20	20	20
VSS 4 mid-aged forest	0	20	20	20	20	20	20
VSS 5 mature forest	100	20	20	20	20	20	20
VSS 6 old forest	100	20	20	20	20	20	20
Canopy Cover %							
VSS 4	NA[3]	1/3 60+[7] 2/3 50+	60+	60+	40+	1/3 60+[7] 2/3 40+	1/3 60+[7] 2/3 40+
VSS 5	50+	50+	60+	70+	40+	50+	60+
VSS 6	50+	50+	60+	70+	40+	60+	60+
Years to reach VSS 6	200-300	200-250	200-300	200-300	200-250	200-300	200-300
Openings							
W/Reserve Trees (Ac)[4]	0	2	2	1	4	4	1
W/O Reserve Trees (Ac)	0	1/2	1/3	1/3	1/2	1/3	1/3
Width (Ft)	NA	200	150	125	200	200	125
Reserve Trees							
Number (per Group)	NA	3-5	6	6	3-5	6	6
Number of Groups	A[5]	1	1	2	1	1	2
Snags (Ac)	NR[6]	2	3	3	2	3	3
Downed Logs (Ac)	NR	3	5	5	3	5	5
Woody Debris (Tons/Ac)	NR	5-7	10-15	10-15	5-7	10-15	10-15

[1] Suitable nest area (capable of having nesting goshawks) attributes apply to all forest types.

[2] VSS: Vegetative structural stages, a description of forests based on the location of the majority of the trees in the diameter distribution of a stand. For example, if the majority of the stems of a stand (based on basal area) were located in the 12-18 inch diameter class, the stand would be classified as a VSS 4. General diameter limits are: VSS 1 = 0-1" DBH, VSS 2= 1-5" DBH, VSS 3= 5-12" DBH, VSS 4= 12-18" DBH, VSS 5= 18-24" DBH, VSS 6= 24"+ DBH. DBH= Diameter at Breast Height (4.5 ft.).

[3] NA: Not applicable

[4] Reserve trees: Standing trees left after harvesting that will be allowed to become snags and downed logs.

[5] A: Applicable, clumpiness or groups of large trees is also desirable.

[6] NR: Not required, but presence of these features are not detrimental.

[7] Proportion of home range component in VSS 4.

Table ES-2. Summary of management recommendations for producing and maintaining northern goshawk habitat in the southwestern United States.

Attribute	Home Range Components		
	Nest Area[a]	PFA	Foraging Area
Number	6	1	1
Suitable	3	NA	NA
Replacement	3	NA	NA
Size (Ac)	30	420	5,400
Management Season	Oct-Apr	Oct-Apr	Year-Long
Regeneration			
Conifer	None	Yes	Yes
Aspen & Oak[b]	None	Yes	Yes
Planting	None	Yes	Yes
Thinning From Below	Non-uniform Spacing	Non-uniform Spacing	Non-uniform Spacing
Roads			
System	Minimum Density	Minimum Density	Minimum Density
Skid	Permanent	Permanent	Permanent
Forage Utilization (%)	20	20	20
Woody Debris Treatments	In Order Of Preference		
Prescribed Burning[c]	1	1	1
Lopping & Scattering	2	2	2
Hand Piling	3	3	3
Machine Grapple Piling	None	3	3
Dozer	None	4	4

[a] Nest areas may be made up of one or more forest stands.

[b] Oak not applicable in the spruce-fir forest type.

[c] Not applicable in spruce-fir forest type.

BILLING CODE 3410-11-C

Interim Directive No. 2670–92–1
Effective Date: June 8, 1992
Expiration Date: December 8, 1993
Chapter: 2670—Threatened, Endangered, and Sensitive Plants and Animals
Posting Notice: Last ID was No. 2670–91–2, dated October 6, 1991, to Chapter 70
Remove: ID 2670–91–2 dated October 6, 1991

This interim directive requires that Goshawk management units (nesting home ranges: including nest areas, post-fledging family areas, and foraging areas) be identified, established and managed whenever a northern goshawk reproductive site is located (both active and historical home ranges). The Southwestern Region will follow the Goshawk Scientific Committee Recommendations for management of goshawk habitat.

Forrest Carpenter,
Deputy Regional Forester.

2676—Specific Direction on Individual Species.

2676.3—Northern Goshawk. Concern about the habitat needs and population viability of the northern goshawk (*Accipiter gentilis*) resulted in the species being identified as "sensitive" by the Regional Forester in 1982. For the purpose of this interim policy the term northern goshawk is meant to include all goshawks on National Forest land in the Southwestern Region of the Forest Service.

1. *Authority.* This interim policy provides guidelines for carrying out active conservation programs to maintain viability of the northern goshawk, as directed in the implementing regulations for the National Forest Management Act, and FSM 2670.1.

2. *Objectives*

a. Search for goshawk reproductive sites in suitable northern goshawk habitat prior to management activities.

b. Identify and map general areas where replacement and alternate nest areas, post-fledging family areas (PFA), and foraging areas will be placed.

c. Determine the composition and distribution of Vegetational Structural Stages for goshawk home ranges where projects are planned.

d. Provide for multiple use consistent with maintaining northern goshawk population viability.

e. Manage goshawk habitat, by applying the Goshawk Scientific Committee Recommendations, to ensure continued existence of a well distributed northern goshawk population within the Southwestern Region.

f. Specify guidelines for the management of desired habitat conditions to maintain reproductive pairs.

3. *Policy.*

a. Conduct surveys of suitable habitat to locate northern goshawk reproductive sites. The location of nest tree(s) or fledgling goshawks are means of consistently identifying northern goshawk habitat.

b. Implement the Management Guidelines section of this interim policy wherever northern goshawk habitat has been identified by the location of known goshawk nest trees or other evidence of reproduction.

4. *Responsibility.*

a. *Regional Northern Goshawk Program Coordinator.* The Regional Forester shall appoint a Regional Northern Goshawk Program Coordinator who shall:

(1) Assist Forest, District and Zone Wildlife Biologists in locating reproductive sites, nest trees, PFA and foraging area boundaries.

(2) Provide assistance to Forest and District personnel on implementation of northern goshawk management guidelines.

(3) Coordinate northern goshawk studies within the Region.

(4) Serve as chairperson on the Northern Goshawk Scientific Committee and Northern Goshawk Task Force.

(5) Coordinate northern goshawk research efforts with appropriate State and Federal agencies.

(6) Manage the Regional Northern Goshawk Program, providing budget and staffing advice along with data management.

(7) Provide guidance and assistance to Forests to evaluate effects of activities on the northern goshawk in biological evaluations.

b. *Forest Supervisor.* In addition to responsibilities listed at FSM 2670.45, Forest Supervisors shall ensure timely implementation of Regional guidelines concerning northern goshawk through specific procedures and actions including northern goshawk survey, monitoring, reproductive site location, nest area, PFA and foraging area selection, and identification. Implement these guidelines using professional biological expertise.

(1) Review nest area, PFA and foraging area boundaries submitted by the District Ranger where appropriate.

(2) Consult with Regional Northern Goshawk Program Manager on the locations of any northern goshawk nest area, PFA and foraging area boundaries where there is uncertainty about where the boundary should be located.

(3) Coordinate the northern goshawk program at the Forest level with appropriate State and Federal agencies and research.

(4) Coordinate northern goshawk sites available for interpretive trips with Districts.

(5) Ensure that release of information conforms with Forest Service policy identified in FSM 2671.2.

(6) Coordinate with District Rangers on the selection of sites for monitoring.

(8) Manage personal and commercial fuelwood practices within northern goshawk nest areas, PFA's, and foraging areas to maintain recommended levels of snags and downed logs.

(9) Provide guidance, assistance and quality control to ensure the biological evaluations adequately address potential adverse effects on goshawks from management activities.

(10) Review inventory and monitoring procedures used by Districts to ensure quality control and appropriateness.

c. *District Ranger.* In addition to responsibilities listed in FSM 2670.46, District Rangers shall:

(1) Ensure implementation of Forest Supervisor's direction, including necessary survey and monitoring, concerning northern goshawk through specific actions and procedures.

(2) Ensure all multiple-use objectives proposed within northern goshawk nest areas, PFA and foraging area are consistent with northern goshawk habitat management through the Integrated Resource Management (IRM) process.

(3) Ensure that northern goshawk surveys and monitoring are conducted on their District using appropriate methodology.

(4) Locate nest areas, replacement nest areas, PFA and foraging area boundaries best meeting Regional requirements. Submit for review by the Forest Supervisor as appropriate.

(5) Locate, approve and document calling routes used during northern goshawk surveys.

(6) Identify District survey needs and assist Forest Supervisor in determining Forest priorities.

(7) Manage and conduct show-me trips as appropriate in coordination with the Forest Supervisor.

(8) Determine the number of acres in each Vegetative Structural Stage within the home range of each goshawk territory and document that process.

5. *Definitions.* Use this list of standard terms and definitions when referring to northern goshawk habitat management to reduce potential misunderstandings and provide greater consistency in the language used throughout the Region.

Definitions are taken from several sources.

a. *Active Nest.* A goshawk nest known to have contained an egg. A nest need not have successfully produced fledglings to be considered active.

b. *Adverse Management Activity.* Any activity that could adversely modify goshawk behavior, reproductive effort, or habitat.

c. *Alternate Nest Area.* Goshawk home ranges often contain two or more nest areas, only one of which will be active in a given year. All alternate nest areas are historical nest areas.

d. *Breeding Season.* The period from March 1 through September 30 which includes courtship, incubation, nestling, and fledgling-dependency periods.

e. *Clumpiness.* The occurrence of trees in groups.

f. *Cull Logs.* Harvested logs that have less than 50% sound (no decay or indications of insect and disease) wood.

g. *Deferred Habitat.* That portion of the nest area(s), PFA and foraging area where management activities will not occur for some designated period of time.

h. *Designated Nest Area.* An area suitable for nesting, without a history of use by goshawks, designated as an alternate nest area.

i. *Dominant Trees.* The tallest trees in a forest. Together with codominants, the dominant trees comprise the main canopy of the stand.

j. *Downed Log.* Fallen trees or portions of fallen trees.

k. *Fledgling.* A young bird that has left its nest but is unable to completely care for itself.

l. *Foraging Area.* Areas where prey are searched for, pursued by, and captured by goshawks.

m. *Goshawk Scientific Committee (GSC) Recommendations.* Management Recommendations found in a document entitled "Management Recommendations for the Northern Goshawk in the Southwestern United States", The Draft Final Report was completed on November 26, 1991 but not released to the public until January 21, 1992. The authors are Richard T. Reynolds, Russell T. Graham, M. Hildegard Reiser, Richard L. Bassett, Patricia L. Kennedy, Douglas A. Boyce Jr., Greg Goodwin, Randall Smith, and E. Leon Fisher.

n. *Historical Nest Area.* A nest area containing one or more historical nests. An alternate nest area is an historical nest area. Historical nest areas are important because they may contain the habitat elements that attracted the birds originally.

o. *Home Range.* The area that an animal habitually uses during nesting, foraging, and roosting. Adjacent pairs of goshawks may have overlapping home ranges; the extent of overlap is unknown. A nesting home range contains nest areas (active and historical), the post-fledging family area, and the foraging area.

p. *Intermediate Treatment.* The treatment (cutting) of trees from a stand between the time of regeneration and final cut. Treatments include cleaning, thinning, liberation, improvement, salvage, and sanitation cuttings. Treatments other than removal are pruning, fertilization, and prescribed fire can also be called intermediate.

q. *Lopping and Scattering.* A method to disperse logging debris, and to reduce it to a specific height (usually 2–3 feet) above the ground.

r. *Management Unit.* A northern goshawk home range which is managed. The home range consists of nest areas, post-fledging family area, and the foraging area.

s. *Multi-storied Stands.* A forest having more than one horizontal layer of vegetation.

t. *Nest.* A platform of sticks on which eggs are laid. Most goshawk nests are placed within the lower two-thirds of tree crowns, often against the trunk but occasionally on a limb up to 10 feet from the trunk.

u. *Nest Area.* The nest tree and stand(s) surrounding the nest that contain prey handling areas, perches, and roosts. Nest areas are often on mesic forested sites (northerly slopes, along streams).

v. *Nest Stand.* The stand of trees that contains the nest tree.

w. *Nest Tree.* The tree containing the nest.

x. *Opening.* A break in the forest canopy that may be covered by grasses, forbs, shrubs, tree seedlings; or areas with sapling-sized trees and larger that are stocked less than 10 percent.

y. *Plucking Post.* A perch used by a goshawk while removing feathers and fur from prey. Plucking posts can be a tree, snag, downed log, stump, or on the ground. Plucking posts are identified by the feather and fur remains of prey.

z. *Post-fledging Family Area.* The area of concentrated use by the goshawk family after the young leave the nest.

aa. *Predator.* An animal that preys on northern goshawk or their young.

bb. *Protocol.* A formalized methodology.

cc. *Replacement Nest Area.* Forest areas with similar physiographic characteristics and size to suitable goshawk nest areas. Replacement nest areas can have young-to-mature forests that can be developed into suitable nest areas.

dd. *Reserved Trees.* Old and mature trees retained in a management area forever. These trees are a recruitment source for snags and downed logs.

ee. *Silvicultural System.* A planned program of treatments during the whole life of a stand. There are two silvicultural systems, even-aged and uneven-aged.

ff. *Single Storied Stands.* Stands of trees having a single canopy layer.

gg. *Snag.* A standing dead tree.

hh. *Stand.* An area of trees possessing sufficient uniformity (species composition, age, and physical features) to be distinguishable from trees on adjacent areas.

ii. *Successful Nest.* A nest from which at least one young is fledged.

jj. *Suitable Habitat.* Habitat that is currently usable for nesting, roosting, and foraging. Habitat need not be occupied to be considered suitable.

kk. *Survey Area.* Area around the proposed project where a northern goshawk survey or inventory will be conducted.

ll. *Viable Population.* A population that has the estimated numbers and distribution of reproductive individuals to ensure the continued existence of the species far into the future.

6. *Inventory.*

Inventory suitable habitat for habitat modifying projects. Use the following approach:

a. Each Forest will use Region 3's 1992 inventory protocol, as appended to this notice, to get complete coverage of the project or use method (2) below.

b. Use aerial photographs to locate Vegetative Structural Stages 4–6 within the project area and inventory just those sites for goshawk nest areas using R3 1992 inventory protocol. All uninventoried areas (VSS 1–3) will be managed to PFA specifications while in that stage. If, while using this inventory option, evidence suggests goshawks are present (such as finding plucking perches or molted goshawk feathers) conduct a complete inventory as outlined above (#1).

c. If forests have goshawks nesting commonly in stands classified as VSS 1–3, then use the complete inventory method (#1 above) for those areas. There may be situations where an area is classified as a VSS 3, based on the predominant VSS class, but in actuality a combination of VSS 4 & 5 predominate the area. For those situations, use the complete inventory method (#1 above).

d. Use current survey data for all projects under contract and projects with signed decision notices on or before June 6, 1992.

e. Complete at least 1 year of survey for projects with Decision Notices signed between June 7, 1992 and December 7, 1993.

f. Because goshawks change nest stand location frequently, two years of survey are strongly recommended. Whenever possible, conduct two years of survey for projects with Decision Notices signed after September 30, 1992.

(1) If a goshawk nest area is found during the first year of inventory, establish a management unit. A second year of inventory is not needed.

(2) If goshawks are not found during the first year of inventory, and suitable habitat exists, conduct an inventory the following year.

7. *Establishing Goshawk Management Areas.* The District wildlife biologist, or trained District personnel, will establish the nest areas, PFA and foraging area boundaries. If trained District personnel establish the management units, a wildlife biologist must review and approve the design. Use the following information and refer to the definitions when establishing them.

a. *Nest Areas.* Suitable nest areas are critical in the reproductive biology of northern goshawks. They contain the nest tree and may contain alternate nest trees. Nest areas are occupied during the breeding season which generally begins in early March and ends by late September. Nest areas are frequently used more than 1 year. Alternate nest areas are often used intermittently for decades.

Nest areas (30 acres in size) include one or more forest stands, nest(s), and nest stands. The nest stands are often characterized by a relatively high density of large trees and canopy closure, and a varying degree of slope (typically north-facing). See Executive Summary. The desired forest conditions for nest areas are older-aged stands that have a high density of large trees, high tree canopy cover, and high basal area.

The nest areas may take on several spatial distributions based on the current location of nests and topography with regards to suitable goshawk nesting habitat. The distribution of nest areas and replacement nest areas may all be centrally located within the PFA or take on a more linear distribution if sites are located within pine stringers or drainage/canyon situations.

There are three types of nests areas. The first is a nest area currently occupied by goshawks which may have a history of use; second, a nest area documented to have been used in the past but is not occupied (historical nest area); and third, an area of suitable nesting habitat with no history of use by goshawks that is a designated alternate nest area.

A minimum of six nesting areas will be established within the PFA. Whenever possible position the nest areas toward the center of the PFA. Three areas must be suitable for nesting and three must be replacement nest areas. Each nest area must be at least 30 acres in size. A total of 180 acres of nest areas will be identified within each PFA.

Nest areas will established for occupied and all historical nest areas.

The suitable nest areas may include occupied, historical and designated nest areas. Professional judgment will be used when selecting a designated alternate nest area within suitable habitat. Nest area locations will be plotted on U.S.G.S. 2.65" Quad Maps. Nest area information will be kept confidential and maps kept in a secure location.

Professional judgment will be used to identify 3 replacement nest areas within a PFA. Estimate when suitable nest stands will decay so that replacement nest areas will be available on time. Design the boundaries and locations to ensure future nest area needs are met. Locate nest areas in moist areas or other areas that reflect the landform attributes of existing nest areas.

b. *Post-fledging Family Area (PFA).* The PFA is a 420 acre area of concentrated use by a goshawk family after the young leave the nest and until they are not longer dependent on the adults for food. The PFA provides young hawks with necessary hiding cover from both nocturnal and diurnal predators and sufficient prey populations to develop hunting skills.

The desired forest conditions for PFA's include moderately closed overstory and understory canopies for hiding cover and habitat elements critical in the life-histories of the prey species such as large snags, nest-trees, large downed logs, and food resources. The intent is to develop a management prescription for each PFA so that over time about 40 percent of the PFA is maintained in mature forest (18" dbh +) with scattered small openings. (See Executive Summary)

Because the PFA is considerably larger than nest areas, PFA's may include a mosaic of forest conditions. The PFA surrounds the nest tree(s), the nest areas, and alternate and replacement nest areas.

A PFA will be established wherever a reproductive site is known (occupied or historical). The intent is to establish one PFA per breeding pair of goshawks. Location and shape of the PFA are at the discretion of the District, Zone, or Forest Biologist but must be based on habitat conditions and professional judgment. Where possible make PFA boundaries consistent with stand boundaries. At historical sites, conduct surveys and inventories to determine occupancy and habitat condition. Manage the habitat to attain the desired future condition needed by goshawks.

Once the nest areas and replacement nest areas (totaling 180 acres) have been established, the configuration of the 420 acres in the PFA should be considered. Though the PFA need not necessarily be circular in its delineation, an adequate buffer for all of the nest areas and replacement nest areas must be provided.

Large permanent openings (for example, meadows) should not be included in the PFA acreage. Increase the 420 acres needed in the PFA by the amount of acres in permanent openings.

c. *Foraging Areas.* The intent is to manage foraging areas to provide quality habitat for nothern goshawk prey species. The northern goshawk is a predator is a predator of birds and small mammals. Goshawks must hunt for their prey over large areas in order to meet the food and energy requirements of the entire goshawk family. Hunting or foraging areas in nesting home ranges are about 5,400 acres in size, excluding the PFA and nest areas which total 600 acres.

The desired forest conditions for foraging areas include open to moderately closed overstory and open understory canopies. Open tree understories enhance detection and capture of prey by goshawks. Habitat elements critical in the life-histories of the prey species such as large snags, nest-trees, large downed logs, and food resources are provided to maintain a high overall diversity and abundance of prey. The intent is to develop a management prescription for each foraging area so there is sufficient habitat to support sustainable goshawk populations year round. See the Executive Summary. Because the foraging area is considerable larger (5400 acres in size) than the PFA, foraging areas include a mosaic of forest conditions. The foraging area surrounds the nest areas and PFA.

Foraging areas will be established around PFAs. The intent is to establish one foraging area per breeding pair of goshawks for each historical and occupied site. Location and shape of the foraging area are at the discretion of Forest Service Biologists but must be based on habitat conditions and professional judgment. Where possible foraging area boundaries will be consistent with stand boundaries. Prior

to establishing a foraging area around a historical site, surveys and inventories will be necessary to determine occupancy and habitat condition. Foraging areas will be managed to attain the desired future conditions in the GSC Recommendations.

Once the PFA had been established, the configuration of the 5400 acres in the foraging area should be considered. The foraging area need not necessarily be circular in its delineation. Observations or locations of goshawks from past years around an established PFA may aid in determining the foraging area configuration.

Do not include large permanent openings, such as meadows, as part of the goshawk foraging area or as part of the foraging area acreage calculations. When large permanent openings occur in the foraging area, expand the foraging area boundary by the amount of acres in permanent openings.

8. *Monitoring.* Use a systematic protocol to monitor northern goshawk activities.

9. *Management Guidelines.* Follow the Goshawk Scientific Committee Recommendations for Managing goshawk habitat on public lands. For a summary of the desired future conditions for the goshawk home range see Executive Summary. Specific detail is found in the GSC Recommendations (see definitions section) on file at National Forest Supervisor Offices and District Ranger Stations throughout the Southwestern Region. The following provides an overview of the management guidelines. Apply them to all management activities or projects proposed in northern goshawk management units (home ranges).

a. Nest area.

(1) Provide long-term nesting habitat for goshawks in a landscape.

(2) Size: Approximately 30 acres.

(3) Location: Most in mesic areas along drainages, base of slopes, and on northerly aspects.

(4) Stand Structure (See Executive Summary Tables)

(5) Maintain at least 3 suitable nest areas per home range, selection priority starts with (1) The active nest area; (2) the most recently used historical nest areas; and (3) designated alternate nest areas. A designated alternate nest area has no previous history of goshawk use. Designated alternate nest areas are needed when there are fewer than 3 historical nest areas known per home range. Designated alternate nest areas are to be located within suitable nesting habitat. When possible, all historical nest areas should be maintained.

(6) Provide at least 3 replacement nest areas, in addition to the 3 suitable nest areas, per home range. Replacement nest areas should be available for goshawk use when the suitable nest areas are no longer useable. If no activities are scheduled to occur in the PFA this year, then it may not be necessary to delineate replacement nest areas.

(7) All nest areas are best located within an approximate 0.5 mile radius from one another. Cluster replacement nest areas in the center of the PFA when possible.

(8) No adverse management activities in nest areas at any time.

(9) Minimal human presence in active nest areas during the nesting season (March 1–September 30).

(10) Preferred treatments for maintaining stand structure and endemic populations of insects and diseases in nest areas:

(a) In suitable nest areas: thin unwanted understory trees, using non-uniform spacing, by using prescribed fire (except for spruce-fir) and/or hand operated tools.

(b) In replacement nest areas: (1) thin from below (remove trees from the understory), using non-uniform spacing, in VSS 1, VSS 2, and VSS 3 to maintain low densities to promote faster tree growth and crown development, and (2) allow for stand density increases in VSS 4, VSS 5 and VSS 6 to develop interlocking crowns. Replacement nest areas should be selected from partially developed stands in the PFA.

(c) Treatments to decrease fire hazard fuels, *in order of priority*:

(A) Use periodic prescribed fires (except for spruce-fir).

(B) Lopping and scattering of thinning debris is preferred if prescribed fire cannot be used.

(C) Piling of debris should be limited. When necessary, hand piling should be used to minimize compaction within piles and to minimize forest floor and herbaceous layer displacement and destruction.

(D) Grapple or dozer piling not recommended.

(d) Manage road densities at the lowest level possible to minimize disturbance in the nest area. Where timber harvesting has been prescribed to achieve desired forest condition, use small, permanent skid trails in lieu of roads.

This specifically means that open road densities will not exceed that which is stated in the Forest Plan. Permanent (reusable) skid trails will be identified in order to minimize soil and vegetation disturbance with repeated harvest entries. The objective is to minimize reduction in the amount of native forage available for Goshawk prey species. A second objective is to minimize the disturbance of downed woody debris which provides desirable habitat for prey species.

Logging systems analyses will aid in determining optimum road and skid trail spacing (considering economics and equipment commonly in use by the Timber Industry). These analyses will be a consideration in the location of an effective system of roads and permanent skid trails in a given area.

(e) Wildlife and livestock utilization of grasses and forbs should average 20% (by weight) and not exceed 40% in any area and shrub utilization should average 40% (by weight) and not exceed 60% in any area. These levels of utilization should maintain native food and cover for many of the prey species.

b. Post-fledgling family area.

(1) Establish a PFA for all locations where there are historical nest areas or occupied nest areas.

(2) Objectives: Provide hiding cover for goshawk fledglings, provide habitat for prey, and provide foraging opportunities for adults and young during the fledgling-dependency period.

(3) Desired Conditions: approximately 420 acres (not including the acres in suitable and replacement nest areas), approximately centered around suitable and replacement nest areas, containing a mosaic of vegetation structural stages (VSS) interspersed throughout the PFA in small patches, woody debris present throughout the PFA, and developed, intact forest soils with emphasis on organic surface layers (humus, litter and soil wood) within the natural turnover rates. These conditions should provide for the sustainability of mycorrhizae. Stand structure should be as follows:

(a) The majority (60%) of the PFA should be in the three older VSS (4, 5, 6), approximately 20% in each. Of the remaining 40%, 20% should be in young forest (VSS 3), and 10% each in the seedling/sapling (VSS 2), and grass/for/shrub stages (VSS–1). These approximate proportions can be maintained in the different classes depending on: (1) The years required for tree establishment and development, (2) diameter growth rates, and (3) tree longevity. The number of years spent in each structural stage will depend on the intensity of management.

(b) A large-tree component throughout the PFA should include: snags, downed logs, and mature and old, live trees in clumps or stringers with interlocking crowns.

(c) A developed herbaceous and/or shrub understory throughout the PFA should emphasize native species, especially grasses.

Follow "Additional desired conditions per forest type" (Ponderosa Pine, Mixed Species, Spruce-fir) section found in the GSC Recommendations (pages 27–28).

(4) Place the PFA so known or replacement nest areas are generally centered in the PFA.

(5) No adverse management activities in PFAs during the nesting season (March 1–September 30). Minimize human presence during nesting.

(6) Preferred treatment for maintaining stand structure and endemic populations of insects and diseases in the PFA: thin from below. In VSS 1, VSS 2, and VSS 3, these treatments should result in lower stand densities (basal areas) to promote fast tree growth, crown development, herb and/or shrub development, and should allow for irregular spacing of trees; in VSS 4, VSS 5, and VSS 6, allow stand densities (basal areas) to increase. Provide for or preserve existing clumps of trees with interlocking crowns in VSS 4, VSS 5 and VSS 6 by avoiding uniform spacing of individual trees. Other treatments (e.g. sanitation, liberation, improvement) could be used when and where appropriate to create desired conditions.

(7) Manage road densities at the lowest level possible to minimize disturbance in the nest area. Where timber harvesting has been prescribed to achieve desired forest condition, use small, permanent skid trails in lieu of roads.

This specifically means that open road densities will not exceed that which is stated in the Forest Plan. This also means that Travel Management decisions will be fully implemented to achieve the stated densities. Permanent (reusable) skid trails will be identified in order to minimize soil and vegetation disturbances with repeated harvest entries. The objective is to minimize reduction in the amount of native forage available for Goshawk prey species. A second objective is to minimize the disturbance of downed woody debris which provides desirable habitat for prey species.

Logging systems analyses will aid in determining optimum road and skid trail spacing (considering economics and equipment commonly in use by the Timber Industry). These analyses will be a consideration in the location of an effective system of roads and permanent skid trails in a given area.

(8) Wildlife and livestock utilization of grasses and forbs should average 20% (by weight) and not exceed 40% in any area and shrub utilization should average 40% (by weight) and not exceed 60% in any area. These levels of utilization should maintain native food and cover for many of the prey species.

(9) Allow approved activities in PFA's with no active nest areas after July 31. Use an appropriate monitoring method to determine goshawk inactivity.

(10) Follow the PFA "Additional Management Recommendations" section of the GSC Recommendations (pages 29–33).

c. Foraging Area.

(1) Establish a 5,400 acre foraging area for all locations where there are historical nest areas or occupied nest areas. Place the foraging area so the PFA is approximately centered in the foraging area whenever possible.

(2) Objective: provide quality habitat for goshawk prey and conditions that enhance foraging opportunities for the goshawk.

(3) Desired Conditions: approximately 5,400 acres (not including nest areas and PFA acres), surrounding nest areas and the PFA. Stand structure contains a mosaic of vegetation structural stages (VSS) interspersed throughout the foraging area in small patches of 4 acres or less. Woody debris should be present throughout the foraging area. Soil conditions should include developed, intact forest soils with emphasis on organic surface layers (humus, litter and soil wood) within the natural turnover rates. These conditions should provide for the sustainability of mycorrhizae. Stand structure should be as follows:

(a) The majority (60%) of the foraging area should be in the three older VSS (4, 5, 6), approximately 20% in each. Of the remaining 40%, 20% should be in young forest (VSS 3), and 10% each in the seedling/sapling (VSS 2), and grass/for/shrub stages (VSS–1). These approximate proportions can be maintained in the different classes depending on: 1) the years required for tree establishment and development, 2) diameter growth rates, and 3) tree longevity. The number of years spent in each structural stage will depend on the intensity of management.

(b) A large-tree component throughout the PFA should include: snags, downed logs, and mature and old, live trees in clumps or stringers with interlocking crowns.

(c) A developed herbaceous and/or shrub understory throughout the PFA should emphasize native species, especially grasses.

Follow "Additional Desired Conditions" in the GSC Recommendations (pages 35–37).

(4) Preferred treatment for maintaining stand structure and endemic populations of insects and diseases in the foraging area: thin from below. In VSS 1, VSS 2, and VSS 3, these treatments should result in lower stand densities (basal areas) to promote fast tree growth, crown development, herb and/or shrub development, and should allow for irregular spacing of trees; in VSS 4, VSS 5, and VSS 6, allow stand densities (basal areas) to increase. Provide for or preserve existing clumps of trees with interlocking crowns in VSS 4, VSS 5 and VSS 6 by avoiding uniform spacing of individual trees. Other treatments (e.g. sanitation, liberation, improvement) could be used when and where appropriate to create desired conditions.

(5) Manage road densities at the lowest level possible to minimize disturbance in the nest area. Where timber harvesting has been prescribed to achieve desired forest condition, use small, permanent skid trails in lieu of roads.

This specifically means that open road densities will not exceed that which is stated in the Forest Plan. Permanent (reusable) skid trails will be identified in order to minimize soil and vegetation disturbances with repeated harvest entries. The objective is to minimize reduction in the amount of native forage available for Goshawk prey species. A second objective is to minimize the disturbance of downed woody debris which provides desirable habitat for prey species.

Logging systems analyses will aid in determining optimum road and skid trail spacing (considering economics and equipment commonly in use by the Timber Industry). These analyses will be a consideration in the location of an effective system of roads and permanent skid trails in a given area.

(6) Wildlife and livestock utilization of grasses and forbs should average 20% (by weight) and not exceed 40% in any area, and shrub utilization should average 40% (by weight) and not exceed 60% in any area. These levels of utilization should maintain native food and cover for many of the prey species.

(7) Management activities allowed year round. Managers will be sensitive to disturbing goshawks when working near the PFA boundary. If the project will take place adjacent to the PFA boundary, then avoid disturbing goshawks prior to the young reaching two weeks of age.

(8) Follow the foraging area "Additional Management Recommendations" section of the GSC Recommendations (pages 38–42).

10. *Managing Goshawk home ranges containing both private and NFS lands.*

a. Do not manage private lands or include them in the Forest Service

strategy to maintain goshawk habitat on National Forest System lands.

b. If the nest area, PFA, or both (or portions of them) are located on private land not more than ½ mile from National Forest System lands, provide an equivalent amount of acres on National Forest System lands and manage them as nest areas or PFA's. Place them as close to the goshawks as possible. Should something happen to the habitat on private land—then the goshawks would have similar habitat available to use on National Forest System lands.

c. When portions of the foraging area are located on private land, provide an equivalent amount to National Forest System (FS) lands so that on NFS lands there will be 5,400 acres of foraging habitat available.

d. When the nest area and PFA are located further than a ½ mile from National Forest System lands, and when less than 40% of the foraging area occurs on National Forest System lands, do not provide for additional goshawk management acres on National Forest System lands to compensate for those on private lands.

11. *Biological Evaluation.* Use the biological evaluation process (FSM 2672.4) to evaluate and document the effects of Forest Service programs and activities on the northern goshawk and its habitat when they are planned to occur in suitable habitat. Evaluate existing information on northern goshawk occupancy and habitat condition. Include known past, current, and proposed activities when analyzing cumulative effects. Use the biological evaluation process to evaluate general effects on habitat quality of northern goshawk prey species in the PFA and foraging area. This process will also be used to determine possible needs for additional timing restraints or other mitigation measures not addressed by this interim directive. The determination of a "no effect" is contingent upon implementation of these interim guidelines and a site-specific analysis of habitat conditions.

12. *Show-me Trips.* Show-me trips are not recommended, however they may benefit northern goshawk management by increasing awareness of the species and its habitat. It is important to manage and coordinate show-me trips to minimize disturbance and avoid possible adverse impacts to goshawks. Consolidate show-me trips to minimize the number of trips taken and incorporate with other inventory or monitoring activities whenever possible. Encourage the media to utilize existing footage and/or photographs in order to reduce show-me trips. Other considerations for show-me trip management include the number of visits per site and other activities at/near the site.

Dated: June 8, 1992.

Forrest Carpenter,

Deputy Regional Forester.

Appendix

Southwestern Region Goshawk Inventory Protocol for 1992

Dr. Patricia Kennedy's paper (Kennedy-Stalahlecker-Rinker) forms the foundation for our inventory protocol. The enclosed tape will improve inventory consistency. One side of the tape has the "adult alarm" call and the other has the "female wail" call (female food begging call). Each tape is 45 minutes per side. Calls are 10 seconds long with a 30-second space between calls. The tapes were digitized to remove as much annoying background noise as possible.

Dr. Richard Reynolds (personal communication) deviated from the Kennedy-Stalahlecker-Rinker method and used only one calling sequence at each station (step 9 below). He feels his results were comparable to Kennedy but he has not analyzed his data. We require two calling sequences per station so that our results will have a foundation in the literature.

Other Regions that may be limited by time and funding might want to consider one calling sequence per station (total time at station is 2.0 minutes) versus two calling sequences per station (total time at station is 4.0 minutes) used in Region 3.

The goshawk inventory protocol that we suggest forests use is:

1. Use broadcast calls during brood-rearing (nestling and fledgling stages).
2. Place stations 300 meters apart on transects.
3. Separate adjacent transects by 260 meters.
4. Stations on adjacent transects should be staggered by 150 meters.
5. Use alarm calls during nestling period.
6. Use wail calls during the fledgling dependency period.
7. The broadcast tape-playing equipment should produce 100–110 dB output at one meter from the source. Kennedy used equipment 80–85 dB.
8. Inventory can begin 1/2 hour before sunrise and can cease 1/2 hour before sunset.
9. At each calling station, broadcast at 60 degrees (turn left or right but once you turn continue in that same direction) from transect for 10 seconds, then listen and watch for 30 seconds (tapes are set up this way), turn 120 degrees and repeat the procedure, and then turn another 120 degrees. Repeat the procedure once again. Then move to the next station.
10. Callers should have at least 2 transects between them (not be on adjacent or same transects).
11. Move along the transect at an easy pace—watching and listening for goshawks.
12. Be careful not to be fooled by "mimic" calls of jays.
13. Do not inventory in high winds (15 mph or higher) or heavy rain.
14. Note the direction from which goshawk calls are detected. Attempt to determine sex. If a female responds and or fledgling—search the area for the nest. If a male responds you may be one or more miles from the nest site—perform a widening search, time permitting.
15. Pay attention to other cues—droppings, molted feathers, prey remains—when searching for nests. Visit downed logs and look under horizontal limbs that are about 10 feet off the ground for prey remains, molted feathers, and droppings.
16. Inventory ½ mile beyond the boundary of the proposed project area. This is desirable because the project boundary could be located on the edge of a PFA (½ mile is the radius of a PFA) and nesting goshawks might go undetected if inventories were confirmed to just the project area.
17. For habitat modifying projects scheduled for FY 1994, two seasons of consecutive inventory will be preferred prior to modifying the habitat.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–614–503]

Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on lamb meat from New Zealand for the period April 1, 1990 through March 31, 1991. We preliminarily determine the total bounty

or grant to be 0.20 percent *ad valorem* for all firms for the period April 1, 1990 through March 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 19, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1991, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (56 FR 47450) for the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). We received requests for review form the New Zealand Meat Producers Board. We initiated the review, covering the period April 1, 1990 through March 31, 1991, on October 18, 1991 (56 FR 52254). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published in the **Federal Register** on August 13, 1991 (56 FR 38424).

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. This merchandise is currently classifiable under item numbers 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1990 through March 31, 1991, and two programs.

Analysis of Programs

(1) Export Market Development Taxation Incentive (EMDTI)

Under the EMDTI, established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. The tax credit for tax returns filed during the review period was 40 percent of the total qualifying expenditures, and the normal corporate tax rate in New Zealand was 33 percent. Because the program is contingent upon exportation, we preliminarily determine that it confers and export bounty or grant. Three exporters claimed EMDTI tax credits for lamb meat exports to the United States on their tax returns filed during the review period.

Since exporters may claim a tax credit equal to 40 percent of the qualifying expenditures but may not deduct these expenditures from income, which is taxable at 33 percent, the net benefit to the exporters is 7 percent of the qualifying expenditures. To calculate the country-wide benefit, we took 7 percent (the difference between the 40 percent tax credit and the 33 percent corporate tax rate) of each exporter's qualifying expenditures relating to lamb meat exports to the United States, aggregated these companies' net benefits and divided that amount by total sales of lamb meat exports to the United States during the review period. On this basis, we preliminarily determine the benefit from this program during the review period to be 0.03 percent *ad valorem* for all firms.

Effective with the government fiscal year beginning April 1, 1990, the Government of New Zealand eliminated the EMDTI tax credit, and all formerly eligible expenditures are subject to the rules for ordinary business expenses in calculating taxable income. However, because certain corporate fiscal years do not correspond with the Government of New Zealand's fiscal year, some residual benefits were still evident during this review period.

For purposes of cash deposits of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero for all firms.

(2) Livestock Incentive Scheme

The Livestock Incentive Scheme (LIS) was introduced in 1976 in order to encourage farmers to increase permanently their number of livestock. Under the scheme, a farmer engaged in a stock increase program, for a minimum of one and a maximum of three years, could opt for one of two incentives: (1) An interest-free suspensory loan of NZ$12 for each additional stock unit carried; or (2) a deduction of NZ$24 from taxable income for each additional stock unit carried. If the livestock increase was met, farmers who elected to take out loans wrote the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction could be applied toward tax liability in any of the three years after completion of the development program. Applications to participate in the LIS program were accepted until March 31, 1982. No new loans have been given under this program since 1983, and no tax credits have been authorized since the 1983/84 government fiscal year. During the 1990/91 government fiscal year (the review period), there were no outstanding loans that had not been converted to grants and no tax credits remaining to be claimed by lamb producers.

Because benefits under this program are available only to farmers with livestock herds, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and, therefore, confers a countervailable bounty or grant.

To calculate the benefit, we treated the loan amounts forgiven in prior years as grants and allocated those amounts over five years, the average useful life of breeding stock. This methodology is described in 355.49(g) of Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (51 FR 23366, 23385; May 31, 1989). The discount rate chosen was the average interest rate on overdrafts during the year in which the loans were forgiven. The methodology and discount rate are the same used in previous administrative reviews (see e.g., Lamb Meat from New Zealand; Preliminary Results of Countervailing Duty Administrative Review (56 FR 27243; June 13, 1991). We added the value of the benefits from the grants and multiplied the result by a factor determined to represent the value of lamb meat as a percentage of the total value of all livestock production. We then divided that result by the total value of lamb meat production during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.17 percent *ad valorem* for all firms.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.20 percent *ad valorem* for all firms during the period April 1, 1990 through March 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent is *de minimis*.

Therefore, as provided for by section 751(a)(1) of the Act, the Department intends to instruct the Customs Service

to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from New Zealand exported on or after April 1, 1990 and on or before March 31, 1991.

The termination of the EMDTI program reduces the total estimated bounty or grant to 0.17 percent *ad valorem*, a rate which is *de minimis*. Therefore, the Department intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of the subject merchandise from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodologies, and interested parties may request a hearing, not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication in accordance with 19 CFR 355.38(c). Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 12, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-14504 Filed 6-18-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92-00008." A summary of the application follows.

Summary of the Application

Applicant: International ExIm Corporation, 2091 Business Center Drive, #100, room 35, Irvine, California 92715, Contact: Sam H. Razavi, Vice President, Telephone: (714) 261-2050.

Application No.: 92-00008.

Date Deemed Submitted: June 10, 1992.

Members (in addition to applicant): None.

Export Trade: 1. *Products.* All Products. 2. *Services.* All Services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

International ExIm seeks to: 1. Export specific Products and/or Services in response to specific orders for Suppliers.

2. Exchange information only in one-on-one discussions with specific Suppliers on specific orders or market conditions.

3. Enter into exclusive distributorship agreements with Suppliers for the export of Products and Services to the Export Markets. International ExIm will agree not to deal in export trade in the products of that Supplier's competitors unless authorized by the Supplier.

4. Enter into exclusive agreements to grant distributorships to foreign entities and oblige such entities not to deal in goods competing with those supplied by International ExIm Corporation; and

5. Handle sensitive business information pertaining to export trade in a manner that would not promote any successful price or output coordination.

Definition

Supplier means a person who produces, provides, or sells Products and/or Services.

Dated: June 15, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-14430 Filed 6-18-92; 8:45 am]

BILLING CODE 3510-DR-M

President's Export Council; Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The President's Export Council (PEC) is holding an open meeting to discuss current trade issues and future projects. The CATT, NAFTA, agricultural trade issues, commercial programs for the Newly Independent States, and the Trade Promotion Coordinating Committee will be covered. The National Association of Manufacturers will present its views on trade issues and discuss ways to coordinate efforts with the PEC. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

DATES: June 24, 1992, from 1-4 p.m.

ADDRESSES: The Holiday Inn Crowne Plaza Hotel, Salons A & B, Crowne Ballroom, 775 12th Street, NW., Washington, DC, 20005. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Lino Prosak, President's Export Council, room 3215, Washington, DC 20230.

Dated: June 16, 1992.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 92-14572 Filed 6-18-92; 8:45 am]

BILLING CODE 3510-DR-M

President's Export Council; Executive Committee Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The President's Export Council (PEC) is holding a closed Executive Committee meeting to discuss organizational issues, plans for the June 24 full Council meeting, issues relating to export promotion, competitiveness, export controls, and foreign market development, and the status of ongoing multilateral trade negotiations, and other sensitive matters properly classified under Executive Order 12356. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, 202-377-4217.

DATES: June 24, 1992, 11:30 a.m.-1 p.m.

ADDRESSES: The Holiday Inn Crowne Plaza Hotel, Tokyo Room, 775 12th Street, NW., Washington, DC, 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Lino Prosak, President's Export Council, room 3215, Washington, DC 20230.

Dated: June 16, 1992.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 92-14571 Filed 6-18-92; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

[Project I.D. No. 06-10-93001-01]

Business Development Center Applications; Oklahoma City MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds. An audit fee of $4,125 has been added to the Federal amount. The total funding breakdown is as follows: $169,125 Federal and $29,846 non-Federal for a total of $198,971. The period of performance will be from November 1, 1992 to October 31, 1993. The MBDC will operate in the Oklahoma City, Oklahoma geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget period. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of

1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is July 31, 1992. Applications must be postmarked on or before July 31, 1992.

Note: Please mail completed application to the following address: Chicago Regional Office, 55 E. Monroe St., suite 1440, Chicago, Illinois 60603.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on July 1, 1992 in the U.S. Housing and Urban Development Building, room 803, on 200 NW., 5th Street, Oklahoma City, Oklahoma at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: June 15, 1992.

William Fuller,

Deputy Regional Director, Dallas Regional Office.

[FR Doc. 92–14423 Filed 6–18–92; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

June 15, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6496. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used and special carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58369, published on November 19, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 15, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 13, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on June 22, 1992, you are directed to amend the directive dated November 13, 1991 to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
338/339	663,445 dozen.
638/639	280,285 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–14432 Filed 6–18–92; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan; Correction

June 15, 1992.

In the letter to the Commissioner of Customs published in the **Federal Register** on April 21, 1992 (57 FR 14563), third column, delete the following lines under the heading "Category": Levels in Group I, Group II, Sublevel in Group II.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–14431 Filed 6–18–92; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 20, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Compound, Corrosion Preventive

8030–00–938–1947
8030–00–546–8637
Nonprofit Agency: The Lighthouse for the Blind, Inc., Berkeley, Missouri

Services

Grounds Maintenance
Sgt. Paul Beck AFRC
987 East Bishop Street
Bellefonte, Pennsylvania
Nonprofit Agency: Skills of Central Pennsylvania, Inc., Lewistown, Pennsylvania

Grounds Maintenance
Centre County Memorial USARC
1250 Fox Hollow Road
State College, Pennsylvania
Nonprofit Agency: Skills of Central Pennsylvania, Inc., Lewistown, Pennsylvania

Janitorial/Custodial
U.S. Army Reserve Center
Wichita Falls, Texas
Nonprofit Agency: Wichita Falls State Hospital, Wichita Falls, Texas

Deletions

It is proposed to delete the following commodities and services from the Procurement List:

Commodities

Coat, Woman's Pajama

6532–01–222–6565
6532–01–222–9116
6532–01–216–3199
6532–01–215–8093

Trousers, Woman's Pajama

6532–02–226–2961
6532–01–226–2962
6532–01–216–2425
6532–01–216–2426

Shirt, Woman's

8410–01–105–2531
8410–01–224–6079
8410–01–224–6080
8410–01–105–2532
8410–01–105–2533
8410–01–105–2534
8410–01–105–2500
8410–01–224–6081
8410–01–224–6082
8410–01–224–6083
8410–01–224–6084
8410–01–224–6085
8410–01–224–6086
8410–01–224–6087
8410–01–224–6088
8410–01–224–6075
8410–01–224–6076
8410–01–224–6089
8410–01–224–6090
8410–01–224–6091
8410–01–105–2501
8410–01–104–7947
8410–01–224–6092
8410–01–224–6093
8410–01–224–6094
8410–01–104–7949
8410–01–224–6095
8410–01–224–6096
8410–01–105–2495
8410–01–104–7950
8410–01–224–6097
8410–01–224–6098
8410–01–224–6099
8410–01–105–2502
8410–01–105–2503
8410–01–224–6100
8410–01–224–6101
8410–01–224–6102
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8410–01–105–2509
8410–01–104–7953
8410–01–224–6111
8410–01–224–6112
8410–01–105–2494
8410–01–104–7954
8410–01–104–7955
8410–01–224–6113
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8410–01–224–6115
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8410–01–224–6120
8410–01–104–7958
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8410–01–104–7959
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8410–01–224–6123
8410–01–105–2514
8410–01–224–6124
8410–01–105–2515
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8410–01–105–2516
8410–01–224–6127
8410–01–105–2517
8410–01–104–7960
8410–01–104–7961
8410–01–224–6128
8410–01–104–7962
8410–01–224–6129
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8410–01–224–6077
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8410–01–105–2523
8410–01–224–6134
8410–01–224–6135
8410–01–105–4713
8410–01–224–6136
8410–01–105–2497
8410–01–224–6137
8410–01–224–6138
8410–01–105–2524
8410–01–224–6139
8410–01–105–2525
8410–01–224–6140
8410–01–224–6078
8410–01–105–2526
8410–01–105–2527
8410–01–224–6141
8410–01–224–6142
8410–01–105–2498
8410–01–105–2499
8410–01–105–2528
8410–01–105–2529
8410–01–105–2530

Services

Commissary Shelf Stocking
Naval Supply Center
Commissary Branch Store
Athens, Georgia

Commissary Shelf Stocking and Custodial
Fort Monmouth, New Jersey

Computer Tape Verification
Tinker Air Force Base, Oklahoma

Janitorial/Custodial
U.S. Army Corps of Engineers
Raystown Lake
Raystown, Pennsylvania

E.R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 92–14511 Filed 6–18–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 20, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 24, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (57 FR 15059) of proposed additions to the Procurement List.

Comments were received from the current contractor for this service during the development phase of this proposed addition to the Procurement List. The contractor asked the Committee to consider the economic situation in California as well as the impact of the addition on its sales in making its decision. The contractor noted that office space vacancies had increased substantially and that California had experienced major drought conditions for the past five years. As a result, the office cleaning and landscaping industries have been negatively affected. The contractor also indicated that its uneducated and unskilled workforce would have difficulty finding other employment.

The grounds maintenance service being added to the Procurement List represents a very small percentage of the contractor's total sales. Consequently, the loss of this service would not constitute severe adverse impact on the contractor even considering the current state of the economy in its industry.

The contractor has not stated that addition of this service to the Procurement List would definitely cause the loss of employment for any of its workers. However, the Committee believes that any potential loss would be outweighed by the creation of employment for persons with severe disabilities, whose unemployment rates nationally exceed 65%.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2 The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Grounds Maintenance
U.S. Postal Service
General Mail Facility
San Jose, California

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92–14512 Filed 6–18–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF ENERGY

The Development of Coal-Based Fuel Technologies for Department of Defense (DOD) Facilities; Non-Competitive Financial Assistance (Cooperative Agreement) Award

AGENCIES: U.S. Department of Energy, Pittsburgh Energy Technology Center, and U.S. Department of Defense, Army Corps of Engineers.

ACTION: Notice of non-competitive financial assistance (cooperative agreement) award to the Consortium for Coal Water Slurry Fuel Technology.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i) criterion (D), it intends to make a non-competitive Financial Assistance (Cooperative Agreement) award to The Consortium for Coal Water Slurry Fuel Technology.

SUPPLEMENTARY INFORMATION:

Awardee: The Consortium for Coal Water Slurry Fuel Technology

Cooperative Agreement Number: DE–FC22–92PC92162

Cooperative Agreement Value: $18,500,000 with DOD estimated funding of $15,000,000

Scope: Implementation of the proposed program is based upon the authority of 10 CFR 600.7(b)(2)(i) criterion (D), and the "Interagency Agreement (IA) for the National Center of Excellence for Coal Utilization" between the U.S. Army Corps of Engineers and the the U.S. Department of Energy. The research program developed under this IA will be financed by Congressionally-directed funds; at this time there is $5 million of FY 1991 DOD research funding available for expenditure or obligation through September 30, 1992. No obligations or commitments for work beyond that which is currently appropriated will commence prior to future appropriations for this purpose.

The objective of the proposed program is to provide financial assistance to The Consortium for Coal-Water Slurry Fuel Technology to increase coal utilization by the Defense Department. Specific areas of research include: superclean coal-water mixtures for boilers, coal-derived alternative fuels, combustion of various wastes with coal and small-scale combustion facilities.

The program will include three phases. Phase I activities will center on developing clean, coal-based combustion technologies for the utilization of both coal-water slurry and dry, micronized coal in oil-designed industrial boilers. The tasks include coal beneficiation/fuel preparation, combustion tests, engineering design, economic analysis and boiler retrofit design. Phase II research and development will continue to focus on industrial boiler retrofit technology by addressing emissions control and precombustion (i.e., gasification and/or slagging combustion) strategies for the utilization of high ash and sulfur coals. Phase III will examine other coal-based fuel combustion systems, including those that co-fire wastes with coal-based fuels, and small-scale combustion systems for heating and/or power generation.

The term of the cooperative agreement is for three years. The estimated total value is $18,500,000 with a total DOD share of $15,000,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: John R. Columbia, Telephone: AC 412/892–6219.

Dated: June 5, 1992.

Carrol A. Lambton,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 92–14490 Filed 6–18–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Correction

The correct date for filing comments in Docket No. QF88-418-003 (57 FR 24486, June 9, 1992) should be June 19, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14478 Filed 6-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES92-40-000 et al.]

UtiliCorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES92-40-000]

June 9, 1992.

Take notice that on May 29, 1992, UtiliCorp United Inc. (UtiliCorp) filed an application with the Federal Energy Regulatory Commission under Section 204 of the Federal Power Act requesting authorization to issue up to and including 2,500,000 shares of common stock, par value $1.00 per share, pursuant to UtiliCorp's Restated Savings Plan and to issue up to and including 1,000,000 shares of common stock, par value $1.00 per share, pursuant to UtiliCorp's Employee Stock Purchase Plan. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Comment date: June 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corp.

[Docket No. ER92-63-000]

June 9, 1992.

Take notice that on June 3, 1992, Central Vermont Public Service Corporation tendered for filing an amendment to its October 4, 1992 filing in this docket. Central Vermont states that the amendment includes a revised contract and additional explanations and cost support for the contract and that the amendment was made at the request of Commission staff.

Central Vermont requests that the Commission waive its 60-day notice requirement in order to allow the contract to become effective in accordance with its terms.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER92-384-000]

June 9, 1992.

Take notice that on June 2, 1992, Western Resources, Inc. (formally named The Kansas Power and Light Company (KPL) filed to withdraw its March 16, 1992 filing which was to revise Exhibits 4A to Transmission Agreements with Kansas Gas and Electric Company, WestPlains Energy Division, UtiliCorp United, Inc., and Missouri Public Service Division, UtiliCorp United, Inc.

Western Resources, Inc. states that copies of this Notice of Withdrawal were served upon Kansas Gas and Electric Company, WestPlains Energy Division, UtiliCorp United, Inc., Missouri Public Service Division, UtiliCorp United, Inc., and the Utilities Division of the Kansas Corporation Commission.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power and Light Co.

[Docket No. ER92-440-000]

June 9, 1992.

Take notice that on June 3, 1992, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission supplemental material relating to the above docket.

WP&L requests expedited consideration of the filing and an effective date of April 1, 1992. Accordingly, WP&L requests waiver of the Commission's notice requirements.

Comment date: July 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Co.

[Docket No. ER92-484-000]

Errata: June 9, 1992.
Notice of Filing: June 1, 1992.

Take notice that the Notice of Filing issued on June 1, 1992, in Docket No. ER92-582-000 should have been issued in Docket No. ER92-484-000.

6. The Washington Water Power Co.

[Docket No. ER92-609-000]

June 9, 1992.

Take notice that on June 3, 1992, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 Service Agreements under WWP's FERC Electric Tariff Volume No. 4.

A copy of the filing was mailed the parties of the new Service Agreements.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Central Power and Light Co.

[Docket No. ER92-610-000]

June 9, 1992.

Take notice that on June 2, 1992, Central Power and Light Company (CPL) submitted for filing executed Service Agreements providing for full requirements service under CPL's FERC Electric Tariff to Magic Valley Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., South Texas Electric Cooperative, Inc. and Medina Electric Cooperative, Inc. (collectively, the Non-Generating Customers). CPL filed the Service Agreements to implement the Stipulation and Agreement of Settlement dated December 31, 1990, that served as the basis upon which CPL, the Non-Generating Customers and the Commission's trial staff settled Docket No. ER90-289-000, as approved by the Commission in that proceeding.

CPL requests that the Service Agreements be accepted for filing and made effective as of January 1, 1990, in accordance with their terms. In that connection, CPL requests waiver of the Commission's notice requirements.

Copies of the filing have been served on each of the Non-Generating Customers and on the Public Utility Commission of Texas.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER92-612-000]

June 9, 1992.

Take notice that Entergy Services, Inc. (Entergy Services), as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., on June 3, 1992, tendered for filing an Interchange Agreement with City Utilities of Springfield, Missouri.

Entergy Services requests an effective date of May 22, 1992 for the Interchange Agreement. Entergy Services requests waiver of the Commission's notice requirements under § 35.11 of the Commission's regulations.

Comment date: June 23, 1992, in accordance with Standard Paragraph E end of this notice.

9. Robert H. Smith

[Docket No. ID-2724-000]

June 11, 1992.

Take notice that on June 3, 1992, Robert H. Smith filed an application for

authorization under section 305(b) of the Federal Power Act to hold the following positions:

Director—Southern California Edison Company

Director, President and Chief Operating Officer—BankAmerica Corporation, Bank of America National Trust & Savings Association

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Henry T. Segerstrom

[Docket No. ID–2723–000]

June 11, 1992.

Take notice that on June 3, 1992, Henry T. Segerstrom filed an application for authorization under section 305(b) of the Federal Power Act to hold the following positions:

Director—Southern California Edison Company

Director—BankAmerica Corporation

Advisory Director—Bank of America National Trust & Savings Association

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Power Inc.

[Docket No. ER92–611–000]

June 11, 1992.

Take notice that on June 3, 1992, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with City Utilities of Springfield, Missouri.

EPI requests an effective date of May 22, 1992 for the Interchange Agreement. EPI requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's regulations.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc. and Kansas Gas and Electric Company

[Docket No. EC91–2–001]

June 11, 1992.

Take notice that on June 1, 1992, The Western Resources, Inc. (formally named The Kansas Power and Light Company) and Kansas Gas and Electric Company, a wholly owned subsidiary of Western Resources, Inc. tendered for filing in compliance with the Commission's September 10, 1991 order, service schedules, pricing schedules, and a form of standard service agreement for firm and non-firm transmission services. The filing also contained an initial estimate of remaining available transmission capacity and a general methodology for calculating available firm transmission capacity.

Copies of the filing were served upon the parties in this docket and upon the wholesale jurisdiction customers of the two companies.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Co.

[Docket No. ER92–584–000]

June 11, 1992.

Take notice that on May 28, 1992, Arizona Public Service Company (APS) tendered for filing a revised Exhibit A to the Wholesale Power Supply Agreement (Agreement) between APS and the United States of America, Bureau of Indian Affairs on Behalf of the Colorado River Indian Irrigation Project (CRIIP) (APS–FPC Rate Schedule No. 65). Exhibit A lists contract Demands applicable under the Agreement.

No change from the currently effective rate or revenue levels is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on CRIIP and the Arizona Corporation Commission.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Yankee Atomic Electric Co.

[Docket No. ER92–592–000]

June 11, 1992

Take notice that on June 1, 1992, Yankee Atomic Electric Company (Yankee) tendered for filing, pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission's regulations, an amendment to the Power Contracts for the sale of electricity for resale to ten New England utilities. Yankee states that the amendment is designed to clarify the obligations of the purchasing utilities following the decision to cease power production at Yankee's nuclear generating plant. Yankee's filing also includes adjustments to amounts being amortized for unburned nuclear fuel, materials and supplies and a revised schedule of decommissioning changes, based on a new study of decommissioning costs.

Yankee states that the rate change proposed would, principally as a result of an increase in decommissioning charges, increase Yankee's rates by $28.4 million annually, but that the combined effect of the decision to cease power production at its generating plant and of this filing is to reduce rates.

Yankee states that copies of its filing have been provided to its wholesale customers and to state regulatory commissions in Connecticut, Vermont, New Hampshire, Massachusetts, Maine and Rhode Island.

Comment date: June 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Co.

[Docket No. ER92–600–000]

June 11, 1992.

Take notice that on June 1, 1992, New England Power Company (NEP) submitted for filing a Power Sales Contract with the Central Vermont Public Service Corporation for up to a 100 megawatt sale of capacity and energy from NEP's Salem arbor Unit No. 4 facility. NEP requests waiver of the Commission's regulations to allow this Contract to become effective on May 1, 1992.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Consumers Power Co.

[Docket No. ER92–617–000]

June 11, 1992.

Take notice that on June 5, 1992, Consumers Power Company (Consumers) tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined effective May 1, 1992 using year-end 1991 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were reduced from $17,349.00 to $17,277.00.

Consumers requests an effective date of May 1, 1992, and therefore requests waiver of the Commission's notice requirements.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Pacific Gas and Electric Co.

[Docket No. ER92–457–000]

June 11, 1992

Take notice that on June 5, 1992, Pacific Gas and Electric Company tendered for filing an amended filing under FERC Docket No. ER92–457–000. This filing amends the filing made on April 11, 1992, which affects Rate Schedule FERC No. 79, between PG&E

and the Western Area Power Administration (Western).

The proposed amended filing submits a previously filed letter agreement between PG&E and Western dated May 2, 1986 and a table showing the rates of return used in developing rates for the Capacity Account and Energy Account No. 2 (Accounts) for the years 1985 and 1990. The 1992 letter agreement originally filed pertains to pricing of power deposited by Western with PG&E. In addition, certain provisions of the PG&E-Western May 2, 1986 letter agreement are modified and extended by the PG&E-Western February 7, 1992 letter agreement filed in this Docket. The amended filing also includes a request for waiver of the notice requirements to allow a retroactive effective dated of January 1, 1985 for this Docket.

Comment date: June 25, 1992, in accordance with Standard Paragraph E end of this notice.

18. Alabama Power Co.

[Docket No. ER92-614-000]

June 11, 1992.

Take notice that on June 4, 1992, Alabama Power Company (APCo) tendered for filing three (3) separate Transmission Service Delivery Point Agreements dated May 6, 1992, which reflect an increase in the maximum capacity of certain existing delivery points and/or the addition of certain delivery points of Baldwin County Electric Membership Corporative, Inc., dated August 28, 1980 (designated FERC Rate Schedule No. 147). The parties request an effective date for each of these Transmission Service Delivery Point Agreements of May 6, 1992.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Green Mountain Power Corp.

[Docket No. ER92-460-000]

June 11, 1992.

Take notice that on June 5, 1992, Green Mountain Power Corporation (GMP) tendered for filing proposed Attachments A and B to an Agreement dated as of November 1, 1991 between GMP and Vermont Electric Generation and Transmission Cooperative, Inc. which designated certain generating resources of GMP from which capacity and energy sold to VEG&T may be provided and specified the maximum capacity charge to be assessed for sale from each generating source owned by GMP.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power & Light Co.

[Docket No. ER92-615-000]

June 11, 1992.

Take notice that on June 5, 1992, Florida Power & Light Company (FPL), tendered for filing a document entitled Amendment Number Two to the Restated and Revised Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (FMPA).

FPL states that under Amendment Number Two, FPL and FMPA have agreed to amend the Restated and Revised Transmission Agreement such that FPL may provide transmission service for additional FMPA resources in accordance with the provisions of the Restated and Revised Transmission Agreement.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment Number Two be made effective June 1, 1992. FPL states that a copy of the filing was served on the Florida Municipal Power Agency and the Florida Public Service Commission.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Camilla C. Frost

[Docket No. ID-2725-000]

June 11, 1992.

Take notice that on June 3, 1992, Camilla C. Frost filed an application for authorization under section 305(b) of the Federal Power Act to hold the following positions:

Director—Southern California Edison Company

Director—BankAmerica Corporation, Bank of America National Trust & Savings Association

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Gulf States Utilities Co.

[Docket No. ES92-41-000]

June 11, 1992.

Take notice that on June 5, 1992, Gulf States Utilities Company (Gulf States) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to enter into a Guaranty Agreement and related agreements with respect to the issuance of up to $48,285,000 of Pollution Control Revenue Refunding Bonds to be issued by The Industrial Development Board of the Parish of Calcasieu, Inc., in the State of Louisiana, to refund $48,285,000 of Pollution Control Revenue Bonds issued in 1982 to finance certain pollution control facilities for Gulf States. Also, Gulf States requests exemption from the Commission's competitive bidding regulations.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Minnesota Power & Light Co.

[Docket No. ER92-569-000]

June 11, 1992.

Take notice that on May 20, 1992, Minnesota Power & Light Company (MP&L) tendered for filing a Notice of Cancellation of its FERC Rate Schedule No. 11 with Lake Superior District Power Company.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Southern California Edison, et al.

[Docket No. ER92-628-000]

June 12, 1992.

Take notice that on June 9, 1992, Southern California Edison Company (Edison), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) (collectively, the Companies) tendered for filing as a rate schedule, the Coordinated Operations Agreement between Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Participants in the California-Oregon Transmission Project.

The Coordinated Operations Agreement sets forth the rates, terms, and conditions governing the coordinated operation of the Pacific AC Intertie and the California-Oregon Transmission Project for the purpose of exporting and importing power from and to the Pacific Northwest.

The Companies request that the rate schedule go into effect as soon as possible after passage of the 60-day notice provision set forth in 18 CFR 35.3, but in no event later than October 1, 1992.

Copies of the filing were served upon: The California Public Utilities Commission; Western Area Power Administration; Transmission Agency of Northern California; California Department of Water Resources; Carmichael Water District; Plumas-Sierra Rural Electric Cooperative; Sacramento Municipal Utility District; Modesto Irrigation District; Turlock Irrigation District; the California Cities of Alameda, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Ukiah, and Vernon; Southern San Joaquin Valley Power Authority; San

Juan Suburban Water District; and the Shasta Dam Area Public Utility District.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Central Vermont Public Service Corp.

[Docket No. ER92-619-000]

June 12, 1992.

Take notice that on June 8, 1992, Central Vermont Public Service Corporation (CVPS) tendered for filing an amended Exhibit C to the service agreement for electric service provided to New Hampshire Electric Cooperative, Inc. (NHEC) under CVPS' FPC Electric Tariff, First Revised Volume No. 1. Exhibit C designates a new 46 kV point of delivery at the existing CVPS Maple Avenue substation in Claremont, New Hampshire.

CVPS requests waiver of the 60-day notice requirement to permit the Exhibit C to become effective on July 1, 1992. If CVPS' request for waiver of the notice requirement is denied, CVPS requests that the Exhibit C be allowed to become effective 60 days from the date of filing.

Central Vermont states that this filing has been posted as required by the Commission's regulations and that it has served copies of this filing upon the NHEC, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Connecticut Valley Electric Co., Inc.

[Docket No. ER92-620-000]

June 12, 1992.

Take notice that on June 8, 1992, Connecticut Valley Electric Company Inc. (CVEC) filed to designate a new delivery point for transmission service provided to New Hampshire Electric Cooperative, Inc. (NHEC) under CVEC's Rate Schedule FERC No. 8. CVEC's parent company, Central Vermont Public Service Corporation (CVPS), will deliver power at a new 46 kV point of delivery at the existing CVPS Maple Avenue substation in Claremont, New Hampshire. CVEC will wheel the power delivered to the Maple Avenue substation over its existing distribution lines to a point in North Charleston, New Hampshire where NHEC will take delivery.

CVEC requests waiver of the 60-day notice requirement to add the new delivery point effective on July 1, 1992. If CVEC's request for waiver of the notice requirement is denied, CVEC requests that its request for a new delivery point be allowed to become effective 60 days from the date of filing.

CVEC states that this filing has been posted as required by the Commission's regulations and that it has served copies of this filing upon the NHEC, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. PSI Energy, Inc.

[Docket No. EC92-17-000]

June 12, 1992.

Take notice that PSI Energy, Inc., formerly named Public Service Company of Indiana, Inc., on June 8, 1992, filed an Application with the Federal Energy Regulatory Commission (FERC or Commission) pursuant to section 203 of the Federal Power Act for authorization to purchase certain transmission facilities from the City of Logansport, Indiana, which, except for their ownership, would be subject to this Commission's jurisdiction.

Copies of the filing were served upon the Indiana Utility Regulatory Commission.

Comment date: June 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. Iowa Public Service Co.

[Docket No. ER92-593-000]

June 12, 1992.

Take notice that on June 1, 1992, Iowa Public Service Company (Iowa) on behalf of its division, IPS Electric, tendered for filing Notices of Cancellation. Iowa states that these Notices of Cancellation are a result of IPS's review of the RATIS report.

Comment date: June 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Southern California Edison Co.

[Docket No. ER92-628-000]

June 12, 1992.

Take notice that on June 10, 1992, Southern California Edison Company (Edison) tendered for filing a Letter Agreement (Agreement), executed on April 30, 1992, for Environmental Energy Exchange Between Edison and the Bonneville Power Administration (BPA).

The Agreement provides the terms and conditions whereby Edison and BPA will exchange energy and other services to enhance Columbia River flow characteristics for anadromous fish migration in the Pacific Northwest while enhancing Southern California air quality by reducing power plant emissions.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. Pacific Gas and Electric Co.

[Docket No. ER92-491-000]

June 12, 1992.

Take notice that on June 10, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an amended filing in FERC Docket No. ER92-491-000. FERC Docket No. ER92-491-000 initially submitted, to the Commission, a settlement agreement resolving disputes regarding the nature of transmission service provided by PG&E to the Lawrence Livermore National Laboratory (LLNL). This settlement agreement was between PG&E, the Western Area Power Administration (Western), and the United States Department of Energy, San Francisco Field Office (DOE/SF).

Subsequent to the filing, FERC Staff contacted PG&E and requested that PG&E amend its filing by submitting a page of the settlement agreement which had been omitted from the filed copies and by cost supporting a special facilities rate. PG&E's amended filing includes the previously omitted page, and an explanation that before charging any special facilities rate PG&E will file and obtain Commission acceptance.

Copies of this filing have been served upon DOE/SF, Western, the CPUC and the parties to the Service List to FERC Docket No. ER91-499-000.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. PacifiCorp

[Docket No. ER92-623-000]

June 12, 1992.

Take notice that on June 9, 1992, PacifiCorp, tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, Exhibit A (Revision No. 15, effective September 30, 1991) to the February 25, 1976 Transmission Agreement (PacifiCorp Rate Schedule FPC No. 123), between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State).

Exhibit A to the Transmission Agreement is revised annually in accordance with Article 6(b) of the Transmission Agreement, and specifies the projected maximum integrated demand in kilowatts which Tri-State desires to have transmitted to defined

Points of Delivery for a four year rolling period.

PacifiCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of September 30, 1991 be assigned, this date being consistent with the provisions of Article 6(b) of the Transmission Agreement.

Copies of this filing were supplied to Tri-State and the Wyoming Public Service Commission.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. Boston Edison Co.

[Docket No. ER92-621-000]

June 12, 1992.

Take notice that Boston Edison Company of Boston, Massachusetts (Edison) on June 8, 1992, tendered for filing a specification of the firm transmission service to be taken by New England Power Company (NEP) for NEP's Quincy-Weymouth service area under Edison's firm transmission tariff. Edison states that the filing does not change the terms and conditions of service or affect the rate level charged to NEP.

Copies of the filing have been served upon NEP and the Massachusetts Department of Public Utilities.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

33. Old Dominion Electric Cooperative

[Docket No. ER92-432-001]

June 12, 1992.

Take notice that Old Dominion Electric Cooperative (Old Dominion), on June 2, 1992, tendered for filing a clarification of its initial rate tariff pursuant to the instructions included in the May 18, 1992, letter order accepting Old Dominion's rate tariff for filing. Old Dominion's filing clarifies that the payroll expenses component in the formula described in Note P of the formulary rate does not include any costs already included in the A&G expense component of that formula. This filing is administrative in nature and has no effect on the rates and charges computed pursuant to the accepted formulary rate tariff.

Old Dominion has served copies of this filing on each of its wholesale customers, the Virginia State Corporation Commission, the Maryland Public Service Commission, the Delaware Public Service Commission, the Public Service Commission of West Virginia, the Rural Electrification Administration and the Bear Island Paper Company.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

34. Montaup Electric Co.

[Docket No. ER92-629-000]

June 12, 1992.

Take notice that on June 8, 1992, Montaup Electric Company (Montaup) filed an Amendment to an Agreement dated November 1, 1991 between Montaup and Bangor Hydro-Electric Company (Bangor) for the sale of capacity and energy from the Canal 2 Unit from Montaup to Bangor.

The initial Agreement was submitted for filing under Docket No. ER92-201-000 by letter dated November 25, 1991, and was accepted and designated as Montaup Rate Schedule No. 95 on January 13, 1992.

The Amendment provides Bangor with 20 MW of additional capacity and associated energy beginning June 1, 1992 and ending October 31, 1992. The demand and energy charges and all other terms and conditions remain the same as stated in the original Agreement as accepted for filing in Docket No. ER92-201-000. Montaup requests waiver of the 60-day notice requirement to permit the filing to become effective June 1, 1992.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

35. Schuylkill Energy Resources

[Docket No. QF85-720-003]

June 12, 1992.

On June 2, 1992, Schuylkill Energy Resources (Applicant), of 200 Mahantongo Street, Pottsville, Pennsylvania 17901, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(B) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in North Mahanoy Township, Schuylkill County, Pennsylvania. The facility consists of a circulating fluidized bed boiler and an extraction/condensing steam turbine generating unit. The primary energy source is anthracite coal culm. The net electric power production capacity of the facility is approximately 80 MW.

The certification of the facility was originally issued on October 3, 1986 (37 FERC ¶ 62,005 (1986)). The instant recertification is requested by the Applicant to include the alternative useful thermal outputs from the facility in addition to the useful thermal output previously certified by the Commission. All other facility characteristics remain unchanged as described in the previous certification.

Comment date: July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14479 Filed 6-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2300-002 et al.]

Hydroelectric Applications (James River-New Hampshire Electric, Inc., et al.); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New Major License.

b. *Project No.:* 2300-002.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* James River-New Hampshire Electric, Inc.

e. *Name of Project:* Shelburne Project.

f. *Location:* On the Androscoggin River, Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. George W. Hill, James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570-2489, (603) 752-4600.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* July 29, 1992.

k. *Status of Environment Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The Shelburne Project's principal features consist of a dam, an integral powerhouse, and impoundment, and appurtenant facilities. For the existing condition, the Project has a total nameplate generator capacity of 3.72 megawatts (MW) and an average annual generation of about 18,000 megawatt-hours (MWH). James River is proposing to raise the impoundment level by increasing the flashboards height by 1.7 feet. Due to this proposal the average annual generation would increase to 20,000 MWH. In detail, the existing and proposed project is described as follows:

(1) A concrete gravity dam, totaling about 551 feet long, consisting of (a) an 83-foot-long concrete spillway section, with a crest elevation of 724.5 feet mean sea level (msl), topped with pinned-flashboards of an existing height of 9 feet and a proposed height of 10.7 feet; (c) a gate section, about 88 feet long, with a crest elevation of 725.3 feet msl, having three drop wastegates, each about 25 feet wide by 10 feet high, separated by concrete piers about 5 feet wide; (d) a sluicegate structure about 27 feet long; (e) a non-overflow concrete retaining wall, about 95 feet long, with a crest elevation of 736.3 feet msl, topped with 2-foot-high permanent flashboards; and (f) a concrete dike, about 180 feet long, with a crest elevation of 737.8 feet msl;

(2) A brick and steel powerhouse, about 27 feet high by 68 feet wide by 150 feet long, with two additions, measuring 68 feet wide by 109 feet long and 40 feet wide by 40 feet long, equipped with (a) two 960 kilowatt (kW) Allis-Chalmers generators driven by 1,200 horsepower (hp) vertical Francis turbines, and (b) one 1,800 kW Allis-Chalmers generator driven by a 2,500 hp vertical Kaplan turbine, totaling (c) a rated capacity of 3,720 kW; (d) a hydraulic capacity of 3,150 cubic feet per second (cfs); (e) an existing average annual generation of 18,000 MHW; (f) a proposed average annual generation of 20,000 MWH; and (g) each having a designed head of 17 feet;

(3) An existing impoundment, about 7,000 feet long, having (a) a surface area of about 210 acres (AC); (b) a negligible usable storage capacity; and (c) a normal pool headwater elevation of 733.6 feet msl and tailwater elevation of 717.9 feet msl;

(4) A proposed impoundment, about 9,400 feet long, having (a) a surface area of about 250 AC; (b) a negligible usable storage capacity; and (c) a normal pool headwater elevation of 735.3 feet msl and tailwater elevation of 717.9 feet msl; and

(5) Appurtenant facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric power for use in the applicant's pulp and paper mills.

n. *This notice also consists of the following standard paragraph:* B1 and E.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washignton, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at James River-New Hampshire Electric, Inc., 50 Main Street, Berlin, NH, 03570–2489, (603) 752–4600.

2a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2347–001.

c. *Date filed:* December 23, 1991.

d. *Applicant:* Wisconsin Power and Light Company.

e. *Name of Project:* Janesville Central.

f. *Location:* On the Rock River near Janesville in Rock County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Norman E. Boys, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3086.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* July 29, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A reinforced concrete and timber gated spillway; (2) a reservoir with a surface area of 548 acres at surface elevation 769.1 feet. m.s.l. and a storage area of 3,675 acre feet; (3) a powerhouse containing two generating units each with a rated capacity of 250 kW; and (40) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 2,033,667 kWh.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104 Washington, DC 20426, or by calling (202) 208–1371. A copy is available for inspection and reproduction at Wisconsin Power and Light Company, 222 West Washington, Avenue, Madison, WI 53701–0192, or by calling (608) 252–3311.

3a. *Type of Application:* New Major License (Less than 5 MW).

b. *Project No.:* 2454–018.

c. *Date filed:* December 10, 1991.

d. *Applicant:* Minnesota Power & Light Company.

e. *Name of Project:* Sylvan Hydroelectric Project.

f. *Location:* On the Crow Wing River in Cass, Crow Wing, and Morrison County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stephen A. Kopish, Hydro Operations Manager, Minnesota Power & Light Company, 30 West Superior Street, Duluth, Minnesota 55802, (218) 772–2841.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* July 23, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The run-of-river project consists of: (1) A 35-foot-high, 1,249-foot-long dam; (2) a 1,275-acre impoundment with a surface elevation of 1170 feet; (3) a powerhouse containing three generating units with a total installed capacity of 1,800 kW; (4) step-up transformers; and (5) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 9,745 MWh.

m. *Purpose of Project:* All project energy generated would be put into the applicant's electrical grid and distributed to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Minnesota Power & Light Company, located at 30 West Superior Street,

Duluth, Minnesota 55802, or by calling Mr. Stephen A. Kopish at (218) 722–2841.

4a. *Type of Application:* New Major License (Less than 5 MW).

b. *Project No.:* 2532–005.

c. *Date filed:* November 25, 1991.

d. *Applicant:* Minnesota Power & Light Company.

e. *Name of Project:* Little Falls Hydroelectric Project.

f. *Location:* On the Mississippi River in Morrison County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stephen A. Kopish, Hydro Operations Manager, Minnesota Power & Light Company, 30 West Superior Street, Duluth, Minnesota 55802, (218) 722–2641.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* July 23, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The run-of-river project consists of: (1) A 30-foot-high, 900-foot-long concrete dam; (2) a 576-acre impoundment with a normal pool elevation of 1,107 feet; (3) two powerhouses, one containing four generating units with a total installed capacity of 3,920 MW, and one containing two generating units with a total installed capacity of 800 MW; and (4) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 26,117 MWh.

m. *Purpose of Project:* All project energy generated would be put into the applicant's electrical grid and distributed to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Minnesota Power & Light Company, located at 30 West Superior Street, Duluth, Minnesota 55802, or by calling Mr. Stephen A. Kopish at (218) 722–2641.

5a. *Type of Application:* New Major License.

b. *Project No.:* 2579–010.

c. *Date Filed:* December 9, 1991.

d. *Applicant:* Indiana Michigan Power Company.

e. *Name of Project:* Twin Branch Hydro Project.

f. *Location:* On the St. Joseph River in St. Joseph County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. B. H. Bennett, Assistant Vice President, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2930.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 22, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) A spillway composed of (a) a broad crested weir, the "north rollway section", 102.7 feet long, 10 feet wide and 23.2 feet high, located at the right end of the dam when facing downstream, topped with 5.1 feet high timber flash boards along the crest and constructed of timber cribbing capped with concrete, (b) a broad crested weir, the "south rollway section", 100.6 feet long, 10 feet wide and 23.2 feet high located on the right side of the powerhouse when facing downstream, topped with 5.1 feet high timber flash boards along the crest and constructed of timber cribbing capped with concrete, (c) a triangular broad crested weir, the "center Tainter gate section", 198.3 feet long, 5 feet wide and 16.3 feet high, located between the "rollway sections", constructed of timber cribbing capped with concrete, divided into seven segments each with pivoting steel arched Tainter gates approximately 25 feet wide by 11 feet high along the crest; (2) a reservoir with a surface area of 1,065 acres and a total volume of 9,700 acre-feet at the normal maximum surface elevation of 717.37 NGVD; (3) a powerhouse composed of, (a) an "L" shaped main section approximately 152 feet long, 36 feet wide and 35 feet high with an auxiliary section approximately 73 feet long, 31 feet wide and 59 feet high constructed of concrete with a flat membrane roof supported on steel trusses, (b) six turbine bays each approximately 61 feet long, 23 feet wide and 22 feet high constructed of reinforced concrete with steel 3-inch clear space bar racks (c) a twenty ton traveling hoist, (d) eight Kaplan vertical shaft, single runner, turbines, manufactured by Flygt Corp., rated at 860 hp with 20.8 feet of head, (e) eight Siemans Corp., 4,160 V, 60 hz, generators rated at 600 kW each; (4) a transmission system containing, (a) generator leads, (b) a 4-kV generator bus., (c) four 350 MCM, 3/c, 5-kV cables, (d) a 4/34.5 kV transformer and, (e) appurtenant facilities to connect to the 34.5-kV bus. There are approximately 5.4 acres of U.S. lands located within the project boundary. No changes are being proposed for this new license. The applicant estimates the average annual generation for this project would be 33,000 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* a copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Indiana Michigan Power Company, One Summit Square, Fort Wayne, IN, (219) 425–2930.

a. *Type of Application:* New Major License.

b. *Projects Nos.:* 2712–004

c. *Date Filed:* December 30, 1991.

d. *Applicant:* Bangor Hydro-Electric Company.

e. *Name of Project:* Stillwater Project.

f. *Location:* On the Stillwater Branch of the Penobscot, Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Frederick S. Samp, Bangor Hydro-Electric Company, 13 State Street, Bangor, ME 04401, (207) 945–5621.

i. *FERC Contact:* Robert Bell (dt) (202) 219–2806.

j. *Comment Date:* July 22, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The Stillwater Project's principal features consist of a very long, meandering dam, a powerhouse, an impoundment, and appurtenant facilities. The project has a total nameplate generator capacity of 1.95 megawatts (MW) and an average annual generation of about 13,120 megawatt-hours (MWH). In detail, the project is described as follows:

(1) A main concrete gravity dam, totaling about 1,720 feet long, with a maximum height of 22 feet at crest elevation 91.65 feet National Geodetic

Vertical Datum (NGVD), consisting of thirteen sections: (a) A non-overflow section, totaling 63 feet long, which serves as an abutment and wingwall, containing a 6-foot-wide unused stop log sluice gate; (b) a 381-foot-long primary spillway section, with a maximum height of 22 feet at a crest elevation of 91.65 feet (NGVD), topped with 2.0-foot-high pin-supported flashboards; (c) a 85-foot-long by 2-foot-wide by 2.5-foot-high leveling concrete course; (d) a 43-foot-long concrete sill section on top of a ledge island; (e) a 174-foot-long ogee section, with varying heights from 4 to 20 feet, topped with 2.0-foot-high pin-supported flashboards; (f) a 52-foot-long ogee section, with a maximum height of 9 feet, topped with a concrete curb, 15 inches wide by 25 inches high; (g) a 105-foot-long spillway section, with an average height of 6 feet; (h) a 42-foot-long spillway section, with a maximum height of 8 feet, topped with 1-foot-high pin-supported flashboards; (i) a 73.5-foot-long abutment section, with an average height of 4 feet; (j) a 187-foot-long non-overflow section, with varying heights from 3 to 12 feet, which abuts an abandoned powerhouse; (k) a 63-foot-long non-overflow section, which is part of the abandoned powerhouse's foundation; (l) a 197.5-foot-long section, with varying heights from 2 to 4 feet, abutting the old and existing powerhouses; and (m) a 162.5-foot-long non-overflow section, with a downstream-facing earth backfill, having a maximum height of 12 feet, topped with a 2-foot-high concrete curb and a driveway on top of the earth backfill;

(2) A concrete and wooden powerhouse, about 83.5 feet long by 32 feet wide by 45 feet high, equipped with four horizontal hydro-electrical generating units: (a) Three of which are rated at 450-kW each, with a net head of 18 feet and a hydraulic capacity range from 380 to 1,140 cubic feet per second (cfs), (b) and one rated at 600-kW, with at a net head of 18 feet and a hydraulic capacity of 560-cfs; and (c) all totaling a rated capacity of 1,950-kW, a hydraulic capacity range from 380 to 1,700-cfs, an average annual generation of about 13,120-MWH, and each having a net head of 18 feet;

(3) An impoundment, about 3.1 miles long, having (a) a surface area of about 300 acres; (b) a gross storage capacity of 3,040 acre-feet; (c) a normal headwater surface elevation of about 93.65 feet NGVD; and (d) a normal tailwater surface elevation of about 73.65 feet NGVD; and

(4) Appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $850,800.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Bangor Hydro-Electric Company, 33 State Street, Bangor, ME 04401, (207) 945–5621.

7a. *Type of Application:* Amendment of License.

b. *Project No.:* 5223–018.

c. *Date Filed:* December 26, 1991, supplemented May 19, 1992.

d. *Applicant:* International Falls Power Company.

e. *Name of Project:* International Falls Hydroelectric Project.

f. *Location:* The project is located of the Rainy River in Koochiching County, Minnesota. The dam extends between International Falls, Minnesota, and Fort Francis, Ontario and the project utilizes that portion of the dam that lies within the borders of the United States. The project affects lands administered by the Bureau of Land Management.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Richard Baxendale, Counsel for International Falls Power Co., One Jefferson Square, P.O. Box 50, Boise, ID 83728.

i. *FERC Contact:* Michelle Laabs, (202) 219–3274.

j. *Comment Date:* July 24, 1992.

k. *Description of Amendment:* International Falls Power Company requests approval of an as-built exhibit A for the International Falls Hydroelectric Project. The as-built exhibit A states an installed plant capacity of 14,450 kW. This is 3,650 kW greater than the authorized capacity of the project. Additionally, the hydraulic capacity of the turbines increased from 5,860 cfs to 8,137 cfs.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

8a. *Type of Application:* Major License.

b. *Project No.:* 10756–001.

c. *Date filed:* May 28, 1992.

d. *Applicant:* Blue Diamond South Pumped Storage Power Company, Inc.

e. *Name of Project:* Blue Diamond South Pumped Storage.

f. *Location:* Mostly on U.S. lands administered by the Bureau of Land Management, on two man-made reservoirs—on and near the Blue Diamond Hill—about 5 miles west of Las Vegas in Clark County, Nevada.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Iverson, Synergics, Inv. 191 Main Street, Annapolis, MD 21401, (410) 268–8820.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. *Description of Project:* The proposed project consists of: (1) a forebay—a lined earthen embankment reservoir with a capacity of 1,200 acre-feet, a surface area of 30.87 acres, and a maximum water elevation of 4,825 feet (msl); (2) a afterbay—a lined earthen embankment reservoir with a capacity of 1,200 acre-feet, a surface area of 31.43 acres, and a maximum water elevation of 3,317 feet (msl); (3) a five-section water conduit system connecting the forebay to the afterbay; (4) a underground, circular concrete powerhouse containing 2 pump-turbine and generator-motor units with a combined rated capacity of 200 MW; (5) a control building, 80 feet long and 60 feet wide, that is contiguous to the powerhouse; (6) a booster substation, about 300 feet square, with two transformers; (7) a 138-kV transmission line, 17,000 feet long, connecting the project substation to the Nevada Power Company's proposed substation; (8) a water line, 6 inches in diameter, to initially fill the system; and (9) appurtenant facilities.

k. In accordance with § 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, no later than July 27, 1992, and must serve a copy of the request on the applicant.

9a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11278–000.

c. *Date Filed:* April 13, 1992.

d. *Applicant:* Iowa Hydropower Development Corporation.

e. *Name of Project:* Mississippi River Lock & Dam No. 15 Davenport.

f. *Location:* On the Mississippi River, near Davenport, Iowa, in Scott County, Iowa, and Rock Island County, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Justin Rundle, Iowa Hydropower Development Corporation, 3900 Crosby Drive, suite #1620, Lexington, KY 40515.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* July 22, 1992.

k. *Description of Project:* The proposed project would utilize the existing Corps dam and would consist of the following facilities: (1) A proposed powerhouse consisting of four pit turbine-generator units rated at 7.25 megawatts (MW) each, for a total installed capacity of 29.0 MW: and (2) a new 35-kilowatt transmission line from the project powerhouse to the existing transmission lines at Davenport, Iowa. The total estimated average annual energy production of the proposed project is 144.2 gigawatthours. The applicant estimates that the cost of the studies under permit would be $200,000.

l. *This notice also consists of the following standard paragraphs:* A3, A7, A9, A10, B, C, and D2.

10a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11280–000.

c. *Date Filed:* April 17, 1992.

d. *Applicant:* Summit Hydropower.

e. *Name of Project:* Winnipesaukee River Hydroelectric Project.

f. *Location:* On the Winnipesaukee River, near Franklin and Northfield, in Merrimack and Belknap Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Duncan Broatch, Summit Hydropower, 92 Rocky Hill Road, Woodstock, CT 06281, (203) 974–1620.

i. *FERC Contact:* Mary Golato (dt) (202) 219–2804.

j. *Comment Date:* July 23, 1992.

k. *Competing Application:* Project No. 11281–000. Date Filed: April 17, 1992.

l. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing, reconstructed dam 150 feet long and 22 feet high; (2) an existing pond with a normal maximum surface of 408 feet mean sea level, a surface area of approximately 18.4 acres, and a gross storage capacity of approximately 56 acre-feet; (3) a proposed penstock 12 feet in diameter; (4) a proposed powerhouse containing one turbine-generator unit at an installed capacity of 6,372 kilowatts (kW) and a minimum flow unit located upstream of the powerhouse having an installed capacity of 296 kW; (5) a proposed 34.5-kilovolt transmission line approximately 250 feet long; and (6) appurtenant facilities. The dam is owned by the Public Service Company of New Hampshire. The average annual generation would be 25,788,730 kilowatthours, and the estimated cost of the studies under permit would be $164,000.

m. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, and D2.

11a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11281–000.

c. *Date filed:* April 17, 1992.

d. *Applicant:* Zeos J. Dimos and James C. Katsekas.

e. *Name of Project:* Franklin Hydroelectric Project.

f. *Location:* On the Winnipesaukee River, near Franklin, in Merrimack and Belknap Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Zoes J. Dimos and James C. Katsekas, 27 Pimlico Ct., Bedford, New Hampshire, (603) 669–7082.

i. *FERC Contact:* Mary Golato (dmt) (202) 219–2804.

j. *Comment Date:* July 29, 1992.

l. *Description of Project:* The proposed project would consist of the following facilities: (1) A rehabilitated concrete gravity dam 200 feet long and 22 feet high; (2) a proposed reservoir with a surface area of 40 acres at a surface elevation of 405 feet mean sea level, and a storage of approximately 400 acre-feet; (3) a proposed penstock 10 feet in diameter; (4) a proposed powerhouse containing one turbine-generator unit at an installed capacity of 5.8 megawatts; (5) a proposed 300-kilowatt generator/turbine located at the dam; (6) a 34.5-kilovolt transmission line; and (7) appurtenant facilities. The dam is owned by the Public Service Company of New Hampshire. The average annual generation would be 26 gigawatthours. The estimated cost of the studies under permit would be $150,000.

m. *This notice also consists of the following standard paragraphs:* A3, A7, A9, A10, B, C, and D2.

12a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL92–27–000.

c. *Date filed:* May 12, 1992.

d. *Applicant:* Peter Fox Sipp, Jr.

e. *Name of Project:* McBean Creek Project.

f. *Location:* Hephzibah, Richmond County, GA.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Peter Fox Sipp, Jr., 5260 Story Mill Road, Hephzibah, GA 30815, (704) 625–8396.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* July 24, 1992.

k. *Description of Project:* The proposed McBean Creek Project would consist of: (1) A 36-to-48-inch wide, 14-foot-diameter paddle wheel; (2) a 36-to-40-inch-high, 10-to-15-foot-long diversion wall; (3) a 12-volt alternator and a 24-volt D.C. generator, connected to the paddle wheel by a series of belts and pulleys, producing approximately 600 watts of power; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to use energy produced on-site.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a

notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later that 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rule may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "Protest" or "Motion to Intervene;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the

Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: June 12, 1992, Washington, DC

Lois D. Cashell,

Secretary.

[FR Doc. 92-14411 Filed 6-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-526-000, et al.]

Northwest Pipeline Corporation, et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corp.

[Docket No. CP92-526-000]

June 9, 1992.

Take notice that on June 4, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92-256-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to reallocate firm service between two delivery points to Washington Natural Gas Company (Washington Natural) under Northwest's Rate Schedule ODL-1, under the certificate issued to Northwest in Docket No. CP82-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that it is presently authorized to provide up to 150,000 dekatherms per day of firm sales service to Washington Natural under Rate Schedule ODL-1. Northwest also states that it is presently authorized to provide up to 156,733 dekatherms per day of firm transportation service to Washington Natural under Rate Schedule FT-1. It is stated that the combined firm sales and transportation delivery obligation at the South Seattle, Washington delivery point to Washington Natural is limited to the maximum daily delivery obligation (MDDO) of 53,000 dekatherms per day and the Fredrickson, Washington delivery point is limited to 10,000 dekatherms per day. Northwest requests authorization to reallocate 5,000 dekatherms per day of firm MDDO from the South Seattle, Washington delivery point to the Fredrickson, Washington delivery point under its currently effective Rate Schedule ODL-1 service agreement with Washington Natural. Northwest states that no facility modifications would be involved with this proposal.

Comment date: July 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. CNG Transmission Corp.

[Docket No. CP92-527-000]

June 9, 1992.

Take notice that on June 4, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, WV, 26301 filed in Docket No. CP92-527-000, a request pursuant to §§ 157.205, 157.211 and 157.116(b) of the Commission's Regulations under the Natural Gas Act, to abandon by sale 7,189 feet of 6" pipeline and associated facilities, including sales tapes to Pennzoil Products Company, all as fully set forth in the request which is on file with the Commission and open to public inspection.

CNG explains that it will abandon pipeline No. H-10176 because the related gas purchases have been removed from Commission jurisdiction under the Natural Gas Act by virtue of the Wellhead Decontrol Act of 1989. Hope Gas, Inc. (Hope) who purchases gas for resale from CNG for utility residential usage on the line has agreed and has made arrangements to transfer its customers to Pennzoil, a public utility within the state of WV.

Comment date: July 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Border Pipeline Co.

[Docket No. CP92-530-000]

June 11, 1992.

Take notice that on June 8, 1992, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-530-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing receipt point as a delivery point by displacement only to Foothills Pipe Lines, Ltd. (Foothills) in Phillips County, Montana, under Northern Border's blanket certificate issued in Docket No. CP84-420-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern Border states that the natural gas volumes delivered by displacement to Foothills at the proposed delivery point are volumes being transported by Northern Border under terms and conditions of an IT-1 transportation agreement to provide backhaul transportation for Poco Petroleums Ltd. and pursuant to Northern Border's Order 436/500 blanket authorization.

Northern Border further states that the total quantities of natural gas to be delivered by displacement to Foothills would not exceed presently authorized quantities and the change is not prohibited by Northern Border's existing tariff. Northern Border asserts that it has sufficient capacity to perform this backhaul service without detriment or disadvantage to any other customer.

Comment date: July 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Co.

[Docket No. CP92-528-000]

June 11, 1992.

Take notice that on June 5, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124 filed in Docket No. CP92-528-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a small volume measuring station and appurtenant facilities as a new delivery point to accommodate natural gas deliveries to Peoples Natural Gas Company, Division of UtiliCorp, Inc. (Peoples) for redelivery to Coronado Feed Yard, Inc. (Coronado) under the blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that the estimated volumes proposed to be delivered to Peoples is 50.4 Mcf per day and 18,396 Mcf on an annual basis. Northern further states that the volumes proposed to be delivered to Peoples at the proposed delivery point will be within the currently authorized level of entitlements for Peoples, and that the required volumes for Coronado will be served from the firm entitlements currently, assigned to other Kansas non-residential, under Northern's Argus Rate Schedule. Northern further states that it will be reimbursed for all costs associated with the installation of the proposed delivery point.

Comment date: July 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Co.

[Docket No. CP92–529–000]

June 11, 1992.

Take notice that on June 5, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–529–000 a request pursuant to §§ 157.205 and 157.212) for authorization to increase deliveries of natural gas to Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples), at an existing delivery point, and to construct and operate related facilities under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to increase deliveries of natural gas to Peoples at the East Big Marine Lake, Minnesota, delivery point, as well as to construct and operate larger capacity facilities to accommodate those deliveries. Northern states that the total proposed peak day and annual volumes are 212 Mcf per day and 3,780 Mcf, respectively. Northern further states that the proposed volumes are within the currently authorized level of firm entitlements for Peoples. Northern also states that the deliveries of gas would be served from the total firm entitlements currently assigned to the community of Pine City. Northern explains that Peoples has not requested that any firm entitlements be assigned to this delivery point.

Northern states that, in addition to jurisdictional gas sales to Peoples under Northern's Rate Schedule CD–1, gas would be transported under Rate Schedule FT–1 for delivery to Peoples at the proposed delivery point. Northern also states that the end use of the gas would be for residential, commercial, and industrial purposes. It is stated that the cost of upgrading the facilities is estimated to be $24,678. It is further stated that there would be a contribution in aid of construction required by Peoples of the entire amount.

Comment date: July 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corp.

[Docket No. CP92–532–000]

June 12, 1992.

Take notice that on June 10, 1992, Mississippi River Transmission Corporation (MRT), 900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP92–532–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an additional delivery point for an existing resale customer, under the authorization issued in Docket No. CP82–489–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT requests authorization to construct and operate facilities necessary to provide an additional point of delivery for Arkansas Louisiana Gas Company (ALG), an existing firm sales customer served under MRT's Rates Schedule CD–1. The proposed delivery point would serve a customer located near the community of England, Arkansas. MRT states that it would supply an estimated 27 MMBtu of natural gas on a peak day and an estimated 782 MMBtu of natural gas on an annual basis at the proposed delivery point.

MRT states that it provides firm delivery of natural gas to ALG at various delivery points for resale. MRT seeks to install a 1-inch tap and appurtenant facilities to be located on MRT's existing right-of-way. MRT states that the point of delivery will be on MRT's Main Line No. 1 located in the NW/4 of the NE/4 of Section 35, T1S R8W, Lonoke County, Arkansas. It is stated that ALG will own a meter and appurtenant facilities which will also be located on MRT's right-of-way. The gas will be used by ALG's customers for commercial as well as domestic uses including heating, cooking and water heating.

According to MRT, the additional quantity of gas to be provided through the proposed delivery point will not result in an increase in the daily or annual quantities MRT is authorized to deliver to ALG. It is estimated that the cost of the facilities to be installed is $4,775. MRT states that ALG will reimburse MRT for all costs associated with the facilities and the application filing fee.

MRT states that its FERC Gas Tariff does not prohibit the addition of new delivery points and that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers.

Comment date: July 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Co.

[Docket No. CP92–531–000]

June 12, 1992.

Take notice that on June 9, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–531–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an existing delivery point to accommodate increased deliveries of natural gas to Northern States Power Company (NSP) in Washington County, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Northern requests authorization to upgrade the Hugo, Minnesota, town border station, in order to serve a portion of NSP's requirements for St. Paul, in addition to those for the community of Hugo. It is stated that the increased capacity is needed to reflect changes by NSP in its distribution system. It is asserted that the deliveries will remain within NSP's existing firm sales and transportation entitlements from Northern. Northern proposes to use the upgraded facilities to deliver to NSP 50,000 Mcf of gas on a peak day and 4,562,500 Mcf of gas on an annual basis for residential, commercial and industrial end uses. The cost of the upgrade is estimated at $546,000.

Comment date: July 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–14478 Filed 6–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC81-9-008]

Texas Gas Transmission Corp.; Compliance Filing

June 15, 1992.

Take notice that on June 4, 1992, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, tendered for filing in Docket No. TC81-9-008 the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Third Revised Sheet No. 96
Second Substitute Second Revised Sheet No. 194
Substitute Second Revised Sheet No. 195
Second Substitute Second Revised Sheet No. 196
Second Substitute First Revised Sheet No. 197

Texas Gas proposes a November 1, 1991, effective date for the above tariff sheets and asks for any waivers which may be necessary to accept this compliance filing.

Texas Gas explains that these tariff sheets revise Section 10.5 of its General Terms and Conditions and its Index of Entitlement in compliance with the Commission's May 5, 1992, order in the above captioned proceeding. In the May 5th order, the Commission instructed Texas Gas to eliminate certain language relating to its curtailment demand credit charge and any consideration of D-2s when establishing quantity entitlements with regard to Texas Gas' sales curtailment plan. Texas Gas asserts that it has fully complied with the Commission's order except for three new customers. Texas Gas explains that Citizens Gas & Coke Utility, Dayton Power and Light Company, and City of Gallaway, Tennessee have no historic quantities on which to establish their base period entitlement. Accordingly, Texas Gas requests a limited waiver or modification of the Commission's May 5, 1992, order for these three customers in order for Texas Gas to continue to base their quantity entitlements on D-2 levels in the absence of historic data. In all other circumstances, Texas Gas asserts that the revised Index of Quantity Entitlements submitted herein has eliminated consideration of D-2s pursuant to the Commission's May 5th order.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before June 25, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14477 Filed 6-18-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-09-NG]

Alcorn Trading Co., Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Alcorn Trading Company, Inc. to export up to 100 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-14501 Filed 6-18-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-33-NG]

Amoco Canada Marketing Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Amoco Canada Marketing Corp. blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-14493 Filed 6-18-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-32NG]

Anadardo Trading Co.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Anadarko Trading Company blanket authorization to export up to 108 Bcf of natural gas to Mexico over a two-year term, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-14492 Filed 6-18-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket Nos. 92-36-NG, 92-37-NG, 92-41-NG]

Public Service Department, the City of Burbank, CA, et al.; Applications For Long Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of three applications to import natural gas from Canada, as follows:

Applicant name and docket No.	Filing date	Import volumes requested
Public Service Department, City of Burbank (Burbank) 92-36-NG.	3-17-92	4,817 Mcf/day.
Public Service Department, City of Glendale (Glendale) 92-37-NG.	3-21-92	4,074 Mcf/day.
Water and Power Department, City of Pasadena (Pasadena) 92-41-NG.	3-24-92	4,074 Mcf/day.

The gas will be purchased on a firm basis under the terms of similar gas sales agreements between the above-listed applicants and Unigas Corporation (Unigas), and will be imported at the U.S./Canada border near Kingsgate, British Columbia (B.C.) through the pipeline facilities of Pacific Gas Transmission (PGT). Imports under the agreements are proposed to begin on the later of the date of first delivery or November 1, 1993, and will extend through October 31, 1999.

The applications are filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 20, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Susan K. Gregersen, Office of Fuels Programs Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

1. Background

All three applicants are municipalities organized under the laws of the State of California. Burbank, Glendale, and Pasadena all purchase natural gas to generate electricity to meet the needs of residential, commercial and industrial customers. Unigas, the marketing company with whom applicants have contracted to purchase firm gas supplies, is a Canadian corporation, with its principal place of business in Calgary, Alberta. Unigas is a subsidiary of Union Energy, Inc., a Canadian energy company engaged in the exploration, development, production, transportation, storage and marketing of natural gas.

2. Contract Pricing Provisions

Applicants state that the contracts with Unigas were negotiated on an arms-length basis, and are designed to provide price-competitive and reliable gas supplies. Applicants assert that the gas supplies will remain competitive because the contract pricing provisions are structured to conform to changing market conditions. The commodity price will be calculated on a yearly basis, using a base price index adjusted to reflect gas prices from the Alberta and southwest U.S. markets.

3. Transportation Arrangements

All three applicants have signed firm transportation agreements with PGT and Pacific Gas & Electric Company (PG&E). Under the terms of these agreements, PGT would transport the gas from Kingsgate, B.C., to the Oregon/California border near Malin, Oregon. PGT recently obtained a certificate of public convenience and necessity from the Federal Energy Regulatory Commission (FERC) authorizing the construction of new pipeline facilities, otherwise known as the PGT/PG&E Expansion Project. See 56 FERC ¶ 61,192 (1992). The certificate would enable PGT to transport the proposed gas volumes for these three applicants, as well as additional volumes for other shippers. PG&E would then transport the gas from Malin, Oregon, to Kern River Station, California, which is the point of interconnection with Southern California Gas Company (SoCalGas). Finally, the gas will be transported by SoCalGas to Burbank, Glendale, and Pasadena under existing transportation tariffs.

Decisions on these applications will be made consistent with DOE's import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In long-term arrangements such as these, other matters that will be considered in making a public interest determination include need for the gas and security of the long-term supply. Parties, especially those that may oppose these applications, should comment on these issues as set forth in the policy guidelines regarding the requested import authorizations. The applicants assert that imports made under the proposed arrangements will be competitive and otherwise consistent with DOE import policy. Parties opposing these arrangements bear the burden of overcoming these assertions. All parties should be aware that if the requested import arrangements are approved, the authorizations will be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price, in order for DOE to monitor its natural gas import program.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. DOE has previously considered the potential environmental effects of the PGT/PG&E Expansion Project (*i.e.*, the addition of pipeline looping, compression, and metering facilities on the PGT/PG&E system). On May 22, 1992, a Record of Decision (ROD) was published in the **Federal Register** (57 FR 21784) which addressed the environmental aspects of granting eight blanket applications to import Canadian natural gas under DOE/FE Opinion and Order No. 619. In the ROD, DOE concluded that the additional facilities planned by PGT/PG&E could be built and operated in a manner which would adequately protect the environment. Under the import arrangements proposed by Burbank, Glendale, and Pasadena, PGT and PG&E would only be required to dedicate some of the expanded pipeline capacity to transport the proposed volumes. Therefore, approval of these applications would not change the environmental impacts analyzed in the ROD.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person who wants to become a party to any of the three proceedings and to have written comments considered as the basis for the decision on any of the applications must, however, file a separate motion to intervene or notice of intervention, as applicable, in each proceeding. The filing of a protest with respect to these applications will not serve to make the protestant a party to any of the proceedings, although protests and comments received from persons who

are not parties will be considered in determining the appropriate action to be taken on each application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on each application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Issued in Washington, D.C., on June 12, 1992.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Fossil Energy.

[FR Doc. 92–14495 Filed 6–18–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–49–NG]

CU Energy Marketing Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CU Energy Marketing Inc. (CUEM) blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after June 16, 1992, the day which CUEM's current blanket authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–14494 Filed 6–18–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–40–NG]

Enmark Gas Corp.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department oif Energy gives notice that it has issued an order granting EnMark Gas Corp. blanket authorization to export to Canada a total of 40 Bcf of natural gas over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–14497 Filed 6–18–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–104–NG]

Global Petroleum Corp.; Order Granting Blanket Authorization to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Global Petroleum Corp. to import and export up to 100 Bcf of natural gas, including liquefied natural gas, from and to Canada and Mexico, over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–14500 Filed 6–18–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–19–NG]

Inland Gas & Oil Corp.; Order Granting in Part and Denying in Part an Amendment To Blanket Authorization To Import and Export Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted in part and denied in part an amendment to the blanket authorization issued to Inland Gas & Oil Corp. (IGOC) in DOE/FE Opinion and Order No. 517, dated July 5, 1991. The amendment authorizes an increase in the import volumes of natural gas, including liquefied natural gas (LNG), from 14 Bcf to 35 Bcf over the two-year term of the authorization. IGOC's request for conditional authorization to import and export over the proposed pipeline facilities of Sumas International Pipeline Inc. was denied for procedural reasons.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue,

SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–14499 Filed 6–18–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–15–NG]

Iroquois Gas Transmission System, L.P.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Iroquois Gas Transmission System, L.P., blanket authorization to import up to one billion cubic feet of natural gas from Canada over a two-year period beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday though Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–14498 Filed 6–18–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–04–NG]

Kamine/Besicorp Natural Dam L.P.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on January 17, 1992, of an application filed by Kamine/Besicorp Natural Dam L.P. (Kamine/Besicorp), as supplemented on February 25, and March 4, 1992, for authorization to import up to 12,500 Mcf of Canadian natural gas per day, and a total of 114.1 Bcf, over a 15-year term. The natural gas would enter the United States through the pipeline facilities of Iroquois Gas Transmission System, L.P. (Iroquois) at Waddington, New York and be used to fuel Kamine/Besicorp's new 58 MW combined-cycle cogeneration facility to be constructed in Gouverneur, New York. Kamine/Besicorp requests that the authorization commence upon the commercial operation of the plant or June 1993, whichever is earlier.

The appliction is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 20, 1992.

ADDRESSES: Office of Fuels Programs, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Kamine/Besicorp is a Delaware limited partnership whose general partners are Beta Natural Dam Inc. (Beta) and Kamine Natural Dam Cogen Co., Inc. (Kamine). Kamine is an affiliate of Kamine Development Corporation (KDC), a New Jersey corporation. Kamine is a New York corporation with its principal place of business in Union, New Jersey. Beta is a subsidiary of Besicorp Group Inc., a New York corporation with its principal place of business in Kingston, New York. KDC and Besicorp (or their affiliates), individually and jointly, are energy project developers and have been owners and operators of natural gas cogeneration facilities since 1985. KDC and/or Besicorp (or their affiliates) currently operate four congeneration facilities in New York and New Jersey and have several other cogeneration facilities in various stages of planning or construction.

Kamine/Besicorp states the imported natural gas will be used to fuel a new combined-cycle cogeneration facility to be owned by Kamine-Besicorp and constructed on land leased from James River Paper Company Inc. (JRP), an affiliate of James River Corporation of Virginia, at the JRP's paper mill near Gouverneur, New York. The new facility is expected to be completed and in commercial operation by June 1993. The facility was certified by the Federal Energy Regulatory Commission on August 29, 1991 (56 FERC ¶ 62,145), as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978. The steam will be sold to JRP's paper mill and the 58 MW of electric power will be sold to Niagara Mohawk Power Corporation (Niagara Mohawk).

Kamine/Besicorp has contracted to purchase this gas from North Canadian Marketing Inc. (NCM), pursuant to an agreement dated July 30, 1991, as amended November 29, 1991. The contract provides for NCM to be the sole supplier of the cogeneration plant's total gas requirements up to the level of the maximum daily quantity (MDQ). The MDQ or "base quantity" under the contract is 10,200 MMBtu's for the period of November 1, 1993, through November 1, 2008. It relates to the first 49 MW of electrical production. An incremental quantity of up 1,800 MMBtu's per day would be supplied to produce the 9 MW of additional electricity. If Kamine/Besicorp takes less than 80 percent of the MDQ, the contract requires Kamine Besicorp to pay the seller a gas inventory charge equal to $.40 per Mcf of the deficiency volume, subject to an annual percentage increase.

For the base quantity, Kamine/Besicorp would pay specified prices each year beginning at $1.56 (U.S.) per MMBtu (1993–1995) and increasing to $5.54 (U.S.) per MMBtu (2008). This price includes transportation in Saskatchewan and Alberta, taxes, royalties, fees, and other charges incurred by NCM. For incremental quantities, the price would be $1.33 (U.S.) per MMBtu in 1993 and thereafter would be indexed to reflect monthly changes to Niagara Mohawk's short-run avoided energy costs. NCM has made arrangements for transportation by NOVA Corporation of Alberta, TransGas, and West Coast Gas which would deliver the gas to various interconnections of their systems with TransCanada PipeLines Limited (TCPL) in Saskatchewan and Alberta. Kamine/Besicorp would pay TCPL for transportation from these delivery points to the Iroquois system at Waddington, New York. Based on the application, the total price for base volumes delivered at Waddington in

1993 would be $2.49 (U.S.) per MMBtu, consisting of the fixed commodity price of $1.56 (U.S.) and an estimated TCPL transportation charge of $0.93 (U.S.).

In the United States, the gas would be transported on the pipeline systems of Iroquois and St. Lawrence Gas Inc. (St. Lawrence). Kamine/Besicorp has a long-term interruptible transportation agreement with Iroquois and a twenty-five year contract with St. Lawrence. While the Iroquois transportation is interruptible, a peak shaving agreement with Consumers Gas Company Limited has been entered into in the event of an unlikely interruption. For final delivery to the facility, St. Lawrence will construct approximately 12 miles of pipeline from Iroquois to the facility. Kamine/Besicorp will reimburse St. Lawrence for the construction of this pipeline. St. Lawrence has applied to the New York State Public Service Commission for certification to construct such pipeline.

In support of its application, Kamine/Besicorp states that the imported gas will provide a reliable, long-term, secure supply of competitively priced gas to the combined-cycle cogeneration facility. Kamine/Besicorp also state that there is no domestic natural gas delivered into the area in which the facility is located.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters will be considered in making a public interest determination, including need for the natural gas and security of the long-term supply. Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Kamine/Besicorp asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. DOE intends to prepare an environmental assessment (EA) on the cogeneration plant and pipeline lateral proposed by Kamine/Besicorp and St. Lawrence. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, ntice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Kamine/Besicorp's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–14491 Filed 6–18–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearing and Appeals

Cases Filed During the week of May 15 Through May 22, 1992

During the Week of May 15 through May 22, 1992, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 11, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of May 15 through May 22, 1992]

Date	Name and location of applicant	Case No.	Type of submission
May 18, 1992	Gulf/Jim's Gulf, Atlantic Beach, FL	RR300-156	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300-13886) issued to Jim's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	James L. Schwab, Spokane, WA	LFA-0210	Appeal of an information request denial. If granted: The May 7, 1992 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and James L. Schwab would receive access to DOE information concerning tiger team visits to the Tonopah Test Range.
May 19, 1992	Arco/Byle Oil Company, Washington, D.C	RR304-39	Request for modification/rescission in the Arco refund proceeding. If granted: The November 9, 1989 Decision and Order (RF304-2372) issued to Byle Oil Company would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
Do	Arco/Carl King, Inc., Washington, D.C	RR304-41	Request for modification/rescission in the Arco refund proceeding. If granted: The January 4, 1991 Decision and Order (Case No. RF304-4443) issued to Carl King, Inc. would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
Do	Arco/Flippo's Oil Company, Washington, D.C	RR304-42	Request for modification/rescission in the Arco refund proceeding. If granted: The December 6, 1989 Decision and Order (Case No. RF304-6541) issued to Flippo's Oil Company would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
Do	Arco/Perrine Oils, Washington, D.C	RR304-40	Request for modification/rescission in the Arco refund proceeding. If granted: The March 24, 1992 Decision and Order (Case No. RF304-2103) issued to Perrine Oils would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
Do	Gulf/Pigeon Cooperative, Oil Company, Washington, D.C.	RR300-157	Request for modification/rescission in the Gulf refund proceeding. If granted: The June 2, 1989 Decision and Order (Case No. RF300-3573) issued to Pigeon Cooperative Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Moses Chevrolet, Inc., Washington, D.C	RR300-159	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 6, 1989 Decision and Order (Case No. RF300-3578) issued to Moses Chevrolet, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Rupp Oil Company Inc., Washington, D.C	RR300-158	Request for modification/rescission in the Gulf refund proceeding. If granted: The July 26, 1989 Decision and Order (Case No. RF300-4101) issued to Rupp Oil Company Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Shumway Oil Company, Inc., Washington, D.C	RR300-160	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 6, 1989 Decision and Order (Case No. RF300-3581) issued to Shumway Oil Co., Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Linda Farakoff, Kennewick, WA	LFA-0211	Appeal of an information request denial. If granted: The May 12, 1992 Freedom of Information Request Denial issued by the Richland Field Office would be rescinded, and Linda Farakoff would receive access to requested security clearance information collected by Westinghouse Hanford Richland Operations.
May 20, 1992	Gulf/Russ's Gulf, Woodbridge, VA	RR300-161	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300-13891) issued to Russ's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 21, 1992	James L. Schwab, Spokane, WA	LFA-0212	Appeal of an information request denial. If granted: The May 11, 1992 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and James L. Schwab would receive a fee waiver regarding requests dated April 15 and 25, 1992.

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case No.
5/15/92 thru 5/22/92.	Crude Oil Applications Received.	RF272-92353 thru RF272-92421.

Refund Applications Received—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
5/15/92 thru 5/22/92.	Atlantic Richfield Applications Received.	RF304-13103 thru RF304-13134.

Refund Applications Received—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
5/15/92 thru 5/22/92.	Texaco Refund Applications Received.	RF321-18614 thru RF321-18632.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
5/18/92	Cobb County Government.	RF300-20009.
5/18/92	Baton Rouge Lumber Company.	RF300-20010.
5/18/92	Bexar Metropolitan Water Dist.	RF300-20011
5/18/92	C&P Towing Company, Inc.	RF300-20012.
5/18/92	Crea Brothers	RF300-20013.
5/18/92	Curtis Mathes Corporation.	RF300-20014.
5/18/92	Aberdeen School District.	RF300-20015.
5/18/92	City of Dublin	RF300-20016.
5/18/92	Miller Garage Incorporated.	RF300-20017.
5/18/92	Ron Belt Gulf Oil	RF300-20018.
5/18/92	Neil's Clark Service.	RF342-210.
5/18/92	Wicker Super 100.	RF342-211
5/18/92	George Koldoff Super 200.	RF342-212.
5/19/92	Carolina Mills, Inc.	RF300-20020.
5/19/92	Meades S. Tatum	RF300-20019.
5/19/92	Joseph Dunlap Super 100.	RF342-213.
5/20/92	Ted's Clark Service.	RF342-214.
5/22/92	Joe's Gulf.	RF300-20021

[FR Doc. 92-14496 Filed 6-18-92; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4145-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 01, 1992 Through June 05, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-COE-K03021-CA Rating E02, Gaviota Marine Terminal (GTC) Project, Oil and Gas Production Facilities Consolidation, Section 404 Permit Issuance, Santa Barbara County, CA.

Summary: EPA expressed objections due to potential impacts to air quality, the increased risk of an oil spill and its associated effects on natural resources. The DEIS clearly demonstrated that alternative pipeline operations are feasible and more environmentally sensitive. When project alternatives are ranked by environmental effect, the proposed project is one of the least environmentally preferred alternatives.

ERP No. DS-BLM-K65062-NV Rating EC2, Egan Resource Management Plan (RMP), Oil and Gas Leasing Amendment, Approval and Implementation, Ely District, White Pine, Lincoln and Nye Counties, NV.

Summary: EPA expressed environmental concerns regarding the potential impacts of expanded exploration and development actions on regional air quality water quality, surface resources, wet meadows and associated natural resources. EPA noted that the proposed project may not meet the Clean Air Act's conformity provisions. EPA requested additional information regarding efforts to protect air and water quality

Final

ERP No. LF-NPS-L61191-AK, Gate of the Arctic National Park and Preserve, Use of All-Terrain Vehicles (ATV) for Subsistence on Park Land, City of Anaktuvuk Pass, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory No formal letter was sent to the agency

Dated: June 16, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-14514 Filed 6-18-92; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-4144-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-6075.

Availability of Environmental Impact Statements Filed June 08, 1992 Through June 12, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920214, Draft Supplement, BLM, OR, Lower Deschutes Wild and Scenic River Management Plan, Implementation, Additional Alternatives for Access to Public Lands Upstream from the Deschutes Club Locked Gate, Wasco County OR, Due: August 07, 1992, Contact: Jim Kenna (503) 447-4115.

EIS No. 920215, Draft EIS, BLM, NV, Stateline Resource Area, Land and Resource Management Plan, Implementation, Clark and Nye Counties, NV, Due: September 15, 1992, Contact: Jerry C. Wickstrom (702) 647-5000.

EIS No. 920216, Draft Supplement, AFS, AK, Bohemia Mountain Timber Sales, Implementation, Updated Information to Limit Alternatives to those that would not Impact Potential Recommendation of Duncan Salt Chuck Creek from Inclusion in the National Wild and Scenic River System and COE Permit Issuance, Tongass National Forest, Petersburg Ranger District, Stiline, AK, Due: August 03, 1992, Contact: David E. Helmick (907) 772-3841.

EIS No. 920217, Draft EIS, AFS, WY, Thunder Basin National Grasslands Oil and Gas Exploration and Development, Land Availability and Authorization for Leasing and Lease Offerings, Medicine Bow National Forests, Campbell, Crook, Weston, Converse and Niobrara Counties, WY, Due: August 18, 1992, Contact: Terry B. Dilts (307) 745-8971.

The U.S. Department of Agriculture s Forest Service and the U.S. Department of the Interior's Bureau of Land Management are Joint Lead Agencies for this project.

EIS No. 920218, Draft EIS, FHW, PA, Lackawanna Valley Industrial Highway Project, Reconstruction and Redevelopment, I-81 to Dunmore and US Route 6 in Whites Crossing north of Carbondale, Funding and COE Section 404 Permit, Lackawanna Valley, Lackawanna County, PA, Due: August 17, 1992, Contact: Manuel A. Marks (717) 782-2222.

EIS No. 920219, Draft EIS, BLM, ID, Southwest Intertie Project, Construction and Operation, 500kV Transmission Line from the existing Midpoint substation near Shoshone, ID to a new Substation Site in the Dry Lake Valley of Las Vegas, NV area to a point near Delta, UT, Funding and Section 10 and 404 Permits Approval, Several Counties of NV, ID, UT, Due: August 18, 1992, Contact: Karl Simonson (208) 678-5514.

EIS No. 920220, Final EIS, AFS, MT, East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Plan of Operations, Approval and COE Section 404 Permit, Gallatin National Forest, Sweet Grass County, MT, Due: July 20, 1992, Contact: Sherm Sollid (406) 587-6701

EIS No. 920221, Draft EIS, SFW, ND, Lake Ilo Dam and Reservoir Modification Project, Elimination of Existing Dam Safety Deficiencies and Section 404 Permit Implementation, Lake Ilo National Wildlife Refuse, Spring Creek, Dunn County, ND, Due: August

18, 1992, Contact: Adam Misztal (303) 236–8676.

EIS No. 920222, Draft Supplement, AFS, MT, White Stallion Timber Sale Management, Implementation, Additional Analysis, Bitterroot National Forest, Darby Ranger District, Ravalli County, MT, Due: August 03, 1992, Contact: Rick Floch (406) 821–3913.

EIS No. 920223, Final EIS, COE, CA, Sacramento river Flood Control System, Flood Protection, Phases II–V from Red Bluff to Collinsville, Implementation, CA, Due: July 20, 1992, Contact: Cynthia Adornetto (916) 557–6738.

EIS No. 920224, Draft EIS, FHW, NC, US 29A/70A (High Point Road) from US 311 Bypass to the Greensboro Western Urban Loop near Hill Top Road, Improvement, Funding and section 404 Permit, Guilford, Randolph and Davidson Counties, NC, Due: August 07, 1992, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 920225, Draft EIS, FHW, FL, North Suncoast Corridor, Transportation Improvement and Construction, Northwest Expressway Zone 1 in Hillsborough Co., to US 98 in Hernando Co., to Zone 2 FL–52 in Pasco Co., Funding and Section 404 Permit, Hillsborough, Hernando and Pasco Counties, FL, Due: August 03, 1992, Contact: Jenning R. Skinner (904) 681–7223.

EIS No. 920226, Final EIS, NPS, MD, Antietam National Battlefield General Management Plan, Implementation, Washington County, MD, Due: July 20, 1992, Contact: Jacob J. Hoogland (202) 208–3163.

EIS No. 920227, Draft EIS, AFS, MT, Beaver-Dry Timber Sales, Harvest Timber and Road Construction, Implementation, Helena National Forest, Lincoln Ranger District, Lewis and Clark and Powell Counties, MT, Due: August 03, 1992, Contact: Tom Liebscher (406) 362–4265.

EIS No. 920228, Final EIS, NOA, CA, Monterey Bay National Marine Sancturay, Establishment, Designation and Management Plan, San Mateo, Santa Cruz and Monterey Counties, CA, Due: July 20, 1992, Contact: Rafael V. Lopez (202) 606–4126.

Amended Notices

EIS No. 920122, Draft EIS, AFS, OR, Quosatana and Bradford Timber Sales and Integrated Resource Projects, Implementation, Siskiyou National Forest, Gold Beach Ranger District, Curry County, OR, Due: June 22, 1992, Contact: Susan Mathison (503) 247–6651.

Published FR 04–17–02—Review period extended.

EIS No. 920165, Draft EIS, BPA, WA, OR, CA, NV, NM, ID, MT, WY, UT, AZ, Resource Programs to Acquire Sufficient New Resources to meet Potential Electric Power Requirements, Implementation, WA, ID, OR, MT, CA, WY, NV, UT, NM, AZ, and British Columbia, Due: July 06, 1992, Contact: Charles Alton (503) 230–5878.

Published FR 05–15–92—Correction to Comment Period.

Dated: June 16, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–14515 Filed 6–18–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4144–8]

Public Hearing on the Proposal to Grant a Variance from Land Disposal Restrictions to Exxon Company, U.S.A., Billings, MT

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA or Agency) has proposed to grant a no-migration variance to petitioner Exxon Company, U.S.A., Billings, Montana on March 26, 1992 (see 57 FR 10478). The public comment period on this proposal endéd on June 10, 1992. The purpose of this notice is to announce the scheduling of a public hearing on EPA's proposed variance decision, to be held in Billings, Montana, on Friday, July 31, 1992. The purpose of the public hearing is to give local residents an additional opportunity to comment on the proposed variance. All comments received at the hearing will be entered into the public record for this decision making.

DATES: The public hearing has been scheduled for Friday, July 31, 1992, at Eastern Montana College, Library 148, 1500 North 30th Street, Billings, Montana, from 12 noon to 5 p.m. and from 7 p.m. to 9 p.m. Persons interested in making oral statements should register by telephoning Stephanie Wallace, EPA Region VIII, Helena, MT at (406) 449–5414. Requests to make oral statements should be received by July 17, 1992. Written and oral comments on the proposed decision will be accepted by the Hearing Officer only at the public hearing in Billings, Montana on July 31, 1992. If written comments are offered at the public hearing, three copies should be submitted, each identified at the top with the regulatory docket number F–92–NEBP–FFFFF.

ADDRESSES: The RCRA regulatory docket that contains the administrative record for this public hearing is located at the Parmly Library, 510 North Broadway, Billings, Montana and is available for public review from 10 a.m. to 9 p.m. on Tuesday, Wednesday, and Thursday; from 10 a.m. to 6 p.m. on Friday; and 10 a.m. to 5 p.m. on Saturday.

An additional copy of the RCRA regulatory docket is located at the U.S. Environmental Protection Agency (room M2427), 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays. Call (202) 260–9327 for appointments.

A third copy of the RCRA regulatory docket is also available to the public in Helena, Montana, at the EPA Region VIII, Montana Operations Office, Federal Building, 301 South Park. The public may make arrangements to view the documents by calling Stephanie Wallace at (406) 449–5414. This docket is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Athena Rodbell, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, at (202) 260–1206. For information on administrative matters, or to advise of your intent to attend, please contact Stephanie Wallace, EPA Region VIII at (406) 449–5414.

SUPPLEMENTARY INFORMATION: On March 26, 1992, EPA proposed to grant a no-migration variance petition submitted by Exxon Company, U.S.A. (Exxon), Billings, Montana, pursuant to 40 CFR 268.6, to allow Exxon to conduct the land treatment of hazardous wastes generated at the Billings refinery. See 57 FR 10478 for a more detailed explanation of the Agency's proposal to grant Exxon's petition. This land treatment facility was issued a hazardous waste permit by the Montana Department of Health and Environmental Sciences (DHES) and has been in operation for eleven years.

Since publication of the notice proposing to grant the no-migration variance, the Agency has received several requests for a public hearing from local citizens groups and residents of Billings, MT and the surrounding area. In light of the nature of these requests, the Agency decided as a discretionary matter that a public hearing to gather comment from the local citizens in close proximity to Exxon's land treatment facility would be appropriate. The comment period for the notice proposing to grant a no-migration variance to Exxon, Billings, which

closed on June 10, 1992, will be reopened during the public hearing solely to receive these comments on the Agency's proposal to grant the variance.

Dated: June 15, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

[FR Doc. 92-14464 Filed 6-18-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-59941; FRL 4074-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-140, 92-141, June 18, 1992.

Y 92-142, 92-143, June 22, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-140

Manufacturer. Confidential.

Chemical. (G) Styrene-acrylic copolymer.

Use/Production. (G) Component used in coatings for plastics. Prod. range: Confidential.

Y 92-141

Manufacturer. Amoco Chemical Company.

Chemical. (G) Tenary polyamide.

Use/Production. (S) Extruded film/extruded fiber. Prod. range: Confidential.

Y 92-142

Manufacturer. Mace Adhesive and Coatings Co., Inc.

Chemical. (G) Aliphatic polyether polyurethane.

Use/Production. (S) Adhesive. Prod. range: 15,000-35,000 kg/yr.

Y 92-143

Manufacturer. Confidential.

Chemical. (G) Styrene acrylic mercaptan polymer.

Use/Production. (G) Automotive coatings resin. Prod. range: Confidential.

Dated: June 15, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-14465 Filed 6-18-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-51796; FRL 4071-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 57 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-862, 92-863, 92-864, 92-865, 92-866, 92-867, 92-868, 92-869, 92-870, 92-871, 92-872, 92-873, 92-874, 92-875, 92-877, 92-878, 92-879, 92-880, 92-881, 92-882, 92-883, August 9, 1992.

P 92-884, August 12, 1992.

P 92-885, 92-886, August 9, 1992.

P 92-887, 92-888, 92-889, August 11, 1992.

P 92-890, August 12, 1992.

P 92-891, 92-892, 92-893, 92-894, 92-895, 92-896, 92-897, 92-898, 92-899, 92-900, 92-901, 92-902, 92-903, 92-904, 92-905, 92-906, 92-907, 92-908, 92-909, 92-910, 92-911, 92-912, 92-913, 92-914, 92-915, August 15, 1992.

P 92-916, 92-917, 92-918, August 16, 1992.

P 92-976, August 9, 1992.

Written comments by:

P 92-862, 92-863, 92-864, 92-865, 92-866, 92-867, 92-868, 92-869, 92-870, 92-871, 92-872, 92-873, 92-874, 92-875, 92-877, 92-878, 92-879, 92-880, 92-881, 92-882, 92-883, July 10, 1992.

P 92-884, July 13, 1992.

P 92-885, 92-886, July 10, 1992.

P 92-887, 92-888, 92-889, July 12, 1992.

P 92-890, July 13, 1992.

P 92-891, 92-892, 92-893, 92-894, 92-895, 92-896, 92-897, 92-898, 92-899, 92-900, 92-901, 92-902, 92-903, 92-904, 92-905, 92-906, 92-907, 92-908, 92-909, 92-910, 92-911, 92-912, 92-913, 92-914, 92-915, July 16, 1992.

P 92-916, 92-917, 92-918, July 17, 1992.

P 92-976, July 10, 1992.

ADDRESSES: Written comments, identified by the document control number "[OPPTS-51796]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Preventionand Toxics, Environmental Protection Agency, 401 M St., SW., rm. 201ET, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE -G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-862

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Substituted polyolefin.

Use/Production. (G) Coatings/adhesives. Prod. range: Confidential.

P 92-863

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Substituted polyolefin.

Use/Production. (G) Coatings/adhesives. Prod. range: Confidential.

P 92-864

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Substituted polyolefin.

Use/Production. (G) Coatings/adhesives. Prod. range: Confidential.

P 92-865

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Substituted polyolefin.

Use/Production. (G) Coatings/adhesives. Prod. range: Confidential.

P 92-866

Importer. Confidential.

Chemical. (S) Nonacyclo, hexapentaconta, tetracosaene, octakis (1,1-dimethylethyl).

Use/Import. (S) Compomnent of toner. Import range: 2,000–5,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 <2,000 mg/kg species (rabbit). Eye irritation: slight species (rabbit). Mutagenicity: negative. Skin irritation: slight species (rabbit). Skin sensitization: positive species (guinea pig).

P 92-867

Importer. Orient Chemical Corporation.

Chemical. (S) Nonacyclo, hexaconta, tetracosaene, octol, actakis (cyclohexyl).

Use/Import. (S) Component. Import range: 2,000–5,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: slight species (rabbit).

P 92-868

Manufacturer. Goldschmidt Chemical Corporation.

Chemical. (G) Hydroxy functional acrylic copolymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-869

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Methacrylic acid copolymer.

Use/Production. (G) Precursor. Prod. range: Confidential.

P 92-870

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Metharrylic acid copolymer salt.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-871

Manufacturer. E.I. Du Pont De Nemours Company, Inc.

Chemical. (G) Methacrylic acid copolymer salt.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-872

Manufacturer. Confidential.

Chemical. (G) A polymer of acrylic acid esters, methacrylic acid and methacrylic acid, with an alcohol, ammonium salt.

Use/Production. (G) Textile resin dye. Prod. range: Confidential.

P 92-873

Manufacturer. Confidential.

Chemical. (G) 2,2-Dimethyl-1,3-propanediol, ester with branched fatty acids.

Use/Production. (G) Synethetic ingredient lubricant. Prod. range: Confidential.

P 92-874

Manufacturer. Bostik, Inc.

Chemical. (G) Polyurethane.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-875

Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-877

Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-878

Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-879

Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-880

Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-881

Manufacturer. Eastman Kodak Company.

Chemical. (G) Trisubstituted triazine salt.

Use/Production. (G) destructive use. Prod. range: 100.

Toxicity Data. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-882

Manufacturer. Champion Technologies, Inc.

Chemical. (G) 2-Hydroxyethyl cellulose, vinyl phosphonic acid graft polymer.

Use/Production. (G) Oil well stimulation gellant. Prod. range: Confidential.

P 92-883

Manufacturer. Confidential.

Chemical. (G) Terpolymer of butyl acrylate, butyl methacrylate and substituted ethyl acrylate.

Use/Production. (G) Adhesive for contained consumer use. Prod. range: 15,000–65,000 kg/yr.

Toxicity Data. Eye irritation: moderate species (rabbit).

P 92-884

Manufacturer. Monsanto Company.

Chemical. (G) Oxetanone.

Use/Production. (G) Intermediate chemical. Prod. range: Confidential.

P 92-885

Manufacturer. Minnesota Minning & Manufacturing Co.

Chemical. (G) Bis-arene complex.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92-886

Manufacturer. Minnesota Mining & Manufacturing Co.

Chemical. (G) Bis-arene organometallic complex.

Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 92-887

Importer. American Cyanamid Company.

Chemical. (G) Substituted heterocyclic ester.

Use/Import. (G) Additive for polymer. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 15 g/kg species (rat). Inhalation toxicity: LC50 > 5 mg/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negligible species

(rabbit). Skin sensitization: positive species (guinea pig).

P 92-888

Importer. Hi-<tech Color, Inc.

Chemical. (G) 2-Hydroxy ethyl 2-methyl, 2-propenoate polymer with butyl 2-methyl, 2-propenoate, butyl 2-propenoateand alkyl 2-methyl 2-propenoate.

Use/Import. (G) Printing inks. Import range: Confidential.

P 92-889

Manufacturer. Confidential.

Chemical. (S) 2-H-Aze, hexahydro oxirane methyl-polymer with oxirane, bis(2-aminopropyl) ether; 1,4-benzene dicarboxylic acid.

Use/Production. (S) Fiber for apparel application. Prod. range: Confidential.

Toxicity Data. Skin irritation: slight species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-890

Manufacturer. Tennant Company.

Chemical. (G) The ammonium derivative of a copolymer of polyalkyl glycols, toluene diisocyanate and alkyl polyamines.

Use/Production. (G) Open, nondispersive. Prod. range: 130,000–260,000 kg/yr.

P 92-891

Manufacturer. The Dow Chemical Company.

Chemical. (G) High heat polycarbonate.

Use/Production. (S) Automobile body panels. Prod. range: Confidential.

P 92-892

Manufacturer. The Dow Chemical Company.

Chemical. (G) High heat polycarbonate.

Use/Production. (S) Automobile body panels. Prod. range: Confidential.

P 92-893

Manufacturer. The Dow Chemical Company.

Chemical. (G) High heat polyurethane.

Use/Production. (S) Automobile body panels. Prod. range: Confidential.

P 92-894

Manufacturer. The Dow Chemical Company.

Chemical. (G) High heat polyurethane.

Use/Production. (S) Automobile body panels. Prod. range: Confidential.

P 92-895

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-896

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-897

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-898

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-899

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-900

Manufacturer. Sanncor Industrial, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-901

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-902

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-903

Manufacturer. Sanncor Industries, Inc.

Chemical. (S) Polyurethane based on polyisocyanate, polyola, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-904

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-905

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-906

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-907

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-908

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-909

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-910

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 92-911

Manufacturer. Txuston Lubricant Company.

Chemical. (G) Diurea grease thichener prepared by the reaction of diisocyanate with an aliphatic amine.

Use/Production. (S) Industrial ball and roller bearing grease. Prod. range: Confidential.

P 92-912

Manufacturer. Union Specialties, Inc.

Chemical. (G) 1,3-Benzenedicarboxylic acid polymer, with hexanedioic acid and 1,2-hexanediol,

poly(oxy(methyl-1,2-ethanedily)-A-hydrox with hydroxy-, 3-hydroxy-2-(hydroymethyl)-2-ethyl.

Use/Production. (S) Coatings for flexible and rigid substrates. Prod. range: 50,000–100,000 kg/yr.

P 92–913

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyurethane resin.

Use/Production. (G) Hot melt adhesive. Prod. range: Confidential.

P 92–914

Manufacturer. Ashland Chemical, Inc.

Chemical. (G) Polyurethane.

Use/Production. (S) Ingredient used in an adhesive. Prod. range: Confidential.

P 92–915

Manufacturer. Dow Corning Corporation.

Chemical. (G) Organodisilane.

Use/Production. (S) Chemical intermediate for siliconr adhesives. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: minimal species (rabbit). Skin irritation: none species (rabbit). Mutagenicity: negative.

P 92–916

Manufacturer. Dow Corning Corporation.

Chemical. (G) Organosilyl-functional silica.

Use/Production. (S) Silicone structureal adhesive. Prod. range: Confidential.

P 92–917

Importer. Fabricolor Inc.

Chemical. (G) Benzoic acid, 2-hydroxy-3-(4-nitrophenyl)azo)-5-((6(7)-sulfonaphthalenyl)azo)-disodium salt.

Use/Import. (S) Dyeing of leather. Import range: Confidential.

P 92–918

Importer. Fabricolor Inc.

Chemical. (G) Substituted tris azo.

Use/Import. (S) Dyeing of leather. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: minimal species (rabbit). Skin irritation: slight species (rabbit).

P 92–976

Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer.

Use/Production. (S) Coatings. Prod. range: 2,500,000–5,000,000 kg/yr.

Dated: June 15, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–14466 Filed 6–18–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4143–4]

Massachusetts Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of Massachusetts requesting a determination by the Regional Administrator, Environmental Protection Agency, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all the coastal waters of the Town of Nantucket, County of Nantucket, within the State of Massachusetts. The Town of Nantucket is located on Nantucket Island, in Nantucket Sound, approximately 28 miles south of Cape Cod, Massachusetts. Nantucket Island is 14 miles long and varies in width from three to six miles. The total land area is 29.56 square miles.

The State of Massachusetts has certified that there are six pump-out facilities available to service vessels in Nantucket. Five are located within Nantucket Harbor, and a sixth is located in Madaket Harbor, at the western end of the island.

There are four pump-out facilities at the Nantucket Boat Basin, which is located on the western shore of Nantucket Harbor adjacent to the downtown area of the Town of Nantucket. There are two stationary pump-out units and two portable units available for use by both Nantucket Boat Basin patrons and transient vessels. In addition, the Boat Basin dock is equipped with nine deck fittings plumbed directly into the town sewer system that are used in conjunction with the portable units. These pump-out facilities will accommodate vessels with a draft of twelve feet, and are open from 7 a.m. to 7 p.m., seven days a week. Pump-out services are free to patrons and $10 for all others.

A fifth pump-out facility is located on the Nantucket Town Pier, which is located just to the south of the Nantucket Boat Basin on Nantucket Harbor, and is operated by the Town of Nantucket. This pump-out facility will accommodate vessels with a draft of twelve feet, and is open from 8 a.m. to 8 p.m., seven days a week. Pump-out services are free of charge to all vessels.

The sixth pump-out facility is operated by Madaket Marine, which is located on Hither Creek, in Madaket Harbor. This portable pump-out facility will accommodate vessels with a five foot draft, and is open from 8 a.m. to 4:30 p.m., seven days a week. There is a $10 fee per pump-out.

The State of Massachusetts certifies that the five pump-out facilities in Nantucket Harbor discharge directly to the town sewer system. The State of Massachusetts further certifies that sewage collected at Madaket Marine is discharged into an above-ground holding tank and periodically collected by a septage hauler for disposal at the town wastewater treatment plant. The Nantucket Waste Water Treatment Facility is located on South Shore Road. This facility provides advanced primary treatment and has consistently met or exceeded EPA and Massachusetts Department of Environmental Protection standards.

The maximum daily vessel population for the coastal waters of Nantucket is approximately 1725. This includes 1250 vessels on private, seasonal moorings registered with the Town of Nantucket, and an average of 475 transient vessels per day. None of these vessels will be excluded from using one or more of the existing pump-out facilities.

Comments and views regarding this request for action may be filed on or before July 27, 1992. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Melville P. Cote, Jr., U.S. Environmental Protection Agency—Region I, Marine and Estuarine Protection Section (WQE–425), JFK Federal Building, Boston, MA 02203. Telephone: 617/565–4870.

Dated: May 29, 1992.

Julie Belaga,

Regional Administrator.

A. PUMP-OUT FACILITY TABLE

Marina/locations	Number of pump-out units	Hours	Draft limitations	Fee
Nantucket Boat Basin, First Winthrop Corp., 0 Main Street, Nantucket, MA 02554, (508) 228-1333, Channel 09 VHF-FM.	2 Stationary, 2 Portable	7 am to 7 pm Daily	12'-14' draft at permanent units, 6' draft in some locations.	Free for patrons, $10 others.
Nantucket Town Pier, Town of Nantucket, 38 Washington Street, Nantucket, MA 02554, (508) 228-7260, Channel 09 VHF-FM.	1 Stationary	8 am to 8 pm Daily	12' draft	Free.
Madaket Marina, Hither Creek, 20 N. Cambridge St., Nantucket, MA 02554, (508) 228-9086, Channel 09 VHF-FM.	1 Portable	8 am to 4:30 pm	5' draft	$10.

[FR Doc. 92-13867 Filed 6-18-92; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

The Maryland Port Administration et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200165-007.

Title: Maryland Port Administration/ Ceres Corporation Marine Terminal Agreement.

Parties:

The Maryland Port Administration ("Port") Ceres Corporation ("Ceres").

Synopsis: The Agreement reduces Ceres' acreage at the Port by eliminating a total of 62.26 acres, but retains a total of 6.68 acres. The Agreement also extends the term of the basic Agreement for sixty days.

Dated: June 15, 1992.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 92-14388 Filed 6-18-92; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 92-38]

Transportation Services, Inc. as Agent for Network Shipping, Ltd. v. Coex Coffee International, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Inc. as agent for Network Shipping, Ltd. ("Complainant") against Coex Coffee International, Inc. ("Respondent") was served June 15, 1992. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay charges lawfully assessed pursuant to applicable service contracts.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitation prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 15, 1993, and the final decision of the Commission shall be issued by October 13, 1993.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 92-14387 Filed 6-18-92; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Great Falls Bancorp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 13, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Great Falls Bancorp, Totowa, New Jersey; to acquire 51 percent of the issued and outstanding common stock of NJ Mortgage Company, Little Falls, New Jersey, and thereby engage in mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Cardinal Bancshares, Inc., Lexington, Kentucky; to acquire and operate First Federal Savings Bank, Pineville, Kentucky, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Caisse Nationale de Credit Agricole, Paris, France; to acquire an additional 50.1 percent (increasing its ownership to 100 percent) of LCA Holding Corporation, New York, New York (formerly named Locasuez America, Inc., New York, New York), and thereby engage in leasing, consumer finance activities as well as providing lease-related advisory services, pursuant to § 225.25(b)(1) and (5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-14433 Filed 6-18-92; 8:45 am]

BILLING CODE 6210-01-F

Dale Earney Pahlke, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 9, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dale Earney Pahlke to acquire 36.38 percent, Raymond Edward Reich to acquire 24.85 percent, Stanley Harold Sayer to acquire 17.15 percent, Security Bank of Hebron Profit Sharing Plan to acquire 4.99 percent, and Security Insurance Services, Inc. to acquire 4.99 percent, all located in Hebron, North Dakota, of the voting shares of Hebron Bancshares, Inc., and thereby indirectly acquire Security Bank of Hebron, both located in Hebron, North Dakota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Roger D. Hellmus to acquire 18.24 percent; Charles C. Forbes to acquire 18.24 percent; and James J. Acker to acquire 18.23 percent, for a total of 20.06 percent; all located in Freer, Texas, of the voting shares of Brush Country Holding Co., Inc., and thereby indirectly acquire Brush Country Bank, both located in Freer, Texas.

Board of Governors of the Federal Reserve System, June 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-14434 Filed 6-18-92; 8:45 am]

BILLING CODE 6210-01-F

PCB Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. PCB Bancorp, Inc., Largo, Florida; to engage *de novo* through its subsidiary, Our Mortgage Company, Largo, Florida, in correspondent mortgage lending activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-14435 Filed 6-18-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement Number 229]

Surveillance of Elevated Blood Lead Levels in Adults and Children; Notice of Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for two cooperative agreement programs with state health departments and/or appropriate agencies of state government to build capacity for conducting surveillance of elevated blood lead levels in adults and children. CDC's National Institute for Occupational Safety and Health (NIOSH) will provide support for the cooperative agreement program entitled,

Adult Blood Lead Surveillance, ABLS, for surveillance of elevated blood lead levels in adults as part of the Sentinel Event Notification Systems for Occupational Risks (Sensor) program. CDC's National Center for Environmental Health and Injury Control, (NCEHIC) will provide support for the cooperative agreement program entitled, Childhood Blood Lead Surveillance, CBLS, for surveillance of elevated blood lead levels in children.

Both cooperative agreement programs will significantly strengthen the public health infrastructure by integrating resources for occupational safety and health research, environmental health research, and public health prevention programs at the state and local levels.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Health People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Environmental Health. (For ordering a copy of Health People 2000, see the section Where to Obtain Additional Information.)

Authority

The NIOSH program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and the Occupational Safety and Health Act of 1970, section 20 [29 U.S.C. 669].

The NCEHIC program is authorized under section 301(a) (42 U.S.C. 241(a)) and 317A (42 U.S.C. 247b–1) of the Public Health Service Act as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, part 51b.

Eligible Applicants

For NIOSH ABLS program: Eligible applicants are the official public health agencies/and or departments of environment of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Note: Other official state and territorial agencies with occupational safety and health jurisdiction may also apply. Applicants other than health departments must apply in collaboration with their state or territorial health department.

For NCEHIC CBLS program: Eligible applicants are the official public health agencies/and or departments of environment of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

For both programs, eligible applicants must have regulations for laboratory-based reporting of blood lead levels consistent with current CDC Surveillance Guidelines (see section Where to Obtain Additional Information) or provide assurances that such regulations will be in place within *six* months of awarding the cooperative agreement. These programs are intended to initiate and build capacity for blood lead level surveillance. Therefore, any applicant that already has in place a blood lead level surveillance activity must demonstrate how these cooperative agreement funds will be used to enhance, expand or improve the current activity, in order to remain eligible for funding. Cooperative agreement funds should be added to blood lead surveillance funding from other sources, if such funding exists. Funds for these programs may not be used in place of any existing funding for blood lead surveillance.

Awards will be made with the expectation that expanded or improved surveillance activities will continue when awarded funds are terminated at the end of the project period.

Applicants seeking funding for other SENSOR conditions are referred to Announcement Number 225.

Availability of Funds

For NIOSH ABLS: Approximately $400,000 will be available in Fiscal Year 1992.

These funds will be awarded as follows:

- Approximately $200,000 to fund up to five cooperative agreements for states currently without a lead surveillance program. The awards are expected to range from approximately $35,000 to $45,000, with the average award being approximately $40,000.
- Approximately $200,000 to fund up to eight cooperative agreements for states with a current lead surveillance program in need of support to augment or expand present activities. These awards are expected to range from approximately $20,000 to a maximum of $30,000, with the average award being approximately $25,000.

For NCEHIC CBLS: Approximately $200,000 will be available in Fiscal Year 1992 to fund up to four cooperative agreements. The awards are expected to range from approximately $45,000 to $55,000, with the average award being approximately $50,000.

The awards for both programs will be made for a 12-month budget period within project periods of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

This cooperative agreement program is intended to assist state health departments or other appropriate agencies to implement a complete blood lead surveillance activity. For the purpose of these programs a complete blood lead surveillance activity is defined as a process which: (1) Systematically collects information over time about children and/or adults (primarily workers) with elevated PbBs using laboratory reports as the data source; (2) provides timely and useful analysis and reporting of the accumulated data; and (3) provides for appropriate medical and environmental followup of cases, including field investigations when necessary.

Goals

The ABLS and CBLS programs have the same five goals:

1. Increase the number of state health departments with surveillance systems for elevated blood lead levels (PbBs);
2. Build the capacity of state- or territorial-based blood lead level (PbB) surveillance systems;
3. Use data from these systems to conduct national surveillance of elevated PbBs;
4. Disseminate data on the occurrence of elevated blood lead levels to government agencies, researchers, workers, employers, and medical care providers; and
5. Direct intervention efforts to reduce environmental and occupational lead exposure.

Program Requirements

Applicants may choose to focus their efforts on blood lead surveillance in adults by applying to ABLS, and children by applying to CBLS. Applicants may apply for both ABLS and CBLS by submitting separate applications for each project. Throughout the project period, recipients should work in cooperation with the funding agency towards achieving the goals of this cooperative agreement.

Applications to each program will be reviewed and considered separately. Award recipients will interact independently with NIOSH for ABLS and/or NCEHIC for CBLS.

Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and NIOSH/NCEHIC shall be responsible for conducting activities under B., below:

A. Recipient Activities:

1. Revise and refine, in collaboration with NIOSH for ABLS, and/or with NCEHIC for CBLS, the methodology for surveillance as proposed in the respective program application.
2. Implement the revised and approved state-based surveillance activity.
3. Collaborate with NIOSH (for ABLS) and/or NCEHIC (for CBLS) in any interim and/or final evaluation of the surveillance activity. (CDC Guidelines for Evaluating Surveillance Systems, MMWR, 1988.)
4. Provide the surveillance data to NIOSH/NCEHIC in an acceptable format.

B. NIOSH/NCEHIC Activities:

1. Provide technical assistance and consultation in the implementation of the surveillance activities throughout the project period. NIOSH will provide the assistance for ABLS, and NCEHIC will provide the assistance for CBLS.
2. Provide guidelines for evaluating surveillance activities, and technical assistance for evaluation.
3. Provide a format for reporting surveillance data to NIOSH/NCEHIC.
4. Analyze and provide summary surveillance data, at least once a year, to the recipient, from other states and territories where surveillance data are reported to NIOSH/NCEHIC.
5. Provide timely feedback to the recipient from the review of quarterly reports on the program activities conducted by the recipient.
6. Provide assistance in the conduct of field investigations and intervention efforts, at the recipient's request, as resources permit.

Evaluation Criteria

Applications for ABLS and CBLS will be reviewed, scored, and ranked independently by NIOSH for ABLS, and by NCEHIC for CBLS, according to the following criteria (total 100 points):

1. Surveillance Activity (30%)

The clarity, feasibility, and scientific soundness of the approach. The following points will be specifically considered:

a. how will laboratories report blood lead levels?

b. how will data be collected and managed?

c. how and when will data be analyzed?

d. how will summary data be reported and disseminated?

e. what provisions are made for follow-up of individuals with elevated blood lead levels?

2. Progress Toward Complete Blood Lead Surveillance (25%)

The extent to which the proposed activities are likely to result in substantial progress towards establishing a state-based complete blood lead surveillance activity (as defined in the "program requirements" section).

3. Timetable and Evaluation (15%)

The extent to which the proposed schedule for accomplishing each of the project activities, and the methods for evaluating each activity, are clearly defined and appropriate.

4. Project Sustainability (15%)

The extent to which the proposed activities are likely to result in the long-term maintenance of a state-based complete blood lead surveillance system.

5. Personnel (10%)

The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal.

6. Use of Existing Resources (5%)

The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.

7. Budget (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Other Requirements

Paperwork Reduction Act

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, no later than 60 days after the deadline date for new and competing awards. The funding agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Rev. 3/89) for each cooperative agreement applied for must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 Paces Ferry Road, NE., room 300, Mailstop E–14, Atlantic, Georgia 30305, on or before July 27, 1992.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B above are considered late applications and will be returned.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6630.

Please refer to Announcement Number 229 when requesting information on this program.

Programmatic technical assistance for ABLS may be obtained from Paul Seligman, M.D., Chief, Medical Section, National Institute for Occupational Safety and Health, Robert A. Taft Laboratory, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 841-4353.

Programmatic technical assistance for CBLS may be obtained from Ned Hayes, M.D., Medical Epidemiologist, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control, Mailstop F-28, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488-4880 or Thomas Matte, M.D. at (212) 264-7800.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238.)

A copy of Preventing Lead Poisoning in Young Children—a Statement by the Centers for Disease Control—October 1991 may be obtained from the Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-28, Atlanta, Georgia 30333, (404) 488-4880.

Dated: June 11, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-14422 Filed 6-18-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92N-0186]

Environmental Assessments and Findings of No Significant Impact

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received environmental assessments (EA's) and issued findings of no significant impact (FONSI's) relating to the approval of new drug applications (NDA's) for the following products: Cefzil (cefprozil) tablets and powder; Lorabid (loracarbef) powder and capsules; Mazicon (flumazenil) injection; Mivacron (mivacurium chloride) injection and infusion; and Zithromax (azithromycin) capsules. FDA is publishing this notice under section 102 of the National Environmental Policy Act (42 U.S.C. 4332), 21 CFR 25.41(b), and 40 CFR 1506.6.

ADDRESSES: The EA's and FONSI's may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8049.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA) requires all Federal agencies to "use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." (See 42 U.S.C. 4331(a).) Under NEPA, all Federal agencies must prepare detailed statements assessing the possible environmental impact of, and alternatives to, major Federal actions significantly affecting the environment, and such statements are to be made available to the public. (See 42 U.S.C. 4332, 21 CFR 25.41(b), and 40 CFR 1506.6.)

FDA implements NEPA through its regulations at 21 CFR part 25. Under those regulations, the approval of an NDA usually constitutes an action that ordinarily requires the preparation of an EA. (See 21 CFR 25.22(a)(14).)

FDA recently approved NDA's pertaining to the following products: Cefzil (cefprozil), NDA 50-664 (tablet) and NDA 50-665 (powder); Lorabid (loracarbef), NDA 50-667 (powder) and NDA 50-668 (capsule); Mazicon (flumazenil), NDA 20-073; Mivacron (mivacurium chloride), NDA 20-098; and Zithromax (azithromycin), NDA 50-670.

The agency has reviewed the EA's submitted for each NDA and has prepared a FONSI for each. No environmental impact statements, therefore, are necessary. This notice announces that the EA's and FONSI's for these human drug products may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 12, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-14429 Filed 6-18-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the first session of each meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7548, will furnish summaries of the meetings and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is

necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Name of Panel: NHLBI SEP on Small Grant Applications.
Scientific Review Administrator: Dr. David Monsees, Telephone 301–496–7361.
Dates of Meeting: June 28, 1992.
Place of Meeting: Hyatt Regency, Bethesda, Maryland.
Time of Meeting: 7 p.m.
Name of Panel: NHLBI SEP on RFA for Alzheimer's Amyloid Beta Protein in Hemostatis and Thrombosis.
Scientific Review Administrator: Dr. Carl Ohata, Telephone 301–496–8184.
Dates of Meeting: July 12–13, 1992.
Place of Meeting: Holiday Inn, Bethesda, Maryland.
Time of Meeting: 8 p.m.
Name of Panel: NHLBI SEP on Demonstration and Education Grant Applications.
Scientific Review Administrator: Dr. C. James Scheirer, Telephone 301–496–7363.
Dates of Meeting: July 12–14, 1992.
Place of Meeting: Crystal City Marriott Hotel, Arlington, Virginia.
Time of Meeting: 8 p.m.
Name of Panel: NHLBI SEP on Thrombocytopenias in Women and Neonates.
Scientific Review Administrator: Mrs. Betty Masket, Telephone 301–496–7964.
Dates of Meeting: July 23–24, 1992.
Place of Meeting: Holiday Inn, Chevy Chase, Maryland.
Time of Meeting: 8 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: June 9, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–14518 Filed 6–18–92; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on June 5, 1992.

(Call Reports Clearance Officer on (410) 965–4149 for copies of package)

1. Psychiatric Review Technique—0960–4141. The information on form SSA–2506–BK is obtained from the claimant's disability folder. It is used by the Social Security Administration (SSA) to document the fact that the proper assessment sequence for mental impairments has been followed. The respondents are Disability Determination Services (either State or Federal) which make disability determinations for SSA.

Number of Respondents: 54 (State only).
Frequency of Response: 8,492 (per office).
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 114,642 (State only)

2. RSI/DI Quality Review Case Analysis Questionnaires and Annual Earnings Test Questionnaire—0960–0189. The information on forms SSA–2930, SSA–2931 and SSA–2932 is used by SSA to provide a national payment accuracy rate and to provide information regarding the major types and sources of claims deficiencies. The information obtained by form SSA–4659 is used to evaluate the annual earnings test process. The respondents are selected beneficiaries to Retirement and Survivor's or Disability Insurance benefits.

Number of Respondents: 15,612.
Frequency of Response: 1.
Average Burden Per Response: 24 minutes.
Estimated Annual Burden: 6,248 hours.

3. Self-Employment/Corporate Officer Questionnaire—0960–0487. The information on form SSA–4184 is used by SSA to develop a claimant's earnings or corroborate his or her allegation of retirement when he or she is self-employed or a corporate officer. The respondents are claimants who need to support their allegation concerning earnings or employment.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 16,667 hours.

4. SSA Automated SML Application and SSA Automated SML Application for Building Maintenance—0960–0475. The information on forms SSA–4123 and SSA–4124 is used by SSA to maintain an automated listing of vendors interested in doing business with SSA. The respondents are all such vendors who complete either of these forms.

Number of Respondents: 4,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 333 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 12, 1992.

Judy Hasche,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92–14348 Filed 6–18–92; 8:45 am]

BILLING CODE 4190–29–M

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Chapter S2 covers the Office of the Deputy Commissioner, Operations; Subchapter S2H covers the Office of Disability and International Operations (ODIO). Notice is given of the following changes in ODIO. In the Office of Disability Operations (ODO), the number of Process Divisions is increased from four to five, and the Division of Appealed Claims (DAC) is abolished. The functions of the DAC are merged with those of the ODO Process Divisions. Subchapter S2H is changed as follows:

Section S2H.10 *The Office of Disability and International Operations*—(Organization):

D. The Office of Disability Operations (S2HA).

Substitute: 1. The Process Divisions (S2HA1,2,3,4,5).

Delete: 2. The Division of Appealed Claims (S2HA5).

Section S2H.20 *The Office of Disability and International Operations*—(Functions):

D. The Office of Disability Operations (ODO) (S2HA).

Substitute: 1. The Process Divisions (S2HA1,2,3,4,5).

a. Make initial determinations of disability and reconsider disability determinations of claims excluded from State agency jurisdiction. Make determinations of continuing disability entitlement.

b. Make determinations of entitlement or eligibility to primary or auxiliary benefits, and authorize allowance or disallowance of disability claims not authorized by district offices and reconsider those cases appealed for issues other than the existence of disability. Make representative-payee determinations, process representative-payee accountability reports, approve the payment and amount of attorney fees and offset disability insurance benefits due to previous SSI payments.

c. Implement, adjust, suspend and terminate benefits and prepare benefit payment data for introduction into the computer system; process all actions to maintain beneficiary payment rolls; recover or waive recovery of amounts incorrectly paid to beneficiaries, prepare and release award certificates, denial letters and other claims-related notices and maintain the files of disability claim folders.

d. Answer inquiries regarding individual cases and ensure expeditious processing of actions where claimant hardship is indicated.

e. Contact outside Federal/State components such as the Department of Labor, Railroad Retirement Board, Workers' Compensation Commissions and other SSA components, as necessary, to resolve disability claims actions.

Delete: 2. The Division of Appealed Claims (S2HA5) and all its functions (a through e).

Dated: June 8, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92-14384 Filed 6-18-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-83]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stwart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; rm. 1E671, Pentagon, Washington, DC 20310-2600; (703) 693-4583; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; (These are not toll-free numbers).

Dated: June 12, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 06/19/92

Suitable/Available Properties

Land (by State)

Guam

Portion, Former Marbo Base Command "B"-4
Andersen Air Force Base (Admin Annex)
Yigo GU
Landholding Agency: GSA
Property Number: 549220007
Status: Surplus
Comment: 80 acres, land/water use restriction, former housing area, paved

roads on property are buried u/moss and encroaching jungle, potential utilities.
GSA Number: 9–D–GU–411A

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. T–5
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220789
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 101
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220790
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 102
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220791
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 103
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220792
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 104
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220793
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 114
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220794
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 201
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220795
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 202
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220796
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 301
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220797
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 302
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220798
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 303
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220799
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 309
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220800
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 313
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220801
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 701
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220802
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 704
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220803
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 801
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220804
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 805
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 21922805
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 806
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220806
Status: Unutilized
Reason: Other Other Other
Comment: Extensive deterioration

Bldg. 807
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220807
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 810–a
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220808
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 810–oa
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220809
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 828
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220810
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 901-A
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220811
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 901–B
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220812
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 901–C
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220813
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 902 Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220814
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 903
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220815
Status: Unutilized
Reason: Other

Comment: Extensive deterioration

LAND (by State)

Alaska

Portion—Gibson Cove
1211 Gibson Cove Road
Kodiak Co: Kodiak Island AK 99615
Landholding Agency: GSA
Property Number: 549220011
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–C–AK–573

[FR Doc. 92–14261 Filed 6–18–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action—Land Use Permit; Montana

AGENCY: Bureau of Land Management, Billings Resource Area, Miles City District Office, Interior.

ACTION: Notice of Realty Action MTM 79071. Land use permit on public lands in Carbon County, Montana, for making motion pictures.

SUMMARY: The land was examined and found suitable for land use permitting under the provisions of Section 302b of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, (43 U.S.C. 1716) and 43 CFR part 2920 and is located and described as follows:

P.M.M., T. 7 S., R. 24 E.,
Sec. 17, NE ¼

Containing 160 acres of public land more or less

DATES: For 30 days from June 19, 1992, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Area Manager, Billings Resource Area, 810 East Main, Billings, Montana 59105, or Phone 406 657–6262.

SUPPLEMENTARY INFORMATION: Applications will only be accepted at the BLM Billings Resource Area office at the address shown above for 30 days after June 19, 1992. The site will be permitted on a noncompetitive basis. All applications must include a reference to this notice and a complete description of the proposed facilities, services, access needs and activities on the site with a map to make it legible. The description must be in sufficient detail to allow evaluation of the land use including feasibility, environmental impacts, residual impacts, if any, and public benefits. Applicants may be required to furnish satisfactory evidence that they have the technical and financial capability to construct, operate, maintain and terminate the use authorization requested in the application. If the rental is determined to be more than $250 for the project, the selected permittee shall reimburse the United States for reasonable administrative costs incurred in processing the land use permit. Costs include preparing the environmental assessment and related activities, monitoring construction and operation on the permit area and rehabilitation of the area in accordance with the provisions of 43 CFR 2920.6, 2803.3 and 2803.4. The processing and monitoring fees will be charged in addition to the rental.

A bond to ensure full compliance with the conditions and terms of the permit shall be furnished when the authorized officer responsible determines it is appropriate. Length and degree of occupancy, type and number of vehicles and equipment and amount of resource disturbance are factors that will be considered to determine the amount of the bond.

Any permit issued for filming or commercial photography will specify that credit be given to the Department of Interior, Bureau of Land Management, through use of appropriate title of credit unless waived by the authorized officer.

This realty action is consistent with BLM policies and land use planning and has been discussed with state and local officials. The estimated intended length of the permit is two months.

Dated: June 12, 1992.

Arnold E. Dougan,
Acting Associate, District Manager.

[FR Doc. 92–14332 Filed 6–18–92; 8:45 am]
BILLING CODE 4310–DN–M

[G–010–G2–0113–4212–20, RGRP; NMNM 87735]

Albuquerque District, New Mexico; Realty Action; Disposal of Public Lands (Valencia II and III Disposal Block)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice (Correction).

In the **Federal Register** Notice (Document 88–1936, page 2793) dated Monday, February 1, 1988, add the following corrected legal description:

T. 7 N., R. 2 E., NMPM,
Sec. 36 (portions thereof)
Comprising of approximately 200 acres.
Dated: June 11, 1992.

Robert T. Dale,
District Manager.

[FR Doc. 92–14404 Filed 6–18–92; 8:45 am]
BILLING CODE 4310–FB–M

Bureau of Reclamation

Lake Berryessa Reservoir Area Management Plan, Napa County, California

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of availability: final EIS (INT–FES–92–12).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation) announces the availability of a final environmental impact statement (EIS) which addresses the impacts from several land management, water surface management, and concession management actions that Reclamation is considering for eventual adoption in a Reservoir Area Management Plan (RAMP) for Lake Berryessa.

At scoping workshops held in April and June of 1987 and during an additional commenting period (June 28–August 1, 1988), the public was afforded an opportunity to comment on a variety of actions being considered during Reclamation's initial planning efforts for the RAMP. Reclamation considered the input provided by the public in order to determine the significant issues and impacts which were analyzed and included in the draft EIS.

During the public review period for the draft EIS (INT DES–89–30), Reclamation received significant public input from three public hearings and 140 written letters. As such, modifications have been made throughout the document, particularly in the Actions and Alternatives section. Additionally, Reclamation has prepared a Public Involvement Report (PIR) which is part of the final EIS. The PIR includes a summary of questions presented at the public hearings with Reclamation's prepared responses and copies of all written letters received with Reclamation's prepared responses to questions.

COMMENTS

Following availability of the final EIS, the public will have 45 days to provide

comments on the adequacy of actions and issues identified in the document. Written comments should be sent to the Lake Berryessa Recreation Office at the address given below by August 3, 1992. In addition, an open house will be held to further clarify the information in the FEIS.

DATE AND LOCATION: The open house will be held on: Sunday, July 12, 1992, Clarion Inn, 3425 Solano Avenue, Napa, California, 10 a.m. to 4 p.m.

ADDRESSES: Single copies of the final EIS may be obtained on request to the Regional Director at the address below:

- Regional Director, Bureau of Reclamation, Mid-Pacific Region (MP–750), 2800 Cottage Way, Sacramento CA 95825, telephone: (707) 966–2111.

Copies of the final EIS are available for public inspection and review above and at the following locations:

- Bureau of Reclamation, Environment and Planning Branch, U.S. Department of the Interior, 18th and C Streets, NW., room 7455, Washington, DC 20240, telephone: (202) 343–4662.

Libraries

Bureau of Reclamation Library, 2800 Cottage Way, Sacramento, California
Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, room 167, Denver CO 80225;
Fairfield-Suisun Community Library, 1150 Kentucky, Fairfield CA 94533;
Vacaville Public Library, 680 Merchant, Vacaville CA 95688;
Napa Public Library, 1150 Division St., Napa CA 94558;
Sacramento Central Library, 828 I Street, Sacramento CA 95814;
Main Library, Civic Center, Larkin & McAlister, San Francisco CA 94101;
San Jose Main Library, 180 West San Carlos, San Jose CA 95113;
Oakland Public Library, 125 14th Street, Oakland CA 94617;
University of Davis, Shields Library, Government Documents, Davis CA 95616.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Brockman, Outdoor Recreation Planner, Bureau of Reclamation, Mid-Pacific Region (MP–401), 2800 Cottage Way, Sacramento CA 95825, (916) 978–5313; or Mr. Robert Semmens, Recreation Manager, Bureau of Reclamation, Lake Berryessa Recreation Office, PO Box 9332, Napa CA 94558 (707) 966–2111.

SUPPLEMENTARY INFORMATION: Lake Berryessa has been in existence since 1957, after the impoundment of Putah Creek by Monticello Dam. Managed initially by Napa County until 1975, and now by Reclamation, recreation lands use at the lake has changed ranging from dispersed use of undeveloped lands to highly concentrated development and use in seven resort areas. A Public Use Plan (PUP) was prepared by the National Park Service which designated certain areas for development with suggestions regarding specific types of improvements and their locations. Over the years, improvements were made which did not always follow the original designations of areas and uses. In addition, some lands were never fully developed as specified in the PUP. To compound this situation, the demand for day use and other short-term recreation facilities has increased while most development has been oriented toward long-term mobile home and travel trailer parks. In view of the above and recognizing the need to further identify the long-range needs and uses of Lake Berryessa, Reclamation has initiated a planning effort culminating in a RAMP, updating and revising the earlier PUP.

The final EIS prepared by Reclamation analyzes the impacts of various actions which are being considered for inclusion and adoption in the RAMP for Lake Berryessa. Key actions involve the development of additional short-term recreation facilities, establishment of a houseboat program, removal and protection of facilities subject to flooding, promotion of safer and varied water use activities, conversion of long-term sites in key shoreline locations to short-term uses during resort reorganizations, expansion of visitor information services, increases in law enforcement presence, establishment of a fish and wildlife management area, and other development and master planning actions.

Environmental consequences of the actions analyzed for various resource categories include soils and topography, water quality, vegetation and wildlife, fish resources, recreational uses, land uses, cultural resources, traffic and circulation, scenic resources, and socioeconomics (recreation visitors, resort tenants, resort owners, and local economy).

Dated: May 20, 1992

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–14485 Filed 6–18–92; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Intentional Introductions Policy Review Committee Public Meetings

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces four public meetings for the discussion of an "Options Paper" developed by the Intentional Introductions Policy Review Committee, a committee of the Aquatic Nuisance Species (ANS) Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*). A notice of availability of the Options Paper was published in the **Federal Register** on May 28, 1992 (57 FR 22483). At each public meeting a summary of the Options Paper will be presented, after which, there will be opportunity for public comment.

TIMES AND DATES: Public meetings are scheduled for July 6, 1992, in Portland (OR), July 8, 1992, in Vicksburg (MS), July 10, 1992, in Valrico (FL), and July 14, 1992, in Baltimore (MD). All meetings are scheduled for 10 AM to 1 PM.

ADDRESSES: The July 6 meeting will be held in the Third Floor conference room of the U.S. Fish and Wildlife Service Regional Office at 911 NE 11th Avenue, Portland, Oregon. The July 8 meeting will be held in the auditorium (Bldg. 1006) of the U.S. Army Corps of Engineers Waterways Experiment Station at 3909 Halls Ferry Road, Vicksburg, Mississippi. The July 10 meeting will be held in the Community Room of the Hillsborough County Farm Bureau at 100 South Mulrennan Road (corner of Highway 60 and Mulrennan Road), Valrico, Florida. The July 14 meeting will be held at the University of Maryland Center for Marine Biotechnology on the campus of the Community College of Baltimore, 600 E. Lombard Street (across from the National Aquarium), Baltimore, Maryland. Requests for additional information on the public meetings or copies of the Options Paper should either be directed to the name and telephone number listed below or mailed to the following address: Intentional Introductions Policy Review Committee, c/o Dr. Dennis R. Lassuy, U.S. Fish and Wildlife Service (820 ARLSQ), U.S. Department of Interior, 1849 C Street, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Lassuy at (703) 358–1718.

Dated: June 16, 1992.

Noreen K. Clough,

Acting Alternate Co-Chair, ANS Task Force, Assistant Director—Fisheries.

[FR Doc. 92-14440 Filed 6-18-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-334]

Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles; Commission Decision to Extend Deadline for Determining Whether to Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to extend until June 29, 1992, the deadline by which it must determine whether to review an initial determination (ID) granting a motion for summary determination and terminating the investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On April 14, 1992, the presiding administrative law judge (ALJ) issued an ID granting a motion for summary determination, thereby terminating the investigation on the basis of no violation of section 337 of the Tariff Act of 1930. Under Commission interim rule 210.53(h), the ID would have become the determination of the Commission on June 15, 1992, unless review was ordered or the review deadline extended.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: June 15, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-14437 Filed 6-18-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-335]

Certain Dynamic Sequential Gradient Compression Devices and Component Parts Thereof; Commission Decision to Vacate a Portion of an Initial Determination Concerning Temporary Relief and to Deny Motion for Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate a portion of the presiding administrative law judge's (ALJ's) initial determination (ID) denying temporary relief in the above-captioned investigation and not to vacate or modify the ID in other respects. The Commission's determination has the effect of denying the motion for temporary relief.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3087.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.24 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.24).

On January 10, 1992, The Kendall Company ("Kendall") filed a complaint under section 337 alleging unfair acts in the importation and sale of certain dynamic sequential gradient compression devices ("SGCDs") and component parts thereof. The complaint alleged, *inter alia*, importation and sale of articles infringing certain claims of U.S. Letters Patent 4,029,087, which Kendall owns. Kendall concurrently moved for temporary relief. The Commission instituted an investigation of Kendall's complaint and provisionally accepted Kendall's motion for temporary relief. Notice of the Commission's actions was published in the **Federal Register** on February 20, 1992. 57 FR 6126. The notice named two respondents: Huntleigh Technology PLC, of Luton, Bedfordshire, England, and Huntleigh Technology, Inc., of Manalapan, N.J. (collectively "Huntleigh").

The ALJ conducted an evidentiary hearing on the temporary relief motion between March 18 and 23, 1992. All parties participated in the hearing. On April 20, 1992, each party filed a memorandum with the Commission concerning the issues of remedy, the public interest, and respondents' bond, pursuant to Commission interim rule 210.24(e)(18)(ii). On April 28, 1992, the ALJ issued Order No. 4, designating the temporary relief phase of the investigation "more complicated."

On May 15, 1992, the ALJ issued an ID denying Kendall's motion for temporary relief. The ALJ found that Kendall had shown neither a reasonable likelihood that it would prevail on the merits nor that irreparable harm will occur in the absence of relief. With respect to Kendall's showing on the merits, the ID concluded that Kendall is unlikely to establish a violation of section 337 because: (1) Claim 1 of the '087 patent is likely invalid for obviousness under 35 U.S.C. 103; (2) claims 1 and 25 of the '087 patent are likely not infringed by respondents; and (3) Kendall is not likely to establish the existence of a domestic industry with respect to the '087 patent. The ID found no irreparable harm in light of the limited nature of competition between the Kendall SGCDs alleged to be covered by the '087 patent and the imported Huntleigh SGCDs alleged to infringe it and in view of the market strength and pricing practices of Kendall.

The Commission has determined to vacate the ID's discussion of the issue of obviousness under 35 U.S.C. 103. It has determined not to modify or vacate the ID in any other respect. The ID's discussion on obviousness is neither necessary to its conclusion that Kendall is unlikely to establish a violation of section 337 nor dispositive of its determination that temporary relief should be denied. Consequently, the Commission's action not to modify or vacate the other portions of the ID has the effect of denying Kendall's motion for temporary relief.

Copies of the Commission opinion issued in connection with this temporary relief determination, the public disclosure version of the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202–252–1810.

Issued: June 15, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–14436 Filed 6–18–92; 8:45 am]

BILLING CODE 7029–02–M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporation intends to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: ICI Explosives USA Inc. (formerly Atlas Powder Company), 15301 Dallas Parkway, suite 1200, Dallas, TX 75248–4629.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Explo-Midwest—Incorporated in Delaware

CAPCO—Incorporated in Delaware.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–14439 Filed 6–18–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32067]

Northern Indiana Commuter Transportation District—Exemption From Tariff Filing Requirements—Special Fares

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts certain "special fares" to be offered by the Northern Indiana Commuter Transportation District from the Commission's tariff filing requirements at 49 U.S.C. 10702, 10761, and 10762, and at 49 CFR part 1314. This exemption will provide the District with the flexibility needed to market its services for special events, group movements, premium services, and other activities of benefit to the traveling public.

DATES: This exemption will be effective on June 30, 1992. Petitions to stay must be filed by June 24, 1992, and petitions to reopen must be filed by July 9, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32067 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Bjarne R. Henderson, Northern Indiana Commuter, Transportation District, 33 East U.S. Hwy. 12, Chesterton, IN 46304.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, (TDD for hearing impaired: (202) 927–5721.).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721).

Decided: June 12, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–14438 Filed 6–18–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and Federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky:
KY91-29 (Feb. 22, 1991) .... p. 403, pp. 409-414.

New Jersey:
NJ91-3 (Feb. 22, 1991)..... p. 721, pp. 724-725, pp. 727-732.

Pennsylvania:
PA91-4 (Feb. 22, 1991)..... p. 985, p. 986.
PA91-14 (Feb. 22, 1991)..... p. 1063, pp. 1064-1067.

Virginia:
VA91-33 (Feb. 22, 1991).... p. All.
VA91-47 (Feb. 22, 1991).... p. All.
VA91-50 (Feb. 22, 1991).... p. All.
VA91-52 (Feb. 22, 1991).... p. All.

Volume II

Illinois:
IL91-1 (Feb. 22, 1991) ..... p. 69, p. 78.
IL91-8 (Feb. 22, 1991) ..... p. 145, p. 147.
IL91-9 (Feb. 22, 1991) ..... p. 153, p. 155.

Kansas:
KS91-9 (Feb. 22, 1991)..... p. All.

Missouri:
MO91-1 (Feb. 22, 1991)..... p. 651, pp. 654-655.

Ohio:
OH91-29 (Feb. 22, 1991).... p. 903, pp. 904-914, pp. 916, 918.

Volume III

Colorado:
CO91-5 (Feb. 22, 1991)..... p. All.

North Dakota:
ND91-5 (Feb. 22, 1991)..... p. 295, p. 296.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC. This 12th Day of June 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-14243 Filed 6-18-92; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-26,427]

Digital Equipment Corp. Colorado Springs, CO; Negative Determination on Reconsideration

On February 14, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on February 24, 1992 (57 FR 6335).

One of the petitioners states that the transfer of disc drive production overseas and the use of foreign made disc drives in imported and domestically produced mainframes has adversely affected employment at Colorado Springs. Also Systems Industries and Emulex which use foreign disc drives have taken business away from Digital Equipment. The petitioner notes that workers at other Colorado Springs' companies—Ampex, Laser Magnetics and IBM/Rolm—were certified. Finally, the petitioner states that since 1974 Digital Equipment has used original equipment manufacturers (OEM) to provide magnetic storage disc drives for sale in its computer systems. These disc drives were until recently produced domestically but are now being produced offshore.

Workers at Digital produce disc drives for mainframes and other data processing equipment. The Colorado Springs facility produced the RA disc drives until fiscal 1991 and currently produces the RF disc drives. The Kaufbeuren, Germany facility produces only RA disc drives for the European market.

The findings show that RA disc drives represent the older technology which is still popular in the European market. The RA drives reached their end-of-life for the U.S. market and were phased out because the technology they embody is out-dated. The RA disc drives were phased out in Colorado Springs during fiscal year 1991 and are scheduled to be phased out in Kaufbeuren in fiscal year 1992, ending on June 30, 1992. The new generation of system storage devices (RF family) requires a much smaller manufacturing labor force because the disc drives contain substantially fewer component parts.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements was not met since the worker separations at Digital were not the result of increased imports but a change in technology.

Findings on reconsideration show negligible company imports of RA disc drives from Germany. The few that were imported declined in fiscal year 1991 compared to fiscal year 1990. The imports were primarily warranty replacements of earlier sales from Colorado Springs. Other findings show that Kaufbeuren did not produce the RF disc drives.

Further, worker separations due to imported data processing equipment incorporating disc drives would not form a basis for certification of workers producing disc drives. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (D.C. Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of data processing equipment cannot be considered in determining injury to workers producing disc drive components. In determining import injury to workers at Colorado Springs, the Department must consider the finished article produced at Colorado Springs—disc drives.

A worker group certification is based on increased imports of products that are like or directly competitive with those produced at the workers' firm. A review of the Department's files shows that workers at Ampex, Laser Magnetic and IBM Rolm were certified for TAA but produced products different from that of Digital. The Ampex certification, TA-W-20,067, was for workers producing video equipment; the Laser Magnetic Storage certification, TA-W-25,466, was for workers producing cassette tapes and the IBM/Rolm certification, TA-W-22,893, was for workers producing telecommunications systems. These certifications were issued in a different time period from that of Digital's and the aggregate import data for video equipment, cassette tapes

and telecommunications systems would not apply for disc drives.

Findings on reconsideration show that Systems Industries and Emulex were not customers of Digital during the relevant period. Imports by non-customers of Digital could not have caused an actual loss of sales or production at Digital but only a potential loss of future business. A potential loss of business would not form a basis for a worker group certification.

Finally, the findings show that during the period relevant to the petition, Digital had no agreements with OEMs either to manufacture or to install disc drives characterized as "foreign-made" by the petitioner.

Signed at Washington, DC, this 10th day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-14489 Filed 6-18-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,984 and TA-W-26,985]

Potlatch Corp.; Clearwater Logging Unit, and Northern Logging Unit, Lewiston, ID; Negative Determination Regarding Application for Reconsideration

By an application dated May 27, 1992, the Joint Administration No. 1 of the International Woodworkers of America (IWA) AFL-CIO, requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 4, 1992 and published in the **Federal Register** on May 28, 1992 (57 FR 22492).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that the worker separations were the result of imports which have occurred over the years.

The Department's earliest coverage in certifying workers for TAA is limited by Section 223(b)(1) of the Trade Act to worker separations which occurred no more than one year prior to the date of the petition which in this case would be February 26, 1991.

The investigation findings show that the Potlatch Corporation is an integrated company engaged in the production of lumber and plywood products. The subjects of the investigation were the two logging units in Lewiston which produce logs that are shipped to affiliated manufacturing facilities of the company. Only a very small amount of logs are sold to local lumber mills.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. U.S. imports of logs (both softwood and hardwood) are negligible and declined absolutely and relative to domestic shipments in 1991 compared to 1990. Also, there are no company imports of logs.

Since most of the logs were shipped to affiliated manufacturing facilities of Potlatch, the workers could be certified for trade adjustment assistance if they experienced a reduced demand for their product from a production facility of the firm whose workers are already independently certified for trade adjustment assistance. However, these conditions have not been met since there are no workers at Potlatch who are currently certified for TAA.

Further, the Department's negative determination explained why imports of lumber cannot be used in meeting the increased import criterion for workers producing logs. Imports of the finished product (lumber) are not like or directly competitive with their component parts (logs).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92-14487 Filed 6-18-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,874]

Stevenson Co-Ply, Inc. Stevenson, WA; Affirmative Determination Regarding Application for Reconsideration

On May 26, 1992, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on March 31, 1992 and published in the **Federal Register** on April 27, 1992, (57 FR 15331).

The company claims that the Department's survey was inadequate, since it did not survey its customers for competitive products—oriented strand board and wafer board.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 12th day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-14488 Filed 6-18-92; 8:45 am]

BILLING CODE 4510-30-M

Identification of Qualified Sources to Conduct Pilot Projects on Skill Standards and Certification

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor/Employment and Training Administration, with the U.S. Department of Education and assisted by the National Advisory Commission on Work-based Learning, is seeking sources capable of pilot-testing approaches to develop, implement and gain acceptance for voluntary skill standards and certification in U.S. industries.

DATES: Interested organizations should submit the information requested in this notice by July 9, 1992.

ADDRESSES: Responses to this Notice should be mailed to Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Ave., NW., rm. C-4305, Washington, DC 20210.

Attention: FR–SOURCES SOUGHT DESK.

FOR FURTHER INFORMATION CONTACT: Charlotte A. Adams; Telephone: (202) 535–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor (DOL) / Employment and Training Administration (ETA) is seeking sources capable of pilot-testing approaches to develop, implement and gain acceptance for voluntary skill standards and certification in U.S. industries. DOL is undertaking this effort in cooperation with the U.S. Department of Education and utilizing advice from the National Advisory Commission on Work-based Learning (NACWBL).

The Secretaries of Labor and Education were charged by the President in Track III of America 2000 with spearheading a public-private partnership by which business and labor voluntarily "adopt a strategy to establish job-related (and industry-specific) skill standards, built around core proficiencies, and to develop skill certificates to accompany these standards." As announced in the **Federal Register** of March 18, 1992 (57 FR 9488–91), the steps to fulfill this mandate include: public hearings and a request for comments; research; technical assistance projects; the ongoing work of the NACWBL; building on the work of the Secretary of Labor's Commission on Achieving Necessary Skills; and pilot projects.

Federal involvement in pilot projects is intended to be catalytic by seeking to initiate the voluntary development by U.S. industries of their own competency-based skill standards and certification arrangements. The Federal government is facilitating this effort as a cooperative development and learning exercise with industry to increase knowledge and understanding as to how skill standards and certification can be developed. In the long haul, it is envisaged that the development and maintenance of voluntary industry-based skill standards will become self-supporting. Funding will be provided through cooperative agreements with industrial trade associations for particular industries to create a leadership coalition and inclusive project management structure involving the key partners in the industry which will lead to the recognition of skills attained or enhanced through training. The Federal role will also be one of supporting industry-based efforts through the provision of additional technical and research assistance.

Interested parties, limited to national trade associations or consortia of national trade associations, are invited to respond to this sources-sought notice by submitting a capabilities statement addressing the following six broad criteria which have been identified by the NACWBL as predictive of successful pilot projects:

(1) Takes an industry perspective to the development of voluntary standards as opposed to an occupation-based approach;

(2) Represents an industry of significant size to the national economy;

(3) Affirms that most, if not all, non-baccalaureate degreed workers will be covered under the standards developed during the pilot project;

(4) Commits their own resources to the project, at least matching any Federal money;

(5) Assures the involvement of all relevant parties, *e.g.*, labor organizations, workers, trainers, educators and representatives from the human resource development/personnel communities; and

(6) Demonstrates a willingness to cooperate in a loose network of other pilot project operators. This is not a request for competitive proposals.

Respondents will be screened against the above criteria by a panel of specialists. A solicitation will be issued to those prospective sources whose responses indicate the potential for successfully fulfilling the requirements of the planned cooperative agreements. Other respondents will not be notified as to the results of the evaluation of information submitted.

Signed at Washington, DC, this 12th day of June, 1992.

Robert T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92–14486 Filed 6–18–92; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92–39]

NASA Wage Committee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Wage Committee.

DATES: June 30, 1992, 1 p.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 6004, Federal Building 6, 400 Maryland Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Deborah Green Glasco, Code FPP, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453–3781.

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Director, Personnel Division, on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Public Law 92. The Committee, chaired by Dr. David Poferl, consists of six members. During this meeting the Committee will consider wage data, local reports, recommendations, and statistical analyses and proposed wage schedules reviewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters felt to be deserving of the Committee's attention

TYPE OF MEETING: Closed.

PURPOSE OF MEETING: The Committee will recommend to the NASA Wage Fixing Authority the proposed wage schedule to be adopted.

Dated: June 11, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–14397 Filed 6–18–92; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Qualifications Investigation, Clerical/Secretarial.

3. The form number if applicable: NRC Form 212A.

4. How often the collection is required: Whenever NRC Office of Personnel specialists determine qualification investigations are required in conjunction with applications for employment related to vacancies.

5. Who will be required or asked to report: Supervisors, former supervisors, and/or other references of external applicants.

6. An estimate of the number of responses: 1,500 annually.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 375 (15 minutes per response).

8. Section 3504(h), Public Law 96–511 does not apply.

9. Abstract: Information requested on NRC Form 212A is used to determine the qualifications and suitability of external applicants for employment in clerical/secretarial positions with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Personnel, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555.

Comments and questions should be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information & Regulatory Affairs (3150–0034), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 11th day of June, 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–14468 Filed 6–18–92; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Qualifications Investigation, Professional.

3. The form number if applicable: NRC Form 212.

4. How often the collection is required: Whenever NRC Office of Personnel specialists determine qualification investigations are required in conjunction with applications for employment related to vacancies.

5. Who will be required or asked to report: Supervisors, former supervisors, and/or other references of external applicants.

6. An estimate of the number of responses: 1,500 annually.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 375 (15 minutes per response).

8. Section 3504(h), Public Law 96–511 does not apply.

9. Abstract: Information requested on NRC Form 212 is used to determine the qualifications and suitability of external applicants for employment in professional positions with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Personnel, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555.

Comments and questions should be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information & Regulatory Affairs (3150–0033), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 11th day of June, 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–14469 Filed 6–18–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–1162]

Western Nuclear Inc., Split Rock Mill; Intent to Amend Source Material License SUA–56

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA–56 the Split Rock Mill to approve a plan for reclamation of the facility.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA–56 for Western Nuclear, Incorporated's Split Rock Mill to incorporate reclamation and archaeological borrow preservation plans into the license.

DATES: The comment period expires July 20, 1992.

ADDRESSES: Copies of the license amendment request and the staff evaluations which are the basis for revision of the license are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, Suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P–223, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, with a copy of the Director, Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, CO.

Comments may be hand-delivered to room P–223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303–231–5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC)

and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC complete review and approval of detailed reclamation (i.e., final closure) plans, for nonoperational tailings impoundments as soon as practicable, but in any event not later than September of 1993.

The NRC, in letter dated August 15, 1986, informed the licensee that a reclamation plan and surety arrangement adequate to meet the requirements of 10 CFR part 40, appendix A, was required. The licensee provided a reclamation plan on June 30, 1987. This reclamation plan was revised and supplemented several times, and on April 21, 1992, the final reclamation plan was submitted.

The NRC has reviewed the proposed final reclamation plan and other supporting information, against current design guidance, and has determined that the plan meets the requirements of 10 CFR part 40, appendix A.

Dated at Denver, Colorado, this 12th day of June 1992.

For the Nuclear Regulatory Commission

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-14470 Filed 6-18-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-1162]

Western Nuclear, Inc., Split Rock Mill; Intent To Amend Source Material License SUA-56

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA-56 for the Split Rock Mill to Incorporate Reclamation Schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-56, Western Nuclear, Inc., Split Rock Mill, to incorporate a revised reclamation schedule and to add a new license condition.

DATES: The comment period expires August 3, 1992.

ADDRESSES: Copies of the response from Western Nuclear, Inc. and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, Suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 20555.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also listed expected dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that Western Nuclear, Inc. submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The license provided a response on November 22, 1991.

The proposed schedule calls for placement of the final cover by December 31, 1994, which is consistent with the date in the MOU for this mill. The NRC staff reviewed the reclamation schedule and determined that it is compatible with the completion date on the MOU.

The NRC intends to amend Source Material License SUA-56 to incorporate the schedules proposed by the licensee by adding License Condition No. 75 as follows:

75. The licensee shall complete site reclamation in accordance with the approved reclamation plan and ground-water corrective action plan, as authorized by License Condition Nos. 27 and 74, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile—complete.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion—complete.

(3) Placement of final barrier designed and constructed to limit radon emissions to an average flux of no more than 20 $pCi/m^2/s$ above background—December 31, 1994.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of appendix A of 10 CFR part 40—December 31, 1994.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 1994.

C. Any license amendment request to revise the completion dates specified in section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in section B above, must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 10th day of June 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-14471 Filed 6-18-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment

to Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (CECo, the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The proposed amendments request changes to License Condition 2.C.(7) and Technical Specification 5.0, "Design Features" to address the planned rerack of the spent fuel pool at the Zion Nuclear Power Station. The proposed rerack will increase the spent fuel pool storage capacity from 2112 to 3012 storage cells. The added capacity will extend the projected loss of the full core discharge capability date from 1994 to 2005. The proposed amendment would also add new Specifications 3.13.13, "Spent Fuel Pool Storage" and 3.13.14, "Spent Fuel Storage Pool Boron Concentration" to ensure consistency with the rerack project safety analysis assumptions.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) *Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?*

In the course of the analysis, CECo has considered the following potential accident scenarios:

1. A spent fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling system flow.
3. A seismic event.
4. A spent fuel cask drop.
5. Rack (heavy load) drop during construction.

It has been concluded that the proposed modification to the spent fuel pool does not increase the probability of accident scenarios 1–4 since the increase in storage capacity is not assumed to be an initiator of events involving the loss of spent fuel pool cooling, a dropped spent fuel assembly in the spent fuel pool, a seismic event or a spent fuel ask drop.

CECo has also considered the probability of an accident resulting from a postulated rack (heavy load) drop during the construction process. Zion Operating Licenses Condition [2.C.(7)(b)] prohibit loads heavier than the weight of a single spent fuel assembly plus the tool for moving that assembly from being carried over fuel storage in the spent fuel pool. All work in the spent fuel pool area will be controlled and performed in strict accordance with specific written procedures and administrative controls to prevent the movement of a rack directly over any fuel. Therefore the probability of an accident resulting from the drop of a rack module on spent fuel in precluded.

In addition, sections 5.1.1, 5.1.2 and 5.1.6 of NUREG–0612, entitled "Control of Heavy Loads at Nuclear Power Plants", provide guidance for heavy load handling operations pursuant to a spent fuel storage rack replacement. Section 5.1.2 provides four alternatives for assuring the safe handling of heavy loads during a fuel storage rack replacement. Alternative (1) of section 5.1.2 provides that the control of heavy loads guidelines can be satisfied by establishing that the potential for a heavy load drop is extremely small, as demonstrated by satisfaction of the single-failure-proof crane guidelines. The provisions of alternative (1) will be met during implementation of the subject application.

NUREG–0554, entitled "Single-Failure-Proof Cranes for Nuclear Power Plants", provides guidance for the design, fabrication, installation and testing of new cranes that are of a high reliability design. For operating plants, NUREG–0612, appendix C, entitled "Modification of Existing Cranes," provides guidelines on the implementation of NUREG–0554 at operating plants. An evaluation of storage rack movements which will be accomplished by the Zion Fuel Storage Building crane to determine conformance with the NUREG–0612, appendix C guidelines demonstrated that alternative (1) above is satisfied, i.e., the probability of a drop of a storage rack is extremely small. As stated in section 9.7.2.5.8 of the updated Zion FSAR, the Fuel Building crane has a rated capacity of 125 tons, which incorporates a design safety factor of five. The maximum weight of any existing or replacement storage rack and its associated handling tool is 19 tons. Therefore, there is ample safety factor margin for movements of the storage racks by the Fuel Building crane. This applies to non-redundant load-bearing components. Redundant special lifting devices, which have a rated capacity sufficient to maintain sufficient safety factors, will be utilized in the movements of the storage racks. As per NUREG–0612, appendix B, the substantial safety factor margin ensures that the probability of a load drop is extremely low.

CECo has evaluated the consequences of a spent fuel assembly drop in the spent fuel pool and found that the criticality acceptance criterion, k_{eff} less than or equal to 0.95, is not violated. In addition, CECo found that there was no significant change in the radiological consequences of a fuel assembly drop from the previous analyses. Analyses demonstrate that the calculated doses are well within 10 CFR part 100 guidelines. The results of an analysis show that a dropped spent fuel assembly on the racks will not distort the racks such that they would not perform their safety function. Thus, the consequences of this type of accident are not significantly changed from the previously evaluated spent fuel assembly drops.

The consequences of a loss of spent fuel pool cooling system flow have been evaluated and it was found that sufficient time is still available to provide an alternative means for cooling in the event of a complete failure of the cooling system. Thus, the consequences of this type of accident are not significantly increased from previously evaluated loss of cooling system flow accidents.

The consequences of a seismic event, have been evaluated. The new racks will be designed and fabricated to meet the requirements of applicable portions of the NRC Regulatory Guides and published standards. The new free-standing racks are designed, as are the existing free-standing racks, so that the integrity of the racks and the pool structure is maintained during and after a seismic event. Thus, the consequences of a seismic event are not increased from previously evaluated events.

The probability and consequences of a spent fuel cask drop will not be affected by the replacement of the racks. The Zion Operating Licenses Condition [2.C.(7)(b)] prohibit spent fuel cask movements over any region of the spent fuel pool which contains irradiated fuel. During the modification phase of the re-racking project, administrative controls governing safe load paths will supplant the Fuel Building crane interlocks and limit switches. Upon completion of the re-rack installation, the Fuel Building crane safety interlock and limit switch functions will be restored.

The consequences of a rack (heavy load) drop during construction have been considered. A heavy load will not be carried in the spent fuel pool area until all fuel in the pool has decayed for a minimum of three months. This provides sufficient time for decay of gaseous radionuclides in the fuel (gap activity) such that an assumed accidental release of gases from damage to all stored fuel assemblies would result in potential offsite doses less than 10% of 10 CFR part 100 limits. In addition, there is no equipment which is essential to the safe shutdown of the reactor or employed to mitigate the consequences of an accident which is beneath, adjacent to or otherwise within the area of influence of any loads that will be handled during the expansion modification. An analysis was also performed to determine the effect on the integrity of the spent fuel pool structure following the free fall of the heaviest rack module. The analysis concluded that the maximum load due to the rack drop event is well below the cumulative impact load produced during the seismic event, and as such is bounded by the seismic analysis. Therefore, the consequences of a rack (heavy load) drop during construction are not

significantly increased from previously evaluated events.

Therefore, it is concluded that the proposed amendment to replace the spent fuel racks in the spent fuel pool does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) *Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?*

CECo has evaluated the proposed modification in accordance with the guidance of the NRC Position Paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plans, and appropriate industry codes and standards. In addition, CECo has reviewed several previous NRC Safety Evaluation Reports for rerack applications similar to this proposed modification.

No unproven technology will be utilized either in the construction process or in the analytical techniques necessary to justify the planned fuel storage expansion. The basic reracking technology in this instance has been developed and demonstrated in other applications for fuel pool capacity increases previously approved by the NRC.

The change to a two-region spent fuel pool requires the performance of additional evaluations to ensure that the criticality criterion is maintained. These include the evaluation of the limiting criticality condition, i.e., misplacement of an unirradiated fuel assembly of 4.65% enrichment into a Region II storage cell or outside and adjacent to a Region II rack module. The evaluation for this case shows that when the boron concentration meets the proposed Technical Specification requirement, the criticality criterion is satisfied. Although this change does pose the need to address additional aspects of a previously analyzed accident, it does not create the possibility of a previously unanalyzed accident.

Based upon the foregoing, CECo concludes that the proposed reracking does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

(3) *Does the proposed amendment involve a significant reduction in a margin of safety?*

The NRC Staff safety evaluation review process has established that the issue of margin of safety, when applied to a reracking modification, should address the following areas:

1. Nuclear criticality considerations
2. Thermal-hydraulic considerations
3. Mechanical, material and structural considerations.

The established acceptance criterion for criticality is that the neutron multiplication factor in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design.

The methods used in the criticality analysis conform to the applicable portions of the appropriate NRC guidance and industry codes, standards, and specifications. In meeting the acceptance criteria for criticality in the spent fuel pool, such that k_{eff} is always less than 0.95, including uncertainties at a 95%/95% probability confidence level, the proposed amendment does not involve a significant reduction in the margin of safety for nuclear criticality.

Conservative methods were used to calculate the maximum fuel temperature and the increase in temperature of the water in the spent fuel pool. The thermal-hydraulic evaluation used the methods previously employed for evaluations of the present fuel racks to demonstrate that the temperature margins of safety are maintained. The proposed modification will increase the heat load in the spent fuel pool. However, the evaluation shows that a sufficient margin of safety exists such that the maximum allowable temperature for bulk boiling is not exceeded for the calculated increase in pool heat load utilizing the existing spent fuel cooling system. The evaluation also shows that maximum local water temperatures along the hottest fuel assembly are below the nucleate boiling condition value. Thus, there is no significant reduction in the margin of safety for thermal hydraulic or spent fuel cooling concerns.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal or abnormal loadings. Abnormal loadings which have been considered are the effect of an earthquake, the impact due to a spent fuel cask drop, the drop of a spent fuel assembly, or the drop of any other heavy object. The mechanical material, and structural design of the new spent fuel racks is in accordance with applicable portions of: "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", dated April 14, 1978, as modified January 18, 1979; Standard Review Plan 3.8.4 and other applicable NRC guidance and industry codes. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural considerations of the new racks address margins of safety against tilting and deflection or movement, such that the racks do not impact each other during the postulated seismic events. In addition the spent fuel assemblies remain intact and no criticality concerns exist. Thus the margins of safety are not significantly reduced by the proposed rerack.

In summation, it has been shown that the proposed spent fuel storage facility modifications do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

Thus, CECo has determined that the proposed amendment does not involve significant hazard considerations, and that the criteria [of] 10 CFR 50.92 have accordingly been met. In addition, the proposed amendment most closely resembles example (X) of "Amendments That Are Considered Not Likely to Involve Significant Hazards Considerations" as provided in the final NRC adoption of 10 CFR 50.92, 51 FR 7751 (March 6, 1986). This example indicates that an amendment is not likely to involve a significant hazards consideration as follows:

(X) An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits.

The Zion spent fuel pool rerack involves the replacement of the present capacity racks with a design which, by requiring only burned fuel be stored in Region II, allows closer spacing of the stored spent fuel cells. Region I is designed for allowing safe storage of unburned fuel.

(2) The storage expansion method does not involve rod consolidation or double tiering.

The Zion racks are not double tiered and all racks will sit on the spent fuel pool floor. In addition, the amendment application does not involve consolidation of spent fuel.

(3) The k_{eff} of the pool is maintained less than or equal to 0.95.

The design of the spent fuel racks contains a neutron absorber, Boral, to ensure that the k_{eff} remains less than 0.95 under all conditions (with unborated water in the pool). In addition, the water in the spent fuel pool contains at least 500 ppm of boron; providing further assurance that k_{eff} remains less than 0.95 in the event of a mispositioned fuel assembly.

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

The rack design has been licensed for use at other nuclear utilities. The technology for the construction processes and analytical techniques remain the same as these other utilities storage rack projects. Thus no new or unproven technology is utilized in the construction or analysis of the proposed Zion spent fuel racks.

Thus, this submittal meets example (X) as presented in the supplementary information accompanying publication of the Final Rule as an example of situations which are considered not to involve significant hazards considerations.

Based on the foregoing, CECo has concluded that all criteria for issuance of a no significant hazard statement are satisfied.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of request for hearing and petitions for leave to intervene is discussed below.

By July 20, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard J. Barrett: Petitioner's name ad telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First

National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(l)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985), and 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for the amendment dated January 15, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 9th day of June, 1992.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–14472 filed 6–18–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–424, License No. NPF–68, EA 91–141]

Georgia Power Co. (Vogtle); Order Imposing Civil Monetary Penalty

I

Georgia Power Company (Licensee) is the holder of Operating License No. NPF–68 issued by the Nuclear Regulatory Commission (NRC or Commission) on March 16, 1987. The license authorizes the Licensee to operate Vogtle Electric Generating Plant Unit 1 in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was completed on March 19, 1991 by the Nuclear Regulatory Commission. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated December 31, 1991. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letters dated January 30 and February 3, 1992. In its responses, the Licensee denied the violations, disagreed with the severity level, and requested complete mitigation of the proposed civil penalty action.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC Staff has determined, as set forth in the appendix to this Order, that Violations A, B, C.1, and D occurred as stated. With regard to Violation C.2, the NRC Staff agrees with the Licensee that the wrong revision of VEGP Procedure 10000–C was referenced in the Notice. However, as discussed in the Appendix to this Order, the NRC Staff has concluded that, the Licensee's action, when viewed against the correct revision of the procedure, still constitutes a violation. Therefore, the proposed penalty designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (ACT), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $100,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW., Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall

be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice as modified in section III above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 12th day of June 1992

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research.

Appendix

Evaluations and Conclusion

On December 31, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Georgia Power Company (GPC) for violations identified by the Nuclear Regulatory Commission (NRC) Staff during an investigation. GPC responded to the Notice in correspondence dated January 30, 1992 and February 3, 1992. GPC denies the violations occurred and also considers the civil penalty to be unwarranted. The NRC Staff's evaluation and conclusions regarding GPC's responses are presented below.

Restatement of Violation A

A. Technical Specification (TS) 3.4.1.4.2 (1988 edition) required that two residual heat removal (RHR) trains shall be OPERABLE and at least one RHR train shall be in operation. Reactor Makeup Water Storage Tank (RMWST) discharge valves (1208–U4–175, 1208–U4–176, 1208–U4–177, and 1208–U4–183) shall be closed and secured in position whenever the plant is in Mode 5 with reactor coolant loops not filled. Action c. of TS 3.4.1.4.2 required that with the RMWST valves not closed and secured in position, immediately close and secure them in position.

Contrary to the above, on October 12 and 13, 1988, with Unit 1 in Mode 5, loops not filled, RMWST valves 1208–U4–176 and 1208–U4–177 were opened in order to add chemicals to the reactor coolant system.

Summary of Licensee's Response to Violation A

GPC denies Violation A based on its position that the decision to voluntarily enter the Limiting Conditions for Operation (LCO) of TS 3.4.1.4.2 (1988 edition) was consistent with the language of the TS as well as the established practice and NRC guidance available at the time. In addition, GPC contends that since an entry into the specific TS LCO was not prohibited, no violation occurred. GPC also contends that the term "immediate" as applied to this TS is open to interpretation.

NRC Evaluation of Licensee's Response to Violation A

The language which GPC contends sanctioned its voluntary entry into TS LCO can be found in a section from the Inspection and Enforcement (I&E) Manual, [Note: This manual is now titled NRC Inspection Manual], chapter 9900, STS (Standard Technical Specifications) section 3.0, Voluntary Entry Into Action Statements, with an issue date of January 1, 1982 (Exhibit 24).[1] In this guidance, NRC Staff states that "The NRC endorses Voluntary Entry into the Action Statement Conditions and has structured the TS to permit the licensee to exercise judgment within the latitude permitted by the Action Statement language". TS 3.4.1.4.2 action statement does not contain any latitude. Action c. of that TS can only be reasonably read to address the situation where the valves are found either not closed or unsecured and requires in those circumstances that the valves immediately be closed and secured. Interpreting the TS to allow intentional opening of valves that were closed and tagged to perform an evolution is directly contrary to the stated requirement of the TS.

In choosing the NRC Staff's guidance it cites, the licensee selectively picked guidance that supports it position and did not address guidance that did not support its position. Another section of the same I&E chapter referred to by the licensee, discusses in detail an interpretation of locked or otherwise secured components. In part, that guidance dated October 1, 1977, states that the locking into a prescribed position of a manually operated valve should be accomplished using a key or combination lock or other acceptable means to preclude the manipulation from the prescribed position. This guidance also states that the use of a tag or similar device on a valve handwheel does not meet the requirements for a locked valve in a fluid system important to safety. Clearly, if tags in lieu of a locking device on a closed valve would not suffice to meet a requirement that mandates the valve be closed and secured in position, then an individual actually opening the valve (exactly opposite to the required position) under some undocumented administrative control, as occurred in the case at issue, is clearly unacceptable.

The GPC statement that since "Such an entry was not prohibited by TS, no violation occurred", is not supported. As discussed above, the TS clearly prohibited the licensee's action in this case. A document containing guidance in this area is the Technical Specification Improvement Program Highlights, dated August 1987 (Exhibit 27) which the licensee again attempts to selectively use to support its argument. In the section entitled "Voluntary Entry into Technical Specification Action Statements", a specific comment is made to address the entry into TS 3.0.3 (standard version) by licensees. The guidance states that "since such actions remove the last echelon of defense against deleterious events, NRR (Nuclear Reactor Regulation) has alerted Regional Administrators that voluntary use of specification 3.0.3 is unacceptable as an operating convenience in lieu of other courses of action."

With regard to the Technical Specification in this case and the above referenced guidance, three points need to be made. First, if anything, the use of the term "immediate" in the Action for TS 3.4.1.4.2 should have reinforced the importance of following the TS requirement, which in this case was to have the valves closed and secured in position.

Second, the licensee supports its position that entry into the Action is not prohibited by relying on the TS basis. The TS requirement and not its basis establishes the TS requirement with which the licensee must comply. In this case, the requirement prohibits the opening of the valves in Mode 5, loops not filled. Notwithstanding the language of the TS basis, the language of the Final Safety Analysis Report (FSAR), section 15.4.6.2.1 and 15.4.6.2.2, did not support the Operations Manager's decision.

Finally, consistent with the above referenced guidance, the licensee did not extensively consider other possible courses of action before opening the valves in Mode 5, loops not filled. Given that a question of Technical Specification applicability had been raised by a senior reactor operator and that the situation did not involve an evolution that needed to be accomplished immediately in order to maintain plant safety, the plant conditions could have been altered, for example by refilling the RCS loops, so that opening of the valves would unquestionably have been allowed.

GPC discusses the term "immediate" and reaches the conclusion that the time associated with this term is open to interpretation. GPC has stated that NRC Staff internal correspondence dated May 1977 (Exhibit 29) states that the NRC Staff would have to rely on the technical judgment of the NRC inspection staff on a case-by-case basis to determine the appropriate time interval before an "immediate" action had to be taken. In addition, GPC cites another NRC Staff internal memorandum (Attachment 4 to its response) in which Region II requested NRR to review the policy of entering action statements that do not contain allowed outage times (AOT) and the meaning of the word "immediately" as contained in specifications. GPC contends in its analysis that NRC Staff has imposed a definition of "immediate" as not permitting any time interval before the required action must be taken in this enforcement action.

Arguments about the term "immediate" have no relevance in this case. Interpretation of that term would only become necessary if it were concluded that in the situation at issue the licensee could have properly entered Action c. of T.S. 3.4.1.4.2.

However, in Mode 5, loops not filled, entering Action c. by intentionally opening the RMWST valves is in direct violation of the TS requirement. The NRC Staff readily acknowledges that the TS basis states that the requirement is included to preclude an uncontrolled boron dilution. However, the TS requirement achieves that by prohibiting all injections through the valves in Mode 5, loops

[1] All exhibits referenced are contained in Appendix I of GPC response to the NRC June 3, 1991 Demand for Information.

not filled. While the requirement may have been more stringent than necessary, the licensee is bound by the requirement and not the basis. As was subsequently done by GPC, the TS requirement could have been changed through the amendment process by providing additional analysis, supported by the TS basis, to allow opening the valves with proper controls under those plant conditions.

GPC claimed that the Sequoyah plant staff used the same logic as did the Vogtle Electric Generating Plant (VEGP) staff when they chose to voluntarily enter an LCO which contained a required immediate action (Exhibit 31). The licensee states that the NRC Staff's present position is an example of inconsistency in the application of the regulatory process. However, interpretations concerning the term "immediate" are not relevant due to the clear language of the Vogtle TS. Nevertheless, a detailed review of the Sequoyah event has been conducted by NRC Staff. That event is detailed in Licensee Event Report (LER) 50-328/91-03 dated April 10, 1991 and NRC Inspection Report Nos. 50-327/91-06 and 50-328/91-06 dated April 25, 1991. A summary of the review of the inspection report and LER is included below:

—Areas of similarity between the event at VEGP and the event at Sequoyah are as follows:

a. Neither evolution was performed using an approved procedure.

b. Senior level operations managers were involved in the initial decision to enter the TS action statement.

c. The evolutions were conducted using verbal directions from the control room.

d. The evolutions were only discussed with operations personnel at the time actions were initiated.

—Areas of dissimilarity between the Sequoyah and Vogtle event are as follows:

a. The Technical Specifications for Sequoyah (TS 3.5.1.1 and the related surveillances T.S. 4.5.1.1.1.d.1 and 2) are worded differently from the Vogtle TS. Specifically, there are two differences that are germane to discussion of the October 1988 Vogtle event. First, Sequoyah's TS 4.5.1.1.1.d does allow for the licensee to periodically close the valves, in the applicable mode, in order to perform surveillance activities. This is in direct contrast with the Vogtle TS which contains no provisions for opening the RMWST valves, in the applicable mode. Second, should the action for Sequoyah TS 3.5.1.1 be entered, in addition to requiring the isolation valve to be immediately reopened, it provides a specific amount of time within which a plant shutdown must be initiated (1 hour). Again, this contrasts with the Vogtle TS which contains no specific action time limit.

b. At Sequoyah, while placing the plant outside the design basis, the valve was manipulated as an operating evolution in response to a potential safety concern. Identifying plant leakage as in-leakage into a cold leg accumulator allowed the problem to be addressed and maintained a safety system in an operable status. At Vogtle the manipulations were not to maintain a safety system in an operable condition and could have been made at a time when the TS did not preclude operation of the valves.

c. The event at Sequoyah was investigated and reviewed in detail by the licensee resulting in a LER. At Vogtle, the decision to manipulate the valves was only reviewed within the Operations Department, was not investigated until long after the event, and a report was not submitted.

d. The Sequoyah personnel who investigated this event recognized that the actions they had taken resulted in placing the plant in a condition outside the design basis. At Vogtle, the event was not recognized as a condition outside the design basis even though a question about the evolution was raised by a senior reactor operator and an analysis did not exist to address a dilution event for the specific plant conditions.

e. The root cause of the event at Sequoyah was determined to be solely personnel error which resulted in a failure to return a circuit breaker to its specified position. The licensee received a Notice of Violation associated with this problem. The Vogtle event resulted in multiple violations, when considered collectively, indicate a significant breakdown in managerial and administrative controls of licensed activities in a number of inter-related areas.

Based on this review, the NRC staff has concluded that the Sequoyah event, while similar in several minor respects to the Vogtle event, was based on a different set of circumstances from the event at VEGP and different requirements and therefore does not reflect any inconsistency in the NRC Staff's application of the regulatory process.

Restatement of Violation B

B. 50.73(a) (2) (ii) (B) requires licensees to submit a Licensee Event Report (LER) within 30 days after the discovery of any event or condition that resulted in the nuclear power plant being in a condition outside the design basis of the plant.

Contrary to the above, on or about November 17, 1989, the Plant Review Board (PRB) determined the opening of the RMWST valves specified in TS 3.4.1.4.2. was not reportable and, consequently, an LER was not submitted within 30 days, even though opening the valves on October 12, and 13, 1988 has placed the plant in a condition outside of the design basis. Opening the valves constituted a condition outside the plant design basis because at the time the valves were opened an analysis for a boron dilution accident through the valves did not exist.

Summary of Licensee's Response to Violation B

GPC denies this violation based on its contention that opening the RMWST discharge valves specified in TS 3.4.1.4.2 did not place the plant in a condition outside the design basis. GPC contends that the TS Bases for TS 3.4.1.4.2 state that the subject valves are closed to prevent an uncontrolled boron dilution event. Since the evolution was administratively controlled the licensee argues that the manner in which the controls were applied precluded an uncontrolled boron dilution event.

GPC further states that 10 CFR 50.2 defines design basis as "information which identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for design." In addition, GPC contends that the physical design of the chemical addition portion of the chemical and volume control system is such that the chemical addition evolution of October 1988 did not exceed the acceptance criteria specified in the Standard Review Plan (SRP). In its discussion of the SRP, GPC cites Section 15.4.6 which specifies time limits associated with operator actions to mitigate an unplanned dilution event.

GPC also argues that 10 CFR 50.73(a) (2) (ii) treats conditions outside the design basis of the plant and unanalyzed conditions that significantly compromise plant safety as two separate and distinct criteria for reportability. The licensee asserts that if an unanalyzed condition necessarily places that plant outside the design basis there is no need for two different criteria.

GPC provides an analysis performed in November 1989 (November 14, 1989) by Westinghouse (Exhibit 21) that it argues supports its position that the plant was not placed in a condition outside the design basis.

NRC Evaluation of Licensee's Response to Violation B

The NRC Staff also relies on the definition of design basis contained in 10 CFR 50.2, which includes additional clarifications not provided in the excerpt cited by GPC. Again, the licensee is selectively choosing excerpts from the referenced document to support its position. The language that was omitted states (with regard to "values chosen for controlling parameters as reference bounds for design") "These values may be (1) restraints derived from generally accepted "state of the art" practices for achieving functional goals, or (2) requirements derived from analysis (based on calculation and/or experiments) of the effects of a postulated accident for which a structure, system, or component must meet its functional goals."

As discussed in the FSAR, the specific RMWST valves were to be closed and secured in position in order to prevent uncontrolled dilution events in Mode 5, loops not filled. That configuration (RMWST valves closed and secured in position) is the one that the NRC Staff reviewed and accepted in granting the plant a license. Consistent with 10 CFR 50.2, that configuration achieved the functional goal of preventing an uncontrolled dilution event and therefore defines, in part, the system design basis. Because at the time the valves were opened in October 1988, no analysis had been performed to support that condition the plant was placed in a condition outside the design basis as defined in 10 CFR 50.2. The licensee's attempts to now rely on selected words of 10 CFR 50.2 to justify its position are completely contrary to the fact that at the time of licensing, a dilution event through the RMWST valves was specifically excluded from the plant design basis. (See section 15.4.6.2.1.1 of the FSAR).

The NRC Staff does not dispute the fact that the subsequent Westinghouse analysis provides support for changing the TS

requirement and allowing administrative control of the valves. However, as stated above, the analysis did not exist at the time the valves were opened. Additionally, the administrative control of the maximum time the valves would be open, that the licensee attempts to take credit for, was not clearly specified. At least one of the plant equipment operators involved in the October 1988 event did not recall that there was any prohibition on how long the valves could be open. In fact, his recollection was consistent with the then existing chemical addition procedures, which specified minimum rather than maximum flush times to ensure all chemicals were added. More fundamental is the fact that the TS requirement prohibited opening the valves regardless of what the analysis might have been able to support.

GPC states that "VEGP recognizes, as did the PRB in 1989, that the use of the flow path in question was not currently analyzed in the Final Safety Analysis Report (FSAR). However, this condition did not significantly compromise plant safety and does not equate to a condition outside the design basis of the plant, and therefore was not reportable." The PRB could not reach such a conclusion without first performing an analysis in accordance with the requirements of 10 CFR 50.59 because the FSAR required the valves to be closed and secured in position. Since the NRC Staff review indicates that PRB did not obtain information to support this conclusion until mid-November 1989, the manipulation of the RMWST valves on October 12 and 13, 1988 met the criteria for reportability pursuant to 50.73(a) (2) (ii) (B). Even if the PRB had immediately obtained the Westinghouse analysis in August 1989, when questions about the October 1988 event were raised again, the correct determination would have been that the event was reportable as the plant had been outside its design basis, as identified in 10 CFR 50.2, when the valves were opened in October 1988.

With regard to the licensee's specific arguments concerning reportability under 50.73(a)(2)(ii)(B), the NRC Staff makes the following summary points:

1. The NRC Staff's position regarding the reportability of this event is supported by the discussion on pages 6 and 7 of this appendix that, by the definition of 10 CFR 50.2, opening the RMWST valves in Mode 5, loops not filled, placed the plant in a condition outside the design basis.

2. As the NRC Staff cited the licensee for failing to report the plant being in a condition outside the plant design basis, discussion of the applicability of 50.73(a)(2)(ii)(A) and its relationship to 50.73(a)(2)(ii)(B) are not relevant. Further, a discussion of whether plant safety was significantly compromised, in the context of supporting a reportability determination, would only be necessary if a citation had been made under 50.73(a)(2)(ii)(A).

3. GPC introduced a Sequoyah LER to support its position with respect to Violation A. Apart from the NRC Staff's position regarding the Sequoyah event discussed above, GPC's arguments ignore the fact that the Sequoyah event was reported under 50.73(a)(2)(ii). Specifically, in the Sequoyah LER report it was concluded that the event was a condition that was outside the design basis of the plant (See LER 50-328/91-003 page 7 of 11, Analysis of Event).

Restatement of Violation C

C. Technical Specification 6.7.1 requires written procedures shall be established, implemented, and maintained covering the activities recommended by appendix A of Regulatory Guide (RG) 1.33, Revision 2, February 1978. Section 2 of appendix A of RG 1.33, recommends procedures for general plant operation.

The following procedures, in part, implement TS 6.7.1.

1. Vogtle Electric Generating Plant (VEGP) Operations Procedure Number 12006-C, Unit Cooldown to Cold Shutdown, in use on October 12 and 13, 1988, stated in section D4.2.14 that valves 1-1208-U4-175, 1-1208-U4-176, 1-1208-U4-177, 1-1208-U4-181, 1-1208-U4-183, and others be closed, locked and tagged in Mode 5, loops not filled.

2. VEGP Procedure 10000-C, Conduct of Operations, section 2.10.2 in use October 12 and 13, 1988, stated that the Unit Superintendent (US) is responsible to ensure plant operations are conducted in accordance with Technical Specifications and approved procedures.

Contrary to the above:

1. On October 12 and 13, 1988, licensed personnel failed to implement the requirements of procedure number 12006-C in that valves 1-1208-U4-176, -177 and -181, which were required to be closed, locked and tagged, were opened in Mode 5, loops not filled.

2. On October 12 and 13, 1988, the US did not ensure that plant operations were conducted in accordance with Technical Specifications in that valves 1-1208-U4-176 and -177 were opened in Mode 5, loops not filled, with the express knowledge of the US.

Summary of Licensee's Response to Violation C

GPC denies this violation based on its position that since there was no violation of TS 3.4.1.4.2 in October 1988, this violation could not have occurred. GPC, in response to the first example, states that the procedure identified in Violation C only placed administrative controls on these valves and subsequent control of these valves was allowed by VEGP Procedure No. 00304-C, Equipment Clearance and Tagging, dated May 23, 1988, (Exhibit 16). GPC contends that the purpose of the administrative controls was to prevent an uncontrolled dilution and that it fulfilled that intent. GPC also points out that the NRC Staff incorrectly cited the applicable section of Procedure No. 10000-C from the revision in use in October 1988 and also identified the incorrect operations staff position.

NRC Evaluation of Licensee's Response to Violation C

The NRC Staff, in its review of this action, concluded that since the TS restriction was the only action taken to prevent this dilution accident, an accident scenario which had been specifically excluded from analysis in Chapter 15 of the FSAR, the procedural requirement of Procedure No. 12006-C was, in turn, the only procedural requirement available to preclude placing the plant outside its design basis. Sections 15.4.6.2.1 and 15.4.6.2.2 of chapter 15, specify that the RMWST are valves to be locked closed in the refueling mode and in cold shutdown when the loops are drained. The action specified in these sections was to prevent any dilution during these conditions and not just uncontrolled dilution. Notwithstanding the words of the TS basis, the licensee failed to perform an adequate analysis to address the language of the FSAR and even failed to properly control the evolution that was improperly approved.

With regard to the use of administrative controls, the licensee had in place procedural requirements such that if a procedure could not be followed as written, then either a temporary or permanent change is required to be made to the procedure in question. A review of VEGP Procedure No. 00304-C, addresses equipment clearance and tagging. The purpose of this procedure was to address clearance processes associated with maintenance, testing or inspection. Since there was no discussion of tagging associated with operational controls for evolutions in progress, the use of Procedure No. 00304-C for that purpose was not appropriate. Further, even if the NRC Staff accepts that Procedure No. 00304-C could have been used to modify the requirements of Procedure No. 12006-C without a 10 CFR 50.59 analysis, the procedure was not permanently or temporarily modified to allow such a use. In summary, the licensee had no basis to allow administrative control of the RMWST valves when they were opened in October 1988.

The NRC Staff acknowledges that the incorrect revision of Procedure No. 10000-C was referenced in the violation. However, after review of the applicable revision, dated October 3, 1988, it was concluded that while the position titles changed, the substantive requirements did not and, therefore, notwithstanding the incorrect reference, the responsible individual did not carry out his assigned duties. That leads to the licensee's second argument, which is that Procedure No. 10000-C is an organizational procedure which establishes broad areas of responsibility and that the mere occurrence of a TS violation does not establish that a violation of Procedure No. 10000-C occurred. The case at hand is not one of those situations. In this case, the evolution which resulted in the TS violation, and violation of Procedure No. 10000-C, was an evolution occurring with specific On-Shift Operations Supervisor (OSOS) approval despite the fact that questions had been raised about the evolution's appropriateness. Additionally, the detail in which the functions of personnel delineated in Procedure No. 10000-C are defined, argue against the broadness advocated by the licensee. Specifically, section 2.4.c requires that the OSOS ensure that operations are conducted in accordance with Technical Specifications and approved procedures and section 2.4.1 requires that temporary procedure changes are properly administered. The OSOS should have recognized that contrary to section 2.4.c, the evolution could not be accomplished (see

Violation D) in accordance with existing procedures and, as required by section 2.4.1, the temporary change procedure was not properly implemented when Procedure No. 12006–C, as written, was not followed.

The NRC staff does not agree with the interpretation made by GPC with regard to the broadness of the descriptions provided by Procedure No. 10000–C. If the procedure was really intended to be only broad guidance, there would be no need for it to contain the detailed defining functions that it does. A violation of a procedure occurs when the requirements set forth in the procedure are not performed as the procedure delineates and that was the situation in this case. However, because the NRC Staff agrees with GPC that the wrong revision of Procedure No. 10000–C was cited in Violation C.2, NRC records will be amended to reference the correct procedure revision and corresponding applicable steps.

Restatement of Violation D

D. 10 CFR part 50, appendix B, Criterion V, requires, in part, that activities affecting quality shall be prescribed by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall be accomplished in accordance with these instructions, procedures or drawings. VEGP Procedure No. 13007–1, VCT Gas Control and RCS Chemical Addition, section 4.7, Procedure No. 35110–C, Chemistry Control of the Reactor Coolant System, section 4.7 provide the instructions on chemical additions to the Reactor Coolant System.

Contrary to the above, on October 12, and 13, 1988, VEGP Procedure Nos. 13007–1 and 35110–C were inadequate in that these procedures did not contain provisions for adding chemicals to the reactor coolant system in Mode 5, loops not filled. Specifically, the procedures specify such conditions as having a reactor coolant pump running which is not possible in Mode 5, loops not filled.

Summary of Licensee's Response to Violation D

GPC denies this violation based on the position that the procedures were adequate to perform the evolution that was being conducted.

GPC states that the NRC Staff erred in limiting its view to only a portion of Procedure No. 13007–1. GPC contends that there is a hierarchy of procedures applicable to the evolution of October 1988, and that the sum total of all these procedures addressed the evolution of adding chemicals in Mode 5 and ensured proper mixing. GPC states that Procedures Nos. 13007–C and 35110–C addressed the specific task of adding chemicals and not the configuration control aspects of the evolution. In addition, GPC points out that Procedure No. 49006–C, Health Physics and Chemistry Department Outage Activities Implementing Procedures, (Exhibit 40) accomplishes the required configuration control. GPC also acknowledges a weakness in the development of this procedure which failed to identify a potential TS conflict; yet GPC believes that the procedure was adequate for the chemical addition evolution.

NRC Evaluation of Licensee's Response to Violation D

The NRC Staff has reviewed the licensee's arguments and the procedures referenced. The NRC Staff finds a number of inconsistencies in the licensee's arguments. First, it is not clear how Procedure No. 49006–C, which is solely a Health Physics and Chemistry Department Procedure, can accomplish the required configuration controls, which are within the purview of the Operations Department. While Procedure No. 49006–C addresses what the plant conditions need to be to perform certain chemical procedures, it does not detail how to attain those conditions. That problem leads to the second point. It is inconsistent for the licensee to require very detailed step-by-step operations procedures, with very specific prerequisites and precautions, for chemical additions at power and in certain routine shutdown conditions, but then argue that chemical additions in a very infrequent and abnormal shutdown condition such as Mode 5, loops not filled, require only general guidance. Finally, GPC states that the NRC Staff erred in limiting its view to only Procedures 13007–1 and 35110–C. However, starting on Page 77, for example, of the GPC enforcement conference transcript, it is clear that it was only those procedures and not Procedure No. 49006–C which were relied on by the operators in October 1988. This is not surprising given that, as discussed above, Procedure No. 49006–C only applied to Health Physics and Chemistry Department personnel. In summary, the NRC Staff concludes that the procedures for adding chemicals in Mode 5, loops not filled, were inadequate.

Summary of Licensee's Answer To A Notice of Violation

In answer to the Notice, GPC denies that a violation occurred based on the information it provided which has been addressed above and its conclusion that the positions taken by the NRC Staff are based on a new interpretation of the TS at issue. GPC also contends that the cited violations reflect an unwarranted retroactive application of a new position. GPC also considers the NRC Staff citation of four separate examples associated with a single event to reflect a cascading of one principle violation into multiple violations. In addition, GPC has stated that the PRB reviewed this event in 1989 and determined that it did not involve a condition that significantly compromised plant safety or that it was outside the design basis of the plant.

GPC in its response goes on to state that this enforcement action is not the type of straightforward, clear action designed to address the actual safety significance of a particular violation envisioned by the NRC's Enforcement Policy. GPC considers that this action involves a legitimate difference of professional opinion in interpreting regulations and also considers that an industry-wide advisory addressing the issue of action statements in TS containing the term "immediate" would be more beneficial than this enforcement action.

In its request for reconsideration of the severity level which accompanies its response to cited violations, GPC disagrees with the NRC Staff assignment of a Severity Level III to this enforcement action. This is based on GPC's contention that this issue did not have safety significance and that the NRC Staff subsequently approved a TS change to allow chemical addition evolutions of the type involved in this enforcement action. GPC also contends that the NRC Staff assignment of the severity level based on a significant breakdown in managerial and administrative controls is not appropriate. As discussed above, GPC is of the view that the PRB actions were appropriate and that the "command and control" of operational activities was maintained by the shift crew and plant management. Based on this information, GPC states that the fashioning of a Severity Level III problem is inconsistent with the safety significance of this event and the Enforcement Policy's guidance which requires the staff to identify the relative safety importance of each violation as the "first step in the enforcement process". GPC further requests the NRC Staff to reconsider its factual underpinnings for reaching and conclusion regarding broad-based regulatory deficiencies.

In its discussion associated with managerial and administrative controls, GPC acknowledges that inadequate planning and procedures and inadequate training and guidance contributed to the failure of licensed operators to recognize a TS compliance issue in October 1988. Also acknowledged were weaknesses in the procedure for outage chemistry activities and the FSAR in this area. However, GPC did not agree that it has far-ranging management problems. It considers this as an event of very limited scope.

In discussing the PRB's review and conclusions relative to the event in October 1988, GPC concluded that the PRB's review was reasonable, balanced and sufficiently thorough. Further, GPC points out that the PRB unanimously concluded that the decision to open the valves in order to add chemicals was correct. GPC further states the PRB at the time it considered this matter, knew and understood that a condition not analyzed in the FSAR associated with this chemical addition occurred in October 1988. As previously discussed with respect to Violation B, GPC's position is that the PRB decision is a simple reportability disagreement rather than a management problem.

GPC's response also addresses the command and control of the operations staff with respect to the activities that occurred in October 1988. GPC states that the shift crew worked as a team to diligently and continuously monitor the various changes in operation parameters and appropriately delegated specific tasks to qualified individuals. It concludes that since this was a preplanned activity and scheduled to be accomplished at this time, there was no loss of command and control. GPC acknowledges the extreme importance of ensuring compliance with TS and its obligation to comply regardless of whether NRC Staff guidance is available. It is GPC's view that even if the NRC Staff disagrees with its

position that a TS violation did not occur in this case, the violation would not rise to the level of a Severity Level III violation. GPC indicates that in March of 1991, licensed personnel at TVA's Sequoyah plant used the same logic and the enforcement action taken in that case was inconsistent with the action taken in the instant case with GPC. (See discussion above in section entitled NRC Evaluation of Licensee's Responses to Violation A).

GPC has also requested in its correspondence that the NRC Staff reconsider the escalation applied to the base civil penalty for untimely long-term corrective action and NRC identification of the violation. This request is based on the following factors: (1) Since GPC determined that no violation occurred, no long-term corrective actions were required, and (2) The PRB, recognizing that future questions would be raised whenever this activity was to be performed, initiated a proposal to change the TS for clarification purposes before the next scheduled outage. Based on this action, GPC concludes that the action taken was timely. GPC also requests reconsideration of the escalation factor associated with identification based on the position that since it did not conclude that a violation occurred, the identification factor should not be used to escalate the base civil penalty. GPC's position in this regard is that licensees are penalized for opinions differing from those of the NRC Staff.

In addition to the above issues, the licensee's response of February 3, 1992 asserts that the NRC Staff failed to determine whether a violation occurred before referring the matter to the Office of Investigations (OI) and that the proposed large fine was apparently based more on the level of NRC Staff resources devoted to the matter rather than on safety significance. GPC's final position, based on the information provided above, is that the violations did not occur and that a civil penalty is inappropriate in this case.

NRC Evaluation of Licensee's Request for Reconsideration of Severity Level and Mitigation

The NRC Staff has reviewed GPC's response in detail and has also reviewed the bases upon which the staff concluded that taken collectively these violations represent a significant regulatory concern. The individual violations have previously been discussed in this Appendix. The NRC Staff is not relying on the cascading effect of one principal violation, in that numerous violations occurred representing a lack of adequate "command and control." Although the NRC Staff concludes that violation of the TS requirement is important by itself, taken collectively the violations represent a significant regulatory concern. As stated in the cover letter to the Notice of Violation and Proposed Imposition of Civil Penalty, these violations indicate a significant breakdown in managerial and administrative controls of licensed activities. This case not only involved inadequate actions and faulty decisions during the event by individual senior licensed operators in management positions, but included the Plant Review Board which subsequently performed an inadequate review, consequently confirmed the reasonableness of a flawed Technical Specification interpretation and did not recommend reporting the matter. Therefore, even though a direct compromise of plant safety did not occur, the NRC Staff is well within the guidance of the Enforcement Policy in aggregating these violations into a Severity Level III problem.

The NRC Staff has also reviewed the licensee's request for reconsideration of the escalation of the civil penalty. With regard to the escalation for identification, the NRC Staff maintains that the questions raised by GPC staff about the appropriateness of the evolution and the concerns about the evolution, that resurfaced in August 1989 and were improperly dispositioned by the PRB in November 1989, gave GPC adequate opportunities to identify this violation.

With respect to escalation for corrective action, contrary to GPC's assertion, the concerns about PRB activities were not the only NRC Staff concerns which have not been addressed as part of the licensee's corrective actions. Procedures which were clearly inadequate for chemical addition in Mode 5, loops not filled, were not temporarily corrected when used, as required by the existing temporary change mechanism, and were not subsequently updated to resolve the problems. In summary, the NRC Staff concludes 100 percent escalation of the civil penalty was appropriate for NRC identification and inadequate corrective actions.

While the NRC Staff finds them in no way to be germane to the action, two additional issues were raised in the licensee's February 3, 1992 letter. In that letter, the licensee contends the NRC Staff issued a civil penalty to recover staff costs and initiated an investigation without first concluding there was a violation. GPC apparently draws its conclusion that the NRC Staff failed to determine whether a violation occurred before referring the matter to the Office of Investigations (OI), from internal NRC correspondence requesting an interpretation of the TS in question. While it is true that both the request for the interpretation and the reply occurred after OI involvement, review of only that internal correspondence would present an incomplete picture. The request simply memorialized the basis for the written position that had been taken by NRC Region II prior to referral of the issue to OI. With regard to the GPC assertion that the proposed fine was apparently based more on the level of staff resources devoted to the matter rather than on the safety significance of the events, that assertion is again without foundation. All civil penalties collected, no matter how large or small, are deposited in the U.S. Treasury with the NRC Staff receiving no direct benefit. That being the case, the NRC Staff not only did not but could use a civil penalty to offset staff costs. As discussed extensively throughout this Appendix the NRC Staff maintains that the severity level of the problem is supported by the events that occurred at Vogtle which are the subject of this action. Further, having properly arrived at the severity level, the NRC Staff maintains the escalation and mitigation factors of the Enforcement Policy were properly assessed and appropriate to the circumstances. In summary, the NRC Staff finds the two additional issues raised by the licensee to be unsupported by the facts and completely unrelated to the significant issues in this action which are, adequate control of on-shift activities and thorough review of matters potentially impacting plant safety.

NRC Conclusion

The NRC Staff has concluded that GPC has not provided adequate basis for the assertion that the violations should be withdrawn or that the civil penalty is inappropriate. Consequently, the NRC Staff concludes that the proposed civil penalty in the amount of $100,000 should be imposed.

[FR Doc. 92-14473 Filed 6-18-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Public Service Electric and Gas Co., et al.; Withdrawal of Application For Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic Electric Company (the licensees) to withdraw its July 10, 1990, application, as supplemented by letter dated August 28, 1990, for a proposed amendment to Facility Operating Licenses Nos. DPR-70 and DPR-75 for Salem Nuclear Generating Station, Units 1 and 2, respectively, located in Salem County, New Jersey.

The proposed amendments would have revised the Operating Licenses for Salem Nuclear Generating Station, Units 1 and 2, by adding a section that stated "The terms of the May 6, 1983 order have been satisfied by the incorporation of the long-term corrective action requirements into the Salem Updated Final Safety Analysis Report, Appendix 7.A."

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 3, 1990 (55 FR 40473). However, by letter dated June 1, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 10, 1990, the supplement dated August 28, 1990, and the licensees' letter dated June 1, 1992, which withdrew the application for license amendment. The above documents are available for public

inspection at the Commission's Public Document Room, 2120 L Street, N.W., Washington, D.C., and the Local Public Document Room, Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland this 12th day of June, 1992.

For the Nuclear Regulatory Commission.

James C. Stone,

Senior Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-14474 Filed 6-18-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Exemption

I

The Yankee Atomic Electric Company (YAEC or the licensee), is the holder of Operating License No. DPR-3 which authorizes possession, operation and maintenance of the Yankee Nuclear Power Station (facility or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is a pressurized water reactor, currently in the process of being decommissioned, and is located at the licensee's site in Franklin County, Massachusetts. The plant is shut down and the reactor is defueled.

II

In a letter dated February 27, 1992, from the licensee, the NRC staff was informed that YAEC had permanently ceased power operations and planned to develop detailed plans to decommission the facility. The staff subsequently issued a Confirmatory Action Letter (CAL) dated April 7, 1992, which confirmed these commitments. By letter dated May 11, 1992, the licensee requested an exemption to the containment leak test requirements of 10 CFR 50.54(o) in accordance with 10 CFR 50.12. The specific leak test requirements of 10 CFR 50.54(o) are contained in appendix J to 10 CFR part 50. These leak tests are required to demonstrate the leak tight integrity of the reactor containment.

III

In the licensee's letter of May 11, 1992, the justification presented for the exemption was that the reactor had been defueled and the fuel removed from the containment (Vapor Container) to the spent fuel storage pool (Fuel Pit) and could not be returned to the containment because of the NRC CAL of April 7, 1992. Therefore, YAEC compliance with 10 CFR 50.54(o) is no longer needed as the releases for which the rule is predicated are no longer possible.

The Commission will not consider granting an exemption unless special circumstances are present. In the licensee's letter of May 11, 1992, these special considerations were addressed as follows:

10 CFR 50.12(a)(2)(ii)—"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule * * *"

Licensee's response: The purpose of 10 CFR 50.54(o) is to ensure through periodic testing that the leak-tight integrity of the primary reactor containment and containment penetrations and isolation valves is maintained during operating and design basis accident conditions. Integrity of the primary reactor containment structure, penetrations, and isolation valves ensures against the uncontrolled release of fission products into the environment from main coolant system pressure boundary leakage.

For YNPS, compliance with 10 CFR 50.54(o) is no longer needed. The type of releases upon which 10 CFR 50.54(o) are predicated are no longer possible. YNPS is permanently shutdown. All special nuclear material used as reactor fuel has been transferred from the reactor vessel in the Vapor Container to the Spent Fuel Pit. Movement of reactor fuel into the reactor vessel or Vapor Container is prohibited. Therefore, implementation of the rule for YNPS would not serve the underlying purpose of the rule.

IV

The staff agrees with the licensee's analyses as presented in section III above and concludes that sufficient bases have been presented for our approval of the exemption request. Accordingly, the staff finds that there are special circumstances presented that satisfy the requirements of 10 CFR 50.12(a)(2)(ii). In the event that the licensee seeks to resume operation, this exemption will terminate.

V

Based on the above evaluation, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption to all requirements contained within 10 CFR 50.54(o) and 10 CFR part 50—appendix J for the Yankee Nuclear Power Station, provided, however, that this exemption will terminate in the event that the licensee seeks to resume operation of the facility.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (57 FR 22839) dated May 29, 1992.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 15th day of June 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-14475 Filed 6-18-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Expedited Clearance of Form OPM 2809-EZ2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for an expedited clearance of an information collection. Form OPM 2809-EZ2, Open Season Health Benefits Enrollment Change, is used by annuitants only at Open Season to elect a change in health benefits coverage.

Approximately 38,315 OPM 2809-EZ2 forms are completed per year. Each form takes approximately 30 minutes to complete. The annual burden is 19,158 hours.

A draft copy of this form is appended to this notice.

DATES: Comments on this proposal should be received within 3 calendar days from the date of this publication. OMB will act on this clearance within 4 calendar days after the close of the comment period.

ADDRESSES: Send or deliver comments to—

Lorraine Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., rm. 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs. Office of Management and Budget, New Executive Office Building, NW. room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—

CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

The content of draft OPM Form 2809–EZ2 is set out below:

Draft OPM Form 2809–EZ2

Revised October 1992.
Previous editions not usable.
Federal Employees Health Benefits Program.
Civil Service RetirementSystem/ Federal Employees Retirement System.
Enrollment Change form.
For use during the November-December 1992 FEHB Open Season.
Form Approved: OMB 3206–0200.
Use this form only to change your health enrollment during the 1992 Open Season. This form lists all health plans in your geographic area. Carefully read the instructions on the reverse before marking your form.
This form is personalized for you:
—Don't use someone else's form.
—Don't use a photocopy of this form.
Use only a number 2 lead pencil to completely darken appropriate circles.
Use only to change enrollment (*Fill in Sections A, B and C below.*)

Section A—Plan Choices

(Select only one—darken the circle between the two-character enrollment code and the name of the one plan you want.)
Government Wide Plan (Listed.)
Fee-for-Service—Open Plans (Listed.)
Fee-for-Service—Restricted Plans (*You must be a member of a specific group to enroll in a plan below.*) (Listed.)
Pre-paid Plans (Listed.)

Section B

Now choose a Self Only or Self and Family enrollment.
Darken one circle only.
() Self Only OR
() Self and Family
Do not write in the three spaces directly below.
Claim Number
OPM Use Only: () AC () L () NS () E
Name/Address

Section C

You must sign, date and give your telephone number below.
Your signature (*must be signed by the addressee or by an OPM-approved representative*):
Today's date:
Your daytime telephone number:

[FR Doc. 92–14190 Filed 6–18–92; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30798; File No. SR–MSRB–92–2]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of the Municipal Securities Rulemaking Board Relating to Professional Qualifications

June 11, 1992.

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), on March 3, 1992 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to amend Board rule G–3, concerning professional qualifications. The rule change revises the organization of the rule and deletes the "grandfathering" language as a means of qualification as a municipal securities principal.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 30604 (April 17, 1992), 57 FR 15343. The Commission received no comments on the proposal. This order grants approval of the proposed rule change. However, at the Board's request, the effectiveness of the proposed rule will be delayed for a period of 90 days following approval, so that individuals may have adequate time to verify their qualification registrations with the appropriate regulatory agencies and ensure that their registrations are accurate, particularly those individuals who have been acting as municipal securities principals or municipal securities representatives with the belief that their records indicate that they were "grandfathered."

II. Description of Proposed Rule Change

Board rules set minimum qualification standards for dealers and their associated persons. The Board has defined four categories of associated persons: Municipal securities representative, municipal securities principal, municipal securities sales principal, and financial and operations principal. Each of these categories has its own set of standards and qualification requirements to maintain those standards. Under rule G–2, governing standards of professional qualifications, every dealer must meet professional qualification standards before effecting any transaction in municipal securities. Rule G–2 also is applicable to every associated person of the dealer who will engage in municipal securities activities.

The application of the professional qualification standards is delineated in rule G–3. Specifically, rule G–3 prescribes qualification examinations and provides for waiver of an examination in special circumstances. Rule G–3 requires that municipal securities professionals take and pass examinations prior to being qualified to engage in municipal securities representative activities or to supervise municipal securities activities as principals. The rule also requires a dealer to have a certain number of municipal securities principals and financial and operations principals to ensure that its activities in municipal securities are being adequately supervised, and requires that a candidate entering the municipal securities industry for the first time as a representative serve an apprenticeship of at least 90 days.

Reorganization of Rule G–3

Rule G–3 currently is arranged according to the following general categories: the definitions of the four categories of associated persons, numerical requirements for municipal securities principals and financial and operations principals, the qualification requirements of the four categories of associated persons, provisions concerning the confidentiality of the qualification requirements, provisions concerning the retaking of qualification examinations, and provisions concerning employment (relating to the apprenticeship of municipal securities representatives).

The proposed rule change revises the organization of the rule into the following headings:

(a) Municipal Securities Representative
  (i) Definition
  (ii) Qualification Requirements
  (iii) Apprenticeship
(b) Municipal Securities Principal
  (i) Definition
  (ii) Qualification Requirements
  (iii) Numerical Requirements
(c) Municipal Securities Sales Principal
  (i) Definition
  (ii) Qualification Requirements
(d) Financial and Operations Principal
  (i) Definition
  (ii) Qualification Requirements
  (iii) Numerical Requirements
(e) Confidentiality of Qualification Examinations
(f) Retaking of Qualification Examinations
(g) Waiver of Qualification Requirements

The reorganization of rule G–3 seeks to make the presentation of the rule's requirements more understandable. The definitions, qualification requirements, and numerical and apprenticeship requirements, if applicable, have been brought under the major headings of each category of associated person. In reorganizing the rule's presentation, no additional qualification requirements have been placed in the rule. The section on qualification requirements for municipal securities sales principals were revised to reflect that the General Securities Sales Supervisor Qualification Examination is the appropriate examination for qualification in that associated person category.

Numerical Requirements

Rule G–3(b) currently contains the numerical requirements for municipal securities principals and financial and operations principals. The numerical requirements set forth a minimum number of municipal securities principals required to be associated with a dealer engaging in a municipal securities business. An NASD-member firm that conducts a general securities business is required to have at least one municipal securities principal. A dealer that has fewer than eleven associated persons employed in any capacity on a full-time basis must have at least one municipal securities principal. All other dealers must have at least two municipal securities principals. The proposed rule change would place the numerical requirements for municipal securities principals in revised section (b) with the definition and qualification requirements of municipal securities principals.

The numerical requirement for financial and operations principals has been placed in revised section (d) with the definition of and qualification requirements for financial and operations principals. Every dealer, except for bank dealers, is required to have at least one associated person, its chief financial officer, qualified as a financial and operations principal. The individual with the policy-making authority for the processing and clearance of municipal securities for a bank dealer is required to qualify as a municipal securities principal. The numerical requirement for financial and operations principals also does not apply to dealers that function solely as "introducing brokers."

No substantive changes were made to the provisions on numerical requirements.

Apprenticeship

Rule G–3(i), governing employment, currently contains a description of the 90-day apprenticeship period. An individual who first becomes associated with a dealer in a representative capacity (whether as a municipal securities representative or general securities representative) and who has not previously qualified as a municipal securities representative or general securities representative must complete a period of apprenticeship. In the proposed rule change, the requirements of this section have been placed in section (a) along with the definition and qualification requirements of municipal securities representatives. In addition, language has been added to the rule to clarify that prior experience, of at least 90 days as a general securities representative, mutual fund salesperson, or government securities representative, would fulfill the apprenticeship requirement.

Confidentiality of Qualification Examinations and Retaking of Qualification Examinations

Revised sections (e), on confidentiality of the qualification examinations, and (f), on retaking of qualification examinations, have not been substantively revised. Section (e) sets forth strict prohibitions against activities that would compromise the confidential nature of a Board examination or its purpose as a test of an individual's professional qualifications. Section (f) imposes specified time periods before an individual may retake a failed examination. There is no provision in the rule that allows these time period restrictions to be waived under any circumstances.

Waiver of Qualification Requirements

The proposed rule change includes a new section (g), governing waiver of qualification requirements. New section (g) presents under one heading the waiver provisions applicable to the four associated person qualification examinations and the apprenticeship period for municipal securities representatives as currently contained in various sections throughout the rule.

The waiver is granted only in extraordinary circumstances—it is not a means to circumvent the intent and spirit of the examination or the apprenticeship requirement. For the most part, the Board expects a candidate to demonstrate competence by examination. The decision to grant a waiver request is made by the appropriate regulatory body that has primary jurisdiction over the dealer—either the NASD or one of the federal bank regulatory agencies. Waiver requests are made directly to the organization that regulates the applicant's dealer.

Deletion of "Grandfathering" Provisions

Individuals seeking to qualify at this time in any of the four categories of associated persons are required to take qualification examinations or obtain a waiver from the qualification requirements. For a period of time following the development of the current qualification rules and their implementation, certain industry professionals became qualified as municipal securities representatives or municipal securities principals based on designated qualification credentials in a specified area at a specified time. Qualification through this means was known as "grandfathering."

An individual could qualify as a municipal securities representative by "grandfathering" if one or more of the following criteria had been met:

(1) The individual was functioning as a municipal securities representative on December 1, 1975, and continuously functioned in this capacity through July 14, 1978;

(2) The individual was qualified as a general securities representative or a general securities principal by the NASD on July 14, 1978;

(3) The individual was qualified in a general securities supervisory capacity (branch manager or allied member) with a national securities exchange on July 14, 1978;

(4) The individual was associated with a "SEC only" ("SECO") firm as a qualified general securities representative or principal on July 14, 1978; or

(5) The individual began functioning as a municipal securities representative after December 1, 1975, was qualified at that time as a general securities representative or principal or in a general securities supervisory capacity, and continuously functioned as a municipal securities representative from that time until July 14, 1978.

An individual could qualify as a municipal securities principal by "grandfathering" if one or more of the following criteria had been met:

(1) The individual was functioning as a municipal securities principal on December 1, 1975, and continuously functioned in this capacity through November 28, 1979;

(2) The individual was qualified as a general securities principal with the NASD on November 28, 1979;

(3) The individual was qualified in a general securities supervisory capacity (branch manager or allied member) with a national securities exchange on November 28, 1979;

(4) The individual was associated with a SECO firm and was qualified as a general securities principal with the SEC on November 28, 1979; or

(5) The individual began functioning as a municipal securities principal after December 1, 1975, was qualified at the time as a general principal or in a general securities supervisory capacity, and continuously functioned as a municipal securities principal from that time until November 28, 1979.

The proposed rule change clarifies and simplifies the qualification requirements of rule G–3 by removing the reference to the "grandfathering" provisions. The "grandfathering" provisions are no longer relevant to anyone seeking to qualify as a municipal securities principal or municipal securities representative at this time. The proposed rule change does not affect the qualification status of those individuals who previously have qualified as municipal securities principals or municipal securities representatives through "grandfathering." However, qualifications through "grandfathering" does not mean that an individual is always qualified in a particular category. A municipal securities representative ceasing to be an associated person with a dealer for two years or more loses his or her qualification status as a municipal securities representative. A municipal securities principal ceasing to supervise in his or her area of responsibility for two years or more loses qualification status as a municipal securities principal.

III. Discussion and Conclusion

The Commission finds that approval of this proposed rule change is consistent with the Act and the rules and regulations thereunder applicable and, in particular, the requirements of section 15B(b)(2)(A) of the Act, which provides that the rules of the Board, as a minimum, shall ensure that municipal securities brokers, municipal securities dealers, and every natural person associated with such municipal securities brokers or municipal securities dealers meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

. It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–14481 Filed 6–18–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30792; File No. SR–PTC–92–07]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to the Eligibility of Certain Securities Guaranteed by the United States Department of Veterans Affairs

June 10, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 29, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PTC–92–07) as described in Items I and II below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons and to grant approval of the proposed rule change on an accelerated basis until December 31, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides that PTC may designate as eligible for deposit with PTC certain securities guaranteed by the United States Department of Veterans Affairs (commonly referred to as the "Veterans Administration" or "VA") and backed by the full faith and credit of the United States.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to designate certain new issues of securities that will be guaranteed by the Veterans Administration (the "VA securities") as eligible securities under Article I, Rule 2 of PTC's Rules. Real Estate Mortgage Investment Conduits ("REMIC") will be issued by a trust and guaranteed by the Veterans Administration pursuant to 38 U.S.C. 3720 h(1) and (2) (as amended by Public Law 102–291, enacted on May 20, 1992, which granted the VA temporary authority to guarantee certain new issues through December 31, 1992). On the closing for issuance of the securities under this program, the issuing trust will receive an opinion of the General Counsel of the VA to the effect that the VA's obligations under the VA guarantee constitute absolute and unconditional general obligations of the United States, for which the full faith and credit of the United States is pledged.

PTC has been advised that the Veterans Administration plans to issue three REMIC issues during the balance of 1992. Each issue will be comprised of approximately eight to ten tranches and each tranche will constitute a "security" within the PTC definition of "securities." [2] The anticipated total face value amount of each issuance is approximately $350,000,000.

PTC's current system will accommodate the VA securities. Because the VA securities are comparable to GNMAs, no substantive operational change need to be made to PTC's computer processing system. For example, it is expected that there will be daily settlement of the VA securities. Currently, a substantial portion of GNMAs settle daily. There will be a single monthly payment date for principal and interest ("P & I") on the VA securities. GNMA I currently pays on the 15th of the month and PTC

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Pursuant to PTC Rules, "securities" means: "all participation interest in pools of mortgage loans issued or guaranteed by instrumentalities of the United States Government, including, without limitation, pass-through and modified pass-through certificates guaranteed by the Government National Mortgage Association ("GNMA"), Mortgage Participation Certificates and Guaranteed Mortgage Certificates issued by the Federal Home Loan Mortgage Corporation, and pass-through certificates issued by the Federal National Mortgage Association". PTC Rules, Article I, Rule 1.

distributes P & I on payment date plus one. GNMA II currently pays on the 20th of the month, and PTC pays on that date. Therefore, PTC's system is capable of making distributions of P & I on the same day as payment date. The VA securities will be registered in the name of PTC's nominee, MBSCC & Co., and the physical certificates will be held in custody for PTC by a custodian bank (currently Chemical Bank) as is the case for GNMA securities.

The volume of the VA securities to be deposited at PTC (estimated total amount of $1 billion by the end of 1992) is modest compared to the total face amount of GNMA securities now on deposit at PTC ($647 billion) and is expected to have comparably small impact on PTC's overall transaction volume. P & I distributions will total less than $10 million per month by year-end 1992 (compared to $5 to $8 billion per month for GNMA I). Accordingly, the VA securities will have no meaningful impact on the capacity of PTC's transaction processing or P & I disbursement facilities. PTC has tested its securities processing system and determined that it can accommodate the VA securities.

Although PTC has not previously handled any REMIC issues, the processing and handling of these VA REMIC issues as eligible securities does not necessitate any change in PTC's Rules or affect the rights of its participants. Because the VA REMICs will be functionally comparable to GNMA securities, PTC's rules and Procedures are applicable, without change, and govern PTC's and its participants' rights and obligations with respect to the VA securities. Finally, the fees imposed by PTC for providing depository services for VA securities will be the same as those in effect for GNMAs.

(b) Since the proposed rule change provides for the addition of securities as eligible for deposit in PTC and the consequent availability of the efficiencies of PTC's book-entry depository and settlement services with respect to those securities, it is consistent with the requirement of section 17A(B)(3)(F) of the Act [3] requiring that the rules of a clearing agency be designed to promote the prompt and accurate settlement of securities transactions and to remove impediments to the prompt and accurate settlement of securities transactions. The VA securities will be maintained in the physical custody of a commercial bank custodian in the same manner as are the GNMA securities currently held by PTC, and like services will be provided for VA securities as for GNMA securities consistent with the safeguarding of securities and funds in the custody and control of PTC or for which PTC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes PTC's proposal to designate VA guaranteed securities as eligible securities for deposit with PTC is consistent with the Act and particularly with section 17A of the Act.[4] PTC has gained almost four years experience with GNMAs. VA securities have many of the same general attributes as GNMAs (*e.g.*, the securities are issued in physical form and are backed by the full faith and credit of the United States). The Commission believes PTC's experience with GNMAs serves as a good foundation for handling REMICs. In addition, the VA REMIC program will provide PTC valuable experience in the handling of REMIC-type securities.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that this proposal furthers the perfection of the national system for the clearance and settlement of securities transactions because it will allow the VA REMIC to be processed within a centralized, electronic book-entry environment instead of a decentralized, manually intensive physical settlement environment.

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. The issuance of the VA securities pursuant to 38 U.S.C. 3720 h (1) and (2) (as amended by Public Law 102–291, enacted on May 20, 1992) will occur on or about June 25, 1992. PTC has requested accelerated effectiveness of the proposal in order to give PTC and its participants sufficient time to prepare for the deposit of VA securities upon issuance. The Commission, therefore, believes there is good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Such accelerated approval will permit PTC to make eligible for deposit at PTC the REMICs that put the V plans to issue on or about June 25, 1992.

The authorization for new guarantees by the VA terminates on December 31, 1992. PTC as represented to the Commission that it will submit a subsequent rule filing in respect of VA securities issued after December 31, 1992. The Commission, therefore, is approving the proposal on a temporary basis until December 31, 1992. The expiration of the temporary approval period and the submission by PTC of a proposed rule change at that time will not affect the eligibility of VA securities that are already on deposit at PTC. VA securities that were issued and made eligible for deposit at PTC prior to December 31, 1992 will remain eligible.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–PTC–92–07 and should be submitted by July 10, 1992.

[3] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[4] 15 U.S.C. 78q–1 (1988).

V. Conclusion

On the basis of the foregoing, the Commission preliminarily finds that PTC's proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is Therefore Ordered, under section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–92–07) be, and hereby is, approved until December 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–14482 Filed 6–18–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18778; 812–7940]

First Investors Corporation, et al.; Conditional Temporary Order

June 12, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Temporary Order and Notice of Application for Permanent Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First Investors Corporation, First Investors Management Company, Inc., Executive Investors Corporation, Executive Investors Management Company, Inc., and First Investors Life Insurance Company.

RELEVANT ACT SECTIONS: Permanent order requested, and conditional temporary order granted, under sections 9(c) granting an exemption from section 9(a).

SUMMARY: Applicants have been granted a conditional temporary order, and have requested a permanent order, exempting them from the prohibitions of section 9(a), solely with respect to the injunction entered by the United States District Court for the Southern District of New York enjoining applicants from violations of section 10(b) of, and rule 10b–5 under, the Securities Exchange Act of 1934 (the "Exchange Act") and section 17(a) of the Securities Act of 1933 (the "Securities Act"), subject to each of the conditions contained in the application. The temporary order will expire on the earlier of one year from the date of its issuance, or the date on which the Commission takes final action on the application for a permanent order exempting applicants from the prohibitions of section 9(a).

FILING DATE: The application was filed on June 12, 1992.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application for permanent exemption, or ask to be notified if a hearing is ordered. Any request should be in writing and should be received by the Commission no later than the date specified in a notice in the **Federal Register** of the filing with the Commission of the report of the Special Reviewer, described below. The request should state the nature of the interest, the reason for the request, and the issues contested. Any person requesting a hearing should serve applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. As provided by rule 0–5 under the Act, a permanent order disposing of the application may be issued following the expiration of the notice period, unless the Commission orders a hearing upon request or upon its own motion or extends the temporary exemption. Request notification of any hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o First Investors Corporation, 95 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. First Investors Corporation ("FIC") is a broker-dealer registered under the Exchange Act. FIC serves as the counderwriter or underwriter for 12 registered investment companies, which are comprised of 41 different funds or series of funds, including First Investors Fund for Income, Inc. ("FIFI"), First Investors High Yield Fund, Inc. ("FIHY"), First Investors Series Fund (which consists of 4 series), First Investors Global Fund, Inc., First Investors Cash Management Fund, Inc., First Investors Tax-Exempt Money Market Fund, Inc., First Investors Insured Tax Exempt Fund, Inc., First Investors New York Insured Tax Free Fund, Inc., First Investors Multi-State Insured Tax Free Fund (which consists of 17 series), First Investors Government Fund, Inc., First Investors Life Series Fund (which consists of 9 series), and First Investors U.S. Government Plus Fund (which consists of 3 series).

2. FIC also serves as a sponsor and underwriter to First Investors single payment and periodic payment plans for investment in First Investors Global Fund, Inc., First Investors Government Fund, Inc., First Investors Insured Tax Exempt Fund, Inc., FIFI, and FIHY. [1] FIC maintains approximately 100 branch offices in 36 states, and is registered as a broker-dealer in 49 states.

3. First Investors Management Company, Inc. ("FIMCO") is a broker-dealer registered under the Exchange Act. FIMCO serves as the counderwriter with FIC for the twelve registered investment companies named above. FIMCO also is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act").

4. FIMCO serves as the investment adviser for each of the funds or series of funds of which FIMCO and FIC act as underwriter, including FIFI and FIHY, as well as First Investors Special Bond Fund, Inc.

5. Executive Investors Corporation ("EIC") is a broker-dealer registered under the Exchange Act. EIC serves as the underwriter of each of the three series of Executive Investors Trust, a registered management investment company. In this capacity, EIC does not maintain a retail sales force or directly market shares of Executive Investors Trust to the investing public. EIC has entered into dealer arrangements with independent registered broker-dealers that directly market Executive Investors Trust to the public.

6. Executive Investors Management Company, Inc. ("EIMCO") is an investment adviser registered under the Advisers Act. EIMCO serves as the investment adviser for each of the three series of Executive Investors Trust.

7. First Investors Life Insurance Company ("First Investors Life"), a stock life insurance company incorporated under the laws of the State of New York, offers life insurance, annuities, and accident and health insurance. First Investors Life serves as sponsor or depositor for First Investors Life Variable Annuity Fund A, First Investors Life Variable Annuity Fund C, and First Investors Life Level Premium Variable Life Insurance, each of which is a registered unit investment trust.

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[1] Pursuant to an order issued last year by the Commission, new payments received under the FIFI and FIHY plans are being invested in shares of the First Investors Government Fund, Inc. *See* First Investors Corp., Investment Company Act Release Nos. 17942 (Jan. 10, 1991) (notice) and 17981 (Feb. 5, 1991) (order).

Shares of these unit investment trusts are sold exclusively through FIC, and First Investors Life does not maintain an independent retail sales force with respect to these products.

8. All of the registered management investment companies and unit investment trusts described above are collectively referred to as the "First Investors Investment Companies."

9. FIC, FIMCO, EIC, EIMCO, and First Investors Life are wholly owned subsidiaries of First Investors Consolidated Corporation ("FICON"). FICON is a closely-held corporation of which Messrs. David D. Grayson and Glenn O. Head each own or control approximately 34% of the outstanding voting shares.

10. FIFI and FIHY are both open-end management investment companies organized under the laws of the State of Maryland and registered under the Act. As of June 8, 1992, FIFI had net assets of approximately $432 million and FIHY had net assets of approximately $207 million. FIFI and FIHY are diversified funds which invest primarily in high-yield, high-risk, debt securities.

11. On June 11, 1992, the Commission filed a complaint (the "Complaint") in the United States District Court for the Southern District of New York (the "Court") against FIC alleging, among other things, that from in or about 1984 through in or about 1990, FIC violated section 10(b) of the Exchange Act, rule 10b–5 thereunder, and section 17(a) of the Securities Act. The Commission alleges that, in connection with the sale of shares of FIFI and FIHY, FIC directly or indirectly, through its representatives, made misleading statements of material fact regarding the risk of loss of principal invested in FIFI and FIHY and the return on an investment in FIFI and FIHY, and omitted to state material facts necessary in order to make the statements made regarding those subjects, in light of the circumstances under which they were made, not misleading. The Commission also alleges, among other things, that during that period FIC, directly or indirectly, recommended and sold shares of FIFI and FIHY to investors for whom such shares were unsuitable investments.

12. On June 12, 1992, FIC consented to (the "Consent"), and the Court entered a final judgment (the "Judgment"), enjoining and restraining FIC from violating the foregoing sections and rule, and requiring FIC to pay $24.7 million, representing sales commissions and management fees received by FIC and certain affiliated firms in connection with the sale of shares of FIFI and FIHY from in or about November 1984 to in or about November 1990, plus prejudgment interest, less $4,436,700 representing the amount FIC has paid or agreed to pay in connection with settlements with certain state regulators.

13. On June 12, 1992, the Commission commenced an administrative proceeding (the "Administration Proceeding") against FIC pursuant to section 15(b)(4) of the Exchange Act to determine what action, if any, was necessary in light of the Consent and the Judgment. In the order instituting proceedings, making findings, and imposing remedial sanctions under the Administrative Proceeding (the "Order"), the Commission censured FIC and ordered FIC to comply with certain undertakings regarding its sales, training, supervisory, and compliance policies and procedures.

14. On June 12, 1992, the Commission commenced an administrative proceeding ("FIMCO Administrative Proceeding") against FIMCO pursuant to section 203(e) of the Advisers Act and section 9(b) of the Act alleging that FIMCO had violated section 17(j) of the Act and rule 17j–1 thereunder by failing to file timely rule 17j–1 reports as required by FIMCO's code of ethics. In the order instituting proceedings, making findings, and imposing remedial sanctions under the FIMCO Administrative Proceeding (the "Section 17(j) Order"), the Commission censured FIMCO and ordered FIMCO to comply with certain undertakings regarding compliance with section 17(j) of the Act and rule 17j–1 thereunder. Such undertakings include: (a) the adoption, implementation, and maintenance of procedures reasonably designed to ensure compliance with section 17(j) of the Act and rule 17j–1 thereunder; (b) employment of a full-time compliance officer who, among other things, will enforce FIMCO's procedures adopted pursuant to (a) above; (c) the prompt development and distribution to all access persons and supervisory personnel of FIMCO of a compliance manual containing provisions reasonably designed to ensure compliance with section 17(j) of the Act and rule 17j–1 thereunder; and (d) for the year beginning July 1, 1991, the conduct of a review of FIMCO's compliance with section 17(j) of the Act and rule 17j–1 thereunder, and the submission to the Commission's staff of a report detailing the results of such review on or before September 1, 1992.

15. On November 8, 1990, the Securities Division of the Commonwealth of Massachusetts instituted an administrative action against, among other persons, FIC, FIMCO, FICON, FIFI, and FIHY (collectively, the "Respondents"). Also on November 8, 1990, the State of New York filed a complaint in the Supreme Court of the State of New York (New York County) alleging that each of the Respondents had violated that state's securities laws. The State sought both preliminary and permanent injunctive relief, in addition to other relief, for actions taken in connection with the sale of shares of both FIFI and FIHY, and for the use of deficient prospectuses.

16. Following commencement of the New York and Massachusetts proceedings on November 8, 1990, FIFI and FIHY suspended sales of new shares. Pursuant to stipulations entered into by Respondents with the State of New York and with the Commonwealth of Massachusetts on December 14, 1990, New York withdrew its motion for, and Massachusetts agreed not to seek, preliminary injunctive relief against Respondents. Respondents, including FIFI and FIHY, agreed to certain restrictions and record maintenance requirements and to resume sales of shares of FIFI and FIHY only upon 30 days' prior notice to New York and Massachusetts.

17. On October 15, 1991, pursuant to an *ex parte* request for preliminary relief by the State of New York, the New York Supreme Court ordered Respondents to show cause why, among other relief, there should not be a freeze on certain asset transfers by the Respondents and the appointment of a receiver for the corporate Respondents. Respondents have opposed this relief. In connection with this, on November 15, 1991, the corporate Respondents (other than FIFI and FIHY) placed $23 million in escrow from which payments for settlements or judgments, including the Commission settlement described above, can be made. Pending a determination of the order to show cause, Respondents other than FIFI and FIHY currently are being restrained temporarily by the New York Supreme Court from certain asset transfers.

18. Since the institution of the New York and Massachusetts inquiries, other securities regulators commenced inquiries and have begun investigations into FIC's sales practices with respect to FIFI and FIHY and, as described in the application, some states have filed their own lawsuits.

19. In addition to the state actions, seven private class actions (six in federal district court and one in state court) and two derivative actions (both in federal district court) have been filed against Respondents. Five of the federal class actions have been consolidated as *In Re First Investors Securities*

Litigation. A private class action, *Schmaeling* v. *First Investors Corp.*, was filed against Respondents in the Supreme Court of New York (New York County). The two derivative actions are both captioned *Penzer* v. *First Investors Corp.*, one of which was filed on behalf of FIFI, and the other on behalf of FIHY. In addition, individual shareholders or groups of shareholders of FIFI and FIHY have brought actions in state and federal courts and arbitration proceedings against certain of the Respondents.

20. The above actions (collectively, the "State and Civil Complaints") allege that Respondents engaged in unlawful sales practices and did not make proper disclosure in FIFI's and FIHY's prospectuses. The State and Civil Complaints also allege, among other things, that the sales force that solicited purchases of FIFI's and FIHY's shares was inadequately trained and supervised; that the sales force represented or implied that FIFI's and FIHY's securities were safe, "guaranteed" or "insured," and suitable for potential investors without regard to the investors' investment objectives, income, or net worth; that the sales force improperly emphasized the potential yield rather than the total return of investments in FIFY and FIHY, made improper comparisons between FIFI and FIHY and bank instruments, and did not disclose applicable sales loads; and that the sales force did not make timely delivery of prospectuses to certain investors and in some cases advised or implied that investors should ignore the information contained therein. Further, the State an Civil Complaints allege that FIFI's and FIHY's prospectuses used in connection with sales contained material misstatements and omissions with respect to, among other things, the selection, evaluation, and diversification of investments in FIFI's and FIHY's portfolios and relative risk versus return on investments in junk bonds. In addition to the allegations discussed above, the two derivative actions allege that FIFI and FIHY paid excessive advisory, underwriting, and transfer agency fees and expenses, and that the boards of directors breached their fiduciary duties to FIFI and FIHY by accepting or approving such fees.

21. The relief sought by the State and Civil Complaints includes the payment of restitution and damages by Respondents, restrictions and/or prohibitions on Respondents' involvement in the offer or sale of securities, and the appointment of a receiver to take possession of property derived unlawfully.

22. To date, settlements have been reached with several states that provide for payments to certain investors in FIFI and FIHY and/or state regulators, and for the implementation of certain training and compliance procedures by the Respondents. The settlements also permit the sale of FIFI and FIHY shares in the settling states. FIFI and FIHY provided notice to New York and Massachusetts of their intent to resume sales of their shares in those states in which settlements have been made.

23. An agreement in principle has been reached and filed with the Court concerning settlement of all of the class actions and derivative actions. That agreement is contingent upon satisfaction of several material conditions, including class certification, court approval, and other regulatory approvals, some of which have been satisfied.

Applicants' Legal Analysis

1. Section 9(a) of the Act disqualifies any person or company from serving or acting in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliated person of such person, has, by reason of misconduct, been permanently or temporarily enjoined by an order, judgment, or decree from any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

2. The prohibitions in section 9(a) apply to FIC as a result of the Judgment entered against FIC. In addition, because FIMCO, EIC, EIMCO, and First Investors Life are under common control with FIC, and are thus affiliated persons of FIC by virtue of section 2(a)(3) of the Act, the section 9(a) prohibitions also apply to FIMCO, EIC, and EIMCO, and to First Investors Life.

3. Section 9(c) of the Act provides that, upon application, the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or on appropriate temporary or other conditional basis if it is established that: (a) The prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe; or (b) the conduct of such person has been such as to not make it against the public interest or protection of investors to grant such application.

4. Applicants assert that the Commission should grant an exemption from the prohibitions of section 9(a) of the Act, based on the following:

a. Denial of the requested relief and the disqualification of FIC, FIMCO, EIC, and EIMCO would not be in the interests of, and in fact, would be harmful to shareholders of all the First Investors Investment Companies due to, among other factors, the need to incur substantial costs in obtaining shareholder approval of new investment advisers.

b. Applicants have taken, and continue to take, steps designed to enhance their sales training, compliance, and supervision programs, including: (i) Retention of an independent, outside consultant (the "Broker-Dealer Consultant") to examine and report on the sales training, supervisory, and compliance practices and procedures of FIC and the creation of a program based upon the Broker-Dealer Consultant's recommendations specifically designed to strengthen the sales training, supervision, and compliance systems of FIC; (ii) development and implementation of a new sales presentation; (iii) establishment of a new training program; (iv) a substantial review of, and revisions to, FIC's compliance manual; (v) retention of outside legal counsel to examine and report on compliance with the Act's requirements; and (vi) preparation of a new portfolio managers' compliance manual.

c. Applicants have taken the remedial steps described below, and all such steps described with respect to FIC and FIMCO also have been applied to the other applicants to the extent relevant.

i. FIC has implemented various changes in senior management. All applicants (other than First Investors Life) have hired Micheal S. Miller as Chief Executive Officer with full authority over their operations. Prior to being employed by applicants, Mr. Miller was in private law practice for thirteen years. Mr. Miller has ultimate responsibility for overseeing the development and implementation of all policies and procedures, including those relating to sales training, supervision, and compliance systems. FIC also has hired as general counsel Susan E. Bryant, Esq., a former Securities Administrator of Oklahoma. Senior officers of EIC are identical to those of FIC.

ii. FIC has formed a separate compliance department, which also oversees the compliance activities of

EIC, and has increased its compliance personnel to ten persons. The department director, aided by a full-time administrative assistant, manages the compliance department and oversees all duties performed by compliance personnel, including conducting sales office inspections, providing compliance training for sales personnel, responding to customer complaints and regulatory inquiries, and handling the questions of and problems regarding sales personnel. A compliance manager and subordinates research and respond to customer complaints, inquires, and questions and maintain computerized data bases relating to customer complaints and sales office inspections. In addition, two securities examiners conduct and follow-up on sales office inspections and handle compliance questions and problems. A compliance specialist and her assistant review sales activity and monitor all trading for potential breakpoint violations and excessive trading or switching. In addition, all customer complaints forwarded by a regulator or involving complex issues are reviewed by an attorney within the legal department. The FIC legal department also provides legal services to the other applicants.

d. Applicants have been advised by the First Investors Investment Companies which are management investment companies that: (i) Their respective boards of directors or trustees (the "Directors") have determined that the retention of FIC, EIC, FIMCO, and EIMCO as distributors and advisers, respectively, is in the best interests of the funds' shareholders; (ii) to the extent that information has been available, the Directors have reviewed the circumstances pertinent to the Complaint, the Consent and the Judgment, and they have considered the prior services rendered to such funds and trusts by FIC, EIC, FIMCO, and EIMCO; and (iii) after review and considerations of the alternatives, including consultation with legal counsel who is experienced in the Act for the Directors of the funds who are not "interested persons" of those investment companies as defined in section 2(a)(19) of the Act (the "Independent Directors"), and including consideration of such factors as they deemed appropriate, the Directors of the First Investors Investment Companies which are management investment companies believe that FIC, EIC, FIMCO and EIMCO are in the best position to provide the necessary services to such funds and trusts.

e. FIC has served as a distributor of mutual funds shares over 60 years. Except for one case in 1983, prior to the institution of the proceeding by the states of New York and Massachusetts, FIC has not been found to have engaged in sales practices involving fraud or misrepresentations by any regulatory authority.[2]

f. The activities giving rise to the Complaint and Administrative Proceeding took place during the period between 1984 and 1990 and relate solely to the sale and distribution of FIFI and FIHY shares during that period. While the FIMCO Administrative Proceeding was based upon violation of certain reporting requirements under section 17(j) of the Act and rule 17f–1, no allegations have been made in the Complaint, the Administrative Proceeding, or in the various State and Civil Complaints relating to the management or advisory services provided by FIMCO to FIFI or FIHY, or to others, nor did those activities relate to any of the underwriting and investment advisory activities of EIC and EIMCO or the activities of First Investors Life as depositor or sponsor of the unit investment trusts. Similarly, none of the activities giving rise to the Complaint and the Administrative Proceeding concern the sale and distribution of any of the other First Investors Investment Companies.

g. Imposition of the section 9(a) prohibitions would have an "unduly and disproportionately severe" impact on applicants, and, in addition to the $24.7 million already paid by FIC pursuant to the Judgment, would deprive applicants of their ability to provide uninterrupted services to the First Investors Investment Companies and to others, thereby jeopardizing the ability of the applicants to remain in business.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting relief:

1. Any temporary exemption issued pursuant to this application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations of, or administrative proceedings against, applicants pursuant to the Act, including, without limitation, any administration proceeding under section 9(b) of the Act or the consideration by the Commission of any application for exemptions from statutory requirements under the Act, including without limitation, the consideration of the permanent exemption pursuant to section 9(a) of the Act requested pursuant to this application or the revocation or removal of any temporary exemptions granted under the Act in connection with this application.

2. FIC will comply with every provision of the Consent, the Order, and the Section 17(j) Order.

3. Outside counsel to FIC has retained the Broker-Dealer Consultant to conduct a review of, and to report and make recommendations as to, FIC's sales, training, supervisory, and compliance policies and procedures. The Broker-Dealer Consultant has submitted to outside counsel a draft report making recommendations for instituting new procedures and revising existing procedures, to provide for the regular and systematic supervision and monitoring of FIC's compliance, supervisory, and sales personnel, including regional and home office monitoring and supervision of branch office activities. Outside counsel has conveyed those recommendations to FIC. Within ten day after issuance of the temporary exemptive order requested herein, outside counsel will make available a copy of the Broker-Dealer Consultant's draft report to the Commission's staff for the internal use of the Commission and its staff in determining whether to issue the permanent exemptive order requested herein. In addition, promptly upon request by the Special Reviewer (hereinafter defined) to be appointed pursuant to condition 10(a) of this notice, outside counsel will make available a copy of the Broker-Dealer Consultant's draft report to the Special Reviewer.

4. FIC completed a detailed written Action Plan to implement the recommendations of the Broker-Dealer Consultant's draft report regarding FIC's sales, training, supervisory, and compliance programs, and to institute procedures to prevent and detect violations of applicable state and federal securities laws and the rules and regulations of any national securities exchange, the National Association of Securities Dealers ("NASD"), or any other self-regulatory organizations of which FIC is a member. The Action Plan includes a review and assessment of the adequacy of FIC's current sales, training, supervisory, and compliance programs. The subjects to be covered by

[2] On January 31, 1983, the District Business Conduct Committee for District No. 5 of the NASD filed a compliant against FIC, a manager of FIC's New Orleans sales office, and a former registered representative alleging that the former representative made unsuitable sales recommendations and that FIC and the office manager failed to supervise the former representative by permitting such recommendations. FIC entered into a settlement without admitting or denying such allegations.

the Action Plan shall include, without limitation, the following matters:

a. The monitoring and supervision of FIC's sales, training, supervisory, and compliance programs by senior management.

b. The monitoring and supervision of FIC's registered representatives by FIC's branch and sales complex mangers.

c. The adoption and maintenance of uniform standards of sales training by FIC on a company-wide basis.

d. The solicitation of retail purchases and sales, and the suitability of trading activity in customer accounts, including the establishment of written suitability guidelines for specific investment products sponsored by FIC and sold by FIC's registered representatives.

e. The preparation and review of all prospectuses, scripts, visuals, and other materials used by FIC in the sale of investment products sponsored by FIC or in training registered representatives to sell such products, to ensure that such materials comply with applicable state and federal securities laws and the rules and regulations of any national securities exchange, the NASD, or any other self-regulatory organizations of which FIC is a member.

f. The conducting of periodic training courses for all applicable personnel, including all registered representatives, branch and sale complex managers, and other supervisory personnel, regarding compliance procedures generally and the policies and procedures specifically adopted pursuant to the undertakings herein.

g. The adoption of written policies and procedures clearly delineating the responsibilities of FIC's compliance and legal departments with regard to the matters covered by the undertakings herein.

5. Within ten days of the entry of the Order, FIC will submit a copy of the Action Plan to the Commission's staff and make such changes or additions to the Action Plan as may be necessary to make it not unacceptable to the staff.

6. FIC has begun to implement the Action Plan and will implement fully the Action Plan as soon as possible, but no later than 30 days after the entry of the Order and thereafter will adopt, implement, and maintain adequate procedures with respect to FIC's sales, training, supervisory, and compliance programs, designed to prevent and detect violations of applicable state and federal securities laws and the rules and regulations of any national securities exchange, the NASD, or any other self-regulatory organizations of which FIC is a member.

7. Within 30 days of the entry of the Order, FIC will compile and disseminate to all registered representatives and supervisory personnel a revised compliance manual setting forth FIC's current compliance policies and procedures, including policies and procedures adopted pursuant to its undertakings herein, and will periodically update and review such manual and disseminate the revised manual to all registered representatives and supervisory personnel. FIC also will make a copy of such manual available to the Commission's staff.

8. Within 30 days of the entry of the Order, FIC will adopt procedures for annual internal audits of FIC's branch offices and sales complexes, which shall be designed reasonably to detect failures to comply with the policies and procedures adopted pursuant to the Broker-Dealer Consultant's report and the Order and any violation of applicable state and federal securities laws and the rules and regulations of any national securities exchange, the NASD, or any other self-regulatory organizations of which FIC is a member. FIC also will adopt procedures designed to assure that all failures and violations identified by such audits will be remedied or brought to the attention of its general counsel within 30 days after the completion of such audit report.

9. Within one year from the entry of the Order and annually thereafter for five years, FIC will engage the Broker-Dealer Consultant or another person not unacceptable to the Commission's staff to perform a follow-up review and to prepare a report on whether FIC has adopted and is complying with the practices and procedures recommended in the Broker-Dealer Consultant's report and required by FIC's undertakings herein. FIC will submit each such annual report to the Commission's staff within 90 days of the anniversary of the entry of the Order.

10. a. Applicants will retain, at their sole expense and within 30 days of the interim order requested herein, an independent special reviewer acceptable to the Commission ("Special Reviewer") who will prepare a report (the "Report") concerning, and make recommendations regarding, the manner in which applicants carry out and have carried out (during such past period as the Special Reviewer in his or her discretion deems appropriate for the preparation of the Report) their investment company activities, including the policies, procedures, and internal controls used by these applicants to prevent and detect any violation of applicable laws, rules, and regulations, including the applicable rules and regulations of self-regulatory organizations, relating to their investment company activities. The purpose of the Report shall be to assist the Commission in determining whether applicants, their management personnel, and controlling shareholders will conduct their business in compliance with such laws, rules, and regulations in accordance with applicable industry standards, and have implemented or are implementing systems reasonably designed to accomplish this goal. The Special Reviewer shall consider the extent to which past misconduct by applicants' management personnel and controlling shareholders affects applicants' ability to conduct their business properly in the future. Nothing herein shall preclude use by the Commission of information contained in the Report. In addition, applicants will not object if the Commission determines to disseminate publicly the Report.

b. The Independent Directors, with the advice of their independent legal counsel, have undertaken to review the Report and recommendations and to monitor on an ongoing basis compliance with those recommendations.

c. Applicants shall provide such cooperation as is requested of them by the Special Reviewer, including undertaking to obtain the cooperation of their employees or other persons under their control. Such cooperation shall include, without limitation, providing such information and documents (unless otherwise expressly provided in this notice) as the Special Reviewer reasonably may request concerning applicants' current, past, and proposed activities which are relevant to any of applicants' businesses described in section 9(a) of the Act, making employees of applicants available for interviews by the Special Reviewer or such assistants as the Special Reviewer may retain, access to applicants' computerized data, and access to applicants' premises; *provided, however,* That no provision contained in this application shall prevent the assertion of any applicable constitutional or legally recognizable privilege by any natural person on his or her behalf. Applicants and their legal counsel shall provide to the Special Reviewer all information and documents specifically requested by the Special Reviewer, without regard to any privilege or the work product doctrine, relating to past, present, and future compliance and internal audit activities which are relevant to any of applicants' businesses described in section 9(a); *provided, however,* That the Special Reviewer shall take into account the existence of a privilege in assessing his or her need for access to, or his or her disclosure of,

privileged information or documents, and shall keep any documents or information he or she obtains or prepares in connection with his or her review confidential and not disclose same to any person other than to the Commission or its staff or to the boards of directors of the First Investors Investment Companies.

d. Applicants shall not (i) compel, or require or attempt to compel or require, any employee, officer or agent, or his counsel to disclose to anyone what information or testimony the employee has provided to the Commission, its staff or the Special Reviewer, except pursuant to lawful process in a civil action as to which the employee's testimony is relevant; or (ii) take any adverse employment or other action against any person based in whole or in any part on or because of that person's (A) decision to provide information or evidence to the Special Reviewer, or (B) declination to disclose to applicants, their counsel, other employees, officers or counsel for any present or former employee, officer or agent what information or evidence was given to such persons or entities.

e. The Special Reviewer may communicate with the staff of the Commission in the course of performing his or her responsibilities; *provided, however,* That any such communication shall not be deemed to waive any privilege with respect to that communication or other information. Applicants shall not seek to invoke attorney-client or other privilege to prevent or restrict any such communications to the Commission or similarly object to the submission to the Commission by the Special Reviewer of any work papers, notes, schedules, transcripts or other documents or materials created, reviewed or obtained by the Special Reviewer in connection with his or her review (collectively, "Work Papers"). Applicants may request that the Commission afford any Work Papers of the Special Reviewer and the Broker-Dealer Consultant's draft report confidential treatment in accordance with 17 CFR 200.83. In the event that the Commission or the Special Reviewer is requested to produce any Work Papers of the Special Reviewer or the Broker-Dealer Consultant's draft report to third parties pursuant to subpoena or otherwise, the person to whom the request is made will afford applicants and, if the request is made to the Special Reviewer, the Commission as well, five business days' notice or, if not practicable, reasonable notice to allow applicants the opportunity to oppose such production.

The Special Reviewer may engage such assistance at applicants' expense, as he or she, in his or her discretion, deems appropriate to carry out his or her duties.

f. The Special Reviewer, in his or her discretion, from time to time may transmit such information to the Independent Directors as he or she deems necessary or appropriate. Applicants shall not, and the First Investors Investment Companies have advised the applicants that the Independent Directors shall not, seek to invoke attorney-client or other privilege with respect to such information.

g. Within 30 days of the designation of the Special Reviewer, the Special Reviewer shall submit to the Commission, applicants, and the Independent Directors, a comprehensive, detailed outline of the scope of, and protocol to be followed in performing, the required review. Thereafter, the Special Reviewer shall proceed expeditiously with his or her review.

h. The Special Reviewer may determine that there exists a reasonable basis for excluding a fund or trust (or any portfolio thereof) or any investment management practice from further review. Any such determination shall be in writing setting forth the basis therefor, and shall be promptly submitted to the Commission.

i. Within 180 days from the entry of the temporary order, applicants shall submit the Report to the Commission and to the Independent Directors.

j. Within 60 days of submission of the Report, applicants shall submit a report to the Commission and to the Independent Directors on the actions it has taken or will take in response to the recommendations contained in the Report, unless otherwise directed by the Commission within 30 days of its receipt of the Report, either as a result of the Commission's own review of the recommendations or in response to any request by applicants or the Independent Directors not to implement any recommendation.

k. During his or her engagement and for a period of two years following submission of the Report to the Commission, unless the Commission first consents in writing, neither the Special Reviewer nor any law firm which he or she may retain shall represent any of the applicants or the First Investors Investment Companies, or any affiliate, officer, agent, or employee of any of them, in any capacity.

l. Applicants will reimburse the First Investors Investment Companies for all costs and expenses, if any, incurred by those investment companies in connection with the preparation of this application and in providing information to, or adopting recommendations of, the Special Reviewer.

m. Applicants will not make any assignment (as the term "assignment" is defined in section 2(a)(4) of the Act) of any contract to act as an investment adviser or underwriter of any fund, unless each such assignee has agreed, no later than the date of the assignment, that (i) it will provide such cooperation as is requested of it by the Special Reviewer to the same extent as is required by applicants, including undertakings to obtain the cooperation of its employees or other persons under its control, and (ii) it will maintain and make available all records for the period specified herein.

11. Pursuant to rule 8 of the Commission's Rules of Practice, applicants hereby consent to the staff of the Commission advising the Commission regarding the subject matter of the application and waive any provisions of law or of the Commission's rules that would prevent such *ex parte* communications and waive any claim or prejudgment by the Commission based upon any communications by the staff with the Commission for the purpose set forth herein.

12. Pursuant to rules 8(b) and 16(b) of the Commission's Rules of Practice, applicants hereby waive an initial determination by a hearing officer as to the matters set forth herein.

Temporary Order

The Commission has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicants, finds that the issuance of a temporary order under section 9(c) of the Act, subject to the foregoing conditions, is not inconsistent with the public interest or the protection of investors.

Accordingly, *It is hereby Ordered,* Under section 9(c) of the Act, that applicants be, and hereby are, granted a temporary exemption from the provisions of section 9(a) of the Act, solely with respect to the injunction entered by the United States District Court for the Southern District of New York enjoining applicants from violations of section 10(b) of, and rule 10b–5 under, the Exchange Act and section 17(a) of the Securities Act, subject to each of the conditions contained in the application, which conditions are expressly incorporated herein, until the earlier of the date on which the Commission takes final action

on the application for a permanent order exempting applicants from the prohibitions of section 9(a), or one year from the date of this order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-14403 Filed 6-18-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2559]

California, Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated June 6, 1992, to the President's major disaster declaration of May 2, to extend the deadline for filing applications for physical damage. The new deadline is July 15, 1992.

The termination date for filing applications for economic injury remains the close of business on February 2, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 9, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-14393 Filed 6-18-92; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence will hold a public meeting at 11 a.m. on Wednesday, August 5, 1992, at the Greenwood Inn Restaurant located on 1350 Jefferson Boulevard, Warwick, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528-4580.

Dated: June 9, 1992.

Caroline J. Beeson,

Assistant Administrator Office of Advisory Councils

[FR Doc. 92-14395 Filed 6-18-92; 8:45 am]

BILLING CODE 8025-01-M

Commencement of 3% Preferred Stock Repurchase Program

AGENCY: U.S. Small Business Administration.

ACTION:

1. Notice of Commencement of 3% Preferred Stock Repurchase Pilot Program for Small Business Investment Companies Licensed under section 301(d) of the Small Business Investment Act of 1958, as Amended (Specialized SBICs); and,

2. Solicitation of Indications of Interest in the 3% Preferred Stock Repurchase Program from Specialized SBICs.

SUMMARY: This notice announces the implementation by the Small Business Administration (SBA) of the provisions of Public Law 101-162, enacted November 21, 1989. That law authorizes SBA to allow Specialized SBICs ("SSBICs") to repurchase from SBA, at a price less than its par value, their outstanding 3% Preferred Stock held by SBA.

INDICATIONS OF INTEREST: With this notice, SBA is soliciting indications of interest from SSBICs that wish to apply to SBA for the repurchase of their 3% Preferred Stock. Upon receipt of such indications of interest, SBA will notify the interested SSBICs of the specific details of the Repurchase Program and the requirements for making an application and offer to SBA for the repurchase of 3% Preferred Stock.

Additionally, SBA will, at its sole discretion, select from the group of SSBICs indicating interest in the program nine (9) such companies for a pilot program. The objective of the pilot program will be to test SBA's Repurchase Program procedures and to suggest changes to the procedures that might facilitate future transactions.

PUBLIC NOTICE AND COMMENT: SBA is also offering the public an opportunity for comments by interested parties.

EFFECTIVE DATE: This notice is effective on the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Phyllis E. Dawson, Chief, Intensive Servicing Group, Investment Division, U.S. Small Business Administration, suite 6300, 409 Third Street, SW., Washington, DC 20416. Voice Telephone Number 202-205-7554; FAX Telephone Number 202-205-6959.

SUPPLEMENTARY INFORMATION: *Policy Statement,* SBA's policy is to administer the Repurchase Program in such a way as to maximize the capacity of SSBICs to provide financing to businesses owned by persons whose participation in the free enterprise system is hampered by social or economic disadvantage.

SBA will structure each transaction with the aim of:

1. Encouraging and facilitating the investment of new private capital into SSBICs;
2. Conserving the cash resources of each participant;
3. Conserving the borrowing potential of each participant;
4. Conserving the direct and guaranty budget of the Specialized SBIC program;
5. Improving the financial status of the participating SSBICs;
6. Rehabilitating (where necessary) weak SSBICs to improve their financial and operating effectiveness without undue risk to SBA; and
7. Discouraging voluntary liquidations of SSBICs and the premature surrender of licenses.

The methodology of computing the price at which the 3% preferred stock is sold back to an SSBIC will be a function of four factors independent of any SSBIC, and four factors that are variable with each SSBIC. The independent factors are:

1. Average SBIC Treasury-based 10 Year rate.
2. Barron's Junk Bond Spread over Treasury.
3. Preferred stock dividend rate (3%).
4. The adjustment to the price for non-marketability of shares.

The four factors that are variable with each individual SSBIC are:

1. Number of years that dividends are in arrears.
2. Financial Rating of SSBIC as rated by SBA.
3. Ability of SSBIC to have paid dividends.
4. Par value of stock to be purchased.

The above policy will be executed in such a way as to prevent windfall opportunities to SSBICs, their managements, or owners; and, to avoid transfer of cash flows from SSBICs into SBA to the detriment of the program's effectiveness and liquidity.

Financial Impact on SBA. At January 1, 1992, approximately $190 million of 3% preferred stock was outstanding to 105 SSBICs, with accumulated unpaid and undeclared dividends of approximately $36.0 million.

It is estimated that 100 SSBICs with $186.0 million of 3% preferred stock, and accumulated unpaid and undeclared dividends of $34.0 million, might be eligible to repurchase their preferred stock from SBA.

Impact on Specialized SBIC Program. The net effect of the Repurchase Program will be to provide time for restructuring that segment of the industry that is presently financially weak, thus preserving the existence of these companies. Minority or disadvantaged small concerns will benefit since the source of financing that is available from SSBICs will be preserved and enhanced.

Impact on SSBICs. The impact on each SSBIC will be unique in that the effects on the finanical status of each SSBIC will be a function of the amount of preferred stock being purchased in relation to its private capital size and its capital adequacy percentage, the purchase price, and the type of consideration being paid. The financial statements of the SSBICs will reflect the benefits of these transactions since the 3% preferred stock will no longer be outstanding, and the discount from par value will represent a permanent recapitalization. Any dividend arrearage on the 3% preferred stock will no longer be a claim on the future earnings.

Impact on Operations and Investment Plan. SBA, in considering whether to accept an SSBIC's offer to repurchase 3% preferred stock, will require that the applicant submit plans demonstrating that the transaction will accomplish the intent and objectives of the repurchase program as set forth herein. Those plans in some cases may have the effect of requiring substantial changes in the SSBIC's operations and investment practices, or in management practices.

In evaluting each SSBIC's request, SBA will perform due diligence on each SSBIC applicant. Such due diligence will be analagous to that accomplished when an SSBIC seeks funding leverage, with SBA performing a regulatory, and a financial and management evaluation as directed in SOP 10 05.

Duration and Timing Elements of the Repurchase Program. The Repurchase Pilot Program will conclude upon completion of the nine transactions contemplated, or approximately three to six months. Subsequent to the Pilot Program, based upon feedback from comments received in response to this notice, and from experience gained through the Pilot Program, SBA will commence the balance of the Repurchase Program which would continue for a period of three calendar years from the effective date.

SBA considers three years to be sufficient to effect the contemplated transactions without undue haste and processing burden on the SSBICs and SBA, and sufficient to permit SSBICs to solicit and acquire new private capital where necessary.

SBA may, based upon experience with the progress of this program, deem it necessary to extend the time period beyond three years if circumstances show such an extension is in the best interests of the minority or disadvantaged business constituents.

Processing Fee. The standing policy of SBA is to charge user fees, examination fees, and application fees in connection with the administration of its programs. Consistent with that standing policy, SBA is charging a non-refundable processing fee of $2,000, payable at the time that an SSBIC applies to SBA for a repurchase transaction under the Repurchase Program described herein. The processing fee is to recover, in part, SBA's administrative costs of each transaction.

PUBLIC COMMENT PERIOD: Interested parties are hereby invited and encouraged, in the public interest, to provide SBA comments and suggestions concerning the implementation of Public Law 101–162 11/21/89. All such comments will be considered by SBA in its decisions in connection with the policy, terms, and conditions of the aforementioned program. Such comment period shall begin with the date of this notice and end 60 days hence, provided however that SBA, in its discretion, may extend the comment period.

Written comments should be directed to: Wayne S. Foren, Associate Administrator for Investment, Small Business Administration, suite 6300, 409 Third Street SW., Washington, DC 20416.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 92–14390 Filed 6–18–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0547]

CIT Group/Venture Capital, Inc.; Issuance of a Small Business Investment Company License

On April 1, 1992 a notice was published in the **Federal Register** (57 FR 11131) stating that an application has been filed by CIT Group/Venture Capital, Inc., 650 CIT Drive, Livingston, NJ, 07932, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1992)) for a license to operate as a small business investment company.

Interested parties were given until close of business on May 1, 1992 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 107.4 of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0547 on June 1, 1992, to CIT Group/Venture Capital, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 11, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–14391 Filed 6–18–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0258]

Sirrom Capital, L.P.; Issuance of a Small Business Investment Company License

On December 27, 1991 a notice was published in the **Federal Register** (56 FR 67112) stating that an application has been filed by Sirrom Capital, L.P., 511 Union Street, suite 900, Nashville, Tennessee 37219, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1992)) for a license to operate as a small business investment company.

Interested parties were given until close of business on January 26, 1992 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to § 107.4 of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0258 on May 14, 1992, to Sirrom Capital, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 11, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–14392 Filed 6–18–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-92-18]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 9, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 15, 1992.

Denise D. Castaldo,

Manager, Program Management Staff, Office of the Chief Counsel.

Docket No.: 17145.

Petitioner: United Airlines.

Sections of the FAR Affected: 14 CFR 121.665 and 121.697(a) and (b).

Description of Relief Sought: To extend Exemption No. 2466G, which relieves United Airlines of the requirement that load manifests be signed by an actual employee responsible for loading the aircraft.

Docket No.: 26752.

Petitioner: Douglas Aircraft Company.

Sections of the FAR Affected: 14 CFR 43.1.

Description of Relief Sought: To allow minor aircraft damage or malfunction occurrences during the final delivery phase to be handled under the Douglas Quality System approved under Production Certificate No. 27, and not be treated as maintenance under FAR part 43.

Docket No.: 26773.

Petitioner: United Technologies Hamilton Standard.

Sections of the FAR Affected: 14 CFR 21.325(b)(1) and (1).

Description of Relief Sought: To allow United Technologies Hamilton Standard to issue export approvals for Class I, II, and III propeller products manufactured and located at Ratier-Figeac, Figeac, France.

Docket No.: 26863.

Petitioner: Twintown Leasing Company, Inc. and Embraer Aircraft Corporation.

Sections of the FAR Affected: 14 CFR 47.9.

Description of Relief Sought: To allow United States registration of two Embraer Bandeirante aircraft in the name of Embraer Aircraft Corporation, a non-U.S. citizen corporation, without meeting the requirement that the aircraft be based and primarily used in the United States when leased to and in the care, custody, and control of Twintown Leasing Company, Inc., a U.S. citizen corporation operating as an air carrier pursuant to FAR part 135.

Docket No.: 26884.

Petitioner: Mercy Medical Airlift.

Sections of the FAR Affected: 14 CFR 61.118(d)(1) and (6).

Description of Relief Sought: To permit Mercy Medical Airlift to: (1) Conduct its Bonanza 36 Operations without modifying the Federal Aviation Administration (FAA) Flight Standards District Office at least 7 days before flight, and (2) fly under IFR conditions.

Dispositions of Petitions

Docket No.: 21780.

Petitioner: Civil Air Patrol.

Sections of the FAR Affected: 14 CFR 61.118.

Description of Relief Sought/ Disposition: To extend Exemption No. 4042, as amended, which permits members of the Civil Air Patrol holding private pilot certificates to be reimbursed for fuel, oil, and maintenance expenses while serving on official Civil Air Patrol missions.

Grant, May 29, 1992, Exemption No. 4042D.

Docket No.: 21802.

Petitioner: Sowell Aviation Company, Inc.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/ Disposition: To extend Exemption No. 4551, as amended, which permits Sowell Aviation Company, Inc., to hold examining authority for flight instructor and airline transport pilot written tests.

Grant, June 5, 1992, Exemption No. 4551D.

Docket No.: 23980.

Petitioner: United States Hang Gliding Association, Inc.

Sections of the FAR Affected: 14 CFR 91.309 and 103.1(b).

Description of Relief Sought/ Disposition: To extend Exemption No. 4144, as amended, which permits members of United States Hang Gliding Association, Inc., to tow unpowered ultralights with a powered ultralight.

Grant, June 3, 1992, Exemption No. 4144D.

Docket No.: 24605.

Petitioner: World Jet Corporation dba Executive Jet New York.

Sections of the FAR Affected: 14 CFR 91.511(a) and 135.165(b).

Description of Relief Sought/ Disposition: To extend Exemption No. 4961, as amended, and add Falcon Jet DA50, Lear Jet 35, Falcon Jet DA10, and Hawker Siddeley 125-400 to the list of airplanes authorized by the exemption to operate using a single, long-range navigation system and a single, high-frequency communications system.

Grant, May 29, 1992, Exemption No. 4961B.

Docket No.: 26095.

Petitioner: Cochise Community College.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/ Disposition: To extend Exemption No. 5225 which permits Cochise Community College to recommend graduates of its approved certification course for flight instructor-airplane single engine certificates and associated rating without taking the Federal Aviation Administration's practical test, in accordance with the provisions of subpart D of part 141.

Grant, June 1, 1992, Exemption No. 5225A.

Docket No.: 26502.
Petitioner: Critical Air Medicine, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow pilots employed by Critical Air Medicine, Inc., to change the configuration of its aircraft by removing and replacing seats and stretchers to accommodate its air ambulance operations.
Partial Grant, June 2, 1992, Exemption No. 5459.
Docket No.: 26615.
Petitioner: Idaho Bureau of Aeronautics (Idaho-Based Air Taxi Operators).
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow the pilots employed by on-demand, air taxi operators in the State of Idaho to perform the preventive maintenance function of removing and replacing the passenger seats of aircraft used in FAR part 135 operations. Partial Grant, June 9, 1992, Exemption No. 5456.
Docket No.: 26691.
Petitioner: American Cyanamid Company.
Sections of the FAR Affected: 14 CFR 61.57(d) and 135.247(a)(b).
Description of Relief Sought/ Disposition: To permit American Cyanamid Company pilots to operate without complying with the night regency of experience requirements of §§ 61.57(d) and 135.247(a)(2). Denial, June 1, 1992, Exemption No. 5460
Docket No.: 26696.
Petitioner: Ryan International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.503(b) and 121.511(a).
Description of Relief Sought/ Disposition: To permit Ryan International Airlines, Inc., pilots and flight engineers to complete certain west coast to east coast transcontinental flight sequences with B–727 aircraft before being provided with at least 16 hours of rest, provided crewmembers satisfy the requirements of § 121.505(a). Grant, June 1, 1992, Exemption No. 5461.
Docket No.: 26793.
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.310(f)(5).
Description of Relief Sought/ Disposition: To permit installation of a door between passenger compartments on the McDonnell Douglas MD–11 airplane. Grant, June 5, 1992, Exemption No. 5413A.
Docket No.: 26887.
Petitioner: International Cargo Xpress.
Sections of the FAR Affected: 14 CFR 121.547.
Description of Relief Sought/ Disposition: To permit International Cargo Xpress to admit a Russian-speaking flight navigator to the flight deck of airplanes operated by International Cargo Xpress. Grant, June 4, 1992, Exemption No. 5462.

[FR Doc. 92–14421 Field 6–18–92; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 92–14; Notice 2]

Chrysler Corp.; Grant of Petition for Temporary Exemption From Seven Federal Motor Vehicle Safety Standards

This notice grants the petition by Chrysler Corporation of Highland Park, Michigan, for a temporary exemption from seven Federal motor vehicle safety standards, for multipurpose passenger vehicles that are electrically powered. The basis of the petition was that an exemption would facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition was published on April 3, 1992, and an opportunity afforded for comment (57 FR 11541).

Petition was made on behalf of four 1989 model Chrysler TEVans, electrically driven versions of the Dodge Caravan/Plymouth Voyager multipurpose passenger vehicle. The TEVan was developed in cooperation with the Electric Power Research Institute, Southern California Edison Company, the South Coast Air Quality Management District, and the United States Department of Energy. The basis for the petition was that a temporary exemption allowing the offer for sale and sale of these vehicles would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c). The vehicles use electric motors powered by nickel-iron batteries that replace the internal combustion engine. According to Chrysler, the TEVans emit air pollutants in amounts "significantly below" new motor vehicle standards applicable under section 202 of the Clean Air Act, and with respect to other pollutants, meet the 1989 standards applicable to them. Therefore, the TEVans are low-emission vehicles as defined by section 123(g) of the National Traffic and Motor Vehicle Safety Act.

The TEVan differs from regular production vans as follows: the internal combustion engine, transmission, coolant system, power brakes, gasoline fuel system, and power steering system have been replaced by an electric drive motor, a nickel-iron or equivalent battery pack, a micro-processor based battery management system, a controller-converter-charger unit, a two-speed manual automatic transmission, and electric-motor-driven pumps for the vacuum power brakes and the hydraulically assisted power steering. Finally, the hot water heater/defroster unit has been replaced by an electric resistance type heating/defrosting system.

Before their conversion, the four TEVans were manufactured to comply with all applicable Federal motor vehicle safety standards. However, they do not comply with the portions of the standards indicated below.

1. Standard No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect.

S3.1.2. The requirement for transmission braking effect is met by regenerative braking, in which the electric motor becomes a generator, recharging the batteries and dissipating energy in the process. Regenerative braking can be switched off at the option of the driver to restore steering control on slippery surfaces.

2. Standard No. 105, Hydraulic Brake Systems.

S5.1. The performance of the service brake system is predicated on the use of the regenerative characteristic of the drive motor to augment the power-assisted hydraulic wheel brakes. The motor, driven through the transmission by the mass of the coasting vehicle, functions as a generator to dissipate energy through charging the drive batteries. In the performance tests of S5.1.1 Stopping distance, however, the transmission must be in neutral, and in the TEVan, that would preclude the contribution of regenerative braking. Chrysler has not conducted tests using regenerative braking; however, in its opinion, the TEVan will meet the stopping distance requirements of S5.5.1 with regenerative braking. In the fade and recovery test, S5.1.4, the distance specified between the starting points of successive brake applications at 60 mph is 0.4 mile. The TEVan cannot accelerate to 60 mph in that distance, so the test cannot be conducted as prescribed, but Chrysler believes that the TEVan could comply, or nearly comply, with the fade and recovery tests, with regenerative braking, if the TEVan could accelerate as specified.

3. Standard No. 207, Seating Systems.

S4.2(a)-(c) General performance requirements. The right end floor pan anchor sockets for the removable two-

passenger second seat have been reduced in height below the floor pan to provide space for a portion of the battery pack. The modified sockets are believed to be equivalent in strength to the original, but compliance tests have not been performed.

4. Standard No. 210, Seat Belt Assembly Anchorages.

S4.2 Strength. The modified sockets discussed above must also transmit seat belt forces to the vehicle structure through seat-mounted anchorages. The modified sockets are believed to be equivalent in strength to the original, but compliance tests have not been performed.

5. Standard No. 212, Windshield Mounting.

6. Standard No. 219, Windshield Zone Intrusion.

Windshield mounting and zone intrusion performance are ultimately determined by vehicle front structure crush characteristics. The front structure of the base van, modified to support the electric drive train conformance is believed to be materially equivalent in strength to the original, but a 30 mph barrier test has not been performed to confirm compliance.

7. Standard No. 301, Fuel System Integrity

S5.5 Fuel spillage: barrier crash, and S5.6 Fuel spillage: rollover. A 1.6 gallon tank has been provided just behind the rear axle for the fuel used in the diesel fuel-burning heater/defroster. The integrity of the diesel fuel system has not been evaluated with fixed and moving barrier impact tests; however, it is believed that the TEVans would comply with the spillage limitations if they were so tested.

The petitioner requested exemptions for a period of one year, during which it would title and sell one or more of the vehicles for ongoing endurance evaluation. According to the petitioner, an exemption would facilitate the development and field evaluation of a low-emission motor vehicle by enabling the petitioner to develop the electric drive motor, battery controller, battery, and other subsystems to increase the efficiency and durability of future generations of electric vehicles. Chrysler also argued that the exemptions will not unduly degrade the safety of the vehicles because the vehicles from which the TEVans are adapted were certified as conforming to the standards.

Finally, petitioner argued that granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because it would accelerate the development of electrically-driven vehicles and related technology which could help to reduce the dependency on foreign oil.

NHTSA noted that this petition differs from the usual situation under which a petition is filed before the manufacture of the subject vehicle has commenced. However, the agency concluded that, under the circumstances of this case, a petition may be accepted and, further, that an exemption may be granted, provided that findings consistent with the directives of section 123 (15 U.S.C. 1410) can be made. The effect of an exemption is to excuse conduct that is otherwise prohibited by section 108(a)(1)(A) (15 U.S.C. 1397(a)(1)(A)): The manufacture for sale, sale, offer for sale, introduction or delivery for introduction in interstate commerce, and the importation into the United States of a nonconforming vehicle, and one that is not certified in accordance with section 114 (15 U.S.C. 1403). In this instance, the petitioner may have introduced a nonconforming vehicle into interstate commerce if the TEVans have been operated on the public roads. Although an exemption could not serve retrospectively to excuse such past violation, the conduct in which Chrysler intends to engage, the sale and offer for sale of nonconforming and uncertified vehicles, has not yet occurred. An exemption would permit it to do so without violating section 108(a)(1)(A)).

No comments were received on the petition.

In order to grant an exemption, the agency must find that the exemption would facilitate the development and field evaluation of a low-emission motor vehicle, that such exemption would not unduly degrade the safety of the vehicle, and that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

Although only four vehicles are involved here, they represent Chrysler's first generation of conversions. Their sale will allow continued evaluation of electric vehicle propulsion and subsystems with feedback to Chrysler on the performance of those systems. Therefore, it is found that an exemption would facilitate the development and field evaluation of a low-emission motor vehicle.

The agency notes that the requests for exemption affect more form than the substance of the standards concerned. The vehicles initially met, and may still meet all applicable Federal motor vehicle safety standards, though their continuing compliance has not been conclusively demonstrated by tests. Thus, exemptions may have no, or at most minimal, effect upon motor vehicle safety. Therefore, it is also found that an exemption would not unduly degrade the safety of the vehicle.

An exemption would be desirable for environmental reasons as well as contributing to the goal of lessened dependence on foreign oil. Therefore, it is also found that an exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

In consideration of the foregoing, Chrysler Corporation is hereby granted NHTSA Temporary Exemption No. 92–5, expiring June 1, 1993, from the following Federal Motor Vehicle Safety Standards or portions thereof: S3.1.2 of 49 CFR 571.102 Motor Vehicle Safety Standard No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect; S5.1.1 and S5.1.4 of 49 CFR 571.105 Motor Vehicle Safety Standard No. 105, Hydraulic Brake Systems; S4.2(a), (b), and (c) of 49 CFR 571.207 Motor Vehicle Safety Standard No. 207, Seating Systems; S4.2 of 49 CFR 571.210 Motor Vehicle Safety Standard No. 210, Seat Belt Assembly Anchorages; 49 CFR 571.212 Motor Vehicle Safety Standard No. 212, Windshield Mounting; 49 CFR 571.219 Motor Vehicle Safety Standard No. 219, Windshield Zone Intrusion; and S5.5 and S5.6 of 49 CFR 571.301 Motor Vehicle Safety Standard No. 301, Fuel System Integrity.

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on June 15, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92–14415 Filed 6–18–92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 91–66; Notice 2]

Chrysler Corporation; Grant of Petition for Temporary Exemption From Three Federal Motor Vehicle Safety Standards

This notice grants the petition by Chrysler Corporation of Highland Park, Michigan, for a temporary exemption from three Federal motor vehicle safety standards, for multipurpose passenger vehicles that will be electrically powered. The basis of the grant is that an exemption will facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition was published on February 6, 1992, and an opportunity afforded for comment (57 FR 4675).

Petition was made on behalf of the Chrysler TEVan, an electrically driven version of the Dodge Caravan/Plymouth

Voyager multipurpose passenger vehicle. Modifications will be made to production 1991–1994 Dodge and Plymouth vans on and after September 1, 1992. The TEVan has been developed in cooperation with the Electric Power Research Institute, U.S. Advanced Battery Consortium, and the United States Department of Energy. The basis for the petition was that a temporary exemption would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c). The vehicles will use electric motors powered by nickel-iron or other equivalent batteries that replace the internal combustion engine. According to Chrysler, the TEVan will meet the California Air Resource Board zero emission requirements, and are low-emission vehicles as defined by section 123(g) of the National Traffic and Motor Vehicle Safety Act.

The TEVan differs from regular production vans as follows: the internal combustion engine, transmission, coolant system, power brakes, gasoline fuel system, and power steering system have been replaced by an electric drive motor, a nickel-iron or equivalent battery pack, a micro-processor based battery management system, a controller-converter-charger unit, a two-speed manual/automatic transmission, and electric-motor-driven pumps for the vacuum power brakes and the hydraulically assisted power steering. Finally, the hot water heater/defroster unit is replaced by an electric resistance type heating/defrosting system.

The TEVan is based on production vehicles certified as complying with all applicable Federal motor vehicle safety standards. However, it will not comply with the portions of the standards indicated below.

1. Standard No. 101, Controls and Displays.

S5.1. The TEVan will be equipped with a state-of-charge gauge to serve as an indicator of reserve battery power, rather than the fuel gauge required by the standard.

2. Standard No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect.

S3.1.2. The requirement for transmission braking effect is met by regenerative braking, in which the electric motor becomes a generator, recharging the batteries and dissipating energy in the process. Regenerative braking can be switched off at the option of the driver to restore steering control on slippery surfaces.

S3.1.3. The starter interlock mechanism will be deleted since there will be no electric starting motor.

S3.1.4. The automatic transmission shift mechanism will be replaced with an electric switch control device that operates in a similar manner.

3. Standard No. 105, Hydraulic Brake Systems.

S5.1. The performance of the service brake system is predicated on the use of the regenerative characteristic of the drive motor to augment the power-assisted hydraulic wheel brakes. The motor, driven through the transmission by the mass of the coasting vehicle, functions as a generator to dissipate energy through charging the drive batteries. The petitioner has not conducted tests using regenerative braking, however, tests of a conventionally powered weighted simulation of the TEVan indicate that the TEVan will meet the stopping distance requirements of S5.1.1. In the fade and recovery test, S5.1.4, the distance specified between the starting points of successive brake applications at 60 mph is 0.4 mile. The TEVan cannot accelerate to 60 mph in that distance, so the test cannot be conducted as prescribed, but based on the performance of a simulated TEVan, the TEVan could comply if it could accelerate as specified.

On TEVans equipped with anti-lock brake systems, the regenerative braking will be disabled during hard stops that actuate the anti-lock feature of the brakes.

According to the petitioner, an exemption would facilitate the development and field evaluation of a low-emission motor vehicle by enabling the petitioner to develop the electric drive motor, battery controller, battery, and other subsystems to increase the efficiency and durability of future generations of electric vehicles.

The petitioner requested exemptions for a two-year period beginning September 1, 1992. It argued that the exemptions will not unduly degrade the safety of the vehicles because the vehicles from which the TEVan is adapted are certified as conforming to the standards. Initially, Chrysler stated that the vehicles would be used for developmental purposes only, and would be destroyed upon termination of the evaluation program. However, the petitioner has recently informed NHTSA that "The development vehicles are to be sold or otherwise titled to other organizations that may continue with development and/or vehicle testing * * *."

Finally, petitioner argued that granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because it would accelerate the development of electrically-driven vehicles and related technology which could help to reduce the dependency on foreign oil.

No comments were received on the petition.

In order to grant a petition filed under 15 U.S.C. 1410(a)(1)(C), findings must be made that the temporary exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably degrade the safety of the vehicle, and that the exemption is consistent with the public interest and the objectives of the National Traffic and Motor Vehicle Safety Act. Petitioner has argued that the exemption would enable it to develop the components of the vehicle to increase the efficiency and durability of future generations of electric vehicles. NHTSA concurs with this argument. In view of petitioner's recently-communicated desire to sell these vehicles, rather than destroy them, it is probable that an exemption would permit the use of the vehicles under varied conditions of climate and terrain, testing those components for durability and life.

Petitioner has also argued that safety is not compromised because the vehicles from which the TEVan is adapted are certified as conforming to the standards. The inability of the TEVan to meet two of the standards from which exemption is requested, Standards Nos. 101 and 102, appears only technical in nature, as systems and instruments are provided that are the equivalents of those in gasoline-powered vehicles. As for Standard No. 105, the petitioner on the basis of simulated tests of weighted vehicles, judges that the stopping distance requirements will be met. It is NHTSA's experience that regenerative braking can provide a drag on the vehicle's forward motion when the foot is removed from the accelerator; this, coupled with foot brake activation should ensure adequate stopping capability.

It is manifestly in the public interest to accelerate the development of electrically-driven vehicles, not only to reduce reliance on oil, no matter where it originates, but also to reduce the level of harmful emissions in the environment. Because of the minimal impact on safety of the grant of this petition, NHTSA considers that an exemption is consistent with the objectives of the Act.

Subsequent to filing its petition, Chrysler amended its original request for a 1-year exemption, and asked for a 2-year exemption to begin on September 1, 1992. In accordance with 49 CFR 555.7(f), the agency is granting this

request. The exemption will cover modification of some vans that were manufactured during the 1991 and 1992 model years, but which were not sold, and modification of newly-manufactured 1993 and 1994 vans.

In consideration of the foregoing, it is hereby found that a 2-year exemption would facilitate the development or field evaluation of a low-emission vehicle, and would not unreasonably degrade the safety of such vehicle, and that such exemption would be in the public interest and consistent with the objectives of the Act. Accordingly, Chrysler Corporation is hereby granted NHTSA Temporary Exemption No. 92–1, beginning September 1, 1992, and expiring August 31, 1994, from providing a fuel gauge as required by paragraph S5.1 of 49 CFR 571.101 Motor Vehicle Safety Standard No. 101 Controls and Displays, from paragraphs S3.1.2, S3.1.3, and S3.1.4 of 49 CFR 571.102 Motor Vehicle Safety Standard No. 102 Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect, and from paragraph S5.1.4 of 49 CFR 571.105 Motor Vehicle Safety Standard No. 105 Hydraulic Brake Systems.

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on: June 15, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92–14416 Filed 6–18–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 20, 1992.

Dated: June 15, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Application of Service Representative for Placement on Mailing List, VA Form 70–3215.

2. The form is used by service organizations for placing their representatives on the mailing list to receive VA publications.

3. Individuals or households.

4. 25 hours.

5. 10 minutes.

6. On occasion.

7. 150 respondents.

[FR Doc. 92–14426 Filed 6–18–92; 8:45 am]

BILLING CODE 8320–01–M

Prosthetics Services Advisory Committee; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Prosthetics Services Advisory Committee will be held July 13–14, 1992, at 801 I (EYE) Street, NW, Washington, DC. The July 13 session will be held in the Omar N. Bradley Conference Room, room 1105, and the July 14 session will be located in room 534.

The purpose of the Prosthetics Services Advisory Committee is to advise the Secretary of Veterans Affairs and the Chief Medical Director on major policy questions raised by the responsibility to provide state-of-the-art prosthetics and associated rehabilitation research, development, and evaluation of such technology.

The meeting will convene at 8:30 a.m. and adjourn at 4 p.m. on July 13, reconvene at 8:30 a.m. on July 14 and adjourn at 4 p.m. The meeting is open to the public to the capacity of the rooms. For those wishing to attend, contact Ms. Mary Allen, office of the Deputy Associate Deputy Chief Medical Director for Rehabilitation and Prosthetics, phone (202) 535–7537, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to July 7, 1992.

Dated: June 11, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–14424 Filed 6–18–92; 8:45 am]

BILLING CODE 8320–01–M

Special Medical Advisory Group Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Special Medical Advisory Group will be held on July 30–31, 1992, at the Ramada Renaissance Hotel, 999 9th Street, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. The session on July 30 will convene at 6:30 p.m. and the session on July 31 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ginny Rassman, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/535–7605) prior to July 28, 1992.

Dated: June 11, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–14425 Filed 6–18–92; 8:45 am]

BILLING CODE 8302–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 119
Friday, June 19, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92-14517.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 25, 1992, 10:00 a.m., Meeting Open to the Public.

The Following Item Is Added to the Agenda:

Draft Letter to Presidential Campaign Committees

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores R. Harris,
Administrative Assistant.
[FR Doc. 92-14650 Filed 6-17-92; 2:53 pm]
BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:00 a.m., Wednesday, June 24, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposals to implement Section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 on prompt corrective action for troubled depository institutions.
2. Advance notice of proposed rulemaking with respect to implementation of Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 regarding interest rate risk.
3. Proposed 1993 Federal Reserve Board budget guideline.
4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 17, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 92-14578 Filed 6-17-92; 10:31 am]
BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 24, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of currency processing equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 17, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 92-14579 Filed 6-17-92; 10:31 am]
BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 22, 1992.

An open meeting will be held on Tuesday, June 23, 1992, at 9:30 a.m. A closed meeting will be held on Thursday, June 25, 1992, at 2:30 p.m.

The following item will be considered at an open meeting scheduled for June 23, 1992, at 9:30 a.m.:

Consideration of whether to repropose for public comment several amendments to the Commission's proxy rules under section 14(a) of the Securities Exchange Act of 1934 that would facilitate securityholder communications in furtherance of the goal of informed proxy voting, and would reduce the costs of compliance with the proxy rules for all persons engaged in a proxy solicitation. The amendments as initially proposed were issued for public comment on June 17, 1991 (Rel. Nos. 34-29315; IC-18201; File No. S-7-22-91). The Commission received more than 900 letters in response to its request for comment on the proposed amendments. The Commission also will consider whether to propose for public comment new disclosure requirements regarding executive compensation. FOR INFORMATION CONTACT: Catherine Dixon at (202) 272-2589 or David Sirignano at (202) 272-3097.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, June 25, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Kramer at (202) 272-2000.

Dated: June 16, 1992.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 92-14622 Filed 6-17-92; 1:49 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 119
Friday, June 19, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 33, 35, and 290

[Docket No. RM92-10-000]

Streamlining Electric Power Regulation

Correction

In proposed rule document 92-12818 beginning on page 23171 in the issue of Tuesday, June 2, 1992, make the following correction:

On page 23173, in the third column, in the second full paragraph, in the seventh line, "11" should read "2".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Service

[Program Announcement No. OCS-92-05]

Request for Applications Under the Office of Community Services' Fiscal Year 1992 Job Opportunities for Low-Income Individuals Program (Demonstration Projects)

Correction

In notice document 92-9454 beginning on page 18266 in the issue of Wednesday, April 29, 1992, on page 18271, in the first column, under *B. Application Submission*, in the second line, "July 28, 1992" should read "June 29, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[T.D. 8335]

RIN 1545-AO88

OMB Control Numbers Under the Paperwork Reduction Act; Correction

Correction

In rule document 92-5998 beginning on page 9050 in the issue of Monday, March 16, 1992, make the following corrections:

§ 602.101 [Corrected]

1. On page 9051 in § 602.101(c):

a. In the 1st column, in the 22d line from the bottom, "1.913-12" should read "1.913.13".

b. In the 2d column, in the 19th line from the bottom, "1.6050-1" should read "1.6051-1".

c. In the 3d column, in the 17th line, "1545-0012" should read "1545-0112".

BILLING CODE 1505-01-D

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federal register

Friday
June 19, 1992

Part II

Department of Transportation

Coast Guard

33 CFR Part 155
Vessel Response Plans; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 91-034]

RIN 2115-AD61

Vessel Response Plans

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulations requiring response plans for certain vessels that carry oil in bulk as cargo, and additional requirements for such vessels operating in Prince William Sound, Alaska. These regulations are mandated by the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990. The purpose of these requirements is to improve response capabilities and minimize the impact of oil spills from these vessels.

DATES: Comments must be received on or before August 3, 1992.

ADDRESSES: Comments must be in writing and may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406), (CGD 91-034), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Comments on collection of information requirements must also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Headquarters, room 3406. For information concerning comments, the telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Glenn Wiltshire, Project Manager, Oil Pollution Act (OPA 90) Staff, (G-MS-1), (202) 267-6739. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-034) and the specific section of the proposal to which each comment applies, and give the basis for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public hearing at this time. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" Requests should indicate why a public hearing is considered necessary. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Glenn Wiltshire, Project Manager, LCDR Robert Diaz, Project Manager (for Prince William Sound Section only), and Mary-Jo Cooney Spottswood, Project Counsel, Oil Pollution Act of 1990 (OPA 90) Staff (G-MS-1).

Background and Purpose

In recent years, several catastrophic oil spills have threatened the marine environment along the coastal areas of the United States. Among these spills were the EXXON VALDEZ in Prince William Sound, the AMERICAN TRADER in California's coastal waters, and the MEGA BORG in the Gulf of Mexico. These spills have resulted in extensive damage to the marine environment, including the loss of fish and wildlife. In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380).

OPA 90 requires owners and operators of certain vessels to submit individual response plans for approval. This notice of proposed rulemaking (NPRM) presents proposed rules to implement the OPA 90 requirements for vessel response plans, including additional requirements for certain vessels operating in Prince William Sound. This NPRM addresses sections 4202(a)(6), sections 4202(b)(4), and section 5005 of OPA 90. Section 4202(a)(6) of OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321) and set out the requirements for vessel response plans in section 311(j)(5). Section 4202(b)(4) of OPA 90 set the implementation schedule for these provisions. Section 5005 of OPA 90 set oil spill removal requirements for Prince William Sound in addition to those imposed by section 4202(a)(6). These requirements include prepositioning oil spill containment equipment and establishing private oil spill removal organizations to protect property and economic interests, especially fish hatcheries.

This notice does not address the requirements of section 4202(a)(6) of OPA 90 for the carriage and inspection of discharge-removal equipment. These requirements will be the subject of a separate rulemaking.

OPA 90 requires response plans for "oil or hazardous substance" spills. Section 4202(b)(4)(B) establishes an implementation schedule for submission and approval of oil spill response plans only; response plans for hazardous substance spills will be the subject of a separate rulemaking.

Regulations for facility response plans are being developed in concert with other Federal agencies, including the Environmental Protection Agency (EPA), the Minerals Management Service (MMS), and the Department of Transportation (DOT) Research and Special Programs Administration (RSPA). These will also be the subject of a separate rulemaking.

Vessel Response Plans

As amended, section 311(j)(5) of the FWPCA, requires owners and operators of all vessels that are constructed or adapted to carry, or that carry oil or hazardous substances in bulk as cargo or cargo residue prepare and submit individual response plans to the President for approval. This authority was delegated to the Secretary of Transportation by Executive Order 12777 (56 FR 54757) and subsequently to the Commandant of the Coast Guard in 46 CFR 1.46(m) (57 FR 8581).

These proposed rules would be applicable to all vessels certificated under 46 CFR subchapter D, all other certificated vessels that are permitted to carry limited quantities of oil as defined in section 311(a)(1) of the FWPCA and any other uninspected vessel that carries oil in bulk as cargo or cargo residue. As used in these proposed rules, oil includes but is not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils. This includes animal and vegetable oils in addition to petroleum oil. Thus, vessels that carry these oils as secondary cargoes require response plans.

Section 311(j)(5)(C) of the FWPCA requires that response plans must: (1) Be consistent with the National Oil and

Hazardous Substances Pollution Contingency Plan (NCP) and any Area Contingency Plan (ACP) for the geographic area in which the vessel operates; (2) identify the qualified individual with full authority to implement response actions, including liaison with the Federal On-Scene Coordinator (OSC) and response contractors; (3) identify and ensure the availability of, by contract or other approved means, private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from the vessel; (4) describe the training, equipment testing, periodic unannounced drills, and response actions that will be carried out under the response plan to ensure the safety of the vessel and mitigate the effects of an oil discharge; and (5) include procedures for periodically updating or resubmitting the response plan for approval when significant changes occur. Worst case discharge is defined in section 311(a) of the FWPCA as a discharge in adverse weather conditions of a vessel's entire cargo.

A major objective of the OPA 90 amendments to section 311(j)(5) of the FWPCA is to create a system in which private parties supply the bulk of equipment and personnel needed for an oil spill response in a given area. For example, response plans must identify and ensure the availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge, including a discharge resulting from fire or explosion aboard the vessel. Such a discharge will likely require the use of both private and public resources. However, the vessel response plan is required to only identify private resources. The integration and coordination of public and private response resources will be addressed in the applicable Area Contingency Plans.

Section 311(j)(5)(D) of the FWPCA requires the Coast Guard to review vessel response plans; require amendments to any plan that does not meet the requirements set forth under the provisions of section 311(j)(5)(C) of the FWPCA; and approve any plan that does comply with those provisions.

After February 18, 1993, a vessel required to have a response plan may not handle, store, or transport oil unless a plan has been submitted for approval. After August 18, 1993, a vessel requiring a response plan may not perform any of these functions unless it is operating in compliance with that plan. After submission of a plan, but prior to its approval, a vessel may continue operations for up to 2 years if the owner or operator of the vessel has certified the availability of private personnel and equipment sufficient to respond to a worst case discharge.

Section 5005 of OPA 90 establishes requirements for vessel response plans above and beyond the requirements of section 311(j) of the FWPCA. Through the requirements of section 5005 of OPA 90, an owner or operator of a vessel that carriers oil in bulk as cargo that operates on Prince William Sound, Alaska, is required to submit a response plan that provides an additional level of preparedness over and above those identified in section 311(j)(5) of the FWPCA. The response plan requirements of section 311(j)(5) of the FWPCA are intended to ensure an effective and immediate response to an oil spill nationwide. The additional requirements of section 5005 of OPA 90 are intended to provide a even greater margin of safety in Prince William Sound by: providing for response equipment to be prepositioned; establishing an oil spill removal organization; requiring special training for residents in Prince William Sound; performing periodic inspection, testing and certification of response equipment; and exercising of the required trained personnel and spill removal equipment.

Advance Notice of Proposed Rulemaking

The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) on this project in the August 30, 1991 **Federal Register** (56 FR 43534). The ANPRM discussed the background, statutory requirements of section 311(j) of the FWPCA, and possible regulatory approaches. In addition, the ANPRM raised 59 questions for the public comment. The Coast Guard received 172 comments. Each of the comment letters was considered in developing this NPRM.

Public Comments at Response Plan Workshop

In addition to accepting written comments concerning the development of regulations for vessels response plans, a public workshop was held in Washington, DC on November 14, 1991. A total of 196 persons participated in the workshop. During the workshop, the Coast Guard summarized the written comments received in response to the ANPRM and solicited additional input on specific issues.

The workshop focused on four specific issues identified in advance by the Coast Guard. These issues were: (1) Defining Response to the "Maximum Extent Practicable" and "Adverse Weather;"(2) Response Resource Capability Assessment; (3) Tank Vessel-Carried Equipment; and (4) Prince William Sound Equipment and Personnel Requirements under Tank Vessel and Facility Response Plans. The recommendations from this workshop were considered when developing this NPRM.

Audio tapes, a transcript of the plenary sessions, and a summary of the proceedings of the workshop are available for review and copying in the public docket as described under "**ADDRESSES.**"

Recommendations of Oil Spill Response Plan Negotiated Rulemaking Committee

Because of the need for additional information to assist with the development of this proposed rule, the Coast Guard published a Notice of Intent to Form a Negotiated Rulemaking Committee on November 18, 1991 (56 FR 58202). Based on the comments received on this notice, the Coast Guard established the Oil Spill Response Plan Negotiated Rulemaking Committee. A Notice announcing the establishment of the Committee was published on January 10, 1992 (57 FR 1139). Twenty-six organizations participated on the Committee. The Coast Guard was a member of the Committee.

Committee sessions were held between January 8th and March 27th, 1992. The Committee was charged with considering five issues: Definition of "maximum extent practicable"; definition of "adverse weather" for purposes of determining recovery capacity of removal equipment; applicability of requirements to various categories of vessels that carry oil in bulk as cargo, contractor certification; and carriage of discharge removal equipment. The Committee considered a number of options and alternatives during its discussions that were not included in their final recommendations. The consensus recommendations included in the final report of the Committee reflects the agreement of all Committee members and were used when drafting the proposed rule. Contractor certification and discharge removal equipment carriage will be the subject of separate NPRMs.

In establishing the Committee, the Coast Guard agreed to use any consensus recommendations of the Committee as the basis for the NPRM to the maximum extent possible consistent with its legal obligations. The Coast Guard also agreed to draft the proposed regulation and preamble having the same substance and effect as the

Committee's recommendations. The Committee will reconvene after the close of the public comment period to review comments on their recommendations.

Recommendations of the Committee are identified in the preamble discussion of the proposed rule. Copies of the final Committee report of all documents considered by the Committee during its meetings are available in the public docket.

Discussion of Proposed Amendments

To ensure that all vessels subject to the requirements of the Federal Water Pollution Control Act (FWPCA) section 311(j)(5), as amended, are prepared to respond to a discharge of oil, the Coast Guard is proposing requirements that certain vessels prepare and submit oil spill response plans. These plans are necessary to identify the availability of sufficient spill response resources. The following is a section-by-section summary of the proposed amendments.

Section 155.140 Incorporation by Reference

This section incorporates by reference four standard test methods developed by the American Society for Testing and Materials (ASTM). These test methods are acceptable means to evaluate the performance capabilities of oil booms and recovery devices for purposes of § 155.1045 as discussed below. ASTM is in the process of updating these standards as well as developing new standards for response equipment performance evaluation. The Coast Guard is an active participant in this process and will revise this section as necessary to reflect any applicable standard subsequently adopted by ASTM.

This section incorporates IMO Resolution A.648(16), "General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances, and/or Marine Pollutants." This resolution includes standard reporting formats and lists information to be included in reports made concerning pollution incidents.

This section also incorporates the "Ship to Ship Transfer Guide (Petroleum)" published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF) for use in developing the lightering plan required plan required by §§ 155.1035 and 155.1040. The Coast Guard solicits comments on any other appropriate standards, test procedures, or guidelines that should be considered for incorporation by reference.

Subpart D—Response Plans

Section 155.1010 Purpose

This section describes the purpose and notes that the requirements set forth in the rule are for planning purposes only and are not intended as performance standards. These criteria are to be used by a vessel owner or operator to develop a plan for the response to the vessel's worst case discharge to the maximum extent practicable.

Section 155.1015 Applicability

With certain exceptions, the requirements of this proposed subpart apply to all vessels that handle, store, or transport oil in bulk as cargo that operate on the navigable waters of the United States, or that transfer oil in a port or place subject to the jurisdiction of the United States. This includes vessels transferring oil at deepwater ports or other offshore facilities located outside the navigable waters of the United States as defined in 33 CFR 2.05–25. It includes vessels that transit in innocent passage through the navigable waters. The public should be aware that legislation is pending that would extend the seaward boundary of the navigable waters from the current 3 miles to 12 miles. Vessels in innocent passage through the exclusive economic zone are not covered. The requirements apply to vessels that carry oil in bulk as their primary cargo, as well as vessels that carry oil in bulk as a secondary cargo in any quantity. The requirements also apply to vessels carrying non-petroleum oil as cargo.

Vessels involved in oil cargo lightering operations whose cargo is destined for a port or place subject to the jurisdiction of the United States must operate in compliance with FWPCA section 311(j) and must conform to the response plan requirements in the proposed rule. This includes both the delivering and receiving vessel.

The Coast Guard proposes to exclude certain vessels from response plan requirements. The definition of vessel in section 311(a) of the FWPCA excludes public vessels. Also excluded are vessels that, although designed or constructed to carry oil in bulk as cargo, are not carrying oil as cargo or cargo residue. The Coast Guard proposes to apply the requirements for response plans only to those vessels actually engaged in oil carriage. Thus, vessels that are in lay-up status in U.S. waters, vessels carrying cargoes other than oil, or vessels that enter U.S. waters without oil cargo or cargo residue aboard for repairs or reconstruction at a shipyard or other location will not be required to have response plans. While vessels that are not transporting oil as cargo are exempt, these vessels will require response plans if they are used for oil storage.

The proposed rule excludes dedicated oil spill response vessels when operating in a response area from response plan requirements. The Coast Guard proposes to exclude these vessels because their operations involving the carriage of oil occur only in conjunction with spill response activities. Oil spill removal organizations that commit resources to dedicated service as response vessels enhance the nation's ability to respond to spills. Excluding them from response plan requirements when operating within a response area provides an incentive to develop and maintain this specialized capability. Requiring such vessels to have their own response plans could result in fewer such resources being available and would be contrary to the purpose and intent of OPA 90 to improve capability. Such vessels will be subject to response plan requirements when these vessels are engaged in transportation of oil outside of the response area.

Vessels of opportunity will not be required to have response plans while engaged in oil spill response activities. Requiring response plans would discourage their participation and reduce the number of vessels available to respond to a spill.

Even if exempted from these proposed rules, a vessel with an oil capacity exceeding 250 barrels is still subject to the applicable pollution prevention and oil transfer requirements of 33 CFR parts 155 and 156.

This subpart also applies to a U.S. flag vessel that always operates outside the Exclusive Economic Zone of the United States. Although not required by section 311(j)(5) of the FWPCA to have a response plan, regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 related thereto, as amended (MARPOL), requires these vessels to have approved shipboard emergency plans. The Act to Prevent Pollution From Ships (33 U.S.C. 1901 *et seq.*) provides the authority to implement the MARPOL requirements for these vessels. As noted in the preamble discussion for § 155.1030, the Coast Guard is proposing to implement the MARPOL Annex I, Regulation 26 requirements through this rulemaking. The proposed rule would apply the requirements of this subpart, except for identification and contracting of response resources, to such vessels.

Section 155.1020 Definitions

This section would add definitions that are based on the FWPCA, other regulations, recommendations made by the Negotiated Rulemaking Committee, or devised by the Coast Guard to cover other terms used in this subpart. The definitions are only applicable to this subpart.

Adverse Weather: The proposed definition was recommended by the Negotiated Rulemaking Committee. Adverse weather means the weather conditions to be used for planning purposes when identifying equipment and systems in a response plan. The specific requirements for planning are found in § 155.1050.

Bulk: The proposed definition includes any volume of oil carried aboard a vessel in integral tanks, and marine portable tanks or independent tanks if they are filled or discharged while aboard the vessel.

Cargo: The proposed definition covers any quantity of oil transported in bulk aboard a vessel that is off-loaded at a destination, including transfers of oil from fuel tanks to other vessels or facilities. This includes vessels that are not certificated under 46 CFR subchapter D that transfer oil from their fuel tanks. The definition excludes oil carried aboard the vessel for use as fuel for any equipment, machinery, or boats transported aboard the vessel. Also excluded is oil transferred from a towing vessel's fuel tanks to a vessel in its tow for use in operating machinery. This transfer is not deemed cargo since it is essentially ship stores for the operation of the tow rather than being transported for off-loading at a destination. A towing vessel that transfers fuel to a vessel that is not in its tow, such as a midstream refueling operation, is subject to response plan requirements for vessels carrying oil as a secondary cargo. As proposed, the definition applies to any quantity of oil off-loaded at a destination. The Coast Guard solicits comments on whether there should be a minimum quantity of oil that should be excluded from the definition of cargo.

Contract or Other Approved Means: The proposed definition provides four methods that a vessel owner or operator can use to establish evidence of compliance. These are a written contractual agreement, self-certification, or active membership in a local or regional spill removal organization. A memorandum of understanding or basic ordering agreement that does not bind the response contractor or spill removal organization to a specified level of planned performance does not meet this requirement. Finally, the identification of such an organization without a formal contract is acceptable, but only if authorized by a specific section of this proposed regulation and consented to by the response organization.

Operator: The proposed definition is derived from 33 CFR part 130. The operator of a towing vessel is not considered the operator of a vessel being towed.

Owner: The proposed definition is derived from 33 CFR part 130.

Qualified Individual: The proposed definition describes the specific requirements that this individual must meet. Section 311 (j)(5) of the FWPCA specifies that this individual must have full authority of the vessel owner or operator to implement the response plan, contact and if necessary, contract with the response resource identified in the plan, and serve as liaison with the Federal On-Scene Coordinator. This individual must speak and understand English, be located in the United States, and be available on a 24-hour basis. This excludes persons aboard the vessel. While the term qualified individual is used, the vessel's owner or operator may designate an organization to carry out these responsibilities.

Oil Spill Removal Organization: The proposed definition includes any for-profit or not-for-profit contractors, cooperatives, or in-house resources established in a geographic area to provide required response resources.

Spill Management Team: The proposed definition describes the personnel that will staff the organizational structure that a vessel or operator must identify in their response plan. This team will manage the response actions of the vessel owner or operator and the oil spill removal organizations identified in a plan.

Response Area: The proposed definition, based on a recommendation by the Negotiated Rulemaking Committee, was included because it indicates where a dedicated response vessel can operate during a spill response activity without a response plan. It covers any COTP zones or smaller planning area, as applicable, in which spill response activities are occurring.

Dedicated Response Vessel: The proposed definition, recommended by the Negotiated Rulemaking Committee, describes a vessel whose service is limited exclusively to oil spill response activities and response-related escorting. Vessels meeting this definition are excluded from this proposed rule or are subject to reduced requirements.

Vessel of Opportunity: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee. These vessels are used during a spill response to provide platforms for skimmers and other response equipment. These vessels will be exempted from response plan requirements while engaged in spill response activities in the response area.

Higher Volume Port Area: The Negotiated Rulemaking Committee recommended that the Coast Guard identify those ports where greater response capability is necessary. This is fully explained in § 5.1050.

Maximum Extent Practicable: The proposed definition was based on a recommendation drafted by the Negotiated Rulemaking Committee. The definition serves as a cross reference to proposed § 155.1050 which contains the detailed criteria.

Average Most Probable Discharge: The proposed definition was recommended by the Negotiated Rulemaking Committee based on a review of Coast Guard historical spill data from tank ships and tank barges. From 1985 to 1989, approximately 95 percent of the petroleum oil spills from each of these vessels were 50 barrels or less. This includes both cargo and fuel spills occurring during routine vessel operations as well as casualties.

Maximum Most Probable Discharge: The proposed definition, based on a recommendation by the Negotiated Rulemaking Committee, is based on a review of Coast Guard historical spill data from tank ships and tank barges. From 1985 to 1989, approximately 98 percent of the petroleum oil spills from these vessels were 2500 barrels or less. This includes both cargo and fuel spills occurring during routine vessel operations as well as casualties. Thus the proposed rule establishes the maximum most probable discharge volume as 2500 barrels or 10 percent of the oil cargo capacity of the vessel, whichever is less.

Substantial Threat of Such a Discharge: The proposed definition is included because vessel owners and operators are required to plan for incidents that may not result in an oil discharge. This definition is consistent with the International Maritime Organization guidelines for the development of shipboard oil pollution emergency plans.

Non-Persistent Oil: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee. The definition is drawn from the International Oil Pollution Compensation Fund guidelines, which uses distillation percentages at time of shipment to distinguish between persistent and non-persistent oils. It differentiates between the physical

characteristics of persistent and non-persistent oils. Non-persistent oils tend to be more volatile and evaporate very rapidly. The response equipment and methods required are typically different than those for persistent oils. While each oil must be evaluated, generally gasolines, naphtha, kerosene, jet fuel, gas oil, automotive diesel, and number 2 diesel fuel would meet this definition. The International Tanker Owners Pollution Federation (ITOPF) classifies non-persistent oils as Group 1 as indicated in appendix B to part 155. Certain non-petroleum oils would also be classified as non-persistent based on their specific gravity.

Persistent Oil: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee. It differentiates between the physical characteristics of oils. Persistent oils tend to emulsify and do not dissipate as rapidly as non-persistent oils. This affects the equipment and methods required to respond to the discharge. The definition covers all oils that do not meet the criteria for classification as non-persistent oils. Persistent oil includes marine diesel, number 4 and 6 oils, lubricating oils, asphalt, other residual fuel oils, and crude. The International Tanker Owners Pollution Federation (ITOPF) classifies these as Group 2, Group 3, or Group 4 as noted in appendix B to part 155. The proposed subdivision of persistent oils into these three groups goes beyond the Committee recommendation. The Committee recommended that only one category of persistent oil be used. However, the Committee also recommended that the proposed rule account for emulsification of oils, noting that emulsification varies with the relative persistence of the oil. The Coast Guard's opinion is that using the three ITOPF categories for classifying persistent oil better reflects the variability in dissipation and emulsification of persistent oils. If only one category is included, the factors used to reflect dissipation and emulsification in this proposed rule would need to be set conservatively to avoid underestimates of planning volumes. The Coast Guard's opinion is that using such an approach would unfairly penalize a vessel owner or operator that carries a "less persistent" oil. The use of the three categories provides for more equitable coverage. The Coast Guard solicits comments on this categorization of persistent oils. Certain non-petroleum oils would also be classified as persistent oils and assigned oil groups based on specific gravity.

Vessels Carrying Oil as a Primary Cargo: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee to vary the response plan requirements based on the principal purpose of a vessel. It includes all vessels having a Certificate of Inspection under 46 CFR subchapter D (except for dedicated response vessels), a Certificate of Compliance, or a Tank Vessel Examination Letter. These vessels would be subject to the most stringent response plan requirements.

Vessels Carrying Oil as a Secondary Cargo: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee to vary the response plan requirements by the purpose of a vessel. It covers inspected vessels that are not certificated under 46 CFR subchapter D, but have been authorized to carry certain types and quantities of oil or oil-based products under other authorities. It also covers foreign vessels carrying these oils as a secondary cargo as authorized by an International Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35. The definition would also apply to any other uninspected vessel that carries oil in bulk as cargo as defined by this subpart.

Inland Area: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee and is included to define the geographic boundaries of an area for identifying response times and equipment operating capability criteria. The existing boundaries used in 33 CFR part 80 and 46 CFR part 7 are the basis for the seaward limit of this area.

Rivers and Canals: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee and is included to define the geographic boundaries of inland area where shallow draft vessels operate. This area is used for identifying response times and equipment operating capability criteria. The Negotiated Rulemaking Committee did not recommend a specific water depth or draft to use in defining these waters. The Coast Guard proposes to use the controlled navigable depth of 12 feet or less as the method of identifying these waterways. Most of these waterways are in protected areas and reflect conditions different from those found in other waterways. The use of 12 feet or less would limit the waterways that were covered by this definition to those where non-oceangoing vessels operate, such as the Intracoastal Waterway, Western Rivers Systems and other similar areas. The Coast Guard solicits comments on whether this is a reasonable method to differentiate between rivers or canals and other inland areas.

Nearshore Area: The proposed definition, recommended by the Negotiated Rulemaking Committee, defines the geographic boundaries of an area used for identifying response times and equipment operating capability criteria. The area is from the existing boundaries in 33 CFR part 80 and 46 CFR part 7 to 12 miles seaward. This area is close to shore, thus requiring more rapid response times and planning for protective actions.

Offshore Area: The proposed definition, based on a recommendation by the Negotiated Rulemaking Committee, is included to define the geographic boundaries of an area generally located between 12 and 50 nautical miles from shore used for identifying response times and equipment operating capability criteria. This area is farther from shore, thus the risk to the shoreline is reduced. This reduced risk is reflected in the planning criteria for vessels operating in this area.

Open Ocean: The proposed definition, based on a recommendation by the Negotiated Rulemaking Committee, defines the geographic boundaries of an area generally located between 50 and 200 nautical miles from shore. This area is used for identifying response times and equipment operating capability criteria. It extends out to the seaward limit of the United States Exclusive Economic Zone. This area is far from shore, thus the risk to the shoreline is reduced. This reduced risk is reflected in the planning criteria required for vessels operating in this area.

Ocean: The proposed definition, based on a recommendation by the Negotiated Rulemaking Committee, is used to identify response plan equipment operating criteria applicable to all waters seaward of inland areas.

Great Lakes: The proposed definition was taken from 46 CFR 10.103.

Exclusive Economic Zone: The proposed definition is based on the one in section 1001 (8) of OPA 90. It describes this zone as defined in Presidential Proclamation 5030 of March 10, 1983. This zone extends 200 miles from the territorial sea baseline unless a maritime boundary with another country is closer than 200 miles.

Section 155.1025 Operating Restrictions and Interim Operating Authorization

Vessel owners or operators covered by this subpart shall submit a response plan and have it approved by the Coast Guard before they may handle, store, or transport oil. Section 4202(b)(4) of OPA 90 phases in this requirement. Response plans must be submitted no later than February 18, 1993, for vessels operating prior to that date. Such vessels must be operating in full compliance with a plan approved by the Coast Guard by August 18, 1993. A vessel entering service after February 18, 1993, must submit a response plan prior to handling, storing, or transporting oil, and must also be operating in compliance with an approved plan by August 18, 1993. Vessels entering service after August 18, 1993, must be operating in compliance with an approved plan prior to handling, storing, or transporting oil.

While the above dates implement the statutory requirements for vessels to operate with approved response plans, section 311(j)(5)(F) of the FWPCA allows the Coast Guard to authorize a vessel to operate for up to 2 years after a plan is submitted for approval if the owner or operator certifies that they have identified and ensured the availability of, through contract or other approved means, the necessary private personnel and equipment to respond to the maximum extent practicable to a worst case discharge. This provides an interim period in which the vessel may continue to operate before the approval process is completed, recognizing that the Coast Guard may be unable to complete the plan review and approval process before approved plans are required.

The proposed rule would provide a 2 year authorization for vessels to operate pending plan approval if they certify that they have identified and ensured the availability of through contract or other approved means, the response resources required by this subpart. This certification would normally occur as part of the initial plan submission. Since plans must be submitted for existing vessels by February 18, 1993, 6 months before the date for compliance with the plan, all of the required response resources may not be in place. Such vessel owners or operators may submit this certification separately prior to August 18, 1993, or they may note the resources that are not in place when they submit their plan in February. All response resources must be in place by August 18, 1993, for the vessel to continue to operate past that date.

The required certification can be included either in a letter accompanying the plan or in a separate request. In either case, the request must identify the same information on these resources that is required to be submitted with the response plan. Information contained in the plan does not need to be repeated.

Under the proposed rule, a vessel's authorization to operate is void if: The Coast Guard determines that the response resources included in the certification do not meet the requirements of this subpart; the identified resources are no longer covered by a contract or other approved agreement with the vessel owner or operator; the vessel is not operating in compliance with the submitted plan; or the 2 year period expires. Measures taken for vessels not operating in compliance with a plan are described in 33 CFR 155.1065.

Section 155.1025 would also allow the Captain of the Port (COTP) to authorize vessels without an approved response plan to make a single voyage to a port or geographic area. This authorization could be requested for vessels whose plans do not cover a particular port or vessels making an initial visit to a U.S. port. This authorization is intended for vessels in the spot charter market whose destination may change en route, not for use by vessels on planned voyages or in liner service.

To qualify for this single voyage authorization, a vessel must have aboard either: A response plan that meets all of the requirements of this subpart, except for the geographic-specific information for the port; or a shipboard emergency plan that has been approved by the flag state of the vessel as meeting the requirements of MARPOL Annex I, Regulation 26. The MARPOL Annex I, Regulation 26 plan contains most of the shipboard elements of the vessel response plan required in this proposed rule. The vessel owner or operator shall also identify and inform the vessel crew and COTP of the designated qualified individual, and certify that they have identified and ensured the availability of, through contract or other approved means, the response resources required by this subpart for the applicable port or geographic area in which the vessel intends to operate. This request may be submitted to the COTP via telex; however, the response resources must be specifically identified.

155.1030 General Response Plan Requirements

This section of the proposed rule lists the general requirements for all response plans. These requirements differentiate between vessels that carry oil in bulk as a primary cargo, vessels carrying oil in bulk as a secondary cargo, and unmanned tank barges. There are separate sections in the proposed rule that address the detailed requirements to be met by each type of vessel.

The proposed rule sets out the requirements for these vessels separately so that commenters can focus on the proposed requirements for each type of vessel. The Coast Guard may reorganize the format of the final rule to include common components of the plans in one section, only listing the requirements unique to unmanned tank barges or secondary cargo carriers in a separate section, as opposed to restating the entire list of requirements. The Coast Guard solicits comments on this format.

Response plans must be prepared in English, and if applicable, in a language understood by crew members with responsibilities under the plan. This will most often be the officers aboard the vessel.

The general response plan requirements include 10 sections: General information and introduction; notification procedures; shipboard spill mitigation procedures; shore-based response activities; list of contacts; training procedures; drill procedures; plan review and update procedures; vessel-specific appendices; and geographic-specific appendices for each COTP zone in which the vessel stores, handles, or transports oil. Vessel owners or operators are encouraged to use checklists, flowcharts, and other methods to facilitate the use of response plans in an emergency.

The proposed requirements are based on the "Guidelines for the Development of Shipboard Oil Pollution Emergency Plans" adopted by IMO at the Marine Environment Protection Committee meeting in London in March 1992, implementing MARPOL Annex I, Regulation 26. This regulation requires oil tankers of 150 gross tons or over and every other ship of 400 gross tons or over to carry an approved oil pollution emergency plan on board. This requirement is effective on April 4, 1995 for existing vessels and any new vessels delivered prior to April 4, 1993. New vessels delivered after April 3, 1993, must have an approved plan onboard prior to entering service. The MARPOL requirements apply to all such vessels regardless of whether they carry oil in bulk as cargo. The requirements are also based on the "Guidelines for the Preparation of Shipboard Oil Spill Contingency Plans" published in 1990 by OCIMF and the International Tanker Owners Pollution Federation (ITOPF).

Most comments to the ANPRM recommended that these documents form the basis for the response plan regulations. The format in the proposed rule is intended to implement the requirements of MARPOL Annex I, Regulation 26, as authorized by section 3 of the Act to Prevent Pollution From Ships (33 U.S.C. 1903), and section 311(j)(5)(C) of the FWPCA for vessels carrying oil in bulk as cargo. Regulations implementing MARPOL Annex I, Regulation 26 requirements for vessels not subject to this proposed rule will be published at a later date. The Coast Guard solicits comments on this approach for implementing the MARPOL Annex I, Regulation 26 requirements.

A number of comments recommended that the response plan requirements include other topics such as identification of sensitive areas and detailed geographic-specific response strategies. These topics will be addressed in the Area Contingency Plans. The vessel response plan addresses the responsibilities of the vessel crew to notify appropriate government and company officials and to minimize or mitigate an oil discharge from the vessel; management of the response by the vessel owner or operator; and response resources that have been identified in advance by the vessel owner or operator.

The proposed rule also requires that an owner or operator of unmanned tank barges prepares a separate notification and emergency action plan to be carried aboard the barge. These requirements are discussed under § 155.1040.

The proposed rule notes that a response plan for a dedicated response vessel that operates outside of the response area as defined in this proposed rule must be in the same format as a vessel carrying oil as a secondary cargo.

Response plans must be submitted in a specific format. This format is consistent with that required by MARPOL 73/78 Annex I, Regulation 26. Since many vessel owners or operators already have response plans, or will be preparing them before the final rule is published, the proposed rule provides for acceptance of existing plans in a different format until the next required resubmission date. Required resubmission dates are contained in § 155.1070. Response plans that qualify for this acceptance must include a cross-reference that shows the location of required plan sections to facilitate review and use in an emergency.

A response plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and applicable Area Contingency Plans (ACP). The Coast Guard will review the plan for consistency. Section 155.1050 requires the vessel owner or operator to identify and ensure the availability of, by March 1998, through contract or other approved means, certain response resources listed in the ACP.

155.1035 Response Plan Requirements for Vessels Carrying Oil as a Primary Cargo

These requirements apply to all vessels that carry oil as a primary cargo, except for unmanned tank barges. Unmanned tank barges and vessels that carry oil as a secondary cargo are covered by separate sections. This section would also apply to vessels that carry non-petroleum oils as their primary cargo.

The general information and introduction section of a response plan contains information on the vessel, its owner or operator, a listing of the geographic areas covered, a table of contents, and record of changes page.

The notification procedures section contains information on notifications that must be made in the event of a vessel casualty. While some of the notifications should be in geographic-specific appendices, this section should: summarize notification requirements, identify responsibilities, procedures, and communication methods to be used, and information to be provided. Notification information should follow the recommendations of IMO Resolution A648(16). This section contains procedures for notifying the qualified individual designated to represent the vessel's owner or operator. Much of this information can be provided in checklist format. It is not necessary to provide individual names if the information is already provided in the list of contacts section of the response plan or in a geographic-specific appendix.

The shipboard spill mitigation procedures section of a response plan summarizes the actions to be taken by the vessel's crew in the case of an actual or substantial threat of an oil discharge. This section must address potential and actual discharges of both oil cargo and fuel. Although section 311(j)(5) of the FWPCA focuses primarily on oil carried in bulk as cargo, MARPOL Annex I, Regulation 26 applies to both oil cargo and fuel. The plan must address discharges that may result from onboard operations (i.e. internal or external cargo or fuel transfers) as well as those resulting from casualties or emergencies. The proposed rule lists specific situations that must be covered in the plan. Checklists or other simple procedures are appropriate for this section.

The response plan must identify crew actions necessary for the assessment of damage stability and hull stress, as well as information to be collected for use by shore-based personnel. Crew training for these actions may vary greatly, and the response plan must take this into account. The response plan must identify the location of the information necessary for damage assessment and stability calculations. A copy of this information must be maintained ashore by either the vessel owner or operator or the vessel's recognized classification society, unless the applicable information is available in a shore-based damage stability and residual strength calculation program that can be accessed 24 hours per day. This is to ensure that information is available if the information aboard the vessel is destroyed or inaccessible.

The Negotiated Rulemaking Committee recommended that tankers have: A lightering plan with operational checklists, a station bill, and identified sources of specific equipment required for vessel-to-vessel lightering. The proposed rule would require procedures for both internal and ship-to-ship transfers. The Ship-to-Ship Transfer Guide (Petroleum) published jointly by the International Chamber of Shipping and OCIMF is proposed for incorporation by reference. This guide covers ship-to-ship transfers using cargo systems and contains numerous checklists and procedures to be for such transfers. The plan requires transfer procedures followed if any of a ship's systems are damaged, including the use of over-the-top pumping, gravity shifting of cargo, emergency use of void spaces or ballast tanks, etc. The plan must also identify the sources of fendering equipment, transfer hoses, portable pumps, lightering or mooring masters, and vessel or barge brokers. Section 155.1050 specifies which equipment must be contracted for in advance. Lightering plans may be maintained separately from the response plan; however, at a minimum the response plan must address the safety considerations. Emergency lightering or cargo transfer must be done only by trained personnel who are capable of evaluating effects on the vessel's stability, hull stress, potential flammability of the cargo, and other factors. The Coast Guard solicits comments on any reference guide for internal vessel transfers that may be considered for incorporation by reference in the final rule.

The plan must identify the location, crew responsibilities, and procedures for

use of any emergency towing equipment or oil discharge removal equipment aboard the vessel. Although this proposed rule does not require the carriage of equipment, some vessels have transfer pumps, boom, skimmers, and other equipment for use in an emergency.

The response plan section on shore-based response activities must address actions to be taken by the vessel owner or operator, to manage the response to an actual or threatened discharge. The plan must address: any crew responsibilities to initiate response actions; responsibilities and authorities of the designated qualified individual; and procedures for coordinating response actions with those of the predesignated Federal On-Scene Coordinator.

The response plan must also identify the organizational structure that will be used to manage response efforts. Recognizing the need for an organizational infrastructure, the Coast Guard proposes that each response plan contain certain organizational elements that are essential to the successful management of a response operation. A number of comments on the ANPRM requested that the proposed rule require the use of the Incident Command System (ICS) under the National Interagency Incident Management System (NIIMS). The proposed rule does not require the use of ICS. It allows the vessel owner or operator to develop their own organizational structure provided that the organization elements listed are addressed. The structure must be compatible with the organization embodied in the NCP. Some large vessel owners or operators will be able to staff their organizational structure with in-house resources; others will rely on contracted support. Either method is acceptable. The proposed rule would also require identification of the personnel necessary to staff this organizational structure for the first 7 days of a response.

The plan must identify and ensure the availability of resources, through contract or other approved means, necessary to respond to the average most probable discharge, and to the vessel's maximum most probable and worst case discharges. Section 155.1050 of the proposed rule describes the procedures for determining these resources. Resources must be identified for each COTP zone in which a vessel operates. Since most resources will vary based on location, this information should be maintained in a geographic specific appendix.

The proposed rule requires identification of the location of equipment, personnel, and support services available to meet the response resource requirements. One of the recommendations of the Negotiated Rulemaking Committee was to establish a process for response contractor approval that would allow the response plan to identify "approved" response resource providers in lieu of listing all of the response resources. The Coast Guard will be publishing a separate rulemaking that addresses acceptability of response resource providers, and will incorporate any provisions that affect these requirements in the final rule.

The proposed rule would require a section listing contacts available 24 hours a day to assist during a response. This should be a separate section of the plan since it is most likely to require routine revisions. This section will not be required if the same information is included in each geographic-specific appendix. The list of contacts includes: the vessel owner, operator, or charterer, insurance representatives; local agents; marine surveyors; the qualified individual; and the providers of the identified response resources.

Response plans must include a section to address the training program and procedures to ensure that all personnel with responsibilities under the plan are trained as specified in § 155.1055.

Response plans must include a section to address the drill program of the vessel owner or operator to ensure that the plan will function in an emergency as specified in § 155.1060.

The response plan must include a section addressing the procedures for review and update of the plan by the vessel owner or operator. This includes meeting the requirements of § 155.1070, as well as describing the procedures for review after plan use to evaluate effectiveness.

The response plan must contain a geographic-specific appendix for each COTP zone in which the vessel operates. This includes transit areas within the Exclusive Economic Zone. This appendix must contain information on notifications, identify the qualified individual, and identify the response resources required to meet the average most probable discharge, maximum most probable discharge, and worst case discharge scenario for the applicable geographic area. A geographic-specific appendix allows for easy updating of information and facilitates review of the plan by the appropriate COTP.

The response plan must contain an appendix for vessel-specific information. This information covers ships systems; oil cargo and fuel type, stowage, and safety information; and certain vessel plans. Much of this information can be maintained on the vessel separately from the response plan, provided there is a cross-reference to the location of this information.

Section 155.1040 Requirements for Unmanned Tank Barges

This section of the proposed rule contains detailed response plan requirements for unmanned tank barges. While most of the components of the plan are similar to those required of other vessels that carry oil as a primary cargo, there are significant differences. Since unmanned tank barges have personnel aboard only during transfer operations, sections of the plan that address actions of the vessel's crew do not generally apply. In addition, the nature of operation of these vessels is different. Barges are moved by towing vessels that are operated by the barge owner, part of a fleeting operation, or contracted through an independent towing vessel operator. They may have a dedicated towing vessel or move as part of a multiple-barge tow. Because of this, the proposed rule would require response plans for unmanned tank barges to contain two parts: An abbreviated notification and emergency action plan carried aboard the barge, and a core response plan maintained by the owner or operator of the barge. The Coast Guard considered including all tank barges under this proposed section, but is of the opinion that personnel aboard manned tank barges may be able to carry out a number of responsibilities (i.e. internal cargo transfer, damage assessment, etc.) not covered by this section. The Coast Guard also solicits comments on whether this section should apply to all tank barges. The Coast Guard solicits comments on this two part formatting option.

The notification and emergency action part of the response plan carried aboard the unmanned tank barge covers notification procedures for the tank barge owner or operator, qualified individual, and the National Response Center. It would specify information necessary for notification and identify the responsibilities of the personnel of the towing vessel, fleeting area, or facility at which the barge is moored after an actual or threatened oil discharge. The tank barge owner or operator would be responsible for ensuring that the necessary information for notification and initial action is available. It is the tank barge owners responsibility to ensure that the notification component of the response plan can be implemented in an

emergency by the towing vessel. Custody of a tank barge by a towing vessel does not transfer responsibility for meeting the requirements of this proposed subpart. It must be noted that nothing in this section modifies the existing responsibility of the towing vessel operator to notify the National Response Center of an oil discharge as the person in charge of the barge.

The part of the plan carried aboard the tank barge would be stowed in the documentation container. The Coast Guard considered requiring the towing vessel to maintain a copy of this plan component, but concluded that the nature of unmanned tank barge operations would make this impractical. Responsibility for the handling of a tank barge may shift numerous times during transit between multiple towing vessels, fleeting areas, and facilities. The likelihood is high that a plan that had to be passed from vessel to vessel would be easily misplaced. While it may be prudent for the tank barge owner or operator to provide copies of the tank barge plan to the towing vessel to ensure that plan responsibilities are carried out, the proposed rule does not require this.

The part of the response plan retained by the tank barge owner or operator follows the same general format as that required for primary oil carriers. The primary differences are: The plan can cover multiple tank barges; notification procedures must identify the respective responsibilities of the persons having custody of the barge vessel, the tank barge owner or operator, and the qualified individual; the identification of responsibilities of the tankerman to mitigate or prevent discharges resulting from operations aboard the barge; and identification of responsibilities of the custodians pending the arrival of the qualified individual or other representative of the tank barge's owner or operator. The plan must have separate appendices for each type of tank barge covered by the plan, as well as a geographic-specific appendix for each COTP zone in which tank barges covered by the plan operate.

Section 155.1045 Requirements for Vessels That Carry Oil as a Secondary Cargo

These requirements apply to all vessels that carry oil as a secondary cargo as defined in 33 CFR 155.1020. The Negotiated Rulemaking Committee recommended that the Coast Guard take into account the relative risk of harm to the environment that may result from the discharge of a vessel's oil cargo when setting response plan requirements. This risk of harm is affected by the type and quantity of oil being carried as cargo. The Committee recognized that vessels carrying oil as a primary cargo posed a much greater risk than those carrying oil as a secondary cargo. Most of the vessels carrying oil in bulk as a secondary cargo, such as fish processing vessels, offshore supply vessels, cargo vessels, and some towing vessels, carry limited quantities of mostly non-persistent oils. These oils tend to dissipate rapidly into the environment.

The Committee recommended that, if covered by the response plan requirements of OPA 90, these vessels be required to maintain response plans that reflect the reduced risk posed by such vessels. The statute requires their inclusion if they carry oil in bulk as cargo. While it is difficult to estimate the actual numbers, the Coast Guard estimates that over 1,000 of the approximately 1,800 oil field supply vessels may be involved in the carriage of oil in bulk as a secondary cargo as defined in this subpart. This includes transfers of a portion of their fuel to offshore platforms and the carriage of oil-based drilling fluids. Coast Guard spill data for both oil cargo and fuel from 1981 to 1988 reports 503 spill incidents involving such vessels, with 88 percent being less than 100 gallons.

Fishing vessels that carry oil in bulk as cargo are also included. Although there are an estimated 28,000 documented fishing vessels and 90,000 state-registered fishing vessels, the Coast Guard estimates that only 80–100 are engaged in the carriage of oil in bulk as a secondary cargo. Coast Guard spill data for both oil cargo and fuel from 1981 to 1988 reports 3,106 spill incidents involving all fishing vessels, with 90 percent being less than 100 gallons. There is no way to identify which of these spills involve vessels potentially subject to this rule.

With regard to towing vessels, the Coast Guard estimates that only a small number of towing vessels are involved in the carriage of oil in bulk as cargo. While up to 25 percent of the 5,703 towing vessels may be involved in non-routine transfers of small quantities of fuel to other vessels, most of these transfers are to barges within their tow and the oil transferred would not be deemed cargo under the proposed rule.

The Coast Guard has little information on the number of cargo vessels that carry oil in bulk as a secondary cargo. Vessels in this trade carry primarily non-petroleum oils. The Coast Guard solicits information on these and any other vessels that would be subject to the requirements of this section.

This section would also apply to dedicated response vessels when operating outside of the response area. As discussed earlier, they have been excluded from the regulations when operating inside the response area. Movement of recovered oil outside of the response area would generally not be managed as part of the primary spill response, thus requiring a response plan to address the spills.

The Committee recommended that requirements for secondary cargo carriers be based on the volume of oil carried as cargo to differentiate the relative risk of these vessels: 100 barrels, 1000 barrels, and 5000 barrels of cargo are proposed as the categories. Each vessel that is subject to this subpart must prepare a response plan that covers the requirements applicable to the volume of cargo carried.

Some of the vessels covered under this section transfer a portion of the oil in their fuel tanks as cargo. The proposed rule requires that vessels transferring cargo from their fuel tanks use 50 percent of their fuel tank capacity to determine the level of response requirements that will apply. This is a conservative estimate of the quantity of fuel that may be transferred as cargo during a voyage. The Coast Guard solicits information on the volumes and frequencies of oil transfers from such vessels and the percentage of fuel capacity that may be transferred as cargo during a voyage.

The response plan format required for secondary cargo carriers is similar to that required for vessels carrying oil as a primary cargo. It includes: General information; notification procedures; shipboard spill mitigation procedures; shore-based response activities; a list of contacts; training procedures; drill procedures; plan review and update procedures; and geographic-specific appendices.

The requirements for the general information and notification section of the plan are the same as those for primary oil carriers.

The requirements for shipboard spill mitigation procedures vary based on the volume of oil cargo. Vessels carrying 100 barrels or less of oil cargo would only be required to have a basic emergency action checklist covering notification and emergency actions. Vessels carrying over 100 but less than 1,000 barrels of oil cargo are required to have procedures for actions of the vessel's crew, damage control procedures, emergency transfer procedures, and the use of onboard equipment. Vessels carrying between

1000 and 5000 barrels of oil cargo would need to have more detailed procedures. Vessels that carry over 5000 barrels of oil cargo have the same response plan requirements as primary oil carriers.

The requirements for addressing shore-based response activities primarily cover: Initial action by the crew to supervise response actions; responsibilities of the qualified individual; and coordination with the Federal OSC. A significant difference from the primary carriers is the identification of response resources. The Negotiated Rulemaking Committee recommended that vessels carrying oil as a secondary cargo be required only to identify qualified spill response resources and/or contractors in their plan, without contracts. The Coast Guard considered this recommendation when drafting the proposed rule. However, in order to comply with the statutory mandate that the availability of resources be ensured by contract or other approved means, the Notice proposes that a vessel owner or operator obtain the written consent of a response organization to be identified in a response plan. The Coast Guard recognizes that this does not create a contract between the vessel owner or operator and the response organization. The Coast Guard solicits comments in whether this type of agreement is sufficient to meet the requirements of section 311 (j)(5)(C)(iii) of the FWPCA that the plan "identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge", and whether other alternatives should be considered to meet this requirement.

The Coast Guard anticipates that there will be no additional costs associated with the need to obtain the written consent of a response organization before they may be identified in a plan. The Coast Guard considers that the cost of contracting for such services in advance would be inordinate given the minimal risk these vessels pose. The identification of available resources that have provided written consent to be listed will be sufficient to meet the requirements.

The list of contacts section and information in the geographic-specific appendices would be the same as for other vessels except that detailed information on available response resources would not be required.

The training section of the plan requires that personnel aboard the vessel be trained on initial assignment to the vessel and as necessary thereafter. Participation in required drills should provide sufficient refresher training.

The requirements for drills varies by oil cargo capacity. For vessels carrying 100 barrels or less of oil cargo, annual vessel drills and biennial drills of the shore-based response organization are required. Vessels carrying between 100 and 5000 barrels of oil cargo would need to have quarterly vessel drills and annual drills of the shore-based response organization. Drills required for vessels that carry over 5,000 barrels of oil cargo would be at the same frequency as primary oil carriers.

Owners or operators of vessels carrying oil as a secondary cargo would be required to resubmit their plan for review and approval every 5 years, when there is a change in cargo capacity, or a change in vessel configuration. They must provide updates to the Coast Guard and other plan holders for all other changes that occur between resubmissions. Annual review is not required.

Section 155.1050 Response Plan Development and Evaluation Criteria

This section describes response resource requirements for the average most probable discharge, maximum most probable discharge, and worst case discharge to the maximum extent practicable. Appendix B of the proposed rule contains a detailed explanation of requirements.

Section 311(j)(5) of the FWPCA requires planning for the worst case discharge only. The Negotiated Rulemaking Committee recommended that the proposed rule address operational discharges as well. The Coast Guard agrees that the response plan should also address the more common operational and casualty-related discharges which are less than the entire cargo capacity of the vessel. Section 311(j)(1)(C) of the FWPCA, which addresses prevention or containment of oil discharges from vessels, authorizes the Coast Guard to require planning also for the average most probable and maximum most probable discharge volumes.

The Committee also recommended an approach for planning requirements for the worst case discharge cargo volume to the maximum extent practicable. The Committee recommended that the following factors be considered: Loss of some oil to the environment due to evaporation and natural dissipation based on the type of oil; emulsification which may effect the quantity of material to be recovered; provision of close-to-shore response, shoreline protection, and shoreline cleanup capabilities, and limits of available response technologies and private removal capability for worst case discharges for larger vessels.

The Committee recommended placing a cap on the quantity of resources which individual vessel owners or operators are required to contract for in advance. This recognizes the limits of currently available technology and private removal capabilities. The Committee recognized the importance of early equipment arrival at the scene of a discharge and the need for tiering of equipment requirements to reflect local, regional, and national response capability. The Committee recommended that equipment mobilization occur within the first 3 days of a discharge, when oil recovery is most likely. The Committee also recommended that the owner or operator be required to identify additional resources above the cap when the worst case discharge planning volume for a vessel exceeded the caps for the contracted resources.

The Committee recommended that the caps for required contracting of response resources be increased at appropriate intervals that roughly correspond with response plan review periods. This would take into account: increased availability of mechanical recovery devices; improved equipment efficiencies or design; improved ability to track and encounter spills; improved technology to address large spill volumes; high rate response techniques such as dispersants and in situ burning, when approved by the Regional Response Team; and other techniques, such as bioremediation, if quantifiable.

The Committee acknowledged that some areas of the country are more prone to spills for a variety of reasons including, but not limited to: the amount of traffic through an area and the volume of persistent oil moved. Such areas require more rapid response.

The Committee recommended different requirements for vessels operating in the open ocean, offshore, nearshore and inland, and rivers as previously discussed. This recommendation was based on the variability of vessel traffic, proximity to shoreline, and size of vessels. The Committee recommended that deepwater ports be considered separately.

The Committee recommended that the Coast Guard consider the difference in risk posed by small vessels that carry oil in bulk as cargo, as well as recognize that a worst case discharge from any vessel is likely to occur over time and not instantaneously.

The Coast Guard has used the Committee's recommendations in drafting this section of the proposed rule; however, except when specifically noted, the proposed rule approach was developed by the Coast Guard and was not part of the Committee's final recommendations. The proposed rule describes the approach to be followed to determine the response resources that must be identified for response to a vessel's worst case discharge to the maximum extent practicable.

The proposed rule requires that vessel owners and operators consider weather conditions during preparation of a plan. Many of these conditions are area-specific and require the vessel owner or operator to refer to the applicable Area Contingency Plan for information on ice conditions, debris, temperature ranges, and weather-related visibility in which response resources must function. The proposed rule refers to Table 1 of Appendix B to part 155 for evaluating the operability of booms and oil recovery devices. These criteria are based on information from the "World Catalog of Oil Spill Response Products—Third Edition." Table 1 uses significant wave height as the primary criteria for evaluating operability of recovery equipment in different environments. Additional design criteria are included for booms. The criteria are used to evaluate equipment operability under specified conditions. They reflect conditions that may limit mechanical recovery, but would not necessarily limit other response methods or affect normal operations of a vessel.

Identified equipment must be capable of operating safely in the significant wave height criteria in Table 1. The criteria reflect limitations of equipment design, rather than limitations imposed by the specific operating environment. Because these criteria may not reflect the actual conditions in a given geographic area, the COTP may reclassify specific bodies of water within their COTP zone to a more or less stringent operating environment to reflect actual conditions. A body of water may be reclassified as a more stringent operating environment when prevailing wave conditions exceed the significant wave height criteria over 35 percent of the year. A body of water may be reclassified as a less stringent operating environment if prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment over 35 percent of the year. Reclassifications would be identified in the Area Contingency Plan. The classification for a given water body affects requirements for response equipment. The COTPs will evaluate water bodies within their COTP zones and will respond to specific inquiries not later than 90 days. The Coast Guard solicits comments on the use of 35 percent as the standard for reclassifying an operating environment.

The proposed rule requires all vessel owners and operators to identify response resources for the average most probable discharge as defined by the Committee. Vessels that carry oil in bulk as their primary cargo must identify sufficient boom and a means of deployment in the area of any oil transfer. Response plans must also identify the availability of oil recovery equipment and sufficient storage capacity capable of arriving at the transfer area within 2 hours of discovery of a discharge. Appendix B to part 155 contains procedures for determining these resources. The proposed rule would require vessel owners or operators to have response resources under contract to meet the 2 hour response time. This would ensure the prompt availability of equipment where it is most commonly needed, at the point of transfer.

The proposed rule would allow the vessel owner or operator to rely on equipment available at a facility, provided its use for vessel spills has been arranged by contract or other approved means. The proposed rule also permits vessels involved in vessel-to-vessel lightering to rely on common equipment.

This section sets the level of response resources that must be identified and ensured available, through contract or other approved means, to respond to spills up to a vessel's maximum most probable discharge volume. While the Committee recommendation specifically addressed planning for the maximum most probable discharge volume, the Coast Guard has modified this in the proposed rule to cover discharges of lesser volumes as well. The Coast Guard's opinion is that the Committee intended this to be the case, since approximately 98 percent of the spills from tank ships and tank barges are below this volume. In high volume port areas and the Great Lakes, these resources must be capable of arriving at the scene of a discharge within 12 hours of its discovery; within 24 hours in all other river, inland, nearshore, and offshore areas; and in 24 hours plus necessary travel time beyond 50 miles from shore for the open ocean. Response plans must identify sufficient containment boom, oil recovery devices, and oil storage capacity for this planning volume. Appendix B to part 155 contains procedures for determining resource requirements. The response plan must specify the location, type, and quantity of equipment available. As noted, this requirement will be modified in the final rule to account for any response contractor "approval" process adopted by the Coast Guard. Response resources for a maximum most probable discharge must be prepositioned to meet the required response times. The Committee recommended that this minimum capability be maintained within the general geographic area at all times. The proposed rule would authorize the COTP to approve the temporary movement of select items of equipment to a spill outside the area. Equipment movements authorized by the COTP outside the area would not affect a vessel's ability to operate in that area. A response plan would remain valid.

- The proposed rule would require vessel owners and operators to identify sufficient resources to respond to a worst case discharge to the maximum extent practicable. Appendix B to part 155 contains detailed information for calculating the planning volume for each response tier, as discussed below, and for determining the response resources which must be identified to meet these requirements. Response plans must specify the location, type, and quantity of resources. As noted, this requirement will be modified in the final rule to account for any response contractor "approval" process adopted by the Coast Guard.

The requirements for response to a worst case discharge to the maximum extent practicable are based on tiering of resources. The rule proposes three tiers which would allow for identifying of resources from outside the area to meet the requirements. On scene arrival times for these tiers reflect a Committee recommendation that resources be concentrated in areas with the highest potential for spills. These are identified as higher volume port areas. The first tier of resources must be capable of arriving at the scene of a discharge within 12 hours of its discovery. Resources for tiers 2 and 3 must be capable of arriving in 24 hour increments thereafter.

The Coast Guard proposes that the same time limits apply to the Great Lakes because of their unique environment. The rule excludes Prince William Sound because § 155.1135 of this proposed rule establishes different times for this area.

Tier 1 response resources for all locations not within a higher volume

port area must be capable of arriving on scene within 24 hours from the time a spill is discovered. Resources for tiers 2 and 3 must be capable of arriving in 24-hour increments thereafter. The times take into account the outer most boundaries of these areas: a plan must account for notification, mobilization, and travel time when identifying resources capable of arriving within the required time. For open ocean areas, planners must identify equipment that can reach 50 miles from shore in the specified time. Under this proposed rule, open ocean extends up to 200 miles from shore. The Coast Guard's opinion is that it is inappropriate to set one time limit for such a large area. Using the boundary between the offshore and open ocean operating environments as proposed would provide sufficient information to identify resources without speculating where they will need to respond. A vessel owner or operator must include planned travel time beyond 50 miles in determining on scene arrival times in the open ocean. For example, the owner or operator of a vessel involved in lightering operations 70 miles from shore must identify tier 1 response resources capable of arriving to that location within 26 hours of notification (assumes 10 knot transit speed). The Coast Guard solicits comments on this approach.

The Committee recommended that the Coast Guard recognize the value of planning for rapid arrival of response resources to the scene. The tiers discussed above set maximum times for these arrivals. Thus, resources that are capable of arriving early are treated the same as those arriving just before the required maximum. The Coast Guard solicits comments on methods to recognize the early arrival of oil recovery devices and other response equipment when determining overall capability required to be planned for arrival on scene.

The Committee recommended more rapid response times in higher volume port areas, but did not identify specific ports. The higher volume port areas in the proposed rule were determined by the Coast Guard based on a study of persistent and non-persistent oil movement by vessels, tank ship and tank barge transits, and overall vessel transits in a port area. The Coast Guard's "Port Needs Study (Vessel Traffic Services Benefits)" published in March 1992 as required by section 4107 of OPA 90, and the 1987 and 1988 U.S. Army Corps of Engineers reports on "Waterborne Commerce of the United States" provided statistics for the 34 port areas evaluated. Analysis of this data indicated that 15 port areas had oil movements significantly greater than others. These port areas were determined using two methods: total oil volume (persistent and non-persistent) transported by water; and a weighted index with oil volumes and vessel traffic. The port areas were first ranked based on total oil volume. Figure 1 displays the results of this information. The second method listed the port areas using a relative weighting of persistent oil movement (50 percent); non-persistent oil movement (30 percent), tank ship and tank barge transits (10 percent), and overall vessel transits (10 percent). The volumes and transits were indexed to normalize the data for comparison between ports. The relative weightings were based on an assessment of the importance that each factor should have in the ranking of port areas. Figure 2 displays the results of this indexing. The port areas are listed in the same order as in Figure 1 for comparison. The decision to choose 15 port areas was based on the distinct break that occurs between the port areas at that point, both when listed by volume and by index. The higher volume port area to be used for response planning includes the area within 50 nautical miles seaward of the port entrance to reflect the increased probability of vessel casualties within port approaches. A report describing the methodology used for this determination is in the public docket indicated under "**ADDRESSES**."

BILLING CODE 4910-14-M

34 PORTS RELATIVE TO VOLUME OF PERSISTENT AND NON-PERSISTENT OIL

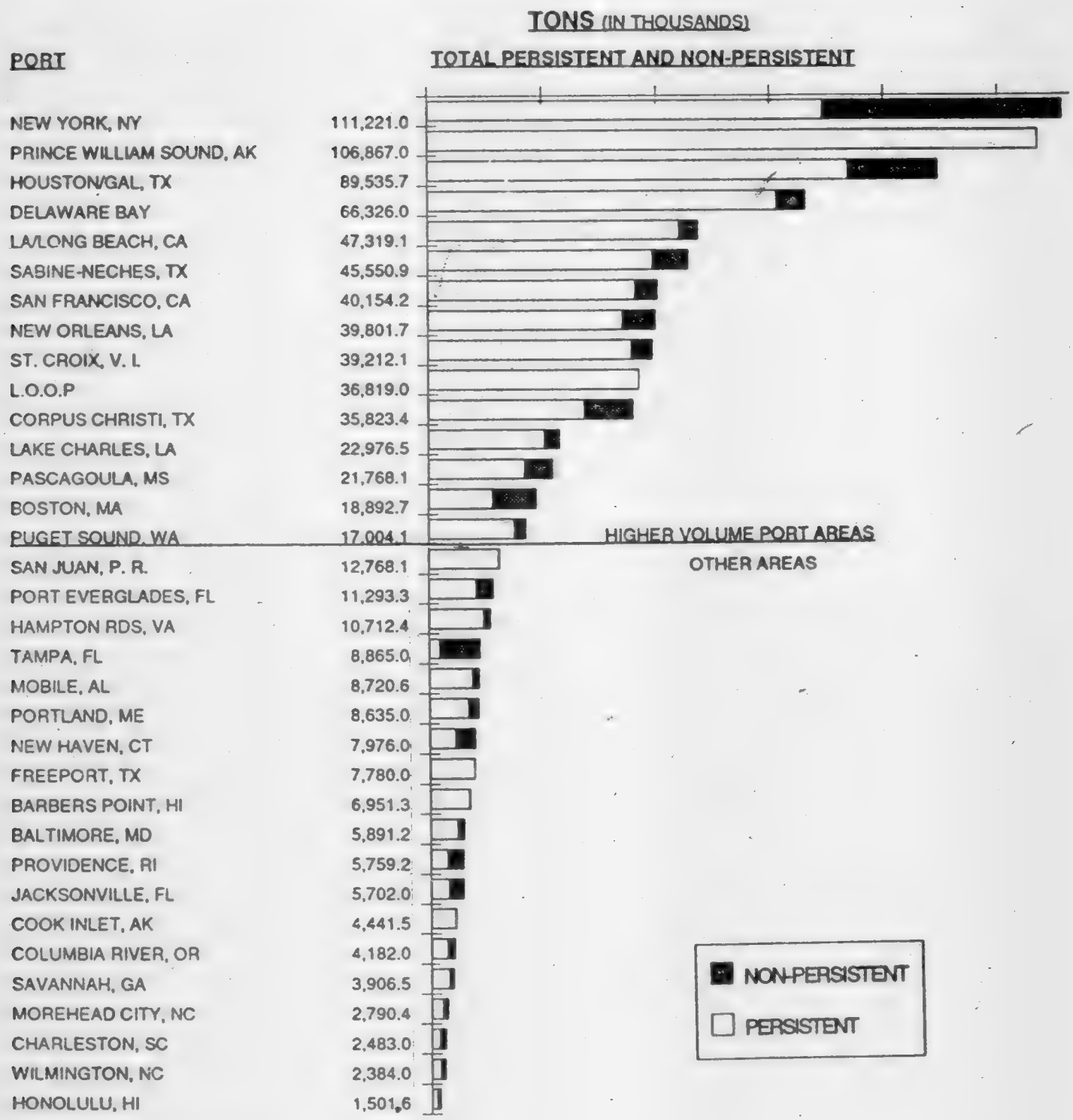

FIGURE 1.

OIL MOVEMENT INDEX OF 34 PORTS IN ORDER OF TOTAL VOLUME

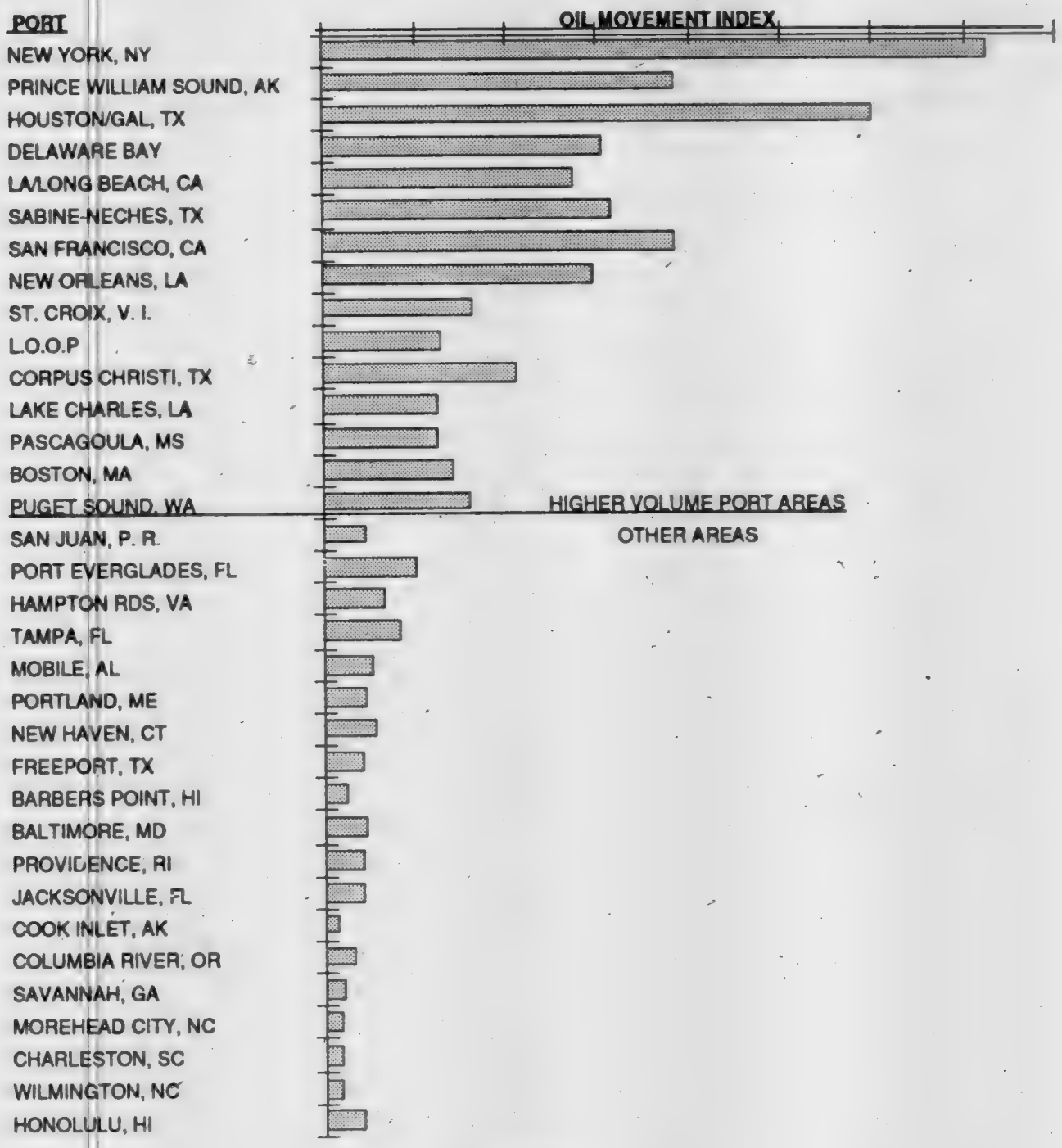

FIGURE 2.

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Although the Louisiana Offshore Oil Port (LOOP) was classified as a higher volume port area using this methodology, the Coast Guard has not included it in the list of higher volume port areas included in the proposed rule. The Negotiated Rulemaking Committee recommended that the reduced risk posed by deepwater ports be considered during development of this proposed rule. The Coast Guard agrees, thus LOOP was not included in the list of port areas subject to more stringent planning criteria.

Notification of Tier 1 resources must occur within 30 minutes of the discovery of a discharge, and such resources must be capable of being mobilized within a 2-hour period after notification. While all resources must be "capable" of being mobilized within that period, the plan can account for resources not needed in the initial stages of a response, such as temporary storage capacity. For example, a barge required to sustain on-water oil recovery operations after 8 hours need not be mobilized within 2 hours. These planning criteria apply only to the Tier 1 resources. Tier 2 and 3 resources must be mobilized as necessary to arrive on scene within the specified time. These times are not performance standards, rather they are planning criteria that must be considered when identifying resources.

The Committee recommended that the Coast Guard recognize the value of high rate response techniques such as dispersants and in situ burning, but did not provide a specific method or approach. The Coast Guard considered this recommendation when developing the requirement of the proposed rule that vessels carrying persistent oil as a primary cargo in offshore or open ocean areas identify and ensure the availability of, through contract or other approved means, dispersant resources. These must be appropriate for the type of oil carried by the vessel and be available in sufficient quantities to treat the volume of the vessel's largest cargo tank. Dispersant resources must be capable of arriving on scene within 24 hours of discovery of a discharge. The Coast Guard has included this requirement in the proposed rule because it believes that dispersants have a role in responding to a worst case discharge from a vessel. Limiting the requirement to vessels that carry only Group two or three persistent oils as their primary cargo and that operate beyond 12 miles from shore, and requiring these vessels to contract in advance, provides incentives for the expansion of dispersant capability in the United States. The Coast Guard solicits comments on the estimated costs of identifying dispersant capability.

This requirement is similar to those of the Minerals Management Service for outer continental shelf exploration and production activities under 30 CFR 250.42. The identification of resources required to use dispersant does not imply that their use will be approved during a spill response. The NCP provides specific procedures for the authorization of dispersants or other chemical countermeasures during a spill. Many areas have been identified by the Regional Response Team for the use of dispersants with approval from the Federal OSC under certain conditions.

Under certain circumstances, the dispersant capability may be used as credit against worst case discharge resource requirements. Appendix B to part 155 contains information on circumstances under which plan credit may occur.

The Committee considered salvage and firefighting capabilities, but did not make any recommendations. The Coast Guard considers these capabilities to be essential to deal with a worst case discharge. The proposed rule requires vessel owners or operators to identify and ensure the availability of, through contract or other approved means, both private salvage and firefighting capability for areas in which the vessel operates. It does not establish specific response times or equipment requirements. This requirement should ensure the availability of sufficient salvage and vessel firefighting capability in the United States. The Coast Guard intends that this proposed requirement create an incentive to maintain or expand existing capabilities. The Coast Guard solicits comments on whether specific levels of resources or capabilities should be identified, as well as the estimated costs of providing this capability.

The Committee recommended that the proposed rule require a vessel owner or operator to identify and ensure the availability of, through contract or other approved means, equipment necessary to perform vessel-to-vessel lightering. This includes equipment suitable for use with vessel systems as well as equipment that can be used when onboard systems fail or are damaged. The Committee considered recommending carriage of certain equipment, such as portable transfer pumps and hoses. However, the Committee's final recommendation allows this equipment to be stored off the vessel provided that it can be delivered on scene within specified time periods following notification. These time periods vary based on the waters in which the vessel operates. The list of equipment required to be identified covers items believed necessary to perform vessel-to-vessel transfers in an emergency. The vessel owner or operator is required to develop a lightering plan under proposed §§ 155.1035 and 155.1040, including a list of equipment required to carry out that plan. This section does not require that the specific amounts of equipment be identified. Rather the vessel owner or operator must identify the necessary capability that can be provided on scene within the times specified to implement their lightering plan. The Coast Guard solicits comments on whether specific quantities of equipment should be specified in the final rule

The proposed rule requires a vessel owner or operator to identify and ensure the availability of, through contract or other approved means, response resources available for shoreline protection activities as well as for shoreline cleanup. The Committee recognized that resources for these activities must be identified in advance, but made no specific recommendations to the Coast Guard on quantities, etc. Because the need for these resources are driven primarily by the type of shoreline area requiring protection or cleanup, the proposed rule requires a vessel owner or operator to identify and ensure the availability of, through contract or other approved means, a minimum quantity of these resources in advance.

Part of this minimum quantity of equipment is boom for shoreline protection. Table 2 of appendix B to part 155 lists the minimum quantities of boom that would be required based on the area in which a vessel operates. A vessel owner or operator would also be required to contract for sufficient support resources such as personnel, boats, anchoring equipment, etc. Table 2 is not based on vessel size because the equipment necessary to protect shoreline areas is generally the same regardless of the size of the vessel that may be the source of the discharge. Although an oil discharge from a larger vessel has the potential to affect more shoreline area than one from a smaller vessel, the purpose of this requirement is to ensure that there is a minimum quantity of equipment available for spills of any quantity. The Coast Guard solicits comments on the quantities of boom listed in Table 2 and whether this quantity should vary based on the size of the vessel.

The proposed rule also requires the owner or operator of a vessel that operates in river, inland, nearshore, and

offshore areas to identify and ensure the availability of, through contract or other approved means, response resources capable of carrying out shoreline cleanup operations. Vessels that operate in the open ocean (greater than 50 miles from shore) are not required to identify or contract for them in advance. This reflects the reduced likelihood that oil discharged from a vessel greater than 50 miles from shore will impact shorelines. Because the level of required resources cannot be quantified in advance, the Coast Guard proposes instead to use a qualitative evaluation based on a planning volume of oil that could reach the shoreline. This evaluation method takes into account the area in which a vessel operates and the type and volumes of oil carried as cargo. Table 3 of appendix B to part 155 includes factors to be considered for potential shoreline impact that are used in determining the planning volume. Appendix B to part 155 also describes how this planning volume is calculated. The Coast Guard solicits comments on alternative methods to evaluate the quantity of required shoreline cleanup capability.

The requirement to identify or contract for specified quantities of boom, support equipment, and shoreline cleanup capability that becomes effective in March 1993 serves as an interim requirement until March 1998. As noted, accurate identification of response resources required to perform shoreline protection or cleanup must be based on the area potentially affected. This information will be developed in the ACPs required by OPA 90. These area plans will not likely be in place in March 1993 when response plans must be submitted. In March 1998, the 5-year anniversary proposed for response plan resubmission will occur for many vessels. By this time, the ACP will be in place and will identify the response capability necessary to implement these geographic-specific response strategies. A vessel owner or operator is required to identify and ensure the availability of, through contract or other approved means, response resources necessary to provide the capability identified in the applicable ACP. Although the proposed rule indicates that this requirement must be met by March 1998, the Coast Guard solicits comments on whether inclusion of these area plan requirements should instead be required if they exist whenever a vessel owner or operator resubmits a plan after its initial approval.

As noted earlier, the Committee recognized that there should be a limit, or cap, to the resources that a vessel owner or operator must contract for in advance. The intent of contracting in advance is to ensure that adequate capability exists to respond to oil spills. In many areas of the country, adequate capability may not currently exist. Requiring contracts provides incentives for the private sector to expand capabilities in these areas. On the other hand, there are areas of the country, primarily the larger ports, where the total capability may exceed the proposed caps. It is not practicable to require vessel owners and operators to contract in advance with every response resource that exists in a given area. It must be recognized that these contracts ensure a baseline capability, but do not limit the resources that will be brought to bear during an actual oil discharge. Vessel owners or operators will be expected to activate the response resources necessary for the particular circumstances of the spill, regardless of what has been contracted for in advance.

Table 6 in appendix B to part 155 of the proposed rule lists the caps for 1993, 1998, and 2003. These caps are based on the effective daily recovery rate (as calculated using the procedure in appendix B to part 155) of response resources that must be identified in a response plan. They are based on an assessment of response capability that in the Coast Guard's opinion can be provided nationwide by 1993. Setting nationwide criteria as opposed to geographic-specific criteria provides an incentive to improve overall response capability in the United States. While some areas of the country may have capability that exceeds the caps, the 25 percent increase in these caps every 5 years will provide an incentive for those areas to expand capability. The 5-year interval is proposed to correspond with required resubmittal interval for response plans. The Coast Guard solicits comments on whether fixed dates should be established for this increase to be in place, or whether it should be tied to the date when an individual vessel owner must resubmit their plan after the effective date of the cap increase. The Coast Guard solicits comments on the specific caps proposed for 1993, 1998, and 2003.

As indicated, the caps would increase at 5-year intervals. The Committee recommended that the Coast Guard conduct an evaluation of these cap increases before they become effective to determine if they remain practicable. The Committee recommended taking into account advances in: skimming efficiencies and design technology; oil tracking technology; high rate response techniques; and other applicable response technologies. The Coast Guard agrees and would anticipate conducting such evaluations approximately 2 years before the cap increase would be effective. The increase would occur unless the Coast Guard determined that the increase was not practicable. Any change in the caps would occur through a public notice and comment process.

Section 155.1055 Training

This section of the proposed rule describes the training requirements that an owner or operator of a vessel carrying oil as a primary cargo or an unmanned tank barge must identify in their plan. The proposed rule does not require training in specific subjects or minimum training periods. Rather, it requires a vessel owner or operator to identify in their plan the training programs they will establish or adopt to train any persons with responsibilities in the response plan. The training will vary widely based on those responsibilities. For example, a vessel's master will need different training than the engineer responsible for internal cargo transfers, just as the qualified individual will need different training than the cleanup manager in the vessel owner or operator's shore-based spill management team. The Coast Guard solicits comments on whether there should be more specific requirements for training programs.

The proposed rule requires a vessel owner or operator to ensure that records of this training are maintained. Records on the vessel crew's training must be maintained aboard the vessel. Records for shore-based personnel trained must be maintained either by the qualified individual or, if applicable, by the spill management team identified in the plan to carry out some or all of the vessel owner's or operator's shore-based responsibility. This recognizes that a vessel owner or operator may rely on a private contractor or cooperative to meet their responsibilities. There is no need to maintain duplicate records. All records must be available for inspection by the Coast Guard.

The proposed rule also clearly indicates that a vessel owner or operator is not relieved from complying with applicable training standards issued by the U.S. Occupational Safety and Health Administration (OSHA). OSHA has issued regulations in 29 CFR 1910.120 that set minimum training requirements based on the task that a responder carries out. These requirements vary from 8 hours to 48 hours of classroom training, plus added requirements for field training. These requirements do not apply to the

vessel's crew, but would apply to shore-based personnel and should be taken into account in the training program of the vessel owner or operator.

Section 155.1060 Drills

The proposed rule requires that a vessel owner or operator identify a planned drill program in the response plan. This must include both announced and unannounced drills conducted by the vessel owner or operator as necessary to ensure that a response plan will function in an emergency.

The proposed rule specifies a minimum frequency for drills to be held for both the vessel's crew and for the shore-based personnel with responsibilities under the plan. The Coast Guard solicits comments on the frequency of these drills.

The proposed rule does not require drills to cover specific sections of a response plan. Instead, it allows the vessel owner or operator to tailor drills to exercise either components of a plan or an entire plan and to exercise those sections of the response plan that are most appropriate. A vessel owner or operator is required to conduct drills at least every 3 years to exercise the entire plan.

The proposed rule requires that any drills conducted to exercise the vessel's crew be documented in the vessel's log. Records of drills involving the shore-based spill management team or oil spill removal organizations identified in a plan must be maintained by the qualified individual.

The proposed rule also requires that vessel owners or operators participate in unannounced drills conducted by the COTP or Area Committee. Section 311(j)(7) of the FWPCA requires that the Coast Guard periodically conduct unannounced drills of removal capability in areas designated for development of Area Contingency Plans. The Coast Guard will involve vessels and facilities in these drills. These drills will be infrequent. A vessel owner or operator selected to participate in such a drill will be expected to activate the spill management team and oil spill removal organizations identified in the plan to the extent required by the COTP. The cost of activating these resources must be borne by the vessel owner or operator. The Coast Guard anticipates holding up to 12 such drills per year throughout the country. The probability of any one vessel being involved in a drill is low.

Finally, the proposed rule allows vessel owners or operators to take credit for drills in which their spill management team or identified oil spill response organization(s) participate for the areas in which the vessel operates. The Coast Guard recognizes that many vessel owners and operators will rely on the same response resources. There is no need for these resources to be exercised continually to meet the requirements of individual owners and operators. Documented drills involving identified response resources can be used to meet the requirements of this section. This would also apply to vessel owners of operators with multiple vessels. Participation in one drill held by a common spill management team will meet the requirement for all vessels utilizing that team.

Section 155.1065 Submission and Approval Procedures

This section of the proposed rule outlines the procedures for submission and approval of response plans. The vessel owner or operator is required to submit two English-language copies for review.

The Coast Guard is studying alternatives for plan review and approval. Consideration is being given to review at a central location for the initial submission of a plan. Since these regulations will result in the submission of more than 5,000 plans in February 1993, a centralized submission, review, and approval process during this phase will both facilitate review and ensure consistency. Geographic-specific appendices will be sent to the appropriate COTP for review and comment. After this initial submission, the system would be modified: plans for new vessels entering service would go directly to the COTP where the vessel's Certificate of Inspection is issued. Plans for foreign flag vessels would go either to a central location or to the COTP who issues the Tank Vessel Examination letter or Certificate of Compliance.

Vessel-specific information would be reviewed by a single Coast Guard office and the geographic-specific appendices would be reviewed by the appropriate COTP. COTPs will have the discretion to include members of the Area Committee in plan review if necessary. Area Committee involvement should be minimal, since appendices will contain primarily notification and response resource information.

Once a plan is approved, the Coast Guard will return one copy with an approval letter. Plan approvals will be valid for up to 5 years. Plans submitted before the required response resources are in place may receive conditional approval subject to availability of the required resources. The Coast Guard will retain one copy for use, if necessary, during a response involving the vessel.

If a plan is not approved, the Coast Guard will explain the deficiencies. The vessel owner or operator will have 30 days to submit a revised plan. The vessel may continue to handle, store, or transport oil as cargo during this period provided that the certification of the availability of the required response resources remains valid.

Copies of an approved response plan must be maintained aboard the vessel, by the qualified individual, and by the vessel owner or operator.

Section 155.1070 Plan Revision and Amendment Procedures

This section of the proposed rule requires that vessel response plans be reviewed annually by the vessel owner or operator to ensure that plan information is current. A letter documenting this review must be submitted to the Coast Guard.

Changes in vessel operations require plan resubmission for approval. These include: addition of an operating area not previously covered by the vessel's plan; a change in the vessel's configuration that significantly affects the plan information, such as a reconstruction or major tank or piping reconfiguration; a change in the type of oil carried as cargo (differing cargo groups have different resource requirements); a change in the identity or capability of the response resources, identified and ensured available by contract or other approved means, that affects their availability; a change in the vessels emergency response procedures; other changes that significantly affect plan implementation. If no other revisions occur, plans must be submitted for reapproval within 5 years of the previous approval.

Plan revisions that affect only names or phone numbers do not require resubmission for approval. However, all plan holders, including the Coast Guard, must receive such revisions as they occur.

Vessel owners or operators must revise a plan whenever the Coast Guard determines that it does not meet the requirements of this subpart. Vessel owners or operators will receive a written notice of deficiencies requiring revision. Deficiencies in the identification of a qualified individual or required response resources must be corrected within 3 days. All other deficiencies must be corrected within 30 days. Vessels may continue to handle, store, or transport oil during the relevant period.

The proposed rule provides appeal procedures for a vessel owner who disputes a plan's deficiency. These

procedures are similar to those under other Coast Guard regulations.

Subpart E—Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska

Section 155.1110 Purpose and Applicability

The proposed requirements of this subpart provides a greater level of preparedness above and beyond the requirements of proposed subpart D. These additional requirements will ensure that adequate response equipment is rapidly on scene in the event of a future oil spill, and that the residents in Prince William Sound are appropriately trained in oil spill removal and containment techniques.

This subpart provides requirements and criteria for use in response plan development and in identifying response resources. The requirements are not intended to establish performance standards to be met during an oil spill. These requirements are in addition to the ones found in proposed subpart D of 33 CFR part 155.

Section 155.1125 Additional Response Plan Requirements

This section describes what must be included in the geographic-specific response plan appendix for Prince William Sound. The appendix is required to identify: The oil spill removal organization; drill procedures for the required response resources; procedures for testing and certifying of response equipment; and type and location of prepositioned equipment. The oil spill removal organization will consist of trained personnel capable of responding to a worst case discharge, to the maximum extent practicable.

The oil spill removal organization must identify personnel to be trained in the communities and hatcheries specified in the rule. General training is to be provided in oil spill removal and containment techniques and specific training is required for the individual response resources provided. The training will allow local residents to assist in the cleanup and containment of oil spills and provide a means of protecting their property and economic interests.

The oil spill removal organization must evaluate each of the communities and hatcheries listed in § 155.1125 to determine the personnel necessary to be trained as well as the property and sensitive areas requiring protection. Response strategies and assumptions then need to be developed. These strategies need to reflect the practicable limitations of personnel and response equipment available.

The majority of the vessels that carry non-crude oil products are small tank barges. These barges typically carry between 30,000 to 70,000 barrels of products. It would appear economically infeasible for these vessels to establish an oil spill removal organization capable of responding to a 200,000 barrel spill, an amount much greater than the vessel's cargo capacity. The language in the statue is clear: Response plans for all tank vessels operating on Prince William Sound shall provide for the establishment of an oil spill removal organization consisting of trained personnel to immediately remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater. The statute does not allow for the Coast Guard to set lower limits for vessels with a capacity less than 200,000 barrels. The proposed rule reflects the requirements of the statute. It is also clear that providing for this response organization will severely increase transportation costs to the consumer. One way that these vessels could satisfy this requirement without incurring major costs would be to join the existing oil spill removal organization. The Coast Guard solicits comments on the feasibility of this alternative and associated costs and on our interpretation of the statutory requirements.

The term "immediately remove" is used in OPA 90 to assess the number of trained personnel needed by an oil spill removal organization to respond to a worst case discharge or a discharge of 200,000 barrels, whichever is greater, to the maximum extent practicable. The Coast Guard considers the phrases "to the maximum extent practicable" and "immediately remove" to be incompatible in the sense that a worst case discharge can rarely be immediately removed because of the maximum practicable limitations in present day cleanup technology and the limited number of residents available to respond to an oil spill in Prince William Sound. Immediately is not used in this proposed subpart to describe the number of trained personnel needed by an oil spill removal organization. Coast Guard believes that the time table proposed, given the nature of the area and the resources available, is an appropriate implementation of "immediately."

The drills required by this proposed subpart are in addition to the proposed requirements of subpart D. The two required drills are to ensure that the oil spill removal organization and the additional equipment and personnel required by this proposed subpart remain in a state of readiness to respond adequately to a worst case discharge to the maximum extent practicable. The Coast Guard does not intend that each individual vessel be individually exercised. These drill requirements can be met by a consortium of vessel owners or operators or by an oil spill removal organization. The drills must include the participation of one or more vessels subject to this subpart to ensure a realistic exercise.

Certification of prepositioned equipment is the responsibility of vessel owners. The method for periodic certification of equipment required by OPA 90 has yet to be determined. The Coast Guard is considering the use of an independent entity to perform this function. The Coast Guard solicits comments on this approach.

Section 155.1130 Requirements for Prepositioned Response Plan Equipment

This section of the proposed rule requires response resources in addition to the requirements proposed in §§ 155.1035, 155.1040, and 155.1045. This section established an additional planning tier for Prince William Sound. This additional tier requires prepositioned on-water recovery equipment and storage capacity to be on scene within 6 hours for all vessels carrying crude oil and for non-crude oil carriers greater than 15,000 deadweight tons (DWT). This section also reduces response times proposed in § 155.1050. The additional tier for certain vessels and the reduced response time for the on-water recovery equipment provide for an effective recovery capacity of up to 70,000 barrels/day to be on scene within 36 hours. The 70,000 barrel/day response capacity provides the additional capability required by section 5005 of OPA 90.

Non-crude oil traffic in Prince William Sound consists mostly of small tank barges and tankers. The tankers are presently only loading and discharging at Whittier, Alaska: tank barges are serving the various communities, military sites, and hatcheries located around Prince William Sound. The supplemental on-water recovery and storage capabilities for these vessels reflects the high volatility of their cargo. Much of the spilled oil from a non-crude oil carrier will evaporate or disperse soon after a discharge. Recovery operations are likely to proceed more cautiously due to the higher flammability of the cargo. This required equipment must be prepositioned along the vessel's intended route of operation.

Vessels less than 15,000 DWT will have to provide the response resources required by §§ 155.1035, 155.1040, or 155.1045. The reduced response times for this equipment reflects the statutory mandate of section 5005 of OPA 90 to provide more rapid response capability. However, it is not necessary to provide an additional tier or response equipment due to the type of cargo carried and the costs of providing and maintaining this equipment. The equipment required by §§ 155.1035, 155.1040, and 155.1045 will be sufficient to meet the intent of section 5005 of OPA 90.

The additional response equipment for communities and hatcheries identified in proposed § 155.1125 will enhance the ability of the local residents to contain and remove oil and to protect their property. The prepositioning of equipment improves the effectiveness of a cleanup operation. The requirement for permanent buoys at strategic locations will provide midchannel anchor points for protective booming of property and environmentally sensitive areas. Prepositioned equipment resources allows for a more rapid response.

Section 5005(a)(1) and 4116(c) of OPA 90 both address requirements for escort vessels. Section 5005(a)(1) requires that response plans for all vessels to which this subpart applies to provide for escort vessels with skimming capability. This includes all non-crude oil carrying vessels. Escort vessels with skimming capability are considered dedicated response vessels as defined in proposed § 155.1015. Section 4116(c), "Escorts for Certain Tankers," requires at least two towing vessels to escort all single hulled tankers over 5,000 gross tons transporting oil in bulk in Prince William Sound.

When section 5005 (a)(1) is read in conjunction with 4116(c) it appears that two escort vessels with skimming capability are required. Costs associated with providing escort vessels with skimming capabilities would likely be prohibitive for the small fleet of vessels operating in Price William Sound carrying non-crude oil products.

It is also unclear whether the escort vessels required by section 5005 should only provide skimming capability or also the capability of the towing assistance.

The Coast Guard solicits comments on the following issues: Whether all vessels carrying oil in bulk as cargo should be escorted by vessels with skimming capability; the number of escort vessels required for each vessel; the feasibility of requiring skimming capabilities for each of the required escort vessels; and the necessity of requiring an escort vessel to provide towing capabilities.

Section 155.1135 Response Plan Development and Evaluation Criteria

This section of the proposed rule provides response times for the response resources required by §§ 155.1035, 155.1040, and 155.1045. More rapid response times reflect the statutory requirements of section 5005 of OPA 90. In accordance with these response times, a vessel owner or operator of a large crude oil carrier that exceeds the response capability caps in proposed § 155.1050, is required to plan for 70,000 barrels/day of on-water recovery capability to be on scene within 36 hours. In any other port in the United States, the planning requirement would be effective recovery capacity of up to 40,000 barrels/day to arrive on scene within 60 hours in a higher volume port area, and within 72 hours in all other areas.

The same applies to vessels carrying non-crude oil products. Response times have been reduced and/or additional response resources have been required, so that spilled oil will be removed from the environment more rapidly.

Section 155.1140 Special Consideration for Vessels Contracting With a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

This section of the proposed rule allows the owner or operator of a vessel to contract with a facility authorized under the Trans-Alaska Pipeline Authorization Act to meet some or all of the requirements of this subpart. This provision has been provided to reflect the present arrangement that crude oil carriers have with the Alyeska Pipeline Service Company. The COTP will review the vessel's geographic-specific appendix for Prince William Sound to ensure that any contractual arrangements meet the requirements of this subpart. The owner or operator of a vessel that has entered into a contractual relationship to provide response resources is not absolved from their responsibility to meet the requirements of this subpart.

Appendix B to Part 155—Guidelines for Determining and Evaluating Required Response Resources for Vessel Response Plans.

This appendix contains the procedure for a vessel's owner or operator to determine the response resources that must be identified and ensured available, by contract or other approved means. The procedures are based on the general recommendations of the Negotiated Rulemaking Committee for determining resources necessary to respond to the average most probable discharge, maximum most probable discharge, and worst case discharge to the maximum extent practicable. The specific approach and proposed factors were discussed by the Committee, but were not part of the final Committee recommendation except as noted.

The procedures described in the appendix are used to determine the planning volumes that a vessel owner or operator must use for response resource identification. A number of assumptions are used to determine this volume. This appendix does not establish a performance standard.

The procedures used for these calculations are based on the vessel's operating area and type of oil (persistent or non-persistent) carried. Non-petroleum oils would be classified using the applicable persistent or non-persistent oil cargo group. The Coast Guard solicits comments on this classification for non-petroleum oils.

The appendix describes the procedures to determine: Whether equipment identified in a response plan is acceptable to meet the requirements of this proposed rule; resource requirements to plan for the average most probable discharge; resource requirements to plan for the maximum most probable discharge; resource requirements to plan for the worst case discharge; effective daily recovery rates for oil recovery devices; the calculation of the worst case discharge planning volume; availability of high-rate response methods; and additional equipment necessary to sustain response operations. Each of these procedures provides further detail on the requirements in § 155.1050. The Coast Guard solicits comments on these procedures.

The proposed method for evaluating the effective daily recovery rate for an oil recovery device was recommended by the Committee. While the Committee recognized that actual recovery rates were affected by a number of variables, the proposed approach allows for the use of either of two methods to determine the rating of equipment identified to meet the planning capabilities required by this proposed rule. The differentiation between rope and belt-type devices and other designs was not part of the Committee recommendation, but was added by the Coast Guard to reflect the difference in these devices from others when determining recovery rates.

The appendix includes tables providing the factors necessary to determine the resource requirements. Table 1 lists the operating criteria for oil recovery devices and booms. It uses

significant wave height for classifying equipment identified in a response plan. Such equipment must be designed to function in the conditions listed for the applicable operating environment. During plan evaluation, the Coast Guard will assess whether equipment identified in a plan meets these criteria.

Table 2 lists the amount of boom that must be contracted for or identified by vessel owners or operators and the response time requirements for shoreline protection. The requirement is based on the area in which the vessel operates, not the size of the vessel. All boom must meet the applicable design criteria in Table 1. The Coast Guard solicits comments on this approach.

Table 3 provides factors needed to calculate the planning volumes for response resource identification. The table is divided into four geographic areas and four oil types. Because loss to the environment, potential for shoreline impact, and potential for on water recovery varies by the oil type and location, a factor is included for each. The factors are based on estimates of the oil behavior when it enters the environment: A percentage will be lost due to natural dispersion; a percentage will reach the shoreline; and a percentage that will remain for on water recovery. In the inland/nearshore and offshore portions of the table, the percentages do not add up to 100 percent. This reflects an adjustment in the on water percentage to increase the quantity of resources that are planned for mobilization within the first 3 days of the response. Because the oil may rapidly impact the shoreline in these areas, quick mobilization is essential. The table also includes a sustainability period. This was used to calculate the resource mobilization factors in Table 5. It does not reflect how long it will take to complete a clean-up. During an actual response, vessel owners and operators will be required to sustain the clean-up operation until release by the Federal OSC. The Coast Guard solicits comments on the specific factors in this table.

Table 4 lists emulsification factors for the four oil groups. The factors represent the increase in volume expected due to emulsification. This increase must be considered when planning for response resources, oil storage and disposal capacity, etc. Oil emulsification affects both the weathering rate and the volume of oily material that must be planned for during the recovery operations. The tendency for certain oils to form an emulsion is based primarily on its viscosity at the ambient temperature and its chemical composition. Because this varies widely, the table uses cargo groups based on specific gravity. Some oils form very stable emulsions: Others emulsify then naturally separate. The individual factors reflect the general behavior of oils in a given group, and do not reflect any one particular oil. The Coast Guard solicits comments on the factors proposed, as well whether there is an alternative method for determining these factors.

Table 5 lists the response resource mobilization factors for the geographic areas where response planning is required. These factors reflect the tiering of on water oil recovery capacity that must be mobilized within the first 3 days of an incident to maximize the potential for oil recovery. These factors were derived using the sustainability periods in Table 3 for the respective geographic area. Each factor reflects a percentage of the total on water recovery requirement. To recover the oil planned for on water recovery within the sustainability period, this capacity must be on scene within the time specified for the applicable tier.

Table 6 lists the proposed caps on response resources that vessel owners or operators must identify and ensure available, through contract or other approved means. The cap reflects an estimate of capability that is considered a practical nationwide target to be met in 1993. Providing the resources necessary to meet these caps will require a significant expansion of response capabilities in most areas of the country. Some areas may currently have resources in place or planned that will exceed these caps. The caps serve as a minimum capability that must be available throughout the United States. The cap for rivers is lower to reflect both the smaller size vessels moving in river areas and a practical limit on response capability available in those areas in 1993.

The caps listed in Table 6 increase 25 percent every 5 years to create incentives for both an increase in the quantity of equipment available and improvements in spill response technology. The Coast Guard solicits comments on the effective daily recovery rates that have been proposed as nationwide minimums.

Regulatory Evaluation

Executive Order 12292 (46 FR 13197, February 19, 1981) requires that agencies develop a regulatory analysis for any rule having major economic consequences on the national economy, individual industries, geographic regions, or levels of government. To assist with making this determination, a series of questions was asked in the ANPRM to solicit information from the public on the potential economic impact of these regulations.

The Coast Guard considers these proposed regulations to be major under Executive Order 12291. It is a significant rule using a number of criteria under the Department of Transportation Regulatory Policies and Procedures (44 FR 11020; February 26, 1979). This rulemaking will cost the oil transportation industry and the general public more than $100 million annually. It may also affect domestic and international shipments of oil to and from the United States and may generate substantial public interest and controversy. These regulations will also impact cleanup contractors, oil spill cooperatives, and other not-for-profit cleanup organizations.

The proposed rule contains requirements for vessel response plans, as well as additional requirements for certain vessels operating in Prince William Sound, Alaska. The impact of these requirements has been analyzed separately and is summarized below.

A draft Regulatory Impact Analysis (RIA) for vessel response plans, and a draft Regulatory Evaluation (RE) for Prince William Sound are available in the docket for inspection or copying, as indicated under "**ADDRESSES**." It also has been placed in a separate document (CGD 90–051A) established to facilitate review of the programmatic RIA for titles IV and V of OPA 90. Any public comments received on the RIA will also be placed in that docket.

Vessel Response Plans

In performing the regulatory impact analysis, the following four response plan alternatives were considered:

(1) No requirements,

(2) Comprehensive requirements for all vessels,

(3) Reduced requirements for vessels carrying oil as a secondary cargo, and

(4) Reduced requirements for inland barges only.

Industry Profile

The vessels that are subject to these requirements are divided into four distinct groupings: (1) Oil tankships in international trade, (2) coastal trading U.S. tankships and tank barges, (3) inland tank barges, and (4) other vessels not certificated under 46 CFR subchapter D, which carry oil in bulk as a secondary cargo. Three distinct industry groups comprise the majority of these other vessels. They are oil field supply vessels, fishing vessels and towing vessels.

Approximately 363 companies owning 1,050 vessels constitute the international tankship sector. The number of vessels held by any one company varies from 1 to over 50 vessels. The assets of the publicly held tankship operating firms vary from $28 million to $95 billion.

The coastal fleet consists of U.S. owned tankships and coastal trading tank barges. The coastal fleet is comprised of 147 tankships owned by 28 companies and 190 tank barges owned by 52 companies. The number of vessels owned by any one company varies from 1 to over 10 vessels. The assets of the independent, publicly-held companies engaged in operating the coastal fleet vary from $50 million to over $1 billion.

The inland barge fleet is comprised of 409 companies with 3,461 active barges. Of these, 219 companies own only 1 vessel or 6 percent of the fleet. The assets of publicly traded firms in this industry vary from $23 million to $13 billion.

The oil field supply vessel industry constitutes the largest group of vessels that carry oil as a secondary cargo covered by this proposed rule. The number of these vessels covered by this proposed rule is estimated to exceed 1,000. The number of these vessels owned by any one company varies from 1 to over 50.

The fishing vessel industry consists of 5,422 vessels owned by 4,587 companies. In addition, 22,371 documented fishing vessels are owned by individuals. The vast majority of these are owners or operators of one vessel. Approximately 80 to 100 of these vessels or 0.4 percent will potentially be impacted by this regulation because they carry oil as a secondary cargo. Virtually all of these vessels are privately owned.

The towing vessel industry consists of 5,703 vessels owned by 2,156 companies. Of these, two companies own over 50 vessels while 1,357 owners have only one vessel. Approximately 2.5 percent of the fleet or 150 vessels are engaged in the transfer oil to other vessels. This proposed rule would not be applicable to the majority of these vessels because the oil carried would not be considered cargo due to the nature of their operation.

Costs

In the aggregate, the requirement for vessel response plans will result in substantial costs to the industries affected. The present value cost of this regulation for the period 1992 through 2015 is estimated at $1.277 billion. The bulk of this cost entails large capital and operating expenditures to ensure adequate shore-based response capability. This accounts for 86 percent of the total incremental cost, or $1.123 billion. The next most costly items are drills and training with costs of $122 million for the 24-year period examined, or 10 percent of the total cost. The incremental cost of the entire regulation is $187 million for 1992, but declines to $155 million annually for the period 1995 through 2015.

For individual tankship or coastal trading tank barge owners or operators, the cost of compliance will vary widely. The owners or operators of large fleets can spread the costs of the response plan development over many vessels. The annual cost per vessel to major oil companies is estimated to be $3,400 per vessel. The cost to small independent vessels owners or operators is estimated to be $26,000–$36,800 per vessel.

For individual inland tank barge owners or operators, the cost per tank barge will also vary widely according to the number of barges owned. For companies with more than 100 barges, the annual cost is estimated to be approximately $75 per barge annually for the development of the plan, plus $825 per barge annually for the development and maintenance of inland response capability ($2 million per year divided by 2,424 inland barges), for a total of $900 per barge per year. By contrast, the cost for companies with 1 to 9 barges is estimated between $195 and $1,750 for the development of the plan, plus $825 for the contractor retainer per barge per year.

The costs for oil field supply vessel, fishing vessel, and towing vessel owners or operators are estimated to be as high as $1,000 per year. As with other vessels, there would be economies of scale for owners or operators of multiple vessels.

The Coast Guard is particularly interested in comments about its estimates of the costs and the effectiveness of the measures mandated by this part of the rule. Are there concerns that the Coast Guard has either underestimated or overestimated the costs of specific provisions of the rule? If so, what steps could be taken to strengthen the analysis which supports these estimates? Are there any additional data not considered by this analysis that would shed light on the cost-effectiveness of the proposed requirements compared with alternative requirements not proposed? Will these provisions place an undue hardship on small entities? Given the relatively higher costs which will be borne by smaller firms, is there any evidence that regulating them will yield higher benefits than regulating larger firms? The Coast Guard solicits comments on these questions and on the cost estimates and will consider all comments in preparing the final rule, to the maximum extent allowed by law.

Summary of Benefits

The principal benefit of the vessel response plan requirement is a potential reduction in oil spilled with a corresponding reduction in natural resource damages and cleanup costs. Vessel response plans are expected to influence: The frequency of and spill occurrence; oil outflow volumes when an incident occurs; spill preparedness; and response management. The requirements of the proposed rule should improve spill response such as: Improved notification and communications; quicker mobilization and reduced response times; and clearer procedures and guidelines for onboard transfers, lightering, and towing. The potential benefits of vessel response plans were calculated by conducting detailed analyses of historical cases and by assessing the effectiveness they might have had in reducing outflows, cleanup costs, and damages.

To quantify benefits of avoided natural resource damages associated with the vessel response plan regulations and to justify the investment in oil spill abatement, the ideal methodology would be to conduct a multiple case study of historical spill data that included natural resource damage assessments. The results would represent the range of benefits from avoided natural resource damages. This could not be done due to the limited number of claims actually settled since OPA 90 established a clear statutory basis for national resource damage restoration claims and the lack of standardized models to perform damage assessments.

Present models provide a glimpse of potential benefit ranges associated with the reduction of oil spilled in the marine environment. Other models and methodologies, which may better quantify natural resource damage, are under development. The monetary value of natural resource damages avoided was calculated based on historical spill unit values. The RIA estimates that vessel response plans will lead to an average 15 percent reduction in total costs of clean-up, third-party claims, and natural resource damage.

Additional Response Plans Requirements for Certain Vessels Operating in Prince William Sound, Alaska Industry Profile

Vessel traffic in Prince William Sound is dominated by large crude carriers calling at the Trans-Alaska Pipeline

(TAPS) terminal near Valdez, Alaska. The terminal is operated by the Alyeska Pipeline Service Company, a consortium of seven major oil companies. This trade consists of approximately 900 tanker loadings accounting for approximately 700 million barrels annually. The non-TAPS traffic consists of product movements by ocean barges and relatively small, single hulled tankships. The latter are operated under charter to the Military Sealift Command and typically call at Whittier, Alaska 4 to 6 times a year. The remainder of the trade involves barge movements of small amounts of home heating oil and marine diesel fuel. A small refinery will be opening in Valdez in late 1992 requiring the loading of a product barge weekly. Total non-TAPS traffic, including the new refinery, will be 2.5 million barrels annually.

Costs

Overall industry costs of complying with section 5005 of OPA 90 requirements are estimated to be $286 million over the 10-year period, 1993 through 2002. Of this, $232 million would be borne by vessels calling at the TAPS terminals and $54 million by non-TAPS vessels. Presently, approximately 900 tanker loadings of nearly 700 million barrels of crude oil are transported from the TAPS terminal annually. This is expected to decline at a rate of 6 to 7 percent a year. Currently the non-TAPS trade consists of 30–35 port calls a year. This will increase by approximately one barge a week when the refinery in Valdez becomes operational. The cost per port call is estimated at $64,000 for tankers involved in TAPS trade and $53,000 per vessel in non-TAPS trade. Unit costs per barrel are estimated at 6¢ per barrel for TAPS trade crude and $2.16 per barrel for non-TAPS trade product.

The Coast Guard is particularly interested in comments about its estimates of the costs and the effectiveness of the measures mandated by this part of the rule. Are there concerns that the Coast Guard has either underestimated or overestimated the costs of these provisions of the rule? If so, what steps could be taken to strengthen the analysis which supports these estimates?

Summary of Benefits

OPA 90 places additional requirements on the spill response capability of certain vessels operating in Prince William Sound. These added requirements are intended to provide additional response capability to protect this unique environmentally sensitive area. Specifically, section 5005 of OPA 90 requires: Prepositioned response equipment; establishment of oil spill removal organizations; training of local citizens and fish hatchery employees in oil spill removal techniques; periodic testing and certification of equipment; and exercises to test the capability of the equipment and trained personnel.

Prepositioned equipment, training, drills, and escort vessels improve the efficiency of offensive response operations. Quick recovery of oil from the environment reduces the net impact of the spill. The regulations for Prince William Sound are estimated to increase the volume of recovered oil by 15 percent for crude oil, and 10 percent for non-persistent oils.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

An Initial Regulatory Flexibility Analysis discussing the impact of this proposal on small entities is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Vessel Response Plans

The impact of vessel response plan requirements will be distributed differently across various sectors of the U.S. waterborne oil transportation industry. Some small owners or operators of international flag tankers, which call infrequently in U.S. waters, may choose to discontinue U.S. trade. However, they will be able to use their vessels in other trades.

Small operators of coastal tankers and tank barges will incur a minor competitive disadvantage versus larger operators. The requirement for a response plan, by itself, should not force these companies to exit the business. However, this proposed regulation may have a detrimental impact on small barge operators. The combined effects of the requirements of the OPA 90 may force a number of these companies to sell their vessels for subcontract due to the cost of meeting all OPA 90 requirements.

Fishing vessels, towing vessels, and oil field supply vessels that carry oil in bulk as a secondary cargo could also be adversely impacted by this regulation. For example, if the annual cost of compliance for an oil field supply vessel is $1,000 for a response plan, it is estimated the cost per gallon of oil carried is between 2/100¢ and 4/100¢ per gallon. The cost for a 90,000 DWT ton tanker is only 3/1000¢ per gallon, a lower cost. For towing vessels and fishing vessels, the cost per gallon of oil carried as cargo is estimated to be 38¢ and $1.00 respectively. The impact of this rule on vessels that occasionally carry oil in bulk as a secondary cargo will be significantly disproportionate. The proposed rule subjects these vessels to reduced requirements in accordance with the recommendations of the Negotiated Rulemaking Committee. It is estimated that the costs to meet these reduced response plan requirements for secondary carriers is 10 percent of the cost to meet the comprehensive standards if that was required.

Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska

The increase in the unit cost of transporting crude petroleum to comply with section 5005 of OPA 90 is relatively minor. This can easily be absorbed by the large oil companies transporting TAPS oil. For the products transported in the non-TAPS trade, the unit cost will be considerably higher. Vessels operated under charter to the Military Sealift Command are not considered a small entities. Only one small entity was identified in the non-TAPS trade.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed regulation that contains collection of information requirements to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements. The collection of information requirements for each subpart of the proposed rule are discussed separately.

Subpart D Vessel Response Plans

This proposal contains collections of information requirements in the following sections: §§ 155.1025 (Operating restrictions and interim operating requirements); 155.1045 (Requirements for vessels carrying oil as secondary cargo); 155.1055 (Training); 155.1060 (Drills); 155.1065 (Submission and approval procedures); and 155.1070 (Plan revision and amendment procedures).

The reporting and recordkeeping requirements associated with this proposed rule are being submitted to

OMB for approval in accordance with 44 U.S.C. chapter 35. The following particulars apply:

DOT No: 2115; OMB CONTROL NO XXXX.

Administration: U.S. Coast Guard.

Title: Vessel Response Plans.

Need for Information: This information is necessary to ensure that vessels carrying oil in bulk as cargo entering U.S. waters are adequately prepared to respond to an oil spill.

Proposed Use: The purpose of the OPA 90 amendments to section 311 of the FWPCA was to reduce the number of oil spills and to minimize the impact of the oil spills when they do occur in U.S. waters. Without the proposed requirements for vessel response plans, it is probable that some operators will not maintain the necessary internal resources (effective planning, training, drilling, etc.) or external resources (adequate shore-based response capability) to meet the requirements of these amendments. The proposed collection of information requirements help ensure and monitor, through the submission and recurring update of response plans, that vessels entering U.S. waters have appropriate response plans and shore-based resources.

Submission of vessel response plans to the U.S. Coast Guard for approval, the onboard verification of an approved plan during routine boarding procedures, and the maintenance of training and drill records is believed to be the most efficacious way to ensure compliance.

Frequency: Response plan submitted every 5 years; notice of reviews completed annually; updates as necessary.

Burden Estimate: A one-time burden for industry of 288,400 hours for reporting and an annual recordkeeping burden of 82,500 hours.

Respondents: 902.

Average Burden Hours per Respondent: One-time reporting burden of 319.73 hours and an annual recordkeeping burden of 91.52 hours.

Subpart E Additional Requirements for Certain Vessels Operating in Prince William Sound, Alaska

This proposal contains collection of information requirements in the following section: §§ 155.1125 (Additional response plan requirements); and 155.1130 (Requirements for prepositioned response plan equipment).

The reporting and recordkeeping requirements associated with this rule are being submitted to OMB for approval in accordance with 44 U.S.C. chapter 35. The following particulars apply:

DOT No: 2115; OMB CONTROL NO XXXX.

Administration: U.S. Coast Guard.

Title: Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska.

Need for Information: This proposed rule ensures that a vessel owner or operator will provide a geographic-specific response plan appendix that addresses: Prepositioned oil spill containment and removal equipment; oil spill removal organizations; training of local residents in oil spill containment and removal techniques; drills; and periodic testing and certification of equipment.

Proposed Use: The purpose the OPA 90 is to reduce the number of oil spills in U.S. waters and minimize the impact when they do occur. The additional requirements in section 5005 of OPA 90 for trained personnel and prepositioned response equipment reflect the particular environmental sensitivity of Prince William Sound. Without the proposed requirements for vessels carrying oil in bulk as cargo that operate in Prince William Sound, it is unlikely that sufficient response resources would be available or properly maintained to clean up a spill. The proposed requirement establishes oil and spill removal organizations and require prepositioned response equipment to ensure a greater level of preparedness and rapid response in the event of a spill.

Frequency: Records of personnel training and equipment maintenance, inspection, and testing would be maintained as necessary. Training and drill plans would be submitted yearly. Drills would take place twice a year.

Burden Estimate: 1480 hours a year for reporting and 400 hours a year for recordkeeping.

Respondents: 2.

Average Burden Hours per Respondent: 740 hours reporting and 200 hours of recordkeeping per year.

The Coast Guard has submitted the requirements to OMB for review, as required by the Paperwork Reduction Act. Persons commenting on the collection of information requirements should submit their comment both to OMB and to the Coast Guard, as indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 (October 26, 1987), and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

During the discussions of the Negotiated Rulemaking Committee, several States expressed concern about the issue of preemption. Some States, including Alaska, Washington, and Florida, have already issued regulations requiring oil spill response plans for vessels. The Coast Guard has evaluated the federalism issue in light of the statutory requirement for vessel response plans and the accompanying provision which dictates that State law shall not be preempted. These regulations establish minimum requirements which may be supplemented by the States. However, a State may not adopt regulations inconsistent with Federal regulations. State law would be preempted by these regulations only to the extent that compliance with the State law would preclude owners or operators of vessels from complying with these requirements.

Section 311(o)(2) of the FWPCA explicitly preserves the authority of any State to impose its own requirements or standards with respect to the liability of persons involved in the removal of oil. Further, section 311(o)(3) of the FWPCA indicates that nothing in section 311 shall affect any State or local law not in conflict with anything therein.

The Supreme Court has held that a state may not issue a regulation which actually conflicts with a Federal statute or regulation. A conflict will be found "where compliance with Federal and State regulations is a physical impossibility." *Florida Lime and Avocado Growers* v. *Paul, 373 U.S. 132.*

Impossibility of compliance must be distinguished from inconsistency in Federal and State laws. For example, if a Federal regulation indicates several ways in which a requirement may be satisfied, a State may limit, but not preclude the method of compliance in its regulations.

Executive Order 12612 and sections 311(o) (2) and (3) of the FWPCA emphasize the goal of preserving the authority of the States in pollution prevention and response. In *Askew* v. *American Waterways Operators, Inc.*, 93 S.Ct. 1590 (1973), the Supreme Court stated that "sea-to-shore pollution [is] historically within the reach of the police power of the States." (Id at 1601.) Hence, the Court has clearly preserved the authority of the States to regulate in this area, as long as State law is not in direct conflict with Federal law.

Section 311(j)(5) of the FWPCA specifically directs the President to issue these regulations. It is certified that the policies contained herein have been

assessed in light of the principles of the Federalism Executive Order. Because this proposal is being issued in response to a statutory mandate, the Coast Guard has determined that this action accords fully with the Executive Order.

Environment

The Coast Guard has prepared a preliminary Environmental Assessment (EA) for this action in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Coast Guard policy (COMDTINST M16475.1B) implementing the procedural provisions of the National Environmental Policy Act (NEPA). The EA discusses the environmental consequences of the proposed action and alternatives, including the no-action alternative. The preliminary EA is available in the public docket as noted under "ADDRESSES." After receipt of all comments to this NPRM and the EA, the Coast Guard will make a final decision on the need to draft an Environmental Impact Statement (EIS) for this rulemaking.

List of Subjects in 33 CFR Part 155

Oil pollution, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

For the reasons discussed in the preamble, the U.S. Coast Guard proposes to amend 33 CFR part 155 as follows:

PART 155—[REVISED]

1. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1) and (j)(5); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Sections 155.100–155.130, 155.350–155.400, 155.430, 155.440, 155.470, and 155.1010–155.1070 also issued under 33 U.S.C. 1903(b), and §§ 155.1110–155.1150 issued under 33 U.S.C. 2735.

2. Section 155.140 is added to read as follows:

§ 155.140 Incorporation by reference.

(a) Certain material is incorporated by reference in this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the U.S. Coast Guard must publish notice of the change in the **Federal Register** and make the materials available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Environmental Protection Division (G–MEP), Room 2100, 2100 Second Street, SW., Washington, DC, 20593–0001, and is available from the sources identified in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM Standard F 631–80, Standard Method for Testing Full Scale Advancing Spill Removal Devices (Reapproved 1985).	Appendix B.
ASTM Standard F 715–81, Standard Methods of Testing Spill Control Barrier Membrane Materials (Reapproved 1986).	Appendix B.
ASTM Standard F 808–83, Standard Guide for Collecting Skimmer Performance Data in Uncontrolled Environments (Reapproved 1988).	Appendix B.
ASTM Standard F 989–86, Standard Test Methods for Spill Control Barrier Tension Members, 1986.	Appendix B.

International maritime Organization (IMO)

IMO Sales, New York Nautical Instrument and Service Corp., 140W. Broadway, New York, NY 10013	
IMO Resolution A.648(16), General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances, and/or Marine Pollutants (19 October 1989).	155.1035; 155.1045.

Oil Companies International Marine Forum (OCIMF)

6th Floor, Portland House, Stag Place London, SWIE 5BH, England	
Ship-to-Ship Transfer Guide, Petroleum, Second Edition, 1988.	155.1035; 155.1040.

3. Part 155 is amended by adding new subparts D and E and Appendix B to read as follows:

PART 155—OIL POLLUTION PREVENTION REGULATIONS FOR VESSELS

* * * * *

Subpart D—Response Plans

Sec.

155.1010 Purpose.
155.1015 Applicability.
155.1020 Definitions.
155.1025 Operating restrictions and interim operating authorization.
155.1030 General response plan requirements.
155.1035 Response plan requirements for vessels carrying oil as a primary cargo.
155.1040 Requirements for unmanned tank barges.
155.1045 Requirements for vessels carrying oil as a secondary cargo.
155.1050 Response plan development and evaluation criteria.
155.1055 Training.
155.1060 Drills.
155.1065 Submission and approval procedures.
155.1070 Plan revision and amendment procedures.

Subpart E—Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska

155.1110 Purpose and applicability.
155.1115 Definitions.
155.1120 Operating restrictions and interim operating authorization.
155.1125 Additional response plan requirements.
155.1130 Requirements for prepositioned response equipment.
155.1135 Response plan development and evaluation criteria.
155.1140 Special considerations for vessels contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act.
155.1145 Submission and approval procedures.
155.1150 Plan revision and amendment procedures.

* * * * *

Appendix B to Part 155—Guidelines for Determining and Evaluating Required Response Resources for Vessel Response Plans.

Subpart D—Response Plans

§ 155.1010 Purpose.

The purpose of this subpart is to establish requirements for oil spill response plans for certain vessels. The planning criteria identified are intended for use in response plan development and the identification of resources required to respond to the scenarios prescribed during the planning process. The specific criteria are not meant to be performance standards. They are planning criteria based on a set of assumptions that may not exist during an actual oil spill incident.

§ 155.1015 Applicability.

(a) Except as provided in paragraph (c) of this section, this subpart applies to each vessel that handles, stores, or transports oil in bulk as cargo or cargo residue, and that—

(1) Is a vessel of the United States;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil in bulk as cargo in a port or place subject to the jurisdiction of the United States.

(b) This subpart also applies to both the delivering and receiving vessels conducting bulk oil cargo lightering operations within the exclusive economic zone of the United States as defined in 33 U.S.C. 2701(8) where the cargo is destined for any port or place subject to the jurisdiction of the United States.

(c) This subpart does not apply to the following types of vessels:

(1) Public vessels and vessels deemed public vessels under 14 U.S.C. 827.

(2) Vessels that, although designed to carry oil in bulk as cargo, are not storing or carrying oil in bulk as cargo or cargo residue.

(3) Dedicated response vessels when conducting response operations in a response area.

(4) Vessels of opportunity.

(d) Vessels of the United States covered by this subpart that do not operate within the navigable waters or the exclusive economic zone of the United States must meet all requirements of this subpart except for identifying and ensuring the availability of, through contract or other approved means, response resources as required in § 155.1035.

§ 155.1020 Definitions.

In addition to the terms defined in this section, the definitions in § 155.110 apply to this subpart.

Adverse weather means the weather conditions that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in § 155.1050, and ice, temperature, weather-related visibility, and currents within the Captain of the Port (COTP) zone in which the systems or equipment are intended to function.

Average most probable discharge means a discharge of 50 barrels of oil from the vessel.

Bulk means any volume of oil carried in an integral tank of the vessel and oil transferred to or from a marine portable tank or independent tank while on board a vessel.

Cargo means oil that is transported to and off-loaded at a destination by a vessel. It does not include—

(1) Oil carried in integral tanks, marine portable tanks, or independent tanks for use as fuel for machinery and boats carried aboard the vessel;

(2) Oil transferred from a towing vessel's fuel tanks to a vessel in its tow to operate installed machinery; or

(3) Oil temporarily handled, stored, or transported within the response area by a dedicated response vessel or vessel or opportunity used for the emergency recovery of oil from the surface of the water.

Contract or other approved means includes—

(1) A written contractual agreement with a response contractor identifying and ensuring the availability of the necessary personnel and equipment available within stipulated response times in specified geographic areas;

(2) Certification that the necessary personnel and equipment resources are owned or operated by the vessel owner or operator and are available within stipulated response times in specified geographic areas;

(3) Active membership in a local or regional oil spill removal organization that has identified necessary personnel and equipment to be available within stipulated response times in specified geographic areas; or

(4) When specifically authorized in this subpart and with the consent of the response contractor or oil spill removal organization, the identification of a response contractor or oil spill removal organization with necessary equipment and personnel which are available within stipulated response times in specified geographic areas.

Dedicated response vessel means a vessel whose service is limited exclusively to oil and hazardous substance spill response-related activities, including spill recovery and transport, response-related escorting, deployment of spill response equipment, supplies, and personnel, and spill response-related training, testing, drills, and research.

Exclusive economic zone means the zone contiguous to the territorial sea of United States extending to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Great Lakes means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between mile 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between mile 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock.

Higher volume port area means an area specified in § 155.1050 (g).

Inland area means the area shoreward of the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter. The inland area does not include the Great Lakes or rivers and canals.

Maximum extent practicable means the planning criteria used to evaluate the response resource required to provide the on-water recovery capability and the shoreline protection and cleanup capability to conduct response activities for a worst case discharge from a vessel in adverse weather, limited by available technology and the practical and technical limits on an individual vessel owner or operator. Specific criteria for defining this term as it relates to response plan development and evaluation are described in § 155.1050.

Maximum most probable discharge means a discharge of up to:

(1) 2,500 barrels of oil for vessels with an oil cargo capacity greater than 25,000 barrels; or

(2) 10% of the vessel's oil cargo capacity for vessels with a capacity of less than 25,000 barrels.

Nearshore area means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico it means the area extending seaward 12 miles from the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter.

Non-persistent or Group 1 oil means:

(1) a petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions:

(i) At least 50% of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(ii) At least 95% of which by volume, distill at a temperature of 370 degrees C (700 degrees F);

(2) a non-petroleum oil with a specific gravity less than .8.

Non-petroleum oil means oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.

Ocean means the open ocean, offshore area, and nearshore area as defined in this subpart.

Offshore area means the area up to 38 nautical miles seaward of the outer boundary of the nearshore area.

Oil spill removal organization means an entity established in a given

geographic area to provide response resources required in this subpart.

Open ocean means the area from 38 nautical miles seaward to the outer boundary of the nearshore area to the seaward boundary of the exclusive economic zone.

Operator or vessel operator means any person, including, but not limited to, an owner or a demise charterer, responsible for the operation of a vessel. The operator of a towing vessel is not considered the operator of a vessel being towed.

Owner of vessel owner means any person holding legal or equitable title to a vessel; provided, however, that a person holding legal or equitable title to a vessel solely as security is not the owner. In a case where a Certificate of Documentation has been issued, the owner is the person or persons whose name or names appear on the vessel's Certificate of Documentation provided, however, that where a Certificate of Documentation has been issued in the name of a president or secretary of an incorporated company under 46 U.S.C. 15, such incorporated company is the owner.

Persistent oil means:

(1) A petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. For the purposes of this subpart, persistent oils are further classified based on specific gravity as follows:

(i) Group II—specific gravity less than .85.

(ii) Group III—specific gravity between .85 and less than .95.

(iii) Group IV—specific gravity .95 or greater.

(2) a non-petroleum oil with a specific gravity of .8 or greater. For the purposes of this subpart, these oils are further classified based on specific gravity as follows:

(i) Group II—specific gravity between .8 and less than .85.

(ii) Group III—specific gravity between .85 and less than .95.

(iii) Group IV—specific gravity .95 or greater.

Qualified individual means an English-speaking shore-based representative of a vessel owner or operator, located in the United States, available on a 24-hour basis, with unconditional written authority to implement the vessel's response plan. This includes—

(1) Activating and engaging in contracting with required oil spill removal organization(s);

(2) Acting as liaison with the predesignated Federal On-Scene Coordinator (OSC); and

(3) Obligating, either directly or through prearranged contracts, any funds required to carry out all required or directed oil response activities.

Response activities means the containment and removal of oil from the water and shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the environment.

Response area means the Captain of the Port (COTP) zone(s) as specified in part 3 of this title, or the planning area within that zone designated under section 311(j)(4) of the Federal Water Pollution Control Act (FWPCA), whichever is smaller, in which spill response activities are occurring.

Response resources means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in a response plan.

Rivers and canals mean bodies of water confined within the inland area that have a controlled navigable depth of 12 feet or less, including the Intracoastal Waterway and other waterways artificially created for navigation.

Spill management team means the personnel identified to staff the organizational structure identified in a response plan to manage response plan implementation

Substantial threat of such a discharge means any incident involving a vessel that may create a significant risk of discharge of fuel or cargo oil. Such incidents include, but are not limited to groundings, strandings, collisions, hull damage, fire, explosion, loss of propulsion, flooding, on-deck spills, or other similar occurrences.

Vessel of opportunity means a vessel engaged in spill response activities that is normally and substantially involved in activities other than spill response, and not normally involved in the carriage of oil in bulk as primary cargo.

Vessels carrying oil as a primary cargo means all vessels engaged in the carriage of oil that have a Certificate of Inspection issued under 46 CFR subchapter D (except for dedicated response vessels), Certificate of Compliance, or Tank Vessel Examination Letter.

Vessels carrying oil as a secondary cargo means vessels carrying oil pursuant to a permit issued under 46 CFR subchapter D (30.01–5), 46 CFR subchapter H (70.05–35), or 46 CFR subchapter I (90.05–35), an International Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35, or any uninspected vessel that carries oil in bulk as cargo.

Worst case discharge means a discharge in adverse weather conditions of a vessel's entire oil cargo.

§ 155.1025 Operating restrictions and interim operating authorization.

(a) After February 18, 1993, the owner or operator of each vessel to which this subpart applies shall submit a response plan meeting the requirements of § 155.1030 prior to—

(1) Handling, storing, or transporting oil on the navigable waters of the United States;

(2) Transferring oil in any other port or place subject to U.S. jurisdiction; or

(3) Performing vessel-to-vessel lightering operations within the exclusive economic zone.

(b) After August 18, 1993, vessels subject to this subpart may not perform the functions listed in paragraph (a) of this section unless operating in full compliance with a plan approved under § 155.1065.

Notwithstanding the requirements of paragraph (b) of this section, a vessel may continue to handle, store, transport, transfer, or lighter oil for two years after the date of submission of a response plan, pending approval of that plan, if the vessel owner or operator certifies to the U.S. Coast Guard that the owner or operator has identified and ensured the availability of, through contract or other approved means, the necessary private personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel (as described in § 155.1050).

(d) With respect to paragraph (c) of this section, a vessel may not continue to handle, store, transport, transfer, or lighter oil if—

(1) The U.S. Coast Guard determines that the response resources identified in the vessel's certification statement do not meet the requirements of this subpart;

(2) The contracts or agreements cited in the vessel's certification statement are no longer valid;

(3) The vessel is not operating in compliance with the submitted plan; or

(4) The period of this authorization expires.

(e) A vessel may be authorized by the applicable COTP to make one voyage to transport or handle oil in port or geographic area not covered by an approved response plan. All requirements of this subpart must be met for any subsequent voyages to that port or geographic area. To be authorized, the vessel owner or operator shall certify to the COTP that—

(1) A response plan meeting the requirements of this subpart, except for

the applicable geographic specific appendix, or a shipboard oil pollution emergency plan approved by the flag state that meets the requirements of Regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78), is aboard the vessel;

(2) The vessel owner or operator has identified and informed the vessel crew and COTP of the designated qualified individual prior to the vessel's entry to the port of geographic area; and

(3) The vessel owner or operator has identified and ensured the availability of, through contract or other approved means, the private personnel and equipment necessary to respond, to the maximum extent practicable (under the criteria in § 155.1050), to a worst case discharge or substantial threat of discharge from the vessel in the applicable port or geographic area.

§ 155.1030 General response plan requirements.

(a) The plan must be written in English and, if applicable, in a language that is understood by the crew members responsible for carrying out the plan.

(b) A response plan for a vessel carrying oil as a primary or a secondary cargo under §§ 155.1035 and 155.1045 and the core response plan for an unmanned tank barge under § 155.1040 must be divided into the following sections in the order listed below unless noted otherwise:

(1) General information and introduction.

(2) Notification procedures.

(3) Shipboard spill mitigation procedures.

(4) Shore-based response activities.

(5) List of contacts.

(6) Training procedures.

(7) Drill procedures.

(8) Plan review and update procedures.

(9) Geographic-specific appendix for each zone in which the vessel operates.

(10) Appendix for vessel-specific information for each vessel covered by the plan (for vessels carrying oil as a primary cargo and unmanned tank barges).

(c) In addition to the core plan, unmanned tank barges must have an onboard notification checklist and emergency procedures.

(d) The required contents for each section of the plan are contained in §§ 155.1035, 155.1040, and 155.1045 as applicable to the type or service of the vessel.

(e) The response plan for a dedicated response vessel operating outside the response area must follow the same format as that for a vessel carrying oil as a secondary cargo under § 155.1045.

(f) A response plan must be in the format described in paragraph (b) of this section unless the plan was completed prior to [*the effective date of this subpart*]. A plan completed prior to [*the effective date of this subpart*] that does not follow this format must be supplemented with a cross-reference section to identify the location of the applicable sections required by this subpart and must be submitted in the required format at the next required resubmission date specified in § 155.1070.

(g) The information contained in a response plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) covering areas in which the vessel operates.

§ 155.1035 Response plan requirements for vessels carrying oil as a primary cargo.

(a) *General information and introduction.* This section of the response plan must include—

(1) The vessel's name, country of registry, and official number;

(2) The name, address, and procedures for contacting the vessel's owner or operator on a 24-hours basis;

(3) Identification of the geographic areas covered by the plan. The plan must identify the COTP zones, as defined in part 3 of this title, covered by the plan. The plan must cover all areas in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas within the exclusive economic zone. A geographic-specific appendix must be included for each COTP zone identified:

(4) A table of contents and index identifying specific sections of the plan; and

(5) A record of change(s) page to record information on plan updates or revisions.

(b) *Notification procedures.* This section of the response plan must include—

(1) A checklist with all notifications in order of priority to be made by shipboard or shore-based personnel and the information required for those notifications;

(2) A discussion of the notification requirements that apply in the vessel's area of operation including—

(i) The requirements of MARPOL 73/78 and the FWPCA (33 U.S.C. 1321) as amended; and

(ii) Any applicable State or local notification requirements. These may be included in the geographic-specific appendix;

(3) Identification of the person(s) to be notified of a discharge or substantial threat of a discharge of oil. If these notifications vary due to vessel location, they must be included in a geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by shipboard personnel;

(ii) The individual(s) or organization(s) to be notified by shore-based personnel;

(iii) The procedures for notifying the qualified individual(s) designated by the vessel's owner or operator; and

(4) Descriptions of the primary and secondary communications methods by which the notifications will be made;

(5) The information to be provided in the initial and follow-up notifications. Notification information must include the information identified in IMO Resolution A648(16) "General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances, and/or Marine Pollution." The initial notification must include—

(i) Vessel name, country of registry, and official number;

(ii) Date and time of the incident;

(iii) Location of the incident;

(iv) Course, speed, and intended track of vessel;

(v) Type of oil involved;

(vi) Nature of the incident (e.g. grounding, collision, etc.);

(vii) Estimate of oil discharged or threat of discharge;

(viii) Weather conditions on scene; and

(ix) Actions taken or planned by persons on scene;

(6) Identification of the person(s) to be notified of a vessel casualty potentially affecting the seaworthiness of a vessel and the information to be provided by the vessel's crew to shore-based personnel to facilitate the assessment of damage stability and stress.

(c) *Shipboard spill mitigation procedures.* This section of the response plan must include—

(1) The total volumes of oil cargo and fuel that would be involved in the—

(i) Maximum most probable discharge; and

(ii) Worst case discharge;

(2) Procedures for the crew to mitigate or prevent any discharge or a substantial threat of such discharge of oil resulting from shipboard operational activities associated with internal or external cargo or fuel transfers. Responsibilities of vessel personnel

should be identified by job title. These procedures must address personnel actions in the event of a—

(i) Transfer system leak;

(ii) Tank overflow; or

(iii) Suspected cargo tank, fuel tank, or hull leak;

(3) Procedures in the order of priority for the crew to mitigate or prevent any discharge or a substantial threat of such a discharge in the event of the following casualties or emergencies:

(i) Grounding or stranding;

(ii) Collision;

(iii) Explosion and/or fire;

(iv) Hull failure;

(v) Excessive list; and

(vi) Equipment failure (e.g. main propulsion, steering gear, etc.);

(4) Damage stability and hull stress considerations when performing shipboard mitigation measures. This section must identify—

(i) Activities in which the crew is trained and qualified to execute absent shore-based support or advice; and

(ii) The information to be collected by the vessel's crew to facilitate shore-based assistance;

(5) The location of vessel plans necessary to perform salvage, stability, and hull stress assessments. A copy of these plans must be maintained ashore by either the vessel owner or operator or the vessel's recognized classification society unless the vessel has prearranged for a shore-based damage stability and residual strength calculation program with the vessel's baseline strength and stability characteristics pre-entered. The response plan must indicate the shore location of these plans or calculation program and 24-hour access procedures. The plan must identify the location of the—

(i) General arrangement plan;

(ii) Midship section plan;

(iii) Lines plan or table of offsets;

(iv) Tank tables;

(v) Load line assignment; and

(vi) Light ship characteristics;

(6) The procedures for both internal and ship-to-ship transfers of cargo or fuel in an emergency;

(i) The format and content of the ship-to-ship transfer procedures must be consistent with the Ship-to-Ship Transfer Guide (Petroleum) published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF);

(ii) The procedures must identify the availability, location, and contact numbers for obtaining suitable—

(A) Fendering equipment;

(B) Transfer hoses and connection equipment;

(C) Portable pumps and ancillary equipment;

(D) Lightering and mooring masters; and

(E) Vessel and barge brokers;

(iii) Reference can be made to a separate oil transfer procedure and lightering plan carried aboard the vessel provided that safety considerations are summarized in the response plan;

(iv) The location of all equipment and fittings carried aboard the vessel to perform such transfers must be identified;

(7) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment aboard the vessel;

(8) The location, crew responsibilities, and procedures for use of shipboard equipment to mitigate an oil discharge;

(9) The crew responsibilities for recordkeeping and sampling of spilled products. Any requirements for sampling must address safety procedures to be followed by the crew.

(d) *Shore-based response activities.* This section of the response plan must include the identification of—

(1) The crew's responsibilities to initiate a response and supervise shore-based resources pending the arrival of the qualified individual;

(2) The qualified individual's responsibilities and authority, including notification of the oil spill removal organization(s) identified in the plan;

(3) The procedures for transferring responsibility for direction of response activities from vessel personnel to the qualified individual or other shore-based personnel;

(4) The procedures for coordinating the actions of the vessel owner or operator with the predesignated Federal On-Scene Coordinator responsible for overseeing or directing those actions;

(5) The organizational structure that will be used to manage the response actions, including—

(i) Command and control;

(ii) Public information;

(iii) Safety;

(iv) Liaison with government agencies;

(v) Spill Operations;

(vi) Planning;

(vii) Logistics support; and

(viii) Finance;

(6) (i) Oil spill removal organizations and the spill management team identified and ensured available, through contract or other approved means, to respond to the following spill scenarios:

(A) Average most probable discharge;

(B) Maximum most probable discharge; and

(C) Worst case discharge to the maximum extent practicable;

(ii) The oil spill organization(s) and the spill management team identified in paragraph (d)(6)(i) of this section must provide the following response resources:

(A) Equipment and supplies to meet the requirements of § 155.1050; and

(B) Trained personnel necessary to continue operation of the equipment and staff the oil spill removal organization and spill management team for the first seven days of the response;

(iii) The information required under paragraph (d)(6)(i) of this section must be separately identified in the applicable geographic-specific appendix for each COTP zone in which the vessel will handle, store, or transport oil as cargo.

(e) *List of contacts.* This section of the response plan must include information on 24-hour contact of key individuals and organizations. The following information must be included in this section or, if more appropriate, in a geographic-specific appendix:

(1) A list of contacts for the vessel owner, operator, and if applicable, the charterer;

(2) Identification of the qualified individual(s) for the vessel's area of operation. The plan must identify a primary and an alternate contact located in the United States with the full authority to act as the qualified individual;

(3) Identification of the vessel's Protection and Indemnity (P&I) Club representatives for the vessel's area of operation;

(4) Identification of the vessel's local agent(s) for the vessel's area of operation;

(5) Identification of other applicable insurance representatives or surveyors for the vessel's area of operation; and

(6) Identification of the contact(s) to notify for activation of the response resources identified in paragraph (d)(6) of this section for the vessel's area of operation.

(f) *Training procedures.* This section must address the training procedures and programs of the vessel owner or operator to meet the requirements of § 155.1055.

(g) *Drill procedures.* This section must address the drill program to be carried out by the vessel owner or operator to meet the requirements in § 155.1060.

(h) *Plan review and update procedures.* This section must address—

(1) The procedures to be followed by the vessel owner or operator to meet the requirements of § 155.1070; and

(2) The procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness;

(i) *Geographic-specific appendices for each COTP zone in which a vessel operates.* These appendices must include—

(1) Any required Federal or State notifications for the areas in which a vessel operates;

(2) Identification of the qualified individual;

(3) Identification of the oil spill removal organization and the spill management team that are identified and ensured available, through contract or other approved means, to respond to the following spill scenarios to the maximum extent practicable, including equipment and supplies to meet the requirements of § 155.1050, and trained personnel to continue operation of the equipment and staff the oil spill removal organization and spill management team identified for the first seven days of the response:

(i) Average most probable discharge;

(ii) Maximum most probable discharge; and

(ii) Worst case discharge.

(j) *Appendices for vessel-specific information.* This section must include the—

(1) List of the vessel's principal characteristics;

(2) Capacities of all cargo, fuel, lube oil, ballast, and fresh water tanks;

(3) Diagrams showing location of all tanks;

(4) General arrangement plan (can be maintained separately aboard vessel providing the plan identifies the location);

(5) Midships section plan (can be maintained separately aboard vessel providing the plan identifies the location);

(6) Cargo and fuel piping diagrams and pumping plan, as applicable (can be maintained separately aboard vessel providing the plan identifies the location);

(7) Damage stability data;

(8) Cargo and fuel stowage plan for vessel (can be maintained separately aboard vessel providing the plan identifies the location); and

(9) Information on the oil cargo and fuel aboard the vessel. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, (cargo information required by 33 CFR 154.310), or equivalent will meet this requirement (can be maintained separately aboard vessel providing the plan identifies the location). This information must include the—

(i) Name;

(ii) Description;

(iii) Physical and chemical characteristics;

(iv) Health and safety hazards; and

(v) Spill and firefighting procedures.

§ 155.1040 Requirements for unmanned tank barges.

(a) *Onboard notification checklist and emergency procedures.* This portion of the response plan is the only portion that must be maintained aboard the vessel. The remaining portion of the response plan as described in paragraphs (b)–(k) of this section (core plan) may be maintained elsewhere. The owner or operator of an unmanned tank barge subject to this section shall provide the personnel of the towing vessel, fleeting area, or facility that the barge may be moored at with the information required by this paragraph and the responsibilities that the plan indicates will be carried out by them. This information must be carried in the documentation container aboard the barge. This portion of the response plan must include—

(1) The name, address, and procedure for contacting the vessel's owner or operator on a 24-hour basis;

(2) The name and procedures for contacting a primary qualified individual and at least one alternate on a 24-hour basis;

(3) The toll-free number of the National Response Center;

(4) A list of information to be provided in the notification by the reporting personnel; and

(5) A statement of responsibilities of and actions to be taken by reporting personnel after an oil discharge or substantial threat of such discharge.

(b) *General information and introduction.* This section of the core response plan must include—

(1) A list of tank barges covered by the plan;

(2) The name, address, and procedure for contacting the barge owner or operator on a 24-hour basis;

(3) Identification of the geographic areas covered by the plan (The plan must identify COTP zones, as defined in part 3 of this title, covered by the plan. The plan must cover all areas in which the tank barges covered by the plan intend to handle, store, or transport oil, including port areas and offshore transit areas in the exclusive economic zone. A geographic-specific appendix must be included for each COTP zone identified);

(4) A table of contents and index identifying specific sections of the plan; and

(5) A record of change(s) page used to record information on plan updates or revisions.

(c) *Notification procedures.* This section of the core response plan must include—

(1) A checklist of the notifications in the order of priority and the information required for those notifications to be made by the—

(i) Towing vessel;

(ii) Vessel owner or operator; or

(iii) Qualified individual;

(2) A discussion of the notification requirements that apply in the area(s) of operation of the barges covered by the plan. This must include—

(i) The requirements of section 311 of the FWPCA (33 U.S.C. 1321); and

(ii) Any applicable State and local notification requirements. These must be included in the geographic-specific appendices;

(3) Identification of the persons to be notified of a discharge. The notifications that vary due to the location of the barge must be included in the appropriate geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by the towing vessel;

(ii) The individual(s) or organization(s) to be notified by the barge owner or operator; and

(iii) The procedures for notification of the qualified individual(s);

(4) Identification of the primary and secondary communications methods by which the notifications will be made;

(5) The information that is to be provided in the initial and any follow-up notifications. Notification information must include the—

(i) Towing vessel name;

(ii) Tank barge name and official number;

(iii) Time of the incident;

(iv) Location of the incident;

(v) Course, speed, and intended track of towing vessel;

(vi) Type of oil involved;

(vii) Nature of the incident (e.g. grounding, collision, etc.);

(viii) Estimate of oil discharged or threat of discharge;

(ix) Weather conditions on scene; and

(x) Actions taken or planned by persons on scene;

(d) *Shipboard spill mitigation procedures.* This section of the core response plan must include—

(1) Identification of procedures to be followed by the tankerman, as defined in 46 CFR 35.35–01, to mitigate or prevent any discharge or a substantial threat of such a discharge of oil resulting from operational activities associated with internal or external cargo or fuel transfers. These procedures must address personnel actions in the event of a—

(i) Transfer system leak;

(ii) Tank overflow; or

(iii) Suspected cargo tank, fuel tank, or hull leak;

(2) Procedures in the order of priority for the towing vessel or barge owner or operator to mitigate or prevent any discharge or a substantial threat of such a discharge of oil in the event of the following casualties or emergencies:

(i) Grounding or stranding;

(ii) Collision;

(iii) Explosion or fire, or both;

(iv) Hull failure; and

(v) Excessive list;

(3) Damage stability and hull stress considerations when performing onboard mitigation measures. This secion must identify—

(i) Activities in which the towing vessel crew or tankerman is trained and qualified to execute absent shore-based support or advice;

(ii) The individuals who shall be notified of casualty potentially affecting the seaworthiness of the barge; and

(iii) The information that must be provided by the towing vessel to facilitate the assessment of damage stability and stress;

(4) Location of barge plans that may be required to perform salvage, stability, and hull stress assessments. A copy of these plans must be maintained ashore by either the barge owner or operator or the vessel's recognized classification society. The response plan must indicate the location of these plans and 24-hour access procedures. The plan must identify the location of the—

(i) General arrangement plan;

(ii) Midship section plan;

(iii) Lines plan or table of offsets; and

(iv) Tank tables;

(5) The procedures for both internal and ship-to-ship transfers of cargo in an emergency;

(i) The format and content of the ship-to-ship transfer procedures must be consistent with the Ship-to-Ship Transfer Guide (Petroleum) published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF);

(ii) The procedures must identify the availability, location, and contact numbers for obtaining suitable—

(A) Fendering equipment;

(B) Transfer hoses and connection equipment;

(C) Portable pumps and ancillary equipment; and

(D) Lightering vessels;

(iii) Reference can be made to separate oil transfer procedures or a lightering plan provided that safety considerations are summarized in the response plan;

(iv) The location of all equipment and fittings carried aboard the barge to perform such transfers must be identified;

(6) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment aboard the barge;

(7) The location, crew responsibilities, and procedures for use of shipboard equipment to mitigate an oil discharge;

(e) *Shore-based response activities.* This section of the core response plan must contain—

(1) The responsibilities of the towing vessel crew and facility or fleeting area personnel to initiate and supervise a shore-based response pending the arrival of the qualified individual or other response resources identified in the response plan;

(2) The qualified individual's responsibilities and authority, including notification of the response resources identified in the plan;

(3) The procedures for coordinating the actions of the barge owner or operator with the action of the predesignated Federal OSC responsible for monitoring or directing those actions;

(4) The oil spill removal organization structure that will manage the barge owner or operator's response actions including—

(i) Command and control;

(ii) Public information;

(iii) Safety;

(iv) Liaison with government agencies;

(v) Spill Operations;

(vi) Planning;

(vii) Logistics support; and

(viii) Finance;

(5) Identification of the oil spill removal organization and spill management team available, through contract or other approved means, to respond to the spill scenarios listed below. This must include both the equipment and supplies necessary to meet the requirements of § 155.1050, and the trained personnel necessary to sustain operation of the equipment and staff the oil spill removal organization and spill management team for the first seven days of the response to an:

(i) Average most probable discharge;

(ii) Maximum most probable discharge; and

(iii) Worst case discharge to the maximum extent practicable.

(6) The information required under paragraph (e)(5) of this section must also be separately identified in the applicable geographic-specific appendix for each COTP zone in which the barge will handle, store, or transport oil as cargo.

(f) *List of contacts.* This section of the core response plan must contain information on 24-hour contact of key individuals or organizations. If more appropriate, this information may be in a geographic-specific appendix and referenced in this section. The following information must be included—

(1) A list of contacts for the barge owner, operator, and the applicable charterer;

(2) Primary and alternate individual(s) for the barge's area(s) of operation, located in the United States, with full authority to act as the qualified individual;

(3) Other applicable insurance representatives or surveyors for the barge's area(s) of operation; and

(4) Contact(s) to notify for activation of the response resources identified in paragraph (e)(5) of this section for the barge's area(s) of operation.

(g) *Training procedures.* This section of the core response plan must address the training procedures and programs of the barge owner or operator to meet the requirements in § 155.1055.

(h) *Drill procedures.* This section of the core response plan must address the drill program carried out by the barge owner or operator to meet the requirements in § 155.1060.

(i) *Plan review and update procedures.* This section of the core response plan must address—

(1) The procedures to be followed by the barge owner or operator to meet the requirements of § 155.1070; and

(2) The procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(j) *Geographic-specific appendices for each COTP zone in which the tank barge will operate.* These appendices in the core response plan must include—

(1) Any required Federal or State notifications for the areas in which the barge operates;

(2) Identification of the qualified individual(s); and

(3) Identification of the oil spill removal organization and spill management team available, through contract or other approved means, to respond to the spill scenarios listed below. This must include both the equipment and supplies necessary to meet the requirements of § 155.1050, and the trained personnel necessary to sustain operation of the equipment and staff the oil spill removal organization and spill management team for the first seven days of the response for an:

(i) Average most probable discharge;

(ii) Maximum most probable discharge; and

(iii) Worst case discharge to the maximum extent practicable.

(k) *Appendices for barge-specific information.* Because many of the tank barges covered by a core response plan

may be of the same design, this information does not need to repeated provided the plan identifies the tank barges to which the same information would apply. The information must be part of the core response plan unless specifically noted. This section must include the following barge-specific information:

(1) For each tank barge covered by the plan, identification of the total volumes of oil cargo that would be involved in the—

(i) Average most probable discharge;

(ii) Maximum most probable discharge; and

(iii) Worst case discharge;

(2) Capacities of all cargo, fuel, lube oil, and ballast tanks;

(3) Diagrams showing location of all tanks aboard barge;

(4) General arrangement plan (can be maintained separately providing that the location is identified);

(5) Midships section plan (can be maintained separately providing that the location is identified);

(6) Cargo and fuel piping diagrams and pumping plan (can be maintained separately providing that the location is identified);

(7) Damage stability data;

(8) Cargo and fuel stowage plan for barge (can be maintained separately providing that the location is identified); and

(9) Information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the oil cargo and fuel aboard the barge. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, cargo information required by 33 CFR 154.310, or equivalent will meet this requirement and can be maintained separately.

§ 155.1045 Requirements for vessels carrying oil as a secondary cargo.

(a) For vessels that transfer a portion of their fuel as cargo, 50% of the fuel capacity of the vessel in addition to the volume of any oil cargo tank is assumed to be the cargo volume for determining response plan requirements.

(b) *General information and introduction.* This section of the response plan must include—

(1) The vessel's name, country of registry, and official number;

(2) The name, address, and procedures for contacting the vessel's owner or operator on a 24-hour basis;

(3) Identification of the geographic areas covered by the plan. The plan must identify the COTP zones that it covers, as defined in 33 CFR part 3. The plan must cover all areas in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas within the exclusive economic zone. A geographic-specific appendix must be included for each COTP zone identified if the vessel operates in more than one zone.

(4) A table of contents and index identifying specific sections of the plan;

(5) A record of change(s) page used to record information on plan updates or revisions.

(c) *Notification procedures.* This section of the response plan must include—

(1) A checklist of all notifications in the order of priority to be made by shipboard or shore-based personnel and the information required for those notifications.

(2) A discussion of the notification requirements that apply in the vessel's area of operation. This must include—

(i) The requirements of MARPOL 73/78 and the FWPCA (33 U.S.C. 1321) as amended; and

(ii) Any applicable State or local notification requirements. These must be included in the geographic-specific appendix;

(3) Identification of the person(s) or organization(s) to be notified of a discharge or substantial threat of discharge of oil from the vessel. If notifications vary due to vessel location they must be included in a geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by shipboard personnel;

(ii) The individual(s) or organization(s) to be notified by shore-based personnel; and

(iii) The procedures for notifying the qualified individual(s);

(4) Identification of the primary and secondary communication methods by which the notifications will be made;

(5) The information to be provided in the initial and any follow-up notifications. Notification information must include that identified in IMO Resolution A648(16) covering "General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollution." The initial notification must include—

(i) Vessel name, country of registry, and official number;

(ii) Date and time of the incident;

(iii) Location of the incident;

(iv) Course, speed, and intended track of vessel;

(v) Type of oil involved;

(vi) Nature of the incident (e.g. grounding, collision, etc.);

(vii) Estimate of oil discharged or threat of discharge;

(viii) Weather conditions on scene; and

(ix) Actions taken or planned by persons on scene.

(d) *Shipboard spill mitigation procedures.* This section of the response plan must identify the total volumes of oil cargo that would be involved in the maximum most probable discharge and the worst case discharge, and meet the applicable requirements of this paragraph.

(1) For vessels carrying 100 barrels or less of oil as cargo, the plan must include a basic emergency action checklist for vessel personnel including notification and actions to be taken to prevent or mitigate any discharge or substantial threat of such a discharge of oil from the vessel;

(2) For vessels carrying over 100, but less than 1,000 barrels of oil as cargo, the plan must include—

(i) General information on actions to be taken by vessel personnel to prevent or mitigate any discharge of oil or substantial threat of such a discharge from the vessel due to operational activities or casualties;

(ii) General information on damage control procedures to be followed by vessel personnel;

(iii) General information on procedures for internal or external transfer of oil cargo in an emergency; and

(iv) Procedures for use of any equipment carried aboard the vessel for spill mitigation;

(3) For vessels carrying from 1,000 to 5,000 barrels of oil as cargo, the plan must include—

(i) Detailed information on actions to be taken by vessel personnel to prevent or mitigate any discharge or substantial threat of such a discharge of oil from the vessel due to operational activities or casualties;

(ii) Detailed information on damage control procedures to be followed by vessel personnel;

(iii) Detailed procedures for internal or external transfer of oil cargo in an emergency; and

(iv) Procedures for use of any equipment carried aboard the vessel for spill mitigation;

(4) For vessels carrying over 5,000 barrels of oil as a secondary cargo, the plan must provide the information required by § 155.1035 for shipboard spill mitigation procedures.

(e) *Shore-based response activities.* This section of the response plan must include the identification of—

(1) Responsibilities and actions to be taken by vessel personnel to initiate and supervise shore-based response pending the arrival of the qualified individual;

(2) The qualified individual's responsibilities and authority, including notification of the oil spill removal organization(s) identified in the plan;

(3) The procedures for coordinating the actions of the vessel owner or operator's with the actions of the predesignated Federal OSC responsible for monitoring or directing those actions;

(4) The spill management team to be used by the vessel owner or operator to manage response plan implementation; and

(5) Oil spill removal organization(s) available to respond to an oil discharge in the vessel's area of operation. A response organization may not be identified in the plan unless the response organization has provided written consent to being identified in the plan as an available resource.

(f) *List of contacts.* This section of the response plan must contain information on contacting key individuals or organizations on a 24-hour basis. If more appropriate, this information may be in a geographic-specific appendix and referenced in this section. The following information must be included—

(1) A list of contacts for the vessel owner, operator, and if applicable, charterer;

(2) Primary and alternate individual(s), located in the United States, with full authority to act as the qualified individual;

(3) Identification of the vessel's local agent(s), if applicable, for the vessel's area of operation;

(4) Identification of applicable insurance representatives or surveyors for the vessel's area of operation; and

(5) Identification of the contact(s) to notify for activation of the oil spill removal organization(s) identified in paragraph (e)(4) of this section for the vessel's area of operation.

(g) *Training procedures.* This section of the response plan must address the training procedures and programs of the vessel owner or operator. The vessel owner or operator shall ensure that—

(1) All personnel with responsibilities under the plan receive training in their assignments and refresher training as necessary, and participate in any drills required under paragraph (h) of this section;

(2) Records of this training are maintained aboard the vessel.

(h) *Drill procedures.* This section of the response plan must address the drill program carried out by the vessel owner or operator to evaluate the ability of vessel and shore-based personnel to perform their identified functions in the plan. The required drill frequency for each category of vessel is as follows:

(1) For vessels carrying 100 barrels or less of oil as cargo—

(i) Vessel crew's onboard spill mitigation procedures and qualified individual notification drills must be conducted annually; and

(ii) Shore-based oil spill removal organization drills must be conducted biennially;

(2) For vessels carrying over 100 barrels up to 5,000 barrels of oil as cargo—

(i) Vessel crew's onboard emergency procedures and qualified individual notification drills must be conducted quarterly; and

(ii) Shore-based oil spill removal organization drills must be conducted annually;

(3) Vessels carrying over 5,000 barrels of oil as cargo must meet the drill requirements of § 155.1060.

(i) *Plan review and update procedures.*

(1) The owner or operator of a vessel covered by this section shall resubmit the plan to the U.S. Coast Guard for approval—

(i) Whenever there is a change in the cargo capacity or layout of the vessel;

(ii) Whenever there is a change in the vessel's configuration affecting the overall capability of the vessel; or

(iii) Within five years of the date of U.S. Coast Guard approval;

(2) The owner or operator of a vessel covered by this section shall notify the U.S. Coast Guard and other plan holders, and provide updated information as appropriate when changes occur in any of the following:

(i) Cargo systems;

(ii) Operating area;

(iii) Qualified individual;

(iv) Identified response resources;

(v) Emergency response procedure; and

(vi) Nature of vessel's operations.

(j) *Geographic-specific appendices for each COTP zone in which the vessel will operate.* This section must include—

(1) Any required Federal or State notifications for the area that the vessel will operate;

(2) Identification of the qualified individual; and

(3) A list of response resources identified in paragraph (e)(4) of this section for the vessel's area of operation.

§ 155.1050 Response plan development and evaluation criteria.

(a) The following criteria must be used to evaluate the operability of response resources identified in the response plan for the specified operating environment:

(1) Table 1 of appendix B of this part.

(i) The criteria in Table 1 of appendix B of this part are to be used solely for identification of appropriate equipment in a response plan.

(ii) These criteria only reflect conditions that would limit the use of certain mechanical response equipment and are not conditions that would limit response actions or affect normal vessel operations.

(2) Limitations that are identified in the Area Contingency Plans for the COTP zones in which the vessel operates, including—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges; and

(iv) Weather-related visibility.

(3) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be identified in the applicable Area Contingency Plan. Reclassifications may be to—

(i) A more stringent operating environment if the prevailing wave conditions exceed the significant wave height criteria during more than 35 percent of the year; or

(ii) A less stringent operating environment if the prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment during more than 35 percent of the year.

(b) Response equipment must—

(1) Meet or exceed the operating criteria listed in Table 1 of appendix B of this part; and

(2) Function in the applicable operating environment.

(c) The response plan must identify and ensure the availability of, through contract or other approved means, the response resources that will respond to the vessel's average most probable discharge.

(1) For a vessel that carries oil as its primary cargo, the response resources must include—

(i) Sufficient containment boom and the means of deployment, at or near the site of oil transfer operations; and

(ii) Oil recovery devices and recovered oil storage capacity capable of being at the transfer area within two hours of the detection of a spill during transfer operations involving vessels that carry oil as their primary cargo.

(2) For areas where vessel-to-vessel lightering is being carried out, multiple vessel transfer operations can be carried out without additional equipment being available.

(3) The required response resources may be contracted from a facility involved in the oil transfer operation.

(d) The response plan must identify and ensure the availability of the response resources, through contract or other approved means, to respond to a discharge up to the vessel's maximum most probable discharge volume.

(1) These resources must be prepositioned such that they can arrive at the scene of a discharge within—

(i) 12 hours of the discovery of an oil discharge in higher volume port areas and the Great Lakes;

(ii) 24 hours in all river, inland, nearshore and offshore areas; and

(iii) 24 hours plus travel time beyond 50 miles from shore for open ocean areas.

(2) The response resources include sufficient containment boom, oil recovery devices, and storage capacity for any recovery of up to the maximum most probable discharge planning volume.

(3) The response resources must be appropriate for the group(s) of oil carried.

(4) The location of storage, make, model, and effective daily recovery rate of each oil recovery device that is identified for plan credit must be included.

(5) The response resources identified for responding to up to a maximum most probable discharge must always be prepositioned in the area. These resources may not be mobilized to respond to a spill outside the area without the approval of the COTP.

(e) The response plan must identify and ensure the availability of, through contract or other approved means, resources necessary to respond to the worst case discharge volume of the oil cargo to the maximum extent practicable.

(1) The location of these resources must be suitable to meet the response times identified for the applicable geographic area(s) of operation and response tier.

(2) The response resources must be appropriate for—

(i) The capacity of the vessel;

(ii) Group(s) of oil carried as cargo; and

(iii) The geographic area(s) of vessel operation.

(3) The resources must include sufficient boom, oil recovery devices, and storage capacity to recover the planning volumes.

(4) The storage location, make, model, and effective daily recovery rate of each oil recovery device that is identified for plan credit must be included.

(5) The guidelines in appendix B to part 155 of this chapter must be used for calculating the quantity of response resources required to respond at each tier to the worst case discharge to the maximum extent practicable.

(f) Response equipment identified in a response plan must be capable of arriving on scene within the times specified in this paragraph for the applicable response tier in a higher volume port area, Great Lakes, and in other areas. Response times for these tiers from the time of discovery of a discharge are:

	Tier 1	Tier 2	Tier 3
Higher volume port area (except Prince William Sound which is covered by § 155.1135).	12 hrs.....	36 hrs.....	60 hrs.
Great Lakes	12 hrs.....	36 hrs.....	60 hrs.
All other river, inland nearshore, and offshore areas.	24 hrs.....	48 hrs.....	72 hrs.
Open Ocean (plus travel time beyond 50 miles from shore).	24 hrs+..	48 hrs+..	72 hrs+.

(g) The following areas are designated as higher volume port areas. These areas include any water area within 50 nautical miles seaward of the entrance to the specified port:

(1) Boston, MA.

(2) New York, NY.

(3) Delaware Bay and River.

(4) St. Croix, VI.

(5) Pascagoula, MS.

(6) Mississippi River from Southwest Pass, LA to Baton Rouge, LA.

(7) Lake Charles, LA.

(8) Sabine-Neches River, TX.

(9) Galveston Bay and Houston Ship Channel, TX.

(10) Corpus Christi, TX.

(11) Los Angeles/Long Beach Harbor, CA.

(12) San Francisco Bay and Sacramento River, CA.

(13) Straits of Juan De Fuca and Puget Sound, WA.

(14) Prince William Sound, AK.

(h) For the purposes of arranging for response resources through contract or other approved means, response equipment identified for Tier 1 plan credit must be capable of being mobilized and en route to the scene of a discharge within two hours of notification.

(1) The notification procedures identified in the plan must provide for notification and authorization of mobilization of identified Tier 1 response resources—

(i) Either directly or through the qualified individual; and

(ii) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(i) Response resources identified for Tier 2 and Tier 3 plan credit must be notified and mobilized as necessary to arrive on scene within the time specified for the applicable tier.

(j) The response plan for a vessel that carries Groups 2 or 3 persistent oils as a primary cargo and operates in the offshore or open ocean environments must identify and ensure the availability of, through contract or other approved means, resources to apply dispersants appropriate for the type of oil carried to treat the volume of vessel's single largest cargo tank. These resources must be capable of being on-scene within 24 hours of a discharge. Note: Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable Area Contingency Plan.

(k) Response plans must identify and ensure the availability of, through contract or other approved means, the following resources—

(1) A salvage company with expertise and equipment; and

(2) Private vessel with firefighting capability that will respond to casualties in the area(s) in which the vessel will operate.

(l) Response plans must identify and ensure the availability of, through contract or other approved means, resources required by §§ 155.1035(c)(6)(ii) and 155.1040(d)(5)(ii).

(1) These resources must include—

(i) Fendering equipment;

(ii) Transfer hoses and connection equipment; and

(iii) Portable pumps and ancillary equipment.

(2) These resources must be capable of reaching the locations in which the vessel operates within the stated times following notification:

(i) Inland, nearshore, and Great Lakes waters—12 hours.

(ii) Offshore waters—18 hours.

(iii) Open ocean waters—36 hours.

(m) The response plan must identify and ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations.

(1) Until March 1, 1998, the response resources must include the quantities of boom specified in Table 2 of Appendix B of this part, based on the areas in which the vessel operates.

(2) After March 1, 1998, the shoreline protection resources must be those identified in the appropriate Area Contingency Plan.

(n) For a vessel operating in offshore, nearshore, inland, or river areas the response plan must identify and ensure the availability of, through contract or other approved means, an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified oil to be planned for in shoreline cleanup operations.

(1) Until March 1, 1998, the shoreline cleanup resources required must be determined as described in appendix B of this part. For a vessel operating in the open ocean area, the response plan must identify an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified oil to be planned for in shoreline cleanup operations, but there is no requirement to contract for those resources in advance.

(2) After March 1, 1998, the applicable shoreline cleanup resources must be those identified in the appropriate Area Contingency Plan.

(o) Appendix B of this part describes the procedures to determine the maximum extent practicable quantity of resources that must be identified and ensured available, through contract or other approved means, for each response tier. Included in appendix B of this part procedure is a cap that recognizes the practical and technical limits of response capabilities that an individual vessel owner or operator can contract for in advance. Table 6 in appendix B lists the caps that will apply in March 1993, March 1998, and March 2003. Depending on the quantity and type of oil carried as cargo and vessel geographic area of operations, the resource capability caps in this table may be reached.

§ 155.1055 Training.

(a) A response plan submitted to meet the requirements of §§ 155.1035 and 155.1040 must identify the training to be provided to each individual with responsibilities under the plan. The training program must differentiate between that provided to vessel personnel and that provided to shore-based personnel.

(b) A vessel owner or operator shall ensure that records sufficient to document this training are maintained and available for inspection by the U.S. Coast Guard.

(1) Records for vessel personnel must be maintained aboard the vessel.

(2) Records for shore-based personnel must be maintained either by the qualified individual or at a U.S. location of the oil spill removal organization identified in the plan.

(c) Nothing in this section relieves the vessel owner or operator from the responsibility to ensure that all shore-based response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120.

§ 155.1060 Drills.

(a) A vessel owner or operator required by §§ 155.1035 and 155.1040 to have a response plan shall conduct drills as necessary to ensure that the plan will function in an emergency. The drills must be both announced and unannounced. The response plan submitted to meet the requirements of this subpart must identify the planned drill program. The following are the required drill frequencies for vessels covered by this section:

(1) Manned vessel onboard emergency procedures and qualified individual notification drills must be conducted monthly.

(2) Unmanned barge emergency actions by the towing vessel crew and notification of the qualified individual drills must be conducted quarterly.

(3) Shore-based spill management team tabletop drills must be conducted yearly.

(4) Oil Spill removal organization field equipment deploying drills must be conducted yearly.

(b) Drills may be designed by the vessel owner or operator to exercise either components of or the entire response plan. The vessel owner or operator shall conduct a drill that exercises the entire plan at least once every three years.

(c) The vessel owner or operator shall ensure that records of drills are maintained in accordance with this paragraph.

(1) All drills conducted aboard the vessel must be documented in the ship's log.

(2) Records of any off-vessel drills of the response organization and resources identified in the response plan must be maintained by the qualified individual designated in the response plan.

(3) Records must be maintained for three years following completion of the drills.

(d) A vessel owner or operator shall participate in any unannounced drills conducted by the applicable COTP. During these drills, the oil spill removal organizational and spill management team identified in the vessel's response plan shall be activated to the extent required by the COTP.

(e) The requirements in paragraphs (a)(3) and (a)(4) of this section are met if the oil spill removal organization identified in the response plan are drilled during the period required to conduct such drills. The qualified individual shall maintain records of these drills and make them available to the U.S. Coast Guard.

§ 155.1065 Submission and approval procedures.

(a) An owner or operator of a vessel to which this subpart applies shall submit two English language copies of a vessel response plan meeting the requirements of §§ 155.1035, 155.1040, or 155.1045, as applicable, to the U.S. Coast Guard for review and approval.

(b) If the U.S. Coast Guard determines that the plan meets all requirements of this subpart, the U.S. Coast Guard will notify the vessel owner or operator and return one copy of the approved plan along with an approval letter. The plan will be valid for a period of up to five years from the date of approval.

(c) If the U.S. Coast Guard reviews the plan and determines that it does not meet all of the requirements, the U.S. Coast Guard will return one copy to the vessel owner or operator along with an explanation of the response plan's deficiencies. A revised plan must be resubmitted to the U.S. Coast Guard within 30 days of receipt of the letter describing the deficiencies.

(d) Copies of an approved response plan must be available as follows:

(1) The vessel owner or operator shall ensure that one English language copy of the approved response plan and the U.S. Coast Guard approval letter are maintained aboard the vessel. If applicable, an additional copy in the language understood by crew members with responsibilities under the plan must be carried.

(2) The vessel owner or operator and each person identified as a qualified individual in the plan shall maintain a copy of the plan.

§ 155.1070 Plan revision and amendment procedures.

(a) A vessel response plan must be reviewed annually by the owner or operator.

(1) This review must occur within one month of the anniversary date of U.S. Coast Guard approval of the plan.

(2) The owner or operator shall submit any required amendments to the U.S. Coast Guard for information or approval. If no changes are required, the owner or operator shall send a letter to the U.S. Coast Guard indicating that the plan remains valid with no changes. A

copy of this letter must be included in the front of each copy of the response plan and indicated in the record of changes page.

(3) Any required changes must be entered in the plan and noted on the record of changes page.

(b) Revisions or amendments to an approved response plan must be submitted for approval by the vessel's owner or operator whenever there is—

(1) A change in the vessel's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A vessel may not operate in an area not covered in a previously approved plan unless the revised plan is approved or interim operating approval is received under § 155.1025;

(2) A change in the vessel's confirguration that significantly affects the information included in the response plan;

(3) A change in the type of oil cargo carried aboard (oil group) that affects the required response resources;

(4) A change in the name(s) and/or capabilities of the oil spill removal organization required by § 155.1050;

(5) A change in the vessel's emergency response procedures;

(6) Any other changes that significantly affect the implementation of the plan; or

(7) Five years from the date of U.S. Coast Guard approval.

(c) The U.S. Coast Guard may require a vessel owner or operator to revise a response plan at any time as a result of a compliance inspection if it is determined that the response plan does not meet the requirements of this subpart. The U.S. Coast Guard will notify the vessel owner or operator in writing of any deficiencies.

(1) Deficiencies involving the identification of a qualified individual or response resources must be corrected within three days.

(2) All other deficiences must be corrected within 30 days of receipt of the U.S. Coast Guard notice or the plan will be declared invalid and any further storage, transfer, or handling of oil in areas subject to the jurisdiction of the United States will be in violation of section 311(j)(5)(E) of the FWPCA.

(d) A vessel owner or operator who disagrees with a deficiency determination may submit a request for reconsideration within 7 days from the date of receipt of the U.S. Coast Guard notice. After considering all relevant material presented, the U.S. Coast Guard will notify the vessel owner or operator of the final decision.

(1) Unless the vessel owner or operator petitions for a review of the U.S. Coast Guard decision, the vessel's owner or operator will have 30 days from the date of the U.S. Coast Guard final determination to comply with the notice.

(2) If the vessel owner or operator petitions the District Commander, the effective date of the U.S. Coast Guard notice may be delayed pending a decision by the District Commander. Petitions to the District Commander must be submitted in writing, via the U.S. Coast Guard official who issued the requirement to amend the response plan, within five days of receipt of the notice.

(e) Except as required in paragraph (b) of this section, amendments to personnel and telephone number lists included in the response plan do not require prior U.S. Coast Guard approval. The U.S. Coast Guard and all other holders of the response plan shall be advised of the revisions and provided a copy of the revisions as they occur.

Subpart E—Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska

§ 155.1110 Purpose and applicability.

(a) This subpart establishes oil spill response planning requirements for an owner or operator of a vessel carrying oil in bulk as cargo operating in Prince William Sound, Alaska, in addition to the requirements of subpart D of this part. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process, they are not performance standards.

(b) The information required in this subpart must be included in a Prince William Sound geographic-specific appendix to the vessel response plan required by subpart D of this part.

§ 155.1115 Definitions.

Except as provided in this section, the definitions in § 155.1015 apply to this subpart. As used in this subpart—

Certification of equipment means attesting that the equipment is on-site and is operable in accordance with the manufacturer's specification.

Crude oil means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

Non-crude oil means any oil other than crude oil.

Prince William Sound means all State and Federal waters within Prince William Sound, Alaska, including the approach to Hinchinbrook Entrance out to and encompassing Seal Rocks.

§ 155.1120 Operating restrictions and interim operating authorization.

The owner or operator of a vessel to which this subpart applies may not operate in Prince William Sound, Alaska, unless the requirements of this subpart as well as § 155.1025 have been met. The owner or operator of a vessel shall certify to the U.S. Coast Guard that they have identified, through an oil spill removal organization required by § 155.1125, the necessary response resources to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater, in Prince William Sound.

§ 155.1125 Additional response plan requirements.

(a) The owner or operator of a vessel shall include the requirements of this section in the Prince William Sound geographic-specific appendix required by subpart D of this part.

(1) The response plan must include identification of an oil spill removal organization that shall—

(i) Perform response activities;

(ii) Provide oil spill removal and containment training, including training in the operation of prepositioned equipment, for personnel from the following locations in Prince William Sound—

(A) Valdez;

(B) Tatitlek;

(C) Cordova;

(D) Whittier;

(E) Chenega;

(F) Armin Koering fish hatchery;

(G) Main Bay fish hatchery;

(H) Wally Norenberg fish hatchery;

(I) Cannery Creek fish hatchery;

(J) Solomon Gulch fish hatchery; and

(K) Other locations in Prince William Sound, to be determined by the COTP;

(iii) Consist of sufficient numbers of trained personnel to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater; and

(iv) Address the responsibilities required in § 155.1035(d)(5).

(2) The response plan must include drill procedures that must—

(i) Provide two drills of the oil spill removal organization each year that ensure preposition equipment and trained personnel required under this subpart perform effectively;

(ii) Provide for both announced and unannounced drills; and

(iii) Provide for drills that test either the entire appendix or individual components.

(3) The response plan must identify a testing, inspection, and certification program for the prepositioned reponse equipment required in § 155.1130 that must provide for—

(i) Annual testing and equipment inspection in accordance with the manufacturer's recommended procedures, to include—

(A) Start-up and running under load all electrical motors, pumps, power packs, air compressors, internal combustion engines, and oil recovery devices; and

(B) Removal of no less than one-third of required boom from storage;

(ii) Records of equipment tests and inspection.

(4) The response plan must identify and give the location of the prepositioned response resources required in § 155.1130 including the make, model, and effective daily recovery rate of each oil recovery resource.

(b) The owner or operator shall submit to the COTP for approval, no later than September 30th of each calendar year, a schedule for the training and drills required by the geographic-specific appendix for Prince William Sound for the following calendar year.

(c) All records required by this section must be available for inspection by the U.S. Coast Guard and must be maintained for a period of 3 years.

§ 155.1130 Requirements for prepositioned response equipment.

Except as permitted under § 155.1140, the owner or operator of a vessel carrying oil in bulk as cargo shall provide the following prepositioned response equipment, located within Prince William Sound, in addition to that required by §§ 155.1035, 155.1040 or 155.1045:

(a) On-water recovery equipment with a minimum effective daily recovery rate of 30,000 barrels for a vessel carrying crude oil or 3,000 barrels for a vessel over 15,000 deadweight tons (DWT) carrying non-crude oil, capable of being on scene within six hours of notification of a discharge.

(b) On-water storage capacity of 100,000 barrels for recovered oily material for a vessel carrying crude oil or 5,000 barrels for a vessel over 15,000 DWT carrying non-crude oil, capable of being on scene within six hours of notification of a discharge.

(c) On-water storage capacity of 300,000 barrels for recovered oily material for a vessel carrying crude oil, capable of being on scene within 24 hours of notification of a discharge.

(d) Equipment as identified below, for the locations identified in § 155.1125(a)(1)(ii), sufficient for the protection of the environment in these locations—

(1) On-water oil recovery devices and storage equipment;

(2) Boom appropriate for the specific locations;

(3) Sufficient boats to deploy boom and sorbents;

(4) Sorbents including booms, sweeps, pads, blankets, drums and plastic bags;

(5) Personnel protective clothing and equipment;

(6) Survival equipment;

(7) First aid supplies;

(8) Buckets, shovels, and various other tools;

(9) Decontamination equipment;

(10) Shoreline cleanup equipment;

(11) Mooring equipment;

(12) Anchored buoys at appropriate locations to facilitate the positioning of defensive boom; and

(13) Other appropriate removal equipment for the protection of the environment as identified by the COTP.

(e) For each oil-laden vessel transit, two escort vessels, each fitted with skimming and onboard storage capabilities that are practicable for the oil recovery planned for a cleanup operation, as identified by the oil spill removal organization.

(f) Lightering resources required in § 155.1035(c)(6) capable of arriving on scene within 6 hours of notification of a discharge.

§ 155.1135 Response plan development and evaluation criteria.

The following response times must be used in determining the on scene arrival time in Prince William Sound, for the response resources required by § 155.1050:

	Tier 1	Tier 2	Tier 3
Prince William Sound Area	12 hrs.....	24 hrs.....	36 hrs

§ 155.1140 Special consideration for vessels contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act.

A vessel owner or operator may meet any of the requirements of this subpart by contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act. The extent to which these requirements are met by the contractual arrangement will be determined by the COTP.

§ 155.1145 Submission and approval procedures.

An appendix prepared under this subpart must be submitted and approved in accordance with § 155.1065.

§ 155.1150 Plan revision and amendment procedures.

An appendix prepared and submitted under this subpart must be revised and amended, as necessary, in accordance with § 155.1070.

Appendix B to Part 155—Guidelines for Determining and Evaluating Required Response Resources for Vessel Response Plans

1. Purpose

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subpart D of this part. These guidelines will be used by the vessel owner or operator in preparing the response plan and by the Coast Guard to review vessel response plans.

2. Equipment Operability and Readiness

2.1 All equipment identified in a response plan must be designed to operate in the conditions expected in a geographic area in which a vessel operates. These conditions vary widely based on the location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in every geographic location.

2.2 Vessels storing, handling, or transporting oil in more than one operating environment as indicated in Table 1 must identify equipment capable of successfully functioning in each operating environment. For example, vessels moving from the ocean to a river port must identify appropriate equipment designed to meet the criteria for ocean, inland, and river areas. This may be equipment that is designed to operate in all of these environments or, more likely, different equipment designed for use in each area.

2.3 When identifying equipment for response plan credit, a vessel owner or operator must consider the inherent limitations in the operability of equipment components and response systems. The criteria in Table 1 must be used for evaluating the operability in a given environment. These criteria reflect the general conditions in certain operating areas.

2.4 Table 1 lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in a geographic area must be designed to function in the same conditions. For example, boats which deploy or support skimmers or boom must be capable of being safely operated in the significant wave heights listed for the applicable operating environment.

2.5 A vessel owner or operator must refer to the applicable Area Contingency Plan to determine if ice, debris, and weather-related visibility are significant factors in evaluating the operability of equipment. The Area Contingency Plan will also identify the

average temperature ranges expected in a geographic area in which a vessel operates. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 The requirements of subpart D of this part establish response resource mobilization and response times. The location that the vessel operates farthest from the storage location of the response resources must be used to determine whether the resources can arrive on scene within the time required. A vessel owner or operator shall include the time for notification, mobilization, and travel time of resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge requirements. Tier 2 and 3 resources must be notified and mobilized as necessary to meet the requirements for arrival on scene. An on water speed of 10 knots and a land speed of 35 miles per hour is assumed unless the vessel owner or operator can demonstrate otherwise.

2.7 In identifying equipment, the vessel owner or operator shall list the storage location, quantity, and manufacturer's make and model. For oil recovery devices, the effective daily recovery rate, as determined using section 6 of this appendix, must be included. For boom, the overall boom height must be included. A vessel owner or operator is responsible for ensuring that identified boom has compatible connectors.

3. Determining Response Resources Required for the Average Most Probable Discharge

3.1 A vessel owner or operator shall ensure that sufficient response resources are available to respond to the 50 barrel average most probable discharge. The equipment must be designed to function in the operating environment at the point of oil transfer.

3.1.1 These resources must be located at or near the site of operational transfers involving vessels that carry oil in bulk as a primary cargo:

.1 Containment boom in a quantity equal to twice the length of the largest vessel involved in the transfer and a means of immediate deployment.

.2 Oil recovery devices with an effective recovery rate of 50 barrel per day or greater available at the transfer site within two hours of the detection of an oil discharge.

.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

3.1.2 A vessel that carries oil in bulk as a secondary cargo must identify sources of equipment in its areas of operation. Deployment requirements in section 3.1.1 of this appendix need not be met for these vessels.

4. Determining Response Resources Required for the Maximum Most Probable Discharge

4.1 A vessel owner or operator shall ensure that sufficient response resources are available to respond to discharges up to the maximum most probable discharge volume for that vessel. This will require resources capable of containing and collecting up to 2,500 barrels of oil. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1.

4.2 To determine the maximum most probable discharge volume to be used for planning, use the lesser of—

4.2.1 2500 barrels; or

4.2.2 10% of the total oil cargo capacity.

4.3 Oil recovery devices identified to meet the applicable maximum most probable discharge volume planning criteria must be located such that they arrive on scene within 12 hours in higher volume port areas and the Great Lakes and 24 hours in all other river, inland, nearshore, and offshore areas.

4.3.1 Because rapid control, containment, and removal of oil is critical to reduce spill impact, the effective daily recovery rate for oil recovery devices must equal 50% of the planning volume applicable for the vessel as determined in section 4.2 of this appendix. The effective daily recovery rate for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.4 In addition to oil recovery capacity, the plan must identify and ensure the availability of, through contract or other approved means, sufficient boom available within the required response times for oil collection and containment and for protection of shoreline areas. While the regulation does not set required quantities of boom, the response plan must identify and ensure the availability of the quantity of boom available through contract or other approved means.

4.5 The plan must indicate the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery rate must be derated to the limits of the available storage capacity.

4.6 The following is an example of a maximum most probable discharge volume planning calculation for equipment identification in a higher volume port area:

The vessel's capacity is 10,000 barrels, thus the planning volume is 10 percent or 1,000 barrels. The effective daily recovery rate must be 50% of this, or 500 barrels per day. The ability of oil recovery devices to meet this capacity will be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on scene must equal twice the daily recovery rate as indicated in section 9 of this appendix, or 1000 barrels per day. This is the information the vessel owner or operator would use to identify and ensure the availability of, through contract or other approved means, the required response resources. The vessel owner would also need to identify how much boom was available for use.

5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A vessel owner or operator shall specify the availability of sufficient response resources to respond to the worst case discharge of oil cargo to the maximum extent practicable. Section 7 describes the method to determine the required response resources.

5.2 Oil spill recovery devices identified to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the time specified for the applicable response tier listed in § 155.1050.

5.3 The effective daily recovery rate for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A vessel owner or operator shall identify the storage locations of all equipment that must be used to fulfill the requirements for each tier. The owner or operator of a vessel whose required daily recovery capacity exceeds the applicable contracting caps in Table 6 shall identify sources of additional equipment, their locations, and the arrangements made to obtain this equipment during a response. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources and quantities of equipment that a vessel owner or operator has considered in their planning.

5.4 In addition to oil spill recovery devices, a vessel owner or operator shall identify and ensure the availability of, through contract or other approved means, sufficient boom that can arrive on scene within the required response times for oil containment and collection and for protection of shoreline areas. Table 2 lists the minimum quantities of boom for shoreline protection that a vessel owner or operator shall identify and ensure the availability of, through contract or other approved means.

5.5 A vessel owner or operator shall identify the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery rate must be derated to the limits of the available storage capacity.

6. Determining Effective Daily Recovery Rate for Oil Recovery Devices

6.1 Oil recovery devices identified by a vessel owner or operator must be identified by manufacturer, model, and effective daily recovery rate. These rates must be used to determine whether there is sufficient capacity to meet the applicable planning criteria for the average most probable discharge; maximum most probable discharge; and worst case discharge to the maximum extent practicable.

6.2 For the purposes of determining the effective daily recovery rate of oil recovery devices, the following method will be used. This method considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The Coast Guard may assign a lower efficiency factor to equipment listed in a response plan if it determines that such a reduction is warranted.

6.2.1 The following formula must be used to calculate the effective daily recovery rate:

$R = T \times 24 \text{ hours} \times E$

R—Effective daily recovery rate

T—Throughput rate in barrels per hour (nameplate capacity)

E—20% Efficiency factor (or lower factor as determined by Coast Guard)

6.2.2 For those devices in which the pump limits the throughput of liquid, throughput

rate will be calculated using the pump capacity.

6.2.3 For belt or mop type devices, the throughput rate will be calculated using the speed of the belt or mop; surface area of the belt or mop in contact with the water surface; and the oil encounter rate. For purposes of this calculation, the assumed thickness of oil will be 1/4 inch.

6.3 As an alternative to 6.2, a vessel owner or operator may submit adequate evidence that a different effective daily recovery rate should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in spill conditions or tests using ASTM Standard F 631–80, F 808–83 (1988), or an equivalent test approved by the Coast Gaurd.

6.3.1 The following formula must be used to calculate the effective daily recovery rate under this alternative:

$R = D \times U$

R—Effective daily recovery rate

D—Average Oil Recovery Rate in barrels per hour (Item 26 in F 808–83; Item 13.1.15 in F 631–80; or actual performance data)

U—Hours per day that a vessel owner or operator can document capability to operate equipment under spill conditions. Ten hours per day must be used unless a vessel owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.4 A vessel owner or operator submitting a response plan shall provide data that supports the effective daily recovery rates for the oil recovery devices listed. The following is an example of these calculations:

A weir skimmer identified in a response plan has a manufacturer's rated throughput at the pump of 267 gallons per minute (gpm).

267 gpm = 381 barrels per hour

$R = 381 \times 24 \times .2 = 1829$ barrels per day

After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The vessel owner or operator identifies sufficient resources available to support operations 12 hours per day.

220 gpm = 314 barrels per hour

$R = 314 \times 12 = 3768$ barrels per day

A vessel owner or operator will be able to use the higher rate if sufficient temporary oil storage capacity is available.

7. Calculating the Worst Case Discharge Planning Volumes

7.1 A vessel owner or operator shall plan for a response to a vessel's worst case discharge volume of oil cargo. The planning for on-water recovery must take into account a loss of some oil to the environment due to evaporative and natural dissipation, potential increases in volume due to emulsification, and the potential for deposit of some oil on the shoreline.

7.2 The following procedures must be used to calculate the planning volume used by a vessel owner or operator for determining required on water recovery capacity:

7.2.1 The following must be determined: the total volume of oil cargo carried, the appropriate cargo group for the type of oil carried [persistent (Groups 2, 3, 4) or nonpersistent (Group 1)], and the geographic area(s) in which the vessel operates. For vessels carrying mixed cargoes from different oil groups, each group must be calculated separately. This information is to be used with Table 3 to determine the percentages of the total cargo volume to be used for removal capacity planning. This table divides the cargo volume into three categories: oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume must be adjusted using the appropriate emulsification factor found in Table 4.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in Table 5 from the appropriate operating area and response tier to determine the total on water oil recovery capacity in barrels per day that must be identified or contracted for to arrive on-scene within the applicable time for each response tier. Three tiers are specified. For higher volume port areas and the Great Lakes, the contracted tiers of resources must be located such that they can arrive on-scene within 12, 36, and 60 hours of the discovery of an oil discharge. For all other river, inland, nearshore, and offshore areas, these tiers are 24, 48, and 72 hours. For the open ocean area, the tiers are 24, 48, and 72 hours with an additional travel time allowance of one hour for every additional 10 nautical miles beyond 50 miles from shore.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable geographic area. The equipment must be capable of sustaining operations for the time period specified in Table 3. A vessel owner or operator shall identify and ensure the availability of, through contract or other approved means, sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 6, then a vessel owner or operator shall contract only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in section 6.3 of this appendix. The owner or operator of a vessel whose planning volume exceeds the cap in 1993 must make arrangements for additional capacity to be under contract by 1998 or 2003, as appropriate. For a vessel that carries multiple groups of oil, the required effective daily recovery capacity for each group is calculated before applying the cap.

7.3 The following procedures must be used to calculate the planning volume for identifying shoreline cleanup capacity:

7.3.1 The following must be determined: The total volume of oil cargo carried; the appropriate cargo group for the type of oil carried [persistent (Groups 2, 3, 4) or non-persistent (Group 1)]; and the geographic area(s) in which the vessel operates. For a vessel carrying cargoes from different oil groups, each group must be calculated separately. Using this information, Table 3 must be used to determine the percentages of the total cargo volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2.

7.3.3 The resulting volume will be used to identify response resources necessary for shoreline cleanup.

7.4 The following is an example of the procedure described above:

A vessel with a 100,000 barrel capacity for #6 oil (specific gravity .96) will move from a higher volume port area to another area. The vessel's route will be 70 miles from shore.

Cargo carried: 100,000 bbls. Group 4 oil.
Emulsification factor: 1.8.
Areas transited: Inland, Nearshore, Offshore, Open ocean.
Planned % on-water recovery:
- Inland 50%
- Nearshore 50%
- Offshore 40%
- Open ocean 20%.

Planned % oil onshore recovery:
- Inland 70%
- Nearshore 70%
- Offshore 30%
- Open ocean 30%.

Planning volumes for on water recovery:
- Inland $100{,}000 \times .5 \times 1.8 = 90{,}000$ bbls
- Nearshore $100{,}000 \times .5 \times 1.8 = 90{,}000$ bbls
- Offshore $100{,}000 \times .4 \times 1.8 = 72{,}000$ bbls
- Open ocean $100{,}000 \times .2 \times 1.8 = 36{,}000$ bbls

Planning volumes for on shore recovery:
- Inland $100{,}000 \times .7 \times 1.8 = 126{,}000$ bbls
- Nearshore $100{,}000 \times .7 \times 1.8 = 126{,}000$ bbls
- Offshore $100{,}000 \times .3 \times 1.8 = 54{,}000$ bbls
- Open ocean $100{,}000 \times .3 \times 1.8 = 54{,}000$ bbls

The vessel owner or operator must contract with a response resource capable of managing a 126,000 barrel shoreline cleanup in those areas where the vessel comes closer than 50 miles to shore. There is no contract required for the 54,000 barrel capability required for open oceans if the vessel is operating farther than 50 miles from shore during the transit.

Determine required resources for on water recovery for each tier using mobilization factors:

	Tier 1	Tier 2	Tier 3
Inland/Nearshore 90,000 ×	.15	.25	.40
Offshore 72,000 ×	.10	.165	.21
Open ocean 36,000 ×	.06	.10	12
	equals (barrels per day)		
Inland/Nearshore	13,500	22,500	36,000
Offshore	7,200	11,880	15,120
Open ocean	2,160	3,600	4,320

Since the requirements for tiers 1 and 2 for inland and nearshore exeed the caps, the vessel owner would only need to contract for 10,000 bpd for tier 1 and 20,000 bpd for tier 2. Sources for the remaining 3,500 bpd for tier 1 and 2,500 for tier 2 would need to be identified but not contracted for.

The vessel owner or operator would also be required to identify or contract for quantities of boom identified in Table 2 for the areas that the vessel operates.

8. Determining the Availability of High-Rate Response Methods

8.1 Response plans for a vessel carrying persistent oil as a primary cargo that operates in the offshore or open ocean environments must identify and ensure the availability of, through contact or other approved means, dispersants and appropriate application equipment in those areas. These resources must be capable of being on–scene within 24 hours of a discharge. The volume of oil discharge to be used in planning for dispersant use will be the volume of the single largest cargo tank aboard the vessel.

8.2 A response plan must identify the locations of dispersant stockpiles, methods of shipping to a shoreside staging area, and appropriate aircraft or vessels to apply the dispersant and monitor its effectiveness at the scene of an oil discharge.

8.2.1 Sufficient volumes of dispersants must be available to treat the oil at the dosage rate recommended by the dispersant manufacturer. Dispersants identified in a response plan must be on the NCP Product Schedule maintained by the U.S. Environmental Protection Agency. (Some states have a list of approved dispersants and within state waters only they can be used.)

8.2.2 Dispersant application equipment identified in a response plan must be located such that it can be mobilized to shoreside staging areas to meet the time requirements in 8.1 above. Sufficient equipment capacity must be identified to treat the planning volume (largest cargo tank) within 48 hours of arrival at the staging area.

8.3 In addition to the equipment and supplies required, a vessel owner or operator shall identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable regional and area contingency plans.

8.4 Identification of the resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable Regional or Area Contingency Plan. A vessel owner or operator that operates a vessel in areas with year-round pre-approval of dispersant can reduce their required on-water recovery capacity for 1993 up to 25%. A vessel owner or operator may reduce their required on water recovery cap increase for 1998 and 2003 up to 50% by identifying non-mechanical methods.

8.5 The use of in-situ burning as a non-mechanical response method is still being studied. Because limitations and uncertainties remain for the use of this method, it may not be used to reduce required oil recovery capacity in 1993.

9. Additional Equipment Necessary to Sustain Response Operations

9.1 A vessel owner or operator is responsible for ensuring that sufficient numbers of trained personnel and boats, aerial spotting aircraft, containment boom, sorbent materials, boom anchoring materials, and other supplies are available to sustain response operations to completion. A vessel owner or operator is not required to list these resources, but shall certify their availability.

9.2 A vessel owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery rates from equipment identified in the plan. Because of the inefficiences of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery rate required on scene. This capacity may be reduced if a vessel owner or operator can demonstrate that the efficiencies of the oil recovery devices will reduce the overall volume of oily material storage requirement.

9.3 A vessel owner or operator shall ensure that their oil spill removal organization has the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable Area Contingency Plan.

TABLE 1.—RESPONSE RESOURCE OPERATING CRITERIA—OIL RECOVERY DEVICES

Operating environment	Significant wave height	Sea state
River	<1 foot	1
Inland	<3 feet	2
Great Lakes	<4 feet	2-3
Ocean	<6 feet	3-4

BOOM

Boom property	Use			
	River	Inland	Great Lakes	Ocean
Significant Wave Height	<1	<3	<4	<6
Sea State	1	2	2-3	3-4
Boom height—in. (draft plus freeboard)	10–18	18–42	18–42	>42
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength—lbs	4,500	15–20,000	15–20,000	<20,000
Skirt Fabric Tensile Strength—lbs	200	300	300	500
Skirt Fabric Tear Strength—lbs	100	100	100	125

TABLE 2.—SHORELINE PROTECTION REQUIREMENTS

Location	Boom contracted (ft.)	Availability hours		Boom identified (ft.)
		High volume port area	Other areas	
Persistent Oils				
Open Ocean				15,000
Offshore	15,000	24	48	Ref. Area Plan.
Nearshore/Inland	30,000	12	24	Ref. Area Plan.
Rivers	25,000	12	24	Ref. Area Plan.
Non-Persistent Oils				
Open Ocean				
Offshore				15,000

TABLE 2.—SHORELINE PROTECTION REQUIREMENTS—Continued

Location	Boom contracted (ft.)	Availability hours		Boom identified (ft.)
		High volume port area	Other areas	
Nearshore/Inland	10,000	12	24	Ref. Area Plan.
Rivers	15,000	12	24	Ref. Area Plan.

TABLE 3.—REMOVAL CAPACITY PLANNING TABLE

Spill location; Sustainability of on-water oil recovery—Oil group	Nearshore/inland, 4 days (percent)			River, 3 days (percent)			Open ocean, 10 days (percent)			Offshore, 6 days (percent)		
	Natural dissipation	Recovered floating oil	Oil on shore	Natural dissipation	Recovered floating oil	Oil on shore	Natural dissipation	Recovered floating oil	Oil on shore	Natural dissipation	Recovered floating oil	Oil on shore
1. Non-light persistent oils	80	20	80	10	10	10	100			95	5	
2. Light crudes and fuels	50	50	30	40	15	45	90	10		75	25	5
3. Medium crudes and fuels	30	50	50	20	15	65	75	20	5	60	40	20
4. Heavy crudes/fuels residual	10	50	70	5	20	75	50	20	30	50	40	30

TABLE 4.—EMULSIFICATION FACTORS FOR OIL CARGO GROUPS

Non-persistent oil:	
Group 1	1.0
Persistent oil:	
Group 2	2.5
Group 3	3.0
Group 4	1.8

TABLE 5.—ON WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

Area	Tier 1	Tier 2	Tier 3
River	.30	.40	.60
Inland/Nearshore	15	.25	.40
Offshore	.10	.165	.21
Ocean	.06	.10	12

Note: These mobilization factors are for total resources mobilized, not incremental resources.

TABLE 6.—RESPONSE CAPABILITY CAPS BY GEOGRAPHIC AREA

	Tier 1	Tier 2	Tier 3
March 1993:			
All except rivers	10K bbls/day	20K bbls/day	40K bbls/day.
Rivers	1,500 bbls/day	3,000 bbls/day	6,000 bbls/day.
March 1998:			
All except rivers	12.5K bbls/day	25K bbls/day	50K bbls/day.
Rivers	1,875 bbls/day	3,750 bbls/day	7,500 bbls/day.
March 2003:			
All except rivers	15K bbls/day	30K bbls/day	60K bbls/day.
Rivers	2,250 bbls/day	4,500 bbls/day	9,000 bbls/day.

Note: The caps show cumulative overall effective daily recovery rate, not incremental increases.

Dated: June 12, 1992.

J. W. Kime

Admiral, U. S. Coast Guard, Commandant.

[FR Doc. 92-14283 Filed 6-15-92; 3:30 pm]

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federal register

Friday
June 19, 1992

Part III

Department of Education

34 CFR Part 212

Even Start Family Literacy Program (Even Start); Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 212

RIN 1810–AA64

Even Start

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Even Start Family Literacy program (Even Start). Even Start is authorized by Part B of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (the Act). The National Literacy Act of 1991 contains amendments to Even Start. These final regulations amend current Even Start regulations to: (1) Reflect the statutory changes to Even Start contained in the National Literacy Act; (2) include provisions needed to govern the program when it becomes State-administered; and (3) make related changes to the migrant education component of the Even Start program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia McKee, Chief, Grants Administration Branch, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2043, Washington, DC 20202, Telephone: (202) 401–1692. Deaf and hearing impaired individuals may call (202) 732–4538 for TDD services.

For questions about the Migrant Education Even Start program, contact Howard Essl, Chief, Policy and Planning Branch, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2149, Washington, DC 20202–6135. Telephone: (202) 401–1611. Deaf and hearing impaired individuals may call (202) 732–4538 for TDD services.

SUPPLEMENTARY INFORMATION:

A. Background

On February 28, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for the Even Start program in the **Federal Register** (57 FR 7300). These amendments to the regulations reflect statutory changes to Even Start contained in the National Literacy Act of 1991 (Pub. L. 102–73). In accordance with the statutory changes, the regulations:

(1) Make community-based organizations, in cooperation with local educational agencies (LEAs), eligible to apply for grants (§§ 212.2 and 212.6);

(2) Expand eligibility for Even Start funds to include Indian tribes, tribal organizations, and the Nation's insular areas (§ 212.2);

(3) Expand the age of children eligible for Even Start to include those from birth through age 7 (§ 212.7);

(4) Provide that families that otherwise would be ineligible due to one or more participants having become ineligible under the statute may continue to participate until all family members become ineligible (§ 212.7);

(5) Revise the selection criteria for making discretionary grants to eligible entities (§ 212.21);

(6) Provide a method for applying the priorities contained in the legislative amendments to the discretionary grant selection process (§ 212.21);

(7) Specify conditions for waiving the requirement relating to the source of the local contribution of funds (§ 212.25);

(8) Contain provisions regarding State administration of the program, which will begin in fiscal year (FY) 1992 (§§ 212.30–212.34); and

(9) Make conforming changes to regulations governing the Migrant Education Even Start program (§§ 212.50–212.58).

Even Start supports AMERICA 2000, the President's strategy to help America move toward achieving the six National Education Goals. Because it integrates early childhood education and adult education by involving parents who have limited education skills in the education of their young children, Even Start helps States and localities directly address two of the National Education Goals. Goal 1 calls for all children in America to start school ready to learn. An objective of Goal 1 is for every parent to be a child's first teacher, to devote time each day to helping his or her preschool child learn, and to have access to training and support. Even Start also contributes to achieving Goal 5—that every adult American will be literate, possess the knowledge and skills necessary to compete in a global economy, and exercise the rights and responsibilities of citizenship.

These regulations are necessary to bring current regulations into conformity with legislative amendments, and to establish procedures that will govern the program when it becomes State-administered in FY 1992.

The only significant changes from the NPRM that are contained in these final regulations are the following: Several of the indirect cost provisions in the Education Department General Administrative Regulations (EDGAR) have been made applicable to the State administration and technical assistance set-aside (§ 212.5(b)(3)(vi)); the child eligibility requirements have been revised for Indian tribes, tribal organizations, and the insular areas (§ 212.7(a)(2)(ii)); a provision has been added requiring family participation in all three Even Start components—early childhood education, adult literacy, and parenting education (§ 212.7(c)); the application requirements for the insular areas have been revised (§ 212.13); the selection criterion regarding cooperative and coordination (§ 212.21(c)) has been modified to clarify that the provisions for cooperative efforts with other service providers should include provision, as needed, for the transition of children and parents out of Even Start into other appropriate programs (§ 212.21(c)(1)(iii)); provisions have been added clarifying which regulatory requirements apply to the insular areas (§ 212.23(b)(3)); and (§ 212.31(c)(1)) as proposed in the NPRM, regarding a State's treatment of a grantee's unobligated funds, has been deleted to allow maximum flexibility for the States. Minor clarifying changes and corrections also have been made.

B. Issues

State Requirements

Section 212.30(a) and (b) of the regulations requires that, in order for a State to receive funds for the first three fiscal years in which the program is State-administered, it must submit a State plan to the Secretary. State plans are needed to ensure full understanding and implementation of Even Start statutory and administrative requirements that govern the program after it converts from Federal to State administration. State plans provide a systematic means for communication between the Department and each State about those requirements and help the Department provide appropriate technical assistance to all States. The Department discourages States from filing lengthy documents.

After the three-year period, it is expected that State plans will no longer be necessary. Consequently, under § 212.30(c), which governs application procedures for the fourth and subsequent years, States are required to file only appropriate assurances with the Department.

The regulations require that States submit the reports and information as the Secretary may require (§ 212.33). The Secretary plans to develop a performance report form for Even Start that States will submit annually. The performance report would ask for information on various aspects of program operations, such as subgrant awards, services provided, numbers of children and adults served, the amount of funds spent on State administration and technical assistance, and outcomes achieved.

The regulations also contain provisions governing State procedures for awarding subgrants. Section 212.31(a)(1) of the regulations interprets section 1052(b) of the amended statute to require that States make subgrants of Federal Even Start funds in amounts of at least $75,000 each. Section 212.31 of the regulations also requires that subgrants be of sufficient size, scope, and quality to give reasonable promise of meeting the purposes of Even Start. The Secretary includes this requirement to emphasize that the $75,000 minimum, award is not a maximum, and that each subgrant award instead must be large enough to help ensure successful Even Start projects.

Transition

For continuation awards, to ensure a smooth transition and avoid overlapping Federal and State grants after July 1, 1992, when Even Start converts to a State-administered program, the beginning date of an award made by a State should be the day after the expiration of the Federal grant's budget period.

Grantees currently operating projects funded by the Department must follow the procedures for closeout in 34 CFR 80.50, which requires that, unless the grantee obtains an extension of the grant, any funds unobligated at the end of the budget period specified on the award documents must be returned to the Federal agency. Grantees are not authorized to use Even Start funds on other grants.

The Secretary is aware of problems that may arise if some LEAs have been unable to complete all approved activities within the current budget period. Therefore, the Secretary intends to extend the budget period for all current grantees for 45 days. Grantees may individually seek further extensions as necessary. An extension does not affect the amount of the original grant award. When a grantee receives an extension, closeout procedures must be followed at the end of the extension period. Also, if a grantee receives a subgrant from its State educational agency (SEA) prior to completion of that Federal grant's budget period (or an extension of that budget period), it must keep separate records for each grant.

The closeout regulations require grantees to file certain reports with the Department, including a final performance report. (34 CFR 80.50(b).) However, the Secretary will accept a copy of a grantee's application to its SEA for a continuation award as the final performance report, provided that it demonstrates that progress has been made toward meeting the project's objectives in accordance with section 1057(d) of the Act.

Indian Tribes and Tribal Organizations

Section 212.23(a)(2)(i) of the NPRM incorrectly stated that § 212.20(a)(2), regarding the review panel's evaluation of an application for a new grant, did not apply to Indian tribes and tribal organizations. That error has been corrected in these regulations. An application to the Secretary from an Indian tribe or tribal organization is evaluated by a review panel on the same basis as applications to the States from eligible entities.

In addition, there has been some confusion regarding whether the requirements in §§ 212.20(a)(3) and 212.24, regarding an applicant's contribution of funding for a portion of the total project cost for each year of a grant, apply to Indian tribes or tribal organizations. These regulations clarify that the requirement applies (§ 212.23(a)(2)). The provisions in § 212.25, regarding when the Secretary may waive the requirement concerning the source of that local contribution, also apply to Indian tribes and tribal organizations (§ 212.23(a)(2)).

The Insular Areas

The final regulations change the term "territories," used in the NPRM, to the more accurate term "insular areas." Under the statutory set-aside for certain categories of applicants, the insular areas (defined in § 212.6) will receive formula grants based on the proportion each receives of basic grant funds under Part A of Chapter 1 of Title I of the Act (the Chapter 1 LEA program). Insular area applicants may submit to the Department either a consolidated grant application or a State plan (§ 212.13). If an insular area chooses to submit a State plan, the plan must be updated or amended for the following two years, and a new State plan submitted every third year.

Applicability of General Chapter 1 Provisions

The Even Start program is contained in Part B of Chapter 1 of Title I of the Act. Several provisions in Parts E and F of Chapter 1 will affect the States in their administration of the Even Start program. Others are inapplicable to Even Start. Those that do apply to Even Start, and are directed to the States rather than the Department, are identified in §§ 212.34 and 212.57(a)(1)(ix) of the regulations.

Section 1404 of the Act (Payments for State Administration) concerns payments to the States for performance of their duties under Chapter 1. These funds may be used for administration of Even Start, if needed, in addition to the 5 percent of Even Start funds that the State is authorized to use under section 1052(b) of the Act.

Section 1432(b) of the Act (Availability of Appropriations), containing limitations on carryover of funds, does not apply to Even Start. This provision is interpreted to apply only to basic and concentration grants under the Chapter 1 LEA program that distributes funds to LEAs by formula. The Chapter 1 carryover limits help establish consistent yearly spending patterns among those LEAs that have an expectation of yearly funding. Unlike the Chapter 1 LEA program, Even Start is a discretionary program that makes funds available on a competitive basis for a project period of up to four years. Even Start applicants receiving funds thus have no legitimate expectation of continued funding beyond that period. Furthermore, under section 1057 of the Act, Even Start grantees may not receive annual continuation awards if they do not show progress toward meeting project objectives.

The "Tydings" provision in section 412(b) of the General Education Provisions Act (GEPA) (Availability of Appropriations on Academic or School Year Basis) does, however, apply to Even Start when the program is State-administered, so that Even Start funds the States receive will remain available for obligation by subgrantees during the fiscal year succeeding the fiscal year for which they are appropriated. Consequently, States may allow a subgrantee to retain unobligated funds from a State grant for the entire Tydings period. States can either reduce the amount of the future award by the carryover amount, or increase the grant award to include the carryover funds, so long as the applicant's budget reflects the total award amount.

Section 1438 of the Act (Application of General Education Provisions Act), providing that GEPA applies except for certain superseded or excepted provisions, is applicable to Even Start. Note that, because section 435 of GEPA, governing single-State applications, is inapplicable, States are not required by Federal law to conduct public hearings on their Even Start State plans. In addition, even though section 436 of GEPA, governing LEA applications to the State, is mostly inapplicable, section 1056 of the Even Start statute specifically requires eligible entities to submit applications to States containing the detailed information listed in section 1056.

Section 1451 of the Act (State Regulations), which requires, among other things, that a committee of practitioners review any proposed State rules, regulations, or policies governing the program, applies to Even Start as well. The regulations in § 212.5(b)(11) adopt the Chapter 1 provision in 34 CFR 200.70 that interprets and implements the provisions of section 1451. However, some provisions of 34 CFR 200.70 are not appropriate for Even Start and are excepted. The committee of practitioners is required to review a State's interpretation and proposed application of the statutory selection criteria, whether the State chooses to adopt the Federal regulations or to adopt its own interpretation.

Section 1453 (Assignment of Personnel) applies to the extent that Even Start personnel, who teach Even Start children through age 7, are paid entirely with Even Start funds and perform their duties in a public school setting. For this purpose, § 212.5(b)(11) of the regulations adopts the Chapter 1 provision in 34 CFR 200.39 that interprets the statutory requirements.

Applicability of Certain Education Department General Administrative Regulations

Section 212.5 of the regulations, lists those sections of part 76 of EDGAR that apply to Even Start. In addition, the Department plans to amend part 76 to include Even Start as a program covered by 34 CFR 76.102 (Definition of "State plan" for part 76), and 34 CFR 76.125 (What is the purpose of these regulations?) governing consolidated applications from insular areas.

Part 80 of EDGAR (for grants to State and local governments, the insular areas, and Indian tribes and tribal organizations) will continue to apply to Even Start when the program is State-administered. Section 212.5 has been revised to provide that part 74 of EDGAR (for grants and subgrants to nonprofit organizations) will also apply when the program is State-administered. Because part 74 expressly applies only to grants that the Department makes directly to institutions of higher education, hospitals, and nonprofit organizations, the inclusion of part 74 in § 212.5(b)'s list of applicable regulations is needed to make the provisions of part 74 applicable to Even Start subgrants that States make to nonprofit organizations.

Migrant Education Even Start Program

As proposed in the NPRM, § 212.55 would have provided for an award of up to 32 points for a project's "likelihood of success in meeting Even Start goals," while at the same time adopting § 212.21(a)(2), under which priority points would be assigned on the basis of a 40-point selection criterion. Section 212.55(d)(1) of the regulations corrects this problem by tailoring the priority point provision to a 32-point criterion.

In addition, § 212.57(a)(3) of the NPRM, as proposed, incorrectly incorporated Migrant Education program regulations regarding State rulemaking and complaint procedures (34 CFR 201.46 and 201.47). Because the Migrant Education Even Start program is administered by the Secretary, and not by the States, these provisions are not included in § 212.57 as applicable to this program.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 18 parties commented either orally or in writing on the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM is published as an appendix to these final regulations.

The appendix responds first to general comments on major issues, then to substantive issues that pertain to specific regulatory sections. Technical and other minor changes not specifically discussed above—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The Migrant Education Even Start program is also subject to these requirements. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 212

Adult education, Education, Education of disadvantaged children, Education of individuals with disabilities, Elementary and secondary education, Family, Family-centered education, Grant programs—education, Indians—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.213, Even Start program.)

Dated: June 12, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary revises part 212 of title 34 of the Code of Federal Regulations to read as follows:

PART 212—EVEN START

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Sec.

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212.26 How does the Secretary make continuation awards if there are insufficient appropriations to fund all requests fully?
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212.30 How does an SEA apply for Even Start funds?
212.31 What reqirements must an SEA meet in making subgrants?
212.32 What selection criteria does an SEA use in making new subgrants?
212.33 What reporting requirements apply to SEAs?
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Subpart E—Transition Provisions

212.40 How are grants made when responsibility for making grants to applicants transfers between the Department and the SEAs?

Subpart F—Migrant Education Even Start

212.50 What is the Migrant Education Even Start program?
212.51 Who is eligible for a grant?
212.52 Who may be served?
212.53 What applications does the Secretary consider?
212.54 How does the Secretary evaluate an application for a new grant?
212.55 What selection criteria does the Secretary use in making new grants?
212.56 What additional factors does the Secretary consider in making new grants?
212.57 What other regulations apply?
212.58 May an SEA make a subgrant to an eligible entity?

Authority: 20 U.S.C. 2741–2749, 2831, unless otherwise noted.

Subpart A—General

§ 212.1 What is the Even Start Family Literacy Program?

(a) The Even Start Family Literacy Program grants funds for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

(b) The Secretary implements the Even Start program by assisting cooperative projects that build on existing community resources to create a new range of services, integrating early childhood education and adult education for parents.

Authority: 20 U.S.C. 2741, 2744(a).

§ 212.2 Who is eligible for a grant?

(1) If section 1052(a) of the Act applies, the Secretary makes grants to—

(a) Eligible entities or consortia of eligible entities;

(2) The insular areas;

(3) Indian tribes and tribal organizations; and

(4) State educational agencies (SEAs), or a consortium of SEAs, for migrant projects under subpart F of this part.

(b) If section 1052(b) of the Act applies the Secretary makes grants to—

(1) SEAs, for subgrants to eligible entities;

(2) The insular areas;

(3) Indian tribes and tribal organizations; and

(4) SEAs, or consortium of SEAs, for migrant projects under subpart F of this part.

Authority: 20 U.S.C. 2742.

§ 212.3 What activities may the Secretary or SEAs fund?

The Secretary or each SEA, as the case may be, funds family-centered education projects that comply with section 1054 of the Act, and that includes all of the program elements required by section 1054(b) of the Act.

Authority: 20 U.S.C. 2744.

§ 212.4 What is the duration of a project?

No project operated by an eligible entity, or Indian tribe or tribal organization, may exceed four years. A grantee may reapply as a new applicant after the fourth year, for the same or a different project.

Authority: 20 U.S.C. 2744(c)(4), 2747(d).

§ 212.5 What regulations apply?

The following regulations apply to the Even Start program:

(a) When the Secretary makes direct grants under section 1052(a) of the Act, the following parts of the Education Department General Administrative Regulations (EDGAR) and section of 34 CFR part 200:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations) for grants to nonprofit organizations.

(2) 34 CFR part 75 (Direct Grant Programs) except for grants to the insular areas.

(3) 34 CFR part 76 (State-Administered Programs) for grants to the insular areas.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (intergovernmental Review of Department of Education Programs and Activities), exept for grants to Indian tribes and tribal organizations.

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for grants to State and local governments, the insular areas, and Indian tribes and tribal organizations.

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses) for grants to institutions of higher education (IHEs), SEAs, local educational agencies (LEAs), and the insular areas.

(11) 34 CFR 200.39 (How may personnel be assigned non-Chapter 1 duties?) for grants to LEAs, with the term "Chapter 1" interpreted as "Even Start."

(b) When the Secretary makes grants under section 1052(b) of the Act, the following parts of EDGAR and sections of 34 CFR part 200:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations) for grants to nonprofit organizations.

(2) 34 CFR part 75 (Direct Grant Programs) for grants to Indian tribes and tribal organizations, and to SEAs under subpart F of this part.

(3) The following portions of 34 CFR part 76 (State-administered Programs) for grants to SEAs and the insular areas:

(i) In subpart A of part 76, §§ 76.1, 76.2, 76.50, and 76.51.

(ii) In subpart B of part 76, §§ 76.125 through 76.137 and, for the first three consecutive fiscal years in which section 1052(b) of the Act applies, §§ 76.100, 76.102 through 76.106, and §§ 76.140 through 76.142.

(iii) In subpart C of part 76, §§ 76.260, 76.261 and, for the first three consecutive fiscal years in which section 1052(b) of the Act applies, §§ 76.201 through 76.235.

(iv) In subpart D of part 76, § 76.300, and §§ 76.302 through 76.305.

(v) All of subpart E of part 76 (§§ 76.400 and 76.401).

(vi) In subpart F of part 76, §§ 76.500 through 76.534, §§ 76.580 through 76.592, §§ 76.681 through 76.683, § 76.690 and only with respect to the amount of Even

Start funds (up to 5 percent) used by the SEA for administration and technical assistance authorized under section 1052(b)(3) of the Act, §§ 76.560 and 76.561.

(vii) All of subpart G of part 76 (§§ 76.700 through 76.783).

(viii) All of subpart H of part 76 (§§ 76.900 through 76.910).

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for grants to SEAs and the insular areas.

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for grants to State and local governments, the insular areas, and Indian tribes and tribal organizations.

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) Part 82 (New Restrictions on Lobbying).

(9) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses) for grants to IHEs, SEAs, LEAs, and the insular areas.

(11) The following sections of 34 CFR part 200 for grants to SEAs:

(i) Section 200.39 (How may personnel be assigned non-Chapter 1 duties?), with the term "Chapter 1" interpreted as "Even Start."

(ii) Section 200.70 (Does a State have authority to issue State regulations for the Chapter 1 LEA program?), with the term "Chapter 1" interpreted as "Even Start" and "this part" interpreted as "Part 212," except for the following:

(A) Section 200.70(c)(1).

(B) Section 200.70 (e)(3)(i)(E) and (e)(3)(iii).

(iii) Sections 200.73 through 200.75 (Complaint Procedures of the SEA), with the term "Chapter 1 LEA program" interpreted as "Even Start."

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 3474.

§ 212.6 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 1471 of the Act: Community-based organization, Elementary school, Equipment, Local educational agency, Parent, Secretary, State educational agency.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1: Applicant, Application, Award, Department, Facilities, Fiscal year, Grant, Grant period, Grantee, Nonprofit, Project.

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Elementary and Secondary Education Act of 1965, as amended.

Eligible entity means—

(i) An LEA applying in collaboration with a community-based organization, public agency, institution of higher education, or other nonprofit organization; or

(ii) A community-based organization or other nonprofit organization of demonstrated quality applying in collaboration with an LEA.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Insular area means Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99-658).

State means any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Tribal organization means the recognized governing body of any Indian tribe, and any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body or is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities.

Authority: 20 U.S.C. 2742(d), 2743, 2831(a).

§ 212.7 Who are eligible participants in an Even Start project?

(a) Except as provided in paragraph (b) of this section, eligible participants are—

(1) A parent of a child described in paragraph (a)(2) of this section, if the parent is eligible for participation in an adult education program under the Adult Education Act, 20 U.S.C. 1201a(1) and (2); and

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a child—

(A) From birth through age 7;

(B) Who is the child of an eligible parent; and

(C) Who resides in an elementary school attendance area designated for participation in programs under Part A of Chapter 1 of Title I of the Act; or

(ii) For grants to the insular areas, and Indian tribes or tribal organizations, a child, from birth through age 7, of any eligible parent.

(b)(1) To be eligible, at least one parent and one or more eligible children must participate together in the Even Start project.

(2) Except as provided in paragraph (c)(2) of this section—

(i) Participating childern must take part in early childhood education activities; and

(ii) Participating parents must take part in—

(A) Adult literacy activities; and

(B) Parenting education activities, including activities in which the parents and children are involved together.

(c)(1) A family that would become ineligible for participation as a result of one or more family members becoming ineligible may continue to participate in the program until all family members become ineligible.

(2) In the situation described in paragraph (c)(1) of this section, the following requirements apply:

(i) Any family member who would be ineligible under paragraph (a) of this section may continue to participate in appropriate family-oriented activities that involve joint parent and child participation.

(ii) Projects may not provide, to a family member who would be ineligible under paragraph (a) of this section, special activities different from those already provided for other Even Start participants; for example, activities designed for children beyond age seven or activities for parents who are no longer eligible for adult education under the Adult Education Act, 20 U.S.C. 1201a (1) and (2).

Authority: 20 U.S.C. 2744, 2745.

Subpart B—How Does an Applicant Apply for a Grant

§ 212.10 To whom does an eligible entity submit an application?

An eligible entity shall submit an application to the Secretary under section 1052(a) of the Act, in the form required by the Secretary, or to the SEA under section 1052(b) of the Act, in the form required by the SEA, as the case may be.

(Approved by the Office of Management and Budget under control number 1810-0540)

Authority: 20 U.S.C. 2746(a).

§ 212.11 What requirements apply to eligible entities for submitting an application to the Secretary for a new grant?

Before submitting an application to the Secretary for a new grant under section 1052(a) of the Act, an eligible entity shall—

(a) Give reasonable notice of the general public's opportunity to testify or otherwise comment at an open meeting regarding the subject matter of the application;

(b) Hold the open meeting; and

(c) Consider comments obtained at the meeting in developing the final application.

(Approved by the Office of Management and Budget under control number 1810–0540.)

Authority: 20 U.S.C. 3386.

§ 212.12 How does an Indian tribe or tribal organization apply for assistance?

An Indian tribe or tribal organization shall submit an application to the Secretary in the form required by the Secretary.

(Approved by the Office of Management and Budget under control number 1810–0540.)

Authority: 20 U.S.C. 2743(a).

§ 212.13 How does an insular area apply for assistance?

(a) An insular area shall—

(1) Submit a State plan to the Secretary at least every three years in accordance with the provisions in 34 CFR part 76 and paragraph (b) of this section; or

(2) Submit an annual consolidated grant application to the Secretary in accordance with the provisions in 34 CFR part 76.

(b) If an insular area submits a State plan to the Secretary under paragraph (a)(1) of this section—

(1) For the first year of every three-year period in which the insular area submits a State plan, the State plan must include the following:

(i) A description of how the insular area's project will meet the elements set forth in sections 1054 (a) and (b) and 1056 (b) and (c) of the Act.

(ii) The certifications and assurances required by § 212.30(a)(2); and

(2) For the second and third consecutive years of every three-year period, an insular area shall submit to the Secretary an update or amendment to the plan if there have been any changes to information submitted in that plan.

(Approved by the Office of Management and Budget under control number 1810-0540.)

Authority: 20 U.S.C. 2743(a), 48 U.S.C. 1469(a).

Subpart C—How Does the Secretary Make a Grant? New Grants

§ 212.20 How does the Secretary evaluate an application from an eligible entity for a new grant?

(a) *Review panel.* (1) The Secretary appoints a panel to review applications in accordance with section 1057 of the Act.

(2)(i) The panel evaluates an application for a new grant on the basis of the criteria in § 212.21.

(ii) The panel gives up to 120 points for these criteria.

(iii) The maximum possible score for each complete criterion in § 212.21 is indicated in parentheses.

(3) The panel indicates whether the applicant has adequately demonstrated its ability to provide the additional funding required by § 212.24.

(b) *Additional factors.* The Secretary then applies the additional considerations in § 212.22 to make grants.

Authority: 20 U.S.C. 2747.

§ 212.21 What selection criteria are used in making new grants to eligible entities?

The following criteria are used to evaluate an eligible entity's application for a new grant:

(a) *Likelihood of success in meeting the Even Start goals* (40 total points plus possible 10 priority points). (1) The Secretary reviews each application to determine the extent to which the proposed project will provide a family-centered education program that includes activities to promote literacy of participating parents, train parents to support the educational growth of their children, and prepare children for success in regular school programs. In applying this criterion, the Secretary determines the extent to which the project described in the application—

(i) Contains clear, attainable, measurable objectives against which the progress and success of the project will be measured (5 points);

(ii) Includes appropriate activities, services, and timelines to achieve those objectives (5 points);

(iii) Designates responsibilities to specific personnel who are qualified to administer and implement the project and to provide special training necessary to prepare staff for the program (5 points);

(iv) Includes an effective plan to ensure proper and efficient administration of the project (5 points);

(v) Is based on sound research in the areas of early childhood education, adult literacy, and parenting education (5 points);

(vi) Contains early childhood education, adult literacy, and parenting education activities appropriate to the level of the children and parents to be served (5 points);

(vii) Provides for continuity of services to maintain progress by, for example, providing continuous services through the summer months, or serving participants, as needed, for the full period of their eligibility (5 points); and

(viii) Provides—

(A) Objective evidence, including quantitative data on the educational and related outcomes of the program, that the applicant, or its collaborating LEA, has had past success in operating a literacy program, an adult education program, an early childhood education program, or a parenting education program; or

(B) A description of the specific family literacy model that the applicant proposes to implement (including quantitative data on the model's effectiveness), information supporting the applicability of the model to the local site, and a detailed description of how the model will be implemented in the proposed project (5 points).

(2)(i) The Secretary gives 10 additional points to applicants that receive at least 35 out of 40 points for likelihood of success under paragraph (a)(1) of this section, including all 5 possible points for past success under paragraph (a)(1)(viii)(A) of this section.

(ii) Applicants that do not meet the requirements in paragraph (a)(2)(i) of this section receive no priority points (0 or 10 points).

Authority: 20 U.S.C. 2744(b)(7), 2747, 2831(a).)

(b) *Need for the project* (10 total points plus possible 10 priority points). (1) The Secretary reviews each application to determine the extent to which the applicant demonstrates that the area to be served has a high percentage or large number of children and parents in need of Even Start services.

(2) For purposes of paragraph (b)(1) of this section, need for Even Start services must be shown by demonstrating the following:

(i) High levels of poverty, illiteracy, unemployment, limited English proficiency, or other need-related indicators. High levels of need may be shown by comparison with other areas of the State or the United States.

(ii) The unavailability of comprehensive family literacy services or programs for the target population. If similar programs serve the same population, applicants may provide

evidence of waiting lists or other indicators that local demand exceeds the ability of those programs to meet the needs.

(3) The Secretary gives 10 additional points to applicants providing substantial objective documentation of need in more than one of the indicators for need listed in paragraph (b)(2)(i) of this section (0 or 10 points).

(c) *Degree of cooperation and coordination* (30 total points). (1) The Secretary reviews each application to determine the extent to which cooperation and coordination will take place in all phases of the proposed project among a variety of relevant service providers, including those funded under the programs listed in paragraph (c)(2) of this section. The Secretary considers the extent to which—

(i) The applicant has made a survey of all relevant providers and is fully aware of similar and related services, including State and locally funded programs, being provided to eligible children and adults (5 points);

(ii) The applicant has, in planning the project, entered into firm agreements with various providers for specific cooperative activities (10 points);

(iii) The plan of operation includes specific provision for additional cooperative efforts with other service providers, including State and locally funded providers, throughout the duration of the project period, including provision, as needed, for the transition of children out of Even Start into other programs and adults into other service programs such as job training (5 points); and

(iv) Services offered by the applicant will build upon, but not duplicate, those already being provided to project participants by the applicant or other service providers (10 points).

(2) The programs referred to in paragraph (c)(1) of this section are Chapter 1 of the Act, the Head Start program, and relevant programs under Chapter 2 of the Act, the Adult Education Act, the Individuals with Disabilities Education Act, and the Job Training Partnership Act, volunteer literacy programs, and other relevant programs.

(d) *Reasonableness of budget* (10 points). The Secretary reviews each application to determine the extent to which the budget submitted for the entire cost of the proposed project appears reasonable, given the scope of the project. The Secretary considers the extent to which—

(1) Costs are reasonable in relation to expected outcomes;

(2) The applicant will make use of currently available resources such as facilities and equipment; and

(3) The budget provides sufficient information to support the requested amount of funds.

(e) *Promise as a model* (10 total points). The Secretary reviews each application to determine the extent to which the proposed project shows promise in providing an effective model that may be transferred to other eligible entities. The Secretary considers the extent to which—

(1) The preliminary evaluation plan described in the application—

(i) Measures the progress and success of the project in achieving its clearly stated and attainable objectives;

(ii) Utilizes concrete and quantifiable means of measurement; and

(iii) Includes, if possible, comparisons with appropriate control groups (5 points);

(2) The general components of the project are readily understandable and usable by other entities, and are based on research or models that have proven to be adaptable to various circumstances (3 points); and

(3) The applicant shows a willingness to have its project serve as a model and to disseminate detailed information about the project to the Department and to other eligible entities (2 points).

(Approved by the Office of Management and Budget under control number 1810–0540.)

Authority: 20 U.S.C. 2744(b)(7), 2747, 2831(a).

§ 212.22 What additional factors does the Secretary consider in making new grants to eligible entities?

(a) The Secretary, in approving grants to eligible entities, ensures the following:

(1) Each project builds on existing community resources in a cooperative effort to create a new range of services integrating early childhood education, adult education, and parenting education into a unified program.

(2) Eligible entities receiving grants are representative of urban and rural regions of the United States.

(3) There is a representative distribution of grant funds among the States and among urban and rural areas of the United States.

(b)(1) For purposes of this section, urban eligible entities are those within Metropolitan Area (MAs), as most recently designated by the United States Department of Commerce, Bureau of the Census, and rural eligible entities are those outside the boundaries of MAs.

(2) If an eligible entity includes areas both within and outside of an MA, the applicant shall designate the category in which the majority of expected participants reside.

(c) To the extent that acceptable applications are received from the various States, the Secretary does not give grants to eligible entities in one State in amount that, in total, exceed the amounts that the SEA would be allocated under section 1053(b) of the Act if the appropriation for the Even Start program equals $50 million.

(Approved by the Office of Management and Budget under control number 1810–0540.)

Authority: 20 U.S.C. 2741, 2747(a)(1)(F), (c), (d)(2).

§ 212.23 How does the Secretary make a grant to Indian tribes and tribal organizations and to the insular areas?

(a)(1) The Secretary provides funds to Indian tribes and tribal organizations by making grants based on applications submitted under § 212.12.

(2) In addition to this section, the Secretary applies all of this subpart in making grants to Indian tribes and tribal organizations, except §§ 212.22(a) (2) and (3), (b), and (c).

(b)(1) The Secretary provides funds to the insular areas by making grants based on applications submitted under § 212.13, according to the relative need of each insular area.

(2) The relative need of each insular area is considered to be in proportion to the amount of funds received by the insular area under Part A of Chapter 1 of Title I of the Act.

(3) The Secretary applies no other sections of this subpart in making grants to the insular areas.

Authority: 20 U.S.C. 2743(a).

§ 212.24 What portion of an Even Start project's funding is an eligible entity required to contribute?

(a) An Even Start project's funding is comprised of a Federal portion of funds (Federal share) and a portion contributed by the eligible entity (local share).

(b) The local share of an Even Start project's funding is as follows:

(1) In the first year of the project's funding, at least 10 percent of the total cost of the project.

(2) In the second year of the project's funding, at least 20 percent of the total cost of the project.

(3) In the third year of the project's funding, at least 30 percent of the total cost of the project.

(4) In the fourth year of the project's funding, at least 40 percent of the total cost of the project.

(5) In any year subsequent to the fourth year of funding, if the same eligible entity is awarded a grant for the

same project, at least 40 percent of the total cost of the project.

(c) Except as provided in § 212.25, the local share may be obtained from any source other than funds made available for programs under Chapter 1 of Title I of the Act, and may be provided in cash or in kind, fairly evaluated.

Authority: 20 U.S.C. 2744.

§ 212.25 When may the Secretary waive the requirement concerning the local contribution of funds?

The Secretary may waive, in whole or in part, the requirement in § 212.24(c) that the local share of the cost of the project be obtained from sources other than funds under Chapter 1 of Title I of the Act if—

(a) An eligible entity demonstrates that, due to its own financial situation and the lack of any other sources of funding—

(1) It otherwise would not be able to conduct an Even Start project; or

(2) It otherwise would not be able to continue its project at the level previously maintained, if it is a grantee applying for a continuation grant;

(b) The demonstration required by paragraph (a) of this section is supported by detailed financial data and is accompanied by a signed statement from a responsible official that all possible sources of funding, including cooperating entities, have been explored;

(c) The applicant designates the specific funds under Chapter 1 of Title I of the Act that it intends to use for its local share; and

(d) The applicant negotiates an agreement with the Secretary with respect to the amount of the local contribution to which the waiver would be applicable.

(Approved by the Office of Management and Budget under control number 1810–0540.)

Authority: 20 U.S.C. 2744(c).

Continuation Awards.

§ 212.26 How does the Secretary make continuation awards if there are insufficient appropriations to fund all requests fully?

(a) If funds are insufficient for the Secretary to fund all continuation requests in the amounts at which each request would otherwise be funded ("approvable grant" amounts), the Secretary reduces the approvable grant amounts for continuation requests on a pro rata basis.

(b) The Secretary does not reduce funding for a project for any fiscal year more than 25 percent below its approvable grant amount, subject to paragraph (c) of this section.

(c) If funds are insufficient to fund all continuation awards at 75 percent of their approvable grant amounts, the Secretary—

(1) Ranks all continuation requests based on the criteria in § 212.21, taking into account information collected throughout the project period, including yearly progress reports, the application submitted in the first year, and revisions to that application; and

(2) Funds continuation requests, based on that rank ordering, at 75 percent of approvable grant amounts until funds are exhausted.

(d) If the ranking procedure in paragraph (c) of this section does not result in the distribution of awards consistent with the requirements of § 212.22(a), the Secretary adjusts the selection process so as to meet those requirements.

Authority: 20 U.S.C. 2831(a).

§ 212.27 What actions may the Secretary take if a grantee does not make sufficient progress toward meeting its project objectives?

If the Secretary finds, after the first, second, or third year of a project, that the grantee has not made sufficient progress toward meeting its project objectives, the Secretary may—

(a) Approve revisions to the project, proposed by the grantee, if those revisions would enable the grantee to meet its project objectives; or

(b) After affording the grantee notice and an opportunity for a hearing, refuse to make a continuation award to the grantee for that project.

Authority: 20 U.S.C. 2747(d)(1).

Subpart D—State Administration

§ 212.30 How does an SEA apply for Even Start funds?

(a) In order to receive assistance for the first fiscal year in which section 1052(b) of the Act applies, an SEA must provide a State plan to the Secretary. The State plan must include—

(1) *Descriptions.* The following descriptions:

(i) *Selection Criteria and Priorities.* A description of how the SEA, in making subgrants to eligible entities, will apply the selection criteria and priorities set forth in section 1057 of the Act.

(ii) *State Administration.* A description of how the SEA, in administering the Even Start program in coordination with other programs, will involve appropriate State offices, including the following:

(A) Adult education and early childhood education offices.

(B) Offices administering the programs listed in § 212.21(c)(2).

(C) Appropriate statewide organizations, such as statewide literacy councils.

(iii) *Grantee Compliance.* A description of what methods, such as monitoring or other means, the SEA will use to ensure that grantees are meeting the requirements of sections 1054 (Uses of Funds), 1055 (Eligible Participants), and 1056 (Applications) of the Act.

(2) *Certifications and Assurances.* The following certifications and assurances, signed and dated by an authorized representative of the SEA:

(i) The certifications required by 34 CFR 76.104.

(ii) An assurance that the SEA will meet the requirements in section 435(b) (2) and (5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting.

(iii) An assurance that the SEA will comply with all applicable Federal laws in implementing the program.

(b) In order to receive assistance for the second and third consecutive fiscal years in which section 1052(b) of the Act applies, an SEA shall submit to the Secretary an update or amendment to the plan submitted under paragraph (a) of this section, if there have been any changes to information submitted in that plan.

(c) In order to receive assistance for the fourth and following fiscal years in which section 1052(b) of the Act applies, an SEA shall submit to the Secretary assurances that it—

(1) Will coordinate Even Start activities with appropriate offices at the State level, including the following:

(i) Those dealing with adult education and early childhood education.

(ii) Those administering the Federal programs listed in § 212.21(c)(2).

(iii) Other appropriate statewide organizations, such as statewide literacy councils;

(2) Will ensure that its subgrantees comply with all the applicable statutory and regulatory requirements;

(3) Will meet the requirements in section 435(b) (2) and (5) of GEPA relating to fiscal control and fund accounting procedures; and

(4) Will comply with all applicable Federal laws in implementing the program.

(Approved by the Office of Management and Budget under control number 1810–0540.)

Authority: 20 U.S.C. 2747(d), 2831(a), 2838.

§ 212.31 What requirements must an SEA meet in making subgrants?

(a) Projects supported by subgrants must—

(1) Be funded with no less than $75,000 of Federal Even Start funds;

(2) Be of sufficient size, scope, and quality to give reasonable promise of meeting the purposes of Even Start; and

(3) Make maximum use of the resources available at the local level.

(b) Before making subgrants, an SEA must—

(1) Determine the effectiveness and financial needs of the currently funded projects within the State;

(2) Consider a current grantee to have an acceptable continuation application if—

(i) The grantee shows that it is making sufficient progress toward meeting the objectives of the project; and

(ii) The grantee meets applicable State requirements for continuation awards; and

(3) Provide funding for each continuation application that the SEA determines has made sufficient progress toward meeting the project's objectives in the previous year, at a level (if sufficient funds exist) that will ensure the project's continuity of services for the current year.

(c) After making continuation awards, the SEA shall use any remaining funds to make grants to new applicants, subject to paragraph (a) of this section.

(d) An SEA shall ensure a representative distribution of assistance between urban and rural areas of the State.

Authority: 20 U.S.C. 2742(b), 2747(c)(2), (d)(2), 2831(a).

§ 212.32 What selection criteria does an SEA use in making new subgrants?

In making new subgrants under section 1052(b) of the Act, an SEA may—

(a) Apply the criteria contained in § 212.21; or

(b) Apply its own criteria, provided the criteria are consistent with section 1057 of the Act.

(Approved by the Office of Management and Budget under control number 1810–0540.)

Authority: 20 U.S.C. 2747.

§ 212.33 What reporting requirements apply to SEAs?

In any fiscal year in which section 1052(b) of the Act applies, SEAs shall annually report information about program operations as may be required by the Secretary.

(Approved by the Office of Management and Budget under control number 1810–0540.)

Authority: 20 U.S.C. 1232f(a), 2852.

§ 212.34 Which of the general Chapter 1 provisions apply to SEAs in their administration of Even Start?

The following sections of parts E and F of chapter 1 of title I of the Act apply to SEAs in their administration of Even Start:

(a) Section 1404 of the Act (Payments for State Administration).

(b) Section 1433 of the Act (Withholding of Payments).

(c) Section 1434 of the Act (Judicial Review).

(d) Section 1438 of the Act (Application of General Education Provisions Act).

(e) Section 1451 of the Act (State Regulations).

(f) Section 1452 of the Act (Records and Information).

(g) Section 1453 of the Act (Assignment of Personnel), to the extent the Even Start personnel are paid entirely with Even Start funds and perform their duties in a public school setting.

(h) Section 1454 of the Act (Prohibition Regarding State Aid).

(i) Section 1471 of the Act (Definitions).

(Authority: 20 U.S.C. 2824, 2833, 2834, 2838, 2851–2854, 2891)

Subpart E—Transition Provisions

§ 212.40 How are grants made when responsibility for making grants to applicants transfers between the Department and the SEAs?

When the responsibility for administering the Even Start program transfers from the Department to the SEAs, or vice versa—

(a) The Secretary applies—

(1) 34 CFR 75.253 with the exception of 34 CFR 75.253(a)(2);

(2) Section 212.27; and

(3) Section 212.26, if necessary;

(b) An SEA applies §§ 212.31 and 212.32; and

(c) The Federal share limitations contained in section 1054(c) of the Act are determined from the original year of the project grant award.

(Authority: 20 U.S.C. 2747(d), 2831(a))

Subpart F—Migrant Education Even Start

§ 212.50 What is the Migrant Education Even Start program?

(a) The Migrant Education Even Start program supports grants to eligible SEAs for the cost of providing family-centered education projects to help parents of currently migratory children (as defined in 34 CFR 201.3) become full partners in the education of their children, to assist currently migratory children in reaching their full potential as learners, and to provide literacy training for their parents.

(b) The Secretary makes grants for family-centered education projects that provide services on an intrastate or interstate basis, and that include all of the program elements required by section 1054(b) of the Act.

(Authority: 20 U.S.C. 2741, 2743, 2831)

§ 212.51 Who is eligible for a grant?

An SEA or a consortium of SEAs that applies under section 1053(a) of the Act is eligible to receive a grant under the Migrant Education Even Start program.

(Authority: 20 U.S.C. 2743, 2831)

§ 212.52 Who may be served?

(a) Except as provided in paragraph (b) of this section, eligible participants under this subpart are—

(1) A parent of a child described in paragraph (a)(2) of this section, if the parent is eligible for participation in an adult education program under the Adult Education Act, 20 U.S.C. 1201a (1) and (2); and

(2)(i) As a first priority, a currently migratory child, as defined in 34 CFR 201.3, from birth through age 7; and

(ii) As a second priority and, if space is available, a formerly migratory child, as defined in 34 CFR 201.3, from birth through age 7.

(b)(1) To be eligible, at least one parent and one or more eligible children must participate in the Even Start project.

(2) Except as provided in paragraph (c)(2) of this section—

(i) Participating children must take part in early childhood education activities; and

(ii) Participating parents must take part in the following:

(A) Adult literacy activities.

(B) Parenting education activities, including activities in which the parents and children are involved together.

(c)(1) A family that would become ineligible for participation as a result of one or more family members becoming ineligible may continue to participate in the program until all family members become ineligible.

(2) In the situation described in paragraph (c)(1) of this section, the following requirements apply:

(i) Any family member who would be ineligible under paragraph (a) of this section may continue to participate in appropriate family-oriented activities that involve joint parent and child participation.

(ii) Projects may not provide, to a family member who would be ineligible under paragraph (a) of this section, special activities different from those already provided for other Even Start participants; for example, activities designed for children beyond age seven or activities for parents who are no

longer eligible for adult education under the Adult Education Act, 20 U.S.C. 1201a (1) and (2).

(Authority: 20 U.S.C. 2743, 2745, 2831)

§ 212.53 What applications does the Secretary consider?

The Secretary considers an application that—

(a) Meets the purposes of the Migrant Education Even Start program as provided in § 212.50; and

(b)(1) Adequately demonstrates the applicant's ability to provide the additional funding required by § 212.24; or

(2) As provided in § 212.25, includes a request for the Secretary to waive the requirement in 212.24 concerning the source of the local contribution of funds.

(Approved by the Office of Management and Budget under control number 1810–0541)

(Authority: 20 U.S.C. 2743, 2744)

§ 212.54 How does the Secretary evaluate an application for a new grant?

(a) The Secretary uses the criteria in § 212.55 to evaluate an application.

(b) The Secretary awards up to 120 possible points for these criteria.

(c) The maximum number of points for each criterion is indicated in § 212.55(c).

(Authority: 20 U.S.C. 2743, 2747)

§ 212.55 What selection criteria does the Secretary use in making new grants?

The Secretary uses the criteria in § 212.21 in evaluating an application, except as follows:

(a) The provision for priority points contained in § 212.21(a)(2) (regarding likelihood of success in meeting the Even Start goals) does not apply.

(b) The criteria in § 212.21(b) (regarding need for the project) do not apply. Instead, for purposes of this subpart, the Secretary uses the criterion in paragraphs (b) (1) and (2) of this section to evaluate the need for the project.

(1) The Secretary reviews each application to determine the extent to which the applicant demonstrates that, during the period in which the project would operate in a particular location, the areas to be served have high percentages or large numbers of currently migratory children and their parents in need of Migrant Education Even Start services.

(2) For purposes of paragraph (b)(1) of this section—

(i) Need for Migrant Education Even Start services must be shown by demonstrating high levels of poverty, illiteracy, unemployment, limited English proficiency, or other need-related indicators; and

(ii) High levels of need during the period in which the project would operate in a particular location may be shown by comparison with other areas of the State or of the United States.

(c)(1) The criterion in § 212.21(c)(1)(ii) (regarding the degree of cooperation and coordination) does not apply.

(2) Instead, for purposes of this subpart, the Secretary considers as a criterion the extent to which the applicant, in planning the interstate or intrastate project, has entered into firm agreements for specific cooperative activities with various providers from all locations in which the project would operate.

(d) The maximum number of points that an applicant may receive for each selection criterion is:

(1) *Likelihood of success in meeting the even start goals*—32 points plus a possible 10 priority points. (i) The Secretary awards up to 4 points for each criterion contained in § 212.21 (a)(1)(i) through (a)(1)(viii).

(ii) The Secretary awards 10 additional points to applicants that receive at least 28 out of 32 points under § 212.21(a)(1), including all 4 possible points under § 212.21(a)(1)(viii)(A).

(2) *Need for the project*—20 points.

(3) *Degree of cooperation and coordination*—30 points. The Secretary distributes these points as follows: § 212.21(c)(1)(i)—5 points; § 212.55(c)—10 points; § 212.21(c)(1)(iii)—5 points; and § 212.21(c)(1)(iv)—10 points.

(4) *Reasonableness of budget*—8 points.

(5) *Promise as a model*—20 points. The Secretary distributes these points as follows: § 212.21(e)(1)—9 points; § 212.21(e)(2)—9 points; and § 212.21(e)(3)—2 points. (Approved by the Office of Management and Budget under control number 1810–0541)

(Authority: 20 U.S.C. 2743, 2831)

§ 212.56 What additional factors does the Secretary consider in making new grants?

(a) In addition to applying the criteria in §§ 212.21 and 212.55, the Secretary ensures that—

(1) Grants are made to projects that ensure coordination and cooperation between States (or areas of a State) in which participating children and parents reside during the year;

(2) Each project will build on existing community resources in a cooperative effort to create a new range of services integrating early childhood education, adult education, and parenting education into a unified program; and

(3) To the extent possible, grants are distributed equitably among the States in the three migrant streams, as defined in paragraph (c) of this section.

(b) In order to meet the requirements of paragraph (a)(3) of this section, the Secretary—

(1) Separates applications into three groups representing the three migrant streams; and

(2) Awards grants to applicants in each stream that are ranked the highest as a result of the process in § 212.54, provided that there is one or more acceptable applications from an SEA or consortium of SEAs in that stream.

(c) For the purposes of this section, the States comprising each stream are the following:

Eastern Stream—

Alabama	North Carolina
Connecticut	Pennsylvania
Delaware	Puerto Rico
Florida	Rhode Island
Georgia	South Carolina
Kentucky	Tennessee
Maine	Vermont
Maryland	Virginia
Massachusetts	West Virginia
Mississippi	District of Columbia
New Hampshire	New Jersey
New York	

Central Stream—

Arkansas	Missouri
Illinois	Nebraska
Indiana	North Dakota
Iowa	Ohio
Kansas	Oklahoma
Louisiana	South Dakota
Michigan	Texas
Minnesota	Wisconsin

Western Stream—

Alaska	New Mexico
Arizona	Oregon
California	Utah
Colorado	Washington
Idaho	Wyoming
Montana	Mariana Islands
Nevada	

(Authority: 20 U.S.C. 2743, 2831)

§ 212.57 What other regulations apply?

(a)(1) In addition to the provisions in this subpart, the following provisions in this part apply to the Migrant Education Even Start program:

(i) Section 212.3.

(i) Section 212.4.

(i) Section 212.5, except for § 212.5 (a)(11) and (b)(11).

(iv) Section 212.6, except for the definition of *eligible entity* in § 212.6(c). For the purposes of the Migrant Education Even Start program, except as noted in paragraphs (a)(2) and (3) of this section, *eligible entity* means—

(A) An LEA or other operating agency as defined in 34 CFR 201.3 applying in collaboration with a community-based organization, public agency, institutions of higher education, or other nonprofit organization; or

(B) A community-based organization or other nonprofit organization of

demonstrated quality applying in collaboration with an LEA or other operating agency as defined in 34 CFR 201.3.

(v) Section 212.24.

(vi) Section 212.25.

(vii) Section 212.26, except that for the purposes of the Migrant Education Even Start program, the appropriate cross-references in § 212.26 (c) and (d) to §§ 212.21 and 212.22(a) are to §§ 212.55 and 212.56, respectively.

(viii) Section 212.27.

(ix) Section 212.34, except for paragraph (e).

(2) For the purposes of the Migrant Edcuation Even Start program, in §§ 212.4, 212.21 and 212.25 an "eligible entity" means an SEA.

(3) For the purposes of the Migrant Education Even Start program, in § 212.24 an "eligible entity" means an SEA or eligible entity.

(b) The following sections of 34 CFR part 201 apply to the Migrant Education Even Start program:

(1) Section 201. 3 (Definitions for this program).

(2) Section 201.49 (Persons to be assigned non-Chapter 1 duties), with "Chapter 1" or "Chapter 1—Migrant Eduation Program" interpreted as "Migrant Education Even Start."

(Authority: 20 U.S.C. 2743)

§ 212.58 May an SEA make a subgrant to an eligible entity?

(a) Notwithstanding the prohibition of subgrants in 34 CFR 75.708(a), an SEA that receives a grant under the Migrant Education Even Start program may make a subgrant of funds to one or more eligible entities, as defined in § 212.57(a)(4), provided that program funds are used as the SEA's approved project application specifies.

(b) An SEA that makes a subgrant of funds to one or more eligible entities may use not more than 5 percent of its Migrant Education Even Start grant for the costs of administration and technical assistance.

(Authority: 20 U.S.C. 2743, 2831)

(Note: This appendix will not be codified in the Code of Federal Regulations.)

Appendix—Summary of Comments and Responses to the Notice of Proposed Rulemaking

PART 212—EVEN START

General

A number of commenters expressed support for portions of the proposed regulations as published. Those comments, as well as technical and other minor changes, are not addressed in this appendix. All other specific comments received on the proposed regulations are summarized below, each followed by the Secretary's response.

Comment: Several commenters inquired whether a State could limit applicants to those that have not previously received grants over a four-year period.

Discussion: Under section 1056 of the Act, any eligible entity (as defined in section 1052(d) of the Act) may apply for Even Start funds. Thus, a State may not limit applicants only to those that have not previously received grants. In addition, § 76.770(g) of the Education Department General Administrative Regulations (EDGAR), which applies to Even Start, provides that a State may "not act in any manner that prevents eligible applicants from applying under the program."

After the end of a four-year grant period, a previously funded applicant may apply for the same or a different project. Under section 1054(c) of the Act and § 212.24 of the regulations, however, if the applicant is funded again for the same project, the local share of the total project cost remains at least at 40 percent for all years of the new project period.

Under section 1057 of the Act and § 212.32 of these regulations, a State has some flexibility in how it chooses to interpret and apply the statutory selection criteria and priorities in selecting projects for funding, and in the distribution of grants between urban and rural areas of the State. Note that under § 212.5(b)(10)(ii), the adoption by a State of an interpretation of the statutory selection criteria and priorities for the purpose of administering the Even Start program requires review by a committee of practitioners convened by the State.

Changes: None.

Comment: One commenter suggested that States be prohibited from establishing a separate committee of practitioners for the Even Start program.

Discussion: Section 1451(b) of the Act contains requirements for the composition of State committees of practitioners. A current Chapter 1 committee might not have the kind of representation appropriate for Even Start. Consequently, the Secretary believes that requiring States to use only current Chapter 1 committees would unduly restrict State flexibility and could hinder States in obtaining helpful advice concerning the Even Start program. As explained in the preamble to the Notice of Proposed Rulemaking (NPRM), under these regulations a State has the option of: Using the current Chapter 1 committee already in place; modifying that committee by including persons familiar with adult education, family literacy, or early childhood education; or establishing a new committee solely for Even Start.

Changes: None.

Comment: One commenter suggested that the Department clarify that Even Start projects can and should serve children with disabilities.

Discussion: Section 1056(c)(5) of the Act requires each application to include information on the methods the applicant will use to provide services to special populations, "including individuals with handicaps." In addition, section 1058(a)(1) of the Act requires that the Secretary, in annually evaluating Even Start projects, determine their effectiveness in providing those services. Even Start projects are also forbidden by Federal law from discriminating on the basis of handicap. See 34 CFR 76.500. The Secretary believes that these requirements are sufficient to ensure that projects include eligible adults and children with disabilities.

Changes: None.

Comment: One commenter was concerned that a number of current projects in his State would have funds remaining at the end of the current budget period, and requested that these funds revert to the State for use in supporting both new and continuing projects during the next budget period.

Discussion: Funds awarded to local educational agencies (LEAs) during previous years when the appropriation was less than $50,000,000 may not now be turned over to States. During the first three years of the Even Start program, the Department, rather than the States, made grants directly to LEAs. Current projects were thus funded as Federal discretionary grants. Beginning with fiscal year (FY) 1992, however, the States, rather than the Federal Government, will administer the distribution of grant funds to eligible entities, and the Department will not be awarding continuations of previous grants. The Department must therefore close out all FY 1991 grants made directly to LEAs. See 34 CFR 80.50. The preamble contains a discussion of the closeout process in the section captioned "Transition."

Changes: None.

Comment: One commenter was concerned that the discussion of section 1453 of the Act (Assignment of Personnel) in the preamble to the NPRM regarding personnel who "teach Even Start children in kindergarten through grade 12 * * *" could be misread to mean that a program could provide services to children from kindergarten through grade twelve.

Discussion: The intent of the preamble language was to describe the public school setting in which some Even Start personnel provide services, and not to describe the Even Start participating children, who are only through age 7, or to describe the scope of services provided by an Even Start program.

Changes: None. However, the discussion in the preamble to the final regulations has been clarified.

Comment: One commenter recommended that the regulations require a State's review panel to include State agency personnel and recipients of Even Start services.

Discussion: Section 1057(b) of the Act specifies the members who are required to be on the panel, and those who, to the extent practicable, may be on the panel. State agency personnel or recipients of Even Start services may serve on the review panel if they qualify under the statutory specifications.

Changes: None.

Section 212.2 Who is eligible for a grant?

Comment: One commenter suggested that States be allowed to limit eligibility for new grants to LEAs, in collaboration with other agencies.

Discussion: Section 1052(d)(1) of the Act defines the term "eligible entity" as including both (1) an LEA, in collaboration with a community-based organization, public agency, institution of higher education, or other nonprofit organization, and (2) a community-based or other nonprofit organization, in collaboration with an LEA. Therefore, States may not limit applicants for new grants only to LEAs in collaboration with other agencies.

Changes: None.

Section 212.4 What is the duration of a project?

Comment: Several commenters expressed concern about the lack of continuation of funding beyond the original four-year project period. One commenter noted that the economic situation in the schools has changed since Even Start was enacted, and that some school districts may be unable to support the program after Federal funds cease. Another commenter suggested extending the grant period to six years. Several other commenters suggested that successful currently funded projects be extended for more than four years without having to recompete with other applicants. Another commenter thought that § 212.4 was misleading because it states that no project may exceed four years' duration, when section 1054(c) of the Act, regarding Federal share limitation, provides that the Federal share of the cost of the project may not exceed 60 percent "in the fourth and any subsequent such year."

Discussion: Section 1057(d) of the Act limits Even Start grants to a period of not more than four years. Even Start was enacted as a demonstration program; it does not provide for perpetual funding of a few projects but rather for four-year funding of many projects, to obtain a wide range of models. In addition, the increasing local contribution requirement was intended to help grantees continue their projects when Federal Even Start funding is withdrawn.

However, at the end of the four-year period, grantees may reapply and compete with other applicants for a new grant. Section 212.4 has been clarified to indicate that a grantee may reapply as a new applicant after the fourth year for the same or a different project. If the same project is again funded, however, the Federal share cannot exceed 60 percent of the total project cost, as provided in section 1054(c)(1)(D) of the Act.

Change: Section 212.4 has been revised to clarify that the four-year maximum grant period does not prohibit a grant recipient from competing for another four-year grant at the conclusion of the initial grant period.

Section 212.5 What regulations apply?

Comment: One commenter asked whether the prohibition on indirect costs applies to funds used for State administration of the program.

Discussion: Under section 1052(b)(3) of the Act, a State may use up to 5 percent of its Federal Even Start funds for costs of administration and technical assistance. The State may apply its indirect cost rate to the funds withheld for these purposes, as long as the total direct plus indirect costs do not exceed 5 percent of the State's grant. However, section 1054(c) of the Act precludes States from applying the indirect cost rate to the remaining funds, which must be subgranted to eligible entities for projects.

In addition, section 1404(b) of the Act, which limits indirect costs to 15 percent of funds a State receives for general administration of all Chapter 1 programs, does not apply to the Even Start administrative and technical assistance set-aside.

Change: Section 212.5(b) has been revised to indicate that §§ 76.560 and 76.561 of EDGAR, regarding indirect cost rates, apply only with respect to the portion of Federal Even Start funds (up to 5 percent) that may be used by the State for administration and technical assistance authorized under section 1052(b)(3) of the Act.

Section 212.6 What definitions apply?

Comment: One commenter asked if the definition of "community-based organization" could include nonpublic, sectarian schools.

Discussion: There is no statutory prohibition against a religiously affiliated organization qualifying as a "community-based organization" for purposes of either collaborating with an LEA applying for Even Start funds, or applying for Even Start funds in collaboration with an LEA. Constitutional issues under the Establishment Clause of the First Amendment may arise in the design or implementation of projects involving religiously affiliated organizations, however, and these projects must be reviewed carefully to ensure that Federal funds are not used in an impermissible manner. *See Bowen v. Kendrick*, 108 S. Ct. 2562 (1988). In addition, Department regulations specifically prohibit a grantee or subgrantee from using Even Start funds for "[r]eligious worship, instruction, or proselytization[.] [e]quipment or supplies to be used in any of those activities[.] [or c]onstruction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of those activities." (See 34 CFR 75.532(a)(1)–(3) and 76.532(a)(1)–(3).)

Changes: None.

Comment: One commenter asked if the term "tribal organization" includes schools operated by the Bureau of Indian Affairs (BIA), or those funded but not operated by the BIA, and whether those schools are eligible to apply for Even Start funds under § 212.23 of the regulations.

Discussion: Federally recognized Indian tribes or tribal organizations are eligible for funds, including those that operate schools under grant or contract with the BIA, or send children to BIA schools. However, BIA-operated schools may not apply for Even Start funds because the BIA is a Federal entity and not an Indian tribe or tribal organization. Tribes and tribal organizations whose children are served by a BIA-operated school are eligible applicants.

Changes: None.

Comment: One commenter asked if a public library could qualify as a "community-based organization" and, as such, apply for Even Start funds.

Discussion: Section 1471(3) of the Act, which applies to Even Start, defines a community-based organization as a "private nonprofit organization." Hence, public agencies, such as public libraries, are not directly eligible for funding under section 1052(d)(1)(B) of the Act. However, under section 1052(d)(1)(A) of the Act, a public agency may apply in collaboration with an LEA.

Changes: None.

Section 212.7 Who are eligible participants in an Even Start project?

Comment: One commenter suggested adding language to clarify that, to be eligible, a family must participate in all portions of Even Start—(1) preparation of children for success in regular school programs, (2) adult literacy, and (3) training parents to support the educational growth of their children.

Discussion: Even Start funds family-centered education projects that involve parents and children in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners. The Secretary agrees that the core of Even Start is its family focus, and that the integration of all three components in each project differentiates Even Start from other programs. The Secretary, therefore, interprets the statute to require participation in all three Even Start activities. (See section 1051, 1054(a) and (b), and 1055 of the Act.) The regulations have been amended to require families to participate in all three Even Start activities—early childhood education, adult literacy, and parenting education.

Change: A new paragraph (b) has been added to § 212.7 to codify existing policy requiring that, in order to be eligible to participate in the program, families must participate in all three portions of Even Start. The new paragraph also clarifies that both an eligible child and an eligible parent must participate in the project together.

Comment: One commenter inquired as to the meaning of "Chapter 1 attendance area" in § 212.7(a)(2) for purposes of determining eligible children for projects operated by Indian tribes and tribal organizations.

Discussion: The provision in § 212.7(a)(2) regarding eligible children applies only to projects operated by LEAs or community-based organizations in collaboration with LEAs. For projects operated by Indian tribes tribal organizations, and the insular areas, a child is not required to reside in a Chapter 1 attendance area to be eligible for Even Start.

Change: A new paragraph § 212.7(a)(2)(ii) defines eligible participants for projects operated by Indian tribes, tribal organizations, and the insular areas.

Comment: One commenter stated that the provision in § 212.7(b)(2) was unclear with regard to the provision of Even Start services when one or more family members become ineligible.

Discussion: The intent was to describe what services may be provided to remaining participants when either the child or parent, whose eligibilities are interdependent, no longer qualifies for Even Start—for instance, when the youngest child reaches the age of 8, or the parent progresses so he or she is no

longer eligible for services under the Adult Education Act.

Changes: Section 212.7(b)(2) has been revised to clarify that an ineligible family member may continue to participate in appropriate family-oriented activities that involve joint parent and child participation, but that projects may not provide special activities to that ineligible family member different from those already provided by the project to eligible participants. For example, with respect to the ineligible family member, a project may not provide special activities designed for children beyond age 7, or for parents who are no longer eligible for adult education under the Adult Education Act.

Section 212.21 What selection criteria are used in making new grants to eligible entities?

Comment One commenter suggested that previously funded projects should be given priority in the selection criteria.

Discussion: The selection criteria and priorities in § 212.21 are necessarily based on those required by section 1057(a) of the Act, which does not contain any specific priority for previously funded projects. Moreover, the House Report accompanying the Even Start legislation states: "Part B [Even Start] is designed as a demonstration program. Applications showing the greatest promise will be funded for four years with a decreasing Federal share each year. The intent of this provision is to encourage grantees to become self-sufficient so that programs will continue to exist when Federal funds are withdrawn and grants awarded to other worthy applicants." This explanation makes clear that Congress did not envision that Even Start funds would be used to support long-term projects in a few districts; rather, it assumes many worthy districts will receive Even Start funds to develop projects, whose cost would be borne from other sources after Federal Even Start funding is withdrawn.

Changes: None.

Comment: One commenter suggested that the selection criteria contain a provision on how applicants would facilitate the transition of children from Even Start to the next appropriate program or services that could meet the children's needs.

Discussion: The Secretary agrees that provisions in an application for transition are reasonable under some circumstances, as well as consistent with the purposes of the statute. Under § 212.21(c), applicants may be awarded points for demonstrating cooperation and coordination with other agencies. Implicit in that provision is the assumption that the cooperation and coordination extends to services needed for the transition of children out of Even Start into regular school or other programs. Further, by specifying that an eligible child must reside in a school attendance area served by Chapter 1, and that Chapter 1 be one of the programs with which Even Start is coordinated, the Act emphasizes the interplay between Even Start and other Chaper 1 programs.

Change: Language has been added to § 212.21(c)(1)(iii) to clarify that the provisions for cooperative efforts with other service providers may include provision, as needed, for the transition of children out of Even Start into other programs.

Comment: One commenter requested that the selection criteria focus more on the quality of the adult literacy component of Even Start. One way to do this, the commenter suggested, was to clarify that the phrase "instructional and developmental activities appropriate to the level of the participants" in § 212.21(a)(vi) refers to adults as well as to children.

Discussion: The Secretary concurs that projects should be selected based in part on a quality adult education component. However, the emphasis on quality is not limited to the adult literacy component; it applies to the entire Even Start program.

The selection criterion contained in § 212.21(a)(vi) of the regulations applies to both adults and children, and is intended to focus on the appropriateness of the Even Start activities for the level of the parents and children to be served. Those activities include all three components of the Even Start program—early childhood education, adult literacy, and parenting education.

Changes: Section 212.21(a)(1)(vi) has been revised to clarify that each project must contain activities appropriate for the level of both parents and children, and that those activities include adult literacy and parenting education as well as early childhood education.

Comment: One commenter stated that the priority point procedure in § 212.21(a)(2) is confusing.

Discussion: Section 212.21(a)(2) and (b)(3) implement the new requirement in section 1057(a)(2) of the Act that the review panel appointed by the Secretary or the State, as the case may be, give priority to the following proposals: (1) Those that demonstrate a high degree of need for Even Start services in the area to be served; and (2) those that demonstrate an ability to operate an effective program.

In the amendments to the Even Start law, the Congress also included the first factor (need) as one of the regular selection criteria. The second factor is similar to an existing selection criterion that focuses on an applicant's likelihood of success in meeting the Even Start goals. Therefore, § 212.21(a)(2) and (b)(3) of the regulations implement the priorities by assigning additional points to those categories.

The regulations implement the statutory priorities in this way in order to streamline the application and review process. An alternative method would have all applicants, in addition to submitting information under the regular selection criteria, submit other information that is tied directly to the two statutory priorities. However, that method would be cumbersome, and would create a needless paperwork burden on all applicants, even though the regular selection criteria in § 212.21(a) and (b) can be adequately used to obtain this same information.

To alleviate any possible confusion, the language in § 212.21(a)(2) has been revised to clarify that the Secretary gives 10 additional priority points only to applicants that achieve the required number of points on the criteria indicated. If an applicant does not receive the required number of points under those criteria, the applicant receives no priority points.

Changes: The language in § 212.21(a)(2) has been revised, and a new paragraph (ii) has been added, to clarify the provision.

Comment: One commenter suggested that § 212.21(c) list the specific Federal programs with which Even Start projects must be coordinated.

Discussion: Specific programs with which Even Start projects must be coordinated are listed in section 1054(b)(7) of the Act. The Secretary agrees that the regulations also should list those programs for the benefit of the public. The programs are Chapter 1 and Head Start; any relevant programs under Chapter 2, the Adult Education Act, the Individuals with Disabilities Education Act, and the Job Training Partnership Act; volunteer literacy programs; and other relevant programs.

Changes: A new paragraph (c)(2) has been added to § 212.21, listing the specific programs under section 1054(b)(7) of the Act. Sections 212.30 (a) and (c) have been amended to refer to § 212.21(c) for the listing of those programs.

Comment: One commenter suggested that additional information should be required on how existing services will be coordinated with Even Start, including an assessment of the relevance and quality of possible cooperating agencies, and that applicants should be required to provide contingency plans stating how the program will be carried out if the cooperating agencies described in the application are unable to provide the necessary services.

Discussion: The Secretary believes that requiring contingency plans would be unnecessarily burdensome on applicants. Applicants can use information obtained in the survey referenced in § 212.21(c)(1) to help select those agencies or organizations that are candidates for successful cooperative arrangements or agreements. Further, in the event a grantee is unable to execute an agreement that was included in its application, it could propose a change to the funding agency, such as by requesting approval of agreements to be made with other service providers. Section 80.30 of EDGAR contains requirements for changes in approved projects.

Changes: None.

Section 212.23 How does the Secretary make a grant to Indian tribes and tribal organizations, and to the insular areas?

Comment: One commenter inquired about which requirements regarding new and continuation grants apply to the insular areas.

Discussion: Section 1053(a) of the Act, which authorizes funding for the insular areas, Indian tribes and tribal organizations, and migratory children, provides that the Secretary shall reserve a certain percentage of funds for those programs "consistent with the purpose of this part * * *." The Secretary interprets this provision to mean that, in making grants to those entities, the Department must apply principles consistent with the purpose of the Act, but that all of the

specific provisions in the Act do not necessarily apply. Thus, the Secretary has determined that none of the requirements in Subpart C of these regulations, other than § 212.23, should apply to the insular areas. This includes § 212.20, regarding evaluating applications for eligible entities; §§ 212.21 and 212.22, regarding criteria and factors for selection of new grants; §§ 212.24 and 212.25, regarding the local contribution to a project's funding; § 212.26, regarding continuation awards where appropriations are insufficient to fund all requests fully; and § 212.27, regarding Secretarial actions in the case of insufficient project progress.

Change: A new paragraph (3) has been added to § 212.23(b) to clarify that none of the other requirements in subpart C apply to the insular areas.

Section 212.24 What is the portion of an Even Start grant that eligible entities are required to contribute?

Comment: One commenter suggested adding language to allow Federal and State dollars, as well as local in-kind contributions, to be used for the contributions of eligible entities.

Discussion: Generally, as set forth in § 212.24(c), eligible entities or Indian tribes and tribal organizations may obtain the local share of a project cost (in cash or in kind) from any source other than Chapter 1 funds, including other Federal as well as State and local contributions. Under certain circumstances, an applicant may request the Secretary to waive the prohibition on the use of Chapter 1 funds as a part of the applicant's contribution, as provided in § 212.25.

Changes: None.

Comment: One commenter requested that LEAs be allowed to use indirect costs as a portion of their required contribution to the project.

Discussion: Section 1054(c) of the Act, which contains limitations on the Federal share of project cost, provides that funds may not be used for indirect costs. This limitation applies to both Federal and local shares of the project cost. Because indirect costs are not an allowable project cost, under § 80.24(a)(1) of EDGAR they do not qualify for cost sharing, and may not be used as a portion of the grantee's contribution to the project cost.

Changes: None.

Comment: One commenter asked whether the $75,000 minimum funding level included only Federal Even Start funds, or meant the total project cost.

Discussion: The Secretary interprets section 1052(b)(2), which requires that no State shall "award a grant * * * for an amount less than $75,000," to mean that no State may make a subgrant of less than $75,000 in Federal Even Start funds. This reading of the statute is consistent with the meaning of the word "grant" in EDGAR, under which the word means the amount of Federal assistance in a project (34 CFR 80.3).

Changes: Section 212.31(a), regarding requirements that a State must meet in making subgrants, has been revised to clarify that States must fund each subgrant with Federal Even Start funds in an amount no less than $75,000. In addition, § 212.24 (a) and (b), regarding the percentage of funds that an eligible entity must contribute to a project's cost, has been revised to clarify that the percentage is of a project's total funding, rather than a portion of the Federal grant amount.

Section 212.25 When may the Secretary waive the requirement concerning the local contribution of funds?

Comment: One commenter inquired whether the Secretary or a State could, in granting a waiver, give additional Even Start funds to the grantee for the grantee to use as its required contribution under section 1054(c) of the Act, if the grantee has no other Chapter 1 funds available.

Discussion: Section 1054(c) of the Act, under certain circumstances, permits a waiver of the requirement that sources "other than funds made available under [Chapter 1]" be used to make up a grantee's contribution. If waiver is granted as necessary to allow participation in the program, the Secretary interprets section 1054(c) to permit Federal Even Start funds to be used to cover a portion or all of the cost of a project.

Changes: None.

Section 212.30 How does a State apply for Even Start funds?

Comments: A number of comments were received regarding the requirement for submission of a State plan to the Department. One commenter objected to the plan requirement, suggesting that, in its place, a State be required to submit a description of its proposed Even Start program and a set of assurances. Several commenters, while supporting the requirement that States provide information to the Department on how they plan to operate their Even Start programs, suggested that some term other than "State Plan" be used to describe the submission. One commenter indicated that the proposed plan requirement is unduly burdensome and could result in delays in States receiving Even Start funds. Two other commenters supported the State plan requirement, one suggesting that Federal monitoring of the plan be included, and the other suggesting a Federal evaluation of State performance at the conclusion of the three-year plan period.

Discussion: The Secretary believes that the State plan, which is required to be submitted (or updated) for the initial three-year period only, should remain unchanged. As set forth in § 212.30, the required plan essentially is comprised of two parts: (1) A description of the State's Even Start program including descriptions of the selection criteria to be used by the State, how the State will administer the program, and what methods will be used to monitor grantee compliance; and (2) a set of certifications and assurances. Changing the name of the submission to other than "State Plan" would not affect its content, nor exempt the submission from the requirements in §§ 76.100–76.106 of EDGAR with regard to State plan submissions.

The Secretary is aware that the requirement for State plans places some burden on States. However, the requirement should not be unduly burdensome, because each State must in any event develop a method for operating its Even Start program and administering the subgrant competition under the statute. Further, except for the requirements regarding fiscal control and fund accounting procedures in section 435(a)(2) and (5) of the General Education Provisions Act (GEPA), States are not subject to the requirements contained in sections 434, 435, or 436 of GEPA, including the requiremnt in section 435 that States must hold public hearings on their proposed State plans. Finally, with regard to Federal monitoring and evaluation, the Secretary intends to monitor State implementation of Even Start in the same manner as is done for other State-administered programs, such as Chapter 1 grants to LEAs.

Change: Section 212.30 has been revised to clarify that the State plan is comprised of two basic elements: certain descriptions regarding a State's Even Start program; and certifications and assurances.

Section 212.34 Which of the general Chapter 1 provisions apply to States in their administration of Even Start?

Comment: One commenter suggested that grantees renewed after the initial four years be allowed to carry over funds remaining into the new project period, without having that amount deducted from their awards. The commenter noted that the Chapter 1 basic grant program allows this carryover.

Discussion: The Chapter 1 basic grant program, unlike Even Start, is a formula grant program in which each eligible LEA receives its entitlement. Therefore, subject to the statutory limitations on carryover, Chapter 1 basic funds may be carried over from one year to the next because LEAs have a legitimate expectation of continued funding. However, because Even Start is a discretionary grant program, it carries no entitlement to funds; therefore, grantees that compete for and receive new Even Start awards may not carry over previously awarded Even Start funds into the succeeding project period. However, the awarding agency may extend the grant budget period for grantees that are unable to complete their projects within the original project period.

Section 412(b) of GEPA (the Tydings provision) extends the period for which funds awarded by formula grants to State educational agencies (SEAs) are available for obligation to one year beyond the year for which they are appropriated (*e.g.*, funds that become available for obligation as of July 1, 1992 will remain available until September 30, 1994). SEAs may not extend a subgrantee's budget period beyond that date.

Changes: None.

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June 19, 1992

Part IV

Department of Health and Human Services

Administration on Children, Youth and Families

Comprehensive Child Development Program; Availability of Fiscal Year 1992 Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Children, Youth and Families

[Program Announcement No. ACYF-HS-93.600-92-6]

Administration on Children, Youth and Families: Availability of FY 1992 Funds and Request for Applications; Comprehensive Child Development Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Announcement of the availability of financial assistance and request for applications for Comprehensive Child Development Programs.

SUMMARY: The Head Start Bureau of the Administration on Children, Youth and Families announces the availability of funds for competing grant applications to operate a Comprehensive Child Development Program (CCDP). The purpose of this program is to plan for and carry out projects for intensive, comprehensive, integrated and continuous support services for infants, toddlers and preschoolers from low-income families to enhance their intellectual, social, emotional and physical development and provide supportive services to their parents and other family members.

This announcement describes the grant application process. Between six (6) and ten (10) agencies will be selected to receive grants based on the outcome of a competitive review process.

DATES: The closing date for receipt of grant applications is August 18, 1992.

ADDRESSES: Address applications to: Comprehensive Child Development Program, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue, SW., Hubert H. Humphrey Building, room 341-F, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Allen N. Smith (202) 245-0566, ACYF Project Officer.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Program Purpose

On April 28, 1988, the President signed the Comprehensive Child Development Act of 1988, Part E of Public Law 100-297 (the Act). The overall objectives of the Act are to provide intensive, comprehensive, integrated and continuous support services to low-income children from birth to entrance into elementary school that will enhance their intellectual, social, emotional and physical development and to provide needed support services to parents and other household family members that will enhance family stability and economic and social self-sufficiency.

A third party evaluation contractor will be used by ACYF to assess whether the above stated objectives are being achieved in the projects funded under the Act. The contractor also might examine the relative effectiveness of different staffing and program models for achieving desirable child and family benefits. Comparison (control) groups of families who are not participating in the project will be compared with families who are participating. In addition, a management support contractor will be used by ACYF to provide ongoing administrative and technical support to grantees in the conduct of their projects and will help assure a smooth and effective implementation needed for delivering core services and for optimizing family participation and services utilization.

B. Background

On September 28, 1989, twenty-two (22) CCDP grantees were selected by ACYF to receive operating grants. On May 1, 1990, two additional grantees were selected, for a total of twenty-four (24) CCDPs nationwide. (See appendix I for a list of current CCDPs.) The CCDPs are currently in their third year of funding. A report describing each of these 24 grantees as well as CCDP in general is available upon written request to ACYF, Head Start Publications Unit, P.O. Box 1182, Washington, DC 20013. This report should satisfy the information needs of all interested applicants. Consequently, applicants are requested not to contact any of the CCDP grantees of ACYF contractors for information or consultation. The ACYF contact person, Allen N. Smith (202) 245-0566, will be able to answer any future requests for information.

C. Framework

Early intervention in the lives of infants and young children from low-income families is an important factor in overcoming the cognitive, social, emotional and physical risks faced by these children. Compared with children from middle- and upper-income families, these children are more likely to experience poor school achievement, low test score performance, higher grade retention and more special education class placements. Intervening successfully, however, is complicated because these children are often part of families that have many social, economic, physical and educational problems which can hinder their development and prevent their achieving the full benefits of such an intervention. Also, the violence occurring in communities where many low-income families live threatens family stability and child development. This points to the need for coordination and cooperation between human service agencies and law enforcement agencies in order to reduce the effects of such violence on children and families.

Evidence has emerged which indicates that high quality intervention programs which serve all family members increase effective and productive family functioning and contribute substantially toward children achieving their full potential. Equally important is the evidence which suggests that intervention for low-income families should begin as soon after birth as possible, address a broad range of needs and continue throughout the preschool years. Investing resources early gives parents more opportunity to develop needed skills and confidence for accessing resources and support systems which can facilitate a greater commitment to directly and actively involving themselves in their child's development as well as in their own development and achievement.

D. Program Services

Projects funded under the Act must intervene as early as possible in the child's life; involve the whole family; provide comprehensive services to all infants and young children in the household which address their intellectual, social, emotional and physical needs; provide services to parents and other family members which enhance their ability to contribute to their child's healthy development and which enable them to achieve family stability and economic and social self-sufficiency; and continue to provide these services until children enter elementary school at the kindergarten or first grade level. It is expected that successful applicants under this announcement will provide and/or arrange for all such services. Family members will not be required to pay for these services in the early project years. As family income increases, and families can afford to partially pay for some services, ACYF will provide grantees with a payment fee schedule.

In the case of infants, toddlers and preschool children, the core services which grantee must ensure are provided under this program, either directly or through arrangements with third-party providers, are health services (including screening, immunization, treatment and referral); developmental screening and assessment; early childhood development programs; early intervention services for children with or at-risk of developmental delay; and nutritional services.

In the case of parents and other household family members, the core services which grantees must provide or arrange for third-parties to provide under this program are prenatal care; education in infant and child development, health care, nutrition and parenting; health care; mental health care; substance abuse identification and treatment; child care that meets State licensing requirements; employment counseling; vocational training; education; and assistance in securing adequate income support, nutritional assistance and housing.

Grantees should, to the extent possible, coordinate with and utilize those core services that exist locally and expand these services, when necessary. Grantees should directly provide required core services that are not available in the area to be served.

Grantees are encouraged to provide and/or arrange for other supportive services as well, in order to meet the assessed needs of enrolled families. These services should be relevant to enhancing the intellectual, social, emotional and physical development of children and the economic and social self-sufficiency of parents.

E. Eligible Applicants

The following types of organizations are eligible to apply for operating grants under this announcement:

- A Head Start agency;
- An agency that is eligible to be designated as a Head Start agency under section 641 of the Head Start Act;
- A community-based organization as defined under section 4(5) of the Job Training Partnership Act (29 U.S.C. 1503(5));
- An institution of higher education as defined under section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));
- A public hospital as defined under 42 U.S.C. 291o(c);
- A community development corporation as defined under section 681(a)(2)(A) of the Community Services Block Grant Act (42 U.S.C. 9910(a)(2)(A)); or
- A public or private non-profit agency or organization specializing in delivering social services to infants or young children (i.e., toddlers and preschoolers) and/or families.

Current CCDP grantees are excluded from applying for a grant under this announcement. With the exception of applicants for a Special Emphasis Program (see part I, section H below), other agencies located in the same county or counties where a CCDP currently exists are also excluded (see appendix I for a listing of current grantees).

F. Recruiting and Enrolling Families

Families are eligible for recruitment and enrollment in the CCDP if their household incomes are at or below the poverty line and they have a child either unborn or less than six months of age at the time they are initially enrolled. The poverty line is determined in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2) and is published annually by the Department in the **Federal Register**. For information purposes, the 1991 Poverty Income Guidelines are reprinted in appendix II. The Guidelines for subsequent years will be found in the **Federal Register**.

Special Emphasis Program agencies must enroll a minimum of 120 eligible families. All other CCDP agencies must enroll a minimum of 240 eligible families for this project. Urban and rural agencies are eligible to apply.

Agencies will be expected to recruit at least 2.5 times the number of eligible families to be enrolled. Of this number, 40 percent will be randomly selected as program families, 40 percent as comparison families and 20 percent as replacement families.

In determining which families will be program families, which will be comparison group families, and which will be replacement families, ACYF requires that grantees use a random assignment procedure to assure that the three groups are equivalent. For evaluation purposes, it is important that any outcome differences are attributable to the CCDP and not to initial differences between the groups. ACYF will provide assistance to grantees in randomly assigning families.

Families identified as comparison group families will not receive services covered by the CCDP but most will be given a stipend (amounts to be determined later by ACYF) for allowing child and family information to be collected periodically. Their participation as comparison group families would not, of course, affect any other type of assistance, service or training they are eligible to receive, are currently receiving or will receive in the future from sources other than the CCDP project, provided that the stipend does not change their eligibility for certain amounts or types of such assistance. Many program families will also receive a stipend for participating in the evaluation as part of a special sub-study to examine the effects on response rates.

As the program progresses and after the initial group of replacement families has been given an opportunity to replace CCDP enrollees leaving the program, other replacement families will be recruited based on the same eligibility criteria as families initially selected during the first funding year. Comparison group families cannot serve as replacement families.

Families who start with the program are expected to be enrolled for the full project period, which should be through September 30, 1997, provided funds are available and grantees are performing satisfactorily. Families voluntarily leaving before September 30, 1997 should be replaced as soon as possible. It is also expected that replacement families will be enrolled through September 30, 1997.

The recruiting area(s) for the program must contain at least two times the number of eligible families as the number to be recruited. These figures are needed to assure that the objectives for the CCDP can be adequately examined over the full five-year project period. Agencies must provide assurances in their operating grant proposal that these minimums will be met.

Shortly after operating grants have been awarded, ACYF will provide grantees with a listing of types of demographic characteristics (i.e, social-economic status, ethnicity, special needs, etc.) to be used in recruiting all families, including enrollees, comparison families and replacement families. Recruited families should reflect demographic characteristics generally proportionate to their distributions in each recruiting area. After families are recruited, grantees will submit a roster of all recruited families along with their demographic characteristics, to the ACYF Project Officer or designee. Once this roster is approved, and the random assignment of recruited families takes place, families will be notified by the grantee and enrolled.

Grantees will be at different stages of readiness for providing core services at the time operating grant awards are made and consequently will differ on when they are prepared to enroll families into the program. ACYF

encourages grantees to enroll families as soon as possible after the project is funded, but not before all core services are available to families. Recruitment and enrollment of families will occur in stages during the first twelve months of the project. All of the families the grantee plans to serve must be enrolled and all core and other proposed services must be available to these families by October 1, 1993.

G. Available Funds

This competitive announcement is soliciting applications for five-year project periods. Initial awards will be for a one-year budget period. Continuation grants for years two through five will be awarded subject to availability of funds, timely and successful completion of project tasks and ACYF's determination that this would be in the best interest of the Government.

In fiscal year 1992, ACYF expects to commit approximately $12,000,000 to fund new operating grants. Between 6 and 10 grants will be funded (3 to 5 of which will be Special Emphasis Projects). Special Emphasis grants are expected to average approximately $1.2 million (Federal share) annually and non-Special Emphasis grants are expected to average about $1.8 million (Federal share) annually.

We anticipate that grants will be refunded in subsequent years and at the same level as the first year of funding.

Continuation funds will be available to serve eligible families who were initially enrolled and eligible families which replaced starting families (i.e., replacement families) who left the program during any single year.

Agencies should serve at least the same number of eligible families each year throughout their five-year project periods.

H. Special Emphasis Program

The Department of Health and Human Services is targeting 3–5 of the grants to be awarded under this announcement to eligible agencies that will operate CCDPs which exclusively recruit and enroll children and families affected by substance and/or alcohol abuse. Enrollees would include families where parents of preschool children (or other adults in the household who provide nurturance to the preschool children) are substance and/or alcohol abusers. It is not necessary that such children would have been exposed to drugs or alcohol in utero. Applicants will have to meet the recruiting and enrolling provisions under part I, section F, of this announcement.

While all agencies listed in part I, section E are eligible to apply for these Special Emphasis grants, agencies particularly encouraged to submit an application include (1) family support-oriented programs (or substance abuse programs) interested in expanding to provide substance abuse services (or child/family support-oriented services); (2) family support programs (or substance abuse programs) that would contract with substance abuse providers (or family support providers) and work together closely to assure a family support orientation in the treatment of substance abuse; and (3) multi-purpose organizations that have both a family support component and a substance abuse component. These programs must fall under the eligibility listing in part I, section E, of this announcement.

In addition to the program services to be provided children and families under part I, section D, of this announcement, as well as grantee responsibilities under part II of this announcement, these programs are required to provide or assure the provision of substance abuse services in order to meet the specific needs of families with substance abuse problems. These services include treatment to affected family members; training for non-addicted family members on co-dependency issues and the recovery process; and peer support groups for recovering addicts and for relative caregivers.

II. Description of the Comprehensive Child Development Program

A. Grantee Responsibilities

The Comprehensive Child Development Program is intended to enhance the intellectual, social, emotional and physical development of children from low-income families necessary for their long range success as well as to enhance the educational, parenting and vocational skills of low-income parents and other significant household family members necessary for effective parenting and family functioning and economic/social self-sufficiency. To accomplish these goals, agencies awarded grants will be expected to involve the whole family and to provide comprehensive, relevant and age appropriate services as early as possible in the child's life, continuing the same level of such services to all children in the family until entrance into elementary school.

In each participating family there must either be a woman who is pregnant or a child who is less than six months old at the time the family is initially enrolled in the program. The continual development of the child will be of particular study interest as the project progresses. Other infants, toddlers and preschool children in that family will also receive similar preschool services and their progress will also be of study interest.

Services to parents and other household family members will be based upon individual and family needs assessments and will be provided in accordance with individual and family service plans. These plans would include specific and well-detailed short and long range goals for family members and activities important for achieving these goals Grantees will need to be sensitive to the changing economic, social and educational conditions of families as the project progresses.

No single model or design for delivering services is prescribed under this announcement. The intent of the Act is to fund and evaluate programs with different structures and mechanisms for delivering services. In addition, the intensity, duration and frequency of required services would be expected to vary from grantee to grantee. Similarly, programs will vary in terms of which services they directly provide and which services they arrange to be provided in coordination with other service providers or organizations.

Also, no single program or staffing model is prescribed under this announcement. Consequently, it is expected that models with different philosophies or strategies for enhancing the intellectual, social, emotional and physical development of children will be funded and assessed across the different child and family populations serviced#.

Similarly, programs will be expected to vary with respect to the emphasis placed on center-based or combination center/home-based models and with the characteristics and intensity of their parent involvement activities.

Grantees are expected to cooperate with a management support contractor which will provide administrative and technical assistance to grantees during the start-up and operating periods. This contractor will also conduct on-going program monitoring needed to assure compliance with the requirements of the Act and with the content of the grant proposals.

Grantees are also expected to cooperate with a third party evaluation contractor which will conduct process and impact assessments of their program.

Cooperation with both contractors will involve periodically furnishing needed program and process-oriented data as required by ACYF and allowing the evaluation contractor reasonable

access to obtain child and family impact information. All child and family data collected by both contractors will be kept confidential.

There will also be a Management Information System (MIS) developed to collect program information from grantees on families, service activities, collaborative arrangements, staff, training, services utilization and costs. Grantees will be responsible for coordinating the collection and management of this information and for reporting this information on a periodic basis using data entry forms and a software package developed by ACYF for this purpose.

Data entry and periodic transmission will be through a personal computer that grantees will be required to purchase. The capabilities required of the personal computer will be provided to the grantee after the grant is awarded.

All funded projects must provide the core services for children, parents and other family members identified in part I, section D, of this announcement. Parents should also be given an opportunity to be involved in decision making about the nature and operation of these services. Under-utilization by parents of available services is a major challenge facing human services delivery agencies. Since the CCDP is designed to be a family as well as a child intervention program, enrolled parents must be encouraged to participate in all facets of the program and utilize all services when needed. To increase the likelihood of this happening, CCDP grantees should obtain in writing from program and comparison parents, prior to their enrollment, a commitment of intent to participate in the evaluation.

Grantees should make it clear to parents that continued enrollment in the program is conditioned on this commitment, unless reasonable circumstances prevent families from keeping this commitment.

The level of core services provided to children and families must be consistent with acceptable developmental, health and nutritional practices for children and must meet or exceed the level reflected in the Head Start Program Performance Standards (45 CFR subchapter B, part 1304; subparts, B, C, D and E, excluding appendices A and B) which are included as appendix III to this announcement.

Furthermore, developmentally appropriate childhood experiences must be provided to all preschool children of enrolled families in the child's home at least once a week or out of home at least three times a week. Also, programs are required to carry reasonable amounts of on- and off-premises accident and liability insurance, covering enrolled children and parents. They are also required to make arrangements for bonding officials and employees authorized to dispense program funds.

B. Grantee Share of Project

The non-Federal share of operating grant costs shall be 20 percent of the total project costs for each grantee and may be provided in cash or in-kind, fairly evaluated, including equipment and/or services.

C. Operating Grant Proposals

To facilitate judging the capacity of agencies for providing quality services in this program, applications for grants (including applicants applying for a Special Emphasis Program grant under part I, section H, of this announcement) shall:

1. Provide an overview of this project identifying the needs for CCDP, major goals and factors contributing to its success and future implications.

2. Identify the population and geographic location to be served by the project (service and recruiting areas) and how the population will be recruited and selected for enrollment, assuring that only eligible families will be served and that eligible families will be located at a reasonable distance to all service providing agencies. Also provide assurances by furnishing appropriate demographic data that the minimum numbers of eligible families required in this announcement are in the catchment or recruiting area(s) and can be recruited and enrolled.

3. Identify the specific results and benefits that could be expected for families and children participating in this project. Provide assurances and describe how core and other services to be provided will be closely related to the assessed needs of the enrolled family members (including male and female adults). Describe how the needs to be addressed are important for successful child and family functioning and growth consistent with the objectives of this project.

4. Provide assurances and describe how each core service identified in part I, section D, will be provided (along with a description of each service) to parents beginning with prenatal care and how core services will be provided on a continuous basis over the five year course of the project to all infants and young children (i.e., toddlers and preschoolers) in the enrolled family's household, as well as to other family members. Identify how the applicant will enhance utilization of these services by both male and female family members. Clearly identify the project's funding source for each service.

5. Provide assurances and describe how the level of services specified in Number 4 above are developmentally appropriate and consistent with Head Start and other established Federal, State and/or local public agency standards.

6. Identify and describe the specific program model(s) that will be used for assuring the intellectual, social, emotional and physical development of children served, including center or home or center/home-based combination model configurations, educational philosophy, curricula, staffing patterns, staff qualifications, and any other information that clearly describes the model(s) and supports its use.

7. Describe how infant, toddler and preschool child care services needed in connection with parental education, vocational training and/or employment will be provided and paid for. Identify and describe existing child care resources in the service community that could be utilized by the applicant.

8. Describe how core and other supportive services will be furnished at off-site locations, if appropriate. Provide assurances that families will have access to these services through a viable transportation system either existing or to be developed. Describe this system.

9. Identify by name specific providers, agencies and organizations with which the applicant will coordinate in order to carry out the requirements of this project. Applicants should furnish formal interagency agreements or contracts (if available) indicating which services will be provided to which project participants for what periods of time, by each of those provider agencies and/or organizations.

Applicants should describe the role of the business community as participants in this project and describe what specific efforts they will conduct and what relationships they intend to establish to assure the availability of entry level jobs for program families. Applicants should identify project staff who will coordinate these business relationships and describe their qualifications for this unique and important activity.

10. Describe the extent to which the applicant will provide services not currently available in the area to be served by the project. Applicants must explain if services are already available in the community or communities to be served but are not considered adequate

to meet the anticipated needs of CCDP families.

11. Discuss how the applicant proposes to help children who live in neighborhoods plagued with violence and drug activities. The application should identify and discuss the effect of violence on family stability and growth in the community and identify how the applicant will train staff and facilitate coordination and cooperation among local education, juvenile justice, law enforcement, employment and social service agencies, and drug abuse referral, treatment and rehabilitation programs for the purpose of preventing or reducing the incidence of violence in communities.

12. Identify how the project will be administered and managed. Since the enrollment of families will need to be completed by October 1, 1993, submit a first-year timetable for implementing all activities.

13. Describe the steps that will be taken to assure that all core services will be available to enrolled families by October 1, 1993. Provide a description of the applicant's previous program, administrative and fiscal experience in providing direct services and in coordinating activities with State and local public and/or other non-profit agencies and organizations.

14. Provide resumes which include descriptions of the training and background of the key project staff, their responsibilities in connection with this project and the time they will be committing to this project. Applicants should furnish any other staff and organizational information which illustrates their skills and capacity to deliver required services in a timely manner and to implement a quality project which can endure for the required project period, including evidence of current or previous relationships with agencies that are committed to work with this applicant on the project.

Applicants should identify the specific staff positions (and their qualifications) that will relate to the direct provision of each core service, the coordination of each core service and the coordination/management/analysis of the MIS data. Applicants should detail the specific training programs to be provided to different staff positions. Applicants who plan to hire paraprofessional case managers are required to justify preferring such staff over case management staff with professional training and/or experience in child development and/or family support development.

Applicants should describe the specific case management model they will utilize for providing case management services in the family's home and describe how that model would target individual family member goals as well as monitor progress toward achieving such goals.

15. Provide assurances and describe how the eligible agency will pay the non-Federal share of the cost of the project for the full five year project period.

16. Identify in detail the proposed first year budget for the project and describe how the proposed costs are reasonable in view of the services to be provided. The budget should anticipate level Federal funding over the project life. The budget should also include travel money for five staff persons to attend two conferences in Washington, DC annually.

17. Identify and describe any technical assistance services which will be utilized by the applicant to assure a smooth start-up of the project and to assure the ongoing integrity of the proposed model.

18. Provide assurances that the applicant will cooperate with a management support contractor to provide training and technical assistance and with a third party evaluation contractor hired by ACYF to evaluate the effectiveness of the Comprehensive Child Development program. Applicants should also verify that they will agree to use a random assignment procedure defined by ACYF for assigning recruited families into program, comparison and replacement groups.

19. Provide assurances that the applicant will collect data on groups of individuals and geographic areas served, types of services to be furnished, service utilization information, costs of providing comprehensive services, types and nature of needs identified and met, and such other information as may be required periodically by ACYF. Applicants will address how confidentiality of user data will be maintained.

20. Describe how the applicant will provide for an advisory board consisting of:

(a) Program families;

(b) Public and community agencies furnishing services; individuals with expertise in services the project provides; and individuals with expertise in other aspects of child and family health and development; and

(c) Political, educational and business representatives of the community in which the project will be located.

21. Applicants should describe how the CCDP advisory board would be active and functional and not just a pro forma body. Applicants should provide letters of commitment (not merely support) from prospective board members, except for those board positions to be filled by program family members who will not yet have been recruited.

22. Special Emphasis Program applicants, as identified in part I, section H, of this announcement, should also discuss the potential difficulties of serving substance abuse populations as well as strategies for resolving those difficulties. Applicants who will contract with other agencies for family support or substance abuse services should describe how this would be accomplished to assure an integrated family support framework for substance abusers.

Applicants should describe how the proposed recruiting area has been heavily impacted by substance abuse and provide statistics and reports which verify this. Applicants should also provide assurances that the minimum number of substance abuse families required in this announcement can be recruited and enrolled.

III. Criteria for Review and Evaluation of Applicants' Operating Grant Proposals

In considering how the eligible applicant for an operating grant will carry out the responsibilities addressed under part II of this announcement, applications will be reviewed and evaluated against the following criteria:

A. Objectives and Need for Assistance. (10 Points)

The extent to which the application reflects a good understanding of the objectives of the project; pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a grant; demonstrates the need for assistance; and states the principal and subordinate objectives of the project.

Information provided in response to part II, section C, Number 1 of this announcement will be used to review and evaluate applicants on this criterion.

B. Results or Benefits Expected (10 points)

The extent to which the identified results and benefits to be derived are consistent with the objectives of the proposal and there are clear and important anticipated contributions to policy, practice, theory and/or research indicated.

Information provided in response to part II, section C, Number 3 of this

announcement will be used to review and evaluate applicants on this criterion.

C. Approach. (35 points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work and gives acceptable reasons for taking the approach proposed as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, or extraordinary social and community involvements; provides required detail for each of the core services and gives projections of the accomplishments to be achieved.

The extent to which the application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates.

The extent to which the application lists and provides letters of commitment from each organization, agency, consultant, or other key individuals or groups who will work with the project along with a description of their activities and nature of their effort or contribution.

Information provided in response to part II, section C, Numbers, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 21 and 22 of this announcement will be used to review and evaluate applicants on this criterion.

D. Geographic Location. {5 points}

The extent to which the application gives a precise location of the project and area to be served by the proposed project and includes maps or other graphic aids. The extent to which the application describes characteristics of the families to be recruited and enrolled and provides assurances that the minimum number of eligible families required in this announcement can be recruited and enrolled.

Information provided in response to part II, section C, Number 2 of this announcement will be used to review and evaluate applicants on this criterion.

E. Staff Background and Experience. {25 points}

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope and reflect the ability to use and coordinate activities with other agencies for the delivery of comprehensive support services.

Information provided in response to part II, section C, Numbers 12, 13 and 14 of this announcement will be used to review and evaluate applicants on this criterion.

F. Budget Appropriateness {15 points}

The extent to which the project's cost are reasonable in view of the activities to be carried out and the anticipated outcomes. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost.

Information provided in response to part II, section C, Numbers 15 and 16 of this announcement will be used to review and evaluate applicants on the above criterion.

IV. The Application Process

A. Availability of Forms

Agencies and organizations interested in applying for operating grant funds should submit an application on the Standard Form 424 included in this announcement (Appendix VIII). In addition, please provide the following assurances: Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions (Appendix V); Certification Regarding Drug-Free Workplace Requirements (Appendix VI); and Certification Regarding Lobbying (Appendix VII).

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Comprehensive Child Development Program, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue SW., Hubert H. Humphrey Building, room 314–F, Washington, DC 20201.

The program announcement number must be clearly identified on the application. Applicants applying for one of the Special Emphasis Program grants should enter the following, "Special Emphasis Program Grant" in the box labeled "Applicant Identifier." Applicants applying for a Special Emphasis Program grant cannot also apply for one of the other CCDP grants and vice versa.

C. Application Consideration

Applications will be scored against the criteria outlined in part III of this announcement. The competitive review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about early childhood education and development and family support programs, and, for Special Emphasis Program applications, will have special expertise on substance abuse. Applicants applying for one of the Special Emphasis Program grants will be reviewed separately from applicants applying for one of the other grants.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who will recommend programs to be funded to the Commissioner, ACYF. The Commissioner, ACYF, will make the final selections. Applicants may be funded in whole or in part. Consideration will also be given to ensuring, to the extent possible, that a variety of geographic area are served, that projects with different auspices are selected and that various project designs and models are represented.

Successful applicants will be notified through a Notice of Financial Assistance Awarded. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period and the amount of the non-Federal matching share.

D. Proposal Format

Applicants submitting an operating grant proposal should use the following format guidelines:

1. Proposals should be organized according to the operating grant proposal criteria for review and evaluation located in part III of this Federal Register announcement. For each of the six specified criteria, applicants should provide information in response to those proposal requirements described in Part II, Section C. These proposal requirements are cross-referenced by number in the last paragraph of each criterion. Applicants should use these numbers to identify specific responses.

2. Lines on each page should be double-spaced.

3. All pages should be numbered.

4. A table of contents should be included.

5. A one-page abstract should be included in the beginning of the proposal.

6. All persons who prepared sections of the proposal should be identified along with those sections they prepared and their responsibilities under this grant.

E. Due Date for the Receipt of Applications

The closing date for grant applications is August 18, 1992.

Deadlines: Applications should be considered as meeting an announced deadline if they are either:

1. Received on or before the deadline date at a place specified in the program announcement, or

2. Sent on or before the deadline date and received by the granting agency in time for independent review under Chapter 1–62. (Applicants are cautioned to request a legibly edited U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the above criteria are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements and regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Program," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Kansas, Louisiana, Minnesota, Oregon, Virginia, Pennsylvania, Alaska, Idaho, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these eleven areas need not take an action regarding E.O. 12372. Applications for projects to be administered by federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) in the SF 424, item 16a. SPOCs have until September 18, 1992 to comment on applications for financial assistance under this program. This announcement has required extensive preparation to ensure its consistency with the 1990 reauthorization of the Head Start Act and the Comprehensive Child Development Centers Act of 1988. Consequently, there is insufficient time remaining in the fiscal year to permit a 60-day SPOC comment period. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Comprehensive Child Development Program, Department of Health and Human Services, Administration on Children Youth and Families, Grants and Contract, Management Division, 200 Independence Avenue SW., room 341F, Hubert H. Humphrey Building, Washington, DC 20201. ACF will notify the State of any application received which has no indication that the State process has had an opportunity for review. A list of single points of contact for each State and territory is included in appendix IV of this announcement.

H. Protection of Human Subjects

Department of Health and Human Services policy (45 CFR part 46, 42 U.S.C. 289[1]) requires that if any phase of this project will involve subjecting individuals to the risk of physical, psychological, sociological, or other harm, certain safeguards must be instituted and an assurance must be filed. If there is any question about the application of requirements for the protection of human subjects for this project, further information should be requested from Mr. Cliff Sharke of the Office for Protection from Research Risks, Building 31, room 5B59, National Institutes of Health, DHHS, 9000 Rockville Pike, Bethesda, Maryland 20892: (301) 496–7041.

The Catalog of Federal Domestic Assistance number for the Comprehensive Child Development Program is 93–666.

Dated: June 9, 1992.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

Appendix I—Comprehensive Child Development Program

Directory of Grantees

Region I

Project AFRIC, Dimock Community Health Center, 55 Dimock St., Richards Bldg., Roxbury, MA 02119, County: Suffix County.

Windham County Family Support Program, Brattleboro Town School District, 218 Canal St., Brattleboro, VT 05301, County: Windham County.

Region II

Project CHANCE, 136 Lawrence Street—3A & B, Brooklyn, NY 11201, County: Kings County.

Region III

Parent Child Resource Center, Edward C. Mazique Parent Child Center, Inc., 1325 W St., NW., Washington, DC 20009, County: Not Applicable—Washington, DC.

Family Start, Friends of the Family, Inc., 1510 West Lafayette Avenue, Baltimore, MD 21217, County: Baltimore City.

Family Foundations, Community Human Services, 374 Lawn Street, Pittsburgh, PA 15213, County: Allegheny County.

Region IV

T.I.P.P. (Toddlers, Infants, Preschoolers, and Parents), Dade County Community Action Agency, 1325 N.W. 71st St., Miami, FL 33147, County: Dade County.

Operation Family, Community Action Council, P.O. Box 11610, Lexington, KY 40576, County: Lexington-Fayette County.

Tennessee CAREs, Bureau of Educational Research and Services, TN State University, 330 Tenth Ave. North, Nashville, TN 37203–3401, Counties: Obion, Gibson, Henry, and Weakly Counties

Region V

Project Focus, Grand Rapids Child Guidance Clinic, 1309 Madison, S.E., Grand Rapids, MI 49506, County: Kent County.
West CAP Full Circle Project, P.O. Box 308 (439 Maple Street), Glenwood City, WI 54013–0308, Counties: Barron, Chippewa, Dunn, Pepin, Pierce, Polk, and St. Croix Counties.

Region VI

Project Family, P.O. Box 120, (4206 Frazier Pike), College Station, AR 72053, County: Pulaski County.
City of Albuquerque CCDP, Albuquerque Dept. of Human Services, Children's Services Section, 601 Yale, S.E., Albuquerque, NM 87106, County: Bernallillo County.
Primero Los Niños, La Clínica de Familia, 225 E. Idaho, La Mission, Pl. #26, Las Cruces, NM 88005, County: Doña Ana County.
Avance CCDP, Avance-San Antonio, Inc., 435 S. San Darío, San Antonio, TX 78237, County: Bexar County.
Share Care Program, Day Care Association of Fort Worth & Tarrant County, 121 North Rayner, Ft. Worth, TX 76111, Counties: Fort Worth and Tarrant Counties.

Region VII

Mid-Iowa Community Action, 1500 East Linn St., Marshalltown, IA 50158, Counties: Hardin, Marshall, Poweshiek, Story and Tama Counties.
Project EAGLE, Gateway Centre, Tower 2, Suite 1001, Fourth and State Avenues, Kansas City, KS 66101, County: Wyandotte County.

Region VIII

Family Futures, 3801 Martin Luther King, Jr. Blvd., Denver, CO 80205, Att: Proj. Dir., County: Denver County.
Little Hoop Community College, P.O. Box 269, Ft. Totten, ND 58335, County: Vincent County.
Community-Family Partnership Project, Center for Persons with Disabilities, UMC 6800, Logan, UT 84322–6800, Counties: Cache and Box Elder Counties.

Region IX

Conocimiento, Southwest Human Development, Inc., 1366 East Thomas Rd., Suite 100, Phoenix, AZ 85014–5739, County: Maricopa County.
Enrich, Venice Family Clinic, 604 Rose Ave., Venice, CA 90291, County: Los Angeles County.

Region X

Families First, Children's Home Society of Washington, P.O. Box 1997, Auburn, WA 98071, County: King County.

APPENDIX II.—1992 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$6,810
2	9,190

APPENDIX II.—1992 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA—Continued

Size of family unit	Poverty guideline
3	11,570
4	13,950
5	16,330
6	18,710
7	21,090
8	23,470

For family units with more than 8 members, add $2,380 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$8,500
2	11,460
3	14,460
4	17,440
5	20,420
6	23,400
7	26,380
8	29,360

For family units with more than 8 members, add $2,980 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$7,830
2	10,570
3	13,310
4	16,050
5	18,790
6	21,530
7	24,270
8	27,010

For family units with more than 8 members, add $2,740 for each additional member.

Appendix III

Head Start—Administration for Children, Youth & Families Program Performance Standards

Subpart A—General

Sec.

1304.1–1 Purpose and application.
1304.1–2 Definitions.
1304.1–3 Head Start program goals.
1304.1–4 Performance standards plan development.
1304.1–5 Performance standards implementation and enforcement.

Subpart B—Education Services Objectives and Performance Standards

1304.2–1 Education services objectives.
1304.2–2 Education services plan content: operations.
1304.2–3 Education services plant content: facilities.

Subpart C—Health Services Objectives and Performance Standards

1304.3–1 Health services general objectives.
1304.3–2 Health Services Advisory Committee.
1304.3–3 Medical and dental history, screening, and examination.
1304.3–4 Medical and dental treatment.
1304.3–5 Medical and dental records.
1304.3–6 Health education.
1304.3–7 Mental health objectives.
1304.3–8 Mental health services.
1304.3–9 Nutrition objectives.
1304.3–10 Nutrition services.

Subpart D—Social Services Objectives and Performance Standards

1304.4–1 Social services objectives.
1304.4–2 Social services plan content.

Subpart E—Parent Involvement Objectives and Performance Standards

1304.5–1 Parent involvement objectives.
1304.5–2 Parent involvement plan content: parent participation policy.
1304.5–3 Parent involvement plan content: enhancing development of parenting skills.
1304.5–4 Parent involvement plan content: communications among program management, program staff, and parents.
1304.5–5 Parent involvement plan content: parents, area residents, and the program.

Subpart A—General

Section 1304.1–1 Purpose and application

This part sets out the goals of the Head Start program as they may be achieved by the combined attainment of the objectives of the basic components of the program, with emphasis on the program performance standards necessary and required to attain those objectives. With the required development of plans covering the implementation of the performance standards, grantees and delegate agencies will have firm bases for operations most likely to lead to demonstrable benefits to children and their families. While compliance with the performance standards is required as a condition of Federal Head Start funding, it is expected that the standards will be largely self-enforcing. This part applies to all Head Start grantees and delegate agencies.

Section 1304.1–2 Definitions

As used in this part:

(a) The term "ACYF" means the Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services, and includes appropriate regional office staff.

(b) The term "responsible HHS official" means the official who is authorized to make the grant of assistance in question, or his designee.

(c) The term "Commissioner" means the Commissioner of the Administration for Children, Youth and Families.

(d) The term "grantee" means the public or private nonprofit agency which has been granted assistance by ACYF to carry on a Head Start program.

(e) The term "delegate agency" means a public or private nonprofit organization or agency to which a grantee has delegated the carrying on of all or part of its Head Start program.

(f) The term "goal" means the ultimate purpose or interest toward which total Head Start program efforts are directed.

(g) The term "objective" means the ultimate purpose of interest toward which Head Start program component efforts are directed.

(h) The term "program" performance standards" or "performance standards" means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(i) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services.

Section 1304.1–3 Head Start Program goals

(a) The Head Start Program is based on the premise that all children share certain needs, and that children of low-income families, in particular, can benefit from a comprehensive developmental program to meet those needs. The Head Start Program approach is based on the philosophy that:

(1) A child can benefit most from a comprehensive, interdisciplinary program to foster development and remedy problems as expressed in a broad range of services, and that

(2) The child's entire family, as well as the community must be involved. The program should maximize the strengths and unique experiences of each child. The family, which is perceived as the principal influence on the child's development, must be a direct participant in the program. Local communities are allowed latitude in developing creative program designs so long as the basic goals, objectives and standards of a comprehensive program are adhered to.

(b) The overall goal of the Head Start program is to bring about a greater degree of social competence in children of low-income families. By social competence is meant the child's everyday effectiveness in dealing with both present environment and later responsibilities in school and life. Social competence takes into account the interrelatedness of cognitive and intellectual development, physical and mental health, nutritional needs, and other factors that enable a developmental approach to helping children achieve social competence. To the accomplishment of this goal, Head Start objectives and performance standards provide for:

(1) The improvement of the child s health and physical abilities, including appropriate steps to correct present physical and mental problems and to enhance every child's access to an adequate diet. The improvement of the family's attitude toward future health care and physical abilities.

(2) The encouragement of self-confidence, spontaneity, curiosity, and self-discipline which will assist in the development of the child's social and emotional health.

(3) The enhancement of the child's mental processes and skills with particular attention to conceptual and communications skills.

(4) The establishment of patterns and expectations of success for the child, which will create a climate of confidence for present and future learning efforts and overall development.

(5) An increase in the ability of the child and the family to relate to each other and to others.

(6) The enhancement of the sense of dignity and self-worth within the child and his family.

Section 1304.1–4 Performance Standards Plan Development

Each grantee and delegate agency shall develop a plan for implementing the performance standards prescribed in subparts B, C, D, and E of this part for use in the operation of its Head Start program (hereinafter called "plan" or "performance standards plan"). The plan shall provide that the Head Start program covered thereby shall meet or exceed the performance standards. The plan shall be in writing and shall be developed by the appropriate professional Head Start staff of the grantee or delegate agency with cooperation from other Head Start staff, with technical assistance and advice as needed from personnel of the Regional Office and professional consultants, and with the advice and concurrence of the policy council or policy committee. The plan must be reviewed by grantee or delegate agency staff and the policy council or policy committee at least annually and revised and updated as may be necessary.

Section 1304.1–5 Performance Standards Implementation and Enforcement

(a) Grantees and delegate agencies must be in compliance with or exceed the performance standards prescribed in subparts B, C, D, and E of this part at the commencement of the grantee's program year next following July 1, 1975, effective date of the regulations in this part, or 6 months after that date, whichever is later, and thereafter, unless the period for full compliance is extended in accordance with paragraph (f) of this section.

(b) If the responsible HHS official as a result of information obtained from program self-evaluation, prereview, or routine monitoring, is aware of has reason to believe that a Head Start program, with respect to performance standards other than those for which the time for compliance has been extended in accordance with paragraph (f) of this section, is not in compliance with performance standards, he shall notify the grantee promptly in writing of the deficiencies and inform the grantee that it, or if the deficiencies are in a Head Start program operated by a delegate agency, the delegate agency has a period stated in the notice not to exceed 90 days to come into compliance. If the notice is with respect to a delegate agency, the grantee shall immediately notify the delegate agency and inform it of the time within which the deficiencies must be corrected. Upon receiving the notice the grantee or delegate agency shall immediately analyze its operations to determine how it might best comply with the performance standards. In this process it shall review, among other things, its utilization of all available local resources, and whether it is receiving the benefits of State and other Federal programs for which it is eligible and which are available. It shall review and realign where feasible, program priorities, operations, and financial and manpower allocations. It shall also consider the possibility of choosing an alternate program option for the delivery of Head Start services in accordance with Notice N–30–334–1, Program Options for Project Head Start, attached hereto as Appendix A, which the grantee, with ACYF concurrence, determines that it would be able to operate as a quality program in compliance with performance standards.

(c) The grantee or delegate agency shall report in writing in detail its efforts to meet the performance standards within the time given in the notice to the responsible HHS official. A delegate agency shall report through the grantee. If the reporting agency, grantee or delegate agency determines that it is unable to comply with the performance standards, the responsible HHS official shall be notified promptly in writing by the grantee, which notice shall contain a description of the deficiencies not able to be corrected and the reasons therefor. If insufficient funding is included as a principal reason for inability to comply with performance standards, the notice shall specify the exact amount, and basis for the funding deficit and efforts made to obtain funding from other sources.

(d) The responsible HHS official on the basis of the reports submitted pursuant to paragraph (c) of this section, will undertake to assist grantees, and delegate agencies through their grantees, to comply with the performance standards, including by furnishing or by recommending technical assistance.

(e) If the grantee or delegate agency has not complied with the performance standards, other than those for which the time for compliance has been extended in accordance with paragraph (f) of this section, with the period stated in the notice issued under paragraph (b) of this section, the grantee shall be notified promptly by the responsible HHS official of the commencement or suspension or termination proceedings or of the intention to deny refunding as may be appropriate, under Part 1303 (appeals procedures) of this chapter.

(f) The time with which a grantee or delegate agency shall be required to correct deficiencies in implementation of the performance standards may be extended by the responsible HHS official to a maximum of one year, only with respect to the following deficiencies:

(1) The space per child provided by the Head Start program does not comply with the Education Services performance standard but there is no risk to the health or safety of the children;

(2) The Head Start program is unable to provide Medical or Dental Treatment Services as required by Health Services Performance Standards because funding is insufficient and there are no community or other resources available;

(3) The services of a mental health professional are not available or accessible to the program as required by the Health Service Performance Standards; or

(4) The deficient service is not able to be corrected within the 90 days notice period, notwithstanding full effort at compliance, because of lack of funds and outside community resources, but it is reasonable to expect that the services will be brought into compliance within the extended period, and the overall high quality of the Head Start program otherwise will be maintained during the extension.

Introduction

The Performance Standards presented in the following pages are accompanied by guidance material which elaborates upon their intent and provides methods and procedures for implementing them. The standard is found in the left hand column and the appropriate guidance material in the right hand column. The standards in the left hand column constitute Head Start policy with which all grantees and delegate agencies are required to conform. They are taken verbatim from the **Federal Register** dates June 30, 1975, Volume 40, Number 126, Part II, that contains the Head Start Program Performance Standards for operation of Head Start programs by grantees and delegate agencies. The guidance in the right hand column is provided for the assistance of Head Start programs in interpreting and implementing the standards and is not in itself mandatory.

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Subpart B—Education Services Objectives and Performance Standards

§ 1304.2-1 Education services objectives.

The objectives of the Education Service component of the Head Start program are to:

(a) Provide children with a learning environment and the varied experiences which will help them develop socially, intellectually, physically, and emotionally in a manner appropriate to their age and stage of development toward the overall goal of social competence.

(b) Integrate the educational aspects of the various Head Start components in the daily program of activities.

(c) Involve parents in educational activities of the program to enhance their role as the principal influence on the child's education and development.

(d) Assist parents to increase knowledge, understanding, skills, and experience in child growth and development.

(e) Identify and reinforce experiences which occur in the home that parents can utilize as educational activities for their children.

§ 1304.2-2 Education services plan content: operations.

(a) The education services component of the performance standards plan shall provide strategies for achieving the education objectives. In so doing it shall provide for program activities that include an organized series of experiences designed to meet the individual differences and needs of participating children, the special needs of handicapped children, the needs of specific educational priorities of the local population and the community. Program activities must be carried out in a manner to avoid sex role stereotyping.

In addition, the plan shall provide methods for assisting parents in understanding and using alternative ways to foster learning and development of their children.

GUIDANCE

(a) The education plan should be prepared by the educational staff with cooperation from other Head Start staff, parents and policy group members. Professional consultants may be called upon as needed.

Before the education plan is written, parents, staff and policy group members should meet to discuss the education service objectives and performance standards. The staff has the responsibility to inform parents and policy group members about alternative strategies for achieving the education objectives. The staff should recommend those strategies (curriculum approaches, teaching methods, classroom activities, etc.) most appropriate to the individual needs of the population served and based on performance standard requirements. With the concurrence of the parents and policy group members, the educational staff will then write the plan. The education plan must be specifically designed to meet children's needs as determined through assessment procedures.

The education plan must specify strategies for implementing each of the education services objectives of the Head Start program.

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(b) The education services component of the plan shall provide for:

(1) *A supportive social and emotional climate* which:

(i) Enhances children's understanding of themselves as individuals, and in relation to others, by providing for individual, small group, and large group activities;

GUIDANCE

The education plan should indicate:

- How the education program will provide children with a learning environment and varied experiences appropriate to their age and stage of development which will help them develop:

  socially
  intellectually
  physically
  emotionally

- How the education program will integrate the educational aspects of the various Head Start components in the daily program of activities.

- How the education program will involve parents in educational activities to enhance their role as the principal influence on the child's education and development.

- How the education program will assist parents to increase knowledge, understanding, skills, and experience in child growth and development.

- How the education program will identify and reinforce experiences which occur in the home that parents can utilize as educational activities for their children.

The plan should be accompanied by brief descriptive information regarding:

- Geographical setting
- Physical setting (available facilities)
- Population to be served (ethnicity, race, language, age, prevelance of handicapping conditions, health factors, family situations)
- Education staff (staffing patterns, experience, training)
- Volunteers
- Community resources
- Program philosophy/curriculum approach
- Assessment procedures (individual child, total program)

(1) The following suggestions may be useful beginning steps:

(i) Encourage awareness of self through the use of full-length mirrors, photos and drawings of child and family, tape recordings of voices, etc.

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	• Use child's name on his/her work and belongings. • Arrange activity settings to invite group participation (block and doll corners, dramatic play). • Include active and quiet periods, child-initiated and adult-initiated activities, and use of special areas for quiet and individual play or rest.
(ii) Gives children many opportunities for success through program activities;	(ii) Here are some examples: • Make sure that activities are suited to the developmental level of each child; • Allow the child to do as much for himself as he can; • Help the child learn "self-help" skills (pouring milk, putting on coat); • Recognize and praise honest effort and not just results; • Support efforts and intervene when helpful to the child; • Help the child accept failure without defeat ("I will help you try again."); • Help the child learn to wait ("You will have a turn in five minutes."); • Break tasks down into manageable parts so that children can see how much progress they are making.
(iii) Provides an environment of acceptance which helps each child build ethnic pride, develop a positive self-concept, enhance his individual strengths, and develop facility in social relationships.	(iii) This can be accomplished by adult behavior such as: • showing respect for each child; • listening and responding to children; • showing affection and personal regard (greeting by name, one-to-one contact); • giving attention to what the child considers important (looking at a block structure, locating a lost mitten); • expressing appreciation, recognizing effort and accomplishments of each child, following through on promises; • respecting and protecting individual rights and personal belongings (a "cubby" or box for storage, name printed on work in large, clear letters); • acknowledging and accepting unique qualities of each child; • avoiding situations which stereotype sex roles or racial/ethnic backgrounds; • providing ample opportunity for each child to experience success, to earn praise, to develop an "I can," "Let me try," attitude; • accepting each child's language, whether it be standard English, a dialect or a foreign lan-

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	guage; fostering the child's comfort in using the primary language; • providing opportunities to talk about feelings, to share responsibilities, to share humor.
(2) Development of intellectual skills by:	(2) Intellectual skills can be enhanced by providing a learning climate in which staff guide children to foster cognitive functioning (i.e., understanding, reasoning, conceptualizing, etc.).
(i) Encouraging children to solve problems, initiate activities, explore, experiment, question, and gain mastery through learning by doing;	(i) Provide materials and time appropriate to the child's age and level of development in the areas of: • science; concepts of size, shape, texture, weight, color, etc.; • dramatic play; • art; • music; • numerical concepts; spatial, locational and other relationships.
(ii) Promoting language understanding and use in an atmosphere that encourages easy communication among children and between children and adults;	(ii) Some examples are: • Give children ample time to talk to each other and ask questions in the language of their choice; • Encourage free discussion and conversation between children and adults; • Provide games, songs, stories, poems which offer new and interesting vocabulary; • Encourage children to tell and listen to stories.
(iii) Working toward recognition of the symbols for letters and numbers according to the individual developmental level of the children;	(iii) Make use of information that is relevant to the child's interests, such as his name, telephone number, address and age. Make ample use of written language within the context of the child's understanding, for example, experience stories, labels, signs.
(iv) Encouraging children to organize their experiences and understand concepts; and	(iv) The sequence of classroom activities should progress from simple to more complex tasks, and from concrete to abstract concepts. Activities can be organized around concepts to be learned.
(v) Providing a balance program of staff directed and child initiated activities.	(v) Although each day's activities should be planned by the staff, the schedule should allow ample time for both spontaneous activity by children and blocks of time for teacher-directed activities.
(3) Promotion of physical growth by:	
(i) Providing adequate indoor and outdoor space, materials, equipment, and time for chil-	(i) This can be accomplished through regular periods for physical activity (both indoor and out).

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dren to use large and small muscles to increase their physical skills; and	Physical activities should include materials and experiences designed to develop: • large muscles (wheel toys, climbing apparatus, blocks); • small muscles (scissors, clay, puzzles, small blocks); • eye-hand coordination (puzzles, balls, lotto); • body awareness; • rhythm and movement (dancing, musical instruments).
(ii) Providing appropriate guidance while children are using equipment and materials in order to promote children's physical growth.	(ii) Staff should be actively involved with children during periods of physical activity. During such activities, staff should take opportunities to increase their contact with individual children. To ensure safety, activities should be adequately supervised.
(c) The education services component of the plan shall provide for a program which is individualized to meet the special needs of children from various populations by:	
(1) Having a curriculum which is relevant and reflective of the needs of the population served (bilingual/bicultural, multicultural, rural, urban, reservation, migrant, etc.).	(1) This can be accomplished by including in each classroom materials and activities which reflect the cultural background of the children. Examples of materials include: • books; • records; • posters, maps, charts; • dolls, clothing. Activities may include: • celebration of cultural events and holidays; • serving foods related to other cultures; • stories, music, and games representative of children's background; • inviting persons who speak the child's native language to assist with activities.
(2) Having staff and program resources reflective of the racial and ethnic population of the children in the program.	
(i) Including persons who speak the primary language of the children and are knowledgeable about their heritage; and, at a minimum, when a majority of the children speak a language other than English, at least one teacher or aide interacting regularly with the children must speak their language; and	(i) This adult may be: • a teacher or aide; • other member of the center staff; • a parent or family member; • a volunteer who speaks the child's language;
(ii) Where only a few children, or a single child, speak a language different from the rest,	(ii) In some cases where a single child is affected it may not be possible for the center to pro-

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one adult in the center should be available to communicate in the native language.	vide an adult speaking the child's language on a regular basis.
(3) Including parents in curriculum development and having them serve as resource persons (e.g., for bilingual/bicultural activities).	(3) Parents can be valuable resources in planning activities which reflect the children's heritage. Teachers may request suggestions from parents on ways to integrate cultural activities into the program. For example, parents may wish to: • plan holiday celebrations; • prepare foods unique to various cultures; • recommend books, records, or other materials for the classroom; • act as classroom volunteers; • suggest games, songs and art projects which reflect cultural customs.
(d) The education services component of the plan shall provide procedures for on-going observation, recording and evaluation of each child's growth and development for the purpose of planning activities to suit individual needs. It shall provide, also, for integrating the educational aspects of other Head Start components into the daily education services program.	(d) The education plan should specify how Head Start staff will assess the individual developmental/instructional needs of children. Some ways this may be accomplished include: • discussions with parents during recruitment, enrollment, home visits, parent-staff conferences and meetings; • review of child's medical and developmental records; • conferences with medical or psychological consultants where indicated; • teacher observations documenting developmental progress used as guidance in planning for and/or modifying individual children's activities; • use of specific assessment instruments or scales. Planning should take into account the age groups and abilities of the children. For example, activities will differ for three and five year olds. Children with handicaps, like all children, should have specific goals set for them according to their ability. The plan should also include the following: • long-range plans based on evaluation of each child's current needs, interests and abilities; • specific activities and responsibilities of staff members; • consistent methods for observing and recording the progress of each child; • procedures to be used for reviewing each child's progress and modifying the program when indicated.

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	Activities to integrate educational aspects of other components into the daily education program could include: • *Health Education* built into the schedule through: —time to talk about physical and dental examinations in order to increase understanding and reduce fears; —books and pictures about doctors and dentists; —materials for dramatic play (stethoscope, nurse's uniform, flashlight); —role playing before and after visits to doctors, dentists, hospitals, clinics, etc. • *Nutrition Education* as part of the daily schedule: —assistance in meal preparation, setting table; —learning experiences through food preparation (adding liquids to solids, seasoning, freezing, melting, heating, cooling, cooking simple foods) —books, pictures, films, trips related to the source of foods, (farm, garden, warehouse, market, grocery store).
(e) The plan shall provide methods for enhancing the knowledge and understanding of both staff and parents of the educational and developmental needs and activities of children in the program. These shall include:	(e) The plan should indicate some of the ways parents and staff will work together to understand each child and provide for his learning experiences. The plan should include details of ways the home and center will attempt to supplement each other in providing positive experiences for the child. There should be an early orientation to the Education Services Objectives. Special emphasis should be given to the significance of the materials, equipment and experiences provided in a Head Start Child Development program. Interpreters should be available to facilitate full participation of non-English speaking parents. Procedures should be established to facilitate maximum communication between staff and parents, for example: • newsletters • parent/teacher conferences • group meetings • phone calls • home visits • posters, bulletin boards, radio/TV announcements.

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(1) Parent participation in planning the education program, and in center, classroom and home program activities;	(1) Meeting with staff to provide for the overall written education plan (see item 1304.2-2(a) for further guidance).
(2) Parent training in activities that can be used in the home to reinforce the learning and development of their children in the center;	(2) Some examples are: • orientation and training sessions • designing activities for children at home • participation in classroom/center activities.
(3) Parent training in the observation of growth and development of their children in the home environment and identification of and handling special developmental needs;	(3) Provide parents with films, workshops, publications, specialists, professionals, etc., in child growth and development. Arrange for films, publications and specialists to provide training.
(4) Participation in staff and staff-parent conferences and the making of periodic home visits (no less than two) by members of the education staff;	(4) Areas of mutual concern to be discussed could include: • child's developmental progress; • child rearing issues; • discussion of possible home activities to expand the Head Start experience; • discussion of health problems or handicapping conditions of the Head Start child. Although only two home visits are required, we suggest that consideration be given to visiting each child's home at the beginning, middle and end of the year. Arrangements for such visits should respect parent's wishes and convenience and should be coordinated with the visits of other component staff. At least one of these visits should be devoted to discussion with parents around areas of mutual interest and concern in order to identify home activities and other ways to expand the Head Start experience.
(5) Staff and parent training, under a program jointly developed with all components of the Head Start program, in child development and behavioral developmental problems of preschool children; and	(5) An orientation and training program should be planned in cooperation with other component staff members and parents. The training program should provide for periodic formal and informal sessions. The content, organization, staffing and scheduling will depend on the individual program needs as determined in the planning stage. Training should focus on the normal child as well as the child with special needs. Emphasis should be on mental, physical, social, and emotional growth and development. There should be identification of opportunities for training or continuing education to contribute to staff competence. In some locations, CDA training can be an appropriate means for achieving this; many Head Start staff members are receiving CDA training through the Head Start Supplementary Training program.

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(6) Staff training in identification of and handling children with special needs and working with the parents of such children, and in coordinating relevant referral resources.	(6) Training should also familiarize staff and parents with appropriate referral resources in the community. (Refer to 1304.3-3(b)(10)).
§ 1304.2-3 Education services plan content: facilities.	
(a) The education services component of the plan shall provide for a physical environment, conducive to learning and reflective of the different stages of development of the children. Home-based projects must make affirmative efforts to achieve this environment. For center-based programs, space shall be organized into functional areas recognized by the children, and space, light, ventilation, heat, and other physical arrangements must be consistent with the health, safety and developmental needs of the children. To comply with this standard:	(a) Indoor and outdoor space should be sufficient and appropriate for necessary program activities and for support functions (offices, food preparation, custodial services) if they are conducted on the premises. In addition, rest/nap facilities and space for isolation of sick children should be available.
(1) There shall be a safe and effective heating system;	(1) Radiators, stoves, hot water pipes, portable heating units, and similar potential hazards are adequately screened or insulated to prevent burns.
(2) No highly flammable furnishings or decorations shall be used.	(2) Flammable materials can be fireproofed with commercial preparations.
(3) Flammable and other dangerous materials and potential poisons shall be stored in locked cabinets or storage facilities accessible only to authorized persons;	(3) Cleaning supplies and potentially dangerous materials should be stored separately from food and out of reach of children.
(4) Emergency lighting shall be available in case of power failure;	(4) High powered flashlights may be used. Candles are fire hazards.
(5) Approved, working fire extinguishers shall be readily available;	(5) Adults in the program should be able to locate and properly operate fire extinguishers.
(6) Indoor and outdoor premises shall be kept clean and free, on a daily basis, of undesirable and hazardous material and conditions;	(6) If evidence of rodents or vermin is found, the local health or sanitation department may provide assistance or referral for extermination. At regular intervals programs should check for and correct splintered surfaces, extremely sharp or protruding corners or edges, loose or broken parts. All clear glass doors should be clearly marked with opaque tape to avoid accidents.
(7) Outdoor play areas shall be made so as to prevent children from leaving the premises and getting into unsafe and unsupervised areas;	(7) Where outdoor space borders on unsafe areas (traffic, streets, ponds, swimming areas) adults should always be positioned to supervise the children. If possible such areas should be enclosed.

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(8) Paint coatings on premises used for care of children shall be determined to assure the absence of a hazardous quantity of lead;	(8) Old buildings may be dangerous; be sure to check for lead contamination. The local public health department can be contacted to provide information on lead poisoning and to detect hazardous quantities of lead in the facility.
(9) Rooms shall be well lighted;	(9) Fixtures which have a low glare surface to sufficiently diffuse and reflect light may be useful. Use bulbs with sufficient wattage. Check and replace burned-out bulbs regularly.
(10) A source of water approved by the appropriate local authority shall be available in the facility; adequate toilets and handwashing facilities shall be available and easily reached by children;	(10) Verify State and local licensing requirements in these areas. Stepstools or low platforms may be useful where toilets or handwashing facilities are too high.
(11) All sewage and liquid waste shall be disposed of through a sewer system approved by an appropriate responsible authority, and garbage and trash shall be stored in a safe and sanitary manner until collected;	(11) Disposal problems can be referred to the local sanitation and public work department. Keep all waste materials away from children's activity areas and from areas used for storage and for preparation of food.
(12) There shall be at least 35 square feet of indoor space per child available for the care of children (i.e., exclusive of bathrooms, halls, kitchen, and storage places). There shall be at least 75 square feet per child outdoors; and	(12) Where minimum space is not avilable, various alternatives can be considered. For example, a variation in program design (See Notice N-30-334-1 on Program Options for Project Head Start), stagger the program day, the program week, outdoor play periods. In this manner, all children will not be present at the same time. In some cases, outdoor space requirements may be met by arranging for daily use of an adjoining or nearby school yard, park, playground, vacant lot, or other space. Be sure that these areas are easily accessible and fulfill the necessary safety requirements. In some cases, it may be necessary to locate more suitable facilities.
(13) Adequate provisions shall be made for handicapped children to ensure their safety and comfort.	(13) Ramps, railings, and special materials and equipment may be needed in order to allow such children maximum possible mobility. Community resources may be used to acquire needed special materials and services.
Evidence that the center meets or exceeds State or local licensing requirements for similar kinds of facilities for fire, health, and safety shall be accepted as prima facie compliance with the fire, health and safety requirements of this section.	Confirm compliance with local licensing requirements. Where no licensing is required, the grantee and Policy Council should request advice from local fire and health departments in determining safety standards.
(b) The plan shall provide for appropriate and sufficient furniture, equipment and materials to meet the needs of the program, and for their ar-	

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rangement in such a way as to facilitate learning, assure a balanced program of spontaneous and structured activities, and encourage self-reliance in the children. The equipment and materials shall be:	
(1) Consistent with the specific educational objectives of the local program;	(1) Make use of the written plan when selecting materials and equipment.
(2) Consistent with the cultural and ethnic background of the children;	(2) Many books, pictures, records, and other materials reflect ethnic and cultural heritage and background.
(3) Geared to the age, ability, and developmental needs of the children;	(3) For instance, chairs and tables are child size; toys, books, and other materials and equipment are interesting and challenging to the children.
(4) Safe, durable, and kept in good condition;	(4) Contact U.S. Consumer Product Safety Commission, Washington, D. C. 20207 for information. Repair broken equipment and materials promptly.
(5) Stored in a safe and orderly fashion when not in use;	(5) (6) Securely-fastened, well-organized closets and cabinets are needed for many supplies which should be stored out of reach and sight of small children. Classroom materials and equipment, stored on low shelves and/or in open bins should be located near the area where they are to be used and arranged in orderly convenient fashion so that children may be responsible for their use and return to storage.
(6) Accessible, attractive, and inviting to the children; and	
(7) Designed to provide a variety of learning experiences and to encourage experimentation and exploration.	(7) Materials that can be used in a number of ways rather than single-purpose items are generally more useful.

HEALTH

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Subpart C—Health Services Objectives and Performance Standards	
§ 1304.3-1 Health services general objectives.	
The general objectives of the health services component of the Head Start program are to:	
(a) Provide a comprehensive health services program which includes a broad range of medical, dental, mental health and nutrition services to preschool children, including handicapped children, to assist the child's physical, emotional, cognitive and social development toward the overall goal of social competence.	(a), (b), & (c) These are the aims toward which the program efforts should be directed.
(b) Promote preventive health services and early intervention.	
(c) Provide the child's family with the necessary skills and insight and otherwise attempt to link the family to an ongoing health care system to ensure that the child continues to receive comprehensive health care even after leaving the Head Start program.	
§ 1304.3-2 Health Services Advisory Committee.	
The plan shall provide for the creation of a Health Services Advisory Committee whose purpose shall be advising in the planning, operation and evaluation of the health services program and which shall consist of Head Start parents and health services providers in the community and other specialists in the various health disciplines. (Existing committees may be modified or combined to carry out this function.)	In order to achieve the comprehensive goals, the health program should be planned by professionally competent people. Planning must take place early and should involve a wide cross section of the professional health talent available in the community. The committee should be represented by all four areas of health professionals, i.e., medical, dental, mental health and nutrition. The committee should meet at least twice a year to advise on the development of the health services and health education program and must approve the health plan. Examples of people who could be involved in planning the health program of the Head Start program include: a. Pediatricians and pediatric societies. b. General practitioners and the Academy of General Practice. c. Other physicians and the county and State medical societies. d. Local, regional, and State health offices. e. Child and general psychiatrists and their associations. f. Hospital administrators and their associations. g. Dentists and Dental Hygienists and their associations. h. Public health nurses, school nurses, and nursing organizations.

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	i. Nutritionists and their associations. j. Optometrists and their associations. k. Psychologists and their associations. l. Medical technologists and their associations. m. Speech and hearing personnel and their associations. The plan should indicate the number of parents, and specific health professionals on the health advisory committee; goals and objectives; and projected number of meetings. Involving parents, health professionals and their organizations in planning will ensure that the health program is tailored to the needs of the children, and that it utilizes fully the resources available in the community without duplicating already existing services. The health professionals should be aware of common health practices in their community. The health advisory committee should develop guidelines to deal with health practices that may be potentially harmful to a child. Organizations and individuals who are involved in the early planning of a program are likely to cooperate fully in the implementation of the program.
§ 1304.3-3 Medical and dental history, screening, and examinations.	
(a) The health services component of the performance standards plan shall provide that for each child enrolled in the Head Start program a complete medical, dental and developmental history will be obtained and recorded, a thorough health screening will be given, and medical and dental examinations will be performed. The plan will provide also for advance parent or guardian authorization for all health services under this subpart.	a) As much pertinent health information as possible should be accumulated and recorded for each child. This should be performed as soon after the child is enrolled as is feasible. There are three main sources for such information: records of past medical and dental care, teachers' observations, and interviews with parents or guardians. Every effort should be made to obtain records or summaries of the significant medical and dental care and immunizations that each child has received in the past. This information may be available from hospital clinics, private physicians and dentists, or health department-sponsored well-child clinics. In special cases, it may be desirable to obtain the mother's and infant's delivery and birth history from the hospital where the child was born, especially if the child now shows evidence of neurologic impairment. Written records of important health events are important supplements to the mother's recollection of such events. By acquiring such records before the physician performs the complete health evaluation, a great deal of repetition, wasted time, and unnecessary concern may be avoided.

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	Health providers should be informed of program requirements for health services. An example of the type of information required is contained in the CHILD HEALTH RECORD available from the Head Start Bureau, P.O. Box 1182, Washington, DC 20013.
	Timely informed written parental consent should be obtained for authorization of all health services provided/arranged.
	The teacher is in an unusually good position to notice those children who may have health problems. The teacher observes the children for 15 to 30 hours a week, whereas the physician can only observe the child for 20 minutes to an hour. Poor coordination, hyperactivity, unintelligible speech, excessive tiredness, or withdrawal from others may be noted much more readily by a teacher than by either the parent, who usually has little basis for comparison, or the physician, who has a limited time of observation. The teacher may observe dental problems when children eat. Some formal provision should be made to ensure that teachers' observations of the children's health and behavior are available to the physician at the time of the medical evaluation.
	An example of the type of form and information the teacher should record is contained in the CHILD HEALTH RECORD.
(b) Health screenings shall include:	(b) Screening tests should be carried out for all the Head Start children. These are tests some of which may be performed by non-professional workers. They do not represent a complete evaluation, but they identify a group of children who require more complete professional evaluation. Health coordinators are encouraged to schedule screening for children who appear to have health problems or handicaps early in the year (the spring before where possible) so that valuable time will not elapse before their health conditions or handicaps can be addressed. Screenings should be completed within 90 days after the child is enrolled or entered into the program. It is important that the results of the screening as well as the complete medical and development history are available to the physician at the time of medical examination. The purpose of this is to identify children with needs and to alert the physician to problems requiring a more complete professional evaluation. A diagnostic evaluation should be arranged for each child with atypical/abnormal findings resulting from screenings.

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	If a child has had a diagnostic evaluation with an atypical/abnormal finding within the past 12 months or is currently under treatment for that finding, the diagnostic evaluation need not be repeated.
(1) Growth assessment (head circumference up to two years old) height, weight, and age.	(1) Head circumference measurement is not necessary after the child reaches one year of age. (A health professional should teach this procedure to para-professionals.) The results of careful height and weight measurements for each child should be recorded on standardized growth charts in the beginning and approximately two months prior to the end of the school year so that a failure to gain weight or too rapid a gain in weight will allow for follow-up. A beam balance scale should be used for weights since ordinary bathroom scales may be inaccurate. Heights should be measured with the child standing straight with the back to a wall on which is mounted a paper, wooden, or metal measure. A straight-edged device rested on the child's head is held at right angle to the measure. In interpreting height and weight measurements, one must remember that many normal, well-nourished children are small for their age. In evaluating poor nutrition and poor growth, the rate of growth of a child between two measurements separated in time is more important than a single measurement. For this purpose, and whenever available, weights and measurements which were obtained in previous health examinations, should be recorded on a graphic recording sheet. The small child who is growing at a normal rate is likely to be well-nourished and free from serious disease. Even a much larger child who is growing at an unusually slow rate may have some significant adverse condition affecting the child's health.
(2) Vision testing.	(2) Visual acuity and strabismus testing should be performed every two years beginning at age three. The most appropriate visual screening test to be applied in any community can usually best be determined by the health services director in consultation with the group of health practitioners-ophthalmologists/optometrists, who will be responsible for the complete evaluation and treatment of the children. These specialists can determine the type of tests and the criteria for passing or failing which they feel are most appropriate. Health departments and school health programs often have well-established visual screening programs

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which can be applied readily to Head Start children.

When there is no established screening program and consultation from eye specialists is not available to a community, the National Society for the Prevention of Blindness* or its State or local chapters, or the Volunteers for Vision may assist in setting up a screening program.

If none of these resources is available, the following vision screening method may be used, which will generally identify most of the children who are in need of further eye care. The test may be performed by nurses, by health aides, or volunteers trained in the method.

A Snellen E illiterate visual testing chart (obtainable from any hospital supply company or from the National Society for the Prevention of Blindness) should be placed on a bare wall without windows. There should be no bright light or glare within the child's field of vision. The child should be seated comfortably with the head 20 feet away from the chart. A goose-neck lamp with a metal shade and a 75 watt bulb placed 5 feet from the chart will provide adequate standard illumination.

Children should be instructed in the Head Start classroom, or in small groups before testing, in "how to play the E game." The child is told to indicate with his own fingers the direction in which the "fingers" of the E point. After he has learned to do this, each child is tested individually, a black "pirate's patch" may be a more acceptable way of covering one eye than simply holding a card in front of that eye. To avoid possible transfer of infection, a separate patch or card should be used for each child. The card or patch should not put any pressure on the eye, and the child should keep the covered eye open. First, the child's vision with both eyes is tested. Then, with his left eye covered, the child is asked to indicate which direction the E is pointing as the examiner uses a pencil or pointer to indicate specific symbols on the chart. An examiner may point first to the first E on the 20/60 line. If this is passed successfully, go on to the first two symbols on the 20/40 line. If these are passed successfully, go on to the first three symbols on the 20/30 line, and if these are passed successfully, go on to the 20/20 line. Whenever a child fails to identify the position correctly, the tester should continue across the same line on the E chart. A line is considered "passed" if more than one half of the figures on the line are correctly identified.

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*Address: 79 Madison Avenue, New York, New York 10016.

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	The same procedure is repeated with the right eye covered. A child fails the test if, with either eye, more than half of the symbols on the 20/40 line cannot be identified, or if there is more than a two line difference in vision between one eye and the other, even if the worse eye is 20/40 or better. A child who is unable to learn to "play the E game" should be reported as "non-testable" and may be given further instruction in the "E game," either in the classroom or by the parents at home, and retested at a later date. Children already wearing glasses should be tested while wearing their glasses. If they pass the test while wearing glasses, there is no need for further testing. Children failing the test who appear acutely ill or particularly fatigued should be retested before they are referred to an eye specialist Other children who fail the screening test should be referred to an eye specialist for further evaluation. The results of the screening test should be recorded on the child's health form and should be brought to the attention of the physician at the time of the health evaluation. At this time, the physician should examine the optic fundi with an ophthalmoscope and should note any deviation in extra-ocular movements. Strabismus testing can be performed by well trained staff or volunteers. The common tests for strabismus are the Cover Test and the Hirschberg Test. Frequently, strabismus testing is performed during the physical examination.
(3) Hearing testing.	(3) Audiometric testing should be done every two years beginning at age three. Children will be better prepared for testing if the procedure is demonstrated in the classroom, where the whole class can be made familiar with the sounds and taught to make the desired response. Children who cannot learn to respond to the test properly, or who give grossly inconsistent responses to sounds of any intensity, should be designated as "non-testable." A child is generally considered to have failed the screening test if he fails to respond at the recommended level at any frequency in either ear. The frequencies generally used in a limited hearing screening test are 1000, 2000, and 4000 Hz. Although audiometric testings are effective and necessary, they do not always identify middle ear problems. Therefore, programs may wish to supplement information to the pure-tone testing with acoustic impedence screening.

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	The acoustic impedence bridge instrument objectively evaluates the middle ear conductive mechanisms and is particularly valuable in identifying children with otitis media. The test is quick and does not require active participation of the child. A large proportion of children who fail a hearing screening test have only temporary hearing impairment associated with upper respiratory conditions. Such children should be retested after a few weeks before they are referred for special medical or audiology care. For this reason, it is important to institute the hearing screening program as early as possible in the Head Start program or even before the Head Start classrooms begin to meet formally. Head Start officials may encourage school personnel to include hearing screening tests at part of the routine pre-school interview which many school systems conduct in spring before students will enter school. Results of the preliminary hearing screening test should be recorded on the health form and be available to the physician at the time of the complete health evaluation. The person performing a hearing screening test must have special training in the use of the equipment and in the interpretation of the various responses which children may make to the test. Most school health programs and health departments have both testing equipment and personnel trained in its use. If equipment and personnel are not available locally, help may be obtained from: (1) An audiologist in a neighboring community, (2) the regional and State health or education department, (3) the State speech and hearing associations, (4) the American Speech and Hearing Association (10801 Rockville Pike, Rockville, Maryland 20852). It will usually be more economical for a Head Start program in a smaller community to obtain services from a trained technician in a nearby larger community than to purchase its own equipment and train its own personnel.
(4) Hemoglobin or hematocrit determination.	(4) A hemoglobin or hematocrit determination should be made at the beginning of the first year of the child's enrollment. An accurate test of hemoglobin concentration is the best screening test for anemia. However, accurate tests require trained technicians and equipment that is moderately expensive. The microhematocrit test is somewhat less precise as an indicator of anemia. However, the laboratory determination itself is so simple and accurate that this test could often be more practical than a hemoglobin test. Most community hospitals

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	will have equipment to perform this test, as will many health department clinics. In using either of these tests, blood samples may be obtained at the Head Start center or at another convenient place by a technician or nurse. The blood samples can then be transported and tested in a central location. Children with anemia and similar medical/nutrition problems need specific diagnoses and follow-up. A child with a hemoglobin of less than 11 or hematocrit of less than 34 is considered to be anemic. This is consistent with the standards of Public Health Service, Maternal and Child Health and with CDC National Nutrition Status Survey as well as EPSDT guidance material.
(5) Tuberculin testing where indicated.	(5) Tuberculin testing and reading of results should be performed in accordance with State health department policy and/or the health services advisory committee recommendations. Most Head Start programs will be able to obtain both test materials and personnel trained in their use through their school health program, the local health department, or the local, county, or State tuberculosis association. Initial tuberculin testing is usually done at approximately one year of age. Routine periodic tuberculosis testing is part of screening only if (1) the child has had contact with a known case of tuberculosis or is a member of a family with a history of tuberculosis, (2) *the child is living in a neighborhood or community in which the prevalence of tuberculin sensitivity in the school-age children is known to exceed 1%*, or (3) the child presents symptoms consistent with tuberculosis. A Head Start program conducting its own tuberculosis testing program will usually find the tuberculin tine test to be the most economical and convenient. Materials for this test are available through many health departments and through any pharmacy. Complete instructions for administering and reading this test are packed with the test materials. The test should be scheduled at such a time that the children will be in a class three days later to have the test read. Any swelling or induration surrounding any of the four needle punctures should be considered a positive reaction. Children who react positively to the tuberculin tine test should have a Mantoux intracutaneous test performed using either intermediate strength, PPD 0.1 mil., or OT 1/1000 0.1 ml. The Mantoux test must be performed by a physician or a specially trained nurse or technician. It should be read on the second or third day. Since children who are known to have been exposed to an active case of pulmonary tuberculosis

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	may have large, uncomfortable reactions to the standard screening test, they should be referred to a physician for testing with a more dilute perparation of PPD or OT. Certain viral infections (such as measles, influenza, mumps), some viral vaccines (such as measles and influenza), administration of corticosteroids, and extreme malnutrition may all depress or suppress the tuberculin reaction for as long as four to six weeks. Children with a history of such conditions should be retested at a later date. The results of the test should be recorded and available to the physician at the time of the examination.
(6) Urinalysis.	(6) A urinalysis need *not* be routinely performed as part of the health screening package unless required by State health department policy and/or the health services advisory committee. A simple and inexpensive screening test that may detect some urinary tract abnormalities is the use of a test paper which detects albumin, sugar, blood, and determines the pH of the urine. Urine can be obtained at the center or in the home using clean glass bottles or paper cups. The test paper is dipped in the urine and color changes on the paper are interpreted according to a chart enclosed on the test papers. Children whose test shows the presence of sugar, blood, more than 1 + albumin, or pH of more than 7.0 should have a complete urinalysis. Most children with abnormal screening urine tests will be found normal on careful retesting.
(7) Based on community health problems, other selected screenings where appropriate, e.g., sickle cell anemia, lead poisoning, and intestinal parasites.	(7) The State health department, local board of health, the pediatric consultant, and the health advisory committee provide information to ascertain whether sickle cell anemia, lead poisoning, and intestinal parasites are community health problems or specific health problems in the population you serve. Problems such as head lice can also be dealt with in this manner.
(8) Assessment of current immunization status.	(8) Staff should check medical records and consult with parents on child's current immunization status regarding diphtheria, pertussis, tetanus, measles, polio, German measles, and mumps.
(9) During the course of health screening, procedures must be in effect for identifying speech problems, determining their cause, and providing services.	(9) Many children talk very little during a medical examination, and the physician is in a poor position to judge the adequacy of their speech. Efficient screening of very young children can be done quickly and informally by having children talk about stimulus pictures, repeat key words containing a variety of speech sounds, and relate oral in-

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	formation spontaneously. In general, remedial speech services should be provided only where conditions exist which suggest that, without attention, a handicapping disorder will continue into late childhood. The teachers in the Head Start center should make note of any children in their class whose speech is substantially different from that of the average Head Start child. These observations should be available to the physician at the time of the examination. The physician then makes special evaluations of the ears, palate, and larynx, and may be able to give advice as to whether the speech pattern is normally immature or is pathological for the child. Whenever speech and hearing professionals are available to the Head Start program, they should work in cooperation with the physician and teacher in detecting, examining, and evaluating speech abnormalities. Every language community or geographic area has certain differences from so-called standard speech in pronunciation, vocabulary, and grammar. It should be recognized that a sizeable number of pre-schoolers have unclear speech due to immature articulation patterns and will mature and develop normally if they receive the necessary developmental services. Therefore, a child who may speak a language other than English or ethnic colloquialisms should not be regarded as speech impaired. The health advisory committee should develop this procedure including the utilization of speech and hearing professionals and outlining a schedule for checking suspect speech abnormalities. Services include speech and language development, clinical services, and parent counseling services.
(10) Identification of the special needs of handicapped children.	(10) Special needs of handicapped children can be identified from the screening and physical examination results, parent interviews, and teachers' and mental health professionals' observations. When screening identifies a child who may require a more complete professional evaluation for handicapping conditions, the Health Coordinator should refer the child to the Handicap Coordinator who is responsible for arranging for diagnostic evaluations. Cooperation between the Health and Handicap Coordinators is essential to the identification of the special needs of handicapped children. The plan to provide for these special needs could include modification of the physical facility, modification of the curriculum, development of

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	new or different feeding skills, and continuation of special medical care. A number of children may be receiving a predetermined set of screening services through public health clinics, neighborhood health centers, or Title XIX Medicaid Early and Periodic Screening, Diagnosis and Treatment, etc. If this set of screenings does not include all of those screenings herein required in the Performance Standards, Head Start must see that these screenings are provided.
(c) Medical examinations for children shall include:	(c) An undressed physical examination/assessment which includes blood pressure reading should be performed every two years beginning at age three.
(1) Examination of all systems or regions which are made suspect by the history or screening test.	**NOTE:** Physical examinations, hearing and vision tests need *not* be performed for enrolled children who have had these screenings within the required periodicity schedule and the program has records of the results.
(2) Search for certain defects in specific regions common or important in this age group, i.e., skin, eye, ear, nose, throat, heart, lungs, and groin (inguinal) area.	
(d) The plan shall provide, also, in accordance with local and State health regulations that employed program staff have initial health examinations, periodic check-ups, and are found to be free from communicable disease; and that volunteer staff be screened for tuberculosis.	(d) Staff and volunteers with respiratory infections, skin infections, or other types of communicable diseases should not have contact with the children. Depending on conditions in the community, tuberculin testing, miniature chest X-rays or full-size chest films may be the most economical forms of screening. Tuberculin screening is not necessary for the *occasional* volunteer.
§ 1304.3-4 Medical and dental treatment.	
(a) The plan shall provide for treatment and follow-up services which include:	(a) The purpose of all examinations and screening tests is to identify children in need of treatment. Examinations which do not lead to needed remedial or rehabilitative treatment represents a waste of time and money. A person on the staff should assume responsibility for assuring that all health defects discovered actually receive competent and continuing care until they are remedied or until a pattern of continuing care for them has been well established. This should include: Aid for the parent to find the necessary services and to find funds to pay for the services. Assistance so that the parent and child actually have transportation to the physician or clinic, and that other children in the family can be cared for during the visit. Community resources should be used for these services.

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	Careful and repeated review of health records to assure that recommended treatment is actually taking place and plans are developed to ensure necessary treatment and follow-up.
(1) *Obtaining or arranging for treatment of all health problems detected.* (Where funding is provided by non-Head Start funding sources there must be written documentation that such funds are used to the maximum feasible extent. Head Starts funds may be used only when no other source of funding is available).	(1) Medical and dental treatment should be completed at the end of the operating year. If completion is not possible, a system must be in place for continuing the treatment after the child leaves the program. The program should coordinate and supplement existing resources for health care of children; it should not duplicate them. When existing service programs do not meet the standards because of inaccessibility, unacceptability, or poor professional quality, funds may be used to supplement the existing services and bring them to standard. Head Start funds should be used only after all community resources and third party payments for which each child is eligible have been used. Only if existing services cannot be modified should new services be arranged or purchased.

Every community will have available many of the resources listed in the following table. The program may contract with existing agencies to provide some or all of the health services.

1. Private Practitioners of Medicine, Dentistry, Optometry, Psychology—individual or group.	1. May provide all types of health services (consultation and planning, administrative, examinations and screening tests, treatment, immunization, health education, and continuing health supervision) on a volunteer, contract, or fee-for-service basis.
2. Health Departments—city, county, regional, or State.	2. May provide all types of health services. Some may be free or contracted for all or some Head Start children. May provide funds to purchase services from other sources.
3. School Health Programs.	3. Same possibilities as Health Department.
4. Clinics—run by hospitals, medical schools, or other agencies.	4. May provide all types of health services, usually on contract or fee-for-service, but some services may be free for all or some Head Start children.
5. Prepaid Medical Groups.	5. May provide complete range of services to children of members of group.
6. Armed Forces Medical Services.	6. May provide medical preventive, diagnostic, and treatment services to children of Armed Forces personnel. Dental services available only at remote posts.

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7. Community Health Centers.	7. May provide comprehensive health services at no cost to Head Start for children living in geographically defined neighborhoods served by centers.
8. Comprehensive Child Health Centers (Example: Children and Youth Programs).	8. May provide comprehensive health services at no cost to Head Start children who are in the defined population served by the center.
9. Dental Service Corporations.	9. May provide planning and administration of dental services for Head Start children on a contract fee.
10. Special Voluntary Agencies and Public Agencies.	10. May provide funds or services for screening or treatment and rehabilitation of certain health problems. Each is usually concerned with a single category of illness.
11. State Crippled Children's Programs.	11. May provide funds for services for screening or treatment and rehabilitation of certain health problems. Limited to certain categories of illness which vary from State to State and within States.
12. Local and State Welfare or Public Assistance Programs.	12. May provide funds for any or all health services for children whose families receive or are eligible for public assistance. Eligibility and type of service paid for vary by State and locality.
13. Insurance and Pre-Payment Plans.	13. Provide payment for certain kinds of health services for children of families covered by policies.
14. Medical Assistance under Title XIX "Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT)."	14. The majority of Head Start children are eligible for Medicaid EPSDT. This provides preventive health services for eligible Medicaid children through screening, diagnosing and treating children with health problems. Exact services provided and paid for and rules for eligibility vary from State to State. At this time, Arizona does not participate in Title XIX.

SOME SPECIAL HEALTH AGENCIES WHICH MAY HELP WITH HEAD START HEALTH SERVICES

Catholic, Protestant, Jewish Welfare Associations.	Money for health and social services.
Family Service Associations.	Psychological, psychiatric and social services.
Lions Club.	Eyeglasses for needy children.
Other fraternal organizations, Civic Clubs, Women's Clubs, and Parent-Teachers Associations.	Money or volunteer help for special projects.

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	Associations for the blind or for prevention of blindness. — Vision screening, special services for vision-impaired children.
	Associations for retarded children, cerebral palsy, crippled children and for children with special diseases. — Special services for retarded and handicapped children.
	Tuberculosis Associations. — Tuberculin testing and follow-up
	Mental Health Associations. — Psychological and social services, mental health consultations.
	Resources need not be utilized solely because they are free. The utilization of community resources should be consistent with the Head Start goal of enhancing the sense of dignity and self-worth within the child and his/her family.
	Ideally, each child should be examined by a private physician or by health facility staff who will institute corrective treatment for all defects discovered and who will also provide continuing health supervision for the child during the time that he/she is in Head Start and over the years to follow. One of the central goals of the Head Start program is to introduce the children and parents to a physician or health facility that will be able to meet all of their health needs over an extended period of time.
(2) Completion of all recommended immunizations—diphtheria, pertussis, tetanus (DPT), polio, measles, German measles. Mumps immunization shall be provided where appropriate.	(2) Immunization instructions: (a) "complete" immunization is defined as follows: (i) DPT—five doses of DPT (Diphtheria, Pertussis, Tetanus) vaccine. (ii) Polio—at least four doses of trivalent oral vaccine or three doses of monovalent oral vaccine plus one dose of trivalent vaccine. (iii) Rubeola/Measles—one dose of live measles vaccine. Naturally occuring measles provides complete immunity. (iv) Rubella/German Measles—one dose of live Rubella vaccine or serologically documented immunity. (v) Mumps—where mumps vaccine is part of a combined vaccine it is appropriate for use in the immunization program. Naturally occurring mumps provides complete immunity. Refer to ACYF Information Memorandum 84-5 for the ages at which children should receive each dose.
(3) Obtaining or arranging for basic dental care services as follows:	(3) Dental providers should be made aware of the basic dental care services required by Head Start. Arrange for basic dental care services with dentists who are accessible and available. Choose a dentist who is sensitive to the dental needs of Head Start families. "Fear of the dentist" is a common phenomenon that may be prevalent in Head Start children and families who have not received regular dental care. A considerate dental provider can help alleviate anxieties associated with visits to the dental provider. A dental screening should be performed. The purpose of the dental screening is to check the

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	child's mouth for readily observable oral health problems in order to establish priorities/categories for the subsequently required dental examination and dental treatment as needed. A dental screening is a general cursory inspection of the mouth. It may be performed by a dentist, dental student, dental hygienist, dental assistant or trained staff member. Priorities/categories are as follows: (1) Children who have special needs requiring immediate attention, i.e. painful teeth and/or gums, badly decayed teeth/obvious large cavities, swelling and bleeding or pus formation around the gums. (2) Children with observable decayed teeth/cavities. (3) Children with no observable disease who require a dental examination and any necessary preventive dental care services.
(i) Dental examination.	(i) The annual dental examination by a dentist is an oral diagnostic procedure which should include diagnostic radiographs (x-rays) only if the dentist determines that they are absolutely necessary. This examination should be performed within 90 days of the child's entrance into the program.
(ii) Services required for the relief of pain or infection.	
(iii) Restoration of decayed primary and permanent teeth.	
(iv) Pulp therapy for primary and permanent teeth as necessary.	
(v) Extraction of non-restorable teeth.	
(vi) Dental prophylaxis and instruction in self-care oral hygiene procedures.	(vi) Self-care oral hygiene procedures should be emphasized daily as part of the classroom experience. Supervised toothbrushing should be part of classroom teaching. This may take place after meals or at any appropriate time during the class day. A child-sized toothbrush with soft, nylon bristles should be available for each child. A pea-sized dab of fluoridated toothpaste should be used on the toothbrush. Dental flossing should be done by a parent or Head Start staff who has been shown how to correctly floss the child's teeth. It is also appropriate and necessary for the parent to brush the child's teeth at home during the preschool years. Parental involvement and example is essential for the child to form proper self-care oral hygiene habits. Not all children will need a professional dental prophylaxis.

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(vii) Application of topical fluoride in communities which lack adequate fluoride levels in the public water supply.	(vii) All children should receive the proven dental health benefits of fluoride. Fluoridation benefits occur most ideally if the community water supply is fluoridated adequately. The local, county, or State health department; or local, county, or State dental association; or the U.S. Public Health Service dental consultant should be contacted to determine the adequacy of community water fluoride levels. It is important to know if fluoride is or is not present naturally in the community water supply or in well water. If the community water supply lacks optimal fluoride levels, a fluoride supplement program should be implemented. A fluoride supplement program is usually a daily regimen of prescription fluoride tablets for the children. You can receive needed professional assistance in the fluoridation effort from the dentist who serves the program, or from: the U.S. Public Health Service dental consultant, the dental or medical professional on the health services advisory committee, the local pediatrician, or the health departments and dental associations mentioned above. Application of topical fluoride is also appropriate in communities which do not have adequately fluoridated water supplies. In addition, even in those communities with adequately fluoridated water, children with rampant caries will benefit from topical application. The dentist can best make this determination. Another beneficial dental health measure is the selective use and application of dental sealants, particularly for the older children in the program. A dental sealant is a plastic adhesive film material which is applied by the dental professional to the chewing surfaces of selected molar teeth to prevent dental decay. The dentist can best determine during the dental examination if dental sealants are indicated for a particular child. Programs are encouraged to ask the dentist and/or the dental consultants listed above, for information in regard to dental sealants.
(b) There must be a plan of action for medical and dental emergencies.	(b) A plan should be developed with the parents to provide for emergency medical and dental care for their child. Written policy should deal with issues such as parental permission and consent forms to secure emergency care, transportation and available physicians/dentists, clinics and hospitals. A community physician/dentists, clinic or nurse should be available for telephone consultation at all times. At least one member of the full-time staff should be knowledgeable or become trained in first aid.

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§ 1304.3-5 Medical and dental records.

The plan shall provide for: (a) the establishment and maintenance of individual health records which contain the child's medical and developmental history, screening results, medical and dental examination data, and evaluation of this material, and up-to-date information about treatment and follow-up; (b) forwarding, with parental consent, the records to either the school or health delivery system or both when the child leaves the program; and (c) giving parents a summary of the record which includes information on immunization and follow-up treatment; and (d) assurance that in all cases parents will be told the nature of the data to be collected and the uses to which the data will be put, and that the uses will be restricted to the stated purposes.

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The health records should be used for: (1) identifying needed preventive and corrective care, (2) arranging for such care, and (3) providing an educational program suited to the individual child.

To aid the individual child, the record must completely and concisely, summarize health findings as determined from the history, screening tests, and medical and dental evaluation and must record all preventive measures in a way that clearly shows which recommended preventive measures have not yet taken place.

Whenever a child is referred for consultation or treatment, all of the information in the health record should be made available to the consulting or treating professional. If this is not done, the consultant must either obtain and record his own information, an unnecessary waste of time and effort, or proceed without such information, with possible ill effects for the child.

To aid physicians, dentists and health workers in providing needed health care, the record must provide a sufficient background of social, medical, and educational information of a general nature so that each health professional dealing with the child need not accumulate his own record and history.

To serve the educational needs of the child, health findings must be translated into classroom recommendations. This process should begin at the time the original health diagnoses are made. It must then be elaborated both by further written recommendations and by conferences between physicians, teachers, nurses, and other health personnel.

Following medical and dental examinations, a copy of the treatment plan, if needed, should be part of the child's health record. In addition, records should indicate the progress in completing treatment for all conditions in need of follow-up as a result of screenings, medical and dental examinations.

The *Health Data Tracking Instrument* (HDTI) should be used in the programs to see the individual child's health status. It is useful in identifying health services performed or yet to be done, follow-up (referral or treatment) needed and/or completed. The HDTI is available from the Head Start Bureau, Box 1182, Washington, D.C. 20013.

Records should indicate the progress in completing treatment for all conditions in need of follow-up as a result of screenings and medical examinations.

In order to be useful to health workers and individual children, the health records must contain a

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	large amount of information of a confidential nature. The privacy and confidence of this information must be respected. The records should be kept in a place that is not accessible to unauthorized persons. Such information should not be available routinely to teachers, administrators, or other non-medical personnel. Those portions of the health information which are pertinent and useful to teachers and to administrative personnel should be shared with them through reports and through conferences which translate the confidential health information into useful educational and administrative recommendations. Health information must not be released to insurance companies or other inquiring agencies without written consent of the child's parents or guardian. Staff should review all health records with the parents. The summary should be given to parents so they have a written account of their current health status annually. In addition, a child's health record should be transferred to the school in order to ensure continuity of health services.
§ 1304.3-6 Health education.	
(a) The plan shall provide for an organized health education program for program staff, parents and children which ensures that:	(a) Health personnel should devote a substantial amount of time in helping the Head Start staff and parents understand the implications of health findings for individual children, and for the program in general. Regularly scheduled consultations between the physician and the teachers are suggested for this purpose.
(1) Parents are provided with information about all available health resources;	(1) A local health resource booklet or pamphlet should be prepared for distribution to parents. The information ought to be categorized by services.
(2) Parents are encouraged to become involved in the health care process relating to their child. One or both parents should be encouraged to accompany their child to medical and dental exams and appointments;	(2) Parents can learn about health as a continuing process and not just as a physical and dental examination if they accompany the child to the examination.
(3) Staff are taught and parents are provided the opportunity to learn the principles of preventive health, emergency first-aid measures, and safety practices;	(3) Procedures should outline measures to be taken in medical and dental emergencies at the center and in home. Preventive health topics can include prenatal and postnatal health, immunizations, sanitation, accident prevention, hazards of toxic lead paint, first-aid for cuts, bruises, insect bites, burns, prevention of dental cavities, use of fluorides and other specific community health problems. Staff should be aware of common health practices in their community.

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(4) Health education is integrated into ongoing classroom and other program activities.	(4) The most important health education activity of a program is the example it sets by providing each child with pleasant, dignified, individualized care within the health program. Parents learn from the emphasis placed on careful examinations, immunizations, dental care, and other health measures that such health activities are important for their children. Parents' participation in classroom activities and in the health care process related to the child (screening, examinations) can be an effective method of health education for the entire family. Teachers should integrate health into the curriculum and daily activities of the children.
(5) The children are familiarized with all health services they will receive prior to the delivery of those services.	(5) Health education can build on the health services program in another way. Each screening test, immunization, and examination can be discussed in the classroom. This will serve both to prepare the children for an unusual experience and to give them a new knowledge about how each of these measures can contribute to their health. Children love to act out the experiences they have had with the doctor or nurse.
§ 1304.3-7 Mental health objectives. **The objectives of the mental health part of the health services component of the Head Start program are to:**	These are the outcomes toward which the program efforts should be directed.
(a) Assist all children participating in the program in emotional, cognitive and social development toward the overall goal of social competence in coordination with the education program and other related component activities;	
(b) Provide handicapped children and children with special needs with the necessary mental health services which will ensure that the child and family achieve the full benefits of participation in the program;	
(c) Provide staff and parents with an understanding of child growth and development, an appreciation of individual differences, and the need for a supportive environment;	
(d) Provide for prevention, early identification and early intervention in problems that interfere with a child's development;	
(e) Develop a positive attitude toward mental health services and a recognition of the contribution of psychology, medicine, social services, education and other disciplines to the mental health program; and	

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(f) Mobilize community resources to serve children with problems that prevent them from coping with their environment.	
§ 1304.3-8 Mental health services.	
(a) The mental health part of the plan shall provide that a mental health professional shall be available, at least on a consultation basis, to the Head Start program and to the children. The mental health professional shall:	(a) A mental health professional is a child psychiatrist, a licensed psychologist, or a psychiatric nurse or psychiatric social worker. Both the psychiatric nurse and psychiatric social worker should have experience in working with young children. A mental health aide may be a member of the mental health team provided the aide is under the supervision of one of the above professionals. A mental health professional may be secured from a mental health center in the geographical areas, the school system, a university, or other appropriate vendors capable of providing comprehensive mental health services.
(1) Assist in planning mental health program activities;	(1) The mental health professional should meet with the Head Start Director, the coordinator responsible for mental health services, and representative parents to assist in developing a plan for delivery of mental health services. The planning should focus on the setting of priorities according to program needs and availability of trained personnel and resources. Mental health program activities include: • pre-service and in-service training of teachers and aides; • consultation with teachers and teachers' aides; • work with parents; • screening, evaluation, and recommendations for intervention for children with special needs. The mental health professional should meet annually with appropriate staff and parents to assist in evaluation of objectives of the plan and to assist in revision of objectives for the following year.
(2) Train Head Start staff;	(2) Be involved in the assessment of mental health training needs, in designing the mental health training program, in the selection of trainers, and evaluating staff members' progress. Provide information which will help staff members better understand normal development as well as the more common behavior problems seen in children. Training should include observation techniques and methods in meeting the assessed needs of the child.
(3) Periodically observe children and consult with teachers and other staff;	(3) The mental health professional can provide practical advice and help to the teaching staff by

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	observing the children in their physical surroundings at least semi-annually. Teachers can share their information, ideas, and suggestions about the children.
(4) Advise and assist in developmental screening and assessment;	(4) Advise and assist staff in devising a process for screening children with atypical behavior, and in evaluating children needing further assessment. In addition, the mental health professional will train or assist in obtaining training for teachers in use of behavior checklists and other screening instruments. Classroom observation and screening should be initiated within the early weeks of class attendance and then continued on a periodic basis—as considered necessary by staff and/or mental health professional. Included in screening and evaluation are: • Physical coordination and development; • Intellectual development; • Sensory development with special emphasis on sensory discrimination; • Emotional development; • Social development.
(5) Assist in providing special help for children with atypical behavior or development, including speech;	(5) Advise and assist in provision of special services for children with atypical behavior or development, including language and speech. Through staff conferences, practical recommendations may be generated when working with the child with special needs. For example, the use of games aimed at increasing the child's verbal expression, how the staff may work with the overly shy or overly aggressive child, and how to curb impulsive behavior.
(6) Advise in the utilization of other community resources and referrals;	(6) The mental health professional should have a working knowledge of mental health resources in the community in order to assist in development of a file of community resources, including referral procedures and documentation of their use. Examples of such resource agencies include child guidance clinics, community mental health centers, psycho-educational clinics, and State or county children's services.
(7) Orient parents and work with them to achieve the objectives of the mental health program; and	(7) Orient parents and work with them to achieve the objectives of the mental health program, including advising parents on how to secure assistance on individual problems, assisting center staff in developing an ongoing education in mental health for parents, and evaluating the effectiveness of the parent mental health education program.

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	The mental health professional should help parents to recognize a variety of ways in which they can further their children's intellectual, emotional, and social development at home. This may be accomplished through individual or group meetings.
(8) Take appropriate steps in conjunction with health and education services to refer children for diagnostic examination to confirm that their emotional or behavior problems do not have a physical basis.	(8) When a child is referred for emotional or behavioral problems, a physical examination should be included in the assessment in order to rule out a physical cause for the mental health problem which can be treated.
(b) The plan shall also provide	
(1) attention to pertinent medical and family history of each child so that mental health services can be made readily available when needed;	(1) The assessment of each child's medical records, family history and home visits by appropriate coordinators and teachers, for information, will indicate if the child or his family may need additional assistance from the mental health program. A plan for follow-through will be written for each child whose medical and/or family history and/or home visit suggests a potential for emotional or behavioral problems. The plan should include objectives to be evaluated monthly.
(2) use of existing community mental health resources;	(2) Procedures for utilizing existing community mental health resources including specified contact persons. These procedures should be developed in conjunction with the mental health professional for identifying and contacting resources.
(3) coordination with the education services component to provide a program keyed to individual developmental levels;	(3) The mental health professional and the educational coordinator should work closely with each teacher and the parents in designing an education program for each child based on his developmental level and in training teachers to be able to do such program planning. Conferences should be held periodically with the staff to discuss particular children who have been identified as needing special help. The mental health professional should share ideas and suggestions with staff on helping the child benefit from the program.
(4) confidentiality of records;	(4) Only authorized persons should be permitted to see the records. Parents and staff should jointly decide if such records are forwarded to the school system.
(5) regular group meetings of parents and program staff;	(5) Periodic group meetings at least quarterly, between parents and staff can be used for identifying and discussing child development, discipline, childhood fears, complex family problems, and other parental and staff concerns. A mental health professional should be present at these sessions periodically.

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(6) parental consent for special mental health services;	(6) There must be a written consent from the parent for special mental health service. A standard "informed consent" form should be used and should include the following: the name of the child, the name of the service provider, a description of the services to be provided, and the date the form was signed.
(7) opportunity for parents to obtain individual assistance; and,	(7) Opportunities should be provided for parents to discuss individual problems of the child or the family with the mental health professional. This can be done on an appointment basis.
(8) active involvement of parents in planning and implementing the individual mental health needs of their children.	(8) There should be a parent orientation meeting to explain the mental health program and the available services. Ideally, the mental health professional should conduct this meeting. Parents should be involved in developing and evaluating the mental health program.

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§ 1304.3-9 Nutrition objectives.	
The objectives of the nutrition part of the health services component of the Head Start program are to:	
(a) Help provide food which will help meet the child's daily nutritional needs in the child's home or in another clean and pleasant environment, recognizing individual differences and cultural patterns, and thereby promote sound physical, social, and emotional growth and development.	
(b) Provide an environment for nutritional services which will support and promote the use of the feeding situation as an opportunity for learning;	
(c) Help staff, child and family to understand the relationship of nutrition to health, factors which influence food practices, variety of ways to provide for nutritional needs and to apply this knowledge in the development of sound food habits even after leaving the Head Start program;	
(d) Demonstrate the interrelationships of nutrition to other activities of the Head Start program and its contribution to the overall child development goals; and	
(e) Involve all staff, parents and other community agencies as appropriate in meeting the child's nutritional needs so that nutritional care provided by Head Start complements and supplements that of the home and community.	
§ 1304.3-10 Nutrition services.	
(a) The nutrition services part of the health services component of the performance standards plan must identify the nutritional needs and problems of the children in the Head Start program and their families. In so doing account must be taken of:	(a) The intended purpose of the written plan is to develop a system to: • identify the problem areas and needs that must be addressed related to nutrition; • meet total needs including providing the overall high quality feeding and nutrition education program expected for children, and • bring parents and staff to a level of understanding and involvement in the area of nutrition to enable them to meet their various appropriate responsibilities. It should be designed for the agency to use to develop and provide a high quality nutrition component and does not have to be elaborate. The ACYF *Handbook for Local Head Start Nutrition Specialists* can provide additional guidance to the professional staff responsible for developing the written plan.

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	The Handbook is available from the Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013.
(1) The nutrition assessment data (height, weight, hemoglobin/hematocrit) obtained for each child;	(1) These data should be available from the child's current health evaluation record or his medical history record. Height and weight measurements should be plotted on growth charts. Measurements should be taken twice, at the beginning and the second time toward the end of the year. Other pertinent information can be obtained from the medical and dental records. Underheight/underweight children may need additional food provided at the center along with follow-up at home. Overweight children need follow-up to identify the specific factors involved in the weight problem and realistic interventions consistent with good child growth and development practices both at the center and at home. Children with anemia and similar medical nutrition problems need specific diagnoses and follow-up. A child with a hemoblobin of less than 11 or hematocrit of less than 34 is considered to be anemic. This is consistent with the standards of Public Health Service, Maternal and Child Health and with CDC National Nutrition Status Survey as well as EPSDT guidance material. Children with unresolved nutrition-related needs should be referred to appropriate agencies who have continuing contact with the child for follow-up after the child leaves Head Start.
(2) Information about family eating habits and special dietary needs and feeding problems, especially of handicapped children; and,	(2) This information should be obtained by talking with parents early in the year. The interviewer should receive orientation and training on how to conduct such interviews from a nutritionist. The information will be used to assure that the many good aspects of the family eating patterns are reinforced through food served in the center; that special dietary needs are met at the center; and that this information will be considered in developing a nutrition plan with families.
(3) Information about major community nutrition problems.	(3) Information about major community nutrition related problems may be obtained from the demographic characteristics of the target group such as family income, educational level, racial and ethnic composition, and from the quality of the local food and water supply such as availability of fluoridated water, etc. The State and local health department nutritionists are helpful in obtaining such information. The information should be used for developing the applied aspects of the nutrition program by determining the need for food supplementation, fluoridation of water, iodized salt, control of sale of

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	uncertified raw milk, more effective method of distribution and utilization of food stamps, a system for making food available, i.e. transportation, food outlets, coops, etc.
(b) The plan, designed to assist in meeting the daily nutritional needs of the children, shall provide that:	(b) The child's total daily nutritional needs should be supplied by the food served in the home, complemented by the food served at the center.
(1) Every child in a part-day program will receive a quantity of food in meals (preferably hot) and snacks which provides at least 1/3 of daily nutritional needs with consideration for meeting any special needs of children, including the child with a handicapping condition;	(1) The Recommended Dietary Allowance of the National Research Council, National Academy of Sciences are used as the basis for establishing the nutritional needs of the child. Calculations of nutrients in food served can be compared to the Recommended Dietary Allowances as a cross-check in assuring that one-third of the nutrient needs are met. To meet one-third of the daily nutritional needs, use the lunch or supper pattern or a breakfast plus a snack pattern. If breakfast is served rather than a lunch it should contain a protein food in addition to milk, bread or cereal. In addition, the snack served must also be carefully planned to add fruit or vegetable and probably milk in order to meet the remaining nutrient needs. Use of cycle menus (3 weeks or longer) are helpful in formulating balanced and varied menus and in planning purchasing orders and work schedules. Include hot and cold foods and variety in colors, flavors and textures. Seasonal foods and USDA donated commodities should be fully utilized to keep food costs down. Check children's acceptance of food items on menu periodically and make changes accordingly. Menus should be dated and posted in the food preparation area as well as in the dining area. The food items should be identified by the kind of food not just the category of food group; for example, specify orange juice rather than fruit juice. All substitutions must be indicated on the menus. Choose foods for meals and snacks that contribute not only to the child's nutrient needs but also to good dental health and support the dental education program. Do not serve overly sweet and sticky foods especially those high in refined sugars. Children do not need salt added to their food. Reduce the salt in cooking and at the table. It will be beneficial to adults as well as children in helping to prevent hypertension. Wherever possible reduce the amount of fat in recipes, and in food preparation. The nutrient needs of handicapped children are the same as for other children. However, due to difficulties in chewing or swallowing or lack of feeding

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	skills the texture and consistency of the foods may need to be modified. In other conditions which require modification of the menu such as in food allergies, digestive or metabolic disturbances, etc., this information should be part of the child's health record and a physician's prescription must be kept on file at the center and at the food preparation site and updated periodically. A qualified nutritionist should help plan for meeting these needs. General use of special dietary foods such as vitamin fortified modified milk products either as snacks or as meal supplements are not allowed. They are not in keeping with Head Start nutrition program goals of (1) providing needed nutrients through well planned meals, (2) providing a variety of food and eating experiences, and (3) providing opportunities for children to participate in menu planning and wherever possible in simple food preparation and selection, (4) reinforcing cultural and ethnic practices found in the children's homes.
(2) Every child in a full-day program will receive snack(s), lunch, and other meals as appropriate which will provide ½ to ⅔ of daily nutritional needs depending on the length of the program;	(2) To meet ⅔ of the child's nutrient needs will necessitate the use of the lunch or supper pattern plus breakfast and a snack or plus two well planned snacks, one of which contains milk.
(3) All children in morning programs who have not received breakfast at the time they arrive at the Head Start program will be served a nourishing breakfast;	(3) Since it is virtually impossible for small children to meet their nutrient needs without having 3 meals a day, breakfast is required to be available at the center for children who have not had it at home. Breakfast should be served immediately upon arrival of the child at the center. If only a small number of the children arrive without breakfast, concentrate on supplementing the snack with simple additional foods to meet the breakfast pattern and serve the snack early. All children should then have access to this. If a majority of the children come without breakfast, it may be simpler to serve breakfast to all children. Cake rolls, pastries, doughnuts, sugar-coated cereals, etc., because of their high sugar content, are not recommended.
(4) The kinds of food served conform to minimum standards for meal patterns;	(4) Meal Patterns Snacks should be planned to supplement nutrient needs not met in the meals. Menus developed from the pattern can include cultural foods. For example, at lunch the meat substitute, vegetable and bread could be made into an enchilada, taco or burrito using the meat or cheese or bean, tomatoes or tomato sauce and onion and an enriched corn or flour tortilla. Protein-rich foods are meat, poultry, fish, eggs, cheese, peanut butter, dried peas and beans.

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Meal Patterns*

Breakfast	Children 1 up to 3 years	Children 3 up to 6 years
Milk, fluid	1/2 cup	3/4 cup
Juice or **fruit** or **vegetable**	1/4 cup	1/2 cup
Bread and/or **cereal**, enriched or whole grain		
Bread or	1/2 slice	1/2 slice
Cereal: Cold dry or	1/4 cup[1]	1/3 cup[2]
Hot cooked	1/4 cup	1/4 cup
Midmorning or midafternoon snack (supplement)		
(Select 2 of these 4 components)		
Milk, fluid	1/2 cup	1/2 cup
Meat or **meat alternate**	1/2 ounce	1/2 ounce
Juice or **fruit** or **vegetable**	1/2 cup	1/2 cup
Bread and/or **cereal**, enriched or whole grain		
Bread or	1/2 slice	1/2 slice
Cereal: Cold dry or	1/4 cup[1]	1/3 cup[1]
Hot cooked	1/4 cup	1/4 cup
Lunch or supper		
Milk, fluid	1/2 cup	3/4 cup
Meat or **meat alternate**		
Meat, poultry, or fish, cooked (lean meat without bone)	1 ounce	1 1/2 ounces
Cheese	1 ounce	1 1/2 ounces
Egg	1	1
Cooked dry beans and peas	1/4 cup	3/8 cup
Peanut butter	2 tablespoons	3 tablespoons
Vegetable and/or **fruit** (two or more)	1/4 cup	1/2 cup
Bread or **bread alternative**, enriched or whole grain	1/2 slice	1/2 slice

[1] 1/4 cup (volume) or 1/3 ounce (weight), whichever is less.
[2] 1/3 cup (volume) or 1/2 ounce (weight), whichever is less.
[3] 3/4 cup (volume) or 1 ounce (weight), whichever is less.
* A Planning Guide for Food Service in Child Care Centers, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302.

Fruit drinks and beverages made from fruit-flavored powders or syrups should not be used routinely. They do not contain many of the vitamins and minerals found in natural juices, and are high in sugar.

Bread includes tortillas, cornbread, rolls, muffins, bagel, fried bread, flat bread, etc., made of whole grain or enriched flour. Use whole grain breads and cereals often.

"Milk" should meet State and local standards. For the preschool child milk may be whole milk, buttermilk, or skim milk, if the child is gaining too much weight.

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	For the infant the use of skim milk or reduced fat milk isn't recommended. The calories from fat are needed by the infant to help provide the high energy needs and to maintain a desirable rate of weight gain. Raw vegetables contain larger amounts of vitamin C than cooked vegetables. Include both raw and cooked fruits and vegetables in the menu. A good to excellent source of vitamin C should be served daily. Fruits and vegetables that are good to excellent sources of vitamin C are listed below: *Excellent:* Orange, orange juice, grapefruit, grapefruit juice, broccoli, collards, cantaloupe, raw tomato and raw strawberries. *Very Good:* Mustard, beet and turnip greens, kale, cauliflower, chard, tangerine, and tomato juice. *Good:* Spinach, raw green pepper, dandelion greens, raw cabbage. A dark yellow or leafy green vegetable should be served every other day to provide vitamin A. Fruits and vegetables that are good to excellent sources of vitamin A are: Sweet potatoes, carrots, pumpkin, broccoli, winter squash, apricots, peaches, tomatoes, cantaloupe, dark green leafy vegetables: beet and turnip greens, spinach, kale, collard, etc.
(5) The quantities of food served conform to recommended amounts indicated in ACYF Head Start guidance materials; and,	(5) See page 42 for suggested size servings.
(6) Meal and snack periods are scheduled appropriately to meet children's needs and are posted along with menus; e.g., breakfast must be served at least 2½ hours before lunch, and snacks must be served at least 1½ hours before lunch or supper.	(6) Quiet time should be scheduled before the meal so the children come to the table relaxed and ready to eat. Regularity in times of serving meals and snacks and the following of a daily routine help young children to establish good habits. Proper spacing of meals allows time for the child to be hungry enough to eat. Time should be allowed after meals for activities such as toothbrushing, handwashing, etc. This is especially important when the meal is served just before the children go home.
(c) The plan shall undertake to ensure that the nutrition services contribute to the development and socialization of the children by providing that:	(c) Mealtimes should promote the physical, social and emotional development of children. This needs to take place in a quiet, well-lighted and ventilated area.

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	Meal-related activities provide opportunities for decision making, learning to take responsibility, sharing, communicating with others, muscle control and eye-hand coordination. Family style food service supports these efforts. Food-related activities should be planned within the child's range of abilities. If food is not prepared on-site, special efforts will need to be made to assure that opportunities are available for food preparation activities in the classroom. These will need to be closely coordinated with the planned menus, and food service personnel.
(1) A variety of foods which broaden the child's food experience in addition to those that consider cultural and ethnic preferences is served;	(1) Start with familiar foods which make a child feel comfortable and promote good self-concept. Introduce new foods gradually. Offer a small amount of one new food along with a meal of familiar foods. Children should be prepared for the new food through classroom activities such as reading stories about the food, shopping for the food and helping in its preparation, growing the food or seeing it grow on a farm, etc. Snack time can be used to introduce a new food. Explore various ways one food item is served in different cultures. For example, the many different types of breads used: tortillas, biscuits, pita (flat bread), bagels, soda bread, etc. Explore the many ways one food can be prepared. For example: hard and soft cooked egg, fried, poached, coddled, egg salad, deviled, meringue, egg nog, etc.
(2) Food is not used as punishment or reward, and that children are encouraged but not forced to eat or taste;	(2) If a child refuses a food, offer it again at some future time, don't keep pestering the child. Forcing children to eat or using desserts or other food as reward or punishment may create problem eaters and unpleasant or undesirable associations with the food. Remember that all foods offered should contribute to the child's needs, including the dessert. "Clean plate" clubs, stars and other gimmicks to encourage children to eat are not appropriate.
(3) The size and number of servings of food reflect consideration of individual children's needs;	(3) Appetites vary among children and in the same child from day to day. Start with small portions allowing for additional portions as desired. Permitting children to serve themselves gives them latitude to make decisions on the quantity they want and prevents waste. Family style food service is preferred. Use of preplated meals does not allow opportunity for individualization of serving size, and usually allows litle variety, especially in cultural foods. Serve food in a form that is easy for the young child to manage. Bite-size pieces and finger food are well-liked and suitable for small hands. Meat

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	cut in bite-size pieces, bread, and raw vegetables cut in strips and fruit in sections are easy for children to handle.
(4) Sufficient time is allowed for children to eat;	(4) Serve children as soon as they come to the table. Slow eaters should be allowed sufficient time to finish their food (about 30 minutes). If children become restless before the meal period is over allow them to get up and move around, i.e., the children can take their plate to a cleaning area away from the table when finished. A leisurely meal time pace should be encouraged. Some handicapped children may be eating at a different developmental level than the other children. For example, if the 3-year-old child is eating with skills of a 2-year-old, start where the child is and plan with a nutritionist or other therapist for helping the child reach an adequate level of self-feeding skill.
(5) Chairs, tables, and eating utensils are suitable for the size and developmental level of the children with special consideration for meeting the needs of children with handicapping conditions;	(5) Chairs should be of a size to allow the child's feet to rest on the floor or support should be provided in some way. Plastic dishes and stainless steel flatware are practical for use with small children. Small plastic glasses or cups (4 oz.) are easy to hold and help avoid spills. Small pitchers can be handled by children for refills. Children need experience using knives. These should have rounded tips. If paper plates must be used they should be of sturdy weight so that they do not slide around and so juice does not soak through the surface and make eating difficult. Use washable tabletops, covers or mats for easy cleaning of spills.
(6) Children and staff including volunteers, eat together sharing the same menu and a socializing experience in a relaxed atmosphere; and	(6) Small groups of 5-7 persons are conducive to conversation and interaction. Interesting and pleasant table conversation centered about children's total experiences (not limited to food and nutrition) should be encouraged. Discourage talk about personal dislike of food. Teachers and other adults should set a good example by their attitude toward acceptance of food served. If the teacher must be on a special diet and cannot eat the same foods as the children, this should be explained to them. Good food habits are "caught rather than taught."
(7) Opportunity is provided for the involvement of children in activities related to meal service. (For example: family style service)	(7) Activities related to meal service include shopping for food, setting the table, serving the food to others or self, cleaning up, making place mats and table centerpieces, etc. Children should be allowed to help with all of these activities.

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(d) The plan shall set forth an organized nutrition education program for staff, parents and children. This program shall assure that:	(d) An organized program is based on identified needs and consists of planned activities to meet these needs. Nutrition education helps staff, children and parents increase knowledge, understanding and skills to achieve good nutrition.
(1) Meal periods and food are planned to be used as an integral part of the total education program;	(1) Meal periods are part of the flow of the day's activities. Foods serve as objects of observation and conversation for conceptual, sensory, and vocabulary development of children. Food related activities can be used as a means for teaching language arts, color, texture, arithmetic, science, social skills and hygienic practices; however, the primary purpose of these activities is to establish long term sound food habits and attitudes, and the food should be eaten. There also may be a special nutrition focus in the education program with carry over into the menu and meal time activities. For example, if a trip is planned to an orchard, related emphasis should be placed on the fruit in the menus, meal time conversation, and classroom food preparation experiences.
(2) Children participate in learning activities planned to effect the selection and enjoyment of a wide variety of nutritious foods;	(2) Examples of learning activities are field trips, tasting parties, food preparation, planting and growing food, reading stories about food; role playing as parents, grocer, making scrap books and exhibits, feeding classroom pets, planning menus to share with parents, etc.
(3) Families receive education in the selection and preparation of foods to meet family needs, guidance in home and money management and help in consumer education so that they can fulfill their major role and responsibility for the nutritional health of the family;	(3) Staff should talk with parents to identify the nutrition information and food needs and develop the plan in response to their specific needs. Parents have much to offer each other. Many ways can be used for parent involvement in education such as formal and informal presentations, individual counseling by nutritionist, nurse and other staff, attendance at local adult education programs and cook training sessions. Also, parents can participate in menu planning committees and staff can distribute pamphlets, newsletters and employ audio-visual aids.
(4) All staff, including administrative, receive education in principles of nutrition and their application to child development and family health, and ways to create a good physical, social and emotional environment which supports and promotes development of sound food habits and their role in helping the child and family to achieve adequate nutrition.	(4) This education must be appropriate to the specific nutrition-related responsibilities of each staff member. For example, nutrition education for the classroom staff should have a different focus from that of the food service staff or that of the director. The staff training program should be coordinated and integrated with the total staff training and orientation program.

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(e) The plan shall make special provision for the involvement of parents and appropriate community agencies in planning, implementing, and evaluating the nutrition services. It shall provide that:	(e) Parents should be encouraged to participate in nutrition program activities such as planning menus and working in classroom nutrition activities, to serve as volunteers or in jobs in food service and in on-going monitoring of the nutrition component. Parents or members of the community who meet the following requirements should be encouraged to apply for food service positions: • know how to prepare good food • are willing to try out new foods • meet health standards • have good attitudes toward food • like being and working with and around children • are eager and flexible to learn the necessary competencies to carry out the functions required. Appropriate agencies can provide professional input and resources for training teachers, staff and food service personnel as well as meeting needs of parents. It is important that these agencies understand the Head Start philosophy. Some agencies may be resources for additional funding equipment, food, etc. Examples are local health departments, schools, colleges, hospitals, county Extension Service, USDA, professional and trade organizations (The American Dietetic Association, Dairy Council, American Home Economics Association and Society for Nutrition Education).
(1) The Policy Council or Committee and the Health Services Advisory Committee have opportunity to review and comment on the nutrition services;	(1) The health advisory committee and policy council should review the nutrition program plan and advise on specific needs of the program with special reference to addressing identified community nutrition needs.
(2) The nutritional status of the children will be discussed with their parents;	(2) Any problem related to nutritional status identified by teachers' observations of feeding skills and habits should be discussed with parents. A plan to solve the problems should be developed with the parents. Opportunity should be taken to reinforce the positive food habits and good growth pattern of the child.
(3) Information about menus and nutrition activities will be shared regularly with parents;	(3) Information can be shared by sending menus to the home, periodic group meetings, parent-staff discussions, home visits, and periodic newsletters. Frequency of these activities will vary from agency to agency.
(4) Parents are informed of the benefits of food assistance programs; and	(4) Food assistance programs include food stamps, free or reduced price school breakfast, lunch, and food programs for high risk categories (pregnant mothers, infants, children, the elderly).

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	Contact USDA Child Nutrition Division for materials and information on these programs. Child Nutrition Division Food & Nutrition Service U.S. Dept. of Agriculture 3101 Park Center Drive Alexandria, Virginia 22302
(5) Community agencies are enlisted to assist eligible families participate in food assistance programs.	(5) It is important to assure that families have food. This may involve utilization of emergency food banks, providing transportation to buy food stamps or food, etc.; but it should be remembered that the long term goal is to help families become independent. Work with the social service component on this.
(f) The plan shall provide for compliance with applicable local, State and Federal sanitation laws and regulations for food service operations including standards for storage, preparation and service of food, and health of food handlers, and for posting of evidence of such compliance. The plan shall provide, also, that vendors and caterers supplying food and beverages comply with similar applicable laws and regulations.	(f) These are established to protect the health and safety of children being fed. All food service personnel should possess a Health Card or Statement of Health from the local Health Department or physician. Some States do not send inspectors to check Head Start facilities for compliance with local and State standards. In such a situation, designated program personnel—with knowledge of applicable sanitation laws and regulations or sanitation standards that assure provision of a safe food service should check annually for compliance with these regulations and be responsible for the correction of existing violations. Written evidence of this must be available. Self-inspection reports should be completed quarterly to assure maintenance of standards. The following areas should be addressed: Cleanliness and safety of food before, during and after preparation including maintenance of correct temperature Cleanliness and maintenance of food preparation, service, storage and delivery areas and equipment Insect and rodent control Garbage disposal methods Dishwashing procedures and equipment Food handling practices Health of food service personnel Water supply Local or State sanitarians in health agencies can be most helpful in providing ideas on ways to meet sanitation standards. Evidence must be available that food caterers have met codes. Vehicles used for transporting and holding food must be insulated so food meets temperature standards and transportation equipment must be able to be sanitized.

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(g) The plan shall provide for direction of the nutrition services by a qualified full-time staff nutritionist or for periodic and regularly scheduled supervision by a qualified nutritionist or dietician as defined in the Head Start Guidance material. Also, the plan shall provide that all nutrition services staff will receive preservice and in-service training as necessary to demonstrate and maintain proficiency in menu planning, food purchasing, food preparation and storage, and sanitation and personal hygiene.

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(g) The services that a nutritionist is expected to provide in developing, implementing and supervising a high quality feeding and nutrition program require a person with at least the minimal amount of nutrition training and experience as follows:

A qualified nutritionist or dietitian is one who (1) meets the educational and training requirements for membership and registration in the American Dietetic Association plus one year of experience in community nutrition including services to children 0-6 or (2) has a baccalaureate degree with a major in foods and nutrition, dietetics or equivalent hours of food and nutrition course work plus two years of experience in community nutrition including services to children 0-6. Required experience could have been concurrent with or a part of training.

A home economist who meets the requirements in item (2) above would also be qualified.

It is important that the same nutritionist be used to establish consistency and continuity in the services. The amount and frequency of supervision needed will depend on the size of the program and the help it needs in coming into compliance with the performance standards. A minimum of 8 hours of services per week per center is suggested. Field experience indicates that grantees with on-site food preparation facilities can effectively use the services of one full time nutritionist for every 5 sites. Grantees providing food from a centralized food preparation facility, including catered or contract services, can use one full time nutritionist for every 10 centers served. Nutritionists, even those meeting the qualifications outlined above should be oriented to the Head Start Performance Standards. Every nutritionist should be provided with the *Handbook for Local Head Start Nutrition Specialists* which is available from the Head Start Bureau. P.O. Box 1182, Washington, D.C. 20013.

The nutritionist provides the following types of services:

(1) Assesses the nutritional status and special needs of children and their families from information provided by the family and from the health records, discussions with nurse, physician, dentist, and from knowledge of community nutrition problems; helps parents and staff in formulating plans for the nutrition program from this information.

(2) Provides necessary counseling for parents.

(3) Plans the nutrition education program with staff, parents and children. Participates in staff training.

(4) Observes performance of food service personnel and provides for an ongoing training pro-

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gram that will improve or develop competencies to insure proficiency.

(5) Helps teaching staff plan and provide nutrition-related learning experiences in classroom.

(6) Utilizes community resources in carrying out the total nutrition program.

(7) Participates in menu planning and review and takes other steps to assure a high quality feeding program.

(8) Provides the food service unit with direction in food budgeting, purchasing, storage, preparation, service, and setting up of efficient record systems.

(9) Assists in interpreting and meeting health, sanitation, and safety standards related to nutrition.

(10) Interprets Head Start nutrition service philosophy to peers in other agencies and enlists skills of such personnel.

(11) Assists in preparation of job descriptions and schedules in food preparation facility to assure an efficient food service operation.

(12) Assists in preparation of the budget and any written plans for the nutrition component.

(13) Participates in the self-assessment process.

The nutritionist should work at the grantee or delegate agency level so that she can coordinate all nutrition efforts across the board. She can function in several modes—using local resources in each program independently, setting up a cluster of model centers at which training of personnel can be conducted, scheduling her own time to make a monthly visit to each on-site facility (or however frequently this is feasible depending on the need in centers).

Training for food service staff must focus on knowledge, skills and attitudes needed to do the job as well as career development plans for those interested. The training program can be designed to meet the qualifications for a dietary technician or assistant as defined by the American Dietetic Association and provide opportunity for career ladders into hospital dietary departments and other types of institutions.

Examples of duties which food service personnel may be expected to perform and therefore need training are:

- Plan menus with staff and parents
- Procure and store food, supplies, equipment

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	• Prepare or supervise the preparation and service of nutritious meals and snacks • Arrange work schedules for aides and volunteers • Maintain established standards of sanitation, safety and food preparation • Prepare budget data and maintain cost control system • Identify equipment needs • Maintain records pertaining to food service operation • Develop and test recipes and products • Cooperate and participate in nutrition education activities for children, parents and staff • Prepare simple written reports Adequate numbers of staff and time are required to do this. What constitutes an adequate number of food service personnel depends on the size of the food operation (the number of children being fed), the type of equipment available, the level of competency of the employees, and the available auxiliary help such as janitorial service and volunteers. One full time cook on basis of past Head Start experience is suggested for centers serving 30-40 children supplemented by one full time aide for centers serving up to 60 children. For centers serving 15-30 children, a minimum of 6 hours per day of cook's time is needed. Sufficient paid time should be allotted to food service personnel to attend staff meetings, training and for planning.
(h) The plan shall provide for the establishment and maintenance of records covering the nutrition services budget, expenditures for food, menus utilized, numbers and types of meals served daily with separate recordings for children and adults, inspection reports made by health authorities, recipes and any other information deemed necessary for efficient operation.	(h) The nutrition services budget includes costs of food, food service and nutrition staff, equipment and nutrition education materials and supplies for children and parent activities and staff training. Records should be kept on file for a minimum of 3 years and should be available to monitors, auditors and other agency personnel as needed. All food program costs should be recorded: quantity and cost of food, purchased or donated, labor including volunteers, expenditures for equipment, utilities and transportation. Programs under the Child Care Food Program must supply reports according to the requirements of the agency administering the program. A daily count of meals served to children and adults is a requirement of USDA as a condition for reimbursement. All menus should reflect any changes made. Written inspection reports should be posted and indicate any sanitation violations and date of compliance or expected compliance.

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	Suggested source of menus and recipes: Child Nutrition Division Food and Nutrition Service, USDA 3101 Park Center Drive Alexandria, Virginia 22302 Tested recipes are recommended to insure uniform quality, prevent waste and serve as a guide to purchasing. Other needed records include food and equipment inventories, personnel evaluation and training records.

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Subpart D-Social Services Objectives and Performance Standards	
§ 1304.4-1 Social services objectives.	
The objectives of the social services component of the performance standards plan are to:	In order to accomplish the comprehensive objectives of the Social Services component, the Head Start program should use some form of family needs assessment (FNA) with every family having a child enrolled in the program. The purpose of the Family Needs Assessment (FNA) is to develop a total profile or picture of the individual families being served by the Head Start program. The FNA will identify the interests, desires, goals, needs and strengths of the family, and will help the Social Services staff determine how Head Start can best work with the family to maximize and maintain its strengths, while strengthening areas of need and/or concern. This assessment *process*, beginning at the time of enrollment, and culminating when the family leaves the program, should result in the development of a family profile and assistance plan (FAP) which should be geared toward assisting families to reach their goals and aspirations. Reference is made to the Head Start Bureau/ ACYF publication, *A Handbook For Providing Social Services in Head Start*, as a resource for staff in developing the FNA and FAP—available from the Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013.
(a) Establish and maintain an outreach and recruitment process which systematically insures enrollment of eligible children.	
(b) Provide enrollment of eligible children regardless of race, sex, creed, color, national origin, or handicapping condition.	
(c) Achieve parent participation in the center and home program and related activities.	
(d) Assist the family in its own efforts to improve the condition and quality of family life.	
(e) Make parents aware of community services and resources and facilitate their use.	
§ 1304.4-2 Social services plan content.	
(a) The social services plan shall provide procedures for:	(a) Input into the plan should be made by staff and parents.
(1) Recruitment of children, taking into account the demographic make-up of the community and the needs of the children and families;	(1) The recruitment process should systematically seek out children from the most disadvantaged homes. Recruitment techniques include door to door contact, use of income eligibility lists, and use of recruitment staff who can identify with the community. Special emphasis should be placed on recruiting and enrolling from and coordinating with other agencies which are serving only some of the children's needs.
(2) Recruitment of handicapped children;	(2) The following factors will be taken into account: • Number of handicapped children in the target population, including types of handicaps and their severity. • Services provided by other community agencies.
(3) Providing or referral for appropriate counseling;	(3) (4) Preferably, these services should be available directly from the local Head Start pro-

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(4) Emergency assistance or crisis intervention;	gram. If unavailable directly, provision should be made for obtaining appropriate services from outside resources.
(5) Furnishing information about available community services and how to use them;	(5) The procedure should ensure that all available community resources are used to the maximum extent possible.
(6) Follow-up to assure delivery of needed assistance;	(6) Agencies to whom children or other family members were referred should be contacted to assure the services were satisfactorily provided.
(7) Establishing a role of advocacy and spokesman for Head Start families;	(7) Head Start staff should, in a prudent and positive way, represent the best interests of Head Start families to the community and other community agencies, especially if the family has any problems in receiving benefits from local resources.
(8) Contacting of parent or guardian with respect to an enrolled child whose participation in the Head Start program is irregular or who has been absent four consecutive days; and	(8) Social services staff should make regularly scheduled family contacts (preferably home visits) and should assess and re-assess family needs on a continuing basis. These contacts should be coordinated with other component staff.
(9) Identification of the social service needs of Head Start families and working with other community agencies to develop programs to meet those needs.	(9) The procedure should specify those services which will be provided *directly* by the local Head Start program; *i.e.*, counseling and those services which will be provided by resource agencies other than the local Head Start program. Head Start staff should make every effort to involve parents in identifying individual family needs and in planning ways to meet those needs. Head Start staff should be provided training in how to identify families and children in need of social services.
(b) The plan shall provide for close cooperation with existing community resources including:	
(1) Helping Head Start parent groups work with other neighborhood and community groups with similar concerns;	(1) (2) Some form of official communication could be established through designated liaison to maintain contact with public service agencies. Letters of intent should be sought from agencies cooperating with Head Start where possible. Staff should initiate the effort of finding out (inventorying) what services these agencies currently do offer and have the potential for offering in the future.
(2) Communicating to other community agencies the needs of Head Start families, and ways of meeting these needs;	
(3) Helping to assure better coordination, cooperation and information sharing with community agencies;	(3) Ways of facilitating communication with other social service providers in the community include visiting those providers, inviting those providers to visit the Head Start program, placing providers on a special Head Start mailing list to receive pertinent information, being placed on the providers' mailing list to keep abreast of the providers' activities, and developing a media relations program with local press, radio stations, and TV stations.

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(4) Calling attention to the inadequacies of existing community services, or to the need for additional services, and assisting in improving the available services, or bringing in new services; and	(4) A Social Services Advisory Committee comprised of Head Start staff, staff from other community agencies, and Head Start parents could be formed to provide input concerning needed social services and to act as an advocacy group in obtaining these services.
(5) Preparing and making available a community resource list to Head Start staff and families.	(5) In communities where another agency prepares a community resource list, the Head Start program might update the list and make it more relevant for Head Start purposes.
(c) The plan shall provide for the establishment, maintenance, and confidentiality of records of up-to-date, pertinent family data, including completed enrollment forms, referral and follow-up reports, reports of contacts with other agencies, and reports of contacts with families.	(c) Adequate records should be kept and reviewed periodically at the center level. Social service staff can coordinate with teaching staff on class attendance and follow-up. Parents and staff should be involved in determining criteria for confidentiality.

PARENT INVOLVEMENT

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Subpart E-Parent Involvement Objectives and Performance Standards	
§ 1304.5-1 Parent involvement objectives.	
The objectives of the parent involvement component of the performance standards are to:	
(a) Provide a planned program of experiences and activities which support and enhance the parental role as the principal influence in their child's education and development.	
(b) Provide a program that recognizes the parent as:	
(1) Responsible guardians of their children's well being.	
(2) Prime educators of their children.	
(3) Contributors to the Head Start program and to their communities.	
(c) Provide the following kinds of opportunities for parent participation:	
(1) Direct involvement in decision making in the program planning and operations.	
(2) Participation in classroom and other program activities as paid employees, volunteers or observors.	
(3) Activities for parents which they have helped to develop.	
(4) Working with their own children in cooperation with Head Start staff.	
§ 1304.5-2 Parent involvement plan content: parent participation.	
(a) The basic parent participation policy of the Head Start program, with which all Head Start programs must comply as a condition of being granted financial assistance, is contained in Head Start Policy Manual, Instruction I-31—Section B2, The Parents (ACYF Transmittal Notice 70.2, dated August 10, 1970). This policy manual instruction is set forth in Appendix B to this part.	
(b) The plan shall describe in detail the implementation of Head Start Policy Manual, Instruction I-31—Section B2. The Parents (Appendix B). The plan shall assure that participation of Head Start parents is voluntary and shall not be required as a condition of the child's enrollment.	(b) The written plan should include a general statement of objectives for the Parent Involvement component, a listing of specific goals, and the appropriate methodology for achieving these goals. An example of a goal might be *Involving Parents in the Education Program* and one technique of the methodology for achieving this goal could be *Recruiting Parents to Serve as Classroom Volunteers.* Emphasis should be placed on maintaining the Head Start philosophy in the home so that parents' lives are enriched and the objectives of Head Start

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	are continued by the child and the child's parents in the home or community.
§ 1304.5-3 Parent involvement plan content: enhancing development of parenting skills.	
The plan shall provide methods and opportunities for involving parents in:	
(a) Experiences and activities which lead to enhancing the development of their skills, self-confidence, and sense of independence in fostering an environment in which their own children can develop to their full potential.	(a) Parents should be encouraged to participate in Head Start policy groups and on community boards of directors and committees. Parents should be given the opportunity and encouraged to conduct sessions for staff, children, and other parents in relevant activities for which they have special skills. Parents should be encouraged to participate as volunteers in social service activities making contact with community social agencies and making home visits as well as volunteering in the classrooms.
(b) Experiences in child growth and development which will strengthen their role as the primary influence in their children's lives.	(b) Parents should be provided with guidance, information and training in the enhancement of their parenting skills, personal development, and child development concepts through such means as films, brochures, discussion groups, rap sessions, courses, books and parent-child interaction activities in the home or center. An excellent resource for accomplishing this goal would be the use of the twenty session *Exploring Parenting* curriculum, a parent education curriculum developed by the Head Start Bureau/ACYF in 1976 for use with Head Start parents.
(c) Ways of providing educational and developmental activities for children in the home and community.	(c) Parents could be exposed to specific activities which foster learning in children in the home, *e.g.*, the use of common household items to teach the names of colors, as in "Bring me the blue towel," and in the community, *e.g.*, planning a trip to the store.
(d) Health, mental health, dental and nutritional education.	(d) Training could be made available to parents, either in conjunction with staff training in these areas or as a unit by itself. To facilitate parental attendance at training sessions, parents should receive adequate notice and babysitting services should be provided.
(e) Identification, and use, of family and community resources to meet the basic life support needs of the family.	(e) Parents should be provided or made aware of available community resources, such as adult classes in consumer education, financial assistance programs, and family and employment counseling. This ought to be coordinated with the social services component to avoid duplication of effort and to strengthen the family-centered approach of Head Start.

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(f) Identification of opportunities for continuing education which may lead towards self-enrichment and employment.	(f) Educational opportunities might include basic adult education issues; continuing education programs, vocational training or child development associate (CDA) training, and self-enrichment programs. Resources in the local community and its immediate environs which offer programs in these and other educational areas should be identified and arrangements made for the participation of Head Start parents. Where these resources are inadequate or do not exist in close physical proximity, Head Start staff should seek assistance from the ACYF Regional Office. Many Head Start staff members are receiving training through the Head Start Supplementary Training Program.
(g) Meeting with the Head Start teachers and other appropriate staff for discussion and assessment of their children's individual needs and progress.	(g) Head Start staff should encourage parental interest in their child's development. Parents should be given the opportunity to meet with teachers on a scheduled and as-needed basis throughout the year (*e.g.*, three home visits are recommended, although only two are required, at the beginning, middle, and end of the school year). At these meetings parents and teachers should discuss the child's physical, social/emotional, and intellectual development and review the child's progress. Such meetings can be used to arrive at agreement regarding desirable short-range goals and some discussion of specific activities and experiences which may contribute to the child's progress toward these goals. Home visits should be planned to enable staff to acquire a fuller understanding of each child's abilities and experiences. Such visits may also be used to help parents consider the child's current needs, interests and ability in order to plan home activities and interactions which will contribute to the child's progress. In addition to regularly scheduled teacher conferences, parents should meet with other Head Start staff on an as-needed basis.
§ 1304.5-4 Parent involvement plan content: communications among program management, program staff, and parents.	
(a) The plan shall provide for two-way communication between staff and parents carried out on a regular basis throughout the program year which provides information about the program and its services; program activities for the children; the policy groups; and resources within the program and the community. **Communications must be designed and carried out in a way which reaches parents and staff effectively. Policy groups, staff and parents must participate in the planning and development of the communication system used.**	(a) Examples of specific communication techniques include newsletters; home visits; training sessions; and policy group meetings. These techniques should be programmed to occur on a regular and continuous basis—*e.g.*, *monthly* newsletter, and *bimonthly* group meetings.

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(b) The plan shall provide a system for the regular provision of information to members of Policy Groups. The purpose of such communication is to enable the policy group to make informed decisions in a timely and effective manner, to share professional expertise, and generally to be provided with staff support. At a minimum, information provided will include:

(1) Timetable for planning, development, and submission of proposals;
(2) Head Start policies, guidelines, and other communications from ACYF.
(3) Financial reports and statement of funds expended in the Head Start account; and
(4) Work plans, grant applications, and personnel policies for Head Start.

(c) The entire Head Start staff shall share responsibility for providing assistance in the conduct of the above activities. In addition, Health Services, Education, and Social Services staff shall contribute their direct services to assist the Parent Involvement staff. If staff resources are not available, the necessary resources shall be sought within the community.

§ 1304.5-5 Parent involvement plan content: parents, area residents, and the program.

The plan shall provide for:

(1) The establishment of effective procedures by which parents and area residents concerned will be enabled to influence the character of programs affecting their interests,
(2) Their regular participation in the implementation of such programs and,
(3) Technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources.

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(b) Examples of ways in which this information may be transmitted include written handouts; written minutes of meetings; official correspondence; and oral presentations at policy group meetings and training sessions. Policy groups should have the opportunity to comment within a reasonable time.

(1) (2) (3) Content of the program *should* include:

- Training in all program components, in a way which allows parents to understand the Head Start program as an interrelated whole and to facilitate parent participation in the preparation of the work plan and budget.
- Ways in which parents can assist staff in setting the goals of the local program and the goals of other community institutions concerned with children and families, allowing parents and staff to see these goals as an interrelated system.
- Training that occurs in a planned and continuous fashion, beginning with and continuing through the grantee's funding cycle, with adequate provision for parental input in the design and evaluation of the program.

Appendix IV—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoneix, Arizona 85012, Telephone: (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004, Telephone (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Attn: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH–51, Olympia, Washington 98504–4151, Telephone (206) 753–4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (608) 266–0267

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750

For OMB Purposes Only, File originated: 9–2–88, "Contacts"

Appendix V—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when HHS determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, HHS may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the HHS agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by HHS.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, HHS may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery,

falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Grant No. _____

_____

Signature

_____

Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549: 45 CFR part 76. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations or the definitions.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in its transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Definitions

(From 45 CFR Part 76, Governmentwide Debarment and Suspension (Nonprocurement)

Covered transaction. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(3) Researchers.

Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government of legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive

control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(i) Principal investigators.

(ii) Researchers.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communications by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

BILLING CODE 4130-01-M

Appendix VI

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

Appendix VII—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4130-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4130-01-C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF–LLL–A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, D.C. 20503.

BILLING CODE 4130–01–M

Appendix VIII

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4130-01-C

Instructions For The SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b):

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g):

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribe pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), E.O. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Public Law 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official —
Title _____
Applicant Organization _____
Date Submitted _____

[FR Doc. 92–14025 Filed 6–18–92; 8:45 am]
BILLING CODE 4130–01–M

federal register

Friday
June 19, 1992

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 348

Male Genital Desensitizing Drug Products for Over-the-Counter Human Use; Final Monograph; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 348

[Docket No. 78N-0301]

RIN 0905-AA06

Male Genital Desensitizing Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) male genital desensitizing drug products (premature ejaculation remedies) are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC male genital desensitizing drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 19, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982 (47 FR 39412), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), as part of the rulemaking for OTC external analgesic drug products, an advance notice of proposed rulemaking to establish a monograph for OTC male genital desensitizing drug products. The agency also published the recommendations on OTC male genital desensitizing drug products that were made by the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug products. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC male genital desensitizing drug products was published in the **Federal Register** of October 2, 1985 (50 FR 40260). Interested persons were invited to file by December 2, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by January 30, 1986. New data could have been submitted until October 2, 1986, and comments on the new data until December 2, 1986.

The OTC drug procedural regulations (§ 330.10) provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

In the proposed regulation for OTC male genital desensitizing drug products (50 FR 40260), the agency advised that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the **Federal Register**. Therefore, on or after June 19, 1993, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC male genital desensitizing drug products, one distributor of these products submitted a comment. A copy of the comment received is on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697), and August 27, 1975 (40 FR 38179), or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comment

One comment suggested that the word "aids" in the indications statements in proposed § 348.50(b)(4) (50 FR 40260 at 40265) be changed to "helps" because of the undesirable association of the word "aids" with the disease acquired immunodeficiency syndrome (AIDS). The comment was concerned with this negative association because male genital desensitizing drug products are used in connection with sexual activity, which is also a suspected manner in which the disease AIDS is transmitted. The comment concluded that its proposed substitution of words in no way changes the meaning of the indications statements because the word "help(s)" is a recognized synonym for the word "aid(s)." The agency agrees that the change suggested by the comment can be made. The word "help(s)" is a recognized synonym for the word "aid(s)" (Ref. 1). In view of the possible negative association of the word "aids" with the disease AIDS, the substitution of words can be done without impairing the intent of the labeling of male genital desensitizing drug products. Accordingly, the agency is amending the indications statements in proposed § 348.50(b)(4)(i) and

(b)(4)(ii) to change the word "aids" to "helps."

Reference

1. "Webster's New World Dictionary," 3rd College Ed., Simon & Schuster, Inc., New York, 1988, s.v. "aid," "help."

II. Agency Initiated Changes

1. In the proposed rule for OTC male genital desensitizing drug products (50 FR 40260 at 40265), the agency recommended the following indications statement for these drug products: "Aids in the prevention of premature ejaculation." The agency also proposed five other allowable indications that could be used in addition to the above indication, which are as follows: (1) "For temporary male genital desensitization, helping to slow the onset of ejaculation." (2) "Aids in temporarily retarding the onset of ejaculation." (3) "Aids in temporarily slowing the onset of ejaculation." (4) "Aids in temporarily prolonging time until ejaculation." (5) "For reducing oversensitivity in the male in advance of intercourse." Except for the use of the word "aids" in these statements, the agency did not receive any comments regarding the content of these statements. The agency has determined that several of the indications statements can be combined to allow for a choice of words to be used, and that any one or more of the statements would be acceptable as indications statements for these OTC drug products. Therefore, the agency is providing in § 348.50(b)(1) of this final monograph that the labeling of OTC male genital desensitizing drug products may contain any one or more of the following indications statements: (1) "Helps in the prevention of premature ejaculation." (2) "For temporary male genital desensitization, helping to slow the onset of ejaculation." (3) "Helps in temporarily" (select one of the following: "retarding the onset of," "slowing the onset of," or "prolonging the time until") followed by "ejaculation." (4) "For reducing oversensitivity in the male in advance of intercourse."

2. The agency is revising the format of the directions statements. In the tentative final monograph, the agency stated that the directions should be followed by the words "or as directed by a doctor." The agency has incorporated these words into the individual statements for each active ingredient so that placement occurs in the correct place. As worded in the tentative final monograph, this might not have occurred.

3. The agency is redesignating portions of the monograph for OTC external analgesic drug products that were proposed in the tentative final monograph for OTC male genital desensitizing drug products because the segment of the monograph covering these products is being finalized prior to other proposed segments of the monograph. For the convenience of the reader, the following chart is included to show these redesignations.

REDESIGNATED SECTION NUMBERS

Old Section Number	Provision	New Section Number
348.3(f)	Definitions	348.3(a)
348.10(e)	Active ingredients	348.10(a)
348.50(a)(3)	Statement of identity.	348.50(a)(1)
348.50(b)(4)	Indications	348.50(b)(1)
348.50(c)(8)	Warnings	348.50(c)(1)
348.50(d)(2)	Directions	348.50(d)(1)

III. Summary of Changes from the Proposed Rule

1. The agency is revising the indications statements in proposed § 348.50(b)(4) to replace the word "aids" with the word "helps." (See section I.)

2. The agency is combining several of the proposed indications statements and providing that any one or more of these statements may be used for these products. (See section II.)

IV. The Agency's Final Conclusions on OTC Male Genital Desensitizing Drug Products

Based on available evidence, the agency is issuing a final monograph establishing conditions under which OTC male genital desensitizing drug products are generally recognized as safe and effective and not misbranded. Specifically, the agency has determined that the only ingredients that meet monograph conditions are benzocaine and lidocaine. All other ingredients considered in this rulemaking have been determined to be nonmonograph conditions for use in an OTC male genital desensitizing drug product. These ingredients include, but are not limited to, benzyl alcohol, camphorated metacresol, and ephedrine hydrochloride. In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in 21 CFR Part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule included in § 310.545(a)(10)(iii) the three nonmonograph OTC male genital desensitizing drug product ingredients mentioned above and was effective May 7, 1991. This current final rule does not result in the addition of any other ingredients to those already listed in § 310.545(a)(10)(iii). Accordingly, any drug product labeled, represented, or promoted for use as an OTC male genital desensitizing drug product that contains any of the ingredients listed in § 310.545(a)(10)(iii) or that is not in conformance with the monograph (21 CFR Part 348), may be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352) and may not be marketed for this use unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and Part 314 of the regulations (21 CFR Part 314). An appropriate citizen petition to amend the monograph may also be submitted under 21 CFR 10.30 in lieu of an application. Any OTC male genital desensitizing drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule mentioned above or this final rule that is not in compliance with the regulations is subject to regulatory action.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (50 FR 40260 at 40264). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC male genital desensitizing drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC male gential desensitizing drug products is not

expected to pose such an impact on small businesses. This final rule will require some relabeling for products containing monograph ingredients. Manufacturers will have 1 year to implement this relabeling. No reformulations should be necessary, and there are no additional nonmonograph ingredients. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 348

External analgesic drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 348 is added to read as follows:

PART 348—EXTERNAL ANALGESIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
348.1 Scope.
348.3 Definitions.

Subpart B—Active Ingredients

348.10 Analgesic, anesthetic, and antipruritic active ingredients.

Subpart C—Labeling

348.50 Labeling of external analgesic drug products.

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

Subpart A—General Provisions

§ 348.1 Scope.

(a) An over-the-counter external analgesic drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 348.3 Definitions.

As used in this part:

(a) *Male genital desensitizing drug product.* A drug product applied to the penis to help in temporarily slowing the onset of ejaculation.

(b) [Reserved]

Subpart B—Active Ingredients

§ 348.10 Analgesic, anesthetic, and antipruritic active ingredients.

The active ingredient of the product consists of any of the following within the specified concentration established for each ingredient:

(a) *Male genital desensitizers.* (1) Benzocaine, 3 to 7.5 percent in a water-soluble base.

(2) Lidocaine in a metered spray with approximately 10 milligrams per spray.

(b) [Reserved]

Subpart C—Labeling

§ 348.50 Labeling of external analgesic drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as follows:

(1) *For products containing any ingredient identified in § 348.10(a).* "Male genital desensitizer."

(2) [Reserved]

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in paragraph (b) of this section. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in paragraph (b) of this section, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing any ingredient identified in § 348.10(a).* (i) "Helps in the prevention of premature ejaculation."

(ii) "For temporary male genital desensitization, helping to slow the onset of ejaculation."

(iii) "Helps in temporarily" (select one of the following: "retarding the onset of," "slowing the onset of," or "prolonging the time until") followed by "ejaculation."

(iv) "For reducing oversensitivity in the male in advance of intercourse."

(2) [Reserved]

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 348.10(a).* (i) "Premature ejaculation may be due to a condition requiring medical supervision. If this product, used as directed, does not provide relief, discontinue use and consult a doctor."

(ii) "Avoid contact with the eyes."

(iii) "If you or your partner develop a rash or irritation, such as burning or itching, discontinue use. If symptoms persist, consult a doctor."

(2) [Reserved]

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing any ingredient identified in § 348.10(a)*—(i) *For products containing benzocaine identified in § 348.10(a)(1).* "Apply a small amount to head and shaft of penis before intercourse, or use as directed by a doctor. Wash product off after intercourse."

(ii) *For products containing lidocaine identified in § 348.10(a)(2).* "Apply 3 or more sprays, not to exceed 10, to head and shaft of penis before intercourse, or use as directed by a doctor. Wash product off after intercourse."

(2) [Reserved]

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: March 18, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

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federal register

Friday
June 19, 1992

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Anti-Asthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment for Tentative Final Monograph for OTC Nasal Decongestant Drug Products; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N–052N]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Tentative Final Monograph for OTC Nasal Decongestant Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the tentative final monograph (proposed rule) for over-the-counter (OTC) nasal decongestant drug products to modify the drug interaction precaution statement required in the labeling of oral nasal decongestant drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments on the proposed regulation by August 18, 1992; written comments on the agency's economic impact determination by August 18, 1992. FDA is proposing that the final rule based on this proposal be effective 12 months after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) recommended the following statement for the labeling of oral nasal decongestant drug products: "*Drug Interaction Precaution*. Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor" (41 FR 38312 at 38404). The Panel noted that patients taking other drugs whose action can intensify the sympathomimetic drug action, e.g., monoamine oxidase inhibitors, should not take nasal decongestants orally except under the advice and supervision of a physician (41 FR 38312 at 38396 to 38397).

The agency discussed this statement in the tentative final monograph for OTC nasal decongestant drug products (January 15, 1985, 50 FR 2220). In response to the Panel's recommendation, two comments contended that terms such as "antihypertensive," "antidepressant," and "monoamine oxidase inhibitor" (MAOI) are highly technical; that only a small percentage of the population is likely to understand this warning; and that including such a warning in the labeling of an OTC drug is contrary to the well-established principle that unnecessary or confusing precautions tend to dilute the significance of all instructions in the labeling and, hence, should be avoided (50 FR 2220 at 2231).

The agency acknowledged that the Panel's proposed drug interaction precaution might not be readily understood by all consumers. However, the agency considered a statement of this type to be necessary to alert consumers because antihypertensive and antidepressant drugs are widely prescribed. The agency proposed to simplify the precaution statement by substituting the term "high blood pressure" for "antihypertensive," and the term "depression" for "antidepressant." The agency also believed that the words "monoamine oxidase inhibitor" would be confusing to consumers and need not be included in the precautionary statement to convey the intended message. Accordingly, the agency proposed the following: "*Drug interaction precaution*. Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See proposed § 341.80(c)(l)(i)(*d*).)

Several other comments on the Panel's report pointed out that OTC drug products containing oral nasal decongestants may be labeled and marketed for use only in pediatric populations, and that the drug interaction precaution should not be required on products labeled strictly for use in children. The agency disagreed with these comments because hypertension and depression do occur in children and a physician might prescribe MAOI drugs for children (50 FR 2220 at 2231). Therefore, the agency proposed to add new § 341.80(c)(l)(ii)(*d*) as follows: "*Drug Interaction Precaution*: Do not give this product to a child who is taking a prescription drug for high blood pressure or depression, without first consulting the child's doctor." A final monograph for OTC nasal decongestant drug products has not been published to date.

Elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the final monograph for OTC antitussive drug products to include a drug interaction precaution statement about MAOI drugs in the labeling of OTC drug products containing dextromethorphan or dextromethorphan hydrobromide and proposing to amend the final monograph for OTC bronchodilator drug products to revise the drug interaction precaution involving MAOI drugs. The agency is aware of a resurgence in the use of MAOI drugs after a period of decline in the 1970's (Refs. 1, 2, and 3). While tricyclic and other antidepressants are the most widely used drugs for patients with major depression, MAOI drugs may be used in selected patients with dysthymic or atypical depression (Refs. 3, 4, and 5). There is evidence that MAOI drugs are also being used to treat bulimia and panic disorders (Refs. 3 and 5 through 8), phobic disorders (Refs. 3, 4, 5, and 7), anxiety (Refs. 3, 4, and 5), and obsessive compulsive disorder (Refs. 3 and 8). On the other hand, use of these drugs in hypertension has essentially ceased. Therefore, the agency has reconsidered the wording of the drug interaction precaution statement proposed for oral nasal decongestant drug products. The agency now believes that the reference to "high blood pressure" is not needed and that "depression" is too narrow a description to convey the intended warning to most people being treated with MAOI drugs for other conditions. In addition, while some patients may not understand the term "monoamine oxidase inhibitor," many will; and if in doubt, patients being given psychotropic drugs can ask their doctor or other health professional.

The agency is aware that "monoamine oxidase inhibitor" and "MAOI" are highly technical terms that the average consumer may not recognize or understand. On the other hand, the agency believes that use of these terms in the precaution statement is justified because the more general term "depression" may not alert everyone who is taking an MAOI drug, for bulimia or phobic disorders, for example (Refs. 3 through 8). OTC drug product labeling cannot accommodate a listing of every condition that an MAOI could be used for. Thus, the agency is adding a sentence to the drug interaction

precaution advising consumers to seek help if they are uncertain whether or not their prescription drug is an MAOI. The new sentence is similar to the one used to warn pregnant women or nursing women about using an OTC drug. (See 21 CFR 201.63.) During the development of a warning to pregnant or nursing women who are considering using an OTC drug (47 FR 54750, December 3, 1982), the agency considered the preference of wording to designate persons who could provide information concerning OTC drugs to consumers. The agency concluded at that time that "health professional" is the preferred term, because the woman who is considering using an OTC drug is in the best position to choose the specific health professional to help her, and the warning should not limit her sources of information. The agency believes that other health professionals, such as pharmacists or nurses, can help consumers determine whether the drug they are taking contains an MAOI.

Accordingly, the agency is proposing to amend § 341.80(c)(l)(i)(*d*) of the tentative final monograph for OTC nasal decongestant drug products to read: "*Drug interaction precaution.* Do not take this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." Also, the agency is proposing to amend § 341.80(c)(l)(ii)(*d*) to read: "*Drug interaction precaution.* Do not give this product to a child who is taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting the child's doctor. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product." The agency is inviting comment on the specific wording of these warnings, and the best way to convey this information to persons who are taking MAOI drugs.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Linden, C. H., B. H. Rumack, and C. Strehlke, "Monoamine Oxidase Inhibitor Overdose," *Annals of Emergency Medicine*, 13:1137–1144, 1984.

(2) Gusé, B. H. and L. R. Baxter, Jr., "Current Concepts: Neuroleptic Malignant Syndrome," *The New England Journal of Medicine*, 313:163–166, 1985.

(3) Pitts, F. N., editor, "Monoamine Inhibitor Drugs in Contemporary Psychiatry," *The Journal of Clinical Psychiatry*, 45:2–84, 1984.

(4) "AMA Drug Evaluations," 5th ed., *American Medical Association*, Chicago, pp. 253–255, 1983.

(5) "AMA Drug Evaluations," 6th ed. *American Medical Association*, Philadelphia, pp. 139–141, 1986.

(6) Harrison, W. M. et al., "MAOIs and Hypertensive Crises: The Role of OTC Drugs," *The Journal of Clinical Psychiatry*, 50:64–65, 1989.

(7) Golwyn, D. H. and R. C. Weinstock, "MAOIs, OTC Drugs, and Hypertensive Crisis," *The Journal of Clinical Psychiatry*, 51:213, 1990.

(8) Harrison, W., "MAOIs, OTC Drugs, and Hypertensive Crisis," The Journal of Clinical Psychiatry, 51:213, 1990.

The agency is proposing that these revised drug interaction precautions become effective 12 months after the date of publication of the final rule in the **Federal Register**. Manufacturers of OTC nasal decongestant drug products are encouraged to voluntarily implement this labeling as of the date of publication of this proposal, subject to the possibility that FDA may change the wording of the drug interaction precautions as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed drug interaction precaution to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that none of these rules, including this proposed rule for OTC nasal decongestant drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC nasal decongestant drug products is not expected to pose such an impact on small businesses. The only action needed will be minor labeling revisions at the time that the final monograph becomes effective. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC nasal decongestant drug products. Comments regarding the impact of this rulemaking on OTC nasal decongestants drug products should be accompanied by appropriate documentation.

A period of 60 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before August 18, 1992, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before August 18, 1992. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Labeling, Nasal decongestant drug products, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21

CFR Part 341 (as proposed in the Federal Register of January 15, 1985 (50 FR 2220)) be amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 321, 351, 352, 353, 355, 360, 371).

2. Section 341.80 is amended by revising paragraphs (c)(1)(i)(*d*) and (c)(l)(ii)(*d*) to read as follows:

§ 341.80 Labeling of nasal decongestant drug products.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(*d*) "*Drug Interaction Precaution.* Do not take this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

(ii) * * *

(*d*) "*Drug Interaction Precaution.* Do not give this product to a child who is taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting the child's doctor. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product."

* * * * *

Dated: March 18, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-14355 Filed 6-18-92; 8:45 am]

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Friday
June 19, 1992

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Bronchodilator Drug Products; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 341

[Docket No. 91N-0323]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the final monograph for over-the-counter (OTC) bronchodilator drug products to modify the drug interaction precaution statement required in the labeling of OTC bronchodilator drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments on the proposed regulation by August 18, 1992; written comments on the agency's economic impact determination by August 18, 1992. FDA is proposing that the final rule based on this proposal be effective 12 months after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments on the proposed regulation to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) recommended the following warning statement for the labeling of OTC bronchodilator drug products: "*Drug Interaction Precaution.* Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor" because of marked and potentially dangerous increases in blood pressure that were known to occur in patients taking monoamine oxidase inhibitor (MAOI) drugs and sympathomimetic amine bronchodilator drugs (41 FR 38312 at 38370 through 38373).

The agency discussed this statement in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47523, October 26, 1982). In response to the Panel's recommendation, one comment contended that terms such as "antihypertensive," "antidepressant," and "monoamine oxidase inhibitor" are highly technical; that only a small percentage of the population is likely to understand this warning; and that including such a warning in the labeling of an OTC drug is contrary to the well-established principle that unnecessary or confusing precautions tend to dilute the significance of all instructions in the labeling and, hence, should be avoided (47 FR 47520 at 47523).

The agency acknowledged that the Panel's proposed drug interaction precaution might not be readily understood by all consumers. However, the agency considered a statement of this type to be necessary to alert consumers because antihypertensive and antidepressant drugs are widely prescribed. The agency proposed to simplify the precaution statement by substituting the term "high blood pressure" for "antihypertensive," and the term "depression" for "antidepressant." The agency also believed that the words "monoamine oxidase inhibitor" would be confusing to consumers and need not be included in the precautionary statement to convey the intended message. Accordingly, the agency proposed the following: "*Drug interaction precaution.* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See proposed § 341.76(c)(3).) In the final monograph for OTC bronchodilator drug products, published in the **Federal Register** of October 2, 1986 (51 FR 35326 at 35338), the agency substituted the word "use" for the word "take" in this statement because the word "use" is more appropriate for inhalation drug products and is also appropriate for oral dosage forms. This statement appears in § 341.76(c)(4) of the final monograph.

Elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the final monograph for OTC antitussive drug products to include a drug interaction precaution statement about MAOI drugs in the labeling of OTC drug products containing dextromethorphan or dextromethorphan hydrobromide and proposing to amend the tentative final monograph for OTC nasal decongestant drug products to revise the proposed drug interaction precaution involving MAOI drugs. The agency is aware of a resurgence in the use of MAOI drugs after a period of decline in the 1970's (Refs. 1, 2, and 3). While tricyclic and other antidepressants are the most widely used drugs for patients with major depression, MAOI drugs may be used in selected patients with dysthymic and atypical depression (Refs. 3, 4, and 5). There is evidence that MAOI drugs are also being used to treat bulimia and panic disorders (Refs. 3 and 5 through 8), phobic disorders (Refs. 3, 4, 5, and 7), anxiety (Refs. 3, 4, and 5), and obsessive compulsive disorder (Refs. 3 and 8). On the other hand, use of these drugs in hypertension has essentially ceased. Therefore, the agency has reconsidered the wording of the drug interaction precaution statement currently required for OTC bronchodilator drug products. The agency now believes that the reference to "high blood pressure" is not needed and that "depression" is too narrow a description to convey the intended warning to most people being treated with MAOI drugs for other conditions. In addition, while some patients may not understand the term "monoamine oxidase inhibitor," many will; and if in doubt, patients being given psychotropic drugs can ask their doctor or other health professional.

The agency is aware that "monoamine oxidase inhibitor" and "MAOI" are highly technical terms that the average consumer may not recognize or understand. On the other hand, the agency believes that use of these terms in the precaution statement is justified because the more general term "depression" may not alert everyone who is taking an MAOI drug, for bulimia or phobic disorders, for example (Refs. 3 through 8). OTC drug product labeling cannot accommodate a listing of every condition that an MAOI could be used for. Thus, the agency is adding a sentence to the drug interaction precaution advising consumers to seek help if they are uncertain whether or not their prescription drug is an MAOI. The new sentence is similar to the one used to warn pregnant or nursing women about using an OTC drug. (See 21 CFR 201.63.) During the development of a warning to pregnant or nursing women who are considering using an OTC drug (47 FR 54750, December 3, 1982), the agency considered the preference of wording to designate persons who could provide information concerning OTC

drugs to consumers. The agency concluded at that time that "health professional" is the preferred term, because the woman who is considering using an OTC drug is in the best position to choose the specific health professional to help her, and the warning should not limit her sources of information. The agency believes that other health professionals, such as pharmacists or nurses, can help consumers determine whether the drug they are taking contains an MAOI.

Accordingly, the agency is proposing to amend § 341.65(c)(4) of the final monograph for OTC bronchodilator drug products to read: "*Drug interaction precaution.* Do not take this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency is inviting comment on the specific wording of this warning, and the best way to convey this information to persons who are taking MAOI drugs.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Linden, C. H., B. H. Rumack, and C. Strehlke, "Monoamine Oxidase Inhibitor Overdose," Annals of Emergency Medicine, 13:1137–1144, 1984.

(2) Guzé, B. H., and L. R. Baxter, Jr., "Current Concepts: Neuroleptic Malignant Syndrome," The New England Journal of Medicine, 313:163–166, 1985.

(3) Pitts, F. N., editor, "Monoamine Inhibitor Drugs in Contemporary Psychiatry," The Journal of Clinical Psychiatry, 45:2–84, 1984.

(4) "AMA Drug Evaluations," 5th ed., American Medical Association, Chicago, pp. 253–255, 1983.

(5) "AMA Drug Evaluations," 6th ed., American Medical Association, Philadelphia, pp. 139–141, 1986.

(6) Harrison, W. M., et al., "MAOIs and Hypertensive Crises: The Role of OTC Drugs," The Journal of Clinical Psychiatry, 50:64–65, 1989.

(7) Golwyn, D. H., and R. C. Weinstock, "MAOIs, OTC Drugs and Hypertensive Crisis," The Journal of Clinical Psychiatry, 51:213, 1990.

(8) Harrison, W., "MAOIs, OTC Drugs and Hypertensive Crisis," The Journal of Clinical Psychiatry, 51:213, 1990.

The agency is proposing that this revised drug interaction precaution become effective 12 months after the date of publication of the final rule in the **Federal Register**. Manufacturers of OTC bronchodilator drug products are encouraged to voluntarily implement this labeling as of the date of publication of this proposal, subject to the possibility that FDA may change the wording of the drug interaction precaution as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed drug interaction precaution to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC bronchodilator drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC bronchodilator drug products is not expected to pose such an impact on small businesses. The only action needed will be minor labeling revisions at the time that the final monograph amendment becomes effective. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC bronchodilator drug products. Comments regarding the impact of this rulemaking on OTC bronchodilator drug products should be accompanied by appropriate documentation. A period of 60 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively having a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before August 18, 1992, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before August 18, 1992. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 341 be amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.76 is amended by revising paragraph (c)(4) to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

* * * * *

(c) * * *

(4) "*Drug interaction precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your

prescription drug contains an MAOI, consult a health professional before taking this product."

* * * * *

Dated: March 18, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-14350 Filed 6-18-92; 8:45 am]

BILLING CODE 4160-01-M

federal register

Friday
June 19, 1992

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Anti-Asthmatic Drugs for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Antitussive Drug Products; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 341

[Docket No. 90N-0420]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the final monograph for over-the-counter (OTC) antitussive drug products to require a drug interaction precaution statement in the labeling of OTC antitussive (relieves cough) drug products containing dextromethorphan or dextromethorphan hydrobromide. These drug products should not be used by individuals who are taking a prescription drug containing a monoamine oxidase inhibitor, without first consulting their doctor. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments on the proposed regulation by August 18, 1992; written comments on the agency's economic impact determination by August 18, 1992. FDA is proposing that the final rule based on this proposal be effective 12 months after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) placed the ingredients dextromethorphan and dextromethorphan hydrobromide in Category I (generally recognized as safe and effective for OTC use) as an antitussive. The Panel recommended a number of warnings for OTC antitussives, but none included an interaction with monoamine oxidase inhibitor (MAOI) drugs. These drugs, which inhibit monoamine oxidase (MAO), are available by prescription only. They are primarily used to treat depression or high blood pressure.

At the time of the Panel's review, the only known interaction with MAOI drugs that was pertinent to cough-cold drug products involved the sympathomimetic amines, which are used as bronchodilators (41 FR 38312 at 38370 to 38371) and nasal decongestants (41 FR 38312 at 38396 to 38397). The Panel proposed the following labeling for bronchodilator drug products containing sympathomimetic amines: "*Drug interaction precaution.* Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor." The Panel proposed the same labeling for oral nasal decongestant drug products containing sympathomimetic amines but added the following words at the end of the above statement: "except under the advice and supervision of a physician."

In the tentative final monograph for OTC bronchodilator drug products, published in the **Federal Register** of October 26, 1982 (47 FR 47520 at 47526), the agency proposed to simplify the precautionary statement as follows: "*Drug interaction precaution.* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See proposed § 341.76(c)(3).) In the final monograph for OTC bronchodilator drug products, published in the **Federal Register** of October 2, 1986 (51 FR 35328 at 35338), the agency substituted the word "use" for the word "take" in this statement because the word "use" is more appropriate for inhalation drug products and also is appropriate for oral dosage forms. This statement appears in § 341.76(c)(4) of the final monograph.

In the tentative final monograph for OTC nasal decongestant drug products, published in the **Federal Register** of January 15, 1985 (50 FR 2220 at 2231), the agency proposed the same precautionary statement as proposed in the tentative final monograph for OTC bronchodilator drug products. (See proposed § 341.80(c)(1)(i)(d).) A final monograph for OTC nasal decongestant drug products has not been published to date.

Although some information on dextromethorphan-MAOI drug interactions was present in the literature (see below), neither the Panel nor the agency was aware of this information, and the subject of such interactions did not arise during the course of the rulemaking for OTC antitussive drug products. Since publication of the final monograph for OTC antitussive drug products on August 12, 1987 (52 FR 30042), the agency has received information that it believes supports the need for a MAOI drug interaction precaution statement in the labeling of OTC drug products containing the ingredient dextromethorphan or dextromethorphan hydrobromide (hereafter referred to generally as dextromethorphan). This information includes reports of adverse reactions, including fatalities, following the ingestion of prescription MAOI drugs and OTC drug products containing dextromethorphan.

Rivers and Horner (Ref. 1) described the death of a 26-year-old female which they believed resulted from a reaction between the drug phenelzine (an MAOI) and dextromethorphan. The woman had been taking phenelzine 15 milligrams (mg) four times daily for 1 month. In the event that led to her death, she had taken 30 mg because she had missed an earlier dose. About 6 hours later she ingested approximately 2 ounces of a cough preparation containing dextromethorphan. Her initial symptoms of the interaction were nausea, dizziness, and collapse. She was brought to the hospital within an hour and was severely hypotensive; her systolic pressure did not rise above 70 millimeters (mm) of mercury. Her temperature varied from 42 °C to 42.2 °C. Four hours and 15 minutes after arriving at the hospital she had a cardiac arrest and died.

Shamsie and Barriga (Ref. 2) reported that a 15-year-old female died of adrenergic crisis after taking capsules containing dextromethorphan hydrobromide 15 mg, phenindamine tartrate 6.25 mg, phenylephrine hydrochloride 5 mg, and acetaminophen 120 mg per capsule while she was being treated for depression with the MAOI drug phenelzine. She had been taking phenelzine 15 mg three times a day for 6 weeks before she took the dextromethorphan. She was also taking thioridazine 25 mg three times a day and 15 mg at bedtime, procyclidine 5 mg twice daily, and metronidazole suppositories for vaginal discharge. She had taken eight capsules of the dextromethorphan compound initially, followed by another five capsules 3 hours after. Prior to her transfer to the hospital, her vital signs were a temperature of 103 °F, blood pressure of

100/60, pulse approximately 160 and strong, with a pulse deficit of 20. Her lungs were clear and her abdomen was soft. A neurological examination revealed bilateral fixed and dilated pupils, absent gag reflex, mild spasticity, and hyperreflexia of the upper limbs. While in the ambulance she became semicomatose and mildly cyanotic and started to show signs of trismus (spasm of the masticatory muscles). She was given oxygen and external cardiac massage. She arrived at the hospital in coma; resuscitation efforts were performed for 55 minutes but to no avail. The autopsy report showed the following: acute cerebral edema with mild tonsillar and uncal notching; marked acute pulmonary edema; petechiae of the epicardium thymus, and gastric mucosa; hemohydrothorax (left 100 milliliters (mL), right 20 mL); and, evidence of fresh thoracotomy (open cardiac massage). Histopathological examination showed acute passive congestion of the kidneys and liver; a granuloma of the right middle lobe of lung; obsolete granulomata of left pulmonary hilar lymph nodes; mild plasmatic vasculosis of splenic arteries; and mild follicular lipidosis of the spleen.

Sovner and Wolfe (Ref. 3) reported an interaction between dextromethorphan and the MAOI drug isocarboxazid. In this case, a 32-year-old woman with a history of chronic atypical depression had been taking isocarboxazid 30 mg daily for 8 weeks, then ingested diazepam 1 mg and 10 mL of a cough syrup containing dextromethorphan hydrobromide 15 mg and guaifenesin 100 mg per 5 mL. Twenty minutes later she was nauseated and dizzy. Within 45 minutes, a fine bilateral leg tremor and muscle spasms of the abdomen and lower back developed. These were followed by bilateral and persistent myoclonic jerks of the legs, occasional choreoathetoid movements of the feet, and marked urinary retention. Nineteen hours after ingesting the cough suppressant, her condition had greatly improved. At followup 2 months later, occasional myoclonic jerks persisted.

Harrison et al. (Ref. 4) reported two cases of interactions between MAOI drugs and OTC drug products containing dextromethorphan. In one case, a 26-year-old depressed woman who was taking phenelzine 60 mg daily ingested 10 mL of a cough syrup containing guaifenesin 300 mg, phenylpropanolamine 37.5 mg, and dextromethorphan hydrobromide 30 mg per 15 mL. She had a hypertensive reaction (systolic blood pressure of 210 mm of mercury and diastolic of 130 mm of mercury) that was treated without sequelae. In the other case, a 35-year-old woman who was taking phenelzine also took two tablets of an OTC drug product containing acetaminophen 325 mg, chlorpheniramine maleate 2 mg, pseudoephedrine hydrochloride 30 mg, and dextromethorphan hydrobromide 15 mg per tablet. She developed a severe hypertensive reaction with intracerebral bleeding. No other information was provided. The authors recommended that manufacturers of OTC drug products provide consumers of those products more complete product information, including specific warnings against concomitant use of certain products containing MAOI drugs.

Laird (Ref. 5) reported an interaction that occurred in a 54-year-old woman who had taken phenelzine for 3 weeks prior to taking an OTC drug product containing dextromethorphan. Exact dosages were not provided. The patient was placed in an intensive care unit in critical condition; she ultimately recovered.

Nine other adverse interactions between MAOI drugs and dextromethorphan have been reported to the agency. In one case (Ref. 6), a woman being treated for major depression with tranylcypromine sulfate took 10 mL of an OTC drug product containing dextromethorphan 15 mg and guaifenesin 100 mg per 5 mL and experienced psychotic episodes. The dextromethorphan cough mixture was discontinued while tranylcypromine was continued. Symptoms abated and the condition resolved. In another case (Ref. 7), a 65-year-old female being treated with phenelzine took one OTC cough lozenge containing 5 mg dextromethorphan. Shortly afterward, she became drowsy and exhibited bizarre behavior. She was admitted to a hospital emergency room where behavior, physical examination, and vital signs were within normal limits. She recovered and was released the next morning. In another case (Ref. 8), a 61-year-old man had been taking 10 mg isocarboxazid four times a day for an undetermined number of years. Concomitant medications were chlorpropamide for diabetes and prednisone and naproxen for arthritis. Dosages were not stated. Approximately 1 day after consuming a dextromethorphan-containing cough mixture, the man was taken to a hospital emergency room in an unresponsive state. Two days later, the man was alert, but exhibited severe myoclonic movements of both legs and was severely diaphoretic. Isocarboxazid was discontinued. On the following day, the man was almost completely recovered, with residual slight tremor of the hands. Approximately 16 days after the onset of the reaction, the man was discharged from the hospital and his problem was completely resolved. Another case (Ref. 9) described a phenelzine sulfate-dextromethorphan polistirex interaction in an adult woman that was characterized by accelerated heart rate, increased blood pressure, and loss of strength in the legs. No additional information was provided. Dosages, duration of therapy, duration of reaction, and final outcome are unknown. In another case (Ref. 10), a 32-year-old woman on phenelzine therapy for depression became lethargic and unresponsive approximately 45 minutes after taking an unstated amount of a guaifenesin-dextromethorphan hydrobromide cough mixture. The woman was taken to an emergency room and found to be unarousable and in a coma. This state continued for approximately 12 hours. With supportive medical care (unspecified), the woman subsequently recovered and was discharged. In another case (Ref. 11), a 42-year-old man had taken 52.5 to 60 mg phenelzine daily for approximately 1 month. Other drugs used concomitantly were 100 mg trazodone at bedtime, 0.25 mg levothyroxine, and 10 mg prednisone per day. Within 15 minutes of taking 10 to 15 mL of a guaifenesin-dextromethorphan cough mixture, the man developed shaking, diaphoresis, and elevated temperature and respiration rate. The man was admitted to an intensive care unit where treatment consisted of intravenous fluids, cooling blanket, and four doses of dantrolene at 0.6 mg per kilogram (kg) per dose. The ultimate outcome of this case was not reported. In another case (Ref. 12), a 28-year-old woman who had been taking phenelzine for depression and bulimia (and propoxyphene napsylate with acetaminophen) took 5 to 10 mL of a cough mixture containing 30 mg iodinated glycerol and 10 mg dextromethorphan hydrobromide per 5 mL. Approximately 30 minutes later, the woman experienced abdominal cramps, wheezing, tightness in the chest, and appeared panicky and stimulated. Symptoms persisted for 30 to 60 minutes. In another case (Ref. 13), a 20-year-old woman had taken phenelzine for several months when she took one dose of a cough mixture containing dextromethorphan. Shortly thereafter, the woman was admitted to an emergency room with tachycardia, diaphoresis, muscular rigidity, temperature of 101 °F, and blood

pressure of 130/90. Treatment involved unspecified doses of valium and labetalol; the hospital course was uneventful, and the woman recovered and was discharged. In another case (Ref. 14), a 28-year-old woman being treated for depression had taken tranylcypromine sulfate, 20 mg every morning and 10 mg every evening, for 3 years without adverse reaction. Minutes after ingesting 20 mL of a cough suppressant containing 7.5 mg dextromethorphan hydrobromide per 5 mL, the woman experienced shakiness and diaphoresis. The woman was admitted to an emergency room with dilated pupils, shaking, hallucinations, temperature of 99.3 °F, pulse 84, blood pressure 132/88, and respiration rate 20. Treatment involved the use of diazepam and diphenhydramine intravenously. The woman remained in the intensive care unit for 12 hours (vital signs were stable throughout this time) and then was released. Based upon these reports, the agency has revised the labeling of the prescription antidepressant MAOI drugs isocarboxazid, phenelzine, and tranylcypromine to include the following statement: "The combination of MAOI inhibitors and dextromethorphan has been reported to cause brief episodes of psychosis or bizarre behavior" (Ref. 15).

In addition, the agency is aware of a study by Sinclair (Ref. 16) in which he examined the effects of dextromethorphan in MAOI-pretreated rabbits. New Zealand white rabbits of both sexes were treated with phenelzine sulfate 30 mg per kg intraperitoneally, pargyline hydrochloride 40 mg per kg intraperitoneally, and nialamide hydrochloride 50 mg per kg intraperitoneally, on 2 successive days. On the following day, the animals were monitored for temperature, and when the temperature was stable for 30 minutes, dextromethorphan 5 mg per kg was slowly administered via a marginal ear vein. Dextromethorphan produced motor restlessness, shivering-like tremors, hyperexcitability, dilated pupils, tachypnea, and hyperpyrexia in phenelzine-pretreated rabbits. Five of seven rabbits died within 1 hour of being given dextromethorphan. The same dose of dextromethorphan in rabbits that were not pretreated with phenelzine produced none of the signs exhibited in the pretreated rabbits. A lower dose of 3 mg per kg dextromethorphan produced similar but generally less intense symptoms of the interaction that occurred in phenelzine-pretreated rabbits. One of four rabbits receiving this dose exhibited a 3 °C rise in temperature and death. Animals pretreated with pargyline succumbed to the interaction when challenged with dextromethorphan less consistently than did phenelzine-pretreated animals. One hour after the dextromethorphan injection, the mean temperature increase in pargyline-pretreated animals was 0.38 °C + 0.48 °C. However, two of the seven animals tested died. Nialamide-pretreated rabbits developed intense symptoms of the interaction when dextromethorphan was administered. The mean temperature increase in these animals at one hour was 3.78 °C + 0.03 °C, and all four animals died.

A number of other authors and general references warn of MAOI-dextromethorphan interactions (Refs. 17 through 22). Reactions described in these sources include central nervous system stimulation, hyperpyrexia (a highly elevated body temperature), hypertension (abnormally high blood pressure), hypotension (abnormally low blood pressure), peripheral vascular collapse, and possible death.

Magurno and Board (Ref. 23) report that one manufacturer has, of its own volition, included an MAOI warning in the "Drug Interaction Precautions" section of its physician labeling (information provided to health care professionals but not to the general public) for its antitussive products that contain dextromethorphan. That warning states: "Serious toxicity may result if dextromethorphan is used with MAOIs." (See Ref. 24.) The authors report that while most patients do not see this specific contraindication, the manufacturer has also added a "Drug Interaction Precaution" to the immediate (consumer-purchased) containers of these products. This precaution states: "Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See Ref. 24.) This is the same drug interaction precaution statement proposed in the tentative final monographs for OTC bronchodilator and OTC oral nasal decongestant drug products. (See discussion above.)

The agency is aware of a resurgence in the use of MAOI drugs after a period of decline in the 1970's (Refs. 21, 22, and 25). While tricyclic and other antidepressants are the most widely used drugs for patients with major depression, MAOI drugs may be used in selected patients with dysthymic or atypical depression (Refs. 19, 25, and 26). There is evidence that MAOI drugs are also being used to treat bulimia and panic disorders (Refs. 4, 19, 25, 27, and 28), phobic disorders (Refs. 19, 25, 26, and 27), anxiety (Refs. 19, 25, and 26), and obsessive compulsive disorder (Refs. 25 and 28). On the other hand, use of these drugs in hypertension has essentially ceased. Therefore, the agency has reconsidered the wording of the drug interaction precaution statement currently required for OTC bronchodilator drug products and proposed for OTC oral nasal decongestant drug products. The agency now believes that the reference to "high blood pressure" is not needed and that "depression" is too narrow a description to convey the intended warning to most people being treated with MAOI drugs for other conditions. In addition, while some patients may not understand the term "monoamine oxidase inhibitor," many will; and if in doubt, patients being given psychotropic drugs can ask their doctor or other health professional.

The agency is aware that "monoamine oxidase inhibitor" and "MAOI" are highly technical terms that the average consumer may not recognize or understand. On the other hand, the agency believes that use of these terms in the precaution statement is justified because the more general term "depression" may not alert everyone who is taking an MAOI drug, for bulimia or phobic disorders, for example (Refs. 4 and 19). OTC drug product labeling cannot accommodate a listing of every condition that an MAOI could be used for. Thus, the agency is adding a sentence to the drug interaction precaution advising consumers to seek help if they are uncertain whether or not their prescription drug is an MAOI. The new sentence is similar to the one used to warn pregnant or nursing women about using an OTC drug. (See 21 CFR 201.63.) During the development of a warning to pregnant or nursing women who are considering using an OTC drug (47 FR 54750, December 3, 1982), the agency considered the preference of wording to designate persons who could provide information concerning OTC drugs to consumers. The agency concluded at that time that "health professional" is the preferred term, because the woman who is considering using an OTC drug is in the best position to choose the specific health professional to help her, and the warning should not limit her sources of information. The agency believes that other health professionals, such as pharmacists or nurses, can help consumers determine whether the drug they are taking contains an MAOI.

The agency tentatively concludes that there is sufficient evidence of serious MAOI-dextromethorphan drug interactions that a drug interaction precaution statement is needed in the labeling of OTC drug products

containing dextromethorphan. Accordingly, the agency is proposing to amend the final monograph for OTC antitussive drug products to require an MAOI drug interaction precaution statement in the labeling of OTC drug products containing dextromethorphan by adding new § 341.74(c)(4)(v) for oral antitussives to read: "*For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled for adults or for adults and children under 12 years of age. Drug Interaction Precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency is also proposing to require the MAOI drug interaction precaution statement in the labeling of OTC drug products containing dextromethorphan or dextromethorphan hydrobromide when labeled for children by adding new § 341.74(c)(4)(vi) for oral antitussives to read: "*For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled only for use by children under 12 years of age. Drug Interaction Precaution.* Do not give this product to a child who is taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting the child's doctor. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product." The agency is inviting comment on the specific wording of these warnings, and the best way to convey this information to persons who are taking MAOI drugs.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Rivers, N., and B. Horner, "Possible Lethal Reaction Between Nardil and Dextromethorphan," *Canadian Medical Association Journal*, 103:85, 1970.

(2) Shamsie, S. J., and C. Barriga, "The Hazards of Use of Monoamine Oxidase Inhibitors in Disturbed Adolescents," *Canadian Medical Association Journal*, 104:715, 1971.

(3) Sovner, R., and J. Wolfe, "Interaction Between Dextromethorphan and Monoamine Oxidase Inhibitor Therapy With Isocarboxazid," *The New England Journal of Medicine*, 319:1671, 1988.

(4) Harrison, W. M., et al., "MAOIs and Hypertensive Crises: The Role of OTC Drugs," *The Journal of Clinical Psychiatry*, 50:64–65, 1989.

(5) Letter from R. D. Laird, M.D., to A. J. Mustafa, FDA, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(6) Case Report No. 458131, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(7) Case Report No. 414881, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(8) Case Report No. 338049, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(9) Case Report No. 489170, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(10) Case Report No. 468738, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(11) Case Report No. 491372, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(12) Case Report No. 507638, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(13) Case Report No. 548005, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(14) Case Report No. 637761, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(15) Approved labeling for isocaboxazid (Hoffman-La Roche Laboratories), phenelzine sulfate (Parke-Davis), and tranylcypromine sulfate (SmithKline & French Laboratories), and letters from P. Leber, FDA, to above firms, in OTC Vol. 04TFMA2, Docket No. 90N–0420, Dockets Management Branch.

(16) Sinclair, J. G., "Dextromethorphan-Monoamine Oxidase Inhibitor Interaction in Rabbits," *Journal of Pharmacy and Pharmacology*, 25:803–808, 1973.

(17) Clayman, C. B., editor, "The American Medical Association Guide to Prescription and Over-the-Counter Drugs," Random House, Inc., New York, p. 307, 1988.

(18) Cardinale, V. A., editor, "Drug Topics Red Book," 92d ed., Medical Economics Co., Inc., Oradell, NJ, p. 35, 1988.

(19) "AMA Drug Evaluations," 6th ed., *American Medical Association*, Philadelphia, pp. 139–141, 1986.

(20) "USP Dispensing Information—1989," 9th ed., the United States Pharmacopeial Convention, Inc., Rockville, MD, Vol. 1A, pp. 309–314.

(21) Guzé, B. H., and L. R. Baxter, Jr., "Current Concepts: Neuroleptic Malignant Syndrome," *The New England Journal of Medicine*," 313:163–166, 1985.

(22) Linden, C. H., B. H. Rumack, and C. Strehlke, "Monoamine Oxidase Inhibitor Overdose," *Annals of Emergency Medicine*, 13:1137–1144, 1984.

(23) Magurno, J. A. J., and A. W. Board, "MAOIs, OTC Drugs, and Hypertensive Crisis," *The Journal of Clinical Psychiatry*, 51:212–213, 1990.

(24) "Physicians' Desk Reference For Nonprescription Drugs," 11th ed., Medical Economics Co., Inc., Oradell, NJ, pp. 656 and 660–661, 1990.

(25) Pitts, F. N., editor, "Monoamine Inhibitor Drugs in Contemporary Psychiatry," *The Journal of Clinical Psychiatry*, 45:2–84, 1984.

(26) "AMA Drug Evaluations," 5th ed., *American Medical Association*, Chicago, pp. 253–255, 1983.

(27) Golwyn, D. H., and R. C. Weinstock, "MAOIs, OTC Drugs and Hypertensive Crisis," *The Journal of Clinical Psychiatry*, 51:213, 1990.

(28) Harrison, W., "MAOIs, OTC Drugs and Hypertensive Crisis," *The Journal of Clinical Psychiatry*, 51:213, 1990.

The agency is proposing that these revised drug interaction precautions become effective 12 months after the date of publication of the final rule in the **Federal Register**. Manufacturers of OTC antitussive drug products are encouraged to voluntarily implement this labeling as of the date of publication of this proposal, subject to the possibility that FDA may change the wording of the drug interaction precaution as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed drug interaction precaution to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291.

The agency therefore concludes that no one of these rules, including this proposed rule for OTC antitussive drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antitussive drug products is not expected to pose such an impact on small businesses. The only

action needed will be a labeling revision at the time that the final monograph amendment becomes effective. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antitussive drug products. Comments regarding the impact of this rulemaking on OTC antitussive drug products should be accompanied by appropriate documentation. A period of 60 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before August 18, 1992, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before August 18, 1992. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 341 be amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.74 is amended by adding new paragraphs (c)(4)(v) and (c)(4)(vi) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(v) *For products containing dextromethorphan or dextromethorphan hydrobromide identified in § 341.14(a)(3) and (a)(4) when labeled for adults or for adults and children under 12 years of age.* "*Drug Interaction Precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

(vi) *For products containing dextromethorphan or dextromethorphan hydrobromide identified in § 341.14(a)(3) and (a)(4) when labeled only for children under 12 years of age.* "*Drug Interaction Precaution.* Do not give this product to a child who is taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting the child's doctor. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product."

* * * * *

Dated: March 18, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-14352 Filed 6-18-92; 8:45 am]

BILLING CODE 4160-01-F

federal register

Friday
June 19, 1992

Part IX

Department of Interior

Fish and Wildlife Service

50 CFR Part 20

Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN: 1018-AA24

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document describes proposed changes and provides additional information that will facilitate establishment of the 1992–93 hunting regulations. This document also announces the meetings of the Service Migratory Bird Regulations Committee.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early seasons on June 23, 24, and 25, and for late seasons on and August 4, 5, and 6. Public hearings on proposed early- and late-season frameworks will be held at 9:00 a.m. on June 25 and August 6, 1992, respectively. The comment period for proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 20, 1992; and for late-season proposals will end on August 30, 1992.

ADDRESSES: Meetings of the Service Migratory Bird Regulations Committee will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (at the corner of 18th and E Streets, NW.), Washington, DC. Both public hearings will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on the proposals and notice of intention to participate in either hearing should be sent to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1991

On May 8, 1992, the Service published in the **Federal Register** (57 FR 19865) a proposal to amend 50 CFR part 20. The proposal dealt with establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document are specified above under **DATES**. Early-season frameworks will be proposed in late June and late-season frameworks in early August. Final regulatory frameworks for early seasons are targeted for publication on or about August 17, 1992, and those for late seasons on or about September 23, 1992.

On June 25, 1992, a public hearing will be held in Washington, DC, to review the status of migratory shore and upland game birds. Recommended hunting regulations for these species and other early seasons will be discussed at that time.

On August 6, 1992, a public hearing will be held in Washington, DC, to review the status of waterfowl and recommended hunting regulations for regular waterfowl seasons, and other species and seasons not previously discussed at the June 25 public hearing.

Announcement of Service Regulations Committee Meetings for Early-Season Regulations

The meeting on June 23 is to review information on the 1991 status of migratory game birds and to develop 1992–93 migratory game bird regulations recommendations. The June 24 meeting is to assure that the Service's regulation recommendations are developed with the benefit of full consultation on the issues.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—July 29–30, Wrightsville, North Carolina (Shell Island Hotel)

Mississippi Flyway—July 29–30, Springfield, Missouri (Ramada Hotel - Hawthorn Park)

Central Flyway—July 30–31, Yellowknife, NWT (Discovery Inn)

Pacific Flyway—July 30–31, Reno, Nevada (Peppermill Inn)

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

Review of Public Comments

This supplemental rulemaking describes changes which have been recommended based on the preliminary proposals published May 8, 1992, in the **Federal Register**. Only those recommendations that would require either new proposals or substantial modification of the preliminary proposals to facilitate effective public participation are included herein. Those that support or oppose but do not recommend alternatives to the preliminary proposals are not included, but will be considered later in the regulations-development process. The Service will publish responses to proposals, written comments, and public-hearing testimony when final frameworks are developed, at which time additional data about the status of affected species will be available.

The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final frameworks.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 8, 1992, **Federal Register** (57 FR 19865).

1. Ducks.

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special/Species Management. Only those categories containing substantial recommendations are included below.

B. Framework Dates

The Atlantic Flyway Council recommended that the framework opening date may be used as a tool for managing harvests of certain duck populations in the Atlantic Flyway.

Under normal circumstances, the opening date in the Atlantic Flyway should be October 1. Framework closing dates should not be used as a tool for managing duck harvest and should be fixed indefinitely at no earlier than January 15 for the Atlantic Flyway.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that framework dates be fixed dates not subject to annual fluctuations and that the fixed dates should be the Saturday nearest October 1 through January 20.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service not use framework dates as a basic tool to adjust harvest, but if framework dates are used, the Service should develop a well-designed study to clarify the various impacts of framework dates. The Committee had previously recommended that framework dates be the Saturday nearest October 1 to the Sunday nearest to January 20. They stated that framework impacts cannot be separated from other past regulatory changes and that the current framework application may not provide equal regulatory fairness throughout the flyway.

The Central Flyway Council noted that the Service's review of framework dates has failed to provide evidence of measurable benefits from the use of framework dates to regulate harvests. The Council stated that the use of framework dates for harvest management is selective in its impact on northern and southern States. In the North, early migrations of some species are complete before seasons open. In the South, seasons are closed before migrations are complete. The Council believes that harvest management should focus on more equitable regulations, such as season length and daily bag limits. Framework dates should not be used to regulate annual harvests, but should be used to establish an appropriate biological framework for duck hunting.

The Pacific Flyway Council recommended that manipulation of hunting-season framework dates should continue to be an option in regulating duck harvest. The Service should not eliminate any duck harvest management options, although the evaluation conducted by the Service to assess the impact of utilizing framework dates to regulate harvest was inconclusive.

G. Special/Species Management

i. *Canvasback Harvest Management.* The Atlantic Flyway Council recommended that the Service develop an interim strategy for canvasback harvests to be used until the resolution of stabilized regulation guidelines. This interim strategy should be based on current biological data, including information that indicates the East/West delineation of the canvasback population is no longer warranted. The Council stated that this interim strategy should be equitable among the 4 flyways.

The Central Flyway Council recommended that a season be initiated when the continental breeding population index exceeds 450,000 (3-year average) and the pond index exceeds 3 million. This season would continue until the continental breeding population index falls below 400,000 (3-year average). The Council stated that banding data suggest the canvasback population is not comprised of two distinct subpopulations and that all flyways should be given an opportunity to conduct a season. The Council recommended that this interim strategy be used until the concept of stabilized regulations becomes operational.

The Pacific Flyway Council recommended that the Service continue to manage Canvasback harvest by subunits. They strongly believe that management actions are most effective when they recognize biological differences among and within populations. Although Western and Eastern canvasback populations are not completely distinct, biological differences do exist that should be recognized in management design. The Council specifically recommended that the quality of the midwinter survey be improved with respect to canvasbacks in the western United States, that the aggregate canvasback/redhead bag should be maintained, that the Service evaluate the cost of trapping and banding required to better determine distribution and derivation of canvasback harvests, and that population harvest strategies be developed that distinguish between Western and Eastern populations, but remain sensitive to population overlap.

ii. *Pintail Harvest Management.* The Central Flyway Council recommended that the Service maintain the current harvest regulations unless a significant decline occurs in the breeding population index. If such a decline should occur, coordination should be initiated between the Service and the flyways to develop options for conservation of the pintail. The Council recognized the low population status of the pintail but indicated that sport harvest was not the cause of the decline, there is no biological justification for closing the pintail season, and a closed season for pintails would complicate regulations and hamper habitat-management efforts.

The Pacific Flyway Council recommended that harvest management options short of season closures should be pursued. Total season closure seems inappropriate because of the lack of evidence that demonstrates population levels have been or are now being regulated by harvest. Closure also may negatively impact support for ongoing habitat-enhancement efforts.

iii. *Experimental September Duck Seasons.* Several recommendations addressing increased harvest opportunities for teal in September referenced the experimental September duck seasons. These seasons are currently limited to wood ducks. Recommendations regarding increased opportunities for blue-winged teal are summarized under September Teal Seasons.

iv. *September Teal Seasons.* The Atlantic Flyway Council recommended that Florida be allowed to hold a September teal season (in conjunction with their experimental September wood duck season) when and if September teal seasons are restored in the Central and Mississippi Flyways.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended interim criteria for reinstatement of the September teal seasons as follows:

"Breeding population indices were viewed as the most appropriate basis for development of interim guidelines for reinstatement of September teal seasons. Final guidelines for September teal seasons should include a range of criteria, including breeding populations, habitat conditions, harvest rates, and development of an approach to evaluate teal harvest south of the United States."

"In the interim (1992), reinstatement of September teal seasons is recommended if the breeding population is sustained at 1991 levels (3.779 +/- 0.245 million). This criterion includes consideration of the precision of population surveys for blue-winged teal. Thus, a breeding population of 3.5 million breeding blue-winged teal would be considered sufficient to recommend reinstatement of the season for 1992. The Service and the Mississippi Flyway Council should jointly develop final implementation criteria (in conjunction with development of stabilized regulations strategies) by March 1994."

In addition, the Lower-Region Regulations Committee recommended that if the full September teal season is reinstated, teal be incorporated into

Kentucky's and Tennessee's September wood duck season daily bag limit and that the bag limit be 4 birds, including no more than 2 wood ducks. If an abbreviated September teal season is offered, the Committee recommended a daily bag limit of 2 teal or wood ducks, singly or in the aggregate.

The Central Flyway Council recommended reinstatement of the September teal season when the 3–year running average of the breeding population index equals or exceeds 3 million. The season length and daily bag limits should be the same as used in past years — — a 9–day season with a 4–bird daily bag limit. The September teal season should be reviewed if the 3–year running average of the breeding population index falls below 3 million.

4. Canada Geese.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service closely monitor existing regular and special seasons for the impacts on the Southern James Bay Population of Canada geese. They further recommend that the Service fully analyze data from existing seasons before expanding seasons that might cause cumulative harvest on this population of geese. They emphasized that special seasons should adhere to the criteria established by the Service.

A. Special Seasons

Since establishing the Criteria for Special Canada Goose Seasons on September 26, 1991, (at 56 FR 49110), the Service has become aware of the need to clarify certain terms and to include provisions for special early seasons to be held after the established dates. The Service herein proposes to modify the established special-season criteria. The revised criteria would clarify that special late Canada goose seasons may be held only after the close of the regular Canada goose season in that geographic area. Special early Canada goose seasons will be considered after the established dates but prior to the opening of the regular Canada goose season provided that at least 2 years of data gathered during the time period being considered are available to justify such a season. The Service expresses its concern for the protection of nontarget Canada goose populations during this later period and emphasizes that these data, and information from subsequent evaluations, must strongly indicate that such a season will successfully meet all established criteria for special early Canada goose seasons.

i. *Early Seasons.* The Atlantic Flyway Council recommended that new experimental seasons for resident Canada geese be initiated in 1992 in Erie, Cattaraugus, and Chautaugua Counties of New York and Bucks, Lehigh, Montgomery, Crawford, Erie, Butler, and Mercer Counties of Pennsylvania.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service approve operational status of the seasons in the Upper Peninsula and Northern Lower Peninsula portions of Michigan which were part of the original 1986–89 experimental season and that the Service approve a 3–year expanded eastern-Upper-Peninsula experiment.

The Committee further recommended that the experimental seasons in the Fergus Falls/ Alexandria and Southwest Border goose zones in Minnesota be extended pending completion of the final report. Preliminary final reports indicate that these seasons meet the criteria outlined in the Memorandum of Understanding between Minnesota and the Service, however, Minnesota is unable to complete the final report until 1991 band-recovery and parts-collection--survey data are obtained. The final reports will be completed prior to the March 1993 Council Meeting.

The Pacific Flyway Council recommended that the hunt area in Oregon be enlarged to include Youngs Bay, its tributaries south and east of the city of Astoria, and adjacent agricultural lands.

ii. *Late Seasons.* No recommendations received.

B. Regular Seasons

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service establish a 3–year experimental season in Boone, Callaway, Cole, and Howard Counties of central Missouri. This season would be 9–15 days long and would be held prior to October 15. The daily bag limit would be 3 geese. All geese harvested would be checked at mandatory check stations and a special permit would be required for hunters to participate. The recommended season would be in addition to the regular Canada goose season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Canada goose frameworks in Wisconsin be modified as follows: Eliminate the Pine Island and Theresa Zones and incorporate these areas into the Horicon Zone. Establish permit-issuance procedures and liberalize hunting authorizations if Wisconsin's Federally-assigned harvest quota for Canada geese exceeds 160,000 and 200,000, respectively. When Wisconsin's quota exceeds 160,000 birds, tag-zone hunters will be authorized to harvest a limited number of birds (controlled by tags) in the Exterior Zone, and Exterior-Zone hunters will be allowed to harvest a limited number of birds (controlled by tags) in the Horicon Zone. When Wisconsin's quota exceeds 200,000 birds, all zone restrictions will be dropped and hunters will be permitted to hunt anywhere in the State if they first obtain a Canada goose hunting permit, as long as an acceptable harvest-monitoring system is in place.

The Central Flyway Council recommended that an interim harvest strategy be developed for dark geese in the Central Flyway. This strategy should endorse attempts to increase harvest of all dark geese in the western tier and increase harvest on large Canada geese, while maintaining harvest of small Canada geese and white-fronted geese, in the eastern tier. During the interim, management plans will be revised.

5. White-fronted Geese.

The Central Flyway Council recommendation regarding an interim harvest strategy for dark geese in the Central Flyway involves white-fronted geese. See item 4. *Canada Geese.*

9. Sandhill Cranes.

The Central Flyway Council recommended no changes in the mid-continent sandhill crane hunting frameworks. The management plan is currently being revised. The Council believes that frameworks should not be modified prior to the revision and that future frameworks should abide by the revised management plan.

The Management Plan for Mid-Continent Sandhill Cranes was approved by the Central Flyway Council in 1981. The Service notes that substantial efforts were made during March 1992 to update this cooperative management plan. The Service suggests that the final revision should be completed prior to June 1993. In the interim, the Service also recommends that the Central Flyway Council submit a draft plan to the Pacific Flyway Council for joint concurrence because management of this population in both flyways is currently being guided by this management plan.

The Central and Pacific Flyway Councils recommended that an experimental season be initiated in Montana for the Rocky Mountain Population of sandhill cranes. All hunts would follow guidelines as outlined in the revised Pacific and Central Flyway Management Plan for Rocky Mountain Greater Sandhill Cranes.

16. Mourning Doves.

The Central Flyway Council recommended that the portion of the Texas Special White-winged Dove Area from Del Rio to Fort Hancock be discontinued and that this area be transferred from the South Zone to the Central Zone. Transferring this area to the Central Zone would permit the hunting of both white-winged doves and mourning doves to begin in this area on September 1, rather than limiting the hunt prior to September 20 to weekends during the special season.

The Central Flyway Council recommendation regarding the number of white-winged doves allowed in the aggregate daily bag limit involves mourning doves as well. See item 17. *White-winged and White-tipped Doves.*

17. White-winged and White-tipped Doves.

The Central Flyway Council recommendation regarding realignment of zone boundaries involves white-winged doves. See item 16. *Mourning Doves.*

The Council further recommended that the number of white-winged doves permitted in the aggregate daily bag limit during the Texas mourning dove season in Cameron, Hidalgo, Starr, and Willacy Counties in the Lower Rio Grande Valley be increased from 2 to 6 to match the statewide daily bag limit.

Finally, the Council recommended that the special white-winged dove season be increased from 2 days to 4 days in September if the Valley whitewing population increases to over 350,000 breeding birds.

23. Other.

A. Stabilized Regulations Development

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service improve the regulations-setting process with objectives of reducing costs of setting regulations while still maintaining a complete 3–year to 5–year periodic review.

The Pacific Flyway Council supported cooperative development of prescriptive regulations that will guide harvest strategies for duck populations. The Council believes expeditious development of harvest guidelines that incorporate habitat variables will lead to a more proactive, concerted, and meaningful approach to management, particularly as populations recover.

Public Comment Invited

The Service intends that adopted final rules be as responsiveas possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988, (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291, and Paperwork Reduction Act

In the **Federal Register** dated May 8, 1992, (57 FR 19865), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above **Federal Register** reference, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary authors of this supplemental proposed rulemaking are Robert J. Blohm and William O. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1992–93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 703–712) and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a–d and e–j).

Dated: June 2, 1992.

James F. Spagnole,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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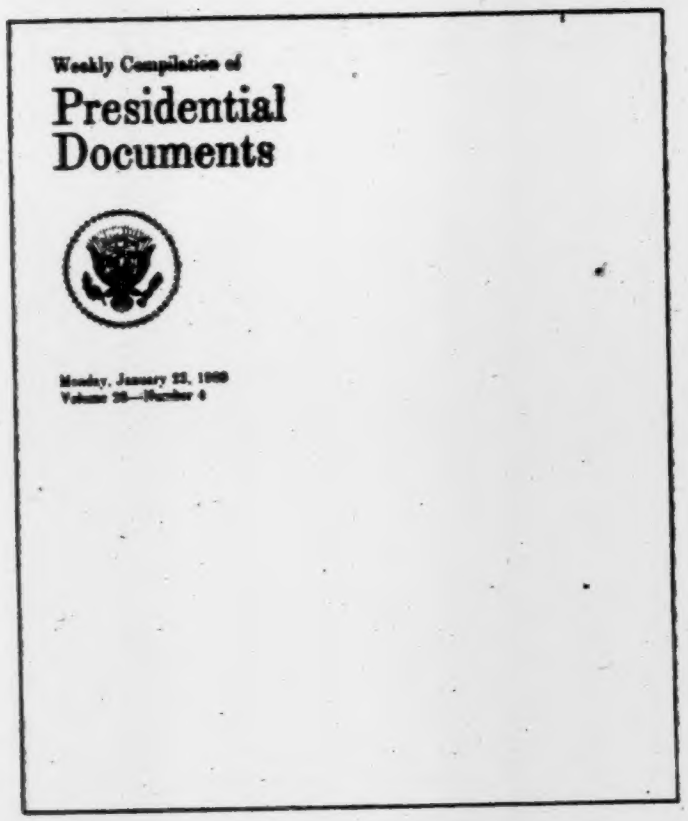

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